ILLINOIS SCHOOL CODE

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CONSTITUTION OF THE STATE OF ILLINOIS

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PREAMBLE

We, the People of the State of Illinois - grateful to Almighty God for the civil, political and religious liberty which He has permitted us to enjoy and seeking His blessing upon our endeavors - in order to provide for the health, safety and welfare of the people; maintain a representative and orderly government; eliminate poverty and inequality; assure legal, social and economic justice; provide opportunity for the fullest development of the individual; insure domestic tranquility; provide for the common defense; and secure the blessings of freedom and liberty to ourselves and our posterity - do ordain and establish this Constitution for the State of Illinois.

(Source: Illinois Constitution.)

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ARTICLE I
BILL OF RIGHTS

Section 1. Inherent and Inalienable Rights.

All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Crim L § 1:09.

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- Police Powers

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- Removal from Ballot

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- Flag

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- Definition
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- Business of Individual

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Rights of an Accused
- Intervention by Law Officers
Unemployment Compensation Act
Using False Name

In General

Minor inmates could not maintain a cause of action for cruel and unusual punishment based on prison conditions under Ill. Const. Art. I, §§ 1 and 2. Prisoner complaints that prison conditions violated their right to be free from cruel and unusual punishment were brought in Illinois courts under either U.S. Const. amend. VIII or under a state statutory scheme. Minor B v. Duff, F. Supp. 2d , 2009 U.S. Dist. LEXIS 61109 (N.D. Ill. July 17, 2009).

A constitutionally repugnant enactment cuts off rights that are guaranteed to every citizen under this section and perverts the duties owed to those citizens. People v. Gersch, 135 Ill. 2d 384, 142 Ill. Dec. 767, 553 N.E.2d 281 (1990).

When a statute is held unconstitutional in its entirety, it is void ab initio. People v. Gersch, 135 Ill. 2d 384, 142 Ill. Dec. 767, 553 N.E.2d 281 (1990).

Where a statute is violative of constitutional guarantees under this section, the Supreme Court has a duty not only to declare such a legislative act void, but also to correct the wrongs wrought through such an act by holding the decision retroactive. People v. Gersch, 135 Ill. 2d 384, 142 Ill. Dec. 767, 553 N.E.2d 281 (1990).

Court concluded that the Illinois Flag Law of April 22, 1899, was unconstitutional, not only as infringing upon the personal liberty guaranteed to defendant by both the U.S. Const. amend. XIV and former Ill. Const. of 1870, Arts. II, §§ 1, 2, and 4 (now Ill. Const. (1970), Arts. I, §§ 1, 2, 4), but also as depriving a U.S. citizen of the right of exercising a privilege impliedly granted by the federal constitution. Ruhstrat v. People, 185 Ill. 133, 57 N.E. 41, 1900 Ill. LEXIS 2636 (1900).

- Bill of Rights

Every court is bound to enforce the provisions of the Illinois Bill of Rights, as well as all other constitutional provisions, with no discretion in any particular case, and without regard to whether in some instances the public good might temporarily be better served by disregarding them. People v. Humphreys, 353 Ill. 340, 187 N.E. 446 (1933).

Basic Rights

Limitations on the right of liquor licensees to make political campaign contributions, set forth in former Ill. Rev. Stat. ch. 43, para. 132, did not violate the free speech or equal protection rights of the licensees. Schiller Park Colonial Inn, Inc. v. Berz, 63 Ill. 2d 499, 349 N.E.2d 61, 1976 Ill. LEXIS 339 (1976).

- Police Powers

Statutes enacted under the police power must be construed, if possible, so as to avoid infringing on life, liberty and the pursuit of happiness. People v. Brown, 407 Ill. 565, 95 N.E.2d 888 (1950).

Elections

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- Removal from Ballot

Respondents' removal from the ballot was constitutionally permissible due to noncompliance with the mandatory pagination requirements of 10 ILCS 5/10-4. Wollan v. Jacoby, 274 Ill. App. 3d 388, 210 Ill. Dec. 841, 653 N.E.2d 1303 (1 Dist. 1995), appeal denied, 164 Ill. 2d 585, 214 Ill. Dec. 333, 660 N.E.2d 1282 (1995).

Illegal Discrimination

An action seeking to declare unconstitutional a rule which prohibited discriminatory real estate agreements which was based upon a former statutory provision (see now 225 ILCS 454/20-50) was dismissed on equity grounds; the contracts upon which the action was based were contrary to public policy. Chapman v. Watson, 40 Ill. 2d 408, 240 N.E.2d 604 (1968).

Infringement of Right

- Flag

Court concluded that the Illinois Flag Law of April 22, 1899, was unconstitutional, not only as infringing upon the personal liberty guaranteed to defendant by both the U.S. Const. amend. XIV and former Ill. Const. of 1870, Arts. II, §§ 1, 2, and 4 (now Ill. Const. (1970), Arts. I, §§ 1, 2, 4), but also as depriving a U.S. citizen of the right of exercising a privilege impliedly granted by the federal constitution. Ruhstrat v. People, 185 Ill. 133, 57 N.E. 41, 1900 Ill. LEXIS 2636 (1900).

Police Power

- Definition

The term police power comprehends the power to make and enforce all wholesome and reasonable laws and regulations necessary to maintain the public health, comfort, safety, and welfare. Frazer v. Shelton, 320 Ill. 253, 150 N.E. 696 (1926).

- Exercise of

The right to liberty, property, and the pursuit of happiness is subject to the reasonable exercise of the police power of the states. Frazer v. Shelton, 320 Ill. 253, 150 N.E. 696 (1926).

The end to be secured by the exercise of the police power is the furtherance of the public health, comfort, safety, or welfare. Frazer v. Shelton, 320 Ill. 253, 150 N.E. 696 (1926).

Prevailing Wage Act

- Prior Illegal Requirements

The former statutory requirements under the former Prevailing Wage Act (see now 820 ILCS 130/0.01) which had the effect of materially increasing costs or limiting those who might be employed in the construction of public works were illegal under this section because they denied the right of the employee to make contracts for his labor. Reid v. Smith, 375 Ill. 147, 30 N.E.2d 908 (1940).

Property

- Business of Individual

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A person's business, profession, trade, occupation, labor, and the avails from each constitute property envisioned by this section and to follow any of those activities is liberty. These rights, shall not be taken from a person except by due process of law. People v. Brown, 407 Ill. 565, 95 N.E.2d 888 (1950).

A person's business, profession or occupation is property within this section relating the right to liberty and the pursuit of happiness; however, this individual right is not unqualified and it does have to yield to the higher and greater right of the best interests of the people. County of DuPage v. Henderson, 402 Ill. 179, 83 N.E.2d 720 (1949).

Restriction of Occupation

- Police Power

Unless an act restricting the ordinary occupations of the citizen can be shown to fall within the police power, such act is void as violating the right of the citizen to liberty and the pursuit of happiness. Frazer v. Shelton, 320 Ill. 253, 150 N.E. 696 (1926).

Right to Contract

The right to contract is both a liberty and a property right under the Constitution. Reid v. Smith, 375 Ill. 147, 30 N.E.2d 908 (1940).

Right to Work

The right to use, buy, and sell property and contract in respect thereto is protected by the Constitution; labor is property, therefore, the laborer has the same right to sell his labor, and to contract with reference thereto, as has any other property owner. Ritchie v. People, 155 Ill. 98, 40 N.E. 454 (1895).

The right to labor or employ labor, and make contracts in respect thereto upon such terms as may be agreed upon between the parties, is a property right guaranteed by the Constitution. Ritchie v. People, 155 Ill. 98, 40 N.E. 454 (1895).

Rights of an Accused

- Intervention by Law Officers

There can be no doubt that any affirmative intervention by officers of the law substantially depriving an accused of the benefit of the guarantees of former Ill. Const. (1870), Art. II (see now Ill. Const. (1970), Art. I) constituted a deprivation of his constitutional rights. Thompson v. People, 410 Ill. 256, 102 N.E.2d 315 (1951).

Unemployment Compensation Act

The former Unemployment Compensation Act (see now 820 ILCS 305/1)did not violate Ill. Const., (1870), Art. II, § 1 (see now this section). Zelney v. Murphy, 387 Ill. 492, 56 N.E.2d 754 (1944).

Using False Name

A former section of the Medical Practice Act (see now 225 ILCS 60/26) which made advertising under a false name a reason for refusing or revoking a certificate to practice medicine did not

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violate Ill. Const. (1870), Art. II, § 1 (see now this section) or U.S. Const., Amend. 14. People ex rel. State Bd. of Health v. Apfelbaum, 251 Ill. 18, 95 N.E. 995 (1911).

LEGAL PERIODICALS

For bibliography, "The 1970 Illinois Constitution: The First Two Decades," see 8 N. Ill. U.L. Rev. 845 (1988).

For article, "The Power of State Constitutions in Protecting Individual Rights," see 8 N. Ill. U.L. Rev. 651 (1988).

For article, "The 1970 Illinois Constitution: Has It Made a Difference," see 8 N. Ill. U.L. Rev. 571 (1988).

For article, "The 1970 Illinois Constitution in Review: A Symposium on Issues for Change," see 8 N. Ill. U.L. Rev. 565 (1988).

For article, "Practice and Procedure Under the Illinois Human Rights Act," see 3 N. Ill. U.L. Rev. 75 (1982).

RESEARCH REFERENCES

Implied cause of action for damages for violation of provisions of state constitutions. 75 ALR5th 619.

Section 2. Due Process and Equal Protection.

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Crim L § 1:09, § 16:01.

See Illinois Jur, Fam L § 10:1, § 10:23.

See Illinois Jur, Pers Inj & Torts § 8:1, § 34:88, § 34:89.

See Illinois Jur, Prop § 3:1.

CASE NOTES

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-- Admonishment
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-- Prison Discipline
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-- Probation Violation Proceeding
-- Professional Regulation
-- Prohibition of Medical Offices
-- Railroad Employee Transportation
-- Railroads
-- Regulation of Cigarette Sales
-- Regulation of Transportation Tickets
-- Retailers' Occupation Tax Act
-- Revenue Act
-- Revised Cities and Villages Act
-- Right to Competent Counsel
-- Right to Contract
-- Scaffold Act
-- School Code
-- School Code Dismissal Procedure
-- School District Annexation
-- Second Degree Murder
-- Sentencing

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-- Sewer Connection Permit
-- Sex Offender and Child Murderer Community Notification Law
-- Sex Offender Registration Act
-- Sexually Violent Persons Commitment Act
-- Standing
-- State Action Required
-- State Wage Rates
-- Stolen Vehicle Statutes
-- Substitution of Judges
-- Sufficient Description
-- Suspension from Association
-- Syndicated Gambling
-- Taking Property for Railroads
-- Tax
-- Taxes
-- Termination of Parental Rights
-- Traffic Congestion
-- Trial Expenses
-- Trusts
-- Two Separate Actions
-- Underage Drinking
-- Use Tax
-- Vehicle Code
-- Vehicular Invasion
-- Voluntary Resignation
-- Voluntary Submission to Intoximeter
-- Wages of Women and Minors
-- Waiver of Right to Counsel
-- Warrantless Arrest
-- Whistleblower Reward and Protection Act
-- Worker's Compensation
-- Workers' Compensation
-- Workers' Compensation Immunity
-- Workers' Occupational Diseases
-- Zoning
-- Zoning Ordinance
-- Zoning Ordinances
- Interference with Interstate Commerce
-- Franchise Tax
- Investigations Under Antitrust Act
- Joint and Several Liability
- Judge's Responsibility
- Jurisdiction
-- In General
-- Foreign Corporation
-- Insufficient Claim

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-- Long-Arm Statute
-- Non-Resident Defendant
-- Notice to Juvenile's Parent
-- Personal Judgment
-- Real Property In Rem Decree
- Juror Verdict Forms
- Jury Instructions
-- Burden of Proof
-- Lesser-Included Offense
-- Multiple Criminal Methods
-- Violation Not Shown
- Legislation
- Liberty Interest
-- In General
-- Conditional Discharge
-- Definition
-- Failure to Provide Counsel
-- Family Rights
-- Indirect Criminal Contempt
-- Involuntary Commitment
-- Involuntary Commitment Proceeding
-- Involuntary Hospitalization
-- Legislative Authority to Set Penalties
-- Overthrow of Government
-- Perjury
-- Raising Children
-- School Attendance
-- Suspension of Driving Privileges
-- Traffic Ordinance
-- Use of Intoxicating Liquor
-- Vagabond
- Long Arm Statute
- Newly Discovered Evidence
-- Habeas Corpus
-- New Trial
- Not Reasonable Use
- Notice
-- Form of Notice
- Notice Requirement
-- In General
-- Failure to State Specific Offense
-- Business Corporation Act
-- Child Abduction Statute
-- Collection of Real Estate Taxes
-- Constructive Service
-- Form of Notice

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-- Former Unemployment Compensation Act
-- Juvenile Delinquency Proceedings
-- Waiver
- Legislation.
-- Manslaughter
-- Property Assessment
-- Sentence Enhancement
-- Tax Sale
-- Taxes
- Notice Requirements
-- In General
-- Property Assessment
- Ordinance
-- Gang Loitering
- Parent's Rights
- Personal Jurisdiction
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- Plain-Error Doctrine
- Police Power
-- In General
-- Abating Nuisance
-- Cancellation of Rock Concerts
-- Controlled Substances Act Penalties
-- Drugged Driving
-- Horse Racing Act
-- Licenses
-- Licenses to Sell Cigarettes
-- Limitation of Garbage Licenses
-- Medical Regulations
-- Motorists
-- Not Reasonable Use
-- Ordinances
-- Penalty Provisions
-- Pollution Control Permit Requirement
-- Reasonable Use
-- Reasonable Uses
-- Right to Contract
-- Right to Property
-- Sale of Liquor
-- Scope of Prohibition
-- Use of Intoxicating Liquor
-- Use of Sewer
-- Vagrancy
-- Workers' Compensation
-- Zoning Ordinances
- Postconviction Petition

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- Probation Violation
- Procedural Due Process
- Property Rights
-- In General
-- Arbitrary Zoning Ordinance
-- Business License
-- Cable Act
-- Condemnation Proceedings
-- Coroner's Juries
-- County Officers
-- Definition
-- Divestiture of Title
-- Dram Shop
-- Easements and Accessibility
-- Eminent Domain
-- Employment
-- Environmental Protection Act
-- Evidentiary Hearing
-- Extent of Zoning Power
-- Factual Consideration
-- Fair Trade Act of 1935
-- Filing Fee for Dissolution of Marriage
-- Gambling Devices
-- Harness Horses
-- Illegal Seizure
-- Impact of Zoning Ordinance
-- Impact Fees
-- Injunction
-- Judicial Review of Zoning Ordinances
-- Jurisdiction
-- Land Use Regulation
-- Landmark Ordinance
-- License to Practice Medicine
-- Mechanic's Liens
-- Motor Fuel Tax Act
-- No Double Taxation
-- Non-conforming Use
-- Notice Requirement
-- Occupational Disease Act
-- Ordinances
-- Pension Benefits
-- Practice of Dentistry
-- Private Employment Agencies
-- Prohibition against Dancing
-- Protection Ordinance
-- Public Employee

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-- Public Employment
-- Racetrack Licenses
-- Right of User
-- Seizure
-- Severed Mineral Interests
-- Sewer Connection Permit
-- Standing
-- State Contract
-- Statutory Taxation Terms
-- Street Car Ordinance
-- Street Closing
-- Student Loan Default Proceedings
-- Subordination to Police Power
-- Substantive Agency Rules
-- Surface Mining Repair Requirements
-- Taking
-- Taking of Funds
-- Tax
-- Tax Reassessment
-- Urban Community Conservation
-- Validity of Zoning Ordinance
-- Zoning Ordinances
- Public Hearing
- Punitive Damages
- Rational Basis Test
-- In General
-- Controlled Substance Act
- Reasonable Relationship
-- Criminal Penalty
-- Limitations Period
-- Municipal Liquor Ordinance
-- Statutory Purpose
-- Ticket Scalping Act
- Reasonable Relationship Standard
- Referendum
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- Registration of Sex Offenders
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-- Sex Offender Registry
- Regulatory Scheme
- Requirements
- Retroactive Application
- Revival of Time-Barred Claim
- Right to Adequate Education
- Right to be Heard
- Right to Competent Counsel

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- Right to Contract
-- In General
-- Local Ordinance
- Right to Counsel
- Right to Pursue Profession
-- Prohibition of Debris Accumulation
- Right to Testify
- Right to Trial
- Rights of Accused
- Rule Making
- School Discipline
- School District Taking
- Scope of Prohibition
- Sentencing
-- In General
-- Consideration of Other Charges
-- Fees
-- Juveniles
-- Requirements
-- Standards
-- Use of Firearm
- Settlement
- Sex Offender Registration
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-- Claims Against State
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-- Municipal Corporations
- State Action
-- Attorney Fees for Private Adoptions
-- Child Abduction Statute
-- Perjury
- Statute of Limitations
- Statutory Interpretation
- Substantive Due Process
- Suspension of Driving Privileges
-- Warnings
- Suspension of Sheriff
- Taxation
- Taxes
- Unregistered Firearm in Vehicle Ordinance

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- Use of Electronic Stun Belts
-- Factors
- Use of Sewer
- Vagueness Standard
-- In General
-- Aggravated Battery Statute
-- Commercial Zoning Ordinance
-- Criminal Statutes
-- Franchise Disclosure Act
-- Grandparent Visitation
-- Insurance
-- Interpretation of Obscene and Indecent
-- Look-Alike Drugs
-- Medical Advertising
-- Municipal Police Pension Ordinance
-- Murder
-- Open Meetings Act
-- Parental Rights
-- Requirements
-- Supreme Court Rule
- Validity of Penalty
- Victim Impact Statement
- Waiver
-- In General
-- Preliminary Hearing
-- Right to Counsel
- Waiver of Right to Testify
- Witnesses to Confessions
- Zoning Ordinances

Elections
- New Parties
- Reapportionment Scheme

Equal Protection
- In General
-- Test
- Discrimination
-- Disproportionate Impact
-- Unemployment Compensation
- Classification
-- Employment
- In General
-- Arbitrary Discrimination
-- History
-- Irrationality
-- Requirements
-- Standard of Review

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-- State Action
-- Test
- Application and Construction
-- Based on Family Relationship
-- Federal and State Analysis Identical
-- Incorporation of State and Federal Safety Regulations
-- Reasonable Basis
-- Relation with Special Legislation Provision
- Arbitrary Enforcement
-- In General
-- Concealed Weapon Permit
-- Municipal Liquor Ordinance
- Attorney's Fees
- Based on Age
- Classification
-- In General
- Classification
-- Marijuana
- Classification
-- In General
-- Attorneys
-- Based on Age
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-- Classification
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-- Based on Age
-- Based on Family Relationship
-- Based on Gender
-- Based on Population
-- Based on Precincts
-- Based on Salary
-- Based on Wealth
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-- Controlled Substances Act
-- Deferential Standard of Review
-- Drainage Code
-- Elimination of Public Services
-- Employment
-- Filing of Wrongful Death Petition
-- Former Paupers Statute
-- Fundamental Rights
-- General Assistance Fund Eligibility
-- HIV Positive

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-- Indigent Prisoners
-- Initiating Criminal Proceedings
-- Irrational
-- Justification
-- Marijuana
-- Marriage and Dissolution of Marriage Act
-- Medical Resident
-- Metropolitan Transit Authority Act
-- Municipal Versus Private Corporations
-- Open Meetings Act
-- Ordinances
-- Parents and Adult Children
-- Parking
-- Parolees
-- Pollution Control Permit Exceptions
-- Presumption of Rationality
-- Presumption of Validity
-- Prostitution Convictions
-- Public Works Preference Act
-- Reasonable Basis
-- Reinstatement of Mortgage
-- Reinstatment of Mortgage
-- Renting Motor Vehicles
-- Residency
-- Sale of Liquor
-- Sale of Marijuana
-- Second Degree Murder
-- Sentencing
-- Sex Offender Registration Requirement
-- Single Member
-- Speed of Motorists
-- Standard of Review
-- State Employees
-- Tax on Alcohol
-- Tax Uniformity Requirement
-- Taxes
-- Tort Liability
-- Uniformity
-- Validity of County Zoning Ordinance
-- Workers' Compensation
-- Workers' Compensation Immunity
-- Wrongful Death Counterclaim
-- Zoning Ordinances
- In General
- Discrimination
-- Bail Provisions

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-- Batson Challenge
-- Burden of Proof
-- Disproportionate Impact
-- Judicial Sale
-- Ordinances
-- Penal Statute
-- Peremptory Challenges
-- Police Pension Fund
-- Public Education Financing
-- Reasonable Basis Test
-- Restrictive Covenant
-- Unemployment Compensation
-- Use of Tax Funds
- Gender Discrimination
-- Jurisdiction
- Illustrative Cases
-- Absentee Ballot Return Provision
-- Amusement Tax
-- Arbitration
-- AIDS Testing of Sex Offenders
-- Aggravated Battery
-- Agriculture Zoning Ordinance
-- Assessments
-- Borrowing Statute
-- Campaign Contributions
-- Canal State Park Act
-- Chicago Transit Authority
-- Child Abduction Statute
-- Child Custody
-- Child Support Guidelines
-- Cigarette Sales
-- Cigarette Tax
-- City Poultry Regulation
-- Coal Mining
-- Collection of Taxes
-- Compensation of Miners
-- Compensatory Good Time
-- Contribution Among Joint Tortfeasors
-- Corporations
-- Denial of Vested Rights by Municipalities
-- Disclosure of Political Contributions
-- Discriminatory Water Rates
-- Driving While Under the Influence of Alcohol
-- Expedited Trial Court Calendar
-- Fire Protection Districts Act
-- Fishing

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-- Former Abandonment of Wife Statute
-- Former Bulk Sales Law
-- Former Civil Service Act
-- Former Corporation Act
-- Former Judgment Debtor Statute
-- Former Limitations Act
-- Former Majority Statute
-- Former Medical Malpractice
-- Franchise Agreements
-- Health Care Provider Immunity
-- Home Rule City Taxing Power
-- Hospital Districts
-- Hotel Room Attendants
-- Immunity
-- Juvenile Delinquent
-- Legal Malpractice Statute of Repose
-- Licenses
-- Malicious Prosecution
-- Motor Vehicle Franchise Act
-- Ordinances
-- Post-Judgment Interest Statute
-- Public Aid Code
-- Regional Transportation Authority Act
-- Right to Appeal
-- Sale of Newspapers
-- Sexually Violent Persons Commitment Act
-- Taxis
-- Termination of Parental Rights
-- Zoning
- Irrationality
- Joint Liability Statute
- lllustrative Cases
-- Court of Claims Act
- Reasonable Basis
- School Districting
- Settlement
- Standard of Review
- Zoning Ordinances

Executive Powers

Illustrative Cases
-- County Zoning Ordinance
- City's Construction Contracts
- Parental Notification

Interference With Interstate Commerce
- State Action

Jury Instructions

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Liberty Interest
- Involuntary Commitment
Peremptory Challenges
Post-Conviction Petition
Property Rights
- Ordinances
School District Taking
Sentence Upheld
- Illustrative Cases
Sentencing
- Juveniles
- Parole
Standing
- Municipal Corporations
Taxation
Unregistered Firearm in Vehicle Ordinance
Vagueness
- Not Shown
Waiver

In General

725 ILCS 5/115-7.3 was not violative of defendant's due process rights, as no fundamental right was involved, and the admission of other crimes evidence did not implicate the fair trial right, where the evidence was relevant and its probative value was not outweighed by its prejudicial effect; the other sexual offenses committed by defendant were relevant to defendant's propensity to commit the crimes for which defendant was on trial. People v. Beaty, 377 Ill. App. 3d 861, 316 Ill. Dec. 759, 880 N.E.2d 237, 2007 Ill. App. LEXIS 1417 (1 Dist. 2007), appeal denied, 2008 Ill. LEXIS 534 (Ill. 2008); cert. denied, 129 S. Ct. 264, 2008 U.S. LEXIS 6129, 172 L. Ed. 2d 197 (U.S. 2008).

The uniformity clause of Ill. Const. Art. IX, § 2 imposes more stringent limitations on the Illinois legislatures authority to classify the subjects and objects of taxation than other clauses in the constitution; thus, because 415 ILCS 5/12.5 did not violate the uniformity clause, it also did not violate either the equal protection or the substantive due process clauses found in Ill. Const. Art. I, § 2. Valstad v. Cipriano, 357 Ill. App. 3d 905, 293 Ill. Dec. 544, 828 N.E.2d 854, 2005 Ill. App. LEXIS 449 (4 Dist. 2005), appeal denied, 216 Ill. 2d 736, 298 Ill. Dec. 391, 839 N.E.2d 1038 (2005).

Denial of defendant's postconviction petition was affirmed because defendant was not denied the effective assistance of counsel as the circuit court did not err in finding that defendant waived his right to testify, as there was no evidence that defendant was unaware of his right to testify or that he was prevented him from exercising it. People v. Chatman, 357 Ill. App. 3d 695, 294 Ill. Dec. 21, 830 N.E.2d 21, 2005 Ill. App. LEXIS 447 (1 Dist. 2005), cert. denied, 2007 U.S. LEXIS 2153 (U.S. 2007).

In defining crimes and their penalties, the legislature is required to consider the constitutional goal of providing penalties according to the seriousness of the offense. People v. Powell, 299 Ill. App. 3d 92, 233 Ill. Dec. 425, 701 N.E.2d 68 (1 Dist. 1998), appeal denied, 181 Ill. 2d 584, 235 Ill. Dec. 946, 706 N.E.2d 501 (1998).

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Illinois Court of Claims has no authority to rule on whether Ill. Rev. Stat. ch. 37, paras. 439.22-1 and 439.22-2 (now 705 ILCS 505/22) are unconstitutional as being special legislation and violation of the equal protection provisions of Ill. Const. Art. I, § 2 because no claimant has a constitutional right to reimbursement from the State except according to the statute created by the legislature; as the court is a creature of the statute that created it, the court cannot question the constitutionality of that statute. Busch v. State, 33 Ill. Ct. Cl. 241, 1979 Ill. Ct. Cl. LEXIS 62 (Ct. Cl. 1979).

Where the trial judge proceeded to hear evidence in mitigation and aggravation before he entered an order that found defendant guilty of direct criminal contempt and imposed the sentence, the trial judge considered matters improper in a direct criminal contempt case; defendant was deprived of due process of law under state and federal constitutions. People v. Thor, 6 Ill. App. 3d 1045, 286 N.E.2d 769 (1 Dist. 1972).

Due process of law, as guaranteed by the Illinois Constitution, requires that an act shall not be vague, indefinite or uncertain, and must provide sufficient standards to guide the administrative body in the exercise of its functions. People ex rel. Stamos v. Public Bldg. Comm'n, 40 Ill. 2d 164, 238 N.E.2d 390 (1968).

It is presumed that public officials will properly discharge their duties and the court will not anticipate evasion or improper performance of duties; where it municipal action has been attacked on the ground that its enforcement will be unreasonable and unconstitutional, it will not be presumed in advance that the municipal corporation will do an unconstitutional act and the party attacking the action has the burden of proving by evidence that is definite and certain the conditions under which the municipal action may be obnoxious to the constitution before a court will be justified in disturbing such action. Kankakee County Housing Authority v. Spurlock, 3 Ill. 2d 277, 120 N.E.2d 561, 1954 Ill. LEXIS 410 (1954).

Where an Indiana court had established a drainage district and had authorized the building of a ditch that would have decreased the flow of a river flowing into Illinois, an Illinois-based electrical company had a right to a temporary injunction barring the drainage district's activities because such an issue was nonjudicial in character and not within the restraint upon the federal courts as related to state court proceedings. Public Service Co. v. Corboy, 250 U.S. 153, 39 S. Ct. 440, 63 L. Ed. 905, 1919 U.S. LEXIS 1728 (1919).

Under former Ill. Const. Art. IV, § 22 (now Ill. Const. (1970) Art. I, § 2), no person shall be deprived of life, liberty, or property without due process of law. Chicago v. Gage, 268 Ill. 232, 109 N.E. 28, 1915 Ill. LEXIS 2216 (1915).

Under Ill. Const. (1970), Art. I, § 2, no freeman shall be in any manner deprived of his life, liberty, or property, but by the judgment of his peers or the law of the land. Cook v. South Park Comm'rs, 61 Ill. 115, 1871 Ill. LEXIS 20 (1871).

- Absence of Controversy

Where proposed initiative amendments which related to compensation and conflicts of interest within the General Assembly did not meet the requirements of Ill. Const. (1970), Art. XIV, § 3 because they did not involve both procedural and structural subjects, they could not be submitted to the electorate for approval; thus, it was not necessary to reach the question of whether the amendments would have violated due process and equal protection rights as well. Coalition for Political Honesty v. State Board of Elections, 65 Ill. 2d 453, 3 Ill. Dec. 728, 359 N.E.2d 138, 1976 Ill. LEXIS 458 (1976).

This provision does not authorize a court to grant declarations of rights involving mere abstract propositions of law without regard to the interests of the parties; an actual controversy must exist before a declaration of right may be made. Beck v. Binks, 19 Ill. 2d 72, 165 N.E.2d 292 (1960).

- Court Errors

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The fact that the appellate court may have misconstrued the law and thereby committed an error for which the judgment should be reversed does not raise any question of due process of law or denial of equal protection of the laws, but merely involves a question whether the court erred in construing and applying the law. Compass Sales Corp. v. National Mineral Co., 388 Ill. 281, 57 N.E.2d 888 (1944).

- Criminal Proceedings

No violation of due process occurred where a trial court failed to sua sponte order a fitness hearing in defendant's burglary prosecution where defendant never disrupted the proceedings, he responded appropriately in court, two medical opinions indicated he was fit, and defense counsel did not dispute the medical opinions. People v. Gilbert, 379 Ill. App. 3d 106, 318 Ill. Dec. 17, 882 N.E.2d 1140, 2008 Ill. App. LEXIS 51 (1 Dist. 2008).

- Different Treatment

The equal protection clauses of the United States and Illinois Constitutions do not prevent states from treating different classes of persons differently and, in fact, states may treat similarly situated persons differently if there is a rational basis for doing so, the persons are not members of a suspect class and no fundamental right is involved. People v. Lance, 243 Ill. App. 3d 380, 183 Ill. Dec. 796, 612 N.E.2d 53 (1 Dist. 1993).

- Governmental Action

This section stands as a prohibition against governmental action, not action by private individuals. Methodist Medical Ctr. v. Taylor, 140 Ill. App. 3d 713, 95 Ill. Dec. 130, 489 N.E.2d 351 (3 Dist. 1986).

Chicago, Ill., Mun. Code §§ 7-29, requiring payment of judgments against the City in the order of their entry upon the records of the court, does not violate former Ill. Const. (1870) Art. II, § 2 (see now Ill. Const. (1970) Art. I, § 2). People ex rel. Gertz v. Kelly, 308 Ill. App. 419, 32 N.E.2d 191, 1941 Ill. App. LEXIS 1115 (1 Dist. 1941).

- Mootness

Funeral director's appeal of an order that dismissed his petition to challenge an order requiring his funeral home to release a body to the administratrix of an estate, on the basis that the order violated of his contract with another family member and the due process clauses of the Illinois and Federal Constitutions, was moot when it had been almost a year since the order at issue was entered and it could be assumed, based on the administratrix's failure to enter an appearance or file a brief in the appeal, that the funeral director had complied with the order. In re Estate of Lawson, 41 Ill. App. 3d 37, 353 N.E.2d 345, 1976 Ill. App. LEXIS 2904 (1 Dist. 1976).

- Procedural Aspects

Although the trial court violated defendant's rights under the Apprendi rule after he was convicted of murdering a person he mistakenly believed was a rival gang member, when the trial court found defendant was a chief enforcer for his gang and imposed an extended sentence as a result of finding he was a chief enforcer instead of submitting that issue to the jury, the error was harmless since the State introduced undisputed evidence that defendant was his gang chief's enforcer and that defendant gunned down the victim in the company of two of defendant's fellow gang members who had agreed to accompany defendant and provide him with any assistance he may have required to shoot the victim. People v. Rivera, 348 Ill. App. 3d 168, 284 Ill. Dec. 476, 810 N.E.2d 129, 2004 Ill. App. LEXIS 456 (1 Dist. 2004).

The procedural aspects of due process and equal protection of the laws require that a person be given notice and an opportunity to be heard and to defend in an orderly proceeding adapted to

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the nature of the case. Pettigrew v. National Accounts Sys., 67 Ill. App. 2d 344, 213 N.E.2d 778 (2 Dist. 1966).

- Public Interests

Neither the Fourteenth Amendment nor any provision of the Illinois Constitution prevents the enactment of laws for the protection of the public health, safety, welfare or morals, and neither do they prohibit legislative cifications reasonably calculated to promote or serve such public interests. City of Chicago v. Vokes, 28 Ill. 2d 475, 193 N.E.2d 40 (1963).

- Purpose

The purpose of former Ill. Const. (1870), Art. II, § 2 (see now this section) was to protect every citizen in his personal and property rights against the arbitrary action of any person or authority; at most, that right may be restricted in some reasonable manner consistent with the public good. R.G. Lydy, Inc. v. City of Chicago, 356 Ill. 230, 190 N.E. 273 (1934); Pure Oil Co. v. City of Northlake, 10 Ill. 2d 241, 140 N.E.2d 289 (1956).

Purpose of former Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) is to protect every citizen in his personal and property rights against the arbitrary action of any person or authority. R. G. Lydy, Inc. v. Chicago, 356 Ill. 230, 190 N.E. 273, 1934 Ill. LEXIS 818 (1934).

- Scope

Minor inmates could not maintain a cause of action for cruel and unusual punishment based on prison conditions under Ill. Const. art. I, §§ 1 and 2. Prisoner complaints that prison conditions violated their right to be free from cruel and unusual punishment were brought in Illinois courts under either U.S. Const. amend. VIII or under a state statutory scheme. Minor B v. Duff, F. Supp. 2d , 2009 U.S. Dist. LEXIS 61109 (N.D. Ill. July 17, 2009).

Due process and equal protection clause, Ill. Const., Art. I, § 2, is designed to protect citizens from actions by the government and not by other citizens; thus, where an employer, which fired an employee after he filed an appearance in the employer's action seeking reimbursement of overpaid wages, was a private entity, it did not act under color of state law and no due process or equal protection issues were implicated. Chi. Commons Ass'n v. Hancock, 346 Ill. App. 3d 326, 281 Ill. Dec. 738, 804 N.E.2d 703, 2004 Ill. App. LEXIS 98 (1 Dist. 2004).

This provision of the Constitution does not forbid legislative classifications reasonably calculated to promote or serve a proper police-power purpose. Tometz v. Board of Educ., 39 Ill. 2d 593, 237 N.E.2d 498 (1968).

- Similar Treatment

The clause guarantees that similar individuals will be dealt with in a similar manner by the government. Ashcraft v. Board of Educ., 83 Ill. App. 3d 938, 39 Ill. Dec. 392, 404 N.E.2d 983 (4 Dist. 1980).

Denial of defendant's postconviction petition was affirmed because defendant was not denied the effective assistance of counsel as the circuit court did not err in finding that defendant waived his right to testify, as there was no evidence that defendant was unaware of his right to testify or that he was prevented him from exercising it. People v. Chatman, 357 Ill. App. 3d 695, 294 Ill. Dec. 21, 830 N.E.2d 21, 2005 Ill. App. LEXIS 447 (1 Dist. 2005), cert. denied, 2007 U.S. LEXIS 2153 (U.S. 2007).

Defendant was not denied the effective assistance of counsel due to counsel's failure to object to an instruction at trial, as counsel's failure to invoke a ruling on the instruction that was made after defendant's trial was not objectively unreasonable and did not prejudice defendant. People v. Chatman, 357 Ill. App. 3d 695, 294 Ill. Dec. 21, 830 N.E.2d 21, 2005 Ill. App. LEXIS 447 (1 Dist. 2005), cert. denied, 2007 U.S. LEXIS 2153 (U.S. 2007).

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- Standing

When owner had never sought to have his building connected to municipality's sanitary sewer system, he had no standing to challenge ordinance setting the minimum charge for use of the sewer system on the basis that it violated the due process and equal protection clauses of the Illinois Constitution; because the ordinance made no provision for charges applicable to persons who were not hooked to the system and did not require buildings within the city to be hooked to the system, the building owner had no liability under the ordinance and there was no justiciable controversy. Greene v. Reynolds, 35 Ill. App. 3d 998, 342 N.E.2d 834, 1976 Ill. App. LEXIS 1967 (1 Dist. 1976).

Appellate Review

Supreme Court of Illinois had no jurisdiction to hear landowner's direct appeal of trial court's resolution of a zoning dispute because a zoning ordinance was not considered a "municipal ordinance" by the civil practice act that authorized a trial court to allow a direct appeal of a decision involving the constitutionality of a municipal ordinance. Winnebago County v. Harrington, 391 Ill. 267, 63 N.E.2d 6, 1945 Ill. LEXIS 361 (1945).

- In General

Appellate courts will reverse summary dismissal of a postconviction petition if the petition states sufficient facts to show the gist of a constitutional claim, and appellate courts will affirm summary dismissal of the petition, regardless of the trial court's reasons for the dismissal, if the petition patently lacks merit. People v. Lee, 344 Ill. App. 3d 851, 280 Ill. Dec. 24, 801 N.E.2d 969, 2003 Ill. App. LEXIS 1376 (1 Dist. 2003), appeal denied, 208 Ill. 2d 547, 284 Ill. Dec. 343, 809 N.E.2d 1289 (2004).

When trial court's order, which dismissed a funeral director's petition to vacate an order that required the funeral home to release husband's body to the administratrix of the estate, recited that the trial court was advised in the premises, and the funeral director's appeal did not include a report of the trial court's proceeding, reviewing court had to conclude that the trial court heard adequate evidence, received enough information or listened to sufficient law and argument to reach what it believed to be the right decision on the issue presented; therefore, the funeral director did not meet the burden of proof necessary to sustain his contention that requiring the funeral home to release the body violated his contract with another family member and the due process clauses of the Illinois and Federal Constitutions. In re Estate of Lawson, 41 Ill. App. 3d 37, 353 N.E.2d 345, 1976 Ill. App. LEXIS 2904 (1 Dist. 1976).

Where a statute was repealed in its entirety with no saving clause because it had been found to have been a violation of due process, an appeal that was decided after the repeal required the appeals court to reverse the judgment of the trial court, which had been rendered under the repealed statute prior to the repeal, because the law in effect at the time of the appeal was that which was to be applied to the appeal. Lincoln Community High School Dist. v. Elkhart Community High School, 414 Ill. 466, 111 N.E.2d 532, 1953 Ill. LEXIS 297 (1953).

When there was no certificate in the record of the trial judge that the validity of a municipal ordinance was involved, appellant and appellant's statement of errors alleged only that the ordinance was uncertain, indefinite, oppressive, unreasonable, unconstitutional, discriminatory, and confiscatory and contrary to the constitution of the state of Illinois and the constitution of the United States of America, the appeal did not raise a constitutional question sufficient to give the Supreme Court of Illinois jurisdiction to hear the matter; to justify a direct appeal, the actual existence of a fairly debatable question in regard to the construction of the constitution is necessary. Watseka v. Blatt, 381 Ill. 276, 46 N.E.2d 374, 1943 Ill. LEXIS 667 (1943).

Where a defendant corporation raised the defense of an ultra vires act, thereby defeating plaintiff's complaint seeking payment under a contract with the corporation, but the record did not

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contain a stenographic report of the proceedings on plaintiff's motion to strike, the issue had not been preserved for appeal under Ill. Const. (1970) Art. I, § 2 (formerly Ill. Const. of 1870, Art. I, § 2). Holsman v. Campbell Realty Co., 371 Ill. 614, 21 N.E.2d 744, 1939 Ill. LEXIS 655 (1939).

An assignment of error as to a constitutional question under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) must be based on the record and not merely upon the argument of counsel, and failure to raise such a question in a trial court precludes review on appeal. Odin Coal Co. v. Industrial Com., 297 Ill. 392, 130 N.E. 704, 1921 Ill. LEXIS 1172 (1921).

Where appellant had raised a constitutional issue on appeal, but the issue had squarely been dealt with by the Illinois Supreme Court in an earlier unrelated case, the court refused to exercise its jurisdiction under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, art. II, § 2) because to have heard the case would have merely required reference to the earlier decision, and the case was transferred to an appeals court. Iles v. Heidenreich, 271 Ill. 480, 111 N.E. 524, 1916 Ill. LEXIS 2670 (1916).

- Jurisdiction

Where an osteopath had not asserted in his petition or his appeal from an order of dismissal that the State Government Act, ch. 127, § 60a, para. 6, was unconstitutional, but had asserted that a certain construction had violated his rights under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2), his appeal was transferred to an appeals court because the Illinois Supreme Court lacked jurisdiction. People ex rel. Poage v. Walsh, 343 Ill. 136, 174 N.E. 881, 1931 Ill. LEXIS 699 (1931).

- Jurisdiction

When appellant, an insurer, filed a direct appeal to the Illinois Supreme Court that challenged a trial court's decision in a coverage dispute by contending that the state's financial responsibility law as construed by the trial court was unconstitutional, in that it lacked due process, the insurer was in substance contending that it had been deprived of due process of law by an erroneous judicial decision; thus, because the record did not show that the trial court had considered the constitutionality of the statute, it was apparent that a construction of and interpretation of the language of the insurance policy and of the statute at issue would determine the issue in the case, and that a decision on the validity of the statute was not necessary to determine the controversy, the Supreme Court had no basis to take jurisdiction of the case. McCann v. Continental Casualty Co., 4 Ill. 2d 170, 122 N.E.2d 268, 1954 Ill. LEXIS 249 (1954).

Where an appeal of a trial court's finding that a plaintiff had failed to state a cause of action could be decided without considering constitutional issues, his appeal to the Supreme Court of Illinois was transferred to an intermediate court of appeal. Biggs v. Chicago, 411 Ill. 566, 104 N.E.2d 611, 1952 Ill. LEXIS 276 (1952).

To authorize a direct appeal to the Illinois Supreme Court from a trial court, on the basis that a statute is unconstitutional, it is incumbent upon the appellant to point out and preserve for review the particular respect in which the statute in question violated some constitutional limitation. Orton Crane & Shovel Co. v. Federal Reserve Bank, 409 Ill. 285, 99 N.E.2d 14, 1951 Ill. LEXIS 360 (1951).

To authorize a direct appeal to the Illinois Supreme Court from a trial court, it is not enough to merely assign as error that a statute is unconstitutional; the actual existence of a question in regard to the construction of the constitution, which is fairly debatable, must appear of record to have been presented and passed upon in the trial court. Orton Crane & Shovel Co. v. Federal Reserve Bank, 409 Ill. 285, 99 N.E.2d 14, 1951 Ill. LEXIS 360 (1951).

Appellant's contention on direct review to the Supreme Court of Illinois, that the trial court's judgment involved the correctness of a rule of law adopted by the appellate court some years earlier, upon which the trial court predicated its dismissal of several defendants, did not present a

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fairly debatable constitutional question; rather, it was merely another way of stating that the effect of the trial court's decision was to deprive appellant of constitutional rights, a contention that did not provide the appellate court jurisdiction to hear a direct appeal. Moore v. Moyle, 399 Ill. 230, 77 N.E.2d 651, 1948 Ill. LEXIS 263 (1948).

Supreme Court of Illinois will never assume that the appellate court will render a judgment in conflict with a litigant's constitutional rights. People ex rel. Templeton v. Board of Education, 399 Ill. 204, 77 N.E.2d 200, 1948 Ill. LEXIS 260 (1948).

Construction or application of a statute does not present a constitutional question so as to authorize a direct appeal to the Supreme Court of Illinois. People ex rel. Templeton v. Board of Education, 399 Ill. 204, 77 N.E.2d 200, 1948 Ill. LEXIS 260 (1948).

A constitutional question is not so presented as to give the Supreme Court of Illinois on direct appeal dimply because a judgment or decree might have been entered that would have given the appellants a right to rely on a constitutional question on appeal. People ex rel. Templeton v. Board of Education, 399 Ill. 204, 77 N.E.2d 200, 1948 Ill. LEXIS 260 (1948).

No constitutional question was passed upon by the trial court to confer jurisdiction on the Supreme Court of Illinois on direct appeal in the teachers' action praying for a writ of mandamus to reinstate them to their positions as high school teachers after they were informed that the school board would keep to its policy that women who become married could only serve as teachers for two years after marriage and then retire because the trial court's order expressly recited that the complaint was dismissed because the question of whether the teachers had a hearing under art. 24 of the School Code could not be determined in an action of mandamus but required the intervention of a writ of certiorari and, thus, the complaint was dismissed solely because the teachers had mistaken their remedy and the only question determined by the trial court was the propriety of the form of action. People ex rel. Templeton v. Board of Education, 399 Ill. 204, 77 N.E.2d 200, 1948 Ill. LEXIS 260 (1948).

Determination of a constitutional question in the form of a ruling thereon by the trial court must appear in the record and the ruling shown must be the thing or one of the things relied on for reversal of the judgment; it is not sufficient to confer jurisdiction on the Supreme Court of Illinois on direct appeal that the pleadings raised constitutional questions. People ex rel. Templeton v. Board of Education, 399 Ill. 204, 77 N.E.2d 200, 1948 Ill. LEXIS 260 (1948).

To warrant a direct appeal on the ground that a constitutional question is involved, the record must affirmatively disclose that the constitutional question was not only presented in the trial court for decision, but was passed upon by it; even though the constitutional question was raised in the trial court, if a final judgment was rendered on other issues, not constitutional question is presented for review on appeal by the Supreme Court of Illinois. People ex rel. Templeton v. Board of Education, 399 Ill. 204, 77 N.E.2d 200, 1948 Ill. LEXIS 260 (1948).

Supreme Court of Illinois had jurisdiction to review trial court's denial of criminal defendant's petition for habeas corpus relief from an involuntary commitment pursuant to Ill. Rev. Stat. 1947, ch. 38, para. 592, even though the commitment was a civil proceeding and there was no statute providing for appeal of the commitment because the defendant was confronted with a construction of the statute under which he was being denied due process; being tried under a statute that was given an improper construction denied him a proper trial by jury. People v. Kadens, 399 Ill. 394, 78 N.E.2d 289, 1948 Ill. LEXIS 284 (1948).

Where the only question raised by the pleadings and proceedings in the trial court was whether a motor truck freight terminal was a lawful use of the property under a 1923 ordinance so as to be permitted as a nonconforming use under a 1942 ordinance, only a construction of the ordinances was involved and there was no basis for a direct appeal to the Supreme Court of Illinois; furthermore, as the record did not disclose a constitutional question raised below, the certificate of the trial judge was ineffective to sustain a direct appeal. Chicago v. Krema Trucking Co., 401 Ill. 411, 82 N.E.2d 338, 1948 Ill. LEXIS 431 (1948).

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Even though a constitutional issue was raised in the trial court, if a final order was rendered on other issues no constitutional question is presented for review on appeal to the Supreme Court of Illinois. Chicago v. Krema Trucking Co., 401 Ill. 411, 82 N.E.2d 338, 1948 Ill. LEXIS 431 (1948).

Validity of a statute is involved only where its constitutionality was the primary inquiry in the trial court. Chicago v. Krema Trucking Co., 401 Ill. 411, 82 N.E.2d 338, 1948 Ill. LEXIS 431 (1948).

Supreme Court of Illinois could not take jurisdiction of a direct appeal from the trial court of an injunction entered against the defendant, a duly authorized agent to appear before the U.S. Patent Office and the matter was transferred to the Appellate Court; although both parties asked the Supreme Court, by direct appeal, to define the rights of those who are not attorneys at law but who were entitled to practice before the patent office, there was no fairly debatable question of the validity of a statute or a construction of the constitution and no franchise was involved. Chicago Bar Ass'n v. Kellogg, 401 Ill. 375, 82 N.E.2d 639, 1948 Ill. LEXIS 425 (1948).

Unless a case presents a fairly debatable question of the validity of a statute or a construction of the constitution, or involves a franchise, the Supreme Court of Illinois cannot take jurisdiction of a direct appeal from the court, even if the parties consent. Chicago Bar Ass'n v. Kellogg, 401 Ill. 375, 82 N.E.2d 639, 1948 Ill. LEXIS 425 (1948).

A mere allegation that a constitutional question is involved is not sufficient, does not raise such a question, and is of no importance where the record shows no such question is in fact involved; the record must show such a question was raised in the trial court, otherwise the case will be transferred to the Appellate Court. Chicago Bar Ass'n v. Kellogg, 401 Ill. 375, 82 N.E.2d 639, 1948 Ill. LEXIS 425 (1948).

Where the constitution is only incidentally involved, an appeal should be taken to the Illinois Appellate Court. Chicago Bar Ass'n v. Kellogg, 401 Ill. 375, 82 N.E.2d 639, 1948 Ill. LEXIS 425 (1948).

Where it is claimed that the enforcement of a judgment or decree will deprive one against it is rendered some constitutional right, no constitutional question is involved because it only questions the validity of the judgment or decree. Chicago Bar Ass'n v. Kellogg, 401 Ill. 375, 82 N.E.2d 639, 1948 Ill. LEXIS 425 (1948).

Supreme Court of Illinois did not have jurisdiction to hear plaintiff's direct appeal when the only support for her contention that the trial court's denial of permission to file an amended complaint deprived her of her property without due process of law was the recitation of that general principle in her brief; the mere assertion that a constitutional right was involved or had been invaded was not enough, in the absence of other grounds, to confer jurisdiction. Aubry v. Supreme Liberty Life Ins. Co., 395 Ill. 584, 71 N.E.2d 48, 1947 Ill. LEXIS 271 (1947).

Supreme Court of Illinois had no jurisdiction to hear landowner's direct appeal of trial court's resolution of a zoning dispute because the trial court's order, which permitted the landowner to continue to use the building at issue for the landowner's business, but which enjoined the landowner from extending the business to other parts of the premises or using the rest of the land in the tract other than as permitted by the applicable zoning ordinance, because the trial court decision did not address the landowner's contention that the zoning ordinance violated the due process clause of the state constitution Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2). Winnebago County v. Harrington, 391 Ill. 267, 63 N.E.2d 6, 1945 Ill. LEXIS 361 (1945).

Supreme Court of Illinois did not have jurisdiction to hear employee's direct appeal of trial court's decision in a workmen's compensation matter because even though the employer alleged, in its motion to dismiss the complaint, that statute at issue contravened Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2), the order dismissing the complaint was a general order that did not rule upon the constitutionality of the statute, the parties admitted that the trial court did not determine the statute's validity, and neither party argued the validity of the statute in their

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appellate briefs; thus, no constitutional question was raised and the court had no jurisdiction to entertain a direct review. Grutzius v. Armour & Co., 377 Ill. 447, 36 N.E.2d 707, 1941 Ill. LEXIS 664 (1941).

Transfer, upon appellee's motion, of case from appellate court to the Supreme Court of Illinois was proper because the trial court judgment was based upon a holding that a city ordinance violated Ill. Const. of 1870, Art. II, §§ 2, 13 (now Ill. Const. (1970), Art. I, §§ 2, 15); because a determination of the ordinance's validity required a construction of the constitution, the supreme court had jurisdiction. People ex rel. Wanless v. Chicago, 378 Ill. 453, 38 N.E.2d 743, 1941 Ill. LEXIS 588 (1941).

A dog license fee does not constitute double taxation, is not an equal protection violation, and a party's contention that controlling precedent should be overturned without presenting substantial reason therefore deprived the court of jurisdiction to hear his challenge to the constitutionality of the fee ordinance under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Sterling v. Berry, 367 Ill. 111, 10 N.E.2d 656, 1937 Ill. LEXIS 467 (1937).

Race track's petition for a writ of certiorari to review a racing commission decision was moot where the racing season had already passed and no live issues suggesting that the appellate court should exercise jurisdiction had been presented. National Jockey Club v. Illinois Racing Com., 364 Ill. 630, 5 N.E.2d 224, 1936 Ill. LEXIS 692 (1936).

Appellate court's hearing of injunction applicant's challenge to a district court's grant of a motion to stay the injunction satisfied the due process protections of the applicant under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2), but because the injunction applicant had raised constitutional questions, the Illinois Supreme Court had jurisdiction over the applicant's appeal. Hallberg v. Goldblatt Bros., Inc., 363 Ill. 25, 1 N.E.2d 220, 1935 Ill. LEXIS 547 (1935).

No constitutional question was raised, preserved of record, or assigned as error and, therefore, the Supreme Court of Illinois was without jurisdiction on direct appeal where the real objection of the appellant was that the court erred in granting the motion for a directed verdict and the trial of the case was admittedly conducted in the usual manner of such trial. Foreman-State Nat'l Bank v. Sistek, 358 Ill. 525, 193 N.E. 513, 1934 Ill. LEXIS 1033 (1934).

Where the appellant's insistence that he had been deprived of his property without due process of law was based upon his contention that the court erroneously instructed the jury to find for the appellee because of a former adjudication, the Supreme Court of Illinois lacked jurisdiction of a direct appeal from the trial court because the appellant's real and only complaint was that the trial court erred in instructing the jury to find for the appellee. Foreman-State Nat'l Bank v. Sistek, 358 Ill. 525, 193 N.E. 513, 1934 Ill. LEXIS 1033 (1934).

Constitutional question is not involved so as to confer jurisdiction on the Supreme Court of Illinois of an appeal or writ of error directly from the trial court where the judgment or decree of the court is attacked on the ground that its enforcement will deprive the one against whom it is sought to be enforced of some constitutional right, such as the taking of property without due process of law; the question involved in such a case is the validity of the judgment or decree and not a constitutional question within the meaning of the statute authorizing appeals or writs of error directly to the Supreme Court. Foreman-State Nat'l Bank v. Sistek, 358 Ill. 525, 193 N.E. 513, 1934 Ill. LEXIS 1033 (1934).

Where the question presented to the Supreme Court of Illinois by the appellant's objection to the entry of the final judgment necessarily depended upon the correctness of the trial court's ruling on the motion for a directed verdict, the correctness of the trial court's ruling on that point could not be reviewed by the Supreme Court because there was nothing in the record to show that any constitutional question was raised in connection with that motion when it was made. Foreman-State Nat'l Bank v. Sistek, 358 Ill. 525, 193 N.E. 513, 1934 Ill. LEXIS 1033 (1934).

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Before the Supreme Court of Illinois will take jurisdiction on the ground that a constitutional question is involved it must appear from the record that a fairly debatable constitutional question was urged in a lower court, a ruling on it was preserved in a record for review, and an error was assigned upon it in the Supreme Court. Foreman-State Nat'l Bank v. Sistek, 358 Ill. 525, 193 N.E. 513, 1934 Ill. LEXIS 1033 (1934).

Insurer's contention that direct appeal to Supreme Court of Illinois was proper because trial court's decision against it in an dispute over whether policy benefits were payable deprived the insurer of property without due process of law failed to raise a constitutional question sufficient to give the court jurisdiction because the trial court had jurisdiction of the subject matter and the parties and both parties had been fully heard in the regular course of the proceedings; in those circumstances, an erroneous decision by the trial court did not deprive the unsuccessful party of his property without due process. Anderson v. Inter-State Business Men's Acc. Ass'n, 342 Ill. 612, 174 N.E. 873, 1931 Ill. LEXIS 844 (1931).

Supreme Court lacked jurisdiction to hear an appeal of a circuit court's affirmance of a zoning board decision because the Supreme Court did not have jurisdiction under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) to hear an appeal relating to the construction of a zoning ordinance, its jurisdiction was only over validity, the constitutional challenge had not been raised below, and because the zoning board's authority was under special statutory proceedings, § 91 of the Practice Act did not apply. Phelps v. Board of Appeals, 325 Ill. 625, 156 N.E. 826, 1927 Ill. LEXIS 934 (1927).

Supreme Court of Illinois had jurisdiction to hear husband and wife's direct appeals from an order dismissing their challenge to a foreclosure action because they raised a question as to whether a notice given the parties in the foreclosure proceedings complied with the requirements of the United States and Illinois constitutions as to due process of law. Glos v. People, 259 Ill. 332, 102 N.E. 763, 1913 Ill. LEXIS 1983 (1913).

Supreme Court of Illinois did not have jurisdiction hear direct appeal, when brief filed by plaintiff in error contained no reference to the act which was alleged to be unconstitutional in the court below and instead argued that a different act violated the due process provisions of the state constitution; under the circumstances, no constitutional question had been raised and the court could not hear the writ of error. Black v. Botzke, 244 Ill. 200, 91 N.E. 71, 1910 Ill. LEXIS 1926 (1910).

Supreme Court of Illinois had jurisdiction to hear direct appeal of trial court's judgment because that judgment held that a city's ordinance was unconstitutional, and that the ordinance took property without due process of law. Chicago v. Openheim, 229 Ill. 313, 82 N.E. 294, 1907 Ill. LEXIS 3122 (1907).

- Lack of Hearing Transcripts

Even though the record on appeal contained no transcript of the hearings at the proceedings that resulted in the defendant's plea of guilty, the defendant was not denied due process and equal protection of the law, as neither the Illinois or Federal Constitution requires that misdemeanants be furnished with verbatim transcripts of the proceedings at which they acknowledge their guilt. People v. Kimsey, 27 Ill. App. 3d 506, 327 N.E.2d 363 (4 Dist. 1975).

- No Jurisdiction

Appellate court had no jurisdiction to consider whether a statutory act under which a trust company was incorporated or whether the act authorizing the administration of trusts by trust companies were unconstitutional because that contention, which was raised in an amendment to a bill of review, was not germane to the decision in the action, which involved the construction of a will. Dean v. Northern Trust Co., 259 Ill. 148, 102 N.E. 244, 1913 Ill. LEXIS 1959 (1913).

- Preservation of Record

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A defendant in a criminal case, whether indigent or not, cannot agree to a statement of facts, fail to obtain a more detailed alternative to a transcript such as a bystander's report, and then argue on appeal that the record is insufficient; it is the defendant's duty to preserve the record on appeal. People v. Luke, 253 Ill. App. 3d 136, 192 Ill. Dec. 392, 625 N.E.2d 352 (1 Dist. 1993).

Application and Construction

Whether judgment interest statute's rate was outdated was a policy consideration for the legislature and not a matter for the reviewing courts, and that statutory provision did not violate due process because it bore a rational relationship to the purpose sought to be achieved by the legislature, that of making judgment creditor's whole. Accordingly, the prime electrical contractor could not show that the judgment interest awarded to the injured party should be overturned. Schultz v. Lakewood Elec. Corp., 362 Ill. App. 3d 716, 298 Ill. Dec. 894, 841 N.E.2d 37, 2005 Ill. App. LEXIS 1159 (1 Dist. 2005).

Legislature has wide discretion in the exercise of its power; it is not circumscribed by precedents arising out of past conditions, but is elastic and capable of expansion in order to keep pace with human progress. In the exercise of this police power, moreover, the legislature may make classifications to subserve public objects, for perfect uniformity of treatment of all persons is neither practical nor desirable. Grasse v. Dealer's Transport Co., 412 Ill. 179, 106 N.E.2d 124, 1952 Ill. LEXIS 310 (1952).

- Governmental Purpose

Ordinance that prohibited slot machines and other electronic gambling games in public places such as bars bore a rational basis to the proper governmental purpose of limiting gambling; furthermore, the ordinance was not vague or overbroad as applied to a bar that was unquestionably in violation of it. Serpico v. Vill. of Elmwood Park, 344 Ill. App. 3d 203, 279 Ill. Dec. 158, 799 N.E.2d 961, 2003 Ill. App. LEXIS 1329 (1 Dist. 2003).

- Overbreadth

Lack of a culpable mental state in the Identity Theft Law, 720 ILCS 5/16G-15(a)(7), providing that a defendant commits identity theft in knowingly using any personal identification information or personal identification document without the prior express permission of the person to whom that material belonged, meant that defendant's due process rights under the Fourteenth Amendment, U.S. Const. amend. XIV, and Ill. Const. art. I, § 2 were violated when defendant was indicted for that offense. Since that statutory provision did not contain a culpable mental state, it had the possibility of making criminal wholly-innocent conduct without even intending that result. People v. Madrigal, 241 Ill. 2d 463, 350 Ill. Dec. 311, 948 N.E.2d 591, 2011 Ill. LEXIS 454 (2011).

Since the statute defining aggravated discharge of a weapon had a rational basis in the proper legislative purpose of discouragement of discharging weapons in the direction of other people, the fact that the words "without lawful authority" were not included in the statute did not make it overbroad. People v. Kasp, 352 Ill. App. 3d 180, 287 Ill. Dec. 165, 815 N.E.2d 809, 2004 Ill. App. LEXIS 961 (1 Dist. 2004), appeal denied, 213 Ill. 2d 568, 293 Ill. Dec. 866, 829 N.E.2d 791 (2005).

- Relationship with the Immunity Statute

There is no violation of due process and equal protection in distinguishing between a "material" or "immaterial" witness; the former has the protection of the statutory immunity (725 ILCS 5/106-1), while the latter is protected by the exercise of the Fifth Amendment privilege against self-incrimination. People v. Taddeo, 113 Ill. App. 3d 639, 69 Ill. Dec. 427, 447 N.E.2d 862 (1 Dist. 1983).

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Arbitrary and Capricious

- Pension Code Exemption

Classification

- Burden of Proof

The burden of demonstrating that a classification is unreasonable or arbitrary is upon the person attacking the validity of the classification. Davis v. Commonwealth Edison Co., 61 Ill. 2d 494, 336 N.E.2d 881 (1975).

- Controlled Substances Act

The classification of cocaine as a narcotic in sections 401 and 402 of Controlled Substances Act (720 ILCS 570/401 and 720 ILCS 570/402) was not arbitrary and unreasonable so as to deprive defendant of due process and equal protection of the law under U.S. Const., Amends. 5 and 14 and this section. People v. Anderson, 74 Ill. App. 3d 363, 30 Ill. Dec. 173, 392 N.E.2d 938 (4 Dist. 1979).

- Equal Protection

-- Controlled Substances Act

Although defendant's appeal of his conviction for violation of Ill. Rev. Stat. ch. 56 1/2, para. 1402(b) (now 720 ILCS 570/402) did not contend that the statute had been held unconstitutional, that contention was not waived because the court could, as a matter of grace, pursuant to Ill. Rev. Stat. ch. 110A, para. 341(e)(7) (now Rule 615(a), Supreme Court Rules), take notice of errors that deprived the accused of or affected substantial rights, but which had not been properly preserved for appeal; given that the statute under which defendant was convicted had been declared unconstitutional, as violative of the equal protection clauses of the United States and Illinois Constitutions, defendant should not have been tried in the first place. People v. Winn, 80 Ill. App. 3d 148, 35 Ill. Dec. 402, 399 N.E.2d 236, 1979 Ill. App. LEXIS 3848 (1 Dist. 1979).

-- Residency

Chicago's residency requirement for employees was constitutional, and evidence that an employee resided at his home outside the city limits was sufficient to sustain a decision to terminate his employment. Fedanzo v. City of Chicago, Ill. App. 3d , Ill. Dec. , N.E.2d , 2002 Ill. App. LEXIS 413 (1 Dist. May 24, 2002).

- Filing Fee for Dissolution of Marriage

Five dollar filing fee for dissolution of marriage collected to fund shelters and services for victims of domestic violence was an unreasonable and arbitrary classification for tax purposes which placed upon the members of a class a burden not shared by others and was violative of due process, as well as equal protection, guaranteed by the Illinois Constitution. Crocker v. Finley, 99 Ill. 2d 444, 77 Ill. Dec. 97, 459 N.E.2d 1346 (1984).

- Home Rule Units

Illinois Const. (1970), Art. VII, § 6(e) is not invalid under the due process and equal protection provisions of the United States and Illinois Constitutions, and is not unreasonable and arbitrary because it singles out one class of nonproperty or privilege taxes and requires prior legislative approval for their use by home rule units, while other nonproperty or privilege taxes can be imposed by home rule units without prior approval by the General Assembly. S. Bloom, Inc. v. Korshak, 52 Ill. 2d 56, 284 N.E.2d 257 (1972).

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- Illinois Pension Code

Although 40 ILCS 5/16-127(5) created two classifications consisting of one group of teachers who were "members" of the system at the time of their entry into the service and who returned "to teaching service" within a specified short period thereafter, and thus could obtain retirement credit, and another group not meeting the requirement of the first class and, therefore, were ineligible for benefits, did not deny the plaintiffs, who were in the latter group, equal protection or due process of the law. Fishman v. Teachers' Retirement Sys., 86 Ill. App. 3d 649, 41 Ill. Dec. 767, 408 N.E.2d 113 (4 Dist. 1980), cert. denied, 452 U.S. 915, 101 S. Ct. 3048, 69 L. Ed. 2d 418 (1981).

- State Employees Retirement System

The classification established by 40 ILCS 5/14-103.12 of the State Employees Retirement System (SERS) did not deny the plaintiffs equal protection of the laws. Disabato v. Board of Trustees of State Employees' Retirement Sys., 285 Ill. App. 3d 827, 221 Ill. Dec. 59, 674 N.E.2d 852 (1 Dist. 1996).

- Workers' Compensation

Given that nonresident aliens cannot invoke the constitutional protections enjoyed by citizens and residents of the U.S., the differentiation in 820 ILCS 305/7(i) between aliens who reside in the U.S., Canada, or Mexico and aliens who do not does not violate due process or equal protection. Jarabe v. Industrial Comm'n, 172 Ill. 2d 345, 216 Ill. Dec. 833, 666 N.E.2d 1 (1996), cert. denied, 519 U.S. 930, 117 S. Ct. 300, 136 L. Ed. 2d 218 (1996).

Competency of Counsel

- Illustrative Cases

Defendant was not denied the effective assistance of counsel due to counsel's failure to object to an instruction at trial, as counsel's failure to invoke a ruling on the instruction that was made after defendant's trial was not objectively unreasonable and did not prejudice defendant. People v. Chatman, 357 Ill. App. 3d 695, 294 Ill. Dec. 21, 830 N.E.2d 21, 2005 Ill. App. LEXIS 447 (1 Dist. 2005), cert. denied, 2007 U.S. LEXIS 2153 (U.S. 2007).

Strickland test for ineffective assistance of counsel applies to ineffective assistance claims brought under the Illinois Constitution. People v. Rish, 344 Ill. App. 3d 1105, 280 Ill. Dec. 575, 802 N.E.2d 826, 2003 Ill. App. LEXIS 1354 (3 Dist. 2003).

- Postconviction Petition

Because a juvenile failed to provide a single concrete example of an issue that the juvenile's counsel should have raised in counsel's oral motion to reconsider the juvenile's sentence revoking the juvenile's probation, 730 ILCS 5/5-6- 4(c), the juvenile had not shown that the juvenile was prejudiced by counsel's actions and the juvenile's ineffective assistance claim failed. People v. Westley A.F. (In re Westley A.F.), 399 Ill. App. 3d 791, 340 Ill. Dec. 431, 928 N.E.2d 150, 2010 Ill. App. LEXIS 349 (2 Dist. 2010).

Criminal Penalties

In an aggravated criminal sexual assault case, defendant's 32 year sentence under 730 ILCS 5/5-8-4 was not unconstitutional as violative of due process because it was defendant who pointed the gun at the victim's side while he and the co-defendant led her behind some bushes. It was defendant who pointed the gun at the victim's head while she performed oral sex on him; the case presented the very evil that mandatory consecutive sentencing was meant to address.

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People v. Nichols, Ill. App. 3d , Ill. Dec. , N.E.2d , 2012 Ill. App. LEXIS 37 (2 Dist. Jan. 18, 2012).

Imposition of a fee for deposit in the Spinal Cord Injury Paralysis Cure Research Trust did not violate defendant's due process rights because it could be viewed as a criminal penalty. People v. Fort, 373 Ill. App. 3d 882, 311 Ill. Dec. 937, 869 N.E.2d 950, 2007 Ill. App. LEXIS 572 (1 Dist. 2007).

Assessment to the Spinal Cord Injury Research Fund was a fine rather than a fee and, accordingly, the assessment did not violate defendant's substantive due process rights. People v. Rodriguez, 373 Ill. App. 3d 905, 311 Ill. Dec. 970, 869 N.E.2d 983, 2007 Ill. App. LEXIS 565 (1 Dist. 2007).

Defendant, who was convicted of armed robbery and sentenced to natural life imprisonment under 720 ILCS 5/33B-1 as a habitual offender, did not show that the sentence was disproportionate, as defendant was not charged with armed violence, so the argument that armed robbery and armed violence predicated on robbery had disproportionate penalties was unavailing; also, there was no indication that accomplices who received lesser sentences had violent criminal histories. People v. Cummings, 351 Ill. App. 3d 343, 286 Ill. Dec. 311, 813 N.E.2d 1004, 2004 Ill. App. LEXIS 733 (1 Dist. 2004).

730 ILCS 5/5-5-3.2(b)(1) and 730 ILCS 5/5-8-4(a), the statutes under which defendant was resentenced, did not violate separation of powers principles; as the legislature had the authority to set the nature and extent of criminal penalties and the courts were without authority to interfere with such legislation unless the challenged penalty was clearly in excess of the broad and general constitutional limitations. People v. Fikara, 345 Ill. App. 3d 144, 280 Ill. Dec. 335, 802 N.E.2d 260, 2003 Ill. App. LEXIS 1259 (2 Dist. 2003), appeal denied sub nom. People v. Shaka Ali Fikara, 208 Ill. 2d 544, 284 Ill. Dec. 342, 809 N.E.2d 1288 (2004).

Criminal Prosecution

Trial court, in deciding that defendant had to wear an electric stun belt in the courtroom that could have been used to severely shock defendant, erred in deferring to the sheriff's policy rather than conducting analysis of applicable factors to determine whether defendant's rights to due process under Ill. Const., Art. I, § 2 and a fair trial under Ill. Const., Art. I, § 8 were violated; the error was automatically reversible. People v. Martinez, 347 Ill. App. 3d 1001, 283 Ill. Dec. 801, 808 N.E.2d 1089, 2004 Ill. App. LEXIS 526 (3 Dist. 2004), appeal denied, 211 Ill. 2d 601, Ill. Dec. , 823 N.E.2d 974 (2004).

Where the State waited six years until after defendant's Indiana incarceration to begin probation revocation proceedings in Illinois despite defendant's frequent requests that defendant be transported to Illinois for the probation revocation hearing while defendant was incarcerated in Indiana, the delay violated due process pursuant to Ill. Const., Art. 1, § 2; the delay was unreasonable, as the State could have procured defendant's presence at a hearing pursuant to 725 ILCS 225/5 instead of simply relying upon its inability to do so under 730 ILCS 5/3-8-9, and the delay prejudiced defendant, who lost the opportunity to serve the sentences concurrently. People v. Bredemeier, 346 Ill. App. 3d 557, 281 Ill. Dec. 893, 805 N.E.2d 261, 2004 Ill. App. LEXIS 104 (5 Dist. 2004).

- Postconviction Petition

735 ILCS 5/22-105, which permitted the imposition of filing fees to defendant upon a postconviction court finding that defendant's postconviction petition was frivolous and without merit, did not violate any constitutional due process or equal protection rights. People v. Gale, 376 Ill. App. 3d 344, 315 Ill. Dec. 171, 876 N.E.2d 171, 2007 Ill. App. LEXIS 990 (1 Dist. 2007), appeal denied, 233 Ill. 2d 574, 335 Ill. Dec. 639, 919 N.E.2d 358, 2009 Ill. LEXIS 1525 (2009).

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Trial court did not err in denying defendant's postconviction petition because defendant's due process rights under Brady were not violated at trial by the State's failure to disclose that one of its witnesses (the victim's father) was a convicted felon where the father's testimony was not material to proving whether defendant committed the elements of the crimes, and even if defendant had impeached the father's credibility by raising the father's prior conviction during cross-examination, there was not a reasonable probability that it would have affected the outcome of the case. People v. Rapp, 343 Ill. App. 3d 414, 278 Ill. Dec. 143, 797 N.E.2d 738, 2003 Ill. App. LEXIS 1170 (3 Dist. 2003), appeal denied, 207 Ill. 2d 623, 283 Ill. Dec. 139, 807 N.E.2d 980 (2004).

Where the attorney representing appellant inmate during police interrogation knew the murder victim and had represented an officer involved in the case, but did not tell the inmate this, the post conviction court erred in dismissing her ineffective assistance claim without an evidentiary hearing as to whether counsel had been ineffective under Strickland. People v. Rish, 344 Ill. App. 3d 1105, 280 Ill. Dec. 575, 802 N.E.2d 826, 2003 Ill. App. LEXIS 1354 (3 Dist. 2003).

Defendant was denied the right to due process of law where defendant's postconviction petition was dismissed without due notice being given to defendant's counsel and without defendant's counsel even being present. People v. Smith, 312 Ill. App. 3d 219, 244 Ill. Dec. 801, 726 N.E.2d 776, 2000 Ill. App. LEXIS 160 (1 Dist. 2000).

Drug Dealing

- Delivery

Equal treatment of those persons caught in the act of dealing drugs and those persons who were caught in the act of dealing drugs but did not consummate the act is rationally related to the legislative purpose of deterring drug trafficking and abuse; no violation of equal protection or due process is evidenced by the legislature's defining the offense of "delivery" to include an attempted delivery and penalizing both equally. People v. Lance, 243 Ill. App. 3d 380, 183 Ill. Dec. 796, 612 N.E.2d 53 (1 Dist. 1993).

- Illustrative Cases

-- Contempt

Witness was properly fined for contempt after refusing to testify in a case; the contempt order, authorized under 1919 Ill. Laws p. 710, § 36 of An Act in Regard to Evidence and Depositions in Civil Cases, did not violate due process or the Ill. Const. of 1870, Art. II, § 9 (now Ill. Const. (1970), Art. I, § 13) right to a trial by jury because the trial court had jurisdiction and the power to punish contempt was inherent in any court of justice. People ex rel. Ickes v. Rushworth, 294 Ill. 455, 128 N.E. 555, 1920 Ill. LEXIS 914 (1920).

Due Process

Statute making it an unlawful use of a weapon to possess a sawed-off shotgun, 720 ILCS 5/24-1(a)(7)(ii), was designed to protect the public from the inherent dangers of sawed-off shotguns and imposing a culpable mental state would defeat that purpose. As a result, that statute did not violate defendant's Ill. Const. art. I, § 2 due process rights for merely possessing the weapon, as the statute was reasonably related to the goal of public safety and did not sweep too broadly, despite defendant's claim that possession of such a weapon involved only innocent conduct by defendant. People v. Williams, 394 Ill. App. 3d 286, 333 Ill. Dec. 744, 915 N.E.2d 815, 2009 Ill. App. LEXIS 1086 (1 Dist. 2009), appeal denied, 235 Ill. 2d 603, 924 N.E.2d 460, 2010 Ill. LEXIS 212 (2010).

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With regard to a defendant's conviction for first-degree murder, the police lying to him and telling him that they had a video tape of the murder was not so unduly coercive to have rendered his confession involuntary and, thus, inadmissible since the police deception in the case had little, if any, undue coercive effect. In light of the totality of the circumstances, even considering any coercive effect of the detectives' deceptive tactics, the appellate court found that the interrogation was not so unduly coercive that the defendant's confession was not a product of his own free will. People v. Rubio, 392 Ill. App. 3d 914, 331 Ill. Dec. 986, 911 N.E.2d 1216, 2009 Ill. App. LEXIS 605 (2 Dist. 2009).

Facts and circumstances concerning the jury's exposure to a juror's experience of feeling threatened by some courtroom observers on the way to her car did not prejudice defendant's right to a fair and impartial jury as the jurors stated that they could decide the matter fairly and impartially. People v. Walker, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1225 (3 Dist. Dec. 4, 2008).

720 ILCS 5/33-3(b) did not violate defendant's due process rights pursuant to Ill. Const. art. I, § 2 since it was not overbroad because it did not subject innocent conduct to a criminal penalty and it was not void for vagueness because a person of ordinary intelligence could understand that using a public position to inform a suspected drug dealer about nearby police surveillance violated the official misconduct statute. People v. Williams, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1174 (3 Dist. Nov. 19, 2008).

Official misconduct statute, 720 ILCS 5/33-3(b), is not unconstitutionally overbroad, since it clearly prohibits public officers from knowingly performing, in their official capacity, an action known to be forbidden by law. Nor is the law vague, as a person of ordinary intelligent would not have to guess that calling a drug dealer to inform him where police were gathering and conducting surveillance was unlawful. People v. Williams, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1135 (1 Dist. Nov. 19, 2008).

Trial court's order sua sponte terminating a joint parenting agreement and awarding custody of the children to the mother violated the father's due process rights because the father had no notice that the trial court was going to consider child custody at the conclusion of the hearing on the father's petition for rule to show cause and hold the mother in contempt. Suriano v. Lafeber, 386 Ill. App. 3d 490, 327 Ill. Dec. 361, 902 N.E.2d 116, 2008 Ill. App. LEXIS 1078 (1 Dist. 2008).

Defendant's rights to due process under Ill. Const. art. I, § 2 and to be present under Ill. Const. art. I, § 8 were not violated by the denial of a motion to reconsider defendant's sentence in his absence because while the motion to reconsider was a critical stage in the proceedings, under one of two lines of analysis, defendant's absence did not deny him any substantial rights because the motion did not raise any new factual allegations. People v. Burnett, 385 Ill. App. 3d 610, 325 Ill. Dec. 288, 897 N.E.2d 827, 2008 Ill. App. LEXIS 1013 (1 Dist. 2008), aff'd, 2010 Ill. LEXIS 285 (Ill. 2010).

Disconnections of the owners' property pursuant to 65 ILCS 5/7-3-1 did not abridge the rights of the nonpetitioners and, thus, did not violate the nonpetitioners' Ill. Const. art. I, § 2 due process right to be adequately heard. For disconnection to be allowed, the owners had to meet the notice provisions of 65 ILCS 5/7-3-2, which the trial court found that they did and which adequately protected the nonpetitioners' right to be heard regarding the disconnection petitions. In re Disconnect Certain Terr. from the Vill. of Campton Hills, 386 Ill. App. 3d 355, 326 Ill. Dec. 63, 899 N.E.2d 280, 2008 Ill. App. LEXIS 1011 (2 Dist. 2008).

Defendant's claim had to be rejected that defendant was deprived of a fair trial because the State permitted a witness to falsely testify that no plea agreement had been reached in exchange for her testimony. Although the trial court's finding that the jury was not misled as to the degree of leverage that the State had over the witness was against the manifest weight of the evidence, defendant still received a fair trial pursuant to Ill. Const. art. I, § 2 because the evidence

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sufficiently supported defendant's convictions for anhydrous ammonia offenses independent of the testimony of the witness. People v. Potter, 384 Ill. App. 3d 1051, 323 Ill. Dec. 723, 894 N.E.2d 490, 2008 Ill. App. LEXIS 916 (4 Dist. 2008).

Defendant was not denied a fair hearing (U.S. Const. amend. XIV, Ill. Const. art. I, § 2) on a motion to withdraw a guilty plea. Nothing in the questions asked about a letter showed that the trial court had prejudged defendant's case, nor was the judge acting as an advocate for the State; rather, the judge was seeking to determine the legitimacy of defendant's allegation that an assistant public defender (APD) told defendant that defendant would only serve 20 years of defendant's sentence. People v. Harris, 384 Ill. App. 3d 551, 323 Ill. Dec. 155, 892 N.E.2d 1147, 2008 Ill. App. LEXIS 742 (1 Dist. 2008), appeal denied, 229 Ill. 2d 679, 900 N.E.2d 1121, 2008 Ill. LEXIS 1700 (2008).

Defendant's constitutional right to due process was violated because he did not receive the benefit of his plea bargain when he was not admonished that a three-year term of mandatory supervised release (MSR) would be added to his prison sentence; defendant entered into a plea bargain with the State for a maximum sentence of 30 years but received a more onerous punishment once statutorily mandated MSR was added to the sentence. People v. Gulley, 383 Ill. App. 3d 727, 322 Ill. Dec. 426, 891 N.E.2d 441, 2008 Ill. App. LEXIS 597 (1 Dist. 2008), appeal denied, 229 Ill. 2d 640, 325 Ill. Dec. 10, 897 N.E.2d 258, 2008 Ill. LEXIS 1364 (2008).

Owner did not plead sufficient facts showing that the village zoning code amendments did not have a rational basis despite the limitations that the amendments placed on the growth of certain financial institutions in the relevant business district. However, the amendments rationally restrained the growth of businesses, such as the financial institutions, that did not provide the village with sales tax revenue in favor of the growth of those that did provide sales tax revenue, which meant that the amendments did not violate the owner's Ill. Const. art. I, § 2 substantive due process rights. Napleton v. Vill. of Hinsdale, 229 Ill. 2d 296, 322 Ill. Dec. 548, 891 N.E.2d 839, 2008 Ill. LEXIS 377 (2008).

District court committed no error in directing the former employer to conduct a hearing on the employee's placement on "zero pay status" rather than proceeding to a damages trial itself where the Merit Board could better determine whether the employee's placement on involuntary unpaid leave was justified. Dargis v. Sheahan, 526 F.3d 981, 2008 U.S. App. LEXIS 10526 (7th Cir. 2008).

Company was not deprived of due process during the administrative hearing as to whether its workers were employees under the Illinois Unemployment Insurance Act where there was no showing that the director's representative was biased. SMRJ, Inc. v. Russell, 378 Ill. App. 3d 563, 318 Ill. Dec. 881, 884 N.E.2d 1152, 2007 Ill. App. LEXIS 1364 (1 Dist. 2007).

Where defendant was convicted of possession of a controlled substance, mental health court and youth diversion/peer court charges were properly imposed under 55 ILCS 5/5-1101(d-5) and (e) because: (1) these charges were fines since they did not seek to compensate the State for any costs incurred as the result of prosecuting defendant; and (2) the charges did not violate defendant's due process rights since the fact that these charges were designated for a specific purpose was irrelevant to their constitutionality and the amounts of the charges were in no way grossly disproportionate to the conviction. People v. Paige, 378 Ill. App. 3d 95, 316 Ill. Dec. 939, 880 N.E.2d 675, 2007 Ill. App. LEXIS 1355 (1 Dist. 2007).

Application of the statutory penalty set forth in § 35 of the Illinois Withholding Act, 750 ILCS 28/35, to an employer's failure to timely forward child support withheld from an employee's wages did not violate the employer's substantive due process rights under U.S. Const., amend. XIV and Ill. Const. art. I, § 2 as the state had a compelling interest in the support of children and the employer repeatedly and knowingly violated the statute. In re Marriage of Miller, 227 Ill. 2d 185, 316 Ill. Dec. 225, 879 N.E.2d 292, 2007 Ill. LEXIS 1704 (2007).

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Defendant did not show that the hearing which resulted in the denial of defendant's request for DNA testing was to be limited to constitutionality of 725 ILCS 5/116-3(b)(1), and, thus, defendant did not show his due process rights were violated when the trial court in the hearing addressed issues beyond that issue. People v. Moore, 377 Ill. App. 3d 294, 316 Ill. Dec. 367, 879 N.E.2d 434, 2007 Ill. App. LEXIS 1193 (1 Dist. 2007).

Appellate court rejected defendant's contention that one of the statutes under which defendant was convicted, 720 ILCS 5/16-8, violated defendant's substantive due process rights because it swept too broadly by punishing innocent conduct; that statute, which made unlawful the use of unidentified sound or audio visual recordings, protected against record piracy and protected consumers against deceptive recordings, bore a rational relationship to that interest and the requirements of that statute were narrowly tailored to serve that purpose. People v. Williams, 376 Ill. App. 3d 875, 315 Ill. Dec. 235, 876 N.E.2d 235, 2007 Ill. App. LEXIS 995 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1826 (Ill. 2007); aff'd, 2009 Ill. LEXIS 1935 (Ill. 2009); aff'd, 235 Ill. 2d 178, 336 Ill. Dec. 237, 920 N.E.2d 446, 2009 Ill. LEXIS 1935 (2009).

Special condition to development permit for a local waste transfer station which stated that no waste generated outside the municipal boundaries of a specific village was to be accepted at the facility was not unconstitutionally vague. United Disposal of Bradley, Inc. v. Pollution Control Bd., 363 Ill. App. 3d 243, 299 Ill. Dec. 809, 842 N.E.2d 1161, 2006 Ill. App. LEXIS 8 (1 Dist. 2006).

Trial court did not err in affirming the administrative law judge's finding that the building owner was liable for violating the city's municipal code. The city did not violate the building owner's due process by presenting evidence of the violation in the form of written reports because the building owner had the right to request that the administrative law judge compel the building inspector to appear for cross-examination regarding the reports and the building owner could not complain that his due process right was violated when he failed to make that request. Dombrowski v. City of Chicago, 363 Ill. App. 3d 420, 299 Ill. Dec. 563, 842 N.E.2d 302, 2005 Ill. App. LEXIS 1297 (1 Dist. 2005), appeal denied, 218 Ill. 2d 537, 303 Ill. Dec. 2, 850 N.E.2d 807 (2006).

Appellate court erred in affirming the trial court's dismissal of defendant's post-conviction relief petition at the second stage of post-conviction proceedings, as defendant was entitled to relief in his case where he agreed with the State in a negotiated plea to a 25-year sentence for murder and armed robbery, and he later learned that he had not been informed that 730 ILCS 5/5-8-1(d)(1) required that he serve a three-year term of mandatory supervised release after his 25-year sentence ended. Defendant's constitutional rights to due process and fundamental fairness were violated by the trial court's failure to fully and completely inform him of the sentence to which he had agreed. People v. Whitfield, 217 Ill. 2d 177, 298 Ill. Dec. 545, 840 N.E.2d 658, 2005 Ill. LEXIS 2075 (2005).

Trial court did not abuse its discretion in failing to hold additional fitness hearings as, at each instance defense counsel raised the issue of defendant's fitness, a fitness examination was ordered and each concluded that defendant was fit to stand trial or to be sentenced. People v. McColler, 363 Ill. App. 3d 81, 299 Ill. Dec. 454, 842 N.E.2d 193, 2005 Ill. App. LEXIS 1275 (1 Dist. 2005), appeal denied, 219 Ill. 2d 583, 303 Ill. Dec. 838, 852 N.E.2d 245 (2006).

Although an ordinance defining and prohibiting the possession and use of illegal amusement devices arguably involved gambling-related games with enough content to permit a facial challenge as overbroad, the court found that the ordinance, read with ordinary understanding of the language, clearly defined exactly what features made a device illegal. Since the devices were adequately defined, there was also no due process violation in authorizing police to seize them. O'Donnell v. City of Chicago, 363 Ill. App. 3d 98, 299 Ill. Dec. 469, 842 N.E.2d 208, 2005 Ill. App. LEXIS 1272 (1 Dist. 2005), appeal denied, 218 Ill. 2d 543, 303 Ill. Dec. 4, 850 N.E.2d 809 (2006).

Trial court did not err in granting the alleged debtor's motion to quash the recognition of judgment that the alleged creditor obtained after he received a monetary judgment in an Ecuadorean court

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and sought to have it recognized in the Illinois forum court. The record showed that the alleged debtor had not received reasonable notice of the proceedings in Ecuador and, thus, the procedural due process requirements for recognizing the judgment in Illinois had not been met, which meant the judgment did not have to be recognized. Najas Cortes v. Orion Secs., Inc., 362 Ill. App. 3d 1043, 299 Ill. Dec. 423, 842 N.E.2d 162, 2005 Ill. App. LEXIS 1269 (1 Dist. 2005), appeal denied, 218 Ill. 2d 537, 303 Ill. Dec. 1, 850 N.E.2d 806 (2006).

Based on the totality of the circumstances, there was no indication of undue suggestiveness in the manner in which photo arrays and subsequent lineups were conducted. The witness' descriptions of defendant had never varied and the witness never had any difficulty in identifying defendant, even after lapses of months, as one of the participants in the killing of the witness' friend. People v. Prince, 362 Ill. App. 3d 762, 298 Ill. Dec. 805, 840 N.E.2d 1240, 2005 Ill. App. LEXIS 1203 (1 Dist. 2005), appeal denied, 218 Ill. 2d 553, 303 Ill. Dec. 7, 850 N.E.2d 812 (2006).

While the Governor was entitled to grant sentence commutations pursuant to the Illinois Constitution, and did so in defendant's case by reducing her sentence to natural life imprisonment, defendant was not then barred from seeking further relief on her first-degree murder conviction. She was still entitled to argue that her sentence should be reduced further, within the statutory range of 20 to 60 years where no aggravating factor was found, as her procedural due process right to argue that the aggravating factor was not supported by sufficient evidence outweighed the claim that the Governor's granting of clemency rendered further sentencing issues moot. People v. Mata, Ill. 2d , Ill. Dec. , N.E.2d , 2005 Ill. LEXIS 2079 (Dec. 15, 2005).

No rational relationship existed between simple drug possession and spinal cord injuries, although arguably such a relationship might be shown in the case of more serious offenses. Therefore, it violated a defendant's substantive due process rights to impose a five dollar assessment against him as a donation to the spinal cord injury fund. People v. Fort, 362 Ill. App. 3d 1, 298 Ill. Dec. 417, 839 N.E.2d 1064, 2005 Ill. App. LEXIS 1124 (1 Dist. 2005), Overruled in part by People v. Jones, 223 Ill. 2d 569, 861 N.E.2d 967, 2006 Ill. LEXIS 1671, 308 Ill. Dec. 402 (2006).

220 ILCS 5/13-502.5, which abated administrative proceedings against a telephone company and had the effect of allowing it to raise its rates, did not violate Illinois businesses' due process rights under Ill. Const. Art. I, § 2, as they lacked a vested property right in the continuance of the prior law. Big Sky Excavating, Inc. v. Ill. Bell Tel. Co., 217 Ill. 2d 221, 298 Ill. Dec. 739, 840 N.E.2d 1174, 2005 Ill. LEXIS 1628 (2005).

Admission of a victim-impact statement from the victim's mother, in addition to one from the victim, did not amount to a due process violation. People v. Hestand, 362 Ill. App. 3d 272, 297 Ill. Dec. 831, 838 N.E.2d 318, 2005 Ill. App. LEXIS 1105 (4 Dist. 2005).

Trial court erred in ordering that respondent be hospitalized for 90 days based on the fact that he suffered from a mental illness. Respondent's due process rights were violated because his statutory rights were violated when the trial court failed to hold a hearing on the petition for involuntary admission within five days of respondent's admission to a mental-health facility, as required by 405 ILCS 5/3-706, and respondent was prejudiced by the noncompliance because he should have been released once the noncompliance occurred. People v. Louis S. (In re Louis S.), 361 Ill. App. 3d 763, 297 Ill. Dec. 731, 838 N.E.2d 218, 2005 Ill. App. LEXIS 1093 (4 Dist. 2005).

Trial court's order that defendant, in his case involving possession of a controlled substance, pay as part of his conviction $5 to the Spinal Cord Injury Research Fund pursuant to 730 ILCS 5/5-9-1.1(c), was unconstitutional. Applying the rational basis test, requiring defendant to pay that sum, which was a fee, to that fund violated his due process rights since there was no rational connection between the possession of a controlled substance and spinal cord research. People v.

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Rodriguez, 362 Ill. App. 3d 44, 298 Ill. Dec. 220, 839 N.E.2d 543, 2005 Ill. App. LEXIS 1071 (1 Dist. 2005), overruled in part by, criticized in People v. Jones, 223 Ill. 2d 569, 861 N.E.2d 967, 2006 Ill. LEXIS 1671, 308 Ill. Dec. 402 (2006).

Motor Vehicle Franchise Act did not violate an auto manufacturer's due process rights either by being vague about what constituted good cause for allowing grants of new franchises in an area or in depriving the manufacturer of the freedom to contract for additional franchises, because the review board had sufficient guidance in determining what constituted good cause, based on the factors it was instructed to consider and because the manufacturer had no protected right to establish franchises without reasonable regulation and the delays inherent in conducting that reasonable regulation were not themselves unreasonable. GMC v. State Motor Vehicle Review Bd., 361 Ill. App. 3d 271, 297 Ill. Dec. 172, 836 N.E.2d 903, 2005 Ill. App. LEXIS 1028 (4 Dist. 2005).

Although substantial compliance with Ill. Sup. Ct. R. 402 is sufficient to establish due process, and an imperfect admonishment is not reversible error unless real justice has been denied or a defendant has been prejudiced by the inadequate admonishment, there is no substantial compliance with Rule 402 and due process is violated when a defendant pleads guilty in exchange for a specific sentence and the trial court fails to advise the defendant, prior to accepting his plea, that a mandatory supervised release (MSR) term will be added to that sentence. In these circumstances, addition of the MSR term to the agreed-upon sentence violates due process because the sentence imposed is more onerous than the one defendant agreed to at the time of the plea hearing, and the addition of the MSR constitutes an unfair breach of the plea agreement. People v. Whitfield, Ill. 2d , Ill. Dec. , N.E.2d , 2005 Ill. LEXIS 978 (Oct. 6, 2005).

Where neither the State nor the trial court informed an inmate that a 730 ILCS 5/5-8-1(d)(1) mandatory supervised release (MSR) term would be added to the 25-year sentence the inmate negotiated for a guilty plea on a murder charge, the addition of the MSR term violated his federal and state due process rights as he received a sentence more onerous than the one he had bargained for. People v. Whitfield, Ill. 2d , Ill. Dec. , N.E.2d , 2005 Ill. LEXIS 978 (Oct. 6, 2005).

Due process did not require that defendant suffer from the same mental disorder which led to acquittal in order to continue commitment, the court was only required to find that defendant was reasonably expected to inflict serious harm upon himself or another. People v. Youngerman, 361 Ill. App. 3d 888, 297 Ill. Dec. 616, 838 N.E.2d 103, 2005 Ill. App. LEXIS 1037 (1 Dist. 2005).

Section 50-50 of Illinois FY2004 Budget Implementation Act, 2003 Ill. Laws 32, which established non-consumer user fees for certain users of state administrative services, was held, in the context of fees imposed on employers who were subject to the workers' compensation laws, not to violate either the uniformity clause of Ill. Const. Art. IX, § 2 or the due process guarantee of Ill. Const. Art. I, § 2, because the challenging employer failed to carry its burden of showing that the imposition of the fee on employers rather than on employees was rational in terms of who generally bore workers' compensation costs and because the challenger also failed to show that fee collections that were transferred to the state's general revenue fund were used for any purposes other than to cover the indirect costs of the workers' compensation program. Ill. State Chamber of Commerce v. Filan, 216 Ill. 2d 653, 297 Ill. Dec. 471, 837 N.E.2d 922, 2005 Ill. LEXIS 1610 (2005).

Heightened burden of proof of clear and convincing evidence to establish an insanity defense did not violate defendant's due process rights under either the United States or Illinois constitutions. Precedential authority in both the federal and Illinois jurisdictions upheld a burden of proof greater than preponderance of the evidence. People v. Clay, 361 Ill. App. 3d 310, 297 Ill. Dec. 141, 836 N.E.2d 872, 2005 Ill. App. LEXIS 994 (1 Dist. 2005), appeal denied, 217 Ill. 2d 609, 300 Ill. Dec. 525, 844 N.E.2d 968 (2006).

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Because the 25-years-to-life sentence enhancement under § 5-8-1(a)(1)(d)(iii) of the Unified Code of Corrections, 730 ILCS 5/5-8-1(a)(1)(d)(iii), is consistent with the legislature's purpose of deterring gun violence and is reasonably designed to address the evil of gun violence that the legislature determined was a greater threat to the public than violence committed with other weapons, § 5-8-1(a)(1)(d)(iii) does not violate the due process clause of Ill. Const. Art. I, § 2. Therefore, defendant's sentence was properly enhanced for use of a firearm during a murder. People v. Dixon, 359 Ill. App. 3d 938, 296 Ill. Dec. 572, 835 N.E.2d 925, 2005 Ill. App. LEXIS 944 (4 Dist. 2005), appeal denied, 217 Ill. 2d 575, 300 Ill. Dec. 370, 844 N.E.2d 42 (2005).

Individual who was involuntarily admitted to a mental-health facility pursuant to 405 ILCS 5/3-700 was not denied procedural due process just because the individual's name was not placed on the first certificate in the examiner's own handwriting or because the two certificates were stapled and filed as a single document, because the individual cited no authority that required an examiner to place, in the examiner's own handwriting, an individual's name above the line designated (name). People v. Alfred H. (In re Alfred H.), 358 Ill. App. 3d 784, 295 Ill. Dec. 514, 832 N.E.2d 964, 2005 Ill. App. LEXIS 777 (4 Dist. 2005).

The fact that the definition of a "family or household member" as including someone who was or had been in a dating relationship with a defendant did not have a temporal element, in that a potential victim could have been in a dating relationship with a defendant at any time in the past, did not render the domestic battery statute unconstitutionally vague; a potential defendant could be absolutely clear as to what situations could give rise to criminal liability. People v. Peacock, 359 Ill. App. 3d 326, 295 Ill. Dec. 563, 833 N.E.2d 396, 2005 Ill. App. LEXIS 775 (4 Dist. 2005).

Trial court erred in summarily dismissing defendant from a drug-court program pursuant to the Drug Court Treatment Act, 730 ILCS 166/1 through 730 ILCS 166/35, because defendant's rights to due process were violated when defendant was not afforded a hearing prior to being dismissed from the program. People v. Anderson, 358 Ill. App. 3d 1108, 295 Ill. Dec. 557, 833 N.E.2d 390, 2005 Ill. App. LEXIS 774 (4 Dist. 2005).

Plaintiffs failed to show that a village's use of the language provided in the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq., to define a special use in a zoning ordinance exceeded the village's authority, or that such definition was unduly vague in violation of due process, as the Code authorized municipalities to pass ordinances to provide for the classification of special uses. Lapp v. Vill. of Winnetka, 359 Ill. App. 3d 152, 295 Ill. Dec. 777, 833 N.E.2d 983, 2005 Ill. App. LEXIS 745 (1 Dist. 2005), appeal denied, 217 Ill. 2d 566, 300 Ill. Dec. 367, 844 N.E.2d 39 (2005).

Nothing in the Clinical Social Work and Social Work Practice Act required the Illinois Department of Professional Regulation to provide a clinical social worker with the allegations of his possible violation before he was ordered to undergo a mental or physical examination, and the record showed that the Department did not file a formal complaint against the social worker until nearly five months after the examination, but the social worker did not dispute that he received proper notice of the complaint and the social worker also filed an answer to the complaint. Accordingly, the social worker had not established a violation of his due process rights. Magnus v. Dep't of Prof'l Regulation, 359 Ill. App. 3d 773, 296 Ill. Dec. 222, 835 N.E.2d 77, 2005 Ill. App. LEXIS 742 (1 Dist. 2005).

Trial court erred in dismissing, for lack of personal jurisdiction, the aircraft seller from the estate representative's negligence suit against the aircraft seller for the death of the Illinois resident who was teaching a corporate officer of the airplane's buyer how to fly the aircraft seller's plane when the plane crashed in Georgia, killing the Illinois resident and the corporate officer. The aircraft seller, though a resident of California, had sufficient minimum contacts with Illinois as a result of his attempt to sell his airplane that long-arm jurisdiction pursuant to 735 ILCS 5/2-209(c) existed over the aircraft seller, especially since his contacts with Illinois were sufficient such that state and federal constitutional due process requirements were not offended. Keller v. Henderson,

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359 Ill. App. 3d 605, 296 Ill. Dec. 125, 834 N.E.2d 930, 2005 Ill. App. LEXIS 809 (2 Dist. 2005), appeal denied, 217 Ill. 2d 603, 300 Ill. Dec. 523, 844 N.E.2d 966 (2006).

Even though a defendant's civil petition for relief from judgment seemed likely to fail for the same reason as that defendant's post-conviction relief petition had failed, since the civil relief statute did not allow for summary dismissal as patently without merit as the post-conviction relief statute did, it was error for the lower court to have granted the State's motion to dismiss the petition without a hearing, without even letting defendant know about the motion. People v. Coleman, 358 Ill. App. 3d 1063, 296 Ill. Dec. 353, 835 N.E.2d 387, 2005 Ill. App. LEXIS 784 (3 Dist. 2005), appeal denied, 217 Ill. 2d 574, 300 Ill. Dec. 369, 844 N.E.2d 41 (2005).

Prosecutor's reference to defendant as a "crack-head," while not condoned by the court, did not amount to reversible error where the evidence established that defendant had a drug addiction that may have been the motive for the murder and where the evidence of defendant's guilt was overwhelming. People v. Deloney, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 735 (1 Dist. July 28, 2005).

Where the trial court apparently summarily dismissed the inmate's postconviction petition at a status hearing without giving any notice to the inmate's counsel beforehand, this violated Ill. Const. Art. I, § 2. People v. Pearson, 216 Ill. 2d 58, 295 Ill. Dec. 621, 833 N.E.2d 827, 2005 Ill. LEXIS 956 (2005).

Trial court did not err in allowing the father, who had been repeatedly incarcerated and who was serving a prison sentence for sexual assault, to remain shackled during his termination of parental rights hearing. Many of the concerns associated with shackling a criminal defendant were not applicable in a termination proceeding; due process only required that the termination proceeding be fundamentally fair, and any error in shackling him did not contribute to the ruling that found him an unfit parent, which was due to the fact that he had at least three felony convictions, including one which occurred within five years of the filing of the petition to terminate his parental rights. People v. D.H. (In re A.H.), 359 Ill. App. 3d 173, 295 Ill. Dec. 709, 833 N.E.2d 915, 2005 Ill. App. LEXIS 696 (1 Dist. 2005), appeal denied sub nom. People v. D.H. (In re D.H.), 217 Ill. 2d 563, 300 Ill. Dec. 366, 844 N.E.2d 38 (2005).

Harmful materials statute, 720 ILCS 5/11-21, which criminalized providing certain materials to minors, was not unconstitutionally vague, because it used language, similar to that in obscenity statutes, that had specifically found not to be vague by both the United States Supreme Court and the Supreme Court of Illinois. People v. Jackson, 358 Ill. App. 3d 927, 295 Ill. Dec. 267, 832 N.E.2d 418, 2005 Ill. App. LEXIS 670 (1 Dist. 2005), appeal denied, 217 Ill. 2d 579, 300 Ill. Dec. 371, 844 N.E.2d 43 (2005).

As the State was able to present two examining expert witnesses and the respondent was able to present one examining expert witness, because both sides were able to call examining experts in relation to the respondent's evaluation, neither party had an evidentiary advantage and both parties had the opportunity to present evidence substantially equal in character; therefore, the court's application of 725 ILCS 207/30(c) of the Sexually Violent Persons Commitment Act, 725 ILCS 207/1 et seq., did not deny the respondent due process. People v. Traynoff (In re Traynoff), 358 Ill. App. 3d 430, 294 Ill. Dec. 759, 831 N.E.2d 709, 2005 Ill. App. LEXIS 638 (2 Dist. 2005).

Respondent's constitutional challenge to the Sexually Violent Persons Commitment Act, 725 ILCS 207/1 et seq., was rejected, as in addition to concluding that he suffered from mental disorders that made it substantially probable that he would engage in acts of sexual violence, the trial court also made a specific finding that he was unable to control his sexually violent conduct; as a result, the court actually went beyond what People v. Varner, 207 Ill. 2d 425, 432, 279 Ill. Dec. 506, had interpreted Kansas v. Crane, 534 U.S. 407, 151 L. Ed. 2d 856, 122 S. Ct. 867, to require. Thus, there was no due process violation. People v. Traynoff (In re Traynoff), 358 Ill. App. 3d 430, 294 Ill. Dec. 759, 831 N.E.2d 709, 2005 Ill. App. LEXIS 638 (2 Dist. 2005).

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625 ILCS 5/6-206(a)(10) does not violate due process because it is rationally related to the State's interest in fostering safe and legal operation of motor vehicles; it was not unconstitutional as applied to a 19 year-old who was arrested for public intoxication and was found to be in possession of his older brother's Illinois identification card. Horvath v. White, 358 Ill. App. 3d 844, 295 Ill. Dec. 215, 832 N.E.2d 366, 2005 Ill. App. LEXIS 632 (1 Dist. 2005).

Where a franchisee, a corporation that had its principal place of business in Idaho, repudiated a franchise agreement by sending a letter to a franchisor at the franchisor's location in Illinois, a district court in Illinois had personal jurisdiction over the franchisee in the breach of contract action filed by the franchisor. GMAC Real Estate, LLC v. Canyonside Reality, Inc., F. Supp. 2d , 2005 U.S. Dist. LEXIS 12589 (N.D. Ill. June 15, 2005).

Trial court's failure to conduct a Boose hearing to establish justification for an order requiring defendant to wear an electronic security belt throughout his trial on burglary charges violated defendant's due process right to a fair trial. People v. Buckner, 358 Ill. App. 3d 529, 294 Ill. Dec. 726, 831 N.E.2d 676, 2005 Ill. App. LEXIS 583 (3 Dist. 2005), criticized by People v. Buckner, 358 Ill. App. 3d 529, 831 N.E.2d 676, 2005 Ill. App. LEXIS 583, 294 Ill. Dec. 726 (Ill. App. Ct. 3d Dist. 2005).

Under a notice pleading standard, an employee satisfied the requirements for a due process claim against the City of Chicago and its mayor and commissioners because his defamation per se pleading alleged that the deputy commissioner abruptly terminated his employment and stated in a press conference that he fired the employee when the employee violated the trust of his supervisors and the public, used bad judgment, and was dishonest; thus, the due process claim was not subject to dismissal for failure to state a claim. Gyrion v. City of Chicago, F. Supp. 2d , 2005 U.S. Dist. LEXIS 9508 (N.D. Ill. May 4, 2005).

Illinois aggravated unlawful use of a weapon statute, 720 ILCS 5/24-1.6, satisfies the requirements of substantive due process under the rational basis test; the statute is rationally related to the legitimate goal of making Illinois communities safer and more secure for their inhabitants. People v. Austin, 349 Ill. App. 3d 766, 285 Ill. Dec. 768, 812 N.E.2d 588, 2004 Ill. App. LEXIS 750 (1 Dist. 2004), appeal denied, 211 Ill. 2d 585, Ill. Dec. , 823 N.E.2d 968 (2004).

Illinois aggravated unlawful use of a weapon statute, 720 ILCS 5/24-1.6, satisfies the requirements of substantive due process in the context of its requirement of a "knowing" mental state; the statute is self-defining in that "knowingly" possessing a loaded, readily accessible, uncased weapon in a car or carrying it concealed is criminal conduct. People v. Austin, 349 Ill. App. 3d 766, 285 Ill. Dec. 768, 812 N.E.2d 588, 2004 Ill. App. LEXIS 750 (1 Dist. 2004), appeal denied, 211 Ill. 2d 585, Ill. Dec. , 823 N.E.2d 968 (2004).

Due process concerns prevent a court from proceeding in a criminal prosecution unless a defendant is determined to be fit; thus, defendant's conviction on a plea of guilty to second degree murder was reversed where a trial court's finding that defendant was conditionally fit for trial was not a proper finding of fitness under 725 ILCS 5/104-11(b), which required a finding that defendant was either fit or unfit to stand trial without any conditions attached. People v. Jones, 349 Ill. App. 3d 255, 285 Ill. Dec. 443, 812 N.E.2d 32, 2004 Ill. App. LEXIS 731 (3 Dist. 2004), appeal denied, 211 Ill. 2d 597, Ill. Dec. , 823 N.E.2d 973 (2004).

Prosecution's practice of asking a criminal defendant to comment on the veracity of other witnesses who have testified against him has consistently and repeatedly been condemned by the Appellate Court of Illinois, First District, Fifth Division, because such questions intrude on the jury's function of determining the credibility of witnesses and serve to demean and ridicule the defendant; this practice has generally been deemed harmless error where evidence of defendant's guilt was overwhelming, but where the evidence in a case is closely balanced and the credibility of the witnesses is a crucial factor underlying the jury's determination of defendant's

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guilt or innocence, the error may not be harmless. People v. Young, 347 Ill. App. 3d 909, 283 Ill. Dec. 284, 807 N.E.2d 1125, 2004 Ill. App. LEXIS 338 (1 Dist. 2004).

Prosecutor's misstatements of law in closing argument can be grounds for reversal, and included within this restriction are statements that in effect distort the burden of proof by suggesting incorrectly what the jury must find in order to reach a certain verdict. People v. Young, 347 Ill. App. 3d 909, 283 Ill. Dec. 284, 807 N.E.2d 1125, 2004 Ill. App. LEXIS 338 (1 Dist. 2004).

Application of 720 ILCS 5/7-11 to defendant juvenile did not constitute a violation of due process because it was not the age of defendant that was determinative regarding the compulsion defense but, rather, the fact that defendant had been charged with an offense punishable by death; based on defendant's age, defendant was not eligible for the death penalty, but defendant was not entitled to use the compulsion defense because defendant was charged with offenses punishable by death. People v. Haynie, 347 Ill. App. 3d 650, 283 Ill. Dec. 146, 807 N.E.2d 987, 2004 Ill. App. LEXIS 285 (1 Dist. 2004), appeal denied, 211 Ill. 2d 595, Ill. Dec. , 823 N.E.2d 972 (2004).

425 ILCS 25/9f could not be applied retroactively to reverse the dismissal of an emergency medical technician's (EMT) negligence action against certain contractors that caused a natural gas line break, which resulted in the EMT being seriously injured; at the time of occurrence, the contractors were protected from negligence liability by the Illinois fireman's rule and retroactive application of 425 ILCS 25/9f would violate their due process rights. Randich v. Pirtano Constr. Co., 346 Ill. App. 3d 414, 281 Ill. Dec. 616, 804 N.E.2d 581, 2004 Ill. App. LEXIS 146 (2 Dist. 2004).

Vested rights are interests that are protected from legislative interference by Illinois's Due Process Clause, Ill. Const., Art. I, § 2; a vested right has frequently been defined to consist of something more than a mere expectation, based upon an anticipated continuance of the existing law, and it must have become a title, legal or equitable, to the present or future enjoyment of property, or to the present or future enjoyment of the demand, or a legal exception from a demand made by another. Randich v. Pirtano Constr. Co., 346 Ill. App. 3d 414, 281 Ill. Dec. 616, 804 N.E.2d 581, 2004 Ill. App. LEXIS 146 (2 Dist. 2004).

In a capital murder case, defendant unsuccessfully contended that the Illinois death penalty statute violated U.S. Const., Amends. VIII, XIV, Ill. Const., Art. I, § 2 and § 11, arguing that procedural safeguards were inadequate to minimize the risk that the death penalty would be applied to innocent persons, and that it was inevitable that innocent people would be executed. People v. Caffey, 205 Ill. 2d 52, 275 Ill. Dec. 390, 792 N.E.2d 1163, 2001 Ill. LEXIS 1426 (2001).

Although 725 ILCS 207/30(c) was not unconstitutional on its face, the application of the statute to defendant, who was adjudicated to be a sexually violent person, violated defendant's right to due process of law under Ill. Const., Art. I, § 2, by barring defendant from presenting the testimony of an examining expert to contradict the testimony offered by the State's examining expert; defendant was not able to defend himself on a level playing field. People v. Trevino (In re Trevino), 317 Ill. App. 3d 324, 251 Ill. Dec. 524, 740 N.E.2d 810, 2000 Ill. App. LEXIS 1019 (1 Dist. 2000).

- In General

Although proceedings under the Illinois Post-Conviction Act are not criminal prosecutions, Illinois case law supports the application of the fair trial guaranty of an impartial judge to an evidentiary hearing under the Illinois Post-Conviction Hearing Act, 725 ILCS 5/122-6. People v. Taylor, 357 Ill. App. 3d 642, 293 Ill. Dec. 965, 829 N.E.2d 890, 2005 Ill. App. LEXIS 464 (1 Dist. 2005), appeal denied, 216 Ill. 2d 727, 298 Ill. Dec. 388, 839 N.E.2d 1035 (2005).

Where the second sentence of 720 ILCS 250/16 allowed the trial court to find that defendant's possession of two or more counterfeit credit cards constituted prima facie evidence that

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defendant intended to defraud as defined under 720 ILCS 250/2.07, this constituted an impermissible mandatory rebuttable presumption, as the State was effectively relieved of its burden of proving defendant's intent to defraud beyond a reasonable doubt in violation of due process under Ill. Const.(1970), Art. 1, § 2. People v. Miles, 344 Ill. App. 3d 315, 279 Ill. Dec. 280, 800 N.E.2d 122, 2003 Ill. App. LEXIS 1385 (2 Dist. 2003).

While to constitute due process of law orderly proceedings according to established rules which do not violate fundamental rights must be observed, a general law administered in its legal course according to the form of procedure suitable and proper to the nature of the case, conformable to the fundamental rules of right and affecting all persons alike, is due process of law. People ex rel. Herman Armanetti, Inc. v. Chicago, 415 Ill. 165, 112 N.E.2d 616, 1953 Ill. LEXIS 333 (1953).

"Due process of law" refers to that law of the land in each State which derives its authority from the inherent and reserved power of the State, exerted within the limits of those fundamental principles of liberty and justice which lie at the base of our civil and political institutions, and its greatest security lies in the right of the people to make their own laws and alter them at their pleasure. Rothschild & Co. v. Steger & Sons Piano Mfg. Co., 256 Ill. 196, 99 N.E. 920, 1912 Ill. LEXIS 2088 (1912).

Under former Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2), no person shall be deprived of life, liberty, or property without due process of law. Polar Wave Ice & Fuel Co. v. Alton Branch of Illinois Humane Soc., 155 Ill. App. 310, 1910 Ill. App. LEXIS 537 (1910).

"Due process of law" is synonymous with "law of the land," and "the law of the land" means general public law, binding upon all of the members of the community, under all circumstances, and not partial or private laws affecting the rights of private individuals or classes of individuals. Eden v. People, 161 Ill. 296, 43 N.E. 1108, 1896 Ill. LEXIS 1606 (1896).

Words "due process of law" as used in Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) are synonymous with the words "the law of the land;" this means general public law, binding upon all members of the community, under all circumstances, and not partial or private laws affecting the rights of private individuals or classes of individuals. Millett v. People, 117 Ill. 294, 7 N.E. 631, 1886 Ill. LEXIS 973 (1886).

-- Actions by Individuals

The due process clause protects individuals from actions by the state, not actions by individuals. In re Schmidt, 241 Ill. App. 3d 47, 182 Ill. Dec. 43, 609 N.E.2d 345 (3 Dist. 1993).

-- Adequate Notice Requirement

Although the student was afforded a hearing on his expulsion and was provided notice of the hearing, his due process rights were violated because he was denied any information about the identity of his accuser or the nature of the specific charge or of the new evidence he would be called upon to refute and was thus denied adequate notice of the charges against him. Camlin v. Beecher Cmty. Sch. Dist., 339 Ill. App. 3d 1013, 274 Ill. Dec. 331, 791 N.E.2d 127, 2003 Ill. App. LEXIS 638 (3 Dist. 2003).

A criminal statute violates due process if it fails to give adequate notice as to what action or conduct is proscribed. People ex rel. Difanis v. Barr, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).

-- Appropriate Relief

Court concluded that the failure of a quorum of the committee to act on petitioner's application did not necessitate further proceedings by the committee; thus, petitioner's due process rights had not been violated under Ill. Const. (1970), Art, I, § 2. In re Childress, 138 Ill. 2d 87, 149 Ill. Dec. 244, 561 N.E.2d 614, 1990 Ill. LEXIS 92 (1990).

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It does not constitute a denial of due process to hold that one means of relief is inappropriate to the facts of the controversy when other appropriate means of relief are available. People v. Freeman, 26 Ill. App. 3d 443, 326 N.E.2d 207 (1 Dist. 1974).

-- Appropriations

County's failure to appropriate reasonable funds to care for delinquent minors may violate 705 ILCS 405/6-7(1), but that does not mean that § 6-7(1), 705 ILCS 405/6-8(2), or 705 ILCS 405/5-710(1)(a)(iv) violate the Illinois or federal due process provisions. People v. Rodney H. (In re Rodney H.), 223 Ill. 2d 510, 308 Ill. Dec. 292, 861 N.E.2d 623, 2006 Ill. LEXIS 1667 (2006).

-- Authority to Control

If dominion over the economic life of one individual or enterprise is to be given to another, some justification must exist and the conditions upon which control is to be exercised must be stated with at least that degree of precision which is required when comparable authority is given to a public official. Illinois Hosp. Serv., Inc. v. Gerber, 18 Ill. 2d 531, 165 N.E.2d 279 (1960).

-- Class Actions

Trial court erred in sustaining the board's motion for a plea in abatement, because the court determined that the separate suit was not a class suit, and did not afford the owners and holders due process of law for the purposes of Ill. Const. (1970), Art. I, § 2. Newberry Library v. Board of Education, 387 Ill. 85, 55 N.E.2d 147, 1944 Ill. LEXIS 588 (1944).

Members of a class may represent others of that class where the sole and common interest of the entire class is to assert or challenge a claimed right; but where the substantial interests of parties present in such a suit are not necessarily or even probably the same as the interests of those they seek to represent, such parties cannot be said to afford that protection to absent parties required by due process under former Ill. Const. (1870), Art. II, § 2 (see now this section). Newberry Library v. Board of Educ., 387 Ill. 85, 55 N.E.2d 147 (1944).

-- Clear Definition Required

The due process clauses of the United States and Illinois Constitutions require that the proscriptions of a criminal statute be clearly defined and provide sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. People v. Jihan, 127 Ill. 2d 379, 130 Ill. Dec. 422, 537 N.E.2d 751 (1989).

-- Construction

Statute criminalizing knowing possession of a weapon ready for use other than in one's home or business had a rational basis in the State's legitimate interest in controlling violence; it was not a statute without a scienter requirement, since knowledge of one's acts was required. People v. Spivey, 351 Ill. App. 3d 763, 286 Ill. Dec. 699, 814 N.E.2d 925, 2004 Ill. App. LEXIS 929 (1 Dist. 2004).

Rationales for imposing potentially greater penalties for sale of look-alike rather than true controlled substances approved in the Upton case, continued to apply after re-enactment of the statute defining the offense without the preamble that contained the rationales; state constitutional due process guarantees were not violated. People v. Cochran, 323 Ill. App. 3d 669, 257 Ill. Dec. 529, 753 N.E.2d 1155, 2001 Ill. App. LEXIS 593 (2 Dist. 2001).

Under Ill. Const. (1970), Art. I, § 2, no person shall be deprived of life, liberty, or property without due process of law; however, the Illinois guarantee of due process stands separate and independent from the Federal guarantee of due process, but the provision offers at least the same level of due process protection as that provided by the U.S. Constitution. Lewis E. by Gwen E. v. Spagnolo, 287 Ill. App. 3d 822, 223 Ill. Dec. 380, 679 N.E.2d 831, 1997 Ill. App. LEXIS 258 (1 Dist. 1997).

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The Illinois Constitution's guarantee of due process to all persons stands separate and independent from the federal guarantee of due process. People v. DiGuida, 152 Ill. 2d 104, 178 Ill. Dec. 80, 604 N.E.2d 336 (1992).

-- Court Errors

Defendant's due process rights and his right to present evidence in his own defense were violated where the trial court singled out codefendant, admonished him of the dangers and consequences of perjury, and implied that codefendant would lie if he testified on behalf of defendant. People v. King, 228 Ill. App. 3d 519, 170 Ill. Dec. 805, 593 N.E.2d 694 (1 Dist. 1992), aff'd, 154 Ill. 2d 217, 181 Ill. Dec. 626, 608 N.E.2d 877 (1993).

The constitutional requirement of due process of law is not a guaranty that courts shall not commit error in the trial of causes, nor is it a guaranty against erroneous or unjust decisions by courts which have jurisdiction of the parties and the subject matter; mere error in a judgment or decree does not deprive the losing party of the benefit of due process of law. Kimbrough v. Parker, 407 Ill. 274, 95 N.E.2d 473 (1950).

The due process clause is not a guaranty against erroneous decisions by courts having jurisdiction of the subject matter and of the parties. Abrams v. Awotin, 388 Ill. 42, 57 N.E.2d 464 (1944).

If errors are committed by a trial court, or erroneous decisions rendered, they may be corrected in the manner provided by law for the correction of such errors, but mere errors in a judgment or decree do not deprive the losing party of due process of law. Meyers v. Fraser, 385 Ill. 550, 53 N.E.2d 442 (1944).

The fact that it may later appear that the judgment rendered is not to the liking of one of the parties, or that the court may have erred in entering it, does not constitute denial of due process of law. Moore v. Town of Browning, 373 Ill. 583, 27 N.E.2d 533 (1940).

If errors are committed or erroneous or unjust decisions are rendered, they may be correct in the manner provided by law for the correction of such errors, but mere error in a judgment or decree does not deprive the losing party of the benefit of due process of law. Foreman-State Nat'l Bank v. Sistek, 358 Ill. 525, 193 N.E. 513, 1934 Ill. LEXIS 1033 (1934).

Constitutional requirement of due process of law is not a guaranty that the court shall not commit error in the trial of causes or a guaranty against erroneous or unjust decisions by courts which have jurisdiction of the parties and the subject matter. Foreman-State Nat'l Bank v. Sistek, 358 Ill. 525, 193 N.E. 513, 1934 Ill. LEXIS 1033 (1934).

The Illinois Constitution did not guarantee the infallability of the decisions of the courts: to constitute due process of law, orderly proceedings according to established rules, which do not violate fundamental rights, must be observed, but a general law, administered in its legal course according to the form of procedure suitable and proper to the nature of the case, conformable to the fundamental rules of right and affecting all persons alike, is due process of law. Brown v. Kienstra, 337 Ill. 641, 169 N.E. 736 (1929).

-- Criminal Proceedings

"Penalty" defendant was assessed under 735 ILCS 5/22-105, comprised of the filing fees and actual court costs due to his frivolous petition. As § 22-105 was intended to defray the costs of disposing of frivolous petitions while also discouraging them, it does not violate due process. People v. Carter, 377 Ill. App. 3d 91, 315 Ill. Dec. 694, 877 N.E.2d 446, 2007 Ill. App. LEXIS 1085 (1 Dist. 2007), appeal denied, 2009 Ill. LEXIS 142 (Ill. 2009).

Instruction that defendant committed felony murder in violation of 720 ILCS 5/9-1(a)(3) if, in attempting to commit an armed robbery, he set in motion a chain of events that caused his

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cofelon's death by a third person who was trying to prevent the felony, did not violate defendant's due process rights by relieving the State of its burden to prove all elements of the offense. Although foreseeability is a necessary component of a proximate cause analysis, the jury did not have to be specifically advised that the killing was a "direct and foreseeable consequence" of the attempted robbery to sufficiently communicate the idea of "proximate cause." People v. Hudson, 222 Ill. 2d 392, 305 Ill. Dec. 927, 856 N.E.2d 1078, 2006 Ill. LEXIS 1105 (2006).

Defendant's due process rights were not violated, even though he was convicted of aggravated robbery, an uncharged crime. He argued throughout the trial for armed robbery that the evidence supported an aggravated robbery charge, not the armed robbery charge, so that any error was an invited one. People v. McDonald, 366 Ill. App. 3d 243, 304 Ill. Dec. 213, 852 N.E.2d 463, 2006 Ill. App. LEXIS 566 (1 Dist. 2006).

Trial court did not violate Supreme Court Rule 608(a)(9), and defendant's right to due process by allowing voir dire to proceed without a court reporter, nor did defense counsel render ineffective assistance by waiving the reporting of voir dire, because it was defendant's responsibility to preserve an adequate record for appeal; the trial court asked defense counsel if he wanted voir dire reported, and he said no. People v. Ash, 346 Ill. App. 3d 809, 282 Ill. Dec. 30, 805 N.E.2d 649, 2004 Ill. App. LEXIS 260 (4 Dist. 2004).

Where the proper sufficiency of the evidence standard to be applied in a criminal appeal required the court to determine whether, viewing the evidence in light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, and the appellate court had properly applied that standard, no due process violation had been shown in a defendant's conviction. United States ex rel. Barnes v. Cowan,, 2000 U.S. Dist. LEXIS 7058 (N.D. Ill. May 18, 2000).

-- Definition

What is, or is not, a denial of due process does not readily lend itself to any refined definition, but it can be rendered progressively more clear by the course of litigation. Where, however, the procedure followed by a court is so lacking in a principle or principles basic to the system of justice that it offends the system, that procedure must be condemned as a denial of due process. Pettigrew v. National Accounts Sys., 67 Ill. App. 2d 344, 213 N.E.2d 778 (2 Dist. 1966).

Due process has been held to be an orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. Valerius v. Perry, 342 Ill. 147, 174 N.E. 29 (1930).

A general law, administered in its regular course according to the form of procedure suitable and proper to the nature of the case, conformable to the fundamental rules of right and affecting all persons alike, is due process. People ex rel. State Bd. of Health v. Apfelbaum, 251 Ill. 18, 95 N.E. 995 (1911).

Due process of law in each particular case means such an exertion of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. Commissioners of Union Drainage Dist. v. Smith, 233 Ill. 417, 84 N.E. 376, 1908 Ill. LEXIS 2726 (1908).

Due process of law does not mean a proceeding pursuant to any law which the legislature may see fit to pass, whether valid or invalid, but does mean in the due course of legal proceedings according to those rules and forms that have been established for the protection of private rights. Commissioners of Union Drainage Dist. v. Smith, 233 Ill. 417, 84 N.E. 376, 1908 Ill. LEXIS 2726 (1908).

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"Due process of law" are synonymous with "law of the land." Commissioners of Union Drainage Dist. v. Smith, 233 Ill. 417, 84 N.E. 376, 1908 Ill. LEXIS 2726 (1908).

Due process of law is synonymous with "law of the land," and it means a general public law, binding upon all members of the community under all circumstances, and not partial or private laws affecting the rights of private individuals or classes of individuals. Charles J. Off & Co. v. Morehead, 235 Ill. 40, 85 N.E. 264, 1908 Ill. LEXIS 3008 (1908).

"Due process of law" does not mean a proceeding pursuant to any law which the legislature may see fit to pass, whether valid or invalid, but does mean "in the due course or legal proceedings according to those rules and forms which have been established for the protection of private rights." Commissioners of Union Drainage Dist. No. 1 v. Smith, 233 Ill. 417, 84 N.E. 376 (1908).

The words "due process of law," in this section, are synonymous with "law of the land," and means the due course of legal proceedings according to the rules and forms which have been established for the protection of private rights. City of Belleville v. St. Clair County Tpk. Co., 234 Ill. 428, 84 N.E. 1049 (1908).

The words "due process of law" are to be held synonymous with the law of the land and, this means general public law, binding upon all the members of the community under all circumstances, and not partial or private laws, affecting the rights of private individuals or classes of individuals. Braceville Coal Co. v. People, 147 Ill. 66, 35 N.E. 62 (1893).

-- Disappointment with Punishment

Disappointment with one's unpleasant punishment does not demonstrate lack of due process. United States v. Mustread, 42 F.3d 1097 (7th Cir. 1994).

- Administrative Proceeding

Participation of a village's attorney denied a pension applicant his due process right under the Fifth and Fourteenth Amendments and Ill. Const. Art. I, § 2 to a fair and impartial hearing. The attorney assumed an advocacy role against the applicant, including objecting to questions asked by applicant's counsel and extensively questioning witnesses. Williams v. Bd. of Trs. of the Morton Grove Firefighters' Pension Fund, 398 Ill. App. 3d 680, 338 Ill. Dec. 178, 924 N.E.2d 38, 2010 Ill. App. LEXIS 60 (1 Dist. 2010).

Participation of certain village officials on a pension board did not create a per se conflict of interest that required reversal based on due process under the Fifth and Fourteenth Amendments and Ill. Const. Art. I, § 2. Williams v. Bd. of Trs. of the Morton Grove Firefighters' Pension Fund, 398 Ill. App. 3d 680, 338 Ill. Dec. 178, 924 N.E.2d 38, 2010 Ill. App. LEXIS 60 (1 Dist. 2010).

Employer's attendance policy was reasonable and the employee discharged as a county correctional officer for too many unexcused absences was afforded before the Board a hearing and opportunity to present the employee's case about why the employee should not have been discharged. As a result, the employee did not show that the employee's Ill. Const. art. I, § 2 due process rights were violated since the employee was afforded all the process to which the employee was entitled. Marzano v. Cook County Sheriff's Merit Bd., 396 Ill. App. 3d 442, 336 Ill. Dec. 615, 920 N.E.2d 1205, 2009 Ill. App. LEXIS 1340 (1 Dist. 2009).

New administrative hearing was required on the village firefighter's application for a line-of-duty pension pursuant to 40 ILCS 5/4-110, or claim for a not-in-duty disability pension pursuant to 40 ILCS 5/4-111, as the village firefighter did not receive a fair and impartial hearing comporting with the due process required by Ill. Const. art. I, § 2. Although the village's attorney was supposed to be acting as an unbiased decisionmaker regarding the application, the record showed that she actually acted as an advocate for the village. Williams v. Bd. of Trs. of the Morton Grove Firefighters' Pension Fund, Ill. App. 3d , Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 1276

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(1 Dist. Dec. 22, 2009), substituted op., remanded, 924 N.E.2d 38, 2010 Ill. App. LEXIS 60 (Ill. App. Ct. 1st Dist. 2010).

There was no merit to a firefighter's argument that a retirement board's decision violated due process because it was rendered by only five members instead of the full eight-member board. Under 40 ILCS 5/6-178, the presence of five members of the board constituted a quorum sufficient to transact business; the firefighter offered no authority for his claim that the eight-member board should have considered his ordinary disability application, and the court was aware of none. Reed v. Ret. Bd. of the Firemen's Annuity & Benefit Fund of Chi., 395 Ill. App. 3d 1, 335 Ill. Dec. 9, 917 N.E.2d 1073, 2009 Ill. App. LEXIS 1007 (1 Dist. 2009), appeal denied, 235 Ill. 2d 604, 924 N.E.2d 460, 2010 Ill. LEXIS 49 (2010).

Board's pre-hearing determination that police officer was no longer disabled, without giving the police officer a chance to respond, was a violation of the police officer's due process rights under Ill. Const. art. I, § 2 and Ill. Const. art. XIII, § 5. Even though it was eventually determined that the police officer was no longer disabled, the police officer had a right to receive disability benefits until a ruling was made that the police officer was no longer disabled. Peacock v. Bd. of Trs. of the Police Pension Fund, 395 Ill. App. 3d 644, 335 Ill. Dec. 159, 918 N.E.2d 243, 2009 Ill. App. LEXIS 1044 (1 Dist. 2009).

Employer's claim that administration of the Illinois Unemployment Insurance Act, 820 ILCS 405/100 et seq., was unconstitutional had to be rejected in a case where the director determined that the employer owed unpaid unemployment contributions for a certain tax year because individuals who worked for it were employees rather than independent contractors. The fact that the director administered the Act was not a violation of the employer's Ill. Const. art. I, § 2 due process rights since the director did not have expansive executive powers or receive a direct gain from decisions under the administrative process provided by the Act. Emergency Treatment, S.C. v. Dep't of Empl. Sec., 394 Ill. App. 3d 893, 334 Ill. Dec. 538, 917 N.E.2d 135, 2009 Ill. App. LEXIS 946 (1 Dist. 2009), appeal denied, 235 Ill. 2d 587, 924 N.E.2d 455, 2010 Ill. LEXIS 124 (2010).

Circuit court property denied a motion to dismiss filed by the Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago in a widow's action seeking administrative review of the Board's decision to award her a widow's annuity based on duty disability paid prospectively from the date of an appellate court decision because the circuit court had jurisdiction over the widow's complaint when the Board failed to meet its due process obligations necessary to activate the 35 day time limit of 735 ILCS 5/3-103 of the Administrative Review Law; the Board's award letter failed to inform the widow that the annuity awarded constituted a denial of the alternative and higher benefit available to her under § 6-140 of the Illinois Pension Code, 40 ILCS 5/6-140. Coleman v. Ret. Bd. of the Firemen's Annuity & Benefit Fund of Chi., 392 Ill. App. 3d 380, 331 Ill. Dec. 672, 911 N.E.2d 493, 2009 Ill. App. LEXIS 440 (1 Dist. 2009).

- Contempt

Attorney's sanction did not arise from the signing or filing of any documents, and if the court wanted to find the attorney in contempt, it had to offer her an opportunity to appear and afford her a hearing to determine whether her conduct was willful, which did not happen; if the sanction was intended as a finding of contempt, it was lacking due process of law. Stewart v. Lathan, 401 Ill. App. 3d 623, 341 Ill. Dec. 159, 929 N.E.2d 1238, 2010 Ill. App. LEXIS 530 (1 Dist. 2010).

-- Requirements

While the trial court had jurisdiction over defendant's indirect criminal contempt proceeding, the finding that defendant was in indirect criminal contempt of a trial court order directing defendant to find full-time employment by a certain date had to be vacated. The State's petition for rule to show cause did not provide defendant with proper notice of the possibility that criminal sanctions could be imposed and, thus, Ill. Const. art. I, § 2 due process rights were violated. People v.

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Covington, 395 Ill. App. 3d 996, 334 Ill. Dec. 792, 917 N.E.2d 618, 2009 Ill. App. LEXIS 1022 (4 Dist. 2009).

- Criminal Prosecution

-- Evidence

References to defendant's drug use denied a murder defendant a fair trial. The drug use was not admissible to establish motive, as the prosecution had not demonstrated that defendant was addicted to narcotics and lacked the financial resources to sustain his habit, and the prosecutor's comment on the drug use was precisely the bad-character accusation prohibited by the rule against admission of other crimes to show criminal propensity. People v. Jackson, 399 Ill. App. 3d 314, 339 Ill. Dec. 311, 926 N.E.2d 786, 2010 Ill. App. LEXIS 200 (1 Dist. 2010).

-- Indictment

Failure to comply with Ill. Sup. Ct. R. 504 by not setting forth the initial appearance date within the time frame set forth in that rule to do so, which could be rescheduled under Ill. Sup. Ct. R. 505, did not mandate automatic dismissal of the traffic violation charges against the respective defendants in consolidated cases. Rather, the trial court should have determined whether the error resulted in prejudice to their Ill. Const. art. I, § 2 due process rights and because the trial court did not do so, further proceedings were required. People v. Ziobro, 242 Ill. 2d 34, 350 Ill. Dec. 839, 949 N.E.2d 631, 2011 Ill. LEXIS 766 (2011).

-- Prosecutorial Remarks

Prosecutor's statement during closing argument that a murder victim was "screaming out for justice" did not deny defendant a fair trial. People v. Jackson, 399 Ill. App. 3d 314, 339 Ill. Dec. 311, 926 N.E.2d 786, 2010 Ill. App. LEXIS 200 (1 Dist. 2010).

Defendant was not denied a fair trial when the prosecutor stated during rebuttal that an assistant state's attorney who interviewed defendant could "be believed." Although a prosecutor could not vouch for a witness or invoke the credibility of his office in argument, he was permitted to comment on the strength of the evidence. People v. Jackson, 399 Ill. App. 3d 314, 339 Ill. Dec. 311, 926 N.E.2d 786, 2010 Ill. App. LEXIS 200 (1 Dist. 2010).

Improper statement that no one had contradicted the State's evidence did not deny defendant a fair trial, as the trial court had corrected the error with its instructions. The jury knew that the State was required to prove the elements of aggravated battery and that it was to give no consideration to defendant's failure to testify. People v. Chester, 396 Ill. App. 3d 1067, 339 Ill. Dec. 248, 926 N.E.2d 723, 2010 Ill. App. LEXIS 17 (4 Dist. 2010).

- Death Penalty

-- Requirements

State did not violate defendant's right to due process under Ill. Const. art. I, § 2 where it offered a plea deal to defendant after defendant's first conviction and direct appeal that resulted in a second trial in defendant's first degree murder case, defendant announced an intention to go to trial, and five years later defendant pled guilty to several counts that ended in the State asking for and receiving the death penalty against defendant. When defendant entered defendant's guilty plea, defendant acknowledged that defendant understood defendant could possibly receive a death sentence, and defendant understood that such a sentence would not be imposed arbitrarily given defendant's rejection of the plea offer, the amount of time since the plea offered had been made before defendant decided to plead guilty, and the fact that the State could not be acting out of vindictiveness because the State's Attorney who had made the offer was no longer the State's Attorney by the time of defendant's second trial. People v. Ramsey, 239 Ill. 2d 342, 347 Ill. Dec. 588, 942 N.E.2d 1168, 2010 Ill. LEXIS 1534 (2010).

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- Evidence

Trial court properly admitted evidence that defendant had been previously convicted of aggravated criminal sexual assault and defendant could not obtain relief from use of the statute allowing the admission of prior act evidence under certain circumstances, 725 ILCS 5/115-7.3, as that statute was constitutional. The prior conviction evidence involved an offense that was not too remote in time, given that the current offense was committed less than six years after defendant had been released from prison for the prior conviction, the two offenses were sufficiently similar, and defendant did not show that defendant's Ill. Const. art. I, § 2 due process rights were violated, as the trial court had the discretion under that statute to bar the admission of evidence it deemed unfairly prejudicial. People v. Everhart, 405 Ill. App. 3d 687, 345 Ill. Dec. 353, 939 N.E.2d 82, 2010 Ill. App. LEXIS 1178 (1 Dist. 2010).

Inference that defendant, a juvenile, committed a battery did not satisfy due process under the Housby test, as the ultimate fact that defendant committed the battery did not more likely than not derive from the fact that he was in possession of a broken bottle. In light of the mass of people surrounding the scene, the fact that multiple bottles were being thrown at the scene (which meant that other people possessed bottles as well), the fact that the victim did not turn around until two minutes after being hit, and the fact that defendant was standing 10 feet away when the victim observed him, it was no more likely that defendant hit the victim than that the guilty party was one of the other 99 people participating in the melee. People v. Gregory G. (In re Gregory G.), 396 Ill. App. 3d 923, 336 Ill. Dec. 506, 920 N.E.2d 1096, 2009 Ill. App. LEXIS 1218 (2 Dist. 2009).

Admission of prior acts of domestic abuse in defendant's trial alleging that defendant violated the domestic abuse law, 720 ILCS 5/12-3.2(a)(1), was permissible pursuant to 725 ILCS 5/115-7.4, as 725 ILCS 5/115-7.4 neither violated defendant's Ill. Const. art. I, § 2 equal protection nor due process rights. Alleged domestic abusers were not members of a suspect class and that statute had a reasonable basis for being enacted, that of finding the truth in a domestic abuse case; too, the statute did not permit admission of irrelevant or unfairly prejudicial evidence, which meant that it contained sufficient procedural safeguards. People v. Dabbs, 396 Ill. App. 3d 622, 335 Ill. Dec. 782, 919 N.E.2d 501, 2009 Ill. App. LEXIS 1236 (3 Dist. 2009), appeal denied, 2010 Ill. LEXIS 315 (Ill. 2010).

Ex-wife's testimony that defendant, charged with the domestic battery of defendant's girlfriend, battered the ex-wife before she and defendant were married was admissible as prior act evidence pursuant to 725 ILCS 5/115-7.4 and that statute was not, as defendant claimed, unconstitutional for allowing the admission of such evidence. The statute did not violate defendant's due process rights because it contained requirements that the evidence admitted be relevant and not unfairly prejudicial, which meant it had sufficient procedural safeguards. People v. Dabbs, Ill. App. 3d , Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 997 (3 Dist. Oct. 15, 2009).

- Fair Hearing

-- Criminal Proceedings

Trial court did not deny defendant the right to a fair trial by limiting defense counsel's closing argument as counsel presented a full closing argument. Although his remarks were challenged by the trial court, he was permitted to argue his theory of the case to the trial court and was neither given a time limit nor pressured to finish prematurely. People v. Faria, 402 Ill. App. 3d 475, 341 Ill. Dec. 845, 931 N.E.2d 742, 2010 Ill. App. LEXIS 622 (1 Dist. 2010).

Trial court's comments did not evidence a bias or prejudice against defense counsel but, instead, showed impatience with defense counsel's lack of preparedness for trial and the trial court's attempt to move the proceedings along when counsel asked redundant or unclear questions. Thus, the trial court's actions did not deprive defendant of the right to a fair trial. People v. Faria, 402 Ill. App. 3d 475, 341 Ill. Dec. 845, 931 N.E.2d 742, 2010 Ill. App. LEXIS 622 (1 Dist. 2010).

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Trial court did not limit defense counsel's ability to cross-examine the State's witnesses or that the trial court's action rose to the level of becoming an advocate for the State; where the record reflected that the trial court's numerous interjections of defense counsel's cross-examination of the State's witnesses was for the purposes of clarification and moving the proceedings along, trial court did not limit defense counsel's ability to cross-examine the State's witnesses nor did the trial court's action rise to the level of becoming an advocate for the State. Thus, the trial court's actions did not deprive defendant of the right to a fair trial. People v. Faria, 402 Ill. App. 3d 475, 341 Ill. Dec. 845, 931 N.E.2d 742, 2010 Ill. App. LEXIS 622 (1 Dist. 2010).

Felony murder defendant was not denied a fair trial by the admission of evidence of the decedent's family and his personal traits when both witnesses testified as to who was present in the home and to the events of the evening prior to the shooting. This testimony came in response to procedural background questions, which had no bearing on defendant's guilt or innocence; the testimony was properly admitted as life and death testimony. People v. Lavelle, 396 Ill. App. 3d 372, 335 Ill. Dec. 673, 919 N.E.2d 392, 2009 Ill. App. LEXIS 1123 (1 Dist. 2009), appeal denied, 2010 Ill. LEXIS 562 (Ill. 2010); appeal denied, 2010 Ill. LEXIS 617 (Ill. 2010).

-- Involuntary Commitment

In a challenge to involuntary commitment, inadequate jury instructions did not deny respondent the due-process right to a fair trial, as a doctor's expert testimony and testimony of witnesses regarding respondent's behavior was sufficient for the jury to find respondent suffered from a mental disorder satisfying the definition of a mental illness. People v. Charles K. (In re Charles K.), 405 Ill. App. 3d 1152, 347 Ill. Dec. 711, 943 N.E.2d 1, 2010 Ill. App. LEXIS 1267 (4 Dist. 2010).

-- Motions in Limine

Defendant was entitled to a new trial in a case where defendant was convicted by a jury on a burglary charge after the trial court refused to rule on defendant's motion in limine to bar the State from introducing evidence of defendant's two prior burglary convictions until defendant had testified. The trial court's refusal denied defendant of defendant's right to a fair trial under Ill. Const. art. I, § 2 because defendant was on trial for the same charge as the prior convictions and whether those prior convictions could be admitted was central to defendant's strategy since defendant's credibility was a central issue in the case. People v. Hernandez, 394 Ill. App. 3d 527, 333 Ill. Dec. 785, 915 N.E.2d 856, 2009 Ill. App. LEXIS 1108 (1 Dist. 2009).

-- Right to Cross-Examination

(Unpublished) Forfeiture by wrongdoing rule did not apply based on a defendant's jumping bail and absconding from justice for a period of 10 years with regard to a murder because such conduct on the part of the defendant had no causal connection with or relationship to a deceased witness' ability to be located and his absence from trial, and there was no evidence that the defendant left or remained a fugitive with the intent to procure the witness's unavailability; as a result, with regard to defendant's murder trial, his conviction for murder was reversed because the trial court erred in allowing the former eyewitness testimony of the deceased witness, who had died of a drug overdose that had nothing to do with the defendant, and the admission of the prior testimony was not harmless error. People v. Melchor, 362 Ill. App. 3d 335, 299 Ill. Dec. 8, 841 N.E.2d 420, 2005 Ill. App. LEXIS 1123 (1 Dist. 2005).

- Forfeiture

Vehicle-forfeiture provisions of 720 ILCS 5/36-1 through 36-4 were not facially unconstitutional as a violation of procedural due process under the Fifth and 14th Amendments and Ill. Const. art. I, § 2, even though they did not include a provision requiring a prompt, probable cause hearing after the seizure of a vehicle, because the forfeiture proceeding itself provided all the process that was due. Applying the Baker factors pursuant to United States Supreme Court precedent, the court found that: (1) the State filed its complaints for forfeiture within 22, 20, and 20 days of each of the

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seizures pursuant to 720 ILCS 5/36-2(a); (2) it did not appear that the claimants took any steps to obtain an early return of their vehicles but rather filed several motions for continuances before waiting several months to file a motion to dismiss; and (3) the claimants did not allege any undue delay, let alone prejudice from the delay. People v. One 1998 GMC, Ill. 2d , 355 Ill. Dec. 900, 960 N.E.2d 1071, 2011 Ill. LEXIS 2238 (2011).

Argument that forfeiture provisions of 720 ILCS 5/36-1 et seq., were unconstitutional based on a failure to provide for a probable cause hearing was waived because it was not presented in a brief; moreover, the argument had already been addressed and rejected. The government was allowed to seize property subject to forfeiture without a preseizure meeting. People v. 1998 Lexus GS 300, 402 Ill. App. 3d 462, 341 Ill. Dec. 372, 930 N.E.2d 582, 2010 Ill. App. LEXIS 585 (1 Dist. 2010).

- Illustrative Cases

-- Administrative Code

There was no merit to a retirement board's argument that the trial court lacked jurisdiction over a complaint by firefighters' widows because it was not timely filed under 735 ILCS 5/3-103. The 35-day jurisdictional requirement would not serve to bar a complaint for administrative review where the agency failed to meet its due process obligations to fairly and adequately inform a plaintiff of its decision; here, the board failed to inform the widows that its award would not be in compliance with the applicable statute or with case law, failed to notify them that it was denying a substantial part of the benefits they were seeking, characterized the decision as favorable to them, and in its initial hearing notice advised the widows that it was not necessary for them to attend the hearing and that they had no need for an attorney. Bell v. Ret. Bd. of the Firemen's Annuity & Benefit Fund, 398 Ill. App. 3d 758, 338 Ill. Dec. 638, 924 N.E.2d 1164, 2010 Ill. App. LEXIS 131 (1 Dist. 2010).

-- Forcible Detainer

In a forcible detainer case, a trial court lacked jurisdiction to proceed because a landlord did not comply with 735 ILCS 5/9-211 when notice was posted on the door of a rental premises and a copy was slid under the door; the landlord never personally served anyone in the household, and the landlord's method of service did not comply with the statutory methods of service for a tenant who was in actual possession of the premises. This resulted in a violation of due process. Figueroa v. Deacon, 404 Ill. App. 3d 48, 343 Ill. Dec. 852, 935 N.E.2d 1080, 2010 Ill. App. LEXIS 897 (1 Dist. 2010).

-- Hospital Staff Privileges

Board's decision to deny a physician's application for reappointment to a hospital's medical staff was not arbitrary or capricious and therefore also did not violate due process. The evidence supported findings that the physician willfully falsified a reappointment application by failing to disclose a reprimand by a prior employer and that he behaved abusively or unprofessionally toward students, staff, and colleagues. Dookeran v. County of Cook, 396 Ill. App. 3d 800, 336 Ill. Dec. 424, 920 N.E.2d 633, 2009 Ill. App. LEXIS 1232 (1 Dist. 2009), appeal denied, 2010 Ill. LEXIS 629 (Ill. 2010).

-- Imposition of Fine upon Conviction

Trial court did not violate defendant's due process rights, U.S. Const. amend. XIV; Ill. Const. art. I, § 2, by imposing mental health court and youth diversion/peer court fines, 55 ILCS 5/5-1101(d-5) and 55 ILCS 5/5-1101(e), as they were imposed as punishment, and the legislature conferred upon county boards the limited power to enact certain fines or penalties. People v. Graves, 235 Ill. 2d 244, 335 Ill. Dec. 881, 919 N.E.2d 906, 2009 Ill. LEXIS 1296 (2009).

-- Involuntary Commitment

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In the context of due process, unless the State has reason to know that a guardian has been appointed for an adult criminal defendant, failure to serve the guardian with notice does not signify a lack of diligence in a proceeding to determine whether to remand the defendant for treatment; therefore, plain error was not shown under Ill. Sup. Ct. R. 615(a) in a case where defendant was involuntary admitted under the Illinois Mental Health and Developmental Disabilities Code, 405 ILCS 5/1-100 et seq., after being found unfit to stand trial, and, even if notice was not given to defendant's guardian, it did not compromise the fairness of the hearing or the integrity of the judicial process. The clear or obvious error standard applied because a hearing that culminated with the remand of defendant for further treatment was part of a criminal prosecution; at that hearing, the trial court considered not only whether defendant was subject to involuntary admission, but also whether he constituted a serious threat to public safety, pursuant to 725 ILCS 5/104-25(g)(2). People v. Houston, 407 Ill. App. 3d 1052, 349 Ill. Dec. 439, 946 N.E.2d 935, 2011 Ill. App. LEXIS 174 (2 Dist. 2011).

-- Sentencing

Defendant had not shown a due process violation when the plea agreement capped the sentence at 25 years' imprisonment and the trial court imposed a prison term of 23 years, plus a statutory three-year period of mandatory supervised release. This did not result in a more onerous punishment than 25 years' imprisonment. People v. Merritt, 395 Ill. App. 3d 169, 334 Ill. Dec. 216, 916 N.E.2d 631, 2009 Ill. App. LEXIS 1012 (4 Dist. 2009), appeal denied, 235 Ill. 2d 599, 924 N.E.2d 459, 2010 Ill. LEXIS 256 (2010).

- Jurisdiction

-- Foreign Corporation

In a products liability suit arising from a helicopter crash in Illinois, due process under the Illinois Constitution permitted the exercise of personal jurisdiction over a nonresident manufacturer of a custom-made component because the manufacturer relied on the marketing and distribution network of the helicopter company and thus reasonably could expect to be subject to suit in an Illinois court. Russell v. SNFA, 408 Ill. App. 3d 827, 349 Ill. Dec. 580, 946 N.E.2d 1076, 2011 Ill. App. LEXIS 290 (1 Dist. 2011).

Exercising personal jurisdiction over the French helicopter part manufacturer complied with the due process clause of the Illinois Constitution because: (1) the helicopter crashed in Illinois; (2) the allegedly defective part was custom-made by the manufacturer for the helicopter; and (3) the manufacturer made itself dependent on the marketing and distribution network of the helicopter manufacturer; and (4) it was reasonably foreseeable to the manufacturer that it would be haled into an American forum as it had previously been subject to jurisdiction for the alleged failure of the same part in the same model aircraft, manufactured by the same company. Russell v. SNFA, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1330 (1 Dist. Dec. 16, 2011).

Employee stated minimum contacts for establishing specific personal jurisdiction over the employer, a California corporation, under the Illinois due process clause because: (1) the employer hired an Illinois resident, communicated with the employee at his Illinois residence, and had the employee work in Illinois for around 15 days a year; (2) the employee raised a retaliatory discharge claim, the injury occurred in Illinois, and the employee's complaint alleged a violation of Illinois public policy; and (3) the employee filed his workers' compensation claim in Illinois. Bell v. Don Prudhomme Racing, Inc., 405 Ill. App. 3d 223, 345 Ill. Dec. 371, 939 N.E.2d 100, 2010 Ill. App. LEXIS 1190 (4 Dist. 2010).

-- Non-Resident Defendant

Trial court had personal jurisdiction over New York residents under 735 ILCS 5/2-209 and due process in a case alleging breach of contract and fraud because they pursued a relationship with an Illinois company, a contract was entered into in Illinois, and substantial performance of the contractual obligations occurred there. Considering the quality and nature of the acts of the New

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York residents, they purposefully reached out beyond New York to create a deliberate affiliation with an Illinois company from which they derived financial benefit by accepting in excess of 20 projects, and requiring the New York residents to litigate in Illinois would not have offended traditional notions of fair play and substantial justice. Aasonn, LLC v. Delaney, Ill. App. 3d , Ill. Dec. , 961 N.E.2d 939, 2011 Ill. App. LEXIS 1224 (2 Dist. 2011).

Trial court could obtain specific jurisdiction over the insurance company served with a citation to discover assets by the businesses after they obtained an Illinois monetary judgment against a corporation that the insurance company, a New Jersey resident, insured. Under 735 ILCS 5/2-209(c), the trial court had long-arm jurisdiction that allowed the trial court to exercise personal jurisdiction over the insurance company based on a nationwide-territory-of-coverage clause in the relevant insurance policies covering the corporation sued for sending impermissible faxes into Illinois, as that clause gave the insurance company minimum contacts with Illinois that did not violate the due process provision of the Ill. Const. art. I, § 2 because the forum was where an insured event took place. Pace Communs. Servs. Corp. v. Express Prods., 408 Ill. App. 3d 970, 349 Ill. Dec. 65, 945 N.E.2d 1217, 2011 Ill. App. LEXIS 270 (2 Dist. 2011).

- Legislation

Alleged victim's claim of childhood sexual abuse based on conduct of members of religious order that last occurred approximately 29 years before the alleged victim sued the religious order based on that conduct could not be sustained under the current childhood sexual abuse statute of limitations, 735 ILCS 5/13-202.2(b). Even assuming the alleged victim's claim was otherwise viable, that claim was barred under the statute of repose of a prior statute and the legislature's later amendatory act, 735 ILCS 5/13-202.2(b), could not be used to resuscitate the claim without offending due process under Ill. Const. art. I, § 2 because the religious order had a vested right in the claim having already been time barred. Johnson v. Augustinians, 396 Ill. App. 3d 437, 335 Ill. Dec. 773, 919 N.E.2d 492, 2009 Ill. App. LEXIS 1174 (1 Dist. 2009).

- Liberty Interest

-- In General

No Illinois court had held that a prisoner had any protected liberty interest in parole. As a result, the prisoner could not show pursuant to Ill. Const. art. I, § 2 that the prisoner's substantive due process rights were violated based on changes in the way that parole hearings were conducted over time. Hill v. Walker, 397 Ill. App. 3d 1090, 338 Ill. Dec. 348, 924 N.E.2d 554, 2010 Ill. App. LEXIS 147 (5 Dist. 2010).

-- Involuntary Commitment Proceeding

Where there was no proof presented that continued hospitalization of an alleged incompetent person was the least restrictive alternative available to him pursuant to 405 ILCS 5/3-811, the trial court's order requiring involuntary commitment violated the incompetent person's due process rights. People v. Lance H. (In re Lance H.), 402 Ill. App. 3d 382, 341 Ill. Dec. 837, 931 N.E.2d 734, 2010 Ill. App. LEXIS 628 (5 Dist. 2010).

"Dangerous conduct" as referenced in 405 ILCS 5/1-119(3) was not only void for vagueness because it did not provide a sufficient standard to justify the involuntary hospitalization of a mentally ill individual, but also violated Ill. Const. art. I, § 2 substantive due process guarantees. That conclusion was so because that term could apply to harm that nevertheless did not justify an involuntary commitment, such as the involuntary commitment of the alleged mentally ill person. People v. Torski C. (In re Torski C.), 395 Ill. App. 3d 1010, 335 Ill. Dec. 405, 918 N.E.2d 1218, 2009 Ill. App. LEXIS 1116 (4 Dist. 2009), appeal denied, 2010 Ill. LEXIS 322 (Ill. 2010).

-- Sex Offender Commitment

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Respondents to a petition under the Sexually Violent Persons Commitment Act, 725 ILCS 207/1 et seq., did not have a constitutional due process right to a fitness evaluation; while respondents' liberty interests were at stake, the procedures employed ensured that the risk of erroneous deprivation of liberty was slight and the State had an interest in protecting its citizens from violent sexual offenders and in treating the mental disorders of those offenders. People v. Weekly (In re Weekly), Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1003 (1 Dist. Sept. 16, 2011).

- Notice Requirement

-- Not Satisfied

Defendant's due process rights were violated when he was adjudicated a delinquent but the State failed to properly serve notice on his father despite the fact that the father's name was included in petition, the mother supplied his telephone number, and the father was paying child support. People v. Willie W. (In re Willie W.), 355 Ill. App. 3d 297, 297 Ill. Dec. 518, 838 N.E.2d 5, 2005 Ill. App. LEXIS 1 (2 Dist. 2005), appeal denied, 216 Ill. 2d 689, 298 Ill. Dec. 378, 839 N.E.2d 1025 (2005).

Trial court did not have subject matter jurisdiction to enter dispositional orders that terminated the father's and mother's parental rights in two minor children and adjudicated the two minor children to be neglected, as the State's failure to give the father adequate notice of the adjudicatory proceedings violated his due process rights and meant the dispositional orders entered against him were void; since those orders were void, the trial court's finding that the mother was an "unfit person" was also void. People v. Gladys C. (In re Miracle C.), 344 Ill. App. 3d 1046, 280 Ill. Dec. 232, 801 N.E.2d 1177, 2003 Ill. App. LEXIS 1546 (2 Dist. 2003), Overruled in part by People v. Juan S. (In re Antwan L.), 368 Ill. App. 3d 1119, 859 N.E.2d 1085, 2006 Ill. App. LEXIS 1127, 307 Ill. Dec. 408 (Ill. App. Ct. 2d Dist. 2006).

-- Satisfied

Under a notice pleading standard, an employee satisfied the requirements for a due process claim against the City of Chicago and its mayor and commissioners because his defamation per se pleading alleged that the deputy commissioner abruptly terminated his employment and stated in a press conference that he fired the employee when the employee violated the trust of his supervisors and the public, used bad judgment, and was dishonest. Gyrion v. City of Chicago, F. Supp. 2d , 2005 U.S. Dist. LEXIS 9508 (N.D. Ill. May 4, 2005).

- Procedural Due Process

Both the first defendant and the second defendant convicted of first degree murder and two counts each of attempted first degree murder were entitled to retrials given the errors that occurred because the trial court admitted a statement from a witness in violation of 725 ILCS 5/115-10.1(c)(2) to the effect that the first defendant had admitted shooting the three people. The first defendant was entitled to a new trial because defense counsel lodged an improper objection to admission of the statement that prejudiced the first defendant, meaning that the first defendant received ineffective assistance of counsel in violation of Ill. Const. art. I, § 8, and the second defendant's Bruton rights regarding admission of a statement by a nontestifying codefendant were violated because admission of that statement, which had the effect of implicating the second defendant in the shooting, violated the second defendant's Ill. Const. art. I, § 2 procedural due process and Ill. Const. art. I, § 8 confrontation clause rights. People v. Fillyaw, 409 Ill. App. 3d 302, 350 Ill. Dec. 609, 948 N.E.2d 1116, 2011 Ill. App. LEXIS 371 (2 Dist. 2011).

Firefighter's rule, 425 ILCS 25/9f, could not be imposed retroactively upon the general contractor to make it liable to the first firefighter for injuries the first firefighter sustained when the first firefighter fell off a ladder while trying to rescue the second firefighter after both firefighters had responded to the report of a fire at a home where the general contractor was performing construction work. Retroactive application of that statute would violate the general contractor's Ill.

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Const. art. I, § 2 due process rights because that application would impose a new duty on the general contractor that did not otherwise exist on it at the time of the fire. Lazenby v. Mark's Constr., Inc., 236 Ill. 2d 83, 337 Ill. Dec. 884, 923 N.E.2d 735, 2010 Ill. LEXIS 10 (2010).

Procedural due process pursuant to Ill. Const. art. I, § 2 was not a fixed concept, but was a flexible concept that called for such procedural protections as were demanded by a particular situation. While that concept meant that the mother in a proceeding under 705 ILCS 405/1-5 to terminate the mother's parental rights was guaranteed notice and opportunity to be heard, it did not also give the mother the right to call the mother's 15-year-old son as a witness at the best interest phase because that one child's emotional problems due to living with the mother and open hostility towards the mother dictated that the mother be kept from compelling the one child to testify, especially since the mother would not be able to show how his testimony would have assisted the mother. People v. P.W. (In re A.W.), 397 Ill. App. 3d 868, 337 Ill. Dec. 137, 921 N.E.2d 1275, 2010 Ill. App. LEXIS 22 (3 Dist. 2010).

Defendant's petition for post-conviction relief under the Post-Conviction Hearing Act, 725 ILCS 5/122-1 et seq., should not have been summarily dismissed, as the petition that defendant filed in a case where defendant had entered a negotiated guilty plea to first-degree murder and armed robbery charges stated the gist of a constitutional claim and, thus, defendant's petition should have been allowed to proceed to the second stage. Defendant indicated in the petition that defendant's Ill. Const. art. I, § 2 due process rights had been violated because the trial court in accepting defendant's plea and imposing sentence either did not advise defendant or did not advise defendant properly that a three-year period of mandatory supervised release attached to the sentences for those offenses, pursuant to 730 ILCS 5/5-8-1. People v. Macklin, Ill. App. 3d , Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 1359 (1 Dist. Dec. 16, 2009).

Definition of "dangerous conduct" in involuntary commitment statutes violated the alleged mentally ill person's Ill. Const. art. I, § 2 procedural due process rights because the statutes contained no clear standard for determining who could be treated against his will. The statutes did not meet the requirement that they be narrowly enough drawn that their terms could be given a reasonably precise content and those persons they encompassed could be identified with reasonably accuracy. People v. Torski C. (In re Torski C.), 395 Ill. App. 3d 1010, 335 Ill. Dec. 405, 918 N.E.2d 1218, 2009 Ill. App. LEXIS 1116 (4 Dist. 2009), appeal denied, 2010 Ill. LEXIS 322 (Ill. 2010).

Testimony of defendant's accomplice in defendant's first-degree murder retrial, pursuant to a plea agreement with the State, did not violate defendant's Ill. Const. art. I, § 2 procedural due process rights despite the agreement containing a provision stating that the witness, who had been tried and convicted of the same two first-degree murders and sentenced to life imprisonment, would testify truthfully and consistent with statements he gave to police shortly after he was arrested. The agreement was to be voided if the witness did not testify truthfully, it informed him that if any of his prior representations made to police were false and he testified to them the agreement would be voided, and the agreement did not require him to give any particular testimony. People v. Bannister, 236 Ill. 2d 1, 337 Ill. Dec. 685, 923 N.E.2d 244, 2009 Ill. LEXIS 1929 (2009).

- Punitive Damages

In a defamation case, the $6 million punitive damages award did not violate due process because the ratio was 3-to-1, and while the compensatory damage award was substantial, the defendants' conduct was significantly reprehensible. Leyshon v. Diehl Controls N. Am., Inc., 407 Ill. App. 3d 1, 349 Ill. Dec. 368, 946 N.E.2d 864, 2010 Ill. App. LEXIS 1404 (1 Dist. 2010).

- Right to be Heard

Defendant's Ill. Const. art. I, § 2 due process rights to present evidence were not infringed by the trial court's decision in defendant's first degree murder and armed robbery case to deny defendant's motion for continuance to present an out-of-town alibi witness. Defendant did not make an offer of proof about what the witness defendant wanted to present would say, and, thus,

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did not show that defendant was prejudiced by the ruling. People v. Moore, 397 Ill. App. 3d 555, 337 Ill. Dec. 312, 922 N.E.2d 435, 2009 Ill. App. LEXIS 1273 (1 Dist. 2009), appeal denied, 2010 Ill. LEXIS 609 (Ill. 2010).

- Sentencing

- Substantive Due Process

Vehicle Code's 625 ILCS 5/6-206(a)(43), generally authorizing the Secretary to suspend driving privileges upon conviction or disposition of court supervision for violation of the Liquor Control Act (Act), 235 ILCS 5/6-20(e), was constitutional. The General Assembly could reasonably have determined that suspension of driving privileges for those individuals who had been engaged in violating the Act through the underage consumption of alcohol would not have enough judgment to refrain from driving after drinking and, thus, the suspension did not violate the Illinois Constitution's due process clause, Ill. Const. art. I, § 2. People v. Boeckmann, 238 Ill. 2d 1, 342 Ill. Dec. 537, 932 N.E.2d 998, 2010 Ill. LEXIS 966 (2010).

Trial court's application of a standard of review appropriate for administrative review regarding the city's denial of the church's application for a special permit use had to be reconsidered upon remand, as the law concerning review was amended while the case was pending on appeal. Under the amendments to 55 ILCS 5/5-12012.1 and 65 ILCS 5/11-13-25, zoning decisions were subject to de novo review as a legislative decision and, thus, the trial court had to use that standard to determine whether the city violated the church's Ill. Const. art. I, § 2 substantive due process rights when the city denied the church's special use permit application. Our Savior Evangelical Lutheran Church v. Saville, 397 Ill. App. 3d 1003, 337 Ill. Dec. 566, 922 N.E.2d 1143, 2009 Ill. App. LEXIS 1336 (2 Dist. 2009), appeal denied, 2010 Ill. LEXIS 499 (Ill. 2010).

- Taxes

There was no violation of due process under U.S. Const. amend. XIV, Ill. Const. art. I, § 2, and Ill. Const. art. IX, § 2 when a claim for refund was time-barred by 35 ILCS 105/21. A taxpayer had a clear and certain statutory means to request a refund, and regardless of the errors or confusion that occurred within the Department of Revenue during an audit, the taxpayer's refund claim had become time-barred before the audit. Am. Airlines, Inc. v. Dep't of Revenue, 402 Ill. App. 3d 579, 341 Ill. Dec. 769, 931 N.E.2d 666, 2009 Ill. App. LEXIS 1263 (1 Dist. 2009).

- Vagueness Standard

-- Involuntary Admission

Involuntary admission was vacated as void because the trial court relied upon a standard that had been held to be unconstitutionally vague. The definition of dangerous conduct was unconstitutionally vague; because 405 ILCS 5/1-119(1), (3) required a finding that the patient was reasonably expected to engage in dangerous conduct as defined in the unconstitutional 405 ILCS 5/1-104.5, the admission could not have been sustained. In re Merrilee M., 409 Ill. App. 3d 983, 351 Ill. Dec. 51, 949 N.E.2d 1146, 2011 Ill. App. LEXIS 402 (2 Dist. 2011).

- Waiver

Employer's argument that it was deprived of due process because it was unable to appeal a decision from the Illinois Workers' Compensation Commission after it was determined that the employer did not comply with the bond requirements under 820 ILCS 305/19(f)(2) was forfeited on appeal because no authority was cited. Vallis Wyngroff Bus. Forms, Inc. v. Ill. Workers' Comp. Comm'n, 402 Ill. App. 3d 91, 341 Ill. Dec. 377, 930 N.E.2d 587, 2010 Ill. App. LEXIS 582 (1 Dist. 2010).

-- Admission of Codefendant Testimony

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Where codefendant, who was the driver of the vehicle defendant was riding in when he shot at the van, was offered the benefits of a plea agreement in exchange for his "truthful" testimony, not in exchange for his "consistent" testimony," the admission of codefendant's testimony pursuant to a plea agreement did not deny defendant due process. People v. Cotton, 393 Ill. App. 3d 237, 332 Ill. Dec. 646, 913 N.E.2d 578, 2009 Ill. App. LEXIS 690 (1 Dist. 2009), appeal denied, 235 Ill. 2d 593, 924 N.E.2d 457, 2010 Ill. LEXIS 81 (2010).

-- Expert Witness

Trial court erred in finding the parents unfit and in terminating their parental rights to two of their children because the State failed to prove by clear and convincing evidence that the parents were unfit under 750 ILCS 50/1(D)(p); the parents had mental disabilities sufficient to prevent them from discharging normal parental duties and the State's case rested almost entirely on the testimony of one expert. People v. Tonya L. (In re Cornica J.), 351 Ill. App. 3d 557, 286 Ill. Dec. 630, 814 N.E.2d 618, 2004 Ill. App. LEXIS 951 (2 Dist. 2004), appeal denied, 212 Ill. 2d 532, 291 Ill. Dec. 708, 824 N.E.2d 284 (2004).

Petitioner's due process rights in connection with a hearing on continued detention as a convicted sex offender were violated when petitioner's expert could not persuade persons involved in petitioner's treatment to be interviewed; nonetheless, petitioner's procedural default in failing to seek a court order to force the interview precluded reversal on appeal. Swope v. People (In re Swope), 343 Ill. App. 3d 152, 277 Ill. Dec. 864, 797 N.E.2d 211, 2003 Ill. App. LEXIS 1164 (2 Dist. 2003), aff'd in part and vacated in part, 213 Ill. 2d 210, 290 Ill. Dec. 232, 821 N.E.2d 283 (2004).

-- Fitness

Defendant's due process rights were not violated because of the trial court's failure to sua sponte inquire into defendant's fitness to stand trial where there was no evidence defendant was anything other than interested, rational, and appropriate, nor was there any indication by the court or defense counsel that defendant was unable to understand the nature of the proceedings against defendant or assist with a defense. People v. Woodard, Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 671 (1 Dist. Aug. 3, 2006).

Trial court was not required to personally question defendant during a fitness to stand trial hearing, and defendant's due process rights were not violated where the parties stipulated as to what the examining expert "would testify" to if he were called at the fitness hearing. People v. Goodman, 347 Ill. App. 3d 278, 282 Ill. Dec. 536, 806 N.E.2d 1124, 2004 Ill. App. LEXIS 211 (1 Dist. 2004), appeal denied, 212 Ill. 2d 542, 291 Ill. Dec. 711, 824 N.E.2d 287 (2004), cert. denied, U.S. , 126 S. Ct. 100, 163 L. Ed. 2d 114 (2005).

Once a bona fide doubt regarding a defendant's fitness has been raised, a trial court has a duty to hold a fitness hearing; a trial court may rely on expert testimony regarding fitness, but ultimately the trial court must decide whether a defendant is fit to stand trial, and the court may not abandon its role as decision-maker by simply deferring to the opinion of an expert. People v. Goodman, 347 Ill. App. 3d 278, 282 Ill. Dec. 536, 806 N.E.2d 1124, 2004 Ill. App. LEXIS 211 (1 Dist. 2004), appeal denied, 212 Ill. 2d 542, 291 Ill. Dec. 711, 824 N.E.2d 287 (2004), cert. denied, U.S. , 126 S. Ct. 100, 163 L. Ed. 2d 114 (2005).

-- Fundamental Fairness

The due process guaranteed by this constitution is equated with fundamental fairness. People ex rel. Illinois Judicial Inquiry Bd. v. Hartel, 72 Ill. 2d 225, 20 Ill. Dec. 592, 380 N.E.2d 801 (1978).

-- General Allegations of Violation

Allegations that the decree of adoption violated the constitutional right to due process of both the minor child and his natural parents under the federal and state constitutions were general only,

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and it was well established that constitutional issues cannot be raised by general allegations. In re Simaner, 15 Ill. 2d 568, 155 N.E.2d 555 (1959).

-- Judgment

Judgment against a mayor in a mandamus, seeking to require him to sign municipal bonds and coupons issued by a city council, was affirmed where issuance of bonds and coupons was within the authority of the city council and did not violate Ill. Const. (1970), Art. VIII, § 1(a) or Ill. Const. (1970), Art. I, § 2 because any benefit to private developers was incidental to the public purpose of the bond issue. People ex rel. Urbana v. Paley, 68 Ill. 2d 62, 11 Ill. Dec. 307, 368 N.E.2d 915, 1977 Ill. LEXIS 359 (1977).

The fact that the judgment is distasteful to the losing party or that the court may have erred in entering such judgment is not a denial of due process. Valerius v. Perry, 342 Ill. 147, 174 N.E. 29 (1930).

-- Juvenile Transfer

Petitioner's due process rights were not violated when the trial court transferred petitioner's case in juvenile court involving six armed violence counts to the adult criminal court, as Apprendi did not apply to juvenile transfer proceedings since the applicable juvenile transfer statute was a dispositional, rather than an adjudicatory, statute; Apprendi only applied to adjudicatory statutes. People v. Beck, 339 Ill. App. 3d 413, 274 Ill. Dec. 53, 790 N.E.2d 429, 2003 Ill. App. LEXIS 583 (5 Dist. 2003).

-- Municipalities

Court determined that Ill. Const. (1970),Art. I, § 2 due process clause does not apply to municipalities, because constitutions are contracts between the sovereign and its people, and because due process rights were specifically guaranteed to the individual and not to the sovereign or the municipality which is its subsidiary. Evanston v. Regional Transp. Authority, 202 Ill. App. 3d 265, 147 Ill. Dec. 559, 559 N.E.2d 899, 1990 Ill. App. LEXIS 1221 (1 Dist. 1990).

As a municipal creature of the legislature, the village itself had no due process rights. E&E Hauling, Inc. v. Pollution Control Bd., 116 Ill. App. 3d 586, 71 Ill. Dec. 587, 451 N.E.2d 555 (2 Dist. 1983).

Due process clause of the Fourteenth Amendment and this section could not be invoked by municipality; municipalities are political subdivisions of the sovereign state and, particularly, when prosecuting individuals for violations of statutes, stand in the place of the sovereign State of Illinois. Village of N. Pekin v. Riviere, 73 Ill. App. 3d 1032, 29 Ill. Dec. 882, 392 N.E.2d 439 (3 Dist. 1979).

-- No Determination of Facts

A judgment pronounced without any judicial determination of the facts which alone can support such judgment is merely the arbitrary edict of the judge, and is as much wanting in due process of law as though the party against whom it is entered had received no legal summons. Hultberg v. Anderson, 252 Ill. 607, 97 N.E. 216 (1911).

-- Police Power

State of Illinois inherently possesses a power of restraint upon private rights as may be found to be necessary and appropriate to promote the health, comfort, safety, and welfare of society known as the police power of the State and, in the exercise of this power, the legislature may, by valid enactments, prohibit all things hurtful to the comfort, safety, and welfare of society, even though the prohibition invades the right of liberty or property of an individual. Christy v. Elliott, 216 Ill. 31, 74 N.E. 1035, 1905 Ill. LEXIS 2644 (1905).

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Because the prohibition against sales of option contracts under Ill. Rev. Stat. Crim. Code § 130 bore a relationship to the objective of regulating gambling, it was a valid use of the State's police power and while it was acknowledged to be an infringement on personal rights in a brokerage business, because it had a real and substantial relation to its object, it was not unconstitutional under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) Booth v. Illinois, 184 U.S. 425, 22 S. Ct. 425, 46 L. Ed. 623, 1902 U.S. LEXIS 2282 (1902).

-- Privilege

When assertion of a privilege by the Judicial Inquiry Board as to subpoenaed materials sought for use in a judge's criminal trial for battery was based on a general interest in confidentiality under Ill. Const. (1970), Art. VI, § 15(c), it could not prevail over fundamental demands of due process in the fair administration of criminal justice. People ex rel. Illinois Judicial Inquiry Board v. Hartel, 72 Ill. 2d 225, 20 Ill. Dec. 592, 380 N.E.2d 801, 1978 Ill. LEXIS 305 (1978).

-- Proper Procedure

Trial court abused its discretion in responding to a question by the jurors during deliberations because the court's substantive response to the jurors' question impermissibly trespassed upon the jury's fact-finding prerogative in that it was apparent that the question concerned the circumstances of defendant's confession to the police. People v. Davis, 393 Ill. App. 3d 114, 332 Ill. Dec. 604, 913 N.E.2d 536, 2009 Ill. App. LEXIS 561 (1 Dist. 2009), appeal denied, 234 Ill. 2d 531, 920 N.E.2d 1076, 2009 Ill. LEXIS 2057 (2009).

Appellate court's judgment affirming the expungement of indicated findings of sexual abuse by a teacher from the Illinois State Central Register was affirmed because the teacher's due process rights were violated by the standard of proof used, the low credible-evidence standard to indicate the report against the teacher and to deny his first-stage appeal, and by the delays in the provision of the hearing and the final administrative decision. Lyon v. Dep't of Children & Family Servs., 209 Ill. 2d 264, 282 Ill. Dec. 799, 807 N.E.2d 423, 2004 Ill. LEXIS 361 (2004).

Due process of law is an orderly proceeding wherein a person is served with a summons in an action of a class of which the court has jurisdiction and has an opportunity to be heard to enforce or protect his rights. Moore v. Town of Browning, 373 Ill. 583, 27 N.E.2d 533 (1940).

To constitute due process of law, orderly proceedings according to established rules which do not violate fundamental rights must be observed, but a general law administered in its legal course, according to the form of procedure suitable and proper to the nature of the case, conformable to the fundamental rules of right and affecting all persons alike, is due process of law. Standard Motors Secs. Corp. v. Yates Co., 337 Ill. 250, 169 N.E. 164 (1929).

Individual who purchased land relying on a final decree affecting its title was a bona fide purchaser and was protected even though the decree was subsequently reversed on writ of error; the direction to a special master in chancery to make a conveyance in case of non-action of a party held by the decree to convey was not a delegation of judicial power in violation of due process protections. Eich v. Czervonko, 330 Ill. 455, 161 N.E. 864, 1928 Ill. LEXIS 943 (1928).

Appellee, who had prevailed in the trial court, was entitled to a remand after reversal by an appellate court because he had not waived a jury trial and appellant was not entitled to a directed verdict. Segal v. Chicago C. R. Co., 325 Ill. 43, 155 N.E. 757, 1927 Ill. LEXIS 861 (1927).

-- Property Rights

Decision of the Illinois Commerce Commission requiring a railway company to pay to maintain a switch that it did not own was not a violation of due process protections under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) because the railway company used the switch and could use it to serve the public by shipping to remote points, and the Commission had statutory authority to require the railway company to condemn land for its use. Alton R. Co. v.

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Illinois Commerce Com., 305 U.S. 548, 59 S. Ct. 340, 83 L. Ed. 344, 1939 U.S. LEXIS 895 (1939).

-- Protectable Interest

Starting point, in any due process analysis, is a determination of whether there a protectable interest in life, liberty or property is present, for if there is not, no process is due. Balmoral Racing Club, Inc. v. Illinois Racing Bd., 151 Ill. 2d 367, 177 Ill. Dec. 419, 603 N.E.2d 489, 1992 Ill. LEXIS 127 (1992).

In considering whether an individual has been deprived of life, liberty or property without due process of law a court must first determine whether a protectable interest was involved. Phillips v. Graham, 86 Ill. 2d 274, 56 Ill. Dec. 355, 427 N.E.2d 550 (1981).

The starting point in any procedural due process analysis is a determination of whether one of the protectable interests of "life, liberty or property" is present, for if there is not, no process is due. Polyvend, Inc. v. Puckorius, 77 Ill. 2d 287, 32 Ill. Dec. 872, 395 N.E.2d 1376 (1979).

-- Protections Triggered

Procedural due process protections are triggered only when a constitutionally protected liberty or property interest is at stake. Goins v. Klincar, 225 Ill. App. 3d 961, 167 Ill. Dec. 779, 588 N.E.2d 420 (3 Dist.), appeal denied, 145 Ill. 2d 633, 173 Ill. Dec. 4, 596 N.E.2d 628 (1992); Sterling v. Klincar, 226 Ill. App. 3d 675, 168 Ill. Dec. 749, 589 N.E.2d 1149 (3 Dist. 1992).

-- Purpose

The purpose of the constitutional requirement relating to due process is to protect every person in his personal and property rights against the arbitrary action of any person or authority. Sheldon v. Hoyne, 261 Ill. 222, 103 N.E. 1021 (1913).

It is the principle of due process to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice. City of Belleville v. St. Clair County Tpk. Co., 234 Ill. 428, 84 N.E. 1049 (1908).

-- Questions of Practice

Questions of practice do not raise constitutional questions of due process, inasmuch as due process does not guarantee that the rules governing the manner in which a controversy is tried will be applied without error in every case. People v. Smith, 30 Ill. 2d 622, 198 N.E.2d 833 (1964).

-- Reasonable Relationship Standard

Village had a rational basis to enact an ordinance that required the residents to connect to the municipal water system and also required them to pay for the water service, and since the ordinance was rationally related to the legitimate government purpose of protecting the health, safety, and welfare of its residents, and the residents did not show otherwise, the finding that they violated the ordinance was upheld. Village of Algonquin v. Tiedel, 345 Ill. App. 3d 229, 280 Ill. Dec. 493, 802 N.E.2d 418, 2003 Ill. App. LEXIS 1619 (2 Dist. 2003).

755 ILCS 5/18-1.1 (2000) does not violate the due process clause, as the minimum claim amounts serve the legislative goal of encouraging immediate family members to commit themselves to disabled relatives. Porter v. Jolliff (In re Jolliff), 199 Ill. 2d 510, 264 Ill. Dec. 642, 771 N.E.2d 346, 2002 Ill. LEXIS 321 (2002).

Legislation will survive a substantive due process challenge so long as it is reasonably designed to remedy the evils the legislature had determined to be a threat to the public health, safety, and general welfare. People v. Upton, 114 Ill. 2d 362, 102 Ill. Dec. 842, 500 N.E.2d 943 (1986).

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-- Regulation of Cigarette Sales

The Tobacco Products Tax Act of 1995 (Act) did not violate due process as it bore a rational relationship to the public interest it sought to protect, because the Act taxed tobacco distributors whose products cause diseases that conceivably require long-term care for those persons who cannot pay for it; the corporation presented no compelling reason for construing the Illinois due process clause independently of its federal counterpart. Arangold Corp. v. Zehnder, 204 Ill. 2d 142, 272 Ill. Dec. 600, 787 N.E.2d 786, 2003 Ill. LEXIS 460 (2003).

-- Requirements

Due process requires that a statutory provision be rationally related to its legislative purpose, and it will be upheld if it is reasonably designed to remedy legislatively identified threats to the public health, safety and welfare. People v. Hamilton, 155 Ill. App. 3d 555, 108 Ill. Dec. 224, 508 N.E.2d 385 (1 Dist. 1987), superseded by statute on other grounds, see 383 Ill. App. 3d 553, 322 Ill. Dec. 826, 892 N.E.2d 73, 2008 Ill. App. LEXIS 621 (1st Dist. 2008).

The due process clause requires only that a statute be reasonably designed to accomplish its purposes, not that it be the best means of accomplishing them. People v. Burton, 100 Ill. App. 3d 1021, 56 Ill. Dec. 430, 427 N.E.2d 625 (4 Dist. 1981).

Due process of law is satisfied when one present in court is convicted of a crime after having been fairly apprised of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. People v. Finch, 47 Ill. 2d 425, 266 N.E.2d 97 (1970).

Before a person can properly invoke due process clauses he must establish that he is within the ambit of their protection. Jordan v. Metropolitan San. Dist., 15 Ill. 2d 369, 155 N.E.2d 297 (1958).

The constitutional requirements of due process are fulfilled when there has been an orderly proceeding wherein the defendant is served with notice and has an opportunity to be heard and to enforce and protect his rights before a tribunal having power to hear and determine the cause, that due process is not a guarantee of any particular decision or even a guarantee against an erroneous or unjust decision. Baumgardner v. Boyer, 384 Ill. 584, 52 N.E.2d 247 (1943).

In order to constitute due process of law within the provisions of the state and federal constitutions, that orderly proceedings according to established rules, which do not violate fundamental rights, shall be observed, but where the person affected has due and sufficient notice and an adequate opportunity to present his defense, the constitutional requirements of due process of law are met. Grattan v. Ahlberg Bearing Co., 373 Ill. 455, 26 N.E.2d 499 (1940).

The essential elements of due process of law are notice and an opportunity to be heard and to defend in an orderly procedure adapted to the nature of the case. City of Chicago v. Cohn, 326 Ill. 372, 158 N.E. 118 (1927); Grattan v. Ahlberg Bearing Co., 373 Ill. 455, 26 N.E.2d 499 (1940).

Due process of law requires notice to the defendant and an opportunity to be heard in the protection and enforcement of his rights before a court of competent jurisdiction in an orderly proceeding adapted to the nature of the case. Griffin v. County of Cook, 369 Ill. 380, 16 N.E.2d 906 (1938); Barnett v. County of Cook, 373 Ill. 516, 26 N.E.2d 862 (1940).

Due process of law requires the administration of equal laws according to established rules, not violative of the fundamental principles of private right, by a competent tribunal having jurisdiction of the case and proceeding upon notice and hearing. People v. Niesman, 356 Ill. 322, 190 N.E. 668 (1934).

The guaranty of due process of law requires that every man shall have the protection of his day in court and the benefit of the general law, a law which hears before it condemns, which proceeds

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not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society. City of Chicago v. Cohn, 326 Ill. 372, 158 N.E. 118 (1927); People v. Niesman, 356 Ill. 322, 190 N.E. 668 (1934); Durkin v. Hey, 376 Ill. 292, 33 N.E.2d 463 (1941).

An orderly proceeding in which a person is served with notice, actual or constructive, and has an opportunity to be heard and to protect and enforce his rights before a court having power to hear and determine the cause, is due process of law. City of Chicago v. Cohn, 326 Ill. 372, 158 N.E. 118 (1927); People v. Niesman, 356 Ill. 322, 190 N.E. 668 (1934).

A party is not only entitled to notice of the proceeding against him, but is also entitled to be heard in his defense. Rabbitt v. Frank C. Weber & Co., 297 Ill. 491, 130 N.E. 787 (1921).

-- Right of Accused

The purpose of the general rule giving an accused the right to be present at a criminal prosecution is to allow him to meet the witnesses face to face and sift the testimony produced against him. People v. Martine, 106 Ill. 2d 429, 87 Ill. Dec. 905, 478 N.E.2d 262 (1985).

-- Right to Counsel

For a discussion of what constitutes a knowing waiver of the constitutional right to counsel during custodial interrogation, see People v. McCauley, 163 Ill. 2d 414, 206 Ill. Dec. 671, 645 N.E.2d 923 (1994).

-- Right to Work

The right to pursue a trade, occupation, business or profession constitutes a property and liberty interest protected by the due process clause of the Illinois Constitution. Collura v. Board of Police Comm'rs, 113 Ill. 2d 361, 101 Ill. Dec. 640, 498 N.E.2d 1148 (1986).

-- Standard of Review

The standard of review on whether a trial court's denial of a request for court-appointed counsel violates a party's due process and equal protection rights is de novo. Jeffrey D.B. v. Stacy L.B. (In re Alyssa Jo B.),, 2005 Ill. App. LEXIS 20 (3 Dist. Jan. 19, 2005).

The standards for determination whether a particular legislative enactment violates due process are the same regardless of whether the enactment under consideration is a statute, an administrative rule, or a municipal ordinance. People v. Keeven, 68 Ill. App. 3d 91, 24 Ill. Dec. 663, 385 N.E.2d 804 (5 Dist. 1979).

-- State Action

Trial court properly dismissed the customer's claim that the Illinois Self-Storage Facility Act, 770 ILCS 95/1 et seq. (Act), violated the due process clause of the Illinois Constitution, Ill. Const. (1970), Art. I, § 2, as the customer did not plead that the storage facility that auctioned the personal property he was storing with them, pursuant to the Act, was acting as a state actor at the time it did so. Hill v. PS Ill. Trust, 368 Ill. App. 3d 310, 305 Ill. Dec. 755, 856 N.E.2d 560, 2006 Ill. App. LEXIS 876 (1 Dist. 2006).

Plaintiffs did not present facts sufficient to show a "close nexus" between the conduct of the police department and the defendant to establish state action. Williams v. Nagel, 162 Ill. 2d 542, 205 Ill. Dec. 525, 643 N.E.2d 816 (1994), cert. denied, 514 U.S. 1064, 115 S. Ct. 1694, 131 L. Ed. 2d 558 (1995).

Although the Illinois due process clause is not expressly limited to actions by the state as is that of the United States, the Supreme Court has so interpreted it. Sargent v. Illinois Inst. of Technology, 78 Ill. App. 3d 117, 33 Ill. Dec. 937, 397 N.E.2d 443 (1 Dist. 1979).

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-- Timeliness

Circuit court did not err in granting defendant's motion to dismiss the statutory summary suspension of his driving privileges because although § 2-118.1(b) of the Illinois Vehicle Code, 625 ILCS 5/2-118.1(b), allowed a hearing on defendant's summary suspension to take place on his appearance date, defendant was deprived of due process when his hearing was continued beyond the effective date of his suspension; the State required defendant to appear in court for a hearing on a date it chose and then informed him that the hearing would not proceed because the officer was not available, but the officer's presence at the hearing was not required when the State could have presented its case through the officer's official reports, and the State then chose not to hold a hearing prior to defendant's summary suspension but, rather, received the circuit court's permission to reschedule the hearing for over two weeks later and eight days after defendant's summary suspension began. People v. Miklos, 393 Ill. App. 3d 205, 333 Ill. Dec. 87, 914 N.E.2d 506, 2009 Ill. App. LEXIS 691 (3 Dist. 2009), appeal denied, 234 Ill. 2d 541, 920 N.E.2d 1078, 2009 Ill. LEXIS 2029 (2009).

In a petition for relief under the Post-Conviction Hearing Act, 725 ILCS 5/122-1 et seq., as defendant could have brought defendant's due process violation claim (based on police coercion to extract an oral confession) earlier, defendant's failure to do so resulted in the forfeiture of this claim on defendant's third successive postconviction petition. People v. Anderson, 375 Ill. App. 3d 121, 313 Ill. Dec. 598, 872 N.E.2d 581, 2007 Ill. App. LEXIS 772 (1 Dist. 2007).

Where the State argued that the trial court erred in considering defendant's motion to dismiss because it was untimely filed, the argument failed. Defendant's motion to dismiss challenged the sufficiency of the indictment to charge an offense, which implicated due process concerns under Ill. Const. Art. I, § 2 that could be raised at any time. People v. Flynn, 352 Ill. App. 3d 1193, 288 Ill. Dec. 573, 817 N.E.2d 1223, 2004 Ill. App. LEXIS 1276 (3 Dist. 2004).

- Academic Freedom

Liberty interest in academic freedom created by due process clause and free speech clause of Illinois Constitution did not grant a greater freedom than that created by the United States Constitution. Rubin v. Ikenberry, 933 F. Supp. 1425 (C.D. Ill. 1996).

- Adequate Notice Requirement

Trial court's proceeding with a hearing against a traffic offense defendant on the original hearing date after a continuance had been granted to the prosecuting village was appropriate because the village had failed to give notice to the driver of the continuance and a finding in his favor and against the village for the village's failure to appear and present its evidence was not erroneous. North Pekin v. Riviere, 73 Ill. App. 3d 1032, 29 Ill. Dec. 882, 392 N.E.2d 439, 1979 Ill. App. LEXIS 3023 (1 Dist. 1979).

Where defendants had questioned service of process in earlier proceedings in another state, and the issue had been decided against them, they could not re-litigate that issue in an action in Illinois by plaintiff to collect on the judgment that was the result of the earlier proceedings and enforcement of the judgment was not a violation of their rights to due process of law. Chicago Life Ins. Co. v. Cherry, 244 U.S. 25, 37 S. Ct. 492, 61 L. Ed. 966, 1917 U.S. LEXIS 1602 (1917).

- Administrative Proceeding

Police officers were not denied due process in the administrative proceedings reviewing the termination of their employment because, although the officers alleged that the hearing officer's questions to witnesses were evidence of the hearing officer's bias against the police officers and were unfair, the officers waived the issue by failing to object to the vast majority of the questions posed by the hearing officer as well as to his evidentiary rulings. Even assuming the issue was not waived, none of the instances cited by the police officers suggested that the hearing officer had a particular bias or prejudice against the police officers, the police officers failed to defeat the

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presumption that the hearing officer was objective and capable of fairly judge the controversy, and the mere number of comments or questions by the hearing officer was not an indication that he was biased, prejudiced or unfair; furthermore, the hearing officer did not prevent the police officers from presenting their own evidence and argument or cross-examining witnesses, and the transcript of the proceedings demonstrated that the hearing officer typically directed his own questions to a witness only after the parties had completed their direct and cross-examinations and, thereafter, he would allow the parties additional questions. Comito v. Police Bd. of Chicago, 317 Ill. App. 3d 677, 251 Ill. Dec. 9, 739 N.E.2d 942, 2000 Ill. App. LEXIS 851 (1 Dist. 2000).

Police officers were not denied due process in the administrative proceedings reviewing the termination of their employment as police officers because, although the hearing officer asked questions of certain witnesses, because, the ability of the hearing officer to pose his own questions to witnesses would seem consistent and, in some cases necessary, with the authority granted to the hearing officer in Chicago, Ill., Mun. Code § 2 - 84 - 030, that code section gave the hearing officer the broad powers to conduct the hearings and asking questions of witnesses to clarify issues was consistent with that power Comito v. Police Bd. of Chicago, 317 Ill. App. 3d 677, 251 Ill. Dec. 9, 739 N.E.2d 942, 2000 Ill. App. LEXIS 851 (1 Dist. 2000).

Fair hearing before an administrative agency must include the opportunity to be heard, the right to cross-examine adverse witnesses, and impartial rulings on the evidence. Comito v. Police Bd. of Chicago, 317 Ill. App. 3d 677, 251 Ill. Dec. 9, 739 N.E.2d 942, 2000 Ill. App. LEXIS 851 (1 Dist. 2000).

In an administrative proceeding, all that due process requires is that the procedures be tailored in light of the decision to be made, to the capacities and circumstances of those who are to be heard, to insure that they are given a meaningful opportunity to present their case. Comito v. Police Bd. of Chicago, 317 Ill. App. 3d 677, 251 Ill. Dec. 9, 739 N.E.2d 942, 2000 Ill. App. LEXIS 851 (1 Dist. 2000).

An administrative body possess broad discretion in its hearings; however, that discretion must be exercised judiciously and not arbitrarily. Comito v. Police Bd. of Chicago, 317 Ill. App. 3d 677, 251 Ill. Dec. 9, 739 N.E.2d 942, 2000 Ill. App. LEXIS 851 (1 Dist. 2000).

- Appellate Review

-- In General

Dismissal of an appeal based on a defendant's failure to file the requisite motions in the trial court violates due process if the defendant did not know that filing such motions was necessary; due process concerns prohibited the dismissal of defendant's appeal of his second degree murder plea where the failure to properly find defendant fit for trial cast doubt on his ability to understand the admonishments he was given under Ill. Sup. Ct. R. 605. People v. Jones, 349 Ill. App. 3d 255, 285 Ill. Dec. 443, 812 N.E.2d 32, 2004 Ill. App. LEXIS 731 (3 Dist. 2004), appeal denied, 211 Ill. 2d 597, Ill. Dec. , 823 N.E.2d 973 (2004).

In a will contest case, appellants' contention that probate court orders were entered in violation of the state and federal constitution and that the circuit court's dismissal of their appeal denied them a hearing de novo, in violation of their due process rights, did not state a constitutional question that would give the Supreme Court of Illinois jurisdiction to hear a direct appeal. In re Paus' Estate, 385 Ill. 550, 53 N.E.2d 442, 1944 Ill. LEXIS 757 (1944).

Allowance of appeals is not essential to due process of law, hence limiting appeals to one court is within the power of the legislature. Goodrich v. Sprague, 385 Ill. 200, 52 N.E.2d 250 (1943).

The constitutional requirement of due process of law under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) is not a guaranty that the courts shall not commit error in the trial of causes or a guaranty against erroneous and unjust decisions by courts that have jurisdiction of the parties and the subject matter, and if errors are committed or erroneous and unjust decisions

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are rendered they may be corrected in the manner provided by law for the correction of such errors. Genslinger v. New Illinois Athletic Club, 332 Ill. 316, 163 N.E. 707, 1928 Ill. LEXIS 1084 (1928).

Although a court of equity would enjoin an excessive tax, the railroad's claim that it was doubly taxed based on the tax collector's characterization of a jointly-owned train connection as a separately-owned main line was rejected because the railroad should have appealed the tax commission's determination and should have provided evidence that the connection, built jointly by four companies was used as a main line by one of the other companies. Michigan C. R. Co. v. Carr, 303 Ill. 354, 135 N.E. 881, 1922 Ill. LEXIS 1135 (1922).

-- Jurisdiction

After a trial court issued a sua sponte order based on an investigation into a receiver, requiring an attorney to turn over fees paid under questionable circumstances, the question of whether that order, which was not a complaint or affidavit issued for civil contempt, was a violation of due process, could not be addressed by an appellate court because the trial court needed to conduct a hearing to determine if the fees should be refunded to the attorney. Kneisel v. Ursus Motor Co., 323 Ill. 452, 154 N.E. 195, 1926 Ill. LEXIS 1016 (1926).

Supreme Court of Illinois did not have jurisdiction to hear landowner's direct appeal, which contended that trial court's entry of a mechanic's lien against his property, for partially completed work when the landowner had no contract with the lien holder, was repugnant to Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) and that a decree granting a mechanic's lien at all was repugnant to Ill. Const. of 1870, Art. II, § 4 and 22, and Art. IV, § 22, because the landowner did not question the constitutionality of the Mechanic's Lien Act; because the landowner sought only to challenge the validity of the judgment, he did not raise a constitutional question within the meaning of the statute authorizing appeals direct to the Supreme Court. Cooper v. Palais Royal Theatre Co., 320 Ill. 44, 150 N.E. 401, 1925 Ill. LEXIS 977 (1925).

Creditor's bill that sought to remove a fraudulent conveyance that if removed would have made the property subject to the lien of the creditor's judgment was purely and solely for the recovery of money and was required to meet the amount in controversy requirement for appellate jurisdiction. McGinnis v. McGinnis, 289 Ill. 608, 124 N.E. 562, 1919 Ill. LEXIS 1047 (1919).

Entry of orders that a husband pay alimony pendente lite after a hearing was not the denial of due process and his appeal was transferred from the Supreme Court of Illinois to an intermediate appeals court. Paul v. Paul, 278 Ill. 196, 115 N.E. 860, 1917 Ill. LEXIS 1062 (1917).

Mere error in a judgment or decree does not necessarily deprive the losing party of the benefit of due process and a collateral attack on the judgment does not necessarily present a constitutional question under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Tarallo v. L. W. Hubbell Fertilizer Co., 281 Ill. 286, 117 N.E. 1001, 1917 Ill. LEXIS 1135 (1917).

Appeal of a city ordinance limiting places where vehicles for hire could stop and solicit business, as well as designating one place at the railroad station for such vehicles to wait for their business, was clearly a constitutional question regarding the construction of an ordinance as it related to the state constitution, Ill. Const. art. I, § 2 (formerly Ill. Const. of 1870, art. II, § 2), and an appeal of a decision of a trial court to an appellate court instead of to the Illinois Supreme Court required dismissal. Pennsylvania Co. v. Chicago, 73 Ill. App. 345, 1897 Ill. App. LEXIS 328 (1897).

Appeal of a trial court's findings relative to the constitutionality of a city ordinance requiring safe stairways in buildings under Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) is direct to the Illinois Supreme Court, requiring the dismissal of an appeal to an Illinois court of appeals. Masonic Fraternity Temple Asso. v. Chicago, 120 Ill. App. 612, 1905 Ill. App. LEXIS 700 (1905).

-- Mootness

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Where the subject of prisoners' habeas corpus petitions under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) was their transfer from reformatories to penitentiaries, but they had been returned to the reformatories prior to the filing of their petitions, the petitions were dismissed as moot. People ex rel. Martin v. Mallary, 195 Ill. 582, 63 N.E. 508, 1902 Ill. LEXIS 3215 (1902).

-- Requirements

Appellate court erred in ruling that appellee inmate had stated the gist of a constitutional claim in a petition for postconviction relief based on his argument that his right to due process had been violated when a letter the inmate wrote to the trial court after pleading guilty to criminal sexual assault was considered as a notice of appeal rather than being interpreted as a request to begin the process of preserving the inmate's appeal rights for which counsel should have been appointed; as the inmate had been properly admonished under Ill. Sup. Ct. R. 605(b) as to the steps the inmate needed to take if he wanted to appeal the sentence, it was not a violation of the inmate's procedural due process rights to hold him responsible for noncompliance with the strictures of Ill. Sup. Ct. R. 604(d). People v. Brooks, 233 Ill. 2d 146, 330 Ill. Dec. 180, 908 N.E.2d 32, 2009 Ill. LEXIS 377 (2009).

Appellate Court of Illinois, First District, Sixth Division declined to apply the conspiracy theory of jurisdiction to subject a Texas attorney and his law firm to long arm jurisdiction under 735 ILCS 5/2-209(a). There was no indication that the attorney and his law firm purposefully directed their activities at Illinois residents; the attorney's transfer of funds allegedly stolen from appellees to an entity in Illinois, were not purposely directed towards Illinois. Knaus v. Guidry, 389 Ill. App. 3d 804, 329 Ill. Dec. 446, 906 N.E.2d 644, 2009 Ill. App. LEXIS 143 (1 Dist. 2009).

Neither due process (see now this section) nor the appeal as of right from final decisions of the circuit court (Ill. Const. (1970), Art. VI, § 6) requires full briefing, oral argument and a lengthy judicial opinion each time the propriety of a circuit court's order granting a new trial is challenged. Robbins v. Professional Constr. Co., 72 Ill. 2d 215, 20 Ill. Dec. 577, 380 N.E.2d 786 (1978).

-- Untimely Appeal

Dismissing an appeal as untimely when the sole reason for delay lies in judicial error might well violate the due process guarantees of the State Constitution. People v. Creek, 94 Ill. 2d 526, 69 Ill. Dec. 113, 447 N.E.2d 330 (1983).

- In General

Court concluded that appellants failed to prove in their complaint that the water main of the city was an obstruction to navigation, and because the State constructed the bridge, there was no basis for relief from that structure or the water main; thus, the trial court properly denied relief as requested under Ill. Const. of 1870, Art. I, § 2. Leitch v. Sanitary Dist. of Chicago, 386 Ill. 433, 54 N.E.2d 458, 1944 Ill. LEXIS 552 (1944).

- Application and Construction

-- Legislative Enactment

The amendments to 35 ILCS 405/2 that were contained in 1993 Ill. Laws 30 applied retroactively to the estates of people dying on or after January 1, 2003, and 1994 Ill. Laws 419, which enacted 35 ILCS 405/3(c), was clearly enacted to deal with the constitutional problem of out-of-state taxation associated with 1993 Ill. Laws 30. Thus, the retroactive application of 1993 Ill. Laws 30 was not barred by Ill. Const. Art. I, § 2, the Illinois due process clause. McGinley v. Madigan, 366 Ill. App. 3d 974, 303 Ill. Dec. 522, 851 N.E.2d 709, 2006 Ill. App. LEXIS 437 (1 Dist. 2006).

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Statutory section that State cited as the sole basis for finding the mother unfit as a parent, 750 ILCS 50/1(D)(q), was an unconstitutional violation of the mother's substantive due process rights as that statutory section permitted a finding of unfitness merely on a person's conviction for aggravated battery without consideration of other relevant factors that might show fitness, such as rehabilitation, fitness, or change of circumstance; in addition, while the State had an interest in the welfare of children, that statutory section was not narrowly tailored to achieve that end as it made irrelevant factors that might show a parent, such as the mother, was a fit parent. People v. Lisa Z. (In re Amanda D.), 349 Ill. App. 3d 941, 285 Ill. Dec. 358, 811 N.E.2d 1237, 2004 Ill. App. LEXIS 763 (2 Dist. 2004), aff'd sub nom. People v. Lisa M. (In re D.W.), 214 Ill. 2d 289, 292 Ill. Dec. 937, 827 N.E.2d 466 (2005).

To be within the protection of the constitution, a right must be a vested right; it must be something more than a mere expectancy based upon an anticipated continuance of an existing law because the Illinois Supreme Court has held there is no vested right in the mere continuation of a law and the legislature has an ongoing right to amend a statute. New Heights Recovery & Power, LLC v. Bower, 347 Ill. App. 3d 89, 282 Ill. Dec. 568, 806 N.E.2d 1156, 2004 Ill. App. LEXIS 219 (1 Dist. 2004), appeal denied, 209 Ill. 2d 583, 286 Ill. Dec. 166, 813 N.E.2d 223 (2004), appeal denied, 211 Ill. 2d 583, Ill. Dec. , 823 N.E.2d 967 (2004).

Retroactive application of amendments to 55 ILCS 5/5-1024 of the Counties Code and 745 ILCS 10/9-107 of the Tort Immunity Act did not violate the due process provisions of Ill. Const., Art. I, § 2, where the purpose of the General Assembly in enacting the amendments was to correct a law and not to target a group of taxpayers for retribution or other illegitimate purposes, the period of retroactivity of the amendments was only six weeks, there was no evidence that a taxpayer detrimentally relied upon the tax rate that existed prior to the enactment of the amendments, and the taxpayer had adequate notice of the impending amendatory change in the tax rate. Commonwealth Edison Co. v. Will County Collector, 196 Ill. 2d 27, 255 Ill. Dec. 482, 749 N.E.2d 964, 2001 Ill. LEXIS 1040 (2001).

Under former Ill. Const. (1870), Art. II, § 2 (see now this section) due process may not be limited, delimited, circumscribed, modified or denied by legislative enactment. People v. Coffman, 83 Ill. App. 2d 272, 227 N.E.2d 108 (4 Dist. 1967).

Aggravated unlawful use of a weapon statute, 720 ILCS 5/24-1.6, was found to be constitutional as the statute, which required a knowing mental state rather than criminal intent, bore a rational relationship to the statute's objective of protecting the general public and law enforcement from the possession of loaded weapons in public places, and did not otherwise reach beyond its valid scope and purpose. People v. Marin, 342 Ill. App. 3d 716, 277 Ill. Dec. 285, 795 N.E.2d 953, 2003 Ill. App. LEXIS 1024 (1 Dist. 2003).

Legislation fixing the rate that could be charged to a county of a certain size, but allowed larger counties to receive competitive bids for the printing of tax assessments was not a violation of Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) because the legislature had the right to fix such rates. D. L. Lee Pub. Co. v. St. Clair County, 341 Ill. 257, 173 N.E. 274, 1930 Ill. LEXIS 873 (1930).

Courts will not construe a statute so as to make it unconstitutional if any other reasonable construction can be placed upon it which will make it effectual; the court will never attribute to the legislature the doing of an unreasonable and absurd thing or something that the legislature clearly could not have been contemplated unless the language of the statute is so clear and certain in its terms that no other reasonable conclusion from the reading thereof can be reached; when the literal enforcement of a statute would result in great inconvenience and cause great injustice, and lead to consequences which are absurd and which the legislature could not have contemplated, the courts are bound to presume that such consequences were not intended and adopt a construction that will promote the ends of justice and avoid the absurdity. Sturges v. Chicago, 237 Ill. 46, 86 N.E. 683, 1908 Ill. LEXIS 2581 (1908).

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Contention of the property owner could not be sustained where it was claimed that a statute imposing liability for damages to property caused by a riot on the city or county in which the property was destroyed was unconstitutional because the Act made the location of the property destroyed or injured, and not the place where the mob assembled or the riot occurred, the criterion as to who should be punished. To hold that the statute should be construed so as to make a city or county liable for the destruction or injury of property caused outside of the limits of the city or county would be to attribute to the legislature the doing of an unreasonable and absurd thing, and something that the legislature clearly could not have contemplated and by construing the statute so as not to impose a liability upon a city or county for property destroyed or injured that was outside the limits and beyond the city or county in which the property was destroyed or injured, the objection urged the owner against its constitutionality was removed. Sturges v. Chicago, 237 Ill. 46, 86 N.E. 683, 1908 Ill. LEXIS 2581 (1908).

-- Liberal Interpretation

The due process provision of former Ill. Const. (1870), Art. II, § 2 (see now this section) and the privilege against self-incrimination in former Ill. Const. (1870), Art. II, § 10 (see now Ill. Const. (1970), Art. I, § 10) were to be applied in a broad and liberal spirit in order to secure to the citizen that immunity from every species of self-accusation implied in the brief but comprehensive language in which they are expressed. People v. Spain, 307 Ill. 283, 138 N.E. 614 (1923).

-- Proscription of Police Power

The due process clauses of the federal and state constitutions, insofar as they operate to limit the exercise of the police power of the state, proscribe only its unreasonable or arbitrary use. Scandroli v. City of Rockford, 86 Ill. App. 3d 999, 42 Ill. Dec. 58, 408 N.E.2d 436 (2 Dist. 1980).

-- Relationship to Federal Constitution

Even though the court must conduct an independent analysis of due process under Illinois law, it can use federal due process analysis as guidance to construe the due process of law analysis of the Illinois Constitution to find that the guarantees set forth by the Illinois due process clause are satisfied as to an out-of-state defendant served with civil process. Allied Metal Co. v. Edgerton Metal Prods., Inc., 908 F. Supp. 576 (N.D. Ill. 1995).

The Constitution of Illinois affords no less protection than the United States Constitution, but it may provide more protection. People v. Hightower, 172 Ill. App. 3d 678, 122 Ill. Dec. 590, 526 N.E.2d 1129 (5 Dist. 1988).

The constitutional guarantees of due process are viewed as generally the same under both the Illinois and Federal Constitutions. Gibbs v. Estate of Dolan, 146 Ill. App. 3d 203, 100 Ill. Dec. 61, 496 N.E.2d 1126 (1 Dist. 1986).

As applied to the actions of a state agency upon an individual, the Illinois due process clause (see this section) guarantees the same rights as does the due process clause of the Fourteenth Amendment. Knight ex rel. Knight v. Board of Educ., 38 Ill. App. 3d 603, 348 N.E.2d 299 (4 Dist. 1976).

755 ILCS 5/9-1, preventing non-Illinois residents from being appointed as executors was not unconstitutional under Ill. Const. (1970), Art. I, § 2, (formerly Ill. Const. of 1870, Art. II, § 2) because such a right was not one barred by the Privileges and Immunities Clause of the United States Constitution. In re Mulford, 217 Ill. 242, 75 N.E. 345, 1905 Ill. LEXIS 2892 (1905).

-- Relationship with Habeas Corpus

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Habeas corpus is not available to review alleged due process errors such as involved in a challenge on the question of notice and hearing. People ex rel. Housby v. Morris, 27 Ill. App. 3d 918, 327 N.E.2d 507 (3 Dist. 1975).

Habeas corpus may not be used to challenge contentions relating to procedural due process. People ex rel. Housby v. Morris, 27 Ill. App. 3d 918, 327 N.E.2d 507 (3 Dist. 1975).

-- Scope

The Illinois Constitution contains the exact language found in the due process clause of the United States Constitution; although the language of the two constitutions is the same, the scope of Illinois' due process provision need not be identical to that of the United States Constitution. People v. Hightower, 172 Ill. App. 3d 678, 122 Ill. Dec. 590, 526 N.E.2d 1129 (5 Dist. 1988).

- Appropriate Relief

In an action by a healthcare contractor against a city alleging breach of contract, contractor's due process claims failed because the contractor had a post-deprivation remedy for any procedural due process violations by raising such claims through certiorari review, and the contractor's complaint contained no allegations that any of the city's actions were either arbitrary or irrational violating its substantive due process rights. United States Neurosurgical Inc. v. City of Chicago, F. Supp. 2d , 2003 U.S. Dist. LEXIS 11154 (N.D. Ill. June 30, 2003).

Prisoners' state constitutional claim, that their transfers from Illinois state prisons to federal prisons in and out of Illinois violated due process and Ill. Const. (1970), Art. I, § 11, could not be raised as a pendent claim in a habeas corpus action brought in federal court under the habeas grant of jurisdiction. United States ex rel. Hoover v. Franzen, 669 F.2d 433, 1982 U.S. App. LEXIS 22668 (7th Cir. 1982).

Court concluded that plaintiffs' issues were disposed of in the first case; thus, plaintiffs have not been denied due process of law under former Ill. Const. Art. II, § 19 (now Ill. Const. (1970), Art. I, § 2), or their "certain remedy." Bowman v. Lake County Public Bldg. Com., 31 Ill. 2d 575, 203 N.E.2d 129, 1964 Ill. LEXIS 302 (1964).

- Arbitrary and Capricious

-- In General

The arbitrary or capricious exercise of power by an administrative officer offends against the due process clause of the federal and state constitutions. People ex rel. Barret v. Fon Du Lac State Bank, 310 Ill. App. 28, 33 N.E.2d 714 (3 Dist. 1941).

City ordinance that requires buildings within a specified area to be built of incombustible material unless the permission of the city council is first obtained violates Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) because the law is arbitrary; it vests the city council with discretion, unregulated by any rules or conditions, to decide whether a building has to be built of incombustible materials. Rohrbach v. Cavallini, 210 Ill. App. 182, 1918 Ill. App. LEXIS 186 (1918).

-- Burden of Proof

One who challenged the validity of an ordinance as arbitrary and unreasonable must prove by clear and affirmative evidence that the ordinance constitutes arbitrary, capricious, and unreasonable municipal action; that there is no permissible interpretation which justifies its adoption, or that it will not promote the safety and general welfare of the public. City of Decatur v. Chasteen, 19 Ill. 2d 204, 166 N.E.2d 29 (1960).

- Arbitrary and Unreasonable Means

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City ordinance, which designated a public road as a pleasure driveway and prohibited business owner from driving his team on that road without special permission of the city's board of trustees, was so arbitrary that it was constitutionally void; the ordinance was arbitrary because it prescribed no conditions upon which the special permission of the board could be granted, thus clothing the board with the right to grant the privilege to some and to deny it to others. Cicero Lumber Co. v. Cicero, 176 Ill. 9, 51 N.E. 758, 1898 Ill. LEXIS 3228 (1898).

-- Aggravated Arson

The aggravated arson statute, as charged against defendant, was an unreasonable and arbitrary means of achieving the object sought of protecting fire and police officers from injury where it was unlikely that persons who could innocently burn a building or a structure, believing they were acting within their rights to do so, could be aware that they were subjecting themselves to Class X penalties if, as a result, an officer was injured, and it was thus questionable whether such provision gave any further protection to the officers. People v. Wick, 121 Ill. App. 3d 94, 76 Ill. Dec. 587, 458 N.E.2d 1387 (2 Dist. 1984).

- Attorneys' Liens

- Bad Faith

-- Not Shown

Defendant's motion to dismiss for a Brady violation based upon what a baseball bat might show was properly denied as defendant failed to show that the destruction of the bat was in bad faith since: (1) the bat appeared in a photograph produced to defendant, (2) the bat was returned to the owner's family before defendant's discovery motion was filed, (3) defendant's custodial statement and testimony at trial contradicted his theory of self-defense, (4) defendant's testimony failed to support his claim that the bat was an important piece of evidence, and (5) the discovery motion was filed two months after defendant's arrest and the motion to dismiss the case was filed two weeks after the discovery motion was filed. People v. Karim, 367 Ill. App. 3d 67, 304 Ill. Dec. 739, 853 N.E.2d 816, 2006 Ill. App. LEXIS 649 (1 Dist. 2006).

Defendant's right to due process was not violated by the State's destruction of blood samples before defendant had the opportunity to have an independent examination made because the defendant failed to prove that the State destroyed the samples in bad faith. People v. Kizer, 365 Ill. App. 3d 949, 303 Ill. Dec. 368, 851 N.E.2d 266, 2006 Ill. App. LEXIS 524 (1 Dist. 2006).

No due process violation occurred where there was no evidence presented which demonstrated bad faith on the part of the police in the failure to preserve potentially useful evidence. People v. Ward, 154 Ill. 2d 272, 181 Ill. Dec. 884, 609 N.E.2d 252 (1992), cert. denied, 510 U.S. 873, 114 S. Ct. 204, 126 L. Ed. 2d 161 (1993).

- Burden of Proof

State, as part of initial involuntary civil commitment proceedings under the Sexually Dangerous Persons Act, was required to prove that respondent was sexually dangerous beyond a reasonable doubt under 725 ILCS 205/3.01; because respondent had already been shown to be sexually dangerous in the initial proceedings, the clear and convincing burden of proof in 725 ILCS 205/9(b) in recovery proceedings did not violate due process. People v. Craig, 403 Ill. App. 3d 762, 343 Ill. Dec. 333, 934 N.E.2d 657, 2010 Ill. App. LEXIS 874 (5 Dist. 2010).

-- In General

Fact that defendant could avoid being convicted for failing to produce evidence of auto insurance when asked for it by producing evidence at trial that his vehicle was insured at the time he was arrested did not create a mandatory presumption or shift the burden to defendant to prove his innocence. Providing defendants with a way to avoid conviction under 625 ILCS 5/3-707 was a

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legislative "gift" that could best be described as an act of grace that was not a violation of due process. People v. Steele, 366 Ill. App. 3d 220, 303 Ill. Dec. 733, 851 N.E.2d 920, 2006 Ill. App. LEXIS 553 (1 Dist. 2006).

-- Balancing Factors

Due process does not require the state to prove beyond a reasonable doubt that the aggravating factors outweigh the mitigating factors. People v. Garcia, 97 Ill. 2d 58, 73 Ill. Dec. 414, 454 N.E.2d 274 (1983), cert. denied, 467 U.S. 1260, 104 S. Ct. 3555, 82 L. Ed. 2d 856 (1984).

-- Improper Placement of Burden

Trial court's improper placement of the burden to rebut the prima facie case against him on the defendant, denied his constitutionally guaranteed right to the presumption of innocence and proof beyond a reasonable doubt. Therefore, the conviction was reversed. People v. Devine, 295 Ill. App. 3d 537, 229 Ill. Dec. 796, 692 N.E.2d 785 (1 Dist. 1998).

-- Lesser Included Offenses

The due process clause of the Illinois Constitution does not forbid the legislature from requiring that the defendant prove, by a preponderance of the evidence, the mitigation necessary to reduce the severity of a homicide charge after the state has proven each element of the charged offense. People v. Jeffries, 164 Ill. 2d 104, 207 Ill. Dec. 21, 646 N.E.2d 587 (1995); People v. Morrow, 269 Ill. App. 3d 1045, 207 Ill. Dec. 607, 647 N.E.2d 1100 (5 Dist. 1995), appeal denied, 164 Ill. 2d 575, 214 Ill. Dec. 327, 660 N.E.2d 1276 (1995).

-- Standard

Due process does not require the imposition of a clear and convincing standard of proof in an abuse or neglect adjudication. Under the preponderance standard, a parent's fundamental right to the care, custody and management of his or her child receives full protection, the risk of error in fact finding is insignificant, and the substantial governmental interest in intervening to provide necessary remedial assistance is promoted. People v. Luz M. (In re Janira T.), Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 842 (1 Dist. Sept. 19, 2006).

- Child Custody Award

Father's due process rights were adequately protected by the provisions of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act), 750 ILCS 5/601 et seq., and changes to the interpretation of the standing and due process requirements that had been made to the Probate Act of 1975, 755 ILCS 5/11-5(b), did not apply to the Marriage Act. Weger v. Weger (In re T.W.), 365 Ill. App. 3d 1075, 303 Ill. Dec. 694, 851 N.E.2d 881, 2006 Ill. App. LEXIS 526 (1 Dist. 2006).

Section 506(a)(3) of the Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/506(a)(3) was unconstitutional as applied in this case because the child's representative's report was adverse to the mother and she was deprived of her due process under U.S. Const. Amend IV, and Ill. Const. 1970, Art. I, § 2 to cross-examine the representative. One of the fundamental rights protected under the fourteenth amendment is the right of parents to make decisions concerning the care, custody, and control of their children without unwarranted state intrusion. In re Marriage of De Bates, 212 Ill. 2d 489, 289 Ill. Dec. 218, 819 N.E.2d 714, 2004 Ill. LEXIS 1619 (2004).

750 ILCS 5/506(a)(3) of the Illinois Marriage and Dissolution of Marriage Act, was unconstitutional as applied in this case because the child's representative's report was adverse to the mother and she was deprived of her due process under U.S. Const. Amend IV, and Ill. Const., Art. I, § 2 to cross-examine the representative. One of the fundamental rights protected under the fourteenth amendment is the right of parents to make decisions concerning the care, custody, and control of

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their children without unwarranted state intrusion. In re Marriage of De Bates, 212 Ill. 2d 489, 289 Ill. Dec. 218, 819 N.E.2d 714, 2004 Ill. LEXIS 1619 (2004).

In a custody case, the trial court exceeded its jurisdiction in awarding shared custody to the father's wife and parents where no pleading requested this relief and the mother had no notice that the custody issue would be considered; similarly, the trial court erred in allowing joinder of the father's wife and parents to the action without notice to the mother. Ayala v. Lozada (In re Ayala), 344 Ill. App. 3d 574, 279 Ill. Dec. 456, 800 N.E.2d 524, 2003 Ill. App. LEXIS 1359 (1 Dist. 2003).

- Child Support

In a suit against an employer pursuant to 750 ILCS 28/35 of the Income Withholding for Support Act, for knowingly failing to pay child support from its employee's wages, the employer's argument that the $100-per-day penalty in 750 ILCS 28/35 was grossly excessive and lacked sufficient due process protections was unpersuasive. 750 ILCS 28/35 provided employers with exact notice of the $100-per-day penalty they would face for failing to comply with a support order, and employers received personal notice of their duties to withhold and pay over income, as well as the penalty for failing to do so, through service of the income withholding order. In re Marriage of Chen, 354 Ill. App. 3d 1004, 290 Ill. Dec. 69, 820 N.E.2d 1136, 2004 Ill. App. LEXIS 1496 (2 Dist. 2004).

- Competence of Accused

When the trial court failed to conduct a sufficient hearing to determine defendant's fitness to stand trial after he had previously been found unfit, the proper remedy was not a retrospective fitness hearing rather than a new trial. Since defendant's condition was not alleged to have been produced by a single, easily identified and readily assessed factor, and since his documented lack of cooperation with medical personnel limited the extent of his evaluations, the instant case did not enable an accurate judgment of his mental state more than two years after his trial. People v. Esang, 396 Ill. App. 3d 833, 336 Ill. Dec. 356, 920 N.E.2d 565, 2009 Ill. App. LEXIS 1216 (1 Dist. 2009).

Trial court failed to conduct a sufficient hearing to determine defendant's fitness to stand trial after he had previously been found unfit, as the trial court's finding that defendant had been restored to fitness appeared to be based solely upon his stipulation to psychiatric conclusions that he was fit to stand trial. Furthermore, given the trial court's clear doubt about defendant's fitness to stand trial both before and after the restoration determination, the court could not conclude that the insufficient fitness restoration hearing was harmless beyond a reasonable doubt. People v. Esang, 396 Ill. App. 3d 833, 336 Ill. Dec. 356, 920 N.E.2d 565, 2009 Ill. App. LEXIS 1216 (1 Dist. 2009).

Defendant's due process rights were not violated by the trial court's failure to sua sponte inquire into defendant's fitness to stand trial where nothing showed that defendant's behavior was anything other than interested, rational, and appropriate, and defense counsel did not indicate that defendant was unable to understand the nature of the proceedings or assist counsel in a defense. People v. Woodard, 367 Ill. App. 3d 304, 305 Ill. Dec. 82, 854 N.E.2d 674, 2006 Ill. App. LEXIS 846 (1 Dist. 2006).

Trial court was not required to hold a hearing to determine defendant' s fitness to stand trial where it appropriately considered his demeanor in court and his use of psychotropic medication, determining that there was no bona fide doubt as to his fitness. People v. Chamberlain, 354 Ill. App. 3d 1070, 291 Ill. Dec. 39, 822 N.E.2d 914, 2005 Ill. App. LEXIS 36 (3 Dist. 2005), appeal denied, 219 Ill. 2d 572, 303 Ill. Dec. 834, 852 N.E.2d 241 (2006).

Defendant's due process rights were violated where no fitness hearing was conducted since once a bona fide doubt of defendant's fitness was raised, the trial court was obligated to conduct a

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fitness hearing even though defense counsel withdrew the motion. People v. Cleer, 328 Ill. App. 3d 428, 262 Ill. Dec. 691, 766 N.E.2d 311, 2002 Ill. App. LEXIS 170 (3 Dist. 2002).

- Competence of Counsel

Denial of defendant's postconviction petition was affirmed because defendant was not denied the effective assistance of counsel as the circuit court did not err in finding that defendant waived his right to testify, as there was no evidence that defendant was unaware of his right to testify or that he was prevented him from exercising it. People v. Chatman, 357 Ill. App. 3d 695, 294 Ill. Dec. 21, 830 N.E.2d 21, 2005 Ill. App. LEXIS 447 (1 Dist. 2005), cert. denied, 2007 U.S. LEXIS 2153 (U.S. 2007).

Defendant's claim that he was denied due process of law under Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) failed when there was no evidence in the record to support defendant's allegations that his trial counsel was incompetent. People v. Kocielko, 413 Ill. 286, 108 N.E.2d 770, 1952 Ill. LEXIS 389 (1952).

- Condemnation of Property

-- Illustrative Cases

--- Highway Act

605 ILCS 5/4-510, authorizing the state transportation agency to prepare and record a map that set forth a right-of-way for a proposed highway, was facially constitutional, where the statute did not violate the federal takings clause because preparation and recordation of the map did not involve a regulatory taking, there was no violation of separation of powers principles because the state transportation agency had to meet certain obligations to lawfully condemn property that the statute did not change and which were sufficient to govern its discretion, and the statute was rationally related to the permissible governmental purpose of building highways so as to not offend substantive due process principles. Davis v. Brown, 221 Ill. 2d 435, 303 Ill. Dec. 773, 851 N.E.2d 1198, 2006 Ill. LEXIS 1082 (2006).

- Confrontation of Witnesses

-- Illustrative Cases

Defendant's right to confrontation was not violated when a wheelchair-bound witness was allowed to testify before the jury from a position that somewhat limited defendant's observation of the witness, especially since the trial court permitted defendant to relocate within the courtroom to obtain a better view. People v. Cuadrado, 214 Ill. 2d 79, 291 Ill. Dec. 638, 824 N.E.2d 214, 2005 Ill. LEXIS 3 (2005).

- Contempt

Defendant's due process rights were violated by a trial court summary order holding her in indirect civil contempt without notice or a hearing, based upon defendant's failure to complete a drug and alcohol assessment as part of a criminal sentence; defendant was denied the right to prior notice and to present evidence. People v. Coupland, 387 Ill. App. 3d 774, 327 Ill. Dec. 120, 901 N.E.2d 448, 2008 Ill. App. LEXIS 1336 (3 Dist. 2008).

In the absence of a statute allowing such a procedure, contempt could not be used as punishment for minors who violated orders of supervision entered on municipal ordinance violations which themselves did not permit imprisonment. City of Urbana v. Andrew N.B., 211 Ill. 2d 456, 286 Ill. Dec. 75, 813 N.E.2d 132, 2004 Ill. LEXIS 990 (2004).

Contempt orders, requiring the trustees of a failed insurance business to surrender the business funds to a receiver, violated Ill. Const of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) and Ill. Const. of 1870, Art. II, § 12 (now Ill. Const. (1970), Art. !, § 14) because the trustees did not have

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actual possession of the funds and there was no evidence of wrongful disposition; constructive possession because of association was insufficient to form the basis for contempt orders. People v. La Mothe, 331 Ill. 351, 163 N.E. 6, 1928 Ill. LEXIS 1009 (1928).

Where the pleadings showed that members of an association were the parties in interest in a filing for an injunction, the "natural persons" requirement for filing an injunction had been met, defendant's failure to obey the court's order could give rise to a contempt action, the burden of proof was not "reasonable doubt" because the contempt action was civil in nature, and defendant's rights under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) were not violated. Flannery v. People, 225 Ill. 62, 80 N.E. 60, 1906 Ill. LEXIS 2442 (1906).

-- Requirements

In proceedings to punish indirect criminal contempts, due process requires that the accused be accorded notice and a fair hearing. People v. Waldron, 114 Ill. 2d 295, 102 Ill. Dec. 395, 500 N.E.2d 17 (1986).

Where contempt, if any, was an indirect contempt, plaintiff in error had the constitutional right to know the nature of the charge against him, to have it definitely and specifically set forth by citation or rule to show cause, and to be accorded an opportunity to answer and to introduce evidence in his own defense. People v. Pomeroy, 405 Ill. 175, 90 N.E.2d 102 (1950).

-- Summary Proceeding

Ex-husband's assault on ex-wife's attorney, which took place in a hallway outside of the courtroom where the parties were to appear for a hearing was, if contemptuous, only indirect contempt because the commotion was not heard by the judge and did not any way interrupt matters then being heard in the court room; therefore, the ex-husband was entitled to due process and when the judge summarily adjudged him guilty of direct criminal contempt, his constitutional right to due process was violated. People v. Javaras, 51 Ill. 2d 296, 281 N.E.2d 670, 1972 Ill. LEXIS 427 (1972).

Following a courtroom melee, summary adjudication of contempt against defendants whose contemptuous conduct the trial court personally observed did not violate those defendants' due process rights; however, with regard to those defendants whose conduct the court had not observed and against whom it was necessary for the court to secure and consider extrinsic evidence to determine whether they had been guilty of contempt of court, a summary proceeding did not meet the requirements of due process. People v. Jashunsky, 51 Ill. 2d 220, 282 N.E.2d 1, 1972 Ill. LEXIS 415 (1972).

A summary proceeding to punish for direct contempt, properly used within the discretion of the court, is not a violation of the constitutional guarantee of due process. People v. Loughran, 2 Ill. 2d 258, 118 N.E.2d 310 (1954).

- Court Errors

Defendant's due process rights were not violated when the court conducted voir dire of prospective jurors without a court reporter present to transcribe the proceedings. People v. Culbreath, 343 Ill. App. 3d 998, 278 Ill. Dec. 511, 798 N.E.2d 1268, 2003 Ill. App. LEXIS 1333 (4 Dist. 2003).

- Criminal Confession

-- Illegally Gained

Defendant was not denied his constitutional right to due process of law, in violation of Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) when his confession was admitted into evidence against him because the confession was not procured by force or violence; although the defendant testified that a police officer beat him up and threatened to keep him in jail when the

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two men were alone in a room at the police station, the officer denied that had happened and another officer, the only other person present at any time while defendant was questioned, testified that he had heard no threats or promises or saw any violence used. People v. Gavurnik, 2 Ill. 2d 190, 117 N.E.2d 782, 1954 Ill. LEXIS 324 (1954).

- Criminal Confessions

-- Illegally Gained

Circumstances of the seizure and interrogation of a person in connection with a crime, including the absence of the counsel and Miranda warnings, and the procurement of a confession violated the constitutional guarantees under the Illinois Constitution where the police went to the person's home, told her they needed her assistance in the investigation and, after the person accompanied the police to the station, was never told that she was free to leave and was continually interrogated until she confessed to a polygraph operator. United States ex rel. Daniels v. Baird, 326 F. Supp. 2d 909, 2004 U.S. Dist. LEXIS 14050 (N.D. Ill. 2004).

Confessions extorted by violence, brutality, promise or unlawful confinement for an unreasonable length of time are illegal and may not be received in evidence against the accused. People v. Prohaska, 8 Ill. 2d 579, 134 N.E.2d 799 (1956).

Defendant's claim that he was denied due process of law under Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) because his confession was coerced failed because he had not made any such claim at trial, the testimony of the chief of police with respect to the circumstances of the confession was not contradicted by the defendant or any of his codefendants, and the unsupported charge of coercion was inconsistent with his claim that his confession was induced by a promise of leniency. People v. Kocielko, 413 Ill. 286, 108 N.E.2d 770, 1952 Ill. LEXIS 389 (1952).

-- Jurisdiction

The question of whether an alleged confession was voluntarily made is initially one for the trial judge. People v. Prohaska, 8 Ill. 2d 579, 134 N.E.2d 799 (1956).

-- Suppression

Defendant's constitutional rights to counsel and due process were not violated by the conduct of the police in obtaining his confession, he made a valid waiver of his right to counsel during custodial interrogation and denial of motion to suppress was proper. People v. Johnson, 182 Ill. 2d 96, 230 Ill. Dec. 945, 695 N.E.2d 435 (1998), cert. denied, 525 U.S. 985, 119 S. Ct. 451, 142 L. Ed. 2d 405 (1998).

-- Voluntary

Police interrogation of defendant, wherein they falsely indicated that they had incriminating information about the criminal incident and they played down defendant's culpability in the incident, was not so unduly coercive that his confession was rendered involuntary and inadmissible under U.S. Const. Amends. V and XIV and Ill. Const. Art. I, §§ 2 and 10; the totality of the circumstances indicated that defendant's waiver of his Miranda right was voluntarily and knowingly made, and that the interrogation was properly conducted. People v. Rubio, Ill. App. 3d , Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 273 (2 Dist. May 7, 2009).

There was no indication in the record that defendant's will was overborne and that his alleged inculpatory statement was involuntary. People v. Ramey, 152 Ill. 2d 41, 178 Ill. Dec. 19, 604 N.E.2d 275 (1992), cert. denied, 508 U.S. 952, 113 S. Ct. 2446, 124 L. Ed. 2d 663 (1993).

A voluntary or freely made confession of guilt is proper evidence of a high and convincing character. People v. Prohaska, 8 Ill. 2d 579, 134 N.E.2d 799 (1956).

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The burden is upon the state to show the confession is voluntary. People v. Prohaska, 8 Ill. 2d 579, 134 N.E.2d 799 (1956).

- Criminal Prosecution

Defendant's murder convictions pursuant to 720 ILCS 5/9-1 were affirmed. Where defendant's due process rights pursuant to Ill. Const., Art. I, § 2 were not violated when a witness denied receiving money from the government in exchange for his cooperation in the case, and the State failed to correct his testimony as the witness did in fact testify that he received money for his expenses, and any failure on the part of the State to correct the statement did not mislead the jury. People v. Hansen, 352 Ill. App. 3d 40, 287 Ill. Dec. 204, 815 N.E.2d 848, 2004 Ill. App. LEXIS 980 (1 Dist. 2004), appeal denied, 213 Ill. 2d 567, 293 Ill. Dec. 866, 829 N.E.2d 791 (2005).

Defendant's conviction for murder under 720 ILCS 5/9-1(a)(1), (a)(2) was reversed after the appellate court determined that the prosecution undermined defendant's rights to due process and a fair trial by, inter alia, (1) inappropriately suggesting that the jury could resolve the issue of guilt or innocence by determining which witnesses it believed, (2) cross-examining defendant on his postarrest silence; (3) commenting on prior bad acts and other crimes; and (4) improperly vouching for certain witnesses and interjecting its own opinions regarding the evidence. People v. Young, 347 Ill. App. 3d 909, 283 Ill. Dec. 284, 807 N.E.2d 1125, 2004 Ill. App. LEXIS 338 (1 Dist. 2004).

Where a complainant could not identify defendant's voice as the voice she heard on the phone telling her that he would not rent an apartment to her, and she had three children under the age of 14, his conviction for violating 775 ILCS 5/3-102, (formerly Ill. Rev. Stat. ch. 80, para. 37) required reversal under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, art. II, § 2) because the conviction was not supported by sufficient evidence. People v. Metcoff, 392 Ill. 418, 64 N.E.2d 867, 1946 Ill. LEXIS 251 (1946).

-- Continuance

Denial of defendant's request for a one-day continuance violated the Due Process Clause, U.S. Const. Amend. XIV and Ill. Const. Art. I, § 2, but the error was not reversible as defendant did not make an offer of proof as to the expected witness's testimony. People v. Moore, Ill. App. 3d , Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 595 (1 Dist. June 30, 2009).

-- Court's Comments

Although defendant argued that the trial court deprived defendant of due process by acting "as an advocate for the State," the court did not act in the capacity of an advocate, but rather sought to ensure the State's right to responsive answers from an evasive witness. The court called a recess and outside the jury's presence admonished the witness to answer the question asked, if the witness understood it, and, if the witness did not understand the question, to simply say so. People v. Urdiales, 225 Ill. 2d 354, 312 Ill. Dec. 876, 871 N.E.2d 669, 2007 Ill. LEXIS 860 (2007).

Report of trial proceedings revealed nothing in the way of judicial displeasure or irritation with a State Appellate Defender Death Penalty Trial Assistance (DPTA) attorney, and because another staff attorney was not allowed to serve as counsel for defendant or represent defendant in any way, pursuant to 725 ILCS 105/10(c)(5), the appeals court did need not consider the possible repercussions of the court's interaction with the attorney, and the court's conduct with respect to the DPTA attorneys did not deny defendant due process. People v. Urdiales, Ill. 2d , Ill. Dec. , N.E.2d , 2007 Ill. LEXIS 437 (Feb. 16, 2007).

-- Cumulative Error

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Cumulative impact of multiple improper remarks by the prosecutor in closing argument may result in prejudice to a criminal defendant; such cases typically involve prejudice to a defendant in the ordinary sense such that absent the improper comments the outcome of the trial would have been different. People v. Libberton, 346 Ill. App. 3d 912, 282 Ill. Dec. 705, 807 N.E.2d 1, 2004 Ill. App. LEXIS 361 (2 Dist. 2004).

Notwithstanding that the evidence of guilt in a murder prosecution was overwhelming, a new trial was required on the basis of cumulative errors by the prosecution which denied the defendant a fair trial. People v. Blue, 189 Ill. 2d 99, 244 Ill. Dec. 32, 724 N.E.2d 920, 2000 Ill. LEXIS 14 (2000).

-- Disclosure of Evidence

Inmate was not denied due process when the State withheld allegedly material and exculpatory evidence regarding a viable suspect because the evidence was too remote and speculative to connect the suspect to the murder and would not have been admitted; thus, the inmate could not show a reasonable probability that disclosure would have affected the outcome of the trial. People v. Beaman, 368 Ill. App. 3d 759, 306 Ill. Dec. 633, 858 N.E.2d 78, 2006 Ill. App. LEXIS 1009 (1 Dist. 2006).

-- Evidence

Because testimony of eyewitness was consistent and credible, including the fact that she had known defendant for several months before the assault and that she had a good opportunity to observe him during the assault, the evidence of defendant's guilt was sufficient to overcome his contention that the prosecution's failures to comply with discovery orders deprived him of due process and to grant him relief pursuant to the Illinois Post Conviction Hearing Act, Ill. Rev. Stat. ch. 38, para. 122-1 et seq. (now 725 ILCS 5/122-1 et seq.) People v. Barrera, 43 Ill. App. 3d 620, 2 Ill. Dec. 132, 357 N.E.2d 109, 1976 Ill. App. LEXIS 3345 (1 Dist. 1976).

-- Indictment

Claim that defendant's due process rights were violated when defendant was convicted of involuntary manslaughter as a lesser-included offense of first degree murder failed because, contrary to defendant's contention, the charging instrument, which clearly identified the offense charged with sufficient specificity to allow defendant to prepare a defense and bar future prosecution arising out of the same conduct, was not deficient. In addition, there was no prejudice to defendant, who had notice as to the range of sentences by the very provision of the criminal code that defendant requested be applied. People v. Robinson, 374 Ill. App. 3d 949, 313 Ill. Dec. 313, 872 N.E.2d 73, 2007 Ill. App. LEXIS 733 (1 Dist. 2007), appeal denied, 232 Ill. 2d 98, 902 N.E.2d 622, 2008 LEXIS 1819 (2008).

Indictment that charges a defendant with acting as a principal can support a verdict finding the defendant liable as an accessory and does not violate due process. People v. Lee, 344 Ill. App. 3d 851, 280 Ill. Dec. 24, 801 N.E.2d 969, 2003 Ill. App. LEXIS 1376 (1 Dist. 2003), appeal denied, 208 Ill. 2d 547, 284 Ill. Dec. 343, 809 N.E.2d 1289 (2004).

Due process is satisfied by indictments that apprise defendants of the offenses charged with sufficient precision to enable the defendants to prepare defenses and to allow pleading the judgments to bar future prosecutions; an indictment adequately informs a defendant of a charge where it specifies the offense alleged and that the defendant committed it in any of several closely associated ways. People v. Lee, 344 Ill. App. 3d 851, 280 Ill. Dec. 24, 801 N.E.2d 969, 2003 Ill. App. LEXIS 1376 (1 Dist. 2003), appeal denied, 208 Ill. 2d 547, 284 Ill. Dec. 343, 809 N.E.2d 1289 (2004).

Due process does not require an indictment to specify whether the prosecutor will prove the defendant guilty as a principal or as an accessory. People v. Lee, 344 Ill. App. 3d 851, 280 Ill.

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Dec. 24, 801 N.E.2d 969, 2003 Ill. App. LEXIS 1376 (1 Dist. 2003), appeal denied, 208 Ill. 2d 547, 284 Ill. Dec. 343, 809 N.E.2d 1289 (2004).

Because the indictment number for a predicate offense was not necessary, an incorrect number was not sufficient to overturn a trial court's finding that defendant was a habitual criminal under 720 ILCS 5/33B-2, (formerly Ill. Rev. Stat. ch. 38, para. 602) after a subsequent robbery conviction because the notice in the indictment was adequate under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). People v. Vinci, 369 Ill. 563, 17 N.E.2d 19, 1938 Ill. LEXIS 620 (1938).

-- Mistrial

Defendant convicted of armed robbery in violation of Ill. Rev. Stat. ch. 38, para. 18-2 (now 720 ILCS 5/18-2) was not denied a fair trial when the trial court denied his motion for a mistrial (which based on his contention that because his co-defendant did not testify, it was improper for his co-defendant's counsel to question him concerning his improper receipt of government education payments and his intent to purchase marijuana), because the trial court sustained defendant's objection to the questioning and instructed the jury to disregard the matter; under the circumstances, any error was cured. People v. Bluitt, 98 Ill. App. 3d 19, 53 Ill. Dec. 649, 424 N.E.2d 62, 1981 Ill. App. LEXIS 2947 (1 Dist. 1981).

-- Nature and Cause of Accusation

In a prosection of defendant for child abduction for an unlawful purpose, the trial court abused its discretion by denying defendant's motion for a bill of particulars specifying the nature of the alleged unlawful purpose, and by so doing the court rendered the criminal statute unconstitutionally vague in its application because, if defendant could not find out what the alleged wrongful acts - beyond private thoughts - were, it would not be possible to support the affirmative defense of lawful purpose, as provided for in the statute. People v. Woodrum, 354 Ill. App. 3d 629, 290 Ill. Dec. 475, 821 N.E.2d 787, 2004 Ill. App. LEXIS 1535 (1 Dist. 2004), overruled in part by People v. Woodrum, 223 Ill. 2d 286, 860 N.E.2d 259, 2006 Ill. LEXIS 1633, 307 Ill. Dec. 605 (2006).

A failure to furnish any defendant with the nature and cause of his accusation in a criminal prosecution is to deny such defendant his constitutional right of due process and his constitutional protection against double jeopardy under former Ill. Const. (1870), Art. II, § 9 and Art. II, § 2 (see now Ill. Const. (1970), Art. I, § 8 and Art. I, § 2). People v. Beeftink, 21 Ill. 2d 282, 171 N.E.2d 632 (1961).

-- Prerequisite of Guilty Plea

Nothing in the record showed that an inmate knew that he was to be subject to a mandatory supervised release term as a result of his guilty plea. Accordingly, the inmate did not get the sentence for which he bargained, and his constitutional right to due process and fundamental fairness was violated. People v. Company, 376 Ill. App. 3d 846, 315 Ill. Dec. 465, 876 N.E.2d 1055, 2007 Ill. App. LEXIS 825 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1828 (Ill. 2007).

Defendant established a violation of his constitutional rights because the trial court accepted defendant's guilty plea without informing defendant that statutes required the addition of a term of mandatory supervised release following the completion of defendant's sentence. Because the appellate court had no evidence from which it could determine whether a retrial would unduly prejudice the prosecution, the case had to be remanded to the trial court for a hearing concerning the prejudice to the prosecution if defendant was granted leave to withdraw his guilty plea. People v. Chamness, 373 Ill. App. 3d 492, 311 Ill. Dec. 617, 869 N.E.2d 291, 2007 Ill. App. LEXIS 459 (1 Dist. 2007).

Trial court deprived a defendant of due process under Ill. Const. Art. I, § 2 when it failed to admonish the defendant during the plea hearing that the defendant was required to serve a three-

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year term of mandatory supervised release under 730 ILCS 5/5-8-1(d)(1). No post-conviction relief was available to the defendant under 725 ILCS 5/122-1 et seq., as the defendant had already served the sentence, so modification of the sentence was unavailable, and the defendant did not want to withdraw the plea. People v. Porm, 365 Ill. App. 3d 791, 303 Ill. Dec. 307, 851 N.E.2d 205, 2006 Ill. App. LEXIS 405 (1 Dist. 2006).

A plea of guilty can be entered only after defendant has been fully and properly advised by the court of his rights and the consequences of his plea, and where defendant made no showing that his plea of guilty was not made competently and voluntarily, there was no denial of constitutional rights. People v. Rednour, 43 Ill. 2d 307, 253 N.E.2d 414 (1969).

Murder defendant's constitutional right to due process was not violated by his conviction upon a guilty plea, which he sought to withdraw more than four years after he was sentenced when defendant had displayed an eagerness to plead guilty, had signed a detailed, 10 page, confession that he himself had practically dictated, and he had not objected to any part of the procedure, which was not hurried or carried on with haste. People v. Bernovich, 391 Ill. 141, 62 N.E.2d 691, 1945 Ill. LEXIS 344 (1945).

-- Prosecutorial Remarks

Defendant was not denied a fair trial based on improper prosecutorial comments because the comments clearly did not constitute a comment on defendant not testifying and when defense counsel provoked a response, defendant could not then complain that the prosecutor's reply denied him a fair trial. People v. Montgomery, 373 Ill. App. 3d 1104, 313 Ill. Dec. 420, 872 N.E.2d 403, 2007 Ill. App. LEXIS 676 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1721 (Ill. 2007).

Supreme Court could not say with confidence that the prosecutor's improper remarks, including cautioning the jury away from "being brainwashed" did not contribute to defendant's conviction for first-degree murder. As the case relied heavily on the credibility of the testifying police witnesses, the prosecutor's utilization of closing arguments to inflame the passions and prejudices of the jury constituted a material factor in defendant's conviction; without those arguments, a contrary verdict could have been reached. People v. Wheeler, 226 Ill. 2d 92, 313 Ill. Dec. 1, 871 N.E.2d 728, 2007 Ill. LEXIS 1146 (2007).

Pattern of intentional prosecutorial misconduct may so seriously undermine the integrity of judicial proceedings as to support reversal under the plain error doctrine. People v. Libberton, 346 Ill. App. 3d 912, 282 Ill. Dec. 705, 807 N.E.2d 1, 2004 Ill. App. LEXIS 361 (2 Dist. 2004).

Even in a case where the evidence of the defendant's guilt is overwhelming, a defendant is deprived of his right to a fair trial where the prosecution makes improper arguments that are related to improperly admitted, emotion-laden evidence, resulting in a jury verdict grounded in emotion rather than rational deliberation of the facts. People v. Libberton, 346 Ill. App. 3d 912, 282 Ill. Dec. 705, 807 N.E.2d 1, 2004 Ill. App. LEXIS 361 (2 Dist. 2004).

Ordinarily a prosecutor's improper comment will not result in a jury's verdict being disturbed on appeal unless the remark caused substantial prejudice to the defendant, taking into account the content and context of the comment, its relationship to the evidence, and its effect on the defendant's right to a fair and impartial trial. People v. Libberton, 346 Ill. App. 3d 912, 282 Ill. Dec. 705, 807 N.E.2d 1, 2004 Ill. App. LEXIS 361 (2 Dist. 2004).

Opening statements by prosecutor, alleged to have improperly and unfairly trivialized the case and diminished the presumption of innocence, did not substantially prejudice defendant or violate his due process rights under the Federal or Illinois Constitutions. People v. Leger, 149 Ill. 2d 355, 173 Ill. Dec. 612, 597 N.E.2d 586 (1992), cert. denied, 507 U.S. 923, 113 S. Ct. 1291, 122 L. Ed. 2d 683 (1993).

-- Shackling

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Trial court did not abuse its discretion in ordering defendant's legs, and later defendant's arm, shackled; the court gave the defense an opportunity to offer reasons why defendant should not be shackled, and the defense in effect conceded that the court's actions were appropriate. The use of physical restraints, which were not visible to the jury, did not impair defendant's ability to communicate with counsel and assist in the defense. People v. Urdiales, 225 Ill. 2d 354, 312 Ill. Dec. 876, 871 N.E.2d 669, 2007 Ill. LEXIS 860 (2007).

-- Stun Belt

Defendant's right to due process was not violated by the trial court's use of a stun belt because defendant was charged with serious crimes of violence; defendant was young and physically fit; defendant had a prior record of violence; defendant presented a possible escape risk, in that defendant had eluded arrest for two years following the subject incident; because of gang involvement, a risk of further violence or revenge was presented; the mood of some of the witnesses attending court was volatile, requiring court intervention; and it was not obvious to the jury or others that defendant was wearing the belt. People v. Gone, 375 Ill. App. 3d 386, 313 Ill. Dec. 951, 873 N.E.2d 575, 2007 Ill. App. LEXIS 891 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1829 (Ill. 2007).

-- Subsequent Prosecution

Where a motorist had pleaded guilty to crossing over a highway median, her subsequent prosecution for reckless homicide was barred under her double jeopardy protections. People v. Zegart, 83 Ill. 2d 440, 47 Ill. Dec. 336, 415 N.E.2d 341, 1980 Ill. LEXIS 468 (1980).

- Death Penalty

-- Requirements

The failure of the death penalty statute (720 ILCS 5/9-1) failure to require juries to employ a reasonable doubt standard when finding that there are no mitigating factors sufficient to preclude the death sentence does not violate the right to due process. People v. Garcia, 97 Ill. 2d 58, 73 Ill. Dec. 414, 454 N.E.2d 274 (1983), cert. denied, 467 U.S. 1260, 104 S. Ct. 3555, 82 L. Ed. 2d 856 (1984).

Due process requires that the state prove defendant's guilt beyond a reasonable doubt and the death penalty statute also requires the jury to find beyond a reasonable doubt that one or more of the statutory aggravating factors are present before a defendant becomes eligible for the death sentence. People v. Garcia, 97 Ill. 2d 58, 73 Ill. Dec. 414, 454 N.E.2d 274 (1983), cert. denied, 467 U.S. 1260, 104 S. Ct. 3555, 82 L. Ed. 2d 856 (1984).

- Definition

A person's business, profession, trade, occupation, labor, and the avails from each constitute "property" envisioned in this section and to follow any of those activities is "liberty"; these rights, shall not be taken from a person except by due process of law. People v. Brown, 407 Ill. 565, 95 N.E.2d 888 (1950).

- Delay in Hearing

A 299 day delay in providing a hearing, a nine day delay in issuing a final decision, and a 598 day delay in completing the appeals process was a gross deviation of the established time limits and thus a violation of the plaintiffs due process rights. Cavarretta v. Department of Children & Family Servs., 277 Ill. App. 3d 16, 214 Ill. Dec. 59, 660 N.E.2d 250 (2 Dist. 1996).

- Delay In Charging Offense

-- Burden of Proof

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Defendant's assertion of inability to recall, standing alone as it was from any indication of other prejudice such as loss of evidence or witnesses, did not evidence actual and substantial prejudice of the unusual nature required to establish a denial of his due process rights; consequently, since the burden never shifted to the state to prove the reasonableness of a 262 day delay between alleged offense of unlawful delivery of a controlled substance and filing of information, the trial court properly denied defendant's pretrial motion for dismissal. People v. Dunn, 49 Ill. App. 3d 1002, 7 Ill. Dec. 879, 365 N.E.2d 164 (5 Dist. 1977).

- Denial of Hearing

-- Administrative Remedies

Where horse racing drivers' petition for injunction claimed that the authority given an organization licensee to exclude an occupation licensee under former Ill. Rev. Stat., ch. 8, para. 9(e) without a prior hearing was violative of due process and, further, that it was an unconstitutional delegation of legislative power, it was proper for the circuit court to assume jurisdiction and consider the petitions for injunction even though the plaintiffs had not exhausted their administrative remedies under the Illinois Horse Racing Act of 1975 (230 ILCS 5/1) and the Illinois Administrative Procedure Act (5 ILCS 100/1-1). Phillips v. Graham, 86 Ill. 2d 274, 56 Ill. Dec. 355, 427 N.E.2d 550 (1981).

- Denial of Parole

-- Detailed Findings of Fact

Detailed findings of fact are not required for due process to be present if the Illinois Prisoner Review Board considered all the relevant factors and furnished the inmate with both the grounds for its decision and the facts upon which inferences were drawn. Goins v. Klincar, 225 Ill. App. 3d 961, 167 Ill. Dec. 779, 588 N.E.2d 420 (3 Dist.), appeal denied, 145 Ill. 2d 633, 173 Ill. Dec. 4, 596 N.E.2d 628 (1992); Sterling v. Klincar, 226 Ill. App. 3d 675, 168 Ill. Dec. 749, 589 N.E.2d 1149 (3 Dist. 1992).

-- Standards

The test to determine whether reasons for denying parole are constitutionally sufficient is whether the reasons are adequate to enable a reviewing body to determine whether parole has been denied for an impermissible reason or for no reason at all. Goins v. Klincar, 225 Ill. App. 3d 961, 167 Ill. Dec. 779, 588 N.E.2d 420 (3 Dist.), appeal denied, 145 Ill. 2d 633, 173 Ill. Dec. 4, 596 N.E.2d 628 (1992); Sterling v. Klincar, 226 Ill. App. 3d 675, 168 Ill. Dec. 749, 589 N.E.2d 1149 (3 Dist. 1992).

Where the Illinois Prisoner Review Board denies parole on the ground that release would deprecate the seriousness of the offense and promote disrespect for the law, due process standards are met if the Board lists the offense of which the inmate was convicted and indicates the extreme length of the sentence imposed. Goins v. Klincar, 225 Ill. App. 3d 961, 167 Ill. Dec. 779, 588 N.E.2d 420 (3 Dist.), appeal denied, 145 Ill. 2d 633, 173 Ill. Dec. 4, 596 N.E.2d 628 (1992); Sterling v. Klincar, 226 Ill. App. 3d 675, 168 Ill. Dec. 749, 589 N.E.2d 1149 (3 Dist. 1992).

- Denied

The prosecution's introduction of evidence to disprove a claim of insanity by showing that the defendant was lucid enough to invoke his privilege against self-incrimination deprived defendant of a fair trial. Burgess v. Abex Corp., 311 Ill. App. 3d 801, 244 Ill. Dec. 546, 726 N.E.2d 142, 2000 Ill. App. LEXIS 116 (2 Dist. 2000).

- Dental Advertising

- Destruction of Samples

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Destruction of the defendant's urine samples after 30 months did not violate his due process rights. Rodriguez v. Bagnola, 297 Ill. App. 3d 906, 232 Ill. Dec. 332, 698 N.E.2d 170 (1 Dist. 1998).

- Disciplinary Proceedings

Inmate failed to establish any due process violation in disciplinary proceedings regarding two disciplinary tickets that were issued to him. The disciplinary adjustment committee had the duty to assess the credibility of witnesses and to make findings based on that assessment, due process did not require the use of polygraph testing in disciplinary proceedings, and the committee's stated basis for its guilty findings were sufficient to satisfy due process. Torres v. Walker, 364 Ill. App. 3d 666, 302 Ill. Dec. 156, 848 N.E.2d 156, 2006 Ill. App. LEXIS 400 (1 Dist. 2006).

Trial court erred in dismissing, pursuant to 735 ILCS 5/2-615, the inmate's action in mandamus to compel the Director of the Illinois Department of Corrections (DOC) to provide the inmate with a new disciplinary hearing because the inmate had sufficiently alleged a cause of action in mandamus where the inmate's complaint alleged facts showing a violation of DOC regulations and a denial of due process if proved true. Gilchrist v. Snyder, 351 Ill. App. 3d 639, 286 Ill. Dec. 497, 814 N.E.2d 147, 2004 Ill. App. LEXIS 876 (4 Dist. 2004).

Prison officials' failure to interview an inmate against whom disciplinary action had been taken was not a due process violation under Ill. Const. (1970), Art. I, § 2, because the need for the interview was eliminated by the issuance of a written report. Durbin v. Gilmore, 307 Ill. App. 3d 337, 240 Ill. Dec. 811, 718 N.E.2d 292, 1999 Ill. App. LEXIS 663 (1 Dist. 1999).

Department violated its own disciplinary proceedings and consequently denied plaintiff's procedural due process rights as guaranteed by the federal and state constitutions. McElroy v. Cook County, 281 Ill. App. 3d 1038, 217 Ill. Dec. 544, 667 N.E.2d 633 (1 Dist. 1996), appeal denied, 168 Ill. 2d 596, 219 Ill. Dec. 566, 671 N.E.2d 733 (1996).

- Employment Dispute

Employer's due process rights and rights under Ill. Const. Art. I, § 12 were not violated by a finding that an award for partial disability could not have been reopened 10 years later because there was no right to a specific remedy, and a hearing was permitted when the award was initially entered. Cassens Transp. Co. v. Indus. Comm'n (Ade), 218 Ill. 2d 519, 300 Ill. Dec. 416, 844 N.E.2d 414, 2006 Ill. LEXIS 317 (2006).

In an action to challenge college board's decision to terminate faculty member's employment contract, denial of the faculty member's petition for issuance of a writ of common law certiorari to the college's board did not violate the faculty member's due process rights because she could also have challenged the termination by a breach of contract action; thus, denying the petition for writ of certiorari did not leave her without a means of exercising her rights. Barden v. Junior College Dist., 132 Ill. App. 2d 1038, 271 N.E.2d 680, 1971 Ill. App. LEXIS 1621 (1 Dist. 1971).

State court interpretation of the Civil Service Act, 65 ILCS 5/10-1-1 et seq., was binding on the United States Supreme Court such that a discharged police officer's petition for review of the sustaining of a municipality's demurrer to the officer's action seeking reinstatement did not present a federal question where the State court had found that he was not in the classified service, was subject to removal, and his removal was not a violation of his due process rights. Preston v. Chicago, 226 U.S. 447, 33 S. Ct. 177, 57 L. Ed. 293, 1913 U.S. LEXIS 2247 (1913).

- Enforcement of Laws

Court concluded that the ordinance subjected every applicant's rights to the unlimited discretion of an officer, without any rules or provisions of law to govern or control the latter's actions; thus, the ordinance was unconstitutional under former Ill. Const. of 1870, Art. II, § 2 (now Ill. Const.

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(1970), Art. I, § 2). R. G. Lydy, Inc. v. Chicago, 356 Ill. 230, 190 N.E. 273, 1934 Ill. LEXIS 818 (1934).

-- Power of Administrative Officers

If a law leaves to a ministerial officer the definition of the thing to which it shall apply, such definition not being commonly known, it is invalid as an unwarranted and void delegation of legislative power to an administrative officer. People ex rel. Duffy v. Hurley, 402 Ill. 562, 85 N.E.2d 26, 1949 Ill. LEXIS 269 (1949).

Any law which vests in the discretion of administrative officers the power to determine whether the law shall or shall not be enforced with reference to individuals in the same situation, without any rules or limitations for the exercise of such discretion, is violative of due process. Board of Admin. v. Miles, 115 N.E. 841 (1917).

- Evidence

Trial court erred in effectively ruling that 725 ILCS 5/104-25(a) was unconstitutional regarding the evidence that could be admitted at a discharge hearing in a case where defendant was charged with four drug and alcohol-related offenses, he was found unfit to stand trial, it was found that he would not likely be fit to stand trial within one year, and the State moved for a discharge hearing to determine the sufficiency of the evidence against him; a discharge proceeding was a civil proceeding, and, thus, defendant's confrontation clause rights were not implicated and he had less due process protection against the kind of evidence that could be admitted than he would have at a criminal trial. People v. Waid, 221 Ill. 2d 464, 303 Ill. Dec. 785, 851 N.E.2d 1210, 2006 Ill. LEXIS 1080 (2006).

Dismissal of a driving under the influence charge was too harsh a sanction for the State's admitted discovery violation in misplacing a videotape of defendant's field sobriety tests; defendant's due process rights were not violated because, although the videotape was apparently helpful to defendant's case, it was not essential to the case as the charge against defendant was not premised on the existence of the videotape. People v. Camp, 352 Ill. App. 3d 257, 287 Ill. Dec. 336, 815 N.E.2d 980, 2004 Ill. App. LEXIS 1094 (2 Dist. 2004).

Where defendant was charged with unlawful transportation of anhydrous ammonia in violation of 720 ILCS 5/21-1.5(b-5) after anhydrous ammonia was found in a thermos in defendant's vehicle, defendant was not entitled to dismissal pursuant to 725 ILCS 5/114-1 as a result of police disposal of the the substance prior to testing of it; the disposal of the substance prior to testing did not violate due process under Ill. Const., Art. I, § 2 despite the fact that the evidence was essential to and determinative of the outcome of the case as the evidence indicated that the substance, which was dangerous to humans, had to be stored at minus 33 degrees Celsius and that there was no evidence that such a storage facility existed or that the thermos could have been safely transported there. People v. Gallaher, 348 Ill. App. 3d 1023, 285 Ill. Dec. 1, 811 N.E.2d 242, 2004 Ill. App. LEXIS 656 (4 Dist. 2004), appeal denied, 211 Ill. 2d 592, Ill. Dec. , 823 N.E.2d 971 (2004).

Destruction of a bottle of vodka found in defendant's car during an inventory search incident to defendant's arrest for driving under the influence did not deny defendant's due process rights; the bottle was destroyed pursuant to a valid police policy and there was no showing that preservation of the evidence would have been "potentially useful" by defendant in the defense of the charge against him. People v. Cantlin, 348 Ill. App. 3d 998, 285 Ill. Dec. 29, 811 N.E.2d 270, 2004 Ill. App. LEXIS 655 (2 Dist. 2004).

Appellate court's ruling that defendants' first-degree murder conviction for the death of her newborn child had to be reversed because the conviction was not supported by sufficient evidence was affirmed; even assuming that the child was born alive, insufficient evidence existed to show that the child died as a result of defendant's criminal agency and defendant could not be convicted on a suspicion that she was probably guilty of killing the child, as procedural due

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process required that she be convicted on sufficient evidence showing beyond a reasonable doubt that she committed the charged crime, which the State did not show in defendant's case. People v. Ehlert, 211 Ill. 2d 192, 285 Ill. Dec. 133, 811 N.E.2d 620, 2004 Ill. LEXIS 681 (2004).

Where the Department of Public Aid, pursuant to 305 ILCS 5/10-25.5(a), placed a child support lien on the account that was jointly owned by the debtor, who owed the support, and the debtor's father, the department violated the father's due process rights under Ill. Const., Art. I, § 2 by limiting the evidence that the father could present in support of the father's argument that the assets in the account were the father's to documentary evidence. Highsmith v. Dep't of Pub. Aid, 345 Ill. App. 3d 774, 281 Ill. Dec. 248, 803 N.E.2d 652, 2004 Ill. App. LEXIS 29 (2 Dist. 2004).

Trial court properly found that the witness's unsubstantiated testimony was not credible; therefore, the trial court's determination, following the evidentiary hearing, that defendant failed to establish a violation of his constitutional rights, Ill. Const., Art. I, § 2, with respect to the witness's testimony was not manifestly erroneous. People v. Cabrera, 326 Ill. App. 3d 555, 261 Ill. Dec. 917, 764 N.E.2d 532, 2001 Ill. App. LEXIS 925 (1 Dist. 2001).

A defendant's due process rights are violated if the State improperly admonishes defense witnesses about the potential ramifications of testifying, causing them not to testify; threatening admonitions are improper and result in preventing the witness from making a free and voluntary choice of testifying.. People v. Cabrera, 326 Ill. App. 3d 555, 261 Ill. Dec. 917, 764 N.E.2d 532, 2001 Ill. App. LEXIS 925 (1 Dist. 2001).

Under Ill. Const. (1970), Art. I, § 2, due process of law requires that findings of an administrative agency must be based on evidence presented in the case, so that an opportunity is given to all parties to cross-examine the witnesses and to offer evidence in rebuttal. Garces v. Department of Registration & Education, 118 Ill. App. 2d 206, 254 N.E.2d 622, 1969 Ill. App. LEXIS 1670 (1 Dist. 1969).

Where a note was transferred from an uncle to his nephew less than two years prior to the uncle's death, a statutory presumption arose that the transfer was in contemplation of death and an estate tax against the nephew under 35 ILCS 405/3 (formerly Ill. Rev. Stat. ch. 120, para. 1) was properly assessed and was not a violation of due process protections under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) because the presumption was only prima facie, making it a rule of evidence. People v. Polhemus, 367 Ill. 185, 10 N.E.2d 966, 1937 Ill. LEXIS 478 (1937).

Where a landowner was allowed to present evidence to a jury in support of his claim that his assessment was too high and therefore not correct, the landowner had been given the protections guaranteed to him by Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Meredosia Lake Drainage & Levee Dist. v. Evemeyer, 244 Ill. 115, 91 N.E. 95, 1910 Ill. LEXIS 1915 (1910).

- Expert Witness

In recovery proceedings under 725 ILCS 205/9(b) of the Sexually Dangerous Persons Act, respondent was not entitled to appointment of an independent psychiatric expert unless he could show that the State's experts were biased or prejudiced; due process was not violated in denying the request for an independent psychiatric expert as respondent could cross-examine the State's witnesses under 725 ILCS 205/5 and present evidence in support of his application. People v. Craig, 403 Ill. App. 3d 762, 343 Ill. Dec. 333, 934 N.E.2d 657, 2010 Ill. App. LEXIS 874 (5 Dist. 2010).

Defendant's due process rights were not violated when the trial court failed to allow an expert of defendant's own choosing to examine the victim to determine whether the victim suffered from post-traumatic stress syndrome because defendant failed to support defendant's assertion that defendant requested an expert of defendant's own choosing where the transcript of the May 6,

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1999, hearing showed that, when the trial court decided to appoint a county-employed psychiatrist to evaluate the victim, defense counsel expressed agreement. People v. Long Nhu Le, 346 Ill. App. 3d 41, 281 Ill. Dec. 148, 803 N.E.2d 552, 2004 Ill. App. LEXIS 5 (1 Dist. 2004).

- Failure to Disclose

State's failure to inform defendant of the identity of two children (who he claimed were occurrence witnesses) as requested in his discovery motion did not defendant of his right to a fair trial on a charge that he committed armed robbery, in violation of Ill. Rev. Stat. ch. 38, para. 18-2 (now 720 ILCS 5/18-2), because there was no allegation that the State failed to disclose evidence material to the case on the issues of criminal culpability or punishment and because Rule 412, Supreme Court Rules did not require the names of occurrence witnesses be made known to a defendant. People v. Longstreet, 23 Ill. App. 3d 874, 320 N.E.2d 529, 1974 Ill. App. LEXIS 1934 (1 Dist. 1974).

- Fair Hearing

Where defendant filed a motion in limine to present an affirmative defense and the motion was denied, the trial court did not deny defendant the right to a jury trial under Ill. Const., Art. I, § 13 or the right to due process under Ill. Const., Art. I, § 2; although the trial court's ruling denying the motion may have had a bearing on defendant's decision to seek a bench trial, the ruling did not directly deprive defendant of the right to a jury trial, and due process was not denied since there was no evidence to support the instruction. People v. Kratovil, 351 Ill. App. 3d 1023, 286 Ill. Dec. 868, 815 N.E.2d 78, 2004 Ill. App. LEXIS 1009 (2 Dist. 2004).

Fair trial before a fair tribunal is a basic requirement of due process, a requirement that applies to both courts and administrative agencies which perform adjudicatory functions. Arvia v. Madigan, 209 Ill. 2d 520, 283 Ill. Dec. 895, 809 N.E.2d 88, 2004 Ill. LEXIS 671 (2004).

There can be a special circumstance where a criminal defendant is deprived of a fair trial even when the evidence of his guilt is overwhelming, i.e., where his substantial constitutional right to a fair, orderly, and impartial trial conducted according to law has been affected to such a degree that his trial was not fundamentally fair; in this special circumstance, the error is of such gravity that it threatens the very integrity of the judicial process and the court must act to correct the error so that the fairness and reputation of the process may be preserved and protected. People v. Libberton, 346 Ill. App. 3d 912, 282 Ill. Dec. 705, 807 N.E.2d 1, 2004 Ill. App. LEXIS 361 (2 Dist. 2004).

To determine whether defendant's right to a fair trial has been compromised, reviewing courts employ the same test that reviewing courts use whenever they apply the second prong of the plain error test; courts ask whether a substantial right has been affected to such a degree that we cannot confidently state that defendant's trial was fundamentally fair. People v. Libberton, 346 Ill. App. 3d 912, 282 Ill. Dec. 705, 807 N.E.2d 1, 2004 Ill. App. LEXIS 361 (2 Dist. 2004).

When a defendant's right to a fair trial has been denied, an appellate court must take corrective action so that the court may preserve the integrity of the judicial process. People v. Libberton, 346 Ill. App. 3d 912, 282 Ill. Dec. 705, 807 N.E.2d 1, 2004 Ill. App. LEXIS 361 (2 Dist. 2004).

Court concluded that plaintiff was not denied a hearing and the judgment of the Appellate Court did not raise the constitutional question of the denial to plaintiff of the right to a hearing for the purposes of Ill. Const. of 1870, Art. I, § 2. Cummings-Landau Laundry Machinery Co. v. Koplin, 386 Ill. 368, 54 N.E.2d 462, 1944 Ill. LEXIS 547 (1944).

-- In General

Opportunity to cross-examine witnesses and to inspect the evidence offered against a party have both been determined to be part of guaranteeing the exercise of due process before an

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administrative tribunal. Balmoral Racing Club, Inc. v. Illinois Racing Bd., 151 Ill. 2d 367, 177 Ill. Dec. 419, 603 N.E.2d 489, 1992 Ill. LEXIS 127 (1992).

A fair trial is a fundamental right in all criminal prosecutions; a violation of this right is a denial of the procedural due process guaranteed litigants under both the United States and Illinois Constitutions. People v. Hattery, 183 Ill. App. 3d 785, 132 Ill. Dec. 58, 539 N.E.2d 368 (1 Dist.), appeal denied, 127 Ill. 2d 627, 136 Ill. Dec. 596, 545 N.E.2d 120 (1989).

A fundamental requisite of procedural due process is that every man shall have the protection of his day in court and the benefit of an orderly proceeding according to the general law or established rules; and that the hearing shall not be arbitrary, but rather shall afford to him an opportunity to be heard in his defense and shall assure to him an inquiry on the issues of the case, wherein judgment is rendered only after trial. There must be an intrinsic fairness of procedure by which any judgment, order or decree is rendered; this is essential to the untainted administration of justice. Pettigrew v. National Accounts Sys., 67 Ill. App. 2d 344, 213 N.E.2d 778 (2 Dist. 1966).

Due process of law presupposes a fair and impartial hearing before a fair and impartial tribunal. Smith v. Department of Registration & Educ., 412 Ill. 332, 106 N.E.2d 722 (1952).

Due process contemplates, as an essential, not only notice but an opportunity to be heard and give evidence; it is of no avail if one be summoned to a court and the issues determined against him without the hearing and determination of questions of fact. Burket v. Reliance Bank & Trust Co., 367 Ill. 196, 11 N.E.2d 6 (1937).

It was a denial of due process to refuse to allow a landowner to amend a complaint in a petition for a writ of mandamus to compel the village building commissioner to issue a permit to construct an apartment building because the application did not comply with the village zoning ordinance requirements because no specifications for the building were filed with it and there was no proof that, if the specifications were filed, the landowner would not be entitled to the writ. Mills v. White, 304 Ill. 256, 136 N.E. 741, 1922 Ill. LEXIS 1041 (1922).

-- Absence of Defendant from Courtroom

Where the record indicated the defendant's departure from the courtroom was not only without objection, but also with complete understanding of what was happening and that she was being asked to leave while an offer of proof was to be presented, she validly waived her right to be present. People v. Martine, 106 Ill. 2d 429, 87 Ill. Dec. 905, 478 N.E.2d 262 (1985).

The defendant's right to be present during her trial is violated only when the exclusion occurs at a time when the trial court is conducting a hearing involving the defendant's substantial rights. People v. Martine, 106 Ill. 2d 429, 87 Ill. Dec. 905, 478 N.E.2d 262 (1985).

The exclusion of the defendant from the courtroom at the time the court was considering and ruling upon the objection to the introduction of her testimony on the ground that it was beyond the scope of her cross-examination did not prejudice her. Nor did it violate her constitutional rights, for she was absent only during argument on a question of law, and this did not violate her right to be present at every step of the proceedings. People v. Martine, 106 Ill. 2d 429, 87 Ill. Dec. 905, 478 N.E.2d 262 (1985).

Fact that defendant was not present in courtroom when Illinois Supreme Court affirmed the lower court's denial of defendant's writ of error, which challenged his conviction on the basis that the record incorrectly indicated that he was present when the judgment of conviction was entered against him, did not violate his rights pursuant to Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. Art. I, § 2) because if the defendant had been present, the law allowed him to do nothing that could have benefitted him. Fielden v. Illinois, 143 U.S. 452, 12 S. Ct. 528, 36 L. Ed. 224, 1892 U.S. LEXIS 2035 (1892).

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-- Allowance of Witness

Trial court's denial of defendant's motion for a continuance to permit a witness's testimony did not require reversal of defendant's conviction because the record was devoid of any showing that the testimony would have been material and non-cumulative or that its exclusion would have been prejudicial; although the desire to adhere to a predetermined schedule was not a proper basis for the denial of the brief continuance defendant requested, defendant did not make an offer of proof because he failed to specify the nature of the witness's proposed testimony in a motion for new trial or otherwise. People v. Moore, Ill. App. 3d , Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 614 (1 Dist. June 30, 2009).

-- Criminal Evidence

Trial court's imposed discovery sanction of denying defense counsel's motion to independently retest the DNA evidence recovered on timeliness grounds denied defendant his constitutional rights to a fair trial, confront witnesses, and present a defense, especially since the State did not object to the request, the State was not prejudiced by counsel's delay in bringing the motion, and the retest could resolve a possible discrepancy encountered in the original test. People v. Sutton, 349 Ill. App. 3d 608, 285 Ill. Dec. 723, 812 N.E.2d 543, 2004 Ill. App. LEXIS 742 (1 Dist. 2004).

In a prosecution for murder (Ill. Rev. Stat. ch. 38, para. 9-1, now 720 ILCS 5/9-1) and armed violence (Ill. Rev. Stat. ch. 38, para. 33A-2, now 720 ILCS 5/33A-2), because defendant failed to show prejudice or surprise resulting from the alleged untimely provision of rebuttal witness information, and defense counsel did not request a continuance to interview the witness, but conducted an in-depth cross-examination of the witness, the trial court's refusal to exclude the witness's testimony was not a manifest abuse of discretion and no prejudice to defendant's right to a fair trial was shown. People v. Galindo, 95 Ill. App. 3d 927, 51 Ill. Dec. 359, 420 N.E.2d 773, 1981 Ill. App. LEXIS 2543 (1 Dist. 1981).

Where the pretrial photographs and/or line-up procedures are shown to have been unduly suggestive and so wanting in fairness as to deprive defendant of due process, the evidence of identification by any witnesses whose judgments were subject to taint by such improper procedure is rendered inadmissible. People v. Seets, 37 Ill. App. 3d 369, 346 N.E.2d 61 (4 Dist. 1976).

-- Criminal Proceedings

Defendant was not deprived of due process and fundamental fairness where the trial court initially ordered defendant's legs shackled under a skirted table during courtroom appearances and later, after defendant created a disturbance in the courtroom, ordered defendant's left arm shackled under the table as well. The trial court gave the defense an opportunity to offer reasons why defendant should not be shackled, and the defense in effect conceded that the court's actions were appropriate; the use of physical restraints, which were not visible to the jury, did not impair defendant's ability to communicate with counsel and assist in the defense.

Since the State did not realize that a witness testified inaccurately to having given a statement to prosecutors soon after having allegedly witnessed a hit-and-run, it was under no obligation to correct that testimony at the time it was given, and the failure to correct that false testimony at the time was not a denial of due process. People v. Bowman, 357 Ill. App. 3d 290, 293 Ill. Dec. 181, 827 N.E.2d 1062, 2005 Ill. App. LEXIS 378 (1 Dist. 2005), appeal denied, 216 Ill. 2d 697, 298 Ill. Dec. 380, 839 N.E.2d 1027, 2005 Ill. LEXIS 1507 (2005).

Where the trial court, in sentencing the inmate, considered the inmate's criminal conduct in which the inmate engaged after the conduct that led to the conviction for which the inmate was being sentenced, the trial court did not violate the inmate's due process rights under Ill. Const. Art. I, § 2 pursuant to Apprendi, and the inmate's postconviction petition was therefore properly summarily denied under 725 ILCS 5/122-2.1(a)(2). Apprendi was inapplicable to the instant case, as the

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inmate's 20-year sentence was well within the maximum of the range provided under 730 ILCS 5/5-8-1(a)(3) for armed robbery. People v. English, 353 Ill. App. 3d 337, 288 Ill. Dec. 922, 818 N.E.2d 857, 2004 Ill. App. LEXIS 1285 (3 Dist. 2004), appeal denied, 213 Ill. 2d 566, 293 Ill. Dec. 865, 829 N.E.2d 790 (2005), cert. denied, 544 U.S. 1064, 125 S. Ct. 2519, 161 L. Ed. 2d 1116 (2005).

Prosecution's failure to correct co-defendant's testimony that the co-defendant had received no benefit from testifying against defendant, when in fact the co-defendant had been promised concurrent prison terms, deprived defendant of due process and required reversal. People v. Junior, 349 Ill. App. 3d 286, 285 Ill. Dec. 388, 811 N.E.2d 1267, 2004 Ill. App. LEXIS 790 (4 Dist. 2004).

Trial court's imposed discovery sanction of denying defense counsel's motion to independently retest the DNA evidence recovered on timeliness grounds denied defendant his constitutional rights to a fair trial, confront witnesses, and present a defense, especially since the State did not object to the request, the State was not prejudiced by counsel's delay in bringing the motion, and the retest could resolve a possible discrepancy encountered in the original test. People v. Sutton, 349 Ill. App. 3d 608, 285 Ill. Dec. 723, 812 N.E.2d 543, 2004 Ill. App. LEXIS 742 (1 Dist. 2004).

Where the defendant had knowingly and intelligently waived his Miranda rights and agreed to make a recorded statement, defendant could not complain of its contents or its omissions on due process grounds. People v. Everette, 187 Ill. App. 3d 1063, 135 Ill. Dec. 472, 543 N.E.2d 1040 (1 Dist. 1989), appeal granted, 139 Ill. Dec. 517, 548 N.E.2d 1073, rev'd on other grounds, 141 Ill. 2d 147, 152 Ill. Dec. 377, 565 N.E.2d 1295 (1990).

A defendant is guaranteed the right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure. People v. Jones, 185 Ill. App. 3d 208, 133 Ill. Dec. 324, 541 N.E.2d 161 (2 Dist. 1989).

Defendant's right of due process was not violated by her absence from the hearing on remand as there was no indication defendant could have done or gained anything by being present. People v. Jones, 185 Ill. App. 3d 208, 133 Ill. Dec. 324, 541 N.E.2d 161 (2 Dist. 1989).

A general allegation of lack of due process in a criminal prosecution without specifying in what particular mode it was lacking, gives Supreme Court no grounds to uphold such a contention. People v. Witt, 394 Ill. 405, 68 N.E.2d 731 (1946).

-- Denied

Trial court's imposed discovery sanction of denying defense counsel's motion to independently retest the DNA evidence recovered on timeliness grounds denied defendant his constitutional rights to a fair trial, confront witnesses, and present a defense, especially since the State did not object to the request, the State was not prejudiced by counsel's delay in bringing the motion, and the retest could resolve a possible discrepancy encountered in the original test. People v. Sutton, 349 Ill. App. 3d 608, 285 Ill. Dec. 723, 812 N.E.2d 543, 2004 Ill. App. LEXIS 742 (1 Dist. 2004).

The trial court was reversed on general due process grounds to allow all the parties a full and fair opportunity to litigate an issue because the trial court barred the appellants from participation in the trial process. Central Ill. Pub. Serv. Co. v. Allianz Underwriters Ins. Co., 158 Ill. 2d 218, 198 Ill. Dec. 834, 633 N.E.2d 675 (1994).

Although the Illinois Racing Board had discretion, pursuant to former Ill. Rev. Stat. ch. 8, par. 37-21(c) (now 230 ILCS 5/21), in awarding racing dates, it could not deprive a racing club of racing dates without providing a fair and impartial hearing affording due process to the racing club. Balmoral Racing Club, Inc. v. Illinois Racing Bd., 151 Ill. 2d 367, 177 Ill. Dec. 419, 603 N.E.2d 489, 1992 Ill. LEXIS 127 (1992).

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When a court concluded a preliminary examination of the parties, suddenly broke off the questioning and announced his decision, and counsel for plaintiff immediately made formal request to cross-examine defendant and to interrogate his own client but was denied the opportunity to do either, this procedure was unconscionable and denied to plaintiff her day in court. Jamal v. Jamal, 98 Ill. App. 2d 180, 240 N.E.2d 246 (1 Dist. 1968).

The appellants were not afforded the due process guaranteed them by the federal and state constitutions where the appellant, called into court on a motion for temporary injunction, found himself directed by the court to proceed on the merits of his suit for a declaratory judgment, filed only 11 days before; and to proceed in defense of the suit against him for damages in the sum of $50,000, and for a permanent injunction which had been on file only seven days, and where, at that time, no answer had been filed to his complaint - the answer being filed the following morning; and no pleading had been filed by the appellant to the suit against him - the motion to dismiss likewise being filed the next morning. Pettigrew v. National Accounts Sys., 67 Ill. App. 2d 344, 213 N.E.2d 778 (2 Dist. 1966).

Provisions of §§ 16 and 37 of ch. 42, Hurd's Revised Statutes of 1905 (Ill.), insofar as they conferred upon the court the power to direct one of the commissioners of a drainage district to act with other commissioners in assessing the benefits conferred on landowners arising from the construction of a drainage ditch when the lands of one of the commissioners are or may be subject to assessment are in violation of Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art I, § 2). Commissioners of Union Drainage Dist. v. Smith, 233 Ill. 417, 84 N.E. 376, 1908 Ill. LEXIS 2726 (1908).

In an action to assess the benefits conferred on landowners arising from the construction of a drainage ditch, the property owner is not entitled to a trial by jury within the meaning of that phrase as it is used in the Illinois Constitution; however, it was still clear that in providing for a commission to determine the amount of money to be collected from each property owner, the law of the land forbids the enactment of a statute that permits the selection of a commissioner who personally has a property interest in the result of the deliberations of the body of which he is a member, and a statute that compels the litigant to submit his controversy to a tribunal of which his adversary is a member makes his antagonist his judge and does not afford due process of law. Commissioners of Union Drainage Dist. v. Smith, 233 Ill. 417, 84 N.E. 376, 1908 Ill. LEXIS 2726 (1908).

-- Employee Discharge

No formal hearing is required by the due process clause of the U.S. Constitution or by this section before an employee may be discharged. Blackmore v. Jasper County Community Unit Sch., 21 Ill. App. 3d 122, 314 N.E.2d 677 (5 Dist. 1974).

-- Exclusion of Defendant

The defendant's due process right to be present during her trial is violated only when the exclusion occurs at a time when the trial court is conducting a hearing involving defendant's substantial rights. People v. Jones, 185 Ill. App. 3d 208, 133 Ill. Dec. 324, 541 N.E.2d 161 (2 Dist. 1989).

-- False Representation

Inmate was not denied due process when the State failed to correct allegedly misleading testimony because there was nothing false or misleading about the testimony, it was just the State's version. People v. Beaman, 368 Ill. App. 3d 759, 306 Ill. Dec. 633, 858 N.E.2d 78, 2006 Ill. App. LEXIS 1009 (1 Dist. 2006).

Where a law-enforcement officer permitted or caused the prosecution to falsely represent the arrest record of the state's key witness to the court, such a practice was so lacking in fundamental fairness as to deprive an accused of due process of law that the false representation

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did not have to relate to a material issue; it was sufficient if it went to the credibility of a witness. People v. Galloway, 59 Ill. 2d 158, 319 N.E.2d 498 (1974).

-- Findings

Illinois Commerce Commission violated due process by denying a railroad's petition to discontinue service to an area, based on the argument that the necessary track replacement was not justified by the money made along the route, without reaching findings on the controverted facts. Northern Illinois Light & Traction Co. v. Illinois Commerce Com., 302 Ill. 11, 134 N.E. 142, 1922 Ill. LEXIS 1184 (1922).

-- Former Medical Practice Acts

The Medical Practice Acts of 1899 and 1917 (see now 225 ILCS 60/1), were not unconstitutional for lack of due process where the power given to the state board of health was not arbitrary or beyond the investigation of the courts and it could not from mere caprice, without cause, revoke a certificate fairly issued upon sufficient evidence of the applicant's qualifications; the statutes required a hearing before a certificate could be refused or revoked, and necessarily implied notice of such hearing and an opportunity to defend. Ramsay v. Shelton, 329 Ill. 432, 160 N.E. 769 (1928).

-- Incompetent Person

An incompetent person cannot be tried for a crime since it would be a denial of due process of law to place such a person on trial. People v. Johnson, 15 Ill. App. 3d 680, 304 N.E.2d 688 (1 Dist. 1973).

-- Initiating Criminal Proceedings

A state may, consistent with due process, dispense with the preliminary hearing procedure and authorize the prosecutor to initiate the criminal proceedings directly. People v. Franklin, 80 Ill. App. 3d 128, 35 Ill. Dec. 121, 398 N.E.2d 1071 (1 Dist. 1979).

-- Judicial Conduct

Fact that postconviction hearing judge questioned witnesses during an inmate's 725 ILCS 5/122-6 hearing and interjected comments during postconviction counsel's closing argument, did not deprive the inmate of a fair hearing; the judge's questions were made in a fair and impartial manner, he did not elicit inadmissible hearsay or intimate his opinion on the credibility of the witnesses, he did not take over management of the hearing from postconviction counsel or the prosecutor, and his interjections during postconviction counsel's closing argument did not prevent counsel from making a coherent argument on behalf of the inmate. People v. Taylor, 357 Ill. App. 3d 642, 293 Ill. Dec. 965, 829 N.E.2d 890, 2005 Ill. App. LEXIS 464 (1 Dist. 2005), appeal denied, 216 Ill. 2d 727, 298 Ill. Dec. 388, 839 N.E.2d 1035 (2005).

The right to be heard before a different judge in a post-conviction proceeding is not absolute, but in certain instances a trial judge should recuse himself when it appears that he may be biased or may be a potential witness. People v. Tobin, 24 Ill. App. 3d 1070, 322 N.E.2d 618 (5 Dist. 1974).

-- Jury Selection

Trial judge failed to comply fully with Ill. Sup. Ct. R. 431(b) by failing to ascertain whether all of the potential jurors understood and accepted all the Zehr principles because he trial judge failed to question and allow the jurors to respond to whether they understood and accepted that the State had the burden to prove defendant guilty beyond a reasonable doubt and that the defendant was presumed innocent, and the State could not rely on the prosecutor's or defense counsel's questions to satisfy the requirements of Rule 431(b); rule 431(b) places the duty on the trial judge to pose specific questions to insure that the prospective jurors understood and accepted the Zehr

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principles, and a trial judge's failure to comply with Rule 431(b) denies a defendant a substantial right and thus a fair trial and obviates the need to inquire into the harmfulness or the measure of prejudice to the defendant. People v. Graham, 393 Ill. App. 3d 268, 332 Ill. Dec. 504, 913 N.E.2d 99, 2009 Ill. App. LEXIS 689 (1 Dist. 2009).

Trial court erred in finding that defendant did not establish a prima facie case of racial discrimination in a juror's exclusion. The juror, like defendant, was Hispanic and shared common characteristics with other, accepted venire members; the juror and the others who were accepted all had relatives or friends with drug problems, yet the others were not excluded on that basis. People v. Alvarado, 365 Ill. App. 3d 216, 302 Ill. Dec. 269, 848 N.E.2d 269, 2006 Ill. App. LEXIS 379 (1 Dist. 2006).

-- Jury-Demand Fee

The principles and reasoning which led to the conclusion that a reasonable jury-demand fee does not violate the Illinois Constitution also compel the conclusion that this fee does not violate this section. Fried v. Danaher, 46 Ill. 2d 475, 263 N.E.2d 820 (1970).

-- Jury Instructions

Instruction allowing jurors to infer that a defendant obtained possession of the property by armed robbery did not deny defendants of their rights to a fair trial and due process under the Illinois Constitution as it did not invade the province of the jury as the collective body charged with the responsibility of determining the inferences to be drawn from the evidence. People v. Baker, 72 Ill. App. 3d 682, 28 Ill. Dec. 892, 391 N.E.2d 91 (1 Dist. 1979).

-- Jury Selection

A trial of a defendant under circumstances where he must either select his jury from a panel which has in various ways been exposed to prejudice, bias, and partiality (through the prior trial and conviction of another defendant jointly accused of the same crime and in which this defendant was called as a witness and forced to claim his constitutional privileges) or exhaust all of his challenges and accept thereafter such bystanders as were summoned by the sheriff to fill the panel, could not be consonant with due process. People v. Kirkpatrick, 413 Ill. 595, 110 N.E.2d 519 (1953).

-- Lifting of Sanctions

Lifting of sanctions during a trial without granting defendant's requested continuance to enable him to secure witnesses for his defense produced the same effect as if the sanctions had not been removed, and thus, deprived defendant of a fair trial. People v. Dalzotto, 55 Ill. App. 3d 995, 13 Ill. Dec. 767, 371 N.E.2d 859 (5 Dist. 1977).

-- Minimum Standards

Due process at a minimum requires that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case. Meylor v. Boys, 101 Ill. App. 3d 148, 56 Ill. Dec. 618, 427 N.E.2d 1023 (2 Dist. 1981).

-- Motions In Limine

Where a motion in limine filed by the state was in substance a motion to strike an entire defense, granting such a motion and thereby preventing the defendant from presenting evidence on an available defense not only distorted the traditional application of motions in limine, but likewise raised serious constitutional questions relating to an accused's right to present a defense. People v. Brumfield, 72 Ill. App. 3d 107, 28 Ill. Dec. 422, 390 N.E.2d 589 (5 Dist. 1979).

-- Municipal Traffic Violation

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Notice provision in ordinance governing parking and vehicle condition violations that if an ordinance violator contested the ordinance violator's ticket and was found liable, the ordinance violator could expect a higher fine than the face amount violated the ordinance violator's state and federal constitutional due process rights since it punished the ordinance violator's exercise of a right to a hearing to contest the merits of the violation. Waicekauskas v. Burke, 336 Ill. App. 3d 436, 271 Ill. Dec. 62, 784 N.E.2d 280, 2002 Ill. App. LEXIS 1216 (1 Dist. 2002).

Village, acting through its representatives, had ignored the rights of defendant to due process, pursuant to this section and U.S. Const., Amend. XIV, in failing to advise him of a continuance obtained by village in traffic violation action. Village of N. Pekin v. Riviere, 73 Ill. App. 3d 1032, 29 Ill. Dec. 882, 392 N.E.2d 439 (3 Dist. 1979).

-- Omission of Written Final Argument

The omission of the trial court to consider the respondent's written final argument in a support proceeding did not rise to the level of a violation of respondent's constitutional right to due process where respondent was given notice and an opportunity to be heard and defend in an orderly proceeding, the proceedings were fundamentally fair to respondent and respondent did not see to it that the written final argument got to the judge. In re Korte, 193 Ill. App. 3d 243, 140 Ill. Dec. 255, 549 N.E.2d 906 (4 Dist. 1990).

-- Perjury

Where a principal witness for the state falsely testified that he had received no promise of consideration in return for his testimony, failure of the prosecutor to correct the testimony of the witness, which he knew to be false, denied the defendant due process of law. People v. Lueck, 24 Ill. 2d 554, 182 N.E.2d 733 (1962).

-- Post-Conviction Proceedings

Although proceedings under the Illinois Post-Conviction Act are not criminal prosecutions, Illinois case law supports the application of the fair trial guaranty of an impartial judge to an evidentiary hearing under 725 ILCS 5/122-6. People v. Taylor, 357 Ill. App. 3d 642, 293 Ill. Dec. 965, 829 N.E.2d 890, 2005 Ill. App. LEXIS 464 (1 Dist. 2005), appeal denied, 216 Ill. 2d 727, 298 Ill. Dec. 388, 839 N.E.2d 1035 (2005).

-- Prior Felony Conviction in Indictment

Inclusion in indictment of an allegation of a prior felony conviction did not deprive defendant of a fair trial and did not violate due process guarantees of the state and federal constitutions. People v. Owens, 37 Ill. 2d 131, 225 N.E.2d 15 (1967).

-- Prison Disciplinary Hearing

Prison officials did not violate the Due Process Clause by denying an inmate the right to call witnesses during a prison disciplinary hearing or hearings before the adjustment committee because the procedures in place, which allowed for the interviewing of witnesses and testimony "if necessary" did not fall below minimum requirements; the class action brought by a prisoner was properly dismissed. Umar v. Johnson, 173 F.R.D. 494, 1997 U.S. Dist. LEXIS 8295 (N.D. Ill. 1997).

-- Private Court Investigation

The deliberations of the trial judge are limited to the record made before him in open court, except for certain matters of which the court may take judicial notice, therefore, any private investigation by a court pending a motion for a new trial constitutes a denial to the defendant of the constitutional guarantee of due process of law. People v. Cooper, 398 Ill. 468, 75 N.E.2d 885 (1947).

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-- Probation Violation

In a probation revocation hearing, defendant's right to due process were not violated by the fact that the possible sentences to be imposed upon a revocation of his probation were not explained to him before he admitted the acts on which the revocation was based because he had been advised of the possible penalties at the time he originally pled guilty; there was no requirement that he be advised of the statutory range of penalties, only that he understood the consequence of his admission. People v. Foehrer, 197 Ill. App. 3d 754, 144 Ill. Dec. 161, 555 N.E.2d 58, 1990 Ill. App. LEXIS 689 (1 Dist. 1990).

Due process in a probation revocation hearing does not require the hearing court to inquire whether defendant's admission that he committed the asserted probation violation is the result of promises made to him or of coercion. People v. Foehrer, 197 Ill. App. 3d 754, 144 Ill. Dec. 161, 555 N.E.2d 58, 1990 Ill. App. LEXIS 689 (1 Dist. 1990).

Where the defendant was informed of the facts of the probation violation, was present in open court with appointed counsel, and had sufficient opportunity to defend against and refute the alleged violation and who stipulated that he was convicted of possession of heroin, defendant was not denied due process. People v. Spencer, 7 Ill. App. 3d 1083, 288 N.E.2d 710 (1 Dist. 1972).

-- Prosecutorial Misconduct

Prosecutor's comments during opening statement and closing argument did not deny defendant a fair trial because the record did not support the conclusion that the prosecutor's comments impacted the jury's verdict; two of the comments made only collateral suggestions of defendant's guilt and did not relate to the primary evidence of his guilt, and the prosecution's reference to defendant's attack occurring in the presence of "like 20 people" was a fair comment on the evidence presented. People v. Moore, Ill. App. 3d , Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 614 (1 Dist. June 30, 2009).

It was not prosecutorial misconduct for the prosecutor to comment in closing that the police were never trying to hide the existence of a baseball bat, as it was photographed in the car at the time of the shooting, that the existence of blood on the baseball bat and the unknown identity of the person whose blood was on it were irrelevant, and that "we know whose blood (was) on the bat"; the comments were based on an inference from the testimony of an investigator that the blood dripped on the baseball bat and that defendant had no injuries consistent with having been hit with a baseball bat, which supported the State's theory and cast doubt upon defendant's self-defense theory. People v. Karim, 367 Ill. App. 3d 67, 304 Ill. Dec. 739, 853 N.E.2d 816, 2006 Ill. App. LEXIS 649 (1 Dist. 2006).

Defendant's claim of prosecutorial misconduct was rejected as in commenting on defendant's alleged failure to run away: (1) it was permissible to infer that in going to the opposite side of the car and shooting a victim, defendant's actions were a hunt, rather than the actions of a frightened man, (2) it was permissible to infer that in the context of shooting three men, defendant's self-defense claim was unbelievable, and (3) it was permissible to infer that "the guy who (said) he was acting in self-defense (ran) to the car he (had) set up, the getaway car, a block away." People v. Karim, 367 Ill. App. 3d 67, 304 Ill. Dec. 739, 853 N.E.2d 816, 2006 Ill. App. LEXIS 649 (1 Dist. 2006).

Even where a prosecutor's comment exceeded the bounds of proper argument, the verdict will not be disturbed unless the remark caused substantial prejudice to the defendant, taking into account the content and context of the comment, its relationship to the evidence, and its effect on the defendant's right to a fair and impartial trial; the prompt sustaining of an objection combined with a proper jury instruction usually is sufficient to cure any prejudice arising from an improper closing argument. People v. Johnson, 208 Ill. 2d 53, 281 Ill. Dec. 1, 803 N.E.2d 405, 2004 Ill. LEXIS 11 (2004).

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Defendants' convictions for, inter alia, murder, were improperly reversed because the prosecutor's conduct did not create a series of cumulative errors amounting to plain error under Rule 615(a), Supreme Court Rules, where (1) evidence of gang affiliation was properly admitted because its probative value substantially outweighed its prejudicial effect; (2) comments indicating that defendant failed a polygraph and that defendant had been previously convicted were properly made in response to defense counsel's argument regarding the reliability of defendant's statement to police; and, (3) additional comments by the prosecutor, which may have been improper, did not substantially prejudice defendant. People v. Johnson, 208 Ill. 2d 53, 281 Ill. Dec. 1, 803 N.E.2d 405, 2004 Ill. LEXIS 11 (2004).

Pattern of intentional prosecutorial misconduct may so seriously undermine the integrity of judicial proceedings as to support reversal under the plain error doctrine of Rule 615(a), Supreme Court Rules; thus, two defendants' convictions for, inter alia, murder, were properly reversed based on cumulative errors where the prosecutors (1) obtained admission and display of a victim officer's blood and brain splattered uniform; (2) presented emotionally charged and irrelevant testimony of the officer's father; (3) introduced other transparently inflammatory testimony, and (4) made improper remarks. People v. Johnson, 208 Ill. 2d 53, 281 Ill. Dec. 1, 803 N.E.2d 405, 2004 Ill. LEXIS 11 (2004).

In a prosecution for murder (Ill. Rev. Stat. ch. 38, para. 9-1, now 720 ILCS 5/9-1) and armed violence (Ill. Rev. Stat. ch. 38, para. 33A-2, now 720 ILCS 5/33A-2), comments by the prosecutor, during closing arguments, which argued that the defense was a fraud because it had changed its story as to whether defendant's family member had been hit with a baseball bat or a carpet kicker, and that if the family member had actually been hit with a bat he would, based on the prosecutor's experience trying cases involving crimes in which a bat was used, have been more severely injured, were not material factors in defendant's conviction and the judgment would not have been different if the prosecutor had not made the comments; therefore, the comments were not so prejudicial that they required reversal of the conviction. People v. Galindo, 95 Ill. App. 3d 927, 51 Ill. Dec. 359, 420 N.E.2d 773, 1981 Ill. App. LEXIS 2543 (1 Dist. 1981).

In a prosecution for murder (Ill. Rev. Stat. ch. 38, para. 9-1, now 720 ILCS 5/9-1) and armed violence (Ill. Rev. Stat. ch. 38, para. 33A-2, now 720 ILCS 5/33A-2), comments by the prosecutor, during closing arguments, which characterized the defense as a fraud and sham, asserted that defendant and his witnesses lied, and that one defense witness was a "bum," were not so prejudicial in nature or substance as to require review under a plain error rule or reversal because the version of the incident given by defendant and his witnesses was inconsistent and much of the defense trial testimony was contradicted by prior inconsistent statements. People v. Galindo, 95 Ill. App. 3d 927, 51 Ill. Dec. 359, 420 N.E.2d 773, 1981 Ill. App. LEXIS 2543 (1 Dist. 1981).

Two areas of prosecutorial misconduct contributed to conclusion that defendant was denied a fair trial where the prosecutor made repeated verbal attacks on defense counsel in the presence of the jury, he admonished her to act like a lawyer, he objected to the lie perpetrated by counsel, he accused her of unprofessional conduct and the prosecutor's actions in making the jury aware that the defense had access to prior statements by witness and had failed to impeach her testimony from these materials. People v. Suggs, 50 Ill. App. 3d 778, 8 Ill. Dec. 732, 365 N.E.2d 1118 (1 Dist. 1977).

-- Right to a Particular Judge

While due process requires a fair trial in a fair tribunal, before an impartial judge, a litigant does not have the right under due process to have his case heard by a particular judge; nor does he have a right to determine the manner in which his case is assigned. People v. Hattery, 183 Ill. App. 3d 785, 132 Ill. Dec. 58, 539 N.E.2d 368 (1 Dist.), appeal denied, 127 Ill. 2d 627, 136 Ill. Dec. 596, 545 N.E.2d 120 (1989).

-- Right to Cross-Examination

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The right to cross-examine a witness as to his biases, prejudices, or ulterior motives is protected by the Illinois Constitution. People v. Gonzalez, 120 Ill. App. 3d 1029, 76 Ill. Dec. 393, 458 N.E.2d 1047 (1 Dist. 1983), aff'd, 104 Ill. 2d 332, 84 Ill. Dec. 457, 472 N.E.2d 417 (1984).

The rights to cross-examine and to present evidence are so basic as to be grounded in due process and collectively constitute the litigant's day in court. Jamal v. Jamal, 98 Ill. App. 2d 180, 240 N.E.2d 246 (1 Dist. 1968).

-- Single-Stage Trial

The single-stage trial procedure (720 ILCS 5/24-1(b)) did not violate the Illinois Constitution, rather, evidence of a prior felony conviction or incarceration in a proceeding at which a determination as to guilt or innocence had not yet been made was proper and necessary to prove allegations found in an indictment. People v. Johnson, 27 Ill. App. 3d 1047, 327 N.E.2d 219 (1 Dist. 1975).

-- Verbatim Transcripts

In view of the fact that Supreme Court Rule 323, made applicable to criminal proceedings by Supreme Court Rule 612, provides for the preparation of a proposed report of proceedings by an appellant-defendant in the event that no verbatim transcript of the proceedings is available, but none of the defendants in the consolidated appeal took advantage of it, and that in none of the cases was a motion presented to the trial court seeking to set aside judgment of conviction which was based upon pleas of guilty, but instead, in each case, a notice of appeal was filed within 30 days after the entry of judgment, neither this section nor the federal Constitution required that the defendants be furnished with verbatim transcripts of the proceedings at which they acknowledged their guilt. People v. Hopping, 60 Ill. 2d 246, 326 N.E.2d 395, cert. denied and appeal dismissed, 423 U.S. 907, 96 S. Ct. 209, 46 L. Ed. 2d 136 (1975).

-- Victim Impact Evidence

Admission of victim impact evidence in a noncapital sentencing hearing does not violate a defendant's constitutional rights. People v. Cox, 197 Ill. App. 3d 1028, 145 Ill. Dec. 518, 557 N.E.2d 288 (1 Dist. 1990).

- Financing

- Forfeiture

Because 720 ILCS 5/36-1 (formerly Ill. Rev. Stat. ch. 38, para. 36-1) did not require a criminal conviction prior to a forfeiture, the statute was not unconstitutional under Ill. Const. (1970), Art. I, § 2, and a forfeiture for defendant's use of the car in an armed robbery prior to his conviction was not improper. People ex rel. Hanrahan v. One 1965 Oldsmobile, 52 Ill. 2d 37, 284 N.E.2d 646, 1972 Ill. LEXIS 308 (1972).

- Freedom of Contract

-- Cemetery Care Act

The provisions of this statute requiring the posting of a fidelity bond and those requiring the taking of minimum deposits for care funds in connection with the sale of facilities or accommodations did not abridge freedom of contract as protected by former sections 1 and 2 of article II of the 1870 Constitution (see now this section and Ill. Const. (1970), Art. I, § 1) and U.S. Const., Amend. XIV; nor did these provisions violate the due process clause. Union Cem. Ass'n v. Cooper, 414 Ill. 23, 110 N.E.2d 239 (1953).

- Fundamental Fairness

-- Requirements

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Where certain allegations set forth in a post-conviction pleading, if proved, could amount to a substantial showing that defendant's constitutional rights were violated at his trial, fundamental fairness required that defendant be entitled to an opportunity to prove such allegations because, if proved, fundamental fairness would in turn require a new trial. People v. Garrett, 26 Ill. App. 3d 786, 326 N.E.2d 143 (1 Dist. 1975).

-- Testimony of Informer

Where there was no participation in the crime by the informer, the police evidence was clear and the circumstances surrounding the raid supported the conviction for knowingly possessing narcotics, the requirements of fundamental fairness have been met and the testimony of the informer would have been of little help to the defense in view of the independent evidence by which the crime was proved. People v. Williams, 45 Ill. 2d 319, 260 N.E.2d 1 (1970).

- Fundamental Rights

-- License to Sell Alcohol

A license to sell alcoholic beverages at retail is not a right but a privilege, and as such it is not subject to the protection of due process under the Constitution. Huguley v. Marcin, 39 Ill. App. 3d 230, 349 N.E.2d 564 (1 Dist. 1976).

-- Release from Incarceration

Fundamental interests generally are those that lie at the heart of the relationship between the individual and a republican form of nationally integrated government, thus, only interests such as those in the expression of ideas, in participation in the political process, in travel among the states, and in privacy with regard to the most intimate and personal aspects of one's life are fundamental; a parolee's interest in release from incarceration, while no doubt important to him, is not among those fundamental interests. People ex rel. Tucker v. Kotsos, 68 Ill. 2d 88, 11 Ill. Dec. 295, 368 N.E.2d 903 (1977).

- Grand Jury Proceedings

-- Deliberate Deception Not Shown

Where the officer testified falsely before the grand jury that defendant exited the store with stolen merchandise, when, in fact, defendant did not exit the store before being apprehended, defendant's due process rights pursuant to Ill. Const. Art. I, § 2 were not denied when the trial court denied defendant's motion to dismiss pursuant to 720 ILCS 5/114-1; the State's conduct before the grand jury did not undermine the integrity of the judicial process, because there was no evidence that the State actor intended to mislead the grand jury, as neither the State, nor the officer, had anything to gain from the inaccurate testimony, due to the fact that defendant's exit of the store was not required to prove retail theft in violation of 720 ILCS 5/16A-3(a). People v. Hart, 338 Ill. App. 3d 983, 273 Ill. Dec. 731, 789 N.E.2d 905, 2003 Ill. App. LEXIS 582 (2 Dist. 2003).

Where defendant made no showing of any deliberate deception of the grand jury or other evidence of bad faith on the part of the prosecutor in this case, it would be mere speculation to assume that the alleged exculpatory evidence would necessarily have been admissible at trial; defendant did not satisfy his burden to establish clearly "actual and substantial prejudice" merely be demonstrating the possibility of avoiding indictment. People v. Torres, 245 Ill. App. 3d 297, 184 Ill. Dec. 311, 613 N.E.2d 338 (2 Dist. 1993).

-- Exculpatory Evidence Proceedings

A factual scenario in which a failure to present exculpatory evidence to the grand jury results in "a clear denial of due process," and "causes actual and substantial prejudice to the defendant," can be appropriately remedied through the existing protections from prosecutorial misconduct; there

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is no compelling reason to create a separate duty requiring the state to present exculpatory evidence during the grand jury proceedings. People v. Torres, 245 Ill. App. 3d 297, 184 Ill. Dec. 311, 613 N.E.2d 338 (2 Dist. 1993).

- Guardian

Trial court violated the mother's due process rights in terminating her parental rights in the minor son, as the trial court removed her former attorney from representing her because the former attorney advocated the termination of her parental rights but then appointed the former attorney to be her guardian ad litem when the former attorney had gained confidential information while representing her as an attorney that he could use while acting as her guardian ad litem to her disadvantage, which was fundamentally unfair since she had a right to be represented by attorney who would not be able to use confidential information against her. People v. Delores W. (In re Mark W.), Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 520 (1 Dist. June 16, 2006).

- Hearing

Defendant's constitutional rights to due process and a fair trial were not violated despite being required to wear a stun belt without having had a hearing to determine that it was necessary since there was no evidence that the jury was aware he was wearing the belt. People v. DuPree, 353 Ill. App. 3d 1037, 289 Ill. Dec. 784, 820 N.E.2d 560, 2004 Ill. App. LEXIS 1391 (5 Dist. 2004).

Illinois Constitution prohibits the state from forcing fit parents to yield visitation rights to a child's grandparents when the parents do not wish to do so merely because a trial judge believes that such visitation would be appropriate. There is no corresponding constitutional prohibition against a fit parent's decision to voluntarily bestow visitation privileges on his child's grandparents. Parents also have the fundamental right to agree to visitation by a child's grandparents if they wish to do so. Johnson v. Duncan (In re M.M.D.), 213 Ill. 2d 105, 289 Ill. Dec. 616, 820 N.E.2d 392, 2004 Ill. LEXIS 1674 (2004).

While a pro se postconviction petition making constitutional claims did not have to present all the details, defendant's postconviction petition presented no details whatsoever; thus, the trial court properly found it frivolous. If the subsequent hearing before Illinois Department of Corrections (DOC), which resulted in defendant's revocation of good conduct credits, failed to satisfy due process, defendant should have administratively challenged that decision or brought an appropriate action against the DOC. People v. Shevock, 353 Ill. App. 3d 361, 288 Ill. Dec. 986, 818 N.E.2d 921, 2004 Ill. App. LEXIS 1372 (4 Dist. 2004), appeal denied, 213 Ill. 2d 572, 293 Ill. Dec. 868, 829 N.E.2d 793 (2005).

Since the trial court made a finding that a criminal defendant was unfit to stand trial, that finding could be reversed only through a subsequent judicial determination that the defendant was fit; thus, the trial court erred in summarily vacating the finding that defendant was unfit without conducting a fitness hearing and without making any findings that defendant was fit and defendant's conviction for aggravated battery was reversed and the matter was remanded with directions to conduct a fitness hearing before any further proceedings because trying defendant if he was not fit to stand trial violated both the law of Illinois, as embodied in 725 ILCS 5/104-10 et. seq., and the Due Process Clause of the United States Constitution under U.S. Const. Amend XIV. People v. Meyers, 352 Ill. App. 3d 790, 288 Ill. Dec. 48, 817 N.E.2d 173, 2004 Ill. App. LEXIS 1264 (2 Dist. 2004).

Summary judgment pursuant to 735 ILCS 5/2-1005(c) was properly granted to plaintiffs where they were precluded from cross-examining witnesses of a party that sought zoning changes in order to construct a store on a particular parcel of land because plaintiffs were denied due process in the joint hearing, pursuant to Ill. Const., Art. I, § 2, which included a request for a special use permit; the Illinois Supreme Court's determination that due process was violated by a failure to allow any cross-examination during the special use aspect of the joint hearing resulted

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in a finding that all determinations in the case were constitutionally infirm as the issues were not separable. People ex rel. Klaeren v. Vill. of Lisle, 352 Ill. App. 3d 831, 288 Ill. Dec. 22, 817 N.E.2d 147, 2004 Ill. App. LEXIS 1251 (2 Dist. 2004).

County board of review's refusal to reschedule a tax appeal hearing was in strict compliance with its own rules and did not deny the taxpayer due process where the taxpayer's failure to appear at the hearing was due to the taxpayer's own negligence. Merisant Co. v. Kankakee County Bd. of Review, 352 Ill. App. 3d 622, 287 Ill. Dec. 376, 815 N.E.2d 1179, 2004 Ill. App. LEXIS 1065 (3 Dist. 2004).

Mother's due process rights were not violated where the State's termination of parental rights petition did not identify the nine-month period in which the mother allegedly failed to make reasonable progress toward the return of her child as 750 ILCS50/1(D)(m)(iii) did not mandate that the State specify the period in its petition. People v. Carmen D. (In re Kenneth J.), 352 Ill. App. 3d 967, 288 Ill. Dec. 290, 817 N.E.2d 940, 2004 Ill. App. LEXIS 1128 (1 Dist. 2004), appeal denied, 212 Ill. 2d 533, 291 Ill. Dec. 708, 824 N.E.2d 284 (2004).

Trial court's entrance of a permanency goal of termination of parental rights prior to the termination hearing did not violate the mother's due process rights since the State successfully demonstrated, by clear and convincing evidence and relevant testimony, that the mother had failed to make reasonable progress toward the return her son to her home. People v. Laura V. (In re R.L.), 352 Ill. App. 3d 985, 288 Ill. Dec. 304, 817 N.E.2d 954, 2004 Ill. App. LEXIS 1127 (1 Dist. 2004).

Admonishment to commission not to consider the references to plaintiff's disciplinary record cured any prejudice plaintiff may have suffered when the information was originally exposed to the commission; thus, in the absence of specific examples of the commission's alleged impartiality and in light of the curative admonishment, the hearing complied with the requirements of due process. Sindermann v. Civil Serv. Comm'n, 275 Ill. App. 3d 917, 212 Ill. Dec. 346, 657 N.E.2d 41 (2 Dist. 1995), appeal denied, 165 Ill. 2d 565, 214 Ill. Dec. 865, 662 N.E.2d 431 (1996).

725 ILCS 207/65(b)(1) of the Illinois Sexually Violent Persons Commitment Act, which prohibits committed persons from attending limited probable cause hearings, does not violate due process. People v. Botruff, 212 Ill. 2d 166, 288 Ill. Dec. 105, 817 N.E.2d 463, 2004 Ill. LEXIS 1019 (2004).

State court did not violate defendants' due process rights when it fined them after it found them in contempt of court for violating an injunction in a trademark case because the court had subject matter jurisdiction, the alleged violation was brought to the court's attention by the filing of a petition in which the facts were fully stated, and the defendants were notified and given a hearing on the matter. Rothschild & Co. v. Steger & Sons Piano Mfg. Co., 256 Ill. 196, 99 N.E. 920, 1912 Ill. LEXIS 2088 (1912).

Any legal proceeding which provides for notice and a hearing, whether that proceeding owes its existence to ancient and uniform custom in the State wherein it is administered, or to some legislative act passed, in the discretion of the legislative power, in furtherance of the public good, which regards and preserves those principles of liberty and justice, must be held to be due process of law. Rothschild & Co. v. Steger & Sons Piano Mfg. Co., 256 Ill. 196, 99 N.E. 920, 1912 Ill. LEXIS 2088 (1912).

- Illustrative Cases

Establishment by a sanitary district of a corporate working cash fund and a construction working case fund by the issuance of bonds without referendum, and the statute that permitted such action, did not violate due process and was "needful" as providing a method for current financing of corporation expenses. People ex rel. Adamowski v. Metropolitan Sanitary Dist., 14 Ill. 2d 271, 150 N.E.2d 361, 1958 Ill. LEXIS 336 (1958).

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-- Accountancy Act of 1903

The Accountancy Act of 1903 (see 225 ILCS 450/0.01) was unconstitutional. Elliott v. University of Ill., 365 Ill. 338, 6 N.E.2d 647 (1936).

-- Administrative Action Against Police Officers

Neither consolidation of administrative proceedings against four police officers arising out of the same incident nor the exposure of individual police board members to extensive prehearing publicity, nor the failure of all board members to be present for every single session deprived the officers of their due process rights; board proceedings were akin to bench trials, and board members were presumed capable of sorting the evidence and ignoring the effects of negative publicity. Daniels v. Police Bd., 338 Ill. App. 3d 851, 273 Ill. Dec. 524, 789 N.E.2d 424, 2003 Ill. App. LEXIS 535 (1 Dist. 2003).

-- Administrative Code

The Illinois Administrative Code, which allows the Department of Commerce and Community Affairs to terminate a grant if the grantee fails to comply with the terms and conditions of the grant, incorporates relevant provisions for due process from other legal sources, and does not violate the due process requirements of federal or state constitutions. Kankakeeland Community Action Program, Inc. v. Department of Commerce & Community Affairs, 197 Ill. App. 3d 1067, 145 Ill. Dec. 507, 557 N.E.2d 277 (1 Dist. 1990).

-- Admonishment

When the court admonished a defense witness to answer the question asked, if the witness understood it, and, if the witness did not understand the question, to simply say so, the trial court properly exercised its discretion, admonishing a witness who was being evasive. Defendant's right to due process was not violated. People v. Urdiales, Ill. 2d , Ill. Dec. , N.E.2d , 2007 Ill. LEXIS 437 (Feb. 16, 2007).

Father was not denied due process by the circuit court's failure to admonish him that he risked termination of his parental rights if he failed to cooperate with Department of Children and Family Services since the record amply demonstrated that the father was aware of need to cooperate with the Department. People v. T.F. (In re Andrea F.), 208 Ill. 2d 148, 280 Ill. Dec. 531, 802 N.E.2d 782, 2003 Ill. LEXIS 2608 (2003).

-- Aggravated Criminal Sexual Assault

The aggravated criminal sexual assault statute (720 ILCS 5/12-14) does not violate due process because no mental state is required for conviction, even though the less serious offense of aggravated criminal sexual abuse (720 ILCS 5/12-16) requires an intentional or knowing touching done for purposes of sexual gratification or arousal. People v. Ramsey, 190 Ill. App. 3d 723, 138 Ill. Dec. 53, 546 N.E.2d 1108 (5 Dist. 1989).

-- Altered Registration Permits

A Class 2 penalty for a person who alters a temporary registration permit for a vehicle which he or she owns or to which he or she is legally entitled in violation of section 104(a)(3) of the Illinois Vehicle Code (625 ILCS 5/4-104(a)(3)) is not reasonably designed to protect automobile owners against theft, nor is it reasonably designed to protect the general public against the commission of crimes involving stolen motor vehicles, and such a penalty is thus violative of the due process clause of the constitution. People v. Morris, 136 Ill. 2d 157, 143 Ill. Dec. 300, 554 N.E.2d 235 (1990), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

-- Arbitration

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The imposition of a $10 charge on all circuit court civil filings to fund the mandatory arbitration program does not violate the constitutional right to due process, the right to free access, the uniformity clause, or the equal protection clause, notwithstanding that the charge is levied even on cases that are statutorily and by rule precluded from using the arbitration system. Rose v. Pucinski, 321 Ill. App. 3d 92, 254 Ill. Dec. 43, 746 N.E.2d 800, 2001 Ill. App. LEXIS 160 (1 Dist. 2001), appeal denied, 195 Ill. 2d 598, 258 Ill. Dec. 100, 755 N.E.2d 483 (2001).

Section 2-1009A of the Civil Practice Law (735 ILCS 5/2-1009A) which imposes a surcharge on the filing fee in civil litigation to fund court-annexed mandatory arbitration, does not violate the uniformity clause, the equal protection clause, the free access clause, or the due process clause of the constitution. Mellon v. Coffelt, 313 Ill. App. 3d 619, 246 Ill. Dec. 422, 730 N.E.2d 102, 2000 Ill. App. LEXIS 384 (2 Dist. 2000), appeal denied, 191 Ill. 2d 534, 250 Ill. Dec. 459, 738 N.E.2d 928 (2000).

-- Barbers

Court concluded that former § 18 of the Illinois Barbers Act of 1909 (now 225 ILCS 410/2-1), as applied to appellants and others in the same situation, deprived them of their liberty and property without due process of law; therefore, it was void under both the U.S. Const. amend. XIV and former Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2). Banghart v. Walsh, 339 Ill. 132, 171 N.E. 154, 1930 Ill. LEXIS 1005 (1930).

-- Blue Laws

If the public welfare of the State of Illinois demands that all business and labor of every description, except works of necessity and charity, should cease on Sunday, the legislature has the power to enact a law requiring all persons to refrain from their ordinary calling on that day but when the legislature undertakes to single out one class of labor harmless in itself and condemn only that class, it transcends its legitimate powers and its action cannot be sustained. Eden v. People, 161 Ill. 296, 43 N.E. 1108, 1896 Ill. LEXIS 1606 (1896).

Act prohibiting barbershops from being kept open on Sunday deprived the barber of his property without due process of law because it could not be claimed that the law was passed as a sanitary measure or that it had any relation to the health of society where it was a matter of common observation that the barber business was both quiet and orderly. Eden v. People, 161 Ill. 296, 43 N.E. 1108, 1896 Ill. LEXIS 1606 (1896).

Act prohibiting barbershops from being kept open on Sunday deprived the barber of his property without due process of law because the act affected one class alone, all other types of businesses were allowed to open their respective places of business on Sunday and transact their ordinary business if they desire and only the barber was required to close his place of business. Eden v. People, 161 Ill. 296, 43 N.E. 1108, 1896 Ill. LEXIS 1606 (1896).

-- Bonds

No form of an appeal bond is prescribed, and a bond given in the usual form for taking appeals from judgments of justices of the peace in ordinary cases given to pay whatever judgment may be rendered by the court upon dismissal allows for a recovery against either the principal or the surety, in compliance with Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Hennies v. People, 70 Ill. 100, 1873 Ill. LEXIS 444 (1873).

-- Boundary Disputes

765 ILCS 215/2, regarding establishment of corners and boundaries in dispute, does not deny due process by denying the right to trial by jury. Hood v. Tharp, 228 Ill. 244, 81 N.E. 861 (1907).

-- Breathalyzer Test

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The evidentiary use of a defendant's refusal to take a breath test does not deprive that defendant of due process under the Illinois Constitution. People v. Millner, 245 Ill. App. 3d 597, 185 Ill. Dec. 761, 615 N.E.2d 56 (5 Dist.), appeal denied, 152 Ill. 2d 572, 190 Ill. Dec. 903, 622 N.E.2d 1220 (1993).

Since a person does not have the constitutional right to refuse breathalyzer test, due process does not require that the person be warned, either orally or in writing, of the consequences of his refusal. People v. Rakers, 187 Ill. App. 3d 27, 134 Ill. Dec. 804, 542 N.E.2d 1311 (5 Dist. 1989).

-- Building and Loan Association Act

Former section 38 of the Building and Loan Association Act did not violate the due process of law provisions of the federal and state Constitutions. People ex rel. Barnett v. Logan County Bldg. & Loan Ass'n, 369 Ill. 518, 17 N.E.2d 4 (1938).

-- Burglary Statute

Section 19-1(b) of the Criminal Code (720 ILCS 5/19-1(b)) is not constitutionally infirm in that it does not violate the due process and limitation-of-penalties provisions of the state constitution. People v. Steppan, 105 Ill. 2d 310, 85 Ill. Dec. 495, 473 N.E.2d 1300 (1985), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

-- Business Corporation Act

Former section 89 of the Business Corporation Act (see now 805 ILCS 5/12.75) was constitutional because it did not violate due process. Elmhurst Stamping & Mfg. Co. v. Amax Plating, Inc., 67 Ill. App. 3d 257, 23 Ill. Dec. 932, 384 N.E.2d 839 (1 Dist. 1978).

The former Business Corporation Act (see 805 ILCS 5/1.01 et seq.), as it related to the assessment and levy of additional franchise taxes and license fees upon increase in state capital and paid-in surplus, by issuance of stock or by mere increase in either or both without issuance of shares or the exchange or reclassification of shares, or by merger, was not unconstitutional for the reason that it provided an election to the plaintiff. United States Borax & Chem. Corp. v. Carpentier, 14 Ill. 2d 111, 150 N.E.2d 818 (1958).

-- Capital Murder Sentencing Procedure

Under former Ill. Const. (1870), Art. II, § 2 (see now this section) refusal to amend the record, so as to show that plaintiff was not present in person or by counsel in the Supreme Court at the time it affirmed the judgment of the trial court, and fixed the day for carrying that judgment into execution, was not a denial to him of that equal protection of the laws under U.S. Const., Amend 14, or due process. Fielden v. People, 143 U.S. 452, 12 S. Ct. 528, 36 L. Ed. 224 (1892).

-- Certificates of Need

A nursing home did not have any due process rights in the application of a competing nursing home for a certificate of need as no protectable property right was implicated by the proceedings. Cathedral Rock of Granite City, Inc. v. Illinois Health Facilities Planning Bd., 308 Ill. App 3d 529, 242 Ill. Dec. 158, 720 N.E.2d 1113 (4 Dist. 1999).

-- Child Abduction

720 ILCS 5/10-5(b)(10) is not unconstitutionally vague. People v. Williams, 133 Ill. 2d 449, 141 Ill. Dec. 444, 551 N.E.2d 631 (1990).

-- Child Labor Act

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The Child Labor Acts of 1897 and 1917 (see now 820 ILCS 205/1) were not unconstitutional for lack of definition or standards; employments that were extrahazardous, or which were dangerous to life or limb, or where health may have been injured or morals depraved, were properly defined in these sections. Kowalczyk v. Swift & Co., 329 Ill. 308, 160 N.E. 588 (1928).

-- Cigarette Tax

Section 2(b) of the Cigarette Tax Act (35 ILCS 130/2(b)) did not violate due process in that the raising of revenue was a proper legislative purpose, and the manner in which that purpose was achieved by the Act was neither arbitrary nor discriminatory. S. Bloom, Inc. v. Mahin, 61 Ill. 2d 70, 329 N.E.2d 213 (1975).

-- Commitment Proceeding

Due process rights and liberty interests of a criminal defendant who had been committed to a state hospital when he was found insane and incompetent to plead to the indictment against him were violated when trial court hearing his petition for habeas corpus directed the jury to find that he had not fully and permanently recovered from his insanity; although "fully and permanently recovered" was the standard required by the statute at issue, Ill. Rev. Stat. 1947 ch. 38, para. 592, when no physician could say with certainty that any person was fully and permanent recovered from insanity (because the physician could not know the patient's future condition), application of the statute to bar defendant's release from the facility was unconstitutional. People v. Kadens, 399 Ill. 394, 78 N.E.2d 289, 1948 Ill. LEXIS 284 (1948).

-- Commitment to Correctional Facility

Where defendant was not given notice of, and an opportunity to be heard at, a hearing at which he was recommitted to a correctional institution, it was held that he was denied due process under the Illinois Constitution (see this section) and U.S. Const., Amend. XIV, § 1). People v. Cooper, 132 Ill. 2d 347, 138 Ill. Dec. 282, 547 N.E.2d 449 (1989).

-- Commitment Proceeding

The required presence of a physician as a member of the jury of six in a mental commitment proceeding under the former Mental Health Code (see now 405 ILCS 5/3-705) did not deprive the respondent of due process of law under the state and federal constitutions. People ex rel. Keith v. Keith, 38 Ill. 2d 405, 231 N.E.2d 387 (1967).

-- Competency of Counsel

Defense counsel's failure to request a further continuance to secure the presence of a witness who had been subpoenaed, but who failed to appear on two separate days, did not justify reversal of defendant's conviction on the ground that his appointed counsel was so incompetent that he was denied his due process right to a fair trial; because the witness had been unsuccessfully subpoenaed on prior occasions and because the witness would have had to waive his own Fifth Amendment privilege and implicate himself in order to exculpate defendant, counsel's failure to continue to request a continuance did not indicate representation of such low caliber that defendant's trial was reduced to a farce or sham, the requisite test for reversal of a conviction on incompetent representation grounds. People v. McCraven, 97 Ill. App. 3d 1075, 53 Ill. Dec. 610, 424 N.E.2d 23, 1981 Ill. App. LEXIS 2927 (1 Dist. 1981).

Where defendant was convicted of rape and in his trial, surgeon testified that his examination of victim showed evidence of forcible entry, the fact that another physician was not called as witness by defendant's attorney was not ineffective assistance of counsel for although the physician stated in his affidavit that his examination of complainant disclosed no lacerations in the vaginal area and that the hymen showed no signs of trauma, he also stated that he detected erythema or redness and that proof of rape was in his opinion "inconclusive." People v. Edmonds, 79 Ill. App. 3d 33, 34 Ill. Dec. 555, 398 N.E.2d 230 (1 Dist. 1979).

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-- Competency Hearing

Where the jury considered the entire pretrial competency hearing upon an erroneous theory defendant was deprived of due process of law. People v. Thompson, 36 Ill. 2d 332, 223 N.E.2d 97 (1967).

-- Conscientious Objector

Petitioner for admission to the Illinois State Bar was not denied due process when the Supreme Court of Illinois denied him admission to the bar on the ground that he would not swear to support the Illinois Constitution because it requires service in the state militia and the petitioner was a conscientious objector. In re Summers, 325 U.S. 561, 65 S. Ct. 1307, 89 L. Ed. 1795 (1945).

-- Constructive Service

Former § 14 of the Civil Practice Act (see now 735 ILCS 5/2-206) is not unconstitutional on the theory that it denies a nonresident due process of law in that the original judgment, after seven years, becomes dormant and the revival of same is equivalent to a judgment in personam and requires personal service to be valid. Bank of Edwardsville v. Raffaelle, 381 Ill. 486, 45 N.E.2d 651 (1942).

-- Contempt

Where there was no petition for rule to show cause before the court, the property owner could not have had the notice required for a civil contempt proceeding. City of Quincy v. Weinberg, 363 Ill. App. 3d 654, 300 Ill. Dec. 387, 844 N.E.2d 59, 2006 Ill. App. LEXIS 38 (1 Dist. 2006).

Petition for rule to show cause did not comport with due process requirements, as it impermissibly shifted the burden of proof from the city to the property owner; the city should have filed petition for adjudication of criminal contempt. City of Quincy v. Weinberg, 363 Ill. App. 3d 654, 300 Ill. Dec. 387, 844 N.E.2d 59, 2006 Ill. App. LEXIS 38 (1 Dist. 2006).

Finding of contempt against attorney could not stand because the order to show cause did not give him adequate notice of the specific charges against him, and the proceedings conducted by the appellate court did not constitute a hearing at which he was permitted to be represented by counsel, to cross-examine witnesses, and to present evidence in his own behalf; therefore, the proceedings did not comport with due process requirements. People v. Waldron, 114 Ill. 2d 295, 102 Ill. Dec. 395, 500 N.E.2d 17 (1986).

A divorced mother was deprived of due process of law where without process, notice, or a finding that she had forfeited her right to personal liberty, in a proceeding regarding her petition to vacate an order granting physical custody of her sons to the father, without a contempt proceeding, she was placed in jail by the trial court for alleged contempt. Johnson v. Johnson, 34 Ill. App. 3d 356, 340 N.E.2d 68 (1 Dist. 1975).

Where the proceeding was based upon charges constituting, if anything, direct contempt, it violated no constitutional rights as guaranteed by the due process clause where the court entered a rule to show cause for these charges of direct contempt not committed in open court, permitted answers and heard evidence, affording plaintiffs in error all the privileges they could demand. People v. Howarth, 415 Ill. 499, 114 N.E.2d 785 (1953).

The decision as to whether an order adjudging defendant in contempt was based on technical perjury or upon false statements made with intent to impede justice, did not raise a constitutional question for the Supreme Court. People v. Siegal, 400 Ill. 208, 79 N.E.2d 616 (1948).

Where the City Election Act had been adopted by a city, violations of the election law by an election official exposed him to contempt charges, and therefore his conviction and his commitment to the custody of the sheriff did not violate Ill. Const. (1970), Art. I, § 2 (formerly Ill.

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Const. of 1870, Art. II, § 2). People ex rel. Jeske v. Burke, 247 Ill. App. 220, 1928 Ill. App. LEXIS 541 (1928).

Where an order of commitment for contempt was entered against a juror in a criminal case without preliminary proceedings, and the record showed that on voir dire he had answered in the negative when asked if he had been interested in any criminal proceeding, but he had been previously indicted as a criminal defendant, the contempt order was not a violation of due process protections under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). People v. Hadesman, 223 Ill. App. 219, 1921 Ill. App. LEXIS 239 (1921).

-- Controverted Facts

Where two factual issues were presented by the pleadings, namely: (1) whether the defendant had previously expended sums in excess of an automobile insurance policy limits, and (2) whether that defense could be raised in view of an agreement between the defendant and the plaintiffs to pay the plaintiffs' claim, neither issue could be resolved without a factual determination by the trier of fact, and it was a fundamental due process right that the litigants had the right to produce witnesses and introduce evidence on controverted facts. Lynch v. Wolverine Ins. Co., 126 Ill. App. 2d 192, 261 N.E.2d 466 (1 Dist. 1970).

-- County Jail Good Behavior Allowance Act

The disallowance of good time credit under 730 ILCS 130/3 to inmates whose crimes involved the infliction of physical harm upon another person does not violate the due process clause of the Illinois Constitution, notwithstanding the argument that such denial of good time credit punishes offenders who are confined in county jail more severely than those who are confined in the penitentiary, since the denial of good time credit is actually based on the type of crime a defendant committed, the defendant's background, and the totality of circumstances that the trial judge relied on to determine an appropriate sentence. People v. Kolzow, 319 Ill. App. 3d 673, 253 Ill. Dec. 785, 746 N.E.2d 27, 2001 Ill. App. LEXIS 77 (1 Dist. 2001).

-- Court of Claims Act

Court of Claims Act created a constitutionally permissible mechanism to receive and process negligence claims against the state; it did not violate due process and equal protection rights of plaintiff in negligence actions against the state. Seifert v. Standard Paving Co., 64 Ill. 2d 109, 355 N.E.2d 537, 1976 Ill. LEXIS 352 (1976).

-- Disability Benefits

Denial by Police Pension Board (Board) of the former police officer's application for disability benefits did not violate the former police officer's due process rights even though there was a delay by the Board in processing the former police officer's claim for disability benefits; the former police officer did not explain how the delays resulted in the deprivation of the former police officer's due process rights and there was no indication from the record as to how the delays impacted the Board's decision. Marconi v. Chicago Heights Police Pension Bd., 225 Ill. 2d 497, 312 Ill. Dec. 208, 870 N.E.2d 273, 2006 Ill. LEXIS 2098 (2006).

-- Drainage District

Act providing for the organization of a special drainage district, which authorized the county court to fix the boundaries of the drainage district to be organized and to make conclusive findings regarding lands that would be benefitted by the improvement of the channel of the river involved, was unconstitutional and void in that it attempted to delegate legislative questions for the determination of a court and contained unilateral restrictions on the right of appeal. Funkhouser v. Randolph, 287 Ill. 94, 122 N.E. 144, 1919 Ill. LEXIS 1145 (1919).

-- Dram Shop Laws

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Sunday Closing Law, Ill. Crim. Code § 259, did not violate constitutional rights of dram shop owners because it applied across the board to all owners of dram shops, it was a general law as to all such shops across the state, and an argument that other store owners selling other items were not affected and that therefore the law was unconstitutional under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) was without merit. Boerner v. Thompson, 278 Ill. 153, 115 N.E. 866, 1917 Ill. LEXIS 1055 (1917).

-- Election Code Violations

10 ILCS 5/29-9 and 10 ILCS 5/29-20(4), in requiring only a knowing mental state rather than criminal intent, are both rationally relate to the legitimate state goal of protecting and preserving the integrity of the election process; consequently, both statutes are constitutional. People v. Deganutti, 348 Ill. App. 3d 512, 284 Ill. Dec. 538, 810 N.E.2d 191, 2004 Ill. App. LEXIS 518 (1 Dist. 2004).

Actions of the defendants, in prohibiting contestants who were duly elected to the position of delegate to the Democratic National Convention by operation of the Illinois election code from attending that convention based on race, violated the due process and equal protection rights of the contestants and the voters' right to a free and equal election under Ill. Const. (1970), Art. IV, § 3. Wigoda v. Cousins, 14 Ill. App. 3d 460, 302 N.E.2d 614, 1973 Ill. App. LEXIS 1865 (1 Dist. 1973).

-- Employment

Court rejected tenured teachers' due process challenges under Ill. Const. Art. I, § 2 because the termination of the teachers' employment was not "for cause." Land v. Bd. of Educ., 325 Ill. App. 3d 294, 259 Ill. Dec. 49, 757 N.E.2d 912, 2001 Ill. App. LEXIS 662 (1 Dist. 2001).

Requiring foreign educated nurses who had already passed their National Council Licensure Examination to pass the Council of Graduates of Foreign Nursing Schools examination pursuant to Ill. Rev. Stat. ch. 111, para. 3512 (now 225 ILCS 65/10-30) was not so arbitrary that it violated the nurses' due process rights because the nurses' interests were not sufficient to overcome the State's interests in protecting the public from unqualified nurses. Romero v. Selcke, 216 Ill. App. 3d 138, 159 Ill. Dec. 607, 576 N.E.2d 276, 1991 Ill. App. LEXIS 1078 (1 Dist. 1991).

In determining whether Ill. Rev. Stat. ch. 111, para. 3512 (now 225 ILCS 65/10-30), which requires foreign educated nurses to pass the Council of Graduates of Foreign Nursing Schools examination, deprives foreign educated nurses of rights guaranteed by the due process clauses of the United States and Illinois constitutions, the court applies a rational basis test and will uphold the statute if it bears a rational relationship to a legitimate legislative purpose and is neither arbitrary nor discriminatory. Romero v. Selcke, 216 Ill. App. 3d 138, 159 Ill. Dec. 607, 576 N.E.2d 276, 1991 Ill. App. LEXIS 1078 (1 Dist. 1991).

Discharge of a court reporter, who intentionally overbilled for transcripts in 13 instances over a four-month period in violation of Ill. Rev. Stat. 1981, ch. 48, par. 138.16, was improper because the Illinois Industrial Commission had violated the established policy of progressive discipline and the rules for imposing discipline; the court reporter had a right to rely on those rules. Brown v. Civil Service Com., 133 Ill. App. 3d 35, 88 Ill. Dec. 226, 478 N.E.2d 541, 1985 Ill. App. LEXIS 1922 (1 Dist. 1985).

Because the State has an interest in seeing that its projects are completed by workers with at least average skills, the Prevailing Wage Act, Ill. Rev. Stat. ch. 48, paras. 39s-1 to 39s-12, is not unconstitutional under Ill. Const. (1970), Art. I, § 2 because the Act bears a rational relationship to a legitimate State interest. People ex rel. Bernardi v. Roofing Systems, Inc., 101 Ill. 2d 424, 78 Ill. Dec. 945, 463 N.E.2d 123, 1984 Ill. LEXIS 272 (1984).

Because the general assembly has the power to subject certain civil service positions to term appointments, and civil service status is not a vested right because it is a creation of the general

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assembly, civil service positions could be changed by legislative action making them term appointments, and therefore § 8b.18 of the Illinois Personnel Code, Ill. Rev. Stat. ch. 127, para. 63b1083.18 was not unconstitutional. Grobsmith v. Kempiners, 88 Ill. 2d 399, 58 Ill. Dec. 722, 430 N.E.2d 973, 1981 Ill. LEXIS 417 (1981).

While it is recognized that the government has the power to exclude from public employment communists and others who advocate its violate overthrow, requirements of due process are applicable to the means adopted to implement the power. A State may validly provide that a person who is knowingly a member of an organization that advocates the overthrow of constitutional government by unlawful means shall not be eligible for public employment, but a law that disqualifies on the basis of mere membership, regardless of any awareness of the organization's purpose or character, is said to be arbitrary and void. Pickus v. Board of Education, 9 Ill. 2d 599, 138 N.E.2d 532, 1956 Ill. LEXIS 372 (1956).

Section 30b of "an Act in relation to State finance," Ill. Rev. Stat. ch. 127, para. 166b, which withheld compensation from state employees who refused to sign the loyalty affidavit set forth therein, was deemed to be constitutional because the subject matter of the affidavit was clearly one upon the basis of which the State of Illinois may determine the fitness of its employees, was limited to present membership or affiliation in an organization that advocated the overthrow or destruction of the government, and no claim of self-incrimination was involved; as reasonably construed, the affidavit negates only membership in organizations known to have the proscribed character and did not affect persons who might have innocently formed or continued affiliation with a subversive organization, unaware of its nature or purpose. Pickus v. Board of Education, 9 Ill. 2d 599, 138 N.E.2d 532, 1956 Ill. LEXIS 372 (1956).

Where an employee had left her employment to be with her husband, she had left her employment because of "marital circumstances," which was a statutory ground for ineligibility, was not an evidentiary presumption, and was a substantive rule of law not in violation of her due process protections under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Illinois Bell Tel. Co. v. Board of Review, 413 Ill. 37, 107 N.E.2d 832, 1952 Ill. LEXIS 360 (1952).

1947 Amendments to § 10 1/2 of the City Civil Service Act, Ill. Rev. Stat. 1947, ch. 24 1.2, par. 49, awarding military credits to persons on promotional eligible lists of cities operating under the Act were unconstitutional because there was create uncertainty as to the proper procedure for awarding credits and, from a reading of the amendments, neither a veteran nor a nonveteran could tell by any method of computation stated or referred to in the amendments what would be his relative standing on a promotional list where military credit had been extended. People ex rel. Duffy v. Hurley, 402 Ill. 562, 85 N.E.2d 26, 1949 Ill. LEXIS 269 (1949).

Requiring drain layers, who laid and connected tile, concrete, and other piping for sanitary draining systems in buildings to pass examinations and perform apprenticeships deprived them of their liberty and property without due process of law under Ill. Const. (1970), Art. I, § 2, (formerly Ill. Const. of 1870, Art. II, § 2) because their trade did not require scientific knowledge or sanitary engineering skills. Scully v. Hallihan, 365 Ill. 185, 6 N.E.2d 176, 1936 Ill. LEXIS 575 (1936).

Court chose not to address the issue of whether an act providing that no restraining order shall be granted growing out of an employment dispute violated due process because the case could be decided on other grounds; the admissions by the union members that they had violated an injunction clearly supported the issuance of the contempt orders. Ossey v. Retail Clerks' Union, 326 Ill. 405, 158 N.E. 162, 1927 Ill. LEXIS 981 (1927).

Act creating a pension fund for officers and employees in the service of counties having a population of 150,000 more, Hurd's Ill. Stat. 1916, ch. 34, § 1, p. 753, does not contravene Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) or Ill. Const. of 1870, Art. II, § 14. Helliwell v. Sweitzer, 278 Ill. 248, 115 N.E. 810, 1917 Ill. LEXIS 1069 (1917).

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Police officer's removal from a city payroll after classification of offices by the civil service commission was not improper where he had been appointed by the superintendent of police prior to the classification, and his removal was not a violation of his rights under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Preston v. Chicago, 246 Ill. 26, 92 N.E. 591, 1910 Ill. LEXIS 2043 (1910).

Mine owner's agent could not lawfully be convicted of violating a statute that required him to furnish a scale upon which to weigh the coal taken from the mine because there was no constitutional basis for that statute. Because compelling the mine owner to make all his contracts for the sale of coal by weight or to pay his miners solely by the weight of coal they produced would violate the due process, equal protection, and takings clauses of the state constitution, there was no valid basis to require the agent to keep and use a scale. Millett v. People, 117 Ill. 294, 7 N.E. 631, 1886 Ill. LEXIS 973 (1886).

-- County Zoning Ordinance

Provisions of a county zoning ordinance forbidding the use of property as a sanitary landfill for the disposal of waste including garbage were arbitrary and therefore unconstitutional. Society of the Divine Word v. County of Cook, 107 Ill. App. 2d 363, 247 N.E.2d 21 (1 Dist. 1969).

-- Court's Misconduct

Defendant's due process rights were violated as evidenced by the trial court judge's statement and complete abdicating of his responsibilities to the prosecutor; the failure to enforce the law invites anarchy and this tenet required reversal of defendant's convictions. People v. Lambert, 288 Ill. App. 3d 450, 224 Ill. Dec. 360, 681 N.E.2d 675 (2 Dist. 1997).

-- Criminal Code

730 ILCS 5/3-6-4(a) of the Criminal Code meets due process standards; the legislative objective in enacting the statute is clearly to insure both the orderly administration of correctional centers and the safety of persons therein by making it a crime for inmates to participate in the holding of hostages while engaging in a prison riot or disturbance. People v. Lewis, 73 Ill. App. 3d 361, 25 Ill. Dec. 436, 386 N.E.2d 910 (3 Dist. 1979).

-- Criminal Sexual Abuse

Section 720 ILCS 5/12-15 is not unconstitutional because it punishes minors who are intended to be protected; once a minor assumes the status of accused as defined under the section, he relinquishes the right to protection. In re T.W., 291 Ill. App. 3d 955, 226 Ill. Dec. 376, 685 N.E.2d 631 (1 Dist. 1997).

Section 720 ILCS 5/12-15(b) is not unconstitutionally vague and in violation of due process because it purportedly contains no minimum objective standards for law enforcement officials to determine which of two minors who engage in consensual sex is the accused and which the victim for purposes of prosecution. In re T.W., 291 Ill. App. 3d 955, 226 Ill. Dec. 376, 685 N.E.2d 631 (1 Dist. 1997).

-- Currency Exchange Act

Former section 4.1 of the Currency Exchange Act (see now 205 ILCS 405/4.1) was not unconstitutional on the grounds that it was an unreasonable exercise of the police power, that it contravened the due process clauses of the federal and state constitutions (see now this section), that it violated the separation and distribution of governmental powers, nor was it an unwarranted delegation of legislative and judicial authority to an administrative agency, and it did not violate former Ill. Const. (1870), Art. IV, Sec. 22 (see now Ill. Const. (1970), Art. IV, § 13) since it was not an attempt by the General Assembly to grant special privileges and franchises to individual corporations. Gadlin v. Auditor of Pub. Accounts, 414 Ill. 89, 110 N.E.2d 234 (1953).

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-- Delivery of Prisoners

The fact that the federal authorities deliver a prisoner to a state court for trial does not violate any of the due process provisions of the federal or state constitutions. People ex rel. Hesley v. Ragen, 396 Ill. 554, 72 N.E.2d 311 (1947).

-- Denial of Right to Defend Title

Where neither corporate officer nor corporation was provided any opportunity to enter formal responsive pleadings to motion to enforce order against them but instead, pursuant to a single hearing at which only corporate officer appeared without representation of counsel, both were not only joined as party-defendants but were also adjudicated to have no interest in the subject property and were moreover permanently enjoined from asserting that either had any right of title therein, corporate officer and corporation were deprived of their due process rights to meaningfully defend their claims and interests before the court. Lakeview Trust & Sav. Bank v. Estrada, 134 Ill. App. 3d 792, 89 Ill. Dec. 569, 480 N.E.2d 1312 (1 Dist. 1985).

-- Disorderly Conduct Ordinance

Municipal ordinance regarding disorderly conduct as interpreted defined the prohibited conduct in sufficiently precise terms to meet the requirements of procedural due process as set out in U.S. Const., Amend. XIV, and this section, and was not unduly vague. City of E. Peoria v. Moushon, 45 Ill. App. 3d 719, 4 Ill. Dec. 253, 359 N.E.2d 1205 (3 Dist. 1977).

-- Disproportionate Sentencing

The availability of different punishments for separate offenses of armed violence (720 ILCS 5/33A-2), for which intimidation (720 ILCS 5/12-6(b)) was the predicate felony, and attempted armed robbery (720 ILCS 5/8-4(c)(4), and 720 ILCS 5/18-1(b)) based on the same acts did not result in an unconstitutionally disproportionate sentencing scheme in violation of the due process and proportionate penalty clauses of the Illinois Constitution (see this section and Ill. Const. (1970), Art. I, § 11). People v. Wade, 131 Ill. 2d 370, 137 Ill. Dec. 608, 546 N.E.2d 553 (1989), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

The legislature had not violated defendant's constitutional rights to proportionate penalties and due process of law where it set the maximum penalty provided for solicitation to commit murder at 30 years which was more severe than the maximum penalty provided for conspiracy to commit murder of seven years. People v. Moorhead, 128 Ill. App. 3d 137, 83 Ill. Dec. 405, 470 N.E.2d 531 (2 Dist. 1984).

Where the court imposed a sentence within statutory limits, no constitutional question as to the punishment being disproportionate under former Ill. Const. (1870), Art. II, § 2 (see now this section) could be involved by merely attacking the sentence; it was necessary to attack the law and show that it violated the Constitution in order to raise the question. People v. Cary, 321 Ill. 45, 151 N.E. 513 (1926).

-- Dram Shop Laws

Because there was no common law remedy for injuries inflicted through third parties by sellers and purveyors of liquor, the Liquor Control Act (235 ILCS 5/1-1 et seq.) in fact provides, rather than abrogates, a remedy; there is no infringement on plaintiffs' rights so as to deny defendants their due process rights. Stevens v. Lou's Lemon Tree, Ltd., 187 Ill. App. 3d 458, 135 Ill. Dec. 58, 543 N.E.2d 293 (1 Dist. 1989).

Section 14 of article 6 of the former Dram Shop Act does not violate due process. O'Connor v. Rathje, 368 Ill. 83, 12 N.E.2d 878 (1937).

-- Driving with a Suspended License

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625 ILCS 5/6-303, driving while license suspended is not an arbitrary or unreasonable use of the police power; nor does due process require that a defendant receive actual notice of suspension. People v. Stevens, 125 Ill. App. 3d 854, 81 Ill. Dec. 519, 466 N.E.2d 1321 (3 Dist. 1984).

-- Employee Discipline

Where the ultimate decision-making authority regarding employee discipline more serious than a 30 day suspension is vested in the Civil Service Commission and its decision is based upon a review of the evidence presented to the hearing officer, there is no due process of statutory impediment. Starkey v. Civil Serv. Comm'n, 97 Ill. 2d 91, 73 Ill. Dec. 405, 454 N.E.2d 265 (1983).

-- Entrapment Not Found

Where it appeared that no undue, prolonged or persistent pressures were exerted against defendant and that he quickly complied with the request to obtain narcotics once his suspicions of police officer were allayed and he was sure it was safe, there was no such deception and unfairness as made it unconscionable for the state to press its case, or which permitted defendant to avail himself of the defense of entrapment. People v. Hall, 25 Ill. 2d 297, 185 N.E.2d 143 (1962).

-- False Imprisonment

Warrant for the arrest of a farmer who refused to pay the fine or post bail after being charged with violating a city ordinance violated the farmer's due process rights because the warrant was irregular (it sought to commit the farmer on the basis that he was probably guilty of violating a village ordinance); because justice of the peace who issued the warrant acted outside his judicial authority, he was liable to the farmer for false imprisonment. Danforth v. Classen, 21 Ill. App. 572, 1886 Ill. App. LEXIS 684 (1886).

Town was not responsible for the wrongful acts of officers who had enforced a statute and had made an arrest, and a trial court had erred by granting a judgment to the arrestee in her action for false imprisonment because the underlying ordinances enforced by the arrest were proper. President & Board of Trustees v. Schroeder, 58 Ill. 353, 1871 Ill. LEXIS 310 (1871).

-- Falsely Reporting Vehicle Theft

The prosecution of the defendant for a Class 2 felony for falsely reporting a vehicle theft did not violate the due process clause where the defendant falsely reported that her former husband had stolen her car and later told the police that her report was false. People v. Fuller, 187 Ill. 2d 1, 239 Ill. Dec. 582, 714 N.E.2d 501 (1999), ; But see People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

-- False or Secret Compartment in Motor Vehicle

625 ILCS 5/12-612 is facially invalid on due process grounds under the Constitutions of the United States and the State of Illinois. People v. Carpenter, 228 Ill. 2d 250, 320 Ill. Dec. 888, 888 N.E.2d 105, 2008 Ill. LEXIS 314 (2008).

Appellate court held that 625 ILCS 5/12-612 (2004) violated the due process provisions of the United States and Illinois Constitutions; the statute was not violated unless a defendant intended and designed a compartment to conceal, hide, and prevent discovery of it or its contents by law enforcement officers, and the statute did not require that contraband or the fruits or tools of crime be found in the compartment. People v. Carpenter, 368 Ill. App. 3d 288, 305 Ill. Dec. 746, 856 N.E.2d 551, 2006 Ill. App. LEXIS 877 (1 Dist. 2006).

-- Farm Drainage Act

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A Farm Drainage Act which enabled adjoining drainage districts to connect their ditches and drains, levees, or other works, and provided for the apportionment of the cost of the construction, operation, and maintenance of the work of the drainage district where lands in an adjoining district were benefited thereby did not contravene the provisions of Ill. Const. (1870), Art. IX, §§ 9, 10 (see now Ill. Const. (1970), Art. VII, §§ 6 and 7) and due process. Drainage Comm'rs v. Commissioners of Rector Special Drainage Dist., 266 Ill. 536, 107 N.E. 895 (1915).

-- Felony Concealment Statute

The concealment statute, 720 ILCS 5/31-5, comports with the due process and proportionate penalties clauses of the Illinois Constitution. People v. Miller, 171 Ill. 2d 330, 216 Ill. Dec. 93, 664 N.E.2d 1021 (1996), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

-- Fishing Limits

A Class 3 felony classification for a person otherwise legally commercially fishing and taking over $300 worth of fish, but who fails to have a tag on his net as proof that the net is licensed, or fails to have in his immediate possession his fishing license to prove he is licensed, is not reasonably designed to protect the citizens of Illinois from depleting natural resources; such a penalty violates the due process and proportionate penalties provisions of the Illinois Constitution and could not stand. People v. Hamm, 149 Ill. 2d 201, 172 Ill. Dec. 179, 595 N.E.2d 540 (1992), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

Defendants lacked standing to challenge the validity of the valuation prescribed by subsection (c) of 515 ILCS 5/5-25 where defendants could not show that they were aggrieved by such a valuation. People v. Hamm, 149 Ill. 2d 201, 172 Ill. Dec. 179, 595 N.E.2d 540 (1992), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

-- Forfeiture of Pension Benefits

The termination of pension payments to former employee convicted of felony arising out of his employment did not violate corruption of blood and forfeiture of estate, cruel and unusual punishment, or due process provisions of the United States and Illinois Constitutions. Kerner v. State Employees' Retirement Sys., 72 Ill. 2d 507, 21 Ill. Dec. 879, 382 N.E.2d 243 (1978).

-- Former Corporation Act

Amendment to Illinois Corporation Act that set a fee for foreign corporations, based upon a portion of a corporation's capital stock, was proper because a clause in the original license, which was a contract, provided for implementing changes in the state law to the contract; there was no constitutional equal protection violation against foreign corporations and no restriction on interstate commerce. American Can Co. v. Emmerson, 288 Ill. 289, 123 N.E. 581, 1919 Ill. LEXIS 1088 (1919).

-- Former Employment Office Act

Former free employment office statute (Act of April 11, 1899) was unconstitutional on grounds that provision prohibiting the referral of applicants to employers engaged in a strike or lockout violated the due process rights of employers and employees, and on grounds that the Act impermissibly appropriated funds pursuant to a private law. Mathews v. People, 202 Ill. 389, 67 N.E. 28 (1903).

-- Former Family Court Act

The former Family Court Act contained nothing purporting to authorize authorities to take custody of a child prior to the filing of a petition and the service of process; the validity of a statute is determined by its provisions, not by its silence. People ex rel. Ryan v. Sempek, 12 Ill. 2d 581, 147 N.E.2d 295 (1958).

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Trial by jury as to the duration of the parent's insanity is not required by the constitution because § 15 of the Family Court Act contemplates a previous adjudication of mental illness or insanity by a court of competent jurisdiction and the mater before the court in a § 15 proceeding is not the parent's insanity, but rather the medical estimate of its probable duration; furthermore, no constitutional provision requires that the question of the duration of a parent's insanity, arising in the course of a statutory proceeding unknown to the common law, be submitted to a jury. People ex rel. Nabstedt v. Barger, 3 Ill. 2d 511, 121 N.E.2d 781, 1954 Ill. LEXIS 437 (1954).

Failure of the procedural provisions of § 15 of the Family Court Act, which made mental illness of parents a legal ground for the adoption of their children, to require service or process upon the parents or near relatives of the child when a supplemental petition was filed did not invalidate the statute because § 15 was concerned with two types of petitions - the initial petition seeking the appointment of a guardian for the child and a supplemental petition that could be filed at any time after the appointment of the guardian - and the supplemental petition is one that is filed after the court has acquired jurisdiction and exercised it through the appointment of a guardian; thus, no further service of summons is necessary and nothing more is needed than the notice ordinarily given of an intended application to the court for the entry of an order when statute or special circumstances do not warrant an ex parte application. People ex rel. Nabstedt v. Barger, 3 Ill. 2d 511, 121 N.E.2d 781, 1954 Ill. LEXIS 437 (1954).

In enacting the 1953 Amendment to § 15 of the Family Court Act, which made mental illness of parents a legal ground for the adoption of their children, the legislature's concern for the interest of the parent showed in the requirement that the mental illness must have continued for a period of three years and must, in the opinion of two qualified physicians, be such that there would not be recovery in the foreseeable future; accordingly, the amendment did not constitute a violation of the substantive requirements of due process. People ex rel. Nabstedt v. Barger, 3 Ill. 2d 511, 121 N.E.2d 781, 1954 Ill. LEXIS 437 (1954).

1953 Amendment to § 15 of the Family Court Act, which made mental illness of parents a legal ground for the adoption of their children did not violate substantive requirements of due process; while it had to be conceded that there was a remote possibility that a parent who is insane would, upon restoration to reason, be barred by an adoption decree, entered while insanity continued, from the right to the custody and companionship of the child, that alone did not invalidate the act. People ex rel. Nabstedt v. Barger, 3 Ill. 2d 511, 121 N.E.2d 781, 1954 Ill. LEXIS 437 (1954).

-- Former Indecent Liberties Statute

Where the defendant was observed kissing and rubbing the victim on her dress and there was sufficient proof that defendant's acts were done with the requisite intent, the application of the former indecent liberties statute (see now 720 ILCS 5/12-15 and 720 ILCS 5/12-16(e)) to the defendant's conduct was neither a denial of due process nor violative of the Illinois Constitution. People v. Thingvold, 66 Ill. App. 3d 1002, 23 Ill. Dec. 695, 384 N.E.2d 489 (2 Dist. 1978).

-- Former Medical Practice Act

Section 2 of the former Medical Practice Act, (see now 225 ILCS 60/3), which provided that no person shall engage in the practice of medicine or midwifery without being licensed as provided by statute, did not violate the due process clause of the constitution when considered in the light of the other sections of the Act and the purposes sought to be accomplished by the enactment of the whole Act. People v. Zimmerman, 391 Ill. 621, 63 N.E.2d 850 (1945).

-- Former Paternity Act Limitations Period

The two year limitations period of the former Illinois Paternity Act of 1983 (see now 750 ILCS 45/8) was unconstitutional. Azzone v. Bricco, 125 Ill. App. 3d 818, 81 Ill. Dec. 85, 466 N.E.2d 671 (2 Dist. 1984).

-- Former Reckless Homicide Act

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The former Reckless Homicide Act (see now 720 ILCS 5/9-3) was not so vague, indefinite and uncertain that so as to be an unconstitutional violation of due process. People v. Garman, 411 Ill. 279, 103 N.E.2d 636 (1952).

-- Four Year Statute of Limitations

The four year limit of 735 ILCS 5/13-212 does not constitute a due process violation. Anderson v. Wagner, 79 Ill. 2d 295, 37 Ill. Dec. 558, 402 N.E.2d 560 (1979).

-- Franchise Disclosure Act

Section 12 of the Franchise Disclosure Act (Ill. Rev. Stat., ch. 121 1/2, para. 712, repealed) is constitutional and does not violate the separation of powers or due process. People v. Carter, 97 Ill. 2d 133, 73 Ill. Dec. 329, 454 N.E.2d 189 (1982).

-- Fraternal Benefits Society

Repeal of bylaws of fraternal benefits society which added benefits in addition to those stated in certificate of membership violated no vested right and did not violate constitutional protections of due process and prohibition on impairment of contract. Jenkins v. Talbot, 338 Ill. 441, 170 N.E. 735 (1930).

-- Freedom to Contract

An act which required certain industries to "pay weekly each and every employee engaged in its business the wages earned by such employee to within six days of the date of such payment" violated Ill. Const. (1870) Art. 2 § 2 (see now this section), as it violated for the public's liberty and property right to contract, without due process of law. Braceville Coal Co. v. People, 147 Ill. 66, 35 N.E. 62 (1893).

-- Frontage Consent Zoning Ordinance

Frontage consent ordinance which provided that it be unlawful to locate, build, construct, or maintain on any streets in the city in any block in which two-thirds of the buildings on both sides of the street are used exclusively for residence purposes, any building for a livery stable, garage, gas, or oil station, and any other business or commercial industry not specifically mentioned, without the consent of two-thirds of the property owners, according to frontage, on both sides of such street, violated the due process clause of the state and federal constitutions; a requirement for the consent of property owners who have no interest in the matter was arbitrary, oppressive, and unreasonable. Klumpp v. Rhoads, 362 Ill. 412, 200 N.E. 153 (1936).

-- Funding

Amendment to § 6i of the State Finance Act did not violate Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) because the act involved no deprivation of life or liberty, the act specified the terms and conditions under which a county fair or fair and exposition authority could receive a grant of funds from the State of Illinois for certain purposes and, at most, such fair or authority could have only an expectation or anticipation of receiving a gift or bounty from the State and at no time had a vested right to such a gift or bounty, and no propery interest therein; a right to be within the constitutional protection must be vested, or something more than a mere expectancy. Sangamon County Fair & Agricultural Asso. v. Stanard, 9 Ill. 2d 267, 137 N.E.2d 487, 1956 Ill. LEXIS 327 (1956).

Each of the Acts of 1931 and 1933, which provided for the payment of anticipation warrants out of any available revenue derived from taxes or otherwise, other than the fund anticipated, violated Ill. Const. Art. IX, § 9, and the due process clause, of the constitution, Ill. Const. Art. I, § 2. Leviton v. Board of Education, 385 Ill. 599, 53 N.E.2d 596, 1944 Ill. LEXIS 763 (1944).

-- Funeral Directors Licensing

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Provision of the former Funeral Directors and Embalmers Licensing Act (see now 225 ILCS 41/1-1 et seq.) which required that funeral directors hold certificates as embalmers, which was ruled unconstitutional as being violative of the due process clause, was not so integrated with the other provisions of the statute as to make the whole Act unconstitutional. Gholson v. Engle, 9 Ill. 2d 454, 138 N.E.2d 508 (1956).

-- Garnishment Proceedings

Amendments to the Nonwage Garnishment Law (735 ILCS 5/12-701 et seq.) which were enacted by the Illinois General Assembly in 1992 to provide debtors with notice of garnishments and an opportunity to assert exemptions, appeared to address the alleged constitutional infirmities that Illinois' Nonwage Garnishment Law (735 ILCS 5/12-701 et seq.) violated the procedural due process guarantees of the Illinois and United States Constitutions. E.J. McKernan Co. v. Gregory, 268 Ill. App. 3d 383, 205 Ill. Dec. 763, 643 N.E.2d 1370 (2 Dist. 1994), appeal denied, 161 Ill. 2d 525, 208 Ill. Dec. 358, 649 N.E.2d 414 (1995), overruled on other grounds, Permier Proery Mgt., Inc. v. Chavez, 191 Ill. 2d 101, 245 Ill. Dec. 394, 728 N.E.2d 476 (2000).

Due process requirements in garnishment proceedings are satisfied by proper notice to the principal debtor of the original suit brought by the creditor. Zimek ex rel. Fieldcamp v. Illinois Nat'l Cas. Co., 370 Ill. 572, 19 N.E.2d 620 (1939).

-- Grouping Multiple Counts

Due process was not violated by the common law procedure of grouping several misdemeanor counts in one indictment. People v. Allen, 352 Ill. 262, 185 N.E. 605 (1933).

-- Guest Statute

The former guest statute of the former Motor Vehicle Act (see now 625 ILCS 5/10-201) did not violate the due process clause of the U.S. Const. Amend. 14, nor this section and Ill. Const. (1970), Art. I, § 19 and was valid under the police power of the state, because the Act reasonably tended to correct an evil or promote some interest of the state and did not violate any positive mandate of the constitution. Clarke v. Storchak, 384 Ill. 564, 52 N.E.2d 229 (1943).

-- Guilty but Mentally Ill Statute

The Illinois guilty but mentally ill statute (720 ILCS 5/6-2(c)) as applied to nonincarcerated defendants, does not violate the due process clause of the United States and Illinois Constitutions. People v. Boatright, 137 Ill. App. 3d 888, 93 Ill. Dec. 393, 486 N.E.2d 926 (2 Dist. 1985).

-- Habeas Corpus

Trial court erred in dismissing the inmate's petition for writ of habeas corpus because it stated a claim for habeas corpus relief where the inmate argued that the inmate's good-time credit was wrongfully revoked and the inmate was being detained unlawfully. Adcock v. Snyder, 345 Ill. App. 3d 1095, 281 Ill. Dec. 515, 804 N.E.2d 141, 2004 Ill. App. LEXIS 92 (4 Dist. 2004).

Petitioner could not challenge on due process grounds the procedural aspects of the entry of the nunc pro tunc order which had been entered in a circuit court criminal case record before the time of the hearing in a habeas corpus proceeding. People ex rel. Housby v. Morris, 27 Ill. App. 3d 918, 327 N.E.2d 507 (3 Dist. 1975).

Under Ill. Const. Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2), Circuit Court and Superior Court judges are bound by decisions of appellate courts and are without power or authority to pass on such decisions, even in the context of a habeas corpus petition filed by an incarcerated defendant alleging prosecutorial misconduct, whose conviction has been affirmed. Marcinkiewicz v. State, 21 Ill. Ct. Cl. 153, 1952 Ill. Ct. Cl. LEXIS 3 (Ct. Cl. 1952).

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-- Habitual Criminal

Habitual Criminal Act, 720 ILCS 5/33B-1 et seq. (formerly Ill. Rev. Stat. 1943, chap. 38, par. 602) does not deprive a defendant of due process of law or equal protection, and it is not relevant that predicate offenses were committed in other jurisdictions. People v. Poppe, 394 Ill. 216, 68 N.E.2d 254, 1946 Ill. LEXIS 372 (1946).

-- Habitual Criminal Act

Claim in habeas corpus proceedings that the Habitual Criminal Act, 720 ILCS 5/33B-1 et seq., was unconstitutional was procedurally barred because the claim had not gone through one full round of the state appellate process. Johnson v. Cowan, 207 F. Supp. 2d 848, 2002 U.S. Dist. LEXIS 11185 (C.D. Ill. 2002).

This Act does not violate due process principles simply because it imposes a mandatory sentence upon defendants who have multiple serious felony convictions. People v. Dunigan, 165 Ill. 2d 235, 209 Ill. Dec. 53, 650 N.E.2d 1026 (1995).

Arguments that the Habitual Criminal Act (720 ILCS 5/33B-1 et seq.) is unconstitutional in that it: (1) was enacted in violation of Ill. Const. (1970), Art. IV, § 8(d), because it was not read three times in the House of Representatives; (2) does not permit consideration of the offender's personal characteristics and seriousness of the offense in violation of the due process clause (see this section) U.S. Const., Amend. 8; (3) places the sentencing discretion in the State's Attorney rather than the judiciary in violation of the separation of powers doctrine of the Illinois Constitution and U.S. Const., Amend. 8; and (4) violates the provisions of the Illinois and United States Constitutions prohibiting ex post facto laws and double jeopardy, have been addressed and rejected in numerous appellate court decisions. People v. McCall, 190 Ill. App. 3d 483, 137 Ill. Dec. 438, 546 N.E.2d 62 (2 Dist. 1989).

The habitual criminal statute, by requiring a natural life sentence thereby forbidding consideration of the offender's personal characteristics and the seriousness of the offense, does not violate Ill. Const. (1970), Art. I, § 11, the due process clause (see this section), and U.S. Const., Amends. 8 and 14. People v. Westefer, 169 Ill. App. 3d 59, 119 Ill. Dec. 522, 522 N.E.2d 1381 (2 Dist.), appeal denied, 122 Ill. 2d 591, 125 Ill. Dec. 233, 530 N.E.2d 261 (1988).

The former Habitual Criminal Statute (720 ILCS 5/33B-1) did not deny due process under this section. People v. Sims, 166 Ill. App. 3d 289, 116 Ill. Dec. 706, 519 N.E.2d 921 (1 Dist. 1987), appeal denied, 119 Ill. 2d 571, 119 Ill. Dec. 391, 522 N.E.2d 1250, cert. denied, 488 U.S. 844, 109 S. Ct. 118, 102 L. Ed. 2d 92 (1988).

The legislature's limit on a trial judge's discretion as to the imposition of a life sentence pursuant to the Habitual Criminal Act (720 ILCS 5/33B-1 et seq.) is constitutionally permissible. People v. McNeil, 125 Ill. App. 3d 876, 81 Ill. Dec. 256, 466 N.E.2d 1058 (1 Dist. 1984).

The Habitual Criminal Act (720 ILCS 5/33B-1 et seq.) does not violate due process under the United States and Illinois Constitutions where a defendant is not notified that he is to be sentenced as a habitual criminal until the day of sentencing. People v. Tobias, 125 Ill. App. 3d 234, 80 Ill. Dec. 496, 465 N.E.2d 608 (1 Dist. 1984).

The passage of the former Habitual Criminal Act (see now 730 ILCS 5/5-5-3) was not equivalent to the passage of a bill of attainder and, hence, the Act did not violate the Constitution of the United States nor the Constitution of the State of Illinois. People v. Lawrence, 390 Ill. 499, 61 N.E.2d 361 (1945).

-- Highway Act

605 ILCS 5/4-510 of the Illinois Highway Code, did not violate due process by allowing the State to effect a taking of landowners' property without just compensation, as the landowners'

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contention that 605 ILCS 5/4-510 dispensed with the procedural requirements of eminent domain law was not borne out by the plain language of 605 ILCS 5/4-510. Davis v. Brown, 357 Ill. App. 3d 176, 292 Ill. Dec. 979, 827 N.E.2d 508, 2005 Ill. App. LEXIS 372 (2 Dist. 2005), aff'd, 221 Ill. 2d 435, Ill. Dec. 773, 851 N.E.2d 1198 (2006).

Sections 6-312, 6-313, and 6-315a of the Highway Act (605 ILCS 5/6-312, 605 ILCS 5/6-313, and 605 ILCS 5/6-315a) are not contrary to the Illinois Constitution. McCue v. Brown, 22 Ill. App. 3d 236, 317 N.E.2d 398 (5 Dist. 1974).

Where a bond issue for the payment of interest on bonds for the construction of State aid roads in a county had been approved by the voters, a county board was without authority under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) to assess an additional levy in excess of the statutory maximum to pay for the construction of roads. People ex rel. Murray v. Louisville & N. R. Co., 307 Ill. 173, 138 N.E. 656, 1923 Ill. LEXIS 778 (1923).

-- Hospital Districts

The fact that taxpayers in the non-detaching portion of a hospital district are not allowed to vote on detachment does not violate due process. In re Detachment of Land v. Morrison Community Hosp. Dist., 318 Ill. App. 3d 922, 251 Ill. Dec. 796, 741 N.E.2d 683, 2000 Ill. App. LEXIS 1016 (3 Dist. 2000).

-- Imposition of Fine upon Conviction

Where defendant was convicted of possession of a controlled substance in violation of 720 ILCS 570/402, the imposition of a five dollar fee for deposit into the spinal cord paralysis cure research trust fund under 730 ILCS 5/5-9-1.1(c) violated substantive due process under Ill. Const. (1970), Art. I, § 2, as there was no rational relationship between the possession of a controlled substance and the public interest that led the legislature to create the fund. People v. Morrison, 367 Ill. App. 3d 581, 305 Ill. Dec. 362, 855 N.E.2d 253, 2006 Ill. App. LEXIS 818 (1 Dist. 2006), overruled in part by, criticized in People v. Jones, 223 Ill. 2d 569, 2006 Ill. LEXIS 1671 (2006).

-- Improper Admission of a Confession

Where pretrial confession of the defendant was the only direct evidence which connected him with the actual crime of murder and the confession was admitted in evidence over objections that it had been illegally obtained, the court's failure to hear, out of the presence of the jury, such evidence as the parties may present concerning the circumstances under which the confession was made, for the purpose of determining whether it was voluntarily made or was procured by pressure, fraud, hope, fear, or other undue influence violated defendant's rights against self-incrimination and not to be deprived of life, liberty or property without due process of law, under this section and Ill. Const. (1970), Art. I, § 10. People v. Wagoner, 8 Ill. 2d 188, 133 N.E.2d 24 (1956).

-- Improper Notice and Unfair Hearing

Although attorney's conduct did not meet the standards of the profession, attorney who did not file two appellate briefs in a timely fashion could not be held in contempt because he was not afforded due process through proper notice and a fair hearing. People v. Waldron, 114 Ill. 2d 295, 102 Ill. Dec. 395, 500 N.E.2d 17 (1986).

-- Improper Public Works Ordinance

Where city ordinance which forbode construction of driveway across a sidewalk without a permit from the city public works commissioner subjected every applicant's rights to the unlimited discretion of an officer, without any rules or provisions of law to govern or control the latter's actions, the ordinance was declared unconstitutional. R.G. Lydy, Inc. v. City of Chicago, 356 Ill. 230, 190 N.E. 273 (1934).

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-- Improper Removal of Names from Ballot

Action by township electoral board ordering the names of all candidates be not printed on the ballot because one candidate was unqualified violated due process. Anderson v. Schneider, 67 Ill. 2d 165, 8 Ill. Dec. 514, 365 N.E.2d 900 (1977).

-- Improper Zoning Ordinance

Court upheld the trial court's finding that the City acted unconstitutionally in adding the amendatory ordinances to its zoning act, insofar as the ordinances applied to plaintiffs' land; as a result, the effect of the ordinances on plaintiffs constituted the taking of property without due process of law in contravention of former Ill. Const. Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2). Welch v. Evanston, 65 Ill. App. 3d 249, 22 Ill. Dec. 295, 382 N.E.2d 615, 1978 Ill. App. LEXIS 3474 (1 Dist. 1978).

Where property was characterized for zoning purposes by the predominantly industrial and commercial character of the other property in the area, the ordinance was unreasonable in so far as it restricted the use of the property to single-family and two-family residences. Nelson v. City of Rockford, 19 Ill. 2d 410, 167 N.E.2d 219 (1960).

Zoning ordinance rezoning plaintiff's property from commercial to apartment use was arbitrary and unreasonable and denied plaintiff his right to just compensation under this section and Ill. Const. (1970), Art. I, § 15. Metropolitan Life Ins. Co. v. City of Chicago, 402 Ill. 581, 84 N.E.2d 825 (1949).

Where no reasonable connection obtained between the rezoning of plaintiff's property from commercial to duplex residence and the public health, safety, morals and general welfare, the zoning ordinance of the city insofar as it applied to plaintiff's property was arbitrary and unreasonable. Offner Elecs., Inc. v. Gerhardt, 398 Ill. 265, 76 N.E.2d 27 (1947).

In forbidding appellees to complete the second floor of their property for the use of a separate family, the ordinance in question imposed an unreasonable and unconstitutional restriction on the use of their property where the property was located in a small tract zoned for residential use, was surrounded by property zoned for either commercial uses or for apartments, the lot was near a busy street, and was adjacent to two apartment buildings. Anderman v. City of Chicago, 379 Ill. 236, 40 N.E.2d 51 (1942).

A zoning ordinance, in its effect upon appellants' real estate, was unreasonable and resulted in the taking of their property without due process of law and without just compensation, in violation of U.S. Const., Amend. 14 and the Illinois Constitution, where the ordinance destroyed three-fourths of the value of their property, without any substantial justification therefor, in conservation or furtherance of the public health, safety, morals or general welfare. Reschke v. Village of Winnetka, 363 Ill. 478, 2 N.E.2d 718 (1936).

Where a village saw the necessity for a change in classification and no objection was interposed thereto, the evidence showed a changing condition fully warranting the change, but the evidence did not show conditions warranting an amendment restricting the use of the lots already zoned for commercial purposes so as to exclude garages and filling stations, there was ample evidence to sustain a decree finding the ordinance and the amendments thereto void as to appellees' property. Bank & Trust Co. v. Village of Wilmette, 358 Ill. 311, 193 N.E. 131 (1934).

Amended zoning ordinance which changed classification of tract of land from commercial and industrial uses to apartment and residential purposes was unreasonable, and invaded the rights of appellees without justification and was therefore in violation of former Ill. Const. (1870), Art. II, § 2 (see now this section). Phipps v. City of Chicago, 339 Ill. 315, 171 N.E. 289 (1930).

-- In Camera Inspection

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The trial court's in camera inspection of the defendant's mental health records outside the presence of the prosecutor and defense counsel, after which the relevant portion of the material consisting of a three-page discharge summary was released, did not deprive him of a fair trial under U.S. Const., Amends. 6 and 14 and this section and Ill. Const. (1970), Art. I, § 8 further, that this action was not violative of the provisions of Rule 412(h). People v. Barkauskas, 147 Ill. App. 3d 360, 100 Ill. Dec. 821, 497 N.E.2d 1183 (1 Dist. 1986), rev'd on other grounds, 878 F.2d 1031 (7th Cir. Ill. 1989).

-- Increased Sentence to Death upon Retrial

Increased sentence upon retrial did not violate the defendant's right to due process of law nor did it violate double jeopardy since there was nothing in the record to indicate that the court, in imposing the death penalty, was prompted by any sense of vindictiveness, the trial court merely acted upon the affirmative recommendation of the jury that the death penalty be imposed, a factor not present in the first trial. People v. Bernette, 45 Ill. 2d 227, 258 N.E.2d 793 (1970).

-- Indecent Exposure

City ordinance prohibiting indecent exhibition where medical treatment and medicine was sold did not violate due process. City of Chicago v. Shaynin, 258 Ill. 69, 101 N.E. 224 (1913).

-- Indecent Solicitation of an Adult

Minor's argument that his due process rights were violated because his adjudication of delinquency for violation of the indecent solicitation of an adult, 720 ILCS 5/11-6.5(a), was allegedly made possible because the statute did not require a culpable mental state or a criminal purpose was rejected; the statute stated that an offender had to "arrange" the illicit encounter and, thus, the statute narrowly defined the requisite culpable mental state and precluded innocent conduct from being punished. People v. M.T. (In re M.T.), 221 Ill. 2d 517, 304 Ill. Dec. 336, 852 N.E.2d 792, 2006 Ill. LEXIS 1093 (2006).

Minor's argument that his due process rights were violated based on his adjudication for violating the indecent solicitation of an adult statute, 720 ILCS 5/11-6.5, because that offense if committed by an adult was a felony for arranging a sexual encounter while those actually engaged in that activity were only guilty of a misdemeanor under another statute regarding criminal sexual abuse was rejected; the legislature could conclude that a person charged with indecent solicitation of an adult for repeatedly arranging sexual contacts between adults and children was a far greater potential societal harm than one charged with a single instance of criminal sexual abuse, and, thus, the statute was not a facial violation of the minor's due process rights. People v. M.T. (In re M.T.), 221 Ill. 2d 517, 304 Ill. Dec. 336, 852 N.E.2d 792, 2006 Ill. LEXIS 1093 (2006).

-- Industrial Project Revenue Bond Act

Under the Industrial Project Revenue Bond Act (65 ILCS 5/11-74-1 et seq.), there is neither a taking of a taxpayer's money to finance the contemplated project, nor are the funds used for a private purpose. People ex rel. City of Salem v. McMackin, 53 Ill. 2d 347, 291 N.E.2d 807 (1972).

-- Inmate Grievance

In a mandamus action by plaintiff inmate to compel defendant warden to follow the Illinois Administrative Procedure Act (APA), 5 ILCS 100/1-1 et seq., during adjustment committee and grievance proceedings at the correctional center where the inmate was housed, the inmate was not entitled to mandamus relief because (1) pursuant to 5 ILCS 100/1-5(a) of the APA, the Illinois Department of Corrections (DOC) was exempt from using the APA's procedures in adjustment committee and grievance proceedings, and (2) the DOC's failure to follow such procedures did not deny the inmate due process since such procedures were not mandatory in the proceedings

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in question. Ratliff-El v. Briley, 338 Ill. App. 3d 1070, 273 Ill. Dec. 607, 789 N.E.2d 781, 2003 Ill. App. LEXIS 562 (3 Dist. 2003).

-- Insurance

Section 502 of the Illinois Insurance Code, Ill. Rev. Stat., 1973, ch. 73, para. 1065.59, did not violate the due process and equal protection clauses of the Illinois and Federal constitutions for failing to set for criteria for determining whether the sanction imposed upon a licensed holder found to have engaged in a type of conduct enumerated in § 502 is to be revocation of the license of suspension; § 502, in empowering the Department of Insurance to order suspension rather than outright revocation of a license, provides a flexibility that the legislature deemed desirable to enable the Department to deal adequately with the varied factual situations that it might confront. Patchett v. Baylor, 62 Ill. 2d 426, 343 N.E.2d 484, 1976 Ill. LEXIS 265 (1976).

Act of June 19, 1891, which prohibits life insurance companies from discriminating between their insureds, does not violate constitutional provisions prohibiting the deprivation of property without due process of law and prohibiting local or special laws granting any corporation a special or exclusive privilege, immunity, or franchise merely because the Act excludes fraternal associations; because the primary object of fraternal associations is to furnish assistance to members rather than to create a profit, a fraternal association is so different from a life insurance company that the State does not act arbitrarily when it classifies the two entities differently for the purpose of regulation. People v. Commercial Life Ins. Co., 247 Ill. 92, 93 N.E. 90, 1910 Ill. LEXIS 1826 (1910).

-- Interest on Judgments

-- Legal Malpractice Statute of Repose

Application of the statute of repose to bar a claim for legal malpractice by an inmate who was estopped from bringing a cause of action for legal malpractice while he was incarcerated did not violate the plaintiff's rights under the equal protection and due process clauses of the Illinois Constitution. Griffin v. Goldenhersh, 323 Ill. App. 3d 398, 257 Ill. Dec. 52, 752 N.E.2d 1232, 2001 Ill. App. LEXIS 539 (5 Dist. 2001).

-- License Fees

City ordinance that provided that no one could temporarily reside in the city and vend at auction any goods or merchandise without first obtaining a license was unconstitutional because a city had no power to discriminate between residents and non-residents of the city, or between those temporarily residing in the city and those permanently residing there, in requiring licenses or in the fees to be paid for those licenses. Carrollton v. Bazette, 159 Ill. 284, 42 N.E. 837, 1896 Ill. LEXIS 1462 (1896).

City ordinance that required itinerant merchants to pay a license fee of $10 per day was unconstitutional because the fee, which was the same no matter the extent of the business or the length of time that it was carried on, was so burdensome that it restrained trade and deprived itinerant merchants of their property without due process of law. Carrollton v. Bazette, 159 Ill. 284, 42 N.E. 837, 1896 Ill. LEXIS 1462 (1896).

-- Licenses

Provision of a statute, which regulated the business of foreign exchange, which allowed the Auditor of Public Accounts, upon his own motion or at the request of another, to investigate the action of any licensee and to charge the expenses for such investigation to the licensee, did violate Ill. Const. of 1870, Art. II § 2 (now Ill. Const. (1970), Art. I, § 2) because the provision could subject honest proprietors to pay large sums for groundless complaints. Italia America Shipping Corp. v. Nelson, 323 Ill. 427, 154 N.E. 198, 1926 Ill. LEXIS 1013 (1926).

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-- Limitations Period

Failure to file suit to enforce a mechanic's lien within the time limits of 770 ILCS 60/9 amounted to a lack of compliance requiring the denial of the lien, and the lienholder's contention that the limitation period violated his constitutional rights was without merit. Agles v. Stolze Lumber Co., 260 Ill. App. 14, 1930 Ill. App. LEXIS 723 (1930).

-- Liquor Control Act

Although the Liquor Control Act (235 ILCS 5/1-1 et seq.) provides for notice and hearing before the local commissioner, the statute provides the same de novo review before the State Commission; therefore, if a de novo review protected a plaintiff's constitutional rights after a summary revocation of his liquor license under the prior procedure, such review would similarly protect a plaintiff's constitutional rights after a tainted hearing before a local commissioner. Roberts v. Illinois Liquor Control Comm'n, 58 Ill. App. 2d 171, 206 N.E.2d 799 (1 Dist. 1965).

-- Long-Term Care Peer Review

210 ILCS 45/3-602 does not violate the due process clauses of the state and federal constitutions. Harris v. Manor Healthcare Corp., 111 Ill. 2d 350, 95 Ill. Dec. 510, 489 N.E.2d 1374 (1986).

-- Look-Alike Drugs

720 ILCS 570/102(z) is not unconstitutionally vague in violation of U.S. Const., Amend. 14, or this section. People v. Prather, 138 Ill. App. 3d 32, 92 Ill. Dec. 619, 485 N.E.2d 430 (1 Dist. 1985).

-- Malicious Prosecution

735 ILCS 5/2-109, which eliminates the requirement to plead or prove special injury for certain malicious prosecution plaintiffs, does not violate the guarantee of due process found in Article I, § 2 of the Illinois Constitution since the statute meets the rational basis requirement. Miller v. Rosenberg, 196 Ill. 2d 50, 255 Ill. Dec. 464, 749 N.E.2d 946, 2001 Ill. LEXIS 473 (2001).

-- Mandatory Fine for Drug Related Offenses

A mandatory fine under § 5-9-1.1 of the Criminal Code (730 ILCS 5/5-9-1.1), does not violate the due process and separation of powers provision of the Illinois Constitution. People v. Harmison, 124 Ill. App. 3d 236, 79 Ill. Dec. 598, 463 N.E.2d 1373 (3 Dist. 1984).

-- Mandatory Sewer Connections

Ordinance requiring connections with a municipal sewer system, and declaring that the use of nonmunicipal sewer systems was a nuisance, was within the powers granted to the city by the General Assembly, and the defendants were not deprived of due process under the state or federal constitution because they are required to connect with the city sewer system. City of Nokomis v. Sullivan, 14 Ill. 2d 417, 153 N.E.2d 48 (1958).

-- Manufacture of Mattresses

Because Laws of 1915, p. 375 prohibited absolutely the use of used material in the manufacture of mattresses for sale when not inherently dangerous and when it could be rendered safe by reasonable regulation, the statute was an invasion of personal and property rights within the meaning of Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). People v. Weiner, 271 Ill. 74, 110 N.E. 870, 1915 Ill. LEXIS 1983 (1915).

-- Marriage License Tax

The imposition of a special tax on the issuance of a marriage license for the purpose of contributing to the Domestic Violence Shelter and Service Fund (20 ILCS 1310/3) imposes a

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significant interference with the fundamental right to marriage and since it could not pass the strict scrutiny test of due process, it was held unconstitutional. Boynton v. Kusper, 112 Ill. 2d 356, 98 Ill. Dec. 208, 494 N.E.2d 135 (1986).

-- Medical Malpractice

The four-year statute of repose of 735 ILCS 5/13-212 does not violate the right to due process. Kanne v. Bulkey, 306 Ill. App. 3d 1036, 240 Ill. Dec. 97, 715 N.E.2d 784 (1 Dist. 1999), appeal denied, 185 Ill. 2d 629, 242 Ill. Dec. 139, 720 N.E.2d 1094 (1999).

-- Mental Health Code

Independent examination for purposes of determining appropriateness of involuntary psychotropic medication did not have to be performed by a psychiatrist, so long as the expert was well qualified. People v. Robert S. (In re Robert S.), 341 Ill. App. 3d 238, 275 Ill. Dec. 190, 792 N.E.2d 421, 2003 Ill. App. LEXIS 856 (2 Dist. 2003), aff'd in part and rev'd in part, 213 Ill. 2d 30, 289 Ill. Dec. 648, 820 N.E.2d 424 (2004).

Involuntary admittee was not served with notice of a petition for administration of authorized involuntary treatment prior to a June 25, 2002, hearing, in violation of his due process rights, where under 405 ILCS 5/2-107.1(a-5)(1) of the Mental Health Code, an involuntary admittee had a right to at least three days' notice prior to a hearing on a petition for authorized involuntary treatment. People v. O.C. (In re O.C.), 338 Ill. App. 3d 292, 273 Ill. Dec. 287, 788 N.E.2d 1163, 2003 Ill. App. LEXIS 624 (4 Dist. 2003).

The Illinois Mental Health Code (405 ILCS 5/3-700 and 405 ILCS 5/3-819) provides sufficient due process safeguards to protect the involuntary patient. People v. Orr, 176 Ill. App. 3d 498, 125 Ill. Dec. 885, 531 N.E.2d 64 (4 Dist. 1988).

-- Mobile Home Landlord and Tenants

765 ILCS 745/8 does not violate plaintiff's right to due process under either the state or federal Constitutions. Beeding v. Miller, 167 Ill. App. 3d 128, 117 Ill. Dec. 707, 520 N.E.2d 1058 (2 Dist.), cert. denied, 122 Ill. 2d 569, 125 Ill. Dec. 211, 530 N.E.2d 239 (1988), 489 U.S. 1096, 109 S. Ct. 1569, 103 L. Ed. 2d 935 (1989).

-- Mortgage Foreclosure Proceeding

Former mortgage foreclosure statute which conferred power on courts of equity to render deficiency decrees in foreclosure proceedings was not repugnant to former sections 2 and 5 of Article 2 of the 1870 Illinois Constitution (see now this section and Ill. Const. (1970), Art. I, § 13), because it did not deprive the mortgagor of due process of law and the right of trial by jury. Martin v. Strubel, 367 Ill. 21, 10 N.E.2d 325 (1937).

Because the foreclosure statute, Ill. Stat. ch. 77, § 28, as amended July 1, 1917, allowed a redemption before sale, it did not deprive mortgagors of their right of redemption or right to contract, and because the statute was construed to require a public sale with notice only as soon as the proper legal steps could be taken to hold the sale, the statute was not unconstitutional under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Hall v. American Bankers' Ins. Co., 315 Ill. 252, 146 N.E. 137, 1924 Ill. LEXIS 826 (1924).

-- Motion for New Trial

Where the defendant in error filed no motion to set aside the verdict in an injury case but did file such motion in the death case, and where the trial court granted plaintiff's motion for a new trial in the death case, the defendant then filed, in the appellate court, a petition for leave to appeal from the order granting the new trial, which petition for leave to appeal was denied, the defendant had not been denied due process of law and that no debatable constitutional question was involved. Baumgardner v. Boyer, 384 Ill. 584, 52 N.E.2d 247 (1943).

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-- Motor Vehicle Dealer Licensing

625 ILCS 5/5-101(e) and 625 ILCS 5/5-102(e) are not unconstitutional delegators of legislative power to an executive officer, nor do they violate due process by authorizing him to act on some applications immediately while arbitrarily delaying others indefinitely. People ex rel. Carpentier v. Goers, 20 Ill. 2d 272, 170 N.E.2d 159 (1960).

-- Municipalities

Statutes allowing a municipality to purchase land for the purpose of providing off-street parking did not violate the due-process clause of the state or federal constitutions. Poole v. City of Kankakee, 406 Ill. 521, 94 N.E.2d 416 (1950).

Ordinance regulating garages did not unlawfully discriminate against persons engaged in the business of parking automobiles on vacant lots and thus did not violate the due process of law guarantee of this section. City of Chicago v. Ben Alpert, Inc., 368 Ill. 282, 13 N.E.2d 987 (1938).

-- Murder

In murder case, defendant was properly adjudged habitual offender and sentenced to life imprisonment pursuant to 720 ILCS 5/33B-1; Defendant's argument that statute violated Ill. Const., Art. I, § II and Eighth Amendment because it required imposition of natural life sentence of imprisonment while forbidding other constitutional considerations such as seriousness of offense and defendant's rehabilitative potential failed; moreover, his argument that Criminal Code of 1961 violated Separation of Powers provisions of state and federal constitutions because it vested too much discretion in hands of the prosecutor failed as well. People v. Szudy, 262 Ill. App. 3d 695, 200 Ill. Dec. 462, 635 N.E.2d 801, 1994 Ill. App. LEXIS 770 (1 Dist. 1994).

Subdivision (b)(3) of 720 ILCS 5/9-1 does not violate the due process clause of the Illinois Constitution. People v. Caballero, 102 Ill. 2d 23, 79 Ill. Dec. 625, 464 N.E.2d 223 (1984), rev'd on other grounds, 126 Ill. 2d 248, 128 Ill. Dec. 1, 533 N.E.2d 1089 (1989), cert. denied, 508 U.S. 952, 113 S. Ct. 2447, 124 L. Ed. 2d 664 (1993).

-- Nonprofit Corporations

In a dispute over the propriety of the by-laws, the members of a nonprofit corporation had no constitutional right to vote for directors, and there was no constitutional prohibition against a staggered election of directors; therefore, the board of directors was properly expanded and elected and a lower court judgment finding that the new by-laws violated former Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) was reversed. Westlake Hospital Asso. v. Blix, 13 Ill. 2d 183, 148 N.E.2d 471, 1958 Ill. LEXIS 249 (1958).

-- Nursing Act

Nursing and Advanced Practice Nursing Act, 225 ILCS 65/20-75, did not violate traditional midwife's due process rights as it was not unconstitutionally vague in that it clearly defined the practice of professional nursing and advanced practice nursing. People ex rel. Sherman v. Cryns, 203 Ill. 2d 264, 271 Ill. Dec. 881, 786 N.E.2d 139, 2003 Ill. LEXIS 450 (2003), cert. denied, 540 U.S. 818, 124 S. Ct. 83, 157 L. Ed. 2d 35 (2003).

-- Objecting to Settlement

Where notice which objector to proposed settlement of class action received informed her that a time certain would be set by the court, the next notice received stated when a hearing was to be held on the proposed settlement and "all matters in connection therewith," the hearing was continued several times thereafter, prior to the actual hearing, objector responded to the second notice and notified all parties of her intentions and the objector responded reasonably to the information supplied her in the notices, she was entitled to an opportunity to be heard or her right

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of due process would have been violated. 1200 Condominium Ass'n v. The 1200, 47 Ill. App. 3d 729, 8 Ill. Dec. 150, 365 N.E.2d 388 (1 Dist. 1977).

-- Obscenity

Defendant's contention that 720 ILCS 5/11-20 was unconstitutional because its definition of obscenity was too vague and indefinite to meet the due process requirements of the Federal Constitution was rejected. People v. Burkhardt, 11 Ill. App. 3d 760, 297 N.E.2d 694 (1 Dist. 1973).

-- Ordinance Banning Handguns

The ordinance banning handguns bore a rational relation to the goal of reducing weapons-related injuries and accidents within the village. Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483, 83 Ill. Dec. 308, 470 N.E.2d 266 (1984).

-- Ordinances

City ordinances prohibiting the use of certain property for cemetery purposes was invalid under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) because the general assembly had already decided that such properties were suitable for cemetery uses, and only where protection to life and health required restrictions could the restrictions be valid. Rosehill Cemetery Co. v. Chicago, 366 Ill. 207, 8 N.E.2d 664, 1937 Ill. LEXIS 574 (1937).

Municipal ordinance, which required every owner of a wagon, motor vehicle, motor bicycle or other vehicle who resided within city limits to pay a tax or license fee for the use of the vehicle within the city, was constitutional because the right or privilege of using vehicles on a city street was a proper subject of license taxation, the ordinance's reference to "use" meant use for travel upon the public streets and highways (rather than the broader connotation of any use of the vehicle), each violation of the ordinance (use of the city's street by a vehicle that had not paid the appropriate tax) was properly a separate offense, and the penalty for the offense was not an unreasonable punishment. Lincoln v. Gerard, 329 Ill. 501, 160 N.E. 839, 1928 Ill. LEXIS 878 (1928).

Ordinance regulating the weight and quality of bread sold within a city was a valid ordinance and did not conflict with Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Chicago v. Schmidinger, 245 Ill. 317, 92 N.E. 244, 1910 Ill. LEXIS 2003 (1910).

Although the vendor had the right to sell fruits and vegetables upon the public streets and alleys of the city, he had no vested right in making noise upon the streets of the city by advertising his fruits and vegetables by public outcry and, thus, a city ordinance that prohibited vendors, other than amusement grounds, parks, halls, and other places licensed by the city, to make noise for the purpose of advertising goods did not deprive the vendor of his property without due process of law. Goodrich v. Busse, 247 Ill. 366, 93 N.E. 292, 1910 Ill. LEXIS 1855 (1910).

City ordinance that prohibited vendors, other than amusement grounds, parks, halls, and other places licensed by the city, to make noise for the purpose of advertising goods did not deprive the vendor of his property without due process of law because the ordinance did not deprive the vendor of his right to engage in the business of peddling fruits and vegetables upon the streets and alleys of the city; the utmost the ordinance did was to regulate the vendor's business, and that of all persons similarly situated. while pursuing their calling upon the streets and alleys of the city. Goodrich v. Busse, 247 Ill. 366, 93 N.E. 292, 1910 Ill. LEXIS 1855 (1910).

Ordinance authorizing an assessment to pay for a street improvement was not invalid, even if contractor violated a statute that prohibited public works' contracts from employing persons that were not native born or naturalized American citizens because such a statute was unconstitutional, in violation of the right of individuals to contract; the city's failure to follow an

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unconstitutional statute could not invalidate its assessment. Chicago v. Hulbert, 205 Ill. 346, 68 N.E. 786, 1903 Ill. LEXIS 2877 (1903).

-- Parking Violations

A city ordinance that provided for the administrative adjudication of parking violations did not violate the due process clause, notwithstanding that the hearing officer had the authority to conduct a searching cross-examination of the ticket recipient. Van Harken v. City of Chicago, 305 Ill. App. 3d 974, 239 Ill. Dec. 223, 713 N.E.2d 754 (1 Dist. 1999), appeal denied, 185 Ill. 2d 668, 242 Ill. Dec. 151, 720 N.E.2d 1106 (1999).

-- Photo-Identification

Defendant's motion to suppress his identification was properly denied as: (1) defendant and the victim were well-acquainted with each other, were doing business together, and had met previously, (2) the victim initially told the police that he was shot by "Red," of whom he was able to provide an accurate description, (3) the victim subsequently identified defendant as "Red" both at a photographic lineup and later at trial, (4) the hand-squeezing method of photographic identification was not inappropriate given that the victim was a hospitalized gunshot victim, (5) defendant was also identified by another witness using the same photographic array, and (6) defendant admitted his guilt to the police. People v. Karim, 367 Ill. App. 3d 67, 304 Ill. Dec. 739, 853 N.E.2d 816, 2006 Ill. App. LEXIS 649 (1 Dist. 2006).

-- Picketing

Injunction prohibiting union members from peaceful picketing of printing shops and from congregating about or near the shops for the purpose of inducing or soliciting employees to leave the shops' employment did not infringe upon constitutional rights of the union or its officers because the picketing was an act of intimidation and an unwarranted interference with the right of free trade and because the picketing, though consisting of otherwise lawful argument and persuasion, was intended to injure the business of the printing shops. A. R. Barnes & Co. v. Chicago Typographical Union, 232 Ill. 424, 83 N.E. 940, 1908 Ill. LEXIS 2793 (1908).

-- Plumbing License Act

The licensure requirement of the Plumbing License Law (225 ILCS 320/1 et seq.) is rationally related to a legitimate state goal and does not violate due process guarantees or the prohibition against special legislation. People ex rel. Lumpkin v. Cassidy, 184 Ill. 2d 117, 234 Ill. Dec. 389, 703 N.E.2d 1 (1998).

-- Police Lineup Identification

Evidence of defendant's lineup identification could not be considered the "fruit of the poisonous tree" of the alleged violation of due process rights where the police conduct, assuming that it violated due process, did not result in defendant being subjected to the lineup identification; defendant would have been required to participate in the lineup regardless of whether he had been allowed to consult with his attorney or was informed that his attorney was present. People v. McCauley, 163 Ill. 2d 414, 206 Ill. Dec. 671, 645 N.E.2d 923 (1994).

-- Premature Relief

Where the sole issue joined on the petition was the question of jurisdiction, an order which granted to petitioner all the relief prayed for in the petition was premature and denied defendant the guarantee of due process of law. Durkin v. Hey, 376 Ill. 292, 33 N.E.2d 463 (1941).

-- Prison Discipline

Prison adjustment committee had denied due process to an inmate accused of damaging a correctional officer's property when it failed to locate and hear testimony from an inmate that the

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accused inmate had named as a witness merely because the accused inmate had misspelled the name of the witness and a grant of summary judgment under 735 ILCS 5/2-1005(c) in favor of the committee in the inmate's mandamus action was erroneous. Miranda v. Coutee, Ill. App. 3d , Ill. Dec. , N.E.2d , 2002 Ill. App. LEXIS 1283 (1 Dist. Oct. 29, 2002).

-- Private Detectives

Private Detective, Private Alarm, Private Security, and Locksmith Act of 1993 does not violate due process because the work experience requirement of 225 ILCS 446/75(a)(6) of the Act is a reasonable means of achieving the legislature's goal of protecting the public. Weipert v. Ill. Dep't of Prof'l Regulation, 337 Ill. App. 3d 282, 271 Ill. Dec. 621, 785 N.E.2d 553, 2003 Ill. App. LEXIS 250 (4 Dist. 2003), appeal denied, 204 Ill. 2d 685, 275 Ill. Dec. 83, 792 N.E.2d 314 (2003).

-- Probation Violation Proceeding

Where the trial court failed to admonish defendant on two of the rights he was waiving by admitting to a probation violation, the court substantially complied with applicable caselaw and due process was not violated; defendant had previously been admonished on such rights, most recently a month before the admission at issue. People v. Dennis, 354 Ill. App. 3d 491, 290 Ill. Dec. 123, 820 N.E.2d 1190, 2004 Ill. App. LEXIS 1521 (4 Dist. 2004).

Forcing defendant to testify as a witness for the State at defendant's probation revocation hearing did not violate defendant's due process rights under U.S. Const., Amend. V and Ill. Const., Art. I, § 2 because (1) defendant had the opportunity to present evidence and cross-examine witnesses, (2) he was represented by counsel, and (3) the proceedings were conducted in a fair and impartial manner. People v. Lindsey, 319 Ill. App. 3d 586, 253 Ill. Dec. 860, 746 N.E.2d 308, 2001 Ill. App. LEXIS 255 (1 Dist. 2001).

Because Miranda protections apply to probation revocation proceedings, due process protections bar use of admissions obtained contrary to Miranda protections in probation revocation hearings. In Interest of McMillan, 51 Ill. App. 3d 940, 10 Ill. Dec. 106, 367 N.E.2d 494, 1977 Ill. App. LEXIS 3213 (1 Dist. 1977).

-- Professional Regulation

In an appeal from administrative orders ordering a nurse to cease and desist the practice of midwifery and suspending the nurse's license for three years, the nurse's due process claims failed because the nurse received notice of the charges and enjoyed a hearing before an impartial tribunal, at which the nurse was represented by counsel and was allowed to cross-examine witnesses, present evidence in the nurse's own defense and inspect documentary evidence against the nurse. Morris v. Dep't of Prof'l Regulation, 356 Ill. App. 3d 83, 291 Ill. Dec. 901, 824 N.E.2d 1151, 2005 Ill. App. LEXIS 135 (1 Dist. 2005), appeal denied, 215 Ill. 2d 599, 295 Ill. Dec. 522, 833 N.E.2d 4 (2005).

-- Prohibition of Medical Offices

Residential district which permitted hospitals and clinics, nursing homes, institutions of an educational nature which could include a medical college or school of veterinary medicine and other uses, but prohibited the operation of a physician's and surgeon's office, was not arbitrary and void as a matter of law and did not violate the due process clauses of the constitutions. City of Champaign v. Roseman, 15 Ill. 2d 363, 155 N.E.2d 34 (1958).

-- Railroad Employee Transportation

Order of Commerce Commission requiring railroad to furnish daily transportation to certain employees from a depot to a yard office 2.7 miles away was unreasonable and unlawful because it had no substantial basis in the evidence and because it was arbitrary, discriminatory and

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indefinite in its terms. Wabash R.R. v. Order of Ry. Conductors of Am., 402 Ill. 548, 84 N.E.2d 406 (1949).

-- Railroads

Chicago, Ill. Ordinance § 15 (February 11, 1907), which gave the city the exclusive authority to grant permission for the construction, maintenance and operation of street railways in the streets of the city and in doing so could impose such terms as it saw fit, was accepted by the railroad company as part of a contract and the railroad company became bound by its terms; therefore the requirement that the railway company be responsible for the maintenance of street pavements at the intersections of tracks and road beds regardless of the cause of damage was not a violation of due process under Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) or Ill. Const. of 1870, Art. II, §§ 13 and 14. Chicago C. R. Co. v. Chicago, 323 Ill. 246, 154 N.E. 112, 1926 Ill. LEXIS 991 (1926).

Ordinance granting a railway company the authority to construct, maintain, and operate a street railway on city streets and pay the city a set amount per mile late did not violate the due process clause of the Illinois Constitution because the statute giving the municipality the power to grant or withhold its consent was not to be exercised by a general ordinance applicable to all cases, and each case had to be acted upon with reference to its peculiar conditions and circumstance; furthermore, discretionary power was conferred by the legislature upon the city council to impose a mileage tax upon giving its consent to any particular company to occupy its streets. Chicago G. R. Co. v. Chicago, 176 Ill. 253, 52 N.E. 880, 1898 Ill. LEXIS 3261 (1898).

Statute allowing double recovery to an owner of livestock killed by a train at a railroad crossing was not unconstitutional because it was penal and did not deprive the railroad of life, liberty, or property without due process of law. Cairo & S. L. R. Co. v. Peoples, 92 Ill. 97, 1879 Ill. LEXIS 64 (1879).

-- Regulation of Cigarette Sales

City ordinance prohibiting sales of cigarettes to minors, sales within 300 feet of schools, sales of cigarettes containing deleterious or poisonous drugs, imposing upon the health department the duty of inspection and to prevent traffic in cigarettes containing deleterious substances and unsanitary conditions in selling places, was within legislative power of city under former City and Villages Act (see now 65 ILCS 5/11-20-3, 65 ILCS 5/11-11-1 and 65 ILCS 5/11-20-5) and was not unconstitutional as to deprive manufacturer and lessor of cigarette vending machines of their property without due process of law under this section or U.S. Const., Amend. XIV. Illinois Cigarette Serv. Co. v. City of Chicago, 89 F.2d 610 (7th Cir. 1937).

-- Regulation of Transportation Tickets

Act requiring that ticket agents have certificate of authority from carrier owner and a regulating resale of tickets for transportation conveyances, did not violate state constitutional provision that no person shall be deprived of life, liberty, or property without due process of law nor did it impair obligation of contracts. Burdick v. People, 149 Ill. 600, 36 N.E. 948 (1894).

-- Retailers' Occupation Tax Act

The Retailers' Occupation Tax Act (35 ILCS 120/1 et seq.) does not violate the due process of law clause of either the federal or state constitution, and the tax is not confiscatory; the legislature has the inherent power to tax the occupation of those persons engaged in the business of selling tangible personal property to purchasers for use or consumption and the provision of the Act imposing a tax measured by gross receipts is valid and is uniform as to the class upon which it operates. Reif v. Barrett, 355 Ill. 104, 188 N.E. 889 (1933).

-- Revenue Act

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The principle of exclusivity of the statutory remedy provided under the former Revenue Act (see now 35 ILCS 200/20-210 through 35 ILCS 200/20-225 and 35 ILCS 200/23-5 through 35 ILCS 200/23-20) was constitutional where plaintiffs elected to forego the procedure specified by the statute thereby allowing their issues to be barred by the judgment entered on the collector's application. Chicago Title & Trust Co. v. Tully, 76 Ill. App. 3d 336, 32 Ill. Dec. 95, 395 N.E.2d 42 (1 Dist. 1979).

-- Revised Cities and Villages Act

Former statute providing for the disconnection of land from a newly organized municipality was not unconstitutional as no taxpayer had any vested right in the village as a municipal corporation or any guaranty that its boundaries would remain unchanged or that it may not lose its corporate life; those hazards were incident to the ownership of property within a city or village and the taxation of owners of property remaining within the municipality did not deny due process, nor did it discriminate against resident and nonresident taxpayers under former Ill. Rev. Stat., ch. 24, para. 7-39a, (see now 65 ILCS 5/7-3-1, 65 ILCS 5/7-3-2 and 65 ILCS 5/7-3-3). Bergis v. Village of Sunnyside, 13 Ill. 2d 50, 147 N.E.2d 333 (1958).

-- Right to Competent Counsel

It is a requirement of due process under the constitution of Illinois that an accused criminal shall be given the benefit of counsel. United States ex rel. Hall v. Ragen, 60 F. Supp. 820 (N.D. Ill. 1945).

Where the court did not inquire as to whether defendant was able to employ counsel and did not appoint counsel to represent him prior to and during his arraignment, conviction was not reversible error as the record showed he was represented by counsel at each stage of the proceedings except at his arraignment when he pleaded not guilty. People v. Moore, 405 Ill. 220, 89 N.E.2d 731 (1950).

-- Right to Contract

Privilege of contracting is both a liberty and a property right, and a law which deprives a man or a class of the right to acquire and enjoy property upon the same terms and in the same manner permitted to the community at large is in violation of the constitutional rights of the persons affected by such law. Charles J. Off & Co. v. Morehead, 235 Ill. 40, 85 N.E. 264, 1908 Ill. LEXIS 3008 (1908).

The right to entertain lodgers in a lodging house, and to fix, by contract with them, the price to be paid for such accommodation, to the number who should occupy the same room at the same time for sleeping purposes, was a liberty and also a property right, and any restriction upon or abridgment of this right by statute deprived the citizen of both liberty and property. Bailey v. People, 190 Ill. 28, 60 N.E. 98 (1901).

-- Scaffold Act

The former Scaffold Act (former 740 ILCS 150/1 et seq.) did not violate the due process provisions of the state and federal constitutions. Kennerly v. Shell Oil Co., 13 Ill. 2d 431, 150 N.E.2d 134 (1958).

-- School Code

Ill. Rev. Stat. ch. 122, § 10-22.6, authorizing school boards to expel students for gross misconduct, satisfied due process requirements because it required a hearing preceded by notice of time, place, and purpose, and the hearing did not need to take the form of a judicial or quasi-judicial trial. Linwood v. Board of Education, 463 F.2d 763, 1972 U.S. App. LEXIS 8940 (7th Cir. 1972).

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Article 34 of the School Code (former Ill. Rev. Stat. 1963, ch. 122, Art. 34) was not violative of due process as an arbitrary delegation of police power and governmental functions to a board not responsible to the electorate, nor did it repose unregulated discretion in an appointive board, nor was it an unlawful delegation of legislative power and the power to tax so delegated did not deprive plaintiffs of their property without due process. Latham v. Board of Educ., 31 Ill. 2d 178, 201 N.E.2d 111 (1964).

Section 96 of the School Law (Ill. Laws of 1917, p. 743), which allows a high school pupil, with the county superintendent of school's permission, to attend a high school in another district that is more convenient for the student and to have the high school district in which the pupil resides to pay tuition to the other district, does not deprive either the student's home school district or its taxpayers of property without due process of law and therefore does not violate Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2). There is no constitutional violation because taxes levied by a board of education are not for the private benefit of the board, the taxpayers, or the pupils; rather, those taxes are public funds in the hands of agents of the state, which are used to establish and maintain a system of free schools. Proviso Tp. High School v. Oak Park & River Forest Tp. High School, 322 Ill. 217, 153 N.E. 369, 1926 Ill. LEXIS 1114 (1926).

Section 96 of the School Law of Illinois, as amended June 22, 1917, which allows students who lived in one school district to attend high school in another school district that is more convenient to them, and which requires the home school district to pay the student's tuition in the receiving district, does not deprive the home school district and the taxpayers in that district of property without due process of law (in violation of Ill. Const. of 1870, Art. II, § 2, now Ill. Const. (1970), Art. I, § 2) because even though the taxes raised for high school purposes in the hands of boards of education are private property of the boards of education as against third persons, for the purpose of carrying out the constitutional mandate of providing a free education, the taxes are public property in the hands of State agents for that purpose and are subject to the will of the legislature. Board of Education v. Board of Education, 314 Ill. 83, 145 N.E. 169, 1924 Ill. LEXIS 1092 (1924).

Illinois School law dealing allowing for the detaching of school districts from a consolidated district did not violate Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) because the governmental powers that the municipal corporation could exercise and the property it held were within the power of the legislature, and the municipal corporation's powers could be enlarged, diminished, modified, or revoked at the pleasure of the legislature. People ex rel. Taylor v. Camargo Community Consol. School Dist., 313 Ill. 321, 145 N.E. 154, 1924 Ill. LEXIS 879 (1924).

Tax levied by the county's board of education of the non-high school district against the railroad's property was proper because there was no merit to the railroad's argument that there were two taxing bodies exercising jurisdiction over the same territory for the same purpose; it was within the power of the legislature to provide for the establishment of township high schools and a school district and to confer the power of taxation upon their boards and there was no clash between the powers and duties of the boards of education of the non-high-school districts and the boards of education of high school districts located within the non-high-school districts. People ex rel. Holmes v. Cleveland, C., C. & S. L. R. Co., 288 Ill. 70, 122 N.E. 792, 1919 Ill. LEXIS 1062 (1919).

Statutes providing for the funding of public schools through property taxes were not unconstitutional because the public schools were provided for in the state constitution, former Ill. Const. of 1870, Art. VIII, § 1, and the legislature's ability to fund those schools was the natural results of that constitutional establishment and the provisions were non-discriminatory and a reasonable exercise of legislative power; the court rejected arguments that the statute required a tax without a vote by the people, violated the rule of local self-government, and discriminated in favor of the tax payers and pupils of the non-high school districts. People ex rel. Goodell v. Chicago, N. W. R. Co., 286 Ill. 384, 121 N.E. 731, 1918 Ill. LEXIS 808 (1918).

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-- School Code Dismissal Procedure

Due process requirements did not disqualify a school board from deciding to terminate a teacher's employment where the board had been involved in earlier events upon which its decision was based. Gilliland v. Board of Educ., 67 Ill. 2d 143, 8 Ill. Dec. 84, 365 N.E.2d 322 (1977).

-- School District Annexation

An allegation of a constitutional violation of due process by a school district, which sought to prevent the annexation of two territories of its district to a special charter school district under a prior similar provision (see now 105 ILCS 5/7-2.3), did not present a debatable constitutional question where statutory procedure was followed and a decision by the special charter school district denied both of the plaintiff's petitions requesting a hearing on the annexation. Board of Educ. v. Special Charter Sch., 32 Ill. 2d 342, 205 N.E.2d 459 (1965).

Provisions of school code requiring notice by publication of petitions for annexation of schools was not violative of Ill. Const. of 1870, Art II, § 2 (now Ill. Const. (1970), Art. I, § 2) because the legislature had the right to change or alter the area of school districts and could do so without notice; in this instance, the legislature provided for notice and public hearing and the insufficiency of notice, or lack of it, was purely a matter of legislative determination. Pritchett v. County Board of School Trustees, 5 Ill. 2d 356, 125 N.E.2d 476, 1955 Ill. LEXIS 231 (1955).

Ill. Rev. Stat., ch. 122, para.4B-6, was deemed not to be unconstitutional because it provided a complete, clear, and certain procedure for detaching territory from any school district and annexing it to an existing adjacent community unit school district; the term "property of the school district" was misleading since the district owned no property and all school facilities were property of the State of Illinois, and the area of the district could be contracted or expanded at the will of the legislature. People ex rel. Dixon v. Community Unit School Dist., 2 Ill. 2d 454, 118 N.E.2d 241, 1954 Ill. LEXIS 355 (1954).

Community school board members were not entitled to petition for or to execute the detachment of a territory from a school district because such authority was properly vested in the legislature by Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. III, § 1), and Ill. Const. (1970), Art. II, § 1. People ex rel. Bensenville Community High School Dist. v. Rathje, 333 Ill. 304, 164 N.E. 696, 1928 Ill. LEXIS 784 (1928).

Where the legislature had passed a curative act relative to high school districts after an earlier act had been held unconstitutional, the curative act rendered an action by residents and landowners against school board members moot, and the residents' and landowners' information in the nature of quo warranto was properly abated upon the board members' motion. People ex rel. Patterson v. Woodruff, 280 Ill. 472, 117 N.E. 791, 1917 Ill. LEXIS 929 (1917).

Where the legislature had passed a curative act relative to the organization of high school districts after an earlier act had been declared unconstitutional, and the curative act had addressed the issues presented in a pending appeal relative to the propriety of certain office holders, the curative act controlled because the law in effect at the time of the appeal was the law that was to be applied. People ex rel. Vautrin v. Madison, 280 Ill. 96, 117 N.E. 493, 1917 Ill. LEXIS 875 (1917).

-- Second Degree Murder

The second degree murder statute was held constitutional despite the defendant's claim that it relieves the state from proving beyond a reasonable doubt every element of the offense because the defendant must prove a mitigating factor by a preponderance of the evidence in order to reduce a first degree murder charge to second degree murder. People v. Mitchell, 221 Ill. App. 3d 926, 164 Ill. Dec. 524, 583 N.E.2d 78 (1 Dist. 1991), appeal denied, 143 Ill. 2d 644, 167 Ill.

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Dec. 406, 587 N.E.2d 1021, cert. denied, 505 U.S. 1208, 112 S. Ct. 3002, 120 L. Ed. 2d 878 (1992).

-- Sentencing

Where defendant had been convicted of a double homicide, but the Governor of Illinois commuted his death sentence, in imposing two natural life sentences, the trial court properly considered both statutory and nonstatutory mitigation evidence. Therefore, defendant's rights under the Due Process Clause and Ill. Const. (1970), Art. I, § 2, were not violated. People v. Thompkins, 376 Ill. App. 3d 629, 315 Ill. Dec. 498, 876 N.E.2d 1088, 2007 Ill. App. LEXIS 1049 (1 Dist. 2007).

Defendant was not denied due process and fundamental fairness where the trial judge informed the sentencing jury that the judge had rejected defendant's insanity defense at trial, and where the prosecutor reminded the sentencing jury in closing argument that the trial judge had rejected the insanity defense. The judge did not mention the rejection of defendant's plea of guilty but mentally ill, and did not in any way suggest that defendant's mental condition was irrelevant to the jury's sentencing decision. People v. Urdiales, 225 Ill. 2d 354, 312 Ill. Dec. 876, 871 N.E.2d 669, 2007 Ill. LEXIS 860 (2007).

Defendant's extended-term sentence for predatory criminal sexual assault of a child, 720 ILCS 5/12-14.1(a)(1), did not violate defendant's due process rights under the Illinois Constitution, Ill. Const. (1970), Art. I, § 2; the legislature's failure to amend the extended-term sentencing statute, 730 ILCS 5/5-5-3.2(c), to include extended-term sentences for two related, harsher statutory crimes was a mere oversight, as the legislature demonstrated in 720 ILCS 5/33A-1 to include extended-term sentences for those offenses as well, which involved firearms. People v. Revell, 372 Ill. App. 3d 981, 311 Ill. Dec. 318, 868 N.E.2d 318, 2007 Ill. App. LEXIS 405 (1 Dist. 2007), appeal denied, 875 N.E.2d 1121, 2007 Ill. LEXIS 1314 (Ill. 2007).

Even though allocution under Rule 402, Supreme Court Rules was imperfect, defendant was advised of the term of up to three years of mandatory supervised release under 730 ILCS 5/5-8-1. Thus, there was no violation of due process entitling defendant to post-conviction relief under 725 ILCS 5/122-2 in that his 8-year prison term was within 10-year cap for guilty plea for one count of possessing of a controlled substance under 720 ILCS 570/401(a)(1)(A). People v. Jarrett, 372 Ill. App. 3d 344, 311 Ill. Dec. 187, 867 N.E.2d 1173, 2007 Ill. App. LEXIS 393 (1 Dist. 2007), appeal denied, 225 Ill. 2d 653, 875 N.E.2d 1118, 2007 Ill. LEXIS 1249 (2007).

Defendant's due process rights were not violated by the trial court's failure to advise her of the option of receiving a sentence under the more favorable reckless homicide statute that was in effect at the time of her sentencing. The amended version of 720 ILCS 5/9-3(d)(2) resulted in substantive changes to the reckless homicide statute, so that defendant was not entitled to the more favorable later sentencing provision. People v. Lush, 372 Ill. App. 3d 629, 311 Ill. Dec. 213, 867 N.E.2d 1199, 2007 Ill. App. LEXIS 387 (1 Dist. 2007).

Trial court did not err in sentencing defendant based on the law in effect at the time defendant committed defendant's reckless homicide offense, and, thus, defendant's due process rights were not violated when defendant was not sentenced under a newer law enacted one year after defendant committed the offense and one year before defendant was sentenced; since the newly-enacted statute changed the nature or substantive elements of the existing offense, defendant could be convicted and sentenced under the law in effect at the time of the offense. People v. Martinez, 371 Ill. App. 3d 363, 308 Ill. Dec. 819, 862 N.E.2d 1022, 2007 Ill. App. LEXIS 15 (1 Dist. 2007).

Imposition of a natural life sentence on a 16 year old violated neither the due process clause of the Illinois Constitution (see this section), the separation of powers provision of the Constitution (Ill. Const. (1970), Art. II, § 1), nor the objective of restoring the offender to useful citizenship (Ill. Const. (1970), Art. I, § 11). People v. Clark, 188 Ill. App. 3d 79, 135 Ill. Dec. 743, 544 N.E.2d

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100 (4 Dist. 1989), appeal denied, 139 Ill. Dec. 516, 548 N.E.2d 1072, cert. denied, 497 U.S. 1026, 110 S. Ct. 3276, 111 L. Ed. 2d 786 (1990).

The defendant was not denied due process by the court's acceptance of his guilty plea and subsequent imposition of a sentence harsher than that recommended by the plea agreement. People v. Lambrechts, 41 Ill. App. 3d 729, 355 N.E.2d 53 (2 Dist. 1976), aff'd, 69 Ill. 2d 544, 14 Ill. Dec. 445, 372 N.E.2d 641 (1977).

-- Sewer Connection Permit

Because a permit to connect a city building to municipal sewers was only a revocable license, it was not constitutionally protected property; therefore, the city's revocation of the permit did not violate due process. LaSalle Nat'l Bank & Trust Co. v. City of Chicago, 128 Ill. App. 3d 656, 83 Ill. Dec. 819, 470 N.E.2d 1239 (1 Dist. 1984).

-- Sex Offender and Child Murderer Community Notification Law

Classification of defendant as a sex offender because aggravated kidnapping in violation of 720 ILCS 5/10-2 was a sex offense under 730 ILCS 150/2(B)(1.5) violated due process under Ill. Const. Art. I, § 2 and U.S. Const. Amend. V, XIV, as the crime was not sexually motivated and there were no allegations of any sexual offense in the case. People v. Johnson, 363 Ill. App. 3d 356, 300 Ill. Dec. 176, 843 N.E.2d 434, 2006 Ill. App. LEXIS 40 (1 Dist. 2006).

Under the rational basis test, the Internet provisions of 730 ILCS 152/115(b) of the Sex Offender and Child Murderer Community Notification Law, bore a rational relationship to the purpose the legislature intended to achieve in enacting that statute, to assist law enforcement and to protect the public from sex offenders. Defendant's substantive due process rights were not violated when his sex offender registration information was disseminated on the Internet. People v. Cornelius, 213 Ill. 2d 178, 290 Ill. Dec. 237, 821 N.E.2d 288, 2004 Ill. LEXIS 2034 (2004).

-- Sex Offender Registration Act

Amendment to 730 ILCS 150/2(B)(1.5) made in 2005, which did not become effective until June 27, 2006, did not apply to defendant who was charged in 2005 with failing to register as a sex offender based on his 1996 conviction for unlawful restraint, even though there was no sexual component involved in that crime; the amendment was not retroactive, and the state supreme court had previously ruled that application of the statute as it read prior to the amendments did not violate the due process rights of defendants charged with kidnapping related offenses. People v. Craig, 374 Ill. App. 3d 375, 312 Ill. Dec. 873, 871 N.E.2d 273, 2007 Ill. App. LEXIS 745 (1 Dist. 2007).

Definition of "sex offense" in pre-2006 version of 730 ILCS 150/2(B)(1.5), which included aggravated kidnapping of a minor by a non-parent, regardless of any sexual motivation, was constitutional as applied to defendant who argued that he should not be required to register as a sex offender because his kidnapping of a minor was not sexually motivated; the definition of "sex offense" chosen by the state legislature definition was one that was reasonably related to the legitimate state goal of the Sex Offender Registration Act, 730 ILCS 150/1 et seq., which was to assist law enforcement and protect the public. People v. Johnson, 225 Ill. 2d 573, 312 Ill. Dec. 350, 870 N.E.2d 415, 2007 Ill. LEXIS 858 (2007).

-- Sexually Violent Persons Commitment Act

The Sexually Violent Persons Commitment Act, 725 ILCS 207/1 et seq., does not violate the equal protection clauses of the state or federal Constitution, does not constitute an ex post facto law or violate the prohibition against double jeopardy, does not violate substantive or procedural due process, and does not violate the petition clauses of the the state or federal Constitution. People v. Bailey (In re Bailey), 317 Ill. App. 3d 1072, 251 Ill. Dec. 575, 740 N.E.2d 1146, 2000 Ill. App. LEXIS 943 (1 Dist. 2000).

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The Sexually Violent Persons Commitment Act (725 ILCS 207/1 et seq.) does not violate the due process clause of the Illinois Constitution. People v. Winterhalter, 313 Ill. App. 3d 972, 246 Ill. Dec. 693, 730 N.E.2d 1158, 2000 Ill. App. LEXIS 404 (3 Dist. 2000).

The Sexually Violent Persons Commitment Act (725 ILCS 207/1 et seq.) does not violate the equal protection clauses of the Illinois or United States constitutions, notwithstanding the argument that similarly situated persons are treated differently depending on whether the state proceeds under the Sexually Violent Persons Commitment Act (725 ILCS 207/1 et seq.) or the Sexually Dangerous Persons Act (725 ILCS 205/0.01 et seq.), since each act applies to a different class of individuals and there is a rational basis for such disparate treatment. People v. Winterhalter, 313 Ill. App. 3d 972, 246 Ill. Dec. 693, 730 N.E.2d 1158, 2000 Ill. App. LEXIS 404 (3 Dist. 2000).

-- Standing

The plaintiff was found to lack standing where he challenged a local ordinance allowing the State's Attorney to represent a former State's Attorney against the plaintiff's claim of malicious prosecution because the plaintiff failed to explain how any of his due process rights under the Federal and State Constitutions would be negatively effected. Romanski v. Barra, 215 Ill. App. 3d 125, 158 Ill. Dec. 813, 574 N.E.2d 1206 (3 Dist. 1991).

-- State Action Required

Licensing and regulation of an activity by the state does not make all incidents of the activity attributable to the state; therefore, where plaintiff failed to connect the state defendant's action, the defendant failed to adequately allege a cause of action for violation of his constitutional rights to due process. Sargent v. Illinois Inst. of Technology, 78 Ill. App. 3d 117, 33 Ill. Dec. 937, 397 N.E.2d 443 (1 Dist. 1979).

-- State Wage Rates

The term "prevailing wage" as used to determine wage rate for state maintenance workers under pay plan promulgated by Department of Labor was not so vague as to violate the requirements of due process. Mahin v. Myers, 108 Ill. App. 2d 416, 247 N.E.2d 812 (4 Dist. 1969).

-- Stolen Vehicle Statutes

625 ILCS 5/4-103(b) is constitutional under the due process and proportionate penalty provisions of the Illinois Constitution. People v. Bounds, 194 Ill. App. 3d 571, 141 Ill. Dec. 264, 551 N.E.2d 257 (1 Dist. 1990).

-- Substitution of Judges

Section 114-5(c) of the Substitution of Judges Statute (725 ILCS 5/114-5(c)) does not violate a defendant's due process rights. People v. Williams, 124 Ill. 2d 300, 124 Ill. Dec. 577, 529 N.E.2d 558 (1988).

-- Sufficient Description

Where defendant's contention that an act was vague, indefinite and violated the constitution since the act did not define the elements that a picture must possess to render it obscene and indecent, and that such defect left it open for the court and jury to supply their own standards, such contention was without merit because the statute was specific as to the offense charged against defendant. People v. Friedrich, 385 Ill. 175, 52 N.E.2d 120 (1943).

-- Suspension from Association

Association member's suspension from the association was not improper where the controlling statute required only compliance with the federal and Illinois constitutions, and the member was

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suspended for violating the by-laws of the association and had declined to answer or otherwise participate in resolution of the charge that had resulted in his suspension. Allen v. Chicago Undertakers' Ass'n, 232 Ill. 458, 83 N.E. 952, 1908 Ill. LEXIS 2797 (1908).

-- Syndicated Gambling

720 ILCS 5/28-1.1 gives a precise description of the number of bets and dollar value of such bets that constitute felonious activity in Illinois; the words contained in the syndicated gambling statute are sufficiently definite and are subject to reasonable interpretation by persons of ordinary intelligence and meet the constitutional requirements of due process. People v. Caffrey, 97 Ill. 2d 526, 74 Ill. Dec. 30, 455 N.E.2d 60 (1983).

720 ILCS 5/28-1.1 is not unconstitutional on its face or as applied to a defendant who accepted numerous bets on the results of football and basketball games. People v. Caffrey, 97 Ill. 2d 526, 74 Ill. Dec. 30, 455 N.E.2d 60 (1983).

-- Taking Property for Railroads

An act requiring railroads to construct and maintain highways and street crossings so as to be safe to persons and property was not unconstitutional as taking property without due process of law. People ex rel. City of Chicago v. Illinois Cent. R.R., 235 Ill. 374, 85 N.E. 606 (1908).

-- Tax

When municipality's road and bridge levies were not sufficient to pay anticipation warrants, bank that issued the warrants could not recover from municipality pursuant to statutes that allowed payments to be made from the municipality's general revenues because those statutes violated Ill. Const. of 1870, Art. IX, § 9 and Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2); under the constitution, all taxation by municipal corporations had to be for corporate purposes and bonds purporting to be a general obligation of the municipality and issued in payment of anticipation warrants were not for a corporate purpose and were therefore invalid. Dimond v. Commissioner of Highways, 366 Ill. 503, 9 N.E.2d 197, 1937 Ill. LEXIS 611 (1937).

-- Taxes

City ordinance authorizing an amusement tax on patrons of health and racquetball clubs that was to be collected, processed, and if necessary paid by the clubs was in reality an unconstitutional occupation tax, Ill. Const. (1970), Art. VII, § 6, that was outside the city's home rule taxation powers because it was not an amusement tax allowed under Ill. Rev. Stat. ch. 24, par. 11-42-5 given the wide variety of services the clubs provided. Chicago Health Clubs, Inc. v. Picur, 124 Ill. 2d 1, 124 Ill. Dec. 87, 528 N.E.2d 978, 1988 Ill. LEXIS 94 (1988).

Because the formula applied under Ill. Rev. Stat. ch. 120, para. 3-304 (now 35 ILCS 5/304) is not a sales tax, but is a method of measuring the business activity within this State of a corporation doing multistate business, it does not constitute a violation of due process. GTE Automatic Electric, Inc. v. Allphin, 68 Ill. 2d 326, 12 Ill. Dec. 134, 369 N.E.2d 841, 1977 Ill. LEXIS 384 (1977).

Perfect equality under Ill. Const. (1970), Art. VII, § 9(a) is neither a constitutionally required nor a realistic goal, and the possibility that some taxpayers or some taxing districts in the county may receive more tax collection service from county officials, is not a viable objection. Thus, a statute that permitted county treasurers to bill taxing bodies for the costs incurred for the collection of taxes was properly declared unconstitutional because the constitution precluded the county from charging a fee for a county function. Joliet v. Bosworth, 64 Ill. 2d 516, 1 Ill. Dec. 355, 356 N.E.2d 543, 1976 Ill. LEXIS 397 (1976).

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Where the legislature has the constitutional power to cure a defective tax levy by a statutory act, the statutory act constitutes due process of law. People ex rel. Burton v. Pittsburgh, C. C. & S. L. R. Co., 284 Ill. 87, 119 N.E. 914, 1918 Ill. LEXIS 920 (1918).

County property tax was properly assessed, extended, and reduced, in accordance with the Cities and Villages Act, the Revenue Act, and provisions of the Illinois constitution, including Ill. Const. of 1870, Art. IX, § 12, because the authorizing statutes were self-executing and required no supplemental legislation; the tax, which imposed additional taxes in emergency situations with only publication notice, did not violate equal protection or due process rights because it applied to all persons in the same situation and operated on all taxpayers. People ex rel. Stuckart v. N. J. Sandberg Co., 282 Ill. 245, 118 N.E. 469, 1917 Ill. LEXIS 1237 (1917).

-- Termination of Parental Rights

Decision of trial court, Department of Children, and Family Services and Lutheran Social Services to preclude the mother from telling the child that she was his mother violated the mother's right to due process because it ensured that the mother would fail the best interest test due to an inability to develop a parent-child bond with the child and a majority of the best interest considerations center on the relationship of and bonding between parent and child. People v. I.J.W. (In re O.S.), 364 Ill. App. 3d 628, 302 Ill. Dec. 130, 848 N.E.2d 130, 2006 Ill. App. LEXIS 333 (1 Dist. 2006).

Mother's action under the Adoption Act, 750 ILCS 50/1 et seq., which necessitated termination of the father's parental rights, was an action by a private party and did not involve state action for constitutional due process purposes; therefore, the indigent father's due process rights were not implicated when the circuit court denied his request for court-appointed counsel. Jeffrey D.B. v. Stacy L.B. (In re Alyssa Jo B.),, 2005 Ill. App. LEXIS 20 (3 Dist. Jan. 19, 2005).

"Per se" factors for finding unfitness as a matter of law under 750 ILCS 50/1(D)(q), such as a conviction for the attempted murder of a child, are not unconstitutional merely because they require a finding of unfitness as a matter of law. Accordingly, such a statute does not violate a party's due process rights merely because it requires that such a finding be based on a prior conviction involving the attempted murder of a child. People v. L.M. (In re D.W.), 344 Ill. App. 3d 30, 278 Ill. Dec. 692, 799 N.E.2d 410, 2003 Ill. App. LEXIS 1238 (1 Dist. 2003).

In Illinois, proceedings used to terminate parental rights must meet the requisites of the due process clause, which require (1) that the private interest be affected by the official action, (2) that there be a risk of an erroneous deprivation of the interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards, and (3) that the government have an interest, which can include the function involved and the fiscal and administrative burdens that the additional or substitute safeguards would entail. Illinois has two interests in a proceeding to terminate parental rights: (1) a parens patriae interest in preserving and promoting a child's welfare, and (2) a fiscal and administrative interest in reducing the cost and burden of such proceedings. People v. L.M. (In re D.W.), 344 Ill. App. 3d 30, 278 Ill. Dec. 692, 799 N.E.2d 410, 2003 Ill. App. LEXIS 1238 (1 Dist. 2003).

Barring rehabilitation evidence from a fitness hearing pursuant to 750 ILCS 50/1(D)(q) does not violate a parent's equal protection or due process rights. People v. L.M. (In re D.W.), 344 Ill. App. 3d 30, 278 Ill. Dec. 692, 799 N.E.2d 410, 2003 Ill. App. LEXIS 1238 (1 Dist. 2003).

-- Traffic Congestion

The need to minimize or reduce traffic congestion is a legitimate state interest and a nexus exists between preventing further traffic congestion and providing for road improvements to ease that congestion. Northern Ill. Home Bldrs. Ass'n v. County of Du Page, 165 Ill. 2d 25, 208 Ill. Dec. 328, 649 N.E.2d 384 (1995).

-- Trial Expenses

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The language of both 20 ILCS 505/1 and 20 ILCS 505/9.1, along with the parents' reasonable expectations, indicates that parents can be assessed for the temporary care of their child after a shelter care hearing and prior to a hearing on the merits, when the hearing is continued, and to allow such reimbursement would not violate the due process clause of either the United States Constitution or the Illinois Constitution. People ex rel. Dep't of Children & Family Servs. v. Cathey, 303 Ill. App. 3d 287, 236 Ill. Dec. 822, 708 N.E.2d 408 (5 Dist. 1999), appeal denied, 184 Ill. 2d 573, 239 Ill. Dec. 613, 714 N.E.2d 532 (1999).

-- Trusts

Circuit court's failure to hold an evidentiary hearing before entering an order that froze all of the assets of a trustee as well as assets of his family, which had not been included in the motion seeking the freeze order, was a violation of due process. Ramlose v. Ramlose Trust (In re Estate of Ramlose), 344 Ill. App. 3d 564, 279 Ill. Dec. 784, 801 N.E.2d 76, 2003 Ill. App. LEXIS 1365 (1 Dist. 2003).

-- Two Separate Actions

The petitioner was not denied fundamental fairness in an action against him by the state Environmental Protection Agency before the Pollution Control Board notwithstanding that there was an action pending between the same parties in the circuit court where the petitioner's due process arguments were couched in vague and general terms and where the two actions involved the resolution of different issues. Janson v. Pollution Control Bd., 69 Ill. App. 3d 324, 25 Ill. Dec. 748, 387 N.E.2d 404 (3 Dist. 1979).

-- Underage Drinking

Where a citation issued to the plaintiff by the police stated that there was reason to believe the plaintiff was under 21 years of age and represented that he was of age for the purpose of purchasing, accepting or receiving alcoholic liquor, and even though the plaintiff did not intend to drink once in the tavern he pleaded guilty to violating the county ordinance, 625 ILCS 5/6-206(a)(10) was constitutional as applied to the plaintiff. Freed v. Ryan, 301 Ill. App. 3d 952, 235 Ill. Dec. 173, 704 N.E.2d 746 (1 Dist. 1998), appeal denied, 183 Ill. 2d 568, 238 Ill. Dec. 713, 712 N.E.2d 817 (1999).

-- Use Tax

Court concluded that since the record supported the conclusion that there was continuous local solicitation of mail orders followed by delivery of the ordered goods to customers in Illinois; therefore, the Use Tax Act, former Illinois Use Tax, Rev. Stat. ch. 120, para. 439.1 et seq. (now 35 ILCS 105/1) does not deprive defendant of due process of law under the U.S. Const. amend. XIV, § 1 and former Ill. Const. Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2). Department of Revenue v. National Bellas Hess, Inc., 34 Ill. 2d 164, 214 N.E.2d 755, 1966 Ill. LEXIS 398 (1966).

-- Vehicle Code

Subsections (a)(1) and (a)(2) of 625 ILCS 5/4-102 violate the due process clauses as they sweep too broadly, potentially imprisoning Good Samaritans, errant batters, and even wedding parties, all of whom possess wholly innocent motives. People v. K.C., 186 Ill. 2d 542, 239 Ill. Dec. 572, 714 N.E.2d 491 (1999).

Subdivision (a)(3) and subsection (g) of 625 ILCS 5/6-208.1 do not violate the substantive due process rights as the two year suspension with no hardship relief provides arrested drivers with an incentive to submit to testing, which is rationally related to the goal of promoting highway safety. People v. Fisher, 184 Ill. 2d 441, 235 Ill. Dec. 454, 705 N.E.2d 67 (1998).

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The possibility of a 14-day delay between the effective date of the suspension and the date of the hearing does not render the statutory summary suspension scheme in 625 ILCS 5/6-208.1 unconstitutional. People v. Fisher, 184 Ill. 2d 441, 235 Ill. Dec. 454, 705 N.E.2d 67 (1998).

-- Vehicular Invasion

In view of the legislature's intent to protect the security of motor vehicles, which have been deemed adjuncts of the home in modern society and to preserve the integrity of this particular enclosure and halt an increase in the number of "smash and grab" crimes, the legislature reasonably could have determined that vehicular invasion is a more serious offense than robbery and affixed a more stringent penalty. People v. Anderson, 272 Ill. App. 3d 537, 208 Ill. Dec. 954, 650 N.E.2d 648 (1 Dist. 1995), appeal denied, 163 Ill. 2d 564, 212 Ill. Dec. 425, 657 N.E.2d 626 (1995).

-- Voluntary Resignation

Plaintiff's due process rights were not violated because he voluntarily resigned rather than was charged or denied continued employment in the police department. Dudycz v. City of Chicago, 206 Ill. App. 3d 128, 151 Ill. Dec. 16, 563 N.E.2d 1122 (1 Dist. 1990).

-- Voluntary Submission to Intoximeter

In a conviction for violating a former section of the Uniform Act Regulating Traffic on Highways, which declared it unlawful for any person under the influence of intoxicating liquor to drive a vehicle, where, the defendant voluntarily agreed to take intoximeter test but did not finish it, where no evidence was offered as to what the test would have shown had it been completed, and where remarks and evidence relative to the test were incidental to and a part of the general conduct of the defendant, there was no denial of due process or violation of defendant's privilege against self-incrimination under the Constitution. People v. Knutson, 12 Ill. 2d 78, 145 N.E.2d 35 (1957).

-- Wages of Women and Minors

The basic system for the establishment and enforcement of minimum wages for women and minors was capable of operation even though the mode of judicial review could be held insufficient to satisfy the constitutional requirements for due process of law; therefore, the unconstitutionality of 820 ILCS 125/13 could not invalidate the entire Act. Vissering Mercantile Co. v. Annunzio, 1 Ill. 2d 108, 115 N.E.2d 306 (1953).

-- Waiver of Right to Counsel

In a noncapital case, where the record was silent and the accused did not under oath state he was indigent nor ask that counsel be appointed, he could be considered to have waived a personal privilege and he had not been denied a constitutional right, nor had he been denied due process of law with regard to representation of counsel. People v. Ross, 400 Ill. 237, 79 N.E.2d 495 (1948).

-- Warrantless Arrest

Constitutional question was not presented by the contention that the legislature was powerless to pass a statute which changed common law rule of due process regarding arrests without warrants. Komorowski v. Boston Store, 341 Ill. 126, 173 N.E. 189 (1930).

-- Whistleblower Reward and Protection Act

Claims brought under the Illinois Whistleblower Reward and Protection Act do not deprive defendants of rights and privileges such that the Act cannot be used to enforce the collection of taxes due the State based on false records and statements because litigants are afforded the protections provided to all litigants in civil proceedings. State ex rel. Beeler, Schad & Diamond,

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P.C. v. Ritz Camera Ctrs., Inc., 377 Ill. App. 3d 990, 316 Ill. Dec. 128, 878 N.E.2d 1152, 2007 Ill. App. LEXIS 1075 (1 Dist. 2007).

-- Worker's Compensation

Workers' Compensation statute, § 29 of the Workmen's Compensation Act, 1917 Ill. Laws 509, that fixed the amount paid to an injured employee as the measure of damages that a negligent third party would be required to pay was unconstitutional under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, art. II, § 2), because the third party had not had notice of the workers' compensation proceedings nor an opportunity to appear and defend itself. Taylorville v. Central Illinois Public Service Co., 301 Ill. 157, 133 N.E. 720, 1921 Ill. LEXIS 924 (1921).

-- Workers' Compensation

Because an employer was not a member of the class of survivors described in 820 ILCS 305/7, (formerly § 7 and 8(b)(2) of the Workmen's Compensation Act, Ill. Rev. Stat. ch. 48, paras. 138.7 and 138.8(b)(2)) the employer did not have standing to challenge the constitutionality of the statute under Ill. Const. (1970), Art. I, § 2. Goldblatt Bros., Inc. v. Industrial Com., 86 Ill. 2d 141, 56 Ill. Dec. 38, 427 N.E.2d 118, 1981 Ill. LEXIS 329 (1981).

As one does not have a vested right in the common-law rules governing negligence actions so as to preclude the legislature from substituting a statutory remedy for the common-law remedy, subsection (a) of section 5 of the Workers' Compensation Act (820 ILCS 305/5) was deemed not violative of due process. Duley v. Caterpillar Tractor Co., 44 Ill. 2d 15, 253 N.E.2d 373 (1969).

Where a widow had been awarded damages from a third-party after her husband was killed in the course of his employment, a judgment in favor of the third-party in the employer's action to recoup worker's compensation payments was proper because the Worker's Compensation Act, 820 ILCS 305/1 et seq. (formerly known as the Workmen's Compensation Act of 1919), was constitutional under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) and the verdict was not against the weight of evidence. Carson, Pirie, Scott & Co. v. Chicago R. Co., 309 Ill. 346, 141 N.E. 172, 1923 Ill. LEXIS 967 (1923).

Where an employer had taken credit for medical services, had paid compensation for an employee's injury, and had otherwise participated in the proceedings and had obtainined review of the award, the employer had admitted the validity of the worker's compensation act and was precluded from questioning its validity on appeal. Chicago-Sandoval Coal Co. v. Industrial Com., 301 Ill. 389, 134 N.E. 158, 1922 Ill. LEXIS 896 (1922).

Where an employer had taken credit for compensation paid to an injured employee and had participated in proceedings before the Worker's Compensation Commission, its contention on a motion to quash the record, filed in a circuit court, that the Worker's Compensation Act, 820 ILCS 305/1 et seq., was unconstitutional under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) had been waived. Taylor Coal Co. v. Industrial Com., 301 Ill. 381, 134 N.E. 169, 1922 Ill. LEXIS 895 (1922).

It was a violation of due process to award workmen's compensation benefits to a widow because hearsay testimony, regarding what the deceased employee told the doctor about how the accident occurred, should not have been admitted and was the only evidence that the accident occurred at work and because the coroner's report was improperly admitted. Spiegel's House Furnishing Co. v. Industrial Com., 288 Ill. 422, 123 N.E. 606, 1919 Ill. LEXIS 1102 (1919).

Illinois Workmen's Compensation Act, specifically 1917 Ill. Laws p. 507, was not unconstitutional insofar as it applied automatically and without election to all employers and their employees engaged in the extrahazardous business of carriage by land because the state was reasonably exercising its police power as the public had a direct common welfare interest in restricting the freedom of contract and the right to a jury trial in the matter of compensation for human life lost or

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disability incurred. Grand T. W. R. Co. v. Industrial Com., 291 Ill. 167, 125 N.E. 748, 1919 Ill. LEXIS 831 (1919).

Section of Workmen's Compensation Act that prohibited employee covered under the Act from recovering damages beyond those payable under the Act against the third party responsible for employee's injuries was not unconstitutional on the basis that it prevented the employee from recovering an amount sufficient to cover his injuries, as was guaranteed to him by law prior to the enactment of the Act, or that it made the employee dependent solely upon his employer, solvent or insolvent, for the recovery of compensation because the employee, before he was injured, could have elected not to be bound by the Act; when he did not, he was subject to both the Act's benefits and its hardships. Although in the particular circumstances, the employee might not have received sufficient compensation under the Act to adequately compensate him for his real damages, the Act guaranteed that the employee would receive some compensation for his injuries, even if he could not recover from the third party. Friebel v. Chicago C. R. Co., 280 Ill. 76, 117 N.E. 467, 1917 Ill. LEXIS 872 (1917).

-- Workers' Compensation Immunity

Grant of immunity to directors and officers of corporation concerning work related injuries did not deny plaintiff due process. Mier v. Staley, 28 Ill. App. 3d 373, 329 N.E.2d 1 (4 Dist. 1975).

-- Workers' Occupational Diseases

Employer waived the due process clause of the state's constitution when it elected to come within the provisions of the Workmen's Occupational Diseases Act, thus employer could not contest the constitutionality of § 25 of that Act, Ill. Rev. Stat. ch. 48, para. 172.25, on the basis that the section violated due process. Central Pattern & Foundry Co. v. Industrial Com., 374 Ill. 300, 29 N.E.2d 511, 1940 Ill. LEXIS 625 (1940).

-- Zoning

Because the property owner was afforded a hearing on his application for recertification of the property, the zoning board of appeals heard the testimony of multiple witnesses prior to issuing its opinion, and the process for review of the application for recertification of a property was distinct from an enforcement action as the latter was a quasi-criminal proceeding and carried with it substantial notice and hearing provisions, 65 ILCS 5/11-13-15, the property owner failed to show that his due process rights were obstructed in any manner. Taylor v. Zoning Bd. of Appeals, 375 Ill. App. 3d 585, 314 Ill. Dec. 562, 874 N.E.2d 927, 2007 Ill. App. LEXIS 940 (1 Dist. 2007).

Court reversed and remanded with directions to render decrees enjoining the village from interfering with the conduct of owner's contractor's plant for the purposes of former Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) and U.S. Const. amend. XIV, because the properties in the same block were zoned industrial and did not conform to residential use. Reschke v. Winnetka, 363 Ill. 478, 2 N.E.2d 718, 1936 Ill. LEXIS 764 (1936).

-- Zoning Ordinance

In Illinois, a zoning ordinance is impermissibly exclusionary if the activity is effectively prohibited anywhere within the municipal limits; this includes an ordinance that does not prohibit the particular land use by its terms but fails to make any provision for that use. While that failure would not render the zoning ordinance or unconstitutional and void in its entirety, it may be unconstitutional and void as applied to the specific property in question. Dupage Hous. Auth. v. Vill. of Oak Brook, F. Supp. 2d , 2004 U.S. Dist. LEXIS 2069 (N.D. Ill. Feb. 13, 2004).

Trial court's sua sponte dismissal of a church's complaint against a city, seeking to challenge the denial of a special use permit and the constitutionality of a zoning ordinance and also seeking declaratory relief, was itself a denial of due process where the church had no opportunity to conduct discovery on the relevant issues, to present evidence, or to argue against dismissal. Oak

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Grove Jubilee Ctr., Inc. v. City of Genoa, 338 Ill. App. 3d 967, 273 Ill. Dec. 662, 789 N.E.2d 836, 2003 Ill. App. LEXIS 567 (1 Dist. 2003).

Trial court's sua sponte dismissal of a church's complaint against a city, seeking to challenge the denial of a special use permit and the constitutionality of a zoning ordinance and also seeking declaratory relief, was itself a denial of due process where the church had no opportunity to conduct discovery on the relevant issues, to present evidence, or to argue against dismissal. Oak Grove Jubilee Ctr., Inc. v. City of Genoa, 331 Ill. App. 3d 102, 264 Ill. Dec. 547, 770 N.E.2d 1243, 2002 Ill. App. LEXIS 500 (1 Dist. 2002).

-- Zoning Ordinances

A landowner has the burden of clearly showing the unreasonableness of a city ordinance, and a zoning board's recommendation that the landowner's land should be re-zoned for commercial uses did not shift the burden to the city to show that the ordinance was not unconstitutional under Ill. Const. art. I, § 2 (formerly Ill. Const. of 1870, art. II, § 2) after the city rejected the zoning board's recommendation. Behnke v. President & Board of Trustees, 366 Ill. 516, 9 N.E.2d 232, 1937 Ill. LEXIS 613 (1937).

- Interference with Interstate Commerce

Amendment to Illinois Corporation Act that set a fee for foreign corporations, based upon a portion of a corporation's capital stock, was proper because a clause in the original license, which was a contract, provided for implementing changes in the state law to the contract; there was no constitutional equal protection violation against foreign corporations and no restriction on interstate commerce. American Can Co. v. Emmerson, 288 Ill. 289, 123 N.E. 581, 1919 Ill. LEXIS 1088 (1919).

-- Franchise Tax

Illinois could not constitutionally compel a foreign corporation to submit to a tax levied or measured wholly or partially by property located and business transacted outside of the state, inasmuch as such tax would be an interference with interstate commerce which would violate the due process and equal protection clauses of the fourteenth amendment of the federal Constitution and the due process clause of the Illinois Constitution. United States Borax & Chem. Corp. v. Carpentier, 14 Ill. 2d 111, 150 N.E.2d 818 (1958).

Where the circumstances of the imposition of a franchise tax are such as to indicate no purpose or necessary effect in the tax imposed to burden interstate commerce, or where the tax affects interstate commerce only incidentally or remotely, the tax is not invalid nor unconstitutional as a burden upon interstate commerce. United States Borax & Chem. Corp. v. Carpentier, 14 Ill. 2d 111, 150 N.E.2d 818 (1958).

- Investigations Under Antitrust Act

The legislative grant of power to the Attorney General to subpoena witnesses and otherwise investigate alleged violations of the Antitrust Act, under section 7.2 of that Act (740 ILCS 10/7.2), is constitutional, and not a violation of this section. People v. Crawford Distrib. Co., 53 Ill. 2d 332, 291 N.E.2d 648 (1972).

- Joint and Several Liability

735 ILCS 5/2-1117 of the Illinois Joint Tortfeasor Contribution Act, pertaining to joint and several liability, does not violate the due process guarantee and equal protection clauses of the Illinois Constitution. Unzicker v. Kraft Food Ingredients Corp., 203 Ill. 2d 64, 270 Ill. Dec. 724, 783 N.E.2d 1024, 2002 Ill. LEXIS 957 (2002).

- Judge's Responsibility

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Due process requires certain safeguards to be afforded to an accused who pleads guilty, including an on-the-record inquiry by the judge accepting the plea that it was knowingly and voluntarily entered. People v. Tripp, 248 Ill. App. 3d 706, 188 Ill. Dec. 587, 618 N.E.2d 1157 (5 Dist.), appeal denied, 153 Ill. 2d 568, 191 Ill. Dec. 627, 624 N.E.2d 815 (1993).

- Jurisdiction

Ex-husband's complaint for intentional or negligent infliction of emotional distress, which alleged that the Florida resident ex-wife had failed to comply with certain requirements of a marital settlement agreement entered by a Florida trial court, did not confer personal jurisdiction over the ex-wife in an Illinois court as none of the failures to act reached into Illinois to establish minimum contacts with the state sufficient to satisfy due process requirements. Gordon v. Gordon, 379 Ill. App. 3d 732, 320 Ill. Dec. 255, 887 N.E.2d 35, 2008 Ill. App. LEXIS 193 (1 Dist. 2008).

Illinois trial court did not have personal jurisdiction in a defamation action over two Missouri residents who owned a motor vehicle because the motor vehicle owners' contacts with Illinois consisted of the owners' participation in two telephone calls initiated by a claims adjuster in Illinois who inquired about the owners' alleged involvement in an auto accident with an insured who brought the defamation action that was the basis for an insurance claim. Considering the nature and quality of the owners' conduct, it was not fair, just, and reasonable to require the owners to defend the defamation action, based on the owners' representations to the claims adjuster, in Illinois. Hanson v. Ahmed, 382 Ill. App. 3d 941, 321 Ill. Dec. 475, 889 N.E.2d 740, 2008 Ill. App. LEXIS 478 (1 Dist. 2008).

In an action to cancel a lease based on potential violations of zoning ordinances, there was no due process violation because a trial court's judgment was not void for want of jurisdiction when the 10-day notice requirement in § 88(2) of the Civil Practice Act, Ill. Rev. Stat. ch. 110, para. 212 (1953), was not jurisdictional. Lind v. Spannuth, 8 Ill. App. 2d 442, 131 N.E.2d 796, 1956 Ill. App. LEXIS 265 (1 Dist. 1956).

-- In General

Acts of the defendant, a Missouri corporation, were sufficiently substantial to satisfy the due process requirements of the Illinois Constitution because the defendant had purposely availed itself of conducting business in Illinois with the plaintiff in the plaintiff's central division office located in Illinois where during the parties' 40 year relationship there had been a continuous business relationship that required the parties to regularly contact each other through various forms of communication and many of the communications were directed towards the plaintiff's central division office; furthermore, the lawsuit centered on allegations that the defendant breached the parties' appointments contract and the continuing communications between the parties had a substantial relationship to the events giving rise to the dispute. Pepsico, Inc. v. Marion Pepsi-Cola Bottling Co.,, 2000 U.S. Dist. LEXIS 2693 (N.D. Ill. Feb. 29, 2000).

Under Illinois' due process clause, it was reasonable to permit an Illinois corporation to use the state's courts to redress the injury alleged to have resulted from the wrongdoing of its former general manager of the corporation's New Jersey facility and another company that later hired the general manager arising from the general manager diverting business to his new venture and, allowing the other company to purchase services from the corporation at a discounted rate, together with the manager's actions in writing checks to reimburse himself for undocumented expenses, using the corporation's creditors to purchase items that could not be located in the corporation's office. Agsco Corp. v. Scheer, F. Supp. 2d , 1999 U.S. Dist. LEXIS 20157 (N.D. Ill. Dec. 27, 1999).

-- Foreign Corporation

Presence of a foreign corporation within a judicial district for jurisdictional purposes is a matter of substantive law and must be decided solely according to state law. Rensing v. Turner Aviation Corp., 166 F. Supp. 790, 1958 U.S. Dist. LEXIS 3607 (N.D. Ill. 1958).

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Federal district court had personal jurisdiction over a foreign corporation by virtue of Illinois state law, particularly § 17(1)(a) of the Illinois Civil Practice Act, Ill. Rev. Stat. ch. 110, § 17 (1957) (now 735 ILCS 5/2-209), in an action to recover for personal injuries sustained by a passenger in the corporation's plane where the plane crash occurred in Illinois and, since ultimate liability in tort is not a jurisdictional fact, it was clear the court had jurisdiction over the person of the defendant by virtue of § 17(1)(B) of the Civil Practice Act (now 737 ILCS 5/2-209(2), which provides for the submission to the jurisdiction of the courts of Illinois by the commission of a tortious act within the State of Illinois. Rensing v. Turner Aviation Corp., 166 F. Supp. 790, 1958 U.S. Dist. LEXIS 3607 (N.D. Ill. 1958).

Federal district court sitting in Illinois may have jurisdiction over a foreign corporation by virtue of § 17(1)(a) of the Illinois Civil Practice Act, Ill. Rev. Stat. ch. 110, § 17 (1957) (now 735 ILCS 5/2-209), and yet venue may be improper under 28 U.S.C.S. § 1391(c) because the corporation was not doing business within the judicial district as determined by federal law. Rensing v. Turner Aviation Corp., 166 F. Supp. 790, 1958 U.S. Dist. LEXIS 3607 (N.D. Ill. 1958).

Question of whether a foreign corporation was engaged in the transaction of any business within Illinois is coterminous with the due process clause; therefore, under § 17(1)(a) of the Illinois Civil Practice Act, Ill. Rev. Stat. ch. 110, § 17 (1957) (now 735 ILCS 5/2-209), a foreign corporation would have to have such minimum contacts with the territory of the forum that maintenance of an in personam suit does not offend traditional notions of fair plan and substantial justice. Rensing v. Turner Aviation Corp., 166 F. Supp. 790, 1958 U.S. Dist. LEXIS 3607 (N.D. Ill. 1958).

-- Insufficient Claim

Franchiser's claims against a franchisee for breach of contract and for unfair competition, cyberpiracy, and trademark infringement in violation of 15 U.S.C.S. §§ 1125(a), (d)(1)(A), and 1114(1) were dismissed because the franchisee was not subject to personal jurisdiction under 735 ILCS 5/2-209(c) and the Due Process Clause of the Illinois Constitution. The franchise agreement at issue, which allowed the franchisee to operate franchises in Ohio, was entered into before the franchiser relocated from New Jersey to Illinois, the franchisee's key contacts remained with the franchiser's New Jersey or Pennsylvania offices, and the alleged acts were not directed at Illinois. GMAC Real Estate, LLC v. E. L. Cutler & Assocs., 472 F. Supp. 2d 960, 2006 U.S. Dist. LEXIS 79365 (N.D. Ill. 2006).

Although defendants otherwise had sufficient contacts with Illinois to support the exercise of personal jurisdiction, such jurisdiction was precluded by the fiduciary shield doctrine since defendants' actions were taken solely in their capacities as officers or directors of their corporate principals; there was no showing that defendants possessed substantial ownership interests in the principals nor that defendants had any personal interest in their transaction with plaintiffs. Interlease Aviation Investors II (Aloha) L.L.C. v. Vanguard Airlines, Inc., 254 F. Supp. 2d 1028, 2003 U.S. Dist. LEXIS 5153 (N.D. Ill. 2003).

Illinois court lacked personal jurisdiction over a Scottish company, being sued for breach of contract arising from a destroyed shipment of engine parts to a Detroit storage facility because, although the parties had transacted business in Illinois previously, those transactions were too dissimilar to form a basis for jurisdiction. RAR, Inc. v. Turner Diesel, 107 F.3d 1272, 1997 U.S. App. LEXIS 3741 (7th Cir. 1997).

Where plaintiff in error, not content with the rulings of the court and the judgment against him, declared his trial was wanting in due process, a recital of such errors did not raise the question of due process of law and did not give the Supreme Court jurisdiction on direct review. People v. Nathanson, 382 Ill. 145, 47 N.E.2d 85 (1943).

-- Long-Arm Statute

Because various factors affected the determination of whether Illinois due process permitted Illinois courts to exercise jurisdiction over a defendant and because conflicting affidavits created

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an issue of fact concerning the extent of a Wisconsin lawyer's personal interest in the consequences of the lawyer's alleged defamation of an employee in Illinois, an evidentiary hearing was necessary to determine whether the Illinois trial court had personal jurisdiction over the lawyer. Femal v. Square D Co., 388 Ill. App. 3d 134, 327 Ill. Dec. 935, 903 N.E.2d 32, 2009 Ill. App. LEXIS 27 (1 Dist. 2009).

As the company initiated the transaction, the former employee provided information that she signed the contract in Illinois, and all the performance of the contract occurred in Illinois, all the factors weighed in favor of finding jurisdiction over the company in Illinois, based on 735 ILCS 5/2-209(a)(1), the Illinois long-arm statute's "transaction of business" clause; in addition, the "quality and nature" of the company's acts that affected interests in Illinois were sufficient to subject the company to jurisdiction under the Illinois Constitution, and jurisdiction in Illinois complied with the due process requirements of the U.S. Constitution. Therefore, defendant's motion to dismiss for lack of personal jurisdiction was denied with prejudice. Joy v. Hay Group, Inc., F. Supp. 2d , 2003 U.S. Dist. LEXIS 16045 (N.D. Ill. Sept. 9, 2003).

Where the father filed a tort action against the property owner in Illinois, and the property owner's property was located in Missouri, sufficient minimum contacts were established between the owner and Illinois to satisfy the Illinois Long-Arm Statute, 735 ILCS 5/2-209, as the owner had minimum contacts with Illinois as required under federal due process, and it was fair, just, and reasonable for an Illinois court to exercise personal jurisdiction over the owner pursuant to Illinois due process, Ill. Const. Art. I, § 2; the owner had a significant customer base in Illinois, it advertised in Illinois, and it operated a free shuttle service from Illinois. Adams v. Harrah's Md. Heights Corp., 338 Ill. App. 3d 745, 273 Ill. Dec. 536, 789 N.E.2d 436, 2003 Ill. App. LEXIS 533 (5 Dist. 2003).

The exercise of long-arm jurisdiction over a nonresident corporate purchaser engaged in a commercial relationship with an Illinois corporation through the placing of purchase orders to the plaintiff in Illinois for products manufactured in Illinois, did not violate the restrictions of the due process clause and the exercise of jurisdiction under such circumstances was fair, just and reasonable. Autotech Controls Corp. v. K.J. Elec. Corp., 256 Ill. App. 3d 721, 195 Ill. Dec. 526, 628 N.E.2d 990 (1 Dist. 1993).

-- Non-Resident Defendant

As it was foreseeable that the injury caused by out-of-state defendant's allegedly false assertions over the Internet would be felt primarily in Illinois, assertion of in personam jurisdiction over defendants comported with Illinois's due process guaranty. Bombliss v. Cornelsen, 355 Ill. App. 3d 1107, 291 Ill. Dec. 925, 824 N.E.2d 1175, 2005 Ill. App. LEXIS 165 (3 Dist. 2005).

It did not comport with fair play and substantial justice to say that a party submitted to the jurisdiction of Illinois courts by virtue of post hoc communications and a single in-state trip in an effort to repair a malfunctioning machine and with the goal of settling disputes and avoiding litigation. MLP U.S.A., Inc. v. Golden Image Graphics, F. Supp. 2d , 2004 U.S. Dist. LEXIS 7116 (N.D. Ill. Apr. 23, 2004).

In the context of establishing personal jurisdiction, the following contacts were insufficient as a matter of law to satisfy the Due Process Clause: (1) the existence of a contract with an Illinois company, (2) the obligation to mail payments to an Illinois address, (3) an Illinois choice-of-law provision, and (4) plaintiff equipment seller's final execution of the agreement in Illinois. MLP U.S.A., Inc. v. Golden Image Graphics, F. Supp. 2d , 2004 U.S. Dist. LEXIS 7116 (N.D. Ill. Apr. 23, 2004).

Under the Illinois Constitution, jurisdiction is to be asserted only when it is fair, just, and reasonable to require a nonresident defendant to defend an action in Illinois, considering the quality and nature of the defendant's acts which occur in Illinois or which affect interests located in Illinois; since there is little guidance available regarding the reach of the Illinois Due Process Clause, a court typically looks to the federal Due Process Clause for guidance; therefore, a court

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turns to the federal constitutional limits on jurisdiction. Zenith Elecs. Corp. v. WH-TV Broad. Corp.,, 2003 U.S. Dist. LEXIS 24357 (N.D. Ill. Aug. 7, 2003).

Illinois Constitution contains a guarantee of due process that is separate and independent from the federal due process clause; under the Illinois Constitution's guarantee of due process, personal jurisdiction is to be asserted only when it is fair, just, and reasonable to require a nonresident defendant to defend an action in Illinois, considering the quality and nature of the defendant's act which occur in Illinois or which affect interests located in Illinois. Jamik, Inc. v. Days Inn, 74 F. Supp. 2d 818, 1999 U.S. Dist. LEXIS 18492 (N.D. Ill. 1999).

Jurisdiction permissible under the Illinois Constitution based on the principle that jurisdiction is to be asserted only when it is fair, just and reasonable to require a non-resident defendant to defend an action in Illinois, considering the quality and nature of the defendant's acts which occur in Illinois or which affect interests located in Illinois. Allerion, Inc. v. Nueva Icacos, 283 Ill. App. 3d 40, 218 Ill. Dec. 632, 669 N.E.2d 1158 (1 Dist. 1996), appeal denied, 169 Ill. 2d 563, 221 Ill. Dec. 436, 675 N.E.2d 631 (1996).

Jurisdiction over a defendant may be exercised by a state court only when it is fair, just, and reasonable to require a non-resident defendant to defend an action in Illinois, considering the quality and nature of the defendant's acts which occur in Illinois or which affect interests located in Illinois. Chemical Waste Mgt., Inc. v. Sims, 870 F. Supp. 870 (N.D. Ill. 1994).

In deciding whether it is fair to subject a nonresident defendant to Illinois jurisdiction a court may not look solely to the Illinois long-arm statute and the federal due process clause but must also satisfy the due process clause of the Illinois Constitution. Mors v. Williams, 791 F. Supp. 739 (N.D. Ill. 1992).

Due process requires only that the non-resident defendant have "certain minimum contacts" with the forum state, and this requirement is satisfied if there is some act by which the defendant purposefully avails himself of the privilege of conducting activities within the forum state, where the dispute is said to "arise from" the jurisdictional act or acts, the forum state and the litigation is the essential foundation of personal jurisdiction, and must be such that it is reasonable to subject defendant to suit in the forum state. Jacobs/Kahan & Co. v. Marsh, 740 F.2d 587 (7th Cir. 1984).

Where a defendant was a non-resident of the forum county, but a resident of the state, service of process on defendant's business agent in the forum county was sufficient to confer personal jurisdiction over defendant, and as applied to defendant, § 13 of the Civil Practice Act, Ill. Rev. Stat. ch. 110, was not unconstitutional under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Joel v. Bennett, 276 Ill. 537, 115 N.E. 5, 1916 Ill. LEXIS 2332 (1916).

Railroad's engagement of solicitors of business was not the transaction of ordinary business within the meaning of 735 ILCS 5/2-209 (formerly § 8 of the Practice Act), and an out-of-state railroad with no other contacts in Illinois is not amenable to the jurisdiction of the courts of Illinois in a shipper's property loss claim. Booz v. Texas & P. R. Co., 250 Ill. 376, 95 N.E. 460, 1911 Ill. LEXIS 2153 (1911).

-- Notice to Juvenile's Parent

Juvenile court was divested of subject matter jurisdiction over juvenile proceeding after there was a failure to serve supplemental petitions on the juvenile's father to notify the father about proceedings involving the juvenile; the record contained the father's name and address, and the juvenile's due process rights were violated when the father, who by all accounts had a good relationship with the juvenile, was not notified of those proceedings, which also meant that the delinquency disposition and order that the juvenile be confined to the Department of Corrections were void. People v. Keyonne D. (In re Keyonne D.), 376 Ill. App. 3d 1023, 316 Ill. Dec. 114, 878 N.E.2d 1138, 2007 Ill. App. LEXIS 1041 (1 Dist. 2007).

-- Personal Judgment

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A personal judgment cannot be obtained by publication process against a non-resident, even though the proceeding is brought in rem or quasi in rem. Griffin v. County of Cook, 369 Ill. 380, 16 N.E.2d 906 (1938).

-- Real Property In Rem Decree

Issue of whether trial court had jurisdiction in a separate maintenance proceeding, within the state and federal concepts of due process of law, to subject real property to a decree in rem, was a sufficient basis for a direct appeal to the Supreme Court. Failing v. Failing, 4 Ill. 2d 11, 122 N.E.2d 167 (1954).

- Juror Verdict Forms

Jurors may sign a verdict charging a defendant in the alternative as either a principal or an accessory guilty of the charged crime; due process does not require verdict forms distinguishing guilt as a principal from guilt as an accessory. People v. Lee, 344 Ill. App. 3d 851, 280 Ill. Dec. 24, 801 N.E.2d 969, 2003 Ill. App. LEXIS 1376 (1 Dist. 2003), appeal denied, 208 Ill. 2d 547, 284 Ill. Dec. 343, 809 N.E.2d 1289 (2004).

- Jury Instructions

-- Burden of Proof

Where the record affirmatively showed that a trial court gave instructions to the jury sufficient to avoid a fundamentally deficient or unfair trial in that the trial court instructed the jury on several occasions as to the State's burden of proving defendant guilty beyond a reasonable doubt on each and every element of the robbery for which defendant was charged, there was no plain error available for review. Because there was no preserved error and no plain error, the trial court did not have a duty to sua sponte tender any additional instructions to the jury. People v. Green, 364 Ill. App. 3d 923, 302 Ill. Dec. 168, 848 N.E.2d 168, 2006 Ill. App. LEXIS 347 (1 Dist. 2006).

Although the State, under 720 ILCS 5/3-2, had the burden of proving defendant guilty beyond a reasonable doubt as to the affirmative defense issue and the elements of the offense, the absence of an instruction on the affirmative defense removed from the jury's consideration an issue essential to the determination of defendant's guilt. People v. Hari, 218 Ill. 2d 275, 300 Ill. Dec. 91, 843 N.E.2d 349, 2006 Ill. LEXIS 9 (2006).

The jury instructions had the effect of shifting to defendant the burden of producing evidence and the burden of persuasion, thereby violating defendant's due process rights under both the United States and Illinois Constitutions. People v. Marcotte, 217 Ill. App. 3d 797, 160 Ill. Dec. 474, 577 N.E.2d 799 (5 Dist. 1991), cert. denied, 143 Ill. 2d 644, 167 Ill. Dec. 406, 587 N.E.2d 1021 (1992); overruled in part by People v. Woodrum, 223 Ill. 2d 286, 860 N.E.2d 259, 2006 Ill. LEXIS 1633, 307 Ill. Dec. 605 (2006).

-- Lesser-Included Offense

Failure to instruct the jury on the lesser included offense of second degree murder did not violate defendant's due process rights because there was no evidence of provocation warranting such an instruction. People v. Woodard, Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 671 (1 Dist. Aug. 3, 2006).

-- Multiple Criminal Methods

When statutes establish multiple methods of committing a single offense, principles of due process permit the court to instruct the jury in the disjunctive, and the jury may return a general verdict without deciding which of the multiple methods the defendant used to commit the single offense. People v. Lee, 344 Ill. App. 3d 851, 280 Ill. Dec. 24, 801 N.E.2d 969, 2003 Ill. App.

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LEXIS 1376 (1 Dist. 2003), appeal denied, 208 Ill. 2d 547, 284 Ill. Dec. 343, 809 N.E.2d 1289 (2004).

-- Violation Not Shown

By immediately instructing the jury to disregard a reference to corporate wealth in closing argument in an asbestos exposure case, the trial court took the necessary steps to ensure that any prejudicial effect from the improper statement was cured and that the manufacturer obtained a fair trial. Zickuhr v. Ericsson, Inc., Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1079 (1 Dist. Sept. 30, 2011).

In a felony murder case, defendant was not denied his constitutional right to due process where the trial court gave a non-Illinois pattern jury instruction since there were none that were applicable to the circumstances of defendant's case and the instruction given was not an incorrect statement of the law and provided the jury with examples enabling the jury to apply the difficult concept of proximate cause to the evidence. People v. Hudson, 354 Ill. App. 3d 648, 290 Ill. Dec. 629, 821 N.E.2d 1203, 2004 Ill. App. LEXIS 1555 (1 Dist. 2004).

Defendant's commitment under the Illinois Sexually Violent Persons Commitment Act, 725 ILCS 207/1 et seq.,did not run afoul of substantive due process because the jury was properly instructed with definitions of the relevant statutory terms. State v. Varner, 207 Ill. 2d 425, 279 Ill. Dec. 506, 800 N.E.2d 794, 2003 Ill. LEXIS 1424 (2003), cert. denied, 540 U.S. 1225, 124 S. Ct. 1519, 158 L. Ed. 2d 164 (2004).

Defendant's rights of due process were not violated by two aggravated battery alternatives contained within the issue instruction which permitted the jury to return a general guilty verdict of aggravated battery even though one or more jurors disagreed as to which alternative course of conduct defendant committed. People v. Diaz, 244 Ill. App. 3d 268, 185 Ill. Dec. 134, 614 N.E.2d 268 (1 Dist. 1993).

Where the only evidence that the trial judge had gone to the jury room and had orally instructed the jury was the affidavits of two jurors, while such an occurrence was improper, because affidavits of jurors could not be used to impeach their verdict, defendant had not shown a violation of his due process protections because written instructions were a statutory right, not a constitutional right. People v. Rettich, 332 Ill. 49, 163 N.E. 367, 1928 Ill. LEXIS 1049 (1928).

While written jury instructions in a criminal trial were a statutory requirement, oral instructions could be given if both parties waived written instructions, and the giving of oral instructions after such a waiver was not appealable. People v. Krakowski, 308 Ill. 266, 139 N.E. 399, 1923 Ill. LEXIS 1044 (1923).

- Legislation

Legislation survives a due process challenge if it is reasonably designed to remedy the evils the legislature believes are a threat to the public health, safety and general welfare. People v. Tucker, 264 Ill. App. 3d 923, 201 Ill. Dec. 888, 637 N.E.2d 477 (1 Dist. 1994).

Where one small portion of one section of a legislative act had been voided, and the remainder of the section and the act had been found valid, the surviving portions of the act were not unconstitutional. Checker Taxi Co. v. Collins, 320 Ill. 605, 151 N.E. 675, 1926 Ill. LEXIS 864 (1926).

State did not act arbitrarily, in violation of Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2), when it adopted a statute that prohibited anyone from possessing a motor vehicle the original engine number of which had been destroyed, removed, altered, covered, or defaced because even if a defendant did not have any criminal intent when he purchased a vehicle that had been stolen and had its engine number altered, the defendant could easily have verified,

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through the required registration records, whether the engine number had been changed. People v. Billardello, 319 Ill. 124, 149 N.E. 781, 1925 Ill. LEXIS 782 (1925).

Whether rule adopted by the Chicago Board of Trade regarding settlement of contracts after buyer authorized the purchase of grain through an intermediary affected the settlement of that purchase contract after the rule's adoption did not raise a constitutional question because the Board of Trade's rules were not laws within the meaning of the constitutional prohibition against laws that impaired the obligation of existing contracts, found at Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) and Ill. Const. of 1870, Art. II, § 14. Thomson v. Thomson, 293 Ill. 584, 127 N.E. 882, 1920 Ill. LEXIS 1012 (1920).

Rule adopted by the Chicago Board of Trade regarding settlement of contracts is not a law within the meaning of the constitutional declaration that no law impairing the obligation of contracts shall ever be made, found at Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) and Ill. Const. of 1870, Art. II, § 14, because the Board of Trade is merely a voluntary organization; although incorporated under an act of the General Assembly, it has no grant of any legislative power. Thomson v. Thomson, 293 Ill. 584, 127 N.E. 882, 1920 Ill. LEXIS 1012 (1920).

Illinois Const. of 1848 contains the same provision as to the passage of laws impairing the obligation of contracts as Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) and Ill. Const. of 1870, Art. II, § 14. Thomson v. Thomson, 293 Ill. 584, 127 N.E. 882, 1920 Ill. LEXIS 1012 (1920).

Statute, which gave state fire marshal power to condemn a building without rules for making such a decision, was an unconstitutional delegation of arbitrary discretion; instead of being a uniform law applicable alike to all similar buildings, it was subject to the varying opinions of the different fire marshals in the several localities or their successors in the same localities People ex rel. Gamber v. Sholem, 294 Ill. 204, 128 N.E. 377, 1920 Ill. LEXIS 875 (1920).

Statute that required the registration in probate of all land owned by a decedent violated Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2), because under the Statute of Descent, 755 ILCS 5/2-1, all title to such land vested by operation of law in the decedent's heirs-at-law. Anderson v. Shepard, 285 Ill. 544, 121 N.E. 215, 1918 Ill. LEXIS 893 (1918).

Statutes providing for the funding of public schools through property taxes were not unconstitutional because the public schools were provided for in the state constitution, former Ill. Const. of 1870, Art. VIII, § 1, and the legislature's ability to fund those schools was the natural results of that constitutional establishment and the provisions were non-discriminatory and a reasonable exercise of legislative power; the court rejected arguments that the statute required a tax without a vote by the people, violated the rule of local self-government, and discriminated in favor of the tax payers and pupils of the non-high school districts. People ex rel. Goodell v. Chicago, N. W. R. Co., 286 Ill. 384, 121 N.E. 731, 1918 Ill. LEXIS 808 (1918).

Statute that provided that no tax deed could be received as prima facie evidence of the regularity of the proceedings if the records of that proceeding had been destroyed by fire did not violate the constitutional rights (against impairment of contracts and divesture of property) of a land purchaser who claimed under a tax deed subject to the statute because the statute was a just exercise of legislative power, given that a landowner's means of rebutting a presumption that the proceeding was regular would require records that had been destroyed. Roby v. Chicago, 64 Ill. 447, 1872 Ill. LEXIS 308 (1872).

- Liberty Interest

Timing requirements for filing of petition for commitment as a sexually violent person were not mere technicalities, but were designed to protect an offender's liberty interest in a release date that would otherwise have been available; the statute was therefore strictly construed, so that deadlines were calculated from the actual date for commencement of mandatory supervised release, not an anticipated date used for other planning and notification purposes. People v.

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Powell (In re Powell), 344 Ill. App. 3d 97, 279 Ill. Dec. 134, 799 N.E.2d 937, 2003 Ill. App. LEXIS 1294 (1 Dist. 2003).

-- In General

Liberty implies only the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community. Memorial Gardens Ass'n v. Smith, 16 Ill. 2d 116, 156 N.E.2d 587 (1959).

Court concluded that the Illinois Flag Law of April 22, 1899, was unconstitutional, not only as infringing upon the personal liberty guaranteed to defendant by both the U.S. Const. amend. XIV and former Ill. Const. of 1870, Arts. II, §§ 1, 2, and 4 (now Ill. Const. (1970), Arts. I, §§ 1, 2, 4), but also as depriving a U.S. citizen of the right of exercising a privilege impliedly granted by the federal constitution. Ruhstrat v. People, 185 Ill. 133, 57 N.E. 41, 1900 Ill. LEXIS 2636 (1900).

-- Conditional Discharge

A defendant has a constitutional liberty interest in his conditional discharge which cannot be extinguished absent due process. People v. Davis, 127 Ill. App. 3d 49, 82 Ill. Dec. 110, 468 N.E.2d 172 (2 Dist. 1984).

-- Definition

Liberty, as that term is used in the Illinois Constitution, means not only freedom of citizens from servitude and restraint, but is deemed to embrace the right of every man to be free in the use of his powers, faculties and property and to adopt and pursue and employ these things in such lawful way as he may choose, subject only to such restraints as are necessary to secure the common welfare. City of Mt. Vernon v. Julian, 369 Ill. 447, 17 N.E.2d 52 (1938).

Liberty includes not only freedom from servitude and restraint, but also the right of every man to be free in the use of his powers and faculties to pursue such occupation or business as he may choose and to use his property in his own way and for his own purposes, subject only to the restraint necessary to secure the common welfare. Bank & Trust Co. v. Village of Wilmette, 358 Ill. 311, 193 N.E. 131 (1934).

The fundamental principle upon which liberty in free and enlightened government is based is equality under the law of the land. Braceville Coal Co. v. People, 147 Ill. 66, 35 N.E. 62 (1893).

Liberty, as that term is used in the Illinois Constitution, means not only freedom of the citizen from servitude and restraint, but is deemed to embrace the right of every man to be free in the use of his powers and faculties, and to adopt and pursue such avocation or calling as he may choose, subject only to the restraints necessary to secure the common welfare. Braceville Coal Co. v. People, 147 Ill. 66, 35 N.E. 62 (1893).

-- Failure to Provide Counsel

Where defendant was a middle-aged housewife who had never before been accused or convicted of any crime and was totally inexperienced in trial procedure, and where she was in a highly emotional and confused state of mind, defendant was in need of representation by counsel and the failure to provide such counsel was a violation of due process of law under this section and U.S. Const., Amend. XIV. People v. Lewis, 413 Ill. 116, 108 N.E.2d 473 (1952).

-- Family Rights

Grandparental-visitation statute, 735 ILCS 5/607(b)(1), was constitutional and did not violate a parent's liberty rights where the statute was both a codification of case law that allowed visitation before the statute was passed and an expansion of grandparents' visitation rights because it was narrowly tailored to achieve the goal of maintaining and promoting a grandparent-grandchild relationship, which was a matter in which the State of Illinois had a compelling interest. In re

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Mehring, 324 Ill. App. 3d 262, 258 Ill. Dec. 28, 755 N.E.2d 109, 2001 Ill. App. LEXIS 640 (1 Dist. 2001).

An individual's freedom of choice concerning procreation, marriage and family life is a fundamental right; thus, statutes restricting that right may only survive if a compelling state interest exists. People v. R.G., 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989), cert. denied, 494 U.S. 1035, 110 S. Ct. 1491, 108 L. Ed. 2d 626 (1990).

-- Indirect Criminal Contempt

Any man who is charged with any offense which may result in his being deprived of this liberty has the constitutional right to know the nature of the charge against him, to have it definitely and specifically set forth, to be accorded an opportunity to answer and to be heard and introduce evidence in his own defense; nothing less than this will satisfy the requirements of due process of law. People v. Sherwin, 353 Ill. 525, 187 N.E. 441 (1933).

-- Involuntary Commitment

Involuntary commitment respondent failed to establish any violation of her due process rights with regard to her commitment or her transfer from a private facility to a state facility; while the proper procedure for making the transfer might not have been followed, respondent failed to show that she suffered any prejudice as she had agreed to the transfer, and once the transfer was made, the State treated respondent's admission to the state facility as an initial involuntary admission, providing respondent with all of the procedural safeguards required by 405 ILCS 5/3-601, 3-602. People v. Lisa G.C. (In re Lisa G.C.), 373 Ill. App. 3d 586, 313 Ill. Dec. 67, 871 N.E.2d 794, 2007 Ill. App. LEXIS 634 (1 Dist. 2007).

Involuntary commitment of any person disrupts one's freedom from unwarranted interference by the state and violates his or her person, entailing a massive curtailment of liberty and can only be justified by a recognized and substantial government interest. People v. Reliford, 65 Ill. App. 3d 177, 21 Ill. Dec. 778, 382 N.E.2d 72 (1 Dist. 1978).

Due process requires that there be a reasonable relationship between the state's purported interest in institutionalizing a person and the reasons for which the individual is ultimately committed. People v. Reliford, 65 Ill. App. 3d 177, 21 Ill. Dec. 778, 382 N.E.2d 72 (1 Dist. 1978).

In order to meet due process standards, a statute permitting a state to involuntarily hospitalize an individual must articulate the state's purpose for the institutionalization; the mere status of mental illness or mental retardation of a person without further inquiry or rationale is an insufficient justification for involuntary institutionalization. People v. Reliford, 65 Ill. App. 3d 177, 21 Ill. Dec. 778, 382 N.E.2d 72 (1 Dist. 1978).

Liberty interests of a criminal defendant who had been committed to a state hospital when he was found insane and incompetent to plead to the indictment against him were violated when trial court hearing his petition for habeas corpus construed Ill. Rev. Stat. 1947, ch. 38, para. 592's to mean that defendant could not be released from the state hospital unless there was proof that his insanity would never return; although defendant's liberty interest, if released, was still in jeopardy because of the pending criminal indictment, under the trial court's construction of the statute, defendant would forever be confined in the state hospital. People v. Kadens, 399 Ill. 394, 78 N.E.2d 289, 1948 Ill. LEXIS 284 (1948).

Forced institutionalization and administration of morphine to a woman, based on the opinion of a visiting nurse that the woman was interfering with her husband's recovery, for 15 days was a violation of due process because under state law, no person could be restrained in an institution unless adjudged insane or adjudged to be an immediate danger of violence. Crawford v. Brown, 321 Ill. 305, 151 N.E. 911, 1926 Ill. LEXIS 908 (1926).

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-- Involuntary Commitment Proceeding

It was not constitutionally and statutorily impermissible to allow the state to call respondent as an adverse witness at his own involuntary commitment proceeding pursuant to former section 60 of the Civil Practice Act (see now 735 ILCS 5/2-1102) since such procedure did not violate his right to assistance of counsel guaranteed by the federal and state constitutions and by the Mental Health Code. People v. Nolan, 66 Ill. App. 3d 744, 23 Ill. Dec. 498, 384 N.E.2d 134 (1 Dist. 1978).

-- Involuntary Hospitalization

Involuntary hospitalization infringes on a person's basic liberty interests and therefore requires strict adherence to constitutional due process and statutory protections. People v. Orr, 176 Ill. App. 3d 498, 125 Ill. Dec. 885, 531 N.E.2d 64 (4 Dist. 1988).

Even during involuntary hospitalization, an individual retains his liberty interests to remain free from unwarranted intrusions into his body and mind. People v. Orr, 176 Ill. App. 3d 498, 125 Ill. Dec. 885, 531 N.E.2d 64 (4 Dist. 1988).

-- Legislative Authority to Set Penalties

The legislature has the authority to set the nature and extent of penalties reasonably designed to remedy the evils which the legislature has determined to be a threat to the public health, safety and general welfare. People v. Moorhead, 128 Ill. App. 3d 137, 83 Ill. Dec. 405, 470 N.E.2d 531 (2 Dist. 1984).

-- Overthrow of Government

Law of 1919 which made it unlawful to openly advocate the overthrow by unlawful means the representative form of government was not so ambiguous so that defendants were deprived of the right to be informed of the nature and cause of the accusation against them, or that they were deprived of their liberty and property without due process of law. People v. Lloyd, 304 Ill. 23, 136 N.E. 505 (1922).

-- Perjury

Defendant in an arson trial was denied due process of law when an expert witness for the state later turned out to be an impostor who had presented false testimony about his expert qualifications, and on his petition for post-conviction relief he was entitled to a new trial. People v. Cornille, 95 Ill. 2d 497, 69 Ill. Dec. 945, 448 N.E.2d 857 (1983).

To establish a violation of due process the defendant must demonstrate that some action of the state was inconsistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions and the deprivation of an individual's liberty based upon false testimony is contrary to fundamental principles of fairness in a civilized society. People v. Cornille, 95 Ill. 2d 497, 69 Ill. Dec. 945, 448 N.E.2d 857 (1983).

-- Raising Children

Parent's interest in having and raising children is considered a fundamental liberty interest which is protected under heightened protection by the due process clause. People v. L.M. (In re D.W.), 344 Ill. App. 3d 30, 278 Ill. Dec. 692, 799 N.E.2d 410, 2003 Ill. App. LEXIS 1238 (1 Dist. 2003).

Because 705 ILCS 405/1-5(3) requires a trial court to admonish parents in child neglect cases that they risk the termination of their parental rights if they fail to comply with various conditions, it acts as a safeguard to a parent's due process rights inherent in their fundamental liberty interest in the care, custody, and control of their children. People v. Britt (In re H.D.), 343 Ill. App. 3d 483, 278 Ill. Dec. 194, 797 N.E.2d 1112, 2003 Ill. App. LEXIS 1241 (4 Dist. 2003).

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Child representative appointment did not violate a custodial parent's due process rights, since the parent had opportunity to question the basis for the representative's recommendations; if the representative were ultimately required to testify in court, another attorney would be appointed to represent the child, so that no ethical violation would occur. De Bates v. Bates, 342 Ill. App. 3d 207, 276 Ill. Dec. 618, 794 N.E.2d 868, 2003 Ill. App. LEXIS 879 (2 Dist. 2003), aff'd sub nom. In re Marriage of De Bates, 212 Ill. 2d 489, 289 Ill. Dec. 218, 819 N.E.2d 714 (2004).

Trial court violated the mother's due process rights by terminating her parental rights without advising her of the tasks that she was required to complete and the time frame within which she was required to complete them; the mother had engaged in many of the services and counseling sessions recommended in her service plan, and had no reason to anticipate that her parental rights would be terminated. People v. Faulkner (In re Jacob K.), 341 Ill. App. 3d 425, 275 Ill. Dec. 246, 792 N.E.2d 477, 2003 Ill. App. LEXIS 862 (4 Dist. 2003).

Parents have a liberty interest in bearing and raising their children. People v. R.G., 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989), cert. denied, 494 U.S. 1035, 110 S. Ct. 1491, 108 L. Ed. 2d 626 (1990).

-- School Attendance

Court determined that a cause of action can be stated for a substantive deprivation of a liberty right due to mandatory school attendance laws that arbitrarily require students to attend a school that does not provide a reasonable level of education; thus, plaintiffs were entitled to a chance to amend the count alleging a breach of Ill. Const. (1970), Art. I, § 2. Lewis E. by Gwen E. v. Spagnolo, 287 Ill. App. 3d 822, 223 Ill. Dec. 380, 679 N.E.2d 831, 1997 Ill. App. LEXIS 258 (1 Dist. 1997).

-- Suspension of Driving Privileges

Due process clause applies to the suspension of driving privileges as a driver's license is a protectable property interest; thus, the statutory scheme for summary suspension of a driver's license must pass muster under the due process provisions of both U.S. Const., Amends. 5, 14, and this section. People v. Rakers, 187 Ill. App. 3d 27, 134 Ill. Dec. 804, 542 N.E.2d 1311 (5 Dist. 1989).

Although the defendant had a substantial interest in continued enjoyment of driving privileges, she failed to show that a hearing was constitutionally required before the state may deprive her of that interest; the summary suspension procedure materially advances the state's interest in public safety and imposed an insubstantial risk of erroneously depriving motorists of their privilege to drive and satisfied the dictates of due process. People v. Esposito, 121 Ill. 2d 491, 118 Ill. Dec. 396, 521 N.E.2d 873 (1988).

The state's compelling interest in highway safety justifies suspending one's driving license after taking a chemical test and obtaining a result which shows legal intoxication. People v. Ramos, 155 Ill. App. 3d 374, 108 Ill. Dec. 323, 508 N.E.2d 484 (4 Dist. 1987).

-- Traffic Ordinance

Municipality's traffic ordinance, which authorized police officers to direct traffic in accordance with the provisions of the ordinance except in times of emergency, at which time the officers should direct traffic as public safety or convenience required, did not violate Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2), by depriving drivers of their liberty without due process of law or deprive them of the equal protection of the laws, because traffic blockages caused by crowded conditions on city streets presented a situation which sufficiently warranted their being included within the term "emergency," and in that situation, the municipality could properly grant discretion to police officers to deal with the situation. Chicago v. Marriotto, 332 Ill. 44, 163 N.E. 369, 1928 Ill. LEXIS 1048 (1928).

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-- Use of Intoxicating Liquor

The State has the power to regulate the places where alcohol is consumed, and therefore 1911 Ill. Laws p. 462, § 1, which made it a crime to be intoxicated in a car carrying passengers, and 1911 Ill. Laws p. 462, § 2, which gave conductors the authority to arrest intoxicated passengers was not unconstitutional under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) and was not an unreasonable restraint on an individual's liberty. Tarantina v. Louisville & N. R. Co., 254 Ill. 624, 98 N.E. 999, 1912 Ill. LEXIS 1967 (1912).

The times and places under which intoxicating liquors may be sold are regulated by statute for the purpose of reducing the evils of intemperance, and for the same purpose the times, places, and circumstances of drinking intoxicating liquors may be regulated; such a regulation does not unreasonably interfere with the liberty of the individual, and is reasonably adapted to protect the public against a recognized public evil. Tarantina v. Louisville & N. R.R., 254 Ill. 624, 98 N.E. 999 (1912).

-- Vagabond

Ill. Rev. Stat. ch. 38, para. 578, under which defendant was convicted as a vagabond, was unconstitutional because it punished him for what he appeared to be, was unreasonable legislation, deprived citizens of their liberty without due process of law, and clothed administrative officers with arbitrary and discriminatory powers. People v. Belcastro, 356 Ill. 144, 190 N.E. 301, 1934 Ill. LEXIS 804 (1934).

- Long Arm Statute

Exercise of personal jurisdiction over Iowa corporation would not offend "traditional notions of fair play and substantial justice"; the plaintiff company had a substantial interest in obtaining relief in its home state for breach of contract, Illinois had a substantial interest in protecting contract rights of companies located within its boundaries, and the burden on the Iowa corporation of traveling to Illinois was not great. United States Gypsum Co. v. All Tank Sales & Supply Co., 977 F. Supp. 1340 (N.D. Ill. 1997).

Defendant Iowa corporation had minimum contacts with Illinois to establish personal jurisdiction and survive defendant's motion to dismiss; defendant came to the state and made admissions and promises relating to a contract, and the Iowa corporation had a continuing relationship with the Illinois company. United States Gypsum Co. v. All Tank Sales & Supply Co., 977 F. Supp. 1340 (N.D. Ill. 1997).

The acts of defendant in Illinois were sufficiently substantial to satisfy the due process requirements of the Illinois Constitution. Vandeveld v. Christoph, 877 F. Supp. 1160 (N.D. Ill. 1995).

- Newly Discovered Evidence

-- Habeas Corpus

A petitioner was not denied due process by a trial court's dismissal of his petition to obtain a new trial on the basis of newly discovered evidence under former § 72 of the Civil Practice Act (see now 735 ILCS 5/2-1401) where habeas corpus was available to present that issue. People v. Freeman, 26 Ill. App. 3d 443, 326 N.E.2d 207 (1 Dist. 1974).

-- New Trial

Claim of newly discovered evidence tending to show defendant is innocent of crime for which he was convicted is cognizable as a matter of due process, and therefore can be raised in a petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 et seq.) entitling defendant to a new trial. People v. Washington, 171 Ill. 2d 475, 216 Ill. Dec. 773, 665 N.E.2d 1330 (1996).

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- Not Reasonable Use

- Notice

Wife's indorsement of an appearance on the back of the husband's divorce complaint was sufficient for her appearance where no summons was issued due to her waiver, and there was a presumption of regularity of an appearance. Vayette v. Myers, 303 Ill. 562, 136 N.E. 467, 1922 Ill. LEXIS 1175 (1922).

-- Form of Notice

County property tax was properly assessed, extended, and reduced, in accordance with the Cities and Villages Act, the Revenue Act, and provisions of the Illinois constitution, including Ill. Const. of 1870, Art. IX, § 12, because the authorizing statutes were self-executing and required no supplemental legislation; the tax, which imposed additional taxes in emergency situations with only publication notice, did not violate equal protection or due process rights because it applied to all persons in the same situation and operated on all taxpayers. People ex rel. Stuckart v. N. J. Sandberg Co., 282 Ill. 245, 118 N.E. 469, 1917 Ill. LEXIS 1237 (1917).

- Notice Requirement

-- In General

Since the statutory provisions permitting a school board to remove a principal for cause provided her notice and a hearing, and since she could only be removed without prior warnings where it was clear from the evidence of record that she had ample notice that her conduct was wrong, there was no violation of due process. Prato v. Vallas, 331 Ill. App. 3d 852, 265 Ill. Dec. 94, 771 N.E.2d 1053, 2002 Ill. App. LEXIS 451 (1 Dist. 2002), appeal denied, 201 Ill. 2d 613, 271 Ill. Dec. 941, 786 N.E.2d 199 (2002).

Trial court violated the mother's constitutional right to due process when it terminated continuance of the case under supervision without a petition to terminate the continuance being filed or a hearing be held as required by 705 ILCS 405/2-20 of the Juvenile Court Act of 1987, because the plain language of the statute indicated that any objection to supervision must be made before the continuance of the case under supervision and no petition to terminate was filed and no hearing was held to terminate the continuance under supervision; furthermore, the Act required that parents be provided with notice and a hearing a to whether the parents violated any conditions prior to terminating the continuance of the case under supervision. People v. Burns (In re E.B.), 314 Ill. App. 3d 712, 247 Ill. Dec. 262, 731 N.E.2d 1270, 2000 Ill. App. LEXIS 572 (1 Dist. 2000).

City's decision that a safety hazard required the construction of a barracade across an alley required some proof of the hazard, and a trial court's finding that there was no such proof was not the grant of any sort of a property right to an abutter, who had at least been entitled to notice and opportunity in the city's proceedings leading to the determination that the alley was a hazard. Superdawg Drive-In, Inc. v. Chicago, 109 Ill. App. 3d 525, 65 Ill. Dec. 35, 440 N.E.2d 890, 1982 Ill. App. LEXIS 1354 (1 Dist. 1982).

Due process of law requires notice, actual or constructive, to the defendant and an opportunity to be heard in the protection and enforcement of his rights before a court of competent jurisdiction in an orderly proceeding adapted to the nature of the case. Barnett v. County of Cook, 388 Ill. 251, 57 N.E.2d 873 (1944).

-- Failure to State Specific Offense

Defendant's conviction on two counts of aggravated sexual abuse of a minor was not obtained in violation of his procedural due process rights, as the indictments and the State's bills of particular filed as to each of the two victims sufficiently informed defendant of the charges against him;

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although defendant argued that the charging instruments were not sufficiently specific, the State provided defendant with the best information it had, the crimes were alleged to have occurred within the statute of limitations, and the crimes were alleged to have occurred prior to the return of the charging instrument. People v. Guerrero, 356 Ill. App. 3d 22, 292 Ill. Dec. 344, 826 N.E.2d 485, 2005 Ill. App. LEXIS 190 (1 Dist. 2005), appeal denied, 215 Ill. 2d 606, 295 Ill. Dec. 523, 833 N.E.2d 5 (2005).

Failure of an indictment to specifically state an offense is a deprivation of due process of law. People v. Stanley, 42 Ill. App. 3d 99, 355 N.E.2d 582 (1 Dist. 1976).

In order to constitute due process of law within the provisions of the Ill. Const. Art. I, § 2 and federal constitution, orderly proceedings according to established rules, which do not violate fundamental rights should be observed, but where the person affected has due and sufficient notice and an adequate opportunity to present his defense, the constitutional requirements of due process of law are met. Lincoln-Lansing Drainage Dist. v. Stone, 364 Ill. 41, 2 N.E.2d 885, 1936 Ill. LEXIS 600 (1936).

Employer was entitled to notice of a petition by the administratrix of a deceased employee's estate of her intent to have an award converted to a lump sum, because there was a constitutional protection against the imposition of a liability without notice and an opportunity to be heard. Tazewell Coal Co. v. Industrial Com., 287 Ill. 465, 123 N.E. 28, 1919 Ill. LEXIS 1191 (1919).

Order directing a railroad to replace a switch track was not a violation of due process rights because the railroad was notified of a hearing and appeared and participated in a hearing before the commission; the railroad was bound by former Ill. Const. of 1870, art. XIII, § 5 to deliver goods to any consignee, despite the fact that the switch track would never have needed replacing if the shipper's elevator had not burned down. State Public Utilities Com. ex rel. Cameron v. Lake E. & W. R. Co., 277 Ill. 574, 115 N.E. 519, 1917 Ill. LEXIS 1773 (1917).

-- Business Corporation Act

In a liquidation proceeding, neither former sections 87 and 89 of the Business Corporation Act (see now 805 ILCS 5/12.60, and 805 ILCS 5/12.75) nor the Illinois or United States Constitution require notice to corporate creditors be made by personal service of summons. Elmhurst Stamping & Mfg. Co. v. Amax Plating, Inc., 67 Ill. App. 3d 257, 23 Ill. Dec. 932, 384 N.E.2d 839 (1 Dist. 1978).

-- Child Abduction Statute

The phrase "other than a lawful purpose," as used in subdivision (b)(10) of the Child Abduction Statute (former Ill. Rev. Stat., ch. 38, para. 10-5) does not fail "to give adequate notice as to what action or conduct will subject one to criminal penalties" nor is the phrase so obscure that people "of common intelligence must necessarily guess at its meaning and differ as to its applicability." People v. Williams, 133 Ill. 2d 449, 141 Ill. Dec. 444, 551 N.E.2d 631 (1990).

-- Collection of Real Estate Taxes

A regulation requiring that the entire tax levied and assessed against the working interest in an oil or gas leasehold estate be billed to the operator instead of the individual owners of the working interest was facially invalid as applied and deprived the owners of the undivided working interest of oil and gas leases of their property without due process and equal protection of law. People ex rel. Harris v. Parrish Oil Prod., Inc., 249 Ill. App. 3d 664, 190 Ill. Dec. 780, 622 N.E.2d 810 (5 Dist. 1993), appeal denied, 154 Ill. 2d 569, 197 Ill. Dec. 496, 631 N.E.2d 718 (1994).

The proceeding for the collection of taxes against real estate is a proceeding in rem, as to which the constitution does not require personal notice. People ex rel. McDonough v. Cesar, 349 Ill. 372, 182 N.E. 448 (1932).

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-- Constructive Service

Constructive service in proper cases is due process of law. Bank of Edwardsville v. Raffaelle, 381 Ill. 486, 45 N.E.2d 651 (1942).

A judgment in personam may be obtained against a resident of the state by constructive service, if it appears actual service of process cannot be had upon him, and notice is given in such manner the reasonable probabilities are the defendant will receive notice of the pending action or proceeding before a judgment or decree is rendered against him. Griffin v. County of Cook, 369 Ill. 380, 16 N.E.2d 906 (1938).

-- Form of Notice

Although the neighbors' due process might have been violated by the improper notice provided of a hearing at which a local zoning board considered an application for a conditional use permit to operate a trap-shooting range on land adjacent to theirs, any constitutional deficiency was rendered harmless when the board conducted a second hearing on the same topic and provided adequate notice to all. Miller v. Fulton County Zoning Bd. of Appeals, 337 Ill. App. 3d 210, 271 Ill. Dec. 600, 785 N.E.2d 532, 2003 Ill. App. LEXIS 121 (3 Dist. 2003).

In determining whether notice given in a particular circumstance is sufficient to ensure actual notice, the United States Supreme Court has looked at four factors: (1) whether the form of notice relies on mere chance to reach the attention of the other party; (2) whether the form of notice is designed to attract the attention of the other party; (3) whether the actual means of providing notice is reliable; and (4) whether the means of notice was reasonable when compared to other alternatives. Ellis v. Chuhak, 229 Ill. App. 3d 281, 171 Ill. Dec. 135, 593 N.E.2d 955 (1 Dist. 1992).

Due process is a flexible protection requiring only such notice and hearings as are commensurate with the necessities of a particular case and the character of the rights affected, to satisfy due process requirements, the form of notice provided should be likely to be received and plain to understand. Elmhurst Stamping & Mfg. Co. v. Amax Plating, Inc., 67 Ill. App. 3d 257, 23 Ill. Dec. 932, 384 N.E.2d 839 (1 Dist. 1978).

-- Former Unemployment Compensation Act

While there was contained in former section 12 of the Unemployment Compensation Act (now see 820 ILCS 405/100 et seq.) no definite provision for notice of an application to a circuit court for an order compelling the production of books or documents, it clearly contemplated that any person against whom such an order was applied for should have notice and an opportunity to be heard, otherwise, it would clearly have violated the due process clause of both the state and federal constitutions. Durkin v. Hey, 376 Ill. 292, 33 N.E.2d 463 (1941).

-- Juvenile Delinquency Proceedings

It was plain error to hold a probation revocation proceeding concerning appellant minor, who had been previously adjudicated delinquent, where the minor's parents and individual guardian were not given notice under 705 ILCS 405/5-530 and 405/5-720(1), as they had all previously participated in the matter and such lack of notice violated the minor's due process rights. People v. Marcus W. (In re Marcus W.), 389 Ill. App. 3d 1113, 330 Ill. Dec. 136, 907 N.E.2d 949, 2009 Ill. App. LEXIS 287 (4 Dist. 2009).

-- Waiver

While due process requires that adequate notice of juvenile proceedings be given to a minor and his parents, it is notice to the custodial parent that is crucial, and where a mother failed to timely raise any issue regarding the lack of notice of a neglect petition to the non-custodial father, the issue was waived. People v. Darlene T. (In re Brett R.), 343 Ill. App. 3d 1210, 279 Ill. Dec. 108,

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799 N.E.2d 911, 2003 Ill. App. LEXIS 1298 (2 Dist. 2003), appeal denied sub nom. In re Brett R., 207 Ill. 2d 603, 283 Ill. Dec. 134, 807 N.E.2d 975 (2004).

- Legislation.

2003 amendment to 735 ILCS 5/13-202.2 could not be applied to the former student's cause of action of childhood sexual abuse without running afoul of the Illinois constitution where the former student's cause of action was already time-barred under the old version of the law by the time he filed suit; the version of § 13-202.2 as amended in 2003 therefore could be applied to revive the former student's claims. Doe v. Diocese of Dallas, 234 Ill. 2d 393, 334 Ill. Dec. 649, 917 N.E.2d 475, 2009 Ill. LEXIS 1294 (2009).

-- Manslaughter

Submission of a voluntary manslaughter verdict to the jury at the conclusion of the case, absent a manslaughter count in the indictment, did not deprive the defendant of his constitutional right to notice of the charges against him since the crime of manslaughter is embraced in a charge of murder, and the accused may be found not guilty of murder and convicted of manslaughter. People v. Speed, 52 Ill. 2d 141, 284 N.E.2d 636 (1972).

-- Property Assessment

Due process requires that before a tax becomes irrevocably fixed as a charge on his property, the taxpayer is entitled to an opportunity, upon notice, to be heard with respect to the validity and extent of the tax. Barnett v. Cook County, 388 Ill. 251, 57 N.E.2d 873, 1944 Ill. LEXIS 668 (1944).

A law authorizing the imposition of a tax or assessment upon property according to its value does not infringe due process of law, if the owner has an opportunity to question the validity or the amount of it either before that amount is determined, or in subsequent proceedings for its collection; that the notice is not personal, but by publication, is not sufficient to vitiate it. Barnett v. County of Cook, 373 Ill. 516, 26 N.E.2d 862 (1940).

In the general assessment and levy of taxes the notice to the taxpayer need only be contained in the statute itself, without publication or personal service upon him. Barnett v. County of Cook, 373 Ill. 516, 26 N.E.2d 862 (1940).

Local Improvement Act did not violate the construction by depriving an owner of his property without due process where the Act provided for notice of the time and place of the public hearing to be sent by mail to the person who paid the taxes on the property assessed for the last preceding year, for notice of the passage of the ordinance for the improvement to be sent by mail to the person who paid the taxes for the last preceding year and a like notice to the occupant of the premises, for notice of the pendency of the proceeding for the confirmation to be sent by mail to the person who paid the taxes during the last preceding year in which the taxes were paid, and for notice, by posting the same and publication in a newspaper, giving notice of the proceeding to all persons interested and notifying them that they may file objections; those notices satisfied the requirements of the constitution and afforded to the owner of the property and all persons interest in it an opportunity to appear and contest the justice, legality, and propriety of the proposed assessment. Gage v. Chicago, 225 Ill. 218, 80 N.E. 127, 1906 Ill. LEXIS 2464 (1906).

-- Sentence Enhancement

Although the procedure which the trial court used when it imposed an enhanced sentence on defendant who was convicted of simple involuntary manslaughter, in violation of 720 ILCS 5/9-3, violated the United States Supreme Court's Apprendi decision, the Supreme Court of Illinois held that 720 ILCS 5/9-3 was not unconstitutional on its face and that the error was harmless, and it affirmed defendant's sentence. People v. Thurow, 203 Ill. 2d 352, 272 Ill. Dec. 185, 786 N.E.2d 1019, 2003 Ill. LEXIS 20 (2003).

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-- Tax Sale

State Supreme Court, upon considering the case as directed by the United States Supreme Court in light of its Jones decision, affirmed the appellate court's judgment that upheld the trial court's denial of the public guardian's amended petition to set aside the tax deed which the tax purchaser obtained after the property owner failed to pay property taxes, even though it was later determined that the property owner had been in a mental health facility for part of the proceedings involved in the tax purchaser obtained the tax deed to the property owner's property; not only did the property owner not redeem the property after the property owner failed to pay taxes on the property, but the facts of the case showed that the property owner was given adequate notice prior to the deprivation of the property owner's property and the mental health facility was prohibited from disclosing to the tax purchaser that the property owner was at the mental health facility receiving mental health services when the tax purchaser later tried to locate the property owner. Apex Tax Investments, Inc. v. Lowe (In re County Collector), 225 Ill. 2D 208, 225 Ill. 2d 208, 310 Ill. Dec. 890, 867 N.E.2d 941, 2007 Ill. LEXIS 450 (2007).

The notice provisions of the former Revenue Act of 1939 (see now 35 ILCS 200/21-385 and 35 ILCS 200/22-10 through 35 ILCS 200/22-25) are consistent with due process protection afforded by U.S. Const., Amend. 14 and this section. Rosewell v. Chicago Title & Trust Co., 99 Ill. 2d 407, 76 Ill. Dec. 831, 459 N.E.2d 966 (1984).

-- Taxes

Tax levy for police and firemen's pensions funds was invalid under the Illinois Municipal Code, 65 ILCS 5/1-1-1, et seq., where the levy did not specify the amount of the total tax that was to be allocated to each fund as required by 35 ILCS 200/18-10 (formerly § 1 of article 8 of the Illinois Cities and Villages Act), because the due process protections of Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) required such notice and an opportunity for objections of a property owner to be heard. People ex rel. Stuckart v. Arnold Bros., 282 Ill. 305, 118 N.E. 702, 1917 Ill. LEXIS 1244 (1917).

- Notice Requirements

-- In General

Notice to a defendant and opportunity to be heard are fundamental requirements and co-existent essentials of the constitutional guaranty of due process of law. People v. Coffman, 83 Ill. App. 2d 272, 227 N.E.2d 108 (4 Dist. 1967).

Statutory notice to a property owner which enables him to appear before the properly constituted tribunal, where he will be heard with reference to an assessment prior to it becoming a charge upon his property is sufficient notice; thus, it is evident that the notice requirements of former § 86a of the Local Improvement Act (now 65 ILCS 5/9 - 3-8) were patterned after those of § 84 of the same Act, and the requirements of § 84 comply with the due process clause of former Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2). Hoehamer v. Elmwood Park, 361 Ill. 422, 198 N.E. 345, 1935 Ill. LEXIS 649 (1935).

-- Property Assessment

Act to adjudicate tax rates by large municipal bodies, Ill. Rev. Stat. 1943, ch. 120, para. 831-841) violates Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) because if a taxpayer objects to a tax levy certified to the county clerk by one of the taxing bodies covered by the act, upon the ground that it was not adopted by a yea and nay vote, and that objection is sustained, the entire levy is invalid and cannot be amended. Barnett v. Cook County, 388 Ill. 251, 57 N.E.2d 873, 1944 Ill. LEXIS 668 (1944).

Statute authorizing the assessment of property that had been omitted in the assessment of any year or number of years was not a violation of the constitutional requirement of due process of

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law because the statute required notice; furthermore, the right to a hearing was constitutional and the statute requiring notice made it effective. People ex rel. Edgar v. National Box Co., 248 Ill. 141, 93 N.E. 778, 1910 Ill. LEXIS 2138 (1910).

- Ordinance

-- Gang Loitering

Terms of gang loitering ordinance were not sufficiently definite so that ordinary persons could comprehend the prohibited conduct. City of Chicago v. Morales, 177 Ill. 2d 440, 227 Ill. Dec. 130, 687 N.E.2d 53 (1997), cert. granted, 523 U.S. 1071, 118 S. Ct. 1510, 140 L. Ed. 2d 664 (1998), aff'd, 527 U.S. 41, 119 S. Ct. 1849, 144 L. Ed. 2d 67 (1999).

Gang loitering ordinance provided such ambiguous definitions of its elements that it did not discourage arbitrary or discriminatory enforcement; the ordinance provided absolute discretion to police officers to decide (1) what constitutes loitering and (2) whether any members of a group are gang members. City of Chicago v. Morales, 177 Ill. 2d 440, 227 Ill. Dec. 130, 687 N.E.2d 53 (1997), cert. granted, 523 U.S. 1071, 118 S. Ct. 1510, 140 L. Ed. 2d 664 (1998), aff'd, 527 U.S. 41, 119 S. Ct. 1849, 144 L. Ed. 2d 67 (1999).

Gang loitering ordinance violated due process of law in that it is impermissibly vague on its face and an arbitrary restriction on personal liberties. City of Chicago v. Morales, 177 Ill. 2d 440, 227 Ill. Dec. 130, 687 N.E.2d 53 (1997), cert. granted, 523 U.S. 1071, 118 S. Ct. 1510, 140 L. Ed. 2d 664 (1998), aff'd, 527 U.S. 41, 119 S. Ct. 1849, 144 L. Ed. 2d 67 (1999).

- Parent's Rights

By the time of the best interest phase of a termination of parental rights proceeding, the parent has been found unfit by clear and convincing evidence, and while the parent retains a fundamental interest, the proper focus of this hearing is on the child; once a finding of unfitness has been made, all considerations, including the parent's rights, must yield to the best interest of the child. People v. Michelle L. (In re Brandon L.), 348 Ill. App. 3d 315, 284 Ill. Dec. 197, 809 N.E.2d 763, 2004 Ill. App. LEXIS 458 (2 Dist. 2004).

In the best interest phase of a termination of parental rights proceeding, the interests of the parent and the child diverge and due process does not require standards as strict as in the unfitness phase; due process requires only a preponderance of the evidence burden of proof in the best interest phase versus a clear and convincing evidence standard in the unfitness phase. People v. Michelle L. (In re Brandon L.), 348 Ill. App. 3d 315, 284 Ill. Dec. 197, 809 N.E.2d 763, 2004 Ill. App. LEXIS 458 (2 Dist. 2004).

In analyzing whether a parent's procedural due process rights were violated in a termination proceeding, Illinois appellate courts apply the test enunciated by the United States Supreme Court in Mathews; the factors to be considered in determining whether a due process violation has occurred are: (1) the private interest implicated by the official action; (2) the risk of an erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional or substitute safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute safeguards would entail. People v. Michelle L. (In re Brandon L.), 348 Ill. App. 3d 315, 284 Ill. Dec. 197, 809 N.E.2d 763, 2004 Ill. App. LEXIS 458 (2 Dist. 2004).

Parents have a fundamental due process right to the care, custody and control of their children, but that right is subject to termination; a parental rights termination proceeding must comport with the guarantees of procedural due process because such a proceeding implicates a fundamental liberty interest. People v. Michelle L. (In re Brandon L.), 348 Ill. App. 3d 315, 284 Ill. Dec. 197, 809 N.E.2d 763, 2004 Ill. App. LEXIS 458 (2 Dist. 2004).

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Parent's right to his children was not always a vested right within the due process clause of the Illinois Constitution, so an amendment to the statute authorizing termination of parental rights that added incarceration as ground for an unfitness finding could be applied retroactively. People v. E. C. (In re E.C.), 337 Ill. App. 3d 391, 272 Ill. Dec. 51, 786 N.E.2d 590, 2003 Ill. App. LEXIS 272 (1 Dist. 2003).

Where the state failed to act with even a modicum of diligence in attempting to notify a father of his minor child's delinquency proceeding, this failure violated both the parent's right to be present at the proceeding and the minor's right to due process of law. In re C.H., 277 Ill. App. 3d 32, 214 Ill. Dec. 100, 660 N.E.2d 545 (3 Dist. 1995), appeal denied, 166 Ill. 2d 540, 216 Ill. Dec. 4, 664 N.E.2d 641 (1996).

- Personal Jurisdiction

Where the entire formation of the contract entered into between plaintiff corporation and defendant corporation occurred in defendant's London, England office, and the contract's choice of law provision and a choice of forum provision indicated that any claim that plaintiff had against defendant arising out of or in connection to the contract was to be governed by English law in English courts, defendant lacked the requisite minimum contacts with Illinois, so the due process provisions of the US and Illinois constitutions did not allow Illinois courts to assert personal jurisdiction over defendant. Morecambe Mar., Inc. v. Nat'l Bank of Greece, S.A., 354 Ill. App. 3d 707, 290 Ill. Dec. 468, 821 N.E.2d 780, 2004 Ill. App. LEXIS 1534 (1 Dist. 2004).

Court can acquire personal jurisdiction over a defendant in Illinois through either general or specific jurisdiction, and the inquiry applied is whether the defendant could reasonably have anticipated being hauled into court in Illinois; a defendant is subject to general jurisdiction in Illinois when it is either domiciled in Illinois or has continuous and systematic general business contacts with the forum, and the defendant is subject to specific jurisdiction when it has purposefully established minimum contacts with the forum state, although an out-of-state party's contract with an in-state party alone is not enough to establish the minimum contacts. Minkus v. Los Alamos Tech. Assocs., F. Supp. 2d , 2004 U.S. Dist. LEXIS 11833 (N.D. Ill. June 25, 2004).

United States District Court for the Northern District of Illinois, Eastern Division, cannot exercise jurisdiction over a defendant if it is improper under either the United States or the Illinois Constitutions, but because there is no operative difference between the limits imposed by both, the court need address a single due process inquiry, that is, whether the defendant has certain minimum contacts with the state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice; when it is challenged, the plaintiff bears the burden of demonstrating the existence of personal jurisdiction over a defendant, but the allegations in the complaint are to be taken as true unless controverted by a defendant's affidavit and any conflicts are to be resolved in favor of the plaintiff. Minkus v. Los Alamos Tech. Assocs., F. Supp. 2d , 2004 U.S. Dist. LEXIS 11833 (N.D. Ill. June 25, 2004).

In plaintiff employee's action for breach of an employment contract regarding the employee's compensation, the district court had specific personal jurisdiction over defendant president of defendant employer, who was in a position to review, implement, interpret, and retain final authority over the employee's compensation package under employment agreements with the employee, and who was a primary participant in the alleged improper actions directed at an Illinois resident. Weyent v. Vertical Networks, Inc., F. Supp. 2d , 2004 U.S. Dist. LEXIS 1443 (N.D. Ill. Feb. 3, 2004).

In plaintiff employee's action for breach of an employment contract, the fiduciary shield doctrine did not preclude personal jurisdiction over defendant president of defendant employer under Ill. Const., Art. 1, § 2; though allegedly none of the president's acts occurred in Illinois, the impact of a discretionary decision to not follow the terms of the parties' employment agreement would have impacted the employee, who suffered the breach in Illinois, and, therefore, it would not be unfair

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to exercise jurisdiction over the president when the president was in a position to decide whether or not to authorize payments to the employee, who resided in Illinois. Weyent v. Vertical Networks, Inc., F. Supp. 2d , 2004 U.S. Dist. LEXIS 1443 (N.D. Ill. Feb. 3, 2004).

Where a defendant had challenged jurisdiction based on its contention that it was no longer a corporate resident in the county where plaintiff had filed his action, the trial court had erred by dismissing on its own suggestion for forum non conveniens under Rule 187(b), Supreme Court Rules, because plaintiff was not given a fair opportunity to present his position on the issue. Pre Fab Transit Co. v. Fontaine Trailer Co., 299 Ill. App. 3d 293, 233 Ill. Dec. 410, 700 N.E.2d 1118, 1998 Ill. App. LEXIS 650 (1 Dist. 1998).

In order to have personal jurisdiction over a non-resident defendant, it is necessary to determine whether exercising jurisdiction would satisfy the due process requirements of the United States and Illinois Constitutions. ING Secs., Futures & Options, Inc. v. Bingham Inv. Fund, 934 F. Supp. 987 (N.D. Ill. 1996).

-- Minimum Contacts

Illinois' due process concepts regarding personal jurisdiction over an out-of-state airplane brokerage firm were satisfied as it was reasonable to require the firm to defend a wrongful death action in Illinois where negotiations for the sale of a plane to an Illinois resident, who died when the plane crashed, reached into Illinois, the firm had continuing obligations to the decedent with regard to two planes the decedent consigned to the firm, and the firms entering into the sale and ongoing relationship with the decedent affected many Illinois interests, including the health and safety of the decedent and his wife, the well-being of his children, and the safety of Illinois aircraft and air traffic. Commerce Trust Co. v. Air 1st Aviation Cos., 366 Ill. App. 3d 135, 303 Ill. Dec. 233, 851 N.E.2d 131, 2006 Ill. App. LEXIS 383 (1 Dist. 2006).

- Plain-Error Doctrine

Order that one of defendant's hands be handcuffed to the table during a jury trial did not require reversal under the plain-error doctrine; even if the handcuff was visible to the jury any error did not contribute to a verdict in light of overwhelming evidence of defendant's guilt. People v. Strickland, 363 Ill. App. 3d 598, 300 Ill. Dec. 297, 843 N.E.2d 897, 2006 Ill. App. LEXIS 85 (1 Dist. 2006).

- Police Power

City ordinance, which required landowner who proposed to use his property for gasoline filling station to obtain approval from neighboring frontage owners, but did not require other business of permitted uses within the restrictive service district to obtain such approval, was not a valid and reasonable exercise of the city's police power, as applied to the landowner, because even though there was opinion evidence that locating a gasoline filling station on the property would increase the traffic hazard to children attending nearby schools, there was proof that other property in the immediate vicinity was being used for a drive-in restaurant and for grocery store parking lots; such uses, as well as the other permissive uses for which the property could be utilized without obtaining frontage consents, would create comparable, if not greater, traffic hazards than the operation of a gasoline station. Drovers Trust & Sav. Bank v. Chicago, 16 Ill. 2d 589, 158 N.E.2d 620, 1959 Ill. LEXIS 300 (1959).

-- In General

65 ILCS 5/11-31-1(a) was enacted pursuant to the Illinois' police power and is, therefore, subject to review under a rational basis standard; therefore, property owners challenging the constitutionality of the statute have the burden of overcoming the presumption of constitutionality. Vill. of Lake Villa v. Stokovich, 211 Ill. 2d 106, 284 Ill. Dec. 360, 810 N.E.2d 13, 2004 Ill. LEXIS 356 (2004), cert. denied, 543 U.S. 943, 125 S. Ct. 354, 160 L. Ed. 2d 256 (2004).

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15 ILCS 335/14B is a valid exercise of police power that is rationally related to the State's purpose of eradicating immigration fraud and does not violate substantive due process. People v. Pizano, 347 Ill. App. 3d 128, 282 Ill. Dec. 512, 806 N.E.2d 1100, 2004 Ill. App. LEXIS 202 (1 Dist. 2004), appeal denied, 209 Ill. 2d 596, 286 Ill. Dec. 170, 813 N.E.2d 227 (2004).

The due process clause of the Illinois Constitution, insofar as it limits the exercise of the state's police or taxing powers, prohibits the arbitrary and unreasonable use of these powers; to be a valid exercise of the police power, the legislation must bear a reasonable relationship to the public interest to be served and the means adopted must be a reasonable method to accomplish such objective. Boynton v. Kusper, 112 Ill. 2d 356, 98 Ill. Dec. 208, 494 N.E.2d 135 (1986).

All legislative actions taken pursuant to the state's police power are subject to the constraints imposed by the due process clauses of the Illinois and United States Constitutions. People v. Keeven, 68 Ill. App. 3d 91, 24 Ill. Dec. 663, 385 N.E.2d 804 (5 Dist. 1979).

The due process clauses of the Illinois and United States Constitutions prohibit only an arbitrary, unreasonable and improper use of the state's police power. People v. Keeven, 68 Ill. App. 3d 91, 24 Ill. Dec. 663, 385 N.E.2d 804 (5 Dist. 1979).

Neither the due process clause of the federal Constitution nor the due process clause of the Illinois Constitution (see now this section) overrides the power of the state, or one of its subdivisions, to establish all regulations that are reasonably necessary to secure the health, comfort, safety, and general welfare of the community. Contemporary Music Group, Inc. v. Chicago Park Dist., 57 Ill. App. 3d 182, 14 Ill. Dec. 703, 372 N.E.2d 982 (1 Dist. 1978).

Court concluded that that portion of former Ill. Rev. Stat. ch. 95 1/2, para 189c(a) (now 625 ILCS 5/1-147), which appellant was convicted, went beyond the police power of the legislature and violated former Ill. Const. Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2); thus, it was unconstitutional and the conviction reversed. People v. Fries, 42 Ill. 2d 446, 250 N.E.2d 149, 1969 Ill. LEXIS 372 (1969).

The police power is an attribute of sovereignty inherent in every government, and it has been reserved to all the states by the Constitution of the United States. Memorial Gardens Ass'n v. Smith, 16 Ill. 2d 116, 156 N.E.2d 587 (1959).

Ill. Rev. Stat. (1951) ch. 8, para. 172 (now 510 ILCS 50/5), which provides the means for determining the amount of reimbursement to be made by the state when the state orders the destruction of a claimant's livestock, is clearly within the police power of the state and a reasonable exercise of that power by the legislature; therefore, the statute does not violate Ill. Const. of 1870 Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) or Ill. Const. of 1870 Art. II, § 13. Feil v. State, 22 Ill. Ct. Cl. 74, 1955 Ill. Ct. Cl. LEXIS 1 (Ct. Cl. 1955).

If the statute is referable to the police power, the court must be able to see that it tends, in some degree, toward the prevention of offenses or the preservation of the public health, morals, safety or welfare, and that there is some connection between the provision of the law and such purpose, however, if it is manifest that the statute has no such object, but, under the guise of a police regulation, is an invasion of the property rights of an individual, it is the duty of the courts to declare it void. Henson v. City of Chicago, 415 Ill. 564, 114 N.E.2d 778 (1953).

Statutes enacted under the police power must be construed, if possible, so as to avoid infringing on life, liberty and the pursuit of happiness. People v. Brown, 407 Ill. 565, 95 N.E.2d 888 (1950).

Where martial law had not been declared, a militaman had no right to shoot and kill a citizen who had refused to allow himself to be arrested, and the Court of Claims had the power to recommend compensation under 705 ILCS 505/1 (formerly § 6, Par. 4, Court of Claims Act), pursuant to Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) Gyenes v. State, 9 Ill. Ct. Cl. 185, 1936 Ill. Ct. Cl. LEXIS 37 (Ct. Cl. 1936).

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Although both liberty and property are subject to the police power of the state, under which new burdens may be imposed upon property and new restrictions placed on its use when the public welfare demands it, the police power is limited to enactments having reference to the public health, comfort, safety, and welfare. Bank & Trust Co. v. Village of Wilmette, 358 Ill. 311, 193 N.E. 131 (1934).

An act which deprives a citizen of his liberty or property rights cannot be sustained under the police power unless a due regard for the public health, comfort, safety, or welfare requires it. Bank & Trust Co. v. Village of Wilmette, 358 Ill. 311, 193 N.E. 131 (1934).

The legislative determination as to what is a proper exercise of the police power is not conclusive but it is subject to review by the courts. Phipps v. City of Chicago, 339 Ill. 315, 171 N.E. 289 (1930).

Police power of the State is exercised for the furtherance of the public health, comfort, safety, or welfare, and unless an act restricting the ordinary occupations of life can be shown to fall within the police power, such act is void. Doe v. Jones, 327 Ill. 387, 158 N.E. 703, 1927 Ill. LEXIS 1065 (1927).

State Public Utilities Commission of Illinois had the authority to establish advanced rates for street car service in a city, even though the city had been granted authority to set rates because the state's police power right to regulate public utilities could be shared with a city, but was never lost by the state. State Public Utilities Com. ex rel. Quincy R. Co. v. Quincy, 290 Ill. 360, 125 N.E. 374, 1919 Ill. LEXIS 909 (1919).

Police power is not susceptible of exact definition; when a city council considers some occupation or thing dangerous to the health of the community and in the exercise of its discretion passes an ordinance to prevent such a danger, it is the policy of the law to favor such legislation. Municipalities are allowed a greater degree of liberty of legislation in this direction than in any other. Biffer v. Chicago, 278 Ill. 562, 116 N.E. 182, 1917 Ill. LEXIS 1097 (1917).

It is within the power of the General Assembly, in the proper exercise of the police power, to declare that unlawful which was previously lawful, even if the act so condemned is an attribute of the right of liberty or property; because Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) allows the State to deprive a citizen of life, liberty, or property by "due process of law" and "due process of law" is synonymous with "law of the land," the law of the land may expressly prohibit and make criminal the doing of an act which, in the absence of such law of the land, would constitute a liberty or property right within the meaning of the constitution, even though the act is not within itself immoral. Booth v. People, 186 Ill. 43, 57 N.E. 798, 1900 Ill. LEXIS 2345 (1900).

Courts are authorized to interfere and declare a statute unconstitutional, or not the law of the land, if it conflicts with the constitutional rights of the individual and does not relate to or is not an appropriate measure for the promotion of the comfort, safety, and welfare of society; although the courts have nothing to do with determining the wisdom, policy, or necessity for a legislative enactment, the courts may declare enactments that, under the guise of the police power, go beyond the great principle of securing the safety or welfare of the public, to be invalid. Booth v. People, 186 Ill. 43, 57 N.E. 798, 1900 Ill. LEXIS 2345 (1900).

State inherently possesses, and the General Assembly may lawfully exercise, such power of restraint upon private rights as may be found to be necessary and appropriate to promote the health, comfort, safety, and welfare of society; in the exercise of this police power, the General Assembly may, by due process of law, prohibit all things hurtful to the comfort, safety, and welfare of society, even though the prohibition invades the right of liberty or property of an individual. Booth v. People, 186 Ill. 43, 57 N.E. 798, 1900 Ill. LEXIS 2345 (1900).

Most important of police powers is that of caring for the health of the community, and that power is inherent in a municipality, and may be exercised whether expressly granted or not, because the

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preservation of the health of the public is indispensable to the existence of the municipal corporations. Gundling v. Chicago, 176 Ill. 340, 52 N.E. 44, 1898 Ill. LEXIS 3273 (1898).

Where the ostensible object of an enactment is to secure the public comfort, welfare, or safety, it must appear to be adapted to that end. It cannot invade the rights of person and property under the guise of a mere police regulation, when it is not such in fact; and where such an act takes away the property of a citizen or interferes with his personal liberty, it is the province of the courts to determine whether it is really an appropriate measure for the promotion of the comfort, safety, and welfare of the society. Eden v. People, 161 Ill. 296, 43 N.E. 1108, 1896 Ill. LEXIS 1606 (1896).

-- Abating Nuisance

Under former Ill. Const. (1870), Art. II, § 2 (see now this section) it was within the police power of the city to pass an ordinance authorizing the destruction of a building which would be effective in preventing the disease of small pox. Sings v. City of Joliet, 237 Ill. 300, 86 N.E. 663 (1908).

-- Cancellation of Rock Concerts

Where a local board of commissioners had evidence before it that the safety and welfare of parks and private property and lives were threatened by a planned pattern of disruption of rock concerts, their resolution cancelling all permit agreements for rock music concerts for the remainder of the year did not violate due process and was a legitimate exercise of police power bearing a reasonable relationship to the evil to be remedied. Contemporary Music Group, Inc. v. Chicago Park Dist., 57 Ill. App. 3d 182, 14 Ill. Dec. 703, 372 N.E.2d 982 (1 Dist. 1978).

-- Controlled Substances Act Penalties

The penalty provisions in the Controlled Substances Act (720 ILCS 570/101) are reasonably designed to remedy evils which the legislature has determined threaten the public's health, safety, and general welfare; thus, this exercise of the state's police power meets the requirements of due process of law. People v. Prather, 138 Ill. App. 3d 32, 92 Ill. Dec. 619, 485 N.E.2d 430 (1 Dist. 1985).

-- Drugged Driving

Section 11-501(a)(5) of the Illinois Vehicle Code (625 ILCS 5/11-501(a)(5)), criminalizing the act of driving a motor vehicle while there is any amount of a drug, substance or compound in such person's blood or urine resulting from the unlawful use of said drug, substance or compound, is proper exercise of the State's police power in curbing the incidence of drugged driving under the Illinois Constitution. People v. Fate, 159 Ill. 2d 267, 201 Ill. Dec. 117, 636 N.E.2d 549 (1994).

-- Horse Racing Act

The provision in subsection (e) of the Illinois Horse Racing Act (230 ILCS 5/9(e)), permitting an organization licensee to exclude an occupation licensee from racetrack premises for just cause is a reasonable and appropriate provision by the legislature under its police powers to protect public health and safety and to promote the public welfare. Excluding parties because of their having been indicted, though an evidentiary hearing was not conducted prior to the order of exclusion, was not, violative of due process. Phillips v. Graham, 86 Ill. 2d 274, 56 Ill. Dec. 355, 427 N.E.2d 550 (1981).

-- Licenses

Where a city had shown that it had enacted an ordinance to require junk dealers to obtain licenses because the ordinance would help the city regulate the industry and reduce the trafficking of stolen property, the ordinance was an acceptable exercise of the city's police power under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Chicago v. Adelman, 326 Ill. 58, 156 N.E. 791, 1927 Ill. LEXIS 939 (1927).

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Statute providing for the appointment and powers of the board of examiners of land surveyors (board) is unconstitutional because the regulation of private surveyors is not within the police power of the state; because the statute does not address the licensing of government surveyors, the only surveyors whose work is considered prima facie evidence of the correctness of the measurements taken, the statute does not further any element of public concern sufficiently to justify interference with private business. Doe v. Jones, 327 Ill. 387, 158 N.E. 703, 1927 Ill. LEXIS 1065 (1927).

In considering whether certain provisions of a city ordinance that required gun dealers to purchase an annual license was so unreasonable that it was constitutionally invalid, court had to presume that the ordinance was valid and that if there were two possible constructions, one of which would render the ordinance constitutional and the other of which would render it void, the court had to adopt the construction that supported the constitutionality of the ordinance. Biffer v. Chicago, 278 Ill. 562, 116 N.E. 182, 1917 Ill. LEXIS 1097 (1917).

Because the sale of deadly weapons could be absolutely prohibited under the police power of the State without violating the federal or state constitutions, a city ordinance that required gun dealers to purchase an annual license in order to display guns for sale could not be considered so unreasonable that it was unconstitutional. Biffer v. Chicago, 278 Ill. 562, 116 N.E. 182, 1917 Ill. LEXIS 1097 (1917).

In considering whether city ordinance that required gun dealers to purchase an annual license was so unreasonable that it was void, court had to consider all the existing circumstances and contemporaneous conditions, the object of the ordinance, and the necessity (or lack of necessity) for adoption of the ordinance. Biffer v. Chicago, 278 Ill. 562, 116 N.E. 182, 1917 Ill. LEXIS 1097 (1917).

Because golf was harmless recreation of the same class as lawn tennis and other like games, and it did not attract crowds or tend to disorder or call for police supervision or regulation, a local ordinance requiring course operators to pay a fee and obtain a license was an improper use of police power under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Condon v. Forest Park, 278 Ill. 218, 115 N.E. 825, 1917 Ill. LEXIS 1065 (1917).

Act requiring horse-shoers to be licensed merely based on the size of the town in which they lived was an invalid use of the State's police power and the act was void under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Bessette v. People, 193 Ill. 334, 62 N.E. 215, 1901 Ill. LEXIS 2658 (1901).

Where pharmacists had an exclusive right under the Illinois Pharmacy Act to sell patent medicines to the public, but no accompanying obligation to ensure the safety of the medicines, the Act did not protect the public and those provisions allowing a monopoly to pharmacists were unconstitutional under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Noel v. People, 187 Ill. 587, 58 N.E. 616, 1900 Ill. LEXIS 2609 (1900).

-- Licenses to Sell Cigarettes

When a city council considers some occupation or thing dangerous to the health of the community, and in the exercise of its discretion passes an ordinance to prevent such a danger, it is the policy of the law to favor such legislation as being humane and essential to the preservation and protection of the community; municipalities are allowed a greater degree of liberty of legislation in this direction than any other. Gundling v. Chicago, 176 Ill. 340, 52 N.E. 44, 1898 Ill. LEXIS 3273 (1898).

An ordinance which provided for the granting of licenses authorizing the sale of cigarettes for a license fee of $100 per year, that no license would be granted to sell cigarettes within 200 feet of a school house, and prescribed a penalty for the violation of the ordinance, was not a violation of due process and was a valid use of police power. Gundling v. City of Chicago, 176 Ill. 340, 52 N.E. 44 (1898).

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-- Limitation of Garbage Licenses

Ordinance limiting the number of licenses issued to scavengers for the collection of garbage to two bore real and reasonable relation to the objects of public health sought to be attained, and was not open to the objection that it was a monopoly, since the municipality was not undertaking to run, establish or operate a business of any kind, but was dealing solely in the exercise of the police power in the interest of public health. Strub v. Village of Deerfield, 19 Ill. 2d 401, 167 N.E.2d 178 (1960).

-- Medical Regulations

The police power of the state includes the power to enact comprehensive, detailed, and rigid regulations for the practice of medicine, surgery, and dentistry; there is no right to practice medicine which is not subordinate to the police power. People ex rel. Kerner v. United Med. Serv., Inc., 362 Ill. 442, 200 N.E. 157 (1936).

-- Motorists

Act regulating the speed of automobiles and other horseless conveyances on public streets was not a violation of the due process clause because the passage of the action was a police regulation and the legislature could lawfully exercise such power to retrain private rights as necessary to promote health, safety and welfare of society, the act was designed to secure the safety of travelers upon the public highways, and it was a source of danger to persons traveling on the highways in vehicles drawn by horses because it was a matter of common knowledge that an automobile that was likely to scare a horse and that the automobile was of unusual shape and form, capable of a high rate of speed, and produced a puffing noise when in motion. Christy v. Elliott, 216 Ill. 31, 74 N.E. 1035, 1905 Ill. LEXIS 2644 (1905).

-- Not Reasonable Use

City ordinance, which required landowner who proposed to use his property for gasoline filling station to obtain approval from neighboring frontage owners, but did not require other business of permitted uses within the restrictive service district to obtain such approval, was not a valid and reasonable exercise of the city's police power, as applied to the landowner, because there was no contention or proof that using the landowner's use of the property for a gasoline filling station would become a nuisance; given the other permissive uses in the zoning district, including dry cleaning establishments and automobile parking lots, there was no rational basis to justify the imposition of the added burden of obtaining frontage consents only upon property sought to be utilized as a filling station. Drovers Trust & Sav. Bank v. Chicago, 16 Ill. 2d 589, 158 N.E.2d 620, 1959 Ill. LEXIS 300 (1959).

-- Ordinances

City ordinance requiring every commodity sold in loads in Chicago to be weighed by a certified weigh-master was valid and reasonable and, thus, was a proper exercise of the municipality's police power. The delivery of true weights of coal to the consumer was a matter clearly related to the public welfare, and the city had the right to adopt reasonable ordinances therefor. Chicago v. Waters, 363 Ill. 125, 1 N.E.2d 396, 1936 Ill. LEXIS 710 (1936).

Municipal ordinance requiring a railroad to light city streets under its elevated tracks was an unconstitutional exercise of the city's police power under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Chicago v. Pennsylvania Co., 252 Ill. 185, 96 N.E. 833, 1911 Ill. LEXIS 1968 (1911).

City ordinance merely prohibiting dry goods, clothing, jewelery, and drug merchants from also selling liquor, without instead regulating the liquor business, was void under Ill. Const. (1970), aArt. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Chicago v. Netcher, 183 Ill. 104, 55 N.E. 707, 1899 Ill. LEXIS 3108 (1899).

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City ordinance barring the sale of liquor in stores that also sold dry goods and jewelery was not not an exercise of the police power for the protection of the public from the injurious effects of the liquor business, was purely arbitrary, and was void under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Chicago v. Netcher, 183 Ill. 104, 55 N.E. 707, 1899 Ill. LEXIS 3108 (1899).

-- Penalty Provisions

Penalty provisions have long been thought to bear a presumption of constitutionality because the legislature under the state's police power has wide discretion to prescribe penalties for an offense; however, even the legislature's power to fix penalties is subject to the constitutional proscription which prohibits the deprivation of liberty without due process of law. People v. Upton, 114 Ill. 2d 362, 102 Ill. Dec. 842, 500 N.E.2d 943 (1986).

Requirement that a company pay demurrage charges on cars delivered, which could not be unloaded because of a strike, was not a violation of due process because the demurrage was a part of the charge for transportation and the approval of the schedule by the commerce commission was conclusive that the charge was reasonable; the charges were not a penalty. Davis v. Keystone Steel & Wire Co., 317 Ill. 278, 148 N.E. 47, 1925 Ill. LEXIS 1020 (1925).

A tax requiring a company to pay the tax for not cleaning impediments to the flow of water in the bed of a stream was absolutely void because it was a penalty for a violation of the law and in violation of due process protections under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2), and separation of powers under Ill. Const. (1970), Art. II, § 1 (formerly Ill. Const. of 1870, Art. III, § 2). Cleveland, C., C. & S. L. R. Co. v. People, 212 Ill. 638, 72 N.E. 725, 1904 Ill. LEXIS 2947 (1904).

-- Pollution Control Permit Requirement

Because a Pollution Control Board rule, which required that an operating permit be obtained for the use or operation of all wastewater sources for which a construction permit is required pursuant to the regulations, was not only reasonably necessary to achieve the reduction and elimination of water pollution and was an important element of the program developed to control water pollution, it constituted a valid exercise of the state's police power and, therefore, the constitutional assurance of due process was not violated by the rule's permit requirement. People v. Keeven, 68 Ill. App. 3d 91, 24 Ill. Dec. 663, 385 N.E.2d 804 (5 Dist. 1979).

-- Reasonable Use

Restrictions in § 20(b) of the Methamphetamine Precursor Control Act, 720 ILCS 648/20(b), represent a valid exercise of police power and do not violate the Due Process clause of the Illinois Constitution, Ill. Const. Art. I, § 2, because § 20(b) provides a reasonable means of limiting the amount of methamphetamine precursor available for diversion to the manufacture of methamphetamine; this diversion affects the public welfare and, as a result, the legislature had the ability to use its police power to place limits on the purchase of products containing methamphetamine precursors. People v. Willner, 392 Ill. App. 3d 121, 338 Ill. Dec. 503, 924 N.E.2d 1029, 2009 Ill. App. LEXIS 554 (4 Dist. 2009), appeal denied, 233 Ill. 2d 597, 335 Ill. Dec. 645, 919 N.E.2d 364, 2009 Ill. LEXIS 1338 (2009).

Section 20(b) of Methamphetamine Precursor Control Act, 720 ILCS 648/20(b), bears a reasonable relationship to the State's interest in stopping the manufacture and distribution of methamphetamine because the legislature has found under 720 ILCS 648/5 that ephedrine or pseudoephedrine is the "essential ingredient" in methamphetamine; while both ephedrine and pseudoephedrine have legitimate medical uses, methamphetamine manufacturers can extract the methamphetamine's precursors from over-the-counter cold medicines for use in methamphetamine production, and the legislature could reasonably have determined that a link exists between individuals making repeated purchases of small quantities of products containing methamphetamine precursors over short periods of time and the manufacture and distribution of

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methamphetamine. People v. Willner, 392 Ill. App. 3d 121, 338 Ill. Dec. 503, 924 N.E.2d 1029, 2009 Ill. App. LEXIS 554 (4 Dist. 2009), appeal denied, 233 Ill. 2d 597, 335 Ill. Dec. 645, 919 N.E.2d 364, 2009 Ill. LEXIS 1338 (2009).

Statute that prohibited persons convicted of sex offenses against children from having contact with unrelated children in public places was a rational exercise of the police power and was not unconstitutionally vague or overbroad, since it was quite clear how defendant violated the law by attending a boys' baseball practice and interacting with players; furthermore, the evidence of many witnesses was ample to support conviction. People v. Diestelhorst, 344 Ill. App. 3d 1172, 280 Ill. Dec. 201, 801 N.E.2d 1146, 2004 Ill. App. LEXIS 60 (5 Dist. 2004), appeal denied, 209 Ill. 2d 587, 286 Ill. Dec. 168, 813 N.E.2d 225 (2004).

When it is determined that an evil exists which affects the public health, safety, morals or general welfare and the legislative means used to counter that evil is reasonable, the exercise of the state's police power is proper and there is no want of due process despite interference with individual property and contract rights. People v. Keeven, 68 Ill. App. 3d 91, 24 Ill. Dec. 663, 385 N.E.2d 804 (5 Dist. 1979).

Chicago, Ill., Mun. Code § 3566, which fixed the levels and grades of the sidewalks, was a valid exercise of the city's police powers and a landowner's attempt to change the sidewalk grade was illegal and unauthorized. Wilmot v. Chicago, 328 Ill. 552, 160 N.E. 206, 1927 Ill. LEXIS 799 (1927).

State acted within its police power and did not violate Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) when it adopted a statute that prohibited anyone from possessing a motor vehicle the original engine number of which had been destroyed, removed, altered, covered, or defaced because the statute was adopted in the interest of the general welfare, not only to protect automobile owners against theft, but to protect the public in general from the commission of crimes and the escape of criminals by the use of stolen automobiles whose identification was made difficult by the destruction of identifying marks. People v. Billardello, 319 Ill. 124, 149 N.E. 781, 1925 Ill. LEXIS 782 (1925).

1917 Ill. Laws p. 685, which makes it unlawful for a person to have in his possession any motor vehicle from which the manufacturer's serial number or any other manufacturer's trade or distinguishing number of identification mark has been removed does not violate the constitutional provision requiring due process, Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) or U.S. Const. amend. XIV on the basis that the law creates a crime without guilty knowledge or intent; the state can, in the exercise of the police power for the protection of the public, provide that the performance of a specific act constitutes a crime regardless of either knowledge or intent. People v. Fernow, 286 Ill. 627, 122 N.E. 155, 1919 Ill. LEXIS 864 (1919).

1917 Ill. Laws p. 685, which makes it unlawful for a person to have in his possession any motor vehicle from which the manufacturer's serial number or any other manufacturer's trade or distinguishing number of identification mark has been removed, does not violate Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) because the statute is not an unreasonable exercise of the police power, given that the purpose of the act is to protect the public against the use of unidentifiable automobiles in the commission of other crimes and to prevent the theft of automobiles. People v. Fernow, 286 Ill. 627, 122 N.E. 155, 1919 Ill. LEXIS 864 (1919).

Ordinance standardizing the weight of bread loaves sold within the city and requiring bakers to label each of loaf with a label stating the loaf's size and name of the manufacturer is not so unreasonable that it is void. Chicago v. Schmidinger, 243 Ill. 167, 90 N.E. 369, 1909 Ill. LEXIS 2340 (1909).

Ordinance standardizing the weight of bread loaves sold within the city and providing for only eight weight classifications is not so unreasonable that it is void; although bakers may have to ensure that their loaves weigh more than their intended weight classification when they leave the oven so that they will be not be short weight when they are sold, because the regulation does not

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address the price of bread, the baker can adjust the price of his bread to compensate for that requirement or the baker can sell the bread as state bread, which is not subject to the weight classifications. Chicago v. Schmidinger, 243 Ill. 167, 90 N.E. 369, 1909 Ill. LEXIS 2340 (1909).

Ordinance standardizing the weight of bread loaves sold within the city and providing for only eight weight classifications is not so unreasonable that it is void; although the ordinance does not permit loaves of bread to be manufactured for sale in weights other than those fixed in the ordinance, even by special contract, that prohibition is not such a clear abuse of the city's legitimate exercise of its police power that it renders the ordinance void. Chicago v. Schmidinger, 243 Ill. 167, 90 N.E. 369, 1909 Ill. LEXIS 2340 (1909).

Ordinance standardizing the weight of bread loaves sold within the city is constitutional because municipalities have been authorized by the legislature to regulate the sale of bread and to determine by ordinance the weight and quality of bread offered for sale or sold in the municipality; the power to regulate the sale and determine the weight of bread when offered for sale is a legitimate exercise of the police power by the municipality. Chicago v. Schmidinger, 243 Ill. 167, 90 N.E. 369, 1909 Ill. LEXIS 2340 (1909).

Application of an otherwise constitutional act regarding the maintenance of railroads, to require a railroad company to forever maintain a sidewalk and street that the railroad had lowered in order to elevate its track exceeded the police power of the State because maintenance of the street and sidewalk below the tracks would not afford any protection from trains to persons using the street and imposing that obligation would violate the railroad company's charter. People ex rel. Chicago v. Illinois C. R. Co., 235 Ill. 374, 85 N.E. 606, 1908 Ill. LEXIS 3056 (1908).

-- Reasonable Uses

Cemetery agent's action of denying a marble headstone to a soldier was an exercise of his regulatory power under the by-laws in the cemetery, and Ill. Rev. Stat. p. 214 (Cahill 1927), Ill. Rev. Stat. p. 232 were not valid uses of the State's police power under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). People v. John Doe of Rosehill Cemetery Co., 334 Ill. 555, 166 N.E. 112, 1929 Ill. LEXIS 816 (1929).

-- Right to Contract

In the exercise of the police power it becomes necessary to prohibit some forms of contract entirely and to restrict others, yet the right to do so is unquestioned when the public welfare demands it; thus, the law may deny the common carrier and the telegraph company the right to make any contract with its patrons exculpating liability for negligence, may prohibit the purchase and sale of lottery tickets, and restrict the right of a minor or an incompetent to contract, except for necessaries. Memorial Gardens Ass'n v. Smith, 16 Ill. 2d 116, 156 N.E.2d 587 (1959).

Railroad company was not entitled to recover the costs incurred when it had to transfer its tracks after another railway repaired a viaduct because the repair was occasioned by the proper exercise of police power and the transfer was incident to the repair; the second railway had contracted to construct and maintain the viaduct at a street crossing as the city council might direct and the obligation to repair rested in the contract and not in the exercise of police power so no unlawful taking occurred. Chicago C. R. Co. v. Chicago & W. I. R. Co., 331 Ill. 151, 162 N.E. 852, 1928 Ill. LEXIS 987 (1928).

Illinois Workmen's Compensation Act, specifically 1917 Ill. Laws p. 507, was not unconstitutional insofar as it applied automatically and without election to all employers and their employees engaged in the extrahazardous business of carriage by land because the state was reasonably exercising its police power as the public had a direct common welfare interest in restricting the freedom of contract and the right to a jury trial in the matter of compensation for human life lost or disability incurred. Grand T. W. R. Co. v. Industrial Com., 291 Ill. 167, 125 N.E. 748, 1919 Ill. LEXIS 831 (1919).

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Statute under which defendant was convicted of entering into an option contract to purchase grain did not violate defendant's due process right to contract because the statute was a valid exercise of the police power to prevent illegal wagering on the price of grain through option contracts that allowed the purchase of grain, but did not require it; because the denial of the right to make such contracts advanced the legislative end of preventing gambling on grain prices, the statute was constitutional. Booth v. People, 186 Ill. 43, 57 N.E. 798, 1900 Ill. LEXIS 2345 (1900).

-- Right to Property

Statute that prohibited conducting manufacturing operations in underground rooms where the machinery employed produced poisonous fumes and dust violated Ill Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) because the production of the gases and dusts, not the location of the business, was the agency that inflicted injuries to the workman's health, and the act unlawfully discriminated between persons similarly situated and was also an invasion of property rights under a purported police power. Agnew v. Woodruff & Edwards, 365 Ill. 384, 6 N.E.2d 623, 1937 Ill. LEXIS 638 (1937).

The declaration that private property shall not be taken for public use without just compensation or without due process of law is subordinated to the interest of the public welfare as expressed through the exercise of the police power of the state, but only where, and to the extent that, such exercise of police power bears substantial relation to the promotion of the public health, safety, morals, or general welfare. Bank & Trust Co. v. Village of Wilmette, 358 Ill. 311, 193 N.E. 131 (1934).

-- Sale of Liquor

Business of selling liquor is subject to any regulation which has any substantial relation to the public health, comfort, safety or welfare. Schiller Park Colonial Inn, Inc. v. Berz, 63 Ill. 2d 499, 349 N.E.2d 61, 1976 Ill. LEXIS 339 (1976).

-- Scope of Prohibition

When considering whether a statute violates due process in exercising the police powers of the state the standard is whether the statute is reasonably designed to remedy the evils which the legislature has determined to be a threat to the public health, safety and general welfare. People v. Wick, 121 Ill. App. 3d 94, 76 Ill. Dec. 587, 458 N.E.2d 1387 (2 Dist. 1984).

The due process clause, limiting the exercise of the state's police power, prohibits only an arbitrary, unreasonable and improper use of such power. City of Decatur v. Chasteen, 19 Ill. 2d 204, 166 N.E.2d 29 (1960).

An act which deprives a citizen of his liberty or property cannot be sustained under the police power unless due regard for the public welfare, health, comfort, and safety requires it. Phipps v. City of Chicago, 339 Ill. 315, 171 N.E. 289 (1930).

-- Use of Intoxicating Liquor

The right to drink intoxicating liquor is a personal right, but it is no more sacred than the other rights of the individual, and all are subject to the police power of the state for the preservation of order and good morals. Tarantina v. Louisville & N. R.R., 254 Ill. 624, 98 N.E. 999 (1912).

-- Use of Sewer

Fact that a village's sewer system was overloaded and that the addition of additional connections might cause a health hazard was no justification for denying a landowner's application to connect to the system when the system had been paid for by a special assessment against the landowner's property and which vested the property with a right to access the sewer. La Salle Nat'l Bank v. Riverdale, 16 Ill. 2d 151, 157 N.E.2d 7, 1959 Ill. LEXIS 249 (1959).

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Although village ordinance prohibiting the issuance of building permits to a developer until the subject property had streets and sewer systems in place could not disturb landowner's vested right to connect its privately constructed sewer system to a sewer system paid for by a special assessment against the landowner's property, the village had the power, right, and privilege to reasonably control the plans, specifications and general construction of the privately constructed sewer system. La Salle Nat'l Bank v. Riverdale, 16 Ill. 2d 151, 157 N.E.2d 7, 1959 Ill. LEXIS 249 (1959).

-- Vagrancy

Because the Vagrancy Act, Ill. Rev. Stat. § 270 p. 1067, allowed a conviction based on defendant's reputation as a habitual violator and the fact that he was found guilty of frequenting places with the intent to commit a felony, the statute was unconstitutional under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, art. II, § 2), despite the State's power to regulate and punish activity as necessary for the protection of the public. People v. Alterie, 356 Ill. 307, 190 N.E. 305, 1934 Ill. LEXIS 831 (1934).

-- Workers' Compensation

By the Workmen's Compensation Act, the legislature requires an employer to give up certain defenses and requires the employee to give up certain recoverable elements of damage of a common-law negligence action, which has been held as a reasonable exercise of the legislature's police power for the promotion of the general welfare under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2), and courts have never considered one to have such a vested right in the common-law rules governing negligence actions as to preclude the legislature from substituting a statutory remedy of this type for the common-law remedy. Moushon v. National Garages, Inc., 9 Ill. 2d 407, 137 N.E.2d 842, 1956 Ill. LEXIS 345 (1956).

-- Zoning Ordinances

While the extent to which property values are changed by a zoning ordinance is a proper consideration in determining the validity of the ordinance, the profit that would accrue to individual property owners, if zoning restrictions were removed, must be weighed against the detriment to public welfare that would ensue, and one property owner should not be permitted to increase the value of his property at the expense of his neighbors; however, if the gain to the public is small when compared with the hardship imposed upon individual property owners, there exists no valid basis for the exercise of the police power. Where, however, it is shown that the restrictions imposed by such a law protect the health, safety and welfare of the public, they must be sustained, even though private interests may be somewhat impaired. Miller Bros. Lumber Co. v. Chicago, 414 Ill. 162, 111 N.E.2d 149, 1953 Ill. LEXIS 262 (1953).

Zoning ordinance may be valid in its general aspects, and yet, as to a particular state of facts involving a particular parcel of real estate affected thereby, be so clearly arbitrary and unreasonable as to result in confiscation, thereby justifying the interposition of a court of equity to restrain the enforcement of the ordinance. If the gain to the public is small when compared with the hardship imposed upon individual property owners, no valid basis for an exercise of the police power exists. Miller Bros. Lumber Co. v. Chicago, 414 Ill. 162, 111 N.E.2d 149, 1953 Ill. LEXIS 262 (1953).

Governmental power to enact zoning regulations is not unfettered, and where the ordinance assailed bears no substantial relation to the public health, morals, comfort, safety or general welfare the ordinance cannot be sustained as a valid exercise of the police power. Whether the means employed have any real substantial relation to the public health, comfort, safety or welfare, or are essentially arbitrary and unreasonable, is a question which is subject to review by the courts. Miller Bros. Lumber Co. v. Chicago, 414 Ill. 162, 111 N.E.2d 149, 1953 Ill. LEXIS 262 (1953).

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City was justified in rezoning an area for residence use because it had been zoned for manufacturing use for many years, but during that time none of it was ever put to that use and it had been devoted almost exclusively to residential use. Thus, the zoning ordinance did not violate Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) because it was not, as alleged, unnecessary, capricious, unrelated to the public health, safety, morals or welfare and did not contravene constitutional rights of the complaining property owner. Miller Bros. Lumber Co. v. Chicago, 414 Ill. 162, 111 N.E.2d 149, 1953 Ill. LEXIS 262 (1953).

One of the facts that must always be considered in determining whether the invasion of property rights under a purported police power is unreasonable and confiscatory is the degree in which the values incident to the property are diminished by the provisions of the zoning ordinance. Mundelein Estates, Inc. v. Mundelein, 409 Ill. 291, 99 N.E.2d 144, 1951 Ill. LEXIS 362 (1951).

Restriction placed on the owners' lots, located on the west side of a road, by classifying all property on the west side as residential, while classifying the property on the east side of the road as commercial, was not unreasonable and confiscatory, and did not deny the owners of due process of law because, although the owners contended that the property was valuable as commercial property and had no value for residential purpose, they did not introduce evidence of the purchase price and it did not appear that the owners ever made or intended to make an effort to sell the property for residential purposes; furthermore, those factors, when considered with evidence that a residence just south of the owners' land was valued at $18,000, gave a doubtful quantity to the negative testimony that the owners' property had no value as residential property. Mundelein Estates, Inc. v. Mundelein, 409 Ill. 291, 99 N.E.2d 144, 1951 Ill. LEXIS 362 (1951).

Ordinance zoning the property west side of the road as residential and the property on the east side of the road as commercial was not unreasonable, arbitrary, or discriminatory, even though the vacant lots on the west side had not had enjoyed brisk sales for use as private residences, because all vacant lots, including the landowners' lots, were treated the same and, thus, there was no question of discrimination; further, the influx of commercial side of the street could have restrained the public from purchasing the lots for residential purposes and, in the absence of an attack on the necessity or purpose of the ordinance, the action of the village in removing the uncertainty facing prospective purchasers of the lots constituted a logical and reasonable act. Mundelein Estates, Inc. v. Mundelein, 409 Ill. 291, 99 N.E.2d 144, 1951 Ill. LEXIS 362 (1951).

Mere presence of buildings or areas being put to a use to which the person attacking the validity of a zoning ordinance seeks to put his property is a wholly insufficient circumstance to show that the ordinance was invalid or discriminatory as to the property of the one assailing the ordinance. Mundelein Estates, Inc. v. Mundelein, 409 Ill. 291, 99 N.E.2d 144, 1951 Ill. LEXIS 362 (1951).

Ordinance zoning the property west side of the road as residential and the property on the east side of the road as commercial was not unreasonable, arbitrary, or discriminatory because the mere presence of commercial buildings along the east side of the road and two fairly distant commercial buildings on the west side of the street were insufficient to establish the invalidity of the ordinance. Mundelein Estates, Inc. v. Mundelein, 409 Ill. 291, 99 N.E.2d 144, 1951 Ill. LEXIS 362 (1951).

Among the particular facts and circumstances to be taken into consideration in determining whether a purported exercise of the police power is so unreasonable and confiscatory as to constitute an unlawful invasion of private rights are the character of the neighborhood, the zoning classification and use of nearby property, the extent to which property values are diminished by the particular zoning restrictions involved, and the gain to the public compared to the hardship imposed upon the individual property owner. Trust Co. v. City of Chicago, 408 Ill. 91, 96 N.E.2d 499 (1951).

The enactment of former Article 73 of the Revised Cities and Villages Act (see now 65 ILCS 5/11-13-1 to 65 ILCS 5/11-13-17) by the legislature was an express delegation of police power, under which municipalities were authorized to adopt and enforce zoning ordinances, thereby imposing

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reasonable restraints upon the use of private property. Trust Co. v. City of Chicago, 408 Ill. 91, 96 N.E.2d 499 (1951).

Municipal ordinance that rezoned property from commercial to apartment use, after owner acquired the property, violated the owner's constitutional rights as guaranteed by Ill. Const. of 1870, Art. II, §§ 2, 13 (now Ill. Const. (1970), Art. I, §§ 2, 15) because the property was much more valuable for commercial use rather than for apartment use, general conditions in the vicinity did not warrant the reclassification, and the rezoning was not applied to other nearby property; under those circumstances, the ordinance, as applied to the property, was so arbitrary and unreasonable that it invaded the owner's constitutional rights. Metropolitan Life Ins. Co. v. Chicago, 402 Ill. 581, 84 N.E.2d 825, 1949 Ill. LEXIS 272 (1949).

Constitutional guarantees of private rights are subject to the qualification that they may be cut down by government agencies acting under a proper exercise of the police power of the State; however, a land purchaser may rely upon the classification which exists as to that land when the purchase is made and upon the rule of law that its classification would not be changed so long as the basis of public welfare remains the same. Metropolitan Life Ins. Co. v. Chicago, 402 Ill. 581, 84 N.E.2d 825, 1949 Ill. LEXIS 272 (1949).

While cities and villages have statutory authority for the enactment of zoning ordinances, in the exercise of that right, the restriction of the use of the property must bear substantial relation to the public health, safety, morals, or general welfare. Metropolitan Life Ins. Co. v. Chicago, 402 Ill. 581, 84 N.E.2d 825, 1949 Ill. LEXIS 272 (1949).

Village zoning ordinance, which created a residential district, but which allowed property in the district to be used for things other than residential uses, such as a medical college containing a morgue and dissecting room, or a hospital, but would not allow landowner to use his property to build a funeral home, was unconstitutional because none of the permitted uses were less detrimental to the purposes which the police power was intended to protect than the use planned by the landowner; thus, because the classification was purely capricious and did not bear any relation to the public welfare, it was unconstitutional. Johnson v. Villa Park, 370 Ill. 272, 18 N.E.2d 887, 1938 Ill. LEXIS 513 (1938).

In considering the question of whether a particular zoning ordinance is, in fact, in the interest of the public welfare, each case must be determined upon its own peculiar facts; a zoning ordinance may be valid in its general aspects, but when applied to a particular piece of property and a particular set of facts, be so arbitrary and unreasonable as to result in confiscation of the property. Johnson v. Villa Park, 370 Ill. 272, 18 N.E.2d 887, 1938 Ill. LEXIS 513 (1938).

Writ of mandamus was properly issued, where the court concluded that the zoning ordinance was not valid when applied to the landowner's property, and it diminished the value of the property to the extent it was unreasonable, confiscatory, and bore no relation to the public health, morals, safety, or general welfare; thus, it violated U.S. Const. amend. V and XIV, and former Ill. Const. of 1870, Art. II, §§ 2 and 13 (now Ill. Const. (1970), Art. I, §§ 2 and 15. People ex rel. Kirby v. Rockford, 363 Ill. 531, 2 N.E.2d 842, 1936 Ill. LEXIS 770 (1936).

In those cases where the zoning bears a substantial interdependence to the public health, safety, morals, or general welfare, a municipality may, in the exercise of the police power, enact such local legislation, and the rights of the property owner to the unrestricted use of his property are subordinated to the exercise of such police power. People ex rel. Kirby v. City of Rockford, 363 Ill. 531, 2 N.E.2d 842 (1936).

Zoning laws are based upon the police power of the state to enact such laws as are for the safety, health, morals, and general welfare of the people. Phipps v. City of Chicago, 339 Ill. 315, 171 N.E. 289 (1930).

Amendment to a zoning ordinance, which disallowed college in a residential district, violated due process when applied to a seminary, which had relied on the previous ordinance to purchase

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property and would no longer be able to use a substantial portion of that property; the amendment was not for the public health, comfort, or welfare and was not a valid use of the city's police power. Western Theological Seminary v. Evanston, 325 Ill. 511, 156 N.E. 778, 1927 Ill. LEXIS 922 (1927).

City was not justified in destroying the owners' property unless the state of alleged facts contained in the ordinance was true and then only if the property was so located and in such condition that the danger to the public health therefrom could not be obviated by the use of reasonable measures less drastic than the absolute destruction of the property. Sings v. Joliet, 237 Ill. 300, 86 N.E. 663, 1908 Ill. LEXIS 2620 (1908).

- Postconviction Petition

Defendant was denied due process and equal protection of the law when the appellate court rejected defendant's gang evidence argument on direct appeal but held that the admission of the same gang evidence was reversible error in a codefendant's appeal because defendant relied on a judicial finding from a direct appeal in which he was not a party; because defendant was not a party to the codefendant's appeal, he could not rely on that holding for postconviction relief of an issue decided against him in his own appeal, and the fact that the codefendant received a new trial from another panel of the appellate court did not rise to a constitutional violation subject to postconviction relief. People v. Martinez, 389 Ill. App. 3d 413, 329 Ill. Dec. 76, 905 N.E.2d 914, 2009 Ill. App. LEXIS 141 (1 Dist. 2009), appeal denied, 233 Ill. 2d 583, 335 Ill. Dec. 641, 919 N.E.2d 360, 2009 Ill. LEXIS 1462 (2009).

Inmate deserved an evidentiary hearing on his postconviction claim that he was denied due process pursuant to this section when the trial court summarily denied his postjudgment motion to withdraw his guilty plea without inquiring into whether he was represented by counsel and, if he was not, whether he was entitled to the appointment of counsel. People v. Young, 355 Ill. App. 3d 317, 291 Ill. Dec. 45, 822 N.E.2d 920, 2005 Ill. App. LEXIS 65 (2 Dist. 2005).

- Probation Violation

In a probation revocation hearing, defendant's right to due process was satisfied when he was advised that he had the right to a hearing in which the State would have to prove the allegations by a preponderance of the evidence, the right to confront witnesses, the right to testify and the right to call witnesses on his own behalf, he was represented by counsel, and he was advised of the basis of the petition, to which he indicated his understanding; the court was not required to inquire as to whether any promises were made to him or whether he was coerced into admitting that he committed the asserted probation violation. People v. Foehrer, 197 Ill. App. 3d 754, 144 Ill. Dec. 161, 555 N.E.2d 58, 1990 Ill. App. LEXIS 689 (1 Dist. 1990).

- Procedural Due Process

Trial court, in a case involving the alleged breach of an oral contract, violated the alleged property buyers' procedural due process rights when, over their objection, the trial court relied on a transcript of their case-in-chief from a prior trial on their complaint against the alleged property sellers rather than let them present their case-in-chief anew before the trial court; the credibility determinations were crucial to the case and could not be adequately made because the first trial judge had retired while the case was on appeal and the second trial judge was a different judge considering the case. Anderson v. Kohler, 376 Ill. App. 3d 714, 315 Ill. Dec. 623, 877 N.E.2d 110, 2007 Ill. App. LEXIS 1081 (1 Dist. 2007).

Patient's procedural due process rights were not violated when an involuntary-admission hearing was held without the patient's presence and without the patient having consulted with an appointed attorney, because (1) counsel was not prevented from conferring with the patient since the patient refused to speak to the attorney, (2) the patient refused to attend no matter the location or circumstances, and (3) the testifying doctor observed the patient and reviewed the

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patient's records. People v. Shirley M. (In re Shirley M.), 368 Ill. App. 3d 1187, 307 Ill. Dec. 699, 860 N.E.2d 353, 2006 Ill. App. LEXIS 1044 (1 Dist. 2006).

An administrative law judge (ALJ) violated a school district's procedural due process rights when the ALJ sua sponte dismissed the district's unit clarification petition to exclude confidential employees form the bargaining unit as untimely because the district had no notice that the ALJ was contemplating dismissal of its petition on an untimeliness basis, and the district had no opportunity to be heard or make arguments as to the issue. When the Illinois Educational Labor Relations Board (Board) refused to consider the additional facts the district submitted in its exceptions regarding the date the employees' job duties were substantially altered, because the facts had not been presented in the investigation or to the ALJ and, therefore, in effect, were waived, the Board's determination was a continuation of the deprivation of the district's procedural due process rights, since the additional facts submitted by the district were in response to the ALJ's improper sua sponte untimeliness ruling and clearly could have been presented at an evidentiary hearing on the petition, had the ALJ properly conducted one. Niles Twp. High Sch. Dist. 219 v. Ill. Educ. Labor Rels. Bd., 369 Ill. App. 3d 128, 307 Ill. Dec. 57, 859 N.E.2d 57, 2006 Ill. App. LEXIS 1027 (1 Dist. 2006).

Trial court did not deny the law firm its procedural due process rights, by allowing the home builder to present evidence in the home builder's legal malpractice action against the law firm regarding the lawsuit the law firm should have tried against the bank regarding construction loans, that the damages that should be awarded to the home builder included damages relating to 23 vacant lots and 14 partially completed lots not specified in the underlying complaint against the bank; there was no merit that the law firm was not able to present a defense to the claims regarding the additional lots because the issue of damages related to the additional lots permeated the entire trial, including a pretrial motion to amend the malpractice complaint to include an allegation that the law firm was negligent for failing to review and amend the complaint. Tri-G, Inc. v. Burke, Bosselman & Weaver, 222 Ill. 2d 218, 305 Ill. Dec. 584, 856 N.E.2d 389, 2006 Ill. LEXIS 1090 (2006).

Trial court erred in finding the default child support order entered against petitioner mother void ab initio for lack of procedural due process where the record showed that the mother was aware of the petition for child support pending before the trial court and did nothing to find out the status of the petition until she received the Illinois Department of Public Aid's notice to withhold income. Fiallo v. Lee, 356 Ill. App. 3d 649, 292 Ill. Dec. 500, 826 N.E.2d 936, 2005 Ill. App. LEXIS 259 (1 Dist. 2005), appeal denied, 216 Ill. 2d 683, 298 Ill. Dec. 376, 839 N.E.2d 1023 (2005).

65 ILCS 5/11-31-1(a) provides procedural due process by means of written notice and a trial on the merits before a circuit court. Vill. of Lake Villa v. Stokovich, 211 Ill. 2d 106, 284 Ill. Dec. 360, 810 N.E.2d 13, 2004 Ill. LEXIS 356 (2004), cert. denied, 543 U.S. 943, 125 S. Ct. 354, 160 L. Ed. 2d 256 (2004).

Administrative proceedings are governed by the fundamental principles and requirements of due process of law; however, procedural due process in an administrative proceeding does not require a proceeding in the nature of a judicial proceeding, but is satisfied by a form of procedure that is suitable and proper to the nature of the determination to be made and conforms to fundamental principles of justice. Comito v. Police Bd. of Chicago, 317 Ill. App. 3d 677, 251 Ill. Dec. 9, 739 N.E.2d 942, 2000 Ill. App. LEXIS 851 (1 Dist. 2000).

Appellants were denied the procedural due process under former Ill. Const. Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2), because they were not permitted the time allowed by the Civil Practice Act to file their answer and were not allowed to prepare and fully present their cases. Pettigrew v. National Accounts System, Inc., 67 Ill. App. 2d 344, 213 N.E.2d 778, 1966 Ill. App. LEXIS 1308 (1 Dist. 1966).

Court concluded that the basic guaranties of due process of law, Ill. Const. (1970), Art. I, § 2, demand and that the ends of justice would be best conserved, by permitting defendants, upon a

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re-reference of the cause to the master in chancery, to present additional testimony upon the issues made by the amended and supplemental complaint and the answers thereto. Oetting v. Graham, 373 Ill. 247, 25 N.E.2d 886, 1940 Ill. LEXIS 701 (1940).

- Property Rights

Attorneys' Lien Law, Laws of 1909, p. 97, was not unconstitutional as a deprivation to those persons against whom suits are brought of the property right to buy their peace by making contracts of settlement because the statute did not affect the right of the defendants in suits or those of a person against whom claims or demands are held for collection from settling the same but it requires, after notice, that in making such settlement that they take into account the attorney's claim for his fees. Standidge v. Chicago R. Co., 254 Ill. 524, 98 N.E. 963, 1912 Ill. LEXIS 1954 (1912).

Power of a city to maintain and operate a system of water works is derived wholly from statute and must be conducted in the manner provided by the statute; although the legislature has the power to place such reasonable conditions upon the exercise of this power as it deems just, it is without the right divest the city of title to property held by the city in its private or business capacity without due process of law, and it is without power to impair the obligations of a contract made by the city in reference to such property. Chicago v. Cicero, 210 Ill. 290, 71 N.E. 356, 1904 Ill. LEXIS 3065 (1904).

-- In General

Procedural due process safeguards are triggered only when the property rights have vested. Williams v. Hardy, 214 Ill. App. 3d 1014, 158 Ill. Dec. 451, 574 N.E.2d 245 (1 Dist.), appeal denied, 141 Ill. 2d 542, 162 Ill. Dec. 490, 580 N.E.2d 116 (1991), cert. denied, 502 U.S. 1098, 112 S. Ct. 1178, 117 L. Ed. 2d 423 (1992).

Court concluded that the action of the building owner was not arbitrary or discriminatory; therefore, there was no unconstitutional abridgment of defendants' First Amendment rights or the protection of private ownership of property rights under former Ill. Const. Art. II, §§ 2 and 13 (now Ill. Const. (1970), Art. I, § 2). Chicago v. Rosser, 47 Ill. 2d 10, 264 N.E.2d 158, 1970 Ill. LEXIS 346 (1970).

The constitutional guarantee of due process does not withdraw from legislative supervision that department of human activity which consists in the making of contracts, or deny to government the power to provide restrictive safeguards. Memorial Gardens Ass'n v. Smith, 16 Ill. 2d 116, 156 N.E.2d 587 (1959).

A person's business, profession or occupation is "property" within this section; however, this individual right is not unqualified, and it does have to yield to the higher and greater right of the best interests of the people. County of DuPage v. Henderson, 402 Ill. 179, 83 N.E.2d 720 (1949).

Illinois Const. (1970), Art. I, § 12 gives a broad field for the protection of persons in their property and reputation, but this does not give a vested right that is not subject to change by legislative power, the legislative change must be reasonably necessary to promote the general welfare of the people, and must not destroy a remedy. Clarke v. Storchak, 384 Ill. 564, 52 N.E.2d 229 (1943).

The privilege of every citizen to use his property according to his own will is both a liberty and a property right. Bank & Trust Co. v. Village of Wilmette, 358 Ill. 311, 193 N.E. 131 (1934).

Right of defense against a money demand, arising from the complete running of the statute of limitations, is property within the protection nof the constitutional guaranty of due process of law. Hanley v. Waters, 255 Ill. App. 239, 1930 Ill. App. LEXIS 158 (1930).

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The owner of property has a constitutional right to make any use of it he desires so long as he does not endanger or threaten the safety, health, comfort, or general welfare of the people; this right cannot be wholly taken away or limited by the state except in so far as it may become necessary for the individual rights to yield to the highter and greater law of the best interests of the people. Phipps v. City of Chicago, 339 Ill. 315, 171 N.E. 289 (1930).

A municipality, of possession of the entire police power of the state, can not deprive a citizen of valuable property rights under the guise of prohibiting or regulating some business or occupation that has no tendency to injure the public health or morals or interfere with the general welfare. Spies v. Board of Appeals, 337 Ill. 507, 169 N.E. 220, 1929 Ill. LEXIS 1056 (1929).

Trustee's refusal to distribute the proceeds of an estate, based upon the argument that a party served by publication only had up to three years to challenge the settlement of the estate and the trustee's fear that the trustee could be called upon to pay the money twice, was improper because the trustee was protected when distribution was decreed in the absence of parties under doctrines long recognized in the English courts of Chancery; further, the party served by publication was not deprived of due process because that party did not lose the right to claim the property as the right had been changed from one against the trustee to one against the distributee. Chapman v. Northern Trust Co., 296 Ill. 353, 129 N.E. 836, 1921 Ill. LEXIS 1312 (1921).

Without notice and an opportunity to defend, the right of private property could not exist in the sense in which it is known to our laws. Rabbitt v. Frank C. Weber & Co., 297 Ill. 491, 130 N.E. 787 (1921).

Curative statute that provided for ratification of bonds issued by a town to finance road construction and maintenance did not deprive taxpayers of any vested property rights because the commissioners' authority to issue the bonds was supplied by the curative statute and by the voters' ratification of the bonds; the statute was not special or discriminatory because it applied to all towns in the same situation. Worley v. Idleman, 285 Ill. 214, 120 N.E. 472, 1918 Ill. LEXIS 854 (1918).

Because the same statute that allowed voters within a city to create a water district that had the power to cause the waters of Lake Michigan to flow into the navigable waters of the state and necessarily to injure the lands of riparian owners also provided for the payment of attorney fees to riparian owners whose lands were overflowed, the requirement that the district pay attorney fees did not deprive it of its property without due process of law or deprive it of the equal protection of the laws; by organizing under the statute, the district accepted both the statute's benefits and its burdens. Gentleman v. Sanitary Dist. of Chicago, 260 Ill. 317, 103 N.E. 234, 1913 Ill. LEXIS 1893 (1913).

The right of property preserved by the constitution is the right not only to possess and enjoy it, but also to acquire it in any lawful mode, or by following any lawful industrial pursuit which the citizen, in the exercise of the liberty guaranteed, may choose to adopt. Braceville Coal Co. v. People, 147 Ill. 66, 35 N.E. 62 (1893).

Under former Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2), no person shall be deprived of life, liberty, or property; thus, the clause nowhere declares that, in the exercise of the admitted functions of government, private property may not receive remote and consequent injury. Munn v. People, 69 Ill. 80, 1873 Ill. LEXIS 303 (1873).

-- Arbitrary Zoning Ordinance

Where it was clear from the record that there was no actual or reasonable connection between the rezoning of plaintiffs' property from apartment to single-family residence and the public health, safety, comfort, morals or welfare, but that the city, in rezoning the properties and in defending such rezoning was not seeking to promote or preserve the general welfare but was seeking to bestow upon the individual residents of the rezoned properties special benefits in that they might

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be free from what they might regard as the nuisance of apartment buildings in the block, the zoning ordinance was arbitrary and unreasonable, and therefore, could not be sustained. Trust Co. v. City of Chicago, 408 Ill. 91, 96 N.E.2d 499 (1951).

-- Business License

Every racing license creates a property interest, for, surely, denial of any racing license forecloses pursuit of a racing establishment's occupation. Balmoral Racing Club, Inc. v. Illinois Racing Bd., 151 Ill. 2d 367, 177 Ill. Dec. 419, 603 N.E.2d 489, 1992 Ill. LEXIS 127 (1992).

The issuance of a license to operate a business creates a property right in the license itself and that property right is therefore protected by the due process clauses of the Illinois and United States Constitutions. National Account Sys. v. Anderson, 82 Ill. App. 3d 233, 37 Ill. Dec. 654, 402 N.E.2d 656 (1 Dist. 1980).

City ordinance that required entertainment shows to purchase a license did not deprive movie theater owner of his property without due process of law because the ordinance was a valid exercise of the police power delegated to the city to regulate business as necessary for the safety, morals and welfare of the people; movie theaters were proper subjects for the exercise of the police power because they might or might not be injurious to the public morals or welfare, according to the manner in which they were managed, conducted, and regulated. Metropolis v. Gibbons, 334 Ill. 431, 166 N.E. 115, 1929 Ill. LEXIS 801 (1929).

Court concluded that the law violated former Ill. Const. (1870), Art. XI, § 5 (now Ill. Const. (1970), Art. XIII, § 8), because it deprived the money-changers of the right to continue the business in which they were engaged without due process of law, and deprived them of the equal protection of the laws, Ill. Const. (1970), Art. I, § 2. Wedesweiler v. Brundage, 297 Ill. 228, 130 N.E. 520, 1921 Ill. LEXIS 1148 (1921).

-- Cable Act

Where the Cable Statute (65 ILCS 5/11-42-11.1) adequately protects the property owner's due process rights, and where it clearly provides for just compensation and establishes a procedure whereby the property owner may prove his damages and receive more than the statutory amount of compensation, and where the statute allows the cable franchisee to proceed with cable installation during resolution of the compensation dispute, this presents no constitutional violation since all that is required is that a reasonable, certain and adequate provision for obtaining compensation exist at the time of the taking. Times Mirror Cable Television v. First Nat'l Bank, 221 Ill. App. 3d 340, 164 Ill. Dec. 8, 582 N.E.2d 216 (4 Dist. 1991).

-- Condemnation Proceedings

The purpose of the condemnation proceeding is to satisfy the constitutional and statutory requirements that property not be taken without due process of law and that just compensation be awarded therefor. Illinois Cities Water Co. v. City of Mount Vernon, 11 Ill. 2d 547, 144 N.E.2d 729 (1957).

An abutting property owner is not entitled to have condemnation proceedings instituted to determine damages to his property occasioned by a public improvement where no part of his property is physically taken and that the city or other authorized sovereign constructing such improvement is not required, under former Ill. Rev. Stat., ch. 83, para. 1 (see now 735 ILCS 5/13-101) and former Ill. Const. (1870), Art. II, § 2 (see now this section) to institute condemnation or other proceedings to ascertain such damages. Horn v. City of Chicago, 403 Ill. 549, 87 N.E.2d 642 (1949).

Where a property owner in a condemnation proceeding was served a summons, provided a jury trial, and allowed to introduce evidence, she was not denied due process of law under Ill. Const. (197), Art. I, § 2 (formerly Ill. Const. of 1870, art. II, § 2) where a city was granted possession

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pending her appeal of the award. Chicago v. Cohn, 326 Ill. 372, 158 N.E. 118, 1927 Ill. LEXIS 978 (1927).

Compliance with notice requirements of an election to determine whether land should be condemned for a school was jurisdictional, and even though the measure passed at the ballot, any taking of land based on the election results was unconstitutional under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Bierbaum v. Smith, 317 Ill. 147, 147 N.E. 796, 1925 Ill. LEXIS 1001 (1925).

The correct measure of damages due to the construction of an elevated railroad was the difference in value to the premises before and after construction, and the landowner's contention that improved access to travel should have been excluded from consideration was rejected. Brand v. Union E. R. Co., 169 Ill. App. 449, 1912 Ill. App. LEXIS 1027 (1912).

-- Coroner's Juries

Duties given jurors under 55 ILCS 5/3-3025, does not deprive a person of his property without due process of law, in violation of the provisions of this section. Devine v. Brunswick-Balke-Collender Co., 270 Ill. 504, 110 N.E. 780 (1915).

-- County Officers

A county officer does not own the title to his office in the manner that men own property, but by his commission or induction into office he acquires the legal right to exercise its functions, and to receive the emoluments that he earns, until the end of his term or his resignation, removal, or its forfeiture. Donahue v. County of Will, 100 Ill. 94 (1881).

-- Definition

The term "property" includes every interest one may have in any and every thing that is the subject of ownership by man, together with the right to freely possess, enjoy and dispose of the same. Metropolitan Trust Co. v. Jones, 384 Ill. 248, 51 N.E.2d 256 (1943).

"Property" has been defined to include every interest any one may have in any and everything that is the subject of ownership by man, together with the right to freely possess, use, enjoy, and dispose of the same. Phipps v. City of Chicago, 339 Ill. 315, 171 N.E. 289 (1930).

The term "property" has been defined to include every interest anyone may have in any and everything that is the subject of ownership by man, together with the right to freely possess, use, enjoy and dispose of the same. Illinois Life Ins. Co. v. Chicago, 244 Ill. App. 185 (1 Dist. 1927).

The right to labor for and to render services to another, and the right to dispose of the compensation to be received for so doing, are property rights within the meaning of former Ill. Const. (1870) Art. II, § 2 (see now this section). Massie v. Cessna, 239 Ill. 352, 88 N.E. 152 (1909).

Property, in its broader sense, is not the physical thing which may be the subject of ownership, but is the right of dominion, possession, and power of disposition which may be acquired over it. Braceville Coal Co. v. People, 147 Ill. 66, 35 N.E. 62 (1893).

-- Divestiture of Title

A corporation that had a security interest in an auto based on a conditional sales contract with the auto's purchaser had a vested right in the auto sufficient to defeat a lien by a garage under the Garage Keeper's Lien Act, Ill. Rev. Stat. ch. 82, para. 45, because legal title remained in the seller and it could not be deprived except by due process of law under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Standard Motors Sec. Corp. v. Yates Co., 257 Ill. App. 394, 1930 Ill. App. LEXIS 328 (1930).

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Due process of law prevents a divestiture of title without notice and an opportunity to be heard, and it is elementary that jurisdiction over parties is only obtained by notice, actual or constructive, and a judicial judgment pronounced without such jurisdiction is void. Rabbitt v. Frank C. Weber & Co., 297 Ill. 491, 130 N.E. 787 (1921).

-- Dram Shop

Dram shop act that allowed the placement of a lien on the landlord's property when he knowingly permitted the premises to be used or occupied for the sale of intoxicating liquors did not deprive the landlord of his property without due process of law because the landlord had his election to lease his premises for the sale of intoxicating liquors or to devote them to some other use and it could not be said that the landlord was deprived of his property without due process of law when was permitted to controvert the facts upon which the lien rested. Wall v. Allen, 244 Ill. 456, 91 N.E. 678, 1910 Ill. LEXIS 1951 (1910).

-- Easements and Accessibility

A landowner may not claim compensation for the destruction or disturbance of easements of light and air, and of accessibility, or of such other intangible rights as he enjoys in connection with, and as incidental to, the ownership of the land itself under former Ill. Const. (1870), Art. II, § 2 (see now this section). Horn v. City of Chicago, 403 Ill. 549, 87 N.E.2d 642 (1949).

-- Eminent Domain

Due process was not violated by a former eminent domain statute (Ill. Rev. Stat., ch. 47, para. 2.2) (see now 735 ILCS 5/7-104) which required a judicial preliminary determination of the adequacy of just compensation, required the deposit of 125% of the preliminary finding of value and required the trial court to order payment of the amount finally ascertained as just compensation, if in excess of the amount deposited. Department of Pub. Works & Bldgs. v. Butler Co., 13 Ill. 2d 537, 150 N.E.2d 124 (1958).

The Eminent Domain Act (see 735 ILCS 5/7-101) gave an owner of land ample right to be heard on the question of just compensation before a final determination and due process was thereby satisfied because the award was not the preliminary value fixed by the appraisers, but was the just compensation fixed by the jury after a full hearing where all parties were heard. Department of Pub. Works & Bldgs. v. Butler Co., 13 Ill. 2d 537, 150 N.E.2d 124 (1958).

Under the former Limitations Act (see now 735 ILCS 5/13-101) and under former Ill. Const. (1870), Art. II, § 2 (see now this section) eminent domain proceedings were not required to ascertain consequential damages and a property owner suffering such damages was deprived of no constitutional right in being remitted to an action at law for the recovery of his damage. Horn v. City of Chicago, 403 Ill. 549, 87 N.E.2d 642 (1949).

Where owners of land condemned for a roadway had voluntarily consented to the city entering upon and taking possession of their land, they had waived their right to demand their award for damages before the land could be taken, the city had acquired a vested right in the property, and because at that time an ordinance authorizing the improvement and an assessment to pay the landowners had been passed, the ordinance controlled as to the method and amount of payment. Mecartney v. Chicago, 194 Ill. App. 592, 1915 Ill. App. LEXIS 563 (1915).

Holder of tax title to real estate did not own property subject to eminent domain proceedings and he was not entitled to an award for his costs and payments of taxes from the damages paid to the fee simple owner after condemnation of the property Sanitary Dist. of Chicago v. Murphy, 261 Ill. 269, 103 N.E. 1001, 1913 Ill. LEXIS 2205 (1913).

Constitution protects the property owner by providing that his property will not be taken for public use without just compensation; however, an eminent domain proceeding is not the enforcement of an individual right, but to settle the condition upon which the sovereign power to take the

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property may be exercised and the judgment is not binding on the government and it can decline to enter upon the property or make payment of compensations. Thus, the provision of the Eminent Domain Act, 1897 Ill. Laws 218, which gives the landowner the right to recover costs, expenses, and attorney's fees if the government dismisses the petition for any reason, was in harmony with the spirit and intent of the constitution and was valid. Sanitary Dist. of Chicago v. Bernstein, 175 Ill. 215, 51 N.E. 720, 1898 Ill. LEXIS 3333 (1898).

Highway commissioner's condemnation of owner's land, pursuant to an 1861 statute, in order to establish a private road requested by another landowner violated due process provision of state's constitution because the legislature did not have the authority to create a means by which a private party could obtain a right of way over another private party's land without that party's consent. Nesbitt v. Trumbo, 39 Ill. 110, 1866 Ill. LEXIS 8 (1866).

Illinois Act of 1861, pp. 263 and 264, which authorizes a private way to be established over the land of a person against his objection, violates the due process provision of the Illinois Constitution, which provides that no person shall be disseized of his freehold but by the judgment of his peers or the law of the state; the legislature is powerless to afford the means by which a person can procure the right of way over another person's lands without his consent. Nesbitt v. Trumbo, 39 Ill. 110, 1866 Ill. LEXIS 8 (1866).

-- Employment

A tenured teacher has a property interest in continued employment that is protected by the due process clause. Board of Educ. of Round Lake Area Sch. v. State Bd. of Educ., 292 Ill. App. 3d 101, 226 Ill. Dec. 309, 685 N.E.2d 412 (2 Dist. 1997).

Plaintiff did not have a property interest in re-employment sufficient to require defendant to give her a hearing when it declined to renew her contract; thus, she held no property interest protected by procedural due process. Lavin v. Board of Educ., 22 Ill. App. 3d 555, 317 N.E.2d 717 (1 Dist. 1974).

Right to labor for and to render services to another and the right to dispose of the compensation to be received for so doing are property rights within the meaning of Ill. Const. of 1870, Art. II, § 2. State Street Furniture Co. v. Armour & Co., 259 Ill. App. 589, 1931 Ill. App. LEXIS 1358 (1931).

The right to use, buy, and sell property and contract in respect thereto is protected by the Constitution; labor is property and the laborer has the same right to sell his labor and to contract with reference thereto as has any other property owner. Ritchie v. People, 155 Ill. 98, 40 N.E. 454 (1895).

Statute making it unlawfully to take any portion of coal by any process of screening or other device without fully accounting for and crediting the same to the minor was unconstitutional and void because, in other kinds of business involving the employment of labor, the employer and employee were free to fix the amount of wages to be paid and the mode of payment and there was nothing in the business of coal mining that rendered either the employer or the employee less capable of contracting in respect to wages. Ramsey v. People, 142 Ill. 380, 32 N.E. 364, 1892 Ill. LEXIS 1060 (1892).

Ability of an employer and an employee to fix the amount of wages to be paid and the mode of payment is justly regarded as a very important right, vitally affecting the interests of both parties and, to the extent that right was abridged, a property right was taken away Ramsey v. People, 142 Ill. 380, 32 N.E. 364, 1892 Ill. LEXIS 1060 (1892).

-- Environmental Protection Act

The failure of the Environment Protection Act (415 ILCS 5/1 et seq.) to provide for hearings on the rights of third parties who might be affected by a decision of the Pollution Control Board to grant permits under provisions of the Act did not violate due process since a third party could file

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a new complaint against the polluter. Landfill, Inc. v. Pollution Control Bd., 74 Ill. 2d 541, 25 Ill. Dec. 602, 387 N.E.2d 258 (1978).

-- Evidentiary Hearing

To determine whether due process requires an evidentiary hearing prior to the impairment or deprivation of a property right, as opposed to a hearing thereafter, an analysis of the governmental and private interests that are affected is necessary. Phillips v. Graham, 86 Ill. 2d 274, 56 Ill. Dec. 355, 427 N.E.2d 550 (1981).

-- Extent of Zoning Power

Court concluded that the facts and circumstances presented made rezoning by amendment a more appropriate procedure than application for a variance; therefore, since the zoning and county boards acted under the authority and in the manner provided by § 5 of the County Zoning Act, plaintiffs' claim that they were deprived of due process under Ill. Const. Art. I, § 2 had no merit. Stratford Aire Asso. v. Hibser, 26 Ill. App. 2d 214, 167 N.E.2d 586, 1960 Ill. App. LEXIS 427 (1 Dist. 1960).

The governmental power to interfere, by zoning regulations, with the general rights of the land owner by restricting the character of his use, though frequently recognized, is not unlimited, and, other questions aside, such restriction cannot be imposed if it does not bear a substantial relation to the public health, safety, morals, or general welfare. Bank & Trust Co. v. Village of Wilmette, 358 Ill. 311, 193 N.E. 131 (1934).

-- Factual Consideration

In deciding whether the invasion of property rights under a purported police power is unreasonable and confiscatory, the degree in which the values incident to the properties are diminished by provisions of the zoning ordinance must be considered and must be determined from the facts of each particular case. Bank & Trust Co. v. Village of Wilmette, 358 Ill. 311, 193 N.E. 131 (1934).

-- Fair Trade Act of 1935

Former section 2 of the Fair Trade Act of 1935 did not arbitrarily deprive an individual of his right to determine the price at which he sold his commodities, and thus, did not violate the due process clauses of the federal and state constitutions. Joseph Triner Corp. v. McNeil, 363 Ill. 559, 2 N.E.2d 929 (1936), aff'd, 365 Ill. 537, 57 S. Ct. 139 (1937).

-- Filing Fee for Dissolution of Marriage

Five dollar filing fee for dissolution of marriage collected to fund shelters and services for victims of domestic violence arbitrarily imposed the burden of funding a general welfare program on a narrow group of matrimonial litigants and, therefore, deprived them of property without due process of law. Crocker v. Finley, 99 Ill. 2d 444, 77 Ill. Dec. 97, 459 N.E.2d 1346 (1984).

-- Gambling Devices

The seizure of property employed as a gambling device in violation of a statute is a proceeding in rem, and being contraband, the provisions of the Illinois Constitution relating to trial by jury and depriving one of his liberty or property without due process of law are inapplicable. Weis v. Allman, 325 Ill. App. 554, 60 N.E.2d 436 (1 Dist. 1945).

Owner whose crap tables, faro lay-out, and roulette wheel and table were destroyed after a summary proceeding, was not deprived of property without due process of law because, under statutes in existence at the time of the seizure, the keeping of gambling implements and apparatus was an offense prohibited by law; thus, the items were not property subject to legal

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protection and could be seized, forfeited, and destroyed without violating any constitutional provision. Frost v. People, 193 Ill. 635, 61 N.E. 1054, 1901 Ill. LEXIS 2695 (1901).

-- Harness Horses

The license of the plaintiffs to pursue an occupation, as a trainer, owner and driver of harness horses, was a property interest given protection by the due process clause; therefore, the plaintiffs could not have been finally deprived of their property interest until a hearing was held to determine the rights of the parties. Phillips v. Graham, 86 Ill. 2d 274, 56 Ill. Dec. 355, 427 N.E.2d 550 (1981).

-- Illegal Seizure

Section of city municipal code providing for the confiscation of motion pictures put in circulation after a permit for exhibition has been refused was unconstitutional, in that it violated former Ill. Const. (1870), Art. II, §§ 2 and 6 (see now this section and Ill. Const. (1970), Art. I, § 6) because it did not provide a forum for such confiscation, nor did it provide for notice to the owner or other persons interested in the property sought to be confiscated. United Artists Corp. v. Thompson, 339 Ill. 595, 171 N.E. 742 (1930).

-- Impact of Zoning Ordinance

Whether the impact of a zoning ordinance upon the particular use which an owner may desire to make of his property is a reasonable and permissible interference with his rights as owner, in the exercise of the police power for the public benefit, or whether it is arbitrary and unreasonable, and therefore, a constitutionally forbidden deprivation of private property, is always a question depending upon the peculiar facts and circumstances of the particular case. Trust Co. v. City of Chicago, 408 Ill. 91, 96 N.E.2d 499 (1951).

-- Impact Fees

Whether the degree of the exactions demanded for road improvements bears the required relationship to the projected impact of the new development, requires a very exacting correspondence, described as the "specific and uniquely attributable" test; under this standard, if the local government cannot demonstrate that its exaction is directly proportional to the specifically created need, the exaction becomes a veiled exercise of the power of eminent domain and a confiscation of private property behind the defense of police regulations. Northern Ill. Home Bldrs. Ass'n v. County of Du Page, 165 Ill. 2d 25, 208 Ill. Dec. 328, 649 N.E.2d 384 (1995).

-- Injunction

Because the operation and maintenance of a gas station is not a nuisance per se, and a hospital had contended that it would secure the proper permits for its private gas station and a landowner had not alleged in his bill that he was a property owner who would be aggrieved by the construction of the hospital's gas station, to have issued an injunction against the hospital would have been a violation of its property rights under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). People ex rel. Terp v. Washingtonian Home of Chicago, 361 Ill. 522, 198 N.E. 721, 1935 Ill. LEXIS 666 (1935).

-- Judicial Review of Zoning Ordinances

Whether the restraints imposed by a zoning ordinance upon a use of private property do, in fact, bear a real, substantial relation to the public health, safety, comfort or welfare, or whether they are essentially capricious and unreasonable is a question subject to judicial review; however, the drawing of demarcations for zoning purposes is the province of the municipal attorney, and a court will not reverse unless the decision is shown to be arbitrary, capricious and unrelated to the

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public morals, safety and general welfare. Trust Co. v. City of Chicago, 408 Ill. 91, 96 N.E.2d 499 (1951).

-- Jurisdiction

A constitutional question is not involved so as to give the Supreme Court jurisdiction of a direct appeal where the judgment or decree is assailed on the ground that its enforcement will deprive the person against whom enforcement is sought of his property without due process of law; the question in such case is the validity of the judgment or decree and not the constitutional question. Meyers v. Fraser, 385 Ill. 550, 53 N.E.2d 442 (1944).

-- Land Use Regulation

A land use regulation does not effect a taking if it substantially advances legitimate state interests and does not deny an owner economically viable use of his land. Northern Ill. Home Bldrs. Ass'n v. County of Du Page, 165 Ill. 2d 25, 208 Ill. Dec. 328, 649 N.E.2d 384 (1995).

Ordinance that compelled the property owner to hold the right of establishing and erecting on his property a community store subject to the arbitrary, uncontrolled will of the owners of neighboring property was repugnant to the constitutional prohibition of deprivation of property without due process of law. Spies v. Board of Appeals, 337 Ill. 507, 169 N.E. 220, 1929 Ill. LEXIS 1056 (1929).

-- Landmark Ordinance

Trial court erred in dismissing property owners' action against a city, a commission on landmarks, and city officials because the owners adequately stated a cause of action in the count of their complaint alleging that the Chicago Landmark Ordinance (Ordinance), Chicago, Ill., Mun. Code §§ 2-120-580 to 2-120-920, permitted an improper delegation of authority; the commission performed a declaratory function, and under the Ordinance, the commission could make a recommendation to the city council, and the city council was not required to review the commission's recommendations before they became final. Hanna v. City of Chicago, 388 Ill. App. 3d 909, 329 Ill. Dec. 799, 907 N.E.2d 390, 2009 Ill. App. LEXIS 98 (1 Dist. 2009).

Trial court erred in dismissing property owners' action against a city, a commission on landmarks, and city officials because the allegations in the owners' complaint that the Chicago Landmark Ordinance, Chicago, Ill., Mun. Code §§ 2-120-580 to 2-120-920, were unconstitutionally vague and ambiguous was sufficient to establish a cause of action; the terms "value," "important," "significant," and "unique" in Chicago, Ill., Mun. Code § 2-120-620 were vague, ambiguous, and overly broad, and the city offered no criteria by which a person of common intelligence could determine from the face of the Ordinance whether a building or district would be deemed to have value or importance or whether a person would be deemed to have a "special interest" in neighborhood preservation. Hanna v. City of Chicago, 388 Ill. App. 3d 909, 329 Ill. Dec. 799, 907 N.E.2d 390, 2009 Ill. App. LEXIS 98 (1 Dist. 2009).

-- License to Practice Medicine

A license to practice medicine is a valuable property right and is protected by the due process clauses of the United States and Illinois Constitutions. Farney v. Anderson, 56 Ill. App. 3d 677, 14 Ill. Dec. 346, 372 N.E.2d 151 (4 Dist. 1978).

A license to practice medicine is a property right within the meaning of the constitutional guarantees of due process of law. Smith v. Department of Registration & Educ., 412 Ill. 332, 106 N.E.2d 722 (1952).

-- Mechanic's Liens

Section 1 of the Mechanic's Lien Act, in so far as it subjects to a lien the property of one who has knowingly permitted another to contract for improvements or repairs which have been placed on

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the property, does not impair the right of an owner of real estate to freely contract in reference to improvements that are made upon the real estate. Boyer v. Keller, 258 Ill. 106, 101 N.E. 237, 1913 Ill. LEXIS 2028 (1913).

-- Motor Fuel Tax Act

Section 10 of the Motor Fuel Tax Act of 1927, (see now 35 ILCS 505/1), which required the Department of Finance to pay to any person who used motor fuel for any other purpose than operating a motor vehicle upon the highways of the state and upon which the license tax imposed by the Act had been paid, two cents on each gallon of motor fuel so used, without regard to whether such person had paid the tax himself and without regard to whether he had paid into the state treasury, directly or indirectly, a sum equal to two cents on each gallon of motor fuel so used by him was held invalid as the distributor was taxed for the purpose of raising the fund to provide this gift to the consumer and was deprived of his property without due process of law. Chicago Motor Club v. Kinney, 329 Ill. 120, 160 N.E. 163 (1928).

-- No Double Taxation

Where tax levied by village on property owned by appellants included a levy for library and that since the property owned by the appellants was also included within the boundaries of another library district, there was not a double taxation of the taxpayers' property for library purposes, and the levy by village was not therefore unconstitutional under this section or former Ill. Const. (1870), Art. IX, § 9 (see now Ill. Const. (1970), Art. VII, § 6 (1970). Kucharski v. White, 42 Ill. 2d 335, 247 N.E.2d 428 (1969).

-- Non-conforming Use

Where complainant's building had been devoted to its current use before the passage of a muncipal zoning ordinance, and at the time of the passage of the zoning ordinance the building was devoted to a "non-conforming use" as defined by the ordinance, as the use was that of a lawful business and not a business over which a municipality had special regulatory power, the complainant had a vested property interest under former Ill. Const. (1870), Art. II, § 2 (see now this section) to continue the use of the building in its present location, irrespective of the passage of the zoning ordinance. Illinois Life Ins. Co. v. Chicago, 244 Ill. App. 185 (1 Dist. 1927).

-- Notice Requirement

The very security of property requires notice of some kind to the owner, before he should be deprived of it, and justice can never be administered in its true spirit when either the person or property is condemned without notice. Rabbitt v. Frank C. Weber & Co., 297 Ill. 491, 130 N.E. 787 (1921).

-- Occupational Disease Act

Former section 15 of the Occupational Disease Act (see 820 ILCS 310/1) was not unconstitutional as taking property without due process by imposing a different liability upon those employers engaged in processes of manufacture other than those described in the Act. First Nat'l Bank v. Wedron Silica Co., 351 Ill. 560, 184 N.E. 897 (1933).

-- Ordinances

City ordinance, which prohibits persons from re-selling unused street car transfers is constitutional and does not deprive the person holding the ticket of property without due process of law because the resale would violate the conditions under which the transfer ticket is issued (that it can only be used by the fare purchaser within a specified time, in order to complete that purchaser's original trip); to hold that the purchaser had a property right to violate the conditions of the contract would be unlawful. The ordinance did not interfere in any way with any right that

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the fare passenger possessed upon purchase of the transfer ticket. Chicago v. Openheim, 229 Ill. 313, 82 N.E. 294, 1907 Ill. LEXIS 3122 (1907).

City ordinance, which prohibits persons from re-selling unused street car transfers is constitutional and does not deprive the person holding the ticket of property without due process of law because a city has the power to pass reasonable regulations affecting street car lines in order to remedy a threatened or actual interference with the comfort, convenience, and general welfare of the traveling public and has the authority to restrict the use to which private property can be put. Chicago v. Openheim, 229 Ill. 313, 82 N.E. 294, 1907 Ill. LEXIS 3122 (1907).

Where an ordinance establishing a fire district was not specific enough for a professional surveyor to identify which properties were in the fire district, property owners were entitled to relief from the ordinance under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2), and a trial court's directed verdict for the municipality was erroneous. Lamm v. Danville, 221 Ill. 119, 77 N.E. 422, 1906 Ill. LEXIS 2664 (1906).

City ordinance, which designated a public road as a pleasure driveway and prohibited business owner from driving his team on that road did not deprive the business owner of property without due process of law because the city, pursuant to its charter, had authority to regulate the streets within the city, the ordinance restricted the number of streets that could be designated as pleasure drives, and the power to create a pleasure drive could be created only when requested by the owners of more than two-thirds of the property fronting the proposed pleasure driveway; because ordinance was within the city's authority as a political body and ordinance was enacted with due regard to individual rights, it was not unconstitutional. Cicero Lumber Co. v. Cicero, 176 Ill. 9, 51 N.E. 758, 1898 Ill. LEXIS 3228 (1898).

-- Pension Benefits

Although an eligible recipient's pension benefits may be terminated under authority of the Pension Code, the trial court erred in affirming the Benefit Fund Board's summary termination of the plaintiff's property interest without notice or hearing because that interest is protected under federal and state constitutional due process provisions. Moore v. Board of Trustees of the San. Dist. Employees' & Trustees' Annuity & Benefit Fund, 157 Ill. App. 3d 158, 109 Ill. Dec. 466, 510 N.E.2d 87 (1 Dist. 1987).

Police officer did not have a vested property right in a pension and amendments to the pension act, which added the requirement that a police officer who had served 20 years could not collect any pension benefits until the age of 50, did not violate due process; the pension fund remained subject to the disposition of the legislature and the police officer had only an expectancy created by the law, which the law could revoke or destroy. People ex rel. Drea v. Hanson, 330 Ill. 79, 161 N.E. 145, 1928 Ill. LEXIS 909 (1928).

Amendment of police pension statute, which gave a city's policemen's annuity and benefit fund the ability to inquire into the validity and legality of a grant of pension benefits, did not contravene U.S. Const. amend. XIV or Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) because, as against the State or its political subdivisions, a police officer had no vested right in a pension accruing in the future; there was no contract on the part of the State to continue paying the benefit or annuity and a change in the law affecting such benefit or annuity did not impair the obligation of a contract or deprive a person of property without due process. People ex rel. Donovan v. Retirement Bd. Policemen's Annuity & Ben. Fund, 326 Ill. 579, 158 N.E. 220, 1927 Ill. LEXIS 1002 (1927).

Police officer's removal and discharge by a police superintendent under the direction of a civil service trial board that was not in violation of the officer's rights was not a deprivation of his property right in reinstatement or a pension and was therefore not a constitutional violation. People ex rel. Gersch v. Chicago, 286 Ill. 105, 121 N.E. 252, 1918 Ill. LEXIS 773 (1918).

-- Practice of Dentistry

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The right to practice dentistry is a valuable property right within the due process of law clause of the Illinois Constitution (see this section). Kalman v. Walsh, 355 Ill. 341, 189 N.E. 315 (1934).

-- Private Employment Agencies

The former Private Employment Agency Act (now see 225 ILCS 515/0.01) which prohibited private employment agencies from requiring any person who had applied for and obtained a position through the agency to sign a judgment note for the payment of any fees or to assign any salary or wages due violated former Ill. Const. (1870), Art. II, § 2 (see now this section) in that it denied private employment agencies the right to contract and acquire property in a manner which they had theretofore enjoyed under the law and which all those engaged in any other lawful occupation were still allowed to enjoy. People v. Redfield, 366 Ill. 562, 10 N.E.2d 341 (1937).

-- Prohibition against Dancing

Municipal ordinance that prohibited dancing in a restaurant open to the public was unconstitutional under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) as a violation of a property right because there was nothing necessarily harmful in permitting the patrons of a restaurant to dance while the restaurant was open to the general public as a place where the public might purchase refreshments. Chicago v. Drake Hotel Co., 274 Ill. 408, 113 N.E. 718, 1916 Ill. LEXIS 2480 (1916).

-- Protection Ordinance

Plaintiffs had no property interest at stake at an administrative hearing over a protection ordinance since they were advocating before the Commission that the public park remain untouched; while their interest as citizens entitled them to enjoy the park and desire it be preserved it did not rise to the level of a protectable interest, thus plaintiffs did not have any constitutionally protected interest in nonexpansion and renovation of a museum. Petersen v. Chicago Plan Comm'n, 302 Ill. App. 3d 461, 236 Ill. Dec. 305, 707 N.E.2d 150 (1 Dist. 1998).

-- Public Employee

Dismissal of an employee, a deputy sheriff, for violation of a drug-free workplace policy was reversed; because the Cook County Sheriffs Merit Board found that the employee tested positive for the presence of cocaine metabolites due to her innocent consumption of Mate de Coca tea that was purchased in Peru when she and her husband traveled there to adopt a child, the application of the drug-free workplace policy by the Merit Board was not rationally related to the specified purpose of the policy and, therefore, violated the employee's substantive due process rights. Garrido v. Cook County Sheriff's Merit Bd., 349 Ill. App. 3d 68, 285 Ill. Dec. 71, 811 N.E.2d 312, 2004 Ill. App. LEXIS 674 (1 Dist. 2004).

A public employee has no property interest in the continuation of any specific rate or method of compensation. Scutt v. La Salle County Bd., 97 Ill. App. 3d 181, 53 Ill. Dec. 21, 423 N.E.2d 213 (3 Dist. 1981).

A public employee has no constitutional right to such employment, although he may not be arbitrarily barred or removed and abandons no constitutionally protected right as a function of his employment. Scutt v. La Salle County Bd., 97 Ill. App. 3d 181, 53 Ill. Dec. 21, 423 N.E.2d 213 (3 Dist. 1981).

-- Public Employment

Terminated firefighter's challenge to an arbitration decision upholding firing based on alleged public policy violation arising out of due process concerns was not upheld, because Illinois case law made it clear that for purposes of terminations of public employees who had violated substance abuse conditions of last chance agreements, a failed breathalyzer test did not have to

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be backed up by a positive urine test for forbidden substances. Casanova v. City of Chicago, 342 Ill. App. 3d 80, 276 Ill. Dec. 148, 793 N.E.2d 907, 2003 Ill. App. LEXIS 827 (1 Dist. 2003).

Generally public employment does not create property rights subject to the protection of due process. Jordan v. Metropolitan San. Dist., 15 Ill. 2d 369, 155 N.E.2d 297 (1958).

While labor and the right of individuals to pursue their occupation or professions have been held to involve property rights, it has never been extended to public employment which exists only by will of the legislature. Jordan v. Metropolitan San. Dist., 15 Ill. 2d 369, 155 N.E.2d 297 (1958).

-- Racetrack Licenses

There was no "final deprivation" of property without a prior hearing as would violate procedural due process where racetrack owners' licenses remained unaffected, allowing them to carry on with their occupation, though admittedly under the restriction that they could not pursue their activities in person on racetrack premises and the order would not affect races taking place outside the state. Phillips v. Graham, 86 Ill. 2d 274, 56 Ill. Dec. 355, 427 N.E.2d 550 (1981).

-- Right of User

The right of user is a part of the property right guaranteed by the Constitution. Illinois Life Ins. Co. v. Chicago, 244 Ill. App. 185 (1 Dist. 1927).

-- Seizure

Former Ill. Rev. Stat. ch. 38, para. 8 (now 725 ILCS 5/108-10), which required seized property and the person in possession of the property to be brought before a judge after execution of the search warrant was constitutional, because it did not deprive persons of their property without due process under former Ill. Const., Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2). Glennon v. Britton, 155 Ill. 232, 40 N.E. 594, 1895 Ill. LEXIS 1357 (1895).

-- Severed Mineral Interests

Severed undivided one-third mineral interest constituted protected property interests entitled to the procedural safeguards which due process required. Wilson v. Bishop, 82 Ill. 2d 364, 45 Ill. Dec. 171, 412 N.E.2d 522 (1980).

-- Sewer Connection Permit

A sewer connection permit is not a constitutionally protected interest in property; the permit is in the nature of a license only and does not create a vested right to such connection. LaSalle Nat'l Bank & Trust Co. v. City of Chicago, 128 Ill. App. 3d 656, 83 Ill. Dec. 819, 470 N.E.2d 1239 (1 Dist. 1984).

-- Standing

Attorney had standing to seek an injunction against a collection agency for the unauthorized practice of law because the attorney could demonstrate a sufficient injury against the attorney's property interest in their profession. Smith v. Illinois Adjustment Finance Co., 326 Ill. App. 654, 63 N.E.2d 264, 1945 Ill. App. LEXIS 384 (1 Dist. 1945).

-- State Contract

A bidder did not have a protected property right in an award of a contract by the state, and the Illinois Procurement Code, 30 ILCS 500/50-5 (formerly the Illinois Purchasing Act, 30 ILCS 505/1 et seq.) which prohibited an award to the bidder because of the bidder's officer's bribery offense, did not violate the bidder's due process rights. Polyvend, Inc. v. Puckorius, 77 Ill. 2d 287, 32 Ill. Dec. 872, 395 N.E.2d 1376, 1979 Ill. LEXIS 383 (1979).

-- Statutory Taxation Terms

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A taxing body is prohibited under the uniformity provisions of the Illinois Constitution from defining statutory terms contrary to their common meaning. Northwestern Univ. v. City of Evanston, 221 Ill. App. 3d 893, 164 Ill. Dec. 307, 582 N.E.2d 1251 (1 Dist. 1991).

-- Street Car Ordinance

Ordinance regarding street cars constituted a contract, the obligation of which could not be impaired as the contract affected real estate, of which the appellant could not be deprived without due process of law and which could not be destroyed, abridged, or damaged for the public use without just compensation. Chicago City Ry. v. City of Chicago, 323 Ill. 246, 154 N.E. 112 (1926).

-- Street Closing

Where a city ordinance did not seek to vacate but restricted the public use of a street to pedestrian and emergency vehicular traffic, such ordinance did not violate the plaintiff's constitutional right to due process in that it allegedly took property without just compensation. Chicago Nat'l Bank v. City of Chicago Heights, 14 Ill. 2d 135, 150 N.E.2d 827 (1958).

-- Student Loan Default Proceedings

Plaintiff class members who had a defense (legitimate or otherwise) to accusations that they had defaulted on their guaranteed student loans were erroneously deprived of property or liberty under former 105 ILCS 5/30-15.12 (see now 110 ILCS 947/105), and by the Illinois State Scholarship Commission's practice of filing all default proceedings in Cook County. Williams v. Illinois State Scholarship Comm'n, 139 Ill. 2d 24, 150 Ill. Dec. 578, 563 N.E.2d 465 (1990).

-- Subordination to Police Power

The constitutional declaration that private property shall not be taken for public use without just compensation or without due process of law is subordinated always to the interests of the public welfare as expressed through the exercise of the police power of the state. Trust Co. v. City of Chicago, 408 Ill. 91, 96 N.E.2d 499 (1951); Dube v. City of Chicago, 7 Ill. 2d 313, 131 N.E.2d 9 (1955).

-- Substantive Agency Rules

An agency rule which allowed the Director of the Department of Registration and Education to make repeated remands without specific objections clearly indicated to the hearing officer the Director's dissatisfaction with the prior findings and recommendations and the Director's desire for a contrary result, thus it became substantive as well as procedural; the rule therefore had to be construed to provide for a single rehearing without the possibility of subsequent referrals following the conclusion of that rehearing so as not to unduly affect the property rights of license holders without violating their due process rights. National Account Sys. v. Anderson, 82 Ill. App. 3d 233, 37 Ill. Dec. 654, 402 N.E.2d 656 (1 Dist. 1980).

-- Surface Mining Repair Requirements

The repair or restoration requirements of section 1.02 of the Surface Coal Mining Land Conservation and Reclamation Act (225 ILCS 720/1.02) did not unlawfully "take" coal company's surface support waivers in violation of the federal and state constitutions, as the legislative declaration set forth in section 1.02(a) of the Act demonstrates public interest in health, safety and general welfare, and the IDMM regulations of the Illinois Department of Mines and Minerals requiring the repair or restoration of structures damaged by subsidence seeks to achieve these interests, since the test for determining whether a land use regulation constituted an unconstitutional taking is whether the regulation substantially advances legitimate state interests or denies an owner economically viable use of his land. Old Ben Coal Co. v. Illinois Dep't of Mines & Minerals, 204 Ill. App. 3d 1062, 150 Ill. Dec. 399, 562 N.E.2d 1202 (5 Dist. 1990).

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-- Taking

Applying the broad definition of "waters" under former section 1003(o) of the Environmental Protection Act (now see 415 ILCS 5/3.550) to a lake used by a steam electric generating plant and located on private property did not constitute the taking of personal property but rather only regulated its use; therefore, petitioner's property was not taken without due process of law or just compensation. Central Ill. Pub. Serv. Co. v. Pollution Control Bd., 36 Ill. App. 3d 397, 344 N.E.2d 229 (5 Dist. 1976).

To characterize the issuance of influent standards as a taking of property without due process of law would deny the Pollution Control Board effective control in its efforts to effectuate the purposes and goals of the Environmental Protection Act (now see 415 ILCS 5/1 et seq.). Central Ill. Pub. Serv. Co. v. Pollution Control Bd., 36 Ill. App. 3d 397, 344 N.E.2d 229 (5 Dist. 1976).

Taking of the owner's land for a housing project was not for an illegal or unconstitutional purpose where the most the landowner proved was that the housing authority might, in the future, perform some illegal act and the presumption is that the housing authority will refrain from an illegal act and will make the ultimate distribution of the housing units in a lawful manner. Kankakee County Housing Authority v. Spurlock, 3 Ill. 2d 277, 120 N.E.2d 561, 1954 Ill. LEXIS 410 (1954).

Taking of the owner's land for a housing project was not for an illegal or unconstitutional purpose where there was a complete lack of proof of any formal action by the county housing authority embracing the allegedly illegal purpose (race segregation) stated by the landowner would have the court attach to the housing authority's exercise of its admitted power to condemn her land; all that was shown was that, to acquire Federal funds, the housing authority had to achieve equitable distribution of its housing between whites and nonwhites, that the housing authority was aware of its duty to achieve racial equity and not to discriminate, and there had been no decision to enforce racial segregation. Kankakee County Housing Authority v. Spurlock, 3 Ill. 2d 277, 120 N.E.2d 561, 1954 Ill. LEXIS 410 (1954).

Taking of the owner's land was not, as alleged by the owner, taken for the purpose of the construction of a project devoted to race segregation and, thus, was not for an illegal or unconstitutional purpose where the record did not reveal any definite or official determination that race segregation would be enforced in the project; furthermore, the question of occupancy was injected into the housing program by the requirement of the Federal Housing Administration, whose financial aid was sought, that the county housing authority submit a definite numerical estimate of the distribution of the units because it was necessary to achieve racial equity between groups classed as "white" and "nonwhite." Kankakee County Housing Authority v. Spurlock, 3 Ill. 2d 277, 120 N.E.2d 561, 1954 Ill. LEXIS 410 (1954).

If as a necessary result of the construction, maintenance or operation of a public improvement under a prior similar provision (see now 735 ILCS 5/13-101), real estate is physically invaded by superinduced additions of water, earth, sand or other materials, so as to effectually destroy or impair its usefulness, it is a taking within the meaning of former Ill. Const. (1870) Art. II, § 2 (see now this section). Horn v. City of Chicago, 403 Ill. 549, 87 N.E.2d 642 (1949).

Due process of law forbids the taking of one person's property and giving it to another contrary to settled usages and modes of procedure and without notice and opportunity for a hearing. City of Chicago v. Cohn, 326 Ill. 372, 158 N.E. 118 (1927).

Order by city requiring a railroad to relocate its tracks at its own expense was not a violation of due process, in the form of a taking without compensation, because the contract under which railway constructed and maintained its railroad was granted and accepted by the city subject to the city's right to regulate the use of the public streets, which included the power to compel the railway to relocate tracks if public safety demanded it. People ex rel. Chicago v. Chicago C. R. Co., 324 Ill. 618, 155 N.E. 781, 1926 Ill. LEXIS 1081 (1926).

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No constitutional question was involved in an appeal where it was merely asserted that the enforcement of a trial court's judgment would deprive the one against whom it was sought to be enforced of some constitutional right, such as the taking of property without due process of law. Albrecht v. Omphghent Tp., 324 Ill. 200, 154 N.E. 898, 1926 Ill. LEXIS 1071 (1926).

Act that required the operator of a Chicago taxicab to post a bond to cover any potential judgments was not violative of the Equal Protection Clause because it was reasonably incidental to the exercise of the police power of the state or municipality and addressed the legitimate concerns raised by the density and continuity of traffic in the city and did not violate the prohibition against special legislation because taxicabs were operated for gain and were thus in service for longer hours and at higher rates of speed; further, the contention that the act was a taking was also rejected because the taxi owner could obtain an insurance policy or bond with a surety at reasonable expense. Weksler v. Collins, 317 Ill. 132, 147 N.E. 797, 1925 Ill. LEXIS 1000 (1925).

Sections 57 and 58 of the Local Improvement Act (1913 Ill. Laws, p. 166), which allowed municipalities to pass an ordinance for a new assessment to pay for work done before the amendments to §§ 57 and 58 went into effect and provided that the assessment was not invalid or void on the basis that it was levied for work already done, did not violate the constitutional requirement of due process of law for the taking of a citizen's property; whatever the legislature could authorize if it were ordering an assessment for the first time could be authorized in a second assessment, even if the first assessment was void. Lincoln v. Harts, 266 Ill. 405, 107 N.E. 725, 1914 Ill. LEXIS 2134 (1914).

City's prohibition against a turnpike company, chartered by the State, from building toll booths or collecting tolls within the city was a taking, and was a violation of the company's rights under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, art. II, § 2). Belleville v. St. Clair County Turnpike Co., 234 Ill. 428, 84 N.E. 1049, 1908 Ill. LEXIS 2963 (1908).

Under the Laws of 1901 (see now 65 ILCS 5/11-128-1) an ordinance which provided for laying lead water service pipes did not deprive appellant of her land, but it did deprive her of her control and dominion over it, her right to subdivide her property as she saw fit, and compelled her to subdivide the entire block, therefore, the ordinance was void for violating due process under former Ill. Const. (1870), Art. II, § 2 (see now this section). City of Chicago v. Wells, 236 Ill. 129, 86 N.E. 197 (1908).

Statutes that created and enlarged a sanitary district (found at Hurd's Ill. Rev. Stat. of 1901, p. 347 and 1903 Ill. Session Laws p. 113) and which required the city of Chicago to allow a neighboring town that was also located in the city's sanitary district to purchase water from the city did not take the city's property without due process of law because the statutes merely enlarged the class entitled to purchase water from the city by extending that privilege to persons taxed to purify the water that filled the city's mains. Chicago v. Cicero, 210 Ill. 290, 71 N.E. 356, 1904 Ill. LEXIS 3065 (1904).

Whether city had a right to require railroad company to lower its tunnel under a river did not present a constitutional question because the city's conduct could not be considered an attempt to take the railroad company's property without just compensation and without due process of law; maintaining the navigable character of the public stream in a lawful way was not taking any property or property right of the owner of the soil under the river. People ex rel. Chicago v. West C. S. R. Co., 203 Ill. 551, 68 N.E. 78, 1903 Ill. LEXIS 2502 (1903).

Where a landowner's building was demolished by a city due to its condition, not due to its use, the demolition was a valid abatement fo a nuisance that the city had a right to complete, and was not a constitutional taking. Nazworthy v. Sullivan, 55 Ill. App. 48, 1893 Ill. App. LEXIS 359 (1893).

Where damages to landowners had not been assessed, a trial court had erred by granting a petition for a writ of mandamus to compel town commissioners to open a road that had been laid

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out by order of supervisors because the land had not been taken and paid for. Commissioners of Highways v. People, 4 Ill. App. 391, 1879 Ill. App. LEXIS 211 (1879).

Court concluded that the impairment of defendants' profits by the legislature was not a taking, and not a taking for a public purpose; thus, the reduction of profits by statute was not a taking that violated the constitutional protection of private property under former Ill. Const. of 1879, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2). Munn v. People, 69 Ill. 80, 1873 Ill. LEXIS 303 (1873).

-- Taking of Funds

The payment of funds by a receiver to a national bank on its claim, predicated upon an agreement concerning a liquidated state bank, did not constitute a misappropriation and diversion of the funds or have the effect of compelling the stockholders to pay a claim for which they were not liable under former Ill. Const. (1870), Art. XI, § 6, and the payment did not constitute the taking and the appropriation of their money in violation of the constitutional provision, without due process of law in contravention of the guarantees of both the state and federal constitutions. Groves v. Farmers State Bank, 368 Ill. 35, 12 N.E.2d 618 (1937).

-- Tax

Tax by one drainage district levied on a neighboring drainage district for improvements that benefited the neighboring district were not unconstitutional under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2), because the levying drainage district was a corporation properly created by the legislature and a duty to pay all legal obligations had attached to both districts. Drainage Comm'rs of North Fork Special Drainage Dist. v. Commissioners of Rector Special Drainage Dist., 266 Ill. 536, 107 N.E. 895, 1915 Ill. LEXIS 2279 (1915).

Because 1905 Ill. Laws 334 & 340 specified the boards of public park commissioners in general terms, it did not place the commissioners in a class by themselves, and because a vote of the voters in the park district was required before a tax levy, the statutes were not invalid under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) as a deprivation of property without due process of law. Kucera v. West Chicago Park Comm'rs, 221 Ill. 488, 77 N.E. 912, 1906 Ill. LEXIS 2720 (1906).

-- Tax Reassessment

System under which individual counties could be reimbursed for half of a tax assessor's salary if assessments and reassessments met certain valuation standards did not deny taxpayers due process; there was no showing that the pay actually received by the assessor was affected in any way by that system and, in any case, all assessors in Illinois were required by law to assess property at one-third of its value. Golf Trust of Am., L.P. v. Soat, 355 Ill. App. 3d 333, 290 Ill. Dec. 977, 822 N.E.2d 562, 2005 Ill. App. LEXIS 40 (2 Dist. 2005), appeal denied, 215 Ill. 2d 596, 295 Ill. Dec. 520, 833 N.E.2d 2 (2005).

Where a taxpayer fails to complete the procedural remedies that the State makes available to him to contest an assessment, due process has not been violated and the dissatisfied taxpayer may not bring a federal claim on that basis unless the procedural remedies are not "plain, speedy and efficient". Tampam Farms, Inc. v. Supervisor of Assmts., 271 Ill. App. 3d 798, 208 Ill. Dec. 255, 649 N.E.2d 87 (2 Dist. 1995), appeal denied, 163 Ill. 2d 589, 212 Ill. Dec. 439, 657 N.E.2d 640 (1995).

Where the purpose of the Reassessment Statute of 1928, and of the order entered thereunder, was not to make changes in the assessments of individuals, but to correct inequalities and failures to comply with the law in assessments in the entire county, while it was called a reassessment, it was, in act and in effect, a new or original assessment of all of the real property of the county, was governed by the rules of law applicable to original assessments, and did not violate due process or delegate legislative and judicial power to taxing officers. Heidenway v. Harding, 336 Ill. 606, 168 N.E. 630 (1929).

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Failure to provide individual notice of a horizontal tax increase to each of a city's property owners did not violate due process because the property owners were entitled to a hearing and to an opportunity to challenge the assessment; requirement that the notice be mailed to a sampling of the taxpayers was sufficient. People ex rel. Bracher v. Orvis, 301 Ill. 350, 133 N.E. 787, 1921 Ill. LEXIS 948 (1921).

Horizontal tax increase on a city's property owners did not violate due process because the board had before it the values as assessed in other taxing districts in the county and it was clear that from the authorizing statute that it was not necessary to change assessment throughout the county; the equalization of assessments to maintain proportion of property values was a proper function of the board. People ex rel. Bracher v. Orvis, 301 Ill. 350, 133 N.E. 787, 1921 Ill. LEXIS 948 (1921).

Section 84 of the Local Land Improvement Act was not unconstitutional simply because it denied the right of appeal or review of the trial court's judgment on writ of error and due process and equal protection were not violated when the ordinary course was pursued in the proceedings for the assessment and collection of taxes that was customarily followed in the state; statute requiring substantial compliance with the provisions of the ordinance with respect to public improvements was far more reasonable and just to all parties interested than a statute requiring a literal compliance. People ex rel. Peterson v. Omen, 290 Ill. 59, 124 N.E. 860, 1919 Ill. LEXIS 874 (1919).

-- Urban Community Conservation

Illinois Urban Community Conservation Act, Ill, Rev. Stat., 1953, chap. 67 1/2, pars. 91.8-91.16, was not so indefinite as to violate due process as it was apparent that the legislative definition attempted to identify and isolate the physical factors that characterized those residential parts of the city that were in an intermediate, transitional state, and the requirements of the definition as to the size of an area and as to the age of the residential structures were specific; furthermore, the age of the structures in the area was not conclusive but, in addition, there had to be present in the area at the time of the designation as a conservation area the various blighting factors enumerated in the definition to such an extent that unless the decline is checked the area may soon become a slum. People ex rel. Gutknecht v. Chicago, 3 Ill. 2d 539, 121 N.E.2d 791, 1954 Ill. LEXIS 441 (1954).

-- Validity of Zoning Ordinance

Appellants who charged that the classification of their property as nonindustrial in a county ordinance amounted to a capricious invasion and an unreasonable invasion of their property rights failed to overcome presumption of the validity of that classification by proof which was clear and convincing. County of DuPage v. Henderson, 402 Ill. 179, 83 N.E.2d 720 (1949).

The test for determining the legitimacy of a zoning ordinance was whether such destruction of value would promote the public health, safety, morals, or general welfare. Bank & Trust Co. v. Village of Wilmette, 358 Ill. 311, 193 N.E. 131 (1934).

-- Zoning Ordinances

Trial court properly dismissed the first amended complaint with prejudice filed by property owners seeking a writ of mandamus compelling a city and mayor to commence condemnation proceedings regarding certain real property that had been rezoned as the case was not ripe for adjudication since the city never made any decision regarding the owners' proposed development plans. LaSalle Bank Nat'l Ass'n v. City of Oakbrook Terrace, 393 Ill. App. 3d 905, 332 Ill. Dec. 535, 913 N.E.2d 130, 2009 Ill. App. LEXIS 699 (2 Dist. 2009).

Dentist, who sought to have zoning ordinance preventing him from maintaining professional office in his residence declared unconstitutional, failed to sustain the burden imposed upon him of showing that the ordinance, as applied to his property, was unreasonable, discriminatory,

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confiscatory, and invalid, and did not overcome the presumption of its validity. Skrysak v. Village of Mount Prospect, 13 Ill. 2d 329, 148 N.E.2d 721 (1958).

City's zoning ordinance classifying the landowners' property for residential use was arbitrary and repugnant to the constitution of the State of Illinois and of the United States and, thus, void where the highest and best use of the subject property was industrial, it was not well-suited for residential development, industrial use would be compatible with the public welfare, and the zoning restriction was without substantial relation to the general welfare; furthermore, it was not the monetary loss to the landowners that required a finding of invalidity, but the fact that the loss was utterly unrelated to any substantial public benefit to be derived. Bauske v. Des Plaines, 13 Ill. 2d 169, 148 N.E.2d 584, 1957 Ill. LEXIS 395 (1957).

City's zoning ordinance classifying the landowners' property for residential use, as it applied to the subject property did not bear any reasonable relation to the public health, safety, or general welfare, and was arbitrary and, therefore, repugnant to the constitution of the State of Illinois and of the United states and, consequently, void where the landowners proposed an industrial development of the subject property and (a) for more than 25 years a portion of the property had been used by the landowners in their business; (b) the subject property was bordered on the south by a two-lane, paved, main county highway and the greater portion of the property was bordered by a heavily-traveled, four-land highway; (c) there was almost no residential development adjacent to the road that bordered the subject property on the south and the land in the area was generally not well suited for residential development; (d) the subject property was in a neighborhood that was originally laid out for industrial uses; (e) O'Hare International Airport almost adjoined the subject property at the southeast corner and its runways were less than a mile away from the property; and (f) the subject property was traversed from north to sough by the main line of a railroad. Bauske v. Des Plaines, 13 Ill. 2d 169, 148 N.E.2d 584, 1957 Ill. LEXIS 395 (1957).

Zoning ordinance, which prohibited a landowner, an automobile sales agency, from displaying and parking cars, violated due process as applied because the loss to the landowner was substantial, that the restrictions were arbitrary and unreasonable, and that there was no substantial relation to the public health, safety, comfort, morals and welfare of the area. Gordon v. Wheaton, 12 Ill. 2d 284, 146 N.E.2d 37, 1957 Ill. LEXIS 360 (1957).

In challenging zoning law prescribing the conditions of business or manufacturing designed to avoid nuisance or annoyance, the factory owner and its lessees assumed the burden of proving that, as applied to their property, the ordinance was clearly arbitrary and unreasonable and bore no substantial relation to the public health, safety, comfort or general welfare, and the factory owner and its lessees did not sustain that burden and, thus, the ordinance as applied to them and their property was not unconstitutional because the health and comfort of the residents in the neighborhood were injuriously affected by the noises and vibrations caused by the business conducted on the premises and the residents were subject to discomforts which went beyond the reasonable limits imposed upon them because of living or of holding property in the vicinity of an industrial zone. Dube v. Chicago, 7 Ill. 2d 313, 131 N.E.2d 9, 1955 Ill. LEXIS 359 (1955).

Where plaintiff failed to show by clear and affirmative evidence that a zoning ordinance of the county, as applied to its properties, was arbitrary, unreasonable and confiscatory and bore no substantial or real relation to the public health, safety, comfort, morals or general welfare, the ordinance was not offensive to the Illinois Constitution. First Nat'l Bank v. County of Lake, 7 Ill. 2d 213, 130 N.E.2d 267 (1955).

Ordinance permitting a city council to retain control of the space above city streets and sidewalks as authorized by the legislature is not discriminatory, unreasonable, oppressive or unjust. People ex rel. Herman Armanetti, Inc. v. Chicago, 415 Ill. 165, 112 N.E.2d 616, 1953 Ill. LEXIS 333 (1953).

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City ordinance prohibiting the erection of any sign exceeding a certain size over public property without city council approval did not violate a business owner's right to due process or constitute a capricious exercise of the police power. People ex rel. Herman Armanetti, Inc. v. Chicago, 415 Ill. 165, 112 N.E.2d 616, 1953 Ill. LEXIS 333 (1953).

The presumption is that a zoning ordinance is valid and the burden of proof is upon the party attacking the ordinance to show affirmatively that it is arbitrary and unreasonable; where there is room for a legitimate difference of opinion concerning the reasonableness of an ordinance governing the use of private property or where such question of reasonableness is fairly debatable, the courts will not interfere with the legislative judgment. Trust Co. v. City of Chicago, 408 Ill. 91, 96 N.E.2d 499 (1951).

While cities and villages have statutory authority for the enactment of zoning ordinances, nevertheless the governmental power so conferred to interfere by zoning regulations with the general rights of property owners is not unlimited, and such an ordinance, to be valid, must have a real and substantial relation to the public health, safety, morals, or general welfare. Trust Co. v. City of Chicago, 408 Ill. 91, 96 N.E.2d 499 (1951).

A zoning ordinance may not be based alone on aesthetic considerations, although it is no objection to such an ordinance that it tends to promote an aesthetic purpose, its reasonableness may be sustained on other grounds. Trust Co. v. City of Chicago, 408 Ill. 91, 96 N.E.2d 499 (1951).

Highly injurious restrictions in a zoning ordinance lacking basis in the public good come within the constitutional inhibition against taking private property for public use without just compensation. Schneider v. Board of Appeals, 402 Ill. 536, 84 N.E.2d 428, 1949 Ill. LEXIS 266 (1949).

Where hardship to nearby properties was great, and gain to the public was slight, a writ of mandamus seeking a building permit was properly denied because financial advantage to the property owner was not the only consideration on a zoning appeal. Evanston Best & Co. v. Goodman, 369 Ill. 207, 16 N.E.2d 131, 1938 Ill. LEXIS 563 (1938).

The general scheme of a zoning ordinance may be valid, yet, as applied to a particular property within the area zoned, such facts may exist that if the terms of the ordinance are enforced it would result in an arbitrary and unreasonable injury of the owner of the property or the confiscation thereof; in that situation, as applied to such designated real estate, the ordinance is void. People ex rel. Kirby v. City of Rockford, 363 Ill. 531, 2 N.E.2d 842 (1936).

It is proper to consider the extent to which the value of property has been diminished by the zoning ordinance for the purpose of determining whether its invasion of property rights is unreasonable and confiscatory. People ex rel. Kirby v. City of Rockford, 363 Ill. 531, 2 N.E.2d 842 (1936).

Where there is no material relation of the restrictive ordinance to the public good, an ordinance cannot, under the guise of a zoning regulation, either confiscate the property or inflict a substantial financial injury upon the owner thereof. People ex rel. Kirby v. City of Rockford, 363 Ill. 531, 2 N.E.2d 842 (1936).

Where the record did not show that zoning ordinance amendments were passed for the public good, and property owners had a right to rely on the classifications in place when they purchased their properties, a superior court decree dismissing their action against their city was erroneous under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Kennedy v. Evanston, 348 Ill. 426, 181 N.E. 312, 1932 Ill. LEXIS 789 (1932).

The legislature may not, under the guise of protecting the people's interests, arbitrarily interfere with private rights. Phipps v. City of Chicago, 339 Ill. 315, 171 N.E. 289 (1930).

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Local ordinance requiring a property owner to obtain approval from certain surrounding landowners prior to his construction of an auto garage and showroom was not void because it was not an unreasonable or arbitrary restriction, rather it was a valid exercise fo the city's power under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) to regulate zoning. People ex rel. Keller v. Oak Park, 266 Ill. 365, 107 N.E. 636, 1914 Ill. LEXIS 2129 (1914).

- Public Hearing

Rules and procedures of the Commission did not require persons speaking on behalf of or against any matter to be placed under oath, nor did they provide for cross examination, which comported with the nature of the inquiry and determination Commission was empowered to make, thus, plaintiffs were afforded all the process due under the ordinance. Petersen v. Chicago Plan Comm'n, 302 Ill. App. 3d 461, 236 Ill. Dec. 305, 707 N.E.2d 150 (1 Dist. 1998).

- Punitive Damages

Punitive damage award in favor of plaintiff investors and against defendant businessman on the investors' claims of common law fraud under Illinois law represented a ratio to the compensatory award of 3.3 to 1; it was sound under federal and state law. Kapelanski v. Johnson, 390 F.3d 525, 2004 U.S. App. LEXIS 24468 (7th Cir. 2004).

- Rational Basis Test

Sentencing scheme of 720 ILCS 5/16-1 led to a disproportionate sentencing result; extended term sentence for theft by deception was found to be void and was reduced to the non-extended term. People v. Tooley, 328 Ill. App. 3d 418, 262 Ill. Dec. 685, 766 N.E.2d 305, 2002 Ill. App. LEXIS 171 (3 Dist. 2002), appeal denied, 201 Ill. 2d 608, 271 Ill. Dec. 940, 786 N.E.2d 198 (2002).

Under 65 ILCS 5/11-31-1(a), the demolition of a structure that is dangerous and unsafe, when it has been demonstrated that the structure is not readily repairable, is rationally related to the legitimate state interest in public health and safety, and the State has a legitimate interest in seeing such structures demolished sooner rather than later. Vill. of Lake Villa v. Stokovich, 211 Ill. 2d 106, 284 Ill. Dec. 360, 810 N.E.2d 13, 2004 Ill. LEXIS 356 (2004), cert. denied, 543 U.S. 943, 125 S. Ct. 354, 160 L. Ed. 2d 256 (2004).

755 ILCS 5/18-1.1 does not violate the due process clause, as the minimum claim amounts serve the legislative goalof encouraging immediate family members to commit themselves todisabled relatives. Porter v. Jolliff (In re Jolliff), 199 Ill. 2d 510, 264 Ill. Dec. 642, 771 N.E.2d 346, 2002 Ill. LEXIS 321 (2002).

Rational basis review is highly deferential to judgments made by a legislature, and, thus, reviewing courts are not concerned with the wisdom of the statute nor with whether it is the best means to achieve the desired result; so long as there is a conceivable basis for finding the statute rationally related to a legitimate state interest, the law must be upheld. Vill. of Lake Villa v. Stokovich, 211 Ill. 2d 106, 284 Ill. Dec. 360, 810 N.E.2d 13, 2004 Ill. LEXIS 356 (2004), cert. denied, 543 U.S. 943, 125 S. Ct. 354, 160 L. Ed. 2d 256 (2004).

In applying the rational basis test, courts must first consider whether the public interest a statute is intended to serve is a legitimate interest, then determine whether the statute bears a rational relationship to that interest, and, finally, determine whether the method chosen by the legislature to protect or further that interest is reasonable. Vill. of Lake Villa v. Stokovich, 211 Ill. 2d 106, 284 Ill. Dec. 360, 810 N.E.2d 13, 2004 Ill. LEXIS 356 (2004), cert. denied, 543 U.S. 943, 125 S. Ct. 354, 160 L. Ed. 2d 256 (2004).

-- In General

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If an affected person is not in a protected class, or the right infringed upon is not fundamental, the challenged legislation is permissible if it has a rational relationship to a legitimate governmental interest and is neither arbitrary nor discriminatory. Town of Normal v. Seven Kegs, Two Tappers & Two Barrels, 234 Ill. App. 3d 715, 175 Ill. Dec. 370, 599 N.E.2d 1384 (4 Dist. 1992).

-- Controlled Substance Act

The legislature has explicitly asserted an intention to penalize the sale of look-alike substances more harshly than the sale of some controlled substances, and it had asserted that, under some circumstances, look-alike substances were more harmful than controlled substances; this, and the legislature's asserted, and plausible hypotheses that look-alike drugs may cause overdoses and that dealers may reap greater profits in look-alike drugs, support a substantial relationship between harsher penalties for sale of look-alike drugs and the greater goal of reducing actual drug abuse; therefore, section 404 of the Illinois Controlled Substances Act (720 ILCS 570/404) as amended, does not violate due process. People v. Upton, 114 Ill. 2d 362, 102 Ill. Dec. 842, 500 N.E.2d 943 (1986).

- Reasonable Relationship

-- Criminal Penalty

The legislature reasonably could have determined that a more stringent penalty for aggravated battery with a firearm is required, given the frequency of the crime and the high risk of bodily harm associated with it, and designating the offense of aggravated battery with a firearm as a Class X felony is not cruel, degrading, or so wholly disproportionate as to shock the moral sense of the community. People v. Lee, 167 Ill. 2d 140, 212 Ill. Dec. 231, 656 N.E.2d 1065 (1995), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

The constitutional guarantee of due process is violated if the penalty prescribed for a more serious offense is not as great or greater than the penalty prescribed for a lesser offense; in such circumstances, the enactment is not reasonably designed to remedy the evil which the legislature determined to be a greater threat to the public. People v. Moorhead, 128 Ill. App. 3d 137, 83 Ill. Dec. 405, 470 N.E.2d 531 (2 Dist. 1984).

-- Limitations Period

Barring a cause of action before its discovery seems "harsh and unfair," however there was no due process violation, if the limitations period was reasonably related to the interests of the state. Street v. Hubert, 141 Ill. App. 3d 871, 96 Ill. Dec. 215, 491 N.E.2d 29 (1 Dist. 1986).

-- Municipal Liquor Ordinance

The plain purpose of the requirement in a county liquor control ordinance that the licensed premises "shall be closed" during the time alcoholic liquor may not be sold at retail was to assure that such sales could only occur during lawful hours and was a reasonable and necessary enforcement provision; the questioned phrase was not vague, uncertain or ambiguous. County of McHenry v. Duenser, 49 Ill. App. 3d 125, 7 Ill. Dec. 35, 363 N.E.2d 1197 (2 Dist. 1977).

-- Statutory Purpose

A criminal penalty of 15 years for armed violence was justified despite due process and proportionality objections in the face of a six year attempted first degree murder sentence because the statutes serve different purposes and the legislature was within its prerogative in trying to prevent persons from carrying dangerous weapons when they commit a felony. People v. Cosby, 305 Ill. App. 3d 211, 238 Ill. Dec. 513, 711 N.E.2d 1174 (1 Dist. 1999), appeal denied, 187 Ill. 2d 575, 244 Ill. Dec. 187, 724 N.E.2d 1271 (2000).

-- Ticket Scalping Act

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Where state had a legitimate interest in seeking to control the resale price of tickets to places of entertainment and amusement, the Ticket Scalping Act (720 ILCS 375/1.5 and 720 ILCS 375/2) reasonably related to this objective, and consequently, did not violate the due process clause of either Illinois (see this section) or U.S. Const., Amend. 14. People v. Patton, 57 Ill. 2d 43, 309 N.E.2d 572 (1974).

- Reasonable Relationship Standard

Spinal Cord Fund fee violated defendant's due process rights because the fee was not reasonably related to the controlled substance offense for which defendant was convicted. People v. Jones, 366 Ill. App. 3d 666, 304 Ill. Dec. 114, 852 N.E.2d 364, 2006 Ill. App. LEXIS 531 (1 Dist. 2006), overruled in part by, criticized in People v. Jones, 223 Ill. 2d 569, 861 N.E.2d 967, 2006 Ill. LEXIS 1671, 308 Ill. Dec. 402 (2006).

- Referendum

City's ordinance, which was for the public peace, health, and safety and which contained an emergency clause, was not a proper subject for referendum and did not, as asserted, deprive plaintiffs of their property without due process of law or deny them equal protection of the laws in violation of the Constitution of the United States and the State of Illinois. Buck v. Danville, 350 Ill. App. 519, 113 N.E.2d 186, 1953 Ill. App. LEXIS 326 (1 Dist. 1953).

- Registration as Child Abuser

Since the subject of an "indicated" report in the state register would undoubtedly cause great damage to a teacher's reputation, when defendant's name was placed on the state register of suspected child abusers, the state violated his due process rights. Cavarretta v. Department of Children & Family Servs., 277 Ill. App. 3d 16, 214 Ill. Dec. 59, 660 N.E.2d 250 (2 Dist. 1996).

- Registration of Sex Offenders

-- Conviction for Aggravated Kidnapping

Result of defendant's conviction for aggravated kidnapping for ransom that he was required to register as a sex offender under the Sex Offender Registration Act, 730 ILCS 150/1 et seq., and the Sex Offender and Child Murderer Community Notification Law, 730 ILCS 152/101 et seq., was upheld against his arguments that the sex offender registration requirement was unconstitutional under the circumstances. Defendant's due process rights were not violated even though there was no sexual component to his crime, as the General Assembly had rationally found that aggravated kidnapping was often a precursor to sex offenses against children, defendant did not have a right to keep his sex offender status private, and defendant had not shown an equal protection violation existed since a rational basis existed for having him register as a sex offender while people not convicted of aggravated kidnapping did not have to do so. People v. Beard, 366 Ill. App. 3d 197, 303 Ill. Dec. 243, 851 N.E.2d 141, 2006 Ill. App. LEXIS 389 (1 Dist. 2006), appeal denied, 225 Ill. 2d 641, 875 N.E.2d 1115, 2007 Ill. LEXIS 1220 (2007).

-- Sex Offender Registry

Where defendant, after being convicted of the aggravated kidnapping of a minor, was obliged to register under 730 ILCS 150/2(B)(1.5) of the Illinois Sex Offender Registration Act, his rights to procedural due process had not been violated. He had been able to contest the kidnapping charges at trial, which was all the process " he was due." People v. Phillip C. (In re Phillip C.), 364 Ill. App. 3d 822, 301 Ill. Dec. 791, 847 N.E.2d 801, 2006 Ill. App. LEXIS 254 (1 Dist. 2006), appeal denied, 225 Ill. 2d 635, 875 N.E.2d 1112, 2007 Ill. LEXIS 1228 (2007).

Dissemination of information about defendant's sex offender status under 730 ILCS 152/115(b), 730 ILCS 152/120(c) and the Sex Offender Registration Act, 730 ILCS 150/1 et seq., did not

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violate defendant's due process rights due to damage to his reputation because defendant had neither a liberty interest or a property interest in his reputation. People v. Grochocki, Ill. App. 3d , Ill. Dec. , N.E.2d , 2003 Ill. App. LEXIS 1083 (3 Dist. Aug. 26, 2003).

- Regulatory Scheme

There is no inconsistency of constitutional magnitude between a statutory summary suspension proceeding and a criminal driving under the influence of alcohol (DUI) prosecution; the suspension of the driver's license is an administrative function, and as such, it is not a part of the punishment for DUI but is merely a regulatory measure, and it is a civil, not a criminal, action. People v. Wickland, 268 Ill. App. 3d 758, 206 Ill. Dec. 31, 644 N.E.2d 799 (2 Dist. 1994).

- Requirements

A website run by defendants, a former employee of plaintiff manufacturer and the former employee's new employer, which allowed e-mails to defendants but was otherwise not interactive, did not establish continuous and systematic contacts for general jurisdiction under 735 ILCS 5/2-209(c), which extended personal jurisdiction to the limit allowed under the Due Process Clause of the Illinois Constitution, Ill. Const. Art. I, § 2, and the Constitution of the United States, but one solicitation to a resident established specific personal jurisdiction; defendants' Fed. R. Civ. P. 12(b)(2) motion to dismiss the manufacturer's claim of misappropriation of trade secrets under the Illinois Trade Secrets Act was denied. Riddell, Inc. v. Monica, F. Supp. 2d , 2003 U.S. Dist. LEXIS 13053 (N.D. Ill. July 23, 2003).

- Retroactive Application

Alleged victim's claims of childhood sexual abuse against a priest and three dioceses, arising out of acts occurring some 19 years before he filed a lawsuit, were not time barred where the relevant statute of limitations, 735 ILCS 5/13-202.2(e), applied retroactively, even to claims that occurred before the statute's effective date; none of the defendants' due process rights were unreasonably infringed by such an application since the legislature had become aware that the abuse by its very nature involved long-repressed memories. Doe A. v. Diocese of Dallas, 379 Ill. App. 3d 782, 319 Ill. Dec. 105, 885 N.E.2d 376, 2008 Ill. App. LEXIS 191 (1 Dist. 2008).

Retroactive application of a statute, which prohibited the building of a jail within 200 feet of a school building, was not a violation of due process because the clergyman bringing the suit would suffer a special injury, the county had notice before it contracted to build the jail that the statute would be in effect, and if the county acquired any right to occupy the square for county purposes it could not interpose an objection to legislative authority over the property. Dunne v. Rock Island County, 283 Ill. 628, 119 N.E. 591, 1918 Ill. LEXIS 1074 (1918).

- Revival of Time-Barred Claim

The legislature could not revive a time-barred tort claim brought by a crime victim against the victim's offender based on conduct for which the offender was convicted; offender's status as a convicted murderer did not enlarge the legislative power to suspend the due process protection afforded a vested defense in a civil tort case. Sepmeyer v. Holman, 162 Ill. 2d 249, 205 Ill. Dec. 125, 642 N.E.2d 1242 (1994).

Constitutional problems are presented where a court is asked to apply statutory amendments in such a way as to revive extinguished liabilities. Wilson-Raymond Constructors Co. v. Industrial Com., 79 Ill. 2d 45, 37 Ill. Dec. 582, 402 N.E.2d 584, 1980 Ill. LEXIS 283 (1980).

- Right to Adequate Education

The plaintiffs failed to provide a basis for a broader construction of the Illinois due process clause than of the federal due process clause in the context of their right to a minimally safe and

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adequate education. Lewis E. v. Spagnolo, 186 Ill. 2d 198, 238 Ill. Dec. 1, 710 N.E.2d 798 (1999).

- Right to be Heard

Where a subcontractor had been denied the right to intervene in a contractor's action against the State, to which the State had contended fraud, under 705 ILCS 505/14, (formerly Ill. Rev. Stat. ch. 37, para. 439.14) the subcontractor was entitled to a remand to have his claim considered because he contended that he had not been involved in the contractor's fraud and he had a constitutional right to be heard at a meaningful time and in a meaningful manner. Rossetti Contracting Co. v. Court of Claims, 109 Ill. 2d 72, 92 Ill. Dec. 521, 485 N.E.2d 332, 1985 Ill. LEXIS 306 (1985).

- Right to Competent Counsel

The standard that should be applied in all cases involving both retained and appointed counsel is that representation by counsel is constitutionally deficient if the incompetence produced substantial prejudice to the defendant without which the result would probably have been different. People v. Royse, 99 Ill. 2d 163, 75 Ill. Dec. 658, 457 N.E.2d 1217 (1983).

The pertinent inquiry in determining whether a defense attorney was incompetent for failing to raise in a post-conviction petition alleged constitutional errors that occurred at trial is whether the defendant's attorney for his post-conviction petition and the related appeal was actually incompetent, and caused such substantial prejudice to the defendant that the outcome was probably changed. People v. Talley, 97 Ill. App. 3d 439, 52 Ill. Dec. 875, 422 N.E.2d 1084 (1 Dist. 1981).

As a general rule, a defendant who is represented by counsel of his own choice is not entitled to relief in a post-conviction proceeding on the ground of incompetency of counsel; having selected his own counsel, defendant is then responsible if that counsel does not faithfully serve his interest and he cannot later contend that he was denied due process of law because his counsel was incompetent or negligent. People v. Garrett, 26 Ill. App. 3d 786, 326 N.E.2d 143 (1 Dist. 1975).

The conduct of counsel in a criminal trial may be such as to deny a defendant the fair trial that is contemplated by the due process provisions of both the state (see now this section), and federal constitutions, under U.S. Const., Amend. 14. People v. De Simone, 9 Ill. 2d 522, 138 N.E.2d 556 (1956).

A defendant's right to assistance by counsel is not satisfied by the mere formality of an appointment of an attorney by the court, but that such right embraces effective representation throughout all stages of the trial, and where the representation is of such low caliber as to amount to no representation or to reduce the trial to a farce, the guarantees of due process are violated. People v. De Simone, 9 Ill. 2d 522, 138 N.E.2d 556 (1956).

- Right to Contract

Privilege of contract is both a liberty and a property right; therefore, to deprive the laborer and the employer of this right to contract with one another is to violate for Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2), which provides that no person shall be deprived of life, liberty, or property without due process of law. Kemp v. Amalgamated Asso. of Street etc. Employees, 153 Ill. App. 344, 1910 Ill. App. LEXIS 970 (1910).

-- In General

The privilege of contracting to receive gains and profits for the right to use property granted to another is both a liberty and property right; thus, any restriction upon or abridgment of bank's right under its charter to invest its capital and contract to act as trustee in the handling of property of

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others, under a contract, deprives the owner of both liberty and property. Metropolitan Trust Co. v. Jones, 384 Ill. 248, 51 N.E.2d 256 (1943).

Where existing bondholders each held $1,000 bonds, a requested exchange by one for 10 $100 bonds could not be allowed because it was an impairment of the bondholders' contract due to a potential reduction in collections on the installment due on the bonds, and payable to all bondholders. Murray v. Skokie, 379 Ill. 112, 39 N.E.2d 671, 1942 Ill. LEXIS 639 (1942).

Statute, which required theater owner to sell admission to the theater's main floor to persons of all races and colors did not contravene U.S. Const. amend. 14, § 1 or Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) by depriving theater owner of property without due process of law by taking away the owner's freedom of contract; the State undoubtedly had the right to regulate theaters and all places of public amusement, including the right to compel persons engaged in those businesses that catered to the public to furnish equal facilities and accommodations to all members of the public without discrimination. Pickett v. Kuchan, 323 Ill. 138, 153 N.E. 667, 1926 Ill. LEXIS 973 (1926).

Liberty and property, as used in Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2), includes the right to acquire property, which includes the privilege of contracting and making enforceable contracts. Booth v. People, 186 Ill. 43, 57 N.E. 798, 1900 Ill. LEXIS 2345 (1900).

Citizen cannot be deprived of an attribute of property, like the right to make a reasonable contract with reference to property, without due process of law; due process of law is a general public law of the land. Booth v. People, 186 Ill. 43, 57 N.E. 798, 1900 Ill. LEXIS 2345 (1900).

State's attorney, upon the relation of a member of the Chicago Live Stock Exchange, should have been permitted to file an information in the nature of quo warranto against the Exchange because the Exchange rule challenged by the relator infringed on the relator's liberty and property rights by limiting his right to contract and to acquire property by limiting the number of solicitors the member could employ. People ex rel. McIlhany v. Chicago Live-Stock Exchange, 170 Ill. 556, 48 N.E. 1062, 1897 Ill. LEXIS 1155 (1897).

The liberty to enter into contracts by which labor may be employed in such way as the laborer shall deem most beneficial, and of others to employ such labor, is necessarily included in the constitutional guaranty. Braceville Coal Co. v. People, 147 Ill. 66, 35 N.E. 62 (1893).

The privilege of contracting is both a liberty and a property right. Braceville Coal Co. v. People, 147 Ill. 66, 35 N.E. 62 (1893).

Privilege of contracting is both a liberty and a property right; thus, to deprive the laborer and the employer of this right to contract with one another is to violate Ill. Const. of 1870, Art. II, § 2, which provides that no person shall be deprived of life, liberty, or property without due process of law. Christensen v. People, 114 Ill. App. 40, 1904 Ill. App. LEXIS 386 (1904).

-- Local Ordinance

An ordinance, which forbids any driver of a "public passenger vehicle," to solicit passengers upon any boulevard, parkway, or driveway under the jurisdiction of the Park District was valid and did not deprive drivers of the right to contract freely for services. Jackie Cab Co. v. Chicago Park Dist., 366 Ill. 474, 9 N.E.2d 213 (1937).

- Right to Counsel

Placing defendant, a detainee, in a room with an inmate to whom defendant made incriminating statements about a murder that the inmate was recording because the inmate was an undercover informant working with police constituted a "custodial interrogation" under 725 ILCS 5/103-2.1. "Custodial interrogations" under that statute included situations in which a defendant was likely to make incriminating statements, and since defendant was denied the right to consult with counsel

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under 725 ILCS 5/103-4 that defendant had asserted several days previously regarding the questioning of defendant, defendant's procedural due process rights under Ill. Const. art. I, § 2 to consult counsel and right to avoid incriminating himself, Ill. Const. art. I, § 10, were violated. People v. Hunt, 403 Ill. App. 3d 802, 343 Ill. Dec. 436, 934 N.E.2d 1039, 2010 Ill. App. LEXIS 866 (1 Dist. 2010).

Placing defendant, a detainee, in a room with an inmate to whom defendant made incriminating statements about a murder that the inmate was recording because the inmate was working with police as an undercover informant constituted a "custodial interrogation" under 725 ILCS 5/103-2.1. "Custodial interrogations" under that statute included situations in which a defendant was likely to make incriminating statements, and since defendant was denied defendant's right to consult with counsel under 725 ILCS 5/103-4 that defendant had asserted several days previously regarding any questioning of defendant, defendant's procedural due process rights under Ill. Const. Art. I, § 2 to consult counsel and defendant's right to counsel to avoid incriminating himself, Ill. Const. Art. I, § 10, were violated. People v. Tavares, Ill. App. 3d , Ill. Dec. , N.E.2d , 2010 Ill. App. LEXIS 219 (1 Dist. Mar. 18, 2010).

Person's rights under the Illinois Constitution's due process clause are violated when the police fail to advise a suspect that an attorney retained by his family is present and asking to see him; however, even if that state law right is violated, it does not entitle a person to relief under 42 U.S.C.S. § 1983 because 42 U.S.C.S. § 1983 requires proof of a violation of the person's federal constitutional rights. Vainder v. Powell, F. Supp. 2d , 2004 U.S. Dist. LEXIS 14175 (N.D. Ill. July 26, 2004).

Appellate court vacated the trial court's judgment finding that defendant's counsel had a conflict of interest per se because a partner in his law firm represented a child victim's guardian in an unrelated civil suit two years before defendant was charged with predatory criminal sexual assault on a child and other crimes, and it remanded the case so the trial court could apply the criteria which the state supreme court announced in its Ortega decision. People v. Downey, Ill. App. 3d , Ill. Dec. , N.E.2d , 2004 Ill. App. LEXIS 922 (2 Dist. July 30, 2004).

Where the inmate's second post-conviction appeal pursuant to the Illinois Post-Conviction Hearing Act, 725 ILCS 5/122-1 et seq., had been dismissed due to the inmate's counsel's failure to comply with Rule 367(a), Supreme Court Rules, the reviewing court lacked jurisdiction to vacate the dismissal, as the rule that held that due process precluded dismissal of an appeal due to counsel's failure to follow procedural rules did not apply to the post-conviction appeal; the inmate's right to counsel was not derived from due process under Ill. Const., Art. I, § 2, but, instead, it was derived from Rule 651(c), Supreme Court Rules. People v. Lyles, 347 Ill. App. 3d 100, 282 Ill. Dec. 875, 807 N.E.2d 499, 2004 Ill. App. LEXIS 198 (1 Dist. 2004).

Uncounseled guilty pleas did not violate due process where defendants did not receive sentences of detention or even probation and, thus, were not entitled to appointed counsel when they pled guilty. City of Urbana v. Andrew N.B., 211 Ill. 2d 456, 286 Ill. Dec. 75, 813 N.E.2d 132, 2004 Ill. LEXIS 990 (2004).

Parent whose rights had been terminated had not been deprived of an indigent parent's guarantee of counsel where the parent had been provided with three successive lawyers, each of whom had been fired or forced to withdraw rather than commit ethical violations; it did not violate the parent's rights to decline to appoint yet another lawyer. People v. Herman O. (In re Travarius O.), 343 Ill. App. 3d 844, 278 Ill. Dec. 792, 799 N.E.2d 510, 2003 Ill. App. LEXIS 1262 (1 Dist. 2003).

Request by a suspect with extensive criminal justice experience was not an invocation of the right to counsel when the suspect requested to speak to a prosecutor, presumably to try to obtain favorable treatment; furthermore, there was no violation of the right to counsel when police questioned the suspect, who was incarcerated for another offense, outside the presence of counsel, since the invocation of right to counsel related to that earlier offense. People v. Graham,

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339 Ill. App. 3d 1049, 274 Ill. Dec. 632, 791 N.E.2d 724, 2003 Ill. App. LEXIS 775 (4 Dist. 2003).

Custodial suspect's state constitutional rights to due process and against self-incrimination under Ill. Const. Art. I, §§ 2 and 10 were violated where an attorney who was physically present at the place the custodial suspect was being held was denied access to the custodial suspect, and where the authorities prevented the custodial suspect from receiving written communications from the attorney that directly related to the custodial suspect's right to counsel. People v. Woods, 338 Ill. App. 3d 78, 272 Ill. Dec. 650, 787 N.E.2d 836, 2003 Ill. App. LEXIS 321 (1 Dist. 2003).

State constitutional guarantees do not permit police to delude custodial suspects, exposed to interrogation, into falsely believing they are without immediately available legal counsel and to also prevent that counsel from accessing and assisting their clients during the interrogation. People v. McCauley, 163 Ill. 2d 414, 206 Ill. Dec. 671, 645 N.E.2d 923 (1994).

Due process requires that an accused is entitled to counsel during any custodial interrogation. People v. McCauley, 163 Ill. 2d 414, 206 Ill. Dec. 671, 645 N.E.2d 923 (1994).

Where a criminal defendant in a non-capital case had declined representation by the public defender, who had later been appointed, and defendant had not objected to the public defender at trial, he had not been deprived of a right to counsel and his habeas corpus petition was properly denied. United States ex rel. Judd v. Ragen, 167 F.2d 802, 1948 U.S. App. LEXIS 2504 (7th Cir. 1948).

Savings, Loan, and Building association under receviership could retain its own counsel through an act by its board of directors, because the auditor of accounts exercised his power subject to the control of the courts, Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) forbids that any person shall be deprived of life, liberty or property without due process of law, and counsel could be reimbursed by the receiver. Assets Realization Co. v. Defrees, Brace & Ritter, 127 Ill. App. 454, 1906 Ill. App. LEXIS 404 (1906).

- Right to Pursue Profession

-- Prohibition of Debris Accumulation

Municipal ordinance prohibiting the unenclosed accumulation of various types of debris or nonfunctional equipment on public or private property did not violate the due process right of antique refinisher and small machine remanufacturer to pursue his trade, occupation, business or profession. Village of Beckmeyer v. Wheelan, 212 Ill. App. 3d 287, 155 Ill. Dec. 514, 569 N.E.2d 1125 (5 Dist. 1991).

- Right to Testify

Plain error was committed pursuant to Ill. Sup. Ct. R. 615(a) when defendant's jury trial in defendant's armed robbery case was conditioned on defendant's written consent to wear a concealed electronic stun belt, without the knowledge of the trial court or defendant's counsel; defendant's substantial right to testify was denied. The trial court did not hold a Boose hearing before the trial to determine the effect of such a restraint on defendant, who had eight screws in defendant's neck and spine and was fearful of the impact of the device operating accidentally, and, thus, defendant's Ill. Const. Art. I, § 2 procedural due process right to a fair trial was impacted because defendant elected not to testify as a result of having to wear the device. People v. Harris, 388 Ill. App. 3d 1007, 328 Ill. Dec. 690, 904 N.E.2d 1200, 2009 Ill. App. LEXIS 138 (3 Dist. 2009).

- Right to Trial

Appellate court erred in holding that parties' stipulation to allow a successor judge to resolve a case based on the written evidence presented to the predecessor judge was insufficient to satisfy

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due process because defendants were bound by their stipulation and waived their right to a trial de novo before the successor when they had full knowledge of the issues and freely granted the successor the authority to resolve them; if the parties enter into an agreement or stipulation to allow a successor judge to decide the case based on written evidence received by a predecessor judge and that agreement is knowing, intentional, and voluntary, it is valid and the parties are bound by it, and parties may waive the right to a trial de novo before a successor judge even where a determination of the cause hinges on issues of credibility. Smith v. Freeman, 232 Ill. 2d 218, 327 Ill. Dec. 683, N.E.2d , 2009 Ill. LEXIS 178 (2009).

- Rights of Accused

Although evidence was admitted that defendant requested counsel after defendant was read defendant's Miranda rights and that evidence should have not been admitted because it could be seen as indicating that defendant thought defendant was guilty, the error in admitting it was harmless. Defendant's Ill. Const. art. I, § 2 process rights were not violated, as that request was referenced only once during defendant's drug possession trial and substantial, admissible evidence supported the jury's verdict finding defendant guilty. People v. Dunlap, Ill. App. 3d , Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 1193 (4 Dist. Mar. 2, 2009).

Extended-term provisions of 730 ILCS 5/5-5-3.2(b)(2) and 730 ILCS 5/5-8-2(a)(1) are not facially unconstitutional, because due process permits courts to impose an extended term upon any defendant that a jury finds eligible for the death penalty. People v. Mena, 345 Ill. App. 3d 418, 280 Ill. Dec. 862, 803 N.E.2d 92, 2003 Ill. App. LEXIS 1543 (1 Dist. 2003), appeal denied, 208 Ill. 2d 548, 284 Ill. Dec. 344, 809 N.E.2d 1290 (2004).

If no jury finds a defendant eligible for the death penalty, the statutory scheme for extended-term sentences found in 730 ILCS 5/5-5-3.2(b)(2) and 730 ILCS 5/5-8-2(a)(1) denies a defendant due process; the statute permits a court to sentence a defendant to a term in excess of the maximum permitted by statute for the charge submitted to the jury, based on a finding of fact never submitted for jury determination. People v. Mena, 345 Ill. App. 3d 418, 280 Ill. Dec. 862, 803 N.E.2d 92, 2003 Ill. App. LEXIS 1543 (1 Dist. 2003), appeal denied, 208 Ill. 2d 548, 284 Ill. Dec. 344, 809 N.E.2d 1290 (2004).

Trial court, on learning of defendant's hearing impairment, was required to inquire into nature and extent of defendant's hearing impairment to determine accommodations needed to protect right to confront witnesses and participate in his defense; conviction was reversed where trial court made no inquiry, and made no provision to protect the defendant's right to hear the witnesses against him. People v. Williams, 331 Ill. App. 3d 662, 265 Ill. Dec. 136, 771 N.E.2d 1095, 2002 Ill. App. LEXIS 466 (1 Dist. 2002).

Trial court's exclusion of misdemeanor defendant's witnesses, on the basis that they had not been disclosed pursuant to a motion for disclosure, denied defendant his right to present witnesses in his own defense, as guaranteed by U.S. Const., Amends. VI and XIV and Ill. Const. (1970), Art. I, § 2. People v. Ramshaw, 75 Ill. App. 3d 123, 31 Ill. Dec. 105, 394 N.E.2d 21, 1979 Ill. App. LEXIS 3044 (1 Dist. 1979).

- Rule Making

A constitutionally protected interest in pursuing one's chosen profession demands that notice be given of a change in an interpretation of a rule which will substantially affect applicants for licensure before that new interpretation is binding. Burke v. Department of Registration & Educ., 83 Ill. App. 3d 647, 39 Ill. Dec. 370, 404 N.E.2d 961 (1 Dist. 1980).

- School Discipline

To determine whether a rule governing attendance and its application deprive pupils of substantive due process the appropriate test is to weigh the severity of the punitive effect of the

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sanction against the severity of the conduct sanctioned. Knight ex rel. Knight v. Board of Educ., 38 Ill. App. 3d 603, 348 N.E.2d 299 (4 Dist. 1976).

- School District Taking

Any school district established under enabling legislation is entirely subject to the will of the legislature thereafter and even without notice or hearing the state may take the school facilities in the district, without giving compensation therefor, and vest them in other districts or agencies under former Ill. Const. (1870), Art. II, § 2 (see now this section). People ex rel. Dixon v. Community Unit Sch. Dist., 2 Ill. 2d 454, 118 N.E.2d 241 (1954).

- Scope of Prohibition

Act of June 14, 1883, as amended June 29, 1885, which requires mine owner to furnish a scale and to weigh coal taken from the mine and to pay miners based on the weight of the coal does not fall with the state's police power because the requirements of the statute have no tendency to insure the personal safety of the miner, or to protect his property or the property of others. Millett v. People, 117 Ill. 294, 7 N.E. 631, 1886 Ill. LEXIS 973 (1886).

- Sentencing

Defendant's conviction became final well before the Illinois Supreme Court had decided Whitfield, which held that there was no substantial compliance with Ill. Sup. Ct. R. 402 and that due process was violated when a defendant pleaded guilty in exchange for a specific sentence and the trial court failed to advise him, prior to accepting his plea, that a mandatory supervised release term would be added to that sentence. Because defendant's conviction was final before Whitfield, defendant was not entitled to retroactive application of the new rule in Whitfield. People v. Mendez, 402 Ill. App. 3d 95, 341 Ill. Dec. 700, 931 N.E.2d 308, 2010 Ill. App. LEXIS 589 (2 Dist. 2010).

Failure to admonish defendant and others like him as to how to preserve sentencing issues for appeal when Ill. Sup. Ct. R. 605(a) did not include a requirement to give such an admonishment did not deprive defendant of due process. People v. Breedlove, 213 Ill. 2d 509, 290 Ill. Dec. 602, 821 N.E.2d 1176, 2004 Ill. LEXIS 2042 (2004).

-- In General

Trial court violated defendant's right to due process by failing to advise defendant of the option of receiving a sentence under a newer, more favorable version of the reckless homicide statute. Remand for sentencing on the aggravated DUI conviction was permissible even though it was unsentenced and unappealed. People v. Gancarz, Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 579 (1 Dist. June 30, 2006).

-- Consideration of Other Charges

The consideration of rape charges in defendant's sentencing charges for a subsequent sexual assault did not violate due process and People v. Dean, 156 Ill. App. 3d 344, 108 Ill. Dec. 922, 509 N.E.2d 618 (1st Dist. 1987), and People v. McGee, 211 Ill. App. 3d 641, 156 Ill. Dec. 102, 570 N.E.2d 578 (1st Dist. 1991), were overruled. People v. Jackson, 149 Ill. 2d 540, 174 Ill. Dec. 842, 599 N.E.2d 926 (1992), cert. denied, 507 U.S. 973, 113 S. Ct. 1416, 122 L. Ed. 2d 786 (1993).

-- Fees

Defendant's due process rights were violated when the trial court ordered him to pay a $5 fee for deposit into the Spinal Cord Fund pursuant to 730 ILCS 5/5-9-1.1 of the Unified Code of Corrections. The relationship between defendant's crime of possession of a controlled substance and the Fund was too attenuated to survive defendant's due process challenge. People v. McNeal, 364 Ill. App. 3d 867, 301 Ill. Dec. 832, 847 N.E.2d 842, 2006 Ill. App. LEXIS 247 (1

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Dist. 2006), overruled in part by, citicized in People v. Jones, 223 Ill. 2d 569, 861 N.E.2d 967, 2006 Ill. LEXIS 1671, 308 Ill. Dec. 402 (2006).

-- Juveniles

Although the imposition of an adult sentence in the juvenile's case involving first-degree murder was deleted because the trial court erred in having the juvenile's case proceed under the extended jurisdiction juvenile statute, that part of the disposition that imposed his juvenile sentence was upheld, as his rights under Apprendi were not violated because Apprendi did not apply to the dispositional stage of a juvenile prosecution. People v. Christopher K. (In re Christopher K.), 348 Ill. App. 3d 130, 284 Ill. Dec. 492, 810 N.E.2d 145, 2004 Ill. App. LEXIS 462 (1 Dist. 2004).

-- Requirements

In regard to penalties, due process requires only that the penalties be designed to remedy the evils which the legislature deemed to threaten the public. People v. Clark, 188 Ill. App. 3d 79, 135 Ill. Dec. 743, 544 N.E.2d 100 (4 Dist. 1989), appeal denied, 139 Ill. Dec. 516, 548 N.E.2d 1072, cert. denied, 497 U.S. 1026, 110 S. Ct. 3276, 111 L. Ed. 2d 786 (1990).

-- Standards

Where the trial court apparently summarily dismissed the inmate's postconviction petition at a status hearing without giving any notice to the inmate's counsel beforehand, this violated Ill. Const. Art. I, § 2. Am. Serv. Ins. Co. v. Pasalka, 363 Ill. App. 3d 385, 299 Ill. Dec. 867, 842 N.E.2d 1219, 2006 Ill. App. LEXIS 41 (1 Dist. 2006).

Defendant failed to carry burden to show that 720 ILCS 5/24-1.6, criminalizing aggravated unlawful use of a weapon, violated either substantive due process or the guarantee of proportionate penalties; the offense prescribes a scienter requirement of knowing action, and because the offense has a different legislative purpose than 720 ILCS 5/24-1.5, criminalizing reckless discharge of a firearm, there is no impropriety in prescribing far more severe sentences for unlawful use than for reckless discharge. People v. Sole, 357 Ill. App. 3d 988, 294 Ill. Dec. 495, 831 N.E.2d 18, 2005 Ill. App. LEXIS 521 (1 Dist. 2005).

Severe sentences for solicitation of murder for hire did not violate either the proportionality in sentencing guarantee of Ill. Const. Art. I, § 11 or the due process guarantee of Ill. Const. Art I, § 2, because none of the other crimes with which punishments were compared incorporated the element of paying a person to carry out a murder, so they were not comparable, and because the legislature was free to perceive murder for hire as a distinct evil subject to special punishments. People v. Voit, 355 Ill. App. 3d 1015, 292 Ill. Dec. 17, 825 N.E.2d 273, 2004 Ill. App. LEXIS 1481 (1 Dist. 2004), appeal denied, 216 Ill. 2d 729, 298 Ill. Dec. 389, 839 N.E.2d 1036 (2005).

Legislature could have reasonably determined that producing greater amounts of a substance containing methamphetamine created the greater threat to public health and safety; thus the penalty scheme of 720 ILCS 570/401(a)(6.5)(D) is reasonably related to the legislative objectives of the Controlled Substances Act and does not violate the due-process clauses of either the United States or Illinois Constitution. People v. McCleary, 353 Ill. App. 3d 916, 289 Ill. Dec. 173, 819 N.E.2d 330, 2004 Ill. App. LEXIS 1389 (4 Dist. 2004), appeal denied, 213 Ill. 2d 570, 293 Ill. Dec. 867, 829 N.E.2d 792 (2005).

Presumptive Transfer Statute, 705 ILCS 405/5-805(2), does not constitute any kind of punishment, and the Illinois Supreme Court has stated that Apprendi is about sentencing only; thus, where defendants were transferred under the statute, although the juvenile court made findings that exposed defendants to a greater sanction, defendants had no due process right to have a jury make those findings beyond a reasonable doubt, and their Apprendi challenge was misplaced and inapplicable. People v. Perea, 347 Ill. App. 3d 26, 282 Ill. Dec. 730, 807 N.E.2d 26, 2004 Ill. App. LEXIS 193 (1 Dist. 2004).

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Defendant's extended conviction, based on a prior felony conviction, did not violate the Illinois constitution because the prior conviction did not relate to the commission of the robbery for which he stood charged and the prior conviction was the result of a proceeding in which defendant had the right to a trial by jury in which the State was required to establish his guilt beyond a reasonable doubt. Those safeguards mitigated any constitutional concerns regarding defendant's due process and jury trial guarantees. People v. Stackhouse, 354 Ill. App. 3d 265, 289 Ill. Dec. 952, 820 N.E.2d 1027, 2004 Ill. App. LEXIS 1411 (1 Dist. 2004), overruled in part by People v. Lewis, 223 Ill. 2d 393, 860 N.E.2d 299, 2006 Ill. LEXIS 1651, 307 Ill. Dec. 645 (2006).

The policy underlying Illinois' constitutional assurances of proportionate penalties and due process would be violated if the penalty prescribed for an offense were not as great or greater than the penalty prescribed for a less serious offense. People v. Chapin, 233 Ill. App. 3d 28, 174 Ill. Dec. 38, 597 N.E.2d 1250 (3 Dist. 1992).

The sentencing standards in the death penalty statute, which provide for the weighing of mitigating factors against aggravating factors, do not offend due process. People v. Williams, 97 Ill. 2d 252, 73 Ill. Dec. 360, 454 N.E.2d 220 (1983), cert. denied, 466 U.S. 981, 104 S. Ct. 2364, 80 L. Ed. 2d 836 (1984), 505 U.S. 1208, 112 S. Ct. 3002, 120 L. Ed. 2d 877 (1992).

Sentencing codes which can cause a misdemeanant to be incarcerated longer than a felon and offers misdemeanants less incentive for good conduct do not violate due process, as different groups are affected. People v. Burton, 100 Ill. App. 3d 1021, 56 Ill. Dec. 430, 427 N.E.2d 625 (4 Dist. 1981).

-- Use of Firearm

Trial court did not err in imposing a sentence enhancement of 25 years, and, indeed, was required to do so pursuant to 730 ILCS 5/5-8-1(a)(1)(d)(iii) based on defendant's conduct in using a firearm to shoot another person to death; moreover, the sentence enhancement did not violate defendant's due process rights as the legislature was entitled to determine that the social ill being addressed, the use of guns, merited the penalty imposed. People v. Young, 365 Ill. App. 3d 753, 302 Ill. Dec. 847, 850 N.E.2d 284, 2006 Ill. App. LEXIS 334 (1 Dist. 2006), appeal denied, 219 Ill. 2d 596, Ill. Dec. , 852 N.E.2d 248 (2006); cert. denied, 2007 U.S. LEXIS 2176 (U.S. 2007).

- Settlement

Plaintiff's settlement, entered into on the advice of counsel, more than one year after an automobile accident, for a sum that was not unconscionable, could not be set aside merely because she claimed that she had discovered a new injury after entry into the settlement. Willis v. Reum, 64 Ill. App. 3d 146, 21 Ill. Dec. 111, 381 N.E.2d 46, 1978 Ill. App. LEXIS 3284 (1 Dist. 1978).

- Sex Offender Registration

730 ILCS 150/2(B)(1.5) of the Illinois Sex Offender Registration Act, as applied to defendant, did not violate his right to substantive due process. Although there was no evidence he had a sexual motive for kidnapping a minor, the legislature could rationally conclude that kidnappers of children posed such a threat to sexually assault those children as to warrant their inclusion in the sex offender registry. People v. Phillip C. (In re Phillip C.), 364 Ill. App. 3d 822, 301 Ill. Dec. 791, 847 N.E.2d 801, 2006 Ill. App. LEXIS 254 (1 Dist. 2006), appeal denied, 225 Ill. 2d 635, 875 N.E.2d 1112, 2007 Ill. LEXIS 1228 (2007).

Amendments to the sex offender notification law, under 730 ILCS 152/115(b) and 730 ILCS 152/120(c), providing for a website to post names and pictures of sex offenders, did not violate defendant's right to due process under Ill. Const. Art. I, § 2; damage to a person's reputation did not constitute a deprivation of liberty or property, and any stigma suffered by defendant's sex offense stemmed from defendant's own criminal act, not from a truthful and accurate compilation

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of public information. People v. Grochocki, 343 Ill. App. 3d 664, 277 Ill. Dec. 438, 796 N.E.2d 153, 2003 Ill. App. LEXIS 1237 (3 Dist. 2003).

Placement of the name of an individual who was the focus of an "indicated report" of child sex abuse on the Illinois State Central Register of suspected child abusers implicated both federal liberty interests and Illinois constitutional due process rights; the Department violated the individual's due process rights when it failed to comply with time requirements in Ill. Admin. Code ch. 89, § 336.220(a) (2001) and 325 ILCS 5/7.16, inasmuch as it failed to timely confirm the original "credible evidence" finding by a preponderance of evidence finding. Montalbano v. Ill. Dep't of Children & Family Servs., 343 Ill. App. 3d 471, 278 Ill. Dec. 160, 797 N.E.2d 1078, 2003 Ill. App. LEXIS 1220 (4 Dist. 2003), appeal denied, 209 Ill. 2d 583, 286 Ill. Dec. 166, 813 N.E.2d 223 (2004).

Within the context of the Sex Offender Registration Act, 730 ILCS 150/1 et seq., procedural due process did not entitle a juvenile sex offender to a hearing to determine that he was not currently dangerous, as his current dangerousness was irrelevant to the requirement to register, which was based solely on the fact of the offense for which the juvenile was adjudicated a juvenile delinquent. People v. D.R. (In re D.R.), 342 Ill. App. 3d 512, 276 Ill. Dec. 638, 794 N.E.2d 888, 2003 Ill. App. LEXIS 883 (1 Dist. 2003).

Registration, notification, and blood sample (non-expungeable) requirements to which sex offenders are subject bear a rational relationship to important public policies and therefore do not offend substantive due process even when applied to juvenile offenders, once they have been adjudicated sex offenders; the procedures are also constitutionally adequate. People v. J.R. (In re J.R.), 341 Ill. App. 3d 784, 275 Ill. Dec. 916, 793 N.E.2d 687, 2003 Ill. App. LEXIS 831 (1 Dist. 2003).

The Sex Offender Registration Act, 730 ILCS 150/1 et seq., and the Child Sex Offender and Murderer Community Notification Law, 730 ILCS 152/101 et seq., do not violate a defendant's constitutional right to due process. People v. Guillen, 307 Ill. App. 3d 35, 240 Ill. Dec. 470, 717 N.E.2d 563 (2 Dist. 1999).

- Speedy Trial

-- In General

To constitute a violation of due process it must be shown that the delay between crime and arrest or charge caused substantial prejudice to the defendant's right to a fair trial and that the delay was an intentional device to gain tactical advantage over the accused. People v. Holland, 28 Ill. App. 3d 89, 327 N.E.2d 597 (2 Dist. 1975).

-- Narcotics Cases

In narcotics cases delay commonly results from continued investigation of other suppliers and considering this factor, if the delay is reasonable, due process is not offended. People v. Holland, 28 Ill. App. 3d 89, 327 N.E.2d 597 (2 Dist. 1975).

No due process violation occurred due to a delay in coming to trial where the state justified the delay on the basis of an ongoing investigation, and the defendant did not plead or show that the purpose of the delay was unreasonable; nor did the defendant plead, nor was it apparent from the record, that the delay caused substantial prejudice to the rights to a fair trial and that the delay was an intentional device to gain tactical advantage over the accused. People v. Holland, 28 Ill. App. 3d 89, 327 N.E.2d 597 (2 Dist. 1975).

- Standard of Review

-- Extent of Zoning Power

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A court will not set aside the determination of public officers, in construing a zoning ordinance, unless it is clear that the ordinance has no foundation in the public welfare but is an arbitrary or irrational exercise of power having no substantial relation to the public health, the public morals, the public safety, or the public welfare in its proper sense. Bank & Trust Co. v. Village of Wilmette, 358 Ill. 311, 193 N.E. 131 (1934).

- Standing

-- Claim Against State

A complaint in which one count asserted that all defendants violated the plaintiff's rights under the due process clause of the Illinois Constitution, to which defendant's response was that there was not a common law claim for violation of one's state constitutional rights, just as there was not a cause of action which could be brought directly under the United States Constitution, was not dismissed because Illinois courts have upheld private claims brought directly against municipalities and state actors under the Illinois Constitution and because the count could have been read as charging knowing or malicious conduct. Clark v. City of Chicago, 595 F. Supp. 482 (N.D. Ill. 1984).

Surveyor had standing to challenge the constitutionality of a statute providing for the appointment and powers of the board of examiners of land surveyors (board), even though surveyor had been licensed by the board for several years and did not bring his action until after the board sought to revoke his license because, if his license was taken under an unconstitutional statute, he would unlawfully be denied the right to practice his occupation. Doe v. Jones, 327 Ill. 387, 158 N.E. 703, 1927 Ill. LEXIS 1065 (1927).

-- Claims Against State

Former inmate, whose state court conviction had been overturned by federal court on writ of habeas corpus, had no remedy against the State of Illinois for his claim that his conviction violated Ill. Const. of 1870 Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) and Ill. Const. of 1870 Art. II, § 9 because even if the state were suable on such a claim, the wrongful acts were done by a State's Attorney, a position that was not considered a state officer; thus, because there was no state officer who was alleged to be liable and the state itself could not violate the state's constitution, the inmate had no remedy. Montgomery v. State, 21 Ill. Ct. Cl. 205, 1952 Ill. Ct. Cl. LEXIS 17 (Ct. Cl. 1952).

-- Municipal Corporation

City was civilly liable to an administrator for damages in a child's death due to the negligence of an employee in performing the employee's street sweeping duty because the employee was performing a corporate, not a governmental, function of the city; while the discharge of the city's duty to cleanse the streets under the Illinois Cities and Villages Act art. 5, § 1(12) incidentally benefitted the public health, it was not a public function. Roumbos v. Chicago, 332 Ill. 70, 163 N.E. 361, 1928 Ill. LEXIS 1052 (1928).

-- Municipal Corporations

Municipalities had standing to challenge, on due process and police power grounds, a neighboring municipality's adoption of zoning ordinances permitting the construction and operation of an outdoor amphitheater because they showed the existence of a real interest in the subject matter of the controversy when they offered evidence that the amphitheater would diminish their municipal revenues by lowering property values in their communities, would increase their expenditures by requiring them to deal with the congestion caused by theater-goers, and would cause the degradation of ambient air quality due to vehicular exhaust and an increase in sound levels. Barrington Hills v. Hoffman Estates, 81 Ill. 2d 392, 43 Ill. Dec. 37, 410 N.E.2d 37, 1980 Ill. LEXIS 369 (1980).

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Company who operated indoor tennis clubs in the village was without standing to challenge the classification of the ordinance regarding the licensing and taxation of amusement facilities where the record failed to show that the company was being taxed by the village differently from any other recreational facility or from outdoor tennis courts. Greater Chicago Indoor Tennis Clubs, Inc. v. Willowbrook, 63 Ill. 2d 400, 349 N.E.2d 3, 1976 Ill. LEXIS 327 (1976).

One who is not directly affected by a statute or an ordinance is without standing to attack its constitutionality. Greater Chicago Indoor Tennis Clubs, Inc. v. Willowbrook, 63 Ill. 2d 400, 349 N.E.2d 3, 1976 Ill. LEXIS 327 (1976).

Defendant city had no standing to attack section 1-4-6 of the Illinois Municipal Code (65 ILCS 5/1-4-6) as violative of either the U.S. Const., Amend. 14 or Ill. Const. (1870), Art. II, § 2 (see now this section) since, under the doctrine of legislative supremacy over municipal corporations, a municipal corporation may not assert the protection of the due process clause against action of the state government. Meador v. City of Salem, 51 Ill. 2d 572, 284 N.E.2d 266 (1972).

- State Action

-- Attorney Fees for Private Adoptions

The fact that there is a statute which allows for individuals to bring private adoption proceedings (750 ILCS 50/1 et seq.) does not of itself turn an action into "state" action; therefore, the court is powerless to mandate a county to pay for the costs of an attorney in private adoption proceedings absent statutory authorization or a deprivation of any constitutional right. Rosewell v. Hanrahan, 168 Ill. App. 3d 329, 119 Ill. Dec. 542, 523 N.E.2d 10 (1 Dist. 1988).

-- Child Abduction Statute

A father's interest in the companionship, care, custody, and management of his illegitimate child, while cognizable and substantial, was subject to the state's countervailing interest in protecting the custodial right of one parent from the abductive abuses of the other; therefore, this section did not violate the father's substantive due process right in the continued care and custody of his child. People v. Morrison, 223 Ill. App. 3d 176, 165 Ill. Dec. 330, 584 N.E.2d 509 (3 Dist. 1991), cert. denied, 144 Ill. 2d 640, 169 Ill. Dec. 148, 591 N.E.2d 28 (1992).

-- Perjury

The unique situation of an expert witness lying about his qualifications as an expert creates additional indicia of state action which, when linked to the involvement of the state's adjudicatory processes, makes his conduct a violation of due process. People v. Cornille, 95 Ill. 2d 497, 69 Ill. Dec. 945, 448 N.E.2d 857 (1983).

- Statute of Limitations

Provison of the Illinois Local Governmental and Governmental Employees Tort Immunity Act extending the statute of limitations from one to two years could not be applied retroactively to a malpractice suit that was time-barred under the prior statute because under the Due Process Clause of the Illinois Constitution defendant doctor had a vested right in the expiration of the statute of limitations. Wheaton v. Suwana, 355 Ill. App. 3d 506, 291 Ill. Dec. 407, 823 N.E.2d 993, 2005 Ill. App. LEXIS 18 (5 Dist. 2005), appeal denied, 214 Ill. 2d 553, 294 Ill. Dec. 9, 830 N.E.2d 9 (2005).

Statute of limitations is a vested right, and an act extending a statute of limitations to allow holders of invalid school bonds to recover the cost of the bonds was unconstitutional under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Board of Education v. Blodgett, 155 Ill. 441, 40 N.E. 1025, 1895 Ill. LEXIS 1377 (1895).

- Statutory Interpretation

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Retroactive application of 605 ILCS 5/6-620 did not violate the taxpayers rights to due process because the road tax at issue was not limited to the parties in the action. In addition, there was no evidence to support a finding that the taxpayers reasonably and detrimentally relied on the prior law because the taxpayers had already paid the challenged tax, there was no increase in the tax rate, and the new law did not eliminate deductions or exemptions. Allegis Realty Investors v. Novak, 223 Ill. 2d 318, 307 Ill. Dec. 592, 860 N.E.2d 246, 2006 Ill. LEXIS 1115 (2006), appeal after remand, remanded, 379 Ill. App. 3d 636, 319 Ill. Dec. 54, 885 N.E.2d 325, 2008 Ill. App. LEXIS 177 (2d Dist. 2008); appeal denied, 229 Ill. 2d 617, 325 Ill. Dec. 1, 897 N.E.2d 249, 2008 Ill. LEXIS 907 (2008).

When determining whether to apply an amendment to statutes retroactively the best approach is to apply the law as it existed at the time of the appeal; an exception to this general rule exists when the application of the change in the law would affect a vested right which is protected from legislative interference under this section. First of Am. Trust Co. v. Armstead, 171 Ill. 2d 282, 215 Ill. Dec. 639, 664 N.E.2d 36 (1995).

- Substantive Due Process

Where a limousine service asserted a violation of substantive due process after a city issued more limousine licenses to operators than allowed under a city ordinance, the violation asserted was a violation of state constitutional protections under Ill. Const. (1970), Art. I, § 2 and the action was dismissed from federal court under Rule 12(b)(6), Federal Rules of Civil Procedure. Chicago Limousine Serv. v. City of Chicago, F. Supp. 2d , 1998 U.S. Dist. LEXIS 13416 (N.D. Ill. Aug. 26, 1998).

- Suspension of Driving Privileges

Administrative hearing procedures afforded under the Illinois zero tolerance law, 625 ILCS 5/11-501.8, for review of the summary suspension of driving privileges satisfy due process requirements Arvia v. Madigan, 209 Ill. 2d 520, 283 Ill. Dec. 895, 809 N.E.2d 88, 2004 Ill. LEXIS 671 (2004).

Placing the burden of proof upon the suspended motorist seeking recision of his suspension does not violate the due process clause of either the federal or the state constitutions. People v. Orth, 124 Ill. 2d 326, 125 Ill. Dec. 182, 530 N.E.2d 210 (1988).

-- Warnings

Because due process does not require that the summary suspension warnings under 625 ILCS 5/11-501.1 be given at all, it does not require that they be given in a language the defendant understands. People v. Wegielnik, 152 Ill. 2d 418, 178 Ill. Dec. 693, 605 N.E.2d 487 (1992).

- Suspension of Sheriff

Suspension of deputy sheriff for five days without a hearing was neither summary nor arbitrary and was within the boundaries of constitutional due process. McCoy v. Brown, 100 Ill. App. 3d 988, 56 Ill. Dec. 424, 427 N.E.2d 619 (4 Dist. 1981).

- Taxation

Debtors were not liable to the State for unpaid property taxes because the original excess valuation of the property was in excess of the true valuation of the property and equalized assessment was violation of due process and equal protection. In re Chicago R. Co., 79 F. Supp. 989, 1948 U.S. Dist. LEXIS 2417 (N.D. Ill. 1948).

- Taxes

In an action challenging the recovery of delinquent personal property taxes, it was not a denial of due process for the state to fail to publish assessment lists within the time prescribed by statute

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and to correct such failure through a validating act; there was no constitutional requirement that such lists be published. People v. Holmstrom, 8 Ill. 2d 401, 134 N.E.2d 246, 1956 Ill. LEXIS 270 (1956).

- Unregistered Firearm in Vehicle Ordinance

A Chicago ordinance that allowed for the seizure and impoundment of any motor vehicle that contained an unregistered firearm or a firearm that was not broken down in a nonfunctioning state did not violate substantive due process, notwithstanding that the ordinance precluded as a defense the innocence of third-party vehicle owners, as the ordinance only applied when there was direct privity between the owner and the wrongdoer and did not apply when, for example, the vehicle was stolen or operated as a common carrier. People v. Jaudon, 307 Ill. App. 3d 427, 241 Ill. Dec. 76, 718 N.E.2d 647 (1 Dist. 1999).

- Use of Electronic Stun Belts

-- Factors

The use of electronic stun belts in the courts of Illinois is warranted only where there has been a showing of manifest need for the restraint; defendants are entitled to a Boos hearing. Factors to be considered by the trial court in making this determination may include: (1) the seriousness of the present charge against the defendant, (2) the defendant's temperament and character, (3) the defendant's age and physical characteristics, (4) the defendant's past record, (5) any past escapes or attempted escapes by the defendant, (6) evidence of a present plan of escape by the defendant, (7) any threats by the defendant to harm others or create a disturbance, (8) evidence of self-destructive tendencies on the part of the defendant, (9) the risk of mob violence or of attempted revenge by others, (10) the possibility of rescue attempts by other offenders still at large, (11) the size and mood of the audience, (12) the nature and physical security of the courtroom, and (13) the adequacy and availability of alternative remedies. People v. Allen, 222 Ill. 2d 340, 305 Ill. Dec. 544, 856 N.E.2d 349, 2006 Ill. LEXIS 1079 (2006).

- Use of Sewer

Village ordinance, which prohibited the construction of a residence except on a street improved with water, sewer, and pavement, and on which the village relied when it refused a landowner's request for permission to connect to the existing combination storm and sanitary sewer system was unconstitutional as applied to that landowner because the land at issue was part of the tract that had been specially assessed to fund the existing sewer system; because the prior ordinance creating the special assessment granted owners within that area the right to use the sewer system, the landowner had a vested right to use the sewer system equally with all other property in the assessment area. Although the village's police power would allow it to regulate the use of a sewer improvement, the village's application of the later ordinance arbitrarily denied the landowner use of the sewer system it had paid for, in violation of the landowner's equal protection and due process rights. La Salle Nat'l Bank v. Riverdale, 16 Ill. 2d 151, 157 N.E.2d 7, 1959 Ill. LEXIS 249 (1959).

- Vagueness Standard

Where the Dental Practice Act, 1933 Ill. Laws 708, at § 18b, limited the advertising by dentists proscribed claims of painless dentistry, or the use of others to solicit business, the act was not vague and was not unconstitutional under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) People v. Dubin, 367 Ill. 229, 10 N.E.2d 809, 1937 Ill. LEXIS 484 (1937).

-- In General

Presumptive Transfer Statute, 705 ILCS 405/5-805(2), was not unconstitutionally vague as applied to defendants because defendants were transferred based on a Class X felony and convicted of a Class X felony, albeit of a different kind; because of the Class X status of their

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crime, defendants knew that they would be subject to the sentencing provisions of the Criminal Code. People v. Perea, 347 Ill. App. 3d 26, 282 Ill. Dec. 730, 807 N.E.2d 26, 2004 Ill. App. LEXIS 193 (1 Dist. 2004).

Under the due process clause, a statute is void for vagueness if its prohibitions are not clearly defined. People v. Fabing, 196 Ill. App. 3d 495, 143 Ill. Dec. 359, 554 N.E.2d 294 (1 Dist. 1990).

To prevail in a vagueness challenge to a statute that does not implicate First Amendment concerns, a party must show that the statute did not provide clear notice that the party's conduct was prohibited. People v. Jihan, 127 Ill. 2d 379, 130 Ill. Dec. 422, 537 N.E.2d 751 (1989).

The federal and state constitutions do not require impossible levels of specificity in penal statutes but only that the statute convey sufficiently definite warnings that can be understood when measured by common understanding and practices. People v. Caffrey, 97 Ill. 2d 526, 74 Ill. Dec. 30, 455 N.E.2d 60 (1983).

The overwhelming body of judicial opinion from courts in Illinois, as well as the United States Supreme Court, indicates that a statute should not be held void due to vagueness unless the intent of the legislature cannot be inferred from the face of the statute. People v. Caffrey, 97 Ill. 2d 526, 74 Ill. Dec. 30, 455 N.E.2d 60 (1983).

Due process requires that a person of ordinary intelligence be given a reasonable opportunity to know what is prohibited. A statute is not rendered unconstitutionally vague, however, merely because the imagination can conjure up hypothetical situations in which the meaning of some terms may be in question. Schiller Park Colonial Inn, Inc. v. Berz, 63 Ill. 2d 499, 349 N.E.2d 61, 1976 Ill. LEXIS 339 (1976).

For a statute to be held valid, the duty imposed by it must be prescribed in terms definite enough to serve as a guide to those who have a duty imposed upon them. People ex rel. Duffy v. Hurley, 402 Ill. 562, 85 N.E.2d 26, 1949 Ill. LEXIS 269 (1949).

Statutes that are so incomplete, vague, indefinite, and uncertain that men of ordinary intelligence must necessarily guess at their meaning and differ as to their application are an unconstitutional deprivation of due process. People ex rel. Duffy v. Hurley, 402 Ill. 562, 85 N.E.2d 26, 1949 Ill. LEXIS 269 (1949).

Statutes which either forbid or require the doing of an act in terms so vague that men of common intelligence must necessarily guess at their meaning and differ as to their application do not constitute due process of law. Parks v. Libby-Owens-Ford Glass Co., 360 Ill. 130, 195 N.E. 616 (1935).

-- Aggravated Battery Statute

The use of the phrase "great bodily harm" in the aggravated battery statute (720 ILCS 5/12-4(a)) does not fail to give defendant adequate warning regarding his conduct; the constitutional protection designed to allow an individual to steer between lawful and unlawful conduct does not extend to an individual's choice between two different forms of prohibited activity, i.e., misdemeanor battery or felony battery. People v. Caliendo, 84 Ill. App. 3d 987, 40 Ill. Dec. 41, 405 N.E.2d 1133 (1 Dist. 1980).

-- Commercial Zoning Ordinance

Ordinance limiting adult bookstores to commercially zoned areas was not so vague as to violate the due process clause of the Illinois or the United States Constitutions for the language in question gave defendants a sufficiently definite warning and fair notice as to the forbidden conduct regulated by the ordinance. City of Chicago v. Scandia Books, Inc., 102 Ill. App. 3d 292, 58 Ill. Dec. 72, 430 N.E.2d 14 (1 Dist. 1981).

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-- Criminal Statutes

Criminal statutes are held to a higher standard than civil sanctions and must define the crime with "appropriate definiteness." People v. Fabing, 196 Ill. App. 3d 495, 143 Ill. Dec. 359, 554 N.E.2d 294 (1 Dist. 1990).

-- Franchise Disclosure Act

The standard "in the public interest" for exemption from criminal prosecution under the Franchise Disclosure Act (815 ILCS 705/9) is an intelligble standard which survives constitutional scrutiny. People v. Carter, 97 Ill. 2d 133, 73 Ill. Dec. 329, 454 N.E.2d 189 (1982).

-- Grandparent Visitation

Best interest of the child standard in the grandparental-visitation statute, 735 ILCS 5/607(b)(1), was not vague and did not render the statute unconstitutional because, although 735 ILCS 5/607 of the Illinois Marriage and Dissolution Act itself did not include an defining terms, 735 ILCS 5/602 of the Dissolution Act, which dealt with the determination of custody did define "best interest of the child;" furthermore, 735 ILCS 5/602 was not the only source of aid available to trial courts faced with making grandparental visitation decisions because 735 ILCS 5/609 of the Dissolution Act, dealing with court approval of the removal of children from Illinois also used the best interests of the child standard and, although 735 ILCS 5/609 contained no definitions of best interests, the Illinois Supreme Court had suggested several criteria to be utilized in many cases. In re Mehring, 324 Ill. App. 3d 262, 258 Ill. Dec. 28, 755 N.E.2d 109, 2001 Ill. App. LEXIS 640 (1 Dist. 2001).

-- Insurance

Term "fraudulent or dishonest practices," used in the Insurance Code to provide that commission of such practices was a ground for license revocation, was not impermissibly vague, in the context of the Insurance Code and the revocation order under review, it could hardly be supposed that an insurance agent would entertain any doubt that the fabrication of insurance claims and the application of payments thereon to his own use would constituted a "fraudulent or dishonest" practice in the conduct of the business in which he had been licensed to engaged. Patchett v. Baylor, 62 Ill. 2d 426, 343 N.E.2d 484, 1976 Ill. LEXIS 265 (1976).

-- Interpretation of Obscene and Indecent

Where there is a conflict in interpretation as to whether pictures are obscene and indecent, where one may honestly conclude they are not obscene and indecent, and the court or jury determine that they were, this does not render the statute void for vagueness or indefiniteness. People v. Friedrich, 385 Ill. 175, 52 N.E.2d 120 (1943).

-- Look-Alike Drugs

Subdivision (z) of 720 ILCS 570/102, which clearly states that a look-alike substance means a noncontrolled substance resembling a controlled substance, is both detailed and definite, so that a typical reasonable person considering it would have sufficient guidance to comply with the statute. People v. Prather, 138 Ill. App. 3d 32, 92 Ill. Dec. 619, 485 N.E.2d 430 (1 Dist. 1985).

-- Medical Advertising

Enforcement of limits on medical advertising set forth at 225 ILCS 60/26 was not precluded under the vagueness doctrine where the chiropractor disciplined for their violation could easily have determined what the law required and what type of discipline was likely to result from violation. Vuagniaux v. Dep't of Prof'l Regulation, 208 Ill. 2d 173, 280 Ill. Dec. 635, 802 N.E.2d 1156, 2003 Ill. LEXIS 2279 (2003).

-- Municipal Police Pension Ordinance

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A municipal ordinance providing that the "failure of any police officer to participate in a Pension Fund shall be grounds for cause for removal from his position as a Springfield City Police Officer" was not void for vagueness where simple reference to the dictionary revealed the common meaning of the words employed. Sanders v. City of Springfield, 130 Ill. App. 3d 490, 85 Ill. Dec. 710, 474 N.E.2d 438 (4 Dist. 1985).

-- Murder

The murder statute is sufficiently distinct from the involuntary manslaughter statute to be constitutionally sound. People v. Rosenberger, 125 Ill. App. 3d 749, 81 Ill. Dec. 22, 466 N.E.2d 608 (4 Dist. 1984).

-- Open Meetings Act

The Open Meetings Act (former Ill. Rev. Stat. 1977, ch. 102, para. 41 et seq.) as applied to defendants, was not impermissibly vague because statute clearly prohibited all meetings of members of legislative bodies, where deliberations were conducted or actions taken on public business and, the clear import of the Act was that any subdivision of a legislative body, including but not limited to committees and subcommittees supported by tax revenues, was subject to the Act. People ex rel. Difanis v. Barr, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).

-- Parental Rights

Termination of parental rights on the basis of depravity is constitutionally permissible and is not overly vague. Kellum v. Cornes, 125 Ill. App. 3d 512, 80 Ill. Dec. 821, 466 N.E.2d 273 (5 Dist. 1984), appeal dismissed, 471 U.S. 1062, 105 S. Ct. 2129, 85 L. Ed. 2d 493 (1985).

-- Requirements

Two requirements must be met to withstand constitutional scrutiny under the vagueness doctrine: first, the penal statute must be clearly defined and give a person of ordinary intelligence a fair warning as to what conduct is proscribed, and second, the statute must provide definite standards and guidance, so as to avoid arbitrary enforcement and application by police officers, judges, and juries. People v. Fabing, 196 Ill. App. 3d 495, 143 Ill. Dec. 359, 554 N.E.2d 294 (1 Dist. 1990).

Juvenile's claim that proceeding with his first-degree murder case under the extended jurisdiction juvenile statute violated his constitutional rights because it was unconstitutionally vague in giving him proper notice as to what actions were sufficient to lift the stay on the adult criminal sentence that was imposed had to be rejected; that statute stated that in order to have the adult portion of the sentence vacated, a juvenile had to successfully complete the juvenile portion of the sentence, which involved not committing a new "offense" and reasonable people would understand that a new "offense" would be a criminal offense as defined in the Illinois Criminal Code. People v. Christopher K. (In re Christopher K.), 348 Ill. App. 3d 130, 284 Ill. Dec. 492, 810 N.E.2d 145, 2004 Ill. App. LEXIS 462 (1 Dist. 2004).

There is nothing vague about the term "arrange;" thus, 720 ILCS5/11-6.5 is not unconstitutionally vague and does not violate due process principles under the Fourteenth Amendment of the United States Constitution and Ill. Const. (1970), Art. I, § 2 on vagueness grounds. People v. M.T. (In re M.T.), 352 Ill. App. 3d 131, 287 Ill. Dec. 592, 816 N.E.2d 354, 2004 Ill. App. LEXIS 1001 (1 Dist. 2004).

-- Supreme Court Rule

Trial court did not err in entering a judgment that barred the alleged tortfeasors from rejecting an arbitration award in favor of the claimant in a case where the claimant and the alleged tortfeasors were involved in an auto accident, the claimant sued them for negligence, and the alleged tortfeasors failed to participate in arbitration in a meaningful manner by failing to comply with the claimant's discovery requests; entry of a judgment pursuant to Rule 91(b), Supreme Court Rules

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that barred them from rejecting the arbitration award was a proper way of sanctioning them for disregarding discovery orders and to prevent abuse of the arbitration process, and that supreme court rule was not unconstitutionally vague because it was sufficient in its definiteness that people of ordinary intelligence could discern its meaning. Campuzano v. Peritz, 376 Ill. App. 3d 485, 314 Ill. Dec. 947, 875 N.E.2d 1234, 2007 Ill. App. LEXIS 1050 (1 Dist. 2007).

- Validity of Penalty

The penalty prescribed for the particular crime need only be reasonably tailored to remedy the evil which the legislature has determined to be a threat to the public health, safety and general welfare. People v. Anderson, 272 Ill. App. 3d 537, 208 Ill. Dec. 954, 650 N.E.2d 648 (1 Dist. 1995), appeal denied, 163 Ill. 2d 564, 212 Ill. Dec. 425, 657 N.E.2d 626 (1995).

- Victim Impact Statement

Admission of victim impact statement did not violate defendant's due process rights where the introduction of the statement was not unduly prejudicial and, indeed, harmless error at worst; trial judge indicated that harsh sentence was imposed based on need to protect the public from defendant. People v. Harth, 339 Ill. App. 3d 712, 274 Ill. Dec. 610, 791 N.E.2d 702, 2003 Ill. App. LEXIS 773 (2 Dist. 2003).

- Waiver

-- In General

Where the Illinois Department of Employment Security had determined that a carpet company's installers were not independent contractors, the company waived its due process claim, based on an assertion that the director of the department had a vested interest in the outcome of the determination, by failing to raise the claim at the first opportunity during the department's administrative proceedings. The director should have been given an opportunity to build a record on the issue. Carpetland U.S.A., Inc. v. Ill. Dep't of Empl. Sec., 201 Ill. 2d 351, 267 Ill. Dec. 29, 776 N.E.2d 166, 2002 Ill. LEXIS 339 (2002).

The failure to raise the issue of a statute's constitutionality in the trial court is a waiver of that issue on review unless a substantial question of constitutionality is raised, which if sustained, would make void the applicable statute or a pertinent part thereof. People v. Moorhead, 128 Ill. App. 3d 137, 83 Ill. Dec. 405, 470 N.E.2d 531 (2 Dist. 1984).

Although imposition of a tax on a foreign corporation that included property located outside the state and business transacted outside the state implicated due process concerns, a corporation waived the right to have the proportionate method of assessing additional taxes by failing to file an amended annual report before the payment of its annual franchise tax or the expiration of the deadline under 805 ILCS 5/1.01 et seq. United States Borax & Chemical Corp. v. Carpentier, 14 Ill. 2d 111, 150 N.E.2d 818, 1958 Ill. LEXIS 321 (1958).

Constitutional rights, like other rights, may be waived. People v. Adams, 4 Ill. 2d 453, 123 N.E.2d 327 (1954).

-- Preliminary Hearing

Neither the fundamental principles of due process nor the state constitution requires that a particular procedure be employed for a valid waiver of a preliminary hearing; rather, all that is required is that the waiver be understandingly made. People v. Krison, 63 Ill. App. 3d 531, 20 Ill. Dec. 471, 380 N.E.2d 449 (5 Dist. 1978).

-- Right to Counsel

The waiver of the right to counsel and other constitutional rights must be knowingly and intelligently made. People v. Long, 77 Ill. App. 2d 124, 221 N.E.2d 507 (2 Dist. 1966).

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- Waiver of Right to Testify

Denial of defendant's postconviction petition was affirmed because because the circuit court did not err in finding that defendant waived his right to testify, as there was no evidence that he was unaware of such right or that he was prevented him from exercising it. People v. Chatman, 357 Ill. App. 3d 695, 294 Ill. Dec. 21, 830 N.E.2d 21, 2005 Ill. App. LEXIS 447 (1 Dist. 2005), cert. denied, 2007 U.S. LEXIS 2153 (U.S. 2007).

- Witnesses to Confessions

All of the witnesses to the confession or those taking part in obtaining it must be produced or their absence explained. People v. Prohaska, 8 Ill. 2d 579, 134 N.E.2d 799 (1956).

- Zoning Ordinances

Landowners' action seeking to enjoin application of a zoning ordinance requiring single-family residences was properly denied because the ordinance was in place when they bought their property and other multi-family residences were nonconforming uses, and therefore there was no violation of Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Jacobson v. Wilmette, 403 Ill. 250, 85 N.E.2d 753, 1949 Ill. LEXIS 307 (1949).

Elections

- New Parties

The full-slate requirement of 10 ILCS 5/10-2 is not so burdensome on a new party that it violates the constitution; the requirement merely forces the party to show that, within a district, it has support sufficient to allow it to field a candidate for each open position. Green Party v. Henrichs, 355 Ill. App. 3d 445, 291 Ill. Dec. 35, 822 N.E.2d 910, 2005 Ill. App. LEXIS 37 (3 Dist. 2005).

- Reapportionment Scheme

That Chicago elected its aldermen to serve four year terms, which caused a temporary delay in the implementation of the new census date every 20 years, did not transform Illinois' scheme into an unconstitutional procedure; decennial reapportionment satisfies the Ill. Const. (1970), Art. I, § 2 and Art. III, § 3 and U.S. Const., Amend. XIV, even though there undoubtedly will be some imbalance in the population of each district towards the end of the decennial period. Political Action Conference v. Daley, 976 F.2d 335 (7th Cir. 1992).

Equal Protection

Sexually Violent Persons Commitment Act, 725 ILCS 207/1 et seq., does not violate the Equal Protection Clause, Ill. Const., Art. 1, § 2, by affording fewer rights than are granted to individuals committed under the provisions of the Sexually Dangerous Persons Act, 725 ILCS 205/1.01 et seq., because individuals committed pursuant to the two acts are not similarly situated, and both statutes are rationally tailored to achieve their dual objectives to provide treatment and to protect the public from sexual violence. People v. Trevino (In re Trevino), 317 Ill. App. 3d 324, 251 Ill. Dec. 524, 740 N.E.2d 810, 2000 Ill. App. LEXIS 1019 (1 Dist. 2000).

Arbitrator did not misapply the equal protection principle of Ill. Const., Art. I, § 2, in determining that although a city treated a 75-year-old applicant for a union laborer's position unfairly in requiring him to submit to a physical examination, it was not unreasonable for the city to deny him employment due to its determination that he was physically unfit to perform the job. Water Pipe Extension, Bureau of Engineering Laborers' Local Union 1092 v. Chicago, 238 Ill. App. 3d 43, 179 Ill. Dec. 280, 606 N.E.2d 112, 1992 Ill. App. LEXIS 1588 (1 Dist. 1992).

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- In General

Equal protection rights of juveniles charged with sex offenses were not violated because respondent juvenile failed to show that respondent was similarly situated to juveniles subject to extended juvenile jurisdiction; respondent did not face the possibility of an adult criminal sentence based on respondent's conviction for criminal sexual assault as a juvenile. People v. Jonathan C.B. (In re Jonathan C.B.), 386 Ill. App. 3d 735, 325 Ill. Dec. 519, 898 N.E.2d 252, 2008 Ill. App. LEXIS 1172 (4 Dist. 2008).

Injured person's equal protection argument that a fatigued driver and the driver struck by a fatigued driver are similarly situated failed as the fatigued driver would be in the best position to know of his/her fatigue and to stay off the roadway, whereas, the person struck by the fatigued driver, by definition, would be the victim of the negligence of one who chose to drive despite being too tired to do so safely; thus, the injured person, an employee, was not entitled to sue the employer for negligence, based on the equal protection doctrine. Behrens v. Harrah's Ill. Corp., 366 Ill. App. 3d 1154, 304 Ill. Dec. 303, 852 N.E.2d 553, 2006 Ill. App. LEXIS 588 (1 Dist. 2006).

Trial court did not err in denying defendant's request for a form of drug treatment, known as TASC probation, rather than sentencing him to prison time based on his convictions for residential burglary and other offenses following a bench trial. Defendant was statutorily ineligible pursuant to 20 ILCS 301/40-5(7) because of his conviction for residential burglary and his prior conviction, especially since his equal protection rights were not violated because the legislature could rationally determine that his situation merited prison time whereas someone who had a residential burglary conviction and no prior felonies should be TASC eligible. People v. Dean, 363 Ill. App. 3d 454, 300 Ill. Dec. 305, 843 N.E.2d 905, 2006 Ill. App. LEXIS 89 (1 Dist. 2006), appeal denied, 219 Ill. 2d 574, 303 Ill. Dec. 835, 852 N.E.2d 242 (2006).

State's Attorney was entitled to consult with county authorities about violations of Ill. Sup. Ct. R. 415(c) by the release of discovery materials, including police to incarcerated suspects, since there was reason to believe that witness intimidation was being attempted, and the county authorities then acted within their powers in ordering a shakedown for such materials and other contraband. There was no violation of the right to counsel, since the inmates were receiving the representation guaranteed to them by law, and no violation of equal protection because the remedy bore a rational relationship to the problem. People v. Savage, 361 Ill. App. 3d 750, 297 Ill. Dec. 760, 838 N.E.2d 247, 2005 Ill. App. LEXIS 1091 (4 Dist. 2005), appeal denied, 217 Ill. 2d 621, 300 Ill. Dec. 528, 844 N.E.2d 971 (2006).

Rational basis existed for the Pennsylvania legislature to remove from the insanity statute, 720 ILCS 5/6-2(a), a prong allowing for a defense based on the defendant's inability to conform his conduct to the requirements of law, while retaining it in the intoxication statute, 720 ILCS 5/6-3(b), since there was a concern that the insanity defense was too easy to prove and an intoxication defense, unlike an insanity defense, was subject to objective testing such as blood-alcohol level. The insanity statute did not violate the equal protection clauses of either the federal or Illinois constitutions. People v. Clay, 361 Ill. App. 3d 310, 297 Ill. Dec. 141, 836 N.E.2d 872, 2005 Ill. App. LEXIS 994 (1 Dist. 2005), appeal denied, 217 Ill. 2d 609, 300 Ill. Dec. 525, 844 N.E.2d 968 (2006).

As 220 ILCS 5/13-502.5, which abated administrative proceedings against a telephone company, did not violate the special legislation clause, Ill. Const. Art. IV, § 13, it did not violate Illinois businesses' right to equal protection under Ill Const. Art. I, § 2, as the two provisions are generally judged by the same standard. Big Sky Excavating, Inc. v. Ill. Bell Tel. Co., 217 Ill. 2d 221, 298 Ill. Dec. 739, 840 N.E.2d 1174, 2005 Ill. LEXIS 1628 (2005).

Statutory judgment interest awarded to the injured party on his judgment against the prime electrical contractor did not violate the prime electrical contractor's equal protection of the law rights; the prime electrical contractor did not show that the statute placed similarly-situated

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persons into different classifications for reasons wholly unrelated to the purpose of the legislation, which was to make judgment creditor's whole. Schultz v. Lakewood Elec. Corp., 362 Ill. App. 3d 716, 298 Ill. Dec. 894, 841 N.E.2d 37, 2005 Ill. App. LEXIS 1159 (1 Dist. 2005).

Former detainees' motion for class certification was denied because they could not show typicality, which was required under Fed. R. Civ. P. 23(a)(3): (1) the detainees had sued 39 Illinois counties in their suit; (2) the only claim that remained in the suit was the detainees' constitutional claims concerning the counties' alleged unequal application of Ill. Pub. Act 91-94, which allowed for the imposition of additional fees on individuals who posted pre-trial release bonds; (3) whether the counties had unequally and arbitrarily applied the Act could only be determined on a county by county basis; and (4) no single detainee's claim could be, or was, typical of the broad classes that the detainees sought to establish. Payton v. County of Kane, F. Supp. 2d , 2005 U.S. Dist. LEXIS 13070 (N.D. Ill. June 10, 2005).

Fire Protection District Act, 70 ILCS 705/11, did not affect a fundamental right or involve a suspect or quasi-suspect classification, and, thus, the rational basis test applied to the question of whether its application violated the state constitution's equal protection clause; since that law's residency classification was rationally related to the law's purpose of protecting the health, welfare, and safety of the public by providing adequate fire prevention and control services, the law did not violate the state constitution's equal protection clause. Wauconda Fire Prot. Dist. v. Stonewall Orchards, LLP, 214 Ill. 2d 417, 293 Ill. Dec. 246, 828 N.E.2d 216, 2005 Ill. LEXIS 318 (2005).

Firemen come within a special class of public servants who receive specialized training to anticipate and encounter risks associated with fires and placing them in a unique class under the Illinois fireman's rule does not violate equal protection. Randich v. Pirtano Constr. Co., 346 Ill. App. 3d 414, 281 Ill. Dec. 616, 804 N.E.2d 581, 2004 Ill. App. LEXIS 146 (2 Dist. 2004).

Defendants' claim that they were denied their constitutional right to equal protection under U.S. Const., Amend. XIV and Ill. Const., Art. I, § 2 was rejected because defendants, who were transferred from the juvenile system under the Presumptive Transfer Statute, 705 ILCS 405-5-805(2), were not similarly situated to those transferred under the automatic transfer provision, 705 ILCS 405/5-130(2), and the extended juvenile jurisdiction statute, 705 ILCS 405/5-710(1)(b), and the State had a rational basis for constructing various laws regarding transfer of juveniles into the criminal court system. People v. Perea, 347 Ill. App. 3d 26, 282 Ill. Dec. 730, 807 N.E.2d 26, 2004 Ill. App. LEXIS 193 (1 Dist. 2004).

-- Test

Defendant sentenced to death for first-degree murders was not entitled to relief under Ill. Sup. Ct. R. 701(b), the Illinois Constitution's Equal Protection Clause, Ill. Const. art. I, § 2, or defendant's claim under 720 ILCS 5/9-1(i) that defendant's death sentence was fundamentally unfair. Although Ill. Sup. Ct. R. 701(b) required attorneys representing capital defendants to be members of the Capital Litigation Trial Bar and defendant's attorneys were not members, they had been appointed to represent defendant before that rule went into effect, defendant's representation by nonmembers did not mean that defendant was treated differently that other similarly-situated defendants whose counsel was appointed before the rule went into effect, and defendant did not show that imposition of the death penalty was unfair because defendant's attorneys provided experienced, capable, and competent representation. People v. Ramsey, 239 Ill. 2d 342, 347 Ill. Dec. 588, 942 N.E.2d 1168, 2010 Ill. LEXIS 1534 (2010).

- Discrimination

-- Disproportionate Impact

Whether the imposition of a punitive damage award violated the equal protection clauses of the federal constitution and the state constitution under Ill. Const. art. I, § 2 by irrationally protecting wealthy defendants and prejudicing less wealthy defendants was an issue that was not ripe for

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review in the auto accident victims' lawsuit against the tortfeasor. Such damages had not been awarded in the case, which had not gone to trial, and, thus, no actual punitive damages were at issue. Powers v. Rosine, Ill. App. 3d , 353 Ill. Dec. 721, 956 N.E.2d 583, 2011 Ill. App. LEXIS 905 (3 Dist. 2011).

-- Unemployment Compensation

There was no equal protection violation in finding a township supervisor ineligible for unemployment benefits because the denial of benefits was based on the amount of his compensation as a township supervisor, not on his status as an elected official. Murphy v. Bd. of Review, 394 Ill. App. 3d 834, 334 Ill. Dec. 733, 917 N.E.2d 559, 2009 Ill. App. LEXIS 958 (1 Dist. 2009).

- Classification

a.

-- Employment

Trial court did not violate the mother and father's Ill. Const. art. I, § 2 equal protection rights in ordering them in an abuse and neglect case regarding their two minor children to find employment. The mother and father were not similarly situated to employed parents and, thus, could not claim that ordering them to find employment, but not ordering employed parents to find employment, violated their equal protection rights since ordering employed parents to find employment would be absurd. In re D.M., 395 Ill. App. 3d 972, 335 Ill. Dec. 278, 918 N.E.2d 1091, 2009 Ill. App. LEXIS 1091 (3 Dist. 2009).

Equal protection rights of a railroad employee who was covered for his work-related injuries by the Federal Employer's Liability Act, 45 U.S.C.S. § 51 et seq., were not violated by the employee under Illinois law being unable to bring a common law retaliatory discharge claim against the railroad that employed him. Irizarry v. Ill. Cent. R.R., 377 Ill. App. 3d 486, 316 Ill. Dec. 619, 879 N.E.2d 1007, 2007 Ill. App. LEXIS 1209 (1 Dist. 2007).

Ordinance was unconstitutional and void where it required the bidder for doing work on a public improvement to agree to hire only members of labor unions in the performance of such work, because that requirement amounted to a discrimination between different classes of citizens and laid down a rule that restricted competition and increased the cost of work; under the Illinois constitution and laws, any man has a right to employ a workman to perform labor for him whether the workman belongs to a labor union or not, and any workman as the right to contract for the performance of labor whether or not he belongs to a labor union. Fiske v. People, 188 Ill. 206, 58 N.E. 985, 1900 Ill. LEXIS 2452 (1900).

- In General

If a tax is constitutional under the uniformity clause, it also passes under the equal protection clause; under the principles of equal protection, a classification is invalid if it is arbitrary and without a reasonable basis. Endsley v. City of Chicago, 319 Ill. App. 3d 1009, 253 Ill. Dec. 585, 745 N.E.2d 708, 2001 Ill. App. LEXIS 133 (1 Dist. 2001).

A law is general, in the constitutional sense, not because it embraces all the governed, but that it may from its terms, when many are embraced in its provisions, embrace all others when they occupy like positions to those who are embraced; such law must be based upon some substantial difference between the situation of a class or classes and another class or classes to which it does not apply. Chicago, B. & Q. R. Co. v. Doyle, 258 Ill. 624, 102 N.E. 260, 1913 Ill. LEXIS 2097 (1913).

If a law is general and uniform in its operation upon all persons in like circumstances, it is general in a constitutional sense; a law general in its character may extend only to particular classes and

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not be obnoxious to the provisions of the constitution if all persons of the same class are treated alike under similar circumstances and conditions. Chicago, B. & Q. R. Co. v. Doyle, 258 Ill. 624, 102 N.E. 260, 1913 Ill. LEXIS 2097 (1913).

Every citizen has an equal right with every other to resort to the courts of justice for the settlement and enforcement of his rights and a discrimination between different classes of litigants that is merely arbitrary in its nature is a denial of that right and of the equal protection of the law. Bay Island Drainage & Levee Dist. v. Union Drainage Dist., 255 Ill. 194, 99 N.E. 385, 1912 Ill. LEXIS 2201 (1912).

Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) secures the citizen against laws which select particular individuals of a class and impose upon them special obligations and burdens from which others of the same class are exempt. People ex rel. Laist v. Lower, 251 Ill. 527, 96 N.E. 346, 1911 Ill. LEXIS 2245 (1911).

-- Arbitrary Discrimination

U.S. Const., Amend. 14, and this section both declare that no person shall be denied the "equal protection of the laws"; this equality of right is fundamental and the equal protection clause forbids unequal governmental action that arbitrarily discriminates against some and favors others in like circumstances. Ashcraft v. Board of Educ., 83 Ill. App. 3d 938, 39 Ill. Dec. 392, 404 N.E.2d 983 (4 Dist. 1980).

Statute which arbitrarily selects a class of individuals and subjects them to peculiar rules or imposes upon them special obligations or burdens from which other persons are exempt is unconstitutional. Charles J. Off & Co. v. Morehead, 235 Ill. 40, 85 N.E. 264, 1908 Ill. LEXIS 3008 (1908).

-- History

The state's equal protection clause (see this section) made part of the state's constitution for the first time under the 1970 Constitution; therefore, any claim for enforcement of rights predicated on this section is prospective only. People v. Grammer, 62 Ill. 2d 393, 342 N.E.2d 371 (1976).

-- Irrationality

Irrationality does not of itself doom laws, the rationality test merely delimits which classifications and distinctions abridge the right, of those unhappy with the classification, to the equal protection of the law, only those with such a right, those who have somehow been placed at a disadvantage, deserve relief. People v. Natoli, 70 Ill. App. 3d 131, 26 Ill. Dec. 266, 387 N.E.2d 1096 (1 Dist. 1979).

The legislature may even differentiate among those similarly situated as long as there is a rational basis for doing so. People v. Ramos, 155 Ill. App. 3d 374, 108 Ill. Dec. 323, 508 N.E.2d 484 (4 Dist. 1987).

In the absence of a fundamental right or suspect classification, the legislature may differentiate between persons similarly situated if there is a rational basis for doing so. Jenkins v. Delon Wu, 102 Ill. 2d 468, 82 Ill. Dec. 382, 468 N.E.2d 1162 (1984); Glinka v. Flame of Countryside, Inc., 171 Ill. App. 3d 81, 121 Ill. Dec. 54, 524 N.E.2d 1102 (1 Dist. 1988).

Under the equal protection analysis, a classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. Jenkins v. Delon Wu, 102 Ill. 2d 468, 82 Ill. Dec. 382, 468 N.E.2d 1162 (1984).

-- Requirements

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Equal protection clause prohibits the type of discrimination claimed in the International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, art. 1, but a defendant who alleges an equal protection violation has the burden of demonstrating either discriminatory intent or discriminatory effect and, to show discriminatory effect, the defendant has to demonstrate that similarly situated individuals were treated differently. People v. Caballero, 206 Ill. 2d 65, 276 Ill. Dec. 356, 794 N.E.2d 251, 2002 Ill. LEXIS 948 (2002).

Equal protection does not require equal or proportional penalties for dissimilar conduct and neither does it deny the state the power to draw lines that treat different classes of people in different ways. People v. Reed, 148 Ill. 2d 1, 169 Ill. Dec. 282, 591 N.E.2d 455 (1992).

Absent the existence of a classification which is inherently suspect or the infringement of a fundamental right, distinctions drawn by a state governmental unit in determining the application of a particular policy must be rationally related to the furtherance of a legitimate governmental interest to comply with the requirements of equal protection. Hampton v. Rowe, 88 Ill. App. 3d 352, 43 Ill. Dec. 511, 410 N.E.2d 511 (3 Dist. 1980).

Equal protection does not require that all persons be treated equally, rather it requires that there be a reasonable and rational basis for classifications which justifies any differences in the proceedings. People v. Collins, 57 Ill. App. 3d 934, 15 Ill. Dec. 404, 373 N.E.2d 750 (2 Dist. 1978).

A legislative enactment does not automatically violate one's federal and state constitutional rights to equal protection of the law merely because the statutory classification contained therein is not accurate, scientific, or harmonious or because the statute treats one class of individuals or entities differently from another class, provided it affects all members of the same class alike. Panko v. County of Cook, 42 Ill. App. 3d 912, 1 Ill. Dec. 577, 356 N.E.2d 859 (1 Dist. 1976).

Equal protection of the law requires that the rights of every person must be governed by the same rule of law under similar circumstances, and a mere arbitrary discrimination between different classes is a denial of the equal protection of the law. People v. Nicholson, 401 Ill. 546, 82 N.E.2d 656 (1948).

-- Standard of Review

A statute will be held unconstitutional as special legislation and as violative of the equal protection guarantee if it was enacted for reasons totally unrelated to the pursuit of a legitimate state goal. Bilyk v. Chicago Transit Auth., 125 Ill. 2d 230, 125 Ill. Dec. 822, 531 N.E.2d 1 (1988).

-- State Action

The first consideration when viewing a constitutional issue of equal protection is to determine whether there has been state action: it is fundamental that the constitutional restraints apply only to governments and not to individuals. Aldridge v. Boys, 98 Ill. App. 3d 803, 54 Ill. Dec. 136, 424 N.E.2d 886 (4 Dist. 1981).

-- Test

The same analysis is used in assessing equal protection claims under both the Federal and State Constitutions. People v. Reed, 148 Ill. 2d 1, 169 Ill. Dec. 282, 591 N.E.2d 455 (1992).

The threshold question in any equal protection discussion is whether similarly situated people are being treated dissimilarly. People v. Burton, 100 Ill. App. 3d 1021, 56 Ill. Dec. 430, 427 N.E.2d 625 (4 Dist. 1981).

The traditional equal protection test under both the United States and Illinois Constitutions consists of a bifurcated inquiry which first identifies the purposes or objectives of a legislative scheme and then asks whether the controverted classification bears a rational relationship to a

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legitimate legislative purpose. Panko v. County of Cook, 42 Ill. App. 3d 912, 1 Ill. Dec. 577, 356 N.E.2d 859 (1 Dist. 1976).

Under the traditional equal protection test a legislative classification will be sustained unless it is patently arbitrary and bears no rational relationship to a governmental interest. People ex rel. Hopf v. Barger, 30 Ill. App. 3d 525, 332 N.E.2d 649 (2 Dist. 1975).

The test for whether a legislative act affords equal protection to all persons affected by it is whether the legislative enactment requires the same means and methods to be employed alike by the persons composing the class affected so that the law operates uniformly on all persons similarly situated; where a law affects all members of the same class alike it is not objectionable as constituting class legislation. Schlib v. Kuebel, 46 Ill. 2d 538, 264 N.E.2d 377 (1970), aff'd, 404 U.S. 357, 92 S. Ct. 479, 30 L. Ed. 2d 502 (1971).

Provisions of the Illinois Constitution with reference to due process of law and equal protection of the law merely require that all persons subjected to such legislation shall be treated alike under like circumstances. Casparis Stone Co. v. Industrial Board of Illinois, 278 Ill. 77, 115 N.E. 822, 1917 Ill. LEXIS 1043 (1917).

Legislature undoubtedly has the constitutional power to enact laws which, by reason of peculiar circumstances, may affect some persons or classes of persons only, but in such instances the class of persons upon whom the law is to operate must possess some common disability, attribute, or qualification, or must occupy some condition marking them as proper objects for the operation of special or class legislation. Charles J. Off & Co. v. Morehead, 235 Ill. 40, 85 N.E. 264, 1908 Ill. LEXIS 3008 (1908).

- Application and Construction

The limitation on felons serving as executors contained in 755 ILCS 5/6-13 did not violate equal protection where an executor was entrusted with property to which others had claims and had to safeguard that property and ultimately distribute it in accordance with the law; as the convicted felon had demonstrated an inability to act within the confines of the law. Muldrow v. Muldrow (In re Estate of Muldrow), 343 Ill. App. 3d 1148, 278 Ill. Dec. 779, 799 N.E.2d 497, 2003 Ill. App. LEXIS 1255 (1 Dist. 2003).

-- Based on Family Relationship

Defendant guilty of sexual assault who was not a member of the victim's family was not denied equal protection on the basis of application of the provision of 730 ILCS 5/5-5-3(e) which, prior to its amendment, stated that whether or not a defendant guilty of criminal sexual assault was eligible for probation depended on whether or not he was a family member of the victim. People v. Alexander, 354 Ill. App. 3d 848, 290 Ill. Dec. 924, 822 N.E.2d 509, 2004 Ill. App. LEXIS 1525 (5 Dist. 2004).

-- Federal and State Analysis Identical

The initial step in an equal protection analysis under the state or federal constitution is to determine the proper standard of review: the rational basis test wherein classifications are constitutional if they bear a rational relationship to a permissible state interest and the strict scrutiny standard wherein classifications are constitutional only if they are necessary to promote a compelling state interest. Ashcraft v. Board of Educ., 83 Ill. App. 3d 938, 39 Ill. Dec. 392, 404 N.E.2d 983 (4 Dist. 1980).

-- Incorporation of State and Federal Safety Regulations

The statutory scheme created by the incorporation of the federal motor carrier safety regulations into the Illinois motor carrier safety regulations of the Illinois Vehicle Code does not violate the

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doctrine of equal protection of the laws. People v. Blackorby, 146 Ill. 2d 307, 166 Ill. Dec. 902, 586 N.E.2d 1231 (1992).

-- Reasonable Basis

In regulating gambling in public places, a town was free to attack the problem of gambling in places where it perceived that the threat to public safety was greatest; therefore, there was no constitutional violation in the failure to enforce the prohibition in private settings. Serpico v. Vill. of Elmwood Park, 344 Ill. App. 3d 203, 279 Ill. Dec. 158, 799 N.E.2d 961, 2003 Ill. App. LEXIS 1329 (1 Dist. 2003).

-- Relation with Special Legislation Provision

Trial court erred in declaring that a public law, which amended the Circuit Courts Act, 705 ILCS 35/1 et seq., was unconstitutional for reconsidering and eliminating three judgeships that appeared to have been authorized by earlier legislation and which would have been part of an upcoming primary election; while the state elections board, part of the executive branch, had the authority to determine whether a statute created new judgeships, the Illinois General Assembly had the authority to create such a statute in the first instance and could reconsider and eliminate a judgeship it had authorized, which meant that the Illinois General Assembly had not violated the separation of powers doctrine nor had it been shown that public act was impermissible special legislation or that it violated the equal protection or due process doctrines. Bridges v. State Bd. of Elections, 222 Ill. 2d 482, 305 Ill. Dec. 640, 856 N.E.2d 445, 2006 Ill. LEXIS 1117 (2006).

The tests for the validity of legislation under the federal and Illinois equal protection clauses (see this section) and under Ill. Const. (1970), Art. IV, § 13, the special legislation provision, are generally similar and overlapping; a classification does not violate the special legislation provision if there is a reasonable basis for the classification, and it bears a reasonable and proper relation to the purposes of the Act and the evil it seeks to remedy. People v. Keeven, 68 Ill. App. 3d 91, 24 Ill. Dec. 663, 385 N.E.2d 804 (5 Dist. 1979).

- Arbitrary Enforcement

-- In General

Statute regarding the collection of the cost of a mental patient's care in a state hospital, which provides that the amount required to paid out of the estate of any patient shall not exceed the reasonable annual income from the estate during the lifetime of the patient and that the hospital's board of administration can modify that requirement in any case where circumstances justify the modification, violated Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) and Ill. Const. of 1870, Art. IV, § 22, because it leaves entirely to the hospital board the determination how much patients must pay out of their own estates, without any guidance from the legislature; the hospital board's unfettered discretion renders the statute arbitrary and unenforceable. Board of Administration v. Miles, 278 Ill. 174, 115 N.E. 841, 1917 Ill. LEXIS 1058 (1917).

The purpose of Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) and Ill. Const. of 1870, Art. IV, § 22, is to protect every citizen in her personal and property rights against the arbitrary action of any person or authority, and a statute which subjects any person's rights to the discretion of an officer, without any rules or provisions of law to control the officer, violates the constitution. Board of Administration v. Miles, 278 Ill. 174, 115 N.E. 841, 1917 Ill. LEXIS 1058 (1917).

Any law which vests in the discretion of administrative officers the power to determine whether the law shall or shall not be enforced with reference to individuals in the same situation, without any rules or limitations for the exercise of such discretion, is unconstitutional. Board of Administration v. Miles, 278 Ill. 174, 115 N.E. 841, 1917 Ill. LEXIS 1058 (1917).

-- Concealed Weapon Permit

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City ordinance that prohibited person from buying a weapon that could be concealed on the person without first securing a permit from the general superintendent of police was not unreasonable on the basis that it unconstitutionally delegated authority to the superintendent because the ordinance did not give arbitrary or unlimited power to the superintendent; if the applicant was of the character provided for in the ordinance, it was the superintendent's duty to grant the permit and if the superintendent arbitrarily refused to do so, the courts could compel him to perform his duty. Biffer v. Chicago, 278 Ill. 562, 116 N.E. 182, 1917 Ill. LEXIS 1097 (1917).

-- Municipal Liquor Ordinance

Where all license holders under a county liquor control ordinance were allowed a grace period of 15 minutes after the required closing time to vacate their bars before any arrests were made, and defendant was arrested 30 minutes after the grace period ended, he had no standing to challenge the enforcement of the ordinance as arbitrary since it was applied against him in the same way it was applied against all licensed premises. County of McHenry v. Duenser, 49 Ill. App. 3d 125, 7 Ill. Dec. 35, 363 N.E.2d 1197 (2 Dist. 1977).

- Attorney's Fees

Where a candidate alleged a violation of the candidate's equal protection rights under 42 U.S.C.S. § 1983 and under the Illinois Constitution, the candidate would be able to recover attorney's fees and costs under 42 U.S.C.S. § 1988 if the candidate prevailed under the federal claim, but would not be able to recover such costs under the comparable state claim. Roe v. Vill. of Westmont, F. Supp. 2d , 2003 U.S. Dist. LEXIS 2530 (N.D. Ill. Feb. 21, 2003).

Section 12 of the Injunction Act, 1861 Ill. Laws p. 133, which authorizes the assessment of damages in cases where an injunction is dissolved, was not unconstitutional under Ill. Const. of 1870, Art. II, §§ 2 (now Ill. Const. 1970), Art. I, § 2), 14 and 19 and Ill. Const. of 1870, Art. IV, § 22 and Ill Const. of 1870, Art. VI, § 29; the allowance of attorney's fees to the defendant upon a dissolution of an injunction, and not to the complainant when he is successful, was not an illegal discrimination between parties litigant but a reasonable distinction. Scherzer v. Keller, 321 Ill. 324, 151 N.E. 915, 1926 Ill. LEXIS 910 (1926).

Award of a refund of the price paid for stock and attorney's fees was not an equal protection violation under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) where the stock salesman had also been an officer in the company, which had not complied with section 37 of the Securities Act. Morrison v. Farmers Elevator Co., 319 Ill. 372, 150 N.E. 330, 1925 Ill. LEXIS 826 (1925).

- Based on Age

705 ILCS 405/5-125, which allowed municipalities to choose between referring ordinance violations involving minors to the State for prosecution under the Illinois Juvenile Court Act, which offered procedural protections, or filing their own complaint under the Illinois Municipal Code, which offered no such protections, did not violated equal protection as the differential in treatment was not arbitrary. City of Urbana v. Andrew N.B., 211 Ill. 2d 456, 286 Ill. Dec. 75, 813 N.E.2d 132, 2004 Ill. LEXIS 990 (2004).

- Classification

-- In General

Legislative classification will be upheld against an equal protection challenge if any set of facts can be reasonably conceived that will sustain the classification. Oak Lawn v. Rosewell, 113 Ill. 2d 104, 100 Ill. Dec. 556, 497 N.E.2d 734, 1986 Ill. LEXIS 286 (1986).

- Classification

-- Marijuana

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Equal protection clause does not mandate that possessors of marijuana be eligible for first-offender probation whenever possessors of barbiturates are so eligible; marijuana and the drugs barbiturates, amphetamines and peyote are not similarly situated. People v. Mathey, 99 Ill. 2d 292, 76 Ill. Dec. 99, 458 N.E.2d 499, 1983 Ill. LEXIS 523 (1983).

- Classification

-- In General

Statute will be upheld under traditional principles of equal protection if arrational basis exists to distinguish a class benefited under the statute from the class not benefited. Oak Lawn v. Rosewell, 113 Ill. 2d 104, 100 Ill. Dec. 556, 497 N.E.2d 734, 1986 Ill. LEXIS 286 (1986).

For classifications to be deemed constitutional, as in all cases involving classifications, it must appear that the particular classification is based upon some real and substantial difference in kind, situation or circumstance in the persons or objects on which the classification rests, and which bears a rational relation to the evil to be remedied and the purpose to be attained by the statute, otherwise the classification will be deemed arbitrary and in violation of the constitutional guaranties of due process and equal protection of the laws. Grasse v. Dealer's Transport Co., 412 Ill. 179, 106 N.E.2d 124, 1952 Ill. LEXIS 310 (1952).

Defendant charged with violating a statute that prohibited tractors and other metal-tired vehicles weighing more than four tons from driving onto a paved public highway without protecting the edge of the highway could not challenge the constitutionality of that statute on the basis that its classifications were arbitrary and unreasonable because even though the statute affected a specific class of vehicle, those weighing more that four tons, all members of that class of vehicles were treated alike. People v. Sisk, 297 Ill. 314, 130 N.E. 696, 1921 Ill. LEXIS 1161 (1921).

In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the State is permitted a wide range of discretion; the question of classification is primarily for the legislature and only becomes a judicial question when the legislative action is clearly unreasonable. Casparis Stone Co. v. Industrial Board of Illinois, 278 Ill. 77, 115 N.E. 822, 1917 Ill. LEXIS 1043 (1917).

The legislature may legally classify persons so long as the law making the classification is general and has some reasonable relation to the end sought, so that the difference between the classes is not a purely arbitrary one, and it is not necessary that a law must apply to every person, rather it must act equally upon all persons coming within its scope. Parker-Washington Co. v. Industrial Board, 274 Ill. 498, 113 N.E. 976, 1916 Ill. LEXIS 2488 (1916).

Laws public in their objects may be confined to a particular class of persons if they be general in their application to the class to which they apply, provided the distinction is not arbitrary but rests upon some reason of public policy growing out of the condition of business of such class. Christy v. Elliott, 216 Ill. 31, 74 N.E. 1035, 1905 Ill. LEXIS 2644 (1905).

Class legislation - discriminating against some and favoring others - is prohibited but legislation that, in carrying out a public purpose and is limited in its application, if within the sphere of its operation it affects alike all persons similarly situation is not within the equal protection clause. Christy v. Elliott, 216 Ill. 31, 74 N.E. 1035, 1905 Ill. LEXIS 2644 (1905).

Every citizen has an equal right with every other to resort to the courts of justice for the settlement and enforcement of his rights and a discrimination between different classes of litigants that is merely arbitrary in its nature is a denial of that right and of the equal protection of the law. If, however, there is a reasonable ground for the distinction so that discrimination does not appear to be purely arbitrary or evasive of constitutional rights, the legislature has the discretion to impose conditions or restrictions it may deem in the furtherance of justice. Sanitary Dist. of Chicago v. Bernstein, 175 Ill. 215, 51 N.E. 720, 1898 Ill. LEXIS 3333 (1898).

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-- Attorneys

Those who follow the legal profession constitute a class and laws may be passed applicable only to members of a class where the classification rests upon some disability, attribute, or classification marking them as proper objects for the operation of such special legislation in any case where such local or special legislation is not expressly forbidden by the constitution; accordingly, the Attorneys' Lien Law, Laws of 1909, p. 97, was not unconstitutional as special legislation. Standidge v. Chicago R. Co., 254 Ill. 524, 98 N.E. 963, 1912 Ill. LEXIS 1954 (1912).

-- Based on Age

Court concluded that the failure to provide defendant juvenile with a jury trial deprived him of equal protection of the law, as guaranteed by the U.S. Const. amend. XIV and Ill. Const. (1970), Art. I, § 2. People v. G.O. (In re G.O.), 304 Ill. App. 3d 719, 237 Ill. Dec. 717, 710 N.E.2d 140, 1999 Ill. App. LEXIS 219 (1 Dist. 1999).

-- Based on Gender

In an action by the Department of Mental Health to collect charges that had been assessed for the cost of his wife's treatment in a state hospital, husband was entitled to raise the issue that the statute upon which the Department relied, by exempting a wife from liability for her husband's care but not exempting a husband in similar circumstances, violated Ill. Const. (1970), Art. I, §§ 2 and 18, by creating an improper and unconstitutional classification according to sex for the first time in the trial court independent of any review procedures relating to the administrative determination of liability. Department of Mental Health v. Gardner, 5 Ill. App. 3d 578, 283 N.E.2d 693, 1972 Ill. App. LEXIS 2752 (1 Dist. 1972).

-- Based on Marital Relationship

Action by a wife, a passenger in a car driven by her husband, was dismissed as to her husband under 750 ILCS 65/1 (formerly Ill. Rev. Stat. ch. 40, para. 1001), which prohibited such actions during coverture, and the statute was not a violation of Ill. Const. Art. I, § 2. Vogel v. Robison, 80 Ill. App. 3d 312, 35 Ill. Dec. 622, 399 N.E.2d 688, 1980 Ill. App. LEXIS 2206 (1 Dist. 1980).

-- Based on population

Relief from tax deed statute, 35 ILCS 200/22-45, did not violate the property resident's equal protection clause rights even though it gave more favorable treatment to people in counties with 3,000,000 seeking tax deed relief than it did to people like her who lived in counties with less than that number of people; the different treatment was rationally based on the larger number of tax deeds that had to be processed in such a more populated county. Craig v. Brown (In re County Treasurer), 356 Ill. App. 3d 1102, 292 Ill. Dec. 997, 827 N.E.2d 526, 2005 Ill. App. LEXIS 382 (4 Dist. 2005), appeal denied, 216 Ill. 2d 687, 298 Ill. Dec. 377, 839 N.E.2d 1024 (2005).

-- Classification

Age is not a suspect classification under the equal protection clause and need only satisfy the rational basis test. Arvia v. Madigan, 209 Ill. 2d 520, 283 Ill. Dec. 895, 809 N.E.2d 88, 2004 Ill. LEXIS 671 (2004).

-- In General

Under the principles of equal protection, a classification is invalid if it is arbitrary and without a reasonable basis. Northwestern Univ. v. City of Evanston, 221 Ill. App. 3d 893, 164 Ill. Dec. 307, 582 N.E.2d 1251 (1 Dist. 1991).

The equal protection clauses of the Illinois Constitution and of the United States Constitution do not prohibit the establishment of legislative classifications, nor do they require that all persons be

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treated uniformly. Little v. East Lake Fork Special Drainage Dist., 166 Ill. App. 3d 209, 116 Ill. Dec. 898, 519 N.E.2d 1113 (4 Dist. 1988).

Legislation which confers a benefit upon one class and denies the same to another may be attacked both as special legislation and as a denial of equal protection, but under either ground for challenge it is the duty of courts to decide whether classifications are unreasonable. Chicago Nat'l League Ball Club, Inc. v. Thompson, 108 Ill. 2d 357, 91 Ill. Dec. 610, 483 N.E.2d 1245 (1985).

The equal protection clause of the state constitution requires equality between groups that are similarly situated, but it does not deny a state the right to treat different classes of persons differently. Brown v. Michael Reese Health Plan, Inc., 150 Ill. App. 3d 959, 104 Ill. Dec. 170, 502 N.E.2d 433 (1 Dist. 1986).

A statutory classification will not be set aside if any set of facts reasonably may be conceived to justify it. Melbourne Corp. v. City of Chicago, 76 Ill. App. 3d 595, 31 Ill. Dec. 914, 394 N.E.2d 1291 (1 Dist. 1979).

Classifications, in order to be constitutional in the sense of equal protection, must be based on some real and substantial difference in persons and bear a rational relation to the purposes of the statute. Kane v. Board of Governors, 43 Ill. App. 3d 315, 2 Ill. Dec. 53, 356 N.E.2d 1340 (4 Dist. 1976).

The legislature may establish classifications, a classification, however, cannot be arbitrary or unreasonable, it must be based on a rational difference of condition or situation existing in the persons or the objects upon which the classification rests. Davis v. Commonwealth Edison Co., 61 Ill. 2d 494, 336 N.E.2d 881 (1975).

In order for there to be equal protection of the law the classification of a group of individual's by the legislature need not be accurate, scientific, logical or harmonious, so long as it is not arbitrary and will accomplish the legislative design. People ex rel. Heydenreich, 374 Ill. 557, 30 N.E.2d 46 (1940).

-- Bail

The cost retention provision regarding bail security under the Criminal Code (725 ILCS 5/110-7) does not create an unconstitutional classification of affluency in violation of the equal protection clause because those who elect to secure release by the deposit of 10% of the amount of bail under that provision do so only by the exercise of their own volition. Schlib v. Kuebel, 46 Ill. 2d 538, 264 N.E.2d 377 (1970), aff'd, 404 U.S. 357, 92 S. Ct. 479, 30 L. Ed. 2d 502 (1971).

-- Based on Age

Plaintiff's claim for violation of the equal protection clause must fail where the defendants presented a rational basis for treating retirees differently than non-retirees, specifically, the belief that employing retirees would cost more, and that not re-hiring retirees would conserve the school district's fiscal resources, thus ultimately advancing the resources available for children's education. Kastel v. Winnetka Bd. of Educ., Dist. 36, 975 F. Supp. 1072 (N.D. Ill. 1997).

The age classification created by 720 ILCS 5/12-15(c) is rationally related to the state interest of protecting children 13 to 16 years old from the consequences of premature sexual experiences. In re T.W., 291 Ill. App. 3d 955, 226 Ill. Dec. 376, 685 N.E.2d 631 (1 Dist. 1997).

-- Based on Family Relationship

755 ILCS 5/18-1.1, providing for compensation for custodial care, does not violate the equal protection clause, as the classification of close family members who alone are eligible for compensation bears a rational relationship to the purpose of the statute, and is not arbitrary.

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Porter v. Jolliff (In re Jolliff), 199 Ill. 2d 510, 264 Ill. Dec. 642, 771 N.E.2d 346, 2002 Ill. LEXIS 321 (2002).

-- Based on Gender

The physical structure and maternal functions of women place them at such a disadvantage in the struggle for existence as to form a substantial difference between the sexes, a difference which is of such a substantial character as to form a basis for legislation without making the legislation subject to the objection that it was not a proper exercise of the police power. W. C. Ritchie & Co. v. Wayman, 244 Ill. 509, 91 N.E. 695 (1910).

-- Based on Population

An amendment to section 1 of the Public Employee Disability Act (5 ILCS 345/1), which makes the provisions of the section applicable to home rule units of government containing fewer than one million persons while excluding from coverage home rule units having a greater population, does not violate the equal protection guarantee or the special legislation proscription of the Illinois Constitution, as it was rational for the legislature to conclude that public safety employees heavily populated units of local government face special dangers not encountered by similar employees in other parts in Illinois. Nevitt v. Langfelder, 157 Ill. 2d 116, 191 Ill. Dec. 36, 623 N.E.2d 281 (1993).

-- Based on Precincts

Section 167 of the Liquor Control Act (see now 235 ILCS 5/9-2), which distinguished between municipalites with populations of 200,000 or less and municipalities with populations in excess of 200,000, by requiring areas with populations in excess of 200,000 to decide a local option question in the precinct, was not rendered invalid by this classification. Duncan v. Marcin, 82 Ill. App. 3d 963, 38 Ill. Dec. 422, 403 N.E.2d 653 (1 Dist. 1980).

-- Based on Salary

A salary classification based on whether or not a teacher has engaged in a strike is consistent with the public policy principle that striking teachers should not be allowed to profit from their illegal strike activity and is not violative of the state and federal constitutions. Ashcraft v. Board of Educ., 83 Ill. App. 3d 938, 39 Ill. Dec. 392, 404 N.E.2d 983 (4 Dist. 1980).

The clear purpose of classification which provided compensation to working teachers and none to striking teachers was to compensate all teachers for the time they either worked, or would have worked; the distinction drawn was reasonably related to this legitimate purpose. Ashcraft v. Board of Educ., 83 Ill. App. 3d 938, 39 Ill. Dec. 392, 404 N.E.2d 983 (4 Dist. 1980).

-- Based on Wealth

Where there may be some correlation between economic wealth and one's place of residence, such that school assignments based on residential location are indirectly influenced by income factors, the state's reliance on residence for school assignment determinations was rationally related to the purpose of providing an educational system to all residents of the state. Jenkins v. Leininger, 277 Ill. App. 3d 313, 213 Ill. Dec. 719, 659 N.E.2d 1366 (1 Dist. 1995).

Legislation based on wealth does not constitute, per se, a suspect classification under the equal protection clauses of either U.S. Const., Amend. XIV or this section. Illinois Hous. Dev. Auth. v. Van Meter, 82 Ill. 2d 116, 45 Ill. Dec. 18, 412 N.E.2d 151 (1980).

A wealth classification infringing on a person's right to housing, a nonfundamental right, should be examined under a rational relationship standard of review, and will be upheld if it bears a rational relationship to a legitimate legislative purpose. Illinois Hous. Dev. Auth. v. Van Meter, 82 Ill. 2d 116, 45 Ill. Dec. 18, 412 N.E.2d 151 (1980).

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-- Cemetery Care Act

The Cemetery Care Act (760 ILCS 100/1 et seq.) which classified cemeteries of various types according to whether they were privately operated or operated by municipalities or by religious, fraternal, or family groups and which exempted certain cemeteries from compliance with portions of the statute, as such these classifications were based upon real and factual differences bearing a reasonable relation to the objects of the Act, and were not arbitrary; therefore, the Act was not unconstitutional as being discriminatory and denying equal protection of the law. Union Cem. Ass'n v. Cooper, 414 Ill. 23, 110 N.E.2d 239 (1953).

-- Controlled Substances Act

The lysergic acid diethylamide (LSD) provisions of 720 ILCS 570/401 and 720 ILCS 570/402 comport with the constitutional guarantees of equal protection and due process. People v. Kimbrough, 163 Ill. 2d 231, 206 Ill. Dec. 84, 644 N.E.2d 1137 (1994).

-- Deferential Standard of Review

Standard to be applied for case where individuals challenge constitutionality of the Borrowing Statute was application of the deferential "rationality" standard under which a classification is valid if it is rationally related to a legitimate governmental purpose. Panchinsin v. Enterprise Co., 117 Ill. App. 3d 441, 72 Ill. Dec. 922, 453 N.E.2d 797 (1 Dist. 1983).

Under deferential standard of review a statutory classification is valid if the court can reasonably conceive of any set of facts which would justify the law; moreover, even if the factual basis apparently underlying a statutory classification is incorrect, the law is valid if the factual predicate is at least debatable, and those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decision maker. Panchinsin v. Enterprise Co., 117 Ill. App. 3d 441, 72 Ill. Dec. 922, 453 N.E.2d 797 (1 Dist. 1983).

-- Drainage Code

Where the legislature could have reasonably intended that the drainage districts utilizing the services of the treasurer should be required to bear the actual costs of the services the districts receive; the legislative classification created by the amendments to the Illinois Drainage Code could not be considered arbitrary or unreasonable merely because the drainage districts were required to reimburse the treasurer for services provided to the districts. Hence, the amendments to the Code did not contravene the dictates of equal protection of the law under either the federal or state constitution. Little v. East Lake Fork Special Drainage Dist., 166 Ill. App. 3d 209, 116 Ill. Dec. 898, 519 N.E.2d 1113 (4 Dist. 1988).

-- Elimination of Public Services

Where the extent of permissible budgetary limitations was determined by the General Assembly and the Governor, and in compliance therewith the Department of Public Aid adopted regulations pursuant to which the expenditures would be made, there was no impermissible distinction between recipients who were seriously ill and in need of inpatient hospital care and recipients not ill enough to require hospitalization which would violate the equal protection clause. Warrior v. Thompson, 96 Ill. 2d 1, 70 Ill. Dec. 179, 449 N.E.2d 53 (1983).

-- Employment

Plaintiff's claim she was not treated as favorably as other applicants for part-time employment with school board because of her membership in class of teachers who elected early retirement was sufficient to state cause of action for violation of this section. Kastel v. Winnetka Bd. of Educ., Dist. 36, 946 F. Supp. 1329 (N.D. Ill. 1996).

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Provision in the Unemployment Compensation Act, Ill. Rev. Stat. 1949 ch. 48, para. 234(c), which classified employers into two groups and required those that did not have five years experience under the Act to pay contributions at a set rate while those employers with at least five years experience paid at a variable rate, did not violate new employer's equal protection rights because the classification was not arbitrary and the basic rate applied to all employers who had not fulfilled the Act's requirements as to experience. Conlon Bros. Mfg. Co. v. Annunzio, 409 Ill. 277, 99 N.E.2d 119, 1951 Ill. LEXIS 359 (1951).

Taxpayer could not enjoin increased retirement payments to retired teachers because the classification of retired teachers by the legislature was reasonable, was based upon a substantial distinction, and was not arbitrary. Krebs v. Board of Trustees, 410 Ill. 435, 102 N.E.2d 321, 1951 Ill. LEXIS 452 (1951).

Cahill's Stat. 1927, ch. 74, p. 30 (Ill.), which provides, in effect, that no assignment of salary or wages is valid unless it is signed in writing by the borrower and that under an assignment, 50 percent of the borrower's salary or wages can be taken, does not violate Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) because the statute limits the amount of wages or salary that can be assigned and protects salaried persons and wage earners equally. Snite v. Chicago & E. I. R. Co., 247 Ill. App. 118, 1927 Ill. App. LEXIS 45 (1927).

Criminal statute, which prohibited the carrying of a handgun but made an exception for police officers, messengers, conductors, baggagemen, drivers, and watchmen, but not for other persons who desired to carry handguns as part of their employment duties, did not violate due process protections because the object of the legislature was to protect the public against violence and the classifications were subject to discretion and need not be scientific or extend to each possible case. People v. Saltis, 328 Ill. 494, 160 N.E. 86, 1927 Ill. LEXIS 797 (1927).

Act allowing employees to recover expenses and loss time for travel to their new place of employment was unconstitutional under Ill. Const. (1970), Art. I, § 2, (formerly Ill. Const. of 1870, Art. II, § 2) because it treated employers differently than other individuals under similar facts, and therefore a judgment for an employee who had been hired to work in a remote plant after an employer lockout, but who was prevented from entering the plant by the locked-out employees, was erroneous. Josma v. Western Steel Car & Foundry Co., 249 Ill. 508, 94 N.E. 945, 1911 Ill. LEXIS 2096 (1911).

Person who received the highest ranking on a civil service examination held to select a new city architect, but who was not licensed as an architect because he had not paid the licensing fee, was not entitled to the position because the architect's licensing statute did not violate the equal protection provisions of Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2); a builder was not the same profession as an architect because a builder was one whose occupation was to build or erect buildings, while an architect was someone who made plans and specifications for others. People ex rel. Laist v. Lower, 251 Ill. 527, 96 N.E. 346, 1911 Ill. LEXIS 2245 (1911).

-- Filing of Wrongful Death Petition

The widow of college professor killed on university campus was not placed in an arbitrary, capricious or unreasonable class of persons by having to file her wrongful death action against the state in the court of claims. Kane v. Board of Governors, 43 Ill. App. 3d 315, 2 Ill. Dec. 53, 356 N.E.2d 1340 (4 Dist. 1976).

-- Former Paupers Statute

The classification of beneficiaries such as paupers for governmental relief and support under a former Act to revise the law in relation to paupers, while not only permissible, but also necessary, had to be reasonable in order for equal protection of the law to be met, and the judiciary would not interfere with such classification when made unless it was clearly unreasonable. People ex rel. Heydenreich, 374 Ill. 557, 30 N.E.2d 46 (1940).

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-- Fundamental Rights

When a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests. Boynton v. Kusper, 112 Ill. 2d 356, 98 Ill. Dec. 208, 494 N.E.2d 135 (1986).

-- General Assistance Fund Eligibility

A classification for purposes of eligibility for general assistance funds based on an individual's pre-trial detention constitutes a sufficient rational basis and, therefore, does not violate equal protection. People ex rel. Holland v. Edelman, 27 Ill. App. 3d 793, 327 N.E.2d 338 (1 Dist. 1975).

-- HIV Positive

Candidate who was not offered a position with the village as a police officer after a routine physical revealed that the candidate was HIV positive had stated a claim for relief under 42 U.S.C.S. § 1983 and under similar provisions in the Illinois Constitution for violation of the candidate's equal protection rights because the candidate had alleged unequal treatment because of the candidate's HIV status. Roe v. Vill. of Westmont, F. Supp. 2d , 2003 U.S. Dist. LEXIS 2530 (N.D. Ill. Feb. 21, 2003).

-- Indigent Prisoners

Defendant's equal protection challenge to 735 ILCS 5/22-105(a) failed, because indigent prisoners were not a suspect class, no financial consideration was interposed between a prisoner and his fundamental right of access to the courts, and the State had a rational basis for imposing fees to discourage frivolous claims and compensate the courts for the expenses of processing them. People v. Carter, 377 Ill. App. 3d 91, 315 Ill. Dec. 694, 877 N.E.2d 446, 2007 Ill. App. LEXIS 1085 (1 Dist. 2007), appeal denied, 2009 Ill. LEXIS 142 (Ill. 2009).

-- Initiating Criminal Proceedings

State's alternative methods of instituting criminal proceedings whereby defendant charged by complaint was entitled to preliminary hearing while defendant charged by grand jury was not entitled to one did not constitute an unreasonable classification in violation of the equal protection clause of the state or federal constitutions. People v. Franklin, 80 Ill. App. 3d 128, 35 Ill. Dec. 121, 398 N.E.2d 1071 (1 Dist. 1979).

-- Irrational

An essential element of every equal protection claim is that the law has placed the claimant in a worse position than some comparable person, or at least that the irrational classification has somehow prejudiced him; where there is no injury, there can be no claim. People v. Natoli, 70 Ill. App. 3d 131, 26 Ill. Dec. 266, 387 N.E.2d 1096 (1 Dist. 1979).

City ordinance, which made it unlawful to operate a commercial motor truck of 1500 pounds capacity or more on city streets unless the vehicle had a front end fender so as to prevent injury to pedestrians, violated Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) and Ill. Const. of 1870, Art. 4, § 22 because its classification was unreasonable, based on evidence that there was no known standard for rating the carrying capacity of a motor truck and that there was no difference, as far as protecting pedestrians from vehicular traffic, between trucks with a carrying capacity of 1500 pounds or more and other motor vehicles. Consumers' Co. v. Chicago, 298 Ill. 339, 131 N.E. 628, 1921 Ill. LEXIS 1086 (1921).

Act of June 17, 1983, which provides that no person can be imprisoned for non-payment of a fine of judgment in any civil or criminal action except upon conviction by jury, violates state constitutional rights to due process and equal protection found at Ill. Const. of 1870, Art. II, § 2

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(now Ill. Const. (1970), Art. I, § 2) because there is no reasonable basis for the statute's distinction between defendants who default, plead guilty or confess judgment and then cannot be imprisoned for non-payment of the judgment entered against them and those defendants who insist upon a jury trial or who are tried by a court after waiving their right to a jury trial and who then are subject to imprisonment for the payment of any judgment rendered against them. Sturges & Burn Mfg. Co. v. Pastel, 301 Ill. 253, 133 N.E. 762, 1921 Ill. LEXIS 937 (1921).

Because the Garage Keeper's Lien Act, formerly Ill. Stat. ch. 82, §§ 3a, 3b, and 3c, gave garagemen superior lien rights over others similarly situated without any reasonable justification, it was unconstitutional under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2), for that reason as well as it took away the rights of a chattel mortgagee without due process protections. Jensen v. Wilton E Wilcox Lumber Co., 295 Ill. 294, 129 N.E. 133, 1920 Ill. LEXIS 1227 (1920).

In order for a statute requiring drainage districts above lower drainage districts or who empty into a lower drainage district to pay the lower drainage district for benefits received by the lower district enlarging or improving the ditches or drains of the lower district to be free from constitutional objections, it must confer the same right of recovery upon the upper district for benefits that may have been conferred upon a lower district by improvements constructed by the upper district in the form of levees, dykes, and embankments that it confers upon the lower district to recover from an upper district for benefits it derived from the use of ditches, drains, and outlets constructed by the lower district. Bay Island Drainage & Levee Dist. v. Union Drainage Dist., 255 Ill. 194, 99 N.E. 385, 1912 Ill. LEXIS 2201 (1912).

1903 Act requiring drainage districts above lower drainage districts or who empty into a lower drainage district to pay the lower drainage district for benefits received by the lower district enlarging or improving the ditches or drains of the lower district was unconstitutional because, while no provision was made for the recovery of benefits by an upper district from a lower district, the laws of the State of Illinois contemplated that lands could be improved by draining surface waters and there could be no reason in law or in justice why a lower district should be compensated by way of benefits for improvements made by it any more than an upper district should be compensated for benefits in case that district protected the lands of a lower district from being inundated from the overflow of water. Bay Island Drainage & Levee Dist. v. Union Drainage Dist., 255 Ill. 194, 99 N.E. 385, 1912 Ill. LEXIS 2201 (1912).

-- Justification

A statutory classification will not be declared unconstitutional if any state of facts may reasonably be conceived to justify it, even if the court on its own and independent of the parties conceives of the facts to justify the classification scheme. Szczurek v. City of Park Ridge, 97 Ill. App. 3d 649, 52 Ill. Dec. 698, 422 N.E.2d 907 (1 Dist. 1981).

-- Marijuana

Classification found in the Cannabis Control Act, Ill. Rev. Stat. ch. 56 1/2, para. 704 (now 720 ILCS 550/4), which provides that person convicted of possessing less than 30 grams of marijuana may receive probation for a first offense, but that conviction of possession of 30 to 500 grams will constitute a felony without benefit of eligibility for first-offender probation is not irrational or contrary to the stated legislative purpose of establishing a reasonable penalty system that focused on commercial traffickers. People v. Mathey, 99 Ill. 2d 292, 76 Ill. Dec. 99, 458 N.E.2d 499, 1983 Ill. LEXIS 523 (1983).

Classifications found in the Cannabis Control Act, Ill. Rev. Stat. ch. 56 1/2, para. 704 (now 720 ILCS 550/4), which punish the possession of small and graduated quantities of marijuana as a misdemeanor (paras. 704(a), (b), and (c)) are rational because the classification furthers the legislative intent to establish a reasonable penalty system that focuses on commercial traffickers; it is not irrational or contrary to the stated legislative purpose to designate 30 grams as the

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threshold quantity at which heavier penalties are imposed. People v. Mathey, 99 Ill. 2d 292, 76 Ill. Dec. 99, 458 N.E.2d 499, 1983 Ill. LEXIS 523 (1983).

-- Marriage and Dissolution of Marriage Act

16-year-olds who are protected from sexual exploitation by that statute from defendants at least five years older at the time of the alleged sexual conduct were not similarly-situated individuals for equal protection purposes, Ill. Const. Art. I, § 2 as the 16-year-olds who were married with parental consent pursuant to 750 ILCS 5/203(1) and who could thus engage in sexual conduct, as the aggravated criminal sexual abuse statute protected those 16-year-olds from exploitation who did not have a parent looking out for their best interests. People v. Downin, 357 Ill. App. 3d 193, 293 Ill. Dec. 371, 828 N.E.2d 341, 2005 Ill. App. LEXIS 402 (3 Dist. 2005), appeal denied, 216 Ill. 2d 703, 298 Ill. Dec. 382, 839 N.E.2d 1029 (2005).

The Marriage and Dissolution of Marriage Act (750 ILCS 5/101 et seq.) does not violate the equal protection clauses of the United States and Illinois Constitutions in that it treats married persons differently than unmarried person by permitting the court to consider a married litigant's expectation of acquiring future capital assets and income in making its determination while no law governing the property rights of unmarried individuals allows the court to take this factor into account. In re Thornqvist, 79 Ill. App. 3d 791, 35 Ill. Dec. 342, 399 N.E.2d 176 (1 Dist. 1979).

-- Medical Resident

Persons preparing themselves for the practice of medicine necessarily attend some reputable established medical school or college for their medical education; the word "resident" was of no serious import from a constitutional standpoint and merely meant that a student seeking to become a restricted practitioner of medicine must attend and graduate from a recognized reputable professional school teaching such branch of medicine. People v. McGinley, 329 Ill. 173, 160 N.E. 186 (1928).

-- Metropolitan Transit Authority Act

Section 27 of the Metropolitan Transit Authority Act (70 ILCS 3605/27) does not violate the equal protection guarantee and the proscription against special legislation because it differentiates between the Chicago Transit Authority and other municipal entities with respect to liability for negligence in protecting persons from criminal attacks of third parties. Bilyk v. Chicago Transit Auth., 125 Ill. 2d 230, 125 Ill. Dec. 822, 531 N.E.2d 1 (1988).

-- Municipal Versus Private Corporations

Statutory and common law provisions which differentiate between municipal and private corporations as to tort liability have been held reasonable and valid classifications under the equal protection and special legislation clauses. Bilyk v. Chicago Transit Auth., 125 Ill. 2d 230, 125 Ill. Dec. 822, 531 N.E.2d 1 (1988).

-- Open Meetings Act

Exemption of the General Assembly from the provisions of the Open Meetings Act (5 ILCS 120/1 et seq.) did not create a classification which amounted to invidious discrimination, nor was it patently arbitrary, with no rational relationship to governmental interests and therefore, it was not violative of the equal protection clause of the Illinois Constitution. People ex rel. Hopf v. Barger, 30 Ill. App. 3d 525, 332 N.E.2d 649 (2 Dist. 1975).

-- Ordinances

City ordinance that prohibited vendors, other than amusement grounds, parks, halls, and other places licensed by the city, to make noise for the purpose of advertising goods did not unjustly discriminate against the business of a vendor selling fruits and vegetables on public streets and alleys because the vendor was not prohibited from selling or advertising his goods in the places

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excepted from operation of the ordinance by public outcry; further, the conditions surrounding the excepted places were different than the conditions found on the public streets and alleys, and it was obvious that persons who frequented the places excepted from the ordinance for different reasons than those that influence the citizen when his builds his house or place of business upon the public streets or uses the public alleys of the city. Goodrich v. Busse, 247 Ill. 366, 93 N.E. 292, 1910 Ill. LEXIS 1855 (1910).

-- Parents and Adult Children

The distinction drawn by 305 ILCS 5/10-2 between parents whose 18- through 20-year-old children reside with them and those whose 18- through 20-year-old children reside elsewhere violates the equal protection clause and is therefore invalid because it exempts some parents from support obligations completely based on reasons that have no rational relationship to the purpose of 305 ILCS 5/10-2: strengthening the family unit. Jacobson v. Department of Pub. Aid, 171 Ill. 2d 314, 216 Ill. Dec. 96, 664 N.E.2d 1024 (1996).

-- Parking

Exemption of residential parking from city's parking tax ordinance does not violate the equal protection clause of the state constitution because, particularly given the broad power of a legislative body to make classifications and the presumption in favor of the validity of a classification made by a legislative body, there is a reasonable basis for the distinction between residential and business parking. Jacobs v. Chicago, 53 Ill. 2d 421, 292 N.E.2d 401, 1973 Ill. LEXIS 382 (1973).

-- Parolees

What is "suspect" about a suspect classification is its long history of use to oppress individuals whose only misfortune is to have been born into the class, such is hardly the case with parolees, whose proved personal misconduct merited their being sentenced to the custody of the Department of Corrections. People ex rel. Tucker v. Kotsos, 68 Ill. 2d 88, 11 Ill. Dec. 295, 368 N.E.2d 903 (1977).

-- Pollution Control Permit Exceptions

The classification contained in a Pollution Control Board rule which excepted certain wastewater sources from obtaining a permit was based on rational distinctions, and directly aided in achieving the goals of the reduction and elimination of water pollution, and was a proper exercise of the state's police power; therefore, it did not violate the equal protection clauses of the Illinois and United States Constitutions, nor Ill. Const. (1970), Art. IV, § 13. People v. Keeven, 68 Ill. App. 3d 91, 24 Ill. Dec. 663, 385 N.E.2d 804 (5 Dist. 1979).

-- Presumption of Rationality

A statute carries a presumption of rationality when undergoing the traditional equal protection examination and it is the defendant's burden to demonstrate the impermissible nature of the classification created. People v. Smith, 124 Ill. App. 3d 805, 80 Ill. Dec. 310, 465 N.E.2d 101 (1 Dist. 1984).

-- Presumption of Validity

In determining whether a classification violates the equal protection clause, the analysis begins with the presumption that the classification is valid; the party challenging the classification has the burden of proving its unconstitutionality and must specifically set forth in the complaint facts upon which to rebut the presumption of constitutionality. Brown v. Michael Reese Health Plan, Inc., 150 Ill. App. 3d 959, 104 Ill. Dec. 170, 502 N.E.2d 433 (1 Dist. 1986).

When undertaking an equal protection analysis under either the Fourteenth Amendment of the federal Constitution or this section of the Illinois Constitution, there is a strong presumption,

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absent the presence of an inherently suspect classification or of a fundamental right, that a classification scheme established either by statute or by ordinance is valid. Szczurek v. City of Park Ridge, 97 Ill. App. 3d 649, 52 Ill. Dec. 698, 422 N.E.2d 907 (1 Dist. 1981).

There is a presumption in favor of the validity of the classification made by the legislative body and one who assails it has the burden of proving classification to be arbitrary. People v. Perine, 82 Ill. App. 3d 610, 37 Ill. Dec. 845, 402 N.E.2d 847 (1 Dist. 1980).

There is a presumption favoring the validity of classifications made by legislative bodies in taxing matters and that one who attacks them has the burden of proving such classifications to be arbitrary and unreasonable; the reasons justifying the classification, moreover, need not appear on the face of the statute, and the classification must be upheld if any state of facts reasonably can be conceived that would sustain it. The burden therefore rests on one who assails the statute to negate the existence of such facts, and there is a presumption of constitutionality that can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes; the burden is on the one attacking the legislative arrangement to negative every conceivable basis that might support it. Williams v. Chicago, 66 Ill. 2d 423, 6 Ill. Dec. 208, 362 N.E.2d 1030, 1977 Ill. LEXIS 271 (1977).

When considering the validity of legislative classification, there exists the presumption that the legislature acted conscientiously and a reviewing court will not interfere with the judgment except where the classification is clearly unreasonable and palpably arbitrary. As long as substantial differences exist and bear a rational relationship to the subject of the legislation, the classification is not violative of equal protection. Spaulding v. Illinois Community College Board, 64 Ill. 2d 449, 1 Ill. Dec. 213, 356 N.E.2d 339, 1976 Ill. LEXIS 390 (1976).

-- Prostitution Convictions

The provisions of 730 ILCS 5/5-5-3, requiring the HIV testing of persons convicted for prostitution, do not impinge upon the exercise of a fundamental right or operate against a suspect class; thus, under the appropriate standard of review, the statute need not establish a perfect fit between the desired end and the means chosen to achieve that end. People v. Adams, 149 Ill. 2d 331, 173 Ill. Dec. 600, 597 N.E.2d 574 (1992).

-- Public Works Preference Act

One year residency requirement for eligibility as an Illinois laborer under the Preference to Citizens on Public Works Project Act (30 ILCS 560/1) created an "invidious classification" that "penalizes" the right of interstate travel by denying new residents a "vital government benefit and privilege," thus violating the equal protection clause of the federal (U.S. Const., Art. I, § 8 and Art. IV, § 2) and the Illinois Constitutions (see this section). People ex rel. Holland v. Bleigh Constr. Co., 61 Ill. 2d 258, 335 N.E.2d 469 (1975).

-- Reasonable Basis

Facts did not support defendant city's claim that it zoned purely for land use purposes and not on the basis of religion, so its classification in a zoning ordinance on the basis of religion was suspect; allowing plaintiff church to conduct worship services on the property posed no threat to the city's legitimate interests. As there was no rational explanation for treating the church differently from similarly situated institutions such as cultural and membership organizations, the church's equal protection rights were violated. Vineyard Christian Fellowship of Evanston, Inc. v. City of Evanston, 250 F. Supp. 2d 961, 2003 U.S. Dist. LEXIS 5079 (N.D. Ill. 2003).

If a classification has some reasonable basis, it is not unconstitutional because it was not made with mathematical precision or because in practice it results in some inequality. Melbourne Corp. v. City of Chicago, 76 Ill. App. 3d 595, 31 Ill. Dec. 914, 394 N.E.2d 1291 (1 Dist. 1979).

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The reasonableness of a police regulation is not necessarily what is best but what is fairly appropriate under all circumstances, and in like manner, a classification which has some reasonable basis is not unconstitutional because it is not made with mathematical nicety or because in practice it results in some inequality. City of Chicago v. Vokes, 28 Ill. 2d 475, 193 N.E.2d 40 (1963).

City ordinance that prohibited person from buying a weapon that could be concealed on the person without first securing a permit from the police, but that excepted the sale of such weapons that were to be delivered or furnished outside the city was not an unreasonable classification because the purpose of the ordinance was to control the sale of deadly weapons to persons who would carry such weapons within the city; while the workings of the ordinance created practical inequalities, the classification was not so unreasonable that it violated any fundamental principle of law. Biffer v. Chicago, 278 Ill. 562, 116 N.E. 182, 1917 Ill. LEXIS 1097 (1917).

City ordinance that prohibited person from buying a weapon that could be concealed on the person without first securing a permit from the police, but that did not address the sale of such weapons to a corporation, did not contain an unreasonable classification; the ordinance was not intended to be applied to the sale of weapons to corporations, as they had no moral character in the sense in which that term was used in the ordinance. Biffer v. Chicago, 278 Ill. 562, 116 N.E. 182, 1917 Ill. LEXIS 1097 (1917).

Statute under which defendant was convicted of entering into an option contract to purchase grain did not violate defendant's right to equal protection of the law because the statute's penalties were directed against all persons and classes of persons who offended against its provisions. Although the statute did not prohibit all contracts for options to buy or sell, that classification was not unlawful because the statute restricted only transactions in the kinds and character of property, commodities, and securities that had been the subject of gambling or wagering contracts; that distinction was a reasonable basis for the classification. Booth v. People, 186 Ill. 43, 57 N.E. 798, 1900 Ill. LEXIS 2345 (1900).

-- Reinstatement of Mortgage

Because the Mortgage Act, 765 ILCS 905/0.01, provides for reinstatement under certain terms, (formerly at Ill. Rev. Stat. ch. 95, para. 57) and the provisions provide for economic relief, only a rational basis for a distinction between those who have never defaulted and those who have is required under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). First Federal Sav. & Loan Asso. v. Walker, 91 Ill. 2d 218, 62 Ill. Dec. 956, 437 N.E.2d 644, 1982 Ill. LEXIS 278 (1982).

-- Reinstatment of Mortgage

Under the Mortgage Act, 765 ILCS 905/0.01, reinstatement statute, (formerly at Ill. Rev. Stat. ch. 95, para. 57) allowing debtors to reinstate their mortgage on default only once every five years was constitutional and could be enforced by a bank even though it had previously allowed two reinstatements in two years, because the statute was not an equal protection violation under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) because there was a rational distinction between those who had never defaulted and those who had. First Federal Sav. & Loan Asso. v. Walker, 91 Ill. 2d 218, 62 Ill. Dec. 956, 437 N.E.2d 644, 1982 Ill. LEXIS 278 (1982).

-- Renting Motor Vehicles

Section 625 ILCS 5/6-305 is not unconstitutional because subsections (d) and (f) address only those engaged in the rental of automobiles and not those engaged in the rental of other chattels, because subsection (d) classifies rental car companies differently from third parties injured by a rental car driver or a third party who damages a rental car, nor because the section does not apply to rental car leases that last over 30 days. Alamo Rent A Car, Inc. v. Ryan, 268 Ill. App. 3d 268, 205 Ill. Dec. 738, 643 N.E.2d 1345 (1 Dist. 1994), appeal denied, 161 Ill. 2d 523, 208 Ill. Dec. 357, 649 N.E.2d 413 (1995).

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-- Residency

Where a city's residency requirement does not involve a suspect classification or a fundamental right, to be constitutional under the due process or equal protection clause of the United States or Illinois Constitution, it must bear a rational relationship to a legitimate governmental interest. One who challenges an ordinance as failing this test of minimum rationality bears the burden of proving by clear and affirmative evidence that the ordinance constitutes arbitrary, capricious, and unreasonable municipal action, that there is no permissible interpretation which justifies its adoption, or that it will not promote the safety and general welfare of the public. Fedanzo v. City of Chicago, Ill. App. 3d , Ill. Dec. , N.E.2d , 2002 Ill. App. LEXIS 413 (1 Dist. May 24, 2002).

-- Sale of Liquor

The state may, in curbing intended evils, impose regulations on the liquor traffic more stringent than would be permitted or allowable in other businesses. Weisberg v. Taylor, 409 Ill. 384, 100 N.E.2d 748 (1951).

-- Sale of Marijuana

Section 704 of the Cannabis Control Act (720 ILCS 550/4) does not deny defendant equal protection of the laws where the classification of the seriousness of the offense according to different amounts of cannabis was directly related both to the frequency of use and to the total quantity which may be used, and the classification appropriately served the legislative policy of preventing or reducing the consequences of cannabis use. People v. Campbell, 16 Ill. App. 3d 851, 307 N.E.2d 395 (3 Dist. 1974).

The classification of marijuana under the former Narcotics Drug Act, (see now the Cannabis Control Act, 720 ILCS 550/1 et seq.) rather than under the former Drug Abuse Control Act offended the equal protection clauses of the federal and state constitutions. People v. McCabe, 49 Ill. 2d 338, 275 N.E.2d 407 (1971).

-- Second Degree Murder

Defendants convicted of second degree murder do not risk being put in jeopardy anymore than defendants convicted of first degree murder, and therefore, are not denied the equal protection of the law. People v. Thomas, 216 Ill. App. 3d 469, 160 Ill. Dec. 66, 576 N.E.2d 1020 (1 Dist.), cert. denied, 141 Ill. 2d 557, 162 Ill. Dec. 505, 580 N.E.2d 131 (1991).

-- Sentencing

Sentencing statute that precluded early release for first-degree murderers treated all first-degree murderers the same, and reasonably related to the State's interest in remedying the evil of first-degree murder. People v. Gorgis, 337 Ill. App. 3d 960, 272 Ill. Dec. 514, 787 N.E.2d 329, 2003 Ill. App. LEXIS 320 (1 Dist. 2003).

-- Sex Offender Registration Requirement

Result of defendant's conviction for aggravated kidnapping for ransom that he was required to register as a sex offender under the Sex Offender Registration Act, 730 ILCS 150/1 et seq., and the Sex Offender and Child Murderer Community Notification Law, 730 ILCS 152/101 et seq., was upheld against his arguments that the sex offender registration requirement was unconstitutional under the circumstances. Defendant's due process rights were not violated even though there was no sexual component to his crime, as the General Assembly had rationally found that aggravated kidnapping was often a precursor to sex offenses against children, defendant did not have a right to keep his sex offender status private, and defendant had not shown an equal protection violation existed since a rational basis existed for having him register as a sex offender while people not convicted of aggravated kidnapping did not have to do so.

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People v. Beard, 366 Ill. App. 3d 197, 303 Ill. Dec. 243, 851 N.E.2d 141, 2006 Ill. App. LEXIS 389 (1 Dist. 2006), appeal denied, 225 Ill. 2d 641, 875 N.E.2d 1115, 2007 Ill. LEXIS 1220 (2007).

-- Single Member

A classification for taxation or regulatory purposes does not violate equal protection merely because the class created has but a single member. North Pole Corp. v. Village of E. Dundee, 263 Ill. App. 3d 327, 200 Ill. Dec. 721, 635 N.E.2d 1060 (2 Dist. 1994).

-- Speed of Motorists

Act regulating the speed of automobiles and other horseless conveyances on public streets applied to all drivers of automobiles without distinction and, therefore general as to that class and because such horseless vehicles constituted a source of danger to travelers upon the highway, it could not be said that the classification was not a reasonable one. Christy v. Elliott, 216 Ill. 31, 74 N.E. 1035, 1905 Ill. LEXIS 2644 (1905).

Acts regulating the speed of automobiles and other horseless conveyances on public streets can not be considered class legislation, simply because they affect one class and not another inasmuch as it affects all members of the same class alike and the classification involved is founded upon a reasonable basis. Christy v. Elliott, 216 Ill. 31, 74 N.E. 1035, 1905 Ill. LEXIS 2644 (1905).

-- Standard of Review

Whether a law is challenged as special legislation or as violative of equal protection, the controlling question is the same: Is the statutory classification rationally related to a legitimate state interest? Bilyk v. Chicago Transit Auth., 125 Ill. 2d 230, 125 Ill. Dec. 822, 531 N.E.2d 1 (1988).

Applicable standard of review in equal protection cases depends upon the nature of the classification or the interest affected, and unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, the constitutionality of the statutory discriminations are presumed and require only that the classification challenged be rationally related to a legitimate state interest. Panchinsin v. Enterprise Co., 117 Ill. App. 3d 441, 72 Ill. Dec. 922, 453 N.E.2d 797 (1 Dist. 1983).

-- State Employees

The failure to permit claimant judicial review because of his status as a state employee did not constitute a denial of equal protection. Yonikus v. Industrial Comm'n, 228 Ill. App. 3d 333, 169 Ill. Dec. 386, 591 N.E.2d 890 (5 Dist.), cert. denied, 146 Ill. 2d 654, 176 Ill. Dec. 825, 602 N.E.2d 479 (1992).

-- Tax on Alcohol

Where a county tax ordinance did not place wholesale and retail dealers in the same class, a wholesaler cannot claim he was denied equal protection as a result of disparate treatment between wholesale and retail dealers. Illinois Wine & Spirits Co. v. County of Cook, 191 Ill. App. 3d 924, 139 Ill. Dec. 31, 548 N.E.2d 416 (1 Dist. 1989), appeal denied, 131 Ill. 2d 559, 142 Ill. Dec. 882, 553 N.E.2d 396, cert. denied, 498 U.S. 848, 111 S. Ct. 135, 112 L. Ed. 2d 102 (1990).

-- Tax Uniformity Requirement

215 ILCS 5/444(1), imposing a retaliatory tax on alien insurers, did not violate the uniformity clause, Ill. Const. (1970), Art. IX, § 2, the federal equal protection clause or Ill. Const. (1970), Art. I, § 2, or the foreign commerce clause. It had the legitimate purpose of promoting domestic

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industry by deterring other countries from enacting discriminatory taxes, and its impact on foreign affairs was incidental. Sun Life Assur. Co. of Can. v. Manna, 368 Ill. App. 3d 591, 306 Ill. Dec. 706, 858 N.E.2d 503, 2006 Ill. App. LEXIS 996 (1 Dist. 2006).

The test for determining whether a tax classification meets the requirements of uniformity is twofold: (1) whether any real and substantial differences exist between those who are taxed and those who are not, and (2) whether the classification is reasonably related to a legislative purpose. Northwestern Univ. v. City of Evanston, 221 Ill. App. 3d 893, 164 Ill. Dec. 307, 582 N.E.2d 1251 (1 Dist. 1991).

The uniformity requirement for taxation may be violated by including those not in fact within the class as well as excluding those properly within it. Northwestern Univ. v. City of Evanston, 221 Ill. App. 3d 893, 164 Ill. Dec. 307, 582 N.E.2d 1251 (1 Dist. 1991).

-- Taxes

Chicago Transaction Tax Ordinance was not invalid as to real estate transfers or the leasing of personal property because taxpayers did not show that the classifications defining the objects of taxation or tax rates were arbitrary or unreasonable. Williams v. Chicago, 66 Ill. 2d 423, 6 Ill. Dec. 208, 362 N.E.2d 1030, 1977 Ill. LEXIS 271 (1977).

Legislative bodies have very broad powers in establishing classifications defining the objects of taxation that will withstand constitutional attack so long as the classifications are reasonable. The legislative determination as to those persons who are to be taxed and those not taxed must not be arbitrary and the classification must bear some reasonable relationship to the object of the legislation. Williams v. Chicago, 66 Ill. 2d 423, 6 Ill. Dec. 208, 362 N.E.2d 1030, 1977 Ill. LEXIS 271 (1977).

-- Tort Liability

Statutory and common law provisions which differentiate between municipal and private corporations as to tort liability have been held reasonable and valid classifications under the equal protection and special legislation clauses. Davis v. Chicago Hous. Auth., 136 Ill. 2d 296, 144 Ill. Dec. 224, 555 N.E.2d 343 (1990).

-- Uniformity

The limitation of the extended term provision to persons with prior convictions in Illinois is constitutionally justified by the need for uniformity of application. People v. Kleba, 110 Ill. App. 3d 345, 66 Ill. Dec. 179, 442 N.E.2d 605 (1 Dist. 1982).

This provision of the Constitution means uniformity as applied to a class. People ex rel. Toman v. Olympia Fields Country Club, 374 Ill. 101, 28 N.E.2d 109 (1940).

No prohibition against classification of property and taxpayers into different classes can be read into the Constitution. People ex rel. Toman v. Olympia Fields Country Club, 374 Ill. 101, 28 N.E.2d 109 (1940).

-- Validity of County Zoning Ordinance

Appellants who charged that the classification of their property as nonindustrial in a county ordinance amounted to a capricious invasion and an unreasonable invasion of their property rights failed to overcome presumption of the validity of that classification by proof which was clear and convincing. County of DuPage v. Henderson, 402 Ill. 179, 83 N.E.2d 720 (1949).

-- Workers' Compensation

A former version of section 7 of the Workers' Compensation Act (820 ILCS 305/7), which provided compensation for all widows whose husbands were killed while covered by the Act, but

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which allowed a widower to recover for the death of his wife under similar circumstances only if he was totally dependent upon her for support, did not create a classification which unreasonably discriminated based on one's sex. Duley v. Caterpillar Tractor Co., 44 Ill. 2d 15, 253 N.E.2d 373 (1969).

Although Workmen's Compensation Act classifies persons by the kind of work they do or where they work, and places employers and their employees in a different classification from other classes of employees and workmen, those classifications do not render the Act unconstitutional because the classifications are reasonable and treat all persons subjected to the legislation alike under like circumstances and conditions. Casparis Stone Co. v. Industrial Board of Illinois, 278 Ill. 77, 115 N.E. 822, 1917 Ill. LEXIS 1043 (1917).

Employer, a street railway company, could not successfully defend a workmen's compensation action on the basis that the Workmen's Compensation Act of 1913 unconstitutionally granted special and exclusive privileges and immunities to certain individuals that were denied to others because the provision of the Act applicable to the employer, that regarding employers engaged in especially hazardous or dangerous employments or occupations, had not changed from an earlier version of the Act that had specifically been found to be constitutional. Chicago R. Co. v. Industrial Board of Illinois, 276 Ill. 112, 114 N.E. 534, 1916 Ill. LEXIS 2265 (1916).

-- Workers' Compensation Immunity

Classification of directors and officers as immune from suit for work related injuries is not a violation of equal protection. Mier v. Staley, 28 Ill. App. 3d 373, 329 N.E.2d 1 (4 Dist. 1975).

-- Wrongful Death Counterclaim

Wrongful death claimants are subject to all of the provisions of the Wrongful Death Act to which personal injury victims are not; they are a distinct class and denying protection to counter-claimants under the Wrongful Death Act did not violate the equal protection clause of the United States Constitution or this section. Bruce v. Halterman-Flynn, 162 Ill. App. 3d 248, 113 Ill. Dec. 601, 515 N.E.2d 410 (3 Dist. 1987).

-- Zoning Ordinances

Facts did not support defendant city's claim that it zoned purely for land use purposes and not on the basis of religion, so its classification in a zoning ordinance on the basis of religion was suspect; allowing plaintiff church to conduct worship services on the property posed no threat to the city's legitimate interests. As there was no rational explanation for treating the church differently from similarly situated institutions such as cultural and membership organizations, the church's equal protection rights were violated. Vineyard Christian Fellowship of Evanston, Inc. v. City of Evanston, 250 F. Supp. 2d 961, 2003 U.S. Dist. LEXIS 5079 (N.D. Ill. 2003).

Where a trial court justified classifications between multiple-family structures and single-family residences set forth in a municipality's policy statement and ordinances on the distinction between the nature and type of service needs required by multiple-family structures due to the greater amount of refuse generated by them, the municipality's assertion of its ordinances in its motion to dismiss and policy statement which were entitled to a presumption of validity, coupled with the factors articulated by the trial court to justify the classification scheme, were sufficient to defeat the equal protection and special legislation challenges asserted in the plaintiff's complaint. Szczurek v. City of Park Ridge, 97 Ill. App. 3d 649, 52 Ill. Dec. 698, 422 N.E.2d 907 (1 Dist. 1981).

- In General

In the exercise of its power to make classifications in the enactment of laws concerning matters within its jurisdiction, the legislature is given a wide range of discretion; if the classification made is not wholly unreasonable and arbitrary and the statute is uniform in its operation on all members

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of the class to which it applies, there is no violation of the constitutional guarantee of equal protection of law. Conlon Bros. Mfg. Co. v. Annunzio, 409 Ill. 277, 99 N.E.2d 119, 1951 Ill. LEXIS 359 (1951).

Because Practice Act of 1907 amends prior law so that either plaintiff or defendant can place an action upon the short clause calendar, the Act is no longer subject to constitutional criticism on the basis that it is unequal and partial. Badger v. Mississippi Valley Portland Cement Co., 247 Ill. 112, 93 N.E. 90, 1910 Ill. LEXIS 1828 (1910).

City ordinance, which designated a public road as a pleasure driveway and prohibited business owner from driving his team on that road was not class legislation, in violation of Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2), because all citizens were entitled to use of the street for the purpose of a pleasure driveway. Cicero Lumber Co. v. Cicero, 176 Ill. 9, 51 N.E. 758, 1898 Ill. LEXIS 3228 (1898).

- Discrimination

-- Bail Provisions

The cost retention provision of 725 ILCS 5/110-7 does not create an unconstitutional disparity between the affluent and nonaffluent. Schlib v. Kuebel, 46 Ill. 2d 538, 264 N.E.2d 377 (1970), aff'd, 404 U.S. 357, 92 S. Ct. 479, 30 L. Ed. 2d 502 (1971).

-- Batson Challenge

Denial of defendant's Batson challenge was upheld because the evidence was not strong enough to show that prosecutors were unaware of the venireperson's rap sheet when they allegedly struck the venireperson because of the venireperson's criminal history and the fact that the venireperson misrepresented himself during voir dire. People v. Davis, 368 Ill. App. 3d 17, 305 Ill. Dec. 848, 856 N.E.2d 653, 2006 Ill. App. LEXIS 892 (1 Dist. 2006).

-- Burden of Proof

The burden of demonstrating, by evidence and reasoned argument, that the discrimination against parents and children residing in a poor school district is invidious, must fall upon the parties who attack the discrimination. People ex rel. Jones v. Adams, 40 Ill. App. 3d 189, 350 N.E.2d 767 (5 Dist. 1976).

-- Disproportionate Impact

Disproportionate impact is relevant, but it is not the sole determinative factor of unconstitutional racial discrimination and by itself does not trigger strict scrutiny. People v. R.L., 158 Ill. 2d 432, 199 Ill. Dec. 680, 634 N.E.2d 733, cert. denied, 513 U.S. 918, 115 S. Ct. 296, 130 L. Ed. 2d 210 (1994).

-- Judicial Sale

The fixing of the rate of interest, if any limit is to be fixed, is within the legislative power, and the fixing of a different rate for the redemption from judicial sales from that borne by judgments or accounts is not an unreasonable discrimination. Meier v. Hilton, 257 Ill. 174, 100 N.E. 520 (1912).

-- Ordinances

Claim brought by a home for inebriates, which challenged a city's fire and safety ordinance requiring the home to install sprinklers and other fire protection devices as unreasonable, oppressive, arbitrary, discriminatory, null and void, discriminating between property owners of the same class and similarly situated and between buildings of the same class and similarly situated, and illegally purporting to invest in the chief of fire prevention and public safety arbitrary judgment

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and discretion, was not sufficient to justify injunctive relief because there was an adequate remedy at law to challenge the penalties imposed on the home. Washingtonian Home of Chicago v. Chicago, 281 Ill. 110, 117 N.E. 737, 1917 Ill. LEXIS 1113 (1917).

-- Penal Statute

Equal protection applies only to interference with an existing right; no constitutional right exists which permits the violation of a penal statute which is nondiscriminatory on its face. People v. Neville, 42 Ill. App. 3d 9, 355 N.E.2d 179 (4 Dist. 1976).

-- Peremptory Challenges

Trial court's ruling that defendant did not establish a prima facie case of race discrimination in the State's use of a peremptory challenge to strike the lone African-American member of the venire, who was the same race as defendant, was against the manifest weight of the evidence; as a result, the case had to be remanded to the trial court with instructions that defendant's Batson challenge proceed to stage two, where the State was required to offer race-neutral reasons for its peremptory challenge, which would allow the trial court, if the State succeeded at stage two, to determine whether the challenge violated defendant's equal protection right to be free from peremptory strikes based solely on race. People v. Davis, 345 Ill. App. 3d 901, 281 Ill. Dec. 110, 803 N.E.2d 514, 2004 Ill. App. LEXIS 1 (1 Dist. 2004).

Where defendant had established only that he was black and that three black jurors were peremptorily challenged, he had not established a prima facie case of purposeful discrimination in the selection of the jury as there was no evidence in the record of the race of any of the veniremen or of the racial composition of the jury ultimately selected. People v. Lott, 196 Ill. App. 3d 967, 143 Ill. Dec. 634, 554 N.E.2d 569 (1 Dist. 1990).

Defendant's assertions regarding the state's use of its peremptory challenges did not raise an issue of substantial denial of his rights under this section of the Constitution as required by the Post-Conviction Hearing Act (725 ILCS 5/122-1 et seq.) where he made no showing of a systematic exclusion of blacks from the jury system and did not raise the issue of the case-by-case exclusion of blacks in his petition or affidavit. People v. Gaines, 105 Ill. 2d 79, 85 Ill. Dec. 269, 473 N.E.2d 868 (1984), cert. denied, 471 U.S. 1131, 105 S. Ct. 2666, 86 L. Ed. 2d 282 (1985).

There was no constitutional violation where a defendant failed to establish systematic exclusion of blacks and Latinos by the state through use of its peremptory challenges. People v. Allen, 96 Ill. App. 3d 871, 52 Ill. Dec. 419, 422 N.E.2d 100 (1 Dist. 1981).

-- Police Pension Fund

An ordinance requiring membership in a pension fund applied only to the municipality's policemen and not to firemen or other municipal employees, was upheld under the rational basis test; disparate treatment between classes of policemen, firemen, and other municipal employees has been justified on the grounds that the job duties and attendant risks of each occupation differ significantly, and it cannot be said that the ordinance at issue resulted in the kind of "invidious discrimination" which is prohibited by equal protection guarantees. Sanders v. City of Springfield, 130 Ill. App. 3d 490, 85 Ill. Dec. 710, 474 N.E.2d 438 (4 Dist. 1985).

-- Public Education Financing

General structure of state's system of funding public schools through state and local resources, and the amounts allocated for distribution, represent legislative efforts to strike a balance between competing considerations of educational equality and local control, and state's system of funding is rationally related to legitimate goal of promoting local control. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

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Education is not a fundamental individual right for equal protection purposes, and whether disparities in funding violate this section is not subject to the strict scrutiny test, but the appropriate standard of review is the rational basis test. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

-- Reasonable Basis Test

Where the discrimination of which complaint is made is not that which is indivious per se, the different treatment given by the state agency is, therefore, valid if there is a reasonable basis for the classification. Springfield Marine Bank v. Pollution Control Bd., 27 Ill. App. 3d 582, 327 N.E.2d 486 (4 Dist. 1975).

Provision in statute regarding the collection of the cost of a mental patient's care in a state hospital, which requires hospital's board of administration to file a claim against the estate of any patient who dies while residing in the hospital, but does not require the filing of a claim against the estate of a patient who dies after his release violates Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) and Ill. Const. of 1870, Art. IV, § 22, because the provision treats patients who die in the hospital differently than patients who are discharged before their death and there is no valid basis for such discrimination. Board of Administration v. Miles, 278 Ill. 174, 115 N.E. 841, 1917 Ill. LEXIS 1058 (1917).

-- Restrictive Covenant

Racially restrictive covenant could not be enforced because it was a violation of equal protection rights of African-Americans under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Tovey v. Levy, 401 Ill. 393, 82 N.E.2d 441, 1948 Ill. LEXIS 428 (1948).

-- Unemployment Compensation

The requirement of repayment of fraudulently obtained benefits, as opposed to recoupment, treated indigents and non-indigents differently and the repayment requirement discriminated against indigents in that only because of a lack of funds were they deprived of a realistic opportunity of re-establishing eligibility as a non-indigent could by repaying the amount improperly received; this constituted a denial of the equal protection guarantees of this section and U.S. Const., Amend. 14. Meadows v. Grabiec, 20 Ill. App. 3d 407, 314 N.E.2d 283 (1 Dist. 1974).

-- Use of Tax Funds

The fact that fees were charged for use of a golf course, and only those who could afford such fees could use the facility did not render the use of tax funds to acquire land for such purpose unconstitutional. Foss Park Dist. v. First Nat'l Bank, 125 Ill. App. 2d 276, 260 N.E.2d 474 (2 Dist. 1970), cert. denied, 402 U.S. 907, 91 S. Ct. 1379, 28 L. Ed. 2d 648 (1971).

Statutes providing for the funding of public schools through property taxes were not unconstitutional because the public schools were provided for in the state constitution, former Ill. Const. art. VIII, § 1, and the legislature's ability to fund those schools was the natural results of that constitutional establishment and the provisions were non-discriminatory and a reasonable exercise of legislative power; the court rejected arguments that the statute required a tax without a vote by the people, violated the rule of local self-government, and discriminated in favor of the tax payers and pupils of the non-high school districts. People ex rel. Goodell v. Chicago, N. W. R. Co., 286 Ill. 384, 121 N.E. 731, 1918 Ill. LEXIS 808 (1918).

- Gender Discrimination

There was no equal protection violation where a reasonable person could have concluded that defendant was charged with public indecency for reasons other than his gender, i.e., defendant was the only person show naked buttocks were visible in graphic motion as memorialized on the videotape. City of Champaign v. Sides, 349 Ill. App. 3d 293, 284 Ill. Dec. 634, 810 N.E.2d

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287, 2004 Ill. App. LEXIS 585 (4 Dist. 2004), appeal denied, 211 Ill. 2d 572, Ill. Dec. , 823 N.E.2d 963 (2004), cert. denied, 544 U.S. 924, 125 S. Ct. 1645, 161 L. Ed. 2d 484 (2005).

-- Jurisdiction

This section does not authorize plaintiff to seek original review of her gender-discrimination claims in the circuit court. Faulkner-King v. Wicks, 226 Ill. App. 3d 962, 168 Ill. Dec. 874, 590 N.E.2d 511 (4 Dist.), appeal denied, 146 Ill. 2d 626, 176 Ill. Dec. 796, 602 N.E.2d 450 (1992), cert. denied, 507 U.S. 960, 113 S. Ct. 1384, 122 L. Ed. 2d 760 (1993).

- Illustrative Cases

725 ILCS 5/115-7.3 was not violative of the equal protection clauses under the U.S. and Illinois Constitutions, as it allowed a trial court to allow the admission of evidence of other crimes to establish the propensity of defendant to commit the charged sexual offense crime where the requirements of § 115-7.3 were met; accordingly, the admission of defendant's prior convictions was not error where defendant was charged with sexual assault offenses. People v. Beaty, 377 Ill. App. 3d 861, 316 Ill. Dec. 759, 880 N.E.2d 237, 2007 Ill. App. LEXIS 1417 (1 Dist. 2007), appeal denied, 2008 Ill. LEXIS 534 (Ill. 2008); cert. denied, 129 S. Ct. 264, 2008 U.S. LEXIS 6129, 172 L. Ed. 2d 197 (U.S. 2008).

-- Absentee Ballot Return Provision

Absentee ballot return provision (10 ILCS 5/19-6) does not violate equal protection, as the burden placed upon absentee voters by the restriction on who can mail an absentee ballot is slight and nondiscriminatory and substantially contributes to the integrity of the election process. Qualkinbush v. Skubisz, Ill. App. 3d , 290 Ill. Dec. 756, 822 N.E.2d 38, 2004 Ill. App. LEXIS 1546 (1 Dist. 2004).

-- Amusement Tax

An ordinance which imposed an amusement tax did not violate the equal protection clause. DeWoskin v. Lowe's Chicago Cinema, Inc., 306 Ill. App. 3d 504, 239 Ill. Dec. 750, 714 N.E.2d 1047 (1 Dist. 1999).

-- Arbitration

Section 2-1009A of the Civil Practice Act, (735 ILCS 5/2-1009A), which imposes a surcharge on the filing fee in civil litigation to fund court-annexed mandatory arbitration, does not violate the uniformity clause, the equal protection clause, the free access clause, or the due process clause of the constitution. Mellon v. Coffelt, 313 Ill. App. 3d 619, 246 Ill. Dec. 422, 730 N.E.2d 102, 2000 Ill. App. LEXIS 384 (2 Dist. 2000), appeal denied, 191 Ill. 2d 534, 250 Ill. Dec. 459, 738 N.E.2d 928 (2000).

-- AIDS Testing of Sex Offenders

The HIV testing provisions of 730 ILCS 5/5-5-3(g) are rationally related to a legitimate governmental interest, and do not deny persons affected by the provision, convicted sex offenders, of equal protection of the laws under either the Federal or State Constitutions. People v. Adams, 149 Ill. 2d 331, 173 Ill. Dec. 600, 597 N.E.2d 574 (1992).

-- Aggravated Battery

720 ILCS 5/12-4(b) is not violative of the constitution as an improper delegation of legislative authority or in depriving defendant of equal protection under the laws. People v. Williams, 15 Ill. App. 3d 294, 304 N.E.2d 150 (3 Dist. 1973); People v. Cook, 15 Ill. App. 3d 345, 304 N.E.2d 487 (3 Dist. 1973).

-- Agriculture Zoning Ordinance

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Under zoning ordinance, which provided that until duly reclassified by the zoning authorities, R-2 districts could continue to be used for all agricultural purposes except that horses, mules, cattle, sheep, goats, swine, poultry or other animals, such as commercial kennels for dogs or foxes, could not be housed, stabled or kenneled closer than fifty feet from any residence other than that of the owner or user of the property, the classification of defendant's property was arbitrary and unreasonable. County of Will v. Stanfill, 7 Ill. App. 2d 52, 129 N.E.2d 46 (2 Dist. 1955).

-- Assessments

Section 84 of the Local Land Improvement Act was not unconstitutional simply because it denied the right of appeal or review of the trial court's judgment on writ of error and due process and equal protection were not violated when the ordinary course was pursued in the proceedings for the assessment and collection of taxes that was customarily followed in the state; statute requiring substantial compliance with the provisions of the ordinance with respect to public improvements was far more reasonable and just to all parties interested than a statute requiring a literal compliance. People ex rel. Peterson v. Omen, 290 Ill. 59, 124 N.E. 860, 1919 Ill. LEXIS 874 (1919).

County property tax was properly assessed, extended, and reduced, in accordance with the Cities and Villages Act, the Revenue Act, and provisions of the Illinois constitution, including Ill. Const. of 1870, Art. IX, § 12, because the authorizing statutes were self-executing and required no supplemental legislation; the tax, which imposed additional taxes in emergency situations with only publication notice, did not violate equal protection or due process rights because it applied to all persons in the same situation and operated on all taxpayers. People ex rel. Stuckart v. N. J. Sandberg Co., 282 Ill. 245, 118 N.E. 469, 1917 Ill. LEXIS 1237 (1917).

Where the Supreme Court of Illinois treated the assessing ordinance as invalid for the purposes of the first assessment, and upheld that ordinance as valid for the second assessment, there was no inconsistency in the reasoning nor was the equal protection of the laws denied. Lombard v. West Chicago Park Comm'rs, 181 U.S. 33, 21 S. Ct. 507, 45 L. Ed. 731 (1901).

-- Borrowing Statute

Since it is reasonably conceivable that the legislature could have concluded that Illinois residents who commit torts were likely to injure other Illinois residents, and refusing to permit Illinois residents to take advantage of a shorter than generally available limitations period (through application of the Borrowing Statute) (see 735 ILCS 5/13-210) would promote the health, safety, and welfare of Illinois citizens by encouraging Illinois residents to maintain high safety standards, therefore defendants failed to establish they were deprived of equal protection of the laws by the unavailability of Borrowing Statute. Panchinsin v. Enterprise Co., 117 Ill. App. 3d 441, 72 Ill. Dec. 922, 453 N.E.2d 797 (1 Dist. 1983).

-- Campaign Contributions

Limitations on the right of liquor licensees to make political campaign contributions, set forth in former Ill. Rev. Stat. ch. 43, para. 132, did not violate the free speech or equal protection rights of the licensees. Schiller Park Colonial Inn, Inc. v. Berz, 63 Ill. 2d 499, 349 N.E.2d 61, 1976 Ill. LEXIS 339 (1976).

-- Canal State Park Act

Section 4 of the Canal Park Act is valid under equal protection and special legislation provisions of the Illinois Constitution, as the unique circumstances surrounding construction and maintenance of the canal bridges by the United States warranted the General Assembly's enactment of § 4 of the Canal Park Act to provide for maintenance of these bridges after the state accepted title to the canal, and in doing so to conform these unique circumstances to the general obligations of local governments to maintain public roads and bridges. However, if a similar situation were to arise and was not treated in a manner similar to that in which the canal, its

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bridges, and the communities where those bridges exist have been treated, § 4 would violate both the equal protection and special legislation provisions of the Illinois Constitution. County Bureau v. Thompson, 139 Ill. 2d 323, 151 Ill. Dec. 508, 564 N.E.2d 1170 (1990).

-- Chicago Transit Authority

The Chicago Transit Authority's (CTA) unique function and activities furnish a rational basis for distinguishing the CTA from other public entities and the legislature could permissibly classify the CTA differently from other municipal corporations because the CTA was established for the sole purpose of operating and maintaining a mass transportation system in the Chicago metropolitan area; the CTA differs from other local governmental entities in its size, responsibilities as a common carrier, and the large number of personal injury claims initiated against it, therefore the limitations provisions of 70 ILCS 3605/41 did not deny plaintiff equal protection. Segarra v. Chicago Transit Auth., 265 Ill. App. 3d 480, 202 Ill. Dec. 33, 637 N.E.2d 572 (1 Dist.), appeal denied, 157 Ill. 2d 522, 205 Ill. Dec. 186, 642 N.E.2d 1303 (1994).

-- Child Abduction Statute

Where the natural father had resided with his illegitimate child from his birth and had provided uninterrupted financial and emotional support and exhibited all the characteristics of responsibility toward his child that would be expected of a child's natural mother or a legally-adjudicated father, and where the natural father (absent a marriage license), and mother lived together and shared family responsibilities with the child as if they were lawfully married to each other, the application of the child abduction statute under these facts deprived the natural father of equal protection of the law. People v. Morrison, 223 Ill. App. 3d 176, 165 Ill. Dec. 330, 584 N.E.2d 509 (3 Dist. 1991), cert. denied, 144 Ill. 2d 640, 169 Ill. Dec. 148, 591 N.E.2d 28 (1992).

-- Child Custody

Where the trial court, after considering the enumerated factors in 750 ILCS 5/602(a), found that the mother and father were evenly matched and capable parents, it did not err in finding that the mother's African-American race slightly tipped the scales in the mother's favor in raising a biracial child in a world potentially hostile to such children, as this was not the sole factor considered, which would have violated equal protection under Ill. Const. Art. I, § 2. In re Marriage of Gambla, 367 Ill. App. 3d 441, 304 Ill. Dec. 770, 853 N.E.2d 847, 2006 Ill. App. LEXIS 667 (1 Dist. 2006).

-- Child Support Guidelines

Subsection (a) of section 505 of the Marriage and Dissolution of Marriage Act (750 ILCS 5/505) does not violate the substantive or procedural due process requirements of the Illinois Constitution. Blaisdell v. Blaisdell, 142 Ill. App. 3d 1034, 97 Ill. Dec. 186, 492 N.E.2d 622 (1 Dist. 1986).

-- Cigarette Sales

Defendant's conviction for violating a city ordinance that prohibited the sale of cigarettes without a license was affirmed because the ordinance did not violate defendant's right to equal protection of laws guaranteed by the constitution; although the ordinance did not require a license for the sale of other forms of tobacco, the classification was not improper because it was well known that young persons were more liable to use tobacco in the form of cigarettes than in any other form and a legislative body could properly provide for the regulation and sale of tobacco in the form in which it was most likely to be most deleterious and injurious and could restrict the sales of that particular form of tobacco. Gundling v. Chicago, 176 Ill. 340, 52 N.E. 44, 1898 Ill. LEXIS 3273 (1898).

-- Cigarette Tax

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As section 2(b) of the Cigarette Tax Act (35 ILCS 130/2(b)) did not differentiate between similarly situated persons, equal protection and special legislation issues had no merit. S. Bloom, Inc. v. Mahin, 61 Ill. 2d 70, 329 N.E.2d 213 (1975).

-- City Poultry Regulation

Municipal ordinance regulating the handling and slaughtering of live poultry in retail food establishments but making no provision covering operations of retail dressed poultry dealers, or wholesale live poultry dealers was based on proper statutory authority pursuant to Revised Villages and Cities Act (see now 65 ILCS 5/1-1-1 et seq.), it was designed to protect public health by imposing more stringent sanitation requirements upon a business involving the sale of food for human consumption and was reasonably designed to protect the public health; therefore, it could not and did not violate rights guaranteed by this section and Ill. Const. (1970), Art. IV, § 13. Charles v. City of Chicago, 413 Ill. 428, 109 N.E.2d 790 (1952).

-- Coal Mining

Statute that required the weighing of coal and of miner's cars only if the coal was shipped by rail or water was unconstitutional under Ill. Const. (1970), Art. I, § 2, (formerly Ill. Const. of 1870, art. II, § 2) because it did not apply to all coal, and separated mine operators into separate classes. Harding v. People, 160 Ill. 459, 43 N.E. 624, 1896 Ill. LEXIS 1528 (1896).

-- Collection of Taxes

Provisions of § 224 of the Revenue Act of 1939, Ill. Rev. Stat., 1984 Supp., ch. 120, par. 705, giving the county the authority to collect and retain interest on delinquent taxes collected by the county for other governmental units did not violate the equal protection clause of the Illinois and federal constitutions where a rational basis existed upon which to distinguish counties from other taxing units for purposes of receiving fiscal benefits; since county collectors are the first step in the process of tax collection and distribution and the county is the only local taxing unit certain to include each county resident, it was not unreasonable for the legislature to have chosen the county to receive the interest funds. Oak Lawn v. Rosewell, 113 Ill. 2d 104, 100 Ill. Dec. 556, 497 N.E.2d 734, 1986 Ill. LEXIS 286 (1986).

-- Compensation of Miners

Statute making it unlawful to take any portion of coal by any process of screening or other device without fully accounting for and crediting the same to the miner was unconstitutional and void because it was a prohibition, not only upon the employer, but also upon his employees because it took from both the right and liberty belonging to all other members of the community to fix by contract the amount of wages the employee was to receive and the mode by which such wages were to be ascertained. Ramsey v. People, 142 Ill. 380, 32 N.E. 364, 1892 Ill. LEXIS 1060 (1892).

-- Compensatory Good Time

Distinction drawn by Department of Corrections regulation regarding compensatory good time, a distinction between persons serving sentence in a penitentiary after conviction and those serving sentence in a county jail prior to conviction because of an inability to make bond, was totally irrational and thus denied equal protection of the law. Hampton v. Rowe, 88 Ill. App. 3d 352, 43 Ill. Dec. 511, 410 N.E.2d 511 (3 Dist. 1980).

-- Contribution Among Joint Tortfeasors

Prospective judicial application of joint and several liability under an Act in relation to contribution among joint tortfeasors (740 ILCS 100/1) was not an arbitrary and invidious discrimination against a class of tortfeasors; therefore, it was not in violation of the federal and Illinois constitutional

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guarantees of equal protection of the laws. Coney v. J.L.G. Indus., Inc., 97 Ill. 2d 104, 73 Ill. Dec. 337, 454 N.E.2d 197 (1983).

-- Corporations

Court's construction of two legislative acts, made within days of each other and each referring to the renewal and extension of charters of corporations, so that only the first act, which added a paragraph to a section of the Railroad and Warehouse Act, applied to railroad corporations and that the second act, which required new renewal fees, applied only to corporations created under the general incorporation act, did not make either act unconstitutional as special legislation; therefore, railroad corporation that sought to renew its charter after the enactment of the amendments was not required to pay renewal fees required by the second act. Chicago, B. & Q. R. Co. v. Doyle, 258 Ill. 624, 102 N.E. 260, 1913 Ill. LEXIS 2097 (1913).

-- Denial of Vested Rights by Municipalities

A municipality cannot levy a special assessment and collect the money from landowners and then refuse some of the landowners the right to use the improvement for which the assessment was made and paid, while permitting such use by others. La Salle Nat'l Bank v. Village of Riverdale, 16 Ill. 2d 151, 157 N.E.2d 7 (1959).

-- Disclosure of Political Contributions

An executive order requiring disclosure of financial contributions to candidates for public office made by regulated businesses and persons who seek to enter into commercial relationships with the state neither infringed upon a right to privacy nor violated the equal protection clauses of the federal and state constitutions. Buettell v. Walker, 59 Ill. 2d 146, 319 N.E.2d 502 (1974).

-- Discriminatory Water Rates

Where a municipal ordinance did not state that the rates charged the suburban metered users must be the same as those charged intracity metered users of like large quantities, but set a ceiling on the water rates that could be charged the suburbs by stating that the price could be no greater, the fact that the suburban customers were charged the same rate as metered intracity users did not establish that the rates were per se reasonable and nondiscriminatory. Village of Niles v. City of Chicago, 82 Ill. App. 3d 60, 37 Ill. Dec. 142, 401 N.E.2d 1235 (1 Dist. 1980).

-- Driving While Under the Influence of Alcohol

The statutory summary suspension scheme of 625 ILCS 5/11-501 is not a violation of the equal protection guarantees of the Illinois Constitution. People v. Ramos, 155 Ill. App. 3d 374, 108 Ill. Dec. 323, 508 N.E.2d 484 (4 Dist. 1987).

-- Expedited Trial Court Calendar

An act allowing certain types of actions to proceed on an expedited trial court calendar was not special legislation under Ill. Const. (1970), Art. IV, § 13, (formerly Ill. Const. of 1870, Art. IV, § 22) because it applied equally to all cases, and was not in violation of Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Louisville, N. A. & C. R. Co. v. Wallace, 136 Ill. 87, 26 N.E. 493, 1891 Ill. LEXIS 951 (1891).

-- Fire Protection Districts Act

The Fire Protection District Act (70 ILCS 705/0.01) does not unconstitutionally delegate legislative power to county judges, nor does it constitute a denial of due process, within the contemplation of either federal or state constitutional guaranties. People ex rel. Armstrong v. Huggins, 407 Ill. 157, 94 N.E.2d 863 (1950).

-- Fishing

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515 ILCS 5/5-25 does not violate equal protection principles in distinguishing between penalties for commercial and sport fishermen, as there is a rational basis for such distinction: the monetary incentive in commercial fishing and fishing for profit, and the capability of commercial fishermen to remove large amounts of fish from Illinois waters, thereby more severely threatening the state's natural resources than sport fishing. People v. Hamm, 149 Ill. 2d 201, 172 Ill. Dec. 179, 595 N.E.2d 540 (1992), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

-- Former Abandonment of Wife Statute

The statute concerning the former crime of wife abandonment did not violate Ill. Const. (1870), Art. II, § 2 (see now this section) nor former Ill. Const. (1870), Art. II, § 5 (see now Ill. Const. (1970), Art. I, § 13). People v. Heise, 257 Ill. 443, 100 N.E. 1000 (1913).

-- Former Bulk Sales Law

Trial court did not err when it refused to consider evidence offered to prove that business owner's sale of her entire inventory to another and her application of the proceeds of the sale to one creditor violated the Bulk Sales Law, enacted May 13, 1905, which provided, in effect, that a seller's sale of her entire stock of merchandise was presumed fraudulent as against the seller's creditors unless those creditors were notified at least five days before the sale, because the Act was unconstitutional, in that it affected only merchants and there was no reason why sales of stocks of merchandise should be protected by a special statute imposing onerous burdens upon both sellers and buyers, when persons dealing in all other classes of property were exempt. Charles J. Off & Co. v. Morehead, 235 Ill. 40, 85 N.E. 264, 1908 Ill. LEXIS 3008 (1908).

Bulk Sales Law, enacted May 13, 1905, which provides, in effect, that a seller's sale of her entire stock of merchandise is presumed fraudulent as against the seller's creditors unless those creditors are notified at least five days before the sale is unconstitutional because there is no such actual, substantial difference between the members of the class of individuals upon whom the Act is intended to operate and the owners of other kinds of property as to warrant the legislature in passing an act applicable only to persons dealing in stocks of merchandise; the Act is therefore special class legislation, which is prohibited by the Illinois Constitution of 1870. Charles J. Off & Co. v. Morehead, 235 Ill. 40, 85 N.E. 264, 1908 Ill. LEXIS 3008 (1908).

-- Former Civil Service Act

The former Civil Service Act (see now 65 ILCS 5/10-1-1 et seq.) did not violate equal protection. People ex rel. Reilly v. City of Chicago, 337 Ill. 100, 168 N.E. 904 (1929).

The former Civil Service Act (see now 65 ILCS 5/10-1-1 et seq.) was not violative of equal protection and was not special legislation. People ex rel. Sellers v. Brady, 262 Ill. 578, 105 N.E. 1 (1914).

-- Former Corporation Act

Amendment to Illinois Corporation Act that set a fee for foreign corporations based upon a portion of a corporation's capital stock was proper because a clause in the original license, which was a contract, provided for implementing changes in the state law to the contract; there was no constitutional equal protection violation against foreign corporations and no restriction on interstate commerce. American Can Co. v. Emmerson, 288 Ill. 289, 123 N.E. 581, 1919 Ill. LEXIS 1088 (1919).

-- Former Judgment Debtor Statute

Former section 5 of the Judgment Act (see now 735 ILCS 5/12-107) did not violate the equal protection provisions of the state or federal constitutions by allegedly discriminating between natural persons and corporations. Lipman v. Goebel, 357 Ill. 315, 192 N.E. 203 (1934).

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-- Former Limitations Act

The tolling provision of the former Limitations Act which limited its application to Illinois residents was violative of the equal protection clauses of both the federal and state constitutions and, therefore, could not stand. Haughton v. Haughton, 76 Ill. 2d 439, 31 Ill. Dec. 183, 394 N.E.2d 385 (1979).

-- Former Majority Statute

The former Illinois majority statute (Ill. Rev. Stat., ch. 3, para. 131), which provided for different ages of majority for males and females, constituted a violation of the equal protection clause of this section. Munck v. Munck, 62 Ill. App. 3d 223, 19 Ill. Dec. 377, 378 N.E.2d 1252 (1 Dist. 1978).

-- Former Medical Malpractice

The former Medical Malpractice Act of 1899, (see now 225 ILCS 60/1 et seq.), tended to deprive osteopaths of their constitutional right to practice surgery, the osteopaths were just as efficient and as well prepared by college and hospital training to practice surgery as were the physicians of the medical schools, therefore, the Act was void as in contravention of U.S. Const., Amend. XIV, Ill. Const. (1870), Art. II, § 2 (see now this section) and Ill. Const. (1870), Art. II, § 14 (Ill. Const. (1970), Art. I, § 16). People v. Schaeffer, 310 Ill. 574, 142 N.E. 248 (1923).

-- Franchise Agreements

Purpose of applying 815 ILCS 710/4(e)(8) and 815 ILCS 710/12(c), prospectively is to protect the vested contract rights of the parties to vehicle dealer franchise agreements, and distinguishing between franchisees who entered franchise agreements prior to the 1995 amendments to the Illinois Motor Vehicle Franchise Act and franchisees who entered franchise agreements after the 1995 amendments to the Act is rationally related to that purpose. Thus, the prospective application of 815 ILCS 710/4(e)(8) and 815 ILCS 710/12(c) does not violate equal protection principles. Yakubinis v. Yamaha Motor Corp., U.S.A., 365 Ill. App. 3d 128, 301 Ill. Dec. 542, 847 N.E.2d 552, 2006 Ill. App. LEXIS 185 (1 Dist. 2006).

-- Health Care Provider Immunity

The statutory immunity granted to a health care provider under the Voluntary Health Services Plans Act (215 ILCS 165/1 et seq.) does not violate special legislation or the equal protection clause of the state Constitution. Jolly v. Michael Reese Health Plan Found., 225 Ill. App. 3d 126, 167 Ill. Dec. 448, 587 N.E.2d 1063 (1 Dist. 1992).

-- Home Rule City Taxing Power

In the exercise of its taxing power, a home rule city is subject to the equal protection clauses of the federal and state constitutions. Northwestern Univ. v. City of Evanston, 221 Ill. App. 3d 893, 164 Ill. Dec. 307, 582 N.E.2d 1251 (1 Dist. 1991).

-- Hospital Districts

The 1999 amendment to 70 ILCS 910/10, which pertained to detachment and distinguished between previously annexed property and property that was part of the original hospital district,was not arbitrary and did not violate the equal protection clauses of the United States or Illinois Constitutions. In re Detachment of Land v. Morrison Community Hosp. Dist., 318 Ill. App. 3d 922, 251 Ill. Dec. 796, 741 N.E.2d 683, 2000 Ill. App. LEXIS 1016 (3 Dist. 2000).

-- Hotel Room Attendants

820 ILCS 140/3.1 is not special legislation under Ill. Const. (1970), Art. IV, § 13 or violative of equal protection under the United States or Illinois constitutions because it applies only to hotels

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in Cook County. The legislature could have rationally concluded that the statute would protect hotel room attendants from overwork in the jurisdiction where the majority of such employees would be affected and in the one best positioned to absorb the costs of the new regulations. Ill. Hotel & Lodging Ass'n v. Ludwig, 374 Ill. App. 3d 193, 311 Ill. Dec. 833, 869 N.E.2d 846, 2007 Ill. App. LEXIS 537 (1 Dist. 2007), appeal denied, 225 Ill. 2d 633, 875 N.E.2d 1111, 2007 Ill. LEXIS 1494 (2007).

-- Immunity

Immunity from suit granted to Medical Center Commission by Court of Claims Act, Ill. Rev. Stat. ch. 127, para. 801 (now 745 ILCS 5/1), an arm of the State, is not an arbitrary classification that violates the equal protection clauses of the Illinois and the United States Constitutions. Williams v. Medical Center Com., 60 Ill. 2d 389, 328 N.E.2d 1, 1975 Ill. LEXIS 213 (1975).

-- Juvenile Delinquent

Minor's equal protection rights were not violated by the fact that, unlike an adult criminal defendant, the minor was prohibited from appealing an interlocutory order that denied her motion to dismiss a petition for adjudication of wardship, which was based on double jeopardy grounds; because a petition for adjudication of wardship was not criminal in nature, the minor was not similarly situated to defendants in criminal proceedings. People v. Olivia C. (In re Olivia C.), 371 Ill. App. 3d 473, 311 Ill. Dec. 307, 868 N.E.2d 307, 2007 Ill. App. LEXIS 150 (1 Dist. 2007).

-- Legal Malpractice Statute of Repose

Application of the statute of repose to bar a claim for legal malpractice by an inmate who was estopped from bringing a cause of action for legal malpractice while he was incarcerated did not violate the plaintiff's rights under the equal protection and due process clauses of the Illinois Constitution. Griffin v. Goldenhersh, 323 Ill. App. 3d 398, 257 Ill. Dec. 52, 752 N.E.2d 1232, 2001 Ill. App. LEXIS 539 (5 Dist. 2001).

-- Licenses

Two ordinances and their authorizing legislation that regulated the installation and alteration of electrical equipment and required the registration of electrical contractors were unconstitutional because they contained arbitrary exemptions for electrical firms with a member who had more than two years' practical experience, even if the member was a silent partner and for public utilities and common carriers; these exemptions were not reasonably related to the purpose of preventing injuries and fires caused by poor workmanship. Berry v. Chicago, 320 Ill. 536, 151 N.E. 581, 1926 Ill. LEXIS 854 (1926).

-- Malicious Prosecution

735 ILCS 5/2-109, which eliminates the requirement to plead or prove special injury for certain malicious prosecution plaintiffs, does not violate the guarantee of equal protection contained within Article I, § 2, of the Illinois Constitution since the statute involves neither a suspect class nor a fundamental right and, therefore is subject only to deferential review under the rational basis test, and the statute satisfies the rational basis test. Miller v. Rosenberg, 196 Ill. 2d 50, 255 Ill. Dec. 464, 749 N.E.2d 946, 2001 Ill. LEXIS 473 (2001).

-- Motor Vehicle Franchise Act

Although the Illinois Motor Vehicle Franchise Act, 815 ILCS 710/1 et seq., treated existing automobile dealers differently than other kids of franchise owners, there was no equal protection violation because the classification was related to the legitimate government purpose of redressing the disparity in bargaining power between automobile manufacturers and their existing dealers and of protecting the public from the negative impact of harmful franchise practices by

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automobile manufacturers. GMC v. State Motor Vehicle Review Bd., 224 Ill. 2d 1, 308 Ill. Dec. 611, 862 N.E.2d 209, 2007 Ill. LEXIS 1 (2007).

-- Ordinances

Theatre owners' contention that others were violating an ordinance, and that the ordinance did not provide for the punishment of the other violators, did not render the ordinance prohibiting the screening of immoral or obscene motion pictures invalid under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Block v. Chicago, 239 Ill. 251, 87 N.E. 1011, 1909 Ill. LEXIS 2404 (1909).

-- Post-Judgment Interest Statute

In a products liability case, defendant motor companies waived the issue of whether the post-judgment interest statute, 735 ILCS 5/2-1303, violated their equal protection or due process rights under the U.S. Constitution or under Ill. Const. (1970), Art. I, §§ 2, because they did not offer any argument or meaningful citation to authority regarding that argument in their brief as required by Rule 341(e)(7), Supreme Court Rules; however, even if waiver had not occurred, the argument was unavailing because the award of interest served the purpose of compensating a party whose money was wrongfully withheld and, therefore, the due process claim failed. Further, the equal protection claim failed under the rational basis test because similarly situated persons were not put into different classifications for reasons wholly unrelated to the purpose of the legislation. Mikolajczyk v. Ford Motor Co., 369 Ill. App. 3d 78, 307 Ill. Dec. 201, 859 N.E.2d 201, 2006 Ill. App. LEXIS 1057 (1 Dist. 2006).

Waiver aside, the car manufacturers' claim that Illinois post-judgment interest statute, 735 ILCS 5/2-1303, was unconstitutional had to be rejected, as they did not show that the statute violated either their constitutional rights to due process or equal protection; the Schultz opinion established that a due process claim failed because access to the courts did not concern a fundamental due process right and an award of interest served the legislature's purpose of compensating a party whose money had been wrongfully withheld and that an equal protection claim failed because a rational basis existed for such legislation and no showing was made that similarly situated people were treated differently. Connie Mikolajczyk v. Ford Motor Co. And Mazda Motor Corp., Ill. App. 3d , Ill. Dec. , N.E.2d , 2007 Ill. App. LEXIS 657 (1 Dist. June 13, 2007).

-- Public Aid Code

Illinois Public Aid Code, 305 ILCS 5/1 et seq., which allowed for reimbursement to the State after a recipient received a tort award was not an unconstitutional violation of equal protection under Ill. Const. (1970), Art. I, § 2, (formerly Ill. Const. of 1870, Art. II, § 2) because it was relationally related to the reasonable goal of reimbursement of funds paid after a tort recovery from a third party. Beck v. Buena Park Hotel Corp., 30 Ill. 2d 343, 196 N.E.2d 686, 1964 Ill. LEXIS 365 (1964).

-- Regional Transportation Authority Act

Appointment provisions of the Regional Transportation Authority Act, 70 ILCS 3615/1.01 et seq., do not violate the provisions of Ill. Const. Art. II, § 1 that the legislative, executive, and judicial branches of government are separate and that no branch shall exercise powers properly belonging to another (separation of powers) or the "one person, one vote" principle derived from Ill. Const. Art. I, § 2 and Ill. Const. Art. III, § 3. Stroger v. Reg'l Transp. Auth., 201 Ill. 2d 508, 268 Ill. Dec. 417, 778 N.E.2d 683, 2002 Ill. LEXIS 626 (2002).

-- Right to Appeal

To the extent that the Practice Act allowed one party a limited right of appeal on questions of law and prohibited him from assigning any error calling in question the determination of an appellate

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court on controverted questions of fact, and gave to the other party a right to have the judgment reviewed on all questions, both of law and fact, it conferred a special privilege on one party to the suit, deprived the other party of of that right, and was a violation of the equal protection of the laws and the guaranty that no person shall be deprived of life, liberty or property without due process of law under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Green v. Red Cross Medical Service Co., 232 Ill. 616, 83 N.E. 1081, 1908 Ill. LEXIS 2823 (1908).

-- Sale of Newspapers

Publisher of a national newspaper was not entitled to have its papers sold from news-stands and therefore an appeal of the dissolution of an injunction against the enforcement of a Chicago ordinance barring the sale of papers published outside of Chicago was proper, because whether the ordinance was constitutional or was not, the publisher had no right to news-stand sales. Curtis Pub. Co. v. Chicago, 273 Ill. 373, 112 N.E. 667, 1916 Ill. LEXIS 2550 (1916).

-- Sexually Violent Persons Commitment Act

The Sexually Violent Persons Commitment Act, 725 ILCS 207/1 et seq., does not violate the equal protection clauses of the state or federal Constitution, does not constitute an ex post facto law or violate the prohibition against double jeopardy, does not violate substantive or procedural due process, and does not violate the petition clauses of the the state or federal Constitution. People v. Bailey (In re Bailey), 317 Ill. App. 3d 1072, 251 Ill. Dec. 575, 740 N.E.2d 1146, 2000 Ill. App. LEXIS 943 (1 Dist. 2000).

-- Taxis

Act that required the operator of a Chicago taxicab to post a bond to cover any potential judgments was not violative of the Equal Protection Clause because it was reasonably incidental to the exercise of the police power of the state or municipality and addressed the legitimate concerns raised by the density and continuity of traffic in the city and did not violate the prohibition against special legislation because taxicabs were operated for gain and were thus in service for longer hours and at higher rates of speed; further, the contention that the act was a taking was also rejected because the taxi owner could obtain an insurance policy or bond with a surety at reasonable expense. Weksler v. Collins, 317 Ill. 132, 147 N.E. 797, 1925 Ill. LEXIS 1000 (1925).

-- Termination of Parental Rights

In a proceeding by mother and her husband under the Adoption Act, 750 ILCS 50/0.01 et seq., to terminate respondent father's parental rights, the trial court violated his equal protection rights by failing to provide him with a written "Notice of Rights," as required by 705 ILCS 405/1-5(1), including including notice that he had the right to request appointed counsel at trial. James M. v. John M. (In re K.M.), 355 Ill. App. 3d 783, 291 Ill. Dec. 717, 824 N.E.2d 293, 2005 Ill. App. LEXIS 116 (3 Dist. 2005).

Appellate court's judgment finding that 750 ILCS 50/1(D)(q), which created a conclusive presumption of parental unfitness if the parent had been convicted of certain listed criminal offenses, was constitutional was reversed in one case and its finding that it violated the mother's equal protection rights in a second case was affirmed, as the State could not show that the conclusive presumption in that statute served a compelling state interest. People v. Lisa M. (In re D.W.), 214 Ill. 2d 289, 292 Ill. Dec. 937, 827 N.E.2d 466, 2005 Ill. LEXIS 319 (2005).

Since an indigent father facing termination of parental rights under the Adoption Act, 750 ILCS 50/0.01 et seq., was not similarly situated to parents facing termination of parental rights under the Juvenile Court Act, 705 ILCS 405/1 et seq., equal protection was not implicated in the denial of his request for court-appointed counsel. Jeffrey D.B. v. Stacy L.B. (In re Alyssa Jo B.),, 2005 Ill. App. LEXIS 20 (3 Dist. Jan. 19, 2005).

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-- Zoning

Facts did not support defendant city's claim that it zoned purely for land use purposes and not on the basis of religion, so its classification in a zoning ordinance on the basis of religion was suspect; allowing plaintiff church to conduct worship services on the property posed no threat to the city's legitimate interests. As there was no rational explanation for treating the church differently from similarly situated institutions such as cultural and membership organizations, the church's equal protection rights were violated. Vineyard Christian Fellowship of Evanston, Inc. v. City of Evanston, 250 F. Supp. 2d 961, 2003 U.S. Dist. LEXIS 5079 (N.D. Ill. 2003).

A city zoning ordinance did not violate the right to equal protection, notwithstanding the argument that churches required special use permits to locate in certain districts, while other similar uses could locate in such districts as permitted uses, since most of the uses allegedly similar to churches received the same treatment and the remaining allegedly similar uses (e.g. restaurants, taverns, theaters) had a commercial character that differentiated them from churches and made them a better fit with other uses allowed in such districts. C.L.U.B. v. City of Chicago, F. Supp. 2d , 2001 U.S. Dist. LEXIS 17213 (N.D. Ill. Oct. 17, 2001).

City ordinance limiting structures in the area to two-family occupancy was not arbitrary, capricious, and confiscatory as applied to the landowner's property and, therefore did not deny the landowner of his constitutional right to equal protection of the law where: (a) all but two lots in the area were improved with single or two-family dwellings in conformity with the zoning ordinance, (b) of the two improved lots that had more than single or two-family dwellings, one belonged to the landowner and the other was an apartment building that was a legal nonconforming use because it was constructed before passage of the ordinance, and (c) the city officials had not tolerated violations of the ordinance. Jacobson v. Evanston, 10 Ill. 2d 61, 139 N.E.2d 205, 1956 Ill. LEXIS 383 (1956).

- Irrationality

Fact that only one of seven of the members of the Medical Disciplinary Board that disciplined a chiropractor for violating advertising limitations was a chiropractor did not invalidate its actions; there was a rational basis for the legislature's decision that the Board should consist of representatives of various medical disciplines. Vuagniaux v. Dep't of Prof'l Regulation, 208 Ill. 2d 173, 280 Ill. Dec. 635, 802 N.E.2d 1156, 2003 Ill. LEXIS 2279 (2003).

- Joint Liability Statute

In a trial arising from a multi-vehicle accident, there was no equal protection or due process violation by the exclusion of settling defendants, pursuant to 735 ILCS 5/2-1117, from a fault allocation verdict form, as such procedure clearly supported the promotion of settlements, a rational basis to uphold the constitutionality of the section which also reduced the amount of damages that a minimally responsible party might have to pay; another public policy interest that was rationally related to the classifications thereunder. Yoder v. Ferguson, 381 Ill. App. 3d 353, 319 Ill. Dec. 380, 885 N.E.2d 1060, 2008 Ill. App. LEXIS 186 (1 Dist. 2008).

- Illustrative Cases

-- Court of Claims Act

Because proceedings before the Court of Claims are not adversary in nature and are not designed to provide a trial, persons presenting claims are not denied equal protection, even though they do not have a right to cross-examine or subpoena witnesses. Seifert v. Standard Paving Co., 64 Ill. 2d 109, 355 N.E.2d 537, 1976 Ill. LEXIS 352 (1976).

- Reasonable Basis

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Prevailing Wage Act, aimed at protecting workers by making sure they were paid a fair wage for their work, did not involve a fundamental right, which meant that it only had to have a reasonable basis for its passage. Since it had the reasonable basis of protecting workers, it did not violate the equal protection clause of the Illinois Constitution, Ill. Const. art. I, § 2. McKinley Found. at the Univ. of Ill. v. Ill. Dep't of Labor, 404 Ill. App. 3d 1115, 344 Ill. Dec. 179, 936 N.E.2d 708, 2010 Ill. App. LEXIS 955 (4 Dist. 2010).

Admission of prior acts of domestic abuse in defendant's trial alleging that defendant violated the domestic abuse law, 720 ILCS 5/12-3.2(a)(1), was permissible pursuant to 725 ILCS 5/115-7.4, as 725 ILCS 5/115-7.4 neither violated defendant's Ill. Const. art. I, § 2 equal protection nor due process rights. Alleged domestic abusers were not members of a suspect class and that statute had a reasonable basis for being enacted, that of finding the truth in a domestic abuse case; too, the statute did not permit admission of irrelevant or unfairly prejudicial evidence, which meant that it contained sufficient procedural safeguards. People v. Dabbs, 396 Ill. App. 3d 622, 335 Ill. Dec. 782, 919 N.E.2d 501, 2009 Ill. App. LEXIS 1236 (3 Dist. 2009), appeal denied, 2010 Ill. LEXIS 315 (Ill. 2010).

As an alleged domestic abuser, defendant was not the member of a suspect class for Ill. Const. art. I, § 2 equal protection purposes and, thus, the statute allowing for admission of prior domestic abuse acts, 725 ILCS 5/115-7.4, in defendant's domestic abuse trial was not violative of the equal protection provision of the Illinois Constitution in regard to defendant. Since defendant was not the member of a suspect class, the statute only had to have a reasonable basis to be constitutionally enacted, and it had a reasonable basis because it furthered the goal of uncovering the truth in domestic abuse cases. People v. Dabbs, Ill. App. 3d , Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 997 (3 Dist. Oct. 15, 2009).

Persons committed under the Sexually Violent Persons Commitment Act, 725 ILCS 207/1 et seq., and the Sexually Dangerous Persons Act, 725 ILCS 205/1.01 et seq., were not similarly situated and 725 ILCS 207/65(a)(2) and 725 ILCS 207/60(d) did not violate equal protection guarantees by allowing the State to prove its case for continued commitment by only clear and convincing evidence because the legislature could have rationally determined that persons who had already been adjudicated sexually violent beyond a reasonable doubt posed a greater risk to society than those whose sexual dangerousness had not been established in a prior criminal proceeding; there was a legitimate state interest in protecting the public from sexually violent persons. People v. Bushong (In re Bushong), 351 Ill. App. 3d 807, 286 Ill. Dec. 893, 815 N.E.2d 103, 2004 Ill. App. LEXIS 1055 (2 Dist. 2004), appeal denied, 213 Ill. 2d 559, Ill. Dec. , 829 N.E.2d 788 (2005).

Equal protection challenges not affecting a suspect class or fundamental right are subject to the rational basis test; under the rational basis test, a court simply inquires whether the method or means employed to achieve a particular purpose is rationally related to that goal. Randich v. Pirtano Constr. Co., 346 Ill. App. 3d 414, 281 Ill. Dec. 616, 804 N.E.2d 581, 2004 Ill. App. LEXIS 146 (2 Dist. 2004).

- School Districting

105 ILCS 5/7-2a(b), providing for the dissolution of certain school districts, did not violate equal protection because it only applied to school districts with less than 5,000 residents, as it was subject to a rational basis analysis, because it did not infringe the right to vote, but merely determined the manner in which that right was exercised, and it was rationally related to the legitimate state goal of promoting local control of education efficiently. Puffer-Hefty Sch. Dist. No. 69 v. Du Page Reg'l Bd. of Sch. Trs., 339 Ill. App. 3d 194, 273 Ill. Dec. 626, 789 N.E.2d 800, 2003 Ill. App. LEXIS 528 (2 Dist. 2003), cert. denied, 540 U.S. 1219, 124 S. Ct. 1509, 158 L. Ed. 2d 155 (2004).

Rational basis existed for granting the right to a referendum in a case involving annexation of non-college-district territory to an existing community college district and withholding the right to a

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referendum in a case involving the formation of a new community college district from non-college-district territory because there were substantially different problems involved in the organization of a new community college district that were not present in the annexation of territory to an existing district including: (1) problems totally unrelated to the need for or the desirability of a community college district could bring about the defeat of the organization of a new district through a back door referendum which would not be critical issues in an annexation referendum; (2) an ancillary question such as the location of the educational facilities could easily become a controlling factor in causing the defeat by way of a referendum of an otherwise desirable and needed community college district; and (3) a real or imagined dominance of the board of trustees of a new district by a geographic area or a distrusted faction could bring about a similar result. Spaulding v. Illinois Community College Board, 64 Ill. 2d 449, 1 Ill. Dec. 213, 356 N.E.2d 339, 1976 Ill. LEXIS 390 (1976).

Former Ill. Rev. Stat., ch. 122, para. 106-6.1 (1973), which granted the Illinois Community College Board the power to establish new community college districts or annex property that was not part of a district to an adjacent community college district did not violate the equal protection clause of the Illinois Constitution because the statute conferred upon one class - residents of territory annexed to existing school districts - the right to have a referendum; the statute applied uniformly to all members of that class and did not confer the right to vote on some otherwise qualified voters and deny it to others. All qualified voters who resided in the territory annexed to an existing district had a right to vote at a referendum and all qualified voters who resided in territory formed into a new school district were denied the right to vote at a referendum and, therefore the plaintiffs had not been deprived of a fundamental right. Spaulding v. Illinois Community College Board, 64 Ill. 2d 449, 1 Ill. Dec. 213, 356 N.E.2d 339, 1976 Ill. LEXIS 390 (1976).

Former Ill. Rev. Stat., ch. 122, para. 106-6.1 (1973), which granted the Illinois Community College Board the power to establish new community college districts or annex property that was not part of a district to an adjacent community college district did not violate the equal protection clause of the Illinois Constitution by providing for a referendum on the question of annexation but no such referendum provisions as to new districts, because the State's interest in education was so pervasive that it could constitutionally establish or alter school districts without any local referendum. Spaulding v. Illinois Community College Board, 64 Ill. 2d 449, 1 Ill. Dec. 213, 356 N.E.2d 339, 1976 Ill. LEXIS 390 (1976).

- Settlement

Consent decree, which settled an action in which the mandatory busing of approximately 550 African-American students violated the equal protection of the law and equal educational opportunities, was approved because the settlement was fair, reasonable, an adequate solution for the class of students, and could be implemented expeditiously. Johnson v. Bd. of Educ. of Champaign Unit Sch. Dist. # 4, 188 F. Supp. 2d 944, 2002 U.S. Dist. LEXIS 1818 (C.D. Ill. 2002).

- Standard of Review

Applicant did not show that the applicant's equal protection rights under Ill. Const. Art. I, § 2 were violated when the Board denied the applicant's request for reinstatement of a widow's annuity benefit in a case where the applicant had been married to a policewoman for 12 days before she died and no person could receive such benefits if that person was married to the relevant police officer for less than one year prior to the police officer's death. Although the applicant claimed that others receiving pension benefits were similarly situated, the applicant did not show that those other people had been married to the relevant police officer for less than one year before the police officer died or that there was no rational basis for the difference in treatment. Kaczka v. Ret. Bd. of the Policemen's Annuity & Benefit Fund of Chi., 398 Ill. App. 3d 702, 338 Ill. Dec. 133, 923 N.E.2d 1282, 2010 Ill. App. LEXIS 160 (1 Dist. 2010).

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Criminalization of escape by persons committed to the Illinois Department of Human Services (DHS) under the Illinois Sexually Violent Persons Act, 720 ILCS 207/1 et seq., while escape by persons committed to DHS for other reasons is not criminalized under 720 ILCS 5/31-6(b-1), does not violate equal protection; the classification used in 720 ILCS 5/31-6(b-1) bears a rational relationship to the State's interest in protecting the public from a class of persons whose sexually violent offenses have been established beyond a reasonable doubt in prior criminal proceedings. People v. Runge, 346 Ill. App. 3d 500, 282 Ill. Dec. 13, 805 N.E.2d 632, 2004 Ill. App. LEXIS 184 (3 Dist. 2004), appeal denied, 209 Ill. 2d 597, 286 Ill. Dec. 170, 813 N.E.2d 227 (2004).

- Zoning Ordinances

Landowners' administrative appeal from the denial of a variance that would have allowed building on lots that were too small under land use regulations that were in effect when they bought the land, as well as their constitutional challenges to the ordinance were dismissed; the zoning board's findings were not against the manifest weight of the evidence, as it was clear that the landowners had still received an excellent return on their investment and that maintenance of open space in a portion of the town was a reasonable exercise of the police power. LaSalle Nat'l Bank v. City of Highland Park, 344 Ill. App. 3d 259, 278 Ill. Dec. 916, 799 N.E.2d 781, 2003 Ill. App. LEXIS 1336 (2 Dist. 2003), appeal denied, 208 Ill. 2d 539, 284 Ill. Dec. 341, 809 N.E.2d 1287 (2004), cert. denied, 543 U.S. 984, 125 S. Ct. 477, 160 L. Ed. 2d 365 (2004).

Dentist's contention that zoning ordinance, which prohibited him from establishing a dental practice in his residence was confiscatory, and thus in violation of Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) and Ill. Const. of 1870, Art. II, § 13, when the evidence showed that he had bought the property six years earlier, subject to the residential zoning classification, had used it as his residence since that time, and offered no proof of changes in the area that would tend to depreciate the property's value. Skrysak v. Mt. Prospect, 13 Ill. 2d 329, 148 N.E.2d 721, 1958 Ill. LEXIS 271 (1958).

Zoning ordinance, which prohibited the establishment of a business within property zoned for residential use, did not violate Ill. Const. of 1870, Art. II, §§ 2 and 13 (now Ill. Const. (1970), Art. I, § 2) as it was applied to dentist's application to open a dental practice within his residence because the dentist did not offer convicting evidence that using his property as a dental office would relieve traffic (in that his patients would not have to cross heavily traveled highways) and because the record did not show a great need for dental services in the area; thus, the dentist did not meet his burden of proving that the ordinance had no substantial relation to the public health, safety, morals or welfare. Skrysak v. Mt. Prospect, 13 Ill. 2d 329, 148 N.E.2d 721, 1958 Ill. LEXIS 271 (1958).

Executive Powers

Under the Illinois Constitution, a court did not have a right to question, review, or modify an executively-imposed sentence, and, thus, defendant's appeal of the sentence imposed on him after the governor commuted his death sentence to a term of natural life imprisonment was dismissed as moot. People v. Watson, 347 Ill. App. 3d 181, 283 Ill. Dec. 23, 807 N.E.2d 628, 2004 Ill. App. LEXIS 258 (1 Dist. 2004), appeal denied, 211 Ill. 2d 611, Ill. Dec. , 823 N.E.2d 977 (2004); overruled in part on other grounds by People v. Mata, 217 Ill. 2d 535, 842 N.E.2d 686, 2006 Ill. LEXIS 311, 299 Ill. Dec. 649 (2006).

Illustrative Cases

Illinois Insurance Guaranty Fund was granted summary judgment on a closely-held corporation's claims that 215 ILCS 5/534.3(b)(iv) violated the Due Process and Equal Protection Clauses of the Illinois Constitution; where the exclusion was merely an eligibility requirement that determined whether an insured was qualified for the benefits provided by the Illinois Insurance Guaranty

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Fund Act, 215 ILCS 5/532 et seq., the Act was not intended to render the Fund absolutely liable to policyholders due to the insolvency of their insurance companies, and as a result, the exclusion was not arbitrary simply because it transcended traditional notions of corporate separateness and liability. Cresswood Farm, Inc. v. Ill. Ins. Guar. Fund, F. Supp. 2d , 2004 U.S. Dist. LEXIS 6725 (N.D. Ill. Apr. 16, 2004).

Distinctions made in 720 ILCS 470/401(a), (d) between possession with the intent to deliver ecstasy in either pill form or powder form bore a reasonable relationship to a possible legislative determination that ecstasy in its pill form was more dangerous than its powder form, and therefore, the distinctions did not violate either the equal protection or the due process clauses found in Ill. Const. (1970), Art. I, § 2. People v. Ragusa, 346 Ill. App. 3d 176, 281 Ill. Dec. 727, 804 N.E.2d 692, 2004 Ill. App. LEXIS 107 (2 Dist. 2004).

-- County Zoning Ordinance

Zoning ordinance, which prohibited a business from using a property that was zoned residential for the parking of automobiles, violated due process as the evidence showed that properties in the area were largely devoted to residential use but that they were bordered on two sides by industrial areas, the parking lot was blacktopped, well kept and surrounded by a neatly trimmed hedge, and it was unrealistic to say that the value of the surrounding properties would be affected. Loves Park v. Woodward Governor Co., 14 Ill. 2d 623, 153 N.E.2d 560, 1958 Ill. LEXIS 376 (1958).

- City's Construction Contracts

While a city's construction contract set-aside programs favoring minority and women owned business enterprises fulfilled a compelling state interest in preventing discrimination and curing prior acts of discrimination, the program was not narrowly enough tailored to remedy either past discrimination or existing discrimination and it was violative of equal protection; the city was ordered by injunction to scrap that program, yet find a way to fulfill its compelling interest in not having its construction projects slip back to near monopoly domination by white male firms. Builders Ass'n of Greater Chi. v. City of Chicago, 298 F. Supp. 2d 725, 2003 U.S. Dist. LEXIS 23287 (N.D. Ill. 2003).

- Parental Notification

Judgment on the pleadings against the medical care providers, and dismissal of their claims challenging the constitutionality of Parental Notice of Abortion Act of 1995 under the Illinois Constitution alone, was not warranted. Their claims alleging equal protection and due process violations under Ill. Const. art. I, § 2 were not barred by collateral estoppel despite the trial court's conclusion to the contrary, as the relevant federal opinion that supposedly barred their claims was not decided on equal protection grounds, as to due process the federal court was presented with a very narrow question not at issue in the medical providers' case, and the claims alleging that the right to privacy under Ill. Const. art. I, § 6 and the right to gender equality under Ill. Const. art. I, § 18 were violated were not infirm because the Illinois Constitution had express clauses guaranteeing those rights which the federal constitution did not have. Hope Clinic for Women Ltd. v. Adams, Ill. App. 3d , 353 Ill. Dec. 44, 955 N.E.2d 511, 2011 Ill. App. LEXIS 649 (1 Dist. 2011).

Interference With Interstate Commerce

It was not a violation of due process to collect a fee on a stock value increase because the railroad company was covered by a state statute requiring such fees to be paid and no federal law provision barred application of the statute; the federal Interstate Commerce Act did not deprive the state legislatures of the authority to levy a tax upon a railroad company for an increase in capital tax and such laws did not burden interstate commerce. Chicago & E. I. R. Co. v. Emmerson, 327 Ill. 574, 158 N.E. 857, 1927 Ill. LEXIS 1088 (1927).

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- State Action

Because a testator or the settlor of a trust is not a state actor, there are no constitutional dimensions to his choice of beneficiaries. Equal protection does not require that all children be treated equally; due process does not require notice of conditions precedent to potential beneficiaries; and the free exercise clause does not require a grandparent to treat grandchildren who reject his religious beliefs and customs in the same manner as he treats those who conform to his traditions. Feinberg v. Feinberg (In re Estate of Feinberg), 235 Ill. 2d 256, 335 Ill. Dec. 863, 919 N.E.2d 888, 2009 Ill. LEXIS 1299 (2009), cert. denied, 2010 U.S. LEXIS 4519, 176 L. Ed. 2d 1245 (U.S. 2010).

Jury Instructions

Refusal to give a lesser included offense instruction requested by defendant in his trial for possession of 30 to 500 grams of cannabis with intent to deliver, 720 ILCS 550/5(d), was error because there was the requisite level of evidence supporting defendant's right to the instruction in the form of his confession stating that he intended to sell only a portion of the cannabis in his possession; since the error was an unconstitutional denial of due process, and since a rational juror could have found defendant guilty of only the lesser included offense, the error was not harmless. People v. Blan, 392 Ill. App. 3d 453, 332 Ill. Dec. 428, 913 N.E.2d 23, 2009 Ill. App. LEXIS 418 (2 Dist. 2009).

Liberty Interest

- Involuntary Commitment

Because involuntary admission proceedings pose a grave threat to an individual's liberty interests, the Illinois Mental Health and Developmental Disabilities Code's procedural safeguards should be strictly construed in favor of the respondent; thus, where the State failed to strictly comply with the statutory requirements for filing the certificates in support of a petition to find a mental health patient to be a person subject to involuntary admission, the order committing the patient to the Illinois Department of Human Services was erroneous. People v. Linda W. (In re Linda W.), 349 Ill. App. 3d 437, 285 Ill. Dec. 460, 812 N.E.2d 49, 2004 Ill. App. LEXIS 706 (5 Dist. 2004).

Peremptory Challenges

Prosecutor's use of peremptory challenge to dismiss African-American from jury panel because she demonstrated some difficulty providing appropriate answers to questions and might have difficulty understanding basic concepts during trial did not violate African-American defendant's right to equal protection. People v. Lee, Ill. App. 3d , Ill. Dec. , N.E.2d , 2001 Ill. App. LEXIS 587 (5 Dist. July 20, 2001).

Post-Conviction Petition

Defendant's contentions had to be rejected that defendant's Ill. Const. art. I, § 2 due process and equal protection rights had been violated when the trial court assessed $105 in fees for filing a frivolous postconviction relief petition and ordered that the costs be deducted from defendant's prisoner trust account. The trial court was permitted to act as it did pursuant to 735 ILCS 5/22-105(a), the appellate court had previously rejected constitutional challenges to the assessment of fees pursuant to that statutory provision, and defendant raised nothing new that would cause a reviewing court to embrace defendant's contentions. People v. Coleman, Ill. App. 3d , 353 Ill.

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Dec. 838, 956 N.E.2d 966, 2011 Ill. App. LEXIS 766 (1 Dist. 2011), appeal denied, 2011 Ill. LEXIS 2105 (Ill. 2011).

Trial court was authorized pursuant to 735 ILCS 5/22-105 regarding frivolous prisoner pleadings to impose fees and costs upon defendant for filing a pro se postconviction petition in defendant's first-degree murder case that was frivolous and patently without merit, and, accordingly had to be summarily dismissed under 725 ILCS 5/122-2.1, as the statute permitting fees and costs to be imposed in such a situation was constitutionally sound. Under Ill. Const. art. I, § 2, and the Fifth Amendment, U.S. Const. amend. V, that statute did not violate due process because defendant did not have a fundamental right to file frivolous pleadings and under Ill. Const. art. I, § 2 and the Fourteenth Amendment, U.S. Const. amend. XIV, that statute did not violate defendant's equal protection rights because prisoners were not a suspect class and the statute rationally furthered the legislature's rational goal of reducing prisoners' frivolous pleadings. People v. Alcozer, 241 Ill. 2d 248, 350 Ill. Dec. 1, 948 N.E.2d 70, 2011 Ill. LEXIS 455 (2011).

Trial court did not err in summarily dismissing defendant's second petition for postconviction relief from defendant's conviction for armed robbery; defendant's petition did not state the gist of a constitutional claim, as defendant's assertions of ineffective assistance of counsel and Brady violations related to how police conducted the lineups at a police station where torture was allegedly used were barred by res judicata and waiver because the claims could have been raised at trial, on direct appeal, or in defendant's first petition for postconviction relief and were not, and defendant also could not maintain an actual innocence claim in violation of defendant's due process rights because the overwhelming evidence of defendant's guilt meant that there was no probability that new evidence would change the result of defendant's trial on retrial. People v. Anderson, 375 Ill. App. 3d 990, 314 Ill. Dec. 367, 874 N.E.2d 277, 2007 Ill. App. LEXIS 942 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1724 (Ill. 2007).

Conviction of an innocent person violates the due process clause of the Illinois Constitution and, therefore, an inmate has a right to assert a claim of actual innocence based on newly discovered evidence; while an inmate had the right to assert that claim in a successive postconviction petition, the denial of that petition was not manifestly erroneous where the recanted testimony the inmate relied on would not likely change the outcome of a new trial on an 18-year-old murder charge. People v. Morgan, 212 Ill. 2d 148, 288 Ill. Dec. 166, 817 N.E.2d 524, 2004 Ill. LEXIS 1021 (2004), cert. denied, 543 U.S. 1167, 125 S. Ct. 1346, 161 L. Ed. 2d 143 (2005).

Property Rights

- Ordinances

Village's vegetation ordinance that prohibited overgrown weeds around a commercial building did not violate the due process clause of Ill. Const. art. I, § 2 due to vagueness because, even if the meaning of "overgrown" was unclear, the building owner had actual notice that his property violated the vegetation ordinance before any citation issued. He received a letter from the Village informing him that his property was in violation of the ordinance and that he would need to remove the overgrown vegetation or a citation would be issued. Hu v. Vill. of Midlothian, 631 F. Supp. 2d 990, 2009 U.S. Dist. LEXIS 41101 (N.D. Ill. 2009).

School District Taking

School district has no property right of which it might be deprived in violation of former Ill. Const. Art. II, § 2 (now Ill. Const. Art. I, § 2). Board of Education v. Ellis, 19 Ill. App. 3d 381, 311 N.E.2d 615, 1974 Ill. App. LEXIS 2626 (1 Dist. 1974).

Sentence Upheld

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- Illustrative Cases

There is a rational basis for classifying 720 ILCS 550/5(g) based upon the Illinois Legislature's stated and unchanged purpose in enacting the Illinois Cannabis Control Act, 720 ILCS 550/1; therefore, an equal protection challenge was rejected after defendant was classified as a Class X offender and sentenced to 12 years in prison. If defendant disagreed based on scientific data, the case should have been presented to the Illinois Legislature for a change in the law. People v. Yoselowitz, Ill. App. 3d , 355 Ill. Dec. 682, 960 N.E.2d 564, 2011 Ill. App. LEXIS 1109 (4 Dist. 2011).

Sentencing

Youth Diversion Peer Court charge, 55 ILCS 5/5-1101(e), was not unconstitutional where the charge was a fine and not intended to reimburse the state for any prosecution cost, and survived a due process analysis as the $5 fine was not wildly disproportionate to underlying drug possession offense. People v. Gildart, 377 Ill. App. 3d 39, 316 Ill. Dec. 343, 879 N.E.2d 410, 2007 Ill. App. LEXIS 1167 (1 Dist. 2007).

Appellate court erred in affirming the trial court's dismissal of defendant's post-conviction relief petition filed pursuant to the Post-Conviction Hearing Act, 725 ILCS 5/122-1 et seq., as the trial court's failure to inform defendant during his plea hearing on charges of first-degree murder and armed robbery that he would be subject to a three-year term of mandatory supervised release meant defendant's due process rights were substantially violated. As a result, the appellate court's judgment had to be reversed, his sentence had to be vacated, and the case had to be remanded to the trial court with directions to enter a modified sentence that would approximate the penal consequences contemplated by the original plea agreement. People v. Whitfield, Ill. 2d , Ill. Dec. , N.E.2d , 2005 Ill. LEXIS 978 (Oct. 6, 2005).

Appellate court erred in concluding that defendant's appeal of her sentence for first-degree murder was moot since the Governor had exercised his powers of executive clemency to commute her sentence from the death penalty to natural life imprisonment. Defendant's constitutional right to due process of law, namely to challenge whether sufficient evidence existed to support the aggravating factor used to enhance her first-degree murder sentence, was not subordinate to the Governor's power of executive clemency, which meant defendant should have been permitted to continue challenging her sentence even after the Governor had commuted it since it might be reduced further depending on additional review of the merits of her sentence. People v. Mata, Ill. 2d , Ill. Dec. , N.E.2d , 2005 Ill. LEXIS 2066 (Dec. 15, 2005).

Because it was the trial court that had the discretion to grant the continuance in defendant's case to past defendant's birthday when he turned 21, the age classification portion of 730 ILCS 5/5-5-3(c)(8) was not subject to manipulation by the State of Illinois. Consequently, defendant's rights to equal protection and due process were not denied under U.S. Const. Amend. XIV, § 1 and Ill. Const. Art. I, § 2. People v. Williams, 358 Ill. App. 3d 363, 295 Ill. Dec. 475, 832 N.E.2d 925, 2005 Ill. App. LEXIS 627 (1 Dist. 2005), appeal denied, 217 Ill. 2d 591, 300 Ill. Dec. 374, 844 N.E.2d 46 (2005).

Statute used to sentence defendant to an additional 20 years in prison for using a firearm, on top of the 30-year base sentence for first-degree murder, was constitutional as the legislature could have made a rational distinction between those crimes committed with a firearm as opposed to those crimes committed without a firearm and concluded that a harsher sentence was warranted for those committed with a firearm, given the destructive nature of a firearm; accordingly the enhancement of defendant's sentence was not disproportionate to the crime and defendant did not show his due process rights were violated because he did not show that the enhancement statute punished less culpable behavior more severely than more culpable behavior. People v. Zapata, 347 Ill. App. 3d 956, 283 Ill. Dec. 776, 808 N.E.2d 1064, 2004 Ill. App. LEXIS 334 (1 Dist. 2004), appeal denied, 217 Ill. 2d 592, Ill. Dec. , 844 N.E.2d 47 (2005).

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Under established caselaw, a natural life sentence for three counts of first degree murder and one count of attempted murder did not violate due process, equal protection, or prohibitions against cruel and unusual punishment. People v. Crosby, 243 Ill. App. 3d 1083, 185 Ill. Dec. 65, 614 N.E.2d 199, 1993 Ill. App. LEXIS 391 (1 Dist. 1993).

Ill. Rev. Stat. 1971, ch. 56 1/2, para. 1404 (now 720 ILCS 570/404 does not violate the equal protection clauses of the United States and Illinois Constitutions by delegating unfettered discretion in the State's Attorney to set the length of sentence for its violation because the kind of determination committed to the discretion of the State's Attorney by the statute is the same kind of discretion that is committed to him with respect to a host of other offenses and it is exercised by him every day; it is not an unconstitutional delegation of authority. People v. Chalmers, 21 Ill. App. 3d 771, 316 N.E.2d 101, 1974 Ill. App. LEXIS 2272 (1 Dist. 1974).

- Juveniles

Although a trial court had not admonished a juvenile of the possible minimum and maximum penalties when it accepted the juvenile's admission to violating the terms of the juvenile's probation, which had been imposed following the juvenile's guilty plea to the offense of unlawful delivery of a controlled substance within 1,000 feet of a church, school, or park, 720 ILCS 570/407(b)(2), it had substantially complied with Ill. Sup. Ct. R. 402A(a) because the trial court had previously admonished the juvenile on two separate occasions that occurred shortly before the juvenile's probation revocation. People v. Westley A.F. (In re Westley A.F.), 399 Ill. App. 3d 791, 340 Ill. Dec. 431, 928 N.E.2d 150, 2010 Ill. App. LEXIS 349 (2 Dist. 2010).

- Parole

Inmate's claim that the parole process in Illinois violated the inmate's procedural due process rights had to be rejected, as that process did not give an inmate a legitimate expectation of parole that became a liberty interest protected by procedural due process pursuant to the applicable constitutional provisions, U.S. Const. amend. XIV and Ill. Const. art. I, § 2. Indeed, while the Board under the relevant statutes creating it and dictating how often it could hold parole hearings, 730 ILCS 5/3-3-1, 730 ILCS 5/3-3-2, and 730 ILCS 5/3-3-5, had to in certain instances deny parole, the Board had complete discretion in granting parole, which meant that the inmate could not show that the inmate had a constitutional right to be granted parole. Hill v. Walker, 241 Ill. 2d 479, 350 Ill. Dec. 321, 948 N.E.2d 601, 2011 Ill. LEXIS 452 (2011).

Standing

In an action by the Department of Mental Health to collect charges that had been assessed for the cost of his wife's treatment in a state hospital, husband had no standing to argue that the statute upon which the Department relied, by exempting a wife whose husband had not supported her for five years from liability for her husband's care but not exempting a husband in the same circumstances, violated Ill. Const. (1970), Art. I, §§ 2 and 18, because the husband claimed only to be a husband, not a husband whose wife had failed to support him for five years; accordingly, the husband was not and could not be adversely or unfavorably affected by the classification in the exemption. Department of Mental Health v. Gardner, 5 Ill. App. 3d 578, 283 N.E.2d 693, 1972 Ill. App. LEXIS 2752 (1 Dist. 1972).

- Municipal Corporations

Corner property owner's claim, that a provision of a building ordinance of the City of Chicago, which stated that when obtaining the required proportion of owners for consent to build a stable in a residential area the homes on corner lots did not count, was unreasonable and discriminatory was rejected because the corner property owner produced no evidence to establish that the stable would be a nuisance or would depreciate the value of the property. Joseph v. Wieland Dairy Co., 297 Ill. 574, 131 N.E. 94, 1921 Ill. LEXIS 1197 (1921).

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Taxation

Alternative homestead exemption in an amendment to 35 ILCS 200/15-176 was not unconstitutional because the amendment did not violate the taxpayers' right to equal protection under Ill. Const. art. I, § 2, and the amendment was not improperly retroactively applied in violation of the taxpayers' due process rights. Chicagoland Chamber of Commerce v. Pappas, 378 Ill. App. 3d 334, 317 Ill. Dec. 113, 880 N.E.2d 1105, 2007 Ill. App. LEXIS 1285 (1 Dist. 2007).

Unregistered Firearm in Vehicle Ordinance

Court declined to apply the exclusionary rule to bar evidence in an administrative impoundment proceeding where automobile owner argued that the exclusionary sanction applied and department of revenue erred in relying on evidence of a firearm obtained during an unconstitutional search of his automobile because preventing the department from considering valuable and relevant evidence would impede truth finding and interfere with the public policy behind the administrative proceeding and the application of the exclusionary rule to the department of revenue proceedings would add little deterrent effect beyond that already imposed by excluding the illegally obtained evidence in a criminal proceeding. McCullough v. Knight, 293 Ill. App. 3d 591, 228 Ill. Dec. 209, 688 N.E.2d 1186, 1997 Ill. App. LEXIS 819 (1 Dist. 1997).

Vagueness

- Not Shown

510 ILCS 70/3 is not void for vagueness because a person of ordinary intelligence would be aware that confining over 80 stray cats to a single townhouse residence would jeopardize the health and sanitary living conditions of the pets on the premises and constitute inhumane treatment to a cat. People v. Curtis, 407 Ill. App. 3d 1042, 348 Ill. Dec. 565, 944 N.E.2d 806, 2011 Ill. App. LEXIS 142 (2 Dist. 2011).

Waiver

Theories of defense not raised in the trial court cannot be raised for the first time on appeal, and under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2), this principle of waiver encompasses constitutional questions. People v. Spooner, 22 Ill. App. 3d 685, 318 N.E.2d 66, 1974 Ill. App. LEXIS 2084 (1 Dist. 1974).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Constitutional Law," see 25 S. Ill. U. L.J. 733 (2001).

RESEARCH REFERENCES

What constitutes reverse or majority race or national origin discrimination violative of federal constitution or statutes - public employment cases. 168 ALR Fed. 1

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Equal protection and due process clause challenges based on racial discrimination - Supreme Court cases. 172 ALR Fed. 1

Equal protection and due process clause challenges based on sex discrimination - Supreme Court cases. 178 ALR Fed. 25.

Forcible administration of antipsychotic medication to pretrial detainees - Federal cases. 188 ALR Fed. 285.

Failure of state prosecutor to disclose exculpatory medical reports and tests as violating due process. 101 ALR5th 187.

What constitutes private club or association not otherwise open to public that is exempt from state civil rights statute. 83 ALR5th 467.

Validity and Propriety under Circumstances, of Court-Ordered HIV Testing. 87 ALR5th 631.

Laws governing judicial recusal or disqualification in state proceeding as violating federal or state constitution. 91 ALR5th 437.

Failure of state prosecutor to disclose exculpatory photographic evidence as violating due process. 93 ALR5th 527; 95 ALR5th 611.

Validity, construction, and application of road or transportation impact fee statutes or ordinances. 97 ALR5th 123.

Denial of, or interference with, accused's right to have attorney initially contact accused. 96 ALR5th 327.

Failure of state prosecutor to disclose fingerprint evidence as violating due process. 94 ALR5th 393.

Application of Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000) and Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002) to state death penalty proceedings. 110 ALR5th 1.

Federal and state constitutional provisions and state statutes as prohibiting employment discrimination based on heterosexual conduct or relationship. 123 ALR5th 411.

Section 3. Religious Freedom.

The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed, and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

(Source: Illinois Constitution.)

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Illinois Jurisprudence. See Illinois Jur, Fam L § 10:1, § 10:23.

CASE NOTES

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In General

That a law's effect merely happens to coincide with religious tenets does not automatically render the law a violation of the establishment clause. Opty's Amoco, Inc. v. Village of S. Holland, 209 Ill. App. 3d 473, 154 Ill. Dec. 260, 568 N.E.2d 260 (1 Dist. 1991), aff'd, 149 Ill. 2d 265, 172 Ill. Dec. 390, 595 N.E.2d 1060 (1992).

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Appeals to Supreme Court

- Jurisdiction

Where defendants' sole defense was their right to freedom of religion and defendants sought construction and application of former Ill. Rev. Stat. ch. 91, para. 16i (see now 225 ILCS 60/49) and not a construction of this section, that was not sufficient to give the Supreme Court jurisdiction on a direct writ of error and the case was transferred to the appellate court. People v. Estep, 409 Ill. 125, 97 N.E.2d 823 (1951).

Applicability

Exercise of the ecclesiastical abstention doctrine rested entirely on the dispute's subject matter. It was not important that a shrine was a congregational entity rather than part of a hierarchical polity. Bruss v. Przybylo, 385 Ill. App. 3d 399, 324 Ill. Dec. 387, 895 N.E.2d 1102, 2008 Ill. App. LEXIS 983 (2 Dist. 2008).

Ecclesiastical abstention doctrine barred adjudication of former shrine and board members' complaint to terminate a pastor's employment contract. That subject matter was barred by the First and Fourteenth Amendments and Ill. Const. art. I, § 3; the controversy involved matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law. Bruss v. Przybylo, 385 Ill. App. 3d 399, 324 Ill. Dec. 387, 895 N.E.2d 1102, 2008 Ill. App. LEXIS 983 (2 Dist. 2008).

- Child Care Act

Section 2.09 of the Child Care Act (225 ILCS 10/2.09) does not violate the establishment clause of the Federal Constitution or provide an invalid religious preference under the State Constitution. Pre-School Owners Ass'n v. Department of Children & Family Servs., 119 Ill. 2d 268, 116 Ill. Dec. 197, 518 N.E.2d 1018 (1988).

- Criminal Statutes

Conviction for violation of an order of protection requiring defendant to stay away from his children, under 720 ILCS 5/12-30, was supported by sufficient evidence that defendant voluntarily entered a church with the knowledge that his children would be there and that he made physical contact with them. Freedom of religion under Ill. Const., Art. I, § 3 was not an issue because the order of protection did not prohibit defendant from exercising the religion of his choice or prohibit defendant from entering any specific place of worship. People v. Mandic, 325 Ill. App. 3d 544, 259 Ill. Dec. 658, 759 N.E.2d 138, 2001 Ill. App. LEXIS 835 (1 Dist. 2001).

The statute which contains the provision enhancing the penalty for delivery of a controlled substance near a place of worship violates neither the establishment clause of the First Amendment to the United States Constitution nor the comparable provision of the Illinois Constitution. People v. Daniels, 307 Ill. App. 3d 917, 241 Ill. Dec. 210, 718 N.E.2d 1064 (2 Dist. 1999), appeal denied, 188 Ill. 2d 570, 246 Ill. Dec. 126, 729 N.E.2d 499 (2000).

- Industrial Schools for Girls Act

A prior provision of the Industrial Schools for Girls Act (see now 730 ILCS 160/0.01 et seq.) did not violate the constitutional guarantee of religious freedom. County of McLean v. Humphreys, 104 Ill. 378 (1882).

- Mental Health Code

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Where defendant had grounds for divorce at and prior to the time of her husband's commitment but because her religious beliefs failed to exercise her right to obtain one, law which required relatives to pay for treatment, but which did not require that persons who were divorced to pay for the care of their former spouses did not amount to a preference given to persons whose religion permitted divorce, and to persons without any religion, over persons whose religious faith prohibited them from obtaining divorces, and the law was not contrary to former Ill. Const. (1870), Art. II, § 3, see now this section. Department of Mental Health v. Warmbir, 37 Ill. 2d 267, 226 N.E.2d 4 (1967).

- Prevailing Wages

Foundations status as a private religious foundation was irrelevant to the issue of its identity under the establishment clauses of the state and federal constitutions for the purpose of determining whether the Prevailing Wage Act requiring "public bodies" to pay the wages required by that law meant that the state was establishing a religion. The foundation was considered to be a public body because it funded some of its construction project through tax-exempt bonds issued under a state financing law and the requirement that it pay workers on the project the prevailing wage was not related to establishing a religion in violation of Ill. Const. art. I, § 3. McKinley Found. at the Univ. of Ill. v. Ill. Dep't of Labor, 404 Ill. App. 3d 1115, 344 Ill. Dec. 179, 936 N.E.2d 708, 2010 Ill. App. LEXIS 955 (4 Dist. 2010).

- School Busing

The same secular purpose, primary neutral effect and absence of excessive government entanglement which places 105 ILCS 5/29-4 outside the prohibition of Ill. Const. (1970), Art. X, § 3 against the use of public funds for sectarian purposes also places it outside the prohibition of this section against any preference being given by law to any religious denomination and therefore the statute does not violate this section. Board of Educ. v. Bakalis, 54 Ill. 2d 448, 299 N.E.2d 737 (1973).

Authority of State

Governmental bodies are precluded from resolving disputes on the basis of religious doctrine and must respect the internal autonomy of religious organizations. Haven v. Department of Revenue, 153 Ill. App. 3d 763, 106 Ill. Dec. 634, 506 N.E.2d 341 (4 Dist. 1987).

Burial on Sunday Act

Evidence held sufficient to support the finding that the Burial on Sunday or Holiday Act (820 ILCS 135/0.01 et seq.) had a valid secular purpose and was therefore constitutional. Heckmann v. Cemeteries Ass'n, 127 Ill. App. 3d 451, 82 Ill. Dec. 574, 468 N.E.2d 1354 (1 Dist. 1984), cert. denied, 473 U.S. 904, 105 S. Ct. 3525, 87 L. Ed. 2d 651 (1985).

Church Property Disputes

Defendants agreed that free exercise claims brought pursuant to the Illinois Constitution are analyzed using standards from federally-derived free exercise jurisprudence. Therefore, the court concluded based on its analysis of plaintiff's federal free exercise claim that plaintiff had also stated a claim based on the Illinois Constitution's Free Exercise Clause. Irshad Learning Ctr. v. County of DuPage, 804 F. Supp. 2d 697, 2011 U.S. Dist. LEXIS 33481 (N.D. Ill. 2011).

Plaintiff church's free exercise claims under the Illinois Constitution regarding a city zoning ordinance that allowed the church to conduct cultural, but not religious, events on its property were analyzed using standards from federally-derived free exercise jurisprudence. Vineyard

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Christian Fellowship of Evanston, Inc. v. City of Evanston, 250 F. Supp. 2d 961, 2003 U.S. Dist. LEXIS 5079 (N.D. Ill. 2003).

Trial court erred in its conclusion that the denial of a conditional use permit was not an infringement of the church's right to freedom of religion and in its imposition of a clear and convincing standard of proof upon plaintiff. Our Saviour's Evangelical Lutheran Church v. City of Naperville, 186 Ill. App. 3d 988, 134 Ill. Dec. 651, 542 N.E.2d 1158 (2 Dist. 1989).

The freedom of religion guaranteed by both federal and state constitutions limits the scope of action by a civil court in the settlement of disputes over church property. Courts have, with varying degrees of success, sought, in resolving such controversies, to formulate principles which preserve and protect the legitimate interest of the state without undesirable or impermissible interference in the internal operation of those rules which churches have chosen as their own form of government. Lowe v. First Presbyterian Church, 56 Ill. 2d 404, 308 N.E.2d 801 (1974).

A major factor in resolving questions of ownership and control of church property resulting from disputes between local and national church organizations is the structure of the parent church body and its relationship to the local church. Lowe v. First Presbyterian Church, 56 Ill. 2d 404, 308 N.E.2d 801 (1974).

Where a local church is but a subordinate member of a superior general church organization, and has directly or impliedly consented to its form of government, that church is ordinarily bound by the decision of the ecclesiastical judicatories. In these circumstances, the civil courts cannot, in the process of resolving property disputes between the local and the general church, independently determine questions properly within the sphere of ecclesiastical bodies. Lowe v. First Presbyterian Church, 56 Ill. 2d 404, 308 N.E.2d 801 (1974).

Duty of State

Because the state cannot constitutionally do so, it obviously has no burden to provide for its citizens' religious care and interests. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App. 3d 431, 115 Ill. Dec. 492, 517 N.E.2d 1178 (2 Dist. 1987).

Holiday

- Good Friday

Finding that Illinois' designation of Good Friday as a legal school holiday was primarily motivated by a desire to endorse the christian faith and conveyed the impermissible message that christianity was a favored religion within the state of Illinois, the United States District Court declared the challenged portion of section 24-2 of the Illinois School Code (105 ILCS 5/24-2) to be unconstitutional and entered a permanent injunction prohibiting its enforcement. Metzl v. Leininger, 850 F. Supp. 740 (N.D. Ill. 1994), aff'd, 57 F.3d 618 (7th Cir. 1995).

Judaism

Order requiring Jewish husband to obtain a "get" upon marriage dissolution could not be invalidated based on this section where petitioner failed to provide any authority that this section was intended to provide protection different from that afforded by the Establishment and Free Exercise Clauses of the First Amendment. In re Goldman, 196 Ill. App. 3d 785, 143 Ill. Dec. 944, 554 N.E.2d 1016 (1 Dist.), cert. denied, 132 Ill. 2d 544, 144 Ill. Dec. 257, 555 N.E.2d 376 (1990).

Minors

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The circuit court did not abuse its discretion in allowing a minor ward of the court the freedom to attend the church of her choice over the mother's objection, when the mother used religion to exercise excessive control over the minor. People v. Tabor, 185 Ill. App. 3d 110, 133 Ill. Dec. 177, 540 N.E.2d 1043 (4 Dist. 1989).

Religious Education

- Board of Education

The Board of Education should not help sustain or support any school controlled by a church or sectarian denomination or aid any church or sectarian purpose; however, nor should a school board be hostile or antagonistic to religion or churches, or interfere with the free exercise and enjoyment of religious freedom. People ex rel. Latimer v. Board of Educ., 394 Ill. 228, 68 N.E.2d 305 (1946).

- Effective Date of Legislation

Bills relating to financial assistance for nonpublic school education were passed on October 28, 1971, and they become law when the Governor certified them pursuant to Ill. Const. (1970), Art. IV, § 10, but they were not effective until July 1, 1972, because they were passed after June 30 and the legislature did not fix an earlier effective date. People ex rel. Klinger v. Howlett, 50 Ill. 2d 242, 278 N.E.2d 84 (1972).

- Establishment of Schools

The state cannot, under this section, prefer one religious denomination or its teachings and the public to contribute to its support, but it is not a violation of this section, either in spirit or letter, to authorize religious denominations to establish and conduct at their own expense, without cost to the public, schools for the development and moral improvement as well as the intellectual betterment of its students; in pursuing this policy in establishing institutions of learning, the state granted the right to religious denominations, without discrimination, to establish and maintain such institutions. Garrett Biblical Inst. v. Elmhurst State Bank, 331 Ill. 308, 163 N.E. 1 (1928).

- Public Schools

Where taxpayers who had sought a writ of mandamus to compell a school board to revoke its action authorizing the superintendent of schools to excuse public-school children from school for religious instruction outside the public school system due to a violation of a separation of church and state under Ill. Const. (1970), Art. I, § 3 (formerly Ill. Const. of 1870, Art. II, § 3), but they had not shown that teachers or principals had spent any time or that any money had been spent on enforcement of the regulation, they had not shown a clear right to the requested writ. People ex rel. Latimer v. Board of Education, 394 Ill. 228, 68 N.E.2d 305, 1946 Ill. LEXIS 374 (1946).

Resolution of board of education authorizing the superintendent of schools to excuse public school children at the request of their parents for one hour each week before the end of the regular school period, for the purpose of attending religious educational classes at places outside of the school activities or property was not a violation of the first amendment to the Constitution of the United States, nor did it violate this section. People ex rel. Latimer v. Board of Educ., 394 Ill. 228, 68 N.E.2d 305 (1946).

- Tax Credit

35 ILCS 5/201(m), which allows taxpayers to take an annual credit of up to $500 against their state income tax liability for 25% of qualified education expenses incurred on behalf of a dependent child or children in kindergarten through grade 12 at state public or nonpublic schools, violates neither § 3 of Article I or § 3 of Article X of the Illinois Constitution. Griffith v. Bower, 319

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Ill. App. 3d 993, 254 Ill. Dec. 383, 747 N.E.2d 423, 2001 Ill. App. LEXIS 248 (5 Dist. 2001), appeal denied, 195 Ill. 2d 577, 258 Ill. Dec. 94, 755 N.E.2d 477 (2001).

Standing

It was error to find that former shrine members lacked standing to sue, on their own behalf and derivatively on behalf of the shrine, to terminate a pastor's employment contract even though the members had been expelled as members of the shrine's board and the shrine. The expulsion occurred after the former members' complaint had been filed, and there was no basis to retroactively divest the members of standing. Bruss v. Przybylo, 385 Ill. App. 3d 399, 324 Ill. Dec. 387, 895 N.E.2d 1102, 2008 Ill. App. LEXIS 983 (2 Dist. 2008).

- Corporations

Plaintiffs, most of whom were corporations, who did not allege that they were members of any religious groups that would be affected, had no standing to raise the objection that a law mandating Sunday closing of automobile dealerships was unconstitutional and discriminatory on the basis of religious beliefs under former Ill. Const. (1870), Art. II, § 3 (see now this section). Humphrey Chevrolet, Inc. v. City of Evanston, 7 Ill. 2d 402, 131 N.E.2d 70 (1955).

- Economic Injury

One who alleges economic injury because of the state imposition of religion has standing to argue that a law prohibiting certain business activities on Sundays acted to establish a religion. Opty's Amoco, Inc. v. Village of S. Holland, 209 Ill. App. 3d 473, 154 Ill. Dec. 260, 568 N.E.2d 260 (1 Dist. 1991), aff'd, 149 Ill. 2d 265, 172 Ill. Dec. 390, 595 N.E.2d 1060 (1992).

State Action

Because a testator or the settlor of a trust is not a state actor, there are no constitutional dimensions to his choice of beneficiaries. Equal protection does not require that all children be treated equally; due process does not require notice of conditions precedent to potential beneficiaries; and the free exercise clause does not require a grandparent to treat grandchildren who reject his religious beliefs and customs in the same manner as he treats those who conform to his traditions. Feinberg v. Feinberg (In re Estate of Feinberg), 235 Ill. 2d 256, 335 Ill. Dec. 863, 919 N.E.2d 888, 2009 Ill. LEXIS 1299 (2009), cert. denied, 2010 U.S. LEXIS 4519, 176 L. Ed. 2d 1245 (U.S. 2010).

Taxation

Even upon accepting a property owner's characterization of its television and radio programming as religious instruction in order to avoid a violation under U.S. Const. amend. I and Ill. Const. art. I, § 3, the owner still failed to qualify for a religious use property tax exemption, as the owner failed to show that the primary activities on the property were "religious" and were conducted without "a view to profit" under 35 ILCS 200/15-40. Three Angels Broad. Network, Inc. v. Dep't of Revenue, 381 Ill. App. 3d 679, 319 Ill. Dec. 283, 885 N.E.2d 554, 2008 Ill. App. LEXIS 293 (1 Dist. 2008), appeal denied, 229 Ill. 2d 661, 325 Ill. Dec. 16, 897 N.E.2d 264, 2008 Ill. LEXIS 1156 (2008).

- In General

In the tax context, this section requires a court to accept an entity's characterization of its activities and beliefs as religious as long as the characterization is in good faith. Haven v. Department of Revenue, 153 Ill. App. 3d 763, 106 Ill. Dec. 634, 506 N.E.2d 341 (4 Dist. 1987).

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- Bible School

Chapter of religious institution that gave power to church "to establish and maintain a biblical institute, under the patronage and control of the Methodist Episcopal Church" and which exempted the institution from state taxation was neither violative of U.S. Const., Amend. I nor of this section. Garrett Biblical Inst. v. Elmhurst State Bank, 331 Ill. 308, 163 N.E. 1 (1928).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Constitutional Law," see 25 S. Ill. U. L.J. 733 (2001).

For article, "Free Exercise in Illinois: Does the State Constitution Envision Constitutionally Compelled Religious Exemptions?," see 19 N. Ill. U.L. Rev. 197 (1998).

For case note, "Smith v. Fair Employment and Housing Commission: Religious Freedom and Anti-Discrimination Laws Square Off in the Landlord Tenant Setting," see 18 N. Ill. U.L. Rev. 197 (1997).

For article, "Freedom of Speech, Press and Assembly, and Freedom of Religion under the Illinois Constitution," see 21 Loy. U. Chi. L.J. 91 (1989-90).

For article, "Defining Religion in the First Amendment," see U. Ill. L. Rev. 731 (1982).

RESEARCH REFERENCES

Civil liability for "deprogramming" member of religious sect. 11 ALR4th 228.

Religion as factor in child custody and visitation cases. 22 ALR4th 971.

Validity, under federal and state establishment of religion provisions, of prohibition of sale of intoxicating liquors on specific religious holidays. 27 ALR4th 1155.

Judicial review of termination of pastor's employment by local church or temple. 31 ALR4th 851.

Validity, under state Constitutions, of private shopping center's prohibition or regulations of political, social, or religious expression or activity. 38 ALR4th 1219.

Validity, under state constitutions, of private shopping center's prohibition or regulation of political, social, or religious expression or activity. 52 ALR5th 195.

Free exercise of religion as applied to individual's objection to obtaining or disclosing social security number. 93 ALR5th 1.

First amendment challenges to display of religious symbols on public property. 107 ALR5th 1.

Practice Guides and Treatises.

Employment Discrimination § 5.1 Religious Discrimination Overview (IICLE).

Section 4. Freedom of Speech.

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All persons may speak, write and publish freely, being responsible for the abuse of that liberty. In trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Pers Inj & Torts § 11:32, § 11:34.

CASE NOTES

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Immunity
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Infringement of Rights
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Libel
- In General
- Actual Malice
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Police Search
Retaliation
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Advertisements

Plaintiffs, a clothing business competitor, an owner, and an employee, could not state claims against a newspaper and clothing company for disparaging remarks made by the company in an advertisement published in the newspaper, because, while the remarks could be considered to be in poor taste, the ad language could not be seen as stating actual fact and, thus, it was protected under the First Amendment. Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc., 227 Ill. 2d 381, 317 Ill. Dec. 855, 882 N.E.2d 1011, 2008 Ill. LEXIS 277 (2008).

Advocating Overthrow of Government

Law of 1919 which made it unlawful to openly advocate the overthrow by unlawful means the representative form of government (see now 720 ILCS 5/30-3) did not violate defendant's constitutional right to freedom of speech. People v. Lloyd, 304 Ill. 23, 136 N.E. 505 (1922).

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Applicability

- In General

This section was not intended to apply to actions taken by private persons, but only to actions by the state. People v. DiGuida, 152 Ill. 2d 104, 178 Ill. Dec. 80, 604 N.E.2d 336 (1992).

Under former Ill. Const., Art. II, § 4 (now Ill. Const. (1970), Art. I, § 4), every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that liberty. Cusack v. Teitel Film Corp., 38 Ill. 2d 53, 230 N.E.2d 241, 1967 Ill. LEXIS 257 (1967).

This section is even more far-reaching than that the United States Constitution in providing that every person may speak freely, write and publish on all subjects, and be responsible for the abuse of that liberty. Village of S. Holland v. Stein, 373 Ill. 472, 26 N.E.2d 868 (1940).

- Academic Freedom

Liberty interest in academic freedom created by due process clause and free speech clause of Illinois Constitution did not grant a greater freedom than that created by the United States Constitution. Rubin v. Ikenberry, 933 F. Supp. 1425 (C.D. Ill. 1996).

- Business Custom

This section relates to the freedom of speech, and has nothing to do with the right of a business to create a custom by long usage and consent. Creitz v. Bennett, 350 Ill. 32, 182 N.E. 736 (1932).

- Criminal Libel

Where the injured party filed a defamation action against the diocese, bishop, and monsignor alleging that they falsely accused the injured party of sexually assaulting two young victims, and the trial court issued a protective order that provided that the parties were allowed to use confidential information regarding the sexual abuse victims' identities during discovery but were only prohibited from disclosing the information to the general public or media, this did not violate the injured party's freedom of speech under Ill. Const., Art. I, § 4; although the information was previously disclosed, it was disclosed in an attempt to resolve the instant action and the protective order protected the alleged victims from potential embarrassment or intimidation while still permitting the parties to engage in full pretrial investigation and discovery. Bush v. Catholic Diocese, 351 Ill. App. 3d 588, 286 Ill. Dec. 485, 814 N.E.2d 135, 2004 Ill. App. LEXIS 993 (3 Dist. 2004).

While defendant had the right to publish on all subjects under the former criminal libel statute (Ill. Rev. Stat., ch. 38, para. 402), he was responsible for the abuse of that privilege. People v. Doss, 384 Ill. 400, 51 N.E.2d 517 (1943).

- Disorderly Conduct

In a case making a facial challenge to the constitutionality of Chicago, Ill. Municipal Code § 8-4-010(d), which was content neutral albeit with incidental effects, § 8-4-010(d) was void for vagueness since the language of § 8-4-010(d) suffered from compound vagueness and invited arbitrary enforcement by leaving those determinations to an officer's subjective impression. The reach of § 8-4-010(d), by its terms, was not limited to situations where the arrestee engaged in conduct that created a likelihood of substantial harm or when there was an actual disturbance being committed. Goldhamer v. Nagode, 611 F. Supp. 2d 784, 2009 U.S. Dist. LEXIS 20351 (N.D. Ill. 2009).

In a case making a facial challenge to the constitutionality of Chicago, Ill. Municipal Code § 8-4-010(d), which was content neutral albeit with incidental effects, various police officers and the City

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of Chicago, Illinois (defendants) failed to show that § 8-4-010(d) satisfied the Ward analysis and thus survive constitutional scrutiny. While maintaining public order, maintaining public safety, and regulating traffic on streets and sidewalks were significant governmental interests, defendants failed to show that § 8-4-010(d) was narrowly tailored to serve the stated interests, and, at most, they also showed that § 8-4-010(d) allowed for alternative channels of communication; they did not address whether the alternative channels were ample. Goldhamer v. Nagode, 611 F. Supp. 2d 784, 2009 U.S. Dist. LEXIS 20351 (N.D. Ill. 2009).

Subsection (a) of 720 ILCS 5/26-1 was not overbroad, and was not unconstitutionally applied to people expressing themselves in an unlawful manner. People v. Raby, 40 Ill. 2d 392, 240 N.E.2d 595 (1968).

- False Advertising

A former statute which made advertising under a false name a reason for refusing or revoking a certificate (see now 225 ILCS 60/49) did not violate former Ill. Const. (1870), Art. II, §§ 1, 2, or 4 or Ill. Const. (1870), (see now Ill. Const. (1970), Art. I, §§ 1 and 2, this section, and Ill. Const. (1970), Art. IV, § 13) or U.S. Const., Amend. XIV. People ex rel. State Bd. of Health v. Apfelbaum, 251 Ill. 18, 95 N.E. 995 (1911).

- Federal Constitution

Ill. Const. Art. I, § 4 provided no greater protection than U.S. Const. Amend. I when nude or seminude dancing was involved. Consequently, an adult entertainment business owner's claim under the free speech clause of the Illinois Constitution did not state a claim upon which relief could be granted. Pooh-Bah Enters. v. County of Cook, 232 Ill. 2d 463, 328 Ill. Dec. 892, 905 N.E.2d 781, 2009 Ill. LEXIS 308 (2009), cert. denied, 130 S. Ct. 258, 2009 U.S. LEXIS 6221, 175 L. Ed. 2d 131 (U.S. 2009).

Protection of freedom of speech and freedom of assembly under the Illinois Constitution is broader than under the United States Constitution. Vineyard Christian Fellowship of Evanston, Inc. v. City of Evanston, 250 F. Supp. 2d 961, 2003 U.S. Dist. LEXIS 5079 (N.D. Ill. 2003).

Former Ill. Const. (1870), Art. II, § 4 (see now this section) was broader than that of the Constitution of the United States. Montgomery Ward & Co. v. United Retail, 400 Ill. 38, 79 N.E.2d 46 (1948).

- Flag Desecration Act

The law against the desecration of the United States flag (former Ill. Rev. Stat., ch. 56 1/4, para. 6 (see now 720 ILCS 620/1) unconstitutionally deprived defendants, who published a photo of a woman who was nude except for a cloth covering which looked like the flag, of their freedom of speech. People v. Von Rosen, 13 Ill. 2d 68, 147 N.E.2d 327 (1958).

- Gaming Machines

Ordinance that forbade public installation of slot machines and other electronic gambling games did not violate the First Amendment because the games in question were, unlike certain protected video games, completely devoid of story lines or intellectual content. Serpico v. Vill. of Elmwood Park, 344 Ill. App. 3d 203, 279 Ill. Dec. 158, 799 N.E.2d 961, 2003 Ill. App. LEXIS 1329 (1 Dist. 2003).

- Obscenity

Where the two publications in question were determined to be obscene, thus, were not entitled to protection under this section. People v. Ward, 63 Ill. 2d 437, 349 N.E.2d 47 (1976).

Trial court's judgment enjoining the film corporation from showing the films in the city of Chicago was upheld, where the Court concluded that both films were obscene, and therefore, beyond the

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protection of either the U.S. Const. amend. I or former Ill. Const., Art. II, § 4 (now Ill. Const. (1970), Art. I, § 4). Cusack v. Teitel Film Corp., 38 Ill. 2d 53, 230 N.E.2d 241, 1967 Ill. LEXIS 257 (1967).

Court concluded that the language of former Ill. Const., Art. II, § 4 (now Ill. Const. (1970), Art. I, § 4), does not extend to a protection of obscenity. Cusack v. Teitel Film Corp., 38 Ill. 2d 53, 230 N.E.2d 241, 1967 Ill. LEXIS 257 (1967).

Conviction of corporate publisher for violation of a municipal obscenity ordinance and 720 ILCS 5/11-20 was reversed where the material in question was found not to be obscene based on the court's independent constitutional judgment that in spite of the explicit sexual content, and the fact that there was little literary merit to justify its publication, it was redeemable because it dealt to a limited extent with common social and marital problems. City of Chicago v. Universal Publishing & Distrib. Corp., 34 Ill. 2d 250, 215 N.E.2d 251 (1966).

- Open Meetings Act

The former Open Meetings Act did not prohibit the expression of any idea, or make assembly illegal, but did require public bodies to meet and deliberate public business openly rather than behind closed doors; since freedom of speech protects the expression of ideas, not the right to conduct public business in closed meetings, this Act was constitutional. People ex rel. Difanis v. Barr, 78 Ill. App. 3d 842, 34 Ill. Dec. 223, 397 N.E.2d 895 (4 Dist. 1979), aff'd, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).

- Real Estate License Act

Because former Ill. Rev. Stat., ch. 111, para. 5732 (e)(20), prohibiting using prizes, money, gifts, or other valuable consideration as inducements to enter into a real estate contract, did not directly advance the state's interest in consumer protection, it violated U.S. Const., Amends. I and XIV, as well as Ill. Const. (1970), Art. I, § 2 and this section. Coldwell Banker Residential Real Estate Servs. of Ill., Inc. v. Clayton, 105 Ill. 2d 389, 86 Ill. Dec. 322, 475 N.E.2d 536 (1985).

- Solicitation of Sex Law

720 ILCS 5/11-14.1(a) was neither overbroad nor vague as applied and was not unconstitutional where the element of speech in the solicitation statute, the offer, was not constitutionally protected; also, the statute was not vague as applied to defendant's conduct because it unambiguously prohibited that conduct by providing adequate and clearly understandable notice that the offer of money in exchange for sex was proscribed. People v. Braddock, 348 Ill. App. 3d 115, 284 Ill. Dec. 146, 809 N.E.2d 712, 2004 Ill. App. LEXIS 275 (1 Dist. 2004).

Commercial Speech

- Advertisements

Argument that limitations on health care provider advertising at 225 ILCS 60/26 violated a chiropractor's free speech rights would have to be developed after remand; the record was insufficient to show whether the speech alleged to have been misleading was in fact protected. Vuagniaux v. Dep't of Prof'l Regulation, 208 Ill. 2d 173, 280 Ill. Dec. 635, 802 N.E.2d 1156, 2003 Ill. LEXIS 2279 (2003).

Liquor Commission's rule restricting a retail licensee's right to advertise was not a closely drawn means of promoting temperance or protecting the public health, safety or welfare, and therefore, violated store's right to commercial free speech. Walgreen Co. v. Illinois Liquor Control Comm'n, 101 Ill. App. 3d 216, 56 Ill. Dec. 761, 427 N.E.2d 1307 (3 Dist. 1981).

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Although liquor seller's right of commercial free speech was not absolute, his constitutional right prevailed over a regulation which did not bear a substantial relation to the governmental interest which the Liquor Control Act (235 ILCS 5/1-1 et seq.) legitimately sought to protect. It was readily apparent that an administrative rule, which restricted licensees from advertising that they accepted credit cards, did not further the legislative purpose of the Liquor Control Act, which specifically states that a licensee is authorized to accept credit cards for the sale of alcoholic liquor. Walgreen Co. v. Illinois Liquor Control Comm'n, 101 Ill. App. 3d 216, 56 Ill. Dec. 761, 427 N.E.2d 1307 (3 Dist. 1981).

- Chicago Fair Housing Ordinance

The Chicago Fair Housing Ordinance, which declared it unlawful to solicit for sale or lease residential property on the ground of loss of value due to present or prospective entry into the neighborhood of any person or persons of any particular race, color, religion or national ancestry, and also prohibited distribution by brokers of any written matter or statements designed to induce any owner of residential property to sell or lease his property for such reason, did not violate the guarantees of freedom of speech in this section and the Federal Constitution. Chicago Real Estate Bd. v. City of Chicago, 36 Ill. 2d 530, 224 N.E.2d 793 (1967).

- Ordinance

Ordinance which made it unlawful for any one to go into a private residence for the purpose of soliciting or to canvas for orders for goods, wares, merchandise or services of any description or solicit for the purpose of offering to furnish goods, wares, merchandise or services, to induce such orders, without obtaining a solicitor's permit was void as being in violation of this section. Village of S. Holland v. Stein, 373 Ill. 472, 26 N.E.2d 868 (1940).

Construction

Media intervenors did not show that their First Amendment, U.S. Const. amend. I, rights were violated by the trial court's decision to seal certain pretrial proceedings and records, and to restrain the speech of attorneys and witnesses. The sealing and restraining were permitted in the high-profile defendant's case involving alleged sex with a minor, as the right of access, including that under Ill. Const. art. I, § 4 and 705 ILCS 105/16(6), had to give way under the circumstances to ensure a fair trial. People v. Kelly, 397 Ill. App. 3d 232, 336 Ill. Dec. 719, 921 N.E.2d 333, 2009 Ill. App. LEXIS 1245 (1 Dist. 2009).

Free speech rights under the Illinois Constitution are not in all circumstances limited to those afforded by the Federal Constitution; nonetheless, the state action requirement of the First Amendment is also present in this section. People v. DiGuida, 152 Ill. 2d 104, 178 Ill. Dec. 80, 604 N.E.2d 336 (1992).

Even a "significant interference" with protected rights of political association may be sustained if a state demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms. Schiller Park Colonial Inn, Inc. v. Berz, 63 Ill. 2d 499, 349 N.E.2d 61, 1976 Ill. LEXIS 339 (1976).

Defense to Libel

- Burden of Proof

720 ILCS 5/27-2 and this section constitute an affirmative defense wherein the defendant bears the burden of proving not only the truth of the defamatory statement, but also that it was uttered with good motives and for a justifiable end. People v. Heinrich, 104 Ill. 2d 137, 83 Ill. Dec. 546, 470 N.E.2d 966 (1984).

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- Elements of Defense

A defense to a charge under the former criminal defamation statute (Ill. Rev. Stat., ch. 38, para. 404), required a showing not only that an utterance stated the facts, but also that the publication was made "with good motives and for justifiable ends"; while truth is a necessary element of the defense, a showing of the other two elements is necessary for the defense to prevail. Beauharnais v. People, 343 U.S. 250, 72 S. Ct. 725, 96 L. Ed. 919 (1952).

In both civil and criminal cases, the truth, when published with good motives and for justifiable ends, is a defense, and under the issues raised by this defense, the alleged libel must be true and must also be published with good motives and for justifiable ends; if the libel is not true, then under this section, even if published with good motives and for justifiable ends, it is no defense. Cook v. East Shore Newspapers, Inc., 327 Ill. App. 559, 64 N.E.2d 751 (4 Dist. 1945).

- Justifiable Ends Not Shown

Libelous and inflammatory language used in fliers circulated on city streets which were full of charges and inflammatory, anti-Negro language, appealing to the white people of the nation to force denial of equal rights to Negro citizens as guaranteed to them by the Constitution of the United States, was designed to breed hatred against the Negro race and was not of such character as entitled defendant to the protection of freedom of speech guaranteed by this section and the Federal Constitution. People v. Beauharnais, 408 Ill. 512, 97 N.E.2d 343 (1951), aff'd, 343 U.S. 250, 72 S. Ct. 725, 96 L. Ed. 919 (1952).

- Person Libelled

The provisions of former Ill. Const. (1870), Art. II, § 4 (see now this section) which provided that truth was a defense in libel action only when published with good motives and for justifiable ends only when applied to defamation of "public officials" or "public figures" was incompatible with the United States Supreme Court's interpretation of the scope of the First Amendment guarantees of the Federal Constitution. Farnsworth v. Tribune Co., 43 Ill. 2d 286, 253 N.E.2d 408 (1969).

- Question of Fact

While truth is a defense to an action in libel, the alleged libelous statement must be shown to have been published with good motives for justifiable ends, and if there is a genuine issue of material fact with respect to this defense it should be submitted to a jury. Welch v. Chicago Tribune Co., 34 Ill. App. 3d 1046, 340 N.E.2d 539 (1 Dist. 1975).

- Self-Executing

This section is clear and unequivocal, and states a sufficient and definite rule by means of which a defendant may establish a defense to a publication that is libelous in its character and it is, therefore, self-executing, and needs no statute to put it in force. Ogren v. Rockford Star Printing, 288 Ill. 405, 123 N.E. 587 (1919).

Exercise of Right

- In General

Court held former Medical Practice Act, Ill. Rev. Stat. ch. 111, para. 4400-22 (now 225 ILCS 60/22), constitutional under the First Amendment and Ill. Const. (1970), Art. I, § 4, as applied to prohibit plaintiff's telephone solicitation, and constitutional in terms of vagueness; thus, the trial court clearly abused its discretion in finding grounds to grant plaintiff's motion for a preliminary injunction. Desnick v. Department of Professional Regulation, 171 Ill. 2d 510, 216 Ill. Dec. 789, 665 N.E.2d 1346, 1996 Ill. LEXIS 59 (1996).

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Although the constitutionally protected First Amendment rights are much cherished and under our Federal and State Constitutions have been carefully protected, these rights are not absolute; it has never been held that first amendment rights may be indiscriminately exercised at any time in any place and in any manner. City of Chicago v. Rosser, 47 Ill. 2d 10, 264 N.E.2d 158 (1970).

The Supreme Court of the United States and the Supreme Court of Illinois have held that the freedom of speech and of the press, which is secured by the Federal Constitution and this section, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom. People v. Beauharnais, 408 Ill. 512, 97 N.E.2d 343 (1951), aff'd, 343 U.S. 250, 72 S. Ct. 725, 96 L. Ed. 919 (1952).

- Labor Dispute

A state cannot exclude working men from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him; the interdependence of economic interest of all engaged in the same industry has become commonplace, and therefore the right of free communication cannot be mutilated by denying it to workers in a dispute with an employer, even though they are not in his employ. Naprawa v. Chicago Flat Janitors' Union, Local No. 1, 315 Ill. App. 328, 43 N.E.2d 198 (1 Dist. 1942).

Publicizing the facts of a labor dispute is within the constitutional guarantees of free press and speech. Schuster v. International Ass'n of Machinists, 293 Ill. App. 177, 12 N.E.2d 50 (1 Dist. 1937); Naprawa v. Chicago Flat Janitors' Union, Local No. 1, 315 Ill. App. 328, 43 N.E.2d 198 (1 Dist. 1942); Montgomery Ward & Co. v. United Retail, Whsle. & Dep't. Store Employees, 330 Ill. App. 49, 70 N.E.2d 75 (1 Dist. 1946), aff'd, 400 Ill. 38, 79 N.E.2d 46 (1948).

It is an employer's right and privilege to refuse to deal with the union and to operate a nonunion shop, but it is just as much the right and privilege of the union, when the employer so refuses, to publish the fact that it regards him as unfair to it. Schuster v. International Ass'n of Machinists, 293 Ill. App. 177, 12 N.E.2d 50 (1 Dist. 1937).

- Leaflet Distribution

The regulatory ordinance requiring peddlers selling goods or merchandise to get a license and pay for such was not proper as applied to Jehovah Witnesses handing out leaflets for ordinance did not state any regulations as to how peddlers could carry on their business. City of Blue Island v. Kozul, 379 Ill. 511, 41 N.E.2d 515 (1942).

- Picketing

Members of janitor's union did not violate any law in patrolling the vicinity of apartment building where union member had worked prior to being fired, and informing persons who might pass, including delivery men, painters and decorators, that owners of the building were unfair to the members of the union since this was the lawful exercise of the right of freedom of speech. Naprawa v. Chicago Flat Janitors' Union, Local No. 1, 315 Ill. App. 328, 43 N.E.2d 198 (1 Dist. 1942).

It is not unlawful for employees to picket even where there is no dispute between the employer and employees of the plant that is being picketed. Naprawa v. Chicago Flat Janitors' Union, Local No. 1, 315 Ill. App. 328, 43 N.E.2d 198 (1 Dist. 1942).

Since restraint of peaceful picketing is prohibited in labor disputes where the employer-employee relationship exists, it logically and reasonably follows that a union which was engaged in an attempt to persuade an employer to employ only members of the union shall, upon the refusal of

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the employee to comply, be entitled to peaceably picket such employer's premises. Schuster v. International Ass'n of Machinists, 293 Ill. App. 177, 12 N.E.2d 50 (1 Dist. 1937).

There is no statutory inhibition in the state against peaceful picketing and truthful publicity. Schuster v. International Ass'n of Machinists, 293 Ill. App. 177, 12 N.E.2d 50 (1 Dist. 1937).

- Printed Matter

Liberty of the press embraces newspapers, periodicals, pamphlets and leaflets, and, in its historic connotation, comprehends every sort of publication which affords a vehicle of information and opinion. Montgomery Ward & Co. v. United Retail, Whsle. & Dep't. Store Employees, 330 Ill. App. 49, 70 N.E.2d 75 (1 Dist. 1946), aff'd, 400 Ill. 38, 79 N.E.2d 46 (1948).

The freedom of speech and of the press, secured to the people by the Constitution of the State of Illinois, are fundamental personal rights and liberties, and are essential to a free government by free men, and the right to freely print and circulate applies not only to printed matter circulated without charge to the recipients, but also applies when a charge is imposed for the material. City of Blue Island v. Kozul, 379 Ill. 511, 41 N.E.2d 515 (1942).

- Prior Restraints

The right of immunity from previous restraints extends to the false and libelous as well as to the true. Montgomery Ward & Co. v. United Retail, Whsle. & Dep't. Store Employees, 330 Ill. App. 49, 70 N.E.2d 75 (1 Dist. 1946), aff'd, 400 Ill. 38, 79 N.E.2d 46 (1948).

- Public Property

No citizen has a right to use at his pleasure, or on his own terms, public property belonging to and under the control of a municipality, without a permit from a designated officer of such municipality or its executive officers; there is no constitutional right for public addresses to be given on such property. Coughlin v. Chicago Park Dist., 364 Ill. 90, 4 N.E.2d 1 (1936).

Hate Crimes

Section 12-7.1 (720 ILCS 5/12-7.1) does not punish an individual for merely thinking hateful or expressing bigoted beliefs, instead it punishes an offender's criminal conduct in choosing a victim by reason of those beliefs or hatred and then committing one of the criminal acts included in the section. In re Vladimir P., 283 Ill. App. 3d 1068, 219 Ill. Dec. 161, 670 N.E.2d 839 (1 Dist. 1996).

Immunity

In a case alleging a failure to hire, defamation and state constitutional claims that sounded in tort were barred by the Illinois Local Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., because the hiring and firing of employees was inherently discretionary within the meaning of 745 ILCS 10/2-201. However, the state immunity rules did not apply to the extent that the actions were brought under 42 U.S.C.S. § 1983. Collins v. Bd. of Educ., 792 F. Supp. 2d 992, 2011 U.S. Dist. LEXIS 57890 (N.D. Ill. 2011).

Infringement of Right

Where a city and a county imposed an amusement tax, but excluded adult entertainment cabaret from amusement tax small-venue exemptions pursuant to Chicago, Ill., Mun. Code §§ 4-156-010 and 4-156-020(D)(1) and Cook County, Ill., Amusement Tax Ordinance §§ 2 and 3D(1), the

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exclusions violated the First Amendment because they were content-based regulations on speech that did not serve a compelling state interest.

- Abortion Protests

Where clinic director testified that it was her policy to remove all demonstrators, regardless of their beliefs, from clinic premises, and there was no evidence that this policy of excluding people was ever applied in a discriminatory manner, defendants' actions in protesting abortions on sidewalk outside clinic were not protected by the Illinois Constitution. People v. Yutt, 231 Ill. App. 3d 718, 173 Ill. Dec. 500, 597 N.E.2d 208 (3 Dist.), cert. denied, 147 Ill. 2d 636, 180 Ill. Dec. 157, 606 N.E.2d 1234 (1992).

- Danger of Evil

The liberty of communication cannot be abridged except under circumstances presenting a clear and present danger of substantive evils. Montgomery Ward & Co. v. United Retail, Whsle. & Dep't. Store Employees, 330 Ill. App. 49, 70 N.E.2d 75 (1 Dist. 1946), aff'd, 400 Ill. 38, 79 N.E.2d 46 (1948).

- Injunctions

Appellate court was unable under former Ill. Rev. Stat., ch. 24, para. 23-57 (see now 65 ILCS 5/11-5-1), to detect any artistic or other merit for the normal, average person in a public demonstration of an arousal of sexual passion by means of a foot, or to conceive how this sort of expression was within the traditional concepts of freedom of speech or of the press; amended complaint made out a prima facie showing that motion picture "Baby Doll" was obscene and the issuance of temporary injunction did not violate any of defendants' constitutional rights of freedom of expression and against prior restraint. City of Aurora v. Warner Bros. Pictures Distrib. Corp., 16 Ill. App. 2d 273, 147 N.E.2d 694 (2 Dist. 1958).

The writ of injunction for restraining publications must be used in exceptional cases only. Montgomery Ward & Co. v. United Retail, 400 Ill. 38, 79 N.E.2d 46 (1948).

Members of a union, not on a strike, not picketing, and not using coercion in any way, could not as a union and as union members, be enjoined from exercising rights guaranteed by the Constitution of the United States and by former Ill. Const. (1870), Art. II, § 4 (see now this section.) Montgomery Ward & Co. v. United Retail, 400 Ill. 38, 79 N.E.2d 46 (1948).

An injunction which restrained "conspiring together to publish" violated the guarantees of a free press. Montgomery Ward & Co. v. United Retail, Whsle. & Dep't. Store Employees, 330 Ill. App. 49, 70 N.E.2d 75 (1 Dist. 1946), aff'd, 400 Ill. 38, 79 N.E.2d 46 (1948).

- Leaflet Distribution

Where the ordinance on its face was obviously intended to prevent littering of park district property, a clearly legitimate objective, and did not purport to prohibit or in any way restrict the right to speak or to distribute written material directly to other persons, there was no patent constitutional impediment to its enforcement. Chicago Park Dist. v. Lyons, 39 Ill. 2d 584, 237 N.E.2d 519 (1968).

Substantial impediment of the right to freely distribute ideas in written form is constitutionally intolerable, and even mildly burdensome regulation thereof is seriously suspect. Chicago Park Dist. v. Lyons, 39 Ill. 2d 584, 237 N.E.2d 519 (1968).

An ordinance requiring peddlers selling wares, goods or merchandise to get a license and pay a fee, as applied to the sale and distribution of the magazines and leaflets by the defendant, was unconstitutional and a violation of the right of freedom of speech and of the press. City of Blue Island v. Kozul, 379 Ill. 511, 41 N.E.2d 515 (1942).

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- Licenses

The publishers and distributors of newspapers, magazines, pamphlets, circulars, books or other printed matter are not immune from the ordinary forms of taxation for the support of the government, but they can not be compelled to purchase, through a license fee or a license tax, the privilege freely granted by this section. City of Blue Island v. Kozul, 379 Ill. 511, 41 N.E.2d 515 (1942).

- Municipal Regulations

Where defendant city did not adequately explain why it was necessary to restrict plaintiff church's property for cultural, rather than religious, expressive activities and nothing in the record demonstrated that the city was better off financially because the property was operated solely as a cultural, rather than a religious facility, even under a lenient standard, the court could not characterize this distinction as narrow tailoring to meet the city's stated goals. Vineyard Christian Fellowship of Evanston, Inc. v. City of Evanston, 250 F. Supp. 2d 961, 2003 U.S. Dist. LEXIS 5079 (N.D. Ill. 2003).

A municipality may enact regulations in the interest of public safety, health, welfare or convenience, within the limits permitted by law, but in every case this power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the freedom protected by the Constitution of the State of Illinois. City of Blue Island v. Kozul, 379 Ill. 511, 41 N.E.2d 515 (1942).

- Permit to Use Public Park

The rights of peaceable assembly (Ill. Const. (1970), Art. I, § 5) and of freedom of speech are not infringed by the refusal of a permit to an applicant for the use of a park facility. Coughlin v. Chicago Park Dist., 364 Ill. 90, 4 N.E.2d 1 (1936).

- Prior Restraints

City park district's refusal to accept a donated brick based on the religious message included on the brick amounted to viewpoint discrimination and a prior restraint in violation of the brick donors' free speech rights under, inter alia, Ill. Const., Art. I, § 4, where (1) it was undisputed that the district's interpretation of commemorative messages for a donated brick walkway was expansive enough to include inscriptions that expressed something important to the donor's family, and that the donors' message was includible in the subject matter of the donated bricks but was excluded because of its religious perspective, and (2) the district's policy for reviewing proposed brick engravings, or lack thereof, amounted to an unconstitutional prior restraint on speech as it conferred unfettered discretion on the district to decide whether to accept or reject a submission. Tong v. Chi. Park Dist., 316 F. Supp. 2d 645, 2004 U.S. Dist. LEXIS 7530 (N.D. Ill. 2004).

A protective order in a wardship adjudication proceeding restricting the news media's reporting on the proceeding went beyond what was authorized by former Ill. Rev. Stat., ch. 37, para. 701-20(6) (see now 705 ILCS 405/1-5), which permitted only the suppression of the minor's identity, and was an unlawful prior restraint of the press. People v. M.B., 137 Ill. App. 3d 992, 92 Ill. Dec. 299, 484 N.E.2d 1154 (4 Dist. 1985).

The constitutional guaranty of free speech as a general rule prohibits both the courts and the legislature from putting prior restraints on publications. Montgomery Ward & Co. v. United Retail, 400 Ill. 38, 79 N.E.2d 46 (1948).

- Private Entities

The Constitutional guarantee of free speech is only a guarantee against abridgements by the government; the Constitution does not provide protection or redress against private individuals or

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corporations which seek to abridge the free expression of others. Barr v. Kelso-Burnett Co., 106 Ill. 2d 520, 88 Ill. Dec. 628, 478 N.E.2d 1354 (1985).

- Private Property

A private store's use of the criminal trespass to land statute to exclude defendant from its property did not violate defendant's rights under the free speech or the free and equal elections provisions of Illinois Constitution. People v. DiGuida, 152 Ill. 2d 104, 178 Ill. Dec. 80, 604 N.E.2d 336 (1992).

The elevator corridor outside the Archdiocese office on the sixth floor of the American Dental Association Building in Chicago cannot be considered functionally, spatially, or in any other pertinent way, equivalent to areas held by the United States Supreme Court to be "public places" where freedom of speech could not be abridged; unlike those places, the area in question was not generally accessible and open to the public, nor was there any indication that the public in general was invited or encouraged in any manner to use the area in question. City of Chicago v. Rosser, 47 Ill. 2d 10, 264 N.E.2d 158 (1970).

- Reporting Government Actions

Assistant state prison warden asserted an actionable retaliation claim under the United States and Illinois Constitutions, arising out of the imposition of an unpaid disciplinary suspension upon him: (1) the warden alleged that he was retaliated against after he contacted the governor's office complaining about the Illinois Department of Correction's (IDOC) policies and treatment of him; (2) the mere fact that the warden had a personal stake in the outcome of his dispute with the IDOC was not dispositive of whether his comments were constitutionally protected; and (3) the court could not conclude from the pleadings, at the Fed. R. Civ. P. 12(b)(6) dismissal stage, that the warden would be unable to present any evidence showing that his speech addressed a matter of public concern. Bohler v. Ill. Dep't of Corr., F. Supp. 2d , 2006 U.S. Dist. LEXIS 4075 (C.D. Ill. Jan. 23, 2006).

The privilege to report governmental acts or utterances can only be defeated by proving that a particular publication was motivated solely by actual malice. Lulay v. Peoria Journal-Star, Inc., 34 Ill. 2d 112, 214 N.E.2d 746 (1966).

The right to speak and print about actions of government is well established; denial of this right would be a serious infringement of both state and federal constitutional guarantees of free speech and press. Lulay v. Peoria Journal-Star, Inc., 34 Ill. 2d 112, 214 N.E.2d 746 (1966).

Infringement of Rights

- Campaign Contributions

Limitations on the right of liquor licensees to make political campaign contributions, set forth in former Ill. Rev. Stat. ch. 43, para. 132, did not violate free speech or equal protection rights of the licensees. Schiller Park Colonial Inn, Inc. v. Berz, 63 Ill. 2d 499, 349 N.E.2d 61, 1976 Ill. LEXIS 339 (1976).

Libel

- In General

While the right of free speech and free press is recognized, which includes the right to publish matters in the interest of the public and to criticize and condemn public officials, it does not include the right to libel them. Cook v. East Shore Newspapers, Inc., 327 Ill. App. 559, 64 N.E.2d 751 (4 Dist. 1945).

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- Actual Malice

The Illinois Supreme Court has never adopted an actual malice requirement for punitive damages where the defamation involves a purely private matter. Mullen v. Solber, 271 Ill. App. 3d 442, 208 Ill. Dec. 28, 648 N.E.2d 950 (1 Dist. 1995).

In a tort action for interference with contract wherein the alleged wrongful conduct arose from a private citizen's petitioning a legislative body for redress (see Ill. Const. (1970), Art. 1, § 5), a complaint for damages has to set forth factual allegations from which actual malice could reasonably be said to exist, as opposed to the bare assertion of actual malice. Arlington Heights Nat'l Bank v. Arlington Heights Fed. Sav. & Loan Ass'n, 37 Ill. 2d 546, 229 N.E.2d 514 (1967).

The burden of proving actual malice is always upon the plaintiff, and it would not be the ordinary case where a plaintiff could establish that a news report or discussion of governmental activities was only published because of actual malice. Lulay v. Peoria Journal-Star, Inc., 34 Ill. 2d 112, 214 N.E.2d 746 (1966).

Where plaintiff grocery store owner did not offer any evidence remotely creating an issue of fact as to whether defendant's news article reporting health code violations by plaintiff's store was conceived or inspired solely because of a malicious design to injure the plaintiff or his business, the plaintiff failed to prove "actual malice" and defendant's report was not libelous. Lulay v. Peoria Journal-Star, Inc., 34 Ill. 2d 112, 214 N.E.2d 746 (1966).

- Elements of Offense

In a suit brought by a private individual to recover actual damages for a defamatory publication whose substantial danger to reputation is apparent, recovery may be had upon proof that the publication was false, and that the defendant either knew it to be false, or, believing it to be true, lacked reasonable grounds for that belief. Troman v. Wood, 62 Ill. 2d 184, 340 N.E.2d 292 (1975).

- Negligence

In a suit brought by a private individual to recover actual damages for a defamatory publication whose substantial danger to reputation is apparent, negligence may form the basis of liability regardless of whether or not the publication in question related to a matter of public or general interest. Troman v. Wood, 62 Ill. 2d 184, 340 N.E.2d 292 (1975).

- Question of Law

Under Ill. Const. (1870), Art. II, § 4 (see now this section), the question of whether a publication was libelous per se was a question of law for the court. Tiernan v. East Shore Newspapers, Inc., 1 Ill. App. 2d 150, 116 N.E.2d 896 (4 Dist. 1953).

- Remedies

From the phrase "being responsible for the abuse" it could be inferred that this section refers to punishment by way of damages or criminal penalties, not preventive relief by way of injunction. Montgomery Ward & Co. v. United Retail, 400 Ill. 38, 79 N.E.2d 46 (1948).

Police Search

Plaintiff failed to allege facts sufficient to show that the officers conducting a warrantless search of her parents' home constricted the flow of information and ideas while pursuing other goals so as to violate her right to free speech. Magnuson v. Cassarella, 812 F. Supp. 824 (N.D. Ill. 1992).

Retaliation

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Because plaintiff could not establish that individuals' actions in transferring and reassigning plaintiff were in retaliation for plaintiff's speech, plaintiff failed to state a claim under the Ill. Const., Art. I, § 4. Falk v. Cook County Sheriff's Office, 904 F. Supp. 797 (N.D. Ill. 1995).

Tailgating

LEGAL PERIODICALS

For note, "People v. DiGuida: Freedom of Expression on Private Property Under the Illinois Constitution," see 24 Loy. U. Chi. L.J. 523 (1993).

For note, "Speak of the Devil: First Amendment Protection of Immoral Conduct," see 1992 U. Ill. L. Rev. 879 (1992).

For note on freedom of the press and promissory estoppel, in light of Cohen v. Cowles Media Co., 111 S.Ct. 2513 (1991), see 80 Ill. B.J. 316 (1992).

For article, "Freedom of Speech, Press and Assembly, and Freedom of Religion under the Illinois Constitution," see 21 Loy. U. Chi. L.J. 91 (1989-90).

For casenote, "Costello v. Capital Cities Communications, Inc. (505 N.E.2d 701 (1987)): Illinois' Innocent Construction Rule Prevails Over the Constitutional Privilege for Expression of Opinion," see 21 J. Marshall L. Rev. 427 (1988).

For casenote, "Kemner v. Monsanto Company (492 N.E.2d 1327) (1986)): The Illinois Supreme Court Confronts the Free Speech/Fair Trial Controversy," see 20 J. Marshall L. Rev. 581 (1987).

For article, "The Unconstitutionality of the Qualified Truth Defense to Libel Actions," see 11 J. Marshall J. Prac. & Proc. 259 (1978).

RESEARCH REFERENCES

Validity, propriety, and effect of allowing or prohibiting media's broadcasting, recording, or photographing court proceedings. 14 ALR4th 121.

Liability for personal injury or death allegedly resulting from television or radio broadcast. 20 ALR4th 327.

Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors. 20 ALR4th 600.

State regulation of content of and representation on program presented by "public broadcasting" television or radio station. 27 ALR4th 375.

Oral communications insulting to particular state judge, made to third party out of judge's physical presence, as criminal contempt. 30 ALR4th 155.

Validity, under state Constitutions, of private shopping center's prohibition or regulations of political, social, or religious expression or activity. 38 ALR4th 1219.

Trespass: state prosecution for unauthorized entry or occupation, for public demonstration purposes, of business, industrial, or utility premises. 41 ALR4th 773.

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Validity and construction of state court's order precluding publicity or comment about pending civil case by counsel, parties, or witnesses. 56 ALR4th 1214.

Validity, construction, and application of "hazing" statutes. 30 ALR5th 683.

Validity, under state constitutions, of private shopping center's prohibition or regulation of political, social, or religious expression or activity. 52 ALR5th 195.

Defamation: Publication of letter to editor in newspaper as actionable. 54 ALR5th 443.

First Amendment protection afforded to commercial and home video games. 106 ALR5th 337.

Section 5. Right to Assemble and Petition.

The people have the right to assemble in a peaceable manner, to consult for the common good, to make known their opinions to their representatives and to apply for redress of grievances.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Anti-War Demonstration
Applicability
- Open Meetings Act
Exercise of Right
- Conditionally Privileged
- Limitations
Infringement of Right
- Gang-Loitering Ordinance
- Permit to Use Public Park
Redress of Grievances
- As Libel
- Personal Grievances
- Right to Petition
- Sexually Violent Persons Commitment Act
Scope

Anti-War Demonstration

Invading a university building to protest U.S. participation in the Vietnam war, denying academic freedom to the purpose for which the building was intended, declining to leave when requested

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although it was several hours after the building's usual closing time, locking and barricading a steel door which had to be broken down to enter the room, and obdurately refusing to depart despite a second order by lawful authority, was not constitutionally privileged conduct. People v. Barnett, 7 Ill. App. 3d 185, 287 N.E.2d 247 (1 Dist. 1972).

Applicability

- Open Meetings Act

The former Open Meetings Act did not prohibit the expression of any idea, or make assembly illegal, but did require public bodies to meet and deliberate public business openly rather than behind closed doors; since freedom of speech protects the expression of ideas, not the right to conduct public business in closed meetings, this Act was constitutional. People ex rel. Difanis v. Barr, 78 Ill. App. 3d 842, 34 Ill. Dec. 223, 397 N.E.2d 895 (4 Dist. 1979), aff'd, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).

Exercise of Right

- Conditionally Privileged

A private citizen's acts pursuant to his right to petition a legislative body, be it local or otherwise, are not absolute rights, but are conditionally privileged. Zientara v. Long Creek Tp., 211 Ill. App. 3d 226, 155 Ill. Dec. 688, 569 N.E.2d 1299 (4 Dist. 1991).

A private citizen's acts pursuant to his right to petition a legislative body, be it local or otherwise, are conditionally privileged. Arlington Heights Nat'l Bank v. Arlington Heights Fed. Sav. & Loan Ass'n, 37 Ill. 2d 546, 229 N.E.2d 514 (1967).

- Limitations

The right of the people to assemble in a peaceful manner, to make known their opinions and to petition for a redress of their grievances, does not permit them to congregate at any time or place, or to communicate their viewpoint by whatever method they choose. People v. Barnett, 7 Ill. App. 3d 185, 287 N.E.2d 247 (1 Dist. 1972).

Infringement of Right

- Gang-Loitering Ordinance

The city's gang-loitering ordinance that prohibited criminal street gang members from loitering in any public place with one or more other persons, violated the freedoms of association, assembly and expression. City of Chicago v. Youkhana, 277 Ill. App. 3d 101, 213 Ill. Dec. 777, 660 N.E.2d 34 (1 Dist. 1995), aff'd sub nom. City of Chicago v. Morales, 177 Ill. 2d 440, 227 Ill. Dec. 130, 687 N.E.2d 53 (1997).

- Permit to Use Public Park

The rights of peaceable assembly and of freedom of speech (Ill. Const. (1970), Art. I, § 4) are not infringed by the refusal of a permit to an applicant for the use of a park facility. Coughlin v. Chicago Park Dist., 364 Ill. 90, 4 N.E.2d 1 (1936).

Redress of Grievances

- As Libel

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In a tort action for interference with contract wherein the alleged wrongful conduct arose from a private citizen's petitioning a legislative body for redress, a complaint for damages has to set forth factual allegations from which actual malice could reasonably be said to exist, as opposed to the bare assertion of actual malice. Arlington Heights Nat'l Bank v. Arlington Heights Fed. Sav. & Loan Ass'n, 37 Ill. 2d 546, 229 N.E.2d 514 (1967).

- Personal Grievances

Since the right to petition for redress of grievances is conditioned similarly to the right to free speech, being fired for petitioning for redress of personal grievances, as opposed to redress of matters of public concern, is not protected by this section. Zientara v. Long Creek Tp., 211 Ill. App. 3d 226, 155 Ill. Dec. 688, 569 N.E.2d 1299 (4 Dist. 1991).

- Right to Petition

Where the court at no time objected to the filing of a petition or did it deny petitioners their right to file the same, and where the court's only objection was to the form and contents of the petition, the petitioners were not deprived of their right to petition to redress their grievance. People v. Howarth, 415 Ill. 499, 114 N.E.2d 785 (1953).

- Sexually Violent Persons Commitment Act

The Sexually Violent Persons Commitment Act, 725 ILCS 207/1 et seq., does not violate the equal protection clauses of the state or federal Constitution, does not constitute an ex post facto law or violate the prohibition against double jeopardy, does not violate substantive or procedural due process, and does not violate the petition clauses of the the state or federal Constitution. People v. Bailey (In re Bailey), 317 Ill. App. 3d 1072, 251 Ill. Dec. 575, 740 N.E.2d 1146, 2000 Ill. App. LEXIS 943 (1 Dist. 2000).

Scope

Protection of freedom of speech and freedom of assembly under the Illinois Constitution is broader than under the United States Constitution. Vineyard Christian Fellowship of Evanston, Inc. v. City of Evanston, 250 F. Supp. 2d 961, 2003 U.S. Dist. LEXIS 5079 (N.D. Ill. 2003).

LEGAL PERIODICALS

For note, "The Sheriff Knows Who the Troublemakers Are. Just Let Him Round Them Up: Chicago's New Gang Loitering Ordinance," see 2002 U. Ill. L. Rev. 729 (2002).

For article, "Freedom of Speech, Press and Assembly, and Freedom of Religion under the Illinois Constitution," see 21 Loy. U. Chi. L.J. 91 (1989-90).

For article, "Citizen Remedies Against Errant Illinois Public Servants," see 11 S. Ill. U.L.J. 285 (1987).

For article, "Lobbying Laws in Illinois: An Incomplete Reform," see 27 DePaul L. Rev. 761 (1978).

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Validity, under state constitutions, of private shopping center's prohibition or regulation of political, social, or religious expression or activity. 52 ALR5th 195.

Section 6. Searches, Seizures, Privacy and Interceptions.

The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Crim L § 5:01, § 8:01, § 8:18, § 8:28, § 8:38.

See Illinois Jur, Municip L § 5:23.

See Illinois Jur, Pers Inj & Torts § 17:4.

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- Hotel Rooms
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- Warrant Subsequently Issued

Warrant Description Sufficient

Constitutionality

Statute that required defendant, as a convicted felon, to submit to mandatory genetic testing was constitutional; application of a balancing test that pitted the State's interest in creating DNA profiles as a law enforcement tool against defendant's diminished expectation of privacy since he was a convicted felon dictated a finding that the mandatory genetic testing statute was constitutional since it did not involve an unreasonable search and seizure. People v. Kelly, 361 Ill. App. 3d 515, 297 Ill. Dec. 749, 838 N.E.2d 236, 2005 Ill. App. LEXIS 1325 (1 Dist. 2005), appeal denied, 219 Ill. 2d 581, 303 Ill. Dec. 837, 852 N.E.2d 244 (2006).

Statute authorizing the trial court to order a defendant to submit specimens of blood, saliva, or tissue to the Department of State Police for DNS Analysis served the purpose of helping to create a database of the genetic identities of recidivist criminal offenders, and, thus, it did not violate defendant's constitutional rights against unreasonable search and seizure. People v. Radford, 359 Ill. App. 3d 411, 296 Ill. Dec. 272, 835 N.E.2d 127, 2005 Ill. App. LEXIS 801 (1 Dist. 2005), appeal denied, 217 Ill. 2d 586, 300 Ill. Dec. 373, 844 N.E.2d 45 (2005).

- DNA Database

Juvenile did not show that the statute under which the juvenile, adjudicated delinquent on aggravated battery charges, was ordered to submit a saliva sample as part DNA indexing, 730 ILCS 5/5-4-3, was facially unconstitutional under either the Fourth Amendment, U.S. Const. amend. IV, or Ill. Const. art. I, § 6. Statutory law had already authorized forensic DNA testing that included comparison of genetic marker groupings of evidence, 725 ILCS 5/116-3(a), and limited searches for the genetic profiles of offenders, 725 ILCS 5/116-5(c), and the State had a strong interest in obtaining reliable DNA identification evidence and in properly identifying convicted felons. People v. Jessica M. (In re Jessica M.), Ill. App. 3d , Ill. Dec. , N.E.2d , 2010 Ill. App. LEXIS 157 (1 Dist. Feb. 26, 2010).

In General

Ill. Const., Art. I, § 6 is interpreted in a manner consistent with the United States Supreme Court's Fourth Amendment jurisprudence. People v. Bartimo, 345 Ill. App. 3d 1100, 281 Ill. Dec. 192, 803 N.E.2d 596, 2004 Ill. App. LEXIS 25 (4 Dist. 2004).

Illinois Constitution Art. I, § 6 goes beyond federal constitutional guarantees by expressly recognizing a zone of personal privacy, and the protection of that privacy is stated broadly and

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without restrictions. A.G. Edwards, Inc. v. Sec'y of State, 331 Ill. App. 3d 1101, 265 Ill. Dec. 324, 772 N.E.2d 362, 2002 Ill. App. LEXIS 869 (5 Dist. 2002), appeal denied, 202 Ill. 2d 597, 272 Ill. Dec. 339, 787 N.E.2d 154 (2002).

While the Illinois Constitution prohibits unreasonable searches and seizures, a trial court's determination on a motion to suppress evidence will not be overturned on review unless it is contrary to the manifest weight of the evidence. People v. Carlile, 234 Ill. App. 3d 1063, 175 Ill. Dec. 673, 600 N.E.2d 916 (4 Dist. 1992).

The constitutional convention intended this section to extend the protection of the Fourth Amendment to include new protections against invasions of privacy and eavesdropping. People v. Beasley, 206 Ill. App. 3d 112, 151 Ill. Dec. 7, 563 N.E.2d 1113 (1 Dist. 1990).

The Fourth Amendment to the Federal Constitution was the prototype for former Ill. Const. (1870), Art. II, § 6 (see now this section) and no reason is perceived why the latter should not receive the same interpretation as the former. People v. Reynolds, 350 Ill. 11, 182 N.E. 754 (1932).

Affidavit

Informant's testimony before a judge that issued a search warrant did not categorically preclude defendant's entitlement to a Franks hearing. People v. Caro, 381 Ill. App. 3d 1056, 321 Ill. Dec. 804, 890 N.E.2d 526, 2008 Ill. App. LEXIS 294 (1 Dist. 2008), appeal denied, 229 Ill. 2d 633, 325 Ill. Dec. 8, 897 N.E.2d 256, 2008 Ill. LEXIS 1101 (2008).

Trial court did not abuse its discretion in granting defendant's motion for a Franks hearing even though a non-government informant had previously testified before the judge that issued a search warrant. Defendant's affidavit and the affidavits of his two roommates were a substantial preliminary showing that the officer who applied for the search warrant knowingly included a false statement in the warrant affidavit that implicated defendant in a drug transaction, and that statement was necessary to a finding of probable cause. People v. Caro, 381 Ill. App. 3d 1056, 321 Ill. Dec. 804, 890 N.E.2d 526, 2008 Ill. App. LEXIS 294 (1 Dist. 2008), appeal denied, 229 Ill. 2d 633, 325 Ill. Dec. 8, 897 N.E.2d 256, 2008 Ill. LEXIS 1101 (2008).

- Appeals

Where a verification attached to an information was stated in positive terms by the affiant, an attempt thereafter to show by the affidavit of defendant's counsel, or otherwise, that the affiant did not have personal knowledge of the facts stated in the information did not raise a constitutional question under former Ill. Const. (1870), Art. II, § 6 (see now this section), and did not authorize a direct appeal to the Supreme Court. People v. Boyden, 385 Ill. 521, 53 N.E.2d 413 (1944).

- False Information

Arguments in support of motions to quash a search warrant failed where defendant failed to show that false information was "knowingly or intentionally" included in the supporting affidavit or with "reckless disregard for the truth," which are requirements under the substantial preliminary showing language of the United States Supreme Court. People v. Edwards, 144 Ill. 2d 108, 161 Ill. Dec. 788, 579 N.E.2d 336 (1991), cert. denied, 504 U.S. 942, 112 S. Ct. 2278, 119 L. Ed. 2d 204 (1992).

The use of a fictitious name by an affiant to a search warrant does not constitute an abridgment of constitutional rights. People v. Stansberry, 47 Ill. 2d 541, 268 N.E.2d 431 (1971).

- Hearsay Records

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Affiant's statements to prove what the records showed were competent upon the issue of probable cause so long as they were based upon his personal inquiries and observations. People v. Dolgin, 415 Ill. 434, 114 N.E.2d 389 (1953).

- Informants

Where the informant himself was the affiant to the complaint and he recited facts that he observed, a showing of the reliability of the informant was not constitutionally required. People v. Smith, 72 Ill. App. 3d 956, 28 Ill. Dec. 766, 390 N.E.2d 1356 (1 Dist. 1979).

- Insufficient

Where the facts in officer's affidavit in support of the search warrant related only to his observations made in various portions of the defendant's home after entry, but no matters contained in the affidavit related to the officer's observations prior to that entry, it necessarily follows that the evidence seized under the search warrant was the fruit of an illegal entry and was properly suppressed. People v. Cohen, 146 Ill. App. 3d 618, 100 Ill. Dec. 166, 496 N.E.2d 1231 (2 Dist. 1986).

Complaint was held to have been constitutionally defective under former Ill. Const. (1870), Art. II, § 6 (see now this section) for failure to state any facts showing underlying circumstances from which probable cause could be determined. People v. Waitts, 36 Ill. 2d 467, 224 N.E.2d 257 (1967).

- Personal Knowledge Required

The affidavit in support of a search warrant must state facts which are within the personal knowledge of affiant; affidavits made only upon information and belief are legally insufficient and search warrants issued upon such complaints or affidavits are invalid. People v. Dolgin, 415 Ill. 434, 114 N.E.2d 389 (1953).

Where the complaint was made upon information and belief, and not upon facts of which witness had knowledge, there was no sufficient basis for the issuance of the search warrant, and the search was illegal. People v. Sovetsky, 343 Ill. 583, 175 N.E. 844 (1931).

Complaint of witness upon which the search warrant was issued was made merely upon information that the stolen goods were concealed in the premises of the defendant; therefore, the search warrant had no basis, and the search made in execution of it was illegal. People v. Sovetsky, 343 Ill. 583, 175 N.E. 844 (1931).

- Probable Cause

An affidavit based on the personal observations of a person other than the affiant is sufficient to show probable cause so long as a substantial basis for crediting the hearsay is presented. People v. Williams, 27 Ill. 2d 542, 190 N.E.2d 303 (1963).

- Requirement

Statute that authorizes manufacturers, bottlers and dealers in ale, porter, lager beer, soda, mineral water and other beverages to swear out warrants and cause law enforcement officers to search and recover their empty bottles violates Ill. Const. of 1870, Art. II, § 6 (now Ill. Const. (1970), Art. I, § 6) because the statute does not require an affidavit that any offense has been committed; the act unlawfully attempts to transfer judicial discretion, which the constitution intends to be exercised by a magistrate, from that officer to the party making the affidavit. Lippman v. People, 175 Ill. 101, 51 N.E. 872, 1898 Ill. LEXIS 3326 (1898).

- Signature Required

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Trial court erred by granting defendant's motion to quash a search warrant and to quash defendant's arrest because a complaint for a search warrant showed that a police officer was properly sworn before the judge who issued the search warrant under 725 ILCS 5/108-3, and the absence of the officer's signature on the complaint was a technical defect under 725 ILCS 5/108-14 that did not violate defendant's rights. People v. Vera, 393 Ill. App. 3d 94, 332 Ill. Dec. 491, 913 N.E.2d 86, 2009 Ill. App. LEXIS 663 (1 Dist. 2009), appeal denied, 234 Ill. 2d 548, 920 N.E.2d 1080, 2009 Ill. LEXIS 2009 (2009).

A warrant which was executed by a judge without having a signed affidavit by the complainant was defective. People v. Barbee, 35 Ill. 2d 407, 220 N.E.2d 401 (1966).

- Standing

A party has no right under either the Constitution of the United States or this section, or under 725 ILCS 5/114-12 to controvert the truth of matters contained in the affidavit for issuance of a search warrant. People v. Endress, 5 Ill. App. 3d 821, 284 N.E.2d 725 (4 Dist. 1972).

Matters declared in an affidavit which caused a search warrant to be issued, may not be contested in a motion to suppress by the party subjected to the search. People v. Bak, 45 Ill. 2d 140, 258 N.E.2d 341 (1970).

- Sufficient

Requirement that affidavits contain highly specific information before a warrant for electronic surveillance would be granted under the drug conspiracy statute kept it from violating state or federal constitutional strictures; since all the statutory steps had been scrupulously followed, the electronic evidence used to prove defendants' guilt in a drug conspiracy was admissible. People v. Edwards, 337 Ill. App. 3d 912, 272 Ill. Dec. 731, 788 N.E.2d 35, 2002 Ill. App. LEXIS 1111 (1 Dist. 2002), appeal denied, 203 Ill. 2d 554, 273 Ill. Dec. 140, 788 N.E.2d 731 (2003), appeal denied, 205 Ill. 2d 604, 281 Ill. Dec. 84, 803 N.E.2d 488 (2003).

An affidavit adequately met all the necessary requirements, and the warrant authorizing a search of defendant's premises was therefore proper notwithstanding the defendant's contention that the complaint failed to allege that there was probable cause to believe that illegal gambling materials were being kept on the premises. People v. Johnson, 5 Ill. App. 3d 948, 284 N.E.2d 692 (1 Dist. 1972).

Where at the hearing to suppress evidence, the assistant chief deputy who signed the complaint for the search warrant testified he knew a burglary of the saddle shop had been committed, he knew that deputy went out to defendant's place with the owners of the stolen equipment, and deputy had returned and told him what he had seen, these facts and circumstances within the knowledge of the affiant, were sufficient to warrant a man of reasonable caution to believe what had been reported to him, and the search warrant was valid. People v. Poe, 48 Ill. 2d 506, 272 N.E.2d 28 (1971).

Where the affidavit stated positively and unequivocally that affiant visited the retail establishments where cigarettes bearing forged stamps had been purchased originally and that upon personal inspection of their records by affiant it appeared that defendant's company had been the sole supplier of cigarettes at the times in question, and the affidavit set forth in considerable detail what records were examined and what the records showed, this evidence was competent and direct as bearing upon the issue of probable cause, and was a statement of facts within the affiant's personal knowledge. People v. Dolgin, 415 Ill. 434, 114 N.E.2d 389 (1953).

Anticipatory Warrant

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Anticipatory search warrants are valid under both the Fourth Amendment to the United States Constitution and Article I, § 6 of the Illinois Constitution of 1970. People v. Carlson, 185 Ill. 2d 546, 236 Ill. Dec. 786, 708 N.E.2d 372 (1999).

"Anticipatory" warrants in Illinois are constitutional; such a warrant serves a useful purpose in protecting the right to privacy by requiring the police to get prior permission to enter and search from a neutral judge only if the conditions precedent will give rise to probable cause. People v. Martini, 265 Ill. App. 3d 698, 202 Ill. Dec. 751, 638 N.E.2d 397 (2 Dist.), appeal denied, 158 Ill. 2d 560, 206 Ill. Dec. 842, 645 N.E.2d 1364 (1994).

The standard to be adhered to in the context of police execution of "anticipatory" search warrants is the substantial compliance standard. People v. Martini, 265 Ill. App. 3d 698, 202 Ill. Dec. 751, 638 N.E.2d 397 (2 Dist.), appeal denied, 158 Ill. 2d 560, 206 Ill. Dec. 842, 645 N.E.2d 1364 (1994).

Officer substantially complied with all four conditions precedent of the anticipatory warrant, notwithstanding the fact that the second delivery of 1,700 units of lysergic acid diethylamide (LSD) was not field tested. People v. Martini, 265 Ill. App. 3d 698, 202 Ill. Dec. 751, 638 N.E.2d 397 (2 Dist.), appeal denied, 158 Ill. 2d 560, 206 Ill. Dec. 842, 645 N.E.2d 1364 (1994).

Applicability

- In General

Defendant failed to meet his burden to clearly show that having his sex offender registration information posted on the Internet pursuant to 730 ILCS 152/115(b) of the Sex Offender and Child Murderer Community Notification Law, violated the ex post facto provisions of the United States or Illinois constitutions. Informed by the decision of the United States Supreme Court in Smith v. Doe, 538 U.S. 84, 155 L. Ed. 2d 164, 123 S. Ct. 1140, such public information was not a shaming punishment, did not subject offenders to an affirmative disability or restraint, did not promote the traditional aims of punishment, and was not excessive with respect to its purpose. People v. Cornelius, 213 Ill. 2d 178, 290 Ill. Dec. 237, 821 N.E.2d 288, 2004 Ill. LEXIS 2034 (2004).

Provisions regarding the rights of persons are to be construed liberally in favor of the people. People v. Martin, 382 Ill. 192, 46 N.E.2d 997 (1942).

- Antenuptial Agreement

Antenuptial agreement between former husband and his second wife did not implicate privacy rights rising to a level entitled to constitutional protection; therefore, they could not refuse to produce those portions of it that were relevant to the first wife's proceeding seeking increased child support. Puterbaugh v. Puterbaugh, 327 Ill. App. 3d 792, 261 Ill. Dec. 967, 764 N.E.2d 582, 2002 Ill. App. LEXIS 110 (3 Dist. 2002).

- Automobile Passenger

Defendant could not show that defendant's rights under Ill. Const. Art. I, § 6 regarding searches and seizures were violated despite the fact that defendant, a passenger in a car stopped for the driver and defendant's seat belt violations, had been arrested on an outstanding warrant, had been handcuffed, and was sitting in the backseat of a police squad car at the time the officer conducted a search of the interior of the vehicle stopped and found cocaine. Belton's bright-line rule that an officer could conduct a search incident to a lawful arrest applied even where defendant was under arrest and secured in the back of a squad car. People v. Bailey, 232 Ill. 2d 285, 328 Ill. Dec. 22, 903 N.E.2d 409, 2009 Ill. LEXIS 183 (2009).

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Car passenger's motion to quash his arrest and suppress evidence was affirmed where the officer lacked authority to ask the passenger for identification and where the passenger did not feel free to refuse to comply or free to leave; the officer had no reasonable suspicion of criminal activity on the part of the passenger and based his concern for his safety solely on the passenger's criminal history obtained from an unlawful computer check. People v. Gonzalez, 324 Ill. App. 3d 15, 257 Ill. Dec. 583, 753 N.E.2d 1209, 2001 Ill. App. LEXIS 609 (2 Dist. 2001).

In instances where an officer fears for his personal safety, he may forcefully detain the passenger of a vehicle that has been lawfully stopped, and may forcibly require the passenger to remain at the scene during the duration of the stop. People v. Gonzalez, 294 Ill. App. 3d 205, 228 Ill. Dec. 766, 689 N.E.2d 1187 (2 Dist. 1998), aff'd, 184 Ill. 2d 402, 235 Ill. Dec. 26, 704 N.E.2d 375 (1998).

Where passenger-defendant did not know that driver had given her consent to a search of the vehicle, did not know the police officers' purpose for the search and that she was being asked to exit the vehicle so that the officers could search the automobile, the defendant did not abandon her purse in the vehicle, nor did she assume the risk that someone might look into her purse if she left it in the car; therefore, the officer's actions were not objectively reasonable and his search of defendant's purse was invalid. People v. James, 163 Ill. 2d 302, 206 Ill. Dec. 190, 645 N.E.2d 195 (1994).

- Butter and Cheese Factories Act

An Act providing that the operators of butter and cheese factories, where the operator received milk from local farmers, made it into butter and cheese, and returned to the farmers a portion of the amount received for their sale, did not violate the constitutional provision against unreasonable searches and seizures by requiring that the operators file with the former precinct clerk a monthly accounting (see now 410 ILCS 610/1). Hawthorn v. People, 109 Ill. 302 (1883).

- Civil Procedure

An order made pursuant to 735 ILCS 5/8-402, which limits examination of documents to such matters as are pertinent to the issue being litigated, does not infringe the constitutional guarantee against unreasonable search and seizure. Carden v. Ensminger, 329 Ill. 612, 161 N.E. 137 (1928).

- Disclosure of Public Records

Neither the Local Records Act (50 ILCS 205/1 et seq.) nor the Municipal Code of Chicago provide for public access of building inspection reports made by the Department of Buildings of the City of Chicago; a building owner must be provided a notice and an opportunity to be heard before a building investigation report may be open to public scrutiny. Lopez v. Fitzgerald, 76 Ill. 2d 107, 28 Ill. Dec. 476, 390 N.E.2d 835 (1979).

- Eavesdropping

Since under 720 ILCS 5/14-2 and 720 ILCS 5/14-6, plaintiffs were entitled to maintain an action for civil damages based on the alleged eavesdropping and such are sufficient to compensate them for any proved wrongs arising out of the alleged eavesdropping, an Illinois court would not recognize a right to bring a separate action under this section. Amati v. City of Woodstock, 829 F. Supp. 998 (N.D. Ill. 1993).

- Effective Date

This section, to whatever extent it may have created a new right, does not apply to events that occurred prior to its effective date. People v. Holliman, 22 Ill. App. 3d 95, 316 N.E.2d 812 (2 Dist. 1974).

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- Extradition

There was no violation of the relator's rights under either the Fourth Amendment or this section where the circuit court quashed a writ of habeas corpus sought by relator in an extradition proceeding despite relator's contention that his arrest was invalid for lack of probable cause, since in an extradition proceeding the court may not inquire into the guilt or innocence of the relator nor the question of probable cause to arrest him. People v. Lauderdale, 16 Ill. App. 3d 916, 306 N.E.2d 913 (2 Dist. 1974).

- Federal Constitution

The Illinois Supreme Court has elected to adopt the United States Supreme Court's construction of the Fourth Amendment when construing this section, although it is not required to do so. People v. Beasley, 206 Ill. App. 3d 112, 151 Ill. Dec. 7, 563 N.E.2d 1113 (1 Dist. 1990).

This section's protection regarding unreasonable searches and seizures closely parallels U.S. Const., Amend. IV, and in view of this close parallel, federal constitutional interpretations regarding the Fourth Amendment apply to Illinois' constitutional provision regarding unreasonable searches and seizures. People v. Long, 208 Ill. App. 3d 627, 153 Ill. Dec. 556, 567 N.E.2d 514 (1 Dist. 1990), cert. denied, 137 Ill. 2d 669, 156 Ill. Dec. 566, 571 N.E.2d 153 (1991).

The guarantees of U.S. Const., Amends. IV and V were in effect at the same time as Ill. Const. (1870), Art. II, §§ 6 and 10 (see now Ill. Const. (1970), Art. I, §§ 6 and 10) and are construed in favor of the accused. People v. Grod, 385 Ill. 584, 53 N.E.2d 591 (1944).

- Home Rule

It is manifestly impossible to find a legislative intention to limit the city's home rule powers of taxation in a statute that predates the 1970 Constitution because the concept of home rule was "totally foreign" to pre-1970 legislative contemplation. City of Rockford v. Gill, 75 Ill. 2d 334, 26 Ill. Dec. 669, 388 N.E.2d 384 (1979).

- Hospital Licensing Act

The limited intrahospital communications allowed pursuant to 210 ILCS 85/6.17(d) and 210 ILCS 85/6.17(e) in order to assure quality patient care do not authorize the kind of substantial and unjustified invasion of privacy that is prohibited by the Illinois Constitution. Burger v. Lutheran Gen. Hosp., 198 Ill. 2d 21, 259 Ill. Dec. 753, 759 N.E.2d 533, 2001 Ill. LEXIS 1423 (2001).

- Individuals

This section was not intended to deal with relationships between individuals and individuals: it provides individuals protection from invasions of privacy by government or public officials. Stern v. Great W. Bank, 959 F. Supp. 478 (N.D. Ill. 1997).

- Self-Incrimination

Privilege against self-incrimination (Ill. Const. (1970), Art. I, § 10) is not identical with the privilege unreasonable search, though they have their point of contact. People v. Exum, 382 Ill. 204, 47 N.E.2d 56 (1943).

- Traffic Stop Warrant Check

- Wages of Women and Minors Act

820 ILCS 125/8, which authorizes the Department of Labor and its agents to enter any place of business employing women and minors and to inspect all books, registers, payrolls and other records bearing upon the wages of women and minors in order to ascertain whether the orders of the Department are being complied with does not violate constitutional provisions relating to

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unlawful searches and seizures. Vissering Mercantile Co. v. Annunzio, 1 Ill. 2d 108, 115 N.E.2d 306 (1953).

Arrest

There was probable cause under Ill. Const. Art. I, § 6 to legitimate defendant's arrest when defendant was initially detained as: (1) defendant's home was the scene of the crime and defendant was the last person to see the victim alive; (2) the victim's cry for help was inconsistent with a suicide attempt: (3) a 911 caller stated that a man was trying to throw a woman out of a window; (4) defendant had a motive to kill the victim; and (5) if the victim had desired to kill herself, there was no reason for the victim to go through the glass when the victim could have opened the side window. People v. Collins, Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 1282 (1 Dist. June 19, 2006).

Defendant was under arrest for Ill. Const. Art. I, § 6 purposes after the first interview with a detective as: (1) when defendant made statements inconsistent with what the witnesses had told the detective, the detective viewed defendant as a suspect; (2) the detective Mirandized defendant as a precaution, but without advising defendant that the detective was giving the admonitions as such; (3) after providing an exculpatory statement, defendant was kept in a locked interrogation room for around nine hours while waiting to take a polygraph test; and (4) no one informed defendant that defendant was free to leave. People v. Collins, Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 1282 (1 Dist. June 19, 2006).

When defendant was placed in handcuffs, wrestled to the ground by two officers, and the handcuffs were closed, these acts were sufficient to place him under arrest, as a reasonable innocent person would believe he was not free to leave. People v. Hopkins, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 1212 (1 Dist. Dec. 12, 2005).

- What Constitutes

Where officer approached defendant, showed his badge and identified himself, asked defendant a question regarding a train, requested her identification and returned it and told defendant she was not under arrest, a reasonable person would have believed she was free to leave. People v. Anaya, 279 Ill. App. 3d 940, 216 Ill. Dec. 461, 665 N.E.2d 525 (4 Dist. 1996), appeal denied, 168 Ill. 2d 600, 219 Ill. Dec. 567, 671 N.E.2d 734 (1996).

Factors to be considered in determining whether or not an arrest occurred include the presence or absence of a formal declaration of arrest and other routine procedures associated with an arrest, such as handcuffing, fingerprinting and photographing. People v. Bailey, 259 Ill. App. 3d 180, 197 Ill. Dec. 34, 630 N.E.2d 1158 (1 Dist. 1994).

Arrest Warrant

- In General

No person may be arrested and held to answer a charge of crime other than on a sworn complaint before a judge or justice of the peace, or an indictment returned by a grand jury duly sworn and impaneled, or by presentment of not less than two members of such grand jury, or by verified information of the state's Attorney or Attorney General in certain cases. People ex rel. Bain v. Meyering, 347 Ill. 344, 179 N.E. 896 (1931).

- Insufficient

An arrest warrant, which was issued on the basis of a complaint which merely stated that the complainant has just and reasonable grounds to believe that a person committed an offense, is constitutionally defective. People v. Waitts, 36 Ill. 2d 467, 224 N.E.2d 257 (1967).

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- Police Subterfuge

Evidence was insufficient to show that defendant was arrested on a subterfuge warrant, where the only evidence introduced at the suppression hearing indicated that defendant's father arranged to have law enforcement officer meet defendant at airport, that prior to the meeting officer learned that there was an outstanding warrant for defendant's arrest, that defendant was wanted for questioning with regard to the intent homicides, and that upon meeting defendant, officer arrested him for aggravated battery. People v. Hattery, 109 Ill. 2d 449, 94 Ill. Dec. 514, 488 N.E.2d 513 (1985).

Where a police officer's subterfuge was not directed against the defendant, but used on a witness to gain information, there was no constitutional basis for his assertion that the information obtained pursuant to the subterfuge, which led to his arrest, was unlawful; defendant lacked standing to raise this claim. People v. Houston, 36 Ill. App. 3d 695, 344 N.E.2d 641 (1 Dist. 1976).

- Staleness

Contraband found after the defendant was stopped for speeding and arrested on a stale warrant was subject to suppression since the error resulting in failure to recall the arrest warrant was committed by the prosecutor and the application of the exclusionary rule would appreciably deter similar future violations. People v. Boyer, 305 Ill. App. 3d 374, 239 Ill. Dec. 124, 713 N.E.2d 655 (3 Dist. 1999), appeal denied, 185 Ill. 2d 635, 242 Ill. Dec. 141, 720 N.E.2d 1096 (1999).

- Sworn Affidavits

The decision on whether to issue an arrest warrant is to be based on information contained in sworn statements of affidavits that are presented to the magistrate. People v. Ross, 132 Ill. App. 3d 553, 87 Ill. Dec. 888, 478 N.E.2d 27 (1 Dist. 1985).

- Transcripts of Hearing

The Illinois Constitution does not require that a written or recorded transcript be made of evidence presented at an ex parte hearing at which an arrest warrant is authorized. People v. Ross, 132 Ill. App. 3d 553, 87 Ill. Dec. 888, 478 N.E.2d 27 (1 Dist. 1985).

Arrest Without Probable Cause

Motions to suppress were improperly granted in a drug case because police had probable cause to arrest defendants for a drug offense; defendants were at a residence under surveillance, they stopped performing yard work when two men entering a drug deal arrived, and they traveled in tandem with these men for many miles. People v. Rodriguez-Chavez, 405 Ill. App. 3d 872, 345 Ill. Dec. 184, 938 N.E.2d 623, 2010 Ill. App. LEXIS 1223 (2 Dist. 2010).

Defendant's conviction for first degree murder was reversed, and he was granted a new trial with his incriminating statement suppressed because his incriminating statement was deemed a product of an illegal arrest without probable cause and, based on his poor education, limited intelligence, poor health, lack of sleep and a 54-hour detention, his subsequent incriminating statement was subject to suppression. Defendant had originally gone to the police station voluntarily after being picked up by two plain clothed police officers thinking he was a witness, as opposed to a suspect, but the second detention of being in custody for 54 hours was illegal and coercive in nature and the illegality of the arrest was not purged of the taint by the time defendant made his statement to the police. People v. Wead, 363 Ill. App. 3d 121, 299 Ill. Dec. 488, 842 N.E.2d 227, 2005 Ill. App. LEXIS 1280 (1 Dist. 2005), appeal denied, 218 Ill. 2d 555, 303 Ill. Dec. 7, 850 N.E.2d 812 (2006).

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Arrest Without Warrant

Trial court erred by quashing a defendant's arrest and his motion to suppress evidence with regard to various drug charges against him as the trial court erroneously placed too much weight on the fact that some of the informant's details pertained to innocent ones, such as the color of a car involved, and by concluding that the basis of the informant's knowledge was unknown. Considering the totality of the circumstances and the lower level of suspicion necessary to perform a Terry stop, the State sufficiently established that the officers had a reasonable suspicion to make the initial investigatory stop of the defendant. People v. Payne, 393 Ill. App. 3d 175, 332 Ill. Dec. 115, 912 N.E.2d 301, 2009 Ill. App. LEXIS 613 (2 Dist. 2009).

Officers had probable cause to arrest defendant without a warrant based on the strong odor associated with methamphetamine (Meth) manufacturing emanating from the property, the presence of a vehicle registered to defendant, the observation of items associated with Meth manufacturing in an open garbage can, and the officers knowledge that defendant sold, used, and manufactured Meth. People v. Redman, 386 Ill. App. 3d 409, 326 Ill. Dec. 899, 900 N.E.2d 1146, 2008 Ill. App. LEXIS 1066 (4 Dist. 2008).

Officer's warrantless, nonconsensual entry into a motorist home to arrest the motorist on a driving under the influence charge did not offend the Fourth Amendment or Ill. Const. art. I, § 6; the officer had already been in pursuit of the motorist when the motorist pulled into his driveway and entered his residence, and therefore, the warrantless entry came within the hot pursuit doctrine. People v. Wear, 229 Ill. 2d 545, 323 Ill. Dec. 359, 893 N.E.2d 631, 2008 Ill. LEXIS 636 (2008).

Officer had probable cause to arrest a motorist for driving under the influence of alcohol based on the officer's observation of the motorist's driving, the fact that the motorist committed at least two traffic violations, the fact that the motorist failed to stop when the officer activated the lights on his patrol vehicle, the fact that when the motorist reached his residence and exited his vehicle he staggered and swayed up to the door, and the fact that when the officer approached the motorist, he was able to detect the odor of alcohol about the motorist's person. People v. Wear, 229 Ill. 2d 545, 323 Ill. Dec. 359, 893 N.E.2d 631, 2008 Ill. LEXIS 636 (2008).

Motorist was not entitled to the recission of a summary suspension of his license under 625 ILCS 5/2-118.1(b) based on a lack of reasonable grounds; the officer who arrested the motorist on the underlying driving under the influence (DUI) charge did not violate the motorist's rights because the officer had probable cause to arrest the motorist, and the warrantless, nonconsensual entry into the motorist's residence to make the arrest was supported by the hot pursuit doctrine. People v. Wear, 229 Ill. 2d 545, 323 Ill. Dec. 359, 893 N.E.2d 631, 2008 Ill. LEXIS 636 (2008).

Trial court did not err in denying defendant's motion to quash arrest and amended motion to suppress statements she made to police, as the statements she made to police were made after they had probable cause to arrest her and thus, her arrest was not the result of an unreasonable search and seizure, which meant that the statements were admissible in her trial for first-degree murder and aggravated arson. People v. Sanchez, 362 Ill. App. 3d 1093, 299 Ill. Dec. 66, 841 N.E.2d 478, 2005 Ill. App. LEXIS 1253 (1 Dist. 2005), cert. denied, 2007 U.S. LEXIS 2337 (U.S. 2007).

While officers who received a radio report that a robbery had been committed at a certain location by two black males in their 20s and saw defendant, a black male in his 20s, seated in a vehicle in the same block in which the crime was committed minutes after it was committed, were not objectively unreasonable in conducting an investigatory stop of defendant's vehicle, their reasonably articulable suspicion did not become probable cause to arrest defendant when the only additional facts they obtained, upon conducting the investigatory stop, were that defendant's heart was racing, he was breathing heavily, and there was snow on his pants. People v. Hopkins, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 1212 (1 Dist. Dec. 12, 2005).

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Plaintiff's state law false arrest and false imprisonment claims were not barred, despite the fact that he had been convicted of criminal offenses arising out of the incident that was the basis for his 42 U.S.C.S. § 1983 suit, because plaintiff had alleged that the illegal arrest took place following defendant police officers' illegal entry into his home. The claims were similarly not barred under the Heck doctrine because the claims would not necessarily undermine the convictions, as there was other sufficient evidence to support them. Foulks v. Emery, F. Supp. 2d , 2005 U.S. Dist. LEXIS 27446 (S.D. Ill. Nov. 4, 2005).

In accordance with Ill. Const. Art. I, § 6, the state trooper had probable cause to arrest defendant for driving under the influence in violation of 625 ILCS 5/11-501(a)(2). Defendant had rolled defendant's vehicle over, defendant exhibited indicia of intoxication, and defendant admitted to having consumed beer before driving. People v. Cortez, 361 Ill. App. 3d 456, 297 Ill. Dec. 366, 837 N.E.2d 449, 2005 Ill. App. LEXIS 1047 (2 Dist. 2005), appeal denied, 217 Ill. 2d 609, 300 Ill. Dec. 525, 844 N.E.2d 968 (2006).

Where defendant fled the accident scene, where defendant refused to answer police knocks at the door of defendant's home, and where defendant left no indication that defendant had been injured, police improperly entered defendant's house without a warrant to arrest defendant in violation of Ill. Const. Art. I, § 6; the emergency exception to the warrant requirement did not apply under the facts, as the minimal facts known by the police were not enough to show that the police had reasonable grounds to believe that there was an emergency at hand and an immediate need for their assistance. People v. Feddor, 355 Ill. App. 3d 325, 291 Ill. Dec. 207, 823 N.E.2d 217, 2005 Ill. App. LEXIS 79 (2 Dist. 2005).

- Exigent Circumstances

The distinction between a misdemeanor and a felony offense is not necessarily dispositive in determining whether exigent circumstances exist in a given situation. People v. Wimbley, 314 Ill. App. 3d 18, 246 Ill. Dec. 762, 731 N.E.2d 290, 2000 Ill. App. LEXIS 417 (1 Dist. 2000).

Exigent circumstances did not exist to justify the warrantless entry into the defendant's home to effect his arrest where there was no evidence that a reliable informant provided information that drugs were being sold from the defendant's home, and a tip that the defendant was selling drugs did not justify an inference that he was armed and dangerous. People v. Wimbley, 314 Ill. App. 3d 18, 246 Ill. Dec. 762, 731 N.E.2d 290, 2000 Ill. App. LEXIS 417 (1 Dist. 2000).

The evidence showed that exigent circumstance existed for the police to take prompt action and make the entry into defendant's home to effect his arrest without a warrant. People v. Davis, 93 Ill. App. 3d 217, 48 Ill. Dec. 675, 416 N.E.2d 1197 (1 Dist. 1981).

The police may not enter a dwelling to search for things without a warrant on probable cause in the absence of exigent circumstances, and if the entry is to effect an arrest, the same rule should apply. People v. Wolgemuth, 43 Ill. App. 3d 335, 1 Ill. Dec. 857, 356 N.E.2d 1139 (3 Dist. 1976), rev'd on other grounds, 69 Ill. 2d 154, 13 Ill. Dec. 40, 370 N.E.2d 1067 (1977).

- Informants

The collective facts of an informer's tip, the appearance and demeanor of the defendant, and the words, actions and flight of the stranger away from the defendant immediately prior to defendant's arrest were sufficient to lead a reasonable and prudent person to conclude that the defendant was in the commission of a criminal offense, the arrest was lawful, and the trial court did not err in admitting evidence discovered in the course of the search incident thereto. People v. Brooks, 32 Ill. 2d 81, 203 N.E.2d 882 (1965).

- Juveniles

When a juvenile's parents are present at the police station, request to confer with their child, and are effectively refused by the law enforcement authorities while the juvenile is being interrogated,

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the presumption arises that the juvenile's will in signing Miranda warnings is overborne. In re J.J.C., 294 Ill. App. 3d 227, 228 Ill. Dec. 751, 689 N.E.2d 1172 (2 Dist. 1998), appeal denied, 178 Ill. 2d 577, 232 Ill. Dec. 847, 699 N.E.2d 1032 (1998).

The police illegally seized defendant prior to when he was formally arrested where the officers told defendant they were investigating a homicide, then asked him to accompany them to the police station instead of questioning him at his home, the officers did not tell defendant that he could refuse to accompany them, or give him the option of arranging his own transportation, defendant stated that he felt that he "had no choice," an officer followed defendant into his bedroom, and waited as he retrieved his shoes and sweatshirt, an officer "grabbed" defendant's shoulder as they exited the house, the police questioned defendant for 15 to 30 minutes in front of his home, and defendant denied involvement in the attack, the police transported defendant to the station in a squad car, and upon arrival at the station, they put defendant in a small room and questioned him for about 90 minutes about a murder in which he continued to deny involvement; then, when the police abruptly terminated the interrogation when defendant admitted his presence, and then transferred defendant to another station, the record did not indicate that defendant consented to such move, or that he was told he could refuse to go, and although the officers testified that defendant was free to leave, they never conveyed this fact to him. People v. R.B., 232 Ill. App. 3d 583, 173 Ill. Dec. 905, 597 N.E.2d 879 (1 Dist. 1992).

- Militia

Where martial law had not been declared, a militaman had no right under pursuant to Ill. Const. (1970), Art. I, § 6 (formerly Ill. Const. of 1870, Art. II, § 6) to shoot and kill a citizen who had refused to allow himself to be arrested, and the Court of Claims had the power to recommend compensation under 705 ILCS 505/1 (formerly § 6, Par. 4, Court of Claims Act). Gyenes v. State, 9 Ill. Ct. Cl. 185, 1936 Ill. Ct. Cl. LEXIS 37 (Ct. Cl. 1936).

- Misdemeanors

Arrests without warrants by sheriffs, constables, and other like officers for misdemeanors committed in their presence, as cannot be stopped or redressed except by immediate arrest, did not violate Ill. Const. (1870), Art. II, § 6 (see now this section). North v. People, 139 Ill. 81, 28 N.E. 966 (1891).

- Not Upheld

Motion to suppress evidence and quash arrest was properly granted when the stop was made in reliance on an uncorroborated anonymous tip that accurately described defendant but did not contain any predictive information that supported the tip's reliability. People v. Brown, 343 Ill. App. 3d 617, 278 Ill. Dec. 416, 798 N.E.2d 800, 2003 Ill. App. LEXIS 1275 (2 Dist. 2003), appeal denied, 207 Ill. 2d 608, 283 Ill. Dec. 136, 807 N.E.2d 977 (2004).

Defendant was arrested without probable cause where he was asked to accompany police officers to a police station to discuss a shooting, was placed in a room to await the arrival of detectives in the morning, questioned by the detectives in the late afternoon, and arrested in the evening because of a statement another man gave. People v. Ollie, 333 Ill. App. 3d 971, 267 Ill. Dec. 726, 777 N.E.2d 529, 2002 Ill. App. LEXIS 860 (1 Dist. 2002).

Where police had probable cause to arrest defendant, but where there was nothing to suggest that the defendant's conduct constituted an immediate and clear danger to the police or to the safety of those around him, there was no exigency sufficient to justify a warrantless arrest, and defendant's arrest was unlawful. People v. Foskey, 136 Ill. 2d 66, 143 Ill. Dec. 257, 554 N.E.2d 192 (1990).

The failure of the police to attempt to get a warrant for defendant's arrest between the time that the information of the planned crime became available and the time of the arrest three weeks

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later was unreasonable, since no exigent circumstances existed to justify his warrantless arrest. People v. Foskey, 136 Ill. 2d 66, 143 Ill. Dec. 257, 554 N.E.2d 192 (1990).

Where the defendant was not arrested on any charge, no criminal offense had been committed or attempted in the presence of the officer, nor had the officer reasonable cause to believe that the defendant had in fact committed a crime, and the only reason the officer stopped the defendant was that he found him on a certain street, there was no valid arrest and the evidence obtained by the officer should not have been permitted to be introduced in evidence, and the motion to suppress the evidence should have been allowed. People v. Thomas, 25 Ill. 2d 559, 185 N.E.2d 668 (1962).

Exigent circumstances did not exist for defendant's arrest for possession and intent to deliver illegal drugs, which took place almost immediately after the crime, since defendant was neither aware of the events that transpired, nor suspected of a crime of violence, and thus there was no need for prompt police action. People v. Day, 165 Ill. App. 3d 266, 116 Ill. Dec. 525, 519 N.E.2d 115 (4 Dist. 1988).

Where defendant was riding in a taxicab and, while so doing city police officers, without warrant or process of law, and not having any reasonable grounds for believing that he had committed any criminal offense, and without his having committed a criminal offense in the presence of the police officers, wrongfully arrested him and searched his person, finding thereon a revolver, arrest was unlawful and all evidence obtained by the police officers as the result of such unlawful arrest and search and seizure should have been suppressed. People v. McGurn, 341 Ill. 632, 173 N.E. 754 (1930).

- Petty offense

In a case in which defendant was arrested after a police officer observed him walking in the middle of a public road, the Illinois Constitution did not prohibit the officer from making a custodial arrest for a petty offense. People v. Fitzpatrick, Ill. App. 3d , 355 Ill. Dec. 827, 960 N.E.2d 709, 2011 Ill. App. LEXIS 1144 (2 Dist. 2011).

- Probable Cause

Officers had probable cause to arrest defendant for obstructing a peace officer, and therefore, handcuffing defendant at the time of his apprehension was lawful; since the stop was warranted, the officers had the right to detain defendant as a passenger and were justified in arresting him when he fled, thereby committing obstruction of a peace officer. People v. Johnson, 408 Ill. App. 3d 107, 348 Ill. Dec. 695, 945 N.E.2d 2, 2010 Ill. App. LEXIS 1406 (1 Dist. 2010), appeal denied, 353 Ill. Dec. 9, 955 N.E.2d 476, 2011 Ill. LEXIS 1330 (2011).

Trial court did not err in defendant's trial for murder and attempted murder involving the shooting of two people in denying defendant's motions to quash defendant's arrest and to suppress defendant's confession, as the investigative stop of defendant shortly after the crimes occurred and in the vicinity of the crimes was based on reasonable suspicion arising out of the description of defendant by witnesses at the crime scene and the arrest of defendant was based on probable cause after police smelled gunshot residue on defendant. People v. Jones, 374 Ill. App. 3d 566, 313 Ill. Dec. 96, 871 N.E.2d 823, 2007 Ill. App. LEXIS 678 (1 Dist. 2007), appeal denied, 225 Ill. 2d 655, 875 N.E.2d 1118, 2007 Ill. LEXIS 1390 (2007).

Because an officer had probable cause to arrest a minor for obstructing under 720 ILCS 5/31-1(a) due to the fact that minor walked toward another group to fight despite officer's orders to stop and officer had authority to give such order to maintain order in park, the arrest and subsequent search did not violate Ill. Const. (1970), Art. I, § 6 or U.S. Const. amend IV. People v. Jerome S. (In re Jerome S.), 372 Ill. App. 3d 642, 311 Ill. Dec. 220, 867 N.E.2d 1206, 2007 Ill. App. LEXIS 384 (1 Dist. 2007).

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Where police received a tip that defendant had purchased methamphetamine ingredients, observed defendant's truck change lanes without signaling and weave across the centerline, and observed fuel and batteries in the truck, the officer had probable cause to arrest defendant. People v. Reatherford, 345 Ill. App. 3d 327, 280 Ill. Dec. 415, 802 N.E.2d 340, 2003 Ill. App. LEXIS 1575 (4 Dist. 2003), appeal denied, 208 Ill. 2d 551, 284 Ill. Dec. 345, 809 N.E.2d 1291 (2004).

There was probable cause to arrest the defendant for murder where the victim's cellular telephone was found in the defendant's possession and substantial additional evidence linked the defendant to the murder. People v. Berry, 314 Ill. App. 3d 1, 247 Ill. Dec. 80, 731 N.E.2d 853, 2000 Ill. App. LEXIS 416 (1 Dist. 2000), appeal denied, 191 Ill. 2d 537, 250 Ill. Dec. 460, 738 N.E.2d 929 (2000).

The standard for an arrest without a warrant under 725 ILCS 5/107-2(1)(c) is the equivalent of the constitutional requirement of probable cause. People v. Stachelek, 145 Ill. App. 3d 391, 99 Ill. Dec. 249, 495 N.E.2d 984 (1 Dist. 1986).

The statutory standard for an arrest without warrant in subsection (c) of 725 ILCS 5/107-2(1)(c) is synonymous with the federal and state constitutional requirement of probable cause. People v. Gutknecht, 121 Ill. App. 3d 839, 77 Ill. Dec. 201, 460 N.E.2d 60 (5 Dist. 1984).

Since police officers are subject to a variety of suspicious events and circumstances during the course of their duties, it is not possible to state a general rule regarding what information satisfies the constitutional and statutory probable cause requirements in the area of warrantless arrest; each case is governed by its own particular facts and circumstances. People v. Scarpelli, 82 Ill. App. 3d 689, 37 Ill. Dec. 913, 402 N.E.2d 915 (2 Dist. 1980).

With respect to warrantless arrests, the requirement of probable cause and the state statutory standard of reasonable grounds in 725 ILCS 5/107-2(1)(c) are synonymous. People v. Scarpelli, 82 Ill. App. 3d 689, 37 Ill. Dec. 913, 402 N.E.2d 915 (2 Dist. 1980).

No general rule applicable to every case has been, or probably can be, announced as to what facts will constitute justification, in law, for an arrest by an officer without a warrant, other than that such ground of suspicion or belief exists as should influence the conduct of a prudent and cautious man under the circumstances. People v. McGowan, 415 Ill. 375, 114 N.E.2d 407 (1953).

- Reasonable Belief

In an action in which the State appealed from a judgment of the trial court which granted defendant's motions to quash arrest and to suppress evidence and statements, the judgment was reversed where it was an entirely reasonable inference from the historical facts that both defendant and another individual were engaged in illegal drug dealing and that both men had actual possession of the cocaine before the officers entered the bar. Consequently, a reasonable officer could conclude that there was probable cause to believe that defendant committed the offense of possession of cocaine, either solely or jointly. People v. Long, 369 Ill. App. 3d 860, 308 Ill. Dec. 270, 861 N.E.2d 335, 2007 Ill. App. LEXIS 1 (1 Dist. 2007).

Reasonable grounds or probable cause justifying a warrantless arrest exist where the facts and circumstances within the arresting officer's knowledge are sufficient to justify a man of reasonable caution in believing that a person is committing or has committed an offense. People v. Scarpelli, 82 Ill. App. 3d 689, 37 Ill. Dec. 913, 402 N.E.2d 915 (2 Dist. 1980).

The term "criminal offense" includes misdemeanors as well as felonies; where a criminal offense has been committed, a police officer has the right to arrest without a warrant provided he has reasonable ground for believing that the person to be arrested is implicated in the offense. People v. McGowan, 415 Ill. 375, 114 N.E.2d 407 (1953).

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Where an arrest of defendant was made without benefit of a warrant, the determination of whether the police officer acted properly rested upon whether he had, at the time of arrest, a belief as to the guilt of defendant such as would influence the conduct of a prudent and cautious man. People v. Derrico, 409 Ill. 453, 100 N.E.2d 607 (1951).

- Upheld

Defendant's custodial arrest and subsequent search did not violate the Fourth Amendment to the United States Constitution or Ill. Const. Art. I, § 6 because defendant's violation of municipal traffic ordinances provided a lawful basis for a police officer to place him under custodial arrest and to search incident to that arrest; the Fourth Amendment did not require a showing that the officer possessed probable cause that defendant had committed an offense more serious than a traffic violation. People v. Taylor, 388 Ill. App. 3d 169, 327 Ill. Dec. 630, 902 N.E.2d 751, 2009 Ill. App. LEXIS 42 (2 Dist. 2009).

Because a police officer had probable cause under 725 ILCS 5/107-2(1)(c) to arrest defendant for driving under the influence of drugs, the officer had authority under Ill. Const. (1970), Art. I, § 6 to search defendant's car; therefore, the trial court erred in granting defendant's motion to suppress. People v. Damian, 374 Ill. App. 3d 941, 313 Ill. Dec. 706, 873 N.E.2d 1, 2007 Ill. App. LEXIS 933 (1 Dist. 2007).

Defendant's presence in a truck that was clearly - to the mind of experienced narcotics investigators - providing countersurveillance for a drug deal offered sufficient probable cause for his arrest. People v. Ortiz, 355 Ill. App. 3d 1056, 291 Ill. Dec. 585, 823 N.E.2d 1171, 2005 Ill. App. LEXIS 152 (2 Dist. 2005), appeal denied, 215 Ill. 2d 612, 295 Ill. Dec. 525, 833 N.E.2d 7 (2005).

Trial court erred in granting defendants' motion to quash their arrests and suppress evidence because (1) there was probable cause to arrest defendants where, by following the potential victim from the casino to the victim's home, defendants had taken a substantial step toward completion of the intended robbery, and (2) the evidence was admissible under the "independent source" doctrine where it had been discovered by lawful means independent of the arrest of defendants. People v. Burks, Ill. App. 3d , Ill. Dec. , N.E.2d , 2004 Ill. App. LEXIS 1268 (3 Dist. Oct. 18, 2004), modified, 355 Ill. App. 3d 750, 291 Ill. Dec. 814, 824 N.E.2d 1064 (3 Dist. 2005).

There was probable cause to arrest defendants for burglary where police officer, in a high crime area, saw the defendants walking through a gangway carrying a television set, a laundry bag filled with materials, and a shotgun partially concealed by a trench coat, and the defendants stopped at the mouth of the gangway and peered up and down the street before proceeding to cross the street; therefore, the arrest was proper and the subsequent warrantless search was not unreasonable. People v. Robinson, 62 Ill. 2d 273, 342 N.E.2d 356 (1976).

When the police officers observed defendant carrying a bag which was open in such a manner that policy (gambling) slips could be seen, it was obvious to the officers that he was violating provision of the code, and that the defendant's companion was seen to emerge from the building carrying a bag of a similar type and in a similar appearance, such facts were sufficient to justify the belief of a prudent and cautious man that companion was likewise implicated in the offense and that the bag carried by him also contained policy slips; therefore, the arrest of defendant and the search made incident thereto were justified under the law. People v. McGowan, 415 Ill. 375, 114 N.E.2d 407 (1953).

- Valid

Where a crime had been committed and, according to the information received by officers, the criminals were driving northward in the vicinity of where the officers were stationed, and the defendant was said to have answered the description of one of the men given in the radio call, the arrest was lawful, and the officers had a right to search defendants without a search warrant,

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for the right of search and seizure is incidental to the right to arrest. People v. Euctice, 371 Ill. 159, 20 N.E.2d 83 (1939).

Where an arrest is made by an officer who has reasonable ground for believing the person arrested is implicated in the crime, such officer has a right to arrest without a warrant and to search the person arrested without a search warrant. People v. Hord, 329 Ill. 117, 160 N.E. 135 (1928).

Community Caretaking

Officer's entry was justified by the community caretaking exception because a father told the officer that he feared his children were not being fed, and defendant's failure to respond further to the officer after she acknowledged his knock was not what he expected when performing a routine well-being check. Defendant resisted the officer's attempt to open the door even after she agreed to open it for him. People v. Hand, 408 Ill. App. 3d 695, 349 Ill. Dec. 343, 946 N.E.2d 537, 2011 Ill. App. LEXIS 293 (1 Dist. 2011).

Trial court properly denied defendant's motion to suppress evidence obtained prior to his arrest in a prosecution for driving under the influence of alcohol (DUI) in violation of 625 ILCS 5/11-501(a)(2) because the arresting officer was acting as a community caretaker and, therefore, once the officer's reasonable suspicion was aroused, he was entitled to question defendant as to whether he had been drinking without violating the Fourth Amendment or Ill. Const. (1970), Art. I, § 6; nonetheless, defendant's conviction was vacated and a new trial ordered because the trial court improperly admitted evidence of two prior DUIs in violation of 725 ILCS 5/111-3(c). People v. Robinson, 368 Ill. App. 3d 963, 307 Ill. Dec. 232, 859 N.E.2d 232, 2006 Ill. App. LEXIS 1056 (1 Dist. 2006).

Where the officer pulled up behind defendant's vehicle, which was parked on the shoulder of the road, and activated the squad car's overhead lights, the officer detained defendant and could not have been performing a community caretaking function, but the detention was not unreasonable under Ill. Const. Art. I, § 6; the officer did not do anything wrong by stopping behind defendant's vehicle to check on the welfare of the vehicle's driver, as police officers routinely provided roadside assistance in addition to conducting criminal investigations. People v. Laake, 348 Ill. App. 3d 346, 284 Ill. Dec. 203, 809 N.E.2d 769, 2004 Ill. App. LEXIS 444 (3 Dist. 2004).

Consent

With regard to a defendant's convictions for unlawful possession of cocaine with intent to deliver and unlawful possession of cocaine, the trial court properly denied the defendant's motion to suppress cocaine found in a vehicle trunk of the car in which he was a passenger in because the driver consented to the search of the vehicle and trunk and it was irrelevant whether the defendant consented to the vehicle search. People v. James, 391 Ill. App. 3d 1045, 331 Ill. Dec. 95, 910 N.E.2d 168, 2009 Ill. App. LEXIS 521 (3 Dist. 2009), appeal denied, 233 Ill. 2d 579, 335 Ill. Dec. 640, 919 N.E.2d 359, 2009 Ill. LEXIS 1409 (2009).

Defendant's actions after being asked if he would consent to a search, which included: (1) assuming the search position against a vehicle; (2) responding to the officer that "You got to go ahead and do what you got to do"; and (3) removing items from his pockets himself, established that he voluntarily gave his consent to the search that yielded drug evidence against him. People v. Terry, 379 Ill. App. 3d 288, 318 Ill. Dec. 485, 883 N.E.2d 716, 2008 Ill. App. LEXIS 163 (1 Dist. 2008).

Consent to search defendant's home and seizure of defendant's personal computer was the product of a knowing, voluntary consent; the record did not support defendant's contention that defendant lacked the ability to understand and speak English and was therefore, incapable of

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giving voluntary consent. People v. Shinohara, 375 Ill. App. 3d 85, 313 Ill. Dec. 515, 872 N.E.2d 498, 2007 Ill. App. LEXIS 744 (1 Dist. 2007), appeal denied, 875 N.E.2d 1121, 2007 Ill. LEXIS 1596 (Ill. 2007).

Where an officer, during a traffic stop, noticed an incomplete 12-pack of beer in a car that was owned by defendant, the passenger, and the officer asked to search the car after the driver said that there were no open containers in the car, the driver's consent was valid and voluntary because the driver had authority to consent, defendant did not voice an objection to the search or limit the driver's consent, and there was no show of authority beyond the verbal request. People v. Barker, 369 Ill. App. 3d 670, 311 Ill. Dec. 35, 867 N.E.2d 1021, 2007 Ill. App. LEXIS 2 (1 Dist. 2007).

Trial court erred in denying defendant's motion pursuant to 725 ILCS 5/114-12 to suppress marijuana found in his backpack and in his home; defendant was seized before he consented to the searches, and therefore his consent to the search of the pack and his home was not consensual, and thus his rights under Ill. Const. Art. I, § 6 were violated. People v. Kveton, 362 Ill. App. 3d 822, 298 Ill. Dec. 601, 840 N.E.2d 714, 2005 Ill. App. LEXIS 1195 (2 Dist. 2005), appeal denied, 219 Ill. 2d 582, 303 Ill. Dec. 837, 852 N.E.2d 244 (2006).

Trial court erred in suppressing evidence discovered in a search of defendant's vehicle pursuant to 725 ILCS 5/114-12. The officer was justified in stopping the vehicle based on a broken windshield, it was not a violation of Ill. Const. Art. I, § 6, for the officer to ask the driver for permission to search the vehicle after returning the driver's documentation, and the driver validly consented to the search of the vehicle. People v. Ramsey, 362 Ill. App. 3d 610, 298 Ill. Dec. 446, 839 N.E.2d 1093, 2005 Ill. App. LEXIS 1186 (4 Dist. 2005).

While police had the consent of the person leasing a house to search the house, that consent did not extend to the contents of a duffel bag which was zipped closed and identified as being the sole property of defendant, who was not present during the search, and the person consenting to a search of the house did not actually or apparently have common authority over the duffel bag, so the police exceeded their authority to search the house when they searched the duffel bag. People v. Miller, 346 Ill. App. 3d 972, 282 Ill. Dec. 462, 806 N.E.2d 759, 2004 Ill. App. LEXIS 305 (2 Dist. 2004).

- After Entry

Although the police misconduct was not flagrant, due to the police officer's belief that a hotel room was vacant, other factors suggested that defendant's consent to the search or abandonment of the suitcase did not purge the primary taint of the illegal entry. People v. Vought, 174 Ill. App. 3d 563, 124 Ill. Dec. 204, 528 N.E.2d 1095 (2 Dist. 1988), cert. denied, 124 Ill. 2d 561, 129 Ill. Dec. 155, 535 N.E.2d 920, 492 U.S. 911, 109 S. Ct. 3228, 106 L. Ed. 2d 576 (1989).

- After Search

Where the search was conducted before consent was given the search could not be ratified by signing a consent-to-search form after the search was for the most part completed. People v. Flagg, 217 Ill. App. 3d 655, 160 Ill. Dec. 490, 577 N.E.2d 815 (5 Dist.), cert. denied, 142 Ill. 2d 658, 164 Ill. Dec. 922, 584 N.E.2d 134 (1991).

- Burden of Proof

Where the validity of a search rests on consent, the state must prove by a preponderance of the evidence that the defendant's consent was voluntary, and the voluntariness of the defendant's consent depends not on any single criterion, but on all circumstances surrounding the giving of the consent. People v. Bruce, 185 Ill. App. 3d 356, 133 Ill. Dec. 497, 541 N.E.2d 708 (5 Dist. 1989).

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- By Relative

Trial court properly denied motion to quash arrest and suppress confession on grounds of a warrantless search finding that detectives obtained consent from defendant's grandmother to enter the residence. People v. Patrick, 298 Ill. App. 3d 16, 232 Ill. Dec. 237, 697 N.E.2d 1167 (1 Dist. 1998), appeal denied, 181 Ill. 2d 583, 235 Ill. Dec. 946, 706 N.E.2d 501 (1998).

- Child's Room

Minor's mother could give valid consent to a warrantless police search of minor's locked bedroom located in her home. People v. Salyer, 44 Ill. App. 3d 854, 3 Ill. Dec. 648, 358 N.E.2d 1333 (3 Dist. 1977).

- Exceeded

Search of defendant's truck after he was stopped for speeding exceeded his consent to the officer's request to "take a look" in the cargo hold. People v. Baltazar, 295 Ill. App. 3d 146, 229 Ill. Dec. 463, 691 N.E.2d 1186 (3 Dist. 1998), appeal denied, 178 Ill. 2d 583, 232 Ill. Dec. 848, 699 N.E.2d 1033 (1998).

- Hotel Rooms

Although a hotel manager may validly consent to the search of a vacant room, where a manager's statement that an occupied room was vacant was incorrect, her consent to search was not valid, absent a showing of exigent circumstances; no exigent circumstances were shown. People v. Vought, 174 Ill. App. 3d 563, 124 Ill. Dec. 204, 528 N.E.2d 1095 (2 Dist. 1988), cert. denied, 124 Ill. 2d 561, 129 Ill. Dec. 155, 535 N.E.2d 920, 492 U.S. 911, 109 S. Ct. 3228, 106 L. Ed. 2d 576 (1989).

- Invitation by Another

Where verbal invitation to police to enter defendant's premises was issued by companion, the court could not presume the officers entered upon the invitation of defendant; even though the invitation to enter was made by one in the presence of defendant, the evidence did not establish the invitation was extended with the permission of defendant; an invitation by another to enter defendant's premises must be extended under specific authorization. People v. Dent, 371 Ill. 33, 19 N.E.2d 1020 (1939).

- Miranda Warnings

Consent to a search of an automobile is not invalid for the reason that the defendant was not previously advised of his constitutional rights against unreasonable search and seizure and was not advised of his rights to consult with an attorney prior to giving the consent, because the constitutional protection given by both the Illinois and the Federal Constitutions against unreasonable search and seizure is wholly different than the constitutional protection against self-incrimination. People v. Trent, 85 Ill. App. 2d 157, 228 N.E.2d 535 (4 Dist. 1967).

- Multiple Searches

Where defendant consented to allow her house to be searched for intruders while she was hospitalized, implicit in this consent was the right of the police to search the house as many times as needed and any place where an intruder might hide. People v. Logsdon, 208 Ill. App. 3d 989, 153 Ill. Dec. 788, 567 N.E.2d 746 (5 Dist.), cert. denied, 139 Ill. 2d 601, 159 Ill. Dec. 113, 575 N.E.2d 920 (1991).

- Police Subterfuge

Where a police officer did not hide the fact that he was a police investigator nor did he hide the fact that he was investigating a crime, but merely disguised the nature of the crime which he was

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investigating, the use of a subtle subterfuge of this nature was not so offensive to the Constitution that it required proscription. People v. Houston, 36 Ill. App. 3d 695, 344 N.E.2d 641 (1 Dist. 1976).

Where police officers did not disclose their identity when seeking admission to the home of defendant, their actions were fraudulent and even if she had given them permission to enter, in ignorance of their official character and purpose, such entrance would have been illegal. People v. Dent, 371 Ill. 33, 19 N.E.2d 1020 (1939).

- Question of Fact

Where the officer, after seeking cannabis plants in defendant's backyard, asked for consent to search defendant's house, and defendant asked what would happen if defendant refused, and the officer replied by stating that the officer would leave another police officer in defendant's home while the officer sought a search warrant, this was not sufficiently coercive to obviate, pursuant to Ill. Const., Art. I, § 6, defendant's subsequent grant of consent to search; leaving an officer behind to prevent the destruction of the plants would have been proper, and the officer's statement that the officer would seek to obtain a search warrant did not indicate that a search warrant was a certainty. People v. Kratovil, 351 Ill. App. 3d 1023, 286 Ill. Dec. 868, 815 N.E.2d 78, 2004 Ill. App. LEXIS 1009 (2 Dist. 2004).

Voluntariness of consent is a question of fact for the trial court whose determination will survive review unless clearly unreasonable. People v. Price, 195 Ill. App. 3d 701, 142 Ill. Dec. 459, 552 N.E.2d 1200 (1 Dist. 1990).

- Shared Use of Premises

Consent to search is a well-settled, specific exception to the constitutional warrant requirement; this consent may be obtained not only from the individual whose property is searched, but also from a third party who possesses common authority over the premises. People v. Pitman, 211 Ill. 2d 502, 286 Ill. Dec. 36, 813 N.E.2d 93, 2004 Ill. LEXIS 989 (2004).

Courts should not infer common authority to consent to a search from the mere property interest a third person has in a property; the authority that justifies third-party consent to search is not based on the law of property, rather, such authority is based on mutual use of the property by persons generally having joint access or control for most purposes. People v. Pitman, 211 Ill. 2d 502, 286 Ill. Dec. 36, 813 N.E.2d 93, 2004 Ill. LEXIS 989 (2004).

Where two persons have equal rights to the use or occupation of premises, either may give consent to a search and the evidence thus disclosed can be used against either. People v. Harvey, 48 Ill. App. 2d 261, 199 N.E.2d 236 (1 Dist. 1964).

- Shown

Defendant was not entitled to suppression of the contraband found on defendant after defendant was stopped for a possible curfew violation and consented to the search that revealed defendant possessed the contraband. Defendant's rights under Ill. Const. art. I, § 6 to be free from unlawful searches and seizures was not violated, as application of the Mendenhall seizure factors showed that defendant had not been unlawfully seized by the two officers who stopped defendant and the record showed that defendant voluntarily consented to the search that produced the contraband. People v. Leach, Ill. App. 3d , 355 Ill. Dec. 266, 959 N.E.2d 680, 2011 Ill. App. LEXIS 695 (4 Dist. 2011).

Where defendant consented to the search of his residence but then presented the officer with a card containing defendant's constitutional rights, the card did not revoke consent under Ill. Const., Art. I, § 6 as defendant did not clarify the purpose of the card, defendant did not verbally assert rights as expressed on the card, and defendant did not ask the officer to read the card. People v.

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Kratovil, 351 Ill. App. 3d 1023, 286 Ill. Dec. 868, 815 N.E.2d 78, 2004 Ill. App. LEXIS 1009 (2 Dist. 2004).

Where defendant was a passenger in a car stopped for drunk driving, and the only way to transport defendant to a place of safety was by police cruiser, the officer was justified in insisting defendant accept a ride, in the absence of any legal alternative, and in following the normal department practice of performing a patdown before allowing defendant to enter the vehicle; therefore, defendant's motion to suppress the gun subsequently found should not have been granted. People v. Smith, 346 Ill. App. 3d 146, 281 Ill. Dec. 453, 803 N.E.2d 1074, 2004 Ill. App. LEXIS 85 (2 Dist. 2004), aff'd, 214 Ill. 2d 338, 292 Ill. Dec. 915, 827 N.E.2d 444 (2005).

Trial court's determination that defendant consented to search of suitcase was not unreasonable based on the totality of the circumstances, including the fact that defendant responded fully to questions posed in English; there was no obligation to prove that defendant had been made aware of the right to refuse consent to a search. People v. Fernandez, 344 Ill. App. 3d 152, 279 Ill. Dec. 141, 799 N.E.2d 944, 2003 Ill. App. LEXIS 1327 (3 Dist. 2003).

Consent for a search was shown where the defendant voluntarily relinquished his police books and certificates of title after the auditor identified himself and the reason for his visit. People v. Wright, 302 Ill. App. 3d 128, 236 Ill. Dec. 30, 706 N.E.2d 904 (1 Dist. 1998).

Police officials could reasonably believe that a homeowner had common authority over the guest/defendant's box so as to be able to consent to a search of box. People v. Bull, 185 Ill. 2d 179, 235 Ill. Dec. 641, 705 N.E.2d 824, 1998 Ill. LEXIS 1578 (1998), cert. denied, 528 U.S. 827, 120 S. Ct. 79, 145 L. Ed. 2d 67 (1999).

Where police officers were clearly in defendant's house at his implied invitation to remove an alleged trespasser, the fact that the police were performing a "community caretaking function" in attempting to get her to leave peacefully negated any inference that the officers' continued presence coerced her to bring the item subject to suppression to them, and upon seeing the nature of the item (marijuana pipe), police had probable cause to seize it. People v. Carlile, 234 Ill. App. 3d 1063, 175 Ill. Dec. 673, 600 N.E.2d 916 (4 Dist. 1992).

Defendant voluntarily consented to searches of his house when he gave his keys to officers while he was in the hospital. People v. Bruce, 185 Ill. App. 3d 356, 133 Ill. Dec. 497, 541 N.E.2d 708 (5 Dist. 1989).

- Valid

Defendant was not entitled to have granted defendant's motion to suppress a weapon found in a search of the apartment defendant shared with a girlfriend and six of the girlfriend's relatives. The search did not violated defendant's right to be free of unreasonable searches under the Fourth Amendment, U.S. Const. amend. IV, and Ill. Const. art. I, § 6, as the evidence showed that the girlfriend had at least the apparent authority to consent to a search of the apartment and defendant never expressly refused to consent to a search of the apartment, but declined to sign a consent-to-search form that the girlfriend had signed because defendant was not the apartment's named leaseholder while the girlfriend was the named leaseholder. People v. Burton, 409 Ill. App. 3d 321, 349 Ill. Dec. 829, 947 N.E.2d 843, 2011 Ill. App. LEXIS 325 (2 Dist. 2011).

Evidence did not show that defendant involuntarily submitted to any of the roadside sobriety tests that were administered to her, that the detention of her to conduct portable breath testing was unreasonably long or invasive, or that the police officer who stopped her did not have reasonable suspicion to request her consent to portable breath testing, and, thus, she did not show that the portable breath testing statute was unconstitutional; moreover, she did not show that her consent to take the test was invalid, which meant the test results could be admitted in her summary suspension proceeding. People v. Rozela, 345 Ill. App. 3d 217, 280 Ill. Dec. 447, 802 N.E.2d 372, 2003 Ill. App. LEXIS 1570 (2 Dist. 2003), appeal denied, 209 Ill. 2d 597, 286 Ill. Dec. 170, 813 N.E.2d 227 (2004).

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Defendant gave a valid general consent permitting police to search his vehicle and its contents, and even though defendant later inquired as to the purpose of the search, he never limited or withdrew his consent, so it was error for the trial court to grant defendant's motion to suppress on the theory that the police exceeded the scope of defendant's consent. People v. Ledesma, 206 Ill. 2d 571, 276 Ill. Dec. 900, 795 N.E.2d 253, 2003 Ill. LEXIS 1409 (2003), overruled on other grounds by People v. Pitman, 211 Ill. 2d 502, 286 Ill. Dec. 36, 813 N.E.2d 93 (2004).

- Voluntariness

Defendant's consent to pat-down search was voluntary where search was not preceded by any accusatory police questioning, officer merely requested permission to pat-down defendant prior to allowing defendant to enter his squad car as a matter of standard police department procedure, and defendant was not unlawfully seized prior to giving consent. People v. Smith, 214 Ill. 2d 338, 292 Ill. Dec. 915, 827 N.E.2d 444, 2005 Ill. LEXIS 317 (2005), overruled in part by People v. Luedemann, 222 Ill. 2d 530, 857 N.E.2d 187, 2006 Ill. LEXIS 1641, 306 Ill. Dec. 94 (2006).

-- Not Shown

Voluntariness of a defendant's consent to search was not established where defendant silently responded to a consent to search by "assuming the position"; it was just as possible to infer that the defendant was simply acquiescing in what he perceived as a show of police power. People v. Anthony, 198 Ill. 2d 194, 260 Ill. Dec. 632, 761 N.E.2d 1188, 2001 Ill. LEXIS 1446 (2001).

Contempt

Illinois courts have the power to find litigants who refuse to cooperate with an order to produce documents for discovery in contempt; the court's power is not a violation of Ill. Const. (1970), Art. I, § 6 (formerly Ill. Const. of 1870, Art. II, § 6), and 735 ILCS 5/2-1003 (formerly Ill. Rev. Stat. ch. 51, § 9) was intended to obviate the necessity for a bill of discovery. Swedish-American Tel. Co. v. Fidelity & Casualty Co., 208 Ill. 562, 70 N.E. 768, 1904 Ill. LEXIS 3173 (1904).

Continued Detention

Defendant's confirmation that images of the victim naked and engaging in sex were on defendant's computer provided the officers with an independent basis for reasonable articulable suspicion justifying the officers' continued detention of defendant. People v. Shinohara, 375 Ill. App. 3d 85, 313 Ill. Dec. 515, 872 N.E.2d 498, 2007 Ill. App. LEXIS 744 (1 Dist. 2007), appeal denied, 875 N.E.2d 1121, 2007 Ill. LEXIS 1596 (Ill. 2007).

Description of Place

- Degree of Particularity

A search warrant is sufficiently descriptive if it enables the police officer who executes it to identify the place intended to be searched with reasonable effort; the description in the warrant need not be technically correct. People v. Holton, 326 Ill. 481, 158 N.E. 134 (1927); People v. Redmond, 43 Ill. App. 3d 682, 2 Ill. Dec. 227, 357 N.E.2d 204 (1 Dist. 1976).

- Incomplete Address

Even where a reading of the address listed on a search warrant taken by itself does not actually pinpoint the premises to be searched, other identifying factors may be considered to enable the officer to locate the premises with definiteness and certainty. People v. Redmond, 43 Ill. App. 3d 682, 2 Ill. Dec. 227, 357 N.E.2d 204 (1 Dist. 1976).

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- Incorrect Address

Where police officers knew which building they intended to search, and there were no other buildings in the area which matched the description given in the search warrant, and, in spite of a mistake in the address in the warrant, there was no evidence that the officers had any doubt or exercised any discretion concerning the premises they were authorized to search, the incorrect address on the warrant constituted a technical defect which created no reasonable possibility of confusion. People v. Powless, 199 Ill. App. 3d 952, 146 Ill. Dec. 4, 557 N.E.2d 946 (2 Dist. 1990).

Whether a police officer's belief as to his authority was reasonable or unreasonable, he was not authorized to search a defendant's apartment where he entered the wrong apartment to execute a search warrant, and the act of the defendant in resisting said unauthorized search was constitutionally protected. People v. Young, 100 Ill. App. 2d 20, 241 N.E.2d 587 (1 Dist. 1968).

- Limited Warrant

Where officers with warrant to search store for liquor also searched residence in which store was located, the search of the dwelling under a warrant particularly describing the store was unreasonable, and therefore was an invasion of the right of security guaranteed defendant. People v. Castree, 311 Ill. 392, 143 N.E. 112, 32 A.L.R. 357 (1924).

- Procedure

Where the evidence indicated that the address was affixed prior to the time the judge signed the warrant, no error was shown concerning the description of the premises. People v. Redmond, 43 Ill. App. 3d 682, 2 Ill. Dec. 227, 357 N.E.2d 204 (1 Dist. 1976).

- Required

Where the only warrant possessed by the deputies was one which authorized a search of the defendant's soft drink parlor, in which those premises were particularly described, this did not authorize a search of the automobile, and marked and identified bills seized as the result of such automobile search were unlawfully obtained. People v. Montgares, 336 Ill. 458, 168 N.E. 304 (1929).

- Sufficient

Where the complainant for a search warrant was the same officer who executed the warrant and who previously had the apartment under surveillance on two days and where he was completely familiar with the physical aspects of the building and of the three apartments in question, and there was no danger of a search of the wrong apartment or of infringement upon the rights of any party, which apartments in the building were to be searched had been designated in the warrant with sufficient particularity. People v. Redmond, 43 Ill. App. 3d 682, 2 Ill. Dec. 227, 357 N.E.2d 204 (1 Dist. 1976).

Where the warrant directed the sheriff to search "a certain dwelling house, barn, garage, outbuildings and sheds located at 1055 Miller street, in the city of Bushnell" the description of the place to be searched was sufficient. People v. Holton, 326 Ill. 481, 158 N.E. 134 (1927).

Description of Things

- Books

The constitutional requirement that warrants must particularly describe the "things to be seized" is to be accorded the most scrupulous exactitude when the "things" are books, and the basis for their seizure is the ideas which they contain. People v. Rixie, 190 Ill. App. 3d 818, 137 Ill. Dec. 428, 546 N.E.2d 52 (2 Dist. 1989).

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- Class of Items

When circumstances make an exact description of items a virtual impossibility, the searching officer can only be expected to describe the generic class of items he is seeking. People v. Raicevich, 61 Ill. App. 3d 143, 18 Ill. Dec. 630, 377 N.E.2d 1266 (3 Dist. 1978); People v. Rixie, 190 Ill. App. 3d 818, 137 Ill. Dec. 428, 546 N.E.2d 52 (2 Dist. 1989).

- Degree of Particularity

The degree of particularity required varies with the nature of the case and the material or items to be seized. People v. Rixie, 190 Ill. App. 3d 818, 137 Ill. Dec. 428, 546 N.E.2d 52 (2 Dist. 1989).

Whether a warrant satisfies the requirements of particularity is determined on a case-by-case basis. People v. Rixie, 190 Ill. App. 3d 818, 137 Ill. Dec. 428, 546 N.E.2d 52 (2 Dist. 1989).

The degree of particularity required in search warrants varies in degree with the nature of the materials to be seized. People v. Hanei, 81 Ill. App. 3d 690, 38 Ill. Dec. 1, 403 N.E.2d 16 (5 Dist. 1980).

The goods to be seized under a search warrant must be described with such certainty that they may be identified and with such particularity that the officer charged with the execution of the warrant will be left with no discretion respecting the property to be taken. People v. Sovetsky, 343 Ill. 583, 175 N.E. 844 (1931).

- Gambling Devices

In the case of gambling devices, more latitude in description than normal is necessarily allowed. People v. Sovetsky, 343 Ill. 583, 175 N.E. 844 (1931).

- Insufficient

A warrant description which does no more than refer to seizing stolen property is insufficient. People v. Brown, 153 Ill. App. 3d 307, 106 Ill. Dec. 99, 505 N.E.2d 405 (3 Dist. 1987).

Search warrant was properly quashed where the warrant was insufficiently particular insomuch as it described items commonly held in residences, and detailed descriptions of the specific items sought by the authorities were readily available. People v. Allbritton, 150 Ill. App. 3d 545, 103 Ill. Dec. 936, 502 N.E.2d 83 (3 Dist. 1986).

Property not described in the warrant may not be taken. People v. Sovetsky, 343 Ill. 583, 175 N.E. 844 (1931).

- Overbroad

Where the officer applying for the search warrant knew the precise stereo equipment that had been stolen in the burglary under investigation, additional overbroad language, which invited a sweeping search of the defendants' home and which was unjustified under the circumstances, required that the evidence obtained as a result of that search be suppressed. People v. Brown, 153 Ill. App. 3d 307, 106 Ill. Dec. 99, 505 N.E.2d 405 (3 Dist. 1987).

- Search Warrant and Affidavit

It is required that a search warrant particularly describe items to be seized and that it be supported by an affidavit particularly describing the items to be seized. People v. Allbritton, 150 Ill. App. 3d 545, 103 Ill. Dec. 936, 502 N.E.2d 83 (3 Dist. 1986).

- Sufficient

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Search warrant, which stated that any and all power tools, hand tools, welders, guns, kitchen cabinets and appliances, air compressors, or other property or other evidence of criminal activity were to be seized, was sufficient because of the number of burglaries involved, the amount of stolen property, the observations of a witness who was inside the storage units where the property was located, and defendant's admitted penchant for stealing items that were generally categorized as tools and equipment. Moreover, the locations searched were rented storage units, not a residence. People v. Elder, 392 Ill. App. 3d 133, 331 Ill. Dec. 129, 910 N.E.2d 202, 2009 Ill. App. LEXIS 627 (4 Dist. 2009).

A warrant authorizing the seizure of "any other indicia of auto theft stripping" was sufficiently particular; however, the seizure of advertising and telephone bills exceeded the scope of warrant. People v. Wright, 302 Ill. App. 3d 128, 236 Ill. Dec. 30, 706 N.E.2d 904 (1 Dist. 1998).

Warrant authorizing the seizure of "any other indicia of auto theft stripping" was sufficiently particular and seizure of license applications, certificates of title and police book did not exceed scope of warrant. People v. Wright, 302 Ill. App. 3d 128, 236 Ill. Dec. 30, 706 N.E.2d 904 (1 Dist. 1998).

Where police officers did not know what the murder weapon was or even how the murder took place, but believed that the murder took place in the defendant's apartment and that evidence existed in defendant's apartment in the form of blood, fibers and weapons, the search warrant authorizing the search for "evidence of murder" was sufficient. People v. Rixie, 190 Ill. App. 3d 818, 137 Ill. Dec. 428, 546 N.E.2d 52 (2 Dist. 1989).

Where a search warrant described the items to be seized with as much exactitude as was possible at that stage of the investigation and sufficiently limited the discretion to be exercised by officers in conducting the search, the failure of the complaint to specify the items to be seized was in the nature of a technical defect not affecting the substantial rights of the accused and did not constitute a basis for quashing the search warrant or suppressing the evidence seized thereunder. People v. Wolski, 83 Ill. App. 3d 17, 38 Ill. Dec. 297, 403 N.E.2d 528 (2 Dist. 1980).

A search warrant did not fail to describe with sufficient particularity the items to be seized where it directed the seizure of "any and all machines, devices, contrivances, equipment and documents which have been used in the commission of, or which constitute evidence of, the offense of obtaining service with intent to defraud" the telephone company. People v. Smith, 72 Ill. App. 3d 956, 28 Ill. Dec. 766, 390 N.E.2d 1356 (1 Dist. 1979).

The phrase "and any other handguns which may be stolen" adequately particularized the items seized. People v. Raicevich, 61 Ill. App. 3d 143, 18 Ill. Dec. 630, 377 N.E.2d 1266 (3 Dist. 1978).

Defendant's objection that the documents sought were not described with sufficient particularity was unsound. People v. Allen, 410 Ill. 508, 103 N.E.2d 92 (1951).

Detention and Confession

Circumstances of the seizure and interrogation of a person in connection with a crime, including the absence of the counsel and Miranda warnings, and the procurement of a confession violated the constitutional guarantees under the Illinois Constitution where the police went to the person's home, told her they needed her assistance in the investigation and, after the person accompanied the police to the station, was never told that she was free to leave and was continually interrogated until she confessed to a polygraph operator. United States ex rel. Daniels v. Baird, 326 F. Supp. 2d 909, 2004 U.S. Dist. LEXIS 14050 (N.D. Ill. 2004).

Prosecution bears the burden of showing a confession was not a product of the illegal arrest. People v. Klimawicze, 352 Ill. App. 3d 13, 287 Ill. Dec. 116, 815 N.E.2d 760, 2004 Ill. App.

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LEXIS 958 (1 Dist. 2004), appeal denied, 213 Ill. 2d 569, 293 Ill. Dec. 866, 829 N.E.2d 791 (2005), cert. denied, 544 U.S. 1067, 125 S. Ct. 2533, 161 L. Ed. 2d 1122 (2005).

Evidence collected following an illegal arrest may be admissible if it is sufficiently attenuated from any illegality, based on four factors used by courts in attenuation analysis: (1) the existence of Miranda warnings; (2) the proximity in time between the arrest and the statement; (3) the presence of intervening circumstances; and (4) the flagrancy of police misconduct. People v. Klimawicze, 352 Ill. App. 3d 13, 287 Ill. Dec. 116, 815 N.E.2d 760, 2004 Ill. App. LEXIS 958 (1 Dist. 2004), appeal denied, 213 Ill. 2d 569, 293 Ill. Dec. 866, 829 N.E.2d 791 (2005), cert. denied, 544 U.S. 1067, 125 S. Ct. 2533, 161 L. Ed. 2d 1122 (2005).

Trial court's finding of attenuation was upheld on appeal of a defendant's murder trial where the evidence showed that the defendant was repeatedly given her Miranda warnings each time the police questioned her, and she waived them each time. People v. Klimawicze, 352 Ill. App. 3d 13, 287 Ill. Dec. 116, 815 N.E.2d 760, 2004 Ill. App. LEXIS 958 (1 Dist. 2004), appeal denied, 213 Ill. 2d 569, 293 Ill. Dec. 866, 829 N.E.2d 791 (2005), cert. denied, 544 U.S. 1067, 125 S. Ct. 2533, 161 L. Ed. 2d 1122 (2005).

Detention Before Arrest

Fact that defendant initially acceded to the police request to accompany them to the police station did not legitimize the treatment of defendant after she arrived at the station. The circumstances were such that defendant would not have concluded that she was free to leave. Thus, defendant's initial voluntary presence at the police station was converted into an unlawful detention. People v. Washington, 363 Ill. App. 3d 13, 299 Ill. Dec. 841, 842 N.E.2d 1193, 2006 Ill. App. LEXIS 24 (1 Dist. 2006), appeal denied, 219 Ill. 2d 594, Ill. Dec. , 852 N.E.2d 248 (2006).

Although defendant had not been formally arrested, physically restrained, booked, or fingerprinted, a reasonable 14 year old person would have been entitled to believe, when the police told him that they had information discounting his statement, that he was in police custody and not free to leave. In re J.W., 274 Ill. App. 3d 951, 211 Ill. Dec. 55, 654 N.E.2d 517 (1 Dist. 1995), appeal denied, 164 Ill. 2d 564, 214 Ill. Dec. 321, 660 N.E.2d 1270 (1995).

DNA Testing

Compulsory extraction of saliva from a juvenile who was adjudicated a delinquent, its analysis for DNA genetic marker groupings, and the perpetual storage and open-ended potential for repeated searches of the juvenile's genetic profile under 730 ILCS 5/5-4-3 did not violate the juvenile's right to be free from unreasonable searches and seizures as guaranteed by Ill. Const. art. I, § 6, nor did it violate the juvenile's right of privacy as guaranteed by the Privacy Clause of the section. People v. Lakisha M. (In re Lakisha M.), 227 Ill. 2d 259, 317 Ill. Dec. 690, 882 N.E.2d 570, 2008 Ill. LEXIS 8 (2008).

Respondent juvenile's assertion that his constitutional rights were violated by an order requiring him to submit buccal swab saliva specimens failed. 730 ILCS 5/5-4-3 had previously been found not to violate a juvenile's right to be free from unreasonable searches and seizures even in light of the argument that juveniles had a greater right to privacy than adult offenders. People v. Rogelio S. (In re Rogelio S.), 378 Ill. App. 3d 211, 317 Ill. Dec. 732, 882 N.E.2d 612, 2007 Ill. App. LEXIS 1357 (1 Dist. 2007).

Defendant's right to be free from unreasonable searches and seizures was not violated when the trial court ordered to submit to compulsory extraction and inclusion of defendant's DNA in state and national databases; the State's interest in effective crime investigations and prevention outweighed defendant's privacy interest as a convicted felon. People v. Csaszar, 375 Ill. App. 3d

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929, 314 Ill. Dec. 345, 874 N.E.2d 255, 2007 Ill. App. LEXIS 941 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1820 (Ill. 2007).

DNA extraction did not violate defendant's constitutional rights. People v. Fort, 373 Ill. App. 3d 882, 311 Ill. Dec. 937, 869 N.E.2d 950, 2007 Ill. App. LEXIS 572 (1 Dist. 2007).

Compulsory extraction and subsequent storing of defendant's DNA pursuant to 730 ILCS 5/5-4-3 (2004) following a burglary conviction was proper because, contrary to defendant's argument, the extraction and storing of DNA was not an unreasonable search and did not violate defendant's Fourth Amendment rights. People v. Jamison, 373 Ill. App. 3d 902, 311 Ill. Dec. 973, 869 N.E.2d 986, 2007 Ill. App. LEXIS 564 (1 Dist. 2007).

Compulsory extraction and perpetual storing of defendant's DNA pursuant to 730 ILCS 5/5-4-3 of the Illinois Unified Code of Corrections, 730 ILCS 5/1-1-1 et seq., did not violate his constitutional right to be free from unreasonable searches and seizures. People v. Abrego, 371 Ill. App. 3d 987, 309 Ill. Dec. 617, 864 N.E.2d 858, 2007 Ill. App. LEXIS 192 (1 Dist. 2007), appeal denied, 225 Ill. 2d 639, 875 N.E.2d 1114, 2007 Ill. LEXIS 1265 (2007).

Order that defendant submit to compulsory extraction and perpetual storing of his DNA did not violate his right to be free from unreasonable searches and seizures; that order was authorized by statutory law and the statute itself favored the State's interests in deterring and prosecuting recidivist criminal acts. People v. Beard, 366 Ill. App. 3d 197, 303 Ill. Dec. 243, 851 N.E.2d 141, 2006 Ill. App. LEXIS 389 (1 Dist. 2006), appeal denied, 225 Ill. 2d 641, 875 N.E.2d 1115, 2007 Ill. LEXIS 1220 (2007).

Defendant's rights to be from unreasonable searches and seizures were not violated by the trial court's order directing compulsory extraction and perpetual storage of his DNA; the trial court found that the statute allowing for that order, 730 ILCS 5/5-4-3, was constitutional. People v. Squire, 365 Ill. App. 3d 842, 303 Ill. Dec. 189, 851 N.E.2d 87, 2006 Ill. App. LEXIS 371 (1 Dist. 2006), overruled in part by People v. Jones, 223 Ill. 2d 569, 861 N.E.2d 967, 2006 Ill. LEXIS 1671, 308 Ill. Dec. 402 (2006).

Trial court did not err in ordering compulsory extraction and inclusion of defendant's DNA in state and national databases pursuant to 730 ILCS 5/5-4-3. That statute did not violate her constitutional right to be from unreasonable searches and seizures, as the statute's purpose demonstrated a special need beyond ordinary law enforcement. People v. James, 365 Ill. App. 3d 847, 303 Ill. Dec. 193, 851 N.E.2d 91, 2006 Ill. App. LEXIS 372 (1 Dist. 2006).

730 ILCS 5/5-4-3 was ruled constitutional as applied to defendant, a convicted felon. The drawing of blood under 730 ILCS 5/5-4-3 did not violate defendant's privacy rights because as a felon, defendant's privacy rights were greatly diminished, and further, the intrusion on those rights that was caused by the drawing of a blood sample was considered minimal. People v. Garvin, 219 Ill. 2d 104, 301 Ill. Dec. 423, 847 N.E.2d 82, 2006 Ill. LEXIS 328 (2006).

Compulsory extraction and perpetual storage of DNA did not violate defendant's right to be free from unreasonable searches and seizures. People v. Clay, 363 Ill. App. 3d 780, 300 Ill. Dec. 285, 843 N.E.2d 885, 2006 Ill. App. LEXIS 61 (1 Dist. 2006), appeal denied, 219 Ill. 2d 573, 303 Ill. Dec. 835, 852 N.E.2d 242 (2006).

Compulsory extraction and perpetual storage of defendant's DNA did not the violate the Illinois Constitution. People v. Adams, 363 Ill. App. 3d 34, 299 Ill. Dec. 835, 842 N.E.2d 1187, 2006 Ill. App. LEXIS 26 (1 Dist. 2006), appeal denied, 219 Ill. 2d 568, 303 Ill. Dec. 833, 852 N.E.2d 240 (2006).

Appellate Court, First District, Second Division, adhered to Illinois case law, in accord with case law of other states and federal courts, finding no constitutional infirmity in a requirement that convicted felons supply DNA samples to be kept in perpetuity. People v. Fort, 362 Ill. App. 3d 1, 298 Ill. Dec. 417, 839 N.E.2d 1064, 2005 Ill. App. LEXIS 1124 (1 Dist. 2005), Overruled in part

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by People v. Jones, 223 Ill. 2d 569, 861 N.E.2d 967, 2006 Ill. LEXIS 1671, 308 Ill. Dec. 402 (2006).

Evidence Unlawfully Seized

Officers violated defendant's right to be free from unreasonable search and seizure when the officers seized defendant before defendant granted the officers consent to search; the officers lacked reasonable suspicion of criminal activity to justify the seizure because, though defendant's movements, which included going into the trunk of a car, exchanging a look and conversation with the driver, and moving as if defendant were taking something out of defendant's pocket, may have been consistent with a drug transaction, they were also consistent with many other scenarios. People v. Ocampo, 377 Ill. App. 3d 150, 316 Ill. Dec. 286, 879 N.E.2d 353, 2007 Ill. App. LEXIS 1150 (1 Dist. 2007).

- Out of State

This section requires that evidence unlawfully seized by Illinois officers must be suppressed; this section does not require suppression of evidence seized by officers in other states. People v. Touhy, 361 Ill. 332, 197 N.E. 849 (1935).

- Self-Incrimination

The use of articles taken from the dwelling house of an accused, without a warrant, and received in evidence in his trial, amounted to the compelling of a person accused of a crime to testify against himself, contrary to both the Constitutions of the United States and of Illinois. People v. Grod, 385 Ill. 584, 53 N.E.2d 591 (1944).

If the property unlawfully seized is not the defendant's and he has no interest in it and no right to its possession, he is not in the position of giving evidence against himself when it is introduced as exhibits in his trial. People v. Exum, 382 Ill. 204, 47 N.E.2d 56 (1943).

- Standing

Possession of stolen property on the basis of which defendants' convictions for burglary and theft could have been obtained and enhanced, was sufficient to give each of them standing to move for the suppression of the evidence alleged to have been unlawfully seized. People v. De Filippis, 34 Ill. 2d 129, 214 N.E.2d 897 (1966).

As regards criminal prosecutions for unlawful possession of property seized, an accused does not lack standing to object to the constitutionality of a search and seizure merely because he fails to allege the requisite proprietary or possessory interest, the deciding factor being that in such situation the possession on the basis of which it is sought to convict is sufficient to give him standing to make the objection. People v. De Filippis, 34 Ill. 2d 129, 214 N.E.2d 897 (1966).

- Suppression

Forcible entry and detainer action pursuant to 735 ILCS 5/9-118 was not quasi-criminal in nature, but was civil in nature, and, thus, neither the Fourth Amendment, U.S. Const. IV nor Ill. Const. art. I, § 6 required that evidence that had been illegally seized that showed the tenant possessed cannabis had to be suppressed or excluded in a forcible entry or detainer action. The cost of not protecting fellow residents from criminal activity outweighed the benefits of deterring police misconduct violating the Fourth Amendment and Ill. Const. art. I, § 6 rights of a person to be free from unreasonable searches. U.S. Residential Mgmt. & Dev., LLC v. Head, 397 Ill. App. 3d 156, 337 Ill. Dec. 143, 922 N.E.2d 1, 2009 Ill. App. LEXIS 1262 (1 Dist. 2009).

Defendant's conviction for unlawful use of a weapon under 720 ILCS 5/24-1.1(a) was properly reversed because the weapon that was the basis for the conviction should have been suppressed

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as the product of an unconstitutional seizure of his person. The police officer was not able to point to specific facts corroborating an inference of guilty from defendant's flight; thus, his stop and subsequent arrest of defendant were constitutionally infirm under U. S. Const., Amend. IV and Ill. Const., Art. I, § 6. People v. Wardlow, 183 Ill. 2d 306, 233 Ill. Dec. 634, 701 N.E.2d 484, 1998 Ill. LEXIS 928 (1998).

Where defendant was stopped for a routine traffic offense, he was subsequently lawfully arrested of an offense related to his operation of vehicle, police did not suspect he was involved in any unlawful activity beyond driving without a license, without asking permission officer got in and drove car away to police station to secure it and subsequently discovered and seized contraband, the nature of the intrusion was not justified and contraband discovered should have been suppressed. People v. Fulton, 289 Ill. App. 3d 970, 225 Ill. Dec. 210, 683 N.E.2d 154 (1 Dist. 1997), appeal denied, 175 Ill. 2d 538, 228 Ill. Dec. 722, 689 N.E.2d 1143 (1997).

Where the trial court erred in denying the defendant's motion to suppress evidence, and the evidence was essential to defendant's conviction, the judgment of guilty entered by the trial court should be reversed. People v. Sanders, 59 Ill. App. 3d 6, 16 Ill. Dec. 437, 374 N.E.2d 1315 (3 Dist. 1978).

Prior to defendant's trial, his counsel presented a written motion to suppress items of evidence obtained by the alleged unlawful search and seizure, which was taken under advisement by the trial judge; since there was no attempt to introduce any of the items sought to be suppressed into evidence, there was no support for his assertion that his constitutional rights under former Ill. Const. (1870), Art. II, § 6 (see now this section) were violated by the court's failure to pass upon the motion. People v. Abrams, 15 Ill. 2d 178, 154 N.E.2d 240 (1958).

Suppression of unlawfully seized evidence is available only if the motion to suppress is made before the commencement of the trial at which such evidence or testimony is to be used; failure to move in apt time to suppress waives the right. City of Chicago v. Lord, 3 Ill. App. 2d 410, 122 N.E.2d 439 (1 Dist. 1954), aff'd, 7 Ill. 2d 379, 130 N.E.2d 504 (1955).

Evidence obtained as a result of illegal searches and seizures of papers obtained upon the premises of defendant should be suppressed. People v. Martin, 382 Ill. 192, 46 N.E.2d 997 (1942).

Where there was nothing in the record to substantiate the claims of the prosecution that testimony of witnesses was received from sources independent of material illegally seized, but the record was almost conclusive that the information to be given by all of the material witnesses was obtained from such material, the evidence should have been suppressed and excluded. People v. Martin, 382 Ill. 192, 46 N.E.2d 997 (1942).

Property seized during an illegal search cannot be used in evidence against a defendant, provided the application to suppress the evidence is made to the court before the trial is commenced. People v. Sovetsky, 343 Ill. 583, 175 N.E. 844 (1931).

- Suppression

Although a police officer made a valid traffic stop and could lawfully direct defendant to exit the vehicle, the officer's search of defendant violated violated U.S. Const. Amend. IV and Ill. Const., Art. I, § 6; therefore, pursuant to 725 ILCS 5/114-12, the trial court should have suppressed any evidence that was discovered. People v. Staple, 345 Ill. App. 3d 814, 281 Ill. Dec. 182, 803 N.E.2d 586, 2004 Ill. App. LEXIS 32 (4 Dist. 2004).

- Used to Impeach

Court properly admitted sexually explicit photographs of the victim of sexual assault obtained through illegal search, to impeach defendant's credibility with respect to statements that he had

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rarely seen victim and had only observed victim's penis on one occasion. People v. Rassmussen, 143 Ill. App. 3d 11, 97 Ill. Dec. 176, 492 N.E.2d 612 (1 Dist. 1986).

- Waiver

When constitutional guarantee against unreasonable search and seizure is waived, evidence obtained by an unlawful search is admissible not only in the proceeding in which the constitutional guarantee is waived, but in any and all subsequent proceedings in which it may be material. City of Chicago v. Lord, 3 Ill. App. 2d 410, 122 N.E.2d 439 (1 Dist. 1954), aff'd, 7 Ill. 2d 379, 130 N.E.2d 504 (1955).

Ex Post Facto Effect

Inmate's claim that the Illinois parole release statute operated as an ex post facto law in violation of U.S. Const. art. I, § 10 and Ill. Const. art. I, § 16 had to be rejected, as that law did not act to increase the punishment that had been imposed on the inmate. Since that law at most created only a speculative and attenuated possibility of increasing punishment it could not operate as an ex post facto law and the inmate was thus not entitled to relief on the inmate's claim. Hill v. Walker, 241 Ill. 2d 479, 350 Ill. Dec. 321, 948 N.E.2d 601, 2011 Ill. LEXIS 452 (2011).

Exclusionary Rule

- Expansion

When a search of defendant's home violated the knock-and-announce rule, the trial court properly held that Ill. Const. Art. I, § 6 did not require its suppression. Defendant had not shown that the state exclusionary remedy should be expanded beyond the federal exclusionary rule, which did not require suppression under the Fourth Amendment. People v. Glorioso, 398 Ill. App. 3d 975, 338 Ill. Dec. 627, 924 N.E.2d 1153, 2010 Ill. App. LEXIS 107 (2 Dist. 2010).

In a given case, a court will not expand the state exclusionary remedy beyond the federal one, unless the proponent of the expansion can show either that (1) the framers of the 1970 constitution intended the expansion; or that (2) denying the expansion would be antithetical to state tradition and values as reflected by long-standing case precedent. People v. Glorioso, 398 Ill. App. 3d 975, 338 Ill. Dec. 627, 924 N.E.2d 1153, 2010 Ill. App. LEXIS 107 (2 Dist. 2010).

- Good Faith Exception

State failed to show that the good faith exception to the exclusionary rule should apply under 725 ILCS 5/114-12(b)(1) and defendant's motion to suppress was properly granted. Officers knowingly obtained an old list of search items and did not verify the continued validity of defendant's warrant; police procedure was to obtain a current list. People v. Morgan, 388 Ill. App. 3d 252, 327 Ill. Dec. 316, 901 N.E.2d 1049, 2009 Ill. App. LEXIS 46 (4 Dist. 2009).

This section prohibits the application of the extended good-faith exception to the state exclusionary rule. People v. Krueger, 175 Ill. 2d 60, 221 Ill. Dec. 409, 675 N.E.2d 604 (1996), cert. denied, 522 U.S. 809, 118 S. Ct. 49, 139 L. Ed. 2d 14 (1997).

Expectation of Privacy

Trial court erred by granting a defendant's motion to suppress the evidence of two fraudulent social security cards bearing names associated with him that were found in his girlfriend's purse, which was searched during a traffic stop as, despite the search of the purse not being lawful incident to his arrest, he had no legitimate expectation of privacy in the purse. The defendant presented no evidence that he had any ownership or possessory interest in the purse nor that he

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had ever used it, and the status of his relationship with his girlfriend did not automatically grant him a legitimate expectation of privacy in her personal belongings. People v. Frias, 393 Ill. App. 3d 331, 332 Ill. Dec. 350, 912 N.E.2d 1236, 2009 Ill. App. LEXIS 700 (2 Dist. 2009).

Trial court did not err by denying defendant's motion to suppress evidence recovered from a dryer vent because defendant did not have a reasonable expectation of privacy to the dryer vent. People v. Carodine, 374 Ill. App. 3d 16, 311 Ill. Dec. 856, 869 N.E.2d 869, 2007 Ill. App. LEXIS 543 (1 Dist. 2007).

- In General

730 ILCS 5/5-4-3 was not unconstitutional because the State's interest in deterring and prosecuting recidivist criminal acts strongly outweighed defendant's diminished right to privacy and the minimal intrusion caused by the submission of a blood, saliva, or tissue sample. People v. Garvin, 349 Ill. App. 3d 845, 285 Ill. Dec. 953, 812 N.E.2d 773, 2004 Ill. App. LEXIS 833 (2 Dist. 2004), aff'd, 219 Ill. 2d 104, 301 Ill. Dec. 423, 847 N.E.2d 82 (2006).

Several factors should be examined to determine whether a defendant possesses a reasonable expectation of privacy in certain property: (1) ownership of the property searched; (2) whether the defendant was legitimately present in the area searched; (3) whether defendant has a possessory interest in the area or property seized; (4) prior use of the area searched or property seized; (5) the ability to control or exclude others from the use of the property; and (6) whether the defendant himself had a subjective expectation of privacy in the property. People v. Pitman, 211 Ill. 2d 502, 286 Ill. Dec. 36, 813 N.E.2d 93, 2004 Ill. LEXIS 989 (2004).

- Abandoned Property

Trial court, on remand, did not err in declining to entertain defendant's motion challenging the search of his vehicle pursuant to a warrant issued on October 28, 1987, because, although defendant did not file a motion challenging the vehicle search prior to his first trial, he did not appeal the trial court's ruling that, having abandoned the vehicle, he had no legitimate expectation of privacy in it; consequently, defendant lacked capacity to challenge the search. People v. Sutherland, 223 Ill. 2d 187, 307 Ill. Dec. 524, 860 N.E.2d 178, 2006 Ill. LEXIS 1650 (2006).

To demonstrate abandonment, the government must establish by a preponderance of the evidence that a defendant's voluntary words or conduct would lead a reasonable person in the searching officer's position to believe that the defendant relinquished his property interests in the item searched or seized; because this is an objective test, it does not matter whether the defendant harbors a desire to later reclaim an item. People v. Pitman, 211 Ill. 2d 502, 286 Ill. Dec. 36, 813 N.E.2d 93, 2004 Ill. LEXIS 989 (2004).

Abandoned property is not subject to constitutional protection. This is because constitutional protection from unreasonable searches only extends to places and items for which a person has a reasonable expectation of privacy, and no person can have a reasonable expectation of privacy in an item that he has abandoned. People v. Pitman, 211 Ill. 2d 502, 286 Ill. Dec. 36, 813 N.E.2d 93, 2004 Ill. LEXIS 989 (2004).

- Conversations

Evidence concerning the circumstances surrounding the inadvertently recorded conversation showed that defendant had no reasonable expectation of privacy in his conversation which would make that recording a "search" under the Fourth Amendment of the United States Constitution, this section or 720 ILCS 5/14-1; first, the conversation took place in the lobby of the police station, a location which was of necessity a public one; second, the area in which the conversation took place was not locked, nor was entry into the lobby predicated on being granted entrance via a buzzer system; and third, defendant's tirade was delivered at peak volume. People v. Calvert,

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258 Ill. App. 3d 504, 196 Ill. Dec. 310, 629 N.E.2d 1154 (5 Dist.), appeal denied, 157 Ill. 2d 508, 205 Ill. Dec. 171, 642 N.E.2d 1288 (1994).

- Garbage

Ill. Const. Art. I, § 6 does not recognize a reasonable expectation of privacy in garbage placed at curbside for collection, and this long-standing precedent is a sound legal concept and will not be disturbed. People v. Stage, 337 Ill. App. 3d 242, 271 Ill. Dec. 618, 785 N.E.2d 550, 2003 Ill. App. LEXIS 245 (3 Dist. 2003).

- Generally

Trial court did not err in denying defendant's motion to suppress methamphetamine lab evidence gathered from a warrantless search and seizure at a farmhouse because the totality of the circumstances showed that defendant had abandoned any reasonable expectation of privacy she had in the premises or that the officers had a reasonable but erroneous belief that the property owner had authority to consent to a search of the premises. People v. London, 358 Ill. App. 3d 567, 294 Ill. Dec. 810, 831 N.E.2d 1135, 2005 Ill. App. LEXIS 559 (5 Dist. 2005), appeal denied, 216 Ill. 2d 713, 298 Ill. Dec. 385, 839 N.E.2d 1032 (2005).

Defendant has failed to meet his burden to clearly establish that 730 ILCS 152/115(b) of the Sex Offender and Child Murderer Community Notification Law, violated his right to privacy under the Illinois Constitution. As the sex offender registry information was already open to the public and was a matter of public record, defendant's registry information was not "private" and did not fall within the Illinois Constitution's privacy clause protections. People v. Cornelius, 213 Ill. 2d 178, 290 Ill. Dec. 237, 821 N.E.2d 288, 2004 Ill. LEXIS 2034 (2004).

To claim the protection of the Fourth Amendment, and thus protection under Ill. Const., Art. I, § 6, a defendant must demonstrate that he or she personally has an expectation of privacy in the place searched and that his or her expectation is reasonable, i.e., an expectation of privacy that has a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society. People v. Pitman, 211 Ill. 2d 502, 286 Ill. Dec. 36, 813 N.E.2d 93, 2004 Ill. LEXIS 989 (2004).

- Houses

Parolee who signed a mandatory supervised release agreement had a greatly-diminished expectation of privacy, especially since he consented in the agreement to a search of his residence and agreed not to possess controlled substances; consequently, his constitutional rights were not violated when police conducted a warrantless, suspicionless search of his residence. People v. Wilson, 228 Ill. 2d 35, 319 Ill. Dec. 353, 885 N.E.2d 1033, 2008 Ill. LEXIS 276 (2008).

Governments cannot search a home and its curtilage absent a warrant or some exception to the warrant requirement; but if a search occurs outside the home or the home's curtilage, even if it is on private property, the guarantee of protection from unreasonable searches applies only if the property owner has a legitimate expectation of privacy in the area. People v. Pitman, 211 Ill. 2d 502, 286 Ill. Dec. 36, 813 N.E.2d 93, 2004 Ill. LEXIS 989 (2004).

The factors for determining the extent of the curtilage surrounding a home include: (1) the proximity of the area claimed to be the home's curtilage; (2) whether the area is included within an enclosure surrounding the home; (3) the nature of the uses to which the area is put; and (4) the steps taken by the resident to protect the area from observation by people passing by. People v. Pitman, 211 Ill. 2d 502, 286 Ill. Dec. 36, 813 N.E.2d 93, 2004 Ill. LEXIS 989 (2004).

In determining whether a particular area falls within a home's curtilage, a court asks whether the area harbors the intimate activities commonly associated with the sanctity of a person's home and the privacies of life; the extent of the curtilage is determined by factors that bear upon

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whether an individual reasonably may expect that the area in question should be treated as the home itself. People v. Pitman, 211 Ill. 2d 502, 286 Ill. Dec. 36, 813 N.E.2d 93, 2004 Ill. LEXIS 989 (2004).

Fourth Amendment protection, and thus Ill. Const., Art. I, § 6 protection, extends to a home's curtilage, i.e., the land immediately surrounding and associated with the home; conversely, no legitimate expectation of privacy attaches to land outside of the home's curtilage, i.e., open fields. People v. Pitman, 211 Ill. 2d 502, 286 Ill. Dec. 36, 813 N.E.2d 93, 2004 Ill. LEXIS 989 (2004).

Court properly denied defendant's motion to suppress, pursuant to Ill. Const. Art. I, § 6, evidence of drugs recovered in her apartment; even though police had no authority to enter her back porch, the police entered a common backyard of a two-flat apartment building and defendant's open back porch, and there was no evidence that entry to the backyard was made inaccessible. People v. Hunley, 313 Ill. App. 3d 16, 245 Ill. Dec. 826, 728 N.E.2d 1183, 2000 Ill. App. LEXIS 281 (1 Dist. 2000).

In considering whether one can claim a reasonable expectation of privacy, the court must determine whether he has, by his conduct, exhibited a subjective expectation of privacy and whether that subjective expectation of privacy is one that society is prepared to recognize as reasonable. Thornton v. University Civil Serv. Merit Bd., 154 Ill. App. 3d 1016, 107 Ill. Dec. 893, 507 N.E.2d 1262 (5 Dist. 1987).

Defendant who was a social guest in a home where marijuana was found, had no reasonable expectation of privacy in the searched premises, and thus lacked standing to seek suppression of evidence seized in the home, as he was merely a social guest in a place where he had an invited right to be, but had no other interest in the premises or its contents. People v. Cohen, 146 Ill. App. 3d 618, 100 Ill. Dec. 166, 496 N.E.2d 1231 (2 Dist. 1986).

- Registration of Sex Offenders

Result of defendant's conviction for aggravated kidnapping for ransom that he was required to register as a sex offender under the Sex Offender Registration Act, 730 ILCS 150/1 et seq., and the Sex Offender and Child Murderer Community Notification Law, 730 ILCS 152/101 et seq., was upheld against his arguments that the sex offender registration requirement was unconstitutional under the circumstances. Defendant's due process rights were not violated even though there was no sexual component to his crime, as the General Assembly had rationally found that aggravated kidnapping was often a precursor to sex offenses against children, defendant did not have a right to keep his sex offender status private, and defendant had not shown an equal protection violation existed since a rational basis existed for having him register as a sex offender while people not convicted of aggravated kidnapping did not have to do so. People v. Beard, 366 Ill. App. 3d 197, 303 Ill. Dec. 243, 851 N.E.2d 141, 2006 Ill. App. LEXIS 389 (1 Dist. 2006), appeal denied, 225 Ill. 2d 641, 875 N.E.2d 1115, 2007 Ill. LEXIS 1220 (2007).

- Vehicles

A long-distance trip is a circumstance under which a passenger in a vehicle may have a legitimate expectation of privacy in certain areas of that vehicle, to the extent afforded to the interior of an automobile. People v. Taylor, 245 Ill. App. 3d 602, 185 Ill. Dec. 587, 614 N.E.2d 1272 (3 Dist.), appeal denied, 152 Ill. 2d 576, 190 Ill. Dec. 907, 622 N.E.2d 1224 (1993).

Grand Jury

- Powers

With regard to physical evidence of an invasive nature (i.e., head hair, facial hair, and pubic hair), where a compelled production would constitute a search or seizure under the Fourth Amendment,

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the Illinois Constitution does not preclude a grand jury from subpoenaing such evidence, but more than mere relevancy is required to support issuance of a subpoena, and a subpoena for pubic hair samples is reasonable only when warranted by probable cause and a subpoena for the production of these items, unsupported by probable cause, is an unreasonable violation of the right to privacy protected by the Illinois Constitution. People v. Watson, 214 Ill. 2d 271, 292 Ill. Dec. 1, 825 N.E.2d 257, 2005 Ill. LEXIS 2 (2005), cert. denied, U.S. , 126 S. Ct. 1141, 163 L. Ed. 2d 1003 (2006).

Grand jury subpoena for samples of defendant's blood, as well as for samples of his head hair, pubic hair, and saliva was supported by probable cause because he fit the victim's physical description of her attacker, he was seen in the area of the assault immediately before the attack, wearing clothing identical to the attacker's, he had a prior conviction for rape and armed robbery based on an assault in the area of the current crime, under very similar circumstances, and enough genetic material for comparison was recovered from the victim. People v. Watson, 214 Ill. 2d 271, 292 Ill. Dec. 1, 825 N.E.2d 257, 2005 Ill. LEXIS 2 (2005), cert. denied, U.S. , 126 S. Ct. 1141, 163 L. Ed. 2d 1003 (2006).

The grand jury is unrestrained by technical and evidentiary rules governing the conduct of criminal trials which would burden it with minitrials on evidence. People v. DeLaire, 240 Ill. App. 3d 1012, 183 Ill. Dec. 33, 610 N.E.2d 1277 (2 Dist.), appeal denied, 151 Ill. 2d 569, 186 Ill. Dec. 387, 616 N.E.2d 340 (1993).

A grand jury may subpoena private documents even without having probable cause to believe the owner has committed a crime. People v. DeLaire, 240 Ill. App. 3d 1012, 183 Ill. Dec. 33, 610 N.E.2d 1277 (2 Dist.), appeal denied, 151 Ill. 2d 569, 186 Ill. Dec. 387, 616 N.E.2d 340 (1993).

Incriminating Statements

Inculpatory statement that defendant gave to police about defendant's involvement in a first-degree murder did not have to be suppressed despite the fact that defendant only made it after defendant had been at the police station for more than 12 hours and defendant had undergone a polygraph examination. Defendant was not seized by police in but voluntarily accompanied the police to the police station for an interview, defendant voluntarily stayed there while police initially looked for witnesses to corroborate defendant's story of noninvolvement, and defendant only made the inculpatory statement after defendant willingly took a polygraph examination that defendant failed, which meant the statement was not obtained in violation of defendant's rights under the Fourth Amendment, U.S. Const. amend. IV, and Ill. Const. art. I, § 6. People v. Anderson, 395 Ill. App. 3d 241, 334 Ill. Dec. 421, 917 N.E.2d 18, 2009 Ill. App. LEXIS 955 (1 Dist. 2009), appeal denied, 235 Ill. 2d 590, 924 N.E.2d 456, 2010 Ill. LEXIS 98 (2010).

Trial court was not required to suppress incriminating statements made after the vehicle in which defendant was traveling as a passenger was stopped for an improper registration and defendant was subsequently charged with unlawful possession with intent to deliver. Ill. Const. Art. I, § 6 did not require suppression since defendant made the incriminating statements during a consensual encounter police and defendant's conduct showed that defendant knew that defendant was not required to make the statements. People v. Robinson, 391 Ill. App. 3d 822, 330 Ill. Dec. 519, 909 N.E.2d 232, 2009 Ill. App. LEXIS 252 (2 Dist. 2009), appeal denied, 234 Ill. 2d 544, 920 N.E.2d 1078, 2009 Ill. LEXIS 2243 (2009).

Interception of Communications

- In General

This section demands the strict construction of the eavesdropping statute (720 ILCS 5/14-1 et seq.) and coordinately, the equally strict scrutiny of all purported consents and requests for

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eavesdropping, so that in Illinois citizens may be safeguarded from promiscuous governmental surveillance, civilian snooping or other unreasonable intrusions into their privacy. People v. Porcelli, 25 Ill. App. 3d 145, 323 N.E.2d 1 (1 Dist. 1974).

A party to a communication cannot intercept that communication. People v. Giannopoulos, 20 Ill. App. 3d 338, 314 N.E.2d 237 (1 Dist. 1974).

- Conduct of Police

It is the reasonableness of the conduct of the police with which the Fourth Amendment is concerned, and the same is true with respect to this section. People v. Richardson, 60 Ill. 2d 189, 328 N.E.2d 260 (1975).

- Consent

Consent of both parties to taping of suspect was not required in a joint operation by Illinois and federal law enforcement personnel, because even though Illinois law required consent by all parties, federal law, and the Fourth Amendment, required that only one participant consent. People v. Burnom, 338 Ill. App. 3d 495, 273 Ill. Dec. 872, 790 N.E.2d 14, 2003 Ill. App. LEXIS 409 (1 Dist. 2003).

This section was not intended to render electronic surveillance with one party consent unconstitutional. People v. Kezerian, 77 Ill. 2d 121, 32 Ill. Dec. 321, 395 N.E.2d 551 (1979).

There was no interception where there was consent by a party to the conversation, and the police officer overheard the conversation by listening with his unaided human ear to a telephone on which the conversation was conducted. People v. Giannopoulos, 20 Ill. App. 3d 338, 314 N.E.2d 237 (1 Dist. 1974).

- Eavesdropping

While defendant's State constitutional protections against "governmental interceptions of communications" were triggered by the police conduct of listening to his conversation, there was no violation of the State constitution where the area the officers overheard defendant's conversation in was a common area shared by other tenants, the landlord, their social guests and other invitees. People v. Smith, 152 Ill. 2d 229, 178 Ill. Dec. 335, 604 N.E.2d 858 (1992), cert. denied, 507 U.S. 1040, 113 S. Ct. 1872, 123 L. Ed. 2d 491 (1993).

Neither the Fourteenth Amendment nor this section compelled a holding that the eavesdropping statute (720 ILCS 5/14-1 et seq.) required a state's Attorney to issue a specific, written authorization for the use of eavesdropping devices. People v. Mosley, 63 Ill. App. 3d 437, 20 Ill. Dec. 172, 379 N.E.2d 1240 (5 Dist. 1978).

This section does not render the eavesdropping statute (720 ILCS 5/14-1 et seq.) unconstitutional. People v. Richardson, 60 Ill. 2d 189, 328 N.E.2d 260 (1975).

In addition to the prohibition in this section, 720 ILCS 5/14-1 et seq., flatly declares the use of an eavesdropping device to be a criminal offense. People v. Porcelli, 25 Ill. App. 3d 145, 323 N.E.2d 1 (1 Dist. 1974).

- Elements of Offense

A proper analysis of whether there has been a violation of this section involves the following analysis: (1) whether there was an interception of the conversation between defendant and the person to whom he speaks, and if so, then (2) whether it was accomplished by use of an eavesdropping device or other means, and, assuming that there was an interception by use of an eavesdropping device or other means, then it must be determined (3) whether that interception was reasonable or unreasonable. People v. Giannopoulos, 20 Ill. App. 3d 338, 314 N.E.2d 237 (1 Dist. 1974).

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Interception implies, first of all, that it involves a third party to the communication before the communication has been completed, and also implies lack of consent. People v. Giannopoulos, 20 Ill. App. 3d 338, 314 N.E.2d 237 (1 Dist. 1974).

- Implied Consent

Police officer's act of listening on the telephone extension to conversation between victim and defendant which led to defendant's arrest did not constitute an unreasonable and unconstitutional interception of a communication, because although the victim did not verbally ask the officer to listen to the conversation, her behavior implied consent. People v. Jenkins, 128 Ill. App. 3d 853, 84 Ill. Dec. 118, 471 N.E.2d 647 (1 Dist. 1984).

- Judicial Supervision

The trial court's determination that defendant's rights, granted by this section and the Fourteenth Amendment, had been violated was error where the judge found the state's attorney's request to the Illinois Bureau of Investigation to set up the equipment to obtain the tapes was conditioned upon an informant consenting to the taping of his conversation. The request of the prosecution for the use of a recording device is not a constitutional requirement of obtaining a recording of a conversation but an additional safeguard required by Ill. Rev. Stat., ch. 38, para. 108A-1. People v. Eddington, 47 Ill. App. 3d 388, 5 Ill. Dec. 790, 362 N.E.2d 103 (4 Dist. 1977).

- Reasonable

Warrant specificity requirements were satisfied by a provision in the drug conspiracy eavesdropping statute that limited the time period during which the electronic intelligence could be gathered; the general warrant specificity requirement did not apply to electronic eavesdropping. People v. Edwards, 337 Ill. App. 3d 912, 272 Ill. Dec. 731, 788 N.E.2d 35, 2002 Ill. App. LEXIS 1111 (1 Dist. 2002), appeal denied, 203 Ill. 2d 554, 273 Ill. Dec. 140, 788 N.E.2d 731 (2003), appeal denied, 205 Ill. 2d 604, 281 Ill. Dec. 84, 803 N.E.2d 488 (2003).

Where eavesdropping was approved by the party to whom the solicitation and bribe had been made, police officers advised him of what to do and followed strictly the provisions of the eavesdropping statute (720 ILCS 5/14-1 et seq.), and there was no fishing expedition and no extended wiretap or eavesdropping, the interception of the communication was reasonable and the recording was properly admitted into evidence in a prosecution for official misconduct and bribery. People v. Drish, 24 Ill. App. 3d 225, 321 N.E.2d 179 (4 Dist. 1974).

- Recording Conversations

The obtaining of recordings of a conversation, with the consent of a party to the conversation and at the request of the prosecutor, and its introduction into evidence did not violate this section or U.S. Const., Amend. IV, even though other parties to the conversation did not consent. People v. Eddington, 47 Ill. App. 3d 388, 5 Ill. Dec. 790, 362 N.E.2d 103 (4 Dist. 1977).

In prosecution for bribery, use of eavesdropping device by police to record conversations between the defendant and police officers did not violate this section of the Constitution. People v. Nahas, 9 Ill. App. 3d 570, 292 N.E.2d 466 (3 Dist. 1973).

- Telephones

The telephone company's attachment of a "dialed number recorder" to a defendant's telephone line to ascertain what long distance calls were being completed and the numbers that were dialed did not violate any rights guaranteed to defendant under the Illinois Constitution. People v. Smith, 72 Ill. App. 3d 956, 28 Ill. Dec. 766, 390 N.E.2d 1356 (1 Dist. 1979).

Invasion of Privacy

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Trial court did not violate defendant's constitutional rights when it ordered as part of his sentencing that he submit a specimen of his blood for perpetual storing of his DNA profile. The appellate courts held that such an order did not violate his right to be free from unreasonable searches and seizures. People v. Quinones, 362 Ill. App. 3d 385, 298 Ill. Dec. 260, 839 N.E.2d 583, 2005 Ill. App. LEXIS 1115 (1 Dist. 2005), appeal denied, 218 Ill. 2d 553, 303 Ill. Dec. 7, 850 N.E.2d 812 (2006).

- Abortion

Judgment on the pleadings against the medical care providers, and dismissal of their claims challenging the constitutionality of Parental Notice of Abortion Act of 1995 under the Illinois Constitution alone, was not warranted. Their claims alleging equal protection and due process violations under Ill. Const. art. I, § 2 were not barred by collateral estoppel despite the trial court's conclusion to the contrary, as the relevant federal opinion that supposedly barred their claims was not decided on equal protection grounds, as to due process the federal court was presented with a very narrow question not at issue in the medical providers' case, and the claims alleging that the right to privacy under Ill. Const. art. I, § 6 and the right to gender equality under Ill. Const. art. I, § 18 were violated were not infirm because the Illinois Constitution had express clauses guaranteeing those rights which the federal constitution did not have. Hope Clinic for Women Ltd. v. Adams, Ill. App. 3d , 353 Ill. Dec. 44, 955 N.E.2d 511, 2011 Ill. App. LEXIS 649 (1 Dist. 2011).

- AIDS Testing

Mandatory HIV testing pursuant to 730 ILCS 5/5-5-3(g) of persons convicted of prostitution was reasonable in light of the health benefits of such testing when compared with the minimal intrusion into the privacy of the persons tested; thus, that provision did not violate defendant's right to freedom from unreasonable searches and seizures under U.S. Const., Amend. IV, and this section. People v. Adams, 149 Ill. 2d 331, 173 Ill. Dec. 600, 597 N.E.2d 574 (1992).

- Arrest Record

Even though city civil service commission incorrectly used records of police force applicants arrest which were expunged in denying applicant's certification and crossing out her name from candidate eligibility list, her constitutional right of privacy was not violated by the commission's reference to her experiences which were public knowledge. Oden v. Cahill, 79 Ill. App. 3d 768, 35 Ill. Dec. 111, 398 N.E.2d 1061 (1 Dist. 1979).

- Blood and Hair Samples

The pubic area has been regarded as the most private part of the human body, one which is normally hidden from the view of others and a demand for pubic hair represents a considerable intrusion into personal privacy and is, without the justification of probable cause, an indignity to the individual subpoenaed. In re May 1991 Will County Grand Jury, 152 Ill. 2d 381, 178 Ill. Dec. 406, 604 N.E.2d 929 (1992).

The taking of hair and blood samples prior to being arrested for or charged with an offense is protected by this section and the search and seizure provision of the Federal Constitution, as neither come within the public exposure exception to the federal provision. People v. Cohn, 104 Ill. App. 3d 94, 59 Ill. Dec. 839, 432 N.E.2d 625 (4 Dist. 1982).

- Blood and Saliva Samples

The nonconsensual extraction of blood and saliva from persons convicted of the sex offenses enumerated in 730 ILCS 5/5-4-3 does not offend traditional United States Constitution Fourth Amendment principles. People v. Wealer, 264 Ill. App. 3d 6, 201 Ill. Dec. 697, 636 N.E.2d 1129 (2 Dist.), appeal denied, 157 Ill. 2d 519, 205 Ill. Dec. 182, 642 N.E.2d 1299 (1994).

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- Blood Sample

In general, a search incident to arrest is constitutionally allowable, but, with regard to the taking of blood, the interests in human dignity and privacy which the Fourth Amendment protects forbid any such intrusions on the mere chance that desired evidence might be obtained, and for probable cause to exist to support the taking of a person's blood for subsequent testing, there must be substantial evidence to support an objective belief that evidence of criminality will be found. People v. Watson, 214 Ill. 2d 271, 292 Ill. Dec. 1, 825 N.E.2d 257, 2005 Ill. LEXIS 2 (2005), cert. denied, U.S. , 126 S. Ct. 1141, 163 L. Ed. 2d 1003 (2006).

Warrantless and suspicionless blood sampling of convicted sex offenders mandated by the Unified Code of Corrections does not violate the right to be free from unreasonable searches and seizures, even when applied to juvenile offenders. People v. Robert K. (In re Robert K.), 336 Ill. App. 3d 867, 271 Ill. Dec. 630, 785 N.E.2d 562, 2003 Ill. App. LEXIS 257 (2 Dist. 2003).

- Debt Collection

A creditor has a right to take reasonable action to pursue his debtor and persuade payment, although the steps taken may result in some invasion of the debtor's privacy. Midwest Glass Co. v. Stanford Dev. Co., 34 Ill. App. 3d 130, 339 N.E.2d 274 (1 Dist. 1975).

Where mirror company installed mirrors in condominium developers premises and no payment was received by mirror company, the mirror company acted reasonably to pursue its debtor and persuade payment by sending out letters informing owners of condominiums of potential incumbrance by filing of mechanic's lien, and purpose was not to vilify nor to subject the counterclaimants to continuous harassments, but to seek assistance in collecting the amount in arrears; this was not an invasion of privacy, because the notices of the indebtedness for the mirrors were disseminated not to the general public but only to a limited number of persons who had a natural and proper interest in the ability and reputation of the company to pay its debt, since they were either purchasers, prospective purchasers or tenants of the condominium unit in question. Midwest Glass Co. v. Stanford Dev. Co., 34 Ill. App. 3d 130, 339 N.E.2d 274 (1 Dist. 1975).

- DNA Testing

Because the court reversed the defendant's conviction, the court also reversed the trial court's order that a DNA sampling be taken from the defendant. People v. Orta, 361 Ill. App. 3d 342, 297 Ill. Dec. 80, 836 N.E.2d 811, 2005 Ill. App. LEXIS 953 (1 Dist. 2005), appeal denied, 217 Ill. 2d 619, 300 Ill. Dec. 527, 844 N.E.2d 970 (2006).

Statute that permitted the State to take a DNA sample from defendant, based on his status as a convicted felon, was constitutional because it did not violate his right to be free from unreasonable searches and seizures; Illinois favored a balancing of interests test, and the State's interest in deterring and prosecuting recidivist criminal acts outweighed defendant's privacy rights because those rights were diminished once he had been convicted of a felony. People v. Redmond, 357 Ill. App. 3d 256, 293 Ill. Dec. 708, 828 N.E.2d 1206, 2005 Ill. App. LEXIS 375 (1 Dist. 2005), appeal denied, 219 Ill. 2d 588, Ill. Dec. , 852 N.E.2d 246 (2006).

The provision of 730 ILCS 5/5-4-3(a) regarding DNA testing is not unconstitutional because the State's interest outweighs both a convicted felon's diminished privacy rights and the minimal intrusion caused by the submission of a DNA sample. That part of defendant's sentence that ordered that he submit to DNA testing because he was a convicted felon was imposed pursuant to a constitutional statute, 730 ILCS 5/5-4-3(a), as application of a balancing test showed that the State had a strong interest in performing such testing in order to deter and prosecute recidivist criminal acts while the physical intrusion caused by that statute involved a relatively insubstantial test that posed no threat to the health or safety of the individual tested. People v. Chamberlain, 354 Ill. App. 3d 1070, 291 Ill. Dec. 39, 822 N.E.2d 914, 2005 Ill. App. LEXIS 36 (3 Dist. 2005), appeal denied, 219 Ill. 2d 572, 303 Ill. Dec. 834, 852 N.E.2d 241 (2006).

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Since defendant's identity, as a convicted person, was a matter of state interest and no legitimate expectation of privacy existed in identifying information derived from bodily sampling such as DNA, defendant had a diminished protected privacy interest. therefore, the requirement of 730 ILCS 5/5-4-3(a)(3.5) that defendant submit a DNA sample to the State did not violate his constitutional right to be free from search and seizure. People v. Foster, 354 Ill. App. 3d 564, 290 Ill. Dec. 421, 821 N.E.2d 733, 2004 Ill. App. LEXIS 1515 (1 Dist. 2004), appeal denied, 219 Ill. 2d 576, 303 Ill. Dec. 836, 852 N.E.2d 243 (2006).

In determining the constitutionality of requiring a defendant convicted of a felony conviction to submit a blood sample for a DNA bank, the analysis under Ill. Const. Art. I, § 6 is the same as under U.S. Const. Amend. IV. People v. Butler, 354 Ill. App. 3d 57, 289 Ill. Dec. 333, 819 N.E.2d 1133, 2004 Ill. App. LEXIS 1378 (1 Dist. 2004), appeal denied, 219 Ill. 2d 571, 303 Ill. Dec. 834, 852 N.E.2d 241 (2006).

Extraction of a blood sample for a DNA data bank pursuant to former 730 ILCS 5/5-4-3 for a person convicted of felonies does not violate U.S. Const. Amend. IV or Ill. Const. Art. I, § 6. The State's interest in having a DNA bank in order to conduct more accurate criminal investigations exceeds a defendant's right to privacy that is diminished by a defendant's status as an inmate, and the search, a blood test, is not of an intrusive nature. People v. Butler, 354 Ill. App. 3d 57, 289 Ill. Dec. 333, 819 N.E.2d 1133, 2004 Ill. App. LEXIS 1378 (1 Dist. 2004), appeal denied, 219 Ill. 2d 571, 303 Ill. Dec. 834, 852 N.E.2d 241 (2006).

Under both tests used in case law to determine the constitutionality of intrusive acts - the balancing test and the special needs test - the statute providing for collection of DNA samples from many kinds of convicted felons passed muster; maintenance of a DNA database met a special need separate from ordinary law enforcement functions and the minimal intrusion on persons whose expectation of privacy had already been lowered was far outweighed by the interest in identifying offenders. People v. Edwards, 353 Ill. App. 3d 475, 288 Ill. Dec. 879, 818 N.E.2d 814, 2004 Ill. App. LEXIS 1250 (1 Dist. 2004), appeal denied, 219 Ill. 2d 575, 303 Ill. Dec. 835, 852 N.E.2d 242 (2006).

Fourth Amendment is not offended by 730 ILCS 5/5-4-3 as incarcerated felons have a substantially diminished expectation of privacy, testing by needle or swab is minimally intrusive, and the State is not investigating a particular or specific crime, rather, it is conducting a technologically accurate identification procedure that would enhance the administration of justice, reaching back to solve past crimes and extending forward to identify future offenders, convicting the guilty and acquitting the innocent. People v. Peppers, 352 Ill. App. 3d 1002, 288 Ill. Dec. 502, 817 N.E.2d 1152, 2004 Ill. App. LEXIS 1185 (1 Dist. 2004), appeal denied, 219 Ill. 2d 587, Ill. Dec. , 852 N.E.2d 246 (2006).

- Elections

While having a voice in elections is regarded as one of our most important and protected rights, and the vote itself traditionally within the "zone of privacy," such is not the case with party affiliation, which does not constitute a privacy right. Small v. Kusper, 161 Ill. App. 3d 42, 112 Ill. Dec. 499, 513 N.E.2d 1108 (1 Dist. 1987).

- Grand Jury Proceedings

The grand jury has been endowed with broad investigative powers; however, when their investigations infringe on a person's protected right of privacy, the reasonableness of the intrusion is tested by the validity of the subpoena. People v. Jackson, 116 Ill. App. 3d 430, 72 Ill. Dec. 153, 452 N.E.2d 85 (1 Dist. 1983).

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The right of privacy is a limited one in areas of legitimate public interest, as where there is a legitimate news interest in one's photograph or likeness as a public figure. Cantrell v. ABC, 529 F. Supp. 746 (N.D. Ill. 1981).

- Medical Records

Because the investigatory powers of the Illinois Department of Professional Regulation were required to yield to the right of patients against invasions of privacy under Ill. Const., Art. I, § 6, the circuit court erred in granting summary judgment in favor of the Department on the Department's motion to compel the production of patient medical files from two dentists; the Department was required to ask permission of the patients before reviewing their medical files. People v. Manos, 326 Ill. App. 3d 698, 260 Ill. Dec. 364, 761 N.E.2d 208, 2001 Ill. App. LEXIS 883 (1 Dist. 2001).

Investigatory powers of the Illinois Department of Professional Regulation were required to yield to the right of patients against invasions of privacy under Ill. Const., Art. I, § 6. People v. Manos, 326 Ill. App. 3d 698, 260 Ill. Dec. 364, 761 N.E.2d 208, 2001 Ill. App. LEXIS 883 (1 Dist. 2001).

- Oral Communication

An action for invasion of privacy could not be based merely on oral communications. Midwest Glass Co. v. Stanford Dev. Co., 34 Ill. App. 3d 130, 339 N.E.2d 274 (1 Dist. 1975).

- Prison Telephones

The monitoring of the telephone conversation from a jailhouse telephone between defendant and his wife did not violate defendant's right to be free from unreasonable searches and seizures under U.S. Const., Amend. IV or this section. People v. Myles, 62 Ill. App. 3d 931, 20 Ill. Dec. 64, 379 N.E.2d 897 (2 Dist. 1978).

A telephone maintained in a jail for prisoner use shares none of the attributes of privacy of a home or automobile or even a public phone booth. People v. Myles, 62 Ill. App. 3d 931, 20 Ill. Dec. 64, 379 N.E.2d 897 (2 Dist. 1978).

- Public Figure

Although it is not necessary for an individual to seek publicity actively in order to be found in the "public eye," the individual cannot be deemed public merely because of the broadcast or publication alone. Cantrell v. ABC, 529 F. Supp. 746 (N.D. Ill. 1981).

- Public Knowledge

The common law right to privacy gives no protection to matters which are within public knowledge, and however wide its scope, the constitutional right of privacy does not extend to matters of public knowledge. Oden v. Cahill, 79 Ill. App. 3d 768, 35 Ill. Dec. 111, 398 N.E.2d 1061 (1 Dist. 1979).

- Reasonable Belief

A reasonable belief that the person arrested has on his person a weapon or contraband may justify the intensive invasion of his privacy. People v. Seymour, 84 Ill. 2d 24, 48 Ill. Dec. 548, 416 N.E.2d 1070 (1981).

- Remedies

The law of Illinois has recognized the right to privacy as well as the right to a remedy for invasion of such right both through the legislature and through the judiciary. Cantrell v. ABC, 529 F. Supp. 746 (N.D. Ill. 1981).

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- Scope of Protection

Trial court did not err in denying defendant's motion to suppress transcriptions of his instant messages in an internet chat room with an undercover police investigator, who was posing as a teenage boy, because defendant's privacy rights under U.S. Const., Amend IV and Ill. Const., Art. I, § 6 were not offended by the investigator retaining transcriptions of defendant's instant messages. People v. Gariano, 366 Ill. App. 3d 379, 304 Ill. Dec. 94, 852 N.E.2d 344, 2006 Ill. App. LEXIS 537 (1 Dist. 2006).

This section only prohibits unreasonable invasions of privacy. People v. McCarty, 86 Ill. App. 3d 130, 41 Ill. Dec. 473, 407 N.E.2d 971 (1 Dist. 1980).

This section does not create a cause of action for invasion of privacy by private individuals but pertains only to invasions by government or public officials. People v. Smith, 72 Ill. App. 3d 956, 28 Ill. Dec. 766, 390 N.E.2d 1356 (1 Dist. 1979); Kelly ex rel. Kelly v. Franco, 72 Ill. App. 3d 642, 28 Ill. Dec. 855, 391 N.E.2d 54 (1 Dist. 1979).

Right of privacy is not absolute but is subject to limitations where there is express or implied consent and legitimate interests. Midwest Glass Co. v. Stanford Dev. Co., 34 Ill. App. 3d 130, 339 N.E.2d 274 (1 Dist. 1975).

- Seat Belts

Statute requiring a driver and front seat passenger to wear a seat belt does not infringe upon the defendants' right to privacy protected by this section and U.S. Const., Amend. XIV. People v. Kohrig, 113 Ill. 2d 384, 101 Ill. Dec. 650, 498 N.E.2d 1158 (1986).

- Sex Offenders

Amendments to the sex offender notification law, under 730 ILCS 152/115(b) and 730 ILCS 152/120(c), providing for a website to post names and pictures of sex offenders, did not violate defendant's right to privacy under Ill. Const. Art. I, § 6, because defendant's criminal record was already public, so defendant could not claim a privacy interest in it. People v. Grochocki, 343 Ill. App. 3d 664, 277 Ill. Dec. 438, 796 N.E.2d 153, 2003 Ill. App. LEXIS 1237 (3 Dist. 2003).

Dissemination of information about defendant's sex offender status under 730 ILCS 152/115(b), 730 ILCS 152/120(c) and the Sex Offender Registration Act, 730 ILCS 150/1 et seq., did not violate defendant's right to privacy because the information was already public information available to any citizen through a review of court records. People v. Grochocki, Ill. App. 3d , Ill. Dec. , N.E.2d , 2003 Ill. App. LEXIS 1083 (3 Dist. Aug. 26, 2003).

The defendant failed to establish that the Sex Offender and Child Murderer Community Notification Law, 730 ILCS 152/101 et seq., impermissibly infringes upon the constitutional right to privacy that is implied in the United States Constitution and explicitly provided for in the Illinois Constitution. People v. Malchow, 193 Ill. 2d 413, 250 Ill. Dec. 670, 739 N.E.2d 433, 2000 Ill. LEXIS 1226 (2000).

The defendant failed to establish that the Sex Offender Registration Act, 730 ILCS 150/1 et seq., impermissibly infringes upon the constitutional right to privacy that is implied in the United States Constitution and explicitly provided for in the Illinois Constitution. People v. Malchow, 193 Ill. 2d 413, 250 Ill. Dec. 670, 739 N.E.2d 433, 2000 Ill. LEXIS 1226 (2000).

A person convicted of the sex offenses enumerated in 730 ILCS 5/5-4-3 is not compelled to provide blood and saliva samples unless a previous plea of guilty has been entered or that person was proven guilty of an enumerated offense beyond a reasonable doubt; accordingly, because the sampling mandated under 730 ILCS 5/5-4-3 is functionally equivalent to fingerprinting, which also necessarily intrudes on a convicted sex offender's diminished privacy interest, the suspicionless blood and saliva sampling of persons convicted of the sex offenses

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enumerated in 730 ILCS 5/5-4-3, regardless of the sentence imposed, does not violate the fourth amendment of the United States Constitution or the Illinois Constitution prohibition of unreasonable searches and seizures. People v. Wealer, 264 Ill. App. 3d 6, 201 Ill. Dec. 697, 636 N.E.2d 1129 (2 Dist.), appeal denied, 157 Ill. 2d 519, 205 Ill. Dec. 182, 642 N.E.2d 1299 (1994).

- Sobriety Test

Because no driver can be chemically tested under 625 ILCS 5/11-501.6, as amended in 1994, unless the driver has been arrested based on probable cause, a driver's zone of privacy is not unconstitutionally invaded when tested. Fink v. Ryan, 174 Ill. 2d 302, 220 Ill. Dec. 369, 673 N.E.2d 281 (1996), cert. denied, 521 U.S. 1118, 117 S. Ct. 2509, 138 L. Ed. 2d 1012 (1997).

Section 11-501.6 (625 ILCS 5/11-501.6), as amended in 1994, is not unconstitutional under U.S. Const., Amend. IV, or this section, because drivers will be subject to chemical testing only when the intrusiveness of the search has been reduced and their expectation of privacy diminished. Fink v. Ryan, 174 Ill. 2d 302, 220 Ill. Dec. 369, 673 N.E.2d 281 (1996), cert. denied, 521 U.S. 1118, 117 S. Ct. 2509, 138 L. Ed. 2d 1012 (1997).

There was no violation of defendant's rights when police gave him a sobriety test before placing him under arrest. People v. Saturday, 135 Ill. App. 3d 1052, 90 Ill. Dec. 841, 482 N.E.2d 1124 (2 Dist. 1985).

- Torts

Illinois courts have adopted four distinct torts of privacy: (1) an unreasonable intrusion upon the seclusion of another, (2) the appropriation of another's name or likeness, (3) a public disclosure of private facts, or (4) publicity which unreasonably places another in a false light before the public. Cantrell v. ABC, 529 F. Supp. 746 (N.D. Ill. 1981).

Applicant of police force whose application was previously turned down due to consideration of expunged records of prior arrests failed to state a cause of action for invasion of privacy. Oden v. Cahill, 79 Ill. App. 3d 768, 35 Ill. Dec. 111, 398 N.E.2d 1061 (1 Dist. 1979).

The requisite elements of the tort of invasion of privacy are: the intentional giving of unreasonable publicity of private debts, without the debtor's consent, which is made for the purpose of coercing or harassing the debtor into payment of the debt or of exposing the debtor to public contempt or ridicule. Midwest Glass Co. v. Stanford Dev. Co., 34 Ill. App. 3d 130, 339 N.E.2d 274 (1 Dist. 1975).

- Urine Sample

Request for a urine sample from police officer was not unreasonable; 1) police officer was a safety-sensitive employee, and it was irrelevant whether he was on duty or off duty; 2) department had a reasonable suspicion because officer's wife and sister had contacted department about his drug use; and 3) department was aware of officer's prior participation in a drug rehabilitation program for cocaine use. Rodriguez v. Bagnola, 297 Ill. App. 3d 906, 232 Ill. Dec. 332, 698 N.E.2d 170 (1 Dist. 1998).

- Use of Cannabis

Private use and possession of cannabis is not protected by any right to privacy arising out of this section. Illinois Norml, Inc. v. Scott, 66 Ill. App. 3d 633, 23 Ill. Dec. 303, 383 N.E.2d 1330 (1 Dist. 1978).

- Use of Liquor

The times and places under which intoxicating liquors may be sold were regulated by statute for the purpose of reducing the evils of intemperance, and for the same purpose the times, places,

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and circumstances of drinking intoxicating liquors may be regulated; such a regulation does not unreasonably interfere with the liberty of the individual, and is reasonably adapted to protect the public against a recognized public evil. Tarantina v. Louisville & N. R.R., 254 Ill. 624, 98 N.E. 999 (1912).

Jurisdiction

- Arrest Warrant

The terms of U.S. Const., Amend. IV, and former Ill. Const. (1870), Art. II, § 6 (see now this section) apply to the issuance of a warrant authorizing a seizure of the persona - an arrest; while they require a sworn complaint as a prerequisite to the issuance of an arrest warrant, they do not purport to lay down any jurisdictional prerequisites governing the institution of a criminal prosecution. People v. Harding, 34 Ill. 2d 475, 216 N.E.2d 147 (1966).

Knock and Announce Requirement

Although the failure of law enforcement officers to knock and announce is not a per se violation of this section, the presence or absence of such an announcement is an important consideration in determining whether a subsequent entry to arrest or search is constitutionally reasonable. People v. Aaron, 296 Ill. App. 3d 317, 230 Ill. Dec. 815, 694 N.E.2d 1093 (2 Dist. 1998).

Papers

- Bank Records

Defendant had a right to privacy in her bank records under Ill. Const. art. I, § 6. People v. Nesbitt, 405 Ill. App. 3d 823, 345 Ill. Dec. 161, 938 N.E.2d 600, 2010 Ill. App. LEXIS 1192 (2 Dist. 2010).

The Illinois State Constitution offers protection for the reasonable expectation of privacy which citizens have in their bank records; however, even with a right of privacy in bank records, the protection is only against unreasonable search and seizures, and not against reasonable ones. People v. Jackson, 116 Ill. App. 3d 430, 72 Ill. Dec. 153, 452 N.E.2d 85 (1 Dist. 1983).

When the subject of the grand jury's investigation was defendant's unlawful receipt of unemployment benefits while still gainfully employed, her financial records for the period of time under investigation were subpoenaed from her bank; such financial records were obviously relevant to the investigation, and the subpoena was not excessive. People v. Jackson, 116 Ill. App. 3d 430, 72 Ill. Dec. 153, 452 N.E.2d 85 (1 Dist. 1983).

- Corporate Records

A corporation is a creature of the state, and subject to a reserved right in the legislature to investigate its contracts and find out whether it has exceeded its powers. People v. Reynolds, 350 Ill. 11, 182 N.E. 754 (1932).

- Financial Records

Financial records, submitted to a city by applicants for cable television franchises, were protected from public inspection by the right of privacy guarantee in this section. People ex rel. Better Broadcasting Council, Inc. v. Keane, 17 Ill. App. 3d 1090, 309 N.E.2d 362 (1 Dist. 1973).

Persons

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- Corporate Officer

The fact that an individual accused may be an officer of the corporation whose premises are illegally searched and whose property is illegally seized does not give him the right to object to the search and seizure or cause the exclusion of the evidence thus obtained. People v. Perry, 1 Ill. 2d 482, 116 N.E.2d 360 (1953).

Possession

Illegal amusement devices, essentially gambling games, were outside the protection against unreasonable searches and seizures where the city, in the reasonable exercise of its police power, had declared them illegal. Even so, the ordinances challenged by a device owner had several procedural safeguards built into the scheme, in that any seizure was only temporary, pending an administrative hearing before the office that normally conducted administrative hearings in the city. O'Donnell v. City of Chicago, 363 Ill. App. 3d 98, 299 Ill. Dec. 469, 842 N.E.2d 208, 2005 Ill. App. LEXIS 1272 (1 Dist. 2005), appeal denied, 218 Ill. 2d 543, 303 Ill. Dec. 4, 850 N.E.2d 809 (2006).

Possessions

- Gambling Device

Gambling devices are not the subject of ownership, nor entitled to the same protection as the right of ordinary property. People v. Cattaneo, 2 Ill. App. 2d 429, 120 N.E.2d 72 (2 Dist. 1954), aff'd, 6 Ill. 2d 122, 126 N.E.2d 692 (1955).

Privacy

Statute making it mandatory that the juvenile give a DNA indexing sample, 730 ILCS 5/5-3-4, after the juvenile was adjudicated delinquent for committing the offense of aggravated battery was not facially unconstitutional under either the Fourth Amendment, U.S. Const. amend. IV, or Ill. Const. Art. I, § 6. The State had a strong interest in obtaining reliable DNA identification evidence and in properly identifying convicted felons, which 730 ILCS 5/5-3-4 furthered, and related statutes 725 ILCS 5/116-3, allowing a defendant to move for DNA testing under limited circumstances, and 725 ILCS 5/116-5, which limited the searches that could be conducted for DNA evidence, adequately protected the privacy interests of those people required to submit a DNA sample to create a DNA database. People v. Jessica M. (In re Jessica M.), 399 Ill. App. 3d 730, 340 Ill. Dec. 512, 928 N.E.2d 511, 2010 Ill. App. LEXIS 217 (1 Dist. 2010).

Trial court did not err in ordering adjudicated delinquent juvenile to submit a saliva sample for DNA indexing under 730 ILCS 5/5-4-3(f) because defendant did not show that 730 ILCS 5/5-4-3(f) was invalid when her argument that the use of genetic marker grouping analysis for a population statistics database under 730 ILCS 5/5-4-3(f)(iii) raised Illinois constitutional privacy concerns. People v. Jessica M. (In re Jessica M.), 385 Ill. App. 3d 894, 325 Ill. Dec. 271, 897 N.E.2d 810, 2008 Ill. App. LEXIS 1009 (1 Dist. 2008).

Private Right of Action

Former probationary police officer could attempt to assert an invasion of privacy claim under Ill. Const. Art. 1, § 6, only if he determined that he could assert a private right of action under Ill. Const. Art. 1, § 6. Harrison v. City of Chicago, F. Supp. 2d , 2005 U.S. Dist. LEXIS 38014 (N.D. Ill. Dec. 22, 2005).

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There is no implied private right of action for a violation of the section. Farrar v. City of Chicago, F. Supp. 2d , 2001 U.S. Dist. LEXIS 1917 (N.D. Ill. Feb. 20, 2001).

Probable Cause

As the facts known to an officer from reports of fellow officers gave him probable cause to arrest defendant for murder, defendant's arrest did not have to be quashed nor his statements suppressed. The officer knew of witness reports that on the day of the victim's death, defendant went to his house, carrying at two-by-four; that the victim's brother found his bloody body in an alley and called police; that the next day, the brother saw a bloody two-by four in the alley and called police to pick it up; and that, while waiting, he saw defendant grab the board and run off with it. People v. Moore, 378 Ill. App. 3d 41, 316 Ill. Dec. 751, 880 N.E.2d 229, 2007 Ill. App. LEXIS 1279 (1 Dist. 2007).

- Appellate Review

If the trial court had a substantial basis for concluding that probable cause existed, the ruling will be undisturbed. People v. Adams, 131 Ill. 2d 387, 137 Ill. Dec. 616, 546 N.E.2d 561 (1989).

A reviewing court will not disturb a trial court's finding of probable cause unless it is manifestly erroneous. People v. Ross, 132 Ill. App. 3d 553, 87 Ill. Dec. 888, 478 N.E.2d 27 (1 Dist. 1985).

- Arrest to Investigate Crime

There was no probable cause for the defendant's arrest where the arrest was made for the investigation of a homicide and where the information upon which the officers based the defendant's arrest did not even measure up to a common rumor or report of suspicion and certainly did not amount to even strong reason to suspect the defendant; and the arrest under such circumstances was unconstitutional. People v. McBride, 157 Ill. App. 3d 955, 110 Ill. Dec. 56, 510 N.E.2d 1087 (1 Dist. 1987).

- Defined

Probable cause is the knowledge of facts justifying a reasonably prudent person in believing that a crime has been or is being committed, and that evidence thereof is contained in the place being searched. People v. Jones, 38 Ill. 2d 427, 231 N.E.2d 580 (1967).

Ill. Const. of 1870, Art. II, § 6 (now Ill. Const. (1970), Art. I, § 6) is a step beyond U.S. Const. amend. IV, in that it requires the evidence of probable cause to be made a permanent record in the form of an affidavit; under either constitution, probable cause must arise from facts within the knowledge of the affiant, the facts upon which the belief arises must be exhibited, and mere belief is not sufficient. Lippman v. People, 175 Ill. 101, 51 N.E. 872, 1898 Ill. LEXIS 3326 (1898).

- Determination

Under Ill. Const., Art. I, § 6, probable cause must be established before search warrant may be issued; whether probable cause exists for issuance of search warrant is question to be decided by judge before whom complaint for search warrant is made. People v. Arce, 289 Ill. App. 3d 521, 225 Ill. Dec. 334, 683 N.E.2d 502, 1997 Ill. App. LEXIS 455 (1 Dist. 1997).

Whether there is probable cause depends upon the totality of the circumstances known to the officers at the time of the search and seizure, bearing in mind their obligation to deter crime and apprehend offenders, and disregarding formalistic technicalities or analytical hindsight. People v. Ott, 209 Ill. App. 3d 783, 153 Ill. Dec. 877, 567 N.E.2d 1104 (1 Dist.), cert. denied, 139 Ill. 2d 601, 159 Ill. Dec. 113, 575 N.E.2d 920 (1991).

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When a police officer has proceeded without a warrant to search, to seize evidence, or to arrest a person, the trial court, in making a probable cause determination, is to apply standards at least as stringent as those that guide a magistrate in deciding whether to issue a warrant. People v. Adams, 131 Ill. 2d 387, 137 Ill. Dec. 616, 546 N.E.2d 561 (1989).

The probable cause review must center on the information available to the officer preceding the search or arrest; the question is whether a reasonable person in that officer's position would believe that a crime was being or had been committed. People v. Adams, 131 Ill. 2d 387, 137 Ill. Dec. 616, 546 N.E.2d 561 (1989).

The trial judge's reliance on his private knowledge of the ordinary conduct of armed robbers, untested on cross-examination, in determining that there was probable cause for the defendant's arrest, denied the defendant due process and demanded reversal. People v. McBride, 157 Ill. App. 3d 955, 110 Ill. Dec. 56, 510 N.E.2d 1087 (1 Dist. 1987).

What constitutes probable cause for searches and seizures must be determined from the standpoint of the police officer, with his skill and knowledge being taken into account, and the subsequent credibility determinations must be made by the trial court. People v. Stout, 106 Ill. 2d 77, 87 Ill. Dec. 521, 477 N.E.2d 498 (1985).

Whether probable cause exists in a particular case turns on the totality of circumstances and the facts known to the officers and the court when the warrant is applied for. People v. Ross, 132 Ill. App. 3d 553, 87 Ill. Dec. 888, 478 N.E.2d 27 (1 Dist. 1985).

When the state has chosen to proceed by first presenting a case to a grand jury, and it returns an indictment, a defendant is not entitled to a further hearing in court to test the probable cause determination made by the grand jury, whether by means of a preliminary hearing, or in an evidentiary hearing of a motion to dismiss the indictment. People v. Rodgers, 98 Ill. App. 3d 999, 54 Ill. Dec. 409, 424 N.E.2d 1312 (2 Dist. 1981), modified on other grounds, 92 Ill. 2d 283, 65 Ill. Dec. 929, 442 N.E.2d 240 (1982).

The credibility of the affiant or others offering evidence under oath establishing probable cause for issuance of a search warrant is for the judicial officer to determine, and if he finds the evidence worthy of belief and sufficient to form probable cause, this judicial determination cannot be relitigated through a later disputing of the evidence. People v. Bak, 45 Ill. 2d 140, 258 N.E.2d 341 (1970).

The existence of probable cause is to be decided by the magistrate before whom the complaint is made. People v. Dolgin, 415 Ill. 434, 114 N.E.2d 389 (1953).

Where a belief is held in good faith by the prosecutor of the guilt of the accused based upon circumstances sufficiently strong enough to induce the belief in the mind of a reasonably cautious person that the defendant in the prosecution was guilty of the particular offense charged, probable cause for the arrest of the person exists. People v. Dolgin, 415 Ill. 434, 114 N.E.2d 389 (1953).

- Dispatching Officer

When officers are working in concert, probable cause can be established from all the information collectively received by the officers even if that information is not specifically known to the officer who makes the stop; although an arresting officer may rely upon a dispatch to make an arrest even if he is unaware of the specific facts that established probable cause to make the arrest, the state must demonstrate that the officer who directed the dispatch to be issued possessed facts sufficient to establish probable cause to make the arrest. People v. Crane, 244 Ill. App. 3d 721, 184 Ill. Dec. 865, 614 N.E.2d 66 (1 Dist.), appeal denied, 152 Ill. 2d 566, 190 Ill. Dec. 897, 622 N.E.2d 1214 (1993), cert. denied, 510 U.S. 1170, 114 S. Ct. 1204, 127 L. Ed. 2d 552 (1994).

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- Evidence Insufficient

A ripped cardboard package of beer, whether the package is full or not, is not a "container" within the meaning of 625 ILCS 5/11-502 and, therefore, the presence of such a ripped package in a motor vehicle did not establish probable cause for a warrantless search of the vehicle. People v. Nadermann, 309 Ill. App. 3d 1016, 243 Ill. Dec. 554, 723 N.E.2d 857, 2000 Ill. App. LEXIS 33 (2 Dist. 2000).

Merely appearing nervous at the approach of a police officer is not sufficiently suspicious conduct to justify probable cause where the officer had no information that either defendant or his companion was a drug dealer and the facts known to the officer did not establish probable cause to believe that a drug transaction had occurred. People v. Blake, 268 Ill. App. 3d 737, 206 Ill. Dec. 575, 645 N.E.2d 580 (2 Dist.), appeal denied, 161 Ill. 2d 530, 208 Ill. Dec. 363, 649 N.E.2d 419 (1995).

Where all the knowledge possessed by the police at the time defendant's dental records were seized was that the defendant was the last person seen with the victim, such minimal knowledge did not support a finding of probable cause to issue a search warrant. People v. Dace, 153 Ill. App. 3d 891, 106 Ill. Dec. 625, 506 N.E.2d 332 (3 Dist.), appeal denied, 116 Ill. 2d 565, 113 Ill. Dec. 307, 515 N.E.2d 116 (1987).

- Evidence Required

Although a mere suspicion that the person arrested has committed the offense is an insufficient basis for arrest, evidence sufficient to convict is not necessary. People v. Ross, 132 Ill. App. 3d 553, 87 Ill. Dec. 888, 478 N.E.2d 27 (1 Dist. 1985).

- Evidence Sufficient

Officer had probable cause to conduct a warrantless search of defendant's minivan based on the totality of the circumstances confronting him at the scene, which included his observation of the closing panel on the minivan's dashboard indicating the possible presence of an illegal secret compartment, his observation of two grocery-size plastic bags each containing large amounts of loose currency ($29,477) sitting on the floor of the van next to defendant, defendant's implausible claim that he did not know who owned the money, and the recovery of illegal drugs from defendant's person. People v. Parker, 354 Ill. App. 3d 40, 289 Ill. Dec. 941, 820 N.E.2d 1016, 2004 Ill. App. LEXIS 1410 (1 Dist. 2004).

Defendant's flight from the officers en route to airport Drug Enforcement Agency office, coupled with the officers' reasonable suspicion that defendant was carrying drugs, constituted probable cause to arrest defendant. People v. Evans, 296 Ill. App. 3d 1, 228 Ill. Dec. 270, 689 N.E.2d 142 (1 Dist. 1997).

The trial court erred in finding that no probable cause existed for the issuance of the warrant and in suppressing the evidence seized. People v. Woods, 217 Ill. App. 3d 561, 160 Ill. Dec. 540, 577 N.E.2d 865 (3 Dist. 1991).

Officers had probable cause to believe that a car, located within 100 yards of a recent burglary, with its doors unlocked and its engine warm, was a "getaway" car, and a subsequent search of the glovebox to determine ownership and the seizure and impounding of the vehicle were proper under these circumstances. People v. Arnett, 217 Ill. App. 3d 626, 160 Ill. Dec. 448, 577 N.E.2d 773 (5 Dist. 1991), cert. denied, 143 Ill. 2d 640, 167 Ill. Dec. 402, 587 N.E.2d 1017 (1992).

Employees of the Department of Corrections had probable cause to search and seize, pursuant to a valid arrest based upon probable cause, where evidence showed that the parties arrested may have been aiding and abetting inmates to escape or to obtain drugs. White v. O'Leary, 742 F. Supp. 990 (N.D. Ill. 1990).

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Where two co-offenders had been arrested, admitted their own participation in the offenses, and implicated defendant as the third offender who beat the victim with a brick resulting in his death, the record supported a finding of probable cause. People v. Ross, 132 Ill. App. 3d 553, 87 Ill. Dec. 888, 478 N.E.2d 27 (1 Dist. 1985).

More than ample evidence was disclosed to justify a judge to believe that defendant had committed a crime by the use of thallium, and to authorize the issuance of a search warrant of defendant's premises. People v. Hanei, 81 Ill. App. 3d 690, 38 Ill. Dec. 1, 403 N.E.2d 16 (5 Dist. 1980).

- Expediency of Arrest

The detectives ascertainment of the defendant's place of employment and the defendant's quitting time on his job, on which the trial court relied, were improper considerations in determining whether there was probable cause that the defendant committed the offense of shooting the victim; expediency of an arrest is not a factor to be considered in determining if there is probable cause for the arrest. People v. McBride, 157 Ill. App. 3d 955, 110 Ill. Dec. 56, 510 N.E.2d 1087 (1 Dist. 1987).

- Grounds for Reversal

Failure to exclude evidence obtained without probable cause requires reversal of defendant's conviction under former Ill. Const. (1870), Art. II, § 6 (see now this section). People v. Hayes, 81 Ill. App. 2d 400, 226 N.E.2d 517 (1 Dist. 1967).

- Hearsay Evidence

Hearsay evidence alone can be a sufficient basis to establish probable cause, so long as there is a substantial basis for crediting the hearsay. People v. Poe, 48 Ill. 2d 506, 272 N.E.2d 28 (1971).

- Informants

In determining whether an informant's information provided sufficient probable cause for a warrantless arrest and subsequent search of defendant's vehicle, the central issue is not the rigid classification of the informant as an ordinary citizen or a paid informant, but whether the information, taken in its totality, and interpreted not by technical legal rules but by factual and practical common sense considerations, would lead a reasonable and prudent person to believe that the person stopped had committed an offense. People v. Adams, 131 Ill. 2d 387, 137 Ill. Dec. 616, 546 N.E.2d 561 (1989).

A totality of circumstances standard is proper for determining probable cause for issuance of a search warrant based on information from an informant. People v. Adams, 131 Ill. 2d 387, 137 Ill. Dec. 616, 546 N.E.2d 561 (1989).

When a co-offender who is under arrest and in custody supplies a police officer with a "tip" implicating alleged accomplices, the test is whether the statement of the co-offender constitutes probable cause for the arrest of the alleged participating accomplice. People v. Ross, 132 Ill. App. 3d 553, 87 Ill. Dec. 888, 478 N.E.2d 27 (1 Dist. 1985).

Probable cause for a search may be based on information supplied by an informant if the reliability of the informant has been previously established or independently corroborated. People v. Aureli, 99 Ill. App. 2d 349, 241 N.E.2d 694 (1 Dist. 1968).

Where police officer vouched for the past reliability of his informant and testified to circumstances corroborating the information he had received; that two people fitting the informer's description were seated in a yellow Ford, with a specific license number, at a specific address, the state complied with the requirements under Illinois law as to the showing of the probable cause under

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former Ill. Const. (1870), Art. II, § 2 (see now this section). People v. Atkins, 82 Ill. App. 2d 477, 227 N.E.2d 129 (1 Dist. 1967).

The proven past reliability of an informant plus the independent verification of all of the present information, except possession of narcotics by defendant, gave the arresting officers probable cause to believe that the final bit of information was correct, and the search and seizure of narcotics from defendant was proper. People v. McFadden, 32 Ill. 2d 101, 203 N.E.2d 888 (1965).

Where the reliability of the informer was established, affiant had a substantial basis for his belief of probable cause. People v. Williams, 27 Ill. 2d 542, 190 N.E.2d 303 (1963).

- Liquor in Automobile

After viewing open liquor in a car the officer had probable cause to arrest the defendants without a warrant, and a search of their persons and of the car was incident to said arrest. United States v. Freeman, 713 F. Supp. 1236 (N.D. Ill. 1989), aff'd, 921 F.2d 278 (7th Cir. 1990).

- Odor

Police officer's observation of the passenger in defendant's car bending over, along with the smell of alcohol, gave the police officer the right to have the passenger exit and to conduct a limited search once defendant had been lawfully pulled over. People v. Stroud, 189 Ill. App. 3d 1034, 137 Ill. Dec. 539, 546 N.E.2d 293 (4 Dist. 1989).

Although sufficient to justify the warrantless search of an automobile, having probable cause from the odor of burning cannabis will not alone justify an officer to enter and search a private residence. People v. Cohen, 146 Ill. App. 3d 618, 100 Ill. Dec. 166, 496 N.E.2d 1231 (2 Dist. 1986).

A police officer's detection of controlled substances by their smell has been held to be a permissible method of establishing probable cause, and this method of detection does not constitute an unconstitutional search. People v. Stout, 106 Ill. 2d 77, 87 Ill. Dec. 521, 477 N.E.2d 498 (1985).

- Reasonable Belief

Information that a fellow officer relayed to the police officer and that the apartment complex managers gave the police officer upon arriving at the apartment complex gave the officer reason to believe that defendant and defendant's cousin had broken into a particular unit in the complex and were burglarizing it. As a result, the police officer's resulting arrest of defendant did not violated defendant's rights to be free from unreasonable seizures under the Fourth Amendment and Ill. Const. art. I, § 6, as the emergency exception to the warrant requirement applied given that the police officer had reason to believe that defendant was in the unit committing a burglary, and meant that the fraudulent identification cards defendant produced for the police officer did not have to be suppressed. People v. Ferral, 397 Ill. App. 3d 697, 336 Ill. Dec. 800, 921 N.E.2d 414, 2009 Ill. App. LEXIS 1320 (2 Dist. 2009), appeal denied, 2010 Ill. LEXIS 624 (Ill. 2010).

Probable cause to arrest exists if the facts and circumstances within the arresting officer's knowledge and of which he had reasonably trustworthy information are sufficient to warrant a prudent person in believing that a suspect had committed or was committing an offense. White v. O'Leary, 742 F. Supp. 990 (N.D. Ill. 1990).

- Tape Recording

Whether tape recordings were obtained in a constitutionally permissible manner depends on the reasonableness of the police conduct; that reasonableness depends upon police motive and probable cause for having the tape made and not upon the quality of the tape. People v. Eddington, 47 Ill. App. 3d 388, 5 Ill. Dec. 790, 362 N.E.2d 103 (4 Dist. 1977).

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- Unreasonable Search

While the officers, based upon an informant's complaint that defendant was selling drugs, had grounds to justify conducting an investigatory stop of defendant, the officers lacked probable cause to search defendant incident to an arrest for violating the ordinance as they did not see defendant engage in any drug transaction and found nothing on defendant in a pat-down search before they arrested him for violating the ordinance. People v. Lee, 214 Ill. 2d 476, 293 Ill. Dec. 267, 828 N.E.2d 237, 2005 Ill. LEXIS 618 (2005).

Trial court improperly denied defendant's motion to quash arrest and suppress evidence because the police officer was not justified in conducting an investigatory stop where the officer did not actually see defendant place any objects in defendant's mouth or witness defendant commit any crimes. People v. Marchel, 348 Ill. App. 3d 78, 284 Ill. Dec. 432, 810 N.E.2d 85, 2004 Ill. App. LEXIS 441 (1 Dist. 2004).

Police officers lacked probable cause to seize defendant's computer in the absence of his consent or a warrant because the presence of bookmarks with references to teenagers in the computer and defendant's arrest for disorderly conduct were insufficient to warrant a person of reasonable caution to believe that the computer contained child pornography; consent given by defendant's father for seizure of the computer was ineffective where the father had no actual or apparent ownership interests in the computer. People v. Blair, 321 Ill. App. 3d 373, 254 Ill. Dec. 872, 748 N.E.2d 318, 2001 Ill. App. LEXIS 304 (1 Dist. 2001).

Because the search went beyond what was necessary to determine whether the object was a weapon, the officer had to have probable cause to search before he could manipulate the object in defendant's pocket and the circumstances independently did not give the officer probable cause to believe that the soft bulge in defendant's pocket was contraband as the officer did not see what the men exchanged and they were not in an inherently suspicious area. People v. Blake, 268 Ill. App. 3d 737, 206 Ill. Dec. 575, 645 N.E.2d 580 (2 Dist.), appeal denied, 161 Ill. 2d 530, 208 Ill. Dec. 363, 649 N.E.2d 419 (1995).

This section is concerned with unreasonable searches; the reasonableness of a search may, or may not, depend upon the existence of probable cause to make an arrest. People v. Boykin, 39 Ill. 2d 617, 237 N.E.2d 460 (1968).

Purpose

The purpose of this section and Ill. Rev. Stat., ch. 38 para. 108-3, which require that a complaint for a search warrant describe with particularity the place or person, or both, to be searched and the things to be seized is to prevent the issuance of general search warrants. People v. Wolski, 83 Ill. App. 3d 17, 38 Ill. Dec. 297, 403 N.E.2d 528 (2 Dist. 1980).

The purpose of this section is to more effectively protect the citizens of Illinois from both unreasonable interceptions of communications by eavesdropping devices or other means and unreasonable invasions of privacy. People v. Holliman, 22 Ill. App. 3d 95, 316 N.E.2d 812 (2 Dist. 1974).

While the constitutional limitation on searches must necessarily apply to all persons alike, it is incumbent upon us to remember that it was primarily intended as a shield to the innocent rather than as a refuge for the guilty. People v. Exum, 382 Ill. 204, 47 N.E.2d 56 (1943).

Reasonable Suspicion

Where an officer, during a traffic stop, noticed an incomplete 12-pack of beer in the car, the officer's questions as to whether any of the beer containers were open inside the vehicle and consent to search were reasonable because the officer had a reasonable, articulable suspicion of

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criminal activity to justify the questions after the traffic stop was complete based upon the missing beer bottles and the danger involved in drinking and driving. People v. Barker, 369 Ill. App. 3d 670, 311 Ill. Dec. 35, 867 N.E.2d 1021, 2007 Ill. App. LEXIS 2 (1 Dist. 2007).

- Dog Sniffing

Officer's prolonging of a traffic stop by about 10 minutes to have a drug dog sniff the car violated defendant's constitutional rights, because defendant's nervousness, heaving breathing, and right hand location were insufficient to give the officer a reasonable articulate suspicion to prolong the detention once the purpose of the traffic stop had been concluded. People v. Baldwin, 388 Ill. App. 3d 1028, 328 Ill. Dec. 683, 904 N.E.2d 1193, 2009 Ill. App. LEXIS 131 (3 Dist. 2009).

- Not Shown

Trial court should have granted defendant's motion to suppress in a case where defendant was convicted of violating the armed habitual criminal statute, 720 ILCS 5/24-1.7, based on two prior convictions and the gun that police officers found on defendant after the vehicle in which defendant was a passenger was stopped for failing to stop at a stop sign. The officers did not had neither the reasonable suspicion to search nor the probable cause to arrest required under the Fourth Amendment and Ill. Const. art. I, § 6 where defendant gave them absolutely no problems during the traffic stop and was not shown to be involved in any criminal activity, and the State could not justify the search on the ground that the area where the stop occurred was a high-crime area or due to the bulge in defendant's clothing. People v. Surles, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1284 (1 Dist. Dec. 21, 2011).

Trial court did not err by granting defendant's motion to suppress a weapon recovered during his arrest because the investigatory stop was not justified under 725 ILCS 5/107-14 and Ill. Const. art. I, § 6; defendant's flight from the officers was insufficient to establish a reasonable suspicion that defendant had committed, was committing, or was about to commit a crime. In addition, aside from the officer's unsubstantiated response to the State's question of whether the area was known to be a high crime area, no evidence was introduced concerning the level of crime in the area where defendant was stopped; because the police were not justified in temporarily detaining defendant, their subsequent search of defendant was not justified under 725 ILCS 5/108-1.01. People v. Harris, Ill. App. 3d , 354 Ill. Dec. 336, 957 N.E.2d 930, 2011 Ill. App. LEXIS 969 (1 Dist. 2011).

Exclusionary rule would have applied to bar evidence of defendant's revoked license, obtained as a result of an unlawful seizure, had defense counsel properly filed a motion to suppress evidence because the officer neither saw a traffic violation before the car stopped, nor had reasonable suspicion of criminal activity. People v. Marshall, Ill. App. 3d , Ill. Dec. , N.E.2d , 2010 Ill. App. LEXIS 1381 (1 Dist. Dec. 21, 2010).

Officer improperly conducted a stop of defendant because the officer failed to see any traffic violations during the 25 seconds that he saw the car traveling on the street, and defendant did not commit a parking infraction by stopping in the "no parking" zone because neither he nor the passenger left the car unoccupied. People v. Marshall, 399 Ill. App. 3d 626, 339 Ill. Dec. 387, 926 N.E.2d 862, 2010 Ill. App. LEXIS 228 (1 Dist. 2010).

Officer did not act on reliable information when arresting defendant, as the information received from the police dispatcher was not show to be based on reliable information and the officer's observations of defendant were insufficient to support an investigatory stop; while the officer testified that the officer decided to stop defendant based on defendant's body language, suggesting that defendant might flee, the predictive value of defendant's behavior was meager at best. People v. Linley, 388 Ill. App. 3d 747, 328 Ill. Dec. 131, 903 N.E.2d 791, 2009 Ill. App. LEXIS 63 (2 Dist. 2009).

Officers testified that they followed defendant for two hours and did not observe him commit an offense. Therefore, because the officers had no arrest warrant or search warrant and did not

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observe defendant commit an offense, including a traffic offense, a traffic stop was not justified at its inception under Ill. Const. Art. 1, § 6 and U.S. Const. Amend. IV. People v. Vasquez, 388 Ill. App. 3d 532, 327 Ill. Dec. 808, 902 N.E.2d 1194, 2009 Ill. App. LEXIS 54 (1 Dist. 2009).

State failed to present any evidence that established that defendant or his vehicle were unlicensed; therefore, a Terry stop was unreasonable under Ill. Const. Art. 1, § 6 and U.S. Const. Amend. IV, because the police failed to detain or stop defendant's vehicle in compliance with Prouse. People v. Vasquez, 388 Ill. App. 3d 532, 327 Ill. Dec. 808, 902 N.E.2d 1194, 2009 Ill. App. LEXIS 54 (1 Dist. 2009).

A police officer's testimony that defendant was walking across the parking lot of an apartment complex at 3:40 a.m. and that there had recently been car burglaries in the parking lot did not support a reasonable suspicion that defendant had committed or was about to commit a crime. The fact that defendant initially kept walking after the officer honked the squad car's horn and called to defendant was consistent with defendant's exercise of the right in the absence of reasonable suspicion to ignore the officer and go about one's business. People v. Kipfer, 356 Ill. App. 3d 132, 291 Ill. Dec. 996, 824 N.E.2d 1246, 2005 Ill. App. LEXIS 233 (2 Dist. 2005).

Identification testimony of two witnesses should have been suppressed in prosecution of defendant for burglary where it resulted from his illegal detention after a Terry stop unsupported by reasonable suspicion and in violation of defendant's right to be protected from unreasonable searches and seizures under Ill. Const. (1970), Art. 1, § 6 because the stop occurred two weeks after the burglary and was based upon information provided by a noneyewitness who did not provide any details as to the crime or the description of the offender. People v. Jackson, 348 Ill. App. 3d 719, 284 Ill. Dec. 752, 810 N.E.2d 542, 2004 Ill. App. LEXIS 532 (1 Dist. 2004).

Where an officer accelerated to catch up with defendant, placed his vehicle to the left rear of defendant's vehicle, and then slowed, effectively trapping defendant in the right lane as defendant came up behind a truck, the officer did not have reasonable grounds to stop defendant for following the truck too closely in violation of 625 ILCS 5/11-710(a). Because it was not against the manifest weight of the evidence for the trial court to have concluded that any noncompliance with the traffic laws resulted from the actions of the officer, the trial court properly concluded that there was no legal justification for the stop under U.S. Const., Amend. IV and Ill. Const., Art. I, § 6. People v. Phillips, 328 Ill. App. 3d 999, 263 Ill. Dec. 116, 767 N.E.2d 842, 2002 Ill. App. LEXIS 190 (1 Dist. 2002).

Police did not have a reasonable and articulable suspicion that defendant was carrying contraband; therefore, the trial court erred in denying the defendant's motion to suppress. People v. Anaya, 279 Ill. App. 3d 940, 216 Ill. Dec. 461, 665 N.E.2d 525 (4 Dist. 1996), appeal denied, 168 Ill. 2d 600, 219 Ill. Dec. 567, 671 N.E.2d 734 (1996).

- Shown

Traffic stop was justified because the officer testified he saw the air freshener as soon as he saw defendant's vehicle, it hung by a string, and the top was two to three inches below the bottom of the mirror; from defendant's sitting position, the officer believed it obstructed his view. The officer did not testify he pulled defendant over simply because he had an air freshener hanging from his rearview mirror. People v. Price, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1257 (4 Dist. Dec. 12, 2011).

Court erred in suppressing evidence because an officer had reasonable suspicion for a stop and probable cause to arrest defendant. The officer was informed of an attempted robbery, the location, and a physical description of the suspect; the officer saw a vehicle matching the description, and upon arriving at the crime scene with defendant, the two victims and two witnesses immediately identified defendant as the offender. People v. Maxey, Ill. App. 3d , 350 Ill. Dec. 963, 949 N.E.2d 755, 2011 Ill. App. LEXIS 534 (1 Dist. 2011).

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Court erred by granting defendant's motion to suppress because the officer properly stopped defendant; an officer saw defendant's vehicle was moving "a little fast" as it approached the intersection, at one point, all four tires passed over the fog line, and the officer wrote in the citation that the road conditions were dry with clear visibility. People v. Geier, 407 Ill. App. 3d 553, 348 Ill. Dec. 552, 944 N.E.2d 793, 2011 Ill. App. LEXIS 143 (2 Dist. 2011).

Upon learning from law enforcement records that the license of a car's registered owner had been revoked and visually confirming that the characteristics of the person driving the car matched a picture of the registered owner, an officer had a reasonable suspicion driver was violating 625 ILCS 5/6-303(a) and could conduct Terry stop even though the driver had a restricted driving permit. People v. Close, 389 Ill. App. 3d 228, 329 Ill. Dec. 147, 905 N.E.2d 985, 2009 Ill. App. LEXIS 188 (3 Dist. 2009).

Law enforcement officers are not required to determine or verify the scope of a restricted driving permit (RDP) before performing a traffic stop when a reasonable articulable basis exists to believe the license of the person behind the wheel is revoked; the mere existence of an RDP does not extinguish an officer's reasonable and articulable basis to believe the officer has witnessed a revoked driver traveling on a highway of the state in violation of the provisions of the Illinois Vehicle Code. People v. Close, 389 Ill. App. 3d 228, 329 Ill. Dec. 147, 905 N.E.2d 985, 2009 Ill. App. LEXIS 188 (3 Dist. 2009).

Totality of the circumstances supported a police officer's continued questioning and detention of defendant and other occupants of a vehicle after the officer issued a warning ticket for speeding to the vehicle's driver; the officer's suspicion of criminal activity was reasonable based on the fact that all of the occupants of the vehicle acted unusually nervous, that one occupant made a furtive movement by placing his hands under a coat, that the driver became noticeably more nervous when her prior arrests for drug offenses were broadcast on a police radio, and the fact that the officer's training indicated that Colorado, the home state of the vehicle and its occupants, was a hub state for drug distribution throughout the country. People v. Davenport, Ill. App. 3d , Ill. Dec. , N.E.2d , 2007 Ill. App. LEXIS 1421 (3 Dist. July 13, 2007).

Defendant's conflicting responses to police questioning regarding the ownership of the toolboxes defendant was carrying, together with the totality of circumstances, including defendant's failure to respond to a question about what the markings on the toolboxes meant, gave rise not only to a reasonable suspicion of criminal activity, but also gave the officers probable cause to arrest defendant. People v. Richardson, 376 Ill. App. 3d 612, 315 Ill. Dec. 303, 876 N.E.2d 303, 2007 Ill. App. LEXIS 1021 (1 Dist. 2007).

Where police received a tip that defendant had purchased methamphetamine ingredients, observed defendant's truck change lanes without signaling and weave across the centerline, and observed fuel and batteries in the truck, the officer had probable cause to initiate the traffic stop based upon the two traffic violations, and the officer's questioning was reasonable because the officer had a reasonable and articulable suspicion that criminal activity may have been afoot based on police observations and the informant's tip. People v. Reatherford, 345 Ill. App. 3d 327, 280 Ill. Dec. 415, 802 N.E.2d 340, 2003 Ill. App. LEXIS 1575 (4 Dist. 2003), appeal denied, 208 Ill. 2d 551, 284 Ill. Dec. 345, 809 N.E.2d 1291 (2004).

Drug Enforcement Agency (DEA) officers at airport acted reasonably in moving defendant and his luggage to the DEA office, given the reasonable articulable suspicion defendant was carrying illegal drugs (he was on a flight frequented by drug traffickers, acted nervous and gave conflicting answers to questions), as well as his refusal to provide any identification and lack of other means to determine content of luggage where defendant claimed he did not know combination to lock. People v. Evans, 296 Ill. App. 3d 1, 228 Ill. Dec. 270, 689 N.E.2d 142 (1 Dist. 1997).

Scope

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This section does not grant greater protection from warrantless arrests than does the Fourth Amendment. People v. Williams, 275 Ill. App. 3d 249, 211 Ill. Dec. 688, 655 N.E.2d 1071 (1 Dist. 1995), appeal denied, 164 Ill. 2d 581, 214 Ill. Dec. 330, 660 N.E.2d 1279 (1995).

Search

There is no basis to claim that a dog sniff is illegal merely because officers lacked specific and articulable facts before calling a canine unit. To the extent that People v. Cox, 202 Ill. 2d 462 (2002) holds otherwise, Cox is now expressly overruled. People v. Bew, 228 Ill. 2d 122, 319 Ill. Dec. 878, 886 N.E.2d 1002, 2008 Ill. LEXIS 291 (2008).

Trial court erred in denying defendant's motion to suppress evidence. Despite the fact that defendant signed a mandatory supervised release (MSR) agreement that stated that he consented to a search of his person, property, or residence, reasonable suspicion pursuant to the Fourth Amendment was the appropriate threshold for such searches. This is especially true since MSR was a mandatory part of his sentence and the search involved an intrusion into his residence, which meant the trial court had to consider at a new suppression hearing whether reasonable suspicion supported the search that occurred. People v. Wilson, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 716 (1 Dist. July 21, 2005).

Under case law interpreting U.S. Const. Amend. IV, the police officer's warrantless search of the passenger compartment of defendant's vehicle while defendant was seated in the patrol car was not unreasonable, and it, therefore, was reasonable under Ill. Const. Art. I, § 6; the officer could search the passenger compartment, as the officer had validly arrested defendant, and defendant had recently occupied the vehicle. People v. Dieppa, 357 Ill. App. 3d 847, 294 Ill. Dec. 458, 830 N.E.2d 870, 2005 Ill. App. LEXIS 594 (2 Dist. 2005), appeal denied, 217 Ill. 2d 575, 300 Ill. Dec. 370, 844 N.E.2d 42 (2005).

Where the police officer conducted a warrantless search of defendant's passenger compartment while defendant was seated in the patrol car, the search did not violate Ill. Const. Art. I, § 6; the officer did not artificially create a situation to fit within an exception to the warrant requirement, as defendant exited the car before the officer actually confronted defendant but after the officer acquired reasonable grounds for the stop, which occurred when the officer witnessed defendant commit traffic violations. People v. Dieppa, 357 Ill. App. 3d 847, 294 Ill. Dec. 458, 830 N.E.2d 870, 2005 Ill. App. LEXIS 594 (2 Dist. 2005), appeal denied, 217 Ill. 2d 575, 300 Ill. Dec. 370, 844 N.E.2d 42 (2005).

- In General

A search implies a prying into hidden places for that which is not open to view, or an invasion and quest with some sort of force, either actual or constructive. People v. McCracken, 30 Ill. 2d 425, 197 N.E.2d 35 (1964).

This section and Ill. Const. (1970), Art. I, § 10 do not prohibit all searches, but only those which are unreasonable. People v. Harvey, 27 Ill. 2d 282, 189 N.E.2d 320 (1963).

The guarantee of this section is not against all searches and seizures, but only against unreasonable search and seizure, and does not grant immunity from search upon a lawful arrest. People v. Ford, 356 Ill. 572, 191 N.E. 315 (1934); People v. Dalpe, 371 Ill. 607, 21 N.E.2d 756 (1939); People v. Tabet, 402 Ill. 93, 83 N.E.2d 329 (1948); People v. Exum, 382 Ill. 204, 47 N.E.2d 56 (1943); People v. McCracken, 30 Ill. 2d 425, 197 N.E.2d 35 (1964); People v. McIntyre, 15 Ill. 2d 350, 155 N.E.2d 45 (1958); People v. Edge, 406 Ill. 490, 94 N.E.2d 359 (1950).

The constitutional prohibition does not extend to all searches and seizures, but is only a guard or shield against unreasonable ones. People v. Lind, 370 Ill. 131, 18 N.E.2d 189 (1938).

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- Ancillary Searches

The arrest and search of defendant's person outside his hotel, prior to the search of his apartment, was proper, and since nothing was obtained during this search, it was difficult to see how defendant could have been prejudiced thereby; substantially the same could be said concerning the search of defendant's brother's premises. Whether these ancillary searches were valid or not was of no concern and could be regarded as independent transactions not requiring invalidation of the subsequent proper search of the defendant's apartment pursuant to a valid warrant. People v. Serrano, 32 Ill. 2d 84, 203 N.E.2d 885 (1965).

- Automobiles

Stop of defendant's automobile did not violate Ill. Const. Art. I, § 6, because police had received an anonymous tip which described specific criminal activity that was to take place at a specific location, and which described a specific type of vehicle which would be involved in the activity, and this information was corroborated by officers' observations, so the officers had reasonable suspicion to conduct an investigatory stop of the vehicle. People v. Ledesma, 206 Ill. 2d 571, 276 Ill. Dec. 900, 795 N.E.2d 253, 2003 Ill. LEXIS 1409 (2003), overruled on other grounds by People v. Pitman, 211 Ill. 2d 502, 286 Ill. Dec. 36, 813 N.E.2d 93 (2004).

The prohibition against unreasonable searches and seizures contained within the Illinois Constitution does not require a police officer to tell a stopped motorist that he is free to go before the officer may ask the motorist for consent to search his vehicle. People v. Brownlee, 293 Ill. App. 3d 315, 227 Ill. Dec. 692, 687 N.E.2d 1174 (4 Dist. 1997).

Defendant did not have permission of the owner to possess the stolen vehicle, and thus defendant could not challenge the search of the vehicle. People v. Allen, 268 Ill. App. 3d 279, 206 Ill. Dec. 258, 645 N.E.2d 263 (1 Dist. 1994), appeal denied, 161 Ill. 2d 530, 208 Ill. Dec. 363, 649 N.E.2d 419 (1995).

Written evidence of standardized police procedures, detailing when an inventory search of a vehicle is proper, is necessary for such searches to be valid. People v. Krueger, 268 Ill. App. 3d 190, 205 Ill. Dec. 851, 643 N.E.2d 872 (4 Dist. 1994), appeal denied, 161 Ill. 2d 534, 208 Ill. Dec. 365, 649 N.E.2d 421 (1995).

Lawful custody of an automobile does not of itself dispense with constitutional requirements of searches thereafter made of it. People v. Davis, 93 Ill. App. 3d 217, 48 Ill. Dec. 675, 416 N.E.2d 1197 (1 Dist. 1981).

-- Passengers

Defendant's motion to suppress search of defendant who was a passenger in a vehicle whose driver was arrested was denied; as the search was incident to the driver's arrest. Once the officers lawfully placed the driver under arrest, they needed no further justification for searching the passenger compartment of his automobile and the contents in it, including defendant's jacket. People v. Morales, 343 Ill. App. 3d 987, 279 Ill. Dec. 183, 799 N.E.2d 986, 2003 Ill. App. LEXIS 1342 (4 Dist. 2003), appeal denied, 207 Ill. 2d 621, 283 Ill. Dec. 139, 807 N.E.2d 980 (2004).

- Common Area

Where police officers were in a common corridor serving three or four apartments on the second floor of a hotel, and where the police officers had sufficient information prior to their arrival at the hotel upon which to make an arrest and conduct a search of defendant's apartment, the admission of the police officers to the common corridor by the hotel clerk did not violate defendant's right against an unreasonable search. People v. Hyman, 97 Ill. App. 2d 451, 240 N.E.2d 206 (1 Dist. 1968).

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- Contemporaneous Searches

Where officer had previously known all of the men who were seen and found at the location on the day in question, and it was apparent after the arrest of the others that the laws relating to policy (see now 720 ILCS 5/28-1 et seq.) were being violated, and the officer had seen defendant enter the basement door from which the first three men arrested had emerged with policy slips in their possession, and, knowing the association of the men, it was reasonable for him to believe that defendant was likewise implicated and that the premises housed things connected with the crime; therefore, the arrests of the defendants without warrants were lawful and the evidence obtained from the contemporaneous searches, both of the premises and their persons, was lawfully seized and properly admitted. People v. McGowan, 415 Ill. 375, 114 N.E.2d 407 (1953).

- Dog Sniffing

A police officer did have legal justification to call a canine unit to conduct an exterior canine sniff of the defendant's vehicle where: (1) the officer stopped the defendant's vehicle after observing that it did not have a rear registration light; and (2) when the officer spoke with the defendant during the stop, he did not smell marijuana in the car; but (3) the officer nevertheless called for a canine unit, which arrived in about 15 minutes, while the officer was still writing a traffic ticket; and (4) the drug dog alerted to the defendant's vehicle and a subsequent search discovered marijuana in the vehicle and on the defendant's person. People v. Cox, 318 Ill. App. 3d 161, 251 Ill. Dec. 133, 739 N.E.2d 1066, 2000 Ill. App. LEXIS 954 (5 Dist. 2000), cert. denied, 539 U.S. 937, 123 S. Ct. 2574, 156 L. Ed. 2d 622 (2003).

To conduct a canine sniff, the government must have a reasonable suspicion of criminal activity, based upon articulable facts. People v. Cox, 318 Ill. App. 3d 161, 251 Ill. Dec. 133, 739 N.E.2d 1066, 2000 Ill. App. LEXIS 954 (5 Dist. 2000), cert. denied, 539 U.S. 937, 123 S. Ct. 2574, 156 L. Ed. 2d 622 (2003).

A canine sniff may constitute a search under Ill. Const., Art. I, § 6. People v. Cox, 318 Ill. App. 3d 161, 251 Ill. Dec. 133, 739 N.E.2d 1066, 2000 Ill. App. LEXIS 954 (5 Dist. 2000), cert. denied, 539 U.S. 937, 123 S. Ct. 2574, 156 L. Ed. 2d 622 (2003).

Where by informing defendant of their intent to subject his luggage to a canine sniff test and to seek a search warrant if the test were positive, the police officers merely and properly apprised defendant of his legal status with respect to his luggage. People v. Price, 195 Ill. App. 3d 701, 142 Ill. Dec. 459, 552 N.E.2d 1200 (1 Dist. 1990).

- Duration

Where the subject of the arrest warrant was readily arrested and the evidence observed was in plain view, 71 minutes was not a reasonable amount of time for the police to remain in the apartment to carry out their duties. People v. Coleman, 194 Ill. App. 3d 336, 141 Ill. Dec. 217, 550 N.E.2d 1263 (2 Dist. 1990).

A search which lasted for three hours was not unreasonable. People v. Serrano, 32 Ill. 2d 84, 203 N.E.2d 885 (1965).

The execution of a search pursuant to warrant can have no exact time limitations placed upon it. People v. Serrano, 32 Ill. 2d 84, 203 N.E.2d 885 (1965).

- Incident to Arrest

Defendant was not entitled to have evidence suppressed that was found as a result of defendant's arrest after an anonymous tipster informed police that defendant had an outstanding warrant for the failure to pay child support and defendant was charged with unlawful possession of less than 15 grams of a controlled substance following a search of defendant's luggage at the time of defendant's arrest. Defendant rights to be free of unreasonable searches and seizures

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under the Fourth Amendment, U.S. Const. amend. V, and Ill. Const. art. I, § 6 were not violated because the search was reasonable pursuant to the exception against warrantless searches for searches incident to a lawful arrest, especially since defendant was a known gang member and the search was thus necessary to promote officer safety. People v. Cregan, Ill. App. 3d , Ill. Dec. , 961 N.E.2d 926, 2011 Ill. App. LEXIS 1219 (4 Dist. 2011).

Because the amount of time that passed and defendant's proximity to where the drugs were found rendered reasonable the inference that defendant possessed the drugs, defendant's arrest based on the drugs found during a perimeter search was proper and the search incident to that arrest was valid, and defendant's conviction for possession of a controlled substance with intent to deliver, 720 ILCS 570/401(c)(2), was affirmed. People v. Holman, 402 Ill. App. 3d 645, 344 Ill. Dec. 490, 937 N.E.2d 196, 2010 Ill. App. LEXIS 579 (2 Dist. 2010).

In prosecution for possession of controlled substance, conviction was not tainted by attorney's failure to make motion to quash arrest and suppress evidence, where motion would have been denied in any event, as the officer who arrested defendant after seeing that defendant and the driver were not wearing seatbelts expeditiously checked whether defendant had any outstanding warrants, arrested defendant when he learned defendant had a warrant outstanding, and was authorized to search the passenger compartment of the vehicle pursuant to the lawful arrest that had been made, which resulted in the cocaine being found in the vehicle's center console. People v. Bailey, 375 Ill. App. 3d 1055, 314 Ill. Dec. 575, 874 N.E.2d 940, 2007 Ill. App. LEXIS 1008 (1 Dist. 2007), aff'd, 2009 Ill. LEXIS 183 (Ill. 2009).

Denial of defendant's motion to suppress items seized during a search incident to defendant's arrest was upheld after the appellate court noted that all of the events happened during an otherwise routine traffic stop during which defendant's car was not moved and that the record suggested that the entire interaction only lasted a matter of minutes, which was not an unreasonable period of time. People v. Neff, 369 Ill. App. 3d 358, 310 Ill. Dec. 929, 867 N.E.2d 980, 2006 Ill. App. LEXIS 1145 (1 Dist. 2006).

Where a weapon was found during a search of the vehicle that was conducted after the passenger was arrested for violating probation, the search was a valid search incident to lawful arrest under Ill. Const. Art. I, § 6; the arrest of the passenger was valid under 730 ILCS 110/11, and search incident to lawful arrest principles applied even if criminal activity had not caused the arrest. People v. Harris, 364 Ill. App. 3d 1037, 302 Ill. Dec. 484, 848 N.E.2d 1048, 2006 Ill. App. LEXIS 422 (1 Dist. 2006).

Search of defendant's vehicle incident to his arrest on a civil body attachment was permissible even though he had not committed any traffic offense, was not engaged in the commission of any criminal offense, and the officers had no reason to believe he was attempting to conceal a weapon, to escape detention, or to destroy evidence of a crime. People v. Miller, 354 Ill. App. 3d 476, 290 Ill. Dec. 149, 820 N.E.2d 1216, 2004 Ill. App. LEXIS 1588 (4 Dist. 2004), appeal denied, 214 Ill. 2d 544, 294 Ill. Dec. 7, 830 N.E.2d 7 (2005).

Because police officers had probable cause to arrest defendant before they began their consensual search of his personal belongings for drugs or weapons, the officers could lawfully perform a non-consensual search and seizure of items on or near defendant, in order to prevent his destruction or concealment of incriminating evidence. People v. Ott, 209 Ill. App. 3d 783, 153 Ill. Dec. 877, 567 N.E.2d 1104 (1 Dist.), cert. denied, 139 Ill. 2d 601, 159 Ill. Dec. 113, 575 N.E.2d 920 (1991).

A search without a warrant is reasonable if it is incident to a lawful arrest. People v. Robinson, 62 Ill. 2d 273, 342 N.E.2d 356 (1976).

An arrest for a traffic violation does not, itself, warrant nor justify a search of the driver, and portions of his vehicle, unless surrounding circumstances reasonably indicate that the police may be dealing with more than an ordinary traffic violation. People v. Ricketson, 129 Ill. App. 2d 365, 264 N.E.2d 220 (2 Dist. 1970).

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A search, incidental to an arrest, is authorized when it is reasonably necessary to protect the arresting officer from attack, to prevent escape, or to discover the fruits of a crime; however, the extent of the search without a warrant, as an incident to a lawful arrest, must be limited, persons are secure against unreasonable warrantless searches. People v. Ricketson, 129 Ill. App. 2d 365, 264 N.E.2d 220 (2 Dist. 1970).

The Fourth Amendment proscribes searches incidental to an arrest once they go beyond the area from which the person arrested might obtain weapons or evidentiary items. People v. Ricketson, 129 Ill. App. 2d 365, 264 N.E.2d 220 (2 Dist. 1970).

Where the police chief entered the premises where the criminal offense of keeping a book for the registration of bets was being committed in his presence, he had a right to arrest defendant without a warrant and, having arrested him, had a right to search the immediate premises and the defendant's person and seize any evidence which was found on that search; since the articles in questions were properly obtained as an incident to defendant's arrest it followed that they were properly admitted in evidence in the prosecution for bookmaking (see now 720 ILCS 5/28-1 et seq.). People v. McIntyre, 15 Ill. 2d 350, 155 N.E.2d 45 (1958).

When an arrest is made by an officer who has reasonable grounds for believing the person arrested is implicated in the crime, the officer has the right to arrest without a warrant and to search the party arrested without a search warrant, inasmuch as the guarantee of this section is not against all search and seizure but against unreasonable search and seizure, and does not extend to immunity from search as an incident to a valid arrest. People v. McGowan, 415 Ill. 375, 114 N.E.2d 407 (1953).

Where police arrested defendant who had been asleep on his bed and in the course of a conversation with the police officer the officer raised the mattress from the bed and found a box containing ninety-five capsules of what was later ascertained to be heroin and defendant admitted the box of capsules belonged to him, search was held to be reasonable. People v. Tillman, 1 Ill. 2d 525, 116 N.E.2d 344 (1953).

The guarantee made by this section that all persons shall be safe in their homes and not subject to unreasonable search and seizure does not grant immunity from a search and seizure upon a lawful arrest. Where a crime has, in fact, been committed and an arrest is made by an officer who has reasonable grounds for believing the person arrested is implicated in the crime, such officer has a right to search the person arrested without a search warrant; in such case the right of search and seizure is incidental to the arrest. People v. Davies, 354 Ill. 168, 188 N.E. 337 (1933).

- Insurance Contract

In indemnity policy, agreement that an insurance company shall have the right and opportunity at all reasonable times to examine the books of the assured employer, so far as they relate to the compensation paid to the employees resulted in a waiver by the employer of the right to insist upon the protection afforded to the employer by this section, even if there would have been a violation of such constitutional provision without the stipulation in question; the employer was therefore estopped from evading the obligations of its contract by insisting upon the protection given by this section. Swedish-American Tel. Co. v. Fidelity & Cas. Co., 208 Ill. 562, 70 N.E. 768 (1904).

- Interruption of Search

A brief interruption or a temporary suspension of a search does not transform one continuous search into two separate searches. People v. Logsdon, 208 Ill. App. 3d 989, 153 Ill. Dec. 788, 567 N.E.2d 746 (5 Dist.), cert. denied, 139 Ill. 2d 601, 159 Ill. Dec. 113, 575 N.E.2d 920 (1991).

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Where the investigating officer briefly interrupted his search to call for backup and to reach the assistant state's attorney, the call for backup clearly demonstrated an intent to keep control of the house and maintain a police presence there, and the call to the assistant state's attorney surely revealed his intent to take possession of the contraband, only one search occurred, albeit temporarily suspended. People v. Logsdon, 208 Ill. App. 3d 989, 153 Ill. Dec. 788, 567 N.E.2d 746 (5 Dist.), cert. denied, 139 Ill. 2d 601, 159 Ill. Dec. 113, 575 N.E.2d 920 (1991).

- Inventory Exception

The inventory search of the defendant's car was a reasonable one and was therefore not in violation of this section. People v. Clark, 65 Ill. 2d 169, 2 Ill. Dec. 578, 357 N.E.2d 798 (1976).

- No-Knock

Since the defendant was not present and no property damage was incurred as a result of the unannounced entry, the defendant's constitutional rights were not violated by the execution of a no-knock search warrant. People v. Hancock, 301 Ill. App. 3d 786, 235 Ill. Dec. 82, 704 N.E.2d 431 (4 Dist. 1998), appeal denied, 183 Ill. 2d 579, 238 Ill. Dec. 716, 712 N.E.2d 820 (1999).

Subdivision (b)(1) of 725 ILCS 5/108-8 violates constitutional guarantees requiring searches and seizures be reasonable; it does not require reasonable belief that an occupant will use a firearm against officers if they proceed with the ordinary announcements. People v. Wright, 183 Ill. 2d 16, 231 Ill. Dec. 908, 697 N.E.2d 693 (1998).

Subdivision (b)(2) of 725 ILCS 5/108-8 is unconstitutional as it authorizes no-knock entries based solely on an occupant's prior possession of firearms. People v. Krueger, 175 Ill. 2d 60, 221 Ill. Dec. 409, 675 N.E.2d 604 (1996), cert. denied, 522 U.S. 809, 118 S. Ct. 49, 139 L. Ed. 2d 14 (1997).

- Physical Examination

The courts have never looked upon a physical examination to determine the fitness of a person for a particular service as a search, within the meaning of this section. People ex rel. Wayman v. Steward, 249 Ill. 311, 94 N.E. 511 (1911).

- Plain Touch

The plain touch doctrine does not permit the search to exceed the initial intrusion; as soon as the officer is satisfied that an object is not a weapon, a further search to determine the nature or identity of that object is impermissible. People v. Mitchell, 165 Ill. 2d 211, 209 Ill. Dec. 41, 650 N.E.2d 1014 (1995).

The "plain touch" doctrine, merely substituting the officer's sense of touch for the officer's sense of sight, does not violate the guarantees of this section. People v. Mitchell, 165 Ill. 2d 211, 209 Ill. Dec. 41, 650 N.E.2d 1014 (1995).

- Plain View

There was no search made, and consequently no illegal seizure of evidence, when the village official, upon entering the premises, merely viewed and photographed refuse, junk vehicles and garbage which he had already observed from public places. Village of Bridgeview v. Slominski, 74 Ill. App. 3d 1, 29 Ill. Dec. 944, 392 N.E.2d 641 (1 Dist. 1979).

Despite the fact that their search warrant was invalid, where police officers reasonably believed that they were in close pursuit of an armed man who had committed a violent offense of a particularly flagrant type, they were lawfully present in his garage while their colleagues attempted to secure a warrant, and they were not required to overlook the stolen car which was

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before them in plain view when they had removed the tarpaulins in their search for defendant. People v. Barbee, 35 Ill. 2d 407, 220 N.E.2d 401 (1966).

Where the articles were in plain and open view and were observed by police officers under suspicious circumstances, it was not a search nor an unreasonable seizure for the officers to make a reasonable investigation thereof. People v. McCracken, 30 Ill. 2d 425, 197 N.E.2d 35 (1964).

Evidence used against defendant which had been found left in open view in defendant's car three to four minutes after he fled to evade apprehension, which had been in the exclusive and immediate control of the defendant, and used against him at trial, was not obtained by an unlawful search. People v. Harper, 26 Ill. 2d 85, 185 N.E.2d 865 (1962).

- Police Officers

In executing a search or seizure, a police officer may properly rely on information obtained from other police officers, even if he is personally unaware of the underlying facts. People v. Price, 195 Ill. App. 3d 701, 142 Ill. Dec. 459, 552 N.E.2d 1200 (1 Dist. 1990).

- Prior Restraint

A search and seizure was deemed constitutionally improper because it was a general search which acted as a prior restraint on the dissemination of materials arguably within First Amendment protection; thus, the evidence used to convict defendant was improperly obtained and should have been suppressed from trial. People v. Eagle Books, Inc., 151 Ill. 2d 235, 176 Ill. Dec. 852, 602 N.E.2d 798 (1992).

- Private Search

Where defendant's girlfriend discovered child pornography at defendant's home, seized it, and presented it to the police, where defendant was subsequently charged with unlawful possession of child pornography in violation of 720 ILCS 5/11-20.1(a)(6), and where defendant moved to suppress the evidence contending that it was illegally obtained in violation of his rights under the Fourth Amendment and Ill. Const. art. I, § 6, the trial court did not err in denying defendant's suppression motion because defendant's girlfriend was not acting as an agent of the state when she seized the unlawful materials. When defendant's girlfriend presented the materials to the police, she had already frustrated defendant's expectation of privacy, and there was no evidence to support defendant's contention that the scope of the investigation of the materials by the police exceeded his girlfriend's prior private search; rather, it merely confirmed the results of the private search. People v. Clendenin, 238 Ill. 2d 302, 345 Ill. Dec. 467, 939 N.E.2d 310, 2010 Ill. LEXIS 1071 (2010).

- Production of Documents

Two guidelines have been followed by the courts in determining whether the intrusion into a person's privacy is a reasonable intrusion and whether the subpoena is valid: (1) the documents sought must be relevant to the inquiry and; (2) a specification of the documents to be produced must be adequate but not excessive for the purpose of the relevant inquiry; only after applying these guidelines should a court determine whether a valid subpoena has been issued which is able to withstand a motion to suppress. People v. Jackson, 116 Ill. App. 3d 430, 72 Ill. Dec. 153, 452 N.E.2d 85 (1 Dist. 1983).

Subpoena duces tecum held to be unreasonably broad in its demand and too general in its terms. People v. Davis, 39 Ill. 2d 325, 235 N.E.2d 634 (1968).

A subpoena duces tecum which is unreasonably broad in its demand and general in its terms constitutes an unreasonable search and seizure. People v. Allen, 410 Ill. 508, 103 N.E.2d 92 (1951); People v. Lurie, 39 Ill. 2d 331, 235 N.E.2d 637 (1968).

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The permissible breadth of a subpoena duces tecum is to be measured by the scope of the problem under investigation, and a subpoena which is not unwarrantably broad when measured by that standard will be sustained. People v. Allen, 410 Ill. 508, 103 N.E.2d 92 (1951).

Where the order was general and not limited to the production of documents relevant and pertinent to the issues in the case, it was violative of the constitutional rights of appellant to be secure against unreasonable search and seizure of his papers and effects. Red Star Lab. Co. v. Pabst, 359 Ill. 451, 194 N.E. 734 (1935).

A subpoena duces tecum to produce the books, records, and correspondence of a union, served upon the president of the union, was neither suitably specific nor properly limited in its scope. People v. Reynolds, 350 Ill. 11, 182 N.E. 754 (1932).

Order for the production of books and records pursuant to 735 ILCS 5/8-402 which left to the discretion of defendant's attorneys to determine what they would or would not inspect, and what was or was not material to the issue, was an invasion of the constitutional rights of plaintiffs. Carden v. Ensminger, 329 Ill. 612, 161 N.E. 137 (1928).

- Reasonable

Defendant's rights were not violated in a case where defendant's neighbor, who had permission to enter defendant's house, found what appeared to be child pornography on defendant's computer discs and turned them over to police, who viewed the discs and confirmed the neighbor's discovery. The search by police was reasonable pursuant to Ill. Const. art. I, § 6 because the neighbor was not acting on behalf of the State when the neighbor gave the discs to police and the officers who viewed the discs only viewed them long enough to confirm the neighbor's discovery. People v. Clendenin, 395 Ill. App. 3d 412, 332 Ill. Dec. 889, 913 N.E.2d 1179, 2009 Ill. App. LEXIS 781 (2 Dist. 2009).

Atomic absorption gunshot residue test administered by the police, which required hand swabbing, was so minor an imposition that defendant suffered no true humiliation or affront to defendant's dignity and thus, the test was not an unreasonable search and seizure. People v. Allen, Ill. App. 3d , Ill. Dec. , N.E.2d , 2007 Ill. App. LEXIS 1060 (1 Dist. Sept. 28, 2007).

Even though there may have been more than one DEA agent in the near vicinity, that fact could not lead to the conclusion that defendant's consent to search her suitcase after disembarking from an airplane was involuntary; moreover, even if her consent was not voluntary, the agents had a reasonable and articulable suspicion based on defendant's answers, conduct, and explanation which would have been sufficient to detain her and search the suitcase. People v. Carter, 288 Ill. App. 3d 658, 224 Ill. Dec. 226, 681 N.E.2d 541 (1 Dist. 1997).

Where defendant and his companion fit the profile of drug carriers, were answering officer's questions conflictingly and exhibited nervous behavior, officers had articulable basis for searching defendant's duffle bag. People v. Olivarez, 279 Ill. App. 3d 90, 215 Ill. Dec. 759, 664 N.E.2d 156 (1 Dist. 1996).

Where the police did have reason to suspect defendant's involvement in criminal activity, their pat-down of him was proper. People v. Allen, 268 Ill. App. 3d 279, 206 Ill. Dec. 258, 645 N.E.2d 263 (1 Dist. 1994), appeal denied, 161 Ill. 2d 530, 208 Ill. Dec. 363, 649 N.E.2d 419 (1995).

Where an arrest warrant served upon defendant charged that defendant unlawfully received three vacuum cleaners and a typewriter or appliances stolen more than two months before the arrest, and defendant was arrested in the kitchen of his five-room one-story residence, the police officers then searched the kitchen, found nothing, and after walking through two rooms, the dining room and living room, searched a front hall closet, where they found diamond rings taken in a recent robbery, the subject of the defendant's motion to suppress, the search was reasonable, and the

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trial court was in error in sustaining defendant's motion to suppress. People v. Panozzo, 48 Ill. App. 2d 385, 199 N.E.2d 259 (1 Dist. 1964).

- Reasonableness

Any search, even one conducted pursuant to a warrant, must be reasonable in its scope and intensity. People v. Brown, 153 Ill. App. 3d 307, 106 Ill. Dec. 99, 505 N.E.2d 405 (3 Dist. 1987).

There is no uniform rule for determining the reasonableness of a search: the determination of that question must depend upon the facts of a given case. People v. Seymour, 84 Ill. 2d 24, 48 Ill. Dec. 548, 416 N.E.2d 1070 (1981).

The guiding principle governing searches and seizures is reasonableness; whether the police have acted reasonably depends on the circumstances of each case. People v. Davis, 93 Ill. App. 3d 217, 48 Ill. Dec. 675, 416 N.E.2d 1197 (1 Dist. 1981).

The fact that the police may have the opportunity to obtain a search warrant prior to the search does not render the search illegal, because the relevant test is not whether it is reasonable to procure a search warrant, but whether the search itself is reasonable. People v. Jones, 38 Ill. 2d 427, 231 N.E.2d 580 (1967).

- Scope

After properly stopping defendant for having a loud muffler in violation of 625 ILCS 5/12-602, the seizure became unreasonable in violation of Ill. Const., Art. I, § 6 when the officer asked defendant to get out of the car after the officer returned defendant's license and insurance cards and issued a warning to defendant regarding the muffler violation; the trial court properly granted defendant's motion to suppress pursuant to 725 ILCS 5/114-12(b), as the stop exceeded its initial scope when the officer asked defendant to get out of the vehicle and asked if defendant had anything on defendant's person about which the officer should have known. People v. Miller, 345 Ill. App. 3d 836, 281 Ill. Dec. 206, 803 N.E.2d 610, 2004 Ill. App. LEXIS 35 (4 Dist. 2004), appeal denied, 209 Ill. 2d 594, 286 Ill. Dec. 169, 813 N.E.2d 226 (2004), cert. denied, 543 U.S. 1015, 125 S. Ct. 607, 160 L. Ed. 2d 484 (2004).

- Strip Searches

Strip search of defendant did not violate his constitutional rights, considering (1) the scope of the intrusion, (2) the manner in which it was conducted, (3) the justification for initiating it, and (4) the place in which it was conducted, because he was about to be placed in a jail's general population. People v. Johnson, 334 Ill. App. 3d 666, 268 Ill. Dec. 506, 778 N.E.2d 772, 2002 Ill. App. LEXIS 986 (4 Dist. 2002), appeal denied, 203 Ill. 2d 558, 273 Ill. Dec. 141, 788 N.E.2d 732 (2003).

By approving a strip search incident to the custodial arrest of the defendant in one case, the court did not mean to permit the intensive intrusion of a strip search into one's privacy in all custodial arrests. People v. Seymour, 84 Ill. 2d 24, 48 Ill. Dec. 548, 416 N.E.2d 1070 (1981).

- Subsequent to Arrest

The proper inquiry into whether a search subsequent to arrest is valid, is whether there was probable cause to arrest the defendant before the search, and the officers' subjective views as to whether the defendant was actually under arrest are not controlling or dispositive. People v. Ott, 209 Ill. App. 3d 783, 153 Ill. Dec. 877, 567 N.E.2d 1104 (1 Dist.), cert. denied, 139 Ill. 2d 601, 159 Ill. Dec. 113, 575 N.E.2d 920 (1991).

- Unreasonable

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Trial court properly granted defendant's motion to suppress the evidence police found that resulted from the search of the vehicle defendant was driving after that vehicle was stopped for a burned out license plate light; the officer's questioning of defendant exceeded that of a permissible Terry stop because the questioning showed that police were interested in drug interdiction, which was unrelated to the stop of the vehicle for the burned out license plate light. People v. Matthews, 357 Ill. App. 3d 1062, 294 Ill. Dec. 677, 831 N.E.2d 627, 2005 Ill. App. LEXIS 562 (3 Dist. 2005), appeal denied, 217 Ill. 2d 582, 300 Ill. Dec. 372, 844 N.E.2d 44 (2005).

Where the police officers searched through photo albums and personal papers, places where a stereo cartridge could not reasonably be expected to be found, and failed to look in the most obvious location for the cartridge among the other stereo equipment, the search was unreasonable in both scope and intensity and thus became an unacceptable general search. People v. Brown, 153 Ill. App. 3d 307, 106 Ill. Dec. 99, 505 N.E.2d 405 (3 Dist. 1987).

Where patrolmen attached to the state's attorney's office and laborers from town water department partially demolished a building in search of water allegedly stolen from town, this constituted an unlawful and unreasonable search and seizure. People v. Kraus, 377 Ill. 539, 37 N.E.2d 182 (1941).

Beer bottler's arrest and conviction for possession of bottles owned by a brewing company, pursuant to a statute that authorized brewing companies to swear out warrants for the search and seizure of the company's bottles, wherever those bottles were located, was unlawful because the statute at issue violated constitutional protections against unreasonable searches, found at Ill. Const. of 1870, Art. II, § 6 (now Ill. Const. (1970), Art. I, § 6), and special laws found at Ill. Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13). Lippman v. People, 175 Ill. 101, 51 N.E. 872, 1898 Ill. LEXIS 3326 (1898).

Statute that authorizes manufacturers, bottlers and dealers in ale, porter, lager beer, soda, mineral water and other beverages to swear out warrants and cause law enforcement officers to search and recover their empty bottles violates Ill. Const. of 1870, Art. II, § 6 (now Ill. Const. (1970), Art. I, § 6) because the search authorized by the statute is unreasonable, in that the statute does not require an affidavit that any crime has been committed and provides that if the property described in the warrant is not found, the prosecution ends. Lippman v. People, 175 Ill. 101, 51 N.E. 872, 1898 Ill. LEXIS 3326 (1898).

- Workplace

Child protective investigator failed to state a claim that a search of her office violated her rights under the Fourth Amendment and this section; the search was a workplace search, not subject to probable cause and warrant requirements. Gossmeyer v. McDonald, 128 F.3d 481 (7th Cir. 1997).

Search Warrant

- Affidavit

Affidavit in support of search warrant application was sufficient, and probable cause to issue warrant was present, when the affidavit fully described observations of likely methamphetamine lab in defendant's house, even though the affidavit did not indicate the date on which the observations were made, the same day on which the warrant was sought. People v. Hughes, 343 Ill. App. 3d 506, 278 Ill. Dec. 379, 798 N.E.2d 763, 2003 Ill. App. LEXIS 1288 (5 Dist. 2003), appeal denied, 207 Ill. 2d 618, 283 Ill. Dec. 138, 807 N.E.2d 979 (2004).

The testimony on which a magistrate acts must be reduced to writing, incorporated in a formal complaint and verified by affidavit; and the complaint must be such that, if false, perjury may be

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assigned on the affidavit. People v. Hartfield, 94 Ill. App. 2d 421, 237 N.E.2d 193 (5 Dist. 1968).

- Alterations to Warrant

Certain handwritten interlineations on the face of the typewritten complaint and in the body of the search warrant did not affect the substantial rights of the defendant nor invalidate the search warrant. People v. Wolski, 83 Ill. App. 3d 17, 38 Ill. Dec. 297, 403 N.E.2d 528 (2 Dist. 1980).

- Civil Procedure

A search warrant is in the nature of criminal process, and its purpose is to aid in the detection and punishment of crime; it has no relation to civil process or civil trials. People v. Dolgin, 415 Ill. 434, 114 N.E.2d 389 (1953).

- Commercial Premises

Both the Federal Constitution and the State Constitution prohibit unreasonable searches and seizures; this protection applies to commercial premises as well as private homes, and although commercial premises do not enjoy the same degree of privacy as a residence, the determination of whether commercial premises, or some part thereof, are entitled to protection depends on the owner or occupier's subjective expectation of privacy in the premises. People v. Rivera, 233 Ill. App. 3d 69, 174 Ill. Dec. 226, 598 N.E.2d 423 (2 Dist. 1992).

A search warrant is necessary only to search those areas of commercial premises from which the public has been excluded, but the entry into a private area is considered a "search." People v. Rivera, 233 Ill. App. 3d 69, 174 Ill. Dec. 226, 598 N.E.2d 423 (2 Dist. 1992).

- Complaint

A complaint for a search warrant must be sufficient for a judicial officer to find probable cause for the warrant, and to do so facts must be related to cause a reasonable man to believe that a crime has been committed and that evidence thereof is in the place to be searched. People v. Hanei, 81 Ill. App. 3d 690, 38 Ill. Dec. 1, 403 N.E.2d 16 (5 Dist. 1980).

- Description

A search warrant providing for seizure of stolen jewelry, golf clubs, currency, firearms, shoes, masks, gloves, and burglary tools was insufficient where specific descriptions of those items were available to the affiant had he chosen to seek out that information. People v. Capuzi, 308 Ill. App. 3d 425, 242 Ill. Dec. 41, 720 N.E.2d 662 (2 Dist. 1999), appeal denied, 188 Ill. 2d 568, 246 Ill. Dec. 125, 729 N.E.2d 498 (2000).

The search warrant and affidavit specifically set forth the place that was to be searched, and thus, was not overbroad. People v. Wagers, 255 Ill. App. 3d 497, 194 Ill. Dec. 401, 627 N.E.2d 738 (3 Dist. 1994).

A verified complaint, upon which a search warrant is issued, must state the facts on which the complainant bases his belief that the articles sought to be seized are concealed by the accused with sufficient definiteness so that, if the complaint is false, perjury may be assigned upon it. People v. Sovetsky, 343 Ill. 583, 175 N.E. 844 (1931).

- Destruction of Evidence

The general rule in Illinois is that the potential destruction of evidence, standing alone, does not excuse the requirement of obtaining a warrant. People v. Cohen, 146 Ill. App. 3d 618, 100 Ill. Dec. 166, 496 N.E.2d 1231 (2 Dist. 1986).

- Inadequate

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Search warrant was constitutionally inadequate under both the U.S. Const. amend. IV and Ill. Const. (1970), Art. I, § 6, because there was nothing in the warrant that limited the scope of the property to be seized, or to curtail the discretion of the officers who were executing the warrant. People v. Thiele, 114 Ill. App. 3d 189, 70 Ill. Dec. 147, 448 N.E.2d 1025, 1983 Ill. App. LEXIS 1723 (1 Dist. 1983).

- Informants

Search warrant based on a confidential informant's statements was upheld despite the fact that the court did not question the informant because the informant's very presence before the magistrate when the warrant was issued supported his or her reliability. People v. Smith, 372 Ill. App. 3d 179, 310 Ill. Dec. 178, 865 N.E.2d 502, 2007 Ill. App. LEXIS 324 (1 Dist. 2007), appeal denied, 875 N.E.2d 1122, 2007 Ill. LEXIS 1348 (Ill. 2007).

There was sufficient basis for issuing a search warrant where the affiant stated that two informers, each unknown to the other and each of whom had in the past supplied reliable information regarding gambling matters, disclosed to affiant that they had placed bets through the telephone number identified with the premises set forth in the complaint, and the affiant stated that he had observed the defendant in or around the premises and had discovered from police records that the defendant had been charged with gambling and bookmaking on six occasions. People v. Aureli, 99 Ill. App. 2d 349, 241 N.E.2d 694 (1 Dist. 1968).

- Judge

A judge issuing a search warrant may be presumed to have read both the warrant and accompanying complaint before issuing the warrant. People v. Wolski, 83 Ill. App. 3d 17, 38 Ill. Dec. 297, 403 N.E.2d 528 (2 Dist. 1980).

- Partial Invalidity

Where infirmity of part of the warrant required suppression of evidence seized pursuant to it, it did not require suppression of evidence seized pursuant to the valid portions of the warrant. People v. Brown, 153 Ill. App. 3d 307, 106 Ill. Dec. 99, 505 N.E.2d 405 (3 Dist. 1987).

- Particularity

Court erred in failing to quash the search warrant and suppress the evidence obtained in the search, because the executing officers searched a residence not listed on the search warrant, and the warrant failed to describe with sufficient particularity the premises to be searched. The search warrant authorized the police to search apartment D, described as located on the left top of the stairs, contrary to the search warrant apartment D was to the right and apartment C was to the left, and the police entered apartment C and searched the premises. People v. Urbina, 393 Ill. App. 3d 1074, 333 Ill. Dec. 882, 916 N.E.2d 1, 2009 Ill. App. LEXIS 796 (2 Dist. 2009), appeal denied, 234 Ill. 2d 547, 920 N.E.2d 1079, 2009 Ill. LEXIS 2208 (2009).

Search of premises was constitutional where, contrary to defendant's contention, the search warrant described with particularity the place to be searched and the items to be seized; there was no evidence that the search was executed at the wrong location and the warrant listed the items to be seized such that the trained officer could easily identify them as contraband. People v. McCarty, 356 Ill. App. 3d 552, 292 Ill. Dec. 521, 826 N.E.2d 957, 2005 Ill. App. LEXIS 255 (5 Dist. 2005).

- Personal Nature

A search warrant was personal in nature with regard to the defendant since there was evidence connecting the defendant to drug dealing apart from his having been seen sometime previously in an apartment suspected of containing drugs where a reliable informant said that the defendant had sold him narcotics and that he had helped the defendant put narcotics in an automobile; thus,

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the warrant authorized the search of the person of the defendant even when he was not in the apartment. People v. Gonzalez, 316 Ill. App. 3d 354, 249 Ill. Dec. 315, 736 N.E.2d 157, 2000 Ill. App. LEXIS 711 (1 Dist. 2000).

- Private Purpose

Statute that authorizes manufacturers, bottlers and dealers in ale, porter, lager beer, soda, mineral water and other beverages to swear out warrants and cause law enforcement officers to search and recover their empty bottles is unconstitutional because Ill. Const. of 1870, Art. II, § 6 (now Ill. Const. (1970), Art. I, § 6) prohibits intrusion of the premises of a citizen, under a search warrant, for a private purpose. Lippman v. People, 175 Ill. 101, 51 N.E. 872, 1898 Ill. LEXIS 3326 (1898).

- Probable Cause

The search warrant set forth sufficient probable cause to justify the search of the white house. People v. Wagers, 255 Ill. App. 3d 497, 194 Ill. Dec. 401, 627 N.E.2d 738 (3 Dist. 1994).

U.S. Const. amend. IV and Ill. Const. (1970), Art. I, § 6, both provide that no warrants shall issue without probable cause, supported by affidavit, particularly describing the place to be searched and the things to be seized. People v. Thiele, 114 Ill. App. 3d 189, 70 Ill. Dec. 147, 448 N.E.2d 1025, 1983 Ill. App. LEXIS 1723 (1 Dist. 1983).

A search warrant will issue only upon a finding of probable cause. People v. Close, 60 Ill. App. 2d 477, 208 N.E.2d 644 (3 Dist. 1965).

Warrants may not issue without probable cause supported by affidavit, and then only to search the place particularly described. People v. Dalpe, 371 Ill. 607, 21 N.E.2d 756 (1939).

- Scope of Authority

Police officer acted within the scope of the authority conferred by a search warrant authorizing a seizure of the victim's person and personal effects when he searched behind the washer and dryer in defendant's home and flipped through a telephone directory looking for some of the items described in the warrant. People v. Edwards, 144 Ill. 2d 108, 161 Ill. Dec. 788, 579 N.E.2d 336 (1991), cert. denied, 504 U.S. 942, 112 S. Ct. 2278, 119 L. Ed. 2d 204 (1992).

- Time Lapse

Since there was no argument that the condition or contents of defendant's computer changed, the passage of approximately 75 days between the seizure by the police of defendant's computer and the issuance of a warrant authorizing the police to search that computer did not violate defendant's right under the Fourth Amendment to be free from unreasonable search and seizure and thus, did not require suppression of the images of child pornography recovered from that computer. People v. Shinohara, 375 Ill. App. 3d 85, 313 Ill. Dec. 515, 872 N.E.2d 498, 2007 Ill. App. LEXIS 744 (1 Dist. 2007), appeal denied, 875 N.E.2d 1121, 2007 Ill. LEXIS 1596 (Ill. 2007).

Where the offenses occurred over a period from August 24, 1951, to October 8, 1951, and the search warrant was not applied for until November 26, 1951, some 49 days after the date of the last offense, the magistrate had before him, the evidence that the defendant had, over a considerable period of time in an extensive territory, made repeated sales and deliveries of cigarettes bearing counterfeit tax stamps, provided reasonable cause to believe that this offense was continuing, so that even after the lapse of the time indicated, the issuance of the warrant would not be improper. People v. Dolgin, 415 Ill. 434, 114 N.E.2d 389 (1953).

- Void

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Where police officer requesting search warrant clearly stated that he was not under oath and had not been sworn when the search warrant was issued on his complaint, even though he signed a notarized statement "that the statements on the sheet, the facts were true to the best of my knowledge," the officer was not under oath or affirmation and the search warrant was void under the United States and Illinois Constitutions. People v. Kleinik, 233 Ill. App. 3d 458, 174 Ill. Dec. 631, 599 N.E.2d 177 (5 Dist. 1992).

Search Without Warrant

Probable cause existed to stop and search defendant's vehicle under Ill. Const. art. I, § 6 because police surveillance indicated that defendant would be delivering 2 kilograms of cocaine on the day in question. People v. Stroud, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1183 (2 Dist. Nov. 19, 2008).

Warrantless search of defendant's vehicle did not violate Ill. Const. art. I, § 6, because police had probable cause to believe that defendant was in possession of two kilograms of cocaine based on intercepted telephone calls. People v. Stroud, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1134 (1 Dist. Nov. 19, 2008).

Officers did not violate the prohibition against unreasonable search and seizure when the officers entered the subject property and proceeded to the back of the house because the odor of methamphetamine emanating from the house was so strong an officer was able to smell it with the windows of the officer's police car up and the officer's presence in the back prevented the occupants from leaving through that entrance. People v. Redman, 386 Ill. App. 3d 409, 326 Ill. Dec. 899, 900 N.E.2d 1146, 2008 Ill. App. LEXIS 1066 (4 Dist. 2008).

Defense counsel was ineffective by withdrawing a prior motion to quash arrest and suppress evidence where the motion would have been granted and evidence found in a bedroom where defendant was an overnight guest would not have been admitted into evidence. The defendant had a reasonable expectation of privacy in the bedroom of her friend's apartment as: (1) the tenant's consent to search could not have included the bedroom; (2) there was no justification for the officers' warrantless intrusion into the bedroom; (3) there was no evidence that police saw defendant selling drugs or committing any other criminal offense; (4) police were not in hot pursuit of defendant; (5) defendant was not in the process of destroying evidence; and (6) the police did not announce their pursuant to 725 ILCS 5/108-8. People v. Givens, 384 Ill. App. 3d 101, 323 Ill. Dec. 106, 892 N.E.2d 1098, 2008 Ill. App. LEXIS 684 (1 Dist. 2008), vacated, cause remanded 2010 Ill. LEXIS 655 (Ill. 2010).

Defendant was initially stopped due to speeding and defendant was issued a warning, and based on the officer's observations of defendant during that time, such that the officer became suspicious, further questioning of defendant that culminated in defendant's consent to search the vehicle was not violative of defendant's rights under U.S. Const. amend. IV and Ill. Const. art. I, § 6, as the officer had a reasonable articulable suspicion of criminal activity that justified the second seizure of defendant; during the traffic stop, the officer had noted that defendant appeared overly nervous, the car had a strong odor of air freshener, defendant mumbled, and defendant fumbled for identification documents. People v. Roa, 377 Ill. App. 3d 190, 316 Ill. Dec. 299, 879 N.E.2d 366, 2007 Ill. App. LEXIS 1161 (1 Dist. 2007).

Appellate court erred in affirming the trial court's decision to grant defendant's motion to suppress evidence that was recovered from defendant during a lawful traffic stop. The totality of the circumstances, defendant's status as a person on mandatory supervised release, and the police officer's limited pat-down search of defendant, which revealed that defendant had a white, solid substance that field-tested positive for cocaine, meant that defendant's rights against an unreasonable search and seizure under the Fourth Amendment and Ill. Const. Art. I, § 6 were not violated. People v. Moss, 217 Ill. 2d 511, 299 Ill. Dec. 662, 842 N.E.2d 699, 2005 Ill. LEXIS 2064 (2005).

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- In General

Weapon frisk of a juvenile was justified, pursuant to 725 ILCS 5/107-14, 725 ILCS 5/108-1.01, and IL Const., Art. I, § 6, where an officer received information on gang activity in the area and observed the juvenile shortly thereafter. People v. S.V. (In re S.V.), 326 Ill. App. 3d 678, 260 Ill. Dec. 404, 761 N.E.2d 248, 2001 Ill. App. LEXIS 890 (1 Dist. 2001).

In determining whether the police acted reasonably, a court must look to the totality of the circumstances the police were confronted with at the time entry was made; the circumstances must militate against delay and justify the decision to proceed without a warrant. The principle guiding such cases is reasonableness, and each case must turn on its own facts. People v. Patterson, 267 Ill. App. 3d 933, 205 Ill. Dec. 1, 642 N.E.2d 866 (1 Dist. 1994).

Searches and seizures inside a home without a warrant are presumptively unreasonable absent exigent circumstances. People v. Griffin, 158 Ill. App. 3d 46, 110 Ill. Dec. 280, 510 N.E.2d 1311 (5 Dist. 1987), overruled in part by People v. Ferral, 397 Ill. App. 3d 697, 336 Ill. Dec. 800, 921 N.E.2d 414, 2009 Ill. App. LEXIS 1320 (2d Dist. 2009).

The constitutional safeguards contained in this section do not prohibit all searches made without a warrant, but only those that are unreasonable. People v. McGee, 140 Ill. App. 3d 677, 95 Ill. Dec. 218, 489 N.E.2d 439 (2 Dist. 1986).

The constitutional safeguards contained in this section and U.S. Const., Amend. IV do not prohibit all searches made without a warrant, but only those which are unreasonable. People v. Stout, 106 Ill. 2d 77, 87 Ill. Dec. 521, 477 N.E.2d 498 (1985); People v. Stroud, 189 Ill. App. 3d 1034, 137 Ill. Dec. 539, 546 N.E.2d 293 (4 Dist. 1989).

Constitutional safeguards do not prohibit all searches made without a warrant, but only those which are unreasonable, and the determinations of the reasonableness of any given search must depend upon the facts in the particular situation. People v. Brown, 38 Ill. 2d 353, 231 N.E.2d 577 (1967).

The constitutional safeguards contained in this section and U.S. Const., Amend. IV do not prohibit all searches made without a warrant but only those which are unreasonable, and a determination of the unreasonableness of any given search must be made upon the facts there present. People v. Brown, 76 Ill. App. 2d 145, 221 N.E.2d 772 (1 Dist. 1966), aff'd, 38 Ill. 2d 353, 231 N.E.2d 577 (1967).

A search of premises without a warrant is an unreasonable search and an invasion of the right to security guaranteed to the individual by this section. People v. Dalpe, 371 Ill. 607, 21 N.E.2d 756 (1939).

- Administrative Searches

Rule that warrantless searches are generally unreasonable, and hence unconstitutional, applies to administrative searches, including the inspection of commercial business by government officials. People v. Krull, 107 Ill. 2d 107, 89 Ill. Dec. 860, 481 N.E.2d 703 (1985).

Attempted inspections of plaintiffs' surgical facility by the Department of Public Health were reasonable and constitutionally permissible, based on plaintiffs' statutory consent to such inspections and the state's police power to protect the well-being of its citizens. Marcowitz v. Department of Pub. Health, 106 Ill. App. 3d 422, 62 Ill. Dec. 319, 435 N.E.2d 1291 (1 Dist. 1982).

- Authorized Entry

Although a fire chief may enter the premises to locate a fire and determine its cause, when he determines that no fire exists, his authority is at an end, and therefore inspections made by him under a village ordinance to inspect fire detectors were violations of U.S. Const., Amend. IV and

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this section. Queenwood E. Sheltered Care Home, Ltd. v. Village of Morton, 94 Ill. App. 3d 51, 49 Ill. Dec. 618, 418 N.E.2d 472 (3 Dist. 1981).

- Automobiles

Police officer lacked any reasonable, articulable suspicion providing a basis for a prolonged detention pending a canine sniff, and defendant's motion to suppress drugs eventually found should have been granted, where officer's interest was originally aroused solely by observing defendant sitting in a car with the engine running, in a high drug activity neighborhood, the stop itself was predicated on a burnt-out rear light, and defendant and two passengers were not acting in a suspicious manner. People v. Gilbert, 347 Ill. App. 3d 1034, 283 Ill. Dec. 885, 808 N.E.2d 1173, 2004 Ill. App. LEXIS 466 (4 Dist. 2004), appeal denied, 211 Ill. 2d 593, Ill. Dec. , 823 N.E.2d 971 (2004), cert. denied, 544 U.S. 992, 125 S. Ct. 1826, 161 L. Ed. 2d 756 (2005).

Where the officer entered defendant's license number into the patrol car computer while stopped at a traffic light, despite the fact that the officer did not witness a traffic violation, and learned from the computer that the vehicle was registered to defendant's wife, that defendant frequently drove the vehicle, defendant's description, and that defendant's license was suspended, the stop of defendant was reasonable under Ill. Const. Art. I, § 6. The computer stated that defendant frequently drove the vehicle, so it was reasonable for the officer to assume that defendant was the driver of the vehicle. People v. Blankenship, 353 Ill. App. 3d 322, 289 Ill. Dec. 137, 819 N.E.2d 49, 2004 Ill. App. LEXIS 1368 (3 Dist. 2004), appeal denied, 212 Ill. 2d 537, 291 Ill. Dec. 710, 824 N.E.2d 286 (2004).

Trial court erred in granting defendant's motion to suppress because the police officer could properly run a computer check on defendant's driver's license; because the license check was reasonable, it did not violate the Fourth Amendment. People v. Grove, 341 Ill. App. 3d 466, 275 Ill. Dec. 344, 792 N.E.2d 819, 2003 Ill. App. LEXIS 833 (5 Dist. 2003).

When a motorist, who has not been stopped by the police and has not committed a traffic offense, voluntarily exits his car before the police approach and does not exit his car to avoid police contact, a subsequent warrantless search of the motorist's car incident to arrest is unconstitutional. People v. Stehman, 324 Ill. App. 3d 54, 257 Ill. Dec. 607, 753 N.E.2d 1233, 2001 Ill. App. LEXIS 610 (1 Dist. 2001).

Warrantless search of defendant's car violated defendant's right to be free from unreasonable searches and seizures under Ill. Const., Art. I, § 6, where defendant was stopped and arrested on a warrant that had no connection to the automobile defendant was driving, defendant did not know that the arresting officer was looking for him until after defendant voluntarily exited his car, and the officer did not observe defendant commit any traffic violation. People v. Stehman, 324 Ill. App. 3d 54, 257 Ill. Dec. 607, 753 N.E.2d 1233, 2001 Ill. App. LEXIS 610 (1 Dist. 2001).

An officer who makes a lawful arrest of an occupant of an automobile may contemporaneously search the passenger compartments of the auto, including any containers. People v. Stroud, 189 Ill. App. 3d 1034, 137 Ill. Dec. 539, 546 N.E.2d 293 (4 Dist. 1989).

When a police officer legitimately stops a vehicle and has probable cause to believe contraband is concealed somewhere within the car, the officer may conduct a warrantless search of the vehicle. People v. Stroud, 189 Ill. App. 3d 1034, 137 Ill. Dec. 539, 546 N.E.2d 293 (4 Dist. 1989).

Uncontroverted testimony of deputy sheriff supported the circuit court's determination that the officer had probable cause to search defendant's vehicle for contraband; thus, officer's search of a closed box found in the vehicle was permissible under the automobile exception to the warrant requirement. People v. Smith, 95 Ill. 2d 412, 69 Ill. Dec. 374, 447 N.E.2d 809 (1983).

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Where it would have been reasonable for the police to have conducted an immediate search of an automobile on the scene, a subsequent search at the police station was also reasonable. People v. Davis, 93 Ill. App. 3d 217, 48 Ill. Dec. 675, 416 N.E.2d 1197 (1 Dist. 1981).

Finding of trial judge that officer's search of defendant's car was not made in good faith was supported by competent evidence and was not contrary to the manifest weight of the evidence. People v. Valdez, 81 Ill. App. 3d 25, 36 Ill. Dec. 516, 400 N.E.2d 1096 (2 Dist. 1980).

Where there was no showing that the police had any authority to take custody of the defendant's car, and defendant did not consent to the police taking custody of his car, a warrantless search of the automobile was invalid as an unreasonable search and seizure. People v. Valdez, 81 Ill. App. 3d 25, 36 Ill. Dec. 516, 400 N.E.2d 1096 (2 Dist. 1980).

In a prosecution for burglary and theft, the search of defendant's automobile after it had been towed to the police station was not unreasonable where the driver jumped from the automobile and ran to avoid capture, which constituted an abandonment of both the car and its contents, and having been discarded, the stolen items in the car were properly seized, examined, and admitted into evidence. People v. Jones, 38 Ill. 2d 427, 231 N.E.2d 580 (1967).

In a prosecution for theft, the trial court did not err in refusing to grant the defendant's motion to suppress evidence seized from the trunk of a stolen car where, even though it occurred after defendant was arrested and taken into custody, the search of the trunk by the police officers was made in an attempt either to ascertain the ownership of the automobile or to determine whether a crime had in fact, been committed and, therefore, was not unreasonable. People v. Brown, 38 Ill. 2d 353, 231 N.E.2d 577 (1967).

The search of the trunk of a defendant's car at the time and place of his arrest, for items connected with the crime for which he was arrested, was reasonable. People v. Jeffries, 31 Ill. 2d 597, 203 N.E.2d 396 (1964).

- Consent

As a condition of probation that defendant agreed to as part of defendant's plea agreement to a charge of retail theft, defendant agreed to submit to a search of defendant's residence at any time defendant's probation officer made such a request. Since defendant consented to a search of defendant's residence, defendant could not given the contractual nature of probation conditions that a search of defendant's residence that revealed defendant possessed marijuana and cocaine was unreasonable under either the Fourth Amendment, U.S. Const. amend. IV, or Ill. Const. art. I, § 6, and the drug evidence was admissible to support defendant's prosecution and conviction for felony unauthorized possession of a controlled substance in violation of 720 ILCS 570/402(c). People v. Absher, 242 Ill. 2d 77, 351 Ill. Dec. 163, 950 N.E.2d 659, 2011 Ill. LEXIS 778 (2011).

Defendant was not entitled to have defendant's motion to suppress granted in defendant's drug possession case where defendant as a passenger in a vehicle that was stopped after leaving a suspected drug house consented to both a pat down search and a search of defendant's pockets. Since defendant clearly and unambiguously consented to such searches, which revealed that defendant was carrying drugs, defendant could not show a violation of defendant's Ill. Const. art. I, § 6 right to be free from unreasonable searches. People v. Dunlap, Ill. App. 3d , Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 1193 (4 Dist. Mar. 2, 2009).

If the police have actual grounds to carry out a threatened course of conduct to search property, communicating their intent amounts to no more than informing defendant of his legal status and does not vitiate consent. People v. Price, 195 Ill. App. 3d 701, 142 Ill. Dec. 459, 552 N.E.2d 1200 (1 Dist. 1990).

A search that is conducted pursuant to consent is one of the specifically established exceptions to the requirements of both a warrant and probable cause before a police search, and a search

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conducted with a defendant's valid consent is permitted so long as the state can establish that the consent was given voluntarily. People v. Bruce, 185 Ill. App. 3d 356, 133 Ill. Dec. 497, 541 N.E.2d 708 (5 Dist. 1989).

Where defendant testified that he freely and voluntarily consented to the search of briefcase in his automobile, after discovering guns and burglary tools in the briefcase, the officer was then fully justified in making a further search of the car. People v. Ricketson, 129 Ill. App. 2d 365, 264 N.E.2d 220 (2 Dist. 1970).

The consent given by the defendant to the search obviates any constitutional questions of illegal search and seizure. People v. Trent, 85 Ill. App. 2d 157, 228 N.E.2d 535 (4 Dist. 1967).

The home of a person charged with crime could not, without consent, be searched without a warrant, and a search so made was an unreasonable one under Ill. Const. (1870), Art. II, § 6 (see now this section). People v. Grod, 385 Ill. 584, 53 N.E.2d 591 (1944).

Motion to suppress the evidence obtained through a search and seizure of defendant's premises without a search warrant, should have been allowed where the consent to search, if obtained, was under the circumstances so tinged with official coercion that it could not be said to have been freely given. People v. Lind, 370 Ill. 131, 18 N.E.2d 189 (1938).

Warrantless search of defendant's room without her consent was unlawful and evidence obtained pursuant to such search was inadmissible. People v. Stokes, 334 Ill. 200, 165 N.E. 611 (1929).

The search and seizure of a cellular telephone was proper where the defendant gave permission to a police officer to examine the telephone; the officer did not exceed the scope of the consent when he pressed the recall button on the telephone to pull up the number to the cellular phone. People v. Berry, 314 Ill. App. 3d 1, 247 Ill. Dec. 80, 731 N.E.2d 853, 2000 Ill. App. LEXIS 416 (1 Dist. 2000), appeal denied, 191 Ill. 2d 537, 250 Ill. Dec. 460, 738 N.E.2d 929 (2000).

- Exigent Circumstances

Exigent circumstances justified the warrantless search of a shed because the officer had probable cause to believe that the victim was sexually assaulted at gunpoint by two men, the shed was only a block from where the assault allegedly occurred, and the fact that the doors appeared to be open or missing gave the officer additional reason to believe that the suspects possibly were or had been hiding in the shed. The crime occurred in a residential neighborhood consisting of single-family homes and outbuildings, and that environment provided manifold potential hiding places that the suspects could employ in fleeing the area. People v. Nichols, Ill. App. 3d , Ill. Dec. , N.E.2d , 2012 Ill. App. LEXIS 37 (2 Dist. Jan. 18, 2012).

Need to remove persons from the home and to locate, dismantle, and take possession of the dangerous instrumentalities used in cooking the methamphetamine was an exigent circumstance that justified the warrantless search. People v. Haycraft, 349 Ill. App. 3d 416, 285 Ill. Dec. 260, 811 N.E.2d 747, 2004 Ill. App. LEXIS 653 (5 Dist. 2004), appeal denied, 211 Ill. 2d 595, Ill. Dec. , 823 N.E.2d 972 (2004).

Where the officers were justifiably concerned about a possible escape and threat of harm to a second little girl, window entered was partially opened and assault had recently occurred, exigent circumstances justified a warrantless entry. People v. Harris, 297 Ill. App. 3d 1073, 232 Ill. Dec. 108, 697 N.E.2d 850 (1 Dist. 1998), appeal denied, 179 Ill. 2d 600, 235 Ill. Dec. 570, 705 N.E.2d 443 (1998).

The following factors may be employed in assessing the exigency of a given circumstance: (1) whether the offense under police investigation was recently committed; (2) whether there was any deliberate or unjustifiable delay by the police during which time a warrant might have been obtained; (3) whether the offense at issue is a grave one, particularly if it is one of violence; (4) whether the suspected offender was reasonably believed to be armed; (5) whether the police

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were acting upon a clear showing of probable cause; (6) whether there was a likelihood that the suspected offender would escape if not apprehended swiftly; (7) whether there was strong reason to believe the suspected offender was on the premises; and (8) whether the entry by the police, though nonconsensual, was made peaceably. People v. Patterson, 267 Ill. App. 3d 933, 205 Ill. Dec. 1, 642 N.E.2d 866 (1 Dist. 1994).

Constitutional safeguards in general prohibit police officers from making warrentless, nonexigent entries into a private residence to make an arrest, but these safeguards do not prohibit officers from entering a home without a warrant if exigent or compelling circumstances justify the entry. People v. Foskey, 136 Ill. 2d 66, 143 Ill. Dec. 257, 554 N.E.2d 192 (1990).

Factors useful in determining whether exigent circumstances exist for making warrantless nonconsensual entries into suspect's homes are: (1) the recentness of the offense and the need for prompt police action; (2) the absence of deliberate or unjustified delay by police during which time they could have obtained a warrant; (3) the likelihood the suspect will escape if not immediately apprehended; (4) the gravity of the offense, particularly a crime of violence; (5) the suspect is reasonably believed to be armed; (6) there is a clear showing of probable cause; (7) there is a strong reason to believe the suspect is on the premises; and (8) the police entry, though nonconsensual, can be made peaceably. People v. Day, 165 Ill. App. 3d 266, 116 Ill. Dec. 525, 519 N.E.2d 115 (4 Dist. 1988).

The fact that the front door of a home was open at 12:45 a.m., and the home was located in a high-crime area did not provide a police officer with reasonable grounds to enter the home under the emergency exception. People v. Griffin, 158 Ill. App. 3d 46, 110 Ill. Dec. 280, 510 N.E.2d 1311 (5 Dist. 1987), overruled in part by People v. Ferral, 397 Ill. App. 3d 697, 336 Ill. Dec. 800, 921 N.E.2d 414, 2009 Ill. App. LEXIS 1320 (2d Dist. 2009).

No warrant is necessary when police enter into and search the premises with a reasonable belief that immediate action is necessary for the purpose of providing aid to persons or property in need thereof. People v. Griffin, 158 Ill. App. 3d 46, 110 Ill. Dec. 280, 510 N.E.2d 1311 (5 Dist. 1987), overruled in part by People v. Ferral, 397 Ill. App. 3d 697, 336 Ill. Dec. 800, 921 N.E.2d 414, 2009 Ill. App. LEXIS 1320 (2d Dist. 2009).

There are three basic elements to the so-called emergency exception to the warrant requirement: (1) the police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property; (2) the search must not be primarily motivated by intent to arrest and seize evidence; and (3) there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. People v. Griffin, 158 Ill. App. 3d 46, 110 Ill. Dec. 280, 510 N.E.2d 1311 (5 Dist. 1987), overruled in part by People v. Ferral, 397 Ill. App. 3d 697, 336 Ill. Dec. 800, 921 N.E.2d 414, 2009 Ill. App. LEXIS 1320 (2d Dist. 2009).

Under the emergency exception, the reasonableness of the belief that an emergency exists is determined by the entirety of all the circumstances known to the police at the time of entry. People v. Griffin, 158 Ill. App. 3d 46, 110 Ill. Dec. 280, 510 N.E.2d 1311 (5 Dist. 1987), overruled in part by People v. Ferral, 397 Ill. App. 3d 697, 336 Ill. Dec. 800, 921 N.E.2d 414, 2009 Ill. App. LEXIS 1320 (2d Dist. 2009).

Absent consent to enter, "exigent circumstances" are necessary to render the entry into defendant's home without a warrant and a seizure of his person reasonable under this section and the Constitution of the United States. People v. Davis, 93 Ill. App. 3d 217, 48 Ill. Dec. 675, 416 N.E.2d 1197 (1 Dist. 1981).

This section and U.S. Const., Amend. IV mandate that a warrant issue describing the place to be searched whether persons or things are to be seized; however, since a delay would frustrate or defeat the purpose of the search, the exigent or exceptional circumstances doctrine has evolved. People v. Sanders, 59 Ill. App. 3d 6, 16 Ill. Dec. 437, 374 N.E.2d 1315 (3 Dist. 1978).

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Factors to be considered in determining whether "exigent circumstances" are present include: (1) whether a grave offense is involved, particularly one that is a crime of violence; (2) the suspect is reasonably believed to be armed; (3) there exists not merely the minimum of probable cause that is required when a warrant has been issued, but beyond that, a clear showing of probable cause including "reasonably trustworthy information" to believe the suspect committed the crime involved; (4) strong reason exists to believe that the suspect is on the premises being entered; (5) there is likelihood the suspect will escape if not swiftly apprehended; (6) whether the entry is forcible or peaceful; and (7) the time of entry (day or night). People v. Sanders, 59 Ill. App. 3d 6, 16 Ill. Dec. 437, 374 N.E.2d 1315 (3 Dist. 1978).

Where the suspect was not involved in a grave offense of violence, and there was no reason to believe that he was armed and it was difficult to conclude that he would have escaped during the delay occasioned by the procurement of a warrant, then the circumstances did not justify a warrantless entry. People v. Sanders, 59 Ill. App. 3d 6, 16 Ill. Dec. 437, 374 N.E.2d 1315 (3 Dist. 1978).

- Hotel Rooms

A police officer's warrantless entry and search of an occupied hotel room were not proper simply because of the prior private search by hotel employees. People v. Vought, 174 Ill. App. 3d 563, 124 Ill. Dec. 204, 528 N.E.2d 1095 (2 Dist. 1988), cert. denied, 124 Ill. 2d 561, 129 Ill. Dec. 155, 535 N.E.2d 920, 492 U.S. 911, 109 S. Ct. 3228, 106 L. Ed. 2d 576 (1989).

- Implied Consent

When defendant willingly handed over articles to an officer at his request, this action implied consent to the examination; hence, defendant could not later complain that the articles which he carried in open view and willingly handed over were taken by an unreasonable search and seizure. People v. McCracken, 30 Ill. 2d 425, 197 N.E.2d 35 (1964).

- Inventory Exception

Search of a vehicle did not meet the necessary criteria of a valid inventory search because the State did not present evidence showing that defendant was prohibited from parking in the lot, and the mere fact that defendant's vehicle would have been left unattended following his arrest was insufficient to justify its impoundment. People v. Spencer, 408 Ill. App. 3d 1, 350 Ill. Dec. 127, 948 N.E.2d 196, 2011 Ill. App. LEXIS 265 (1 Dist. 2011).

Search by officer into a drawstring bag in defendant's car trunk, was impermissible, because there was no standard procedure that the officer was following regarding an inventory search into containers in an impounded vehicle. People v. Lear, 217 Ill. App. 3d 712, 160 Ill. Dec. 501, 577 N.E.2d 826 (5 Dist.), cert. denied, 142 Ill. 2d 660, 164 Ill. Dec. 923, 584 N.E.2d 135 (1991).

The inventory-search exception to this section is co-extensive with that exception to U.S. Const., Amend. IV. People v. Bayles, 76 Ill. App. 3d 843, 32 Ill. Dec. 433, 395 N.E.2d 663 (5 Dist. 1979), aff'd, 82 Ill. 2d 128, 44 Ill. Dec. 880, 411 N.E.2d 1346 (1980).

- Narcotics

The mere presence of narcotics inside a hotel room is insufficient to justify a warrantless entry and search on the basis of exigent circumstances. People v. Vought, 174 Ill. App. 3d 563, 124 Ill. Dec. 204, 528 N.E.2d 1095 (2 Dist. 1988), cert. denied, 124 Ill. 2d 561, 129 Ill. Dec. 155, 535 N.E.2d 920, 492 U.S. 911, 109 S. Ct. 3228, 106 L. Ed. 2d 576 (1989).

- Plain View

Parole agreement permitted the parole agent to visit defendant's home and the agent had a right to be in defendant's kitchen where she recognized the methamphetamine laboratory and cooking

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process; therefore, the warrantless search of defendant's home was valid under the plain view doctrine. People v. Haycraft, 349 Ill. App. 3d 416, 285 Ill. Dec. 260, 811 N.E.2d 747, 2004 Ill. App. LEXIS 653 (5 Dist. 2004), appeal denied, 211 Ill. 2d 595, Ill. Dec. , 823 N.E.2d 972 (2004).

The search and seizure of a cellular telephone was proper under the plain view exception where: (1) the defendants' mother consented to the police entry into the home in order to talk to her two sons about the homicide at issue; (2) the telephone was sitting on top of a dresser in one defendant's room, where the defendant was located when a detective inadvertently saw it and recognized it; and (3) there was probable cause to associate the telephone with criminal activity as the detective recognized the telephone and knew that the defendants discussed buying the telephone within 24 hours of the homicide. People v. Berry, 314 Ill. App. 3d 1, 247 Ill. Dec. 80, 731 N.E.2d 853, 2000 Ill. App. LEXIS 416 (1 Dist. 2000), appeal denied, 191 Ill. 2d 537, 250 Ill. Dec. 460, 738 N.E.2d 929 (2000).

- Probable Cause

Police who monitored phone calls between a suspected drug dealer and an unknown male did not have probable cause to conduct a search of the trunk of defendant's vehicle after defendant and the suspected drug dealer were seen purportedly meeting a bowling alley parking lot and no drug transaction was observed. Defendant was thereafter seen bowling in the bowling alley, and, thus, the officer who pulled defendant's vehicle over after defendant left the bowling alley and search the trunk of defendant's vehicle violated defendant's Fourth Amendment and Ill. Const. art. I, § 6 rights to be free from unreasonable searches since the officer had only a vague hunch, rather than the required probable cause, to believe evidence of a criminal drug transaction would be found. People v. Christmas, 396 Ill. App. 3d 951, 336 Ill. Dec. 650, 920 N.E.2d 1240, 2009 Ill. App. LEXIS 1318 (2 Dist. 2009), appeal denied, 2010 Ill. LEXIS 510 (Ill. 2010).

Cocaine found in defendant's vehicle was admissible because police officers had probable cause to stop and conduct a warrantless search of every part of defendant's vehicle. Based upon intercepted telephone conversations, as well as the observations made by individual police officers during the investigation of a drug ring, the police had sufficient facts to believe that defendant was in possession of 2 kilograms of cocaine, that defendant was going to bring the cocaine to another party that afternoon, and that the drugs were in the vehicle. People v. Stroud, 392 Ill. App. 3d 776, 331 Ill. Dec. 922, 911 N.E.2d 1152, 2009 Ill. App. LEXIS 594 (1 Dist. 2009), appeal denied, 233 Ill. 2d 592, 335 Ill. Dec. 644, 919 N.E.2d 363, 2009 Ill. LEXIS 1367 (2009).

Where private citizen informed police officer that he had seen the defendant putting a gun inside the engine compartment of his, the defendant's, car, the officer testified he observed the defendant on the street, near the vehicle after previously seeing him drive it, approached the defendant and told him that he had prior information that a gun was placed in his car, asked if he could look in the engine compartment of his car, the defendant replied, "Go ahead" and defendant had possession of the car keys, there was probable cause for a warrantless search of the car's engine compartment. People v. Billings, 52 Ill. App. 3d 414, 9 Ill. Dec. 903, 367 N.E.2d 337 (1 Dist. 1977).

Valid searches which are not incidental to an arrest may be made without a warrant; however, such searches must be based upon probable cause. People v. Jones, 38 Ill. 2d 427, 231 N.E.2d 580 (1967).

- Protection of Police Officer

Where arresting officers had a defendant with a rear license not displayed, he was unable to meet the requirements of Rule 526, Supreme Court Rules, for posting bail because he had a temporary license, and a scuffle with one officer took place, as it was necessary that this defendant be taken to the police station to post bail, a search was justified for the protection of

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the officer, and the discovery of the contraband which followed was the result of a legal search. People v. Redmond, 73 Ill. App. 3d 160, 28 Ill. Dec. 774, 390 N.E.2d 1364 (1 Dist. 1979).

- Purses

Where a defendant was handcuffed and seated in the back seat of a squad car, and one of the police officers searched defendant's purse after picking it up from the street where it had landed during a scuffle with the officers, the search was not justified, and there was no compelling or necessary purpose justifying the police officers' warrantless intrusion into the defendant's purse at that time and location. People v. Redmond, 73 Ill. App. 3d 160, 28 Ill. Dec. 774, 390 N.E.2d 1364 (1 Dist. 1979).

- Reasonable

Defendant was not entitled to suppress a gun because Ill. Const. art. I, § 6 and 725 ILCS 5/107-14 permitted a Terry protective search of the passenger compartment of a vehicle as the police had a reasonable suspicion that defendant, a passenger, and the driver had been involved in a shooting as they were the only people located in the vicinity of the crime. People v. Johnson, 387 Ill. App. 3d 780, 327 Ill. Dec. 127, 901 N.E.2d 455, 2009 Ill. App. LEXIS 6 (3 Dist. 2009), aff'd, 237 Ill. 2d 81, 927 N.E.2d 1179, 2010 Ill. LEXIS 657 (2010).

No search warrant was required to justify an atomic absorption gunshot residue test after defendant was in custody and while the arresting officers were assigned to investigate an attempted robbery as the hand swab performed on defendant was a minor intrusion, no more offensive than fingerprinting or photographing. People v. Allen, 376 Ill. App. 3d 511, 314 Ill. Dec. 934, 875 N.E.2d 1221, 2007 Ill. App. LEXIS 1054 (1 Dist. 2007).

Trial court did not err in denying defendant's motion to quash arrest and suppress evidence, as the search of her without a warrant was reasonable under the circumstances and did not violate her constitutional rights against unreasonable searches and seizures. The evidence showed that the officer's stop of her in front of a liquor store where she appeared to be soliciting customers for prostitution was justified and the questioning of her regarding contraband she might be carrying was reasonably related in scope to the circumstances that justified the stop in the first place. People v. James, 365 Ill. App. 3d 847, 303 Ill. Dec. 193, 851 N.E.2d 91, 2006 Ill. App. LEXIS 372 (1 Dist. 2006).

Evidence was sufficient to justify stop under Terry and 725 ILCS 5/107-14; when defendant was seen with a person that the officers believed was carrying crack cocaine and defendant changed direction to separate himself from that person, the officers had reasonable suspicion to believe that defendant might be involved in criminal activity. Officer was also justified in conducting pat down of defendant based on officer's knowledge of defendant's criminal history. People v. Austin, 365 Ill. App. 3d 496, 302 Ill. Dec. 497, 849 N.E.2d 112, 2006 Ill. App. LEXIS 357 (1 Dist. 2006).

Trial court erred in suppressing evidence recovered from defendant because, based on the totality of the circumstances, including the officers' experience, officers properly entered defendant's apartment, as they were in hot pursuit of two individuals, and there was probable cause to arrest defendant and to search a hole in the wall. People v. Tillman, 355 Ill. App. 3d 194, 291 Ill. Dec. 107, 823 N.E.2d 117, 2005 Ill. App. LEXIS 15 (1 Dist. 2005), appeal denied, 215 Ill. 2d 616, 295 Ill. Dec. 526, 833 N.E.2d 8 (2005).

The trial court did not err in denying defendant's motion to suppress the evidence, since the entry by police officers into his home was reasonable, because the entry was based on probable cause, defendant consented to the entry and it was based upon exigent circumstances. People v. Gross, 166 Ill. App. 3d 413, 116 Ill. Dec. 828, 519 N.E.2d 1043 (1 Dist.), cert. denied, 121 Ill. 2d 576, 122 Ill. Dec. 442, 526 N.E.2d 835 (1988), 488 U.S. 854, 109 S. Ct. 142, 102 L. Ed. 2d 114 (1988).

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Where police did not enter defendant's apartment to gather evidence on the deviate sexual assault and indecent liberties charges (see now sexual assault) which were later filed against defendant, but to help a runaway youth who was living with him to gather up his personal belongings, incriminating photographs obtained through illegal search were not obtained by exploitation of the illegality, but rather by means sufficiently distinguishable to be purged of the primary taint. People v. Rassmussen, 143 Ill. App. 3d 11, 97 Ill. Dec. 176, 492 N.E.2d 612 (1 Dist. 1986).

Where the conduct of the defendant, when considered in its entirety, indicated that he was more than the ordinary traffic offender and suggested a serious violation of the law, the police officers had reason to believe that the defendant was the driver of the vehicle which caused the accident, and when the defendant denied driving the vehicle, the search the officers conducted to discover the keys to the automobile was reasonable, and the trial court did not err in denying a motion to suppress. People v. McGee, 44 Ill. App. 3d 1027, 3 Ill. Dec. 600, 358 N.E.2d 1285 (1 Dist. 1976).

Officers had reasonable grounds for believing that the defendant had committed a criminal offense, so the subsequent arrest and search, which revealed the screwdriver, were lawful. People v. McCracken, 30 Ill. 2d 425, 197 N.E.2d 35 (1964).

By the aiming of the loaded, cocked pistol at the police officers, threatening to shoot them and calling them the vile name he did, the defendant was guilty of an assault upon the officers, as well as displaying a pistol, and in entering the home of the defendant and searching him and the premises without a search warrant, the officers were not acting without authority; a criminal offense had been committed in the presence of the officers, and they had the lawful right to take possession of the deadly weapon with which the defendant had threatened to take their lives. People v. Davies, 354 Ill. 168, 188 N.E. 337 (1933).

- Stop and Frisk

Stop and frisk of defendant did not violate his constitutional rights because the police officer who conducted the search had reasonable suspicion to do so based on an informant's tip, received in person by the officer, which described a man with a gun by race, clothing, and the specific corner on which he was standing. People v. Miller, 355 Ill. App. 3d 898, 291 Ill. Dec. 830, 824 N.E.2d 1080, 2005 Ill. App. LEXIS 84 (1 Dist. 2005).

"Plain touch" doctrine did not apply to Terry search for weapons, which yielded a bag of drugs hidden in defendant's sock, because the scope of the Terry search did not go beyond a search for weapons and the officer conducting the search admitted that the bulge in defendant's sock did not feel like a weapon; thus, the search was constitutionally infirm and suppression of the evidence was proper. People v. Morquecho, 347 Ill. App. 3d 382, 282 Ill. Dec. 693, 806 N.E.2d 1281, 2004 Ill. App. LEXIS 359 (1 Dist. 2004), appeal denied, 211 Ill. 2d 602, Ill. Dec. , 823 N.E.2d 974 (2004).

The continued exploration of a suspect's pocket after the officer concluded that it did not contain a weapon exceeded the scope of a proper frisk because if the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under Terry and its fruits will be suppressed. People v. Blake, 268 Ill. App. 3d 737, 206 Ill. Dec. 575, 645 N.E.2d 580 (2 Dist.), appeal denied, 161 Ill. 2d 530, 208 Ill. Dec. 363, 649 N.E.2d 419 (1995).

The standard for determining whether a stop is reasonable is whether a man of reasonable caution would find police officer's action appropriate, or, stated another way, whether police officer could point to specific and articulable facts, which together with reasonable inferences, reasonably warranted the intrusion. People v. Long, 99 Ill. 2d 219, 75 Ill. Dec. 693, 457 N.E.2d 1252 (1983).

Search of the defendant's purse without a warrant at police station was not justified under the "stop and frisk" statute (725 ILCS 5/108-1.01), as the arresting officers could not reasonably have

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suspected by the time they reached the station that they were in danger of attack, nor were the terms of Ill. Rev. Stat., ch. 38, para. 108-1 for a search incident to an arrest fulfilled. People v. Helm, 89 Ill. 2d 34, 59 Ill. Dec. 276, 431 N.E.2d 1033 (1981).

Where police officers lacked sufficient authority under 725 ILCS 5/107-14 to stop defendant for temporary questioning without arrest, a subsequent search of defendant, whether it was of a brown paper package in defendant's hand as a police officer testified, or a pants pocket as defendant testified, was not constitutionally permissible under this section or Ill. Rev. Stat., ch. 38, para. 108-1.01. People v. Moorhead, 17 Ill. App. 3d 521, 308 N.E.2d 381 (1 Dist. 1974).

- Stop and Search

Trial court properly granted defendant's motion to suppress evidence of a gun that police found sticking out from under a front seat as the result of defendant's unlawful detention following the stop of his vehicle because defendant's vehicle was violating two provisions of the Illinois Vehicle Code, 625 ILCS 5/3-413(b), having a tinted rear license plate cover, and 625 ILCS 5/12-503(c); the one police officer did not have the reasonable suspicion necessary to continue questioning defendant after defendant had been warned about the purpose of the stop, and, thus, the second officer's discovery during the unlawful detention that defendant had a gun under his front seat and almost immediate stop of defendant a second time after he had been allowed to drive off violated his constitutional right to be free from unlawful searches and seizures. People v. Mendoza, 364 Ill. App. 3d 564, 301 Ill. Dec. 207, 846 N.E.2d 169, 2006 Ill. App. LEXIS 266 (1 Dist. 2006).

Trial court erred in denying defendant's motion to suppress because the police officer's questioning regarding the contents of defendant's truck impermissibly expanded the scope of the traffic stop where the questioning was unrelated to the purpose of the stop and was not based on any reasonable, articulable suspicion. People v. Leigh, 341 Ill. App. 3d 492, 275 Ill. Dec. 334, 792 N.E.2d 809, 2003 Ill. App. LEXIS 832 (5 Dist. 2003).

Even though it was not directly related to the original traffic stop, a police officer's request that a passenger produce identification, made while a routine computer check was being run on the driver, was innocuous enough, and did not further prolong the stop, so that it was a permissible inquiry not requiring suppression of cocaine found later in the encounter nor suppression of defendant's arrest for possession of a controlled substance. People v. Gonzalez, 204 Ill. 2d 220, 273 Ill. Dec. 360, 789 N.E.2d 260, 2003 Ill. LEXIS 765 (2003), overruled in part by People v. Luedemann, 222 Ill. 2d 530, 857 N.E.2d 187, 2006 Ill. LEXIS 1641, 306 Ill. Dec. 94 (2006); but see People v. Harris, 2008 Ill. LEXIS 292 (Ill. 2008).

Motion to suppress evidence obtained during a consensual search, which was the result of continued detention after a proper Terry stop for suspicion of underage drinking, was granted; the continued detention of defendant after the officers' suspicions had been allayed violated the Fourth Amendment and Ill. Const. Art. I, § 6, as the officers no longer had a reasonable, articulable suspicion of criminal activity, and the consent was tainted by the illegal detention. People v. Gherna, Ill. 2d , Ill. Dec. , N.E.2d , 2003 Ill. LEXIS 12 (Jan. 24, 2003).

A court must consider the totality of the circumstances to determine whether the police indeed had a reasonable, articulable suspicion at the time of detention. People v. Price, 195 Ill. App. 3d 701, 142 Ill. Dec. 459, 552 N.E.2d 1200 (1 Dist. 1990).

Validity of automobile search was upheld and evidence was sufficient to sustain defendant's conviction of burglary. People v. Georgev, 38 Ill. 2d 165, 230 N.E.2d 851 (1967).

- Suppression of Evidence

Circuit court properly suppressed marijuana evidence seized from a field outside a barn after drug task force officers saw the marijuana after entering the barn; defendant had an expectation of privacy in the barn and the officers' warrantless entry into the barn without the consent of defendant or anyone else with authority to give such consent violated both the Fourth

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Amendment and Ill. Const. art. I, § 6. People v. Pitman, 211 Ill. 2d 502, 286 Ill. Dec. 36, 813 N.E.2d 93, 2004 Ill. LEXIS 989 (2004).

Where evidence is obtained from the dwelling house of a defendant without authority of a search warrant, if it is of such a nature as would incriminate the defendant, contrary to the constitution, it should be suppressed by the court upon a petition filed in apt time, describing the illegal search, and asking that it be impounded and suppressed upon proof of the illegal search, without regard to the ownership of the property. People v. Grod, 385 Ill. 584, 53 N.E.2d 591 (1944).

- Unreasonable

Police officer's warrantless search of a lawfully parked and locked vehicle was unreasonable pursuant to the Fourth Amendment, U.S. Const. amend. IV, and Ill. Const. art. I, § 6, and merited suppression of the quantity of cocaine found in it. The officer drove over to the vehicle and confronted defendant, standing outside the vehicle, based on a hunch but without any reasonable suspicion that defendant had been involved in any criminal activity and then made a warrantless search of the vehicle. People v. Estrada, 394 Ill. App. 3d 611, 333 Ill. Dec. 260, 914 N.E.2d 679, 2009 Ill. App. LEXIS 819 (1 Dist. 2009).

Search of the trunk of defendant's vehicle was unconstitutional under the Fourth Amendment, U.S. Const. amend. IV and Ill. Const. art. I, A 6 as when an officer requested consent to search the trunk of the vehicle, defendant and a passenger were still standing at the front and the rear of the vehicle, and a reasonable person in their position would not have felt free to leave; knowledge of the passenger's parole status, and a fragrant liquid found in the interior did not give the officer probable cause or a reasonable, articulable suspicion of criminal conduct to support the request for consent to support the search. People v. Oliver, 387 Ill. App. 3d 1045, 327 Ill. Dec. 154, 901 N.E.2d 482, 2009 Ill. App. LEXIS 14 (3 Dist. 2009), rev'd, 236 Ill. 2d 448, 925 N.E.2d 1107, 2010 Ill. LEXIS 281 (2010).

Detention of driver and passengers after a purely pretextual traffic stop that occurred not long after an anonymous and apparently not very detailed tip had been received was not supported by reasonable and articulable suspicion, thus, drugs found in the car had to be suppressed, and defendant's tainted conviction reversed. People v. Lomas, 349 Ill. App. 3d 462, 285 Ill. Dec. 450, 812 N.E.2d 39, 2004 Ill. App. LEXIS 696 (5 Dist. 2004).

Although the officers were justified in searching defendant's room to determine whether a probationer was residing there without having given prior notification of a change in residence to her probation officer, as required by her probation conditions, the search between the mattress and box springs was constitutionally unreasonable in its scope. People v. Lampitok, 207 Ill. 2d 231, 278 Ill. Dec. 244, 798 N.E.2d 91, 2003 Ill. LEXIS 1422 (2003).

No exigent circumstances existed justifying warrantless entry into the minor's home since it was not obvious that the crime under investigation has been recently committed, the record did not support a finding that exigent circumstances existed based on a likelihood that the suspect would escape if not swiftly apprehended as officers were stationed around the building, and there was no reason to believe the minor was armed or dangerous, or was attempting to destroy evidence. People v. D.W. (In re D.W.), 341 Ill. App. 3d 517, 275 Ill. Dec. 566, 793 N.E.2d 46, 2003 Ill. App. LEXIS 748 (1 Dist. 2003).

Police lacked probable cause to seize defendant's videotapes because (1) by carrying away the videotapes to the county jail and viewing them in a separate room while defendant was being booked, the police interfered, in a meaningful way, with defendant's possessory interest in the videotapes, and (2) defendant's shrug at the site of the search was not an unambiguous expression of consent. People v. Raibley, 338 Ill. App. 3d 692, 273 Ill. Dec. 345, 788 N.E.2d 1221, 2003 Ill. App. LEXIS 531 (4 Dist. 2003).

Where defendants drove approximately two blocks from their house and an unmarked police car pulled them over, three police officers ran up to the car with their guns drawn and yelled at

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defendants to get out of the car and spread their hands on its trunk, and officers searched defendants but did not find any drugs or guns on them or in the car, then took them back to the house in handcuffs, never gave Miranda warnings, searched the house without a warrant, and then coerced the residents to sign consent-to-search forms, the trial court properly granted defendants' motion to quash arrest and suppress evidence of drug possession. People v. Calderon, 336 Ill. App. 3d 182, 270 Ill. Dec. 322, 782 N.E.2d 881, 2002 Ill. App. LEXIS 1239 (1 Dist. 2002).

The officer did not enter the home, or the bedroom area of it, to make an arrest for vandalism, the offense he suspected, but did so to search for evidence of that or other offenses, and as exigent circumstances were not present to validate the officer's warrantless entry and search of the defendant's residence, the search was invalid. People v. Cohen, 146 Ill. App. 3d 618, 100 Ill. Dec. 166, 496 N.E.2d 1231 (2 Dist. 1986).

The search of the residence of the defendant charged with burglary, without a warrant while he was in jail under suspicion of crime, and the production and use of stolen bonds seized from the warrantless search amounted to a direct violation of former Ill. Const. (1870), Art. II, §§ 6 and 10 (see now this section and Ill. Const. (1970), Art. I, § 10). People v. Grod, 385 Ill. 584, 53 N.E.2d 591 (1944).

The opening of henhouse gates and doors at night, and the searching with flash-lights to discover chickens allegedly stolen, is an invasion of property rights which any reasonable person would say would constitute an illegal search, if made without consent or a search warrant. People v. Lind, 370 Ill. 131, 18 N.E.2d 189 (1938).

Where at the time the two police officers first entered defendant's place of business, and found guns in his safe over his protests, they had neither a warrant for his arrest nor a search warrant, and neither officer had any suspicion that defendant was implicated in any crime, the petition for a search warrant was based on evidence wrongfully and unlawfully obtained by the police officers. People v. Scaramuzzo, 352 Ill. 248, 185 N.E. 578 (1933).

A search of defendant's home, and the seizure of the effects found there without his consent and without a search warrant, were in violation of his constitutional rights, as defined in Ill. Const. (1870), Art. II § 6 (see now this section). People v. Anderson, 337 Ill. 310, 169 N.E. 243 (1929).

Seizure

In separate cases consolidated for the purposes of appeal, neither the first defendant nor the second defendant was seized following police officers initially stopping their vehicles for minor traffic violations, and, thus, Fourth Amendment and Ill. Const. art. I, § 6 concerns were not implicated. In both cases, there was an absence of Mendenhall coercion factors, the first defendant voluntarily consented to the search that uncovered the contraband, and the second defendant refused to consent but one officer learned that the second defendant had a gun in the car, which allowed for a subsequent stop of his vehicle and the discovery of the gun. People v. Cosby, 231 Ill. 2d 262, 325 Ill. Dec. 556, 898 N.E.2d 603, 2008 Ill. LEXIS 890 (2008).

Where officers went to defendant's apartment during a murder investigation and took defendant to the police station for questioning, defendant's voluntary presence at the police station escalated into an involuntary seizure in violation of defendant's Fourth Amendment rights because, a reasonable juvenile in defendant's position would not have felt free to leave the station; defendant's handwritten statement was suppressed based on the lack of Miranda warnings. People v. Lopez, 229 Ill. 2d 322, 323 Ill. Dec. 55, 892 N.E.2d 1047, 2008 Ill. LEXIS 630 (2008), cert. denied, 129 S. Ct. 998, 2009 U.S. LEXIS 744, 173 L. Ed. 2d 291(U.S. 2009); criticized in, 385 Ill. App. 3d 202, 325 Ill. Dec. 657, 898 N.E.2d 704, 2008 Ill. App. LEXIS 975 (4th Dist. 2008).

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Officers had probable cause to seize defendant's computer because they personally viewed images which indicated that defendant had committed the crime of child pornography. People v. Shinohara, 375 Ill. App. 3d 85, 313 Ill. Dec. 515, 872 N.E.2d 498, 2007 Ill. App. LEXIS 744 (1 Dist. 2007), appeal denied, 875 N.E.2d 1121, 2007 Ill. LEXIS 1596 (Ill. 2007).

Trial court did not err in denying defendant's motion to quash arrest, as defendant was not unlawfully seized at the scene of the motor vehicle accident that she caused; considering all of the relevant circumstances surrounding her encounter with two police officers at the accident scene, a reasonable person would not have believed that he or she was forcibly detained. People v. Sturgess, 364 Ill. App. 3d 107, 300 Ill. Dec. 852, 845 N.E.2d 741, 2006 Ill. App. LEXIS 135 (1 Dist. 2006).

Since 730 ILCS 5/5-4-3, regarding compulsory extraction of defendant's DNA, had been held to be constitutional, defendant's claim that it violated his right to be free from an unreasonable search and seizure had to be rejected. People v. Foerster, 359 Ill. App. 3d 198, 295 Ill. Dec. 736, 833 N.E.2d 942, 2005 Ill. App. LEXIS 739 (1 Dist. 2005), appeal denied, 219 Ill. 2d 576, 303 Ill. Dec. 836, 852 N.E.2d 243 (2006).

- After Invalid Confession

In light of the fact that defendant's statements to sheriff were coerced in violation of his Fifth and Sixth Amendment rights, the evidence obtained as a result of these constitutional violations would have been excluded from defendant's trial if the prosecution had been unable to demonstrate to the court that the evidence would have been "inevitably discovered" in the police's search of the area, or that the evidence was discovered by an independent, legitimate source, separate from the taint of the police misconduct. People v. Edwards, 144 Ill. 2d 108, 161 Ill. Dec. 788, 579 N.E.2d 336 (1991), cert. denied, 504 U.S. 942, 112 S. Ct. 2278, 119 L. Ed. 2d 204 (1992).

- After Invalid Search

Even though the trial court erred in denying defendant's motion to suppress evidence, the error was harmless because defendant's statements - defendant's request for defendant's wallet and defendant's admission that defendant was in the area where a theft of computer equipment occurred - were not material to the guilty finding where other competent evidence overwhelmingly established defendant's guilt beyond a reasonable doubt. People v. Garvin, 349 Ill. App. 3d 845, 285 Ill. Dec. 953, 812 N.E.2d 773, 2004 Ill. App. LEXIS 833 (2 Dist. 2004), aff'd, 219 Ill. 2d 104, 301 Ill. Dec. 423, 847 N.E.2d 82 (2006).

An unlawful search cannot be justified by what is found, and a search which is unlawful in the beginning is not made lawful by the discovery and seizure of contraband articles. People v. Martin, 382 Ill. 192, 46 N.E.2d 997 (1942).

- After Stop and Frisk

An individual is not seized for Fourth Amendment purposes when police ask questions of that individual, including a request for identification, so long as the officers do not convey by their words or actions to the person being questioned that compliance with their requests is required; however, a consensual encounter lost its consensual nature if law enforcement officers conveyed a message, by means of physical force or show of authority (as in this case, after the reason for the Terry stop had been dispelled), that induced the individual to cooperate. People v. Gherna, 203 Ill. 2d 165, 271 Ill. Dec. 245, 784 N.E.2d 799, 2003 Ill. LEXIS 2 (2003).

An officer exceeded the scope of detention allowed under the Constitution where: (1) officers heard a gunshot from the vicinity of a specified location; (2) the officers saw a group of men in the parking lot at that location and chased them, but lost them; and (3) the officers then confronted the defendant in a nearby parking lot, chased him into a nearby building, conducted a stop and frisk that revealed no incriminating items, and arrested him. People v. Delaware, 314 Ill. App. 3d 363, 247 Ill. Dec. 131, 731 N.E.2d 904, 2000 Ill. App. LEXIS 464 (1 Dist. 2000), appeal

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denied, 191 Ill. 2d 541, 250 Ill. Dec. 461, 738 N.E.2d 930 (2000), cert. denied, 532 U.S. 1019, 121 S. Ct. 1956, 149 L. Ed. 2d 752 (2001).

The detention of defendant for the legitimate law enforcement purpose of ascertaining whether he was carrying contraband was a consensual encounter which ripened into a full-blown seizure only after the officers obtained probable cause to arrest. People v. Price, 195 Ill. App. 3d 701, 142 Ill. Dec. 459, 552 N.E.2d 1200 (1 Dist. 1990).

- After Valid Search

Once it has been established that the entry was valid under this exception, evidence of crime discovered during such an entry may be legally seized without a warrant. People v. Griffin, 158 Ill. App. 3d 46, 110 Ill. Dec. 280, 510 N.E.2d 1311 (5 Dist. 1987), overruled in part by People v. Ferral, 397 Ill. App. 3d 697, 336 Ill. Dec. 800, 921 N.E.2d 414, 2009 Ill. App. LEXIS 1320 (2d Dist. 2009).

- Arrest Not Shown

Where the evidence adduced at motion to suppress did not tend to show that a reasonable, innocent person would have felt that she was not free to leave during the time that elapsed between defendant's arrival at the police station and her statement concerning the purchase of a stolen stereo set, the circuit court's determination that defendant was not arrested at the time in question was not manifestly erroneous. People v. Williams, 164 Ill. 2d 1, 206 Ill. Dec. 592, 645 N.E.2d 844 (1994), cert. denied, 515 U.S. 1136, 115 S. Ct. 2566, 132 L. Ed. 2d 818 (1995).

- Automobiles

Trial court erred by granting defendant's motion to suppress because the restricted driver permit exception of 625 ILCS 5/6-303 was not an element of the offense of driving while license revoked, and therefore, the officer's stop of defendant was lawful, as he was aware that the license of the registered owner of the vehicle had been revoked and that the person driving the vehicle strongly resembled the photograph of the owner; the officer was not required to have a reasonable articulable suspicion that defendant was not in compliance with the terms of his restricted driving permit, as that was not an element of the offense. The mere possibility that the permit issued to defendant allowed him to drive at the time and place that the officer observed him did not negate the officer's reasonable suspicion that defendant was driving on a revoked license. People v. Close, 238 Ill. 2d 497, 345 Ill. Dec. 620, 939 N.E.2d 463, 2010 Ill. LEXIS 1539 (2010).

Under the Fourth Amendment, a seizure is effected only when a motor vehicle begins to yield; for vehicles moving in traffic, an indication of submission may come well before the vehicle comes to a full halt. Vill. of Mundelein v. Thompson, 341 Ill. App. 3d 842, 276 Ill. Dec. 237, 793 N.E.2d 996, 2003 Ill. App. LEXIS 929 (2 Dist. 2003).

Defendant was seized where the police officers' positions with their bicycles on either side of defendant's vehicle, combined with an officer's request that defendant produce a bottle of beer for examination after questioning defendant and her daughter about their identities constituted an official show of authority to which a reasonable innocent person would feel compelled to submit. People v. Gherna, Ill. 2d , Ill. Dec. , N.E.2d , 2003 Ill. LEXIS 12 (Jan. 24, 2003).

Defendant, by leaving his car on a secluded gravel road, unlicensed, unregistered, and along the railroad tracks, had no expectation of privacy and the seizure and subsequent search of the abandoned automobile was proper and did not violate defendant's Fourth Amendment rights, and the evidence found therein was properly introduced at trial. People v. Arnett, 217 Ill. App. 3d 626, 160 Ill. Dec. 448, 577 N.E.2d 773 (5 Dist. 1991), cert. denied, 143 Ill. 2d 640, 167 Ill. Dec. 402, 587 N.E.2d 1017 (1992).

Police could, without a warrant, seize an automobile parked in a public place based on probable cause to believe that the automobile itself was an instrumentality used in a crime, and thus

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constituted evidence of the crime, and on probable cause to believe that the automobile contained evidence of the crime. People v. Davis, 93 Ill. App. 3d 217, 48 Ill. Dec. 675, 416 N.E.2d 1197 (1 Dist. 1981).

- By Private Individuals

The fact that the evidence involved was seized by a private individual does not automatically end all inquiry, since such an individual can be regarded as acting as an agent or instrument of the state in light of all the circumstances of the case so as to subject the seizure to constitutional guarantees. People v. Clements, 80 Ill. App. 3d 821, 36 Ill. Dec. 63, 400 N.E.2d 483 (5 Dist. 1980).

Where there was no evidence of unreasonable police conduct or coercive influence over the private individuals who turned over defendant's cannabis to the police, the cannabis was not inadmissible since it was not obtained at the expense of defendant's constitutional rights. People v. Clements, 80 Ill. App. 3d 821, 36 Ill. Dec. 63, 400 N.E.2d 483 (5 Dist. 1980).

- Evidence from Spouse

Conflicting testimony in larceny trial as to whether incriminating evidence was obtained from defendant's wife without his consent and without a warrant raised no question of the construction of either this section or the Federal Constitution with reference to unlawful search and seizure, or of Ill. Const. (1970), Art. I, § 10, regarding a person being required to give testimony against himself. People v. Totten, 378 Ill. 385, 38 N.E.2d 1 (1941).

- Experience of Officer

What constitutes probable cause for a seizure must be determined from the standpoint of the officer who made the seizure, with his experience and training in the detection of controlled substances being taken into account. People v. Crane, 244 Ill. App. 3d 721, 184 Ill. Dec. 865, 614 N.E.2d 66 (1 Dist.), appeal denied, 152 Ill. 2d 566, 190 Ill. Dec. 897, 622 N.E.2d 1214 (1993), cert. denied, 510 U.S. 1170, 114 S. Ct. 1204, 127 L. Ed. 2d 552 (1994).

- Fruit of Poisonous Tree

Co-conspirator's statement to police was an intervening circumstance that, in light of the other attenuation factors, sufficiently purged the taint of defendant's illegal arrest before defendant gave a court-reported statement. People v. Wilberton, 348 Ill. App. 3d 82, 284 Ill. Dec. 179, 809 N.E.2d 745, 2004 Ill. App. LEXIS 402 (1 Dist. 2004), appeal denied, 211 Ill. 2d 612, Ill. Dec. , 823 N.E.2d 977 (2004).

The fruit of the poisonous tree doctrine does not apply to: (1) evidence discovered from an independent source; (2) evidence sufficiently distant in causal connection from the controverted search and seizure so that any connection has become so attenuated as to dissipate any taint; or (3) evidence which inevitably would have been found without an illegal search; satisfaction of any of the foregoing conditions removes the evidence in question from the purview of the doctrine. People v. Rassmussen, 143 Ill. App. 3d 11, 97 Ill. Dec. 176, 492 N.E.2d 612 (1 Dist. 1986).

- Independent of Search

Evidence obtained independently of an illegal search may be used against defendants. People v. Martin, 382 Ill. 192, 46 N.E.2d 997 (1942).

- Individuals

Temporary detention of an individual during a vehicle stop constitutes a seizure of his person, even if the stop is brief and for a limited purpose. People v. Bartimo, 345 Ill. App. 3d 1100, 281 Ill. Dec. 192, 803 N.E.2d 596, 2004 Ill. App. LEXIS 25 (4 Dist. 2004).

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Since it was necessary to hold the defendant until it could be ascertained whether he should be charged with a felony or a misdemeanor, for safety and security reasons it was proper to hold him in the lockup. People v. Seymour, 84 Ill. 2d 24, 48 Ill. Dec. 548, 416 N.E.2d 1070 (1981).

- Investigative Stop

Length of a vehicle stop was unreasonable under Ill. Const. art. I, § 6, and the trial court did not err in granting defendant's motion to suppress; after attempting to obtain defendant's consent for 13 minutes an officer called for a canine unit, and even then the unit did not arrive for another 25 minutes or so. People v. McQuown, 407 Ill. App. 3d 1138, 348 Ill. Dec. 332, 943 N.E.2d 1242, 2011 Ill. App. LEXIS 96 (4 Dist. 2011).

Court properly granted defendant's motion to quash arrest and suppress evidence, because the officer provided no testimony from which to find that an officer in his position could reasonably believe that defendant was actually driving in two lanes and was therefore engaged in improper lane usage in violation of 625 ILCS 5/11-709(a); the officer testified that both times defendant's vehicle barely went over the lane divider and that both times, defendant's tires crossed the line for a matter of seconds. People v. Hackett, 406 Ill. App. 3d 209, 347 Ill. Dec. 723, 943 N.E.2d 13, 2010 Ill. App. LEXIS 1388 (3 Dist. 2010).

Officers' observations of defendant and two others pulling a city garbage can down the street gave rise to reasonable concern, entitling the officers initially to approach and stop defendant and the others. People v. Edward, 402 Ill. App. 3d 555, 341 Ill. Dec. 563, 930 N.E.2d 1077, 2010 Ill. App. LEXIS 570 (1 Dist. 2010).

Motion to suppress was properly denied because, under the circumstances, the 90 minute detention in the early morning of defendant following a traffic stop for equipment violations, where the investigating officer became suspicious that a brand new pickup which defendant was towing on a trailer was a stolen vehicle, was not too long in duration to be justified as an investigatory stop under U.S. Const. Amend. IV and Ill. Const. Art. I, § 6, and the investigatory stop did not involve any unnecessary delay. The officer became suspicious because of the answers which defendant gave to the officer, one issue always led to another issue in the questioning, the officer had to contact the police department in the town where defendant said that defendant purchased the pickup, and the police department had to contact the owner of the auto dealership where defendant said that defendant had purchased the truck to verify if a sale had taken place. People v. O'Dell, 392 Ill. App. 3d 979, 332 Ill. Dec. 512, 913 N.E.2d 107, 2009 Ill. App. LEXIS 679 (5 Dist. 2009).

- Lineup

The refusal of the police to permit the defendant's lawyer to observe the witness during a lineup did not convert his voluntary appearance at the police station into an involuntary seizure by the police where: (1) the defendant voluntarily went to the police station with his lawyer, (2) there was no evidence that the police threatened the defendant in any way, (3) rather than insist that the defendant take part in a lineup, the police asked the lawyer whether the defendant would agree to participate in one, (4) the defendant never stated that he did not feel free to leave the premises, and (5) the defendant was not formally placed under arrest until after the conclusion of the lineup. People v. Bolden, 197 Ill. 2d 166, 258 Ill. Dec. 538, 756 N.E.2d 812, 2001 Ill. LEXIS 770 (2001), cert. denied, 535 U.S. 936, 122 S. Ct. 1316, 152 L. Ed. 2d 225 (2002).

- Luggage

Defendant's arrival on a flight routinely used by drug traffickers, coupled with his nervous behavior and conflicting answers to the officer's questions, constituted a reasonable articulable suspicion to detain his luggage. People v. Evans, 296 Ill. App. 3d 1, 228 Ill. Dec. 270, 689 N.E.2d 142 (1 Dist. 1997).

- Not Shown

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Where defendant voluntarily came to the station, was treated as a witness, was free to leave, and was familiar with the arrest process due to many prior arrests, the questioning of defendant was not a seizure under Ill. Const., Art. I, § 6. People v. Ball, 322 Ill. App. 3d 521, 255 Ill. Dec. 802, 750 N.E.2d 719, 2001 Ill. App. LEXIS 286 (1 Dist. 2001).

The questioning of the defendant's wife with regard to a key during the execution of a search warrant at their apartment fell within the traditional bounds of the search and seizure clause, as opposed to the privacy clause, and was not a seizure such that particular or objective justifications were required prior to speaking to her. People v. Leon, 311 Ill. App. 3d 624, 243 Ill. Dec. 605, 723 N.E.2d 1206, 2000 Ill. App. LEXIS 22 (1 Dist. 2000), appeal denied, 188 Ill. 2d 575, 246 Ill. Dec. 128, 729 N.E.2d 501 (2000).

The stopping and questioning of defendant by a DEA agent, in plain clothes, which occurred in a public walkway, did not amount to an unlawful seizure as defendant was repeatedly advised that she was free to leave. People v. Carter, 288 Ill. App. 3d 658, 224 Ill. Dec. 226, 681 N.E.2d 541 (1 Dist. 1997).

Defendant was not seized within the constitutional sense where officer approached defendant in a public area, identified himself and requested the opportunity to ask questions and told defendant he was free to leave and not under arrest. People v. Olivarez, 279 Ill. App. 3d 90, 215 Ill. Dec. 759, 664 N.E.2d 156 (1 Dist. 1996).

- Plain Touch

As police officer was justified by Terry to stop and frisk defendant and, further, as he had probable cause to believe the object felt in defendant's pocket was rock cocaine, seizure of the substance was proper under the "plain touch" doctrine. People v. Mitchell, 165 Ill. 2d 211, 209 Ill. Dec. 41, 650 N.E.2d 1014 (1995).

- Plain View

Objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence. People v. Stroud, 189 Ill. App. 3d 1034, 137 Ill. Dec. 539, 546 N.E.2d 293 (4 Dist. 1989).

Where searched bag was sitting in plain and open view on a sidewalk curb where it had been abandoned by defendant, its seizure by the officers did not violate any constitutional rights of defendant. People v. Sylvester, 43 Ill. 2d 325, 253 N.E.2d 429 (1969).

- Reasonable

Defendant was not unlawfully seized in violation of defendant's rights under the Fourth Amendment, U.S. Const. amend. IV, and Ill. Const. art. I, § 6 given defendant's consent to the search of the trunk of the vehicle defendant had been driving that was the subject of a valid traffic stop even though the request to search the trunk came at the end of the traffic stop and after the police officer had made a consensual search of the vehicle's interior that did not reveal any contraband. As a result, defendant was not entitled to have suppressed the contraband found as a result of the officer's search of the vehicle's trunk. People v. Oliver, 236 Ill. 2d 448, 338 Ill. Dec. 901, 925 N.E.2d 1107, 2010 Ill. LEXIS 281 (2010).

The seizure was "reasonable" due to the seriousness of the violent crime the officers were investigating and the importance of capturing the victim's murderer quickly, there was a clear showing of probable cause at the time of defendant's arrest, particularly in light of suspect's overheard admission of committing a murder that evening, the fact that officers overheard a man in the apartment which had been identified by witnesses as belonging to defendant, when added to the fact that this man admitted involvement in a murder, gave strong assurances to the police that defendant was on the premises before they entered his home, the police effected his arrest in a peaceable way, and the officers faced the situation in which they were nearly certain that

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evidence of a murder in the form of bloodstained clothing was just beyond the door and that this evidence would likely disappear absent prompt action and therefore, was not a violation of this section. People v. Smith, 152 Ill. 2d 229, 178 Ill. Dec. 335, 604 N.E.2d 858 (1992), cert. denied, 507 U.S. 1040, 113 S. Ct. 1872, 123 L. Ed. 2d 491 (1993).

- Receivership

The taking of the books and records of a business by a receiver under order of the court was not a seizure. People ex rel. Scott v. Pintozzi, 50 Ill. 2d 115, 277 N.E.2d 844 (1971).

- Standing

When a defendant fails to ever claim an ownership or possessory interest in property, the defendant loses standing to dispute the search and suppress the evidence. People v. Allen, 268 Ill. App. 3d 279, 206 Ill. Dec. 258, 645 N.E.2d 263 (1 Dist. 1994), appeal denied, 161 Ill. 2d 530, 208 Ill. Dec. 363, 649 N.E.2d 419 (1995).

Defendant had no standing to challenge the seizure of narcotics, which were in plain view and seized pursuant to a lawful stop of vehicle in which defendant was a passenger. People v. Norris, 101 Ill. App. 3d 664, 57 Ill. Dec. 307, 428 N.E.2d 987 (4 Dist. 1981).

The fruits of a search cannot determine its constitutional validity, and should not govern a defendant's standing to make a motion to suppress evidence. People v. De Filippis, 34 Ill. 2d 129, 214 N.E.2d 897 (1966).

- Synonymous with Arrest

For purposes of the Fourth Amendment, a seizure is synonymous with an arrest, and an arrest effected without probable cause or a warrant based thereon violates the protections of the amendment. People v. Williams, 164 Ill. 2d 1, 206 Ill. Dec. 592, 645 N.E.2d 844 (1994), cert. denied, 515 U.S. 1136, 115 S. Ct. 2566, 132 L. Ed. 2d 818 (1995).

- Unreasonable

Where the officer's show of authority, telling defendant and the others that they were free to go but that the officer was detaining the vehicle until the officer could perform a canine sniff, subjected defendant to a seizure, as a reasonable person in such a situation, traveling on an interstate highway between two states would not have felt free to leave; the seizure was illegal because the fact that the vehicle was traveling from Colorado to Illinois on a specific highway, that the travelers were allegedly nervous, and that the vehicle slowed significantly after passing the officer indicated nothing more than a hunch and not reasonable, objective grounds to support the seizure. People v. Davenport, 392 Ill. App. 3d 19, 331 Ill. Dec. 61, 910 N.E.2d 134, 2009 Ill. App. LEXIS 319 (3 Dist. 2009), review denied, 234 Ill. 2d 531, 920 N.E.2d 1075, 2009 Ill. LEXIS 2137 (2009).

As an officer's order to defendant to remove his hands from his pockets indicated that compliance with his request might be compelled, a seizure took place when defendant complied. As there was no legal basis for it, the seizure of the gun violated the Fourth Amendment and the gun was properly suppressed. People v. Jackson, 389 Ill. App. 3d 283, 329 Ill. Dec. 211, 906 N.E.2d 56, 2009 Ill. App. LEXIS 158 (1 Dist. 2009), appeal denied, 233 Ill. 2d 579, 335 Ill. Dec. 640, 919 N.E.2d 359, 2009 Ill. LEXIS 1685 (2009).

Trial court properly granted defendant's motion to quash arrest and to suppress evidence, as the police officers' seizure of defendant as he walked down a sidewalk in his neighborhood early one morning because he could not sleep was unreasonable, and, thus violated his rights under the state and federal constitutions to be free from unreasonable searches and seizures; that conclusion was especially true given the one officer's testimony at the suppression hearing that it was his standard practice went he met someone on the street to stop that person and run a

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warrant check even where the officer had no reason to suspect that the person he stopped was engaged in any sort of criminal activity. People v. Mitchell, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 497 (2 Dist. May 20, 2005), appeal denied, 215 Ill. 2d 611, 295 Ill. Dec. 525, 833 N.E.2d 7 (2005).

Trial court properly granted defendant's motion to quash arrest and to suppress evidence where police officers' stop of defendant without cause as he walked down a sidewalk in his neighborhood early one morning, asking him for identification, and running a warrant search amounted to a seizure in violation of the Fourth Amendment. People v. Mitchell, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 497 (2 Dist. May 20, 2005), appeal denied, 215 Ill. 2d 611, 295 Ill. Dec. 525, 833 N.E.2d 7 (2005).

Trial court erred in denying defendant's motion to suppress evidence, as the evidence used to convict him on two counts of aggravated unlawful use of a weapon was obtained in violation of his rights under the Fourth Amendment rights to the United States Constitution and Ill. Const., Art. I, § 6; once police determined that the woman he was with was not in any danger regarding the domestic disturbance the police thought they saw, it was unreasonable for the police to remove defendant from the truck in which defendant and the woman were sitting, pat defendant down, and run a warrant check on him, which revealed he had an outstanding warrant for DUI and was carrying a gun and gun clip. People v. Torres, 347 Ill. App. 3d 252, 283 Ill. Dec. 49, 807 N.E.2d 654, 2004 Ill. App. LEXIS 265 (1 Dist. 2004), appeal denied, 211 Ill. 2d 610, Ill. Dec. , 823 N.E.2d 977 (2004), cert. denied, 544 U.S. 905, 125 S. Ct. 1603, 161 L. Ed. 2d 279 (2005).

A seizure of an automobile driver and his passengers was unreasonable where: (1) the automobile was stopped for a traffic violation; (2) after a brief investigation, the officer informed the driver that a citation would not be issued; and (3) the officer then "paused" for "a couple of minutes" and then had a conversation with the driver which resulted in the driver giving consent to a search of the automobile. People v. Brownlee, 186 Ill. 2d 501, 239 Ill. Dec. 25, 713 N.E.2d 556 (1999).

Where police officers seized movie film from arcade machine, and no arrest was made until the day following the seizure of the films, nor had a search warrant been issued, the officers acted without legal justification and the taking of the film and the search for and seizure of films in other machines were repugnant to the constitutional guarantee against unreasonable search and seizure. City of Chicago v. Lord, 3 Ill. App. 2d 410, 122 N.E.2d 439 (1 Dist. 1954), aff'd, 7 Ill. 2d 379, 130 N.E.2d 504 (1955).

Shown

Defendant failed to make a prima facie case that his seizure was an improper investigatory stop under the Fourth Amendment where the police were notified of an intoxicated driver, which was corroborated by the police, and the caller identified himself, although it was unclear whether the identification was before defendant submitted to the seizure; the trial court's order rescinding the statutory summary suspension of defendant's driver's license pursuant to 625 ILCS 5/11-501.1 was reversed. Vill. of Mundelein v. Thompson, 341 Ill. App. 3d 842, 276 Ill. Dec. 237, 793 N.E.2d 996, 2003 Ill. App. LEXIS 929 (2 Dist. 2003).

Subject Matter Jurisidiciton

Ill. Const., Art. VI, § 1, does not withdraw from the legislature the power to confer upon city courts jurisdiction to hear and determine transitory causes of action, arising outside of the territorial limits of the city in which the particular city court is located, and did not preclude a city court from exercising jurisdiction over an action under the Federal Employers Liability Act for damages incurred outside the state. Indeed Ill. Rev. Stat. ch. 37, para. 333, vested the city courts with

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concurrent jurisdiction over transitory actions wherever they may arise. McGlynn & McGlynn v. Louisville & N. R. Co., 313 Ill. App. 396, 40 N.E.2d 539, 1942 Ill. App. LEXIS 1163 (1 Dist. 1942).

Telephone Records

- Expectation of Privacy

Citizens have a legitimate expectation that their telephone records will not be disclosed. People v. DeLaire, 240 Ill. App. 3d 1012, 183 Ill. Dec. 33, 610 N.E.2d 1277 (2 Dist.), appeal denied, 151 Ill. 2d 569, 186 Ill. Dec. 387, 616 N.E.2d 340 (1993).

- Message Unit Detail (MUD) Records

Message Unit Detail (MUD) records are documentary evidence rather than personal or bodily evidence and the reasonableness of the intrusion of the grand jury subpoena power is tested by determining: (1) whether the document is relevant to the inquiry; and (2) whether the specification of the document to be produced is adequate but not excessive for the purpose of the relevant inquiry. People v. DeLaire, 240 Ill. App. 3d 1012, 183 Ill. Dec. 33, 610 N.E.2d 1277 (2 Dist.), appeal denied, 151 Ill. 2d 569, 186 Ill. Dec. 387, 616 N.E.2d 340 (1993).

Bell Telephone Company as a monopoly and a utility, records customers' message unit details (MUD) automatically and involuntarily; the MUD records reveal personal associations and dealings which create a "biography" which should not be subject to an unreasonable search and seizure. Although Bell has access to the MUD records, that does not negate persons' expectation of privacy in the telephone records. People v. DeLaire, 240 Ill. App. 3d 1012, 183 Ill. Dec. 33, 610 N.E.2d 1277 (2 Dist.), appeal denied, 151 Ill. 2d 569, 186 Ill. Dec. 387, 616 N.E.2d 340 (1993).

Traffic Stops

There was not a sufficient basis to justify police officer's stop of defendant's vehicle on the suspicion that he was driving outside of the limits of a restricted driving permit issued pursuant to 625 ILCS 5/6-205(c), as the only basis for the stop was the knowledge that he had a restricted permit and the fact that he was driving on Sunday afternoon; without showing knowledge of the terms of the permit, the time that defendant was driving, without more, did not support a reasonable suspicion that justified the stop. People v. Johnson, 379 Ill. App. 3d 710, 319 Ill. Dec. 87, 885 N.E.2d 358, 2008 Ill. App. LEXIS 176 (1 Dist. 2008).

Suppression of evidence obtained in a search of defendant during a traffic stop was not required under the Fourth Amendment or this section because: (1) the traffic stop itself was valid; (2) questions posed to defendant, a passenger in the stopped vehicle, did not unnecessarily prolong the stop; (3) asking defendant if he had any knives, guns, drugs, or needles, was the same as asking if he had any contraband in which he had no legitimate privacy interest; and (4) defendant's actions and verbal statements established his consent to the search. People v. Terry, 379 Ill. App. 3d 288, 318 Ill. Dec. 485, 883 N.E.2d 716, 2008 Ill. App. LEXIS 163 (1 Dist. 2008).

Trial court granted defendant's motion to quash arrest and suppress evidence, namely a handgun a police officer found hidden under defendant's dashboard after defendant consented to a search of his vehicle, as the handgun was only located after the officer impermissibly prolonged an investigatory stop of defendant's vehicle after defendant had committed three traffic violations; the officer had already run a computer check on defendant's license and registration, which showed they were valid, and had enough to issue a warning or a ticket when he asked defendant if defendant was carrying contraband and when he asked defendant if he could search defendant's person or car, which showed that the officer was on a fishing expedition because

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there was no evidence that defendant was involved in criminal activity. People v. Parra, 352 Ill. App. 3d 584, 288 Ill. Dec. 16, 817 N.E.2d 141, 2004 Ill. App. LEXIS 1249 (2 Dist. 2004).

Upon initiating a minor traffic stop, a police officer may briefly detain the driver to request his driver's license and determine its validity and, under certain circumstances, conduct a speedy warrant check; once a check of a driver's license and any warrant information is completed, if no further suspicion is aroused, the traffic stop must cease and the individual should no longer be detained. People v. Bartimo, 345 Ill. App. 3d 1100, 281 Ill. Dec. 192, 803 N.E.2d 596, 2004 Ill. App. LEXIS 25 (4 Dist. 2004).

Under the second prong of a Terry analysis, the length of a traffic stop detention and the manner in which it was carried out are considered; an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. People v. Bartimo, 345 Ill. App. 3d 1100, 281 Ill. Dec. 192, 803 N.E.2d 596, 2004 Ill. App. LEXIS 25 (4 Dist. 2004).

Because a traffic stop is more analogous to a Terry investigative stop than to a formal arrest, the reasonableness of a traffic stop is analyzed under Terry principles; a Terry analysis involves a dual inquiry: (1) whether the officer's action was justified at its inception, and (2) whether it was reasonably related in scope to the circumstances which justified the interference in the first place. People v. Bartimo, 345 Ill. App. 3d 1100, 281 Ill. Dec. 192, 803 N.E.2d 596, 2004 Ill. App. LEXIS 25 (4 Dist. 2004).

Automobile stops are subject to the constitutional imperative that they not be "unreasonable" under the circumstances; as a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred. People v. Bartimo, 345 Ill. App. 3d 1100, 281 Ill. Dec. 192, 803 N.E.2d 596, 2004 Ill. App. LEXIS 25 (4 Dist. 2004).

Where an officer accelerated to catch up with defendant, placed his vehicle to the left rear of defendant's vehicle, and then slowed, effectively trapping defendant in the right lane as defendant came up behind a truck, the officer did not have reasonable grounds to stop defendant for following the truck too closely in violation of 625 ILCS 5/11-710(a); because it was not against the manifest weight of the evidence for the trial court to have concluded that any noncompliance with the traffic laws resulted from the actions of the officer, the trial court properly concluded that there was no legal justification for the stop under U.S. Const., Amend. IV and Ill. Const., Art. I, § 6. People v. Phillips, 328 Ill. App. 3d 999, 263 Ill. Dec. 116, 767 N.E.2d 842, 2002 Ill. App. LEXIS 190 (1 Dist. 2002).

- Dog Sniffing

Dog sniff of a vehicle during a routine traffic stop does not implicate the privacy clause of Ill. Const. Art. I, § 6 (1970). People v. Caballes, 221 Ill. 2d 282, 303 Ill. Dec. 128, 851 N.E.2d 26, 2006 Ill. LEXIS 625 (2006).

Dog sniff of a defendant's vehicle during a routine traffic stop did not implicate the privacy clause of Ill. Const. Art. I, § 6; given the "limited lockstep" approach to search and seizure analysis, in which the court would look first to the U.S. Constitution, and only if federal law provided no relief turn to the Illinois Constitution to determine whether a specific criterion justified departure from federal precedent, the sniff did not violate defendant's right to be free from unreasonable search and seizure. People v. Caballes, 221 Ill. 2d 282, 303 Ill. Dec. 128, 851 N.E.2d 26, 2006 Ill. LEXIS 625 (2006).

Unreasonable Search and Seizure

Investigative stop violated defendant's rights because, beyond the character of the neighborhood, the observations of the officer, seeing two black men exit one vehicle and enter another, were too minimal to support reasonable suspicion that a drug transaction was occurring; thus, the balance

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tilted in favor of individual's right to personal security and freedom from arbitrary detention; a finding of reasonable suspicion in the aforementioned circumstances would subject too many innocent travelers to arbitrary detention-and with little more, in the way of justification, than their presence in a high-crime neighborhood. People v. Leggions, 382 Ill. App. 3d 1129, 321 Ill. Dec. 978, 890 N.E.2d 700, 2008 Ill. App. LEXIS 632 (1 Dist. 2008).

- In General

The protection guaranteed by this section is not against searches and seizures but against unreasonable searches and seizures. People v. Reynolds, 350 Ill. 11, 182 N.E. 754 (1932).

- After Lawful Entry

Where the purpose for the police remaining in the apartment after arresting first defendant was to conduct an illegal, warrantless room to room search of the entire residence, including the taking of photographs and the seizing of numerous items found through the apartment, and not to process the evidence of cocaine residue initially found shortly after entering the apartment lawfully, the lawful purpose terminated substantially before second defendant's arrival 30 minutes later. People v. Coleman, 194 Ill. App. 3d 336, 141 Ill. Dec. 217, 550 N.E.2d 1263 (2 Dist. 1990).

A lawful entry becomes an unlawful intrusion if the police remain beyond a time reasonably necessary to complete the purpose of their original lawful entry or engage in other unlawful conduct that would render the intrusion unreasonable. People v. Coleman, 194 Ill. App. 3d 336, 141 Ill. Dec. 217, 550 N.E.2d 1263 (2 Dist. 1990).

- Cause of Action

A plaintiff's allegation that he was subject to an illegal search not incident to a lawful arrest and in violation of his constitutional rights under this section was sufficient to state a cause of action in an action seeking recovery from the police officers and the municipalities involved. Newell v. City of Elgin, 34 Ill. App. 3d 719, 340 N.E.2d 344 (2 Dist. 1976).

Although former Ill. Const. (1870), Art. II, § 6 (see now this section) prohibits unreasonable search and seizure, there is a federal remedy which is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked. Monroe v. Pape, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492 (1961), overruled on other grounds, Monell v. Department of Social Servs., 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978).

- Conviction Void

Defendant's convictions for aggravated unlawful use of a weapon in violation of 720 ILCS 5/34-1.6 and defacing identification marks of a firearm contrary to 720 ILCS 5/24-5(b) could not stand, as the trial court should have granted defendant's motion to suppress evidence. Defendant's rights to be free from unreasonable searches and seizures, under the Fourth Amendment, U.S. Const. amend. IV, and Fourteenth Amendment, U.S. Const. amend. XIV, as well as the right to be stopped for reasonable suspicion of criminal activity under 725 ILCS 5/107-14, were violated when a police officer stopped defendant after an informant had told the officer that defendant was at a certain location and possessed a gun, as the officer did not explain any reason why the officer thought the informant was providing reliable information regarding criminal activity. People v. Rhinehart, Ill. App. 3d , Ill. Dec. , 961 N.E.2d 933, 2011 Ill. App. LEXIS 1220 (1 Dist. 2011).

Police officer who stopped defendant for driving on the shoulder of the road and speeding had no basis for asking defendant if he could search his vehicle, and the appellate court reversed defendant's conviction for aggravated unlawful use of a weapon, in violation of 720 ILCS 5/24-1.6(a)(3), because the trial court should have granted defendant's motion to suppress a handgun the officer found. People v. Jones, 346 Ill. App. 3d 1101, 282 Ill. Dec. 425, 806 N.E.2d 722,

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2004 Ill. App. LEXIS 282 (3 Dist. 2004), appeal denied, 211 Ill. 2d 597, Ill. Dec. , 823 N.E.2d 972 (2004).

A conviction cannot stand when it is based upon evidence that is the product of an unreasonable search and seizure. People v. Parren, 24 Ill. 2d 572, 182 N.E.2d 662 (1962).

The trial court committed grave error in failing to sustain the motion to suppress the evidence obtained by illegal search and seizure, and in allowing the coats seized in defendant's store to be admitted in evidence against him, and for this error the judgment must be reversed and the cause remanded for a new trial. People v. Dalpe, 371 Ill. 607, 21 N.E.2d 756 (1939).

- Exclusionary Rule

The exclusionary rule arising under this section's prohibition of unreasonable searches and seizures was not subject to the good faith exception so as to allow admission of evidence seized during execution of a no-knock search warrant that was issued under a statute found to be unconstitutional. The court based its decision on the fact that the constitutional violation in question was the result of unreasonable legislative activity, which swept broadly and ought to be deterred, rather than a judicial act, which would affect only those named in the warrant. People v. Aaron, 296 Ill. App. 3d 317, 230 Ill. Dec. 815, 694 N.E.2d 1093 (2 Dist. 1998).

Where police officers testified that they would not have applied for a search warrant had defendants consented to search of their home, after officers had already illegally entered and searched defendants' home, evidence should have been excluded because seizure did not comply with the independent source rule, and trial court committed manifest error in finding illegal entry did not influence officers' decision to seek warrant. People v. Carter, 284 Ill. App. 3d 745, 220 Ill. Dec. 267, 672 N.E.2d 1279 (5 Dist. 1996), appeal denied, 171 Ill. 2d 570, 222 Ill. Dec. 433, 677 N.E.2d 967 (1997).

Since the exclusionary rule is based upon the constitutional privilege against self-incrimination, it is available only to one whose constitutional rights have, in fact, invaded by an illegal search and seizure; an accused does not have standing to prevent the admission of evidence obtained by an unlawful search and seizure which did not infringe his own personal rights protected by the Constitution. People v. Perry, 1 Ill. 2d 482, 116 N.E.2d 360 (1953).

- Exigent Circumstances

Illinois has adopted the exigent circumstances exception allowing certain warrantless arrests and searches made on private property when the police officer reasonably believes that a person is in need of immediate aid. Under this exception, the reasonableness of the officers' belief that an emergency situation exists is determined by the totality of all circumstances known to the officers at the time of the entry. People v. Mitran, 194 Ill. App. 3d 344, 141 Ill. Dec. 212, 550 N.E.2d 1258 (2 Dist. 1990).

- Federal and State Protection

Suppression of drugs found was not appropriate because the search of defendant was not a strip search under 725 ILCS 5/103-1; moreover, it was a valid search incident to arrest that did not violate U.S. Const. amend. IV since the officer's unzipping the defendant's pants and extracting readily accessible contraband did not exceed the scope of a search incident to a lawful arrest. Even if the search constituted a strip search, it was not unreasonable under the circumstances; the officer had the reasonable suspicion necessary to search for a concealed controlled substance in the zipper area of the defendant's pants, a violation of 725 ILCS 5/103-1 did not necessarily trigger U.S. Const. amend. IV concerns, the Illinois Constitution did not provide greater protection from strip searches than the United States Constitution, and the search was not unreasonable since it was conducted in a way that provided minimal embarrassment to the defendant while still allowing the officer to extract the cocaine which he reasonably believed to be

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present. People v. Carter, Ill. App. 3d , 354 Ill. Dec. 260, 957 N.E.2d 576, 2011 Ill. App. LEXIS 1076 (3 Dist. 2011).

The constitutional proscription of unreasonable searches and seizures in U.S. Const., Amend. IV is coextensive with the scope of this section. People v. Reincke, 84 Ill. App. 3d 222, 39 Ill. Dec. 677, 405 N.E.2d 430 (5 Dist. 1980); People v. Estrada, 68 Ill. App. 3d 272, 24 Ill. Dec. 924, 386 N.E.2d 128 (2 Dist. 1979); Thornton v. University Civil Serv. Merit Bd., 154 Ill. App. 3d 1016, 107 Ill. Dec. 893, 507 N.E.2d 1262 (5 Dist. 1987).

The protection prohibiting all searches made without a warrant was not intended to be more extensive than that provided at the federal level against unreasonable searches. People v. McGee, 140 Ill. App. 3d 677, 95 Ill. Dec. 218, 489 N.E.2d 439 (2 Dist. 1986).

State protection in the context of search and seizure requirements is not intended to be more extensive than that provided at the federal level. People v. Tisler, 103 Ill. 2d 226, 82 Ill. Dec. 613, 469 N.E.2d 147 (1984).

- Remedies

The fact that Illinois by this section and by 725 ILCS 5/107-1 et seq., outlaws unreasonable searches and seizures is no barrier to a suit in the federal court pursuant to R.S. § 1979, 42 U.S.C. § 1983 on the same issues. Monroe v. Pape, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492 (1961), overruled on other grounds, Monell v. Department of Social Servs., 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978).

- Scope of Protection

This section gives rise to a cause of action against public officials or government actors who violate citizens' rights contained in this section. White v. O'Leary, 742 F. Supp. 990 (N.D. Ill. 1990).

The protection of this section and the search and seizure provision of the United States Constitution exists not only to redress past intrusions by way of the exclusionary rule, but also to prevent threatened intrusions at the investigatory stage. People v. Cohn, 104 Ill. App. 3d 94, 59 Ill. Dec. 839, 432 N.E.2d 625 (4 Dist. 1982).

The constitutional proscription against unreasonable searches and seizures operates only as a check upon governmental authority and does not apply to searches and seizures conducted by private individuals. Gindrat v. People, 138 Ill. 103, 27 N.E. 1085 (1891); People v. Clements, 80 Ill. App. 3d 821, 36 Ill. Dec. 63, 400 N.E.2d 483 (5 Dist. 1980).

The prohibition against unreasonable searches and seizures applies to seizures of the person as well as seizures of property. People v. Wolgemuth, 43 Ill. App. 3d 335, 1 Ill. Dec. 857, 356 N.E.2d 1139 (3 Dist. 1976), rev'd on other grounds, 69 Ill. 2d 154, 13 Ill. Dec. 40, 370 N.E.2d 1067 (1977); People v. Sanders, 59 Ill. App. 3d 6, 16 Ill. Dec. 437, 374 N.E.2d 1315 (3 Dist. 1978).

The prohibition contained in this section and the United States Constitution against unreasonable searches and seizures extends to individuals and their invited guests in the privacy of their homes. People v. Creed, 34 Ill. App. 3d 282, 339 N.E.2d 305 (3 Dist. 1975).

The provisions of the Constitution of the United States and of this section, with regard to the rights of persons to be secure, were placed therein as a limitation upon the powers of the executive officers of government. People v. Martin, 382 Ill. 192, 46 N.E.2d 997 (1942).

- Self-Incrimination

When something forbidden by the constitution, namely compelling a man to give evidence against himself in a prosecution from crime (Ill. Const. (1970), Art. I, § 10), is the purpose for a search

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and seizure of his private papers, property or effects, the search is an unreasonable search and seizure within the prohibition of this section. People v. Exum, 382 Ill. 204, 47 N.E.2d 56 (1943).

- Standing

In order to qualify as a person aggrieved by an unlawful search and seizure, one must have been a victim of search or seizure, that is, the one against whom the search was directed, as distinguished from one who claims prejudice only through the use of evidence gathered as a consequence of search or seizure directed at someone else. People v. Houston, 36 Ill. App. 3d 695, 344 N.E.2d 641 (1 Dist. 1976).

The conventional concepts of standing must give way whenever it is necessary to prevent unfairness, and to secure to an accused both his constitutional protection against unlawful search and seizure and his protection against self-incrimination (Ill. Const. (1970), Art. I, § 10). People v. De Filippis, 34 Ill. 2d 129, 214 N.E.2d 897 (1966).

- Traffic Stop

Defendant's motion to suppress should have been granted, and her convictions for cannabis trafficking and possession were vacated, as a deputy unnecessarily had defendant exit her vehicle and accompany him to the rear of the vehicle before he returned her documents after running a check. The aggregate effect of the deputy's actions inhibited the type of feeling necessary for voluntary consent. People v. LaPoint, 353 Ill. App. 3d 328, 288 Ill. Dec. 930, 818 N.E.2d 865, 2004 Ill. App. LEXIS 1292 (3 Dist. 2004), appeal denied, 213 Ill. 2d 569, 293 Ill. Dec. 866, 829 N.E.2d 791 (2005).

Defendant's detention, following the conclusion of the purpose of the traffic stop, was unreasonable within the meaning of the Fourth Amendment and tainted the resulting discovery of the marijuana because the officers' questions after the purpose of the stop was completed impermissibly prolonged defendant's detention and changed the fundamental nature of the stop. People v. Hall, 351 Ill. App. 3d 501, 286 Ill. Dec. 785, 814 N.E.2d 1011, 2004 Ill. App. LEXIS 984 (2 Dist. 2004), appeal denied, 212 Ill. 2d 542, 291 Ill. Dec. 711, 824 N.E.2d 287 (2004).

Search of defendant's vehicle was unreasonable under Ill. Const. Art. I, § 6, where the officer pulled defendant over for tailgating, issued defendant's ticket, and at that time the officer lacked a reasonable and articulable suspicion to extend the search. The officer then called in a canine unit and searched the vehicle, eventually finding cannabis; at the time that the officer issued the traffic warning ticket, the stop for the traffic violation ended, the officer only knew that: 1) the car smelled of air freshener, which the officer testified could have been used to mask the smell of cannabis, 2) the defendant had prior drug arrests, 3) defendant had an outstanding warrant that could not be executed, and 4) defendant was going out-of-state. People v. Powell, 343 Ill. App. 3d 699, 278 Ill. Dec. 495, 798 N.E.2d 1252, 2003 Ill. App. LEXIS 1330 (4 Dist. 2003).

- Warrant Subsequently Issued

Where police had already illegally entered and searched defendants' home, seizure was not cured by subsequent issuance of search warrant. People v. Carter, 284 Ill. App. 3d 745, 220 Ill. Dec. 267, 672 N.E.2d 1279 (5 Dist. 1996), appeal denied, 171 Ill. 2d 570, 222 Ill. Dec. 433, 677 N.E.2d 967 (1997).

Warrant Description Sufficient

Search warrant complied with the particularity requirements found in Ill. Const., Art. I, § 6, where, although the warrant did not state the specific postal address of the premises to be searched, the warrant sufficiently described the place to be searched and the items to be seized, and the warrant was properly executed. People v. Reynolds, 358 Ill. App. 3d 286, 294 Ill. Dec. 778, 831 N.E.2d 1103, 2005 Ill. App. LEXIS 511 (5 Dist. 2005).

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Term "Lladro figurine" used in warrant was not a generic description in the ordinary sense; the warrant did not merely name porcelain figurines (which is a generic term) but specified a particular brand of such figurines. People v. Rende, 253 Ill. App. 3d 881, 191 Ill. Dec. 734, 624 N.E.2d 922 (2 Dist. 1993), appeal denied, 155 Ill. 2d 572, 198 Ill. Dec. 549, 633 N.E.2d 11 (1994).

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Validity of warrantless search of motor vehicle based on odor of marijuana - Federal cases. 188 ALR Fed. 487.

Validity of warrantless search of other than motor vehicle or occupant of motor vehicle based on odor of marijuana - Federal cases. 191 ALR Fed. 303.

Validity of warrantless search of motor vehicle occupant based on odor of marijuana - Federal cases. 192 ALR Fed. 391.

Sufficiency of information provided by confidential informant, whose identity is known to police, to provide probable cause for federal search warrant where there was indication that informant provided reliable information to police in past - Cases decided after Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). 196 ALR Fed. 1

Application of Leon good faith exception to exclusionary rule where police fail to comply with knock and announce requirement during execution of search warrant. 2 A.L.R.6th 169.

Admissibility of evidence discovered in search of defendant's property or residence authorized by one, other than relative, who is cotenant or common resident with defendant - state cases. 4 ALR4th 1050.

Admissibility of evidence discovered in search of defendant's property or residence authorized by defendant's adult relative other than spouse - state cases. 4 ALR4th 196.

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Odor of narcotics as providing probable cause for warrantless search. 5 ALR4th 681.

Use of electronic sensing device to detect shoplifting as unconstitutional search and seizure. 10 ALR4th 376.

Sufficiency of showing of reasonable belief of danger to officers or others excusing compliance with "knock and announce" requirement - state criminal cases. 17 ALR4th 301.

Use, in attorney or physician disciplinary proceeding, of evidence obtained by wrongful police action. 20 ALR4th 546.

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Permissible warrantless surveillance, under state communications interception statute, by state or local law enforcement officer or one acting in concert with officer. 27 ALR4th 449.

Employment of photographic equipment to record presence and nature of items as constituting unreasonable search. 27 ALR4th 532.

Search and seizure: Suppression of evidence found in automobile during routine check of vehicle identification number (VIN). 27 ALR4th 549.

Searches and seizures: Validity of searches conducted as condition of entering public premises - state cases. 28 ALR4th 1250.

Searches and seizures: Reasonable expectation of privacy in contents of garbage or trash receptacle. 28 ALR4th 1219.

State and local administrative inspection of and administrative warrants to search pharmacies. 29 ALR4th 264.

Lawfulness of warrantless search of purse or wallet of person arrested or suspected of crime. 29 ALR4th 771.

Admissibility, in criminal case, of evidence discovered by warrantless search in connection with fire investigation - post-Tyler cases. 31 ALR4th 194.

Construction and application of state statutes authorizing civil cause of action by person whose wire or oral communication is intercepted, disclosed, or used in violation of statutes. 33 ALR4th 506.

Validity of routine roadblocks by state or local police for purpose of discovery of vehicular or driving violations. 37 ALR4th 10.

Validity of, and admissibility of evidence discovered in, search authorized by judge over telephone. 38 ALR4th 1145; 74 ALR5th 319.

Retailer's surveillance of fitting or dressing rooms as invasion of privacy. 38 ALR4th 954.

Admissibility, in criminal case, of physical evidence obtained without consent by surgical removal from person's body. 41 ALR4th 60.

Search and seizure: necessity that police obtain warrant before taking possession of, examining, or testing evidence discovered in search by private person. 47 ALR4th 501.

Officer's ruse to gain entry as affecting admissibility of plain-view evidence - modern cases. 47 ALR4th 425.

Eavesdropping on extension telephone as invasion of privacy. 49 ALR4th 430.

False light invasion of privacy - accusation or innuendo as to criminal acts. 58 ALR4th 902.

Search and seizure: reasonable expectation of privacy in public restroom. 74 ALR4th 508.

Nonconsensual treatment of involuntarily committed mentally ill persons with neuroleptic or antipsychotic drugs as violative of state constitutional guaranty. 74 ALR4th 1099.

Sufficiency of showing of reasonable belief of danger to officers or others excusing compliance with "knock and announce" requirement - state criminal cases. 17 ALR4th 301.

Search and seizure of bank records pertaining to customer as violation of customer's rights under state law. 33 ALR5th 453.

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Propriety of execution of search warrant at nighttime. 41 ALR5th 171.

Sufficiency of description in warrant of person to be searched. 43 ALR5th 1.

Application of "plain-feel" exception to warrant requirements - state cases. 50 ALR5th 581.

Admissibility of evidence discovered in search of defendant's property or residence authorized by defendant's adult relative other than spouse - state cases. 55 ALR5th 125.

Admissibility of evidence of voice identification of defendant as affected by allegedly suggestive voice lineup procedures. 55 ALR5th 423.

Observation through binoculars as constituting unreasonable search. 59 ALR5th 615.

Search and seizure: reasonable expectation of privacy in driveways. 60 ALR5th 1.

Admissibility of evidence discovered in warrantless search of rental property authorized by lessor of such property - state cases. 61 ALR5th 1.

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Belief that burglary is in progress or has recently been committed as exigent circumstance justifying warrantless search of premises. 64 ALR5th 637.

Admissibility of evidence discovered in search of defendant's property or residence authorized by defendant's spouse (resident or nonresident) - state cases. 65 ALR5th 407.

Search and seizure: reasonable expectation of privacy in tent or campsite. 66 ALR5th 373.

Validity of anticipatory search warrants - state cases. 67 ALR5th 361.

Admissibility of evidence discovered in search of defendant's property or residence authorized by one, other than relative, who is cotenant or common resident with defendant - state cases. 68 ALR5th 343.

Civilian participation in execution of search warrant as affecting legality of search. 68 ALR5th 549.

Effect of retroactive consent on legality of otherwise unlawful search and seizure. 76 ALR5th 563.

Permissibility and sufficiency of warrantless use of thermal imager or Forward Looking Infra-Red Radar (F.L.I.R.). 78 ALR5th 309.

Validity of police roadblocks or checkpoints for purpose of discovery of illegal narcotics violations. 82 ALR5th 103.

Validity of Search or Seizure of Computer, Computer Disk, or Computer Peripheral Equipment. 84 ALR5th 1.

What Constitutes Compliance with Knock-and-Announce Rule in Search of Private Premises - State Cases. 85 ALR5th 1.

Federal and State Constitutions as Protecting Prison Visitor Against Unreasonable Searches and Seizures. 85 ALR5th 261.

Validity and Propriety under Circumstances, of Court-Ordered HIV Testing. 87 ALR5th 631.

Constitutionality of secret video surveillance. 91 ALR5th 585.

Expectation of privacy in internet communications. 92 ALR5th 15.

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Validity of requirement that, as condition of probation, defendant submit to warrantless searches. 99 ALR5th 557.

Error, in either search warrant or application for warrant, as to address of place to be searched as rendering warrant invalid. 103 ALR5th 463.

Search warrant as authorizing search of structures on property other than main house or other building, or location other than designated portion of building. 104 ALR5th 165.

Odor detectable by unaided person as furnishing probable cause for search warrant. 106 ALR5th 397.

Admissibility, in civil proceeding, of evidence obtained through unlawful search and seizure. 105 ALR5th 1.

When are facts offered in support of search warrant for evidence of sale or possession of cocaine so untimely as to be stale - State cases. 109 ALR5th 99.

When are facts offered in support of search warrant for evidence of sexual offense so untimely as to be stale - State cases. 111 ALR5th 239.

When are facts relating to marijuana, provided by one other than police or other law enforcement officer, so untimely as to be stale when offered in support of search warrant for evidence of sale or possession of a controlled substance - State cases. 112 ALR5th 429.

When are facts relating to drug other than cocaine or marijuana so untimely as to be stale when offered in support of search warrant for evidence of sale or possession of controlled substance - State cases. 113 ALR5th 517.

Validity of warrantless search of motor vehicle based on odor of marijuana - State cases. 114 ALR5th 173.

When are facts relating to marijuana, provided by police or other law enforcement officer, so untimely as to be stale when offered in support of search warrant for evidence of sale or possession of controlled substance - State cases. 114 ALR5th 235.

Validity of warrantless search based in whole or in part on odor of narcotics other than marijuana, or chemical related to manufacture of such narcotics. 115 ALR5th 477.

Validity of routine roadblocks by state or local police for purpose of discovery of driver's license, registration, and safety violations. 116 ALR5th 479.

Use of trained dog to detect narcotics or drugs as unreasonable search in violation of state constitutions. 117 ALR5th 407.

Adequacy of defense counsel's representation of criminal client regarding search and seizure issues - Motions and objections during trial and matters other than pretrial motions. 117 ALR5th 513.

First Amendment protection afforded to comic books, comic strips, and cartoons. 118 ALR5th 213.

Validity of warrantless search of other than motor vehicle or occupant of vehicle based on odor of marijuana - State cases. 122 ALR5th 439.

Validity of warrantless search of motor vehicle driver based on odor of marijuana - State cases. 123 ALR5th 179.

Validity of search conducted pursuant to parole warrant. 123 ALR5th 221.

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Validity of warrantless search of motor vehicle passenger based on odor of marijuana. 1 A.L.R.6th 371.

Section 7. Indictment and Preliminary Hearing.

No person shall be held to answer for a criminal offense unless on indictment of a grand jury, except in cases in which the punishment is by fine or by imprisonment other than in the penitentiary, in cases of impeachment, and in cases arising in the militia when in actual service in time of war or public danger. The General Assembly by law may abolish the grand jury or further limit its use.

No person shall be held to answer for a crime punishable by death or by imprisonment in the penitentiary unless either the initial charge has been brought by indictment of a grand jury or the person has been given a prompt preliminary hearing to establish probable cause.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Crim L § 9:02, § 10:01, § 10:02, § 10:09, § 11:01.

CASE NOTES

Analysis

In General
Additional Charges
- Properly Added
Applicability
- Guilty Plea
- Prosecution for Drug Possession
Construction
- In General
- Alternative Methods
Construction with Other Laws
Delay
- Dismissal Improper
- Not Shown
- Preceding Indictment
- Preliminary Hearing
- Violation Shown
Deletion or Partial Withdrawal
Evidentiary Hearing

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Exceptions
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- Alternative Methods
- Promptness Found
- Remedies

Prospective Application

Purpose

Remedies

- No Dismissal
- No Immunity
- Power of Courts

Same Charges

Waiver

- In General
- Improper Delay
- Shown
- Substantial Rights

In General

725 ILCS 5/111-3(c-5) was not unconstitutional under Ill. Const. Art. I, § 7; defendant received written notice of the State's intent to seek an extended sentence, based on the brutal and heinous nature of the crime, prior to his third trial and thus, he could not say that he failed to receive reasonable notice. People v. McClain, 343 Ill. App. 3d 1122, 278 Ill. Dec. 604, 799 N.E.2d 322, 2003 Ill. App. LEXIS 1163 (1 Dist. 2003).

All that is required under this section is that an accused be afforded a prompt probable cause determination of the validity of the charge, either at a preliminary hearing or by an indictment by a grand jury. People v. Walker, 230 Ill. App. 3d 292, 171 Ill. Dec. 679, 594 N.E.2d 1199 (1 Dist.), cert. denied, 146 Ill. 2d 649, 176 Ill. Dec. 819, 602 N.E.2d 473 (1992).

The class of criminal defendants who are charged by means of indictment instead of information does not fall within the definition of a suspect class. Furthermore, as this section neither disadvantages a suspect class nor infringes a fundamental right, the court need not apply strict scrutiny to it. United States ex rel. Kline v. Lane, 707 F. Supp. 368 (N.D. Ill. 1989).

State's alternative methods of instituting criminal proceedings whereby defendant charged by complaint was entitled to preliminary hearing while defendant charged by grand jury was not entitled to one did not constitute an unreasonable classification in violation of the equal protection clause of the state or federal constitutions. People v. Franklin, 80 Ill. App. 3d 128, 35 Ill. Dec. 121, 398 N.E.2d 1071 (1 Dist. 1979).

The language of this constitutional provision, as well as the history of its evolution, negates any thought that its purpose was to attach finality to a finding of no probable cause, or to establish mutually exclusive procedures so that grand jury proceedings would be barred if an accused had been discharged upon preliminary hearing. People v. Kent, 54 Ill. 2d 161, 295 N.E.2d 710 (1972).

Additional Charges

- Properly Added

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Where additional information was obtained to add a count against defendant which arose out of the same transaction and conduct as a prior count, the failure to hold a preliminary hearing as to the second count did not infringe on defendant's rights under this section of the 1970 Illinois Constitution. People v. Shelton, 110 Ill. App. 3d 625, 66 Ill. Dec. 367, 442 N.E.2d 928 (4 Dist. 1982).

Where the court found probable cause for robbery, but made no finding as to the greater charge of armed robbery, and the state amended the complaint to charge only robbery for which probable cause for an offense had been found, the additional charges of armed robbery could be added by information without violating defendant's due process right under the United States Constitution or his rights under this section of the 1970 Illinois Constitution. People v. Hovanec, 76 Ill. App. 3d 401, 32 Ill. Dec. 1, 394 N.E.2d 1340 (1 Dist. 1979).

Applicability

- Guilty Plea

The trial court properly dismissed petitioner's first contention that he was denied due process of law by the court which accepted his guilty pleas because that court failed to determine a factual basis for his pleas and failed to admonish him as to the nature of the charges against him, because there is no requirement under either the state or federal Constitutions that a trial court accepting a guilty plea must determine a factual basis or admonish the defendant as to the nature of the charges. People v. Willis, 50 Ill. App. 3d 498, 8 Ill. Dec. 359, 365 N.E.2d 597 (1 Dist. 1977).

- Prosecution for Drug Possession

Where punishment for the first offense of possession of a habit forming drug was by fine or imprisonment in the county jail (that is, otherwise than in the penitentiary), defendant was not convicted without due process of law in that he was prosecuted by information rather than indictment by grand jury. People v. O'Connor, 4 Ill. 2d 403, 122 N.E.2d 806 (1954).

Construction

- In General

The language of this section has been construed to require, alternatively, either trial by indictment or a prompt preliminary hearing for a crime punishable by imprisonment in the penitentiary. People v. Marshall, 50 Ill. App. 3d 615, 8 Ill. Dec. 736, 365 N.E.2d 1122 (1 Dist. 1977).

- Alternative Methods

A person charged with a crime punishable by penitentiary imprisonment or death has a right to either a preliminary hearing or grand jury indictment, it is not clear that a person charged with an offense not so punishable has such right. People v. Toler, 32 Ill. App. 3d 793, 336 N.E.2d 270 (5 Dist. 1975).

This constitutional provision is in the alternative using the word "or"; therefore, it must be given its common accepted usage, a defendant may be charged by indictment or given a prompt preliminary hearing. People v. Spera, 10 Ill. App. 3d 305, 293 N.E.2d 656 (2 Dist. 1973).

Construction with Other Laws

725 ILCS 5/115-7.3, the statute which allowed the State to prove that a defendant who was charged with committing a sex offense had a propensity to commit sex offenses by showing that

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the defendant had been convicted of committing a prior sex offense, did not violate Ill. Const. Art. I, §§ 7 or 8. People v. Donoho, 204 Ill. 2d 159, 273 Ill. Dec. 116, 788 N.E.2d 707, 2003 Ill. LEXIS 461 (2003).

The provision of the Code of Criminal Procedure (725 ILCS 5/111-2(f)) that "such prosecution may be for all offenses, arising from the same transaction or conduct of a defendant even though the complaint or complaints filed at the preliminary hearing charged only one or some of the offenses arising from that transaction or conduct," is not contrary to the intendment of this section of the Illinois Constitution of 1970, providing for a prompt preliminary hearing for an accused. People v. Redmond, 67 Ill. 2d 242, 10 Ill. Dec. 250, 367 N.E.2d 703 (1977).

Delay

- Dismissal Improper

Dismissal of an indictment or reversal of a conviction is not appropriate even in instances where a preliminary hearing to determine probable cause has been unreasonably delayed. People v. Griffin, 47 Ill. App. 3d 1012, 8 Ill. Dec. 249, 365 N.E.2d 487 (1 Dist. 1977).

An unexplained lapse of time of more than two months between an arrest and a preliminary hearing was a violation of the constitutional mandate that there be a prompt hearing to determine probable cause; nonetheless, the deprivation of the defendant's constitutional right to a prompt preliminary hearing did not entitle him to the dismissal of the charges against him. People v. Hunt, 26 Ill. App. 3d 776, 326 N.E.2d 164 (1 Dist. 1975).

- Not Shown

Delay in taking defendants before a judge, where defendants were arrested late at night and taken before daily bond court approximately 24 hours after the commencement of the next business day, did not constitute reversible error in breach of their constitutional rights or their rights under the Code of Criminal Procedure (see now 725 ILCS 5/109-1), especially where the defendants did not clearly establish that any prejudice resulted from minimal delay before a preliminary hearing. People v. Martin, 121 Ill. App. 3d 196, 76 Ill. Dec. 642, 459 N.E.2d 279 (2 Dist. 1984).

The defendant was not entitled to a reversal of his conviction because he was denied his constitutional right to a prompt preliminary hearing, where there was a 47 day delay between arrest and the holding of a preliminary hearing. People v. Grant, 69 Ill. App. 3d 940, 26 Ill. Dec. 257, 387 N.E.2d 1087 (1 Dist. 1979).

Where defendant's preliminary hearing was continued at the request of defendant's counsel, and the following day (within 17 days of his arrest) defendant was indicted, under these circumstances, defendant was given a prompt determination of probable cause and was not, therefore, deprived of a substantial constitutional right. People v. Williams, 19 Ill. App. 3d 136, 310 N.E.2d 666 (2 Dist. 1974).

- Preceding Indictment

Incarceration of the defendant for a period of nine to ten days before he was indicted did not constitute denial of due process. People v. Brown, 11 Ill. App. 3d 67, 296 N.E.2d 77 (2 Dist. 1973).

- Preliminary Hearing

Delay in giving an accused a prompt preliminary hearing is a serious deprivation of his constitutional rights. People v. Howell, 60 Ill. 2d 117, 324 N.E.2d 403 (1975).

- Violation Shown

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The failure to provide defendant a preliminary hearing until 84 days after filing of the information, or to present his case to a grand jury, violated the letter and intent of this section. People v. Riddle, 141 Ill. App. 3d 97, 95 Ill. Dec. 448, 489 N.E.2d 1176 (5 Dist. 1986).

Where the defendants demanded a preliminary hearing, objected when a scheduled hearing was continued and in their post trial motion assigned as error their denial of a prompt probable cause hearing, the delay of 176 days was a most severe violation of this section. People v. Kirkley, 60 Ill. App. 3d 746, 18 Ill. Dec. 251, 377 N.E.2d 540 (3 Dist. 1978).

Holding defendant in jail under a criminal charge for 65 days without giving him a prompt preliminary hearing or presenting his case to a grand jury violated the letter and intent of this section of the 1970 Constitution. People v. Howell, 60 Ill. 2d 117, 324 N.E.2d 403 (1975).

Deletion or Partial Withdrawal

Allowing the State to proceed to trial on five counts of attempted murder that had been nol-prossed and never reinstated violated defendant's rights to due process and a fair trial in accordance with Ill. Const., Art. I, § 7 and U.S. Const., Amends. V and XIV. Defendant was unfairly forced to defend himself against charges that were not even pending against him at the time of his jury trial, and the trial court's decision not to instruct the jury on any of the five attempted murder charges did not cure any prejudice to defendant. People v. Stafford, 325 Ill. App. 3d 1069, 259 Ill. Dec. 635, 759 N.E.2d 115, 2001 Ill. App. LEXIS 811 (1 Dist. 2001).

Evidentiary Hearing

If allegations of a petition warranted a fair inference of a violation of constitutional rights - such as an involuntarily made plea of guilty - which were not negated by the state or by the record, and evidentiary hearing was required to determine the truth or falsity of the allegations. People v. Cagle, 68 Ill. App. 3d 72, 24 Ill. Dec. 697, 385 N.E.2d 838 (5 Dist. 1979).

Exceptions

- Prosecution by Information

Where an offense is punishable by fine alone or imprisonment otherwise than in the penitentiary only or both fine and such imprisonment only, such offense may be prosecuted by information. People v. Jarrett, 57 Ill. App. 2d 169, 206 N.E.2d 835 (1 Dist. 1965).

Grand Jury

- Discretion of State's Attorney

Where the circumstances did not furnish a sufficient basis for the action of the court in requiring special state's attorney to call every witness who had participated in a federal grand jury regarding the same offense, the order holding him in contempt for refusing to subpoena the witnesses was reversed. People v. Sears, 49 Ill. 2d 14, 273 N.E.2d 380 (1971).

- General Assembly's Powers

This section of the Illinois Constitution of 1970 preserves the use of an indictment by a grand jury in felony prosecutions but also authorizes the General Assembly to abolish the grand jury or further limit its use. This section additionally provides that in all prosecutions, the existence of probable cause will be promptly determined, whether by a judge or by a grand jury. People v. Krison, 63 Ill. App. 3d 531, 20 Ill. Dec. 471, 380 N.E.2d 449 (5 Dist. 1978).

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The grand jury was not a mandatory requirement under the Illinois Constitution of 1870 but could be abolished by the legislature at any time. That legislative power is continued in the 1970 Constitution under this section. People v. Jefferies, 6 Ill. App. 3d 648, 285 N.E.2d 592 (5 Dist. 1972).

Legislature may, at any time, change the definition of felony or, by effecting the punishment of an offense, change a felony to a misdemeanor, but the legislature cannot effect the constitutional guarantee regarding the function of the grand jury except as therein specifically provided, that the grand jury may be abolished by law in all cases. People v. Jarrett, 57 Ill. App. 2d 169, 206 N.E.2d 835 (1 Dist. 1965).

Since the legislature can constitutionally abolish the right to a grand jury in all cases, they can abolish the right in less than all cases. People ex rel. Latimer v. Randolph, 13 Ill. 2d 552, 150 N.E.2d 603 (1958).

- Justified

Because an indictment without a preliminary hearing was rationally related to the state's interest in obtaining a pretrial determination of probable cause without unnecessarily taxing the state's resources, the grand jury scheme was justified. United States ex rel. Kline v. Lane, 707 F. Supp. 368 (N.D. Ill. 1989).

- Legislature Control

This section of the 1970 Illinois Constitution articulates the right of the legislature to abolish the grand jury or limit its function, thus, any modification or elimination of the grand jury system should be initiated by the legislature. People v. Franklin, 80 Ill. App. 3d 128, 35 Ill. Dec. 121, 398 N.E.2d 1071 (1 Dist. 1979).

- Power of Courts

Whatever may be the power of the Legislature to abolish the grand jury, certainly the courts have no such power. People ex rel. Ferrill v. Graydon, 333 Ill. 429, 164 N.E. 832 (1928).

- Presenting Information

It is the duty of a grand jury to inquire into offenses which it shall become aware of whether from the court, the State's Attorney, its own members, or from any source. However, the proper channel for presenting information to the grand jury is the State's Attorney and it is improper to communicate directly with the grand jury. People v. Sears, 49 Ill. 2d 14, 273 N.E.2d 380 (1971).

- Subpoenas for Witnesses

There may be circumstances under which the circuit court will have jurisdiction to direct that witnesses be subpoenaed to appear before a grand jury, however, the preservation of the historic independence of the grand jury requires that such supervisory power be exercised only when failure to do so will effect a deprivation of due process or result in a miscarriage of justice. People v. Sears, 49 Ill. 2d 14, 273 N.E.2d 380 (1971).

Indictments

- In General

Allowing the State to proceed to trial on five counts of attempted murder that had been nol-prossed and never reinstated violated defendant's rights to due process and a fair trial in accordance with Ill. Const., Art. I, § 7 and U.S. Const., Amends. V and XIV. Defendant was unfairly forced to defend himself against charges that were not even pending against him at the time of his jury trial, and the trial court's decision not to instruct the jury on any of the five

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attempted murder charges did not cure any prejudice to defendant. People v. Stafford, 325 Ill. App. 3d 1069, 259 Ill. Dec. 635, 759 N.E.2d 115, 2001 Ill. App. LEXIS 811 (1 Dist. 2001).

The law allows the prosecution of felonies by information or indictment. People v. Overstreet, 64 Ill. App. 3d 287, 21 Ill. Dec. 227, 381 N.E.2d 305 (4 Dist. 1978).

- Challenges

There can be no right under this section to challenge an indictment as being founded on wholly incompetent evidence. People v. Jones, 19 Ill. 2d 37, 166 N.E.2d 1 (1960).

- Held Insufficient

Where, after jury was impaneled and sworn but before any evidence was taken, trial court declared mistrial over the defendant's objection, because the trial court concluded that the indictment was insufficient to charge crime of theft, mistrial met the manifest necessity requirement, since the trial court could reasonably have concluded that the ends of public justice would be defeated by having allowed the trial to continue because indictment could be cured by amendments it could not be waived by the defendant's failure to object, and could be asserted on appeal or in a post-conviction habeas corpus proceeding to overturn a final judgment of conviction; thus, double jeopardy clause of U.S. Const., Amend. 5 did not bar retrial under a valid indictment. Illinois v. Somerville, 410 U.S. 458, 93 S. Ct. 1066, 35 L. Ed. 2d 425 (1973).

An indictment which fails to specify the street address at which an offense has allegedly occurred, is not for that reason fatally defective, though it may require the granting of a motion for a bill of particulars in those cases where a defendant reasonably needs such additional information to properly prepare his defense. People v. Aristole, 131 Ill. App. 2d 175, 268 N.E.2d 227 (1 Dist. 1971).

Indictment against police commissioner charging defendant with misconduct for failure to perform his duty pursuant to the Villages and Cities Act (65 ILCS 5/3-14-5) in that he failed to use any sincere effort to stop a gaming house was insufficient where it did not name the operators involved. People v. Beebe, 30 Ill. App. 2d 435, 174 N.E.2d 880 (4 Dist. 1961).

- Held Sufficient

An indictment for burglary was not defective for failure to specify the location of the offense where it named the owner of the building. People v. Powell, 61 Ill. App. 2d 238, 209 N.E.2d 345 (4 Dist. 1965).

- Historical Form

Former Ill. Const. (1870), Art. VI, § 33, requiring that all indictments commence "in the name and by the authority of the People of the State of Illinois" and conclude "against the peace and dignity of the same" no longer remains in effect. People v. Hemphill, 96 Ill. App. 2d 407, 238 N.E.2d 601 (4 Dist. 1968).

- Historical Jurisdiction

Under former Ill. Const. (1870), Art. II, § 8 and the Municipal Court Act, the municipal court of Chicago had jurisdiction to try on information all violations of criminal laws punishable by fine or by imprisonment otherwise than in the penitentiary, or by both fine and such imprisonment, and if the offense was one that could be punished either by fine or by imprisonment in the penitentiary, or both by fine and imprisonment in the penitentiary, then it can only be prosecuted under an indictment. People v. Glowacki, 236 Ill. 612, 86 N.E. 368 (1908).

- Preliminary Hearing Not Required

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This section does not require that a preliminary hearing be conducted after an indictment has been returned by a grand jury. People v. Brown, 11 Ill. App. 3d 67, 296 N.E.2d 77 (2 Dist. 1973); People v. Moore, 28 Ill. App. 3d 1085, 329 N.E.2d 893 (5 Dist. 1975); People v. Franklin, 80 Ill. App. 3d 128, 35 Ill. Dec. 121, 398 N.E.2d 1071 (1 Dist. 1979).

- Reindictment Allowed

The return of an indictment, without a prior preliminary hearing, did not void the indictment as this section did not provide a grant of immunity from prosecution as a sanction for its violation; thus defendant could be reindicted. People v. Uribe, 13 Ill. App. 3d 1027, 301 N.E.2d 492 (2 Dist. 1973).

- Required

This provision requires criminal offenses to be prosecuted by indictment by a grand jury, consequently, defendant's conviction for pandering, based on a police filed information was reversed. People v. Jarrett, 57 Ill. App. 2d 169, 206 N.E.2d 835 (1 Dist. 1965).

- Requirements

Every fact necessary to sustain a sentence imposed by a court in a criminal case must be alleged in the information or in the indictment, and an indictment under which it is sought to impose a higher penalty by reason of a previous conviction must allege the fact of such conviction. People v. Boykin, 298 Ill. 11, 131 N.E. 133 (1921).

- Waiver

A defendant was not entitled to relief on the ground that he was promised an opportunity to go home and visit his infant daughter before serving his sentence if he pled guilty where the record was very clear and complete in showing a full admonition by the court of the consequences of the plea of guilty, and, where the defendant waived the right to be indicted, and the sentencing promise was kept. People v. Joynt, 46 Ill. 2d 321, 263 N.E.2d 46 (1970).

- Waiver Not Shown

Where defendant was not informed of his right to a grand jury indictment and did not waive that right in open court, a complete failure to comply with Rule 401(b), Supreme Court Rules, or to take a waiver of indictment in any fashion, necessitated reversal and remandment. People v. McCutcheon, 28 Ill. App. 3d 515, 328 N.E.2d 584 (4 Dist. 1975).

If an indictment is, in fact, void in that it fails to set out particularly the offense charged, then a plea of guilty will be insufficient to waive the objection to the indictment under former Ill. Const. (1870). People v. Temple, 2 Ill. 2d 266, 118 N.E.2d 271 (1954).

Miscellaneous

Allowing the State to proceed to trial on five counts of attempted murder that had been nol-prossed and never reinstated violated defendant's rights to due process and a fair trial in accordance with Ill. Const., Art. I, § 7 and U.S. Const., Amends. V and XIV. Defendant was unfairly forced to defend himself against charges that were not even pending against him at the time of his jury trial, and the trial court's decision not to instruct the jury on any of the five attempted murder charges did not cure any prejudice to defendant. People v. Stafford, 325 Ill. App. 3d 1069, 259 Ill. Dec. 635, 759 N.E.2d 115, 2001 Ill. App. LEXIS 811 (1 Dist. 2001).

Preliminary Hearings

- In General

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If a defendant is initially charged by criminal complaint, but is indicted for the same crime prior to a prompt preliminary hearing on the complaint, he is not constitutionally entitled to a preliminary hearing; moreover, a finding of no probable cause at a preliminary hearing does not bar a subsequent indictment for the same offense. People v. Franklin, 80 Ill. App. 3d 128, 35 Ill. Dec. 121, 398 N.E.2d 1071 (1 Dist. 1979).

- Burden on Prosecution

The burden rests on the prosecution to produce a reasonable explanation for not giving a defendant a prompt hearing to determine probable cause. People v. Hunt, 26 Ill. App. 3d 776, 326 N.E.2d 164 (1 Dist. 1975).

- Cross-Examination

Ordinarily, cross-examination at a preliminary hearing is subject to the general rule that it may not extend beyond the scope of the direct examination and such further interrogation as is directed to show interest, bias, prejudice or motive of the witness to the extent that these factors are relevant to the question of probable cause. People v. Horton, 65 Ill. 2d 413, 3 Ill. Dec. 436, 358 N.E.2d 1121 (1976).

- Delay Improper

An 84 day delay was a violation of this section. People v. Kilgore, 39 Ill. App. 3d 1000, 350 N.E.2d 810 (5 Dist. 1976).

- Determination of Probable Cause

An accused is entitled to a prompt preliminary hearing unless initially proceeded against by way of grand jury indictment; the critical consideration in either a preliminary hearing or grand jury indictment is that probable cause be determined promptly. People v. Franklin, 80 Ill. App. 3d 128, 35 Ill. Dec. 121, 398 N.E.2d 1071 (1 Dist. 1979).

- Discovery

Discovery and impeachment functions which are incidental byproducts of the preliminary hearing proceeding are not independent rights to be asserted apart from their function in ensuring that the accused receives a prompt determination of probable cause that a crime has been committed and that criminal proceedings should be instituted. People v. Franklin, 80 Ill. App. 3d 128, 35 Ill. Dec. 121, 398 N.E.2d 1071 (1 Dist. 1979).

- Following Nontrue Bill

Neither this section of the Illinois Constitution of 1970 nor the Criminal Code, 725 ILCS 5/112-4(b) indicates a purpose to attach a finality to a finding of a nontrue bill by the grand jury; thus, where the state proceeded with the information after the nontrue bill, and provided a preliminary hearing within the statutory 60 day period, the trial court should not have dismissed the preliminary hearing on the grounds that defendant's due process rights were violated. People v. Mennenga, 195 Ill. App. 3d 204, 141 Ill. Dec. 858, 551 N.E.2d 1386 (4 Dist.), appeal denied, 133 Ill. 2d 566, 149 Ill. Dec. 331, 561 N.E.2d 701 (1990).

- Hearing Not Required

Where the defendant did not establish how he was prejudiced by delay or that he suffered actual and substantial prejudice as a result of having failed to receive a preliminary hearing, and the defendant received a prompt determination of probable cause, he was not denied due process. People ex rel. Hatch v. Elrod, 190 Ill. App. 3d 1004, 138 Ill. Dec. 643, 547 N.E.2d 1264 (1 Dist. 1989), appeal denied, 131 Ill. 2d 566, 142 Ill. Dec. 888, 553 N.E.2d 402, cert. denied, 498 U.S. 845, 111 S. Ct. 128, 112 L. Ed. 2d 96 (1990).

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Under the Illinois Constitution of 1970, a defendant is not entitled to a preliminary hearing when he is charged by indictment. All that is required is that an accused be afforded a prompt probable cause determination of the validity of the charge, either at a preliminary hearing or by an indictment by a grand jury. People v. Kline, 92 Ill. 2d 490, 65 Ill. Dec. 843, 442 N.E.2d 154 (1982).

There was no constitutional right to a preliminary hearing where defendant was responsible for the first three continuances of his preliminary hearing and was subsequently indicted; the constitutional requirement was to a prompt determination of probable cause, either by preliminary hearing or by indictment. People v. Rush, 91 Ill. App. 3d 366, 46 Ill. Dec. 846, 414 N.E.2d 899 (3 Dist. 1980).

The defendant had no constitutional right to a preliminary hearing for determination of probable cause where probable cause was determined by a grand jury for intimidation and communicating with a witness, and the denial of a preliminary hearing did not violate his right to due process of law. People v. Grew, 69 Ill. App. 3d 663, 26 Ill. Dec. 96, 387 N.E.2d 926 (1 Dist. 1979).

A state may, consistent with due process, dispense with the preliminary hearing procedure and authorize the prosecutor to initiate the criminal proceedings directly. People v. Franklin, 80 Ill. App. 3d 128, 35 Ill. Dec. 121, 398 N.E.2d 1071 (1 Dist. 1979).

In view of the fact that defendants were indicted with promptness by the grant jury, no preliminary hearing for establishment of probable cause was required by this section of the Constitution of Illinois of 1970. People v. Marshall, 50 Ill. App. 3d 615, 8 Ill. Dec. 736, 365 N.E.2d 1122 (1 Dist. 1977).

A preliminary hearing would serve no legitimate purpose where probable cause had already been established by the grand jury. People v. Kuelper, 46 Ill. App. 3d 420, 5 Ill. Dec. 29, 361 N.E.2d 29 (1 Dist. 1977).

An accused was not entitled to a preliminary hearing on the charges contained in the grand jury's indictment. People v. Hunt, 26 Ill. App. 3d 776, 326 N.E.2d 164 (1 Dist. 1975).

Where defendant was serving a penitentiary sentence at the time of the offense and was not entitled to bail or to discharge from custody, the indictment was not void and the court without jurisdiction because defendant was not given a prompt preliminary hearing upon the information filed. People v. Moore, 26 Ill. App. 3d 1078, 327 N.E.2d 84 (4 Dist. 1975).

The trial court did not err in denying defendant's motion to dismiss because of the failure to have a preliminary hearing where the record showed that defendant was out on bond in sufficient time to arrange for his defense. People v. Hunsaker, 23 Ill. App. 3d 155, 318 N.E.2d 737 (5 Dist. 1974).

- Hearing Required

A preliminary hearing is constitutionally required whenever a prosecution is initiated by means of an information. People v. Audi, 73 Ill. App. 3d 568, 29 Ill. Dec. 691, 392 N.E.2d 248 (5 Dist. 1979).

Where the "initial charge" was brought by the arresting officer, the defendant was not given a preliminary hearing, and the defendant was not indicted until 65 days after his arrest, such actions violated the defendant's constitutional right to a prompt preliminary hearing; however, such error did not invalidate defendant's conviction of attempted murder. People v. Howell, 16 Ill. App. 3d 989, 307 N.E.2d 172 (5 Dist. 1974), aff'd, 60 Ill. 2d 117, 324 N.E.2d 403 (1975).

- No Violation

Defendants' constitutional rights to a prompt preliminary hearing were not violated, because defendant posted bail when arrested, he was not incarcerated, and defendant was not deprived

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of a fair and impartial trial. People v. Meredith, 86 Ill. App. 3d 1136, 42 Ill. Dec. 575, 409 N.E.2d 70 (5 Dist. 1980).

Where the defendant waived an extradition hearing in Tennessee, was promptly indicted upon his return to Illinois, and then rejected a proffered preliminary hearing in Illinois, apparently for the sole reason that the indictment had been returned before the preliminary hearing could be conducted, there was no violation of the defendant's constitutional right to a prompt preliminary hearing. People v. Hendrix, 54 Ill. 2d 165, 295 N.E.2d 724 (1973).

- Pre-hearing Lineups Allowed

In Illinois, a warrantless arrest based on probable cause simply does not initiate such adversary judicial proceedings as would give rise to a right to counsel at a lineup conducted prior to the preliminary hearing. People v. Martin, 121 Ill. App. 3d 196, 76 Ill. Dec. 642, 459 N.E.2d 279 (2 Dist. 1984).

- Purpose

The purpose of a preliminary hearing is to insure that a person charged is not held in custody or to bail without a showing of probable cause. People v. Moore, 26 Ill. App. 3d 1078, 327 N.E.2d 84 (4 Dist. 1975); People v. Kosyla, 129 Ill. App. 3d 685, 84 Ill. Dec. 811, 472 N.E.2d 1207 (2 Dist. 1984).

- Repeat of Hearing

Had the judge at the preliminary hearing made an express finding that no probable cause existed for the charge of armed robbery, the state could either seek a grand jury indictment for that crime, or, absent harassment, refile the armed robbery complaint and hold another preliminary hearing. People v. Hovanec, 76 Ill. App. 3d 401, 32 Ill. Dec. 1, 394 N.E.2d 1340 (1 Dist. 1979).

A second preliminary hearing does not per se violate due process; absent a showing of harassment, bad faith, or fundamental unfairness, the state must be allowed an opportunity to refile by information and proceed to a second preliminary hearing. People v. Overstreet, 64 Ill. App. 3d 287, 21 Ill. Dec. 227, 381 N.E.2d 305 (4 Dist. 1978).

- Right to a Speedy Trial

Where the "initial charge" was brought by the arresting officer, the defendant was not given a preliminary hearing, and the defendant was not indicted until 65 days after his arrest, such actions violated the defendant's constitutional right to a prompt preliminary hearing; however, such error did not invalidate defendant's conviction of attempted murder. People v. Howell, 16 Ill. App. 3d 989, 307 N.E.2d 172 (5 Dist. 1974), aff'd, 60 Ill. 2d 117, 324 N.E.2d 403 (1975).

The right to a hearing is similar to other rights guaranteed by the Constitution which the Supreme Court of Illinois and other courts have held the accused may waive. People v. Utterback, 385 Ill. 239, 52 N.E.2d 775 (1944).

- Right to Counsel

The preliminary hearing is a "critical stage" in the prosecution to which the right to counsel attaches. Phegley v. Greer, 497 F. Supp. 519 (C.D. Ill. 1980), aff'd, 685 F.2d 435 (7th Cir.), published as full-text opinion at 691 F.2d 306 (7th Cir.), cert. denied, 459 U.S. 946, 103 S. Ct. 262, 74 L. Ed. 2d 204 (1982).

Although this section guarantees the right to a preliminary hearing, the denial of counsel at that hearing does not affect the substantial rights of a party so as to require automatic reversal, even though it is a critical stage in the prosecutorial proceedings wherein the accused has a constitutional right to representation. People v. Clontz, 31 Ill. App. 3d 35, 334 N.E.2d 317 (5 Dist. 1975).

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- Scope

The preliminary hearing in a criminal case is not intended to be a discovery proceeding. People v. Horton, 65 Ill. 2d 413, 3 Ill. Dec. 436, 358 N.E.2d 1121 (1976).

- Second Hearing Not Required

Where no alibi defense was presented, no claim was made that the statute of limitations had expired, and the specific date of the alleged offense was not basic to any theory or defense advanced on defendant's behalf, the refusal of the trial court to conduct a second preliminary hearing based on the amended information did not deprive defendant of any substantial rights. People v. Riddle, 141 Ill. App. 3d 97, 95 Ill. Dec. 448, 489 N.E.2d 1176 (5 Dist. 1986).

- Time Limit

The Code of Criminal Procedure of 1963 (725 ILCS 5/109-3.1(b)) sets a time limit of 30 or 60 days on the constitutional right to a "prompt" preliminary hearing. People v. Roby, 200 Ill. App. 3d 1063, 146 Ill. Dec. 766, 558 N.E.2d 729 (5 Dist. 1990).

- When Required

There is nothing in this section which indicates a legislative intention to preclude the state from proceeding initially by way of information, and then later by way of indictment without holding a preliminary hearing; if that is done, and the probable cause determination is made promptly by the grand jury, then no error has occurred. It is only where a prosecution is pursued solely by way of information that a preliminary hearing would be required, under the 1970 Illinois Constitution. People v. Rush, 91 Ill. App. 3d 366, 46 Ill. Dec. 846, 414 N.E.2d 899 (3 Dist. 1980).

Defendants are entitled to a preliminary hearing to establish probable cause unless the initial charge is brought by grand jury indictment. Phegley v. Greer, 497 F. Supp. 519 (C.D. Ill. 1980), aff'd, 685 F.2d 435 (7th Cir.), published as full-text opinion at 691 F.2d 306 (7th Cir.), cert. denied, 459 U.S. 946, 103 S. Ct. 262, 74 L. Ed. 2d 204 (1982).

Probable Cause Determination

- In General

The right to a prompt probable cause determination is established in this section of the Illinois Constitution of 1970. People v. Bartee, 177 Ill. App. 3d 937, 127 Ill. Dec. 168, 532 N.E.2d 997 (2 Dist. 1988).

- Alternative Methods

A defendant is not entitled to a preliminary hearing as such, but rather to a probable cause determination which can be by indictment by grand jury as well as by a judge in a preliminary hearing. Once a defendant is properly indicted, there is no necessity for a preliminary hearing to establish probable cause. People v. Williams, 19 Ill. App. 3d 136, 310 N.E.2d 666 (2 Dist. 1974); People v. Kuelper, 46 Ill. App. 3d 420, 5 Ill. Dec. 29, 361 N.E.2d 29 (1 Dist. 1977); People v. Franklin, 80 Ill. App. 3d 128, 35 Ill. Dec. 121, 398 N.E.2d 1071 (1 Dist. 1979); People v. Torres, 93 Ill. App. 3d 718, 49 Ill. Dec. 38, 417 N.E.2d 728 (2 Dist. 1981).

- Promptness Found

Indictments returned against the defendants 21 days after their arrest satisfied the requirement of a prompt determination of probable cause. People v. Latimore, 33 Ill. App. 3d 812, 342 N.E.2d 209 (5 Dist. 1975).

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Although there was a series of continuances for various reasons which caused delay, there was not any violation of the defendant's constitutional right to a prompt determination of probable cause. People v. Savage, 12 Ill. App. 3d 734, 298 N.E.2d 758 (4 Dist. 1973).

- Remedies

Although a suspect who is presently detained may challenge the probable cause for that confinement, a conviction will not be vacated on the ground that the defendant was detained pending trial without a determination of probable cause. People v. Riddle, 141 Ill. App. 3d 97, 95 Ill. Dec. 448, 489 N.E.2d 1176 (5 Dist. 1986).

Prospective Application

Application of the 1975 amendment providing that all prosecutions of felonies shall be by information or by indictment did not divest defendant of a vested constitutional right and was not an ex post facto application of the law, where defendant committed a theft offense prior to the effective date of the amendment but was not charged with or prosecuted for the offense until after the effective date. People v. Tibbs, 46 Ill. App. 3d 310, 4 Ill. Dec. 730, 360 N.E.2d 993 (4 Dist. 1977).

Purpose

The purpose of this provision is to guarantee that a defendant would not be held in custody or on bail without a prompt showing of probable cause. People v. Latimore, 33 Ill. App. 3d 812, 342 N.E.2d 209 (5 Dist. 1975); People v. Eisele, 77 Ill. App. 3d 766, 33 Ill. Dec. 273, 396 N.E.2d 662 (2 Dist. 1979); People v. Anderson, 92 Ill. App. 3d 849, 48 Ill. Dec. 183, 416 N.E.2d 78 (2 Dist. 1981); People v. Bartee, 177 Ill. App. 3d 937, 127 Ill. Dec. 168, 532 N.E.2d 997 (2 Dist. 1988).

Under this constitutional provision, a defendant held on a criminal charge punishable by imprisonment in the penitentiary must be afforded a prompt probable cause determination of the validity of the charge either at a preliminary hearing or by an indictment by a grand jury. People v. Howell, 60 Ill. 2d 117, 324 N.E.2d 403 (1975); People v. Sanders, 36 Ill. App. 3d 518, 344 N.E.2d 479 (5 Dist. 1976).

This provision is designed to insure that the existence of probable cause will be determined promptly either by a grand jury or by a judge. People v. Kent, 54 Ill. 2d 161, 295 N.E.2d 710 (1972); People ex rel. Hatch v. Elrod, 190 Ill. App. 3d 1004, 138 Ill. Dec. 643, 547 N.E.2d 1264 (1 Dist. 1989), appeal denied, 131 Ill. 2d 566, 142 Ill. Dec. 888, 553 N.E.2d 402, cert. denied, 498 U.S. 845, 111 S. Ct. 128, 112 L. Ed. 2d 96 (1990).

The purpose of the charge contained in the indictment is to inform the accused of the nature and cause of the accusation against him. People v. Moyer, 1 Ill. App. 3d 245, 273 N.E.2d 210 (4 Dist. 1971).

Remedies

- No Dismissal

Dismissal with prejudice is not available to a defendant as a sanction for a violation of this section. People v. Riddle, 141 Ill. App. 3d 97, 95 Ill. Dec. 448, 489 N.E.2d 1176 (5 Dist. 1986).

The legislature has not provided a remedy for a violation of this section; therefore, the majority of reviewing courts have refused to dismiss charges against a defendant. People v. Bradley, 128 Ill. App. 3d 372, 83 Ill. Dec. 701, 470 N.E.2d 1121 (4 Dist. 1984).

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The legislature has not fashioned a remedy of discharge for a violation of this section as it has for the violation of a defendant's right to a speedy trial (Ill. Const., Art. I, § 8 (1970)). People v. Howell, 60 Ill. 2d 117, 324 N.E.2d 403 (1975); People v. Eisele, 77 Ill. App. 3d 766, 33 Ill. Dec. 273, 396 N.E.2d 662 (2 Dist. 1979).

- No Immunity

The second paragraph of this section does not provide a grant of immunity from prosecution as a sanction for its violation. People v. Sanders, 36 Ill. App. 3d 518, 344 N.E.2d 479 (5 Dist. 1976).

- Power of Courts

Even though a defendant's right to a prompt determination of probable cause for further prosecution was violated, and the state's purported excuse for the delay was untenable, the appellate court was precluded from establishing a judicial remedy because the defendant's remedy was properly within legislative purview. People v. Todd, 34 Ill. App. 3d 844, 340 N.E.2d 669 (5 Dist. 1976).

Same Charges

The Code of Criminal Procedure of 1963 (725 ILCS 5/114-1(e)), which allows the state to file a new information charging the same offense as an original information which was dismissed for failure to provide a prompt preliminary hearing, does not deprive a defendant of a remedy for violation of his right to a prompt preliminary hearing. People v. Roby, 200 Ill. App. 3d 1063, 146 Ill. Dec. 766, 558 N.E.2d 729 (5 Dist. 1990).

Had the judge at the preliminary hearing made an express finding that no probable cause existed for the charge of armed robbery, the state could either seek a grand jury indictment for that crime, or, absent harassment, refile the armed robbery complaint and hold another preliminary hearing. People v. Hovanec, 76 Ill. App. 3d 401, 32 Ill. Dec. 1, 394 N.E.2d 1340 (1 Dist. 1979).

Having brought about the dismissal of the pending charge against defendant because of insufficient evidence, does not raise an bar to the state's subsequently presenting available evidence to a grand jury to seek an indictment for the same offense previously dismissed. People v. Eisele, 77 Ill. App. 3d 766, 33 Ill. Dec. 273, 396 N.E.2d 662 (2 Dist. 1979).

Waiver

- In General

Defendant was precluded on appeal from raising the question of violation of this section of the Illinois Constitution of 1970, by his failure to present the issue to the trial court. People v. Howell, 60 Ill. 2d 117, 324 N.E.2d 403 (1975).

Generally, failure to raise an issue in the trial court constitutes a waiver, and this general waiver rule also applies to constitutional issues. People v. Howell, 60 Ill. 2d 117, 324 N.E.2d 403 (1975).

- Improper Delay

Where a 86 day delay in affording defendant a preliminary hearing after his arrest and until the charge was nolprossed may have presented violation under this section had timely objection been made, because defendant failed to assert his right to a prompt probable cause determination, his failure to raise the issue during that period of time precluded his doing so on appeal. People v. Eisele, 77 Ill. App. 3d 766, 33 Ill. Dec. 273, 396 N.E.2d 662 (2 Dist. 1979).

- Shown

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Because defendant failed to raise the lack of a prompt preliminary hearing in his post trial motion, the issue was waived. People v. Meredith, 86 Ill. App. 3d 1136, 42 Ill. Dec. 575, 409 N.E.2d 70 (5 Dist. 1980).

- Substantial Rights

The fact that substantial rights of a criminal defendant are involved does not mandate a consideration of a violation of this section (Ill. Const. (1970), Art. I, § 7) when the same has not been properly preserved for review. People v. Howell, 60 Ill. 2d 117, 324 N.E.2d 403 (1975).

LEGAL PERIODICALS

For comment, "The Improbability of Probable Cause - The Inequity of the Grand Jury Indictment Versus the Preliminary Hearing in the Illinois Criminal Process," see 1981 S. Ill. U.L.J. 281.

For comment, "The Illinois Grand Jury Indictment: A Denial of Due Process?" see 12 J. Marshall J. Prac. & Proc. 319 (1979).

RESEARCH REFERENCES

Validity of indictment as affected by substitution or addition to grand jurors after commencement of investigation. 2 ALR4th 980.

Determination of indigency entitling accused in state criminal case to appointment of counsel on appeal. 26 ALR5th 765.

Section 8. Rights After Indictment.

In criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation and have a copy thereof; to be confronted with the witnesses against him or her and to have process to compel the attendance of witnesses in his or her behalf; and to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.

(Source: Amendment adopted at general election November 8, 1994.)

Note.

The preamble to Senate Joint Resolution No. 123 of the 1994 Regular Session states: "WHEREAS, The Illinois Supreme Court struck down the Child Shield Law (Article 106B of the Code of Criminal Procedure of 1963) in its decision in *People v. Fitzpatrick*, Docket No. 74768, on February 17, 1994, and this amendment is intended to reverse that decision ... ."

Illinois Jurisprudence. See Illinois Jur, Crim L § 9:02, § 9:22, § 9:23, § 13:02, § 13:20, § 13:21, § 14:01, § 14:03, § 16:03, § 18:41, § 20:01, § 20:02, § 20:04, § 20:07, § 20:13, § 20:14, § 20:17, §

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21:07, § 21:08, § 25:12, § 26:09, § 26:10.

Effect of Amendments. The 1994 amendment by SCRCA 123 of the 1994 Regular Session, adopted by vote of the People at the election held November 8, 1994, effective November 8, 1994, substituted "to be confronted with the witnesses against him or her" for "to meet the witnesses face to face" and inserted "or her" preceding "behalf".

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In General

This section and the U.S. Const., Amend. 6, guarantee the accused the right to appear and defend themselves in person at every stage of the proceedings, including imposition of sentencing. People v. Fields, 255 Ill. App. 3d 787, 195 Ill. Dec. 754, 629 N.E.2d 62 (1 Dist. 1993).

While an accused in a criminal case does indeed have the constitutional right to be represented by counsel of his own choosing, it is likewise true that such right may not be employed as a weapon to indefinitely thwart the administration of justice, or to otherwise embarrass the effective prosecution of crime. People v. Inniss, 1 Ill. App. 3d 531, 275 N.E.2d 218 (1 Dist. 1971); People v. Capers, 186 Ill. App. 3d 367, 134 Ill. Dec. 349, 542 N.E.2d 528 (4 Dist. 1989); People v. Langley, 226 Ill. App. 3d 742, 168 Ill. Dec. 424, 589 N.E.2d 824 (4 Dist. 1992).

A defendant was not entitled to relief on the ground that he was promised an opportunity to go home and visit his infant daughter before serving his sentence if he pled guilty where the record was very clear and complete in showing a full admonition by the court of the consequences of the plea of guilty, and, where the defendant waived the rights to a jury trial, to confront witnesses and to a speedy trial, and the sentencing promise was kept. People v. Joynt, 46 Ill. 2d 321, 263 N.E.2d 46 (1970).

Applicability

- Municipal Ordinances

Landlord who was sued by a tenant for violating a municipal ordinance regulating the relationship between landlords and tenants, and who had an arbitration award entered against the landlord for a sum of money, could not obtain relief based on a claim that the landlord received ineffective assistance of counsel in violation of Ill. Const. art. I, § 8. Although such a claim was well known in criminal proceedings, it did not apply in civil proceedings. Coleman v. Akpakpan, 402 Ill. App. 3d 822, 342 Ill. Dec. 293, 932 N.E.2d 184, 2010 Ill. App. LEXIS 652 (1 Dist. 2010).

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This section is not applicable to ordinance violation prosecutions punishable by fine only. City of Danville v. Clark, 63 Ill. 2d 408, 348 N.E.2d 844 (1976).

A prosecution to recover a penalty for violation of a municipal ordinance was not a criminal proceeding and former Ill. Const. (1870), Art. II, § 9 (see now this section) did not apply thereto. People v. Stout, 41 Ill. 2d 292, 242 N.E.2d 264 (1968).

Assistance of Counsel

Because a defendant had not been properly admonished by a trial court, pursuant to Ill. Sup. Ct. R. 401, of defendant's right to counsel at a preliminary hearing, defendant's conviction warranted reversal. People v. Black, Ill. App. 3d , Ill. Dec. , N.E.2d , 2010 Ill. App. LEXIS 637 (5 Dist. June 24, 2010).

Defendant's convictions of aggravated battery, 720 ILCS 5/12-4(b)(1), and unlawful use of weapons, 720 ILCS 5/24-1(a)(2), were affirmed; the trial court properly admitted evidence of defendant's attack on a female guest at a party, as those actions led the victim to confront defendant, who attacked the victim with a knife during the confrontation, and furthermore, counsel did not render ineffective assistance in violation of Ill. Const. Art. I, § 8, by failing to object to the other crimes evidence, as it was properly admitted. People v. Thompson, 359 Ill. App. 3d 947, 296 Ill. Dec. 580, 835 N.E.2d 933, 2005 Ill. App. LEXIS 951 (4 Dist. 2005).

Trial court properly denied a petition for post-conviction relief pursuant to 725 ILCS 5/ 122-2.1 challenging defendant's conviction of aggravated criminal sexual assault, 720 ILCS 5/12-14(a)(2); defendant's right to due process pursuant to Ill. Const. Art. I, § 2, was not violated, as there was sufficient evidence that defendant imposed bodily harm on the victim to support the conviction, and defendant did not receive ineffective assistance of counsel in violation of Ill. Const. Art. I, § 8, as trial counsel adequately argued the issue of bodily harm, and appellate counsel properly raised the issue of prosecutorial misconduct. People v. Edwards, 355 Ill. App. 3d 1091, 292 Ill. Dec. 73, 825 N.E.2d 329, 2005 Ill. App. LEXIS 210 (3 Dist. 2005), appeal denied, 216 Ill. 2d 703, 298 Ill. Dec. 382, 839 N.E.2d 1029 (2005), appeal denied, 217 Ill. 2d 575, 300 Ill. Dec. 370, 844 N.E.2d 42 (2005).

Failure to have a court reporter present to transcribe voir dire did not result in the denial of defendant's right to effective assistance of appellate counsel since defendant filed neither a bystander's report nor an agreed statement of facts and thus, could not argue that the trial court's failure to provide the court reporter constituted error requiring reversal. People v. Culbreath, 343 Ill. App. 3d 998, 278 Ill. Dec. 511, 798 N.E.2d 1268, 2003 Ill. App. LEXIS 1333 (4 Dist. 2003).

- Right to Choose Counsel

Defendant was not improperly deprived of defendant's right to be represented by counsel of defendant's choice when defendant's retained counsel was disqualified, over defendant's objection, because counsel also represented two prosecution witnesses because the trial court evaluated relevant interests by considering (1) defendant's interest in counsel's undivided loyalty by explaining to defendant that counsel might not vigorously cross-examine the witnesses, even though the State thought they would recant, (2) an appearance of impropriety if the jury learned of the conflict, as the jury could infer counsel improperly influenced the State's witnesses, (3) the State's right to a fair trial, as counsel would have information about the witnesses counsel could use to cross the bounds of proper cross-examination, and (4) the likelihood that counsel's representation would lead to reversal of defendant's conviction. People v. House, 377 Ill. App. 3d 9, 316 Ill. Dec. 147, 878 N.E.2d 1171, 2007 Ill. App. LEXIS 1128 (1 Dist. 2007).

Right to counsel guaranteed by Sixth and Fourteenth amendments to U.S. Constitution and by Ill. Const., Art. I, § 8 includes limited right to counsel of choice; right to choose counsel is particularly limited where substitution would delay or impede effective administration of justice, and criminal defendant may not interrupt trial in progress to substitute counsel or to represent himself, causing

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mistrial and necessitating recall of witnesses who have testified for either side; in addition, defendant may not discharge or substitute counsel for cause where doing so prejudices state or interferes with administration of justice. People v. Torres, 252 Ill. App. 3d 567, 191 Ill. Dec. 439, 623 N.E.2d 1029, 1993 Ill. App. LEXIS 1723 (1 Dist. 1993).

Balance

Where a sex offense victim refuses to submit to a physical examination, the court is required to address what evidence can be produced by the State in light of the considerations of the victim's right to be free from intrusions and defendant's right to a fair trial under Ill. Const. (1970), Art. I, § 8. People v. Lopez, 207 Ill. 2d 449, 279 Ill. Dec. 628, 800 N.E.2d 1211, 2003 Ill. LEXIS 1494 (2003).

A compensating balance in Illinois law for allowing each defendant in a capital case a total of twelve peremptory challenges while allowing the prosecution the same number as all defendants combined, in this case involving two defendants, a total of 24, would be that the defendant had the right to demand a jury, which right the prosecution did not possess. United States ex rel. Mahaffey v. Peters, 978 F. Supp. 762 (N.D. Ill. 1997), aff'd sum nom. Mahaffey v. Page, 151 F.3d 671 (7th Cir. 1998), vacated in part on other grounds, Mahaffey v. Page, 162 F.3d 481 (7th Cir. 1998), cert. denied, 526 U.S. 1127, 119 S. Ct. 1786, 143 L. Ed. 2d 814 (1999).

Competency of Counsel

Trial counsel did not provide ineffective assistance of counsel in violation of Ill. Const. Art. I, § 8 when representing defendant on a charge of criminal sexual abuse where defendant as a 19 year old sexually penetrated a 15 year old female victim. Although defendant claimed that trial counsel should have provided the trial court with authority that the criminal offense of battery was a lesser included offense of criminal sexual abuse, sexual penetration of an underage victim involved insulting physical conduct as a matter of law, the same as the criminal offense of battery required, and, thus, battery was not a lesser included offense of criminal sexual abuse. People v. Meor, 233 Ill. 2d 465, 331 Ill. Dec. 166, 910 N.E.2d 575, 2009 Ill. LEXIS 632 (2009).

When defendant's examination of a witness elicited defendant's co-defendant's confession, which inculpated defendant, this was not ineffective assistance of counsel because there was ample other evidence which supported the jury's verdict finding defendant guilty of the crimes with which he was charged. People v. Hopkins, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 1212 (1 Dist. Dec. 12, 2005).

Trial counsel was not ineffective for failing to request that the trial court inquire about potential gang bias amongst the venire members, as gang evidence permeated the trial and both sides utilized it; defendant used the evidence to support his self-defense theory. People v. Powell, 355 Ill. App. 3d 124, 290 Ill. Dec. 849, 822 N.E.2d 131, 2004 Ill. App. LEXIS 1566 (1 Dist. 2004), appeal denied, 217 Ill. 2d 585, 300 Ill. Dec. 373, 844 N.E.2d 45 (2005).

Counsel in a sexually violent person's commitment proceeding was not ineffective in seeking a continuance without consulting defendant, since this enabled counsel to properly prepare, or in failing to move for dismissal for lack of personal jurisdiction, since defendant had waived any jurisdictional arguments by appearing at and participating in a probable cause proceeding. People v. Erbe (In re Erbe), 344 Ill. App. 3d 350, 279 Ill. Dec. 295, 800 N.E.2d 137, 2003 Ill. App. LEXIS 1388 (4 Dist. 2003), appeal denied, 214 Ill. 2d 533, 294 Ill. Dec. 3, 830 N.E.2d 3 (2005).

Trial court erred in dismissing defendant's claims; defendant stated the gist of a constitutional claim for ineffective assistance of counsel, trial counsel's performance fell below an objective standard of performance, and his trial was prejudiced by his counsel's failure to challenge the

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admissibility of his involuntarily given confession. People v. Kellerman, 342 Ill. App. 3d 1019, 281 Ill. Dec. 772, 804 N.E.2d 1067, 2003 Ill. App. LEXIS 1118 (3 Dist. 2003).

Resentencing counsel was not deficient under Ill. Const. Art. I, § 8, nor was defendant prejudiced by counsel's failure to introduce evidence of defendant's family history of mental illness, where the family history of mental illness was not inherently mitigating. People v. Jackson, 205 Ill. 2d 247, 275 Ill. Dec. 521, 793 N.E.2d 1, 2001 Ill. LEXIS 1783 (2001).

Dismissal of petition for post-conviction relief was proper where defendant failed to establish the requisite prejudice component in order to have succeeded on his claim that he was denied the effective assistance of counsel on direct appeal of his criminal conviction. People v. Winsett, 153 Ill. 2d 335, 180 Ill. Dec. 109, 606 N.E.2d 1186, 1992 Ill. LEXIS 179 (1992).

Doctrine of waiver does not bar the court from considering an issue where an alleged waiver stems from a claim of incompetency of counsel on appeal. People v. Winsett, 153 Ill. 2d 335, 180 Ill. Dec. 109, 606 N.E.2d 1186, 1992 Ill. LEXIS 179 (1992).

- Right to Counsel

When a reviewing court addresses an ineffective-assistance claim, it need not apply the two-part Strickland test in numerical order; a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which will often be so, that course should be followed. People v. Winsett, 153 Ill. 2d 335, 180 Ill. Dec. 109, 606 N.E.2d 1186, 1992 Ill. LEXIS 179 (1992).

- Counsel Held Competent

Defendant failed in his claim that his counsel in a criminal drug conspiracy trial was ineffective, in part due to a failure to understand the law on conspiracy, because: counsel's decision not to cross-examine witnesses was a trial strategy that was not subject to review; the record showed that he understood the law on conspiracy and was attempting to create reasonable doubt based on a lack of testimony corroborating a conspiracy; and even if his performance was inadequate, due to the overwhelming evidence against defendant, defendant could not show prejudice. People v. Grimes, 379 Ill. App. 3d 905, 318 Ill. Dec. 914, 884 N.E.2d 1185, 2008 Ill. App. LEXIS 99 (1 Dist. 2008), vacated, remanded, 324 Ill. Dec. 1, 895 N.E.2d 1, 2008 Ill. LEXIS 1821 (2008).

Complaint

- Specificity

Allegations that defendants "knowingly by the use of intimidation, disturbed the public peace" were too general to meet requirement that facts constituting the crime be specifically set forth to state an offense under the Mob Action Statute (720 ILCS 5/25-1); allegations in charging instruments of intimidation and peace disturbance were not the same as allegations of unlawful assembly for violations of the crime charged under 720 ILCS 5/25-1, and based on allegations in charging instrument, without more, there would be no way to ascertain what defendants did that was supposed to be against the law. People v. Nash, 173 Ill. 2d 423, 220 Ill. Dec. 154, 672 N.E.2d 1166 (1996).

A complaint that charges resisting or obstructing a peace officer in the disjunctive must set forth sufficient allegations describing what physical act or acts of the defendant constituted resisting or obstructing a peace officer. People v. Lauer, 273 Ill. App. 3d 469, 210 Ill. Dec. 443, 653 N.E.2d 30 (1 Dist. 1995).

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A complaint charging resisting a peace officer does not need to specify particular physical acts; the statute's general language is sufficient because it so particularizes the offense that it sufficiently informs the defendant of the precise crime with which he or she was charged. People v. Lauer, 273 Ill. App. 3d 469, 210 Ill. Dec. 443, 653 N.E.2d 30 (1 Dist. 1995).

Construction with Other Laws

725 ILCS 5/115-7.3, the statute which allowed the State to prove that a defendant who was charged with a sex offense had a propensity to commit sex offenses by showing that the defendant had been convicted of committing a prior sex offense, did not violate Ill. Const. Art. I, §§ 7 or 8. People v. Donoho, 204 Ill. 2d 159, 273 Ill. Dec. 116, 788 N.E.2d 707, 2003 Ill. LEXIS 461 (2003).

Delay Chargeable

Where an accused has sought and obtained a continuance, or agrees to a continuance, or in any manner causes delay in trial by his own action, the four months period, set out in former paragraph of the Criminal Code, (see now 725 ILCS 5/103-5), is renewed and starts to run again from the date the delay occurred, or to which the cause was continued. People v. Hamby, 27 Ill. 2d 493, 190 N.E.2d 289 (1963).

Enforcement

Defendant did not show that defendant's speedy trial right as recognized by Ill. Const. art. I, § 8 was violated in a case where defendant was tried and convicted on home invasion charges. Defendant agreed to a trial setting outside the relevant statutory time period, which meant that defendant waived strict application of the statutory time period, defendant was thus tried within the statutory time period when that time was tolled due to delays caused by defendant, and the statute was meant to enforcement the constitutional right of a defendant to receive a speedy trial. People v. Zeleny, 396 Ill. App. 3d 917, 336 Ill. Dec. 539, 920 N.E.2d 1129, 2009 Ill. App. LEXIS 1240 (2 Dist. 2009).

Evidence

- Destroyed

Dismissal of indictment for transporting marijuana was not called for as a sanction for the State's apparently inadvertent destruction of two of three suitcases seized at defendant's arrest where defendant had failed to move for sanctions and where the evidence provided by only one suitcase was ample to support conviction. People v. Fernandez, 344 Ill. App. 3d 152, 279 Ill. Dec. 141, 799 N.E.2d 944, 2003 Ill. App. LEXIS 1327 (3 Dist. 2003).

- Discovery Violation

Defendant's rights to due process, to present a defense, and to compulsory process were violated by the State's discovery violation, a failure to disclose the fact that the expert was going to testify that the results in a report, which indicated that a test on a tile directly adjacent to defendant's footprint was negative for the presence of blood, were incorrect and that the result was a false negative; had defendant been made aware of the expert's conclusion, defendant could have called an expert to refute that contention or could have chosen to pursue a different line of defense altogether. People v. Lovejoy, 235 Ill. 2d 97, 335 Ill. Dec. 818, 919 N.E.2d 843, 2009 Ill. LEXIS 1302 (2009).

- Gang Membership

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It was reversible error for a trial court to grant the State's motion in limine forbidding defense to impeach all the witnesses against defendant accused of murder regarding their gang affiliations since such information was critical to a showing of witness bias. People v. Blue, 205 Ill. 2d 1, 275 Ill. Dec. 376, 792 N.E.2d 1149, 2001 Ill. LEXIS 1082 (2001).

Witness' gang membership was not relevant where defendant had not alleged State witnesses had a motive to falsely accuse him and there was no evidence of any gang retaliation or gang rivalry; therefore, issues of gangs were completely immaterial to the case and therefore properly excluded. People v. Davis, 287 Ill. App. 3d 46, 222 Ill. Dec. 541, 677 N.E.2d 1340 (1 Dist. 1997).

- Other Crimes

Where the trial court erroneously admitted other crimes evidence at defendant's murder trial, the error was not harmless as defendant was deprived of a fair trial in violation of this section; the case was based entirely on circumstantial evidence, and the State repeatedly used the improper other crimes evidence in making its case. People v. Richee, 355 Ill. App. 3d 43, 291 Ill. Dec. 132, 823 N.E.2d 142, 2005 Ill. App. LEXIS 19 (1 Dist. 2005), appeal denied, 215 Ill. 2d 614, 295 Ill. Dec. 525, 833 N.E.2d 7 (2005).

Failure to Raise

Granting Continuance

Although the state had been granted several continuances at defendant's trial for deviate sexual assault and aggravated battery, the trial judge did not abuse his discretion in granting the state a continuance of 60 days to procure attendance of a physician who had examined the victim and thereafter left his employment at a county hospital under former Ill. Const. (1870), Art. II, § 9 (see now this section). People v. Taylor, 82 Ill. App. 2d 5, 226 N.E.2d 693 (1 Dist. 1967).

Guilty Plea

Defendant established a violation of his constitutional rights because the trial court accepted defendant's guilty plea without informing defendant that statutes required the addition of a term of mandatory supervised release following the completion of defendant's sentence. Because the appellate court had no evidence from which it could determine whether a retrial would unduly prejudice the prosecution, the case had to be remanded to the trial court for a hearing concerning the prejudice to the prosecution if defendant was granted leave to withdraw his guilty plea. People v. Chamness, 373 Ill. App. 3d 492, 311 Ill. Dec. 617, 869 N.E.2d 291, 2007 Ill. App. LEXIS 459 (1 Dist. 2007).

Impartial Jury

- Rules of Court

Defendant was entitled to reversal of defendant's conviction for aggravated domestic battery and a new trial based on the trial court's failure to ask jurors whether they understood and accepted all of the key principles governing criminal trials, known as the Zehr principles, in violation of Ill. Sup. Ct. R. 431(b). Despite the fact that the trial court mentioned the principles themselves, and the fact that defendant did not object either at trial or in a post-trial motion, the failure of the trial court to ask as it was required to do amounted to Ill. Sup. Ct. R. 615(a) plain error that was an exception to the forfeiture rule because defendant's substantial right to an impartial jury pursuant to Ill. Const. art. I, §§ 8, 13 was affected by the trial court's failure to specifically ask about jurors'

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understanding and acceptance of those principles. People v. Blair, 395 Ill. App. 3d 465, 334 Ill. Dec. 446, 917 N.E.2d 43, 2009 Ill. App. LEXIS 944 (2 Dist. 2009).

Indictment

- Insufficient

Defendant, a former township supervisor, could not have been convicted on any of the 12 counts of official misconduct charged against him in violation of 720 ILCS 5/33-3 for his failure to report amounts his wife owed to the township for his mother-in-law's care at a county nursing home. The indictment against him did not charge offenses punishable by Illinois criminal law, as the requirement that he file with the township clerk an annual statement of the township's financial affairs pursuant to 60 ILCS 1/70-15(c) only addressed amounts that the township owed, not amounts owed to it and, thus, as a matter of statutory construction, defendant's failure was not a criminal act. People v. Grever, 222 Ill. 2d 321, 305 Ill. Dec. 573, 856 N.E.2d 378, 2006 Ill. LEXIS 1084 (2006).

The indictment did not inform the defendant of the nature and elements of the "official misconduct" charges against him. People v. Davis, 281 Ill. App. 3d 984, 217 Ill. Dec. 934, 668 N.E.2d 119 (1 Dist. 1996).

- Sufficient

Use of the word "procure" instead of "solicit" in an indictment for solicitation to commit murder did not invalidate the indictment, because it would have been plain to any defendant what the charge signified, and defendant had not challenged the indictment until the close of the State's case. People v. Cuadrado, 341 Ill. App. 3d 703, 275 Ill. Dec. 659, 793 N.E.2d 139, 2003 Ill. App. LEXIS 789 (1 Dist. 2003), aff'd, 214 Ill. 2d 79, 291 Ill. Dec. 638, 824 N.E.2d 214 (2005).

Ineffective Assistance

Defendant did not show that defense counsel provided ineffective assistance in violation of Ill. Const. Art. I, § 8 in not requesting separate verdict forms covering the different theories under which a defendant could be convicted of first-degree murder in violation of 720 ILCS 5/9-1(a). Defendant did not show that defendant was prejudiced by counsel's conduct because defendant could not demonstrate that counsel was not pursuing a reasonable trial strategy in not making the request. People v. Braboy, 393 Ill. App. 3d 100, 331 Ill. Dec. 959, 911 N.E.2d 1189, 2009 Ill. App. LEXIS 616 (1 Dist. 2009), appeal denied, 234 Ill. 2d 528, 920 N.E.2d 1075, 2009 Ill. LEXIS 2277 (2009).

Trial counsel's failure to make a closing argument denied defendant the effective assistance of counsel as trial counsel had the opportunity to impress upon the jury the inconsistencies in the identification testimony of the State's witnesses, the lack of a confession, and the lack of any physical evidence connecting defendant to the offenses; further, trial counsel failed to object to evidence about the recovery of a revolver and a photograph of the revolver, which prejudiced defendant even further. People v. Wilson, 392 Ill. App. 3d 189, 331 Ill. Dec. 592, 911 N.E.2d 413, 2009 Ill. App. LEXIS 360 (1 Dist. 2009), appeal denied, 234 Ill. 2d 550, 920 N.E.2d 1080, 2009 Ill. LEXIS 2075 (2009).

Trial court did not err in dismissing defendant's postconviction petition because defendant failed to show that he was prejudiced by counsel's failure to challenge a jury instruction that addressed the circumstances of an identification and was given when identification was at issue; although counsel's failure to challenge the instruction at trial or on appeal established deficient performance, defendant could not show that he was prejudiced because the eyewitness's ability to identify defendant was not at issue, and the evidence against defendant was overwhelming. People v. Martinez, 389 Ill. App. 3d 413, 329 Ill. Dec. 76, 905 N.E.2d 914, 2009 Ill. App.

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LEXIS 141 (1 Dist. 2009), appeal denied, 233 Ill. 2d 583, 335 Ill. Dec. 641, 919 N.E.2d 360, 2009 Ill. LEXIS 1462 (2009).

Defense counsel did not provide ineffective assistance of counsel due to counsel's failure to request separate verdict forms as defendant did not show prejudice or a reasonable probability that separate verdict forms would have resulted in not guilty verdicts on the intentional murder and knowing murder charges. People v. Moore, Ill. App. 3d , Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 595 (1 Dist. June 30, 2009).

Defendant did not receive ineffective assistance of counsel, even though no compulsion defense was raised under 720 ILCS 5/7-11, as: (1) defendant's testimony that defendant remained seated during the armed robbery merely amounted to a claim that defendant was unaware that the robbery would occur; (2) defendant aided co-defendants in the planning and commission of the offense and provided the transportation that co-defendants lacked earlier; (3) the conduct defendant was compelled to perform was not connected to the armed robbery; and (4) defendant's claim that defendant believed the robbery was called off at the time they arrived at hotel was based on too many witnesses being present, and was not a withdrawal. People v. Johns, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1173 (1 Dist. Nov. 17, 2008).

Inmate's ineffective assistance of trial and appellate counsel claims under Ill. Const. art. I, § 8 based on trial counsel's failure to attack a search warrant and appellate counsel's failure to raise the issue on appeal were frivolous since when the warrant was issued, the police had found matching gloves: one in the victim's house and the other in the inmate's garbage. The inmate's lawful presence in the victim's house, which allegedly explained a fingerprint on the victim's money jar, did not negate probable cause to issue the search warrant. People v. Petrenko, 385 Ill. App. 3d 479, 324 Ill. Dec. 797, 896 N.E.2d 873, 2008 Ill. App. LEXIS 985 (3 Dist. 2008), criticized in, 396 Ill. App. 3d 763, 336 Ill. Dec. 197, 919 N.E.2d 1122, 2009 Ill. App. LEXIS 1267 (4th Dist. 2009).

Defendant's claim that defendant received ineffective assistance of counsel in violation of Ill. Const. Art. I, § 8 because defense counsel at defendant's trial for unlawful delivery of a controlled substance stipulated to an adequate chain of custody could not be reviewed during the direct appeal of defendant's conviction. Such a claim depended on consideration of matters outside of the record and was better pursued in postconviction proceedings. People v. Coleman, 391 Ill. App. 3d 963, 330 Ill. Dec. 930, 909 N.E.2d 952, 2009 Ill. App. LEXIS 552 (4 Dist. 2009), appeal denied, 234 Ill. 2d 530, 920 N.E.2d 1075, 2009 Ill. LEXIS 1995 (2009).

There was no plain error under Ill. Sup. Ct. R. 451(c) by the trial court's failure to sua sponte give a jury instruction on Illinois Pattern Jury Instructions Criminal No. 24-25.09X although it gave a jury instruction on Illinois Pattern Jury Instructions Criminal No. 24-25.09, as defendant did not tender that instruction under 155 Ill. 2d R. 366(b)(2)(i), the omission did not create a serious risk that the jurors incorrectly convicted defendant, and other instructions given to them made it clear what elements they had to find proven in order to convict defendant; there was no ineffectiveness of counsel for failing to seek such an instruction in the circumstances, as no prejudice was shown to defendant. People v. Alexander, 391 Ill. App. 3d 419, 330 Ill. Dec. 321, 908 N.E.2d 173, 2009 Ill. App. LEXIS 294 (3 Dist. 2009).

Defense counsel provided ineffective assistance of counsel in violation of Ill. Const. Art. I, § 8 in stating during opening statements in a first-degree murder case that the jury would be hearing from the defendants that they could not be the killers because they were sleeping at the time other suspects lured a cocaine dealer to their home, and severely battered and robbed the cocaine dealer. After the State had rested, defense counsel called no witnesses, and a reasonable attorney would not have failed to call the defendants as witnesses to support the theory of non-involvement in the crime; the defendants were further prejudiced because the case against them was less than solid. People v. Bryant, 391 Ill. App. 3d 228, 330 Ill. Dec. 49, 907 N.E.2d 862, 2009 Ill. App. LEXIS 238 (5 Dist. 2009).

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Defendant's counsel was not ineffective for failing to present, both at trial and at a suppression hearing, evidence of defendant's learning disability and depression. The mental health evidence ran counter to trial counsel's strategy of portraying defendant as an intelligent man, and the proposed evidence would have contradicted, in part, defendant's trial testimony. People v. Johnson, 385 Ill. App. 3d 585, 325 Ill. Dec. 611, 898 N.E.2d 658, 2008 Ill. App. LEXIS 903 (1 Dist. 2008).

Defendant's counsel was not ineffective for failing to request Ill. Pattern Jury Instructions Crim. No. 3.06-3.07 (4th ed. 2000), as the trial court gave an instruction that was almost identical, word for word, to this instruction. People v. Johnson, 385 Ill. App. 3d 585, 325 Ill. Dec. 611, 898 N.E.2d 658, 2008 Ill. App. LEXIS 903 (1 Dist. 2008).

Defendant received ineffective assistance of counsel when counsel failed to seek a speedy trial discharge under 725 ILCS 5/103-5(a) when, eight months after defendant was charged with reckless homicide, the State was allowed to vacate defendant's plea to that charge and then charge defendant aggravated DUI; because the aggravated DUI and reckless homicide charges came within the compulsory joinder language of 720 ILCS 5/3-3, delays assessed against defendant on the reckless homicide charge could not be applied to the aggravated DUI charge. People v. Phipps, 382 Ill. App. 3d 1047, 321 Ill. Dec. 594, 889 N.E.2d 1154, 2008 Ill. App. LEXIS 682 (1 Dist. 2008).

Defense counsel was ineffective by withdrawing a prior motion to quash arrest and suppress evidence where the motion would have been granted and evidence found in a bedroom where defendant was an overnight guest would not have been admitted into evidence. The defendant had a reasonable expectation of privacy in the bedroom of her friend's apartment as: (1) the tenant's consent to search could not have included the bedroom; (2) there was no justification for the officers' warrantless intrusion into the bedroom; (3) there was no evidence that police saw defendant selling drugs or committing any other criminal offense; (4) police were not in hot pursuit of defendant; (5) defendant was not in the process of destroying evidence; and (6) the police did not announce their pursuant to 725 ILCS 5/108-8. People v. Givens, 384 Ill. App. 3d 101, 323 Ill. Dec. 106, 892 N.E.2d 1098, 2008 Ill. App. LEXIS 684 (1 Dist. 2008), vacated, cause remanded 2010 Ill. LEXIS 655 (Ill. 2010).

When defendant was charged with residential burglary, he was not denied the effective assistance of counsel when counsel did not move to suppress a search of defendant's residence because the motion would have been denied, as defendant was on parole, so the Fourth Amendment did not apply to the search. People v. Echols, 382 Ill. App. 3d 309, 320 Ill. Dec. 649, 887 N.E.2d 793, 2008 Ill. App. LEXIS 364 (1 Dist. 2008), appeal denied, 229 Ill. 2d 638, 325 Ill. Dec. 9, 897 N.E.2d 257, 2008 Ill. LEXIS 1203 (2008).

Defendant was not denied the effective assistance of counsel after conviction of first degree murder, under 720 ILCS 5/9-1(a)(1) when counsel did not request a second degree murder instruction based on provocation rather than the basis of unreasonable belief in justification in shooting the victim, as it was reasonable trial strategy to decide that a provocation theory instruction could undermine testimony supporting the justification theory instruction. People v. Ingram, 382 Ill. App. 3d 997, 321 Ill. Dec. 1, 888 N.E.2d 520, 2008 Ill. App. LEXIS 344 (1 Dist. 2008), appeal denied, 229 Ill. 2d 642, 325 Ill. Dec. 11, 897 N.E.2d 259, 2008 Ill. LEXIS 1237 (2008).

Neither defense counsel's failure to ask a jury venire about their understanding of the principles of defendant's presumption of innocence, the State's burden of proof beyond a reasonable doubt, and defendant's right not to testify or to call witnesses, nor counsel's failure to request that the trial court ask such questions, constituted ineffective assistance of counsel as there was no reasonable probability that the outcome of defendant's trial on a burglary charge would have been different had the questions been asked. People v. Gilbert, 379 Ill. App. 3d 106, 318 Ill. Dec. 17, 882 N.E.2d 1140, 2008 Ill. App. LEXIS 51 (1 Dist. 2008).

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Defendant could not show that his post conviction counsel failed to provide reasonable assistance pursuant to Rule. 651(c), Supreme Court Rules, where his counsel amended his pro se petition for post conviction relief and raised the argument that trial counsel provided ineffective assistance for not having a certain witness testify at defendant's trial, and the argument failed only because the testimony of the witness would not have changed the outcome of defendant's case. People v. Davis, 382 Ill. App. 3d 701, 321 Ill. Dec. 357, 889 N.E.2d 622, 2008 Ill. App. LEXIS 21 (1 Dist. 2008), appeal denied, 229 Ill. 2d 676, 900 N.E.2d 1120, 2008 Ill. LEXIS 1747 (2008).

Defense counsel could have determined that a juror, whose mother had been attacked by a knife-wielding assailant, would sympathize with defendant, a woman who similarly alleged that she was the victim of a knife-wielding aggressor who attacked her; counsel's decision not to challenge the juror was a matter of trial strategy and did not run afoul of Strickland. People v. Begay, 377 Ill. App. 3d 417, 316 Ill. Dec. 574, 879 N.E.2d 962, 2007 Ill. App. LEXIS 1146 (1 Dist. 2007).

Trial court did not err in granting the State's motion to dismiss defendant's petition for relief under the Post-Conviction Hearing Act, 725 ILCS 5/122-1 et seq., without an evidentiary hearing because none of the affidavits defendant submitted supported his claim that trial counsel provided ineffective assistance by failing to investigate evidence that would have shown he confessed falsely; because the affidavits from 4 individuals alleged that defendant's trial counsel failed to interview them, the affidavits did not support a claim of failure to investigate. People v. Terrell, Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 1279 (1 Dist. July 26, 2006).

State was entitled to have its motion to dismiss granted, directed at petitioner's initial and supplemental postconviction petitions, in a case where petitioner was charged with and convicted of theft by deception. Pursuant to 725 ILCS 5/122-5, the State was entitled because petitioner was not able to demonstrate that the conviction, or the affirmance of it on direct appeal, were obtained through violation of petitioner's Ill. Const. Art. I, § 8 right to effective assistance of trial and appellate counsel. People v. Clark, Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 1281 (1 Dist. May 31, 2006).

Appellate court erred in finding merit in a Sixth Amendment ineffective assistance of counsel claim because the issues the court contended appointed postconviction counsel should have raised were either waived or were not in defendant's petition. Pursuant to Ill. Sup. Ct. R. 651(c), counsel was only required to investigate and present properly preserved claims raised by defendant. People v. Pendleton, 223 Ill. 2d 458, 308 Ill. Dec. 434, 861 N.E.2d 999, 2006 Ill. LEXIS 1669 (2006).

Defendant's ineffective assistance of counsel claim failed; because of the overwhelming evidence of defendant's guilt of aggravated unlawful use of a weapon, defendant could not show a reasonable probability that the outcome of the case would have been different if defense counsel had questioned jurors about the Zehr principles. An officer testified that the officer found a loaded gun in defendant's car, and no evidence adduced at trial contradicted the officer's testimony. People v. Williams, 368 Ill. App. 3d 616, 306 Ill. Dec. 809, 858 N.E.2d 606, 2006 Ill. App. LEXIS 1020 (1 Dist. 2006).

Since defense counsel's primary strategy in the murder trial was to prove lack of opportunity, failure to obtain evidence or further testimony regarding drive times was not objectively unreasonable. People v. Beaman, 368 Ill. App. 3d 759, 306 Ill. Dec. 633, 858 N.E.2d 78, 2006 Ill. App. LEXIS 1009 (1 Dist. 2006).

Because the jury's question to the court did not require the trial judge to provide the jury with a definition of the term "knowingly," defendant could not show that trial counsel was ineffective for failing to require the trial judge to provide the jury with an instruction on the definition of that term. People v. Sanders, 368 Ill. App. 3d 533, 306 Ill. Dec. 549, 857 N.E.2d 948, 2006 Ill. App. LEXIS 1003 (1 Dist. 2006).

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Counsel was not ineffective in failing to object to the State's request for a continuance to obtain DNA test results because the State's motion was more than reasonable given that one technician was on maternity leave and the other, who was also pregnant, could not work with certain chemicals because of significant risks to her unborn baby. People v. Workman, 368 Ill. App. 3d 778, 306 Ill. Dec. 828, 858 N.E.2d 886, 2006 Ill. App. LEXIS 618 (1 Dist. 2006).

Where defendant argued that defense counsel was ineffective under Ill. Const. Art. I, § 8 because defense counsel conceded that defendant committed one of the offenses of which defendant was charged, defendant failed to show prejudice, as the evidence against defendant on the conceded offense was overwhelming where two witnesses saw defendant committing the crime. People v. Berrier, 362 Ill. App. 3d 1153, 299 Ill. Dec. 385, 841 N.E.2d 1117, 2006 Ill. App. LEXIS 17 (1 Dist. 2006).

Ineffective assistance of counsel claim failed where counsel impliedly, if not expressly, suggested that the sex between the victim and defendant was consensual in closing arguments, counsel thoroughly cross-examined the victim and eyewitnesses about the incident in an attempt to discredit them, and counsel's decision not to question the victim about the possibility that she consented to have sex with defendant was a sound trial strategy based on counsel's belief that its only purpose would have been to hammer the forcefulness of the act into the minds of the jury. People v. Rodriguez, 364 Ill. App. 3d 304, 301 Ill. Dec. 258, 846 N.E.2d 220, 2006 Ill. App. LEXIS 265 (1 Dist. 2006).

Claim that defense counsel was ineffective for failing to file a motion to suppress defendant's statements failed because defendant was not prejudiced by defense counsel's representation; the trial court specifically found that defendant was properly advised of his Miranda rights and that he knowingly and intelligently waived those rights. People v. Salgado, 366 Ill. App. 3d 596, 304 Ill. Dec. 16, 852 N.E.2d 266, 2006 Ill. App. LEXIS 251 (1 Dist. 2006).

Defendant did not show that he received ineffective assistance of counsel regarding his assertion that his trial counsel should have moved to discover the identity of the police informant in his case where he was alleging an entrapment defense; defendant did not show how the alleged deficiency on counsel's part prejudiced his case. People v. Glenn, 363 Ill. App. 3d 170, 299 Ill. Dec. 736, 842 N.E.2d 773, 2006 Ill. App. LEXIS 29 (1 Dist. 2006).

Defendant's counsel was ineffective for not filing a motion for discharge of the home invasion counts against defendant, as those charges were not tried within the 120-day time limit that ran from the date he was taken into custody, not including any delays that were attributable to defendant. The State did not have a legitimate excuse for not filing the charges earlier rather than waiting until the 116th day after defendant was taken into custody to file them, as the State filed other charges earlier that occurred in a single location on the same date, and, thus, the State knew the home invasion charges were subject to compulsory joinder pursuant to 720 ILCS 5/3-3, yet the State impermissibly delayed in filing the home invasion charges. People v. Boyd, Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 22 (1 Dist. Jan. 20, 2006).

Trial counsel was not ineffective; although counsel was unable to elicit an admission of the police report description of the suspect from a witness or the victim, trial counsel attempted to elicit this information from witnesses, and even if counsel had conducted a pretrial interview of these witnesses and discovered prior to the trial that they would not admit to having given that description, it would still have been objectively reasonable for counsel to present the evidence through the lead detective during cross-examination and make mention of the discrepancy between the report and defendant's age during arguments. People v. Welch, 365 Ill. App. 3d 978, 303 Ill. Dec. 397, 851 N.E.2d 584, 2005 Ill. App. LEXIS 1259 (5 Dist. 2005), appeal denied, 218 Ill. 2d 555, 303 Ill. Dec. 8, 850 N.E.2d 813 (2006).

Prisoner failed to adequately prove a claim of ineffective assistance of counsel in violation of Ill. Const. Art. I, § 8, as the prisoner failed to show how testimony of a witness counsel was allegedly ineffective for failing to call at trial might have contained or how it might have swayed the jury to

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arrive at a different verdict. People v. Jones, 362 Ill. App. 3d 31, 298 Ill. Dec. 216, 839 N.E.2d 539, 2005 Ill. App. LEXIS 1057 (1 Dist. 2005), appeal denied, 218 Ill. 2d 550, 303 Ill. Dec. 6, 850 N.E.2d 811 (2006).

The State contended that absent the damaging evidence brought out by defense counsel, the evidence introduced by the State overwhelmingly proved defendant's guilt beyond a reasonable doubt. The court found, however, that the evidence was not overwhelming: there was only constructive possession of the drugs based on defendant's exiting the door leading to the apartment and his possession of the door keys, in addition to the phone bills. As such, the court found that the evidence brought out by defense counsel was damaging enough to defendant's case to satisfy both prongs of the Strickland test. People v. Orta, 361 Ill. App. 3d 342, 297 Ill. Dec. 80, 836 N.E.2d 811, 2005 Ill. App. LEXIS 953 (1 Dist. 2005), appeal denied, 217 Ill. 2d 619, 300 Ill. Dec. 527, 844 N.E.2d 970 (2006).

Court was reluctant to say that defense counsel was ineffective when he failed to contend that evidence of the presence of defendant's name on cellular phone bills found in confiscated shaving bag would be inadmissible hearsay, especially since the State contended it would have offered the bills through a police officer's testimony whether or not defense counsel brought up the bills. People v. Orta, 361 Ill. App. 3d 342, 297 Ill. Dec. 80, 836 N.E.2d 811, 2005 Ill. App. LEXIS 953 (1 Dist. 2005), appeal denied, 217 Ill. 2d 619, 300 Ill. Dec. 527, 844 N.E.2d 970 (2006).

Finding that defendant was insane at the time he killed the victim, which otherwise would have amounted to first-degree murder, meant that the appellate court had to dismiss defendant's appeal, as the finding meant that defendant was effectively acquitted, bore no criminal responsibility, and could not be granted relief on appeal; however, the trial court could still find that defendant should be committed to the Illinois Department of Human Services until a certain time or until he was discharged because he was no longer mentally ill, and, in any event, even if defendant could appeal he could not show that he received ineffective assistance of counsel for his counsel's failure to file a motion to suppress his statement after the trial court determined he was insane because the evidence showed that his statement had been given voluntarily at a time he was sane. People v. Harrison, 366 Ill. App. 3d 210, 303 Ill. Dec. 254, 851 N.E.2d 152, 2006 Ill. App. LEXIS 392 (1 Dist. 2006), aff'd, 226 Ill. 2d 427, 877 N.E.2d 432, 2007 Ill. LEXIS 1692 (2007).

Appellate court erred in affirming the trial court's dismissal of defendant's postconviction petition for relief from his conviction for aggravated kidnapping following his tender and the trial court's acceptance of his guilty plea. Defendant's petition contained sufficient documentation and stated a constitutional claim and, thus, the petition should not have been dismissed because defendant alleged his guilty plea was the result of his counsel's erroneous advice that his alleged lack of knowledge of the young child in the car he stole would not be a defense to an aggravated kidnapping charge and that he would receive 25 years if convicted on that charge, which indicated that defendant had received ineffective assistance of counsel in entering his guilty plea. People v. Hall, 217 Ill. 2d 324, 299 Ill. Dec. 181, 841 N.E.2d 913, 2005 Ill. LEXIS 2073 (2005).

Because the circumstantial evidence provided a reasonable inference that defendant was looking into the victim's house in violation of 720 ILCS 5/26-1, defendant was not prejudiced by counsel's questions, which assumed that defendant was looking in the window. People v. Rizzo, 362 Ill. App. 3d 444, 299 Ill. Dec. 690, 842 N.E.2d 727, 2005 Ill. App. LEXIS 1169 (2 Dist. 2005).

Trial court did not err in summarily dismissing defendant's pro se post-conviction petition, as the record substantively rebutted allegations raised in that petition that defendant was not proven guilty beyond a reasonable doubt of vehicular hijacking or that trial counsel rendered ineffective assistance of counsel, particularly with regard to the allegation that counsel should have moved for a speedy trial. Since the record substantively rebutted those allegations, the petition could be summarily dismissed at the initial stage of post-conviction proceedings since the petition was

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frivolous and patently without merit. People v. Phyfiher, 361 Ill. App. 3d 881, 297 Ill. Dec. 694, 838 N.E.2d 181, 2005 Ill. App. LEXIS 1068 (1 Dist. 2005).

Trial court did not err when it did not inquire into or evaluate defendant's pro se posttrial claims of Ill. Const. Art. I, § 8 ineffective assistance of counsel. Defendant's letter sent to the trial court did not set forth an adequate claim of ineffective assistance of counsel and defendant did not assert any such claim at his posttrial hearing. People v. Radford, 359 Ill. App. 3d 411, 296 Ill. Dec. 272, 835 N.E.2d 127, 2005 Ill. App. LEXIS 801 (1 Dist. 2005), appeal denied, 217 Ill. 2d 586, 300 Ill. Dec. 373, 844 N.E.2d 45 (2005).

Trial court erred in declining to hear defendant's pro se motion claiming that he received ineffective assistance of counsel where his first notice of appeal was rendered ineffective by defense counsel's timely filing of a motion directed against defendant's conviction; the court still had jurisdiction over the case at the time defendant filed his motion because it was filed within 30 days of the denial of defense counsel's post-trial motion. People v. Serio, 357 Ill. App. 3d 806, 294 Ill. Dec. 337, 830 N.E.2d 749, 2005 Ill. App. LEXIS 563 (2 Dist. 2005), appeal denied, 217 Ill. 2d 588, 300 Ill. Dec. 373, 844 N.E.2d 45 (2005).

Post-conviction petitioner's claim that counsel failed to investigate or secure the attendance of a witness who would have called into question petitioner's presence at the crime scene in question raised serious enough issues of possible ineffective assistance of counsel that the petition should not have been dismissed without a hearing. People v. Makiel, 358 Ill. App. 3d 102, 294 Ill. Dec. 319, 830 N.E.2d 731, 2005 Ill. App. LEXIS 557 (1 Dist. 2005), appeal denied, 217 Ill. 2d 582, 300 Ill. Dec. 372, 844 N.E.2d 44 (2005).

Because of the overwhelming evidence of defendant's guilt of first degree murder, he could not show a reasonable probability that the outcome of his case would have been different had counsel questioned the potential jurors regarding the principles of People v. Zehr, 103 Ill. 2d 472, 83 Ill. Dec. 128 (1984). Accordingly, his contention of ineffective assistance was without merit. People v. Foreman, 361 Ill. App. 3d 136, 297 Ill. Dec. 19, 836 N.E.2d 750, 2005 Ill. App. LEXIS 936 (1 Dist. 2005).

Defendant's failure to raise the issue of ineffective assistance of trial counsel on direct appeal waived that issue in his habeas corpus proceeding where the fact that witnesses should have been subpoenaed to testify at trial was information contained in the trial record. United States ex rel. Adams v. Suggs,, 2000 U.S. Dist. LEXIS 1740 (N.D. Ill. Feb. 11, 2000).

Defendant who neglects to raise a claim of inadequate representation on direct appeal may not later assert that claim in a petition for post-conviction relief unless the basis for the claim does not appear in the record. United States ex rel. Adams v. Suggs,, 2000 U.S. Dist. LEXIS 1740 (N.D. Ill. Feb. 11, 2000).

- Failure to Request Fitness Hearing

Defendant counsel was not ineffective for failing to raise the issue of defendant's fitness to stand trial, as the medical evidence in defendant's Department of Corrections file was not sufficient to raise a bona fide doubt defendant could not possibly have understood the nature of the proceedings. People v. Weeks, 393 Ill. App. 3d 1004, 333 Ill. Dec. 363, 914 N.E.2d 1175, 2009 Ill. App. LEXIS 807 (4 Dist. 2009).

Defense counsel was not ineffective for failing to seek a fitness hearing where both a psychologist and a psychiatrist had examined defendant and found him fit for trial. People v. Gilbert, 379 Ill. App. 3d 106, 318 Ill. Dec. 17, 882 N.E.2d 1140, 2008 Ill. App. LEXIS 51 (1 Dist. 2008).

Inmate was presumed to be fit to stand trial or to plead guilty to charges of criminal damage to government-supported property and aggravated battery on a corrections employee and as nothing in the record of indicated that the inmate had impaired judgment or did not understand

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the proceedings, there was no bona fide basis for his counsel to have sought a fitness hearing. As the inmate was "fit" to enter his guilty pleas there was no due process violation and there was no basis for his claim of ineffective assistance of counsel. People v. Williams, 364 Ill. App. 3d 1017, 302 Ill. Dec. 254, 848 N.E.2d 254, 2006 Ill. App. LEXIS 374 (1 Dist. 2006).

- Postconviction Proceeding

Defendant claimed, and the State conceded, that the trial court at the very least should have held a preliminary hearing on defendant's pro se postconviction motion alleging that defendant received Ill. Const. art. I, § 8 ineffective assistance of counsel in defendant's case where defendant was convicted on three charges of threatening a public official. Although the trial court was not required to find that defendant received ineffective assistance, defendant raised several claims would should have at least been heard. People v. Scates, 393 Ill. App. 3d 566, 333 Ill. Dec. 36, 914 N.E.2d 243, 2009 Ill. App. LEXIS 778 (4 Dist. 2009), appeal denied, 234 Ill. 2d 545, 920 N.E.2d 1079, 2009 Ill. LEXIS 2086 (2009).

Inmate's motion for post conviction relief under 725 ILCS 5/122-1 et seq. was properly denied because the inmate's allegations, that defense counsel failed to inform him of the 25-year sentencing enhancement on his first-degree murder charge, failed to connect the inmate's rejection of a plea offer with any information provided by counsel; there was no allegation that defense counsel provided erroneous information, nor did the inmate receive a sentence in excess of the maximum of which he was informed, and the only reasonable inference was that the inmate desired to pursue his right to trial and to assert his self-defense claim. There was no allegation supporting even a gist of a ineffectiveness claim. People v. Miller, 393 Ill. App. 3d 629, 332 Ill. Dec. 727, 913 N.E.2d 659, 2009 Ill. App. LEXIS 746 (1 Dist. 2009), appeal denied, 234 Ill. 2d 542, 920 N.E.2d 1078, 2009 Ill. LEXIS 2278 (2009), cert. denied, 2010 U.S. LEXIS 4069, 176 L. Ed. 2d 1198 (U.S. 2010).

Defendant's appointed trial counsel did not provide ineffective assistance by failing to pursue defendant's original pro se petition under 735 ILCS 5/2-1401 because counsel performed reasonably in recasting defendant's § 2-1401 petition, which was based upon a constitutional claim, as a postconviction petition under 725 ILCS 5/122-1(f). Further, because defendant's consecutive sentences were not void under 730 ILCS 5/5-8-4, as the trial court had jurisdiction, counsel was not deficient in failing to advocate defendant's void sentences claim. People v. Welch, 392 Ill. App. 3d 948, 332 Ill. Dec. 269, 912 N.E.2d 756, 2009 Ill. App. LEXIS 653 (3 Dist. 2009), appeal denied, 233 Ill. 2d 595, 335 Ill. Dec. 645, 919 N.E.2d 364, 2009 Ill. LEXIS 1347 (2009).

Although defendant raised claims of Ill. Const. art. I, § 8 ineffective assistance of counsel on direct appeal, the direct appeal was not a proper stage of defendant's first-degree murder trial at which to raise such claims. Instead, defendant was entitled to raise such claims at the postconviction proceeding stage, where defendant would have an opportunity to better develop the claim. People v. Hatchett, Ill. App. 3d , Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 1085 (1 Dist. Nov. 10, 2009).

Trial court should not have summarily dismissed defendant's pro se petition for postconviction relief pursuant to the Post-Conviction Hearing Act, 725 ILCS 5/122-1. The petition, which alleged that defendant's attorney misled defendant into believing that the attorney would file appropriate postconviction challenges after defendant pled guilty to first-degree murder and attempted murder, sufficiently alleged the gist of a constitutional claim, that of ineffective assistance of counsel in violation of Ill. Const. art. I, § 8, and required further investigation. People v. Hernandez, Ill. App. 3d , Ill. Dec. , N.E.2d , 2007 Ill. App. LEXIS 1431 (1 Dist. July 23, 2007).

Jurisdiction

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- County of Offense

The charge that an offense was committed within a particular county is a material averment which must be proven; because it is the duty of the prosecution to allege where the offense was committed, when there was a failure to allege the county in which the offense occurred the jurisdiction of the court was not established. People v. Wallace, 125 Ill. App. 2d 455, 261 N.E.2d 214 (4 Dist. 1970).

Jurisdiction of Supreme Court

- Historical Jurisdiction

Where a construction of the state constitution is involved, the Illinois Supreme Court has jurisdiction directly even if indictment charges the defendants with a misdemeanor under former Ill. Const. (1870), Art. II, § 9 (see now this section). People v. Beeftink, 21 Ill. 2d 282, 171 N.E.2d 632 (1961).

- Not Shown

Where the constitutional points raised by appellant were no longer debatable, and the circuit court was compelled to follow the mandate of the appellate court, questions giving the Supreme Court of Illinois jurisdiction could not be raised upon a motion to disobey the mandate, and because all of the issues necessary for a final disposition of the case had been decided, the appeal of appellant was dismissed. Goodrich v. Sprague, 385 Ill. 200, 52 N.E.2d 250 (1943).

- Right to a Fair Trial

Contention, that extensive prejudicial newspaper, radio and television publicity deprived defendant of his right to a fair trial gave Supreme Court jurisdiction for appeal of conviction of embezzlement. People v. Hagel, 32 Ill. 2d 413, 206 N.E.2d 699 (1965).

Jury Trial

Because the record established that defendant, who was no stranger to the criminal justice system, knew the difference between a bench trial and a jury trial and voluntarily chose the former, defendant knowingly and understandingly waived his right to a jury trial to the sentencing portion of the death-sentence case; thus, there was no constitutional violation. People v. Bannister, 232 Ill. 2d 52, 327 Ill. Dec. 450, 902 N.E.2d 571, 2008 Ill. LEXIS 1422 (2008).

Failure to sua sponte excuse a witness suggesting bias for cause was not plain error where the defendant failed to raise the issue, either at trial or in a post-trial motion, and could have peremptorily challenged her. People v. Bowman, 325 Ill. App. 3d 411, 259 Ill. Dec. 285, 758 N.E.2d 408, 2001 Ill. App. LEXIS 765 (1 Dist. 2001), appeal denied, 198 Ill. 2d 596, 262 Ill. Dec. 621, 766 N.E.2d 241 (2002), cert. denied, 536 U.S. 968, 122 S. Ct. 2682, 153 L. Ed. 2d 853 (2002).

The Illinois Constitution, Ill. Const. Art. I, § 8, guarantees a criminal defendant the right to a trial by an impartial jury; that right is not violated by a single equivocal response suggesting bias where the prospective juror later states that he will try to disregard his bias. People v. Bowman, 325 Ill. App. 3d 411, 259 Ill. Dec. 285, 758 N.E.2d 408, 2001 Ill. App. LEXIS 765 (1 Dist. 2001), appeal denied, 198 Ill. 2d 596, 262 Ill. Dec. 621, 766 N.E.2d 241 (2002), cert. denied, 536 U.S. 968, 122 S. Ct. 2682, 153 L. Ed. 2d 853 (2002).

Where defendant did not speak English, the court erred in proceeding with a bench trial without personally addressing defendant on the record regarding his understanding of the jury waiver.

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People v. Lach, 302 Ill. App. 3d 587, 236 Ill. Dec. 299, 707 N.E.2d 144 (1 Dist. 1998), appeal denied, 184 Ill. 2d 566, 239 Ill. Dec. 611, 714 N.E.2d 530 (1999).

Court erred in refusing to allow defendant to waive a jury trial and to be tried by the court without a jury. People v. Spegal, 5 Ill. 2d 211, 125 N.E.2d 468 (1955).

Nature and Cause

A defendant has a fundamental right to be informed of the nature and cause of the criminal accusations made against him, referring to the crime committed, not the manner in which it was committed. People v. DiLorenzo, 169 Ill. 2d 318, 214 Ill. Dec. 846, 662 N.E.2d 412 (1996).

Preparation of Case

A defendant in every criminal case is entitled, under the law, to a reasonable time and full opportunity to prepare for his trial, and that right is one guaranteed to him by the Constitution. What is a reasonable time for the preparation of a case and what time counsel should be granted for that purpose must necessarily depend upon the facts and circumstances of each case, and is a matter largely resting in the sound judicial discretion of the trial court. The court's decision will only be disturbed on review in a court of appeal when it is shown that discretion has been abused. People v. Storer, 329 Ill. 536, 161 N.E. 76 (1928).

Rearraignment

Where the trial of joined indictments charging home invasion and armed robbery was underway when the state filed new indictments against the defendant to cure defects in the counts of home invasion, and defense counsel objected and moved to dismiss the charges upon the state's filing of new indictments, defendant was entitled to be rearraigned and plead anew on home invasion counts; without these proceedings, the trial on these charges was a nullity. People v. Foley, 162 Ill. App. 3d 282, 113 Ill. Dec. 542, 515 N.E.2d 351 (2 Dist. 1987).

Circuit courts have the duty of insuring that a defendant's waiver of his right to a jury trial be made expressly and understandably, however, there is no set formula for determining whether this waiver was made knowingly, and thus the determination necessarily turns on the facts of each case. People v. Steiger, 208 Ill. App. 3d 979, 153 Ill. Dec. 702, 567 N.E.2d 660 (2 Dist. 1991).

Right to Appear and Defend

- Actions of Trial Court

Defendant's due process rights and his right to present evidence in his own defense were violated where the trial court singled out codefendant, admonished him of the dangers and consequences of perjury, and implied that codefendant would lie if he testified on behalf of defendant. People v. King, 228 Ill. App. 3d 519, 170 Ill. Dec. 805, 593 N.E.2d 694 (1 Dist. 1992), aff'd, 154 Ill. 2d 217, 181 Ill. Dec. 626, 608 N.E.2d 877 (1993).

Right to Be Adequately Informed

Number of convictions for criminal sexual assault and aggravated criminal sexual assault should have been reduced from eight to two where the counts charging defendant did not differentiate among eight separate acts of penetration, rather, they charged defendant with only two separate acts under different theories of culpability. People v. Bishop, 352 Ill. App. 3d 195, 287 Ill. Dec. 461, 815 N.E.2d 1264, 2004 Ill. App. LEXIS 1120 (2 Dist. 2004).

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Where the defendant did not possess the degree of understanding of his rights which was required in order to effectively waive them, it was imperative that the trial court adequately inform the accused of the nature of the charge against him and instruct him as to his right to be held answerable to that charge only by indictment, and the consequences of a waiver of that right. People v. Culbert, 69 Ill. App. 2d 162, 215 N.E.2d 470 (2 Dist. 1966).

Right to Be Present

While defendant was deprived of his constitutional right to be present when the trial judge responded to the jury's note in his absence, he failed to establish how his failure to participate in formulating a response prejudiced him. People v. Cotton, 393 Ill. App. 3d 237, 332 Ill. Dec. 646, 913 N.E.2d 578, 2009 Ill. App. LEXIS 690 (1 Dist. 2009), appeal denied, 235 Ill. 2d 593, 924 N.E.2d 457, 2010 Ill. LEXIS 81 (2010).

Defendant's rights to due process under Ill. Const. art. I, § 2 and to be present under Ill. Const. art. I, § 8 were not violated by the denial of a motion to reconsider defendant's sentence in his absence because while the motion to reconsider was a critical stage in the proceedings, under one of two lines of analysis, defendant's absence did not deny him any substantial rights because the motion did not raise any new factual allegations. People v. Burnett, 385 Ill. App. 3d 610, 325 Ill. Dec. 288, 897 N.E.2d 827, 2008 Ill. App. LEXIS 1013 (1 Dist. 2008), aff'd, 2010 Ill. LEXIS 285 (Ill. 2010).

Because defendant was not afforded the opportunity to participate in person at a conference at which a judge was presented with a question from the jury, an improper ex parte communication occurred. However, defendant's absence did not prejudice his substantial rights where the jury's question centered on the term "knowingly" and defense counsel requested and the court agreed to provide the jurors with Illinois Pattern Jury Instruction, Criminal, No. 5.01B, which defined the term; it was not necessary to also present the jury with an instruction on the metal state of recklessness, as it would not have been responsive to the jury's question, and it would have been inappropriate given the complete lack of evidence that defendant acted recklessly when he ignited a fire. People v. Phillips, 383 Ill. App. 3d 521, 322 Ill. Dec. 139, 890 N.E.2d 1058, 2008 Ill. App. LEXIS 601 (1 Dist. 2008), appeal denied, 233 Ill. 2d 587, 335 Ill. Dec. 642, 919 N.E.2d 361, 2009 Ill. LEXIS 1560 (2009).

Mere fact that defense counsel waived defendant's right to be present was not itself problematic; what was problematic, however, was that there was no evidence that defendant voluntarily, knowingly, and intelligently waived his right to be present at a conference to discuss a question posed by the jury during its deliberations. Where defense counsel simply stated that defendant waived his right to be present and did not give any indication that he had conferred with his client prior to doing so, there was insufficient evidence that defendant voluntarily, knowingly, and intelligently waived his right to be present, but the ex parte conversation did not prejudice defendant. People v. Phillips, 383 Ill. App. 3d 521, 322 Ill. Dec. 139, 890 N.E.2d 1058, 2008 Ill. App. LEXIS 601 (1 Dist. 2008), appeal denied, 233 Ill. 2d 587, 335 Ill. Dec. 642, 919 N.E.2d 361, 2009 Ill. LEXIS 1560 (2009).

Trial court's violation of defendant's constitutional right to be present at a conference concerning a jury's questions to the court did not compel reversal of his convictions. Because an ex parte communication occurred in open court and there was a record of what transpired, it was clear, beyond a reasonable doubt, that the communication did not prejudice defendant. People v. Phillips, 383 Ill. App. 3d 521, 322 Ill. Dec. 139, 890 N.E.2d 1058, 2008 Ill. App. LEXIS 601 (1 Dist. 2008), appeal denied, 233 Ill. 2d 587, 335 Ill. Dec. 642, 919 N.E.2d 361, 2009 Ill. LEXIS 1560 (2009).

Although an improper ex parte conversation occurred at which counsel and the State considered a jury's questions to the court regarding the definition of the term "knowing," the communication did not prejudice defendant's substantial rights; rather, it was harmless beyond a reasonable

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doubt. People v. Phillips, 383 Ill. App. 3d 521, 322 Ill. Dec. 139, 890 N.E.2d 1058, 2008 Ill. App. LEXIS 601 (1 Dist. 2008), appeal denied, 233 Ill. 2d 587, 335 Ill. Dec. 642, 919 N.E.2d 361, 2009 Ill. LEXIS 1560 (2009).

Excluding defendant from discussions of the jury's notes to the trial court, without defendant's voluntary and knowing consent, violated substantial constitutional rights protected by the federal and state constitutions, U.S. Const. amend. VI; Ill. Const. art. I, § 8. The cumulative effect of the trial court's violations of defendant's constitutional rights was so serious that it affected the fairness of the trial. People v. McLaurin, 382 Ill. App. 3d 644, 323 Ill. Dec. 579, 894 N.E.2d 138, 2008 Ill. App. LEXIS 426 (1 Dist. 2008).

Sheriff's ex parte communications with the hung jury was a trial error of constitutional magnitude, implicating the trial court's conduct. The cumulative effect of the trial court's violations of defendant's constitutional rights was so serious that it affected the fairness of the trial. People v. McLaurin, 382 Ill. App. 3d 644, 323 Ill. Dec. 579, 894 N.E.2d 138, 2008 Ill. App. LEXIS 426 (1 Dist. 2008).

- In General

A court's decision in requiring defendant to be present during the trial, while based on the sound determination that it was in defendant's best interest that he remain, is erroneous because a defendant may waive this right to be present at trial. People v. Terry, 177 Ill. App. 3d 185, 126 Ill. Dec. 883, 532 N.E.2d 568 (4 Dist. 1988).

An accused has the right to appear and defend at every stage of his trial, including the rendition of the verdict, at which time defendant's presence affords him an opportunity to exercise his right to poll the jury. People v. Neidhofer, 150 Ill. App. 3d 518, 103 Ill. Dec. 910, 502 N.E.2d 57 (2 Dist. 1986).

A defendant has the right to be present at all stages of the trial which involve his or her substantial rights. People v. Tansil, 137 Ill. App. 3d 498, 92 Ill. Dec. 314, 484 N.E.2d 1169 (2 Dist. 1985).

The constitutional guarantee that an accused has the right to appear and defend in person and by counsel and to meet the witnesses face to face is not violated by hearings held outside defendant's presence in which substantial rights of the accused are not considered; but, a defendant's right to be present must be protected whenever it has a reasonably substantial relation to the paramount consideration of his opportunity to defend himself. People v. Grigsby, 47 Ill. App. 3d 812, 8 Ill. Dec. 243, 365 N.E.2d 481 (1 Dist. 1977).

- Attorney's Presence Insufficient

Where defendant was not present and no notice of the sentencing hearing was given to defendant, the circumstance that defendant's attorney was present did not cure the error since his attorney did not have power to waive defendant's right to be present. People v. Etheridge, 35 Ill. App. 3d 981, 343 N.E.2d 55 (3 Dist. 1976).

- Closed Circuit Television Appearance

Even though defendant had federal and state constitutional rights to be present at every critical stage of the proceedings against defendant, defendant's rights were not violated when his arraignment and jury trial where conducted through a closed circuit television from defendant's location in jail as the record did not show that use of the television rendered the proceeding against defendant unfair. People v. Lindsey, 201 Ill. 2d 45, 265 Ill. Dec. 616, 772 N.E.2d 1268, 2002 Ill. LEXIS 336 (2002).

The defendant's closed circuit television appearance at a proceeding at which he waived a jury trial did not constitute plain error under the Constitution as the trial court admonished the

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defendant of the nature of the right he was giving up in selecting a bench trial, the defendant exercised his right to speak privately with counsel before entering his jury waiver, and he did not show that his waiver was less than knowing and intelligent. People v. Lindsey, 309 Ill. App. 3d 1031, 243 Ill. Dec. 538, 723 N.E.2d 841, 2000 Ill. App. LEXIS 27 (3 Dist. 2000), aff'd, 201 Ill. 2d 45, 265 Ill. Dec. 616, 772 N.E.2d 1268 (2002).

The defendant's closed circuit television appearance at his arraignment did not constitute plain error under the Constitution as he failed to show prejudice or an impairment of his right to due process. People v. Lindsey, 309 Ill. App. 3d 1031, 243 Ill. Dec. 538, 723 N.E.2d 841, 2000 Ill. App. LEXIS 27 (3 Dist. 2000), aff'd, 201 Ill. 2d 45, 265 Ill. Dec. 616, 772 N.E.2d 1268 (2002).

A defendant's closed circuit television appearance at his guilty plea hearing violates his right to be physically present under the Constitution. People v. Guttendorf, 309 Ill. App. 3d 1044, 243 Ill. Dec. 535, 723 N.E.2d 838, 2000 Ill. App. LEXIS 26 (3 Dist. 2000), appeal denied, 188 Ill. 2d 572, 246 Ill. Dec. 127, 729 N.E.2d 500 (2000).

- Communications to or from Jury

The defendant's right to be present was not violated when the trial court responded to a note from the jury by stating, "the law applicable to this case is obtained in the instructions you have been given. You are to follow those instructions"; the record revealed that (1) the trial judge contacted defense counsel via telephone upon receipt of the jury's note, (2) defense counsel was allowed an adequate opportunity to assist in responding to the note, (3) defense counsel was also allowed to discuss the contents of the note with defendant and was given the opportunity to make changes before the trial judge submitted the response to the jury, and (4) defense counsel was also asked if he had an objection to the language in the response and he said no. People v. Smith, 321 Ill. App. 3d 523, 254 Ill. Dec. 669, 747 N.E.2d 1081, 2001 Ill. App. LEXIS 218 (1 Dist. 2001), appeal denied, 195 Ill. 2d 593, 258 Ill. Dec. 99, 755 N.E.2d 482 (2001).

Defendant was deprived of his right to be present when the trial court responded to the jurors' question without informing defendant or his counsel. People v. Comage, 303 Ill. App. 3d 269, 237 Ill. Dec. 258, 709 N.E.2d 244 (4 Dist. 1999), appeal denied, 185 Ill. 2d 638, 242 Ill. Dec. 142, 720 N.E.2d 1097 (1999).

In order to protect the privacy of jury deliberations, communications from the judge to the jury should be made in open court and in the presence of the parties. People v. Marsan, 264 Ill. App. 3d 870, 202 Ill. Dec. 1, 637 N.E.2d 540 (1 Dist. 1994).

- Construction with Statutory Provisions

The Code of Criminal Procedure (see now 725 ILCS 5/115-4.1) is in harmony with this section which confers upon a defendant the right to appear and defend himself in person, and constitutes a statutory mechanism to protect this constitutional right. People v. Stark, 121 Ill. App. 3d 787, 77 Ill. Dec. 188, 460 N.E.2d 47 (5 Dist. 1984).

- Error Not Shown

Where the jury was sent into deliberations without the written jury instructions and the verdict forms and where the trial court, in response to the jury's request for those documents, consulted the parties and sent the documents to the jury, defendant was not deprived of defendant's right to be present under Ill. Const. Art. I, § 8, as neither the jury note nor the discussion between counsel and the court had any effect on defendant's substantial rights since defendant's presence at the discussion would not have changed the trial court's response. People v. Patel, 366 Ill. App. 3d 255, 303 Ill. Dec. 560, 851 N.E.2d 747, 2006 Ill. App. LEXIS 488 (1 Dist. 2006).

No plain error occurred although defendant's broad right of presence was improperly denied by his absence from the in camera voir dire, since the absence did not, in fact, have the slightest

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effect on the impartiality of the jury selected. People v. Bean, 137 Ill. 2d 65, 147 Ill. Dec. 891, 560 N.E.2d 258 (1990), cert. denied, 499 U.S. 932, 111 S. Ct. 1338, 113 L. Ed. 2d 270 (1991).

- Evidentiary Hearings

Hearings in the defendant's absence dealing with legal questions such as objections to the introduction of evidence do not require the defendant's presence. People v. Martine, 106 Ill. 2d 429, 87 Ill. Dec. 905, 478 N.E.2d 262 (1985).

- Ex Parte Communication to Jury

Defendant satisfied his plain error burden of persuasion to show that he was prejudiced when a trial court engaged in an ex parte communication with the jury during their deliberations in defendant's criminal sexual abuse prosecution; jury deliberations were a critical stage and the ex parte communication prejudiced defendant as he was denied direct knowledge of what was said and done in response to a question from the jury, and he was deprived of the opportunity to make objections and to take actions necessary to secure his rights. People v. Johnson, 388 Ill. App. 3d 199, 327 Ill. Dec. 879, 902 N.E.2d 1265, 2009 Ill. App. LEXIS 58 (3 Dist. 2009).

Trial judge's ex parte communication to a jury outside of pro se defendant's presence during jury deliberations, although improper, was harmless beyond a reasonable doubt, and reversal on this ground was not warranted. People v. McDonald, 168 Ill. 2d 420, 214 Ill. Dec. 125, 660 N.E.2d 832 (1995), cert. denied, 518 U.S. 1024, 116 S. Ct. 2563, 135 L. Ed. 1080 (1996).

- Historical Basis

The fact that a defendant in a criminal prosecution is entitled to appear and defend in person was guaranteed by former Section 9 of Article II of the Illinois Constitution if 1870. People v. Woods, 27 Ill. 2d 393, 189 N.E.2d 293 (1963).

- In Camera Inspection Upheld

The trial court's in camera inspection of the defendant's mental health records outside the presence of the prosecutor and defense counsel, after which the relevant portion of the material consisting of a three page discharge summary was released, did not deprive him of a fair trial under the sixth and fourteenth amendments of the United States Constitution and this section of the 1970 Illinois Constitution. People v. Barkauskas, 147 Ill. App. 3d 360, 100 Ill. Dec. 821, 497 N.E.2d 1183 (1 Dist. 1986), rev'd on other grounds, 878 F.2d 1031 (7th Cir. Ill. 1989).

- Interpreter Absent

The defendant was not denied his right to be present during jury selection, notwithstanding that an interpreter ordered by the defense did not appear, where he had some command of the English language and was represented by counsel during the proceedings in question. People v. Herrero, 324 Ill. App. 3d 876, 258 Ill. Dec. 252, 756 N.E.2d 234, 2001 Ill. App. LEXIS 527 (1 Dist. 2001), appeal denied, 198 Ill. 2d 600, 262 Ill. Dec. 622, 766 N.E.2d 622 (2002), cert. denied, 536 U.S. 967, 122 S. Ct. 2682, 153 L. Ed. 2d 853 (2002).

- Material Witness Bond Hearings

A material witness bond hearing is a stage of a defendant's trial, so there is no question that a defendant is entitled to notice of the filing of petitions and to hearings, and it is clear error not to give such notice; however, such an error was harmless where there was no evidence of prejudice. People v. McDonald, 322 Ill. App. 3d 244, 255 Ill. Dec. 584, 749 N.E.2d 1066, 2001 Ill. App. LEXIS 366 (3 Dist. 2001), appeal denied, 202 Ill. 2d 642, 272 Ill. Dec. 349, 787 N.E.2d 164 (2002).

- No Reversible Error

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Although the defendant had a right to be present in court at the time the sealed verdict was opened, read and recorded, his absence at that time did not violate any substantial right. In the absence of some showing by the defendant that he was thereby deprived of some substantial right there was no reversible error. People v. Nettles, 107 Ill. App. 2d 143, 246 N.E.2d 29 (3 Dist. 1969).

- Not Violated

Defendant was not denied his constitutional right to a speedy trial under Ill. Const. Art. I, § 8 where the three and one-half years of delays in bringing him to trial were all caused by defense counsel and defendant failed to show that the length of time caused his defense to be impaired. People v. O'Quinn, 339 Ill. App. 3d 347, 274 Ill. Dec. 655, 791 N.E.2d 1066, 2003 Ill. App. LEXIS 630 (5 Dist. 2003).

The exclusion of the defendant from the courtroom at the time the court was considering and ruling upon the objection to the introduction of her testimony on the ground that it was beyond the scope of her cross-examination did not prejudice her. Nor did it violate her constitutional rights, for she was absent only during argument on a question of law, and this did not violate her right to be present at every step of the proceedings. People v. Martine, 106 Ill. 2d 429, 87 Ill. Dec. 905, 478 N.E.2d 262 (1985).

Because a hearing on the issue of whether to grant a jury's request to review transcripts of testimony is not a proceeding that involves the defendant's "substantial rights," defendant's right of an accused to appear and defend in person by counsel and to meet witnesses face to face pursuant to U.S. Const., Amend. VI and this section, was not violated by hearings held outside defendant's presence in which substantial rights of the accused were not considered. People v. Smith, 76 Ill. App. 3d 191, 30 Ill. Dec. 27, 392 N.E.2d 682 (2 Dist. 1979).

A defendant was not denied due process and equal protection of the laws in violation of the state and federal constitutions upon the grounds that he was denied his constitutional right to appear and defend in person and to meet the witnesses face to face where the record did not show positively that he was not present in court during the conduct of the trial, nor that he was not present when his attorney stipulated to the testimony of certain witnesses. People v. Allen, 411 Ill. 582, 104 N.E.2d 768 (1952).

- Post-Trial Motion

Defendant's right to be present at all proceedings that involved his substantial rights was not absolute, and he was entitled to relief based on a trial court's error in ruling on his pro se post-trial motion without his being present only if the State could not prove beyond a reasonable doubt that the error was harmless. Harmless error was established, even in light of the fact that due to his pro se status, defendant had no representation at all when the trial court ruled; defendant made no showing that his presence at the proceeding would have persuaded the court that his motion was meritorious, the written motion adequately set out the grounds for the motion, and the trial court evidently believed that it has sufficient information to rule on the motion without further input from either side as it advised the State that no response to the motion was required. People v. Lambert, 364 Ill. App. 3d 488, 301 Ill. Dec. 477, 847 N.E.2d 136, 2006 Ill. App. LEXIS 284 (1 Dist. 2006).

- Presence of Defendant Inferred

Where there was no question that defendant was actually present in court before and after the playing of the evidentiary tapes, and there was no indication that the court reporter was in the judge's chambers to report who was actually present, it was more reasonable to infer defendant's presence during the playing of the tapes. People v. Harvey, 95 Ill. App. 3d 992, 51 Ill. Dec. 231, 420 N.E.2d 645 (1 Dist. 1981).

- Pretrial Proceedings

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An ordinary, uncontested motion for a continuance, or to advance and then continue a case, does not involve the rights of the accused of such a substantial nature as to invalidate any action thereon occurring in his absence. People v. Woods, 27 Ill. 2d 393, 189 N.E.2d 293 (1963).

- Proceedings to Correct Record

A defendant in a criminal case is not entitled, as a matter of right, to be present when proceedings are taken to correct the record. People v. Ferguson, 410 Ill. 87, 101 N.E.2d 522 (1951).

- Purpose

The purpose of the general rule giving an accused the right to be present at a criminal prosecution, is to allow him to meet the witnesses face to face and sift the testimony produced against him. People v. Martine, 106 Ill. 2d 429, 87 Ill. Dec. 905, 478 N.E.2d 262 (1985).

- Reading of Jury Instructions

The giving of the instructions to the jury was a part of the trial, and the accused person had a right to hear the instructions read. Inquiry would not be made into the correctness of an instruction given in the defendant's absence, and the error was not cured by the presence of the defendant's counsel, since his attorney had no power to waive his right to be present in court. People v. McGrane, 336 Ill. 404, 168 N.E. 321 (1929).

- Remedy

The rendition of the verdict in defendant's absence violated his constitutional right to be present at all stages of the trial, but entitled him only to a new trial, and not to a discharge from further prosecution. People v. Nelson, 18 Ill. 2d 313, 164 N.E.2d 16 (1960).

- Scope

Although in a criminal prosecution one accused of a crime has the right to appear and defend in person, such a guaranty does not embrace a requirement that a defendant be present in court at a proceeding which strikes a void part of a judgment. People v. Hirschberg, 410 Ill. 165, 101 N.E.2d 520 (1951).

This section does not require that a defendant be present in person at the filing or hearing of motions not involving substantial rights. People v. DeLisle, 374 Ill. 437, 29 N.E.2d 600 (1940).

- Violations

Court's decision to proceed with trial even though defendant was absent due to being admitted to the hospital violated defendant's substantial constitutional and statutory right to defend in person and confront the witness against him, so the judgment was reversed. People v. Johnson, 293 Ill. App. 3d 915, 228 Ill. Dec. 307, 689 N.E.2d 179 (1 Dist. 1997), appeal denied, 178 Ill. 2d 587, 232 Ill. Dec. 850, 699 N.E.2d 1035 (1998).

Defendant's right to be present was violated where defendant was excluded from 17 individual voir dire sessions involving 16 of 29 potential jurors because he was considered a security risk and the armed guard accompanying him would influence venire members. People v. Bennett, 282 Ill. App. 3d 975, 218 Ill. Dec. 574, 669 N.E.2d 717 (3 Dist. 1996), appeal denied, 169 Ill. 2d 572, 221 Ill. Dec. 440, 675 N.E.2d 635 (1996).

The defendant's right to be present during her trial is violated only when the exclusion occurs at a time when the trial court is conducting a hearing involving the defendant's substantial rights. People v. Martine, 106 Ill. 2d 429, 87 Ill. Dec. 905, 478 N.E.2d 262 (1985).

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Attorney's testimony about possible conflict of interest which might have interfered with his undivided allegiance to, and effective representation of, the defendant was clearly relevant to the adequacy of the defendant's opportunity to protect himself; therefore, the defendant should have been present while sworn testimony on that subject was heard and considered by the court. People v. Grigsby, 47 Ill. App. 3d 812, 8 Ill. Dec. 243, 365 N.E.2d 481 (1 Dist. 1977).

- Voir Dire

Where court knew defendant had been released from jail just that morning on another charge and was on his way to the courthouse and did arrive before jury selection was complete, court should not have proceeded with jury selection absent state establishing defendant was willfully absent. People v. Stokes, 293 Ill. App. 3d 643, 228 Ill. Dec. 566, 689 N.E.2d 625 (1 Dist. 1997).

Although the court strongly condemned the practice of conducting voir dire outside of a defendant's presence, where the defendant was excluded from questioning because of his shackles and was afforded an opportunity to strike both jurors after their questioning outside of his presence, defendant failed to prove that such questioning resulted in the impaneling of a prejudiced jury. People v. Starks, 287 Ill. App. 3d 1035, 223 Ill. Dec. 313, 679 N.E.2d 764 (3 Dist. 1997), appeal denied, 174 Ill. 2d 589, 227 Ill. Dec. 15, 686 N.E.2d 1171 (1997).

- Waiver

Trial court did not abuse its discretion by accepting defendant's waiver of his right to be present because the record showed that defendant knew that he had a right to be present at the hearing and the appropriate steps had been taken to secure his transportation to Illinois for the hearing; the record also showed that defendant sent a letter to his counsel, stating that he did not want to be present at the hearing, and told his counsel during two telephone conversations that he did not want to be present at the hearing. People v. Justice, 349 Ill. App. 3d 981, 285 Ill. Dec. 394, 811 N.E.2d 1273, 2004 Ill. App. LEXIS 782 (4 Dist. 2004).

If the defendant is absent, has not contacted the court, and a prima facie case of willful absence has been established, a trial court does not abuse its discretion if, at the state's request, it immediately begins the proceedings without further inquiry as to the reasons for the defendant's absence. People v. Smith, 298 Ill. App. 3d 1067, 233 Ill. Dec. 519, 701 N.E.2d 162 (2 Dist. 1998), aff'd, 188 Ill. 2d 335, 242 Ill. Dec. 274, 721 N.E.2d 553 (1999).

Where the defendant effectively waived his right to be present during the testimony of two witnesses, the erroneous expectation of the witnesses' testimony did not negate the effectiveness of the defendant's waiver. People v. Pryor, 282 Ill. App. 3d 92, 218 Ill. Dec. 258, 668 N.E.2d 1090 (3 Dist. 1996), appeal denied, 168 Ill. 2d 616, 219 Ill. Dec. 573, 671 N.E.2d 740 (1996).

Although a defendant may voluntarily waive his right to be present at sentencing, a defendant who is incarcerated is not voluntarily absent from his court proceeding and has not waived his right to appear. People v. Fields, 255 Ill. App. 3d 787, 195 Ill. Dec. 754, 629 N.E.2d 62 (1 Dist. 1993).

A defendant does not waive his constitutional right to be present at sentencing by failing to make an objection at the very sentencing hearing where he is not present, or by failing to file a motion to reduce his sentence. People v. Fields, 255 Ill. App. 3d 787, 195 Ill. Dec. 754, 629 N.E.2d 62 (1 Dist. 1993).

There is no Supreme Court rule or statute requiring direct inquiry to defendant personally, rather than to his counsel, to establish a waiver of defendant's right to be present at trial or jury selection. People v. Wilson, 257 Ill. App. 3d 670, 195 Ill. Dec. 8, 628 N.E.2d 472 (1 Dist. 1993), appeal denied, 155 Ill. 2d 575, 198 Ill. Dec. 552, 633 N.E.2d 14 (1994).

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Where defendant by knowing conduct waived his right to be present at rendition of the verdict, he also waived his right to be present during polling of the jury. People v. Neidhofer, 150 Ill. App. 3d 518, 103 Ill. Dec. 910, 502 N.E.2d 57 (2 Dist. 1986).

Where the record indicated the defendant's departure from the courtroom was not only without objection, but also with complete understanding of what was happening and that she was being asked to leave while an offer of proof was to be presented, she validly waived her right to be present. People v. Martine, 106 Ill. 2d 429, 87 Ill. Dec. 905, 478 N.E.2d 262 (1985).

An accused's right to appear and defend in person was waived when defendant struggled with deputy sheriffs in court mumbling and crying to leave him alone. People v. Durant, 105 Ill. App. 2d 216, 245 N.E.2d 41 (1 Dist. 1969).

A defendant's right to be present at the trial itself, or any portion thereof, may be voluntarily waived even in felony cases. People v. Woods, 27 Ill. 2d 393, 189 N.E.2d 293 (1963).

Right to Bench Trial

Jury trial is the norm for a felony case and a bench trial is the exception; therefore, a defendant who wishes a bench trial instead of a jury trial must make his position known to the trial court if his trial attorney fails to do so. People v. Powell, 281 Ill. App. 3d 68, 216 Ill. Dec. 915, 666 N.E.2d 365 (4 Dist. 1996), appeal denied, 168 Ill. 2d 616, 219 Ill. Dec. 573, 671 N.E.2d 740 (1996).

Right to Compel Attendance of Witnesses

- In General

The right of an accused to summon witnesses in his defense is fundamental to our legal system. People v. Johnson, 47 Ill. App. 3d 362, 6 Ill. Dec. 66, 362 N.E.2d 701 (5 Dist. 1977).

A trial court has the power to exclude witnesses during the trial of a case and to direct that they shall be examined out of the hearing of each other; exercise of this power does not infringe on a defendant's right to a public trial. People v. Jenkins, 10 Ill. App. 3d 588, 295 N.E.2d 123 (1 Dist. 1973).

- Bench Warrant

While a defendant's right to compel the attendance of witnesses on his behalf is a fundamental constitutional right, it appears settled that while a bench warrant is occasionally the only means to insure the appearance of a reluctant witness, defendant's constitutional rights are not infringed by the court's refusal to issue a bench warrant in the absence of proper service of a subpoena. People v. Winfield, 113 Ill. App. 3d 818, 69 Ill. Dec. 594, 447 N.E.2d 1029 (1 Dist. 1983).

- Continuances

The trial court's refusal to grant the defendant a continuance to subpoena two police officers in order to impeach another witness did not deprive defendant of his constitutional right to compel the attendance of witnesses at his trial where not only was defendant unaware of what the testimony of the witnesses would be, but had a proper use been made of the written report the need for calling the officers to establish the purported contradiction would never have arisen, and the trial court was fully informed of the inconsistency between the testimony of the other witness and the report of the officers, and thus was in a position to test the credibility of the witness on such basis. People v. Kees, 32 Ill. 2d 299, 205 N.E.2d 729 (1965).

- Failure to Remove Bullet

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A defendant's constitutional rights to compel the production of witnesses in his behalf were not violated where the court did not order the surgical removal of a bullet from his body for examination by a forensic scientist, which the defendant believed might produce evidence that his victims were armed and that he acted in self-defense. People v. Wilkerson, 123 Ill. App. 3d 527, 79 Ill. Dec. 1, 463 N.E.2d 139 (4 Dist. 1984).

- Fees

A shoeprint expert's opinion was necessary to defendant's proving crucial issues in instant case, the lack thereof prejudiced him and the trial court abused its discretion by denying an indigent defendant's motion for funds for expert assistance. People v. Lawson, 163 Ill. 2d 187, 206 Ill. Dec. 119, 644 N.E.2d 1172 (1994).

There is no requirement, pursuant to the Sixth Amendment, or this section, that witness fees must be paid in criminal cases as a prerequisite to compelling attendance of defense witnesses who had been subpoenaed. People v. Hicks, 133 Ill. App. 2d 424, 273 N.E.2d 450 (1 Dist. 1971).

- Illustrative Case

Petitioner's claim that he was induced by law enforcement officers to refrain from putting on witnesses, whose testimony might have impeached the credibility of a state's witness, by means of promises that if he did so refrain they would "take care of" him was cognizable under the Post-Conviction Hearing Act (725 ILCS 5/122-1). People v. Graham, 48 Ill. App. 3d 689, 6 Ill. Dec. 595, 363 N.E.2d 124 (5 Dist. 1977).

It constituted error on the part of the trial court, not to have compelled attendance of witness through enforcement of subpoena where the testimony of the witness, daughter of the defendant, would have corroborated the testimony of defendant in line with the basic theory of defense murder case. People v. Hicks, 133 Ill. App. 2d 424, 273 N.E.2d 450 (1 Dist. 1971).

- Improper Service

There was no infringement upon defendant's constitutional right to compel the attendance of witness where defendant, a party to the action, served a subpoena on a person who was not the person named in the subpoena; attempted service was improper and accused's constitutional right to have compulsory process for obtaining witnesses in his favor, pursuant to U.S. Constitution, Amendment VI and this section, was not infringed. People v. Hicks, 133 Ill. App. 2d 424, 273 N.E.2d 450 (1 Dist. 1971).

- Proper Basis to Deny

The trial court's refusal to enforce defendant's subpoena did not violate his constitutional right to compulsory process to obtain favorable witnesses where there was a proper basis for the trial court to deny this ground of the defendant's motion without conducting a hearing or receiving testimony. People v. Boyce, 51 Ill. App. 3d 549, 9 Ill. Dec. 403, 366 N.E.2d 914 (1 Dist. 1977).

- Subpoenas

The requiring of the payment of fees in advance for the service of subpoenas is not contrary to this section. People v. Virella, 55 Ill. 2d 192, 302 N.E.2d 327 (1973).

Right to Confer with Client

An attorney does not have an absolute "right" to confer with his client while the client is testifying; there may be circumstances where permitting an attorney to intercede during the examination of his client and to confer with his client would be reversible error. People v. Coleman, 248 Ill. App. 3d 371, 187 Ill. Dec. 875, 618 N.E.2d 466 (1 Dist.), appeal denied, 153 Ill. 2d 562, 191 Ill. Dec. 622, 624 N.E.2d 810 (1993).

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Right to Confront A Witness

- Cross-examination

In prosecution for aggravated possession of a stolen motor vehicle in violation of 625 ILCS 5/4-103.2, the trial court's violation of defendant's right to confront a witness, through restriction of cross-examination of a police officer regarding why officer did not record defendant's admission at the scene of his arrest, was harmless error given the overwhelming evidence of guilty. People v. Wallace, Ill. App. 3d , Ill. Dec. , N.E.2d , 2002 Ill. App. LEXIS 20 (1 Dist. Jan. 18, 2002).

Right to Confront Witness

Section 115-10 (725 ILCS 5/115-10) of the Illinois Code of Criminal Procedure of 1963 is not facially unconstitutional for violating the Confrontation Clause of the United States and Illinois Constitutions, U.S. Const. Amend. VI and Ill. Const. Art. I, § 8. People v. Kitch, 392 Ill. App. 3d 108, 333 Ill. Dec. 508, 915 N.E.2d 29, 2009 Ill. App. LEXIS 558 (4 Dist. 2009).

Admission of an 11 year old victim's hearsay statements under 725 ILCS 5/115-10 did not violate the Confrontation Clause, U.S. Const. Amend. VI and Ill. Const. Art. I, § 8, as on cross-examination, the victim answered all questions put to the victim by defense counsel; the victim appeared for cross-examination within the meaning of Crawford v. Washington, 541 U.S. 36 (2004), and the Confrontation Clause. People v. Kitch, 392 Ill. App. 3d 108, 333 Ill. Dec. 508, 915 N.E.2d 29, 2009 Ill. App. LEXIS 558 (4 Dist. 2009).

With regard to a defendant's convictions for the offenses of habitual armed criminal and unlawful possession of a weapon by a felon, the defendant was not denied a fair trial when a witness's prior inconsistent statement to the police was admitted as impeachment and as substantive evidence at the defendant's trial, which implicated the defendant. Specifically, the trial court did not abuse its discretion when it declared the witness as hostile and allowed the State to impeach him with evidence of his prior inconsistent statement to the police after he established himself as uncooperative by repeatedly stating that he could not remember his prior statement; the statement satisfied the requirements for admission as substantive evidence since the statement was inconsistent with the witness's trial testimony; and the Confrontation Clause, U.S. Const. Amend. VI, was not implicated since the witness was available for cross-examination, he took the stand, testified under oath, and responded to the questions presented to him. People v. Leonard, 391 Ill. App. 3d 926, 331 Ill. Dec. 582, 911 N.E.2d 403, 2009 Ill. App. LEXIS 520 (3 Dist. 2009), appeal denied, 233 Ill. 2d 582, 335 Ill. Dec. 641, 919 N.E.2d 360, 2009 Ill. LEXIS 1678 (2009).

Defendant's attorney's line of questioning regarding the assistant public defender's (APD) unwillingness to try the case was speculative and uncertain and not based on defendant's claims against the APD. For this reason, the trial judge properly limited the scope of cross-examination, and defendant's confrontation rights (U.S. Const. amends. VI, XIV, Ill. Const. art. I, § 8) were not violated. People v. Harris, 384 Ill. App. 3d 551, 323 Ill. Dec. 155, 892 N.E.2d 1147, 2008 Ill. App. LEXIS 742 (1 Dist. 2008), appeal denied, 229 Ill. 2d 679, 900 N.E.2d 1121, 2008 Ill. LEXIS 1700 (2008).

When defendant was convicted of first degree murder, under 720 ILCS 5/9-1(a)(1), the admission of the victim's dying declaration to a friend did not violate defendant's right of confrontation because the statement was not testimonial: (1) the conversation in which the statement was made was not an interrogation to prove events possibly relevant to later prosecutions; and (2) the victim was dying, therefore, there was an ongoing emergency. People v. Ingram, 382 Ill. App. 3d 997, 321 Ill. Dec. 1, 888 N.E.2d 520, 2008 Ill. App. LEXIS 344 (1 Dist. 2008), appeal denied, 229 Ill. 2d 642, 325 Ill. Dec. 11, 897 N.E.2d 259, 2008 Ill. LEXIS 1237 (2008).

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With regard to defendant's conviction for aggravated sexual assault of an elderly woman, considering the overwhelming nature of the other evidence, the fact that defendant's confrontation clause rights were violated by the admission of the victim's statement to a doctor that she was tied and raped was harmless beyond a reasonable doubt, particularly because of defendant's admission that he penetrated the victim. People v. Spicer, Ill. App. 3d , Ill. Dec. , N.E.2d , 2007 Ill. App. LEXIS 1281 (1 Dist. Dec. 10, 2007).

Under 725 ILCS 5/115-5.1, an autopsy report of a murder victim was admissible as a business record. Therefore, the fact that the doctor who prepared the report did not testify and was not available for cross-examination did not violate defendant's rights to confrontation as set out in Crawford. People v. Moore, 378 Ill. App. 3d 41, 316 Ill. Dec. 751, 880 N.E.2d 229, 2007 Ill. App. LEXIS 1279 (1 Dist. 2007).

It was not error to admit testimony of a detective describing an encounter with a nontestifying individual who supplied information that assisted the police in identifying and locating defendant after a murder and home invasion; the statements did not violate defendant's rights under U.S. Const. amend. VI and Ill. Const. art. I, § 8, as they were not offered for their truth but to show the course of the investigation. People v. Peoples, 377 Ill. App. 3d 978, 316 Ill. Dec. 862, 880 N.E.2d 598, 2007 Ill. App. LEXIS 1267 (1 Dist. 2007).

Trial court erred in admitting, pursuant to 725 ILCS 5/115-10.2, the custodial statements and prior testimony of two co-defendants who had been tried but who did not testify at defendant's trial. While the statute was not facially unconstitutional, defendant's right to confront the two co-defendants was nevertheless violated because defendant clearly did not have the opportunity to cross-examine the co-defendants either during the interrogations that resulted in their statements or during their testimony at their separate trials, and the errors in admitting the statements and prior testimony was not harmless because they contributed to defendant's convictions. People v. Brown, 363 Ill. App. 3d 838, 299 Ill. Dec. 789, 842 N.E.2d 1141, 2006 Ill. App. LEXIS 87 (1 Dist. 2006).

Trial court did not err in allowing a police officer to testify that the witness, in a prior statement, identified defendant as the person who shot the victim even though the witness consistently denied making the prior statement at trial. The witness, who was the prior statement's declarant, was present at trial to defend or explain the statement and was subject to cross-examination, and, thus, defendant's confrontation clause rights were not violated. People v. Miller, 363 Ill. App. 3d 67, 299 Ill. Dec. 551, 842 N.E.2d 290, 2005 Ill. App. LEXIS 1294 (1 Dist. 2005).

Trial court erred in admitting, pursuant to 725 ILCS 5/115-10.2, the custodial statements and prior testimony of two codefendants who had been tried but who did not testify at defendant's trial. While 725 ILCS 5/115-10.2 was not facially unconstitutional, defendant's right to confront the two codefendants was nevertheless violated because defendant clearly did not have the opportunity to cross-examine the codefendants either during the interrogations that resulted in their statements or during their testimony at their separate trials, and the error in admitting the statements and prior testimony was not harmless because they contributed to defendant's convictions. People v. Brown, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 1254 (1 Dist. Dec. 15, 2005).

Attorney's stipulation that a proper chain of custody was maintained over the little bags that the police officer recovered from defendant and that the items tested positive for the presence of cocaine did not violate defendant's federal and state constitutional confrontation rights because defendant did not object to the stipulation and the stipulation was a legitimate matter of trial strategy. People v. Rodriguez, 362 Ill. App. 3d 44, 298 Ill. Dec. 220, 839 N.E.2d 543, 2005 Ill. App. LEXIS 1071 (1 Dist. 2005), overruled in part by, criticized in People v. Jones, 223 Ill. 2d 569, 861 N.E.2d 967, 2006 Ill. LEXIS 1671, 308 Ill. Dec. 402 (2006).

Where defendant argued that 625 ILCS 5/11-501.4-1(a) violated defendant's confrontation rights under Ill. Const. Art. I, § 8 where 625 ILCS 5/11-501.4-1(a) established that blood test results

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were admissible in evidence as a business record exception to the hearsay rule for drunk driving offenses, the argument failed. 625 ILCS 5/11-501.4-1(a) did not violate defendant's confrontation rights because 625 ILCS 5/11-501.4-1(a) was sufficiently similar to the business records exception to the hearsay rule to be considered a firmly rooted exception to the hearsay rule. People v. Cortez, 361 Ill. App. 3d 456, 297 Ill. Dec. 366, 837 N.E.2d 449, 2005 Ill. App. LEXIS 1047 (2 Dist. 2005), appeal denied, 217 Ill. 2d 609, 300 Ill. Dec. 525, 844 N.E.2d 968 (2006).

Since the stipulation that defendant's trial counsel agreed to did not state that the evidence in defendant's drug possession case was sufficient to convict defendant and the State did not present its entire case through the stipulation, defendant's constitutional right to confront witnesses was not violated when trial counsel was allowed to stipulate to the chemical composition and chain of custody regarding the substances recovered in his case. People v. Foerster, 359 Ill. App. 3d 198, 295 Ill. Dec. 736, 833 N.E.2d 942, 2005 Ill. App. LEXIS 739 (1 Dist. 2005), appeal denied, 219 Ill. 2d 576, 303 Ill. Dec. 836, 852 N.E.2d 243 (2006).

Fact that defense counsel stipulated to a valid chain of custody and that the item defendant delivered to another was cocaine did not violate defendant's right to confrontation. Defense counsel could waive that right in light of defendant's failure to object to the stipulation and the fact that stipulation was sound trial strategy. People v. Banks, 358 Ill. App. 3d 924, 295 Ill. Dec. 722, 833 N.E.2d 928, 2005 Ill. App. LEXIS 697 (1 Dist. 2005).

725 ILCS 5/115-10, which allowed for the introduction of the victim's statements to third persons at defendant's trial, was not unconstitutional on its face because 725 ILCS 5/115-10(b)(1) and (b)(2)(A) interacted to specifically provide that a victim's hearsay statements should be admitted only when there were sufficient safeguards of reliability surrounding the statements and the victim actually testified at trial; in addition, 725 ILCS 5/115-10(b)(2)(A) was severable from any other allegedly unconstitutional provisions in 725 ILCS 5/115-10. People v. Cannon, 358 Ill. App. 3d 313, 295 Ill. Dec. 161, 832 N.E.2d 312, 2005 Ill. App. LEXIS 622 (1 Dist. 2005).

Defendant's right to confrontation was not violated when the trial court admitted the testimony of several witnesses pursuant to the hearsay exception of 725 ILCS 5/115-10, since the State sufficiently shouldered its burden of proof with respect to said statements, offering sufficient evidence of the reliability of the statements that the victim made to those witnesses. People v. Cookson, 215 Ill. 2d 194, 294 Ill. Dec. 72, 830 N.E.2d 484, 2005 Ill. LEXIS 630 (2005), cert. denied, U.S. , 126 S. Ct. 553, 163 L. Ed. 2d 467 (2005).

Defendant's Sixth Amendment right to confront witnesses was not violated in her murder trial by the admission of codefendant's incriminating statements where defendant cross-examined co-defendant at trial; the use of co-defendant's statements was also used to explain why defendant decided to confess to the murder of her mother, which bolstered the reliability of her confession. People v. Klimawicze, 352 Ill. App. 3d 13, 287 Ill. Dec. 116, 815 N.E.2d 760, 2004 Ill. App. LEXIS 958 (1 Dist. 2004), appeal denied, 213 Ill. 2d 569, 293 Ill. Dec. 866, 829 N.E.2d 791 (2005), cert. denied, 544 U.S. 1067, 125 S. Ct. 2533, 161 L. Ed. 2d 1122 (2005).

- In General

In determining whether defendant's right of confrontation has been violated, a reviewing court looks not only to what defendant was prohibited from doing, but also to what he has been allowed to do, and where the jury has been made aware of adequate factors regarding the credibility of the prosecution witness, a reviewing court may conclude that there is no constitutional error or manifest prejudice to defendant. People v. Paul, 304 Ill. App. 3d 404, 237 Ill. Dec. 869, 710 N.E.2d 499, 1999 Ill. App. LEXIS 277 (1 Dist. 1999).

Where the issue is whether the defendant's inability to make inquiry created a substantial risk of prejudice by depriving him of the inability to test the truth of the witness's direct testimony, the court must look to the record as a whole and the alternative means open to defendant to impeach the witness; if that review shows that the jury as been made aware of adequate factors

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concerning relevant areas of impeachment of a witness, no constitutional question arises merely because defendant has been prohibited on cross-examination from pursuing other areas of inquiry. People v. Paul, 304 Ill. App. 3d 404, 237 Ill. Dec. 869, 710 N.E.2d 499, 1999 Ill. App. LEXIS 277 (1 Dist. 1999).

An accused may challenge whether a declarant was sincerely telling what he believed to be the truth or whether the declarant's intended meaning was adequately conveyed by the language employed. People v. Landis, 229 Ill. App. 3d 128, 171 Ill. Dec. 73, 593 N.E.2d 893 (1 Dist.), cert. denied, 146 Ill. 2d 641, 176 Ill. Dec. 811, 602 N.E.2d 465 (1992).

The right to cross-examine a witness about his bias or ulterior motives is protected by state and federal Constitutions. People v. Chevalier, 159 Ill. App. 3d 341, 111 Ill. Dec. 460, 512 N.E.2d 1001 (4 Dist.), appeal denied, 117 Ill. 2d 546, 115 Ill. Dec. 403, 517 N.E.2d 1089 (1987).

When determining whether a denial of cross-examination violates the defendant's right of confrontation, a court should look not to what defendant has been prohibited from doing but to what he has been allowed to do. People v. Hines, 94 Ill. App. 3d 1041, 50 Ill. Dec. 312, 419 N.E.2d 420 (1 Dist. 1981).

The right of a defendant to confront the witnesses against him, protected by both the United States and Illinois Constitutions, includes the right to an effective cross-examination. People v. Garrett, 44 Ill. App. 3d 429, 3 Ill. Dec. 197, 358 N.E.2d 364 (5 Dist. 1976).

Defendant has the right to be confronted with the witnesses against her. People v. Cooper, 398 Ill. 468, 75 N.E.2d 885 (1947).

Where the party who makes entries on checks in the due course of business is living, sane, and is not permanently out of the state, such entries must be proved by him to have been so made, and proved to be correct and true entries, before they can be admitted into evidence, as proof of the facts therein stated, otherwise the defendant has been denied the right to meet the witnesses face to face in violation of this section. People v. Vammar, 320 Ill. 287, 150 N.E. 628 (1926).

- Admission of Hearsay

Defendant's confrontation rights were not violated by admission of testimony regarding the victim's autopsy reports because the autopsy reports were business record, neither report went to the identity of the victim per se, and instead, the information contributing to the identity of the victim and the circumstances of her demise came from other sources, not the least of which was defendant's statement and revelation of the location of her remains. People v. Antonio, 404 Ill. App. 3d 391, 343 Ill. Dec. 532, 935 N.E.2d 540, 2010 Ill. App. LEXIS 901 (1 Dist. 2010).

Defendant's Ill. Const. art. I, § 8 confrontation clause rights were not violated by the admission of alleged hearsay in defendant's first-degree murder case where a witness testified that defendant had told the witness of defendant's intent to harm the person who took defendant's bicycle, and the witness rushed out of the building a few moments later when another person came in said that the victim had been stabbed outside. The testimony about the witness rushing outside to see who had been stabbed after hearing about the stabbing was not offered for the truth of the matter asserted, but was instead introduced to explain the effect on the witness of hearing that the victim had been stabbed and then rushing outside to confirm that the victim had indeed been stabbed. People v. Nugen, 399 Ill. App. 3d 575, 339 Ill. Dec. 285, 926 N.E.2d 760, 2009 Ill. App. LEXIS 1334 (1 Dist. 2009).

Admission of a statement that the victim made to the victim's aunt did not violate the Confrontation Clause in Ill. Const. (1970), Art. I, § 8, and U.S. Const. amend. VI, because the statement was admissible under the excited utterance exception to the hearsay rule; the statement was made at most 18 minutes after the victim was shot five times and just after the victim arrived at the aunt's house but before receiving protection from the assailant or medical

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attention. People v. Lisle, 376 Ill. App. 3d 67, 315 Ill. Dec. 632, 877 N.E.2d 119, 2007 Ill. App. LEXIS 1077 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1822 (Ill. 2007).

Defendant's right to confrontation was not violated when the trial court admitted the testimony of several witnesses pursuant to the hearsay exception of 725 ILCS 5/115-10, since the State sufficiently shouldered its burden of proof with respect to said statements, offering sufficient evidence of the reliability of the statements that the victim made to those witnesses. People v. Cookson, 215 Ill. 2d 194, 294 Ill. Dec. 72, 830 N.E.2d 484, 2005 Ill. LEXIS 630 (2005), cert. denied, U.S. , 126 S. Ct. 553, 163 L. Ed. 2d 467 (2005).

Defendant was denied a fair trial where the jury heard hearsay testimony from three police officers and the outcome of the case depended on whether the jury believed defendant or the officers; the officers testified they saw defendant with a gun, but defendant denied possessing the gun and no physical evidence connected defendant to the gun. People v. Jura, 352 Ill. App. 3d 1080, 288 Ill. Dec. 318, 817 N.E.2d 968, 2004 Ill. App. LEXIS 1139 (1 Dist. 2004).

Where the hearsay statement of a four-year-old who allegedly witnessed the father's abuse of the declarant's brother was admitted into the proceeding pursuant to 705 ILCS 405/2-18(4)(c) in which the child was found to be a ward of the court, the father's confrontation rights under Ill. Const., Art. I, § 8 were not violated; such protections applied to criminal matters, and the wardship case was civil. People v. Maxwell (In re C.M.), 351 Ill. App. 3d 913, 286 Ill. Dec. 839, 815 N.E.2d 49, 2004 Ill. App. LEXIS 985 (4 Dist. 2004).

Trial court violated defendant's rights under the Confrontation Clause of the United States Constitution during defendant's trial on charges of aggravated domestic battery, aggravated battery, and unlawful restraint when it allowed the State to ask defendant questions about statements his fiancee made when she obtained an order of protection that was issued after the incident which led to defendant's arrest, and the error was not harmless. People v. Thompson, 349 Ill. App. 3d 587, 285 Ill. Dec. 696, 812 N.E.2d 516, 2004 Ill. App. LEXIS 740 (1 Dist. 2004).

Labels from Sudafed medication boxes were properly admitted into evidence as an exception to the hearsay rule as proof that Sudafed contained the drug pseudoephedrine. People v. Shevock, 335 Ill. App. 3d 1031, 270 Ill. Dec. 390, 782 N.E.2d 949, 2003 Ill. App. LEXIS 9 (4 Dist. 2003), appeal denied, 204 Ill. 2d 678, 275 Ill. Dec. 81, 792 N.E.2d 312 (2003).

When a hearsay declarant is not present for cross-examination at trial, the confrontation clause normally requires a showing that he is unavailable and that the statement bears adequate indicia of reliability. People v. Green, 233 Ill. App. 3d 298, 174 Ill. Dec. 493, 599 N.E.2d 39 (3 Dist.), cert. denied, 147 Ill. 2d 631, 180 Ill. Dec. 153, 606 N.E.2d 1230 (1992).

The admission of prison incident reports, without more, would give rise to serious confrontation clause concerns. People v. Smith, 141 Ill. 2d 40, 152 Ill. Dec. 218, 565 N.E.2d 900 (1990).

- Applicability

In a case where defendant was convicted of sex offenses arising out of defendant's sexual conduct with a two-year-old boy at a homeless shelter, the admission of a detective's statements during defendant's videotaped interview did not violate defendant's right to confrontation under the Sixth Amendment and Ill. Const. art. I, § 8. The statements were admissible because they were not hearsay and admissible evidence that was not hearsay did not implicate the right of confrontation under either the United States or Illinois Constitutions. People v. Theis, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1288 (2 Dist. Dec. 20, 2011).

Both the first defendant and the second defendant convicted of first degree murder and two counts each of attempted first degree murder were entitled to retrials given the errors that occurred because the trial court admitted a statement from a witness in violation of 725 ILCS 5/115-10.1(c)(2) to the effect that the first defendant had admitted shooting the three people. The

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first defendant was entitled to a new trial because defense counsel lodged an improper objection to admission of the statement that prejudiced the first defendant, meaning that the first defendant received ineffective assistance of counsel in violation of Ill. Const. art. I, § 8, and the second defendant's Bruton rights regarding admission of a statement by a nontestifying codefendant were violated because admission of that statement, which had the effect of implicating the second defendant in the shooting, violated the second defendant's Ill. Const. art. I, § 2 procedural due process and Ill. Const. art. I, § 8 confrontation clause rights. People v. Fillyaw, 409 Ill. App. 3d 302, 350 Ill. Dec. 609, 948 N.E.2d 1116, 2011 Ill. App. LEXIS 371 (2 Dist. 2011).

Defendant's rights were not violated under the Confrontation Clause of the Sixth Amendment, U.S. Const. amend. VI, and Ill. Const. art. I, § 8 when the State introduced inculpatory DNA evidence in a case where defendant was charged with aggravated criminal sexual assault. Defendant did not show error in admitting that evidence, let alone Ill. Sup. Ct. R. 615(a) plain error, as the evidence, a report detailing the results of DNA testing, was not testimonial in nature and was not offered for the truth of the matter asserted, but rather was offered as a basis for the expert's opinion regarding the DNA testing. People v. Johnson, 394 Ill. App. 3d 1027, 333 Ill. Dec. 774, 915 N.E.2d 845, 2009 Ill. App. LEXIS 1103 (1 Dist. 2009).

The trial court erred in effectively ruling that 725 ILCS 5/104-25(a) was unconstitutional regarding the evidence that could be admitted at a discharge hearing in a case where defendant was charged with four drug and alcohol-related offenses, he was found unfit to stand trial, it was found that he would not likely be fit to stand trial within one year, and the State moved for a discharge hearing to determine the sufficiency of the evidence against him; a discharge proceeding is a civil proceeding, and, thus, defendant's confrontation clause rights were not implicated and he had less due process protection against the kind of evidence that could be admitted than he would have at a criminal trial. People v. Waid, 221 Ill. 2d 464, 303 Ill. Dec. 785, 851 N.E.2d 1210, 2006 Ill. LEXIS 1080 (2006).

The right of confrontation provided for in U.S. Const., Amend. VI and in this section was only applicable to criminal prosecution and was not applicable in mortgage foreclosure action. South Holland Trust & Sav. Bank v. Witvoet, 18 Ill. App. 3d 24, 309 N.E.2d 306 (1 Dist. 1974).

- Barricades

In a prosecution for predatory criminal sexual assault, a procedure whereby the trial court permitted the child victim to testify against the defendant while barricaded by podiums improperly limited the defendant's ability to aid in the cross-examination of the victim and thereby violated the confrontation clause. People v. Lofton, 194 Ill. 2d 40, 251 Ill. Dec. 489, 740 N.E.2d 775, 2000 Ill. LEXIS 1707 (2000).

- Child Witness

Defendant was not denied his right to confront 4 year old witness. People v. Smith, 152 Ill. 2d 229, 178 Ill. Dec. 335, 604 N.E.2d 858 (1992), cert. denied, 507 U.S. 1040, 113 S. Ct. 1872, 123 L. Ed. 2d 491 (1993).

- Closed-Circuit Testimony

Where defendant called elderly women from jail, posed as a relative, and requested money, defendant's conviction for felony theft by deception under 720 ILCS 5/16-1(a)(2) was upheld because, inter alia, a deposition of a victim at home due to medical circumstances did not violate defendant's right to self-representation or defendant's right to be personally present and to confront witnesses, because defendant's "presence" by closed circuit television was necessary and the arrangements adequately preserved the essence of effective confrontation. People v. Rohlfs, 368 Ill. App. 3d 540, 306 Ill. Dec. 819, 858 N.E.2d 616, 2006 Ill. App. LEXIS 1043 (1 Dist. 2006).

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In a prosecution for predatory criminal sexual assault of a child in which the child testified by closed circuit television, the defendant was denied his right of confrontation when, during deliberations, the court read a transcript of the child's testimony to the jury after the jury asked for a transcript due to the poor quality of the transmission of the original testimony. People v. Miller, 311 Ill. App. 3d 772, 244 Ill. Dec. 253, 725 N.E.2d 48, 2000 Ill. App. LEXIS 93 (5 Dist. 2000).

This section provides that a defendant in a criminal case is entitled to a face to face confrontation with a witness; therefore, a witness who is examined by closed circuit television does not provide the defendant with the face-to-face encounter envisioned by the drafters of the Illinois Constitution. People v. Fitzpatrick, 158 Ill. 2d 360, 198 Ill. Dec. 844, 633 N.E.2d 685 (1994).

Defendant's right of confrontation under U.S. Const., Amend. VI, and under this section was not violated when child victim was permitted to testify to sexual abuse via closed-circuit television pursuant to the Code of Criminal Procedure (see now 725 ILCS 5/106A-2), as the statute specifically included the defendant and his attorney in the room where the child is testifying, and the defendant was thus afforded face-to-face confrontation with the child and an opportunity to cross-examine him. People v. Schmitt, 204 Ill. App. 3d 820, 149 Ill. Dec. 913, 562 N.E.2d 377 (4 Dist. 1990), cert. denied, 137 Ill. 2d 670, 156 Ill. Dec. 567, 571 N.E.2d 154 (1991).

- Co-Defendants

The admission of a co-defendant's statements at trial did not deny the defendant his right of confrontation when his motion for severance was denied and the co-defendant's statements were admitted as evidence against the defendant. People v. Kendrick, 104 Ill. App. 3d 326, 60 Ill. Dec. 155, 432 N.E.2d 1054 (1 Dist. 1982).

- Comparable to U.S. Constitution

The confrontation clause of the sixth amendment of the U.S. Constitution provides the accused the right to be confronted with the witnesses against him; whereas the Illinois Constitution clearly, emphatically and unambiguously requires a face-to-face confrontation. People v. Fitzpatrick, 158 Ill. 2d 360, 198 Ill. Dec. 844, 633 N.E.2d 685 (1994).

The sixth amendment to the U.S. Constitution providing in part that the accused shall enjoy the right to be confronted with the witnesses against him and the comparable Illinois provision that the accused shall have the right to meet the witnesses face to face are meant to protect the same interest. People v. Tennant, 65 Ill. 2d 401, 3 Ill. Dec. 431, 358 N.E.2d 1116 (1976).

- Conspirator's Statements

Court did not err in permitting the state to introduce the written statement made by conspirator concerning the facts of the alleged robbery, even though she was not tried with the defendants, did not testify at their trial, and defendant's had no opportunity to cross-examine her. Because the statement was made in furtherance of the common design and it was therefore the statement of all the members of the conspiracy. People v. Barnett, 347 Ill. 127, 179 N.E. 450 (1931).

- Continuances

Because there is no absolute right to a continuances, statute allowing defeat of continuance in criminal case where material witness was absent was held not to deny to the accused the right to meet the witnesses testifying against him face to face as the statute allowed waiver so that the facts the witness would have testified to could have been read into evidence. Hoyt v. People, 140 Ill. 588, 30 N.E. 315 (1892).

- Cross-Examination

-- In General

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The right to cross-examine witnesses has never been interpreted to be an absolute bar to all hearsay evidence offered against a criminal defendant. People v. Smith, 141 Ill. 2d 40, 152 Ill. Dec. 218, 565 N.E.2d 900 (1990).

-- Improperly Limited

In a case where defendant was charged with possession of a controlled substance within 1,000 feet of a park and the evidence was closely balanced, the trial court should not have limited defendant's cross-examination of a police officer who conducted surveillance based on the surveillance location privilege recognized pursuant to 735 ILCS 5/8-802.3. The trial court committed plain error in violation of Ill. Sup. Ct. R. 615 in doing so, since defendant was denied the right under Ill. Const. art. I, § 8 to confront the officer and challenge the reliability of his eyewitness testimony that defendant had been involved in several drug transactions, which was a problem because the reliability of such testimony was the central issue in the case. People v. Price, 404 Ill. App. 3d 324, 343 Ill. Dec. 544, 935 N.E.2d 552, 2010 Ill. App. LEXIS 902 (1 Dist. 2010).

Trial court unduly restricted cross-examination of a witness as to the mental health of the witness and improperly prevented introduction of the witness's mental health records where the witness had complained of hallucinations in past but denied having hallucinations at the time of the shooting, though the witness admitted so to a defense investigator and that the witness was not taking the witness's medication on day of shooting. People v. Flowers, 371 Ill. App. 3d 326, 308 Ill. Dec. 882, 862 N.E.2d 1085, 2007 Ill. App. LEXIS 86 (1 Dist. 2007).

Since defendant's right to cross-examination included the right to impeach the victim-witness with evidence that tended to establish bias or motive affecting credibility, it was improper for the trial court to grant the State's motion in limine to exclude evidence of the victim's misdemeanor drug conviction from his home state of New York because that conviction was relevant to defendant's claim that an encounter with the victim was a drug deal gone bad rather than a robbery. People v. Owens, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 22 (1 Dist. Jan. 20, 2005).

In a prosecution for possession of a controlled substance, the defendant's right of confrontation was violated by severe limitation of his cross-examination of the arresting officer with regard to a previous incident in which the same officer arrested the defendant for similar conduct, the fact that both parties sustained physical injuries during that previous arrest, and the factual basis of a complaint filed by the defendant against the officer arising from that incident. People v. Averhart, 311 Ill. App. 3d 492, 243 Ill. Dec. 845, 724 N.E.2d 154, 1999 Ill. App. LEXIS 961 (1 Dist. 1999).

It was error for trial court not to allow defense counsel to question witness for prosecution about recent dismissal of theft charges against witness, but given defendant's failure to show nexus between dismissed charges and witness' testimony, the showing of actual reasons for witness' bias and the convincing evidence of defendant's guilt, the error was harmless. People v. Tomes, 284 Ill. App. 3d 514, 219 Ill. Dec. 781, 672 N.E.2d 289 (1 Dist. 1996), appeal denied, 171 Ill. 2d 582, 222 Ill. Dec. 436, 677 N.E.2d 970 (1997).

In a gang-related murder criminal trial, where the trial court improperly restricted defendant's cross-examination of the state's eyewitness by not permitting the defendant to question the state's eyewitness about a subsequent battery charge brought against him and the disposition of that charge, the court's action was in contravention of the defendant's state constitutional right to confront the witnesses against him. People v. Young, 206 Ill. App. 3d 789, 151 Ill. Dec. 592, 564 N.E.2d 1254 (1 Dist. 1990).

-- Limitations on Attempt to Show Bias

Trial court erred in not allowing defendant to impeach the father of allegedly abused children as to inconsistencies in prior statements and at trial; such cross-examination would have allowed

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defendant to establish the father's bias against defendant. Nonetheless, the trial court's error was harmless as the jury was made aware that the father was biased against defendant and the father made numerous hostile comments toward defendant during trial. People v. Monroe, 366 Ill. App. 3d 1080, 304 Ill. Dec. 432, 852 N.E.2d 888, 2006 Ill. App. LEXIS 593 (1 Dist. 2006).

Evidentiary hearing should have been held to determine whether defendant's confrontation rights were denied by trial court's decision to limit cross-examination of a witness to preclude references to pending charges, because there was at least a possibility that such cross-examination would have enabled defendant to expose a source of witness bias. People v. Makiel, 358 Ill. App. 3d 102, 294 Ill. Dec. 319, 830 N.E.2d 731, 2005 Ill. App. LEXIS 557 (1 Dist. 2005), appeal denied, 217 Ill. 2d 582, 300 Ill. Dec. 372, 844 N.E.2d 44 (2005).

Defendants have a constitutional right to cross-examine witnesses for the purpose of showing bias, prejudice, or a motive to falsify testimony; however, while defendants are granted wide latitude in conducting cross-examination to show bias, a trial judge may impose limits on such inquiry, such as restricting interrogation in order to avoid harassment, prejudice, confusion of the issues, and repetitive or irrelevant testimony, and the defendant may be prevented from delving into evidence which is remote and uncertain. People v. Jefferson, 260 Ill. App. 3d 895, 197 Ill. Dec. 915, 631 N.E.2d 1374 (1 Dist.), appeal denied, 157 Ill. 2d 512, 205 Ill. Dec. 175, 642 N.E.2d 1292 (1994).

Where the jury had been made aware of adequate factors to determine whether a witness was worthy of belief and through his testimony and defendant's cross-examination of him, the jury heard evidence on his possible bias stemming from several areas, including his custodial status and criminal record, there was sufficient cross-examination to satisfy the constitutional guarantee, and the trial court's restrictions on defendant's cross-examination of the witness were not an abuse of discretion that resulted in manifest prejudice to defendant. People v. Maldonado, 193 Ill. App. 3d 1062, 550 N.E.2d 1011 (1 Dist. 1989), appeal denied, 132 Ill. 2d 551, 144 Ill. Dec. 263, 555 N.E.2d 382 (1990).

Trial court denied defendant's constitutional right to confrontation by setting an arbitrary time limit on the cross-examination of the complaining witness. People v. Feathers, 134 Ill. App. 3d 1060, 90 Ill. Dec. 26, 481 N.E.2d 826 (5 Dist. 1985).

Because the jury in this case was presented with the question of whether to believe police officer's or the defendant's version of the drug sale, defendant's credibility was a crucial issue; therefore, police officers testimony that defendant was not always known to tell the truth, was prejudicial and may have improperly influenced the jury in reaching their verdict of guilty because of the strictures placed on the defendant's cross-examination. People v. Doll, 126 Ill. App. 3d 495, 81 Ill. Dec. 635, 467 N.E.2d 335 (2 Dist. 1984).

The defendant has a common-law right, based on evidentiary principles, to cross-examine an adverse witness to reveal any possible bias, interest, or motive to testify falsely, and the defendant should be given the widest latitude in such cross-examination. People v. Austin, 123 Ill. App. 3d 788, 79 Ill. Dec. 103, 463 N.E.2d 444 (2 Dist. 1984).

As a part of his constitutional right to confront witnesses against him, defendant has a right to cross-examine the state's witnesses, which includes inquiry into the fact that a witness has been arrested or charged with a crime where such inquiry would develop matters that would reasonably show the bias, motive or willingness of the state's witnesses to testify. People v. Winfield, 113 Ill. App. 3d 818, 69 Ill. Dec. 594, 447 N.E.2d 1029 (1 Dist. 1983).

A defendant's right to confront the witnesses against her was not violated where she was not allowed to cross-examine two of the state's witnesses on their involvement in an alleged welfare fraud scheme similar to the charges against the defendant, as there was ample other evidence presented concerning the credibility of those witnesses, and where the defendant presented evidence of bias of a third witness, even though she was not allowed to cross-examine that

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witness concerning one particular incident. People v. Baugh, 96 Ill. App. 3d 946, 52 Ill. Dec. 485, 422 N.E.2d 166 (1 Dist. 1981).

Because the exposure of any bias, interest, or motive to testify falsely on the part of a witness is an important function of cross-examination, cross-examination for these purposes is a matter of right, subject only to the trial court's broad discretion to preclude repetitive and unduly harassing interrogation; this right requires that defense counsel be permitted to expose to the jury facts from which it could appropriately draw inferences concerning the reliability of the state's witnesses. People v. Thompson, 75 Ill. App. 3d 901, 31 Ill. Dec. 220, 394 N.E.2d 422 (1 Dist. 1979); People v. Austin, 123 Ill. App. 3d 788, 79 Ill. Dec. 103, 463 N.E.2d 444 (2 Dist. 1984); People v. Dowdy, 140 Ill. App. 3d 631, 94 Ill. Dec. 933, 488 N.E.2d 1326 (2 Dist. 1986).

-- Motive

The right to cross-examine a witness as to his interest, bias or motive cannot be defeated merely because there is other evidence that the witness is biased; nor can it be defeated by a claim of a lack of prejudice. People v. Thompson, 75 Ill. App. 3d 901, 31 Ill. Dec. 220, 394 N.E.2d 422 (1 Dist. 1979).

-- Narcotics Addiction

Narcotics addiction has an important bearing upon the credibility of a witness, and, in this regard, counsel may use legitimate methods to attack such a witness' credibility; the question as to whether a witness is a narcotics addict at the time of testifying or at the time an event occurred is a proper subject of cross-examination. People v. Adams, 259 Ill. App. 3d 995, 197 Ill. Dec. 717, 631 N.E.2d 1176 (1 Dist. 1993), appeal denied, 157 Ill. 2d 506, 205 Ill. Dec. 169, 642 N.E.2d 1286 (1994).

-- Police Officer

Cross-examinations of a police officer and a detention aide were not improperly restricted, as defense counsel was allowed to elicit testimony from them that they did not testify regarding the case until they were served with a civil suit from defendant, approximately two years after the underlying criminal incident; furthermore, the trial court allowed the questioning over the State's objections, explicitly indicating that the questioning was relevant to interest or bias. People v. Rendak, Ill. App. 3d , 354 Ill. Dec. 227, 957 N.E.2d 543, 2011 Ill. App. LEXIS 957 (1 Dist. 2011).

A defendant should be allowed during the cross-examination of an officer, presently suspended from the police force, to explore the possibility that his testimony may have been influenced by a desire to return to active duty without further trouble and to avoid continued suspension or other disciplinary measures. People v. Adams, 259 Ill. App. 3d 995, 197 Ill. Dec. 717, 631 N.E.2d 1176 (1 Dist. 1993), appeal denied, 157 Ill. 2d 506, 205 Ill. Dec. 169, 642 N.E.2d 1286 (1994).

-- Scope

The cross-examiner may go beyond the scope of direct examination to impeach a witness. People v. Santamaria, 165 Ill. App. 3d 381, 116 Ill. Dec. 411, 519 N.E.2d 1 (3 Dist. 1987).

-- Surveillance Privilege

In finding that a surveillance privilege exists at trial, where a defendant's need for the location information is so great that the case against him turns almost exclusively on an officer's testimony, disclosure must almost always be ordered, and the only instances in which nondisclosure would positively not be necessary is where no question is raised about a surveillance officer's ability to observe or where a contemporaneous videotape provides the relevant evidence. People v. Knight, 323 Ill. App. 3d 1117, 257 Ill. Dec. 213, 753 N.E.2d 408, 2001 Ill. App. LEXIS 533 (1 Dist. 2001).

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The surveillance privilege should be treated differently when raised at a suppression hearing as opposed to when it is raised at a trial; upon recognizing the need for disclosure of surveillance points at trial, a trial court should order an in camera hearing out of the presence of defendant and defense counsel at which state witness must reveal the surveillance location from which the defendant was watched, the state must make a preliminary showing that disclosure of the surveillance location would harm the public interests and should therefore remain privileged, and the trial judge should then weigh the defendant's need for this information against the public's interest in nondisclosure of the surveillance point. People v. Knight, 323 Ill. App. 3d 1117, 257 Ill. Dec. 213, 753 N.E.2d 408, 2001 Ill. App. LEXIS 533 (1 Dist. 2001).

- Deceased Witness

Confrontation Clause, as set forth in Ill. Const. Art. I, § 8 and the Sixth Amendment, U.S. Const. amend. VI, did not require the redaction of testimony properly admitted in defendant's first trial for first degree murder despite the fact that the testimony in question contained inconsistent statements made by the witness. Defendant conceded that the testimony at issue was properly admitted in the first trial, that testimony could be admitted in defendant's second trial under a hearsay exception allowing the admission of testimony of a deceased witness, and the Confrontation Clause did not bar its admission in the second trial because defense counsel had an opportunity to cross-examine the witness in the first trial. People v. Rush, 401 Ill. App. 3d 1, 340 Ill. Dec. 438, 928 N.E.2d 157, 2010 Ill. App. LEXIS 346 (1 Dist. 2010).

Where a witness died after testifying at defendant's bond violation hearing, it was error to admit the bond hearing testimony because the issues at the bond hearing differed significantly from the issues at trial and counsel did not have a similar motive for cross-examining the witness at the hearing. People v. Brown, 374 Ill. App. 3d 726, 312 Ill. Dec. 589, 870 N.E.2d 1033, 2007 Ill. App. LEXIS 668 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1741 (Ill. 2007).

Trial court's admission of a dead man's testimony before a grand jury at the defendant's trial for murder and robbery violated the defendant's right of confrontation. People v. Smith, 333 Ill. App. 3d 622, 267 Ill. Dec. 409, 776 N.E.2d 781, 2002 Ill. App. LEXIS 757 (1 Dist. 2002).

Trial court's admission of a dead man's testimony before a grand jury at the defendant's trial for murder and robbery violated the defendant's right of confrontation. People v. Smith, 333 Ill. App. 3d 622, 267 Ill. Dec. 409, 776 N.E.2d 781, 2002 Ill. App. LEXIS 757 (1 Dist. 2002).

Where a hearsay declarant was unavailable because she was dead, and her statements bore adequate indicia of reliability, the admission of the statements did not constitute a violation of the confrontation clauses of either the Illinois or United States Constitutions. People v. Green, 233 Ill. App. 3d 298, 174 Ill. Dec. 493, 599 N.E.2d 39 (3 Dist.), cert. denied, 147 Ill. 2d 631, 180 Ill. Dec. 153, 606 N.E.2d 1230 (1992).

Where the defendant had the benefit of cross-examination at the preliminary hearing, the now deceased complainant's preliminary hearing testimony was properly admitted into evidence. People v. Heard, 53 Ill. App. 3d 1042, 11 Ill. Dec. 775, 369 N.E.2d 229 (1 Dist. 1977).

Where there was an adequate opportunity for cross-examination of the preliminary hearing testimony of a witness who dies prior to trial, the earlier testimony of that witness is properly admitted at a defendant's murder trial. People v. Tennant, 65 Ill. 2d 401, 3 Ill. Dec. 431, 358 N.E.2d 1116 (1976).

Where nothing in the preliminary hearing testimony of a tavern owner, who died of natural causes prior to trial, was not covered by testimony of other witnesses, and defendants did not suggest in what manner additional cross-examination would benefit them, defendants were afforded an adequate opportunity to cross-examine the tavern owner and the circuit court did not err in admitting his testimony. People v. Horton, 65 Ill. 2d 413, 3 Ill. Dec. 436, 358 N.E.2d 1121 (1976).

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- Depositions

The use of depositions taken out of the presence of the defendant was not authorized under the former Sexually Dangerous Persons Act (see now 725 ILCS 5/105-1.01 et seq.). People v. Nastasio, 19 Ill. 2d 524, 168 N.E.2d 728 (1960).

- Error Not Harmless

Error in allowing inadmissible out-of-court statements by co-conspirators implicating defendant in robbery was not harmless where inadmissible evidence was used repeatedly in a death penalty hearing, and where other evidence did not show defendant to have been the gunman beyond a reasonable doubt. People v. Johnson, 116 Ill. 2d 13, 106 Ill. Dec. 763, 506 N.E.2d 563 (1987).

- Evidence

Where a decision to stipulate to certain State evidence remains one of trial strategy within defense counsel's sound judgment, defense counsel's agreement to stipulate does not implicate a defendant's right under either the federal or state constitution to confront and cross-examine the witnesses against him. People v. Probst, 344 Ill. App. 3d 378, 279 Ill. Dec. 546, 800 N.E.2d 834, 2003 Ill. App. LEXIS 1398 (4 Dist. 2003), appeal denied, 208 Ill. 2d 550, 284 Ill. Dec. 344, 809 N.E.2d 1290 (2004).

In prosecution of defendants for rape and armed robbery the failure to produce victim's husband or show his unavailability was not required where a defendant admitted the declaration by husband was a spontaneous declaration and conceded that the statement bore adequate indicia of reliability, and consequently, its admission into evidence did not violate his constitutional right of confrontation. People v. Hines, 94 Ill. App. 3d 1041, 50 Ill. Dec. 312, 419 N.E.2d 420 (1 Dist. 1981).

It is a general rule that where the party who makes entries in the due course of business is living, sane, and not permanently out of the state, such entries must be proved by him to be correct and true entries before they can be admitted as evidence as proof of the facts therein stated. People v. Trefonas, 9 Ill. 2d 92, 136 N.E.2d 817 (1956).

- Financial Benefit

Defendant should have been permitted to cross-examine witness regarding bia because if a witness has or may have an expectancy of a financial benefit as a result of the litigation being brought, the quality of his testimony may be affected. People v. Thompson, 75 Ill. App. 3d 901, 31 Ill. Dec. 220, 394 N.E.2d 422 (1 Dist. 1979).

- Former Trials

Where the defendants had a right to meet the witness face to face, and to hear him testify and this was done at a former trial, at which the counsel cross-examined him, this section was satisfied. Gillespie v. People, 176 Ill. 238, 52 N.E. 250 (1898).

- Handwriting Analysis

It was not proper for the jurors to conduct experiments regarding the comparison of handwriting outside of the presence of the parties because the defendant was deprived of the benefit of former Ill. Const. (1870), Art. II, § 9 (see now this section) which guaranteed every defendant in a criminal case the right to "appear and defend" and "to meet the witnesses face to face." People v. White, 365 Ill. 499, 6 N.E.2d 1015 (1937).

- Hearing Impairment

Trial court, on learning of defendant's hearing impairment, was required to inquire into nature and extent of defendant's hearing impairment to determine accommodations needed to protect right to

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confront witnesses and participate in his defense; conviction was reversed where trial court made no inquiry, and made no provision to protect the defendant's right to hear the witnesses against him. People v. Williams, 331 Ill. App. 3d 662, 265 Ill. Dec. 136, 771 N.E.2d 1095, 2002 Ill. App. LEXIS 466 (1 Dist. 2002).

- Hearsay

The statutory provision which allows the admission of prior statements when a witness refuses to testify despite a court order to testify, 725 ILCS 5/115-10.2, is not unconstitutional on its face because evidence that is admissible pursuant to the statute does not necessarily violate the confrontation clause. People v. Thomas, 313 Ill. App. 3d 998, 246 Ill. Dec. 593, 730 N.E.2d 618, 2000 Ill. App. LEXIS 437 (4 Dist. 2000), appeal denied, 191 Ill. 2d 556, 250 Ill. Dec. 465, 738 N.E.2d 934 (2000).

- Illustrative Cases

Defendant's right to confrontation was not violated by the court barring evidence of the victim's previous conviction for domestic battery because evidence related to defendant's intent to kill the victim included testimony that a witness heard the victim pleading, "please don't let me die," and the victim had stab wounds to her torso, including multiple stab wounds to a critical area surrounding her heart. People v. Bowens, 407 Ill. App. 3d 1094, 348 Ill. Dec. 339, 943 N.E.2d 1249, 2011 Ill. App. LEXIS 144 (4 Dist. 2011), cert. denied, 2012 U.S. LEXIS 854 (U.S. 2012).

Trial court erred in ruling that the out-of-court statements of the sole eyewitness to police at the scene of a murder and while in an ambulance would violate defendant's rights under the state and federal constitutions to confrontation; either the statements were nontestimonial in nature or the sole eyewitness was available to be cross-examined. People v. Sutton, 375 Ill. App. 3d 889, 314 Ill. Dec. 302, 874 N.E.2d 212, 2007 Ill. App. LEXIS 888 (1 Dist. 2007).

Right to confrontation was not violated where trial court restricted defendant's use of a psychological report to impeach a witness, because the report was privileged under 740 ILCS 110/3(a). People v. Workman, 368 Ill. App. 3d 778, 306 Ill. Dec. 828, 858 N.E.2d 886, 2006 Ill. App. LEXIS 618 (1 Dist. 2006).

Trial court did not improperly limit defendant's attempt to show bias with regard to an inmate's testimony against him because he was given adequate latitude to establish the inmate's alleged bias with regard to receiving good-time credit or other leniency and the opportunity to fabricate. People v. Hari, 355 Ill. App. 3d 449, 291 Ill. Dec. 14, 822 N.E.2d 889, 2005 Ill. App. LEXIS 7 (4 Dist. 2005), reversed and remanded, 218 Ill. 2d 275; 843 N.E.2d 349; 2006 Ill. LEXIS 9; 300 Ill. Dec. 91 (2006).

Defendant's right to confrontation was not violated when a wheelchair-bound witness was allowed to testify before the jury from a position that somewhat limited defendant's observation of the witness, especially since the trial court permitted defendant to relocate within the courtroom to obtain a better view. People v. Cuadrado, 214 Ill. 2d 79, 291 Ill. Dec. 638, 824 N.E.2d 214, 2005 Ill. LEXIS 3 (2005).

Placement of paraplegic witness in a wheelchair in nearly the only location that would accommodate the wheelchair, in the well of the courtroom, so that defendant could only see the witness in profile, was a reasonable accommodation under the circumstances, especially since the trial judge invited defendant to move to a better vantage point if defendant wished a better view. People v. Cuadrado, 341 Ill. App. 3d 703, 275 Ill. Dec. 659, 793 N.E.2d 139, 2003 Ill. App. LEXIS 789 (1 Dist. 2003), aff'd, 214 Ill. 2d 79, 291 Ill. Dec. 638, 824 N.E.2d 214 (2005).

Trial court's decision to bar defendant from inquiring into an alleged "frame-up" on cross-examination of police officers did not deny him the right to confront witnesses and present a defense in violation of U.S. Const. amends. VI, XIV and Ill. Const., Art. I, § 8, as defendant was allowed ample opportunity to confront, cross-examine, and test the truth of the testimony of the

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State's witnesses. There was too great a leap of logic between evidence that defendant filed a complaint against one of their fellow officers and the conclusion that the presentation of such evidence to the jury would reasonably allow the jury to infer that the testifying officers joined with that officer and his partner in planning and executing what amounted to a major criminal conspiracy in retribution against defendant for filing the complaint, followed by perjuring themselves en masse at trial. People v. Green, 322 Ill. App. 3d 747, 255 Ill. Dec. 916, 751 N.E.2d 10, 2001 Ill. App. LEXIS 190 (1 Dist. 2001).

The hearing held under 725 ILCS 5/115-10 gave the defendant the opportunity to review the witnesses' testimony prior to trial, thereby providing him with a chance for more effective cross examination at trial, thus defendant's confrontation right was not violated. People v. Stewart, 303 Ill. App. 3d 844, 237 Ill. Dec. 201, 708 N.E.2d 1241 (4 Dist. 1999), aff'd in part modified, 194 Ill. 2d 40, 251 Ill. Dec. 496, 740 N.E.2d 782 (2000).

No statement attributable to any of the three defendants directly implicated the others in the shooting, and, thus, defendant was not denied his right to confrontation as a result of his inability to examine the codefendants. People v. Loera, 250 Ill. App. 3d 31, 189 Ill. Dec. 251, 619 N.E.2d 1300 (2 Dist.), appeal denied, 153 Ill. 2d 565, 191 Ill. Dec. 625, 624 N.E.2d 813 (1993).

It was not error of constitutional magnitude for the state not to produce the author of a police report notation where the police reports containing the notation were made available to defendant more than one year prior to the hearing on the motion to suppress the identification and defense counsel was informed of the identity of the author of the notation. People v. Mathis, 55 Ill. App. 3d 680, 13 Ill. Dec. 528, 371 N.E.2d 245 (1 Dist. 1977).

Where, in the absence of one juror from case, it was agreed upon by counsel for both sides that testimony of state's witness (who had testified in chambers before the defendant and his counsel, the judge, and the State's attorney) would be read to jury, defendant's right to meet witnesses face to face was not violated. People v. Czajkowski, 342 Ill. 144, 173 N.E. 817 (1930).

- Joint Trial Improper

Where defendant and co-defendant both intended to blame the other in their defenses, their interests were so antagonistic that the motion for severance should have been granted. People v. Johnson, 151 Ill. App. 3d 1049, 105 Ill. Dec. 309, 504 N.E.2d 178 (3 Dist. 1987).

- Laboratory Reports

The unconstitutionality of the statute allowing for admission of lab reports without the testimony of the preparer when defendant fails to timely demand such testimony was not relevant in the prosecution of defendant on a drug charge against him where a lab report detailing the drug involved was not admitted under that statute, rather, defense counsel agreed to stipulate to the contents of the report. People v. Scott, 355 Ill. App. 3d 741, 291 Ill. Dec. 726, 824 N.E.2d 302, 2005 Ill. App. LEXIS 160 (3 Dist. 2005), appeal denied, 217 Ill. 2d 621, 300 Ill. Dec. 528, 844 N.E.2d 971 (2006).

The statutory provision which allows the state, in prosecutions under the Cannabis Control Act (720 ILCS 550/1 et seq.) or the Illinois Controlled Substances Act (720 ILCS 570/100 et seq.), to use lab reports in lieu of actual testimony as prima facie evidence of the contents of the substance at issue unless the defendant files a demand for the testimony of the witness who prepared the report, 725 ILCS 5/115-15, is unconstitutional under the confrontation clauses of the United States and Illinois Constitutions as it impermissibly requires a defendant to take a procedural step to secure his confrontation rights or be deemed to have waived them and does not require that the waiver of this fundamental constitutional right be a knowing, intelligent, and voluntary act. People v. McClanahan, 191 Ill. 2d 127, 246 Ill. Dec. 97, 729 N.E.2d 470, 2000 Ill. LEXIS 379 (2000).

- Letters as Evidence

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A letter from an out-of-town police chief read into evidence by a witness, was inadmissible in the absence of the state's having made the chief available for cross-examination. People v. Marselle, 20 Ill. App. 3d 1012, 314 N.E.2d 21 (3 Dist. 1974).

- Marital Privilege

The defendant's right to confrontation prevailed against his wife's claim of marital privilege where the content of wife's letters and conversations with defendant had the potential for devastating the credibility of her testimony and where invoking the privilege would not furthered the legislative policy of preserving and promoting marital harmony. People v. Foskey, 136 Ill. 2d 66, 143 Ill. Dec. 257, 554 N.E.2d 192 (1990).

- Motive

The trial court erred in restricting defendant's attempts to inquire into witness' possible motives for testifying at defendant's earlier trial and this denied defendant a substantial right which constituted plain error. People v. Ramey, 152 Ill. 2d 41, 178 Ill. Dec. 19, 604 N.E.2d 275 (1992), cert. denied, 508 U.S. 952, 113 S. Ct. 2446, 124 L. Ed. 2d 663 (1993).

A trial court cannot preclude the defendant from showing the interest, bias or motive of a witness, and if it does so by its ruling, it cannot be sustained on the basis of an argument that the ruling was within the trial court's discretion. People v. Thompson, 75 Ill. App. 3d 901, 31 Ill. Dec. 220, 394 N.E.2d 422 (1 Dist. 1979).

- No Waiver of Right

Authority to read testimony into the record is limited to instances where there was an agreement that a waiver of the right to meet witnesses face to face existed; where the record contained no waiver of constitutional right by the defendant or his counsel, it was error to admit into evidence the transcript of testimony of witness at prior trial. People v. Cox, 87 Ill. App. 2d 243, 230 N.E.2d 900 (4 Dist. 1967).

- Preliminary Hearing Testimony

An in camera inspection to determine the reliability of any preliminary hearing testimony sought to be introduced at trial is unnecessary, even where that testimony is uncorroborated by other witnesses because an adequate opportunity for cross-examination itself provides enough evidence of reliability to allow the testimony to go to the jury. People v. Tennant, 65 Ill. 2d 401, 3 Ill. Dec. 431, 358 N.E.2d 1116 (1976).

- Preservation of Evidence

The state's failure to preserve the gunshot residue test did not infringe on defendant's right of confrontation or his constitutional right to establish a defense where the evidence did not possess an exculpatory value that was apparent before it was destroyed and defendant was able to obtain comparable evidence by other means. People v. Kidd, 180 Ill. App. 3d 1065, 129 Ill. Dec. 766, 536 N.E.2d 816 (1 Dist.), appeal denied, 136 Ill. Dec. 598, 545 N.E.2d 122 (Ill. 1989).

- Probation Conditions

The circuit court properly excluded from a probation revocation hearing the results of the defendant's urine test by means of a certified laboratory report, notwithstanding that the defendant's probation was conditioned upon her refraining from drug use, submitting to drug tests, and agreeing to the admissibility of drug test results, as such conditions were unconstitutional because she had a right to confront the witnesses against her and to cross-examine those witnesses. People v. Renner, 321 Ill. App. 3d 1022, 255 Ill. Dec. 202, 748 N.E.2d 1272, 2001 Ill. App. LEXIS 378 (5 Dist. 2001).

- Provision Violative

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Former Ill. Rev. Stat. 1987, ch. 38, para. 106A-2 (see now 725 ILCS 5/106A-2) violated respondent's right to confrontation guaranteed by the United States and Illinois Constitutions. People v. Bastien, 129 Ill. 2d 64, 133 Ill. Dec. 459, 541 N.E.2d 670 (1989).

- Purpose

The main and essential purpose of the confrontation clause is to secure for an accused person the opportunity of cross-examination. People v. Smith, 141 Ill. 2d 40, 152 Ill. Dec. 218, 565 N.E.2d 900 (1990).

- Rape Shield Statute

The right to confront one's accusers does not include the right to explore the irrelevant prior conduct of the victim; the Rape Shield Act, as applied, did not violate defendant's right to confront his accusers or to present a defense. People v. Jones, 264 Ill. App. 3d 556, 201 Ill. Dec. 172, 636 N.E.2d 604 (1 Dist. 1993).

- Right Against Self-Incrimination

The trial court properly allowed witness to invoke his constitutional right against self-incrimination and in doing so it did not invalidly infringe upon defendant's constitutional right to confront witnesses against him. People v. Lockett, 260 Ill. App. 3d 266, 197 Ill. Dec. 498, 631 N.E.2d 720 (1 Dist. 1993), appeal denied, 157 Ill. 2d 513, 205 Ill. Dec. 176, 642 N.E.2d 1293 (1994).

- Scope

A criminal defendant has a constitutional right to be confronted with the witnesses against him or her; this right encompasses the right to effective cross-examination to test the credibility of the witnesses and the truth of their testimony. People v. Austin, 123 Ill. App. 3d 788, 79 Ill. Dec. 103, 463 N.E.2d 444 (2 Dist. 1984).

The right to confront witnesses guaranteed by this section is no broader and no more protective than the same right guaranteed by the Sixth Amendment of the United States Constitution. People v. Behm, 49 Ill. App. 3d 574, 7 Ill. Dec. 475, 364 N.E.2d 636 (1 Dist. 1977).

- Statements by Co-Conspirators

The substantive use of out-of-court statements by co-conspirators implicating defendant, where co-conspirators asserted their privilege against self-incrimination and were thus unavailable to testify, violated the defendant's confrontation rights under state constitutions. People v. Johnson, 116 Ill. 2d 13, 106 Ill. Dec. 763, 506 N.E.2d 563 (1987).

- Stipulations

Admission of a statement by another man present at the shooting death of the victim that gave rise to a first degree murder charge against defendant, without having the other man testify, did not violate defendant's confrontation clause rights under the Sixth Amendment, U.S. Const. amend. VI or Ill. Const. art. I, § 8. Defendant stipulated to the admission of that statement, in which the other man repudiated an earlier statement that the other man had shot the victim, and admission of the statement was a reasonable trial strategy to keep the other man from taking the stand and stating that defendant was the shooter. People v. Cortez, 402 Ill. App. 3d 468, 341 Ill. Dec. 854, 931 N.E.2d 751, 2010 Ill. App. LEXIS 625 (1 Dist. 2010).

Since defense counsel did not make sure that defendant knew what was specifically contained in a second stipulation presented at a stipulated bench trial, no showing was made that defense counsel validly waived defendant's Ill. Const. art. I, § 8 right of confrontation in a case where defendant was convicted of unlawful possession of child pornography. Thus, defendant was entitled to additional proceedings, as the second stipulation included such incriminating statements as defendant telling a police officer that defendant did not think that there was very

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much child pornography contained on defendant's computer discs when defendant had indicated that defendant wanted to say that defendant was unaware of any child pornography being on them. People v. Clendenin, 395 Ill. App. 3d 412, 332 Ill. Dec. 889, 913 N.E.2d 1179, 2009 Ill. App. LEXIS 781 (2 Dist. 2009).

Defense counsel's decision to stipulate that a proper chain of custody was maintained over items recovered from defendant and that the items tested positive for the presence of cocaine was a matter of trial strategy because the weight and nature of the recovered items were not contested and because the defense at trial was instead that another person, rather than defendant, possessed the items; further, the stipulation did not indicate that the stipulated evidence was sufficient to convict defendant nor did the State present its entire case through stipulation. Accordingly, defendant's confrontation rights were not violated. People v. Rodriguez, 373 Ill. App. 3d 905, 311 Ill. Dec. 970, 869 N.E.2d 983, 2007 Ill. App. LEXIS 565 (1 Dist. 2007).

Defendant's constitutional rights to confrontation were not violated when his attorney stipulated to certain evidence, as the stipulation did not indicate that the stipulated evidence was sufficient to convict nor did the State present its entire case through stipulation. People v. Squire, 365 Ill. App. 3d 842, 303 Ill. Dec. 189, 851 N.E.2d 87, 2006 Ill. App. LEXIS 371 (1 Dist. 2006), overruled in part by People v. Jones, 223 Ill. 2d 569, 861 N.E.2d 967, 2006 Ill. LEXIS 1671, 308 Ill. Dec. 402 (2006).

- Unavailable Witnesses

Admission of videotaped statements by two witnesses did not violate defendant's rights under the Confrontation Clause because the witnesses testified and were subject to cross-examination, giving defendant the chance to impeach their credibility. The witnesses' inability to recall making their statements or the incident that was the subject of their statements did not render the witnesses "unavailable" for effective confrontation. People v. Bakr, 373 Ill. App. 3d 981, 312 Ill. Dec. 19, 869 N.E.2d 1010, 2007 Ill. App. LEXIS 577 (1 Dist. 2007), appeal denied, 225 Ill. 2d 640, 875 N.E.2d 1114, 2007 Ill. LEXIS 1299 (2007).

Defense counsel had the right in defendant's criminal trespass to a residence case to waive defendant's Sixth Amendment right of confrontation by stipulating to the admission of a statement by an unavailable witness since defendant did not object, and the decision to stipulate involved a legitimate trial tactic since the statement contained evidence that could have shown defendant did not have the requisite criminal intent in entering the residence of the unavailable witness. Accordingly, defendant's conviction for criminal trespass to a residence was proper. People v. Campbell, 208 Ill. 2d 203, 280 Ill. Dec. 684, 802 N.E.2d 1205, 2003 Ill. LEXIS 2603 (2003), cert. denied, 543 U.S. 834, 125 S. Ct. 149, 160 L. Ed. 2d 53 (2004).

Face to face live testimony is to be the rule, and any exception must be narrowly drawn and predicated on a showing of special need; the "unavailable witness" problem is one such special circumstance. People v. Johnson, 118 Ill. 2d 501, 115 Ill. Dec. 384, 517 N.E.2d 1070 (1987).

- Violated

Trial court abused its discretion in responding to a question by the jurors during deliberations because the court's substantive response to the jurors' question impermissibly trespassed upon the jury's fact-finding prerogative in that it was apparent that the question concerned the circumstances of defendant's confession to the police. People v. Davis, 393 Ill. App. 3d 114, 332 Ill. Dec. 604, 913 N.E.2d 536, 2009 Ill. App. LEXIS 561 (1 Dist. 2009), appeal denied, 234 Ill. 2d 531, 920 N.E.2d 1076, 2009 Ill. LEXIS 2057 (2009).

Trial court violated defendant's right to cross-examine a police officer about his alleged comments regarding defendant's pending lawsuit against the police arising out of a shooting which resulted in defendant's paralysis since defendant's theory at trial was that he was being framed by the State's witnesses and defendant had a right to present evidence to support the theory for what it

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was worth. People v. Chavez, 338 Ill. App. 3d 835, 273 Ill. Dec. 454, 789 N.E.2d 354, 2003 Ill. App. LEXIS 507 (1 Dist. 2003).

Defendant's right of confrontation was violated when defendant was not allowed to demonstrate to the jury that the prosecution's witness has prior felony convictions for theft, burglary, and armed robbery, all crimes of dishonesty because defendant should have been allowed to make the jury aware of adequate facts to determine whether the witness was worthy of belief. People v. Paul, 304 Ill. App. 3d 404, 237 Ill. Dec. 869, 710 N.E.2d 499, 1999 Ill. App. LEXIS 277 (1 Dist. 1999).

Where defendant was limited in presenting evidence of the credibility of a prosecution witness by the trial court permitting defendant only to elicit from the witness that he had prior felonies, but not permitted to elicit evidence of the types of felonies, defendant's right to confrontation was violated and resulted in manifest prejudice to defendant. People v. Paul, 304 Ill. App. 3d 404, 237 Ill. Dec. 869, 710 N.E.2d 499, 1999 Ill. App. LEXIS 277 (1 Dist. 1999).

Where witness did not testify, so that there was no opportunity to cross-examine him, but nevertheless the trial court admitted in evidence his testimony that he told the police officer that defendant and the accomplice were the men who had sold him narcotics, the testimony could not be sustained as an implied admission by defendant since the statement by witness was out of the presence and hearing of the defendant; the admission of this testimony denied to the defendant the constitutional right to confront the witnesses against him. People v. Smith, 38 Ill. 2d 13, 230 N.E.2d 188 (1967).

- Witness' Occupation

The granting of the state's motion in limine to preclude questioning into the witness' occupation (prostitution) was improper as: (1) it is proper to cross-examine a witness to bring out the fact that the witness engages in an unlawful and disreputable occupation as a matter affecting that witness' general credibility; and (2) defendants may bring out facts concerning the witness that might show the witness' motive for testifying favorably to the state. People v. Hines, 94 Ill. App. 3d 1041, 50 Ill. Dec. 312, 419 N.E.2d 420 (1 Dist. 1981).

Right to Continuance

Where the court was advised defendant's family had retained private counsel who was present and ready, willing, and able to make an entry of appearance on the day defendant was scheduled for trial for multiple counts of armed robbery and aggravated criminal sexual assault, but not prepared to proceed to trial as defendant had not advised him trial was set for that day, and the court failed to ask counsel how long a continuance would be needed, defendant's right to counsel outweighed the state's interest in the effective administration of justice; court erred in denying request for continuance. People v. Childress, 276 Ill. App. 3d 402, 212 Ill. Dec. 835, 657 N.E.2d 1180 (1 Dist. 1995), appeal denied, 166 Ill. 2d 545, 216 Ill. Dec. 6, 664 N.E.2d 643 (1996).

Right to Counsel

Trial court made a proper inquiry into defendant's claim that trial counsel was ineffective because the trial court considered defendant's concerns, reviewed counsel's actions, and concluded that counsel provided effective representation, and while the trial court mentioned the Strickland prejudice prong, that did not change the fact that it looked at defendant's allegations and determined them to be meritless; where a trial court correctly inquires into a defendant's allegation and concludes counsel provided effective representation, it is not error to make a passing reference to Strickland. People v. Dickerson, 393 Ill. App. 3d 531, 332 Ill. Dec. 678, 913 N.E.2d 610, 2009 Ill. App. LEXIS 693 (3 Dist. 2009).

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Because defendant did not show a reasonable probability that separate verdict forms would have resulted in not guilty verdicts on intentional murder and knowing murder charges, trial counsel's failure to submit separate forms did not require reversal of his convictions or modification of his sentences. People v. Moore, Ill. App. 3d , Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 614 (1 Dist. June 30, 2009).

Trial counsel was not ineffective for failing to move to sever charges of first degree murder and domestic battery, because the murder and battery occurred at or near the same location and close in time, and the battery evidence would have been admissible under the continuing narrative exception in a trial on only the murder charge. People v. Slater, 393 Ill. App. 3d 977, 338 Ill. Dec. 513, 924 N.E.2d 1039, 2009 Ill. App. LEXIS 537 (4 Dist. 2009), appeal denied, 235 Ill. 2d 601, 924 N.E.2d 459, 2010 Ill. LEXIS 209 (2010).

Trial counsel did not commit ineffective assistance by failing to file a motion to suppress defendant's statements where defendant was questioned shortly after ingesting a large amount of cocaine and where defendant spoke Spanish but was given Miranda warnings and questioned in English. Given the trial judge's determination that defendant's testimony regarding defendant's drug use lacked credibility, there was no reasonable probability that the trial judge would have granted a motion to suppress statements based on defendant's cocaine use. People v. Ayala, 386 Ill. App. 3d 912, 326 Ill. Dec. 296, 899 N.E.2d 513, 2008 Ill. App. LEXIS 1197 (1 Dist. 2008), appeal denied, 231 Ill. 2d 671, 904 N.E.2d 981, 2009 Ill. LEXIS 834 (2009).

Defendant did not show that defendant received ineffective assistance of counsel in violation of Ill. Const. Art. I, § 8 in a case where defendant was charged with and convicted of official misconduct in violation of 720 ILCS 5/33-3(b) for using defendant's position as a part-time police dispatcher for a village to inform a suspected drug dealer about police surveillance being conducted near his home. The allegations in the indictment were sufficient to inform defendant of the offense defendant was being accused of committing and allowed defendant to prepare a defense, and, thus, defense counsel did not act in an unreasonable manner in not moving to dismiss the indictment. People v. Williams, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1174 (3 Dist. Nov. 19, 2008).

While the indictment could have been more detailed, counsel was not ineffective for failing to move to dismiss an indictment that was not fatally defective. People v. Williams, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1135 (1 Dist. Nov. 19, 2008).

Trial counsel's decision not to object to evidence of defendant's parole officer's occupation was neither unreasonable nor prejudicial. The officer's job at the time of trial was the sort of background information that every witness provided; thus, an objection to the officer's preliminary testimony that the officer was a parole officer would not have succeeded. People v. Rhodes, 386 Ill. App. 3d 649, 326 Ill. Dec. 118, 899 N.E.2d 335, 2008 Ill. App. LEXIS 1133 (2 Dist. 2008).

Counsel was not ineffective for failing to object to evidence that defendant exercised defendant's Fourth and Fifth Amendment rights, as the testimony of which defendant complained was brief and given almost in passing. Moreover, the State never suggested that defendant's displeasure with police officers' entry into defendant's home, or defendant's decision not to write out a statement, showed defendant's consciousness of guilt. People v. Rhodes, 386 Ill. App. 3d 649, 326 Ill. Dec. 118, 899 N.E.2d 335, 2008 Ill. App. LEXIS 1133 (2 Dist. 2008).

Trial counsel was not ineffective for failing to tender a jury instruction on possession of cannabis, a Class 4 felony under 720 ILCS 550/4(d), and instead taking an "all-or-nothing" approach that resulted in defendant's conviction of possession with the intent to deliver, a Class 3 felony 720 ILCS 550/5(d). Counsel could have reasonably believed that, although the evidence that defendant possessed cannabis was overwhelming, the evidence that defendant intended to deliver it was not; therefore, counsel could have decided that, rather than guarantee defendant at least a Class 4 felony conviction, counsel would give defendant a realistic chance at a complete

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acquittal. People v. Rhodes, 386 Ill. App. 3d 649, 326 Ill. Dec. 118, 899 N.E.2d 335, 2008 Ill. App. LEXIS 1133 (2 Dist. 2008).

Trial counsel was not ineffective for failing to assert a compulsion defense, because the record lacked evidence that defendant performed any conduct under compulsion, defendant's testimony at trial amounted to no more than a claim that defendant was unaware that the robbery would take place, and defendant had ample opportunity to withdraw from the criminal enterprise but failed to do so. People v. Johns, 387 Ill. App. 3d 8, 325 Ill. Dec. 863, 898 N.E.2d 1142, 2008 Ill. App. LEXIS 1131 (1 Dist. 2008).

Inmate's claim that counsel was ineffective for failing advising the inmate to waiver a jury trial did not entitle the inmate to postconviction relief, because counsel's advice to waive a jury trial constituted a prediction based upon counsel's evaluation of the mitigating circumstances and counsel's knowledge by reputation and/or experience of the trial judge's previous record. People v. Hobson, 386 Ill. App. 3d 221, 325 Ill. Dec. 173, 897 N.E.2d 421, 2008 Ill. App. LEXIS 1101 (1 Dist. 2008).

Inmate's claim that counsel was ineffective for failing to provide the inmate with requested discovery material did not entitle the inmate to postconviction relief, because the inmate could not show prejudice due to counsel's failure; the inmate was unable to show that the inmate would have pled guilty or that such a plea would have resulted in a lesser sentence. The sentence imposed was only one year over the statutory minimum. People v. Hobson, 386 Ill. App. 3d 221, 325 Ill. Dec. 173, 897 N.E.2d 421, 2008 Ill. App. LEXIS 1101 (1 Dist. 2008).

Defendant's counsel was not ineffective for failing to appear at a hearing on a motion to reconsider sentence as defendant was not deprived of a substantial right because the filing of the motion preserved defendant's right to appeal from the sentence. People v. Burnett, 385 Ill. App. 3d 610, 325 Ill. Dec. 288, 897 N.E.2d 827, 2008 Ill. App. LEXIS 1013 (1 Dist. 2008), aff'd, 2010 Ill. LEXIS 285 (Ill. 2010).

Defendant's counsel did not provide ineffective assistance on the basis that counsel filed an incomplete written motion to reconsider the sentence that did not specify sentencing alternatives or the mitigating factors that would have persuaded the trial court to impose a lesser sentence because the suggested additions would not have changed the trial court's sentence as the sentence imposed of 10 years for burglary was close to the minimum of 6 years under 730 ILCS 5/5-8-1(b)(3) as defendant was a Class X offender and the mitigating factors, such as defendant's drug addiction, were mentioned in the presentence investigation report. People v. Burnett, 385 Ill. App. 3d 610, 325 Ill. Dec. 288, 897 N.E.2d 827, 2008 Ill. App. LEXIS 1013 (1 Dist. 2008), aff'd, 2010 Ill. LEXIS 285 (Ill. 2010).

Ineffective assistance of counsel at sentencing was not shown due to a failure to request a mental or physical examination under 730 ILCS 5/5-3-2(b) and 730 ILCS 5/5-3-3 as the presentence investigation report brought to the trial court's attention all of the factors that defendant claimed should have been raised regarding, inter alia, his drug addiction and psychological condition. People v. Burnett, 385 Ill. App. 3d 610, 325 Ill. Dec. 288, 897 N.E.2d 827, 2008 Ill. App. LEXIS 1013 (1 Dist. 2008), aff'd, 2010 Ill. LEXIS 285 (Ill. 2010).

Defendant's ineffective assistance of counsel claim failed because defendant was unable to show prejudice as a result of counsel's alleged failure to facilitate defendant's plea agreement given defendant's lack of cooperation, consistently representing that defendant would not name an individual as a participant in the offense. People v. Alfaro, 386 Ill. App. 3d 271, 324 Ill. Dec. 858, 896 N.E.2d 1077, 2008 Ill. App. LEXIS 993 (2 Dist. 2008).

Trial court properly dismissed an inmate's postconviction claims of ineffective assistance of counsel at the second stage of the postconviction proceedings because the inmate failed to plead in his second amended petition that he was prejudiced by his lawyers actions or that, but for his lawyers' actions, the inmate would have declined to plead guilty on charges of criminal assault of

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a family member and would have insisted on going to trial. People v. Giampaolo, 385 Ill. App. 3d 999, 325 Ill. Dec. 397, 898 N.E.2d 130, 2008 Ill. App. LEXIS 923 (2 Dist. 2008).

Trial counsel was not ineffective for failing to request that a prior inconsistent statement by defendant be admitted as substantive evidence pursuant to 725 ILCS 5/115-10.1, or failing to request that the jury be instructed that it could consider the statement as substantive evidence because the statement was introduced by the State and was used as substantive evidence by virtue of the fact that the jury's use of the statement was not limited by the trial court's instructions. People v. Lemke, 384 Ill. App. 3d 437, 323 Ill. Dec. 221, 892 N.E.2d 1213, 2008 Ill. App. LEXIS 754 (1 Dist. 2008), appeal denied, 229 Ill. 2d 682, 326 Ill. Dec. 875, 900 N.E.2d 1122, 2008 LEXIS 1789 (2008).

Defendant could not show that defendant received ineffective assistance of counsel in violation of Ill. Const. Art. I, § 8 in defendant's case of driving under the influence of alcohol despite trial counsel not moving to bar the admission of certain sobriety test results without a Frye hearing being conducted. The failure to bar such evidence from being admitted was not prejudicial since the evidence was not closely balanced and, thus, not barring it from being introduced did not result in defendant receiving ineffective assistance of counsel. People v. Weathersby, 383 Ill. App. 3d 226, 321 Ill. Dec. 898, 890 N.E.2d 620, 2008 Ill. App. LEXIS 551 (1 Dist. 2008), appeal denied, 229 Ill. 2d 655, 325 Ill. Dec. 14, 897 N.E.2d 262, 2008 Ill. LEXIS 1281 (2008).

Trial court did not err in denying defendant's posttrial pro se motion for a new trial based on a claim of ineffective assistance of counsel under U.S. Const. Amend. VI and Ill. Const. Art. I, § 8, as the trial court adequately inquired into defendant's claim that counsel failed to call witnesses would have provided an alibi for defendant; the trial court indicated that defendant had not made a colorable argument as to how the witnesses would change the outcome of the trial. People v. McCarter, 385 Ill. App. 3d 919, 325 Ill. Dec. 17, 897 N.E.2d 265, 2008 Ill. App. LEXIS 540 (1 Dist. 2008).

Although defendant showed under the first prong of Strickland that counsel was ineffective under U.S. Const. Amend. VI and Ill. Const. Art. I, § 8 for failing to object to the admission of various statements by witnesses that were inadmissible and which were not matters of trial strategy, there was no ineffectiveness of counsel that deprived defendant of a fair trial, as the evidence of defendant's guilt was so overwhelming that there was no reasonable probability that the complained-of evidence had any significant impact on the jury's overall picture of events or on the outcome of the trial. People v. McCarter, 385 Ill. App. 3d 919, 325 Ill. Dec. 17, 897 N.E.2d 265, 2008 Ill. App. LEXIS 540 (1 Dist. 2008).

Even if it was determined that defendant waived a claim of ineffective assistance of counsel under U.S. Const. Amend. VI and Ill. Const. Art. I, § 8 by failing to raise the specific issues in a pro se posttrial motion, such was still reviewable under the plain error standard because ineffective assistance of counsel was a substantial impairment of fundamental rights that triggered plain error review. People v. McCarter, 385 Ill. App. 3d 919, 325 Ill. Dec. 17, 897 N.E.2d 265, 2008 Ill. App. LEXIS 540 (1 Dist. 2008).

Trial court failed to adequately investigate a claim in defendant's posttrial pro se motion for a new trial that counsel was ineffective under U.S. Const. Amend. VI and Ill. Const. Art. I, § 8 for failing to adhere to defendant's desire for a bench trial rather than a jury trial, as the trial court only asked defendant about the issue in a very cursory manner; prejudice was presumed where counsel did not comply with defendant's choice because that decision was one that affected the fundamental framework of the trial and it belonged to defendant rather than to counsel. People v. McCarter, 385 Ill. App. 3d 919, 325 Ill. Dec. 17, 897 N.E.2d 265, 2008 Ill. App. LEXIS 540 (1 Dist. 2008).

Trial court pursuant to the Post-Conviction Hearing Act, 725 ILCS 5/122-1 et seq. (Act), had the authority to grant petitioner leave to file a late notice of appeal to challenge petitioner's armed robbery conviction in a case where petitioner's counsel provided ineffective assistance of counsel

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by failing to file a notice of appeal. Although other potential avenues of relief did not allow the filing of a late notice of appeal, such as Ill. Sup. Ct. R. 606 because too much time had passed or 725 ILCS 5/122-6 because it did not mention filing a late notice of appeal as a source of relief, the right to appeal a criminal conviction was a fundamental right, Ill. Const. Art. VI, § 6, and petitioner alleged a viable constitutional claim pursuant to Ill. Const. art. I, § 8 that petitioner received ineffective assistance of counsel because the failure to file the notice of appeal prevented petitioner from arguing that petitioner was convicted despite lack of proof that a dangerous weapon was involved. People v. Ross, 229 Ill. 2d 255, 322 Ill. Dec. 574, 891 N.E.2d 865, 2008 Ill. LEXIS 376 (2008).

Trial court adequately inquired into defendant's allegations of ineffective assistance of counsel during defendant's criminal trial and found no showing of possible neglect by counsel, such that there was no cause to grant defendant's request to appoint alternate counsel to conduct further proceedings in connection with an ineffectiveness claim. People v. Dixon, 382 Ill. App. 3d 233, 320 Ill. Dec. 433, 887 N.E.2d 577, 2008 Ill. App. LEXIS 274 (1 Dist. 2008), appeal denied, 229 Ill. 2d 637, 325 Ill. Dec. 9, 897 N.E.2d 257, 2008 Ill. LEXIS 994 (2008).

Defendant's conviction for armed robbery armed robbery was appropriate, as defendant was unable to meet the prejudice prong of the Strickland test for ineffective assistance of counsel based on waiver of the court reporter for voir dire. Even without the waiver defendant could not establish a Batson claim of purposeful discrimination, as there was not an impermissible pattern of strikes against African-Americans or a disproportionate use of peremptory challenges against African-American venire persons. People v. Houston, 229 Ill. 2d 1, 321 Ill. Dec. 702, 890 N.E.2d 424, 2008 Ill. LEXIS 313 (2008), cert. denied, 129 S. Ct. 308, 2008 U.S. LEXIS 6424, 172 L. Ed. 2d 225 (U.S. 2008).

Trial counsel was not ineffective for failing to submit a jury instruction on identification, as the main issue was not eyewitness identification, but rather which of the various versions of events presented at trial should be believed. Under the circumstances, there was no reasonable probability that defendant would have been acquitted if the instruction had been given. People v. Houston, 229 Ill. 2d 1, 321 Ill. Dec. 702, 890 N.E.2d 424, 2008 Ill. LEXIS 313 (2008), cert. denied, 129 S. Ct. 308, 2008 U.S. LEXIS 6424, 172 L. Ed. 2d 225 (U.S. 2008).

Counsel was not ineffective for failing to object to defendant's appearance in handcuffs and jail clothing, as there was no reasonable probability that defendant would have been found not guilty had counsel objected. People v. Tedrick, 377 Ill. App. 3d 926, 316 Ill. Dec. 796, 880 N.E.2d 274, 2007 Ill. App. LEXIS 1394 (1 Dist. 2007).

Defendant did not suffer prejudice from the alleged error made by counsel by not requesting a Frye hearing or not objecting to the admission of horizontal gaze nystagmus (HGN) test results. Deciding not to object to the admission of the HGN test results was a matter of trial strategy, and the State produced enough evidence even without the test results to convict defendant of driving under the influence. People v. Gordon, 378 Ill. App. 3d 626, 317 Ill. Dec. 395, 881 N.E.2d 563, 2007 Ill. App. LEXIS 1371 (1 Dist. 2007).

Trial counsel rendered ineffective assistance during defendant's trial for first-degree murder, attempted armed robbery, and armed violence, by not challenging the state's lip-print identification evidence; if defendant's postconviction expert had testified at trial, the lip-print would not likely have been shown to the jury, no physical evidence would have linked defendant to the crime, and the result would likely have been different. People v. Davis, 377 Ill. App. 3d 735, 316 Ill. Dec. 608, 879 N.E.2d 996, 2007 Ill. App. LEXIS 1258 (1 Dist. 2007).

Trial court's interference with defendant's attorney-client relationship in defendant's residential burglary case denied defendant the right to a fair trial; the record reasonably supported the conclusion that defendant would have testified in furtherance of the strategy advanced by defense counsel during opening arguments if the trial court had not repeatedly questioned

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defendant and defense counsel on matters related to that strategy. People v. Peden, 377 Ill. App. 3d 463, 316 Ill. Dec. 156, 878 N.E.2d 1180, 2007 Ill. App. LEXIS 1153 (1 Dist. 2007).

Defendant failed to establish prejudice due to his trial counsel's failure to object, because other identification evidence was overwhelming. Witnesses identified defendant in a lineup and in court, and other witnesses testified before the grand jury that they identified defendant in the lineup. People v. Cox, 377 Ill. App. 3d 690, 316 Ill. Dec. 392, 879 N.E.2d 459, 2007 Ill. App. LEXIS 1210 (1 Dist. 2007).

Counsel's failure to file a motion to suppress defendant's videotaped statement did not support ineffective assistance claim because defendant failed to overcome the presumption that counsel's decision was the result of a trial strategy in which mutual combat was defendant's defense. People v. Jones, 371 Ill. App. 3d 303, 308 Ill. Dec. 956, 862 N.E.2d 1159, 2007 Ill. App. LEXIS 76 (1 Dist. 2007).

Ineffective assistance claim failed where defendant failed to demonstrate that there was reasonable probability that, but for her attorney's decision not to subpoena prior to trial the past autopsy records of the coroner, the outcome would have been different. In addition, defendant did not show that she was prejudiced by counsel's failure to impeach the state's expert; the trial court was aware that the expert did not personally perform a test on the baby's eyes and that the outside expert's report showed no hemorrhages in the white's of the baby's eyes. People v. Clay, 363 Ill. App. 3d 780, 300 Ill. Dec. 285, 843 N.E.2d 885, 2006 Ill. App. LEXIS 61 (1 Dist. 2006), appeal denied, 219 Ill. 2d 573, 303 Ill. Dec. 835, 852 N.E.2d 242 (2006).

In a driving under the influence of alcohol case, a prosecutor's comments, which suggested that defendant failed to prove his innocence to a police officer by failing to take a breath test, were improper, and defense counsel erred by failing to lodge an objection to the remarks; however, even if counsel's failure to object amounted to deficient performance, defendant was not sufficiently prejudiced by the deficient performance because the prosecutor's improper closing remarks did not deny defendant a fair trial. Thus, there was no reasonable probability that, but for counsel's failure to object, the result of the trial would be different; therefore, defendant did not sustain his claim that he received ineffective assistance of counsel and, accordingly, reversal on that basis was not warranted. People v. Johnson, Ill. 2d , Ill. Dec. , N.E.2d , 2006 Ill. LEXIS 313 (Feb. 2, 2006).

Defendant could not show that trial counsel was ineffective where there was no showing that defense counsel neglected defendant's case and the record indicated that trial counsel vigorously and ably represented the client; among other things, counsel stated that he did call one of the witness as a matter of strategy, and stated that he took into account the relationships of the individuals involved in the case in determining which witnesses to call. People v. Eggleston, 363 Ill. App. 3d 220, 299 Ill. Dec. 857, 842 N.E.2d 1209, 2006 Ill. App. LEXIS 39 (1 Dist. 2006), appeal denied, 219 Ill. 2d 575, 303 Ill. Dec. 835, 852 N.E.2d 242 (2006).

Where defense counsel reasserted the argument that the State failed to present a sufficient foundation to support the expert testimony that established an element of the crime and where the trial court, instead of granting defense counsel's motion for a directed verdict, permitted the State to reopen the testimony of the expert in order to present the foundational testimony, defense counsel was not ineffective under Ill. Const. Art. I, § 8. Defense counsel argued the issue so effectively that the State sought to reopen the case, and the issue fell under the realm of trial strategy. People v. Berrier, 362 Ill. App. 3d 1153, 299 Ill. Dec. 385, 841 N.E.2d 1117, 2006 Ill. App. LEXIS 17 (1 Dist. 2006).

Defense counsel could have reasonably determined that the State would be able to satisfy the foundational requirements for admitting a 911 audiotape of the victim's call to police and, thus, objecting to it would have been fruitless. Accordingly, defendant did not show that defense counsel's stipulation of the admissibility of that piece of evidence was error. People v. Carter,

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362 Ill. App. 3d 1180, 299 Ill. Dec. 320, 841 N.E.2d 1052, 2005 Ill. App. LEXIS 1283 (1 Dist. 2005), appeal denied, 219 Ill. 2d 572, 303 Ill. Dec. 834, 852 N.E.2d 241 (2006).

Appellate court did not err in upholding defendant's conviction, following a trial in which a jury found defendant guilty, for the offense of driving under the influence of alcohol. Despite the fact that the State's comments in opening and closing arguments, that defendant's refusal to take a breath test meant defendant had not proven to the arresting officer that he was not guilty of that offense, were improper, defendant did not object, he failed to show that plain error resulted, and the statements taken in context were not so prejudicial that they affected the jury's verdict, which also meant that the failure of defendant's attorney to object to them could not constitute ineffective assistance of counsel. People v. Johnson, 218 Ill. 2d 125, 299 Ill. Dec. 677, 842 N.E.2d 714, 2005 Ill. LEXIS 2072 (2005).

Defendant's pro se ineffective assistance of counsel allegation was patently without merit and, thus, the trial court was not required to make an inquiry into it or appoint counsel to examine it. People v. James, 362 Ill. App. 3d 250, 298 Ill. Dec. 488, 839 N.E.2d 1135, 2005 Ill. App. LEXIS 1206 (4 Dist. 2005), appeal denied, 218 Ill. 2d 550, 303 Ill. Dec. 6, 850 N.E.2d 811 (2006).

Despite the fact that defendant spit and struck his attorney before trial, defendant did not show that a per se conflict existed between him and his attorney, and, thus, relief would not be granted on that basis. Defendant's counsel stated that he bore no ill will toward defendant, that he would not withdraw from representing defendant, and that he felt defendant's actions were an attempt to obtain a mistrial. People v. James, 362 Ill. App. 3d 250, 298 Ill. Dec. 488, 839 N.E.2d 1135, 2005 Ill. App. LEXIS 1206 (4 Dist. 2005), appeal denied, 218 Ill. 2d 550, 303 Ill. Dec. 6, 850 N.E.2d 811 (2006).

Appellate counsel was not ineffective in failing to raise issue of hearsay identification testimony because the testimony in question, if hearsay at all, was clearly admissible as a spontaneous statement. People v. Robinson, 217 Ill. 2d 43, 298 Ill. Dec. 37, 838 N.E.2d 930, 2005 Ill. LEXIS 1607 (2005).

Counsel was not ineffective for failing to challenge the admission of defendant's statements to police on the basis of his lengthy detention where his statements were voluntarily given and thus, admissible. While defendant was held an unusual amount of time without a hearing, police were diligently engaged in the investigation and the delay, by itself, did not render the statements involuntary. People v. Deloney, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 735 (1 Dist. July 28, 2005).

Defendant's pre-sentencing letter to the judge in which defendant raised the (possibly colorable) issue of trial counsel's ineffectiveness was sufficient to mandate that a hearing be held before such a post-trial motion could be dismissed; it did not matter that defendant failed to mention the letter in an allocution at sentencing. People v. Peacock, 359 Ill. App. 3d 326, 295 Ill. Dec. 563, 833 N.E.2d 396, 2005 Ill. App. LEXIS 775 (4 Dist. 2005).

Where defendant two argued that defense counsel was ineffective under Ill. Const. Art. I, § 8 in failing to tender a jury instruction on the defense of involuntary conduct, the argument failed; defendant two was not prejudiced by defense counsel's failure to tender such an instruction, as the instruction on knowingly stated that defendant two had to be consciously aware of defendant two's conduct, and defense counsel argued to the jury that defendant two did not knowingly attack the security officer due to defendant two's seizure. People v. Gill, 355 Ill. App. 3d 805, 292 Ill. Dec. 83, 825 N.E.2d 339, 2005 Ill. App. LEXIS 213 (4 Dist. 2005), appeal denied, 216 Ill. 2d 705, 298 Ill. Dec. 383, 839 N.E.2d 1030 (2005).

Defendant did not receive effective assistance of counsel at a hearing on a motion to suppress because his counsel did not object to the seizure by police, without a warrant or effective consent, of cocaine from a duffel bag which was zipped closed and identified as being defendant's sole property, so the trial court's denial of defendant's petition for postconviction relief was manifestly

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erroneous, and the guilty plea which defendant entered when his suppression motion was denied was vacated. People v. Miller, 346 Ill. App. 3d 972, 282 Ill. Dec. 462, 806 N.E.2d 759, 2004 Ill. App. LEXIS 305 (2 Dist. 2004).

Filing of a pretrial motion to suppress statements would not have been granted as defendant juvenile's confession was voluntary; thus, there was no ineffective assistance of counsel as the result of defense counsel's decision not to file a motion to suppress statements. People v. Haynie, 347 Ill. App. 3d 650, 283 Ill. Dec. 146, 807 N.E.2d 987, 2004 Ill. App. LEXIS 285 (1 Dist. 2004), appeal denied, 211 Ill. 2d 595, Ill. Dec. , 823 N.E.2d 972 (2004).

Although a per se conflict of interest existed where defense counsel had previously represented the State's witness, a confidential informant, concerning the facts alleged in defendant's case, defendant made a knowing and intelligent waiver of the potentially conflicted representation. The trial court abused its discretion by disregarding defendant's choice, which he had a constitutional right to make pursuant to Ill. Const., Art. I, § 8. People v. Ortega, 329 Ill. App. 3d 114, 263 Ill. Dec. 484, 768 N.E.2d 244, 2002 Ill. App. LEXIS 217 (1 Dist. 2002).

- In General

Circumstances of the seizure and interrogation of a person in connection with a crime, including the absence of the counsel and Miranda warnings, and the procurement of a confession violated the constitutional guarantees under the Illinois Constitution where the police went to the person's home, told her they needed her assistance in the investigation and, after the person accompanied the police to the station, was never told that she was free to leave and was continually interrogated until she confessed to a polygraph operator. United States ex rel. Daniels v. Baird, 326 F. Supp. 2d 909, 2004 U.S. Dist. LEXIS 14050 (N.D. Ill. 2004).

Where counsel conceded defendant's guilt during opening and closing arguments; although defense counsel conceded that the defendant had stolen merchandise, the record shows that he did not entirely fail to subject the State's case to meaningful adversarial testing, and, as a consequence, prejudice was not presumed People v. Taylor, 344 Ill. App. 3d 929, 280 Ill. Dec. 60, 801 N.E.2d 1005, 2003 Ill. App. LEXIS 1407 (1 Dist. 2003), appeal denied, 208 Ill. 2d 553, 284 Ill. Dec. 346, 809 N.E.2d 1292 (2004).

Right to have counsel present during questioning and the rule that all interrogation must cease once a suspect requests counsel are not themselves constitutional rights, but are simply "prophylactic measures" designed to safeguard the Fifth Amendment privilege against self-incrimination. People v. Winsett, 153 Ill. 2d 335, 180 Ill. Dec. 109, 606 N.E.2d 1186, 1992 Ill. LEXIS 179 (1992).

While an accused's right to counsel is absolute and unqualified, the right to choice of counsel is limited, although fundamental. People v. Burrell, 228 Ill. App. 3d 133, 170 Ill. Dec. 17, 592 N.E.2d 453 (1 Dist.), appeal denied, 146 Ill. 2d 634, 176 Ill. Dec. 806, 602 N.E.2d 460 (1992).

In balancing the judicial interest of trying the case with due diligence and the defendant's constitutional right to counsel of choice, the court must inquire into the actual request to determine whether it is being used merely as a delaying tactic. Factors to be considered are whether the defendant has been continuously in custody, whether he has informed the trial court of efforts to obtain counsel, and whether he has cooperated with appointed counsel even though dissatisfied with that counsel. People v. Burrell, 228 Ill. App. 3d 133, 170 Ill. Dec. 17, 592 N.E.2d 453 (1 Dist.), appeal denied, 146 Ill. 2d 634, 176 Ill. Dec. 806, 602 N.E.2d 460 (1992).

The right to effective assistance of counsel, as guaranteed by the sixth and fourteenth amendments of the U.S. Constitution and this section includes the right to have the undivided loyalty of counsel, free from any conflict of interest. People v. Taylor, 165 Ill. App. 3d 1016, 117 Ill. Dec. 556, 520 N.E.2d 907 (1 Dist. 1988).

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No error occurs when a trial court fails to advise a defendant of a right to represent himself unless that defendant has clearly and unequivocally expressed a desire to reject the assistance of counsel and to proceed to present his defense pro se. The manifestation of this desire must also be timely made; a defendant cannot await the eve of trial and then, hoping for a continuance, announce that he has decided to rely upon his skills rather than counsel's in presenting his defense. People v. Woodruff, 85 Ill. App. 3d 654, 40 Ill. Dec. 788, 406 N.E.2d 1155 (4 Dist. 1980).

Defendant is guaranteed the assistance of counsel under both the United States Constitution and the Illinois Constitution; in the event counsel is so incompetent as to undermine that right, defendant has been deprived of due process under certain circumstances. People v. Connor, 82 Ill. App. 3d 652, 37 Ill. Dec. 860, 402 N.E.2d 862 (1 Dist. 1980).

Neither the state Constitution, its statutes nor the common law require a trial court to permit a defendant to proceed both in person and by counsel. People v. Guthrie, 60 Ill. App. 3d 293, 17 Ill. Dec. 426, 376 N.E.2d 425 (4 Dist. 1978), aff'd, 79 Ill. App. 3d 403, 34 Ill. Dec. 731, 398 N.E.2d 406 (1979).

A person accused of a crime has the fundamental, constitutional right to assistance of counsel for his defense. People v. Hardemon, 46 Ill. App. 3d 1052, 5 Ill. Dec. 357, 361 N.E.2d 680 (1 Dist. 1977).

If counsel must represent conflicting interests, or is ineffective because of the burdens of representing more than one defendant, the injured defendant has been denied his constitutional right to effective counsel. People v. Craig, 47 Ill. App. 3d 242, 5 Ill. Dec. 413, 361 N.E.2d 736 (1 Dist. 1977).

A defendant's fundamental right to effective assistance of counsel requires that his attorney not represent conflicting interest. People v. Kester, 66 Ill. 2d 162, 5 Ill. Dec. 246, 361 N.E.2d 569 (1977).

The right to assistance by counsel is not satisfied by the mere formality of the appointment of an attorney by the court, but such right embraces effective representation throughout all stages of the trial and where the representation is of such low caliber as to amount to no representation or to reduce the trial to a farce, the guarantees of due process are violated. People v. Allen, 132 Ill. App. 2d 1015, 270 N.E.2d 54 (3 Dist. 1971).

In a criminal proceeding an accused has the right to the assistance of counsel and this right of representation extends to every stage of the trial. People v. Martin, 84 Ill. App. 2d 117, 228 N.E.2d 557 (1 Dist. 1967).

The right to the assistance of counsel as guaranteed by the Sixth Amendment to the U.S. Constitution and this section, is not based upon whether the defendant is rich or poor; it is a right with which we are all endowed. People v. Manikas, 87 Ill. App. 2d 227, 230 N.E.2d 577 (2 Dist. 1967).

The right to counsel is not a mere formality, but contemplates that only qualified persons will be permitted to defend in a court of justice the life or liberty of a person charged with a crime. People v. Cox, 12 Ill. 2d 265, 146 N.E.2d 19 (1957).

The right to representation by counsel is personal to a defendant and may be waived or claimed as he himself elects, and no duty rests upon the court to provide legal assistance for an accused unless he states upon oath his inability to procure counsel. People v. Bute, 396 Ill. 588, 72 N.E.2d 813 (1947), aff'd, 333 U.S. 640, 68 S. Ct. 763, 92 L. Ed. 986 (1948).

The right to be represented by counsel is a personal right which the defendant may waive or claim, as he himself may determine under former Ill. Const. (1870), Art. II, § 9 (see now this section). People v. Corbett, 387 Ill. 41, 55 N.E.2d 74 (1944); People v. Corrie, 387 Ill. 587, 56

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N.E.2d 767 (1944); People v. Batey, 392 Ill. 390, 64 N.E.2d 875 (1946); People v. Burson, 11 Ill. 2d 360, 143 N.E.2d 239 (1957).

- Actual Representation Decisive

Where the inmate argued in the postconviction petition that defense counsel was ineffective under Ill. Const. Art. I, § 8 for failing to object to testimony presented by the State at sentencing regarding criminal conduct by the inmate in another case and that appellate counsel was ineffective for failing to raise the issue on appeal, the postconviction petition was properly summarily dismissed pursuant to 725 ILCS 5/122-2.1(a)(2). The inmate's criminal conduct in another case could be considered at sentencing, and the evidence was properly presented through the testimony of a witness who could be cross-examined. People v. English, 353 Ill. App. 3d 337, 288 Ill. Dec. 922, 818 N.E.2d 857, 2004 Ill. App. LEXIS 1285 (3 Dist. 2004), appeal denied, 213 Ill. 2d 566, 293 Ill. Dec. 865, 829 N.E.2d 790 (2005), cert. denied, 544 U.S. 1064, 125 S. Ct. 2519, 161 L. Ed. 2d 1116 (2005).

For the purposes of this section, the fact of representation by counsel, and not the date of the order of appointment, is decisive. People v. DeLisle, 374 Ill. 437, 29 N.E.2d 600 (1940).

- Adverse Witness

It was not constitutionally and statutorily impermissible to allow the state to call respondent as an adverse witness at his own involuntary commitment proceeding pursuant to former section of the Civil Practice Act (see now 735 ILCS 5/2-1102) since such procedure did not violate his right to assistance of counsel guaranteed by the Federal and State Constitutions and by the Mental Health Code. People v. Nolan, 66 Ill. App. 3d 744, 23 Ill. Dec. 498, 384 N.E.2d 134 (1 Dist. 1978).

- Advice

There is no just reason why a defendant representing himself should not be allowed, within reasonable limitations imposed by the trial court, to obtain advice or information. People v. Martin, 84 Ill. App. 2d 117, 228 N.E.2d 557 (1 Dist. 1967).

- Applicability

Defendant charged with and convicted of multiple counts of first-degree murder could not show an automatic or per se violation of defendant's right to counsel pursuant to the Sixth Amendment to the United States Constitution, U.S. Const. amend. VI, or Ill. Const. art. I, § 8 where defendant's co-counsel was not a member of the Capital Litigation Trial Bar at the time pretrial proceedings were conducted in defendant's case. Lead counsel who supervised the co-counsel was a member of that bar, and co-counsel became a member of that bar during the trial. People v. Alvarez-Garcia, 395 Ill. App. 3d 719, 344 Ill. Dec. 59, 936 N.E.2d 588, 2009 Ill. App. LEXIS 1063 (1 Dist. 2009), appeal denied, 235 Ill. 2d 590, 924 N.E.2d 456, 2010 Ill. LEXIS 243 (2010).

An accused's invocation of his Sixth Amendment right to counsel as to a charged offense does not serve as an assertion of his fifth amendment Miranda right to have counsel present during custodial interrogation on crimes with which he has not yet been charged. People v. Allen, 221 Ill. App. 3d 737, 164 Ill. Dec. 453, 583 N.E.2d 7 (1 Dist. 1991).

Indigent defendant has no constitutional right to court-appointed counsel where he was not sentenced to imprisonment. People v. Kosyla, 143 Ill. App. 3d 937, 98 Ill. Dec. 823, 494 N.E.2d 945 (2 Dist. 1986).

A defendant is not entitled to the appointment of counsel under the federal Constitution, the Illinois Constitution or the Criminal Code unless the penalty imposed is imprisonment. People v.

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Guice, 83 Ill. App. 3d 914, 38 Ill. Dec. 837, 404 N.E.2d 261 (1 Dist. 1979), cert. denied, 450 U.S. 968, 101 S. Ct. 1487, 67 L. Ed. 2d 618 (1981).

Where the only point raised in defendant's petition for habeas corpus was venue and it was apparent on the face of the petition, the dismissal without hearing and without appointment of counsel was proper. People v. Goulet, 52 Ill. App. 3d 609, 10 Ill. Dec. 436, 367 N.E.2d 1045 (4 Dist. 1977).

The right to counsel applies only to post-indictment confrontations. People v. Estes, 37 Ill. App. 3d 889, 346 N.E.2d 469 (4 Dist. 1976).

- Appointed Counsel

Where the Illinois State's Attorney had a duty to defend the deputy sheriffs in the criminal case pursuant to 55 ILCS 5/3-9005(a)(4) but the State's Attorney had a per se conflict of interest that barred the State's Attorney's representation of the deputy sheriff's pursuant to 55 ILCS 5/3-9008 and under Ill. Const. Art. I, § 8 because the State's Attorney was also prosecuting the same case, the trial court was permitted under § 3-9008, but not required, to appoint a special State's Attorney to take the State's Attorney's place. People v. Lanigan, 353 Ill. App. 3d 422, 288 Ill. Dec. 894, 818 N.E.2d 829, 2004 Ill. App. LEXIS 1266 (1 Dist. 2004), appeal denied, 213 Ill. 2d 569, 293 Ill. Dec. 866, 829 N.E.2d 791 (2005).

-- Duty of Court

The trial court's duty to furnish counsel for the indigent prisoners is imposed both by statute, the Code of Criminal Procedure (725 ILCS 5/113-3), and by the Federal and State Constitutions. People ex rel. Conn v. Randolph, 35 Ill. 2d 24, 219 N.E.2d 337 (1966).

- Assertion of Right

It was error to summarily dismiss defendant's post-conviction petition because defendant stated the "gist" of constitutional claim of ineffective assistance of counsel by alleging that defendant's confession to arson was involuntary based on an offer of leniency and defendant's trial counsel failed to challenge the confession's admissibility. People v. Kellerman, 337 Ill. App. 3d 781, 272 Ill. Dec. 60, 786 N.E.2d 599, 2003 Ill. App. LEXIS 278 (3 Dist. 2003).

Defendant's statement that he intended to retain some unnamed attorney is an ambiguous assertion of his right to counsel. People v. Farrell, 181 Ill. App. 3d 446, 129 Ill. Dec. 636, 536 N.E.2d 476 (4 Dist.), appeal denied, 126 Ill. 2d 562, 133 Ill. Dec. 672, 541 N.E.2d 1110, cert. denied, 493 U.S. 872, 110 S. Ct. 202, 107 L. Ed. 2d 155 (1989).

- At Lineups

Each defendant had the constitutional right to be informed of his right to counsel at the lineups; moreover, the officers who conducted the defendants' lineups were obligated under the federal and state Constitutions to advise each defendant of his right to counsel at the lineup and that neither of them could be required to be a participant in a lineup in the absence of his counsel, should he choose to have his counsel present. People v. Coleman, 179 Ill. App. 3d 410, 128 Ill. Dec. 401, 534 N.E.2d 583 (1 Dist.), appeal denied, 126 Ill. 2d 562, 133 Ill. Dec. 672, 541 N.E.2d 1110 (1989).

- Attorney Fees Legislation

Assuming that the Governor had legislation awarding attorney's fees prepared and introduced, only the legislature has the power to pass such a bill; the Governor's executive power is limited to signing the bill into law. Kaplan v. Mahin, 79 Ill. App. 3d 848, 35 Ill. Dec. 481, 399 N.E.2d 315 (1 Dist. 1979).

- Avoidance of Trial

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A defendant is entitled to a speedy trial, and the courts will assure that he receives it or is discharged, but a defendant is not entitled to the assistance of his counsel to turn that right into a loophole to avoid trial. People v. Buckley, 164 Ill. App. 3d 407, 115 Ill. Dec. 428, 517 N.E.2d 1114 (2 Dist. 1987), appeal denied, 119 Ill. 2d 561, 119 Ill. Dec. 389, 522 N.E.2d 1248 (1988).

- Change of Counsel

Trial court did not abuse its discretion by removing defendant's attorney, as the attorney did not and likely could not tell the court when the attorney would return from vacation in Israel; the attorney's request that another attorney be appointed while the attorney was gone undermined the attorney's claim that the attorney was ready, willing, and able to represent defendant. People v. Baez, 241 Ill. 2d 44, 349 Ill. Dec. 165, 946 N.E.2d 359, 2011 Ill. LEXIS 432 (2011).

Parent whose rights had been terminated had not been deprived of an indigent parent's guarantee of counsel where the parent had been provided with three successive lawyers, each of whom had been fired or forced to withdraw rather than commit ethical violations; it did not violate the parent's rights to decline to appoint yet another lawyer. People v. Herman O. (In re Travarius O.), 343 Ill. App. 3d 844, 278 Ill. Dec. 792, 799 N.E.2d 510, 2003 Ill. App. LEXIS 1262 (1 Dist. 2003).

If a defendant moves to change counsel, it is within the trial court's sound discretion to grant or deny a continuance for the substitution of counsel. People v. Young, 207 Ill. App. 3d 130, 152 Ill. Dec. 67, 565 N.E.2d 309 (4 Dist. 1990), cert. denied, 137 Ill. 2d 672, 156 Ill. Dec. 568, 571 N.E.2d 155 (1991).

- Choice Denied

Where the defendant's chosen attorney stood willing and able to make an entry, he never discussed how prepared he was for trial, if he would need a continuance, and how lengthy that might have to be, and the public defender was fully prepared to proceed, all that was shown was the potential for an inconvenience to the administration of justice, which could not be deemed an unreasonable interference with the orderly process of judicial administration, so that the trial court's decision to deny defendant the counsel of his choice was an abuse of discretion. People v. Young, 207 Ill. App. 3d 130, 152 Ill. Dec. 67, 565 N.E.2d 309 (4 Dist. 1990), cert. denied, 137 Ill. 2d 672, 156 Ill. Dec. 568, 571 N.E.2d 155 (1991).

- Co-Defendants

Co-defendants should have a right to separate counsel if their positions are antagonistic, but such antagonism is not necessarily present, merely by virtue of such representation, in every instance where the same attorney represents two or more co-defendants. People v. Craig, 47 Ill. App. 3d 242, 5 Ill. Dec. 413, 361 N.E.2d 736 (1 Dist. 1977).

- Competency of Counsel

First defendant and second defendant convicted following a jury trial of first degree murder and attempted first degree murder did not show that they received ineffective assistance of trial counsel contrary to Ill. Const. art. I, § 8. In particular, they did not show that counsel acted deficiently in failing to object to the admission at trial of the grand jury testimony of several witnesses, as that testimony involved prior inconsistent statements that were not cumulative of the evidence the jury had before it and helped the jury to assess the credibility of the witnesses, which meant that trial counsel had not provided deficient performance in not objecting. People v. White, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1292 (1 Dist. Dec. 23, 2011).

Defendant failed in his argument that his attorney provided ineffective assistance by failing to move to sever the aggravated assault charge from the child pornography charges because there was no reasonable likelihood that defendant would have been acquitted of aggravated assault

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based upon the evidence. People v. Wayman, 379 Ill. App. 3d 1043, 319 Ill. Dec. 145, 885 N.E.2d 416, 2008 Ill. App. LEXIS 200 (1 Dist. 2008).

Incompetency of counsel was not shown where, contrary to defendant's claim, counsel called several witnesses to present evidence supporting his defense of others theory and vigorously defended the case at every stage of the proceedings. People v. Nunn, 357 Ill. App. 3d 625, 293 Ill. Dec. 871, 829 N.E.2d 796, 2005 Ill. App. LEXIS 422 (1 Dist. 2005), appeal denied, 216 Ill. 2d 719, 298 Ill. Dec. 386, 839 N.E.2d 1033 (2005).

In an action charging defendant with driving while under the influence of alcohol and improper lane usage, trial counsel was not deficient in eliciting testimony from the officer that he did not ask defendant about her medication status and did not think she was taking medication because such questioning could be fairly construed as a reasonable trial tactic. People v. Bock, 357 Ill. App. 3d 160, 293 Ill. Dec. 208, 827 N.E.2d 1089, 2005 Ill. App. LEXIS 386 (1 Dist. 2005), appeal denied, 216 Ill. 2d 696, 298 Ill. Dec. 380, 839 N.E.2d 1027 (2005).

An inmate adequately stated a claim of ineffective assistance of counsel where it was shown that, because he repeatedly refused to accept a guilty plea to a class X felony conviction and a 10-year sentence and then eventually accepted a plea bargain for a class one felony conviction and 12-year sentence, it could be inferred that defense counsel told him that by pleading guilty to a class one charge, he was eligible for work release and less actual time served; this was not true because he secured no greater opportunity for good-time credit than he otherwise would have, pursuant to 730 ILCS 5/3-6-3(a)(2), (2.1), and, also, his prior felony sentences disqualified him from receiving enhanced good-time credit for work release, based on 730 ILCS 5/3-6-3(a)(4). People v. Young, 355 Ill. App. 3d 317, 291 Ill. Dec. 45, 822 N.E.2d 920, 2005 Ill. App. LEXIS 65 (2 Dist. 2005).

Where defendant's initial request to view police reports was denied, and he had his attorney subpoena them and the police informed defendant that these reports were sent to his attorney one week after the subpoena was sent, counsel's failure to provide defendant with the reports was unreasonable conduct by an attorney and not a tactical decision within the attorney's discretion. People v. Smith, 268 Ill. App. 3d 574, 206 Ill. Dec. 308, 645 N.E.2d 313 (1 Dist. 1994), appeal denied, 161 Ill. 2d 537, 208 Ill. Dec. 367, 649 N.E.2d 423 (1995).

The trial court did not err in denying defendant's petition for post-conviction relief of his murder conviction where the trial counsel's failure to impeach the prosecution's eye-witness based on her prior statement did not amount to incompetency of counsel; and the conduct of appellate counsel and post-conviction counsel did not amount to incompetency for their failure to raise the issue at a subsequent time. People v. Scott, 94 Ill. App. 3d 159, 49 Ill. Dec. 785, 418 N.E.2d 805 (5 Dist. 1981).

The fact that the possibility of a plea of guilty was discussed between defendant and his attorney did not demonstrate the incompetence of defendant's appointed counsel, and was not a sufficient reason for the trial judge to grant defendant's request for a change of attorneys in the midst of the trial; therefore, defendant's contention that he was deprived of counsel of his own choice was without merit. People v. Scott, 20 Ill. 2d 324, 169 N.E.2d 763 (1960).

- Competency of Course

Dismissal of post-conviction relief petition upheld where petitioner's appellate counsel had not been ineffective in failing to argue the ineffectiveness of trial counsel. People v. McGhee, 337 Ill. App. 3d 992, 272 Ill. Dec. 509, 787 N.E.2d 324, 2003 Ill. App. LEXIS 319 (1 Dist. 2003).

- Conflict of Interest

Trial court did not err in dismissing defendant's postconviction petition for relief where he was unable to show that his counsel was laboring under a prohibited conflict of interest when he represented him at his preliminary hearing. People v. Scott, 355 Ill. App. 3d 741, 291 Ill. Dec.

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726, 824 N.E.2d 302, 2005 Ill. App. LEXIS 160 (3 Dist. 2005), appeal denied, 217 Ill. 2d 621, 300 Ill. Dec. 528, 844 N.E.2d 971 (2006).

Trial court abused its discretion in granting the State's motion to disqualify defense counsel because the incomplete record did not establish a substantial relationship between a state witness's civil matter and defendant's criminal prosecution; the record showed only that an attorney in defense counsel's law firm represented the state witness in a civil matter that was dismissed two years before defendant's case began. People v. Downey, 351 Ill. App. 3d 1008, 287 Ill. Dec. 112, 815 N.E.2d 756, 2004 Ill. App. LEXIS 1097 (2 Dist. 2004), appeal denied, 213 Ill. 2d 565, 293 Ill. Dec. 865, 829 N.E.2d 790 (2005).

Trial court improperly dismissed defendant's post-conviction claim on ineffective assistance of counsel where defendant had a right to expect that her requested counsel was acting completely in her interests and the allegations raised in her petition were sufficient to state a claim for ineffective assistance under Illinois due process guarantees. People v. Rish, 336 Ill. App. 3d 875, 271 Ill. Dec. 335, 784 N.E.2d 889, 2003 Ill. App. LEXIS 178 (3 Dist. 2003).

In a prosecution for aggravated criminal sexual assault, the defense counsel's representation was not ineffective even though he did not tell the defendant of the judge's potential conflict regarding the judge's prior representation of the victim's natural father, because the defendant failed to show how his counsel's action amounted to prejudice which would have materially effected the outcome of his trial. People v. Booker, 224 Ill. App. 3d 542, 166 Ill. Dec. 252, 585 N.E.2d 1274 (4 Dist.), appeal denied, 145 Ill. 2d 637, 173 Ill. Dec. 7, 596 N.E.2d 631 (1992).

-- In General

Hostility of interests is shown to exist when at trial a defendant's testimony is antagonistic to the interests of his co-defendant. People v. Taylor, 165 Ill. App. 3d 1016, 117 Ill. Dec. 556, 520 N.E.2d 907 (1 Dist. 1988).

For purposes of establishing ineffective assistance of counsel, merely showing that a strategy which was available to the defense was not used does not establish a conflict of interests. People v. Howard, 166 Ill. App. 3d 328, 116 Ill. Dec. 767, 519 N.E.2d 982 (1 Dist. 1988).

-- Joint Representation

Defendant did not show that defendant was entitled to relief on defendant's 725 ILCS 5/122-1 et seq. postconviction relief petition alleging that defendant received ineffective assistance of counsel in violation of Ill. Const. art. I, § 8 based on trial counsel's representation of both defendant and codefendant in a first-degree murder case. Defendant and codefendant both claimed that they were not guilty and did not blame each other, and, thus, defendant did not show that an actual conflict of interest existed or that trial counsel represented defendant in such a way as to avoid a conflict of interest. People v. Taylor, 237 Ill. 2d 356, 341 Ill. Dec. 445, 930 N.E.2d 959, 2010 Ill. LEXIS 282 (2010).

Once defendant testified that co-defendant said "kill everybody in the apartment, don't leave nobody," and that he "went off," her testimony clearly was antagonistic to his interests and in effect, she became a witness against him; consequently, the attorney could not fully and vigorously represent one of his clients without hurting the other. For this reason, neither defendant was provided with effective assistance of counsel because their attorney was in a duplicitous position where his full talents were restrained by his divided commitments. People v. Taylor, 165 Ill. App. 3d 1016, 117 Ill. Dec. 556, 520 N.E.2d 907 (1 Dist. 1988).

-- Loyalty Required

Every person charged with a criminal offense in the State of Illinois is entitled to effective counsel who gives undivided loyalty to the accused; counsel whose loyalty to the accused is burdened by his commitment to another, is not effective. People v. Franklin, 60 Ill. App. 3d 905, 18 Ill. Dec.

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267, 377 N.E.2d 556 (3 Dist. 1978), rev'd on other grounds, 75 Ill. 2d 173, 25 Ill. Dec. 809, 387 N.E.2d 685 (1979).

-- Per Se Rule

Where defendant's court-appointed defense counsel also previously served in the same criminal proceeding as the prosecuting assistant State's Attorney, a possible conflict of interests existed and fairness to both the accused as well as his attorney dictated application of a per se rule which meant it was unnecessary for the defendant to show actual prejudice in order to be entitled to a reversal of his conviction. People v. Lawson, 163 Ill. 2d 187, 206 Ill. Dec. 119, 644 N.E.2d 1172 (1994).

-- Prohibited

The right to have effective counsel entitles the accused to the undivided loyalty of counsel, free from any conflict of interest. People v. Lee, 271 Ill. App. 3d 1093, 208 Ill. Dec. 401, 649 N.E.2d 457 (1 Dist. 1995), appeal denied, 163 Ill. 2d 576, 212 Ill. Dec. 431, 657 N.E.2d 632 (1995).

The right to effective assistance of counsel as guaranteed by U.S. Const., Amends. VI and XIV, and this section includes the right to have undivided loyalty of counsel, free from any conflict of interest. People v. Vaughn, 200 Ill. App. 3d 765, 146 Ill. Dec. 516, 558 N.E.2d 479 (1 Dist. 1990).

- Considerations

In ruling on a motion for self-representation, the trial court must determine whether the defendant has the requisite capacity to make an intelligent and knowing waiver of his right to counsel. The criteria generally considered in making that decision include the defendant's age, level of education, mental capacity and prior involvement, if any, in legal proceedings. People v. Davis, 169 Ill. App. 3d 1, 119 Ill. Dec. 697, 523 N.E.2d 165 (2 Dist. 1988).

- Continuances

Where the court closely questioned defendant to determine whether defendant's request was a delaying tactic, the court determined defendant did not know the attorney's name and was not certain whether he would have enough money to retain the attorney and defendant had not in fact retained the attorney, so his statements about when the attorney would make an entry of appearance and how much he would charge remained mere speculation, the trial court did not abuse its discretion in denying defendant's motion for continuance to retain counsel. People v. Jones, 269 Ill. App. 3d 925, 207 Ill. Dec. 381, 647 N.E.2d 612 (4 Dist. 1995).

Where the defendant was granted two continuances to prepare for trial and there was no showing that the defendant was prejudiced in any way by the failure to grant a third continuance, the trial court did not abuse its discretion in denying defendant a third continuance to prepare for trial because the right to a reasonable time to prepare for trial cannot be construed to permit a defendant to postpone his trial date indefinitely by changing counsel on the day of trial. People v. Crawford, 23 Ill. 2d 605, 179 N.E.2d 667 (1962).

Where, appointed defense counsel made no motion for a continuance, either written or oral and he did not ask the court for time in which to prepare such motion, and he was not in a position to ask the court to reverse judgment on the ground that a continuance was not granted. People v. Kowalski, 332 Ill. 167, 163 N.E. 399 (1928).

- Conviction Upheld

Where the court did not inquire as to whether defendant was able to employ counsel and did not appoint counsel to represent him prior to and during his arraignment, conviction was not reversible error as the record showed he was represented by counsel at each stage of the

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proceedings, except at his arraignment when he pleaded not guilty. People v. Moore, 405 Ill. 220, 89 N.E.2d 731 (1950).

- Counsel Held Competent

Trial counsel was not ineffective for failing to file a pretrial motion to suppress where defendant's confession, made after an intelligent waiver of Miranda rights, was voluntary People v. Harrison, 366 Ill. App. 3d 210, 303 Ill. Dec. 254, 851 N.E.2d 152, 2006 Ill. App. LEXIS 392 (1 Dist. 2006), aff'd, 226 Ill. 2d 427, 877 N.E.2d 432, 2007 Ill. LEXIS 1692 (2007).

Claim that trial counsel was ineffective lacked merit because counsel was not ineffective for failing to challenge "by agreement" continuances because the defense needed the search warrant the State sought to find in order to attack the legality of the search, nor was counsel ineffective for failing to file a motion to suppress where defendant failed to provide the appellate court with any indication of why the police lacked probable cause to search the apartment and defendant. People v. Stewart, 366 Ill. App. 3d 101, 303 Ill. Dec. 485, 851 N.E.2d 672, 2006 Ill. App. LEXIS 401 (1 Dist. 2006).

Counsel was not ineffective for failing to request that the judge instruct the jury that the officers' testimony that they smelled anhydrous ammonia at the scene could not constitute proof that the substance was, in fact, anhydrous ammonia because the testimony was the only realistic way to identify anhydrous ammonia and thus, had such an instruction been tendered, it would properly have been refused. People v. Glisson, 359 Ill. App. 3d 962, 296 Ill. Dec. 307, 835 N.E.2d 162, 2005 Ill. App. LEXIS 892 (5 Dist. 2005).

Trial strategy generally encompasses counsel's decisions as to when and to what matters objection should be made; Even if evidence is clearly inadmissible, incompetency of counsel is not established by mere failure to object to such evidence; defendant is entitled to competent, not perfect or successful, representation. People v. Martinez, 348 Ill. App. 3d 521, 284 Ill. Dec. 546, 810 N.E.2d 199, 2004 Ill. App. LEXIS 520 (1 Dist. 2004), appeal denied, 211 Ill. 2d 601, Ill. Dec. , 823 N.E.2d 974 (2004).

- Counsel of Choice

While the right to counsel, itself, is absolute and unqualified, the right to choice of counsel is limited. People v. Spurlark, 67 Ill. App. 3d 186, 23 Ill. Dec. 860, 384 N.E.2d 767 (1 Dist. 1978).

The right to counsel guaranteed by both Federal and State Constitutions includes the right to be represented by counsel of one's choice or if indigent to have counsel appointed by the court. People v. Gardner, 47 Ill. App. 3d 529, 5 Ill. Dec. 701, 362 N.E.2d 14 (5 Dist. 1977).

Courts have qualified the right to counsel when dealing with court-appointed counsel for indigents; as an indigent defendant does not have the right to choose his court-appointed counsel. People v. Gardner, 47 Ill. App. 3d 529, 5 Ill. Dec. 701, 362 N.E.2d 14 (5 Dist. 1977).

In the proper exercise of discretion, depending on the circumstances, a defendant can be denied the opportunity to obtain counsel of his choice. People v. Edmondson, 30 Ill. App. 3d 763, 332 N.E.2d 493 (1 Dist. 1975).

Defendant was represented by counsel of his choice where he, without any expression to the contrary, appeared with an attorney in court and treated him as his lawyer. People v. Colon, 9 Ill. App. 3d 989, 293 N.E.2d 468 (1 Dist. 1973).

Important as it is, enjoyment of the right to be represented by counsel of one's choice is not absolute. People v. MacArthur, 2 Ill. App. 3d 1077, 278 N.E.2d 530 (1 Dist. 1971).

Where trial judge compelled defendant to discharge counsel of his own choice, who also represented a co-defendant, or waive his right to a severance, defendant was deprived of the

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right to counsel of his own choice and defendant's judgment of conviction would be reversed on this ground. People v. Friedrich, 20 Ill. 2d 240, 169 N.E.2d 752 (1960).

When a defendant selects his own attorney, or where, as in intelligent and competent person, he acquiesces in the selection by another, he is himself responsible if that counsel does not faithfully serve his interests, and he cannot later contend he was denied due process of law because of his lawyer's shortcomings, unless the representation was of such caliber as to reduce the proceedings to a farce or a sham, and the same rule must apply where the defendant's chosen attorney later proves to be only an attorney in fact or a layman, for if it were otherwise, an accused would be tempted to seek unlicensed and unqualified representation in the hope of gaining acquittal, but with the assurance of gaining a new trial even if convicted. People v. Cox, 12 Ill. 2d 265, 146 N.E.2d 19 (1957).

It is mandatory that the accused be given a full opportunity to select and employ his own attorney. People v. Burson, 11 Ill. 2d 360, 143 N.E.2d 239 (1957).

- Counsel Defined

The term "counsel," means a duly licensed and qualified lawyer, and not an attorney in fact or a layman. People v. Cox, 12 Ill. 2d 265, 146 N.E.2d 19 (1957).

- Counsel Held Competent

As defendant's lawyers discharged their professional responsibilities with competence, defendant was not denied his constitutionally guaranteed right to effective assistance of counsel. People v. Colon, 9 Ill. App. 3d 989, 293 N.E.2d 468 (1 Dist. 1973).

- Cross-Examination

-- Scope

Trial court's limitation of defendant's cross-examination of a witness who had a son with the victim regarding an alleged lawsuit concerning insurance policy proceeds potentially payable to the son did not violate defendant's Ill. Const. art. I, § 8 right to confrontation in a case where defendant was convicted of first-degree murder and procuring another person to commit a murder for money after defendant obtained a large life insurance policy proceeds on the victim and had him killed so defendant could receive the proceeds. Any alleged motive of the witness to testify falsely based on the alleged lawsuit was simply too remote and uncertain to allow more extensive cross-examination. People v. Leak, 398 Ill. App. 3d 798, 338 Ill. Dec. 767, 925 N.E.2d 264, 2010 Ill. App. LEXIS 156 (1 Dist. 2010).

- Denial of Access

The court rejected the defendant's contention that his right to counsel was violated when the police department failed to inform him of his attorney's efforts to reach him and that, therefore, his statements to the police had to be suppressed as the trial court specifically found that the defendant's attorney did not show up at the police station until after the defendant had already given his statements and that the attorney did not ask to speak to the defendant or give any directions regarding the defendant when he called the station to inquire as to the defendant's whereabouts. People v. Watson, Ill. App. 3d , Ill. Dec. , N.E.2d , 2000 Ill. App. LEXIS 695 (2 Dist. Aug. 22, 2000), appeal denied, 192 Ill. 2d 707, 252 Ill. Dec. 84, 742 N.E.2d 334 (2000).

- Denial of Counsel

Although a student who has not complied with the requirements of Ill. Sup. Ct. R. 711 is not counsel for constitutional purposes, where the supervising attorney properly supervises the law student and remains responsible for the representation, as Rule 711 requires, the defendant has not been denied counsel; to the extent that People v. Schlaiss, 174 Ill. App. 3d 78 (1988), is

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inconsistent with this holding, it is overruled. Conversely, where the defendant is entitled to counsel but the law student appears alone in violation of the rule, the defendant clearly has been denied counsel. People v. Denzel W., 237 Ill. 2d 285, 341 Ill. Dec. 460, 930 N.E.2d 974, 2010 Ill. LEXIS 283 (2010).

- Determination of Competency

Illinois employs a two-prong test for determining the competency of legal counsel. Under this test, a defendant bears the burden of proving his case was so seriously prejudiced by the deficient conduct of counsel that a just result was not produced at trial. People v. Hamilton, 195 Ill. App. 3d 391, 141 Ill. Dec. 909, 552 N.E.2d 277 (4 Dist.), cert. denied, 132 Ill. 2d 549, 144 Ill. Dec. 261, 555 N.E.2d 380 (1990).

A reviewing court has authority to examine the trial record in order to determine the competency of counsel even though that individual was selected by the defendant; after examining the record it must be determined if the representation received by the defendant was so grossly inadequate as to reduce the proceedings to a farce, or was the caliber of representation afforded the defendant such as would deprive the defendant of any chance of being found not guilty. People v. Allen, 132 Ill. App. 2d 1015, 270 N.E.2d 54 (3 Dist. 1971).

The mere failure to solicit or elicit evidence or testimony from the defendant did not mean that counsel was incompetent or that defendant was deprived of his right to representation. People v. Rednour, 43 Ill. 2d 307, 253 N.E.2d 414 (1969).

- Dilatory Tactics

A defendant's dilatory tactics prior to trial may constitute an effective waiver of counsel. Although an accused does have the right to be represented by counsel of his choice, this right may not be used to indefinitely thwart the administration of justice or delay the effective prosecution of trial. People v. Guice, 83 Ill. App. 3d 914, 38 Ill. Dec. 837, 404 N.E.2d 261 (1 Dist. 1979), cert. denied, 450 U.S. 968, 101 S. Ct. 1487, 67 L. Ed. 2d 618 (1981).

- Discretion of Court

At what point a defendant's right to select counsel unreasonably interferes with the orderly process of judicial administration, necessarily depends upon the particular facts and circumstances surrounding each case and is a matter which lies within the sound judicial discretion of the trial court. People v. Young, 207 Ill. App. 3d 130, 152 Ill. Dec. 67, 565 N.E.2d 309 (4 Dist. 1990), cert. denied, 137 Ill. 2d 672, 156 Ill. Dec. 568, 571 N.E.2d 155 (1991).

The granting or the denial of a motion for a continuance to retain private counsel rests with the discretion of the circuit court. People v. Capers, 186 Ill. App. 3d 367, 134 Ill. Dec. 349, 542 N.E.2d 528 (4 Dist. 1989).

- Dissolution Action

Neither the federal nor the state constitution provide incarcerated husband with a right to counsel in a dissolution of marriage action brought by wife. In re Schmidt, 241 Ill. App. 3d 47, 182 Ill. Dec. 43, 609 N.E.2d 345 (3 Dist. 1993).

- Duty of Court

Trial court was under no obligation to make a Krankel inquiry to determine whether new counsel should be appointed for defendant who had been convicted of a drug offense charge in a bench trial and whose sentence was enhanced based on prior convictions. The statement defendant made at sentencing about not accepting the State's plea offer and the hardship that extended sentencing would impose on defendant and defendant's family did not provide a clear basis for determining that defendant was making an Ill. Const. Art. I, § 8 ineffective assistance of counsel

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claim. People v. Taylor, 237 Ill. 2d 68, 340 Ill. Dec. 161, 927 N.E.2d 1172, 2010 Ill. LEXIS 656 (2010).

Once a defendant raised specific facts supporting the existence of a conflict in his legal representation, the trial court had a duty to conduct an inquiry to determine the necessity of appointing alternate counsel. People v. Vaughn, 200 Ill. App. 3d 765, 146 Ill. Dec. 516, 558 N.E.2d 479 (1 Dist. 1990).

A court which has appointed counsel to represent an accused has the duty to refrain from requiring appointed counsel to represent, concurrently, co-defendants whose interests diverge from those of the accused, when the possibility of that divergence is brought home to the court. People v. Hardemon, 46 Ill. App. 3d 1052, 5 Ill. Dec. 357, 361 N.E.2d 680 (1 Dist. 1977).

No duty rested upon the trial judge to tender the services of an attorney to defendant unless he made a request, under oath, that he was unable to procure counsel. People v. Batey, 392 Ill. 390, 64 N.E.2d 875 (1946).

No duty rests upon the trial court to provide counsel for a defendant unless he states, upon oath, that he is unable to procure counsel. People v. Corrie, 387 Ill. 587, 56 N.E.2d 767 (1944).

There is no requirement that the trial court provide counsel in the absence of a showing that the defendant is unable to procure counsel. People v. Withey, 387 Ill. 418, 56 N.E.2d 784 (1944).

- Effective Assistance

Defendant failed to show that his counsel was ineffective in failing to call him as a witness. He presented no evidence showing that his trial counsel refused to allow him to testify; instead, at the hearing on his motion for a new trial, he testified that counsel did not say to testify and he did not say not to testify. People v. McCleary, 353 Ill. App. 3d 916, 289 Ill. Dec. 173, 819 N.E.2d 330, 2004 Ill. App. LEXIS 1389 (4 Dist. 2004), appeal denied, 213 Ill. 2d 570, 293 Ill. Dec. 867, 829 N.E.2d 792 (2005).

When defendant's probation officer observed cash and what looked like bags of marijuana when he was standing on the door step about to make a home visit, the observation created a reasonable suspicion that defendant had violated his probation order and criminal activity was occurring and the reasonable suspicion was clearly sufficient to justify the search of defendant's home. A motion to dismiss the evidence would have been futile and defendant was not denied effective assistance of trial counsel when he failed to move to suppress the evidence. People v. McCleary, 353 Ill. App. 3d 916, 289 Ill. Dec. 173, 819 N.E.2d 330, 2004 Ill. App. LEXIS 1389 (4 Dist. 2004), appeal denied, 213 Ill. 2d 570, 293 Ill. Dec. 867, 829 N.E.2d 792 (2005).

Defendant was not entitled to a lesser-included offense instruction for second-degree murder with provocation based on either a theory of adultery (neither provocative acts nor a marital-type relationship were shown) or mutual combat (since defendant's conduct was out of all proportion to the victim's alleged aggression); therefore, counsel, who did request an instruction regarding self-defense, was not ineffective in failing to request a provocation instruction. People v. Sutton, 353 Ill. App. 3d 487, 288 Ill. Dec. 858, 818 N.E.2d 793, 2004 Ill. App. LEXIS 1245 (1 Dist. 2004).

-- Counsel

Alleged failure of defense counsel to ensure that an expert witness, a doctor, in defendant's death penalty case used the term "disturbance" in the expert's report or at his deposition did not show that defendant received ineffective assistance of counsel in violation of Ill. Const. art. I, § 2 despite the fact that defendant was seeking such an opinion to support defendant's claim of the existence of a mitigating factor. Defendant did not cite any case in which it was shown that defense counsel should or must elicit expert testimony in conformity with the precise language of the statutory mitigating factor, and, thus, defendant did not show that counsel's performance fell

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below an objective standard of reasonableness. People v. Ramsey, 239 Ill. 2d 342, 347 Ill. Dec. 588, 942 N.E.2d 1168, 2010 Ill. LEXIS 1534 (2010).

-- Shown

Defendant received a fair trial because evidence of other offenses against a victim was admissible as an integral and natural part of the victim's description of the circumstances surrounding defendant's aggravated battery of a police officer; probative evidence did not have to be excluded merely because it was unflattering to defendant. Defendant was unable to establish plain error for the admission of the evidence or ineffective assistance of counsel based on a failure to object. People v. Rutledge, 409 Ill. App. 3d 22, 350 Ill. Dec. 236, 948 N.E.2d 305, 2011 Ill. App. LEXIS 397 (1 Dist. 2011).

In a sexual assault case, counsel was not ineffective for allegedly not viewing the crime scene to show that the victim was mistaken about the lighting because counsel asked the victim questions related to the lighting in the park, an officer agreed that the park was "not a well lit park," and the victim testified to a clear and unobstructed view of her assailants' faces. People v. Lacy, 407 Ill. App. 3d 442, 347 Ill. Dec. 1013, 943 N.E.2d 303, 2011 Ill. App. LEXIS 90 (1 Dist. 2011), appeal denied, 2011 Ill. LEXIS 2050 (Ill. 2011).

In a sexual assault case, trial counsel was not ineffective in failing to present an alibi witness because the witness was a relative of defendant's, and further, her affidavit indicated that defendant was not permitted to go to Chicago Heights; however, when defendant was arrested, he was in Chicago Heights. Thus, even from the face of the affidavit, there was a contradiction between the statements in the affidavit and the evidence. People v. Lacy, 407 Ill. App. 3d 442, 347 Ill. Dec. 1013, 943 N.E.2d 303, 2011 Ill. App. LEXIS 90 (1 Dist. 2011), appeal denied, 2011 Ill. LEXIS 2050 (Ill. 2011).

In a sexual assault case, trial counsel was not ineffective in his cross-examination of the victim regarding her identification of defendant because counsel asked the victim about her degree of attention when the men initially approached her. Counsel focused extensively on the victim's identification during closing arguments, emphasizing that she had never seen defendant before, that the incident occurred at night with poor lighting, and that the victim was unable to immediately provide a description of defendant. People v. Lacy, 407 Ill. App. 3d 442, 347 Ill. Dec. 1013, 943 N.E.2d 303, 2011 Ill. App. LEXIS 90 (1 Dist. 2011), appeal denied, 2011 Ill. LEXIS 2050 (Ill. 2011).

Summary dismissal of a post-conviction petition was proper because a claim of ineffectiveness of counsel based on an alleged failure to allow appellant to testify was frivolous; a proper transcript was not provided, there was a basis for presuming that appellant was admonished of his right to testify, and prejudice was not shown since there was overwhelming evidence of guilt. Appellant's bond slip was found at the murder scene with a victim's blood on it, appellant traded the victim's cellular phone for narcotics, appellant had the victim's keys and credit card in his possession, appellant had blood on one of his shoes, and bloody footprints were found at the murder scene. People v. Deloney, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1386 (1 Dist. July 23, 2008).

Defendant did not show that he received ineffective assistance of counsel regarding his counsel's cross-examination of witnesses about what defendant's accomplice had to say about defendant's participation in the crimes for which defendant was on trial. Ample evidence supported the jury's verdicts against defendant even without the jury being made aware of the accomplice's statement and, thus, defendant could not prove the prejudice prong of the ineffective assistance of counsel test. People v. Hopkins, 363 Ill. App. 3d 971, 300 Ill. Dec. 772, 845 N.E.2d 661, 2006 Ill. App. LEXIS 193 (1 Dist. 2006).

Defendant's conviction for aggravated criminal sexual abuse in violation of 720 ILCS 5/12-16(d) was improper because he was denied his right to the effective assistance of counsel. Defense counsel not only elicited testimony that reinforced the victim's claim that he had been sexually

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assaulted and abused, but also failed to request a limiting jury instruction on how to use the evidence of other crimes adduced at trial. People v. Gomez, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 1367 (1 Dist. Mar. 31, 2005).

Defendant's conviction for criminal sexual assault was improper because he was denied his right to the effective assistance of counsel. Defense counsel not only elicited testimony that reinforced the victim's claim that he had been sexually assaulted and abused, but also failed to request a limiting jury instruction on how to use the evidence of other crimes adduced at trial. People v. Gomez, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 1367 (1 Dist. Mar. 31, 2005).

Defendant did not show that he received ineffective assistance of counsel; in particular, he did not show that his trial counsel's alleged failure to challenge the jury selection process, which only had one African-American prospective juror in a venire of 48, violated defendant's constitutional right to have a fair-cross-section of the community decide his case, as defendant did not make the required showing that there was evidence of systematic and purposeful exclusion of African-Americans, which meant showing a pattern of underrepresentation, or that the outcome of defendant's case would have been different had there been a different racial composition on the jury. People v. Bradley, 348 Ill. App. 3d 677, 284 Ill. Dec. 704, 810 N.E.2d 494, 2004 Ill. App. LEXIS 525 (1 Dist. 2004), appeal denied, 211 Ill. 2d 586, Ill. Dec. , 823 N.E.2d 969 (2004).

Defendant suffered no prejudice and did not receive ineffective assistance of counsel where there was no evidence in the record that a certain witness would have testified that the victim told the witness that the victim told defendant that the victim was 18 years old, and even if the witness would have testified that the victim told the witness that the victim was 16 at the time of the sexual encounters, the witness's testimony would not have supported defendant's defense because at 16 years of age the victim would have been unable to consent to sex. People v. Garner, 347 Ill. App. 3d 578, 283 Ill. Dec. 460, 808 N.E.2d 10, 2004 Ill. App. LEXIS 277 (1 Dist. 2004), appeal denied, 216 Ill. 2d 705, 298 Ill. Dec. 382, 839 N.E.2d 1029 (2005).

Record on post-conviction appeal substantively rebutted defense counsel's allegation that counsel on direct appeal was ineffective for failing to challenge defendant's felony murder conviction because even if any error occurred regarding that conviction, it was harmless and in no way prejudiced defendant, since (1) the judge merged defendant's felony murder conviction with a conviction for knowing murder pursuant to the one-act, one-crime rule and sentenced defendant to 45 years for the crime of first-degree knowing murder under 720 ILCS 5/9-1(a)(2); (2) defendant received no additional sentence for the felony murder conviction; and (3) the court had already determined that there was sufficient evidence to prove defendant guilty beyond a reasonable doubt of first-degree murder. People v. Boyd, 347 Ill. App. 3d 321, 283 Ill. Dec. 34, 807 N.E.2d 639, 2004 Ill. App. LEXIS 264 (1 Dist. 2004), appeal denied, 211 Ill. 2d 586, Ill. Dec. , 823 N.E.2d 969 (2004).

Trial counsel was not ineffective pursuant to Ill. Const., Art. I, § 8 for failing to call a witness, the inmate's cousin, who allegedly would have presented exculpatory evidence in the form of testimony that the cousin spoke with the inmate where the murder allegedly took place before the murder and burglary and saw the inmate tell one of the inmate's alleged accomplices to get off a truck that the inmate was later accused of robbing; this testimony was not exculpatory, as the inmate's cousin left the scene before the murder and burglary occurred, and this testimony actually harmed the inmate by corroborating the testimony of the State's witnesses regarding the inmate's role and position at the scene. People v. Broughton, 344 Ill. App. 3d 232, 279 Ill. Dec. 149, 799 N.E.2d 952, 2003 Ill. App. LEXIS 1328 (1 Dist. 2003), appeal denied, 207 Ill. 2d 608, 283 Ill. Dec. 136, 807 N.E.2d 977 (2004).

Defendant took the stand and acknowledged with great detail defendant's involvement in the sale of drugs to the victim and another, and because defendant testified to the evidence of other crimes, it was unlikely a limiting instruction would have affected the ultimate outcome of the matter; thus, because defendant could not prove prejudice, defendant received effective

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assistance of counsel. People v. Figueroa, 341 Ill. App. 3d 665, 275 Ill. Dec. 941, 793 N.E.2d 712, 2003 Ill. App. LEXIS 824 (1 Dist. 2003).

Defendant did not show that he received ineffective assistance of counsel, as he did not show that a reasonable probability existed that the outcome of his trial would have been different had his counsel objected to any comments made during the prosecutor's closing arguments; since defendant was not prejudiced it cannot be said that the trial strategy of defense counsel denied defendant the effective assistance of counsel. People v. Simmons, 342 Ill. App. 3d 185, 276 Ill. Dec. 745, 794 N.E.2d 995, 2003 Ill. App. LEXIS 977 (2 Dist. 2003).

Defendant received effective assistance of counsel under the Sixth Amendment where: (1) defense counsel negotiated a plea agreement enabling defendant to plead not guilty due to insanity to attempted murder and aggravated battery; (2) the trial court admonished defendant at the time her plea was entered that a long-term involuntary commitment was a distinct possibility; (3) had the case gone to trial defendant would have been convicted given the overwhelming State's evidence; (4) while defendant did not want to be confined to a mental health center, such an outcome was not available to her; and (5) given defendant's prior convictions and history of mental illness and violence, a recommendation that defendant receive outpatient treatment was highly improbable, and defendant could not show that she was prejudiced by defense counsel's comment that being involuntarily admitted was in defendant's best interests. People v. Dutton, 342 Ill. App. 3d 323, 277 Ill. Dec. 5, 795 N.E.2d 372, 2003 Ill. App. LEXIS 969 (5 Dist. 2003).

Defendant failed to make gist of a constitutional argument based on ineffective assistance of counsel where defendant could not show prejudice at all and, in addition, all counsel's decisions regarding presentation of witnesses made reasonable strategic sense. People v. Deloney, 341 Ill. App. 3d 621, 275 Ill. Dec. 709, 793 N.E.2d 189, 2003 Ill. App. LEXIS 829 (1 Dist. 2003).

Defendant charged with sexual abuse and child pornography involving several different young people failed to show prejudice, in the form of a different outcome, from counsel's failure to move to sever charges involving a child who was several years younger than the others; in the absence of prejudice, argument that trial counsel was ineffective in failing to move for severance was unsuccessful. People v. Gonzalez, 339 Ill. App. 3d 914, 274 Ill. Dec. 486, 791 N.E.2d 578, 2003 Ill. App. LEXIS 719 (2 Dist. 2003).

Defense counsel's election not to utilize jury instruction on presumption of driving under the influence was consistent with trial strategy and did not constitute ineffective assistance. People v. Barker, 298 Ill. App. 3d 751, 232 Ill. Dec. 854, 699 N.E.2d 1039 (1 Dist. 1998), appeal denied, 181 Ill. 2d 576, 235 Ill. Dec. 943, 706 N.E.2d 498 (1998).

Defense counsel's limited cross examination of passenger was a trial tactic to support the defense theory that defendant was not driving at the time of the accident and thus was properly characterized as trial strategy and ineffective. People v. Barker, 298 Ill. App. 3d 751, 232 Ill. Dec. 854, 699 N.E.2d 1039 (1 Dist. 1998), appeal denied, 181 Ill. 2d 576, 235 Ill. Dec. 943, 706 N.E.2d 498 (1998).

Defendant's petition and supporting affidavits made a substantial showing that defense counsel's limited presentation of mitigating evidence at the sentencing hearing was not the result of a strategic decision preceded by a reasonable investigation and was deficient, prejudicing defendant. People v. Towns, 182 Ill. 2d 491, 231 Ill. Dec. 557, 696 N.E.2d 1128 (1998).

While trial counsel erred initially by failing to anticipate the value of certain evidence regarding defendant's insanity defense until he reviewed the state's impeachment materials and after he had raised the issue in his opening argument, that error was not incompetence, nor was his failure to introduce evidence of the insanity defense. People v. Whitehead, 169 Ill. 2d 355, 215 Ill. Dec. 164, 662 N.E.2d 1304 (1996), cert. denied, 519 U.S. 1030, 117 S. Ct. 587, 136 L. Ed. 2d 517 (1996), overruled, People v. Coleman, 183 Ill. 2d 366, 233 Ill. Dec. 789, 701 N.E.2d 1063 (1998).

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Trial counsel was not ineffective because he presented two inconsistent defenses, where trial counsel's opening statement did not concede defendant's commission of criminal acts, but left the jury with the impression defendant's mental state made it impossible for him to commit the crime and because there was no evidence of insanity or intoxication presented, the jury was never in the position to actually resolve any inconsistencies between any insanity and reasonable doubt defenses. People v. Whitehead, 169 Ill. 2d 355, 215 Ill. Dec. 164, 662 N.E.2d 1304 (1996), cert. denied, 519 U.S. 1030, 117 S. Ct. 587, 136 L. Ed. 2d 517 (1996), overruled, People v. Coleman, 183 Ill. 2d 366, 233 Ill. Dec. 789, 701 N.E.2d 1063 (1998).

Where all the actions, strategies and theories tendered by counsel were reasonable, defendant did not meet his burden in proving that trial counsel's assistance was ineffective. People v. Newbern, 276 Ill. App. 3d 623, 213 Ill. Dec. 376, 659 N.E.2d 6 (1 Dist. 1995), appeal denied, 166 Ill. 2d 549, 216 Ill. Dec. 8, 664 N.E.2d 645 (1996).

-- Test

Defendant charged with first-degree murder could not show that the State improperly cross-examined defense witnesses because defendant was incorrect in arguing that the State's questions and comments impugned their moral character; instead, the State was exploring their bias in defendant's favor. Too, defendant could not show that defense counsel provided Ill. Const. art. I. § 8 ineffective assistance of counsel by not objecting to all of the challenged cross-examination questions and comments, as overwhelming evidence supported defendant's guilt and, thus, defendant could not show that but for the challenged questions and comments, the jury would have found defendant not guilty. People v. Brazziel, 406 Ill. App. 3d 412, 345 Ill. Dec. 809, 939 N.E.2d 989, 2010 Ill. App. LEXIS 1243 (1 Dist. 2010).

Defendant did not show that defendant received ineffective assistance of counsel in violation of either the Sixth Amendment, U.S. Const. amend. VI, or Ill. Const. art. I, § 8 in a case where defendant's trial counsel conceded that defendant burglarized the victim's residence, but left before another, unknown person brutally murdered the victim there. Although defendant claimed that defendant's trial counsel should not have made such a concession, the unsuccessful tactic was a strategic maneuver by defense counsel in light of the fact that defendant conceded both the murder and the residential burglary to police in a videotaped interview and defendant did not even argue that defendant had been prejudiced by trial counsel's tactic given the evidence against defendant. People v. Adkins, 239 Ill. 2d 1, 346 Ill. Dec. 11, 940 N.E.2d 11, 2010 Ill. LEXIS 1543 (2010).

Defendant was entitled to a new trial on the charge against defendant of possession of a controlled substance, as trial counsel's failure to object to the impeachment of defendant through introduction of a prior conviction for possession of a controlled substance with the intent to deliver for which defendant was released more than 10 years before defendant's current trial meant that defendant received ineffective assistance of counsel in violation of Ill. Const. art. I, § 8. Trial counsel's failure to object was unreasonable be a prior conviction more than 10 years old was not admissible for impeachment purposes, the admission of that evidence hurt defendant's credibility, and there was a reasonable probability that the outcome of defendant's bench trial could have been different absent that improper evidence. People v. Sanchez, 404 Ill. App. 3d 15, 343 Ill. Dec. 871, 935 N.E.2d 1099, 2010 Ill. App. LEXIS 903 (1 Dist. 2010).

Counsel's failure to file defendant's written consent to participation in the defense by a nonattorney senior law student or law graduate under Ill. Sup. Ct. R. 711 did not amount to a per se denial of counsel. Instead, the supervising attorney's performance had to be evaluated as a whole under Strickland. People v. Denzel W., 237 Ill. 2d 285, 341 Ill. Dec. 460, 930 N.E.2d 974, 2010 Ill. LEXIS 283 (2010).

Violation of Ill. Sup. Ct. R. 711 does not amount to a per se denial of counsel; instead, the supervising attorney's performance must be evaluated as a whole under Strickland. The failure to file written consent under Rule 711 to participation in the defense by a nonattorney senior law

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student or law graduate is one factor to consider when evaluating whether counsel was ineffective, but a reviewing court must assess that failure in light of counsel's overall performance, and it must determine whether counsel's performance prejudiced the accused. People v. Denzel W., 237 Ill. 2d 285, 341 Ill. Dec. 460, 930 N.E.2d 974, 2010 Ill. LEXIS 283 (2010).

Although defendant's postconviction petition was not frivolous pursuant to 725 ILCS 5/122-2.1 and, thus, could proceed to the second stage of postconviction proceedings governed by 725 ILCS 5/122-4, defendant was not entitled to proceed any further in a case where defendant was found guilty but mentally ill after defendant shot defendant's employer to death. The State was entitled to dismissal of the petition it sought pursuant to 725 ILCS 5/122-5, as defendant did not show that trial counsel provided ineffective assistance in violation of Ill. Const. art. I, § 8 in preparing the defense expert to testify on defendant's mental health issues, as trial counsel built a strong foundation regarding the expert's qualifications and training, and trial counsel had done a good job in presenting the expert's in a cogent manner. People v. Wilson, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1385 (4 Dist. Mar. 3, 2008).

Although the trial counsel's factual findings made in regard to its denial of defendant's 725 ILCS 5/122-1 et seq. postconviction relief motion in a case where defendant was convicted of 720 ILCS 5/9-1(a)(2) first degree murder had to be affirmed because they were not clearly erroneous, the question of whether defendant received ineffective assistance of counsel in violation of Ill. Const. art. I, § 8 had to be revisited in an evidentiary hearing upon remand. Defendant provided the affidavits of two doctors that defendant could have presented a meritorious defense based on information in the victim's medical records indicating that the victim, a child who attended defendant's day care center and was allegedly shaken, had preexisting conditions that made the victim susceptible to injuries, and, thus, the trial court had to explore whether trial counsel's lack of use of those medical records involved competent performance by trial counsel. People v. Jacobazzi, 398 Ill. App. 3d 890, Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 1392 (2 Dist. 2009).

Courts may resolve ineffectiveness claims under the two-part Strickland test by reaching only the prejudice component, for lack of prejudice renders irrelevant the issue of counsel's performance; thus, a trial court properly dismissed defendant's petition at the first stage of the post-conviction process under 725 ILCS 5/122-2.1(a)(2) where, inter alia, defendant failed to show prejudice by demonstrating that had his trial or appellate counsel argued that he was guilty of second-degree murder, the trial court would have found him not guilty of first-degree murder because there was more than ample evidence in the record to establish defendant was proven guilty beyond a reasonable doubt of first-degree murder and the record did not reflect that the result at trial or on appeal would have been different. People v. Boyd, 347 Ill. App. 3d 321, 283 Ill. Dec. 34, 807 N.E.2d 639, 2004 Ill. App. LEXIS 264 (1 Dist. 2004), appeal denied, 211 Ill. 2d 586, Ill. Dec. , 823 N.E.2d 969 (2004).

The test of due process is not whether the defendant had an attorney, licensed or unlicensed, but whether, under all the circumstances of the case, his conviction was obtained in such a manner as to be offensive to the common and fundamental ideas of what is fair and what is right. People v. Cox, 12 Ill. 2d 265, 146 N.E.2d 19 (1957).

- Experience of Appointed Counsel

Counsel appointed by the court to defend in a criminal proceeding must have sufficient experience and ability to fairly represent the defendant. This does not mean, however, that an accused who has been represented by one other than a licensed attorney may claim, ipso facto, that he has been deprived of his constitutional rights. People v. Cox, 12 Ill. 2d 265, 146 N.E.2d 19 (1957).

- Failure to Admonish

Court committed reversible error by failing to admonish defendant of his right to counsel under Ill. Sup. Ct. R. 401 at the preliminary hearing because defendant did not display knowledge that was

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supposed to be imparted by Rule 401, and the pretrial nature of the preliminary hearing made counsel vital to defendant's development of his case. People v. Black, Ill. App. 3d , 352 Ill. Dec. 277, 953 N.E.2d 958, 2011 Ill. App. LEXIS 598 (5 Dist. 2011).

Defendant did not show his counsel provided ineffective assistance for not advising him of the deportation consequences of his guilty plea, because counsel had advised defendant to consult an immigration attorney about those consequences. People v. Pequeno, 337 Ill. App. 3d 537, 272 Ill. Dec. 237, 786 N.E.2d 1071, 2003 Ill. App. LEXIS 330 (2 Dist. 2003).

Where trial judge provided no admonishments before proceeding with defendant's sentencing hearing, and, at the sentencing hearing, the first opportunity to admonish defendant in open court since he stated he wanted to represent himself at the sentencing hearing, the judge did not provide any of the admonishments outlined in Rule 401(a), Supreme Court Rules, the judge did not substantially comply with Rule 401(a), and his failure denied defendant his fundamental right to counsel at his sentencing hearing. People v. Langley, 226 Ill. App. 3d 742, 168 Ill. Dec. 424, 589 N.E.2d 824 (4 Dist. 1992).

- Failure to Call Witness

Although defendant in defendant's 725 ILCS 5/122-1 et seq. postconviction relief petition claimed that defendant's trial attorney provided Ill. Const. art. I, § 8 ineffective assistance by failing in a case, where defendant was found guilty of shooting to death two people in a bar, to introduce a crime scene expert to rebut the State's expert testimony, defendant was not entitled to relief. It was not the failure to call an expert witness that doomed defendant's case, but, instead it was the irreparable impeachment of defendant regarding the multiple accounts of the murders defendant gave that caused defendant's convictions. People v. Woolley, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1387 (3 Dist. June 24, 2008).

Where defendant was charged with aggravated driving while intoxicated under 625 ILCS 5/11-501(a)(2) and 625 ILCS 5/11-501(c-1)(3), defense counsel was not ineffective under U.S. Const. Amend. VI and Ill. Const. Art. I, § 8 for failing to call defendant's fiancee, an occupant of the vehicle, as witness to testify that defendant was not too intoxicated to drive. The fiancee's testimony was not likely to be credible given the fiancee's relationship to defendant and the fiancee's own intoxication. People v. Barcik, 365 Ill. App. 3d 183, 302 Ill. Dec. 280, 848 N.E.2d 579, 2006 Ill. App. LEXIS 338 (1 Dist. 2006).

Where defense counsel argued, with regard to a driving while license revoked offense under 625 ILCS 5/6-303(a) and 625 ILCS 5/6-303(d), that defendant did the responsible thing by taking the wheel since the other occupants were too intoxicated to drive, defense counsel was not ineffective under U.S. Const. Amend. VI and Ill. Const. Art. I, § 8 for failing to call defendant's fiancee as a witness on the driving while license revoked offense. The jury nullification argument made by counsel was the only argument available because defendant had admitted to the offense, and defendant's fiancee could have only added that the fiancee was too intoxicated to drive, which was undisputed. People v. Barcik, 365 Ill. App. 3d 183, 302 Ill. Dec. 280, 848 N.E.2d 579, 2006 Ill. App. LEXIS 338 (1 Dist. 2006).

- Failure to File Motion

Defendant could not show that counsel provided ineffective assistance in violation of Ill. Const. art. I, § 8 through counsel's failure to file a motion to withdraw defendant's guilty plea in a case where defendant pled guilty to predatory criminal sexual assault of a child and admitted committing the offense at defendant's sentencing hearing. Since defendant could not show that defendant had a justifiable ground for withdrawing defendant's guilty plea, in light of defendant admitting that defendant had committed the charged offense, defendant could not show either that counsel's conduct prejudiced defendant or that defendant was entitled to relief on defendant's amended postconviction petition filed pursuant to the Post Conviction Hearing Act, 725 ILCS 5/122-1 et seq. People v. Gomez, 409 Ill. App. 3d 335, 349 Ill. Dec. 706, 947 N.E.2d 343, 2011 Ill. App. LEXIS 280 (2 Dist. 2011).

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Counsel was not ineffective for failing to file a motion to discharge based on a speedy trial violation because there was no such violation. People v. Murray, 379 Ill. App. 3d 153, 318 Ill. Dec. 102, 882 N.E.2d 1225, 2008 Ill. App. LEXIS 69 (1 Dist. 2008).

Because counsel's stipulation to a forensic chemist's findings was not tantamount to a guilty plea, and because defense counsel was not ineffective for declining to file a futile motion, defendant's rights to confrontation and counsel under U.S. Const. Amends. VI, XIV, Ill. Const. Art. I, § 8 were not violated. People v. Stewart, 365 Ill. App. 3d 744, 303 Ill. Dec. 264, 851 N.E.2d 162, 2006 Ill. App. LEXIS 395 (1 Dist. 2006).

- Failure to Inform

Denial of defendant's postconviction petition was affirmed because defendant was not denied the effective assistance of counsel; the circuit court did not err in finding that defendant waived his right to testify, as there was no evidence that defendant was unaware of his right to testify or that he was prevented him from exercising it. People v. Chatman, 357 Ill. App. 3d 695, 294 Ill. Dec. 21, 830 N.E.2d 21, 2005 Ill. App. LEXIS 447 (1 Dist. 2005), cert. denied, 2007 U.S. LEXIS 2153 (U.S. 2007).

Failure to inform of the right to counsel may violate a defendant's constitutional rights; however, this error can be harmless where there is no possibility that the error affected the outcome of the trial. People v. Guice, 83 Ill. App. 3d 914, 38 Ill. Dec. 837, 404 N.E.2d 261 (1 Dist. 1979), cert. denied, 450 U.S. 968, 101 S. Ct. 1487, 67 L. Ed. 2d 618 (1981).

- Failure to Object

While the trial court improperly failed to instruct the jury that defendant had to have specific intent to commit the offense and knowledge that the victim was less than 17 years old with respect to indecent solicitation of a child under 720 ILCS 5/11-6 (2000), the error was not prejudicial under plain error analysis based on defendant's failure to object because the evidence was overwhelming that defendant spoke to the victim about sex on a telephone party line, that the victim had stated that he was 13 years old and looked younger than 17, and that the victim's grandmother found defendant in the victim's bedroom unclothed from the waist down with an erect penis. Therefore, defense counsel was not ineffective for failing to object to the jury instructions. People v. Carter, 405 Ill. App. 3d 246, 345 Ill. Dec. 317, 939 N.E.2d 46, 2010 Ill. App. LEXIS 1165 (1 Dist. 2010).

Defendant could not show ineffective assistance of counsel in violation of Ill. Const. art. I, § 8 when defense counsel in a first degree murder case did not object to the admission of the out-of-court statement defendant's aunt gave to police in which the aunt stated that defendant nodded affirmatively after the aunt asked defendant whether defendant killed the victims. The aunt testified consistently at trial with her out-of-court statement and, thus, even if defense counsel had objected, the objection would not have been successful because defendant could not show that defendant had been prejudiced by admission of that statement. People v. Pitchford, 401 Ill. App. 3d 826, 341 Ill. Dec. 1, 929 N.E.2d 655, 2010 Ill. App. LEXIS 496 (1 Dist. 2010).

Defendant could not show that the defendant received ineffective assistance of counsel in violation of Ill. Const. Art. I, § 8 when the defendant's counsel failed to object to the trial court responding to a jury's question, as counsel's failure to do so was not objectively unreasonable. Since the trial court acted within its discretion in telling the jury to continue to deliberate in the defendant's criminal case, the defendant could not show prejudice because any objection would have been futile. People v. Averett, 237 Ill. 2d 1, 340 Ill. Dec. 180, 927 N.E.2d 1191, 2010 Ill. LEXIS 658 (2010).

Defendant could not show that defendant received ineffective assistance of counsel in violation of Ill. Const. art. I, § 8 despite defendant's claim that defense counsel should have objected when the trial court gave an outdated jury instruction in defendant's aggravated criminal sexual assault case. Defendant was unable to show that giving the outdated instruction was plain error, given

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the overwhelming evidence against defendant, and, thus, defendant could not show that defendant was prejudiced by counsel's failure to object to that instruction being given. People v. Taylor, 397 Ill. App. 3d 813, 337 Ill. Dec. 117, 921 N.E.2d 1255, 2010 Ill. App. LEXIS 20 (3 Dist. 2010), appeal denied, 2010 Ill. LEXIS 384 (Ill. 2010).

Defendant's conviction of first degree murder was affirmed, because defendant failed to show that he received ineffective assistance of counsel in violation of Ill. Const. (1970), Art. 1, § 8, as he failed to show that he was prejudiced by counsel's failure to object to a juror who stated that she could not serve beyond a certain date, as the speed with which a verdict was returned was likely a result of the overwhelming evidence of defendant's guilt, defense counsel actively participated in voir dire, challenged two potential jurors for cause, and exercised four peremptory challenges to dismiss jurors, and thus defendant presented no evidence to rebut the presumption that counsel's decisions to not strike two jurors were the result of trial strategy, and counsel was not ineffective for failing to request additional admonishments to inform the jury it was not to consider anything it might have read about the case in the newspaper, as there was a strong presumption that jurors followed the instructions given by the court, and nothing in the record rebutted that presumption. People v. Lopez, 371 Ill. App. 3d 920, 309 Ill. Dec. 485, 864 N.E.2d 726, 2007 Ill. App. LEXIS 153 (1 Dist. 2007).

Defendant failed to show that he received ineffective assistance of counsel in violation of Ill. Const. (1970), Art. I, § 8, during his trial on a charge of theft by deception, because defense counsel's failure to object to hearsay statements by hotel managers concerning defendant failure to pay for a hotel room which he occupied for an extended period of time, as it was a valid trial strategy to let these statements pass rather than object and run the risk of the declarants themselves being called to testify, and other alleged errors on the part of defense counsel did not constitute ineffective assistance. People v. Perry, 224 Ill. 2d 312, 309 Ill. Dec. 330, 864 N.E.2d 196, 2007 Ill. LEXIS 435 (2007).

Counsel was not ineffective for, inter alia, failing to object to properly admitted arguments by the State. People v. Ward, 371 Ill. App. 3d 382, 308 Ill. Dec. 899, 862 N.E.2d 1102, 2007 Ill. App. LEXIS 75 (1 Dist. 2007).

Defendant was not denied the effective assistance of counsel due to counsel's failure to object to an instruction at trial; counsel's failure to invoke a ruling on the instruction that was made after defendant's trial was not objectively unreasonable and did not prejudice defendant. People v. Chatman, 357 Ill. App. 3d 695, 294 Ill. Dec. 21, 830 N.E.2d 21, 2005 Ill. App. LEXIS 447 (1 Dist. 2005), cert. denied, 2007 U.S. LEXIS 2153 (U.S. 2007).

Defense counsel's failure to object to the prosecutor's closing argument stating that the jurors should convict defendant to prevent their insurance rates from increasing amounted to ineffective assistance under the federal and state constitutions because the remarks served no purpose other than to inflame the passions of the jury, and the failure to object could not be excused as trial strategy. People v. Moore, 356 Ill. App. 3d 117, 291 Ill. Dec. 912, 824 N.E.2d 1162, 2005 Ill. App. LEXIS 168 (1 Dist. 2005).

Defense counsel's failure to object to defendant's wearing of a stun belt did not amount to ineffective assistance of counsel because the evidence against defendant was overwhelming; thus, defendant was unable to show that he was prejudiced by counsel's failure to object. People v. DuPree, 353 Ill. App. 3d 1037, 289 Ill. Dec. 784, 820 N.E.2d 560, 2004 Ill. App. LEXIS 1391 (5 Dist. 2004).

Sexual offender did not show that he was deprived of the effective assistance of counsel when his attorney failed to object to admission of the results of a penile plethysmograph, even though this test was not found to have been generally accepted in the scientific community, because, given the other evidence showing that the offender was a sexually violent person, he was not prejudiced. People v. Swanson, 335 Ill. App. 3d 117, 269 Ill. Dec. 157, 780 N.E.2d 342, 2002 Ill. App. LEXIS 1073 (2 Dist. 2002).

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- Failure to Tender Jury Instruction

Defendant convicted of first-degree murder for stabbing another man to death did not show that defendant's trial counsel was ineffective for not tendering a jury instruction regarding a defendant's use of force when the defendant was not the initial aggressor. Defendant could not show that defendant would not have been found guilty if counsel had requested that instruction be given and, thus, did not show that defendant received ineffective assistance of counsel in violation of Ill. Const. art. I, § 8. People v. Alexander, 408 Ill. App. 3d 994, 349 Ill. Dec. 255, 946 N.E.2d 449, 2011 Ill. App. LEXIS 309 (3 Dist. 2011), appeal denied, 353 Ill. Dec. 5, 955 N.E.2d 472, 2011 Ill. LEXIS 1498 (2011).

- Guilty Plea

Where defendant was not informed of his right to counsel by the trial court, the defendant's plea of guilty without representation by counsel did not deprive him of a constitutional right to counsel since elements of a misapprehension of the facts or consequences, apparent ignorance, illiteracy, fraud, misrepresentation or intimidation were not present. People v. Pring, 414 Ill. 63, 110 N.E.2d 214 (1953).

In a prosecution for burglary and larceny, the trial court did not err in accepting a plea of guilty without defendant having counsel where the trial court fully informed and admonished the defendant as to the effect and consequences of a plea of guilty and after having been informed and admonished, the defendant persisted in pleading guilty to the offense of burglary and larceny in manner and form as was charged in the indictment. People v. Childers, 386 Ill. 312, 53 N.E.2d 878 (1944).

Under former Art. II, § 9 of the Constitution (see now Ill. Const. (1970), Art. I, § 8) and the former Criminal Code (see now 725 ILCS 5/103-4) where plaintiff in error, did not know that he had a right to have counsel, entered a plea of guilty, and the cause was continued until the next day for the purpose of entering judgment on the plea, and next day before sentence was passed or plaintiff in error knew what the judgment was to be, counsel appeared for him and filed motion and made offer of proof, the court should have heard the evidence offered in support of the motion for withdrawal of the plea of guilty. People v. Lavendowski, 326 Ill. 173, 157 N.E. 193 (1927).

- Historical Basis

Former Art. II, § 9 of the Illinois Constitution of 1870 assured to every accused the right to have the assistance of counsel to advise him as to the nature of the charge preferred, of the plea to enter, and if a plea of not guilty is entered, to have counsel prepare and present his defense on the trial. People v. Wilson, 399 Ill. 437, 78 N.E.2d 514 (1948).

- Illustrative Cases

Defendant's argument that defendant was denied effective assistance of trial counsel based on counsel's failure to present an adequate closing argument was rejected where counsel zealously argued defendant's theory of the case during closing argument that there was a reasonable explanation for defendant's fingerprints appearing on the glass, i.e., that defendant left the prints there two weeks before the burglary when defendant used the bathroom. People v. Davis, 356 Ill. App. 3d 725, 292 Ill. Dec. 558, 826 N.E.2d 994, 2005 Ill. App. LEXIS 282 (1 Dist. 2005), appeal denied, 216 Ill. 2d 702, 298 Ill. Dec. 382, 839 N.E.2d 1029 (2005).

Trial court was not entitled to summarily dismiss the petition where defendant's delayed filing was not due to culpable negligence and defendant's allegation of ineffective assistance of counsel was not rebutted by the record; defendant's motion should have been allowed to proceed to the next stage of postconviction proceedings. People v. Paleologos, 345 Ill. App. 3d 700, 280 Ill. Dec. 878, 803 N.E.2d 108, 2003 Ill. App. LEXIS 1562 (1 Dist. 2003).

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The defendant's right to counsel was not violated and he was not entitled to suppression of his incriminating statements, notwithstanding the defendant's contention that the police department improperly failed to inform him of his attorney's efforts to reach him, where the defendant's attorney did not show up at the police station until sometime after 10 p.m., the defendant had already given his statements by that time, and the attorney did not ask to speak to the defendant or give any directions regarding the defendant when he called the station to inquire as to the defendant's whereabouts. People v. Watson, 315 Ill. App. 3d 866, 248 Ill. Dec. 755, 735 N.E.2d 75, 2000 Ill. App. LEXIS 614 (2 Dist. 2000).

A defendant's right to counsel was violated where, after invoking such right, he asked a question of a police officer and the officer responded in a manner which was likely to elicit an incriminating response; the defendant asked to use the restroom after being at the police department overnight, upon exiting, the defendant observed several people in the room and asked the detective what was going on, and the detective "told him there were a number of state's attorneys in the office who were reviewing the case, they were deciding who was going to be charged, and what charges were going to be placed." People v. Flores, 315 Ill. App. 3d 387, 248 Ill. Dec. 355, 734 N.E.2d 63, 2000 Ill. App. LEXIS 592 (1 Dist. 2000), appeal denied, 191 Ill. 2d 542, 250 Ill. Dec. 462, 738 N.E.2d 931 (2000).

Where defendant was placed in isolation for observation purposes based on the sheriff department's fear that defendant was going to harm himself on account of his statement that he would not be taken from the courtroom alive, and there was no indication that defendant desired, attempted or was prevented from consulting with counsel while he was in isolation, defendant was not deprived of right to assistance of counsel. People v. Stewart, 161 Ill. App. 3d 99, 112 Ill. Dec. 655, 514 N.E.2d 51 (2 Dist. 1987).

Where the defendant's case was almost 31/2 years old as a result of the numerous continuances already granted to him, the trial judge, was justifiably concerned that defendant's trial commence within a reasonably short period of time and therefore did not err in proceeding to trial despite the unavailability of defendants counsel of choice nor did he err in refusing to substitute counsel with the associate of defense counsel where substitute counsel needed a continuance. People v. Spurlark, 67 Ill. App. 3d 186, 23 Ill. Dec. 860, 384 N.E.2d 767 (1 Dist. 1978).

The trial court did not err in permitting counsel of uncooperative defendants' own choosing to withdraw six days before trial on oral motion without notice, in refusing to grant court-appointed counsel a continuance to investigate and prepare the case, or in appointing counsel whose qualifications were clouded with doubt. People v. Stokes, 18 Ill. 2d 371, 164 N.E.2d 26 (1960).

- Ineffective Assistance

Defense counsel was not ineffective for failing to object to evidence suggesting that defendant committed acts of fraud, specifically evidence that defendant forged a resume and that defendant used the personal information of an individual to renegotiate a loan. Such evidence was part of the continuing narrative of the crime and, as such, was properly admitted to demonstrate defendant's intent and knowledge. People v. Jackson, 391 Ill. App. 3d 11, 330 Ill. Dec. 220, 908 N.E.2d 72, 2009 Ill. App. LEXIS 193 (1 Dist. 2009), appeal denied, 233 Ill. 2d 579, 335 Ill. Dec. 640, 919 N.E.2d 359, 2009 Ill. LEXIS 1434 (2009).

-- Appeals

Defendant was entitled to have defendant's 725 ILCS 5/122-1 et seq. postconviction relief petition in defendant's first-degree murder case advanced to the second stage of postconviction proceedings, as trial court at the first stage did not have a ground for summarily dismissing that petition. Defendant alleged the required gist of a constitutional claim, as defendant asserted that appellate counsel rendered Ill. Const. art. I. § 8 ineffective assistance of counsel for not raising in defendant's direct appeal the trial court's error in allowing admission of the inadmissible hearsay testimony of a police officer who stated that he informed defendant of the need to come to the police station because defendant had been named in a police report as the shooter in the case.

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People v. Jackson, Ill. App. 3d , Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 1343 (1 Dist. Dec. 2, 2009).

It was error to summarily dismiss a postconviction petition in which defendant alleged that counsel was ineffective for failing to appeal. The record showed both that defendant demonstrated a desire to appeal and that a rational defendant in his place would have wanted to appeal; by stating that trial counsel had not properly advised him of his appeal rights, defendant sufficiently alleged that trial counsel had not consulted with him about an appeal; and defendant's allegations that he believed that his appeal had been perfected and that he made efforts to determine its status were supported by the record and sufficiently indicated that he would have timely appealed had counsel consulted with him about an appeal. People v. Usher, 397 Ill. App. 3d 276, 336 Ill. Dec. 545, 920 N.E.2d 1135, 2009 Ill. App. LEXIS 1238 (2 Dist. 2009).

-- Further Inquiry

In a murder case, defendant's general, conclusory comments did not bring to the trial court's attention a specific claim with supporting facts of ineffectiveness of counsel; therefore, the trial court was not required to conduct a further inquiry. During a pretrial matter, defendant stated that his attorney was the devil and that he did not trust him. People v. Walker, Ill. App. 3d , 354 Ill. Dec. 215, 957 N.E.2d 531, 2011 Ill. App. LEXIS 955 (1 Dist. 2011).

-- Incompetency

Incompetency of counsel is to be found when representation is so poor as to amount to no representation at all or to reduce the proceeding to a farce or mockery. People v. Elliott, 46 Ill. App. 3d 887, 5 Ill. Dec. 529, 361 N.E.2d 852 (4 Dist. 1977).

Alleged incompetency of counsel of defendant's choice presents no constitutional question. People v. Farmer, 34 Ill. 2d 218, 215 N.E.2d 232 (1966).

-- Mental Health Proceeding

State in an involuntary mental health commitment proceeding failed to file the predisposition report required under 405 ILCS 5/3-810 regarding the mental health patient's treatment and need for involuntary commitment and its failure to do so was reversible error. The patient's appeal of the involuntary commitment, though technically moot, could be heard under the collateral consequences doctrine and the patient could have that commitment determined to be invalid, as the failure of the patient's counsel to object to the lack of the report meant that the patient's 405 ILCS 5/3-805 right to counsel was violated because the patient received ineffective assistance of counsel in violation of Ill. Const. art. I, § 8 and the Sixth Amendment, U.S. Const. amend. VI. People v. Daryll C. (In re Daryll C.), 401 Ill. App. 3d 748, 341 Ill. Dec. 534, 930 N.E.2d 1048, 2010 Ill. App. LEXIS 550 (3 Dist. 2010).

-- Misconduct

Where the public defender appointed to represent defendant at the trial allegedly collected $15,000 from defendant's mother to represent defendant, the professional ethics of defendant's trial counsel was a matter for the Attorney Registration and Disciplinary Commission and in no way required a reversal of defendant's convictions in the absence of a showing of actual prejudice to defendant. People v. Armstrong, 175 Ill. App. 3d 874, 125 Ill. Dec. 409, 530 N.E.2d 567 (4 Dist. 1988).

-- Not Shown

Post-conviction relief was not proper because there was no ineffective assistance of counsel where a plea offer improperly stated the amount of good-conduct credit under 730 ILCS 5/3-6-3(a)(2.1) that appellant was entitled to; there was no showing that, but for counsel's deficient performance, the result of the proceeding would have been different. At any rate, the issue of

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good-conduct credit involved a consequence that was collateral to the issue of the sentence offered. People v. Powers, Ill. App. 3d , Ill. Dec. , 961 N.E.2d 906, 2011 Ill. App. LEXIS 1216 (2 Dist. 2011).

First-stage dismissal of defendant's pro se postconviction petition was proper, as the petition failed to assert a factual basis for the claim that trial counsel should have discovered that defendant invoked defendant's right to counsel at the time of defendant's arrest when defendant failed to so inform defendant's trial attorney. People v. Douglas, Ill. App. 3d , Ill. Dec. , 961 N.E.2d 875, 2011 Ill. App. LEXIS 1213 (1 Dist. 2011).

Trial counsel did not provide ineffective assistance by failing to introduce evidence of the victim's violent character, as the jury had before it even more persuasive evidence of the victim's violent character; the victim testified that the victim had a 2006 conviction for burglary and a 2008 conviction for aggravated unlawful use of a weapon. People v. Hayes, Ill. App. 3d , Ill. Dec. , 961 N.E.2d 311, 2011 Ill. App. LEXIS 1175 (1 Dist. 2011).

In a case involving possession of more than one gram, but less than 15 grams, of cocaine with intent to deliver within 1,000 feet of a church, trial counsel was not ineffective for failing to move to discharge on speedy trial grounds when the State was permitted to amend an information; because the amendment was formal due to a correction of a miswriting and defendant was not surprised, the speedy-trial right under 725 ILCS 5/103-5(a) was not implicated. Defendant was not surprised because the information stated all along that he was charged with possession with intent to deliver more than 1 gram, but less than 15 grams, of cocaine, the facts alleged in the body of the charge were controlling in this case, and it was clear that the charge all along was the Class X felony and that the statutory citation was a miswriting. People v. Shipp, Ill. App. 3d , 354 Ill. Dec. 932, 958 N.E.2d 1128, 2011 Ill. App. LEXIS 1087 (2 Dist. 2011).

Trial court did not err by summarily dismissing defendant's postconviction petition as frivolous and patently without merit under 725 ILCS 5/122-2.1(a)(2) (2008) because the record showed that defense counsel's decision not to call the co-defendant as a witness, even after promising to call him as a witness during opening statements, appeared to be the product of sound trial strategy; the record showed that counsel contemplated calling the co-defendant as a witness, but after interviewing him determined that his testimony would not be in defendant's best interest, and discussed the matter with defendant in open court, who agreed with counsel. The co-defendant's testimony may have been harmful to defendant, as defendant contended in his motion for severance that the co-defendant had made written and/or oral statements implicating defendant. People v. Wilborn, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1029 (1 Dist. Sept. 23, 2011).

In a murder case, counsel was not ineffective for stipulating that the police executed a warrant to search defendant and his apartment regarding an unrelated investigation and located firearms, ammunition, and a bulletproof vest which were unrelated to the instant offense because, contrary to defendant's suggestion, a jury could have found evidence that defendant had two guns, a significant amount of ammunition, and a bulletproof vest corroborated counsel's theory that he was more fearful and protective than the average person. People v. Salcedo, Ill. App. 3d , 352 Ill. Dec. 596, 954 N.E.2d 679, 2011 Ill. App. LEXIS 596 (1 Dist. 2011), appeal denied, 2011 Ill. LEXIS 2085 (Ill. 2011).

Despite defendant's claim that defendant received ineffective assistance of counsel in a case where defendant pled guilty to first-murder, because defendant's counsel did not inform defendant of the possible immigration consequences of the plea, defendant could not show the cause and prejudice necessary to allow defendant to file defendant's successive postconviction relief petition. Defendant could not show that defendant was prejudiced by defense counsel's alleged ineffective assistance in violation of Ill. Const. art. I, § 8 since the evidence against defendant was so overwhelming that defendant would not have had a chance of prevailing at trial had defendant not pled guilty and been tried. People v. Gutierrez, Ill. App. 3d , 352 Ill. Dec.

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505, 954 N.E.2d 365, 2011 Ill. App. LEXIS 717 (1 Dist. 2011), appeal denied, 2011 Ill. LEXIS 1891 (Ill. 2011).

While defendant was entitled to file a postconviction petition pursuant to the Illinois Post-Conviction Hearing Act, 725 ILCS 5/122-1, to challenge the constitutionality of defendant's first-degree murder conviction, the trial court also had the authority under 725 ILCS 5/122-2.1(a)(2) to summarily dismiss that petition if it was frivolous or patently without merit. Since defendant did not show that defendant's claims of ineffective assistance of trial or appellate counsel under Ill. Const. art. I, § 8 were not frivolous or patently without merit, and defendant's claim on appeal that trial counsel advised defendant not to testify because of defendant's juvenile adjudications of guilt was waived under 725 ILCS 5/122-3 given that defendant had not included that claim in defendant's pro se petition, summary dismissal of defendant's postconviction petition was warranted. People v. Coleman, Ill. App. 3d , 353 Ill. Dec. 838, 956 N.E.2d 966, 2011 Ill. App. LEXIS 766 (1 Dist. 2011), appeal denied, 2011 Ill. LEXIS 2105 (Ill. 2011).

Defendant failed to show prosecutorial misconduct, because the evidence supporting the jury's verdict was so substantial that defendant could not establish first-prong plain error, and defense counsel subjected the State's case to meaningful adversarial testing. People v. Anderson, Ill. App. 3d , 351 Ill. Dec. 517, 951 N.E.2d 1181, 2011 Ill. App. LEXIS 679 (1 Dist. 2011).

Defendant failed to show ineffective assistance of counsel, because counsel's performance reflected a trial strategy suited to the evidence against defendant, and given the strength of the evidence against defendant, there was no reasonable probability that counsel's performance affected the result of the trial. People v. Farmer, Ill. App. 3d , 350 Ill. Dec. 978, 949 N.E.2d 770, 2011 Ill. App. LEXIS 544 (1 Dist. 2011).

Defendant had a right to counsel under the Sixth Amendment for all encounters with State agents after he was indicted, and the victim became a state agent when he agreed to wear a wire while he talked to defendant; defense counsel should have objected to evidence of the conversation between the victim and defendant, but defendant failed to show ineffective assistance because the admissible evidence showed that defendant attempted to commit both armed robbery and first degree murder and he did not show that he would have achieved a better result had counsel not erred. People v. Martin, 408 Ill. App. 3d 44, 349 Ill. Dec. 87, 945 N.E.2d 1239, 2011 Ill. App. LEXIS 263 (1 Dist. 2011).

Court presumed that the trial court made no improper use of a witness's testimony, and the trial court should not have used the testimony for the hearsay purpose of proving an offer and acceptance, but the court could use the testimony for explaining the situation; because defendant could not show that the trial court misused the hearsay testimony as evidence, the court found no prejudice and no showing of ineffective assistance of counsel. People v. Martin, 408 Ill. App. 3d 44, 349 Ill. Dec. 87, 945 N.E.2d 1239, 2011 Ill. App. LEXIS 263 (1 Dist. 2011).

Because defendant could not show that the trial court used the testimony about a victim's conversations with a witness as evidence against defendant, the court did not find that the failure to object had the prejudicial effect needed to show ineffective assistance of counsel. People v. Martin, 408 Ill. App. 3d 44, 349 Ill. Dec. 87, 945 N.E.2d 1239, 2011 Ill. App. LEXIS 263 (1 Dist. 2011).

While the father in an abuse and neglect proceeding under the Juvenile Court Act had a right to counsel pursuant to 705 ILCS 405/1-5(1), the father did not show that the father received Ill. Const. art. I, § 8 ineffective assistance even though counsel's performance appeared to be deficient. To show ineffective assistance, the father not only had to show deficient performance, but also had to show prejudice resulting from the deficient performance and the father did not make such a showing. People v. Wells (In re Ch. W.), 408 Ill. App. 3d 541, 350 Ill. Dec. 361, 948 N.E.2d 641, 2011 Ill. App. LEXIS 208 (4 Dist. 2011).

Self-defense instruction was inappropriate in a case where defendant resisted arrest and then officers used force to effectuate the arrest; consequently, defendant was not prejudiced by

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defense counsel's failure to request such an instruction. People v. Haynes, 408 Ill. App. 3d 684, 349 Ill. Dec. 297, 946 N.E.2d 491, 2011 Ill. App. LEXIS 286 (1 Dist. 2011).

(Unpublished) Defendant, convicted on drug possession charges, did not show that defendant received ineffective assistance of counsel in violation of Ill. Const. art. I, § 8 due to counsel's failure to have stricken a prospective juror who equivocated on whether he could be fair after defense counsel informed prospective jurors that defendant was a registered sex offender who did not live at the duplex where the drugs were purchased. Voir dire had to be considered as a whole and defendant did not rebut the strong presumption that defense counsel's failure to have the prospective juror removed was not part of a trial strategy, which meant that defendant did not demonstrate that counsel's performance was deficient. People v. Manning, 241 Ill. 2d 319, 350 Ill. Dec. 262, 948 N.E.2d 542, 2011 Ill. LEXIS 422 (2011), cert. denied, 2012 U.S. LEXIS 270 (U.S. 2012).

In a case involving an armed habitual criminal, defense counsel pursued the rational strategy of presenting defendant's testimony to show that he never owned the gun and he never intended to assert control over the gun, but the trial court did not find that testimony credible. Because defense counsel subjected the State's case to meaningful adversarial testimony, defendant failed to show that he received ineffective assistance of counsel. People v. Thomas, 407 Ill. App. 3d 136, 347 Ill. Dec. 889, 943 N.E.2d 179, 2011 Ill. App. LEXIS 65 (1 Dist. 2011).

Defendant could not show a reasonable probability existed the proceeding's outcome would have been different had counsel objected to the State's voir dire questions since the voir dire questions did not deprive defendant of a fair trial, the jurors were provided testimony showing the reason the victim hesitated in reporting the rape, and the jurors stated they could be impartial. Moreover, during closing argument, defense counsel emphasized the reporting delay as a basis for finding defendant not guilty, and the evidence at trial supported the conviction. People v. Rinehart, 406 Ill. App. 3d 272, 348 Ill. Dec. 90, 943 N.E.2d 698, 2010 Ill. App. LEXIS 1396 (4 Dist. 2010).

Although defendant asserted that counsel was arguably ineffective for failing to request a reckless conduct instruction because his testimony supported such an instruction and he wanted counsel to make such a request, the decision of whether to tender an instruction on a lesser included offense was one which belonged to defendant, rather than to defense counsel, and an instruction for reckless conduct would not have been justified in the instant case because there was no evidence to support the giving of that instruction. People v. Cathey, 406 Ill. App. 3d 503, 347 Ill. Dec. 168, 942 N.E.2d 1, 2010 Ill. App. LEXIS 1344 (1 Dist. 2010).

Although defendant asserted that counsel was arguably ineffective for failing to include his claim that the trial court abused its discretion in delaying ruling on his motion in limine until after he had testified in his posttrial motion for a new trial because the issue was likely meritorious on appeal. However, Patrick, which announced a new constitutional rule of criminal procedure, was not decided until after the completion of defendant's trial and direct appeal, and therefore, counsel was not ineffective for failing to challenge the trial court's delay in ruling on his motion in defendant's posttrial motion for a new trial or on direct appeal. People v. Cathey, 406 Ill. App. 3d 503, 347 Ill. Dec. 168, 942 N.E.2d 1, 2010 Ill. App. LEXIS 1344 (1 Dist. 2010).

In defendant's prosecution for aggravated battery with a firearm under 720 ILCS 5/12-4.2(a)(1), trial counsel was not ineffective for failing to request a reckless conduct instruction because defendant's actions in trying to wrestle a gun away from the victim, resulting in the shooting, did not amount to reckless conduct under 720 ILCS 5/12-5(a) and 720 ILCS 5/4-6. People v. Cathey, Ill. App. 3d , Ill. Dec. , N.E.2d , 2010 Ill. App. LEXIS 1220 (1 Dist. Nov. 12, 2010).

Defense counsel did not provide ineffective assistance of counsel in violation of Ill. Const. Art. I, § 8 when defense counsel elicited testimony from defendant in defendant's armed violence case that defendant had a prior juvenile adjudication. Under 705 ILCS 405/5-150(1)(c), defendant could have been impeached with that juvenile adjudication and, thus, defense counsel prudently

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made the jury aware of it before the State did so. People v. Coleman, 399 Ill. App. 3d 1150, 339 Ill. Dec. 763, 927 N.E.2d 304, 2010 Ill. App. LEXIS 352 (4 Dist. 2010).

Counsel's failure to object to a general verdict form for first degree murder or to request a specific verdict form did not constitute ineffective assistance of counsel, as it would have been reasonable for defense counsel to conclude that defendant had a better chance of prevailing on intentional murder since the focus on the element of intent would provide the jury with more latitude to reach a more lenient verdict. People v. Calhoun, 404 Ill. App. 3d 362, 343 Ill. Dec. 655, 935 N.E.2d 663, 2010 Ill. App. LEXIS 952 (1 Dist. 2010).

Although defendant failed to object to a modified jury instruction, such that she forfeited the right to raise it on appeal, as the instruction contained an accurate statement of the law on the issue of proximate cause, there was no plain error; accordingly, counsel could not be deemed ineffective for failing to object thereto. People v. Wilson, 404 Ill. App. 3d 244, 343 Ill. Dec. 579, 935 N.E.2d 587, 2010 Ill. App. LEXIS 934 (3 Dist. 2010).

Defendant's contention that defendant received ineffective assistance of counsel because trial counsel had failed to object to the State's closing argument was rejected. The appellate court concluded that the remarks did not deprived defendant of a fair trial and, thus, defendant could not demonstrate that a reasonable probability existed that the outcome of defendant's trial could have been different, as required by Strickland's ineffective assistance of counsel test. People v. Sims, 403 Ill. App. 3d 9, 342 Ill. Dec. 37, 931 N.E.2d 1220, 2010 Ill. App. LEXIS 648 (1 Dist. 2010).

Defendant was not entitled to relief on the postconviction petition that defendant filed pursuant to 725 ILCS 5/122-1 in a case where defendant began to plead guilty to a charge of armed robbery, but the trial court vacated the plea and found defendant guilty of that charge in a bench trial after defendant had proclaimed defendant's innocence at the guilty plea hearing. Defendant's petition filed in accordance with 725 ILCS 5/122-2 lacked merit, as defendant could not show that appellate counsel provided ineffective assistance of counsel in violation of Ill. Cons. art. I, § 8 by not raising a claim on appeal that the bench trial violated defendant's right to be free from double jeopardy, either under Ill. Const. art. I, § 10 or 720 ILCS 5/3-4(a)(3), as defendant could not show that the guilty plea hearing terminated improperly since the trial court had the discretion to vacate defendant's guilty plea and order a trial be held where defendant was unequivocally proclaiming that defendant was innocent of the crime. People v. Cabrera, 402 Ill. App. 3d 440, 342 Ill. Dec. 401, 932 N.E.2d 528, 2010 Ill. App. LEXIS 639 (1 Dist. 2010).

Defense counsel in defendant's aggravated battery case called both expert witnesses and fact witnesses to testify that defendant was physically unable to commit the alleged crime, and also called character witnesses to testify to defendant's non-violent reputation in the community. As a result, defense counsel provided a reasonable and rational trial strategy, and could not be shown to have provided ineffective assistance of counsel in violation of Ill. Const. art. I, § 8 despite the fact that jury eventually found defendant guilty of the charge. People v. Shelton, 401 Ill. App. 3d 564, 340 Ill. Dec. 840, 929 N.E.2d 144, 2010 Ill. App. LEXIS 419 (1 Dist. 2010).

Defendant was not entitled to relief on defendant's conviction for possession of a controlled substance, based on defendant's claim that defense counsel provided ineffective assistance in violation of Ill. Const. Art. I, § 8 in withdrawing a motion to suppress. All of the facts related to the issue of the consent to search, that the leaseholder of the apartment where the drugs were found gave to police, were presented to the trial court and it resolved the credibility of the witnesses on that issue in favor of the prosecution rather than the defense. People v. Givens, 237 Ill. 2d 311, 343 Ill. Dec. 146, 934 N.E.2d 470, 2010 Ill. LEXIS 655 (2010).

Defendant was not entitled to relief on the 725 ILCS 5/122-1 et seq. postconviction relief petition that defendant filed, as defendant did not show under 725 ILCS 5/122-2 that defendant's constitutional rights had been violated. Defendant's claims that defendant received ineffective assistance of appellate counsel, in violation of Ill. Const. art. I, § 8, and that defendant's double

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jeopardy rights were violated, in violation of Ill. Const. art. I, § 10, were frivolous and patently without merit, as the trial court was authorized to vacate defendant's guilty plea and conduct a bench trial on the charges against defendant due to the fact that defendant at defendant's guilty plea hearing on an armed robbery charge claimed that defendant was innocent of the crime. People v. Cabrera, Ill. App. 3d , Ill. Dec. , N.E.2d , 2010 Ill. App. LEXIS 102 (1 Dist. Feb. 16, 2010).

Defendant did not show that defense counsel provided ineffective assistance of counsel in violation of Ill. Const. Art. I, § 8 when defense counsel in defendant's first degree murder case did not offer relevant expert testimony to show defendant was so mentally impaired that defendant could not waive defendant's Miranda rights. Defense counsel did not have evidence available to defense counsel that showed that he knew that to be the case and, thus, defendant did not show he received ineffective assistance of counsel. People v. Richardson, 401 Ill. App. 3d 45, 340 Ill. Dec. 740, 929 N.E.2d 44, 2010 Ill. App. LEXIS 355 (1 Dist. 2009).

Defendant could not show in defendant's postconviction proceeding that defendant had received either Ill. Const. art. I, § 8 ineffective assistance of counsel regarding the services provided by defendant's trial or appellate counsel. The failure of trial counsel to file a motion to quash defendant's arrest in the first-degree murder case against defendant based on the alleged unreliability of an informant would have been futile, as the informant only corroborated information that police already knew, which also meant that appellate counsel could not be deemed ineffective for not raising on direct appeal the failure of trial counsel to file such a motion. People v. Goings, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1369 (1 Dist. June 30, 2008).

(Unpublished) Where in a solicitation of murder for hire case under 720 ILCS 5/8-1.2(a), a witness testified that the cost for solicitation of murder for hire in the instant case should have been $40,000 and that it was important for the undercover officer to elicit from defendant specific facts about the act to be performed and the amount to be transacted for the particular act, defense counsel was not ineffective under Ill. Const. (1970), Art. I, § 8 for failing to disclose the witness as an expert; since the testimony was stricken, defendant could not establish either prong of the Strickland test, as the stricken testimony was largely speculative and would not have aided the jury in determining whether defendant was guilty of solicitation of murder for hire. People v. Patel, 366 Ill. App. 3d 255, 303 Ill. Dec. 560, 851 N.E.2d 747, 2006 Ill. App. LEXIS 488 (1 Dist. 2006).

Although defense counsel was unable to persuade the trial court to grant the juvenile delinquent funds to obtain a DNA expert witness in a case where the juvenile delinquent allegedly sexually assaulted a boy in a locker room, the record indicated that defendant investigated and conducted extensive research into the State's DNA evidence in order to adequately represent the juvenile delinquent at trial. Since defense counsel also subjected the State's DNA expert to an extensive and thorough cross-examination, the juvenile delinquent could not show that the juvenile delinquent received ineffective assistance of counsel in violation of Ill. Const. art. I, § 8. People v. T.W. (In re T.W.), 402 Ill. App. 3d 981, 342 Ill. Dec. 234, 932 N.E.2d 125, 2010 Ill. App. LEXIS 646 (1 Dist. 2010).

Defendant was not entitled to relief based on a claim that defendant received ineffective assistance of counsel in violation of Ill. Const. art. I, § 8 in a case where defendant was convicted of fraud and money laundering related to the overbilling of the State for the transportation by defendant's company of public aid recipients. Defendant could not show that the State knowingly used false testimony from a cooperating witness or that the trial court erred in admitting into evidence the agreement of that witness that he had been barred from participating in the Medicare system, and, thus, defendant could not show that counsel provided deficient performance in not impeaching the cooperating witness for allegedly testifying falsely or not barring the admission of the agreement nor could defendant show that defendant had been prejudiced by defense counsel's conduct. People v. Gutman, 401 Ill. App. 3d 199, 340 Ill. Dec. 342, 928 N.E.2d 61, 2010 Ill. App. LEXIS 272 (1 Dist. 2010).

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Defendant's postconviction relief petition filed in defendant's first degree murder case did not contain allegations that showed an arguable basis in law or fact, and, thus, could be summarily dismissed as frivolous and patently without merit. Defendant's claim of actual innocence was simply based on fanciful allegations that were baseless, and defendant as to defendant's ineffective assistance of trial and appellate counsel in violation of Ill. Const. art. I, § 8 did not show that even if defendant's allegations were taken as true that the guilty verdict against defendant would change. People v. Jones, 399 Ill. App. 3d 341, 339 Ill. Dec. 870, 927 N.E.2d 710, 2010 Ill. App. LEXIS 168 (1 Dist. 2010).

Defendant who filed a 725 ILCS 5/122-1 et seq. postconviction relief motion did not show that meet defendant's burden of making a substantial showing that defendant's convictions for, inter alia, murder and attempted murder resulted from the violation of a constitutional right, and, thus, the petition was subject to denial following a hearing pursuant to 725 ILCS 5/122-2.1. The trial court's decision to allow witnesses to testify while wearing in their military uniforms did not meant that the credibility of the testimony of those witnesses was unfairly enhanced, which also meant that appellate counsel did not provide ineffective assistance of counsel in not raising the issue on appeal of the propriety of allowing the witnesses to testify while so dressed. People v. Lane, 398 Ill. App. 3d 287, 337 Ill. Dec. 452, 922 N.E.2d 575, 2010 Ill. App. LEXIS 64 (5 Dist. 2010).

Defendant's assertion that defendant's trial counsel provided ineffective assistance of counsel in violation of Ill. Const. art. I, § 8 did not require that the trial court appoint new counsel to investigate those claims, in a case where defendant was convicted of murder and sentenced to death. The trial court conducted an adequate inquiry into defendant's pro se claim of ineffective assistance, determined that the claim was meritless, and, thus, rightfully declined to appoint counsel for defendant. People v. Banks, 237 Ill. 2d 154, 343 Ill. Dec. 111, 934 N.E.2d 435, 2010 Ill. LEXIS 272 (2010).

Defendant was not entitled to relief on defendant's claim that trial counsel was ineffective in violation of Ill. Const. art. I, § 8 in not filing a motion for severance of trial from that of a codefendant, in not filing a motion to suppress identification testimony, and in not impeaching a witness with evidence regarding his felony conviction in a case where defendant was convicted of aggravated battery with a firearm under an accountability theory. Defendant did not show trial counsel's conduct prejudiced defendant, as severance was not required to ensure that defendant received a fair trial, under the totality of the circumstances the identifications of defendant were not the result of an unduly suggestive identification procedure or police misconduct, and the fact that the witness testified about his felony conviction meant that the trial court was aware of that status at the time the witness testified. People v. Gabriel, 398 Ill. App. 3d 332, 338 Ill. Dec. 607, 924 N.E.2d 1133, 2010 Ill. App. LEXIS 49 (1 Dist. 2010).

Defendant failed to establish that trial counsel's performance was deficient with respect to opening arguments. Counsel had not promised the jury that defendant would testify. People v. Magallanes, 397 Ill. App. 3d 72, 336 Ill. Dec. 774, 921 N.E.2d 388, 2009 Ill. App. LEXIS 1274 (1 Dist. 2009).

Defendant did not show that defense counsel in defendant's first degree murder trial provided Ill. Const. art. I, § 8 ineffective assistance by not objecting when the trial court did not give defendant's requested pattern instruction stating that the jury could not consider defendant not testifying in reaching a verdict. The appellate court found that defendant was not entitled to relief on the underlying claim regarding the failure of the trial court to give that instruction and, thus, defendant could not show that defense counsel prejudiced defendant's case in not objecting to the failure to give that instruction. People v. Nugen, 399 Ill. App. 3d 575, 339 Ill. Dec. 285, 926 N.E.2d 760, 2009 Ill. App. LEXIS 1334 (1 Dist. 2009).

Even if defense counsel was ineffective for failing to lay the proper foundation for the admission of a clothing receipt from a jail, defendant had not shown prejudice. The contents of the receipt would have been cumulative of the testimony already offered. People v. Stanley, 397 Ill. App. 3d 598, 336 Ill. Dec. 831, 921 N.E.2d 445, 2009 Ill. App. LEXIS 1304 (1 Dist. 2009).

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Defendant's claim that the statute making disarming a peace officer an offense impermissibly included conduct constituting the inchoate and completed offense was without merit. As a result, defendant's claim that defense counsel provided Ill. Const. art. I, § 8 ineffective assistance of counsel for failing to raise that issue in the trial court was also without merit. People v. Wishard, 396 Ill. App. 3d 283, 336 Ill. Dec. 193, 919 N.E.2d 1118, 2009 Ill. App. LEXIS 1264 (4 Dist. 2009), appeal denied, 2010 Ill. LEXIS 575 (Ill. 2010).

Defendant's prosecution was not time-barred under 720 ILCS 5/3-5(b), and counsel was not ineffective for failing to present a defense and tender the appropriate jury instruction relating to the statute-of-limitations issue. The State had to allege and prove to the trial court, not always to the jury, that the prosecution was proceeding within the applicable limitations period; here, the State proved that circumstances existed that effectively tolled and extended the applicable statute of limitations. People v. Gray, 396 Ill. App. 3d 216, 338 Ill. Dec. 583, 924 N.E.2d 1109, 2009 Ill. App. LEXIS 1171 (4 Dist. 2009).

While the trial court should have allowed defendant to testify in defendant's first-degree murder case about a conversation explaining why defendant suddenly left town, to dispel the State's suggestion that defendant was fleeing from a crime, the error in not admitting such evidence was harmless, and defendant did not show that the refusal to admit it was either plain error pursuant to Ill. Sup. Ct. R. 615 or that defendant's counsel provided ineffective assistance of counsel in violation of Ill. Const. art. I, § 8 by not preserving an objection to that refusal. No plain error occurred, as the evidence of defendant's guilt was overwhelming and defendant could not show prejudice from not objecting to the refusal to admit such evidence, as defense counsel was still able to get before the jury defendant's claim that defendant suddenly left town because a "group of guys" had "erroneously" concluded that defendant had something to do with the killing. People v. Weatherspoon, 394 Ill. App. 3d 839, 333 Ill. Dec. 690, 915 N.E.2d 761, 2009 Ill. App. LEXIS 888 (1 Dist. 2009), appeal denied, 234 Ill. 2d 549, 920 N.E.2d 1080, 2009 Ill. LEXIS 2164 (2009).

In defendant's trial on charges of aggravated arson, in violation of 720 ILCS 5/20-1.1(a)(1), counsel was not ineffective for failing to seek a jury instruction on the lesser included offense of residential arson, in violation of 720 ILCS 5/20-1.2, as the evidence would not have supported an acquittal on the aggravated arson charge and a conviction on the residential arson charge because defendant was aware that there were two house occupants at the time that she started the fire. People v. Bauer, 393 Ill. App. 3d 414, 332 Ill. Dec. 842, 913 N.E.2d 1132, 2009 Ill. App. LEXIS 759 (2 Dist. 2009).

In defendant's trial on charges of aggravated arson, in violation of 720 ILCS 5/20-1.1(a)(1), counsel was not ineffective for failing to seek a jury instruction on the defense of mistake of fact, based on defendant's claim that she believed that a match which she dropped on lighter fluid in a residence to start a fire had gone out, as had the fire that started, as such a belief was not relevant to the crime; the commission of the offense was complete when defendant dropped the match and started the fire. People v. Bauer, 393 Ill. App. 3d 414, 332 Ill. Dec. 842, 913 N.E.2d 1132, 2009 Ill. App. LEXIS 759 (2 Dist. 2009).

Defendant's counsel was not ineffective for failing to object to the admissibility of an audiotape of defendant's statement despite the fact that there were approximately 125 areas where the transcriber did not understand what was being said, as those areas did not undermine the totality of the tape so as to render it untrustworthy; the inaudible portions did not interfere with understanding defendant's explanation of the events that led to the criminal charges. People v. Bauer, 393 Ill. App. 3d 414, 332 Ill. Dec. 842, 913 N.E.2d 1132, 2009 Ill. App. LEXIS 759 (2 Dist. 2009).

Circuit court did not err in dismissing defendant's postconviction petition because defendant failed to present the gist of a claim that his trial counsel was ineffective for refusing to let defendant testify; the petition contained no allegation that defendant made any assertion of his right to testify

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during the trial. People v. Youngblood, 389 Ill. App. 3d 209, 329 Ill. Dec. 522, 906 N.E.2d 720, 2009 Ill. App. LEXIS 159 (2 Dist. 2009).

Circuit court did not err in dismissing defendant's postconviction petition because defendant failed to state the gist of a claim that his counsel was ineffective for failing to challenge the indictment; defendant did not allege that any delay in the indictment prejudiced him, and under 725 ILCS 5/109-3.1(b)(1), defendant had no valid claim that he was not timely indicted because he caused the delay by asking for continuances. People v. Youngblood, 389 Ill. App. 3d 209, 329 Ill. Dec. 522, 906 N.E.2d 720, 2009 Ill. App. LEXIS 159 (2 Dist. 2009).

Where the information alleged the substance of defendant's statement to the officer which formed the basis for the charge of disorderly conduct and thus, contained sufficient particularity to allow defendant to prepare a defense, counsel was not ineffective for failing to challenge the sufficiency of the information. People v. Klepper, 234 Ill. 2d 337, 334 Ill. Dec. 555, 917 N.E.2d 381, 2009 Ill. LEXIS 309 (2009).

Defense counsel was not ineffective for failing to file a motion to quash defendant's arrest and for failing to fully litigate a motion to suppress defendant's statement because the motions would not have been successful at trial; defendant voluntarily went to the police station and inculpated himself in the victim's murder, despite repeated reminders of his rights and numerous opportunities to invoke those rights, defendant discussed his involvement in the offense, and he evinced a willingness and desire for a generalized discussion about the investigation and knowingly and intelligently waived his rights. People v. Velez, 388 Ill. App. 3d 493, 327 Ill. Dec. 946, 903 N.E.2d 43, 2009 Ill. App. LEXIS 34 (1 Dist. 2009), appeal denied, 232 Ill. 2d 594, 331 Ill. Dec. 375, 910 N.E.2d 1131, 2009 Ill. LEXIS 531 (2009); cert. denied, 2009 U.S. LEXIS 7318 (U.S. 2009).

Defense counsel was not ineffective for failing to request or offer clarification of the terms "incite," "induce" and "predispose" when the jury requested clarification of the terms during deliberations. There was no indication that an additional definition or definitions were needed when the definition of entrapment in the pattern instructions was used. People v. Sanchez, 388 Ill. App. 3d 467, 328 Ill. Dec. 400, 904 N.E.2d 162, 2009 Ill. App. LEXIS 94 (1 Dist. 2009).

Appellant inmate failed to show that trial counsel rendered ineffective assistance by precluding the inmate from exercising the inmate's right to a jury trial, because the record showed that the waiver was made knowingly and intelligently and contained no indication that counsel told the inmate the court would not convict the inmate of murder if the inmate chose a bench trial rather than a jury trial. People v. Hobson, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 259 (1 Dist. Mar. 28, 2008), reh'g denied, 2008 Ill. App. LEXIS 1149 (Ill. App. Ct. 1st Dist. 2008); op. withdraw; ,substituted op., 325 Ill. Dec. 173, 897 N.E.2d 421, 2008 Ill. App. LEXIS 1101 (App. Ct. 1st Dist. 2008).

There was no ineffective assistance of defendant's counsel where counsel did not challenge various statements attributed to the victim of defendant's sexual offenses, as the decision not to challenge that evidence was one of trial strategy. People v. Beaty, 377 Ill. App. 3d 861, 316 Ill. Dec. 759, 880 N.E.2d 237, 2007 Ill. App. LEXIS 1417 (1 Dist. 2007), appeal denied, 2008 Ill. LEXIS 534 (Ill. 2008); cert. denied, 129 S. Ct. 264, 2008 U.S. LEXIS 6129, 172 L. Ed. 2d 197 (U.S. 2008).

Resentencing counsel was not ineffective for failing to argue that victim did not suffer a severe bodily injury and that consecutive sentences were therefore impermissible where the trial court determined at the original sentencing hearing that victim sustained a severe bodily injury, and the only reason for remand was that defendant's other sentence was invalid. People v. Deleon, 227 Ill. 2d 322, 317 Ill. Dec. 843, 882 N.E.2d 999, 2008 Ill. LEXIS 7 (2008).

Resentencing counsel was not ineffective on the basis that he never read the original trial and sentencing transcripts because all that reasonably could be inferred from counsel's concession that he was "working without the benefit of a transcript" was that he was working without the

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benefit of a transcript at the time he prepared the motion to reconsider sentence. People v. Deleon, 227 Ill. 2d 322, 317 Ill. Dec. 843, 882 N.E.2d 999, 2008 Ill. LEXIS 7 (2008).

Summary dismissal of defendant's 725 ILCS 5/122-1 et seq. postconviction relief petition was warranted, as defendant's petition was frivolous and patently without merit because it did not, pursuant to 725 ILCS 5/122-2.1(a)(2), state the gist of a constitutional claim in a case where defendant was convicted of first-degree murder for participating in a robbery that involved the shooting death of one man, Defendant's claim that trial counsel should not have withdrawn a motion to suppress was barred by res judicata because the claim had been raised and rejected on direct appeal, defendant's claim that trial counsel failed to file a motion to quash defendant's arrest lacked merit given the overwhelming evidence against defendant, and defendant's claim that appellate counsel should have challenged trial counsel's failure to file the motion to quash arrest was likewise meritless considering the overwhelming evidence against defendant. People v. Fair, Ill. App. 3d , Ill. Dec. , N.E.2d , 2007 Ill. App. LEXIS 1437 (1 Dist. May 18, 2007).

Defendant's claims of ineffective assistance failed. Even if counsel had introduced impeachment evidence that defendant had sold a motorcycle on which the victim said that he and defendant worked, there was no reasonable probability that this would have affected the outcome of the trial, given the taped conversations between defendant and the victim; counsel's questioning of jurors as to whether they were biased against homosexuals did not prejudice the jury, as the acts of which defendant was accused were homosexual in nature and the intent of the questioning was to eliminate jurors with any bias against homosexuals; and counsel was not ineffective for failing to file a motion to suppress taped conversations when it was highly unlikely that such a motion would have been granted. People v. Stewart, Ill. App. 3d , Ill. Dec. , N.E.2d , 2007 Ill. App. LEXIS 1432 (2 Dist. Jan. 25, 2007).

There was no ineffective assistance of defendant's counsel due to counsel's failure to object to a State's witness's testimony that the witness was sentenced to seven years of imprisonment rather than two concurrent four-year sentences, as noting the correct terms of imprisonment would not have resulted in a different trial outcome; the evidence against defendant was substantial and the jury was aware of the witness's bias in testifying. People v. Beaty, 377 Ill. App. 3d 861, 316 Ill. Dec. 759, 880 N.E.2d 237, 2007 Ill. App. LEXIS 1417 (1 Dist. 2007), appeal denied, 2008 Ill. LEXIS 534 (Ill. 2008); cert. denied, 129 S. Ct. 264, 2008 U.S. LEXIS 6129, 172 L. Ed. 2d 197 (U.S. 2008).

Defendant failed to show ineffective assistance of counsel due to counsel's failure to object to a police officer's testimony about defendant's post-arrest silence and request for counsel, as the evidence was not closely balanced and that part of the officer's testimony was a minor portion thereof; further, the prosecutor did not comment on that portion of the officer's testimony and there was no showing that there was a reasonable probability that the result of defendant's trial would have been different if counsel had objected. People v. Beaty, 377 Ill. App. 3d 861, 316 Ill. Dec. 759, 880 N.E.2d 237, 2007 Ill. App. LEXIS 1417 (1 Dist. 2007), appeal denied, 2008 Ill. LEXIS 534 (Ill. 2008); cert. denied, 129 S. Ct. 264, 2008 U.S. LEXIS 6129, 172 L. Ed. 2d 197 (U.S. 2008).

Defendant's counsel's failure to object to defendant's wearing of a leg restraint during defendant's criminal trial was not ineffective assistance or plain error under Rule 615(a) Supreme Court Rules, as the restraint was not visible to the jury, defendant failed to show prejudice from having to wear the restraint, and there was no reasonable probability that the result of the trial would have been different had defendant not been wearing the restraint. People v. Beaty, 377 Ill. App. 3d 861, 316 Ill. Dec. 759, 880 N.E.2d 237, 2007 Ill. App. LEXIS 1417 (1 Dist. 2007), appeal denied, 2008 Ill. LEXIS 534 (Ill. 2008); cert. denied, 129 S. Ct. 264, 2008 U.S. LEXIS 6129, 172 L. Ed. 2d 197 (U.S. 2008).

Inmate's claim that defense counsel refused to investigate a claim that the inmate had invoked the inmate's Miranda rights was frivolous as defense counsel reasonably moved to suppress the

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inmate's statement, and provided an expert who concluded that the inmate had deficient abilities to rationally appreciate the inmate's waiver of the inmate's Miranda rights. People v. Teran, 376 Ill. App. 3d 1, 315 Ill. Dec. 422, 876 N.E.2d 734, 2007 Ill. App. LEXIS 1059 (1 Dist. 2007).

Counsel was not ineffective for failing to file a motion to suppress evidence because defendant's conflicting responses to police questioning regarding the ownership of the toolboxes defendant was carrying, together with the totality of circumstances, including defendant's failure to respond to a question about what the markings on the toolboxes meant, gave rise not only to a reasonable suspicion of criminal activity, but also gave officers probable cause to arrest defendant. People v. Richardson, 376 Ill. App. 3d 612, 315 Ill. Dec. 303, 876 N.E.2d 303, 2007 Ill. App. LEXIS 1021 (1 Dist. 2007).

Defendant convicted of possession of a controlled substance following defendant's arrest while defendant was a passenger in a vehicle was not tainted by ineffective assistance of counsel despite defendant citing defense counsel's failure to file a motion to quash arrest and suppress evidence; that motion would have been denied in any event, as the officer who arrested defendant after seeing that defendant and the driver were not wearing seatbelts expeditiously checked whether defendant had any outstanding warrants, arrested defendant when he learned defendant had a warrant outstanding, and was authorized to search the passenger compartment of the vehicle pursuant to the lawful arrest that had been made, which resulted in the cocaine being found in the vehicle's center console. People v. Bailey, 375 Ill. App. 3d 1055, 314 Ill. Dec. 575, 874 N.E.2d 940, 2007 Ill. App. LEXIS 1008 (1 Dist. 2007), aff'd, 2009 Ill. LEXIS 183 (Ill. 2009).

Trial counsel was not ineffective for opting to pursue an all-or-nothing strategy in defendant's first-degree murder trial and arguing that defendant acted in self-defense, as, inter alia, there was no reasonable probability that, had counsel argued for second-degree murder conviction, result would have differed; the mere fact that counsel's viable strategy proved unsuccessful did not mean that counsel performed unreasonably. People v. Walton, 378 Ill. App. 3d 580, 317 Ill. Dec. 1, 880 N.E.2d 993, 2007 Ill. App. LEXIS 1121 (1 Dist. 2007).

Trial counsel was not ineffective for failing to pursue a hearing or ruling on a motion to suppress because defendant consented to a search of defendant's person and vehicle, eliminating the need for probable cause or a warrant. People v. Starnes, 374 Ill. App. 3D 329, 374 Ill. App. 3d 329, 313 Ill. Dec. 88, 871 N.E.2d 815, 2007 Ill. App. LEXIS 652 (1 Dist. 2007), appeal denied, 875 N.E.2d 1122, 2007 Ill. LEXIS 1514 (Ill. 2007).

Counsel was not ineffective for failing to call a witness who allegedly would have impeached the credibility of the State's key witness where counsel's failure did not result from a conflict of interest but from an inability to find the witness. People v. Brown, 371 Ill. App. 3d 972, 309 Ill. Dec. 526, 864 N.E.2d 767, 2007 Ill. App. LEXIS 158 (1 Dist. 2007).

Trial counsel's strategic decision to challenge the prosecution's case for aggravated kidnapping by attacking the evidence as to great bodily harm, while unsuccessful, subjected the State's case to meaningful adversarial testing, and thus, counsel was not ineffective for pursuing that strategy. People v. Bobo, 375 Ill. App. 3d 966, 314 Ill. Dec. 387, 874 N.E.2d 297, 2007 Ill. App. LEXIS 943 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1830 (Ill. 2007).

Defendant did not show that defendant was denied effective assistance of counsel, as defendant did not show deficient performance on the part of counsel for counsel not filing a motion to quash arrest and suppress evidence; the motion would not have been successful since the police officer who stopped defendant had reasonable suspicion to do so and did not detain defendant longer than was necessary to investigate the circumstances. People v. Morrison, 375 Ill. App. 3d 545, 314 Ill. Dec. 531, 874 N.E.2d 896, 2007 Ill. App. LEXIS 887 (1 Dist. 2007).

Trial counsel was not ineffective for failing to interview codefendant and present codefendant's testimony at trial where counsel, after examining codefendant's testimony at codefendant's own trial, determined that presenting codefendant's potential testimony would not have furthered

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defendant's case. Codefendant's alibi testimony at codefendant's own trial contradicted a later statement that codefendant was involved but not defendant and opened up the door to substantial impeachment. People v. Marshall, 375 Ill. App. 3d 670, 314 Ill. Dec. 48, 873 N.E.2d 978, 2007 Ill. App. LEXIS 846 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1790 (Ill. 2007).

Trial court properly dismissed, summarily, defendant's motion for postconviction relief, as defendant was not able to show that defendant's trial or appellate counsel provided ineffective assistance of counsel in failing to appropriately object in defendant's murder case to the fact that defendant was shackled in the courtroom; defendant was not prejudiced by the alleged failure because it did not contribute to the verdict, especially since the evidence against defendant's claim of self-defense regarding defendant's killing of a coworker was overwhelming in supporting the conclusion that defendant had not been justified in killing the coworker. People v. Robinson, 375 Ill. App. 3d 320, 313 Ill. Dec. 672, 872 N.E.2d 1061, 2007 Ill. App. LEXIS 813 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1731 (Ill. 2007).

Defense counsel's failure to object to a jury instruction on identification testimony and testimony regarding the victim's identification and a show up could not support an ineffective assistance of counsel claim since these matters were sound trial strategy and did not prejudice defendant. Thus, defendant's claims failed both prongs of the Strickland test. People v. McGee, 373 Ill. App. 3d 824, 311 Ill. Dec. 870, 869 N.E.2d 883, 2007 Ill. App. LEXIS 544 (1 Dist. 2007), appeal denied, 225 Ill. 2d 659, 875 N.E.2d 1119, 2007 Ill. LEXIS 1338 (2007).

Trial court did not err by not appointing new counsel to investigate defendant's posttrial pro se motion of ineffective assistance, because defendant was not prejudiced by counsel's failure to secure the testimony of a coworker, as the testimony would simply have established that defendant was in the same area where an officer testified the officer saw defendant selling narcotics. Nor did counsel's inability to locate the coworker fall below objective standards of reasonableness in discharging counsel's duties to defendant. People v. Bell, 373 Ill. App. 3d 811, 311 Ill. Dec. 794, 869 N.E.2d 807, 2007 Ill. App. LEXIS 521 (1 Dist. 2007), appeal denied, 225 Ill. 2d 641, 875 N.E.2d 1115, 2007 Ill. LEXIS 1258 (2007).

Counsel was not ineffective for failing to introduce evidence that one of two complaining witnesses had a prior conviction of battery because the testimony of the other victim would have been unimpeached and corroborated the witness's testimony; thus, defendant could not show a probability that the outcome would have been different if counsel had made such an attempt. People v. Pineda, 373 Ill. App. 3d 113, 311 Ill. Dec. 281, 867 N.E.2d 1267, 2007 Ill. App. LEXIS 471 (1 Dist. 2007).

Ineffective assistance of counsel claim based on counsel's failure to move to dismiss a portion of the indictment for a speedy trial violation failed because the State was not adding a new charge but was seeking an enhanced sentence and thus, the amendment to the charging instrument did not affect defendant's speedy trial rights. People v. Davis, 373 Ill. App. 3d 351, 311 Ill. Dec. 665, 869 N.E.2d 339, 2007 Ill. App. LEXIS 464 (1 Dist. 2007), appeal denied, 225 Ill. 2d 646, 875 N.E.2d 1116, 2007 Ill. LEXIS 1273 (2007).

Defendant failed to state a constitutional claim of ineffective assistance of counsel for post-conviction relief because counsel was correct when he told defendant that he needed to set aside his guilty plea before asking the court to reduce his sentence and defendant made it clear that he did not want to withdraw his guilty plea. People v. Jarrett, 372 Ill. App. 3d 344, 311 Ill. Dec. 187, 867 N.E.2d 1173, 2007 Ill. App. LEXIS 393 (1 Dist. 2007), appeal denied, 225 Ill. 2d 653, 875 N.E.2d 1118, 2007 Ill. LEXIS 1249 (2007).

Defendant failed to show that trial counsel's representation fell below an objective standard of reasonableness or that, even if it did, the substandard performance affected outcome of the plea process; other evidence existed which likely would have led to conviction and therefore, led counsel to recommend defendant agree to the plea. People v. Ramirez, 371 Ill. App. 3d 738,

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309 Ill. Dec. 244, 863 N.E.2d 1141, 2007 Ill. App. LEXIS 165 (1 Dist. 2007), appeal denied, 233 Ill. 2d 588, 335 Ill. Dec. 643, 919 N.E.2d 362, 2009 Ill. LEXIS 1383 (2009), substituted op., 2010 Ill. App. LEXIS 425 (Ill. App. Ct. 2d Dist. 2010), op. withdrawn, 2010 Ill. App. LEXIS 425 (Ill. App. Ct. 2d Dist. 2010), substituted op., 2010 Ill. App. LEXIS 587 (Ill. App. Ct. 2d Dist. 2010).

Trial court did not err in dismissing defendant's petition for post-conviction relief, as neither of the two claims that defendant advanced in support of defendant's contention that defendant received ineffective assistance of counsel in defendant's burglary case stated the gist of a meritorious claim that defendant's constitutional rights had been violated; police had a reasonable suspicion that justified the stop of defendant's vehicle in Wisconsin, but only nine miles from the crime scene in Illinois, and any motion challenging defendant's extradition from Wisconsin to Illinois would have failed since defendant could not show the violation of any law that occurred when Illinois deputies went to Wisconsin and returned with defendant to Illinois. People v. Hoekstra, 371 Ill. App. 3d 720, 309 Ill. Dec. 215, 863 N.E.2d 847, 2007 Ill. App. LEXIS 149 (1 Dist. 2007), appeal denied, 229 Ill. 2d 641, 325 Ill. Dec. 10, 897 N.E.2d 258, 2008 Ill. LEXIS 963 (2008).

Trial counsel's failure to question prospective jurors regarding gang bias did not amount to ineffective assistance as it could have been a strategic decision not to highlight the gang evidence further and defendant could not establish prejudice from the alleged error. People v. Macias, 371 Ill. App. 3d 632, 309 Ill. Dec. 144, 863 N.E.2d 776, 2007 Ill. App. LEXIS 103 (1 Dist. 2007), appeal denied, 229 Ill. 2d 645, 325 Ill. Dec. 11, 897 N.E.2d 259, 2008 Ill. LEXIS 923 (2008), cert. denied, 129 S. Ct. 1992, 2009 U.S. LEXIS 3013, 173 L. Ed. 2d 1094 (U.S. 2009).

Defendant did not show that defendant received ineffective assistance of counsel when defendant entered a guilty plea to one count of residential burglary; defendant's counsel was not obligated to advise defendant of the possibility of pleading guilty but mentally ill because only collateral consequences flowed from the decision to plead guilty but mentally ill and defendant's claim that defendant was improperly informed about the amount of prison time defendant could expect to receive on defendant's guilty plea lacked a factual basis in the record. People v. Manning, 371 Ill. App. 3d 457, 309 Ill. Dec. 59, 863 N.E.2d 289, 2007 Ill. App. LEXIS 102 (1 Dist. 2007).

Defense counsel's failure to present mitigating evidence did not amount to ineffective assistance where defendant waived the right to present such evidence and counsel strategically chose not to present evidence based on defendant's refusal to cooperate with the appointed mitigation specialist and thus, the expert's inability to tie a prior accident to defendant's acts in the instance action. People v. Harris, 225 Ill. 2d 1, 310 Ill. Dec. 351, 866 N.E.2d 162, 2007 Ill. LEXIS 425 (2007).

Defendant did not show that defendant's trial counsel provided ineffective assistance by not moving for sanctions when the State failed to tender a police officer's photographs and measurements of an accident scene that had been attached to the officer's investigative report, but which was inadvertently missing when the State provided that report to defense counsel; the evidence was not closely balanced, defendant was not deprived of a fair trial because defendant could not show that defendant had been prejudiced, and defendant would not have been entitled to sanctions had defense counsel requested them. People v. Martinez, 371 Ill. App. 3d 363, 308 Ill. Dec. 819, 862 N.E.2d 1022, 2007 Ill. App. LEXIS 15 (1 Dist. 2007).

Counsel was not ineffective for not seeking to quash defendant's arrest because he was arrested without a warrant and in the absence of exigent circumstances. The balance of the McNeal factors supported the police conduct, as there was no deliberate or unjustified delay by the officers during which time a warrant could have been obtained, officers had reason to believe defendant was violent, and there was a reasonable likelihood that defendant would flee if not swiftly apprehended. People v. Johnson, 368 Ill. App. 3d 1073, 307 Ill. Dec. 153, 859 N.E.2d 153, 2006 Ill. App. LEXIS 1050 (1 Dist. 2006).

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Mother's claim that she was denied effective assistance of counsel, pursuant to Ill. Const. (1970), Art. I, § 8 and the Sixth Amendment, in her termination of parental rights proceeding was rejected on appeal; the appellate court concluded that the Cronic ineffective assistance of counsel test did not apply and due to her lack of effort in being involved in her young son's life, she could not show under the Strickland test that she had been prejudiced by her counsel's performance in informing the court that counsel could not provide much of a defense because counsel had not been in touch with the mother very much. People v. Cundiff (In re C.C.), 368 Ill. App. 3d 744, 307 Ill. Dec. 170, 859 N.E.2d 170, 2006 Ill. App. LEXIS 1048 (1 Dist. 2006).

Defense counsel was not ineffective for failing to file a motion to suppress defendant's inculpatory statement to police because the statement was voluntary; defendant did not suffer any mental or physical affliction, was informed of defendant's Miranda rights, and was provided with food, drink, and the use of a restroom. People v. Woodard, Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 671 (1 Dist. Aug. 3, 2006).

It was not objectively unreasonable for trial counsel to not introduce the statement of a witness, or clarify its contents. The witness's potential failure to inform the authorities of a fight involving defendant was not of particular significance with respect to the witness's identification of defendant as a shooter. People v. Ward, Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 891 (1 Dist. Sept. 29, 2006).

Counsel's failure to preserve as error counsel's request that the circuit court question a juror as to why the juror disobeyed the court's orders was not ineffective assistance, as defendant failed to do anything more than speculate surrounding any prejudice that may have resulted. Such speculation was not enough to gain relief. People v. Ward, Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 891 (1 Dist. Sept. 29, 2006).

Trial court properly denied defendant's postconviction petition, as defendant failed to show that his appellate counsel was ineffective in violation of Ill. Const. (1970), Art. I, § 8, for failing to raise the issue of trial counsel's ineffectiveness based on trial counsel's failure to demand trial when a fitness examination of defendant was not submitted to the court and the parties within 30 days of the court's order as required by 725 ILCS 5/104-15(a) (1994), because failure to comply with 725 ILCS 5/104-15(a) (1994) did not require discharge of a defendant, and accordingly, even if trial counsel had raised the objection, counsel would not have been successful in obtaining defendant's discharge, and because continuances to obtain a fitness examination tolled the term set out in 725 ILCS 5/103-5(a) (1996) for bringing the case to trial. People v. Oliver, 367 Ill. App. 3d 826, 306 Ill. Dec. 49, 856 N.E.2d 1144, 2006 Ill. App. LEXIS 883 (1 Dist. 2006).

Counsel was not ineffective for failing to file a motion to suppress defendant's inculpatory statements to police because the statements were voluntary and thus, such a motion would not have succeeded. Among other things, the evidence showed that defendant was 20 years old at the time the statement was made, defendant did not suffer from any mental or physical affliction, defendant's conversations with detectives did not last for inordinate amounts of time, defendant was informed of defendant's Miranda rights on several occasions, and defendant was provided with food, drink, and the use of a restroom while in custody. People v. Woodard, 367 Ill. App. 3d 304, 305 Ill. Dec. 82, 854 N.E.2d 674, 2006 Ill. App. LEXIS 846 (1 Dist. 2006).

Search of defendant did not violate the Fourth Amendment where an officer witnessed defendant engaged in an argument with another man in the middle of the street, as defendant's disorderly conduct under 720 ILCS 5/26-1 justified a Terry stop of defendant, the officer was thereafter permitted to ask defendant for defendant's name during a Terry stop, and the officer detained defendant for a reasonable time while checking defendant's name; thus, trial counsel was not ineffective under Ill. Const. (1970), Art. I, § 8 for failing to file a motion to suppress and to quash arrest, as such a motion would not have had a reasonable likelihood of success. People v. Morrison, 367 Ill. App. 3d 581, 305 Ill. Dec. 362, 855 N.E.2d 253, 2006 Ill. App. LEXIS 818 (1 Dist. 2006), overruled in part by, criticized in People v. Jones, 223 Ill. 2d 569, 2006 Ill. LEXIS 1671 (2006).

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Defendant's claim of ineffective assistance failed because counsel could not be ineffective for failing to file a motion to suppress that would not have been successful. People v. White, 221 Ill. 2d 1, 302 Ill. Dec. 614, 849 N.E.2d 406, 2006 Ill. LEXIS 612 (2006), cert. denied, 127 S. Ct. 259201, 2006 U.S. LEXIS 6157, 166 L. Ed. 2d (U.S. 2006); overruled in part by People v. Luedemann, 222 Ill. 2d 530, 857 N.E.2d 187, 2006 Ill. LEXIS 1641, 306 Ill. Dec. 94 (2006).

Defense counsel did not render ineffective assistance of counsel by conceding defendant's guilt and pursuing an unavailable theory of self-defense because the evidence against defendant was overwhelming where defendant confessed, both in a videotaped statement and in defendant's testimony at trial, to shooting the victim, and two eyewitnesses positively identified defendant as the shooter; defense counsel's conduct did not constitute a "total failure of legal representation" because defense counsel's conduct demonstrated an attempt to present a defense, albeit, unsuccessfully, and to test the State's case against defendant. People v. Bloomingburg, 346 Ill. App. 3d 308, 281 Ill. Dec. 673, 804 N.E.2d 638, 2004 Ill. App. LEXIS 80 (1 Dist. 2004), appeal denied, 217 Ill. 2d 571, 300 Ill. Dec. 368, 844 N.E.2d 40 (2005), cert. denied, U.S. , 126 S. Ct. 1657, 164 L. Ed. 2d 401 (2006).

Defendant's claim that he received ineffective assistance of counsel because his attorney failed to exercise a peremptory challenge to exclude from the jury a juror who did not disclose during voir dire that the juror had been arrested and charged with driving while intoxicated was rejected; defendant could not meet the Strickland test for showing his counsel was ineffective because the evidence against defendant in his burglary case was substantial and defendant could not show that another jury without that juror would not have convicted defendant. People v. Redmond, 357 Ill. App. 3d 256, 293 Ill. Dec. 708, 828 N.E.2d 1206, 2005 Ill. App. LEXIS 375 (1 Dist. 2005), appeal denied, 219 Ill. 2d 588, Ill. Dec. , 852 N.E.2d 246 (2006).

Defense counsel did not render ineffective assistance when he rested his case without presenting any evidence after the denial of a motion for a directed finding of not guilty since there was no probability that had defendant testified or presented other testimony, the outcome would have been different; thus, defendant's claim failed under the prejudice prong. People v. Milton, 354 Ill. App. 3d 283, 290 Ill. Dec. 7, 820 N.E.2d 1074, 2004 Ill. App. LEXIS 1451 (1 Dist. 2004), appeal denied, 214 Ill. 2d 544, 294 Ill. Dec. 7, 830 N.E.2d 7 (2005).

Defense counsel did not render ineffective assistance when he advanced the implausible defense theory of "attempt possession" and, in doing so, conceded defendant's guilt to the charge of simple possession since counsel's closing argument was reasonable. The record showed counsel vigorously defended the case and, using a degree of creativity, fashioned a defense where no other was available. People v. Milton, 354 Ill. App. 3d 283, 290 Ill. Dec. 7, 820 N.E.2d 1074, 2004 Ill. App. LEXIS 1451 (1 Dist. 2004), appeal denied, 214 Ill. 2d 544, 294 Ill. Dec. 7, 830 N.E.2d 7 (2005).

Trial court properly summarily dismissed pursuant to 725 ILCS 5/122-2.1 the inmate's post-conviction claim that defense counsel was ineffective under Ill. Const., Art. I, § 8 for failing to call multiple witnesses as inmate failed to support this claim with an affidavit from the proposed witnesses. People v. Palmer, 352 Ill. App. 3d 877, 288 Ill. Dec. 4, 817 N.E.2d 129, 2004 Ill. App. LEXIS 1255 (4 Dist. 2004), appeal denied, 216 Ill. 2d 720, 298 Ill. Dec. 386, 839 N.E.2d 1033 (2005).

Trial court properly summarily dismissed pursuant to 725 ILCS 5/122-2.1 the inmate's post-conviction claim that the inmate's counsel had a conflict of interest in violation of the right to effective assistance of counsel under Ill. Const., Art. I, § 8 because counsel knew the victim, an attorney; while counsel knew the victim professionally, counsel had no previous relationship with the victim that would have given rise to divided loyalties. People v. Palmer, 352 Ill. App. 3d 877, 288 Ill. Dec. 4, 817 N.E.2d 129, 2004 Ill. App. LEXIS 1255 (4 Dist. 2004), appeal denied, 216 Ill. 2d 720, 298 Ill. Dec. 386, 839 N.E.2d 1033 (2005).

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Defendant, who was found to be a sexually violent person pursuant to the Sexually Violent Persons Commitment Act, 725 ILCS 207/1 et seq., and who was committed to a Department of Human Services (DHS) treatment facility indefinitely, was not prejudiced by the use of certain actuarial instruments because, as a matter of trial strategy, defendant presented evidence that defendant's own expert relied upon them in reaching the expert's opinion; although defense counsel erred in procedurally defaulting on the meritorious issue of the DHS employees' refusal to discuss the case, counsel was not ineffective because the State's evidence was so overwhelming that defendant was not prejudiced by defense counsel's performance. People v. Bushong (In re Bushong), 351 Ill. App. 3d 807, 286 Ill. Dec. 893, 815 N.E.2d 103, 2004 Ill. App. LEXIS 1055 (2 Dist. 2004), appeal denied, 213 Ill. 2d 559, Ill. Dec. , 829 N.E.2d 788 (2005).

Defendant's claim of ineffective assistance failed where, contrary to defendant's claim, counsel called several witnesses to present evidence supporting his defense of others theory and vigorously defended the case at every stage of the proceedings. People v. Nunn, 357 Ill. App. 3d 625, 293 Ill. Dec. 871, 829 N.E.2d 796, 2005 Ill. App. LEXIS 422 (1 Dist. 2005), appeal denied, 216 Ill. 2d 719, 298 Ill. Dec. 386, 839 N.E.2d 1033 (2005).

Defendant was not entitled to have his convictions for first-degree murder, arson, and concealment of a homicide overturned based on his allegation that he received ineffective assistance of counsel, as defendant did not show either that his counsel performed deficiently or that the actions of his counsel, which were a matter of trial strategy, prejudiced him such that the outcome of his case was affected. People v. Patterson, 347 Ill. App. 3d 1044, 283 Ill. Dec. 871, 808 N.E.2d 1159, 2004 Ill. App. LEXIS 468 (4 Dist. 2004), aff'd, 217 Ill. 2d 407, 299 Ill. Dec. 157, 841 N.E.2d 889 (2005).

Defendant was not denied effective assistance of counsel because, once defendant decided not to attend the hearing, and clearly waived his right to be present at the hearing to withdraw his guilty plea, defendant's post-plea counsel was not required to force defendant to do so. People v. Justice, 349 Ill. App. 3d 981, 285 Ill. Dec. 394, 811 N.E.2d 1273, 2004 Ill. App. LEXIS 782 (4 Dist. 2004).

Trial court properly handled a delinquent minor's post-trial pro se motion seeking appointment of new counsel for an appeal where the judge examined the basis in the record for the minor's claim of ineffectiveness, that counsel had not called witnesses that the minor had failed to tell counsel about, despite having been instructed to do so, and found the claim meritless. People v. Eric B. (In re Eric B.), 351 Ill. App. 3d 1000, 287 Ill. Dec. 273, 815 N.E.2d 917, 2004 Ill. App. LEXIS 999 (1 Dist. 2004).

Defense counsel was not ineffective for failing to file a motion to quash defendant's arrest and suppress the evidence since such motions would have been futile; defendant's arrest was based on probable cause and, therefore, the search incident thereto was legal. People v. Rucker, 346 Ill. App. 3d 873, 280 Ill. Dec. 801, 803 N.E.2d 31, 2004 Ill. App. LEXIS 76 (1 Dist. 2004).

Defendant's conviction of criminal damage to property, 720 ILCS 5/21-1(1)(a), was reversed where defense counsel rendered ineffective assistance in violation of Ill. Const., Art. I, § 8 by saying in opening statements that defendant would testify, and then inexplicably failing to call defendant to the stand. People v. Briones, 352 Ill. App. 3d 913, 287 Ill. Dec. 909, 816 N.E.2d 1120, 2004 Ill. App. LEXIS 1207 (5 Dist. 2004), appeal denied, 213 Ill. 2d 563, 293 Ill. Dec. 864, 829 N.E.2d 789 (2005).

Court rejected defendant's ineffective assistance of counsel claim after finding that counsel's failure to tender the accomplice witness instruction caused no prejudice to defendant. The purpose of the instruction is to warn the jury that there may be a strong motivation for the accomplice witness to provide false testimony in return for lenient treatment; however, defendant's accomplice had already pleaded guilty and been convicted of theft directly related to

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defendant's case. People v. Davis, 353 Ill. App. 3d 790, 289 Ill. Dec. 395, 819 N.E.2d 1195, 2004 Ill. App. LEXIS 1458 (2 Dist. 2004).

Although counsel failed to have the trial court inform the jurors regarding defendant's decision not to testify, the jury was made aware of this principle before deliberating, thereby curing any error. People v. Benford, 349 Ill. App. 3d 721, 285 Ill. Dec. 894, 812 N.E.2d 714, 2004 Ill. App. LEXIS 818 (1 Dist. 2004).

Counsel's strategic decision not to request a jury instruction on the lesser-included offense of second-degree murder, while unsuccessful, did not amount to ineffective assistance given the State's evidence which included an eyewitness account and defendant's confession. People v. Benford, 349 Ill. App. 3d 721, 285 Ill. Dec. 894, 812 N.E.2d 714, 2004 Ill. App. LEXIS 818 (1 Dist. 2004).

Counsel's failure to object to the State's use of a witness' prior inconsistent statement as substance evidence during closing arguments did not amount to ineffective assistance of counsel since defendant incurred no prejudice as the jury was otherwise exposed to the same information. People v. Benford, 349 Ill. App. 3d 721, 285 Ill. Dec. 894, 812 N.E.2d 714, 2004 Ill. App. LEXIS 818 (1 Dist. 2004).

Counsel's failure to move to suppress defendant's inculpatory statements did not amount to ineffective assistance since the suppression of said statements would not have affected the outcome of the trial; the eyewitness testimony presented was sufficient alone to support defendant's conviction. People v. Benford, 349 Ill. App. 3d 721, 285 Ill. Dec. 894, 812 N.E.2d 714, 2004 Ill. App. LEXIS 818 (1 Dist. 2004).

Counsel's tactical decisions did not amount to ineffective assistance; in particular, failure to object to vague charges or to demand a bill of particulars was not ineffective because the court had already determined that the charges were not vague, and were therefore clear enough that no bill of particulars would have been required. People v. Diestelhorst, 344 Ill. App. 3d 1172, 280 Ill. Dec. 201, 801 N.E.2d 1146, 2004 Ill. App. LEXIS 60 (5 Dist. 2004), appeal denied, 209 Ill. 2d 587, 286 Ill. Dec. 168, 813 N.E.2d 225 (2004).

Trial court did not violate Rule 608(a)(9), Supreme Court Rules, and defendant's right to due process by allowing voir dire to proceed without a court reporter, nor did defense counsel render ineffective assistance by waiving the reporting of voir dire, because it was defendant's responsibility to preserve an adequate record for appeal; the trial court asked defense counsel if he wanted voir dire reported, and he said no. People v. Ash, 346 Ill. App. 3d 809, 282 Ill. Dec. 30, 805 N.E.2d 649, 2004 Ill. App. LEXIS 260 (4 Dist. 2004).

Counsel was not ineffective in failing to move to suppress an eyewitness identification where the motion was certain to have been futile, or in failing to investigate certain witnesses where there was no indication at the time that they were likely to recant, or in failing to challenge alleged disparate sentences where the co-defendant received leniency only pursuant to a guilty plea. People v. Morales, 339 Ill. App. 3d 554, 274 Ill. Dec. 711, 791 N.E.2d 1122, 2003 Ill. App. LEXIS 645 (1 Dist. 2003).

Defense counsel was not ineffective in failing to call alibi witnesses, in withdrawing a motion to suppress two photo lineups, or in failing to object to the chain of custody for the state's DNA evidence. People v. Smado, 322 Ill. App. 3d 329, 255 Ill. Dec. 652, 750 N.E.2d 233, 2001 Ill. App. LEXIS 289 (3 Dist. 2001).

The defendant failed to establish ineffective assistance of counsel where he offered at least six examples of counsel's conduct to establish his claim of ineffective assistance, but each of these bases fell in the category of either: (1) trial strategy decisions appropriately made by counsel; or (2) conduct not unreasonable enough to show that the defendant suffered prejudice from the claimed professional error. People v. Leeper, 317 Ill. App. 3d 475, 251 Ill. Dec. 202, 740 N.E.2d 32, 2000 Ill. App. LEXIS 917 (5 Dist. 2000).

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Defendant failed to demonstrate that counsel's performance fell below an objective standard for reasonableness on the basis of alleged errors, including attempts to learn the basic facts of the case, ineffective cross-examination, ignorance of the adverse witness rule, ignorance on how to impeach a witness, and attempts to elicit testimony. People v. Madej, 177 Ill. 2d 116, 226 Ill. Dec. 453, 685 N.E.2d 908 (1997), cert. denied, 523 U.S. 1098, 118 S. Ct. 1565, 140 L. Ed. 2d 799 (1998).

Where counsel never conceded her client was guilty of any charge, nor misunderstood accountability and felony murder principles, her obvious hope was that the jury would split its verdict, refusing, despite the instructions to convict the defendant of a murder he did not plan or intend, and though such tactics are risky they did not amount to ineffective assistance of counsel. People v. Montanez, 281 Ill. App. 3d 558, 217 Ill. Dec. 459, 667 N.E.2d 548 (1 Dist. 1996), appeal denied, 168 Ill. 2d 614, 219 Ill. Dec. 572, 671 N.E.2d 739 (1996).

Because exigent circumstances obviated the requirement that the police knock and announce their presence and purpose, the motion to suppress would not have succeeded and counsel's failure to file that motion did not fall below an objective standard of reasonableness, nor deprive defendant of the effective assistance of counsel. People v. Seaberg, 262 Ill. App. 3d 79, 200 Ill Dec. 25, 635 N.E.2d 126 (2 Dist.), appeal denied, 157 Ill. 2d 517, 205 Ill. Dec. 180, 642 N.E.2d 1297 (1994).

Where the defendant did not contend that the outcome of his case would have been different if his counsel had been more diligent in his investigation, but merely conjectured that the outcome may have been different, such speculation was not sufficient to warrant a reversal of his conviction of aggravated assault and weapons violations based prejudice. People v. Elliott, 46 Ill. App. 3d 887, 5 Ill. Dec. 529, 361 N.E.2d 852 (4 Dist. 1977).

Although unsuccessful, defendant's counsel moved to suppress a confession, moved for discovery and succeeded in the first trial in having a hung jury which resulted in a mistrial. The fact that she was not able to secure exoneration in the second trial did not indicate incompetence. People v. Murphy, 47 Ill. App. 3d 278, 5 Ill. Dec. 519, 361 N.E.2d 842 (2 Dist. 1977), aff'd, 72 Ill. 2d 421, 21 Ill. Dec. 350, 381 N.E.2d 677 (1978).

-- Prejudice Not Shown

Trial counsel was not ineffective for failing to file a motion to suppress evidence found in defendant's truck following defendant's arrest, as probable cause existed to arrest defendant and search the truck incident to that arrest; defendant was observed at an address where a package containing cocaine had been shipped. People v. Tyus, Ill. App. 3d , 355 Ill. Dec. 742, 960 N.E.2d 624, 2011 Ill. App. LEXIS 1118 (4 Dist. 2011).

Defendant's counsel was not ineffective as defendant suffered no prejudice from the trial counsel's failure to discover a witness's criminal history because there were a number of eyewitnesses to the shooting, all of whom testified that they did not observe the victim with a weapon; and there was the presence of forensic evidence that the victim had been shot in the back, as well as defendant's incredible account of the event. People v. Simon, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 535 (1 Dist. May 27, 2011).

Defendant was not entitled to relief on defendant's successive postconviction relief petition because defendant did not state the gist of a meritorious constitutional claim, and, in particular, did not show that defendant received Ill. Const. art, I, § 8 ineffective assistance of counsel. For example, defendant could not show that defendant's trial counsel provided ineffective assistance for not investigating certain witnesses in defendant's first-degree murder case, as those witnesses would not have supported defendant's self-defense theory that defendant was not the initial aggressor. People v. Jarrett, 399 Ill. App. 3d 715, 340 Ill. Dec. 15, 927 N.E.2d 754, 2010 Ill. App. LEXIS 214 (1 Dist. 2010).

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Defendant's contention had to be rejected that defendant received Ill. Const. art. I, § 8 ineffective assistance of counsel in defendant's aggravated criminal sexual assault case because defendant's counsel said in opening statements that defendant would testify and defendant did not end up doing so. Defendant could not show that defendant was prejudiced by the unfulfilled promise as the State's evidence against defendant was overwhelming such that defendant would still have been convicted had the remark not been made. People v. Everhart, 405 Ill. App. 3d 687, 345 Ill. Dec. 353, 939 N.E.2d 82, 2010 Ill. App. LEXIS 1178 (1 Dist. 2010).

Defendant did not show in a case where defendant had been convicted of murder, aggravated kidnapping, and robbery that defendant was entitled to relief on the postconviction petition that defendant filed pursuant to the Post-Conviction Hearing Act, 725 ILCS 5/122-1 et seq. Although defendant's claims centered around the State allegedly using the false testimony of a serologist, defendant's convictions were not based on forensic evidence, meaning defendant could not show that defendant received Ill. Const. art. I, § 8 ineffective assistance of trial or appellate counsel in not challenging that evidence, and defendant's only other claim, that postconviction counsel did not comply with Ill. Sup. Ct. R. 651(c), was meritless because evidence in the case showed that such counsel had consulted with defendant to make sure defendant's postconviction petition claims were adequately presented. People v. Garcia, 405 Ill. App. 3d 608, 345 Ill. Dec. 792, 939 N.E.2d 972, 2010 Ill. App. LEXIS 1179 (1 Dist. 2010).

Defendant was not entitled to relief on defendant's amended postconviction relief petition filed pursuant to 725 ILCS 5/122-1, as defendant did not make the required substantial showing of a constitutional violation in a case where defendant was convicted of attempted murder after firing four shots at a person who earlier had a confrontation with defendant's girlfriend. Defendant was unable to rebut the strong presumption that the representation defendant received was the result of trial counsel's trial strategy rather than incompetence or that defendant was prejudiced by the representation and, thus, could not show that defendant received ineffective assistance of counsel in violation of Ill. Const. art. I, § 8. People v. Mendoza, 402 Ill. App. 3d 808, 341 Ill. Dec. 806, 931 N.E.2d 703, 2010 Ill. App. LEXIS 560 (1 Dist. 2010).

Defendant could not show that defendant was entitled to withdraw the guilty plea defendant made to a charge of attempted aggravated criminal sexual assault, as defendant could not demonstrate that defendant's right to a speedy trial was violated at the time defendant gave that plea and the trial court accepted it. Defendant did not show that defendant received ineffective assistance of counsel in violation of Ill. Const. art. I, § 8, as only 100 days passed between the time that defendant's conviction was vacated in a prior case in which defendant was tried and convicted in absentia and the date on which defendant pled guilty to that charge in a subsequent case. People v. Sharifpour, 402 Ill. App. 3d 100, 341 Ill. Dec. 319, 930 N.E.2d 499, 2010 Ill. App. LEXIS 499 (2 Dist. 2010).

Defendant was not entitled to relief from defendant's conviction for possession of a controlled substance with intent to deliver more than one gram but less than five grams of a substance containing cocaine, in violation of 720 ILCS 570/401(c)(2). Despite defendant claiming that defense counsel should have moved to dismiss the indictment returned against defendant and that dog-tracking evidence was improperly admitted, defendant could not show that defendant received Ill. Const. art. I, § 8 ineffective assistance of counsel, as the asserted variations between grand jury testimony and the allegations of the indictment were too immaterial to show that defendant was prejudiced by any of the differences and any objection to the properly-admitted dog-tracking evidence would have been denied. People v. Holmes, 397 Ill. App. 3d 737, 337 Ill. Dec. 602, 922 N.E.2d 1179, 2010 Ill. App. LEXIS 82 (2 Dist. 2010).

Defendant could not show that defendant received Ill. Const. art. I, § 8 ineffective assistance of counsel due to the fact that defense counsel was unable to obtain a severance of defendant's case involving weapons offenses from that of the codefendant, who was being tried under an accountability theory and presented a contradictory, but not antagonistic, defense. Since defendant was not entitled to a severance, defense counsel could not have provided ineffective assistance for failing to obtain it, and defendant in any event was not prejudiced given the

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overwhelming evidence against defendant. People v. Mercado, 397 Ill. App. 3d 622, 336 Ill. Dec. 900, 921 N.E.2d 756, 2009 Ill. App. LEXIS 1313 (1 Dist. 2009).

Defendant did not show that defense counsel provided Ill. Const. art. I, § 8 ineffective assistance of counsel by not submitting separate verdict forms in defendant's first degree murder and armed robbery case. Defendant did not show a reasonable probability that separate verdict forms would have resulted in not guilty verdicts on the first degree murder theories of intentional and knowing murder, which might have prevented the trial court from being able to impose a consecutive sentence upon defendant for the armed robbery conviction. People v. Moore, 397 Ill. App. 3d 555, 337 Ill. Dec. 312, 922 N.E.2d 435, 2009 Ill. App. LEXIS 1273 (1 Dist. 2009), appeal denied, 2010 Ill. LEXIS 609 (Ill. 2010).

First defendant and second defendant convicted of first degree murder stemming from their involvement in the shooting death of a 16-year-old person were not entitled to relief on their claim that they received Ill. Const. art. I, § 8 ineffective assistance of counsel because trial counsel did not tender an accomplice witness instruction at trial. The State presented overwhelming evidence of their guilt and, thus, neither of them could show the required prejudice, that their trials would have turned out differently if such an instruction had been given. People v. Brown, Ill. App. 3d , Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 1251 (1 Dist. May 14, 2009).

Defendant could not obtain relief from defendant's first-degree murder conviction involving defendant stabbing to death another man through defendant's argument that defendant's counsel provided ineffective assistance of counsel in violation of Ill. Const. art. I, § 8 in not requesting that the trial court give a jury instruction use of force where defendant was not the initial aggressor. Defendant made no showing that defendant would not have been found guilty had the jury instruction at issue been given. People v. Alexander, 396 Ill. App. 3d 563, 336 Ill. Dec. 91, 919 N.E.2d 1016, 2009 Ill. App. LEXIS 1187 (3 Dist. 2009).

Defendant suffered no prejudice from counsel's failure to request Ill. Pattern Jury Instructions Crim. No. 24-25.09, regarding use of force. There was no evidence that had defense counsel requested No. 24-25.09 that the trial court would have allowed it, given that the court denied defendant's request for Ill. Pattern Jury Instructions Crim. No. 24-25.06; in addition, No. 24-25.09 could not be given without No. 24-25.06. People v. Lavelle, 396 Ill. App. 3d 372, 335 Ill. Dec. 673, 919 N.E.2d 392, 2009 Ill. App. LEXIS 1123 (1 Dist. 2009), appeal denied, 2010 Ill. LEXIS 562 (Ill. 2010); appeal denied, 2010 Ill. LEXIS 617 (Ill. 2010).

Despite defendant's claim that there were multiple examples of defendant receiving Ill. Const. art. I, § 8 ineffective assistance of counsel in a case where defendant was tried and convicted for purchasing stolen cell phones, defendant failed to prove that defense counsel provided ineffective assistance of counsel. Most of what defendant complained about involved defense counsel's choice of trial tactics, which did not demonstrate ineffective assistance of counsel, and defendant failed to show that defendant was prejudiced by defense counsel's representation. People v. Garmon, 394 Ill. App. 3d 977, 334 Ill. Dec. 303, 916 N.E.2d 1191, 2009 Ill. App. LEXIS 948 (1 Dist. 2009), appeal denied, 235 Ill. 2d 595, 924 N.E.2d 458, 2010 Ill. LEXIS 194 (2010).

Defendant failed to show that her counsel's alleged ineffectiveness caused her prejudice, such that her claim lacked merit; she did not show how an expert might have helped support her defense theory and she did not show how there was any error by her trial counsel's failure to tender his complete case file to her posttrial attorney. People v. Bauer, 393 Ill. App. 3d 414, 332 Ill. Dec. 842, 913 N.E.2d 1132, 2009 Ill. App. LEXIS 759 (2 Dist. 2009).

Defendant's counsel was not ineffective for failing to seek dismissal of one of two aggravated arson charges based on the one-act, one-crime principle, as the trial court vacated one of the convictions prior to sentencing, such that defendant was not prejudiced by counsel's actions. People v. Bauer, 393 Ill. App. 3d 414, 332 Ill. Dec. 842, 913 N.E.2d 1132, 2009 Ill. App. LEXIS 759 (2 Dist. 2009).

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Defendant did not show in defendant's first-degree murder case that defendant was entitled to relief on defendant's pro se postconviction relief motion filed pursuant to 725 ILCS 5/122-1 et seq., as defendant did not show that defendant received ineffective assistance of counsel in violation of Ill. Const. art. I, § 8 even if was true as defendant alleged that defense counsel refused to allow defendant to testify. Defendant could not show such conduct prejudiced defendant, as no amount of testimony from defendant could have shown that defendant acted of a sudden and intense passion where defendant had an altercation with the victim, the victim fled into a restaurant, defendant had another altercation with the victim there, defendant left because police had been called, defendant went to defendant's nearby home and retrieved a loaded gun, and defendant returned to the restaurant and fatally shot the victim. People v. Brooks, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1382 (1 Dist. Apr. 23, 2008).

Appellant inmate failed to show that trial counsel rendered ineffective assistance by not providing the inmate with police reports that contained the names and statements of two eyewitnesses because the allegations were insufficient to establish that absent trial counsel's failures, the outcome of the proceedings would have been different and thus, prejudice was not shown. People v. Hobson, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 259 (1 Dist. Mar. 28, 2008), reh'g denied, 2008 Ill. App. LEXIS 1149 (Ill. App. Ct. 1st Dist. 2008); op. withdraw; ,substituted op., 325 Ill. Dec. 173, 897 N.E.2d 421, 2008 Ill. App. LEXIS 1101 (App. Ct. 1st Dist. 2008).

Appellate court erred in ruling that defendant received ineffective assistance of counsel when defendant's trial counsel failed to file a motion to suppress drug evidence found through a dog sniff. Based on controlling law at the time, counsel's failure to file the motion established a deficiency in counsel's performance, but as that law was overruled by the Caballes decision, there was no basis for the finding that defendant was prejudiced by counsel's deficient performance. People v. Bew, 228 Ill. 2d 122, 319 Ill. Dec. 878, 886 N.E.2d 1002, 2008 Ill. LEXIS 291 (2008).

Defendant was not entitled to relief on defendant's 725 ILCS 5/122-1 et seq. pro se postconviction petition for relief in a case where defendant was convicted on a charge of first-degree murder and sentenced to 45 years in prison. Despite defendant's claim that defendant received ineffective assistance of counsel in violation of Ill. Const. art. I, § 8 based on defense counsel's failure to present the testimony of an alibi witness who would have placed defendant at her house at the time of the shooting that occurred elsewhere, the trial court was authorized to find that such a claim was patently without merit under 725 ILCS 5/122-2.1, as defendant's conviction was largely based on the testimony of two eyewitnesses to the relevant shooting and, thus, it was unlikely that the outcome of defendant's trial would have been different had the testimony of the alibi witness been presented at defendant's trial. People v. Velasco, Ill. App. 3d , Ill. Dec. , N.E.2d , 2007 Ill. App. LEXIS 1436 (1 Dist. Mar. 8, 2007).

Trial counsel was not ineffective for failing to call a certain witness, as the testimony would not have changed the outcome of the trial and prejudice was thus not shown. Although the witness's testimony that a second man was the shooter would have corroborated defendant, the rest of his testimony would have contradicted defendant, and the evidence against defendant was overwhelming. People v. Haselrig, Ill. App. 3d , Ill. Dec. , N.E.2d , 2007 Ill. App. LEXIS 1435 (1 Dist. June 28, 2007).

Trial court was authorized to summarily dismiss defendant's pro petition for postconviction relief filed pursuant to 725 ILCS 5/122-1 et seq., as defendant did not show that the petition was not frivolous or patently without merit. Defendant's Ill. Const. art. I, § 8 ineffective assistance of counsel claim was meritless, as defendant's assertion that defendant was told by defendant's counsel not testify was refuted by the record and defendant conceded defendant had no self-defense claim. People v. Cheversan, Ill. App. 3d , Ill. Dec. , N.E.2d , 2007 Ill. App. LEXIS 1433 (1 Dist. July 25, 2007).

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Counsel's failure to point out the hardship a term of imprisonment would be on defendant's son and the son's mother did not amount to ineffective assistance of counsel because defendant failed to establish prejudice; the trial court was aware that defendant provided financial support for the son and it was unlikely the fact would have any weight in sentencing defendant as, inter alia, defendant was being sentenced for defendant's role in a string of four burglaries that were not the result of a spur-of-the-moment, rash decision influenced perhaps by drugs or alcohol. People v. Thompson, 375 Ill. App. 3d 488, 314 Ill. Dec. 476, 874 N.E.2d 572, 2007 Ill. App. LEXIS 839 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1791 (Ill. 2007).

Defendant failed to show that his counsel was ineffective because he did not show prejudice where the record did not establish that he was prepared to plead guilty had he known that the minimum sentence was 31 years instead of 27 years. Further, the trial court was not required to conduct an inquiry regarding defendant's posttrial claims of ineffective assistance where the claims were facially insufficient and were set forth in a general and conclusory manner. People v. Montgomery, 373 Ill. App. 3d 1104, 313 Ill. Dec. 420, 872 N.E.2d 403, 2007 Ill. App. LEXIS 676 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1721 (Ill. 2007).

Defendant's claim of ineffective assistance of trial counsel failed because defendant could not establish prejudice. The State overwhelmingly established defendant's direct participation in the destruction of the victim's mailbox, and the trial would have been no different even without counsel's alleged deficiencies. People v. Kuhns, 372 Ill. App. 3d 829, 310 Ill. Dec. 579, 866 N.E.2d 1181, 2007 Ill. App. LEXIS 397 (1 Dist. 2007).

Trial counsel was not ineffective for failing to file a posttrial challenge to the rulings on defendant's motions to quash arrest and suppress evidence because counsel's failure did not forfeit appellate review of the rulings and therefore, defendant suffered no prejudice. People v. Nitz, 371 Ill. App. 3d 747, 309 Ill. Dec. 185, 863 N.E.2d 817, 2007 Ill. App. LEXIS 136 (1 Dist. 2007).

Ineffective assistance of counsel claim based on counsel's use of the word "jail" during openings statement and elicitation of the word "jail-jumps" from a witness failed, as defendant did not establish prejudice; the statements were not stressed or emphasized and were made in the context of a lengthy trial in which the jury heard extensive ballistics evidence as well as the compelling testimony of two eyewitnesses who repeatedly and unequivocally identified defendant as the gunman. People v. Harris, 225 Ill. 2d 1, 310 Ill. Dec. 351, 866 N.E.2d 162, 2007 Ill. LEXIS 425 (2007).

Defendant contended that defendant was prejudiced because the assurances of defendant's counsel that the state appellate defender would address defendant's concerns of ineffective assistance of counsel led defendant to not press the matter. However, defendant failed to demonstrate actual prejudice since defendant made no attempt to show that, had defendant been afforded the opportunity to press defendant's claims of ineffective assistance, the ultimate result would have been the circuit court's grant of a new trial. People v. Ward, Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 891 (1 Dist. Sept. 29, 2006).

The trial court did not abuse its discretion in denying the defendant's amended petition for post-conviction relief on the grounds that his attorney provided ineffective assistance of counsel at the sentencing hearing where the defendant did not show a reasonable probability that the outcome of his sentencing would have been different had the attorney investigated and prepared more adequately for the aggravation/mitigation phase of the trial. People v. Madej, 177 Ill. 2d 116, 226 Ill. Dec. 453, 685 N.E.2d 908 (1997), cert. denied, 523 U.S. 1098, 118 S. Ct. 1565, 140 L. Ed. 2d 799 (1998).

-- Procedure

Even though the Juvenile Court Act, 705 ILCS 405/1-5(1), gave the father the right to be represented by counsel and the father was represented by counsel at a hearing to determine whether the father was fit to parent the minor children, it did not provide for a collateral proceeding to determine whether the father received ineffective assistance of counsel in violation

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of Ill. Const. art. I, § 8. However, since the appellate court was not equipped to hear a direct appeal of the father's ineffective assistance of counsel claim, it had the power pursuant to Ill. Sup. Ct. R. 366(a)(5) to retain jurisdiction over the father's appeal of the finding that the father was unfit while remanding that cause to the trial court for it to conduct a collateral proceeding on that claim. People v. Wells (In re Ch. W.), 399 Ill. App. 3d 825, 340 Ill. Dec. 133, 927 N.E.2d 872, 2010 Ill. App. LEXIS 351 (4 Dist. 2010).

Although defendant claimed that defendant received ineffective assistance of counsel in violation of counsel in violation of Ill. Const. art. I, § 8 because counsel failed to request that the trial court allow defendant to surrender the bond posted in defendant's case once defendant was taken into custody by the Department of Corrections for a parole violation based on defendant's arrest in the instant case. Defendant did not provide a sufficient record for the appellate court to decide the issue of whether defendant received ineffective assistance of counsel as defendant claimed. People v. Nesbit, 398 Ill. App. 3d 200, 338 Ill. Dec. 311, 924 N.E.2d 517, 2010 Ill. App. LEXIS 97 (3 Dist. 2010).

Defendant's petition for postconviction relief stated the gist of a constitutional claim based on its allegations that defense counsel provided Ill. Const. art. I, § 8 ineffective assistance of counsel by not requesting a mental fitness hearing after defendant attacked police officers responding to defendant's domestic disturbance with a knife at a time when defendant was depressed and taking psychiatric medication. As a result, the very low threshold for stating the gist of a constitutional claim was met and summary dismissal of defendant's petition pursuant to 725 ILCS 5/122-2.1 was unwarranted. People v. Brown, 236 Ill. 2d 175, 337 Ill. Dec. 897, 923 N.E.2d 748, 2010 Ill. LEXIS 25 (2010).

Trial court was not required to conduct an evidentiary hearing on defendant's motion for a new trial on defendant's claim of ineffective assistance of counsel in a case where defendant was convicted of two first-degree murders and aggravated battery stemming from the shooting of three people. The record did not show that trial counsel was incompetent in violation of defendant's right to effective assistance of counsel under Ill. Const. art. I, § 8 for not calling defendant's mother and her two coworkers as alibi witnesses where their proposed testimony was never disclosed to counsel and where their testimony in any event would have conflicted with defendant's own alibi testimony. People v. Youngblood, Ill. App. 3d , Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 1250 (1 Dist. Mar. 31, 2009).

Although the dismissal of defendant's petition for postconviction relief filed pursuant to 725 ILCS 5/122-1 et seq. could be affirmed because the findings that trial counsel and its retained expert reviewed certain crucial medical records was supported by the record, defendant who was convicted of first-degree murder under 720 ILCS 5/9-1(a)(2) for allegedly shaking to death the child victim was entitled to an evidentiary hearing on remand of the case. Such a hearing was necessary to determine whether trial counsel was ineffective pursuant to Ill. Const. art. I, 8, based on the contents of the medical records, for not presenting a defense that the child victim's prior medical conditions rather than shaking led to the child victim's death. People v. Jacobazzi, Ill. App. 3d , Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 1125 (2 Dist. Nov. 17, 2009).

State supreme court determined that defendant's cause had to be remanded to the trial court for proceedings to reconstruct the jury voir dire; defendant had set forth a Batson claim in the trial court, and, thus, whether defendant received ineffective assistance of counsel through defense counsel's conduct in waiving the court reporter's mandatory obligation in recording of jury voir dire depended on whether defendant had been prejudiced by the waiver, which could not be determined until the jury voir dire was reconstructed. People v. Houston, 226 Ill. 2d 135, 314 Ill. Dec. 113, 874 N.E.2d 23, 2007 Ill. LEXIS 1147 (2007).

Defendant did not show that the trial court should have granted defendant a hearing on defendant's pro se, pretrial complaint that defendant received ineffective assistance of counsel in violation of Ill. Const. art. I, § 8. The trial court conducted an adequate inquiry into defendant's ineffective assistance of counsel claim in a case where defendant was charged with first degree

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murder and attempted murder, and defense counsel sufficiently addressed defendant's concerns such that the trial court was convinced that there was no need to appoint new counsel. People v. Glasper, Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 1284 (1 Dist. Nov. 21, 2006).

Defendant's conviction for felony theft by deception under 720 ILCS 5/16-1(a)(2) was upheld, but it was error to decline to make any inquiry into defendant's pro se claims of ineffective assistance of counsel. People v. Rohlfs, 368 Ill. App. 3d 540, 306 Ill. Dec. 819, 858 N.E.2d 616, 2006 Ill. App. LEXIS 1043 (1 Dist. 2006).

Where the defendant alleged that trial counsel, a member of the public defender's office, rendered ineffective assistance of counsel at trial, the trial court did not abuse its discretion by denying the defendant's post-trial request for the appointment of an attorney other than a member of the public defender's office due to the alleged conflict of interest on the part of the newly appointed public defender, who on the motion would have to prove that a colleague rendered ineffective assistance of counsel. People v. Moore, 338 Ill. App. 3d 11, 272 Ill. Dec. 764, 788 N.E.2d 68, 2003 Ill. App. LEXIS 335 (1 Dist. 2003).

-- Proof Required

To prevail on a claim of ineffective assistance of counsel, a claimant must show that the performance of the attorney fell outside the range of competence demanded of attorneys in criminal cases and that there is a reasonable probability that, but for the attorney's professional errors, the result in the case would have been different. People v. Holmes, 141 Ill. 2d 204, 152 Ill. Dec. 268, 565 N.E.2d 950 (1990).

-- Shown

Defendant's trial counsel was found ineffective, as counsel's unreasonable failure to object to the admission of other crimes evidence on digital video disks created a reasonable probability that the outcome of the trial would have been different and that the result of the proceeding was unreliable; the jury could have watched the interrogation portions of the video during its deliberations. People v. Moore, Ill. App. 3d , Ill. Dec. , N.E.2d , 2012 Ill. App. LEXIS 66 (1 Dist. Feb. 1, 2012).

Both the first defendant and the second defendant convicted of first degree murder and two counts each of attempted first degree murder were entitled to retrials given the errors that occurred because the trial court admitted a statement from a witness in violation of 725 ILCS 5/115-10.1(c)(2) to the effect that the first defendant had admitted shooting the three people. The first defendant was entitled to a new trial because defense counsel lodged an improper objection to admission of the statement that prejudiced the first defendant, meaning that the first defendant received ineffective assistance of counsel in violation of Ill. Const. art. I, § 8, and the second defendant's Bruton rights regarding admission of a statement by a nontestifying codefendant were violated because admission of that statement, which had the effect of implicating the second defendant in the shooting, violated the second defendant's Ill. Const. art. I, § 2 procedural due process and Ill. Const. art. I, § 8 confrontation clause rights. People v. Fillyaw, 409 Ill. App. 3d 302, 350 Ill. Dec. 609, 948 N.E.2d 1116, 2011 Ill. App. LEXIS 371 (2 Dist. 2011).

Restitution order in defendant's prosecution for theft and burglary was vacated because defense counsel was ineffective for failing to object to the order, which was based on an unnotarized document listing the items taken or repaired. People v. Heinz, 407 Ill. App. 3d 1016, 349 Ill. Dec. 591, 946 N.E.2d 1087, 2011 Ill. App. LEXIS 313 (2 Dist. 2011).

Defendant was entitled to a reversal of his conviction for criminal damage to government-supported property in excess of $500 under 720 ILCS 5/21-4(1)(a) because trial counsel was ineffective for failing to timely object to the inclusion of sales tax in the cost of repairs; otherwise, the offense could have been reduced to a fourth-degree felony. People v. Vega, 408 Ill. App. 3d 887, 349 Ill. Dec. 37, 945 N.E.2d 1189, 2011 Ill. App. LEXIS 233 (2 Dist. 2011).

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Although the State presented sufficient evidence to support defendant's conviction of first degree murder in violation of 720 ILCS 5/9-1(a)(1),(a)(2) because the State showed that defendant shot the victim to death, defendant was still entitled to a new trial. Defense counsel provided ineffective assistance in violation of Ill. Const. art. I, § 8 when defense counsel failed to tender an accomplice jury instruction telling the jury how it should consider the testimony of defendant's alleged accomplice, as the State relied heavily on the accomplice's testimony to convict defendant and the evidence in the case was closely balanced. People v. Wheeler, 401 Ill. App. 3d 304, 340 Ill. Dec. 795, 929 N.E.2d 99, 2010 Ill. App. LEXIS 390 (3 Dist. 2010).

Defense counsel who seemed unable to understand the fundamental facts of defendant's case and trial procedure principles failed to provide defendant with Ill. Const. art. I, § 8 effective assistance of counsel in a case where defendant was convicted of attempted first-degree murder and armed robbery after the victim was attacked by three gunman in an apartment. Defense counsel failed to exploit the victim's testimony that the victim was 100 percent certain of the identity of one gunman despite the police investigation that conclusively established that the alleged gunman was working elsewhere at the relevant time or that the victim did not tell police that the gunman identified as defendant was unusually tall, all of which was important because the State's case was a weak case. People v. Baines, 399 Ill. App. 3d 881, 339 Ill. Dec. 617, 927 N.E.2d 158, 2010 Ill. App. LEXIS 253 (1 Dist. 2010).

Defendant received ineffective assistance of counsel in violation of defendant's right to counsel under Ill. Const. art. I, § 8 when defense counsel failed to make sure that defendant understood specifically what was contained in a second stipulation that defendant presented to the trial court in a stipulated bench trial involving defendant be charged with unlawful possession of child pornography. The second stipulation contained such incriminating statements as defendant stating to a police officer that defendant did not think that there was very much child pornography on defendant's compact discs when defendant intended to say that defendant was unaware of any child pornography on them. People v. Clendenin, 395 Ill. App. 3d 412, 332 Ill. Dec. 889, 913 N.E.2d 1179, 2009 Ill. App. LEXIS 781 (2 Dist. 2009).

Defendant's convictions of involuntary manslaughter and unlawful delivery of a controlled substance were reversed and remanded for a new trial, because defendant received ineffective assistance of counsel in violation of Ill. Const. (1970), Art. I, § 8, based on counsel's stipulation to the admission of testimony by defendant in the trial of a co-defendant that defendant had entered into plea negotiations with the State, as the evidence was inadmissible under Rule 402, Supreme Court Rules, and the admission of the evidence prejudiced defendant. People v. Hoerer, 375 Ill. App. 3d 148, 313 Ill. Dec. 589, 872 N.E.2d 572, 2007 Ill. App. LEXIS 769 (1 Dist. 2007).

Where defendant was convicted of possession of a controlled substance with intent to deliver, retrial was warranted because counsel was ineffective in eliciting damaging testimony not presented as part of the State's case; the evidence prejudiced defendant because (1) the testimony connected defendant to a man yelling the word "rocks" on a corner, (2) it explained why no money was found in defendant's pockets, and (3) the trial court clearly relied on the evidence. People v. Bailey, 374 Ill. App. 3d 608, 313 Ill. Dec. 437, 872 N.E.2d 420, 2007 Ill. App. LEXIS 681 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1710 (Ill. 2007).

Trial counsel was ineffective in not raising an insanity defense because the accounts of defendant's behavior at the time of the offense, statements defendant made in court, and defendant's fitness evaluations demonstrated that defendant was delusional at the time of the offense and lent support to a defense that defendant was unable to appreciate criminality of defendant's conduct. Actual prejudice existed because the insanity defense was reasonable based on the evidence in the record and it was the only viable defense defendant had. People v. Manns, 373 Ill. App. 3d 232, 311 Ill. Dec. 763, 869 N.E.2d 437, 2007 Ill. App. LEXIS 561 (1 Dist. 2007).

Where a defendant's desire to testify was repeatedly voiced to trial counsel, trial counsel's failure to allow the defendant to testify amounted to ineffective assistance of counsel. The defendant

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was prejudiced because the error was not harmless beyond a reasonable doubt; the defendant was the only person who was in a position to fully express her mental state and to directly rebut the testimony of the Department of Children and Family Services' investigator regarding the defendant's interaction with the investigator in the defendant's home. People v. Whiting, 365 Ill. App. 3d 402, 302 Ill. Dec. 510, 849 N.E.2d 125, 2006 Ill. App. LEXIS 409 (1 Dist. 2006).

Defendant was prejudiced by counsel's failure to properly challenge the admissibility of hearsay testimony from three police officers, and its use in the opening statement, closing argument, and repeatedly through the officers' testimony as the outcome of the case depended on whether the jury believed defendant or the officers. People v. Jura, 352 Ill. App. 3d 1080, 288 Ill. Dec. 318, 817 N.E.2d 968, 2004 Ill. App. LEXIS 1139 (1 Dist. 2004).

Trial court erred in convicting defendant of driving under the influence of alcohol and driving on a revoked license because there was a reasonable probability that, but for counsel's failings, the trial's outcome might have been different where counsel's presentation of defendant's "decade of criminality," the prosecution's cross-examination about that history, the distortion of critical evidence during closing argument, and a witness's hearsay accusation were significant errors, the cumulative effect of which undermined confidence in the outcome of the case. People v. McMillin, 352 Ill. App. 3d 336, 287 Ill. Dec. 499, 816 N.E.2d 10, 2004 Ill. App. LEXIS 1058 (5 Dist. 2004).

Defense counsel's failure to present defense that defendant had committed the lesser offense of involuntary manslaughter constituted ineffective assistance of counsel. The evidence presented could not have supported a finding of not guilty due to the shooting being an accident because defendant's pointing of the handgun in the direction of the stepson during an altercation was, at least, reckless. People v. Lemke, 349 Ill. App. 3d 391, 285 Ill. Dec. 221, 811 N.E.2d 708, 2004 Ill. App. LEXIS 404 (5 Dist. 2004), appeal denied, 211 Ill. 2d 599, Ill. Dec. , 823 N.E.2d 973 (2004).

Defendant was denied effective assistance of counsel in his aggravated battery prosecution where defense counsel failed to tender to the trial court the Illinois Pattern Jury Instruction on the definition of "knowingly" after the jury, during deliberations, sent out a question indicating it was confused on the word's definition. The evidence in the case was close and the jury's question indicated that it was confused as to the legal definition applicable to defendant's conduct and the result of that conduct. People v. Lowry, 354 Ill. App. 3d 760, 290 Ill. Dec. 337, 821 N.E.2d 649, 2004 Ill. App. LEXIS 1449 (1 Dist. 2004).

Denial of defendant's motion to withdraw his guilty plea on grounds of ineffective assistance of counsel was reversed because trial court did not adequately investigate defendant's allegations; defense attorney had a conflict of interest and should have withdrawn when he realized that defendant was questioning his professional judgment. People v. Friend, 341 Ill. App. 3d 139, 276 Ill. Dec. 168, 793 N.E.2d 927, 2003 Ill. App. LEXIS 878 (2 Dist. 2003).

Additional evidence defendant claimed would have militated against the death penalty, that gave name and refined description to defendant's organic and psychological disorders which expert who testified at sentencing hearing had in part diagnosed, was only cumulative and balanced against aggravating evidence that was considerable, was not sufficient to show trial counsel was ineffective for being unable or failing to investigate and present this evidence in mitigation at sentencing. People v. Whitehead, 169 Ill. 2d 355, 215 Ill. Dec. 164, 662 N.E.2d 1304 (1996), cert. denied, 519 U.S. 1030, 117 S. Ct. 587, 136 L. Ed. 2d 517 (1996), overruled, People v. Coleman, 183 Ill. 2d 366, 233 Ill. Dec. 789, 701 N.E.2d 1063 (1998).

A pro se petitioner's affidavit, which stated that he wished to testify in his own behalf at the trial, but his trial counsel told him he would be impeached with his prior misdemeanor battery conviction and that his testimony would probably damage his case, presented the basis for a meritorious constitutional claim of ineffective assistance of counsel and it was prematurely dismissed under 725 ILCS 5/122-2.1(a)(1). People v. Seaberg, 262 Ill. App. 3d 79, 200 Ill Dec.

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25, 635 N.E.2d 126 (2 Dist.), appeal denied, 157 Ill. 2d 517, 205 Ill. Dec. 180, 642 N.E.2d 1297 (1994).

Totality of counsel's deficient performance was held sufficient to establish ineffective assistance of counsel, where, but for those errors, there was a reasonable probability that the defendant would not have been convicted. People v. Tillman, 226 Ill. App. 3d 1, 168 Ill. Dec. 187, 589 N.E.2d 587 (1 Dist. 1991), cert. denied, 146 Ill. 2d 648, 176 Ill. Dec. 818, 602 N.E.2d 472 (1992).

Where the conduct of the defendant's counsel did not measure up to that expected of a competent and conscientious trial attorney, the defendant was entitled to a reversal since the incompetency of counsel visited substantial prejudice on the defendant. People v. Jackson, 96 Ill. App. 2d 99, 238 N.E.2d 234 (1 Dist. 1968).

-- Statute of Limitations

The failure of a court appointed trial attorney to move to dismiss criminal on the grounds that they were barred by the statute of limitations deprived a defendant of effective assistance of counsel. People v. Staton, 154 Ill. App. 3d 230, 107 Ill. Dec. 398, 507 N.E.2d 62 (1 Dist. 1987).

- Errors

An error by counsel, even if professionally unreasonable, does not warrant setting aside a criminal judgment based on ineffective assistance of counsel if the error had no effect on the judgment. People v. Holmes, 141 Ill. 2d 204, 152 Ill. Dec. 268, 565 N.E.2d 950 (1990).

- Factors

A defendant's due process guarantees are contravened if representation by court appointed counsel demonstrates: (1) actual incompetency of counsel, as reflected by the manner of carrying out his duties as a trial attorney; and (2) substantial prejudice resulting therefrom, without which the outcome would probably have been different. People v. Connor, 82 Ill. App. 3d 652, 37 Ill. Dec. 860, 402 N.E.2d 862 (1 Dist. 1980).

An attorney's decision on whether to initiate or pursue plea negotiations may legitimately fall within the realm of trial strategy or professional judgment and counsel's decision to forgo plea negotiations, as a matter of trial strategy, is not vulnerable to attack as incompetent. People v. Palmer, 162 Ill. 2d 465, 205 Ill. Dec. 506, 643 N.E.2d 797 (1994), cert. denied, 514 U.S. 1086, 115 S. Ct. 1800, 131 L. Ed. 2d 727 (1995).

- Ineffective Assistance Proof

Because the resolution of the ineffective assistance of counsel claim requires an inquiry into matters outside of the record, defendant's petition required a hearing and the circuit court abused its discretion in dismissing defendant's post-conviction petition. People v. Smith, 268 Ill. App. 3d 574, 206 Ill. Dec. 308, 645 N.E.2d 313 (1 Dist. 1994), appeal denied, 161 Ill. 2d 537, 208 Ill. Dec. 367, 649 N.E.2d 423 (1995).

- Ineffective Assistance Shown

Where interests, of criminal co-defendants were shown to be hostile, public defender's representation of criminal co-defendant's brothers prevented the public defender from loyally representing the appellant, thereby denying appellant the effective assistance of counsel guaranteed by the six and fourteenth amendments to the United States Constitution, and by this section of Ill. Const. 1970. People v. Echols, 74 Ill. 2d 319, 24 Ill. Dec. 503, 385 N.E.2d 644 (1978).

A defendant was denied effective assistance of counsel where his appointed attorney represented a co-defendant who pled guilty and, after being sentenced, became a witness for the

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state against the defendant. People v. Halluin, 36 Ill. App. 3d 556, 344 N.E.2d 579 (5 Dist. 1976).

- Interference

At what point a defendant's right to select counsel unreasonably interferes with the orderly process of judicial administration, necessarily depends upon the particular facts and circumstances surrounding each case and is a matter which lies within the sound judicial discretion of the trial court. The proper exercise of this discretion requires that the public need for efficient and effective administration of justice be weighed against the defendant's fundamental right to be represented by counsel of his choice. People v. Spurlark, 67 Ill. App. 3d 186, 23 Ill. Dec. 860, 384 N.E.2d 767 (1 Dist. 1978); People v. Terry, 177 Ill. App. 3d 185, 126 Ill. Dec. 883, 532 N.E.2d 568 (4 Dist. 1988); People v. Capers, 186 Ill. App. 3d 367, 134 Ill. Dec. 349, 542 N.E.2d 528 (4 Dist. 1989).

Prohibition against communication placed upon the defendant's conversing with his mother or an attorney, during a recess called for another purpose was unreasonable where it would not have delayed the trial of the case, nor interfered with the decorum of the court, nor given the defendant an unfair advantage. People v. Martin, 84 Ill. App. 2d 117, 228 N.E.2d 557 (1 Dist. 1967).

- Involuntary Commitment Proceeding

- Joint Representation

Joint representation of criminal codefendants is not a per se violation of the right to the effective assistance of counsel. People v. Howard, 166 Ill. App. 3d 328, 116 Ill. Dec. 767, 519 N.E.2d 982 (1 Dist. 1988).

When a co-defendant becomes, in effect, a witness against the defendant, the defendant is constitutionally entitled to confront the witness; however, where one attorney represents both the defendant and co-defendant, the co-defendant/witness cannot adequately be impeached because the codefendant is defense counsel's client. Defense counsel is then forced to perform a "balancing act," where he cannot fully and vigorously represent one client without hurting the other; thus, the problem which arises in an attorney's joint representation of co-defendants with conflicting interests, is in what the attorney must refrain from doing. People v. Taylor, 165 Ill. App. 3d 1016, 117 Ill. Dec. 556, 520 N.E.2d 907 (1 Dist. 1988).

The per se conflict rule does not apply to cases involving joint representation of co-defendants, and the accused must demonstrate that an actual conflict of interest affected the adequacy of his representations to establish a claim of ineffective assistance of trial counsel. People v. Sanchez, 161 Ill. App. 3d 586, 113 Ill. Dec. 404, 515 N.E.2d 213 (1 Dist. 1987).

Where hostility between two interests of criminal co-defendants is shown to exist, the joint representation of the conflicting interests denies a defendant the effective assistance of counsel, and such denial is presumed to be prejudicial. People v. Echols, 74 Ill. 2d 319, 24 Ill. Dec. 503, 385 N.E.2d 644 (1978).

The mere fact that defendants are to be tried jointly does not necessitate the appointment of separate counsel for each of them. People v. Hardemon, 46 Ill. App. 3d 1052, 5 Ill. Dec. 357, 361 N.E.2d 680 (1 Dist. 1977).

- Limitations on Choice

The right to counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, and by this section entitles one to be represented by counsel of one's choice; however, this right is not without limitations, and does not mean that an indigent defendant has the right to choose among appointed counsel. People v. Tucker, 99 Ill. App. 3d 606, 54 Ill. Dec. 646, 425 N.E.2d 511 (2 Dist. 1981).

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- Lineups

The right to counsel at a pretrial lineup arises only when adversary judicial proceedings have been initiated. People v. McCauley, 163 Ill. 2d 414, 206 Ill. Dec. 671, 645 N.E.2d 923 (1994).

When the warrants for defendants' arrest were issued, adversary judicial criminal proceedings were thereby commenced, which entitled defendants to their constitutional right to counsel upon arrest in execution of the warrant, upon being charged with murder, and upon being placed in a lineup and viewed by witnesses to the murder. People v. Coleman, 179 Ill. App. 3d 410, 128 Ill. Dec. 401, 534 N.E.2d 583 (1 Dist.), appeal denied, 126 Ill. 2d 562, 133 Ill. Dec. 672, 541 N.E.2d 1110 (1989).

- Misdemeanors

Trial court did not err in not informing the defendant that he was entitled to be represented by counsel where he was charged with a misdemeanor. People v. Chilikas, 128 Ill. App. 2d 414, 262 N.E.2d 732 (1 Dist. 1970).

- Multiple Defendants

One counsel in a case against multiple defendants can represent more than one, as long as the representation is effective and it does not appear that conflicts of interest between or among defendants can be anticipated. People v. Craig, 47 Ill. App. 3d 242, 5 Ill. Dec. 413, 361 N.E.2d 736 (1 Dist. 1977).

- No Record of Proceedings

In a prosecution for driving while intoxicated and disorderly conduct, where the defendant's allegations that his pleas of guilty were improperly accepted by the trial court, that he did not knowingly and understandingly waive his right to counsel, and that he was never informed of his right to counsel, since there was no record of the proceedings, the trial court's judgment was reversed and remanded. People v. McKenzie, 89 Ill. App. 2d 157, 231 N.E.2d 702 (5 Dist. 1967).

- No Violation

A defendant could not complain of a trial court's failure to appoint counsel for him where, in the absence of a bill of exceptions, the common-law record disclosed that he did not assert his right to have an attorney appointed to represent him. People v. Braner, 389 Ill. 190, 58 N.E.2d 869 (1945).

- Not Denied

Where there was no real reasonable probability that the outcome of the trial or a new trial would have been different, evidence was not closely balanced and the evidence of defendant's guilt was overwhelming, defendant was not denied his constitutional right to effective assistance of counsel. People v. Chatman, 276 Ill. App. 3d 619, 213 Ill. Dec. 414, 659 N.E.2d 44 (1 Dist. 1995).

The defendant was not deprived of the assistance of counsel where the trial judge ordered that she be sequestered during the lunch recess, no objection was made, and there was nothing to indicate that she and her attorneys wished to communicate during that period. People v. Brooks, 115 Ill. 2d 510, 106 Ill. Dec. 30, 505 N.E.2d 336 ((1987)), cert. denied, 484 U.S. 825, 108 S. Ct. 91, 98 L. Ed. 2d 52, modified on other grounds, 155 Ill. 2d 122, 184 Ill. Dec. 389, 613 N.E.2d 706 (1993).

A narcotics defendant failed to provide any evidence to support the conclusion that his attorney labored under an actual conflict of interest which denied him effective assistance of counsel. People v. Sanchez, 161 Ill. App. 3d 586, 113 Ill. Dec. 404, 515 N.E.2d 213 (1 Dist. 1987).

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Where the defendant's attorney had been appointed as a special prosecutor in a traffic matter, there was no conflict of interest as the appointment was made by the circuit court, not the Attorney General. People v. Ash, 102 Ill. 2d 485, 82 Ill. Dec. 373, 468 N.E.2d 1153 (1984).

Where defendant was convicted on the strength of the identification testimony of one undercover officer who unequivocally stated that the criminal was clean shaven and defense counsel introduced no evidence at trial to corroborate defendant's testimony that he wore a beard before, during, and after the time of the crime, in spite of the fact counsel was aware of defendant's driver's license showed the presence of a beard six days after the commission of the offense, he had received a list of potential witnesses; none of the witnesses were interviewed, and neither the license nor a single witness was subpoenaed, trial counsel was actually incompetent and this incompetence produced substantial prejudice to defendant, without which the outcome of his trial would probably have been different. People v. Corder, 103 Ill. App. 3d 434, 59 Ill. Dec. 200, 431 N.E.2d 701 (3 Dist. 1982).

Where the alibis of the various defendants were independent and corroborative of the others and none inculpated another defendant in the commission of a crime, there was no real conflict of interest and defendants were not denied effective assistance of counsel. People v. Craig, 47 Ill. App. 3d 242, 5 Ill. Dec. 413, 361 N.E.2d 736 (1 Dist. 1977).

Defendant's contention that a motion to consolidate was purely a matter of convenience for his attorney was merely speculative and, lacking any basis in the record, was insufficient to show actual and prejudicial incompetence. People v. Joseph, 46 Ill. App. 3d 835, 5 Ill. Dec. 229, 361 N.E.2d 368 (3 Dist. 1977).

Where defendant did not show any concurrent representation by his appointed counsel which would burden counsel with conflicting interests, the mere speculation that defendant's former wife, may, in the future, seek representation by appointed counsel was not sufficient to support a claim of ineffective assistance of counsel. People v. Miller, 46 Ill. App. 3d 882, 5 Ill. Dec. 234, 361 N.E.2d 373 (3 Dist. 1977).

- Per Se Conflict

Per se conflict of interest rule provides that an accused need not demonstrate prejudice in order to obtain a reversal where it is shown that defense counsel acted under an actual or potential conflict of interest without the accused's knowledgeable consent. People v. Taylor, 165 Ill. App. 3d 1016, 117 Ill. Dec. 556, 520 N.E.2d 907 (1 Dist. 1988).

A conflict of interest is per se where, by its nature, the conflict subjects counsel to subtle pressures adversely affecting his representation of the accused. People v. Taylor, 165 Ill. App. 3d 1016, 117 Ill. Dec. 556, 520 N.E.2d 907 (1 Dist. 1988).

Whenever it is shown that defense counsel was or is committed to another whose interest is antagonistic to that of the accused, a per se conflict of interest exists; there need be no showing of actual prejudice. People v. Franklin, 60 Ill. App. 3d 905, 18 Ill. Dec. 267, 377 N.E.2d 556 (3 Dist. 1978), rev'd on other grounds, 75 Ill. 2d 173, 25 Ill. Dec. 809, 387 N.E.2d 685 (1979).

- Post-Conviction Hearing

Trial counsel's failure to obtain fingerprint reports that might have bolstered defendant's claim that defendant had not been in a sexual assault victim's vehicle, as the victim claimed, meant that defendant had an arguable claim of a constitutional violation that defendant raised in defendant's postconviction proceeding, as the claim involved defendant being provided with ineffective assistance of counsel in violation of Ill. Const. art. I, § 8. As a result, the trial court should not have allowed defendant's postconviction counsel to withdraw based on the contention that defendant's postconviction petition lacked merit and should not have granted the State's motion to dismiss claiming that defendant was not entitled to further consideration of defendant's petition

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for relief. People v. Johnson, 401 Ill. App. 3d 685, 341 Ill. Dec. 252, 930 N.E.2d 462, 2010 Ill. App. LEXIS 491 (2 Dist. 2010).

Appellate court declined to address defendant's claim that trial counsel had been ineffective in failing to call defendant as a witness at a suppression hearing; resolution of the issue would require matters not in the record, so that any such claim would have to await a petition for post-conviction relief. People v. Parker, 344 Ill. App. 3d 728, 279 Ill. Dec. 870, 801 N.E.2d 162, 2003 Ill. App. LEXIS 1412 (3 Dist. 2003).

In order to show a deprivation of the constitutional guaranty of representation by counsel, a petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1) must allege and establish that the defendant's failure to be represented by counsel on entering a plea of guilty was in some manner unjust or unfair. People v. Pring, 414 Ill. 63, 110 N.E.2d 214 (1953).

- Potential Conflict

The existence of potential conflict is sufficient to constitute a violation of the rights of the accused whether or not the commitment to another influences the attorney or the outcome of the cause. People v. Franklin, 60 Ill. App. 3d 905, 18 Ill. Dec. 267, 377 N.E.2d 556 (3 Dist. 1978), rev'd on other grounds, 75 Ill. 2d 173, 25 Ill. Dec. 809, 387 N.E.2d 685 (1979).

A potential conflict of interest exists when a prosecutor who personally has been involved in the prosecution of a defendant in a particular criminal proceeding later assumes the duties of court appointed defense counsel for that defendant in the same proceeding. People v. Kester, 66 Ill. 2d 162, 5 Ill. Dec. 246, 361 N.E.2d 569 (1977).

- Prejudice Not Shown

Had trial counsel pursued a reasonable doubt defense by introducing evidence that another committed crimes defendant was convicted of, the result of the case would not reasonably likely have been different, because what was offered by defendant paled beside the overwhelming evidence of guilt based on findings unaffected by error and the court's confidence in the outcome was not undermined even assuming the claimed errors of trial counsel, so that trial counsel was not ineffective in investigating, presenting and arguing evidence in support of reasonable doubt. People v. Whitehead, 169 Ill. 2d 355, 215 Ill. Dec. 164, 662 N.E.2d 1304 (1996), cert. denied, 519 U.S. 1030, 117 S. Ct. 587, 136 L. Ed. 2d 517 (1996), overruled, People v. Coleman, 183 Ill. 2d 366, 233 Ill. Dec. 789, 701 N.E.2d 1063 (1998).

Defendant was held to have received a fair trial and was not prejudiced by incompetency of counsel. People v. Allen, 132 Ill. App. 2d 1015, 270 N.E.2d 54 (3 Dist. 1971).

- Prejudice Presumed

It is not necessary to establish actual prejudice to the defendant once the court finds a conflict of interest, as prejudice is presumed. People v. Howard, 166 Ill. App. 3d 328, 116 Ill. Dec. 767, 519 N.E.2d 982 (1 Dist. 1988).

- Prejudice Required

Claims of ineffectiveness can often be disposed of on the ground that the accused suffered no prejudice from the claimed errors, without deciding whether the alleged errors were egregious enough to constitute professional incompetence. People v. Holmes, 141 Ill. 2d 204, 152 Ill. Dec. 268, 565 N.E.2d 950 (1990).

- Preliminary Hearing

A preliminary hearing is a critical stage in this state's criminal process; one at which a defendant has the right to counsel. People v. Edmondson, 30 Ill. App. 3d 763, 332 N.E.2d 493 (1 Dist. 1975).

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- Preparation

This section of the Illinois Constitution of 1970 provides that in all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; this right includes reasonable time for counsel to prepare the defense. People v. Kowalski, 332 Ill. 167, 163 N.E. 399 (1928).

The constitutional guaranty that an accused shall have the assistance of counsel is not a barren right, but one of inestimable value to him, and he should not be deprived of it by compelling counsel to go to trial unprepared and without an opportunity of studying the case. People v. Blumenfeld, 330 Ill. 474, 161 N.E. 857 (1928).

- Prerequisites of Guilty Plea

A plea of guilty can be entered only after defendant has been fully and properly advised by the court of his rights and the consequences of his plea, and where defendant made no showing that his plea of guilty was not made competently and voluntarily, there was no denial of constitutional rights. People v. Rednour, 43 Ill. 2d 307, 253 N.E.2d 414 (1969).

- Private Counsel Precluded

When the trial court precluded defendant from retaining private counsel before the imposition of sentence and compelled defendant to proceed with court-appointed counsel, defendant was not deprived of his constitutional right to meaningful assistance of counsel. People v. Inniss, 1 Ill. App. 3d 531, 275 N.E.2d 218 (1 Dist. 1971).

- Pro Se Representation

-- In General

Trial court applied an improper legal standard when it denied defendant's requests to represent himself in defendant's drug possession case, as it erroneously found that defendant did not have sufficient knowledge and expertise to do so. Since defendant knowingly and intelligently could waive the right to counsel, defendant had a right under Ill. Const. art. I, § 8 to represent himself at trial. People v. Woodson, Ill. App. 3d , 355 Ill. Dec. 260, 959 N.E.2d 674, 2011 Ill. App. LEXIS 694 (4 Dist. 2011).

An accused who knowingly and voluntarily elects to manage his own defense relinquishes many of the traditional benefits associated with the right to counsel. People v. Woodruff, 85 Ill. App. 3d 654, 40 Ill. Dec. 788, 406 N.E.2d 1155 (4 Dist. 1980).

A defendant who chooses to represent himself must do just that, even though a court may appoint standby counsel to assist a defendant who elects to proceed pro se, and the decision to do so is a matter of discretion and shall not be disturbed absent an abuse of that discretion. People v. Taggart, 233 Ill. App. 3d 530, 174 Ill. Dec. 717, 599 N.E.2d 501 (2 Dist. 1992), appeal denied, 148 Ill. 2d 652, 183 Ill. Dec. 29, 610 N.E.2d 1273, cert. denied, 509 U.S. 928, 113 S. Ct. 3050, 125 L. Ed. 2d 734 (1993).

-- Duty of Court

Defendant's right to self-representation was not violated when the court asked defendant to meet with defendant's attorney again before making a final decision, as the court had an obligation to make defendant aware of the dangers and disadvantages of self-representation, particularly given the capital nature of defendant's case. People v. Baez, 241 Ill. 2d 44, 349 Ill. Dec. 165, 946 N.E.2d 359, 2011 Ill. LEXIS 432 (2011).

Trial court adequately investigated defendant's pro se claims of ineffective assistance of counsel in violation of Ill. Const. art. I, § 8 and defendant's trial counsel provided explanations surrounding the claims that enabled the trial court to determine whether defendant should be provided with

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new counsel regarding them. Since the trial court conducted a sufficient inquiry based on an adequate understanding of the basis for the claims, the trial court was authorized to deny defendant an appointment of new counsel in that regard. People v. Sucic, 401 Ill. App. 3d 492, 340 Ill. Dec. 634, 928 N.E.2d 1231, 2010 Ill. App. LEXIS 429 (1 Dist. 2010).

-- Limitations

While a defendant has the right under the Sixth Amendment to the U.S. Constitution and this Article to waive counsel and proceed pro se, such right does not carry with it a corresponding right to the assistance of a legal advisor. People v. Taggart, 233 Ill. App. 3d 530, 174 Ill. Dec. 717, 599 N.E.2d 501 (2 Dist. 1992), appeal denied, 148 Ill. 2d 652, 183 Ill. Dec. 29, 610 N.E.2d 1273, cert. denied, 509 U.S. 928, 113 S. Ct. 3050, 125 L. Ed. 2d 734 (1993).

-- Request Properly Denied

Although defendant alleged that the circuit court should have conducted an inquiry into the various claims of deficient representation raised in his pro se documents, the circuit court could not be criticized for failing to take action on defendant's concerns when there was no indication that the circuit court was ever made aware of them. People v. Jocko, 239 Ill. 2d 87, 346 Ill. Dec. 59, 940 N.E.2d 59, 2010 Ill. LEXIS 1551 (2010).

Although defendant had a right to represent himself at trial on an aggravated battery charge, pursuant to the Sixth Amendment, U.S. Const. amend. VI, and Ill. Const. Art. I, § 8, that right was not absolute and the trial court acted within its discretion in denying defendant's request, made on the day of trial, to proceed pro se. The record supported the trial court's finding that the request was a tactic to delay the case that had been pending for more than one year, and, moreover, defendant's request did not contain the required clear and unequivocal request to proceed pro se. People v. Rasho, 398 Ill. App. 3d 1035, 338 Ill. Dec. 855, 925 N.E.2d 711, 2010 Ill. App. LEXIS 239 (4 Dist. 2010).

The trial court properly exercised its discretion in denying the defendant's request to represent himself since he failed to make an unequivocal request to represent himself prior to the commencement of meaningful proceedings where: (1) just prior to the trial, the defendant asked both for a continuance and for the appointment of a different attorney, the court denied those requests, and the defendant stated that he refused his appointed counsel; and (2) after the jury had been chosen and the trial was about to begin, the defendant mentioned representing himself. People v. Leeper, 317 Ill. App. 3d 475, 251 Ill. Dec. 202, 740 N.E.2d 32, 2000 Ill. App. LEXIS 917 (5 Dist. 2000).

- Prohibited

The right to effective assistance of counsel requires that a defendant's attorney not represent conflicting interests or undertake the discharge of inconsistent duties. People v. Cunningham, 126 Ill. App. 3d 637, 81 Ill. Dec. 704, 467 N.E.2d 404 (3 Dist. 1984), rev'd on other grounds, 107 Ill. 2d 143, 89 Ill. Dec. 879, 481 N.E.2d 722 (1985).

- Proof

Under a per se conflict of interest rule, the accused need not demonstrate prejudice in order to obtain a reversal of his conviction if his counsel, whether appointed or retained, has labored under an actual or potential conflict of professional interest without the accused's knowledgeable assent to such conflict; where a per se conflict of interest is not established, the defendant must demonstrate the existence of an actual conflict of interest and demonstrate actual prejudice before a new trial is granted. People v. Sanchez, 161 Ill. App. 3d 586, 113 Ill. Dec. 404, 515 N.E.2d 213 (1 Dist. 1987).

- Pro Se Representation

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-- In General

An accused who knowingly and voluntarily elects to manage his own defense relinquishes many of the traditional benefits associated with the right to counsel. People v. Woodruff, 85 Ill. App. 3d 654, 40 Ill. Dec. 788, 406 N.E.2d 1155 (4 Dist. 1980).

A competent defendant has the right to conduct his own defense if he so chooses; however, it must appear that his decision to do so was made understandingly and intelligently after being advised of his right to counsel. People v. Martin, 84 Ill. App. 2d 117, 228 N.E.2d 557 (1 Dist. 1967).

If then sane, the defendant, upon the waiver of counsel, had the right to defend himself, subject to the constant duty of the court to protect the judicial process from deterioration occasioned by improper or inadequate conduct of the defense; in such situation the court possessed broad discretion in relation to the appointment of counsel for advisory or other limited purposes, or to supersede the defendant in the conduct of the defense. People v. Burson, 11 Ill. 2d 360, 143 N.E.2d 239 (1957).

-- Duty of Court

Where defendant never clearly and unequivocally expresses a desire to proceed pro se, a court is not required to advise defendant of his right to represent himself, and the absence of such an admonishment is not error. People v. Terry, 177 Ill. App. 3d 185, 126 Ill. Dec. 883, 532 N.E.2d 568 (4 Dist. 1988).

-- Limitations

It is a matter of discretion resting with the trial court as to what limitations should be required where a defendant proceeds pro se, and the exercise of such discretion should not be upset in a court of review unless it appears that it was clearly abused. People v. Martin, 84 Ill. App. 2d 117, 228 N.E.2d 557 (1 Dist. 1967).

-- Proper

Where defendant was 26 years old and had completed the 11th grade, his motion for self-representation was concise and contained relevant citations, he initiated the incorporation of a nonprofit corporation, and was familiar with the criminal justice system, defendant's desire to represent himself was not based on an uninformed whim, but on recent similar experience; therefore, defendant's request of self-representation was proper. People v. Davis, 169 Ill. App. 3d 1, 119 Ill. Dec. 697, 523 N.E.2d 165 (2 Dist. 1988).

Where defendant clearly set forth, both orally and in writing, his desire to proceed pro se, as well as his full appreciation of the consequences of his decision, and where the trial court asked whether defendant had discussed his case with the public defender to which defendant replied that he had conflicts with his counsel over trial strategy and over which witnesses to call, and the trial court summarily denied defendant's motion, it was reversible error. People v. Davis, 169 Ill. App. 3d 1, 119 Ill. Dec. 697, 523 N.E.2d 165 (2 Dist. 1988).

-- Request Required

Regardless of whether he has been notified of his right to defend himself, a criminal defendant must make an unequivocal request to act as his own lawyer in order to invoke the right. People v. Woodruff, 85 Ill. App. 3d 654, 40 Ill. Dec. 788, 406 N.E.2d 1155 (4 Dist. 1980).

- Purpose

The right and duty of the court to appoint counsel for indigent persons is limited to criminal prosecutions in which the accused is charged with crime; the purpose of the guarantee of the right to appear by counsel is to prevent an unjust conviction of the accused in a criminal

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prosecution instituted and carried on by the state and it has no application to a civil proceeding for a writ of habeas corpus, instituted for the purpose of the enforcement of the civil right of personal liberty. People ex rel. Ross v. Ragen, 391 Ill. 419, 63 N.E.2d 874 (1945).

- Request Waived

Where a defendant's request to represent himself was not unequivocal, was made at the preliminary hearing but not later renewed, and was not cited as error in his post-trial motion, it was waived for purposes of appeal. People v. Woodruff, 85 Ill. App. 3d 654, 40 Ill. Dec. 788, 406 N.E.2d 1155 (4 Dist. 1980).

- Restrictions on Counsel

Any restriction on the rights of a lawyer to give advice seriously impairs the constitutional right of a client to receive that advice, and denies the client due process of law. People ex rel. Kunce v. Hogan, 37 Ill. App. 3d 673, 346 N.E.2d 456 (5 Dist. 1976), rev'd on other grounds, 67 Ill. 2d 55, 7 Ill. Dec. 63, 364 N.E.2d 50 (1977).

- Retroactive Application

Decision that a preliminary hearing was a critical stage of the criminal process at which the accused was constitutionally entitled to the assistance of counsel did not apply retroactively; contrary conclusion was not called for merely because defendant made a pretrial motion to dismiss the indictment, or because his conviction was before Supreme Court on direct review where petitioner made no claim of actual prejudice constituting a denial of due process. Adams v. Illinois, 405 U.S. 278, 92 S. Ct. 916, 31 L. Ed. 2d 202 (1972).

- Right to Closing Arguments

Where the trial judge repeatedly interrupted defense counsel's closing argument, at one point prejudging defense counsel's case before defense counsel's argument was over, defendant was denied the right to make a closing argument and, as a result, the right to counsel provided under Ill. Const. Art. I, § 8 and 725 Ill. Comp. Stat. 5/113-3. People v. Stevens, 338 Ill. App. 3d 806, 273 Ill. Dec. 910, 790 N.E.2d 52, 2003 Ill. App. LEXIS 557 (1 Dist. 2003).

- Scope

The right to counsel guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution and by this section includes the right to be represented by counsel of one's own choice. People v. Payne, 46 Ill. 2d 585, 264 N.E.2d 167 (1970).

- Shown

Defendant was not denied effective assistance of counsel where he was evaluated as suffering from a paranoid type of chronic schizophrenia, but there was no psychological evidence he lacked substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law at the time of the incident. Given this unfavorable psychological evaluation, legal counsel could not have developed a successful insanity defense at trial; therefore, counsel acted in the best interests of defendant in switching, at trial, to the ultimately viable mental illness defense. People v. Hamilton, 195 Ill. App. 3d 391, 141 Ill. Dec. 909, 552 N.E.2d 277 (4 Dist.), cert. denied, 132 Ill. 2d 549, 144 Ill. Dec. 261, 555 N.E.2d 380 (1990).

Where defendant, after being advised of the Miranda rights, which include a right to counsel, validly waived them, this waiver indicated his statement at the arraignment that he desired to retain some unnamed attorney was not an attempted assertion of his right to counsel. People v. Farrell, 181 Ill. App. 3d 446, 129 Ill. Dec. 636, 536 N.E.2d 476 (4 Dist.), appeal denied, 126 Ill. 2d 562, 133 Ill. Dec. 672, 541 N.E.2d 1110, cert. denied, 493 U.S. 872, 110 S. Ct. 202, 107 L. Ed. 2d 155 (1989).

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Alleged failure to present a proper alibi defense did not substantially prejudice defendant, because defense counsel otherwise performed diligently in that they participated in pretrial motions, made appropriate objections at trial, rigorously cross-examined witnesses, addressed the identification and reasonable doubt issues, and participated in post trial motions. People v. Connor, 82 Ill. App. 3d 652, 37 Ill. Dec. 860, 402 N.E.2d 862 (1 Dist. 1980).

Where the record supported the conclusion that there was no bona fide doubt of defendant's fitness for trial, the failure on the part of defense counsel to request a fitness hearing was not indicative of a failure of adequate representation. People v. Murphy, 72 Ill. 2d 421, 21 Ill. Dec. 350, 381 N.E.2d 677 (1978).

- Statements of Counsel

The court cannot accept statements of counsel in lieu of a duly prepared and authenticated report of proceedings. People v. Dixon, 105 Ill. App. 3d 340, 61 Ill. Dec. 216, 434 N.E.2d 369 (1 Dist. 1982), cert. denied, 466 U.S. 981, 104 S. Ct. 2364, 80 L. Ed. 2d 836 (1984).

- Substitution of Counsel

Defendant was not denied his constitutional right to retain a counsel of his choice and was properly denied a continuance on the first day of jury selection for substitution of counsel because he failed to identify a specific attorney that had been secured and failed to show that he had the financial resources to hire an attorney of his choice. People v. Montgomery, 373 Ill. App. 3d 1104, 313 Ill. Dec. 420, 872 N.E.2d 403, 2007 Ill. App. LEXIS 676 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1721 (Ill. 2007).

Defendant had no absolute right to substitute counsel in the middle of his trial. People v. Langley, 226 Ill. App. 3d 742, 168 Ill. Dec. 424, 589 N.E.2d 824 (4 Dist. 1992).

It was an abuse of discretion on the part of the trial judge, not to have allowed defendant to be represented by her retained attorney, who had notified the court clerk that he would be late in arriving at court, and instead to have forced her to go to trial for murder with an admittedly inexperienced, newly admitted associate attorney. People v. Myles, 49 Ill. App. 3d 325, 7 Ill. Dec. 162, 364 N.E.2d 323 (1 Dist. 1977).

- Trial Tactics

Defendant did not overcome the strong presumption that defense counsel, in a case where defendant was charged with delivery of a controlled substance containing less than one gram of heroin, employed an unreasonable trial strategy in challenging the police investigation of defendant. Although defendant was subsequently convicted, defendant did not show that defendant received Ill. Const. art. I, § 8 ineffective assistance of counsel, especially given that defense counsel pointed out the lack of physical evidence tying defendant to foil packets of heroin purchased by undercover officers and that no marked currency or drugs were found on or near defendant. People v. Strickland, 399 Ill. App. 3d 590, 339 Ill. Dec. 269, 926 N.E.2d 744, 2010 Ill. App. LEXIS 169 (1 Dist. 2010), appeal denied, 2010 Ill. LEXIS 893 (Ill. 2010).

In defendant's murder case, counsel's failure to object to the conversations between defendant and his wife was not deficient representation but, instead, was a reasonable strategic decision. In order to explain why defendant fled to Mexico, counsel argued that defendant left the country because he feared that he would be falsely convicted of the murders, and during cross-examination of the wife, counsel asked questions regarding the conversations that took place between defendant and the wife after the police questioned them, which were consistent with the defense's theory. People v. Hommerson, 399 Ill. App. 3d 405, 339 Ill. Dec. 560, 927 N.E.2d 101, 2010 Ill. App. LEXIS 231 (2 Dist. 2010).

Defendant convicted of first degree murder and armed robbery did not show that trial counsel provided defendant with ineffective assistance of counsel in violation of Ill. Const. art. I, § 8 where

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trial counsel challenged the conditions under which defendant made a videotaped statement for police rather than arguing that defendant had invoked defendant's right to remain silent. Under the circumstances, trial counsel's conduct was a matter of valid trial strategy based on the evidence known to trial counsel. People v. Mabry, 398 Ill. App. 3d 745, 339 Ill. Dec. 257, 926 N.E.2d 732, 2010 Ill. App. LEXIS 155 (1 Dist. 2010).

Trial court was not authorized to summarily dismiss defendant's 725 ILCS 5/122-1 et seq. postconviction relief petition, as defendant's petition stated the gist of a meritorious constitutional claim and, thus, had to be advanced to the next postconviction proceeding stage, as partial dismissals of petitions pursuant to 725 ILCS 5/122-2.1(b). Defendant adequately alleged that defendant received Ill. Const. art. I, § 8 ineffective assistance of counsel since the petition asserted that defense counsel did not allow defendant to decide on tendering a 720 ILCS 5/9-2(a) second-degree murder jury instruction, which would have permitted defendant to argue that defendant had a justifiable, if even unreasonable, belief that defendant had to act in self defense as recognized by 720 ILCS 5/7-1 in shooting the victim in order to protect himself. People v. DuPree, 397 Ill. App. 3d 719, 337 Ill. Dec. 380, 922 N.E.2d 503, 2010 Ill. App. LEXIS 4 (2 Dist. 2010), appeal denied, 2010 Ill. LEXIS 725 (Ill. 2010).

In an action charging defendant with driving while under the influence of alcohol and improper lane usage, trial counsel was not deficient in eliciting testimony from the officer that he did not ask defendant about her medication status and did not think she was taking medication because such questioning could be fairly construed as a reasonable trial tactic. People v. Bock, 357 Ill. App. 3d 160, 293 Ill. Dec. 208, 827 N.E.2d 1089, 2005 Ill. App. LEXIS 386 (1 Dist. 2005), appeal denied, 216 Ill. 2d 696, 298 Ill. Dec. 380, 839 N.E.2d 1027 (2005).

Although statement of witness may have exonerated defendant or corroborated defendant's testimony, where counsel knew the identity of the witness, thoroughly and independently investigated, and obtained a statement from him, but did not subpoena the witness, counsel's decision not to subpoena witness led court to conclude counsel's decision was a trial tactic, because counsel may have feared that witness would change his testimony, so that counsel's performance did not fall below the objective standard of reasonableness. People v. Juarez, 278 Ill. App. 3d 286, 214 Ill. Dec. 1001, 662 N.E.2d 567 (1 Dist. 1996).

Exercise of discretion and decisions regarding tactics are for the counsel to determine, not the reviewing court; effective counsel is not denied even if counsel chooses a course which turns out less desirable than some alternative or even if counsel errs. People v. Rogers, 132 Ill. App. 2d 501, 270 N.E.2d 186 (1 Dist. 1971).

- Unlicensed Counsel

A violation of due process does not result from the single circumstance, unaided by other facts, that the counsel of a defendant's choice is later proved to be unlicensed to practice law before the court in which the trial occurred. People v. Cox, 12 Ill. 2d 265, 146 N.E.2d 19 (1957).

- Violation

Where the court employed only the most perfunctory attempts to determine the status of defendant's representation, and plainly sought to expedite the case at all costs, defendant's constitutional and statutory right to representation was infringed and a new trial was required. People v. Morris, 30 Ill. App. 3d 1075, 333 N.E.2d 29 (5 Dist. 1975).

- Waiver

An accused may waive his right to counsel free from conflicts but such waiver must be made knowingly, i.e., the accused must be apprised of the existence of the potential conflict and its significance before he will be held to have waived his right to the absolute loyalty of his attorney. People v. Sanchez, 161 Ill. App. 3d 586, 113 Ill. Dec. 404, 515 N.E.2d 213 (1 Dist. 1987).

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A strong showing of an intentional and knowing waiver of a conflict of interests issue is required for there to be a waiver; no waiver was found where defendant was never advised of either an existing or potential conflict of interest. People v. Cunningham, 126 Ill. App. 3d 637, 81 Ill. Dec. 704, 467 N.E.2d 404 (3 Dist. 1984), rev'd on other grounds, 107 Ill. 2d 143, 89 Ill. Dec. 879, 481 N.E.2d 722 (1985).

There was nothing in the record to negate the normal inference of understanding waiver, and the Supreme Court could not assume that the trial court either refused a request by defendant that counsel be appointed, or accepted the defendant's plea without a waiver of his right to have counsel appointed. People v. Greene, 1 Ill. 2d 235, 115 N.E.2d 265 (1953).

-- In General

Waiver of the right to counsel in a criminal trial must be knowing, intelligent, and unequivocal. People v. Fitzpatrick, 124 Ill. App. 3d 1079, 80 Ill. Dec. 375, 465 N.E.2d 166 (3 Dist. 1984).

The Constitution does not force a lawyer upon a defendant; he may waive his constitutional right to counsel if he knows what he is doing and his choice is made with his eyes open. People v. Nelson, 47 Ill. 2d 570, 268 N.E.2d 2 (1971).

Right to counsel right may be waived. People v. Martin, 84 Ill. App. 2d 117, 228 N.E.2d 557 (1 Dist. 1967).

-- Not Intelligently Made.

Trial court's repeated expressions of concern regarding defendant's mental state showed the existence of a bona fide doubt about his competency. In the presence of such doubt, defendant's waiver of his right to counsel could not be held to have been intelligently made. People v. Esang, 396 Ill. App. 3d 833, 336 Ill. Dec. 356, 920 N.E.2d 565, 2009 Ill. App. LEXIS 1216 (1 Dist. 2009).

-- Not Presumed

A presumption would not be made that a waiver of a constitutional right was intelligently and understandingly made where the record did not contain showing that an accused was offered counsel, but intelligently and understandingly rejected the offer. People v. McKenzie, 89 Ill. App. 2d 157, 231 N.E.2d 702 (5 Dist. 1967).

-- Lack of Transcript

Where the appellate court did not have the benefit of a verbatim transcript of the proceedings upon which to base a considered judgment as to whether the defendant expressly and understandingly elected to forego a jury trial or, whether the defendant knowingly and intelligently waived his right to the appointment of counsel, the judgment of the trial court was reversed and remanded for further proceedings. People v. McGrath, 85 Ill. App. 2d 388, 229 N.E.2d 14 (2 Dist. 1967).

-- Shown

Where defendant consented to the withdrawal of defendant's originally-retained private attorney, confirmed that defendant understood pursuant to Ill. Sup. Ct. R. 13 that defendant had to either obtain new counsel or appear pro se and represent himself, was not able to hire new counsel, declined the appointment of a public defender, and was properly admonished pursuant to Ill. Sup. Ct. R. 401 about waiving the right to counsel, defendant effectively waived defendant's Ill. Const. art. I, § 8 right to counsel. As a result, defendant's convictions on two counts of aggravated criminal sexual abuse, entered following a trial in which defendant represented himself, had to stand. People v. Belk, 403 Ill. App. 3d 1056, 344 Ill. Dec. 192, 936 N.E.2d 721, 2010 Ill. App. LEXIS 961 (4 Dist. 2010).

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Waiver of previously invoked right to have counsel during interrogation was shown where defendant interrupted a detective during a reading of an arrest warrant, a routine police procedure in Iowa, the arrest occurred, and defendant began making inculpatory statements, followed by execution of a waiver document. People v. Parker, 344 Ill. App. 3d 728, 279 Ill. Dec. 870, 801 N.E.2d 162, 2003 Ill. App. LEXIS 1412 (3 Dist. 2003).

Where the uncontradicted evidence presented on the hearing of the motion to suppress the defendants' lineup identifications established that defendant was properly advised of his right to counsel at his lineup, he knowingly, intelligently, freely and voluntarily waived his right to counsel at his lineup. People v. Coleman, 179 Ill. App. 3d 410, 128 Ill. Dec. 401, 534 N.E.2d 583 (1 Dist.), appeal denied, 126 Ill. 2d 562, 133 Ill. Dec. 672, 541 N.E.2d 1110 (1989).

Defendant knowingly and intelligently waived his right to appointed counsel. People v. Fitzpatrick, 124 Ill. App. 3d 1079, 80 Ill. Dec. 375, 465 N.E.2d 166 (3 Dist. 1984).

Where the record was replete with instances which reflected the trial court's determination to make sure the petitioner's waiver of counsel was knowingly and intelligently made, and the trial court attempted at all stages of the trial to make available to the petitioner the necessary counsel to best carry on his defense, the petitioner's contention that his waiver of counsel was not knowingly and understandingly made was without merit. People v. Jefferson, 8 Ill. App. 3d 839, 291 N.E.2d 223 (1 Dist. 1972).

- Waiver Not Shown

Where the state was unable to ascertain who the defendant's lawyer was, where the state unsuccessfully attempted to obtain an assistant public defender to be present and represent the defendant at a lineup, and where after the state was unable to secure legal assistance, the defendant stated that he didn't want a lawyer to be present and represent him at the lineup, it was clear that defendant did not waive his right to counsel at the lineup. People v. Bailey, 164 Ill. App. 3d 555, 115 Ill. Dec. 159, 517 N.E.2d 570 (1 Dist. 1987), appeal denied, 119 Ill. 2d 560, 119 Ill. Dec. 388, 522 N.E.2d 1247 (1988).

- When Right Attaches

Although a person's right to counsel attaches after adversary judicial criminal proceedings have been initiated against him by way of a formal charge, preliminary hearing, indictment, information, or arraignment, the state was not committed to prosecute defendant when he was transferred from jail to the courtroom, served with a complaint for a preliminary hearing, served with an arrest warrant for battery, and placed in a lineup; based upon the record, no adversary judicial criminal proceedings had been initiated before defendant's inculpatory statement. People v. Hunt, 240 Ill. App. 3d 496, 183 Ill. Dec. 152, 611 N.E.2d 5 (1 Dist. 1992), appeal denied, 151 Ill. 2d 571, 186 Ill. Dec. 388, 616 N.E.2d 341 (1993).

Adversary judicial criminal proceedings are initiated by the filing of a complaint for examination which charges an accused with the commission of a criminal offense. This is a critical stage of the criminal proceeding during which the accused has a constitutional right to counsel. People v. Coleman, 179 Ill. App. 3d 410, 128 Ill. Dec. 401, 534 N.E.2d 583 (1 Dist.), appeal denied, 126 Ill. 2d 562, 133 Ill. Dec. 672, 541 N.E.2d 1110 (1989).

Right to Defend

Defendant's right to present a defense under Ill. Const. Art. I, § 8 was not denied where the trial court excluded the testimony of defendant's girlfriend whose testimony was to impeach the testimony of the victim who testified that the victim did not sell the gun to defendant that defendant used to attempt to murder the victim. The testimony was irrelevant because it was uncertain and remote in time, it was going to be used for the improper purchase of impeaching the victim's testimony on a collateral matter, and there was no foundation for the evidence.

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People v. Hayes, 353 Ill. App. 3d 578, 289 Ill. Dec. 184, 819 N.E.2d 341, 2004 Ill. App. LEXIS 1395 (3 Dist. 2004), appeal denied, 214 Ill. 2d 541, 294 Ill. Dec. 5, 830 N.E.2d 5 (2005).

- Death Penalty

Where defendant's counsel had submitted a brief on behalf of defendant, defendant had no right to present a pro se brief in addition to his counsel's brief; however, given that defendant's life was at stake, the court considered the arguments addressed in defendant's pro se brief. People v. McDonald, 168 Ill. 2d 420, 214 Ill. Dec. 125, 660 N.E.2d 832 (1995), cert. denied, 518 U.S. 1024, 116 S. Ct. 2563, 135 L. Ed. 1080 (1996).

Right to Fair Trial

Defendant's claims that the prosecutor's alleged improper statements deprived defendant of the right to a fair trial were forfeited because defendant did not object to the alleged errors, and defendant's claims failed under plain error review where the challenged statements were based on the evidence or invited by defense counsel's comments. People v. Glasper, 234 Ill. 2d 173, 334 Ill. Dec. 575, 917 N.E.2d 401, 2009 Ill. LEXIS 933 (2009), cert. denied, 130 S. Ct. 1714, 2010 U.S. LEXIS 2170, 176 L. Ed. 2d 198 (U.S. 2010).

Prosecutor's argument did not exceed the bounds of proper argument, and did not amount to plain error, as the State's comment that defendant was "gaming" the system was brief and not repeated; further, the trial court did not cite this argument as support for finding defendant legally sane. Defendant was not denied the right to a fair trial. People v. McCullum, 386 Ill. App. 3d 495, 325 Ill. Dec. 248, 897 N.E.2d 787, 2008 Ill. App. LEXIS 1006 (1 Dist. 2008).

Defendant's right to a fair trial was not violated by an accidental encounter in which a juror saw defendant in shackles and a jail uniform; the trial court had ruled that the brief encounter did not mandate a mistrial, and while the trial court granted defense counsel the opportunity to voir dire the juror, defense counsel ultimately accepted the trial court's alternate option, which was to admonish the entire jury that whether defendant was in custody during trial was irrelevant to the proceedings and was not a consideration in determining guilt or innocence. People v. Romero, 384 Ill. App. 3d 125, 323 Ill. Dec. 130, 892 N.E.2d 1122, 2008 Ill. App. LEXIS 736 (1 Dist. 2008), appeal denied, 229 Ill. 2d 688, 900 N.E.2d 1124, 2008 Ill. LEXIS 1571 (2008).

Where defendant argued that defendant's constitutional right to a fair and impartial trial was violated when evidence outside of the record allegedly was relied upon in denying defendant's motion to suppress, defendant was not entitled to a new suppression hearing, because it was not error to find that the testimony of defendant's passenger less credible than that offered by the police officers due to the passenger's relationship with defendant; the relationship was not characterized as a romantic one. People v. Salinas, 383 Ill. App. 3d 481, 322 Ill. Dec. 593, 891 N.E.2d 884, 2008 Ill. App. LEXIS 600 (1 Dist. 2008), appeal denied, 229 Ill. 2d 688, 900 N.E.2d 1124, 2008 Ill. LEXIS 1512 (2008).

Claim that defendant was denied a fair trial because defendant was shackled and dressed in an orange jail uniform at trial did not amount to plain error because the evidence was not closely balanced, defendant admitted striking the victim, and defendant did not, and could not, show defendant's presumption of innocence, defendant's ability to assist counsel, or the dignity of the proceedings was compromised. People v. Tedrick, 377 Ill. App. 3d 926, 316 Ill. Dec. 796, 880 N.E.2d 274, 2007 Ill. App. LEXIS 1394 (1 Dist. 2007).

Defendant's right to a fair trial was violated when the trial court admitted hearsay testimony in violation of defendant's Sixth Amendment right to confrontation because the subject testimony was an integral part of the State's case, serving as direct impeachment to defendant's version of events and the only evidence that contradicted defendant's version. People v. Feazell, 386 Ill. App. 3d 55, 325 Ill. Dec. 798, 898 N.E.2d 1077, 2007 Ill. App. LEXIS 1145 (1 Dist. 2007).

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In a driving under the influence of alcohol case, a prosecutor's comments, which suggested that defendant failed to prove his innocence to a police officer by failing to take a breath test, were improper and that, as a result, error occurred. Although evidence of defendant's refusal to take the test designed to determine defendant's blood-alcohol content was admissible and could be used to argue defendant's consciousness of guilt, the prosecutor's argument went beyond that legitimate purpose and blurred the distinction between defendant's state of mind and the State's burden of proof. However, the prosecutor did not rely solely on the fact that defendant did not take the breath test to prove the case against defendant as the prosecutor also relied on an officer's testimony that defendant moved into an on-coming lane of traffic on three occasions and that, after the officer stopped defendant, he noted that defendant smelled of alcohol, had slightly slurred speech, failed to produce his insurance card when first requested, and failed two sobriety tests. Therefore, there was no plain error and reversal was not warranted because (1) the prosecutor's improper remarks were not so prejudicial that real justice was denied; (2) the jury verdict was unaffected by the improper comments; and (3) defendant was not deprived of a fair trial. People v. Johnson, Ill. 2d , Ill. Dec. , N.E.2d , 2006 Ill. LEXIS 313 (Feb. 2, 2006).

Where the prosecution, during closing arguments, referred to defendant's conduct at the time of the murder as pure evil on a number of occasions, the prosecution made no error, and defendant's right to a fair trial under Ill. Const. Art. I, § 8 was not denied; these comments constituted a permissible comment upon the evidence. People v. Nicholas, Ill. 2d , Ill. Dec. , N.E.2d , 2005 Ill. LEXIS 2080 (Dec. 1, 2005).

Prosecution's statements during closing arguments recounting defendant's conduct at the time of the shooting and after the shooting and defendant's characterization of that conduct as pure evil did not constitute a violation of defendant's right to a fair trial under Ill. Const. Art. I, § 8. The prosecutor's pure evil characterizations constituted permissible comments upon the evidence, and the remarks were used to preface the prosecutor's argument that the facts proved defendant guilty. People v. Nicholas, Ill. 2d , Ill. Dec. , N.E.2d , 2005 Ill. LEXIS 1629 (Dec. 1, 2005).

Failure to give the jury a general "not guilty" verdict form as required by Ill. Pattern Jury Instructions Crim. No. 26.01A did not deprive defendant of a fair trial; although the error was fundamental, the instruction given did not amount to plain error because it made it clear that if the jury found defendant not guilty of first degree murder he could not be found guilty of second degree murder, thereby resulting in an acquittal of both offenses. People v. Parker, 358 Ill. App. 3d 371, 295 Ill. Dec. 408, 832 N.E.2d 858, 2005 Ill. App. LEXIS 584 (1 Dist. 2005).

Defendant was not denied a fair trial based on the trial court's failure to instruct the jury on the presumption of innocence and the State's burden, where the court clearly expressed the importance of the presumption in its opening comments to the venire and the evidence of defendant's guilt was overwhelming. People v. Nunn, 357 Ill. App. 3d 625, 293 Ill. Dec. 871, 829 N.E.2d 796, 2005 Ill. App. LEXIS 422 (1 Dist. 2005), appeal denied, 216 Ill. 2d 719, 298 Ill. Dec. 386, 839 N.E.2d 1033 (2005).

Defendant was not deprived of a fair trial by prosecution statements in opening and closing since the statements regarding the difference between first-degree and second-degree murder accurately stated the law as applied to the evidence; although certain statements in opening were unduly inflammatory in describing the murder, the jurors were presumed to have taken the judge's curative instructions to heart. People v. Sutton, 353 Ill. App. 3d 487, 288 Ill. Dec. 858, 818 N.E.2d 793, 2004 Ill. App. LEXIS 1245 (1 Dist. 2004).

Trial court, in deciding that defendant had to wear an electric stun belt in the courtroom that could have been used to severely shock defendant, erred in deferring to the sheriff's policy rather than conducting analysis of applicable factors to determine whether defendant's rights to due process under Ill. Const., Art. I, § 2 and a fair trial under Ill. Const., Art. I, § 8 were violated; the error was automatically reversible. People v. Martinez, 347 Ill. App. 3d 1001, 283 Ill. Dec. 801, 808

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N.E.2d 1089, 2004 Ill. App. LEXIS 526 (3 Dist. 2004), appeal denied, 211 Ill. 2d 601, Ill. Dec. , 823 N.E.2d 974 (2004).

- In General

Defendant was not denied a fair trial based on the trial court's failure to instruct the jury on the presumption of innocence and the State's burden, where the trial court clearly expressed the importance of the presumption in its opening comments to the venire and the evidence of defendant's guilt was overwhelming. Thus, the result of trial would not have been different and the court's failure was harmless beyond a reasonable doubt. People v. Nunn, 357 Ill. App. 3d 625, 293 Ill. Dec. 871, 829 N.E.2d 796, 2005 Ill. App. LEXIS 422 (1 Dist. 2005), appeal denied, 216 Ill. 2d 719, 298 Ill. Dec. 386, 839 N.E.2d 1033 (2005).

Where it was clear that the trial judge had carefully weighed the probative value of photographs of a murder victim and an autopsy report against the danger of prejudice they represented before allowing some items into the jury room, defendant failed to show that the court had abused its discretion or denied defendant's rights to due process and a fair trial. People v. Sterling, 357 Ill. App. 3d 235, 293 Ill. Dec. 766, 828 N.E.2d 1264, 2005 Ill. App. LEXIS 406 (1 Dist. 2005), appeal denied, 217 Ill. 2d 589, 300 Ill. Dec. 374, 844 N.E.2d 46 (2005).

Jury that manifests confusion or doubt should be instructed on any question of law giving rise to that doubt or confusion because fundamental fairness includes, among other things, seeing to it that certain basic instructions, essential to a fair determination of the case by the jury, are given. The failure of a trial court to provide defendant's aggravated battery jury with an instruction on the definition of "knowingly" after the jury indicated its confusion on the term's legal meaning as it applied to defendant's conduct, was error. People v. Lowry, 354 Ill. App. 3d 760, 290 Ill. Dec. 337, 821 N.E.2d 649, 2004 Ill. App. LEXIS 1449 (1 Dist. 2004).

Neither a reference to defendant's invocation of the right to counsel during questioning nor a prosecutor's reference, during closing argument, denied defendant a fair trial; since defendant testified at trial, the circumstances of earlier questioning could be raised to impeach that testimony, to explain why there was no taped record of defendant's earliest statements to police before invocation of the right to counsel, and the prosecutor's remarks fell within the latitude ordinarily accorded prosecutorial argument. People v. Taylor, 345 Ill. App. 3d 1064, 281 Ill. Dec. 490, 804 N.E.2d 116, 2004 Ill. App. LEXIS 77 (4 Dist. 2004), appeal denied, 209 Ill. 2d 598, 286 Ill. Dec. 171, 813 N.E.2d 228 (2004).

Patient/pretrial detainee's challenge to involuntary administration of psychotropic medicine based on denial of fair trial guarantees was not upheld where there was absolutely nothing in the record that administration of medication was sought for anything but medical reasons - rather than to render the patient competent for trial. People v. Robert S. (In re Robert S.), 341 Ill. App. 3d 238, 275 Ill. Dec. 190, 792 N.E.2d 421, 2003 Ill. App. LEXIS 856 (2 Dist. 2003), aff'd in part and rev'd in part, 213 Ill. 2d 30, 289 Ill. Dec. 648, 820 N.E.2d 424 (2004).

Various remarks in closing argument were not plain error, where they were generally comments on the evidence, some made in response to assertions by defense counsel, and where the jury was properly admonished in one instance where the remarks went over the line. People v. Watson, 342 Ill. App. 3d 1089, 277 Ill. Dec. 721, 796 N.E.2d 1087, 2003 Ill. App. LEXIS 1089 (1 Dist. 2003).

- DNA Evidence

Defendant was deprived of a fair trial when the trial court allowed a DNA expert to testify that the DNA profile of blood found at the scene matched defendant's DNA profile, which was on filed in a DNA database, because it tended to suggest defendant had committed other crimes since DNA databases are utilized for little else than storage of profiles of convicted criminals. People v. Jackson, 372 Ill. App. 3d 112, 309 Ill. Dec. 832, 865 N.E.2d 195, 2007 Ill. App. LEXIS 373 (1 Dist. 2007), aff'd in part and (Flag:) rev'd in part, 2009 Ill. LEXIS 175 (Ill. 2009).

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- Illustrative Cases

Defendant's right to due process was not violated by the trial court's ruling that defendant should be shackled throughout defendant's trial, where the trial court considered defendant's history of violence, the nature of the offenses, the fact that defendant had another case pending involving a threat to a judge, plus defendant's assertions of an escape plan. In addition, defendant did not object to the shackling and the record failed to show it contributed to the jury's finding of guilt. People v. Weeks, 393 Ill. App. 3d 1004, 333 Ill. Dec. 363, 914 N.E.2d 1175, 2009 Ill. App. LEXIS 807 (4 Dist. 2009).

Defendant was not deprived of a fair trial by the admission of 30 photographs of women's feet, the State's use of defendant's statements, or the use of a prior statement by defendant that was not disclosed in discovery, because the photographs were relevant to defendant's identity and intent to sexually gratify himself, defendant's statements were not used until the defense strategy was found to be based on the issue of identity, and the late disclosed statement was not known to the prosecutor until the morning of trial and a continuance was offered to defense counsel, who refused it. People v. Bobo, 375 Ill. App. 3d 966, 314 Ill. Dec. 387, 874 N.E.2d 297, 2007 Ill. App. LEXIS 943 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1830 (Ill. 2007).

Defendant's right to a fair trial was not violated because one isolated question elicited testimony about victim's mental disability or where defendant opened the door to a prosecutorial challenge to defendant's credibility by raising the issue of the witness' veracity. People v. Bakr, 373 Ill. App. 3d 981, 312 Ill. Dec. 19, 869 N.E.2d 1010, 2007 Ill. App. LEXIS 577 (1 Dist. 2007), appeal denied, 225 Ill. 2d 640, 875 N.E.2d 1114, 2007 Ill. LEXIS 1299 (2007).

Defendant was deprived of a fair trial when a DNA expert testified that the DNA profile of blood found on the toilet and bathtub of the crime scene matched defendant's DNA profile, which was on file in a DNA database because that statement tended to suggest that defendant had committed other crimes because DNA databases were utilized for little else than the storage of the DNA profiles of convicted criminals. People v. Jackson, Ill. App. 3d , 309 Ill. Dec. 832, 865 N.E.2d 195, 2007 Ill. App. LEXIS 233 (1 Dist. 2007), aff'd in part and rev'd in part, 2009 Ill. LEXIS 175 (Ill. 2009).

(Unpublished) Where defendant argued that defendant was deprived of a fair trial under Ill. Const. (1970), Art. I, § 8 due to repeated instances of alleged prosecutorial misconduct, the argument failed since none of the individual statements at issue rose to the level of error. People v. Patel, 366 Ill. App. 3d 255, 303 Ill. Dec. 560, 851 N.E.2d 747, 2006 Ill. App. LEXIS 488 (1 Dist. 2006).

(Unpublished) Where defendant argued that defendant was deprived of a fair trial under Ill. Const. (1970), Art. I, § 8 when the state argued facts not in evidence that were designed to inflame the passions of the jury, defendant did not show plain error under Ill. Sup. Ct. R. 615(a); the state's comments during closing arguments were comments upon the evidence offered at trial. People v. Patel, 366 Ill. App. 3d 255, 303 Ill. Dec. 560, 851 N.E.2d 747, 2006 Ill. App. LEXIS 488 (1 Dist. 2006).

Physician's testimony that she had examined an alleged child abuse victim's anal area did not deprive defendant of a fair trial, as the physician was examining the child after the child had reported that the child had been sexually abused; as such, the physician would be expected to do a full examination of the alleged victim. People v. Monroe, 366 Ill. App. 3d 1080, 304 Ill. Dec. 432, 852 N.E.2d 888, 2006 Ill. App. LEXIS 593 (1 Dist. 2006).

Defendant was not deprived of a fair trial by any testimony to the effect that defendant's penis had come into contact with the buttocks of either of two alleged victims in violation of an order in limine, as each time a witness testified in violation of the order, the trial court sustained an objection to the improper testimony, gave an instruction to the jury to disregard the improper testimony, or offered to give a jury instruction that defense counsel ultimately requested not be given. As such, the trial court's remedial action cured any prejudice to defendant. People v.

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Monroe, 366 Ill. App. 3d 1080, 304 Ill. Dec. 432, 852 N.E.2d 888, 2006 Ill. App. LEXIS 593 (1 Dist. 2006).

Defendant claimed defendant was denied the right to a fair trial when the circuit court did not act sufficiently to ensure that the jury was not tainted by a communication a juror received from defendant and which the juror then described to the juror's fellow jurors prior to informing the court of its occurrence. However, defendant had waived the issue, and the circuit court determined that defendant's communication was not intimidating in nature; in fact, defendant's statement could be viewed simply as a supplication, little different in substance from what defendant's attorney had already asked from the jury. People v. Ward, Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 891 (1 Dist. Sept. 29, 2006).

Defendant's right to a fair trial was not violated by the admission into evidence of gloves found in an unsecured house approximately six months after the murder because the gloves were admissible and relevant. The State established a sufficient circumstantial connection between the gloves, defendant, and the crime by introducing evidence defendant bragged to a witness that he wore gloves during the shooting so that no fingerprings would be found and evidence that a jacket found in a bag with the murder weapon contained a clear plastic glove. People v. Ursery, 364 Ill. App. 3d 680, 302 Ill. Dec. 146, 848 N.E.2d 146, 2006 Ill. App. LEXIS 330 (1 Dist. 2006).

Defendant was not denied a fair trial because the jury heard the alleged victim "wailing" outside the courtroom following her trial testimony. The alleged victim testified without incident and the court was in the best position to determine the effect of the alleged victim's emotional outburst on the jury. People v. Randall, 363 Ill. App. 3d 1124, 300 Ill. Dec. 699, 845 N.E.2d 120, 2006 Ill. App. LEXIS 196 (1 Dist. 2006).

- Jury Instructions

Defendant's Ill. Const. art. I, § 8 right to a fair trial was not violated when the trial court failed to give defendant's requested pattern instruction that the jury could not consider the fact that defendant did not testify in reaching a verdict. The trial court repeatedly instructed the jury on that principle, the pattern instruction itself was included in the materials that the jury took into the jury room, no Ill. Sup. Ct. R. 451(c) substantial defect in the jury instructions were shown, the evidence in defendant's first degree murder case was not closely balanced, and the error in not giving the jury instruction did not affect the fairness of defendant's trial. People v. Nugen, 399 Ill. App. 3d 575, 339 Ill. Dec. 285, 926 N.E.2d 760, 2009 Ill. App. LEXIS 1334 (1 Dist. 2009).

Defendant was not denied a fair trial by any error relating to jury instructions regarding eligibility for an extended-term sentence. The record reflected that no enhanced sentence was imposed and no comment by the judge suggested an enhanced sentence was considered. People v. Starnes, 374 Ill. App. 3D 132, 374 Ill. App. 3d 132, 311 Ill. Dec. 821, 869 N.E.2d 834, 2007 Ill. App. LEXIS 538 (1 Dist. 2007), appeal denied, 875 N.E.2d 1122, 2007 Ill. LEXIS 1514 (Ill. 2007).

- Physical Restraints

Trial court set forth sufficient reasons to justify the use of physical restraints, including the seriousness of the charge, defendant's physical attributes, defendant's prison record, the security of the courtroom, and the adequacy of alternative remedies. People v. Millsap, 374 Ill. App. 3d 857, 313 Ill. Dec. 772, 873 N.E.2d 396, 2007 Ill. App. LEXIS 812 (1 Dist. 2007), appeal denied, 225 Ill. 2d 660, 875 N.E.2d 1119, 2007 Ill. LEXIS 1339 (2007).

- Plain Error

Although the trial court did not fully comply with Ill. Sup. Ct. R. 431(b) in conducting voir dire, defendant was not entitled to relief on defendant's claim that defendant's right to a fair trial was compromised under, inter alia, Ill. Const. art. I, § 8. Because defendant did not object at trial,

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defendant had to establish that the trial court's error resulted in Ill. Sup. Ct. R. 615 plain error that compelled waiver of defendant's forfeiture, and defendant could not show that defendant's substantial rights had been violated, especially since defendant did not demonstrate that defendant was convicted in defendant's sexual assault trial by a biased jury that acquitted defendant of two of the three charges against defendant. People v. Rogers, 408 Ill. App. 3d 873, 349 Ill. Dec. 480, 946 N.E.2d 976, 2011 Ill. App. LEXIS 179 (2 Dist. 2011).

(Unpublished) Where defendant argued that defendant was deprived of a fair trial under Ill. Const. (1970), Art. I, § 8 when the prosecution told the jury to do its job and asked the jury to find defendant guilty beyond a reasonable doubt, defendant did not establish error or plain error under Rule 615(a), Supreme Court Rules; trial court cured any error with regard to one statement by sustaining defendant's objection, and plain error was not established because the comment at issue was similar to comments made in other cases in which it was found that the comments did not violate defendant's rights. People v. Patel, 366 Ill. App. 3d 255, 303 Ill. Dec. 560, 851 N.E.2d 747, 2006 Ill. App. LEXIS 488 (1 Dist. 2006).

(Unpublished) Where defendant alleged that defendant was deprived of a fair trial under Ill. Const. (1970), Art. I, § 8 when the state shifted the burden of proof to defendant by stating that if the defense thought there was evidence that the defense wanted to get in, the defense could have provided witnesses to do so, defendant did not establish plain error under Rule 615(a), Supreme Court Rules; the state was merely responding to a statement made by defense counsel regarding why the state did not call other witnesses. People v. Patel, 366 Ill. App. 3d 255, 303 Ill. Dec. 560, 851 N.E.2d 747, 2006 Ill. App. LEXIS 488 (1 Dist. 2006).

(Unpublished) Where defendant argued that the prosecution made disparaging comments about defense counsel during the state's rebuttal arguments, defendant did not establish that defendant's right to a fair trial under Ill. Const. (1970), Art. I, § 8 was violated; defendant did not establish plain error under Rule 615(a), Supreme Court Rules, as the prosecution's remarks about the defense in the case were invited by defense counsel's remark that the state did not call certain witnesses for fear of subjecting the witnesses to cross-examination. People v. Patel, 366 Ill. App. 3d 255, 303 Ill. Dec. 560, 851 N.E.2d 747, 2006 Ill. App. LEXIS 488 (1 Dist. 2006).

Where, in a solicitation of murder for hire case under 720 ILCS 5/8-1.2(a), a witness testified, in part, that the cost for solicitation of murder for hire in the instant case should have been $40,000 and that it was important for the undercover officer to elicit from defendant specific facts about the act to be performed and the amount to be transacted for the particular act, defendant waived the claim that defendant was deprived of a fair trial, as defendant failed to raise it in defendant's posttrial motion, and defendant failed to raise it in the opening appellate brief as required under Ill. Sup. Ct. R. 341(e)(7), (g); plain error analysis under Ill. Sup. Ct. R. 615(a) was unavailable since the evidence in the case was not closely balanced given that the solicitation was recorded, and the error was not so serious that its consideration was necessary to preserve the integrity and reputation of the judicial process given that the witness's testimony was an improper comment on a question of law, was based on speculation, and did not deprive defendant of a fair trial under Ill. Const. Art. I, § 8. People v. Patel, 366 Ill. App. 3d 255, 303 Ill. Dec. 560, 851 N.E.2d 747, 2006 Ill. App. LEXIS 488 (1 Dist. 2006).

Where the trial court failed to conduct a full inquiry on the record of all of the applicable factors related to defendant's right to a fair trial pursuant to Ill. Const. Art. I, § 8 before requiring defendant to wear an electronic security belt while testifying, the trial court erred; the remedy for that error was a remand to the trial court for a hearing wherein the reasons for and against the restraints were to be argued and the reasons underlying the decision were to be placed on the record. People v. Johnson, 356 Ill. App. 3d 208, 292 Ill. Dec. 177, 825 N.E.2d 765, 2005 Ill. App. LEXIS 293 (3 Dist. 2005).

Where the trial court gave no reasons for the use of an electronic stun belt restraining device on defendant at trial, the trial court violated defendant's right to a fair trial under this section and committed plain error under Ill. Sup. Ct. R. 615(a); caselaw established that before a restraining

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device was used at trial, a manifest need analysis had to be conducted and that a failure to do so constituted plain error, and the trial court failed to do so. People v. Allen, 354 Ill. App. 3d 442, 290 Ill. Dec. 284, 821 N.E.2d 335, 2004 Ill. App. LEXIS 1564 (3 Dist. 2004).

Although defendant failed to object to the State's failure to perfect its impeachment of defendant by calling defendant's former cellmate to testify that defendant had offered the cellmate money or drugs in return for false statements regarding an alternative murder suspect, the error in question was reviewable as plain error, and so substantially impaired the right to a fair trial that a new trial was ordered. People v. Williams, 204 Ill. 2d 191, 273 Ill. Dec. 250, 788 N.E.2d 1126, 2003 Ill. LEXIS 462 (2003).

Under the doctrine of plain error, the appellate court may consider matters not otherwise properly raised in the trial court where the evidence is closely balanced or the error is of such magnitude that the commission thereof denies the accused a fair and impartial trial. People v. Griffis, 200 Ill. App. 3d 752, 146 Ill. Dec. 501, 558 N.E.2d 464 (1 Dist. 1990).

- Prosecutor's Remarks

Prosecution's comments during rebuttal did not deny defendant a fair trial; when viewed in context of defense counsel's argument that the police had a "theory," the medical examiner was in on it, and the police "fed" defendant the statements defendant made, the prosecutor's response was proper. Moreover, any error would be harmless based on the strength of the evidence demonstrating defendant's guilt. People v. Starnes, 374 Ill. App. 3D 132, 374 Ill. App. 3d 132, 311 Ill. Dec. 821, 869 N.E.2d 834, 2007 Ill. App. LEXIS 538 (1 Dist. 2007), appeal denied, 875 N.E.2d 1122, 2007 Ill. LEXIS 1514 (Ill. 2007).

(Unpublished) Defendant was not deprived of a fair trial under Ill. Const. (1970), Art. I, § 8 where defendant argued that the state improperly cross-examined a witness; trial court sustained defendant's objection to one of the statements at issue, thereby curing any error, and with regard to the other allegedly improper question, a sidebar was held before the question was answered and the state never revisited the line of questioning. People v. Patel, 366 Ill. App. 3d 255, 303 Ill. Dec. 560, 851 N.E.2d 747, 2006 Ill. App. LEXIS 488 (1 Dist. 2006).

(Unpublished) Comments made by the prosecution about defendant's ethnicity and religion did not constitute a violation of defendant's right to a fair trial under Ill. Const. (1970), Art. I, § 8; defendant, who failed to preserve the issue, did not establish plain error under Rule 615(a), Supreme Court Rules, as the state's questions regarding religion were designed to establish a possible motive and were not prejudicial. People v. Patel, 366 Ill. App. 3d 255, 303 Ill. Dec. 560, 851 N.E.2d 747, 2006 Ill. App. LEXIS 488 (1 Dist. 2006).

In defendant's first-degree murder trial the prosecutor's general statement about the frequency of murder convictions did not constitute reversible error, and the trial court did not abuse its discretion when it allowed the comment but urged the prosecutor to return the focus to the case at hand. The errors in the trial were not of a magnitude so as to deprive defendant of a fundamentally fair trial. People v. Sullivan, 366 Ill. App. 3d 770, 304 Ill. Dec. 677, 853 N.E.2d 754, 2006 Ill. App. LEXIS 522 (1 Dist. 2006).

Defendant was not denied a fair trial because of the prosecutor's closing argument where the jury was appropriately instructed on second degree murder and was advised that it had a duty to follow all of the instructions and was not to single out certain instructions and disregard others. People v. Figueroa, 341 Ill. App. 3d 665, 275 Ill. Dec. 941, 793 N.E.2d 712, 2003 Ill. App. LEXIS 824 (1 Dist. 2003).

Although prosecutor's remarks about a planned defense witness's conviction and sentence in the same series of criminal acts were improper, the error in allowing them was not reversible error, because defendant could not show that the information was actually prejudicial; counsel's failure to call the witness thereafter was not ineffective assistance, because it was a reasonable

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strategic decision. People v. Arroyo, 339 Ill. App. 3d 137, 274 Ill. Dec. 170, 790 N.E.2d 943, 2003 Ill. App. LEXIS 690 (2 Dist. 2003).

Test for reversing a conviction based on a prosecutor's remarks is whether the jury would have reached a contrary verdict had the improper remarks not been made; to constitute reversible error, the complained of remarks must have resulted in substantial prejudice to the accused, such that absent those remarks the verdict would have been different. People v. Burton, 338 Ill. App. 3d 406, 272 Ill. Dec. 916, 788 N.E.2d 220, 2003 Ill. App. LEXIS 400 (1 Dist. 2003).

Right to Impartial Jury

Defendant failed to show that defendant did not receive a fair trial before an impartial jury, required by Ill. Const. Art. I, §§ 8 and 13, as the evidence demonstrated that the trial court acted within its discretion in waiting until an allegedly biased juror indicated during the sentencing phase that the juror could not be fair and impartial to replace the juror. Prior to that time, the trial court did not have enough evidence that the juror could not be fair and impartial, but the juror's indication that defendant should get the death sentence the State was requesting showed that the juror had made up his mind without listening to all of the evidence. People v. Runge, 234 Ill. 2d 68, 334 Ill. Dec. 865, 917 N.E.2d 940, 2009 Ill. LEXIS 635 (2009), cert. denied, 130 S. Ct. 2402, 2010 U.S. LEXIS 3748, 176 L. Ed. 2d 925 (U.S. 2010).

Where none of the jury venire at defendant's trial had been present at co-defendant's trial, where there was no discussion of co-defendants trial among the members of the venire for defendant's trial, and where none of the prospective jurors, including those who actually determined defendant's guilt, indicated they would be unable to set aside any impression concerning defendant that they may have received from their participation in co-defendant's venire, defendant was not denied his constitutional right to a trial before an impartial jury and was not entitled to a new trial. People v. Hyche, 77 Ill. 2d 229, 32 Ill. Dec. 893, 396 N.E.2d 6 (1979).

- Absence from Jury Selection

Where defendant's presence may have resulted in the exclusion of one or more of the five jurors who convicted him, the individual voir dire sessions excluding defendant resulted in the denial of his fundamental right to a fair trial by an impartial jury. People v. Bennett, 282 Ill. App. 3d 975, 218 Ill. Dec. 574, 669 N.E.2d 717 (3 Dist. 1996), appeal denied, 169 Ill. 2d 572, 221 Ill. Dec. 440, 675 N.E.2d 635 (1996).

- Challenge to Composition

A consideration of defendant's challenge to the composition of his jury could not be made in the absence of an adequate record of the voir dire. People v. Dixon, 105 Ill. App. 3d 340, 61 Ill. Dec. 216, 434 N.E.2d 369 (1 Dist. 1982), cert. denied, 466 U.S. 981, 104 S. Ct. 2364, 80 L. Ed. 2d 836 (1984).

- Comments on Race

Where defendant timely objected to certain remarks related to the race of the victims made by prosecutor and preserved that issue for consideration, as appellate court's and the prosecutor's statement was directed to the race of the victims and not to the defendant's race and, as the remark was not a direct slur against the defendant designed to arouse the prejudice of the jury, the prosecutors isolated remarks did not deprive defendant of his right to a fair trial. People v. Gary, 42 Ill. App. 3d 357, 1 Ill. Dec. 135, 356 N.E.2d 135 (1 Dist. 1976).

- Communications with Jury

Defendant was not denied a fair trial when a juror told other jurors that defendant communicated with the juror, as the juror ensured the trial court of his ability to remain fair and impartial and any

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further inquiry would only have acknowledged and accentuated the communication. People v. Ward, 371 Ill. App. 3d 382, 308 Ill. Dec. 899, 862 N.E.2d 1102, 2007 Ill. App. LEXIS 75 (1 Dist. 2007).

Prejudice has been demonstrated where the judge's communication with the jury has had an effect on the deliberative process. People v. Tansil, 137 Ill. App. 3d 498, 92 Ill. Dec. 314, 484 N.E.2d 1169 (2 Dist. 1985).

A judgment based upon a private communication, not made in open court, between a judge and jury during its deliberations violates the defendant's substantial rights. The proper procedure in such situations is for the trial judge to discuss the jury's request with the defendant's counsel and the prosecutor before responding to a jury, and where a defendant and counsel are absent from such a communication, the defendant must demonstrate that he or she suffered prejudice as a result in order for the error to require reversal. People v. Tansil, 137 Ill. App. 3d 498, 92 Ill. Dec. 314, 484 N.E.2d 1169 (2 Dist. 1985).

- Competency of Jurors

A person is not competent to sit as a juror if his mental attitude is such that a defendant will not receive a fair and impartial trial with him or her as a member of the jury. People v. Stone, 61 Ill. App. 3d 654, 18 Ill. Dec. 799, 378 N.E.2d 263 (5 Dist. 1978).

- Construction with the Jury Act

The Jury Act (705 ILCS 305/14) does not violate an accused's right to a trial by impartial jury. Coughlin v. People, 144 Ill. 140, 33 N.E. 1 (1893).

- Disqualification of Jurors

A juror who, prior to his acceptance, has expressed a decided conviction upon the merits of the case, or who, without any qualification, says that the defendant is guilty, is disqualified, because he does not stand impartially between the parties. People v. Ortiz, 320 Ill. 205, 150 N.E. 708 (1926).

- Exclusion on Basis of Race

The motives of the prosecution in exercising peremptory challenges are not subject to examination absent a showing of a systematic pattern over time of excluding blacks from jury service. People v. Dixon, 105 Ill. App. 3d 340, 61 Ill. Dec. 216, 434 N.E.2d 369 (1 Dist. 1982), cert. denied, 466 U.S. 981, 104 S. Ct. 2364, 80 L. Ed. 2d 836 (1984).

- Flexibility of Jury System

The constitutional guarantee of the right of trial by jury is not so inelastic as to render unchangeable every characteristic and specification of the common-law jury system, flexibility for the adjustment of details remains, as long as the essentials of the system are retained. People v. Lobb, 17 Ill. 2d 287, 161 N.E.2d 325 (1959).

- Illness of Juror

Defendant has no constitutional right to a tribunal of his own choosing, but only the right to an impartial jury chosen through a joint effort of both parties in compliance with the statutory requirements; accordingly, defendant was not denied a fair trial or due process as a result of the court's refusal to grant a continuance to see if an ill juror would recover by the next day. People v. Ward, 154 Ill. 2d 272, 181 Ill. Dec. 884, 609 N.E.2d 252 (1992), cert. denied, 510 U.S. 873, 114 S. Ct. 204, 126 L. Ed. 2d 161 (1993).

- Illustrative Cases

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The issue of whether defendant was denied his right to an impartial jury by being unfairly deprived of information regarding one of the jurors was raised on appeal and adequately addressed and holding was not affected by defendant's additional information. People v. Towns, 182 Ill. 2d 491, 231 Ill. Dec. 557, 696 N.E.2d 1128 (1998).

Emotional outburst by victim's mother directed at defendant during trial did not result in prejudice warranting reversal, where the incident was brief and isolated, there was no attempt to obtain the jury's sympathy, the court admonished the jury and there was no indication in the record that the jury would have been unable to heed the admonition and disregard the incident during its deliberations. People v. Whitehead, 169 Ill. 2d 355, 215 Ill. Dec. 164, 662 N.E.2d 1304 (1996), cert. denied, 519 U.S. 1030, 117 S. Ct. 587, 136 L. Ed. 2d 517 (1996), overruled, People v. Coleman, 183 Ill. 2d 366, 233 Ill. Dec. 789, 701 N.E.2d 1063 (1998).

Where the burden of determining the guilt or innocence of the defendant was divided between the trial judge and the jury, the defendant did not receive a full trial by an impartial jury. People v. Burnside, 185 Ill. App. 3d 540, 133 Ill. Dec. 611, 541 N.E.2d 822 (3 Dist. 1989).

A trial of defendant under circumstances where he must either select his jury from a panel which has in various ways been exposed to prejudice, bias and partiality (through the prior trial and conviction of another defendant jointly accused of the same crime and in which this defendant was called as a witness and forced to claim his constitutional privileges) or exhaust all of his challenges and accept thereafter such bystanders as are summoned by the sheriff to fill the panel, cannot be said to insure a defendant the fair, impartial jury guaranteed by the constitution of the state of Illinois. People v. Faulisi, 34 Ill. 2d 187, 215 N.E.2d 276 (1966).

Where juror made statement to acquaintance that defendant had it coming to him sooner or later, referring to the result of the trial, and on voir dire the juror told counsel he had no prejudice and could serve as a fair and impartial juror, as defendant was prevented from determining whether juror and should have been accepted as a member of the jury, it was error to overrule his motion for a new trial. People v. Cravens, 375 Ill. 495, 31 N.E.2d 938 (1941).

- Impartial Jury

Petitioner stated a "gist" of a meritorious claim based on an allegation that an impartial jury was not empanelled where one of the jurors worked during the same time as petitioner at a hotel when petitioner was convicted of raping a hotel guest. People v. Hanks, 335 Ill. App. 3d 894, 269 Ill. Dec. 804, 781 N.E.2d 601, 2002 Ill. App. LEXIS 1117 (1 Dist. 2002).

Assurance from a juror is required that he or she will be able to set aside all information he or she has acquired outside the courtroom, as well as any opinions formed, and decide the case strictly on the evidence. People v. Santamaria, 165 Ill. App. 3d 381, 116 Ill. Dec. 411, 519 N.E.2d 1 (3 Dist. 1987).

An impartial jury has been described as one made up of persons prepared to exercise their personal judgment, favoring neither prosecution nor accused, standing indifferent to both, and guided only by law and the evidence in the performance of their duties. People v. Stone, 61 Ill. App. 3d 654, 18 Ill. Dec. 799, 378 N.E.2d 263 (5 Dist. 1978).

Jurors, to be qualified as impartial, should stand indifferent between the parties and be wholly free from even the suspicion of bias. People v. Kirkpatrick, 413 Ill. 595, 110 N.E.2d 519 (1953).

A juror, to be qualified, under this section, must come into the trial of the case with a mind uncommitted on the question of guilt or innocence of the defendant and prepared to weigh the evidence impartially; if the existence of certain facts has been established in his mind, touching the guilt or innocence of the accused, to the extent of producing a conviction, he is disqualified, for neither party to the proceeding should be required to adduce proof to remove a preconceived opinion. People v. Cravens, 375 Ill. 495, 31 N.E.2d 938 (1941).

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-- Duty of Trial Judge

When a prospective juror indicates bias or prejudice and has not been rehabilitated and counsel fails to exercise a peremptory challenge or challenge her for cause, the trial judge has the sua sponte duty to excuse the prospective juror. People v. Metcalfe, 326 Ill. App. 3d 1008, 261 Ill. Dec. 172, 762 N.E.2d 1099, 2001 Ill. App. LEXIS 1500 (1 Dist. 2001).

- Juror Deceit

Where a juror deceives or misleads a party by falsely testifying that he is unprejudiced or impartial, on discovery of the fact after verdict a new trial will be ordered. People v. Ortiz, 320 Ill. 205, 150 N.E. 708 (1926).

- Jurors of County of Offense

-- Waiver

Failure to bring the nonresidency of a juror to the attention of the circuit court before trial begins results in waiver of both the defendant's constitutional and statutory rights to be tried by a jury composed of residents of the county in which the offense was committed. People v. Johnson, 206 Ill. App. 3d 318, 151 Ill. Dec. 255, 564 N.E.2d 232 (4 Dist. 1990), cert. denied, 137 Ill. 2d 668, 156 Ill. Dec. 565, 571 N.E.2d 152 (1991).

- Jury Selection Improper

A trial of a defendant under circumstances where he must either select his jury from a panel which has in various ways been exposed to prejudice, bias and partiality (through the prior trial and conviction of another defendant jointly accused of the same crime and in which this defendant was called as a witness and forced to claim his constitutional privileges) or exhaust all of his challenges and accept thereafter such bystanders as are summoned by the sheriff to fill the panel, cannot be consonant with due process. People v. Kirkpatrick, 413 Ill. 595, 110 N.E.2d 519 (1953).

- Jury Venire Overlap

It will not be presumed that an entire jury venire is prejudiced against a defendant solely because the defendant's and a co-defendant jury venires overlapped. People v. Hyche, 77 Ill. 2d 229, 32 Ill. Dec. 893, 396 N.E.2d 6 (1979).

- News Coverage

Information that a juror's name and address had been published in a local newspaper during the course of a murder trial held in a small metropolitan area while bound to have impact, was not sufficient to show that an honest juror would therefore give sway to his emotions and disregard the fundamental requirement of a fair trial and decide to convict a person in order to be absolutely secure. People v. Whitehead, 169 Ill. 2d 355, 215 Ill. Dec. 164, 662 N.E.2d 1304 (1996), cert. denied, 519 U.S. 1030, 117 S. Ct. 587, 136 L. Ed. 2d 517 (1996), overruled, People v. Coleman, 183 Ill. 2d 366, 233 Ill. Dec. 789, 701 N.E.2d 1063 (1998).

Where the exposure of the defendant or the facts of the case to the public has been extensive, the possibility of a fair trial is significantly reduced, and due process of law has therefore been compromised, however, that the mere existence of news accounts of the crime or the subsequent trial does not raise a presumption that the jury is prejudiced. People v. Santamaria, 165 Ill. App. 3d 381, 116 Ill. Dec. 411, 519 N.E.2d 1 (3 Dist. 1987).

Whether a motion for a continuance should be granted because of publicity concerning the case resides within the sound discretion of the trial court; when an abuse of discretion by the trial court is not found, a court of review will not disturb the trial court's judgment. People v. Kurtz, 37 Ill. 2d 103, 224 N.E.2d 817 (1967).

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- Peremptory Challenges

The prosecution's alleged systematic use of peremptory challenges to exclude blacks from the jury did not deprive defendant of his right to an impartial jury in violation of the Illinois Constitution. People v. Lewis, 103 Ill. 2d 111, 82 Ill. Dec. 442, 468 N.E.2d 1222 (1984), cert. denied, 470 U.S. 1006, 105 S. Ct. 1364, 84 L. Ed. 2d 384 (1985).

Where there was neither a report of the jury selection proceedings, a bystander's report, nor an agreed statement of facts and only a statement by counsel, the propriety of the state's peremptory challenge could not be considered. People v. Belton, 105 Ill. App. 3d 10, 60 Ill. Dec. 881, 433 N.E.2d 1119 (1 Dist. 1982).

Where the appellate court did not agree that in order to insure an impartial jury peremptory challenges can only be exercised in a limited way, it rejected defendant's contention that the state's exercise of its peremptory challenges violated defendant's right to an impartial jury guaranteed by U.S. Const., Amend. 6 and this section. People v. Fleming, 91 Ill. App. 3d 99, 46 Ill. Dec. 217, 413 N.E.2d 1330 (1 Dist. 1980).

- Prejudice Not Presumed

The sole fact that a portion of defendant's venire overlapped a portion of the venire from which co-defendant's jury was selected did not justify a presumption of prejudice absent additional circumstances such as bias and partiality or an incomplete and careless voir dire. People v. Hyche, 77 Ill. 2d 229, 32 Ill. Dec. 893, 396 N.E.2d 6 (1979).

- Racial Use of Peremptory Challenges

Defendant's assertions regarding the state's use of its peremptory challenges did not raise an issue of substantial denial of his rights under the Constitution as required by the Post-Conviction Hearing Act (725 ILCS 5/122-1) where he made no showing of a systematic exclusion of blacks from the jury system and did not raise the issue of the case-by-case exclusion of blacks in his petition or affidavit. People v. Gaines, 105 Ill. 2d 79, 85 Ill. Dec. 269, 473 N.E.2d 868 (1984), cert. denied, 471 U.S. 1131, 105 S. Ct. 2666, 86 L. Ed. 2d 282 (1985).

State's use of peremptory challenge to exclude all blacks from the jury did not deprive defendant of his right to an impartial jury. People v. Withers, 115 Ill. App. 3d 1077, 71 Ill. Dec. 444, 450 N.E.2d 1323 (1 Dist. 1983).

Where a defendant cited only one instance in which the prosecutor used his peremptory challenges to exclude two black jurors, the record did not sufficiently demonstrate the types of invidious discrimination which must be proved, and the state's exercise of its peremptory challenges did not violate the defendant's constitutional rights. People v. Osborn, 111 Ill. App. 3d 1078, 67 Ill. Dec. 674, 444 N.E.2d 1158 (3 Dist. 1983).

There was no constitutional violation where a defendant failed to establish systematic exclusion of blacks and Latinos by the state through use of its peremptory challenges. People v. Allen, 96 Ill. App. 3d 871, 52 Ill. Dec. 419, 422 N.E.2d 100 (1 Dist. 1981).

State's use of its peremptory challenges was not error because no prima facie case of discrimination was established. People v. Fleming, 91 Ill. App. 3d 99, 46 Ill. Dec. 217, 413 N.E.2d 1330 (1 Dist. 1980).

- Remedy for Violation

A criminal defendant's right to trial by a fair and impartial jury is firmly rooted in the state Constitution; this right is so basic that a violation thereof requires a reversal. People v. Stone, 61 Ill. App. 3d 654, 18 Ill. Dec. 799, 378 N.E.2d 263 (5 Dist. 1978).

- Rules of Court

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There is nothing in the constitutional guarantee of the right to a trial by jury which prevents reasonable regulation of the manner in which jurors shall be selected, and a rule of court regulating the selection of jurors is valid if it is in harmony with settled principles of law essential to securing an impartial jury. People v. Lobb, 17 Ill. 2d 287, 161 N.E.2d 325 (1959).

- Unanimity of Verdict

The jury need only be unanimous with respect to the ultimate question of defendant's guilt or innocence of the crime charged, and unanimity is not required concerning alternate ways in which the crime can be committed. People v. Travis, 170 Ill. App. 3d 873, 121 Ill. Dec. 830, 525 N.E.2d 1137 (4 Dist.), cert. denied, 122 Ill. 2d 590, 125 Ill. Dec. 232, 530 N.E.2d 260 (1988), 489 U.S. 1023, 109 S. Ct. 1149, 103 L. Ed. 2d 208 (1989).

- Voir Dire

Trial court failed to inquire of some jurors in the first panel from which jurors were chosen, whether they knew, understood and accepted the four principles regarding defendant's trial rights set forth in Ill. Sup. Ct. R. 431(b) in a case where several jurors were ultimately selected from that panel and defendant was subsequently convicted of aggravated battery with a firearm and first-degree murder under an accountability theory. Since the trial court's error amounted to plain error because defendant was denied the substantial right guaranteed to defendant under Ill. Const. Art. I, § 8 and Ill. Const. Art. I, § 13 of being tried by a fair and impartial jury, defendant was entitled to a new trial. People v. Anderson, 399 Ill. App. 3d 856, 339 Ill. Dec. 580, 927 N.E.2d 121, 2010 Ill. App. LEXIS 261 (1 Dist. 2010).

Where his petition for post-conviction relief under the Illinois Post-Conviction Hearing Act, 725 ILCS 5/122-1 et seq., alleged a valid gang bias voir dire issue that was not rebutted by the record, defendant alleged a sufficient constitutional deprivation to require a second-stage review of his petition; thus, a trial court erred in dismissing, as frivolous, the petition at the first-stage level of review. People v. Etherly, 344 Ill. App. 3d 599, 279 Ill. Dec. 807, 801 N.E.2d 99, 2003 Ill. App. LEXIS 1372 (1 Dist. 2003).

The trial court's voir dire examination of a venireman was sufficient to ensure the selection of an impartial jury at the defendant's trial, notwithstanding the venireman's police-related associations, where the court admonished the entire venire that the defendant was presumed innocent and that this presumption could be overcome only by evidence presented by the state that showed the defendant's guilt beyond a reasonable doubt and where, per the court's questioning, the venireman explicitly stated he would follow the law and decide defendant's case based on the evidence and the law presented. People v. Wilson, 303 Ill. App. 3d 1035, 237 Ill. Dec. 778, 710 N.E.2d 408 (1 Dist. 1999), appeal denied, 185 Ill. 2d 663, 242 Ill. Dec. 150, 720 N.E.2d 1105 (1999).

Once court decided to permit prosecution to present evidence of defendant's gang affiliation, defendant had a right to have jury venire questioned as to biases against gang members. People v. Jimenez, 284 Ill. App. 3d 908, 220 Ill. Dec. 97, 672 N.E.2d 914 (1 Dist. 1996).

The prospective jurors were never individually examined during the voir dire process, nor were the trial court, State's Attorney and defense counsel afforded adequate opportunity to ascertain whether the venire persons were biased, victims of crime, or both; therefore the jury selection procedure did not ensure a fair and impartial jury. People v. Oliver, 265 Ill. App. 3d 543, 202 Ill. Dec. 437, 637 N.E.2d 1173 (1 Dist.), appeal denied, 157 Ill. 2d 515, 205 Ill. Dec. 178, 642 N.E.2d 1295 (1994).

Voir dire is the proper and effective tool to be used to discover and exclude jurors who are actually biased against a defendant for any reason, including participation in a co-defendant's venire. People v. Hyche, 77 Ill. 2d 229, 32 Ill. Dec. 893, 396 N.E.2d 6 (1979).

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There is no constitutional right to direct examination of prospective jurors. People v. Brumfield, 51 Ill. App. 3d 637, 9 Ill. Dec. 619, 366 N.E.2d 1130 (3 Dist. 1977).

- Waiver

Where the defendant's attorney expressly advises the court of defendant's choice to proceed by bench trial in the defendant's presence without objection from defendant, a valid waiver may be found from the defendant's acquiescence to that waiver. People v. Clauson, 182 Ill. App. 3d 268, 130 Ill. Dec. 719, 537 N.E.2d 1048 (1 Dist. 1989).

The circuit courts have the duty of ensuring that a defendant's waiver of his right to a jury trial be made expressly and understandingly. People v. Smith, 106 Ill. 2d 327, 88 Ill. Dec. 42, 478 N.E.2d 357 (1985).

Right to Jury Trial

705 ILCS 405/5-101(3) was not unconstitutional as applied to respondent juvenile, charged with a sex offense, because juveniles have no right to a jury trial under the Illinois Constitution. People v. Jonathan C.B. (In re Jonathan C.B.), 386 Ill. App. 3d 735, 325 Ill. Dec. 519, 898 N.E.2d 252, 2008 Ill. App. LEXIS 1172 (4 Dist. 2008).

Defendant knowingly waived her right to a jury trial; defendant acknowledged that she understood the meaning of a jury trial and specifically stated to the court that she was giving up that right. People v. Clay, 363 Ill. App. 3d 780, 300 Ill. Dec. 285, 843 N.E.2d 885, 2006 Ill. App. LEXIS 61 (1 Dist. 2006), appeal denied, 219 Ill. 2d 573, 303 Ill. Dec. 835, 852 N.E.2d 242 (2006).

Prior felony arrest, on the basis of which defendant was subject to an extended sentence, could be established by information contained in a presentence report, and did not have to be found by a jury beyond a reasonable doubt. People v. James, 362 Ill. App. 3d 285, 298 Ill. Dec. 115, 838 N.E.2d 1008, 2005 Ill. App. LEXIS 1128 (4 Dist. 2005), appeal denied, 217 Ill. 2d 614, 300 Ill. Dec. 526, 844 N.E.2d 969 (2006).

It was an abuse of discretion not to grant a new trial, but merely to offer a continuance, when State had violated discovery rules by failing to respond to a specific request for information about compensation paid to witnesses, and by continuing to fail to respond each time the witness in question relocated at State expense. Defendant was particularly prejudiced in that the apparent dearth of impeachment material was likely to have influenced defendant's decision to waive trial by jury. People v. Blackman, 359 Ill. App. 3d 1013, 296 Ill. Dec. 686, 836 N.E.2d 101, 2005 Ill. App. LEXIS 896 (1 Dist. 2005), appeal denied, 217 Ill. 2d 607, 300 Ill. Dec. 524, 844 N.E.2d 967 (2006).

- In General

There is no set formula for determining whether waiver of jury trial was made knowingly, and the determination necessarily turns on the particular facts of each case. People v. Woods, 225 Ill. App. 3d 988, 167 Ill. Dec. 1094, 588 N.E.2d 1224 (2 Dist.), cert. denied, 146 Ill. 2d 650, 176 Ill. Dec. 820, 602 N.E.2d 474 (1992).

There is no set formula for determining whether waiver of jury trial was made knowingly, and thus the determination necessarily turns on the facts of each case. People v. Steiger, 208 Ill. App. 3d 979, 153 Ill. Dec. 702, 567 N.E.2d 660 (2 Dist. 1991).

No set admonition or advice is required before an effective waiver of the right to jury trial may be made. People v. Smith, 106 Ill. 2d 327, 88 Ill. Dec. 42, 478 N.E.2d 357 (1985).

Defendant is entitled to a fair trial, not a perfect one, for counsel is not required to be infallible. People v. Allen, 132 Ill. App. 2d 1015, 270 N.E.2d 54 (3 Dist. 1971).

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The trial court correctly held that there was no right to trial by jury and no constitutional right of plaintiff was violated by denial of jury trial or the dismissal of the complaint upon motion. Berk v. County of Will, 34 Ill. 2d 588, 218 N.E.2d 98 (1966).

- Appellate Review

The right to a fair trial is of such importance, that on review, an appellate court must examine the record to determine independently whether the defendant received a fair trial. People v. Santamaria, 165 Ill. App. 3d 381, 116 Ill. Dec. 411, 519 N.E.2d 1 (3 Dist. 1987).

- Duty of Court

There is no requirement that the court affirmatively advise defendant of his right to a jury trial and elicit a waiver, or advise him of the consequences of a waiver. People v. Woods, 225 Ill. App. 3d 988, 167 Ill. Dec. 1094, 588 N.E.2d 1224 (2 Dist.), cert. denied, 146 Ill. 2d 650, 176 Ill. Dec. 820, 602 N.E.2d 474 (1992).

Circuit courts have the duty of insuring that a defendant's waiver of his right to a jury trial be made expressly and understandably, however, there is no set formula for determining whether this waiver was made knowingly, and thus the determination necessarily turns on the facts of each case. People v. Steiger, 208 Ill. App. 3d 979, 153 Ill. Dec. 702, 567 N.E.2d 660 (2 Dist. 1991).

It is the duty of the trial court to see that a waiver of the right to jury trial is expressly and understandingly made, and such obligation is not to be perfunctorily discharged. People v. Sebag, 110 Ill. App. 3d 821, 66 Ill. Dec. 502, 443 N.E.2d 25 (2 Dist. 1982).

- Fundamental Fairness Required

Due process does prohibit the conviction and imprisonment of one whose trial is offensive to the common and fundamental ideas of fairness and right. People v. Cox, 12 Ill. 2d 265, 146 N.E.2d 19 (1957).

- Illustrative Case

Defendant was not denied his right to a hearing before an impartial court, notice of the charges and proof beyond a reasonable doubt of indirect criminal contempt where the record revealed that the petition for a rule to show cause why defendant should not be held in contempt was filed and set for hearing in September while defendant did not appear in September but was represented by counsel who appeared and argued several motions, the court entered the rule to show cause and set it for hearing in October at the request of the defense counsel, a six day continuance of the rule was allowed, again at the request of the defense counsel, and the rule was finally heard in October. While it is true that originally the rule to show cause was brought by the special state's attorney and it was the trial court who directed the contempt proceeding against defendant, the activities which formed the basis of the contempt in both the rule sought by the special state's attorney and the finding of contempt by the trial court were the same in both instances. Armentrout v. Dondanville, 67 Ill. App. 3d 1021, 24 Ill. Dec. 688, 385 N.E.2d 829 (2 Dist. 1979).

A defendant had not made a knowing and understanding waiver of his right to a jury trial where, save for the notation "JW" on the half-sheet for the trial date, the record, which contained the trial transcript, was totally devoid of any indication that the trial court explained the right to a jury trial to the defendant, or that he was otherwise apprised of it. People v. Montgomery, 96 Ill. App. 3d 994, 52 Ill. Dec. 545, 422 N.E.2d 226 (1 Dist. 1981).

- Impartial Judge Required

When a defendant waives a trial by jury he is entitled to the same fair and impartial treatment he would expect and be entitled to by a jury. Therefore, where a judge made some outside private investigation concerning the defendant previous to pronouncing sentence, he violated the right of

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the defendant to a fair and impartial trial. People v. McMiller, 410 Ill. 338, 102 N.E.2d 128 (1951).

- Juvenile Court Act

For a defendant to be deemed a "person convicted of a felony" within the meaning of the escape statute, 720 ILCS 5/31-6(a) (1998), both U.S. Const. Amend. VI and Ill. Const. Art. I, § 8 require that the defendant have been afforded the right to a trial by jury on the predicate felony. A delinquency proceeding cannot satisfy that requirement because juveniles are not entitled to a trial by jury under the Juvenile Court Act, 705 ILCS 405/5-101(3). People v. Taylor, 221 Ill. 2d 157, 302 Ill. Dec. 697, 850 N.E.2d 134, 2006 Ill. LEXIS 620 (2006).

Neither the Illinois nor the United States Constitution requires a jury trial in proceedings under the former Juvenile Court Act (see now 705 ILCS 405/1-1). People v. Jones, 46 Ill. 2d 506, 263 N.E.2d 863 (1970).

- Mandatory Arbitration

An order barring a losing party from rejecting an award in mandatory arbitration as a sanction for failure to appear and fully participate did not violate the party's right to a jury trial; the party was bound by the presumption that there was a basis for the court's action because the party had not provided a sufficient record for review. Gov't Emples. Ins. Co. v. Buford, 338 Ill. App. 3d 448, 272 Ill. Dec. 786, 788 N.E.2d 90, 2003 Ill. App. LEXIS 343 (1 Dist. 2003).

- Plain Error

-- Number of Jurors

The right to a 12-person jury, although waivable, is an essential feature of a substantial constitutional guarantee; as such, the doctrine of plain error may be invoked and error will be found if it appears that defendant was prejudiced by a violation of his right to a 12-person jury. People v. Bragg, 176 Ill. App. 3d 1080, 126 Ill. Dec. 194, 531 N.E.2d 821 (3 Dist. 1988).

-- Prejudice Presumed

Prejudice may be presumed where defendant was unaware of his right to a full jury and neither agreed to nor acquiesced in a decision to waive the full number of jurors. People v. Bragg, 176 Ill. App. 3d 1080, 126 Ill. Dec. 194, 531 N.E.2d 821 (3 Dist. 1988).

- Remarks by Prosecutor

Where the prosecutor's alleged improper and prejudicial remarks were either cured through sustained objections and jury instructions or were reasonable inferences from the record, the defendant was not denied a fair trial. People v. Maldonado, 193 Ill. App. 3d 1062, 550 N.E.2d 1011 (1 Dist. 1989), appeal denied, 132 Ill. 2d 551, 144 Ill. Dec. 263, 555 N.E.2d 382 (1990).

- Report of Proceeding

Given the statutory requirement that a jury waiver be made in open court, a suitable report of the proceeding in which the waiver is supposed to have occurred will be an essential part of the record in an appeal that raises the question. People v. Smith, 106 Ill. 2d 327, 88 Ill. Dec. 42, 478 N.E.2d 357 (1985).

- Sentencing Enhancements

Existence of a prior conviction, when it is to be used to enhance a sentence, need not be decided by a jury. People v. Pittman, 326 Ill. App. 3d 297, 260 Ill. Dec. 327, 761 N.E.2d 171, 2001 Ill. App. LEXIS 844 (1 Dist. 2001), appeal denied, 198 Ill. 2d 628, 264 Ill. Dec. 329, 770 N.E.2d 223 (2002), cert. denied, 537 U.S. 895, 123 S. Ct. 180, 154 L. Ed. 2d 163 (2002).

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- Valid

The Illinois Supreme Court has recognized the validity of a waiver made by the defense counsel, in the presence of the defendant, and without objection by the defendant; furthermore, a statement by the defense attorney, made in the presence of the defendant, was a sufficient record of the jury waiver. People v. Steiger, 208 Ill. App. 3d 979, 153 Ill. Dec. 702, 567 N.E.2d 660 (2 Dist. 1991).

- Voir Dire by Judge

Former Rule 24-1, Supreme Court Rules (see now Rule 234, Supreme Court Rules) which provided that: "the judge shall initiate the voir dire examination of jurors in civil and criminal causes by identifying the parties and their respective counsel and he shall briefly outline the nature of the case, the judge shall then put to the jurors any questions which he thinks necessary, touching their qualifications to serve as jurors in the cause on trial, the parties or their attorneys shall be allowed a reasonable opportunity to supplement such examination, but shall not directly or indirectly examine jurors concerning matters of law or instructions," did not violate the constitutional guarantee to a trial by jury. People v. Lobb, 17 Ill. 2d 287, 161 N.E.2d 325 (1959).

- Waiver

Despite the existence of a signed jury waiver, defendant was entitled to an evidentiary hearing on his post-conviction claim that his constitutional right to a jury trial was violated. People v. Dockery, 296 Ill. App. 3d 271, 230 Ill. Dec. 630, 694 N.E.2d 599 (1 Dist. 1998).

Where the record is absolutely silent on the waiver aspects and the appellate court is not presented with a situation in which it can be assured that defendant was even aware of his right to a 12-person jury, it cannot conclude that defendant was not prejudiced by the infringement of his right to a full jury. People v. Bragg, 176 Ill. App. 3d 1080, 126 Ill. Dec. 194, 531 N.E.2d 821 (3 Dist. 1988).

-- Illustrative Cases

Defendant's right to a jury trial under Ill. Const. Art. I, § 8 and 725 ILCS 5/103-6 was not violated because defendant did not object at a final pretrial conference when defense counsel indicated that a bench trial was requested and later submitted a written jury waiver under 725 ILCS 5/115-1; the trial court was not required to confirm that the written waiver was actually signed by defendant but could rely on defense counsel's affirmative statements on defendant's behalf. People v. Rincon, 387 Ill. App. 3d 708, 326 Ill. Dec. 945, 900 N.E.2d 1192, 2008 Ill. App. LEXIS 1324 (2 Dist. 2008).

-- In General

-- Illustrative Cases

Where defense counsel stated in court and on the record that he had discussed with defendant whether defendant should waive his right to a jury trial and defense counsel then informed the court that defendant wished to waive this right and questioned defendant to determine whether defendant was still in agreement with this decision, and defendant responded in the affirmative, then, under these circumstances, defendant knowingly and understandingly waived his right to a trial by jury. People v. Steiger, 208 Ill. App. 3d 979, 153 Ill. Dec. 702, 567 N.E.2d 660 (2 Dist. 1991).

-- Impartial Judge Required

The guilt or innocence of a defendant should be determined by the evidence produced in open court, and the consideration of outside matters, obtained through private investigation, is a violation of his constitutional rights. People v. McMiller, 410 Ill. 338, 102 N.E.2d 128 (1951).

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A defendant in a criminal case who waives a trial by jury and submits his rights and liberty to the trial judge is entitled to the same fair, patient, kindly and impartial consideration he would expect and be entitled to by a jury composed of fair, impartial, careful and considerate jurors. People v. Hoffman, 379 Ill. 318, 40 N.E.2d 515 (1942).

-- Lack of Transcript

Where the appellate court did not have the benefit of a verbatim transcript of the proceedings upon which to base a considered judgment as to whether the defendant expressly and understandingly elected to forego a jury trial or, whether the defendant knowingly and intelligently waived his right to the appointment of counsel, the judgment of the trial court was reversed and remanded for further proceedings. People v. McGrath, 85 Ill. App. 2d 388, 229 N.E.2d 14 (2 Dist. 1967).

-- Not Shown

Record failed to demonstrate that defendant made a knowing and understanding oral waiver of his right to a jury trial in open court where there was only one occasion where the issue of a jury waiver was discussed in defendant's presence and that was following sentencing when trial court noted the absence of a written jury waiver, inquired as to whether defendant would be willing to sign a waiver and was told by defendant's attorney he had not waived his right. People v. Eyen, 291 Ill. App. 3d 38, 225 Ill. Dec. 249, 683 N.E.2d 193 (2 Dist. 1997).

Defendant did not knowingly and understandingly waive her right to a jury trial where court was not convinced mere translation of waiver form into Chinese for defendant was enough to adequately convey its meaning to defendant. People v. Phuong, 287 Ill. App. 3d 988, 223 Ill. Dec. 240, 679 N.E.2d 425 (1 Dist. 1997).

Defendant did not waive his right to a jury trial where the record was silent as to whether defendant was aware of the jury waiver and where counsel's waiver was made outside of defendant's presence. People v. Clauson, 182 Ill. App. 3d 268, 130 Ill. Dec. 719, 537 N.E.2d 1048 (1 Dist. 1989).

Where defendant was without benefit of counsel, and it did not appear that he was advised of the meaning of a trial by jury, nor did it appear that he was familiar with criminal proceedings, and moreover, where the trial court discussion in the record related to the offense of battery, the defendant not having been arraigned on public indecency charge, taken as a whole, the record did not adequately establish a waiver of defendant's right to a jury trial on the charge of public indecency and, therefore, required reversal and remand for a new trial. People v. Sebag, 110 Ill. App. 3d 821, 66 Ill. Dec. 502, 443 N.E.2d 25 (2 Dist. 1982).

The defendant did not knowingly and understandingly waive a trial by jury where the record failed to reveal that the defendant understood the concept of a jury trial, or that he understood that he was entitled to demand a jury trial, or that he knowingly waived that right in favor of a trial by the court. People v. Murff, 69 Ill. App. 3d 560, 26 Ill. Dec. 90, 387 N.E.2d 920 (1 Dist. 1979).

-- Report of Proceeding

When an entry in the common-law record indicates that a jury waiver has been made, a defendant seeking review of that question should include in the record on appeal a transcript, or suitable substitute for one, of the corresponding proceeding. People v. Smith, 106 Ill. 2d 327, 88 Ill. Dec. 42, 478 N.E.2d 357 (1985).

-- Review

Review of the validity of a defendant's waiver of his right to a jury trial depends on the existence of an adequate memorial of the event, if it occurred at all. People v. Smith, 106 Ill. 2d 327, 88 Ill. Dec. 42, 478 N.E.2d 357 (1985).

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-- Shown

Where record showed that the defendant, a man of the age of 40, had been in this country for 16 or 17 years at time of trial, was no stranger to criminal proceedings and held a responsible position as head of shipping department did nothing to alert the trial court to the possibility that a more detailed explanation of a jury trial was required, and the record reflected that the responses of accused to the court regarding waiver of a jury trial were unhesitating, direct, and unequivocal, and there was nothing in the record indicating that the defendant did not understand the words "waiver" and "jury" as they are commonly understood, waiver was upheld. People v. Sadeghzaden, 124 Ill. App. 2d 375, 260 N.E.2d 447 (1 Dist. 1970).

-- Signed Waiver

Although a signed jury waiver form alone is insufficient proof to demonstrate that the defendant made an understanding waiver of the right to a jury trial, the signed jury waiver does lessen the probability that the waiver was not made knowingly. People v. Steiger, 208 Ill. App. 3d 979, 153 Ill. Dec. 702, 567 N.E.2d 660 (2 Dist. 1991).

A signed jury waiver in itself is insufficient to show the relinquishment of a defendant's right to a jury trial. People v. Sebag, 110 Ill. App. 3d 821, 66 Ill. Dec. 502, 443 N.E.2d 25 (2 Dist. 1982).

-- Valid Waiver

State was not entitled to the writ of mandamus it requested, as the trial court had the discretion to allow a defendant in a criminal case to proceed with less than 12 jurors. Since a defendant had a right to waive a jury trial altogether under the Sixth Amendment, U.S. Const. amend. VI, as well as Ill. Const. art. I, §§ 8 and 13 and 725 ILCS 5/115-1, the defendant could also agree to be tried by six jurors instead of 12 despite 725 ILCS 5/115-4(b) stating that jury "shall" consist of 12 members and the State held absolutely no veto power over that decision. People ex rel. Birkett v. Dockery, 235 Ill. 2d 73, 335 Ill. Dec. 592, 919 N.E.2d 311, 2009 Ill. LEXIS 1321 (2009).

Right to Know Accusations

- In General

A defendant has a constitutional as well as a statutory right to know the nature and cause of a criminal accusation against him. This guaranty is satisfied if an indictment or information provides a specific description of the offense charged against the defendant so that the defendant is able to fully prepare his defense and plead the judgment involved in a subsequent prosecution for the same offense. People v. Miles, 96 Ill. App. 3d 721, 52 Ill. Dec. 324, 422 N.E.2d 5 (1 Dist. 1981); People v. Hall, 96 Ill. 2d 315, 70 Ill. Dec. 836, 450 N.E.2d 309 (1982).

An accused has the constitutional right to demand or be informed of the nature and cause of the accusation against him. People v. Johnson, 34 Ill. 2d 202, 215 N.E.2d 204 (1966).

A failure to furnish any defendant with the nature and cause of his accusation in a criminal prosecution is to deny such defendant his constitutional right of due process and his constitutional protection against double jeopardy (Ill. Const. (1970), Art. I, § 8 and § 2). People v. Beeftink, 21 Ill. 2d 282, 171 N.E.2d 632 (1961).

- Bill of Particulars

A Bill of Particulars is to provide for "more particular averments in order to enable the defendant to understand the nature of the charges against him or to prepare his defense." The granting or denying of a Bill rests in the sound discretion of the court and unless the court abused its discretion, a denial does not deprive the defendant of the right to a fair trial. People v. O'Connell, 84 Ill. App. 2d 184, 228 N.E.2d 154 (1 Dist. 1967).

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- Complaint Held Insufficient

Defendant's conviction of reckless driving would be reversed where the instrument whereby he was charged, an Illinois Uniform Traffic Ticket and Complaint, failed to inform the defendant of what particular act constituted the offense of reckless driving. People v. Roberts, 113 Ill. App. 3d 1046, 69 Ill. Dec. 725, 448 N.E.2d 185 (5 Dist. 1983).

- Construction of Charging Document

The courts will not make so technical a construction of an indictment or information as to serve as a protection for the guilty rather than a defense for the innocent. People v. Haney, 95 Ill. App. 2d 1, 238 N.E.2d 110 (1 Dist. 1968).

- Construction with Other Provisions

Section of the Code of Criminal Procedure (see subdivision (a)(3) of 725 ILCS 5/111-3) is based on the public policy that a defendant has a fundamental right to be informed of the "nature and cause" of criminal accusations made against him. People v. Beard, 191 Ill. App. 3d 371, 138 Ill. Dec. 615, 547 N.E.2d 1041 (3 Dist. 1989).

- Content of Charging Document

This section, which implements the constitutional guarantee that a defendant know the nature and cause of a criminal accusation, provides that the charging document name the offense, cite the statutory provision alleged to have been violated and set forth the nature and elements of the offense with which the defendant has been charged. A charge should contain such a clear specification of the acts and descriptive circumstances as will on its face fix and determine the identity of the offense with particularity. People v. Miles, 96 Ill. App. 3d 721, 52 Ill. Dec. 324, 422 N.E.2d 5 (1 Dist. 1981).

- County of Offense

Statutory requirements with respect to stating the place of the offense are satisfied by designation of the county wherein the offense took place. People v. Tramell, 65 Ill. App. 2d 331, 213 N.E.2d 74 (1 Dist. 1966).

- Guilty Plea Not Waiver

If an indictment is, in fact, void in that it fails to set out particularly the offense charged, then a plea of guilty will be insufficient to waive the objection to the indictment. People v. Temple, 2 Ill. 2d 266, 118 N.E.2d 271 (1954).

- Illustrative Cases

Motion to suppress should have been granted in a drug case because there was no probable cause justifying an arrest under Chicago, Ill., Mun. Code § 10-8-515 where defendant was observed at a known narcotics sales area yelling "dro, dro" at a passing vehicle; had a complaint been filed against defendant, it would have been insufficient under 725 ILCS 5/111-3(a) because the phrase "unlawful business" did not describe specific conduct. Moreover, the term "dro" did not qualify as a common term for cannabis such that a complaint defining the term would have satisfied the requirement that an ordinance violation be charged with reasonable certainty. People v. Grant, Ill. App. 3d , 351 Ill. Dec. 489, 951 N.E.2d 1153, 2011 Ill. App. LEXIS 645 (1 Dist. 2011).

In a prosecution of defendant for child abduction for an unlawful purpose, the trial court abused its discretion by denying defendant's motion for a bill of particulars specifying the nature of the alleged unlawful purpose, and by so doing the court rendered the criminal statute unconstitutionally vague in its application because, if defendant could not find out what the alleged wrongful acts - beyond private thoughts - were, it would not be possible to support the

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affirmative defense of lawful purpose, as provided for in the statute. People v. Woodrum, 354 Ill. App. 3d 629, 290 Ill. Dec. 475, 821 N.E.2d 787, 2004 Ill. App. LEXIS 1535 (1 Dist. 2004), overruled in part by People v. Woodrum, 223 Ill. 2d 286, 860 N.E.2d 259, 2006 Ill. LEXIS 1633, 307 Ill. Dec. 605 (2006).

An indictment charging that defendants committed the offense of battery, in that they, intentionally and knowingly without legal justification, committed a battery on named person which caused great bodily harm to said person, in violation of the Criminal Code (725 ILCS 5/12-3) and against the peace and dignity of the said People of the State was sufficiently certain to enable defendants to prepare a defense and to permit any judgment entered to be pleaded in bar of a subsequent indictment for the same offense. People v. Grieco, 44 Ill. 2d 407, 255 N.E.2d 897 (1970).

Defendants were fully informed of the exact offenses intended to be charged so that they knew what they were called upon to meet. City of Chicago v. Lambert, 47 Ill. App. 2d 151, 197 N.E.2d 448 (1 Dist. 1964).

Where there was a conflict in interpretation as to whether pictures were obscene and indecent, and one could have honestly concluded they were not obscene and indecent, but the court or jury determined that they were, this did not render the statute void for vagueness or indefiniteness. People v. Friedrich, 385 Ill. 175, 52 N.E.2d 120 (1943).

Defendant's rights under the constitution were not abridged where he was furnished with a copy of the indictment and a list of the witnesses, and the nature and cause of the accusation were fully set forth in the copy of the indictment furnished to him. Cross v. People, 192 Ill. 291, 61 N.E. 400 (1901).

- Indictment

An indictment sufficiently complies with this constitutional requirement when it informs the accused of the offense with which he is charged so as to enable him to prepare his defense. People v. Petropoulos, 59 Ill. App. 2d 298, 208 N.E.2d 323 (1 Dist. 1965), aff'd, 34 Ill. 2d 179, 214 N.E.2d 765 (1966).

- Indictment Held Insufficient

Where the first count of certain indictments did not name the person solicited nor designate the place of such solicitation with sufficient certainty to enable the accused to prepare a defense or to plead judgment thereon as a bar to further prosecution for the same offense, the trial court did not err in quashing the count. People v. Rice, 383 Ill. 584, 50 N.E.2d 711 (1943).

- Indictment Held Sufficient

Defendant was not prejudiced by indictment's failure to designate which store belonging to a corporation was involved in the prosecution since he proceeded to trial and presented his defense on the merits, indicating that he knew which store he was accused of burglarizing. People v. McKinney, 126 Ill. App. 2d 339, 261 N.E.2d 797 (1 Dist. 1970).

The failure of an indictment to designate which store belonging to the corporation was involved in a burglary did not result in defendant's being deprived of his constitutional right to know the nature and cause of the accusation against him under former ch. 2, para. 9 (see now Ill. Const. (1970), Art. 1, § 8). People v. McKinney, 126 Ill. App. 2d 339, 261 N.E.2d 797 (1 Dist. 1970).

Where an indictment alleged that a defendant attempted the murder of a specified person on a specified date, it adequately informed the defendant of the nature and cause of the accusation, enabled him to make preparation for his defense and to plead the judgment. People v. Drink, 85 Ill. App. 2d 202, 229 N.E.2d 409 (1 Dist. 1967).

Failure to cite a particular statutory provision in an indictment cannot be equalized with failure to state the nature and elements of the offense charged, the latter is on a higher level and parallels

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the constitutional requirement that an accused shall have the right "to demand the nature and cause of the accusation." People v. Bridges, 67 Ill. App. 2d 236, 214 N.E.2d 539 (1 Dist. 1966).

The term "attempt" within itself signifies a failure, or an unsuccessful action, and thus the crime was fully described in indictment and defendant fully informed, without the need for the affirmative allegations that the defendant had failed to commit the crime of armed robbery itself, or that he had been intercepted or prevented from doing so. People v. Moriarity, 33 Ill. 2d 606, 213 N.E.2d 516 (1966).

An indictment must be sufficiently specific to enable a defendant to fully prepare his defense, and to plead the judgment in bar of a subsequent prosecution for the same offense, to demand the nature and the cause of the accusation against him. People v. Laczny, 63 Ill. App. 2d 324, 211 N.E.2d 438 (1 Dist. 1965).

Indictment charging the crime of aiding escape which set out the crime in even greater particularity than statute did not raise a real question of defendant's constitutional right to be informed of the nature and cause of the accusation under former Ill. Const. (1870), Art. II, § 9 (see now this section). People v. Arbuckle, 31 Ill. 2d 163, 201 N.E.2d 102 (1964).

Armed robbery indictments complied fully with the constitutional rights of defendant to demand the nature and cause of the accusation against him. People v. Kessler, 48 Ill. App. 2d 177, 198 N.E.2d 733 (3 Dist. 1964).

Indictment was sufficiently specific so as to advise defendant of the nature of the accusation and to state an offense. People v. Potter, 5 Ill. 2d 365, 125 N.E.2d 510 (1955).

There must be the highest degree of certainty as to the meaning of the indictment; courts are not at liberty, in construing indictments when challenged by motion to quash, to depart from the words of the indictment itself and speculate as to the possible intention of the writer. People v. Bundesen, 348 Ill. App. 519, 109 N.E.2d 385 (1 Dist. 1952).

Under this section in prosecution for armed robbery, all the people needed to do was to prove defendant robbed victim within the bounds of the county; the indictment was sufficient when it was specific enough to notify defendant of the charge he had to meet and enable him to prepare his defense. People v. Burns, 403 Ill. 407, 86 N.E.2d 197 (1949).

- Information Held Insufficient

Statutory language referring to the filing of a fraudulent return constituted sufficient particularization to notify defendant of the nature and elements of the offense charged and the information did not offend due process. People v. Tyler, 45 Ill. App. 3d 111, 3 Ill. Dec. 830, 359 N.E.2d 240 (4 Dist. 1977).

Count of information charging defendant with the offense of petty theft, which was in the words of the statute, fully, directly and expressly, without any uncertainty or ambiguity set forth all of the elements necessary to constitute the offense intended to be punished; the count of the information left free from all ambiguity and left no doubt in the mind of the accused and the court of the exact offense charged. People v. Howard, 41 Ill. App. 2d 128, 190 N.E.2d 3 (2 Dist. 1963).

An information which charged that a defendant did wilfully and unlawfully practice a system or method of treating human ailments without the use of drugs or medicine and without operative surgery, without a valid existing license so to do was not sufficiently specific to advise him of the nature and cause of the accusation or to state an offense punishable under the former Medical Practice Act (see now 225 ILCS 60/49). People v. Brown, 336 Ill. 257, 168 N.E. 289 (1929).

- Insufficient

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By charging two separate acts which constitute the offense of mob action (720 ILCS 5/25-1), the charge did not set forth the nature and elements of the crime with certainty as is constitutionally required. People v. Aldridge, 20 Ill. App. 3d 1045, 314 N.E.2d 24 (4 Dist. 1974).

- Language of Statute

A miscitation of the statutory provision alleged to have been violated does not render the charging instrument void unless defendant is prejudiced by the error. People v. Gray, 61 Ill. App. 3d 243, 18 Ill. Dec. 675, 377 N.E.2d 1311 (4 Dist. 1978).

Indictment is sufficient where the charge is set forth in the language of the statute: it sufficiently describes the nature of the charge, so as to enable defendant to prepare a defense thereto and plead the judgment in bar of a later prosecution. People v. Nastasio, 30 Ill. 2d 51, 195 N.E.2d 144 (1963).

While the offense to be punished may be set forth with sufficient certainty and definiteness in the statute to satisfy constitutional requirements, it does not follow that an indictment, substantially in the language of the act, is sufficient to advise the defendant of the nature of the accusation or to state an offense. People v. Potter, 5 Ill. 2d 365, 125 N.E.2d 510 (1955).

- Method of Commission of Offense

It is only where the means used are an integral part of the offense that they need be averred with particularity in an indictment, as for example in the crime of assault with deadly weapon, or the crime of assault with means likely to produce great bodily injury. Therefore, an indictment for battery in terms of statute coupled with allegations setting forth name of victim and date of occurrence was not defective for failure to allege means by which battery was accomplished because the means was not an element of this crime; and furthermore a bill of particulars was available to defendant had he desired or needed more detail. People v. Grieco, 44 Ill. 2d 407, 255 N.E.2d 897 (1970).

- Multiple County Indictment/Information

Elements missing from one count of a multiple count indictment or information may be supplied by another count. People v. Hall, 96 Ill. 2d 315, 70 Ill. Dec. 836, 450 N.E.2d 309 (1982).

- No Deprivation

Law which made it unlawful to openly advocate the overthrow, by unlawful means, of the representative form of government was not so ambiguous so that defendants were deprived of the right to be informed of the nature and cause of the accusation against them, or that they were deprived of their liberty and property without due process of law. People v. Lloyd, 304 Ill. 23, 136 N.E. 505 (1922).

- Purpose

The purpose of the constitutional guarantee of the right of the accused to demand the nature and cause of the charge against him, as provided by former Article II, Section 9, of the Illinois Constitution of 1870, see now this section, is to secure to the accused such specific declaration of the offense as will enable him fully to prepare for his defense and to plead judgment in bar of subsequent prosecution for the same offense. People v. Martin, 62 Ill. App. 2d 97, 210 N.E.2d 587 (1 Dist. 1965).

The purpose of the right to demand the nature and cause of the accusation is to give the accused such specific designation of the offense as will enable him to prepare his defense and to plead the judgment in bar of a subsequent prosecution for the same offense. People v. Brown, 336 Ill. 257, 168 N.E. 289 (1929); People v. Lewis, 375 Ill. 330, 31 N.E.2d 795 (1940); People v. Rice, 383 Ill. 584, 50 N.E.2d 711 (1943); People v. Peters, 10 Ill. 2d 577, 141 N.E.2d 9 (1957); People v. White, 24 Ill. App. 2d 324, 164 N.E.2d 823 (2 Dist. 1960), aff'd, 21 Ill. 2d 373, 172

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N.E.2d 794 (1961); People v. Howard, 41 Ill. App. 2d 128, 190 N.E.2d 3 (2 Dist. 1963); People v. Kessler, 48 Ill. App. 2d 177, 198 N.E.2d 733 (3 Dist. 1964); People v. Starr, 50 Ill. App. 2d 399, 200 N.E.2d 118 (1 Dist. 1964); People v. Edwards, 62 Ill. App. 2d 241, 210 N.E.2d 822 (1 Dist. 1965); People v. Moriarity, 33 Ill. 2d 606, 213 N.E.2d 516 (1966); People v. Patrick, 75 Ill. App. 2d 93, 220 N.E.2d 243 (3 Dist. 1966), aff 'd, 38 Ill. 2d 255, 230 N.E.2d 843 (1967); People v. Griffin, 36 Ill. 2d 430, 223 N.E.2d 158 (1967).

- Purpose of Exactness

The purpose of requiring exactness in a complaint or indictment is to allow the defendant to prepare adequately for trial. People v. Lewis, 375 Ill. 330, 31 N.E.2d 795 (1940); People v. Rice, 383 Ill. 584, 50 N.E.2d 711 (1943); People v. Temple, 2 Ill. 2d 266, 118 N.E.2d 271 (1954); People v. Peters, 10 Ill. 2d 577, 141 N.E.2d 9 (1957); People v. Howard, 41 Ill. App. 2d 128, 190 N.E.2d 3 (2 Dist. 1963); People v. Starr, 50 Ill. App. 2d 399, 200 N.E.2d 118 (1 Dist. 1964); People v. Kessler, 48 Ill. App. 2d 177, 198 N.E.2d 733 (3 Dist. 1964); People v. Edwards, 62 Ill. App. 2d 241, 210 N.E.2d 822 (1 Dist. 1965); People v. Moriarity, 33 Ill. 2d 606, 213 N.E.2d 516 (1966); People v. Williams, 69 Ill. App. 2d 55, 216 N.E.2d 468 (1 Dist. 1966), aff'd, 37 Ill. 2d 521, 229 N.E.2d 495 (1967); People v. Griffin, 36 Ill. 2d 430, 223 N.E.2d 158 (1967).

- Specificity

The use of the phrase "great bodily harm" in the aggravated battery statute (see subsection (a) of 720 ILCS 5/12-4), does not fail to give defendant adequate warning regarding his conduct; the constitutional protection designed to allow an individual to steer between lawful and unlawful conduct does not extend to an individual's choice between two different forms of prohibited activity, i.e., misdemeanor battery or felony battery. People v. Caliendo, 84 Ill. App. 3d 987, 40 Ill. Dec. 41, 405 N.E.2d 1133 (1 Dist. 1980).

- Sufficiency of Complaint

Complaint charging the defendant with aggravated assault was not so vague that it failed to inform the defendant of the nature of the conduct which constituted the offense where it charged that defendant engaged in conduct which placed a police officer in reasonable apprehension of receiving a battery. People v. Muhlethaler, 9 Ill. App. 3d 388, 292 N.E.2d 438 (1 Dist. 1972).

Count charging that, as an object of the alleged conspiracy, a corporation was to either acquire a State contract or a direct pecuniary interest was not sufficiently specific so as to allow its use in stating the object of a conspiracy under former version of the Civil Administrative Code (30 ILCS 505/11.1) and under former version of this section. People v. Isaacs, 37 Ill. 2d 205, 226 N.E.2d 38 (1967).

Unless a defendant is advised of the particular acts relied upon to sustain a charge of reckless driving, he is not advised of the "nature and elements" of the offense, and he is not afforded the full protection against double jeopardy. People v. Griffin, 36 Ill. 2d 430, 223 N.E.2d 158 (1967).

Where a complaint adequately informed the defendant of the nature, cause and the elements of the charge against him, so that he knew precisely what he was called upon to meet, it thereby fulfilled the requirements of former Ill. Const. (1870), Art. II, § 9 (see now this section) and of section of the Code of Criminal Procedure (see subdivision (a)(3) of 725 ILCS 5/111-3). People v. Hill, 68 Ill. App. 2d 369, 216 N.E.2d 212 (1 Dist. 1966).

- Sufficient Description

Where defendant contended that act was vague, indefinite and violated the constitutional provisions as did not define the elements that a picture must possess to render it obscene and indecent, and that such defect left it open for the court and jury to supply their own standards, defendant's contentions were without merit because the statute was specific as to the offense charged against defendant. People v. Friedrich, 385 Ill. 175, 52 N.E.2d 120 (1943).

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- Ticket Sufficient

A misdemeanor conviction based on a Uniform Traffic Ticket naming an offense and citing the statutory provision, where there was no objection to the sufficiency of the ticket or request for a bill of particulars, did not violate the defendant's constitutional right to be informed of the nature and cause of the accusation. People v. Domovich, 91 Ill. App. 3d 870, 46 Ill. Dec. 568, 414 N.E.2d 290 (2 Dist. 1980).

- Use of Statutory Language

Where the language of a statute defining an offense so far particularizes such offense that by its use alone the accused is notified with reasonable certainty of the precise offense with which he is charged, an indictment drawn substantially in the language of the statute is constitutionally sufficient. People v. Isaacs, 37 Ill. 2d 205, 226 N.E.2d 38 (1967); People v. Patrick, 38 Ill. 2d 255, 230 N.E.2d 843 (1967); People v. Tyler, 45 Ill. App. 3d 111, 3 Ill. Dec. 830, 359 N.E.2d 240 (4 Dist. 1977); People v. Grieco, 44 Ill. 2d 407, 255 N.E.2d 897 (1970).

As a general rule it is sufficient in an indictment or information to state the offense in the language of the statute in those cases where the statute clearly defines the offense; however, where the statute does not define or describe the act or acts constituting the offense created, such acts must be specifically alleged. People v. Peters, 10 Ill. 2d 577, 141 N.E.2d 9 (1957); People v. Henry, 47 Ill. 2d 312, 265 N.E.2d 876 (1970).

- Writing Required

Section of the Code of Criminal Procedure (725 ILCS 5/111-3) was enacted to insure compliance with the constitutional requirement of furnishing defendant with a copy of the writing accusing him of committing a crime and a charge which conforms to this section satisfies the constitutional guarantee. People v. Troutt, 51 Ill. App. 3d 656, 9 Ill. Dec. 113, 366 N.E.2d 370 (5 Dist. 1977).

Right to Present Evidence

Defendant was not denied his right to present evidence to support his theory of defense of others where the trial court excluded a witness's testimony about her conversation with codefendant as there was little evidence to support such a theory given the fact that defendant had an opportunity to walk away and avoid confrontation but chose to become the aggressor. People v. Nunn, 357 Ill. App. 3d 625, 293 Ill. Dec. 871, 829 N.E.2d 796, 2005 Ill. App. LEXIS 422 (1 Dist. 2005), appeal denied, 216 Ill. 2d 719, 298 Ill. Dec. 386, 839 N.E.2d 1033 (2005).

Right to Present Witnesses

Prosecutor's actions in discussing with a potential defense witness and that witness's attorney potential areas for cross-examination if the witness decided to testify, including the fact that defendant had mentioned the witness when discussing an ongoing search for a hired killer, did not deprive defendant of the opportunity to present a defense, under the circumstances. People v. Voit, 355 Ill. App. 3d 1015, 292 Ill. Dec. 17, 825 N.E.2d 273, 2004 Ill. App. LEXIS 1481 (1 Dist. 2004), appeal denied, 216 Ill. 2d 729, 298 Ill. Dec. 389, 839 N.E.2d 1036 (2005).

- Exclusion of Testimony

Defendant was not denied his right to present evidence to support his theory of defense of others where the trial court excluded a witness's testimony about her conversation with codefendant as there was little evidence to support such a theory given the fact that defendant had an opportunity to walk away and avoid confrontation but chose to become the aggressor. People v. Nunn, 357 Ill. App. 3d 625, 293 Ill. Dec. 871, 829 N.E.2d 796, 2005 Ill. App. LEXIS 422 (1 Dist. 2005), appeal denied, 216 Ill. 2d 719, 298 Ill. Dec. 386, 839 N.E.2d 1033 (2005).

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The trial judge did not abuse his discretion by refusing to permit a defense witness to testify because he was present in the courtroom in violation of an exclusion order although the violation was not the defendant's fault. People v. Boles, 52 Ill. App. 3d 707, 10 Ill. Dec. 404, 367 N.E.2d 1013 (2 Dist. 1977).

- New Trial Required

Defense counsel's failure to timely notify prosecutors of a new witness could have been remedied by measures less extreme than exclusion of the witness's testimony altogether; since it was quite possible that the exclusion had affected the jurors' decision, a new trial was required. People v. Scott, 339 Ill. App. 3d 565, 274 Ill. Dec. 293, 791 N.E.2d 89, 2003 Ill. App. LEXIS 601 (1 Dist. 2003).

- Unavailability of Funds

State was required to provide indigent defendants with the basic tools for conducting an adequate defense and, thus, just as Ill. Const. art. I, § 8 compelled it to provide counsel for indigent defendants, so did 725 ILCS 5/113-3(d) direct it to provide funds for defendants to obtain expert witnesses where a defendant showed that defendant was unable to afford an expert and that the expert was necessary to provide an adequate defense. Although the trial court should not have declined to provide funds to the juvenile delinquent in a sexual assault case where DNA evidence was critical to the outcome, based on its erroneous conclusion that it did not have to do so because defense counsel was not court-appointed, the error in failing to award such funds was harmless because other evidence presented in the case meant that a DNA expert's testimony would not have changed the finding made against the juvenile delinquent of delinquency. People v. T.W. (In re T.W.), 402 Ill. App. 3d 981, 342 Ill. Dec. 234, 932 N.E.2d 125, 2010 Ill. App. LEXIS 646 (1 Dist. 2010).

Where the issue of how victim's throat was slit was not crucial to defendant's defense, there was no error in the decision not to make funds available to defendant to retain a pathologist. People v. Keene, 169 Ill. 2d 1, 214 Ill. Dec. 194, 660 N.E.2d 901 (1995), cert. denied, 519 U.S. 828, 117 S. Ct. 92, 136 L. Ed. 2d 47 (1996).

Right to Proper Venue

The transfer of charges from one county to another does not automatically implicate the constitutional right to proper venue conferred by Ill. Const. (1970), Art. I., § 8. People v. Owens, 109 Ill. App. 3d 1150, 65 Ill. Dec. 593, 441 N.E.2d 908 (2 Dist. 1982).

Right to Public Trial

Where a circuit court reminded the public that all proceedings were public and anyone was welcome to attend "each and every hearing," the circuit court neither closed the court room during voir dire nor denied defendant his Sixth Amendment right to a public trial. People v. Smith, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 289 (1 Dist. Mar. 31, 2008), cert. denied, 2009 U.S. LEXIS 2464 (U.S. 2009); appeal denied, 229 Ill. 2d 652, 325 Ill. Dec. 13, 897 N.E.2d 261, 2008 Ill. LEXIS 1123 (2008), cert. denied, 129 S. Ct. 1678, 2009 U.S. LEXIS 2464, 173 L. Ed. 2d 1044 (U.S. 2009).

Appellate court could not equate a circuit court's mere warning during voir dire that there may not be enough seats to accommodate everyone in the future, with denying defendant his Sixth Amendment right to a public trial. People v. Smith, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 289 (1 Dist. Mar. 31, 2008), cert. denied, 2009 U.S. LEXIS 2464 (U.S. 2009); appeal denied, 229 Ill. 2d 652, 325 Ill. Dec. 13, 897 N.E.2d 261, 2008 Ill. LEXIS 1123 (2008), cert. denied, 129 S. Ct. 1678, 2009 U.S. LEXIS 2464, 173 L. Ed. 2d 1044 (U.S. 2009).

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- In General

A person charged with a crime is entitled to a public trial. People v. Kirkpatrick, 70 Ill. App. 3d 166, 26 Ill. Dec. 356, 387 N.E.2d 1284 (4 Dist. 1979).

- Closed Proceedings Factors

A party seeking to close proceedings must: (1) advance an overriding interest that is likely to be prejudiced; (2) the closure must be no broader than necessary to protect that interest; (3) the trial court must consider reasonable alternatives to closure; and (4) the trial court must make findings adequate to support the closure. People v. Webb, 267 Ill. App. 3d 954, 205 Ill. Dec. 6, 642 N.E.2d 871 (1 Dist. 1994), appeal denied, 159 Ill. 2d 578, 207 Ill. Dec. 523, 647 N.E.2d 1016 (1995).

- Criteria

The supreme court may ultimately resolve the clear split in authority between the fourth and the second districts regarding limitations on authority under 725 ILCS 5/115-11 but under either Benson or Waller analysis, the trial court did not commit reversible error in its decision to exclude defendant's family, three relatively distantly related individuals. People v. Falaster, 273 Ill. App. 3d 694, 210 Ill. Dec. 562, 653 N.E.2d 467 (5 Dist. 1995), aff'd, 173 Ill. 2d 220, 218 Ill. Dec. 902, 670 N.E.2d 624 (1996).

The court identified three limitations on its authority under 725 ILCS 5/115-11 to exclude persons from the courtroom during a minor victim's testimony: (1) it could not exclude the media; (2) it could not exclude persons having a direct interest in the case, such as the defendant's immediate family; and (3) its authority to exclude the public extended only to cases in which the victim was under age 18. People v. Falaster, 273 Ill. App. 3d 694, 210 Ill. Dec. 562, 653 N.E.2d 467 (5 Dist. 1995), aff'd, 173 Ill. 2d 220, 218 Ill. Dec. 902, 670 N.E.2d 624 (1996).

- Impaneling of the Jury

The right to a public trial, which is one that belongs to the accused rather than the public extends to all criminal proceedings, including the impaneling of the jury. People v. Webb, 267 Ill. App. 3d 954, 205 Ill. Dec. 6, 642 N.E.2d 871 (1 Dist. 1994), appeal denied, 159 Ill. 2d 578, 207 Ill. Dec. 523, 647 N.E.2d 1016 (1995).

- In Camera Hearings

The defendant was not deprived of his right to an open trial by the holding of in camera hearings of certain pretrial motions where the trial judge was properly concerned with keeping prejudicial information from prospective jurors. People v. Kirkpatrick, 70 Ill. App. 3d 166, 26 Ill. Dec. 356, 387 N.E.2d 1284 (4 Dist. 1979).

- Limitation on Spectators

No violation of the defendant's right to a public trial was caused by the court's announcement that it would prohibit entry into the courtroom except during breaks in the proceedings, especially where the courtroom was generally filled to capacity during the proceedings. People v. Gostele, Ill. App. 3d , Ill. Dec. , N.E.2d , 2000 Ill. App. LEXIS 498 (2 Dist. June 21, 2000), appeal denied, 192 Ill. 2d 697, 252 Ill. Dec. 81, 742 N.E.2d 331 (2000).

The trial court's actions in a rape case, which allowed all spectators with a "specific interest" to remain during the testimony of the complaining witness, were not violative of the defendants' right to a public trial. People v. Latimore, 33 Ill. App. 3d 812, 342 N.E.2d 209 (5 Dist. 1975).

- Not Absolute

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An accused's right to a public trial is not absolute; it must be balanced against other interests which may justify closing of limiting access to the proceedings. People v. Webb, 267 Ill. App. 3d 954, 205 Ill. Dec. 6, 642 N.E.2d 871 (1 Dist. 1994), appeal denied, 159 Ill. 2d 578, 207 Ill. Dec. 523, 647 N.E.2d 1016 (1995).

Right to Represent Oneself

Trial court erred in denying defendant's request to proceed pro se, as defendant did not suffer from a severe mental illness that impaired defendant's ability to conduct trial proceedings under the Indiana v. Edwards standard; two experts, a psychiatrist and a neurologist, both did not diagnose a severe mental illness. People v. Sheley, Ill. App. 3d , Ill. Dec. , N.E.2d , 2012 Ill. App. LEXIS 3 (3 Dist. Jan. 5, 2012).

Defendant's rights under the Sixth Amendment, U.S. Const. amend. VI, and Ill. Const. art. I, § 8 to self-representation were not violated when the trial court denied defendant's request to represent himself in defendant's robbery case. Even assuming that defendant's request was knowingly and voluntarily made, the request was not timely because defendant's appointed attorney had a long involvement with the case and defendant had already been found guilty. People v. Gorga, 396 Ill. App. 3d 406, 336 Ill. Dec. 326, 920 N.E.2d 535, 2009 Ill. App. LEXIS 1199 (1 Dist. 2009), appeal denied, 2010 Ill. LEXIS 479 (Ill. 2010).

Where defendant called elderly women from jail, posed as a relative, and requested money, defendant's conviction for felony theft by deception under 720 ILCS 5/16-1(a)(2) was upheld because, inter alia, it was not an abuse of discretion to deny defendant's request to represent himself since defendant engaged in obstructionist conduct and equivocated on the request. People v. Rohlfs, 368 Ill. App. 3d 540, 306 Ill. Dec. 819, 858 N.E.2d 616, 2006 Ill. App. LEXIS 1043 (1 Dist. 2006).

Right to Speedy Trial

Right to a speedy trial is guaranteed by Ill. Const. Art. I, § 8. People v. Sitkowski, 382 Ill. App. 3d 1072, 322 Ill. Dec. 588, 891 N.E.2d 879, 2008 Ill. App. LEXIS 547 (1 Dist. 2008).

Defendant's speedy trial right, under both U.S. Const. amend VI and Ill. Const. Art. I, § 8, did not accrue until he was arrested, despite the fact that nearly 14 years passed between date of complaint for warrant and arrest. People v. Mitchell, 356 Ill. App. 3d 158, 292 Ill. Dec. 230, 825 N.E.2d 1241, 2005 Ill. App. LEXIS 318 (2 Dist. 2005), appeal denied, 216 Ill. 2d 717, 298 Ill. Dec. 386, 839 N.E.2d 1033 (2005).

Defendant's speedy trial right, under both U.S. Const. Amend VI and Ill. Const. Art. I, § 8, did not accrue until he was arrested, despite the fact that nearly 14 years passed between date of complaint for warrant and arrest. People v. Mitchell, 356 Ill. App. 3d 158, 292 Ill. Dec. 230, 825 N.E.2d 1241, 2005 Ill. App. LEXIS 318 (2 Dist. 2005), appeal denied, 216 Ill. 2d 717, 298 Ill. Dec. 386, 839 N.E.2d 1033 (2005).

Defendants in criminal cases have a constitutional right to a speedy trial, but this constitutional right cannot be defined in terms of an absolute or precise standard of time, within which an accused must be given trial. People v. Rhoads, 110 Ill. App. 3d 1107, 66 Ill. Dec. 747, 443 N.E.2d 673 (1 Dist. 1982).

- In General

A speedy trial is most assuredly the basic thread essential to our fabric of justice. People v. Ladd, 294 Ill. App. 3d 928, 229 Ill. Dec. 423, 691 N.E.2d 896 (5 Dist. 1998), aff'd, 185 Ill. 2d 602, 236 Ill. Dec. 773, 708 N.E.2d 359 (1999).

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It is only under unusual circumstances that the initiation of a prosecution which is not barred by the statute of limitations would constitute a deprivation of the right to a speedy trial. People v. Plazewski, 2 Ill. App. 3d 378, 276 N.E.2d 459 (1 Dist. 1971).

Where a delay is deliberate, and where it appears that some prejudice might have resulted therefrom, the possibility of denial of due process to the defendant is present. People v. Brown, 117 Ill. App. 2d 97, 253 N.E.2d 140 (2 Dist. 1969).

The state may not evade the right of an accused to a speedy trial under former Ill. Const. (1870), Art. II, § 9 (see now this section). People v. Gray, 83 Ill. App. 2d 262, 227 N.E.2d 159 (4 Dist. 1967).

This provision of former Ill. Const., (1870), Art. II, § 9, does not fix a specific time limitation for trial but guarantees only against arbitrary and oppressive delays, and, is a personal right which may be waived by an accused. People v. Hamby, 27 Ill. 2d 493, 190 N.E.2d 289 (1963).

The provision in the Illinois Constitution for a speedy trial is mandatory, and confers a right upon the person who has been denied a speedy trial under former Ill. Const. (1870), Art. II, § 9 (see now this section). Phillips v. Nash, 311 F.2d 513 (7th Cir. 1962), cert. denied, 374 U.S. 809, 83 S. Ct. 1700, 10 L. Ed. 2d 1033 (1963).

The right to a speedy trial is guaranteed by the Constitution and should be available to every accused who brings his case within the statute. People v. Utterback, 385 Ill. 239, 52 N.E.2d 775 (1944).

The right to a speedy trial guaranteed by former Ill. Const. (1870), Art. II, § 9 (see now this section) is a right which is personal to the accused and which he may waive. People v. Lantz, 387 Ill. 72, 55 N.E.2d 78 (1944).

The right to a speedy trial guaranteed to a defendant by the constitution is only against arbitrary and oppressive delays. People v. Meisenhelter, 381 Ill. 378, 45 N.E.2d 678 (1942); People v. Utterback, 385 Ill. 239, 52 N.E.2d 775 (1944); People v. Stillman, 391 Ill. 227, 62 N.E.2d 698 (1945); People v. Farley, 408 Ill. 288, 96 N.E.2d 453 (1951).

The term "speedy public trial" as used in the Constitution is a relative term; it does not mean the defendant may have an immediate trial following his apprehension and indictment, but it does mean the he shall have public trial consistent with the business of the court. People v. Wilson, 356 Ill. 256, 190 N.E. 270 (1934).

Every person charged with crime is entitled to a speedy public trial by an impartial jury. People v. Ortiz, 320 Ill. 205, 150 N.E. 708 (1926).

- Acquiescence to Continuances

Where after the issuance of mandate the case was continued by agreement to allow the prosecution time to re-investigate the case and allow the defense to file pre-trial motions, defendant's acquiescence in these continuances tolled the statute. People v. Trolia, 107 Ill. App. 3d 487, 63 Ill. Dec. 155, 437 N.E.2d 804 (1 Dist. 1982), cert. denied, 460 U.S. 1044, 103 S. Ct. 1442, 75 L. Ed. 2d 798 (1983).

- Additional Charges

Where the murder offense was not known to the prosecuting officer at the time of commencing the prosecution, it was not subject to compulsory joinder under 720 ILCS 5/3-3 (2002), and defendant's right to a speedy trial on the murder count was not violated. People v. Ursery, 364 Ill. App. 3d 680, 302 Ill. Dec. 146, 848 N.E.2d 146, 2006 Ill. App. LEXIS 330 (1 Dist. 2006).

When a new and additional charge arises from the same facts as did the original charge and the state knew of these facts at the time of the initial indictment, the time within which trial is to begin

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on the additional charges is subject to the same statutory limitation that is applied to the original charges. People v. Rodgers, 106 Ill. App. 3d 741, 62 Ill. Dec. 165, 435 N.E.2d 963 (2 Dist. 1982).

- Admonishments to Defendant

The by incorrect admonishment trial court has a responsibility to correctly admonish the defendant and the consequences of any delay caused cannot, in good conscience, be ascribed to the defendant, especially when the defendant appears without aid of counsel. People v. Neideffer, 25 Ill. App. 3d 819, 324 N.E.2d 46 (5 Dist. 1975).

- Application to be Discharged

An accused who wishes to make an application to be discharged for failure to have a speedy trial must obtain the ruling of the trial court and if it is adverse to him he has a right to have such ruling reviewed by writ of error. People v. Utterback, 385 Ill. 239, 52 N.E.2d 775 (1944).

- Assistance of Counsel

Defendant's claim, in regard to a case where defendant was convicted of breaking into an occupied dwelling that counsel was ineffective for not filing a demand for a speedy trial, had to be rejected. In deciding whether a defendant's speedy trial rights had been violated after a mistrial had occurred, such as happened in defendant's case, reviewing courts were concerned with the constitutional right to a speedy trial under U.S. Const. amends. VI and XIV, and Ill. Const. art. I, § 8 rather than the time limits set forth in 725 ILCS 5/103-5 and because defendant did not argue that defendant's constitutional right to a speedy trial was violated until defendant filed defendant's reply brief, defendant forfeited review of the issue. People v. Burney, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1295 (4 Dist. Dec. 27, 2011).

The appellate court erred in concluding that defense counsel's failure to move for defendant's discharge amounted to ineffective assistance as the record did not support a reasonable probability that defense counsel's failure to move for his discharge before trial materially affected the outcome of his case or resulted in defendant's failure to be discharged on speedy trial grounds. People v. Staten, 159 Ill. 2d 419, 203 Ill. Dec. 230, 639 N.E.2d 550, cert. denied, 513 U.S. 1063, 115 S. Ct. 677, 130 L. Ed. 2d 610 (1994).

- Case by Case Analysis

Whether a defendant has been given the speedy trial to which he is entitled is not always readily ascertainable. People v. Buckley, 164 Ill. App. 3d 407, 115 Ill. Dec. 428, 517 N.E.2d 1114 (2 Dist. 1987), appeal denied, 119 Ill. 2d 561, 119 Ill. Dec. 389, 522 N.E.2d 1248 (1988).

- Civil Proceeding

By their express terms, neither the speedy trial provisions of the United States Constitution's Sixth Amendment nor Ill. Const., Art. I, § 8 applied to the proceeding against the alleged sex offender to determine if he was a sexually dangerous person, as the proceeding against the alleged sex offender was a civil proceeding. People v. Hughes (In re Hughes), 346 Ill. App. 3d 637, 282 Ill. Dec. 106, 805 N.E.2d 725, 2004 Ill. App. LEXIS 214 (2 Dist. 2004).

- Commencement

Where a jury has been selected but not sworn and is later dismissed and a new jury is selected from an entirely different venire, a defendant's trial does not commence for purposes of statutory speedy trial rights upon the selection of the first jury. People v. Roberson, 289 Ill. App. 3d 344, 224 Ill. Dec. 448, 681 N.E.2d 1069 (4 Dist. 1997).

In determining whether the defendant's right to a speedy trial has been denied, the analysis must begin at the time the defendant is first charged with an offense, whether by arrest or by filing of a

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complaint or an indictment. People v. Nichols, 60 Ill. App. 3d 919, 18 Ill. Dec. 330, 377 N.E.2d 815 (3 Dist. 1978).

Where defendant's appeal for new trial was granted, time period for speedy trial begins to run on date mandate of Supreme Court was filed in trial court. People v. Worley, 45 Ill. 2d 96, 256 N.E.2d 751 (1970).

In determining whether one has been denied a speedy trial, the period commences from the time the complaint or other form of accusation is filed, and not from the time of arrest or incarceration. People v. Brown, 117 Ill. App. 2d 97, 253 N.E.2d 140 (2 Dist. 1969).

Under prior provision of Criminal Code (see now 725 ILCS 5/103-5) requiring trial within four months of the date defendant was "committed" to custody, the period commenced to run from the date of defendant's commitment by the police magistrate, and not from the date of the return of the indictment. Guthmann v. People, 203 Ill. 260, 67 N.E. 821 (1903).

- Construction with Other Provisions

The speedy trial statute (725 ILCS 5/103-5) is designed to implement the constitutional right to a speedy trial contained in this section of the Illinois Constitution of 1970. People v. Goins, 136 Ill. App. 3d 582, 91 Ill. Dec. 356, 483 N.E.2d 702 (2 Dist. 1985), rev'd on other grounds, 119 Ill. 2d 259, 116 Ill. Dec. 193, 518 N.E.2d 1014 (1988).

The purpose of the 120 day rule of the Code of Criminal Procedure (725 ILCS 5/103-5) is to guarantee a speedy trial, not to open a new procedural loophole which defense counsel could unconscionably use to obstruct the ends of justice. People v. George, 71 Ill. App. 3d 932, 28 Ill. Dec. 419, 390 N.E.2d 586 (2 Dist. 1979).

The Code of Criminal Procedure is a means of implementing and explaining the right to speedy trial guaranteed by the state and federal constitutions. People v. Toney, 58 Ill. App. 3d 364, 15 Ill. Dec. 912, 374 N.E.2d 695 (1 Dist. 1978).

- Continuance to Determine Sanity

A delay necessitated for the purpose of ascertaining a defendant's sanity and mental capacity to be subjected to criminal prosecution is a permissible delay which does not impair or infringe upon the constitutional right to a speedy trial. People v. Benson, 19 Ill. 2d 50, 166 N.E.2d 80 (1960).

- Continuances

Continuance by agreement so defendants could obtain counsel was chargeable to both parties. People v. Grayson, 165 Ill. App. 3d 1038, 117 Ill. Dec. 550, 520 N.E.2d 901 (1 Dist. 1988).

Continuance occasioned by motion for appointment of counsel other than a public defender, which defendant sought because of complaints defendant had pending against the office of Public Defender arising out of their representation of him in an unrelated case, was attributable to the defendant. People v. Grayson, 165 Ill. App. 3d 1038, 117 Ill. Dec. 550, 520 N.E.2d 901 (1 Dist. 1988).

Where out of approximately 26 continuances granted during the pendency of defendant's prosecution, at least 15 were at the request of or with the agreement of the defendant, the defendant was not denied his constitutional right to a speedy trial, under either the Illinois or the United States Constitution. People v. Bracey, 52 Ill. App. 3d 266, 9 Ill. Dec. 917, 367 N.E.2d 351 (1 Dist. 1977).

Where two continuances were granted at the request of defendant's counsel, one continuance was granted pursuant to an express consent and agreement between the State's attorney and defendant's counsel, and defendant and his counsel were present when all continuances were granted and made no objection thereto, there was no suggestion in the record that there was an

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unreasonable delay in the trial against the wishes of the defendant. People v. Brame, 6 Ill. 2d 412, 128 N.E.2d 911 (1955).

- Chargeable to Defendant

Where defendant caused four delays of his trial, each of which tolled the running of section of the Code of Criminal Procedure (see subsection (a) of 735 ILCS 5/103-5), he was not denied his right to a speedy trial. People v. Mrozek, 52 Ill. App. 3d 500, 10 Ill. Dec. 330, 367 N.E.2d 783 (3 Dist. 1977).

Generally, a delay caused by a motion of the accused or the granting of his motion is occasioned by him and so tolls the running of the statutory period within which he must be brought to trial. People v. Neideffer, 25 Ill. App. 3d 819, 324 N.E.2d 46 (5 Dist. 1975).

Petition alleging violation of the speedy trial statute did not set forth a denial of any rights under the constitution of the United States, nor did it show any denial of any constitutional rights under the Constitution of the State of Illinois, where, at defendant's request, the cause was continued beyond the four month period; defendant was not entitled to post-conviction relief. People v. Hartman, 408 Ill. 133, 96 N.E.2d 449 (1951).

Where the defendant obtained three continuances, covering a period of over four months, delays were chargeable to defendant, who could not then demand discharge based on such delays. People v. Farley, 408 Ill. 288, 96 N.E.2d 453 (1951).

If the trial was delayed by reason of the prisoner's own application, he was not entitled to a discharge and further, in the interest of a proper enforcement of prior version of the Code of Criminal Procedure (see now 725 ILCS 5/103-5), provision was made that if the court found that due exertion had been made on the part of the people to procure the evidence but without avail and that there were reasonable grounds to believe that if the time for trial was extended the evidence would be available, then the court might extend the time not more than 60 days. People v. Utterback, 385 Ill. 239, 52 N.E.2d 775 (1944).

Where the failure to try the defendant within the time prescribed by former section of the Criminal Code (see now 725 ILCS 5/103-5) is occasioned by the defendant himself, the statute does not apply. People v. Meisenhelter, 381 Ill. 378, 45 N.E.2d 678 (1942).

-- Improper

Prisoner was denied his right to a speedy trial where there was an eight year delay between the indictment and trial even though the defendant did not demand trial, and the delay for the first three years was attributable to defendant. People v. Bryarly, 23 Ill. 2d 313, 178 N.E.2d 326 (1961).

-- Prejudice Presumed

Where a post-indictment delay of 31 months in arresting the defendant was unreasonably long and not justified by the reasons which caused it, the delay was so prolonged and unjustified that prejudice to the defendant should be presumed. People v. Yaeger, 84 Ill. App. 3d 415, 40 Ill. Dec. 549, 406 N.E.2d 555 (3 Dist. 1980).

Delay before the trial may be so prolonged that prejudice will be presumed and found without requiring a defendant to demonstrate that he was prejudiced. People v. Nichols, 60 Ill. App. 3d 919, 18 Ill. Dec. 330, 377 N.E.2d 815 (3 Dist. 1978).

- Delay Chargeable to Defendant

Although eight and a half year delay in trial is presumed to be prejudicial, the subsequent dismissal of defendant's indictment was an abuse of discretion because the delay was directly traceable to the behavior of defendant and that included the "cloud of anxiety" that may have

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accompanied defendant to Mexico and on defendant's illegal re-entry. People v. Torres, 289 Ill. App. 3d 513, 224 Ill. Dec. 700, 682 N.E.2d 261 (1 Dist. 1997).

- Demand for Trial

Defendant's failure to request speedy trial was irrelevant where the first he knew of indictment was execution of warrant following delay of four years from arrest. People v. Singleton, 278 Ill. App. 3d 296, 214 Ill. Dec. 1014, 662 N.E.2d 580 (1 Dist. 1996).

Defendant's right to a speedy trial was not abridged where he failed to make a demand for speedy trial, and suffered no prejudice. People v. Neafus, 39 Ill. App. 3d 365, 353 N.E.2d 68 (5 Dist. 1976).

- Discharge

State's explanation for 50 month delay before bringing defendant to trial resting on alleged fugitive status of defendant after petition for violation of probation was filed was inadequate to constitute a justifiable reason for delay, because record revealed defendant was in custody numerous times after the indictment issued, state proceeded on with trial on other indictment while ignoring indictment tried after delay and defendant was in custody four times during period state claimed defendant was a fugitive. People v. Singleton, 278 Ill. App. 3d 296, 214 Ill. Dec. 1014, 662 N.E.2d 580 (1 Dist. 1996).

The effect of an order allowing a defendant's motion to dismiss a prosecution, for violation of a penal ordinance of a city based on the proposition that defendant was not tried within 120 days after demand for trial, was to discharge the defendant rather than to dismiss the indictment, and that order was not appealable by the state. City of Gibson City v. McClellan, 61 Ill. App. 2d 218, 209 N.E.2d 363 (4 Dist. 1965).

-- Upheld

Where for a period in excess of 160 days, the state remained entirely inactive with respect to the prosecution of defendant for unlawful delivery of a controlled substance and there was nothing in the record to justify or excuse the complete inaction by the state for the full statutory period, the trial court's discharge of the defendant for want of prosecution within the statutory period was affirmed. People v. Neideffer, 25 Ill. App. 3d 819, 324 N.E.2d 46 (5 Dist. 1975).

- Duties of Parties

While it was the State's duty to bring defendant to trial within the appropriate time, at risk of the dismissal of the criminal charges brought against defendant if it fails to do so, that duty does not relieve defendant's counsel of their responsibility to the trial court to assist in the expeditious consideration and disposal of cases. People v. Buckley, 164 Ill. App. 3d 407, 115 Ill. Dec. 428, 517 N.E.2d 1114 (2 Dist. 1987), appeal denied, 119 Ill. 2d 561, 119 Ill. Dec. 389, 522 N.E.2d 1248 (1988).

- Factors

In considering reasons for a trial's delay, the courts appear to be primarily concerned with whether the record shows deliberate or oppressive delay on the part of the state designed to hinder or embarrass those accused in their efforts to prepare a defense, even where the trial's delay involved was lengthy and unexplained. People v. Jones, 37 Ill. App. 3d 515, 346 N.E.2d 430 (5 Dist. 1976).

There are four factors to be given particular consideration in determining whether one has been denied the right to a speedy trial: the length of delay; the reason for the delay; the prejudice to the defendant; and the defendant's waiver of the right. People v. Brown, 117 Ill. App. 2d 97, 253 N.E.2d 140 (2 Dist. 1969); People v. Henry, 47 Ill. 2d 312, 265 N.E.2d 876 (1970); People v. Jones, 37 Ill. App. 3d 515, 346 N.E.2d 430 (5 Dist. 1976); People v. Uplinger, 45 Ill. App. 3d

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558, 4 Ill. Dec. 100, 359 N.E.2d 1052 (4 Dist. 1976), aff'd, 69 Ill. 2d 181, 13 Ill. Dec. 27, 370 N.E.2d 1054 (1977); People v. Sims, 47 Ill. App. 3d 215, 5 Ill. Dec. 625, 361 N.E.2d 1153 (4 Dist. 1977); People v. Toney, 58 Ill. App. 3d 364, 15 Ill. Dec. 912, 374 N.E.2d 695 (1 Dist. 1978); People v. Nichols, 60 Ill. App. 3d 919, 18 Ill. Dec. 330, 377 N.E.2d 815 (3 Dist. 1978); People v. Yaeger, 84 Ill. App. 3d 415, 40 Ill. Dec. 549, 406 N.E.2d 555 (3 Dist. 1980).

This section did not leave the right of an accused person to a speedy trial dependent solely upon the lapse of a certain fixed time following the commitment but reserved for judicial determination questions as to whether the delay had been occasioned at the prisoner's request or whether under the circumstances there had been ample time for the people to procure the evidence. People v. Utterback, 385 Ill. 239, 52 N.E.2d 775 (1944).

- Illustrative Cases

Defendant's waiver of his speedy trial demand aside, defendant contributed to the delay by filing shortly before his release a demand that incorrectly stated that he had one year remaining to serve on his sentence in another county, and then did not notify the trial court of his location after his release; defendant did not show that he could have been located by the State after he misrepresented his remaining term of incarceration and did not notify the trial court of his change of address, something required by his previous bond. Defendant did not present evidence about who knew of his location after his release, and thus, failed to provide a record that affirmatively showed that his actions did not contribute to the delay. People v. Patterson, 392 Ill. App. 3d 461, 332 Ill. Dec. 58, 912 N.E.2d 244, 2009 Ill. App. LEXIS 419 (2 Dist. 2009), appeal denied, 233 Ill. 2d 586, 335 Ill. Dec. 642, 919 N.E.2d 361, 2009 Ill. LEXIS 1403 (2009).

Violation of defendant's right to a speedy trial pursuant to 725 ILCS 5/103-5(b) because defendant was not brought to trial within 160 days of the date on which defendant demanded a speedy trial could not be excused by the State's conduct in dismissing the charge against defendant of driving under the influence in violation of 625 ILCS 5/11-501(a)(1) so that the State could refile the charge to include the sentence enhancing factor of driving on a revoked license so as to make the offense a felony. The DUI charge was still one charge, not two charges because of the sentence enhancement factor, the speedy trial statute was not tolled despite the refiling, and defendant had a fundamental right to a speedy trial under the Sixth Amendment, U.S. Const. Amend. VI and Ill. Const. Art. I, § 8. People v. Van Schoyck, 232 Ill. 2d 330, 328 Ill. Dec. 267, 904 N.E.2d 29, 2009 Ill. LEXIS 187 (2009).

The prejudice suffered by the defendant due to his unjustified incarceration for an 11 month period did not warrant a finding that his speedy trial right was denied where (1) the defendant received a trial and was found guilty of murder and aggravated arson, (2) on appeal the reviewing court found that the defendant's confession should not have been admitted into evidence at trial, the defendant's convictions were reversed, and a new trial was ordered, (3) while awaiting retrial the defendant remained incarcerated, and (4) a period of 24 months passed before the defendant demanded retrial, and another two months passed before he objected to the delay and sought dismissal of the charges against him, claiming he had been denied his right to speedy retrial. People v. Crane, 195 Ill. 2d 42, 252 Ill. Dec. 687, 743 N.E.2d 555, 2001 Ill. LEXIS 3 (2001).

Record indicated that defendant did not request a speedy trial and actively attempted to frustrate the police in their attempt to arrest him on the outstanding warrant related to the burglary charges, therefore defendant's arguments regarding the State's failure to provide him with a speedy trial were meritless. People v. Williams, 299 Ill. App. 3d 143, 233 Ill. Dec. 225, 700 N.E.2d 753 (1 Dist. 1998).

Where 112 days elapsed from the date defendant was last chargeable with a delay until the start of the first trial, only 102 days elapsed from the date of the mistrial until the start of the second trial, one of the stated reasons the second trial did not start sooner was because the judicious trial judge wanted to give both sides an opportunity to obtain a transcript of the first trial, therefore defendant was not prejudiced by the time period between the first and second trial, and that

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period was not so extensive that prejudice should be presumed, and defendant was not denied his statutory or constitutional right to a speedy trial. People v. Daniels, 76 Ill. App. 3d 646, 32 Ill. Dec. 216, 395 N.E.2d 163 (1 Dist. 1979).

Where the delay to trial was occasioned by the unavailability of key witnesses despite the diligent efforts of the state to produce them, subsequent delay was either caused or acquiesced by the defendant, during the interval between discharge and indictment the defendant was not subject to any of the disabilities of arrest, criminal charges or prosecution, and where the charges against the defendant were dismissed, and the state was no longer asserting probable cause against him, he was neither in custody nor subject to reinstatement of the same charges; therefore, the delay was not so inordinate as to prejudice the defendant or to violate his constitutional right to speedy trial. People v. Toney, 58 Ill. App. 3d 364, 15 Ill. Dec. 912, 374 N.E.2d 695 (1 Dist. 1978).

Where defendant was released from custody on the 116th day on recognizance, the 160 day time period for defendants on bail or recognizance in the Code of Criminal Procedure (see subsection (b) of 725 ILCS 5/103-5) became applicable and because defendant was tried within that 160 day period, no statutory violation occurred, defendant did not need to be discharged, and he was not denied a speedy trial. People v. Sibley, 41 Ill. App. 3d 616, 354 N.E.2d 442 (1 Dist. 1976).

Battery charges filed eight months after defendants were arrested for other charges did not deprive them the right to a speedy trial for the prosecutions of the battery charges were commenced well within the period allowed by the statute of limitations. People v. Plazewski, 2 Ill. App. 3d 378, 276 N.E.2d 459 (1 Dist. 1971).

Under the Code of Criminal Procedure (725 ILCS 5/103-5) where first trial commenced after the defendant had been in custody 108 days and after eight days a mistrial was declared, and ten days later a motion for discharge which, asserted that more than 120 days had passed from the day of his arrest to the day of the motion, and that he was still in custody and had not occasioned any delay was filed, motion was denied because the state could not be charged with the eight days consumed by the trial, and therefore, only 118 days had elapsed up to the time the motion was made. People v. Eickert, 124 Ill. App. 2d 394, 260 N.E.2d 465 (1 Dist. 1970).

In a prosecution for burglary, defendant's constitutional right to a speedy trial, defined by the requirements of the "four month rule," were satisfied by the commencement of defendant's second trial 39 days from the date the first jury failed to agree, and four months and eight days from the date the defendant was originally incarcerated. People v. Henry, 68 Ill. App. 2d 48, 214 N.E.2d 550 (3 Dist. 1966).

The effect of an order allowing a defendant's motion to dismiss a prosecution for violation of a penal ordinance of a city based on the proposition that defendant was not tried within 120 days after demand for trial was to discharge the defendant rather than to dismiss the indictment, and that order was not appealable by the state. City of Gibson City v. McClellan, 61 Ill. App. 2d 218, 209 N.E.2d 363 (4 Dist. 1965).

Defendant's right to a speedy trial was not violated where he agreed to a continuance and was subsequently tried on his return to Illinois. People v. Williams, 403 Ill. 429, 86 N.E.2d 355 (1949).

Where a prisoner was incarcerated, not admitted to bail, and not tried until nearly five months later, the court erred in overruling his motion to be discharged. People v. Schmagien, 361 Ill. 371, 198 N.E. 142 (1935).

- Mandatory

The constitutional provision for a speedy trial is mandatory and may not be disregarded. People v. Schmagien, 361 Ill. 371, 198 N.E. 142 (1935).

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- Mistrial

In the event of a mistrial, the issue is whether a defendant's constitutional right to a speedy trial has been violated rather than whether the second trial commenced within the statutory period. People v. Daniels, 76 Ill. App. 3d 646, 32 Ill. Dec. 216, 395 N.E.2d 163 (1 Dist. 1979).

- Necessitated by State

Where the motions of the defendant are necessitated by the state's dilatory actions the delay is "occasioned by the defendant" only if said defendant fails to act diligently. People v. Neideffer, 25 Ill. App. 3d 819, 324 N.E.2d 46 (5 Dist. 1975).

- Not Attributable to Defendant

A delay in bringing defendant to trial caused by the inadvertence of the trial court is not to be ascribed to the defendant absent a showing that the resulting delay is otherwise caused by the defendant. People v. Neideffer, 25 Ill. App. 3d 819, 324 N.E.2d 46 (5 Dist. 1975).

- Not Coextensive

Statutory right of defendant to a speedy trial in Illinois was not the precise equivalent of the constitutional right that existed under Ill. Const. art. I, § 8. As a result, the proof of a violation of the statutory right required only that a defendant not be tried within the period set by statute and that defendant had not caused or contributed to the delay, but dismissal of the relevant indictments against defendant for aggravated battery and mob action was error because defendant had not given notice of actual demand to enforce that right as early as defendant thought defendant did. People v. Bonds, 401 Ill. App. 3d 668, 341 Ill. Dec. 227, 930 N.E.2d 437, 2010 Ill. App. LEXIS 403 (2 Dist. 2010).

The constitutional right and the statutory right to a speedy trial are not coextensive. Therefore, where defendant argued a statutory violation in his motion, but the court used a constitutional basis to discharge defendant, the discharge was affirmed. People v. Thomas, 149 Ill. App. 3d 1, 102 Ill. Dec. 759, 500 N.E.2d 652 (1 Dist. 1986).

- Not Violated

Defendant was not entitled to withdraw defendant's guilty plea that defendant voluntarily gave in a case where defendant was tried and convicted in absentia of attempted aggravated criminal sexual assault, that conviction was vacated 10 years later based on a procedural problem after defendant had been arrested, and only 100 days passed between the time the conviction was vacated and the trial court accepted defendant's guilty plea. The 10-year delay was due to defendant fleeing the country, and defendant could not show that defendant's right to a speedy trial under Ill. Const. art. I, § 8 had been violated, which also meant that defendant's counsel could not be found to have provided ineffective assistance regarding the assertion of defendant's speedy trial right. People v. Sharifpour, 402 Ill. App. 3d 100, 341 Ill. Dec. 319, 930 N.E.2d 499, 2010 Ill. App. LEXIS 499 (2 Dist. 2010).

State's amendment of its indictment in a case where defendant was charged with, and ultimately convicted of, criminal sexual assault did not cause a violation of defendant's speedy trial rights. Although defendant had speedy trial rights pursuant to Ill. Const. art. I, § 8 and 725 ILCS 5/103-5, neither of those provisions was violated because the amendments were permissible formal, rather than substantive, amendments and such amendments did not implicate speedy trial provisions. People v. Ross, 395 Ill. App. 3d 660, 335 Ill. Dec. 47, 917 N.E.2d 1111, 2009 Ill. App. LEXIS 1056 (1 Dist. 2009), appeal denied, 2010 Ill. LEXIS 564 (Ill. 2010).

Considering the four factors that had to be balanced to show that defendant did not receive a speedy trial as a matter of a constitutional right under Ill. Const. Art. I, § 8, defendant did not show that defendant was denied that right even apart from the central matter resolved in defendant's

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case, that the State's filing of petition regarding whether defendant was a sexually dangerous person tolled the time for trying defendant on the underlying criminal charges against defendant. Taking into account the length of the delay, the reasons for the delay, prejudice, if any, to the defendant, and the defendant's assertion of that right, defendant did not show that right was denied, the evidence showed that the State timely requested a hearing on the petition and vigorously pursued it, while it was defendant who stated that defendant would not be ready for trial and requested additional time. People v. Spurlock, 388 Ill. App. 3d 365, 328 Ill. Dec. 214, 903 N.E.2d 874, 2009 Ill. App. LEXIS 80 (5 Dist. 2009).

Where defendant's conviction was reversed and remanded for a new trial that took place over three years after the remand, defendant was not denied a speedy trial in violation of Ill. Const. Art. I, § 8; defense attorneys caused all but three months of the delay, defendant did not assert his right in a timely manner, and defendant did not assert that he was prejudiced by the delay in preparing the defense. People v. Kaczmarek, 207 Ill. 2d 288, 278 Ill. Dec. 329, 798 N.E.2d 713, 2003 Ill. LEXIS 1426 (2003), cert. denied, 540 U.S. 1199, 124 S. Ct. 1459, 158 L. Ed. 2d 115 (2004).

While the length of the delay involved was beyond the statutory term of 160 days and the record revealed that the defendant had demanded trial, these factors would not support a holding that the constitutional guarantees had been denied where the delay was legitimate and no prejudice to the accused was suffered. People v. Griffin, 58 Ill. App. 3d 644, 16 Ill. Dec. 256, 374 N.E.2d 1031 (1 Dist. 1978).

In burglary proceeding where interval between defendant's arrest and commencement of the second trial, after mistrial was declared because jury was unable to reach a verdict, was 156 days, and the first trial took place 35 days after their arrest, their right to a speedy trial was not violated. People v. Gilbert, 24 Ill. 2d 201, 181 N.E.2d 167 (1962).

In burglary prosecution where the defendant was arrested on May 19, and was indicted on September 15, and on November 10, he was arraigned and pleaded not guilty and counsel was appointed to represent him and on November 14, 1952, he was granted leave to withdraw his plea of not guilty and to plead guilty and on July 2, he was convicted of malicious mischief in the county court and after he had served that sentence he was remanded to the custody of the sheriff on November, 1, these circumstances did not show a violation of his constitutional or statutory right to a speedy trial. People v. Allen, 15 Ill. 2d 455, 155 N.E.2d 561 (1959).

- Out-of-State Custody

A defendant had no statutory right to demand and be granted trial within any specified length of time when he was outside the State of Illinois in the custody of the federal authorities. People v. Rose, 7 Ill. App. 3d 374, 287 N.E.2d 195 (2 Dist. 1972).

- Prejudice

It is not necessary to show prejudice for a statutory speedy trial violation; all that is necessary is that the trial began beyond the 120 day statutory period through no delay attributed to defendant. People v. Roberson, 289 Ill. App. 3d 344, 224 Ill. Dec. 448, 681 N.E.2d 1069 (4 Dist. 1997).

Prejudice was presumed where trial was delayed 50 months from time of arrest and most of delay was attributable to the state. People v. Singleton, 278 Ill. App. 3d 296, 214 Ill. Dec. 1014, 662 N.E.2d 580 (1 Dist. 1996).

Prejudice, caused by a delay, which is speculative and conjectural, cannot establish a violation of the constitutional to a speedy trial. People v. Jones, 37 Ill. App. 3d 515, 346 N.E.2d 430 (5 Dist. 1976).

- Purpose

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The purpose of the constitutional guarantee to a speedy trial is threefold: (1) to prevent undue and oppressive incarceration before trial; (2) to minimize anxiety and concern accompanying public accusation; and (3) to limit the possibility that long delay will impair the ability of the accused to defend himself. People v. Brown, 117 Ill. App. 2d 97, 253 N.E.2d 140 (2 Dist. 1969); People v. Henry, 47 Ill. 2d 312, 265 N.E.2d 876 (1970); People v. Woods, 78 Ill. App. 3d 431, 33 Ill. Dec. 480, 396 N.E.2d 1204 (1 Dist. 1979).

The Criminal Code (725 ILCS 5/103-5) which provides that any person committed for a criminal or supposed criminal offense, and not admitted to bail, and not tried by the court having jurisdiction of the offense, within four months of the date of commitment, is designed to implement the right to a speedy trial guaranteed by this section; however, it does not follow that the statutory requirement is the precise equivalent of the constitutional guaranty. People v. Stuckey, 34 Ill. 2d 521, 216 N.E.2d 785 (1966).

- Reasonable Time Test

Whether this right to a speedy trial has been violated is a judicial question, and following a mistrial, a reasonable time test should be applied. People v. Daniels, 76 Ill. App. 3d 646, 32 Ill. Dec. 216, 395 N.E.2d 163 (1 Dist. 1979).

- State's Right to Appeal

State may appeal from an order discharging the defendant from custody due to the failure of the state to accord him a speedy trial in accordance with the 120 day standard found in the Code of Criminal Procedure (see subsection (a) of 725 ILCS 5/103-5). People v. Jenkins, 101 Ill. App. 2d 414, 243 N.E.2d 259 (1 Dist. 1968).

- Statutory Provisions

Court erred in finding a speedy trial violation and dismissing defendant's case on speedy trial grounds under 725 ILCS 5/103-5, because explained and unexplained failures to appear held no relevance where there was no such distinction in the language of the speedy trial statute. People v. Minor, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1243 (1 Dist. Dec. 9, 2011).

Constitutional right of a defendant to receive a speedy trial militates against the use of Rule 14.2, Rules of the Circuit Court of Cook County to limit or burden the constitutional protections provided by 725 ILCS 5/103-5(b). In comparison to 725 ILCS 5/103-5(b), Rule 14.2, Rules of the Circuit Court of Cook County improperly places an additional burden on a defendant seeking to file a speedy-trial demand by requiring defendant to serve the demand on the State's Attorney in open court. People v. Atou, 372 Ill. App. 3d 78, 310 Ill. Dec. 113, 865 N.E.2d 437, 2007 Ill. App. LEXIS 319 (1 Dist. 2007).

Because there was a conflict between Rule 14.2, Rules of the Circuit Court of Cook County and 725 ILCS 5/103-5(b), as only the local rule required a defendant to serve the State's Attorney with notice of a speedy-trial demand in open court, § 103-5(b) controlled as the local rule would limit defendant's constitutional protections. People v. Atou, 372 Ill. App. 3d 78, 310 Ill. Dec. 113, 865 N.E.2d 437, 2007 Ill. App. LEXIS 319 (1 Dist. 2007).

A defendant's waiver of the 120 day rule of the Code of Criminal Procedure (725 ILCS 5/103-5) by his plea of guilty did not mean that the state could indefinitely delay the trial; withdrawal of the guilty plea did not negate his constitutional right to a speedy trial. People v. George, 71 Ill. App. 3d 932, 28 Ill. Dec. 419, 390 N.E.2d 586 (2 Dist. 1979).

- Substitution of Judges

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Two day delay occasioned by defendant's motion for substitution of judges was attributable to defendant. People v. Grayson, 165 Ill. App. 3d 1038, 117 Ill. Dec. 550, 520 N.E.2d 901 (1 Dist. 1988).

- Time Limits

Existence of specific time limits under 725 ILCS 5/103-5 not found under the United States Constitution or Illinois Constitution creates a possibility of violation of the statutory guarantee to a speedy trial without violating the constitutional guarantee. People v. Fly, 249 Ill. App. 3d 730, 189 Ill. Dec. 120, 619 N.E.2d 821 (4 Dist.), appeal denied, 153 Ill. 2d 563, 191 Ill. Dec. 623, 624 N.E.2d 811 (1993).

The constitutional right to a speedy trial cannot be defined in terms of an absolute or precise standard of time within which an accused must be given trial. People v. Daniels, 76 Ill. App. 3d 646, 32 Ill. Dec. 216, 395 N.E.2d 163 (1 Dist. 1979).

The right to a speedy trial, clearly a fundamental protection of our constitution, cannot be defined in terms of an absolute or precise standard of time, within which an accused must be given trial. People v. Henry, 47 Ill. 2d 312, 265 N.E.2d 876 (1970).

- Tolling During Appeal

The period of time during which a convicted accused pursues an appeal which results in a new trial has no bearing on whether he received a speedy trial under both the U.S. and Illinois Constitutions. People v. Trolia, 107 Ill. App. 3d 487, 63 Ill. Dec. 155, 437 N.E.2d 804 (1 Dist. 1982), cert. denied, 460 U.S. 1044, 103 S. Ct. 1442, 75 L. Ed. 2d 798 (1983).

- Violation

Trial court erred in denying defendant's motion to dismiss on constitutional speedy trial grounds upon finding that defendant did not show that defendant suffered prejudice even though nearly three years passed between the date that indictments were issued by the grand jury charging defendant with possession of child pornography and defendant's arrest after defendant surrendered to Illinois authorities; since the delay was presumptively prejudicial because it was more than one year, defendant was not required to affirmatively show prejudice and the remaining Barker speedy trial factors weighed heavily against the State, defendant's speedy trial rights pursuant to U.S. Const. amends. VI, XIV, and Ill. Const. (1970), Art. I, § 8 were violated. People v. Silver, 376 Ill. App. 3d 780, 315 Ill. Dec. 609, 877 N.E.2d 96, 2007 Ill. App. LEXIS 1082 (1 Dist. 2007).

Failure to find and arrest a defendant for 31 months after issuance of an indictment was not incompetence, but it violated defendant's right to a speedy trial. People v. Yaeger, 84 Ill. App. 3d 415, 40 Ill. Dec. 549, 406 N.E.2d 555 (3 Dist. 1980).

- Waiver

Defendant waived his speedy trial demand under the plain language of 725 ILCS 5/103-5(b) because he failed to appear in the trial court for scheduled appearances after he made his speedy trial demand; defendant did not deny that he had notice of the latest of the 3 dates. The statute said nothing to indicate that waiver could have occurred only before the speedy trial period had run. People v. Patterson, 392 Ill. App. 3d 461, 332 Ill. Dec. 58, 912 N.E.2d 244, 2009 Ill. App. LEXIS 419 (2 Dist. 2009), appeal denied, 233 Ill. 2d 586, 335 Ill. Dec. 642, 919 N.E.2d 361, 2009 Ill. LEXIS 1403 (2009).

Defendant's failure to demand trial is relevant to the question of whether defendant waived his right to a speedy trial. People v. Jones, 37 Ill. App. 3d 515, 346 N.E.2d 430 (5 Dist. 1976).

A plea of guilty waives all defects that are not jurisdictional the right to a speedy trial is not jurisdictional. People v. Swansey, 7 Ill. App. 3d 1042, 288 N.E.2d 646 (1 Dist. 1972).

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Where the defendant pleaded guilty to the reduced charge of possession of a narcotic drug, and he entered his plea voluntarily after consultation with counsel and admonition by the court, he waived his right to a speedy trial. People v. Swansey, 7 Ill. App. 3d 1042, 288 N.E.2d 646 (1 Dist. 1972).

The defendants were considered as having waived the right to a speedy trial where they failed to demand to be brought to trial in Illinois. People v. Henry, 47 Ill. 2d 312, 265 N.E.2d 876 (1970).

Right to a speedy trial is waived when the question of undue delay is not presented to the trial court. People v. Worley, 45 Ill. 2d 96, 256 N.E.2d 751 (1970).

The constitutional right of an accused to a speedy trial is subject to waiver in the event he does not bring the fact of delay to the attention of the trial court by appropriate motion prior to conviction. People v. Bonds, 32 Ill. 2d 94, 203 N.E.2d 884 (1965).

The constitutional right to a speedy trial is personal to the accused and may be waived by a failure to raise the question of delay in the trial court. People v. Stahl, 26 Ill. 2d 403, 186 N.E.2d 349 (1962); People v. Carrillo, 27 Ill. App. 3d 603, 327 N.E.2d 1 (1 Dist. 1975); People v. Sweeney, 409 Ill. 223, 99 N.E.2d 143 (1951).

Where defendant entered a plea of guilty he waived the right to be discharged for failure to obtain a trial within four months of commitment pursuant to former version of the Code of Criminal Procedure (725 ILCS 5/103-5) and former Ill. Const., Art. II, § 9 (see now this section). People v. Lybarger, 22 Ill. 2d 170, 174 N.E.2d 687 (1961).

Right to Testify

Trial court's failure to rule, prior to defendant's testimony, on defendant's motion in limine regarding the use of defendant's prior convictions for impeachment purposes did not violate defendant's right to testify at trial as the ruling was within the trial court's discretion, defendant still had the right to choose to testify or not testify, and defendant chose to testify. People v. DeBerry, 375 Ill. App. 3d 822, 314 Ill. Dec. 622, 875 N.E.2d 1, 2007 Ill. App. LEXIS 925 (1 Dist. 2007).

Right to testify was not violated where defendant failed to assert his right to testify and the record was devoid of any evidence that defendant alerted the trial court that he wanted to testify. People v. Davis, 373 Ill. App. 3d 351, 311 Ill. Dec. 665, 869 N.E.2d 339, 2007 Ill. App. LEXIS 464 (1 Dist. 2007), appeal denied, 225 Ill. 2d 646, 875 N.E.2d 1116, 2007 Ill. LEXIS 1273 (2007).

- In General

It is a fundamental constitutional right for a defendant to testify in his own defense. People v. Johnson, 151 Ill. App. 3d 1049, 105 Ill. Dec. 309, 504 N.E.2d 178 (3 Dist. 1987).

- Waiver

Denial of defendant's postconviction petition was affirmed because because the circuit court did not err in finding that defendant waived his right to testify, as there was no evidence that he was unaware of such right or that he was prevented him from exercising it. People v. Chatman, 357 Ill. App. 3d 695, 294 Ill. Dec. 21, 830 N.E.2d 21, 2005 Ill. App. LEXIS 447 (1 Dist. 2005), cert. denied, 2007 U.S. LEXIS 2153 (U.S. 2007).

Venue

- In General

This section concerns venue and not jurisdiction. The distinction is that jurisdiction is the authority or power of a court to try a case, while venue concerns only the place where the case may be

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tried. People v. Caruso, 119 Ill. 2d 376, 116 Ill. Dec. 548, 519 N.E.2d 440 (1987), cert. denied, 488 U.S. 829, 109 S. Ct. 83, 102 L. Ed. 2d 59 (1988).

- County of Offense

A defendant has a constitutional right to be tried in the county in which the offense is alleged to have been committed. People v. Hill, 68 Ill. App. 2d 369, 216 N.E.2d 212 (1 Dist. 1966); People v. McClellan, 46 Ill. App. 3d 584, 4 Ill. Dec. 850, 360 N.E.2d 1225 (4 Dist. 1977).

The Constitution creates certain courts with defined jurisdiction, but limits and restrains the authority of the General Assembly with respect even to them by the other provisions for uniformity and preservation of the right of trial by jury, so that the trial shall be by a jury of the county or district in which the offense is alleged to have been committed. People ex rel. Smith v. Rodenberg, 254 Ill. 386, 98 N.E. 764 (1912).

- Jurisdiction

If there is no allegation of the county in which the offense took place the jurisdiction of the court is not established. People v. Hill, 68 Ill. App. 2d 369, 216 N.E.2d 212 (1 Dist. 1966).

The power to establish courts in cities and incorporated towns does not enable to the General Assembly to destroy the constitutional guaranty to be tried by a jury of the county or district in which the crime is alleged to have been committed by creating a municipality extending beyond the county in which an offense is committed and treating it as a district in which persons accused of crime may be prosecuted. People ex rel. Smith v. Rodenberg, 254 Ill. 386, 98 N.E. 764 (1912).

- Material Allegation

Venue is a material allegation which must be proved by the state beyond a reasonable doubt along with the other elements of an offense; this rule has not been supplanted by the provisions of section 1-6(a) of the Criminal Code of 1961 (720 ILCS 5/1-6) or section 114-1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/114-1). People v. Adams, 161 Ill. 2d 333, 204 Ill. Dec. 290, 641 N.E.2d 514 (1994).

- Not Jurisdictional

Venue is not a jurisdictional matter, but only a material part of the proof in criminal cases. People v. Goulet, 52 Ill. App. 3d 609, 10 Ill. Dec. 436, 367 N.E.2d 1045 (4 Dist. 1977).

- Sufficiency of Complaint

A complaint which alleged the place of the offense as "900 S. Winchester" rather than "Cook County" was not defective where the words "Cook County" appeared four times on the complaint. People v. Williams, 69 Ill. App. 2d 55, 216 N.E.2d 468 (1 Dist. 1966), aff'd, 37 Ill. 2d 521, 229 N.E.2d 495 (1967).

- Waiver

Since venue is not a jurisdictional matter, the defendant, who despite admonitions regarding venue during plea proceedings, waived the point by entering a plea of guilty. People v. Goulet, 52 Ill. App. 3d 609, 10 Ill. Dec. 436, 367 N.E.2d 1045 (4 Dist. 1977).

Waiver

Trial court did not err in summarily dismissing defendant's second petition for postconviction relief from defendant's conviction for armed robbery; defendant's petition did not state the gist of a constitutional claim, as defendant's assertions of ineffective assistance of counsel and Brady

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violations related to how police conducted the lineups at a police station where torture was allegedly used were barred by res judicata and waiver because the claims could have been raised at trial, on direct appeal, or in defendant's first petition for postconviction relief and were not, and defendant also could not maintain an actual innocence claim in violation of defendant's due process rights because the overwhelming evidence of defendant's guilt meant that there was no probability that new evidence would change the result of defendant's trial on retrial. People v. Anderson, 375 Ill. App. 3d 990, 314 Ill. Dec. 367, 874 N.E.2d 277, 2007 Ill. App. LEXIS 942 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1724 (Ill. 2007).

- Adequate

Where the trial judge directly addressed defendant concerning the constitutional right to a jury trial and his understanding of the effect of signing a waiver, the defendant's lawyer made no objection then or later to proceeding to a bench trial, defendant was a high school graduate with one year of college, had prior arrests and had filed pro se motions, there was a knowing jury waiver. People v. Stokes, 281 Ill. App. 3d 972, 217 Ill. Dec. 505, 667 N.E.2d 600 (1 Dist. 1996), appeal denied, 168 Ill. 2d 619, 219 Ill. Dec. 574, 671 N.E.2d 741 (1996).

- Default Judgment

The court abused its discretion when it entered a default judgment against defendant and found that his jury demand was waived based on the default, where his attorney appeared on the day of trial and refused to waive the jury, and a notice that a default judgment might be entered if defendant failed to appear was not sent. Reuben H. Donnelley Corp. v. Earles, 268 Ill. App. 3d 263, 205 Ill. Dec. 722, 643 N.E.2d 1329 (1 Dist. 1994).

Witnesses

Limitation of a defendant's cross-examination of the bias, motive, or interest of a witness may violate a defendant's constitutional right to confront the witnesses against him guaranteed by both the federal and state constitutions; therefore, a trial court should be unwilling to grant a motion in limine brought by the State if the result will be an evisceration of the defendant's theory of the case. People v. Truly, 318 Ill. App. 3d 217, 251 Ill. Dec. 937, 741 N.E.2d 1115, 2000 Ill. App. LEXIS 967 (1 Dist. 2000).

OPINIONS OF ATTORNEY GENERAL

Analysis

Legal Defense Fund

Representation by Public Defender

- Residents of Correctional Facilities

Legal Defense Fund

A county is not prohibited from contributing public moneys to a private legal defense fund if it is determined that the interests of the county and its residents will be benefited thereby. 2000 Op. Atty. Gen. 11.

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Representation by Public Defender

- Residents of Correctional Facilities

The statutory duties of the public defender do not include the representation of residents of correctional facilities who file petitions for habeas corpus, mandamus or injunction which relate to the conditions of their incarceration; residents of correctional facilities have no right under either the Illinois Constitution of 1970 or the United States Constitution to be represented by the public defender in such actions. 1980 Op. Atty. Gen. 114.

LEGAL PERIODICALS

For comment, "Illinois Conformation with the Use of Closed Circuit Testimony in Child Sexual Abuse Cases: A Legislative Approach to the Supreme Court Decision of 'People v. Fitzpatrick,'" see 15 N. Ill. U.L. Rev. 719 (1996).

For article, "Survey of Illinois Law: Evidence," see 19 S. Ill. U.L.J. 801 (1995).

For note, "People v. Fitzpatrick: The Path to Amending the Illinois Constitution to Protect Child Witnesses in Criminal Sexual Abuse Cases," see 26 Loy. U. Chi. L.J. 321 (1995).

For comment, "A New Speedy Trial Standard for Barker v. Wingo: Reviving a Constitutional Remedy in an Age of Statutes," see 61 U. Chi. L. Rev. 559 (1994).

For comment, "The Forgetful Witness," see 60 U. Chi. L. Rev. 167 (1993).

For comment, "Disentangling Webb: Governmental Intimidation of Defense Witnesses and Harmless Error Analysis," see 59 U. Chi. L. Rev. 1239 (1992).

For case note, "People v. Tenant and People v. Horton - Preliminary Hearing Testimony of a Witness Who Dies Before Trial Is Admissible at Trial If a Meaningful Opportunity for Confrontation Existed," see 1978 U. Ill. L.F. 204.

For case note, "Admissibility of Psychiatric Testimony Based Partly on Reports Prepared by Others," see 1977 U. Ill. L.F. 386.

RESEARCH REFERENCES

Right of enemy combatant to counsel. 184 ALR Fed. 527.

Power of court to change counsel appointed for indigent, against objections of accused and original counsel. 3 ALR4th 1227.

Adequacy of defense counsel's representation of criminal client regarding right to and incidents of jury trial. 3 ALR4th 601.

Sufficiency of efforts to procure missing witness' attendance to justify admission of his former testimony - state cases. 3 ALR4th 87.

Continuances at instance of state public defender or appointed counsel over defendants objections as excuse for denial of speedy trial. 16 ALR4th 1283.

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Denial of, or interference with, accused's right to have attorney initially contact accused. 18 ALR4th 669.

Denial of accused's request for initial contact with attorney - drunk driving cases. 18 ALR4th 705.

Conditions interfering with accused's view of witness as violation of right of confrontation. 19 ALR4th 1286.

Admissibility or use in criminal trial of testimony given at preliminary proceeding by witness not available at trial. 38 ALR4th 378.

Application of speedy trial statute to dismissal or other termination of prior indictment or information and bringing of new indictment or information. 39 ALR4th 899.

Cure of prejudice resulting from statement by prospective juror during voir dire, in presence of other prospective jurors, as to defendant's guilt. 50 ALR4th 969.

Ineffective assistance of counsel: misrepresentation, or failure to advise, of immigration consequences of guilty plea - state cases. 65 ALR4th 719.

Relief available for violation of right to counsel at sentencing in state criminal trial. 65 ALR4th 183.

Power of state trial court in criminal case to change venue on its own motion. 74 ALR4th 1023.

Requirement of jury unanimity as to mode of committing crime under statute setting forth the various modes by which offense may be committed. 75 ALR4th 91.

Adverse presumption or inference based on state's failure to produce or examine informant in criminal prosecution - modern cases. 80 ALR4th 547.

Adverse presumption or inference based on state's failure to produce or examine law enforcement personnel - modern cases. 81 ALR4th 872.

What constitutes assertion of right to counsel following Miranda warnings - state cases. 83 ALR4th 443.

Permissibility of testimony by telephone in state trial. 85 ALR4th 476.

When does delay in imposing sentence violate speedy trial provision. 86 ALR4th 340.

Legal malpractice in defense of criminal prosecution. 4 ALR5th 273.

Ineffective assistance of counsel: right of attorney to withdraw, as appointed defense counsel, due to self-avowed incompetence. 16 ALR5th 118.

Criminal defendant's representation by person not licensed to practice law as violation of right to counsel. 19 ALR5th 351.

Determination of indigency entitling accused in state criminal case to appointment of counsel on appeal. 26 ALR5th 765.

Right to appointment of counsel in contempt proceedings. 32 ALR5th 31.

Right of accused to have evidence or court proceedings interpreted, because accused or other participant in proceedings is not proficient in the language used. 32 ALR5th 149.

Gestures, facial expressions, or other nonverbal communication of trial judge in criminal case as ground for relief. 45 ALR5th 531.

Inattention of juror from sleepiness or other cause as ground for reversal or new trial. 59 ALR5th 1.

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Voluntary absence when sentence is pronounced. 59 ALR5th 135.

Adequacy of defense counsel's representation of criminal client - issues of mental matters concerning persons, other than counsel's client, who are involved in criminal case. 80 ALR5th 55.

Examination and challenge of state case jurors on basis of attitudes toward homosexuality. 80 ALR5th 469.

Adequacy of defense counsel's representation of criminal client-conduct at trial regarding issues of insanity. 95 ALR5th 125.

Denial of, or interference with, accused's right to have attorney initially contact accused. 96 ALR5th 327.

Validity and efficacy of minor's waiver of right to counsel - cases decided since application of Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967). 101 ALR5th 351.

Denial of accused's request for initial contact with attorney - drunk driving cases. 109 ALR5th 611.

Adequacy of defense counsel's representation of criminal client regarding search and seizure issues - Motions and objections during trial and matters other than pretrial motions. 117 ALR5th 513.

Denial of accused's request for initial contact with attorney in cases involving offenses other than drunk driving - Cases focusing on presence of inculpatory statements. 124 ALR5th 1.

Section 8.1. Crime Victim's Rights.

(a) Crime victims, as defined by law, shall have the following rights as provided by law:

(1) The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.

(2) The right to notification of court proceedings.

(3) The right to communicate with the prosecution.

(4) The right to make a statement to the court at sentencing.

(5) The right to information about the conviction, sentence, imprisonment, and release of the accused.

(6) The right to timely disposition of the case following the arrest of the accused.

(7) The right to be reasonably protected from the accused throughout the criminal justice process.

(8) The right to be present at the trial and all other court proceedings on the same basis as the accused, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial.

(9) The right to have present at all court proceedings, subject to the rules of evidence, an advocate or other support person of the victim's choice.

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(10) The right to restitution.

(b) The General Assembly may provide by law for the enforcement of this Section.

(c) The General Assembly may provide for an assessment against convicted defendants to pay for crime victims' rights.

(d) Nothing in this Section or in any law enacted under this Section shall be construed as creating a basis for vacating a conviction or a ground for appellate relief in any criminal case.

(Source: Amendment adopted at general election November 3, 1992.)

Illinois Jurisprudence. See Illinois Jur, Crim L § 48:03.

CASE NOTES

Analysis
Appeals
Death of Defendant
Victim Impact Statements

Appeals

Article I, § 8.1(d) of the Illinois Constitution, specifically removes victims' rights from the spectrum of issues that a criminal defendant may appeal. People v. Bowman, 325 Ill. App. 3d 411, 259 Ill. Dec. 285, 758 N.E.2d 408, 2001 Ill. App. LEXIS 765 (1 Dist. 2001), appeal denied, 198 Ill. 2d 596, 262 Ill. Dec. 621, 766 N.E.2d 241 (2002), cert. denied, 536 U.S. 968, 122 S. Ct. 2682, 153 L. Ed. 2d 853 (2002).

Death of Defendant

When a defendant dies while his direct appeal is pending before the appellate court, all of the proceedings abate ab initio; the Crime Victim's Rights Amendment has neither application nor reference to the abatement of criminal prosecutions. People v. Robinson, 187 Ill. 2d 461, 241 Ill. Dec. 533, 719 N.E.2d 662 (1999).

Victim Impact Statements

Although it was error for the trial court to accept and consider victim impact statements of a murder victim's parent and two children, rather than of "a single representative" of the victim, the defendant was prohibited by the constitution from seeking appellate relief on the ground that more than one victim impact statement was presented and considered at his sentencing. People

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v. Richardson, 196 Ill. 2d 225, 256 Ill. Dec. 267, 751 N.E.2d 1104, 2001 Ill. LEXIS 472 (2001).

LEGAL PERIODICALS

For article, "Protecting the Innocent: Victim - Witness Rights in Illinois," see 83 Ill. B.J. 568 (1995).

RESEARCH REFERENCES

Validity, construction, and application of state constitutional or statutory victims' bill of rights. 91 ALR5th 343.

Section 9. Bail and Habeas Corpus.

All persons shall be bailable by sufficient sureties, except for the following offenses where the proof is evident or the presumption great: capital offenses; offenses for which a sentence of life imprisonment may be imposed as a consequence of conviction; and felony offenses for which a sentence of imprisonment, without conditional and revocable release, shall be imposed by law as a consequence of conviction, when the court, after a hearing, determines that release of the offender would pose a real and present threat to the physical safety of any person. The privilege of the writ of habeas corpus shall not be suspended except in cases of rebellion or invasion when the public safety may require it.

Any costs accruing to a unit of local government as a result of the denial of bail pursuant to the 1986 Amendment to this Section shall be reimbursed by the State to the unit of local government.

(Source: Amendment adopted at general election November 4, 1986.)

Illinois Jurisprudence. See Illinois Jur, Crim L § 6:01, § 6:06, § 31:11.

CASE NOTES

Analysis

In General
Capital Offenses
Construction
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Determination of Bail

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- Discretion of Court
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Excessive Bail
- In General

Habeas Corpus

Harmless Error
- Failure to Endorse Amount of Bail

Order Fixing Bail
- Effect

Purpose

Review
- Procedure

Second Warrant
- Validity

Sufficient Sureties
- Alternative Bail Methods

Use and Benefit of Bail Money
- Forfeiture

In General

Statutory section governing pretrial bail, 725 ILCS 5/110-4(b), deprived the defendant of his constitutional due process right by unconstitutionally placing the burden of proving the right to bail on him; the state bore the burden. People v. Purcell, 201 Ill. 2d 542, 268 Ill. Dec. 429, 778 N.E.2d 695, 2002 Ill. LEXIS 938 (2002).

This section contemplates the admission to reasonable bail of all persons charged with a criminal offense, except for a capital offense, where the presumption is great or the proof is evident. In re McGarry, 380 Ill. 359, 44 N.E.2d 7 (1942).

The provisions of former Ill. Const. (1870), Art. II, § 7 (see now this section) contemplated the admission to reasonable bail of all persons charged with a criminal offense, except for capital offenses where the proof was evident or the presumption great, and it was the duty of the court to enforce this provision of the Bill of Rights as applied not only to criminal proceedings but also kindred proceedings. People ex rel. Smith v. Blaylock, 357 Ill. 23, 191 N.E. 206 (1934).

All persons charged with crime have a right to be admitted to bail before conviction except for capital offenses where the proof is evident or the presumption great. People ex rel. Sammons v. Snow, 340 Ill. 464, 173 N.E. 8 (1930).

The right to be bailed, being constitutional, is independent of courts and officers, but the accused can not be required to exercise it. Lewis v. People, 18 Ill. App. 76 (3 Dist. 1885).

Capital Offenses

That portion of 725 ILCS 5/110-4 that placed on a defendant charged with a capital crime the burden to show that the proof of his guilt was not evident and that the presumption of guilt was not great violated the Illinois Constitution's due process presumption of innocence and guarantee of a right to bail in most cases. People v. Purcell, 325 Ill. App. 3d 551, 259 Ill. Dec. 487, 758

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N.E.2d 895, 2001 Ill. App. LEXIS 837 (2 Dist. 2001), aff'd, 201 Ill. 2d 542, 268 Ill. Dec. 429, 778 N.E.2d 695 (2002).

Construction

This section guarantees, with certain exceptions, the right of persons to be bailable by sufficient sureties, but this provision cannot be read to prohibit the application of the principles set forth in 725 ILCS 5/110-1 et seq. Coleson v. Spomer, 31 Ill. App. 3d 563, 334 N.E.2d 344 (5 Dist. 1975).

This section guarantees, with certain exceptions, the right of persons to be bailable by sufficient sureties, but this provision cannot be read to prohibit the application of the principles set forth in this Article. Coleson v. Spomer, 31 Ill. App. 3d 563, 334 N.E.2d 344 (5 Dist. 1975).

Defendant Held Bailable

In a murder case, defendant was entitled to the monetary credit described in 725 ILCS 5/110-14 (a) since his offenses were bailable offenses, and therefore defendant's fines and fees reduced by $ 15 from $ 895 to $ 880. Defendant was granted bail, which meant that the State either failed or did not attempt to satisfy its burden of "wanton cruelty" or an aggravating circumstance. People v. Maldonado, 402 Ill. App. 3d 411, 341 Ill. Dec. 590, 930 N.E.2d 1104, 2010 Ill. App. LEXIS 604 (1 Dist. 2010).

Defendant not being charged with an offense for which the death penalty may be imposed was "bailable" under the provisions of constitution. People ex rel. Hemingway v. Elrod, 60 Ill. 2d 74, 322 N.E.2d 837 (1975).

Determination of Bail

- Discretion of Court

The constitutional right to bail must be qualified by the authority of the courts, as an incident of their power to manage the conduct of the proceedings before them, to deny or revoke bail when such action is appropriate to preserve the orderly process of criminal procedure. This action must not be based on mere suspicion but must be supported by sufficient evidence to show that it is required. People ex rel. Hemingway v. Elrod, 60 Ill. 2d 74, 322 N.E.2d 837 (1975).

- Factors

Bail is not allowed or refused on account of the presumed guilt or innocence of the person accused, though the existence of a doubt as to his guilt and the probability of his innocence are proper matters for consideration in determining the amount of bail, and likewise, the character and criminal record of the person accused is a proper matter to be considered in fixing it. In re McGarry, 380 Ill. 359, 44 N.E.2d 7 (1942).

Bail is not allowed or refused on account of the presumed guilt or innocence of the person accused, though the existence of a doubt as to the accused's guilt and the probability of his appearing for trial are questions which must be considered in determining the amount of the bail to be required; it is also proper to take into consideration on that questions the character of the person accused, and the fact, if it is a fact, that he has a criminal record. People ex rel. Sammons v. Snow, 340 Ill. 464, 173 N.E. 8 (1930).

- When Required

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When an indictment was found as a true bill, if the offense was bailable, under former Ill. Const. (1870), Art. II, § 7 (see now this section), the court was required to make an order fixing the amount of bail to be required of the accused. People v. Frugoli, 334 Ill. 324, 166 N.E. 129 (1929).

Excessive Bail

- In General

Excessive bail is not to be required for the purpose of preventing the prisoner from being admitted to bail; however, it is not a valid objection to the amount of bail required that it is greater than the prisoner is able to give, if the bail fixed is not of itself unreasonable in amount to secure his attendance to answer for the crime with which he is charged. People ex rel. Sammons v. Snow, 340 Ill. 464, 173 N.E. 8 (1930).

Habeas Corpus

Under Ill. Const. Art. I, § 9 (formerly Ill. Const. of 1870, Art. II, § 9), Circuit Court and Superior Court judges are bound by decisions of appellate courts and are without power or authority to pass on such decisions, even in the context of a habeas corpus petition filed by an incarcerated defendant alleging prosecutorial misconduct, whose conviction has been affirmed. Marcinkiewicz v. State, 21 Ill. Ct. Cl. 153, 1952 Ill. Ct. Cl. LEXIS 3 (Ct. Cl. 1952).

Harmless Error

- Failure to Endorse Amount of Bail

Where defendant was clearly advised by the court that he had the right to be released on bail on an aggravated assault charge as well as upon other charges, and a new attorney was appointed to represent him, the error in failing to endorse the amount of bail upon the defendant's copy of the indictment did not prejudice the defendant in his preparation for trial. People v. Rue, 35 Ill. 2d 234, 220 N.E.2d 457 (1966).

Order Fixing Bail

- Effect

Where the defendant was admitted to bail upon furnishing the requisite bond, the order of the court fixing bail was an adjudication that he was entitled to his freedom pending trial upon meeting the conditions of the bond fixed by the court and there was no room under this section for the administrative imposition of a financial obligation upon the defendant, in addition to the conditions fixed by the court in admitting him to bail, especially where the defendant's constitutional right would be diluted if not nullified if he could be subjected, at the will of the prosecutor, to an undisclosed retroactive financial obligation. County of Champaign v. Anthony, 64 Ill. 2d 532, 1 Ill. Dec. 373, 356 N.E.2d 561 (1976).

Purpose

This section is designed to give the accused liberty until he is proved guilty, but yet to have some assurance that he will appear for trial. People ex rel. Sammons v. Snow, 340 Ill. 464, 173 N.E. 8 (1930); People ex rel. Gendron v. Ingram, 34 Ill. 2d 623, 217 N.E.2d 803 (1966); People v. Ealy, 49 Ill. App. 3d 922, 7 Ill. Dec. 864, 365 N.E.2d 149 (1 Dist. 1977).

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Review

- Procedure

If a judge errs in setting the amount or conditions of bail, plaintiff has an adequate remedy under Rule 604(c), Supreme Court Rules for review of that bail order both in the circuit and appellate courts. Coleson v. Spomer, 31 Ill. App. 3d 563, 334 N.E.2d 344 (5 Dist. 1975).

Second Warrant

- Validity

Issuing a second arrest warrant on identical charges after a defendant has been arrested and released on bond produces a warrant that is invalid ab initio; such a practice undermines a citizen's constitutional right to bail. People v. Turnage, 162 Ill. 2d 299, 205 Ill. Dec. 118, 642 N.E.2d 1235 (1994).

Sufficient Sureties

- Alternative Bail Methods

The alternative methods of bail provided in sections 110-7 and 110-8 of the Code of Criminal Procedure (see 725 ILCS 5/110-7 and 725 ILCS 5/110-8), do not violate the constitutional provision that all persons shall be bailable by "sufficient sureties." People ex rel. Gendron v. Ingram, 34 Ill. 2d 623, 217 N.E.2d 803 (1966).

Use and Benefit of Bail Money

- Forfeiture

The right to be bailable does not mean that a man on bail may not be required to forfeit, even temporarily, the use and benefit of the money he is required to post as security. Coleson v. Spomer, 31 Ill. App. 3d 563, 334 N.E.2d 344 (5 Dist. 1975).

LEGAL PERIODICALS

For article, "'Nothing We Say Matters': Teague and New Rules," see 61 U. Chi. L. Rev. 423 (1994).

For note, "Appellate Review Under the Bail Reform Act," see 1992 U. Ill. L. Rev. 483 (1992).

For article, "'Last Chance' State Judicial Review in Criminal Cases - Illinois' Collateral Attack Remedies: A Call for a Principled Jurisprudence," see 38 De Paul L. Rev. 201 (1989).

For comment, "Preventive Detention: Illinois Takes a Tentative Step Towards a Safer Community," see 21 J. Marshall L. Rev. 389 (1988).

For article, "The New Bail Statute in Illinois: Preventive Detention by Any Other Name," see 1985 S. Ill. U.L.J. 631.

For article, "To Bail or Not to Bail: Is There a Constitutional Question?," see 64 Chi. B. Rec. 382 (1983).

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For article, "Drug Addicts and the Dangerous Drug Abuse Act - Special Relief Available to Criminal Defendants in Illinois," see 65 Ill. B.J. 142 (1977).

RESEARCH REFERENCES

Right of defendant in state court to bail pending appeal from conviction - modern cases. 28 ALR4th 227.

Bail: Effect on surety's liability under bail bond of principal's subsequent incarceration in same jurisdiction. 35 ALR4th 1192.

Ineffective assistance of counsel: misrepresentation, or failure to advise, of immigration consequences of guilty plea - state cases. 65 ALR4th 719.

Validity of regulation by public-school authorities as to clothes or personal appearance of pupils. 58 ALR5th 1.

Section 10. Self-Incrimination and Double Jeopardy.

No person shall be compelled in a criminal case to give evidence against himself nor be twice put in jeopardy for the same offense.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Crim L § 3:41, § 16:44, § 18:03, § 18:04, § 18:36.

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In General

The courts in this state have not broadened the United States Supreme Court's decision in Oregon v. Kennedy, 456 U.S. 667, 102 S. Ct. 2083, 72 L. Ed. 2d 416 (1982), which held that a retrial was barred by double jeopardy only if the prosecutor's conduct was "intended to provoke the defendant into moving for a mistrial." Accordingly, the double jeopardy clause of this section affords defendants no greater protection than does the double jeopardy clause of the United States Constitution. People v. Franklin, 159 Ill. App. 3d 56, 111 Ill. Dec. 136, 512 N.E.2d 40 (1 Dist.), appeal denied, 117 Ill. 2d 548, 115 Ill. Dec. 404, 517 N.E.2d 1090 (1987).

Illinois Constitution (1970), Article IV, § 6 has been interpreted to provide rights and protections beyond those assured by the double-jeopardy clause. People v. Pender, 154 Ill. App. 3d 978, 107 Ill. Dec. 798, 507 N.E.2d 951 (4 Dist. 1987).

The double jeopardy prohibition places upon a trial judge the responsibility of spotting deficient prosecutions - those in which the evidence is insufficient to convict - and his authority to do so is not curtailed by the contingency that the jury is unable to agree on a verdict. People ex rel. Daley v. Crilly, 108 Ill. 2d 301, 91 Ill. Dec. 601, 483 N.E.2d 1236 (1985).

The privilege against self-incrimination essentially means that no person, without proper immunity, can be required to implicate himself in a crime. In re Zisook, 88 Ill. 2d 321, 58 Ill. Dec.

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786, 430 N.E.2d 1037 (1981), cert. denied, 457 U.S. 1134, 102 S. Ct. 2962, 73 L. Ed. 2d 1352 (1982).

To give rise to a valid claim of double jeopardy, be it based on constitutional or statutory grounds, it must be shown that the two offenses charged are the same offenses. People v. Johnson, 63 Ill. App. 3d 248, 20 Ill. Dec. 483, 380 N.E.2d 461 (2 Dist. 1978).

Subsection (b) of 720 ILCS 5/3-3 meant to give a more enlightened view of the double jeopardy provisions of the Constitution. People v. Behymer, 48 Ill. App. 2d 218, 198 N.E.2d 729 (3 Dist. 1964).

The constitutions of the United States and of this state guarantee to every person accused of a crime the privilege to remain silent. People v. Hodson, 406 Ill. 328, 94 N.E.2d 166 (1950).

The rule is firmly established that if the proposed evidence has a tendency to incriminate the witness or to establish a link in the chain of evidence which may lead to his conviction, or if the proposed evidence will disclose the names of persons upon whose testimony the witness might be convicted of a criminal offense, he cannot be compelled to answer. People v. Schultz, 380 Ill. 539, 44 N.E.2d 601 (1942).

This section commands that no person shall be twice put in jeopardy for the same offense. A distinction obtains between an offense and the unlawful act out of which it arises. The act is the cause of the offense which, conversely, is the result of the act. The constitutional inhibition is directed to the identity of the offense and not to the act. People v. Allen, 368 Ill. 368, 14 N.E.2d 397 (1937).

Under former Ill. Const. (1870), Art. II, § 10 (see now this section), a witness in a criminal case could not be compelled to testify unless such immunity as was granted was as broad as the constitutional guaranty. People v. Rockola, 339 Ill. 474, 171 N.E. 559 (1930).

A witness cannot be required to incriminate himself and thereby bring punishment upon himself by reason of his disclosures not voluntarily made. People v. Boyle, 312 Ill. 586, 144 N.E. 342 (1924).

No statute which leaves the witness subject to prosecution after he answers an incriminating question put to him, can have the effect of supplanting the constitutional guaranty. People v. Newmark, 312 Ill. 625, 144 N.E. 338 (1924).

Acceptance of Guilty Plea

Defendant's knowing and voluntary guilty plea was a waiver that functioned as a procedural default not a voluntary relinquishment of a known right and waived any right to raise an Apprendi-based due process sentencing objection. People v. Palmer, 336 Ill. App. 3d 821, 271 Ill. Dec. 784, 785 N.E.2d 978, 2003 Ill. App. LEXIS 253 (2 Dist. 2003).

- Effect

Defendant's prosecution on the armed robbery charge was barred because the trial court had previously accepted defendant's guilty plea to a robbery charge. People v. Valentine, 122 Ill. App. 3d 782, 78 Ill. Dec. 281, 461 N.E.2d 1388 (4 Dist. 1984), overruled by, cited by, People v. Price, 369 Ill. App. 3d 395, 2006 Ill. App. LEXIS 1144 (Ill. App. Ct. 4th Dist. 2006).

Where defendant entered into a guilty plea, he did not waive his right to invoke the privilege against self-incrimination by reason of his guilty plea since the plea cannot serve to waive his privilege against self-incrimination because the plea agreement did not encompass all of respondent's potential criminal liability. Orlove v. Novick, 78 Ill. App. 3d 1141, 34 Ill. Dec. 495, 398 N.E.2d 170 (1 Dist. 1979).

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Acquittal

Because the circuit court explicitly found that defendant was not guilty of residential burglary, the constitutional bar against double jeopardy prevented an appellate court from remanding the cause, so that defendant could be tried on that charge. Thus, even if the appellate court found that the State of Illinois proved defendant guilty of residential burglary, the circuit court's acquittal on the charge prohibited the State from retrying defendant for residential burglary. People v. Blanks, 361 Ill. App. 3d 400, 300 Ill. Dec. 580, 845 N.E.2d 1, 2005 Ill. App. LEXIS 1364 (1 Dist. 2005).

Defendant's acquittal on a home invasion charge estopped the state from re-trying defendant on charges of armed robbery and residential burglary, upon which the jury had deadlocked, where the appellate court found that the jury must have had reasonable doubt as to whether defendant was one of the intruders, in finding defendant not guilty of home invasion. People v. Wharton, 334 Ill. App. 3d 1066, 268 Ill. Dec. 732, 779 N.E.2d 346, 2002 Ill. App. LEXIS 987 (4 Dist. 2002).

A finding in favor of a defendant at a separate proceeding to rescind the statutory summary suspension of his driver's license, is not tantamount to an acquittal in a criminal proceeding so as to bar further prosecution for driving under the influence on the basis of double jeopardy. People v. Dvorak, 276 Ill. App. 3d 544, 213 Ill. Dec. 120, 658 N.E.2d 869 (2 Dist. 1995), appeal denied, 172 Ill. 2d 557, 223 Ill. Dec. 197, 679 N.E.2d 382 (1997).

The constitutional protection against double jeopardy prohibiting retrial is only unequivocal following an acquittal. People v. Harbold, 262 Ill. App. 3d 1067, 200 Ill. Dec. 561, 635 N.E.2d 900 (1 Dist.), appeal denied, 157 Ill. 2d 512, 205 Ill. Dec. 175, 642 N.E.2d 1292 (1994), cert. denied, 513 U.S. 1191, 115 S. Ct. 1254, 131 L. Ed. 2d 134 (1995).

The doctrine of double jeopardy prevents the reprosecution of persons who are acquitted of a criminal offense. People v. Ortiz, 151 Ill. 2d 1, 175 Ill. Dec. 695, 600 N.E.2d 1153 (1992), cert. denied, 507 U.S. 918, 113 S. Ct. 1278, 122 L. Ed. 2d. 672 (1993).

A judgment of acquittal triggers double jeopardy protection when it represents a resolution, correct or not, of some or all of the factual elements of the offense charged. People v. Brown, 227 Ill. App. 3d 795, 169 Ill. Dec. 855, 592 N.E.2d 342 (1 Dist. 1992).

Where the trial judge found that the evidence was insufficient and stated that defendant was found not guilty of armed violence, this ruling resolved some of the factual elements of the offense and as a result, the ruling was an acquittal based on insufficient evidence which the trial judge could not reconsider; therefore, defendant's subsequent conviction for armed violence violated principles of double jeopardy. People v. Brown, 227 Ill. App. 3d 795, 169 Ill. Dec. 855, 592 N.E.2d 342 (1 Dist. 1992).

A jury's determination that the defendant was guilty of murder but mentally ill was not the same as implicitly finding the defendant not guilty of murder, and his retrial for murder following the award of a new trial was not therefore not barred by the implied acquittal doctrine. People v. Fierer, 196 Ill. App. 3d 404, 143 Ill. Dec. 100, 553 N.E.2d 807 (3 Dist.), appeal denied, 133 Ill. 2d 563, 149 Ill. Dec. 328, 561 N.E.2d 698 (1990), cert. denied, 501 U.S. 1219, 111 S. Ct. 2830, 115 L. Ed. 2d 999 (1991).

The word "acquittal" has no talismanic quality for purposes of the double jeopardy clause, and what constitutes an acquittal for purposes of the double jeopardy clause is not necessarily controlled by the form of the judge's action or what the judge calls it. People v. Deems, 81 Ill. 2d 384, 43 Ill. Dec. 8, 410 N.E.2d 8 (1980), cert. denied, 450 U.S. 925, 101 S. Ct. 1378, 67 L. Ed. 2d 355 (1981).

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Dismissal of municipal battery charge was not a final order within the meaning of section 3-4 of the Criminal Code (see 720 ILCS 5/3-4), and is not an acquittal within the meaning of the double jeopardy clause. People v. Crabtree, 82 Ill. App. 3d 87, 37 Ill. Dec. 527, 402 N.E.2d 417 (5 Dist. 1980).

The trial court did not err in refusing to sustain a plea of autrefois acquit in an armed robbery prosecution based on acquittal of larceny and burglary nor did it err in refusing to permit the defendant to submit to the jury the issue raised on this plea of former jeopardy for such plea submitted a question of law only. People v. Flaherty, 396 Ill. 304, 71 N.E.2d 779 (1947).

Adjudication of Municipal Ordinance Violation

- Reviewable

In a municipal ordinance case, as in other civil cases, the prosecuting municipality may appeal the acquittal of a defendant charged with violating a municipal ordinance without running afoul of the United States and Illinois Constitutions' proscription against double jeopardy. Village of Beckmeyer v. Wheelan, 212 Ill. App. 3d 287, 155 Ill. Dec. 514, 569 N.E.2d 1125 (5 Dist. 1991).

A municipality can, without violating a defendant's constitutional rights, properly appeal from a judgment acquitting him after a prosecution for violation of an ordinance since such prosecution is quasi-criminal in character but civil in form; double jeopardy does not bar an appeal by the municipality. Village of Park Forest v. Bragg, 38 Ill. 2d 225, 230 N.E.2d 868 (1967).

Since a municipality has the right to appeal an adverse decision in a case to collect an ordinance violation penalty, the courts have by implication rejected claims of double jeopardy in permitting appeal in such cases. Village of Maywood v. Houston, 10 Ill. 2d 117, 139 N.E.2d 233 (1956).

- Subsequent Prosecution Barred

Where the state, in prosecution for criminal disposal and reckless disposal of hazardous wastes, into a sewer system made no showing that the offenses charged were separate from ordinance violations already prosecuted, such was barred by the double jeopardy clause. People v. Stefan, 146 Ill. 2d 324, 166 Ill. Dec. 910, 586 N.E.2d 1239 (1992).

A conviction or acquittal entered in a municipal ordinance prosecution bars a later prosecution by the State's attorney for violation of a state statute based upon the same conduct. People v. Stefan, 146 Ill. 2d 324, 166 Ill. Dec. 910, 586 N.E.2d 1239 (1992).

Appellate Procedure

- In General

On appeal by the state of dismissal of charge against defendant on double jeopardy grounds, as authorized by Rule 604(a)(1), Supreme Court Rules, since consideration of the prior proceeding was necessary to evaluate the double jeopardy claim, the state was not required to have appealed from the order entered in the prior proceeding in order to challenge that judgment. People v. Pankey, 94 Ill. 2d 12, 67 Ill. Dec. 804, 445 N.E.2d 284 (1983).

- Jurisdiction

Appellate court lacked jurisdiction to consider defendant's claim that the trial court erred in denying his motion to dismiss the State's two-count petition to revoke his probation, which he believed violated his double jeopardy rights because the underlying charges were either nol-prossed by the State or he was acquitted of them following a jury trial. Defendant filed his appeal

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under Ill. Sup. Ct. R. 604(f), which the drafters specifically limited to criminal cases, but his probation revocation proceeding was a civil proceeding. People v. Trimarco, 364 Ill. App. 3d 549, 301 Ill. Dec. 405, 846 N.E.2d 1008, 2006 Ill. App. LEXIS 320 (1 Dist. 2006).

- Leave to Appeal

Where on appeal, appellate court found there was insufficient evidence to prove defendant guilty of murder beyond a reasonable doubt but evidence was sufficient to convict him of voluntary manslaughter and on remand, defendant filed a written motion to dismiss the indictment alleging that to impose a sentence on the reduced offense would violate state constitutional and statutory prohibitions against double jeopardy, since jury had returned a signed verdict of not guilty of voluntary manslaughter, defendant's appeal was not procedurally correct, and proper judicial procedure required defendant to petition the appellate court for rehearing and petition the Supreme Court for leave to appeal if the relief he sought was not granted by the appellate court. People v. Goolsby, 70 Ill. App. 3d 832, 26 Ill. Dec. 893, 388 N.E.2d 894 (1 Dist. 1979), cert. denied, 445 U.S. 952, 100 S. Ct. 1602, 63 L. Ed. 2d 788 (1980).

Applicability

Strickland test for ineffective assistance of counsel applies to ineffective assistance claims brought under the Illinois Constitution. People v. Rish, 344 Ill. App. 3d 1105, 280 Ill. Dec. 575, 802 N.E.2d 826, 2003 Ill. App. LEXIS 1354 (3 Dist. 2003).

- In General

Where defendant was charged with personally discharging a firearm that proximately caused great bodily harm to the victim, 720 ILCS 5/18-2(a)(4), the trial court erred in ruling that the 15/20/25-to-life sentencing enhancements violated the double jeopardy ban on multiple punishments for the same offense; the firearm elements were not multiple punishments, and there was thus no double jeopardy violation. People v. Moss, 206 Ill. 2d 503, 276 Ill. Dec. 855, 795 N.E.2d 208, 2003 Ill. LEXIS 1410 (2003).

Reversal of a conviction based on insufficient evidence, which occurs when the prosecution has failed to prove its case, requires a judgment of acquittal; the state is barred by the double jeopardy clause from retrying defendant once a reviewing court has determined that the evidence introduced at trial was legally insufficient to convict. People v. Brown, 222 Ill. App. 3d 703, 165 Ill. Dec. 176, 584 N.E.2d 355 (1 Dist. 1991), cert. denied, 144 Ill. 2d 636, 169 Ill. Dec. 145, 591 N.E.2d 25 (1992).

A reversal for trial error is a determination that defendant has been convicted through a judicial proceeding which contains certain defects such as the incorrect admission or rejection of evidence, incorrect instructions or prosecutorial misconduct; retrial in these instances is not precluded by the double jeopardy clause. People v. Brown, 222 Ill. App. 3d 703, 165 Ill. Dec. 176, 584 N.E.2d 355 (1 Dist. 1991), cert. denied, 144 Ill. 2d 636, 169 Ill. Dec. 145, 591 N.E.2d 25 (1992).

To entitle a party, called as a witness, to the privilege of silence, it must appear from the circumstances of the case and the nature of the evidence which the witness is called to give, that there is a reasonable ground to apprehend danger to the witness from his being compelled to answer. People v. Schultz, 380 Ill. 539, 44 N.E.2d 601 (1942).

- Accumulation of Litter

None of defendant's 13 municipal code violations involving the accumulation of various forms of rubbish and debris on his property constituted the same offense as his violation of 415 ILCS 105/6 for double jeopardy purposes. People v. Pudlo, 272 Ill. App. 3d 1002, 209 Ill. Dec. 498,

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651 N.E.2d 676 (1 Dist. 1995), appeal denied, 164 Ill. 2d 577, 214 Ill. Dec. 328, 660 N.E.2d 1277 (1995), cert. denied, 517 U.S. 1137, 116 S. Ct. 1424, 134 L. Ed. 2d 548 (1996).

- Alcohol Blood Test

The summary suspension of a driver's license pursuant to the implied consent statute is fairly characterized as a remedial civil sanction rather than as punishment for double jeopardy purposes. People v. Dvorak, 276 Ill. App. 3d 544, 213 Ill. Dec. 120, 658 N.E.2d 869 (2 Dist. 1995), appeal denied, 172 Ill. 2d 557, 223 Ill. Dec. 197, 679 N.E.2d 382 (1997).

The implied consent statute (see subsection (c) of 625 ILCS 5/11-501.2), which allows a defendant the right to refuse to take the breath test but also allows the admission of his refusal into evidence, is not a violation of his right under this section, which provides that a person shall not be compelled in a criminal case to give evidence against himself; the inference of intoxication arising from a positive blood alcohol test is far stronger than that arising from a refusal to take the test, and the right to refuse the blood alcohol test is simply a matter of grace bestowed by the legislature. People v. Ahern, 119 Ill. App. 3d 532, 75 Ill. Dec. 31, 456 N.E.2d 852 (1 Dist. 1983).

- Arrest

Police officers have no right to arrest a person without a warrant unless they either see a crime committed or know that a crime has been committed and have reason to believe the accused is the guilty party; their duty is to take the person so arrested before a magistrate; they have no right to make a defendant talk; the investigation cannot be held pursuant to the law in making the defendant a witness against himself or herself because the presumption of innocence is still one of the cherished rights of citizenship under former Ill. Const. (1870), Art. II, § 10 (see now this section). Carter v. Southern Limited, Inc., 303 Ill. App. 502, 25 N.E.2d 590 (1 Dist. 1940).

- Attorney Disciplinary Proceedings

An attorney against whom a disciplinary proceeding is pending does not have a complete immunity from testifying as does a defendant in a criminal case, the attorney must appear as any other witness and assert the claimed privilege as to each incriminating question. In re Zisook, 88 Ill. 2d 321, 58 Ill. Dec. 786, 430 N.E.2d 1037 (1981), cert. denied, 457 U.S. 1134, 102 S. Ct. 2962, 73 L. Ed. 2d 1352 (1982).

Attorney disciplinary proceedings are not considered to be criminal in nature, therefore, an attorney in a disciplinary proceeding may be compelled to testify if he is granted immunity by the court from the use of such testimony at subsequent criminal proceedings and is so informed at the disciplinary hearing; thereafter, a continued refusal to testify may, obviously, result in disciplinary sanctions. In re March, 71 Ill. 2d 382, 17 Ill. Dec. 214, 376 N.E.2d 213 (1978).

Where respondent, a judge, urged that he in good faith feared that the state's attorney was seeking to indict him in a disciplinary hearing to investigate his conduct as an attorney, the fears he expressed were not unreal nor fanciful, and his duty as a lawyer did not require that he answer self-incriminating questions. In re Holland, 377 Ill. 346, 36 N.E.2d 543 (1941).

- Business Documents

Documents, voluntarily maintained by business owners in the ordinary course of running their business are not privileged. People v. Bernstein, 155 Ill. App. 3d 445, 108 Ill. Dec. 116, 508 N.E.2d 277 (1 Dist. 1987), cert. denied, 484 U.S. 1064, 108 S. Ct. 1023, 98 L. Ed. 2d 987 (1988).

An individual defendant charged with violating 740 ILCS 10/3 was not protected from the compulsory production of the books and records of a small, family partnership under either U.S.

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Const., Amend. IV or this section. People v. Lynch, 83 Ill. App. 3d 479, 39 Ill. Dec. 223, 404 N.E.2d 814 (1 Dist. 1980).

- Calling Defendant As Adverse Witness

In a proceeding under this Act, the calling of the defendant as an adverse witness when objection is made is a violation of the defendant's constitutional privilege against self-incrimination. People v. Beshears, 65 Ill. App. 2d 446, 213 N.E.2d 55 (5 Dist. 1965).

- Civil Proceedings

Proceeding to determine whether respondent was sexually dangerous was civil, not criminal, and therefore, remanding case for retrial without weighing evidence to determine whether defendant was proved guilty beyond a reasonable doubt did not violate provision against double jeopardy contained in this section. People v. McDonald, 186 Ill. App. 3d 1096, 134 Ill. Dec. 759, 542 N.E.2d 1266 (5 Dist. 1989).

The guaranty against compulsory incrimination is not limited to criminal cases and may be invoked in proceedings of a civil nature former Ill. Const. (1870), Art II, § 10 (see now this section). Powers v. Kelley, 83 Ill. App. 2d 289, 227 N.E.2d 376 (5 Dist. 1967).

The constitutional protection from being compelled to furnish evidence against oneself has been upheld in civil actions for penalties in cases involving federal laws, state laws and municipal ordinances. City of Chicago v. Berg, 48 Ill. App. 2d 251, 199 N.E.2d 49 (1964).

Where assault and battery action was civil in its nature, and was instituted to recover damages for the indignity, vexation, and physical injuries suffered by plaintiff, since it was a distinct tort action for damages not involving a penalty, it followed that calling defendant as a witness under former section 60 of the Civil Practice Act (see now 735 ILCS 5/2-1102) did not constitute involuntary incrimination. Kulikowski v. Roth, 330 Ill. App. 13, 69 N.E.2d 726 (1 Dist. 1946).

- Corporate Officer

The fact that an individual accused may be an officer of the corporation whose premises are illegally searched and whose property is illegally seized does not give him the right to object to the search and seizure or cause the exclusion of the evidence thus obtained. People v. Perry, 1 Ill. 2d 482, 116 N.E.2d 360 (1953).

- Corporate Records

The constitutional privilege against self incrimination cannot be claimed by the custodian of corporate records, nor does an employee of a professional corporation possess the privilege against self incrimination so far as records of the corporation are concerned. Department of Registration & Educ. v. Schmidt, 196 Ill. App. 3d 628, 143 Ill. Dec. 455, 554 N.E.2d 390 (1 Dist. 1990).

- Criminal Cases Only

Jeopardy, in its constitutional or common-law sense, has a strict application to criminal prosecutions only. Village of Maywood v. Houston, 10 Ill. 2d 117, 139 N.E.2d 233 (1956).

- Custodian of Corporate Records

A custodian of corporate books who produces them pursuant to a subpoena duces tecum, does not waive his personal privileges against self-incrimination when the books produced prove not to be self-explanatory. People v. Monroe, 27 Ill. 2d 449, 189 N.E.2d 350 (1963).

- Defective Chain of Evidence

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Where the State failed to show an adequate chain of custody for the cocaine and thus, the trial erred in admitting the cocaine, the retrial of defendant was permissible because it would not offend double jeopardy principles; the deficiency in the State's case was best characterized as trial error, not evidentiary insufficiency. People v. Howard, 387 Ill. App. 3d 997, 327 Ill. Dec. 599, 902 N.E.2d 720, 2009 Ill. App. LEXIS 17 (2 Dist. 2009).

- Defendant's Refusal to Assist Police

A defendant may invoke the privilege and refuse to assist the police in locating the fruits of the crime and evidence of a testimonial or communicative nature when his conviction had not yet become final or when an appeal is pending. People v. Beyah, 102 Ill. App. 3d 434, 58 Ill. Dec. 141, 430 N.E.2d 83 (1 Dist. 1981).

- Disclosure of Reports Prepared by Expert

On motion of the state asking that defendant inform the state whether there had been any scientific tests conducted or statements of experts given and, if so, to provide the names and addresses of the experts and their reports; that defendant inform it of the thing or article or the person examined or tested and advise the prosecution whether there had been any oral or written reports prepared showing the results of any tests; and that defendant provide all of such reports for its inspection and copying, the trial judge correctly decided that defendant could be required to disclose information sought in the prosecution's motion only if defendant intended to call the expert concerned as a witness or to use the requested reports or materials at a hearing or trial, as the materials sought were of a testimonial or communicative nature, and an accused has a constitutional privilege against being compelled to provide the state with such materials. People ex rel. Bowman v. Woodward, 63 Ill. 2d 382, 349 N.E.2d 57 (1976).

- Employees of Professional Corporations

Employees of professional corporations do not possess the privilege against self-incrimination so far as records of the corporation are concerned. In re Zisook, 88 Ill. 2d 321, 58 Ill. Dec. 786, 430 N.E.2d 1037 (1981), cert. denied, 457 U.S. 1134, 102 S. Ct. 2962, 73 L. Ed. 2d 1352 (1982).

- Failure to Inform of Attorney's Presence

The failure of the police to tell the defendant of the presence of his attorney did not require the suppression of his statements where the defendant was not held in custody or subject to custodial interrogation and, further, was not a suspect or an accused. People v. DeSantis, 319 Ill. App. 3d 795, 253 Ill. Dec. 227, 745 N.E.2d 1, 2000 Ill. App. LEXIS 986 (1 Dist. 2000), appeal denied, 195 Ill. 2d 583, 258 Ill. Dec. 96, 755 N.E.2d 479 (2001); overruled in part on other grounds, People v. Johnson, 208 Ill. 2d 118, 281 Ill. Dec. 38, 803 N.E.2d 442 (2003).

- Handwriting Sample

A handwriting sample, in contrast to the content of what is written therein, like the voice or the body itself, is an identifying physical characteristic which is outside self-incrimination protections. People v. Schmoll, 77 Ill. App. 3d 762, 33 Ill. Dec. 245, 396 N.E.2d 634 (2 Dist. 1979).

A grand jury witness may not interpose his privilege against self-incrimination against an order compelling him to produce handwriting exemplars. People ex rel. Hanrahan v. Power, 54 Ill. 2d 154, 295 N.E.2d 472 (1973).

- Home Invasion

Inmate's petition, in asserting the impropriety of a second home invasion conviction for a single break-in, asserted a claim of constitutional deprivation properly raised in a petition for post-conviction relief; the petition was sufficiently specific to communicate the legal principles supporting his constitutional claim. People v. Cowart, 389 Ill. App. 3d 1046, 329 Ill. Dec. 682,

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907 N.E.2d 1, 2009 Ill. App. LEXIS 47 (1 Dist. 2009), appeal denied, 233 Ill. 2d 571, 335 Ill. Dec. 638, 919 N.E.2d 357, 2009 Ill. LEXIS 1746 (2009).

- Illegally Obtained Evidence

Where evidence is obtained from the dwelling house of a defendant without authority of a search warrant, if it is of such a nature as would incriminate the defendant, contrary to the constitution, it should be suppressed by the court upon a petition filed in apt time, describing the illegal search, and asking that it be impounded and suppressed upon proof of the illegal search, without regard to the ownership of the property. People v. Grod, 385 Ill. 584, 53 N.E.2d 591 (1944).

The search of the residence of the defendant charged with burglary, without a warrant while he was in jail under suspicion of crime, and the production and use of stolen bonds seized from the warrantless search amounted to a direct violation of the former constitution of 1870, Article II, §§ 6 and 10 (see Ill. Const. (1970), Art. I, §§ 6 and 10). People v. Grod, 385 Ill. 584, 53 N.E.2d 591 (1944).

Conflicting testimony in larceny trial as to whether incriminating evidence was obtained from defendant's wife without his consent and without a warrant raised no question of the construction of either the state or federal Constitutions with reference to unlawful search and seizure, or to a person being required to give testimony against himself. People v. Totten, 378 Ill. 385, 38 N.E.2d 1 (1941).

- Improper Termination of Trial

The controlling issue determining whether the consequences of the federal and state constitutional protections against double jeopardy apply is whether the first trial was improperly terminated. People v. Collins, 48 Ill. App. 3d 643, 6 Ill. Dec. 296, 362 N.E.2d 1118 (3 Dist. 1977).

- Mental Commitment Proceeding

The calling of a respondent in a mental commitment proceeding to the witness stand to testify against his will and against the advice of counsel and over timely objections did not violate his privilege against self-incrimination under former section 10 of article II of the 1870 Constitution of Illinois (see now this section) and under the Fifth Amendment to the Constitution of the United States because it was civil in nature and the fact that it revealed a mental condition which required confinement for treatment did not bring it within the privilege. People ex rel. Keith v. Keith, 38 Ill. 2d 405, 231 N.E.2d 387 (1967).

- Misstatements by Court

Double jeopardy guarantees were not violated where trial court as finder of fact considering defendant's guilt of home invasion under three different theories mistakenly stated that he acquitted defendant under one of those theories and then immediately corrected himself; this was not the type of incident that the guarantee aimed at preventing. People v. Burnette, 325 Ill. App. 3d 792, 259 Ill. Dec. 268, 758 N.E.2d 391, 2001 Ill. App. LEXIS 766 (1 Dist. 2001).

- Mistrial

On appeal brought under Rule 604(f), Supreme Court Rules from the denial of defendants' motion to dismiss criminal contempt proceedings on former jeopardy grounds, it was held that retrial was not barred on double jeopardy grounds under Ill. Const. (1970), Art. I, § 10; although the City of Chicago's remarks during opening argument were inappropriate, a mistrial was not a guarantee, and the record did not support defendants' assertion that the comments of the City's attorney were made with the intention of securing a mistrial. People ex rel. City of Chicago v. Hollins, 368 Ill. App. 3d 934, 307 Ill. Dec. 253, 859 N.E.2d 253, 2006 Ill. App. LEXIS 1058 (1 Dist. 2006).

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After the trial court declared a mistrial with regard to two charges of domestic battery against defendant, the State was precluded from retrying defendant on double jeopardy grounds, because the trial court was too hasty in declaring a mistrial when allegedly prejudicial testimony was elicited from the victim during cross-examination with regard to her making domestic battery charges against three other men. Defendant was not given an opportunity to explain the gist of the cross-examination and otherwise object to the State's motion for the mistrial. People v. Dahlberg, 355 Ill. App. 3d 308, 291 Ill. Dec. 357, 823 N.E.2d 649, 2005 Ill. App. LEXIS 102 (2 Dist. 2005).

The government, like the defendant, is entitled to resolution of the case by verdict from the jury, and jeopardy does not terminate when the jury is discharged because it is unable to agree; the double jeopardy clause by its terms applies only if there has been some event, such as an acquittal, which terminated the original jeopardy. People v. Fisher, 259 Ill. App. 3d 445, 198 Ill. Dec. 359, 632 N.E.2d 689 (5 Dist.), appeal denied, 157 Ill. 2d 511, 205 Ill. Dec. 174, 642 N.E.2d 1291 (1994).

- Nonparty Deponent

Nonparty deponents may properly invoke in civil proceedings the privilege against self-incrimination. Orlove v. Novick, 78 Ill. App. 3d 1141, 34 Ill. Dec. 495, 398 N.E.2d 170 (1 Dist. 1979).

- Not Found

Where the sole and only purpose which led a witness to defy the court and refuse to answer questions was his own desire to protect his cousin from prosecution, the constitutional guaranties of this section could not be utilized. People v. Schultz, 312 Ill. App. 220, 38 N.E.2d 379 (1 Dist. 1941), aff'd, 380 Ill. 539, 44 N.E.2d 601 (1942).

- Papers and Documents

Compelling production of voluntarily kept documents would have testimonial impact and a possibly incriminating effect, therefore the state, in order to compel production of these records, had to grant owners immunity for the act of producing the documents and the compelled testimonial statements that accompany production. People v. Bernstein, 155 Ill. App. 3d 445, 108 Ill. Dec. 116, 508 N.E.2d 277 (1 Dist. 1987), cert. denied, 484 U.S. 1064, 108 S. Ct. 1023, 98 L. Ed. 2d 987 (1988).

The privilege against self-incrimination does not prevent the use of information voluntarily supplied by the witness or information supplied by a third party and it has long been recognized that the privilege extends to private papers as well as oral testimony. In re Zisook, 88 Ill. 2d 321, 58 Ill. Dec. 786, 430 N.E.2d 1037 (1981), cert. denied, 457 U.S. 1134, 102 S. Ct. 2962, 73 L. Ed. 2d 1352 (1982).

- Protection of Third Party

A witness cannot claim the privilege of silence for a purely fanciful or sentimental reason or for purposes of securing from prosecution some third person who is interested in concealing the facts to which the witness could testify. People v. Newmark, 312 Ill. 625, 144 N.E. 338 (1924); People v. Schultz, 380 Ill. 539, 44 N.E.2d 601 (1942).

A party when called as a witness is not entitled to the privilege of silence by reason of fanciful excuses, nor is the privilege to be so far extended that it may be put forward for sentimental reasons, or for protection against an imaginary danger, or for the purpose of securing immunity to some third person. People v. Boyle, 312 Ill. 586, 144 N.E. 342 (1924).

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Since every good citizen is bound to aid in the enforcement of the law and has no right to permit himself, under the pretext of shielding himself, to be made the tool of others who are desirous of seeking shelter behind his privilege. People v. Spain, 307 Ill. 283, 138 N.E. 614 (1923).

- Public Employees

If a public employee refuses to testify as to a matter concerning which his employer is entitled to inquire, he may be discharged for insubordination, but if he does testify his answers may not be used against him in a subsequent criminal prosecution. Kammerer v. Board of Fire & Police Comm'rs, 44 Ill. 2d 500, 256 N.E.2d 12 (1970).

- Statement Made in Presence of Accused

Statements made in the presence of an accused are not admissible where, by his conduct, the accused person shows clearly that he does not acquiesce in the statements. People v. Hodson, 406 Ill. 328, 94 N.E.2d 166 (1950).

- Summary Suspension of Driving Privilege

Statutory summary suspension is remedial in nature and does not constitute punishment for double jeopardy purposes. People v. Eck, 279 Ill. App. 3d 541, 216 Ill. Dec. 219, 664 N.E.2d 1147 (5 Dist. 1996).

Statutory summary suspension of driving privileges does not constitute punishment for double jeopardy purposes because it does not constitute forfeiture of a fundamental property right, but merely temporary suspension of a privilege. People v. Eck, 279 Ill. App. 3d 541, 216 Ill. Dec. 219, 664 N.E.2d 1147 (5 Dist. 1996).

- Telephone Call by Attorney

A defendant is not entitled to suppression of a statement made after the time that his attorney telephones the police station, but before the time the attorney is physically present at the police station. People v. Chapman, 194 Ill. 2d 186, 252 Ill. Dec. 474, 743 N.E.2d 48, 2000 Ill. LEXIS 1719 (2000).

- Voice Identity

The state was properly allowed to use tape recordings as evidence that defendant committed the crimes for which he was charged, as his identity was proven through other circumstantial evidence. People v. Edwards, 144 Ill. 2d 108, 161 Ill. Dec. 788, 579 N.E.2d 336 (1991), cert. denied, 504 U.S. 942, 112 S. Ct. 2278, 119 L. Ed. 2d 204 (1992).

- Voluntary Submission to Intoximeter

In a conviction for violating former section 47 of the Uniform Act Regulating Traffic on Highways, (Ill. Rev. Stat., ch. 95 1/2, para. 144), which declared it unlawful for any person under the influence of intoxicating liquor to drive a vehicle, where the defendant voluntarily agreed to take intoximeter test but did not finish it, where no evidence was offered as to what the test would have shown had it been completed, and where remarks and evidence relative to the test were incidental to and a part of the general conduct of the defendant, there was no denial of due process on violation of defendant's privilege against self-incrimination under the Constitution. People v. Knutson, 12 Ill. 2d 78, 145 N.E.2d 35 (1957).

Attachment of Jeopardy

As defendant was 16 years old at the time of an alleged armed robbery with a gun, under 705 ILCS 405/5-130(1)(a), a trial court had no jurisdiction and no authority to accept defendant's admission to the allegations in the wardship petition; as the proceedings before the dismissal of

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the wardship petition were a nullity, there was no prior jeopardy for double jeopardy purposes, and defendant was properly recharged in a felony indictment. People v. Gilberto G.-P. (In re Gilberto G.-P.), 375 Ill. App. 3d 728, 313 Ill. Dec. 910, 873 N.E.2d 534, 2007 Ill. App. LEXIS 883 (1 Dist. 2007).

Where the Deputy Sheriff acted under the proper authority of the State's Attorney's Office in accepting defendant's plea and, the court's acceptance of the defendant's guilty plea and entry of judgment thereon was not void and jeopardy did not attach. People v. Rolland, 221 Ill. App. 3d 195, 163 Ill. Dec. 753, 581 N.E.2d 907 (5 Dist. 1991).

Where proper declaration of a mistrial was made, no jeopardy attached to bar reprosecution in a new case subsequent to nolle prosequi, or to bar reindictment and retrial in the same case without a nolle prosequi. People v. Yarbrough, 179 Ill. App. 3d 198, 128 Ill. Dec. 513, 534 N.E.2d 695 (5 Dist. 1989).

Jeopardy does not attach until the defendant is at risk of conviction for the crime of which he is accused. People v. Turner, 186 Ill. App. 3d 849, 134 Ill. Dec. 589, 542 N.E.2d 935 (1 Dist. 1989).

Jeopardy had attached when the state moved to nol-pros three counts of a charge and the motion was granted. People v. Cregar, 172 Ill. App. 3d 807, 122 Ill. Dec. 613, 526 N.E.2d 1376 (4 Dist. 1988).

Jeopardy attaches in a jury trial when the jury has been impaneled and sworn. People v. Cregar, 172 Ill. App. 3d 807, 122 Ill. Dec. 613, 526 N.E.2d 1376 (4 Dist. 1988).

Although the court erred in directing the verdict of acquittal on the home invasion charge, the legal effect of the directed verdict was to bar, under double jeopardy principles, the vacation or reversal of that verdict. People v. Strong, 129 Ill. App. 3d 427, 84 Ill. Dec. 756, 472 N.E.2d 1152 (1 Dist. 1984).

A defendant is placed in jeopardy when he or she is put to trial. People v. Williams, 130 Ill. App. 3d 11, 85 Ill. Dec. 168, 473 N.E.2d 536 (1 Dist. 1984).

Jeopardy attaches in a bench trial when the first witness is sworn and the court begins to hear evidence. People v. Deems, 81 Ill. 2d 384, 43 Ill. Dec. 8, 410 N.E.2d 8 (1980), cert. denied, 450 U.S. 925, 101 S. Ct. 1378, 67 L. Ed. 2d 355 (1981).

Jeopardy attached when the trial court in a contempt proceeding began to hear the evidence, and the circumstance that defendant was not punished in the contempt proceeding did not eliminate the problem of double jeopardy from a second charge based on the same offense. People v. Holmes, 54 Ill. App. 3d 843, 11 Ill. Dec. 498, 368 N.E.2d 1106 (3 Dist. 1977).

The concept of "jeopardy" requires that the accused be on trial for the offense charged; that is, that he be present at a judicial proceeding aimed at reaching a final determination of his guilt or innocence of the offense charged. Where it was manifest from an examination of the transcript of the proceedings before the magistrate, that the sole purpose of those proceedings was to determine if probable cause existed for holding defendant to the grand jury, defendant was in no manner put in "jeopardy" for the offense charged. People v. Chatman, 38 Ill. 2d 265, 230 N.E.2d 879 (1967).

The acquittal or conviction of a person accused of a crime by a tribunal which is wanting in jurisdiction and authority to adjudicate and render a valid judgment in the premises does not constitute a bar to the further prosecution of the accused, and jeopardy does not attach at any stage in such a proceeding. Paulsen v. People, 195 Ill. 507, 63 N.E. 144 (1902).

Bill of Rights

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- In General

Article II of the Illinois Constitution of 1870 was termed the Bill of Rights. People v. Humphreys, 353 Ill. 340, 187 N.E. 446 (1933).

- Mandatory Enforcement

Every court is bound to enforce the provisions of the Illinois Bill of Rights as well as all other constitutional provisions, with no discretion in any particular case, and without regard to whether in some instances the public good might temporarily be better served by disregarding them. People v. Humphreys, 353 Ill. 340, 187 N.E. 446 (1933).

Broad Application of Privilege

If the proposed evidence has a tendency to incriminate the witness or to establish a link in the chain of evidence which may lead to his conviction, or if the proposed evidence would disclose the names of persons upon whose testimony the witness might be convicted of a criminal offense, he cannot be compelled to answer. People v. Newmark, 312 Ill. 625, 144 N.E. 338 (1924).

When this section arises, it should be applied in a broad and liberal spirit, in order to secure to the citizen that immunity from every species of self-accusation implied in the brief but comprehensive language in which it is expressed. People v. Newmark, 312 Ill. 625, 144 N.E. 338 (1924).

When a proper case arises, the due process provision of former Art. II, § 2 (see now Art. I, § 2) and the privilege against self incrimination in former Art. II, § 10 (see now Art. I, § 10) should be applied in a broad and liberal spirit in order to secure to the citizen that immunity from every species of self-accusation implied in the brief but comprehensive language in which they are expressed. People v. Spain, 307 Ill. 283, 138 N.E. 614 (1923).

Burden of Proof

To exclude a confession under the Fourth and Fourteenth Amendments and the similar provision of the Illinois Constitution a defendant must make a motion to suppress evidence and the burden of proof is on the defendant. People v. Harris, 105 Ill. App. 2d 305, 245 N.E.2d 80 (1 Dist. 1969), aff'd, 55 Ill. 2d 15, 302 N.E.2d 1 (1973).

Collateral Estoppel Doctrine

Overruling its decision in People v. Grayson, 58 Ill. 2d 260, 319 N.E.2d 43 (1974) and appellate decisions in People v. Porter, 241 Ill. App. 3d 116, 608 N.E.2d 1210 (1993) and In re A.V., 285 Ill. App. 3d 470, 674 N.E.2d 118 (1996), the Illinois Supreme Court ruled that because of the differing burdens of proof in a criminal prosecution and a probation revocation hearing, the collateral estoppel concept of double jeopardy would no longer prohibit the State from proceeding with a probation revocation proceeding if a defendant was acquitted on a substantive charge that provided the basis for revoking probation. People v. Colon, 225 Ill. 2d 125, 310 Ill. Dec. 396, 866 N.E.2d 207, 2007 Ill. LEXIS 446 (2007).

The collateral estoppel doctrine is a component part of the constitutional guarantee against double jeopardy. People v. Winston, 200 Ill. App. 3d 296, 146 Ill. Dec. 810, 558 N.E.2d 773 (4 Dist. 1990).

Confession

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With regard to a defendant's conviction for first-degree murder, the police lying to him and telling him that they had a video tape of the murder was not so unduly coercive to have rendered his confession involuntary and, thus, inadmissible since the police deception in the case had little, if any, undue coercive effect. In light of the totality of the circumstances, even considering any coercive effect of the detectives' deceptive tactics, the appellate court found that the interrogation was not so unduly coercive that the defendant's confession was not a product of his own free will. People v. Rubio, 392 Ill. App. 3d 914, 331 Ill. Dec. 986, 911 N.E.2d 1216, 2009 Ill. App. LEXIS 605 (2 Dist. 2009).

While defendant was not in custody during the first portion of defendant's interview with police, defendant's statements to police should have been suppressed because the police employed a "question first, warn later" technique, and that the statements made after defendant was given Miranda warnings were not voluntary because a reasonable person in defendant position would not have understood that he or she had a genuine choice about whether to continue to speak with the police. People v. Alfaro, 386 Ill. App. 3d 271, 324 Ill. Dec. 858, 896 N.E.2d 1077, 2008 Ill. App. LEXIS 993 (2 Dist. 2008).

Where defendant, charged with murder, moved to suppress inculpatory statements he made to police officers without the benefit of Miranda warnings when he was 16 years old, it was unnecessary to consider what a reasonable 16-year-old in his position would have perceived as to whether he was in custody when he made the statements because such a consideration injected a subjective element into what is supposed to be an objective test. People v. Croom, 379 Ill. App. 3d 341, 318 Ill. Dec. 450, 883 N.E.2d 681, 2008 Ill. App. LEXIS 115 (1 Dist. 2008).

Although defendant's initial statements regarding the contents of a safe were inadmissible because he had not been advised of his Miranda rights, his later confession regarding that matter was admissible as the evidence showed that it was voluntarily made after he was advised of and waived his Miranda rights, and there was no evidence that detectives had used an impermissible two-step interrogation process to secure the second confession. People v. Loewenstein, 378 Ill. App. 3d 984, 318 Ill. Dec. 459, 883 N.E.2d 690, 2008 Ill. App. LEXIS 113 (1 Dist. 2008).

Defendant's jailhouse conversation with an undercover informant, whom defendant believed to be a fellow inmate, did not constitute a custodial interrogation implicating Miranda Fifth Amendment rights of self-incrimination. Thus, his motion to suppress statements in his solicitation of murder for hire case under 720 ILCS 5/8-1.2 made to informant was improperly granted. People v. Lashmet, 372 Ill. App. 3d 1037, 311 Ill. Dec. 368, 868 N.E.2d 368, 2007 Ill. App. LEXIS 385 (1 Dist. 2007).

Although defendant had been advised of his Miranda rights when he made inculpatory statements during questioning at a police station, the statements should have been suppressed because they were not sufficiently attenuated from illegally obtained statements defendant had made several hours earlier while awaiting treatment for a gunshot wound; the questioning at the police station was based on the very information the police had illegally obtained at the hospital; although three hours had elapsed between the two interrogations, the delay was necessitated by defendant's medical treatment and did nothing to remove the taint of the earlier interrogation, and the misconduct of the police during their investigation was flagrant and carried out for an improper purpose. People v. Dennis, 373 Ill. App. 3d 30, 310 Ill. Dec. 662, 866 N.E.2d 1264, 2007 Ill. App. LEXIS 396 (1 Dist. 2007).

Defendant's confession, under all of the circumstances, was voluntarily given despite the fact that the police engaged in deception in defendant's case where police were questioning defendant about the bludgeoning death of a victim who lived in a home near where defendant resided; although defendant was only 15 years old at the time of the crime and 16 years old when defendant gave defendant's statement to police, defendant was otherwise articulate, was not subjected to physical or mental abuse, had a youth officer present to make sure defendant's rights were respected, and the police trickery was not used to coerce defendant into confessing.

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People v. Minniti, 373 Ill. App. 3d 55, 311 Ill. Dec. 251, 867 N.E.2d 1237, 2007 Ill. App. LEXIS 448 (1 Dist. 2007), appeal denied, 225 Ill. 2d 660, 875 N.E.2d 1120, 2007 Ill. LEXIS 1365 (2007).

Where the intermediate appellate court, in finding defendant's confession violated U.S. Const. Amend. V and Ill. Const. Art. I, § 10, stated that defendant was fed sporadically with donuts and fast food, with only a passing glance to the notion of nutrition, the intermediate appellate court erred in implying a square meal requirement into its analysis as to whether an inculpatory statement was made voluntarily. People v. Nicholas, Ill. 2d , Ill. Dec. , N.E.2d , 2005 Ill. LEXIS 2080 (Dec. 1, 2005).

Where defendant was presented to a trial judge 40 hours after defendant confessed to the murder, the confession was voluntary under U.S. Const. Amend. V and Ill. Const. Art. I, § 10. Miranda warnings were read to defendant numerous times, defendant was in good physical shape and was alert and articulate, defendant was given food, beverages, and cigarettes, defendant was given breaks, defendant was never handcuffed, and police scrupulously abided by defendant's decision during the time that defendant invoked defendant's U.S. Const. Amend. V rights. People v. Nicholas, Ill. 2d , Ill. Dec. , N.E.2d , 2005 Ill. LEXIS 2080 (Dec. 1, 2005).

Appellate court improperly incorporated into its voluntary confession analysis under U.S. Const. Amend. V and Ill. Const. Art. I, § 10 whether defendant was fed nutritious food; nutrition was not a factor in the voluntariness factor, and it was improper for the appellate court to imply a square meal requirement into its analysis of whether an inculpatory statement was made voluntarily. People v. Nicholas, Ill. 2d , Ill. Dec. , N.E.2d , 2005 Ill. LEXIS 1629 (Dec. 1, 2005).

Defendant's confession was voluntary under U.S. Const. Amend. V and Ill. Const. Art. I, § 10, as defendant was in fine physical shape and was alert and articulate, Miranda warnings were read to defendant numerous times, the police honored defendant's invocation of the right to remain silent, the police fed defendant, gave defendant beverages, and provided defendant with cigarettes, and there was no evidence of mental or physical abuse. People v. Nicholas, Ill. 2d , Ill. Dec. , N.E.2d , 2005 Ill. LEXIS 1629 (Dec. 1, 2005).

- Admissible

Trial court did not err in denying defendant's motion to suppress because the statement made by defendant in which defendant admitted smoking marijuana in defendant's vehicle just before driving was not the result of custodial interrogation and, therefore, Miranda warnings were not required as a prerequisite for admitting the statement into evidence. People v. Briseno, 343 Ill. App. 3d 953, 278 Ill. Dec. 641, 799 N.E.2d 359, 2003 Ill. App. LEXIS 1192 (1 Dist. 2003).

Fact that the prisoner was not warned that the confession might be used against him did not render it inadmissible. People v. Kelly, 404 Ill. 281, 89 N.E.2d 27 (1949).

- Admissibility Generally

A confession is not rendered inadmissible by the mere fact it was made while in the custody of the police or by the fact it was made after the accused was illegally arrested or because it was elicited by questions put by the police or came after exhortations to tell the truth. People v. Miller, 13 Ill. 2d 84, 148 N.E.2d 455 (1958).

- Miranda Rights

Trial court erred by denying a defendant's motion to suppress her videotaped confession and, therefore, her conviction for aggravated kidnapping was reversed on appeal, as the trial court's finding that she had intelligently and knowingly waived her Miranda rights was against the manifest weight of the evidence based on her cognitive limitations, a State expert who doubted her ability to comprehend all of her Miranda rights and the testimony of other court appointed

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experts, the trial judge being dismissive of the opinions of all 3 experts in evaluating the defendant's cognitive abilities and drawing different conclusions, and her continuing exhibition of an inability to understand her right to remain silent. The error was not harmless as the appellate court could not conclude that the defendant's videotaped confession had no impact upon the determination of the trier of fact since the record revealed that, apart from the defendant's videotaped confession, the only evidence of her participation in the crime came from: (1) equivocal videotaped statements of 2 codefendants, which were recanted at trial; (2) the presence of the defendant's DNA on a cigarette butt found inside the car the victim was placed; (3) the testimony of a co-defendant that the defendant was present inside the apartment while the other codefendants beat and sodomized the victim; and (4) the testimony of a detective that the defendant came to the police station and stated that "something bad" happened at her house, that she was "involved" and that she knew what happened to the victim. People v. Daniels, 391 Ill. App. 3d 750, 330 Ill. Dec. 446, 908 N.E.2d 1104, 2009 Ill. App. LEXIS 276 (1 Dist. 2009).

Principal and the dean of students were not agents of the police when the questioned defendant, a student, in the office of the dean of students and therefore, were not required to advise defendant of his Miranda rights. People v. Pankhurst, 365 Ill. App. 3d 248, 302 Ill. Dec. 329, 848 N.E.2d 628, 2006 Ill. App. LEXIS 385 (1 Dist. 2006).

- Suppression Procedure

Where the thrust of the motion brought under U.S. Const., Amends. 5 and 14, and Ill. Const. (1970), Art. II, § 10, and all the testimony under it were directed to suppressing the confession as involuntary, the trial court did not err in treating the motion to suppress the confession rather than a Fourth Amendment motion to suppress evidence. People v. Harris, 105 Ill. App. 2d 305, 245 N.E.2d 80 (1 Dist. 1969), aff'd, 55 Ill. 2d 15, 302 N.E.2d 1 (1973).

- Voluntariness

Defendant's confession was not involuntary because, while the fact that defendant was a diabetic was uncontradicted, the officers maintained that defendant made no complaints or requests during the interview and never informed them that he was a diabetic and required insulin; he never indicated he required food, medical attention, or assistance. People v. Anderson, 407 Ill. App. 3d 662, 348 Ill. Dec. 406, 944 N.E.2d 359, 2011 Ill. App. LEXIS 88 (1 Dist. 2011).

State failed to carry its burden of showing that statements made by defendant as he was awaiting treatment for a gunshot wound were voluntary given defendant's unknown medical condition, the intensity of the questioning, the absence of Miranda warnings, and the fact that toward the end of the questioning, defendant broke down in tears. People v. Dennis, 373 Ill. App. 3d 30, 310 Ill. Dec. 662, 866 N.E.2d 1264, 2007 Ill. App. LEXIS 396 (1 Dist. 2007).

Circumstances indicated that a statement defendant gave to the police was voluntary and did not violate Ill. Const. (1970), Art. I, § 10; defendant was read defendant's Miranda rights, and defendant had also had defendant's Miranda rights read and explained to defendant on at least two previous occasions. Further, the duration of the interrogation of defendant was relatively short and defendant was accompanied by defendant's mother throughout the interrogation. People v. Johnson, 368 Ill. App. 3d 1073, 307 Ill. Dec. 153, 859 N.E.2d 153, 2006 Ill. App. LEXIS 1050 (1 Dist. 2006).

Defendant's motion to suppress his confession was properly denied as: (1) the 30-hour delay in presenting defendant to the trial court was needed to confirm defendant's identification by fingerprints and by the eyewitnesses and to confirm defendant's identification as the shooter through lineup identifications, (2) defendant understood his Miranda rights, (3) defendant never asked for an attorney, never said he wanted to remain silent, was never told he would get a 20-year sentence in exchange for his cooperation, and was never threatened with the death penalty, (4) defendant was given food and drink, was allowed access to bathroom facilities, and was given the opportunity to smoke, and (5) the time-delay was not per se excessive. People v. Karim, 367 Ill. App. 3d 67, 304 Ill. Dec. 739, 853 N.E.2d 816, 2006 Ill. App. LEXIS 649 (1 Dist. 2006).

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Circumstances of the seizure and interrogation of a person in connection with a crime, including the absence of the counsel and Miranda warnings, and the procurement of a confession violated the constitutional guarantees under the Illinois Constitution where the police went to the person's home, told her they needed her assistance in the investigation and, after the person accompanied the police to the station, was never told that she was free to leave and was continually interrogated until she confessed to a polygraph operator. United States ex rel. Daniels v. Baird, 326 F. Supp. 2d 909, 2004 U.S. Dist. LEXIS 14050 (N.D. Ill. 2004).

Defendant's previous experience with the criminal justice system is a relevant factor in determining whether a defendant is aware of his rights and whether a statement was given voluntarily, and prior prosecutions are relevant, as are prior convictions; voluntariness of a confession is to be determined by the judge alone, but a defendant may still present evidence to the trier of fact challenging the statement's reliability or truth. People v. Johnson, 208 Ill. 2d 53, 281 Ill. Dec. 1, 803 N.E.2d 405, 2004 Ill. LEXIS 11 (2004).

A "physical confrontation" between the defendant and police had no bearing on the events which transpired between the defendant and another police force, or the assistant state's attorney; accordingly, the statement made by the defendant to the assistant state's attorney while in the custody of the second police force was not coerced. People v. Holland, 121 Ill. 2d 136, 117 Ill. Dec. 109, 520 N.E.2d 270 (1987), aff'd, 493 U.S. 474, 110 S. Ct. 803, 107 L. Ed. 2d 905 (1990), overruled on other grounds, People v. Edwards, 144 Ill. 2d 108, 161 Ill. Dec. 788, 579 N.E.2d 336 (1991), overruled on other grounds, People v. McCauley, 163 Ill. 2d 414, 206 Ill. Dec. 671, 645 N.E.2d 923 (1994).

Whether a statement is voluntarily given depends upon the totality of the circumstances. The test is whether it has been made freely, voluntarily and without compulsion or inducement of any sort, or whether the defendant's will was overcome at the time he confessed. People v. Ybarra, 46 Ill. App. 3d 1049, 5 Ill. Dec. 355, 361 N.E.2d 678 (1 Dist. 1977).

Confessions are competent evidence only where voluntarily given and confessions obtained by methods of coercion are violative of both section 10 of article I of the Illinois constitution, and the recognized application of the due process clause of the fourteenth amendment to the Federal constitution to confessions obtained in state cases. People v. Miller, 13 Ill. 2d 84, 148 N.E.2d 455 (1958).

Where pretrial confession of the defendant was the only direct evidence which connected him with the actual crime of murder and confession was admitted in evidence over objections that it had been illegally obtained, the court's failure to hear, out of the presence of the jury, evidence concerning the circumstances under which the confession was made for the purpose of determining whether it was voluntarily made or was procured by pressure, fraud, hope, fear, or other undue influence violated defendant's rights against self-incrimination and not to be deprived of life, liberty or property without due process of law, under Ill. Const., Art. I, §§ 2 and 10 (1970). People v. Wagoner, 8 Ill. 2d 188, 133 N.E.2d 24 (1956).

A defendant's confession to murder was held to be involuntary where he was subjected to extensive interrogation day and night for nearly three days, he was not permitted to see relatives or friends and had no lawyer with whom he could consult, he had been trailed by detectives for almost six months and yet no charge was placed against him until the State's attorney had been ordered by a court to produce him in response to a writ of habeas corpus, no warrant had been issued for his arrest, and he was not taken before any magistrate for examination until after a habeas corpus writ had been obtained in his behalf. People v. Goldblatt, 383 Ill. 176, 49 N.E.2d 36 (1943).

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Ill. Const. Art. 1, § 10 is construed in the same manner as the Double Jeopardy Clause of the Fifth Amendment and provides no greater protection. People v. Andrews, 358 Ill. App. 3d 744, 294 Ill. Dec. 543, 831 N.E.2d 66, 2005 Ill. App. LEXIS 617 (2 Dist. 2005), appeal denied, 217 Ill. 2d 569, 297 Ill. Dec. 516, 838 N.E.2d 3 (2005); substituted opinion, 2006 Ill. App. LEXIS 228 (Ill. App. Ct. 2d Dist. 2006).

Decisions of the United State Supreme Court construing the Fifth Amendment are authoritative in construing the provision of Article I, § 10 of the Illinois Constitution. People v. Cunningham, 177 Ill. App. 3d 544, 126 Ill. Dec. 826, 532 N.E.2d 511 (1 Dist. 1988).

In the absence of a clear indication from the Illinois Supreme Court to the contrary, the Illinois Constitution will be interpreted in a manner consistent with the U.S. Constitution with regard to double jeopardy. People v. Russell, 165 Ill. App. 3d 569, 116 Ill. Dec. 416, 519 N.E.2d 6 (5 Dist. 1987).

This section does not impose any higher standard than the Fifth Amendment to the U.S. Constitution. People v. Whitecotton, 162 Ill. App. 3d 173, 113 Ill. Dec. 149, 514 N.E.2d 1160 (5 Dist. 1987).

The Illinois immunity statute is coextensive with both the United States and Illinois Constitutions. People v. Taddeo, 113 Ill. App. 3d 639, 69 Ill. Dec. 427, 447 N.E.2d 862 (1 Dist. 1983).

Despite differences in language, the federal and state privileges against self-incrimination are identical. People v. Lynch, 83 Ill. App. 3d 479, 39 Ill. Dec. 223, 404 N.E.2d 814 (1 Dist. 1980).

The provision of this section of the Illinois Constitution and the provision of the Fifth Amendment to the Constitution of the United States differ in semantics rather than in substance, and should be given the same construction. People v. Henne, 11 Ill. App. 3d 405, 296 N.E.2d 769 (4 Dist. 1973); People v. Schmoll, 77 Ill. App. 3d 762, 33 Ill. Dec. 245, 396 N.E.2d 634 (2 Dist. 1979); People v. Givens, 135 Ill. App. 3d 810, 90 Ill. Dec. 504, 482 N.E.2d 211 (4 Dist. 1985); People v. Cunningham, 177 Ill. App. 3d 544, 126 Ill. Dec. 826, 532 N.E.2d 511 (1 Dist. 1988).

The guaranties of the fourth and fifth amendments of the Constitution of the United States were in effect the same as sections 6 and 10 of article II of the 1870 Illinois Constitution (see now Ill. Const., Art. I, §§ 6 and 10 (1970)) and construed in favor of the accused. People v. Grod, 385 Ill. 584, 53 N.E.2d 591 (1944).

Where it is sought by statute to authorize the courts to grant immunity to material witnesses, a construction must not be placed upon the immunity statute which will abridge the constitutional privilege of silence. People v. Newmark, 312 Ill. 625, 144 N.E. 338 (1924).

Conviction for Lesser Offense

- Mandamus Improper

Where each defendant was charged with delivery of more than 30 grams of a substance containing cocaine, but was found guilty of the offense of delivery of less than 30 grams of a substance containing cocaine, conviction of the lesser offense operated as an acquittal of a greater offense. Therefore, issuance of writs of mandamus violated federal and Illinois constitutional guarantees against double jeopardy. People ex rel. Daley v. Limperis, 86 Ill. 2d 459, 56 Ill. Dec. 666, 427 N.E.2d 1212 (1981).

- Offense Not Charged

Trial court was entitled to find defendant guilty of a lesser-included offense of attempted aggravated criminal sexual assault, even though defendant was not charged with the lesser-

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included offense. People v. Johnson, 304 Ill. App. 3d 599, 237 Ill. Dec. 738, 710 N.E.2d 161, 1999 Ill. App. LEXIS 193 (1 Dist. 1999).

- Subsequent Prosecution Barred

Trial court properly granted defendant's motion to dismiss aggravated driving under the influence of alcohol charges based on the allegation that he was under the influence of alcohol when he ran over his sister without knowing it and then drove off; defendant had already pled guilty in another county, where he had driven after that incident, to driving under the influence of alcohol, and since the charges in the two counties arose from a single physical act and the previously-prosecuted charge was a lesser offense of the latter charge, he was protected from subsequent prosecution through his constitutional right against double jeopardy. People v. Brener, 357 Ill. App. 3d 868, 294 Ill. Dec. 280, 830 N.E.2d 692, 2005 Ill. App. LEXIS 552 (2 Dist. 2005).

Defendant could not be prosecuted for reckless homicide after he was convicted of reckless driving, arising from the same incident. People v. Sienkiewicz, 331 Ill. App. 3d 70, 264 Ill. Dec. 876, 771 N.E.2d 580, 2002 Ill. App. LEXIS 477 (2 Dist. 2002), appeal denied, 201 Ill. 2d 605, 271 Ill. Dec. 939, 786 N.E.2d 197 (2002), cert. denied, 537 U.S. 1166, 123 S. Ct. 983, 154 L. Ed. 2d 905 (2003), aff'd, 208 Ill. 2d 1, 280 Ill. Dec. 516, 802 N.E.2d 767 (2003).

Where defendant was convicted of voluntary manslaughter (now second degree murder), the doctrine of former jeopardy barred any further prosecution on the greater offense of murder, for if defendant were tried again for murder, a charge of which he has already been impliedly acquitted, he would be twice put in jeopardy for the same offense in violation of the provisions of our constitution; accordingly, defendant's conviction of murder was vacated; the conviction of voluntary manslaughter was affirmed. People v. Fox, 114 Ill. App. 3d 593, 70 Ill. Dec. 387, 449 N.E.2d 261 (1 Dist. 1983).

Deadlocked Jury

Prosecution was not barred even though defendant was formerly prosecuted for the same offense, based upon the same facts, because such former prosecution was not terminated improperly after the jury was impaneled and sworn but before findings were rendered by the trier of facts, as prohibited by 720 ILCS 5/3-4(a)(3). Rather, a mistrial was declared after the jury was unable to reach a unanimous verdict. People v. Cearlock, 381 Ill. App. 3d 975, 320 Ill. Dec. 749, 887 N.E.2d 893, 2008 Ill. App. LEXIS 407 (1 Dist. 2008), appeal denied, 229 Ill. 2d 634, 325 Ill. Dec. 8, 897 N.E.2d 256, 2008 Ill. LEXIS 1386 (2008).

Defendant's retrial after a hung jury did not violate his double jeopardy rights even though he objected to the mistrial because the trial court correctly declared a manifest necessity for the retrial. People v. Andrews, 358 Ill. App. 3d 744, 294 Ill. Dec. 543, 831 N.E.2d 66, 2005 Ill. App. LEXIS 617 (2 Dist. 2005), appeal denied, 217 Ill. 2d 569, 297 Ill. Dec. 516, 838 N.E.2d 3 (2005); substituted opinion, 2006 Ill. App. LEXIS 228 (Ill. App. Ct. 2d Dist. 2006).

When a jury is truly unable to reach a unanimous verdict, the defendant's jeopardy is not terminated. Therefore, a retrial following a hung jury does not violate double jeopardy principles. People v. Andrews, 358 Ill. App. 3d 744, 294 Ill. Dec. 543, 831 N.E.2d 66, 2005 Ill. App. LEXIS 617 (2 Dist. 2005), appeal denied, 217 Ill. 2d 569, 297 Ill. Dec. 516, 838 N.E.2d 3 (2005); substituted opinion, 2006 Ill. App. LEXIS 228 (Ill. App. Ct. 2d Dist. 2006).

- Effect of Mistrial

When a mistrial is declared because the jury is deadlocked, retrial is barred by the double jeopardy prohibition if the evidence introduced at the trial was insufficient to convict the defendant but a retrial is permissible when the first trial produced sufficient evidence to convict the defendant. People ex rel. Daley v. Crilly, 108 Ill. 2d 301, 91 Ill. Dec. 601, 483 N.E.2d 1236 (1985).

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Where, in a prosecution for murder that ended in a "hung jury," defendant argued that since 11 jurors voted to find him guilty of voluntary manslaughter, and one juror voted to find him not guilty, the jury was in agreement that the defendant did not have the requisite state of mind to be guilty of murder, and therefore, defendant's rights against double jeopardy were violated when he was placed on trial the second time for the murder. Although defendant's argument was novel if not ingenious the appellate court was unable to find any sanction for the novel argument and procedure defendant advanced, and it could not be approved in his case. People v. Hall, 25 Ill. App. 3d 992, 324 N.E.2d 50 (5 Dist. 1975).

A mistrial, declared because a deadlocked jury could not reach a verdict, does not constitute an acquittal and does not bar a subsequent prosecution. People v. Hall, 25 Ill. App. 3d 992, 324 N.E.2d 50 (5 Dist. 1975).

- Subsequent Prosecution Not Barred

The defendant was not placed in double jeopardy by a retrial where the first trial was properly declared a mistrial after the foreman stated that the jury was not likely to reach a verdict and the individual jurors agreed that there was no possibility of their reaching a verdict. People v. Wolf, 178 Ill. App. 3d 1064, 128 Ill. Dec. 184, 534 N.E.2d 204 (3 Dist. 1989).

Jeopardy did not effectively attach where the trial court properly terminated the trial due to manifest necessity in that the jury was deadlocked: the termination did not bar a second trial on double jeopardy grounds. People v. Yarbrough, 179 Ill. App. 3d 198, 128 Ill. Dec. 513, 534 N.E.2d 695 (5 Dist. 1989).

The constitutional protection against double jeopardy is not violated by a second trial if the jury was discharged in the first trial because it was unable to reach a verdict. People v. Eickert, 124 Ill. App. 2d 394, 260 N.E.2d 465 (1 Dist. 1970).

Delegation of Power

- Reckless Driving Statute

625 ILCS 5/11-503 is a valid exercise of the state's police power, and does not violate any constitutional guarantees of double jeopardy, privileges and immunities or separation of powers clauses. People v. Green, 368 Ill. 242, 13 N.E.2d 278 (1938), overruled on other grounds, People v. Griffin, 36 Ill. 2d 430, 223 N.E.2d 158 (1967).

Detention Hearing

- Not Barred by Double Jeopardy

A detention hearing for the purpose of determining custody is comparable to a preliminary hearing in a criminal case where evidence is taken to determine whether probable cause exists to hold the accused for grand jury action, and a defendant is in no manner placed in jeopardy by this action. People v. Depoy, 40 Ill. 2d 433, 240 N.E.2d 616 (1968).

Directed Verdict in Criminal Case

- Improperly Withdrawn

A trial court may not withdraw an order directing a verdict and permit the jury to make a finding on the charge, therefore, defendant's double jeopardy rights were violated by the court's reinstating the home invasion charge and submitting it to the jury. People v. Strong, 129 Ill. App. 3d 427, 84 Ill. Dec. 756, 472 N.E.2d 1152 (1 Dist. 1984).

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- Not Reviewable

Even if the trial judge appraised evidence incorrectly in deciding that it was insufficient for conviction of murder, that order of granting defendant's motion for directed verdict was not reviewable for such review would deprive defendant of his constitutional protection against double jeopardy. People ex rel. Daley v. Crilly, 108 Ill. 2d 301, 91 Ill. Dec. 601, 483 N.E.2d 1236 (1985); People v. Mink, 141 Ill. 2d 163, 152 Ill. Dec. 293, 565 N.E.2d 975 (1990), cert. denied, 501 U.S. 1235, 111 S. Ct. 2863, 115 L. Ed. 2d 1030 (1991).

Although the trial court erred in directing a verdict of acquittal on a burglary charge, the legal effect of the directed verdicts was to bar, under double jeopardy principles, the vacation or reversal of those verdicts. People v. L.R., 106 Ill. App. 3d 244, 62 Ill. Dec. 110, 435 N.E.2d 908 (3 Dist. 1982).

- Reconsideration

Circuit court judge unequivocally granted defendant's motion for a directed verdict finding on the aggravated battery charge representing a resolution of some or all of the factual elements of the offense charged; therefore, it was improper for the circuit court judge to reconsider and vacate his ruling acquitting defendant of aggravated battery and defendant's subsequent conviction for armed robbery violated double jeopardy. People v. Henry, 204 Ill. 2d 267, 273 Ill. Dec. 374, 789 N.E.2d 274, 2003 Ill. LEXIS 768 (2003).

Discretion of Court

- Comparison to Federal Constitution

Forcing defendant to testify as a witness for the State at defendant's probation revocation hearing did not violate defendant's privilege against self-incrimination under U.S. Const., Amend. V and Ill. Const., Art. I, § 10 because probation revocation proceedings are not criminal proceedings and defendant's testimony at the probation revocation hearing would not incriminate him in any other proceedings. The court held that the privilege against self-incrimination contained in the Illinois Constitution should not be interpreted more broadly than that contained in the federal Constitution. People v. Lindsey, 319 Ill. App. 3d 586, 253 Ill. Dec. 860, 746 N.E.2d 308, 2001 Ill. App. LEXIS 255 (1 Dist. 2001).

Dismissal for Want of Prosecution

- Effect

Circuit court's denial of the prosecutor's nolle prosequi motion was an abuse of discretion where there was no indication in the record of intentional delay or harassment by the prosecution, or was there a showing that the postponement of the trial would deny the defendant a fair trial or violate fundamental principles of fair dealing; the "trial" or "acquittal" was no more than a dismissal for want of prosecution, and such dismissals do not put the defendant in jeopardy or bar retrial on a new indictment. People v. Rudi, 103 Ill. 2d 216, 82 Ill. Dec. 936, 469 N.E.2d 580 (1984).

Dismissal with Prejudice

- Effect

A dismissal of a charge with prejudice bars a subsequent prosecution for the same offense. People v. Cregar, 172 Ill. App. 3d 807, 122 Ill. Dec. 613, 526 N.E.2d 1376 (4 Dist. 1988).

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Double Jeopardy

Convictions of the first defendant and second defendant for first degree murder and two counts of second degree murder each could not stand because the statement of a witness was improperly admitted in which the witness claimed that the first defendant admitted shooting the three victims, despite the fact that the witness had no personal knowledge about what was supposedly stated. However, retrial of either or both defendants would not violate Ill. Const. art. I, § 10 double jeopardy principles since a reasonable trier of fact could have found either one of them or both of them guilty absent the improperly admitted evidence. People v. Fillyaw, 409 Ill. App. 3d 302, 350 Ill. Dec. 609, 948 N.E.2d 1116, 2011 Ill. App. LEXIS 371 (2 Dist. 2011).

Defendant was not entitled to relief on the postconviction petition that defendant filed pursuant to 725 ILCS 5/122-1 in a case where defendant began to plead guilty to a charge of armed robbery, but the trial court vacated the plea and found defendant guilty of that charge in a bench trial after defendant had proclaimed defendant's innocence at the guilty plea hearing. Defendant's petition filed in accordance with 725 ILCS 5/122-2 lacked merit, as defendant could not show that appellate counsel provided ineffective assistance of counsel in violation of Ill. Cons. art. I, § 8 by not raising a claim on appeal that the bench trial violated defendant's right to be free from double jeopardy, either under Ill. Const. art. I, § 10 or 720 ILCS 5/3-4(a)(3), as defendant could not show that the guilty plea hearing terminated improperly since the trial court had the discretion to vacate defendant's guilty plea and order a trial be held where defendant was unequivocally proclaiming that defendant was innocent of the crime. People v. Cabrera, 402 Ill. App. 3d 440, 342 Ill. Dec. 401, 932 N.E.2d 528, 2010 Ill. App. LEXIS 639 (1 Dist. 2010).

Double jeopardy under U.S. Const. Amend. V and Ill. Const. Art. I, § 10 was not implicated in defendant's resentencing after his probation was vacated as void because probation was not a punishment in the same sense as imprisonment. People v. Allen, 386 Ill. App. 3d 30, 325 Ill. Dec. 403, 898 N.E.2d 136, 2008 Ill. App. LEXIS 1061 (1 Dist. 2008), cert. denied, 2009 U.S. LEXIS 4503 (U.S. 2009).

There was no double-jeopardy bar to retrial where a rational trier of fact could have found defendant guilty beyond a reasonable doubt based on evidence that defendant told a girlfriend that defendant drove the car to the site where the victim was killed, that it was defendant's job to get close to the victim and gain the victim's trust so that the victim could receive a beating, and defendant admitted to cleaning blood from defendant's car. People v. Alfaro, 386 Ill. App. 3d 271, 324 Ill. Dec. 858, 896 N.E.2d 1077, 2008 Ill. App. LEXIS 993 (2 Dist. 2008).

Although defense counsel was ineffective by withdrawing a prior motion to quash arrest and suppress evidence, the evidence was sufficient to convict defendant of possession of a controlled substance with intent to deliver, and double jeopardy did not forbid a second trial; a new trial was required to correct the errors made by defense counsel that deprived defendant of a fair trial. People v. Givens, 384 Ill. App. 3d 101, 323 Ill. Dec. 106, 892 N.E.2d 1098, 2008 Ill. App. LEXIS 684 (1 Dist. 2008), vacated, cause remanded 2010 Ill. LEXIS 655 (Ill. 2010).

Where defendant videotaped himself engaging in sexual activity with a child, defendant's prior New Mexico conviction for possession of child pornography did not bar defendant's Illinois conviction for child pornography based on double jeopardy principles, because the New Mexico conviction was not predicated on the same act or conduct as the Illinois prosecution since: (1) one to two years separated the acts; (2) defendant's move between states constituted an intervening event; and (3) defendant's purpose did not remain constant. People v. Dunnavan, 381 Ill. App. 3d 514, 319 Ill. Dec. 630, 886 N.E.2d 393, 2008 Ill. App. LEXIS 263 (1 Dist. 2008).

A defendant sentenced to probation, and then sentenced to imprisonment for the same offense, is not subjected to an unconstitutional second punishment for double jeopardy purposes and,

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therefore, is not entitled to credit for time spent on probation. People v. Whitfield, 228 Ill. 2d 502, 321 Ill. Dec. 233, 888 N.E.2d 1166, 2007 Ill. LEXIS 2047 (2007).

Defendant forfeited defendant's claim that defendant's retrial violated defendant's rights under U.S. Const. Amend. V and Ill. Const. Art. I, § 10 by failing to timely raise it in the trial court and by requesting that defendant be granted a new trial following postconviction relief. People v. Bannister, 378 Ill. App. 3d 19, 316 Ill. Dec. 871, 880 N.E.2d 607, 2007 Ill. App. LEXIS 1268 (1 Dist. 2007), aff'd, 236 Ill. 2d 1, 337 Ill. Dec. 685, 923 N.E.2d 244, 2009 Ill. LEXIS 1929 (2009).

Defendant's second prosecution did not violate defendant's right to be free from double jeopardy as there was sufficient evidence to convict defendant at the first trial; postconviction relief was granted based on a witness's recantation of the witness's previous testimony and not based on a lack of sufficient evidence to convict, and all the evidence submitted at the original trial could be considered when determining the sufficiency of the evidence. People v. Bannister, 378 Ill. App. 3d 19, 316 Ill. Dec. 871, 880 N.E.2d 607, 2007 Ill. App. LEXIS 1268 (1 Dist. 2007), aff'd, 236 Ill. 2d 1, 337 Ill. Dec. 685, 923 N.E.2d 244, 2009 Ill. LEXIS 1929 (2009).

Trial court erred by dismissing with prejudice the charges against defendant because a retrial would not have violated the double jeopardy clauses of U.S. Const. Amend. V and Ill. Const. (1970), Art. I, § 10. The prosecutor's questions, which the trial court ruled violated a court order, appeared to have been mere mistakes at worst, there was no evidence of overreaching by the prosecution, the prosecution's case appeared to have been going well, and there was no reason to think that the prosecution would have wanted to start over with a different jury. People v. Longoria, Ill. App. 3d , Ill. Dec. , N.E.2d , 2007 Ill. App. LEXIS 611 (1 Dist. June 6, 2007).

Double jeopardy principles did not bar retrial of defendant whose conviction was reversed after defendant was tried in absentia without counsel because the evidence was sufficient to find beyond a reasonable doubt the elements of driving with a revoked license. People v. Gargani, 371 Ill. App. 3d 729, 309 Ill. Dec. 130, 863 N.E.2d 762, 2007 Ill. App. LEXIS 138 (1 Dist. 2007).

Double jeopardy concepts did not bar defendant's retrial on a charge of indecent solicitation of a child after his original conviction was reversed based on the improper admission of the transcripts of defendant's online conversations with an investigator defendant thought was a child; the reversal corrected an error in the proceedings, it did not supplement insufficient evidence, and the evidence before the trial court in the original trial was sufficient to sustain the original verdict. People v. Johnson, 376 Ill. App. 3d 175, 314 Ill. Dec. 969, 875 N.E.2d 1256, 2007 Ill. App. LEXIS 1044 (1 Dist. 2007).

Contrary to defendant's assertions, his convictions and sentences on four counts of aggravated fleeing or attempting to elude a police officer were not reversed in a prior appeal; rather, his case was remanded to the trial court for proper admonishments regarding the guilty pleas, and therefore, the double jeopardy was not applicable to the new trial that was conducted after defendant withdrew his guilty pleas. People v. Gorka, 374 Ill. App. 3d 85, 312 Ill. Dec. 423, 870 N.E.2d 867, 2007 Ill. App. LEXIS 633 (1 Dist. 2007).

Prosecutions against defendant for criminal trespass to a vehicle, 720 ILCS 5/21-2, occurring in a separate county and unlawful possession of a stolen vehicle, 625 ILCS 5/4-103(a)(1), in the forum county arose out of separate acts based on intervening events; thus, principles of double jeopardy could not support dismissal of the indictment. People v. Dinelli, 217 Ill. 2d 387, 299 Ill. Dec. 236, 841 N.E.2d 968, 2005 Ill. LEXIS 2065 (2005).

Double jeopardy considerations precluded defendant being tried on a residential burglary charge under 720 ILCS 5/19-3(a) where he was originally charged with residential burglary, was improperly convicted of simple burglary, and the trial court, in convicting defendant of simple

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burglary, specifically stated that he was not guilty of residential burglary. People v. Blanks, 361 Ill. App. 3d 400, 297 Ill. Dec. 338, 837 N.E.2d 118, 2005 Ill. App. LEXIS 986 (1 Dist. 2005).

Where defendant's conviction was reversed because of confrontation clause violations, a new trial would not constitute double jeopardy because the evidence, even after exclusion of the considerable evidence that had been improperly admitted, was still at least legally sufficient to convince a rational fact-finder that defendant had committed the murder in question. People v. Melchor, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 626 (1 Dist. June 28, 2005).

On remand, a trial court did not err when, pursuant to 725 ILCS 5/111-3(c-5) of the Code of Criminal Procedure of 1963, it instructed and submitted to the jury an additional verdict form concerning behavior indicative of wanton cruelty after his conviction for murder under 720 ILCS 5/9-1(a)(1). The determination of the aggravating factor was not an element of the offense of first-degree murder but was only a new mode of procedure; thus the change required by the statute did not violate the double jeopardy clause of the United States Constitution or Ill. Const., Art. I, § 10. People v. Crutchfield, 353 Ill. App. 3d 1014, 289 Ill. Dec. 731, 820 N.E.2d 507, 2004 Ill. App. LEXIS 1290 (5 Dist. 2004), cert. denied, 2007 U.S. LEXIS 2260 (U.S. 2007).

Where defendant, upon striking another attorney in a courtroom, was ordered by a judge to be detained and defendant escaped detention, the petition for rule to show cause did not constitute double jeopardy in violation of Ill. Const., Art. I, § 10 after defendant pled guilty to battery, and defendant, in the Rule 604(f), Supreme Court Rules appeal, was not entitled to relief from the trial court's refusal to dismiss the petition for rule to show cause; the guilty plea and petition related to different acts, as the plea related to the battery, and the petition related to defendant's refusal to comply with the detention order. People v. Rothman, 347 Ill. App. 3d 587, 283 Ill. Dec. 730, 808 N.E.2d 1018, 2004 Ill. App. LEXIS 329 (1 Dist. 2004).

Where defendant pleaded guilty to a crime and served his sentence, double jeopardy, as set forth in Ill. Const. Art. I, § 10, protected defendant from prosecution again for the same conduct, even though the crime to which defendant pleaded guilty had been invalidated. People v. Turner, 325 Ill. App. 3d 185, 258 Ill. Dec. 969, 757 N.E.2d 658, 2001 Ill. App. LEXIS 773 (1 Dist. 2001).

Court concluded that the trial court was barred by principles of double jeopardy, Ill. Const., Art. I, § 10, from subjecting defendant to a second trial as a means of correcting the erroneous exclusion of the State's evidence at the first trial; thus, judgment was reversed so that the judgment of acquittal notwithstanding the verdict on defendant's conviction for driving with a suspended license could be reinstated. People v. Carter, 194 Ill. 2d 88, 251 Ill. Dec. 661, 741 N.E.2d 255, 2000 Ill. LEXIS 2451 (2000).

State was barred from prosecuting defendant on a reckless homicide charge because defendant's guilty plea to the related traffic citations constituted double jeopardy, in violation of Ill. Const. Art. I, § 10, precluding the subsequently attempted felony prosecution. People v. Correa, 244 Ill. App. 3d 307, 185 Ill. Dec. 561, 614 N.E.2d 1246, 1993 Ill. App. LEXIS 445 (1 Dist. 1993).

- Acquittal

Double jeopardy clauses of Ill. Const., Art. I, § 10 did not bar defendant's retrial on charge of driving with suspended license, in violation of 625 ILCS 5/6-303, after defendant had been orally granted acquittal notwithstanding verdict on that charge, because trial court vacated acquittal without signing written order and ordered new trial after it found that it erred at trial in excluding evidence of defendant's suspended license. People v. Carter, 306 Ill. App. 3d 867, 240 Ill. Dec. 139, 715 N.E.2d 1196, 1999 Ill. App. LEXIS 571 (1 Dist. 1999).

The trial judge did not unequivocally grant the defendant's motion for a finding of not guilty, notwithstanding her statement that she was going to grant the motion for a directed finding and finding of not guilty, where the record as a whole disclosed that the trial judge conveyed to the

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parties that she would wait to review any legal authority presented by the state before ruling on the defendant's motion. People v. Williams, 188 Ill. 2d 293, 242 Ill. Dec. 245, 721 N.E.2d 524 (1999).

- Acquittal by Bribery

Given defendant's involvement in the bribery of the judge in order to procure an acquittal in his murder trial, defendant was not subject to the risk normally associated with a criminal prosecution; therefore, the principles of double jeopardy did not bar the instant reindictment and reprosecution. People v. Aleman, 281 Ill. App. 3d 991, 217 Ill. Dec. 526, 667 N.E.2d 615 (1 Dist. 1996), appeal denied, 168 Ill. 2d 600, 219 Ill. Dec. 567, 671 N.E.2d 734 (1996), cert. denied, 519 U.S. 1128, 117 S. Ct. 986, 136 L. Ed. 2d 868 (1997).

- Burden of Proof

To prevail on a double jeopardy challenge, a defendant must establish not only the existence of two punishments, but also that he had been punished twice for the same offense.

- Conditional Discharge

Defendant's conditional discharge was revoked pursuant to 730 ILCS 5/5-6-4 without violating double jeopardy under U.S. Const. Amend. V and Ill. Const. Art. I, § 10. The revocation was not for the offense upon which the revocation was based, instead it was for an earlier offense upon which conditional discharge was imposed. People v. Janovic, 365 Ill. App. 3d 547, 302 Ill. Dec. 801, 850 N.E.2d 238, 2006 Ill. App. LEXIS 310 (1 Dist. 2006).

- Dismissal Prior to Attachment of Jeopardy

There was no violation of the double jeopardy clause where (1) the defendant was charged by indictment with two counts of unlawful delivery of a controlled substance while on a public way within 1,000 feet of public housing property and two counts of the lesser-included offense of unlawful delivery of a controlled substance, with the lesser charges based on the same conduct as the greater charges, absent the location element; (2) prior to the selection and empaneling of the jury, the state dismissed the lesser-included charges and the cause proceeded to trial on the greater offenses; (3) after the state presented its case in chief, the defendant moved for a directed verdict; (4) the trial court found that the evidence was insufficient on the location element and, therefore, refused to allow the greater charges to be considered by the jury, but found that the evidence was sufficient to prove the lesser-included offense and allowed the state to amend its indictment; and (5) the case was submitted to the jury on the lesser-included offenses; the state's request to dismiss the lesser charges prior to jeopardy attaching was of no import, as the defendant did not actually need to be charged with the lesser offense in order to be convicted of it. People v. Knaff, 196 Ill. 2d 460, 256 Ill. Dec. 881, 752 N.E.2d 1123, 2001 Ill. LEXIS 771 (2001).

- Evidence

Since the appellate court found that the trial court committed reversible error in keeping defendant's wife and son from testifying in defendant's 720 ILCS 5/31-4(a) obstruction of justice case regarding what a defendant allegedly told a police officer investigating an auto accident involving the son, the appellate court had to determine whether defendant could be retried. It then concluded that retrying defendant would violate double jeopardy principles under U.S. Const. amend. V and Ill. Const. art. I, § 10 because the evidence presented at trial was not sufficient to show that any false information given was provided with the intent to prevent the prosecution of the son since the officer approached defendant asking for information and did not state the reason that the officer wanted that information. People v. Jenkins, Ill. App. 3d , Ill. Dec. , N.E.2d , 2012 Ill. App. LEXIS 35 (2 Dist. Jan. 19, 2012).

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Since the jury in defendant's criminal sexual assault case heard testimony from a woman who defendant allegedly assaulted in a separate incident, as permitted by 725 ILCS 5/115-7.3's other-acts evidence law, the trial court should also have permitted the jury to hear that defendant had been acquitted when that other case was tried given the strength with which jury's tended to view propensity evidence. However, defendant could be retried for the current offense, as the totality of the evidence presented at defendant's trial regarding the current matter was sufficient for a rational trier of fact to find the essential elements of the crime had been proven beyond a reasonable doubt, and, thus, a retrial would not create a Ill. Const. art. I, ' 10 double jeopardy violation. People v. Ward, Ill. 2d , 351 Ill. Dec. 809, 952 N.E.2d 601, 2011 Ill. LEXIS 1095 (2011).

Evidence presented by the State was sufficient to support defendant's convictions for aggravated driving under the influence of alcohol in violation of 625 ILCS 5/11-501(d)(1)(C), but defendant was entitled to a new trial based on the trial court's error in admitting the officer's testimony about HGN testing for alcohol impairment. The State did not present a sufficient foundation about compliance with applicable HGN-testing standards concerning the officer's testimony and the remedy for that error, a new trial, would not violate defendant's Ill. Const. art. I, § 10 double jeopardy rights because the evidence presented was sufficient to support defendant's convictions. People v. McKown, 236 Ill. 2d 278, 338 Ill. Dec. 415, 924 N.E.2d 941, 2010 Ill. LEXIS 270 (2010).

Although the indictment filed against defendant charging defendant with criminal sexual assault should have been dismissed as time barred because it was filed 11 months after the applicable statute of limitations expired, the evidence presented at trial sufficiently supported defendant's resulting conviction for aggravated criminal sexual abuse by use of force of threat of force. As a result defendant's Ill. Const. art. I, § 10 double jeopardy rights would not be violated if the State were to reindict and retry defendant, but any new indictment would have to allege a claim that was not time barred. People v. Macon, 396 Ill. App. 3d 451, 336 Ill. Dec. 634, 920 N.E.2d 1224, 2009 Ill. App. LEXIS 1259 (1 Dist. 2009).

Where the State presented evidence that defendant was seen hiding a bag that was later found to contain six counterfeit credit cards, the State presented sufficient evidence to convict defendant of violating 720 ILCS 250/16; pursuant to the double jeopardy clause under Ill. Const. Art. 1, § 10, this finding was not binding on the trial court during defendant's retrial. People v. Miles, 344 Ill. App. 3d 315, 279 Ill. Dec. 280, 800 N.E.2d 122, 2003 Ill. App. LEXIS 1385 (2 Dist. 2003).

- Exception

In cases where double jeopardy might otherwise be implicated, an exception exists where the state is unable to proceed on the more serious charge at the outset because the additional facts necessary to sustain that charge have not yet occurred. People v. Carrillo, 164 Ill. 2d 144, 207 Ill. Dec. 16, 646 N.E.2d 582 (1995), cert. denied, 515 U.S. 1146, 115 S. Ct. 2586, 132 L. Ed. 2d 834 (1995).

- Expulsion

State petition seeking adjudication of wardship after minor committed aggravated assault and battery against school principal would not violate double jeopardy merely because student had been expelled from school; expulsion has a remedial purpose in seeking to protect others from dangerous, violent persons. In re S.J., 291 Ill. App. 3d 703, 226 Ill. Dec. 13, 684 N.E.2d 1009 (5 Dist. 1997).

- Extended Term Sentences

Where an enhanced sentence was imposed against defendant on a drunk driving offense based on earlier drunk driving offenses and where defendant's conditional discharge from an earlier offense was revoked, defendant was not placed in double jeopardy under U.S. Const. Amend. V

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and Ill. Const. Art. I, § 10, as the punishments applied to separate offenses. People v. Janovic, 365 Ill. App. 3d 547, 302 Ill. Dec. 801, 850 N.E.2d 238, 2006 Ill. App. LEXIS 310 (1 Dist. 2006).

Defendant's third driving under the influence offense under 625 ILCS 5/11-501, which was enhanced based on the fact that defendant was driving while suspended and because it was defendant's third drunk driving conviction, did not violate double jeopardy under U.S. Const. Amend. V and Ill. Const. Art. I, § 10, as sentences could be enhanced based on criminal history without violating double jeopardy protections. People v. Janovic, 365 Ill. App. 3d 547, 302 Ill. Dec. 801, 850 N.E.2d 238, 2006 Ill. App. LEXIS 310 (1 Dist. 2006).

(Unpublished) Defendant's murder sentence, which was enhanced for discharging a firearm that resulted in causing a death, was proper where it did not violate the proportionate penalties clause, separation of powers principles, double jeopardy, or constitute an impermissible enhancement. People v. Sawczenko-Dub, 345 Ill. App. 3d 522, 280 Ill. Dec. 832, 803 N.E.2d 62, 2003 Ill. App. LEXIS 1517 (1 Dist. 2003).

Defendant's extended-term sentences did not violate defendant's constitutional guarantee against double jeopardy where defendant did not deny the existence of a prior felony conviction entered in a fair proceeding in which defendant was afforded due process. People v. Fikara, 345 Ill. App. 3d 144, 280 Ill. Dec. 335, 802 N.E.2d 260, 2003 Ill. App. LEXIS 1259 (2 Dist. 2003), appeal denied sub nom. People v. Shaka Ali Fikara, 208 Ill. 2d 544, 284 Ill. Dec. 342, 809 N.E.2d 1288 (2004).

- Forfeiture

Following civil forfeiture proceedings under the Drug Asset Forfeiture Procedure Act, 725 ILCS 150/1 et seq., that involved forfeiture of cash and an automobile, criminal drug charges against defendant were dismissed on double jeopardy grounds, in accordance with the Fifth Amendment and Ill. Const. Art. I, § 10, because the offenses did not require proof of an element not required by the forfeiture action. People v. P.S. (In re P.S.), 169 Ill. 2d 260, 214 Ill. Dec. 475, 661 N.E.2d 329, 1996 Ill. LEXIS 12 (1996).

Appeal by state of trial court's denial of state's forfeiture complaint based on the Cannabis Control Act (720 ILCS 550/1 et seq.) and Drug Asset Forfeiture Procedure Act (725 ILCS 150/1 et seq.) was not prohibited by the double jeopardy clauses of the state and federal constitutions, because the General Assembly intended such proceedings to be deemed civil in nature, and the acts were not so punitive as to render them criminal in nature. People ex rel. Neal v. Ryan, 284 Ill. App. 3d 318, 219 Ill. Dec. 732, 672 N.E.2d 47 (3 Dist. 1996), appeal denied, 171 Ill. 2d 584, 222 Ill. Dec. 437, 677 N.E.2d 971 (1997).

Although the seizure of real property under the Forfeiture Act (725 ILCS 150/9) marks the beginning of the civil forfeiture process, the actual seizure itself has limited legal significance as the act of seizure neither extinguishes the ownership rights of claimants to the property, nor does it vest title in the State; it is the deprivation of ownership, not the deprivation of the unencumbered use of the property, that determines when punishment for double jeopardy purposes occurs, the State's seizure of defendant's property, therefore, did not constitute punishment for double jeopardy purposes. People v. Krizek, 271 Ill. App. 3d 533, 207 Ill. Dec. 857, 648 N.E.2d 313 (2 Dist. 1995).

- Municipal Ordinance

The city could appeal from the defendant's sentence for violation of a municipal ordinance without placing the defendant in double jeopardy as the sentence was found to be illegal and void. City of Chicago v. Roman, 184 Ill. 2d 504, 235 Ill. Dec. 468, 705 N.E.2d 81 (1998).

- Not Shown

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Appellate court should not have vacated defendant's conviction for retail theft, as its conclusion that retail theft was a lesser-include offense of the burglary offense on which defendant was convicted failed to take into account that defendant could be convicted of the burglary offense without also being convicted of the retail offense charge. Defendant was not in danger of receiving multiple punishments in violation of the Fifth Amendment, U.S. Const. amend. V, and Ill. Const. art. I, § 10 double jeopardy clauses since the two offenses when compared contained different elements. People v. Miller, 238 Ill. 2d 161, 345 Ill. Dec. 59, 938 N.E.2d 498, 2010 Ill. LEXIS 1067 (2010).

Defendant was not entitled to relief on the 725 ILCS 5/122-1 et seq. postconviction relief petition that defendant filed, as defendant did not show under 725 ILCS 5/122-2 that defendant's constitutional rights had been violated. Defendant's claims that defendant received ineffective assistance of appellate counsel, in violation of Ill. Const. art. I, § 8, and that defendant's double jeopardy rights were violated, in violation of Ill. Const. art. I, § 10, were frivolous and patently without merit, as the trial court was authorized to vacate defendant's guilty plea and conduct a bench trial on the charges against defendant due to the fact that defendant at defendant's guilty plea hearing on an armed robbery charge claimed that defendant was innocent of the crime. People v. Cabrera, Ill. App. 3d , Ill. Dec. , N.E.2d , 2010 Ill. App. LEXIS 102 (1 Dist. Feb. 16, 2010).

Defendant was not tried on two different charges during one trial in a case where defendant allegedly had committed a criminal sexual assault and the State amended the relevant indictment merely to change the name of the victim and the type of penetration involved. Defendant's Ill. Const. art. I. § 10 double jeopardy rights were not violated because defendant was charged with criminal sexual assault and the indictment was amended to again allege criminal sexual assault. People v. Ross, 395 Ill. App. 3d 660, 335 Ill. Dec. 47, 917 N.E.2d 1111, 2009 Ill. App. LEXIS 1056 (1 Dist. 2009), appeal denied, 2010 Ill. LEXIS 564 (Ill. 2010).

Since trial court allowed a defective jury selection process in violation of Batson to impact defendant's trial, defendant was entitled to a new trial. Granting a new trial to defendant, rather then acquitting defendant outright did not violate defendant's double jeopardy rights pursuant to Ill. Const. Art. I, § 10 because the evidence was sufficient to convict defendant and a procedural matter was the reason for granting a new trial. People v. Hogan, 389 Ill. App. 3d 91, 328 Ill. Dec. 634, 904 N.E.2d 1144, 2009 Ill. App. LEXIS 123 (1 Dist. 2009), appeal denied, 233 Ill. 2d 577, 335 Ill. Dec. 640, 919 N.E.2d 359, 2009 Ill. LEXIS 1700 (2009).

Juvenile's double jeopardy rights were not violated where the trial court imposed an indeterminate sentence pursuant to 705 ILCS 405/5-750 and declined to grant the juvenile's motion to vacate the commitment order when it reviewed the sentence two months later; the juvenile improperly characterized the initial sentence before the review as an "evaluation." People v. Justin L.V. (In re Justin L.V.), 377 Ill. App. 3d 1073, 317 Ill. Dec. 741, 882 N.E.2d 621, 2007 Ill. App. LEXIS 1400 (1 Dist. 2007).

Principles of double jeopardy did not bar the retrial of defendant where a mistrial was declared sua sponte by the trial court because the mistrial was the result of defense counsel's many indiscretions and their potential impact on the jury, including defense counsel's repeated attempts to abuse the rules of trial procedure, excessive and repeated argument with the judge, and repeated improper commentary before the jury regarding objections by, and other conduct of, the State's attorney, all after being warned no to do so. People v. Burtron, 376 Ill. App. 3d 856, 315 Ill. Dec. 600, 877 N.E.2d 87, 2007 Ill. App. LEXIS 1065 (1 Dist. 2007).

Dismissal with prejudice of the charges against defendant after he successfully sought a mistrial based on the State's violation of an in limine order was error; as defendant had sought the mistrial, double jeopardy acted to preclude a retrial only on a finding that the State's conduct constituted overreaching that goaded defendant into seeking the mistrial, and no such finding had been made. People v. Longoria, 375 Ill. App. 3d 346, 313 Ill. Dec. 694, 872 N.E.2d 1083, 2007 Ill. App. LEXIS 833 (1 Dist. 2007).

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Defendant sentenced to probation, and then sentenced to imprisonment for the same offense, was not subjected to an unconstitutional second punishment for double jeopardy purposes and, therefore, was not entitled to credit for his time spent on probation. People v. Whitfield, Ill. 2d , Ill. Dec. , N.E.2d , 2007 Ill. LEXIS 1706 (Dec. 13, 2007).

State was not barred by the double-jeopardy provisions of either the federal or state constitutions from going forward with the pending official-misconduct charge after defendant entered an open plea of guilty to theft charge. People v. Price, 369 Ill. App. 3d 395, 310 Ill. Dec. 921, 867 N.E.2d 972, 2006 Ill. App. LEXIS 1144 (1 Dist. 2006).

Two prosecutions, one in Kendall County and one in Cook County, did not violate the double jeopardy cause, as the first act was defendant's transfer of a copy of an image via E-mail to a police officer, while the second act involved the retention of a copy of the original image on a hard drive for over a month. People v. Flaar, 366 Ill. App. 3d 685, 304 Ill. Dec. 88, 852 N.E.2d 338, 2006 Ill. App. LEXIS 543 (1 Dist. 2006).

Second jury trial in defendant's case where he was charged with aggravated vehicular hijacking while carrying a firearm did not violate his double jeopardy rights. The trial court was within its discretion in declaring a mistrial in defendant's first case as a mistrial was required out of manifest necessity because the jury was hopelessly deadlocked and could not come to a verdict. People v. Andrews, 364 Ill. App. 3d 253, 301 Ill. Dec. 109, 845 N.E.2d 974, 2006 Ill. App. LEXIS 228 (1 Dist. 2006).

Defendant's claims that the indictment charging him with two counts of the aggravated criminal sexual abuse of a minor was defective because it did not protect him from double jeopardy was rejected, as a prior prosecution for that offense could easily be proven by reference to the record and reference to record did not show that defendant had previously been prosecuted for such offenses. People v. Guerrero, 356 Ill. App. 3d 22, 292 Ill. Dec. 344, 826 N.E.2d 485, 2005 Ill. App. LEXIS 190 (1 Dist. 2005), appeal denied, 215 Ill. 2d 606, 295 Ill. Dec. 523, 833 N.E.2d 5 (2005).

Appellate court properly affirmed the trial court's denial of defendant's motion to dismiss criminal charges against him in the second county on double jeopardy grounds; although the charges in the second county were based on the same conduct as the charges in the first county to which he pled guilty and was convicted, different statutory offenses were involved in the second county's prosecution and, thus, that prosecution was not barred by double jeopardy even though there was a significant overlap in the proof that would be offered to establish the crimes in the second county. People v. Gray, 214 Ill. 2d 1, 291 Ill. Dec. 263, 823 N.E.2d 555, 2005 Ill. LEXIS 5 (2005).

Where defendant was convicted of murder and the conviction was reversed based upon the improper admission of other crimes evidence, a remand for retrial was not prohibited by double jeopardy under this section since the conviction was supported by sufficient evidence. People v. Richee, 355 Ill. App. 3d 43, 291 Ill. Dec. 132, 823 N.E.2d 142, 2005 Ill. App. LEXIS 19 (1 Dist. 2005), appeal denied, 215 Ill. 2d 614, 295 Ill. Dec. 525, 833 N.E.2d 7 (2005).

Defendant was not entitled to dismissal of the charges against him after the trial court granted the prosecutor's motion for a mistrial since defense counsel acquiesced by failing to object to the mistrial despite having had adequate opportunity to do so. People v. Hill, 353 Ill. App. 3d 961, 289 Ill. Dec. 485, 819 N.E.2d 1285, 2004 Ill. App. LEXIS 1501 (4 Dist. 2004), appeal denied, 214 Ill. 2d 542, 294 Ill. Dec. 6, 830 N.E.2d 6 (2005).

Although it reversed defendant's convictions for aggravated domestic battery, aggravated battery, and unlawful restraint because the trial court violated defendant's rights under the Confrontation Clause of the United States Constitution during his trial, the appellate court found that there was enough evidence in the record to support the convictions and that the State was not barred from retrying defendant on double jeopardy grounds. People v. Thompson, 349 Ill. App. 3d 587, 285 Ill. Dec. 696, 812 N.E.2d 516, 2004 Ill. App. LEXIS 740 (1 Dist. 2004).

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Nolle prosequi of a lesser-included charge entered after jeopardy attaches does not preclude prosecution of the greater charge, and, moreover, a nolle prosequi of one count after jeopardy attaches has no bearing upon another count charging the same offense because, while a nolle prosequi discharges a defendant on the charging document or count which was nol-prossed, there is nothing inherent in the nolle prosequi itself which causes it to operate as an acquittal; thus, where defendant was convicted for felony murder predicated on predatory criminal sexual assault of a child, 720 ILCS 5/9-1(a)(3) even though the prosecutor nol-prossed the sexual assault charge, 720 ILCS 5/12-14.1(a)(1), the State's entry of a nolle prosequi did not operate as an acquittal of have the effect of an acquittal so as to preclude continuation of the trial, and, thus, the bar against double jeopardy under U.S. Const. Amend. V, Ill. Const., Art. I, § 10, and 720 ILCS 5/3-4 was not violated People v. Milka, 211 Ill. 2d 150, 284 Ill. Dec. 380, 810 N.E.2d 33, 2004 Ill. LEXIS 365 (2004).

Where defendant, upon striking another attorney in a courtroom, was ordered by a judge to be detained and defendant escaped detainment, the petition for rule to show cause did not constitute double jeopardy in violation of Ill. Const., Art. I, § 10 after defendant pled guilty to battery, and defendant, in the Ill. Sup. Ct. R. 604(f) appeal, was not entitled to relief from the trial court's refusal to dismiss the petition for rule to show cause; the guilty plea and petition related to different acts, as the plea related to the battery, and the petition related to defendant's refusal to comply with the detainment order. People v. Rothman, 347 Ill. App. 3d 587, 283 Ill. Dec. 730, 808 N.E.2d 1018, 2004 Ill. App. LEXIS 225 (1 Dist. 2004).

(Unpublished) Trial court did not violate the Illinois Constitution's prohibition against double jeopardy, as imposition of an enhanced sentence on defendant for causing a death by discharge of a firearm during an offense was a separate statutory provision from the statutory provision that allowed defendant to be convicted of first-degree murder for the shooting death of her husband, and thus multiple punishments for the same act were not involved. People v. Sawczenko-Dub, 345 Ill. App. 3d 522, 280 Ill. Dec. 832, 803 N.E.2d 62, 2003 Ill. App. LEXIS 1517 (1 Dist. 2003).

Double jeopardy principles did not preclude the State from prosecuting defendant on charges of first-degree murder, attempted first-degree murder, and aggravated battery with a firearm after a jury failed to reach a verdict on those charges in defendant's first trial and the trial court declared a mistrial, the trial court's judgment denying defendant's motion to dismiss the indictment was correct, and similar cases could be dealt with summarily in the future, pursuant to Ill. Sup. Ct. R. 23(c). People v. Smith, 338 Ill. App. 3d 254, 273 Ill. Dec. 211, 788 N.E.2d 802, 2003 Ill. App. LEXIS 519 (2 Dist. 2003).

After a stipulated bench trial on the sole issue of defendant's sanity, the trial court refused to rule and refused to dismiss the murder charges on double jeopardy grounds, since court should have ruled on the issue of defendant's sanity, as cross-examination of the witnesses would have adduced no further evidence; and entering judgment would not subject defendant to double jeopardy, as his original jeopardy had never terminated. People v. Bellmyer, 199 Ill. 2d 529, 264 Ill. Dec. 687, 771 N.E.2d 391, 2002 Ill. LEXIS 322 (2002).

In a prosecution for armed robbery in which the defendant was improperly convicted of aggravated robbery as a lesser included offense, double jeopardy did not prevent a retrial. The implied acquittal rule did not apply since aggravated robbery was not a lesser included offense under the indictment against the defendant. People v. McDonald, 321 Ill. App. 3d 470, 254 Ill. Dec. 809, 748 N.E.2d 255, 2001 Ill. App. LEXIS 187 (1 Dist. 2001), cert. denied, 534 U.S. 1005, 122 S. Ct. 484, 151 L. Ed. 2d 397 (2001), appeal denied, 195 Ill. 2d 589, 258 Ill. Dec. 98, 755 N.E.2d 481 (2001).

No double jeopardy violation occurred when the trial court ruled that the evidence was insufficient to support two counts of Class 1 felonies, but then allowed the case to go forward on two lesser included Class 2 felonies, notwithstanding that the state had previously, and successfully, moved

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to dismiss two counts which charged the Class 2 felonies. People v. Knaff, 314 Ill. App. 3d 676, 247 Ill. Dec. 657, 732 N.E.2d 712, 2000 Ill. App. LEXIS 526 (4 Dist. 2000).

Defendant's retrial for felony murder was not barred by the prohibition against double jeopardy since: (1) the jury chosen for the first trial in the case never reached a verdict and did not make any finding concerning the defendant's guilt or innocence; (2) the state did not agree to any order dismissing the felony-murder charges with prejudice; and (3) the state's failure to submit instructions on the felony-murder charge did not amount to a nolle prosequi. People v. Daniels, 187 Ill. 2d 301, 240 Ill. Dec. 668, 718 N.E.2d 149, 1999 Ill. LEXIS 683 (1999), cert. denied, 529 U.S. 1088, 120 S. Ct. 1723, 146 L. Ed. 2d 644 (2000).

The Sex Offender Registration Act, 730 ILCS 150/1 et seq., does not violate the prohibition against double jeopardy as the registration and notification requirements of the act are not penal. People v. Malchow, 306 Ill. 2d 665, 239 Ill. Dec. 664, 714 N.E.2d 583 (2 Dist. 1999).

Subjecting the defendant to a second trial on drug charges did not violate double jeopardy principles; at the defendant's first trial he was convicted of theft and drug charges but at defendant's request he was granted a new trial on the drug charges after which it was determined that the theft statute had been held unconstitutional before the defendant's trial. People v. Placek, 184 Ill. 2d 370, 235 Ill. Dec. 44, 704 N.E.2d 393 (1998).

The civil in rem seizure and forfeiture of defendant's vehicle did not constitute a criminal punishment for double jeopardy purposes. People v. Daniels, 283 Ill. App. 3d 958, 219 Ill. Dec. 335, 670 N.E.2d 1223 (2 Dist. 1996).

Under the DUI statute (625 ILCS 5/11-501(a)(2)) the state was required to prove defendant was acting under the influence of alcohol and under the summary suspension statute (625 ILCS 5/11-101.1(d)) the state had to show defendant submitted to a breath test; because each proceeding was therefore premised on different allegations and required different proofs by the state the double jeopardy clause was not violated. People v. Parmenter, 283 Ill. App. 3d 688, 219 Ill. Dec. 283, 670 N.E.2d 1171 (3 Dist. 1996).

Defendant's double jeopardy rights were not violated by convictions for driving under the influence of alcohol following statutory summary suspension of his driver's license because the offenses required proof of different elements. People v. Lopeman, 279 Ill. App. 3d 1058, 216 Ill. Dec. 623, 665 N.E.2d 881 (3 Dist. 1996).

Where defendant was sentenced by the trial court to six years for possession of a controlled substance and pursuant to the supreme court's supervisory order was resentenced to nine years, double jeopardy was not involved as the resentencing was simply the trial court's formalization of the defendant's new and harsher sentence. People v. Martinez, 278 Ill. App. 3d 218, 214 Ill. Dec. 907, 662 N.E.2d 473 (1 Dist. 1996).

The felony murder and intentional murder charges faced by the defendants were not barred by the double jeopardy clause because the defendants could not have been prosecuted for victim's murder until her death. People v. Carrillo, 164 Ill. 2d 144, 207 Ill. Dec. 16, 646 N.E.2d 582 (1995), cert. denied, 515 U.S. 1146, 115 S. Ct. 2586, 132 L. Ed. 2d 834 (1995).

- Scope

Since statements regarding defendant's offer to plea bargain were improperly admitted in defendant's criminal trial before a jury, defendant could be retried on the charges for which defendant was otherwise properly convicted of predatory criminal sexual assault, criminal sexual assault, and aggravated criminal sexual abuse without violating double jeopardy principles under Ill. Const. art. I, § 10. Defendant could not be retried on defendant's conviction for possession of child pornography since that conviction was based on insufficient evidence rather than evidentiary error. People v. Rivera, 409 Ill. App. 3d 122, 349 Ill. Dec. 805, 947 N.E.2d 819, 2011 Ill. App. LEXIS 320 (1 Dist. 2011).

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Defendant pursuant to double jeopardy principles under Ill. Const. art. I, § 10 could not be retried for official misconduct in violation of 720 ILCS 5/33-3(b) in a case where the evidence was insufficient to show that defendant's violation of a village police department rule while working as a police officer constituted a required violation of the law. Since the evidence was insufficient to convict defendant, retrying defendant would violate defendant's right to be free from double jeopardy on that official misconduct charge. People v. Williams, 239 Ill. 2d 119, 346 Ill. Dec. 50, 940 N.E.2d 50, 2010 Ill. LEXIS 1556 (2010).

The Illinois double jeopardy provision affords no greater protection than the double jeopardy clause of the fifth amendment of the United States Constitution. People v. Aleman, 281 Ill. App. 3d 991, 217 Ill. Dec. 526, 667 N.E.2d 615 (1 Dist. 1996), appeal denied, 168 Ill. 2d 600, 219 Ill. Dec. 567, 671 N.E.2d 734 (1996), cert. denied, 519 U.S. 1128, 117 S. Ct. 986, 136 L. Ed. 2d 868 (1997).

- Shown

State could not retry defendant on charge of aggravated criminal sexual assault when he was already acquitted on the predicate charge of criminal sexual assault. People v. Ousley, 297 Ill. App. 3d 758, 232 Ill. Dec. 184, 697 N.E.2d 926 (3 Dist. 1998), appeal denied, 181 Ill. 2d 583, 235 Ill. Dec. 946, 706 N.E.2d 501 (1998).

Exceptions to Privilege

- Crime Barred by Statute of Limitations

Where the crime to which a defendant's testimony might expose him has been barred by the statute of limitations, he may be compelled to answer. People v. Boyle, 312 Ill. 586, 144 N.E. 342 (1924).

Exclusionary Rule

- Application

Since the exclusionary rule is based upon the constitutional privilege against self-incrimination, it is available only to one whose constitutional rights have, in fact, been invaded by the illegal search and seizure; an accused does not have standing to prevent the admission of evidence obtained by an unlawful search and seizure which did not infringe his own personal rights protected by the constitution. People v. Perry, 1 Ill. 2d 482, 116 N.E.2d 360 (1953).

Exercise of Privilege

- In General

In prosecution for murder, jury instruction regarding defendant's failure to testify, given over defendant's objection after jury had retired to deliberate and was brought back into courtroom, did not violate Ill. Const. Art. I, § 10 People v. Matney, 293 Ill. App. 3d 139, 227 Ill. Dec. 83, 686 N.E.2d 1239, 1997 Ill. App. LEXIS 772 (1 Dist. 1997).

Where attorney failed to appear and produce requested documents, this was not a proper way of claiming the privilege against self-incrimination. In re Zisook, 88 Ill. 2d 321, 58 Ill. Dec. 786, 430 N.E.2d 1037 (1981), cert. denied, 457 U.S. 1134, 102 S. Ct. 2962, 73 L. Ed. 2d 1352 (1982).

Pursuant to this section and U.S. Const., Amend. 5, a witness cannot arbitrarily decline to testify merely because he states that such testimony would tend to incriminate him, however, great

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weight will be given to the decision of the witness, particularly in a doubtful case. People v. Conzo, 301 Ill. App. 524, 23 N.E.2d 210 (1 Dist. 1939).

While it is not enough for a witness to say that an answer will incriminate him, and while it must appear to the court, from all the circumstances, that there is real danger to the witness, the witness has the right to decide where the question is doubtful. People v. Newmark, 312 Ill. 625, 144 N.E. 338 (1924).

- Burden

Trial judges should always be careful to see that the constitutional right providing that no person shall be compelled in any criminal case to give evidence against himself is not infringed, but it has been held that it is for the person claiming the privilege in the first instance to show he has reasonable ground to believe that his answers, if given, might tend to incriminate him. People v. Schultz, 312 Ill. App. 220, 38 N.E.2d 379 (1 Dist. 1941), aff'd, 380 Ill. 539, 44 N.E.2d 601 (1942).

- Mere Silence Not Sufficient

A person can not avail himself of the right not to self-incriminate by mere silence or mere refusal to obey a subpoena duces tecum; his refusal must be by him placed upon the ground that to do so would be to furnish evidence tending to incriminate himself. Kanter v. Clerk of the Circuit Court, 108 Ill. App. 287 (1 Dist. 1903).

- Personal Right

The right of a witness to refuse to answer incriminating questions or to produce incriminating documents is personal; it can not be claimed for him by a mere party to the proceeding. Kanter v. Clerk of the Circuit Court, 108 Ill. App. 287 (1 Dist. 1903).

- Right to a Hearing

Where one based his refusal to obey an order of the court upon his constitutional privilege to refuse to give evidence against himself in a criminal case, though the proceeding was summary, he was entitled to a fair hearing and an opportunity to state the facts constituting his justification, and, if necessary, to offer evidence to sustain his claim of constitutional privilege. People v. Zazove, 311 Ill. 198, 142 N.E. 543 (1924).

- When Claimed

The privilege against self-incrimination must be claimed during examination and as questions are asked. Pennsylvania Tank Line v. Jordan, 341 Ill. 94, 173 N.E. 181 (1930).

Fifth Amendment

Appellate court erred in finding that defendant's inculpatory statement to police regarding the shooting death of his mother was involuntarily made and, thus was inadmissible pursuant to the Fifth Amendment and Ill. Const. Art. I, § 10. The purpose of those constitutional provisions was to prevent the trial court from considering statements that were involuntarily made, but all of the circumstances in defendant's case indicated that his inculpatory statement was voluntarily made. People v. Nicholas, 218 Ill. 2d 104, 299 Ill. Dec. 637, 842 N.E.2d 674, 2006 Ill. LEXIS 308 (2006), modified and rehearing denied, 2006 Ill. LEXIS 308 (2006).

- Comparison to Federal Constitution

Right to have counsel present during questioning and the rule that all interrogation must cease once a suspect requests counsel are not themselves constitutional rights, but are simply "prophylactic measures" designed to safeguard the Fifth Amendment privilege against self-

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incrimination. People v. Winsett, 153 Ill. 2d 335, 180 Ill. Dec. 109, 606 N.E.2d 1186, 1992 Ill. LEXIS 179 (1992).

The privilege against self-incrimination contained in this section is similar in import and intended to confer similar protections as those afforded by the Fifth Amendment to the U.S. Constitution. Gabriel v. Columbia Nat'l Bank, 228 Ill. App. 3d 240, 170 Ill. Dec. 120, 592 N.E.2d 556 (1 Dist. 1992).

- Purpose

The purpose of the Fifth Amendment is to assure an individual that he cannot be compelled to produce evidence which may be used against him. The evidence included in this protection is not only evidence leading to a criminal conviction buy also evidence which would furnish a link in the chain of evidence that could lead to prosecution, including evidence which the individual reasonably believes could be used against him in a criminal prosecution. People v. Baker, 123 Ill. 2d 233, 122 Ill. Dec. 17, 526 N.E.2d 157 (1988).

- Reasonable Fear of Discrimination

Defendant did not have a reasonable belief or fear of incrimination, his fifth amendment claim was without merit. People v. Baker, 123 Ill. 2d 233, 122 Ill. Dec. 17, 526 N.E.2d 157 (1988).

Forfeiture Proceeding

A claim to protest must be filed in a civil forfeiture proceeding in order to raise a double jeopardy issue. People v. Portuguez, 282 Ill. App. 3d 98, 217 Ill. Dec. 687, 667 N.E.2d 1080 (3 Dist. 1996).

Since defendant was not properly served and never became a party to voided forfeiture proceeding, the declaration of forfeiture was without legal effect; neither defendant nor his purported ownership interest in the property was effectively at risk or in jeopardy, and there was no "punishment" for double jeopardy purposes. People v. Smith, 275 Ill. App. 3d 844, 212 Ill. Dec. 200, 656 N.E.2d 797 (2 Dist. 1995).

Habitual Criminal Act

The Habitual Criminal Act (720 ILCS 5/33B-1) did not punish defendant a second time for his prior rape convictions, but rather, his prior felony convictions operated solely as aggravating factors, which enhanced the penalty imposed for the most recent offense; use of defendant's prior convictions as factors in aggravation at the defendant's sentencing hearing did not violate double jeopardy proscriptions. People v. Dunigan, 165 Ill. 2d 235, 209 Ill. Dec. 53, 650 N.E.2d 1026 (1995).

Habitual criminal statutes do not define a new or independent criminal offense but rather, such statutes simply prescribe the circumstances under which a defendant found guilty of a specific crime may be more severely punished because that defendant has a history of prior convictions; the punishment imposed under the Act is for the most recent offense only. The penalty is made heavier because the person convicted is a habitual criminal; the Act does not punish a defendant again for his prior felony convictions, nor are those convictions elements of the most recent felony offense. People v. Dunigan, 165 Ill. 2d 235, 209 Ill. Dec. 53, 650 N.E.2d 1026 (1995).

Arguments that the Habitual Criminal Act (725 ILCS 5/33B-1 et seq.) is unconstitutional in that it: (1) was enacted in violation of Article IV, § 8(d), of the Illinois Constitution because it was not read three times in the House of Representatives; (2) does not permit consideration of the offender's personal characteristics and seriousness of the offense in violation of the due process clause and eighth amendment of the United States Constitution; (3) places the sentencing discretion in the

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State's Attorney rather than the judiciary in violation of the separation of powers doctrine of the Illinois Constitution and eighth amendment to the United States Constitution; and (4) violates the provisions of the Illinois and United States Constitutions prohibiting ex post facto laws and double jeopardy have been addressed and rejected in numerous appellate court decisions. People v. McNeil, 125 Ill. App. 3d 876, 81 Ill. Dec. 256, 466 N.E.2d 1058 (1 Dist. 1984); People v. Westefer, 169 Ill. App. 3d 59, 119 Ill. Dec. 522, 522 N.E.2d 1381 (2 Dist.), appeal denied, 122 Ill. 2d 591, 125 Ill. Dec. 233, 530 N.E.2d 261 (1988); People v. McCall, 190 Ill. App. 3d 483, 137 Ill. Dec. 438, 546 N.E.2d 62 (2 Dist. 1989).

Punishment is for the new crime only, but the penalty is made heavier by statute because the defendant is a habitual criminal. People v. McNeil, 125 Ill. App. 3d 876, 81 Ill. Dec. 256, 466 N.E.2d 1058 (1 Dist. 1984).

Illustrative Cases

Defendant's pre-warning and post-warning statements were properly suppressed where defendant was subjected to custodial interrogation prior to being informed of defendant's Miranda rights when, inter alia, the officer's did not allow defendant's father to be present during the interrogation, defendant was required to ask for police assistance prior to engaging in activity that required defendant to leave the room, the officers situated themselves between defendant and the interrogation room, defendant was only 20 years old and of below-average intelligence, and defendant was inexperienced with the criminal justice system, and the post-warning interrogation occurred immediately after defendant was read the Miranda warnings, and the officers' strategy was meant to undermine Miranda. People v. Griffin, 385 Ill. App. 3d 202, 325 Ill. Dec. 657, 898 N.E.2d 704, 2008 Ill. App. LEXIS 975 (4 Dist. 2008).

Where defendant was found to be in direct criminal contempt for falsely representing himself before the trial court to be his brother; the trial court's granting of defendant's motion to dismiss the information on double jeopardy grounds was in error. People v. Heard, 208 Ill. App. 3d 278, 153 Ill. Dec. 46, 566 N.E.2d 896 (4 Dist. 1991).

Although reconsideration of a post-verdict ruling granting the defendant a new trial obviously subjected the defendant to continuing expense and anxiety, it did not expose him to the possibility of a second trial on the merits such that the double jeopardy clauses of the state and Federal Constitutions were not offended. People v. Mink, 141 Ill. 2d 163, 152 Ill. Dec. 293, 565 N.E.2d 975 (1990), cert. denied, 501 U.S. 1235, 111 S. Ct. 2863, 115 L. Ed. 2d 1030 (1991).

Defendant was not subjected to jeopardy at the time juror was excused, although juror had been sworn, because alternate jurors had not been selected and after his dismissal, the jury contained only eleven members, not twelve. People v. Turner, 186 Ill. App. 3d 849, 134 Ill. Dec. 589, 542 N.E.2d 935 (1 Dist. 1989).

Although no written finding as to murder was entered in the written memorandum of orders, the court did expressly state on the record that defendant was proven legally accountable for the action of codefendant who, if alive, would definitely have been guilty of murder, and the written memorandum of guilty as to armed violence and unlawful use of weapons, did not constitute a judgment of conviction of those charges in the absence of a sentence being imposed; therefore, defendant's conviction for murder did not violate his constitutional right against double jeopardy. People v. Young, 116 Ill. App. 3d 984, 72 Ill. Dec. 465, 452 N.E.2d 718 (1 Dist. 1983).

Where defendant did not intend to produce evidence that he was at work at the time in question, the trial court's failure to strike occurrence witnesses' volunteered testimony to that effect compelled defendant to produce information of a testimonial or communicative nature that he did not intend to introduce at trial; the admission of this prejudicial evidence, produced in violation of the defendant's privilege against self-incrimination and introduced for the ostensible purpose of

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rebutting evidence of an alibi, which could not have been established by witnesses' testimony, required reversal. People v. Fritz, 84 Ill. 2d 72, 48 Ill. Dec. 880, 417 N.E.2d 612 (1981).

Since all circuit courts are courts of general jurisdiction, the judge of the circuit court who held a defendant in criminal contempt in a divorce action was equal in authority to those judges who try felony criminal cases and could have presided at a criminal trial for the same occurrence, and while it was true that the contempt proceedings could not have resulted in a judgment that defendant was guilty of aggravated battery, the fact remained that he was twice punished for the same offense because the elements of proof were substantially identical in both prosecutions. A mere disparity in punishments available for the two offenses did not restrict the application of the double jeopardy bar. People v. Gray, 36 Ill. App. 3d 720, 344 N.E.2d 683 (1 Dist. 1976), aff'd, 69 Ill. 2d 44, 12 Ill. Dec. 886, 370 N.E.2d 797 (1977), cert. denied, 435 U.S. 1013, 98 S. Ct. 1887, 56 L. Ed. 2d 395 (1978).

Where a psychiatrist for the state and the defendant mutually observed one another prior to the arriving of defendant's counsel, there was, in fact, no testimonial compulsion as to inculpating matters; there was no valid question of the violation of defendant's right against self-incrimination, benefit of counsel or due process of law. People v. Wax, 75 Ill. App. 2d 163, 220 N.E.2d 600 (4 Dist. 1966).

Where defendant was prosecuted for violation of city ordinance requiring automobile to have to two functioning headlights, and one of defendant's headlights was out-of-order, defendant had a right to invoke his constitutional privilege against self-incrimination, and the trial court was in error in threatening to punish him if he did not aid the city in obtaining his own conviction, in finding him in contempt of court, and in depriving him of his liberty. A court has no jurisdiction to punish for contempt where no contempt has been committed. City of Chicago v. Berg, 48 Ill. App. 2d 251, 199 N.E.2d 49 (1964).

The request to the defendant to put on eyeglasses, in evidence, was not testimonial compulsion, and therefore, was not within the scope of the privilege against self-incrimination; nor was prejudicial conduct such as to deprive defendant of a fair trial. The glasses were in evidence, the defendant had denied they were his, and the ownership of the glasses was relevant and a material issue in the case. People v. Tomaszek, 54 Ill. App. 2d 254, 204 N.E.2d 30 (1 Dist. 1964).

The defendant was placed in jeopardy upon the first trial where the jury had been impaneled and the first witness for the prosecution began his testimony before a juror was withdrawn but it did not, however, follow automatically that his constitutional rights were violated by the second trial. People v. Thomas, 15 Ill. 2d 344, 155 N.E.2d 16 (1958).

Discharge under the speedy-trial provision of the Criminal Code (see 725 ILCS 5/103-5), of a motorist charged with voluntary manslaughter of pedestrian, did not prevent indictment for the death of a second pedestrian who died as a result of the same accident that killed the first pedestrian. People v. Allen, 368 Ill. 368, 14 N.E.2d 397 (1937).

No error was committed in sustaining the demurrer to the plea of former jeopardy, because evidence establishing such defense was properly admissible under the plea of not guilty; if the evidence offered established such defense, refusal to admit it was reversible error. People v. Peplos, 340 Ill. 27, 172 N.E. 54 (1930).

Under the U.S. Constitution and former Ill. Const. (1870), Art. II, § 10 (see now this section), where the court released the defendant from all liability to be prosecuted or punished on account of any matter to which he may have been required to testify before the grand jury in the investigation and inquiry of a charge of bribery, but the questions propounded to defendant had a direct tendency to convict him of gambling and of keeping a gambling house, and also exposed him to penal actions, it was within his constitutional rights to refuse to answer the questions. People v. Argo, 237 Ill. 173, 86 N.E. 679 (1908).

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Implied Acquittal Doctrine

Where the trial court mistakenly believed that the doctrine of implied acquittal applied to the inconsistent guilty verdicts of murder and voluntary manslaughter, and did not rule upon the sufficiency of the evidence with regard to the offense of murder, the court's actions did not bar defendant's retrial for that offense since the court did not resolve the factual elements of the offense charged. People v. Batson, 144 Ill. App. 3d 1027, 99 Ill. Dec. 89, 495 N.E.2d 154 (5 Dist. 1986).

Where defendant was found guilty of murder, voluntary manslaughter (now second degree murder) and involuntary manslaughter application of the doctrine of implied acquittal would be fictional. People v. Hoffer, 106 Ill. 2d 186, 88 Ill. Dec. 20, 478 N.E.2d 335 (1985).

Where defendant was initially charged with murder, the case was submitted to the jury with instructions as to offenses of murder, voluntary manslaughter (now second degree murder) and involuntary manslaughter, and the jury found defendant guilty of involuntary manslaughter, by operation of law, this conviction had the effect of an acquittal of the graver charges of murder and voluntary manslaughter; thus, where a new trial was required due to insufficient discovery provided to defendant, doctrine of former jeopardy barred any further prosecution on the greater offense and required that defendant be retried only for involuntary manslaughter. People v. Keith, 66 Ill. App. 3d 93, 22 Ill. Dec. 847, 383 N.E.2d 655 (5 Dist. 1978).

Increased Sentence to Death upon Retrial

- Not Double Jeopardy

Increased sentence upon retrial did not violate defendant's right to due process of law nor did it violate double jeopardy since there was nothing in the record to indicate that the court, in imposing the death penalty, was prompted by any sense of vindictiveness. People v. Bernette, 45 Ill. 2d 227, 258 N.E.2d 793 (1970).

Invited Error

Defendant's retrial for armed robbery did not violate Double Jeopardy Clause of U.S. Const. Amend. V, U.S. Const. Amend. XIV, or Ill. Const. (1970), Art. I, § 10. The trial court's finding in his first trial that he was guilty of aggravated robbery was not an implied acquittal on the armed robbery charge, and because defendant invited the error by arguing that the evidence supported the offense of aggravated robbery, not armed robbery, under the invited error doctrine, he was not allowed to take advantage of that error in his appeal from the conviction in his retrial for armed robbery. People v. McDonald, 366 Ill. App. 3d 243, 304 Ill. Dec. 213, 852 N.E.2d 463, 2006 Ill. App. LEXIS 566 (1 Dist. 2006).

Judicial Remarks

- Not Prejudicial

When during defendant's pro se cross-examination of a witness the trial judge repeatedly instructed defendant not to testify while he was conducting his cross-examination and stated that defendant would have an opportunity to testify later, the trial judge's remarks did not violate defendant's rights against self-incrimination. People v. Anderson, 262 Ill. App. 3d 349, 198 Ill. Dec. 858, 633 N.E.2d 699 (1 Dist. 1992).

Where the court's remarks were not intended to "call attention" to the defendant's failure to testify but was made during the presentation of the state's case, as an isolated instance, it was not a

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case in which accused's failure to testify was argued to the jury and, additionally, the evidence which sustained the verdict was positive and direct and not circumstantial, in fact, overwhelming, the error was harmless beyond a reasonable doubt and did not contribute to the verdict. People v. King, 4 Ill. App. 3d 942, 282 N.E.2d 252 (5 Dist. 1972).

- Prejudicial

The trial court's comment to defendant that, "If you disagree with something you can take the stand and testify yourself," was not harmless error because defendant's guilt was conflicting and the proof was not overwhelming; accordingly, defendant's conviction of aggravated battery would be reversed. People v. Crabtree, 162 Ill. App. 3d 632, 114 Ill. Dec. 52, 515 N.E.2d 1323 (4 Dist. 1987).

Lesser Included Offense

- Retrial Permitted

There was no violation of double jeopardy where defendant was acquitted of felony murder at the first trial but not of arson and since the charge of arson was a lesser included offense of the charge of felony murder based upon arson, a retrial as to those charges was appropriate. People v. Rosario, 166 Ill. App. 3d 383, 116 Ill. Dec. 805, 519 N.E.2d 1020 (1 Dist. 1988).

Mistrial

- Bar to Retrial

Trial court erred in denying defendant's motion to dismiss charges on the ground of double jeopardy where the trial court sua sponte declared mistrial based on the fact that a juror had an alleged emergency, the juror's mother-in-law was hospitalized with a broken leg, and the State failed to meet its heavy burden of justifying the mistrial. People v. Largent, 337 Ill. App. 3d 835, 272 Ill. Dec. 268, 786 N.E.2d 1102, 2003 Ill. App. LEXIS 396 (4 Dist. 2003).

- Consent

A defendant's failure to object to a mistrial, despite having an adequate opportunity to do so, and his course of conduct after the declaration of the mistrial, can constitute acquiescence to the mistrial. People v. Escobar, 168 Ill. App. 3d 30, 118 Ill. Dec. 736, 522 N.E.2d 191 (1 Dist.), appeal denied, 122 Ill. 2d 583, 125 Ill. Dec. 226, 530 N.E.2d 254 (1988).

- Defendant's Approval

A defendant's explicit approval of a mistrial declaration will constitute consent so as to avoid the bar of double jeopardy. People v. Williams, 130 Ill. App. 3d 11, 85 Ill. Dec. 168, 473 N.E.2d 536 (1 Dist. 1984).

- Effect

The effect of a declaration of mistrial is to continue the case for trial before another jury; double jeopardy attaches after a mistrial is improperly directed only if the defendant neither requests the mistrial nor consents thereto. People v. Cummings, 47 Ill. App. 3d 578, 5 Ill. Dec. 944, 362 N.E.2d 415 (3 Dist. 1977).

- Intent to Provoke

Illinois caselaw requires the prosecutor's intent behind her misconduct be to "goad" the defendant into seeking a mistrial to trigger double jeopardy protection under Ill. Const. art. I, § 10. People v.

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Griffith, 404 Ill. App. 3d 1072, 344 Ill. Dec. 417, 936 N.E.2d 1174, 2010 Ill. App. LEXIS 1054 (1 Dist. 2010).

Illinois Supreme Court precedent provided that the federal standard under Illinois caselaw required the prosecutor's intent behind her misconduct be to goad the defendant into seeking a mistrial to trigger double jeopardy protection under U.S. Const., amend. V and Ill. Const. art. I, § 10; however, as defendant conceded, no such intent could be objectively established under the facts of the case. Therefore, under well-established precedent, the double jeopardy clause under Ill. Const. art. I, § 10 did not preclude defendant's retrial, and under the current state of Illinois law, the only relief defendant could claim, even in the face of a clear showing of egregious prosecutorial misconduct, was that which the federal district court provided, a new trial. People v. Griffith, 404 Ill. App. 3d 1072, 344 Ill. Dec. 417, 936 N.E.2d 1174, 2010 Ill. App. LEXIS 1054 (1 Dist. 2010).

Where prosecutorial (or judicial) misconduct was intended to goad defendant into moving for mistrial and where defendant successfully moved for mistrial, retrial was barred by the double jeopardy doctrine; although the prosecutor's comments alluding to the defendant's motive to kill the deceased were promptly objected to and sustained by the trial court, there was no motion for mistrial and both the defense counsel and the trial court failed to recognize any need for a mistrial. People v. Harbold, 262 Ill. App. 3d 1067, 200 Ill. Dec. 561, 635 N.E.2d 900 (1 Dist.), appeal denied, 157 Ill. 2d 512, 205 Ill. Dec. 175, 642 N.E.2d 1292 (1994), cert. denied, 513 U.S. 1191, 115 S. Ct. 1254, 131 L. Ed. 2d 134 (1995).

Even if a prosecutor may have purposely offered evidence constituting error, it should neither be equated with actually showing an intent to provoke a mistrial nor be the ground for a reasonable inference of an intent to provoke a mistrial. After all, every act on the part of a rational prosecutor during a trial is designed to "prejudice" the defendant by placing before the judge or jury evidence leading to a finding of his guilt. People v. Ramirez, 114 Ill. 2d 125, 102 Ill. Dec. 392, 500 N.E.2d 14 (1986).

- Motion by Defendant

A defendant's request for, or acquiescence in, a mistrial will generally remove any bar to reprosecution unless the conduct of the judge or prosecutor was calculated to provoke the defendant to move for a mistrial. People v. Roche, 258 Ill. App. 3d 194, 197 Ill. Dec. 124, 630 N.E.2d 1248 (2 Dist. 1994).

There is no barrier to reprosecution if the mistrial was attributable to the defendant, by virtue of his or her motion or consent. People v. Escobar, 168 Ill. App. 3d 30, 118 Ill. Dec. 736, 522 N.E.2d 191 (1 Dist.), appeal denied, 122 Ill. 2d 583, 125 Ill. Dec. 226, 530 N.E.2d 254 (1988).

A defendant's motion for mistrial is generally considered to remove the double jeopardy bar, and the state is entitled to retry the defendant even though the error which prompted the motion is attributable to the state. People v. Williams, 130 Ill. App. 3d 11, 85 Ill. Dec. 168, 473 N.E.2d 536 (1 Dist. 1984).

- Not Bar to Retrial

Defendant was not subjected to double jeopardy following the court's declaration of a mistrial because the record was clear that he objected to proceeding with 11 jurors. People v. LaFond, 343 Ill. App. 3d 981, 278 Ill. Dec. 800, 799 N.E.2d 518, 2003 Ill. App. LEXIS 1287 (3 Dist. 2003).

Defendant's interlocutory appeal, pursuant to Ill. Sup. Ct. R. 604(f), from the trial court's denial of his motion to dismiss criminal charges against him, under 725 ILCS 5/114-1, following the trial court's declaration of mistrial in a prior trial due to the discharge of three jurors, resulted in an affirmance of the denial of dismissal, where it was found that the mistrial was declared due to

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manifest necessity. People v. Sanders, 342 Ill. App. 3d 374, 276 Ill. Dec. 976, 795 N.E.2d 329, 2003 Ill. App. LEXIS 953 (5 Dist. 2003).

Jury's failure to render a verdict on the charge of involuntary manslaughter did not constitute an implied acquittal barring subsequent proseuction; therefore, the trial court permissibly declared a mistrial as to that charge and the appellate court erred in entering a judgment of acquittal on that charge. People v. Henry, 204 Ill. 2d 267, 273 Ill. Dec. 374, 789 N.E.2d 274, 2003 Ill. LEXIS 768 (2003).

After the State located a previously lost videotape of defendant's arrest and the trial court sua sponte declared a mistrial, double jeopardy principles did not bar retrial since the trial court balanced the competing interests of the State and defendant with regard to the videotape. People v. Bagley, 338 Ill. App. 3d 978, 273 Ill. Dec. 686, 789 N.E.2d 860, 2003 Ill. App. LEXIS 566 (2 Dist. 2003).

Manifest necessity for a mistrial existed and, therefore, the retrial of the defendant was not barred where: (1) after two days of testimony, the court learned that a juror was previously convicted of a felony and failed to disclose that conviction during voir dire; (2) a previous juror had already been dismissed, and the alternate was already in place; and (3) the defendant was not willing to proceed with 11 jurors. People v. McPherson, 306 Ill. App. 3d 758, 239 Ill. Dec. 833, 715 N.E.2d 278 (5 Dist. 1999).

Double jeopardy does not bar a subsequent prosecution where the trial court granted a mistrial based, not on a resolution of defendant's guilt or innocence, but on a perceived due process problem concerning the state's failure to preserve a valuable piece of evidence. People v. Marty, 241 Ill. App. 3d 266, 181 Ill. Dec. 852, 608 N.E.2d 1326 (4 Dist. 1993).

A criminal defendant will not be allowed to seek the protection of the double jeopardy clause if a mistrial is declared because of manifest necessity. A trial court may declare a mistrial as a manifest necessity if certain circumstances beyond the control of the parties and the court no longer make it possible to conduct a trial or to reach a fair result upon the evidence; some examples of manifest necessity are a hung jury, a defective indictment, or inflammatory remarks which make a fair trial impossible, and in these instances, the court can declare a mistrial and double jeopardy will not be a bar to a second prosecution. People v. Mulcahey, 231 Ill. App. 3d 908, 173 Ill. Dec. 416, 596 N.E.2d 1295 (4 Dist.), cert. granted, 146 Ill. 2d 644, 176 Ill. Dec. 814, 602 N.E.2d 468 (1992), rev'd on other grounds, 155 Ill. 2d 549, 187 Ill. Dec. 455, 617 N.E.2d 1176 (1993).

Where defendants were retried within a few months of the first trial, both trials were short and the testimony of only one witness, the alleged victim, was involved, double jeopardy was not a bar to a retrial. People v. Cummings, 47 Ill. App. 3d 578, 5 Ill. Dec. 944, 362 N.E.2d 415 (3 Dist. 1977).

A mistrial is not a bar to a second prosecution when manifest necessity or the interests of public justice require it. People v. Phillips, 29 Ill. App. 3d 529, 331 N.E.2d 163 (1 Dist. 1975).

Where, for reasons deemed compelling by the trial judge, who is best situated intelligently to make such a decision, the ends of substantial justice cannot be attained without discontinuing the trial, a mistrial may be declared without the defendant's consent and even over his objection, and he may be retried. People v. Chaffin, 49 Ill. 2d 356, 274 N.E.2d 68 (1971).

To be twice tried for the same offense is not necessarily to be twice put in jeopardy, and under a variety of circumstances, including instances where the first proceeding has ended in a mistrial, a second trial does not give rise to a claim of double jeopardy. People v. Laws, 29 Ill. 2d 221, 193 N.E.2d 806 (1963).

The defendant was not placed in double jeopardy or deprived his due process rights when he was convicted on a second trial that was needed when another judge declared mistrial in the

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presence of the jury the trial judge had charged the defendant's attorney with attempting "a manufactured and synthetic emotional appeal." People v. Thomas, 15 Ill. 2d 344, 155 N.E.2d 16 (1958).

- Standard for Granting

Where the original trial was sufficiently flawed or defective that a conviction would probably be reversed on appeal, public justice requires that a mistrial be declared; on the other hand, if the problem could have been adequately corrected short of aborting the proceeding, such that a guilty verdict would be reasonably supportable on appeal, neither manifest necessity or the ends of public justice require a mistrial, and the granting thereof, being improper, bars further prosecution as violative of the Double Jeopardy Clause. People v. Phillips, 29 Ill. App. 3d 529, 331 N.E.2d 163 (1 Dist. 1975).

New Trial

Since defendant's videotaped statement showed that defendant specifically and unambiguously invoked his right to remain silent under U.S. Const. Amend. V and Ill. Const., Art. I, § 10, a subsequently obtained videotaped statement in which defendant essentially admitted his involvement in a murder would have been suppressed if counsel had moved to suppress on the grounds that the videotape was obtained after defendant invoked his right to remain silent. Since the State's case was based primarily on the videotape and since there was no physical or eyewitness evidence linking defendant to the murder, counsel was ineffective for failing to raise a suppression motion, the videotape was improperly admitted into evidence, and defendant's murder conviction was vacated. However, since the videotape provided overwhelming evidence of defendant's guilt through a "common design" theory of accountability, a new trial would not violate double jeopardy. People v. Hernandez, 362 Ill. App. 3d 779, 298 Ill. Dec. 819, 840 N.E.2d 1254, 2005 Ill. App. LEXIS 1204 (1 Dist. 2005), appeal denied, 219 Ill. 2d 579, 303 Ill. Dec. 836, 852 N.E.2d 243 (2006).

- Applicability of Jeopardy

Although the cumulative effect of a prosecutor's misconduct during defendant's trial on charges of armed robbery and home invasion denied defendant a fair trial and required reversal of his convictions, eyewitness testimony provided during trial established the elements of the charged crimes beyond a reasonable doubt so that double jeopardy did not attach and the State was free to retry defendant on the charges. People v. Liner, 356 Ill. App. 3d 284, 292 Ill. Dec. 838, 826 N.E.2d 1274, 2005 Ill. App. LEXIS 224 (5 Dist. 2005).

When defendant was convicted of two murders in separate trials,and, in the second trial, was sentenced to death due to multiple murder convictions, but both convictions were reversed, and, on retrial of the first murder, he was again convicted and found eligible for the death penalty due to multiple murder convictions, but the death penalty was not imposed, the State was not barred, in the retrial of the second murder, from seeking the death penalty, on double jeopardy grounds. People v. Blue, 207 Ill. 2d 542, 280 Ill. Dec. 283, 802 N.E.2d 208, 2003 Ill. LEXIS 2272 (2003).

Appeals court reversed and remanded mother's conviction for aiding and abetting the mother's boyfriend's murder of the mother's three-year-old daughter; the jury instructions were erroneous under the Pollack decision; they indicated that the mother could be convicted under a negligent rather than knowing or intentional state of mind standard where there was an ongoing pattern of abuse, and the error was not harmless where accountability was a fundamental element of the offense; the evidence was sufficient to convict the mother under the knowing or intentional state of mind test, so the mother's retrial was not barred by the Double Jeopardy Clause. People v. Burton, 338 Ill. App. 3d 406, 272 Ill. Dec. 916, 788 N.E.2d 220, 2003 Ill. App. LEXIS 400 (1 Dist. 2003).

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In the situation where a conviction is reversed and remanded for a new trial, an appeals court must also address the sufficiency of the evidence to remove the risk of subjecting defendant to double jeopardy. People v. Burton, 338 Ill. App. 3d 406, 272 Ill. Dec. 916, 788 N.E.2d 220, 2003 Ill. App. LEXIS 400 (1 Dist. 2003).

Extension of the concept of double jeopardy from circumstances where a mistrial has been declared to those in which a defendant has been granted a new trial because of trial error is improper. People v. Marchbanks, 125 Ill. App. 3d 796, 81 Ill. Dec. 82, 466 N.E.2d 668 (2 Dist. 1984).

- Held Improper

Because the trial court determined that the evidence was insufficient to convict, the double jeopardy clause prohibited the state from trying the defendant again for the same offense, and the trial court erred in ordering a new trial. People v. Mink, 141 Ill. 2d 163, 152 Ill. Dec. 293, 565 N.E.2d 975 (1990), cert. denied, 501 U.S. 1235, 111 S. Ct. 2863, 115 L. Ed. 2d 1030 (1991).

Nolle Prosequi

Withdrawal of charges of a predicate offense was not an adjudication and therefore did not operate as an acquittal on the merits; therefore, defendant's conviction of felony murder was not barred by collateral estoppel principles. People v. Milka, 336 Ill. App. 3d 206, 270 Ill. Dec. 476, 783 N.E.2d 51, 2003 Ill. App. LEXIS 50 (2 Dist. 2003), aff'd, 211 Ill. 2d 150, 284 Ill. Dec. 380, 810 N.E.2d 33 (2004).

- Distinguished from Dismissal with Prejudice

While pleading not formally entitled as a nolle prosequi may be considered to be such a pleading in substance, a plea of nolle prosequi and dismissal with prejudice are quite different in effect, in that a dismissal with prejudice will foreclose the filing of a second indictment on the same charge. People v. Newell, 83 Ill. App. 3d 133, 38 Ill. Dec. 544, 403 N.E.2d 775 (3 Dist. 1980).

- Effect

Once a nolle prosequi has been entered, neither double jeopardy nor equitable estoppel will bar future prosecution of an offense nolprossed before jeopardy attached. People v. Jones, 188 Ill. App. 3d 183, 135 Ill. Dec. 575, 543 N.E.2d 1322 (5 Dist. 1989).

Even if the original dismissal was, in substance, a plea of nolle prosequi, the trial court's dismissal of the second indictment was proper where the defendant was indicted for the same charge, based on the same set of facts after the term time on the first indictment. People v. Newell, 83 Ill. App. 3d 133, 38 Ill. Dec. 544, 403 N.E.2d 775 (3 Dist. 1980).

Although a nolle prosequi filed before jeopardy attaches does not bar another prosecution for the same offense, that second prosecution must be instituted in the same term and can not be reinstated in a subsequent term. People v. Newell, 83 Ill. App. 3d 133, 38 Ill. Dec. 544, 403 N.E.2d 775 (3 Dist. 1980).

- No Waiver of Rights

Although the right to claim double jeopardy is a right which can be waived, a defendant cannot be said to have waived such right where the prosecution made a calculated decision to nolle prosequi defendant, where there was no manifest necessity for a retrial, and where the circumstances suggested the defendant may not have been aware of the consequences which flowed from his actions. People v. Mulcahey, 231 Ill. App. 3d 908, 173 Ill. Dec. 416, 596 N.E.2d 1295 (4 Dist.), cert. granted, 146 Ill. 2d 644, 176 Ill. Dec. 814, 602 N.E.2d 468 (1992), rev'd on other grounds, 155 Ill. 2d 549, 187 Ill. Dec. 455, 617 N.E.2d 1176 (1993).

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- Subsequent Prosecution Not Barred

Since jeopardy does not generally attach until a defendant has been placed before the trier of fact, a prosecutor may decide not to prosecute, at that moment, and plead nolle prosequi before jeopardy attaches; when this occurs, subsequent prosecution for the same offense is not barred. People v. Newell, 83 Ill. App. 3d 133, 38 Ill. Dec. 544, 403 N.E.2d 775 (3 Dist. 1980).

Overreaching

- Bar to Mistrial

Prosecutorial or judicial overreaching is a bar to retrial, whether or not a defendant consented to the mistrial. People v. Escobar, 168 Ill. App. 3d 30, 118 Ill. Dec. 736, 522 N.E.2d 191 (1 Dist.), appeal denied, 122 Ill. 2d 583, 125 Ill. Dec. 226, 530 N.E.2d 254 (1988).

- Defined

"Overreaching" is prosecutorial or judicial misconduct: (1) specifically designed to provoke a mistrial in order to obtain a second, and perhaps more favorable, opportunity to convict the accused. Further, overreaching is established by the trial judge making a finding of fact. People v. Escobar, 168 Ill. App. 3d 30, 118 Ill. Dec. 736, 522 N.E.2d 191 (1 Dist.), appeal denied, 122 Ill. 2d 583, 125 Ill. Dec. 226, 530 N.E.2d 254 (1988).

Prosecutorial or judicial overreaching needed for a defendant to be able to advantageously claim double jeopardy after his own motion for a mistrial is granted is improper conduct on the part of the judge or the prosecutor which is specifically aimed at depriving the defendant of the opportunity of having a fair trial by an impartial jury. People v. Hill, 34 Ill. App. 3d 193, 339 N.E.2d 405 (5 Dist. 1975).

- Improper Line of Questioning

Where there was a series of questions, a conviction for contempt of court for refusing to answer the questions could not be sustained by picking out one question which could have been safely answered; if answers to any of a series of questions would have a tendency to subject the witness to criminal prosecution, he was entitled to remain silent as to all of them. People v. Newmark, 312 Ill. 625, 144 N.E. 338 (1924).

- Independent Circumstances

Where defendant sought, or at least consented to, the mistrial that the trial court declared, there was no barrier to reprosecution, even if the defendant's motion was necessitated by prosecutorial or judicial overreaching since circumstances developed not attributable to prosecutorial or judicial overreaching. People ex rel. Roberts v. Orenic, 88 Ill. 2d 502, 59 Ill. Dec. 68, 431 N.E.2d 353 (1981).

- Not Found

Where the trial judge specifically found that neither the state nor any person intentionally sent prejudicial evidence into the jury room, there was no overreaching and double jeopardy principles did not bar the reprosecution of defendant after a mistrial was declared. People v. Escobar, 168 Ill. App. 3d 30, 118 Ill. Dec. 736, 522 N.E.2d 191 (1 Dist.), appeal denied, 122 Ill. 2d 583, 125 Ill. Dec. 226, 530 N.E.2d 254 (1988).

Where defendant's convictions at his first trial were not reversed on appeal for insufficiency of the evidence nor was he intentionally provoked into requesting a mistrial by conduct of the state or court, but was, instead, granted a new trial, at his request, the failure of the state to disclose information which defendant might have used to affect the credibility of a witness against him did not constitute "prosecutorial overreaching" and, thus, did not bar defendant's retrial on double

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jeopardy grounds. People v. Marchbanks, 125 Ill. App. 3d 796, 81 Ill. Dec. 82, 466 N.E.2d 668 (2 Dist. 1984).

Where there was no evidence or suggestion of judicial or prosecutorial overreaching, no double jeopardy violation occurred when defendant was retried following the granting of his motion for a mistrial. People v. Hill, 34 Ill. App. 3d 193, 339 N.E.2d 405 (5 Dist. 1975).

- Prosecutorial Misconduct

Retrial, or resentencing is not proper if the prosecutor has provoked a mistrial, because an accused is entitled to have the charges against him decided by the first trier of fact, however, prosecutorial misconduct is a very narrow exception to the general holding that the guaranty against double jeopardy does not bar retrial following a reversal because of trial errors. People v. Ramirez, 114 Ill. 2d 125, 102 Ill. Dec. 392, 500 N.E.2d 14 (1986).

Defendant failed to demonstrate an abuse of discretion by the trial court in allowing the prosecution to recall the victim as a witness; the prosecution's conduct did not provoke defendant into moving for a mistrial, therefore, double jeopardy was not a bar, to a second trial. People v. Veal, 149 Ill. App. 3d 619, 102 Ill. Dec. 913, 500 N.E.2d 1014 (3 Dist. 1986).

Plea Agreement

- Refusal to Honor

There was no double jeopardy bar to the state's reindictment on felony sexual abuse charges which had been nolle prosequied under a plea agreement with defendant, where defendant later refused to comply with the plea agreement to plead guilty to misdemeanor charges. People v. Mulcahey, 155 Ill. 2d 549, 187 Ill. Dec. 455, 617 N.E.2d 1176 (1993).

Prim Instruction

Where the trial judge indicated he was going to declare a mistrial, defendant's suggestion to give the jury a Prim instruction (People v. Prim, 53 Ill. 2d 62, 289 N.E.2d 601 (1972)), did not constitute a timely objection on double jeopardy grounds, and, therefore, did not preclude a retrial. People v. Escobar, 168 Ill. App. 3d 30, 118 Ill. Dec. 736, 522 N.E.2d 191 (1 Dist.), appeal denied, 122 Ill. 2d 583, 125 Ill. Dec. 226, 530 N.E.2d 254 (1988).

Prior Civil Action

The double jeopardy prohibition applies only to criminal proceedings; a criminal prosecution would not be barred by a prior civil action. People v. Gray, 36 Ill. App. 3d 720, 344 N.E.2d 683 (1 Dist. 1976), aff'd, 69 Ill. 2d 44, 12 Ill. Dec. 886, 370 N.E.2d 797 (1977), cert. denied, 435 U.S. 1013, 98 S. Ct. 1887, 56 L. Ed. 2d 395 (1978).

Prior Nonadjudicatory Hearing

- Not Bar to Subsequent Prosecution

Defendant's contention that when a witness was sworn and gave evidence against him during juvenile court proceedings, he was placed in jeopardy and could not thereafter be tried criminally for commission of the same act was rejected where the hearing which was conducted at that time was solely for the purpose of determining whether defendant should be kept in custody during the period for which a continuance was requested by the defense. People v. Depoy, 40 Ill. 2d 433, 240 N.E.2d 616 (1968).

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Prison Disciplinary Proceedings

- Not Bar to Subsequent Prosecution

The state's prosecution of a prison inmate for felony attempt escape did not violate the double jeopardy clause of the Federal and State Constitutions where prior to his prosecution in the circuit court, the inmate was subjected to prison disciplinary proceedings for the attempted escape. People v. McCollum, 72 Ill. App. 3d 174, 28 Ill. Dec. 457, 390 N.E.2d 624 (3 Dist. 1979).

Where, as a result of their participation in prison disturbance, defendants were subjected to internal prison disciplinary proceedings in which their accumulated statutory good time was revoked and also to criminal prosecution for the same conduct there was no violation of the double jeopardy clauses of the Illinois Constitution. People v. Lewis, 73 Ill. App. 3d 361, 25 Ill. Dec. 436, 386 N.E.2d 910 (3 Dist. 1979).

Probation Revocation Proceedings

- In General

A defendant is not entitled to invoke the privilege against self-incrimination in a probation revocation hearing because such proceedings are civil in nature. People v. Lindsey, 199 Ill. 2d 460, 264 Ill. Dec. 695, 771 N.E.2d 399, 2002 Ill. LEXIS 320 (2002).

Forcing defendant to testify as a witness for the State at defendant's probation revocation hearing did not violate defendant's privilege against self-incrimination under U.S. Const., Amend. V and Ill. Const., Art. I, § 10 because probation revocation proceedings are not criminal proceedings and defendant's testimony at the probation revocation hearing would not incriminate him in any other proceedings. The court held that the privilege against self-incrimination contained in the Illinois Constitution should not be interpreted more broadly than that contained in the federal Constitution. People v. Lindsey, 319 Ill. App. 3d 586, 253 Ill. Dec. 860, 746 N.E.2d 308, 2001 Ill. App. LEXIS 255 (1 Dist. 2001).

The protections afforded under this section of the Illinois Constitution apply to a probation revocation proceeding and, accordingly, a defendant may not be called as a witness by the state to testify against himself in such a proceeding. People v. McNairy, 309 Ill. App. 3d 220, 242 Ill. Dec. 669, 721 N.E.2d 1200 (2 Dist. 1999), appeal denied, 188 Ill. 2d 576, 246 Ill. Dec. 128, 729 N.E.2d 501 (2000).

- Coerced Testimony Inadmissible

The due process of a probation revocation proceeding must include forbearance from the use of coerced testimony and its fruits. People v. Peterson, 74 Ill. 2d 478, 23 Ill. Dec. 554, 384 N.E.2d 348 (1978).

- Trial on Latest Offense

Following a hearing in which probation is revoked, trial upon the indictment for the latest offense does not subject the defendant to double jeopardy. People v. Morgan, 55 Ill. App. 2d 157, 204 N.E.2d 314 (4 Dist. 1965).

Prosecution for Separate Offenses

Defendant's convictions of both computer fraud and theft did not violate the one-act, one-crime rule because the computer fraud offense and the theft offense were based on separate acts. Defendant committed computer fraud in violation of 720 ILCS 5/16D-5 by representing himself as

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someone else while using a computer to complete online application forms in order to obtain a credit card; defendant committed theft in violation of 720 ILCS 5/16-1(a)(2)(A) by accepting the credit card and then using it to obtain merchandise and financing. People v. Davis, 353 Ill. App. 3d 790, 289 Ill. Dec. 395, 819 N.E.2d 1195, 2004 Ill. App. LEXIS 1458 (2 Dist. 2004).

- Not Barred by Double Jeopardy

If each offense requires proof of an additional fact not required to prove the other, then the two offenses are not the same for double jeopardy purposes. People v. Flanagan, 201 Ill. App. 3d 1071, 147 Ill. Dec. 765, 559 N.E.2d 1105 (4 Dist. 1990), appeal denied, 135 Ill. 2d 561, 151 Ill. Dec. 387, 564 N.E.2d 842 (1990).

If the statutory elements of one offense require an element of proof which the other offense does not include, then for purposes of double jeopardy, the offenses are not the same. People v. Kaye, 154 Ill. App. 3d 562, 107 Ill. Dec. 348, 507 N.E.2d 12 (1 Dist. 1987).

A prosecution for aggravated battery following and arising out of an adjudication of direct criminal contempt does not offend the double jeopardy clause of either the United States Constitution (U.S. Const., Amend. V) or this section because proof of aggravated battery requires proof that the defendant inflicted great bodily harm upon the victim, an element not necessary to prove indirect criminal contempt for the violation of an order, and as such, indirect criminal contempt and aggravated battery are two separate and distinct offenses. People v. Totten, 118 Ill. 2d 124, 113 Ill. Dec. 47, 514 N.E.2d 959 (1987).

Section 3-4 (720 ILCS 5/3-4) and federal and state prohibitions against double jeopardy (U.S. Const., Amend. IV and this section) shield the defendant against the burden of multiple trials for the same offense, but not against indictments by more than one county for the same offense. People v. Owens, 99 Ill. App. 3d 730, 54 Ill. Dec. 662, 425 N.E.2d 527 (2 Dist. 1981).

Defendant's contention that the jury's specific finding that he was not guilty of voluntary manslaughter precluded the appellate court from reducing his conviction from murder to voluntary manslaughter was without merit as appellate court's reduction of the degree of defendant's offense from murder to "provocation" voluntary manslaughter and the jury's acquittal on "unreasonable belief" voluntary manslaughter referred to separate offenses. People v. Goolsby, 70 Ill. App. 3d 832, 26 Ill. Dec. 893, 388 N.E.2d 894 (1 Dist. 1979), cert. denied, 445 U.S. 952, 100 S. Ct. 1602, 63 L. Ed. 2d 788 (1980).

Defendant who was accused of two separate and distinct thefts, identical but for the dates, was not placed in jeopardy twice for the same offense. People v. Johnson, 63 Ill. App. 3d 248, 20 Ill. Dec. 483, 380 N.E.2d 461 (2 Dist. 1978).

Prosecution of defendant on six deceptive practice charges after his seventh deceptive practice charge which happened within 90 days of a transaction resulting in the remaining six charges did not violate the prohibition against double jeopardy since the prosecution of any of these charges would involve proof of a substantially different mental state and act from any of the others. People v. Beam, 55 Ill. App. 3d 943, 12 Ill. Dec. 946, 370 N.E.2d 857 (5 Dist. 1977), aff'd, 74 Ill. 2d 240, 24 Ill. Dec. 157, 384 N.E.2d 1315 (1978).

Respondent's acquittal from charges of assault and intimidation did not preclude a charge of criminal contempt on double jeopardy grounds, where, although both proceedings may have related to the same general transactions, it was apparent that widely distinct elements were involved in the two proceedings. People ex rel. Scott v. Master Barbers & Beauty Culturists Ass'n, 9 Ill. App. 3d 981, 293 N.E.2d 393 (1 Dist. 1973).

If offenses arising from the same conduct are separate and distinct in law, regardless of how closely they are connected in point of fact, a prosecution for both is not a violation of the constitutional prohibition against being placed in double jeopardy. People v. Barnett, 7 Ill. App. 3d 185, 287 N.E.2d 247 (1 Dist. 1972).

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Although 720 ILCS 5/21.2-2 and 720 ILCS 5/21-5 deal with different subject matter, one act may contravene both; thus, a defendant violated both statutes simultaneously when after receiving notice to depart, he refused to leave a building owned and operated by an institution of higher learning which was supported by the state, and a prosecution for both was not a violation of the constitutional prohibition against being placed in double jeopardy. People v. Barnett, 7 Ill. App. 3d 185, 287 N.E.2d 247 (1 Dist. 1972).

Battery is neither the same nor is it an includable offense in the crime of attempted rape; therefore, the defendant was not subjected to double jeopardy. People v. Thompson, 87 Ill. App. 2d 426, 230 N.E.2d 889 (2 Dist. 1967).

Defendant's contention that the imposition by the trial court of a sentence in excess of the limits of punishment fixed by the verdict constituted placing the defendant twice in jeopardy for the same offense was meritless because the court was not confronted with two valid sentences placing a defendant in double jeopardy, nor had defendant again been placed on trial for the same offense. People v. Koning, 18 Ill. App. 2d 119, 151 N.E.2d 103 (2 Dist. 1958).

The trial court had authority to impose two consecutive sentences under a single indictment consisting of two counts naming separate offenses in the same transaction, and the same did not constitute double jeopardy within the meaning of the Constitution of the State of Illinois and the Constitution of the United States. People v. Stingley, 414 Ill. 398, 111 N.E.2d 548 (1953).

Robbery and burglary are separate and distinct offenses and the fact that both crimes resulted from the same transaction and involved the same property is of no consequence; a conviction or acquittal of burglary does not exempt the accused from prosecution and punishment for robbery. People v. Flaherty, 396 Ill. 304, 71 N.E.2d 779 (1947).

It was not error in placing plaintiff in error on trial for the crimes of burglary, as he had been tried and convicted of the crime of robbery arising out of the same facts. People v. Loftus, 395 Ill. 479, 70 N.E.2d 573 (1946), cert. dismissed, 337 U.S. 935, 69 S. Ct. 1511, 93 L. Ed. 1741 (1949).

Two or more distinct offenses may grow out of the same transaction or act, and the rule that a person cannot be twice put in jeopardy for the same offense has no application where two separate and distinct crimes are committed by one and the same act. People v. Allen, 368 Ill. 368, 14 N.E.2d 397 (1937).

- Not Double Jeopardy

Because the conviction of home invasion would require proof that defendant entered the dwelling place of victim and intentionally caused injury to victim, while a finding of indirect criminal contempt would not and similarly, a finding of indirect criminal contempt would require proof that defendant intentionally violated a court order by striking ex-wife, while a conviction of home invasion would not; because each offense required proof of at least one additional fact that the other did not require, the subsequent prosecution of defendant for home invasion was not barred by the double jeopardy clause. People v. Benson, 256 Ill. App. 3d 560, 194 Ill. Dec. 565, 627 N.E.2d 1207 (2 Dist. 1994).

Where the state charged defendants with solicitation under two theories, each brought under a separate count, and the jury acquitted defendants of only solicitation by request, its inability to reach a verdict as to solicitation by encouragement was not tantamount to an acquittal under such theory; thus, defendants' second trial for solicitation to commit murder did not violate the Illinois Constitution. People v. Cole, 91 Ill. 2d 172, 61 Ill. Dec. 793, 435 N.E.2d 490, cert. denied, 459 U.S. 863, 103 S. Ct. 139, 74 L. Ed. 2d 118 (1982).

Where the same evidence that elevated the offense from the underlying felony of aggravated battery to armed violence was an essential element of proving the underlying felony, defendant was not placed in double jeopardy since defendant was neither tried nor punished twice for the

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same offense. People v. Turner, 77 Ill. App. 3d 985, 33 Ill. Dec. 692, 397 N.E.2d 25 (5 Dist. 1979).

- Test

Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not. People v. Flanagan, 201 Ill. App. 3d 1071, 147 Ill. Dec. 765, 559 N.E.2d 1105 (4 Dist. 1990), appeal denied, 135 Ill. 2d 561, 151 Ill. Dec. 387, 564 N.E.2d 842 (1990).

The test of the identity of offenses to determine double jeopardy violation is whether each statutory provision requires the proof of an additional fact which the other does not. People v. Goolsby, 70 Ill. App. 3d 832, 26 Ill. Dec. 893, 388 N.E.2d 894 (1 Dist. 1979), cert. denied, 445 U.S. 952, 100 S. Ct. 1602, 63 L. Ed. 2d 788 (1980).

For double jeopardy purposes, the test of whether the same offense is involved in both prosecutions is whether either trial would involve any significant elements of proof absent from the other trial. People v. Gray, 36 Ill. App. 3d 720, 344 N.E.2d 683 (1 Dist. 1976), aff'd, 69 Ill. 2d 44, 12 Ill. Dec. 886, 370 N.E.2d 797 (1977), cert. denied, 435 U.S. 1013, 98 S. Ct. 1887, 56 L. Ed. 2d 395 (1978).

Prosecutorial Comments

- Defendant's Silence

Petitioner's counsel was not ineffective in failing to object to a prosecutor's alleged comments on the petitioner's failure to testify where the comments were not direct comments about the petitioner's decision not to testify at trial. The prosecutor responded to attacks on a witness's credibility by contrasting the varying statements made by the petitioner to the police and those of the allegedly more consistent and credible statements by witnesses in the case. Williamson v. Leibach, F. Supp. 2d , 2005 U.S. Dist. LEXIS 33650 (N.D. Ill. Dec. 15, 2005).

The recognized test for determining whether a prosecutor's comment has violated a defendant's exercise of his right to remain silent is the question, was the reference intended or calculated to direct the attention of the jury to the defendant's neglect to avail himself of his legal right to testify. People v. Summers, 49 Ill. App. 3d 70, 6 Ill. Dec. 427, 362 N.E.2d 1347 (1 Dist. 1977).

Prosecutors have been permitted to comment on the uncontradicted nature of the state's evidence, even where the defendant is the only person who could be expected to contradict it by his testimony. People v. Summers, 49 Ill. App. 3d 70, 6 Ill. Dec. 427, 362 N.E.2d 1347 (1 Dist. 1977).

Where the state's evidence was uncontradicted, there was no violation of defendant's rights because of remarks at closing argument to that effect where such remarks were not intended or calculated to draw the attention of the jury to the defendant's election of the privilege to remain silent. People v. Summers, 49 Ill. App. 3d 70, 6 Ill. Dec. 427, 362 N.E.2d 1347 (1 Dist. 1977).

A defendant's right to trial free from comment by the prosecutor on his failure to take the witness stand is secured by both the Federal and State Constitutions. People v. Summers, 49 Ill. App. 3d 70, 6 Ill. Dec. 427, 362 N.E.2d 1347 (1 Dist. 1977).

- Failure to Produce Weapon

In a murder prosecution where there may have been some reason for failing to produce the gun which defendant had acquired the day before the murders and which allegedly was used in the crime, but none was given, defendant's nonproduction was a subject for consideration and also

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for comment; comments by the prosecution did not constitute a denial of defendant's guarantees against self-incrimination nor were the comments in violation of Ill. Rev. Stat., ch. 38, para. 155-1. People v. Williams, 40 Ill. 2d 522, 240 N.E.2d 645 (1968).

- Not Prejudicial

Even where a prosecutor's comment exceeded the bounds of proper argument, the verdict will not be disturbed unless the remark caused substantial prejudice to the defendant, taking into account the content and context of the comment, its relationship to the evidence, and its effect on the defendant's right to a fair and impartial trial; the prompt sustaining of an objection combined with a proper jury instruction usually is sufficient to cure any prejudice arising from an improper closing argument. People v. Johnson, 208 Ill. 2d 53, 281 Ill. Dec. 1, 803 N.E.2d 405, 2004 Ill. LEXIS 11 (2004).

State may comment that evidence is uncontradicted and may do so even if the defendant was the only person who could have provided contrary proof. People v. Johnson, 208 Ill. 2d 53, 281 Ill. Dec. 1, 803 N.E.2d 405, 2004 Ill. LEXIS 11 (2004).

Defendant was not placed in jeopardy twice for the same offense because the state referred to the crime as occurring on the date of a dismissed count in its opening statement but instructed the jury the opening statement was not evidence. People v. Bradley, 128 Ill. App. 3d 372, 83 Ill. Dec. 701, 470 N.E.2d 1121 (4 Dist. 1984).

Where defendant was silent as to his reason for escaping and this was all brought to the attention of the jury by his own attorney before being commented upon by the prosecutor, there was no prejudice to defendant as a result of the comments made by the prosecutor and defendant was not deprived of his privilege against self-incrimination. People v. Racinowski, 78 Ill. App. 3d 954, 34 Ill. Dec. 260, 397 N.E.2d 932 (3 Dist. 1979).

- Violation of Right Not to Testify

When determining whether the accused's right not to testify has been violated, a reviewing court must examine the challenged prosecutorial comments in the context of the entire proceeding. People v. Johnson, 208 Ill. 2d 53, 281 Ill. Dec. 1, 803 N.E.2d 405, 2004 Ill. LEXIS 11 (2004).

Punitive Damages

- Not Barred by Double Jeopardy

Where plaintiff sought punitive damages based on his assault and battery claim the award of punitive damages by the trial court did not violate the Illinois Constitution's prohibition against double jeopardy. Jines v. Seiber, 193 Ill. App. 3d 390, 140 Ill. Dec. 313, 549 N.E.2d 964 (5 Dist. 1990).

Purpose

This section embodies the belief that the prohibition against self-incrimination will protect citizens from incommunicado interrogation by the police. People v. McCauley, 228 Ill. App. 3d 893, 172 Ill. Dec. 222, 595 N.E.2d 583 (1 Dist.), cert. granted, 146 Ill. 2d 643, 176 Ill. Dec. 813, 602 N.E.2d 467 (1992), modified on other grounds, 163 Ill. 2d 414, 206 Ill. Dec. 671, 645 N.E.2d 923 (1994).

The double jeopardy proscription protects miscreants from successive prosecutions by a municipality for violating an ordinance and the state for the same conduct, as in criminal cases, even if the penalty is a fine only. Village of Beckmeyer v. Wheelan, 212 Ill. App. 3d 287, 155 Ill. Dec. 514, 569 N.E.2d 1125 (5 Dist. 1991).

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The constitutional doctrine of double jeopardy consists of three separate protections; it protects against a second prosecution for the same offense after acquittal; it protects against a second prosecution for the same offense after conviction; and it protects against multiple punishments for the same offense. People v. Flanagan, 201 Ill. App. 3d 1071, 147 Ill. Dec. 765, 559 N.E.2d 1105 (4 Dist. 1990), appeal denied, 135 Ill. 2d 561, 151 Ill. Dec. 387, 564 N.E.2d 842 (1990).

The rationale underlying the double jeopardy doctrine is that the state, with all its resources and power, should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty. People v. Bradley, 128 Ill. App. 3d 372, 83 Ill. Dec. 701, 470 N.E.2d 1121 (4 Dist. 1984); People v. Flanagan, 201 Ill. App. 3d 1071, 147 Ill. Dec. 765, 559 N.E.2d 1105 (4 Dist. 1990), appeal denied, 135 Ill. 2d 561, 151 Ill. Dec. 387, 564 N.E.2d 842 (1990).

The constitutional prohibition set forth in this section protects against: (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; (3) multiple punishments for the same offense. People v. Jones, 188 Ill. App. 3d 183, 135 Ill. Dec. 575, 543 N.E.2d 1322 (5 Dist. 1989).

Double jeopardy safeguards a defendant against being forced to undergo a second trial where the evidence introduced at the first trial is insufficient for conviction. People ex rel. Daley v. Crilly, 108 Ill. 2d 301, 91 Ill. Dec. 601, 483 N.E.2d 1236 (1985).

The constitutional prohibition of double jeopardy protects a defendant from prosecution of an offense after acquittal or conviction of the same offense and prohibits multiple punishments for the same offense. People v. Hoffer, 106 Ill. 2d 186, 88 Ill. Dec. 20, 478 N.E.2d 335 (1985).

Generally, the privilege against self-incrimination protects an accused from being compelled to testify against himself, or to otherwise provide the state with evidence of a testimonial or communicative nature. People v. Beyah, 102 Ill. App. 3d 434, 58 Ill. Dec. 141, 430 N.E.2d 83 (1 Dist. 1981).

The constitutional concept of double jeopardy protects an individual against a second prosecution for the same offense after either acquittal or conviction and protects against multiple punishments for the same offense. People v. Turner, 77 Ill. App. 3d 985, 33 Ill. Dec. 692, 397 N.E.2d 25 (5 Dist. 1979).

The purpose of this section is to protect the witness from prosecution and punishment on his own testimony. It is not to save a witness from embarrassment, disgrace or opprobrium arising out of the exposure of a crime, and the fact that his answers may tend to degrade him does not permit him to refuse to testify, and when the court can clearly see that a person is fully protected from the effects of his testimony, he should be required to give evidence even though it may show him to have been guilty of a criminal offense. Halpin v. Scotti, 415 Ill. 104, 112 N.E.2d 91 (1953).

The Constitution does not purport to shield the witness from the personal disgrace or opprobrium arising out of the exposure of his crime, the fact that his testimony may tend to degrade him does not permit him to refuse to testify. People v. Boyle, 312 Ill. 586, 144 N.E. 342 (1924).

The constitutional privilege is not for the purpose of concealing blemishes on the character of the witness, but to protect him against being compelled to furnish evidence to convict him of a criminal offense. People v. Boyle, 312 Ill. 586, 144 N.E. 342 (1924).

Reinstatement of Charges

- New Information

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Reinstatement of the charges under a new information does not violate the constitutional guarantee set forth in this section. People v. Jones, 188 Ill. App. 3d 183, 135 Ill. Dec. 575, 543 N.E.2d 1322 (5 Dist. 1989).

Review

- Contempt Order

Appellate court order committing a person for contempt should be so complete that the Supreme Court could, by examining the same, determine whether the refusal of the witness to answer was justified. People v. Conzo, 301 Ill. App. 524, 23 N.E.2d 210 (1 Dist. 1939).

- Jeopardy Issues

Issue of double jeopardy was a constitutional issue and it could be reviewed even though not raised in a post trial motion. People v. Turner, 186 Ill. App. 3d 849, 134 Ill. Dec. 589, 542 N.E.2d 935 (1 Dist. 1989).

- Showing of Actual Prejudice

A defendant who has not been actually prejudiced should not be able to escape a trial on the merits because of a difference of opinion between the trial court and the reviewing court as to the fatal or nonfatal quality of the error that brought about the termination of the first trial. People v. Goffman, 30 Ill. 2d 501, 198 N.E.2d 323 (1964).

- Voluntariness of Confession

The finding of the trial court on the voluntariness of a confession will not be disturbed unless it can be said that it is contrary to the manifest weight of the evidence. People v. Brownell, 79 Ill. 2d 508, 38 Ill. Dec. 757, 404 N.E.2d 181, appeal dismissed, 449 U.S. 811, 101 S. Ct. 59, 66 L. Ed. 2d 14 (1980).

Right to Confront Witnesses

The trial court properly allowed witness to invoke his constitutional right against self-incrimination and in doing so it did not invalidly infringe upon defendant's constitutional right to confront witnesses against him. People v. Lockett, 260 Ill. App. 3d 266, 197 Ill. Dec. 498, 631 N.E.2d 720 (1 Dist. 1993), appeal denied, 157 Ill. 2d 513, 205 Ill. Dec. 176, 642 N.E.2d 1293 (1994).

Right to Counsel

- In General

Where the attorney representing appellant inmate during police interrogation knew the murder victim and had represented an officer involved in the case, but did not tell the inmate this, the post conviction court erred in dismissing her ineffective assistance claim without an evidentiary hearing as to whether counsel had been ineffective under Strickland. People v. Rish, 344 Ill. App. 3d 1105, 280 Ill. Dec. 575, 802 N.E.2d 826, 2003 Ill. App. LEXIS 1354 (3 Dist. 2003).

For a discussion of what constitutes a knowing waiver of the constitutional right to counsel during custodial interrogation, see People v. McCauley, 163 Ill. 2d 414, 206 Ill. Dec. 671, 645 N.E.2d 923 (1994).

- Denial of Access

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Placing defendant, a detainee, in a room with an inmate to whom defendant made incriminating statements about a murder that the inmate was recording because the inmate was an undercover informant working with police constituted a "custodial interrogation" under 725 ILCS 5/103-2.1. "Custodial interrogations" under that statute included situations in which a defendant was likely to make incriminating statements, and since defendant was denied the right to consult with counsel under 725 ILCS 5/103-4 that defendant had asserted several days previously regarding the questioning of defendant, defendant's procedural due process rights under Ill. Const. art. I, § 2 to consult counsel and right to avoid incriminating himself, Ill. Const. art. I, § 10, were violated. People v. Hunt, 403 Ill. App. 3d 802, 343 Ill. Dec. 436, 934 N.E.2d 1039, 2010 Ill. App. LEXIS 866 (1 Dist. 2010).

Placing defendant, a detainee, in a room with an inmate to whom defendant made incriminating statements about a murder that the inmate was recording because the inmate was working with police as an undercover informant constituted a "custodial interrogation" under 725 ILCS 5/103-2.1. "Custodial interrogations" under that statute included situations in which a defendant was likely to make incriminating statements, and since defendant was denied defendant's right to consult with counsel under 725 ILCS 5/103-4 that defendant had asserted several days previously regarding any questioning of defendant, defendant's procedural due process rights under Ill. Const. Art. I, § 2 to consult counsel and defendant's right to counsel to avoid incriminating himself, Ill. Const. Art. I, § 10, were violated. People v. Tavares, Ill. App. 3d , Ill. Dec. , N.E.2d , 2010 Ill. App. LEXIS 219 (1 Dist. Mar. 18, 2010).

Custodial suspect's state constitutional rights to due process and against self-incrimination under Ill. Const. Art. I, §§ 2 and 10 were violated where an attorney who was physically present at the place the custodial suspect was being held was denied access to the custodial suspect, and where the authorities prevented the custodial suspect from receiving written communications from the attorney that directly related to the custodial suspect's right to counsel. People v. Woods, 338 Ill. App. 3d 78, 272 Ill. Dec. 650, 787 N.E.2d 836, 2003 Ill. App. LEXIS 321 (1 Dist. 2003).

Where police officers refused to allow defendant access to law student sent to police station by defendant's attorney, defendant's constitutional rights were not violated, and order suppressing subsequent statements given to police was reversed. People v. Rodriguez, 324 Ill. App. 3d 468, 257 Ill. Dec. 735, 754 N.E.2d 393, 2001 Ill. App. LEXIS 600 (1 Dist. 2001).

Defendant's right against self-incrimination guaranteed by Ill. Const., Art. I, § 10 is violated when the police deny an attorney, retained for the defendant without his knowledge, access to the defendant by telephone during an interrogation and when the police do not inform the defendant that the attorney is seeking to consult with him by telephone; in a murder prosecution, the trial court erred in not suppressing statements made by defendant after an attorney, who was retained by defendant's mother to represent defendant, asked to speak with defendant by telephone and was denied access to defendant during his interrogation. People v. Milestone, 283 Ill. App. 3d 682, 219 Ill. Dec. 386, 671 N.E.2d 51, 1996 Ill. App. LEXIS 686 (1 Dist. 1996).

When police, prior to or during custodial interrogation, refuse an attorney appointed or retained to assist a suspect access to the suspect, there can be no knowing waiver of the right to counsel if the suspect has not been informed that the attorney was present and seeking to consult with him. People v. McCauley, 163 Ill. 2d 414, 206 Ill. Dec. 671, 645 N.E.2d 923 (1994).

For purposes of protection against self-incrimination, once a lawyer reasonably presents to the police that he is a lawyer in good standing and that he represents the suspect in custody, the police must treat the lawyer as representing the suspect unless the suspect himself states that the lawyer does not represent him and that he does not want the lawyer to represent him; the police have no entitlement to make their own on the spot determination that the attorney does not lawfully represent the suspect. People v. McCauley, 228 Ill. App. 3d 893, 172 Ill. Dec. 222, 595 N.E.2d 583 (1 Dist.), cert. granted, 146 Ill. 2d 643, 176 Ill. Dec. 813, 602 N.E.2d 467 (1992), modified on other grounds, 163 Ill. 2d 414, 206 Ill. Dec. 671, 645 N.E.2d 923 (1994).

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If a suspect's family hires an attorney to represent him while he is in police custody and the police deny the attorney access to him and later obtain a lineup identification or statements from him, it violates the suspect's self-incrimination protection afforded by this section. People v. McCauley, 228 Ill. App. 3d 893, 172 Ill. Dec. 222, 595 N.E.2d 583 (1 Dist.), cert. granted, 146 Ill. 2d 643, 176 Ill. Dec. 813, 602 N.E.2d 467 (1992), modified on other grounds, 163 Ill. 2d 414, 206 Ill. Dec. 671, 645 N.E.2d 923 (1994).

The defendant was not denied his right to counsel where there was no evidence to suggest that the defendant's attorney was immediately-available to the defendant or that the police deluded the defendant into falsely believing that he was without immediately available legal counsel and there was also no evidence to suggest that the defendant's attorney was ever denied access to the defendant; although the defendant's attorney told the police that she was the defendant's attorney before the defendant was arrested, such a statement is not analogous to an attempt by an attorney to contact his client while the client is undergoing interrogation. People v. Pitchford, 314 Ill. App. 3d 72, 246 Ill. Dec. 795, 731 N.E.2d 323, 2000 Ill. App. LEXIS 421 (1 Dist. 2000), appeal denied, 189 Ill. 2d 697, 248 Ill. Dec. 606, 734 N.E.2d 897 (2000).

- Unambiguous Request

All statements made by defendant, who was in a hospital's intensive care unit recovering from serious self-inflicted stab wounds after apparently being involved a double homicide, had to be suppressed from the point at which defendant made a request of a police officer guarding defendant that defendant be given a phone so defendant could call defendant's attorney. In doing so, defendant had made an unambiguous request for counsel, which had to be honored under the Fifth Amendment, U.S. Const. amend. V, and Ill. Const. Art. I, § 10. People v. Schuning, 399 Ill. App. 3d 1073, 340 Ill. Dec. 409, 928 N.E.2d 128, 2010 Ill. App. LEXIS 327 (2 Dist. 2010).

Trial court did not err in declining to grant defendant's motion to suppress his confession in a case where defendant shot another person to death; defendant was not compelled to incriminate himself, he did not make an unambiguous request for counsel despite being advised of his Miranda rights, and a third-party could not enforce defendant's right to counsel for him despite the fact that he was a minor. People v. Young, 365 Ill. App. 3d 753, 302 Ill. Dec. 847, 850 N.E.2d 284, 2006 Ill. App. LEXIS 334 (1 Dist. 2006), appeal denied, 219 Ill. 2d 596, Ill. Dec. , 852 N.E.2d 248 (2006); cert. denied, 2007 U.S. LEXIS 2176 (U.S. 2007).

- Waiver

While defendant's inquiry to a police officer regarding what was going to happen to defendant indicated a desire and willingness to engage in a generalized discussion about the investigation and amounted to initiation of the discussion with police, remand was necessary to determine whether defendant's waiver of the right to counsel was knowingly and intelligently made. People v. Crotty, 394 Ill. App. 3d 651, 333 Ill. Dec. 457, 914 N.E.2d 1269, 2009 Ill. App. LEXIS 894 (2 Dist. 2009), appeal denied, 235 Ill. 2d 594, 338 Ill. Dec. 251, 924 N.E.2d 457, 2010 Ill. LEXIS 664 (2010).

Right to Remain Silent

Although the evidence that the prosecution introduced was sufficient to convict defendant of the attempted murder of a peace officer for defendant's conduct in nearly running down a police officer trying to arrest defendant, a new trial was required as the prosecutor in closing argument made multiple comments that defendant did not produce evidence that defendant was not trying to kill the officer. The trial court should not have overruled defendant's objections to those comments, as the trial court's rulings denied defendant's rights under the Fifth Amendment, U.S. Const. amend. V, and Ill. Const. art. I, § 10 to remain silent and impermissibly shifted the burden of proof to defendant. People v. Smith, Ill. App. 3d , Ill. Dec. , N.E.2d , 2010 Ill. App. LEXIS 386 (1 Dist. May 6, 2010).

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Defendant's right to remain silent was violated when defendant stated that defendant desired to answer no more questions and immediately thereafter was asked if defendant had consumed any alcohol that day; however, counsel's failure to object to the admission of the statement did not support defendant's ineffective assistance claim because said failure could not be said to fall below an objective standard of reasonableness. People v. Diaz, 377 Ill. App. 3d 339, 316 Ill. Dec. 187, 878 N.E.2d 1211, 2007 Ill. App. LEXIS 1157 (1 Dist. 2007).

Since defendant's videotaped statement showed that defendant specifically and unambiguously invoked his right to remain silent under U.S. Const. Amend. V and Ill. Const. Art. I, § 10, a subsequently obtained videotaped statement in which defendant essentially admitted his involvement in a murder would have been suppressed if counsel had moved to suppress on the grounds that the videotape was obtained after defendant invoked his right to remain silent. Since the State's case was based primarily on the videotape and since there was no physical or eyewitness evidence linking defendant to the murder, counsel was ineffective for failing to raise a suppression motion, the videotape was improperly admitted into evidence, and defendant's murder conviction was vacated. However, since the videotape provided overwhelming evidence of defendant's guilt through a "common design" theory of accountability, a new trial would not violate double jeopardy. People v. Hernandez, 362 Ill. App. 3d 779, 298 Ill. Dec. 819, 840 N.E.2d 1254, 2005 Ill. App. LEXIS 1204 (1 Dist. 2005), appeal denied, 219 Ill. 2d 579, 303 Ill. Dec. 836, 852 N.E.2d 243 (2006).

It was appropriate for the trial judge to inform the witness of his right to remain silent; however, it was inappropriate for the trial judge repeatedly to inform the witness of this right and editorialize that testifying would be foolish; nevertheless, the trial judge's comments did not rise to the level of reversible error. People v. Blalock, 239 Ill. App. 3d 830, 180 Ill. Dec. 576, 607 N.E.2d 645 (2 Dist.), appeal denied, 151 Ill. 2d 567, 186 Ill. Dec. 386, 616 N.E.2d 339 (1993).

Same Offense

Defendant's conviction for fleeing and eluding police in violation of this section in the county where he began prohibited prosecution for the offense in the second county, as the second prosecution would have violated double jeopardy; because the statute did not define the unit of the offense or what constituted a separate and distinct offense, defendant's single transaction of engaging in a high speed chase from one county to another without stopping constituted a single offense. People v. Batterman, 355 Ill. App. 3d 766, 291 Ill. Dec. 738, 824 N.E.2d 314, 2005 Ill. App. LEXIS 138 (3 Dist. 2005), appeal denied, 215 Ill. 2d 600, 295 Ill. Dec. 522, 833 N.E.2d 4 (2005).

Armed robbery is the "same offense" as robbery for purposes of double jeopardy. People v. Valentine, 122 Ill. App. 3d 782, 78 Ill. Dec. 281, 461 N.E.2d 1388 (4 Dist. 1984), overruled by, cited by, People v. Price, 369 Ill. App. 3d 395, 2006 Ill. App. LEXIS 1144 (Ill. App. Ct. 4th Dist. 2006).

A conviction or acquittal under one charge is a bar to a prosecution for another crime growing out of the same act only where the offense for which the accused was tried and acquitted or convicted is but one of the degrees of the same offense for which it is later attempted to put him on trial. People v. Allen, 368 Ill. 368, 14 N.E.2d 397 (1937).

Scope of Privilege

In a prosecution for possession of a controlled substance in violation of 720 ILCS 570/401, questions by a prosecutor to prospective jurors regarding their illegal drug use, while improper, did not deny defendant a right to an impartial jury because infringing on jurors' self-incrimination rights did not relate to the existence of a fair and impartial jury. People v. James, 304 Ill. App. 3d 52, 237 Ill. Dec. 854, 710 N.E.2d 484, 1999 Ill. App. LEXIS 258 (1 Dist. 1999).

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The constitutional privilege against self-incrimination under this section of the Illinois Constitution is no broader than its counterpart under the United States Constitution. People v. Fayne, 283 Ill. App. 3d 382, 218 Ill. Dec. 646, 669 N.E.2d 1172 (5 Dist. 1996).

The privilege contained in this section protects an accused only from being compelled to testify against himself, or otherwise providing the state with evidence of a testimonial or communicative nature. People ex rel. Bowman v. Woodward, 63 Ill. 2d 382, 349 N.E.2d 57 (1976).

740 ILCS 40/5 grants transactional immunity and therefore, defendant who answered incriminating interrogatories in nuisance action could not be persecuted pursuant to 720 ILCS 5/28-3 for keeping a gambling place even with regard to counts filed before he answered interrogatories. People v. Dinora, 13 Ill. App. 3d 99, 299 N.E.2d 797 (4 Dist. 1973), overruled on other grounds, People v. McDuffee, 299 Ill. App. 3d 283, 233 Ill. Dec. 682, 701 N.E.2d 532 (4 Dist. 1998).

Evidence of fluorescent powder from dollar bills on defendant's hands following his arrest for unlawful sale of narcotics was beyond the scope of the privilege against self-incrimination; the testimonial capacity of the defendant was not called upon, and no act of his will was involved. People v. Greer, 28 Ill. 2d 107, 190 N.E.2d 742 (1963).

In order to hold valid a statute requiring a person to give evidence which might tend to incriminate him, the immunity afforded must be broad enough to protect him against all future punishment for any offense to which the evidence relates. Halpin v. Scotti, 415 Ill. 104, 112 N.E.2d 91 (1953).

This constitutional privilege of silence is an absolute guaranty to every person appearing as a witness in any court against being required to answer any question the answer to which will expose or tend to expose him to any penalty, fine, forfeiture, or punishment, or tend to accuse him of any crime or misdemeanor, or will be evidence to convict him of a criminal offense. People v. Nachowicz, 340 Ill. 480, 172 N.E. 812 (1930).

Second Sentencing

- Not Barred by Double Jeopardy

City could appeal imposition of sentence of 10 days of community service and one year probation without violating the double jeopardy clause, as reversal of the sentence would not subject defendant to another trial or to additional punishment. City of Chicago v. Roman, 292 Ill. App. 3d 546, 226 Ill. Dec. 512, 685 N.E.2d 967 (1 Dist. 1997), aff'd, 184 Ill. 2d 504, 235 Ill. Dec. 468, 705 N.E.2d 81 (1998).

Neither the Illinois habitual-criminal sentencing proceeding nor Class X sentencing so approximates the ordeal of trial to bring the proceeding within the exception to the general rule that the double jeopardy clause does not prohibit the imposition of a harsher sentence at retrial after a defendant has succeeded in having his original conviction set aside. People v. Levin, 157 Ill. 2d 138, 191 Ill. Dec. 72, 623 N.E.2d 317 (1993), cert. denied, 513 U.S. 826, 115 S. Ct. 94, 130 L. Ed. 2d 44 (1994).

State constitutional guarantees against double jeopardy did not preclude the state from seeking a death sentence a second time when defendant's first death sentence was vacated and the cause remanded for a new sentencing hearing. People v. Ramirez, 114 Ill. 2d 125, 102 Ill. Dec. 392, 500 N.E.2d 14 (1986).

Self-Incrimination

- In General

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Since defendant chose to testify instead of claiming the Fifth Amendment privilege against self-incrimination, defendant's disclosures were not compelled incrimination and defendant was foreclosed from invoking the privilege against self-incrimination when such information was later introduced against defendant in the criminal prosecution for driving under the influence of alcohol. People v. Snow, 403 Ill. App. 3d 734, 344 Ill. Dec. 133, 936 N.E.2d 662, 2010 Ill. App. LEXIS 913 (4 Dist. 2010).

The privilege against self-incrimination guarantees a right of fundamental decency and dignity which precludes a court from extracting testimony from a witness who reasonably fears a subsequent criminal prosecution by another sovereign, be it in a different domestic jurisdiction or in a foreign country. Relsolelo v. Fisk, 317 Ill. App. 3d 798, 251 Ill. Dec. 21, 739 N.E.2d 954, 2000 Ill. App. LEXIS 857 (1 Dist. 2000).

- Probation Revocation Proceedings

State's calling defendant as an adverse witness to the stand during the State's probation revocation hearing did not violate defendant's right against self-incrimination contained in the Illinois Constitution as defendant did not face a realistic threat that his testimony would incriminate him in further proceedings. People v. Miller, 199 Ill. 2d 541, 264 Ill. Dec. 682, 771 N.E.2d 386, 2002 Ill. LEXIS 324 (2002).

- Religious Confessions

For a case discussing statements made by a criminal defendant to minister, including discussion on minister-penitent privilege, see People v. Byers, 11 Ill. App. 3d 277, 296 N.E.2d 621 (5 Dist. 1973).

Sex Offenses

Proceedings under the Sexually Violent Persons Commitment Act (Act) were civil rather than criminal in nature, and confinement pursuant to the Act was not punitive. As a result, the initiation of commitment proceedings under the Act did not constitute a second prosecution for double jeopardy, Ill. Const. art. I, § 10, purposes, and did not implicate Ill. Const. art. I, § 16 ex post facto concerns because the Act did not have a retroactive effect given that it permitted commitment only if a person was presently suffering from a mental disorder that created a substantial probability that he would engage in acts of sexual violence if he was released. People v. Lieberman (In re Lieberman), 401 Ill. App. 3d 903, 340 Ill. Dec. 965, 929 N.E.2d 616, 2010 Ill. App. LEXIS 519 (1 Dist. 2010).

The Sex Offender Registration Act (730 ILCS 150/1 et seq.) and the Child Sex Offender and Murderer Community Notification Law (730 ILCS 152/101 et seq.) do not violate the double jeopardy provisions of the United States or Illinois Constitution. People v. Guillen, 307 Ill. App. 3d 35, 240 Ill. Dec. 470, 717 N.E.2d 563 (2 Dist. 1999).

Silence of Accused

- Effect

Where statements are made in the presence of an accused under circumstances showing that his silence is of a character which does not justify the inference that he should have spoken, or if he is restrained in any way from speaking by fear, doubt of his rights, instruction by his attorney, or reasonable belief that his security would be best promoted by silence, his silence does not amount to an admission of the truth of the statements made and such statements are not admissible as against the accused. People v. Hodson, 406 Ill. 328, 94 N.E.2d 166 (1950).

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Subsequent Prosecution

Since the elements of predatory sexual assault on a trial were different from the elements of the less serious offense of criminal sexual assault, a guilty plea to the latter offense in one county did not bar a later prosecution for the more serious offense in the county where most of the alleged offenses actually occurred. People v. Gray, 336 Ill. App. 3d 356, 270 Ill. Dec. 595, 783 N.E.2d 170, 2003 Ill. App. LEXIS 30 (4 Dist. 2003), aff'd, 214 Ill. 2d 1, 291 Ill. Dec. 263, 823 N.E.2d 555 (2005).

- Acts Previously Punished As Direct Criminal Contempt

Any criminal charge following and arising out of an adjudication of direct criminal contempt does not offend the double jeopardy clause of either the United States Constitution or of the Illinois Constitution. People v. Heard, 208 Ill. App. 3d 278, 153 Ill. Dec. 46, 566 N.E.2d 896 (4 Dist. 1991).

- Acts Previously Punished As Indirect Criminal Contempt

Double jeopardy prohibits a criminal prosecution for acts that have previously been punished as an indirect criminal contempt. People v. Gray, 36 Ill. App. 3d 720, 344 N.E.2d 683 (1 Dist. 1976), aff'd, 69 Ill. 2d 44, 12 Ill. Dec. 886, 370 N.E.2d 797 (1977), cert. denied, 435 U.S. 1013, 98 S. Ct. 1887, 56 L. Ed. 2d 395 (1978).

- Barred by Double Jeopardy

Because defendant was charged with the felony of child abduction and pleaded guilty, he could not be again prosecuted for the same conduct under the criminal contempt proceedings without being twice put in jeopardy, in violation of the fifth amendment to the federal Constitution and Article I, § 10 of the Illinois Constitution. In re D'Altomo, 211 Ill. App. 3d 914, 156 Ill. Dec. 320, 570 N.E.2d 796 (1 Dist. 1991).

Where a traffic citation was issued charging a minor with the offense of driving without a license to which he plead guilty and was fined, subsequent prosecution of delinquency petition, alleging that the minor operated a motor vehicle so as to strike a pedestrian, did not stop or report the accident, and proceeded to have the car repaired to disguise his involvement, was barred by double jeopardy. People v. C.H., 93 Ill. App. 3d 825, 49 Ill. Dec. 226, 417 N.E.2d 1053 (4 Dist. 1981).

- Critical Inquiry

A successive prosecution is barred if the government, to establish an essential element in a subsequent prosecution, will prove conduct that constitutes an offense for which the defendant has already been prosecuted, thus, in a case involving a successive prosecution the critical inquiry is what conduct the state will prove. People v. Hoskinson, 201 Ill. App. 3d 411, 147 Ill. Dec. 11, 559 N.E.2d 11 (1 Dist. 1990).

- Defective Indictment

Alleged deficiencies in burglary indictment would not expose defendant to double jeopardy where, in the event of another prosecution, defendant would have recourse to the entire record in the proceeding, including the complaint for preliminary examination, the arresting officer's report, and the bill of particulars, which included the trade name and address of the store. People v. Walker, 47 Ill. App. 3d 737, 8 Ill. Dec. 190, 365 N.E.2d 428 (1 Dist. 1977).

- Former Acquittal As Bar

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The test, when a former acquittal is pleaded in bar of a subsequent prosecution, is whether the facts charged in the later indictment would, if found to be true, have justified a conviction under the earlier indictment. People v. Flaherty, 396 Ill. 304, 71 N.E.2d 779 (1947).

- Not Barred by Double Jeopardy

Defendant's second trial was not barred by do uble jeopardy because of the failure of the state to disclose an eyewitness' relocation and compensation; although the state should have disclosed the information to defendant, there was no impropriety, bad faith or overreaching in the state's conduct. People v. Brown, 222 Ill. App. 3d 703, 165 Ill. Dec. 176, 584 N.E.2d 355 (1 Dist. 1991), cert. denied, 144 Ill. 2d 636, 169 Ill. Dec. 145, 591 N.E.2d 25 (1992).

Where the state conceded in open court that the defendant was not guilty of receiving stolen property but indicated that it would seek an indictment against the defendant for theft; despite the state's admission that the defendant did not commit the offense with which he was originally charged and its motion to dismiss, the defendant demanded an immediate trial on the original charge; and the court found the defendant not guilty and entered judgment acquitting him, the subsequent indictment for theft was improperly dismissed on double jeopardy grounds. People v. Deems, 81 Ill. 2d 384, 43 Ill. Dec. 8, 410 N.E.2d 8 (1980), cert. denied, 450 U.S. 925, 101 S. Ct. 1378, 67 L. Ed. 2d 355 (1981).

Robbery prosecution was not precluded by the acquittal of burglary and larceny under prior indictment which did not name owner or as custodian of any of the property stolen. People v. Flaherty, 396 Ill. 304, 71 N.E.2d 779 (1947).

- Test

For double jeopardy to bar a subsequent prosecution, the state must rely on the entirety of the conduct already prosecuted to establish an essential element of the offense in the second prosecution. People v. Astorga, 245 Ill. App. 3d 124, 184 Ill. Dec. 462, 613 N.E.2d 779 (2 Dist.), appeal denied, 152 Ill. 2d 564, 190 Ill. Dec. 895, 622 N.E.2d 1212 (1993).

When a former acquittal or conviction is pleaded in bar of a subsequent prosecution, the test is whether the facts charged in the latter indictment would, if found to be true, have justified a conviction under the earlier indictment. If they do, then the judgment on the earlier indictment is a complete bar to a prosecution under the later indictment; otherwise not. People v. Allen, 368 Ill. 368, 14 N.E.2d 397 (1937).

- Void Judgment

Circuit court's void order that exceeded appellate court's mandate by vacation or sentence upon remand for resentencing could not violate the constitutional guarantee against double jeopardy. People v. Bosley, 233 Ill. App. 3d 132, 174 Ill. Dec. 158, 598 N.E.2d 355 (2 Dist. 1992).

A void judgment is one entered by a court that lacks the inherent power to make or enter the particular order involved and may be attacked at any time either directly or collaterally, such a judgment would be a nullity, and the double jeopardy clauses of the Federal and State Constitutions would not bar subsequent prosecution. People v. Rolland, 221 Ill. App. 3d 195, 163 Ill. Dec. 753, 581 N.E.2d 907 (5 Dist. 1991).

- Barred by Double Jeopardy

Since recklessness was the culpability element of both reckless driving and reckless homicide, and defendant's speeding and related conduct was the basis of both charged offenses; reckless driving was a lesser-included offense of reckless homicide; therefore, double jeopardy principles precluded defendant from being prosecuted for reckless homicide after a previous conviction of reckless driving arising out of the same conduct. People v. Sienkiewicz, 208 Ill. 2d 1, 280 Ill. Dec. 516, 802 N.E.2d 767, 2003 Ill. LEXIS 2282 (2003).

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Successive Prosecutions

- Blockburger Test

The Blockburger test is the threshold inquiry in a double jeopardy analysis for successive prosecutions. People v. Astorga, 245 Ill. App. 3d 124, 184 Ill. Dec. 462, 613 N.E.2d 779 (2 Dist.), appeal denied, 152 Ill. 2d 564, 190 Ill. Dec. 895, 622 N.E.2d 1212 (1993).

Suspension of Driver's License

- Not Punishment

The statutory summary suspension of a driver's license under 625 ILCS 5/11-501.1 because of a failed blood alcohol test is not punishment for double jeopardy purposes and therefore does not bar a subsequent criminal prosecution for driving under the influence of alcohol under 625 ILCS 5/11-501. People v. Lavariega, 175 Ill. 2d 153, 221 Ill. Dec. 840, 676 N.E.2d 643 (1997).

The summary suspension of defendant's driver's license was not punishment for purposes of the Illinois Constitution's double jeopardy clause nor the United States Constitution; instant summary suspension proceeding under 625 ILCS 5/11-501.1 is classified as primarily nonpunitive with the remedial goal of making roads safer by removing drunk drivers. People v. Lavariega, 175 Ill. 2d 153, 221 Ill. Dec. 840, 676 N.E.2d 643 (1997).

Administrative statutory summary suspension of one's privilege to drive is clearly remedial in nature, designed to protect persons who travel the highways, and not to punish for double jeopardy purposes. People v. Fasbinder, 278 Ill. App. 3d 855, 215 Ill. Dec. 538, 663 N.E.2d 1052 (4 Dist. 1996).

- Remedial Civil Sanction

Summary suspension of a driver's license is fairly characterized as a remedial civil sanction rather than as a punishment for double jeopardy purposes. People v. Fasbinder, 278 Ill. App. 3d 855, 215 Ill. Dec. 538, 663 N.E.2d 1052 (4 Dist. 1996).

Tax Penalty

- Held Proper

The assessment of a tax penalty pursuant to the Cannabis and Controlled Substance Tax Act (35 ILCS 520/1 et seq.) does not bar a subsequent prosecution for unlawful delivery based on the same transaction, since the former penalty was administrative, not criminal, and this section only prohibits multiple criminal prosecutions based on the same act or acts. People v. Adawi, 231 Ill. App. 3d 896, 173 Ill. Dec. 310, 596 N.E.2d 1189 (4 Dist.), cert. denied, 147 Ill. 2d 629, 180 Ill. Dec. 152, 606 N.E.2d 1229 (1992).

Testimony Regarding Defendant's Silence

- Improper

It was error for the state to elicit testimony in its case as to defendant's silence and failure to assert his self-defense claim prior to testifying. People v. Wright, 32 Ill. App. 3d 736, 336 N.E.2d 18 (1 Dist. 1975).

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Trial

A hearing on the factual sufficiency of a plea which, if sustained, will terminate the litigation, is a trial. People v. Drymalski, 22 Ill. 2d 347, 175 N.E.2d 553 (1961).

A "trial" has been defined as a judicial examination, in accordance with the law of the land, either civil or criminal, of the issues between the parties, whether of law or fact, before a court that has jurisdiction over it. People v. Drymalski, 22 Ill. 2d 347, 175 N.E.2d 553 (1961).

Unlawful Use of Weapons

The unlawful use of weapons provision of the Criminal Code (720 ILCS 5/24-1) is not unconstitutional as applied to a defendant convicted of a prior felony on the bases that it places him in double jeopardy for the prior offense. People v. Lampkins, 28 Ill. App. 3d 246, 328 N.E.2d 100 (1 Dist. 1975).

Voluntary Statement

Defendant's right against self-incrimination was not violated when the officer's asked defendant what was wrong following defendant's voluntary statement that she was not feeling well; in the verbal exchange initiated by defendant, the officer's question was a neutral, noncoercive response to clarify what defendant had already volunteered, rather than a question reasonably likely to elicit incriminating information outside the scope of defendant's volunteered statement. People v. Peo, 391 Ill. App. 3d 815, 331 Ill. Dec. 183, 910 N.E.2d 592, 2009 Ill. App. LEXIS 299 (2 Dist. 2009).

Waiver of Double Jeopardy Defense

Defendant's failure to raise the double jeopardy issue either prior to or during the course of the bench trial did not constitute waiver of the issue for purposes of appeal. People v. Valentine, 122 Ill. App. 3d 782, 78 Ill. Dec. 281, 461 N.E.2d 1388 (4 Dist. 1984), overruled by, cited by, People v. Price, 369 Ill. App. 3d 395, 2006 Ill. App. LEXIS 1144 (Ill. App. Ct. 4th Dist. 2006).

Where the defendant's new attorney in second trial may have been misled by inaccurate representations as to the prior history of the case which were made by an assistant State's attorney to the second judge, the defendant's constitutional right was not knowingly waived. People v. Goffman, 30 Ill. 2d 501, 198 N.E.2d 323 (1964).

The constitutional right to not be twice put in jeopardy for the same offense is a personal privilege which may be waived. People v. Scales, 18 Ill. 2d 283, 164 N.E.2d 76 (1960).

The right to a double jeopardy defense has been waived where the accused seeks and obtains a new trial, or where he does not raise the defense of former jeopardy before judgment in the trial court. People v. Scales, 18 Ill. 2d 283, 164 N.E.2d 76 (1960).

Where defendant urged that he was exonerated by a coroner's jury of the killing of the same person on account of whose death he was afterwards indicted, tried and convicted, and where the common-law record did not show that the defense of former jeopardy was presented, the Supreme Court could not consider such a defense. People v Freeman, 406 Ill. 512, 94 N.E.2d 357 (1950).

Waiver of Error

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- Failure to Object

Where defendant failed to object to the allegedly erroneous interchange between the court and the Assistant State's Attorney at the second sentencing hearing, and the record showed that the objection raised at the first sentencing hearing did not assert the privilege but was a general objection to the materiality and relevancy of the failure to cooperate, defendant waived any alleged error at the second sentencing hearing in connection with the trial court's alleged consideration of his post-conviction refusal to cooperate with the police in recovering the proceeds of the burglary. People v. Beyah, 102 Ill. App. 3d 434, 58 Ill. Dec. 141, 430 N.E.2d 83 (1 Dist. 1981).

Waiver of Privilege

Police interrogation of defendant, wherein they falsely indicated that they had incriminating information about the criminal incident and they played down defendant's culpability in the incident, was not so unduly coercive that his confession was rendered involuntary and inadmissible under U.S. Const. Amends. V and XIV and Ill. Const. Art. I, §§ 2 and 10; the totality of the circumstances indicated that defendant's waiver of his Miranda right was voluntarily and knowingly made, and that the interrogation was properly conducted. People v. Rubio, Ill. App. 3d , Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 273 (2 Dist. May 7, 2009).

A witness has the right to remain silent, and he cannot be compelled to provide answers which may tend to establish his criminal liability; a witness may, however, waive this privilege against self-incrimination if he answers a question without claiming the privilege. People v. Accardo, 195 Ill. App. 3d 180, 141 Ill. Dec. 821, 551 N.E.2d 1349 (2 Dist. 1990).

Where officer told the defendant that he had received a report from the Chicago police department that his vehicle was seen in the same alley where the complainant was raped and that he would have to explain why his vehicle was there, but where no such report existed; defendant's waiver of his Miranda rights was unaffected by the statement and was valid. People v. Holland, 121 Ill. 2d 136, 117 Ill. Dec. 109, 520 N.E.2d 270 (1987), aff'd, 493 U.S. 474, 110 S. Ct. 803, 107 L. Ed. 2d 905 (1990), overruled on other grounds, People v. Edwards, 144 Ill. 2d 108, 161 Ill. Dec. 788, 579 N.E.2d 336 (1991), overruled on other grounds, People v. McCauley, 163 Ill. 2d 414, 206 Ill. Dec. 671, 645 N.E.2d 923 (1994).

Civil defendant who voluntarily testified as to certain matters which could incriminate him waived any privilege against self-incrimination regarding those matters. Heath ex rel. Heath v. Heath, 143 Ill. App. 3d 390, 97 Ill. Dec. 615, 493 N.E.2d 97 (2 Dist. 1986).

The trial court was correct in finding that admission of defendant's written statement did not violate his right to remain silent where the written statement was made 36 hours after initial interrogation, after the defendant had conferred with counsel several times, after the defendant had been informed of his right to remain silent and after the defendant had expressly declined to remain silent or to have counsel present. People v. Brownell, 79 Ill. 2d 508, 38 Ill. Dec. 757, 404 N.E.2d 181, appeal dismissed, 449 U.S. 811, 101 S. Ct. 59, 66 L. Ed. 2d 14 (1980).

By admitting that she took a gun out of the glove compartment, and, after warned of her rights, stating that she fired the gun, a defendant knowingly waived any right of silence with respect to the act of shooting and, therefore, should have been permitted to testify further about the facts surrounding the shooting. People v. Cantu, 79 Ill. App. 3d 279, 34 Ill. Dec. 633, 398 N.E.2d 308 (1 Dist. 1979).

Once the privilege to remain silent has been waived, the witness cannot refuse to answer questions regarding otherwise privileged information. People v. Cantu, 79 Ill. App. 3d 279, 34 Ill. Dec. 633, 398 N.E.2d 308 (1 Dist. 1979).

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The immunity from giving testimony is one which the defendant may waive by offering himself as a witness for if the defendant takes the witness stand, he assumes the role of a witness and as such becomes subject to cross-examination in the same manner and to the same extent as any other witness. People v. Dawson, 57 Ill. App. 3d 712, 15 Ill. Dec. 286, 373 N.E.2d 632 (5 Dist. 1978).

An emotionally upset defendant is legally capable of voluntarily waiving his right against self-incrimination. People v. Ybarra, 46 Ill. App. 3d 1049, 5 Ill. Dec. 355, 361 N.E.2d 678 (1 Dist. 1977).

Where trial counsel's decision to have defendant take the witness stand was essentially a matter of judgment and trial tactics, which defendant alleged rendered the defense incompetent, and where the record demonstrated that trial counsel was well acquainted with trial procedure in criminal matters and exercised his best judgment in placing the defendant on the stand, defendant's constitutional rights were not violated. People v. Hyman, 97 Ill. App. 2d 451, 240 N.E.2d 206 (1 Dist. 1968).

The constitutional guaranty against self-incrimination may be waived. City of Chicago v. Lord, 3 Ill. App. 2d 410, 122 N.E.2d 439 (1 Dist. 1954), aff'd, 7 Ill. 2d 379, 130 N.E.2d 504 (1955).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Constitutional Law," see 25 S. Ill. U.L.J. 733 (2001).

For article, "Post-Conviction Challenges to the Death Penalty: Mental Health Records and the Fifth Amendment," see 32 Loy. U. Chi. L.J. 425 (2001).

For article, "The Unjustified Expansion of the Double Jeopardy Doctrine to Civil Asset Forfeiture Proceedings," see 84 Ill. B.J. 70 (1996).

For article, "Survey of Illinois Law: Criminal Law and Procedure," see 17 S. Ill. U.L.J. 793 (1993).

For article, "Multiple Punishments for the 'Same Offense' in Illinois," see 11 S. Ill. U.L.J. 217 (1987).

For note, "Expanding State Constitutional Protections and the New Silver Platter: After They've Shut the Door, Can They Bar the Window?," see 8 Loy. U. Chi. L.J. 186 (1976-77).

For article, "Incommunicado Interrogation Under the Federal and Illinois Constitutions," see 81 Ill. B.J. 74 (1993).

RESEARCH REFERENCES

Propriety of requiring criminal defendant to exhibit self, or perform physical act, or participate in demonstration, during trial and in presence of jury. 3 ALR4th 374.

Applicability of double jeopardy to juvenile court proceedings. 5 ALR4th 234.

Conviction or acquittal in federal court as bar to prosecution in state court for state offense based on same facts - modern view. 6 ALR4th 802.

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What constitutes "manifest necessity" for state prosecutor's dismissal of action, allowing subsequent trial despite jeopardy's having attached. 14 ALR4th 1014.

Right of partners to assert personal privilege against self-incrimination with respect to production of partnership books or records. 17 ALR4th 1039.

Extent and determination of attorney's right or privilege against self-incrimination in disbarment or other disciplinary proceedings - post-Spevack cases. 30 ALR4th 243.

Former jeopardy as bar to retrial of criminal defendant after original trial court's sua sponte declaration of a mistrial - state cases. 40 ALR4th 741.

Double jeopardy: various acts of weapons violations as separate or continuing offense. 80 ALR4th 631.

When should jury's deliberation proceed from charged offense to lesser-included offense. 26 ALR5th 603.

Requirement that court advise accused of, and make inquiry with respect to, waiver of right to testify. 72 ALR5th 403.

Conviction or acquittal in federal court as bar to prosecution in state court for state offense based on same facts - Modern view. 97 ALR5th 201.

Denial of, or interference with, accused's right to have attorney initially contact accused. 96 ALR5th 327.

Sufficiency of showing that voluntariness of confession or admission was affected by alcohol or other drugs - Drugs or narcotics administered as part of medical treatment and drugs or intoxicants administered by the police. 96 ALR5th 523.

Practice Guides and Treatises.

Civil Discovery Practice (Illinois) § 2.19 Privilege Against Self-Incrimination (IICLE).

Section 11. Limitation of Penalties After Conviction.

All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. No conviction shall work corruption of blood or forfeiture of estate. No person shall be transported out of the State for an offense committed within the State.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Crim L § 1:06, § 4:01, § 4:02, § 4:04, § 4:05, § 28:12.

CASE NOTES

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Constitutionality

Imposition of a 10-year sentence enhancement for four aggravated-criminal-sexual-assault counts was reasonably related to the goal of deterring sexual offenders who sought to overcome will of their victims by threatening the use of dangerous weapons other than firearms. People v. Leach, 385 Ill. App. 3d 215, 325 Ill. Dec. 649, 898 N.E.2d 696, 2008 Ill. App. LEXIS 980 (4 Dist. 2008), appeal denied, 2009 Ill. LEXIS 107 (Ill. 2009).

In evaluating whether a proportionate penalties violation has been established, the central question is whether the penalty at issue has been set by the legislature according to the seriousness of the offense. People v. Jones, 357 Ill. App. 3d 684, 293 Ill. Dec. 972, 829 N.E.2d 897, 2005 Ill. App. LEXIS 498 (1 Dist. 2005), appeal denied, 217 Ill. 2d 615, 300 Ill. Dec. 526, 844 N.E.2d 969 (2006).

730 ILCS 5/5-8-1(a)(1)(d)(iii) did not violate the Ill. Const. Art. I, § 11 because the statute had the legitimate statutory purpose of deterring the use of firearms in the commission of murder, which the legislature had deemed to be a threat to the public's health, safety, and general welfare. People v. Jones, 357 Ill. App. 3d 684, 293 Ill. Dec. 972, 829 N.E.2d 897, 2005 Ill. App. LEXIS 498 (1 Dist. 2005), appeal denied, 217 Ill. 2d 615, 300 Ill. Dec. 526, 844 N.E.2d 969 (2006).

In General

A following two-step inquiry is used when considering an alleged proportionate penalties violation by cross-comparison: (1) whether the offenses share a common statutory purpose such that comparative proportionality review is appropriate; and (2) if the purposes are related, whether the offense with the harsher penalty is less serious than the offense with the less severe penalty. People v. Austin, 349 Ill. App. 3d 766, 285 Ill. Dec. 768, 812 N.E.2d 588, 2004 Ill. App. LEXIS 750 (1 Dist. 2004), appeal denied, 211 Ill. 2d 585, Ill. Dec. , 823 N.E.2d 968 (2004).

When a defendant raises a challenge that a less serious offense is punished more harshly than a more serious offense, courts must apply a two-step cross-comparison analysis of the various subsections of the statute; first, a court must compare the purposes of the specific provisions contained in the same statute and determine whether they are sufficiently distinct such that proportionality review is inappropriate, and, second, if proportionality review is appropriate, the court must then determine whether the offense with the harsher penalty is more serious than the offense with the lesser penalty. People v. Pizano, 347 Ill. App. 3d 128, 282 Ill. Dec. 512, 806 N.E.2d 1100, 2004 Ill. App. LEXIS 202 (1 Dist. 2004), appeal denied, 209 Ill. 2d 596, 286 Ill. Dec. 170, 813 N.E.2d 227 (2004).

Illinois proportionate penalties clause, Ill. Const., Art. I, § 11, can be violated in one of three instances: where (1) the penalty for an offense is cruel, degrading, or so completely disproportionate to the offense for which it is imposed as to shock the moral sense of the community; (2) similar offenses are compared and conduct that creates a less serious threat to public health and safety is punished more severely; or (3) the penalties imposed for identical offenses differ. People v. Pizano, 347 Ill. App. 3d 128, 282 Ill. Dec. 512, 806 N.E.2d 1100, 2004 Ill. App. LEXIS 202 (1 Dist. 2004), appeal denied, 209 Ill. 2d 596, 286 Ill. Dec. 170, 813 N.E.2d 227 (2004).

Provisions for concurrent and consecutive terms of imprisonment in 730 ILCS 5/5-8-4 do not violate the proportionate penalties clause by giving identical offenses (attempted murder) different sentences (mandatory consecutive sentences versus discretionary concurrent sentences) as the attempted murders punishable by mandatory consecutive sentences in subsection (a) of that section are not identical to the attempted murders punishable by concurrent sentences. People v.

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Conley, 306 Ill. App. 3d 1, 238 Ill. Dec. 885, 713 N.E.2d 131 (1 Dist. 1999), appeal denied, 185 Ill. 2d 638, 242 Ill. Dec. 142, 720 N.E.2d 1097 (1999).

The legislature must mandate penalties which are proportionate to the offenses. People v. Powell, 299 Ill. App. 3d 92, 233 Ill. Dec. 425, 701 N.E.2d 68 (1 Dist. 1998), appeal denied, 181 Ill. 2d 584, 235 Ill. Dec. 946, 706 N.E.2d 501 (1998).

The proportionate penalties clause may act as a restriction on the power of the legislature to establish criminal penalties. People v. Lewis, 175 Ill. 2d 412, 222 Ill. Dec. 296, 677 N.E.2d 830 (1996), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

The trial court is not required to articulate the process by which it concluded that the penalty imposed was appropriate, nor is it required to articulate its consideration of mitigating factors. People v. Jarrell, 248 Ill. App. 3d 1043, 188 Ill. Dec. 374, 618 N.E.2d 944 (1 Dist. 1993).

The policy underlying Illinois' constitutional assurances of proportionate penalties and due process would be violated if the penalty prescribed for an offense were not as great or greater than the penalty prescribed for a less serious offense. People v. Chapin, 233 Ill. App. 3d 28, 174 Ill. Dec. 38, 597 N.E.2d 1250 (3 Dist. 1992).

The policy underlying this section would be violated if a penalty prescribed for an offense was not as great or greater than that prescribed for a less serious offense. People v. Bryant, 165 Ill. App. 3d 996, 117 Ill. Dec. 539, 520 N.E.2d 890 (1 Dist. 1988), rev'd on other grounds, 128 Ill. 2d 448, 132 Ill. Dec. 415, 539 N.E.2d 1221 (1989).

A sentence must correspond to the seriousness of the offense and have the objective of restoring the offender to useful citizenship. People v. Novak, 94 Ill. App. 3d 1024, 50 Ill. Dec. 285, 419 N.E.2d 393 (1 Dist. 1981); People v. Williams, 97 Ill. 2d 252, 73 Ill. Dec. 360, 454 N.E.2d 220 (1983), cert. denied, 466 U.S. 981, 104 S. Ct. 2364, 80 L. Ed. 2d 836 (1984), 505 U.S. 1208, 112 S. Ct. 3002, 120 L. Ed. 2d 877 (1992); People v. Branham, 137 Ill. App. 3d 896, 92 Ill. Dec. 371, 484 N.E.2d 1226 (2 Dist. 1985).

The power of the legislature to determine punishment is subject to constitutional limitations. People v. Taylor, 115 Ill. App. 3d 621, 71 Ill. Dec. 377, 450 N.E.2d 1256 (1 Dist. 1983), rev'd on other grounds, 102 Ill. 2d 201, 80 Ill. Dec. 76, 464 N.E.2d 1059 (1984).

Where a sentence is within the limits prescribed by the legislature but nonetheless is claimed to be excessive, the sentence will not be disturbed unless it is greatly at variance with the purpose and spirit of the law. People v. Michels, 72 Ill. App. 3d 182, 28 Ill. Dec. 568, 390 N.E.2d 927 (3 Dist. 1979).

It is the policy of the state to prescribe penalties which are proportionate to the seriousness of the offenses and which allow for the possibility of rehabilitation. People v. Kish, 58 Ill. App. 3d 215, 15 Ill. Dec. 717, 374 N.E.2d 10 (3 Dist. 1978).

This section is a statement of public policy aimed at both the legislature and the courts. People v. Moore, 15 Ill. App. 3d 691, 304 N.E.2d 696 (1 Dist. 1973).

- Violations

The Illinois Supreme Court has recognized the following three violations of the proportionate penalties clause that may occur: first, the proportionate penalties clause is violated where the punishment for a particular offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community; second, the proportionate penalties clause is violated where similar offenses are compared and conduct that creates a less serious threat to the public health and safety is punished more harshly; and third, the proportionate penalties clause is violated where identical offenses are given different sentences. People v.

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Austin, 349 Ill. App. 3d 766, 285 Ill. Dec. 768, 812 N.E.2d 588, 2004 Ill. App. LEXIS 750 (1 Dist. 2004), appeal denied, 211 Ill. 2d 585, Ill. Dec. , 823 N.E.2d 968 (2004).

The proportionate penalties clause, Ill. Const., Art. I, § 11, can be violated in one of three instances, namely, where: (1) the penalty for an offense is cruel, degrading, or so completely disproportionate to the offense for which it is imposed as to shock the moral sense of the community; (2) the penalty imposed for a given offense is harsher than the penalty for a similar but more serious offense; and (3) the penalties imposed for identical offenses differ. People v. Ragusa, 346 Ill. App. 3d 176, 281 Ill. Dec. 727, 804 N.E.2d 692, 2004 Ill. App. LEXIS 107 (2 Dist. 2004).

Accountability

Imposition of a natural life sentence for multiple murders, even though based on accountability, does not violate U.S. Const. Amend. VIII or the proportionate penalties clause of the Ill. Const., Art. 1, § 11. People v. Johns, 345 Ill. App. 3d 237, 280 Ill. Dec. 380, 802 N.E.2d 305, 2003 Ill. App. LEXIS 1548 (3 Dist. 2003), appeal denied, 208 Ill. 2d 546, 284 Ill. Dec. 343, 809 N.E.2d 1289 (2004).

Where defendant was found guilty of two execution style murders, 730 ILCS 5/5-8-1 was not unconstitutional under this section as applied to those found guilty by accountability. People v. Koger, 287 Ill. App. 3d 764, 223 Ill. Dec. 161, 679 N.E.2d 105 (3 Dist. 1997).

Aggravated Battery of a Child

Penalty for aggravated battery of a child, under 720 ILCS 5/12-4.3(a), was not unconstitutionally disproportionate to the penalty for aggravated battery of an unborn child, under 720 ILCS 5/12-4.4(b), in violation of Ill. Const. Art. I, § 11, because the legislature could find the former offense occurred more frequently, justifying a harsher penalty. People v. Milash, 329 Ill. App. 3d 153, 263 Ill. Dec. 929, 769 N.E.2d 131, 2002 Ill. App. LEXIS 316 (2 Dist. 2002).

Aggravated Battery with Firearm

The legislature reasonably could have determined that a more stringent penalty for aggravated battery with a firearm is required, given the frequency of the crime and the high risk of bodily harm associated with it, and designating the offense of aggravated battery with a firearm as a Class X felony is not cruel, degrading, or so wholly disproportionate as to shock the moral sense of the community. People v. Lee, 167 Ill. 2d 140, 212 Ill. Dec. 231, 656 N.E.2d 1065 (1995), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

Aggravated Criminal Sexual Assault

In an aggravated criminal sexual assault case, defendant's 32 year sentence under 730 ILCS 5/5-8-4 was not unconstitutional as disproportionate because the court noted defendant's poor behavior while incarcerated, and the sex offender evaluator found that defendant was at a "moderate" risk to reoffend, based on his young age and other factors, including potential for psychopathy and unrealistic plans and negative attitude toward intervention. At the time of sentencing, defendant had taken few steps that showed definite rehabilitative potential. People v. Nichols, Ill. App. 3d , Ill. Dec. , N.E.2d , 2012 Ill. App. LEXIS 37 (2 Dist. Jan. 18, 2012).

Since the elements of aggravated-criminal-sexual-assault under 720 ILCS 5/12-14(a)(1) were not identical to those under 720 ILCS 5/12-14(a)(3), 720 ILCS 5/12-14(a)(1) did not run afoul of the

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proportionate penalties clause. People v. Leach, 385 Ill. App. 3d 215, 325 Ill. Dec. 649, 898 N.E.2d 696, 2008 Ill. App. LEXIS 980 (4 Dist. 2008), appeal denied, 2009 Ill. LEXIS 107 (Ill. 2009).

Fifteen-year mandatory add-on provision of 720 ILCS 5/12-14(d)(1) violates the proportionate penalties clause because it makes aggravated criminal sexual assault punishable more severely than the identical offense of armed violence predicated on criminal sexual assault with a category 1 weapon. People v. Hampton, 363 Ill. App. 3d 293, 299 Ill. Dec. 772, 842 N.E.2d 1124, 2006 Ill. App. LEXIS 131 (1 Dist. 2006), vacated by, in part, cause remanded by: People v. Hampton, 225 Ill. 2d 208, 2007 Ill. LEXIS 451 (2007).

A 30 year sentence for aggravated criminal sexual assault and home invasion was not an abuse of discretion, notwithstanding the defendant's assertion that the sentence failed to take into account that he was 28 years of age, that he was married and the father of two children, that he was gainfully employed, that he had no history of arrests as a juvenile and no convictions as an adult, that he pled guilty and accepted full responsibility, and that he had the support and encouragement of dozens of people who appeared in court on his behalf; while noting such facts, the court also recognized that the complainant was an innocent working woman who was seriously beaten and bruised, and stated that the acts done by defendant were "among the most serious and the most dangerous and the most violent things that can be done by a criminal." People v. Villa, 305 Ill. App. 3d 641, 238 Ill. Dec. 857, 713 N.E.2d 103 (1 Dist. 1999).

The trial court did not abuse its discretion in imposing a sentence where the defendant's sentence was not greatly disproportionate to the nature of his crime but reflected the severity of his crimes as well as his lack of rehabilitative potential. People v. Hindson, 301 Ill. App. 3d 466, 234 Ill. Dec. 856, 703 N.E.2d 956 (2 Dist. 1998), appeal denied, 183 Ill. 2d 581, 238 Ill. Dec. 717, 712 N.E.2d 821 (1999).

Aggravated Discharge of Firearm

Classification of aggravated discharge of a firearm as a more serious crime, with more severe penalties, than reckless discharge did not violate the Illinois constitutional requirement of proportionality of penalties because the two statutes had different purposes of eliminating different types of behavior, based on level of scienter. People v. Kasp, 352 Ill. App. 3d 180, 287 Ill. Dec. 165, 815 N.E.2d 809, 2004 Ill. App. LEXIS 961 (1 Dist. 2004), appeal denied, 213 Ill. 2d 568, 293 Ill. Dec. 866, 829 N.E.2d 791 (2005).

Defendant's seven-year sentence for aggravated discharge of a firearm was proper, as it fell within the statutory limitations, did not thwart the purpose of restoring defendant to useful citizenship, and defendant did not overcome the presumption that the trial court considered all mitigating evidence. People v. Allen, 344 Ill. App. 3d 949, 280 Ill. Dec. 170, 801 N.E.2d 1115, 2003 Ill. App. LEXIS 1428 (1 Dist. 2003).

Trial court abused its discretion by imposing 14 year sentence for aggravated discharge of a firearm, where defendant had no prior significant criminal record or convictions for violent crimes and was successfully employed as an artist, no one suffered any physical injury and defendant had good rehabilitative potential; no mitigating or aggravating factors were specifically stated by trial judge as required by law when defendant was sentenced, nor did the judge point to any particular evidence or information that led to his sentencing decision and sentence was reduced to 6 years' imprisonment by appellate court. People v. Juarez, 278 Ill. App. 3d 286, 214 Ill. Dec. 1001, 662 N.E.2d 567 (1 Dist. 1996).

Aggravated Kidnapping

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With regard to 720 ILCS 5/10-2, the 15- and 20-year add-ons mandated by 1999 Ill. Laws 404 (codified at 720 ILCS 5/33A-1) violate the proportionate penalties clause of Ill. Const. Art. I, § 11. People v. Moss, 206 Ill. 2d 503, 276 Ill. Dec. 855, 795 N.E.2d 208, 2003 Ill. LEXIS 1410 (2003).

- Armed Violence

The penalties for aggravated kidnaping and armed violence are unconstitutionally disproportionate. People v. Christy, 139 Ill. 2d 172, 151 Ill. Dec. 315, 564 N.E.2d 770 (1990), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

Aggravating Factors

Although defendant claimed that an extended-term sentence of 50 years for home invasion, armed robbery, and aggravated kidnapping was an abuse of discretion as no victim was injured and the incident lasted only a few minutes, the sentence was within the statutory range for Class X felonies under 730 ILCS 5/5-8-2(a)(2) based on the aggravating factors in 730 ILCS 5/5-5-3.2(b)(1), (b)(4)(i) that the victims included three children under the age of 12 and defendant had six prior felony convictions; thus, the sentence was appropriate under Ill. Const. Art. I, § 11. People v. Thomas, 384 Ill. App. 3d 895, 323 Ill. Dec. 914, 894 N.E.2d 940, 2008 Ill. App. LEXIS 877 (1 Dist. 2008).

Enhanced sentence where defendant's commission of attempted first-degree murder was found to have been accompanied by great brutality did not violate the constitutional guarantee of proportionate sentencing, even though a completed second-degree murder would have yielded a shorter sentence, because the legislature was entitled to consider many factors in determining a crime's seriousness, not limited to whether death resulted; as long as the sentence was not so wholly disproportionate as to shock the moral sense of the community, it passed constitutional muster. People v. Ford, 352 Ill. App. 3d 55, 287 Ill. Dec. 228, 815 N.E.2d 872, 2004 Ill. App. LEXIS 981 (1 Dist. 2004), appeal denied, 212 Ill. 2d 541, 291 Ill. Dec. 711, 824 N.E.2d 287 (2004).

Where a defendant's behavior indicates that his alcohol problems lead to recidivism and the defendant takes no steps to either stop drinking or stop committing crimes while under the influence of alcohol, a trial court may properly consider the defendant's alcohol problems in aggravation. People v. Tross, 281 Ill. App. 3d 146, 216 Ill. Dec. 927, 666 N.E.2d 377 (2 Dist. 1996).

Altering Temporary Vehicle Registration

The penalty of a class two felony for altering the temporary registration permit for a vehicle which one owns or to which one is legally entitled violates the guarantee of proportionate penalties in the constitution. People v. Morris, 136 Ill. 2d 157, 143 Ill. Dec. 300, 554 N.E.2d 235 (1990), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

Appellate Review

The trial court generally is the proper forum for determining a suitable sentence, and its sentencing decisions are entitled to great deference and weight; a court of review will not substitute its judgment for that of the trial court. People v. BoClair, 225 Ill. App. 3d 331, 167 Ill. Dec. 606, 587 N.E.2d 1221 (1 Dist.), appeal denied, 146 Ill. 2d 634, 176 Ill. Dec. 806, 602 N.E.2d 460 (1992).

Because it is within the discretion of the trial court, after taking into consideration the particular facts and circumstances of the case and the defendant's prior history, to impose a particular

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sentence, it is outside the province of the appellate court to reweigh those factors. People v. Camp, 201 Ill. App. 3d 330, 147 Ill. Dec. 26, 559 N.E.2d 26 (1 Dist.), appeal denied, 133 Ill. 2d 562, 149 Ill. Dec. 326, 561 N.E.2d 696 (1990).

When a trial court imposes a sentence that is within the statutory limit, it will not be altered upon review absent an abuse of discretion by the trial court; the weight to be accorded the various factors in aggravation and mitigation depends on the facts and circumstances of each case, and the balance struck by the trial judge will not be disturbed if there is support in the record for his determination. People v. Spears, 169 Ill. App. 3d 470, 121 Ill. Dec. 570, 525 N.E.2d 877 (1 Dist. 1988).

The trial court ordinarily is in the best position to make a reasoned judgment as to a sentence which balances the need to protect society and rehabilitate the offender, and its judgment is due great weight and deference. People v. Branham, 137 Ill. App. 3d 896, 92 Ill. Dec. 371, 484 N.E.2d 1226 (2 Dist. 1985).

A reviewing court will not substitute its judgment solely because it might have balanced the sentencing factors differently if the task of sentencing had been given to it. People v. Branham, 137 Ill. App. 3d 896, 92 Ill. Dec. 371, 484 N.E.2d 1226 (2 Dist. 1985).

Absent an abuse of discretion, a reviewing court will not alter the sentence imposed. People v. Belcher, 92 Ill. App. 3d 237, 47 Ill. Dec. 807, 415 N.E.2d 1120 (1 Dist. 1980).

A reviewing court will not disturb a sentence of the trial court unless it clearly appears the penalty is manifestly in excess of the proscription of this Section, which requires all penalties to be proportionate to the nature of the offense. People v. Neal, 37 Ill. App. 3d 713, 346 N.E.2d 178 (3 Dist. 1976).

If punishment imposed in a particular case is excessive, though within the limits prescribed by the legislature, a reviewing court should not disturb the sentence unless it clearly appears that the penalty constitutes a great departure from the fundamental law and its spirit and purpose, or that the penalty is manifestly in excess of the proscription of this section, which requires that all penalties shall be proportioned to the nature of the offense. People v. Daniels, 39 Ill. App. 3d 562, 350 N.E.2d 577 (3 Dist. 1976).

Where it is contended that the punishment imposed in a particular case is excessive, though within the limits prescribed by the legislature, reviewing courts should not disturb the sentence unless it clearly appears the penalty constitutes a great departure from the constitutional requirement that all penalties shall be proportioned to the nature of the offense. People v. Gray, 40 Ill. App. 3d 52, 351 N.E.2d 339 (1 Dist. 1976).

The standard of review where a sentence, imposed is within statutory limits is whether the trial court exercised proper discretion and to justify modification the sentence must clearly depart from the spirit and requirement of this section that the punishment imposed reflect both the nature of the offense and the possibilities of rehabilitation. People v. Luckey, 35 Ill. App. 3d 179, 341 N.E.2d 112 (1 Dist. 1975); People v. Halstead, 164 Ill. App. 3d 1, 115 Ill. Dec. 256, 517 N.E.2d 667 (2 Dist. 1987).

Taking cognizance of the trial court's superior position to make a sound determination as to sentencing, a reviewing court is reluctant to interfere unless the sentence falls outside the limitations set by statute or manifests a substantial departure from the spirit of the Illinois Constitution. People v. Lipscomb, 19 Ill. App. 3d 114, 311 N.E.2d 257 (1 Dist. 1974).

In passing sentence upon a criminal who is found guilty, the trial judge is invested with the judicial discretion within the limits fixed by law, and it is only where that discretion has been abused or when a defendant has been materially prejudiced by the procedure which the courts adopt in conducting the inquiry that a court of review will interfere with a judgment pronounced. People v. Robinson, 116 Ill. App. 2d 323, 253 N.E.2d 570 (3 Dist. 1969).

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A reviewing court's power to reduce punishment imposed by a trial court should be exercised with caution and circumspection. People v. Ramey, 115 Ill. App. 2d 431, 253 N.E.2d 688 (1 Dist. 1969).

A sentence within the maximum term fixed by the legislature is not cruel and unusual punishment prohibited by the Constitution and will not be disturbed upon review. People v. Calcaterra, 33 Ill. 2d 541, 213 N.E.2d 270 (1965).

Applicability

Secretary under the statute allowing for suspension of driver's licenses for the underage consumption of alcohol, 625 ILCS 5/6-206(a)(43), was required to suspend the licenses for such drivers and could do so without violating the proportionate penalties clause of the Illinois Constitution, Ill. Const. art. I, § 11. The suspension under that statute was not a direct action to inflict punishment, but was meant to protect the public. People v. Boeckmann, 238 Ill. 2d 1, 342 Ill. Dec. 537, 932 N.E.2d 998, 2010 Ill. LEXIS 966 (2010).

Suspension of a driver's license by the Illinois Secretary of State is not considered criminal punishment; thus, Ill. Const. Art. I, § 11 could not be used to support plaintiff's claim that 625 ILCS 5/6-206(a)(10) violated the Illinois Constitution's mandate for proportional penalties because it punished mere possession of another person's identification card the same as displaying or attempting to fraudulently use such an identification card. Horvath v. White, 358 Ill. App. 3d 844, 295 Ill. Dec. 215, 832 N.E.2d 366, 2005 Ill. App. LEXIS 632 (1 Dist. 2005).

Comparative proportionality review is inappropriate when statutory purposes are different because, when statutes are enacted for different reasons, courts must presume that the legislature considered different factors as to the respective punishments; comparative proportionality review of the penalties for aggravated unlawful use of a weapon (UUW) statute, 720 ILCS 5/24-1.6 and the reckless discharge of a firearm, 720 ILCS 5/24-1.5, is inappropriate because the former targets possession of a weapon while the later targets the use of a weapon. People v. Austin, 349 Ill. App. 3d 766, 285 Ill. Dec. 768, 812 N.E.2d 588, 2004 Ill. App. LEXIS 750 (1 Dist. 2004), appeal denied, 211 Ill. 2d 585, Ill. Dec. , 823 N.E.2d 968 (2004).

This section is clearly directed toward a judge's determination of what sentence to impose, not to the carrying out of that sentence by prison officials. Williams v. Thompson, 111 Ill. App. 3d 145, 66 Ill. Dec. 883, 443 N.E.2d 809 (4 Dist. 1982).

The constitutional direction of determining penalties according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship is not limited to penalties for violations of criminal law, but applies to all penalties, which would include those imposed for criminal contempt. In re G.B., 88 Ill. 2d 36, 58 Ill. Dec. 845, 430 N.E.2d 1096 (1981), cert. denied, 456 U.S. 963, 102 S. Ct. 2041, 72 L. Ed. 2d 487 (1982).

This section pertains to criminal proceedings and is not applicable to school disciplinary proceedings. Knight ex rel. Knight v. Board of Educ., 38 Ill. App. 3d 603, 348 N.E.2d 299 (4 Dist. 1976).

Where the sentence imposed is within the statutory limits prescribed for the offense of which the defendant is convicted, the issue of sentence excessiveness does not involve a constitutional question. People v. Rife, 18 Ill. App. 3d 602, 310 N.E.2d 179 (4 Dist. 1974).

Armed Robbery

Since the definition of armed robbery at 720 ILCS 5/18-2(a)(2) was completely intertwined with and would not have been enacted without a sentencing enhancement provision that had been held to violate the proportionate penalties provision of Ill. Const. Art. I, § 11, the sentencing

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provision could not be severed from the statute; therefore, defendant could not be convicted at all under that subsection of the armed robbery statute and the offense had not existed at all under prior law. People v. Hauschild, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 1026 (2 Dist. Oct. 5, 2005).

With regard to the statute for armed robbery, 720 ILCS 5/18-2, the 15- and 20-year add-ons mandated by 1999 Ill. Laws 404 (codified at 720 ILCS 5/33A-1) violate the proportionate penalties clause of Ill. Const. Art. I, § 11. People v. Moss, 206 Ill. 2d 503, 276 Ill. Dec. 855, 795 N.E.2d 208, 2003 Ill. LEXIS 1410 (2003).

There is no unconstitutional disproportionality in the 25-years-to-life add-on mandated by 1999 Ill. Laws 404 for the offense of armed robbery with personal discharge of a firearm causing great bodily harm (720 ILCS 5/18-2(a)(4)). People v. Moss, 206 Ill. 2d 503, 276 Ill. Dec. 855, 795 N.E.2d 208, 2003 Ill. LEXIS 1410 (2003).

Armed robbery statutory provision which imposed an additional 15-year prison sentence when a defendant was found to be in possession of a firearm during the armed robbery was unenforceable as such sentencing violated the proportionate penalties clause of the Illinois Constitution, Ill. Const. Art. 1, § 11. People v. Garcia, 199 Ill. 2d 401, 264 Ill. Dec. 314, 770 N.E.2d 208, 2002 Ill. LEXIS 316 (2002), overruled in part on other grounds by People v. Hauschild, 364 Ill. App. 3d 202, 845 N.E.2d 74, 2006 Ill. App. LEXIS 176, 300 Ill. Dec. 653 (Ill. App. Ct. 2d Dist. 2006).

In imposing a five to 15 year sentence for armed robbery where a patron of a lounge was killed, where the court was aware of defendant's age, his lack of a prior criminal record, and other matters which would go towards the question of his potential for rehabilitation, and where the trial court did not expressly state that it considered this information before imposing the prison term, a failure to make such a statement, in and of itself, did not indicate that the trial court did not consider such matter. People v. Gonzalez, 78 Ill. App. 3d 1146, 34 Ill. Dec. 747, 398 N.E.2d 422 (1 Dist. 1979).

Statutory minimum of four year sentence for armed robbery without possibility of probation did not violate the constitutional provision requiring that all penalties be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. People v. Henson Robinson Co., 28 Ill. App. 3d 622, 329 N.E.2d 28 (4 Dist. 1975).

Sentences imposed on defendants upon conviction for armed robbery were well within the guidelines described by the legislature under 730 ILCS 5/5-8-1 and did not appear to constitute a great departure from the fundamental law and its spirit and purpose, nor was the penalty imposed in excess of the philosophy prescribed by this section. People v. Wilson, 19 Ill. App. 3d 625, 312 N.E.2d 30 (4 Dist. 1974).

Where the trial court took cognizance of the seriousness of defendant's offense of armed robbery, defendant's proclivity toward violence, and his prior convictions for theft and burglary, the three year variance between the minimum and maximum sentence reflected the trial court's assessment of defendant's potential for rehabilitation, was reasonable, and was held to be indeterminate. People v. Harston, 23 Ill. App. 3d 284, 319 N.E.2d 67 (2 Dist. 1974).

The minimum mandatory sentence adopted by the legislature for the offense of armed robbery does not contravene the constitutional requirements of this section and is not unreasonable or arbitrary and, as required by this section, is aimed at the seriousness of the offense. People v. Oestringer, 24 Ill. App. 3d 185, 321 N.E.2d 146 (5 Dist. 1974).

A minimum sentence of four years for armed robbery was not so great as to demonstrate that the legislature ignored the rehabilitative potential of the offender. People v. Oestringer, 24 Ill. App. 3d 185, 321 N.E.2d 146 (5 Dist. 1974).

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Armed Violence

The defendant's 15 year sentence under the armed violence statute (720 ILCS 5/33A-2) for an underlying probationable offense, which itself carries a maximum term of imprisonment of three years, did not violate the disproportionality and due process clauses of the constitution; the legislature could reasonably conclude that a person who commits a felony of any nature while carrying a gun ought to receive the mandatory minimum of 15 years as punishment and deterrence. People v. Green, 301 Ill. App. 3d 767, 235 Ill. Dec. 88, 704 N.E.2d 437 (4 Dist. 1998), appeal denied, 183 Ill. 2d 579, 238 Ill. Dec. 716, 712 N.E.2d 820 (1999).

Circuit court was correct in finding that the penalty for armed violence predicated on robbery committed with a category I weapon violated the proportionate penalties clause. People v. Lewis, 175 Ill. 2d 412, 222 Ill. Dec. 296, 677 N.E.2d 830 (1996), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

The armed violence statute (720 ILCS 5/33A-2) does not violate the requirement that the penalty be determined with respect to the seriousness of the offense by including nonviolent felonies as acts of armed violence. People v. Pace, 100 Ill. App. 3d 213, 55 Ill. Dec. 658, 426 N.E.2d 983 (1 Dist. 1981).

The minimum term of six years imprisonment found in the armed violence statute (720 ILCS 5/33A-2) did not violate this section where the defendant was involved in a tavern fight, shot up a police car, and had 37 prior convictions. People v. Lenhart, 90 Ill. App. 3d 502, 45 Ill. Dec. 887, 413 N.E.2d 220 (3 Dist. 1980).

Attempt

While the Supreme Court of Illinois had held that the attempt statute, 720 ILCS 5/8-4, as amended by 1991 Ill. Laws 404, § 5, was unconstitutional as it violated the proportionate penalties clause of Ill. Const. Art. I, § 11, the court made clear that only the amendment to the attempt statute was unconstitutional, and not the attempt statute in its entirety. Thus, the circuit court correctly applied the statute as it existed before the amendment in denying defendant's motion to dismiss the attempted first degree murder charges against defendant. People v. Bartgen, 361 Ill. App. 3d 336, 297 Ill. Dec. 67, 836 N.E.2d 798, 2005 Ill. App. LEXIS 943 (1 Dist. 2005).

Supreme court ruled that the attempt statute, 720 ILCS 5/8-4, amended by 1991 Ill. Laws 404, violated the proportionate penalties clause of Ill. Const. 1970, Art. I, § 11, since the person who failed to kill his victim stood to be sentenced to a much greater sentence than the person who actually caused the death of his victim, and declared the amended attempt statute unconstitutional. People v. Morgan, 203 Ill. 2d 470, 272 Ill. Dec. 160, 786 N.E.2d 994, 2003 Ill. LEXIS 1 (2003), overruled in part on other grounds by People v. Hauschild, 364 Ill. App. 3d 202, 845 N.E.2d 74, 2006 Ill. App. LEXIS 176, 300 Ill. Dec. 653 (Ill. App. Ct. 2d Dist. 2006).

Battery

A sentence of six months at a state penal farm was within the limits of the statute for a battery where the charge involved an attack on a male companion of the defendant's teenage girlfriend and did not constitute a great departure from the fundamental law and its spirit and purpose, nor was the penalty manifestly in excess of the proscription of this section which requires that all penalties shall be proportionate to the nature of the offense. People v. Smice, 92 Ill. App. 2d 83, 234 N.E.2d 47 (2 Dist. 1968).

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Burglary

Defendant's attack on the mandatory four year minimum sentence for residential burglary, contending that such a penalty for this offense was violative of equal protection, due process, and the "proportionality concept" under this section as a gross deviation from reasonable proportionality because it prescribed the same penalty for the residential burglar as was statutorily provided for the offenses of indecent liberties with a child and aggravated kidnapping other than for ransom, was without merit; no valid equal protection or due process argument could be made by comparing residential burglary with other dissimilar criminal offenses. People v. Sturlic, 130 Ill. App. 3d 120, 85 Ill. Dec. 587, 474 N.E.2d 1 (2 Dist. 1985).

720 ILCS 5/19-1(b) does not violate the due process and limitation-of-penalties provisions of the state constitution. People v. Steppan, 105 Ill. 2d 310, 85 Ill. Dec. 495, 473 N.E.2d 1300 (1985), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

The imposition of a mandatory minimum sentence for residential burglary and not for aggravated kidnaping does not violate the limitations of the penalty provisions of the Illinois Constitution. People v. Bales, 108 Ill. 2d 182, 91 Ill. Dec. 171, 483 N.E.2d 517 (1985).

Where the defendant was sentenced to three years' imprisonment for burglary based on his prior juvenile record, his prior drug use, and prior poor work history, there was no abuse of discretion. People v. Rands, 86 Ill. App. 3d 1095, 42 Ill. Dec. 562, 409 N.E.2d 57 (2 Dist. 1980).

Codefendants

- Sentence Disparity

Where both defendant and his co-defendant received natural life sentences for a double homicide, defendant's sentence was not unconstitutionally disparate with that of his co-defendant, as the co-defendant was not a more culpable offender and defendant had a more serious criminal history. People v. Thompkins, 376 Ill. App. 3d 629, 315 Ill. Dec. 498, 876 N.E.2d 1088, 2007 Ill. App. LEXIS 1049 (1 Dist. 2007).

Where the record demonstrated that one codefendant more actively participated in the attempted murder than did another, for example, by handling the gun, the sentences were not arbitrarily imposed by the trial court, despite their 10 year disparity. People v. Reynolds, 178 Ill. App. 3d 756, 127 Ill. Dec. 850, 533 N.E.2d 932 (1 Dist. 1989).

Consecutive Sentences

Mandatory consecutive sentences for defendant's aggravated criminal sexual assault convictions did not violate the proportionate sentencing provision of Ill. Const. art. I, § 11 because the elements for aggravated criminal sexual assault and aggravated kidnapping were not identical as charged in the indictment, the proportionate penalties clause was not implicated; to prove aggravated kidnapping as charged, the State only needed to prove the elements of kidnapping plus the commission of criminal sexual assault and the use of force or threat of force, but not aggravated criminal sexual assault. The seven-year sentences for each count fell within the statutory sentencing range of six to 30 years, and the imposition of the seven-year sentences as a consecutive sentence affected only the manner by which the sentence was carried out and did not constitute an increase in penalty. People v. Hawkins, 409 Ill. App. 3d 564, 350 Ill. Dec. 396, 948 N.E.2d 676, 2011 Ill. App. LEXIS 396 (1 Dist. 2011), appeal denied, 2011 Ill. LEXIS 2158 (Ill. 2011).

Provisions for concurrent and consecutive terms of imprisonment in 730 ILCS 5/5-8-4 do not violate the proportionate penalties clause by punishing offenses committed in the same course of

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conduct more harshly than offenses committed in separate courses of conduct. People v. Conley, 306 Ill. App. 3d 1, 238 Ill. Dec. 885, 713 N.E.2d 131 (1 Dist. 1999), appeal denied, 185 Ill. 2d 638, 242 Ill. Dec. 142, 720 N.E.2d 1097 (1999).

Where the record showed that defendant was a 17 year old high school student with no history of juvenile delinquency through his freshman year, he had been a good student, however, within a few months prior to the offenses, he suffered a series of personal problems, including breaking up with his girlfriend, the death of his grandmother and an argument with his mother following which he moved out of her home and moved in with his natural father where he became acquainted with co-defendant who planned the offenses and cajoled defendant into participating, it appeared that the armed robbery offenses grew out of a series of emotional incidents which defendant faced; although a lengthy prison sentence was warranted in view of the violent nature of the attack, consecutive sentences totaling 20 years constituted an abuse of discretion. People v. Rucker, 260 Ill. App. 3d 659, 198 Ill. Dec. 684, 633 N.E.2d 146 (2 Dist. 1994).

This section does not require the abolition of consecutive sentences. People v. Hudson, 11 Ill. App. 3d 147, 296 N.E.2d 40 (5 Dist. 1973).

Conspiracy

- Obstruction of Justice

The imposition of a two to three year term of imprisonment and denial of probation for defendant's conviction for conspiracy to obstruct justice was not manifestly in excess of the proscription of Ill. Const. (1970), Art. II, § 11 (see now this section). People v. Saiken, 49 Ill. 2d 504, 275 N.E.2d 381 (1971).

Construction

Minor could not justifiably claim that the consequences the minor faced following the minor's adjudication for criminal sexual assault violated the proportionate penalties clause of Illinois Constitution, Ill. Const. Art. I, § 11. The proportionate penalties clause was concerned with the infliction of punishment, and the requirement that the minor register as a sex offender under the Sex Offender Registration Act was not punishment since the requirement was a regulatory measure aimed at protecting the public. People ex rel. Birkett v. Konetski, 233 Ill. 2d 185, 330 Ill. Dec. 761, 909 N.E.2d 783, 2009 Ill. LEXIS 389 (2009).

Cruel and Unusual Punishment

Punishment will not be held as cruel or unusual unless it is cruel or degrading punishment not known to the common law, or a degrading punishment which has become obsolete in the state, or so wholly disproportionate to the offense as to shock the moral sense of the community. People v. Callicott, 322 Ill. 390, 153 N.E. 688 (1926).

Damage to Property

Where the record did not show that the trial court fairly considered probation as an alternative to the sentence imposed, a 364 day prison term clearly was unnecessary to protect the public from a man convicted of splattering paint on a neighbor's fence; the sentence was excessive even in light of defendant's substantial prior record. Imperial Stamp & Engraving Co. v. Bailey, 82 Ill. App. 3d 835, 38 Ill. Dec. 206, 403 N.E.2d 294 (2 Dist. 1980).

A trial court abused its discretion by imposing the maximum sentence on two teenage defendants following conviction for criminal damage to property where there was nothing in the defendants'

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backgrounds to indicate that imprisonment was required, neither of the youths had ever violated even the traffic laws in the past, both had just graduated from high school and were either employed or looking for full-time employment, one defendant was planning to enroll in a welding course in the fall, and the defendants' inability to borrow enough money to make immediate restitution apparently tipped the scales in favor of incarceration. People v. Short, 66 Ill. App. 3d 172, 22 Ill. Dec. 915, 383 N.E.2d 723 (5 Dist. 1978).

Death Penalty

In a capital murder case, defendant unsuccessfully contended that the Illinois death penalty statute violated U.S. Const., Amends. VIII, XIV, Ill. Const., Art. I, §§ 2, 11, arguing that procedural safeguards were inadequate to minimize the risk that the death penalty would be applied to innocent persons, and that it was inevitable that innocent people would be executed. People v. Caffey, 205 Ill. 2d 52, 275 Ill. Dec. 390, 792 N.E.2d 1163, 2001 Ill. LEXIS 1426 (2001).

Failing to instruct the jury at the second stage of a capital sentencing hearing to consider a defendant's potential for rehabilitation and restoration to useful citizenship does not violate the section, provided that the jury is instructed that it can consider "any other reason" why the defendant should not be sentenced to death. People v. Kirchner, 194 Ill. 2d 502, 252 Ill. Dec. 520, 743 N.E.2d 94, 2000 Ill. LEXIS 1717 (2000).

A defendant convicted of a capital crime has no constitutional right under this section to have the jury consider residual doubt, because residual doubt about a defendant's guilt is not a mitigating circumstance because it is not a fact about the defendant's character or the circumstances of the offense which might call for a penalty less than death. People v. McDonald, 168 Ill. 2d 420, 214 Ill. Dec. 125, 660 N.E.2d 832 (1995), cert. denied, 518 U.S. 1024, 116 S. Ct. 2563, 135 L. Ed. 1080 (1996).

The Supreme Court's duty, under both the United States and Illinois Constitutions, is to determine whether a death sentence has been imposed arbitrarily or capriciously or is unduly severe considering the circumstances of the offense and the character and rehabilitative prospects of the defendant. People v. Bean, 137 Ill. 2d 65, 147 Ill. Dec. 891, 560 N.E.2d 258 (1990), cert. denied, 499 U.S. 932, 111 S. Ct. 1338, 113 L. Ed. 2d 270 (1991).

In reviewing the appropriateness of a death sentence, the court will examine the facts of the particular case and the evidence introduced at the trial and death penalty hearing, and, as a matter of reference, it may consider the sentence imposed on an accomplice or a codefendant in light of his involvement in the offense. People v. Bean, 137 Ill. 2d 65, 147 Ill. Dec. 891, 560 N.E.2d 258 (1990), cert. denied, 499 U.S. 932, 111 S. Ct. 1338, 113 L. Ed. 2d 270 (1991).

Defendant's death sentence was not excessive where defendant gratuitously offered to kill the victim in return for compensation. People v. Bean, 137 Ill. 2d 65, 147 Ill. Dec. 891, 560 N.E.2d 258 (1990), cert. denied, 499 U.S. 932, 111 S. Ct. 1338, 113 L. Ed. 2d 270 (1991).

The death penalty statute does not violate Ill. Const. (1970), Art. I, § 2, which provides that all penalties be determined in accordance with the seriousness of the offense and with the goal of restoring the offender to useful citizenship. People v. Williams, 97 Ill. 2d 252, 73 Ill. Dec. 360, 454 N.E.2d 220 (1983), cert. denied, 466 U.S. 981, 104 S. Ct. 2364, 80 L. Ed. 2d 836 (1984), 505 U.S. 1208, 112 S. Ct. 3002, 120 L. Ed. 2d 877 (1992).

In determining whether the imposition of the death penalty is proper in a particular case, the state supreme court is required to consider the circumstances of the offense and the character of the defendant. People v. Szabo, 94 Ill. 2d 327, 68 Ill. Dec. 935, 447 N.E.2d 193 (1983).

The state Supreme Court has a duty to ensure that the cases in which death is imposed are rationally distinguished from those in which it is not imposed; rationality, consistency, and

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evenhandedness in the imposition of the death penalty are constitutionally indispensable. People v. Szabo, 94 Ill. 2d 327, 68 Ill. Dec. 935, 447 N.E.2d 193 (1983).

Sentence of death imposed on defendant could not be deemed excessive or disproportionate solely because his accomplice received a lesser sentence where the accomplice's age precluded the imposition of the death penalty regardless of the circumstances and where the evidence showed that defendant had the leading role in the planning and execution of the crimes. People v. Szabo, 94 Ill. 2d 327, 68 Ill. Dec. 935, 447 N.E.2d 193 (1983).

This section does not reflect any intention by the constitutional convention to prohibit imposition of the death penalty. People v. Gaines, 88 Ill. 2d 342, 58 Ill. Dec. 795, 430 N.E.2d 1046 (1981), cert. denied, 456 U.S. 1001, 102 S. Ct. 2285, 73 L. Ed. 2d 1295 (1982).

The framers of the 1970 Constitution apparently did not intend the document to abolish the death penalty in Illinois, since a separate referendum regarding its retention was submitted to the voters at the same time the constitution was submitted for approval. People v. Moore, 15 Ill. App. 3d 691, 304 N.E.2d 696 (1 Dist. 1973).

Disproportionate Penalties

The disorderly conduct statute, 720 ILCS 5/26-1, was found constitutional under the "identical elements" test, because § 26-1(a)(12) required calling 911 which § 26-1(a)(4) did not require and thus, the differing sentencing classifications for a Class 4 felony and a Class A misdemeanor did not offend the proportionate penalties clause of Ill. Const. Art. I, § 11. People v. Klepper, 234 Ill. 2d 337, 334 Ill. Dec. 555, 917 N.E.2d 381, 2009 Ill. LEXIS 309 (2009).

Appellate court erred in reaching a decision that the 15-year sentence enhancement in 720 ILCS 5/12-14(d)(1) violated Ill. Const. (1970), Art. I, § 11; the appellate court had already vacated defendant's convictions on a right to confrontation claim making the constitutional review of § 12-14(d)(1) unnecessary and improper. People v. Hampton, 225 Ill. 2D 238, 225 Ill. 2d 238, 310 Ill. Dec. 906, 867 N.E.2d 957, 2007 Ill. LEXIS 451 (2007).

Defendant's sentence for armed robbery/discharging a firearm and causing great bodily harm was unconstitutional, as it violated the proportionate penalties clause. Defendant's sentence was disproportionate to the penalty for armed violence predicated on robbery, which had identical elements, and, thus, defendant had to be resentenced. People v. Harvey, 366 Ill. App. 3d 119, 303 Ill. Dec. 284, 851 N.E.2d 182, 2006 Ill. App. LEXIS 403 (1 Dist. 2006).

Fifteen-year add on penalty contained in 720 ILCS 5/18-4(a)(4), the statute outlawing aggravating vehicular hijacking, made that statute's penalty disproportionate to the penalty for an identical offense, armed violence with a Category I weapon predicated upon the offense of vehicular hijacking, 720 ILCS 5/33A-2, and, thus, the penalty in 720 ILCS 5/18-4(a)(4) violated the proportionate penalties clause of the Ill. Const. Article I, § 10. People v. Andrews, 364 Ill. App. 3d 253, 301 Ill. Dec. 109, 845 N.E.2d 974, 2006 Ill. App. LEXIS 228 (1 Dist. 2006).

Constitutional prohibition against disproportionate penalties for identical crimes may be relaxed where the State decides to proceed only with the crime carrying a greater penalty. People v. Hampton, 363 Ill. App. 3d 293, 299 Ill. Dec. 772, 842 N.E.2d 1124, 2006 Ill. App. LEXIS 131 (1 Dist. 2006), vacated by, in part, cause remanded by: People v. Hampton, 225 Ill. 2d 208, 2007 Ill. LEXIS 451 (2007).

Domestic Battery

Defendant failed in his argument that the penalty for domestic battery violates the proportionate penalties clause by permitting judges to grant supervision to defendants convicted of a Class A misdemeanor, such as simple battery, but denying judges that same discretion for those

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defendants convicted of domestic battery, which is also a Class A misdemeanor, because battery and domestic battery do not share identical elements, i.e., battery applies to any individual, and domestic battery applies to all family or household members. People v. Pickens, 354 Ill. App. 3d 904, 290 Ill. Dec. 776, 822 N.E.2d 58, 2004 Ill. App. LEXIS 1543 (1 Dist. 2004).

Driving Under the Influence

A sentence of six months imprisonment after pleading guilty to the charge of driving under the influence of intoxicating liquor was upheld where findings indicated that some incarceration was necessary for the protection of society, and probation would have deprecated the seriousness of the offense and have been inconsistent with the ends of justice. People v. Oelschlager, 85 Ill. App. 3d 695, 41 Ill. Dec. 30, 407 N.E.2d 222 (3 Dist. 1980).

Escape

The escape statute (720 ILCS 5/31-6) does not violate this section. People v. Boucher, 75 Ill. App. 3d 322, 31 Ill. Dec. 144, 394 N.E.2d 60 (3 Dist. 1979).

Ex Post Facto

The Habitual Criminal Statute (725 ILCS 5/33B-1), by requiring a natural life sentence thereby forbidding consideration of the offender's personal characteristics and the seriousness of the offense, does not violate this section, the due process clause of the United States Constitution, or the Eighth Amendment of the United States Constitution. People v. Wilson, 257 Ill. App. 3d 826, 196 Ill. Dec. 37, 629 N.E.2d 582 (1 Dist. 1994).

Illinois courts have consistently held that the Habitual Criminal Act (725 ILCS 5/33B-1 et seq.) does not place defendant in double jeopardy, and it does not act as an ex post facto law, because it prescribes punishment only for the most recent crime, which must have been committed after the statute went into effect; the evidence of prior crimes is used solely to augment the penalty for the last crime. People v. Wilson, 257 Ill. App. 3d 826, 196 Ill. Dec. 37, 629 N.E.2d 582 (1 Dist. 1994).

Factors Considered

Defendant's 20-year prison sentence for predatory criminal sexual assault of a child was appropriate under Ill. Const. art. I, § 11 because it fell within the sentencing range of 6 to 30 years in 720 ILCS 5/12-14.1(b)(1), defendant engaged in the criminal conduct with the eight-year-old victim on multiple occasions, and defendant's status as an illegal immigrant was not a statutory ground in mitigation under 730 ILCS 5/5-5-3.1(a). People v. Flores, 404 Ill. App. 3d 155, 343 Ill. Dec. 923, 935 N.E.2d 1151, 2010 Ill. App. LEXIS 991 (2 Dist. 2010).

A judgment as to the proper sentence to be imposed must be based upon the particular circumstances of each individual case, and such a judgment depends upon many factors, including defendant's credibility, demeanor, general moral character, mentality, social environment, habits, prior criminal history and age. People v. Harris, 196 Ill. App. 3d 663, 143 Ill. Dec. 432, 554 N.E.2d 367 (1 Dist.), appeal denied, 133 Ill. 2d 565, 149 Ill. Dec. 329, 561 N.E.2d 699 (1990).

Penalties must be determined on the basis of rehabilitative potential and seriousness of the offense, as well as to prevent arbitrary or oppressive treatment of convicts and to restore them to useful citizenship, and record must show that the court considered both rehabilitative and

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seriousness elements. People v. Morando, 169 Ill. App. 3d 716, 120 Ill. Dec. 150, 523 N.E.2d 1061 (1 Dist. 1988).

There is no question that the rehabilitation of offenders, in order to return them to useful citizenship, is one of the principal goals of the criminal justice system, but there are dual considerations in sentencing; the seriousness of the offense and rehabilitation of the offender both are to be given weight. People v. Young, 124 Ill. 2d 147, 124 Ill. Dec. 516, 529 N.E.2d 497 (1988).

A reasoned judgment as to the proper penalty to be imposed must be based upon the particular circumstances of each individual case, including the defendant's demeanor, habits, age, mentality, credibility, general moral character, and social environment as well as the nature and circumstances of the offense, including the nature and extent of each element of the offense as committed by the defendant. People v. Saldivar, 113 Ill. 2d 256, 100 Ill. Dec. 776, 497 N.E.2d 1138 (1986).

The possibility of an individual offender's rehabilitation is not the sole factor to be considered in sentencing, and the court is also to consider whether the seriousness of the offense and the protection of the interests of society call for a sentence of severity. People v. Gaines, 88 Ill. 2d 342, 58 Ill. Dec. 795, 430 N.E.2d 1046 (1981), cert. denied, 456 U.S. 1001, 102 S. Ct. 2285, 73 L. Ed. 2d 1295 (1982).

The sentence given a defendant did not need to be reduced since there were other reasons for imposing sentence in excess of the minimum beside deterring others from committing the same crime, including the harm caused and the threat of serious harm, the egregious and conduct in committing three felonies on the victim in a short period of time, defendant's lack of marketable skills; given these factors, sentences in excess of the minimum sentence would comport with the constitutional requirement that penalties be imposed according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. People v. Griffin, 94 Ill. App. 3d 165, 49 Ill. Dec. 797, 418 N.E.2d 817 (5 Dist. 1981).

Some factors to be considered in reviewing sentences imposed by the trial court are: (1) the seriousness of the crime at bar; (2) any prior convictions; (3) the defendant's natural inclination or aversion to commit crime; and (4) the stimuli which motivated his conduct. People v. Hastings, 72 Ill. App. 3d 816, 28 Ill. Dec. 683, 390 N.E.2d 1273 (1 Dist. 1979).

A sentencing judge has the responsibility to impose a sentence which will adequately punish a convicted defendant, protect the public from future offenses, individualize the punishment to fit the particular offender and offense, and reform and rehabilitate the offender into a productive member of society. People v. Blumstengel, 61 Ill. App. 3d 1016, 18 Ill. Dec. 937, 378 N.E.2d 401 (5 Dist. 1978).

In exercising his sentencing power, a judge must be concerned with the rehabilitative potential of the defendant, with the need to deter repeated or similar criminal conduct, to protect society from law violators, and to encourage adherence to and respect for the law. People v. Hines, 44 Ill. App. 3d 204, 2 Ill. Dec. 664, 357 N.E.2d 884 (4 Dist. 1976).

Principally, the nature of the acts which constitute the crime, the history of defendant so far as behavior is concerned, the criminal predisposition of defendant, as well as the circumstances surrounding the crime, are all factors to be considered in the imposition of a sentence. People v. Reynolds, 23 Ill. App. 3d 317, 319 N.E.2d 114 (3 Dist. 1974).

False Report of Vehicle Theft

The imposition of a penalty of a Class 2 felony for falsely reporting a vehicle theft was not disproportionate where the defendant falsely reported that her former husband had stolen her car and later told the police that her report was false. People v. Fuller, 187 Ill. 2d 1, 239 Ill. Dec.

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582, 714 N.E.2d 501 (1999), ; But see People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

Felony Concealment Statute

The concealment statute, 720 ILCS 5/31-5, comports with the due process and proportionate penalties clauses of the Illinois Constitution. People v. Miller, 171 Ill. 2d 330, 216 Ill. Dec. 93, 664 N.E.2d 1021 (1996), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

Felony concealment statute, 720 ILCS 5/31-5, is reasonably designed to protect the general public against the commission of crimes involving the concealment of felons and misdemeanants. People v. Miller, 171 Ill. 2d 330, 216 Ill. Dec. 93, 664 N.E.2d 1021 (1996), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

Fines

Where defendant had completely paid his initial fine ahead of schedule, prior to the sentencing hearing, and because of defendant's lack of skills and his criminal record the trial court erred when it resentenced defendant to a fine of $500, which was to be paid within 90 days, the additional fine had no relationship to either the seriousness of the offense or the objective of restoring defendant to useful citizenship. People v. Rolland, 73 Ill. App. 3d 531, 29 Ill. Dec. 606, 392 N.E.2d 163 (5 Dist. 1979).

Where a trial judge imposed a fine of $2500 on a defendant convicted of deviate sexual assault because he believed the defendant had given the complainant mescaline, although it was established that he gave her a pill, which she put in her purse, it was never established that the pill contained mescaline, and thus the fine was improper and was vacated. People v. Hastings, 72 Ill. App. 3d 816, 28 Ill. Dec. 683, 390 N.E.2d 1273 (1 Dist. 1979).

Firearm Registration

Statutory penalty for felons in possession of firearm without proper registration is disproportionate when compared to the penalty for the offense of unlawful use of a weapon by a felon. People v. Davis, 177 Ill. 2d 495, 227 Ill. Dec. 101, 687 N.E.2d 24 (1997), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

Fishing Limits

A Class 3 felony classification for a person otherwise legally commercially fishing and taking over $300 worth of fish, but who fails to have a tag on his net as proof that the net is licensed, or fails to have in his immediate possession his fishing license to prove he is licensed, is not reasonably designed to protect the citizens of Illinois from depleting natural resources; such a penalty violates the due process and proportionate penalties provisions of the Illinois Constitution and could not stand. People v. Hamm, 149 Ill. 2d 201, 172 Ill. Dec. 179, 595 N.E.2d 540 (1992), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

Forfeiture of Pension Benefits

The termination of pension payments to a former employee convicted of a felony arising out of his employment does not violate the provisions regarding corruption of blood and forfeiture of estate,

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cruel and unusual punishment, or due process. Kerner v. State Employees' Retirement Sys., 72 Ill. 2d 507, 21 Ill. Dec. 879, 382 N.E.2d 243 (1978).

Forfeiture of Weapons

The state may seize or destroy contraband which cannot be owned or possessed legally or which is injurious to the public health and morals without violating this constitutional provision. People v. Green, 45 Ill. App. 3d 506, 4 Ill. Dec. 158, 359 N.E.2d 1110 (4 Dist. 1977).

Habitual Criminals

Trial court did not err in summarily denying defendant's petition for post-conviction relief, as defendant's claim that the proportionate penalties clause of the Illinois Constitution had been violated because the sentence for armed robbery, defendant's third violent felony, was more severe than the sentence for armed violence predicated on robbery with a category III weapon, had to be rejected; defendant was not sentenced for armed robbery, but, instead, was sentenced to a term of natural life imprisonment for being a habitual offender and that sentence was proper since society had the right to be protected from defendant, who had shown that defendant was immune from the State's attempts to rehabilitate defendant. People v. Cummings, Ill. App. 3d , Ill. Dec. , N.E.2d , 2007 Ill. App. LEXIS 677 (1 Dist. June 25, 2007).

The Habitual Criminal Act (720 ILCS 5/33B-1) is not unconstitutional because it mandates a sentence of life imprisonment without regard for the seriousness of the offense or any other potentially mitigating factors; the legislature obviously considered the seriousness of the offense when it enacted the Act, which applies only to Class X felonies, first-degree murder and criminal sexual assault, offenses recognized to be particularly violent and dangerous to society. People v. Dunigan, 165 Ill. 2d 235, 209 Ill. Dec. 53, 650 N.E.2d 1026 (1995).

The habitual criminal statute (720 ILCS 5/33B-1), by requiring a natural life sentence thereby forbidding consideration of the offender's personal characteristics and the seriousness of the offense, does not violate this section, the due process clause of the United States Constitution, or the Eighth Amendment to the United States Constitution. People v. Westefer, 169 Ill. App. 3d 59, 119 Ill. Dec. 522, 522 N.E.2d 1381 (2 Dist.), appeal denied, 122 Ill. 2d 591, 125 Ill. Dec. 233, 530 N.E.2d 261 (1988).

The habitual criminal sentencing provision (720 ILCS 5/33B-1) does not violate this section by precluding the exercise of judicial discretion in imposing sentence. People v. Coleman, 128 Ill. App. 3d 538, 83 Ill. Dec. 857, 470 N.E.2d 1277 (5 Dist. 1984).

Home Invasion

Defendant's argument that his 15-year sentence enhancement for home invasion while armed with a firearm was unconstitutional because it violated the proportionate-penalties clause of the Illinois Constitution (Ill. Const. Art. I, § 11) failed, as the cross-comparison test as to whether a statute violated the proportionate-penalties clause had been abandoned by People v. Sharpe, 216 Ill. 2d 481, 839 N.E.2d 492, 298 Ill. Dec. 169 (2005). Defendant's argument based on this test was inapplicable. People v. Standley, 364 Ill. App. 3d 1008, 302 Ill. Dec. 195, 848 N.E.2d 195, 2006 Ill. App. LEXIS 359 (1 Dist. 2006).

Home invasion statute, ILCS 5/12-11(a)(3), does not violate the proportionate penalties clause. People v. Hampton, 363 Ill. App. 3d 293, 299 Ill. Dec. 772, 842 N.E.2d 1124, 2006 Ill. App. LEXIS 131 (1 Dist. 2006), vacated by, in part, cause remanded by: People v. Hampton, 225 Ill. 2d 208, 2007 Ill. LEXIS 451 (2007).

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720 ILCS 5/12-11(a)(3) does not contain an impermissible double enhancement; the firearm factor is used only as an element of the offense of home invasion while in possession of a firearm and is nowhere mentioned in the sentencing provision, 725 ILCS 5/12-11(c), which simply defines the sentence for the distinct crime contained in § 12-11(a)(3). People v. Guevara, 216 Ill. 2d 533, 297 Ill. Dec. 450, 837 N.E.2d 901, 2005 Ill. LEXIS 981 (2005).

Since home invasion involving personal discharge of a weapon pursuant to 720 ILCS 5/12-11(a)(4) carried more severe penalties than aggravated battery with a firearm or aggravated discharge of a firearm, both more inherently dangerous offenses, it violated the proportionate penalties clause of Ill. Const. Art. I, § 11. Since the defined offense had no lesser included offenses, the conviction was vacated altogether. People v. Hauschild, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 1026 (2 Dist. Oct. 5, 2005).

Defendant's 15-year sentence enhancement under 720 ILCS 5/12-11(c) did not violate Ill. Const. Art. 1, § 11 by being disproportionate to the lesser sentence imposed for aggravated battery with a firearm. Both offenses shared the same statutory purpose of discouraging the use of a firearm in the commission of a crime and as the legislature could have determined that the emotional and psychological harm of a home invasion with a firearm was greater than that caused by an aggravated battery with a firearm, the former was a greater evil than the latter, which supported the harsher sentence. People v. Standley, 359 Ill. App. 3d 1096, 296 Ill. Dec. 592, 835 N.E.2d 945, 2005 Ill. App. LEXIS 945 (4 Dist. 2005), appeal denied, vacated, 217 Ill. 2d 622, 298 Ill. Dec. 798, 840 N.E.2d 1233, 2006 Ill. LEXIS 92 (2006).

Sentence of 21 to 45 years for violating 720 ILCS 5/12-11(a)(3) is not cruel or degrading, nor does it shock the moral conscience; the firearms provision of 720 ILCS 5/12-11(a)(3) has a distinct purpose from 720 ILCS 5/12-11(a)(1) and (2) such that proportionality review is inappropriate. People v. Hill, 199 Ill. 2d 440, 264 Ill. Dec. 670, 771 N.E.2d 374, 2002 Ill. LEXIS 325 (2002), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

Considering the seriousness of the crime of home invasion, and the importance of security in the home, a mandatory six year sentence for home invasion (720 ILCS 5/12-11) is not unconstitutional. People v. Bitner, 89 Ill. App. 3d 1106, 45 Ill. Dec. 370, 412 N.E.2d 721 (3 Dist. 1980).

Home Repair Fraud Act

The actual harm suffered by a victim of home repair fraud, especially a senior citizen, may be much greater than the monetary loss incurred. Accordingly, the legislature rationally determined that the harm to the victim and the seriousness of the offense is more accurately determined based on the amount of the fraudulent contract actually entered into than the monetary loss to the victim; the Home Repair Fraud Act's (815 ILCS 515/1 et seq.) penalty provisions are rationally related to the evil that the legislature sought to remedy. People v. Thompson, 275 Ill. App. 3d 725, 211 Ill. Dec. 885, 656 N.E.2d 77 (1 Dist. 1995), appeal denied, 165 Ill. 2d 563, 214 Ill. Dec. 864, 662 N.E.2d 430 (1996).

Insanity Acquittees

The application of the extended term statute (730 ILCS 5/5-8-1) to an insanity acquittee does not constitute punishment, as the purpose of criminal commitment is treatment of the mental illness and the length of the confinement is limited to the time necessary for recovery. People v. Winston, 191 Ill. App. 3d 948, 139 Ill. Dec. 21, 548 N.E.2d 406 (1 Dist. 1989).

Interest of Joint Tenant

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A surviving joint tenant has the right to retain his or her interest in joint tenancy property regardless of his or her felonious killing of the other joint tenant. Coslet v. Tuscola Nat'l Bank, 39 Ill. App. 3d 305, 349 N.E.2d 499 (4 Dist. 1976).

Intimidation

A rational legislature could conclude that a threat of physical harm communicated with the intent to overcome the will of another is a more serious offense than an assault or battery, and therefore the intimidation statute as enhanced by the armed violence statute is constitutional. People v. Lucien, 128 Ill. App. 3d 706, 83 Ill. Dec. 911, 471 N.E.2d 210 (2 Dist. 1984), cert. denied, 471 U.S. 1019, 105 S. Ct. 2047, 85 L. Ed. 2d 309 (1985).

Juveniles

Trial court erred in declaring that 705 ILCS 405/5-710(1)(a)(iv) and 20 ILCS 505/5(l) violated Ill. Const. (1970), Art. I, § 11, due to their disparate treatment of delinquent minors under and over age 13. Because a petition for adjudication of wardship is not a direct action by the State to inflict punishment, neither the Proportionate Penalties Clause nor the Cruel and Unusual Punishment Clause applies to such proceedings. People v. Rodney H. (In re Rodney H.), 223 Ill. 2d 510, 308 Ill. Dec. 292, 861 N.E.2d 623, 2006 Ill. LEXIS 1667 (2006).

The legislature could legitimately conclude that an individual who has committed two serious violent offenses has benefited little from the rehabilitative measures of the juvenile court system and exhibits little prospect for restoration to meaningful citizenship within that system; therefore, was constitutionally permissible for the legislature to authorize a mandatory disposition. In re M.G., 301 Ill. App. 3d 401, 234 Ill. Dec. 733, 703 N.E.2d 594 (1 Dist. 1998).

Imposition of a natural life sentence on a 16 year old violated neither the due process clause of the Illinois constitution (Ill. Const. (1970), Art. I, § 2), the separation of powers provision (Ill. Const. (1970), Art. II, § 1), nor the objective of restoring the offender to useful citizenship of this section. People v. Clark, 188 Ill. App. 3d 79, 135 Ill. Dec. 743, 544 N.E.2d 100 (4 Dist. 1989), appeal denied, 139 Ill. Dec. 516, 548 N.E.2d 1072, cert. denied, 497 U.S. 1026, 110 S. Ct. 3276, 111 L. Ed. 2d 786 (1990).

The trial court did not abuse its discretion in imposing a sentence of 20 to 40 years for the murder of a correctional officer by defendant when he was 15. People v. Boose, 85 Ill. App. 3d 457, 40 Ill. Dec. 760, 406 N.E.2d 963 (3 Dist. 1980).

Former section 5-12 of the Juvenile Court Act (see now 705 ILCS 405/5-35) was not unconstitutional because it mandated confinement of habitual offender juveniles until age 21. People ex rel. Carey v. Chrastka, 83 Ill. 2d 67, 46 Ill. Dec. 156, 413 N.E.2d 1269 (1980).

Former sections 5-2 and 5-8 of the Juvenile Court Act (see now 705 ILCS 405/3-24 and 705 ILCS 405/3-29) did not violate this section by providing that a minor could be kept in the Department of Corrections until attaining the age of 21 years, as confinement would last no longer than age 21 and within that period would last only so long as the minor's behavior demonstrated that he remained an unacceptable risk if returned to his family; nor was authorization for custody until age 21 any measure of the seriousness of the particular act that the juvenile had performed. People v. F.L.W., 73 Ill. App. 3d 355, 29 Ill. Dec. 387, 391 N.E.2d 1070 (4 Dist. 1979).

Life Insurance Policies

Life insurance policies will not be defeated because the assured met his death through execution as a penalty for a murder he committed. Allen v. Diamond, 13 F.2d 579 (7th Cir. 1926).

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Legal execution of the assured for a crime committed by him did constitute a defense to an action by his legal representative on a life insurance policy. Collins v. Metropolitan Life Ins. Co., 232 Ill. 37, 83 N.E. 542 (1907).

Mandatory Minimum Sentences

The legislature may properly fix mandatory minimum penalties when it determines that no set of mitigating circumstances could allow a proper penalty of less than natural life for the crimes of two or more murders. People v. McCleary, 208 Ill. App. 3d 466, 153 Ill. Dec. 476, 567 N.E.2d 434 (1 Dist. 1990).

Requiring minimum mandatory sentences was not unconstitutional as having abandoned the concept of rehabilitation in contravention of this section; the methods of rehabilitating the criminal offender have been the subject of considerable, diverse discussion and was a question peculiarly suitable for legislative investigation, analysis, and action. People v. Perry, 81 Ill. App. 3d 422, 37 Ill. Dec. 170, 401 N.E.2d 1263 (4 Dist. 1980).

The constitutionality of mandatory minimum provisions have been upheld in numerous Illinois cases. People v. James, 38 Ill. App. 3d 594, 348 N.E.2d 295 (2 Dist. 1976), appeal dismissed, 429 U.S. 1082, 97 S. Ct. 1087, 51 L. Ed. 2d 528 (1977).

The legislature had statutory authority under this section to set a mandatory minimum term of imprisonment for a conviction of the former deviate sexual assault statute (see now aggravated criminal sexual assault). People v. Emmett, 34 Ill. App. 3d 167, 340 N.E.2d 235 (1 Dist. 1975).

The legislative enactment of a minimum sentence, below which the trial court may not set the offender's punishment, does not violate this section in that it prevents the courts from tailoring the sentence to fit the personal attributes of the offender and the particular nature and circumstances of the offense, as the section does not present a mandate opposing minimum sentences; rather this section requires the legislature to develop sentencing standards that reflect the goal of restoring the offender to useful citizenship, as well as providing a penalty that is proportionate to the nature of the offense. People v. Cantrell, 14 Ill. App. 3d 1068, 304 N.E.2d 13 (1 Dist. 1973).

The statutory minimum sentence for murder of 14 years is constitutionally permissible. People v. Cantrell, 14 Ill. App. 3d 1068, 304 N.E.2d 13 (1 Dist. 1973).

The statutory minimum sentence of four years without possibility of probation for the offense of rape (now sexual assault), did not violate this section. People v. Moore, 15 Ill. App. 3d 691, 304 N.E.2d 696 (1 Dist. 1973).

A consideration of the rehabilitative aims in sentencing does not deprive the legislature of fixing minimum penalties for crime, which has long been within their domain. People v. Moore, 15 Ill. App. 3d 691, 304 N.E.2d 696 (1 Dist. 1973).

Mitigating Factors

The legislature has a statutory scheme whereby sentencing courts implicitly consider rehabilitative potential when they consider mitigating factors in sentencing defendants, and as such, they need not reweigh mitigating factors in terms of determining rehabilitative potential. People v. Parker, 192 Ill. App. 3d 779, 139 Ill. Dec. 900, 549 N.E.2d 626 (1 Dist. 1989), cert. denied, 132 Ill. 2d 552, 144 Ill. Dec. 264, 555 N.E.2d 383 (1990).

Murder

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Maximum sentence for first-degree murder was inappropriate where the comments of the trial judge in imposing the sentence reflected failure by the trial judge to recognize the full nature and extent of the provocation experienced by defendant upon defendant's determination that the victim had apparently raped defendant's infant daughter. People v. Calhoun, 404 Ill. App. 3d 362, 343 Ill. Dec. 655, 935 N.E.2d 663, 2010 Ill. App. LEXIS 952 (1 Dist. 2010).

Like the home-invasion enhancement, the 25-years-to-life enhancement to first degree murder has an additional, more specific purpose of deterring the use of firearms than the substantive offense of first degree murder. That additional purpose makes comparative proportionality review inappropriate, and the murder sentence enhancement under 730 ILCS 5/5-8-1(a)(1)(d)(iii) of the Unified Code of Corrections, for use of a firearm complies with the proportionality clause of Ill. Const. Art. 1, § 11. Defendant's sentence was, therefore, properly enhanced without violating his constitutional rights. People v. Dixon, 359 Ill. App. 3d 938, 296 Ill. Dec. 572, 835 N.E.2d 925, 2005 Ill. App. LEXIS 944 (4 Dist. 2005), appeal denied, 217 Ill. 2d 575, 300 Ill. Dec. 370, 844 N.E.2d 42 (2005).

Severe sentences for solicitation of murder for hire did not violate either the proportionality in sentencing guarantee of Ill. Const. Art. I, § 11 or the due process guarantee of Ill. Const. Art I, § 2, because none of the other crimes with which punishments were compared incorporated the element of paying a person to carry out a murder, so they were not comparable, and because the legislature was free to perceive murder for hire as a distinct evil subject to special punishments. People v. Voit, 355 Ill. App. 3d 1015, 292 Ill. Dec. 17, 825 N.E.2d 273, 2004 Ill. App. LEXIS 1481 (1 Dist. 2004), appeal denied, 216 Ill. 2d 729, 298 Ill. Dec. 389, 839 N.E.2d 1036 (2005).

Sentencing statute that precluded early release for first-degree murderers treated all first-degree murderers the same, and reasonably related to the State's interest in remedying the evil of first-degree murder. People v. Gorgis, 337 Ill. App. 3d 960, 272 Ill. Dec. 514, 787 N.E.2d 329, 2003 Ill. App. LEXIS 320 (1 Dist. 2003).

First-degree murder is a Class X felony punishable by a term of imprisonment ranging from six to 30 years but if defendant had actually killed his wife and the jury believed he acted under a sudden and intense passion due to serious provocation, he would have been guilty of second-degree murder, a Class 1 felony, which is punishable by a term of imprisonment ranging from four to 15 years, but this possibility did not violate the Illinois Constitution's requirement that all penalties be determined according to the seriousness of the offense as the disparity in sentencing range was not cruel, degrading, or so wholly disproportionate to the offense committed as to shock the moral sense of the community. People v. Lopez, 166 Ill. 2d 441, 211 Ill. Dec. 481, 655 N.E.2d 864 (1995).

The trial court did not abuse its discretion in sentencing defendant to 25 years' imprisonment for felony murder, as the sentence imposed was not at great variance with the spirit and purpose of the law or greatly disproportionate to the offense, and as the record disclosed that sentence was imposed only after the trial court considered all of the factors presented in aggravation and mitigation of the offense. People v. Harris, 196 Ill. App. 3d 663, 143 Ill. Dec. 432, 554 N.E.2d 367 (1 Dist.), appeal denied, 133 Ill. 2d 565, 149 Ill. Dec. 329, 561 N.E.2d 699 (1990).

A 20 year sentence imposed for felony murder did not violate the constitutional guarantees of the Eighth Amendment to the United States Constitution or of this section. People v. Jenkins, 190 Ill. App. 3d 115, 137 Ill. Dec. 225, 545 N.E.2d 986 (1 Dist. 1989), appeal denied, 129 Ill. 2d 568, 140 Ill. Dec. 677, 550 N.E.2d 562 (1990).

The six year sentence imposed upon a defendant for second degree murder did not constitute a great departure from the spirit and purpose of the law and did not violate the intent and mandate regarding excessive sentences. People v. Griggs, 126 Ill. App. 3d 477, 81 Ill. Dec. 697, 467 N.E.2d 397 (5 Dist. 1984).

Where the trial court balanced the factors that defendant killed his 13 year old girlfriend, who was pregnant with his child, by shooting her in the abdomen with a shotgun and then walked away,

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and at no time showed any remorse, against the facts of his age of 17, his family background, his lack of a previous criminal record and that, while in prison awaiting trial, he had finished high school, the 40 to 80 year sentence imposed was not an abuse of discretion and it did not violate the federal and state constitutional guarantees against cruel and unusual punishment and did not ignore the defendant's rehabilitation potential. People v. Bailey, 91 Ill. App. 3d 910, 47 Ill. Dec. 461, 415 N.E.2d 466 (1 Dist. 1980).

Where a defendant was convicted of the brutal slaying of an apparently defenseless elderly man, the sentence of 50 to 100 years imposed by the trial court was within the statutory requirements and there was no abuse of discretion. People v. Collins, 71 Ill. App. 3d 815, 28 Ill. Dec. 296, 390 N.E.2d 463 (1 Dist. 1979).

Where the record showed that the trial judge carefully weighed all of the factors in the presentence report in favor of a minimum sentence against the heinous nature of the crime and the circumstances under which it was committed, and he also considered the rehabilitative potential of the defendant, in light of all these factors, and the trial court's consideration thereof, the 30 to 60 year sentence imposed for murder was not excessive or unauthorized by law. People v. Heflin, 71 Ill. 2d 525, 17 Ill. Dec. 786, 376 N.E.2d 1367 (1978).

Where the trial court considered the nature of the offense as well as defendant's potential for rehabilitation, there was no abuse of discretion in the imposition of a 75 to 150 year sentence for murder. People v. Van Broughton, 35 Ill. App. 3d 619, 342 N.E.2d 100 (1 Dist. 1976).

Where defendant murdered five children and the sentences were imposed by the trial judge after five days of hearings in aggravation and mitigation, and the sentences were within statutory limits, the sentences did not offend the provisions of this section. People v. Fuller, 21 Ill. App. 3d 437, 315 N.E.2d 687 (4 Dist. 1974).

In view of the extreme brutality of a murder, the trial court did not abuse its discretion in sentencing defendant to a term of from 100 to 150 years for that murder. People v. Lipscomb, 19 Ill. App. 3d 114, 311 N.E.2d 257 (1 Dist. 1974).

Sentence for voluntary manslaughter (now second degree murder) for not less than one year nor more than 20 years, with a minimum fixed at 10 years and maximum at 14 years, would not be reduced. People v. Robinson, 116 Ill. App. 2d 323, 253 N.E.2d 570 (3 Dist. 1969).

Narcotics

- Cocaine

Federal laws that punished defendants more severely for crack cocaine offenses as opposed to powdered cocaine offenses was not a violation of Ill. Const. Art. I, § 11, and while there was some disparity, it was not such that it was a constitutional violation. United States v. Spencer, 160 F.3d 413, 1998 U.S. App. LEXIS 28453 (7th Cir. 1998).

- Delivery

In view of the seriousness of the offense of delivery of LSD, and the evil sought to be alleviated, the legislative provisions of 730 ILCS 5/5-5-3(d)(1) and 730 ILCS 5/5-8-1 were not so unreasonable and arbitrary as to offend either federal or state constitutional limitations. People v. James, 38 Ill. App. 3d 594, 348 N.E.2d 295 (2 Dist. 1976), appeal dismissed, 429 U.S. 1082, 97 S. Ct. 1087, 51 L. Ed. 2d 528 (1977).

- Intent to Deliver

Sentence of six years' imprisonment for possession of drugs with intent to distribute under section 401 of the Controlled Substances Act (720 ILCS 570/401) was not unconstitutional under the

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Eighth Amendment to the United States Constitution as cruel and unusual punishment nor did it violate this section, which requires proportionate penalties. People v. D'Angelo, 223 Ill. App. 3d 754, 166 Ill. Dec. 217, 585 N.E.2d 1239 (5 Dist.), appeal denied, 145 Ill. 2d 638, 173 Ill. Dec. 8, 596 N.E.2d 632 (1992).

- Sale

The statutory penalty under the former Narcotics Control Act which provided a sentence of ten years to life for the illegal sale of narcotics, and life imprisonment if the defendant had a prior conviction under that Act, was not disproportionate to the nature of the offense and was not incompatible with the penalty for more serious offenses. People v. Jackson, 116 Ill. App. 2d 304, 253 N.E.2d 527 (1 Dist. 1969).

Natural Life Imprisonment

Court properly sentenced defendant to his natural life in prison because defendant murdered and raped the victim, and the trial court clearly weighed the aggravating factors against the mitigating factors. The court noted defendant's age and lack of violent criminal history, the court also remarked on the testimony from his family members and friends that defendant was a good person, and the trial court found the mitigating factors to be significant enough to preclude the imposition of the death penalty. People v. Gomez, Ill. App. 3d , 355 Ill. Dec. 445, 959 N.E.2d 1178, 2011 Ill. App. LEXIS 1065 (1 Dist. 2011).

The statutory provision which prescribes mandatory life imprisonment for any person 17 years or older convicted of murdering a child less than 12 years old, provided that the offender is not sentenced to death, 730 ILCS 5/5-8-1(a)(1)(c)(ii), does not violate this section of the Illinois Constitution since the nature of crime is especially heinous and the legislature could have concluded that no mitigating evidence would justify a sentence less severe than life imprisonment for an offender guilty of such crime. People v. Wooters, 188 Ill. 2d 500, 243 Ill. Dec. 33, 722 N.E.2d 1102 (1999).

The trial court's sentence of natural life imprisonment was not an abuse of discretion where defendant was convicted of strangling and suffocating his victim to death with plastic bags. The trial court found the following factors in aggravation: the offense was committed during the course of a robbery; the offense was committed during the course of an attempted or completed aggravated criminal sexual assault; the cause and manner of the victim's death was brutal and heinous; the defendant exhibited a lack of remorse and an eagerness to celebrate afterwards; and defendant had a criminal history in which he had failed to take advantage of prior opportunities of rehabilitation; and with respect to mitigating factors, the record demonstrated that the trial court considered defendant's presentence investigation report, defendant's family and dependents, defendant's young age, and defendant's diminished intellectual capacity. People v. Morrow, 269 Ill. App. 3d 1045, 207 Ill. Dec. 607, 647 N.E.2d 1100 (5 Dist. 1995), appeal denied, 164 Ill. 2d 575, 214 Ill. Dec. 327, 660 N.E.2d 1276 (1995).

A mandatory natural life sentence for multiple murders is not limited only to those found guilty as principal offenders; it is also validly applied where guilt is based on accountability. People v. Perry, 230 Ill. App. 3d 720, 172 Ill. Dec. 375, 595 N.E.2d 736 (5 Dist.), cert. denied, 146 Ill. 2d 644, 176 Ill. Dec. 814, 602 N.E.2d 468 (1992).

The statutory provisions for a sentence of natural life imprisonment upon conviction of murdering more than one victim (730 ILCS 5/5-8-1(a)(1)(c)) do not unduly infringe upon the judicial power and do not violate this section. People v. Sims, 166 Ill. App. 3d 289, 116 Ill. Dec. 706, 519 N.E.2d 921 (1 Dist. 1987), appeal denied, 119 Ill. 2d 571, 119 Ill. Dec. 391, 522 N.E.2d 1250, cert. denied, 488 U.S. 844, 109 S. Ct. 118, 102 L. Ed. 2d 92 (1988).

The trial court properly imposed a sentence of natural life imprisonment for the murder of a policeman despite the existence of several mitigating factors where the trial judge did not see any

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rehabilitative potential in the defendant, and the record indicated a thorough consideration of the factors constitutionally and statutorily designated for the trial judge's attention. People v. Staten, 143 Ill. App. 3d 1039, 98 Ill. Dec. 136, 493 N.E.2d 1157 (2 Dist. 1986).

The mandatory natural life sentencing provision violates neither the separation of powers doctrine nor the objective of restoring offenders to useful citizenship, and regardless of age, a defendant found guilty of murdering more than one victim must be sentenced to a term of natural life in prison. People v. Rodriguez, 134 Ill. App. 3d 582, 89 Ill. Dec. 404, 480 N.E.2d 1147 (1 Dist. 1985), cert. denied, 475 U.S. 1089, 106 S. Ct. 1476, 89 L. Ed. 2d 731 (1986).

The imposition of life imprisonment as an habitual offender was not constitutionally disproportionate with successive armed robberies committed over a period of 16 years, and where defendant's predicate armed robbery convictions necessitated consideration of his rehabilitative potential during the attendant sentencing hearings, the constitutional mandate of rehabilitative recognition had thus been fulfilled. People v. McNeil, 125 Ill. App. 3d 876, 81 Ill. Dec. 256, 466 N.E.2d 1058 (1 Dist. 1984).

Imposition of a mandatory natural life sentence without the possibility of early release, parole, or consideration of mitigating circumstances did not violate the Eighth and Fourteenth Amendments of the United States Constitution or this section as defendant's previous predicate felony convictions involved consideration of his rehabilitation prospects through sentencing hearings. People v. Withers, 115 Ill. App. 3d 1077, 71 Ill. Dec. 444, 450 N.E.2d 1323 (1 Dist. 1983).

The natural life sentencing provision (730 ILCS 5/5-8-1(a)(1)) is not unconstitutional as violative of this section. People v. Bush, 103 Ill. App. 3d 5, 58 Ill. Dec. 482, 430 N.E.2d 514 (5 Dist. 1981); People v. Cannon, 150 Ill. App. 3d 1009, 104 Ill. Dec. 82, 502 N.E.2d 345 (1 Dist. 1986), appeal denied, 125 Ill. 2d 568, 130 Ill. Dec. 484, 537 N.E.2d 813 (1989).

The provision in the Unified Code of Corrections for natural life imprisonment (730 ILCS 5/5-8-1(a)(1)) does not violate this section for failing to expressly require the court to consider the rehabilitative potential of the defendant because the court is required to do so under this section and under section 1-1-2 of the Unified Code of Corrections (730 ILCS 5/1-1-2). People v. Bartik, 94 Ill. App. 3d 696, 50 Ill. Dec. 114, 418 N.E.2d 1108 (2 Dist. 1981).

The imposition of a sentence for natural life does not offend this constitutional provision. People v. Nobles, 83 Ill. App. 3d 711, 38 Ill. Dec. 906, 404 N.E.2d 330 (4 Dist. 1980).

Defendant's long history of drug use did not require that his sentence be reduced although defendant's conduct was shown to be most bizarre; where the evidence was conflicting as to the extent to which his drug use contributed to his conduct, much evidence attested to his antisocial personality, and no indication was given of his having substantial rehabilitation potential, a sentence of natural life for the murder of two people was not improper. People v. Nobles, 83 Ill. App. 3d 711, 38 Ill. Dec. 906, 404 N.E.2d 330 (4 Dist. 1980).

Section 5-8-1(a)(1) of the Unified Code of Corrections (730 ILCS 5/5-8-1(a)(1)), which permits the court to impose imprisonment for a defendant's natural life, is neither vague nor ambiguous and is not unconstitutional. People v. Nobles, 83 Ill. App. 3d 711, 38 Ill. Dec. 906, 404 N.E.2d 330 (4 Dist. 1980).

Nature of Offense

In sentencing, the trial court is required to consider the nature of the offense as well as the defendant's rehabilitative potential. People v. Haepp, 194 Ill. App. 3d 207, 141 Ill. Dec. 148, 550 N.E.2d 1194 (1 Dist. 1990).

Pandering

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The decision by the legislature to abolish the difference in penalties between pandering, whether by compulsion or otherwise, was not a cruel, degrading, or shocking classification warranting judicial interference with the legislative determination of the seriousness of the offense. People v. Houston, 43 Ill. App. 3d 677, 2 Ill. Dec. 207, 357 N.E.2d 184 (1 Dist. 1976).

Penalty

Defendants may no longer challenge a penalty under the proportionate penalties clause by comparing it with the penalty for an offense with different elements. Any cases relying upon the cross-comparison analysis are overruled and the cross-comparison analysis is abandoned. The Illinois Supreme Court retains the other two types of proportionate penalties challenges, namely defendants may still argue that the penalty for a particular offense is too severe, and such a challenge will be judged under the familiar cruel or degrading standard, and defendants may still challenge a penalty on the basis that it is harsher than the penalty for a different offense that contains identical elements. People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492, 2005 Ill. LEXIS 977 (2005).

Like the home-invasion enhancement, the 25-years-to-life enhancement to first degree murder has an additional, more specific purpose of deterring the use of firearms than the substantive offense of first degree murder. That additional purpose makes comparative proportionality review inappropriate, and the murder sentence enhancement under 730 ILCS 5/5-8-1(a)(1)(d)(iii) of the Unified Code of Corrections, for use of a firearm complies with the proportionality clause of Ill. Const. Art. 1, § 11. Defendant's sentence was, therefore, properly enhanced without violating his constitutional rights. People v. Dixon, 359 Ill. App. 3d 938, 296 Ill. Dec. 572, 835 N.E.2d 925, 2005 Ill. App. LEXIS 944 (4 Dist. 2005), appeal denied, 217 Ill. 2d 575, 300 Ill. Dec. 370, 844 N.E.2d 42 (2005).

- Interference with Legislative Judgment

Interference with legislative judgment in regard to the limitation of penalties provision is justified only where the designated punishment is cruel, degrading or so wholly disproportionate to the offense committed as to shock the community's moral sense. People v. Anderson, 272 Ill. App. 3d 537, 208 Ill. Dec. 954, 650 N.E.2d 648 (1 Dist. 1995), appeal denied, 163 Ill. 2d 564, 212 Ill. Dec. 425, 657 N.E.2d 626 (1995).

- Proportioned to the Nature of the Offense

When a sentence is imposed within the limits prescribed by statute, an appellate court will not disturb that sentence unless it clearly appears that the penalty imposed constitutes a great departure from the fundamental law and its spirit and purpose, or that it is manifestly in excess of the proscription of this section. People v. Buford, 125 Ill. App. 2d 424, 261 N.E.2d 23 (2 Dist. 1970).

- Valid

Subsection (a) of 730 ILCS 5/5-8-4 does not violate the proportionate penalties clause and the due process clause of the Illinois Constitution (Ill. Const. (1970), Art. I, § 11). People v. Williams, 263 Ill. App. 3d 1098, 202 Ill. Dec. 561, 638 N.E.2d 207 (1 Dist.), appeal denied, 158 Ill. 2d 564, 206 Ill. Dec. 845, 645 N.E.2d 1367 (1994).

Penalty Imposition Process

The trial judge is not required to detail for the record the process by which he concluded that the penalty he imposed was appropriate. People v. BoClair, 225 Ill. App. 3d 331, 167 Ill. Dec. 606, 587 N.E.2d 1221 (1 Dist.), appeal denied, 146 Ill. 2d 634, 176 Ill. Dec. 806, 602 N.E.2d 460 (1992).

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A trial judge is not required to detail for the record the process by which he concluded that the penalty he imposed was appropriate. People v. La Pointe, 88 Ill. 2d 482, 59 Ill. Dec. 59, 431 N.E.2d 344 (1981).

Prior Felony Charge

- Consecutive Sentences

Section 5-8-4(h) of the Unified Code of Corrections (730 ILCS 5/5-8-4(h)) is constitutional in that it is reasonably designed to remedy the threat posed by persons who commit crimes while on bond and does not unduly infringe on judicial sentencing authority. People v. Dowthard, 197 Ill. App. 3d 668, 143 Ill. Dec. 881, 554 N.E.2d 816 (3 Dist. 1990).

Prisoner Review Board

The Prisoner Review Board may properly consider principles of retributive justice and general deterrence in rendering its decisions. Rivera v. O'Leary, 191 Ill. App. 3d 367, 138 Ill. Dec. 609, 547 N.E.2d 1035 (3 Dist. 1989).

Probation

Provision of 730 ILCS 5/5-5-3(e), prior to its amendment, stating that whether or not a defendant guilty of criminal sexual assault was eligible for probation depended on whether or not he was a family member of the victim was not unconstitutional under the proportionate penalties clause. People v. Alexander, 354 Ill. App. 3d 848, 290 Ill. Dec. 924, 822 N.E.2d 509, 2004 Ill. App. LEXIS 1525 (5 Dist. 2004).

While it is within the discretionary power of a trial court to consider the nature and seriousness of an offense in denying probation, the court must also comply with the provisions of this section that all penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. People v. Honn, 47 Ill. App. 3d 378, 5 Ill. Dec. 777, 362 N.E.2d 90 (4 Dist. 1977).

This section creates a tension between the considerations that go into the granting or denial of probation, which tension is necessary to reach the goal of sentences crafted for the individual defendant insofar as they reflect the defendant's conduct and his rehabilitative potential. People v. Honn, 47 Ill. App. 3d 378, 5 Ill. Dec. 777, 362 N.E.2d 90 (4 Dist. 1977).

Neither Rule 615(b)(4), Supreme Court Rules, nor this section authorizes a reviewing court to reduce a penitentiary sentence to probation. People v. Parra, 35 Ill. App. 3d 240, 340 N.E.2d 636 (1 Dist. 1975).

The trial court did not act arbitrarily or otherwise abuse its discretion in denying defendant's application for probation where defendant had been convicted of reckless homicide. People v. Parra, 35 Ill. App. 3d 240, 340 N.E.2d 636 (1 Dist. 1975).

While the appellate court is authorized under the terms of Rule 615(b)(4), Supreme Court Rules, to reduce the punishment imposed by a trial court, as well as under this section, the issue of whether or not a sentence of probation best serves the interests of the individual and of society is a basic conclusion which is left to the discretion of the trial court; thus, if there has been an abuse of discretion or the court has acted arbitrarily in denying probation, defendant could be entitled to a remandment before a different judge for a further hearing in aggravation and mitigation, but where the record does not indicate such an abuse of discretion, the appellate court should affirm the action of the trial court. People v. Cross, 27 Ill. App. 3d 785, 327 N.E.2d 81 (3 Dist. 1975).

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There is no indication that the restoration to useful citizenship portion of this section is to be given greater consideration than that which establishes that the seriousness of the offense shall determine the penalty; nor does this section specifically empower a reviewing court to grant probation after the trial court has imposed a penitentiary sentence. People ex rel. Ward v. Moran, 54 Ill. 2d 552, 301 N.E.2d 300 (1973).

Proportionate Penalties

In a sexual assault of a child case, defendant's natural life sentence was not disproportionate because the victim testified defendant inserted his penis into her vagina two or three times a week for three years, starting when she was 10 years old, and that defendant threatened to hurt her mother if she ever told anyone what he had done. The victim testified defendant caused her pain when he rubbed her vaginal area with baby oil prior to the first time he inserted his penis into her vagina, and she also testified he caused her pain when he inserted his penis into her anus. People v. Peters, Ill. App. 3d , 353 Ill. Dec. 173, 955 N.E.2d 640, 2011 Ill. App. LEXIS 901 (1 Dist. 2011).

Since the penalties for armed robbery while armed with a firearm and for aggravated kidnaping were harsher than the penalty for armed violence, defendant's sentences for armed robbery while armed with a firearm and for aggravated kidnaping violated the proportionate penalties clause. People v. Harris, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 779 (1 Dist. July 22, 2011).

Because the truth-in-sentencing provision under 730 ILCS 5/3-6-3 did not affect the sentencing range imposed for defendant's offenses of aggravated kidnaping and armed violence, but only the manner in which the sentence was carried out, it did not violate the proportionate penalties clause. People v. Harris, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 779 (1 Dist. July 22, 2011).

Defendant's 25-year sentence for attempted armed robbery violated the proportionate penalties clause found in Ill. Const. art. I, § 11 because it had the same elements as attempted armed violence, but carried a more severe penalty. As a result, defendant's sentence for armed robbery had to be vacated and defendant had to be resentenced on the offense of attempted armed violence. People v. Span, Ill. App. 3d , 352 Ill. Dec. 924, 955 N.E.2d 100, 2011 Ill. App. LEXIS 700 (1 Dist. 2011).

Defendant's 25-year sentence for armed robbery, 720 ILCS 5/18-2(a)(2), which included a 15-year enhancement for using a firearm, as contemplated by 720 ILCS 5/18-2(b), violated the proportionate penalties clause of the Illinois Constitution, Ill. Const. art. I, § 11, as that penalty was more severe than the penalty for the identical offense of armed violence predicated on robbery with a category I or category II weapon. As a result, defendant's case had to be remanded for resentencing in accordance with the statute as it existed proper to the amendment that added the 15-year enhancement. People v. Blanton, Ill. App. 3d , 352 Ill. Dec. 916, 955 N.E.2d 92, 2011 Ill. App. LEXIS 691 (4 Dist. 2011).

Defendant's 36-year sentence for first degree murder and consecutive four-year sentence for concealment of a homicidal death for killing a girlfriend who was trying to leave defendant were not disproportionate to the crimes and, thus, did not violate the proportionate penalties provision of Ill. Const. art. I, § 11. The evidence showed that defendant killed her with a knife, claimed that she had left and that defendant did not know where she had gone, and defendant undressed her body and put her body in a dumpster before defendant was arrested and claimed that the death was the result of involuntary manslaughter despite no evidence existing to support that claim. People v. Hayes, 409 Ill. App. 3d 612, 350 Ill. Dec. 694, 949 N.E.2d 182, 2011 Ill. App. LEXIS 364 (1 Dist. 2011).

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It is unconstitutional to impose the same punishment upon the nonviolent arrangement of an act of sexual conduct in violation of 720 ILCS 5/11-6.5 and a violent solicitation of an act of sexual penetration under the same act; the sentencing provisions for violations of 720 ILCS 5/11-6.5 violate the proportionate penalties clause of the Illinois Constitution, Ill. Const., Art. I, § 11. People v. M.T. (In re M.T.), 352 Ill. App. 3d 131, 287 Ill. Dec. 592, 816 N.E.2d 354, 2004 Ill. App. LEXIS 1001 (1 Dist. 2004).

Defendant's sentence for aggravated kidnapping violated the proportionate penalties clause of the Illinois Constitution because the sentencing range for aggravated kidnapping was greater than the sentencing range for armed violence predicated on kidnapping. A person committed the offense of armed violence if he committed the act of kidnapping while armed with a firearm; those were precisely the same elements as aggravated kidnapping while armed with a firearm. People v. Gibson, 403 Ill. App. 3d 942, 343 Ill. Dec. 287, 934 N.E.2d 611, 2010 Ill. App. LEXIS 880 (2 Dist. 2010).

Defendant's harsher sentence pursuant to 720 ILCS 5/33A-3(a) for armed violence predicated on robbery, as compared to armed robbery with a firearm in violation of 720 ILCS 5/18-1 and 720 ILCS 5/18-2(a)(2), violated the proportionate penalties clause of the Illinois Constitution, Ill. Const. art. I, § 11. The mandatory enhancement for using a 720 ILCS 5/33A-1 category 1 handgun made armed violence a Class X felony under 720 ILCS 5/33A-2 for sentencing purposes and increased the sentencing range dictated by 730 ILCS 5/5-8-1(a)(3), which meant the sentence for armed violence was harsher than the sentence for armed robbery for a firearm despite the fact that the elements of the two offenses were identical. People v. Coleman, 399 Ill. App. 3d 1150, 339 Ill. Dec. 763, 927 N.E.2d 304, 2010 Ill. App. LEXIS 352 (4 Dist. 2010).

Defendant's 50-year sentence imposed in a first degree murder case where defendant fatally stabbed the victim in retaliation for the victim taking defendant's bicycle was not excessive under the circumstances. The sentence was within the 20 to 60-year sentencing range for first degree murder set forth in 730 ILCS 5/5-8-1(a)(1) and was proportionate to the offense as contemplated by Ill. Const. art. I, § 11, given defendant's criminal history that included commission of the offenses of battery, intimidating a victim, criminal damage to property, and apparent need to react violently in response to problems that arose. People v. Nugen, 399 Ill. App. 3d 575, 339 Ill. Dec. 285, 926 N.E.2d 760, 2009 Ill. App. LEXIS 1334 (1 Dist. 2009).

Defendant's sentence of life imprisonment pursuant to 720 ILCS 5/12-13(b)(3) had to be upheld, as the sentence was permissible under that statute because defendant previously had been convicted of aggravated criminal sexual assault. The sentence did not violate the proportionate penalties clause of the Illinois Constitution, Ill. Const. art, I, § 11, given defendant's inclination to commit sexual offenses and the State's need to protect its citizens from known sex offenders. People v. Ross, 395 Ill. App. 3d 660, 335 Ill. Dec. 47, 917 N.E.2d 1111, 2009 Ill. App. LEXIS 1056 (1 Dist. 2009), appeal denied, 2010 Ill. LEXIS 564 (Ill. 2010).

Because an accused could commit aggravated criminal sexual assault by committing sexual assault, while threatening to use, although not actually armed with, a knife, and such an act would not substantiate a charge of armed violence with a category II weapon predicated upon criminal sexual assault because the accused would not have been armed, defendant's penalty for aggravated criminal sexual assault, of 25 years for one count and 40 years for the second count, to be served consecutively, did not violate the proportionate-penalties clause of the Illinois Constitution. People v. Henderson, 394 Ill. App. 3d 747, 333 Ill. Dec. 667, 915 N.E.2d 473, 2009 Ill. App. LEXIS 919 (4 Dist. 2009), appeal denied, 235 Ill. 2d 596, 924 N.E.2d 458, 2010 Ill. LEXIS 159 (2010).

Defendant's sentence for armed robbery while armed with a firearm under 720 ILCS 5/18-2(b) violated the Proportionate Penalties Clause as it was more severe than the penalty for the armed violence predicated on robbery with a category I or category II weapon under 720 ILCS 5/33A-3(a), (a-5); the case was remanded for resentencing in accordance with 1991 Ill. Laws 404.

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People v. Johns, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1173 (1 Dist. Nov. 17, 2008).

Defendant's sentence for armed robbery with a firearm with an add-on penalty violated the proportionate penalties clause of the Illinois Constitution because armed robbery with a firearm and armed violence predicated on robbery had identical statutory elements, yet armed robbery with a firearm was punished more severely. People v. Johns, 387 Ill. App. 3d 8, 325 Ill. Dec. 863, 898 N.E.2d 1142, 2008 Ill. App. LEXIS 1131 (1 Dist. 2008).

Sentencing defendant to two concurrent life sentences pursuant to 720 ILCS 5/12-14.1(b)(1.2) for his two convictions for predatory criminal sexual assault did not violate the proportional penalties clause of the Illinois Constitution despite the fact that defendant had not committed prior offenses. The court deferred to the legislature's judgment and determined that the sentence was not cruel in light of fact that the sexual acts were committed against two six-year-old boys. People v. Hernandez, 382 Ill. App. 3d 726, 321 Ill. Dec. 267, 888 N.E.2d 1200, 2008 Ill. App. LEXIS 433 (1 Dist. 2008), appeal denied, 229 Ill. 2d 641, 325 Ill. Dec. 10, 897 N.E.2d 258, 2008 Ill. LEXIS 1216 (2008).

Appellate court did not err in vacating defendant's nonenhanced sentence for attempted murder and in directing the trial court to add the mandated 15-year enhancement to the new base sentence and in affirming the trial court's judgment vacating defendant's sentence for armed robbery, but its resentencing directive on remand had to be reversed and defendant had to be sentenced under the prior law for the armed robbery; the state supreme court's recent Sharpe decision could be applied retroactively to the attempted murder charge without violating the Illinois Constitution's proportionate penalties clause by the addition of the 15-year sentence, but the same could not be done regarding the armed robbery conviction because the addition of the 15-year enhancement meant that the sentence for that offense would be disproportionate to the sentence for armed violence, which had identical elements, and the State Supreme Court had the authority to order that the sentences be modified. People v. Hauschild, 226 Ill. 2d 63, 312 Ill. Dec. 601, 871 N.E.2d 1, 2007 Ill. LEXIS 862 (2007).

Defendant did not show that the extended term sentence imposed upon defendant for defendant's conviction following defendant's guilty plea to predatory criminal sexual assault of a child violated the proportionate penalties clause of the Illinois Constitution, Ill. Const. (1970), Art. I, § 11, as the penalty for that offense was held in Dunn not to violate the proportionate penalties clause pursuant to the identical elements test and defendant showed no reason for overruling Dunn. People v. Revell, 372 Ill. App. 3d 981, 311 Ill. Dec. 318, 868 N.E.2d 318, 2007 Ill. App. LEXIS 405 (1 Dist. 2007), appeal denied, 875 N.E.2d 1121, 2007 Ill. LEXIS 1314 (Ill. 2007).

Thirty-year sentence for driving while defendant's license was revoked, unlawful possession of a weapon by a felon, and armed violence did not violate proportionate penalties clause simply because the predicate felony offense fell into the lowest felony classification, nor was the sentence excessive in light of the nature of the offense.

While the Illinois Supreme Court's decision in Sharpe overruled Moss, Walden, and Morgan, and did away with the cross-comparison analysis as a test for violations of the proportionate penalties clause, the supreme court did not rule that the decisions in those cases were constitutionally defective; thus, defendant's pre-Sharpe unenhanced sentences on two counts of attempted murder of a peace officer were valid when imposed and remained valid post-Sharpe. People v. Douglas, 371 Ill. App. 3d 21, 308 Ill. Dec. 531, 861 N.E.2d 1096, 2007 Ill. App. LEXIS 6 (1 Dist. 2007), appeal denied, 225 Ill. 2d 647, 875 N.E.2d 1116, 2007 Ill. LEXIS 1225 (2007).

Sentence did not violated the proportionate penalties clause where the identical-elements test was not violated because home invasion and armed violence predicated on trespass to a residence and involving great bodily harm caused by the discharge of a firearm were not

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identical. People v. Johnson, 368 Ill. App. 3d 1146, 307 Ill. Dec. 290, 859 N.E.2d 290, 2006 Ill. App. LEXIS 1121 (1 Dist. 2006).

Trial court did not err in denying defendant's petition for writ of habeas corpus, as defendant did not establish that the statute he was challenging and under which he was convicted, 720 ILCS 5/9-3.3, was unconstitutional; that statute was not vague and overbroad, as defendant contended, because it quite clearly imposed criminal liability for a death resulting from the knowing delivery of controlled substances such as cocaine and the 30-year sentence imposed on defendant was not disproportionate to the offense, which meant defendant's sentence was constitutional. Faircloth v. Sternes, 367 Ill. App. 3d 123, 304 Ill. Dec. 801, 853 N.E.2d 878, 2006 Ill. App. LEXIS 666 (1 Dist. 2006).

Appellate court's holding that the indecent solicitation of an adult statute violated the proportionate penalties clause of the Illinois Constitution, Ill. Const. (1970) Art. I, § 11, based on its use of cross-comparison analysis had to be reversed, as that approach had been abandoned by the state supreme court in Sharpe. People v. M.T. (In re M.T.), 221 Ill. 2d 517, 304 Ill. Dec. 336, 852 N.E.2d 792, 2006 Ill. LEXIS 1093 (2006).

Defendant's claim that 720 ILCS 5/12-14.1(a)(1) violated the proportionate penalties clause under the identical elements test because it imposed a harsher sentence than convictions under § 12-14.1(a)(1.1) or (1.2) failed because the latter crimes clearly contained an element - use of a firearm - that § 12-14.1(a)(1) did not. Thus, the elements of the crimes were not identical and there could be no proportionate penalties clause violation. People v. Dunn, 365 Ill. App. 3d 292, 302 Ill. Dec. 533, 849 N.E.2d 148, 2006 Ill. App. LEXIS 419 (1 Dist. 2006).

Defendant's argument that the 15-year enhancement added on to his sentence for home invasion, based on his possession of a firearm during the commission of a home invasion, violated the proportionate penalties clause of the Ill. Const. Art. I, § 11, based on the fact that the sentencing range for aggravated battery was considerably less than the sentencing range for home invasion had to be rejected, as recent case law established that a defendant was no longer entitled to challenge a penalty under the proportionate penalties clause by comparing it with an offense with different elements. People v. Dryden, 363 Ill. App. 3d 447, 300 Ill. Dec. 458, 844 N.E.2d 456, 2006 Ill. App. LEXIS 127 (1 Dist. 2006).

Where defendant's sentence for home invasion in violation of 720 ILCS 5/12-11(a)(3) was enhanced by 15 years under 720 ILCS 5/12-11(c); 720 ILCS 5/12-11(c) was constitutional, as it did not violate the proportionate penalties clause under Ill. Const. Art. I, § 11 and it was not vague under U.S. Const. Amend. V since the provision clearly applied a 15-year sentence enhancement to home invasion as prescribed by 720 ILCS 5/12-11(a)(3). People v. James, 362 Ill. App. 3d 1202, 299 Ill. Dec. 377, 841 N.E.2d 1109, 2006 Ill. App. LEXIS 16 (1 Dist. 2006), appeal denied, 219 Ill. 2d 580, 303 Ill. Dec. 837, 852 N.E.2d 244 (2006).

Enhanced penalty provision of 730 ILCS 5/5-8-1(a)(1)(d)(ii) for personally discharging a firearm as applied to first-degree murder did not violate the proportionate penalties clause of the Ill. Const., Art. I, § 11. People v. Arnold, 349 Ill. App. 3d 668, 285 Ill. Dec. 876, 812 N.E.2d 696, 2004 Ill. App. LEXIS 816 (1 Dist. 2004), appeal denied, 217 Ill. 2d 569, 300 Ill. Dec. 368, 844 N.E.2d 40 (2005), cert. denied, U.S. , 126 S. Ct. 1778, 164 L. Ed. 2d 525 (2006).

Provision of 720 ILCS 5/12-14(d)(1) that required a 15 year add-on penalty violated the proportionate penalties clause of Ill. Const. Art. I, § 11, because it made aggravated criminal sexual assault punishable more severely than the identical offense of armed violence predicated on criminal sexual assault with a category 1 weapon. Defendant was entitled to resentencing if those convictions were reinstated on remand after the court had vacated them on appeal. People v. Hampton, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 1188 (1 Dist. Dec. 5, 2005).

Defendants' arguments that 720 ILCS 5/12-11(3)(a), (c) violated the proportionate penalties clause in Ill. Const. Art. I, § 11 because it imposed a harsher sentence for home invasion while in

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possession of a firearm than was imposed for aggravated battery with a firearm failed because defendants could not challenge a penalty under the proportionate penalties clause by comparing it with the penalty for an offense with different elements. People v. Guevara, 216 Ill. 2d 533, 297 Ill. Dec. 450, 837 N.E.2d 901, 2005 Ill. LEXIS 981 (2005).

Like the home-invasion enhancement, the 25-years-to-life enhancement to first degree murder has an additional, more specific purpose of deterring the use of firearms than the substantive offense of first degree murder. That additional purpose makes comparative proportionality review inappropriate, and the murder sentence enhancement under 730 ILCS 5-8-1(a)(1)(d)(iii) of the Unified Code of Corrections, 730 ILCS 5/5-8-1(a)(1)(d)(iii), for use of a firearm complies with the proportionality clause of Ill. Const. Art. 1, § 11. Defendant's sentence was, therefore, properly enhanced without violating his constitutional rights. People v. Dixon, 359 Ill. App. 3d 938, 296 Ill. Dec. 572, 835 N.E.2d 925, 2005 Ill. App. LEXIS 944 (4 Dist. 2005), appeal denied, 217 Ill. 2d 575, 300 Ill. Dec. 370, 844 N.E.2d 42 (2005).

Defendant's mandatory four-year sentence for child pornography was not grossly disproportional to his crime in violation of the proportionate penalties clause of Ill. Const. Art. I, § 11. The child pornography was committed against defendant's 13-year-old stepdaughter, the child was seriously psychologically harmed by defendant's actions, and his actions were such that they shocked the moral conscience of the community. People v. Myers, 359 Ill. App. 3d 341, 295 Ill. Dec. 588, 833 N.E.2d 421, 2005 Ill. App. LEXIS 789 (4 Dist. 2005).

As the crime of child pornography, 720 ILCS 5/11-20.1(a)(1)(vii), contained an element not included in the crime of sexual exploitation of a child, 720 ILCS 5/11-9(a-5), namely the photographing of the victim, the two crimes were not identical and the fact that a violation of the child pornography statute carried a harsher mandatory four-year sentence did not violate the proportionate penalties clause, Ill. Const. Art. I, § 11. People v. Myers, 359 Ill. App. 3d 341, 295 Ill. Dec. 588, 833 N.E.2d 421, 2005 Ill. App. LEXIS 789 (4 Dist. 2005).

Defendant failed to carry burden to show that 720 ILCS 5/24-1.6, criminalizing aggravated unlawful use of a weapon, violated either substantive due process or the guarantee of proportionate penalties; the offense prescribes a scienter requirement of knowing action, and because the offense has a different legislative purpose than 720 ILCS 5/24-1.5, criminalizing reckless discharge of a firearm, there is no impropriety in prescribing far more severe sentences for unlawful use than for reckless discharge. People v. Sole, 357 Ill. App. 3d 988, 294 Ill. Dec. 495, 831 N.E.2d 18, 2005 Ill. App. LEXIS 521 (1 Dist. 2005).

Trial court did not err in sentencing defendant to 18 years in prison on his conviction for controlled substance trafficking pursuant to the Controlled Substances Act, 720 ILCS 570/401.1(a), even though the penalty for that offense was harsher than the penalty for possession with the intent to deliver a controlled substance; the sentence was not in violation of the proportionate penalties clause and, thus, was constitutional because the offenses were not related, and, thus, it was reasonable to presume that the legislature considered different factors in establishing the penalties for the offenses. People v. Rosenberg, 356 Ill. App. 3d 219, 292 Ill. Dec. 132, 825 N.E.2d 720, 2005 Ill. App. LEXIS 220 (3 Dist. 2005).

Trial court did not err in sentencing defendant for his violation of the Sex Offender Registration Act, 730 ILCS 150/1 et seq., as the penalty provisions of the Act, primarily 730 ILCS 150/10, did not violate the proportionate penalties clause of the Illinois Constitution, Ill. Const. Art. I, § 11 despite the fact that the sentence for violating the Act was a felony whereas the sentence for the underlying offense, sexual exploitation of a child, 720 ILCS 5/11-9.1, was a misdemeanor; the penalties were not unconstitutionally disproportionate because Act served the additional and distinct purpose of tracking the movements of sexual offenders to prevent the recurrence of attacks on adults as well as children. People v. Bonner, 356 Ill. App. 3d 386, 292 Ill. Dec. 303, 826 N.E.2d 444, 2005 Ill. App. LEXIS 175 (1 Dist. 2005), appeal denied, 215 Ill. 2d 601, 295 Ill. Dec. 522, 833 N.E.2d 4 (2005).

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Statute used to sentence defendant to an additional 20 years in prison for using a firearm, on top of the 30-year base sentence for first-degree murder, was constitutional as the legislature could have made a rational distinction between those crimes committed with a firearm as opposed to those crimes committed without a firearm and concluded that a harsher sentence was warranted for those committed with a firearm, given the destructive nature of a firearm; accordingly the enhancement of defendant's sentence was not disproportionate to the crime and defendant did not show his due process rights were violated because he did not show that the enhancement statute punished less culpable behavior more severely than more culpable behavior. People v. Zapata, 347 Ill. App. 3d 956, 283 Ill. Dec. 776, 808 N.E.2d 1064, 2004 Ill. App. LEXIS 334 (1 Dist. 2004), appeal denied, 217 Ill. 2d 592, Ill. Dec. , 844 N.E.2d 47 (2005).

Statutory enhancement for attempted first degree murder of a police officer serves a specific purpose that the second degree murder statute does not in that it seeks to both deter the intentional killing of police officers and to protect police officers who are performing their official duties. The statutory enhancement was not open to a comparative proportionality analysis with the sentencing range for second degree murder and as the sentence that could be imposed under 720 ILCS 5/8-4(c)(1) was not cruel, degrading, or so wholly disproportionate to the offense committed so as to shock the moral sense of the community, it did not violate the proportionality clause of Ill. Const. Art. I, § 11 (1970). People v. Henderson, 354 Ill. App. 3d 8, 289 Ill. Dec. 600, 820 N.E.2d 108, 2004 Ill. App. LEXIS 1377 (1 Dist. 2004), appeal denied, 213 Ill. 2d 567, 293 Ill. Dec. 866, 829 N.E.2d 791 (2005).

Because the aggravated criminal sexual abuse statute, 720 ILCS 5/12-16(c)(1), (d), and the child pornography statute, 720 ILCS 5/11-20.1(a)(4), had distinct purposes, and the legislature considered different factors in establishing the penalties for the offenses, there was no violation of the proportionate penalties clause of the Illinois Constitution, Ill. Const. Art. I, § 11. People v. Borash, 354 Ill. App. 3d 70, 289 Ill. Dec. 566, 820 N.E.2d 74, 2004 Ill. App. LEXIS 1365 (1 Dist. 2004), appeal denied, 214 Ill. 2d 537, 294 Ill. Dec. 4, 830 N.E.2d 4 (2005).

Defendant, who was convicted of armed robbery and sentenced to natural life imprisonment under 720 ILCS 5/33B-1 as a habitual offender, did not show that the sentence was disproportionate as defendant was not charged with armed violence, so the argument that armed robbery and armed violence predicated on robbery had disproportionate penalties was unavailing; in addition, also, there was no indication that accomplices who received lesser sentences had violent criminal histories. People v. Cummings, 351 Ill. App. 3d 343, 286 Ill. Dec. 311, 813 N.E.2d 1004, 2004 Ill. App. LEXIS 733 (1 Dist. 2004).

720 ILCS 5/24-3.1(a)(1) and 720 ILCS 5/24-1(a)(4) had different and distinct purposes, and 720 ILCS 5/24-3.1(a)(1) did not violate Ill. Const., Art. I, § 11 because it punished possession of a handgun as a Class 4 felony while 720 ILCS 5/24-1(a)(4) punished possession of a firearm as a Class A misdemeanor. People v. S.M. (In re S.M.), 347 Ill. App. 3d 620, 283 Ill. Dec. 261, 807 N.E.2d 1102, 2004 Ill. App. LEXIS 324 (1 Dist. 2004), appeal denied, 211 Ill. 2d 578, Ill. Dec. , 823 N.E.2d 966 (2004).

Because mere possession of a fraudulent identification card, in violation of 15 ILCS 335/14B(b)(1), results in a more severe penalty for less serious conduct than conduct under 15 ILCS 335/14B(b)(2)-(6), the sentencing provision for such a violation found in 15 ILCS 335/14B(c)(1) violates the proportionate penalties clause of the Illinois Constitution. People v. Pizano, 347 Ill. App. 3d 128, 282 Ill. Dec. 512, 806 N.E.2d 1100, 2004 Ill. App. LEXIS 202 (1 Dist. 2004), appeal denied, 209 Ill. 2d 596, 286 Ill. Dec. 170, 813 N.E.2d 227 (2004).

Harsher penalties under 720 ILCS 570/401 for possession or possession with intent to deliver ecstasy in its pill form as opposed to those for possession or possession with intent to deliver ecstasy in its powder form, did not violate the proportionate penalties restrictions in Ill. Const., Art. I, § 11; the offenses at issue were not identical and therefore, different penalties could be imposed for each offense. People v. Ragusa, 346 Ill. App. 3d 176, 281 Ill. Dec. 727, 804 N.E.2d 692, 2004 Ill. App. LEXIS 107 (2 Dist. 2004).

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Penalty for aggravated unlawful use of a weapon, 720 ILCS 5/24-1.6(a)(1), (a)(3)(A), was not unconstitutionally disproportionate under Ill. Const., Art. I, § 11; the seriousness of the conduct to be deterred under the statute justified a higher sentence than the sentence for conduct without a loaded weapon under 720 ILCS 5/24-1(a)(4). People v. Pulley, 345 Ill. App. 3d 916, 281 Ill. Dec. 332, 803 N.E.2d 953, 2004 Ill. App. LEXIS 20 (1 Dist. 2004), appeal denied, 208 Ill. 2d 550, 284 Ill. Dec. 345, 809 N.E.2d 1291 (2004).

(Unpublished) In evaluating whether a proportionate penalties violation has been established, the central question is whether the penalty at issue has been set by the legislature according to the seriousness of the offense, and there are three separate tests to identify a proportionate penalties violation: first, a penalty violates the proportionate penalties clause if it is cruel, degrading, or so wholly disproportionate to the offense committed as to shock the moral sense of the community; second, a penalty is invalid under the proportionate penalties clause where similar offenses are compared, and conduct that creates a less serious threat to the public health and safety is punished more severely; and third, there is a violation of the proportionate penalties clause when identical offenses are given different sentences. People v. Sawczenko-Dub, 345 Ill. App. 3d 522, 280 Ill. Dec. 832, 803 N.E.2d 62, 2003 Ill. App. LEXIS 1517 (1 Dist. 2003).

720 ILCS 5/12-14(d)(2) did not violate the proportionality clause of the Illinois Constitution, Ill. Const., Art. I, § 11 when compared to the penalties imposed for the crimes of female genital mutilation and first degree murder; the legislative intent for each of the crimes was different from the legislative intent behind the aggravated sexual assault statute and therefore, comparative proportionality review was inappropriate. People v. Sanchez, 344 Ill. App. 3d 74, 279 Ill. Dec. 387, 800 N.E.2d 455, 2003 Ill. App. LEXIS 1338 (1 Dist. 2003), appeal denied, 207 Ill. 2d 624, 283 Ill. Dec. 140, 807 N.E.2d 981 (2004).

The aggravated unlawful use of a weapon statute, 720 ILCS 5/24-1.6(a)(1)(3)(A), did not violate the proportionate penalties clause of the Illinois Constitution, Ill. Const. Art. I, § 11, when compared to the reckless discharge of a firearm statute, 720 ILCS 5/24-1.5. People v. Washington, 343 Ill. App. 3d 889, 279 Ill. Dec. 368, 800 N.E.2d 436, 2003 Ill. App. LEXIS 1236 (1 Dist. 2003), appeal denied, 208 Ill. 2d 554, 284 Ill. Dec. 346, 809 N.E.2d 1292 (2004).

While similarities existed between the crime of unlawful use of a weapon by a felon and the unlawful discharge of a weapon, which carried a lesser penalty than an unlawful use charge, a comparative proportionality analysis of the penalties for the two charges was not appropriate because the legislature had distinctly different purposes in enacting the sections and it was presumed that the legislature also considered different factors in establishing the penalties for the respective offenses; the court deferred to the legislature's judgment in doing so. People v. Carmichael, 343 Ill. App. 3d 855, 278 Ill. Dec. 683, 799 N.E.2d 401, 2003 Ill. App. LEXIS 1231 (1 Dist. 2003).

Twenty-five year sentence enhancement mandated by 730 ILCS5/5-8-1(a)(1)(d)(iii) did not violate the proportionate penalties clause of Ill. Const. Art. I, § 11. People v. Moore, 343 Ill. App. 3d 331, 277 Ill. Dec. 870, 797 N.E.2d 217, 2003 Ill. App. LEXIS 1165 (2 Dist. 2003), appeal denied, 207 Ill. 2d 621, 283 Ill. Dec. 139, 807 N.E.2d 980 (2004), appeal denied, 217 Ill. 2d 584, 300 Ill. Dec. 372, 844 N.E.2d 44 (2005).

Because the elements of the crimes of unauthorized theft from a victim over age 60 and theft by deception from a victim over age 60 are not identical, in that the former requires unauthorized control over the victim's property while the latter requires that control over the property be obtained by deception, the greater sentence imposed for unauthorized theft from a victim over age 60, found in 730 ILCS 5/5-5-3.2(b)(4)(ii) and 730 ILCS 5/5-8-2, is not unconstitutionally disproportionate to the penalty imposed by 730 ILCS 5/5-8-1(a)(5) for theft by deception from a victim over age 60. People v. Graves, 207 Ill. 2d 478, 279 Ill. Dec. 502, 800 N.E.2d 790, 2003 Ill. LEXIS 1423 (2003).

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Aggravated unlawful use of a weapon (UUW) statute, 720 ILCS 5/24-1.6, did not violate the proportionate penalty provision of the Illinois Constitution, Ill. Const. Art. I, § 11, since aggravated UUW required a finding of at least one of seven aggravating factors, none of which were required under the misdemeanor UUW statute; thus, the felony charge applied to more serious conduct. People v. McGee, 341 Ill. App. 3d 1029, 276 Ill. Dec. 605, 794 N.E.2d 855, 2003 Ill. App. LEXIS 818 (1 Dist. 2003).

Although the aggravated kidnapping statute provided for a 15-year enhancement in the sentence imposed where that crime involved a defendant armed with a firearm, the 15-year enhancement could not constitutionally be imposed where defendant was also convicted of armed violence predicated on the offense of kidnapping while carrying a category I weapon, such as a handgun, because imposition of the 15-year enhancement in that situation violated the proportionate penalties clause of the Illinois Constitution; the reason was that the enhancement allowed for the sentencing range for aggravated kidnapping to be 21 to 45 years in prison, while the armed violence with a category I weapon was 15 to 30 years, even though the statutes required the same elements for conviction. People v. Baker, 341 Ill. App. 3d 1083, 276 Ill. Dec. 458, 794 N.E.2d 353, 2003 Ill. App. LEXIS 532 (4 Dist. 2003).

Fifteen-year enhancement for aggravated kidnapping violates the proportionate penalties clause of the Illinois Constitution and is unenforceable. People v. Baker, 341 Ill. App. 3d 1083, 276 Ill. Dec. 458, 794 N.E.2d 353, 2003 Ill. App. LEXIS 1077 (4 Dist. 2003).

Mandatory sentence of natural life based upon accountability did not offend the proportionate penalties clause of the Illinois Constitution, Ill. Const. Art. I, § 11, where defendant was deemed guilty as a perpetrator of the ultimate offenses since, under the common-design rule, all participants are legally accountable for the concerted acts of all participants; thus the seriousness of defendant's conduct and his rehabilitative potential were considered during sentencing. People v. McCoy, 337 Ill. App. 3d 518, 272 Ill. Dec. 218, 786 N.E.2d 1052, 2003 Ill. App. LEXIS 270 (2 Dist. 2003), appeal denied, 204 Ill. 2d 674, 275 Ill. Dec. 80, 792 N.E.2d 311 (2003).

Fifteen year sentencing enhancement for armed robbery while in possession of a firearm was not valid and enforceable because it violated the proportionate penalties clause of the Illinois Constitution, Ill. Const., Art. I, § 11. People v. Blanco, 199 Ill. 2d 410, 264 Ill. Dec. 320, 770 N.E.2d 214, 2002 Ill. LEXIS 311 (2002), overruled in part on other grounds by People v. Hauschild, 364 Ill. App. 3d 202, 845 N.E.2d 74, 2006 Ill. App. LEXIS 176, 300 Ill. Dec. 653 (Ill. App. Ct. 2 Dist. 2006).

730 ILCS 5/5-8-1(a)(1)(c)(ii) as applied to a 15-year-old juvenile offender who acted as a lookout when two other defendants shot and killed two victims, and was convicted under a theory of accountability violated the proportionate penalties clause of Ill. Const. Art. I, § 11. People v. Miller, 202 Ill. 2d 328, 269 Ill. Dec. 503, 781 N.E.2d 300, 2002 Ill. LEXIS 950 (2002).

The unambiguous language of the statute evinces the intent of the legislature that it did not intend to exclude the liquid within which the cocaine is diluted in calculating the weight of the contraband, and this does not result in penalties that are unconstitutionally disproportionate to the offense. People v. Butler, 304 Ill. App. 3d 750, 237 Ill. Dec. 559, 709 N.E.2d 1272 (1 Dist. 1999), appeal denied, 185 Ill. 2d 636, 242 Ill. Dec. 141, 720 N.E.2d 1096 (1999).

The penalty for armed violence predicated on a residential burglary while armed with a Category I weapon violates the proportionate penalties clause. People v. Lombardi, 184 Ill. 2d 462, 235 Ill. Dec. 478, 705 N.E.2d 91 (1998), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

The elements of the armed violence counts were not identical to the elements of the aggravated criminal sexual abuse counts or the aggravated kidnapping counts; therefore, the differences between sentences did not violate the proportionate penalties clause. People v. Koppa, 184 Ill. 2d 159, 234 Ill. Dec. 479, 703 N.E.2d 91 (1998), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

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Armed violence predicated on the commission of aggravated battery (public way) consists of three principal statutory elements while aggravated battery consists of only two; therefore, the armed violence offenses charged were not identical to the aggravated battery charge and no dismissal based on proportionate penalties was required. People v. Espinoza, 184 Ill. 2d 252, 234 Ill. Dec. 372, 720 N.E.2d 1275 (1998).

Court could not conclude that penalty for armed violence based on a battery on or about a place of public accommodation was so disproportionate to the offense that it shocked the moral sense of the community or was cruel or degrading and therefore did not violate the proportionate penalties clause. People v. Garza, 298 Ill. App. 3d 452, 232 Ill. Dec. 734, 699 N.E.2d 181 (2 Dist. 1998), appeal denied, 181 Ill. 2d 579, 235 Ill. Dec. 944, 706 N.E.2d 499 (1998).

The penalty that 720 ILCS 570/405.1(c) imposes is not cruel or degrading, and is not so disproportionate to the offense as to shock the moral sense of the community; therefore, subsection (c) is not disproportionate. People v. Hickman, 163 Ill. 2d 250, 206 Ill. Dec. 94, 644 N.E.2d 1147 (1994), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

The constitutional guarantee of proportionate penalties is violated where the penalty prescribed for an offense is greater than the penalty prescribed for a more serious offense; in proportionate penalties, the court will consider the relative seriousness of the offenses being compared. People v. Tucker, 264 Ill. App. 3d 923, 201 Ill. Dec. 888, 637 N.E.2d 477 (1 Dist. 1994).

Because this section states that the possession of a fraudulent driver's license poses a greater threat to the public than distributing the same license and there is no manner in which an individual could distribute a driver's license without at the very least constructive possession, the penalty provision is not reasonable; the penalty provided by 625 ILCS 5/6-301.2(c) (a class 4 felony) is disproportionate to the seriousness of the offense committed when considered in light of the offense of distributing a fraudulent driver's license (a class B misdemeanor) and violated the due process and proportionality requirements of the Illinois constitution. People v. McGee, 257 Ill. App. 3d 229, 195 Ill. Dec. 403, 628 N.E.2d 867 (1 Dist. 1993).

The availability of different punishments for separate offenses, armed violence for which intimidation was the predicate felony, and attempted armed robbery based on the same acts, does not result in an unconstitutionally disproportionate sentencing scheme, in violation of the due process clause and the proportionate penalty clause of this section. People v. Wade, 131 Ill. 2d 370, 137 Ill. Dec. 608, 546 N.E.2d 553 (1989), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

Penalties for crimes shall be proportioned to the nature of the offense. People v. Alexander, 121 Ill. App. 2d 347, 257 N.E.2d 497 (1 Dist 1970).

The legislative classification of the offense of signing a name to a check drawn on either a fictitious bank or with knowledge of insufficient funds in the depository as the misdemeanor of deceptive practices, and the classification of drawing checks with intent to defraud using the name of another as the purported maker as forgery, carrying a greater penalty, did not deprive defendant convicted of the latter of equal protection under former Ill. Const. (1870), Art. II, § 11 (see now this section). People v. Lanners, 122 Ill. App. 2d 290, 258 N.E.2d 390 (2 Dist 1970).

Insurance company was properly found liable for the acts of its agent in giving a discount to an insured in exchange for the insured's assistance in obtaining other customers, because the agent's conduct was a violation of paragraph 27 of chapter 73 of Illinois Statutes, Ill. Stat. p. 1388, and the statute did not violate the proportionate penalty provision of Ill. Const. (1970), Art. I, § 11 (formerly Ill. Const. of 1870, art. II, § 11). People v. American Life Ins. Co., 267 Ill. 504, 108 N.E. 679, 1915 Ill. LEXIS 2352 (1915).

The fact that the statute establishing the Illinois State Reformatory imposed the maximum term of imprisonment provided by law for the crime for which a minor was convicted did not mean that

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such statute was in violation of the constitutional requirement that all penalties shall be proportioned to the nature of the offense. People ex rel. Bradley v. Illinois State Reformatory, 148 Ill. 413, 36 N.E. 76 (1894).

Purpose and Spirit of Law

The spirit and purpose of the law are promoted when a sentence reflects the seriousness of the offense and gives adequate consideration to the rehabilitative potential of the defendant. People v. BoClair, 225 Ill. App. 3d 331, 167 Ill. Dec. 606, 587 N.E.2d 1221 (1 Dist.), appeal denied, 146 Ill. 2d 634, 176 Ill. Dec. 806, 602 N.E.2d 460 (1992).

An abuse of discretion in sentencing by the trial court may be found even where the sentence is within statutory limitations if it is greatly at variance with the purpose and spirit of the law. People v. Williams, 196 Ill. App. 3d 851, 144 Ill. Dec. 1, 554 N.E.2d 1040 (1 Dist.), appeal denied, 133 Ill. 2d 570, 149 Ill. Dec. 335, 561 N.E.2d 705 (1990).

A sentenced imposed by a trial court will not be disturbed unless it clearly appears that the penalty constitutes a great departure from the fundamental law and its spirit and purpose. People v. Taylor, 115 Ill. App. 3d 621, 71 Ill. Dec. 377, 450 N.E.2d 1256 (1 Dist. 1983), rev'd on other grounds, 102 Ill. 2d 201, 80 Ill. Dec. 76, 464 N.E.2d 1059 (1984).

The spirit and purpose of the law are upheld when a sentence in conformity with this section reflects the seriousness of the offense and gives adequate consideration to the rehabilitative potential of the defendant. People v. Heflin, 71 Ill. 2d 525, 17 Ill. Dec. 786, 376 N.E.2d 1367 (1978); People v. Taylor, 115 Ill. App. 3d 621, 71 Ill. Dec. 377, 450 N.E.2d 1256 (1 Dist. 1983), rev'd on other grounds, 102 Ill. 2d 201, 80 Ill. Dec. 76, 464 N.E.2d 1059 (1984).

The Supreme Court will not disturb a sentence imposed by the trial court unless it clearly appears that the penalty constitutes a great departure from the fundamental law and its spirit and purpose. People v. Heflin, 71 Ill. 2d 525, 17 Ill. Dec. 786, 376 N.E.2d 1367 (1978).

Where it was contended that the punishment imposed in a particular case was excessive, though within the limits prescribed by the legislature, the Supreme Court would not disturb the sentence unless it clearly appeared that the penalty constituted a great departure from the fundamental law and its spirit and purpose, or that the penalty was manifestly in excess of the proscription of former Ill. Const. (1870), Art. II, § 11 (see now this section), which required that all penalties be proportioned to the nature of the offense. People v. Smith, 14 Ill. 2d 95, 150 N.E.2d 815 (1958).

Purposes of Punishment

- Balancing

The balancing of the retributive and rehabilitative purposes of punishment requires careful consideration of the nature and circumstances of the crime, the defendant's conduct in the commission of the crime, and the defendant's personal history, including his age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment, and education. People v. Maldonado, 240 Ill. App. 3d 470, 181 Ill. Dec. 426, 608 N.E.2d 499 (1 Dist. 1992), appeal denied, 151 Ill. 2d 572, 186 Ill. Dec. 390, 616 N.E.2d 343 (1993).

Railroads

- Use of Intoxicating Liquor

The times and places under which intoxicating liquors may be sold are regulated by statute for the purpose of reducing the evils of intemperance, and for the same purpose the times, places,

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and circumstances of drinking intoxicating liquors may be regulated, and such a regulation does not unreasonably interfere with the liberty of the individual, and is reasonably adapted to protect the public against a recognized public evil; the state could properly regulate the sale of intoxicating liquor on and intoxicated persons in and around passenger trains, and the penalty for violation of the statute was not unconstitutionally disproportionate. Tarantina v. Louisville & N. R.R., 254 Ill. 624, 98 N.E. 999 (1912).

Rehabilitation Factors

Under Ill. Const., Art. I, § 11, a proper balance must be struck between the protection of society and the rehabilitation of defendant, however, a court is not required to give defendant's rehabilitative potential more weight than the seriousness of the offense; thus, the trial court properly considered defendant's rehabilitative potential and determined that he was not entitled to more lenient treatment. People v. White, 237 Ill. App. 3d 967, 178 Ill. Dec. 926, 605 N.E.2d 720, 1992 Ill. App. LEXIS 2065 (1 Dist. 1992).

Ill. Const., Art. I, § 11 required that all penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. People v. White, 237 Ill. App. 3d 967, 178 Ill. Dec. 926, 605 N.E.2d 720, 1992 Ill. App. LEXIS 2065 (1 Dist. 1992).

- Alcohol Dependence

A criminal offender's dependence on alcohol may properly be considered as a factor in determining the offender's rehabilitation potential and the most appropriate disposition. People v. Blumstengel, 61 Ill. App. 3d 1016, 18 Ill. Dec. 937, 378 N.E.2d 401 (5 Dist. 1978).

- Balancing

A defendant's rehabilitative potential is not entitled to greater weight than the seriousness of the offense. People v. Coleman, 166 Ill. 2d 247, 209 Ill. Dec. 782, 652 N.E.2d 322 (1995).

- Weight in Sentencing

Where the trial judge, in sentencing defendant, made it clear that the judge was sentencing defendant solely to remove defendant from society because prisons were unable to rehabilitate people, the sentence violated Ill. Const. Art. I, § 11; the trial judge impermissibly failed to consider defendant's rehabilitative potential. People v. Lang, 366 Ill. App. 3d 588, 304 Ill. Dec. 558, 853 N.E.2d 90, 2006 Ill. App. LEXIS 619 (1 Dist. 2006).

While all penalties should be determined according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship, this does not mean that rehabilitation of the offender should be accorded greater weight than the seriousness of the offense during sentencing. People v. Pickens, 274 Ill. App. 3d 226, 210 Ill. Dec. 583, 653 N.E.2d 778 (1 Dist. 1995), appeal denied, 164 Ill. 2d 576, 214 Ill. Dec. 328, 660 N.E.2d 1277 (1995).

Restoration of Offender

- In General

A proper objective in determining the extent and nature of a criminal penalty is the restoration of the offender to useful citizenship. People v. Goodwin, 83 Ill. App. 3d 203, 38 Ill. Dec. 597, 403 N.E.2d 1051 (2 Dist. 1980).

While protecting the public in the event that an attempt at rehabilitating a defendant fails, the best interests of the defendant are served by providing him with both the opportunity and incentive for

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rehabilitation by combining a long maximum sentence with a minimum sentence which would allow the defendant to receive parole in a relatively short time. People v. Kish, 58 Ill. App. 3d 215, 15 Ill. Dec. 717, 374 N.E.2d 10 (3 Dist. 1978).

Adequacy of the punishment should determine the minimum sentence, with the maximum dependent upon the court's divination as to the length of time required to achieve rehabilitation. People v. Lillie, 79 Ill. App. 2d 174, 223 N.E.2d 716 (5 Dist. 1967).

- Consideration

For a record to reflect actual consideration of rehabilitative potential, a trial court need not expressly indicate its consideration thereof in haec verba. People v. Parker, 192 Ill. App. 3d 779, 139 Ill. Dec. 900, 549 N.E.2d 626 (1 Dist. 1989), cert. denied, 132 Ill. 2d 552, 144 Ill. Dec. 264, 555 N.E.2d 383 (1990).

This section requires that the sentencing court consider and act on the goal of rehabilitation as an objective of its sentence. People v. Parker, 192 Ill. App. 3d 779, 139 Ill. Dec. 900, 549 N.E.2d 626 (1 Dist. 1989), cert. denied, 132 Ill. 2d 552, 144 Ill. Dec. 264, 555 N.E.2d 383 (1990).

This section does not require each and every sentencing alternative to offer restoration to useful citizenship, and the fact that the sentence ultimately imposed precludes restoration to useful citizenship does not mean that rehabilitative potential was disregarded in weighing the factors considered in the sentencing decision. People v. Merchel, 91 Ill. App. 3d 285, 46 Ill. Dec. 751, 414 N.E.2d 804 (5 Dist. 1980).

The constitutional mandate requires not only that the judge consider the rehabilitative or restorative factor, but that he also act on it as an objective of his sentence; some degree of discretion is permitted within the legislative perimeters establishing the indeterminate system of sentencing, but the judge may not resign to total retribution one who has a chance of future restoration to useful citizenship in the free society. People v. Gibbs, 49 Ill. App. 3d 644, 7 Ill. Dec. 330, 364 N.E.2d 491 (1 Dist. 1977).

The mandate of this section is not fulfilled merely by including rehabilitation into the sentencing deliberations as a counterweight to retribution, but rather must be acted upon as an actual objective of the sentence. People v. Brown, 55 Ill. App. 3d 569, 13 Ill. Dec. 445, 371 N.E.2d 140 (1 Dist. 1977).

Although the appellate court would not reduce concurrent sentences of 40 to 60 years because of its opinion that the trial court was in a better position to determine the appropriate minimum concurrent sentences, where the trial court gave no express indication that the rehabilitation factor was considered and gave a possible indication that it was not considered, defendant's minimum concurrent sentences were vacated and the cause remanded to the sentencing court for the imposition of such minimum concurrent sentences (not greater than 40 years) as that court might find appropriate after expressly taking into account the rehabilitation factor. People v. Johnson, 29 Ill. App. 3d 763, 331 N.E.2d 306 (1 Dist. 1975).

This section constitutes specific constitutional recognition of the consideration of potential rehabilitation of an offender. People v. Cantrell, 14 Ill. App. 3d 1068, 304 N.E.2d 13 (1 Dist. 1973).

- No Rehabilitative Potential

The trial court is not required to articulate its consideration of mitigating factors or to make an express finding that the defendant lacked rehabilitative potential. People v. BoClair, 225 Ill. App. 3d 331, 167 Ill. Dec. 606, 587 N.E.2d 1221 (1 Dist.), appeal denied, 146 Ill. 2d 634, 176 Ill. Dec. 806, 602 N.E.2d 460 (1992).

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The defendant did not demonstrate overwhelming rehabilitative potential where, in more than four years of high school, he accumulated many failing grades and no credits due to excessive absences and failed to graduate, his steady employment record since leaving high school was marred by a firing from at least one job due to chronic tardiness and poor attitude, he was a convicted felon who previously violated probation, and he had a misdemeanor conviction and an extensive record of traffic offenses both before and after the suspension of his driver's license. People v. Reid, 160 Ill. App. 3d 491, 112 Ill. Dec. 103, 513 N.E.2d 517 (4 Dist. 1987).

A trial court did not abuse its discretion; in finding that defendant convicted of armed violence had no rehabilitative potential, his sentence of concurrent extended terms of 50 and 30 years of imprisonment did not violate this section. People v. Randle, 147 Ill. App. 3d 621, 101 Ill. Dec. 408, 498 N.E.2d 732 (2 Dist. 1986).

A trial judge may make the determination that a defendant has little or no potential for rehabilitation and impose sentence accordingly. People v. Shumate, 94 Ill. App. 3d 478, 50 Ill. Dec. 169, 419 N.E.2d 36 (1 Dist. 1981).

Where defendant committed the offenses of attempt robbery and battery less than three months after he had been paroled from a penitentiary on the charge of aggravated battery, and where he also had previous convictions for theft and criminal trespass to a vehicle, the trial court's finding that there was no hope of defendant's rehabilitation was not unreasonable or arbitrary, and the sentences imposed were not in violation of this section. People v. Shumate, 94 Ill. App. 3d 478, 50 Ill. Dec. 169, 419 N.E.2d 36 (1 Dist. 1981).

- Requirement

Not only must the sentencing court consider the rehabilitative factor, it must also act on it as an objective of its sentence. People v. Robinson, 163 Ill. App. 3d 384, 114 Ill. Dec. 520, 516 N.E.2d 675 (1 Dist. 1987); People v. Bigham, 226 Ill. App. 3d 1041, 168 Ill. Dec. 793, 590 N.E.2d 115 (5 Dist. 1992).

Rehabilitation is an objective of the sentence and a factor which the trial court must consider. People v. Johnson, 206 Ill. App. 3d 542, 151 Ill. Dec. 458, 564 N.E.2d 913 (2 Dist. 1990), cert. denied, 137 Ill. 2d 668, 156 Ill. Dec. 565, 571 N.E.2d 152 (1991).

Although the court did not expressly articulate a consideration of defendant's rehabilitative potential, the court's stated objective in imposing sentence implied that rehabilitation had been consciously considered and was, therefore, proper. People v. Robinson, 163 Ill. App. 3d 384, 114 Ill. Dec. 520, 516 N.E.2d 675 (1 Dist. 1987).

Rehabilitation must be an actual objective of the sentence and be clearly stated by the trial court as a consideration. People v. Steffens, 131 Ill. App. 3d 141, 86 Ill. Dec. 392, 475 N.E.2d 606 (1 Dist. 1985); People v. Haepp, 194 Ill. App. 3d 207, 141 Ill. Dec. 148, 550 N.E.2d 1194 (1 Dist. 1990).

Although judges must consider rehabilitation in imposing sentence, it is the rehabilitative potential of the defendant, not the Illinois prison system, which must be assessed. Williams v. Thompson, 111 Ill. App. 3d 145, 66 Ill. Dec. 883, 443 N.E.2d 809 (4 Dist. 1982).

Both this section as well as 730 ILCS 5/1-1-2(d) require that the rehabilitation potential of the accused in a felony case be considered in fixing sentence. People v. Owens, 99 Ill. App. 3d 730, 54 Ill. Dec. 662, 425 N.E.2d 527 (2 Dist. 1981); People v. Goodman, 98 Ill. App. 3d 743, 53 Ill. Dec. 872, 424 N.E.2d 663 (2 Dist. 1981).

This section imposes a constitutional requirement that rehabilitative potential be considered in setting sentences. People v. Kane, 31 Ill. App. 3d 500, 333 N.E.2d 247 (1 Dist. 1975).

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The constitution expressly calls for a consideration of rehabilitation in sentencing. People v. Moore, 15 Ill. App. 3d 691, 304 N.E.2d 696 (1 Dist. 1973).

- Sentence Reduced

Trial court's sentence of 30 years for murder and 30 years for armed robbery was found to be excessive and the trial court abused its discretion by not taking into consideration the defendant's age, lack of substantial criminal history, and rehabilitative potential. People v. Williams, 196 Ill. App. 3d 851, 144 Ill. Dec. 1, 554 N.E.2d 1040 (1 Dist.), appeal denied, 133 Ill. 2d 570, 149 Ill. Dec. 335, 561 N.E.2d 705 (1990).

A sentence of 100 to 300 years for murder imposed on defendant who had no prior criminal record was improper since it effectively negated any possibility of defendant's rehabilitation. People v. Rickard, 99 Ill. App. 3d 914, 55 Ill. Dec. 144, 425 N.E.2d 1317 (1 Dist. 1981).

Where a 19 year old defendant abandoned his criminal purpose voluntarily, prevented the commission of any further crime, and confessed to the authorities voluntarily, the trial court did not properly consider these indications of rehabilitative potential and abused its discretion by imposing a four year sentence which was disproportionate to the nature of the offense. People v. Brown, 90 Ill. App. 3d 742, 46 Ill. Dec. 591, 414 N.E.2d 475 (3 Dist. 1980).

Even though a defendant and his companions committed repeated violent criminal acts, in the interests of rehabilitation, his sentence of 20 to 60 years for deviate sexual assault was reduced where his youth, coupled with his record of only one misdemeanor conviction and his successful completion of trade school, made reduction appropriate. People v. Hastings, 72 Ill. App. 3d 816, 28 Ill. Dec. 683, 390 N.E.2d 1273 (1 Dist. 1979).

Where at the time of his sentencing for murder and attempted armed robbery, the defendant was 18 years of age, with one prior juvenile misdemeanor conviction and no criminal record, the appellate court reduced his sentence of from 60 to 100 years to from 20 to 40 years, since the effect of the original sentence would be to severely reduce the possibility of defendant's rehabilitation. People v. Smith, 50 Ill. App. 3d 320, 8 Ill. Dec. 320, 365 N.E.2d 558 (1 Dist. 1977), cert. denied, 435 U.S. 1008, 98 S. Ct. 1880, 56 L. Ed. 2d 390 (1978).

A sentence of 25 to 50 years imposed on a 17 year old defendant with no prior criminal record upon his conviction of murder severly diminished the possibility of defendant's rehabilitation, and was modified by the appellate court pursuant to the authority granted under Rule 615(b)(4), Supreme Court Rules, to a minimum term of 14 years and a maximum term of 25 years. People v. Horton, 43 Ill. App. 3d 150, 1 Ill. Dec. 762, 356 N.E.2d 1044 (1 Dist. 1976).

A first offender who had a favorable work record and family background, factors which indicate a strong potential for early rehabilitation, could properly have his sentence reduced from a seven year to a four year minimum sentence. People v. Kane, 31 Ill. App. 3d 500, 333 N.E.2d 247 (1 Dist. 1975).

A sentence was excessive where the defendant, who was 23 years of age at the time of his convictions, was on parole from a prior burglary conviction committed in 1967 and had also been convicted of burglary in 1966, but no violence was present in any of the crimes; the possibility of rehabilitation was not so remote as to justify a sentence of ten to 30 years, which left little or no room for rehabilitation and did not permit an exercise of discretion by the parole authorities at a time when such discretion may have contributed most to rehabilitation. People v. Roddy, 9 Ill. App. 3d 65, 291 N.E.2d 264 (5 Dist. 1972).

- Sentence Upheld

Where, after engaging in a scuffle with the victim, defendant had retreated to the safe haven of his aunt's home when he decided to return to the apartment "out of anger," carrying a butcher knife, and voluntarily returned to the scene and brutally stabbed the decedent a number of times,

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these actions far outweighed the rehabilitative potential that may have existed. People v. Black, 223 Ill. App. 3d 630, 166 Ill. Dec. 206, 585 N.E.2d 1228 (2 Dist.), appeal denied, 145 Ill. 2d 636, 173 Ill. Dec. 7, 596 N.E.2d 631 (1992).

In view of the serious nature of the offenses for which defendants were convicted (murder, armed robbery, robbery, burglary, and felony theft), the sentences (concurrent terms of 50 to 150 years, 25 to 75 years, 62/3 to 20 years, 62/3 to 20 years, and 31/3 to 10 years for the offenses as respectively listed) did not violate the admonition of this section requiring that the objective of restoring an offender to useful citizenship be a substantial consideration in sentencing. People v. Baker, 57 Ill. App. 3d 401, 14 Ill. Dec. 427, 372 N.E.2d 438 (4 Dist. 1978).

A defendant's sentence of not less than 30 nor more than 50 years for two murders did not raise a substantial constitutional claim that his sentence ignored the objective of restoring him to useful citizenship. People v. Meyer, 20 Ill. App. 3d 1032, 314 N.E.2d 637 (3 Dist. 1974).

Review

- Determining Proportionality

The proportionate penalties clause is violated where either: (1) punishment for a particular offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community; (2) similar offenses are compared and conduct that creates a less serious threat to the public health and safety is punished more harshly; or (3) identical offenses are given different sentences. People v. Davis, 177 Ill. 2d 495, 227 Ill. Dec. 101, 687 N.E.2d 24 (1997), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

Robbery

In view of defendant's youth and the nature of his offense, his sentence of four to ten years for robbery was unrealistic and in contravention of the constitutional mandate this section. People v. Hudson, 3 Ill. App. 3d 815, 279 N.E.2d 120 (5 Dist. 1972).

Sentence

- Excessive

Proportionate Penalties Clause, Ill. Const. Art. I, § 11, is not violated by the Illinois sentencing scheme, whereby solicitation of murder is punished more severely than conspiracy to commit murder, because the person who solicits another by command, encouragement, or request to commit murder generally represents a more sophisticated and planned criminal intent by an actor who attempts to shield himself through his hireling. People v. Kauten, 324 Ill. App. 3d 588, 258 Ill. Dec. 197, 755 N.E.2d 1016, 2001 Ill. App. LEXIS 713 (2 Dist. 2001), appeal denied, 198 Ill. 2d 601, 262 Ill. Dec. 622, 766 N.E.2d 622 (2002).

- Proper

A mandatory minimum sentence of 12 years in prison for a person convicted of controlled substance trafficking under 720 ILCS 570/401.1, is not clearly irrational or wholly disproportionate to the offense committed. People v. Harlow, 246 Ill. App. 3d 196, 185 Ill. Dec. 795, 615 N.E.2d 354 (4 Dist.), appeal denied, 152 Ill. 2d 568, 190 Ill. Dec. 899, 622 N.E.2d 1216 (1993).

- Proportionate Penalties

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When defendant was convicted of armed robbery, under 720 ILCS 5/18-2, and sentenced to life in prison as an habitual offender, under 720 ILCS 5/33B-1, the fact that armed violence predicated on robbery with a category III weapon, under 720 ILCS 5/33A-1(c)(3), was an identical crime and carried a lesser sentence did not cause defendant's life sentence to be a violation of the proportionate penalties provision of Ill. Const. (1970), Art. I, § 11, because defendant's sentence was not for armed robbery but was a mandatory sentence imposed for the three violent felonies of which defendant had been convicted, one of which was armed robbery. People v. Cummings, 375 Ill. App. 3d 513, 314 Ill. Dec. 66, 873 N.E.2d 996, 2007 Ill. App. LEXIS 849 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1818 (Ill. 2007).

Sentence Reduced

Where the consecutive sentencing provision in effect when the defendant was resentenced by the circuit court following remand required that the defendant's sentence be modified, the appellate court reduced the punishment imposed by the trial court in accordance with Rule 615(b)(4), Supreme Court Rules, and in view of the egregious nature of the offenses, and after reviewing the defendant's potential for rehabilitation and the seriousness of the offense, together with society's need for protection, reduced defendant's sentence of two consecutive terms of 100 to 300 years to two concurrent terms of 35 to 100 years. People v. Gill, 29 Ill. App. 3d 356, 330 N.E.2d 552 (5 Dist. 1975).

Sentence Upheld

Defendant was properly sentenced to 20 years' incarceration for direct criminal contempt, because while defendant's actions of refusing to testify were not violent, they were nonetheless clearly calculated to hinder or obstruct the trial court in its administration of justice in a double murder case, and when coupled with defendant's criminal history, the appellate court could not say the trial court abused its discretion in weighing factors relevant to fashioning defendant's sentence. People v. Geiger, Ill. App. 3d , 354 Ill. Dec. 816, 958 N.E.2d 748, 2011 Ill. App. LEXIS 1171 (3 Dist. 2011).

Sentence was not improper, as the trial court did not focus on the harm caused in issuing its sentencing decision and determined that defendant's rehabilitative potential was outweighed by his lengthy criminal history. People v. Haley, Ill. App. 3d , 355 Ill. Dec. 788, 960 N.E.2d 670, 2011 Ill. App. LEXIS 1139 (1 Dist. 2011).

Challenge to the constitutionality of 720 ILCS 550/5(g) based on scientific studies was rejected because punishing defendant as a Class X offender and imposing a 12-year prison term was not cruel, degrading, or so wholly disproportionate to the offense that it shocked the moral sense of the community. The sentence was not excessive since this was defendant's third drug-related conviction, and the sentence was at the lower end of the potential range. People v. Yoselowitz, Ill. App. 3d , 355 Ill. Dec. 682, 960 N.E.2d 564, 2011 Ill. App. LEXIS 1109 (4 Dist. 2011).

While defendant's 12-year sentence for unlawful use of a weapon by a felon under 720 ILCS 5/24-1.1(e) was near the statutory maximum, it was not excessive and there was no basis for disturbing the sentence as the trial court did not improperly enhance it, and there was no evidence to support defendant's claim that it was imposed in retaliation for his decision to proceed to trial. People v. Lee, 379 Ill. App. 3d 533, 318 Ill. Dec. 808, 884 N.E.2d 776, 2008 Ill. App. LEXIS 117 (1 Dist. 2008).

Defendant's sentence of a total of 100 years (55 for first degree murder and a consecutive 45 years for personally discharging a firearm during the commission of the offense) was appropriate as it complied with the legislative intent underlying the enactment of 730 ILCS 5/5-8-1(a)(1)(d)(iii), and the absence of an adult criminal record was not remarkable considering defendant was only 19 years old when he murdered the victim. Moreover, the record showed that defendant's

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criminal record included a narcotics offense, a juvenile adjudication for criminal trespass to a vehicle, and a serious arrest record, and defendant failed to reconcile or rebut the trial judge's comments concerning defendant's prospects for rehabilitation. People v. Evans, 373 Ill. App. 3d 948, 311 Ill. Dec. 907, 869 N.E.2d 920, 2007 Ill. App. LEXIS 555 (1 Dist. 2007), appeal denied, 225 Ill. 2d 648, 875 N.E.2d 1117, 2007 Ill. LEXIS 1401 (2007).

Where the trial court, after considering a presentence report detailing a defendant's background, and hearing evidence of his good employment history, his military service and his lack of a criminal record, sentenced him to a term exceeding the minimum by only three years, it did not abuse its discretion in reaching this sentence or unconstitutionally ignore his rehabilitative potential. People v. Calderon, 101 Ill. App. 3d 469, 57 Ill. Dec. 21, 428 N.E.2d 571 (1 Dist. 1981).

A trial court did not abuse its discretion in its determination of sentences of 75 to 200 years for murder, 25 to 50 years for attempt murder, and three to ten years for aggravated battery where the evidence indicated that both defendants, armed with a jack and jack handle, were active participants in a brutal attack upon a victim and that this attack resulted in that victim's death, and where defendant, with codefendant as a passenger, rammed his car into decedent and another victim, and shortly thereafter, made their savage attacks on decedent and a third victim. People v. Belvedere, 72 Ill. App. 3d 998, 28 Ill. Dec. 649, 390 N.E.2d 1239 (1 Dist. 1979).

Where the defendant had 12 prior convictions a sentence of imprisonment between four and 20 years for burglary conviction was not excessive. People v. Morris, 54 Ill. App. 3d 1039, 12 Ill. Dec. 685, 370 N.E.2d 308 (3 Dist. 1977).

Where the defendant was convicted of five felonies, four of which were of class one status, and the record described some of the most wanton criminal behavior imaginable, concurrent sentences of 25 to 50 years for rape and armed robberies were not at variance with a reasonable appraisal of the seriousness of the criminal acts and the outlook for rehabilitation. People v. Scott, 45 Ill. App. 3d 487, 4 Ill. Dec. 45, 359 N.E.2d 878 (1 Dist.), aff'd, 69 Ill. 2d 85, 12 Ill. Dec. 736, 370 N.E.2d 540 (1977).

In light of the fact that defendant was convicted of three separate and distinct Class I felonies, his conduct prior to the offenses was not of such mitigating influence that it rendered the sentence imposed by the trial court violative of the constitutional mandate that all penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship, and the court would not reduce defendant's sentence of 10 to 30 years. People v. Cook, 41 Ill. App. 3d 946, 354 N.E.2d 122 (1 Dist. 1976).

The sentence of 6-18 years imposed was well within the statutory range established by the legislature for the offense of armed robbery and there was no justification for modifying the sentence imposed by the trial court since such sentence was of sufficient indeterminacy to provide the possibility of rehabilitation while the maximum was clearly proportionate to the gravity of the offense. People v. Monreal, 42 Ill. App. 3d 842, 1 Ill. Dec. 639, 356 N.E.2d 921 (1 Dist. 1976).

Where a defendant gave a 14 year old girl a ride in his automobile and then strangled her and drowned her in a river, where he was also guilty of a rape which seemed to have occurred about the same time as the murder, where his prison record was far from flawless, and where he showed something less than full and forthright cooperation with the prison authorities and the psychiatrist who examined him, a sentence of 90 to 180 years imposed by the trial court was not excessive and did not contravene either the limitation of penalties provision of this section or the prohibition against cruel and unusual punishment of the Eighth Amendment to the Constitution of the United States. People v. Peter, 43 Ill. App. 3d 1068, 3 Ill. Dec. 31, 358 N.E.2d 31 (1 Dist. 1976).

A trial court did not abuse its discretion by imposing a 40 year maximum sentence where psychiatric reports indicated that defendant required incarceration for the successful treatment of

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his explosive, aggressive behavior, defendant had pled guilty to a charge of theft, he had once taken a stolen automobile across the state line, he had a history of problems in the Army which resulted in a dishonorable discharge, he was unable to hold a job for more than a brief period of time, and he once had been admitted to the state hospital after he had sexually abused a six year old female, and in the latest offense, defendant had choked a former employer until he saw the death stare. People v. Pack, 34 Ill. App. 3d 894, 341 N.E.2d 4 (5 Dist. 1976).

Where a 16 year old defendant was found guilty of two charges of murder, a sentence of two concurrent terms of 30 to 60 years in the penitentiary was determined in accordance with this section. People v. Simmons, 60 Ill. 2d 173, 326 N.E.2d 383 (1975).

Where the sentence was within the limits prescribed by the legislature, the trial judge held a hearing in aggravation and mitigation, and defendant would be eligible for parole possibly within 11 years, there was no abuse of discretion in the sentencing. People v. Soto, 35 Ill. App. 3d 166, 341 N.E.2d 107 (1 Dist. 1975).

Where defendant went to the home of the paraplegic victim, asked to use the telephone, attempted to choke the victim with nylon hose, then attempted to choke the victim with her hands, stabbed the victim with a paring knife, found a meat fork and used that instrument to stab the victim two more times, strangled the victim with an electrical cord and removed several objects from the house, there was no abuse of discretion in imposing a minimum sentence in excess of 14 years. People v. Barnes, 22 Ill. App. 3d 178, 317 N.E.2d 332 (5 Dist. 1974).

Where a defendant indicted for murder not only negotiated a plea of guilty to the lesser included offense of voluntary manslaughter and recommendation of sentence which the trial court in fact accepted, but also expressly waived a hearing in mitigation, the sentence imposed was within the statutory limits and was neither greatly at variance with the purpose and spirit of the law nor manifestly in excess of the proscriptions of this section. People v. Puckett, 7 Ill. App. 3d 304, 287 N.E.2d 150 (5 Dist. 1972).

Sentencing

With regard to a defendant's convictions for first degree murder and armed robbery in connection with the robbery and shooting death of a store owner, the trial court did not abuse its discretion in sentencing the defendant to a term of 50 years imprisonment for murder with a 25 year enhancement based on the jury's special factual finding that he used a weapon as the sentence fell within the sentencing range and it was apparent from the record that the trial court considered all relevant factors in aggravation and mitigation before handing down the sentences. People v. Battle, 393 Ill. App. 3d 302, 332 Ill. Dec. 299, 912 N.E.2d 786, 2009 Ill. App. LEXIS 705 (1 Dist. 2009).

Like the home-invasion enhancement, the 25-years-to-life enhancement to first degree murder has an additional, more specific purpose of deterring the use of firearms than the substantive offense of first degree murder. That additional purpose makes comparative proportionality review inappropriate, and the murder sentence enhancement under 730 ILCS 5/5-8-1(a)(1)(d)(iii) of the Unified Code of Corrections, for use of a firearm complies with the proportionality clause of Ill. Const. Art. 1, § 11. Defendant's sentence was, therefore, properly enhanced without violating his constitutional rights. People v. Dixon, 359 Ill. App. 3d 938, 296 Ill. Dec. 572, 835 N.E.2d 925, 2005 Ill. App. LEXIS 944 (4 Dist. 2005), appeal denied, 217 Ill. 2d 575, 300 Ill. Dec. 370, 844 N.E.2d 42 (2005).

Defendant's claim that his extended sentence on a conviction for aggravated battery of his 60-year-old wife, based on 720 ILCS 5/12-4(b)(10), violated the proportionate penalties clause of the Illinois Constitution because he would have received a shorter sentence for the more serious offense of aggravated battery of a senior citizen, was rejected. Defendant's 1981 conviction for aggravated kidnapping, a Class X felony, acted as an enhancing factor that could have been

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used to also impose an extended sentence had defendant been convicted of the more serious charge. People v. Arnhold, 359 Ill. App. 3d 857, 296 Ill. Dec. 562, 835 N.E.2d 915, 2005 Ill. App. LEXIS 930 (2 Dist. 2005).

- Balancing Test

Deciding whether a sentence is excessive requires balancing between the interest of protecting society and the possibility of rehabilitation of the offender. People v. Belcher, 92 Ill. App. 3d 237, 47 Ill. Dec. 807, 415 N.E.2d 1120 (1 Dist. 1980).

- Consecutive Terms

Sentencing defendants to consecutive terms for Class X and Class 1 felonies and for sexual assault when those offenses are committed in a single course of conduct is a reasonable legislative determination and thus this section does not violate either the due process or proportionate penalties clauses of the constitution. People v. Arna, 168 Ill. 2d 107, 212 Ill. Dec. 963, 658 N.E.2d 445 (1995).

- Discretion of Court

Where the trial judge considered defendant's exceptional work record, his lack of a prior criminal record, his remarks and the particular facts of the case, merely because defendant did not agree with the weight given to each of the factors did not give rise to the inference of an abuse of discretion. People v. Newbern, 276 Ill. App. 3d 623, 213 Ill. Dec. 376, 659 N.E.2d 6 (1 Dist. 1995), appeal denied, 166 Ill. 2d 549, 216 Ill. Dec. 8, 664 N.E.2d 645 (1996).

Although the trial court is allowed discretion on sentencing matters, it still has a fundamental obligation to exercise that discretion responsibly and in a manner that reflects the constitutional mandate that all penalties shall be determined according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. People v. Clark, 206 Ill. App. 3d 741, 151 Ill. Dec. 757, 565 N.E.2d 28 (1 Dist. 1990).

The imposition of a sentence is a matter of judicial discretion. People v. Belcher, 92 Ill. App. 3d 237, 47 Ill. Dec. 807, 415 N.E.2d 1120 (1 Dist. 1980).

It is generally held that sentencing is within the sound discretion of the trial court and a sentence that is within statutory limits will not be disturbed upon review unless it represents an abuse of discretion; this general rule is based on an assumption that the trial court is in a superior position to evaluate the numerous and sometimes conflicting factors which must be considered in the determination of an appropriate sentence. People v. Blumstengel, 61 Ill. App. 3d 1016, 18 Ill. Dec. 937, 378 N.E.2d 401 (5 Dist. 1978).

In sentencing defendant for an armed robbery, after considering defendant's previous criminal record and his refusal to admit any guilt, even in the face of overwhelming identification testimony, and also considering his fabrications to the probation officer, even after conviction, the trial court did not abuse its discretion in the sentence imposed. People v. Daniels, 39 Ill. App. 3d 562, 350 N.E.2d 577 (3 Dist. 1976).

- Eligibility for Parole

Among the factors that may be considered in determining whether a sentence is excessive is the defendant's eligibility for parole. People v. Peter, 43 Ill. App. 3d 1068, 3 Ill. Dec. 31, 358 N.E.2d 31 (1 Dist. 1976).

- Enhancement

As aggravated criminal sexual assault predicated upon the accused having been armed with a firearm (720 ILCS 5/12-14(a)(8)) and armed violence with a category I weapon predicated upon criminal sexual assault (720 ILCS 5/33A-1(c)(2), 33A-2(a)) had identical elements, enhancements

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to defendant's sentence based on the use of a firearm for defendant's aggravated criminal sexual assault conviction were improper, in violation of the Proportionate Penalties Clause, Ill. Const. art. I, § 11. People v. Pelo, 404 Ill. App. 3d 839, 347 Ill. Dec. 260, 942 N.E.2d 463, 2010 Ill. App. LEXIS 1064 (4 Dist. 2010).

Sentence enhancement did not violate the proportionality clause of the Illinois Constitution because it punished first degree murder committed while personally discharging a firearm, more severely than similar offenses that constituted greater threats to the health and safety of the public, aggravated battery with a firearm and aggravated discharge of a firearm. People v. Powell, 355 Ill. App. 3d 124, 290 Ill. Dec. 849, 822 N.E.2d 131, 2004 Ill. App. LEXIS 1566 (1 Dist. 2004), appeal denied, 217 Ill. 2d 585, 300 Ill. Dec. 373, 844 N.E.2d 45 (2005).

Firearm enhancement provision, 730 ILCS 5/5-8-1(d), did not violate Ill. Const., Art. I, § 11, the proportionate penalties clause, because there was no basis to compare two offenses with identical elements where there was only one offense of murder in Illinois; also, the firearm enhancement provision did not constitute a double enhancement because the firearm factor was not an inherent or essential element of murder, and it was only used to impose a longer sentence. People v. Bloomingburg, 346 Ill. App. 3d 308, 281 Ill. Dec. 673, 804 N.E.2d 638, 2004 Ill. App. LEXIS 80 (1 Dist. 2004), appeal denied, 217 Ill. 2d 571, 300 Ill. Dec. 368, 844 N.E.2d 40 (2005), cert. denied, U.S. , 126 S. Ct. 1657, 164 L. Ed. 2d 401 (2006).

- Proportionate Penalties

Eight-year sentence imposed on defendant for defendant's conviction of unlawful possession of a methamphetamine precursor with the intent to manufacture methamphetamine, in violation of 720 ILCS 646/20(a)(1), was not shown by defendant to be impermissibly disproportionate in violation of Ill. Const. (1970), Art. I, § 11, the proportionate penalties clause; defendant tried to compare it to the sentence that could be given for actual possession of an equivalent amount of methamphetamine in violation of 720 ILCS 646/60, but the state supreme court had abandoned such a cross-comparison analysis in favor of determining whether the sentence imposed was so wholly disproportionate to the offense committed that it shocked the moral sense of the community. People v. Brown, 375 Ill. App. 3d 1116, 314 Ill. Dec. 511, 874 N.E.2d 607, 2007 Ill. App. LEXIS 1055 (1 Dist. 2007).

Trial judge had no authority under the case law at the time to apply enhancement provisions to defendant's sentence for armed robbery because the case law held that pursuant to a cross-comparison analysis the enhancement provisions violated the Proportionate Penalties Clause of the Illinois Constitution. The decision which overturned the case law, and allowed for the enhancement, was issued while the case was pending on direct review; therefore, the proper remedy was to remand for resentencing as permitted at the time of the sentencing. People v. Lee, 376 Ill. App. 3d 951, 315 Ill. Dec. 359, 876 N.E.2d 671, 2007 Ill. App. LEXIS 963 (1 Dist. 2007).

Defendant's natural life sentence pursuant to 730 ILCS 5/5-8-1(a)(1)(c)(ii) did not violate the proportionate penalties clause of the Illinois Constitution, Ill. Const. (1970), Art. I, § 11. Prior to killing a woman and her daughter, defendant committed multiple burglaries, and defendant had violated defendant's probation. People v. Smolley, 375 Ill. App. 3d 167, 313 Ill. Dec. 713, 873 N.E.2d 8, 2007 Ill. App. LEXIS 816 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1716 (Ill. 2007).

Defendant's natural life sentence for armed robbery in violation of 720 ILCS 5/18-2(b) was constitutionally proportionate because defendant had no constitutional right to choose the offense with which defendant would be charged or defendant's penalty, and defendant's penalty was not based solely on the armed robbery offense, but also on defendant's criminal history of committing violent Class X offenses; in addition, where defendant's background supported application of the Habitual Criminal Act and there was nothing to indicate that either codefendant had a similar criminal background, defendant's sentence was not unconstitutionally disproportionate. People v.

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Cummings, 351 Ill. App. 3d 343, 286 Ill. Dec. 311, 813 N.E.2d 1004, 2004 Ill. App. LEXIS 956 (1 Dist. 2004), appeal denied, 212 Ill. 2d 539, 291 Ill. Dec. 710, 824 N.E.2d 286 (2004), cert. denied, 544 U.S. 1051, 125 S. Ct. 2298, 161 L. Ed. 2d 1093 (2005).

Trial court did not err in imposing a term of natural life imprisonment on defendant following his conviction for aggravated criminal sexual assault based on his striking the complaining witness in the head with a hammer and then tying her up and raping her; the sentencing statute required that defendant receive that sentence for his second conviction on that offense, the State proved that he committed an aggravated criminal sexual assault several years earlier, and the sentence did not violate the Illinois Constitution because it was not a disproportionate penalty to the offense involved. People v. Walls, 346 Ill. App. 3d 1154, 282 Ill. Dec. 415, 806 N.E.2d 712, 2004 Ill. App. LEXIS 270 (5 Dist. 2004), appeal denied, 211 Ill. 2d 611, Ill. Dec. , 823 N.E.2d 977 (2004).

With regard to the statute for aggravated vehicular hijacking, 720 ILCS 5/18-4, the 15- and 20-year add-ons mandated by 1999 Ill. Laws 404 (codified at 720 ILCS 5/33A-1) violate the proportionate penalties clause of Ill. Const. Art. I, § 11. People v. Moss, 206 Ill. 2d 503, 276 Ill. Dec. 855, 795 N.E.2d 208, 2003 Ill. LEXIS 1410 (2003).

The constitutional command that penalties be proportioned to the nature of the offense would justify interference with the legislative judgment only if the punishment was cruel, degrading, or so wholly disproportionate to the offense committed as to shock the moral sense of the community. People v. Agriesti, 191 Ill. App. 3d 419, 138 Ill. Dec. 812, 548 N.E.2d 42 (2 Dist. 1989).

- Purposes

Where the trial judge's objective in sentencing defendant was to cure defendant of his alcoholism rather than to rehabilitate a criminal offender, and where there was no indication in the records that the trial judge considered defendant's limited participation in the subject burglaries or the complete absence of any significant prior criminal offenses, the sentence was excessive and an abuse of judicial discretion. People v. Blumstengel, 61 Ill. App. 3d 1016, 18 Ill. Dec. 937, 378 N.E.2d 401 (5 Dist. 1978).

The purpose of sentencing is to provide adequate punishment for the offense, safeguard society from further offenses, and to restore the offender to useful citizenship. People v. Pardue, 46 Ill. App. 3d 845, 5 Ill. Dec. 244, 361 N.E.2d 383 (3 Dist. 1977).

A sentence should be fair and could also consider the need of society to be protected from persons convicted of and capable of committing criminal offenses; necessarily, it is required that the sentence also be fair to the defendant for whom rehabilitation and return to useful citizenship it sought, and thus, a sentence cannot be arbitrary, unreasonable, or oppressive. People v. Reynolds, 23 Ill. App. 3d 317, 319 N.E.2d 114 (3 Dist. 1974).

The purposes sought to be achieved by the imposition of sentence are adequate punishment for the offense committed, the safeguarding of society from further offenses, and the rehabilitation of the offender into a useful member of society; adequacy of the punishment should determine the minimum sentence, with the maximum dependent upon the court's divination as to the length of time required to achieve rehabilitation. People v. Higgins, 133 Ill. App. 2d 496, 268 N.E.2d 265 (5 Dist. 1971).

The purposes sought to be achieved by the imposition of sentence are adequate punishment for the offense committed, the safeguarding of society from further offenses, and the rehabilitation of the offender into a useful member of society. People v. Lillie, 79 Ill. App. 2d 174, 223 N.E.2d 716 (5 Dist. 1967).

- Reduction

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A reviewing court will reduce a sentence only where it constitutes a substantial departure from the fundamental spirit and purpose of the law and is an abuse of discretion. People v. Branham, 137 Ill. App. 3d 896, 92 Ill. Dec. 371, 484 N.E.2d 1226 (2 Dist. 1985).

The basis for granting a reduction is not judicial clemency, but rather evidence in the record of an abuse of discretion on the part of the trial court. People v. Kish, 58 Ill. App. 3d 215, 15 Ill. Dec. 717, 374 N.E.2d 10 (3 Dist. 1978).

When the appellate court is asked to exercise its power to reduce sentences, that power will be exercised cautiously because the trial court is in a better position to determine the punishment to be imposed. People v. Kish, 58 Ill. App. 3d 215, 15 Ill. Dec. 717, 374 N.E.2d 10 (3 Dist. 1978).

The authority to reduce sentences is limited to those cases where the punishment is at variance with the fundamental purposes of the laws or is disproportionate to the offense. People v. Peter, 43 Ill. App. 3d 1068, 3 Ill. Dec. 31, 358 N.E.2d 31 (1 Dist. 1976).

The power to reduce sentences imposed by trial courts, where circumstances warrant, should be applied with considerable caution and circumspection, for the trial judge ordinarily has superior opportunity, in the course of the trial and the hearing in aggravation and mitigation, to make a sound determination concerning the punishment to be imposed, as compared to the appellate tribunals. People v. Daniels, 39 Ill. App. 3d 562, 350 N.E.2d 577 (3 Dist. 1976).

While a court of review may act to modify and reduce a sentence, this power should not be employed unless it clearly appears that the sentence constitutes a great departure from the fundamental spirit of the law. People v. Howard, 42 Ill. App. 3d 81, 355 N.E.2d 543 (1 Dist. 1976).

Where a defendant convicted of armed robbery was sentenced to 14 to 28 years in prison, the minimum sentence was reduced from 14 to 10 years; the maximum sentence was not reduced, however, in light of the fact that defendant was only one of three perpetrators who beat the robbery victim. People v. Dandridge, 9 Ill. App. 3d 174, 292 N.E.2d 51 (4 Dist. 1973).

While generally a sentence on review will not be disturbed unless it is greatly at variance with the purpose and spirit of the law or manifestly in excess of the proscription of the Illinois Constitution which requires that all penalties should be proportioned to the nature of the offense, there are cases which call for the appellate court to reduce the sentence which has been imposed even when such sentences are within the statutory limits. People v. Wallace, 117 Ill. App. 2d 426, 254 N.E.2d 643 (1 Dist. 1969); People v. Juve, 106 Ill. App. 2d 421, 245 N.E.2d 293 (2 Dist. 1969); People v. Williams, 131 Ill. App. 2d 149, 264 N.E.2d 901 (1 Dist. 1970); People v. Robinson, 18 Ill. App. 3d 360, 309 N.E.2d 757 (1 Dist. 1974); People v. Gibbs, 49 Ill. App. 3d 644, 7 Ill. Dec. 330, 364 N.E.2d 491 (1 Dist. 1977); People v. Haepp, 194 Ill. App. 3d 207, 141 Ill. Dec. 148, 550 N.E.2d 1194 (1 Dist. 1990).

The primary purpose of the power to reduce sentences is to prevent arbitrary or oppressive treatment of offenders and to provide penalties which are both proportionate to circumstances of the case and which recognize differences in rehabilitation potential of offenders. People v. Ramey, 115 Ill. App. 2d 431, 253 N.E.2d 688 (1 Dist. 1969).

Where it is contended that the punishment imposed in a particular case is excessive, though within the limits prescribed by the legislature, an appellate court should not disturb the sentence unless it clearly appears that the penalty constitutes a great departure from the fundamental law and its spirit and purpose, or that the penalty is manifestly in excess of the proscription of this section which requires that all penalties shall be proportioned to the nature of the offense. People v. Taylor, 33 Ill. 2d 417, 211 N.E.2d 673 (1965); People v. Hampton, 44 Ill. 2d 41, 253 N.E.2d 385 (1969); People v. Robinson, 116 Ill. App. 2d 323, 253 N.E.2d 570 (3 Dist. 1969); People v. Hanserd, 125 Ill. App. 2d 465, 261 N.E.2d 317 (2 Dist. 1970); People v. Shelby, 1 Ill. App. 3d 269, 274 N.E.2d 197 (5 Dist. 1971); People v. Soto, 35 Ill. App. 3d 166, 341 N.E.2d 107 (1

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Dist. 1975); People v. Hamilton, 60 Ill. App. 3d 937, 18 Ill. Dec. 309, 377 N.E.2d 598 (3 Dist. 1978).

- Requirements

The constitutional mandate calls for balancing of the retributive and rehabilitative aspects of punishment; therefore, the record must show that the court gave due consideration to both elements. People v. D'Arezzo, 229 Ill. App. 3d 428, 171 Ill. Dec. 256, 593 N.E.2d 1076 (2 Dist.), appeal denied, 146 Ill. 2d 636, 176 Ill. Dec. 808, 602 N.E.2d 462 (1992).

A trial judge improperly ignored the clear requirements of this section, of 730 ILCS 5/5-6-1 and of section 100 of the Controlled Substance Act (720 ILCS 570/100) in imposing an excessive sentence on, denying probation for, and refusing to grant bail to the defendants during the pendency of their appeals. People v. Honn, 47 Ill. App. 3d 378, 5 Ill. Dec. 777, 362 N.E.2d 90 (4 Dist. 1977).

- Standards

No standards have yet been devised which can precisely indicate when the rehabilitative objective has been met; the propriety of a sentence is inextricably tied to the particular factual situation of each individual case. People v. Brown, 55 Ill. App. 3d 569, 13 Ill. Dec. 445, 371 N.E.2d 140 (1 Dist. 1977).

- Vacated

Where defendant was not shown to have planned or in any manner participated in killings which occurred during the course of a felony, his death sentences were vacated. People v. Tiller, 94 Ill. 2d 303, 68 Ill. Dec. 916, 447 N.E.2d 174 (1982), cert. denied, 461 U.S. 944, 103 S. Ct. 2121, 77 L. Ed. 2d 1302 (1983).

Seriousness of Offense

- In General

All penalties should be determined according to the seriousness of the offense; this section would be violated if the penalty prescribed for an offense was not as great or greater than the penalty prescribed for a less serious offense. People v. Christy, 188 Ill. App. 3d 330, 135 Ill. Dec. 731, 544 N.E.2d 88 (3 Dist. 1989).

This section clearly provides that all penalties shall be determined according to the seriousness of the offense. People v. Moore, 15 Ill. App. 3d 691, 304 N.E.2d 696 (1 Dist. 1973).

- Factors Considered

Actual infliction of bodily harm is a proper fact to be taken into consideration in determining the seriousness of an offense; the frequency of a crime and the high risk of bodily harm associated with a crime may also be considered in determining the seriousness of a crime for purposes of limitation of penalties provision. People v. Bales, 108 Ill. 2d 182, 91 Ill. Dec. 171, 483 N.E.2d 517 (1985).

- Facts Required

In order to weigh the seriousness of the original offense, it was necessary to know the facts surrounding its commission, and where the court was unaware of these facts because a different judge than the one who admitted defendant to probation conducted the probation violation hearing, the court failed to comply with the Unified Code of Corrections and the sentence was vacated. People v. Ellis, 48 Ill. App. 3d 221, 6 Ill. Dec. 504, 363 N.E.2d 33 (1 Dist. 1977).

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- Sentence Upheld

Where the record clearly demonstrated that the trial court considered all of the relevant factors, including defendant's lack of prior convictions and determined that the nature and seriousness of the offenses warranted a 50 year term for first-degree murder and ten year terms for each conviction of attempted first-degree murder, the trial court did not abuse its discretion. People v. Porter, 277 Ill. App. 3d 194, 213 Ill. Dec. 861, 660 N.E.2d 118 (1 Dist. 1995), appeal denied, 166 Ill. 2d 550, 216 Ill. Dec. 9, 664 N.E.2d 646 (1996).

A sentence of 30 years was proper, based on a threat of death or bodily harm; a well-planned and executed robbery at gunpoint; defendant's prior conviction for rape; commission of offense within four months of defendant's parole for the rape conviction, and credible evidence that during that four month period, defendant also committed a similar armed robbery on another victim. People v. Robinson, 163 Ill. App. 3d 384, 114 Ill. Dec. 520, 516 N.E.2d 675 (1 Dist. 1987).

Trial court did not abuse its discretion in sentencing defendant to terms of 75 years for murders and 60 years for a rape in light of the brutal nature and seriousness of the offenses. People v. Rainge, 112 Ill. App. 3d 396, 68 Ill. Dec. 87, 445 N.E.2d 535 (1 Dist. 1983).

Where defendant was sentenced to 14 years for murder, which was the minimum sentence allowed, the sentence was in accordance with the seriousness of the offense as provided by this section. People v. Koeppen, 21 Ill. App. 3d 478, 315 N.E.2d 679 (2 Dist. 1974).

Sex Offender Registration

Amendments to the sex offender notification law, under 730 ILCS 152/115(b) and 730 ILCS 152/120(c), providing for a website to post names and pictures of sex offenders, did not violate the proportionate penalties clause, Ill. Const. Art. I, § 11; the dissemination of defendant's sex offender status was not a punishment or penalty. People v. Grochocki, 343 Ill. App. 3d 664, 277 Ill. Dec. 438, 796 N.E.2d 153, 2003 Ill. App. LEXIS 1237 (3 Dist. 2003).

Dissemination of information about defendant's sex offender status under 730 ILCS 152/115(b), 730 ILCS 152/120(c) and the Sex Offender Registration Act, 730 ILCS 150/1 et seq., did not violate the proportionate penalties clause because dissemination of information about defendant's sex offender status was not a "punishment" or a "penalty." People v. Baker, 341 Ill. App. 3d 1083, 276 Ill. Dec. 458, 794 N.E.2d 353, 2003 Ill. App. LEXIS 1077 (4 Dist. 2003).

Penalties that included a mandatory fine and a sentence of one to three years' imprisonment for failure to report a change of address as required by the Illinois Sex Offender Registration Act, at 730 ILCS 150/6, were not disproportionate to the seriousness of the offense in light of the statutory purpose; the trial court did abuse its discretion, however, in giving the maximum sentence to an offender who showed relatively slight likelihood of re-offending, and in imposing an enhanced sentence because of long-ago prior offenses. People v. Marsh, 329 Ill. App. 3d 639, 263 Ill. Dec. 348, 768 N.E.2d 108, 2002 Ill. App. LEXIS 228 (1 Dist. 2002).

The Sex Offender Registration Act, 730 ILCS 150/1 et seq., does not constitute cruel and unusual punishment as its purpose is to protect the public and not to punish sex offenders. People v. Malchow, 306 Ill. 2d 665, 239 Ill. Dec. 664, 714 N.E.2d 583 (2 Dist. 1999).

Sex Offenses

The Sex Offender Registration Act, 730 ILCS 150/1 et seq., and the Child Sex Offender and Murderer Community Notification Law, 730 ILCS 152/101 et seq., do not violate the prohibitions against cruel, unusual, or disproportionate punishment contained in the United States or Illinois Constitution. People v. Guillen, 307 Ill. App. 3d 35, 240 Ill. Dec. 470, 717 N.E.2d 563 (2 Dist. 1999).

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A felony conviction for violation of 720 ILCS 5/11-9.3, prohibiting the presence of child sex offenders within a school zone, is not disproportionate to the level of culpability required to commit the offense itself and, thus, does not violate the proportionate penalties clause. People v. Stork, 305 Ill. App. 3d 714, 238 Ill. Dec. 941, 713 N.E.2d 187 (2 Dist. 1999), appeal denied, 185 Ill. 2d 659, 242 Ill. Dec. 148, 720 N.E.2d 1103 (1999).

Defendant's sentence of 20 to 60 years was excessive under the former rape statute (now sexual assault) where the defendant was 17 years old at the time of the offense and he had no record of a prior conviction, and the sentence was reduced to a minimum of ten years and maximum of 30 years. People v. Patton, 25 Ill. App. 3d 840, 322 N.E.2d 592 (5 Dist. 1975).

Defendant's sentence to imprisonment for one to 20 years for his conviction of the former crime of indecent liberties with a child was not excessive, oppressive, or so out of proportion to the crime committed as to be a violation of the state and federal Constitutions. People v. Norwitt, 394 Ill. 553, 69 N.E.2d 285 (1946).

Stalking

The sentencing scheme for stalking does not impose penalties which are unconstitutionally disproportionate to the offense. The stalking laws reflect the legislature's decisions that stalking is fundamentally different from other offenses like assault and disorderly conduct and therefore the penalties for stalking must be correspondingly more severe. People v. Bailey, 167 Ill. 2d 210, 212 Ill. Dec. 608, 657 N.E.2d 953 (1995), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

Standard on Review

The question on review under the proportionate penalties clause is whether the penalty is so cruel, degrading or disproportionate to the offense committed as to shock the moral sense of the community. People v. Miller, 171 Ill. 2d 330, 216 Ill. Dec. 93, 664 N.E.2d 1021 (1996), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

Termination of Parental Rights

Father's contention that the termination of his parental rights based solely on the fact of his conviction violated the federal constitutional prohibition against cruel and unusual punishment U.S. Const., Amends. VIII, XIV and this section was rejected for he failed to raise these constitutional arguments before the trial court, as such he waived them for purposes of appeal; moreover, the termination of his parental rights was not based solely on his conviction but on a finding of unfitness grounded in depravity based on his murder of the mother of his children in an exceptionally brutal and heinous manner indicating wanton cruelty. In re T.H., 255 Ill. App. 3d 247, 193 Ill. Dec. 370, 626 N.E.2d 403 (5 Dist. 1993), appeal denied, 155 Ill. 2d 577, 198 Ill. Dec. 554, 633 N.E.2d 16, cert. denied, 513 U.S. 905, 115 S. Ct. 269, 130 L. Ed. 2d 187 (1994).

Theft by Deception Statute

Sentencing scheme of 720 ILCS 5/16-1 led to a disproportionate sentencing result; extended term sentence for theft by deception was found to be void and was reduced to the non-extended term. People v. Tooley, 328 Ill. App. 3d 418, 262 Ill. Dec. 685, 766 N.E.2d 305, 2002 Ill. App. LEXIS 171 (3 Dist. 2002), appeal denied, 201 Ill. 2d 608, 271 Ill. Dec. 940, 786 N.E.2d 198 (2002).

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Traffic Offenses

A sentence of home confinement and public speech making, resulting from a petty traffic offense seriously injuring three people, was not deemed too severe where the seriousness of the offense was balanced with the objective of restoring the offender to useful citizenship. People v. Stocke, 212 Ill. App. 3d 547, 156 Ill. Dec. 605, 571 N.E.2d 192 (5 Dist.), cert. denied, 141 Ill. 2d 557, 162 Ill. Dec. 505, 580 N.E.2d 131 (1991).

Transportation Provision

- In General

The language of the transportation clause is not unqualified, for it prohibits prisoner transportation only when such transportation is for the commission of an offense. Sayles v. Thompson, 99 Ill. 2d 122, 75 Ill. Dec. 446, 457 N.E.2d 440 (1983).

- Applicability

The transportation clause of this section does not protect those convicted of crimes within Illinois from the regime of statutes, regulations and rules governing inmates in federal prisons. United States ex rel. Hoover v. Elsea, 558 F. Supp. 974 (N.D. Ill. 1983).

- Transfers of Inmates

A state may transfer a prisoner from one institution to another institution in another state; a prisoner has no constitutional right or justifiable expectation to remain in an Illinois prison. Wilson v. Cooper, 922 F. Supp. 1286 (N.D. Ill. 1996).

Transfers of inmates pursuant to the Interstate Corrections Compact (730 ILCS 5/3-4-4) do not violate the transportation clause of the Illinois Constitution. Sayles v. Thompson, 99 Ill. 2d 122, 75 Ill. Dec. 446, 457 N.E.2d 440 (1983).

Prisoners' state constitutional claim, that their transfers from Illinois state prisons to federal prisons in and out of Illinois violated due process and Ill. Const. (1970), Art. I, § 11, could not be raised as a pendent claim in a habeas corpus action brought in federal court under the habeas grant of jurisdiction. United States ex rel. Hoover v. Franzen, 669 F.2d 433, 1982 U.S. App. LEXIS 22668 (7th Cir. 1982).

- Violations

The transportation clause is violated only if and when the transportation of prisoners constitutes cruel and unusual punishment. Sayles v. Thompson, 99 Ill. 2d 122, 75 Ill. Dec. 446, 457 N.E.2d 440 (1983).

Trespass

Where the defendant was convicted of criminal trespass to property resulting from her participation in an anti-nuclear demonstration, and at her sentencing hearing, defendant stated that she was proud of what she had done and only regretted that the plant had not been shut down permanently, and indicated that she would continue to work to shut down the plant, the trial judge did not abuse his discretion in sentencing the defendant to seven days in jail. People v. Allen, 119 Ill. App. 3d 845, 75 Ill. Dec. 287, 457 N.E.2d 77 (3 Dist. 1983).

Unified Code of Corrections

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The Unified Code of Corrections was enacted to provide for criminal sanctions proportionate to the seriousness of the offense, to recognize that the possibilities of rehabilitation are different among offenders, to provide fair treatment to prison inmates consistent with security for other inmates, prison staffs, and the public, and to recognize that offenders must be restored to useful citizenship. People v. Craig, 47 Ill. App. 3d 242, 5 Ill. Dec. 413, 361 N.E.2d 736 (1 Dist. 1977).

Unlawful Entry into Dwelling

Because greater weight was given by the legislature to the serious nature of an unlawful entry into a dwelling used as a home or residence in determining a proper penalty, the penalty called for in 720 ILCS 5/19-3 is not violative of this section. People v. Sturlic, 130 Ill. App. 3d 120, 85 Ill. Dec. 587, 474 N.E.2d 1 (2 Dist. 1985).

Unlawful Possession of a Weapon

As unlawful possession of a weapon (UUW) and aggravated UUW had distinct purposes, defendant's three-year sentence for UUW did not violate the proportionate penalties clause of the Illinois Constitution. People v. Kelly, 347 Ill. App. 3d 163, 282 Ill. Dec. 888, 807 N.E.2d 512, 2004 Ill. App. LEXIS 201 (1 Dist. 2004), appeal denied, 211 Ill. 2d 598, Ill. Dec. , 823 N.E.2d 973 (2004).

Unlawful Restraint

- Armed Violence

The offense of armed violence predicated on unlawful restraint is unconstitutionally disproportionate to aggravated kidnapping under this section, therefore armed violence cannot be predicated on unlawful restraint. People v. Murphy, 261 Ill. App. 3d 1019, 200 Ill Dec. 9, 635 N.E.2d 110 (2 Dist. 1994).

Because of the amendment of the Criminal Code of 1961 to add the offense of aggravated unlawful restraint (720 ILCS 5/10-3.1), effective January 1, 1986, which made the underlying offenses of kidnapping and unlawful restraint proportional, the armed violence statute as applied to unlawful restraint is not unconstitutional. People v. Bloyer, 200 Ill. App. 3d 872, 146 Ill. Dec. 857, 558 N.E.2d 1056 (2 Dist. 1990).

Vehicle Code

In view of the legislature's intent to protect the security of motor vehicles, which have been deemed adjuncts of the home in modern society and to preserve the integrity of this particular enclosure and halt an increase in the number of "smash and grab" crimes, the legislature reasonably could have determined that vehicular invasion is a more serious offense than robbery and affixed a more stringent penalty. People v. Anderson, 272 Ill. App. 3d 537, 208 Ill. Dec. 954, 650 N.E.2d 648 (1 Dist. 1995), appeal denied, 163 Ill. 2d 564, 212 Ill. Dec. 425, 657 N.E.2d 626 (1995).

Section 4-103(b) of the Vehicle Code (625 ILCS 5/4-103(b)) is constitutional under the due process and proportionate penalty provisions of the Illinois Constitution. People v. Bounds, 194 Ill. App. 3d 571, 141 Ill. Dec. 264, 551 N.E.2d 257 (1 Dist. 1990).

Section 4-103(b) of the Vehicle Code (625 ILCS 5/4-103(b)) does not violate Ill. Const. (1970), Art. I, § 2, and this section. People v. Procell, 185 Ill. App. 3d 476, 133 Ill. Dec. 580, 541 N.E.2d 791 (5 Dist. 1989).

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To the extent that section 4-103(b) of the Vehicle Code (625 ILCS 5/4-103(b)), punished, as possession of a stolen motor vehicle, trafficking in stolen vehicle parts equally to mere possession, it was not unconstitutional. People v. Bryant, 165 Ill. App. 3d 996, 117 Ill. Dec. 539, 520 N.E.2d 890 (1 Dist. 1988), rev'd on other grounds, 128 Ill. 2d 448, 132 Ill. Dec. 415, 539 N.E.2d 1221 (1989).

Section 4-103(a) of the Vehicle Code (625 ILCS 5/4-103(a)) does not violate the constitutional guarantees of due process of law and proportionate penalties because its penalties are greater than the general theft statute (720 ILCS 5/16-1). People v. Carlyle, 159 Ill. App. 3d 964, 111 Ill. Dec. 815, 513 N.E.2d 61 (1 Dist.), appeal denied, 113 Ill. Dec. 306, 515 N.E.2d 115 (Ill. 1987).

Victim Impact Statement

Consideration of the victim impact statement which illustrates and elaborates upon the seriousness of the defendant's crime, including its effect upon the complainant, is not barred under the Illinois Constitution. People v. Abrams, 205 Ill. App. 3d 295, 150 Ill. Dec. 83, 562 N.E.2d 613 (1 Dist. 1990).

Weight of Sentencing Factors

A sentencing tribunal need not accord greater weight to the goal of restoring the defendant to useful citizenship than it places on the seriousness of the offense; rather, the responsibility for striking the appropriate balance between these two concerns reposes in the trial court. People v. Johnson, 206 Ill. App. 3d 542, 151 Ill. Dec. 458, 564 N.E.2d 913 (2 Dist. 1990), cert. denied, 137 Ill. 2d 668, 156 Ill. Dec. 565, 571 N.E.2d 152 (1991).

Illinois incorporates the rehabilitative potential of the accused as a factor in prescribing penalties; however, this factor is not entitled to any greater weight than the remaining factors. People v. Moore, 189 Ill. App. 3d 957, 137 Ill. Dec. 478, 546 N.E.2d 232 (4 Dist. 1989), appeal denied, 129 Ill. 2d 569, 140 Ill. Dec. 677, 550 N.E.2d 562 (1990).

A trial court did not abuse its discretion to the extent that the sentence imposed reflected a greater emphasis on the seriousness of defendant's offense than on the goal of rehabilitation. People v. McDonald, 189 Ill. App. 3d 374, 137 Ill. Dec. 166, 545 N.E.2d 819 (1 Dist. 1989).

Although both this section and 730 ILCS 5/1-1-2(d) mandate that the sentencing judge consider the defendant's potential for rehabilitation in determining an appropriate sentence, the court is not obligated to assign more weight to this factor than to the seriousness of the offense and is not required to recite and ascribe a value to each fact that is presented in evidence at the sentencing hearing. People v. Balsar, 178 Ill. App. 3d 876, 128 Ill. Dec. 52, 533 N.E.2d 1140 (2 Dist. 1989); People v. Fisher, 186 Ill. App. 3d 255, 134 Ill. Dec. 620, 542 N.E.2d 1127 (4 Dist. 1989).

Although the Illinois Constitution requires a court to consider a defendant's rehabilitative potential, it does not require the judge to give greater weight to rehabilitation than to the seriousness of the offense. People v. Reid, 160 Ill. App. 3d 491, 112 Ill. Dec. 103, 513 N.E.2d 517 (4 Dist. 1987).

While the trial court is required to consider the defendant's rehabilitative potential in imposing sentence, such consideration need not outweigh the seriousness of the offense or other aggravating factors. People v. Halstead, 164 Ill. App. 3d 1, 115 Ill. Dec. 256, 517 N.E.2d 667 (2 Dist. 1987); People v. Metts, 30 Ill. App. 3d 868, 334 N.E.2d 277 (2 Dist. 1975); People v. Jenkins, 209 Ill. App. 3d 249, 154 Ill. Dec. 122, 568 N.E.2d 122 (1 Dist. 1991), cert. denied, 145 Ill. 2d 639, 173 Ill. Dec. 9, 596 N.E.2d 633 (1992).

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In a sentence determination, restoring the offender to useful citizenship is to be accorded no greater consideration than that which establishes the seriousness of the offense, and the prime responsibility for striking the proper balance between these two factors rests with the trial court. People v. Greene, 160 Ill. App. 3d 1089, 112 Ill. Dec. 483, 513 N.E.2d 1092 (1 Dist. 1987).

Although rehabilitation is a factor which must be considered in determining a proper sentence, it is not the only factor and does not outweigh other considerations which are persuasive of a severe sentence, such as the nature of the crime and degree of harm to the victim. People v. Branham, 137 Ill. App. 3d 896, 92 Ill. Dec. 371, 484 N.E.2d 1226 (2 Dist. 1985); People v. Holcomb, 192 Ill. App. 3d 158, 139 Ill. Dec. 228, 548 N.E.2d 613 (1 Dist. 1989).

Although the Illinois Constitution requires that sentences be determined according to both the seriousness of the offense and with the objective of restoring the offender to useful citizenship, it does not require the court to give greater weight to the possibility of rehabilitation than to the seriousness of the crime. People v. Jones, 119 Ill. App. 3d 615, 75 Ill. Dec. 105, 456 N.E.2d 926 (1 Dist. 1983).

The objective of restoration to useful citizenship does not outweigh other factors which the sentencing judge takes into consideration. People v. Henderson, 83 Ill. App. 3d 854, 39 Ill. Dec. 8, 404 N.E.2d 392 (1 Dist. 1980).

Restoration of the offender to useful citizenship is not to be given greater consideration than the seriousness of the offense in determining the penalty. People v. Newbury, 22 Ill. App. 3d 1, 316 N.E.2d 559 (2 Dist. 1974); People v. Williams, 142 Ill. App. 3d 266, 96 Ill. Dec. 662, 491 N.E.2d 941 (5 Dist. 1986), overruled on other grounds, 132 Ill. 2d 86, 138 Ill. Dec. 262, 547 N.E.2d 429 (1989).

Work Release Program

Neither the provisions in the Unified Code of Corrections (Unified Code) nor the Illinois Constitution, each of which propounded general policies of rehabilitation and restoration to useful citizenship, created an entitlement of a prisoner to participate in the work-release program, but, instead, whether a prisoner was allowed to participate in a work-release program was a matter of discretion solely for the Illinois Department of Corrections (IDOC); the denial of an inmate's request for an injunction compelling the IDOC to transfer him to a minimum-security facility and allow him to participate in a work and day release program was proper because the courts were not to intervene in matters within the discretion of the IDOC, including the location of where inmates were assigned and housed. Briggs v. Walker, 375 Ill. App. 3d 849, 314 Ill. Dec. 654, 875 N.E.2d 164, 2007 Ill. App. LEXIS 983 (1 Dist. 2007).

LEGAL PERIODICALS

For article, "1997 Illinois Supreme Court Criminal Survey: Fitness Hearings, Proportionate Punishment, and More," see 86 Ill. B.J. 202 (1998).

For note, "Hudson v. McMillian: The Eighth Amendment Gets a Push and a Shove," see 24 Loy. U. Chi. L.J. 343 (1993).

For article, "'Last Chance' State Judicial Review in Criminal Cases - Illinois' Collateral Attack Remedies: A Call for a Principled Jurisprudence," see 38 De Paul L. Rev. 201 (1989).

For article, "Criminal Law and Procedure: Adherence and Variances from Established Principles," see 59 Chi.-Kent L. Rev. 519 (1983).

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Excessive fines clause of Eighth Amendment - Supreme Court cases. 172 ALR Fed. 389.

Validity, construction, and application of state wildlife possession laws. 50 ALR5th 703.

Propriety of carrying out death sentences against mentally ill individuals. 111 ALR5th 491.

Application of constitutional rule of Atkins v. Virginia, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002), that execution of mentally retarded persons constitutes "cruel and unusual punishment" in violation of Eighth Amendment. 122 ALR5th 145.

When does forfeiture of real property violate excessive fines clause of Eighth Amendment or state constitutions - State cases. 124 ALR5th 509.

Section 12. Right to Remedy and Justice.

Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Fam L § 10:28.

See Illinois Jur, Pers Inj & Torts § 3:31, § 17:4, § 34:88, § 34:89.

CASE NOTES

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In General

Ill. Const., Art. I, § 12 is an expression of philosophy and not a mandate to courts to provide a remedy in any specific form. DMS Pharm. Group v. County of Cook, 345 Ill. App. 3d 430, 280 Ill. Dec. 921, 803 N.E.2d 151, 2003 Ill. App. LEXIS 1565 (1 Dist. 2003).

Right to Remedy and Justice Clause of the Illinois Constitution did not create a cause of action which a not-for-profit corporation could use as a basis for its lawsuit against an entertainment company, and the court dismissed the not-for-profit corporation's action seeking a declaratory judgment that various episodes of a television program the entertainment company aired breached the Individual Dignity Clause of the Illinois Constitution, Ill. Const. Art. I, § 20, because they portrayed Italian-Americans in a negative light. AIDA v. Time Warner Entm't Co., L.P., 332 Ill. App. 3d 154, 265 Ill. Dec. 582, 772 N.E.2d 953, 2002 Ill. App. LEXIS 536 (1 Dist. 2002).

Former Ill. Const. (1870), Art. II, § 19 (see now this section) enunciated a basic policy of jurisprudence serving to preserve the rights recognized by the common law and to permit the fashioning of new remedies to meet changing conditions. Steffa v. Stanley, 39 Ill. App. 3d 915, 350 N.E.2d 886 (2 Dist. 1976).

The right to remedy and justice under the Illinois Constitution is a statement of philosophy rather than a rule which can be used to solve cases. Friendship Medical Ctr., Ltd. v. Chicago Bd. of Health, 367 F. Supp. 594 (N.D. Ill. 1973), modified on other grounds, 505 F.2d 1141 (7th Cir. 1974), cert. denied, 420 U.S. 997, 95 S. Ct. 1438, 43 L. Ed. 2d 680 (1975).

This section enunciates a basic policy of jurisprudence that serves both to preserve the rights recognized by the common law and to permit the fashioning of new remedies to meet changing conditions; however, this policy expression does not authorize the Supreme Court to create a cause of action unknown to the common law in the face of an express statutory prohibition. Heckendorn v. First Nat'l Bank, 19 Ill. 2d 190, 166 N.E.2d 571 (1960).

Action Against Public Employee

To have denied a plaintiff the right to pursue allegations of wilful and wanton misconduct, absent a prayer for punitive damages, would have effectively denied her a remedy provided for by this section and by the Survival Act (755 ILCS 5/27-6), Wrongful Death Act (740 ILCS 180/0.01 et seq.) as well as the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 et seq.); thus, the trial court erred by denying plaintiff's motion to amend her complaint by deleting her request for punitive damages and by dismissing her complaint. Kupianen ex rel. Kupianen v. Graham, 107 Ill. App. 3d 373, 63 Ill. Dec. 125, 437 N.E.2d 774 (1 Dist. 1982).

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Alienation of Affections

Former Ill. Rev. Stat., ch. 68, para. 34 (see now 740 ILCS 5/1) did not deprive plaintiff of vested rights or of a remedy by which to recover for a wrong. Siegall v. Solomon, 19 Ill. 2d 145, 166 N.E.2d 5 (1960).

Appellate Court

- Guidance

The statement of the appellate court regarding the circuit court's power to grant bail on parole violation warrants was not an "advisory opinion" since it addressed the live, adverse, and actual interests of parties before the court, and the court could not expunge, that portion of the appellate court's opinion without consideration of its merits; given a plaintiff with a live interest in a remedy, it was not improper for the appellate court to seek to guide him toward what it considered to be the proper form of relief. People ex rel. Tucker v. Kotsos, 68 Ill. 2d 88, 11 Ill. Dec. 295, 368 N.E.2d 903 (1977).

- Jurisdiction

Under former Ill. Const. (1870), Art. II, § 19 (see now this section), the appellate court did not have jurisdiction over the constitutional question of whether retroactive application of a statute creating immunity from negligence liability of park district employees deprived plaintiff of a vested right of action. Miller v. City of Chicago, 25 Ill. App. 2d 56, 165 N.E.2d 724 (1 Dist. 1960).

Applicability

Although Ill. Const. art. I, § 12 purportedly gave defendant, convicted of first degree murder, aggravated battery, and unlawful use of a weapon by a felon, the right to remedies and justice, that constitutional provision was aspirational and did not entitle defendant to a specific remedy. As a result, defendant was not entitled to relief after the trial court declined to rule on the admission of prior conviction evidence to impeach defendant until defendant testified, as defendant never testified in the case. People v. Scott, 401 Ill. App. 3d 585, 340 Ill. Dec. 820, 929 N.E.2d 124, 2010 Ill. App. LEXIS 421 (1 Dist. 2010).

Although Ill. Const. Art. I, § 12 stated that parties were entitled to remedies, it did not state that they were entitled to specific remedies, and courts had interpreted that constitutional provision to be aspirational. As a result, the defendant could not show that the defendant was entitled to a specific remedy when the trial court declined to rule on the defendant's motion in limine to bar prior convictions from being admitted until the defendant had testified, as the defendant declined to testify. People v. Averett, 237 Ill. 2d 1, 340 Ill. Dec. 180, 927 N.E.2d 1191, 2010 Ill. LEXIS 658 (2010).

This section did not apply where defendant requested "compensation" for the time that he served in prison before the statute under which he was convicted was declared unconstitutional; if defendant had been given this credit, the court would have been encouraging the commission of a crime, and defendants who had wrongly served a prison sentence would then have license to commit a "free" crime or a crime with a diminished sentence. People v. Fischer, 100 Ill. App. 3d 195, 55 Ill. Dec. 640, 426 N.E.2d 965 (1 Dist. 1981).

Since former Ill. Const. (1870), Art. II, § 19 (see now this section) provided that every person should find a ready remedy in the law for injuries and wrongs received, the court had the power to compel the expunging of plaintiff's illegal six day suspension from his job and the payment of lost salary. People ex rel. Blanks v. Ruddell, 1 Ill. App. 3d 662, 274 N.E.2d 835 (1 Dist. 1971).

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Former Ill. Const. (1870), Art. II, § 19 (see now this section) did not have any application to the question of whether or not drainage districts were liable for damages caused by the negligence of their employees in the performance of their duties. Bates v. Commissioners of Lake Fork Special Drainage Dist., 352 Ill. 378, 185 N.E. 589 (1933).

Certain Remedy

- In General

Trial court properly dismissed bank account holder's complaint seeking return of funds after the state public aid department persuaded the bank to turn those funds over to the state public aid department so it could give those funds to the joint account holder's ex-wife, since the joint account holder, who was the bank account holder's nephew, had a child support arrearage and the state public aid department gave the bank account holder a chance to identify the funds in the account that belonged to her, which she did not do; the bank account holder's complaint failed to state a claim on which relief could be granted because she did not allege a set of facts that showed that either the Illinois Constitution's open court's provision or its separation of powers clause were violated by the state public aid department's actions. Martinez v. Dep't of Pub. Aid, 348 Ill. App. 3d 788, 284 Ill. Dec. 818, 810 N.E.2d 608, 2004 Ill. App. LEXIS 591 (1 Dist. 2004).

The provision is merely an expression of philosophy and does not mandate the creation of a cause of action or remedy in each case where one does not exist. Graham v. Commonwealth Edison Co., 318 Ill. App. 3d 736, 252 Ill. Dec. 320, 742 N.E.2d 858, 2000 Ill. App. LEXIS 1003 (1 Dist. 2000), appeal denied, 195 Ill. 2d 551, 257 Ill. Dec. 890, 754 N.E.2d 1285 (2001), appeal denied, 195 Ill. 2d 577, 258 Ill. Dec. 94, 755 N.E.2d 477 (2001).

- Construction

As the case law had repeatedly held that the suppression of statements given by a defendant to the police was not an available remedy for violations of Article 36 of the Vienna Convention on Consular Relations, Apr. 24, 1963, 21 U.S.T. 77, at 100-01,596 U.N.T.S. 261, defendant's argument that an appellate court should depart from that precedent based on Ill. Const. (1970), Art. I, § 12 was rejected; the remedy and justice provisions contained in § 12 were merely an expression of a philosophy and not a mandate that a particular remedy be provided in any specific form. People v. Martinez, 372 Ill. App. 3d 750, 310 Ill. Dec. 711, 867 N.E.2d 24, 2007 Ill. App. LEXIS 147 (1 Dist. 2007), appeal denied, 225 Ill. 2d 658, 875 N.E.2d 1119, 2007 Ill. LEXIS 1416 (2007).

The "certain remedy" provision has been interpreted as an expression of political philosophy rather than as a specific mandate that the legislature preserve a particular remedy in its existing form. Bilyk v. Chicago Transit Auth., 125 Ill. 2d 230, 125 Ill. Dec. 822, 531 N.E.2d 1 (1988).

Since this section and its predecessors have been construed as an expression of philosophy and not as a mandate that a certain remedy be provided in any specific form, the trial court's denial of the plaintiff's action brought in contract and tort for the streaking of windows in a newly constructed building did not violate this section. Wheeling Trust & Sav. Bank v. Tremco Inc., 153 Ill. App. 3d 136, 106 Ill. Dec. 254, 505 N.E.2d 1045 (1 Dist. 1987).

The argument that this section requires a remedy for every wrong is without merit; the section expresses a philosophy and does not impose a mandate that the court must create a remedy where one did not formerly exist. Bryski v. City of Chicago, 148 Ill. App. 3d 556, 101 Ill. Dec. 795, 499 N.E.2d 162 (2 Dist. 1986).

This section is an expression of a philosophy and not a mandate that a "certain remedy" be provided in any specific form or that the nature of the proof necessary to the award of a judgment or decree continue without modification. Pantone v. Demos, 59 Ill. App. 3d 328, 16 Ill. Dec.

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607, 375 N.E.2d 480 (1 Dist. 1978); Berlin v. Nathan, 64 Ill. App. 3d 940, 21 Ill. Dec. 682, 381 N.E.2d 1367 (1 Dist. 1978), cert. denied, 444 U.S. 828, 100 S. Ct. 53, 62 L. Ed. 2d 36 (1979).

This section does not mandate that a specific form of remedy be provided plaintiff, but only expresses the philosophy that some remedy be provided. Lyddon v. Shaw, 56 Ill. App. 3d 815, 14 Ill. Dec. 489, 372 N.E.2d 685 (2 Dist. 1978); Steffa v. Stanley, 39 Ill. App. 3d 915, 350 N.E.2d 886 (2 Dist. 1976).

- Limitations

Since this section merely expresses a philosophy, and does not mandate that a certain remedy be provided in any specific form, it is not violative of this aspirational goal to limit or restrict available remedies. Schoeberlein v. Purdue Univ., 129 Ill. 2d 372, 135 Ill. Dec. 787, 544 N.E.2d 283 (1989).

The "certain remedy" provision does not prevent the legislature from elevating the standard of care for tort liability from ordinary negligence to wilful and wanton negligence, or from restricting the type or amount of damages a party may recover, nor does it bar the legislature from limiting the time within which an action may be brought, even if the statute could have the effect of barring a party's cause of action before the discovery of the ground for it. Bilyk v. Chicago Transit Auth., 125 Ill. 2d 230, 125 Ill. Dec. 822, 531 N.E.2d 1 (1988).

- Not Denied

Parents had a remedy for the alleged wrong done to them by defendants - an action for wrongful birth - recognized as a matter of common law; the open courts provision in Ill. Const. art. I, § 12 required no more than that. Clark v. Children's Mem. Hosp., Ill. 2d , Ill. Dec. , N.E.2d , 2011 Ill. LEXIS 1828 (May 6, 2011).

Statute providing certain types of immunity to firearm range owners and operators for liability under noise restrictions did not deny neighbors a certain remedy, because the operators did face possible liability under other theories, nor was it special legislation denying the neighbors equal protection, because it passed the rational basis test. Miller v. Fulton County Zoning Bd. of Appeals, 337 Ill. App. 3d 210, 271 Ill. Dec. 600, 785 N.E.2d 532, 2003 Ill. App. LEXIS 121 (3 Dist. 2003).

Applying the Credit Agreements Act in a mortgage foreclosure action to bar defenses and counterclaims based on a purported oral agreement by the lender to modify or amend loans did not violate the "certain remedy" provision of this section. Teachers Ins. & Annuity Ass'n of Am. v. LaSalle Nat'l Bank, 295 Ill. App. 3d 61, 229 Ill. Dec. 408, 691 N.E.2d 881 (2 Dist. 1998), appeal denied, 179 Ill. 2d 621, 235 Ill. Dec. 577, 705 N.E.2d 450 (1998), cert. denied, 525 U.S. 1146, 119 S. Ct. 1043, 143 L. Ed. 2d 50 (1999).

Where taxpayers sued to prevent the issuance and sale of proposed revenue bonds to finance construction of a new county courthouse, and defendants alleged that no issue was raised that had not been raised and decided in a prior case and prayed that plaintiff and all the other taxpayers of the county be permanently enjoined from further prosecution of the cause and from the institution of further litigation raising any issue adjudicated in the first case, the trial court properly entered a decree restraining the plaintiff and all other taxpayers of the county from further prosecution of the case and from the institution of vexatious or harassing litigation of any issue raised and decided, or governed in principle by the Supreme Court of the State, and since the issues were disposed of in the first case, plaintiffs were not denied due process of law or their certain remedy. Bowman v. Lake County Pub. Bldg. Comm'n, 31 Ill. 2d 575, 203 N.E.2d 129 (1964).

Collection of Funds

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This section requires that litigants' circuit court fees only be used to support the operation and maintenance of the circuit court. Norton v. City of Chicago, 293 Ill. App. 3d 620, 228 Ill. Dec. 810, 690 N.E.2d 119 (1 Dist. 1997), appeal denied, 177 Ill. 2d 572, 232 Ill. Dec. 453, 698 N.E.2d 544 (1998).

Plaintiffs failed to establish that a constitutional violation occurred when funds collected through the civil justice system were used to finance the court system as a whole. Zamarron v. Pucinski, 282 Ill. App. 3d 354, 218 Ill. Dec. 23, 668 N.E.2d 186 (1 Dist. 1996).

Common Law Remedies

- Construction

Subsection (b) of 735 ILCS 5/13-214 does not violate the open courts provision of the Illinois Constitution because it merely modifies the common law to provide that there is no cause of action against architects, contractors, engineers, and manufacturers involved in the construction of an improvement to real property after ten years following the completion of construction. Adcock v. Montgomery Elevator Co., 274 Ill. App. 3d 519, 211 Ill. Dec. 169, 654 N.E.2d 631 (1 Dist. 1995), appeal denied, 164 Ill. 2d 557, 214 Ill. Dec. 316, 660 N.E.2d 1265 (1995).

Former Ill. Const. (1870), Art. II, § 19 (see now this section) was construed to mean only that remedies known to the common law, though subject to reasonable legislative change for the public welfare, were preserved and could not be destroyed. Nolin v. Nolin, 68 Ill. App. 2d 54, 215 N.E.2d 21 (3 Dist. 1966).

Complaints

- Held Not Sufficient

One count of a complaint was defective where it was based solely on the phrase in this section that "every person shall find a certain remedy in the law for all injuries and wrongs which he receives to his person.". Bohacs v. Reid, 63 Ill. App. 3d 477, 20 Ill. Dec. 304, 379 N.E.2d 1372 (2 Dist. 1978).

Condemnation Proceedings

Defendant's right to justice without delay, as found in former Ill. Const. (1870), Art. II, § 19 (see now this section) and to just compensation were not violated by a lapse of four years between the filing of a condemnation petition and the trial thereon where defendant never asked for a hearing and agreed to 20 continuances; the right to recover damages for the delay is not based upon the fact that there is delay in the prosecution of the suit with resulting damages but upon the theory that the delay in prosecuting the suit has been wrongful. Trustees of Schs. v. First Nat'l Bank, 49 Ill. 2d 408, 274 N.E.2d 56 (1971).

Corporations

Former Ill. Const. (1870), Art. II, § 19 (see now this section) did not repeal, directly or by implication, the common law rule that an unincorporated association could not be sued in its association or union name. Cahill v. Plumbers, Local 93, 238 Ill. App. 123 (2 Dist. 1925).

Defamation

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Even though persons defamed in pleadings or trial testimony may be left without legal redress, even if their reputations are damaged, because of the public policy favoring free and open administration of justice, granting an absolute privilege in favor of pleadings in a case under the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1961 et seq.) did not violate this section. Defend v. Lascelles, 149 Ill. App. 3d 630, 102 Ill. Dec. 819, 500 N.E.2d 712 (4 Dist. 1986).

Former Ill. Const. (1870), Art. II, § 19 (see now this section) was never interpreted to abolish immunities extended for the protection of a recognized public interest; therefore, the granting of an absolute privilege did not offend the Illinois Constitution. Defend v. Lascelles, 149 Ill. App. 3d 630, 102 Ill. Dec. 819, 500 N.E.2d 712 (4 Dist. 1986).

Disclosure of Public Records

A building owner must be provided a notice and an opportunity to be heard before a building investigation report may be open to public scrutiny. Lopez v. Fitzgerald, 76 Ill. 2d 107, 28 Ill. Dec. 476, 390 N.E.2d 835 (1979).

Neither the Local Records Act (50 ILCS 205/1 et seq.) nor the Municipal Code of Chicago provide for public access of building inspection reports made by the Department of Buildings of the City of Chicago. Lopez v. Fitzgerald, 76 Ill. 2d 107, 28 Ill. Dec. 476, 390 N.E.2d 835 (1979).

Dismissal of Complaint

Since this section is an expression of a philosophy and does not mandate that a "certain remedy" be provided in any specific form, constitutional rights are not infringed when an insufficient or defective complaint is dismissed. Di Santo v. City of Warrenville, 59 Ill. App. 3d 931, 17 Ill. Dec. 289, 376 N.E.2d 288 (2 Dist. 1978).

Constitutional rights cannot be infringed when an insufficient or defective complaint is dismissed. County of Champaign v. Anthony, 33 Ill. App. 3d 466, 337 N.E.2d 87 (4 Dist. 1975), aff'd, 64 Ill. 2d 532, 1 Ill. Dec. 373, 356 N.E.2d 561 (1976); Richards v. Leimbacher, 131 Ill. App. 2d 775, 267 N.E.2d 523 (3 Dist. 1971).

The failure of a complaint to state a cause of action cannot be cured by alleging that the plaintiff should have a remedy as provided in former Ill. Const. (1870), Art. II, § 19 (see now this section). Richards v. Leimbacher, 131 Ill. App. 2d 775, 267 N.E.2d 523 (3 Dist. 1971).

The dismissal of a bill for inconsistent reasons, even if manifestly erroneous, did not warrant recourse to former Ill. Const. (1870), Art. II, § 19 (see now this section). Hawkins v. Hawkins, 350 Ill. 227, 183 N.E. 9 (1932).

Dram Shop Act

The existence of a legislative remedy such as that afforded by the Liquor Control Act (235 ILCS 5/1-1 et seq.) albeit limited, does not require the courts to recognize an additional or expanded remedy and does not deny plaintiffs their right to "a certain remedy," guaranteed by this section. Stevens v. Lou's Lemon Tree, Ltd., 187 Ill. App. 3d 458, 135 Ill. Dec. 58, 543 N.E.2d 293 (1 Dist. 1989).

Due Process

- Illustrative Cases

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-- Sentencing

Inmate was entitled to relief under the Post-Conviction Hearing Act, 725 ILCS 5/122-1 et seq. (2004), because the trial court failed to admonish him at the time of his guilty plea, in accordance with Rule 402, Supreme Court Rules, that he was required to serve a three-year period of mandatory supervised release; because the inmate had no knowledge of the issue, there was no procedural default. People v. Welch, 376 Ill. App. 3d 705, 315 Ill. Dec. 647, 877 N.E.2d 134, 2007 Ill. App. LEXIS 1080 (1 Dist. 2007).

Effect of Section

Although Ill. Const. Art. I, § 12 provides that every person shall find a certain remedy in the laws for all injuries and wrongs, a court is not required to create a cause of action where none exists. McDonald's Corp. v. Am. Motorists Ins. Co., 321 Ill. App. 3d 972, 255 Ill. Dec. 67, 748 N.E.2d 771, 2001 Ill. App. LEXIS 322 (1 Dist. 2001).

- Construction

This section was intended to protect an individual's privacy from invasions or injuries caused by another nongovernmental individual or company. In re Minor, 149 Ill. 2d 247, 172 Ill. Dec. 382, 595 N.E.2d 1052 (1992).

This section has been construed as an expression of philosophy which was not meant to have a substantive effect on Illinois law. Huter ex rel. Huter v. Ekman, 137 Ill. App. 3d 733, 92 Ill. Dec. 369, 484 N.E.2d 1224 (2 Dist. 1985); Schlenz v. Castle, 132 Ill. App. 3d 993, 87 Ill. Dec. 571, 477 N.E.2d 697 (2 Dist. 1985), aff'd, 115 Ill. 2d 135, 104 Ill. Dec. 684, 503 N.E.2d 241 (1987).

Election Contests

Former Ill. Const. (1870), Art. VI, § 12 and Art. II, § 19 (see now Ill. Const., (1970), Art. VI, § 8 and this section) did not confer jurisdiction upon the circuit courts to try election contests to the office of Superior Court Judge. Douglas v. Hutchinson, 183 Ill. 323, 55 N.E. 628 (1899).

Employment

- At Will

Given the limited scope of the tort of retaliatory discharge, this section does not create a clear and unambiguous public policy exception to the employment at will doctrine. Paris v. Cherry Payment Sys., 265 Ill. App. 3d 383, 202 Ill. Dec. 705, 638 N.E.2d 351 (1 Dist. 1994).

- Suspension

A policeman was entitled to an opportunity to review of his 30 day suspension, and in order to uphold the suspension, it was required to be approved by a majority of the police board. Kropel v. Conlisk, 60 Ill. 2d 17, 322 N.E.2d 793 (1975).

Exclusionary Rule

The application of the "exclusionary rule" to probation revocation proceedings is not mandated by this section. People v. Dowery, 62 Ill. 2d 200, 340 N.E.2d 529 (1975).

Failure to State a Cause of Action

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Failure to state a cause of action cannot be cured by alleging that the plaintiff should have a remedy as provided in this section. Berlin v. Nathan, 64 Ill. App. 3d 940, 21 Ill. Dec. 682, 381 N.E.2d 1367 (1 Dist. 1978), cert. denied, 444 U.S. 828, 100 S. Ct. 53, 62 L. Ed. 2d 36 (1979).

The failure to state a cause of action cannot be cured by alleging that plaintiff should have a remedy as provided in the Constitution; constitutional rights cannot be infringed when an insufficient or defective complaint is dismissed. Zamouski v. Gerrard, 1 Ill. App. 3d 890, 275 N.E.2d 429 (2 Dist. 1971); Bauscher v. City of Freeport, 103 Ill. App. 2d 372, 243 N.E.2d 650 (2 Dist. 1968).

Foreign Laws

- Applicability

Although Illinois choice of law rule directed the application of the law of the place of injury when determining liability of a safari operator when an Illinois resident sought to recover damages for a personal injury she sustained while on a hunting safari in Mozambique, Mozambican law would not be applied to determine damages as matter of public policy where Mozambique's law limited liability and provided no recovery for pain and suffering. Pancotto v. Sociedade de Safaris de Mocambique, 422 F. Supp. 405 (N.D. Ill. 1976).

Forfeited argument

Defendant forfeited the argument that the circuit court erred in refusing to rule on his motion in limine to bar the introduction of his prior convictions for impeachment purposes, because defendant failed to testify at trial; Ill. Const. art. I, § 12, only expressed a philosophy and did not require a certain remedy in any specific form. People v. Hill, 408 Ill. App. 3d 23, 349 Ill. Dec. 94, 945 N.E.2d 1246, 2011 Ill. App. LEXIS 269 (1 Dist. 2011).

Form of Remedy

- Construction

This clause is merely the expression of philosophy; it does not mandate that any particular remedy be provided in any specific form and does not create fundamental rights in the interests listed. Gavery v. County of Lake, 160 Ill. App. 3d 761, 112 Ill. Dec. 518, 513 N.E.2d 1127 (2 Dist. 1987).

This section does not mandate a specific form of remedy be provided plaintiff but only expresses the philosophy that some remedy be provided. Steffa v. Stanley, 39 Ill. App. 3d 915, 350 N.E.2d 886 (2 Dist. 1976).

Guarantee of Recovery

Nothing in this section guarantees recovery for all injuries regardless of one's culpability. Angelini v. Snow, 58 Ill. App. 3d 116, 15 Ill. Dec. 780, 374 N.E.2d 215 (1 Dist. 1978).

Guilty Pleas

A plea of guilty can be entered only after defendant has been fully and properly advised by the court of his rights and the consequences of his plea, and where defendant made no showing that his plea of guilty was not made competently and voluntarily, there was no denial of constitutional rights. People v. Rednour, 43 Ill. 2d 307, 253 N.E.2d 414 (1969).

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Illustrative Cases

Employer's due process rights and rights under Ill. Const. Art. I, § 12 were not violated by a finding that an award for partial disability could not have been reopened 10 years later because there was no right to a specific remedy, and a hearing was permitted when the award was initially entered. Cassens Transp. Co. v. Indus. Comm'n (Ade), 218 Ill. 2d 519, 300 Ill. Dec. 416, 844 N.E.2d 414, 2006 Ill. LEXIS 317 (2006).

- Abused and Neglected Child Reporting Act

In light of the substantial state interest in uncovering child abuse or neglect and in protecting the children of the state, the "good faith" immunity provided for, mandated, and permitted to those reporting suspected abuse or neglect under the Abused and Neglected Child Reporting Act (325 ILCS 5/1 et seq.) is clearly justified, and is in no way inconsistent with this section. Lehman v. Stephens, 148 Ill. App. 3d 538, 101 Ill. Dec. 736, 499 N.E.2d 103 (4 Dist. 1986).

- Arbitration

The imposition of an arbitration fee on all circuit court civil cases filed in order to fund the mandatory arbitration program does not violate the constitutional right to due process, the right to free access, the uniformity clause, or the equal protection clause, notwithstanding that the charge is levied even on cases that are statutorily and by rule precluded from using the arbitration system. Rose v. Pucinski, 321 Ill. App. 3d 92, 254 Ill. Dec. 43, 746 N.E.2d 800, 2001 Ill. App. LEXIS 160 (1 Dist. 2001), appeal denied, 195 Ill. 2d 598, 258 Ill. Dec. 100, 755 N.E.2d 483 (2001).

Section 2-1009A of the Civil Practice Act, (735 ILCS 5/2-1009A), which imposes a surcharge on the filing fee in civil litigation to fund court-annexed mandatory arbitration, does not violate the uniformity clause, the equal protection clause, the free access clause, or the due process clause of the constitution. Mellon v. Coffelt, 313 Ill. App. 3d 619, 246 Ill. Dec. 422, 730 N.E.2d 102, 2000 Ill. App. LEXIS 384 (2 Dist. 2000), appeal denied, 191 Ill. 2d 534, 250 Ill. Dec. 459, 738 N.E.2d 928 (2000).

- Bond or Lien

The circuit court erred in determining that the bond or lien provisions of 35 ILCS 120/12 or 735 ILCS 5/3-111 violated this section; the requirements simply place limits upon the availability of judicial review and do not eliminate any remedies. McLean v. Department of Revenue, 184 Ill. 2d 341, 235 Ill. Dec. 3, 704 N.E.2d 352 (1998).

- Child Support

Former Ill. Const. (1870), Art. II, § 19 (see now this section) was interpreted as giving a court authority to act in the best interests of a child in child support cases. Bayuk v. Bayuk, 79 Ill. App. 3d 877, 35 Ill. Dec. 159, 398 N.E.2d 1109 (1 Dist. 1979).

An Illinois court had subject matter jurisdiction over a child support matter, even though the parents' foreign divorce decree was not fully enforceable in Illinois. Zalduendo v. Zalduendo, 45 Ill. App. 3d 849, 4 Ill. Dec. 450, 360 N.E.2d 386 (1 Dist. 1977).

Under former Ill. Const. (1870), Art. II, § 19 (see now this section), Illinois recognized and protected the rights of minor children to support, and family life against interference from third persons; if the rights to child support without interference could be enforced against third persons, it should have been enforced against a derelict parent who had fled to Illinois and was violating his support obligations to his child. Parker v. Parker, 335 Ill. App. 293, 81 N.E.2d 745 (2 Dist. 1948).

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- Civil Practice Act

The scheme of review authorized by former section 75(2)(c) of the Civil Practice Act and former section 92(3)(b) of the Civil Practice Act (see now Rules 302, 315, and 366, Supreme Court Rules) was not discriminatory and inequitable so as to violate the constitution and did not deprive plaintiff of her remedy. Olson v. Chicago Transit Auth., 1 Ill. 2d 83, 115 N.E.2d 301 (1953).

- Contributory Negligence

The contributory negligence doctrine is not unconstitutional under this section. Angelini v. Snow, 58 Ill. App. 3d 116, 15 Ill. Dec. 780, 374 N.E.2d 215 (1 Dist. 1978).

- Crime Victims

Where the amount and conditions of payment of restitution by a juvenile defendant to his burglary victim were not determined at the dispositional hearing in the juvenile case, but instead, the juvenile probation officer was, by means of the court order, vested with the court's discretion to determine the time, mode and occasion of collection of restitution, it was clear that the duties with which the juvenile probation officer was entrusted by order of the court were of a highly discretionary nature, and not merely ministerial; in order to be free to exercise his discretion for the general welfare of the juvenile, the probation officer and the director of juvenile court services were required, in this instance, to be cloaked with immunity from personal civil liability to the victim of the juvenile's offense, and the victim was not completely without remedy, as he may have had a civil cause of action against the juvenile for the commission of a tort against his property. Richardson v. Grundel, 85 Ill. App. 3d 46, 40 Ill. Dec. 569, 406 N.E.2d 575 (3 Dist. 1980).

- Defamatory Will

No cause of action exists against an executor, individually, merely for presenting a defamatory will for probate. Nolin v. Nolin, 68 Ill. App. 2d 54, 215 N.E.2d 21 (3 Dist. 1966).

- Dispute Resolution Center Act

Dispute resolution centers are sufficiently related to the maintenance and operation of the court system to survive a challenge to their $1 fee, and the Illinois Not-For-Profit Dispute Resolution Center Act (710 ILCS 20/1 et seq.) does not violate this section. Wenger v. Finley, 185 Ill. App. 3d 907, 133 Ill. Dec. 782, 541 N.E.2d 1220 (1 Dist. 1989).

- Dram Shop Act

Since the original Dram Shop Act created a remedy unknown to the common law, and the only civil remedy under the Liquor Control Act (235 ILCS 5/6-21) was contained in section 14 of that Act, former Ill. Const. (1870), Art. II, § 19 (see now this section) did not require courts to recognize a remedy which the legislature had already created, even though the statutory remedy be limited as to recoverable damages. Knierim v. Izzo, 22 Ill. 2d 73, 174 N.E.2d 157 (1961); Cunningham v. Brown, 22 Ill. 2d 23, 174 N.E.2d 153 (1961).

- Finance

Trial court did not err in refusing to order that any interest accrued on funds transferred from the Lawyers Assistance Program (LAP) and the Mandatory Arbitration Fund (MAF) into the state's general revenue fund be deposited with the LAP and the MAF. Under 30 ILCS 105/4.1(a), interest on fees was to be deposited into the general revenue fund; moreover, plaintiffs had not shown that the disposition of interest unduly infringed upon inherent judicial powers under Ill. Const. Art. II, § 1 or unconstitutionally burdened access to the courts. Morawicz v. Hynes, 401 Ill. App. 3d 142, 340 Ill. Dec. 893, 929 N.E.2d 544, 2010 Ill. App. LEXIS 309 (1 Dist. 2010).

- Food Stamps

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The failure of section 11-8.7 of the Illinois Public Aid Code (305 ILCS 5/11-8.7) to adopt the Administrative Review Act (735 ILCS 5/3-101 et seq.) in regard to food stamp decisions did not mean that persons affected by such decisions were left with no avenue of judicial review; the writ of common law certiorari survived as an available method of review. Smith v. Department of Pub. Aid, 67 Ill. 2d 529, 10 Ill. Dec. 520, 367 N.E.2d 1286 (1977).

- Guest Statute

The "guest statute," former section 42-1 of the Motor Vehicle Act (see now 625 ILCS 5/10-201) did not violate the due process clause of the United States Constitution or former Ill. Const. (1870), Art. II, § 19 (see now this section), and was valid under the police power of the state. Clarke v. Storchak, 384 Ill. 564, 52 N.E.2d 229 (1943).

- Highway Code

Sections 6-312, 6-313, and 6-315a of the Highway Code (see now 605 ILCS 5/6-312, 605 ILCS 5/16-313, and 605 ILCS 5/6-315a) are not contrary to the Illinois Constitution. McCue v. Brown, 22 Ill. App. 3d 236, 317 N.E.2d 398 (5 Dist. 1974).

- Insurance Code

Section 143.18 of the Insurance Code (215 ILCS 5/143.18) does not violate this section. International Adm'rs v. Life Ins. Co., 753 F.2d 1373 (7th Cir. 1985).

- Laws of Other Jurisdictions

When an injured party attempted to sue an Indiana state agency in Illinois for alleged negligence occurring in Illinois, it was not contrary to Ill. Const. Art. I, § 12, for an Illinois court to decline to exercise jurisdiction under principles of comity and the fact that Indiana law provided that an Indiana state agency was immune from suit outside the courts of Indiana, because Art. I, § 12 did not guarantee the injured party a specific form of remedy or a constitutional right to a remedy, but merely expressed a philosophy. Kings v. N. Ind. Commuter, Transp. Dist., 337 Ill. App. 3d 52, 271 Ill. Dec. 384, 785 N.E.2d 35, 2003 Ill. App. LEXIS 18 (1 Dist. 2003), appeal denied, 203 Ill. 2d 548, 273 Ill. Dec. 138, 788 N.E.2d 729 (2003).

Giving full faith and credit to a foreign state's workers' compensation statute did not violate former Ill. Const. (1870), Art. II, § 19 (see now this section). Kabak v. Thor Power Tool Co., 106 Ill. App. 2d 190, 245 N.E.2d 596 (1 Dist. 1969).

- Medical Malpractice

The four-year statute of repose of 735 ILCS 5/13-212 does not unconstitutionally eliminate all causes of action for plaintiffs with latent injuries that manifest themselves more than four years after their last treatment. Kanne v. Bulkey, 306 Ill. App. 3d 1036, 240 Ill. Dec. 97, 715 N.E.2d 784 (1 Dist. 1999), appeal denied, 185 Ill. 2d 629, 242 Ill. Dec. 139, 720 N.E.2d 1094 (1999).

- Metropolitan Transit Authority Act

Section 27 of the Metropolitan Transit Authority Act (70 ILCS 3605/27) did not abolish the plaintiff's cause of action for the injuries he suffered, it simply restricted the liability of one category of defendants; the section did not preclude the plaintiff from seeking a remedy from third parties, and thus plaintiff's argument that the section violated this section was without merit. Bilyk v. Chicago Transit Auth., 125 Ill. 2d 230, 125 Ill. Dec. 822, 531 N.E.2d 1 (1988).

Section 27 of the Metropolitan Transit Authority Act (70 ILCS 3605/27) does not violate this section. Bilyk v. Chicago Transit Auth., 125 Ill. 2d 230, 125 Ill. Dec. 822, 531 N.E.2d 1 (1988).

- Park Districts

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A former statute granting immunity to park districts (former Ill. Rev. Stat., ch. 105, para. 12.1-1, now repealed) was arbitrary, unconstitutionally discriminated against plaintiff injured on a slide in a park district, and violated former Ill. Const. (1870), Art. II, § 19 (see now this section). Harvey v. Clyde Park Dist., 32 Ill. 2d 60, 203 N.E.2d 573 (1964).

- Probate Act

Former sections 72 and 92 of the Probate Act (see now 755 ILCS 5/6-8) did not violate this section. Lewis v. Oak Park Trust & Sav. Bank, 51 Ill. App. 3d 163, 9 Ill. Dec. 291, 366 N.E.2d 548 (1 Dist. 1977).

- Snowmobile Act

Since 625 ILCS 40/5-1(N) did not abolish plaintiff's cause of action for decedent's injuries and death but simply restricted the liability of one category of defendants; as the plaintiffs were not prevented from seeking a remedy at law there was no constitutional violation of this section. Jost v. Bailey, 286 Ill. App. 3d 872, 222 Ill. Dec. 69, 676 N.E.2d 1033 (2 Dist. 1997).

Section 5-1(I) of the Snowmobile Registration and Safety Act (325 ILCS 40/5-1) does not deprive a plaintiff of any remedy; it merely restricts the liability of landowners who would otherwise have to undertake massive repairs to make their property safe for snowmobiling and, therefore, is not unconstitutional. Ostergren v. Forest Preserve Dist., 104 Ill. 2d 128, 83 Ill. Dec. 892, 471 N.E.2d 191 (1984).

- Statute of Repose

735 ILCS 5/13-212(b), limiting the time for filing a medical malpractice action for injury to a minor, did not bar a minor plaintiff from bringing suit in violation of this section. Partin v. St. Francis Hosp., 296 Ill. App. 3d 220, 230 Ill. Dec. 605, 694 N.E.2d 574 (1 Dist. 1998), appeal denied, 179 Ill. 2d 590, 235 Ill. Dec. 567, 705 N.E.2d 440 (1998).

- Subsequent Criminal Information

725 ILCS 5/114-1(e), which allows the state to file a new information charging the same offense as an original information which was dismissed for failure to provide a prompt preliminary hearing, does not deprive a defendant of a remedy for violation of his right to a prompt preliminary hearing; it is not contrary to Ill. Const. (1970), Art. I, § 7 or this section. People v. Roby, 200 Ill. App. 3d 1063, 146 Ill. Dec. 766, 558 N.E.2d 729 (5 Dist. 1990).

- Tort Immunity Act

Section 5-103(b) of the Local Governmental and Governmental Tort Immunity Act (745 ILCS 10/5-103(b)) is unaffected by the existence of this section. Adams v. City of Peoria, 77 Ill. App. 3d 683, 33 Ill. Dec. 183, 396 N.E.2d 572 (3 Dist. 1979).

Section 3-106 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/5-106) did not violate former Ill. Const. (1870), Art. II, § 19 (see now this section). Sullivan v. Midlothian Park Dist., 51 Ill. 2d 274, 281 N.E.2d 659 (1972).

- Worker's Compensation

Riverboat casinos permanently moored had ceased to be vessels in navigation; therefore engineer injured at work on the riverboat was not denied a remedy when he was limited to those available under the workers' compensation law, rather than the more generous benefits that he would have been eligible for as a seaman pursuant to the Jones Act, 46 U.S.C.S. section 688. Grobe v. Hollywood Casino-Aurora, Inc., 325 Ill. App. 3d 710, 259 Ill. Dec. 674, 759 N.E.2d 154, 2001 Ill. App. LEXIS 833 (2 Dist. 2001), appeal denied, 198 Ill. 2d 590, 262 Ill. Dec. 619, 766 N.E.2d 618 (2002).

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- Workers' Compensation

Statutory immunity extended to employer's workers' compensation insurers did not involve unreasonable classification as to due process, equal protection or denial of remedies. Towns v. Kessler, 10 Ill. App. 3d 356, 293 N.E.2d 761 (5 Dist. 1973).

Indigent Defendants

Indigent defendants convicted of armed robbery were entitled to appellate review despite their lack of funds to purchase a transcript. Griffin v. Illinois, 351 U.S. 12, 76 S. Ct. 585, 100 L. Ed. 891 (1956).

Injunctions

Plaintiff railroad companies were granted injunctions against defendant attorneys who filed personal injury actions in Illinois for incidents occurring an average distance of 1,930 miles away, in an attempt to inconvenience the railroad companies. Atchison, T. & Santa Fe Ry. v. Andrews, 338 Ill. App. 552, 88 N.E.2d 364 (1 Dist. 1949).

The former anti-injunction law did not deprive circuit courts of jurisdiction to restrain any unlawful act nor of jurisdiction to determine whether or not any act complained of was legal or illegal; so far as the statute was concerned, circuit courts had the same jurisdiction in labor disputes they always had, for it could not be said that they ever had the power, by the Constitution or otherwise, to prevent or penalize the performance of lawful acts concerning which no cause of action existed. Fenske Bros. v. Upholsterers Int'l Union, 358 Ill. 239, 193 N.E. 112 (1934).

Interlocutory Orders

The trial court's denial of defendant's motion to dismiss his murder charges, where defendant had been indicted 8 years earlier but found incompetent to stand trial and had been remanded to the Mental Health Department was neither a final judgment nor an appealable interlocutory order, and therefore the appellate court lacked jurisdiction to entertain the matter, despite the defendant's contention that the Constitution required a remedy be provided by direct appeal. People v. Culhane, 34 Ill. App. 3d 158, 340 N.E.2d 63 (1 Dist. 1975).

Interspousal Immunity

Widow injured in an automobile collision that killed her husband, who had been driving, could not maintain a personal injury action against her deceased husband's estate because former Ill. Rev. Stat. ch. 68, para. 1 provided interspousal immunity and the alleged tortious act occurred during the marriage. Former Ill. Rev. Stat. ch. 68, para. 1 did not violate Ill. Const., Art. I, § 12 because the constitutional provision merely constitutes a philosophy that all individuals are entitled to relief for personal injuries and is not a mandate that a certain remedy be provided in any special form. Tyrken v. Tyrken, 63 Ill. App. 3d 199, 19 Ill. Dec. 932, 379 N.E.2d 804, 1978 Ill. App. LEXIS 3923 (1 Dist. 1978).

Widow who was injured in an automobile collision that killed her husband, who had been driving, could not maintain a personal injury action against her deceased husband's estate because Ill. Rev. Stat. ch. 68, para. 1 provided interspousal immunity and because the alleged tortious act occurred during the couple's marriage. The widow's argument that Ill. Rev. Stat. ch. 68, para. 1 violated Ill. Const., Art. I, § 12 because Ill. Const., Art. I, § 12 constituted a philosophy that all individuals were entitled to relief for personal injuries and not a mandate that a certain remedy be

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provided in any special form. Tyrken v. Tyrken, 63 Ill. App. 3d 199, 19 Ill. Dec. 932, 379 N.E.2d 804, 1978 Ill. App. LEXIS 3923 (1 Dist. 1978).

A statute preventing spouses from suing each other for torts to the person committed during coverture did not violate the due process clause of either the state or federal constitutions. Heckendorn v. First Nat'l Bank, 19 Ill. 2d 190, 166 N.E.2d 571 (1960).

Intervention

The actions of the trial court depriving the motion of a village to intervene in a suit concerning a nearby airport and to file an amended complaint, and thereby establish standing, did not deprive the village of a remedy for injuries and wrongs in contravention of this section. County of Cook v. Priester, 62 Ill. 2d 357, 342 N.E.2d 41 (1976).

Joint Tortfeasor Contribution Act

735 ILCS 5/2-1117 of the Illinois Joint Tortfeasor Contribution Act, pertaining to joint and several liability, does not violate the remedy clause of the Illinois Constitution. Unzicker v. Kraft Food Ingredients Corp., 203 Ill. 2d 64, 270 Ill. Dec. 724, 783 N.E.2d 1024, 2002 Ill. LEXIS 957 (2002).

Juvenile Proceedings

- Exclusion of Media

705 ILCS 405/1-5(6) did not violate this section as an illegal invasion of privacy or prior restraint in a juvenile proceeding where trial judge forbad newspaper from publishing names of minors where minors were victims of abuse rather than delinquents; the newspaper was not deprived of the opportunity to exercise its constitutional right to inform the public about the operation of the juvenile court system, and prohibiting the newspaper from disclosing the minor victims' identities in no way interfered with the newspaper's constitutional role of acting as a conduit for the public in generating the free flow of ideas, keeping the public informed of the workings of governmental affairs, and checking abuses by public officials. In re Minor, 149 Ill. 2d 247, 172 Ill. Dec. 382, 595 N.E.2d 1052 (1992).

Legislation

- Presumption of Validity

He who challenges the constitutionality of a legislative act has the burden of clearly showing wherein the act violates the Constitution; every presumption is in favor of the validity of the act. Fenske Bros. v. Upholsterers Int'l Union, 358 Ill. 239, 193 N.E. 112 (1934).

Limitations on Damages

While this section provides that every person shall find a remedy for all injuries received, the power and adequacy of the available remedy rests with the legislature which may permissibly limit damages in certain actions. Goldstein v. Hertz Corp., 16 Ill. App. 3d 89, 305 N.E.2d 617 (1 Dist. 1973).

Malicious Prosecution

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Former Ill. Const. (1870), Art. II, § 19 (see now this section) was infringed by the denial of the courts to entertain an action to recover damages alleged to have been sustained by the malicious institution of a civil suit against the plaintiff while such civil action remained pending in the courts for trial. Bonney v. King, 201 Ill. 47, 66 N.E. 377 (1903).

Medical Malpractice Claims

Section 2-622 of the Civil Practice Act (735 ILCS 5/2-622) is not unconstitutional as denying healing art malpractice litigants access to the courts. DeLuna v. St. Elizabeth's Hosp., 147 Ill. 2d 57, 167 Ill. Dec. 1009, 588 N.E.2d 1139 (1992).

Minor Children

- Causes of Action

This section does not create of a child's loss of consortium action. Koskela v. Martin, 91 Ill. App. 3d 568, 47 Ill. Dec. 32, 414 N.E.2d 1148 (1 Dist. 1980).

The facts that some interests of children had been unrecognized, and that there was no binding precedent for redress where a child's rights had been violated, was not a sufficient justification for the denial of a remedy in favor of children against a third party for enticing their father to leave them. Johnson v. Luhman, 330 Ill. App. 598, 71 N.E.2d 810 (2 Dist. 1947).

Minor children have a right to protect their relationship with their parents and are properly entitled to seek damages from one who has destroyed their family unit. Johnson v. Luhman, 330 Ill. App. 598, 71 N.E.2d 810 (2 Dist. 1947).

New Causes of Action

Court's decision not to recognize a cause of action for loss of filial society by parents whose adult child was survived by a wife and children did not violate this section. Stephens v. Trinity Medical Ctr., 292 Ill. App. 3d 165, 226 Ill. Dec. 300, 685 N.E.2d 403 (3 Dist. 1997).

This section provides that every person shall find a certain remedy in the laws for all injuries and wrongs received; it does not mandate the creation of a new cause of action. Huter ex rel. Huter v. Ekman, 137 Ill. App. 3d 733, 92 Ill. Dec. 369, 484 N.E.2d 1224 (2 Dist. 1985).

This section is an expression of philosophy and does not mandate the creation of an action and remedy where one did not formerly exist. Favata v. Rosenberg, 106 Ill. App. 3d 572, 62 Ill. Dec. 467, 436 N.E.2d 49 (1 Dist. 1982).

As long as some remedy for the alleged wrong exists, this section does not mandate recognition of any new remedy. Pantone v. Demos, 59 Ill. App. 3d 328, 16 Ill. Dec. 607, 375 N.E.2d 480 (1 Dist. 1978).

New Constitutional Rights

This section's provision that every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation was meant to have no substantive effect on Illinois law and created no new constitutional right. Kelly ex rel. Kelly v. Franco, 72 Ill. App. 3d 642, 28 Ill. Dec. 855, 391 N.E.2d 54 (1 Dist. 1979).

Police Power

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The legislature may, in the exercise of the police power of the state, enact those measures which have a tendency to promote the public comfort, health, safety, morals, or welfare of society. Fenske Bros. v. Upholsterers Int'l Union, 358 Ill. 239, 193 N.E. 112 (1934).

Neither the Fourteenth Amendment to the Federal Constitution nor any provision of the Illinois Constitution was designed to interfere with the police power to enact and enforce laws for the protection of the health, peace, morals, or general welfare of the people. Fenske Bros. v. Upholsterers Int'l Union, 358 Ill. 239, 193 N.E. 112 (1934).

Potential Defendants

- Restrictions

The General Assembly may restrict the class of potential defendants from whom a plaintiff may seek a remedy without violating this section. Bilyk v. Chicago Transit Auth., 125 Ill. 2d 230, 125 Ill. Dec. 822, 531 N.E.2d 1 (1988).

Privacy Right

- In General

Illinois has recognized the right to privacy as well as the right to a remedy for invasion of such right both through the legislature and through the judiciary. Cantrell v. ABC, 529 F. Supp. 746 (N.D. Ill. 1981).

The right to privacy as well as the right to a remedy for invasion of such right have received both legislative and judicial sanction in Illinois. Midwest Glass Co. v. Stanford Dev. Co., 34 Ill. App. 3d 130, 339 N.E.2d 274 (1 Dist. 1975).

- Debt Collection

An action for invasion of privacy could not be maintained where oral communications did not amount to a privacy infringement; in actions involving attempts to collect debts, an invasion of privacy cannot be based merely on oral communications. Midwest Glass Co. v. Stanford Dev. Co., 34 Ill. App. 3d 130, 339 N.E.2d 274 (1 Dist. 1975).

The requisite elements of the tort of invasion of privacy include: (1) an intentional giving of unreasonable publicity (2) to private debts, (3) without the debtor's consent, (4) which is made for the purpose of coercing or harassing the debtor into payment of the debt or of exposing the debtor to public contempt or ridicule. Midwest Glass Co. v. Stanford Dev. Co., 34 Ill. App. 3d 130, 339 N.E.2d 274 (1 Dist. 1975).

A creditor has a right to take reasonable action to pursue his debtor and persuade payment, although the steps taken may result in some invasion of the debtor's privacy. Midwest Glass Co. v. Stanford Dev. Co., 34 Ill. App. 3d 130, 339 N.E.2d 274 (1 Dist. 1975).

Where a mirror company installed mirrors in a condominium developers' premises and no payment was received, the mirror company, having a legitimate interest in the context of rendering services without receiving compensation, acted reasonably to pursue its debtor and persuade payment by sending out letters informing owners of condominiums of potential encumberment by filing of mechanic's lien, and where the company's purpose was not to vilify or subject the counterclaimants to continuous harassment, but to seek assistance in collecting the amount in arrears, this was not an invasion of privacy where the notices of the indebtedness for the mirrors were disseminated to a limited number of persons who had a natural and proper interest in the ability and reputation of the company to pay its debt, since they were either

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purchasers, prospective purchasers, or tenants of the condominium units. Midwest Glass Co. v. Stanford Dev. Co., 34 Ill. App. 3d 130, 339 N.E.2d 274 (1 Dist. 1975).

- Medical Information

Patients in Illinois have a privacy interest in confidential medical information, and there is a strong public policy in preserving a patient's fiduciary and confidential relationship with his or her physician. Best v. Taylor Mach. Works, 179 Ill. 2d 367, 228 Ill. Dec. 636, 689 N.E.2d 1057 (1997).

- Physician-Ordered Blood or Urine Tests

625 ILCS 5/11-501.4-1, which allows the results of physician-ordered blood or urine tests conducted in the course of emergency treatment for injuries resulting from a motor vehicle accident to be reported directly to state or local law enforcement officials, does not violate a patient's right to privacy in his medical records and does not violate the separation of powers provisions. People v. Jung, 192 Ill. 2d 1, 248 Ill. Dec. 258, 733 N.E.2d 1256, 2000 Ill. LEXIS 982 (2000).

- Public Eye

Although it is not necessary for an individual to seek publicity actively in order to be found in the "public eye," the individual cannot be deemed public merely because of a broadcast or publication alone. Cantrell v. ABC, 529 F. Supp. 746 (N.D. Ill. 1981).

- Scope

The right of privacy is a limited one in areas of legitimate public interest, as where there is a legitimate news interest in one's photograph or likeness as a public figure. Cantrell v. ABC, 529 F. Supp. 746 (N.D. Ill. 1981).

The right of privacy is not absolute, but is subject to limitations where there is express or implied consent or legitimate interests. Midwest Glass Co. v. Stanford Dev. Co., 34 Ill. App. 3d 130, 339 N.E.2d 274 (1 Dist. 1975).

- Types of Torts

Based on the constitutional guarantee that every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation, the Illinois Supreme Court would recognize a cause of action for intrusion upon seclusion for an employee who was surreptitiously videotaped by his employer while receiving medical treatment in the workplace. Acuff v. IBP, Inc., 77 F. Supp. 2d 914 (C.D. Ill. 1999).

Illinois courts have adopted four distinct torts of privacy: (1) an unreasonable intrusion upon the seclusion of another, (2) the appropriation of another's name or likeness, (3) a public disclosure of private facts, or (4) publicity which unreasonably places another in a false light before the public. Cantrell v. ABC, 529 F. Supp. 746 (N.D. Ill. 1981).

- Violations

Plaintiff's complaint stated a good cause of action for violation of plaintiff's right of privacy by defendants' unauthorized use of her picture for advertising purposes. Eick v. Perk Dog Food Co., 347 Ill. App. 293, 106 N.E.2d 742 (1 Dist. 1952).

Property Rights

The right of plaintiffs to use the process for cracking and refining petroleum was a property right, and was not an infringement upon any right or patent defendant claimed; in the pursuit of their

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property right to use the process, plaintiffs should not have been burdened with the expense of defending against a claim of infringement based upon a corrupt judgment of the United States Circuit Court of Appeals. Skelly Oil Co. v. Universal Oil Prods. Co., 338 Ill. App. 79, 86 N.E.2d 875 (1 Dist. 1949).

Former Ill. Const. (1870), Art. II, §§ 2 and 19 (see now Ill. Const. (1970), Art. I, § 2 and this section) gave a broad field for the protection of persons in their property and reputation, but this did not give a vested right not subject to change by legislative power, provided the change was reasonably necessary to promote the general welfare of the people and did not destroy a remedy. Clarke v. Storchak, 384 Ill. 564, 52 N.E.2d 229 (1943).

Property Tax Exemption

- Challenges

Denying a taxpayer standing to challenge an exemption granted to the property of another does not abolish any common-law cause of action, and does not violate the "certain remedy" provision of this section. Highland Park Women's Club v. Department of Revenue, 206 Ill. App. 3d 447, 151 Ill. Dec. 435, 564 N.E.2d 890 (2 Dist. 1990), cert. denied, 139 Ill. 2d 596, 159 Ill. Dec. 107, 575 N.E.2d 914 (1991).

Prospective Application

Where the alleged wrongs described by plaintiffs all took place prior to the effective date of the 1970 Illinois Constitution, it was correct that Section 2 of the Transition Schedule of the 1970 Constitution provided that all rights created by Article I should be prospective and not retroactive. Holiday Magic, Inc. v. Scott, 4 Ill. App. 3d 962, 282 N.E.2d 452 (1 Dist. 1972).

Provision of Remedy

Coach did not show that the Citizen Participation Act, which immunized the conduct of the vocal opponents who successfully petitioned the school board to relieve the coach of the coach's head basketball coach position at a high over their disagreement with the coaching style of the coach, violated the coach's right to a remedy for the coach's injuries. While Ill. Const. art. I, § 12 expressed the philosophy that remedies were available to every person for injuries and wrongs, that constitutional provision was aspirational and did not guarantee a certain remedy in any specific form. Sandholm v. Kuecker, 405 Ill. App. 3d 835, 347 Ill. Dec. 341, 942 N.E.2d 544, 2010 Ill. App. LEXIS 1095 (2 Dist. 2010).

Trial court's judgment awarding judgment interest to the injured party on the judgment it obtained against the prime electrical contractor, as the statutory award of judgment interest did not violate the prime electrical contractor's constitutional right of access to the courts under Ill. Const. Art. I, § 12. That constitutional provision mandated that parties' access to the courts to obtain remedies not be impeded and the judgment interest award did not impede the prime electrical contractor's access to the courts. Schultz v. Lakewood Elec. Corp., 362 Ill. App. 3d 716, 298 Ill. Dec. 894, 841 N.E.2d 37, 2005 Ill. App. LEXIS 1159 (1 Dist. 2005).

The Act of 1947 relating to actions for breach of promise or agreement to marry (see now 740 ILCS 15/0.01), did not prohibit an action, but merely limited the damages recoverable to actual damages; the legislature held as public policy that punitive damages could not be recovered under the action in question and, in denying such damages as a basis of recovery, the act was not in contravention of section 19 of Article II of the 1870 Constitution (see now this section). Smith v. Hill, 12 Ill. 2d 588, 147 N.E.2d 321 (1958).

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Wherever the legislature has failed to provide a remedy, the courts must. Skelly Oil Co. v. Universal Oil Prods. Co., 338 Ill. App. 79, 86 N.E.2d 875 (1 Dist. 1949).

Reputation

- Basis of Liability

In a suit brought by a private individual to recover actual damages for a defamatory publication whose substantial danger to reputation is apparent, negligence may form the basis of liability regardless of whether or not the publication in question related to a matter of public or general interest. Troman v. Wood, 62 Ill. 2d 184, 340 N.E.2d 292 (1975).

In a suit brought by a private individual to recover actual damages for a defamatory publication whose substantial danger to reputation is apparent, recovery may be had upon proof that the publication was false, and that the defendant either knew it to be false, or, believing it to be true, lacked reasonable grounds for that belief. Troman v. Wood, 62 Ill. 2d 184, 340 N.E.2d 292 (1975).

Restriction or Alteration of Remedies

- Legislative Discretion

The legislature is traditionally accorded a broad discretion to determine whether a proposed statute which would restrict or alter an existing remedy is reasonably necessary to promote the general welfare. Bilyk v. Chicago Transit Auth., 125 Ill. 2d 230, 125 Ill. Dec. 822, 531 N.E.2d 1 (1988).

Sale of Alcohol to Minor

There is no common law right of action against a supplier of liquor for selling alcohol to a minor. Gora v. 7-11 Food Stores, 109 Ill. App. 3d 109, 64 Ill. Dec. 727, 440 N.E.2d 279 (1 Dist. 1982).

Statutes of Repose

Repeal of a statutory repose period could not operate to revive plaintiffs' claims if they were time-barred under the old law. M.E.H. v. L.H., 177 Ill. 2d 207, 226 Ill. Dec. 232, 685 N.E.2d 335 (1997).

A statute of repose does not violate this section of the Illinois Constitution, even if it bars an action before it is discovered. M.E.H. v. L.H., 283 Ill. App. 3d 241, 218 Ill. Dec. 702, 669 N.E.2d 1228 (2 Dist. 1996), aff'd, 177 Ill. 2d 207, 226 Ill. Dec. 232, 685 N.E.2d 335 (1997).

Toll Highway Act

Former Ill. Const. (1870), Art. I, § 12 (see now this section), which provides that every person shall find a ready remedy in the law for injuries and wrongs received, was not violated by former Ill. Rev. Stat., ch. 121, para. 314a53 (see now 605 ILCS 10/32) making the commission's determinations in the area of its discretionary powers conclusive and not subject to review. People v. Illinois Toll Hwy. Comm'n, 3 Ill. 2d 218, 120 N.E.2d 35 (1954).

Unjust Enrichment

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Evidence showed fees charged for delinquent parking tickets were never authorized court costs, so the money received was not lawfully held in trust for the circuit court for operation and maintenance expenses; therefore county retained benefit of these unauthorized fees, supporting summary judgment. Norton v. City of Chicago, 293 Ill. App. 3d 620, 228 Ill. Dec. 810, 690 N.E.2d 119 (1 Dist. 1997), appeal denied, 177 Ill. 2d 572, 232 Ill. Dec. 453, 698 N.E.2d 544 (1998).

Waiver of Constitutional Issue

A plaintiff who contended that a trial court's order dismissing her complaint to vacate an arbitrator's award violated her constitutional right to a legal remedy, where not raised by plaintiff in the trial court, could not be raised for the first time on appeal. Pillott v. Allstate Ins. Co., 48 Ill. App. 3d 1043, 6 Ill. Dec. 778, 363 N.E.2d 460 (3 Dist. 1977).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Constitutional Law," see 25 S. Ill. U. L.J. 733 (2001).

For article, "Illinois Courts: Vital Developers of Tort Law as Constitutional Vanguards, Statutory Interpreters, and Common Law Adjudicators," see 30 Loy. U. Chi. L.J. 183 (1999).

For article, "Privacy in the Workplace," see 72 Chi-Kent L. Rev. 285 (1997).

For article, "The Framers Did Not Incorporate a Right to Abortion," see 81 Ill. B.J. 31 (1993).

For article, "Using the Illinois Constitution to Protect Reproductive Freedom," see 81 Ill. B.J. 31 (1993).

For note, "Privacy Rights in State Constitutions: Models for Illinois?" see U. Ill. L. Rev. 215 (1989).

For article, "The Case Against Caps," see 75 Ill. B.J. 164 (1986).

For note and comment, "The Reform of the Innocent Construction Rule in Illinois," see 60 Chi.-Kent L. Rev. 263 (1984).

For note and comment, "Malicious Prosecution: a Physician's Need for Reassessment," see 60 Chi.-Kent L. Rev. 317 (1984).

For article, "Blind Justice or Just Blindness?" see 60 Chi.-Kent L. Rev. 209 (1984).

For article, "The Tort of Custodial Interference - Toward a More Complete Remedy to Parental Kidnappings," see 1983 U. Ill. Rev. 229 (1983).

For note on Constitutional Law and Employment discussing Melvin v. City of West Frankfort, 93 Ill. App. 3d 425, 417 N.E.2d 260 (1981), see 70 Ill. B.J. 520 (1982).

For article, "Contribution: The End to Active-Passive Indemnity," see 69 Ill. B.J. 78 (1980).

For case notes, "Renslow v. Mennonite Hospital; Prenatal Injuries and a Pre-Existence Duty," see 10 J. Marshall J. Prac. & Proc. 417 (1977).

For article, "Illinois and the Right of Privacy: History and Current Status," see 11 J. Marshall J. Prac. & Proc. 91 (1977).

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For comment, "Pre-trial Screening of Medical Malpractice Claims Versus the Illinois Constitution," see 10 J. Marshall J. Prac. & Proc. 133 (1976).

For note on Civil Rights and Housing, see 65 Ill. B.J. 164 (1976).

RESEARCH REFERENCES

What constitutes special damages in action for slander of title. 4 ALR4th 532.

Criticism or disparagement of physician's or dentist's character, competence, or conduct as defamation. 38 ALR4th 836.

Defamation of psychiatrist, psychologist, or counselor. 38 ALR4th 874.

Validity and construction of statute or ordinance limiting the kinds or amount of actual damages recoverable in tort action against governmental unit. 43 ALR4th 19.

Excessiveness or adequacy of damages awarded for noneconomic loss caused by personal injury or death of parent. 61 ALR4th 251.

Excessiveness or adequacy of damages awarded for noneconomic loss caused by personal injury or death of spouse. 61 ALR4th 309.

Excessiveness or adequacy of damages awarded for parents' noneconomic loss caused by personal injury or death of child. 61 ALR4th 413.

Excessiveness or adequacy of damages awarded for injuries causing mental or psychological damages. 52 ALR5th 1.

Practice Guides and Treatises.

Chancery and Special Remedies § 1.6 The Maxims of Equity, In General (IICLE).

Section 13. Trial by Jury.

The right of trial by jury as heretofore enjoyed shall remain inviolate.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Crim L § 20:01, § 20:03, § 20:04.

CASE NOTES

Analysis

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Withholding Evidence

In General

In defendant's trial on a charge of attempted aggravated robbery, the trial court did not violate defendant's rights to due process of law and trial by jury as guaranteed by the United States Constitution, or defendant's right to trial by jury as guaranteed by Ill. Const. Art. I, § 13, by sentencing defendant as a Class X offender, pursuant to 730 ILCS 5/5-5-3(c)(8), without requiring the State to obtain a jury verdict finding that defendant had prior convictions which allowed defendant to be sentenced under 730 ILCS 5/5-5-3(c)(8). People v. Smith, 338 Ill. App. 3d 555, 273 Ill. Dec. 328, 788 N.E.2d 1204, 2003 Ill. App. LEXIS 482 (1 Dist. 2003).

The right to a trial by jury has been consistently interpreted as inapplicable to special or statutory proceedings unknown to the common law; however, Illinois courts have construed the Illinois constitutional guarantee of a right to trial by jury as adhering to those actions known at common law at the time of the adoption of the Illinois Constitution. People ex rel. O'Malley v. 6323 N. LaCrosse Ave., 158 Ill. 2d 453, 199 Ill. Dec. 690, 634 N.E.2d 743 (1994).

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Where noteholders exercised their right to a jury trial in their law division action against a bank pursuant to Ill. Const., Art. I, § 13, seeking the recission of a certain note and personal guaranty that they executed, the bank's separate mortgage foreclosure action had to be stayed where both claims related to the noteholders' default in the payment of the same three notes; if judgment was entered in the foreclosure action before the law division action, the court's determination of the factual issues that were common to both actions would, by application of the doctrine of collateral estoppel, be binding upon the noteholders in the law division action, thus depriving them of the right to have those common issues of fact determined by a jury. First Nat'l Bank of Hoffman Estates v. Fabbrini, 255 Ill. App. 3d 99, 194 Ill. Dec. 240, 627 N.E.2d 356, 1993 Ill. App. LEXIS 1579 (1 Dist. 1993).

The determination as to whether the right to a jury exists in a particular case depends primarily on the substance of the controversy rather than on the form of the action. Zurich Ins. Co. v. Raymark Indus., Inc., 145 Ill. App. 3d 175, 98 Ill. Dec. 512, 494 N.E.2d 634 (1 Dist. 1986).

This section does not confer a right to a jury in any class of cases where either it had not previously existed or the proceeding was created by statute and was unknown to the common law. Galvin v. Heritage First Nat'l Bank, 74 Ill. App. 3d 336, 30 Ill. Dec. 215, 392 N.E.2d 980 (3 Dist. 1979).

The strong policy of this state is to favor jury trials, and the power of the legislature to regulate the right of jury trial should be liberally construed in favor of the right to a jury trial. Hernandez v. Power Constr. Co., 43 Ill. App. 3d 860, 2 Ill. Dec. 439, 357 N.E.2d 606 (1 Dist. 1976), aff'd, 73 Ill. 2d 90, 22 Ill. Dec. 503, 382 N.E.2d 1201 (1978).

The constitutional right of trial by jury is the right to have the facts in controversy determined, under the direction and superintendence of a judge, by the unanimous verdict of twelve impartial jurors who possess the qualifications and are selected in the manner prescribed by law. People v. Lobb, 17 Ill. 2d 287, 161 N.E.2d 325 (1959).

No litigant has a right, constitutional or otherwise, to have his case tried before ignorant jurors. People v. Izzo, 14 Ill. 2d 203, 151 N.E.2d 329 (1958).

The right to trial by jury as it existed at common law and as enjoyed at the adoption of the constitution does not mean a jury trial shall be had in every case or preclude all restrictions on the exercise of that right. Hudson v. Leverenz, 10 Ill. 2d 87, 139 N.E.2d 255 (1956); People ex rel. Cizek v. Azzarello, 81 Ill. App. 3d 1102, 37 Ill. Dec. 84, 401 N.E.2d 1177 (1 Dist. 1980).

The right of a jury trial has been guaranteed in Illinois ever since the state has been organized, has been carried forward in each of the several constitutions of the state and, even though none of the constitutional provisions define the right of trial by jury, the provisions in each mean the same thing, namely, the right of trial by jury as it existed at common law and which was enjoyed at the adoption of the respective constitutions. Stephens v. Kasten, 383 Ill. 127, 48 N.E.2d 508 (1943).

The essential elements of a trial by jury are twelve impartial qualified jurors who should unanimously decide the facts in controversy under the direction and superintendence of a judge. People ex rel. Denny v. Traeger, 372 Ill. 11, 22 N.E.2d 679 (1939).

Abandonment of Spouse

The statute concerning the former crime of wife abandonment did not violate former Ill. Const. (1870), Art. II, § 2 (see now Ill. Const. (1970), Art. I, § 2) nor former § 5 of Article II (see now Ill. Const. (1970), Art. I, § 13). People v. Heise, 257 Ill. 443, 100 N.E. 1000 (1913).

The mere fact that in cases concerning the former crime of wife abandonment the legislature empowered the court, in its discretion, to inflict a punishment differing from that inflicted in other

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cases of misdemeanor did not affect the right of the defendant to a trial by jury. People v. Heise, 257 Ill. 443, 100 N.E. 1000 (1913).

Abatement of Public Nuisance

No right to trial by jury exists under 65 ILCS 5/11-31-1(a) since there is no constitutional right to trial by jury in cases involving equity and there is no guarantee to a trial by jury in special or statutory proceedings unknown to common law, and a proceeding under that section qualifies in both respects. City of Bloomington v. Bible Truth Crusade, 197 Ill. App. 3d 793, 144 Ill. Dec. 220, 555 N.E.2d 117 (4 Dist. 1990).

Administrative Proceedings

- Pollution Control Board

The constitutional guarantee of right to trial by jury was never intended to apply to administrative proceedings which were unknown at common law and, therefore, a roofing company charged with pollution violations could not argue that this right had been abridged by the Environmental Protection Act (415 ILCS 5/1 et seq.) or the Pollution Control Board. Lloyd A. Fry Roofing Co. v. Pollution Control Bd., 20 Ill. App. 3d 301, 314 N.E.2d 350 (2 Dist. 1974).

In the Environmental Protection Act (415 ILCS 5/1 et seq.), the General Assembly has provided remedies to prevent or lessen air pollution which are in addition to those remedies recognized by the common law; thus, this section is inapplicable to special or statutory proceedings unknown to the common law, including hearings before the Pollution Control Board. City of Monmouth v. Pollution Control Bd., 57 Ill. 2d 482, 313 N.E.2d 161 (1974).

The penalty powers of the Pollution Control Board do not deprive a penalized party of his constitutional right to a jury trial. Ford v. EPA, 9 Ill. App. 3d 711, 292 N.E.2d 540 (3 Dist. 1973).

Admiralty Case

Defendants do not have a jury trial right in a traditional admiralty case heard in Illinois state court. Hanks v. Luhr Bros., 303 Ill. App. 3d 661, 236 Ill. Dec. 696, 707 N.E.2d 1266, 1999 Ill. App. LEXIS 126 (5 Dist. 1999), appeal denied, 184 Ill. 2d 556, 239 Ill. Dec. 608, 714 N.E.2d 527 (1999), cert. denied, 528 U.S. 966, 120 S. Ct. 402, 145 L. Ed. 2d 314 (1999).

Arbitration

An insurance policy provision requiring arbitration, but allowing parties to reject awards in excess of a specified threshold, does not violate the right to a jury trial as the state constitutional guarantee of a jury trial was not intended to guarantee trial by jury in special or statutory proceedings unknown to the common law. Reed v. Farmers Ins. Group, 188 Ill. 2d 168, 242 Ill. Dec. 97, 720 N.E.2d 1052 (1999).

Arbitration rules do not foreclose a litigant's access to a jury trial; a party has a right to reject an arbitration award for any reason but may lose the right to proceed with a jury trial as a sanction. Bachmann v. Kent, 293 Ill. App. 3d 1078, 228 Ill. Dec. 299, 689 N.E.2d 171 (1 Dist. 1997).

The compulsory arbitration provisions of former § 609 of the Insurance Code violated this section and Ill. Const. (1970), Art. VI, § 14. Grace v. Howlett, 51 Ill. 2d 478, 283 N.E.2d 474 (1972).

Attorney Fees

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- Insurance Code

Section 155 of the Insurance Code (215 ILCS 5/155) does not constitute unconstitutional special legislation, nor does it deprive plaintiffs of their right to trial by jury. Kaniuk v. Safeco Ins. Co., 142 Ill. App. 3d 1070, 97 Ill. Dec. 156, 492 N.E.2d 592 (1 Dist. 1986).

Common Law

- In General

Illinois' constitutional right to a jury trial is not the same as that found in the federal constitution and in Illinois, the right to a jury trial only attaches in those actions where such right existed under the English common law at the time the constitution was adopted. Martin v. Heinhold Commodities, Inc., 163 Ill. 2d 33, 205 Ill. Dec. 443, 643 N.E.2d 734 (1994).

The constitutional guarantee of the right of trial by jury is not so inelastic as to render unchangeable every characteristic and specification of the common-law jury system, and flexibility for the adjustment of details remains, as long as the essentials of the system are retained. People v. Lobb, 17 Ill. 2d 287, 161 N.E.2d 325 (1959).

Although the constitutional right to a jury has been included in each of the several Illinois Constitutions, none of them has defined the right of trial by jury; but, as construed by the courts, the provision means the right of trial by jury as it existed at common law, and as enjoyed at the adoption of the respective constitutions. Reese v. Laymon, 2 Ill. 2d 614, 119 N.E.2d 271 (1954).

- Actions at Law

The determination of whether an action is an action at law and one in which there is the constitutional right of jury trial can only be resolved by an examination of the proceedings. Berk v. County of Will, 34 Ill. 2d 588, 218 N.E.2d 98 (1966).

- Crimes

The common law right to a trial by jury in criminal cases is guaranteed and declared to be inviolable, and the former Criminal Code required that, except as therein provided, all trials for criminal offenses should be conducted according to the course of the common law. Harris v. People, 128 Ill. 585, 21 N.E. 563 (1889).

- Felony Indictment

The trial of an indictment for a felony by a judge without a jury was a proceeding wholly unknown to the common law. Harris v. People, 128 Ill. 585, 21 N.E. 563 (1889).

- Role of Jury

Common law trial by jury by no means contemplated jurors that were free to act according to their own conceptions of their proper role. People v. Izzo, 14 Ill. 2d 203, 151 N.E.2d 329 (1958).

Competency Hearing

The right to a trial by jury is guaranteed by the United States Constitution and the Illinois Constitution, but does not mean that the defendant is guaranteed a trial by jury at a competency hearing. People v. White, 131 Ill. App. 2d 652, 264 N.E.2d 228 (3 Dist. 1970).

The right to trial by jury guaranteed by the 1870 constitution did not extend to a hearing to determine the competency of a defendant to stand trial. People v. Shadowens, 44 Ill. 2d 70, 254 N.E.2d 484 (1969).

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The right to trial by jury does not extend to a hearing to determine the competency of a defendant to stand trial. People v. Brown, 43 Ill. 2d 79, 250 N.E.2d 647 (1969).

Constitution of 1870 Compared

This section is identical to the provision contained in the Illinois Constitution of 1870 and has been interpreted to afford the right to a jury trial only as it existed at common law. Atkins v. City of Chicago Comm'n on Human Relations ex rel. Lawrence, 281 Ill. App. 3d 1066, 217 Ill. Dec. 575, 667 N.E.2d 664 (1 Dist. 1996).

The Constitution of 1970 provides that "the right of trial by jury as heretofore enjoyed shall remain inviolate." This language is identical to that in the Constitution of 1870 and has been interpreted to secure the right of jury trial as it existed at common law. Lloyd A. Fry Roofing Co. v. Pollution Control Bd., 20 Ill. App. 3d 301, 314 N.E.2d 350 (2 Dist. 1974).

This section is identical with the first clause of section 5 of Article II of the 1870 Constitution of Illinois, and no change in construction was, therefore, intended. Ford v. EPA, 9 Ill. App. 3d 711, 292 N.E.2d 540 (3 Dist. 1973).

Consumer Fraud

An action under the Consumer Fraud Act (815 ILCS 505/1 et seq.) is a new statutory right created by the legislature and, as such, does not confer the right to a jury trial. Martin v. Heinhold Commodities, Inc., 163 Ill. 2d 33, 205 Ill. Dec. 443, 643 N.E.2d 734 (1994).

An action brought under the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2) which constituted special or statutory proceeding unknown to the common law, was not entitled to a trial by jury, either under this section or paragraph 262 of the Federal Trade Commission Act. Richard/Allen/Winter, Ltd. v. Waldorf, 156 Ill. App. 3d 717, 109 Ill. Dec. 239, 509 N.E.2d 1078 (2 Dist. 1987).

Contempt

- In General

This section preserves the right to a jury trial as it existed at common law; however, the weight of authority is that at common law all contempts were tried summarily, and a jury trial was not available as a matter of right under any circumstances. In re Betts, 200 Ill. App. 3d 26, 146 Ill. Dec. 441, 558 N.E.2d 404 (4 Dist. 1990), appeal denied, 136 Ill. 2d 541, 153 Ill. Dec. 370, 567 N.E.2d 328 (1991).

Witness was properly fined for contempt after refusing to testify in a case; the contempt order, authorized under 1919 Ill. Laws p. 710, § 36 of An Act in Regard to Evidence and Depositions in Civil Cases, did not violate due process or the Ill. Const. of 1870, Art. II, § 9 (now Ill. Const. (1970), Art. I, § 13) right to a trial by jury because the trial court had jurisdiction and the power to punish contempt was inherent in any court of justice. People ex rel. Ickes v. Rushworth, 294 Ill. 455, 128 N.E. 555, 1920 Ill. LEXIS 914 (1920).

- Criminal

An individual charged with direct criminal contempt who has no right to a jury trial under the United States Constitution also has no right to a jury trial under either the Illinois Constitution or Illinois statutory or common law. In re Betts, 200 Ill. App. 3d 26, 146 Ill. Dec. 441, 558 N.E.2d 404 (4 Dist. 1990), appeal denied, 136 Ill. 2d 541, 153 Ill. Dec. 370, 567 N.E.2d 328 (1991).

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Contempt is not a statutory offense in Illinois, and the guarantee of a jury trial in this section was not applicable to defendant in a summary proceeding in which he was found in direct criminal contempt of court. People v. Collins, 57 Ill. App. 3d 934, 15 Ill. Dec. 404, 373 N.E.2d 750 (2 Dist. 1978).

Contribution

The right to trial by jury does not extend to special or statutory proceedings unknown at common law, and as the issue of a good faith settlement arises under the Illinois Contribution Act where no provision granting the right to a jury trial is provided, no right to a jury trial attaches. Barreto v. City of Waukegan, 133 Ill. App. 3d 119, 88 Ill. Dec. 266, 478 N.E.2d 581 (2 Dist. 1985).

Damages

The right of trial by jury in cases at law is a constitutional right, and in any case where there are issues of fact to be determined a jury must be called to assess the damages unless it is expressly waived. North Am. Provision Co. v. Kinman, 288 Ill. App. 414, 6 N.E.2d 235 (3 Dist. 1937).

Declaratory Judgment Action

Circuit court order in a declaratory judgment action was reversed and remanded because the court's striking of an insurer's jury demand was an abuse of discretion in that the predominant issues to be determined were factual issues. The insurer was entitled under Ill. Const. (1970), Art. I, § 13 and 735 ILCS 5/2-701(d) to have a jury assess the credibility of the witnesses and make findings of fact as to the cause of the damage to the insureds' property. Noren v. Metro. Prop. & Cas. Ins. Co., 369 Ill. App. 3d 72, 307 Ill. Dec. 777, 860 N.E.2d 431, 2006 Ill. App. LEXIS 1117 (1 Dist. 2006).

In a declaratory judgment action, the right to a jury trial depends upon the relief sought. DeKalb Bank v. Purdy, 205 Ill. App. 3d 62, 150 Ill. Dec. 420, 562 N.E.2d 1223 (2 Dist. 1990).

Default Judgments

The provisions of U.S. Const., Amends. VII and XIV and this section do not prevent the entry of a default judgment against a litigant who makes a timely jury demand but otherwise fails to appear personally or by her legal representative when notice by the opposing party specifically states that, if she does not appear, a motion for judgment by default will be made. Puglisi v. Hansford, 193 Ill. App. 3d 803, 140 Ill. Dec. 733, 550 N.E.2d 618 (4 Dist. 1990).

Demand Upon Remand

A construction of former section 64 of the Civil Practice Act (see now 735 ILCS 5/2-1105), which precluded a jury trial where the demand for it was made for the first time after the cause had been remanded for a new trial, did not violate former Ill. Const. (1870), Art. II, § 5 (see now this section). Reese v. Laymon, 2 Ill. 2d 614, 119 N.E.2d 271 (1954).

Directed Verdicts

Verdicts ought to be directed and judgments n.o.v. entered only in those cases in which all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors

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the movant that no contrary verdict based on that evidence could ever stand. Pedrick v. Peoria & E. R.R., 37 Ill. 2d 494, 229 N.E.2d 504 (1967).

Dram Shop Act

Claims created by statute, such as the Liquor Control Act (235 ILCS 5/1-1 et seq.), need not be tried by a jury as the right to a jury trial is conferred on common law claims; thus, the Liquor Control Act does not violate the constitutional right to a jury trial. Stevens v. Lou's Lemon Tree, Ltd., 187 Ill. App. 3d 458, 135 Ill. Dec. 58, 543 N.E.2d 293 (1 Dist. 1989).

Equity

- In General

Where legal and equitable proceedings are tried together, the jury's verdict governs factual issues common to them; thus, a circuit court did not have the right to make a finding on the question of breach of fiduciary duty independent of that made by the jury. Boatmen's Nat'l Bank v. Ward, 231 Ill. App. 3d 401, 172 Ill. Dec. 261, 595 N.E.2d 622 (5 Dist.), cert. denied, 147 Ill. 2d 625, 180 Ill. Dec. 147, 606 N.E.2d 1224 (1992).

There is no constitutional right of trial by jury in equity. Burnett v. Safeco Ins. Co., 227 Ill. App. 3d 167, 169 Ill. Dec. 113, 590 N.E.2d 1032 (5 Dist.), cert. denied, 146 Ill. 2d 623, 176 Ill. Dec. 793, 602 N.E.2d 447 (1992).

What this provision guarantees is the right to trial by jury as it existed in common law actions when the constitution was adopted. There was then and there is now no constitutional right of trial by jury in equity. Lazarus v. Village of Northbrook, 31 Ill. 2d 146, 199 N.E.2d 797 (1964).

The provision of the Constitution of 1870, prescribing the right to trial by jury (Ill. Const. (1870), Art. II, § 5) (see now this section) did not extend to cases in equity but was confined to cases at law. Martin v. Strubel, 367 Ill. 21, 10 N.E.2d 325 (1937).

- Breach of Fiduciary Duty

Trial court was authorized to strike the potential investor's jury demand in a case where the potential investor sued the banking firm and investment banker for breach of fiduciary duty for allegedly usurping the potential investor's plan to buy a bank. The potential investor did not have a right to a jury trial under Ill. Const. art. I, § 13 on the breach of fiduciary duty claim because that claim was an equitable action for which there was not a right to a jury trial. Prodromos v. Everen Secs., Inc., 389 Ill. App. 3d 157, 329 Ill. Dec. 401, 906 N.E.2d 599, 2009 Ill. App. LEXIS 120 (1 Dist. 2009).

- Declaratory Relief

There was no right to a jury trial on either the complaint or counterclaim where the trial court properly exercised jurisdiction in equity to declare the common rights and obligations of the parties under contracts of insurance where the issues substantively concerned contribution and, therefore, were in the nature of equitable actions. Zurich Ins. Co. v. Raymark Indus., Inc., 145 Ill. App. 3d 175, 98 Ill. Dec. 512, 494 N.E.2d 634 (1 Dist. 1986).

When a declaratory judgment alone is sought, and no further relief is requested, the right to a trial by jury must be determined by an examination of the disputed issues and an appraisal of their predominant characteristics as indicating the appropriateness of legal or equitable relief; but when, as is ordinarily the case, relief in addition to the naked declaration of rights is sought, the nature of that relief determines the right to a trial by jury. Lazarus v. Village of Northbrook, 31 Ill. 2d 146, 199 N.E.2d 797 (1964).

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- Ejectment Statute

A former ejectment statute conferring jurisdiction over ejectment actions on the court of chancery did not unconstitutionally deprive parties of their right to jury trial; jurisdiction in equity did not exclude trial by jury, since courts of chancery could submit questions of fact to trial by jury. Gage v. Ewing, 107 Ill. 11 (1883).

- Foreclosure Deficiency Decrees

Statute which conferred power on courts of equity to render deficiency decrees in foreclosure proceedings was not repugnant to former section 2 or section 5 of Article II of the 1870 Illinois Constitution (see now this section and Ill. Const. (1970), Art. I, § 2), because it did not deprive the mortgagor of due process of law or the right of trial by jury. Martin v. Strubel, 367 Ill. 21, 10 N.E.2d 325 (1937).

- Injunction Against Strip Mining

An action by city to restrain defendant from strip mining was not a criminal proceeding and therefore he was not constitutionally entitled to a trial by jury under former Ill. Const. (1870), Art. II, § 5 (see now this section). Village of Spillertown v. Prewitt, 21 Ill. 2d 228, 171 N.E.2d 582 (1961).

- Statute Allowing Jury

Pursuant to former section 63 of the Civil Practice Act (see now 735 ILCS 5/2-1111) which expressly vested in courts of equity discretion as to whether they should call a jury on questions of fact in chancery cases, the trial court did not abuse its discretion in striking the demand for jury in an interpleading proceeding to determine whether an insured's widow or sister was entitled to proceeds of life insurance policy on the issue of whether an insured was insane when he changed beneficiary from widow to sister. Metropolitan Life Ins. Co. v. Davis, 295 Ill. App. 582, 15 N.E.2d 874 (4 Dist. 1938).

- Zoning Injunction

What former Ill. Const. (1870), Art. II, § 5 (see now this section) guarantees is the right to trial by jury as it existed in common law actions when the constitution was adopted; there was then and there is now no constitutional right to a jury in equity. Thus, the fact that a complaint was designated in its caption as a complaint at law could not finally determine the right to a trial by jury as the complaint prayed for an injunction. Lazarus v. Village of Northbrook, 31 Ill. 2d 146, 199 N.E.2d 797 (1964).

Where plaintiffs sought a declaration of invalidity of a village zoning ordinance as applied to their property and injunctive relief, the village was not deprived of its constitutional right of trial by jury, when the village's demand for a jury trial was stricken upon the plaintiffs' motion. Lazarus v. Village of Northbrook, 31 Ill. 2d 146, 199 N.E.2d 797 (1964).

Exercise of Right

The right of an accused person to a jury trial is absolute to the extent that he may have such a trial by claiming it or even by withholding his consent to proceed without it. People ex rel. Swanson v. Fisher, 340 Ill. 250, 172 N.E. 722 (1930).

Fee for Jury Demand

Compelling payment of a reasonable jury-demand fee does not violate the constitutional right to the trial by jury. Fried v. Danaher, 46 Ill. 2d 475, 263 N.E.2d 820 (1970).

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A reasonable jury demand fee is valid, and does not impair the right of trial by jury. Brownell v. Quinn, 47 Ill. App. 2d 206, 197 N.E.2d 721 (1 Dist. 1964).

A city ordinance requiring that a party filing a jury demand pay the court clerk a jury demand fee of 50 for a jury of six and $100 for a jury of twelve did not violate former Ill. Const. (1870), Art. II, § 5 (see now this section) as such fees were reasonable. People ex rel. Flanagan v. McDonough, 24 Ill. 2d 178, 180 N.E.2d 486 (1962).

The right of trial by jury in civil cases does not prohibit the requirement of payment of a jury fee by a party demanding that mode of trial. Huber v. Van Schaack-Mutual, Inc., 368 Ill. 142, 13 N.E.2d 179 (1938).

Felonies

The right of trial by jury in all capital cases - and at common law a century and a half ago all felonies were capital - was justly regarded as the great safeguard of personal liberty; the fundamental principle of the system in its relation to such trials was that all questions of fact should be determined by the jury, questions of law only being reserved for the courts. Harris v. People, 128 Ill. 585, 21 N.E. 563 (1889).

Forcible Entry and Detainer Action

Defendants were guaranteed a right of trial by jury with respect to the plaintiff's claim for rent under the former Forcible Entry and Detainer Act (see now 735 ILCS 5/9-101). Twin-City Inn, Inc. v. Hahne Enter., Inc., 37 Ill. 2d 133, 225 N.E.2d 630 (1967).

Human Rights Act

Since a claim for handicap discrimination was nonexistent at common law, and because the General Assembly did not include the right to a jury trial in the text of the Human Rights Act (775 ILCS 5/1-101 et seq.), it follows that a defendant was not entitled to a jury trial thereon under the Illinois Constitution. Habitat Co. v. McClure, 301 Ill. App. 3d 425, 234 Ill. Dec. 717, 703 N.E.2d 578 (1 Dist. 1998), appeal denied, 183 Ill. 2d 568, 238 Ill. Dec. 713, 712 N.E.2d 817 (1999).

Impartiality Not Shown

The presence of one of the jurors in a murder trial who was a special deputy sheriff who was an employee of an oil company, had never been assigned any duties as special deputy sheriff, whose commission was issued as a courtesy only, with no compensation, had never exercised any peace officer authority and had no more than a speaking acquaintance with the sheriff, was not sufficiently prejudicial to warrant reversal; the guaranty of trial by jury insures to a defendant in a criminal case the right to have the facts in controversy determined by twelve impartial jurors, but this rule does not relieve a defendant of his duty to ascertain whether impartiality exists and in the case at bar nothing appeared to show the juror in question had expressed opinions upon the merits of the case, or was in fact biased against defendant and unable to weigh the evidence impartially. People v. Ward, 32 Ill. 2d 253, 204 N.E.2d 741 (1965).

Impartiality Shown

Defendant failed to show that defendant did not receive a fair trial before an impartial jury, required by Ill. Const. Art. I, §§ 8 and 13, as the evidence demonstrated that the trial court acted within its discretion in waiting until an allegedly biased juror indicated during the sentencing phase

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that the juror could not be fair and impartial to replace the juror. Prior to that time, the trial court did not have enough evidence that the juror could not be fair and impartial, but the juror's indication that defendant should get the death sentence the State was requesting showed that the juror had made up his mind without listening to all of the evidence. People v. Runge, 234 Ill. 2d 68, 334 Ill. Dec. 865, 917 N.E.2d 940, 2009 Ill. LEXIS 635 (2009), cert. denied, 130 S. Ct. 2402, 2010 U.S. LEXIS 3748, 176 L. Ed. 2d 925 (U.S. 2010).

Defendant was not denied the right to a fair and impartial jury where one juror described a threatened feeling the juror had when leaving the courthouse behind defense spectators because the jurors who were asked stated they could decide the matter fairly and impartially and the only juror who was not asked indicated that he was not paying attention to the one juror's comments. People v. Walker, 386 Ill. App. 3d 1025, 327 Ill. Dec. 101, 901 N.E.2d 429, 2008 Ill. App. LEXIS 1208 (3 Dist. 2008).

Defendant was not denied a trial by an impartial jury when the trial court failed to hold an in camera questioning of two jurors about the names of their friends who were correctional officers, as the names were not necessary where the jurors denied knowing defendant and any of the witnesses in the case and denied that their relationship with correctional officers would cause them to favor one side or the other, indicating that they could be fair and impartial. People v. Gay, 377 Ill. App. 3d 828, 317 Ill. Dec. 877, 882 N.E.2d 1033, 2007 Ill. App. LEXIS 1398 (1 Dist. 2007).

Trial court did not err in denying defendant's post-conviction petition for failure to make a substantial showing of a constitutional violation in a case where defendant, a gang-member, was convicted of first-degree murder under an accountability theory after fellow gang members shot to death a high school student; defense counsel was given ample opportunity to request that the jury be asked a gang bias question and did not do so, and, thus, the trial court's conduct did not thwart the selection of an impartial jury. People v. Gardner, 348 Ill. App. 3d 479, 284 Ill. Dec. 527, 810 N.E.2d 180, 2004 Ill. App. LEXIS 476 (1 Dist. 2004), appeal denied, 211 Ill. 2d 593, Ill. Dec. , 823 N.E.2d 971 (2004).

Where his petition for post-conviction relief under the Illinois Post-Conviction Hearing Act, 725 ILCS 5/122-1 et seq., alleged a valid gang bias voir dire issue that was not rebutted by the record, defendant alleged a sufficient constitutional deprivation to require a second-stage review of his petition; thus, a trial court erred in dismissing, as frivolous, the petition at the first-stage level of review. People v. Etherly, 344 Ill. App. 3d 599, 279 Ill. Dec. 807, 801 N.E.2d 99, 2003 Ill. App. LEXIS 1372 (1 Dist. 2003).

The issue of whether defendant was denied his right to an impartial jury by being unfairly deprived of information regarding one of the jurors was raised on appeal and adequately addressed and holding was not affected by defendant's additional information. People v. Towns, 182 Ill. 2d 491, 231 Ill. Dec. 557, 696 N.E.2d 1128 (1998).

In Rem Proceedings

A right to a jury trial, in civil in rem proceedings for the enforcement of statutory forfeitures, existed prior to the adoption of the Illinois Constitution and the Illinois Constitution preserves this right for the benefit of Illinois citizens under this section. People ex rel. O'Malley v. 6323 N. LaCrosse Ave., 158 Ill. 2d 453, 199 Ill. Dec. 690, 634 N.E.2d 743 (1994).

Section 9(F) of the Drug Asset Forfeiture Procedure Act (725 ILCS 150/9(F)) unconstitutionally denies the claimant in an in rem civil forfeiture proceeding the right to a trial by jury. People ex rel. O'Malley v. 6323 N. LaCrosse Ave., 158 Ill. 2d 453, 199 Ill. Dec. 690, 634 N.E.2d 743 (1994).

Jones Act

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Because such a cause of action was unknown at common law, the Illinois Constitution does not confer a right to a trial by jury upon a defendant in a Jones Act case. Hendricks v. Riverway Harbor Serv. St. Louis, Inc., 314 Ill. App. 3d 800, 247 Ill. Dec. 702, 732 N.E.2d 757, 2000 Ill. App. LEXIS 530 (5 Dist. 2000).

Defendants under the Jones Act, 46 U.S.C. § 688, have no right to a jury trial, since the Act did not exist at common law. Hanks v. Luhr Bros., 303 Ill. App. 3d 661, 236 Ill. Dec. 696, 707 N.E.2d 1266, 1999 Ill. App. LEXIS 126 (5 Dist. 1999), appeal denied, 184 Ill. 2d 556, 239 Ill. Dec. 608, 714 N.E.2d 527 (1999), cert. denied, 528 U.S. 966, 120 S. Ct. 402, 145 L. Ed. 2d 314 (1999).

The state constitutional right to a jury trial does not apply to defendant's in Jones Act cases because the right to a jury trial does not apply to actions nonexistent at common law, and the Jones Act grants the right to a jury trial statutorily only to a plaintiff. Gibbs v. Lewis & Clark Marine, 298 Ill. App. 3d 743, 233 Ill. Dec. 126, 700 N.E.2d 227, 1998 Ill. App. LEXIS 608 (5 Dist. 1998).

Judgment N.O.V.

The power to enter judgment notwithstanding the verdict on the ground that the plaintiff's evidence wholly failed as a matter of law to establish his claim was not a violation of the right to trial by jury contained in this section. Fulford v. O'Connor, 3 Ill. 2d 490, 121 N.E.2d 767 (1954).

Where a motion for judgment notwithstanding the verdict and for a new trial are both before the trial court, and only the motion for judgment is granted, the appellate court, in reversing, cannot exercise original jurisdiction to deny the new trial; however, where the constitutional points raised by appellant were no longer debatable and the circuit court was compelled to follow the mandate of the appellate court, questions giving the Supreme Court of Illinois jurisdiction could not be raised upon a motion to disobey the mandate, and because all of the issues necessary for a final disposition of the case had been decided, the appeal was dismissed. Goodrich v. Sprague, 385 Ill. 200, 52 N.E.2d 250 (1943).

Jury Trial Improperly Denied

Where plaintiff sought money damages for breach of contract and conversion in addition to a mere declaration of rights, and defendants filed a counterclaim alleging breach of contract and estoppel, and requesting the court to award them certain net proceeds, the court abused its discretion by denying the defendant's demand for jury trial. DeKalb Bank v. Purdy, 205 Ill. App. 3d 62, 150 Ill. Dec. 420, 562 N.E.2d 1223 (2 Dist. 1990).

Jury's Request for Instructions

Since the jury's own request for clarification emphasized that the evidence could have supported that defendant's purported confession was partly fabricated, the trial court should have instructed the jury specifically that part of their task was to determine whether defendant actually made the confession; instructional error was not reversible, however, given the overwhelming evidence of guilt in addition to the confession. People v. Richmond, 341 Ill. App. 3d 39, 274 Ill. Dec. 721, 791 N.E.2d 1132, 2003 Ill. App. LEXIS 653 (1 Dist. 2003).

If a jury's request for further instructions is essentially a request for advice on how to decide a question of fact, the circuit court must refuse to give the additional instructions; giving an additional instruction which informs the jury how to decide a question of fact would frustrate the parties' constitutional and statutory right to a trial by jury and so must be avoided. Department of

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Pub. Works & Bldgs. v. Roehrig, 45 Ill. App. 3d 189, 3 Ill. Dec. 893, 359 N.E.2d 752 (5 Dist. 1976).

Justices of the Peace

- Roads and Bridges Act

There was no prohibition, under former Article II, section 5 of the Constitution of 1870 (see now this section) limiting the power of the General Assembly to confer jurisdiction on justices of the peace, except that it be uniform; trial by a justice of the peace of a hearing for damages under the Roads and Bridges Act (see now 605 ILCS 5/6-309) did not unconstitutionally deprive a landowner of his right to jury trial. McManus v. McDonough, 107 Ill. 95 (1883).

Juvenile Proceedings

Mother was not entitled to a jury trial in a termination of parental rights proceeding because: (1) neither the Juvenile Court Act of 1987 nor the Adoption Act provided for a jury trial except in certain juvenile delinquency proceedings; (2) as the proceedings were statutory, there was no right to jury trial under this section; and (3) the Seventh Amendment to the United States Constitution did not extend to state proceedings. People v. Benavides (In re K.J.), 381 Ill. App. 3d 349, 319 Ill. Dec. 436, 885 N.E.2d 1116, 2008 Ill. App. LEXIS 211 (1 Dist. 2008).

Neither the federal nor the state Constitution is violated by the failure of the Juvenile Court Act to provide for jury trials in proceedings thereunder. People v. Presley, 47 Ill. 2d 50, 264 N.E.2d 177 (1970).

Denying a juvenile the right to trial by jury in a delinquency proceeding did not violate the constitutional guarantee of a jury trial. People v. Fucini, 44 Ill. 2d 305, 255 N.E.2d 380 (1970).

Late Demand

- Discretion of Court

Where the judge cited no reason for denying defendant's late request for a jury trial, although the jury decision usually falls within the discretion of the trial judge, he must not ignore the constitutional importance of the right; therefore the trial court abused its discretion in this matter by refusing to grant a jury trial. Williams v. National Super Mkts., Inc., 143 Ill. App. 3d 110, 96 Ill. Dec. 659, 491 N.E.2d 938 (5 Dist. 1986).

- Extension of Time

Former section 59 (see now 735 ILCS 5/2-1007) and former Supreme Court Rule 8(5) (see now Supreme Court Rules 181-184) could not authorize an extension of the limitation periods fixed by a statute nor extensions of time to do acts beyond the period over which a court had jurisdiction; however, in order to read purpose into the statute, and the rule of court thereunder, such provisions must be construed to apply to situations in which, for good cause shown and in fairness and justice, time should be extended in which to allow a party to exercise the right of trial by jury as guaranteed to him by the constitution. Stephens v. Kasten, 383 Ill. 127, 48 N.E.2d 508 (1943).

- Good Cause

A party can file a late jury demand upon establishing good cause; although the facts of each case determine good cause, the court may consider inconvenience to the parties, inconvenience to the

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court, and possible prejudice to the rights of opposing parties. Williams v. National Super Mkts., Inc., 143 Ill. App. 3d 110, 96 Ill. Dec. 659, 491 N.E.2d 938 (5 Dist. 1986).

Where good cause existed for defendant's late demand for a jury trial because of the allegation of additional injuries in plaintiff's second amended complaint, defendant was entitled to a trial by jury. Williams v. National Super Mkts., Inc., 143 Ill. App. 3d 110, 96 Ill. Dec. 659, 491 N.E.2d 938 (5 Dist. 1986).

Legislative Restrictions

Residential Real Property Disclosure Act, 765 ILCS 77/1 et seq.; the Real Estate License Act of 2000, 225 ILCS 454/1-1 et seq.; and the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et seq., each create a new statutory right with no right to a jury trial. Anderson v. Klasek, 393 Ill. App. 3d 219, 332 Ill. Dec. 683, 913 N.E.2d 615, 2009 Ill. App. LEXIS 708 (5 Dist. 2009).

While the power of the legislature to regulate the right of jury trial in some reasonable manner has long been recognized in this state, a statute doing so should be liberally construed in favor of the right, and the inclination of the court should be to protect and enforce that right. Hudson v. Leverenz, 10 Ill. 2d 87, 139 N.E.2d 255 (1956).

Liberal Construction

The right to a jury trial should be liberally construed in favor of the party requesting a jury, and the trial court should be inclined to protect that right. DeKalb Bank v. Purdy, 205 Ill. App. 3d 62, 150 Ill. Dec. 420, 562 N.E.2d 1223 (2 Dist. 1990).

Mental Treatment

The 1870 Constitution of Illinois (see now Ill. Const. (1970), Art. I, § 13) did not require a jury trial in a proceeding to commit for mental treatment under former Ill. Rev. Stat., ch. 91 1/2, para. 8-6 (see now 405 ILCS 5/3-705). People ex rel. Keith v. Keith, 38 Ill. 2d 405, 231 N.E.2d 387 (1967).

Modification of Verdict

Where a direct appeal was taken by three defendants to the Supreme Court of Illinois on the theory that the trial court's interpretation and modification of the verdict constituted an invasion of the exclusive province of the jury and therefore deprived defendants of their right of trial by jury, the case's transfer to appellate court by the Supreme Court without opinion indicated that no constitutional question was involved. Goldbeck v. Cieslik, 5 Ill. App. 2d 529, 126 N.E.2d 417 (1 Dist. 1955).

Motor Vehicle Act

Section 11-501.1 of the Motor Vehicle Act (625 ILCS 5/11-501.1) is a statutory proceeding of recent origin and was unknown at common law; therefore, a trial by jury of implied consent issues is not guaranteed in such proceedings by the Illinois Constitution of 1970. People v. Finley, 21 Ill. App. 3d 335, 315 N.E.2d 229 (3 Dist. 1974).

Newly Created Right

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Because the action under the ordinance was a newly created right, respondent was not entitled to a jury trial. Atkins v. City of Chicago Comm'n on Human Relations ex rel. Lawrence, 281 Ill. App. 3d 1066, 217 Ill. Dec. 575, 667 N.E.2d 664 (1 Dist. 1996).

Non-Support of Spouse

The mere fact that in cases concerning the former crime of wife abandonment the legislature empowered the court, in its discretion, to inflict a punishment differing from that inflicted in other cases of misdemeanor did not affect the right of the defendant to a trial by jury. People v. Heise, 257 Ill. 443, 100 N.E. 1000 (1913).

Not Guilty Plea

In a prosecution for a felony, where a plea of not guilty was entered, the right to a jury trial could not have been waived, and the court did not have the jurisdiction to try, convict, and sentence the defendant without the intervention of a jury. Harris v. People, 128 Ill. 585, 21 N.E. 563 (1889).

Number of Jurors

State was not entitled to the writ of mandamus it requested, as the trial court had the discretion to allow a defendant in a criminal case to proceed with less than 12 jurors. Since a defendant had a right to waive a jury trial altogether under the Sixth Amendment, U.S. Const. amend. VI, as well as Ill. Const. art. I, §§ 8 and 13 and 725 ILCS 5/115-1, the defendant could also agree to be tried by six jurors instead of 12 despite 725 ILCS 5/115-4(b) stating that jury "shall" consist of 12 members and the State held absolutely no veto power over that decision. People ex rel. Birkett v. Dockery, 235 Ill. 2d 73, 335 Ill. Dec. 592, 919 N.E.2d 311, 2009 Ill. LEXIS 1321 (2009).

- In General

A jury is comprised of twelve members although the parties can consent in open court to a unanimous verdict of a jury of less than twelve. Hartgraves v. Don Cartage Co., 63 Ill. 2d 425, 348 N.E.2d 457 (1976).

A trial by jury has been held to be a trial by a jury comprised of twelve jurors. Hartgraves v. Don Cartage Co., 27 Ill. App. 3d 298, 326 N.E.2d 461 (1 Dist. 1975), aff'd, 63 Ill. 2d 425, 348 N.E.2d 457 (1976).

The guarantee of trial by jury under former Ill. Const. (1870), Art. II, § 5 (see now this section) insures to a defendant in a criminal case the right to have the facts in controversy determined by twelve impartial jurors. People v. Cole, 132 Ill. App. 2d 1041, 271 N.E.2d 385 (4 Dist. 1971), rev'd on other grounds, 54 Ill. 2d 401, 298 N.E.2d 705 (1973).

Authorization of a trial by a jury of six upon the demand of any person interested, or the judge's ordering by his own motion a jury of the same number to try the case under the former Juvenile Court Act, was a jury as the constitution guarantees. Lindsay v. Lindsay, 257 Ill. 328, 100 N.E. 892 (1913).

- Consent to Change

The defendant was entitled to a new trial where he was tried by a six person jury, but it did not appear that he was aware of his right to a 12 person jury or that he agreed to a jury of less than 12 persons. People v. Matthews, 304 Ill. App. 3d 415, 237 Ill. Dec. 894, 710 N.E.2d 524 (5 Dist. 1999), appeal denied, 185 Ill. 2d 651, 242 Ill. Dec. 146, 720 N.E.2d 1101 (1999).

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The legislature may not deny a defendant in a criminal case the right to have a jury of 12 persons to decide his case; however, the defendant may waive that right. People v. Matthews, 304 Ill. App. 3d 415, 237 Ill. Dec. 894, 710 N.E.2d 524 (5 Dist. 1999), appeal denied, 185 Ill. 2d 651, 242 Ill. Dec. 146, 720 N.E.2d 1101 (1999).

Without the consent of the parties, a verdict may not be properly rendered by a jury of any number other than twelve. Hartgraves v. Don Cartage Co., 27 Ill. App. 3d 298, 326 N.E.2d 461 (1 Dist. 1975), aff'd, 63 Ill. 2d 425, 348 N.E.2d 457 (1976).

- Incapacity of Juror

Where a defendant did not waive its right to a trial by twelve jurors, the trial court erred in denying the defendant's timely motion for a mistrial based upon the fact that the twelfth juror was incapacitated during the course of the trial. Hartgraves v. Don Cartage Co., 27 Ill. App. 3d 298, 326 N.E.2d 461 (1 Dist. 1975), aff'd, 63 Ill. 2d 425, 348 N.E.2d 457 (1976).

- No Partial Waiver

While the defendant's ability to waive a trial by jury is not abridged, he does not have the right, over the state's objection, to insist on a six-member jury, as the right to a jury trial guaranteed by the Illinois Constitution is the right to a trial by jury "as heretofore enjoyed," which has commonly been understood to mean a jury of twelve. People v. Ernst, 219 Ill. App. 3d 51, 161 Ill. Dec. 828, 579 N.E.2d 376 (3 Dist. 1991), cert. denied, 143 Ill. 2d 642, 167 Ill. Dec. 404, 587 N.E.2d 1019 (1992).

- Plain Error

Prejudice may be presumed where defendant was unaware of his right to a full jury and neither agreed to nor acquiesced in a decision to waive the full number of jurors. People v. Bragg, 176 Ill. App. 3d 1080, 126 Ill. Dec. 194, 531 N.E.2d 821 (3 Dist. 1988).

The right to a twelve-person jury, although waivable, is an essential feature of a substantial constitutional guarantee; as such, the doctrine of plain error may be invoked and error will be found if it appears that defendant was prejudiced by a violation of his right to a twelve-person jury. People v. Bragg, 176 Ill. App. 3d 1080, 126 Ill. Dec. 194, 531 N.E.2d 821 (3 Dist. 1988).

- Waiver

Defendant who stood silent and made no objection as counsel agreed that it was not necessary to appoint alternate jurors was clearly on notice as to the right to a 12-person jury and was also on notice as to the possibility that illness or other mishaps involving a juror could result in trial by a smaller jury; therefore, waiver of the 12-person jury right was shown. People v. Barrier, 359 Ill. App. 3d 639, 296 Ill. Dec. 59, 834 N.E.2d 616, 2005 Ill. App. LEXIS 865 (3 Dist. 2005), appeal denied, 217 Ill. 2d 570, 300 Ill. Dec. 368, 844 N.E.2d 40 (2005).

Paternity Actions

Determination of paternity was not recognized at common law; therefore, no constitutional right to trial by jury inheres in such an action. Hamilton ex rel. Ceasar v. Ceasar, 218 Ill. App. 3d 268, 161 Ill. Dec. 94, 578 N.E.2d 221 (1 Dist.), appeal denied, 142 Ill. 2d 653, 164 Ill. Dec. 917, 584 N.E.2d 129 (1991), cert. denied, 505 U.S. 1207, 112 S. Ct. 2999, 120 L. Ed. 2d 875 (1992).

The circuit court did not err in striking an indigent defendant's jury demand for lack of payment of the jury fee in the underlying paternity action. Hamilton ex rel. Ceasar v. Ceasar, 218 Ill. App. 3d 268, 161 Ill. Dec. 94, 578 N.E.2d 221 (1 Dist.), appeal denied, 142 Ill. 2d 653, 164 Ill. Dec.

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917, 584 N.E.2d 129 (1991), cert. denied, 505 U.S. 1207, 112 S. Ct. 2999, 120 L. Ed. 2d 875 (1992).

In a paternity proceeding there can be no question as to one's constitutional right to trial by jury since this cause of action was not recognized at common law; however, section 6 of the Paternity Act (see now 750 ILCS 45/1 et seq.) creates a statutory right to jury trial. People ex rel. Cizek v. Azzarello, 81 Ill. App. 3d 1102, 37 Ill. Dec. 84, 401 N.E.2d 1177 (1 Dist. 1980).

Petit Juries

- Composition

The Illinois Constitution does not require that petit juries reflect a representative cross section of the community. People v. Rosa, 206 Ill. App. 3d 1074, 151 Ill. Dec. 950, 565 N.E.2d 221 (1 Dist. 1990), appeal denied, 137 Ill. 2d 670, 156 Ill. Dec. 566, 571 N.E.2d 153, cert. denied, 502 U.S. 911, 112 S. Ct. 309, 116 L. Ed. 2d 251 (1991).

Prevailing Wage Act

Right to jury trial exists in actions that carried such a right under the English common law when the Illinois Constitution was adopted and when the legislature specifically provides for one by statute; no right to jury trial exists under the Prevailing Wage Act, 820 ILCS 130/0.01 et seq. Seaman v. Thompson Elecs. Co., 325 Ill. App. 3d 560, 259 Ill. Dec. 331, 758 N.E.2d 454, 2001 Ill. App. LEXIS 776 (3 Dist. 2001).

Probate Proceedings

Probate is a purely statutory proceeding and, unless the statutes provide a right to jury in probate proceedings, as is done for the limited purpose of discovery and recovery of property of the estate, there exists no right to a jury in probate proceedings. Galvin v. Heritage First Nat'l Bank, 74 Ill. App. 3d 336, 30 Ill. Dec. 215, 392 N.E.2d 980 (3 Dist. 1979).

A petitioner's contention that Sections 6-8 and 8-3 of the Probate Act of 1975 (755 ILCS 5/6-8 and 755 ILCS 5/8-3) were unconstitutional were without merit, as a proceeding to probate a will and admit it to record is not designed as a final and conclusive determination of the testamentary capacity of the testator upon all the evidence that may be produced; the purpose is only to establish testamentary capacity prima facie in order that the will may be recorded, the estate be cared for and the administration proceed. The provision of the Statute of Wills is that, upon certain proof being made to the court, the will shall be admitted to record and that proof embraces the execution of the will and the capacity of the testator to make it, with a reservation to any party interested, of the right to show fraud, compulsion or other improper conduct sufficient to invalidate or destroy the will. Lewis v. Oak Park Trust & Sav. Bank, 51 Ill. App. 3d 163, 9 Ill. Dec. 291, 366 N.E.2d 548 (1 Dist. 1977).

Prosecutorial Misconduct

- Effect

A conviction may be reversed if the prosecutor commits improper acts during closing arguments. People v. Dunsworth, 233 Ill. App. 3d 258, 174 Ill. Dec. 483, 599 N.E.2d 29 (3 Dist.), cert. denied, 147 Ill. 2d 631, 180 Ill. Dec. 153, 606 N.E.2d 1230 (1992).

- Improper Arguments

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A prosecutor is prohibited from presenting argument which is calculated solely to inflame the passions and prejudices of the jury. People v. Dunsworth, 233 Ill. App. 3d 258, 174 Ill. Dec. 483, 599 N.E.2d 29 (3 Dist.), cert. denied, 147 Ill. 2d 631, 180 Ill. Dec. 153, 606 N.E.2d 1230 (1992).

- Shown

Defendant's constitutional right to a fair and impartial trial was compromised by the cumulative effect of the prosecutor's remarks. People v. Dunsworth, 233 Ill. App. 3d 258, 174 Ill. Dec. 483, 599 N.E.2d 29 (3 Dist.), cert. denied, 147 Ill. 2d 631, 180 Ill. Dec. 153, 606 N.E.2d 1230 (1992).

- Standard of Review

The standard of review to determine if a prosecutor's comments during closing argument constitute reversible error is whether those remarks were such that without their having been made, the jury might have reached a different result. People v. Dunsworth, 233 Ill. App. 3d 258, 174 Ill. Dec. 483, 599 N.E.2d 29 (3 Dist.), cert. denied, 147 Ill. 2d 631, 180 Ill. Dec. 153, 606 N.E.2d 1230 (1992).

Purpose

The constitutional provision regarding a right to trial by jury was not intended to confer the right in any class of cases where it had not previously existed and was not intended to guarantee trial by jury in special statutory proceedings unknown to the common law. Biewald v. Jensen, 127 Ill. App. 3d 269, 82 Ill. Dec. 541, 468 N.E.2d 1321 (1 Dist. 1984).

The object of a constitutional provision guaranteeing the right of a trial by jury is to preserve the substance of the right rather than to prescribe the details of the methods by which it shall be exercised and enjoyed. People v. Kelly, 347 Ill. 221, 179 N.E. 898 (1931); Olson v. Chicago Transit Auth., 1 Ill. 2d 83, 115 N.E.2d 301 (1953).

Qualifications

While the trial court addressed the principles of People v. Zehr, 469 N.E.2d 1062, in voir dire, but did not satisfy the stringent requirements of Ill. Sup. Ct. R. 431(b) by failing to determine whether the majority of empaneled jurors understood and accepted the Zehr principles, it committed plain error. Therefore, defendant was entitled to a new trial despite his failure to make a Rule 431(b) objection. People v. Anderson, 389 Ill. App. 3d 1, 328 Ill. Dec. 603, 904 N.E.2d 1113, 2009 Ill. App. LEXIS 174 (1 Dist. 2009).

Questions of Fact

Where the trial court determined that a contract was ambiguous, a determination that was not challenged by the parties on appeal, a review of the extrinsic evidence showed that there was a triable issue of fact which the defendant was entitled to have submitted to a jury. Dwyer v. Graham, 110 Ill. App. 3d 316, 66 Ill. Dec. 26, 442 N.E.2d 298 (2 Dist. 1982).

Where there is a question of fact, it should be submitted to a jury unless the facts are such as to raise purely a question of law. White v. City of Belleville, 364 Ill. 577, 5 N.E.2d 215 (1936); Sycamore Preserve Works, v. Chicago & N.W. Ry., 293 Ill. App. 20, 12 N.E.2d 42 (2 Dist. 1937).

Res Judicata

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Res judicata did not bar the plaintiff's legal malpractice action, notwithstanding that the plaintiff had raised the defendant's negligence as an affirmative defense to a fee petition brought pursuant to the Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/508, since, even if the plaintiff could have litigated her legal malpractice claim in the § 508 proceeding, she would have been deprived of her right to a jury trial on the claim. Weisman v. Schiller, Ducanto & Fleck, 314 Ill. App. 3d 577, 248 Ill. Dec. 143, 733 N.E.2d 818, 2000 Ill. App. LEXIS 552 (1 Dist. 2000), appeal denied, 191 Ill. 2d 562, 250 Ill. Dec. 468, 738 N.E.2d 937 (2000).

Reversal of Judgment

Former Ill. Rev. Stat., ch. 110, para. 216(3)(b) (see now 735 ILCS 5/216) insofar as it permitted the appellate court to reverse a judgment entered upon the verdict of a jury, and remand for a new trial on the ground that the verdict was against the weight of the evidence, did not violate former Ill. Const. (1870), Art. II, § 5 (see now this section). Olson v. Chicago Transit Auth., 1 Ill. 2d 83, 115 N.E.2d 301 (1953).

If an appellate court reversed the trial court for error in its rulings of law, it must have remanded the cause for a new trial, unless it found that the evidence did not tend to prove the cause of action alleged; for otherwise it would have deprived the plaintiff of the guaranteed right of trial by jury in a case decided before the enactment of former Ill. Const. (1870), Art. II, § 5 (see now this section). Jones v. Fortune, 128 Ill. 518, 21 N.E. 523 (1889).

Right to Trial by Jury

Because the record established that defendant, who was no stranger to the criminal justice system, knew the difference between a bench trial and a jury trial and voluntarily chose the former, defendant knowingly and understandingly waived his right to a jury trial to the sentencing portion of the death-sentence case; thus, there was no constitutional violation. People v. Bannister, 232 Ill. 2d 52, 327 Ill. Dec. 450, 902 N.E.2d 571, 2008 Ill. LEXIS 1422 (2008).

Ill. Const. (1970), Art. I, § 13 provides that the right of trial by jury as heretofore enjoyed shall remain inviolate. Bowman v. Am. River Transp. Co., 217 Ill. 2d 75, 298 Ill. Dec. 56, 838 N.E.2d 949, 2005 Ill. LEXIS 1604 (2005), cert. denied, U.S. , 126 S. Ct. 1619, 164 L. Ed. 2d 333 (2006).

Jones Act, 46 U.S.C.S. App. § 688 et seq., defendants litigating in Illinois courts have the right to a trial by jury under the state constitution; however, 735 ILCS 5/2-1105 did not say anything about whether a particular party was entitled to a jury trial in a given action. Bowman v. Am. River Transp. Co., 217 Ill. 2d 75, 298 Ill. Dec. 56, 838 N.E.2d 949, 2005 Ill. LEXIS 1604 (2005), cert. denied, U.S. , 126 S. Ct. 1619, 164 L. Ed. 2d 333 (2006).

Under former Ill. Const. of 1870, Art. XIII, § 6 (now Ill. Const. (1970), Art. I, § 13), the right of trial by jury shall remain inviolate; and shall extend to all cases at law, without regard to the amount in controversy. Ross v. Irving, 14 Ill. 170, 1852 Ill. LEXIS 59 (1852).

Scope of Right

There is a right to a trial by jury for civil actions alleging violations of the Illinois Notary Public Act, 5 ILCS 312/1-101 et seq. Bank of Am., N.A. v. Bird, 392 Ill. App. 3d 621, 331 Ill. Dec. 1009, 911 N.E.2d 1239, 2009 Ill. App. LEXIS 628 (5 Dist. 2009).

Although the trial court could have impaneled an advisory jury under 735 ILCS 5/2-1111, the buyers of a vehicle had no right to a jury trial under Ill. Const. Art. I, § 13 in their action against the sellers of the vehicle because, instead of seeking diminution in value, the legal damages for breach of warranty under 810 ILCS 5/2-714(2), the buyers sought revocation of acceptance, an

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equitable remedy for breach of warranty. Bublitz v. Wilkins Buick, Mazda, Suzuki, Inc., 377 Ill. App. 3d 781, 317 Ill. Dec. 207, 881 N.E.2d 375, 2007 Ill. App. LEXIS 1306 (1 Dist. 2007).

Defendant's conviction in the circuit court was reversed and remanded for a new trial because the trial judge, without a prompt from the prosecution or the defense, stated on the record that a juror appeared to the judge to have been half asleep through most of defendant's trial. Given the possibility of the juror's inattentiveness during almost the entire proceeding, there was an abuse of discretion by the trial judge in failing to reopen voir dire. People v. Jones, 369 Ill. App. 3d 452, 308 Ill. Dec. 211, 861 N.E.2d 276, 2006 Ill. App. LEXIS 1204 (1 Dist. 2006).

Ill. Const. Art. I, § 13 does not confer the right to a jury trial for actions filed pursuant to the Illinois Wage Payment Act, 820 ILCS 115/1 et seq. Catania v. Local 4250/5050 of the Communs. Workers of Am., 359 Ill. App. 3d 718, 296 Ill. Dec. 161, 834 N.E.2d 966, 2005 Ill. App. LEXIS 814 (1 Dist. 2005), appeal denied, 217 Ill. 2d 558, 300 Ill. Dec. 363, 844 N.E.2d 35 (2005).

Trial court struck trust beneficiary's jury demand because she did not have a constitutional right to a jury trial under Ill. Const., Art. I, § 13, in her counterclaim against a bank alleging breach of fiduciary duty; at the time the Illinois Constitution was adopted, breach of trust suits were equitable proceedings. Bank One, N.A. v. Borse, 351 Ill. App. 3d 482, 286 Ill. Dec. 6, 812 N.E.2d 1021, 2004 Ill. App. LEXIS 846 (2 Dist. 2004), appeal denied, 212 Ill. 2d 528, 291 Ill. Dec. 706, 824 N.E.2d 282 (2004).

Where defendant filed a motion in limine to present an affirmative defense and the motion was denied, the trial court did not deny defendant the right to a jury trial under Ill. Const., Art. I, § 13 or the right to due process under Ill. Const., Art. I, § 2; although the trial court's ruling denying the motion may have had a bearing on defendant's decision to seek a bench trial, the ruling did not directly deprive defendant of the right to a jury trial, and due process was not denied since there was no evidence to support the instruction. People v. Kratovil, 351 Ill. App. 3d 1023, 286 Ill. Dec. 868, 815 N.E.2d 78, 2004 Ill. App. LEXIS 1009 (2 Dist. 2004).

The Illinois constitution does not guarantee a defendant a right to a jury trial on either a Jones Act claim (46 U.S.C. § 688), a purely statutory proceeding which does not provide for such a right, or on maritime claims of unseaworthiness and maintenance and cure, which have been traditionally tried to a court sitting without a jury. Allen v. Norman Bros., 286 Ill. App. 3d 1091, 222 Ill. Dec. 705, 678 N.E.2d 317 (5 Dist. 1997).

Court of Claims Act created a constitutionally permissible mechanism to receive and process negligence claims against the state. Because the Act is a statutory proceeding unknown to the common law, persons presenting claims to the Court of Claims have no constitutional right to a trial by jury. Seifert v. Standard Paving Co., 64 Ill. 2d 109, 355 N.E.2d 537, 1976 Ill. LEXIS 352 (1976).

Town ordinance, which authorizes any person whose property is damaged by livestock running at large to have the livestock impounded until the livestock's owner pays the damages assessed against him violates Ill. Const. of 1870, Art. XIII, § 6 (now Ill. Const. (1970), Art. I, § 13) and Ill. Const. of 1870, Art. XIII, § 8 because the ordinance deprives the owner of a trial by a court to determine whether he is liable for damages growing out of a trespass committed by his cattle. Bullock v. Geomble, 45 Ill. 218, 1867 Ill. LEXIS 242 (1867).

Selection of Jurors

State's voir dire questions improperly indoctrinated jurors with the State's view of the facts and predisposed them to accept its theory of a sexual assault case in which defendant asserted a consent defense; as the evidence in the case was close, the State's action denied defendant of a fair trial. People v. Boston, 383 Ill. App. 3d 352, 323 Ill. Dec. 405, 893 N.E.2d 677, 2008 Ill. App. LEXIS 812 (1 Dist. 2008), appeal denied, 229 Ill. 2d 673, 900 N.E.2d 1120, 2008 Ill. LEXIS 1595 (2008).

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- In General

Ill. Sup. Ct. R. 431(b) charges trial courts with an affirmative sua sponte duty to ask potential jurors whether they understand and accept the principles of People v. Zehr, 469 N.E.2d 1062, in each and every case. Moreover, the trial court must provide each juror with an opportunity to respond to the specific Zehr principles. People v. Anderson, 389 Ill. App. 3d 1, 328 Ill. Dec. 603, 904 N.E.2d 1113, 2009 Ill. App. LEXIS 174 (1 Dist. 2009).

- Challenges for Cause

The circuit court did not abuse its discretion in a prosecution for murder when it denied the defendant's challenges for cause to six different jurors. People v. Buss, 187 Ill. 2d 144, 240 Ill. Dec. 520, 718 N.E.2d 1, 1999 Ill. LEXIS 663 (1999), cert. denied, 529 U.S. 1089, 120 S. Ct. 1723, 146 L. Ed. 2d 644 (2000).

- Qualifications

If a juror meets the statutory qualifications, the determination of whether a challenge for cause should be allowed rests within the sound discretion of the trial judge, and his ruling will not be disturbed unless he has clearly abused his discretion. People v. Cole, 132 Ill. App. 2d 1041, 271 N.E.2d 385 (4 Dist. 1971), rev'd on other grounds, 54 Ill. 2d 401, 298 N.E.2d 705 (1973).

- Racial Discrimination

Defendant did not show that he received ineffective assistance of counsel, where he did not show that his trial counsel's alleged failure to challenge the jury selection process, which only had one African-American prospective juror in a venire of 48, violated defendant's constitutional right to have a fair-cross-section of the community decide his case, as defendant did not make the required showing that there was evidence of systematic and purposeful exclusion of African-Americans, which meant showing a pattern of underrepresentation, or that the outcome of defendant's case would have been different had there been a different racial composition on the jury. People v. Bradley, 348 Ill. App. 3d 677, 284 Ill. Dec. 704, 810 N.E.2d 494, 2004 Ill. App. LEXIS 525 (1 Dist. 2004), appeal denied, 211 Ill. 2d 586, Ill. Dec. , 823 N.E.2d 969 (2004).

If the defendant makes prima facie showing of purposeful discrimination in the selection of the jury, then the burden shifts to the state to come forward with a neutral explanation for challenging black jurors. People v. Lott, 196 Ill. App. 3d 967, 143 Ill. Dec. 634, 554 N.E.2d 569 (1 Dist. 1990).

Defendant's assertions regarding the state's use of its peremptory challenges did not raise an issue of substantial denial of his rights under the Constitution as required by the Post-Conviction Hearing Act (725 ILCS 5/122-1) where he made no showing of a systematic exclusion of blacks from the jury system and did not raise the issue of the case-by-case exclusion of blacks in his petition or affidavit. People v. Gaines, 105 Ill. 2d 79, 85 Ill. Dec. 269, 473 N.E.2d 868 (1984), cert. denied, 471 U.S. 1131, 105 S. Ct. 2666, 86 L. Ed. 2d 282 (1985).

There was no constitutional violation where a defendant failed to establish systematic exclusion of blacks and Latinos by the state through use of its peremptory challenges. People v. Allen, 96 Ill. App. 3d 871, 52 Ill. Dec. 419, 422 N.E.2d 100 (1 Dist. 1981).

- Reasonable Regulation

There is nothing in the constitutional guarantee of the right to a trial by jury which prevents reasonable regulation of the manner in which jurors shall be selected, and a rule of court regulating the selection of jurors is valid if it is in harmony with settled principles of law essential to securing an impartial jury. People v. Lobb, 17 Ill. 2d 287, 161 N.E.2d 325 (1959).

- Statutes

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Former Rule 24-1, Supreme Court Rules (see now Rule 234, Supreme Court Rules) which provided that: "the judge shall initiate the voir dire examination of jurors in civil and criminal causes by identifying the parties and their respective counsel and he shall briefly outline the nature of the case, the judge shall then put to the jurors any questions which he thinks necessary, touching their qualifications to serve as jurors in the cause on trial, the parties or their attorneys shall be allowed a reasonable opportunity to supplement such examination, but shall not directly or indirectly examine jurors concerning matters of law or instructions," did not violate the constitutional guarantee to a trial by jury. People v. Lobb, 17 Ill. 2d 287, 161 N.E.2d 325 (1959).

- Venire

Defendant's right to trial by jury was not violated by the impaneling of jurors from outside the City of Chicago; 705 ILCS 310/2 does not violate former Ill. Const. (1870), Art. II, § 5 (see now this section), as a defendant is guaranteed an impartial jury, not a trial by one's peers. People v. Beck, 133 Ill. App. 2d 356, 273 N.E.2d 169 (1 Dist. 1971).

- Voir Dire

Trial court failed to inquire of some jurors in the first panel from which jurors were chosen, whether they knew, understood and accepted the four principles regarding defendant's trial rights set forth in Ill. Sup. Ct. R. 431(b) in a case where several jurors were ultimately selected from that panel and defendant was subsequently convicted of aggravated battery with a firearm and first-degree murder under an accountability theory. Since the trial court's error amounted to plain error because defendant was denied the substantial right guaranteed to defendant under Ill. Const. Art. I, § 8 and Ill. Const. Art. I, § 13 of being tried by a fair and impartial jury, defendant was entitled to a new trial. People v. Anderson, 399 Ill. App. 3d 856, 339 Ill. Dec. 580, 927 N.E.2d 121, 2010 Ill. App. LEXIS 261 (1 Dist. 2010).

Defendant was entitled to reversal of defendant's conviction for aggravated domestic battery and a new trial based on the trial court's failure to ask jurors whether they understood and accepted all of the key principles governing criminal trials, known as the Zehr principles, in violation of Ill. Sup. Ct. R. 431(b). Despite the fact that the trial court mentioned the principles themselves, and the fact that defendant did not object either at trial or in a post-trial motion, the failure of the trial court to ask as it was required to do amounted to Ill. Sup. Ct. R. 615(a) plain error that was an exception to the forfeiture rule because defendant's substantial right to an impartial jury pursuant to Ill. Const. art. I, §§ 8, 13 was affected by the trial court's failure to specifically ask about jurors' understanding and acceptance of those principles. People v. Blair, 395 Ill. App. 3d 465, 334 Ill. Dec. 446, 917 N.E.2d 43, 2009 Ill. App. LEXIS 944 (2 Dist. 2009).

Defendant was not deprived of his right to an impartial jury because he was not allowed to voir dire potential jurors to ascertain their attitudes toward self-defense as Illinois courts had consistently refused to allow voir dire questions concerning a defendant's theory of self-defense, except in the case of controversy, bias, and prejudice, which included insanity, street gangs, alcohol and drugs, and drug dealers; defendant's claim that the self-defense line of questioning went to the core of the presumption of innocence was rejected. People v. Karim, 367 Ill. App. 3d 67, 304 Ill. Dec. 739, 853 N.E.2d 816, 2006 Ill. App. LEXIS 649 (1 Dist. 2006).

There is no constitutional right to direct examination of prospective jurors. People v. Brumfield, 51 Ill. App. 3d 637, 9 Ill. Dec. 619, 366 N.E.2d 1130 (3 Dist. 1977).

Sentencing Enhancements

Dismissal of the inmate's postconviction petition challenging a life sentence based on factors that were not proven to a jury beyond a reasonable doubt was affirmed after the appellate court concluded that Apprendi did not apply to the inmate's case because the inmate's direct appeals were exhausted before Apprendi was decided, and thus, Apprendi did not apply retroactively to

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the inmate's case. People v. Kelley, 366 Ill. App. 3d 676, 304 Ill. Dec. 74, 852 N.E.2d 324, 2006 Ill. App. LEXIS 536 (1 Dist. 2006).

Defendant's extended conviction, based on a prior felony conviction, did not violate the Illinois Constitution because the prior conviction did not relate to the commission of the robbery for which he stood charged and the prior conviction was the result of a proceeding in which defendant had the right to a trial by jury in which the State was required to establish his guilt beyond a reasonable doubt; those safeguards mitigated any constitutional concerns regarding defendant's due process and jury trial guarantees. People v. Stackhouse, 354 Ill. App. 3d 265, 289 Ill. Dec. 952, 820 N.E.2d 1027, 2004 Ill. App. LEXIS 1411 (1 Dist. 2004), overruled in part by People v. Lewis, 223 Ill. 2d 393, 860 N.E.2d 299, 2006 Ill. LEXIS 1651, 307 Ill. Dec. 645 (2006).

720 ILCS 5/12-14(d)(2), which enhances the penalty on a second conviction of aggravated sexual assault from that for a Class X felony to natural life imprisonment, does not violate a defendant's right of trial by jury as guaranteed by Ill. Const., Art. I, § 13. People v. Sanchez, 344 Ill. App. 3d 74, 279 Ill. Dec. 387, 800 N.E.2d 455, 2003 Ill. App. LEXIS 1338 (1 Dist. 2003), appeal denied, 207 Ill. 2d 624, 283 Ill. Dec. 140, 807 N.E.2d 981 (2004).

Where the trial judge, rather than a jury, determined that defendant murdered the victim in a brutal and heinous manner, causing defendant's sentence to be enhanced to life in prison, defendant was not denied the right to a jury trial, pursuant to Ill. Const. Art. I, § 13, as defendant was not prejudiced by the fact that a jury did not make the finding; there was no doubt that a jury would have found that the crime was committed in a brutal and heinous manner, as defendant stabbed, beat, and strangled an 86-year-old female to death. People v. Kaczmarek, 207 Ill. 2d 288, 278 Ill. Dec. 329, 798 N.E.2d 713, 2003 Ill. LEXIS 1426 (2003), cert. denied, 540 U.S. 1199, 124 S. Ct. 1459, 158 L. Ed. 2d 115 (2004).

Convicted criminal was not entitled to have prior convictions submitted to a jury and proven beyond a reasonable doubt before having the convicted criminal's sentence enhanced as the applicable sentencing statute dealt exclusively with sentencing enhancements and not the offense itself, and, thus, the prior convictions did not have to be presented to the jury. People v. Smith, 337 Ill. App. 3d 175, 271 Ill. Dec. 425, 785 N.E.2d 76, 2003 Ill. App. LEXIS 80 (1 Dist. 2003), appeal denied, 204 Ill. 2d 678, 275 Ill. Dec. 81, 792 N.E.2d 312 (2003).

Since the rule of Apprendi was decided after the post-conviction relief petitioner had already been sentenced to an extended term sentence and since the Supreme Court of Illinois had previously determined that Apprendi did not apply retroactively, petitioner was not entitled to raise an Apprendi claim in a successive petition under the exception for new precedents. People v. Lee, 207 Ill. 2d 1, 277 Ill. Dec. 655, 796 N.E.2d 1021, 2003 Ill. LEXIS 1420 (2003), cert. denied, 540 U.S. 1010, 124 S. Ct. 547, 157 L. Ed. 2d 419 (2003).

Statutory Right to Jury

- Restricting Right of Waiver

Both the 1987- and 1988-effective amendments to the 1986 version of 725 ILCS 5/115-1 violated the Illinois Constitution; thus the opinion in People v. Joyce, 126 Ill. 2d 209, 533 N.E.2d 873 (1988), should be given retroactive effect. People v. Gersch, 135 Ill. 2d 384, 142 Ill. Dec. 767, 553 N.E.2d 281 (1990).

725 ILCS 5/115-1 violates this section and is invalid since it restricts the rights of certain defendants to waive their rights to jury trial. People ex rel. Daley v. Joyce, 126 Ill. 2d 209, 127 Ill. Dec. 791, 533 N.E.2d 873 (1988).

Summary Judgment

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Even if the common-law actions nuisance and negligence are normally heard by juries, there can be no denial of the right to a jury trial where a complaint fails to state a cause of action. Belmar Drive-In Theatre Co. v. Illinois State Toll Hwy. Comm'n, 34 Ill. 2d 544, 216 N.E.2d 788 (1966).

Tax Proceedings

The Constitution does not guarantee the right of trial by jury in tax proceedings. Hoffman v. Department of Fin., 374 Ill. 494, 30 N.E.2d 34 (1940).

Time of Jury Demand

Former section 64 of the Civil Practice Act (see now 735 ILCS 5/1105 and 735 ILCS 5/1110) did not contravene former Ill. Const. (1870), Art. II, § 5 (see now this section). Stephens v. Kasten, 383 Ill. 127, 48 N.E.2d 508 (1943).

Trial by Court

Under former Ill. Const. (1870), Art. II, § 5 (see now this section), a defendant had no constitutional right to be tried by a court, but he did have a constitutional right to be tried by a jury in the State of Illinois. United States ex rel. Adams v. Ragen, 172 F.2d 693 (7th Cir.), cert. denied, 337 U.S. 920, 69 S. Ct. 1148, 93 L. Ed. 1729 (1949).

Unanimous Verdict

Although defendant's conviction for felony murder was improper due to the fact that the aggravated battery with a firearm used as the predicate offense was inherent in the act of killing the victim, the Knaff decision that would have allowed defendant's conviction to be reduced to aggravated battery with a firearm did not apply because, based on the manner in which the case was presented, the jury instructions given by the trial court, and the verdict forms given to the jury, it could not be determined whether the jury was unanimous in finding defendant had committed aggravated battery with a firearm against the deceased victim as required under Ill. Const. art. I, § 13 and 725 ILCS 5/115-4. People v. Rosenthal, 387 Ill. App. 3d 858, 326 Ill. Dec. 994, 900 N.E.2d 1241, 2008 Ill. App. LEXIS 1330 (1 Dist. 2008).

Venue Statute

Statutory provision which stated that where an offense was committed on a county line or within 100 rods of the same then the trial could be had in either county divided by such line was unconstitutional as depriving defendant of his right to trial by jury. Buckrice v. People, 110 Ill. 29 (1884).

Verdict Forms

- Insufficient

Defendant's constitutional right to an unanimous verdict by a 12 person jury was violated when the trial court provided verdict forms for only one of the three counts charged in the indictment. People v. Scott, 243 Ill. App. 3d 167, 183 Ill. Dec. 750, 612 N.E.2d 7 (1 Dist.), appeal denied, 151 Ill. 2d 574, 186 Ill. Dec. 391, 616 N.E.2d 344 (1993).

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Waiver

Defendant knowingly waived her right to a jury trial; defendant acknowledged that she understood the meaning of a jury trial and specifically stated to the court that she was giving up that right. People v. Clay, 363 Ill. App. 3d 780, 300 Ill. Dec. 285, 843 N.E.2d 885, 2006 Ill. App. LEXIS 61 (1 Dist. 2006), appeal denied, 219 Ill. 2d 573, 303 Ill. Dec. 835, 852 N.E.2d 242 (2006).

- In General

The right of trial by jury in criminal cases is a personal right which may be waived, even though former Ill. Const. (1870), Art. II, § 5 (see now this section) provides that the right of trial by jury shall remain inviolate. People v. Bradley, 7 Ill. 2d 619, 131 N.E.2d 538 (1956).

A criminal court had no legal power to try a defendant without a jury, notwithstanding her consent and agreement in that behalf, and the trial and conviction were therefore erroneous. Harris v. People, 128 Ill. 585, 21 N.E. 563 (1889).

- Annulment

Where the attorney entered the appearance of the defendants, waived service of process, and confessed the cause of action alleged in the declaration and the damages alleged, there could be no trial either by jury or by the court without a jury; however, when the court set aside the judgment the appearance and confession were annulled and, for the first time, there was a legal and valid appearance by the defendants to the action, and immediately upon the vacation of the judgment the written demand for a jury was filed and the fees tendered, which was in apt time to preserve the right to a jury trial, the power of attorney given to the attorney to waive a jury, the setting aside of the confession destroyed in toto the acts of the attorney, and, the judgments of the appellate court and municipal court were reversed with directions that the clerk accept the money tendered as fees for a jury trial, and that the court award to the defendants their right to a trial by jury. Morrison Hotel & Restaurant Co. v. Kirsner, 245 Ill. 431, 92 N.E. 285 (1910).

- Civil Cases

A jury trial is a right of constitutional dimension in some civil matters; however, it does not extend to special or statutory proceedings and may be waived by a failure to make a timely demand or by other actions by the parties. Puglisi v. Hansford, 193 Ill. App. 3d 803, 140 Ill. Dec. 733, 550 N.E.2d 618 (4 Dist. 1990).

- Default Judgment

Neither the Illinois Constitution nor United States Constitution automatically precludes entry of a default judgment against a party who files a timely jury demand but otherwise fails to appear at trial, although the non-appearing party's actions may constitute a waiver of his previously asserted right; however, under such circumstances, a finding of waiver must be made. Puglisi v. Hansford, 193 Ill. App. 3d 803, 140 Ill. Dec. 733, 550 N.E.2d 618 (4 Dist. 1990).

- Evidentiary Hearing

Despite the existence of a signed jury waiver, defendant was entitled to an evidentiary hearing on his post-conviction claim that his constitutional right to a jury trial was violated. People v. Dockery, 296 Ill. App. 3d 271, 230 Ill. Dec. 630, 694 N.E.2d 599 (1 Dist. 1998).

- Failure to Demand

By failing to make proper and timely demand for a jury trial in the lower court and by participating in a trial, third-party defendant was held to have waived his right thereto. Brownell v. Quinn, 47 Ill. App. 2d 206, 197 N.E.2d 721 (1 Dist. 1964).

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- Incomplete Jury

If it is established that a defendant knew that he had a right to a twelve-person jury and nevertheless agreed to or acquiesced in the decision to proceed with a six-person jury, then the defendant will be deemed to have waived the issue for purposes of appeal. People v. Bragg, 176 Ill. App. 3d 1080, 126 Ill. Dec. 194, 531 N.E.2d 821 (3 Dist. 1988).

Trial court acted properly in proceeding with eleven jurors where defendant, despite objections of his own counsel, specifically indicated he wished to proceed with eleven jurors. People v. Burries, 144 Ill. App. 3d 138, 98 Ill. Dec. 628, 494 N.E.2d 750 (4 Dist. 1986).

Waiver of the right to having a full complement of jurors is closely related to waiving a trial by jury but a less serious matter and therefore, if a defendant has authority to waive jury trial altogether against advice of counsel, logic requires that he have authority to waive the existence of a full twelve-person jury under similar circumstances. People v. Burries, 144 Ill. App. 3d 138, 98 Ill. Dec. 628, 494 N.E.2d 750 (4 Dist. 1986).

- Not Prohibited

Waiver of trial by jury is not prohibited by this section. Brewster v. People, 183 Ill. 143, 55 N.E. 640 (1899).

- Not Shown

Defendant's fundamental right to a jury trial was violated when the trial court, relying on a jury waiver executed in conjunction with defendant's first trial, retried defendant in a bench trial without first ascertaining whether, for his new trial, defendant knowingly and voluntarily waived his right to a jury trial. People v. Bracey, 213 Ill. 2d 265, 290 Ill. Dec. 202, 821 N.E.2d 253, 2004 Ill. LEXIS 2028 (2004).

At the very least, in order for there to be a valid waiver of the right to a jury trial, the record must disclose some evidence of some discussion in defendant's presence, prior to being found guilty, with respect to a jury waiver; where there was one single reference to proceeding to a bench trial, in defendant's presence, some two and one-half weeks prior to trial that did not constitute a discussion of a jury waiver or demonstrate that defendant was aware he could choose between a jury and bench trial, and where there was no evidence that defendant was even given the option of proceeding with a jury trial or a jury waiver ever being discussed, defendant's constitutional rights were violated, even though a written jury waiver was present in the record. People v. Elders, 349 Ill. App. 3d 573, 285 Ill. Dec. 829, 812 N.E.2d 649, 2004 Ill. App. LEXIS 792 (1 Dist. 2004).

Where defendant did not speak English, the court erred in proceeding with a bench trial without personally addressing defendant on the record regarding his understanding of the jury waiver. People v. Lach, 302 Ill. App. 3d 587, 236 Ill. Dec. 299, 707 N.E.2d 144 (1 Dist. 1998), appeal denied, 184 Ill. 2d 566, 239 Ill. Dec. 611, 714 N.E.2d 530 (1999).

Record failed to demonstrate that defendant made a knowing and understanding oral waiver of his right to a jury trial in open court where there was only one occasion where the issue of a jury waiver was discussed in defendant's presence and that was following sentencing when trial court noted the absence of a written jury waiver, inquired as to whether defendant would be willing to sign a waiver and was told by defendant's attorney he had not waived his right. People v. Eyen, 291 Ill. App. 3d 38, 225 Ill. Dec. 249, 683 N.E.2d 193 (2 Dist. 1997).

- Promises Inducing Plea

A defendant was not entitled to relief from his guilty plea on the ground that he was promised an opportunity to go home and visit his infant daughter before serving his sentence if he pled guilty where the record was very clear and complete in showing a full admonition by the court of the

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consequences of the plea of guilty, and, when the court asked the defendant if he were pleading guilty because he was in fact guilty, the defendant answered "yes." People v. Joynt, 46 Ill. 2d 321, 263 N.E.2d 46 (1970).

- Record

Where the record is absolutely silent on the waiver aspects and the appellate court is not presented with a situation in which it can be assured that defendant was even aware of his right to a twelve-person jury, it cannot conclude that defendant was not prejudiced by the infringement of his right to a full jury. People v. Bragg, 176 Ill. App. 3d 1080, 126 Ill. Dec. 194, 531 N.E.2d 821 (3 Dist. 1988).

- Remarks to Jurors

A judge's remarks to prospective jurors, regarding the defendant's right to waive trial by jury, and statements in handbooks distributed to them held proper. People v. Izzo, 14 Ill. 2d 203, 151 N.E.2d 329 (1958).

- Right of Defendant

While the right of trial by jury is inviolate and cannot be waived or denied without the consent of the defendant, it is a right which he can waive. People v. Hoffman, 379 Ill. 318, 40 N.E.2d 515 (1942).

The defendant in a criminal prosecution, whether the charge be a felony or a misdemeanor, has the power, upon a plea of not guilty, to waive a jury trial. People ex rel. Swanson v. Fisher, 340 Ill. 250, 172 N.E. 722 (1930).

- Shown

Defendant knowingly waived defendant's right to a jury trial as: (1) defendant was present during defendant's arraignment when defense counsel requested a bench trial and waived defendant's right to a trial by jury, (2) although the trial court did not explicitly discuss the waiver with defendant, defendant did not express any objection and stated that defendant understood defendant's presence was required for the bench trial, (3) defendant signed a written jury waiver, and (4) defendant had two prior criminal convictions and six prior traffic convictions. People v. Turner, 375 Ill. App. 3d 1101, 314 Ill. Dec. 665, 875 N.E.2d 175, 2007 Ill. App. LEXIS 1006 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1759 (Ill. 2007).

Withholding Evidence

Where a case which belonged to the class of cases in which the right of trial by jury was enjoyed before the adoption of the 1870 constitution, it was within the guarantee of the right of trial by jury; it was competent for the trial court to exclude the evidence from the jury where it had no legitimate tendency to establish the cause of action alleged, and the appellate court was authorized, on appeal, to do what the trial court should have done in this respect upon the trial. Jones v. Fortune, 128 Ill. 518, 21 N.E. 523 (1889).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Governing Lawyers," see 25 S. Ill. U. L.J. 841 (2001).

For comment, "Don't Tell Juries About Statutory Damage Caps: The Merits of Nondisclosure," see 66 U. Chi. L. Rev. 469 (1999).

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For article, "Why Judges, Not Juries, Should Set Punitive Damages," see 65 U. Chi. L. Rev. 179 (1998).

For article, "Jury Trial in Illinois: Chancery, Multi-Remedy, and Special Remedy Civil Cases," see 22 Loy. U. Chi. L.J. 625 (1990-91).

For note, "People ex rel. Daley v. Joyce: Death Knell for the Lockstep Doctrine?," see 21 Loy. U. Chi. L.J. 693 (1989-90).

For casenote, "Kemner v. Monsanto Company (492 N.E.2d 1327 (1986)): The Illinois Supreme Court Confronts the Free Speech/Fair Trial Controversy," see 20 J. Marshall L. Rev. 581 (1987).

For article, "The Illinois Medical Malpractice Reform Act of 1985: A Constitutional Analysis of the Medical Review Panel Procedure," see 35 De Paul L. Rev. 345 (1986).

For article, "Blind Justice or Just Blindness?" see 60 Chi.-Kent L. Rev. 209 (1984).

For article, "Law and Equity, the Right to a Jury Trial, and Equal Protection," see 70 Ill. B.J. 376 (1982).

For note on Criminal Procedure, Guilty Pleas, Torts and Sovereign Immunity discussing Herndon v. Morgan, 426 U.S. 637 (1976), see 65 Ill. B.J. 592 (1977).

For comment, "Inconsistent Verdicts in Illinois Criminal Trials," see 10 J. Marshall J. Prac. & Proc. 263 (1977).

For comment, "Pre-trial Screening of Medical Malpractice Claims Versus the Illinois Constitution," see 10 J. Marshall J. Prac. & Proc. 133 (1976).

RESEARCH REFERENCES

Right to jury trial in action under state civil rights law. 12 ALR5th 508.

Constitutional right to jury trial in cause of action under state unfair or deceptive trade practices law. 54 ALR5th 631.

Right to jury trial in child neglect, child abuse, or termination of parental rights proceedings. 102 ALR5th 227.

Validity and application of computerized jury selection practice or procedure. 110 ALR5th 329.

Practice Guides and Treatises.

Civil Practice (Illinois) Volume III: Trying the Case § 2.3 Constitutional Guarantees (ICCLE).

Contract Law § 5.22 Right to a Jury Trial (IICLE).

Section 14. Imprisonment for Debt.

No person shall be imprisoned for debt unless he refuses to deliver up his estate for the benefit of his creditors as provided by law or unless there is a strong presumption of fraud. No person shall be imprisoned for failure to pay a fine in a criminal case unless he

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has been afforded adequate time to make payment, in installments if necessary, and has willfully failed to make payment.

(Source: Illinois Constitution.)

CASE NOTES

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Applicability

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- In General

This section does not apply to imprisonment under a capias ad respondendum issued in accord with the statutory requirements. Shatz v. Paul, 7 Ill. App. 2d 223, 129 N.E.2d 348 (1 Dist. 1955).

Defendants were mistaken in their assertion that an amount of money specified in an original decree to be repaid by them to plaintiffs was nothing more than a civil judgment which constituted a debt, imprisonment for which was prohibited by former Ill. Const. (1870), Art. II, § 12 (see now this section), although that the money ordered repaid was a civil judgment, it was that and more because inherent in said judgment was the element of fraud in the wrongful disposition or withholding of money and property entrusted to them for the care and benefit of plaintiffs, and defendants' inability to pay and the fact that their failure to pay the amount decreed was not wilful did not present a legal defense to the rule to show cause. Adams v. Rakowski, 319 Ill. App. 556, 49 N.E.2d 733 (1 Dist. 1943).

The statute concerning the former crime of wife abandonment did not authorize an imprisonment for debt; it provided as punishment for certain crimes that the person convicted may be fined or imprisoned, or may be fined and committed to jail until the fine is paid and the act was not in violation of former Ill. Const. (1870), Art. II, § 12 (see now this section). People v. Heise, 257 Ill. 443, 100 N.E. 1000 (1913).

- Alimony

Former Ill. Const. (1870), Art. II, § 12 (see now this section), which prohibited imprisonment for debt, had no application to the wilful refusal to obey an alimony decree. Clubb v. Clubb, 334 Ill. App. 599, 80 N.E.2d 94 (1 Dist. 1948), rev'd on other grounds, 402 Ill. 390, 84 N.E.2d 366 (1949).

The commitment of a defendant for contempt for refusing to pay alimony is not an imprisonment for debt, from which he can claim exemption under the provisions of a constitution prohibiting imprisonment for debt. Barclay v. Barclay, 184 Ill. 375, 56 N.E. 636 (1900).

- Anticipation Warrant

Anticipation warrants are not liabilities of a municipality or school district by which they are issued, and are not, and cannot be, corporate obligations and changing them into bonds or other forms does not make them corporate liabilities. Pratt v. Board of Educ., 326 Ill. App. 610, 63 N.E.2d 275 (2 Dist. 1945).

- Contracts

This section does not relate to debts within the meaning of judgments recovered in tort actions, but relates to judgment arising out of contracts, either express or implied; it particularly has no application to judgments recovered for malicious, wanton, and wilful tortious acts committed by a judgment debtor. Lipman v. Goebel, 357 Ill. 315, 192 N.E. 203 (1934).

- Costs and Fees

Although this constitutional provision is applicable to fines only, omitting any reference to costs and fees, it is nevertheless expressive of the approach taken by the cases in determining the liability of indigents for costs and fees. People v. Nicholls, 45 Ill. App. 3d 312, 4 Ill. Dec. 143, 359 N.E.2d 1095 (5 Dist. 1977), rev'd on other grounds, 71 Ill. 2d 166, 15 Ill. Dec. 759, 374 N.E.2d 194 (1978).

- Failure to Pay Maintenance

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The commitment of the defendant for contempt for failing to comply with a maintenance decree is not an imprisonment for debt from which he can claim exemption. Mesirow v. Mesirow, 346 Ill. 219, 178 N.E. 411 (1931).

The power to enforce the payment of maintenance by imprisonment of the defendant for contempt of the court is limited to a wilful and contumacious refusal to obey the order of the court, and to such refusal the constitutional limitation of this article has no application. Mesirow v. Mesirow, 346 Ill. 219, 178 N.E. 411 (1931).

- Tort Actions

Imprisonment for debt in a tort action, where there has been a special finding by the trial tribunal that malice is the gist of the action, is not repugnant to this section. Shatz v. Paul, 7 Ill. App. 2d 223, 129 N.E.2d 348 (1 Dist. 1955).

The prohibition for imprisonment for debt does not extend to cases of tort, but applies only to debts arising out of contract between the parties, either express or implied. Buck v. Alex, 350 Ill. 167, 182 N.E. 794 (1932).

Authority of Court

- Imprisonment

The mere fact that a court of equity has rendered a decree fixing a money liability does not authorize it to imprison others to enforce the payment, without regard to the relation of the parties to each other or to the court. People v. LaMothe, 331 Ill. 351, 163 N.E. 6 (1928).

The power of a court of equity to punish for contempt by imprisonment upon the refusal of a trustee to pay over money actually received and wrongfully withheld is well established. People v. LaMothe, 331 Ill. 351, 163 N.E. 6 (1928).

Authority of Legislature

- Rights

The constitutional provision that "the right of trial by jury as heretofore enjoyed shall remain inviolate" has never been held to prohibit the Legislature from creating new rights unknown to the common law and provide for their determination without a jury. Standidge v. Chicago Ry., 254 Ill. 524, 98 N.E. 963 (1912).

Construction

In the enforcement of former Ill. Const. (1870), Art. II, § 12 (see now this section), every doubt was to be resolved in favor of the liberty of the citizen and no one was to be imprisoned for a failure to pay money unless the evidence clearly showed that the party charged had the money within his power to pay, or that he had the money and wrongfully disposed of it. Adams v. Rakowski, 319 Ill. App. 556, 49 N.E.2d 733 (1 Dist. 1943).

Contempt

Contempt orders, requiring the trustees of a failed insurance business to surrender the business funds to a receiver, violated Ill. Const of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) and Ill. Const. of 1870, Art. II, § 12 (now Ill. Const. (1970), Art. I, § 14) because the trustees did not have actual possession of the funds and there was no evidence of wrongful disposition; constructive

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possession because of association was insufficient to form the basis for contempt orders. People v. La Mothe, 331 Ill. 351, 163 N.E. 6, 1928 Ill. LEXIS 1009 (1928).

Debt

- Not Shown

Circuit court's order that conservator of incompetent's estate pay executor the sums of money invested by the conservator did not create a debt within the meaning of former Ill. Const. (1870), Art. II, § 12 (see now this section). Cox v. Rice, 375 Ill. 357, 31 N.E.2d 786 (1940).

Enforcement

- Procedure

In the enforcement of this constitutional provision every doubt should be resolved in favor of the liberty of the citizen and no one should be imprisoned for a failure to pay money unless the evidence shows that the party charged has the money within his power to pay, or that he had the money and wrongfully disposed of it; courts may imprison for wilful defiance, but they will not imprison for a failure to comply with a decree where the disobedience is not wilful. Meaden v. W.J. Anderson Corp., 301 Ill. App. 390, 23 N.E.2d 74 (1 Dist. 1939).

- Requirements

In the enforcement of the constitutional provision prohibiting imprisonment for debt, every doubt should be resolved in favor of the liberty of the citizen. People v. LaMothe, 331 Ill. 351, 163 N.E. 6 (1928).

Imprisonment

- In General

No man can be legally imprisoned for a failure to pay over money he does not have and never had. People v. LaMothe, 331 Ill. 351, 163 N.E. 6 (1928).

- Failure to Turn Over Funds

Defendants incorporators of insurance company, who had not been in possession of trust funds, and who were merely jointly and severally required to account for the funds, could not be imprisoned for failure to turn over the funds to the court, where they were unable to comply with court order requiring them to do so. People v. LaMothe, 331 Ill. 351, 163 N.E. 6 (1928).

- Held Proper

Where imprisonments for failure to pay over money have been sustained, the decisions were based upon the fact that the party charged actually had the money in his hands, or had wrongfully disposed of it, none of them was based upon a constructive possession of the money because of the party's association with the person who had actually received the money. People v. LaMothe, 331 Ill. 351, 163 N.E. 6 (1928).

- Not Shown

The imprisonment of the defendant which followed issuance of a contempt mittimus did not constitute imprisonment for debt. Kazubowski v. Kazubowski, 45 Ill. 2d 405, 259 N.E.2d 282, cert. denied, 400 U.S. 926, 91 S. Ct. 188, 27 L. Ed. 2d 186 (1970).

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- Requirements

No one should be imprisoned for a failure to pay money, unless the evidence clearly shows that the party charged has the money within his power to pay, or that he had the money and wrongfully disposed of it. People v. LaMothe, 331 Ill. 351, 163 N.E. 6 (1928).

- Shown

Decree ordering appellant to account for a trust fund and any profits from investment thereof and directing that "until this decree and any decree that may be subsequently entered herein shall have been fully satisfied," appellant shall stand committed violated former Ill. Const. (1870), Art. II, § 12 (see now this section). Tegtmeyer v. Tegtmeyer, 314 Ill. App. 16, 40 N.E.2d 767 (1 Dist. 1942).

Where a receiver has wrongfully converted or expended money in his hands and is proceeded against, in the cause in which he was appointed, for contempt on account of his failure to comply with an order to pay, his inability to pay, resulting from the wrongful act, does not present a defense to the proceeding, and he may be imprisoned for the contempt notwithstanding his inability to pay. People v. LaMothe, 331 Ill. 351, 163 N.E. 6 (1928).

Purpose

- Amendment

It was undoubtedly because honest judgment debtors were too frequently subjected to unwarranted and unjust arrest and imprisonment under former Ill. Const. (1870), Art. II, § 12 and because it was too susceptible to abuse that the legislature was actuated to amend this section by requiring, among other things, an order of court of the issuance of a body execution, so that the liberty of judgment debtors would be afforded some measure of protection prior to their arrest and imprisonment. Morris v. Schwartz, 326 Ill. App. 274, 61 N.E.2d 690 (1 Dist. 1945).

Refusal to Pay

- Contempt of Court

Where the defendant had more than $30,000 belonging to the trust estate, and was able to turn this money over to the receiver, but contumaciously refused to do so, the court was warranted in finding her to be guilty of contempt of court. Tegtmeyer v. Tegtmeyer, 292 Ill. App. 434, 11 N.E.2d 657 (1 Dist. 1937).

Section 15. Right of Eminent Domain.

Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Prop § 15:1, § 15:34, § 15:46, § 15:55, § 15:56.

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In General

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Ill. Const. (1970), Art. I, § 15 prohibits a taking or a damage to private property for public use without just compensation. La Salle Nat'l Bank & Trust Co. v. Chicago, 128 Ill. App. 3d 656, 83 Ill. Dec. 819, 470 N.E.2d 1239, 1984 Ill. App. LEXIS 2474 (1 Dist. 1984).

Both this section and 735 ILCS 5/7-101, provide that private property shall not be taken or damaged for public use without just compensation. DOT v. Lake Ka-Ho, Inc., 98 Ill. App. 3d 1052, 54 Ill. Dec. 538, 425 N.E.2d 50 (4 Dist. 1981).

Former Ill. Const. (1870), Art. II, § 15 (see now this section) proscribed the taking or damaging of private property for public use without just compensation. City of Chicago v. Birnbaum, 49 Ill. 2d 250, 274 N.E.2d 22 (1971).

The power of eminent domain is an attribute of sovereignty. Green St. Ass'n v. Daley, 373 F.2d 1 (7th Cir.), cert. denied, 387 U.S. 932, 87 S. Ct. 2054, 18 L. Ed. 2d 995 (1967).

The owner of property taken for public use is entitled to that amount of compensation which will put him in as good financial condition as he was when the condemnation petition was filed. City of Chicago v. George F. Harding Collection, 70 Ill. App. 2d 254, 217 N.E.2d 381 (1 Dist. 1965).

The right of eminent domain is inherent in the state, subject however, to the constitutional provision for just compensation, and the exercise of its powers of sovereignty is regulated by the general assembly. Department of Pub. Works & Bldgs. v. McNeal, 33 Ill. 2d 248, 211 N.E.2d 266 (1965).

This section does not prohibit the taking, possession, and use of private property by the state prior to the fixing and payment of compensation, provided of course, that the authorizing statute adequately safeguards the right of the owner of such property to just compensation therefor. Department of Pub. Works & Bldgs. v. Butler Co., 13 Ill. 2d 537, 150 N.E.2d 124 (1958).

The power and right of eminent domain is inherent in the sovereign state, existing independently of written constitutions or statutory laws thereof, regulated by appropriate legislation, limited only by the constitutional provision for compensation, and extending to every kind of property. Department of Pub. Works & Bldgs. v. Kirkendall, 415 Ill. 214, 112 N.E.2d 611 (1953).

Framers of this section did not intend that one given a right of action for damages under the constitutional provision might delay his suit for many years when evidence, formerly within his power to produce, concerning the existence, cause and extent of the alleged damage, may have become lost, destroyed or otherwise beyond the defendant's power or control under former Ill. Const. (1870), Art. II, § 13 (see now this section). Horn v. City of Chicago, 403 Ill. 549, 87 N.E.2d 642 (1949).

This provision is self-executing and cannot be annulled by nonaction of a head of a department of the state. People ex rel. Markgraff v. Rosenfield, 383 Ill. 468, 50 N.E.2d 479 (1943).

The right of eminent domain is a right inherent in all sovereignties, and it is defined as the right of the nation or state, or of those to whom the power has been lawfully delegated to condemn private property for public use, and to appropriate the ownership or possession of such property for such use, upon paying the owner just compensation, to be ascertained according to law. Sanitary Dist. v. Manasse, 380 Ill. 27, 42 N.E.2d 543 (1942).

The right of eminent domain is an inherent attribute of sovereignty existing independently of written constitutions or statutory laws, although it is regulated by appropriate legislation, and it is the power of the sovereign to appropriate private property for public use, limited only by the constitutional guaranty for just compensation. Sanitary Dist. v. Manasse, 380 Ill. 27, 42 N.E.2d 543 (1942).

Former Ill. Const. (1870), Art. I, § 15 (see now this section) provides that private property shall not be taken or damaged for public use, without just consideration, this provision is self-executing in

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that it requires no legislation for its enforcement and it is not susceptible of impairment by legislation. Cohen v. City of Chicago, 377 Ill. 221, 36 N.E.2d 220 (1941).

This provision of the Constitution is self-executing and cannot be annulled by nonaction of a head of a department. People ex rel. First Nat'l Bank v. Kingery, 369 Ill. 289, 16 N.E.2d 761 (1938).

This section which guarantees compensation if property is taken or damaged for public use is self executing, requires no legislation for its enforcement, and cannot be impaired by legislation or ordinance. Roe v. County of Cook, 358 Ill. 568, 193 N.E. 472 (1934); People ex rel. Alexander v. City of Mt. Vernon, 404 Ill. 58, 88 N.E.2d 45 (1949); People ex rel. John V. Farwell Co. v. Kelly, 361 Ill. 54, 196 N.E. 795 (1935); People ex rel. Louise v. City of Chicago, 378 Ill. 453, 38 N.E.2d 743 (1941); City of Chicago v. George F. Harding Collection, 70 Ill. App. 2d 254, 217 N.E.2d 381 (1 Dist. 1965).

The power to exercise eminent domain is inherent in the state under former Ill. Const. (1870), Art. II, § 13 (see now this section). Department of Pub. Works v. Ryan, 357 Ill. 150, 191 N.E. 259 (1934).

The right of eminent domain by any corporation or department of the government, as distinguished from a state or sovereignty, can only be exercised when such grant is specifically conferred by legislative enactment, and then only in the manner and by the agency so authorized under former Ill. Const. (1870), Art. II, § 13 (see now this section). Department of Pub. Works v. Ryan, 357 Ill. 150, 191 N.E. 259 (1934).

Where the Constitution provides that private property shall not be taken or damaged for public use without just compensation, this is a guaranty that no citizen shall be thus deprived of his property until compensation for the same has not only been fixed, but paid for him. People ex rel. Hesterman v. Smart, 333 Ill. 135, 164 N.E. 171 (1928).

The power of eminent domain is an incident to sovereignty and inherent in the state, and can be exercised only on the occasion, in the mode, and by the agency prescribed by the legislature. Illinois State Trust Co. v. St. Louis, Iron Mt. & S. Ry., 208 Ill. 419, 70 N.E. 357 (1904).

The measure of damages in an eminent domain proceeding was the market value of the property condemned, and that, in arriving at such value, it was competent to prove any use, the highest and best use, for which it was adapted; this general rule was not without exception, since there could be cases where a proper observance of the constitutional provision that private property should not be taken or damaged for public use without just compensation might not require the payment of damages actually sustained, other than those measured by the value of the property taken. Metropolitan W. Side Elevated R.R. v. Siegel, 161 Ill. 638, 44 N.E. 276 (1896); People ex rel. Alexander v. City of Mt. Vernon, 404 Ill. 58, 88 N.E.2d 45 (1949); People ex rel. John V. Farwell Co. v. Kelly, 361 Ill. 54, 196 N.E. 795 (1935); People ex rel. Louise v. City of Chicago, 378 Ill. 453, 38 N.E.2d 743 (1941); City of Chicago v. George F. Harding Collection, 70 Ill. App. 2d 254, 217 N.E.2d 381 (1 Dist. 1965).

Appellate Review

Transfer, upon appellee's motion, of case from appellate court to the Supreme Court of Illinois was proper because the trial court judgment was based upon a holding that a city ordinance violated Ill. Const. of 1870, Art. II, §§ 2, 13 (now Ill. Const. (1970), Art. I, §§ 2, 15) and Ill. Const. of 1870, Art. II, § 19; because a determination of the ordinance's validity required a construction of the constitution, the supreme court had jurisdiction. People ex rel. Wanless v. Chicago, 378 Ill. 453, 38 N.E.2d 743, 1941 Ill. LEXIS 588 (1941).

Applicability

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Claimants did not state a cause of action for the payment of interest on bail bond funds returned to them pursuant to 725 ILCS 5/110-7(f) and, thus, the trial court should not have certified them as a class under 735 ILCS 5/2-802. The statute regarding return of the funds, 725 ILCS 5/110-7(f), was silent regarding interest, the claimants did not show any contract, common law provision, or other statute that required payment of interest on those returned funds, and that statute could not be considered facially unconstitutional under Ill. Const. art. I, § 15 given that no taking had occurred because the funds were paid to secure a benefit, the release of an individual, and, thus, the claimants had no legal right to those funds. Turnipseed v. Brown, 391 Ill. App. 3d 88, 330 Ill. Dec. 358, 908 N.E.2d 546, 2009 Ill. App. LEXIS 257 (1 Dist. 2009), appeal denied, 233 Ill. 2d 601, 335 Ill. Dec. 647, 919 N.E.2d 366, 2009 Ill. LEXIS 1623 (2009); cert. denied, 130 S. Ct. 2094, 2010 U.S. LEXIS 3380, 176 L. Ed. 2d 723 (U.S. 2010).

Use of substitute condemnation was proper where the taking of an owner's property which gave rise to the city's agreement to acquire the subject property was for the valid public purpose of facilitating a redevelopment plan and, because that public purpose was so closely connected with the taking of the subject property, the present action was a constitutional exercise of the city's power of eminent domain; if the owner had been compensated by money, the property would have violated a parking ordinance. City of Chicago v. Midland Smelting Co., 385 Ill. App. 3d 945, 324 Ill. Dec. 578, 896 N.E.2d 364, 2008 Ill. App. LEXIS 973 (1 Dist. 2008).

- Appropriation Bill

An appropriation bill must, under Article IV, § 8 of the Illinois Constitution, be limited to the subject of appropriations, and not contain substantive law; therefore an appropriations bill cannot contain the finding of necessity required in the exercise of eminent domain. People ex rel. Dir. of Fin. v. YWCA of Springfield, 86 Ill. 2d 219, 55 Ill. Dec. 950, 427 N.E.2d 70 (1981).

- Bill of Rights

The constitutional right of all property owners to compensation when their property has been damaged or taken for public use is one of the most salient provisions of the Bill of Rights. Roe v. County of Cook, 358 Ill. 568, 193 N.E. 472 (1934).

- Common Law Remedy

Landowner's Fifth Amendment takings action against a village and other defendants was properly dismissed as unripe because the landowner had failed to seek compensation through state channels; a remedy was available arising out of the self-executing takings provision of Ill. Const. (1970), Art. I, § 15. Although the landowner argued that no mandamus remedy existed because the village, a non-home-rule municipality, lacked authority to bring an eminent domain proceeding, it was clear under Illinois law that a common law remedy would be found. Peters v. Clifton, 498 F.3d 727, 2007 U.S. App. LEXIS 19941 (7th Cir. 2007).

Even if 605 ILCS 5/5-110 nullified that portion of 605 ILCS 5/5-109 which acknowledges the right to such damages as may be ascertained and paid as provided by law for the vacating of a county road, this fact did not operate to deprive the owner of a common law remedy. Streeter v. County of Winnebago, 44 Ill. App. 3d 392, 2 Ill. Dec. 928, 357 N.E.2d 1371 (2 Dist. 1976).

When this section forbids the taking or damaging of private property without just compensation and points out no remedy, and no statute affords one, for the invasion of the right of property thus secured, the common law, which affords a remedy for every wrong, will furnish the appropriate action for the redress of such grievance. Roe v. County of Cook, 358 Ill. 568, 193 N.E. 472 (1934).

- Drainage District

The intervenor's rights to the natural flow of the waters of creeks was a property right, and the damage arising out of taking away that right by construction of a drainage ditch was a property

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damage committed by the drainage district, which came clearly within the constitutional provision of former Ill. Const. (1870), Art. II, § 13 (see now this section) requiring just compensation for damaging private property for public use. Eldred Drainage & Levee Dist. v. Wilcoxson, 365 Ill. 249, 6 N.E.2d 149 (1936).

A drainage district was a municipal corporation with power to condemn property. Eldred Drainage & Levee Dist. v. Wilcoxson, 365 Ill. 249, 6 N.E.2d 149 (1936).

- Drainage Ditches

The same rules for ascertaining the damages which prevail in proceedings for the condemnation of private property for public use apply to cases arising under the drainage statute. Ginn v. Moultrie, Coles & Douglas Drainage Dist., 188 Ill. 305, 58 N.E. 988 (1900).

Under this section, which provides that property shall not be taken without just compensation, no benefits accrued from the construction of a drainage ditch can be set off against compensation for land actually taken, therefore, corporations organized for drainage purposes cannot take private property for constructing any drainage ditch without making compensation to the owner of such property in money and not in benefits. Ginn v. Moultrie, Coles & Douglas Drainage Dist., 188 Ill. 305, 58 N.E. 988 (1900).

- Former Sections

For a case discussing the constitutionality of a former provision of the Local Improvement Act as it applies to this section, see Price v. City of Elgin, 257 Ill. 63, 100 N.E. 133 (1912).

- Highway Act

605 ILCS 5/6-312, 605 ILCS 5/6-313 and 605 ILCS 5/6-315a are not contrary to this section. McCue v. Brown, 22 Ill. App. 3d 236, 317 N.E.2d 398 (5 Dist. 1974).

- Inheritance and Transfer Tax Law

The state's use of estate funds deposited pursuant to the Inheritance and Transfer Tax Law to earn interest is not a taking in violation of the United States Constitution or this section. Mannix v. Donnewald, 187 Ill. App. 3d 472, 135 Ill. Dec. 94, 543 N.E.2d 329 (1 Dist. 1989).

- Municipal Code

The Municipal Code (see now 65 ILCS 5/11-42-11.1) does not unconstitutionally permit a taking without just compensation, where this section implicitly recognizes cable installation involves a taking, as it provides a procedure for compensating the property owner. Times Mirror Cable Television v. First Nat'l Bank, 221 Ill. App. 3d 340, 164 Ill. Dec. 8, 582 N.E.2d 216 (4 Dist. 1991).

The enactment of former Article 73 of the Revised Cities and Villages Act, (see now 65 ILCS 5/11-13-1) by the legislature, was an express delegation of police power, under which municipalities were authorized to adopt and enforce zoning ordinances, thereby imposing reasonable restraints upon the use of private property. Trust Co. v. City of Chicago, 408 Ill. 91, 96 N.E.2d 499 (1951).

- Nuisance

Exercise of police power to prevent a property owner from using his property so as to create a nuisance or a risk of harm to others is not a "taking" in the constitutional sense. Vill. of Lake Villa v. Stokovich, 211 Ill. 2d 106, 284 Ill. Dec. 360, 810 N.E.2d 13, 2004 Ill. LEXIS 356 (2004), cert. denied, 543 U.S. 943, 125 S. Ct. 354, 160 L. Ed. 2d 256 (2004).

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Where there was no controverted or controversial issue of fact to be submitted to the jury, and plaintiff's own pleading was an admission that its business, or property use was particularly sensitive to light and where it was common knowledge, and all reasonable men would agree, that the business of showing outdoor movies was a property use peculiarly and abnormally sensitive to light, the dismissal of a nuisance charge did not deprive plaintiff of the right to a jury trial. Belmar Drive-In Theatre Co. v. Illinois State Toll Hwy. Comm'n, 34 Ill. 2d 544, 216 N.E.2d 788 (1966).

- Personal Property

Nothing in the notion of "property," whether as used in the due process clause of the Fourteenth Amendment of the United States Constitution, which has been held to require just compensation when state government takes private property for a public use, or in the constitutional and statutory provisions of Illinois governing condemnation, limits condemnation and inverse condemnation to real property. Warner/Elektra/Atlantic Corp. v. County of DuPage, 991 F.2d 1280 (7th Cir. 1993).

- Res Judicata

Based on 28 U.S.C.S. § 1738 under a transactional test, the property owners' complaint against a village and others was properly dismissed based on res judicata because an earlier settled state court suit alleging a taking under Ill. Const. art. I, § 15, due to the creating of a tax district, was based on the same operative facts as the present complaint even though the present suit sought recovery based on additional theories. Arlin-Golf, LLC v. Vill. of Arlington Heights, 631 F.3d 818, 2011 U.S. App. LEXIS 1188 (7th Cir. 2011).

For purposes of appeal, consolidation of declaratory judgment action challenging the constitutionality of the taking of property under this section and action to condemn property pursuant to the precursor to 65 ILCS 5/11-74.4-4(c) did not result from merger of the two actions in a single suit where two suits were consolidated for hearing on certain common issues, but separate case numbers were retained and separate judgments were entered in each case; thus landowner was faced with a final order in that action and its failure to timely file a notice of appeal deprived appellate court of jurisdiction, requiring dismissal of subsequent untimely attempted appeal from that judgement order; furthermore, under principles of res judicata landowner was precluded from relitigating those issues that were the subject of the final order in that prior case. Kassnel v. Village of Rosemont, 135 Ill. App. 3d 361, 90 Ill. Dec. 49, 481 N.E.2d 849 (1 Dist. 1985).

- Right of Way

The use of a railroad right of way is exclusive, and is property, and an entry upon such right of way and use of it for another public purpose is a taking of property, for which there must be just compensation. Illinois Cent. R.R. v. Commissioners of Hwys., 161 Ill. 247, 43 N.E. 1100 (1896).

- Riparian Rights

Under former Ill. Const. (1870), Art. II, § 13 (see now this section) an owner of an oil refining property was held entitled to enjoin alteration of course of a stream. Indian Ref. Co. v. Ambraw River Drainage Dist., 1 F. Supp. 937 (E.D. Ill. 1932).

- Sanitary District

The power of a board to trustees of a sanitary district to provide for the drainage needs of a district is subject to the paramount authority of the state and federal constitutions, which prohibit the taking of private property for public use without just compensation. Sanitary Dist. v. Commonwealth Edison Co., 357 Ill. 255, 192 N.E. 248 (1934).

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A sanitary district is not exempt from the provision of this section requiring the payment of just compensation to an owner when his property is taken or damaged for public use. Sanitary Dist. v. Commonwealth Edison Co., 357 Ill. 255, 192 N.E. 248 (1934).

- Statute of Limitations

Where property owner did not avail himself of the inverse condemnation action provided in this state, his federal taking claim was not ripe and had not yet accrued for purposes of the statute of limitations and, his federal claim would ripen, and the statute of limitations would begin to run, if and when he was denied just compensation by the state courts. Biddison v. City of Chicago, 921 F.2d 724 (7th Cir. 1991).

- Taking

Because there was no evidence that any private monies were transferred from the Cycle Rider Safety Training Fund to the General Revenue Fund, the non-profit and member could not show any private money was taken, and the takings clause, Ill. Const. art. I, § 15, was not violated. A.B.A.T.E. of Ill., Inc. v. Giannoulias, 401 Ill. App. 3d 326, 341 Ill. Dec. 109, 929 N.E.2d 1188, 2010 Ill. App. LEXIS 498 (4 Dist. 2010), aff'd, 354 Ill. Dec. 282, 957 N.E.2d 876, 2011 Ill. LEXIS 1825 (2011).

Interest claimants, pursuant to the Uniform Disposition of Unclaimed Property Act, 765 ILCS 1025/1 et seq., were not entitled to be paid interest on property that the State held for safekeeping prior to the interest claimants filing a petition for reclamation. Although divesting the interest claimants of the right to interest, as the State was permitted to do under 765 ILCS 1025/15, might be considered a taking, it was not a taking that required the payment of just compensation under the taking provisions of Ill. Const. art. I, § 15 and the Fifth and Fourteenth Amendments, U.S. Const. amends. V and IV, because it was the conduct of the neglectful owner rather than any state action that caused the loss of the right to be paid interest. Cwik v. Giannoulias, 237 Ill. 2d 409, 341 Ill. Dec. 476, 930 N.E.2d 990, 2010 Ill. LEXIS 672 (2010).

Proceedings under 765 ILCS 1025/15 of the Uniform Disposition of Unclaimed Property Act, 765 ILCS 1025/1 et seq., resulted from the property owner's neglect of the property and did not constitute a taking that required compensation under Ill. Const. art. 1, § 15; U.S. Const Amend. 5 and 14; and 42 U.S.C. § 1983. Cwik v. Topinka, 389 Ill. App. 3d 21, 328 Ill. Dec. 766, 905 N.E.2d 300, 2009 Ill. App. LEXIS 116 (1 Dist. 2009), aff'd, 2010 Ill. LEXIS 672 (Ill. 2010).

The "taking clause" of this provision applies to the earnings of the award amount deposited with the county treasurer pursuant to a former provision (see now 735 ILCS 5/7-126) in the same manner, and with the same force, as it applies to the principal. Morton Grove Park Dist. v. American Nat'l Bank & Trust Co., 78 Ill. 2d 353, 35 Ill. Dec. 767, 399 N.E.2d 1295 (1980).

The entry upon land and the construction of a ditch for drainage purposes constitute, in law, a taking and appropriation of a perpetual easement and interest in the land, which is protected from invasion even as against the owner of the land. Ginn v. Moultrie, Coles & Douglas Drainage Dist., 188 Ill. 305, 58 N.E. 988 (1900).

- Unemployment Compensation Act

For a case discussing the constitutionality of the former Unemployment Compensation Act, see Zelney v. Murphy, 387 Ill. 492, 56 N.E.2d 754 (1944).

- Urban Development

Fact that the former Eminent Domain Act contemplates that properties acquired through the use of eminent domain may be sold or leased for private development, in accordance with the provisions of a conservation plan, does not nullify the public purpose of a taking since possessory use by the public is not an indispensable prerequisite to the lawful exercise of the power of

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eminent domain. People ex rel. Gutknecht v. City of Chicago, 3 Ill. 2d 539, 121 N.E.2d 791 (1954).

- Writ of Mandamus

Where plaintiffs claimed that access had been eliminated and the defendant claimed that access had only been altered the fact of damage must be determined in a mandamus proceeding; if no damage had occurred, the writ would not issue and if damage had occurred, the writ would issue and the compensation would be determined in an eminent domain proceeding. Inn of the Lamplighter, Inc. v. Kramer, 128 Ill. App. 3d 317, 83 Ill. Dec. 785, 470 N.E.2d 1205 (4 Dist. 1984).

Even if the state were to be held responsible for an alleged condemnation, it is certainly questionable whether a writ of mandamus would be the appropriate remedy since the legislature has provided that the state may be sued for damages in the Court of Claims. Granite City Moose Lodge v. Kramer, 96 Ill. 2d 265, 70 Ill. Dec. 505, 449 N.E.2d 852 (1983).

Only if all the elements considered by the plaintiff's expert witness were improper would he clearly not be entitled to writ of mandamus. Corn Belt Bank v. Cellini, 18 Ill. App. 3d 1035, 310 N.E.2d 470 (4 Dist. 1974).

Since to justify issuance of a writ, a mandamus proceeding must determine the fact of damage, where that fact was disputed, it was error to enter judgment for the petitioner on the pleadings. People ex rel. Haynes v. Rosenstone, 16 Ill. 2d 513, 158 N.E.2d 577 (1959).

Where an appellant's judgment against a city was obtained for damage to property, within the meaning of Ill. Const. (1870), Art. II, § 13 (see now this section), that provision of the Constitution was self-executing and the compensation awarded by that judgment had not been paid, appellant, as assignee of the judgment, took it with all its attributes in the hands of his assignor, so far as the record showed, the city had sufficient funds on hand with which to pay this judgment and nothing remained to be done but to make payment, such a matter was not discretionary with any public official, and appellant was entitled to the writ of mandamus. People ex rel. Farwell v. Kelly, 367 Ill. 616, 12 N.E.2d 612 (1937).

Appellants were entitled to a writ of mandamus to require the city to pay judgment where the judgments were each for personal injuries. People ex rel. Farwell v. Kelly, 367 Ill. 631, 12 N.E.2d 614 (1937).

- Zoning

The enactment of the former Revised Cities and Villages Act, (see now 65 ILCS 5/11-13-1 et seq.) by the legislature, was an express delegation of police power, under which municipalities were authorized to adopt and enforce zoning ordinances, thereby imposing reasonable restraints upon the use of private property. Trust Co. v. City of Chicago, 408 Ill. 91, 96 N.E.2d 499 (1951).

Municipal ordinance that rezoned property from commercial to apartment use, after owner acquired the property, violated the owner's constitutional rights as guaranteed by Ill. Const. of 1870, Art. II, §§ 2, 13 (now Ill. Const. (1970), Art. I, §§ 2, 15) because the property was much more valuable for commercial use rather than for apartment use, general conditions in the vicinity did not warrant the reclassification, and the rezoning was not applied to other nearby property; under those circumstances, the ordinance, as applied to the property, was so arbitrary and unreasonable that it invaded the owner's constitutional rights. Metropolitan Life Ins. Co. v. Chicago, 402 Ill. 581, 84 N.E.2d 825, 1949 Ill. LEXIS 272 (1949).

Constitutional guarantees of private rights are subject to the qualification that they may be cut down by government agencies acting under a proper exercise of the police power of the State; however, a land purchaser may rely upon the classification which exists as to that land when the purchase is made and upon the rule of law that its classification would not be changed so long as

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the basis of public welfare remains the same. Metropolitan Life Ins. Co. v. Chicago, 402 Ill. 581, 84 N.E.2d 825, 1949 Ill. LEXIS 272 (1949).

Zoning ordinance rezoning plaintiff's property from commercial to apartment use was arbitrary and unreasonable and denied plaintiff his right to just compensation under this section. Metropolitan Life Ins. Co. v. City of Chicago, 402 Ill. 581, 84 N.E.2d 825 (1949).

Writ of mandamus was properly issued, where the court concluded that the zoning ordinance was not valid when applied to the landowner's property, and it diminished the value of the property to the extent it was unreasonable, confiscatory, and bore no relation to the public health, morals, safety, or general welfare; thus, it violated U.S. Const. amend. V and XIV, and former Ill. Const. of 1870, Art. II, §§ 2 and 13 (now Ill. Const. (1970), Art. I, §§ 2 and 15. People ex rel. Kirby v. Rockford, 363 Ill. 531, 2 N.E.2d 842, 1936 Ill. LEXIS 770 (1936).

It is proper to consider the extent to which the value of property has been diminished by the zoning ordinance for the purpose of determining whether its invasion of property rights is unreasonable and confiscatory. People ex rel. Kirby v. City of Rockford, 363 Ill. 531, 2 N.E.2d 842 (1936).

It was apparent that the prohibited use of a relator's property to other than single-family residences would prevent its ultimate improvement or result in having residences of only the cheapest type thereon, and such restraint inflicted a drastic financial loss on the relator. People ex rel. Kirby v. City of Rockford, 363 Ill. 531, 2 N.E.2d 842 (1936).

The general scheme of a zoning ordinance may be valid, yet, as applied to a particular property within the area zoned, such facts may exist that if the terms of the ordinance are enforced it would result in an arbitrary and unreasonable injury of the owner of the property or the confiscation thereof and in that situation, as applied to such designated real estate, the ordinance is void. People ex rel. Kirby v. City of Rockford, 363 Ill. 531, 2 N.E.2d 842 (1936).

Where there is no material relation of a restrictive ordinance to the public good, an ordinance cannot, under the guise of a zoning regulation, either confiscate the property or inflict a substantial financial injury upon the owner thereof. People ex rel. Kirby v. City of Rockford, 363 Ill. 531, 2 N.E.2d 842 (1936).

In those cases where the zoning bears a substantial interdependence to the public health, safety, morals, or general welfare, a municipality may, in the exercise of the police power, enact such local legislation, and the rights of the property owner to the unrestricted use of his property are subordinated to the exercise of such police power. People ex rel. Kirby v. City of Rockford, 363 Ill. 531, 2 N.E.2d 842 (1936).

A zoning ordinance must bear a definite relation to the public health, safety, morals, or general welfare. People ex rel. Kirby v. City of Rockford, 363 Ill. 531, 2 N.E.2d 842 (1936).

- Zoning Power

The test applicable to an exercise of the zoning power is that it must bear a real and substantial relation to the public health, safety and welfare; moreover, while the general scheme of a zoning ordinance may be valid, it may be so arbitrary or unreasonable as applied to a particular property as to result in a confiscation of that property. Equity Assocs. v. Village of Northbrook, 171 Ill. App. 3d 115, 121 Ill. Dec. 71, 524 N.E.2d 1119 (1 Dist. 1988).

Where it was clear from the record that there was no actual or reasonable connection between the rezoning of plaintiffs' property from apartment to single-family residence and the public health, safety, comfort, morals or welfare, but that the city, in rezoning the properties and in defending such rezoning in this court, was not seeking to promote or preserve the general welfare but was seeking to bestow upon the individual residents of the rezoned properties special benefits in that they might continue in their "oasis of gracious family living," free from what they might regard as

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the nuisance of apartment buildings in the block, the zoning ordinance was arbitrary and unreasonable, and therefore could not be sustained. Trust Co. v. City of Chicago, 408 Ill. 91, 96 N.E.2d 499 (1951).

Applicability of Federal Law

- Remedies

Because this section provides an inverse condemnation action for aggrieved property owners who are harmed by a municipality's actions a property owner must first avail himself of this state's remedies before he may file a 42 U.S.C. § 1983 action in federal court. Biddison v. City of Chicago, 921 F.2d 724 (7th Cir. 1991).

Authority of Court

- In General

When only a portion of the owner's land is taken by eminent domain, the trier of fact must determine what is to be paid for the portion taken, whether the remainder has been damaged and, if so, the amount of compensation for the damage. DOT ex rel. People v. Central Stone Co., 200 Ill. App. 3d 841, 146 Ill. Dec. 779, 558 N.E.2d 742 (4 Dist. 1990).

It is within the province of the court to decide whether a particular statute grants the authority to take property, and in making this determination, the court must strictly construe the statutory grant so as to protect the rights of property owners. Village of Long Grove v. First Nat'l Bank, 164 Ill. App. 3d 253, 115 Ill. Dec. 318, 517 N.E.2d 729 (2 Dist. 1987).

Although the actual purpose for which land is condemned may be investigated, the subjective reasons of the legislative authority seeking the acquisition is an inappropriate area for judicial inquiry. Green St. Ass'n v. Daley, 373 F.2d 1 (7th Cir.), cert. denied, 387 U.S. 932, 87 S. Ct. 2054, 18 L. Ed. 2d 995 (1967).

Recourse to the courts may be had where the discretionary powers of the State Toll Highway Commission are attended by bad faith, fraud, corruption, manifest oppression or a clear abuse of discretion, however, the failure of the complaint to plead facts sufficient to entitle the plaintiff to relief against the State Toll Highway commission did not permit recourse to this section nor place a duty upon the courts to provide an alternative remedy. Belmar Drive-In Theatre Co. v. Illinois State Toll Hwy. Comm'n, 34 Ill. 2d 544, 216 N.E.2d 788 (1966).

The rule is that when the question of reasonableness is fairly debatable courts will not interfere with the legislative judgment and the same rules apply with respect to the use and purpose to which property shall be assigned, and it is not the province or duty of the court to interfere with the discretion with which such bodies are vested, in the absence of a clear showing of the abuse of that discretion. People ex rel. Miller v. Gill, 389 Ill. 394, 59 N.E.2d 671 (1945).

- Admission of Evidence

Although appellants contended that the sale of their property was not voluntary because it was made in the course of liquidation, and that testimony concerning its sale price should not have been admitted, where, under the former Eminent Domain Act, (see now this section) the jury had inspected the premises, and could not have been misled by the challenged testimony, the trial court acted within its sound discretion in admitting proof of these sales in evidence. Forest Preserve Dist. v. Folta, 377 Ill. 158, 36 N.E.2d 264 (1941).

- Damages

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The amount of damages allowed by the trial court for plaintiff's buildings caused by the city's negligent construction of viaduct which caused buildings to settle by interfering with their lateral support, required relocation of some equipment and interfered with the working environment, was best left for trial judge who saw and heard the witnesses, who examined the premises, and who was, therefore in the best position to pass upon the credibility and weight of the evidence. Boulevard Bridge Bank v. City, 304 Ill. App. 190, 25 N.E.2d 1018 (1 Dist., 1940).

- Determination of Compensation

Trial court erred when it concluded that the value of land which landowners used as a sod farm and to conduct a landscaping business was not affected by an action to condemn lakeside property because the landowners were not actively using the lake as a source of water on the date the condemnation action was filed, and the appellate court reversed the trial court's judgment awarding the landowners $1,100 and remanded the case for reassessment of damages. Ill. Dep't of Natural Res. v. Pedigo, 348 Ill. App. 3d 1044, 285 Ill. Dec. 274, 811 N.E.2d 761, 2004 Ill. App. LEXIS 660 (4 Dist. 2004), appeal denied, 211 Ill. 2d 576, Ill. Dec. , 823 N.E.2d 965 (2004).

Where the General Assembly not having chosen to prescribe by general law a method for determination of compensation to be paid where private property is to be taken by the state itself in the exercise of its power of eminent domain, the determination of just compensation for such taking becomes a judicial proceeding to be regulated by the court in the exercise of its judicial discretion. Department of Pub. Works & Bldgs. v. Kirkendall, 415 Ill. 214, 112 N.E.2d 611 (1953).

Unless and until the General Assembly acts upon the subject, the granting or withholding of a jury trial in condemnation proceedings where the state is the condemning party, as distinguished from a petitioner to whom the power of eminent domain has been delegated by the state, is within the sound judicial discretion of the court, and it is not for this court to legislate judicially upon the subject. Department of Pub. Works & Bldgs. v. Kirkendall, 415 Ill. 214, 112 N.E.2d 611 (1953).

- Determination of Interest

The determination of whether a given interest rate is sufficient for just compensation is a judicial function and the statutory rate of interest applies only if it is constitutionally adequate. DOT v. Rasmussen, 108 Ill. App. 3d 615, 64 Ill. Dec. 119, 439 N.E.2d 48 (2 Dist. 1982).

When interest for the delay in payment is an element of just compensation under this section, the six percent interest rate specified by this section is a statutory minimum only, with the proper rate of interest to be a question for the trier of fact (as is just compensation in general). DOT v. Rasmussen, 108 Ill. App. 3d 615, 64 Ill. Dec. 119, 439 N.E.2d 48 (2 Dist. 1982).

- Determination of Property

Courts have the right to determine whether the use private property is proposed to be taken and appropriated for is public in its nature or not, but when the use is public, the judiciary can not inquire into the necessity or propriety of exercising the right of eminent domain and that right is political in its nature, and not judicial. Zurn v. City of Chicago, 389 Ill. 114, 59 N.E.2d 18 (1945).

- Excessive Taking

While governmental bodies have some discretion as to the amount of property to be taken by eminent domain for a public use, the courts must intervene if the amount taken is excessive and future needs cannot excuse the taking of an excessive amount of property, as only needs of the public which may be fairly anticipated in the future may be considered. People ex rel. Dir. of Fin. v. YWCA of Springfield, 86 Ill. 2d 219, 55 Ill. Dec. 950, 427 N.E.2d 70 (1981).

- Jurisdiction

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Court did not have subject matter jurisdiction over a property owner's claim that a Village's denial of his business license constituted a regulatory taking or inverse condemnation in violation of Ill. Const. art. I, § 15 because the matter was not ripe for adjudication. The property owner was not in a position where he had completed the state process and had still been denied just compensation. Hu v. Vill. of Midlothian, 631 F. Supp. 2d 990, 2009 U.S. Dist. LEXIS 41101 (N.D. Ill. 2009).

Where plaintiffs filed suit seeking to compel the state to institute condemnation proceedings so that compensation could be paid to plaintiffs for their loss of access to their property the Court of Claims did not have jurisdiction; the constitutional guaranty of just compensation derives from the constitution itself and not from a "claim against the state founded upon any law of the State of Illinois." Inn of the Lamplighter, Inc. v. Kramer, 128 Ill. App. 3d 317, 83 Ill. Dec. 785, 470 N.E.2d 1205 (4 Dist. 1984).

Where in action against city for damages resulting from construction by railroad of viaduct abutting plaintiff's land appellate court reversed judgment for plaintiff on grounds that release given to railroad by plaintiff was improperly excluded from evidence, no constitutional question existed so as to give the Supreme Court jurisdiction to review case. Cuneo v. City of Chicago, 372 Ill. 473, 24 N.E.2d 569 (1939).

- Jury Instructions

If a jury's request for further instructions is essentially a request for advice on how to decide a question of fact, the circuit court must refuse to give the additional instructions; giving an additional instruction which informs the jury how to decide a question of fact would frustrate the parties' constitutional and statutory right to a trial by jury and so must be avoided. Department of Pub. Works & Bldgs. v. Roehrig, 45 Ill. App. 3d 189, 3 Ill. Dec. 893, 359 N.E.2d 752 (5 Dist. 1976).

- Procedure

It is a question of law for the court to determine in the first instance whether there has been an actionable taking or material impairment of access which entitles the property owner to compensation, it is then for the jury to determine the extent of damages which have resulted, in an eminent domain proceeding. Department of Pub. Works & Bldgs. v. Wilson & Co., 62 Ill. 2d 131, 340 N.E.2d 12 (1975).

- Public Use

The determination of whether a given use is a public use is a judicial function. People ex rel. Tuohy v. City of Chicago, 394 Ill. 477, 68 N.E.2d 761 (1946).

- Refusal of Instructions

In suit for damage to property trial judge did not err by not submitting questions of damage to a jury with instructions to exclude from market value such enhancement as resulted from the street railroad itself where evidence was not sufficient to show market value or change in value. Brand v. Union Elevated R.R., 238 U.S. 586, 35 S. Ct. 846, 59 L. Ed. 1471 (1915).

- Remedies

The constitution guarantees a jury trial in cases regarding eminent domain, however, jury trials are not provided in the court of claims and recovery in the court of claims is limited and subject to legislative appropriation; therefore, the court of claims offers no remedy in cases of eminent domain. Inn of the Lamplighter, Inc. v. Kramer, 128 Ill. App. 3d 317, 83 Ill. Dec. 785, 470 N.E.2d 1205 (4 Dist. 1984).

- Remittitur

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A trial court has the authority to enter a remittitur in an eminent domain case. Department of Pub. Works & Bldg. v. Huff, 15 Ill. 2d 517, 155 N.E.2d 563 (1959).

Authority of Federal Court

- Abstention

Since state eminent domain procedure allowed condemnees to question the public nature of the taking and to raise other defenses in the form of a "traverse" or motion to dismiss, the condemnor's petition and plaintiffs could raise the crux of their federal constitutional claims in the pending state proceedings and, federal court intervention was unnecessary. Ahrensfeld v. Stephens, 528 F.2d 193 (7th Cir. 1975).

Authority of Jury

- Function

The function of the jury is to decide disputed questions of fact, and it is obvious that where no such issue is presented there can be no denial of the right to a jury trial. Belmar Drive-In Theatre Co. v. Illinois State Toll Hwy. Comm'n, 34 Ill. 2d 544, 216 N.E.2d 788 (1966).

Authority of Legislature

- In General

The legislature cannot, by delegating the power of eminent domain, dispense with constitutional requirements restricting its use, including the requirement of "necessity." People ex rel. Dir. of Fin. v. YWCA of Springfield, 86 Ill. 2d 219, 55 Ill. Dec. 950, 427 N.E.2d 70 (1981).

- Delegation

The General Assembly may delegate the power to take private property for public use to municipal corporations, governmental subdivisions, or public service corporations, and also to public officers, boards of trustees, managers of state institutions, county commissioners, to administrative boards or officers, such as school officers, commissioners of highways, county boards, park commissioners, or others exercising similar powers and to the Utilities Commission to secure public safety. Zurn v. City of Chicago, 389 Ill. 114, 59 N.E.2d 18 (1945).

- Interest in Land

The legislature is free to determine the extent of the interest in the land which the state itself may take, or which it may authorize municipalities to take, by eminent domain, for public purposes. Sanitary Dist. v. Manasse, 380 Ill. 27, 42 N.E.2d 543 (1942).

Burden of Proof

- In General

Although the plaintiff's witness may have testified to and considered improper elements in arriving at his opinion as to the amount of damages resulting as expressed in terms of monetary loss, the petitioner was not required to prove the precise monetary amount of damage sustained, that being an element of proof required in the eminent domain proceeding as contrasted to the proof required to support his petition for writ of mandamus in which proceeding he need only prove the fact of damage. Corn Belt Bank v. Cellini, 18 Ill. App. 3d 1035, 310 N.E.2d 470 (4 Dist. 1974).

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- Not Met

Dentist, who sought to have zoning ordinance preventing him from maintaining professional office in his residence declared unconstitutional failed to sustain the burden imposed upon him of showing that the ordinance, as applied to his property, was unreasonable, discriminatory, confiscatory, and invalid, and did not overcome the presumption of its validity. Skrysak v. Village of Mount Prospect, 13 Ill. 2d 329, 148 N.E.2d 721 (1958).

Compensable Damages

- In General

A property owner suffers compensable damages if his access to an abutting street is completely eliminated in an eminent domain proceeding. Department of Pub. Works & Bldgs. v. Wilson & Co., 62 Ill. 2d 131, 340 N.E.2d 12 (1975).

The installation of medial dividers and the regulation of traffic generally, have been upheld as being an appropriate exercise of the police powers of the state and, the exercise by the state of its power and authority to provide for the public safety, convenience and necessity does not give rise to compensable damage under this section. Department of Pub. Works & Bldgs. ex rel. People v. Bills, 66 Ill. App. 2d 170, 213 N.E.2d 110 (3 Dist. 1965).

- Defined

A property owner suffers compensable damages if his access to an abutting street is taken or materially impaired; however, a loss or impairment of access does not involve an actual physical invasion of the property, and it therefore constitutes a "damaging" rather than a "taking." Patzner v. Baise, 133 Ill. 2d 540, 142 Ill. Dec. 123, 552 N.E.2d 714 (1990).

- Delay by Municipality

To render a municipal corporation liable for compensation for damages arising out of delay in bringing a condemnation suit to trial, or for omission to make an election to take the land or abandon the proceedings within a reasonable time after the judgment has been fixed, the acts complained of must be wrongful and injurious under former Ill. Const. (1870), Art. II, § 13 (see now this section) to entitle the landowner to recover. Eckhoff v. Forest Preserve Dist., 377 Ill. 208, 36 N.E.2d 245 (1941).

- Liability

Compensation for property that has been damaged, as well as for property that has been physically taken, should not be determined through eminent domain proceedings, nor shall compensation be determined by a jury. Patzner v. Baise, 133 Ill. 2d 540, 142 Ill. Dec. 123, 552 N.E.2d 714 (1990).

This section affords redress in all cases where there is occasioned by a public improvement some direct disturbance of a right which is enjoyed by the owner in connection with his property and which gives to the property an additional value, and by reason of such disturbance he has sustained special damage with reference to his property in excess of that sustained by the public generally; the disturbance need not be a physical disturbance of the tangible object of property rights, but must be a disturbance of a right which the owner enjoys in connection with his ownership of the tangible object. Kane v. City of Chicago, 392 Ill. 172, 64 N.E.2d 506 (1945).

An independent contractor who was not charged with any neglect in constructing the sewer was not liable for the damage to the property under this section. Maezes v. City of Chicago, 316 Ill. App. 464, 45 N.E.2d 521 (1 Dist. 1942).

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Owner of property near construction of sewer by sanitary district who suffered personal injuries and property damage could recover from the district despite ordinance authorizing the construction. Baker v. S.A. Healy Co., 302 Ill. App. 634, 24 N.E.2d 228 (1 Dist. 1939).

The right to recover damages for injury to private property occasioned by the occupation of a public street by a railroad, or the taking of other property for the public use, is secured to the property owner by this section and the railroad will be liable for all direct, physical damages occurring from the construction and operation of such railroad to such contiguous or abutting owner. Penn Mut. Life Ins. Co. v. Heiss, 141 Ill. 35, 31 N.E. 138 (1892).

- Not Shown

In an inverse condemnation action, a lessee failed to prove cognizable damages to leased property caused by the State's reconstruction project within the ambit of Ill. Const., Art. I, § 15 because vehicular access to the property, while significantly impaired for a significant period, was not prevented and the impairment was temporary; compensation was not warranted because the injury was not material, was temporary, and although there was an undisputed decline in the business of the restaurant on the property, the lessee did not show any decline in the property's value. Goodman's Peppermill Rest. v. State, 51 Ill. Ct. Cl. 18, 1995 Ill. Ct. Cl. LEXIS 88 (Ct. Cl. 1995).

Although former Ill. Const. (1870), Art. II, § 12 (see now this section) declared that private property could not be taken or damaged for public use without compensation, the damage which the plaintiff would sustain, if any, by the construction and operation of street railway tracks over the streets in front of his property, was not damage within the meaning of the Constitution for which compensation had to be made in advance. Lorie v. North Chicago City Ry., 32 F. 270 (N.D. Ill. 1887).

Compensation

- In General

City ordinance, which requires judgments against the city to be paid in the order of their entry, when applied to preclude payment of a condemnation award, violates Ill. Const. of 1870, Art. II, § 13 (now Ill. Const. (1970), Art. I, § 15) because the requirement of just compensation is not satisfied until the compensation is actually paid; by placing condemnation judgments on the same footing as all other judgments, and thus depriving landowner whose property is taken of the right to be paid until all creditors who have prior judgments against the city are paid, the landowner is denied just compensation. People ex rel. Wanless v. Chicago, 378 Ill. 453, 38 N.E.2d 743, 1941 Ill. LEXIS 588 (1941).

- Determination by Jury

The only question for a jury to determine in an eminent domain proceeding is the just compensation to be paid to the owner of the property sought to be condemned. DOT v. White, 264 Ill. App. 3d 145, 201 Ill. Dec. 772, 636 N.E.2d 1204 (5 Dist. 1994).

In a counterclaim seeking to recover damages for property which was not to be taken by the state in their eminent domain proceeding for a temporary construction easement for three years over a small portion of defendant's property, defendant was entitled to litigate the question of compensable damages caused by the taking of the easement but defendant was not entitled to litigate the question of whether it was entitled to compensable damages caused by the relocation of the access to the property. DOT v. Interstate Brands Corp., 251 Ill. App. 3d 785, 191 Ill. Dec. 181, 623 N.E.2d 771 (4 Dist. 1993).

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Where the state is not one of the parties in interest, both parties to a condemnation suit have a right to have the amount of compensation determined by a jury. Department of Pub. Works & Bldgs. v. Kirkendall, 415 Ill. 214, 112 N.E.2d 611 (1953).

Not only shall private property not be taken or damaged for public use without just compensation, but that compensation shall be ascertained by a jury. Juvinall v. Jamesburg Drainage Dist., 204 Ill. 106, 68 N.E. 440 (1903).

- Determination of Amount

In order for the trustee to receive just compensation for the taking as required under Ill. Const., Art. I, § 15, the trustee was not entitled to be compensated for the best uses of different parts of the property; because the trustee's experts could not agree as to the boundaries of the use zones on the trustee's property, those zones were not sufficiently cognizable for the trustee to be compensated based upon those zones. DOT v. Kelley, 352 Ill. App. 3d 278, 287 Ill. Dec. 411, 815 N.E.2d 1214, 2004 Ill. App. LEXIS 1108 (3 Dist. 2004), appeal denied, 212 Ill. 2d 530, 291 Ill. Dec. 707, 824 N.E.2d 283 (2004).

If defendants in a condemnation proceeding are unsatisfied with the amount of preliminary compensation set by the trial court, they have a right under this section to have a jury determine compensation. DOT v. Brownfield, 211 Ill. App. 3d 565, 164 Ill. Dec. 1, 582 N.E.2d 209 (3 Dist. 1991).

Just compensation for land taken was the amount for which property would sell for cash under ordinary circumstances, assuming that the owner was willing to sell and a purchaser willing to buy, and this measure of compensation was the same whether or not the owner wishes to sell. Department of Pub. Works & Bldgs. v. Filkins, 411 Ill. 304, 104 N.E.2d 214 (1952).

Just compensation includes all elements of value that inhere in the property, but it does not exceed market value fairly determined. The sum required to be paid the owner does not depend upon the uses to which he has devoted his land but is to be arrived at upon just consideration of all the uses for which it is suitable. Department of Pub. Works & Bldgs. v. Filkins, 411 Ill. 304, 104 N.E.2d 214 (1952).

Court concluded that the only purpose of the condemnation proceeding was to ascertain the amount of compensation to be paid, and that was the only question to be tried under the petition. Chicago v. Gage, 268 Ill. 232, 109 N.E. 28, 1915 Ill. LEXIS 2216 (1915).

The compensation to be paid to the owner for private property must be in money alone, disregarding all benefits to the portion of the land not taken. Juvinall v. Jamesburg Drainage Dist., 204 Ill. 106, 68 N.E. 440 (1903).

The fact that the improvement has been made before the damages are determined and paid will not prejudice the property owner to recover the amount justly due him by reason of damage done his property. Aldis v. Union Elevated R.R., 203 Ill. 567, 68 N.E. 95 (1903).

- Failure to Agree

Where an offer has been made by a telegraph company for the use of railroad right of way, and the owner refused to sell, there is sufficient showing of a failure to agree on the compensation. Western Union Tel. Co. v. Louisville & N.R.R., 270 Ill. 399, 110 N.E. 583 (1915).

- Interest

Compensation for property condemned is due when the condemnor takes possession and interest is due from that time. Department of Pub. Works & Bldgs. v. Exchange Nat'l Bank, 61 Ill. 2d 346, 335 N.E.2d 496 (1975).

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Final and unconditional judgment for compensation entered in conformity with § 32 of the Local Improvement Act, Cahill's ch. 24, p. 155, draws interest from the date upon which it is entered because, by reason of the plain language used in § 32 of the Local Improvement Act and § 3 of the Interest Act, Cahill's Ill. Stat., 1918, ch. 74, § 3, as well as the language of the Illinois Constitution, which requires full compensation for property taken or damaged for public use, indicated that it was the intention of the legislature that in proceedings under the Local Improvement Act, the judgment fixing the amount of compensation, when final and unconditional, would draw interest from the date of entry. University of Chicago v. Chicago, 258 Ill. App. 189, 1930 Ill. App. LEXIS 562 (1930).

- Joinder of Defendants

Plaintiff, having received just compensation as required by this section, for the taking of his property, was not entitled to recover additional compensation by joining different defendants, and by bringing the action under the theory of trespass to property for which, by operation of law, he did not hold title. Lawless v. Pierce, 118 Ill. App. 3d 747, 74 Ill. Dec. 83, 455 N.E.2d 113 (1 Dist. 1983).

- Liability

A railroad which constructs its tracks beside a highway is liable to the owner of a farm on the opposite side of the highway for any depreciation in the farm's value caused by the construction under former Ill. Const. (1870), Art. II, § 13 (see now this section). Lake Erie & W.R.R. v. Scott, 132 Ill. 429, 24 N.E. 78 (1890).

- Liability of Municipality

Where a municipality voluntarily collected anticipated taxes and disregarded its duty to apply them to the payment of the warrants, but used the money for its other purposes, it created an obligation upon the municipality to make the warrant holders whole by restoring the moneys to the treasury: the moneys collected in such manner belonged to the tax warrant holders. Edward J. Berwind, Inc. v. Chicago Park Dist., 393 Ill. 317, 65 N.E.2d 785 (1946).

Compliance

- Requirements

The requirements of former Ill. Const. (1870), Art. II, § 13 (see now this section) that property shall not be taken for public use without just compensation are not complied with simply by the entry of a judgment fixing the amount. Cohen v. City of Chicago, 377 Ill. 221, 36 N.E.2d 220 (1941).

Condemnation

- In General

Service stations and restaurants are an integral part of the toll road system, whether they be operated by the Toll Highway Commission or leased to a private corporation who may be better able to carry on the business, thus bringing about the desired result, since access to sewer and water facilities is essential to the operation of service stations and restaurants, the reasoning which sustains the propriety of arrangements for the latter must uphold as well a reasonable exercise of condemnation powers in obtaining the former. Illinois Toll Hwy. Comm'n v. Eden Cem. Ass'n, 16 Ill. 2d 539, 158 N.E.2d 766 (1959).

Where the power to condemn exists, the right to determine whether it shall be exercised likewise exists. Eckhoff v. Forest Preserve Dist., 377 Ill. 208, 36 N.E.2d 245 (1941).

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Several owners with an undivided interest in a condemned tract are one "party interested." Illinois, I. & M. Ry. v. Freeman, 210 Ill. 270, 71 N.E. 444 (1904).

- Compensation

The damages awarded by a jury in a condemnation proceeding will not be disturbed where the evidence is conflicting, the jury views the premises, and the amount of compensation fixed is within the range of the evidence, unless there appears to have been a clear and palpable mistake or the verdict was the result of passion and prejudice. Forest Preserve Dist. v. Galt, 412 Ill. 500, 107 N.E.2d 682 (1952).

- Determination of Damages

Where damages result to property from highway improvements, the owner may bring mandamus against the Director of the Department of Public Works and Buildings to compel him to institute condemnation proceedings to ascertain the amount of damages. Corn Belt Bank v. Cellini, 18 Ill. App. 3d 1035, 310 N.E.2d 470 (4 Dist. 1974).

The sale to one having the power of condemnation would not be a fair test of market value, in as much as the amount paid includes any damages that may be claimed to the residue of the landowner's premises, and often does not represent the mere market value of the portion sold. Forest Preserve Dist. v. Galt, 412 Ill. 500, 107 N.E.2d 682 (1952).

- Division of Award

The division and apportionment of a condemnation award should be determined subsequent to the ascertainment of the value of the tract taken. DOT v. White, 264 Ill. App. 3d 145, 201 Ill. Dec. 772, 636 N.E.2d 1204 (5 Dist. 1994).

- Duty of District

A duty on the part of a district to proceed diligently and without delay in condemnation proceedings under former Ill. Const. (1870), Art II, § 13 (see now this section) was not imposed. Eckhoff v. Forest Preserve Dist., 377 Ill. 208, 36 N.E.2d 245 (1941).

- Held Improper

Where the record did not show that the land sought to be condemned had ever been designated as a part of the state-aid road system or that suit for the condemnation for this land was ever authorized by the proper authorities, the county could not condemn the property. County of Mason v. Furrer, 320 Ill. 305, 150 N.E. 636 (1926).

- Necessary Parties

Whether the grantees of plaintiffs, who acquired their interest subsequent to the construction of a highway, were entitled to compensation, or whether she alone could receive such, was of no consequence since they were parties having an interest in the premises and would be necessary parties defendant to a condemnation proceeding such as was sought to be required of the appellant. People ex rel. Markgraff v. Rosenfield, 383 Ill. 468, 50 N.E.2d 479 (1943).

- Not Required

An abutting property owner is not entitled to have condemnation proceedings instituted to determine damages to his property occasioned by a public improvement where no part of his property is physically taken and the city or other authorized sovereign constructing such improvement is not required, under the constitution or the former Eminent Domain Act or any other law or statute, to institute condemnation or other proceedings to ascertain such damages. Granite City Moose Lodge v. Kramer, 96 Ill. 2d 265, 70 Ill. Dec. 505, 449 N.E.2d 852 (1983).

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- Property Not Taken

In case it is necessary to take private property for public use, the compensation must be fixed and paid before possession can be taken and the improvement made; but where no property is taken, the improvement may be made before the damages are ascertained and paid, the property owner in such case being driven to his action at law for damages; such action, however, is in the nature of a condemnation suit, and, when resorted to, the measure of damages and rules of evidence which are to be adopted are the same as though a direct proceeding by condemnation had been brought to determine the amount of damages to be paid prior to the making of the improvement. Aldis v. Union Elevated R.R., 203 Ill. 567, 68 N.E. 95 (1903).

- Public Use

While the State of Illinois, as a sovereign, had an inherent right to condemn private property, its power to do so only extended to instances where the condemnation was for a public use, and since the government agency's taking was for the private purpose of allowing a private third party to take private property to solve the third party's parking problems, the condemnation was unconstitutional as the taking was not for a public use or public purpose. Southwestern Ill. Dev. Auth. v. Nat'l City Envtl., L.L.C., 199 Ill. 2d 225, 263 Ill. Dec. 241, 768 N.E.2d 1, 2002 Ill. LEXIS 299 (2002), cert. denied, 537 U.S. 880, 123 S. Ct. 88, 154 L. Ed. 2d 135 (2002).

Where a private enterprise admits it can use its own resources to develop its property (for example, by building a parking garage), a condemning authority is not justified in using its power of eminent domain to take private property from an unwilling seller and to transfer it to another private enterprise to increase the profits of that enterprise. Southwestern Ill. Dev. Auth. v. National City Envtl., 304 Ill. App. 3d 542, 238 Ill. Dec. 99, 710 N.E.2d 896 (5 Dist. 1999), aff'd, 199 Ill. 2d 225, 263 Ill. Dec. 241, 768 N.E.2d 1 (2002), cert. denied, 537 U.S. 880, 123 S. Ct. 88, 154 L. Ed. 2d 135 (2002).

Though land can be taken for a proper public use, taking private property for private use under the law of eminent domain is in direct contravention of the Constitution. Southwestern Ill. Dev. Auth. v. National City Envtl., 304 Ill. App. 3d 542, 238 Ill. Dec. 99, 710 N.E.2d 896 (5 Dist. 1999), aff'd, 199 Ill. 2d 225, 263 Ill. Dec. 241, 768 N.E.2d 1 (2002), cert. denied, 537 U.S. 880, 123 S. Ct. 88, 154 L. Ed. 2d 135 (2002).

Under this section property cannot be condemned for a private use. People ex rel. Tuohy v. City of Chicago, 394 Ill. 477, 68 N.E.2d 761 (1946).

- Purpose

The purpose of a condemnation proceeding is to satisfy the constitutional and statutory requirements that property not be taken without due process of the law. Forest Preserve Dist. v. West Sub. Bank, 249 Ill. App. 3d 900, 190 Ill. Dec. 346, 621 N.E.2d 215 (2 Dist. 1993), rev'd on other grounds, 161 Ill. 2d 448, 204 Ill. Dec. 269, 641 N.E.2d 493 (1994).

The primary objective of condemnation proceedings under a former similar provision is to satisfy the constitutional guaranty of just compensation and damages to the owner of private property taken for public use. Department of Pub. Works & Bldgs. v. SUNOCO, 66 Ill. App. 3d 64, 22 Ill. Dec. 826, 383 N.E.2d 634 (5 Dist. 1978).

- Requirements

In a condemnation action at least four issues concerning necessity may be readily distinguished: (1) whether the declared public use is necessary, (2) whether some property of the general type being condemned is necessary to serve the declared public use, (3) whether the property condemned is necessary as opposed to neighboring or similar properties, and (4) whether it is necessary to acquire the subject property by eminent domain as opposed to voluntary sale or

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lease. People ex rel. Dir. of Fin. v. YWCA of Springfield, 86 Ill. 2d 219, 55 Ill. Dec. 950, 427 N.E.2d 70 (1981).

A property owner has no cause of action for damage to property caused by preliminary activities prior to the filing of an action for condemnation. City of Chicago v. Loitz, 11 Ill. App. 3d 42, 295 N.E.2d 478 (1 Dist. 1973), aff'd, 61 Ill. 2d 92, 329 N.E.2d 208 (1975).

The filing of a petition to condemn property under former Ill. Const. (1870), Art. II, § 13 (see now this section) gives the petitioner a right to obtain title to the property at its then market value, and private rights thereafter acquired in the property are subject to the pending suit. Eckhoff v. Forest Preserve Dist., 377 Ill. 208, 36 N.E.2d 245 (1941).

- Right to Compensation

City did not violate the takings clauses of the United States and Illinois Constitutions by finding that a private road had become a highway under 605 ILCS 5/2-202, but failing to compensate the property owners because the city was only granted prescriptive easement, not fee title. City of Des Plaines v. Redella, 365 Ill. App. 3d 68, 301 Ill. Dec. 722, 847 N.E.2d 732, 2006 Ill. App. LEXIS 236 (1 Dist. 2006).

Where land is actually taken by eminent domain the owner may recover in a condemnation proceeding for damage to contiguous land not described in the petition. People ex rel. Haynes v. Rosenstone, 16 Ill. 2d 513, 158 N.E.2d 577 (1959).

Independent of a statute, under former Ill. Const. (1870), Art. II, § 13 (see now this section), a property owner had a right of action to recover damages occasioned by wrongful delay in the prosecution of condemnation proceedings under the former Local Improvement Act (see now 65 ILCS 5/9-2-1 et seq.) Roach v. Village of Winnetka, 366 Ill. 578, 10 N.E.2d 356 (1937).

- Right to Share Award

Lessees are entitled to share in the condemnation awards of their landlords for any injury suffered to their leasehold interests. DOT ex rel. People v. Gass, 165 Ill. App. 3d 562, 116 Ill. Dec. 500, 519 N.E.2d 90 (5 Dist. 1988), overruled on other grounds, Illinois State Toll Hwy. Auth. v. American Nat'l Bank & Trust Co., 162 Ill. 2d 181, 205 Ill. Dec. 132, 642 N.E.2d 1249 (1994).

Consequential Damages

- Liability

Where there was evidence that as a result of a public sewer improvement plaintiff suffered special damage to his property, he had a right to recover compensation from the sanitary district under this section, without regard to the question of negligence. Euwema Co. v. McKay Eng'g Co., 316 Ill. App. 650, 45 N.E.2d 555 (1 Dist. 1942).

A sanitary district was not relieved of liability for consequential damages to private property because an independent contractor constructed the sewer. Maezes v. City of Chicago, 316 Ill. App. 464, 45 N.E.2d 521 (1 Dist. 1942).

Where the construction of a sewer tunnel was for the benefit of the sanitary district and its taxpayers, consequential damages to private property caused by such construction should be borne by the sanitary district. Maezes v. City of Chicago, 316 Ill. App. 464, 45 N.E.2d 521 (1 Dist. 1942).

- Requirements

Where no part of the land or property of the complaining owner is physically taken for or in making the proposed public improvement, and the damages claim to result are therefore

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consequential only, the ascertainment and payment of damages are not required as a condition precedent to the exercise of the right or power to condemn. Parker v. Catholic Bishop, 146 Ill. 158, 34 N.E. 473 (1893).

- Shown

Where the land alleged to have been damaged was not contiguous to that portion of the lot taken by the railroad company, as it was separated by a street, a portion of which was in the city, and no part of that ground was taken, hence the damages suffered to the property were not direct, resulting from a taking of a part of that land, but were consequential, and the railway company was not required to include that property in its petition for condemnation, nor could appellants, by cross petition, compel the adjustment of damages to property no part of which had been taken, and which was not contiguous to the property taken. White v. Metropolitan W. Side Elevated R.R., 154 Ill. 620, 39 N.E. 270 (1894).

Constitutional Requirement

City's exercise of its eminent domain powers was proper under Ill. Const. Art. I, § 15, and former 735 ILCS 5/7-101 (now 735 ILCS 30/1-1-1 et seq.), where the property owner failed to establish that the city abused its discretion in its determination that it was necessary to acquire the property. The taking was authorized by ordinances that recited that it was necessary to acquire the property pursuant to a judgment entered in other litigation and that it was necessary to acquire the property for the public purpose of furthering a redevelopment plan by eradicating blight and redeveloping underutilized land in the redevelopment area for residential, commercial, and business uses. City of Chicago v. Midland Smelting Co., 385 Ill. App. 3d 945, 324 Ill. Dec. 578, 896 N.E.2d 364, 2008 Ill. App. LEXIS 973 (1 Dist. 2008).

- In General

A judgment of a state court, even if it be authorized by statute, whereby private property is taken for the state or under its direction for public use, without compensation made or secured to the owner, upon principle and authority, wanting in the due process of law required by U.S. Const., Amend XIV, and the affirmance of such judgment by the highest court of the state is a denial by that state of a right secured to the owner by that instrument. Chicago, B. & Q.R.R. v. City of Chicago, 166 U.S. 226, 17 S. Ct. 581, 41 L. Ed. 979 (1897).

Due process of law, as applied to judicial proceedings instituted for the taking of private property for public use means such process as recognizes the right of the owner to be compensated if his property be wrested from him and transferred to the public. Chicago, B. & Q.R.R. v. City of Chicago, 166 U.S. 226, 17 S. Ct. 581, 41 L. Ed. 979 (1897).

- Met

Residential district which permitted hospitals and clinics, nursing homes, institutions of an educational nature which could include a medical college of school of veterinary medicine and other uses, but prohibited the operation of a physician's and surgeon's office, was not arbitrary and void as a matter of law and did not violate the due process clause of the constitutions. City of Champaign v. Roseman, 15 Ill. 2d 363, 155 N.E.2d 34 (1958).

Construction of Easement

- City Not Liable

Where a city granted an easement to the sanitary district to use the city streets for the construction of a sewer, it did not thereby assume any obligation under this section to pay for any

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damages occasioned by reason of the construction of the sewer. Maezes v. City of Chicago, 316 Ill. App. 464, 45 N.E.2d 521 (1 Dist. 1942).

Damage

- Defined

Even though a city ordinance prevented the property owner from developing property in the manner he desired, the prevention of the physical development of the property did not constitute "damage" under the taking clause of this section. International College of Surgeons v. City of Chicago, 153 F.3d 356 (7th Cir. 1998).

"Damage" to private property for public use has been defined as: any direct physical disturbance of a right either public or private, which an owner enjoys in connection with his property; a right which gives the property an additional value; a right which is disturbed in a way that inflicts a special damage with respect to the property in excess of that sustained by the public generally. Equity Assocs. v. Village of Northbrook, 171 Ill. App. 3d 115, 121 Ill. Dec. 71, 524 N.E.2d 1119 (1 Dist. 1988).

There is no question that a property owner suffers compensable damages if his access to an abutting street is taken or materially impaired; however, a loss or impairment of access does not involve an actual physical invasion of the property, and it therefore constitutes a "damaging," rather than a "taking," of the property. Granite City Moose Lodge v. Kramer, 96 Ill. 2d 265, 70 Ill. Dec. 505, 449 N.E.2d 852 (1983).

Damage within both the constitutional and statutory provisions means some direct physical disturbance of a right which owners of a plant in question enjoyed in connection with their property; one that gave the plant additional value; and which, when disturbed, would cause special damage in excess of that sustained by the public generally and give rise to an action by the common law. Citizens Utils. Co. v. Metropolitan San. Dist., 25 Ill. App. 3d 252, 322 N.E.2d 857 (1 Dist. 1974).

- Elements

The increased vehicular traffic, increased advertising value and increased accessibility were proper considerations bearing upon the question of damage and benefit to plaintiff's property. Cuneo v. City of Chicago, 400 Ill. 545, 81 N.E.2d 451 (1948).

- Offset by Benefits

The decision of the trial court, that any damages sustained to the land were more than offset by reason of the benefits derived from the improvements, was not contrary to the manifest weight of the evidence; when property is not taken, benefits may always be offset against damages to the property. Cuneo v. City of Chicago, 400 Ill. 545, 81 N.E.2d 451 (1948).

Where property is damaged, the measure of the property is the difference in the fair market value as a whole before and after the improvements, and benefits may always be set off against damages. Cuneo v. City of Chicago, 400 Ill. 545, 81 N.E.2d 451 (1948).

- Requirement

Where no part of the land or property of a complaining owner is physically taken for or in making a proposed public improvement, and the damages claimed to result are therefore consequential only, this section does not require the ascertainment and payment of such damages as a condition precedent to the exercise of the right or power. Hill v. Kimball, 269 Ill. 398, 110 N.E. 18 (1915).

- Shown

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Under the precursor to 735 ILCS 5/7-103, where the installation of the overpass on the public highway was not itself a taking of defendants' property, and defendants did not allege, nor would the record support, any damage to the remainder from the temporary construction easement, then compensable damages to land not taken flowed from a constitutionally compensable "damaging" of defendants' property, not from a "taking" under a former similar provision. DOT v. Rasmussen, 108 Ill. App. 3d 615, 64 Ill. Dec. 119, 439 N.E.2d 48 (2 Dist. 1982).

Property was held to be damaged within the meaning of a similar prior provision. City of Chicago v. Taylor, 125 U.S. 161, 8 S. Ct. 820, 31 L. Ed. 638 (1888).

- Valuation

Where property is not actually taken by the public for its use, but it has been damaged for public use, if the market value of the property is not decreased, there is no damage, and there can be no recovery. Schroeder v. City of Joliet, 189 Ill. 48, 59 N.E. 550 (1901).

Delay in Payment

- Effect

Where there is delay in the payment of a condemnation judgment it cannot reasonably be said that its payment at some later date will amount to just compensation, because the owner in such case is deprived of the full and beneficial use and enjoyment of his property without legal process or compensation. People ex rel. Louise v. City of Chicago, 378 Ill. 453, 38 N.E.2d 743 (1941).

Deprivation of Property

- Not Shown

Since possession of property was not in defendant who had conveyed such to a trustee, defendant was not injured by the imposition of the receivership in that it did not deprive defendant of property in violation of this section and the Constitution of the United States. Hartman v. Hartman, 2 Ill. App. 3d 163, 276 N.E.2d 56 (1 Dist. 1971).

Due Process

A state legislature may prescribe a form of procedure to be observed in the taking of private property for public use, but it is not due process of law if provision be not made for compensation. Chicago, B. & Q.R.R. v. City of Chicago, 166 U.S. 226, 17 S. Ct. 581, 41 L. Ed. 979 (1897).

Duty to Institute Proceedings

It was the duty of the appellant, as Director of the Department of Public Works and Buildings, to institute, under the Eminent Domain Act, proceedings to ascertain the value of land taken or damaged for public use. People ex rel. Markgraff v. Rosenfield, 383 Ill. 468, 50 N.E.2d 479 (1943).

Easement

- Unobstructed Light and Air

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A right, of which the abutting owner may not be deprived without compensation, is that of having light and air from a public highway, unobstructed by any encroachment on the street. Barnard v. City of Chicago, 270 Ill. 27, 110 N.E. 412 (1915).

Eminent Domain

City did not abuse its discretion by determining that it was necessary to secure its right to have vehicles park on an owner's property; the city council passed an ordinance authorizing the taking of the northern portion of the property, a two-year term of lease for the 30 parking spaces had expired, and the parties were operating on a month-to-month tenancy. The owner's offer, made after the city filed a condemnation case, would not have prevented it from selling the property to another party at a later time, in which case the city would again have been required to obtain substitute parking; moreover, that substitute parking may not have been located on or near the property, which was specifically chosen, in part, due to its unique location adjacent to another building that was compelled by a redevelopment plan and Chicago, Ill., Mun. Code ch. 194A, § 5.8-5 to maintain parking facilities. City of Chicago v. Midland Smelting Co., 385 Ill. App. 3d 945, 324 Ill. Dec. 578, 896 N.E.2d 364, 2008 Ill. App. LEXIS 973 (1 Dist. 2008).

- In General

Trial court did not err in finding that state transportation agency had the authority to take the property owner's property for its project to build "connector" roads between two existing highways as property had historically been taken through eminent domain for construction of roads and the state transportation department had the statutory authority to take the property involved as the property was being taken for the public purpose of building roads to ease traffic congestion. DOT v. Sunnyside P'ship, L.P., 337 Ill. App. 3d 322, 271 Ill. Dec. 824, 785 N.E.2d 1018, 2003 Ill. App. LEXIS 244 (5 Dist. 2003).

Under Ill. Const. (1970), Art. I, § 15, private property shall not be taken or damaged for public use without just compensation as provided by law. Evanston v. Regional Transp. Authority, 202 Ill. App. 3d 265, 147 Ill. Dec. 559, 559 N.E.2d 899, 1990 Ill. App. LEXIS 1221 (1 Dist. 1990).

A railroad could not exercise the power of eminent domain to acquire property for parking lots or billboard space, purposes which were not related to its business as a common carrier. Abens v. Chicago, B. & Q.R.R., 388 Ill. 261, 57 N.E.2d 883 (1944).

Court concluded that a case of a clear exercise of the right of eminent domain by the State under former Ill. Const. of 1870, Art. XIII, § 11 (now Ill. Const. (1970), Art. I, § 15), to advance the public necessity, and supply a want, existed; thus, the legislature, in the exercise of this right, can, without notice of any kind, on an emergency of which they are to judge, take any man's property for public use, by making compensation, and prescribe the mode by which this compensation shall be ascertained. Johnson v. Joliet & C. R. Co., 23 Ill. 124, 1859 Ill. LEXIS 304 (1859).

- Acquisition of Easement

An easement acquired by a railroad company in an eminent domain proceeding for right-of-way purposes gives the company the right to the exclusive possession of the land taken. Abens v. Chicago, B. & Q.R.R., 388 Ill. 261, 57 N.E.2d 883 (1944).

Where railroad defendant acquired, in an eminent domain proceeding, an easement over a land tract, the fee subject to the easement remained in the owner; the present owners of the fee could use the land for every purpose not incompatible with the use for which the easement was created. Abens v. Chicago, B. & Q.R.R., 388 Ill. 261, 57 N.E.2d 883 (1944).

- Authority of Foreign Powers

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No other state can authorize the exercise of eminent domain within this state. Illinois State Trust Co. v. St. Louis, Iron Mt. & S. Ry., 208 Ill. 419, 70 N.E. 357 (1904).

- Benefit to State Not Shown

The state was not required to institute eminent domain proceedings because the city, rather than the state, actually benefited from, and was authorized to construct and maintain, a overpass which plaintiff alleged resulted in the taking. Granite City Moose Lodge v. Kramer, 96 Ill. 2d 265, 70 Ill. Dec. 505, 449 N.E.2d 852 (1983).

- Delegation of Power

The legislature may delegate the exercise of the power of eminent domain to a foreign corporation; but the power can only be exercised when so granted. Illinois State Trust Co. v. St. Louis, Iron Mt. & S. Ry., 208 Ill. 419, 70 N.E. 357 (1904).

- Dismissal of Petition

An eminent domain petition is properly dismissed where no formal resolution embodying a finding of necessity had, on the date of filing of the petition, been adopted, even though a subsequently adopted resolution referred to action taken at an executive meeting of the responsible body prior to the filing of the petition. People ex rel. Dir. of Fin. v. YWCA of Springfield, 86 Ill. 2d 219, 55 Ill. Dec. 950, 427 N.E.2d 70 (1981).

- Elements

"Eminent domain" is a right inherent in all sovereignties, and is defined as the right of the nation or the state, or of those to whom the power has been lawfully delegated, to condemn private property for public use, and to appropriate the ownership or possession of such property for such use upon paying the owner due compensation, to be ascertained according to law. Western Union Tel. Co. v. Louisville & N.R.R., 270 Ill. 399, 110 N.E. 583 (1915).

- Entitlement to Interest

Owners of land which was partially condemned under the "quick take" provision of the former Eminent Domain Act was not entitled to interest on award of just compensation from the date of "quick take" deposit, but only from the date that the owners surrendered possession. Department of Pub. Works & Bldgs. v. Exchange Nat'l Bank, 23 Ill. App. 3d 175, 318 N.E.2d 530 (2 Dist. 1974), aff'd, 62 Ill. 2d 346, 335 N.E.2d 496 (1975).

Court concluded that former Illinois Eminent Domain Act, § 2.6 (now Ill. Const. Art. I, § 15) provided the property owner should not have the right to withdraw funds and by non-exercise of the right require a petitioner to pay interest on funds it has placed beyond its control; therefore, judgment providing that interest be paid at the rate of five percent per annum on the funds deposited with the court from the data of possession until the date of payment was reversed. Department of Public Works v. Porter, 123 Ill. App. 2d 415, 259 N.E.2d 74, 1970 Ill. App. LEXIS 1455 (1 Dist. 1970).

Provisions of the former Illinois Eminent Domain Act, § 2.6 (now Ill. Const. Art. I, § 15) show a clear legislative intent to exclude interest under the Ill. Interest Act, § 3 where interest is payable under the Eminent Domain Act. Department of Public Works v. Porter, 123 Ill. App. 2d 415, 259 N.E.2d 74, 1970 Ill. App. LEXIS 1455 (1 Dist. 1970).

Award of interest from date of judgment until payment of just compensation for land taken pursuant to eminent domain proceeding under local improvement act does not violate this section. Blaine v. City of Chicago, 366 Ill. 341, 8 N.E.2d 939 (1937).

- Legislative Inquiry

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The power of eminent domain is legislative in character; given a public purpose or use, the motives that underlie the exercise of that power may not be questioned. Green St. Ass'n v. Daley, 373 F.2d 1 (7th Cir.), cert. denied, 387 U.S. 932, 87 S. Ct. 2054, 18 L. Ed. 2d 995 (1967).

- Limitations

The right of eminent domain by any corporation or department of government, as distinguished from the state or sovereignty itself, can only be exercised when such grant is specifically conferred by legislative enactment, and then only in the manner and by the agency so authorized. Department of Pub. Works & Bldgs. v. Schlich, 359 Ill. 337, 194 N.E. 587 (1935).

The exercise of eminent domain power is limited to those cases where public necessity requires the taking of private property for public use, and such property may then be taken only by payment of just compensation. Department of Pub. Works & Bldgs. v. Schlich, 359 Ill. 337, 194 N.E. 587 (1935).

The right to take private property for public use is a high prerogative of sovereignty, controlled by the Constitution, and can be exercised only subject to the Bill of Rights, and the limitations therein contained. Roe v. County of Cook, 358 Ill. 568, 193 N.E. 472 (1934).

- Loss of Access

Where a loss or impairment of access does not involve an actual physical invasion of the property, it constitutes a "damaging," rather than a "taking" of the property and, a "damaging" without a "taking" is not a proper subject for eminent domain proceedings in circuit court. Rothschild v. Baise, 157 Ill. App. 3d 481, 109 Ill. Dec. 550, 510 N.E.2d 418 (5 Dist. 1987).

The trial court did not err in denying a motion in limine to prohibit the introduction of evidence to determine whether or not a material impairment of access had occurred with respect to property, where the effect of a partial taking was not merely a limitation of the existing direct access to an abutting highway nor simply a change in the flow of traffic on the street, but rather a complete elimination of all direct access with the substitution of a frontage road connecting defendant's remaining property to another street, accordingly, the trial court properly permitted the jury to consider loss of direct access to the abutting highway and the substitution of the frontage road as factors bearing on the extent of damages to the remainder. Department of Pub. Works & Bldgs. v. Wilson & Co., 62 Ill. 2d 131, 340 N.E.2d 12 (1975).

- Private Corporations

Where the legislature has delegated to a corporation the authority to exercise the power of eminent domain, the corporation has also the authority to decide on the necessity for exercising the right, and its decision will be conclusive in the absence of a clear abuse of the right and courts cannot inquire into the necessity or propriety of its exercise. Zurn v. City of Chicago, 389 Ill. 114, 59 N.E.2d 18 (1945).

- Proceedings

A property owner who can prove that his property has been damaged by the state for the benefit of the public can compel the institution of eminent domain proceedings. People ex rel. Haynes v. Rosenstone, 16 Ill. 2d 513, 158 N.E.2d 577 (1959).

- Right of Access

Abutting property owners' right of ingress or egress is a valuable property right and the taking of any such right must be compensated. Streeter v. County of Winnebago, 44 Ill. App. 3d 392, 2 Ill. Dec. 928, 357 N.E.2d 1371 (2 Dist. 1976).

The "right of access" is a private property right inherent in ownership of real estate abutting a highway, when such access in taken or materially impaired by action of the state the property

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owner is entitled to compensation, if however, there is no physical disturbance of the right of access vis-a-vis the abutting highway, then any damages which may result to the property owner as a consequence of a change in the use of the highway by the public are damunum absque injuria even though such damages may be very substantial. Department of Pub. Works & Bldgs. v. Wilson & Co., 62 Ill. 2d 131, 340 N.E.2d 12 (1975).

Owners of property bordering upon a street, in addition to the public right of travel which they enjoy in common with all citizens, have the right of access to and egress from the property by way of the street, and this right cannot be taken away or materially impaired without compensation to the extent of the damages suffered. Barnard v. City of Chicago, 270 Ill. 27, 110 N.E. 412 (1915).

- Right to Jury Trial

The right to a jury trial where the sovereign state exercises its right of eminent domain is not guaranteed as a matter of common law, nor by the Bill of Rights of this section. Department of Pub. Works & Bldgs. v. Kirkendall, 415 Ill. 214, 112 N.E.2d 611 (1953).

Highest and Best Use

- Appraiser Testimony

When the highest and best use of the property is not uniform throughout the tract in question, an appraiser may testify to the highest and best use for the different portions of the full tract involved. DOT v. HP/Meachum Land Ltd. Partnership, 245 Ill. App. 3d 252, 185 Ill. Dec. 351, 614 N.E.2d 485 (2 Dist.), appeal denied, 152 Ill. 2d 557, 190 Ill. Dec. 886, 622 N.E.2d 1203 (1993).

Interest

- In General

The Constitution left the legislature free to provide for interest, or not, as it saw fit. City of Chicago v. S. Obermayer Co., 268 F. 237 (7th Cir. 1920).

- Determination by Jury

Because interest on the difference between the preliminary compensation amount found by the court in quick-take proceedings and the sum finally awarded by the jury is an element of just compensation, the appropriate rate of interest must be determined by a jury as provided by law. Illinois State Toll Hwy. Auth. v. American Nat'l Bank & Trust Co., 162 Ill. 2d 181, 205 Ill. Dec. 132, 642 N.E.2d 1249 (1994).

Inverse Condemnation

When certain real property in which bondholders and a developer had invested in a redevelopment project was condemned by a city for an airport expansion, the developer and bondholders were not entitled to compensation for the fact that the bonds held by the developer and the bondholders were rendered worthless because: (1) the bonds were not secured by the real property but by anticipated future tax revenue, which the bondholders and developer explicitly had no authority to require the village issuing the bonds to employ; and (2) the loss in the bonds' value was consequential damage related to the lawful taking of the property, so no compensation was required. City of Chicago v. ProLogis, 383 Ill. App. 3d 160, 321 Ill. Dec. 917, 890 N.E.2d 639, 2008 Ill. App. LEXIS 541 (1 Dist. 2008), aff'd, 236 Ill. 2d 69, 337 Ill. Dec. 726, 923 N.E.2d 285, 2010 Ill. LEXIS 11 (2010).

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Where plaintiff landowner alleged defendants, a village and its officials, created a loss of property value and access by removing a road, and claimed inverse condemnation under Ill. Const., Art. I, § 15, the landowner's claims of a substantial depreciation in value due to the removal of the road stated an inverse condemnation claim against the village, but not as to the officials. Pelfresne v. Vill. of Lindenhurst, F. Supp. 2d , 2004 U.S. Dist. LEXIS 14176 (N.D. Ill. July 23, 2004).

If by virtue of the reference to damage, the Illinois constitution has expanded the term "inverse condemnation" beyond its original meaning and caused it to become a synonym for the negligent infliction of property damage, the ancillary doctrines of negligence, including the doctrine of comparative negligence, come into play and require that the 70 percent assessment of responsibility for the damage cut down any judgment to which plaintiff would be entitled on the inverse condemnation count, just as on the negligence count. Warner/Elektra/Atlantic Corp. v. County of DuPage, 991 F.2d 1280 (7th Cir. 1993).

Just Compensation

The term "just compensation" does not necessarily mean some award must be made and the property owner is entitled to be compensated justly for what is given up is of no value, the making of an award would not be required in order that he be justly compensated. Department of Pub. Works & Bldgs. v. Filkins, 411 Ill. 304, 104 N.E.2d 214 (1952).

- Applicability

State's action, pursuant to 765 ILCS 1025/15, of keeping dividends that accrued on abandoned stock the State held in the hopes of eventually returning the stock to its owner, constituted a taking under the Fifth and Fourteenth Amendments, but whether the taking was unconstitutional would turn on the issue of whether any compensation for the taking should have been paid to the stock's owner. Canel v. Topinka, 342 Ill. App. 3d 65, 276 Ill. Dec. 86, 793 N.E.2d 845, 2003 Ill. App. LEXIS 844 (1 Dist. 2003).

- Applicability

Statutory clerk's fees did not constitute a taking of property in violation of the Illinois Constitution because the "just compensation" provision, stated in this section, apply only to exercises of the power of eminent domain, not to applications of the authority to raise revenue for public purposes. Mlade v. Finley, 112 Ill. App. 3d 914, 68 Ill. Dec. 387, 445 N.E.2d 1240 (1 Dist. 1983).

- Attorney Fees

Attorney fees and expenses should not be allowed unless specifically authorized by statute; because Illinois statutory law does not authorize attorney fees, reimbursement of attorney fees is not required as part of just compensation in eminent domain action. Illinois State Toll Hwy. Auth. v. American Nat'l Bank & Trust Co., 162 Ill. 2d 181, 205 Ill. Dec. 132, 642 N.E.2d 1249 (1994).

Attorney fees and other expenses are not included in the "just compensation." DOT v. Carriage Hills Kennels, 255 Ill. App. 3d 43, 194 Ill. Dec. 187, 627 N.E.2d 303 (1 Dist. 1993), aff'd in part, rev'd in part on other grounds, 162 Ill. 2d 181, 205 Ill. Dec. 138, 642 N.E.2d 1249 (1994).

- Defined

Just compensation is defined as the "market value" of the property concerned adapted to its highest and best use on the date of the filing of the complaint to condemn; market value is what the owner, if desirous of selling, would sell the property for and what reasonable persons, desirous of purchasing, would pay for it. DOT v. White, 264 Ill. App. 3d 145, 201 Ill. Dec. 772, 636 N.E.2d 1204 (5 Dist. 1994).

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Payment of excess compensation to the condemnor on the date ordered by the court did not waive condemnee's right to appeal from the jury's verdict of just compensation. Illinois State Toll Hwy. Auth. v. Heritage Std. Bank & Trust Co., 157 Ill. 2d 282, 193 Ill. Dec. 180, 626 N.E.2d 213 (1993).

Just compensation to which the landowner is entitled has been defined as the amount of money necessary to put him in as good condition financially as he was with the ownership of the property and as a sum of money that is equivalent to the value of the property under a former similar provision (see now 735 ILCS 5/7-123). Lombard Park Dist. v. Chicago Title & Trust Co., 103 Ill. App. 2d 1, 242 N.E.2d 440 (2 Dist. 1968).

Just compensation under former Ill. Const. (1870), Art. II, § 13 (see now this section) did not necessarily mean that some award must be made. Midwestern Gas Transmission Co. v. Mason, 31 Ill. 2d 340, 201 N.E.2d 379 (1964).

- Delay

Trial court on remand of the condemnation case filed by the condemnor had to hold a hearing to determine whether the value of the property of the condemnees that the condemnor sought to acquire was materially different than the amount of the jury's verdict setting a fair market value on that property as of the time that the condemnation case was filed. Such a hearing was necessary because eight years passed between the date the condemnation case was filed and the date the jury rendered its verdict, which meant that there was a question whether the jury's verdict awarded "just compensation" to the condemnees under the Fifth Amendment and Ill. Const. art. I, § 15 because 735 ILCS 5/7-121 directed that a "time-of-filing" valuation date be used that might not reflect an accurate value eight years later. Forest Preserve Dist. of Du Page County v. First Nat'l Bank of Franklin Park, 401 Ill. App. 3d 966, 341 Ill. Dec. 267, 930 N.E.2d 477, 2010 Ill. App. LEXIS 501 (2 Dist. 2010), aff'd, remanded, 2011 Ill. LEXIS 1840 (Ill. 2011).

Where the appellate court's remand mandate in the condemnation case did not require the trial court to reopen discovery and allow the Illinois Department of Transportation to name a new expert where its former expert had died and the former expert's testimony had been found to be inadmissible, the trial court did not err in refusing to reopen discovery. Reopening discovery would have created additional delay that would have violated the owners' right to just compensation under Ill. Const. Art. I, § 15. People ex rel. DOT v. Firstar Ill., 365 Ill. App. 3d 936, 303 Ill. Dec. 495, 851 N.E.2d 682, 2006 Ill. App. LEXIS 415 (1 Dist. 2006).

- Determination

Just compensation is determined by the fair cash market value of the property at its highest and best use. DOT v. HP/Meachum Land Ltd. Partnership, 245 Ill. App. 3d 252, 185 Ill. Dec. 351, 614 N.E.2d 485 (2 Dist.), appeal denied, 152 Ill. 2d 557, 190 Ill. Dec. 886, 622 N.E.2d 1203 (1993).

- Preliminary Injunction

In the context of a condemnation proceeding, a preliminary injunction cannot be considered a taking without just compensation; the very purpose of an eminent domain proceeding is to determine the amount of just compensation constitutionally owned to the landowner. Forest Preserve Dist. v. West Sub. Bank, 161 Ill. 2d 448, 204 Ill. Dec. 269, 641 N.E.2d 493 (1994).

- Shown

The decision of a jury that no compensation is due the defendants should not be disturbed where the jury did not allow some compensation for the taking of the ingress and egress, crossing, light and air of the property immediately north of the highway and the other property owned by the plaintiffs. Department of Pub. Works & Bldgs. v. Filkins, 411 Ill. 304, 104 N.E.2d 214 (1952).

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Where a jury felt that the limitation upon ingress and egress, as provided under the new highway was no greater than the present privilege of ingress, egress, the action of the jury should not be disturbed on this point. Department of Pub. Works & Bldgs. v. Filkins, 411 Ill. 304, 104 N.E.2d 214 (1952).

Land

- Damaged

Land is damaged by reason of preliminary procedure looking to its appropriation to a public use. City of Chicago v. Loitz, 11 Ill. App. 3d 42, 295 N.E.2d 478 (1 Dist. 1973), aff'd, 61 Ill. 2d 92, 329 N.E.2d 208 (1975).

Lease of Condemned Property

- Admission into Evidence

The lease of the condemned property which was negotiated and executed in good faith prior to commencement of the condemnation proceedings, was properly admitted in evidence. Department of Pub. Works & Bldgs. v. Kirkendall, 415 Ill. 214, 112 N.E.2d 611 (1953).

Leasehold Interest

Because the measure of compensation for a leasehold interest was the value of the interest subject to the contracted rent, any evidence of business profits was inadmissible regarding the compensation for an advertising corporation's billboard on property subject to condemnation; bonus value was an adequate measure of just compensation under Ill. Const. art. I, § 15 and 735 ILCS 30/10-5-5 and 10-5-60. DOT v. E. Side Dev., L.L.C., 384 Ill. App. 3d 295, 322 Ill. Dec. 889, 892 N.E.2d 136, 2008 Ill. App. LEXIS 756 (1 Dist. 2008), appeal denied, 229 Ill. 2d 664, 900 N.E.2d 1117, 2008 Ill. LEXIS 1745 (2008).

Legislative Powers

Under this section, the legislature cannot on the pretense that a particular statute amounts only to a change of remedy, subject the right of compensation to chance and make payment uncertain and problematical. People ex rel. O'Meara v. Smith, 374 Ill. 286, 29 N.E.2d 274 (1940).

Liability for Negligence

Neither former Ill. Const. (1870), Art. II, § 13 or former Ill. Const. (1870), Art. II, § 19 had any application to the question of whether or not drainage districts were liable for damages caused by the negligence of their employees in the performance of their duties. Bates v. Commissioners of Lake Fork Special Drainage Dist., 352 Ill. 378, 185 N.E. 589 (1933).

"Or Damaged"

- In General

The words "or damaged" make it possible for a landowner to claim compensation for the destruction or disturbance of easements of light and air, and of accessibility, or of such other intangible rights as he enjoys in connection with, and as incidental to, the ownership of the land itself. DOT v. Rasmussen, 108 Ill. App. 3d 615, 64 Ill. Dec. 119, 439 N.E.2d 48 (2 Dist. 1982).

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The words "or damaged" were added to the Constitution in 1870 to compensate landowners for harm to their property rights caused by activities not amounting to takings. DOT v. Rasmussen, 108 Ill. App. 3d 615, 64 Ill. Dec. 119, 439 N.E.2d 48 (2 Dist. 1982).

Payment

The municipality or sovereignty taking property under a former provision of the Municipal Code (see now 65 ILCS 5/9-2-1) must have the amount fixed by the judgment of a court of competent jurisdiction as a guaranty that no citizen shall be deprived of his property until compensation has not only been fixed, but paid to him. Cohen v. City of Chicago, 377 Ill. 221, 36 N.E.2d 220 (1941).

Under the eminent domain statute, payment of the compensation adjudged may in all cases be made to the county treasurer, who shall, on demand, pay the same to the party thereto entitled, and the compensation can be ascertained and the money paid to the county treasurer in any case without interfering with or disturbing the jurisdiction of the court. Chicago v. Gage, 268 Ill. 232, 109 N.E. 28, 1915 Ill. LEXIS 2216 (1915).

"Private Property"

"Private property," as used here, includes both realty and personalty. United States v. 19.86 Acres of Land, 141 F.2d 344 (7th Cir. 1944).

Property

- Defined

Property, in the sense in which that word is used in this section, is that dominion or indefinite right of user and disposition which one may lawfully exercise over particular things or subjects, and generally to the exclusion of all others. Illinois Cent. R.R. v. Commissioners of Hwys., 161 Ill. 247, 43 N.E. 1100 (1896).

- Scope

Where the property in question was adjacent to a railroad track and to a playground, which rendered it less suitable for single family use, the village board's amending ordinance to include apartment buildings was not an unreasonable, arbitrary or an unequal exercise of power. People ex rel. Miller v. Gill, 389 Ill. 394, 59 N.E.2d 671 (1945).

Public Property

- Scope

The reference to private property in the Fifth Amendment encompasses the property of state and local governments when condemned by the United States, but there is no authority that private property within the meaning of the Fifth Amendment includes the public property of a political subdivision taken by another political subdivision of the same state. City of Evanston v. Regional Transp. Auth., 202 Ill. App. 3d 265, 147 Ill. Dec. 559, 559 N.E.2d 899 (1 Dist. 1990).

Public Purpose

- In General

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Merely because the city might attempt to devote property acquired through condemnation proceedings to a private purpose does not destroy 65 ILCS 5/11-74.4-4, as it may, by appropriate proceedings, be compelled to observe its obligation to the public. People ex rel. Tuohy v. City of Chicago, 394 Ill. 477, 68 N.E.2d 761 (1946).

- Applicability

Cases presenting challenges to urban renewal programs are matters for the condemnation proceedings in the state courts if the taking is ostensibly for a public purpose, even though violations of federally guaranteed rights are claimed. Green St. Ass'n v. Daley, 373 F.2d 1 (7th Cir.), cert. denied, 387 U.S. 932, 87 S. Ct. 2054, 18 L. Ed. 2d 995 (1967).

- Elements

Whereas it seems unquestioned that cities have authority to condemn property adjacent to an existing street for the purpose of widening it so as to accommodate the parking of vehicles and to facilitate the flow of traffic, the acquisition of property for off-street parking would likewise also be a public purpose for eminent domain purposes. Poole v. City of Kankakee, 406 Ill. 521, 94 N.E.2d 416 (1950).

To constitute a public use, something more than a mere benefit to the public must flow from the contemplated improvement, the public must be to some extent entitled to use or enjoy the property, not as a mere favor or by permission of the owner, but by right. People ex rel. Tuohy v. City of Chicago, 394 Ill. 477, 68 N.E.2d 761 (1946).

When areas have been reclaimed and a redevelopment achieved, the public purpose has been fully accomplished, the fact that this section does not thereafter protect the continued use of the property acquired for public purposes, does not in any way affect the purposes of this section or render the taking of the property a taking for a use or purpose which is not public. Zurn v. City of Chicago, 389 Ill. 114, 59 N.E.2d 18 (1945).

- Preference to State Court

In nearly all cases, the question of whether land to be acquired will be devoted to a public purpose is more appropriate for the state court than federal court to make in the condemnation proceedings. Green St. Ass'n v. Daley, 373 F.2d 1 (7th Cir.), cert. denied, 387 U.S. 932, 87 S. Ct. 2054, 18 L. Ed. 2d 995 (1967).

- Shown

The acquiring of land for the purpose enumerated in former Ill. Rev. Stat., ch. 24, para. 11-24.4.2(b) is a public and not a private one, for which the granting of the power of eminent domain is amply justified. People ex rel. Tuohy v. City of Chicago, 394 Ill. 477, 68 N.E.2d 761 (1946).

Corporations existing for drainage purposes are public corporations, and where land is sought to be taken for the purpose of a ditch, it is for a public purpose, and compensation must be made before land of an individual can be taken for such public use. Juvinall v. Jamesburg Drainage Dist., 204 Ill. 106, 68 N.E. 440 (1903).

Public Use

- Applicability

The power given to a municipality by 65 ILCS 5/11-74.4-4(c) to sell, lease or exchange property for the purpose of the rehabilitation or development of a slum area is not unconstitutional even though the ultimate use of condemned property may be for private purposes. People ex rel. Tuohy v. City of Chicago, 394 Ill. 477, 68 N.E.2d 761 (1946).

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- Elements

The acquisition of vacant land areas which are unmarketable by a public agency, for subsequent sale to private interest for development for residential use, is acquisition for a public use or a public purpose; therefore, eminent domain may be employed and public funds may be expended. People ex rel. Gutknecht v. City of Chicago, 414 Ill. 600, 111 N.E.2d 626 (1953).

Any attempt to grant the right to take private property for private use is void. People ex rel. Tuohy v. City of Chicago, 394 Ill. 477, 68 N.E.2d 761 (1946).

The power of eminent domain can only be exercised when the property to be taken is to be devoted to public use, a public use means public usefulness, utility, advantage, or benefit. It is not essential that the entire community or people of the state, or any political subdivision thereof, should be benefited or share in the use or enjoyment thereof. The use may be local or limited, and it may be confined to a particular district and still be public. People ex rel. Tuohy v. City of Chicago, 394 Ill. 477, 68 N.E.2d 761 (1946).

The use may be confined to a particular district and still be public. People ex rel. Tuohy v. City of Chicago, 394 Ill. 477, 68 N.E.2d 761 (1946).

Changing the grade of a street in such a way as to obstruct ingress or egress to or from the private property of a citizen is damaging property for public use within the meaning of this section. People ex rel. John V. Farwell Co. v. Kelly, 361 Ill. 54, 196 N.E. 795 (1935).

- Found

The use of the power of eminent domain by a regional development authority to take real property and convey it to a corporation for the expansion of an automobile racetrack was for a public purpose where the authority found, inter alia, that a labor surplus area existed in the region and that the economic burdens resulting from involuntary unemployment fall in part upon the state and that a lack of decent housing contributes to urban blight, crime, anti-social behavior, disease, a higher need for public assistance, reduced tax revenues and the migration of workers and their families away from areas which fail to offer adequate, decent, affordable housing. Southwestern Ill. Dev. Auth. v. Nat'l City Envtl., Ill. 2d , Ill. Dec. , N.E.2d , 2001 Ill. LEXIS 478 (Apr. 19, 2001), cert. denied, 537 U.S. 880, 123 S. Ct. 88, 154 L. Ed. 2d 135 (2002).

- Legislative Declaration

Where the legislature determined that the prevalence of the conditions were conducive to ill-health, the transmission of disease, infant mortality, juvenile delinquency, crime and poverty; and that the elimination of the conditions was in the best interest of the health, morals, safety and general welfare of the citizens of the state, the court could not say that the finding of the legislature that the elimination and redevelopment of slum and blight areas is a public purpose is unwarranted, or that the use to be made of the property was not a public use and a public purpose. Zurn v. City of Chicago, 389 Ill. 114, 59 N.E.2d 18 (1945).

- Requirements

Before the right of eminent domain may be exercised, the law, beyond a doubt, requires that the use for which the land is taken shall be public as distinguished from a private use. People ex rel. Tuohy v. City of Chicago, 394 Ill. 477, 68 N.E.2d 761 (1946).

If local or limited, the public use must be directly beneficial to a considerable number of the inhabitants of a section of the state, and the property to be taken must be controlled by law, for the advantage of that particular portion of the community to be benefited. People ex rel. Tuohy v. City of Chicago, 394 Ill. 477, 68 N.E.2d 761 (1946).

Public use requires that all persons must have an equal right to the use and that it must be in common upon the same terms, however few the number who avail themselves of it; that it shall

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be open to all people to the extent that its capacity may admit of such use, and such use cannot be confined to privileged persons, and must be for all men or a class of men, and not for a special few. People ex rel. Tuohy v. City of Chicago, 394 Ill. 477, 68 N.E.2d 761 (1946).

The expression "public use" implies an interest or right of some kind in the public, and, as the public can have no existence separate and apart from the people of which it consists, it follows that this interest or right, whatever it is, belongs to and is vested in the people; this being so, it is the duty of the state to see that it is properly protected. Sholl v. German Coal Co., 118 Ill. 427, 10 N.E. 199 (1887).

If the use for which the property sought to be taken is a private one, there is no power or authority to take it. Sholl v. German Coal Co., 118 Ill. 427, 10 N.E. 199 (1887).

Purpose

The purpose of the just compensation provisions of the Federal and Illinois Constitutions is to place the condemnee in the same financial condition as if he retained ownership. Their purpose is not to improve the condemnee's status as would occur if the substitute-facilities measure were adopted and elements such as market value and depreciation were not primary points of inquiry. People ex rel. Dir. of Fin. v. YWCA, 74 Ill. 2d 561, 25 Ill. Dec. 649, 387 N.E.2d 305 (1979).

This section was intended to give redress in cases where prior to amendment, as at common law, a property owner could not recover if a statute authorized the improvement causing the damage; and in other cases where formerly no recovery could be had with or without a statute. Euwema Co. v. McKay Eng'g Co., 316 Ill. App. 650, 45 N.E.2d 555 (1 Dist. 1942).

The purpose of this section is not to place the owner in a better position than he was in before his land was taken, but to make him whole. Department of Pub. Works & Bldgs. v. Hubbard, 363 Ill. 99, 1 N.E.2d 383 (1936); DOT ex rel. People v. Central Stone Co., 200 Ill. App. 3d 841, 146 Ill. Dec. 779, 558 N.E.2d 742 (4 Dist. 1990).

Regulation of Occupation

In order for regulations to be lawfully imposed upon the constitutional rights of the individual to pursue his trade, profession or business, the Act passed under the guise of a measure to protect the public health, safety and welfare must have a definite relation to the ends sought to be attained. Klein v. Department of Registration & Educ., 412 Ill. 75, 105 N.E.2d 758 (1952).

Remedies

A writ of mandamus does not lie against respondents where there has not been a physical invasion and therefore "taking" of the property. Patzner v. Baise, 175 Ill. App. 3d 818, 125 Ill. Dec. 430, 530 N.E.2d 588 (2 Dist. 1988).

Requirements

- In General

Private property shall not be taken for public purposes except on payment of just compensation; in the interest of protecting both the property owner and the public, this principle requires that after the taking and improvement the property owner shall be neither worse off nor better off. Department of Pub. Works & Bldgs. ex rel. People v. Hufeld, 68 Ill. App. 2d 120, 215 N.E.2d 312 (3 Dist. 1966).

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Right to Compensation

- In General

A property owner who has suffered the loss of access to, but no physical invasion of, his property because of a public improvement may seek compensation from the state in the court of claims. Rothschild v. Baise, 157 Ill. App. 3d 481, 109 Ill. Dec. 550, 510 N.E.2d 418 (5 Dist. 1987).

Unless the owner whose land is wrongfully taken acquiesces in the trespass, taking and use of the property for a public highway for the statutory period of 15 years, such owner cannot be defeated of his right to compensation. People ex rel. Markgraff v. Rosenfield, 383 Ill. 468, 50 N.E.2d 479 (1943).

The constitutional requirement that private property shall not be taken for public use without just compensation is not satisfied when the judgment is entered, but only when the compensation is actually paid. People ex rel. Louise v. City of Chicago, 378 Ill. 453, 38 N.E.2d 743 (1941).

The constitutional guaranty of just compensation under former Ill. Const. (1870), Art. II, § 13 (see now this section) for damage to property rights when taken for public use was not satisfied by the judgment, but only by payment of it. Eldred Drainage & Levee Dist. v. Wilcoxson, 365 Ill. 249, 6 N.E.2d 149 (1936).

Ordinance regarding street cars constituted a contract, the obligation of which could not be impaired as the contract affected of real estate, which the appellant could not be deprived without due process of law, and which cannot be destroyed, abridged, or damaged for the public use without just compensation. Chicago City Ry. v. City of Chicago, 323 Ill. 246, 154 N.E. 112 (1926).

The right of the owner of property damaged by a public work to recover damages is recognized and may be asserted by the owner as a plaintiff in an action at law where none of his property is taken, or as a defendant to an eminent domain proceeding for the condemnation of property actually taken. Illinois Power & Light Corp. v. Peterson, 322 Ill. 342, 153 N.E. 577 (1926).

The legislature had no authority to confer power on the county board to authorize a telegraph company to take owner's land without compensation, and hence the county board was powerless to give such authority; owner purchased the land subject to all rights the company possessed in it, but by taking possession without making compensation to the owner of the fee, the company acquired no rights against such owner, and when appellee purchased the land he acquired all the rights on the land possessed by his grantor, and, if his grantor was entitled to bring ejectment, this right passed to appellee. Postal Telegraph-Cable Co. v. Eaton, 170 Ill. 513, 49 N.E. 365 (1897).

Where the city was empowered to purchase or lease from railroad company its plant, and improve the same in such manner as the demands of the public required, yet if, in making the improvement, a private land owner was damaged, the constitution gave him a remedy for the injury sustained. City of Centralia v. Wright, 156 Ill. 561, 41 N.E. 217 (1895).

- Absolute

This section makes absolute the right of a land owner to damages whenever his property is taken or damaged for public use; it makes no difference whether the damages are ascertained before or after the injury is inflicted. People ex rel. First Nat'l Bank v. Kingery, 369 Ill. 289, 16 N.E.2d 761 (1938); People ex rel. O'Meara v. Smith, 374 Ill. 286, 29 N.E.2d 274 (1940); People ex rel. Markgraff v. Rosenfield, 383 Ill. 468, 50 N.E.2d 479 (1943).

- Amount

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Property owner's right to compensation for damages sustained to the property is the same as an owner's right to compensation for the actual taking of his property. Boal v. City of Chicago, 301 Ill. App. 536, 23 N.E.2d 237 (1 Dist. 1939).

- Burden of Proof

In case in which plaintiff alleged causes of action in ejectment and trespass, and sought injunction and a writ of mandamus to compel city to institute eminent domain proceedings based on the construction on his property in construction of a storm sewer system, city bore the burden of proving that the original owner consented or was compensated and where city offered no competent evidence of consent or compensation, writ of mandamus compelling defendant to institute eminent domain proceedings was correctly issued. Rosenthal v. City of Crystal Lake, 171 Ill. App. 3d 428, 121 Ill. Dec. 869, 525 N.E.2d 1176 (2 Dist. 1988).

In every case where the owner of property is seeking to recover the just compensation guaranteed by this section for the lawful damaging of private property for public use, the burden is upon such owner to establish the existence and amount of the damage he claims and the measure of damages and the rules of evidence are the same in an action at law as in a condemnation proceeding. Kane v. City of Chicago, 392 Ill. 172, 64 N.E.2d 506 (1945).

- Burden Not Met

Where city failed to meet its burden of introducing competent evidence to prove the value of all of the property to be taken, the just compensation requirement of the constitution was not satisfied. City of Chicago v. George F. Harding Collection, 70 Ill. App. 2d 254, 217 N.E.2d 381 (1 Dist. 1965).

- Damage

While a city may lawfully grant to an elevated railroad company the right to construct its railroad in its streets, it is powerless to grant to such company the right to damage the property of the abutting owner; when the property of an abutting owner is damaged, his right to compensation is not confined to a recovery for the tortious acts of the railroad company, but he may recover for an injury to his property which is the result of an act which is perfectly legal. Aldis v. Union Elevated R.R., 203 Ill. 567, 68 N.E. 95 (1903).

The damage contemplated by former Ill. Const. (1870), Art. II, § 12 (see now this section) was an injury resulting to the owner from an actual appropriation of his private property, and that the taking of only a part of a lot or parcel of land entitled the owner to compensation in advance for the injury resulting thereby to the unappropriated part. Lorie v. North Chicago City Ry., 32 F. 270 (N.D. Ill. 1887).

- Date Due

When judgments were entered in former Ill. Const. (1870), Art. II, § 13 (see now this section) fixing the amount of compensation to be paid for property taken, owners of the property were entitled to have the compensation, so fixed, paid to them in money. Cohen v. City of Chicago, 377 Ill. 221, 36 N.E.2d 220 (1941).

- Defenses Available

Where a right to damages is guaranteed by this section, neither common law public official immunity nor the tort immunity statute can be a defense to an action against those responsible. Hoekstra v. County of Kankakee, 48 Ill. App. 3d 1059, 8 Ill. Dec. 315, 365 N.E.2d 553 (3 Dist. 1977).

- Deposits of Earth or Water

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Compensation is required when the construction or operation of public works results in the deposit of water or earth onto property, thereby destroying or impairing the property's usefulness. Pineschi v. Rock River Water Reclamation Dist., 346 Ill. App. 3d 719, 282 Ill. Dec. 224, 805 N.E.2d 1241, 2004 Ill. App. LEXIS 222 (2 Dist. 2004).

- Entitlement to Interest

The requirements of just compensation for takings under the United States and Illinois Constitution include interest for the delay in payment from the date of taking. DOT v. Rasmussen, 108 Ill. App. 3d 615, 64 Ill. Dec. 119, 439 N.E.2d 48 (2 Dist. 1982).

Defendant property owners are entitled to interest only on the difference between the deposit and the verdict as provided in part in the judgment order below; the remaining portion of the order providing for interest on the amount of the preliminary deposit which the defendants chose not to withdraw, was erroneous. Department of Pub. Works v. Porter, 123 Ill. App. 2d 415, 259 N.E.2d 74 (2 Dist. 1970).

- Exceptions

Where both former Ill. Const. (1870), Art. II, § 13 (see now this section) and a former provision (see now 735 ILCS 5/7-101) require just compensation for property taken by eminent domain, and the measure of compensation for land taken must be its fair cash market value for the highest and best use to which it is available, even if, at the time of filing a petition, it is not being put to such use, exceptions to this rule exist where the property is of such a nature and applied to such a special use that it cannot have a market value as, for example, a church, college, or club house. Forest Preserve Dist. v. Lehmann Estate, Inc., 388 Ill. 416, 58 N.E.2d 538 (1944).

- Extension of Highway

The extension of a public highway by the public authorities across the right of way of a railroad company deprives it, in part, of its property rights in respect to the portions of the right of way within the lines of such highway, so as to entitle the railroad company to just compensation. Illinois Cent. R.R. v. Commissioners of Hwys., 161 Ill. 247, 43 N.E. 1100 (1896).

- Not Shown

Destruction of the value of tax increment financing bonds was a consequence of a city's lawful action of condemning land in order to expand its airport; thus, the city did not have to pay just compensation to the bondholders under the Fifth Amendment and Ill. Const. art. I, § 15 for the bonds' loss in value. City of Chicago v. Prologis, 236 Ill. 2d 69, 337 Ill. Dec. 726, 923 N.E.2d 285, 2010 Ill. LEXIS 11 (2010).

Even though leasehold interests were protected against uncompensated taking, no compensation was due to a billboard lessee, because no actual deprivation had occurred, where the city abandoned its quick-take condemnation proceeding before it had taken the property and the billboard lessee in fact continued to rent the billboard out for advertising until the end of the lease term. City of Chicago v. Harris Trust & Sav. Bank, 346 Ill. App. 3d 609, 281 Ill. Dec. 759, 804 N.E.2d 724, 2004 Ill. App. LEXIS 110 (1 Dist. 2004), appeal denied, 211 Ill. 2d 572, Ill. Dec. , 823 N.E.2d 963 (2004).

Abutting property owner is not entitled to compensation for the diminished property value or loss of business caused by the diversion of traffic by one way traffic control device or the complete relocation of the highway. Department of Pub. Works & Bldgs. v. Mabee, 22 Ill. 2d 202, 174 N.E.2d 801 (1961).

When the state or one of its agencies inflicts damage in connection with a public improvement, the sovereign immunity from suit establish by former Ill. Const. (1870), Art. IV, § 26 (see now this

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section) precludes the action for damages that is available against other condemnors. People ex rel. Haynes v. Rosenstone, 16 Ill. 2d 513, 158 N.E.2d 577 (1959).

Where the appellants did not assert their claim to receive damages for land not taken until over a year after the petition for condemnation was filed and their appearance entered, and then only a day preceding the date set for trial, and where no reason was advanced for their lack of diligence, the trial court did not, abuse its discretion in denying leave to file a cross petition. Forest Preserve Dist. v. Krol, 12 Ill. 2d 139, 145 N.E.2d 599 (1957).

Where the declaration in action by property owner for damages and negligence in disposing of condemnation proceedings did not show a cause of action, where an additional count alleged the damaging of appellants' property for a public use and no acts in this count were stated from which it could be determined that the property was damaged a question was not presented as to whether, under the provision of this action requiring just compensation for property damaged for a public purpose, a defendant to a condemnation petition was to be afforded, a right of action to recover damages under former Ill. Const., Art. II, § 13 (1870) (see now this section). Lindstrom v. City of Chicago, 331 Ill. 144, 162 N.E. 128 (1928).

- Requirements

In order to recover damages in an eminent domain proceeding for property not taken, the land not taken and the condemned land must be contiguous or so inseparably connected in use that the taking of one will necessarily injure the other, although contiguity alone is not sufficient and another necessary element is unity of title. DOT ex rel. People v. Gass, 165 Ill. App. 3d 562, 116 Ill. Dec. 500, 519 N.E.2d 90 (5 Dist. 1988), overruled on other grounds, Illinois State Toll Hwy. Auth. v. American Nat'l Bank & Trust Co., 162 Ill. 2d 181, 205 Ill. Dec. 132, 642 N.E.2d 1249 (1994).

An abutting property owner is not entitled to have condemnation proceedings instituted to determine damages to his property occasioned by a public improvement where no part of his property is physically taken, and the authorized sovereign constructing such improvement is not required under this section or 735 ILCS 5/7-101 et seq. or any other law or statute to institute condemnation or other proceedings to ascertain such damages. Rothschild v. Baise, 157 Ill. App. 3d 481, 109 Ill. Dec. 550, 510 N.E.2d 418 (5 Dist. 1987).

To warrant recovery under former Ill. Const. (1870), Art. II, § 13 (see now this section), it must appear that there has been some direct disturbance of a right which the plaintiff enjoys in connection with his property and which gives to it an additional value, and that by reason of the disturbance of that right he has sustained special damage with reference to his property, in excess of that sustained by the public generally. Eckhoff v. Forest Preserve Dist., 377 Ill. 208, 36 N.E.2d 245 (1941).

The right of a plaintiff to maintain an action for any damage to its property by a public improvement rests upon the provisions of this section, which provides that private property shall not be damaged for public use without just compensation. Calumet Savings & Loan v. City, 306 Ill. App. 524, 29 N.E.2d 292 (1940).

- Shown

Where the trial court's sole reason for denying a cross-petition was its belief that all three unities of use, contiguity and title must have existed between the condemned property and the remainder at the time of the initial filing of the petition to condemn, the trial court's denial of the cross-petition for severance damages to its remainder property was error and infringed on its right to just compensation guaranteed by U.S. Const., Amend. V and U.S. Const., Amend. XIV. Illinois Medical Ctr. Comm'n v. United Church of the Medical Ctr., 142 Ill. App. 3d 498, 96 Ill. Dec. 867, 491 N.E.2d 1327 (1 Dist. 1986), cert. denied, 480 U.S. 922, 107 S. Ct. 1385, 94 L. Ed. 2d 698 (1987).

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Condemnees were entitled to be reimbursed for the full amount of money which had been earned on the sum deposited with the county treasurer pursuant to a former similar provision (see now 735 ILCS 5/7-126) while they appealed the amount of the condemnation award. Morton Grove Park Dist. v. American Nat'l Bank & Trust Co., 78 Ill. 2d 353, 35 Ill. Dec. 767, 399 N.E.2d 1295 (1980).

Where abutting property owners have previously conveyed property to this state for road purposes reserving the right of access to a public highway via a frontage road by voluntary conveyance for a consideration, they have compensable value recoverable in a condemnation proceeding which changes that point of access to a different place reached by a more circuitous route. People ex rel. Dep't of Pub. Works & Bldgs. v. Mokres, 28 Ill. App. 3d 422, 328 N.E.2d 357 (4 Dist. 1974).

Appellant's predecessor had constructive notice from the record of the deed to plaintiffs, who were husband and wife, that the latter was the owner of a one half interest in the land taken, as joint tenant with her husband; although possession of the land was taken under the erroneous assumption that the plat of dedication executed by the husband conveyed the entire fee to the land, such assumption could not justify taking possession of the tract, and insofar as the wife was concerned, appellant was a trespasser upon her rights and such possession by appellant's predecessor in no way affected her right to compensation and to have such compensation determined by condemnation under the Eminent Domain Act of this state. People ex rel. Markgraff v. Rosenfield, 383 Ill. 468, 50 N.E.2d 479 (1943).

Where compensation fixed by a verdict, while less than the value estimated by witnesses for appellants, was higher than the amount suggested as proper by appellee's witnesses, and there was no error of law that might have misled the jury, nor anything in the record to suggest that the verdict was the result of passion or prejudice, the verdict under the former Eminent Domain Act (see now this section) was not contrary to the weight of the evidence. Forest Preserve Dist. v. Folta, 377 Ill. 158, 36 N.E.2d 264 (1941).

Plaintiff was entitled to damages where his property was damaged by the construction of a tunnel for a public use. Barnard v. City of Chicago, 270 Ill. 27, 110 N.E. 412 (1915).

In an eminent domain proceeding where appellee brought an action against the city to recover damages resulting from the construction of a sidewalk in front of her premises she was able to recover because the owner of a lot had the right to improve the same by erecting buildings thereon, and such buildings, when erected, were as much within the constitutional guaranty against damage for public purposes as the ground upon which they stand. Chapman v. City of Staunton, 246 Ill. 394, 92 N.E. 905 (1910).

If private property was damaged by grading of public street, property owner is entitled to just compensation for such damage. City of Bloomington v. Pollock, 141 Ill. 346, 31 N.E. 146 (1892).

Owner of land damaged by construction of railroad was entitled to just compensation since railroads, although constructed, owned and operated by private capital, talent and enterprise, are chartered for public use. Chicago & W. Ind. R.R. v. Ayres, 106 Ill. 511 (1883).

The owner of real estate condemned by city park commissioners was entitled to compensation within a reasonable time; nine years after condemnation was not a reasonable time. Beveridge v. West Chicago Park Comm'rs, 100 Ill. 75 (1881).

A railroad was entitled to compensation for a strip of its property condemned by another railroad. Lake Shore & Mich. S. Ry. v. Chicago & W. Ind. Ry., 100 Ill. 21 (1881).

- Vacated Streets

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Plaintiffs could not recover damages for the vacation of any of the streets or alleys in any part of their subdivision except as to the vacated alleys in the block in which their property was located. Hill v. Kimball, 269 Ill. 398, 110 N.E. 18 (1915).

Size of Jury

- Fewer Than Twelve

Former Ill. Const., Art. II, § 15 (see now this section) while requiring a jury trial to determine damages to land by public uses, does not specify the size of the jury, and thus, in a trial by a justice of the peace under the former Roads and Bridges Act (see now 605 ILCS 5/6-309), a jury of six was sufficient. McManus v. McDonough, 107 Ill. 95 (1883).

Taking

- Applicability to Police Power

The constitutional declaration that private property shall not be taken for public use without just compensation or without due process of law is subordinated always to the interests of the public welfare as expressed through the exercise of the police power of the State. Trust Co. v. City of Chicago, 408 Ill. 91, 96 N.E.2d 499 (1951).

The police power of a state, comprehensive as it is, has its limitations; it cannot be held to sanction the taking of private property for public use without just compensation, however essential such taking may be for the promotion of the public health or safety or the general welfare. Sanitary Dist. v. Commonwealth Edison Co., 357 Ill. 255, 192 N.E. 248 (1934).

Order by the Commerce Commission for relocation of highway did not infringe the constitutional rights of appellant, in that it assumes to shift to appellant part of the burden of a public improvement, and so is not within the scope of the police powers of the state. Chicago & N.W. Ry. v. Illinois Commerce Comm'n, 326 Ill. 625, 158 N.E. 376 (1927).

Where a city required a railroad to raise its tracks, thus cutting off a switch track which went onto the plaintiff's property, requiring elevation of the tracks was an exercise of the police power, not equitable estoppel, and though the plaintiff constructed improvements upon its own ground for use in connection with the switch, that gave no right against the city to have the railroad maintained at the existing grade, and there was no taking of the plaintiff's property. Otis Elevator Co. v. City of Chicago, 263 Ill. 419, 105 N.E. 338 (1914).

- Compensation

The Illinois Constitution prohibits a taking of property for public use without just compensation. Forest Preserve Dist. v. West Sub. Bank, 249 Ill. App. 3d 900, 190 Ill. Dec. 346, 621 N.E.2d 215 (2 Dist. 1993), rev'd on other grounds, 161 Ill. 2d 448, 204 Ill. Dec. 269, 641 N.E.2d 493 (1994).

Where 65 ILCS 5/11-42-11.1 adequately protects the property owner's due process rights, and where it clearly provides for just compensation and establishes a procedure whereby the property owner may prove his damages and receive more than the statutory amount of compensation, and where the section allows cable franchisee to proceed with cable installation during resolution of the compensation dispute, this presents no constitutional violation, as all that is required is that a reasonable, certain and adequate provision for obtaining compensation exist at the time of the taking. Times Mirror Cable Television v. First Nat'l Bank, 221 Ill. App. 3d 340, 164 Ill. Dec. 8, 582 N.E.2d 216 (4 Dist. 1991).

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Both this section and a former provision (see now 735 ILCS 5/7-101) prohibited the state from taking or causing damage to property without just compensation and it was the market value of the property concerned, adapted to its highest and best use, which had long been deemed the most serviceable measure of just compensation. DOT v. Schlechte, 94 Ill. App. 3d 187, 50 Ill. Dec. 6, 418 N.E.2d 1000 (5 Dist. 1981).

Where property is taken, the owner is entitled to the amount of money necessary to put him in as good financial condition as he was with the ownership of the property at the time the petition was filed. Forest Preserve Dist. v. Krol, 12 Ill. 2d 139, 145 N.E.2d 599 (1957).

Attempt of the city council to take property originally vacated pursuant to former a provision (see now 65 ILCS 5/11-91-1) for purpose of producing munitions during World War II from its lawful owner by passage of ordinance was a violation of this section, which prohibits the taking of private property for public use without just compensation. People ex rel. Alexander v. City of Mt. Vernon, 404 Ill. 58, 88 N.E.2d 45 (1949).

If property is actually "taken" for a public use, this section requires that it shall be paid for in money regardless of benefits or advantages accruing to other property of the same owner of which he is not actually taken by the public for its use, and this requires that the owner is to be compensated in money for his damages thereto only to the extent that the benefits or advantages accruing to the property from the improvement are exceeded by the damages occasioned thereby. Kane v. City of Chicago, 392 Ill. 172, 64 N.E.2d 506 (1945).

- Defined

A taking has been defined as an actual physical invasion of the property, or a radical curtailment of the use of an owner's property or ability to derive income from the property. Forest Preserve Dist. v. West Sub. Bank, 249 Ill. App. 3d 900, 190 Ill. Dec. 346, 621 N.E.2d 215 (2 Dist. 1993), rev'd on other grounds, 161 Ill. 2d 448, 204 Ill. Dec. 269, 641 N.E.2d 493 (1994).

In order to constitute a "taking" compensable through eminent domain proceedings, there must be a physical taking of the property. Rosenthal v. City of Crystal Lake, 171 Ill. App. 3d 428, 121 Ill. Dec. 869, 525 N.E.2d 1176 (2 Dist. 1988); Patzner v. Baise, 133 Ill. 2d 540, 142 Ill. Dec. 123, 552 N.E.2d 714 (1990).

Any actual physical injury to private property, by reason of the erection, construction or operation of a public improvement in or along a public street or highway, whereby its appropriate use or enjoyment was materially interrupted, or its value substantially impaired, was regarded as a taking of private property, within the meaning of similar prior provision in the 1850 Illinois Constitution. Rigney v. City of Chicago, 102 Ill. 64 (1882).

- Held Improper

Where elevated railroad company, in order to connect its tracks with the loop elevated railroad in process of construction in the city, cut away the northeast corner of the leaseholder's building and, in order to accomplish that end without resort to proceedings for condemnation, procured as assignment to itself of the leasehold estate from the owner, although the assignment was made with the consent of the appellant, it was not to be inferred that she thereby consented to the particular use proposed, since there were various other railroad purposes which might have been in contemplation, which would not have been inconsistent with any condition or covenant of the lease, therefore, as against the lessor, such an occupation of her property was wrongful from the beginning as without consent or proceedings to condemn, it had no right to take or injure. Bass v. Metropolitan W. Side El. R.R., 82 F. 857 (7th Cir. 1897).

- Held Proper

Illinois Urban Community Conservation Act, Ill, Rev. Stat., 1953, chap. 67 1/2, pars. 91.8-91.16, was not a taking of private property for a private use in violation of Ill. Const. of 1870, Art. II, § 13

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(now Ill. Const. (1970), Art. I, § 15), because the achievement of the redevelopment of slum and blight areas, as defined in the Act, constituted a public use and a public purpose, regardless of the use which may be made after the redevelopment has been achieved. People ex rel. Gutknecht v. Chicago, 3 Ill. 2d 539, 121 N.E.2d 791, 1954 Ill. LEXIS 441 (1954).

- Injunctive Relief

If a taking is by a city, any compensation to be awarded by the court must be determined by a jury, and further relief, such as injunctive relief, may be considered. National Blvd. Bank v. DOT, 78 Ill. App. 3d 168, 33 Ill. Dec. 758, 397 N.E.2d 91 (1 Dist. 1979).

- Judicial Question

The question of confiscation is judicial and Illinois' courts of equity under the constitution, had no less power than federal courts of equity in determining this question under former Ill. Rev. Stat., ch. 111 2/3, para. 72) (see now 220 ILCS 5/10-201). Peoples Gas Light & Coke Co. v. Slattery, 373 Ill. 31, 25 N.E.2d 482 (1939).

- Not Shown

Injunction which did not deprive defendants of all economically viable use of the property did not amount to a regulatory taking. Forest Preserve Dist. v. West Sub. Bank, 161 Ill. 2d 448, 204 Ill. Dec. 269, 641 N.E.2d 493 (1994).

The city's zoning ordinance occasioned upon the landowner only a mere diminution in value, rather than a denial of all economically viable use of the property, and did not constitute a taking within the provisions of this section. St. Lucas Ass'n v. City of Chicago, 212 Ill. App. 3d 817, 156 Ill. Dec. 885, 571 N.E.2d 865 (1 Dist. 1991).

Plaintiff's claims that his property has been damaged by the state's construction machinery being parked on his property and by other interferences with access to his property did not entitle him to eminent domain proceedings to compensate him and taking of the property was required. Patzner v. Baise, 133 Ill. 2d 540, 142 Ill. Dec. 123, 552 N.E.2d 714 (1990).

Any hardship to plaintiffs was occasioned not by anything having the full force and effect of law but by their own decision to postpone construction of their buildings lest they be forced to remove them if defendants were ultimately successful in challenging a county zoning ordinance and enjoining plaintiffs' construction; no legal action taken by defendants nor any remedy, provisional or permanent, obtained by them compelled plaintiffs, as a matter of law, to forego exercising their legal rights; therefore, there was no taking without just compensation by the defendant. Equity Assocs. v. Village of Northbrook, 171 Ill. App. 3d 115, 121 Ill. Dec. 71, 524 N.E.2d 1119 (1 Dist. 1988).

Where bank failed to establish any physical invasion of its property for which injunctive relief would be proper, revocation of a sewer permit entailed no appropriation of the bank's sewers or land, and no issue was raised by the bank concerning any consequential damage to its property; the bank was not entitled to injunctive relief for a "taking" of its property for public use. LaSalle Nat'l Bank & Trust Co. v. City of Chicago, 128 Ill. App. 3d 656, 83 Ill. Dec. 819, 470 N.E.2d 1239 (1 Dist. 1984).

Plaintiff's argument that it was entitled to recovery for the damage to the lateral support of the building, and for various improper uses of its property during the period of construction referred to temporary and consequential damages, not a taking, and were recoverable in an action at law. Granite City Moose Lodge v. Kramer, 96 Ill. 2d 265, 70 Ill. Dec. 505, 449 N.E.2d 852 (1983).

If over half of the total area sought by eminent domain were being taken without any showing of need, present or future, the amount of property sought by the petition would be grossly excessive

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and the entire petition invalid. People ex rel. Dir. of Fin. v. YWCA of Springfield, 86 Ill. 2d 219, 55 Ill. Dec. 950, 427 N.E.2d 70 (1981).

Applying the broad definition of "waters" under a former similar provision to a lake used by a steam electric generating plant and located on private property did not constitute the taking of personal property but rather only regulated its use; therefore, petitioner's property was not taken without due process of law or just compensation. Central Ill. Pub. Serv. Co. v. Pollution Control Bd., 36 Ill. App. 3d 397, 344 N.E.2d 229 (5 Dist. 1976).

Precondemnation activities of a College Board did not constitute a "taking" of hotel owner's property despite the fact that hotel owners argued that a decline in the residential character of the neighborhood resulted from the Board's acquisition and demolition of substantially all of the property in project area with the exception of their two hotels where there was neither a written contract to purchase the real estate and neither were there condemnation proceedings commenced. MacMor Mtg. Corp. v. Exchange Nat'l Bank, 30 Ill. App. 3d 734, 332 N.E.2d 740 (1 Dist. 1975).

Conduct of College Board in acquiring and demolishing the properties of other owners in the area, resulting in a decline in the value of appellants' property, was not sufficient to constitute a "taking" or damaging of the property in violation of the United States Constitution and this section. MacMor Mtg. Corp. v. Exchange Nat'l Bank, 30 Ill. App. 3d 734, 332 N.E.2d 740 (1 Dist. 1975).

Trial court erred in granting private utility company's motion for summary judgment in holding that with regard to the loss of a sewage treatment plant, it suffered compensable damages as it was clear from the record that no property belonging to owners of the plant was taken by the Sanitary District. Citizens Utils. Co. v. Metropolitan San. Dist., 25 Ill. App. 3d 252, 322 N.E.2d 857 (1 Dist. 1974).

City's action in refusing to approve the plaintiff's plat of resubdivision because he did not agree to dedicate land for new public roadways exceeded the bounds of permissible and reasonable regulation and would have constituted a taking of private property for public use without compensation; if the city considered that new streets were necessary at the locations sought to serve the community at large or an adjacent subdivision, the city could have sought to acquire the needed land by other means, such as by purchase or condemnation. People ex rel. Exchange Nat'l Bank v. City of Lake Forest, 40 Ill. 2d 281, 239 N.E.2d 819 (1968).

Municipal ordinance which prohibited the storage of combustibles near certain locations, but did not prohibit existing non-conforming use of property, did not amount to a constitutional violation of due process or equal protection of the law. Rasmussen v. Village of Bensenville, 56 Ill. App. 2d 119, 205 N.E.2d 631 (2 Dist. 1965).

In an eminent domain proceeding, in which an appellee attempted to condemn a parcel of real estate owned by the appellant, for use as public housing site, where the appellant alleged that the taking was unlawful for the reason that her land was to be utilized for the construction of a project devoted to race segregation, where there was a complete lack of proof of any formal action by appellee embracing the allegedly illegal purpose, where all that was shown was that to acquire federal funds appellee must have achieved equitable distribution of its housing between whites and nonwhites, that appellee was aware of its duty to achieve racial equity and not to discriminate, and that there had been no decision to enforce racial segregation, and where appellant proved at most that appellee might in the future, perform some illegal act, the evidence was not sufficiently definite and certain to establish that the taking of appellant's land was for an illegal or unconstitutional purpose. Kankakee County Hous. Auth. v. Spurlock, 3 Ill. 2d 277, 120 N.E.2d 561 (1954).

The payment of funds by a receiver to a national bank on its claim, predicated upon an agreement concerning a liquidated state bank did not constitute a misappropriation and diversion of the funds, or have the effect of compelling the stockholders to pay a claim for which they were not liable under former Ill. Const. (1870), Art. XI, § 6 (see now this section) and the payment did

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not constitute the taking and the appropriation of their money in violation of this constitutional provision, without due process of law, in contravention of the guarantees of both the state and federal Constitutions. Groves v. Farmers State Bank, 368 Ill. 35, 12 N.E.2d 618 (1937).

Chicago, Ill. Ordinance § 15 (February 11, 1907), which gave the city the exclusive authority to grant permission for the construction, maintenance and operation of street railways in the streets of the city and in doing so could impose such terms as it saw fit, was accepted by the railroad company as part of a contract and the railroad company became bound by its terms; therefore the requirement that the railway company be responsible for the maintenance of street pavements at the intersections of tracks and road beds regardless of the cause of damage was not a violation of due process under Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) or Ill. Const. of 1870, Art. II, §§ 13 and 14. Chicago C. R. Co. v. Chicago, 323 Ill. 246, 154 N.E. 112, 1926 Ill. LEXIS 991 (1926).

City ordinance that required a dry-cleaning building to be 50 feet from another building, or a lot line beyond which another building could be built was not a taking but was an unreasonable restriction and was unconstitutional. Klever Shampay Karpet Kleaners, Inc. v. Chicago, 238 Ill. App. 291, 1925 Ill. App. LEXIS 262 (1925).

A contractor was not deprived of his property without due process of law because the former Local Improvement Act did not require any person to enter into a contract except at his own free will, and the plaintiff, exercising his right to enter into contracts as he saw fit, agreed to exchange his material and labor for a certain sum of money to be paid in a certain way. Price v. City of Elgin, 257 Ill. 63, 100 N.E. 133 (1912).

Where in a construction of a road, there had been no direct physical disturbance of any right, public or private, which the plaintiff enjoyed in connection with her property, and which gave to it an additional value, whereby she sustained a special damage in excess of that sustained by the public generally, where the damages sued for were of the same kind and character as those sustained by the public generally in the ownership of property, which property may have lessened in value by the construction and operation of the road and where noise, the obstruction of light and of view, were necessary incidents of the construction and operation of such roads there was no taking under former Ill. Const. (1870), Art. II, § 13 (see now this section). Aldrich v. Metropolitan W. Side Elevated R.R., 195 Ill. 456, 63 N.E. 155 (1902).

- Rendering Property Uninhabitable

If government makes a house uninhabitable, that is a taking of property even if an individual retains a clear title. Pineschi v. Rock River Water Reclamation Dist., 346 Ill. App. 3d 719, 282 Ill. Dec. 224, 805 N.E.2d 1241, 2004 Ill. App. LEXIS 222 (2 Dist. 2004).

- Requirements

A "taking" requires an actual physical invasion of property. DOT v. Rasmussen, 108 Ill. App. 3d 615, 64 Ill. Dec. 119, 439 N.E.2d 48 (2 Dist. 1982).

Mere planning by a governmental body in anticipation of the taking of land for public use and preliminary steps taken to accomplish this, without the filing of proceedings and without physical taking or actual invasion of the real estate, is not actionable by the owner of the land as being in contravention of this section. City of Chicago v. Loitz, 11 Ill. App. 3d 42, 295 N.E.2d 478 (1 Dist. 1973), aff'd, 61 Ill. 2d 92, 329 N.E.2d 208 (1975).

Taking or damaging of land by eminent domain under former Ill. Const. (1870), Art. II, § 13 (see now this section) is not accomplished by passing resolutions or ordinances, nor by negotiating with the owner for the purchase of it, or serving notices upon him that the land may be required for public purpose; it occurs at the filing of a condemnation petition. Eckhoff v. Forest Preserve Dist., 377 Ill. 208, 36 N.E.2d 245 (1941).

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- Service and Negotiation

The service of notices or the initiation of negotiations between a governmental agency and a landowner do not in themselves constitute a physical taking or the infliction of damage upon the property; these preliminary matters do not in any physical sense invade the property or infringe upon the possessory rights of the owner. City of Chicago v. Loitz, 11 Ill. App. 3d 42, 295 N.E.2d 478 (1 Dist. 1973), aff'd, 61 Ill. 2d 92, 329 N.E.2d 208 (1975).

- Shown

A village's attempted exaction of 28 feet of right of way along another road, as well as a 40 foot triangular section of right of way adjacent to an intersection, constituted a taking under both the U.S. Const., Amend. 5 and this section of the Illinois Constitution. Amoco Oil Co. v. Village of Schaumburg, 277 Ill. App. 3d 926, 214 Ill. Dec. 526, 661 N.E.2d 380 (1 Dist. 1995), appeal denied, 167 Ill. 2d 549, 217 Ill. Dec. 662, 667 N.E.2d 1055 (1996), cert. denied, 519 U.S. 976, 117 S. Ct. 413, 136 L. Ed. 2d 325 (1996).

Sewer system constructed on plaintiff's property definitely invaded tangible property owned by plaintiff; thus, it involved a taking. Rosenthal v. City of Crystal Lake, 171 Ill. App. 3d 428, 121 Ill. Dec. 869, 525 N.E.2d 1176 (2 Dist. 1988).

Where the severe effects of construction in limiting ingress and egress to the plaintiff's property were quite different from relatively technical or formal disturbances and did not merely cause circuity of travel or changes in public use of the highway adjoining plaintiff's land but blocked all access along one property line, the decrease in the value of plaintiff's land was a "taking" and was compensable. DOT v. Rasmussen, 108 Ill. App. 3d 615, 64 Ill. Dec. 119, 439 N.E.2d 48 (2 Dist. 1982).

The Illinois Commerce Commission's order that a grade crossing be constructed over railroad's property was a proper exercise of the police power for the public welfare and even though the railroad was not deprived of the use of its right-of-way, a burden on the property which was in the nature of an easement was imposed, and thus a taking of property which would require eminent domain proceedings to be held or compensation to be paid. Village of Arlington Heights v. Illinois Commerce Comm'n, 64 Ill. App. 3d 364, 20 Ill. Dec. 603, 380 N.E.2d 812 (1 Dist. 1978).

Particular zoning ordinances of the city of Chicago were unreasonable, arbitrary and void, and resulted in the taking and the damaging of plaintiff's property for public use without compensation, deprived her of her liberty and property without due process of law, and denied plaintiff the equal protection of the law. Petropoulos v. City of Chicago, 5 Ill. 2d 270, 125 N.E.2d 522 (1955).

Damaging private property for public use by a public utility company after the ascertainment and payment of just compensation is not an unlawful invasion of the legal rights of the individual, but is a right recognized by former Ill. Const. Art. 2, § 13 (1870) (see now this section). Central Ill. Pub. Serv. Co. v. Vollentine, 319 Ill. 66, 149 N.E. 580 (1925).

City's prohibition against a turnpike company, chartered by the State, from building toll booths or collecting tolls within the city was a taking, and was a violation of the company's rights under Ill. Const. (1970), Art. I, § 15 (formerly Ill. Const. of 1870, Art. II, § 13). Belleville v. St. Clair County Turnpike Co., 234 Ill. 428, 84 N.E. 1049, 1908 Ill. LEXIS 2963 (1908).

The entry upon land and the construction of a ditch for drainage purposes constitute, in law, a taking and appropriation of a perpetual easement and interest in the land, which is protected from invasion even as against the owner of the land; the same rules for ascertaining the damages which prevail in proceedings for the condemnation of private property for public use also apply to drainage cases. Juvinall v. Jamesburg Drainage Dist., 204 Ill. 106, 68 N.E. 440 (1903).

Act of June 14, 1883, as amended June 29, 1885, which requires mine owner to furnish a scale and to weigh coal taken from the mine and to pay miners based on the weight of the coal violates

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Ill. Const. of 1870, Art. II, § 13 (now Ill. Const. (1970), Art. I, § 15) because it appropriates private property to public use without just compensation; the taking occurs because the statute compels the mine owner to purchase scales and to employ persons to use them, for the benefit of the public. Millett v. People, 117 Ill. 294, 7 N.E. 631, 1886 Ill. LEXIS 973 (1886).

- Special Assessment

Where landowners seeking recovery of special assessments paid alleged they had not received just compensation for their property because the special assessment deducted from the awards had not been used for the purpose for which the assessment was levied, allegation did not present a constitutional question, but a question of fact as to the use of the money and trial court erred in entering the summary judgment. Goodman v. City of Chicago, 336 Ill. App. 126, 83 N.E.2d 23 (1 Dist. 1948).

- Strict Construction

The power to take the property of an individual without his consent is against common right, and all acts authorizing such a taking are to be strictly construed. Illinois State Trust Co. v. St. Louis, Iron Mt. & S. Ry., 208 Ill. 419, 70 N.E. 357 (1904).

- Subordination to Police Power

The constitutional declaration that private property shall not be taken for public use without just compensation or without due process of law is subordinated always to the interests of the public welfare as expressed through the exercise of the police power of the state. Trust Co. v. City of Chicago, 408 Ill. 91, 96 N.E.2d 499 (1951).

If government makes a house uninhabitable, that is a taking of property even if an individual retains a clear title. Pineschi v. Rock River Water Reclamation Dist., 346 Ill. App. 3d 719, 282 Ill. Dec. 224, 805 N.E.2d 1241, 2004 Ill. App. LEXIS 222 (2 Dist. 2004).

- Temporary Taking

Temporary taking is as subject to just compensation as is a permanent one. Pineschi v. Rock River Water Reclamation Dist., 346 Ill. App. 3d 719, 282 Ill. Dec. 224, 805 N.E.2d 1241, 2004 Ill. App. LEXIS 222 (2 Dist. 2004).

Unity of Title

The unity of title in a remainder case should be determined by examining who the owner of the property was at the time the petition to condemn was filed, because the valuation of the property is determined as of the date the complaint for condemnation is filed. DOT v. Chicago Title & Trust Co., 303 Ill. App. 3d 484, 236 Ill. Dec. 510, 707 N.E.2d 637 (1 Dist. 1999), appeal denied, 184 Ill. 2d 555, 239 Ill. Dec. 607, 714 N.E.2d 526 (1999).

Value of Land

In determining the valuation methodology regarding just compensation under Ill. Const. Art. I, § 15 for a billboard belonging to an advertising corporation, the unit rule, which utilized the value of the parcel as a whole, applied based on the plain language of 735 ILCS 30/10-5-5 (former 735 ILCS 5/7-101) as the statute merely indicated that the owner of a billboard had a compensable interest and did not require a second taking for a billboard on condemned property. DOT v. E. Side Dev., L.L.C., 384 Ill. App. 3d 295, 322 Ill. Dec. 889, 892 N.E.2d 136, 2008 Ill. App. LEXIS 756 (1 Dist. 2008), appeal denied, 229 Ill. 2d 664, 900 N.E.2d 1117, 2008 Ill. LEXIS 1745 (2008).

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- In General

If property has a special value, from whatever cause, that special value belongs to the owner of the property, and he is entitled to be paid it by the party seeking condemnation; in determining the value of real property in such cases, to the owner, witnesses may give their opinions, and any special circumstances upon which those opinions are founded, for what they are worth. Johnson v. Freeport & Miss. R. Ry., 111 Ill. 413 (1884).

- Applicability of Rezoning

The reasonable probability of rezoning may be considered in assessing the fair market value of taken property. Department of Public Works & Bldgs. v. Association of Franciscan Fathers, 69 Ill. 2d 308, 13 Ill. Dec. 681, 371 N.E.2d 616 (1977).

- Burden of Proof

Requirement of "good faith" required the state transportation agency to take some responsibility for the quality of appraisals it secured by hiring an outside appraiser. Requiring property owners to bear the expense of uncovering defective appraisals was unacceptable since it would require them to accept an inadequate award or absorb the costs of litigation; accordingly, the property owners' were entitled to have dismissed the state transportation agency's eminent domain proceeding and recover the costs of litigation since the state transportation agency did not act in good faith when it relied on a completely defective appraisal in its condemnation action against the property owners. DOT ex rel. People v. 151 Interstate Rd. Corp., 333 Ill. App. 3d 821, 267 Ill. Dec. 566, 777 N.E.2d 369, 2002 Ill. App. LEXIS 1135 (2 Dist. 2002), aff'd in part and rev'd in part, cause remanded, Ill. 2d , 284 Ill. Dec. 348, 810 N.E.2d 1 (2004).

The condemnor's burden must be construed to require, as a minimum, that there be competent evidence of value as to all the property to be taken. City of Chicago v. George F. Harding Collection, 70 Ill. App. 2d 254, 217 N.E.2d 381 (1 Dist. 1965).

- Determination

The value of property taken in a condemnation proceeding is to be determined as of the date the petition for condemnation is filed. Trustees of Schs. v. First Nat'l Bank, 49 Ill. 2d 408, 274 N.E.2d 56 (1971).

When a parcel of land is taken by eminent domain, the price the owner paid for it is a fact which may be considered in determining its value, provided the sale was recent and was a voluntary transaction, with no change in conditions or marked fluctuation in values having occurred since the sale. Forest Preserve Dist. v. Krol, 12 Ill. 2d 139, 145 N.E.2d 599 (1957).

Where land has no market value, from the fact of its being used as a railroad right-of-way, in a condemnation proceeding, its value to its owner is its estimated value to another railway company for similar use, and such compensation for such value must be made by contemnor to owner. Johnson v. Freeport & Miss. R. Ry., 111 Ill. 413 (1884).

- Expert Not Required

A witness need not be an expert to testify to the value of real estate in eminent domain proceedings, as the market value of land is a question of fact like any other, and as it thus may be proved by any person who has knowledge of real estate values and is acquainted with the property in question. City of Chicago v. George F. Harding Collection, 70 Ill. App. 2d 254, 217 N.E.2d 381 (1 Dist. 1965).

- Fair Market Value

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The fair market value of the property is the measure for determining just compensation. DOT ex rel. People v. Central Stone Co., 200 Ill. App. 3d 841, 146 Ill. Dec. 779, 558 N.E.2d 742 (4 Dist. 1990).

The damage to property not taken is the difference in the fair market value of the property as a whole, before and after the improvement, benefits may always be set off against damages, no matter what may be the amount of those damages. Kane v. City of Chicago, 392 Ill. 172, 64 N.E.2d 506 (1945).

- Highest Use

The land taken is to be valued at its highest and best use as shown by the evidence, as rental value of property is clearly an important question to be considered in determining the fair cash market value of property. Department of Pub. Works & Bldgs. v. Kirkendall, 415 Ill. 214, 112 N.E.2d 611 (1953).

- Presence

The presence of minerals under the surface affects the valuation of condemned land. DOT ex rel. People v. Central Stone Co., 200 Ill. App. 3d 841, 146 Ill. Dec. 779, 558 N.E.2d 742 (4 Dist. 1990).

- Separate Values of Land and Buildings

It is improper for a court to allow the cross-examination of a witness on the separate values of land and buildings in a condemnation proceeding. DOT v. White, 264 Ill. App. 3d 145, 201 Ill. Dec. 772, 636 N.E.2d 1204 (5 Dist. 1994).

Zoning Ordinance

- Burden of Proof

Zoning ordinance was entitled to a presumption of validity and constitutionality; a party seeking to set aside the ordinance had the burden of establishing its unreasonableness and unconstitutionality (decision under prior law). Springfield v. Kable, 306 Ill. App. 616, 29 N.E.2d 675, 1940 Ill. App. LEXIS 906 (1 Dist. 1940).

- Held Proper

Where the record contained testimony of residents in the neighborhood to the effect that the operations of the appellant created obnoxious fumes and odors, and where appellant produced no evidence, other than that relating to the former uses of the property, to show the classification was arbitrary, the evidence reasonably supported a finding that there was a substantial relationship between the zoning ordinance proscribing such use and the public health, safety and welfare. Wechter v. Board of Appeals, 3 Ill. 2d 13, 119 N.E.2d 747 (1954).

LEGAL PERIODICALS

For note, "No Parking: The Public Use Doctrine in Eminent Domain: Southwestern Illinois Development Authority v. National City Environmental, L.L.C., 768 N.E.2d 1 (Ill. 2000)," see 28 S. Ill. U. L.J. 505 (2004).

For article, "Capital Asset Pricing Theory and the Risk of Government Regulation: Who Needs the Takings Clause Anyway?," see 1995 U. Ill. L. Rev. 945.

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For article, "Jury Trial in Illinois: Chancery, Multi-Remedy, and Special Remedy Civil Cases," see 22 Loy. U. Chi. L.J. 625 (1990-91).

For article, "Eminent Domain Revisited and Some Land Use Problems," see 34 De Paul L. Rev. 587 (1985).

For article, "Conservation Rights in Illinois - Meshing Illinois Property Law With Federal Tax Deduction Requirements," see 71 Ill. B.J. 430 (1983).

For article, "Public Recreational Rights in Illinois Rivers and Streams," see 29 De Paul L. Rev. 353 (1980).

For case note, "Compensability of the Elimination of Direct Access," see 1977 U. Ill. L.F. 463.

For student note and comment, "Is the Illinois Equity in Eminent Domain Act Truly Equitable?", see, See 81 Chi.-Kent L. Rev. 995 (2008).

RESEARCH REFERENCES

Eminent domain is the measure and elements of lessee's compensation for condemnor's taking or damaging of leasehold. 17 ALR4th 337.

Possibility of overcoming specific obstacles to contemplated use of property is an element in determining existence of necessary public use. 22 ALR4th 840.

Public taking of sports or entertainment franchise or organization qualifies as a taking for public purpose. 30 ALR4th 1226.

Abutting owner's right to damages for limitation of access caused by traffic regulations. 15 ALR5th 821.

Practice Guides and Treatises.

Residential Real Estate § 23.2 The Power, Its Source, and Its Limitations (IICLE).

Eminent Domain Practice (Illinois) § 4.3 Source of Quick-Take Powers (IICLE).

Eminent Domain Practice (Illinois) § 1.2 The Power, Its Source, and Its Limitations (IICLE).

Eminent Domain Practice (Illinois) § 1.37 Relocation (IICLE).

Commercial Real Estate § 12.4 Constitution (IICLE).

Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 32.2 What Law Controls (IICLE).

Section 16. Ex Post Facto Laws and Impairing Contracts.

No ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities, shall be passed.

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(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Com Law § 1:7.

See Illinois Jur, Crim L § 1:15, § 1:17.

CASE NOTES

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- Right to Maintain Poles
Utility Company
Validity

Constitutionality

Armed habitual criminal statute does not constitute an ex post facto law because it does not punish a defendant for the prior offense he committed before the statute's effective date but, rather, properly punishes him for the new and separate crime he committed by possessing a firearm while having already been convicted of prior enumerated felonies. People v. Ross, 407 Ill. App. 3d 931, 349 Ill. Dec. 762, 947 N.E.2d 776, 2011 Ill. App. LEXIS 195 (1 Dist. 2011).

In General

It is well settled that the ex post facto clause does not limit the legislature's control of remedies or modes or procedure, so long as they do not affect matters of substance. People v. Felella, 131 Ill. 2d 525, 137 Ill. Dec. 547, 546 N.E.2d 492 (1989).

Under Ill. Const. (1970), Art. I, § 16, no ex post facto law, or law impairing the obligation of contracts, or making any irrevocable grant of special privileges or immunities, shall be passed. Skidmore v. Illinois State Toll Highway Authority, 47 Ill. App. 3d 954, 6 Ill. Dec. 99, 362 N.E.2d 734, 1977 Ill. App. LEXIS 2519 (1 Dist. 1977).

The right to contract is a property right, but like all other rights, its exercise is subject to the police power, and may be limited and restricted for the preservation of the public health, morals, safety, or welfare or to prevent a well-known evil and wrong. People v. Hartford Life Ins. Co., 252 Ill. 398, 96 N.E. 1049 (1911).

To subject one to punishment for a failure which was the direct consequence of a wrongful act done long prior to the passage of a statute would make the statute obnoxious to this section. Brown v. People, 218 Ill. 361, 75 N.E. 984 (1905).

Additional Benefits

Repeal of bylaws of fraternal benefits society which added benefits in addition to those stated in certificate of membership violated no vested right and did not violate constitutional protections of due process and prohibition on impairment of contract. Jenkins v. Talbot, 338 Ill. 441, 170 N.E. 735 (1930).

Administrative Rules

The prohibition against ex post facto laws does not apply to the enactment of administrative rules. Ashley v. Snyder, 316 Ill. App. 3d 1252, 250 Ill. Dec. 900, 739 N.E.2d 897, 2000 Ill. App. LEXIS 835 (4 Dist. 2000).

Alimony Obligations

Petitioner had no vested right to modification of his alimony obligations, rather, he had a mere expectation that he could seek such relief under the preexisting divorce laws, thus petitioner's claim that precursor to 750 ILCS 5/801(c) retroactively deprived him of a vested right was

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unfounded and the section was constitutional. In re Josic, 78 Ill. App. 3d 347, 33 Ill. Dec. 871, 397 N.E.2d 204 (1 Dist. 1979).

Appellate Jurisdiction

The Supreme Court would not assume jurisdiction on direct appeal merely to refer to earlier decisions regarding the constitutionality of a statute. Richter v. City of Mt. Carroll, 398 Ill. 473, 76 N.E.2d 452 (1947).

Application

Defendant in a case involving defendant's attempted first-degree murder of a peace officer could be convicted on a charge of armed habitual criminal in violation of 720 ILCS 5/24-1.7(a) since that conviction did not involve an Ill. Const. art. I, § 16 ex post facto violation. Defendant's possession of a firearm occurred after the effective date of the armed habitual criminal statute, and, thus, even if that statute's required two prior convictions occurred before the statute's effective date, defendant had fair warning at the time that the statute was enacted that defendant's prior convictions in combination with the new offense of being an armed habitual criminal would result in a conviction under the statute. People v. Tolentino, 409 Ill. App. 3d 598, 351 Ill. Dec. 72, 949 N.E.2d 1167, 2011 Ill. App. LEXIS 417 (1 Dist. 2011).

Prisoner was not entitled to the declaratory judgment or writ of mandamus the prisoner sought regarding challenges to the way in which parole hearings were conducted in a case where the prisoner was seeking parole from two convictions and sentences for two murders the prisoner had committed. The prisoner did not show that the changes in procedures increased the punishment imposed, and, thus, did not show that the laws changing parole procedures violated the ex post facto clause of the Illinois Constitution, Ill. Const. art. I, § 16. Hill v. Walker, 397 Ill. App. 3d 1090, 338 Ill. Dec. 348, 924 N.E.2d 554, 2010 Ill. App. LEXIS 147 (5 Dist. 2010).

Defendant's conviction on one count of armed habitual criminal in violation of 720 ILCS 5/24-17(a) did not run afoul of the ex post facto clause of the Illinois Constitution, Ill. Const. art. I, § 16, despite the fact that defendant had to have a total of at least two prior, enumerated convictions as part of the proof needed to convict defendant under that statute. Defendant, who had the requisite prior convictions, was not being punished for them, but, instead was being punished for the new and separate offense of armed habitual criminal. People v. Bailey, 396 Ill. App. 3d 459, 335 Ill. Dec. 741, 919 N.E.2d 460, 2009 Ill. App. LEXIS 1175 (1 Dist. 2009), appeal denied, 2010 Ill. LEXIS 576 (Ill. 2010).

The U.S. Supreme Court does not view punishment for ex post facto clause purposes to mean simply the period of incarceration prescribed by a judge for a person convicted of a crime, but construes punishment to mean the actual time that such a person spends in prison. Barger v. Peters, 163 Ill. 2d 357, 206 Ill. Dec. 170, 645 N.E.2d 175 (1994), cert. denied, 514 U.S. 1102, 115 S. Ct. 1838, 131 L. Ed. 2d 756 (1995).

The ex post facto clauses apply only to criminal legislation which operates retrospectively to the disadvantage of the party affected or which alters any substantial right of the accused to his detriment. Harris v. Irving, 90 Ill. App. 3d 56, 45 Ill. Dec. 394, 412 N.E.2d 976 (5 Dist. 1980); People v. DeWit, 123 Ill. App. 3d 723, 79 Ill. Dec. 188, 463 N.E.2d 742 (1 Dist. 1984); People v. Smith, 124 Ill. App. 3d 805, 80 Ill. Dec. 310, 465 N.E.2d 101 (1 Dist. 1984); People v. Caruso, 152 Ill. App. 3d 1074, 105 Ill. Dec. 821, 504 N.E.2d 1339 (2 Dist.), aff'd, 119 Ill. 2d 376, 116 Ill. Dec. 548, 519 N.E.2d 440 (1987), cert. denied, 488 U.S. 829, 109 S. Ct. 83, 102 L. Ed. 2d 59 (1988); People v. Farmer, 176 Ill. App. 3d 436, 126 Ill. Dec. 4, 531 N.E.2d 137 (5 Dist. 1988); People v. Felella, 131 Ill. 2d 525, 137 Ill. Dec. 547, 546 N.E.2d 492 (1989); Taylor v. Lane, 191 Ill. App. 3d 101, 138 Ill. Dec. 123, 546 N.E.2d 1178 (3 Dist. 1989).

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Constitutional prohibition against ex post facto laws applies only to criminal matters and did not apply to challenge of Motor Vehicle Law (625 ILCS 5/7-303). Jewell v. Carpentier, 22 Ill. 2d 445, 176 N.E.2d 767 (1961).

Arbitration Provisions

An insurance policy provision requiring arbitration, but allowing parties to reject awards in excess of a specified threshold, does not violate the freedom to contract as such provision, which is mandated by the statute, is rationally related to the goal of providing at least minimum insurance coverage to an insured who has been injured by an uninsured driver. Reed v. Farmers Ins. Group, 188 Ill. 2d 168, 242 Ill. Dec. 97, 720 N.E.2d 1052 (1999).

Assessment

A judgment in confirmation of an assessment under the Local Improvement Act (50 ILCS 605/1 et seq.) is not a contract, and consequently this section of the Illinois Constitution has not been violated. Hoehamer v. Village of Elmwood Park, 361 Ill. 422, 198 N.E. 345 (1935).

Bill of Rights for Victims and Witnesses

The Bill of Rights for Victims and Witnesses of Violent Crime Act (see now 725 ILCS 120/1 et seq.) merely affects a mode of procedure; it does not increase the punishment or change the ingredients of the offense or the ultimate facts necessary to establish guilt, and it leaves untouched the nature of the crime and the level of proof necessary for a conviction; consequently, it does not violate the ex post facto provisions of either the U.S. Const., Art. I, § 10 or this section. People v. Felella, 131 Ill. 2d 525, 137 Ill. Dec. 547, 546 N.E.2d 492 (1989).

Breath Tests

625 ILCS 5/11-501.2, which provides that refusal to submit to a breath test shall be admissible as evidence at trial, does not offend either the United States Constitution or this section. People v. Long, 124 Ill. App. 3d 1030, 80 Ill. Dec. 332, 465 N.E.2d 123 (3 Dist. 1984).

Business Risks

- Allocation

In nonregulated areas, there exists a widespread policy of permitting competent parties to contractually allocate business risks as they see fit. McClure Eng'g Assocs. v. Reuben H. Donnelley Corp., 95 Ill. 2d 68, 69 Ill. Dec. 183, 447 N.E.2d 400 (1983).

Child Abduction

Although the detention of the children occurred before the enactment of 720 ILCS 5/10-5, where the statute was alleged to be violated by the continued detention of the children after passage of the statute, neither the statute nor the indictments applied to events occurring before the enactment of the statute, and the law was not facially or as applied violative of the ex post facto provisions of U.S. Const., Art. I, § 9 or this section. People v. Caruso, 152 Ill. App. 3d 1074, 105 Ill. Dec. 821, 504 N.E.2d 1339 (2 Dist.), aff'd, 119 Ill. 2d 376, 116 Ill. Dec. 548, 519 N.E.2d 440 (1987), cert. denied, 488 U.S. 829, 109 S. Ct. 83, 102 L. Ed. 2d 59 (1988).

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Continued Maintenance

A law cannot be said to be ex post facto which provides for the continued maintenance of certain conditions which prior to the enactment of the statute were lawful. People v. Caruso, 152 Ill. App. 3d 1074, 105 Ill. Dec. 821, 504 N.E.2d 1339 (2 Dist.), aff'd, 119 Ill. 2d 376, 116 Ill. Dec. 548, 519 N.E.2d 440 (1987), cert. denied, 488 U.S. 829, 109 S. Ct. 83, 102 L. Ed. 2d 59 (1988).

Conviction Reversed

Where defendant was convicted for manufacture of phencyclidine (PCP), possession of PCP with intent to manufacture PCP, and possession of PCP, pursuant to 720 ILCS 570/206(e)(7)(b), which first included PCC as a schedule II controlled substance seven months after defendant's arrest, defendant's convictions would be reversed according to the prohibition against ex post facto application of laws in the U.S. Const., Art. I, Sec. 9, and U.S. Const., Art. I, Sec. 10, and this section. People v. Franklin, 159 Ill. App. 3d 923, 111 Ill. Dec. 681, 512 N.E.2d 1318 (1 Dist. 1987).

Defendant's Rights

Petitioner's argument that because the homicide offenses of conviction were committed prior to the rule of evidence under which a witness's statement was admitted, the prohibition on ex post facto laws precluded the admission of testimony, rested on a mistake; the statement was admitted under 725 ILCS 5/115-10.1, rather than 10.2. Williams v. Hinsley, F. Supp. 2d , 2005 U.S. Dist. LEXIS 31717 (N.D. Ill. Dec. 6, 2005).

Statutes imposing some collateral consequence upon a conviction may be applied retroactively if their purpose is not to punish the offender but to protect some other legitimate public interest. People v. Starnes, 273 Ill. App. 3d 911, 210 Ill. Dec. 417, 653 N.E.2d 4 (1 Dist. 1995), appeal denied, 163 Ill. 2d 581, 212 Ill. Dec. 434, 657 N.E.2d 635 (1995).

A defendant does not have an absolute right to be tried or sentenced under the law as it existed at the time of the offense; procedural changes, even those which work to the disadvantage of a defendant, may be applied retroactively if they do not create a new offense or increase punishment. People v. Starnes, 273 Ill. App. 3d 911, 210 Ill. Dec. 417, 653 N.E.2d 4 (1 Dist. 1995), appeal denied, 163 Ill. 2d 581, 212 Ill. Dec. 434, 657 N.E.2d 635 (1995).

Distribution of Marital Property

Precursor 750 ILCS 5/503(b), did not impair preexisting contractual relationships; it merely classified the aggregate property interests of the spouses for the purposes of equitably distributing the property. That which is classified as "marital property" is subject to distribution within those limitations set by laws governing transfers, assignments and conveyances of such property. Kujawinski v. Kujawinski, 71 Ill. 2d 563, 17 Ill. Dec. 801, 376 N.E.2d 1382 (1978).

Under 750 ILCS 5/503(b), "marital property" will be distributed so as to avoid the impairment of any contractual obligations owed to third parties who are not parties to the dissolution proceeding. Kujawinski v. Kujawinski, 71 Ill. 2d 563, 17 Ill. Dec. 801, 376 N.E.2d 1382 (1978).

Employer's Compensation Insurers

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Statutory immunity extended to employer's compensation insurers did not involve unreasonable classification as to due process, equal protection or denial of remedies. Towns v. Kessler, 10 Ill. App. 3d 356, 293 N.E.2d 761 (5 Dist. 1973).

Employment Contract

Noncompetition covenant in the attorneys' employment agreement conflicted with Rule 5.6, Rules of Professional Conduct because the rule could be applied retroactively and because application of the rule did not violate Ill. Const. Art. I, § 16, prohibiting laws impairing the obligations of contracts; however, summary judgment was not appropriate under 735 ILCS 5/2-1005 because although the court concluded that a law firm could bring a claim of tortious interference with contract against attorneys who left the firm and solicited clients, there were unresolved factual issues. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 230 Ill. Dec. 229, 693 N.E.2d 358, 1998 Ill. LEXIS 357 (1998).

The application of Rule 5.6 of the Rules of Professional Conduct, as a bar to the enforcement of a noncompetition provision in an employment agreement was not an unconstitutional impairment of the right to contract in violation of this section. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 230 Ill. Dec. 229, 693 N.E.2d 358 (1998).

Entrapment

The defendant was improperly convicted under an ex post facto law where the jury instruction on entrapment given at her trial accurately stated the law on entrapment as it read at the time of her trial, but misstated the law on entrapment as it read at the time the offense was committed. People v. Criss, 307 Ill. App. 3d 888, 241 Ill. Dec. 647, 719 N.E.2d 776 (1 Dist. 1999).

Equity Assurance Program

Ordinance creating equity assurance program which guaranteed payment of 80% of difference between appraised value and actual sale price was not void because it did not unconstitutionally allow the village to impair contracts entered into under its terms. Clayton v. Village of Oak Park, 117 Ill. App. 3d 560, 73 Ill. Dec. 112, 453 N.E.2d 937 (1 Dist. 1983).

Ex Post Facto Effect

Denial of pension rights was not an ex post facto law in violation of U.S. Const., Art. I, § 9, U.S. Const., Art. I, § 10, and this section, since the statute had been in existence nearly six years before plaintiff's employment commenced in 1961. Kerner v. State Employees' Retirement Sys., 53 Ill. App. 3d 747, 11 Ill. Dec. 510, 368 N.E.2d 1118 (4 Dist. 1977), aff'd, 72 Ill. 2d 507, 21 Ill. Dec. 879, 382 N.E.2d 243 (1978).

Ex Post Facto Violation

Trial court could not impose upon defendant, convicted on one count of predatory criminal sexual assault of a child, a sex offender investigation fund fine, as the statute for that fine, 730 ILCS 5/5-9-1.15, was not in effect at the time defendant committed the offense. The authority that dictated ex post facto laws were prohibited, Ill. Const. art. I, § 16, applied to fines and, thus, that fine could not be imposed against defendant under the circumstances. People v. Dalton, 406 Ill. App. 3d 158, 346 Ill. Dec. 870, 941 N.E.2d 428, 2010 Ill. App. LEXIS 1407 (2 Dist. 2010).

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Trial court erred in granting defendant's motion in limine with respect to blood alcohol content, in which defendant argued that a disinfectant pad might have affected the results, because an amended regulation was not an ex post facto law. People v. Morris, 394 Ill. App. 3d 678, 334 Ill. Dec. 404, 917 N.E.2d 1, 2009 Ill. App. LEXIS 907 (2 Dist. 2009).

With regard to a defendant's convictions for the offenses of habitual armed criminal and unlawful possession of a weapon by a felon, the armed habitual criminal statute was not violative of the constitutional prohibitions against ex post facto laws as the statute did not punish the defendant for the offenses he committed before the statute creating the offense was enacted in August 2005. Rather, the defendant was convicted for the separate offense of possessing a firearm after having been convicted of three of the statute's enumerated offenses, namely, he possessed the AR-15 firearm in April 2006 and he had fair warning that, in combination with his prior convictions, he was committing the offense of being an armed habitual criminal, thus, his prior convictions were only an element of the offense and he was not punished for acts that occurred prior to the statute's effective date but for the new act of possessing a firearm. People v. Leonard, 391 Ill. App. 3d 926, 331 Ill. Dec. 582, 911 N.E.2d 403, 2009 Ill. App. LEXIS 520 (3 Dist. 2009), appeal denied, 233 Ill. 2d 582, 335 Ill. Dec. 641, 919 N.E.2d 360, 2009 Ill. LEXIS 1678 (2009).

Application of 720 ILCS 5/16-16 and 720 ILCS 5/16.1 did not violate the prohibition against ex post facto laws because defendant was arrested nearly three years after the possession of stolen firearm statutes were enacted and thus, they were not applied retroactively. People v. Jenkins, 383 Ill. App. 3d 978, 322 Ill. Dec. 521, 891 N.E.2d 536, 2008 Ill. App. LEXIS 650 (1 Dist. 2008), appeal denied, 229 Ill. 2d 681, 326 Ill. Dec. 875, 900 N.E.2d 1122, 2008 LEXIS 1579 (2008).

Repeated use of the word "fee" in 730 ILCS 5/5-9-1(c-5) and 730 ILCS 5/5-9-1(c-7), dictating the payment of fees to the Illinois Trauma Center Fund and the Illinois Spinal Cord Injury Paralysis Cure Research Trust Fund, respectively, indicates an intent on the part of the legislature that these assessments be treated as a fee and not a fine; as the fees were compensatory in nature, they were not subject to ex post facto violations. People v. Bishop, 354 Ill. App. 3d 549, 290 Ill. Dec. 365, 821 N.E.2d 677, 2004 Ill. App. LEXIS 1485 (1 Dist. 2004).

Assessment of fees to the Illinois Trauma Center Fund and the Illinois Spinal Cord Injury Paralysis Cure Research Trust Fund under 730 ILCS 5/5-9-1(c-5) and 730 ILCS 5/5-9-1(c-7) was not an ex post facto violation as the fees were compensatory in nature, not punitive. People v. Bishop, 354 Ill. App. 3d 549, 290 Ill. Dec. 365, 821 N.E.2d 677, 2004 Ill. App. LEXIS 1485 (1 Dist. 2004).

Public Act 88-311 curtailed the opportunity for an earlier release as permitted under 730 ILCS 5/3-6-3 in its form as existed between September 10, 1990, and August 11, 1993, and so makes more burdensome the punishment associated with the crimes of inmates who were eligible as of September 10, 1990, to enhance their good-conduct credit by a factor of 1.25 under the former section but who were, as of August 11, 1993, deprived of that opportunity by Public Act 88-311; therefore Public Act 88-311 violated the ex post facto prohibitions of the Federal and Illinois Constitutions. Barger v. Peters, 163 Ill. 2d 357, 206 Ill. Dec. 170, 645 N.E.2d 175 (1994), cert. denied, 514 U.S. 1102, 115 S. Ct. 1838, 131 L. Ed. 2d 756 (1995).

Exculpatory Clauses Valid

An exculpatory clause, specifically or generally providing that the lessor shall not be liable for damages or injuries to the lessee or his property from all or certain causes, is not against public policy but is valid and enforceable. Jackson v. First Nat'l Bank, 415 Ill. 453, 114 N.E.2d 721 (1953).

Former Family Court Act

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Fact that § 15 of the Family Court Act, which made the mental illness of parents a legal ground for the adoption of their children, gave retroactive effect to the adjudication of the mental illness of the parent and her commitment to a mental institution for a period of more than three years prior to the filing of the petition did not make the statute invalid as an ex post facto law. People ex rel. Nabstedt v. Barger, 3 Ill. 2d 511, 121 N.E.2d 781, 1954 Ill. LEXIS 437 (1954).

Greater Punishment

On remand, a trial court did not err when, pursuant to 725 ILCS 5/111-3(c-5) of the Code of Criminal Procedure of 1963, it instructed and submitted to the jury an additional verdict form concerning behavior indicative of wanton cruelty after his conviction for murder under 720 ILCS 5/9-1(a)(1). The procedural change required by the statute did not violate the ex post facto provisions of the United States Constitution or Ill. Const., Art. I, § 16 because it was the mode of procedure that changed in the new statute, not the range of conduct for murder. People v. Crutchfield, 353 Ill. App. 3d 1014, 289 Ill. Dec. 731, 820 N.E.2d 507, 2004 Ill. App. LEXIS 1290 (5 Dist. 2004), cert. denied, 2007 U.S. LEXIS 2260 (U.S. 2007).

Amended versions of 725 ILCS 5/111-3 of the Code of Criminal Procedure of 1963 and 730 ILCS 5/5-8-2(a) of the Unified Code of Corrections, regarding imposing extended sentences in certain circumstances, merely affect a mode of procedure and clearly do not alter legal rules to make convictions easier, nor do they increase the punishment for a previously committed offense or make any changes to the elements of the offense of murder, and the only change made is that the finder of fact must determine the existence of the relevant aggravating factors beyond a reasonable doubt, thereby increasing the burden required of the State; the amendments do not violate the ex post facto provisions of U.S. Const., Art. I, § 10 or Ill. Const. Art. I, § 16. People v. Forcum, 344 Ill. App. 3d 427, 279 Ill. Dec. 431, 800 N.E.2d 499, 2003 Ill. App. LEXIS 1352 (5 Dist. 2003), appeal denied, 207 Ill. 2d 615, 283 Ill. Dec. 137, 807 N.E.2d 978 (2004), cert. denied, 541 U.S. 1078, 124 S. Ct. 2425, 158 L. Ed. 2d 992 (2004).

In a murder case, it was not error for the trial court to use a special interrogatory to ask the jury to find beyond a reasonable doubt whether defendant exhibited especially brutal or heinous behavior, which would qualify him for an extended sentence, under 730 ILCS 5/5-5-3.2(b)(2), and that procedure did not violate the ex post facto prohibitions in U.S. Const. Art. I, § 10 or Ill. Const. Art. I, § 16 because it did not change the elements of the offense, as it only applied to a sentencing factor. People v. Forcum, 344 Ill. App. 3d 427, 279 Ill. Dec. 431, 800 N.E.2d 499, 2003 Ill. App. LEXIS 1352 (5 Dist. 2003), appeal denied, 207 Ill. 2d 615, 283 Ill. Dec. 137, 807 N.E.2d 978 (2004), cert. denied, 541 U.S. 1078, 124 S. Ct. 2425, 158 L. Ed. 2d 992 (2004).

The pivotal question under ex post facto is whether a new statute imposes a greater punishment than that prescribed when the criminal act was committed. Harris v. Irving, 90 Ill. App. 3d 56, 45 Ill. Dec. 394, 412 N.E.2d 976 (5 Dist. 1980); People v. Farmer, 176 Ill. App. 3d 436, 126 Ill. Dec. 4, 531 N.E.2d 137 (5 Dist. 1988).

Guilty But Mentally Ill

725 ILCS 5/115-4(j) is not unconstitutional in its application as violative of the ex post facto clauses of this section. People v. Smith, 124 Ill. App. 3d 805, 80 Ill. Dec. 310, 465 N.E.2d 101 (1 Dist. 1984).

725 ILCS 5/115-4(j), authorizing the guilty but mentally ill verdict, is not unconstitutional as an ex post facto law when applied to a defendant where the section became effective just over a year from the date defendant allegedly committed a murder and several days before defendant's trial began; 725 ILCS 5/115-4(j), does not increase the penalty for his crime nor disadvantage him by diluting his statutory right to an insanity defense. People v. DeWit, 123 Ill. App. 3d 723, 79 Ill. Dec. 188, 463 N.E.2d 742 (1 Dist. 1984).

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Habitual Criminal

- Introduction of Prior Convictions

Where a trial court allowed into evidence certified copies of defendant's prior armed robbery convictions for the sole purpose of establishing matters in aggravation in order to support the rendition of a natural life sentence, the limited use of prior adjudications was therefore not violative of ex post facto prohibitions. People v. McNeil, 125 Ill. App. 3d 876, 81 Ill. Dec. 256, 466 N.E.2d 1058 (1 Dist. 1984).

- No New Offense

Habitual criminal statutes do not define a new or independent criminal offense but rather, such statutes simply prescribe the circumstances under which a defendant found guilty of a specific crime may be more severely punished because that defendant has a history of prior convictions; the punishment imposed under the Act is for the most recent offense only. The penalty is made heavier because the person convicted is a habitual criminal; the Act does not punish a defendant again for his prior felony convictions, nor are those convictions elements of the most recent felony offense. People v. Dunigan, 165 Ill. 2d 235, 209 Ill. Dec. 53, 650 N.E.2d 1026 (1995).

- Timing of Violation

Ex post facto challenge was rejected because the act that violated 720 ILCS 5/24-1.7, possession of a firearm by a twice-convicted felon, had to take place entirely after the enactment of 720 ILCS 5/24-1.7. People v. Thomas, 407 Ill. App. 3d 136, 347 Ill. Dec. 889, 943 N.E.2d 179, 2011 Ill. App. LEXIS 65 (1 Dist. 2011).

Impaired Contracts

The contractual obligation that parties had regarding attorney fees in their premarital agreement was not substantially impaired by 750 ILCS 5/501(c-1) and, thus, the provision did not violate the contract clauses of the United States or Illinois Constitutions; further, the provision did not violate procedural or substantive due process requirements. Rosenbaum-Golden v. Golden, 381 Ill. App. 3d 65, 319 Ill. Dec. 27, 884 N.E.2d 1272, 2008 Ill. App. LEXIS 185 (1 Dist. 2008), appeal denied, 229 Ill. 2d 659, 325 Ill. Dec. 15, 897 N.E.2d 263, 2008 Ill. LEXIS 1019 (2008).

Soft Drink Industry Fair Dealing Act, 815 Ill. Comp. Stat. 730/1 et seq., was unconstitutional under Ill. Const. Art. I, § 16 where it transformed the conduct mandated by a soft drink manufacturer's and distributor's pre-existing bottling appointments into a mechanism for renewing the contracts with new terms to which the manufacturer had not consented, impaired the manufacturer's right to terminate contracts by imposing new requirements on termination, created rights for the distributor that were not found in the parties' contracts by imposing a reasonableness requirement on the manufacturer's exercise of contractual discretion, imposing good faith restrictions on the negotiation of amendments, modifications, or changes in the bottling appointment, and prohibiting price discrimination, and Act required the manufacturer to offer the distributor appointments for new products. Pepsico, Inc. v. Marion Pepsi-Cola Bottling Co., F. Supp. 2d , 2003 U.S. Dist. LEXIS 20060 (S.D. Ill. July 18, 2003).

The amendment to 105 ILCS 5/10-21.9(c), which prohibits a school board from knowingly employing a person who has been found by a juvenile court to be the perpetrator of sexual or physical abuse of a minor, does not impair a teacher's rights under his employment contract. Panzella v. River Trails Sch. Dist. 26, 313 Ill. App. 3d 527, 246 Ill. Dec. 303, 729 N.E.2d 954, 2000 Ill. App. LEXIS 387 (1 Dist. 2000).

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Section 770 ILCS 60/1.1, prohibiting the waiver of mechanics' lien rights, did not impair contractual rights where it predated the waiver agreement at issue in the case. R.W. Dunteman Co. v. C/G Enters., Inc., 181 Ill. 2d 153, 229 Ill. Dec. 533, 692 N.E.2d 306 (1998).

Court concluded that under the provisions of the lease, the amendment to the Toll Highways Act, former Ill. Rev. Stat. ch. 121, para. 314(a)(43) (now 605 ILCS 10/22), resulted in an impairment to the taxpayer's obligation of the contract; thus, the impairment of a valid, existing contract was contrary to the Ill. Const. (1970), Art. I, § 16. Skidmore v. Illinois State Toll Highway Authority, 47 Ill. App. 3d 954, 6 Ill. Dec. 99, 362 N.E.2d 734, 1977 Ill. App. LEXIS 2519 (1 Dist. 1977).

According to former Ill. Const. of 1879, Art. XIII, § 17, no law impairing the obligation of contracts shall ever be made. Newland v. Marsh, 19 Ill. 376, 1857 Ill. LEXIS 183 (1857).

- Test

While some of the legal incidents arising upon the creation of the relationship can be avoided by express contract, others cannot, and the courts, in considering whether or not effect shall be given to the particular agreement in question have constantly had to weigh the advantages of preserving the contract of the parties against the disadvantages of possible serious social consequences arising from its enforcement and such contracts will be enforced unless (1) it would be against the settled public policy of the state to do so, or (2) there is something in the social relationship of the parties militating against upholding the agreement. Jackson v. First Nat'l Bank, 415 Ill. 453, 114 N.E.2d 721 (1953).

Impartial Jury

A defendant in a criminal case is guaranteed a trial by a jury of impartial persons. People v. Kellogg, 68 Ill. App. 3d 456, 25 Ill. Dec. 210, 386 N.E.2d 481 (1 Dist. 1979), aff'd, 77 Ill. 2d 524, 34 Ill. Dec. 163, 397 N.E.2d 835 (1979).

Incorporation As a Village

- Consent of Municipality

The requirement of the consent of existing municipality before area within 11/2 miles of that municipality can incorporate as a village (65 ILCS 5/2-3-5a) did not constitute an irrevocable grant or special privileges or immunities in violation of this section. Town of Godfrey v. City of Alton, 33 Ill. App. 3d 978, 338 N.E.2d 890 (5 Dist. 1975).

Insanity

The 1998 amended version of 720 ILCS 5/6-2, which was passed after a public act which previously amended the statute in 1995 was declared unconstitutional due to a violation of the single subject rule, could not be applied retroactively as such application would violate the prohibition against ex post facto laws. People v. Ramsey, 92 Ill. 2d 154, 248 Ill. Dec. 882, 735 N.E.2d 533, 2000 Ill. LEXIS 1218 (2000).

Jurisdiction

Where a constitutional question of impairment of the obligation of contract arose for the first time in the judgment of the appellate court, the Supreme Court had jurisdiction to review that judgment. People ex rel. Hafer v. Flynn, 13 Ill. 2d 368, 150 N.E.2d 183 (1958).

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Juvenile Detention System

Application of the presumptive transfer provision as set for in the Juvenile Justice Reform Act, 705 ILCS 405/5-805(2)(b) to a matter arising prior to its enactment does not violate the prohibition against ex post facto laws contained in either U.S. Const. Art. I, § 10 or Ill. Const. Art. I, § 16 because it does not provide for a greater punishment, but only affects the procedure by which punishment is determined. People v. Brown, 358 Ill. App. 3d 56, 294 Ill. Dec. 501, 831 N.E.2d 24, 2005 Ill. App. LEXIS 568 (1 Dist. 2005), Affirmed in part and reversed in part by, cause remanded by: People v. Brown, 225 Ill. 2d 188, 2007 Ill. LEXIS 449 (2007).

The 1995 amendment to 730 ILCS 5/3-10-11 did not amount to an ex post facto law because it did not increase the length of the minor's confinement; rather, it simply altered the location of their confinement. In re J.R., 302 Ill. App. 3d 87, 235 Ill. Dec. 236, 704 N.E.2d 809 (1 Dist. 1998).

The 1995 amendment to 730 ILCS 5/3-10-11 is more properly viewed as a security classification provision, integral to the juvenile detention system, than as an increase in punishment violative of the ex post facto clause. In re J.R., 302 Ill. App. 3d 87, 235 Ill. Dec. 236, 704 N.E.2d 809 (1 Dist. 1998).

Life Insurance

A regulation designed to secure equality between those contributing to the funds and resources of life insurance companies and to secure financial ability to meet obligations which may mature in the distant future and adapted to that end does not violate any prohibition of this section. People v. Hartford Life Ins. Co., 252 Ill. 398, 96 N.E. 1049 (1911).

Limitations Period

- Change

A legislative body can extend the period of limitations as to criminal offenses which occurred prior to the effective date of the change without violating the constitutional prohibitions against ex post facto laws, so long as the extended period does not apply to any case in which the accused has acquired, as of the effective date of the change, a right to acquittal through the running of the original statute. People v. Massarella, 80 Ill. App. 3d 552, 36 Ill. Dec. 16, 400 N.E.2d 436 (1 Dist. 1979).

Marriage

Precursor to 750 ILCS 5/801(c) did not impair the obligations arising out of a marital agreement regarding its subsequent modification and was not in violation of this section. In re Josic, 78 Ill. App. 3d 347, 33 Ill. Dec. 871, 397 N.E.2d 204 (1 Dist. 1979).

Marriage contracts are not deemed to be protected by the constitutional contract clauses of U.S. Const., Art. I, sec. 10 or this section. Kujawinski v. Kujawinski, 71 Ill. 2d 563, 17 Ill. Dec. 801, 376 N.E.2d 1382 (1978).

Mere Expectancy

A right, to be within the protection of the Constitution, must be a vested right: it must be something more than a mere expectancy based upon an anticipated continuance of an existing law. Dodge v. Board of Educ., 364 Ill. 547, 5 N.E.2d 84 (1936), aff'd, 302 U.S. 74, 58 S. Ct.

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98, 82 L. Ed. 57 (1937); In re Josic, 78 Ill. App. 3d 347, 33 Ill. Dec. 871, 397 N.E.2d 204 (1 Dist. 1979).

Modification of Settlement Agreement

Precursor to 750 ILCS 5/801(c) did not unconstitutionally impair the obligations arising out of marital agreement regarding modification of settlement agreement. In re Josic, 78 Ill. App. 3d 347, 33 Ill. Dec. 871, 397 N.E.2d 204 (1 Dist. 1979).

No Fault Divorce

Neither this section nor U.S. Const., Art. I, § 10 impairment of contract were applicable to no fault divorce provision of Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/401(a)(2)). In re Semmler, 107 Ill. 2d 130, 89 Ill. Dec. 873, 481 N.E.2d 716 (1985).

Neither the ex post facto clause of the U.S. Const., Art. I, § 10 nor this section were applicable to no-fault divorce provision of this section of Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/401(a)(2)). In re Semmler, 107 Ill. 2d 130, 89 Ill. Dec. 873, 481 N.E.2d 716 (1985).

Open Meetings Act

Where the parties enjoyed vested contract rights which could be destroyed if the court granted retroactive application to the amendments to the Open Meetings Act (5 ILCS 120/1), such impairment of contract rights was unconstitutional under both the state and federal Constitutions. Potter v. Judge, 112 Ill. App. 3d 81, 67 Ill. Dec. 585, 444 N.E.2d 821 (3 Dist. 1983).

Parole

Inclusion of an electronic monitoring condition to plaintiff inmate's parole pursuant to the Electronic Home Detention Law, 730 ILCS 5/5-8A-3, which became effective after his conviction, did not violate the state or federal ex post facto clauses; the condition was procedural, was not a punishment, and did not increase his sentence. Hadley v. Montes, 379 Ill. App. 3d 405, 318 Ill. Dec. 472, 883 N.E.2d 703, 2008 Ill. App. LEXIS 162 (1 Dist. 2008).

Statute in effect at the time that the inmate, a sex offender, was convicted that was later used to deny the inmate's release to mandatory supervised release (MSR) on electronic monitoring because the inmate did not meet one MSR condition, 730 ILCS 5/3-3-7(b-1), did not violate U.S. Const. Art. I, § 10, cl. 1 and Ill. Const. art. I, § 16 ex post facto clauses. The statute: (1) allowed broad conditions to be set for imposing MSR, (2) the statute did not impose punishment, but, instead was aimed at protecting the public, (3) and the statute was not used to increase the inmate's sentence. Neville v. Walker, 376 Ill. App. 3d 1115, 316 Ill. Dec. 109, 878 N.E.2d 831, 2007 Ill. App. LEXIS 1204 (1 Dist. 2007), appeal denied, 229 Ill. 2d 628, 325 Ill. Dec. 6, 897 N.E.2d 254, 2008 Ill. LEXIS 946 (2008).

Prisoner's allegations that parole board informally changed the standards that it used to make parole decisions for convicted murders, governed by 730 ILCS 5/3-3-5, raised an issue of whether prisoner's rights under Ill. Const. Art. I, § 16 had been violated and required discovery. Ganci v. Washington, 318 Ill. App. 3d 1174, 253 Ill. Dec. 268, 745 N.E.2d 42, 2001 Ill. App. LEXIS 153 (1 Dist. 2001).

Parole in Illinois is in the nature of a gift and as such, its conditions can be changed at the discretion of the legislature, and prisoner review board, by virtue of its grant of authority from the General Assembly, neither increased appellant's punishment or sentence nor denigrated any of his rights when it denied him parole and board in its reliance on 730 ILCS 5/3-3-5 was proper and

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does not constitute an ex post facto law. Harris v. Irving, 90 Ill. App. 3d 56, 45 Ill. Dec. 394, 412 N.E.2d 976 (5 Dist. 1980).

Parole Board Hearings

Amended 730 ILCS 5/3-3-5(f) is not an ex post facto law, as it would have no constitutionally significant effect on any prisoner's actual term of confinement; the amended provision does not have the prohibited effect of increasing punishment and it is tailored to the determination of the likelihood that a prisoner would be released sooner than an extended parole hearing date. Fletcher v. Williams, 179 Ill. 2d 225, 227 Ill. Dec. 942, 688 N.E.2d 635 (1997), cert. denied, 523 U.S. 1064, 118 S. Ct. 1396, 140 L. Ed. 2d 654 (1998).

En banc hearing requirements found in 730 ILCS 5/3-3-2 and 730 ILCS 5/3-3-5 are not disadvantageous to prisoners sentenced prior to its enactment; therefore, the requirements do not violate the ex post facto prohibition. Taylor v. Lane, 191 Ill. App. 3d 101, 138 Ill. Dec. 123, 546 N.E.2d 1178 (3 Dist. 1989).

Pension Rights

Denial of pension rights was not an ex post facto law in violation of U.S. Const., Art. I, § 9 and U.S. Const., Art. I, § 10 and this section, since the statute had been in existence nearly six years before plaintiff's employment commenced in 1961. Kerner v. State Employees' Retirement Sys., 53 Ill. App. 3d 747, 11 Ill. Dec. 510, 368 N.E.2d 1118 (4 Dist. 1977), aff'd, 72 Ill. 2d 507, 21 Ill. Dec. 879, 382 N.E.2d 243 (1978).

Permit to Use Park

The rights of peaceable assembly and of freedom of speech are not infringed by the refusal of a permit to an applicant for the use of a park facility. Coughlin v. Chicago Park Dist., 364 Ill. 90, 4 N.E.2d 1 (1936).

Police Power

- In General

Freedom of contract, as guaranteed by this section is a qualified right and is subject to the reasonable and legitimate exercise of the police power of the state. Illinois Hous. Dev. Auth. v. LaSalle Nat'l Bank, 139 Ill. App. 3d 985, 94 Ill. Dec. 15, 487 N.E.2d 772 (2 Dist. 1985).

- Medical Regulations

The police power of the state includes the power to enact comprehensive, detailed, and rigid regulations for the practice of medicine, surgery, and dentistry; there is no right to practice medicine which is not subordinate to the police power. People ex rel. Kerner v. United Med. Serv., Inc., 362 Ill. 442, 200 N.E. 157 (1936).

Probation Fee

- Procedural

As the probation fee is a compensable cost designed to offset the rising cost of probation as an alternative to imprisonment, the taxing of such a fee is procedural and no election of whether to

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be sentenced under prior law need be provided to defendant. People v. Willhoite, 212 Ill. App. 3d 307, 156 Ill. Dec. 662, 571 N.E.2d 249 (4 Dist. 1991).

Procedural Change in Law

In an action by a healthcare contractor against a city alleging violations of the Illinois and United States Contracts Clauses, the city's motion to dismiss under was granted in part where the contractor's claims failed because, under either the contract's dispute resolution procedures or department regulations, after a contract claim was asserted administratively it was properly challengeable through a writ of certiorari. United States Neurosurgical Inc. v. City of Chicago, F. Supp. 2d , 2003 U.S. Dist. LEXIS 11154 (N.D. Ill. June 30, 2003).

The prohibition against ex post facto laws does not require that defendant be provided an election between the laws to be applied where the change in the law is procedural. People v. Willhoite, 212 Ill. App. 3d 307, 156 Ill. Dec. 662, 571 N.E.2d 249 (4 Dist. 1991).

Even though a law may work to the disadvantage of a defendant, a procedural change is not ex post facto. Taylor v. Lane, 191 Ill. App. 3d 101, 138 Ill. Dec. 123, 546 N.E.2d 1178 (3 Dist. 1989).

Property for Public Use

The only legal method by which a property owner can be deprived of his property for public use is by having his damages assessed by a jury duly selected, impaneled, and sworn, and acting under the direction of a court of competent jurisdiction. Michigan Cent. R.R. v. Spring Creek Drainage Dist., 215 Ill. 501, 74 N.E. 696 (1905).

Prospective Lessee

Act which provided a penalty for the exhibition to a prospective purchaser or lessee of a lease which does not fairly state the rent being paid because of a rent concession was not a special privilege or an impairing the obligation of contract. People v. Rice, 323 Ill. 580, 154 N.E. 427 (1926).

Public Employees

- Tenure

Although the former Chicago School Reform Act was found unconstitutional on other grounds, the portion of the Act that eliminated permanent employment status, or tenure, was upheld on the grounds that legislative Acts fixing the terms or tenure of employment of public employees do not create private contractual rights and the Act did not create an unconstitutional impairment of the obligation of contract. Fumarolo v. Chicago Bd. of Educ., 142 Ill. 2d 54, 153 Ill. Dec. 177, 566 N.E.2d 1283 (1990).

Public Policy

Public policy strongly favors freedom to contract. McClure Eng'g Assocs. v. Reuben H. Donnelley Corp., 95 Ill. 2d 68, 69 Ill. Dec. 183, 447 N.E.2d 400 (1983).

Punitive Nature of Statutory Provisions

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Defendant's conviction pursuant to 720 ILCS 5/11-9.3(b-5) of knowingly residing within 500 feet of a school building that persons under the age of 18 attended, in a case where defendant was already a convicted sex offender, did not violate ex post facto laws in either the Illinois or United States Constitutions. That law was aimed at protecting the public and not on imposing punishment on defendant. People v. Morgan, 377 Ill. App. 3d 821, 317 Ill. Dec. 339, 881 N.E.2d 507, 2007 Ill. App. LEXIS 1310 (1 Dist. 2007).

The intent and effect of 50 ILCS 705/9.1 and 730 ILCS 5/5-9-1 were punitive in nature, and as such, application to the defendant, whose alleged offense was committed prior to their effectiveness, was in error, as contrary to the prohibition against ex post facto laws. People v. Timmons, 114 Ill. App. 3d 861, 70 Ill. Dec. 762, 449 N.E.2d 1366 (3 Dist. 1983).

Railroads

Chicago, Ill. Ordinance § 15 (February 11, 1907), which gave the city the exclusive authority to grant permission for the construction, maintenance and operation of street railways in the streets of the city and in doing so could impose such terms as it saw fit, was accepted by the railroad company as part of a contract and the railroad company became bound by its terms; therefore the requirement that the railway company be responsible for the maintenance of street pavements at the intersections of tracks and road beds regardless of the cause of damage was not a violation of due process under Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2) or Ill. Const. of 1870, Art. II, §§ 13 and 14. Chicago C. R. Co. v. Chicago, 323 Ill. 246, 154 N.E. 112, 1926 Ill. LEXIS 991 (1926).

Real Property

Ordinance regarding street cars constituted a contract, the obligation of which could not be impaired as the contract affected of real estate, which railway company could not be deprived without due process of law, and which cannot be destroyed, abridged, or damaged for the public use without just compensation. Chicago City Ry. v. City of Chicago, 323 Ill. 246, 154 N.E. 112 (1926).

Regulation of Transportation Tickets

Act requiring that ticket agents have certificate of authority from carrier owner regulating resale of tickets for transportation conveyances, did not violate state constitutional provision that no person shall be deprived of life, liberty or property without due process of law nor did it impair obligation of contracts. Burdick v. People, 149 Ill. 600, 36 N.E. 948 (1894).

Renewal Conditioned on Rent Increase

The clear intention of the legislature in amending 765 ILCS 745/9 was to allow mobile home park operators to have the uninhibited right to condition lease renewals on the acceptance of rental increases, and such action does not unconstitutionally impair lease agreement contrary to the impairment of contract clauses of U.S. Const., Art. I, § 10 and this section. Aydt v. De Anza Santa Cruz Mobile Estates, 763 F. Supp. 970 (N.D. Ill. 1991).

Retroactive Application

Minor's reclassification under the recently enacted amendments to the Sex Offender Registration Act (Act) that applied retroactively to make the minor a sexual predator rather than a sexual offender did not violate the minor's right to be free from the enactment of ex post facto laws, as

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prohibited by U.S. Const. Art. I, § 9, cl. 3, U.S. Const. Art. I, § 10, cl. 1, and Ill. Const. Art. I, § 16. The Act's requirements were not punishments, but were part of a regulatory scheme to protect the public, which meant that the amendments were not ex post facto clause violations and the minor did not show otherwise. People ex rel. Birkett v. Konetski, 233 Ill. 2d 185, 330 Ill. Dec. 761, 909 N.E.2d 783, 2009 Ill. LEXIS 389 (2009).

Amendment to 215 ILCS 5/143a(1), which changed the limit for binding uninsured motorist coverage arbitration awards, could not be applied retroactively to a policy issued prior to the amendment regardless of whether the amendment was considered procedural or substantive; as the insurer and the insured had bargained for a binding arbitration award limit that mirrored the minimum liability coverage amount stated in 625 ILCS 5/7-203, the application of the amended statute would have impaired their contract in violation of Ill. Const. (1970), Art. I, 16. Am. Family Mut. Ins. Co. v. King, 375 Ill. App. 3d 791, 314 Ill. Dec. 507, 874 N.E.2d 603, 2007 Ill. App. LEXIS 985 (1 Dist. 2007).

Where amendment to 625 ILCS 5/11-501.4 affected matters of procedure only, retroactive application of amended section to defendant charged with driving under the influence of alcohol to allow into evidence results of his blood-alcohol test, ordered in the regular course of providing emergency treatment to defendant, did not violate ex post facto clause of Illinois Constitution. People v. Kotecki, 279 Ill. App. 3d 1006, 216 Ill. Dec. 869, 666 N.E.2d 37 (2 Dist. 1996).

The purpose of the Child Sex Offender Registration Act (730 ILCS 150/1 et seq.) protects a legitimate public interest, because it imposes a collateral consequence upon conviction, as opposed to punishment, under Illinois law it may be applied retroactively and therefore does not violate the ex post facto clauses. People v. Starnes, 273 Ill. App. 3d 911, 210 Ill. Dec. 417, 653 N.E.2d 4 (1 Dist. 1995), appeal denied, 163 Ill. 2d 581, 212 Ill. Dec. 434, 657 N.E.2d 635 (1995).

Where petitioner had already served his initial criminal commitment, under the old statute, and then the court established a second criminal commitment that extended his original sentence, by retroactively applying 730 ILCS 5/5-2-4, the court had to reverse this decision, because the application violated the ex post facto clause of this section. Raimondo v. Kiley, 172 Ill. App. 3d 217, 122 Ill. Dec. 198, 526 N.E.2d 457 (1 Dist. 1988).

Where, under regulations in effect when a crime was committed, a petitioner would have been eligible for release on January 1, 1961, and where, during the interval between the commission of the crime and the petitioner's conviction, the regulations were changed so that the petitioner was not eligible for release until April 9, 1962, the computation of the petitioner's good time allowance on the basis of regulations adopted after the commission of the crime violated the ex post facto prohibition of this section and the regulations were improperly given retroactive application. People ex rel. Johnson v. Pate, 23 Ill. 2d 409, 178 N.E.2d 398 (1961).

The General Assembly did not confer upon the Department of Public Safety authority to establish regulations that would apply retroactively. People ex rel. Johnson v. Pate, 23 Ill. 2d 409, 178 N.E.2d 398 (1961).

The authority in 730 ILCS 5/3-6-3 spoke as of the date of enactment, and did not confer a continuing authority to make retroactive regulations. People ex rel. Johnson v. Pate, 23 Ill. 2d 409, 178 N.E.2d 398 (1961).

Right to Municipal Pensions

Municipalities may take away the right to pensions under certain circumstances without affecting the contract right of pensioners or violating the Constitution. Dodge v. Board of Educ., 364 Ill. 547, 5 N.E.2d 84 (1936), aff'd, 302 U.S. 74, 58 S. Ct. 98, 82 L. Ed. 57 (1937).

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Safeguards

Constitutional guarantee of this section does not withdraw from legislative supervision the power to provide restrictive safeguards; liberty implies only the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community. Illinois Hous. Dev. Auth. v. LaSalle Nat'l Bank, 139 Ill. App. 3d 985, 94 Ill. Dec. 15, 487 N.E.2d 772 (2 Dist. 1985).

Sentencing

Where defendant was sentenced and fined for predatory criminal sexual assault after an amendment to 725 ILCS 5/110-14(b) barred the application of a credit against fines for time spent in presentencing custody due to defendant's sexual assault conviction, defendant was entitled to the credit because a denial would violate ex post facto prohibitions under federal and state law since a denial of the credit against defendant's fines would increase the punishment for a previously committed offense. People v. Prince, 371 Ill. App. 3d 878, 309 Ill. Dec. 450, 864 N.E.2d 316, 2007 Ill. App. LEXIS 184 (1 Dist. 2007).

Defendant did not present a true ex post facto argument, where defendant had not argued that the extended-term sentencing provisions of 730 ILCS 5/5-5-3.2(b)(1) were not in effect at the time of the crimes charged in the case. People v. Fikara, 345 Ill. App. 3d 144, 280 Ill. Dec. 335, 802 N.E.2d 260, 2003 Ill. App. LEXIS 1259 (2 Dist. 2003), appeal denied sub nom. People v. Shaka Ali Fikara, 208 Ill. 2d 544, 284 Ill. Dec. 342, 809 N.E.2d 1288 (2004).

Sentencing statute which amended method of calculating good conduct credits toward sentence, and which deprived all opportunity for prisoners to secure early release through good-conduct credits, was ex post facto violation; prisoners were entitled to have sentences calculated pursuant to prior law and receive credits that they had merited. McGee v. Snyder, 326 Ill. App. 3d 343, 260 Ill. Dec. 209, 760 N.E.2d 982, 2001 Ill. App. LEXIS 689 (2 Dist. 2001).

720 ILCS 5/33A-3(a), as reenacted following a decision that the public act that first amended the subsection to increase the minimum term for armed violence to 15 years' imprisonment violated the single subject rule of the Illinois Constitution, could not be applied retroactively as nothing in the statute indicated that the legislature intended retroactive application of the reenacted statute and as retroactive application would violate the ex post facto clauses of the federal and Illinois constitutions. People v. Walls, 323 Ill. App. 3d 436, 256 Ill. Dec. 576, 752 N.E.2d 456, 2001 Ill. App. LEXIS 425 (1 Dist. 2001), appeal denied, 201 Ill. 2d 610, 271 Ill. Dec. 940, 786 N.E.2d 198 (2002).

Where a defendant was found not guilty of murder by reason of insanity, the trial court did not err in committing him to the Department of Mental Health and Developmental Disabilities under the law in existence at the time of his trial rather than under the law in effect at the time of the offense as the retroactive application of the amended 730 ILCS 5/5-2-4 did not violate the prohibition against ex post facto laws. People v. Thiem, 82 Ill. App. 3d 956, 38 Ill. Dec. 416, 403 N.E.2d 647 (1 Dist. 1980).

Sex Offender Registration

Retroactive application of amendment to 730 ILCS 150/7 did not violate ex post facto principals because registration requirements for sex offenders did not constitute punishment. Lesher v. Trent, 407 Ill. App. 3d 1170, 348 Ill. Dec. 526, 944 N.E.2d 479, 2011 Ill. App. LEXIS 168 (5 Dist. 2011).

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The Sex Offender and Child Murderer Community Notification Law, 730 ILCS 152/101 et seq., does not have such a punitive effect that the legislature's intent to create a nonpunitive scheme may be disregarded and, therefore, the act does not violate the ex post facto clauses of the federal or state constitutions. People v. Malchow, 193 Ill. 2d 413, 250 Ill. Dec. 670, 739 N.E.2d 433, 2000 Ill. LEXIS 1226 (2000).

The Sex Offender Registration Act, 730 ILCS 150/1 et seq., does not impose a punishment and, therefore, does not violate the ex post facto clause of the federal or state constitutions. People v. Malchow, 193 Ill. 2d 413, 250 Ill. Dec. 670, 739 N.E.2d 433, 2000 Ill. LEXIS 1226 (2000).

Where the amendment to 730 ILCS 150/10, setting forth penalties for violation of the Sex Offender Registration Act, occurred prior to the date that the defendant committed his offense, the enhanced penalty of the amendment did not violate the ex post facto clause. People v. Malchow, 306 Ill. 2d 665, 239 Ill. Dec. 664, 714 N.E.2d 583 (2 Dist. 1999).

As the 1996 amendment to this section occurred prior to the date that the defendant committed this offense, the enhanced penalty of the amendment did not violate the ex post facto clause. People v. Logan, 302 Ill. App. 3d 319, 235 Ill. Dec. 539, 705 N.E.2d 152 (2 Dist. 1998).

Sex Offenses

Proceedings under the Sexually Violent Persons Commitment Act (Act) were civil rather than criminal in nature, and confinement pursuant to the Act was not punitive. As a result, the initiation of commitment proceedings under the Act did not constitute a second prosecution for double jeopardy, Ill. Const. art. I, § 10, purposes, and did not implicate Ill. Const. art. I, § 16 ex post facto concerns because the Act did not have a retroactive effect given that it permitted commitment only if a person was presently suffering from a mental disorder that created a substantial probability that he would engage in acts of sexual violence if he was released. People v. Lieberman (In re Lieberman), 401 Ill. App. 3d 903, 340 Ill. Dec. 965, 929 N.E.2d 616, 2010 Ill. App. LEXIS 519 (1 Dist. 2010).

The Sex Offender Registration Act, 730 ILCS 150/1 et seq., and the Child Sex Offender and Murderer Community Notification Law, 730 ILCS 152/101 et seq., do not violate the ex post facto clauses of the United States or Illinois Constitutions. People v. Guillen, 307 Ill. App. 3d 35, 240 Ill. Dec. 470, 717 N.E.2d 563 (2 Dist. 1999).

Special Assessment Bonds

- Exchange

Village ordinance allowing exchange of special assessment bonds for new bonds in denomination of $100 was an impairment of contract of holder of $1000 bond where another bondholder sought to exchange his $1000 bond for ten $100 bonds with similar qualities, because bondholder whose bond is due is entitled to pro rata share of installment collections, and furthermore bondholder might use small denomination received in exchange to pay installment of special assessment. Murray v. Village of Skokie, 379 Ill. 112, 39 N.E.2d 671 (1942).

State Contracts

The former constitutional provision (see now this section) which prohibited any law from impairing the obligation of a contract binding the parties to perform their agreement, whether the contract was executed or executory, applied not only to private contracts but the protection extended to contracts made by the state and municipalities with individuals. Deneen v. Deneen, 293 Ill. 454, 127 N.E. 700 (1920).

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Surface Mining

- Repair Requirements

Repair or restoration requirements of Surface Coal Mining Land Conservation and Reclamation Act (225 ILCS 720/1.01 et seq.) did not unlawfully impair coal company's contractual rights, i.e., subjacent support waivers contained in deeds and coal leases, as the requirements demonstrate a legitimate public interest. Old Ben Coal Co. v. Illinois Dep't of Mines & Minerals, 204 Ill. App. 3d 1062, 150 Ill. Dec. 399, 562 N.E.2d 1202 (5 Dist. 1990).

Telephone Company

- Right to Maintain Poles

Municipal ordinance granting telephone company the right to erect and maintain its poles and wires on the streets and public ways of the municipality, for the purpose of supplying to the citizens of said municipality and the public telephone communications, was not a grant of a franchise, or of special privileges, and it was not therefore void under this section. City of Rock Island v. Central Union Tel. Co., 132 Ill. App. 248 (2 Dist. 1907).

Utility Company

Illinois Commerce Commission's order that allowed a utility company to recover construction costs of certain new supply facilities and to impose charges for reserving capacity within its distribution system did not violate the Contract Clauses, U.S. Const., art. I, § 10 and Ill. Const. art. I, § 16, as the Commission's authority to set rates was not limited by the fact that the company and its customers had previously entered into contracts; the contracts related to rates under 220 ILCS 5/3-116. Commonwealth Edison Co. v. Ill. Commerce Comm'n, 398 Ill. App. 3d 510, 338 Ill. Dec. 539, 924 N.E.2d 1065, 2009 Ill. App. LEXIS 913 (2 Dist. 2009).

Validity

Where different methods of collection were used, depending upon whether real estate or personalty was involved in the collection of maintenance charges under the former Mental Health Code, the nature of the assets in an estate did not affect its liability; there was no sufficient basis for saying that constitutional rights were violated. State v. Foster, 13 Ill. 2d 55, 147 N.E.2d 319 (1958).

OPINIONS OF ATTORNEY GENERAL

Payment of License Reinstatement Fee

The fee for reinstatement of a revoked driver's license, or a suspended driver's license for that matter, cannot be considered additional punishment for criminal violation and thus, is clearly not a violation of the ex post facto prohibitions. 1980 Op. Atty. Gen. 54.

LEGAL PERIODICALS

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For article, "Survey of Illinois Law: Constitutional Law," see 25 S. Ill. U. L.J. 733 (2001).

For case note, "Retroactive Application of Illinois Statute Eliminating Opportunity for Annual Parole Hearings Violate Ex Post Facto Prohibitions," see 17 S. Ill. U.L. Rev. 403 (1993).

Section 17. No Discrimination in Employment and the Sale or Rental of Property.

All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry and sex in the hiring and promotion practices of any employer or in the sale or rental of property.

These rights are enforceable without action by the General Assembly, but the General Assembly by law may establish reasonable exemptions relating to these rights and provide additional remedies for their violation.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Crim L § 1:13.

See Illinois Jur, Labor § 4:57.

See Illinois Jur, Pers Inj & Torts § 8:2, § 8:10, § 8:36.

CASE NOTES

Analysis

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Allegations Insufficient

Allegations were held insufficient as a matter of law to state a claim of sex discrimination in the rental of property under this section. Bismarck Hotel Co. v. Sutherland, 175 Ill. App. 3d 739, 125 Ill. Dec. 15, 529 N.E.2d 1091 (1 Dist. 1988).

Application and Construction

The only reasonable construction to the interplay between 810 ILCS 5/8-111(C) and 810 ILCS 5/2-104 is that the General Assembly intended that the conduct described in 810 ILCS 5/2-104 was intended to constitute "reasonable exemption" from this section of the Constitution. Baker v. Miller, 242 Ill. App. 3d 44, 182 Ill. Dec. 865, 610 N.E.2d 734 (4 Dist.), appeal granted, 152 Ill. 2d 554, 190 Ill. Dec. 883, 622 N.E.2d 1200 (1993), aff'd, 159 Ill. 2d 249, 201 Ill. Dec. 119, 636 N.E.2d 551 (1994).

The relationship between 810 ILCS 5/8-111(C) and 810 ILCS 5/2-101(B)(1)(a) creating the "15 or more employees" requirement in order to be defined as an "employer" is such that the legislature also intended that those employing fewer than the required number of employees be in the category of a "reasonable exemption" from the requirements of this section of the Constitution. Baker v. Miller, 242 Ill. App. 3d 44, 182 Ill. Dec. 865, 610 N.E.2d 734 (4 Dist.), appeal granted, 152 Ill. 2d 554, 190 Ill. Dec. 883, 622 N.E.2d 1200 (1993), aff'd, 159 Ill. 2d 249, 201 Ill. Dec. 119, 636 N.E.2d 551 (1994).

Where the Illinois Human Rights Act, former Ill. Rev. Stat. ch. 68, para. 1-101 et seq. (now 775 ILCS 5/1-101), applies, it is the exclusive source for redress of alleged civil rights violations, and a covered employee may not bring a private cause of action to recover damages for violation of his rights under Ill. Const. (1970), Art. I, § 17. Ritzheimer v. Insurance Counselors, 173 Ill. App. 3d 953, 123 Ill. Dec. 506, 527 N.E.2d 1281, 1988 Ill. App. LEXIS 1216 (1 Dist. 1988).

Purpose of Ill. Const. (1970), Art. I, § 17 is to provide for equality of employment opportunity and upgrading based on merit. Ritzheimer v. Insurance Counselors, 173 Ill. App. 3d 953, 123 Ill. Dec. 506, 527 N.E.2d 1281, 1988 Ill. App. LEXIS 1216 (1 Dist. 1988).

The most fundamental requirement for a showing of sex discrimination is a demonstration that men and women were treated in a dissimilar manner because of their sex; however, if the applicant pool for a position is comprised entirely of one sex, there can be no dissimilar treatment of the sexes in the hiring process and therefore there can be no sex discrimination. Tranquilli v. Irshad, 117 Ill. App. 3d 1074, 73 Ill. Dec. 517, 454 N.E.2d 377 (4 Dist. 1983).

This section extends to hiring and promotion practices but not to all employment practices. Greenholdt v. Illinois Bell Tel. Co., 107 Ill. App. 3d 748, 63 Ill. Dec. 507, 438 N.E.2d 245 (4 Dist. 1982); Thakkar v. Wilson Enters., Inc., 120 Ill. App. 3d 878, 76 Ill. Dec. 331, 458 N.E.2d 985 (1 Dist. 1983); Briggs v. Lawrenceville Indus., Inc., 136 Ill. App. 3d 1073, 91 Ill. Dec. 788, 484 N.E.2d 347 (5 Dist. 1985).

Broad Interpretation

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This section prohibits sex discrimination in employment and the protection afforded by such a constitutionally-based prohibition has been interpreted broadly. Illinois Bell Telephone Co. v. Fair Emp. Practices Comm'n, 81 Ill. 2d 136, 41 Ill. Dec. 41, 407 N.E.2d 539 (1980).

Direct Actions Invalid

The Human Rights Act (775 ILCS 5/1-101 et seq.) implicitly exempts small employers from bringing claims under this section; by such exemption employees of small employers are "covered" under the Act and because the Act is the exclusive remedy for employment discrimination claims, employees of small employers may not bring a direct action under this section. Baker v. Miller, 159 Ill. 2d 249, 201 Ill. Dec. 119, 636 N.E.2d 551 (1994).

Where this section is implemented by the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.), an employee is entitled to the benefits of an elaborate administrative scheme designed to protect individuals from arbitrary actions by their supervisors, it is inappropriate to thwart that scheme by permitting a direct cause of action for damages based directly on the Constitution. Curtis v. Continental Ill. Nat'l Bank, 568 F. Supp. 740 (N.D. Ill. 1983).

Enforcement Mechanism

The Illinois Human Rights Act (775 ILCS 5/1-101 et seq.) provides the statutory framework in which the Illinois constitutional right to freedom from unlawful employment discrimination is to be enforced. O'Young v. Hobart Corp., 579 F. Supp. 418 (N.D. Ill. 1983); Danielson v. DuPage Area Vocational Educ. Auth., 595 F. Supp. 27 (N.D. Ill. 1984); Briggs v. Lawrenceville Indus., Inc., 136 Ill. App. 3d 1073, 91 Ill. Dec. 788, 484 N.E.2d 347 (5 Dist. 1985); Walker v. Woodward Governor Co., 631 F. Supp. 91 (N.D. Ill. 1986); Sanders v. A.J. Canfield Co., 635 F. Supp. 85 (N.D. Ill. 1986); Bismarck Hotel Co. v. Sutherland, 175 Ill. App. 3d 739, 125 Ill. Dec. 15, 529 N.E.2d 1091 (1 Dist. 1988).

Exhaustion of Remedies

The statutory scheme of the Human Rights Act (775 ILCS 5/1-101 et seq.), which serves to protect and enforce the rights of this section effectively bars a plaintiff from bringing a direct cause of action until the administrative procedures and remedies as set forth in the Act have been exhausted. Thakkar v. Wilson Enters., Inc., 120 Ill. App. 3d 878, 76 Ill. Dec. 331, 458 N.E.2d 985 (1 Dist. 1983).

Failure to State Cause of Action

Where the plaintiffs' complaint alleged that defendants had knowingly and wilfully permitted persons to view plaintiffs and other women through an opening in the ceiling of a ladies restroom on the defendants' premises, thus violating plaintiffs' right to be free from sex discrimination, the plaintiffs failed to state a cause of action under this section. Briggs v. Lawrenceville Indus., Inc., 136 Ill. App. 3d 1073, 91 Ill. Dec. 788, 484 N.E.2d 347 (5 Dist. 1985).

Money Damages

A civil action for damages may be maintained for a violation of the rights set forth in this section, because it was the intention of the framers that money damages be available to remedy such a deprivation of rights. Walinski v. Morrison & Morrison, 60 Ill. App. 3d 616, 18 Ill. Dec. 89, 377 N.E.2d 242 (1 Dist. 1978).

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No Violation

Discharged employee's allegations that he was dismissed for no legitimate business reason after he had developed a bleeding ulcer which did not impair his performance on the job was not a violation of the public policy of the state. Criscione v. Sears, Roebuck & Co., 66 Ill. App. 3d 664, 23 Ill. Dec. 455, 384 N.E.2d 91 (1 Dist. 1978).

Personal Property

This section does not prevent voluntary associations from limiting the use of their facilities and the sale of personal property. Davis v. Attic Club, 56 Ill. App. 3d 58, 13 Ill. Dec. 811, 371 N.E.2d 903 (1 Dist. 1977).

Pregnancy Discrimination

Where, no men are in the job applicant pool and the hiring practice only favors nonpregnant women over pregnant women, pregnancy discrimination is not sex discrimination. Tranquilli v. Irshad, 117 Ill. App. 3d 1074, 73 Ill. Dec. 517, 454 N.E.2d 377 (4 Dist. 1983).

Private Cause of Action

Because the Human Rights Act (775 ILCS 5/1-101 et seq.) does not purport to reach discriminatory practices by smaller employers, the act cannot be construed as preempting a claim of gender discrimination against such an employer asserted directly under this section. Ritzheimer v. Insurance Counselors, Inc., 123 Ill. App. 506, 173 Ill. App. 3d 953, 123 Ill. Dec. 506, 527 N.E.2d 1281 (5 Dist. 1988).

Property

"Property" as contained in this section means both real and personal property. Davis v. Attic Club, 56 Ill. App. 3d 58, 13 Ill. Dec. 811, 371 N.E.2d 903 (1 Dist. 1977).

Service to Tenants

This section must be considered to proscribe conduct whereby plaintiff, tenants' association, alleged in complaint that when the population of apartment complex was predominantly white, quality services were provided to white tenants by the defendants, landlord however, when the population of the project became predominantly black, the services previously provided the white tenants disappeared and the apartment project began to physically deteriorate. Concerned Tenants Ass'n v. Indian Trails Apts., 496 F. Supp. 522 (N.D. Ill. 1980).

Spouses

- Rights and Duties

Appellant's contention that she suffered a deprivation of her constitutional rights in having to sign a note with her husband was rejected, as the requirement that appellant sign the note in question arose out of the implications that flew from the marital relationship of the appellant and her husband. King City Fed. Sav. & Loan Ass'n v. Ison, 80 Ill. App. 3d 900, 36 Ill. Dec. 142, 400 N.E.2d 562 (5 Dist. 1980).

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Standing

With respect to the constitutional prohibition against sex discrimination, appellant lacked standing to challenge appellee's policies toward women; even if his charges were true, he was not a member of the class sought to be protected by this constitutional provision, he had not been discriminated against because of his sex and he could not assert constitutional infringement based on the sex of other persons; moreover, appellant had not demonstrated that the women allegedly suffering discrimination at the hands of appellee were incapable of or unwilling to represent their own interests before the judiciary such that he should be allowed to champion their cause in the courts. Beane v. Millers Mut. Ins. Ass'n, 90 Ill. App. 3d 258, 45 Ill. Dec. 542, 412 N.E.2d 1124 (5 Dist. 1980).

Transfer

- Not Promotion Practice

The alleged discriminatory practice of requiring male managers to be transferred while allowing female managers the option to refuse transfer did not deprive males of an equal opportunity for advancement based on merit therefore, it was not a promotion practice within the meaning of this section. Greenholdt v. Illinois Bell Tel. Co., 107 Ill. App. 3d 748, 63 Ill. Dec. 507, 438 N.E.2d 245 (4 Dist. 1982).

LEGAL PERIODICALS

For article, "The Courts and Legislature Begin to Adopt ADR Methods to Deal with Growing Number of Employment Discrimination Claims," see 13 N. Ill. U.L. Rev. 221 (1993).

For article, "The Silenced Majority: Martin v. Wilks and the Legislative Response," see 1992 U. Ill. L. Rev. 43 (1992).

For article, "Recent Developments in Employment Law: 1987-88 Survey," see 13 S. Ill. U.L.J. 656 (1989).

For comment, "The Legality and Equity of Homeowner's Equity Assurance: A Study of Oak Park, Illinois," see 78 Nw. U.L. Rev. 1463 (1984).

For article, "Employment-at-Will in Illinois: Implications and Anticipations for the Practitioner," see 31 De Paul L. Rev. 359 (1982).

For article, "A Survey of Illinois Employment Discrimination Law," see 31 De Paul L. Rev. 323 (1982).

For note on State Constitutional Law and Special Legislation discussing Wilson v. All-Steel, 87 Ill. 2d 38, 428 N.E.2d 489 (1981), see 71 Ill. B.J. 189 (1982).

For article, "Equal Protection of the Law Under the Federal and Illinois Constitutions: A Contrast in Unequal Treatment," see 30 De Paul L. Rev. 263 (1981).

For article, "Civil Rights Implications of Insurance Redlining," see 29 De Paul L. Rev. 315 (1980).

For note, "State Constitutional Rights To Damages for Private Discrimination in Employment," see 28 De Paul L. Rev. 229 (1978).

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For article, "The Unrealized Expectation of Article I, Section 17," see 11 J. Marshall J. Prac. & Proc. 283 (1978).

RESEARCH REFERENCES

Sex discrimination in treatment of jail or prison inmates. 12 ALR4th 1219.

Exclusion of one sex from admission to or enjoyment of equal privileges in places of accommodation or entertainment as actionable sex discrimination under state law. 38 ALR4th 339.

Award of front pay under state job discrimination statutes. 74 ALR4th 746.

Federal and state constitutional provisions as prohibiting discrimination in employment on basis of gay, lesbian, or bisexual sexual orientation or conduct. 96 ALR5th 391.

Practice Guides and Treatises.

Employment Discrimination § 11.41 State Constitutional Proctections in the Public Sector (IICLE).

Employment Discrimination § 4.106 Illinois Constitution (IICLE).

Employment Discrimination § 3.83 Illinois Human Rights Act, Background (IICLE).

Section 18. No Discrimination on the Basis of Sex.

The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Fam L § 2:40.

See Illinois Jur, Pers Inj & Torts § 8:2, § 8:3, § 8:10, § 8:36.

CASE NOTES

Analysis

Administrative Procedures
Alimony
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Classification
- Invalid
- Juveniles
Compelling State Interest
Discrimination in Courtroom
Equal Protection
Evidence Held Insufficient
Exclusively Female Teams
Illegitimate Children
Juries
- Peremptory Challenges
Jury Selection
Jury Service
Legislative Intent
Level of Scrutiny
Nuns
Parental Rights
Private Right of Action
Prospective Application
Purpose
Reciprocal Spousal Support
Review of Suspension
Rights and Duties of Spouses
Rights of Married Women
Scope of Review
Standing
- Not Shown

Administrative Procedures

An action claiming employment discrimination based on sex was covered by provisions of the Illinois Human Rights Act (775 ILCS 5/1-101) and constitutional actions under Ill. Const. (1970), Art. I, § 17 and this section and are subject to the Act's administrative procedures. Danielson v. DuPage Area Vocational Educ. Auth., 595 F. Supp. 27 (N.D. Ill. 1984).

Alimony

The purpose of the equal protection clause of the state constitution is to prohibit discrimination on account of sex, and because the obligation to pay alimony did not depend on sex, alimony provisions of a divorce decree did not violate the guarantee of equal protection. Lane v. Lane, 35 Ill. App. 3d 276, 340 N.E.2d 705 (1 Dist. 1976).

Applicability

Judgment on the pleadings against the medical care providers, and dismissal of their claims challenging the constitutionality of Parental Notice of Abortion Act of 1995 under the Illinois Constitution alone, was not warranted. Their claims alleging equal protection and due process

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violations under Ill. Const. art. I, § 2 were not barred by collateral estoppel despite the trial court's conclusion to the contrary, as the relevant federal opinion that supposedly barred their claims was not decided on equal protection grounds, as to due process the federal court was presented with a very narrow question not at issue in the medical providers' case, and the claims alleging that the right to privacy under Ill. Const. art. I, § 6 and the right to gender equality under Ill. Const. art. I, § 18 were violated were not infirm because the Illinois Constitution had express clauses guaranteeing those rights which the federal constitution did not have. Hope Clinic for Women Ltd. v. Adams, Ill. App. 3d , 353 Ill. Dec. 44, 955 N.E.2d 511, 2011 Ill. App. LEXIS 649 (1 Dist. 2011).

The bar against tort actions between spouses during coverture applies equally to male and female and cannot therefore be said to discriminate by denying or abridging plaintiff's rights on the basis of sex. Steffa v. Stanley, 39 Ill. App. 3d 915, 350 N.E.2d 886 (2 Dist. 1976).

Athletic Opportunities

This section imposes a stiffer test than do federal constitutional requirements but the equalization of general athletic opportunities is the essence of the application of this section to the public schools of the state. Petrie ex rel. Petrie v. Illinois High Sch. Ass'n, 75 Ill. App. 3d 980, 31 Ill. Dec. 653, 394 N.E.2d 855 (4 Dist. 1979).

Child Custody

Where the trial court found that the best interests of divorced parties' minor children would be best served by granting their custody to their father, and where such holding was not contrary to the manifest weight of the evidence, it was not error for the trial court to deny custody of the parties' six year old daughter to her mother, and granting custody of the minor daughter to the father did not violate the mother's right to equal protection of the law. Lane v. Lane, 40 Ill. App. 3d 229, 352 N.E.2d 19 (3 Dist. 1976).

Presumption favoring custody in the mother for a child of tender years does not constitute discrimination on the basis of sex where the general nature of the maternal instinct and particular characteristics of the mother, as well as those of the father, are considered by the trial court. Randolph v. Dean, 27 Ill. App. 3d 913, 327 N.E.2d 473 (3 Dist. 1975).

Classification

- Invalid

There was no compelling state interest for a sex base classification implicit in an ordinance which prohibited a person of one sex from giving massages to persons of the other sex where there were less intrusive means available under existing laws. Wheeler v. City of Rockford, 69 Ill. App. 3d 220, 25 Ill. Dec. 702, 387 N.E.2d 358 (2 Dist. 1979).

- Juveniles

The classifications 705 ILCS 405/5-3 and 705 ILCS 405/5-4 which describe as juveniles, females who have not reached the age of 18 and males who have not reached the age of 17, is not violative of this section. People v. McCabe, 15 Ill. App. 3d 169, 303 N.E.2d 469 (3 Dist. 1973).

Compelling State Interest

A classification based on sex may be upheld if grounded on a compelling state interest. Wheeler v. City of Rockford, 69 Ill. App. 3d 220, 25 Ill. Dec. 702, 387 N.E.2d 358 (2 Dist. 1979).

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Discrimination in Courtroom

Discrimination in the courtroom against any party or juror is constitutionally intolerable. People v. Mitchell, 228 Ill. App. 3d 917, 171 Ill. Dec. 62, 593 N.E.2d 882 (1 Dist.), cert. granted, 146 Ill. 2d 643, 176 Ill. Dec. 813, 602 N.E.2d 467 (1992), modified on other grounds, 155 Ill. 2d 344, 185 Ill. Dec. 528, 614 N.E.2d 1213 (1993).

Equal Protection

Defendant school board's motion to dismiss was denied, where plaintiff minority and limited English students stated sufficient allegations that the board's actions in adjusting school populations denied their rights to equal protection under the Illinois Constitution. Daniel v. Bd. of Educ. for Ill. Sch. Dist. U-46, 379 F. Supp. 2d 952, 2005 U.S. Dist. LEXIS 15532 (N.D. Ill. 2005).

The Juvenile Court Act (705 ILCS 405/5-3 and 705 ILCS 405/5-4) which classified a delinquent minor as a male under the age of 17 years or a female under the age of 18 years who violated a law or ordinance was not an age classification in violation of the equal protection clause of either U.S. Const., Amend. XIV or this section. People v. Newton, 18 Ill. App. 3d 180, 309 N.E.2d 779 (1 Dist. 1974).

Evidence Held Insufficient

Where judge found that both parents were fit and proper persons to have custody of the children, but made a statement that he was modifying prior custody award and awarding custody to the mother because of the age of the two boys, six and three, the court's reasoning was not supported by the law, and violated equal protection provision. King v. Vancil, 34 Ill. App. 3d 831, 341 N.E.2d 65 (5 Dist. 1975).

Exclusively Female Teams

The sponsoring by public schools of volleyball teams exclusively for girls is not per se invalid. Petrie ex rel. Petrie v. Illinois High Sch. Ass'n, 75 Ill. App. 3d 980, 31 Ill. Dec. 653, 394 N.E.2d 855 (4 Dist. 1979).

Public school volleyball teams and tournaments exclusively for girls were constitutionally permissible even when no similar volleyball program is sponsored for boys. Petrie ex rel. Petrie v. Illinois High Sch. Ass'n, 75 Ill. App. 3d 980, 31 Ill. Dec. 653, 394 N.E.2d 855 (4 Dist. 1979).

Illegitimate Children

A sex based classification is created by 755 ILCS 5/2-2 in that it distinguishes between the parents of an illegitimate child based solely on the gender of the parent, and even assuming a compelling state interest in enacting laws that attempt to give effect to the presumed intentions of a deceased intestate, this classification is unconstitutional as the least restrictive means are not employed; the state's interest could be effectively achieved in a gender neutral manner by allowing intestate succession by any parent who has acknowledged and supported his illegitimate child. In re Estate of Hicks, 174 Ill. 2d 433, 221 Ill. Dec. 182, 675 N.E.2d 89 (1996).

The only means by which a child may be legitimized is by marriage of the parents; neither parent has the unilateral power to legitimize a child; that power is mutual and subject to the consent of the other parent. As such, to allow the mothers of illegitimate children to recover for their wrongful

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deaths while denying that right to their fathers would constitute invidious gender-based discrimination which denies the equal protection of the laws. Dotson v. Sears, Roebuck & Co., 157 Ill. App. 3d 1036, 110 Ill. Dec. 177, 510 N.E.2d 1208 (1 Dist. 1987).

Under former Ill. Rev. Stat., ch. 3, para. 12 (see now 755 ILCS 5/2-2), which permitted an illegitimate to inherit from his mother but not from his father, did not violate state constitutional guarantees that equal protection of the laws shall not be denied or abridged on account of sex. Sodermark v. Karas, 61 Ill. 2d 40, 329 N.E.2d 234 (1975).

Juries

- Peremptory Challenges

The trial judge did not err in finding that defendant failed to make a prima facie showing of discrimination in the state's exercise of its peremptory challenges against black males, excluding them from jury; although men are a cognizable gender group under this section, black men are a subgroup of it. People v. Washington, 257 Ill. App. 3d 26, 194 Ill. Dec. 854, 628 N.E.2d 351 (1 Dist. 1993), appeal denied, 161 Ill. 2d 538, 208 Ill. Dec. 368, 649 N.E.2d 424 (1995), cert. denied, 516 U.S. 875, 116 S. Ct. 203, 133 L. Ed. 2d 137 (1995).

Jury Selection

Gender discrimination in the selection of jury not only causes a defendant cognizable injury, but it also harms the excluded jurors, whose gender comprises at least half of all eligible persons in the state, by depriving them of a significant opportunity to participate in public life, casts doubt on the integrity of the judicial process, and places the fairness of the criminal proceeding, indeed, of the criminal justice system itself, in doubt. People v. Lann, 261 Ill. App. 3d 456, 199 Ill. Dec. 142, 633 N.E.2d 938 (1 Dist.), appeal denied, 157 Ill. 2d 513, 205 Ill. Dec. 176, 642 N.E.2d 1293 (1994).

Jury Service

Defendant has the constitutional right to a jury which has been assembled without gender discrimination; competence to serve as a juror should depend on an assessment of individual qualities and his or her capacity to assess the trial evidence, and denial of jury service to a person based solely upon his or her sex is unconstitutionally discriminatory against the excluded juror by arbitrarily excluding him or her from the duty, honor, and privilege of jury service. People v. Mitchell, 228 Ill. App. 3d 917, 171 Ill. Dec. 62, 593 N.E.2d 882 (1 Dist.), cert. granted, 146 Ill. 2d 643, 176 Ill. Dec. 813, 602 N.E.2d 467 (1992), modified on other grounds, 155 Ill. 2d 344, 185 Ill. Dec. 528, 614 N.E.2d 1213 (1993).

Legislative Intent

This section was intended to supplement and expand the guaranties of the equal protection provision of the Bill of Rights. People v. Ellis, 57 Ill. 2d 127, 311 N.E.2d 98 (1974).

Level of Scrutiny

Ill. Const. (1970), Art. I, § 18, was intended to supplement and expand the guaranties of the equal protection provision of the Bill of Rights and thus, a classification based upon sex is a suspect classification that, to be valid, must withstand strict scrutiny. Teverbaugh by Duncan v. Moore, 311 Ill. App. 3d 1, 243 Ill. Dec. 916, 724 N.E.2d 225, 2000 Ill. App. LEXIS 12 (1 Dist. 2000).

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Under this section, gender-based classifications are accorded a higher level of scrutiny then they receive under the fourteenth amendment of the United States Constitution. People v. Lann, 261 Ill. App. 3d 456, 199 Ill. Dec. 142, 633 N.E.2d 938 (1 Dist.), appeal denied, 157 Ill. 2d 513, 205 Ill. Dec. 176, 642 N.E.2d 1293 (1994).

Nuns

Postulants, novices and nuns of religious orders constitute a class quite different from that made up of women who enter the labor market and become gainfully employed, therefore, a state rule of law that treated these classes differently for purposes of alimony modification did not impose an unconstitutional distinction. Lane v. Lane, 35 Ill. App. 3d 276, 340 N.E.2d 705 (1 Dist. 1976).

Parental Rights

Although the petitioner had no superior right because she was the mother of an illegitimate child, neither did the father's custody of the child for a long time prior to the hearing on the writ give him a preemptive right to custody. People ex rel. Elmore v. Elmore, 46 Ill. App. 3d 504, 5 Ill. Dec. 292, 361 N.E.2d 615 (1 Dist. 1977).

Private Right of Action

No private right of action for damages can be sustained under Ill. Const. (1970), Art. I, § 18. Teverbaugh by Duncan v. Moore, 311 Ill. App. 3d 1, 243 Ill. Dec. 916, 724 N.E.2d 225, 2000 Ill. App. LEXIS 12 (1 Dist. 2000).

No private right of action exists for a violation of the section. Teverbaugh by Duncan v. Moore, 311 Ill. App. 3d 1, 243 Ill. Dec. 916, 724 N.E.2d 225, 2000 Ill. App. LEXIS 12 (1 Dist. 2000).

This section does not confer on plaintiff a private right of action for alleged gender discrimination. Faulkner-King v. Wicks, 226 Ill. App. 3d 962, 168 Ill. Dec. 874, 590 N.E.2d 511 (4 Dist.), appeal denied, 146 Ill. 2d 626, 176 Ill. Dec. 796, 602 N.E.2d 450 (1992), cert. denied, 507 U.S. 960, 113 S. Ct. 1384, 122 L. Ed. 2d 760 (1993).

Where plaintiff failed to allege any state action, she had no claim under this section. Sanders v. A.J. Canfield Co., 635 F. Supp. 85 (N.D. Ill. 1986).

Prospective Application

Ill. Const. (1970), Art. I, § 2 and this section were made part of this state's Constitution for the first time under the 1970 Constitution; therefore, any claim for enforcement of rights predicated on either of these two sections is prospective only. People v. Grammer, 62 Ill. 2d 393, 342 N.E.2d 371 (1976).

Purpose

Type of action contemplated under Ill. Const. (1970), Art. I, § 18, was an action solely to challenge the constitutionality of classifications by the State of Illinois. Teverbaugh by Duncan v. Moore, 311 Ill. App. 3d 1, 243 Ill. Dec. 916, 724 N.E.2d 225, 2000 Ill. App. LEXIS 12 (1 Dist. 2000).

Drafters intended Ill. Const. (1970), Art. I, § 18, to expand upon the general guaranty of equal protection conferred in Ill. Const. (1970), Art. I, § 2, by designating a gender suspect

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classification. Teverbaugh by Duncan v. Moore, 311 Ill. App. 3d 1, 243 Ill. Dec. 916, 724 N.E.2d 225, 2000 Ill. App. LEXIS 12 (1 Dist. 2000).

The purpose of Ill. Const. (1970), Art. I, § 18, was to guarantee to females rights equal to those of males by raising the standard of review in actions challenging the imposition of sex classification by the State. Teverbaugh by Duncan v. Moore, 311 Ill. App. 3d 1, 243 Ill. Dec. 916, 724 N.E.2d 225, 2000 Ill. App. LEXIS 12 (1 Dist. 2000).

The purpose of the constitutional provision was to guarantee rights for females equal to those of males. People v. Ellis, 57 Ill. 2d 127, 311 N.E.2d 98 (1974).

Reciprocal Spousal Support

Common-law doctrines which impose a duty of support solely on the husband are inconsistent with the constitutional mandate and the statutory scheme recognizing equal rights and responsibilities, and are no longer valid. McGloon v. Zmigrocki, 191 Ill. App. 3d 968, 139 Ill. Dec. 53, 548 N.E.2d 438 (1 Dist. 1989).

Review of Suspension

Policeman was entitled to an opportunity to a review of his 30 day suspension, and that, in order to uphold the suspension, it was required to be approved by a majority of the police board. Kropel v. Conlisk, 60 Ill. 2d 17, 322 N.E.2d 793 (1975).

Rights and Duties of Spouses

Appellant's contention that she suffered a deprivation of her constitutional rights in having to sign a note with her husband was rejected, as the requirement that appellant sign the note in question arose out of the implications that flew from the marital relationship of the appellant and her husband. King City Fed. Sav. & Loan Ass'n v. Ison, 80 Ill. App. 3d 900, 36 Ill. Dec. 142, 400 N.E.2d 562 (5 Dist. 1980).

In an action by the Department of Mental Health to collect charges that had been assessed for the cost of his wife's treatment in a state hospital, husband was entitled to raise the issue that the statute upon which the Department relied, by exempting a wife from liability for her husband's care but not exempting a husband in similar circumstances, violated Ill. Const. (1970), Art. I, §§ 2 and 18, by creating an improper and unconstitutional classification according to sex for the first time in the trial court independent of any review procedures relating to the administrative determination of liability. Department of Mental Health v. Gardner, 5 Ill. App. 3d 578, 283 N.E.2d 693, 1972 Ill. App. LEXIS 2752 (1 Dist. 1972).

Rights of Married Women

The purpose of this section is not to control or otherwise abridge the rights of married women but, rather, to allow rights denied under the common law and elevate married women to a legal parity with married men. Steffa v. Stanley, 39 Ill. App. 3d 915, 350 N.E.2d 886 (2 Dist. 1976).

Scope of Review

Where the question of the constitutionality of the applicable statute was not raised in the trial court and was being raised for the first time on appeal, the appellate court would not consider the question. People v. Reese, 14 Ill. App. 3d 1049, 303 N.E.2d 814 (1 Dist. 1973).

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Standing

- Not Shown

Guardian of estates of children of female public school teacher did not have standing to sue for damages incurred by allegedly sexually discriminatory acts where the alleged acts of discrimination were aimed at a third party and not at plaintiff's wards. MacDonald v. Chicago Bd. of Educ., 43 Ill. App. 3d 570, 2 Ill. Dec. 437, 357 N.E.2d 604 (1 Dist. 1976).

In an action by the Department of Mental Health to collect charges that had been assessed for the cost of his wife's treatment in a state hospital, husband had no standing to argue that the statute upon which the Department relied, by exempting a wife whose husband had not supported her for five years from liability for her husband's care but not exempting a husband in the same circumstances, violated Ill. Const. (1970), Art. I, §§ 2 and 18, because the husband claimed only to be a husband, not a husband whose wife had failed to support him for five years; accordingly, the husband was not and could not be adversely or unfavorably affected by the classification in the exemption. Department of Mental Health v. Gardner, 5 Ill. App. 3d 578, 283 N.E.2d 693, 1972 Ill. App. LEXIS 2752 (1 Dist. 1972).

LEGAL PERIODICALS

For article, "Using the Illinois Constitution to Protect Reproductive Freedom", see 81 Ill. B.J. 31 (1993).

For article, "The Framers Did Not Incorporate a Right to Abortion", see 81 Ill. B.J. 31 (1993).

For note: "State ERAs: Problems and Possibilities," see U. Ill. L. Rev. 1123 (1989).

For article, "A Survey of Illinois Employment Discrimination Law," see 31 De Paul L. Rev. 323 (1982).

For article, "Equal Protection of the Law Under the Federal and Illinois Constitutions: A Contrast in Unequal Treatment," see 30 De Paul L. Rev. 263 (1981).

For article: "Sex Discrimination Under Article I, § 18 of the Illinois Constitution 1970," see 66 Ill. B.J. 450 (1978).

For article, "The Unrealized Expectation of Article I, Section 17," see 11 J. Marshall J. Prac. & Proc. 283 (1978).

For case note, "The Validity of the Aggravated Incest Statute Under the Illinois Sex Discrimination Clause," see 1977 U. Ill. L.F. 351.

RESEARCH REFERENCES

Sex discrimination in treatment of jail or prison inmates. 12 ALR4th 1219.

Exclusion of one sex from admission to or enjoyment of equal privileges in places of accommodation or entertainment as actionable sex discrimination under state law. 38 ALR4th 339.

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Practice Guides and Treatises.

Employment Discrimination § 3.83 Illinois Human Rights Act, Background (IICLE).

Section 19. No Discrimination Against the Handicapped.

All persons with a physical or mental handicap shall be free from discrimination in the sale or rental of property and shall be free from discrimination unrelated to ability in the hiring and promotion practices of any employer.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Labor § 4:57.

See Illinois Jur, Pers Inj & Torts § 8:2, § 8:10, § 8:36.

CASE NOTES

Analysis

Amputees
- Police and Fire Positions
Handicap
Public Policy
Vision Standard

Amputees

- Police and Fire Positions

Statutes barring applicants for police or fire department positions who have suffered the amputation of a limb for all purposes other than essentially clerical duties have been held to violate constitutional provisions proscribing discrimination against handicapped persons. Melvin v. City of W. Frankfort, 93 Ill. App. 3d 425, 48 Ill. Dec. 858, 417 N.E.2d 260 (5 Dist. 1981).

Handicap

Where trial court denied defendant's motion to dismiss suit brought by plaintiff alleging job discrimination due to his mental handicap in violation of this section, the trial court should have dismissed plaintiff's suit because, pursuant to 735 ILCS 5/2-619(a), the trial court did not have jurisdiction over the subject matter of the lawsuit. Yount v. Hesston Corp., 124 Ill. App. 3d 943, 80 Ill. Dec. 231, 464 N.E.2d 1214 (2 Dist. 1984).

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Uterine cancer is not a handicap within the meaning of the Illinois Constitution or the former Equal Opportunities for the Handicapped Act (see now 775 ILCS 5/1-102). Lyons v. Heritage House Restaurants, Inc., 89 Ill. 2d 163, 59 Ill. Dec. 686, 432 N.E.2d 270 (1982).

Not all physical conditions that may give rise to discriminatory treatment are physical handicaps within the meaning of the law; race, sex, age, although physical conditions, are not handicaps. Lyons v. Heritage House Restaurants, Inc., 89 Ill. 2d 163, 59 Ill. Dec. 686, 432 N.E.2d 270 (1982).

In enacting the former Equal Opportunities for the Handicapped Act (see now 775 ILCS 5/1-102), the General Assembly had in mind a class of physical and mental conditions which are generally believed to impose severe barriers upon the ability of an individual to perform major life functions. Kubik v. CNA Fin. Corp., 96 Ill. App. 3d 715, 52 Ill. Dec. 320, 422 N.E.2d 1 (1 Dist. 1981).

Where a plaintiff had a malignant tumor on his colon which was successfully removed, doctors would not consider him cured until five years had passed without a recurrence, and he alleged that he was physically handicapped in that his physiological condition was limited and was regarded as limiting certain of his major life functions, even construing those allegations liberally in favor of plaintiff, they did not assert a physical handicap under the former Equal Opportunities for the Handicapped Act (see now 775 ILCS 5/1-102). Kubik v. CNA Fin. Corp., 96 Ill. App. 3d 715, 52 Ill. Dec. 320, 422 N.E.2d 1 (1 Dist. 1981).

Where no guidance was provided by this section or by the former Equal Opportunities for the Handicapped Act (see now 775 ILCS 5/1-102), as to the scope of the phrase "physical or mental handicap," an unreasonable classification did not result from a judicial interpretation of that phrase, and it was not contrary to the language of those provisions. Kubik v. CNA Fin. Corp., 96 Ill. App. 3d 715, 52 Ill. Dec. 320, 422 N.E.2d 1 (1 Dist. 1981).

Discharged employee's allegations that he was dismissed for no legitimate business reason after he had developed a bleeding ulcer which did not impair his performance on the job was not a violation of the public policy of the state. Criscione v. Sears, Roebuck & Co., 66 Ill. App. 3d 664, 23 Ill. Dec. 455, 384 N.E.2d 91 (1 Dist. 1978).

Under 775 ILCS 5/1-103(I), the question of whether a person is handicapped turned upon whether the character of the disability was one generally perceived as one which severly limited the individual in performing work-related functions. Advocates for the Handicapped v. Sears, Roebuck & Co., 67 Ill. App. 3d 512, 24 Ill. Dec. 272, 385 N.E.2d 39 (1 Dist. 1978).

Public Policy

District court found that an employee stated a claim alleging that his former employer committed the common law tort of retaliatory discharge when it terminated his employment after he refused to engage in discriminatory conduct against a physically handicapped employee because the actions which the employee was asked to take violated Ill. Const. Art. I, § 19, and discharging him for refusing to take those actions implicated the public policy of Illinois. Souffle v. Dobbs Tire & Auto Ctrs., Inc., F. Supp. 2d , 2005 U.S. Dist. LEXIS 28488 (S.D. Ill. Nov. 15, 2005).

Vision Standard

The application of a vision standard for a police officer does not constitute a per se blanket prohibition violative of public policy, provided the standard used is justifiable. City of Belleville v. Human Rights Comm'n, 167 Ill. App. 3d 834, 118 Ill. Dec. 813, 522 N.E.2d 268 (5 Dist. 1988), appeal denied, 122 Ill. 2d 569, 125 Ill. Dec. 213, 530 N.E.2d 241 (1988).

Where there was no empirical evidence to indicate that 20/30 uncorrected vision was the minimum degree of visual acuity necessary to perform a policeman's job, the application of the

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20/30 uncorrected vision standard violated public policy as expressed in this section. City of Belleville v. Human Rights Comm'n, 167 Ill. App. 3d 834, 118 Ill. Dec. 813, 522 N.E.2d 268 (5 Dist. 1988), appeal denied, 122 Ill. 2d 569, 125 Ill. Dec. 213, 530 N.E.2d 241 (1988).

LEGAL PERIODICALS

For note and comment: "Cancer as a Protected Handicap in Illinois," see 60 Chi.-Kent L. Rev. 715 (1984).

For article, "A Survey of Illinois Employment Discrimination Law," see 31 De Paul L. Rev. 323 (1982).

For note on Constitutional Law and Employment discussing - Melvin v. City of West Frankfort, 93 Ill. App. 3d 425, 417 N.E.2d 260 (1981), see 70 Ill. B.J. 520 (1982).

For article, "Equal Protection of the Law Under the Federal and Illinois Constitutions: A Contrast in Unequal Treatment," see 30 De Paul L. Rev. 263 (1981).

Practice Guides and Treatises.

Employment Discrimination § 4.106 Illinois Constitution (IICLE).

Employment Discrimination § 3.83 Illinois Human Rights Act, Background (IICLE).

Section 20. Individual Dignity.

To promote individual dignity, communications that portray criminality, depravity or lack of virtue in, or that incite violence, hatred, abuse or hostility toward, a person or group of persons by reason of or by reference to religious, racial, ethnic, national or regional affiliation are condemned.

(Source: Illinois Constitution.)

CASE NOTES

Analysis
In General
Group Libel

In General

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Individual Dignity Clause of the Illinois Constitution did not create a cause of action which a not-for-profit corporation could use as a basis for its lawsuit against an entertainment company, and the court dismissed the not-for-profit corporation's action seeking a declaratory judgment that various episodes of a television program the entertainment company aired breached the Individual Dignity Clause because they portrayed Italian-Americans in a negative light. AIDA v. Time Warner Entm't Co., L.P., 332 Ill. App. 3d 154, 265 Ill. Dec. 582, 772 N.E.2d 953, 2002 Ill. App. LEXIS 536 (1 Dist. 2002).

Group Libel

In the face of the history of racial and religious strife in Illinois the court could not deny that the Illinois legislature was within reason in seeking ways to curb false or malicious defamation of racial and religious groups, made in public places and by means calculated to have a powerful emotional impact on those to whom it was presented, and the enactment of former Ill. Rev. Stat., ch. 38, § 47 (1949), a criminal statute punishing group libel (see now this section), was held a valid and constitutional method. Beauharnais v. People, 343 U.S. 250, 72 S. Ct. 725, 96 L. Ed. 919 (1952).

Speech concededly punishable when immediately directed at individuals can be outlawed if directed at groups with whose position and esteem in society the affiliated individual may be inextricably involved. Beauharnais v. People, 343 U.S. 250, 72 S. Ct. 725, 96 L. Ed. 919 (1952).

LEGAL PERIODICALS

For article, "Boundaries and Reasons: Freedom of Expression and the Subordination of Groups," see U. Ill. L. Rev. 95 (1990).

For article, "Blind Justice or Just Blindness?" see 60 Chi.-Kent L. Rev. 209 (1984).

For note and comment, "The Reform of the Innocent Construction Rule in Illinois," see 60 Chi.-Kent L. Rev. 263 (1984).

For note on Torts and Defamation discussing "Colson v. Stieg, 89 Ill. 2d 205, 433 N.E.2d 246 (1982)," see 71 Ill. B.J. 438 (1983).

Section 21. Quartering of Soldiers.

No soldier in time of peace shall be quartered in a house without the consent of the owner; nor in time of war except as provided by law.

(Source: Illinois Constitution.)

Section 22. Right to Arms.

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Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

In General
Federal Law
Framer's Intent
Handguns
Mental Illness
Police Power

In General

Aggravated unlawful use of a weapon statute, which criminalized the possession of a loaded, uncased, and accessible firearm outside the home, did not violate the constitutional right to bear arms and passed the intermediate scrutiny test in a facial challenge to the statute because the statute served an important governmental objective in that its overall purpose was to protect the public and police enforcement officers from the inherent dangers or threats to safety posed by any person carrying in public a loaded and accessible firearm on his person or in his vehicle. Further, the means employed were substantially related to the objective; the statute did not impose a blanket prohibition on carrying firearms outside of the home but was limited to prevent the carrying of loaded, uncased, and accessible firearms in public on the street, and the prohibition was justified by the potential deadly consequences to innocent members of the general public when someone carrying a loaded and accessible gun was mistaken about his need for defense or was just a poor shot. People v. Montyce H., Ill. App. 3d , 355 Ill. Dec. 193, 959 N.E.2d 221, 2011 Ill. App. LEXIS 1184 (1 Dist. 2011).

Right to bear arms under Ill. Const. Art. I, § 22 is not a fundamental right, so the relevant test to be applied in a due process analysis of an ordinance regulating the possession of weapons is the rational basis test and not strict scrutiny. City of Chicago v. Taylor, 332 Ill. App. 3d 583, 266 Ill. Dec. 244, 774 N.E.2d 22, 2002 Ill. App. LEXIS 550 (1 Dist. 2002).

While the state may regulate possession of guns, that possession is a civil right which can only be intruded upon to the extent necessary to further a legitimate governmental interest. United States v. Erwin, 723 F. Supp. 1285 (C.D. Ill. 1989), aff'd, 902 F.2d 510 (7th Cir.), cert. denied, 498 U.S. 859, 111 S. Ct. 161, 112 L. Ed. 2d 127 (1990).

This section does not mirror U.S. Const., Amend 2, but adds the words "[s]ubject only to the police power," omits prefatory language concerning the importance of a militia, and substitutes "the individual citizen" for "the people." These changes were intended to broaden the scope of the right to arms from a collective one to an individual right covering a wider variety of arms. Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483, 83 Ill. Dec. 308, 470 N.E.2d 266 (1984).

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This section bestows upon individual citizens for the first time a right to possess some form of weapon suitable for self-defense or recreation, regardless of the adaptability of the weapon for use in an organized militia or whether it is possessed for the purposes of forming a militia. Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483, 83 Ill. Dec. 308, 470 N.E.2d 266 (1984).

Federal Law

The right to possess weapons is not a federal civil right. United States v. Erwin, 723 F. Supp. 1285 (C.D. Ill. 1989), aff'd, 902 F.2d 510 (7th Cir.), cert. denied, 498 U.S. 859, 111 S. Ct. 161, 112 L. Ed. 2d 127 (1990).

Framer's Intent

The category of arms protected by this section is not limited to military weapons; the framers also intended to include those arms that law-abiding persons commonly employed for "recreation or the protection of person and property." Quilici v. Village of Morton Grove, 695 F.2d 261 (7th Cir. 1982), cert. denied, 464 U.S. 863, 104 S. Ct. 194, 78 L. Ed. 2d 170 (1983).

Handguns

720 ILCS 5/24-1.6(a)(1), (a)(2), (a)(3)(A) does not violate either U.S. Const. amend. II, or the Illinois Constitution. People v. Williams, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1318 (1 Dist. Dec. 30, 2011).

Because the State could constitutionally ban the possession of loaded handguns by adults outside their homes under 720 ILCS 5/24-1.6(a)(3)(I), defendant failed to present any reason supporting a different result for those under the age of 21. People v. Williams, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1264 (1 Dist. Dec. 15, 2011).

Because 720 ILCS 5/24-1.6(a)(1), (a)(3)(A) of the aggravated unlawful use of a weapon (AUUW) statute applied to defendant as he was in a public place with a handgun, he could not argue for relief based on the possibility that the AUUW might be unconstitutional under Ill. Const. art. I, § 22 as applied to a felon in possession of a handgun in his own home. People v. Williams, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1264 (1 Dist. Dec. 15, 2011).

Defendant's remaining conviction for carrying an uncased, loaded, and accessible handgun on a public city street had to be affirmed because the relevant provisions of Illinois' aggravated unlawful use of a weapon (AUUW) did not violate the constitutional protection of the right to bear arms either under the Second Amendment, U.S. Const. amend. II, or Ill. Const. art. I, § 22. The fit between the challenged provisions of the AUUW statute and the statute's substantial and important goal of protecting the general public and police officers was absolutely reasonable. People v. Mimes, Ill. App. 3d , 352 Ill. Dec. 119, 953 N.E.2d 55, 2011 Ill. App. LEXIS 644 (1 Dist. 2011).

720 ILCS 5/24-1.6 (2008), aggravated unlawful use of a weapon (AUUW), did not violate defendant's second amendment rights because it was substantially related to the important governmental objective of keeping police officers and the general public safe and the fit between the AUUW statute and the government objective was reasonable. People v. Aguilar, 408 Ill. App. 3d 136, 348 Ill. Dec. 575, 944 N.E.2d 816, 2011 Ill. App. LEXIS 103 (1 Dist. 2011).

Chicago municipal ordinance, which allowed for registration of handguns only if those handguns were validly registered prior to effective date of handgun ban, did not violate Ill. Const. Art. I, § 22, because the ordinance was rationally related to legitimate governmental interests in solving crimes. Hunt v. Daley, 286 Ill. App. 3d 766, 222 Ill. Dec. 253, 677 N.E.2d 456, 1997 Ill. App. LEXIS 66 (1 Dist. 1997).

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A ban on all firearms that an individual citizen might use would not be permissible, but a reasonable prohibition of handguns is constitutional in this state. Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483, 83 Ill. Dec. 308, 470 N.E.2d 266 (1984).

A city ordinance providing that no person could possess a handgun unless it had been rendered inoperative was a permissible exercise of the police power pursuant to this section. Kalodimos v. Village of Morton Grove, 113 Ill. App. 3d 488, 69 Ill. Dec. 414, 447 N.E.2d 849 (1 Dist. 1983).

This section's plain language grants only the right to keep and bear arms, not handguns. Quilici v. Village of Morton Grove, 695 F.2d 261 (7th Cir. 1982), cert. denied, 464 U.S. 863, 104 S. Ct. 194, 78 L. Ed. 2d 170 (1983).

Mental Illness

Legislation mandating the denial of a Firearm Owner's Identification card to any person who, within five years of his application, has been a patient in mental institution has a reasonable basis and is constitutional. Rawlings v. Department of Law Enforcement, 73 Ill. App. 3d 267, 29 Ill. Dec. 333, 391 N.E.2d 758 (3 Dist. 1979).

Police Power

County residents were not entitled to declaratory and injunctive relief on their claim that a county ordinance banning assault weapons was unconstitutional. Although Ill. Const. art. I, § 22 gave the right to bear arms, that constitutional provision made that right subject to the "police power" and the evidence showed that the ordinance was properly enacted in response to the harm that a discrete and distinct class of weapons inflicted in violent crimes. Wilson v. Cook County, 394 Ill. App. 3d 534, 333 Ill. Dec. 176, 914 N.E.2d 595, 2009 Ill. App. LEXIS 786 (1 Dist. 2009).

Chicago, Ill., Municipal Code § 8-20-040, requiring firearm registration, and Chicago, Ill., Municipal Code § 8-20-220, requiring the destruction of unregistered firearms, do not violate Ill. Const. Art. I, § 22 because they allow individuals to bear firearms which may be registered and which have been properly registered. City of Chicago v. Taylor, 332 Ill. App. 3d 583, 266 Ill. Dec. 244, 774 N.E.2d 22, 2002 Ill. App. LEXIS 550 (1 Dist. 2002).

The words "police power" are broad enough to include regulation of firearms and a prohibition of any class of arms. Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483, 83 Ill. Dec. 308, 470 N.E.2d 266 (1984).

While this section grants to the individual the right to keep and bear arms, infringement is expressly allowed in the exercise of the police power. Rawlings v. Department of Law Enforcement, 73 Ill. App. 3d 267, 29 Ill. Dec. 333, 391 N.E.2d 758 (3 Dist. 1979).

LEGAL PERIODICALS

For note on constitutional law and the right to bear arms in light of Quilici v. Village of Morton Grove (695 F.2d 261 (7th Cir. 1982), cert. denied, 52 U.S.L.W. 3266 (U.S. Oct. 4, 1983) (No. 82-1822)), see 72 Ill. B.J. 426 (1984).

RESEARCH REFERENCES

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Validity of state statutes restricting right of aliens to bear arms. 28 ALR4th 1096.

Validity of state gun control legislation under state constitutional provisions securing the right to bear arms. 86 ALR4th 931.

Section 23. Fundamental Principles.

A frequent recurrence to the fundamental principles of civil government is necessary to preserve the blessings of liberty. These blessings cannot endure unless the people recognize their corresponding individual obligations and responsibilities.

(Source: Illinois Constitution.)

Section 24. Rights Retained.

The enumeration in this Constitution of certain rights shall not be construed to deny or disparage others retained by the individual citizens of the State.

(Source: Illinois Constitution.)

CASE NOTES

Analysis
Family Rights
Unconstitutional Act

Family Rights

Parents possess a fundamental constitutional right in the care, custody and control of their children; thus, a father has the right to say "no" to a mother if she wishes to remove a child from his care. People v. Arthur H. (In re Arthur H.), 212 Ill. 2d 441, 289 Ill. Dec. 238, 819 N.E.2d 734, 2004 Ill. LEXIS 1620 (2004).

Unconstitutional Act

An unconstitutional act is not a law because it confers no rights, imposes no duties, affords no protection; and creates no office; it is, in legal contemplation, as inoperative as though it had never been passed. Chicago, Wilmington & Vermillion Coal Co. v. People, 214 Ill. 421, 73 N.E. 770 (1905).

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ARTICLE II
THE POWERS OF THE STATE

Section 1. Separation of Powers.

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Labor § 11:11.

CASE NOTES

Analysis

In General
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County Superintendent of Schools
Court Clerks
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Due Diligence
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- Infringement Not Shown
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Listing Contracts
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- Service in General Assembly
Mandatory Fines
Mandatory Retirement Provision
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Medical Malpractice Claims Procedure
Mental Health Code
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Motor Carrier Law
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Review of Administrative Jurisdiction
Review of Property Tax Assessments

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Supreme Court Rules
Termination of Parental Rights
Torrens Act
Tort Immunity Act
Unified Code of Corrections
Veteran's Bonus Act
Voir Dire
Waiver
Workers' Compensation
1870 Constitution

In General

The legislature, which is vested with the power to enact laws, may also enact legislation which governs judicial practices, as long as it does not unduly infringe upon the powers of the court. People v. P.H., 145 Ill. 2d 209, 164 Ill. Dec. 137, 582 N.E.2d 700 (1991).

In cases where it is determined that a statute is repugnant to the Illinois Constitution, the Supreme Court has a duty to declare the law void, in order to protect the rights which that document guarantees. People v. Gersch, 135 Ill. 2d 384, 142 Ill. Dec. 767, 553 N.E.2d 281 (1990).

The legislature is vested with the power to enact laws, but may not enact laws that unduly infringe upon the inherent powers of the judiciary. People v. Bainter, 126 Ill. 2d 292, 127 Ill. Dec. 938, 533 N.E.2d 1066 (1989).

Where a legislative enactment establishes a public policy preference not involving judicial administration, the Illinois Supreme Court has sought to reconcile any conflicts between its rules and the statute. People v. Felella, 131 Ill. 2d 525, 137 Ill. Dec. 547, 546 N.E.2d 492 (1989).

Although this provision does not contemplate a rigid separation of the branches, if the power is judicial in character, the legislature is expressly prohibited from exercising it. People v. Young, 170 Ill. App. 3d 969, 120 Ill. Dec. 800, 524 N.E.2d 982 (1 Dist.), appeal denied, 122 Ill. 2d 592, 125 Ill. Dec. 234, 530 N.E.2d 262 (1988).

The legislative, executive and judicial branches are separate, no branch shall exercise powers properly belonging to the other; this section does not contemplate rigidly separated

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compartments, however, if a power is judicial in character, the legislature is expressly prohibited from exercising it. People v. Winfield, 160 Ill. App. 3d 983, 112 Ill. Dec. 423, 513 N.E.2d 1032 (1 Dist.), appeal denied, 117 Ill. 2d 552, 115 Ill. Dec. 517 N.E.2d 1094 (1987).

The three branches are part of a single operating government; hence, the separation of powers clause has never been interpreted to require a complete divorce between them; the clause does not contemplate the division of powers into rigidly separated compartments, but rather, the doctrine seeks to ensure that the whole power of two or more of the branches of government shall not be lodged in the same hands. People v. O'Donnell, 116 Ill. 2d 517, 108 Ill. Dec. 489, 508 N.E.2d 1066 (1987).

The separation of powers doctrine, with respect to the relationship between the executive and judicial branches of government, is violated when the challenged provision would confer powers to one branch of government which properly should be exercised by another branch. People v. Inghram, 118 Ill. 2d 140, 113 Ill. Dec. 65, 514 N.E.2d 977 (1987).

It is generally recognized that the separation of powers clause does not forbid every exercise of functions by one branch of government that is conventionally exercised by another, nor does it require rigidly separated compartments. People v. Inghram, 118 Ill. 2d 140, 113 Ill. Dec. 65, 514 N.E.2d 977 (1987).

The doctrine of separation of powers prevents the whole power of two or more branches of government from being lodged in a single branch. People v. Brumfield, 51 Ill. App. 3d 637, 9 Ill. Dec. 619, 366 N.E.2d 1130 (3 Dist. 1977).

The power of the court to make rules governing practice, pleading and procedure is one which is inherent in the court rather than one which rests in legislative grant. People v. Brumfield, 51 Ill. App. 3d 637, 9 Ill. Dec. 619, 366 N.E.2d 1130 (3 Dist. 1977).

It is the undisputed duty of the court to protect its judicial powers from encroachment by legislative enactments, and thus preserve an independent judicial department. People v. Brumfield, 51 Ill. App. 3d 637, 9 Ill. Dec. 619, 366 N.E.2d 1130 (3 Dist. 1977).

The separation of powers doctrine was not designed to achieve a complete divorce between the three departments of a single operating government. City of Waukegan v. Pollution Control Bd., 57 Ill. 2d 170, 311 N.E.2d 146 (1974).

Separation of powers, is a method to prevent the accumulation of power in the hands of one branch of government, this principle does not prevent the legislature form delegating to an administrative agency the power to do those things which it might properly but not understandingly or advantageously do, itself. Meadowlark Farms, Inc. v. Pollution Control Bd., 17 Ill. App. 3d 851, 308 N.E.2d 829 (5 Dist. 1974).

The doctrine of separation of powers does not inexorably preclude one of the three departments of government from exercising powers which could also be given to another department. Board of Educ. v. Nickell, 410 Ill. 98, 101 N.E.2d 438 (1951).

In dividing the powers of government in this State into three separate and distinct departments, Article II is declaratory of one of the basic principles of constitutional law, both Federal and State, that each of the three departments is to perform the duties assigned to it and that no department may exercise the powers properly belonging to either of the other two. People ex rel. Bernat v. Bicek, 405 Ill. 510, 91 N.E.2d 588 (1950).

The powers of government, both national and state, are divided into three departments - legislative, executive and judicial; none of these departments is subordinate to, or can assume overlordship of either of the others. People ex rel. Woll v. Graber, 394 Ill. 362, 68 N.E.2d 750 (1946).

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Where an ordinance is within the grant of power conferred by the legislature, the presumption is in favor of the validity of the ordinance, and the burden is always on the party attacking its legality to show such invalidity, and the courts are without power to inquire into the wisdom of an ordinance or the motives that prompted its enactment, with the possible exception that municipal ordinances may be impeached for fraud by persons injuriously affected thereby. Stearns v. City of Chicago, 368 Ill. 112, 13 N.E.2d 63 (1937).

By article 3 of the Illinois constitution of 1870 (see now this section), the powers of the government of this state are divided into three distinct departments - the legislative, executive, and judicial - and no person or collection of persons, being one of these departments, may exercise any power properly belonging to either of the others, except as expressly directed or permitted by the Constitution. Fergus v. Marks, 321 Ill. 510, 152 N.E. 557 (1926).

By article 3 of the Illinois Constitution of 1870 (see now this section), the three branches of government are equal, each acting within its own sphere, independent of each of the others, so long as its action does not exceed the powers confided to it, unless particular exceptions are made to this general rule by the Constitution itself. MacGregor v. Miller, 324 Ill. 113, 154 N.E. 707 (1926).

Administrative Agency

State Commerce Commission's action in permitting an out-of-state attorney to practice pro hac vice before the state commerce commission violated neither the separation of powers clause of the Illinois Constitution, Ill. Const. Art. II, § 1, nor encroached on the power of the judiciary under Ill. Const. Art. VI. The separation of powers doctrine did not forbid every exercise of functions by one branch of government that conventionally is exercised by another branch and the State Commerce Commission's exercise of quasi-judicial power was incidental to the duty of administering the law in a practical and effective manner. Alhambra-Grantfork Tel. Co. v. Ill. Commerce Comm'n, 358 Ill. App. 3d 818, 295 Ill. Dec. 419, 832 N.E.2d 869, 2005 Ill. App. LEXIS 605 (5 Dist. 2005), appeal denied, 217 Ill. 2d 557, 300 Ill. Dec. 363, 844 N.E.2d 35 (2005).

Illinois Motor Vehicle Review Board could apply pre-existing commercially reasonable good cause standards in evaluating the propriety of a manufacturer's termination of a dealership agreement, even though certain standards articulated at 815 ILCS 710/12(d) did not apply retroactively; separation of powers principles and constitutional vagueness principles did not preclude the agency from determining what constituted good cause. Ford Motor Co. v. Motor Vehicle Review Bd., 338 Ill. App. 3d 880, 272 Ill. Dec. 883, 788 N.E.2d 187, 2003 Ill. App. LEXIS 354 (1 Dist. 2003).

Legislative amendment to the Illinois Consumer Installment Loan Act regarding short-term lenders and the rules promulgated thereunder by the Illinois Department of Financial Institutions were valid as the amendment did not violate the separation of powers doctrine. South 51 Dev. Corp. v. Vega, 335 Ill. App. 3d 542, 269 Ill. Dec. 731, 781 N.E.2d 528, 2002 Ill. App. LEXIS 1103 (1 Dist. 2002), appeal dismissed sub nom. S. 51 Dev. Corp. v. Vega, 211 Ill. 2d 189 (2004).

The doctrine of separation of powers does not preclude an administrative adjudication of facts sufficient to apply legislative rules for the revocation of licenses. Haswell v. Powell, 38 Ill. 2d 161, 230 N.E.2d 178 (1967).

Where the interpretation of a statute was essential to the performance of the administrative agency's duty, the administrative agency could make the necessary interpretation, and such action did not constitute an exercise of a judicial function in violation of former Article III of the 1870 Constitution (see now this section). Telcser v. Holzman, 31 Ill. 2d 332, 201 N.E.2d 370 (1964).

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Article III of the 1870 Constitution (see now this section) was not interpreted so rigidly as to preclude the possibility of administrative adjudication. Cermak Club, Inc. v. Illinois Liquor Control Comm'n, 30 Ill. 2d 90, 195 N.E.2d 178 (1963).

Administrative Suspension of Driver's License

The operation of a motor vehicle is subject to such reasonable regulation as the legislature may prescribe, and the application of such regulation is an administrative matter, civil in nature; the action of the Secretary in suspending plaintiff's license after three moving violations (625 ILCS 5/6-206) was not an exercise of judicial power and not violative of article III of the 1870 Constitution of Illinois (see now this section). Haswell v. Powell, 38 Ill. 2d 161, 230 N.E.2d 178 (1967).

Agent of Court

The ordering of the State's Attorney to file a petition in respect of a minor is not an impermissible exercise by the judicial branch of powers belonging exclusively to the executive branch. In re J.M., 245 Ill. App. 3d 909, 184 Ill. Dec. 754, 613 N.E.2d 1346 (2 Dist.), appeal denied, 152 Ill. 2d 560, 190 Ill. Dec. 890, 622 N.E.2d 1207 (1993).

A trial court has the power to order the State's Attorney to prosecute a petition under the Juvenile Court Act. In re J.M., 245 Ill. App. 3d 909, 184 Ill. Dec. 754, 613 N.E.2d 1346 (2 Dist.), appeal denied, 152 Ill. 2d 560, 190 Ill. Dec. 890, 622 N.E.2d 1207 (1993).

A person filing a petition alleging a minor to be delinquent, dependent, neglected or a minor in need of supervision is merely an agent of the court, and the court does not exceed its constitutional powers merely by directing the filing of a petition concerning a minor through the office of a State's Attorney. Sullivan v. Sullivan, 110 Ill. App. 3d 714, 66 Ill. Dec. 435, 442 N.E.2d 1348 (5 Dist. 1982).

Appeal

55 ILCS 5/5-12012.1, providing for de novo review of certain zoning decisions, did not violate separation of powers, under Ill. Const. Art. II, § 1, because, while the statute nominally provided for de novo review, the statute was interpreted to allow only review for arbitrariness as a matter of substantive due process, which deferred to agency decision making, since a court intervened only when there was no rational basis for a contested decision, and any new evidence presented had to bear on review for arbitrariness as a matter of substantive due process. Millineum Maint. Mgmt. v. County of Lake, 384 Ill. App. 3d 638, 323 Ill. Dec. 819, 894 N.E.2d 845, 2008 Ill. App. LEXIS 830 (1 Dist. 2008).

55 ILCS 5/5-12012.1, providing for de novo review of certain zoning decisions, did not violate separation of powers, under Ill. Const. Art. II, § 1, because the statute granted courts neither too little nor too much power, as the legislature's removal of certain zoning decision from the purview of the Administrative Review Law, 735 ILCS 5/3-101 et seq., pursuant to the statute, was not beyond the legislature's authority, and, while the statute nominally provided for de novo review, the statute was interpreted to allow only review for arbitrariness as a matter of substantive due process, which deferred to agency decision making, since a court intervened only when there was no rational basis for a contested decision, and any new evidence presented had to bear on review for arbitrariness as a matter of substantive due process. Millineum Maint. Mgmt. v. County of Lake, 384 Ill. App. 3d 638, 323 Ill. Dec. 819, 894 N.E.2d 845, 2008 Ill. App. LEXIS 830 (1 Dist. 2008).

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Appeal From Administrative Order

The doctrine of separation of powers as delineated under the State Constitution gives guidance in determining which procedure controls the perfection of a direct appeal to the appellate court from an administrative order. Consumers Gas Co. v. Illinois Commerce Comm'n, 144 Ill. App. 3d 229, 98 Ill. Dec. 127, 493 N.E.2d 1148 (5 Dist. 1986).

Provision of the Illinois Public Aid Code, 305 ILCS 5/3-1 et seq., (formerly Illinois Old Age Assistance Act) providing aid to the aged, blind, or disabled, that also provided for de novo review by a circuit court was unconstitutional under Ill. Const. (1970), Art. II, § 1, (formerly Ill. Const. of 1870, art. III) because it delegated executive power to a branch of the judicial department. Borreson v. Department of Public Welfare, 368 Ill. 425, 14 N.E.2d 485, 1938 Ill. LEXIS 679 (1938).

Appointment of Corporate Receiver

The portion of former section 38 of the Building and Loan Association Act (see now 805 ILCS 5/1.01.) which authorized the auditor (now Commissioner) to appoint a receiver where the business of an association was being conducted in a "fraudulent, illegal, discriminatory or unsafe" manner did not constitute an illegal delegation of legislative power to the auditor. People ex rel. Barnett v. Logan County Bldg. & Loan Ass'n, 369 Ill. 518, 17 N.E.2d 4 (1938).

No constitutional provision was contravened by a former statute which empowered an executive officer to appoint a receiver to liquidate an insolvent insurance company (see now 215 ILCS 5/187), under judicial supervision. People ex rel. Palmer v. Niehaus, 356 Ill. 104, 190 N.E. 349 (1934).

Appointment of Municipal Officers

The method of appointment of other than constitutional officers is solely within the discretion of the State legislature; thus, defendants who claimed that former ch. 24, para. 9-84 was an unconstitutional violation of separation of powers raised no debatable constitutional issue, and the Supreme Court was without jurisdiction on direct appeal from the circuit court. Betts v. Village of Calumet Park, 20 Ill. 2d 524, 170 N.E.2d 563 (1960).

Attorney General

The Attorney General of the state, in addition to those powers and duties conferred by statute, enjoys all the inherent powers and duties of the Attorney General under the common law and, thus, for any judge or court to assert or to deny the powers of the Attorney General would constitute an unconstitutional encroachment of the judiciary upon the executive department. People ex rel. Elliott v. Covelli, 415 Ill. 79, 112 N.E.2d 156 (1953).

Baby Richard Amendment

Court found on June 16, 1994, that natural father had been improperly denied a most fundamental right, the right to the care, custody and control of his son and because the court subsequently denied rehearing to vacate the adoption, the date of the final adjudication of father's resulting right to custody of child remained June 16, 1994; therefore amendment to the Adoption Act, effective July 3, 1994, could not be constitutionally applied retroactively. In re Kirchner, 164 Ill. 2d 468, 208 Ill. Dec. 268, 649 N.E.2d 324 (1995), cert. denied, 515 U.S. 1152, 115 S. Ct. 2599, 132 L. Ed. 2d 846 (1995); overruled in part on other grounds by Timmons ex rel. R.L.S. v.

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L.S. (In re R.L.S.), 218 Ill. 2d 428, 844 N.E.2d 22, 2006 Ill. LEXIS 312, 300 Ill. Dec. 350 (2006).

Bar Association Disciplinary Fees

Inherent judicial power includes the authority to compel the collection of bar association admission and disciplinary fees provided for in Illinois Supreme Court rules. Chicago Bar Ass'n v. Cronson, 183 Ill. App. 3d 710, 132 Ill. Dec. 17, 539 N.E.2d 327 (1 Dist.), appeal denied, 136 Ill. Dec. 582, 545 N.E.2d 106 (1989), cert. denied, 493 U.S. 1057, 110 S. Ct. 867, 107 L. Ed. 2d 950 (1990).

Blighted Areas Act

The 1955 amendments to the Blighted Areas Redevelopment Act of 1947 (315 ILCS 5/1 et seq.), which authorized expending public funds in making surveys and developing plans for open lands described as "blighted" which were to be developed for industrial use, or for other than residential use, were not unconstitutional under the 1870 Constitution despite allegations that the amendments allowed for taking of private property for other than a public use, constituted an unlawful delegation of legislative power, and were vague, indefinite and uncertain in their terms. People ex rel. Adamowski v. Chicago Land Clearance Comm'n, 14 Ill. 2d 74, 150 N.E.2d 792 (1958).

Blood Collection

Whole blood conversion factor in Ill. Admin. Code tit. 20, § 1286.40 did not violate the separation of powers clause of the Illinois Constitution (Ill. Const. art. II, § 1) and the confrontation clauses of the Illinois (Ill. Const. art, I, § 8) and United States Constitutions. Just as the term "shall" may be construed as permissive rather than mandatory, the court construed the phrase "will be" in § 1286 as permissive rather than mandatory, thereby rendering the regulation constitutional; thus, while a trial court may take judicial notice of § 1286.40, the application of the 1.18 conversion factor was not a mandatory presumption, but rather a permissive presumption that the trial court did not have to accept. People v. Olsen, 388 Ill. App. 3d 704, 328 Ill. Dec. 118, 903 N.E.2d 778, 2009 Ill. App. LEXIS 45 (2 Dist. 2009).

Subsection (i) of 730 ILCS 5/5-4-3 conscripts the Illinois courts into the service of an essentially administrative program for the collection and analysis of blood samples for inclusion in the state's data bank, an administrative scheme belonging to the executive branch; the vesting of an executive function in the judiciary is prohibited by the separation of powers clause. Murneigh v. Gainer, 177 Ill. 2d 287, 226 Ill. Dec. 614, 685 N.E.2d 1357 (1997).

Subsection (i) of 730 ILCS 5/5-4-3 violates the separation of power principles because it compels the judiciary to enter orders that are administrative in nature and then to punish violations of such orders with contempt of court; the mandatory nature of the provisions vitiates the courts' inherent discretion in matters concerning the exercise of the contempt power. Murneigh v. Gainer, 177 Ill. 2d 287, 226 Ill. Dec. 614, 685 N.E.2d 1357 (1997).

Board of Physicians

Provision of the former Medical Practice Act which allowed a committee of physicians to determine that a physician was not of good moral character was an unwarranted delegation of legislative power and, thus, unconstitutional under former Article III of the 1870 Constitution (see now this section). Schireson v. Walsh, 354 Ill. 40, 187 N.E. 921 (1933).

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Breach of Promise to Marry

The Act of 1947 relating to actions for breach of promise or agreement to marry (see now 740 ILCS 15/0.01), which restricted recovery to actual damages, which term included both general and special damages and encompassed compensatory damages because they are synonymous, did not invade any judicial functions of the courts, and in barring punitive damages merely established a "public policy" that in the interest of society in the particular class of cases such damages should not be awarded; such damages being allowed in the interest of society, and not to recompense solely the individual, to deny them could not be said to deny any constitutional right or to encroach upon any judicial function, or to violate any constitutional guaranty of separation of powers. Smith v. Hill, 12 Ill. 2d 588, 147 N.E.2d 321 (1958).

Cemetery Care Act

The powers granted to the State Auditor under sections 15 and 16 of the Cemetery Act (760 ILCS 100/15 and 760 ILCS 100/16) were not unlimited, uncertain, arbitrary nor oppressive and did not constitute an invalid delegation of legislative authority in violation of former article III and former section 1 of article IV of the 1870 Constitution (see now Ill. Const. (1970), Art. II, § 1 and Ill. Const. (1970), Art. IV, § 1); these sections of the Cemetery Care Act also did not violate the due process clauses of both the State and the United States Constitutions. Union Cem. Ass'n v. Cooper, 414 Ill. 23, 110 N.E.2d 239 (1953).

Child Support

The amendment to section 505 of the Marriage and Dissolution of Marriage Act (750 ILCS 5/505), which established certain support guidelines was constitutional. In re Cook, 147 Ill. App. 3d 134, 100 Ill. Dec. 760, 497 N.E.2d 1029 (3 Dist. 1986).

750 ILCS 5/505(a), which grants a certain adjudicatory powers to a court in matters of child support incident to a divorce, does not violate the separation of powers requirement of the Illinois Constitution. Blaisdell v. Blaisdell, 142 Ill. App. 3d 1034, 97 Ill. Dec. 186, 492 N.E.2d 622 (1 Dist. 1986).

City Counsel Rate Making Authority

Former statute which authorized city councils to fix by ordinance maximum water rates, and, also provided "and in case the corporate authorities of any such city, town or village shall fix unjust and unreasonable charges, the same may be reviewed and determined by the circuit court of the county in which such city, town or village may be in view of this article of the state Constitution relative to "distribution of powers," was unconstitutional as conferring legislative powers upon courts. City of Kankakee v. American Water Supply Co., 199 F. 757 (7th Cir. 1912).

Clemency

In determining the intent of a governor in issuing a clemency order, a court may consider not only the language of the order but also the reason and necessity of the order, the evils sought to be remedied, and the purpose to be achieved, and the court's consideration of those factors does not constitute a violation of separation of powers principles. Thus, a trial court properly interpreted a clemency order by relying in part on a speech given by a former Illinois governor in which he announced that he was commuting the sentences of all death row inmates; the speech clearly set forth the reasons for the blanket clemency orders, the evils sought to be remedied by the orders,

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and the purpose the clemency orders were meant to achieve. People v. Morris, 219 Ill. 2d 373, 302 Ill. Dec. 436, 848 N.E.2d 1000, 2006 Ill. LEXIS 610 (2006).

Governor's clemency orders did not violate the separation of powers principal where he was, following an adjudication of guilty, permitted to grant a defendant a complete pardon, and he did not exercise any powers reserved to the judiciary. People ex rel. Madigan v. Snyder, 208 Ill. 2d 457, 281 Ill. Dec. 581, 804 N.E.2d 546, 2004 Ill. LEXIS 6 (2004).

Collective Bargaining

The fact that a county who paid the salaries of nonjudicial employees in the judicial branch was not considered an employer for collective bargaining purposes comported with the State Constitution's separation of powers and unified court system provisions. Orenic v. Illinois State Labor Relations Bd., 127 Ill. 2d 453, 130 Ill. Dec. 455, 537 N.E.2d 784 (1989).

Constitutional Officers

A certificate of the Civil Service Commission was necessary in order for the State Auditor to issue warrants for the salary of three civil service employees despite their contention that the Civil Service Act (see now 110 ILCS 70/0.01), as applied to officers whose offices were created by the Constitution was null and void because it violated this section. People ex rel. Gullett v. McCullough, 254 Ill. 9, 98 N.E. 156 (1912).

Cost of Treatment Services

As it is clear that the legislature contemplated interplay between the Department of Children and Family Services (DCFS) and the juvenile court in deciding the appropriate social services for neglected and abused children and their families, the juvenile court orders directing DCFS to pay for drug treatment services to parents of minors did not violate the doctrine of the separation of powers. In re Lawrence M., 172 Ill. 2d 523, 219 Ill. Dec. 32, 670 N.E.2d 710 (1996).

County Clerk Filing Levy Ordinance

30 ILCS 350/16 does not authorize encroachment by the county clerk into legislative processes, because the act of filing the levy ordinance does not affect substantively a governmental unit's authority in levying, and a county clerk's decision to accept the filing of the levy ordinance, tantamount to accepting jurisdiction to extend tax, could not intrude the clerk into the legislative process of levying the tax; therefore, there is no constitutional infirmity on this basis. In re Delinquent Properties for Tax Year 1989, 167 Ill. 2d 161, 212 Ill. Dec. 215, 656 N.E.2d 1049 (1995).

County Superintendent of Schools

The division of the powers of the state government into three distinct departments by the Constitution was not violated by former section of the School Law which delegated to the county superintendent of schools, an administrative officer, the power, to determine when it is more convenient for a pupil to attend one high school than another, without placing any limitations upon or prescribing any rules for the exercise of that power. Proviso Tp. High Sch. v. Oak Park & River Forest Tp. High Sch., 322 Ill. 217, 153 N.E. 369 (1926).

Court Clerks

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Placing a circuit court clerk's contracts for computer-related purchases under the control of the county does not contravene the separation of powers provision since the right to impose and expend court document storage fees does not derive from the inherent power of the court. Pucinski v. County of Cook, 192 Ill. 2d 540, 249 Ill. Dec. 835, 737 N.E.2d 225, 2000 Ill. LEXIS 992 (2000).

Court of Claims Act

Court of Claims Act does not violate the separation of powers provision, Ill. Const. (1970), Art. II, § 1 as the Court of Claims is not a judicial court within the meaning of Ill. Const. (1970), Art. VI. Seifert v. Standard Paving Co., 64 Ill. 2d 109, 355 N.E.2d 537, 1976 Ill. LEXIS 352 (1976).

Criminal Penalties

The proportionate penalties clause may act as a restriction on the power of the legislature to establish criminal penalties. People v. Lewis, 175 Ill. 2d 412, 222 Ill. Dec. 296, 677 N.E.2d 830 (1996), But see by People v. Sharpe, 216 Ill. 2d 481, 298 Ill. Dec. 169, 839 N.E.2d 492 (2005).

The legislature has constitutional power to specify to the judiciary, within proper bounds, the range of penalties for a given criminal offense. People v. Muskgrove, 44 Ill. App. 3d 381, 3 Ill. Dec. 169, 358 N.E.2d 336 (3 Dist. 1976).

- Death Sentencing

At most the role of the State's Attorney under the precursor to 720 ILCS 5/9-1 could be characterized as requiring his consent before the court may proceed with the procedure for death sentencing, the State's Attorney is not exercising part of the sentencing process, so there is no violation of the separation of powers provision. People ex rel. Carey v. Cousins, 77 Ill. 2d 531, 34 Ill. Dec. 137, 397 N.E.2d 809 (1979).

- Habitual Criminal Act

Individually, the state's power to petition the court for a transfer and the state's power to petition the court for a particular sentence do not violate the separation of powers clause of the Illinois Constitution. People v. Bryant, 278 Ill. App. 3d 578, 215 Ill. Dec. 355, 663 N.E.2d 105 (1 Dist. 1996).

The Habitual Criminal Act (720 ILCS 5/33B-1) does not violate the separation of powers provision by effectively taking the sentencing function away from the judiciary and delegating it to the prosecutor; the State's Attorney has always enjoyed wide discretion including the right to decide whether to initiate any prosecution at all, to choose which of several charges shall be brought, to decide whether to charge a juvenile as an adult, and to manage the criminal litigation. It is not constitutionally objectionable that the legislature may have accorded discretion to the State's Attorney to choose whether or not to seek a hearing under this Act. People v. Dunigan, 165 Ill. 2d 235, 209 Ill. Dec. 53, 650 N.E.2d 1026 (1995).

The Habitual Criminal Act (see now 720 ILCS 5/33B-1 et seq.) does not place sentencing authority in the State's Attorney and, therefore, does not violate the separation of powers clause of this section, the due process and equal protection clauses U.S. Const., Amend. XIV, or the U.S. Const., Amend. VIII. People v. Westefer, 169 Ill. App. 3d 59, 119 Ill. Dec. 522, 522 N.E.2d 1381 (2 Dist.), appeal denied, 122 Ill. 2d 591, 125 Ill. Dec. 233, 530 N.E.2d 261 (1988).

The Habitual Criminal Act (see now 720 ILCS 5/33B-1 et seq.), does not unconstitutionally preempt the judicial function of sentencing by mandatorily requiring the circuit court to sentence a defendant to life imprisonment when he meets the statutory requirements, in violation of Ill. Const.

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(1970), Art. II, § 1. People v. Tobias, 125 Ill. App. 3d 234, 80 Ill. Dec. 496, 465 N.E.2d 608 (1 Dist. 1984).

Although the Habitual Criminal Act (720 ILCS 5/33B-1 et seq.) mandatorily requires the circuit court to sentence a defendant found to be a habitual criminal to natural life imprisonment, such statute does not infringe on judicial power as precluding judicial opportunity to tailor the sentence to be imposed to fit the particular circumstances of each case. People v. Withers, 115 Ill. App. 3d 1077, 71 Ill. Dec. 444, 450 N.E.2d 1323 (1 Dist. 1983).

- Mandatory Life Imprisonment

Mandatory life imprisonment provisions for multiple murder (730 ILCS 5/5-8-1(a)) do not violate this section. People v. Bailey, 164 Ill. App. 3d 555, 115 Ill. Dec. 159, 517 N.E.2d 570 (1 Dist. 1987), appeal denied, 119 Ill. 2d 560, 119 Ill. Dec. 388, 522 N.E.2d 1247 (1988).

The mandatory life imprisonment provision of the precursor to 730 ILCS 5/5-8-1(a)(1), is not an unconstitutional seizure of an inherent judicial power to determine sentence. People v. Bailey, 164 Ill. App. 3d 555, 115 Ill. Dec. 159, 517 N.E.2d 570 (1 Dist. 1987), appeal denied, 119 Ill. 2d 560, 119 Ill. Dec. 388, 522 N.E.2d 1247 (1988).

- Mandatory Parole

Although a defendant may be incarcerated for periods which in the aggregate exceed the maximum of the indeterminate sentence imposed by the sentencing court when a mandatory parole is revoked, the statutory provisions for mandatory parole do not violate the separation of powers provision of the Illinois Constitution. People ex rel. Scott v. Israel, 66 Ill. 2d 190, 5 Ill. Dec. 580, 361 N.E.2d 1108 (1977).

- Sentencing

Defendant was incorrect in claiming that the Illinois Department of Corrections increased defendant's sentence by adding a term of mandatory supervised release in violation of the separation of powers clause in Ill. Const. art. II, § 1. The trial court imposed the term of mandatory supervised release pursuant to statutory law and, thus, the claim of a violation of the separation of powers clause of the Illinois Constitution was without merit. People v. Hunter, Ill. App. 3d , 354 Ill. Dec. 207, 957 N.E.2d 523, 2011 Ill. App. LEXIS 944 (1 Dist. 2011), appeal denied, 2011 Ill. LEXIS 2183 (Ill. 2011).

Impact incarceration was created as a substitute for certain sentencing ranges; thus, the impact incarceration was not a sentence in defendant's case, but it was merely a possible alternative. 730 ILCS 5/5-8-1.1(a) did not run afoul of the Illinois Constitution's separation-of-powers requirement. People v. Manoharan, 394 Ill. App. 3d 762, 334 Ill. Dec. 101, 916 N.E.2d 134, 2009 Ill. App. LEXIS 923 (4 Dist. 2009), appeal denied, 2010 Ill. LEXIS 332 (Ill. 2010).

(Unpublished) Trial court did not err in imposing a statutory sentencing enhancement upon defendant for her action in discharging a firearm that caused death, on top of her sentence for first-degree murder, as imposition of the sentence enhancement did not violate the Illinois Constitution's separation of powers principles even though the legislature's sentencing scheme regarding first-degree murder; legislature had the power to fix the sentence for a crime and, in turn, limit the scope of judicial discretion with respect to imposing the sentence. People v. Sawczenko-Dub, 345 Ill. App. 3d 522, 280 Ill. Dec. 832, 803 N.E.2d 62, 2003 Ill. App. LEXIS 1517 (1 Dist. 2003).

Imposition of a natural life sentence on a 16 year old violated neither the due process clause of the Illinois Constitution (Ill. Const. (1970), Art. I, § 2), the separation of powers provision of that Constitution (Ill. Const. (1970), Art. II, § 1), nor the objective of restoring the offender to useful citizenship (Ill. Const. (1970), Art. I, § 11). People v. Clark, 188 Ill. App. 3d 79, 135 Ill. Dec. 743,

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544 N.E.2d 100 (4 Dist. 1989), appeal denied, 139 Ill. Dec. 516, 548 N.E.2d 1072, cert. denied, 497 U.S. 1026, 110 S. Ct. 3276, 111 L. Ed. 2d 786 (1990).

It is the right of every defendant to be sentenced under a constitutional statute; this right is a substantial one, for it goes without saying that imprisonment involves one's liberty; thus if a convicted defendant may not be sentenced under an unconstitutional statute, it stands to reason that neither may a sentence be enhanced or augmented by an unconstitutional law. People v. Poole, 167 Ill. App. 3d 7, 117 Ill. Dec. 666, 520 N.E.2d 1017 (1 Dist. 1988).

Currency Exchange Act

Former section 4.1 of the Currency Exchange Act (see now 205 ILCS 405/4.1) was not unconstitutional on the grounds that it was an unreasonable exercise of the police power, that it contravened the due process clauses of the U.S. and Illinois Constitutions, that it violated the separation and distribution of governmental powers, nor was it an unwarranted delegation of legislative and judicial authority to an administrative agency, and it did not violate former section 22 of article IV of the 1870 Illinois Constitution (see now Ill. Const. (1970), Art. IV, § 13), since it was not an attempt by the General Assembly to grant special privileges and franchises to individual corporations. Gadlin v. Auditor of Pub. Accounts, 414 Ill. 89, 110 N.E.2d 234 (1953).

Damages

Statutory caps set forth in 735 ILCS 5/2-1706.5 that limited the amount of noneconomic damages that could be recovered in medical malpractice cases violated the Illinois Constitution's separation of powers clause, Ill. Const. art. II, § 1, as applied, and because that law had an inseverability provision, the entire statute had to be declared invalid. The caps acted as a "legislative remittitur" and unduly infringed on the inherent power of the judiciary to reduce verdicts. Lebron v. Gottlieb Mem. Hosp., 237 Ill. 2d 217, 341 Ill. Dec. 381, 930 N.E.2d 895, 2010 Ill. LEXIS 26 (2010).

Statutory cap on damages where a plaintiff elected to proceed with a lawsuit after the defendant died, without waiting for the opening of the defendant's estate, by substituting a special representative did not offend separation of powers principles because the right to continue a lawsuit in such a manner was a purely statutory right, subject to modification and limitation by the legislature. Knauerhaze v. Nelson, 361 Ill. App. 3d 538, 296 Ill. Dec. 889, 836 N.E.2d 640, 2005 Ill. App. LEXIS 924 (1 Dist. 2005).

Delegation of Powers

The power to make the laws for this state is a sovereign power vested in the legislature, and it cannot be delegated to another body, authority or person. People v. Tibbitts, 56 Ill. 2d 56, 305 N.E.2d 152 (1973).

The General Assembly cannot delegate its general legislative power to determine what the law shall be, but may delegate to others the authority to do those things which the legislature might properly do, but cannot do as understandingly or advantageously; however, the legislature, in delegating to an administrative agency the performance of certain functions, may not invest that agency with arbitrary powers, or be vague or indefinite in its delegation. People v. Tibbitts, 56 Ill. 2d 56, 305 N.E.2d 152 (1973).

The Governor possesses the power to reduce an appropriation by means of an item veto, but he could not exercise, nor could the legislature constitutionally delegate to him or a department of the executive branch of government, the power to transfer funds specifically appropriated for one program. County of Cook v. Ogilvie, 50 Ill. 2d 379, 280 N.E.2d 224 (1972).

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Dependence upon privately negotiated rates of pay for state maintenance workers was not an improper delegation of discretionary power of the Director of the Department of Personnel (see Ill. Rev. Stat., ch. 127, para. 63b108a-2). Mahin v. Myers, 108 Ill. App. 2d 416, 247 N.E.2d 812 (4 Dist. 1969).

The legislature cannot delegate its power to make a law, but it can make a law delegating a power to determine facts upon which the law makes, or intends to make, its own action depend. People ex rel. Adamowski v. Chicago Land Clearance Comm'n, 14 Ill. 2d 74, 150 N.E.2d 792 (1958).

The scope of permissible delegation must be measured in terms of the complexity and diversity of the conditions which will be encountered in the enforcement of the statute. People v. Illinois Toll Hwy. Comm'n, 3 Ill. 2d 218, 120 N.E.2d 35 (1954).

The legislature must decide what the law shall be, and the power delegated to that department by the Constitution cannot be again delegated to any other body or authority; thus an act which vests any person with arbitrary discretion to determine what the laws shall be in a particular situation is invalid. People ex rel. Bernat v. Bicek, 405 Ill. 510, 91 N.E.2d 588 (1950).

A statute which vests in administrative officers a discretion not only as to the administration of the enactment but also, the determination of what the law is, or the right to apply it to one and refuse its application to another in like circumstances, constitutes an unwarranted delegation of legislative authority. Owens v. Green, 400 Ill. 380, 81 N.E.2d 149 (1948).

The legislature may delegate to others the power to do those things which it might properly, but cannot understandingly or advantageously, do itself, and it may confer an authority or discretion as to the execution of the law, to be exercised under and in pursuance of the law. Owens v. Green, 400 Ill. 380, 81 N.E.2d 149 (1948).

Ordinance allowing appellants to convert their property from a class of buildings known in the ordinance as class 6, which included apartment buildings, to a building known as class 2b, which included hotels, lodging houses, and rooming houses, without having secured the permit normally required, was invalid as a delegation of legislative authority to the building commissioner for the reason that it did not define a "rooming house" as that term was used in the ordinance, but left to the building commissioner the matter of determining when a structure was a rooming house and when it was not. City of Chicago v. Matthies, 320 Ill. 352, 151 N.E. 248 (1926).

An ordinance which leaves to an executive officer the definition of the thing to which such ordinance applies, such definition not being commonly known, is an unwarranted and void delegation of legislative power to an executive officer. City of Chicago v. Matthies, 320 Ill. 352, 151 N.E. 248 (1926).

Act providing for the organization of a special drainage district, which authorized the county court to fix the boundaries of the drainage district to be organized and to make conclusive findings regarding lands that would be benefitted by the improvement of the channel of the river involved, was unconstitutional and void in that it attempted to delegate legislative questions for the determination of a court and contained unilateral restrictions on the right of appeal. Funkhouser v. Randolph, 287 Ill. 94, 122 N.E. 144, 1919 Ill. LEXIS 1145 (1919).

It is incompetent for the Legislature to confer the power to tax upon the judiciary or the executive branch of government. School Dirs. v. School Dirs., 232 Ill. 322, 83 N.E. 849 (1908).

Director of Insurance

If the rules and regulations promulgated by the Director of Insurance, pursuant to (see now 215 ILCS 5/401), are embraced within the meaning of "state laws" and made equivalent to a law duly enacted by the General Assembly, such would constitute a clear violation of the doctrine of

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separation of powers enunciated in Ill. Const. (1970), Art. II, which prohibits the executive branch from exercising legislative powers. Fox v. Inter-State Assurance Co., 84 Ill. App. 3d 512, 39 Ill. Dec. 894, 405 N.E.2d 873 (2 Dist. 1980).

Discretionary Administrative Penalty

The imposition of a discretionary penalty by an administrative agency is an exercise of judicial authority and violative of the separation of powers doctrine. Airtex Prods., Inc. v. Pollution Control Bd., 15 Ill. App. 3d 238, 303 N.E.2d 498 (5 Dist. 1973), aff'd, 60 Ill. 2d 204, 326 N.E.2d 406 (1975).

Discretionary Powers

The judicial department may not take as its own those discretionary powers vested in an executive officer. People v. Stinger, 22 Ill. App. 3d 371, 317 N.E.2d 340 (2 Dist. 1974).

Drainage District Powers

Power conferred on the Department of Public Works and Buildings by former law (see now 70 ILCS 605/10-1) to ascertain the effect on streams by the construction work of drainage districts did not violate the Constitution by conferring judicial power on such department. Duck Island Hunting & Fishing Club v. Edward Gillen Dock, Dredge & Constr. Co., 330 Ill. 121, 161 N.E. 300 (1928).

Due Diligence

Sections 2-1009 and 13-217 of the Code of Civil Procedure (735 ILCS 5/2-1009 and 735 ILCS 5/13-217) unduly infringed upon the Supreme Court's constitutional authority to regulate the judicial system of Illinois. O'Connell v. St. Francis Hosp., 112 Ill. 2d 273, 97 Ill. Dec. 449, 492 N.E.2d 1322 (1986), aff'd, 145 Ill. 2d 1, 163 Ill. Dec. 848, 582 N.E.2d 114 (1991).

Due Process

- Police Power

-- Motor Vehicle Inspections

Court concluded that former Ill. Rev. Stat. ch. 95a, para. 22-3 (now 625 ILCS 5/13-100) and the ordinance constituted a valid exercise of the city's police power, because the motor vehicle inspections were related to public safety and did not violate the Due Process Clause. Evanston v. Wazau, 364 Ill. 198, 4 N.E.2d 78, 1936 Ill. LEXIS 620 (1936).

Eavesdropping Statute

Plaintiff's attempt to invoke the jurisdiction of the circuit court in reliance upon an act of the legislature, the Illinois Eavesdropping statute (see now 720 ILCS 5/14-6), was unsuccessful; to preclude the Supreme Court from exercising its jurisdiction in considering the fitness of an attorney would violate this section and would be an unwarranted application of the Illinois Eavesdropping statute. Ettinger v. Rolewick, 140 Ill. App. 3d 295, 94 Ill. Dec. 599, 488 N.E.2d 598 (1 Dist. 1986).

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Election Code

Sections 13-1 and 13-2 of the Election Code (see now 10 ILCS 5/13-1 and 10 ILCS 5/13-2), which provide for the appointment of judges of election by the county board, are not unconstitutional as a delegation of legislative power. People ex rel. Stead v. Board of Supvrs., 223 Ill. 187, 79 N.E. 123 (1906).

Environmental Protection Act

The imposition of discretionary monetary penalty by the Pollution Control Board under the authority of 415 ILCS 5/42 was constitutionally permissible. Southern Ill. Asphalt Co. v. Pollution Control Bd., 60 Ill. 2d 204, 326 N.E.2d 406 (1975).

The authority given the Pollution Control Board to impose monetary penalties does not violate the constitutional separation of powers. City of Waukegan v. Pollution Control Bd., 57 Ill. 2d 170, 311 N.E.2d 146 (1974).

Where petitioner, who had been cited for violation of the Environmental Protection Act (see now 415 ILCS 5/12(a)), argued that the charges against him should have been dismissed because section 1005 of the Act delegated judicial and legislative powers to an administrative agency (Pollution Control Board) in violation of the separation of powers doctrine of the State Constitution, and was therefore unconstitutional, petitioner's argument was totally without support since the Pollution Control Board has been delegated powers which enable it to exercise both regulatory and adjudicatory functions in furtherance of the Act, which delegation is compatible with the separation of powers doctrine. Meadowlark Farms, Inc. v. Pollution Control Bd., 17 Ill. App. 3d 851, 308 N.E.2d 829 (5 Dist. 1974).

The Environmental Protection Act (see now 415 ILCS 5/1 et seq.), lawfully vests the Pollution Control Board with power to levy monetary penalty against a party who has been found by the Board to be in violation of the provisions set forth in the Act; such action does not constitute an unlawful delegation of judicial power by a legislative body. Incinerator, Inc. v. Pollution Control Bd., 15 Ill. App. 3d 514, 305 N.E.2d 35 (1 Dist. 1973), aff'd, 59 Ill. 2d 290, 319 N.E.2d 794 (1974).

The penalty powers given the Pollution Control Board are incidental to its duties of administering the law and, as such, are quasi-judicial powers which fall outside the prohibition of the this section. Ford v. EPA, 9 Ill. App. 3d 711, 292 N.E.2d 540 (3 Dist. 1973).

Evidence

The legislature has the power to prescribe new and to alter existing rules of evidence or to prescribe methods of proof and, thus, 725 ILCS 5/115-5, does not violate the separation of powers clause of the Illinois Constitution. Heitz v. Hogan, 134 Ill. App. 3d 352, 89 Ill. Dec. 299, 480 N.E.2d 185 (4 Dist. 1985).

It is not within the legislative power to declare what shall be conclusive evidence, because that would be an invasion of the power of the judiciary, a violation of separation of powers, and a statute establishing that a certain showing is prima facie evidence cannot be construed in such a way that the showing is conclusive proof. People ex rel. Hillel Lodge v. Rose, 207 Ill. 352, 69 N.E. 762, 1904 Ill. LEXIS 3218 (1904).

Ex Parte Dismissals

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Former Ill.Rev.Stat, ch. 110, para. 50a (see now 735 ILCS 5/2-1302), which regulated judicial authority in the performance of a purely judicial act, placing a restriction on the power of the courts to render a judgment of dismissal in ex parte actions by requiring a five day notice to every attorney of record before an ex parte dismissal could be granted; any violation thereof was contrary to the express division of governmental powers into three distinct departments. Agran v. Checker Taxi Co., 412 Ill. 145, 105 N.E.2d 713 (1952).

Executive Powers

Power to grant reprieves, commutations, and pardons belonged to governor and, thus, the judiciary could not review the governor's action in commuting defendant's death sentence to natural life imprisonment without parole; as a result, defendant's appeal of his sentence had to be dismissed as moot. People v. Watson, 347 Ill. App. 3d 181, 283 Ill. Dec. 23, 807 N.E.2d 628, 2004 Ill. App. LEXIS 258 (1 Dist. 2004), appeal denied, 211 Ill. 2d 611, Ill. Dec. , 823 N.E.2d 977 (2004); overruled in part on other grounds by People v. Mata, 217 Ill. 2d 535, 842 N.E.2d 686, 2006 Ill. LEXIS 311, 299 Ill. Dec. 649 (2006).

Judicial review of withholding of funds appropriated by the general assembly for the use of the Dangerous Drugs Commission by state executive branch officials did not violate the concept of separation of powers pursuant to Ill. Const., Art. II, § 1. It was within the province of the judiciary to determine whether the laws or constitution of the State granted the executive branch the authority to withhold the funds appropriated by the legislative branch. West Side Organization Health Services Corp. v. Thompson, 73 Ill. App. 3d 179, 29 Ill. Dec. 129, 391 N.E.2d 392, 1979 Ill. App. LEXIS 3917 (1 Dist. 1979).

Former Drivers License Act

Former section 73.32 of the Drivers License Act (see now 625 ILCS 5/6-204) which required the judge or clerk of court to report convictions for violation of traffic violations to the Secretary of State was not invalid under former Article III of the Illinois Constitution. People v. Reiner, 6 Ill. 2d 337, 129 N.E.2d 159 (1955).

Framers' Intent

The doctrine of separation of powers was not designed to achieve a complete divorce between the three departments of a single operating government. Chirikos v. Yellow Cab Co., 87 Ill. App. 3d 569, 43 Ill. Dec. 61, 410 N.E.2d 61 (1 Dist. 1980).

The separation of powers clause was not designed to achieve a complete divorce between the three departments of government, but rather was a recognition of the fact that the whole power of two or more of these departments shall not be lodged in the same hands, whether of one or many. Meadowlark Farms, Inc. v. Pollution Control Bd., 17 Ill. App. 3d 851, 308 N.E.2d 829 (5 Dist. 1974).

The constitutional doctrine of separation of powers was not intended to confine the legislature to the alternatives of complete inaction or the imposition of rigidly inflexible laws which would distort rather than promote its objective. People v. Illinois Toll Hwy. Comm'n, 3 Ill. 2d 218, 120 N.E.2d 35 (1954).

Franchise Disclosure Act

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Section 12 of the Franchise Disclosure Act (see now 815 ILCS 705/12) is constitutional and does not violate the doctrine of separation of powers or due process. People v. Carter, 97 Ill. 2d 133, 73 Ill. Dec. 329, 454 N.E.2d 189 (1982).

Homicide

Because the statutory scheme relating to homicide (720 ILCS 5/9-1) does not preclude the state from charging a defendant with second-degree murder, the legislature has not usurped a power of the State's Attorney, an arm of the executive branch of Illinois government, and the homicide scheme is not violative of the separation of powers provision of the Illinois Constitution. People v. Gore, 212 Ill. App. 3d 984, 157 Ill. Dec. 22, 571 N.E.2d 1041 (1 Dist.), appeal denied, 141 Ill. 2d 550, 162 Ill. Dec. 498, 580 N.E.2d 124 (1991), cert. denied, 502 U.S. 1114, 112 S. Ct. 1222, 117 L. Ed. 2d 458 (1992).

Homicide Statutes

The Illinois homicide statutes (720 ILCS 5/9-1) are not unconstitutional as violative of the due process, equal protection, and separation of powers clauses of the United States and Illinois Constitutions. People v. Smallwood, 224 Ill. App. 3d 393, 166 Ill. Dec. 678, 586 N.E.2d 636 (1 Dist. 1991), cert. denied, 144 Ill. 2d 640, 169 Ill. Dec. 148, 591 N.E.2d 28 (1992).

The second degree murder statute (720 ILCS 5/9-2), does not violate due process, equal protection, or the separation of powers. People v. Davis, 221 Ill. App. 3d 1023, 164 Ill. Dec. 510, 583 N.E.2d 64 (1 Dist. 1991), cert. denied, 143 Ill. 2d 641, 167 Ill. Dec. 403, 587 N.E.2d 1018 (1992).

Illinois State Farm

Former Ill. Rev. Stat., ch. 118, para. 15 (see now 730 ILCS 5/5-8-6(b)), did not violate the constitutional prohibition that one branch of government cannot exercise any power properly belonging to either of the others. People ex rel. Latimer v. Randolph, 13 Ill. 2d 552, 150 N.E.2d 603 (1958).

Intergovernmental Cooperation

Constitutional provision allowing for intergovernmental cooperation cannot validate any "compact" that is contrary to separation of powers or the inherent powers of a unified court system. Orenic v. Illinois State Labor Relations Bd., 127 Ill. 2d 453, 130 Ill. Dec. 455, 537 N.E.2d 784 (1989).

Joint Tortfeasor Contribution Act

735 ILCS 5/2-1117 of the Illinois Joint Tortfeasor Contribution Act, pertaining to joint and several liability, does not violate the separation of powers clause of the Illinois Constitution. Unzicker v. Kraft Food Ingredients Corp., 203 Ill. 2d 64, 270 Ill. Dec. 724, 783 N.E.2d 1024, 2002 Ill. LEXIS 957 (2002).

Judicial Assistants

The judicial department could not be separate from the other departments of the government and free from interference in the exercise of judicial functions if it had to accept its assistants from

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another department or a commission which makes the selection. Witter v. County Comm'rs, 256 Ill. 616, 100 N.E. 148 (1912).

Judicial Driving Permit

Construing § 6-206.1(B)(d) of the Illinois Vehicle Code (625 ILCS 5/6-206.1(B)(d)) so as to allow the secretary to appeal a circuit court's judicial driving permit order does not pose a separation of powers violation; there is no transfer of authority away from the judiciary or performance of any duty reserved for the judiciary. People v. Pine, 129 Ill. 2d 88, 134 Ill. Dec. 365, 542 N.E.2d 711 (1989).

Judicial Powers

- In General

In order for 730 ILCS 5/5-4-1(b) to avoid unduly encroaching upon the inherent powers of the judiciary to assign cases and impose a sentence, and to avoid a conflict with Ill. Sup. Ct. R. 21(b), which provides for the assignment of judges, the statute is directory, and not mandatory. It merely instructs the courts on a common practice, rather than mandates assignment of a particular judge to make a sentencing decision, and thereby avoids violating the separation of powers provisions of Ill. Const. Art. II, § 1. People v. Gray, 363 Ill. App. 3d 897, 300 Ill. Dec. 692, 845 N.E.2d 113, 2006 Ill. App. LEXIS 195 (1 Dist. 2006).

The legislature is vested with the power to enact laws, but it cannot constitutionally enact laws that unduly infringe upon the powers of the court; the legislature may, however, enact laws complementing the authority of the judiciary. People v. Felella, 131 Ill. 2d 525, 137 Ill. Dec. 547, 546 N.E.2d 492 (1989).

Judicial power is defined as the power which adjudicates upon the rights of citizens and to that end construes and applies the law. People v. Winfield, 160 Ill. App. 3d 983, 112 Ill. Dec. 423, 513 N.E.2d 1032 (1 Dist.), appeal denied, 117 Ill. 2d 552, 115 Ill. Dec. 517 N.E.2d 1094 (1987).

If a power is judicial in character, the legislature is expressly prohibited from exercising it. People v. Joseph, 113 Ill. 2d 36, 99 Ill. Dec. 120, 495 N.E.2d 501 (1986).

The judiciary cannot legislate, nor can it enjoin the legislature from doing so, but the courts can restrain the legislative branch of government from acting in an unconstitutional manner. Murphy v. Collins, 20 Ill. App. 3d 181, 312 N.E.2d 772 (1 Dist. 1974).

The domain of the judiciary is in the field of the administration of justice under the law; it interprets, construes and applies the law, but it does not interfere with the conduct of government by entering into a field of conflict for the control of executive discretion by judicial action, and it does not intermeddle with the execution of discretionary powers vested in executive or administrative officers, in the absence of abuse or arbitrary or capricious exercise of such power on the part of the officers. People ex rel. Woll v. Graber, 394 Ill. 362, 68 N.E.2d 750 (1946).

It is the business of the courts to construe the law in cases presented to them; it is the business of the legislature to enact laws necessary to the welfare of the State. People ex rel. Schreiner v. Courtney, 380 Ill. 171, 43 N.E.2d 982 (1942).

- Court Administration

Court administration falls within the ambit of the courts' inherent judicial power. People v. Joseph, 113 Ill. 2d 36, 99 Ill. Dec. 120, 495 N.E.2d 501 (1986).

- Court Rules

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Although the law firm and the shareholder contended that the court of appeals had jurisdiction to review the appeal as an interlocutory appeal based on Ill. Sup. Ct. R. 307(a) and the language of 735 ILCS 110/20(a), the court of appeals disagreed and dismissed the appeal for lack of jurisdiction because although the Supreme Court of Washington could provide by rule for appeals to the appellate court from other than final judgments of circuit courts pursuant to Ill. Const. art. VI, § 6, Ill. Sup. Ct. R. 307(a)(1) provided for interlocutory appeals from a trial court order granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction, and the motion to dismiss in the instant case did not constitute an injunction. Further, a statute that claimed to give a right to an interlocutory appeal not covered by supreme court rules or to give the appellate court jurisdiction over that appeal would violate Ill. Const. art. VI, § 6 and the separation-of-powers clause in Ill. Const. art. II, § 1; therefore, appellate jurisdiction was not conferred by 735 ILCS 110/20(a) (2007). Stein v. Krislov, 405 Ill. App. 3d 538, 345 Ill. Dec. 675, 939 N.E.2d 518, 2010 Ill. App. LEXIS 1182 (1 Dist. 2010).

There is no conflict between 750 ILCS 5/508(b) and Rules 137 and 219, Supreme Court Rules, since 750 ILCS 5/508 simply delineates more specific standards for sanctioning violations of court orders in the specific context of dissolution of marriage cases; it is not a separation of powers violation for the legislature to remedy abuses of a statutory cause of action by enacting procedural rules more specific than those general remedies set forth in the Supreme Court Rules. Kaufman, Litwin & Feinstein v. Edgar, 301 Ill. App. 3d 826, 235 Ill. Dec. 183, 704 N.E.2d 756 (1 Dist. 1998), appeal denied, 182 Ill. 2d 551, 236 Ill. Dec. 670, 707 N.E.2d 1240 (1999).

- Infringement Not Shown

Trial court did not err in refusing to order that any interest accrued on funds transferred from the Lawyers Assistance Program (LAP) and the Mandatory Arbitration Fund (MAF) into the state's general revenue fund be deposited with the LAP and the MAF. Under 30 ILCS 105/4.1(a), interest on fees was to be deposited into the general revenue fund; moreover, plaintiffs had not shown that the disposition of interest unduly infringed upon inherent judicial powers under Ill. Const. Art. II, § 1 or unconstitutionally burdened access to the courts. Morawicz v. Hynes, 401 Ill. App. 3d 142, 340 Ill. Dec. 893, 929 N.E.2d 544, 2010 Ill. App. LEXIS 309 (1 Dist. 2010).

- Judicial Inquiry Board

Because the State of Illinois Judicial Inquiry Board (JIB) did not exist when the Illinois Personnel Code exemptions were enacted, its predecessor was exempt, and 20 ILCS 415/4 generally exempted legislative and judicial jobs, it was reasonable to find 20 ILCS 415/2 applied only to those positions "under" the governor, which excluded the JIB. Plaintiff former employee of the JIB had no property interest under the Personnel Code that was protected by the due process requirements of the Fourteenth Amendment. Crull v. Sunderman, 384 F.3d 453, 2004 U.S. App. LEXIS 19441 (7th Cir. 2004).

- Municipal Legislative Authority

Circuit court violated the doctrine of separation of powers when it ordered a board of education, based on public health and safety, to build sidewalks or walkways on a township road district's property near a school that was being built. Bd. of Educ. v. Miller, 349 Ill. App. 3d 806, 285 Ill. Dec. 868, 812 N.E.2d 688, 2004 Ill. App. LEXIS 819 (1 Dist. 2004).

Where neither the record nor the decree suggested that the action of city authorities was prompted by improper motives or that the determination of the city was so unreasonable, arbitrary, or oppressive as to render it void, the trial court should not have interfered with the legislative action of the city; the determination of the necessity for opening the street in question, its width and the use of motor fuel tax funds for its construction, were left to the municipal authorities and the Department of Public Works, and the decree of the trial court enjoining the city from proceeding was without support and constituted judicial interference with the powers of the coordinate legislative branch of government in contravention of this section. Colville v. City of Rochelle, 130 Ill. App. 2d 541, 268 N.E.2d 222 (2 Dist. 1970).

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- Municipal Ordinance

The court had no power to invalidate or rescind city ordinance dealing with taxicab rates. Chirikos v. Yellow Cab Co., 87 Ill. App. 3d 569, 43 Ill. Dec. 61, 410 N.E.2d 61 (1 Dist. 1980).

- Order to Indict

A trial judge is not authorized to order the state to file an information or to file a charge on the court's own motion upon the State's Attorney's refusal to do so; such action by a trial judge would be an impermissible exercise by the judicial branch of powers belonging exclusively to the executive, and in direct contravention of the applicable statutory mandates. People ex rel. Daley v. Moran, 94 Ill. 2d 41, 67 Ill. Dec. 790, 445 N.E.2d 270 (1983).

- Prosecution

A trial court is without authority to assume the mantle of prosecutor; that role is reserved to the state by constitution and by statute. People v. Edwards, 97 Ill. App. 3d 407, 52 Ill. Dec. 908, 422 N.E.2d 1117 (1 Dist. 1981).

Jury Instructions

Since the legislature is acting within its sphere when it places conditions on its statutorily-created right, 735 ILCS 5/2-1107.1 does not trespass on an exclusive judicial preserve by regulating the conduct of trials. Stenger v. Germanos, 265 Ill. App. 3d 942, 203 Ill. Dec. 140, 639 N.E.2d 179 (1 Dist. 1994).

Juvenile Court Act

Appellate court lacked jurisdiction to hear parents' claim that a permanency goal requirement that they admit at least to themselves that they had abused their infant son violated their right against self-incrimination, because the statutory provision making an order declining to change a permanency goal a final appealable order violated separation of powers principles. State v. Terry S. (In re Brandon S.), 331 Ill. App. 3d 757, 265 Ill. Dec. 158, 771 N.E.2d 1117, 2002 Ill. App. LEXIS 474 (1 Dist. 2002).

The provision in 705 ILCS 405/2-28(3) of the Juvenile Court Act of 1987, which makes permanency review orders immediately appealable, is unconstitutional because it violates the separation of powers clause of the Illinois Constitution; the provision encroaches upon the exclusive power of the Supreme Court to regulate matters of appellate practice and procedure by directing that a nonfinal order is appealable contrary to the rules of the Supreme Court. People v. Bradley (In re C.B.), 322 Ill. App. 3d 1011, 255 Ill. Dec. 886, 750 N.E.2d 1271, 2001 Ill. App. LEXIS 464 (4 Dist. 2001).

Section 2-14 of the Juvenile Court Act (705 ILCS 405/2-14) does not violate the principle of separation of powers; it represents a legislative expression of public policy requiring the expeditious resolution of abuse and neglect cases and neither the doctrine of parens patriae nor inherent guardianship powers provide for the broad judicial power to express a child's best interest and thereby decline to carry out this legislative policy. In re S.G., 175 Ill. 2d 471, 222 Ill. Dec. 386, 677 N.E.2d 920 (1997).

By statutorily constraining a reviewing court from considering the issue of notice in juvenile cases in 705 ILCS 405/1-15(b), the legislature encroaches upon judicial power and thereby violates the separation of powers clause of the Illinois Constitution.

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705 ILCS 405/5-13, requiring the consent of the State's Attorney before a court may order a "continuance under supervision," does not violate the separation of powers doctrine embodied in this section. In re T.W., 101 Ill. 2d 438, 79 Ill. Dec. 149, 463 N.E.2d 703 (1984).

Under former § 704-1(1) of the Juvenile Court Act (see now 705 ILCS 405/5-13), authorization of the juvenile court to direct the filing of a petition in respect of a minor through the State's Attorney does not authorize an impermissible exercise by the judicial branch of powers belonging exclusively to the executive, and does not violate this section. People ex rel. Davis v. Vazquez, 92 Ill. 2d 132, 65 Ill. Dec. 262, 441 N.E.2d 54 (1982).

Juvenile Courts

The legislature, by lowering the age for juvenile court jurisdiction in relation to certain crimes, did not usurp a judicial function, but redefined the applicability of a statute which it created under its legislative power. People v. J.S., 103 Ill. 2d 395, 83 Ill. Dec. 156, 469 N.E.2d 1090 (1984).

Where the first proviso of the former Probation Law which established juvenile courts (see now 705 ILCS 405/1-1) singled out from all the counties of the state counties that had a population of over 500,000, and purported to turn over to the board of county commissioners or board of supervisors in the counties the power of appointment of officers and assistants of the juvenile court in the discharge of judicial duty is in conflict with former Article 3 of the Constitution (see now Ill. Const. (1970), Art. II, § 1). Witter v. County Comm'rs, 256 Ill. 616, 100 N.E. 148 (1912).

Legislative Powers

a.

The legislature possesses every power not delegated to some other department of the state or to the federal Government or not denied to it by the Constitution of the state or of the United States. Greenfield v. Russel, 292 Ill. 392, 127 N.E. 102 (1920).

- In General

Declaring public policy is the domain of the legislature. People v. Felella, 131 Ill. 2d 525, 137 Ill. Dec. 547, 546 N.E.2d 492 (1989).

No proposition is better settled than that the State Constitution is not a grant of power to the legislature, but is a limitation upon its powers, and that the legislature possesses every power not delegated to some other department or to the federal government or not denied to it by the Constitution of the State or of the United States. Fenske Bros. v. Upholsterers Int'l Union, 358 Ill. 239, 193 N.E. 112 (1934).

Community school board members were not entitled to petition for or to execute the detachment of a territory from a school district because such authority was properly vested in the legislature by Ill. Const. (1970), Art. II, § 1 (formerly Ill. Const. of 1870, Art. III, § 1). People ex rel. Bensenville Community High School Dist. v. Rathje, 333 Ill. 304, 164 N.E. 696, 1928 Ill. LEXIS 784 (1928).

It is the undoubted law the the Legislature may pass any law and do any legislative act not prohibited by the Constitution of the State or the United States. People ex rel. Gullett v. McCullough, 254 Ill. 9, 98 N.E. 156 (1912).

- Appointment of Officers

The power to appoint to office is not inherent in the executive department unless conferred by the Constitution or the legislature, but the creation of officers, the delegation and regulation of the

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powers and duties of officers and the prescribing of the manner of their appointment or election are legislative functions, which are restrained only by the Constitution. People ex rel. Gullett v. McCullough, 254 Ill. 9, 98 N.E. 156 (1912).

- Elimination of Judgeships

Trial court erred in declaring that a public law, which amended the Circuit Courts Act, 705 ILCS 35/1 et seq., was unconstitutional for reconsidering and eliminating three judgeships that appeared to have been authorized by earlier legislation and which would have been part of an upcoming primary election; while the state elections board, part of the executive branch, had the authority to determine whether a statute created new judgeships, the Illinois General Assembly had the authority to create such a statute in the first instance and could reconsider and eliminate a judgeship it had authorized, which meant that the Illinois General Assembly had not violated the separation of powers doctrine nor had it been shown that public act was impermissible special legislation or that it violated the equal protection or due process doctrines. Bridges v. State Bd. of Elections, 222 Ill. 2d 482, 305 Ill. Dec. 640, 856 N.E.2d 445, 2006 Ill. LEXIS 1117 (2006).

- Enactment of Legislation

Enactment of 20 ILCS 1705/15f, which prohibited electric shock treatment of mentally disabled individuals who suffered from behavioral challenges, to the extent that the statute interacted with a prior court order regarding the treatment of an individual through contingent electronic shock, did not violate the separation of powers doctrine. Bernstein v. Dep't of Human Servs., 392 Ill. App. 3d 875, 331 Ill. Dec. 324, 910 N.E.2d 733, 2009 Ill. App. LEXIS 441 (1 Dist. 2009).

- Infringement Not Shown

Although the hog facility was authorized under the Livestock Management Facilities Act, the trial court could enjoin construction upon neighboring land owners' claims of nuisance; the trial court's actions did not violate the separation of powers provision of Ill. Const. art. II, § 1. Nickels v. Burnett, 343 Ill. App. 3d 654, 278 Ill. Dec. 433, 798 N.E.2d 817, 2003 Ill. App. LEXIS 1278 (2 Dist. 2003).

755 ILCS 5/18-1.1, providing for compensation for custodial care, does not violate the separation of powers doctrine, as the claim amounts do not operate as an unconstitutional "legislative remittitur," but rather as an equitable distribution from a disabled person's estate to those who have provided years of care. Porter v. Jolliff (In re Jolliff), 199 Ill. 2d 510, 264 Ill. Dec. 642, 771 N.E.2d 346, 2002 Ill. LEXIS 321 (2002).

An exception was created by 725 ILCS 5/115-10(c) to the hearsay rule for a class of out-of-court statements by children in prosecutions for sexual acts committed upon them, provided that certain conditions were met for reliability in derogation of the common law, albeit evidentiary not procedural, which the legislature could define and then implement; subsection (c) does not represent an infringement, much less one that is undue, of the courts' judicial power. People v. Novak, 242 Ill. App. 3d 836, 183 Ill. Dec. 555, 611 N.E.2d 1203 (1 Dist. 1993), aff'd, 163 Ill. 2d 93, 205 Ill. Dec. 471, 643 N.E.2d 762 (1994).

- Legislative Investigations

While the state legislature has power to obtain information upon any subject upon which it has power to legislate, it cannot violate the constitutional rights of any institution or of any individual by conducting a public and judicial investigation of any charges made against such person or institution under the pretense or cloak of its power to investigate for the purpose of legislation. Greenfield v. Russel, 292 Ill. 392, 127 N.E. 102 (1920).

- Retroactive Alteration of Statute

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Where, after the court of appeals held that former 415 ILCS 5/42(e) did not authorize mandatory injunctions, the legislature amended the statute to provide for such injunctions, under the constitutional doctrine of separation of powers, the legislature could not retroactively alter the provision to overrule the appellate court's decision. People ex rel. Ryan v. Agpro, Inc., 214 Ill. 2d 222, 291 Ill. Dec. 694, 824 N.E.2d 270, 2005 Ill. LEXIS 311 (2005).

Listing Contracts

Real estate listing contracts with owners who refused to sell or offer to sell and who refused to permit licensed real-estate brokers to sell or offer to sell their property to persons other than caucasians were contrary to public policy, the circuit court should have dismissed the complaints. The constitutional issues were not considered. Chapman v. Watson, 40 Ill. 2d 408, 240 N.E.2d 604 (1968).

Local Officials

- Service in General Assembly

Former Article III of the 1870 Constitution, mandating the separation of powers, did not prohibit village officials from serving in the General Assembly, where the defendants were not exercising governmental sovereignty in the performance of their duties under their local positions. People v. Capuzi, 20 Ill. 2d 486, 170 N.E.2d 625 (1960).

Mandatory Fines

A mandatory fine under 730 ILCS 5/5-9-1.1 does not violate the due process and separation of powers provisions of the Illinois Constitution. People v. Harmison, 124 Ill. App. 3d 236, 79 Ill. Dec. 598, 463 N.E.2d 1373 (3 Dist. 1984).

Mandatory Retirement Provision

The enactment to the Chicago Sanitary District Employees' and Trustees' Annuity and Benefit Fund Act providing for compulsory retirement at age 67 was not invalid as an unlawfully delegated legislative authority to administrative officers on the ground the right to determine which of the sanitary district employees who have reached age 67 shall have the opportunity to continue in service was left to the unguided discretion of the corporate authorities of the sanitary district due to the fact that the amendment unconditionally terminated tenure of civil service employees at age of 67. Jordan v. Metropolitan San. Dist., 15 Ill. 2d 369, 155 N.E.2d 297 (1958).

Marriage and Dissolution of Marriage Act

Subsection (d) of 750 ILCS 5/508 requires the parties to provide the court with more information, which will help the court exercise its discretion fairly and reasonably, and does not conflict with any supreme court rule or create a separation of powers problem. Kaufman, Litwin & Feinstein v. Edgar, 301 Ill. App. 3d 826, 235 Ill. Dec. 183, 704 N.E.2d 756 (1 Dist. 1998), appeal denied, 182 Ill. 2d 551, 236 Ill. Dec. 670, 707 N.E.2d 1240 (1999).

Subdivision (c)(2) of 750 ILCS 5/508, providing that relief requested under a petition for setting final fees and costs brought against an attorney's own client constitutes a distinct cause of action that does not affect the appealability of any judgment or other adjudication in the original proceeding, does not violate the separation of powers clause. Kaufman, Litwin & Feinstein v.

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Edgar, 301 Ill. App. 3d 826, 235 Ill. Dec. 183, 704 N.E.2d 756 (1 Dist. 1998), appeal denied, 182 Ill. 2d 551, 236 Ill. Dec. 670, 707 N.E.2d 1240 (1999).

Section 508 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/508) does not violate this section under the theory in that the trial court loses jurisdiction to award attorney's fees under the Supreme Court Rules upon the filing of the notice of appeal; a trial court retains jurisdiction to award fees for defending an appeal even after the filing of the notice of appeal, on the rationale that the award of attorney's fees is subsequent in time and merely collateral to the appeal and involves a matter independent of any question raised by the appeal. In re Pahlke, 154 Ill. App. 3d 256, 107 Ill. Dec. 407, 507 N.E.2d 71 (1 Dist.), appeal denied, 113 Ill. Dec. 304, 515 N.E.2d 113 (Ill. 1987).

Subsection (a) of section 505 of the Marriage and Dissolution of Marriage Act (750 ILCS 5/505(a)) does not violate the separation of powers requirement of the Illinois Constitution, (Ill. Const. (1970), Art. II, § 1, and Ill. Const. (1970), Art. IV, § 1). Blaisdell v. Blaisdell, 142 Ill. App. 3d 1034, 97 Ill. Dec. 186, 492 N.E.2d 622 (1 Dist. 1986).

Subsection 801(b) of the Marriage and Dissolution of Marriage Act (750 ILCS 5/801(b)), does not unconstitutionally prevent the court from determining facts in cases pending before it; the section does not dictate the resolution of facts in pending actions; it merely mandates which law the court is to apply to the facts in pending cases. Kujawinski v. Kujawinski, 71 Ill. 2d 563, 17 Ill. Dec. 801, 376 N.E.2d 1382 (1978).

Medical Malpractice Claims Procedure

735 ILCS 5/2-622 does not violate the separation of powers clause of the Illinois Constitution by improperly granting a judicial power to health care professionals. DeLuna v. St. Elizabeth's Hosp., 147 Ill. 2d 57, 167 Ill. Dec. 1009, 588 N.E.2d 1139 (1992).

Mental Health Code

Where in 1965 former section 10-7 of the Mental Health Code, was amended deleting the words "as a matter of record" and also deleting the requirement that the court restore the patient to legal competence, the question of the constitutionality of this portion of section 10-7, was therefore, moot and the lower court could not be compelled to follow the directive of the section prior to its 1965 amendment. Hill v. Relyea, 34 Ill. 2d 552, 216 N.E.2d 795 (1966).

The statutory requirement, that the court enter its order discharging a person who had been granted an absolute discharge by the hospital superintendent was merely a ministerial duty imposed on the court to clarify the court records and to show that the person hospitalized on court order had been discharged; this was not the equivalent of giving judicial approval to an administrative action, it was not onerous or time consuming, and it was not a governmental power as contemplated by this section, and accordingly, former section 10-7 of the Mental Health Code as amended, did not violate Ill. Const. (1970), Art. II, § 1. Hill v. Relyea, 34 Ill. 2d 552, 216 N.E.2d 795 (1966).

Metropolitan Fair and Exposition Authority Act

The delegation of the power to enact ordinances sanctioned by fines and penalties, and to conduct investigations, as provided for in the Metropolitan Fair and Exposition Authority Act (see now 70 ILCS 210/1), violated neither Ill. Const. (1970), Art. IV, § 1 as an unlawful delegation of legislative power, nor Ill. Const. (1970), Art. II, § 1 relative to separation of powers, nor Ill. Const. (1970), Art. I, § 2, the due process clause of the State Constitution; since the Authority is a municipal corporation, it must follow that the legislature has the power to authorize it to enact

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such ordinances, rules and regulations as are necessary for its operation, and to enforce them with proper sanctions. People ex rel. Coutrakon v. Lohr, 9 Ill. 2d 539, 138 N.E.2d 471 (1956).

Motor Carrier Law

The civil penalty provision contained in section 18-702 of the Motor Carrier of Property Law (Ill. Rev. Stat., ch. 95 1/2, para. 18-702) is a valid delegation of authority to impose civil penalties for the violations of that Act. Boles Trucking, Inc. v. O'Connor, 138 Ill. App. 3d 764, 93 Ill. Dec. 261, 486 N.E.2d 362 (4 Dist. 1985).

Motor Vehicle Dealer Licensing

625 ILCS 5/5-101(e) and 625 ILCS 5/5-102(e) are not unconstitutional delegations of legislative power to an executive officer, nor do they violate due process by authorizing him to act on some applications immediately while arbitrarily delaying others indefinitely. People ex rel. Carpentier v. Goers, 20 Ill. 2d 272, 170 N.E.2d 159 (1960).

Municipal Annexation of Territory

A 1998 amendment to 65 ILCS 5/7-1-1 pertaining to annexations through forest preserve property changed the statute, rather than clarifying an existing ambiguity, as the new language was contrary to both a logical interpretation of the statute as it existed prior to the amendment and to the judicial interpretation of the forest preserve provision; thus, to the extent the amendment purported to be merely a clarification or declaration of existing law, it violated the constitutional principle of separation of powers and, thus, the amendatory changes were of prospective effect only. People ex rel. Village of Orland Hills v. Village of Orland Park, 316 Ill. App. 3d 327, 248 Ill. Dec. 663, 734 N.E.2d 954, 2000 Ill. App. LEXIS 643 (1 Dist. 2000).

Municipal Code

An amended city ground transportation ordinance is not a law governing judicial practice and does not unduly infringe on the powers of the judiciary. Silver Fox Limousine v. City of Chicago, 306 Ill. App. 3d 103, 239 Ill. Dec. 52, 713 N.E.2d 583 (1 Dist. 1999).

Section 2-3-18 of the Municipal Code (65 ILCS 5/2-3-18), requiring two defined determinations by the county board of certain counties as a precondition to the incorporation of villages, does not represent an unlawful delegation of judicial power. Petitioners Seeking to Incorporate Liberty Lakes v. Village of Lindenhurst, 119 Ill. 2d 179, 115 Ill. Dec. 607, 518 N.E.2d 132 (1987), appeal dismissed, 487 U.S. 1212, 108 S. Ct. 2861, 101 L. Ed. 2d 897 (1988).

Under former Ill. Rev. Stat., ch. 24, para. 69-11 where the pleadings disclosed that petitioners alleged as a fact that the sole beneficiaries of the purported vacation of the street under a city ordinance were private corporations and that the purported vacation of the public highway was for a purely private purpose, namely, for the exclusive benefit of private corporations and, on the other hand, not for the benefit of the general public, such allegation of fact the defendants should have been required to answer since the issue thus made would have presented for decision the question whether the purpose and effect of the city ordinance was to solely benefit private interests to the complete exclusion of public benefits. People ex rel. Foote v. Kelly, 385 Ill. 543, 53 N.E.2d 429 (1944).

Not-For-Profit Dispute Resolution Center Act

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The chief judge's rulemaking and administrative duties under the Illinois Not-for-Profit Dispute Resolution Center Act (710 ILCS 20/1 et seq.) do not violate the doctrine of separation of powers because they do not infringe upon the inherent powers of the judiciary. Wenger v. Finley, 185 Ill. App. 3d 907, 133 Ill. Dec. 782, 541 N.E.2d 1220 (1 Dist. 1989).

Nursing Act

Appellate court did not violate the separation of powers doctrine as set out in Ill. Const. Art. II, § 1 by construing the Nursing and Advanced Practice Nursing Act, 225 ILCS 65/20-75 to apply to the traditional midwife. People ex rel. Sherman v. Cryns, 203 Ill. 2d 264, 271 Ill. Dec. 881, 786 N.E.2d 139, 2003 Ill. LEXIS 450 (2003), cert. denied, 540 U.S. 818, 124 S. Ct. 83, 157 L. Ed. 2d 35 (2003).

Obscenity

Where defendant contended that former Ill. Rev. Stat., ch. 38, para 468 was vague, indefinite and violated the constitutional provisions where it did not define the elements that a picture must possess to render it obscene and indecent, and that such defect left it open for the court and jury to supply their own standards, was without merit because the statute was specific as to the offense charged against defendant. People v. Friedrich, 385 Ill. 175, 52 N.E.2d 120 (1943).

Parking Violations

A city ordinance that provides for the administrative adjudication of parking violations does not violate the separation of powers clause. Van Harken v. City of Chicago, 305 Ill. App. 3d 974, 239 Ill. Dec. 223, 713 N.E.2d 754 (1 Dist. 1999), appeal denied, 185 Ill. 2d 668, 242 Ill. Dec. 151, 720 N.E.2d 1106 (1999).

Personnel Code

Section 4b of the Personnel Code (20 ILCS 415/4b), giving the right to extend the civil service to specific group of employees, is not invalid as an encroachment upon the independent constitutional executive authority of the Secretary of State infringement by the Governor upon the constitutional independence granted the Secretary of State in violation of this section or Ill. Const. (1970), Art. V, § 1. Boner v. Jones, 60 Ill. 2d 532, 328 N.E.2d 548 (1975).

Physician-Ordered Blood or Urine Tests

625 ILCS 5/11-501.4-1, which allows the results of physician-ordered blood or urine tests conducted in the course of emergency treatment for injuries resulting from a motor vehicle accident to be reported directly to state or local law enforcement officials, does not violate a patient's right to privacy in his medical records and does not violate the separation of powers provisions. People v. Jung, 192 Ill. 2d 1, 248 Ill. Dec. 258, 733 N.E.2d 1256, 2000 Ill. LEXIS 982 (2000).

Post-Conviction Hearing Act

725 ILCS 5/122-1(d) did not unduly infringe on inherent judicial powers and, as such did not violate the separation of powers provision of Ill. Const. Art. II, § 1. People v. Knox, 336 Ill. App. 3d 275, 270 Ill. Dec. 647, 783 N.E.2d 222, 2003 Ill. App. LEXIS 46 (2 Dist. 2003), appeal denied, 204 Ill. 2d 674, 275 Ill. Dec. 80, 792 N.E.2d 311 (2003).

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725 ILCS 5/122-8 has been held an unconstitutional encroachment by the legislature on judicial powers under this section. People v. Day, 152 Ill. App. 3d 416, 105 Ill. Dec. 694, 504 N.E.2d 979 (1 Dist. 1987).

Because of the encroachment into the area of court administration by the legislature, 725 ILCS 5/122-8, requiring a different judge to consider post-conviction proceedings than the one who was involved in the original proceeding, violates the separation of powers clause of the State Constitution. People v. Joseph, 113 Ill. 2d 36, 99 Ill. Dec. 120, 495 N.E.2d 501 (1986).

725 ILCS 5/122-8 unduly encroaches on the court's administrative and supervisory authority and violates this section. People v. Joseph, 113 Ill. 2d 36, 99 Ill. Dec. 120, 495 N.E.2d 501 (1986).

Since to hold that the language of 725 ILCS 5/122-8 is mandatory would unduly infringe upon the inherent authority of the judiciary, the language of the section must be read as permissive in order to preserve the constitutionality of the statute in light of the separation of powers clause of the Illinois Constitution of 1970. People v. Price, 144 Ill. App. 3d 949, 99 Ill. Dec. 136, 495 N.E.2d 517 (1 Dist. 1986).

Post-Conviction Petition

725 ILCS 5/122-2.1(a) is not unconstitutional under the separation of powers provision of the Illinois Constitution as the trial judge does not serve as an advocate of any one position; rather, his function is merely to screen out those cases which are patently without merit at an early stage in the proceeding, thereby conserving valuable time and resources of the court and the people and agencies who are involved in these cases. People v. O'Neal, 148 Ill. App. 3d 87, 101 Ill. Dec. 83, 101 Ill. Dec. 716, 499 N.E.2d 83 (4 Dist. 1986).

Prior Inconsistent Statements

The precursor to 725 ILCS 5/115-10.1, is a rule of evidence governing the substantive use of prior inconsistent statements in criminal cases, an area of law in which the Supreme Court has not exercised judicial power; in contrast, Rule 238, Supreme Court Rules, states the rule with regard to the use of such statements for impeachment purposes, retains its own unique purpose, and is not subsumed into the new statute and, therefore, there is no separation of powers violation. People v. Winfield, 160 Ill. App. 3d 983, 112 Ill. Dec. 423, 513 N.E.2d 1032 (1 Dist.), appeal denied, 117 Ill. 2d 552, 115 Ill. Dec. 517 N.E.2d 1094 (1987).

The precursor to 725 ILCS 5/115-10.1, which permits the admission of prior inconsistent statements as substantive evidence, in certain circumstances, and Rule 238, Supreme Court Rules, which allows a party to impeach its own witness, are complementary rather than conflicting; therefore, this section is not an unconstitutional violation of separation of powers (see this section). People v. Hastings, 161 Ill. App. 3d 714, 113 Ill. Dec. 451, 515 N.E.2d 260 (1 Dist. 1987), appeal denied, 117 Ill. Dec. 228, 520 N.E.2d 389 (Ill. 1988).

Probation Violation

Chief Judge pursuant to 730 ILCS 5/5-6-1 was required to adopt a system of structured, intermediate sanctions for violation of the terms and conditions of a sentence of probation. Under that structure, the State's Attorney did not have the power to veto a probation officer's offer to a defendant to complete intermediate sanctions, as long as the sanctions were timely completed, and that construction did not violate the Ill. Const. art. II, § 1 separation of powers doctrine, as the ultimate authority to act regarding probation violations was in the judicial branch of government. People v. Hammond, Ill. 2d , 355 Ill. Dec. 1, 959 N.E.2d 29, 2011 Ill. LEXIS 1839 (2011).

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Public Aid Code

Appropriations provision enacted pursuant to the purpose of the Public Aid Code (305 ILCS 5/1-1), stating the "the Department of Public Aid, with consent in writing of the Governor, may reapportion the amounts appropriated in this section among the several subdivisions of distributive expenses herein designated as the need therefor arises" was invalid because it was an unconstitutional delegation of legislative power to the executive branch of government. County of Cook v. Ogilvie, 50 Ill. 2d 379, 280 N.E.2d 224 (1972).

Public Utilities Act

Section 10-201 of the Public Utilities Act (220 ILCS 5/10-201) is but another improper legislative intrusion into the area of appellate practice by attempting to regulate the method for perfecting a direct appeal of an administrative decision; therefore, to the extent its provisions conflict with Supreme Court Rule 335, we hold it unconstitutional. Consumers Gas Co. v. Illinois Commerce Comm'n, 144 Ill. App. 3d 229, 98 Ill. Dec. 127, 493 N.E.2d 1148 (5 Dist. 1986).

The principal distinction between section 10-204(b) of the Public Utilities Act (220 ILCS 5/10-204(b)) and Supreme Court Rule 335(g) is that the former requires that an evidentiary hearing be conducted on the motion for stay, while the latter does not; the legislature should be prohibited from establishing procedures for obtaining an appeal bond from an administrative decision where a Supreme Court Rule is already in place for that purpose, because application of the separation of powers doctrine requires that the procedures established under Rule 335 should control. Consumers Gas Co. v. Illinois Commerce Comm'n, 144 Ill. App. 3d 229, 98 Ill. Dec. 127, 493 N.E.2d 1148 (5 Dist. 1986).

Quo Warranto Proceeding

The board of commissioners is a legislative body where county legislative matters are considered, debated and resolved and plaintiff commissioners abdicated their legislative obligations when they asked the courts to exercise their legislative functions for them by filing a quo warranto action challenging the board president's issuance of an executive order; interjection of the court into the legislative process would violate separation of powers principles. People ex rel. Hansen v. Phelan, 158 Ill. 2d 445, 199 Ill. Dec. 686, 634 N.E.2d 739 (1994).

Real Estate Listing Contracts

Real estate listing contracts with owners or between owners and real-estate brokers which permitted either to refuse to sell or offer to sell their property to persons other than caucasians were contrary to public policy and violative of Rule V of former Ill. Rev. Stat., ch. 114 1/2, para. 3.06, and a complaint alleging the adoption of Rule V to be unconstitutional should have been dismissed by the circuit court. Chapman v. Watson, 40 Ill. 2d 408, 240 N.E.2d 604 (1968).

Regional Transportation Authority Act

Appointment provisions of the Regional Transportation Authority Act, 70 ILCS 3615/1.01 et seq., did not violate the provisions of Ill. Const. Art. II, § 1 that the legislative, executive, and judicial branches of government are separate and that no branch shall exercise powers properly belonging to another (separation of powers) or the "one person, one vote" principle derived from Ill. Const. Art. I, § 2 and Ill. Const. Art. III, § 3. Stroger v. Reg'l Transp. Auth., 201 Ill. 2d 508, 268 Ill. Dec. 417, 778 N.E.2d 683, 2002 Ill. LEXIS 626 (2002).

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Relation to Article III

Article III of the Constitution does not command that the judiciary be kept aloof from the general operations of government beyond the point necessary to preserve judicial independence and to avoid the dissipation of energy which should be conserved for judicial duties. People v. Reiner, 6 Ill. 2d 337, 129 N.E.2d 159 (1955).

Relief From Judgment

One function of 735 ILCS 5/2-1401 is to bring to the attention of the court matters of fact not appearing of record which, if known to the court at the time judgment was entered, would have prevented its rendition, and it was not intended to relieve a litigant from the consequences of his own negligence. Calabrese v. Hatlen Heights Sewer & Water Co., 34 Ill. 2d 483, 216 N.E.2d 145 (1966).

Retroactive Overruling of Court Decision

When the legislature invades the province of the judiciary by retroactively overruling a decision of a reviewing court, it violates this section, which embodies the principle of separation of powers. In re Cohn, 93 Ill. 2d 190, 66 Ill. Dec. 615, 443 N.E.2d 541 (1982).

The attempt at retroactive application of the 1978 amendments to the Cannabis Control Act precursor to 720 ILCS 550/10 and the Controlled Substances Act (see now 720 ILCS 570/410) was an attempt not only to direct the construction of the previously enacted sections, but also to reverse the construction placed upon those sections by the highest court in this state; as such, it violated the constitutional provision for the separation of powers. People v. Harris, 69 Ill. App. 3d 118, 25 Ill. Dec. 576, 387 N.E.2d 33 (3 Dist. 1979).

Revenue Act of 1939

Subsequent to Andrews v. Foxworthy (1978), 71 Ill. 2d 13, 15 Ill. Dec. 648, 373 N.E.2d 1332, where the Supreme Court held that the publication dates in former 35 ILCS 205/103 (see now 35 ILCS 200/12-10 through 35 ILCS 200/12-35) were mandatory and that failure of timely publication was not an "informality or clerical error" within the savings provision of former section 235 of the Revenue Act of 1939, (see now 35 ILCS 200/21-175 through 35 ILCS 200/21-185), the General Assembly enacted former section 318.1 of the Revenue Act, (repealed) which validated untimely assessment publications; because the General Assembly did not amend section 103 and section 318.1 did not attempt to attribute to section 103 a meaning different from that declared in the Andrew's opinion, the General Assembly did not usurp judicial authority. Schlenz v. Castle, 84 Ill. 2d 196, 49 Ill. Dec. 322, 417 N.E.2d 1336, appeal dismissed, 454 U.S. 804, 102 S. Ct. 76, 70 L. Ed. 2d 73 (1981).

Review of Administrative Jurisdiction

Circuit courts and the superior court of Cook county had jurisdiction to issue the common law writ of certiorari for the purpose of determining whether or not a board of fire and police commissioners had jurisdiction to hear charges against a member of its department and proceeded according to law; in exercising this jurisdiction, the courts did not exercise executive power. Bartunek v. Lastovken, 350 Ill. 380, 183 N.E. 333 (1932).

Review of Property Tax Assessments

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The provision of 35 ILCS 200/23-15 replacing the doctrine of constructive fraud with a mechanism permitting objections to property tax assessments to be addressed directly to the circuit court does not violate this section. People ex rel. Devine v. Murphy, 181 Ill. 2d 522, 230 Ill. Dec. 220, 693 N.E.2d 349 (1998).

Rules of Evidence

The legislature has the power to prescribe new and alter existing rules of evidence or to prescribe methods of proof, and 725 ILCS 5/115-5.1 does not violate the separation of powers clause of the Illinois Constitution. Heitz v. Hogan, 134 Ill. App. 3d 352, 89 Ill. Dec. 299, 480 N.E.2d 185 (4 Dist. 1985).

Scaffold Act

Even though the Scaffold Act empowered common-law juries to pass upon questions of law, it did not violate Article III of the 1870 Constitution (see now this section). Kennerly v. Shell Oil Co., 13 Ill. 2d 431, 150 N.E.2d 134 (1958).

School Bussing

105 ILCS 5/2-3.8 is not an unconstitutional delegation of judicial power in violation of this section. Board of Educ. v. Bakalis, 54 Ill. 2d 448, 299 N.E.2d 737 (1973).

Separation of Powers

Appellate court lacked jurisdiction to review denial of defendants' motions to dismiss, because the denial of a motion to dismiss was not a final and appealable order within the purview of Ill. Sup. Ct. R. 307, and 735 ILCS 110/20(a) would not confer jurisdiction on the appellate court in the absence of a final judgment and to the extent the Citizen Participation Act attempted to provide for appeals from less than final judgments, it would be unconstitutional; a statute that claimed to give a right to an interlocutory appeal not covered by supreme court rules or to give the appellate court jurisdiction over that appeal would violate Ill. Const. art. VI, § 6 and would violate the separation-of-powers clause in Ill. Const. art. II, § 1. Mund v. Brown, 393 Ill. App. 3d 994, 332 Ill. Dec. 935, 913 N.E.2d 1225, 2009 Ill. App. LEXIS 795 (5 Dist. 2009), appeal denied, 234 Ill. 2d 525, 920 N.E.2d 1074, 2009 Ill. LEXIS 2180 (2009).

Where relatives' negligence claim was involuntarily dismissed in a prior wrongful-death action and they voluntarily dismissed the remaining willful and wanton misconduct count, res judicata barred refiling of the latter claim because: (1) the involuntary dismissal of the negligence claim constituted an adjudication on the merits; (2) the relatives could have litigated the willful and wanton claim in the prior suit; and (3) the legislature did not intend in 735 ILCS 5/2-1009 and 5/13-217 to give the relatives an absolute right to split their claims. Hudson v. City of Chicago, 228 Ill. 2d 462, 321 Ill. Dec. 306, 889 N.E.2d 210, 2008 Ill. LEXIS 12 (2008).

Appellate court declined to undertake de novo review regarding whether the county political party chairman's complaints alleging Election Code violations had been filed based on justifiable grounds. Doing so would violate the doctrine of separation of powers since the state elections board had the authority to determine the existence of "justifiable grounds" and it was not a task for the judiciary to perform such an executive branch function. Cook County Republican Party v. State Bd. of Elections, 378 Ill. App. 3d 752, 317 Ill. Dec. 519, 882 N.E.2d 93, 2007 Ill. App. LEXIS 1295 (1 Dist. 2007).

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Trial court properly dismissed bank account holder's complaint seeking return of funds after the state public aid department persuaded the bank to turn those funds over to the state public aid department so it could give those funds to the joint account holder's ex-wife, since the joint account holder, who was the bank account holder's nephew, had a child support arrearage and the state public aid department gave the bank account holder a chance to identify the funds in the account that belonged to her, which she did not do; the bank account holder's complaint failed to state a claim on which relief could be granted because she did not allege a set of facts that showed that either the Illinois Constitution's open court's provision or its separation of powers clause were violated by the state public aid department's actions. Martinez v. Dep't of Pub. Aid, 348 Ill. App. 3d 788, 284 Ill. Dec. 818, 810 N.E.2d 608, 2004 Ill. App. LEXIS 591 (1 Dist. 2004).

Ill. Const. (1970), Art. II, § 1 provides for separation of powers among the three branches of the state government. People ex rel. Daley v. Suria, 112 Ill. 2d 26, 96 Ill. Dec. 83, 490 N.E.2d 1288, 1986 Ill. LEXIS 236 (1986).

Under the Ill. Const. (1970), Art. II, § 1, the legislative, executive, and judicial branches are separate; no branch shall exercise powers properly belonging to another. In re Marriage of Davies, 105 Ill. App. 3d 661, 61 Ill. Dec. 204, 434 N.E.2d 357, 1982 Ill. App. LEXIS 1709 (1 Dist. 1982).

In dividing the powers of government in the state into three separate departments, former Ill. Const. (1870), Art. III (see now this section) was declaratory of a basic principle of constitutional law. Each of the three departments is to perform the duties assigned to it and no department may exercise the powers properly belonging to either of the other two. Agran v. Checker Taxi Co., 412 Ill. 145, 105 N.E.2d 713 (1952).

Former Ill. Const. Art. III (now Ill. Const. (1970), Art. II, § 1) divides the powers of government into three departments, executive, legislative, and judicial, and provides that no person, or collection of persons, being one of these departments shall exercise any power properly belonging to either of the others, except as therein directed or permitted. Liberty Foundries Co. v. Industrial Com., 373 Ill. 146, 25 N.E.2d 790, 1940 Ill. LEXIS 684 (1940).

Provision of a statute, which regulated the business of foreign exchange, which allowed the Auditor of Public Accounts to revoke the license of any business not in compliance with the statute's requirements, was not a violation of the separation of powers, because administrative officers would not be performing a judicial function and the lack of a provision to appeal to a court did not mean the provision violated due process as long as orderly proceedings with established rules were employed. Italia America Shipping Corp. v. Nelson, 323 Ill. 427, 154 N.E. 198, 1926 Ill. LEXIS 1013 (1926).

A tax requiring a company to pay the tax for not cleaning impediments to the flow of water in the bed of a stream was absolutely void because it was a penalty for a violation of the law and in violation of due process protections under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2), and separation of powers under Ill. Const. (1970), Art. II, § 1 (formerly Ill. Const. of 1870, Art. III, § 2). Cleveland, C., C. & S. L. R. Co. v. People, 212 Ill. 638, 72 N.E. 725, 1904 Ill. LEXIS 2947 (1904).

- Condemnation Proceedings

605 ILCS 5/4-510, authorizing the state transportation agency, to prepare and record a map that set forth a right-of-way for a proposed highway, where the statute did not violate the federal takings clause because preparation and recordation of the map did not involve a regulatory taking, there was no violation of separation of powers principles because the state transportation agency had to meet certain obligations to lawfully condemn property that the statute did not change and which were sufficient to govern its discretion, and the statute was rationally related to the permissible governmental purpose of building highways so as to not offend substantive due

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process principles. Davis v. Brown, 221 Ill. 2d 435, 303 Ill. Dec. 773, 851 N.E.2d 1198, 2006 Ill. LEXIS 1082 (2006).

- Probation Revocation

Statute allowing a probation officer to propose that the first defendant, second defendant, and third defendant accept and complete intermediate sanctions as a way of avoiding a possible revocation of probation, 730 ILCS 5/5-6-4(i), did not violate Ill. Const. Art. II, § 1's separation of powers doctrine. Since granting probation in Illinois long had been a judicial function and a probation officer was a judicial branch employee under 730 ILCS 110/9b(3), 730 ILCS 5/5-6-4(i) did not unduly infringe on the executive branch or, more specifically, the State's Attorneys in their function of prosecuting probation violations. People v. Hammond, 397 Ill. App. 3d 342, 339 Ill. Dec. 64, 925 N.E.2d 1185, 2009 Ill. App. LEXIS 1388 (4 Dist. 2009), aff'd, 2011 Ill. LEXIS 1839 (Ill. 2011).

Statute allowing probation officer to propose that the first defendant, second defendant, and third defendant accept and complete intermediate sanctions as a way of avoiding a potential revocation of probation, 730 ILCS 5/5-6-4, did not violate the separation of powers doctrine set forth in Ill. Const. art. II, § 1. In Illinois, granting probation had long been a judicial function and a probation officer was a judicial branch employee pursuant to 730 ILCS 110/9b(3), and, thus, 730 ILCS 5/5-6-4 did not unduly infringe on the executive branch or, more specifically, the State's Attorneys in their function of prosecuting probation violations. People v. Hammond, Ill. App. 3d , Ill. Dec. , N.E.2d , 2009 Ill. App. LEXIS 1310 (4 Dist. Dec. 21, 2009), modified, 397 Ill. App. 3d 342, 925 N.E.2d 1185, 2009 Ill. App. LEXIS 1388 (4th Dist. 2009).

Sexually Violent Person

A trial court's order of commitment under the Sexually Violent Persons Commitment Act, 725 ILCS 207/40, did not violate the doctrine of separation of powers by unduly encroaching on the sphere of authority granted the Illinois Department of Human Services. The Act allows the trial court to order the Department to conduct a predisposition investigation or mental examination before entering a dispositional order, and, if a respondent is found appropriate for conditional release, the Department must prepare a treatment plan for the individual and must submit the plan to the trial court for approval and, if a respondent is committed to a secure facility, the Department "shall arrange for control, care and treatment of the person. In the present case, the jury found that respondent was a sexually violent person; the trial court conducted a commitment hearing and received testimony regarding respondent's mental and physical condition and the types of treatment respondent needed; and the trial court entered an order that, through reference to the court expert's report, incorporated specific factual findings regarding respondent's mental and physical condition and identified the types of treatment respondent required. Tthe legislature clearly intended such an interplay between the courts and the Department in framing a commitment order, and, therefore, the trial court's orders did not violate the separation of powers doctrine. People v. Hayes (In re Hayes), 321 Ill. App. 3d 178, 254 Ill. Dec. 404, 747 N.E.2d 444, 2001 Ill. App. LEXIS 232 (1 Dist. 2001).

Sovereign Immunity

When a court finds, on the facts of a particular case, that the General Assembly has granted a public entity immunity from liability, the court may not then negate that immunity by applying a common law exception to a common law rule; to do so would violate not only the provision governing sovereign immunity (Ill. Const. (1970), Art. XIII, § 40), but also this clause. Harinek v. 161 N. Clark St. Ltd. Partnership, 181 Ill. 2d 335, 230 Ill. Dec. 11, 692 N.E.2d 1177 (1998).

Splash Guard Act

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The court properly denied a motion to dissolve a temporary injunction where plaintiffs filed a complaint against the Director of Public Safety and the Superintendent of the Division of State Highway Police of the Department of Public Safety praying for a declaratory judgment declaring former section 218b of the Uniform Act Regulating Traffic on Highways unconstitutional. Hoagland v. Bibb, 12 Ill. App. 2d 298, 139 N.E.2d 417 (3 Dist. 1957).

Standing

The defendant did not have standing to raise the argument that the second degree murder section (720 ILCS 5/9-2), violated the separation of powers by usurping the power of the State's Attorney to charge a defendant with second degree murder, because the state did not attempt to charge him with second degree murder and, even if he did have standing, the statute does not usurp the power of the State's Attorney to charge a defendant with second degree murder. People v. Davis, 221 Ill. App. 3d 1023, 164 Ill. Dec. 510, 583 N.E.2d 64 (1 Dist. 1991), cert. denied, 143 Ill. 2d 641, 167 Ill. Dec. 403, 587 N.E.2d 1018 (1992).

State Treasurer's Discretion

The court would not analyze the evidence or decide whether the bonds invested in by the State Treasurer under 70 ILCS 210/12, were a prudent and safe investment, for to take such a course would, in effect, be the substitution of the court's judgment for the judgment of the treasurer, in violation of this section. Fairbank v. Stratton, 14 Ill. 2d 307, 152 N.E.2d 569 (1958).

Substitution of Judges

As a state supreme court order under Ill. Sup. Ct. R. 384 merely directed that a chiropractor's class action suit against an insurance company be transferred to the Circuit Court of Cook County and consolidated with two other pending class actions but did not state that any particular judge should preside over the cases, the chiropractor's 735 ILCS 5/2-1001(a)(2) motion to substitute judge as of right did not violate the separation of powers clause found in Ill. Const. Art. II, § 1, by undermining the Supreme Court's transfer order. Bemis v. State Farm Fire & Cas. Co., 388 Ill. App. 3d 687, 328 Ill. Dec. 751, 905 N.E.2d 285, 2009 Ill. App. LEXIS 75 (1 Dist. 2009).

In a subsequent proceeding on child neglect, where a minor's siblings are already before the court, allowing substitution of a judge as a matter of right upon the parents' request does not violate the separation of powers clause, notwithstanding the argument that the public defender, a member of the executive branch, uses legislation that arguably interferes with the judiciary's inherent power to administer and supervise the court system. In re Daniel R., 291 Ill. App. 3d 1003, 225 Ill. Dec. 900, 684 N.E.2d 891 (1 Dist. 1997).

Automatic substitution of judge statute (725 ILCS 5/114-5(a)) did not violate the separation of powers doctrine nor encroach upon the powers of the judiciary and, thus, was constitutional. People v. Walker, 119 Ill. 2d 465, 116 Ill. Dec. 675, 519 N.E.2d 890 (1988).

725 ILCS 5/114-5(c) does not violate separation of powers principles by impermissibly infringing on the role of the judiciary. People v. Williams, 124 Ill. 2d 300, 124 Ill. Dec. 577, 529 N.E.2d 558 (1988).

Summary Suspension of Driver's License

625 ILCS 5/2-118.1(b), which allows the court to suspend driver's license pending hearing, applies only to the original implied consent hearing and does not violate the separation of powers

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or due process provisions of the state constitution. People v. Trainor, 156 Ill. App. 3d 918, 109 Ill. Dec. 746, 510 N.E.2d 614 (4 Dist. 1987).

Supreme Court Rules

Since a three-year sentence on defendant's admission to a petition for revocation of probation was lawfully imposed by a judge who had jurisdiction over defendant and who had authority to assign defendant's case to his docket, a different judge, who was the judge that accepted defendant's admission to the revocation petition, improperly vacated that sentence and erroneously resentenced defendant to a greater sentence. 730 ILCS 5/5-4-1(b) did not mandate that the judge who accepted defendant's plea had to be the judge who sentenced him. If 730 ILCS 5/5-4-1 was mandatory, it would be unconstitutional under the separation of powers clause of Ill. Const. Art. II, § 1, and it would improperly encroach on the judiciary's power to assign cases pursuant to Ill. Sup. R. 21(a), which was constitutionally granted by Ill. Const. Art. VI, § 7(c). The court ordered that defendant's original sentence be reinstated. People v. Gray, 363 Ill. App. 3d 897, 300 Ill. Dec. 692, 845 N.E.2d 113, 2006 Ill. App. LEXIS 195 (1 Dist. 2006).

When a statute conflicts with a Supreme Court Rule promulgated pursuant to constitutional authority, the rule prevails and the statute is void. People v. Winfield, 160 Ill. App. 3d 983, 112 Ill. Dec. 423, 513 N.E.2d 1032 (1 Dist.), appeal denied, 117 Ill. 2d 552, 115 Ill. Dec. 517 N.E.2d 1094 (1987).

The Illinois Constitution clearly empowers the Supreme Court to promulgate procedural rules to facilitate the judiciary in the discharge of its constitutional duties. O'Connell v. St. Francis Hosp., 112 Ill. 2d 273, 97 Ill. Dec. 449, 492 N.E.2d 1322 (1986), aff'd, 145 Ill. 2d 1, 163 Ill. Dec. 848, 582 N.E.2d 114 (1991).

The constitutional authority to promulgate procedural rules, in certain circumstances, can be concurrent between the Supreme Court and the legislature. O'Connell v. St. Francis Hosp., 112 Ill. 2d 273, 97 Ill. Dec. 449, 492 N.E.2d 1322 (1986), aff'd, 145 Ill. 2d 1, 163 Ill. Dec. 848, 582 N.E.2d 114 (1991).

Where a rule of the Supreme Court on a matter within the court's authority and a statute on the same subject conflict, the rule will prevail. O'Connell v. St. Francis Hosp., 112 Ill. 2d 273, 97 Ill. Dec. 449, 492 N.E.2d 1322 (1986), aff'd, 145 Ill. 2d 1, 163 Ill. Dec. 848, 582 N.E.2d 114 (1991).

Neither former Smith-Hurd Ann. St. C. 110, § 228, (see now Rule 219, Supreme Court Rules) nor former Supreme Court Rule 18, (see now Rule 219, Supreme Court Rules) contravened Ill. Const. (1970), Art. I, § 2, Ill. Const. (1970), Art. II, § 1 or U.S. Const. Amend. 14. Wintersteen v. National Cooperage & Woodenware Co., 361 Ill. 95, 197 N.E. 578 (1935).

Termination of Parental Rights

The order of a circuit court directing the state to prosecute a pending termination petition after setting a permanency goal of substitute care pending court determination on the termination of parental rights does not violate the constitutional doctrine of separation of powers. D.S. v. R.S. (In re D.S.), 198 Ill. 2d 309, 261 Ill. Dec. 281, 763 N.E.2d 251, 2001 Ill. LEXIS 773 (2001).

Torrens Act

The Torrens Act (see now 765 ILCS 35/0.01 et seq.) is not invalid for the reason that it confers judicial powers on the chief examiner of titles because the act provides, not that the certificate of the chief examiner as to the abstract offered in evidence shall conclusively prove anything, but that it amounts to a sufficient certification to entitle the abstract to be introduced, becomes a

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prima facie proof of the transfers therein described. Stolle v. Mitchell, 309 Ill. 341, 141 N.E. 136 (1923).

Tort Immunity Act

Because the special duty doctrine is a judicially created exception to the public duty rule, the special duty doctrine, cannot, and was not intended to, contravene the immunities provided to governmental entities under the Tort Immunity Act (745 ILCS 10/1-101 et seq.); such operation constitutes a violation of Ill. Const. (1970), Art. XIII, § 4 as well as this section. Zimmerman v. Village of Skokie, 183 Ill. 2d 30, 231 Ill. Dec. 914, 697 N.E.2d 699 (1998).

Unified Code of Corrections

A construction which would hold that 730 ILCS 5/5-4-1(c) and 730 ILCS 5/5-8-1(b), require the trial judge to specify reasons for a sentence would render the provisions an unconstitutional invasion of the inherent power of the judiciary; however, a construction rendering the sections to be solely directory would not. People v. Davis, 93 Ill. 2d 155, 66 Ill. Dec. 294, 442 N.E.2d 855 (1982).

Veteran's Bonus Act

The Veteran's Bonus Act did not undertake to confer legislative powers upon the Service Recognition Board just because the Board was given the power to adopt general rules determining the question of whether an applicant was a resident of this state and determining the time he entered the service. Routt v. Barrett, 396 Ill. 322, 71 N.E.2d 660 (1947).

Voir Dire

725 ILCS 5/115-4(f), which purported to give opposing counsel the right to conduct direct voir dire examinations of prospective jurors, unduly infringed upon the judicial power of the courts, as reflected in Rule 234, Supreme Court Rules, in violation of the separation of powers doctrine of the Constitution of Illinois and, therefore, was void. People v. Walker, 58 Ill. App. 3d 323, 15 Ill. Dec. 882, 374 N.E.2d 490 (3 Dist. 1978).

Defendant had no statutory right to direct voir dire for there was no constitutional right to direct examination of prospective jurors. People v. Johnson, 54 Ill. App. 3d 970, 12 Ill. Dec. 807, 370 N.E.2d 611 (3 Dist. 1977).

Waiver

Although certain Supreme Court Rules govern a defendant's waiver of rights, no rule directly conflicts with the written jury waiver requirement of 725 ILCS 5/115-1 and that section does not violate the separation of powers clause of the Illinois Constitution. People v. Jennings, 268 Ill. App. 3d 439, 206 Ill. Dec. 146, 644 N.E.2d 1199 (3 Dist. 1994), appeal denied, 161 Ill. 2d 533, 208 Ill. Dec. 365, 649 N.E.2d 421 (1995).

Failure to object at the trial on the ground that precursor to 730 ILCS 5/3-10-7, improperly delegated legislative authority to the judiciary in violation of this section prevented the issue from being raised on appeal. People v. Hollands, 41 Ill. App. 3d 41, 353 N.E.2d 294 (1 Dist. 1976).

Workers' Compensation

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Former Sections 73 and 114 of the Occupational Diseases Act were void for vagueness, indefiniteness, and uncertainty, and for attempted delegation of legislative power. Parks v. Libby-Owens-Ford Glass Co., 360 Ill. 130, 195 N.E. 616 (1935).

Former Section 73 of the Occupational Disease Act violated Ill. Const. (1870), Art. I, § 2 and Ill. Const. (1970), Art. II, § 1, and U.S. Const, Amend. XIV. Boshuizen v. Thompson & Taylor Co., 360 Ill. 160, 195 N.E. 625 (1935).

1870 Constitution

Under division of powers of former Ill. Const. (1870), Art. III (see now this section), the legislature could not direct the judiciary how cases should be decided, nor did it possess the power to declare what weight the court should give to certain evidence, nor declare what should be conclusive evidence of a fact in issue. Liberty Foundries Co. v. Industrial Comm'n, 373 Ill. 146, 25 N.E.2d 790 (1940).

The three departments aid in the administration of the government, each one performing its different functions, and former Article III (see now this section) did not mean that the legislative, executive, and judicial powers should be kept so entirely separate and distinct as to have no connection with or dependence upon each other. Witter v. County Comm'rs, 256 Ill. 616, 100 N.E. 148 (1912).

Ill. Const. (1970), Art. II, § 1 declares that the powers of the government shall be divided into three distinct departments, each of them to be confined to a separate body of magistracy. Newland v. Marsh, 19 Ill. 376, 1857 Ill. LEXIS 183 (1857).

OPINIONS OF ATTORNEY GENERAL

Analysis

Assumption of Powers
Lump Sum Pay Increases

Assumption of Powers

The Motor Vehicle Laws Commission composed of legislators could not constitutionally assume powers currently held by the Vehicle Recycling Board to distribute appropriated funds to public and private bodies for disposing of abandoned vehicles. 1978 Op. Atty. Gen. 140.

Lump Sum Pay Increases

The application of section 11.00 of the Pay Plan, which authorized the payment of lump sum pay increases to state employees not in bargaining units and to employees of constitutional officers other than the Governor, did not violate the doctrine of separation of powers. 1977 Op. Atty. Gen. 144.

LEGAL PERIODICALS

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Fink, Best v. Taylor Machine Works, The Remittitur Doctrine, and the Implicatons for Tort Reform, 94 Nw. U.L. Rev. 227 (Fall, 1999).

Article: Can the End Justify the Means? Illinois Lawyers Trust Fund: A Constitutional Analysis, see 23 S. Ill. U. L.J. 693 (1999).

For article, "Illinois Courts: Vital Developers of Tort Law as Constitutional Vanguards, Statutory Interpreters, and Common Law Adjudicators", see 30 Loy. U. Chi. L.J. 183 (1999).

For article, "Criminal Procedure: 1987-88 Survey," see 13 S. Ill. U.L.J. 511 (1989).

For article, "The Law of Contempt in Illinois," see 19 Loy. U. Chi. L.J. 827 (1987-88).

For note, "The Illinois Amendatory Veto: Defining and Enforcing the Limits," see U. Ill. L. Rev. 691 (1987).

For article, "Court Supervision for Juvenile Delinquents Under the Amended Juvenile Court Act," see 72 Ill. B.J. 76 (1983).

For note, "Separation of Powers and the Illinois Habitual Offender Act: Who Sentences the Habitual Criminal?" see 13 Loy. U. Chi. L.J. 1033 (1981-82).

For article: "Illinois New Legislature Veto: A Strict Scrutiny of Agency Rulemaking 'With Bite,'" see 70 Ill. B.J. 36 (1981).

For article, "The Supreme Court's Exclusive Rule Making Authority," see 67 Ill. B.J. 408 (1979).

RESEARCH REFERENCES

Laws governing judicial recusal or disqualification in state proceeding as violating federal or state constitution. 91 ALR5th 437.

Practice Guides and Treatises.

Eminent Domain Practice (Illinois) § 2.16 Authority and Delegation of Authority To Implement Condemnation (IICLE).

Section 2. Powers of Government.

The enumeration in this Constitution of specified powers and functions shall not be construed as a limitation of powers of state government.

(Source: Illinois Constitution.)

CASE NOTES

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Analysis

In General
Appointment of Counsel
Condemnation Proceedings
Disorderly Conduct
Imposition of Receivership
Police Power
Standing
State Authority to Control Municipalities
Zoning Ordinances

In General

The Constitution of a state derives its force and authority from the vote of the people adopting it; for that reason it is a general rule that in construing the provisions of a constitution, the words employed therein shall be given the meaning which they bear in ordinary use among the people. Burke v. Snively, 208 Ill. 328, 70 N.E. 327 (1904).

Appointment of Counsel

An inquiry board was under no constitutional obligation to appoint counsel for an officer in the disciplinary proceeding if he could not afford, or for other reasons could not or did not obtain, counsel for himself. Kammerer v. Board of Fire & Police Comm'rs, 44 Ill. 2d 500, 256 N.E.2d 12 (1970).

Condemnation Proceedings

The opportunity to have a jury view the premises after the condemnor has taken possession of the property is not a matter of constitutional right. Department of Bus. & Economic Dev. v. Phillips, 43 Ill. 2d 28, 251 N.E.2d 170 (1969).

Disorderly Conduct

Subsection (a) of section 26-1 of the Criminal Code (720 ILCS 5/26-1) was not unconstitutionally applied. People v. Raby, 40 Ill. 2d 392, 240 N.E.2d 595 (1968).

Imposition of Receivership

Since possession of the property was not in defendant who had conveyed such to a trustee, defendant was not injured by the imposition of the receivership in that it deprived defendant of property in violation of the Illinois Constitution and the Constitution of the United States. Hartman v. Hartman, 2 Ill. App. 3d 163, 276 N.E.2d 56 (1 Dist. 1971).

Police Power

The standard of a proper exercise of the police power is whether the statute is reasonably designed to remedy the evils which the legislature has determined to be a threat to the public

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health, safety and general welfare. Heimgaertner v. Benjamin Elec. Mfg. Co., 6 Ill. 2d 152, 128 N.E.2d 691 (1955).

The State may, in the exercise of its police power, restrict, regulate or prohibit any and all uses of private property in the interest of public health, safety and welfare; however, while paramount to the rights of the individual, the police power is still restrained by the fundamental principles of justice connoted by the phrase, due process of law. Heimgaertner v. Benjamin Elec. Mfg. Co., 6 Ill. 2d 152, 128 N.E.2d 691 (1955).

Under the police power, cities and villages may enact reasonable ordinances to preserve health, suppress nuisances, prevent fires, regulate the use and storing of dangerous articles, control markets, and similar use and purposes, the police power is not impaired by U.S. Const., Amend 14, but every citizen holds his property subject to the proper exercise of the police power, either by the state legislature or by public or municipal corporations, to which the legislature has delegated that power. County of Cook v. City of Chicago, 311 Ill. 234, 142 N.E. 512 (1924).

Standing

Village did not have standing to sue on due process or equal protection grounds, because it was not a "person" as that term is embraced by the equal protection provisions of the Illinois Constitution. Village of Schaumburg v. Doyle, 277 Ill. App. 3d 832, 214 Ill. Dec. 642, 661 N.E.2d 496 (1 Dist. 1996), appeal denied, 167 Ill. 2d 569, 217 Ill. Dec. 670, 667 N.E.2d 1063 (1996).

State Authority to Control Municipalities

In the performance of governmental functions, the state has the power to control units of local government through legislation without regard to considerations of due process or equal protection of the laws both as to substance and procedure, and it may require a city to perform acts through its officers and employees against its corporate will. People v. Valentine, 50 Ill. App. 3d 447, 8 Ill. Dec. 696, 365 N.E.2d 1082 (5 Dist. 1977).

Zoning Ordinances

The state's police power provides the sole justification for the enactment of zoning ordinances which limit a property owner's privilege and right to use his property as he desires. Northbrook Trust & Sav. Bank v. County of Cook, 47 Ill. App. 3d 879, 8 Ill. Dec. 195, 365 N.E.2d 433 (1 Dist. 1977).

Although a zoning ordinance is presumed valid, this presumption may be overcome by a property owner who shows by clear and convincing evidence that the ordinance as applied to him is arbitrary and unreasonable and bears no substantial relation to the public health, morals, safety or welfare. Northbrook Trust & Sav. Bank v. County of Cook, 47 Ill. App. 3d 879, 8 Ill. Dec. 195, 365 N.E.2d 433 (1 Dist. 1977).

Zoning ordinance was entitled to a presumption of validity and constitutionality; a party seeking to set aside the ordinance had the burden of establishing its unreasonableness and unconstitutionality, under Ill. Const. Art. II, § 2. Springfield v. Kable, 306 Ill. App. 616, 29 N.E.2d 675, 1940 Ill. App. LEXIS 906 (1 Dist. 1940).

City ordinance that required a dry-cleaning building to be 50 feet from another building, or a lot line beyond which another building could be built was an unreasonable restriction and was unconstitutional. Klever Shampay Karpet Kleaners, Inc. v. Chicago, 238 Ill. App. 291, 1925 Ill. App. LEXIS 262 (1925).

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LEGAL PERIODICALS

For article, "Illinois and the Right of Privacy: History and Current Status," see 11 J. Marshall J. Prac. & Proc. 91 (1977).

RESEARCH REFERENCES

Validity, construction, and application of variance provisions in state and local air pollution control laws and regulations. 66 ALR4th 711.

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ARTICLE III
SUFFRAGE AND ELECTIONS

Section 1. Voting Qualifications.

Every United States citizen who has attained the age of 18 or any other voting age required by the United States for voting in State elections and who has been a permanent resident of this State for at least 30 days next preceding any election shall have the right to vote at such election. The General Assembly by law may establish registration requirements and require permanent residence in an election district not to exceed thirty days prior to an election. The General Assembly by law may establish shorter residence requirements for voting for President and Vice-President of the United States.

(Source: Amendment adopted at general election November 8, 1988.)

Illinois Jurisprudence. See Illinois Jur, Pers Inj & Torts § 8:4.

CASE NOTES

Analysis

Elections
One Punch Straight Party Vote
Registration
Residency Requirements
Statutory Limits
Woman's Suffrage

Elections

Classification for purposes of legislation is primarily a legislative function, therefore, only if it can be said that the classification is clearly unreasonable and palpably arbitrary will the court hold the classification invalid. Redmond v. Novak, 86 Ill. 2d 374, 55 Ill. Dec. 933, 427 N.E.2d 53 (1981).

While the necessity of, and legislative authority to establish, reasonable rules assuring the honest and orderly conduct of elections is obvious, that statutory requirements which, absent fault on his part, deprive a fully qualified voter of his right to vote or to have his vote counted are constitutionally suspect, particularly where such requirements do not substantially promote the secrecy and integrity of the election. Craig v. Peterson, 39 Ill. 2d 191, 233 N.E.2d 345 (1968).

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In construing statutory provisions regulating elections, the courts generally have tended to hold directory those requirements as to which the legislature has not clearly indicated a contrary intention, particularly where such requirements do not contribute substantially to the integrity of the election process. Craig v. Peterson, 39 Ill. 2d 191, 233 N.E.2d 345 (1968).

One Punch Straight Party Vote

Legislation abolishing the one punch straight party voting was introduced with the purpose of achieving a number of goals including increased voter awareness, selection of better qualified candidates and increased involvement by third party groups in political process and was therefore rationally related to a legitimate government purpose. Orr v. Edgar, 298 Ill. App. 3d 432, 232 Ill. Dec. 469, 698 N.E.2d 560 (1 Dist. 1998), appeal denied, 179 Ill. 2d 589, 235 Ill. Dec. 567, 705 N.E.2d 440 (1998).

Legislation abolishing the one punch straight party voting did not infringe upon the right to vote, rather, it affected the manner in which citizens exercised their right to vote. Orr v. Edgar, 298 Ill. App. 3d 432, 232 Ill. Dec. 469, 698 N.E.2d 560 (1 Dist. 1998), appeal denied, 179 Ill. 2d 589, 235 Ill. Dec. 567, 705 N.E.2d 440 (1998).

Registration

Registration laws have been sustained as reasonable limitations on the right of suffrage. Pope v. Board of Election Comm'rs, 370 Ill. 196, 18 N.E.2d 214 (1938).

Residency Requirements

To constitute a residence, within the meaning of the constitutional and statutory provisions, a permanent abode is necessary. Pope v. Board of Election Comm'rs, 370 Ill. 196, 18 N.E.2d 214 (1938).

A real and not an imaginary abode occupied as his home or dwelling is essential to satisfy the residence requirements of the law. Pope v. Board of Election Comm'rs, 370 Ill. 196, 18 N.E.2d 214 (1938).

Residence, for purposes of registration or voting, means more than a mere technical domicile and does not permit registration and voting from an office or business location where the applicant has never lodged; the meaning of the words "residence" and "permanent abode" cannot be tortured, under the guise of statutory construction, to include a business location not even purporting to be a definite place to which an intention to return might be legitimately inferred. Pope v. Board of Election Comm'rs, 370 Ill. 196, 18 N.E.2d 214 (1938).

Since appellant's place of actual abode was in Missouri and not at his law office in Illinois, he was precluded from claiming residence for voting purposes. Pope v. Board of Election Comm'rs, 370 Ill. 196, 18 N.E.2d 214 (1938).

Statutory Limits

The amendment by P.A. 89-5 to 110 ILCS 310/1, to remove the sitting trustees from office, was unconstitutional; the amendment impaired the right to suffrage as it basically eviscerated the election process by providing that, even though the trustees received the majority of votes cast and counted on election day, they were prohibited from holding office for the terms to which they were elected. Tully v. Edgar, 171 Ill. 2d 297, 215 Ill. Dec. 646, 664 N.E.2d 43 (1996).

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Woman's Suffrage

Because county commissioners were officers provided for by former Ill. Const. (1870), Art. X, Sec. 7 (see now Ill. Const. (1970), Art. VII, Sec. 3), only those who possessed the qualifications of electors as provided in former Ill. Const. (1870), Art. VII, Sec. 1 (see now this section) could vote for such commissioners and for one of their number to be president of the county board. People ex rel. Jurgensen v. Czarnecki, 265 Ill. 489, 107 N.E. 184 (1914).

For a case discussing women's right to vote in school district elections, see People ex rel. Nourie v. Peltier, 265 Ill. 630, 107 N.E. 200 (1914).

For a case holding the Woman's Suffrage Act constitutional under former Ill. Const. (1870) Art. VII, § 1, see Scown v. Czarnecki, 264 Ill. 305, 106 N.E. 276 (1914).

Practice Guides and Treatises.

Civil Practice (Illinois) Volume I: Opening the Case § 4.40 Basis of Civil Jurisdiction of United States District Courts (IICLE).

Section 2. Voting Disqualifications.

A person convicted of a felony, or otherwise under sentence in a correctional institution or jail, shall lose the right to vote, which right shall be restored not later than upon completion of his sentence.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Pers Inj & Torts § 8:4.

CASE NOTES

Analysis

Constitutionality
Federal Rights
Felony
Infamous Crime

Constitutionality

Disenfranchisement of felons by this section does not violate U.S. Const., Amend. 15. Jones v. Edgar, 3 F. Supp. 2d 979 (C.D. Ill. 1998).

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Federal Rights

Citizenship rights restored by this section, do not affect rights of citizenship which are controlled by federal law which have not been restored, including the right to serve on a jury (28 U.S.C. § 1865(b) (5)) and to possess firearms (18 U.S.C. § 925(c)). Viverito v. Levi, 395 F. Supp. 47 (N.D. Ill. 1975).

Felony

In both the Constitution of 1848 and that of 1870, bribery of all kinds, which included bribery in elections, was classed with perjury, as rendering the offender infamous, one showing him to be insensible to the obligations of an oath, and the other proving him alike insensible to the obligations and duties of a citizen, and unfit to exercise the elective franchise; bribery in elections was an infamous crime (now felony) within the meaning of former Art. VII, § 7 (see now this section). Christie v. People, 206 Ill. 337, 69 N.E. 33 (1903).

Infamous Crime

Where a county assessor was convicted of conspiracy to evade and evasion of personal and corporate income taxes, such a conviction constituted a conviction under former Ill. Rev. Stat., ch. 38, para. 587 as an infamous crime, which caused a vacancy in his office as county assessor; defendant's appeal from such conviction did not operate to stay the effect of such vacancy. People ex rel. Keenan v. McGuane, 13 Ill. 2d 520, 150 N.E.2d 168 (1958).

Practice Guides and Treatises.

Civil Practice (Illinois) Volume I: Opening the Case § 4.40 Basis of Civil Jurisdiction of United States District Courts (IICLE).

Section 3. Elections.

All elections shall be free and equal.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

In General
Ballot Form
Board Elections
Combining Polling Places

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Criminal Trespass to Land
Drainage Code
- Voting Scheme
Election Upheld
Elections
Free and Equal
- Not Shown
Nominating Petitions
Primaries
Purpose
Reapportionment Scheme
- Held Valid
Right to Vote
School Elections
Town Meetings
Two Tier System
Write-In Vote

In General

Appointment provisions of the Regional Transportation Authority Act, 70 ILCS 3615/1.01 et seq., did not violate the provisions of Ill. Const. Art. II, § 1 that the legislative, executive, and judicial branches of government are separate and that no branch shall exercise powers properly belonging to another (separation of powers) or the "one person, one vote" principle derived from Ill. Const. Art. I, § 2 and Ill. Const. Art. III, § 3. Stroger v. Reg'l Transp. Auth., 201 Ill. 2d 508, 268 Ill. Dec. 417, 778 N.E.2d 683, 2002 Ill. LEXIS 626 (2002).

Constitutional provision relating to a free and equal election does not guarantee an errorless election; all that the Constitution requires is that each voter have the right and opportunity to cast his or her vote without any restraint and that his or her vote has the same influence as the vote of any other voter. Goree v. LaVelle, 169 Ill. App. 3d 696, 120 Ill. Dec. 167, 523 N.E.2d 1078 (1 Dist.), cert. denied, 122 Ill. 2d 574, 125 Ill. Dec. 217, 530 N.E.2d 245 (1988), 489 U.S. 1054, 109 S. Ct. 1317, 103 L. Ed. 2d 586 (1989).

Insofar as the creation of congressional and senatorial districts and the formation of judicial circuits and districts, as well as wards in municipalities and other districts, is concerned the commands of this section are primarily addressed to the legislative branch of the government. Daly v. County of Madison, 378 Ill. 357, 38 N.E.2d 160 (1941).

An election is free where the voters are exposed to no intimidation or improper influence and where each voter is allowed to cast his ballot as his own conscience dictates; elections are equal when the vote of each voter is equal in its influence upon the result to the vote of every other elector - where each ballot is as effective as every other ballot. People ex rel. Elder v. Quilici, 309 Ill. App. 466, 33 N.E.2d 492 (1 Dist. 1941).

This section means that every qualified voter may freely exercise the right to cast a vote without restraint or coercion of any kind, and that vote, when cast, shall have the same influence as that of any other vote. McAlpine v. Dimick, 326 Ill. 240, 157 N.E. 235 (1927).

Ballot Form

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Some older cases barred multiple-question ballot propositions as a violation of the free and equal clause, but more recent cases clearly establish that it is only separate and unrelated questions which cannot be combined in a single proposition. Richardson v. Mulcahey, 265 Ill. App. 3d 123, 202 Ill. Dec. 481, 637 N.E.2d 1217 (3 Dist. 1994).

Only separate and unrelated questions cannot be combined in a single proposition to amend the state Constitution. Coalition for Political Honesty v. State Bd. of Elections, 83 Ill. 2d 236, 47 Ill. Dec. 363, 415 N.E.2d 368 (1980).

The questions which respondents found in petitioner's proposition to amend the state Constitution, namely whether the size of the house should be reduced, whether cumulative voting should be abolished and whether single member districts should be adopted, were no separate and unrelated, for they related directly to the ultimate purpose of structural and procedural change in the House of Representatives; they were also compatibly interrelated to provide a consistent and workable whole in the sense that reasonable voters could support the entire proposition, and therefore qualified for submission to the electorate. Coalition for Political Honesty v. State Bd. of Elections, 83 Ill. 2d 236, 47 Ill. Dec. 363, 415 N.E.2d 368 (1980).

Where village submitted question of acquiring property for recreational use to a referendum, the referendum was not invalid because it combined in a single proposition the question whether the property should be acquired and the question whether bonds should be issued to meet the cost of acquisition. Village of Deerfield v. Rapka, 54 Ill. 2d 217, 296 N.E.2d 336 (1973).

This section has been construed as requiring that separate and independent questions may not be combined in one proposition in such a way as to place a voter in the position of having to vote for or against both questions when he might otherwise favor one but oppose the other. Village of Deerfield v. Rapka, 54 Ill. 2d 217, 296 N.E.2d 336 (1973).

This section states that all elections shall be free and equal, which means each qualified elector shall have equal opportunity and influence in expressing his mandate upon a given subject, and where that right has been denied by combining unrelated questions into a single proposition, the court will declare the election void. Carstens v. Board of Educ., 27 Ill. 2d 88, 187 N.E.2d 682 (1963).

105 ILCS 5/9-13, which allows the proposition of purchasing schoolhouse sites and building thereon to be combined into one ballot question among other activities, does not violate the constitutional provision requiring free and equal elections. Roll v. Carrollton Community Unit School, 3 Ill. 2d 148, 121 N.E.2d 1 (1954); Carstens v. Board of Educ., 27 Ill. 2d 88, 187 N.E.2d 682 (1963).

This section of the constitution does not guarantee that every person, because of membership in a definite group, with a common interest in the outcome of an election, by reason thereof, has a right to a separate ballot, and that the result of that separate balloting shall determine his and their subsequent status. People ex rel. Honefenger v. Burris, 408 Ill. 68, 95 N.E.2d 882 (1950).

The constitutional provision requiring that all elections be free and equal circumscribes the power of the General Assembly and prohibits it from prescribing a form of ballot which combines two or more separate unrelated propositions into a single question. People ex rel. Hall v. Bopp, 396 Ill. 80, 71 N.E.2d 351 (1947).

Constitutional provision that all elections shall be free and equal, has been held to mean that the vote of every qualified elector shall be equal in its influence with that of every other one, and that two or more questions which are separate and unrelated cannot be combined into a single proposition for submission to a vote. Routt v. Barrett, 396 Ill. 322, 71 N.E.2d 660 (1947).

Although a taxpayer has a right to have separately stated and itemized the several purposes for which public money is appropriated or taxes levied, there is no requirement that detailed

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itemization of the purposes be included in the ballot submitted to the voter. Voss v. Chicago Park Dist., 392 Ill. 429, 64 N.E.2d 731 (1946).

A law which provides for the holding of primary elections for the nomination of candidates for office regulates the form and contents of the ballot, and the method of choosing the candidates must conform to this section. McAlpine v. Dimick, 326 Ill. 240, 157 N.E. 235 (1927).

Board Elections

Where county-wide referendum overwhelmingly approved the proposition that the chairman of the county board would be selected by general election as provided for in former section 7 of the County Board Act (see now 55 ILCS 5/2-3007), requirement that chairman of the county board be selected by general election did not violate this section, although chairman had to be a board member and only incumbent board members could seek election as chairman in districts where incumbents were not set up for re-election. Taylor v. County of St. Clair, 57 Ill. 2d 367, 312 N.E.2d 231 (1974).

Combining Polling Places

The Board of Election Commissioners, did not violate this section by combining polling places by virtue of a resolution, which was 25 days before the election since the resolution did not deny to any elector who had resided in an election precinct 30 days next preceding the election the right to vote but merely designated a common polling place for several election precincts. People ex rel. Elder v. Quilici, 309 Ill. App. 466, 33 N.E.2d 492 (1 Dist. 1941).

Criminal Trespass to Land

A private store's use of the criminal trespass to land statute to exclude defendant from its property did not violate defendant's rights under the free speech or the free and equal elections provisions of Illinois Constitution. People v. DiGuida, 152 Ill. 2d 104, 178 Ill. Dec. 80, 604 N.E.2d 336 (1992).

Drainage Code

- Voting Scheme

The voting scheme contained within the Drainage Code (70 ILCS 605/1-1 et seq.) does not violate this section. Goldstein v. Mitchell, 144 Ill. App. 3d 474, 98 Ill. Dec. 792, 494 N.E.2d 914 (2 Dist. 1986).

Election Upheld

Where there was nothing in the record, that disclosed that any eligible voter was not aware of the election, had been denied the right to vote, suffered any restraint, or whose vote did not have the same influence as any other voter; the election was not unconstitutional. Goree v. LaVelle, 169 Ill. App. 3d 696, 120 Ill. Dec. 167, 523 N.E.2d 1078 (1 Dist.), cert. denied, 122 Ill. 2d 574, 125 Ill. Dec. 217, 530 N.E.2d 245 (1988), 489 U.S. 1054, 109 S. Ct. 1317, 103 L. Ed. 2d 586 (1989).

Elections

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Trial court's order directed to state officials to issue "corrective notice" to be distributed to voters along with the ballot in an upcoming election fulfilled the Ill. Const. art. III, § 3 requirement of making elections "free and equal." That ruling did so by allowing voters to express a choice for or against a state constitutional convention. Chicago Bar Ass'n v. White, 386 Ill. App. 3d 955, 325 Ill. Dec. 822, 898 N.E.2d 1101, 2008 Ill. App. LEXIS 1050 (1 Dist. 2008).

Despite the substantial cost of the additional elections and diminishing of the time during which residents of the counties affected might register, Supreme Court was unable to say that the method which the General Assembly chose to provide for the elections under former section 832 of chapter 34 (see now 55 ILCS 5/2-3002), and 10 ILCS 5/4-6 and 10 ILCS 5/7-5 created invalid classifications or resulted in constitutional violations. Bridgewater v. Hotz, 51 Ill. 2d 103, 281 N.E.2d 317 (1972).

Declaration in the Bill of Rights, under former Ill. Const. 01 1870, Art. II, § 18 (now Ill. Const. (1970), Art. III, § 3), that all elections must be equal, does not necessarily mean, that there must be uniformity of regulation, in regard thereto, in all portions of Illinois. People ex rel. Grinnell v. Hoffman, 116 Ill. 587, 5 N.E. 596, 1886 Ill. LEXIS 1119 (1886).

Free and Equal

As election is free where the voters are exposed to no intimidation or improper influence and where each voter is allowed to cast his ballot as his own conscience dictates, and an election is equal when the vote of each voter is equal in its influence upon the result to the vote of every other elector. Moran v. Bowley, 347 Ill. 148, 179 N.E. 526 (1932).

- Not Shown

The methods employed by defendants, summoning to the patently inadequate meeting room in the dead of night a number of their supporters sufficient to control the 2:00 P.M. meeting, devising a system whereby tickets are given such supporters permitting free ingress and egress from that room, providing guards armed with guns and riot clubs to prevent the entrance of other qualified electors, refusing to permit even a vote upon a motion to adjourn the meeting to more adequate quarters, and directing 8 to 12 police officers with their guns and riot clubs to remain in the meeting room during a meeting in which there was not the slightest hint of disorder while other similarly armed officers barred the entrances to the building, are all typical of the type of intimidation and coercion found in a police state, but which are totally opposed to the guarantees of free and equal elections provided by our state and federal constitutions, and rendered the town meeting void. Thompson v. Conti, 39 Ill. 2d 160, 233 N.E.2d 351 (1968).

Nominating Petitions

The portion of 10 ILCS 5/10-3 which required that the 25,000 signatures on a nominating petition for an independent candidate include 200 signatures from each of at least 50 of the state's 102 counties applied a rigid, arbitrary formula to sparsely settled counties and populous counties alike, contrary to the constitutional theme of equality among citizens in the exercise of their political rights, and violated the equal protection clause of the United States Constitution. Moore v. Ogilvie, 394 U.S. 814, 89 S. Ct. 1493, 23 L. Ed. 2d 1 (1969).

Primaries

Since in Illinois, primaries are subject to extensive state regulation, the right to vote in them is constitutionally protected. Pontikes v. Kusper, 345 F. Supp. 1104 (N.D. Ill. 1972), aff'd, 414 U.S. 51, 94 S. Ct. 303, 38 L. Ed. 2d 260 (1973).

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Purpose

The purpose of this provision is to insure people access to the ballot and access to being on the ballot. Anagnost v. Layhe, 230 Ill. App. 3d 540, 172 Ill. Dec. 46, 595 N.E.2d 109 (1 Dist. 1992).

Reapportionment Scheme

- Held Valid

That Chicago elected its aldermen to serve four year terms, which caused a temporary delay in the implementation of the new census date every 20 years, did not transform Illinois' scheme into an unconstitutional procedure; decennial reapportionment satisfies Ill. Const. (1970), Art. I, § 2, this section and U.S. Const., Amend. XIV, even though there undoubtedly will be some imbalance in the population of each district towards the end of the decennial period. Political Action Conference v. Daley, 976 F.2d 335 (7th Cir. 1992).

Right to Vote

The bestowal by the legislature of the power to organize a park district conferred a privilege not a right, thus, the inhabitants of a district and its 120 sections who challenged a statute on the grounds that it bestowed such power in a manner that permitted elections which were not free and equal, did not have a right to vote, only the privilege of voting, in furtherance of legislative policy. People ex rel. Honefenger v. Burris, 408 Ill. 68, 95 N.E.2d 882 (1950).

School Elections

105 ILCS 5/7-2a(b), providing for the dissolution of certain school districts, did not violate equal protection because it only applied to school districts with less than 5,000 residents, as it was subject to a rational basis analysis, because it did not infringe the right to vote, but merely determined the manner in which that right was exercised, and it was rationally related to the legitimate state goal of promoting local control of education efficiently. Puffer-Hefty Sch. Dist. No. 69 v. Du Page Reg'l Bd. of Sch. Trs., 339 Ill. App. 3d 194, 273 Ill. Dec. 626, 789 N.E.2d 800, 2003 Ill. App. LEXIS 528 (2 Dist. 2003), cert. denied, 540 U.S. 1219, 124 S. Ct. 1509, 158 L. Ed. 2d 155 (2004).

Residents of a school district do not have an inherent right of franchise insofar as school elections are concerned, rather the right to vote therein is purely a permissive one bestowed by legislative grace in furtherance of the policy of the legislature. People v. Deatherage, 401 Ill. 25, 81 N.E.2d 581 (1948).

Town Meetings

The constitutional guarantee of free and equal elections applies to town meetings as well as other forms of election. Thompson v. Conti, 39 Ill. 2d 160, 233 N.E.2d 351 (1968).

Two Tier System

The two tier system of voting, creating dual and separate electorates for state and federal elections, violated the guarantee of free and equal elections. Orr v. Edgar, 283 Ill. App. 3d 1088, 219 Ill. Dec. 355, 670 N.E.2d 1243 (1 Dist. 1996).

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Write-In Vote

Requirement that in addition to the writing in of the name of a candidate, an (X) must be placed opposite the name for the act of voting to be complete, did not violate this section. Stramaglia v. Jenkins, 9 Ill. App. 3d 703, 292 N.E.2d 912 (2 Dist. 1973).

Section 4. Election Laws.

The General Assembly by law shall define permanent residence for voting purposes, insure secrecy of voting and the integrity of the election process, and facilitate registration and voting by all qualified persons. Laws governing voter registration and conduct of elections shall be general and uniform.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Applicability
Ballot Expenses
General and Uniform
Home Rule Units
University Solicitation Policy
Violation
- Not Found

Applicability

This section refers to the mechanics of voter registration, residency requirements and other election and voting procedures, it does not address and was not intended to require uniformity of rules governing the management of a political party's internal affairs. Totten v. State Bd. of Elections, 79 Ill. 2d 288, 38 Ill. Dec. 137, 403 N.E.2d 225 (1980).

Ballot Expenses

A county is liable for the expense of printing and delivering ballots. People ex rel. Atwell Printing & Binding Co. v. Board of Comm'rs, 345 Ill. 172, 177 N.E. 705 (1931).

General and Uniform

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A nonpartisan referendum, which deprived candidates seeking office from having the same time to circulate their nominating petitions as other candidates for office did not conform to the constitution. Lipinski v. Chicago Bd. of Election Comm'rs, 114 Ill. 2d 95, 102 Ill. Dec. 417, 500 N.E.2d 39 (1986).

Home Rule Units

The constitutional convention proceedings indicate that the drafters considered the regulation of election procedures to be a statewide, not a local, concern. Leck v. Michaelson, 129 Ill. App. 3d 593, 84 Ill. Dec. 770, 472 N.E.2d 1166 (1 Dist. 1984), modified on other grounds, 111 Ill. 2d 523, 96 Ill. Dec. 368, 491 N.E.2d 414 (1986).

University Solicitation Policy

The solicitation policy of a university, which provided registrars with table space in public areas during fixed times, was fully consistent with the principles and purposes of the Election Code (see now 10 ILCS 5/1-1) and Illinois Constitution where the student remained at all times free to register at the clerk's office, at a temporary registration place if the clerk chose to establish one in the public area of the campus, or in his own room if he wished to invite the deputy registrar there. Harrell v. Southern Ill. Univ., 120 Ill. App. 3d 161, 75 Ill. Dec. 529, 457 N.E.2d 971 (5 Dist. 1983).

Violation

- Not Found

The unavailability of the one punch straight party vote did not prevent the elderly or handicapped from fully exercising their voting rights and therefore did not impede voting by all qualified persons. Orr v. Edgar, 298 Ill. App. 3d 432, 232 Ill. Dec. 469, 698 N.E.2d 560 (1 Dist. 1998), appeal denied, 179 Ill. 2d 589, 235 Ill. Dec. 567, 705 N.E.2d 440 (1998).

Despite the substantial cost of the additional elections and diminishing of the time during which residents of the counties affected might register, Supreme Court was unable to say that the method which the General Assembly chose to provide for elections under 55 ILCS 5/2-3002, 10 ILCS 5/4-6 and 10 ILCS 5/7-5 created invalid classifications or resulted in constitutional violations. Bridgewater v. Hotz, 51 Ill. 2d 103, 281 N.E.2d 317 (1972).

Section 5. Board of Elections.

A State Board of Elections shall have general supervision over the administration of the registration and election laws throughout the State. The General Assembly by law shall determine the size, manner of selection and compensation of the Board. No political party shall have a majority of members of the Board.

(Source: Illinois Constitution.)

CASE NOTES

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Analysis

Authority
Compatibility
Majority of Members
Manner of Selection
Regulation
Removal of Member

Authority

State board of elections had supervision over the administration of election laws and, thus, it could dismiss without a public hearing the 10 complaints filed by the county political party chairman. Those complaints either did not contain justifiable grounds for believing that the politicians violated the Election Code or the complaints did not receive the state election board's majority vote as required by 10 ILCS 5/9-21. Cook County Republican Party v. State Bd. of Elections, 378 Ill. App. 3d 752, 317 Ill. Dec. 519, 882 N.E.2d 93, 2007 Ill. App. LEXIS 1295 (1 Dist. 2007).

Compatibility

No incompatibility existed which required the Supreme Court to treat this section as fashioning an exception to the proscription against legislative appointment contained in Ill. Const. (1970), Art. V, § 9 (a) as this section sanctions no particular method of selection. Walker v. State Bd. of Elections, 65 Ill. 2d 543, 3 Ill. Dec. 703, 359 N.E.2d 113 (1976).

Majority of Members

Ill. Const. Art. III, § 5 provides that no political party have a majority on the Illinois State Board of Elections. Ill. Campaign for Political Reform v. Ill. State Bd. of Elections, 388 Ill. App. 3d 517, 328 Ill. Dec. 486, 904 N.E.2d 996, 2009 Ill. App. LEXIS 93 (1 Dist. 2009).

Manner of Selection

Statutory method used to select members of the State Board of Elections and the tie breaker provision of said statute were unconstitutional. Walker v. State Bd. of Elections, 65 Ill. 2d 543, 3 Ill. Dec. 703, 359 N.E.2d 113 (1976).

Regulation

Classification of boards of election for purposes of legislation is primarily a legislative function, therefore, only where the classification was clearly unreasonable and palpably arbitrary would the court hold the classification invalid under this constitutional provision. Redmond v. Novak, 86 Ill. 2d 374, 55 Ill. Dec. 933, 427 N.E.2d 53 (1981).

Removal of Member

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Governor could only remove a member of the State Board of Elections for cause. Lunding v. Walker, 65 Ill. 2d 516, 3 Ill. Dec. 686, 359 N.E.2d 96 (1976).

Because of the independent nature of the State Board of Elections the question of whether Board member's failure to file a financial disclosure statement in compliance with an executive order was sufficient "neglect of duty" to justify the Governor's exercise of his removal power was a question which was properly reviewable by the courts. Lunding v. Walker, 65 Ill. 2d 516, 3 Ill. Dec. 686, 359 N.E.2d 96 (1976).

LEGAL PERIODICALS

For article, "The Illinois State Board of Elections: A History and Evaluation of the Formative Years," see 11 J. Marshall J. Prac. & Proc. 321 (1978).

Section 6. General Election.

As used in all articles of this Constitution except Article VII, "general election" means the biennial election at which members of the General Assembly are elected. Such election shall be held on the Tuesday following the first Monday of November in even-numbered years or on such other day as provided by law.

(Source: Illinois Constitution.)

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ARTICLE IV
THE LEGISLATURE

Section 1. Legislature - Power and Structure.

The legislative power is vested in a General Assembly consisting of a Senate and a House of Representatives, elected by the electors from 59 Legislative Districts and 118 Representative Districts.

(Source: Amendment adopted at general election November 4, 1980.)

CASE NOTES

Analysis

In General
Curing of Defect
Delegation of Power
- In General
- Administrative Discretion
- Invalid
- Valid
Intent
- Determined from Statutory Language
Limitation of Power
Power to Tax
- Discretion of County Clerk
- Limitations
Zoning
- Power to Modify

In General

Legislature has a right to legalize acts of peaceable picketing and peaceable persuasion, and thus, it necessarily follows that forbidding the restraint of such peaceable acts does not deprive anybody of a remedy for an injury or wrong; therefore, such a remedy is all that former Ill. Const. of 1870, Art. II, § 19 (now Ill. Const. (1970), Art. IV, § 1) is meant to guarantee. Fenske Bros., Inc. v. Upholsterers' International Union, 358 Ill. 239, 193 N.E. 112, 1934 Ill. LEXIS 996 (1934).

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All the legislative power inherent in the people of the state of Illinois has been vested in the General Assembly, except in those cases in which the power has by express limitation or necessary implication been withheld. People ex rel. Thomson v. Barnett, 344 Ill. 62, 176 N.E. 108 (1931).

Unlimited and uncontrolled legislative power was conferred in the General Assembly, and it may be so exercised unless limited by other provisions of the State Constitution or inhibited by the Federal Constitution. Harris v. Board of Supervisors, 105 Ill. 445 (1883).

Under former Ill. Const. of 1870, Art. I, § 1 (now Ill. Const. (1970), Art. IV, § 1), the legislature has power to pass a general law authorizing partition by laying off land into lots, authorizing a sale when so laid off, and declaring the streets in all towns surveyed and recorded as public highways. Edwards v. Pope, 4 Ill. 464, 1842 Ill. LEXIS 31 (1842).

Under former Ill. Const. of 1870, Art. I, § 1 (now Ill. Const. (1970), Art. IV, § 1), the legislature may exercise its legitimate powers by enacting general or special laws. Edwards v. Pope, 4 Ill. 464, 1842 Ill. LEXIS 31 (1842).

Curing of Defect

Where the legislature enacts a law with reference to a particular subject-matter, and authorizes acts to be done which are not, in and of themselves, jurisdictional with reference to a person or property, it may by curative legislation approve and render valid any act done which it had power to originally authorize, and which may have been done theretofore under a supposed power and authority. Park v. Modern Woodmen of Am., 181 Ill. 214, 54 N.E. 932 (1899).

Delegation of Power

Trial court erred in dismissing property owners' action against a city, a commission on landmarks, and city officials because the owners adequately stated a cause of action in the count of their complaint alleging that the Chicago Landmark Ordinance (Ordinance), Chicago, Ill., Mun. Code §§ 2-120-580 to 2-120-920, permitted an improper delegation of authority; the commission performed a declaratory function, and under the Ordinance, the commission could make a recommendation to the city council, and the city council was not required to review the commission's recommendations before they became final. Hanna v. City of Chicago, 388 Ill. App. 3d 909, 329 Ill. Dec. 799, 907 N.E.2d 390, 2009 Ill. App. LEXIS 98 (1 Dist. 2009).

- In General

The legislature has constitutional power to specify to the judiciary, within proper bounds, the range of penalties for a given criminal offense. People v. Muskgrove, 44 Ill. App. 3d 381, 3 Ill. Dec. 169, 358 N.E.2d 336 (3 Dist. 1976).

Where the legislature had constitutionally delegated to the prosecutor the power to specify a range of penalties, there was no constitutional infirmity. People v. Muskgrove, 44 Ill. App. 3d 381, 3 Ill. Dec. 169, 358 N.E.2d 336 (3 Dist. 1976).

When the legislature has the power to enact a law, it also has the power, as a necessary adjunct, to adopt a procedure for its administration and may do so through commissions, boards or committees, and may grant to such administrative certain authority and powers in keeping with the spirit of the act, for its efficient and practical application and operation. Meadowlark Farms, Inc. v. Pollution Control Bd., 17 Ill. App. 3d 851, 308 N.E.2d 829 (5 Dist. 1974).

The power to make the laws for this state is a sovereign power vested in the legislature, and cannot be delegated to another body, authority or person. People v. Tibbitts, 56 Ill. 2d 56, 305 N.E.2d 152 (1973).

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The General Assembly cannot delegate its general legislative power to determine what the law shall be, but may delegate to others the authority to do those things which the legislature might properly do, but cannot do as understandingly or advantageously; but the legislature in delegating to an administrative agency the performance of certain functions may not invest that agency with arbitrary powers or be vague or indefinite in its delegation. People v. Tibbitts, 56 Ill. 2d 56, 305 N.E.2d 152 (1973); People ex rel. Chicago Dryer Co. v. City of Chicago, 413 Ill. 315, 109 N.E.2d 201 (1952).

The legislature must decide what the law shall be, and an act which vests any person or authority with arbitrary discretion to determine what the law shall be in a particular situation is invalid. People ex rel. Chicago Dryer Co. v. City of Chicago, 413 Ill. 315, 109 N.E.2d 201 (1952).

The ultimate operation of a law may by its own terms be made to depend upon a contingency, such as an affirmative vote of the electors in a given district or upon the action of some municipality, commission, or other public agency named in the act, and such dependency does not necessarily result in an unconstitutional delegation of power. People ex rel. Chicago Dryer Co. v. City of Chicago, 413 Ill. 315, 109 N.E.2d 201 (1952).

Fundamental distinction lies between a delegation of power to make the law, which involves a discretion of what the law shall be, and conferring an authority or discretion as to its execution to be exercised under and in pursuance of the law; the first cannot be done while the latter is unobjectionable. People ex rel. Chicago Dryer Co. v. City of Chicago, 413 Ill. 315, 109 N.E.2d 201 (1952).

The generally recognized rule of law is that legislative power may not be delegated. People ex rel. Thomson v. Barnett, 344 Ill. 62, 176 N.E. 108 (1931).

- Administrative Discretion

General Assembly is the sole repository of legislative power; however, in the proper case it may delegate duties involving administrative bodies, or officers. People ex rel. Daesch v. Mayor of Belleville, 22 Ill. 2d 226, 174 N.E.2d 678 (1961).

- Invalid

The rule against delegation of legislative power was violated by vesting municipal corporations with certain powers of legislation on subjects of purely local concern connected with their municipal affairs. People ex rel. Chicago Dryer Co. v. City of Chicago, 413 Ill. 315, 109 N.E.2d 201 (1952).

The authority attempted to be conferred upon a city council by the former Zoning Act (see now 65 ILCS 5/11-13-3) to establish a board of appeals was in excess of the constitutional limitation of the legislative power, because it conferred upon the board of appeals authority to determine and vary the application of the zoning regulations without restriction. Welton v. Hamilton, 344 Ill. 82, 176 N.E. 333 (1931).

A part of former Ill. Rev. Stat., ch. 24, para. 68 (see now 65 ILCS 5/11-13-3) which purported to authorize the board of appeals to vary or modify the application of any of the regulations or provisions of a zoning ordinance relating to the use, construction, or alteration of buildings or structures or the use of land was arbitrary and unconstitutional, because it was a delegation to an administrative body of the power of legislation, which could only be exercised by a legislative body. Welton v. Hamilton, 344 Ill. 82, 176 N.E. 333 (1931).

- Valid

A review of this section makes plain that 105 ILCS 5/7-2b grants such a privilege of organizing school districts subject to specific rules and conditions and is thus not an unconstitutional delegation of lawmaking authority. Rogers v. Desiderio, 274 Ill. App. 3d 446, 211 Ill. Dec. 547,

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655 N.E.2d 930 (3 Dist. 1995), appeal denied, 164 Ill. 2d 582, 214 Ill. Dec. 331, 660 N.E.2d 1280 (1995), cert. dismissed, 517 U.S. 1164, 116 S. Ct. 1562, 134 L. Ed. 2d 662 (1996).

Delegation of power to city to provide for the manner of election of five department officers under former Revised Villages and Cities Act (see now 65 ILCS 5/11-10-2) was not an unconstitutional delegation of power by the General Assembly. People ex rel. Daesch v. Mayor of Belleville, 22 Ill. 2d 226, 174 N.E.2d 678 (1961).

The 1955 amendments to the Blighted Areas Redevelopment Act of 1947 (315 ILCS 5/1), which authorized expending public funds in making surveys and developing plans for open lands described as "blighted" to be developed for industrial use, or for other than residential use, were found constitutional, despite allegations that the amendments allowed for taking of private property for other than a public use, constituted an unlawful delegation of legislative power, and were vague, indefinite and uncertain in their terms. People ex rel. Adamowski v. Chicago Land Clearance Comm'n, 14 Ill. 2d 74, 150 N.E.2d 792 (1958).

The legislature cannot delegate its power to make a law, but it can make a law delegating a power to determine some facts or state of things upon which the law makes, or intends to make, its own action depend. People ex rel. Adamowski v. Chicago Land Clearance Comm'n, 14 Ill. 2d 74, 150 N.E.2d 792 (1958).

Valid the construction and operation of a University television station, and the appropriation and expenditure of funds therefor, was within the powers delegated to the University of Illinois Board of Trustees, and being part of the ordinary and contingent expenses of the University there was no need to specifically detail expenditure for each function. Turkovich v. Board of Trustees, 11 Ill. 2d 460, 143 N.E.2d 229 (1957).

The delegation of the power to enact ordinances sanctioned by fines and penalties, and to conduct investigations, as provided for in the Metropolitan Fair and Exposition Authority Act (see now 70 ILCS 210/1), violated neither this section as an unlawful delegation of legislative power, nor Art. II, § 1 relative to separation of powers, nor Art. I, § 2 the due process clause of the Ill. Const. (1970); since the Authority is a municipal corporation, it must follow that the legislature has the power to authorize it to enact such ordinances, rules and regulations as are necessary for its operation, and to enforce them with proper sanctions. People ex rel. Coutrakon v. Lohr, 9 Ill. 2d 539, 138 N.E.2d 471 (1956).

The powers granted to the State Auditor under the Cemetery Act (see now 760 ILCS 100/15 and 760 ILCS 100/16) were not unlimited, uncertain, arbitrary nor oppressive and did not constitute an invalid delegation of legislative authority in violation of the State or Federal Constitution. Union Cem. Ass'n v. Cooper, 414 Ill. 23, 110 N.E.2d 239 (1953).

The Fire Protection district Act (see now 70 ILCS 705/1) does not unconstitutionally delegate legislative power to county judges, nor does it constitute a denial of due process, within the contemplation of either federal or state constitutional guaranties. People ex rel. Armstrong v. Huggins, 407 Ill. 157, 94 N.E.2d 863 (1950).

While the legislature may delegate some discretion to administrative bodies, it must lay down standard to guide its exercise and if the Illinois Housing Authorities Act of 1934, did not prescribe adequate standards to guide administrative bodies, an amendment passed in 1937 remedied that objection by enumerating several factors which the board may take into consideration in determining whether dwelling accommodations are unsafe or unsanitary. Krause v. Peoria Hous. Auth., 370 Ill. 356, 19 N.E.2d 193 (1939).

The Accountancy Act of 1903 (see now 225 ILCS 450/1) was not an unconstitutional exercise of legislature or judicial in violation of this section, where it penalizes delegation of authority to the University of Illinois to perform the ministerial function of determining if an applicant met the qualification for a certified public accountant. Elliott v. University of Ill., 365 Ill. 338, 6 N.E.2d 647 (1936).

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A referendum which provided for a vote to dissolve 22 park districts under an amendment to the Chicago Park District Act (see now 70 ILCS 1505/1) was not an unconstitutional delegation of legislative power. People v. Kelly, 357 Ill. 408, 192 N.E. 372 (1934).

Intent

- Determined from Statutory Language

By the Constitution, the lawmaking power of the state is vested in the legislature, and its intent in the exercise of such power by the enactment of statutes is to be determined from the language which the legislature has used in the enactment of such statutes. People ex rel. County of Cook v. Nelsen, 349 Ill. 193, 181 N.E. 635 (1932).

Limitation of Power

The Illinois Constitution is a limitation upon the powers of the legislature, and not a grant of power, and the legislature possesses every power not delegated to some other department or to the federal government, or denied to it by the Constitution of the state or of the United States. People ex rel. Woodyatt v. Thompson, 155 Ill. 451, 40 N.E. 307 (1895).

Power to Tax

- Discretion of County Clerk

30 ILCS 350/16 does not authorize encroachment by the county clerk into legislative processes, because the act of filing the levy ordinance does not affect substantively a governmental unit's authority in levying, and a county clerk's decision to accept the filing of the levy ordinance, tantamount to accepting jurisdiction to extend tax, could not intrude the clerk into the legislative process of levying the tax; therefore, there is no constitutional infirmity on this basis. In re Delinquent Properties for Tax Year 1989, 167 Ill. 2d 161, 212 Ill. Dec. 215, 656 N.E.2d 1049 (1995).

- Limitations

The Legislature does not possess the power to impose taxes on the people of any district for corporate purposes, and laws attempting to validate taxes illegally levied was held unconstitutional. People ex rel. Adams v. Illinois Cent. R.R., 311 Ill. 113, 142 N.E. 473 (1924).

Zoning

- Power to Modify

Appellants' constitutional objection that former Ill.Rev.St., ch. 24, para. 68 (see now 65 ILCS 5/11-13-3) attempted to confer on the board of appeals the power to vary or modify the application of any of the regulations or provisions of an ordinance relating to the use, construction, or alteration of buildings or structures or the use of land whenever in the opinion of the board there were practical difficulties or unnecessary hardship in the way of carrying out the provisions of the ordinance, but provided no rule or standard for the guidance of the board other than its own uncontrolled discretion, was sustained. Welton v. Hamilton, 344 Ill. 82, 176 N.E. 333 (1931).

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LEGAL PERIODICALS

For article, "Illinois Courts: Vital Developers of Tort Law as Constitutional Vanguards, Statutory Interpreters, and Common Law Adjudicators", see 30 Loy. U. Chi. L.J. 183 (1999).

For note, "The Illinois Amendatory Veto: Defining and Enforcing the Limits," see U. Ill. L. Rev. 691 (1987).

For note on Banks and Branch Banking discussing McHenry State Bank v. Harris, 89 Ill. 2d 542, 434 N.E.2d 1144 (1982), see 71 Ill. B.J. 562 (1983).

Practice Guides and Treatises.

Chancery and Special Remedies § 5.30 Federal Court (IICLE).

Section 2. Legislative Composition.

(a) One Senator shall be elected from each Legislative District. Immediately following each decennial redistricting, the General Assembly by law shall divide the Legislative Districts as equally as possible into three groups. Senators from one group shall be elected for terms of four years, four years and two years; Senators from the second group, for terms of four years, two years and four years; and Senators from the third group, for terms of two years, four years and four years. The Legislative Districts in each group shall be distributed substantially equally over the State.

(b) Each Legislative District shall be divided into two Representative Districts. In 1982 and every two years thereafter one Representative shall be elected from each Representative District for a term of two years.

(c) To be eligible to serve as a member of the General Assembly, a person must be a United States citizen, at least 21 years old, and for the two years preceding his election or appointment a resident of the district which he is to represent. In the general election following a redistricting, a candidate for the General Assembly may be elected from any district which contains a part of the district in which he resided at the time of the redistricting and reelected if a resident of the new district he represents for 18 months prior to reelection.

(d) Within thirty days after a vacancy occurs, it shall be filled by appointment as provided by law. If the vacancy is in a Senatorial office with more than twenty-eight months remaining in the term, the appointed Senator shall serve until the next general election, at which time a Senator shall be elected to serve for the remainder of the term. If the vacancy is in a Representative office or in any other Senatorial office, the appointment shall be for the remainder of the term. An appointee to fill a vacancy shall be a member of the same political party as the person he succeeds.

(e) No member of the General Assembly shall receive compensation as a public officer or employee from any other governmental entity for time during which he is in attendance as a member of the General Assembly.

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No member of the General Assembly during the term for which he was elected or appointed shall be appointed to a public office which shall have been created or the compensation for which shall have been increased by the General Assembly during that term.

(Source: Amendment adopted at general election November 4, 1980)

CASE NOTES

Analysis

Appointments
- Authority of General Assembly
- Election Code
Civil Appointment
Improper Appointments
- Mootness
Prohibition Against Dual Offices
Residence

Appointments

- Authority of General Assembly

Subdivision (d) of this section commits to the General Assembly the task of detailing the manner in which an appointment is to be made, not the issue of whether the manner chosen is otherwise constitutional. Kluk v. Lang, 125 Ill. 2d 306, 126 Ill. Dec. 163, 531 N.E.2d 790 (1988).

- Election Code

Section 25-6 of the Election Code (10 ILCS 5/25-6) appears to meet the constitutional mandate that an appointment to fill a vacancy is to be made within 30 days after the vacancy occurs and that the appointee is to be of the same political party as the legislator whom the appointee succeeds. Kluk v. Lang, 125 Ill. 2d 306, 126 Ill. Dec. 163, 531 N.E.2d 790 (1988).

Civil Appointment

To come within proscription of this section that state legislators not receive any civil appointment, appointment must have been of a permanent nature and must have lent itself to personal aggrandizement with an opportunity for private gain, pecuniary or otherwise. Gillespie v. Barrett, 368 Ill. 612, 15 N.E.2d 513 (1938).

Improper Appointments

- Mootness

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Where the declaratory and injunctive relief granted by the trial court, which decreed that defendant had not been a member of the 80th General Assembly since June 30, 1977, and ordered that defendant was enjoined from acting, under color of an unconstitutional appointment, as a member of the 80th General Assembly, extended only to defendant's appointment to serve as a member of the now dissolved 80th General Assembly. It was clear that relief granted could no longer effect a result respecting the 80th General Assembly and could not prevent defendant from serving in an elective capacity in the 81st General Assembly, and where there was no reason to presume that defendant's qualifications would be challenged again or that any future controversy would involve defendant, or where no continuing or recurring controversy existed between the adverse parties for which a judicial decision would be of consequence; therefore, the controversy had become moot. Bluthardt v. Breslin, 74 Ill. 2d 246, 24 Ill. Dec. 151, 384 N.E.2d 1309 (1979).

Prohibition Against Dual Offices

Offices covered by the last two sentences of former Ill. Const. (1870), Art. IV, § 3 (see now this section) including the "lucrative offices" of representative and senator were not incompatible with membership in the constitutional convention, unless made incompatible by some other provision under the Constitution. Livingston v. Ogilvie, 43 Ill. 2d 9, 250 N.E.2d 138 (1969).

Under former Ill. Const. (1870), Art. IV, § 3 (see now this section) deputy coroner, deputy bailiffs, deputy clerks of municipal court, and village president did not occupy state offices and were not disqualified from serving in the General Assembly. People v. Capuzi, 20 Ill. 2d 486, 170 N.E.2d 625 (1960).

Under former Ill. Const. (1870), Art. IV, § 3, (see now this section) county judge who was inducted into the United States Army as a private was entitled to a writ of mandamus compelling county clerk to issue an order or warrant for the payment of judge's salary during his time in army. People ex rel. v. Butler, 393 Ill. 395, 66 N.E.2d 388 (1946).

Where the office of captain in the United States army and of police magistrate of the village were both positions of profit and honor, the trial court properly ordered the writ of mandamus to compel the village officials to call an election to fill the vacancy of the office of police magistrate. People ex rel. Cromer v. Village of Maywood, 381 Ill. 337, 45 N.E.2d 617 (1942).

Under former Ill. Const. (1870), Art. IV, § 3 (see now this section) the rule that a captain in the United States army could not hold an office of honor or profit under the authority of this state applied to the office of police magistrate and the induction into military service, commissioned as a captain, automatically vacated the office to which he had been previously elected. People ex rel. Cromer v. Village of Maywood, 381 Ill. 337, 45 N.E.2d 617 (1942).

The word "lucrative" as used under former Ill. Const. (1870), Art. IV, § 3, (see now this section) not only disqualified a person for a seat in the General Assembly, but that an office of profit or honor, whether lucrative or not, would not be held under one government, and another office of profit, or even of mere honor, under another government. People ex rel. Cromer v. Village of Maywood, 381 Ill. 337, 45 N.E.2d 617 (1942).

The words "honor or profit," as used under former Ill. Const., Art. IV, § 3 (1970) (see now this section), include any civil position in which a person is appointed to perform public functions even though they may be administrative functions. People ex rel. Cromer v. Village of Maywood, 381 Ill. 337, 45 N.E.2d 617 (1942).

Under former Art. IV, section 3 of the Illinois Constitution (see now this section), clerk of the municipal court of Chicago was forbidden to hold office of clerk and state senator simultaneously. People ex rel. Myers v. Haas, 145 Ill. App. 283 (1 Dist. 1908).

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Residence

Since the prevention of carpetbagging appeared to be a rational basis for the residency requirement in Article 4, § 2(c) of the Illinois Constitution, a candidate and a party chairman did not have a likelihood of success on the merits of their claim that the requirement violated their rights under the First and Fourteenth Amendments to the United States Constitution; thus, their motion for a temporary restraining order, which was treated as a motion for a preliminary injunction, was denied. Loveless v. Chi. Bd. of Election Comm'rs, F. Supp. 2d , 2004 U.S. Dist. LEXIS 18832 (N.D. Ill. Sept. 8, 2004).

Residence requires physical presence in the district with the intent that such presence be permanent; it does not, however, require that "permanence" attach to any particular physical structure. Dillavou v. County Officers Electoral Bd., 260 Ill. App. 3d 127, 198 Ill. Dec. 516, 632 N.E.2d 1127 (4 Dist.), appeal denied, 157 Ill. 2d 498, 205 Ill. Dec. 159, 642 N.E.2d 1276 (1994).

OPINIONS OF ATTORNEY GENERAL

Compatible Offices

- Township Supervisor

The office of state representative is compatible with that of township supervisor (and chairman and ex officio member of the Board of Health of the Public Health District of the town) as there is no constitutional provision or statute prohibiting a person from holding both of the offices in question and the duties of the offices are such that the holder of one could properly and faithfully perform the duties of the other; consequently, a person may be elected to either of these offices without being considered to have abandoned or vacated the other. 1980 Op. Atty. Gen. 116.

Section 3. Legislative Redistricting.

(a) Legislative Districts shall be compact, contiguous and substantially equal in population. Representative Districts shall be compact, contiguous, and substantially equal in population.

(b) In the year following each Federal decennial census year, the General Assembly by law shall redistrict the Legislative Districts and the Representative Districts.

If no redistricting plan becomes effective by June 30 of that year, a Legislative Redistricting Commission shall be constituted not later than July 10. The Commission shall consist of eight members, no more than four of whom shall be members of the same political party.

The Speaker and Minority Leader of the House of Representatives shall each appoint to the Commission one Representative and one person who is not a member of the General Assembly. The President and Minority Leader of the Senate shall each appoint to the Commission one Senator and one person who is not a member of the General Assembly.

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The members shall be certified to the Secretary of State by the appointing authorities. A vacancy on the Commission shall be filled within five days by the authority that made the original appointment. A Chairman and Vice Chairman shall be chosen by a majority of all members of the Commission.

Not later than August 10, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

If the Commission fails to file an approved redistricting plan, the Supreme Court shall submit the names of two persons, not of the same political party, to the Secretary of State not later than September 1.

Not later than September 5, the Secretary of State publicly shall draw by random selection the name of one of the two persons to serve as the ninth member of the Commission.

Not later than October 5, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

An approved redistricting plan filed with the Secretary of State shall be presumed valid, shall have the force and effect of law and shall be published promptly by the Secretary of State.

The Supreme Court shall have original and exclusive jurisdiction over actions concerning redistricting the House and Senate, which shall be initiated in the name of the People of the State by the Attorney General.

(Source: Amendment adopted at general election November 4, 1980.)

CASE NOTES

Analysis

Alteration of Districts
- Means Available
At Large Elections
Authority of Governor
- Effect of Veto
- Veto
Commission
- Improper Constitution
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- Validity
Compactness
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- Burden of Proof
- Defined
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County Representation
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Redistricting Plans
- Burden of Proof
- Judicial Review
- Plan Held Valid
- Presumptions
- Priority of Factors
- Valid

Staggered Terms
- Temporary Redistricting
- Validity

Violation

Alteration of Districts

- Means Available

Once Senate districts have been established, they are permanently fixed and may not be altered, revised or reallocated except by constitutional amendment. People ex rel. Giannis v. Carpentier, 30 Ill. 2d 24, 195 N.E.2d 665 (1964).

At Large Elections

The language of former Ill. Const. (1870), Art. IV, § 8 (see now this section) was never intended to and did not require Senators to run at large after the initial senatorial redistricting accomplished in 1955. People ex rel. Giannis v. Carpentier, 30 Ill. 2d 24, 195 N.E.2d 665 (1964).

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Authority of Governor

- Effect of Veto

The Governor's veto of the bill to redistrict the state did not leave undisturbed the existing representatives districts; it brought into operation his duty to appoint a redistricting commission. People ex rel. Spence v. Carpentier, 30 Ill. 2d 43, 195 N.E.2d 690 (1964).

- Veto

When engaged in considering bills the Governor is acting in considering bills, the Governor is acting in a legislative capacity; for that purpose he is a part of the legislative department. It follows that the veto power is applicable to redistricting the state. Williams v. Kerner, 30 Ill. 2d 11, 195 N.E.2d 680 (1963).

The Governor's veto power with respect to legislation for reapportionment or redistricting to elect state representatives is indicated both by authority from other jurisdictions and by the past practice in this State. Williams v. Kerner, 30 Ill. 2d 11, 195 N.E.2d 680 (1963).

Commission

- Improper Constitution

The Legislative Redistricting Commission created by subsection 3(b) was illegally composed in that three of the persons having appointive power appointed not only themselves but also their legislative aides to the Commission. People ex rel. Scott v. Grivetti, 50 Ill. 2d 156, 277 N.E.2d 881 (1971).

- Tie-Breaking Member

The provision in subsection (b) pertaining to appointment of a tie-breaking member of a Legislative Redistricting Commission does not violate either the Due Process or Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution as the provision is rationally related to the legitimate state interest of legislative redistricting and as it does not create any sort of classification whatsoever and, instead, treats both political parties exactly the same and singles neither party out for disparate treatment. Winters v. Ill. State Bd. of Elections, 197 F. Supp. 2d 1110, 2001 U.S. Dist. LEXIS 19335 (N.D. Ill. 2001), aff'd, 535 U.S. 967, 122 S. Ct. 1433, 152 L. Ed. 2d 377 (2002).

- Validity

This section, on its face, is not violative of the First Amendment and the equal protection clause of the Fourteenth Amendment to the United States Constitution and does not infringe upon any constitutionally protected interests because it places the selection of the redistricting commission under the control of the majority and minority leaders of the House and Senate. People ex rel. Scott v. Grivetti, 50 Ill. 2d 156, 277 N.E.2d 881 (1971).

Compactness

- In General

Compactness is a constitutional requirement in this state which cannot be ignored in redistricting. People ex rel. Burris v. Ryan, 147 Ill. 2d 270, 167 Ill. Dec. 893, 588 N.E.2d 1023 (1991).

- Burden of Proof

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Challenged districts were not held to be not reasonably compact where voters challenging the plan failed to meet this burden of showing that a finding that the plan met the State constitutional requirement of compactness was against the manifest weight of the evidence. Beaubien v. Ryan, 198 Ill. 2d 294, 260 Ill. Dec. 842, 762 N.E.2d 501, 2001 Ill. LEXIS 1787 (2001).

Voters who opposed redistricting plan approved by Illinois Legislative Redistricting Commission after 2000 census, on basis that plan violated rule that voting districts must be compact, did not meet burden of proving that Commission's plan was against the manifest weight of the evidence. Cole-Randazzo v. Ryan, 198 Ill. 2d 233, 260 Ill. Dec. 826, 762 N.E.2d 485, 2001 Ill. LEXIS 1444 (2001).

- Defined

The compactness standard is recognized by this state as a means to improve legislative representation through seeking to insure that districts are not gerrymandered, consistent with this goal, the constitutional compactness standard avoids a "tortured, extremely elongated or other form which is not compact in any sense," cannot be ignored. Rybicki v. State Bd. of Elections, 574 F. Supp. 1082 (N.D. Ill. 1982), modified on other grounds, 574 F. Supp. 1147 (N.D. Ill. 1983).

The word "compact," as used in the Constitution and applicable to mere territorial surface means "closely united," and that the provision that districts shall be formed of contiguous and compact territory means that the counties or subdivisions of counties when combined to form a district, must not only touch each other, but must be closely united, territorially. People ex rel. Woodyatt v. Thompson, 155 Ill. 451, 40 N.E. 307 (1895).

- Discretion of Court

Upon review, the duty of the court is to determine whether the principle of compactness of territory has been applied. People ex rel. Burris v. Ryan, 147 Ill. 2d 270, 167 Ill. Dec. 893, 588 N.E.2d 1023 (1991).

- Factors

Districts must be reasonably compact, not necessarily perfect. People ex rel. Burris v. Ryan, 147 Ill. 2d 270, 167 Ill. Dec. 893, 588 N.E.2d 1023 (1991).

- Not Shown

District failed to meet the compactness standard where a visual examination revealed a tortured, extremely elongated from which was not compact in any sense, and the defendant were unable to advance any reason which might have possibly justified such a radical departure from the constitutional requirement of compactness. Schrage v. State Bd. of Elections, 88 Ill. 2d 87, 58 Ill. Dec. 451, 430 N.E.2d 483 (1981).

Where a visual examination of representative district revealed a tortured, extremely elongated form which is not compact in any sense and such was invalid as it failed to meet the compactness standard as required by subsection (a). Schrage v. State Bd. of Elections, 88 Ill. 2d 87, 58 Ill. Dec. 451, 430 N.E.2d 483 (1981).

- Purpose

The requirement of contiguousness was contained in the Constitution of 1848, and it was evidently the intention of the people, in adding the requirement of compactness in the Constitution of 1870, to guard, as far as practicable, against a legislative evil commonly known as the "Gerrymander," and to require the legislature to form districts not only contiguous, but of compact or closely-united territory. People ex rel. Woodyatt v. Thompson, 155 Ill. 451, 40 N.E. 307 (1895).

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County Representation

The Apportionment Acts of 1901 and of 1893 were not constitutionally void, where the contention was that the General Assembly was required to establish as a separate senatorial district each county having a population in excess of four-fifths of the ratio of representation in the Senate; nowhere was it stated, or even suggested, in this section or other section of the Constitution that each county having a population in excess of four-fifths of the ratio was entitled to be and had to be designated as a separate senatorial district. Moreover, advocates of county representation were defeated as a result of the deliberate action of the convention in rejecting the idea that any county was entitled to such representation. People ex rel. Daniher v. Sweitzer, 328 Ill. 549, 160 N.E. 108 (1928).

Delegation of Responsibility

The Constitution directs that if the General Assembly cannot redistrict itself by June 30 of a year following a Federal decennial census, then a Legislative Redistricting Commission shall be constituted with the authority to redistrict the General Assembly. The legislative leaders of the General Assembly are directed to appoint the members of this commission, and the Constitution specifically provides that of the two commission members to be appointed by each legislative leader, one must not also be a member of the General Assembly. The resulting commission is an administrative body, not a legislative one, and this constitutional scheme suggests that the legislature's decision in this section to delegate the drawing of a district's electoral boundaries to a non-legislative body was not beyond the pale of Illinois constitutional law. Pidgeon v. State Bd. of Elections, 234 Ill. App. 3d 490, 175 Ill. Dec. 615, 600 N.E.2d 858 (4 Dist. 1992).

Discretion of General Assembly

The legislature may exercise discretion in reapportioning legislative districts according to constitutional standards. People ex rel. Engle v. Kerner, 32 Ill. 2d 212, 205 N.E.2d 33 (1965).

Equality of Population

- Effects

Municipalities, villages, townships, cities and counties may have to be divided in order to achieve the Illinois constitutional requirements, but more importantly to meet the controlling consideration of "one man - one vote." People ex rel. Burris v. Ryan, 147 Ill. 2d 270, 167 Ill. Dec. 893, 588 N.E.2d 1023 (1991).

- Factors

Mathematical nicety is not constitutionally required in devising reapportionment schemes, and districts not substantially diluting the equal population principle are valid. People ex rel. Engle v. Kerner, 33 Ill. 2d 11, 210 N.E.2d 165 (1965).

- Shown

A legislative redistricting plan met the state and federal "one man-one vote" constitutional requirement where the population in each district deviated less than 1% form the figure representing the "one man-one vote" equality. People ex rel. Scott v. Grivetti, 50 Ill. 2d 156, 277 N.E.2d 881 (1971).

Failure to Redistrict

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- Effects

Where no redistricting act was passed which became law, there was a failure by the General Assembly to "redistrict," and failure of commission thereafter to be validly appointed to act under the requirements of former Ill. Const. (1970), Art. IV, § 8 (see now this section) resulted in the nomination and election of state representatives at large. People ex rel. Spence v. Carpentier, 30 Ill. 2d 43, 195 N.E.2d 690 (1964).

Where no redistricting act was passed which became law, there was a failure by the General Assembly to "redistrict," and failure of commission thereafter validly appointed to act under the requirements of former Ill. Const. (1870), Art. IV, § 8 (see now this section). This resulted in the nomination and election of state representatives at large. People ex rel. Spence v. Carpentier, 30 Ill. 2d 43, 195 N.E.2d 690 (1964).

Law prohibiting the carrying of a concealed revolver was held constitutional even though members of the General Assembly were not legally elected insofar as they failed to make apportionment required by former Ill. Const. (1870), Art. IV, § 6. This and other sections were not intended to penalize the people to the extent that they should forfeit their right to elect subsequent legislatures in the case of any previous one had refused to apportion the state; therefore, the legislative body that passed the law was a de jure legislative body and the members thereof were de jure members and officers of the General Assembly. People v. Clardy, 334 Ill. 160, 165 N.E. 638 (1929).

- Federal Taxes

The proposition that, because the federal government had not compelled the Illinois Legislature to redistrict the state into senatorial districts, it had failed to carry out the constitutional guaranty to the states of republican form of government, and that thereby the citizens of Illinois were relieved from paying federal income taxes, was entirely without merit; even though the federal government was constitutionally empowered and required to compel the state to obey the state's constitutional requirement of decennial reapportionment for legislative purposes, the failure of the federal government to conform did not relieve the citizens of the state from the duties and burdens imposed upon them by the federal Constitution. Keogh v. Neely, 50 F.2d 685 (7th Cir.), appeal dismissed and cert. denied, 284 U.S. 583, 52 S. Ct. 39, 76 L. Ed. 504 (1931).

Improper Constitution of Commission

- Effects

A redistricting plan that had been filed with the Secretary of State by the Legislative Redistricting Commission, under the Constitution was presumed valid and had the force and effect of law, and a subsequent court holding that the Commission was not properly constituted, but found no constitutional infirmity in the redistricting plan, did not affect the validity of the act which provided for the election of senators for staggered terms. People ex rel. Pierce v. Lavelle, 56 Ill. 2d 278, 307 N.E.2d 115 (1974).

Where the presence of the legislative leaders and their aides upon the Redistricting Commission was the direct result of their acts, they could not be accorded a de facto status, which would have validated the resulting plan, because the strong public policy against self-appointment precluded recognizing as valid a product formulated by means so completely at variance with the constitutional mandate. People ex rel. Scott v. Grivetti, 50 Ill. 2d 156, 277 N.E.2d 881 (1971).

Jurisdiction of Supreme Court

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State legislative redistricting decisions are constitutionally within the original and exclusive jurisdiction of the Supreme Court. Merwin v. State Bd. of Elections, 229 Ill. App. 3d 236, 170 Ill. Dec. 820, 593 N.E.2d 709 (1 Dist. 1992).

Purpose

This section prevents the enlargement of the rights of one or more persons in discrimination against the rights of others. Marallis v. City of Chicago, 349 Ill. 422, 182 N.E. 394 (1932).

Redistricting Plans

A redistricting plan that had been filed with the Secretary of State by the Legislative Redistricting Commission, was presumed valid under the Constitution and had the force and effect of law, and a subsequent court holding that the Commission was not properly constituted, but found no constitutional infirmity in the redistricting plan, did not affect the validity of an act which provided for the election of senators for staggered terms. People ex rel. Pierce v. Lavelle, 56 Ill. 2d 278, 307 N.E.2d 115 (1974).

- Burden of Proof

Map submitted by the constitutionally-mandated Legislative Redistricting Commission is valid unless it is against the manifest weight of the evidence; thus, parties opposing the map must establish that not only their map or maps are superior, but that the Commission map is against the manifest weight of the evidence. People ex rel. Burris v. Ryan, 147 Ill. 2d 270, 167 Ill. Dec. 903, 588 N.E.2d 1033, cert. denied, Gardner v. Ryan, 504 U.S. 973, 112 S. Ct. 2940, 119 L. Ed. 2d 565 (1992).

- Judicial Review

In testing each proposed redistricting map submitted for review, the Supreme Court viewed each map with these issues in mind: (1) whether the plan satisfies the Illinois constitutional requirement of substantially equal population in each district; (2) whether the map has provided adequate representation to minorities and other special interests to satisfy various state and United States constitutional rights as well as Federal statutes, i.e., racial, ethnic and gender; (3) whether the maps satisfy the compactness requirements of the Illinois Constitution; and (4) whether the maps meet all legal requirements regarding political fairness. People ex rel. Burris v. Ryan, 147 Ill. 2d 270, 167 Ill. Dec. 903, 588 N.E.2d 1033, cert. denied, Gardner v. Ryan, 504 U.S. 973, 112 S. Ct. 2940, 119 L. Ed. 2d 565 (1992).

- Plan Held Valid

A petition to vacate the judgment approving the map submitted by the Legislative Redistricting Commission was denied. People ex rel. Burris v. Ryan, 158 Ill. 2d 469, 199 Ill. Dec. 712, 634 N.E.2d 1066 (1994).

Where the appellate court found at least one rational basis for the legislature's action, and having no reason why the legislature had to change every community college district at once as it sought to remedy the "evil" of at-large elections, plaintiff's special legislation claim was without merit. Pidgeon v. State Bd. of Elections, 234 Ill. App. 3d 490, 175 Ill. Dec. 615, 600 N.E.2d 858 (4 Dist. 1992).

For case holding proposed redistricting map valid, see People ex rel. Burris v. Ryan, 147 Ill. 2d 270, 167 Ill. Dec. 903, 588 N.E.2d 1033, cert. denied, Gardner v. Ryan, 504 U.S. 973, 112 S. Ct. 2940, 119 L. Ed. 2d 565 (1992).

- Presumptions

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A redistricting plan that had been filed with the Secretary of State by the Legislative Redistricting Commission, under the Constitution was presumed valid and had the force and effect of law, and a subsequent court holding that the Commission was not properly constituted, but found no constitutional infirmity in the redistricting plan, did not effect the validity of the act which provided for the election of senators for staggered terms. People ex rel. Pierce v. Lavelle, 56 Ill. 2d 278, 307 N.E.2d 115 (1974).

- Priority of Factors

The "one man-one vote" requirement in legislative redistricting must be the controlling consideration in the apportionment of seats in any particular legislative body even if it results in fragmentation of the established political subdivisions. Compactness is clearly subservient to the dominate requirement of equality of population among legislative districts. People ex rel. Scott v. Grivetti, 50 Ill. 2d 156, 277 N.E.2d 881 (1971).

- Valid

Parties were held to have presented insufficient facts for Supreme Court to ascertain with certainty whether the district lines met legal guidelines. People ex rel. Burris v. Ryan, 147 Ill. 2d 270, 167 Ill. Dec. 893, 588 N.E.2d 1023 (1991).

Staggered Terms

- Temporary Redistricting

Where plan adopted was clearly provisional and temporary in nature, made necessary only by legislative nonfeasance, it was not necessary to judicially provide for staggered terms in a temporary redistricting scheme. People ex rel. Engle v. Kerner, 33 Ill. 2d 11, 210 N.E.2d 165 (1965).

- Validity

Provision for staggering the terms of senators is valid and in any legislatively devised reapportionment scheme, this principle would be mandatory. People ex rel. Engle v. Kerner, 33 Ill. 2d 11, 210 N.E.2d 165 (1965).

Violation

Actions of the defendants, in prohibiting contestants who were duly elected to the position of delegate to the Democratic National Convention by operation of the Illinois election code from attending that convention based on race, violated the due process and equal protection rights of the contestants and the voters' right to a free and equal election under Ill. Const. (1970), Art. IV, § 3. Wigoda v. Cousins, 14 Ill. App. 3d 460, 302 N.E.2d 614, 1973 Ill. App. LEXIS 1865 (1 Dist. 1973).

LEGAL PERIODICALS

For article, "The Courts and Partisan Gerrymandering: Recent Cases on Legislative Reapportionment," see 18 S. Ill. U.L.J. 563 (1994).

For article, "The McCourt Bill: A Practical Merit Selection Plan," see 66 Ill. B.J. 12 (1977).

For article, "The End of Free Exercise?," see 42 De Paul L. Rev. 567 (1992).

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RESEARCH REFERENCES

Application of constitutional "compactness requirement" to redistricting. 114 ALR5th 311.

State court jurisdiction over congressional redistricting disputes. 114 ALR5th 387.

Section 4. Election.

Members of the General Assembly shall be elected at the general election in even-numbered years.

(Source: Illinois Constitution.)

Practice Guides and Treatises.

Civil Practice (Illinois) Volume I: Opening the Case § 8.34 Original Actions in the Supreme Court (IICLE).

Section 5. Sessions.

(a) The General Assembly shall convene each year on the second Wednesday of January. The General Assembly shall be a continuous body during the term for which members of the House of Representatives are elected.

(b) The Governor may convene the General Assembly or the Senate alone in special session by a proclamation stating the purpose of the session; and only business encompassed by such purpose, together with any impeachments or confirmation of appointments shall be transacted. Special sessions of the General Assembly may also be convened by joint proclamation of the presiding officers of both houses, issued as provided by law.

(c) Sessions of each house of the General Assembly and meetings of committees, joint committees and legislative commissions shall be open to the public. Sessions and committee meetings of a house may be closed to the public if two-thirds of the members elected to that house determine that the public interest so requires; and meetings of joint committees and legislative commissions may be so closed if two-thirds of the members elected to each house so determine.

(Source: Illinois Constitution.)

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CASE NOTES

Analysis

Construction
- Other Constitutional Provisions
Purpose of Special Session
- Valid

Construction

- Other Constitutional Provisions

In an action alleging that the School Finance Authority Act, Public Act 81-1221, eff. Jan. 16, 1980, violated the constitution for not being passed by three-fifths vote, this section was not read together with Ill. Const. (1970), Art. IV, § 10 because section 10 was a clear and explicit constitutional provision requiring no construction. Polich v. Chicago Sch. Fin. Auth., 79 Ill. 2d 188, 37 Ill. Dec. 357, 402 N.E.2d 247 (1980).

Purpose of Special Session

- Valid

Where a sewage improvement act was in existence at the time of a special session of the General Assembly and called with the Governor's proclamation authorizing the General Assembly to enter into contracts with, to cooperate with, and to receive financial aid from the United States Government and its agencies, the Reconstruction Finance Corporation, and the Federal Emergency Administration of Public Works, it did not violate former Ill. Const. (1870), Art. V, § 8. City of Edwardsville v. Jenkins, 376 Ill. 327, 33 N.E.2d 598 (1941).

LEGAL PERIODICALS

For note, "The Illinois Amendatory Veto: Defining and Enforcing the Limits," see U. Ill. L. Rev. 691 (1987).

For article, "Effective Date of Laws," see 11 J. Marshall J. Prac. & Proc. 363 (1978).

Section 6. Organization.

(a) A majority of the members elected to each house constitutes a quorum.

(b) On the first day of the January session of the General Assembly in odd-numbered years, the Secretary of State shall convene the House of Representatives to elect from its membership a Speaker of the House of Representatives as presiding officer, and the Governor shall convene the Senate to elect from its membership a President of the Senate as presiding officer.

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(c) For purposes of powers of appointment conferred by this Constitution, the Minority Leader of either house is a member of the numerically strongest political party other than the party to which the Speaker or the President belongs, as the case may be.

(d) Each house shall determine the rules of its proceedings, judge the elections, returns and qualifications of its members and choose its officers. No member shall be expelled by either house, except by a vote of two-thirds of the members elected to that house. A member may be expelled only once for the same offense. Each house may punish by imprisonment any person, not a member, guilty of disrespect to the house by disorderly or contemptuous behavior in its presence. Imprisonment shall not extend beyond twenty-four hours at one time unless the person persists in disorderly or contemptuous behavior.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Administrative Action
- Educational Labor Relations Board
Election of President
- Authority of Governor
- Invalid
- Majority Vote
School Purposes

Administrative Action

- Educational Labor Relations Board

Where the Educational Labor Relations Board has cross-appealed for enforcement of its order in a cause already under review by an appellate court, the court may issue such an order without violating this section. Central City Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 149 Ill. 2d 496, 174 Ill. Dec. 808, 599 N.E.2d 892 (1992).

Election of President

- Authority of Governor

The Governor was without authority, inherent, express or implied, to make factual determinations for the record as to the presence of non-voting Senators. Rock v. Thompson, 85 Ill. 2d 410, 55 Ill. Dec. 566, 426 N.E.2d 891 (1981).

- Invalid

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Because the trial transcript failed to reflect the presence of a quorum, the purported election of the respondent as President of the Senate did not constitute compliance with this Article. Rock v. Thompson, 85 Ill. 2d 410, 55 Ill. Dec. 566, 426 N.E.2d 891 (1981).

- Majority Vote

Inherent in the command that the Senate "elect from its membership" a President is the requirement that such election be by a majority of the entire membership. Rock v. Thompson, 85 Ill. 2d 410, 55 Ill. Dec. 566, 426 N.E.2d 891 (1981).

School Purposes

Corporation's real property, which housed members of a fraternity, was not exempt from taxation under the Property Tax Code, 35 ILCS 200/15-35, because allowing a tax exemption would be contrary to the requirement of Ill. Const. art. IX, § 6 that property be used exclusively for school purposes and would be inconsistent with the terms of the Code, 35 ILCS 200/15-35(b); the corporation's purpose and efforts were on behalf of the fraternal organization and its members, not on behalf of the university, and neither the corporation nor the local chapter of the fraternity was relieving the university of any of its tasks or otherwise furthering its purposes. Ill. Beta House Fund Corp. v. Ill. Dep't of Revenue, 382 Ill. App. 3d 426, 320 Ill. Dec. 703, 887 N.E.2d 847, 2008 Ill. App. LEXIS 385 (1 Dist. 2008).

Section 7. Transaction of Business.

(a) Committees of each house, joint committees of the two houses and legislative commissions shall give reasonable public notice of meetings, including a statement of subjects to be considered.

(b) Each house shall keep a journal of its proceedings and a transcript of its debates. The journal shall be published and the transcript shall be available to the public.

(c) Either house or any committee thereof as provided by law may compel by subpoena the attendance and testimony of witnesses and the production of books, records and papers.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Legislative Investigations
- Authority of Committees
Legislative Journal Entries
- Failure to Mark
Legislative Rules

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- Compliance Required

Legislative Investigations

- Authority of Committees

While the Illinois General Assembly possesses the inherent authority and power to conduct legislative investigations, this does not mean that the standing committees of the Illinois House of Representatives can conduct such investigations on their own initiative, and while the work of the General Assembly must necessarily be carried out through committees, there must be a transmittal through some appropriate means of this inherent authority and power to the committee system. Without a proper delegation the standing committees have no authority and power to conduct legislative investigations. Murphy v. Collins, 20 Ill. App. 3d 181, 312 N.E.2d 772 (1 Dist. 1974).

Legislative Journal Entries

- Failure to Mark

Under former Ill. Const. (1870), Art. IV, § 12, the general rule was that if an act which had the signatures of the proper officers of the two houses of the legislative and of the executive, it was presumed to have become a law pursuant to the requirements of the constitution; however, this presumption could be overthrown. If the facts essential to the passage of a law were not set forth in the legislative journal, the conclusion was that they did not transpire; if the journal failed to show that the act was passed in the mode prescribed by the constitution, the presumption was overcome, and the act would fail. People ex rel. Oliver v. Knopf, 198 Ill. 340, 64 N.E. 842 (1902).

Legislative Rules

- Compliance Required

Defendant was not properly summoned where the House of Representatives recognized and adhered to a "customary rule of procedure" allowing for standing committees to have investigative powers even though no specific bill or resolution was pending before them in violation of the House rule that authorized a standing committee to conduct a legislative investigation except where a bill or resolution had been referred to it. Murphy v. Collins, 20 Ill. App. 3d 181, 312 N.E.2d 772 (1 Dist. 1974).

OPINIONS OF ATTORNEY GENERAL

Senate Rule

- Invalid

To the extent that Rule 3-5 of the "Rules of the Senate of the State of Illinois" (Sen. Res. No. 2, 88th General Assembly, January 13, 1993) purports to authorize the Senate Rules Committee to meet without giving reasonable public notice of its meetings or without including in that notice a

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statement of the subjects to be considered at a meeting, it is contrary to subsection (a) and is, therefore, invalid. 1993 Op. Atty. Gen. (93-001).

To the extent that Senate Rule 1-2 of the "Rules of the Senate of the State of Illinois" (Sen. Res. No. 2, 88th General Assembly, January 13, 1993) may be intended to relieve conference committees from compliance with the requisite notice provisions of subsection (a) it is invalid. 1993 Op. Atty. Gen. (93-001).

Section 8. Passage of Bills.

(a) The enacting clause of the laws of this State shall be: "Be it enacted by the People of the State of Illinois, represented in the General Assembly."

(b) The General Assembly shall enact laws only by bill. Bills may originate in either house, but may be amended or rejected by the other.

(c) No bill shall become a law without the concurrence of a majority of the members elected to each house. Final passage of a bill shall be by record vote. In the Senate at the request of two members, and in the House at the request of five members, a record vote may be taken on any other occasion. A record vote is a vote by yeas and nays entered on the journal.

(d) A bill shall be read by title on three different days in each house. A bill and each amendment thereto shall be reproduced and placed on the desk of each member before final passage.

Bills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject. Appropriation bills shall be limited to the subject of appropriations.

A bill expressly amending a law shall set forth completely the sections amended.

The Speaker of the House of Representatives and the President of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been met.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Municip L § 12:6.

CASE NOTES

Analysis
Constitutionality

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- Comprehensiveness of Legislation
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- Authority of General Assembly
- Discretion of General Assembly
- Former Subject Rule
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- Invalid
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- Validity

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Purpose

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- Shown
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- Amendments
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Constitutionality

Public Act 89-688, which amended the Violent Crime Victims Assistance Act to allow the circuit clerk to assess fines, violated the single subject rule of the Illinois Constitution as the bill stated that it related to criminal law, but also contained provisions pertaining to civil proceedings. People v. Foster, 316 Ill. App. 3d 855, 250 Ill. Dec. 148, 737 N.E.2d 1125, 2000 Ill. App. LEXIS 833 (4 Dist. 2000).

In General

An act to be valid under this section must not be vague, indefinite or uncertain and, it must be complete when it leaves the legislature, and sufficiently explicit to advise everyone of his rights under the act. People ex rel. Schoon v. Carpentier, 2 Ill. 2d 468, 118 N.E.2d 315 (1954).

Amendatory Legislation

It is not necessary, when a new act is passed, that all prior acts modified by implication shall be re-enacted and published at length and this principle also applies to amendatory legislation when the amendment is within the scope of the title of the act amended. Jordan v. Metropolitan San. Dist., 15 Ill. 2d 369, 155 N.E.2d 297 (1958).

Amendment

- In General

An amendment does not violate constitutional provision where it is complete in itself and it is unnecessary to refer to the original act in order to determine its effect. People ex rel. Bentson v. Bowen, 9 Ill. 2d 69, 136 N.E.2d 806 (1956).

Section 96 of the School Law (Ill. Laws of 1917, p. 743), which allows a high school pupil, with the county superintendent of school's permission, to attend a high school in another district that is more convenient for the student and to have the high school district in which the pupil resides to pay tuition to the other district, is not an amendment of § 121 of the School Law because even

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though both sections deal with the transfer of pupils from one school district to another, § 121 deals with grade or common schools, while § 96 is applicable to high schools; thus, because each of the sections has its purpose and is independent of the other, § 96 cannot be considered to be an amendment of § 121 and thus there is no violation of Ill. Const. of 1870, Art. IV, § 13, which provides that no law shall be amended by reference to its title only. Proviso Tp. High School v. Oak Park & River Forest Tp. High School, 322 Ill. 217, 153 N.E. 369, 1926 Ill. LEXIS 1114 (1926).

- Defined

The amendment of an act in general, or of a particular section of an act, ex vi termini, implies merely a change of its provisions upon the same subject to which the act or section relates. Dolese v. Pierce, 124 Ill. 140, 16 N.E. 218 (1888).

- Not Shown

The 1953 amendment which changed the method of computing the amount to be charged upon redemption from a sale of real estate upon foreclosure in equity to satisfy the lien of delinquent taxes, was not invalid because it did not amend section 253 of the former Revenue Act (35 ILCS 205/216) without setting forth that section at length in the amendatory act. People v. Lewis, 5 Ill. 2d 117, 125 N.E.2d 87 (1955).

Mere fact that the Illinois Prohibition Act changed a prior statute did not make it an amendatory act under Ill. Const. (1970), Art. IV, § 8 (formerly Ill. Const. of 1870, Art. IV, § 13), because the Act was in itself a complete statute, it did not commingle new and old provisions, and no reading of the prior statute was necessary to gain an understanding of the Act. State v. Milauskas, 318 Ill. 198, 149 N.E. 294, 1925 Ill. LEXIS 1091 (1925).

Amendment by Implication

- In General

Where the new law is complete in itself without reference to the prior legislation it does not contravene the constitutional provision merely because it may modify or amend the existing statute by implication. Hertz Corporation v. Taylor, 15 Ill. 2d 552, 155 N.E.2d 610 (1959).

- Act Held Self Contained

State's failure to provide the necessary funds for a veterans' scholarship program did not impose a new duty upon college to provide expanded services to veterans and legislature's failure to appropriate new funds for the program was not a service mandate subject to the Mandates Act (30 ILCS 805/1 et seq.) therefore, did not amend the act without setting forth completely the sections amended. Board of Trustees v. Burris, 118 Ill. 2d 465, 113 Ill. Dec. 937, 515 N.E.2d 1244 (1987).

- Conflict of Laws

Any new provision of law change the prior system of laws, and whenever there is an irreconcilable conflict between two acts the later one must prevail; to the extent of the conflict the later act amends the earlier one by implication, and if the later act if not amendatory in form and perfect in itself it is not within the prohibition of the constitution; it is not necessary, when a new act is passed, that all prior acts modified by implication shall be re-enacted and published at length. People ex rel. Rusch v. Ladwig, 365 Ill. 574, 7 N.E.2d 313 (1937).

- Illustrative Cases

Although the Regional Transportation Authority Act would ultimately have an effect upon the powers and authorities of mass transit districts which had been created pursuant to the Local

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Mass Transit District Act (70 ILCS 3610/1), it was not constitutionally objectionable because it did not purport to amend the Act by reference or otherwise. Hoogasian v. Regional Transp. Auth., 58 Ill. 2d 117, 317 N.E.2d 534 (1974).

- Validity

Act which extended the use of coroner's reports to civil actions as well as criminal actions did not violate Article IV, § 8(d) of the Illinois Constitution insofar as it amended § 115-5.1 of the Code of Criminal Procedure (Ill. Rev. Stat., ch. 38, para. 115-5.1). Heitz v. Hogan, 134 Ill. App. 3d 352, 89 Ill. Dec. 299, 480 N.E.2d 185 (4 Dist. 1985).

An act which is complete in itself and which only by implication repeals a prior statute does not violate subsection 8(d) of Article IV of the Constitution. United Private Detective & Sec. Ass'n v. City of Chicago, 62 Ill. 2d 506, 343 N.E.2d 453 (1976).

It was not necessary to read former section 162b of the Revenue Act (Ill. Rev. Stat. ch. 120, para. 643b)(now repealed) as excluding tax rates temporarily in effect; this would not amend the five year limitation periods in the former Roads and Bridges Act (Ill. Rev. Stat., ch. 121, para. 62 et seq.) (see now 605 ILCS 5/6-501) and the former Revised Cities and Villages Act (Ill. Rev. Stat., ch. 24, para. 16-1) (see now 65 ILCS 5/8-3-1 et seq.) and would not violate Ill. Const. (1870), Art. IV, § 13 (see now Ill. Const. (1970), Art. IV, § 8). People ex rel. Nordstrom v. Chicago & N.W. Ry., 16 Ill. 2d 264, 157 N.E.2d 54 (1959).

Where the new law is complete in itself without reference to the prior legislation it does not contravene the constitutional provision merely because it may modify or amend the existing statute by implication. Hertz Corporation v. Taylor, 15 Ill. 2d 552, 155 N.E.2d 610 (1959).

Under former Ill. Const. (1870), Art. IV, § 13 was not necessary, when a new act was passed, that all prior acts modified by by implication would be re-enacted and published at length; this principle also applied to amendatory legislation when the amendment was within the scope of the title of the act amended. Jordan v. Metropolitan San. Dist., 15 Ill. 2d 369, 155 N.E.2d 297 (1958).

A statute that is complete in itself is valid even though it incidentally amends an earlier statute without setting forth the amended section at length. Gannon v. Chicago, M., St. P and Pac. Ry., 13 Ill. 2d 460, 150 N.E.2d 141 (1958).

Where a new law is complete in itself and entirely intelligible without reference to prior legislation, it is valid, though, it incidentally modifies existing law. People ex rel. Bentson v. Bowen, 9 Ill. 2d 69, 136 N.E.2d 806 (1956).

There was no conflict or inconsistency between the Revenue Act (35 ILCS 200/22-30 through 35 ILCS 200/22-55) and Torrens Act (765 ILCS 35/82) since the one provides for the collection of taxes and delivery of a certificate and deed in case of sale; the other the required registration the land; therefore, Section 82 of the Torrens Act was not unconstitutional as amending the former Revenue Act (see now the Property Tax Code, 35 ILCS 200/1-1 et seq). Interstate Bond Co. v. Baran, 406 Ill. 161, 92 N.E.2d 658 (1950).

The provision of the section providing that no fees or commission shall be deducted by the county collector from taxes collected by him and previously authorized to be collected by town collectors, and that such taxes shall be paid over in full to the proper authorities, which only prohibits the deduction of such fees as were theretofore authorized to be paid to town collectors; the provision that all taxes collected shall be paid over in full to the proper authorities means that the county collector shall pay over the full amount collected, less lawful deductions made therefrom, regardless of the fact that such deductions may be authorized by other and different statutes. People ex rel. San. Dist. v. Schlaeger, 391 Ill. 314, 63 N.E.2d 382 (1945).

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Where an act is complete in itself, without reference to a general act, it does not contravene section merely because is repeals, modifies or amends by implication the general act. People ex rel. Curren v. Wood, 391 Ill. 237, 62 N.E.2d 809 (1945).

A subsequent statute which amends a prior act by implication is not invalid because its title does not state that it is an amendatory act. Scott v. Freeport Motor Cas. Co., 379 Ill. 155, 39 N.E.2d 999 (1942).

The effect of the Corporation Act of 1919 was not to completely annul or abrogate the provisions of the Interest Act as to usury, but to withdraw from its operation loans made to corporations at rates of interest which would otherwise be unlawful, and to leave the Interest Act in full force and effect as to any and all other loans; the Corporation Act did not contravene the constitution and was valid. Tennant v. Joerns, 329 Ill. 34, 160 N.E. 160 (1928).

Where the act establishing municipal courts may have affected various general laws in relation to a city and its authorities, such incidental amendment by implication of previously existing law was not a violation of the constitutional provision requiring the section amended to be inserted in the amendatory act. It is only where the law professes to be amendatory, or is amendatory in its nature, that the constitutional provision applies. People ex rel. Egan v. City of Chicago, 310 Ill. 534, 142 N.E. 161 (1923).

Two or more laws relating to the same subject or different parts of the same subject matter are not necessarily amendatory of each other, within the meaning of former Ill. Const. (1870), Art. IV, § 13 (see now this section), although they may be construed together as in pari materia. People ex rel. Stuckart v. Knopf, 183 Ill. 410, 56 N.E. 155 (1900).

One law may be amended by another, without any reference to it, as any new provision of law may in some sense be said to amend and change a prior system of laws, so that the law as a body is not what it was before; two or more laws, relating to the same subject or different parts of the same subject matter, are not necessarily amendatory of each other, within the meaning of this clause of the constitution, although they may be construed together as in pari materia. School Dirs. v. School Dirs., 135 Ill. 464, 28 N.E. 49 (1891).

Amendment by Reference

- Invalid

Statute which was an attempt to amend several statutes by referring to such statutes and which stated its purpose to change the present and future scope of statutes was in violation of constitutional direction that a bill expressly amending a law include the amended portions. Fuehrmeyer v. City of Chicago, 57 Ill. 2d 193, 311 N.E.2d 116 (1974).

Former section 10a of the Prevailing Wage Law (now repealed) as it amended § 8 of the Motor Fuel Tax Act (35 ILCS 505/8) and certain sections of the Illinois Highway Code, by dealing with the same subject matter, without being complete itself and without setting forth the section amended, was within the constitutional prohibition against revision or amendment of a law by reference to its title only. City of Monmouth v. Lorenz, 30 Ill. 2d 60, 195 N.E.2d 661 (1963).

A house bill which amended a prior law by reference to its title only, the section amended was not inserted at length in the new act, was a clear violation of former Ill. Const. (1870), Art. IV, § 13 (see now this section). Galpin v. City of Chicago, 269 Ill. 27, 109 N.E. 713 (1915).

- Municipal Ordinances

Reference to the title page of the municipal code, to the letter of the corporation counsel and to the journal of the city council of the city indicated that all persons considered passage of city code a re-enactment or rather a compilation, revision and editing of ordinances already in existence

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was insufficient to overcome the prohibition against amendment by reference; therefore, the attempt to repeal certain portions of the public charters ordinance was invalid. City of Chicago v. Iovino, 400 Ill. 354, 81 N.E.2d 171 (1948).

- Not Shown

Section 11-1403.2 of the Vehicle Code (625 ILCS 5/11-1403.2) is not unconstitutional under Ill. Const. (1970), Art. IV, § 8(d), because it does not amend § 11-503 of the Vehicle Code (625 ILCS 5/11-503) by reference. People v. Tumminaro, 102 Ill. 2d 331, 80 Ill. Dec. 299, 465 N.E.2d 90 (1984).

- Validity

The amendment to an act, to come within the prohibition against amendments by reference, must make some change in the provisions of the act upon the subject matter to which the original relates, and does not include additional provisions not affecting existing provisions. People ex rel. Seeman v. Greer College, 302 Ill. 538, 135 N.E. 80 (1922).

Applicability

- Governmental Entities

Defendant, who worked for a municipal police department, did not violate a law by allegedly violating police department rules and regulations because the rules and regulations promulgated by the police department were not laws. Only the Illinois Legislature promulgated laws, while municipalities, promulgated ordinances under Ill. Const. Art. VII, § 6(c). People v. Williams, 393 Ill. App. 3d 77, 331 Ill. Dec. 516, 910 N.E.2d 1272, 2009 Ill. App. LEXIS 593 (1 Dist. 2009).

Former Ill. Const. (1870), Art. IV, § 13 (see now this section) applied only to acts of the Legislature and not to city ordinances. City of Metropolis v. Gibbons, 334 Ill. 431, 166 N.E. 115 (1929).

This section of the Constitution applies only to acts passed by the Legislature, and has no application to ordinances passed by a city or village. Harris v. People ex rel. Knight, 218 Ill. 439, 75 N.E. 1012 (1905).

- Single Subject

The part of this section which provides that no act shall concern more than one subject refers only to acts of the General Assembly. Chicago Cosmetic Co. v. City of Chicago, 374 Ill. 384, 29 N.E.2d 495 (1940).

Appropriations

- Construction

P.A. 93-32, which in part assessed fees on National Pollutant Discharge Elimination System permit holders, did not violate the appropriations clause of Ill. Const. Art. IV, § 8(d) because it was not an appropriations bill but, rather, was a bill constituting substantive law that contained provisions regarding the distribution of public funds. Valstad v. Cipriano, 357 Ill. App. 3d 905, 293 Ill. Dec. 544, 828 N.E.2d 854, 2005 Ill. App. LEXIS 449 (4 Dist. 2005), appeal denied, 216 Ill. 2d 736, 298 Ill. Dec. 391, 839 N.E.2d 1038 (2005).

- Joint Resolutions

A joint resolution of the General Assembly attempting to divert appropriations made by law for other purposes and attempting to authorize the creation of a debt of the state was void under the

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Ill. Const. (1870), Art. IV, § 13. Burritt v. Comm'rs of State Contracts, 120 Ill. 322, 11 N.E. 180 (1887).

- Judicial Review

The provision of subsection (d) limiting appropriation bills to the subject of appropriations is not a procedural requirement but a constitutional limitation subject to judicial review. Benjamin v. Devon Bank, 68 Ill. 2d 142, 11 Ill. Dec. 270, 368 N.E.2d 878 (1977).

- No Violation

P.A. 93-32, which in part assessed fees on National Pollutant Discharge Elimination System permit holders, did not violate the appropriations clause because it was not an appropriations bill but, rather, was a bill constituting substantive law that contained provisions regarding the distribution of public funds. Valstad v. Cipriano, 357 Ill. App. 3d 905, 293 Ill. Dec. 544, 828 N.E.2d 854, 2005 Ill. App. LEXIS 449 (4 Dist. 2005), appeal denied, 216 Ill. 2d 736, 298 Ill. Dec. 391, 839 N.E.2d 1038 (2005).

- State Finance Act

Appropriation to the Department of Transportation for use by the State Police made in appropriations bill was unconstitutional as the state constitution makes invalid any attempt by the legislature to amend the State Finance Act (30 ILCS 105/1 et seq.) through an appropriations bill. Granberg v. Didrickson, 279 Ill. App. 3d 886, 216 Ill. Dec. 338, 665 N.E.2d 398 (1 Dist. 1996).

Authority of General Assembly

- Comprehensiveness of Legislation

It is the province of the legislature to determine the comprehensiveness of a statute, subject to the limitations prescribed by former Ill. Const. (1870), Art. IV, § 13. Boehm v. Hertz, 182 Ill. 154, 54 N.E. 973 (1899).

Civil Service of Cities

Provision of Civil Service Commissioner's appointment was germane to the general statute dealing with the civil service of cities and thus was within the scope of amending act regulating civil service of cities not invalid as unlawful amendment by reference. People ex rel. Bentson v. Bowen, 9 Ill. 2d 69, 136 N.E.2d 806 (1956).

Completeness of Amendment

- Addition of New Sections

It is a common and unobjectionable practice to add a section or sections to an act for a separate and distinct purpose, and the Constitution does not require any part of the act, to which the section or sections are added, to be printed at length in the amendatory act where there is no change made in the general law except to add a section or sections. Maulding v. Skillet Fork River Outlet Union Drainage Dist., 313 Ill. 216, 145 N.E. 227 (1924).

- Contents Required

Subsection (d) of this section has long been construed as requiring only that the complete section as amended shall be printed in full; it is not necessary that a repealed section as it existed before the amendment, or a section as it existed before the amendment, shall be inserted at length in the amendatory act. People v. Swets, 24 Ill. 2d 418, 182 N.E.2d 150 (1962).

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Under former Ill. Const. of 1870, Art. IV, § 13 (now Ill. Const. (1970), Art. IV, § 8), no law shall be amended by reference to its title, only, and that the section amended shall be inserted at length in the new act. De Motte v. De Motte, 364 Ill. 421, 4 N.E.2d 960, 1936 Ill. LEXIS 659 (1936).

- Discretion of Court

When a law is, in fact, amendatory of a previous law, the mere fact that the later act purports to be an independent act, and not amendatory, is unimportant. People v. Tokoly, 313 Ill. 177, 144 N.E. 808 (1924).

- Factors

An amendment does not violate constitutional provision where it is complete in itself; it is unnecessary to refer to the original act in order to determine its effect. People ex rel. Bentson v. Bowen, 9 Ill. 2d 69, 136 N.E.2d 806 (1956).

If an amendatory act was complete in itself, constituting an entire act of legislation on the subject with which it purports to deal, it was to be deemed good and was not subject to the provision which prohibits the amendment of any act by reference to its title only, notwithstanding it may have repealed by implication or modified the provisions of the prior law. If the amendatory act merely amended the old law by intermingling new and different provisions or by adding new provisions so as to create out of the old act and the new, when taken together, a complete act and left it in such condition that the old act must have been read with the new to determine its provisions and meaning, then the act was amendatory of the old law, and this section required that the law so amended be inserted at length in the new act. People ex rel. Judges Retirement Sys. v. Wright, 379 Ill. 328, 40 N.E.2d 719 (1942).

If an act purported to be complete in itself, but was, in effect, an attempt to amend prior statutes without inserting the amended sections at length in the new act, the amendment was in violation of former Ill. Const. (1870), Art. IV, § 13 (see now Ill. Const. (1970), Art. IV, § 8). Wagner v. Retirement Bd. of the Policemen's Annuity & Benefit Fund, 370 Ill. 73, 17 N.E.2d 972 (1938).

An act is complete in itself as to the subject with which it deals, when it is intelligent and when upon examination without reference to other acts, it discloses its purposes and its methods of carrying out those purposes. People ex rel. Rusch v. Ladwig, 365 Ill. 574, 7 N.E.2d 313 (1937).

The character of an act as amendatory of a prior act or as independent legislation must be determined not by title alone nor by the question of whether the act professes to be an amendment of existing laws, but by examination and comparison of its provisions with prior laws. If the act purports to be complete in itself, but is, in effect, an attempt to amend prior statutes without complying with the provisions of the Constitution, it is void. Holingsworth v. Chicago & Carterville Coal Co., 243 Ill. 98, 90 N.E. 276 (1909).

- Not Shown

Statute that tried to preempt the licensing and regulation of particular professions, vocations and occupations but did not itself contain any substantive provision for the regulation of any of the subjects which it purports to preempt was invalid because it violated the provisions subsection 8(d) of the Constitution of 1970 which required that a bill expressly amending a law shall set forth completely the sections amended, and that bills shall be confined to one subject. Fuehrmeyer v. City of Chicago, 57 Ill. 2d 193, 311 N.E.2d 116 (1974).

Where an act in relation to suits to restrain and enjoin the disbursement of public monies by officers of the state was merely an attempt to amend the old law by intermingling new and different provisions so as to create a new act out of the existing laws, it was a violation of this section. Giebelhausen v. Daley, 407 Ill. 25, 95 N.E.2d 84 (1950).

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Where prior to the passage of an Act, there was no statute for summoning an administrator or executor as garnishee, the purpose of alleged act was to subject the administrator to the garnishment process, and consisted of only one section, it actually amended the statute relating to garnishment and could not be sustained as a complete and independent act, and thus was invalid. O'Connell ex rel. Wilson v. McClenathan, 248 Ill. 350, 94 N.E. 21 (1911).

- Purpose

The purpose of the constitutional provision is to avoid confusion arising from patchwork legislation, but does not require practically endless reiteration of amended statutes, nor that, when a new act is passed, all prior acts in any way modified by it shall be published at length in the amendatory act. People ex rel. Bentson v. Bowen, 9 Ill. 2d 69, 136 N.E.2d 806 (1956).

The purpose of the provision requiring amendments to be set forth completely is to prevent the enactment of amendatory statutes in terms so blind that the legislators themselves are sometimes deceived in regard to their effect, and the public fails to become apprised of the changes made in the law because of difficulty in making the necessary examination and comparison. Lombardo Wine Co. v. Taylor, 407 Ill. 454, 95 N.E.2d 607 (1950).

Some of the reasons which lead to the adoption of this constitutional provision are: (1) to prevent legislative "log rolling"; (2) to prevent surprise or fraud upon the legislature by inserting provisions into bills of which the titles give no intimation and which might, by oversight, be carelessly and unintentionally adopted; and (3) to fairly apprise the people, through such publication of legislative proceedings as is usually made of the subjects of legislation being considered, so they might be heard thereon, if they so desire, by petition or remonstrance. People v. Mahumed, 381 Ill. 81, 44 N.E.2d 911 (1942).

The purpose of this constitutional provision requiring that a section amended shall be inserted at length is to avoid confusion arising from patchwork legislation, and not require endless and interminable reiteration of amended statutes. Bishop v. Chicago Ry., 303 Ill. 273, 135 N.E. 439 (1922); DeMotte v. DeMotte, 364 Ill. 421, 4 N.E.2d 960 (1936); People ex rel. Lindheimer v. Gaylord Bldg. Corp., 369 Ill. 371, 16 N.E.2d 901 (1938).

The purpose of former Ill. Const. (1870), Art. IV, § 13 (see now this section) was to enable one, by looking at the amended act, to understand intelligently what the existing law was and that object could not be accomplished without showing what the law was before it was changed, and that could be the only purpose of printing the section as it was before amendment. City of Marion v. Campbell, 266 Ill. 256, 107 N.E. 601 (1914).

The mischief intended to be remedied by this section was the amendment of statutes by reference to their titles only. Under the practice which had prevailed, to amend a previous act merely by reference to its title, and in the insertion or striking out of certain words or the making of some substitution therein, the amendatory act, of itself, would be unintelligible, and it would require examination and comparison with the prior act to understand what was the real purport of the amendatory act. People ex rel. Stuckart v. Knopf, 183 Ill. 410, 56 N.E. 155 (1900).

- Sections Amended

Public Act 86-935 as it amends 65 ILCS 5/11-10-2 is not unconstitutional on the grounds that it violates Ill. Const., Art. IV, § 8(d); it is not an invalid attempt to amend other statutes, nor does it fail to set forth completely the sections amended. Des Plaines Firemen's Ass'n v. City of Des Plaines, 267 Ill. App. 3d 920, 204 Ill. Dec. 831, 642 N.E.2d 732 (1 Dist. 1994), appeal denied, 159 Ill. 2d 565, 207 Ill. Dec. 515, 647 N.E.2d 1008 (1995).

- Shown

Provision of Civil Service Commissioner's appointment was germane to the general statute dealing with the civil service of cities and thus was within the scope of amending act regulating

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civil service of cities and not invalid as unlawful amendment by reference. People ex rel. Bentson v. Bowen, 9 Ill. 2d 69, 136 N.E.2d 806 (1956).

Where a section did not amend the language of any section of an act so that sections were read differently, no limitation was changed by the section so far as the limitation appeared in the act, and it fixed an additional period of limitation arising under certain conditions therein set out, and applied only when the conditions were met, the act did not contravene former Ill. Const. (1870), Art. IV, § 13 (see now this section) and was not unconstitutional. Bishop v. Chicago Ry., 303 Ill. 273, 135 N.E. 439 (1922).

Construction of Former Provision

The provision in Ill. Const. (1870), Art. IV, § 13 (see now this section) requiring a bill to be signed by the President of the Senate and the Speaker of the House was mandatory. Lynch v. Hutchinson, 219 Ill. 193, 76 N.E. 370 (1905).

Construction of Statutes

- Severability

Although a portion of a statute was unconstitutional, it did not follow that the court was authorized to declare its other provisions void, if they were separable from the void provisions, and capable of enforcement independently of the void provision, unless it appeared that all of the provisions of the act so dependent on each other, operating together for the same purpose, or were otherwise so connected together in meaning that it could not have been presumed that the legislature will have passed the one without the other provision. Donnersberger v. Prendergast, 128 Ill. 229, 21 N.E. 1 (1889).

- Severability Clauses

Former section 201 of the Illinois Controlled Substances Act, as it existed prior to August 14, 1975 (720 ILCS 570/201), was invalid for failure to require due notice prior to effect being given any rule which the Director of Law Enforcement might issue under the delegated authority of the Act; however, because of the severability provision of the Act (720 ILCS 570/602), the Illinois Controlled Substances Act was not invalid as a whole. People v. Avery, 67 Ill. 2d 182, 9 Ill. Dec. 645, 367 N.E.2d 79 (1977).

Criminal Trespass Statute

720 ILCS 5/21-5 does not conflict with former Ill. Const. (1870), Art. IV, § 13 (see now this section) which provided that "no act . . . shall embrace more than one subject, that shall be expressed in the title." People v. Barnett, 7 Ill. App. 3d 185, 287 N.E.2d 247 (1 Dist. 1972).

Enrolled Bill Doctrine

Appellate court followed precedent under the enrolled-bill doctrine and, because it was certified, refused to find 1993 Ill. Laws 30, which amended 35 ILCS 405/2, violative of the three-readings provision of the Illinois Constitution. McGinley v. Madigan, 366 Ill. App. 3d 974, 303 Ill. Dec. 522, 851 N.E.2d 709, 2006 Ill. App. LEXIS 437 (1 Dist. 2006).

Because 1999 Ill. Laws 935, which amended 70 ILCS 3205/3, of the Illinois Sports Facilities Authority Act, was certified, under the enrolled-bill doctrine, judicial review of the Act under Ill. Const. Art. IV, § 8(d) was precluded Friends of the Parks v. Chi. Park Dist., 203 Ill. 2d 312, 271 Ill. Dec. 903, 786 N.E.2d 161, 2003 Ill. LEXIS 451 (2003).

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Circuit court properly found it was precluded from inquiring into the constitutionality of the legislative process followed for bill due to the enrolled bill doctrine. Orr v. Edgar, 298 Ill. App. 3d 432, 232 Ill. Dec. 469, 698 N.E.2d 560 (1 Dist. 1998), appeal denied, 179 Ill. 2d 589, 235 Ill. Dec. 567, 705 N.E.2d 440 (1998).

Entitling Acts

- In General

It is for the legislature to determine how broad and comprehensive or how specific the title of an act shall be. Sangamon County Fair Agric. Ass'n v. Stanard, 9 Ill. 2d 267, 137 N.E.2d 487 (1956).

Under former Ill. Const. (1870), Art. IV, § 13 the title of an act was not required to be an index of the body of the act, or as comprehensive in matters of detail, but if it fairly indicates the general subject and reasonably covers all the provisions of the act, and is not calculated to mislead the General Assembly or the people, it is a sufficient compliance with the constitutional requirement. Brotherhood of R.R. Trainmen v. Elgin, J. & E. Ry., 382 Ill. 55, 46 N.E.2d 932 (1943).

- Authority of General Assembly

It is for the legislature to determine how broad and comprehensive or how specific the title of an act shall be. People ex rel. Coutrakon v. Lohr, 9 Ill. 2d 539, 138 N.E.2d 471 (1956).

- Discretion of General Assembly

The legislature when entitling an act may choose to make the title general or specific; should the legislature choose to make the title specific, then provisions which are not within the scope of the specific subject chosen for the title may not be included in the act or added thereto by amendment unless the title is also amended because the body of the statute cannot encompass a broader subject than is stated in the title. People v. Tibbitts, 56 Ill. 2d 56, 305 N.E.2d 152 (1973).

- Former Subject Rule

The 1970 constitution eliminated the requirement of former Ill. Const. (1870), Art. IV, § 13 that the subject of each bill must be expressed in the title. People v. Tibbitts, 56 Ill. 2d 56, 305 N.E.2d 152 (1973).

- Scope of Contents

The title of an act need not contain all the details thereof, nor be an index of its contents. People ex rel. Coutrakon v. Lohr, 9 Ill. 2d 539, 138 N.E.2d 471 (1956).

Title of statute need only state the general purposes, and not the legal effect of the act. Scott v. Freeport Motor Cas. Co., 379 Ill. 155, 39 N.E.2d 999 (1942).

It is sufficient if the title is comprehensive enough to reasonably include, as falling within the general subject, and as subordinate branches thereof, the several objects which the statute assumes to affect. Donnersberger v. Prendergast, 128 Ill. 229, 21 N.E. 1 (1889).

Final Passage

- In General

The final passage of a bill under former Ill. Const. (1870), Art. IV, § 13 (see now this section) does not mean its passage in the House or Senate regardless of amendments to it subsequently

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made; the final passage of a bill cannot mean one thing where the vote is required to be by yeas and nays and a different thing where it is required to be printed before the vote is taken on the final passage, otherwise, the provision for the the yeas and nays on the final passage of the bill would apply only to the first passage and not to the passage of the bill as it becomes a law. Neiberger v. McCullough, 253 Ill. 312, 97 N.E. 660 (1912).

- Enrolled Bill Rule

Even though the General Assembly did not comply with the three readings requirement based on the enrolled bill doctrine, the violation was ignored. Geja's Cafe v. Metropolitan Pier & Exposition Auth., 153 Ill. 2d 239, 180 Ill. Dec. 124, 606 N.E.2d 1212 (1992).

The purpose of the "enrolled bill" rule is to preclude impeachment of a bill "certified" in accordance with subsection (d) of this section by use of the Senate and House journals to show legislative compliance with constitutionally mandated procedural requirements. Benjamin v. Devon Bank, 68 Ill. 2d 142, 11 Ill. Dec. 270, 368 N.E.2d 878 (1977).

- Journal Entries

A bill does not become a law where the journals of the House and Senate do not show a compliance with the requirements of the Constitution respecting the passage of bills. Neiberger v. McCullough, 253 Ill. 312, 97 N.E. 660 (1912).

- Presumption of Validity

Acts of the legislature are presumed to be valid; all doubts or uncertainty arising from the language of the Constitution or of the act must be resolved. There was no reasonable basis for an argument on final passage of a bill as amended, the work "bill" could not be held to include senate amendments because on its final passage the question was stated "shall this bill pass, together with senate amendments." People ex rel. Sellers v. Brady, 262 Ill. 578, 105 N.E. 1 (1914).

- Signatures of Officers

The signatures of the presiding officers are conclusive proof that all constitutional procedures have been properly followed in the manner of passage if the bill shows on its face that it was properly passed. Rock v. Thompson, 85 Ill. 2d 410, 55 Ill. Dec. 566, 426 N.E.2d 891 (1981).

Habitual Criminal Act

Public Act 81-1270 was certified by both the Speaker of the House and the President of the Senate and became law; because the Habitual Criminal Act (720 ILCS 5/33B-1) shows, on its face, that it was certified by the presiding officers of both houses, the enrolled bill rule precluded the Supreme Court from considering whether the legislature complied with the three readings requirement set forth in this section. People v. Dunigan, 165 Ill. 2d 235, 209 Ill. Dec. 53, 650 N.E.2d 1026 (1995).

Incorporation by Reference

- Invalid

An amendment to former section 15 of the Workers' Compensation Act (820 ILCS 305/1 et seq.) declared that section to be and remain in full force and effect except as amended without inserting at length in the new act the sections amended was clearly in violation of former Ill. Const. (1870), Art. IV, § 13 (see now Ill. Const. (1970), Art. IV, § 8) which declared that no law shall be revived or amended by reference to its title only, but the law revived, or the section

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amended, shall be inserted at length in the new act. Kelley v. St. Louis Smelting & Ref. Co., 307 Ill. 367, 138 N.E. 618 (1923).

- Valid

Public Act did not violate State Constitution in that it was not confined to one subject. The act amended was the "Revenue Act of 1939" and its title was set forth in the title of the amendatory act; any provision which might have been inserted in the original act may be incorporated in the amendatory act. Schlenz v. Castle, 84 Ill. 2d 196, 49 Ill. Dec. 322, 417 N.E.2d 1336, appeal dismissed, 454 U.S. 804, 102 S. Ct. 76, 70 L. Ed. 2d 73 (1981).

Section 2.1 of the Insurance Code (215 ILCS 5/2.1) did not violate this section which requires that a bill expressly amending a law shall set forth completely the sections amended because section 2.1 did not expressly amend section 415 of the Insurance Code (see 215 ILCS 5/415), although it made reference to the "in lieu" provision of section 415. Prudential Ins. Co. of Am. v. City of Chicago, 66 Ill. 2d 437, 6 Ill. Dec. 199, 362 N.E.2d 1021 (1977).

The mere fact that the act creating the Metropolitan Fair and Exposition Authority of Cook County incorporated by reference certain sections of the state finance act to village act in no way amended that act, and such practice is free from constitutional objection. People ex rel. Coutrakon v. Lohr, 9 Ill. 2d 539, 138 N.E.2d 471 (1956).

Where an act did not purport to change or amend a particular section but did adopt, by reference, the provisions of that section without repeating them was a proper method of enacting laws, and the effect of the legislation is the same as though the statute or provision adopted had been incorporated into the act, therefore, it is free from constitutional objection. Zeman v. Dolan, 279 Ill. 295, 116 N.E. 642 (1917).

Joint Resolution

A joint resolution is the proper manner of expressing the will of a legislative assembly concerning mere temporary matters. Burritt v. Comm'rs of State Contracts, 120 Ill. 322, 11 N.E. 180 (1887).

Judicial Construction

Former Ill. Const, Art. IV, § 13 (1870) (see now this section) has been uniformly construed liberally in favor of the validity of enactments. People v. Newcom, 318 Ill. 188, 149 N.E. 269 (1925).

Lessee Use Tax Unconstitutional

The 1969 amendment to 35 ILCS 200/9-195, by which leasehold interests were assessed to the lessees at the fair market value of the real estate, was held invalid as violative of the prohibition against plurality of subject matters. Dee-El Garage, Inc. v. Korzen, 53 Ill. 2d 1, 289 N.E.2d 431 (1972).

Lower Amount of Appropriations

- Validity

Legislature's decision to lower amount of appropriation to Department of Public Aid did not alter any right otherwise bestowed by statute, for recipients did not have any substantive right not to have grant levels set at a lower level than that set the year before; therefore, it did violate the

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limitation that appropriations shall be limited to the subject of appropriations. Estep v. Department of Pub. Aid, 115 Ill. App. 3d 644, 71 Ill. Dec. 402, 450 N.E.2d 1281 (1 Dist. 1983).

Presumption of Validity

- Enrolled Bill Rule

Where the contention was based on the transcript of debates that title was not read by title on three different days did not overcome the presumption of validity based on the enrolled bill rule, which means that when the presiding officers of the two houses sign a bill, their signatures become conclusive proof that all constitutional procedures have been properly followed. Polich v. Chicago Sch. Fin. Auth., 79 Ill. 2d 188, 37 Ill. Dec. 357, 402 N.E.2d 247 (1980).

- President of Senate

There was no constitutional basis for a presumption of validity with respect to the swearing and signing by Senator of the oath of office of president of the senate and its certification to the Secretary of State. Rock v. Thompson, 85 Ill. 2d 410, 55 Ill. Dec. 566, 426 N.E.2d 891 (1981).

Prevailing Wage Law Amendment

820 ILCS 130/10(a), as it amended 35 ILCS 505/8 and certain sections of the Illinois Highway Code, by dealing with the same subject matter, without being complete in itself and without setting forth the section amended, was within the constitutional prohibition against revision or amendment of a law by reference to its title only. City of Monmouth v. Lorenz, 30 Ill. 2d 60, 195 N.E.2d 661 (1963).

Procedural Violations

- Laches

Where a law had been in operation and applied for substantially 12 years without contest, parties seeking to contest the validity of a law under the provision of this section, which were to prevent surprise in the enactment of law. Meister v. Carbaugh, 310 Ill. 486, 142 N.E. 189 (1923).

Where constitutional provisions regarding legislative procedure had not been availed of promptly, it is improper to upset a law long applied without constitutional question. Meister v. Carbaugh, 310 Ill. 486, 142 N.E. 189 (1923).

Purpose

The purpose of this section is to prevent incongruous and unrelated matters from being joined in one act. People v. Fenwick, 137 Ill. App. 3d 457, 92 Ill. Dec. 184, 484 N.E.2d 915 (3 Dist. 1985); People v. Cannady, 159 Ill. App. 3d 1086, 111 Ill. Dec. 872, 513 N.E.2d 118 (1 Dist. 1987).

The purpose of the constitutional provision is to avoid confusion arising from patchwork legislation, but does not require practically endless reiteration of amended statutes, nor that, when a new act is passed, all prior acts in any way modified by it shall be published at length in the amendatory act. People ex rel. Bentson v. Bowen, 9 Ill. 2d 69, 136 N.E.2d 806 (1956).

Former Ill. Const. (1870), Art. IV, § 13 (see now Art. IV, §§ 8 and 10, Ill. Const. 1970) was not intended to strait-jacket the General Assembly with respect to amending legislation. Starck v. Chicago & N.W. Ry., 4 Ill. 2d 611, 123 N.E.2d 826 (1954).

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The purpose of this section of the constitution is to prevent the enactment of amendatory statutes in terms so blind that the legislators themselves are sometimes deceived in regard to their effect and the public fails to become apprised of the changes made in the law because of difficulty in making the necessary examination and comparison. Lombardo Wine Co. v. Taylor, 407 Ill. 454, 95 N.E.2d 607 (1950).

The purpose of this constitutional provision requiring that a section amended shall be inserted at length in a new act is to avoid confusion arising from patchwork legislation, but that endless and interminable reiteration of amended statutes is not required. DeMotte v. DeMotte, 364 Ill. 421, 4 N.E.2d 960 (1936).

This section's provisions were not intended to impede legislation, but to protect the people against unwise legislation being passed without notice to the people or to the legislature itself, and to prevent both the people and legislature from being deceived by the title of a bill. Cloyd v. County of Vermilion, 360 Ill. 610, 196 N.E. 802 (1935).

Record of Vote

- Yeas and Nays

The express provision in the former Constitution (Ill. Const. (1870), Art. IV, § 12) for the entry of the yeas and nays on the final passage of the bill did not carry with it the slightest implication that other matters need not be entered. Neiberger v. McCullough, 253 Ill. 312, 97 N.E. 660 (1912).

Repealing Statute

The rule of the common law, that when one statute is repealed by another the repeal of the repealing statute revives the statute repealed, does not apply to municipal ordinances. City of Chicago v. Degitis, 383 Ill. 171, 48 N.E.2d 930 (1943).

- Effects

Where a repealing act is passed and nothing substituted for the former act, the former act is repealed as if it never existed, and it bears no more force and effect than if it had never been enacted in the first place. City of Chicago v. Degitis, 383 Ill. 171, 48 N.E.2d 930 (1943).

Revival of Prior Statutes

- Municipal Ordinances

The rule at common law, that where one statute is repealed by another, the repeal of the repealing statute revives the formerly repealed statute, does not apply to municipal ordinances, particularly in view of the general rule of public policy of the state indicated by former chapter 131 section 3 (see now 5 ILCS 70/3) and former Ill. Const. (1870), Art. IV, § 13. City of Chicago v. Degitis, 383 Ill. 171, 48 N.E.2d 930 (1943).

Single Subject

Defendant was properly convicted of criminal drug conspiracy because even if 1995 Ill. Laws 89-404 violated Ill. Const. Art. IV, § 8(d), the single subject clause, the version of 725 ILCS 5/108B in effect prior to its amendment by that law remained in effect at the time of defendant's conviction. People v. Stroud, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1183 (2 Dist. Nov. 19, 2008).

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Trial court properly dismissed the indictments charging defendants with violating the Illinois Income Tax Act, 35 ILCS 5/1301, by allegedly filing tax returns in two different tax years that supposedly contained false statements about their adjusted gross incomes during those years. The public law used to enact the Act, as amended, violated the Illinois Constitution's single subject clause, Ill. Const. Art. IV, § 8(d) because it contained measures that were too unrelated to be categorized as involving a single subject, and, thus, the indictments had to be dismissed. People v. Olender, 222 Ill. 2d 123, 305 Ill. Dec. 1, 854 N.E.2d 593, 2005 Ill. LEXIS 2070 (2005).

725 ILCS 5/122-2.1, which empowered trial courts, prior to appointing counsel, to dismiss postconviction petitions that were frivolous or patently without merit, did not violate the single subject rule of Ill. Const., Art. IV, § 8(d) because all sections of the act clearly related to the subject of the criminal justice system. People v. Dorris, 319 Ill. App. 3d 579, 253 Ill. Dec. 855, 746 N.E.2d 303, 2001 Ill. App. LEXIS 256 (1 Dist. 2001).

- In General

In determining whether a provision of an act relates to a putative single subject, courts must determine what that provision means; this begins and ends with the plain language of the provision where that language is clear. People v. Burdunice, 211 Ill. 2d 264, 285 Ill. Dec. 191, 811 N.E.2d 678, 2004 Ill. LEXIS 679 (2004).

Statute embraces but one subject or object where the matters included are such that, if traced back, they will lead the mind to the subject as the generic head; on the other hand, an act may not embrace unrelated or unconnected subjects or objects, but the various topics in the body of the act should and must be kindred in nature, and germane to the subject or object. People v. Burdunice, 211 Ill. 2d 264, 285 Ill. Dec. 191, 811 N.E.2d 678, 2004 Ill. LEXIS 679 (2004).

Courts use a two-tiered analysis to determine whether an act violates the single subject rule; first, courts must determine whether the act, on its face, involves a legitimate single subject, and second, courts must discern whether the various provisions within an act all relate to the proper subject at issue. People v. Burdunice, 211 Ill. 2d 264, 285 Ill. Dec. 191, 811 N.E.2d 678, 2004 Ill. LEXIS 679 (2004).

Defendant was not convicted in violation of the single subject rule of Ill. Const. Art. IV, § 8(d); Although 1984 Ill. Laws 1041 may have violated the single subject clause, the passage of 1986 Ill. Laws 866 remedied any constitutional infirmity and, as defendant's conduct occurred in 1999, he was unaffected by the 1984 act. People v. Strickland, 342 Ill. App. 3d 566, 277 Ill. Dec. 125, 795 N.E.2d 793, 2003 Ill. App. LEXIS 1019 (3 Dist. 2003).

1983 Ill. Laws 6200, which authorized first-stage dismissal, did not violate the single subject clause of Ill. Const., Art. IV, § 8(d) because the fact that the act discussed multiple subjects did not necessarily mean that it violated that portion of the Illinois Constitution which mandated single subject thesis for Illinois laws passed by the state legislature. Further, a showing that one or a few senators or representatives in the state legislature objected to the inclusion of a section in the bill did not affirmatively demonstrate that the resultant public act violated the single subject clause. People v. Jones, 318 Ill. App. 3d 1189, 253 Ill. Dec. 62, 744 N.E.2d 344, 2001 Ill. App. LEXIS 141 (1 Dist. 2001).

Ill. Const. of 1870, Art. IV, § 13 (now Ill. Const. (1970), Art. IV, § 8) is obeyed if all the provisions in an act related to one subject indicated in the title and are parts of it, or incident to it, or reasonably connected with it, or in some reasonable sense auxiliary to the object in view; it is not required that the subject of the act shall be specifically and exactly expressed in the title or that the title should be an index of the details of the act. People v. Commercial Life Ins. Co., 247 Ill. 92, 93 N.E. 90, 1910 Ill. LEXIS 1826 (1910).

- Criminal Offenses

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Aggravated battery statute, P.A. 86-980, under which defendant pled guilty did not violate the single subject rule of the Illinois Constitution, Ill. Const. Art. IV, § 8(d); the courts were not required to look beyond the face of the public act and the subject provisions did all relate to a single subject - crime, specifically, the prevention of same. People v. Morales, 342 Ill. App. 3d 815, 277 Ill. Dec. 338, 795 N.E.2d 1006, 2003 Ill. App. LEXIS 1035 (1 Dist. 2003).

Statute creating a criminal offense did not violate the single subject rule where the statute was naturally and logically related to a single subject, crime. People v. Davis, 328 Ill. App. 3d 411, 262 Ill. Dec. 657, 766 N.E.2d 277, 2002 Ill. App. LEXIS 160 (3 Dist. 2002), appeal denied, 199 Ill. 2d 563, 266 Ill. Dec. 443, 775 N.E.2d 5 (2002), cert. denied, U.S. , 124 S. Ct. 320, 157 L. Ed. 2d 221 (2003).

Decision declaring the insanity defense statute, 720 ILCS 5/6-2(a), unconstitutional, by violating the single subject rule of the Illinois Constitution, Ill. Const., Art. IV, § 8(d), did not apply retroactively to a case pending on collateral review; by pleading guilty, defendant gave up the possibility that he might benefit from future changes in the law. People v. Belcher, 319 Ill. App. 3d 906, 254 Ill. Dec. 169, 746 N.E.2d 1217, 2001 Ill. App. LEXIS 222 (1 Dist. 2001).

Illinois P.A. 89-707, which contained statutory amendments dealing with court security officers, attendance of county correction officers at court proceedings, elevation of aggravated kidnapping to a higher degree of felony, and immunity for secondary release of sex offender registration information, did not violate the single-subject rule because all the topics related in some manner to the criminal law. People v. Fuller, 324 Ill. App. 3d 728, 258 Ill. Dec. 273, 756 N.E.2d 255, 2001 Ill. App. LEXIS 646 (1 Dist. 2001).

P.A. 88-680, which amended 720 ILCS 5/33A-1 and 720 ILCS 5/33A-3, violated the single-subject clause of the Illinois Constitution. People v. Wells, 317 Ill. App. 3d 247, 250 Ill. Dec. 863, 739 N.E.2d 626, 2000 Ill. App. LEXIS 889 (5 Dist. 2000).

P.A. 89-689 did not violate the single subject rule as all of the 18 substantive sections of the act pertained to the criminal justice system. People v. Majors, 308 Ill. App. 3d 1021, 242 Ill. Dec. 474, 721 N.E.2d 753 (4 Dist. 1999), appeal denied, 187 Ill. 2d 583, 244 Ill. Dec. 188, 724 N.E.2d 1272 (2000), appeal denied, 188 Ill. 2d 576, 246 Ill. Dec. 128, 729 N.E.2d 501 (2000).

- In General

The constitutional provision which limits appropriation bills to the subject of appropriations is not simply a formal requirement in the enactment of legislation; it has its roots in the doctrine of separation of powers. People ex rel. Kirk v. Lindberg, 59 Ill. 2d 38, 320 N.E.2d 17 (1974).

In order to render a provision of a statute void because its subject is not embraced in its title, the provision must be one which is incongruous or which has no proper connection with the title of the act. Jordan v. Metropolitan San. Dist., 15 Ill. 2d 369, 155 N.E.2d 297 (1958).

The constitution is obeyed if all the provisions of the act relate to one subject indicated in the title and are parts of it, or incident to it, or reasonably connected with it, or in some reasonable sense auxiliary to the object in view. Jordan v. Metropolitan San. Dist., 15 Ill. 2d 369, 155 N.E.2d 297 (1958).

The amendatory portion under constitutional provisions regulating subjects and titles of statutes need only be germane to the general statute. People ex rel. Bentson v. Bowen, 9 Ill. 2d 69, 136 N.E.2d 806 (1956).

Even assuming that the validating act had the effect of legalizing a defective budget without expressing such matter in its title, provisions so construed do not have the effect of rendering the title constitutionally deficient concerning singleness of subject. People ex rel. Brenza v. Gebbie, 5 Ill. 2d 565, 126 N.E.2d 657 (1955).

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Unless the act contains matters having no relation to the title, the constitutional provision is not violated. Fenske Bros. v. Upholsterers Int'l Union, 358 Ill. 239, 193 N.E. 112 (1934).

- City Ordinances

The single subject requirement of this section applies only to acts of the state legislature and not to city ordinances and the trial court erred in imposing a germane requirement for a substitute liquor tax ordinance. City & Suburban Distributors-Illinois, Inc. v. City of Chicago, 157 Ill. App. 3d 791, 110 Ill. Dec. 127, 510 N.E.2d 1158 (1 Dist. 1987).

- Codification Rule

A defendant should not be precluded from raising a single subject rule claim once an act has been codified. People v. Reedy, 186 Ill. 2d 1, 237 Ill. Dec. 74, 708 N.E.2d 1114 (1999).

- Criminal Offenses

Public Act 88-680, which amended 720 ILCS 5/33A-3 making the commission of armed violence with a category I weapon a Class X felony subject to a mandatory minimum prison term of 15 years, violated the single subject clause of the Illinois Constitution. People v. Young, 316 Ill. App. 3d 963, 250 Ill. Dec. 170, 738 N.E.2d 134, 2000 Ill. App. LEXIS 728 (1 Dist. 2000), cert. denied, 534 U.S. 1029, 122 S. Ct. 565, 151 L. Ed. 2d 439 (2001), appeal denied, 195 Ill. 2d 597, 258 Ill. Dec. 100, 755 N.E.2d 483 (2001).

The public act which created the offense of aggravated battery with a firearm (720 ILCS 5/12-4.2) did not violate the single subject rule, as all parts of that act involved criminal conduct and each related either to the Criminal Code or the Juvenile Court Act. People v. Vazquez, 315 Ill. App. 3d 1131, 248 Ill. Dec. 732, 734 N.E.2d 1023, 2000 Ill. App. LEXIS 673 (1 Dist. 2000).

The defendant was entitled to a new trial where the trial court employed the amended 1996 version of 720 ILCS 5/6-2 because that was the version of the law in effect when the crimes were allegedly committed, but the Supreme Court later determined that the public act which amended the statute was unconstitutional and void ab initio because it violated the single subject rule. People v. Ramsey, 92 Ill. 2d 154, 248 Ill. Dec. 882, 735 N.E.2d 533, 2000 Ill. LEXIS 1218 (2000).

Public Act 80-1099 (Pub. Act 80-1099, eff. February 1, 1978 (1977 Ill. Laws 3264)), which created Class X sentencing, did not violate the single subject rule as an examination of all the provisions of Public Act 80-1099 revealed a natural and logical connection to a single subject, the criminal justice system. People v. Smith, 314 Ill. App. 3d 1111, 248 Ill. Dec. 396, 734 N.E.2d 104, 2000 Ill. App. LEXIS 625 (4 Dist. 2000).

The public act which enacted the residual hearsay statute, 725-5/115-10.2, did not violate the single subject rule since the act addresses the single subject of the criminal justice system. People v. Campbell, 309 Ill. App. 3d 423, 242 Ill. Dec. 694, 721 N.E.2d 1225 (4 Dist. 1999), appeal denied, 188 Ill. 2d 568, 246 Ill. Dec. 125, 729 N.E.2d 498 (2000).

The public act which amended 720 ILCS 150/0.01 et seq. to expand the scope of the act pertaining to the sexual exploitation of a child, violated the single subject rule since the act did not pertain solely to neighborhood safety. People v. Cervantes, 189 Ill. 2d 80, 243 Ill. Dec. 233, 723 N.E.2d 265 (1999).

The public act which enacted 720 ILCS 5/17B-1 et seq. violated the single subject rule since the act did not pertain solely to neighborhood safety. People v. Cervantes, 189 Ill. 2d 80, 243 Ill. Dec. 233, 723 N.E.2d 265 (1999).

The public act which amended 430 ILCS 65/0.01 et seq. to require that each FOID card applicant certify that he or she is not an illegal alien and to provide the State Police the authority to deny an application for a FOID card or to revoke and seize a FOID card if it finds that the person is an

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illegal alien, to require that FOID card expiration dates be conspicuously displayed on the card's face, and to increase the penalties for possession of a firearm without a valid FOID card, violated the single subject rule since the act did not pertain solely to neighborhood safety. People v. Cervantes, 189 Ill. 2d 80, 243 Ill. Dec. 233, 723 N.E.2d 265 (1999).

The public act which amended 410 ILCS 255/1 et seq. by expanding the types of business entities subject to civil monetary penalties for violations of either the WIC Act or WIC program regulations, deleting language requiring that training fees or penalty money received by the Department of Public Health be used to administer the act, deleting language allowing the Department of Public Health to invest penalty money, and requiring the Department of Public Health to promulgate rules concerning administrative appeals from sanctions imposed upon the new types of business entities subject to civil monetary sanctions under the act, violated the single subject rule since the act did not pertain solely to neighborhood safety. People v. Cervantes, 189 Ill. 2d 80, 243 Ill. Dec. 233, 723 N.E.2d 265 (1999).

The public act which amended 730 ILCS 140/1 et seq. to create an exemption from the general prohibition against privately run correctional facilities for juvenile residential facilities, violated the single subject rule since the act did not pertain solely to neighborhood safety. People v. Cervantes, 189 Ill. 2d 80, 243 Ill. Dec. 233, 723 N.E.2d 265 (1999).

The public act which amended 30 ILCS 105/1 et seq. by adding the Secure Residential Youth Care Facility Fund to the list of special funds, violated the single subject rule since the act did not pertain solely to neighborhood safety. People v. Cervantes, 189 Ill. 2d 80, 243 Ill. Dec. 233, 723 N.E.2d 265 (1999).

The public act which created 730 ILCS 175/45-1 et seq. violated the single subject rule since the act did not pertain solely to neighborhood safety. People v. Cervantes, 189 Ill. 2d 80, 243 Ill. Dec. 233, 723 N.E.2d 265 (1999).

The public act which amended 725 ILCS 120/1 et seq. to allow state's attorneys and the Prisoner Review Board to provide victims and witnesses of violent crimes with more information and to expand the rights of victims in such cases to present an impact statement, violated the single subject rule since the act did not pertain solely to neighborhood safety. People v. Cervantes, 189 Ill. 2d 80, 243 Ill. Dec. 233, 723 N.E.2d 265 (1999).

The public act which amended 725 ILCS 5/100-1 to provide for the surrender of firearms by a person released on bail prior to conviction for certain offenses, violated the single subject rule since the act did not pertain solely to neighborhood safety. People v. Cervantes, 189 Ill. 2d 80, 243 Ill. Dec. 233, 723 N.E.2d 265 (1999).

The public act which amended 720 ILCS 570/100 et seq. to specify a 24-month period of probation for first-time offenders, establish certain conditions for probation, and allow for the use, during the aggravation portion of a sentencing hearing of an offender's prior drug convictions that were discharged or dismissed, violated the single subject rule since the act did not pertain solely to neighborhood safety. People v. Cervantes, 189 Ill. 2d 80, 243 Ill. Dec. 233, 723 N.E.2d 265 (1999).

The public act which amended 720 ILCS 550/1 et seq. to specify a 24-month period of probation for first-time offenders, establish certain conditions for probation, and allow for the use, during the aggravation portion of a sentencing hearing of an offender's prior drug convictions that were discharged or dismissed, violated the single subject rule since the act did not pertain solely to neighborhood safety. People v. Cervantes, 189 Ill. 2d 80, 243 Ill. Dec. 233, 723 N.E.2d 265 (1999).

The public act which amended 730 ILCS 5/1-1-1 et seq. to permit extended term sentences for defendants who commit felonies in furtherance of the activities of an "organized gang," and to require that defendants sentenced to probation or conditional discharge or placed on supervision for such offenses perform community service, violated the single subject rule since the act did not

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pertain solely to neighborhood safety. People v. Cervantes, 189 Ill. 2d 80, 243 Ill. Dec. 233, 723 N.E.2d 265 (1999).

The public act which amended 705 ILCS 405/1-1 et seq. to expand the types of offenses for which a minor can be tried as an adult, to mandate imprisonment for juveniles adjudicated delinquent for first degree murder, and to lengthen the time period that the state may continue adjudicatory hearings, violated the single subject rule since the act did not pertain solely to neighborhood safety. People v. Cervantes, 189 Ill. 2d 80, 243 Ill. Dec. 233, 723 N.E.2d 265 (1999).

The public act which enacted 55 ILCS 5/5-1120 which empowers counties to establish and fund programs to reduce, prevent or control juvenile delinquency, violates the single subject rule contained in this section of the Illinois Constitution since the act related to both crimes and civil procedure. People v. Wooters, 188 Ill. 2d 500, 243 Ill. Dec. 33, 722 N.E.2d 1102 (1999).

The public act which amended 625 ILCS 5/11-501 to add terms of imprisonment as punishment for persons arrested for driving under the influence while accompanied by an individual under the age of 16, violates the single subject rule contained in Article IV, Section 8 of the Illinois Constitution since the act related to both crimes and civil procedure. People v. Wooters, 188 Ill. 2d 500, 243 Ill. Dec. 33, 722 N.E.2d 1102 (1999).

The public act which amended 625 ILCS 5/6-208.1 to alter the conditions under which an individual convicted of driving while intoxicated could receive a temporary driving permit, violates the single subject rule contained in Article IV, Section 8 of the Illinois Constitution since the act related to both crimes and civil procedure. People v. Wooters, 188 Ill. 2d 500, 243 Ill. Dec. 33, 722 N.E.2d 1102 (1999).

The public act which amended 730 ILCS 5/5-6-3.1 to require payment of restitution following conviction, violates the single subject rule contained in Article IV, Section 8 of the Illinois Constitution since the act related to both crimes and civil procedure. People v. Wooters, 188 Ill. 2d 500, 243 Ill. Dec. 33, 722 N.E.2d 1102 (1999).

The public act which amended 730 ILCS 5/5-5-6 to require payment of restitution following conviction, violates the single subject rule contained in Article IV, Section 8 of the Illinois Constitution since the act related to both crimes and civil procedure. People v. Wooters, 188 Ill. 2d 500, 243 Ill. Dec. 33, 722 N.E.2d 1102 (1999).

The public act which amended 720 ILCS 5/11-6.5 to include a definition of "arranges" for the crime of indecent solicitation of an adult, violates the single subject rule contained in Article IV, Section 8 of the Illinois Constitution since the act related to both crimes and civil procedure. People v. Wooters, 188 Ill. 2d 500, 243 Ill. Dec. 33, 722 N.E.2d 1102 (1999).

The public act which amended 720 ILCS 5/11-6 to include a definition of "solicits" for the crime of indecent solicitation of a child, violates the single subject rule contained in Article IV, Section 8 of the Illinois Constitution since the act related to both crimes and civil procedure. People v. Wooters, 188 Ill. 2d 500, 243 Ill. Dec. 33, 722 N.E.2d 1102 (1999).

The public act which amended 720 ILCS 5/32-10 to expand the circumstances under which a person charged with a felony while on bail must appear in court for the bail to be reset, violates the single subject rule contained in Article IV, Section 8 of the Illinois Constitution since the act related to both crimes and civil procedure. People v. Wooters, 188 Ill. 2d 500, 243 Ill. Dec. 33, 722 N.E.2d 1102 (1999).

The public act which enacted 730 ILCS 5/5-8-1(a)(1)(c)(ii), which prescribes mandatory life imprisonment for any person 17 years or older convicted of murdering a child less than 12 years old, provided the offender is not sentenced to death, violates the single subject rule contained in Article IV, Section 8 of the Illinois Constitution since the act related to both crimes and civil procedure. People v. Wooters, 188 Ill. 2d 500, 243 Ill. Dec. 33, 722 N.E.2d 1102 (1999).

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The public act which amended 725 ILCS 5/104-21(a) so as to repeal the requirement that a defendant taking a psychotropic drug is required to have a hearing on his fitness to stand trial did not violate the single subject rule since all of the provisions of the act pertained to the criminal justice system. People v. Dixon, 308 Ill. App. 3d 1008, 242 Ill. Dec. 641, 721 N.E.2d 1172 (4 Dist. 1999), appeal denied, 211 Ill. 2d 590, 823 N.E.2d 970 (2004).

Public Act 89-404, which amended the insanity defense contained in 720 ILCS 5/6-2, is unconstitutional as it violates the single subject rule of the Illinois Constitution. People v. Noble, 308 Ill. App. 3d 980, 242 Ill. Dec. 501, 721 N.E.2d 780 (3 Dist. 1999).

Public Act 89-8, which amended the Sex Offender Registration Act, 730 ILCS 150/1 et seq., and several other acts, did not violate the single-subject rule and it encompassed only one subject, i.e., matters relating to the criminal justice system, even though it amended several different chapters of the Illinois Compiled Statutes. People v. Malchow, 306 Ill. 2d 665, 239 Ill. Dec. 664, 714 N.E.2d 583 (2 Dist. 1999).

The amendment to 730 ILCS 5/3-6-3 which required an inmate to serve 85 percent of a sentence for criminal sexual assault before eligibility for release was unconstitutional under the single-subject rule. People v. McIntosh, 305 Ill. App. 3d 462, 238 Ill. Dec. 789, 712 N.E.2d 893 (5 Dist. 1999), appeal denied, 185 Ill. 2d 651, 242 Ill. Dec. 146, 720 N.E.2d 1101 (1999).

720 ILCS 5/33A-3(a-5) is unconstitutional since Public Act 88-680, which enacted that subsection, violated the single subject rule. People v. Dainty, 299 Ill. App. 3d 235, 233 Ill. Dec. 475, 701 N.E.2d 118 (3 Dist. 1998), appeal denied, 187 Ill. 2d 576, 244 Ill. Dec. 187, 724 N.E.2d 1271 (2000).

The statute defining the offense of prostitution (see now subsection (a) of 720 ILCS 5/11-14) is not unconstitutional as violative of due process rights by defining an inherently inchoate offense as a specific substantive offense, the equal protection of the law, right to freedom of speech, or Ill. Const. (1970), Art. IV, § 8(d), which provides that bills shall be confined to one subject. People v. Thompson, 85 Ill. App. 3d 964, 41 Ill. Dec. 263, 407 N.E.2d 761 (1 Dist. 1980).

- Criminal Procedure

An act which, inter alia, amended 725 ILCS 5/104-21 by modifying the requirement for holding a fitness hearing based upon psychotropic medication, did not violate the single subject rule since all of the act pertained to the subject of public safety. People v. Startz, 312 Ill. App. 3d 863, 245 Ill. Dec. 743, 728 N.E.2d 825, 2000 Ill. App. LEXIS 262 (2 Dist. 2000).

P.A. 83-942, which amended 725 ILCS 5/122-2.1 to provide for summary dismissals of pro se petitions which the trial court finds to be frivolous or patently without merit, did not violate the single subject rule since all sections of the act concerned criminal law or the administration of criminal justice. People v. Sharpe, 321 Ill. App. 3d 994, 255 Ill. Dec. 331, 749 N.E.2d 432, 2001 Ill. App. LEXIS 337 (3 Dist. 2001), appeal denied, 202 Ill. 2d 653, 272 Ill. Dec. 352, 787 N.E.2d 167 (2002).

P.A. 83-942, which amended 725 ILCS 5/122-2.1 to allow for summary dismissals of postconviction petitions after an initial review by the trial court, was not passed in violation of the single subject clause since "crime and correctional matters" is a permissible single legislative subject. People v. Vilces, 321 Ill. App. 3d 937, 255 Ill. Dec. 149, 748 N.E.2d 1219, 2001 Ill. App. LEXIS 230 (2 Dist. 2001).

P.A. 83-942, which included 725 ILCS 5/122-2.1, did not violate the single subject rule since all of the provisions in the act pertained to criminal justice and correctional facilities, notwithstanding that the provisions pertained to several difference codes. People v. Roberts, 318 Ill. App. 3d 719, 252 Ill. Dec. 869, 743 N.E.2d 1025, 2000 Ill. App. LEXIS 1010 (1 Dist. 2000), appeal denied, 202 Ill. 2d 651, 272 Ill. Dec. 351, 787 N.E.2d 166 (2002).

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P.A. 89-689, which amended 725 ILCS 5/104-21 to provide that a defendant who is receiving psychotropic drugs will not be presumed to be unfit to stand trial solely by virtue of the receipt of those drugs, does not violate the single subject rule of the Illinois Constitution. People v. Cackler, 317 Ill. App. 3d 645, 251 Ill. Dec. 318, 740 N.E.2d 399, 2000 Ill. App. LEXIS 866 (1 Dist. 2000).

P.A. 89-689, which amended 725 ILCS 5/104-21 so as not to automatically provide a criminal defendant with the right to a fitness hearing because the defendant is receiving psychotropic medication, did not violate the single subject provision of the Illinois Constitution. People v. Jones, 317 Ill. App. 3d 283, 250 Ill. Dec. 644, 739 N.E.2d 105, 2000 Ill. App. LEXIS 875 (5 Dist. 2000).

- Dismissal of Post-conviction petition

Provision in Illinois law that permitted summary dismissal of defendant's post-conviction petition did not violate the single subject clause of the Illinois Constitution. People v. Diehl, 335 Ill. App. 3d 693, 270 Ill. Dec. 678, 783 N.E.2d 640, 2002 Ill. App. LEXIS 1060 (1 Dist. 2002).

Enactment of law permitting summary dismissal of petition for postconviction relief did not violate the single subject rule of the Illinois Constitution, and, thus, the defendant was not entitled to relief from a drug charge conviction on that ground. People v. Mendez, 336 Ill. App. 3d 935, 271 Ill. Dec. 207, 784 N.E.2d 425, 2003 Ill. App. LEXIS 169 (3 Dist. 2003).

- Factors

An act may include all matters germane to a general subject, including the means and methods reasonably necessary or appropriate for the accomplishment of the legislative purpose and including any other provisions not inconsistent with or foreign to the general subject of the act. People v. Fenwick, 137 Ill. App. 3d 457, 92 Ill. Dec. 184, 484 N.E.2d 915 (3 Dist. 1985).

Under former Ill. Const. (1870), Art. IV, § 13, the amendatory portion under constitutional provisions regulating subjects and titles of statutes need only be germane to the general statute. People ex rel. Bentson v. Bowen, 9 Ill. 2d 69, 136 N.E.2d 806 (1956).

Under former Ill. Const. (1870), Art. IV, § 13 the question of validity of a statute could not be determined by considering the title alone but the body of the act had to be looked to to determine whether but one purpose was included; if all the provisions of the act were fairly referable to one general scheme or purpose and that one purpose is expressed in the title, the act is valid. Clarke v. Storchak, 384 Ill. 564, 52 N.E.2d 229 (1943).

Provisions of an act which relate, directly or indirectly, to its general subject do not render the act vulnerable to the objection that it embraces more than one subject. People ex rel. City of Chicago v. Board of County Comm'rs, 355 Ill. 244, 189 N.E. 26 (1934).

Any number of provisions may be contained in an act, however diverse they may be, so long as they are not inconsistent with or foreign to the general subject, and may be considered in furtherance of such subject. Commissioners of Lincoln Park v. Fahrney, 250 Ill. 256, 95 N.E. 194 (1911).

- Not Shown

2009 Ill. Laws 34 violates the single subject clause of Ill. Const. art. IV, § /Aa8(d) and it is void in its entirety because not all of the provisions of 2009 Ill. Laws 34 have a natural and logical connection to the single subject of revenue to the state; moreover, pursuant to their own terms, 2009 Ill. Laws 35, 2009 Ill. Laws 37, and 2009 Ill. Laws 38 are all contingent on the enactment of 2009 Ill. Laws 34. Since 2009 Ill. Laws 34 is void in its entirety, the remaining acts cannot stand; therefore, a lawsuit on behalf of taxpayers should have been allowed to proceed under 735 ILCS

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5/11-303. Wirtz v. Quinn, 407 Ill. App. 3d 776, 347 Ill. Dec. 562, 942 N.E.2d 765, 2011 Ill. App. LEXIS 33 (1 Dist. 2011).

Appellate court properly reversed the trial court's summary dismissal of defendant's successive postconviction petition for relief on the grounds that it was frivolous and patently without merit; defendant was entitled to have the trial court consider whether defendant should be granted postconviction relief on the grounds that the statute under which defendant's case was transferred from juvenile court to criminal court was invalid because it violated the single subject clause of the Illinois Constitution, Ill. Const. (1970), Art. IV, § 8 and the trial court also had to apply the law in effect at the time of the transfer given that the statute was invalid in its entirety and that the Juvenile Justice Reform Provisions of 1998, 705 ILCS 405/5-805(2)(a) were not in effect at the time of the transfer. People v. Brown, 225 Ill. 2d 188, 310 Ill. Dec. 561, 866 N.E.2d 1163, 2007 Ill. LEXIS 449 (2007).

P.A. 89-688, which amends 720 ILCS 5/31A-1.2 to add cellular phone batteries to the list of contraband prohibited in penal institutions and which also amends 5 ILCS 350/2 to allow the Illinois Attorney General to file counterclaims in civil suits involving state employees, is unconstitutional because it violates the single subject rule for legislation. People v. Burdunice, 211 Ill. 2d 264, 285 Ill. Dec. 191, 811 N.E.2d 678, 2004 Ill. LEXIS 679 (2004).

Where 1996 Ill. Laws 688, which created the crime of unauthorized delivery of electronic contraband into a penal institution by an employee, violated the single subject rule of Ill. Const. Art. IV, § 8(d), and there was no curative legislation that facially exhibited the legislature's intent to cure the single subject violation, 720 ILCS 5/31A-1.2(c)(1), (4)(xi) was void ab initio and defendant's conviction thereunder was reversed. People v. Burdunice, 339 Ill. App. 3d 986, 274 Ill. Dec. 737, 791 N.E.2d 1148, 2003 Ill. App. LEXIS 656 (3 Dist. 2003).

1998 Ill. Laws 90-456 contravenes the single subject rule clause of Ill. Const. art. IV, § 8(d) (1970). People v. Sypien, 198 Ill. 2d 334, 261 Ill. Dec. 294, 763 N.E.2d 264, 2001 Ill. LEXIS 1077 (2001).

The public act which amended 735 ILCS 5/15-1701 to guarantee adequate notice of a change of ownership for individuals in possession of real estate, but who were not parties to foreclosure proceedings on that property, violates the single subject rule contained in Article IV, Section 8 of the Illinois Constitution since the act related to both crimes and civil procedure. People v. Wooters, 188 Ill. 2d 500, 243 Ill. Dec. 33, 722 N.E.2d 1102 (1999).

The public act which amended 735 ILCS 5/15-1508 to allow residents of foreclosed property to be removed from the premises only if the residents are personally named in the relevant complaint or petition, violates the single subject rule contained in Article IV, Section 8 of the Illinois Constitution since the act related to both crimes and civil procedure. People v. Wooters, 188 Ill. 2d 500, 243 Ill. Dec. 33, 722 N.E.2d 1102 (1999).

As there was no natural and logical connection that could justify the enactment of the various matters in one act, P.A. 89-404 violated the single subject clause and was therefore unconstitutional in its entirety. People v. Reedy, 186 Ill. 2d 1, 237 Ill. Dec. 74, 708 N.E.2d 1114 (1999).

Public Act 88-680 violated the single subject rule and is unconstitutional in its entirety; it contains a multitude of provisions creating several new laws in unrelated matters. People v. Williams, 302 Ill. App. 3d 975, 236 Ill. Dec. 642, 707 N.E.2d 980 (2 Dist. 1999), appeal denied, 187 Ill. 2d 590, 244 Ill. Dec. 190, 724 N.E.2d 1274 (2000).

Public Act 89-404 violates the single subject rule as 9 out of 10 provisions relate to criminal law or procedure, but the tenth provision, dealing with amendments to the Hospital Lien Act (770 ILCS 35/1 et seq.), does not have the necessary connection. People v. Worden, 299 Ill. App. 3d 836, 234 Ill. Dec. 271, 702 N.E.2d 611 (2 Dist. 1998).

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Public Act 89-404 (1995 Ill. Laws 4306) violates the single subject rule of this section and is therefore invalid. People v. Wilson, 295 Ill. App. 3d 228, 229 Ill. Dec. 649, 692 N.E.2d 422 (4 Dist. 1998), appeal denied, 183 Ill. 2d 594, 238 Ill. Dec. 720, 712 N.E.2d 824 (1999).

Public Act 89-404 (1995 Ill. 1995 Ill. Laws 4306), which addressed at least five legislative subjects and amended nine statutory codes covering both civil and criminal matters, violated the single subject requirement of this section and is unconstitutional in its entirety. People v. Reedy, 295 Ill. App. 3d 34, 229 Ill. Dec. 603, 692 N.E.2d 376 (2 Dist. 1998), aff'd, 186 Ill. 2d 1, 237 Ill. Dec. 74, 708 N.E.2d 1114 (2d Dist. 1999).

Public Act 89-404, which amended 730 ILCS 5/3-6-3(a)(2) to add the "truth in sentencing provision," violated the single subject requirement of this section. People v. Pitts, 295 Ill. App. 3d 182, 229 Ill. Dec. 451, 691 N.E.2d 1174 (4 Dist. 1998), appeal denied, 183 Ill. 2d 588, 238 Ill. Dec. 718, 712 N.E.2d 822 (1999).

The enactment of P.A. 89-428 violated the single subject rule; the Act amended a multitude of provisions in over 20 different acts and created several new laws and by no fair intendment may the many discordant provisions be considered to possess a natural and logical connection. Johnson v. Edgar, 176 Ill. 2d 499, 224 Ill. Dec. 1, 680 N.E.2d 1372 (1997).

The 1969 amendment to former § 26 of the Revenue Act (see now 35 ILCS 200/9-195), by which leasehold interests were assessed to the lessees at the fair market value of the real estate, was held invalid as violative of the prohibition against plurality of subject matters. Dee-El Garage, Inc. v. Korzen, 53 Ill. 2d 1, 289 N.E.2d 431 (1972).

Where the title described the statutes as "An Act in relation to a tax upon persons engaged in the business of selling cigarettes, and providing for collection of such tax and penalties for violations of the Act," it was clear, from both the body and the title of the act, that the tax was intended to be an occupation; by no conceivable interpretation could the mere bringing of cigarettes into the state for consumption be considered a sale thereof, much less an engaging in the business of selling cigarettes. Johnson v. Daley, 403 Ill. 338, 86 N.E.2d 350 (1949).

An amendment which sought to apply the Retailers' Occupation Tax to those engaged in a business other than that of making retail sales, whether that business be called wholesale or by some other name, violated this section and was held invalid. Stolze Lumber Co. v. Stratton, 386 Ill. 334, 54 N.E.2d 554 (1944).

An act of 1891 which provided for the division and organization of new town from disconnected territory was held to be an unconstitutional violation of Ill. Const. (1870), Art. IV, § 13, see now this section, where it addressed more than one subject. Hammon v. People, 178 Ill. 503, 53 N.E. 308 (1899).

- Purpose

The constitutional requirement that no act shall encompass more than one subject was designed to prevent the joinder of incongruous and unrelated matters in one act; such is not a limitation on the comprehensiveness of a subject. In re Thompson, 79 Ill. App. 3d 310, 34 Ill. Dec. 342, 398 N.E.2d 17 (1 Dist. 1979).

The term "subject" pursuant to former Ill. Const. (1870), Art. IV, § 13 that no act shall embrace more than one subject which shall be expressed in the title is comprehensive in its scope, and an act may include all matters germane to its general subject, including the means necessary or appropriate to the accomplishment of the legislative purpose; the constitutional requirement seeks to prohibit only the inclusion of discordant provisions which by no fair intendment can be considered as having any legitimate relation to each other. Jordan v. Metropolitan San. Dist., 15 Ill. 2d 369, 155 N.E.2d 297 (1958).

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Under former Ill. Const. (1870), Art. IV, § 13, the object of the provision as to titles in this section is to guard against inconsiderate legislation, to give information as to the subject of legislation with which the act deals, and to prevent joining in one act incongruous or unrelated matters. People v. Jiras, 340 Ill. 208, 172 N.E. 47 (1930).

The constitutional provision that no act shall embrace more than one subject does not mean that it shall contain only one provision; its purpose is to prevent the joining in one act of incongruous and unrelated matters, and an act may contain any number of provisions which tend to further its purpose. Stewart v. Brady, 300 Ill. 425, 133 N.E. 310 (1921).

The object of the former provision relating to an act embracing more than one subject of Ill. Const. (1870), Art. IV, § 13 (see this section) was to correct the abuses that had crept into the legislation under the system of intermingling subjects foreign to each other and to prohibit the union in the same act of incongruous provisions relating to matters having no just or proper connection with or relation to each other. Blumenthal v. Huerter, 3 N.E. 425 (Ill. 1885).

- Scope of Limitation

Nowhere does the Constitution limit the powers of any local government entity created by the General Assembly to a single subject, nor does the Constitution prohibit the amendment of a statute that has already been codified to include a second subject, rather, the Constitution simply limits the types of bills that the General Assembly can pass into law. Geja's Cafe v. Metropolitan Pier & Exposition Auth., 153 Ill. 2d 239, 180 Ill. Dec. 124, 606 N.E.2d 1212 (1992).

An act may include all matters germane to a general subject, including the means and methods reasonably necessary or appropriate for the accomplishment of the legislative purpose. By germane, it is meant that the amendment has a common tie to the subject matter of the original bill. People v. Cannady, 159 Ill. App. 3d 1086, 111 Ill. Dec. 872, 513 N.E.2d 118 (1 Dist. 1987).

This section and its predecessor (Ill. Const. (1870), Art. IV, § 13), have been interpreted to mean that matters covered in a bill must be germane to a general subject and those matters must be naturally and logically connected with each other. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

The term "subject," in the constitutional sense, is comprehensive in scope; an act may include all matters germane to a general subject, including means and methods reasonably necessary or appropriate for the accomplishment of the legislative purpose and including any other provisions not inconsistent with, or foreign to, the general subject of an act. In re Thompson, 79 Ill. App. 3d 310, 34 Ill. Dec. 342, 398 N.E.2d 17 (1 Dist. 1979).

Constitutional requirement of singleness of subject is comprehensive in its scope and an act may include all matters germane to its general subject, including the means necessary or appropriate to the accomplishment of the legislative purpose. People ex rel. Brenza v. Gebbie, 5 Ill. 2d 565, 126 N.E.2d 657 (1955).

Any matter or thing which may reasonably be said to be subservient to the general subject or purpose will be germane, and may be properly included in the law. Co-Ordinated Transp., Inc. v. Barrett, 412 Ill. 321, 106 N.E.2d 510 (1952), aff'd, 344 U.S. 583, 73 S. Ct. 468, 97 L. Ed. 567 (1953).

Provisions of an act which relate, directly or indirectly, to its general subject, do not render the act vulnerable to the objection that it embraces more than one subject. Brotherhood of R.R. Trainmen v. Elgin, J. & E. Ry., 382 Ill. 55, 46 N.E.2d 932 (1943).

An act having a single general subject expressed in the title may contain many provisions, however diverse, if they are not inconsistent with or foreign to the subject; and provisions for the

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method and means of effectuating the act may be incorporated in it. Michaels v. Barrett, 355 Ill. 175, 188 N.E. 921 (1934).

- Sex Offenses

The Sex Offender Registration Act, 730 ILCS 150/1 et seq., and the Child Sex Offender and Murderer Community Notification Law, 730 ILCS 152/101 et seq., do not violate the single subject rule of the Illinois Constitution. People v. Guillen, 307 Ill. App. 3d 35, 240 Ill. Dec. 470, 717 N.E.2d 563 (2 Dist. 1999).

- Shown

P.A. 93-32 did not violate the single-subject clause, Ill. Const. Art. IV, § 8(d), because all of the provisions in the Act concerned making changes related to state finance and revenues, making them directly related to the Acts stated purpose of making changes to state-finance revenues that were necessary to implement the state's fiscal year 2004 budget. Valstad v. Cipriano, 357 Ill. App. 3d 905, 293 Ill. Dec. 544, 828 N.E.2d 854, 2005 Ill. App. LEXIS 449 (4 Dist. 2005), appeal denied, 216 Ill. 2d 736, 298 Ill. Dec. 391, 839 N.E.2d 1038 (2005).

P.A. 93-32, which included statute codified as 415 ILCS 5/12.5, did not violate the single-subject clause because all of the provisions in the Act concerned making changes related to state finance and revenues making them directly related to the stated purpose of the Act. Valstad v. Cipriano, 357 Ill. App. 3d 905, 293 Ill. Dec. 544, 828 N.E.2d 854, 2005 Ill. App. LEXIS 449 (4 Dist. 2005), appeal denied, 216 Ill. 2d 736, 298 Ill. Dec. 391, 839 N.E.2d 1038 (2005).

P.A. 83-942, which amended the Post-Conviction Hearing Act, 725 ILCS 5/122 et seq., to provide for summary dismissals, did not violate the single subject clause of Ill. Const. Art. IV, § 8(d). People v. Ross, 339 Ill. App. 3d 580, 274 Ill. Dec. 375, 791 N.E.2d 171, 2003 Ill. App. LEXIS 651 (1 Dist. 2003).

Amended truth-in-sentencing law did not violate Illinois Constitution as it did not involve a bill on more than one subject and did not violate the appropriations clause. People v. Norris, 328 Ill. App. 3d 994, 263 Ill. Dec. 178, 767 N.E.2d 904, 2002 Ill. App. LEXIS 250 (3 Dist. 2002), appeal denied, 202 Ill. 2d 646, 272 Ill. Dec. 350, 787 N.E.2d 165 (2002).

Public Act 83-942, which amended 725 ILCS 5/122-2.1 to provide for summary dismissals of postconviction petitions after an initial review by the trial court, did not violate the single subject rule because "crime and correctional matters" is a permissible single legislative subject. People v. Vilces, 321 Ill. App. 3d 937, 255 Ill. Dec. 149, 748 N.E.2d 1219, 2001 Ill. App. LEXIS 230 (2 Dist. 2001), appeal denied, 202 Ill. 2d 658, 272 Ill. Dec. 353, 787 N.E.2d 168 (2002).

Public Act 89-21, of which the Tobacco Products Tax Act was a part, did not violate the single subject requirement of the Illinois Constitution, notwithstanding that the act amended more than 20 different acts, since the act embraced only one subject, i.e., implementation of the state budget for the 1996 fiscal year. Arangold Corp. v. Zehnder, 187 Ill. 2d 341, 240 Ill. Dec. 710, 718 N.E.2d 191 (1999).

Applying the Credit Agreements Act in a mortgage foreclosure action to bar defenses and counterclaims based on a purported oral agreement by the lender to modify or amend loans did not violate the single subject rule of this section. Teachers Ins. & Annuity Ass'n of Am. v. LaSalle Nat'l Bank, 295 Ill. App. 3d 61, 229 Ill. Dec. 408, 691 N.E.2d 881 (2 Dist. 1998), appeal denied, 179 Ill. 2d 621, 235 Ill. Dec. 577, 705 N.E.2d 450 (1998), cert. denied, 525 U.S. 1146, 119 S. Ct. 1043, 143 L. Ed. 2d 50 (1999).

Where the act has but one single subject: the Expansion Project even though it may have implicated statutes already in effect, and may have even added a second subject to these statutes, this was of no consequence; the act complied with the single subject requirement.

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Geja's Cafe v. Metropolitan Pier & Exposition Auth., 153 Ill. 2d 239, 180 Ill. Dec. 124, 606 N.E.2d 1212 (1992).

The Public Labor Relations Act (see now 5 ILCS 315/1 through 5 ILCS 315/27) did not violate the single subject requirement of this section, where the Act provided a comprehensive scheme governing collective bargaining among public employees, and nothing was pointed to in the Act that failed the broad field of public employment and public labor relations. County of Kane v. Carlson, 116 Ill. 2d 186, 107 Ill. Dec. 569, 507 N.E.2d 482 (1987).

Because subsection (t) of section 2.33 of chapter 61 (see subsection (t) of 520 ILCS 5/2.33) regulates hunting and is germane to and provides a means to accomplish the stated purpose of the Wildlife Code to preserve wild mammals, it is not unconstitutional. People v. Fenwick, 137 Ill. App. 3d 457, 92 Ill. Dec. 184, 484 N.E.2d 915 (3 Dist. 1985).

The Marriage and Dissolution of Marriage Act (see now 750 ILCS 5/101 et seq.) is not unconstitutional despite fact that it encompasses more than one subject, namely, that it includes both marriage and divorce. In re Thornqvist, 79 Ill. App. 3d 791, 35 Ill. Dec. 342, 399 N.E.2d 176 (1 Dist. 1979).

Where the provisions of a replacement tax act were directly connected with and germane to the subject of replacing the ad valorem personal property tax; the act was an appropriate legislative response to the comprehensive mandate set forth in Ill. Const. (1970), Art. IX, § 5(c). Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

The Marriage and Dissolution of Marriage Act (see now 750 ILCS 5/101 et seq.) was enacted to create a uniform law governing domestic relations; all the provisions were germane to domestic relations and were reasonably necessary to accomplish the legislative purpose and thus there was no violation of single subject requirement of the Illinois Constitution. In re Thompson, 79 Ill. App. 3d 310, 34 Ill. Dec. 342, 398 N.E.2d 17 (1 Dist. 1979).

The argument that a bill to amend the school board's fiscal year and the establishment of truant schools were not so discordant or incongruous to fall within the prohibition of multiple subjects; therefore, amendments to precursor of 105 ILCS 5/34-54.1 was not unconstitutional in that it embraces more than one subject in violation of Article IV, Section 8(d) of the 1970 Illinois Constitution. People ex rel. Carey v. Board of Educ., 55 Ill. 2d 533, 304 N.E.2d 273 (1973).

Section 27 dealing with real estate transactions was properly related to the other portions of the Public Utilities Act (see now 220 ILCS 5/1-101 et seq.), and thus was not violative of constitutional prohibition of Acts embracing more than one subject. Chicago & N.W. Ry. v. Illinois Commerce Comm'n, 130 Ill. App. 2d 352, 264 N.E.2d 745 (1 Dist. 1970).

Chapter 7 of the Motor Vehicle Law of 1957, which dealt with financial responsibility, was embraced within the title of the Act and therefore did not violate this section. Jewell v. Carpentier, 22 Ill. 2d 445, 176 N.E.2d 767 (1961).

Provisions added by an amendatory act, which included the method of financing and details by which the general objective was to be obtained, were not violative of this section for including more than two subjects. People ex rel. Adamowski v. Metropolitan San. Dist., 11 Ill. 2d 476, 143 N.E.2d 550 (1957).

Where a bill as originally introduced and the amendment dealt with the same subject, the amount to be paid upon redemption from tax foreclosure sales, there was no violation of this section of the constitution. People v. Lewis, 5 Ill. 2d 117, 125 N.E.2d 87 (1955).

The Urban Community Conservation Act (see now 315 ILCS 25/1 et seq.) did not violate former Ill. Const. (1870), Art. IV, § 13 (see now this section) since each of the matters contained therein is germane to the prevention of slum and blighted areas. People ex rel. Gutknecht v. City of Chicago, 3 Ill. 2d 539, 121 N.E.2d 791 (1954).

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The regulation of cemetery care funds necessarily implied the existence of the funds sought to be regulated, and their creation was germane to the general subject of regulation; therefore, the Act did not offend former this section by embracing more than one subject. Union Cem. Ass'n v. Cooper, 414 Ill. 23, 110 N.E.2d 239 (1953).

The former Medical Practice Act did not violate the constitution as embracing more than one subject because the sections of the act which regulated the practice of midwifery Ill. Rev. Stat., ch. 91, § 1 (see now 225 ILCS 60/1) did not deal with a subject other than the treatment of human ailments for the better protection of the public health. People v. Zimmerman, 391 Ill. 621, 63 N.E.2d 850 (1945).

Former Policemen's Minimum Wage Act and Firemen's Minimum Wage Act (see now 65 ILCS 5/10-3-1 and 65 ILCS 5/10-3-2) did not violate constitutional prohibitions against multi-subjects. Morgan v. City of Rockford, 375 Ill. 326, 31 N.E.2d 596 (1940).

Under Ill. Const. (1870), Art. IV, § 13, the provisions of the statute as to injunctions were not inconsistent with, or foreign to, the general subject, employment and labor disputes; therefore, the Act does not violate the constitutional provisions requiring all acts to contain but one subject. Fenske Bros. v. Upholsterers Int'l Union, 358 Ill. 239, 193 N.E. 112 (1934).

The manifest purpose of the Legislature in enacting the Motor Vehicle Act of 1911 was to bring the whole subject regulating the use of motor vehicles under the control of the state; therefore, the act did not embrace several subjects but particular matters relating to but one general subject. People v. Sargent, 254 Ill. 514, 98 N.E. 959 (1912).

The legislature may, in an act establishing a court, provide for a review of its judgments and the practice on such review without violating subsection (d) of this section. People v. Cosmopolitan Fire Ins. Co., 246 Ill. 442, 92 N.E. 922 (1910).

Under the former township organization law, the provision for changing the boundaries of towns was distinct and separable from the annexation of an incorporated city or village to another, or extending the boundaries of an incorporated city or village so as to include the territory annexed within the city or village limit; the provisions of the act of 1887, so far as it related to the uniting of towns, or detaching territory from one town and attaching it to another, was valid legislation. Donnersberger v. Prendergast, 128 Ill. 229, 21 N.E. 1 (1889).

A prior similar provision enacted to restrict the power of counties, cities, towns and villages in licensing dramshops, to provide for granting a license to retail malt liquors separately, for punishing persons holding such separate license, and for unlawful sale and gifts, did not violate former Ill. Const. (1870), Art. IV, § 13 (see now Ill. Const. (1970), Art. IV, § 8) by embracing more than one subject. Timm v. Harrison, 109 Ill. 593 (1884).

A prior act to provide for the construction, reparation and protection of drains, ditches and levees across the lands of others, and for agricultural, sanitary and mining purposes, and to provide for the organization of drainage districts did not violate former Ill. Const. (1870), Art. IV, § 13 (see now Ill. Const. (1970), Art. IV, § 8) by embracing more than one subject. Blake v. People, 109 Ill. 504 (1884).

Each may contain numerous provisions which, although not specifically indicated in the general title to the act, are related to or have some connection, more or less direct, with the subject of legislation. People ex rel. City of Chicago v. Board of County Comm'rs, 355 Ill. 244, 189 N.E. 26 (1934).

- Subsequent Legislation

Town's argument that legislation containing language mandating interest arbitration of residency disputes for fire employees was invalid because it was enacted with other, disparate matters in violation of the Illinois Constitution's single-subject rule had to be rejected, as legislation enacted

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prior to the legislation that was the subject of the town's argument already provided for mandatory arbitration of disputes over residency for firefighters; thus, the reviewing court did not need to concern itself with whether subsequent legislative amendments were constitutional. Town of Cicero v. Ill. Ass'n, IAFF Local 717, 338 Ill. App. 3d 364, 272 Ill. Dec. 982, 788 N.E.2d 286, 2003 Ill. App. LEXIS 389 (1 Dist. 2003).

A challenge that an act violates the single subject rule is directed at the act in its entirety and subsequent legislation will not remedy the constitutional defect if it was passed in violation of the single subject rule. Johnson v. Edgar, 176 Ill. 2d 499, 224 Ill. Dec. 1, 680 N.E.2d 1372 (1997).

Subject

- Defined

The word "subject," as used in the Constitution, signifies "the matter or thing forming the groundwork"; it may contain many parts which grow out of it and are germane to it, and which, if traced back, will lead the mind to it as the generic head. Michaels v. Hill, 328 Ill. 11, 159 N.E. 278 (1927).

The word "subject" as used in former Ill. Const., Art. IV, § 13 (see now this section) signifies the basis or principal object of the act; it may contain many objects growing out of and germane to it and any matter or thing which may reasonably be said to be subservient to the general subject or purpose will be germane and properly included in the law. People v. Newcom, 318 Ill. 188, 149 N.E. 269 (1925).

The word "subject," as used in the Constitution, signifies the matter or thing forming the groundwork, out of which many parts may grow and be germane, and which, if traced back, will lead the mind to it as the generic head. Any matter or thing which may reasonably be said to be subservient to the general subject or purpose will be germane, and may be properly included in the law. People v. Sargent, 254 Ill. 514, 98 N.E. 959 (1912); People v. Monroe, 349 Ill. 270, 182 N.E. 439 (1932); Brotherhood of R.R. Trainmen v. Elgin, J. & E. Ry., 382 Ill. 55, 46 N.E.2d 932 (1943); Union Cem. Ass'n v. Cooper, 414 Ill. 23, 110 N.E.2d 239 (1953).

Subject Expressed in Title

If an act purported to be complete in itself, but was, in effect, an attempt to amend prior statutes without inserting the amended sections at length in the new act, the amendment was in violation of former Ill. Const. (1870), Art. IV, § 13 (see now this section). Wagner v. Retirement Bd. of the Policemen's Annuity & Benefit Fund, 370 Ill. 73, 17 N.E.2d 972 (1938).

All matters are properly included in an act which are germane to the title; if all the provisions relate to the one subject, indicated in the title, and are part of it,or reasonably connected with it, or in some reasonable sense auxiliary to the object in view, then the provision of the constitution under consideration is obeyed. Christy v. Elliott, 216 Ill. 31, 74 N.E. 1035, 1905 Ill. LEXIS 2644 (1905).

Ill Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 8), must receive a liberal construction and, unless the provision in an act contains matter incongruous with the title or having no proper connection with or relation to the title, it will not be void as not embraced therein. Christy v. Elliott, 216 Ill. 31, 74 N.E. 1035, 1905 Ill. LEXIS 2644 (1905).

For cases discussing the former requirement of Ill. Const. (1870), Art. IV, § 13 that the subject of each bill must be expressed in the title. Unity v. Barrage, 103 U.S. 447, 26 L. Ed. 405 (1880); Town of Abington v. Cabeen, 106 Ill. 200 (1883); Dows v. Town of Elmwood, 34 F. 114 (N.D. Ill. 1888), appeal dismissed, 136 U.S. 651, 10 S. Ct. 1070, 34 L. Ed. 555 (1890); Donnersberger v. Prendergast, 128 Ill. 229, 21 N.E. 1 (1889); Boehm v. Hertz, 182 Ill. 154, 54 N.E. 973

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(1899); Galpin v. City of Chicago, 269 Ill. 27, 109 N.E. 713 (1915); People ex rel. City of Chicago v. Board of County Comm'rs, 355 Ill. 244, 189 N.E. 26 (1934); People ex rel. Stuckart v. Chicago, B. & Q. R.R., 290 Ill. 327, 125 N.E. 310 (1919); People v. Newcom, 318 Ill. 188, 149 N.E. 269 (1925); People v. Stacker, 322 Ill. 232, 153 N.E. 354 (1926); Michaels v. Hill, 328 Ill. 11, 159 N.E. 278 (1927); Campe v. Cermak, 330 Ill. 463, 161 N.E. 761 (1928); People ex rel. Marcus v. Swanson, 340 Ill. 188, 172 N.E. 3 (1930); People v. Monroe, 349 Ill. 270, 182 N.E. 439 (1932); Rosehill Cem. Co. v. City of Chicago, 352 Ill. 11, 185 N.E. 170 (1933); People v. Colegrove, 354 Ill. 164, 187 N.E. 913 (1933); Michaels v. Barrett, 355 Ill. 175, 188 N.E. 921 (1934); Fenske Bros. v. Upholsterers Int'l Union, 358 Ill. 239, 193 N.E. 112 (1934); Cloyd v. County of Vermilion, 360 Ill. 610, 196 N.E. 802 (1935); Seagram-Distillers Corp. v. Old Dearborn Distrib. Co., 363 Ill. 610, 2 N.E.2d 940, aff'd, 299 U.S. 183, 57 S. Ct. 139, 81 L. Ed. 109 (1936); People ex rel. Gage v. Village of Wilmette, 375 Ill. 420, 31 N.E.2d 774 (1940); Lasdon v. Hallihan, 377 Ill. 187, 36 N.E.2d 227 (1941); People v. Mahumed, 381 Ill. 81, 44 N.E.2d 911 (1942); Brotherhood of R.R. Trainmen v. Elgin, J. & E. Ry., 382 Ill. 55, 46 N.E.2d 932 (1943); Johnson v. Daley, 403 Ill. 338, 86 N.E.2d 350 (1949); Co-Ordinated Transp., Inc. v. Barrett, 412 Ill. 321, 106 N.E.2d 510 (1952), aff'd, 344 U.S. 583, 73 S. Ct. 468, 97 L. Ed. 567 (1953); Department of Pub. Works & Bldgs. v. Lanter, 413 Ill. 581, 110 N.E.2d 179 (1953); Roberts Optical Co. v. Department of Registration & Educ., 4 Ill. 2d 290, 122 N.E.2d 824 (1954); People ex rel. Brenza v. Gebbie, 5 Ill. 2d 565, 126 N.E.2d 657 (1955); People v. Lewis, 5 Ill. 2d 117, 125 N.E.2d 87 (1955); Sangamon County Fair Agric. Ass'n v. Stanard, 9 Ill. 2d 267, 137 N.E.2d 487 (1956); People ex rel. Coutrakon v. Lohr, 9 Ill. 2d 539, 138 N.E.2d 471 (1956); People ex rel. Adamowski v. Metropolitan San. Dist., 11 Ill. 2d 476, 143 N.E.2d 550 (1957); People ex rel. Ryan v. Sempek, 12 Ill. 2d 581, 147 N.E.2d 295 (1958); Jordan v. Metropolitan San. Dist., 15 Ill. 2d 369, 155 N.E.2d 297 (1958); International Bus. Mach. Corp. v. Department of Revenue, 25 Ill. 2d 503, 185 N.E.2d 257 (1962); People v. Calcaterra, 33 Ill. 2d 541, 213 N.E.2d 270 (1965); People ex rel. County Collector v. Jeri, Ltd., 40 Ill. 2d 293, 239 N.E.2d 777 (1968); People v. Barnett, 7 Ill. App. 3d 185, 287 N.E.2d 247 (1 Dist. 1972).

- Acts Prior to 1970 Constitution

Where defendant was charged with having committed an offense on May 17, 1971, prior to the effective date of the 1970 constitution, the validity of the act as it applies to this defendant must be judged by the requirements of the 1870 constitution. People v. Tibbitts, 56 Ill. 2d 56, 305 N.E.2d 152 (1973).

Section of act entitled "An act to regulate the speed of automobiles and other horseless conveyances on the public streets, roads and highways of the State of Illinois" which provided that a person driving an automobile shall cause it to come to a full stop whenever it appears that any horse driven or ridden by a person is about to become frightened by the automobile's approach did not violate Ill Cons. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 8) because the limitation of speed of automobiles on the public roads was for the protection of travelers and drivers of horse-drawn vehicles and the requirement that the driver of an automobile must, under certain circumstances, bring his machine to a full stop was reasonably connected with the purpose of such protection as expressed in the title, and the cessation of the speed of the automobile altogether, or its reduction to a scarcely perceptible movement, was not incongruous with the title of the act. Christy v. Elliott, 216 Ill. 31, 74 N.E. 1035, 1905 Ill. LEXIS 2644 (1905).

Stopping of an automobile when a horse appears to be frightened is embraced within the subject of regulating the speed of automobiles as indicated in the title of the act - "An act to regulate the speed of automobiles and other horseless conveyances on the public streets, roads and highways of the State of Illinois" - and it could not be said that the provision requiring the stoppage of the vehicle was not reasonably connected with the subject mentioned in the title because the stoppage of an automobile until a frightened horse has pass was, in a reasonable sense, auxiliary to the object of regulating the speed of the automobile on the public highway; therefore that section of the act was not unconstitutional. Christy v. Elliott, 216 Ill. 31, 74 N.E. 1035, 1905 Ill. LEXIS 2644 (1905).

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Three Day Reading Requirement

- In General

Passage of an amendment to § 6i of the State Finance Act did not violate Ill. Const. of 1870, Art. IV, § 13 (now Ill. Const. (1970), Art. IV, § 8) where, although the complaint alleged the failure to read at large, the complaint also incorporated by reference an exhibit of the House Journal that affirmatively showed the amendment to the bill to have been read at large. Sangamon County Fair & Agricultural Asso. v. Stanard, 9 Ill. 2d 267, 137 N.E.2d 487, 1956 Ill. LEXIS 327 (1956).

- Amendments

Because amendment to bill amending former 35 ILCS 205/266 (see now 35 ILCS 200/22-30 through 35 ILCS 200/22-55) was germane to the subject matter of bill for both had a common goal, protection of the property owner in tax sale and tax deed proceedings, and all of the amended statutory provisions were related thereto, there was no necessity to read the amendment on three different days in each house as was required by former Ill. Const., Art. IV, § 13 (see now Ill. Const. (1970), Art. IV, § 8). People ex rel. County Collector v. Jeri, Ltd., 40 Ill. 2d 293, 239 N.E.2d 777 (1968).

Amendments to bills need not be read on three separate days in each house so long as the amendment is germane to the general subject matter of the original bill. People v. Lewis, 5 Ill. 2d 117, 125 N.E.2d 87 (1955).

Amendments to bills need not be read on three different days, as long as the amendments are germane to the act, and cannot be regarded as destroying its identity. People ex rel. Brady v. LaSalle St. Trust & Sav. Bank, 269 Ill. 518, 110 N.E. 38 (1915).

- Authority of General Assembly

Because the three day reading requirement was suspended by a majority of the members of the House of Representatives pursuant to its rules while it was considering the 1980 amendment to the Habitual Criminal Act (720 ILCS 5/33B-1 et seq.), no violation of Ill. Const. (1970), Art. IV, § 8 (d) occurred. People v. Cannady, 159 Ill. App. 3d 1086, 111 Ill. Dec. 872, 513 N.E.2d 118 (1 Dist. 1987).

- Judicial Review

Whether or not a bill has been read by title, as the Constitution commands, seems fairly to be characterized as a procedural matter, the determination of which was left to the presiding officers of the two Houses of the General Assembly. Fuehrmeyer v. City of Chicago, 57 Ill. 2d 193, 311 N.E.2d 116 (1974).

- Not Required

The 1980 amendment to the Habitual Criminal Act (see now 720 ILCS 5/33B-1) was properly passed in accordance under, even though amendments were not read on the three different days because the requirement was suspended pursuant to the legislative rules and the amendment was germane to the original bill submitted for passage. People v. Gray, 192 Ill. App. 3d 907, 140 Ill. Dec. 79, 549 N.E.2d 730 (1 Dist. 1989).

- Parliamentary History

The parliamentary history of a bill in the legislative journal is the only evidence that is recognized in the courts of this state, and cannot be aided or contributed by evidence from another source. People ex rel. Coutrakon v. Lohr, 9 Ill. 2d 539, 138 N.E.2d 471 (1956).

- Purpose

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The object of the provision requiring acts to be read on three different days is to give time for deliberation, but not to deprive of the opportunity of amendment, which is the result of deliberation. People ex rel. Brady v. LaSalle St. Trust & Sav. Bank, 269 Ill. 518, 110 N.E. 38 (1915).

- Violations

Arguments that the Habitual Criminal Act (see now 720 ILCS 5/33B-1 et seq.) was unconstitutional in that it was enacted in violation of Ill. Const. (1970), Art. IV, § 8(d),because it was not read three times in the House of Representatives, as well as violations of due process, separation of powers, prohibition against ex post facto laws and double jeopardy clauses of both the United States and this State. People v. McCall, 190 Ill. App. 3d 483, 137 Ill. Dec. 438, 546 N.E.2d 62 (2 Dist. 1989).

OPINIONS OF ATTORNEY GENERAL

Single Subject in Bill

Section 2a of Public Act 80-142 violates section 8(d) of Article IV of the 1970 Illinois Constitution because section 2a purports to change the substantive provisions of the Pension Code which vest control over expenditures from the accumulated funds of the Retirement System in the Board of Trustees rather than in the General Assembly, and these substantive provisions may not be in an appropriation bill. 1978 Op. Atty. Gen. 93.

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Constitutional Law," see 25 S. Ill. U. L.J. 733 (2001).

For article, "Using the Single-Subject Rule to Invalidate Legislation: A Better Approach?", see 86 Ill. B.J. 146 (1998).

For article, "The Single-Subject Rule: An Overused Constitutional Method for Invalidating Illinois Laws," see 79 Ill. B.J. 132 (1991).

For note, "The Illinois Amendatory Veto: Defining and Enforcing the Limits," see U. Ill. L. Rev. 691 (1987).

For article, "The Conference Committee Report - A Potentially Dangerous Tool," see 68 Ill. B.J. 126 (1979).

Section 9. Veto Procedure.

(a) Every bill passed by the General Assembly shall be presented to the Governor within 30 calendar days after its passage. The foregoing requirement shall be judicially enforceable. If the Governor approves the bill, he shall sign it and it shall become law.

(b) If the Governor does not approve the bill, he shall veto it by returning it with his objections to the house in which it originated. Any bill not so returned by the Governor within 60 calendar days after it is presented to him shall become law. If recess or

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adjournment of the General Assembly prevents the return of a bill, the bill and the Governor's objections shall be filed with the Secretary of State within such 60 calendar days. The Secretary of State shall return the bill and objections to the originating house promptly upon the next meeting of the same General Assembly at which the bill can be considered.

(c) The house to which a bill is returned shall immediately enter the Governor's objections upon its journal. If within 15 calendar days after such entry that house by a record vote of three-fifths of the members elected passes the bill, it shall be delivered immediately to the second house. If within 15 calendar days after such delivery the second house by a record vote of three-fifths of the members elected passes the bill, it shall become law.

(d) The Governor may reduce or veto any item of appropriations in a bill presented to him. Portions of a bill not reduced or vetoed shall become law. An item vetoed shall be returned to the house in which it originated and may become law in the same manner as a vetoed bill. An item reduced in amount shall be returned to the house in which it originated and may be restored to its original amount in the same manner as a vetoed bill except that the required record vote shall be a majority of the members elected to each house. If a reduced item is not so restored, it shall become law in the reduced amount.

(e) The Governor may return a bill together with specific recommendations for change to the house in which it originated. The bill shall be considered in the same manner as a vetoed bill but the specific recommendations may be accepted by a record vote of a majority of the members elected to each house. Such bill shall be presented again to the Governor and if he certifies that such acceptance conforms to his specific recommendations, the bill shall become law. If he does not so certify, he shall return it as a vetoed bill to the house in which it originated.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Amendatory Veto
- Effect
- Governor's Power to Use
- Substitution of New Bill

Appropriations

Consideration of Bills by Governor
- Legislative Capacity

Constitution of 1870
- In General

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- Governor's Signature of Bill
Effective Date of Law
- In General
- Illustrative Cases
Passage of Bills
- Effective Date
- Presentation to Governor
- Return to House
Reduction or Veto of Appropriations
- Appropriation Reduction
- Governor's Power Limited
- Illustrative Cases
- Purpose
Signature After Adjournment
Veto
- In General
- Reapportionment or Redistricting Legislation

Amendatory Veto

- Effect

A bill changed upon the governor's specific recommendation is no longer the same bill as initially passed by the General Assembly, and the final legislative action would not simply be a reaffirmation of the bill's original language, as in the situation involving an override of a non-amendatorily vetoed bill. Mulligan v. Joliet Regional Port Dist., 123 Ill. 2d 303, 123 Ill. Dec. 489, 527 N.E.2d 1264 (1988).

- Governor's Power to Use

The governor's use of the amendatory veto power to recommend reduction of the increase in the yearly corporate income tax was not unconstitutional. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

Subsection (e) of this section was not intended by the voters to restrict the amendatory veto power to that of a proofreading device. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

- Substitution of New Bill

The authorization of "specific recommendations for change," under subsection (e) of this section, did not include the substitution of a completely new bill through the exercise of the amendatory veto power; however, where specific recommendations made by governor regarding a replacement tax act, contained no change in the fundamental purpose of the legislation, governor's use of the veto power was not violative of subsection 9(e) of this Article. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

Where three bills passed by the Senate, and by the House, were sent to the Governor who stated that he was acting pursuant to the authority vested in him under section 9(e) of this article, and he returned each bill with the recommendation that the title of each bill be amended, and that everything in each bill after the enacting clause be stricken, and entirely new textual material be

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substituted therefor, such action was not authorized. People ex rel. Klinger v. Howlett, 50 Ill. 2d 242, 278 N.E.2d 84 (1972).

Appropriations

No constitutional provisions were violated in the construction and operation of a University television station, nor in the appropriation and expenditure of funds therefor. Turkovich v. Board of Trustees, 11 Ill. 2d 460, 143 N.E.2d 229 (1957).

Consideration of Bills by Governor

- Legislative Capacity

When engaged in considering bills the Governor is acting in a legislative capacity, and for that purpose he is a part of the legislative department. Williams v. Kerner, 30 Ill. 2d 11, 195 N.E.2d 680 (1963).

Constitution of 1870

- In General

Under former Ill. Const. (1870), Art. V, § 16 (see now this section) the governor's power with regard to a bill was either to sign it, return it with his objections, or allow it to become a law by failure to return it within ten days after it was presented to him, and he had no power to take any other action concerning such a bill and it necessarily follows that he had no discretion about receiving it when it was presented to him. People ex rel. Erskine v. Hughes, 373 Ill. 144, 25 N.E.2d 801 (1940).

- Governor's Signature of Bill

Under a similar prior provision in the Constitution of 1870, during the ten days which the Governor had to consider a bill, the fact that he signed a bill did not make it into law, while it was within his possession, and thus, he could reconsider his action. People ex rel. Partello v. McCullough, 210 Ill. 488, 71 N.E. 602 (1904).

Effective Date of Law

- In General

The effective date of a law, which had been the subject of a simple, nonamendatory veto, would be the time of its final legislative action prior to presentation to the Governor. City of Springfield v. Allphin, 74 Ill. 2d 117, 23 Ill. Dec. 516, 384 N.E.2d 310 (1978).

- Illustrative Cases

House Bill authorizing state employee salary increase of $100 per month to take effect on September 1, 1974, which was initially passed by the General Assembly on July 1, 1974, presented to the governor on July 11, 1974, amended by the governor to provide for a $50 per month increase on September 5, 1974, returned to the General Assembly which restricted the amendatory action of the governor, and which became law on December 4, 1974, was not to be applied retroactively to September 1, 1974, and should have been denied. People ex rel. AFSCME v. Walker, 61 Ill. 2d 112, 332 N.E.2d 401 (1975).

Bills relating to financial assistance for nonpublic school education were passed on October 28, 1971, became law when the Governor certified them pursuant to Ill. Const. (1970), Art. IV, § 10,

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but they were not effective until July 1, 1972, because they were passed after June 30, and the legislature did not fix an earlier effective date. People ex rel. Klinger v. Howlett, 50 Ill. 2d 242, 278 N.E.2d 84 (1972).

Passage of Bills

- Effective Date

In an amendatory veto situation, a bill can only be viewed as "passed" for purpose of determining its effective date, when the legislature has voted to accept the governor's recommendations for change, since only then is the bill in its final form, and can the public be held to have been put on notice as to the bill's actual contents. Mulligan v. Joliet Regional Port Dist., 123 Ill. 2d 303, 123 Ill. Dec. 489, 527 N.E.2d 1264 (1988).

- Presentation to Governor

A bill as passed by both houses shall be the one presented to the Governor for his approval or veto, and this is a necessary step before any bill can become a law. People ex rel. Dezettel v. Lueders, 283 Ill. 287, 119 N.E. 339 (1918).

- Return to House

Under former Article V, Section 16 of the 1870 Constitution (see now this section) when a bill was presented to governor more than ten days before the adjournment of the General Assembly, and the ten-day period for the return of the vetoed bill following presentment expired before the date of adjournment, it was to be returned to the house in which it originated, and it was in no way affected by the adjournment. People ex rel. Petersen v. Hughes, 372 Ill. 602, 25 N.E.2d 75 (1939).

Reduction or Veto of Appropriations

- Appropriation Reduction

Comptroller properly refused to pay claims of college for full costs of veterans' scholarships, after the amounts appropriated by the legislature for veterans' scholarships had been reduced by the Governor, and the General Assembly failed to override the Governor's line-item veto. Board of Trustees v. Burris, 118 Ill. 2d 465, 113 Ill. Dec. 937, 515 N.E.2d 1244 (1987).

The governor could not infringe by use of his power to reduce, or veto appropriations for pension funds, negotiated by the state and participants in state pension systems. People ex rel. Ill. Fed'n of Teachers v. Lindberg, 60 Ill. 2d 266, 326 N.E.2d 749 (1975).

- Governor's Power Limited

The power given the Governor by the 1870 Constitution to disapprove of and veto any distinct item or section in an appropriation bill did not give him the power to disapprove of a part of a distinct item, and approve the remainder, to permit such a practice would be a clear encroachment by the executive upon the rights of the legislative department of the state. Fergus v. Russel, 270 Ill. 304, 110 N.E. 130 (1915).

- Illustrative Cases

Governor could properly use his veto or item reduction authority on appropriations made to fund teachers' pension plans. People ex rel. Ill. Fed'n of Teachers v. Lindberg, 60 Ill. 2d 266, 326 N.E.2d 749 (1975).

- Purpose

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The purpose of the line item veto section is to enable the Governor, when passing on appropriation bills, to consider and act on the items of the appropriation separately. Owens v. Green, 400 Ill. 380, 81 N.E.2d 149 (1948).

Signature After Adjournment

Legislation approved by the Governor after the final adjournment of a General Assembly is valid. Orr v. Edgar, 298 Ill. App. 3d 432, 232 Ill. Dec. 469, 698 N.E.2d 560 (1 Dist. 1998), appeal denied, 179 Ill. 2d 589, 235 Ill. Dec. 567, 705 N.E.2d 440 (1998).

Veto

- In General

It is an act of the General Assembly which becomes a law, whether the act takes effect with the approval of the Governor, or without his approval, or over his veto. Board of Educ. v. Morgan, 316 Ill. 143, 147 N.E. 34 (1925).

- Reapportionment or Redistricting Legislation

The Governor's veto power with respect to legislation for reapportionment or redistricting to elect state representatives is indicated both by authority from other jurisdictions and by the past practice in this state. Williams v. Kerner, 30 Ill. 2d 11, 195 N.E.2d 680 (1963).

LEGAL PERIODICALS

For article, "Reconsidering the Amendatory Veto for Illinois," see 8 N. Ill. U.L. Rev. 753 (1988).

For article, "The Amendatory Veto Revisited: How Far Can the Governor's Magic Constitutional Pen Reach?" see 76 Ill. B.J. 598 (1988).

For note, "The Illinois Amendatory Veto: Defining and Enforcing the Limits," see U. Ill. L. Rev. 691 (1987).

For article, "Effective Date of Laws," see 11 J. Marshall J. Prac. & Proc. 363 (1978).

For comment, "The Illinois Amendatory Veto," see 11 J. Marshall J. Prac. & Proc. 415 (1978).

Section 10. Effective Date of Laws.

The General Assembly shall provide by law for a uniform effective date for laws passed prior to June 1 of a calendar year. The General Assembly may provide for a different effective date in any law passed prior to June 1. A bill passed after May 31 shall not become effective prior to June 1 of the next calendar year unless the General Assembly by the vote of three-fifths of the members elected to each house provides for an earlier effective date.

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(Source: Amendment adopted at general election November 8, 1994.)

Effect of Amendments. The 1994 amendment by HJRCA 35 of the 1994 Regular Session, adopted by vote of the People at the election held November 8, 1994, effective November 8, 1994, substituted "June 1" for "July 1" throughout the section; and in the third sentence, substituted "May 31" for "June 30".

CASE NOTES

Analysis

Amendment Effective Date
- Illustrative Cases
- Legislative Intent
Effective Date of Law
- In General
- Based Upon Contingency or Future Event
- Construction
Third January Session

Amendment Effective Date

- Illustrative Cases

Amendment to statute concerning resentencing after revocation of probation, which was passed after June 30, 1973, did not become effective until July 1, 1974, since the General Assembly did not provide for an earlier effective date. People v. Brown, 29 Ill. App. 3d 34, 329 N.E.2d 330 (2 Dist. 1975).

Where amendment contained no effective date, and its final passage was on October 30, 1973, it did not go into effect until July 1, 1974; therefore, defendant sentenced on January 17, 1974. People v. Goetz, 27 Ill. App. 3d 680, 327 N.E.2d 516 (4 Dist. 1975).

The 1971 amendment to former 35 ILCS 205/263 (see now 35 ILCS 200/21-385 and 35 ILCS 200/22-10 through 35 ILCS 200/22-25) was applied even though it was not yet in publication when a purchaser's notice was sent and an owner had no means of knowing about it, since an act needs no promulgation to take effect. Knoll Dev. Co. v. John Allan Co., 12 Ill. App. 3d 12, 297 N.E.2d 213 (1973).

Respondents' contention that an act to amend the Jury Commission Act (705 ILCS 310/0.01 et seq.) was complete when it came from the legislature, and became a law when it was signed by the Governor was rejected where the legislature never intended the act to have any force or effect whatever, until it was submitted to the legal voters and approved by a majority of all the votes cast upon the proposition. People ex rel. Thomson v. Barnett, 344 Ill. 62, 176 N.E. 108 (1931).

- Legislative Intent

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This section was not intended to strait-jacket the General Assembly with respect to amending legislation. Starck v. Chicago & N.W. Ry., 4 Ill. 2d 611, 123 N.E.2d 826 (1954).

Effective Date of Law

- In General

This section allows the legislature to set a date on which statutes take effect, in default of provision in the particular law. Mosler v. S/P Enters., Inc., 888 F.2d 1138 (7th Cir. 1989).

The date on which the bill becomes a law need not coincide with the date on which that law becomes effective. City of Springfield v. Allphin, 74 Ill. 2d 117, 23 Ill. Dec. 516, 384 N.E.2d 310 (1978).

The effective date of a law which had been the subject of a simple, nonamendatory veto would be the time of its final legislative action, prior to presentation to the Governor. City of Springfield v. Allphin, 74 Ill. 2d 117, 23 Ill. Dec. 516, 384 N.E.2d 310 (1978).

Bills relating to financial assistance for nonpublic school education which were passed on October 28, 1971, and which became law when the Governor certified them pursuant this section, were not effective until July 1, 1972, because they were passed after June 30 and the legislature did not fix an earlier effective date. People ex rel. Klinger v. Howlett, 50 Ill. 2d 242, 278 N.E.2d 84 (1972).

- Based Upon Contingency or Future Event

An act of the legislature is not unconstitutional, because by its terms it is to take effect only after it shall have been approved by the vote of the people of the locality affected. People ex rel. Thomson v. Barnett, 344 Ill. 62, 176 N.E. 108 (1931).

- Construction

The word "passed" as used in this section clearly refers only to the passage of bills by the General Assembly, not to the date the bill is signed by the Governor. Board of Educ. v. Morgan, 316 Ill. 143, 147 N.E. 34 (1925).

Third January Session

Only a simple majority was necessary to pass Act with immediate effective date during a third January session. Orr v. Edgar, 298 Ill. App. 3d 432, 232 Ill. Dec. 469, 698 N.E.2d 560 (1 Dist. 1998), appeal denied, 179 Ill. 2d 589, 235 Ill. Dec. 567, 705 N.E.2d 440 (1998).

LEGAL PERIODICALS

For article, "Effective Date of Laws," see 11 J. Marshall J. Prac. & Proc. 363 (1978).

For article, "Legislature Approval of Judicial Reform: The Uncertain Summer of '61," see 65 Ill. B.J. 254 (1977).

Section 11. Compensation and Allowances.

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A member shall receive a salary and allowances as provided by law, but changes in the salary of a member shall not take effect during the term for which he has been elected.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Changes in Salary
- In General
- Additional Duties
- Intervening Election
- Mid-Term Pay Raise
Construction
- In General
Scope of Salary
- In General
Term of Service
- In General

Changes in Salary

- In General

The intention of this section is to make appropriations to pay the members of the General Assembly, and salaries of officers of the government, a distinct subject for legislative action, separate and apart from appropriations for other purposes. People ex rel. Millner v. Russel, 311 Ill. 96, 142 N.E. 537 (1924).

- Additional Duties

This provision of the Constitution of 1870 (see now this section), absolutely prohibited increasing the pay of county officers, even when additional duties were imposed by law. Fergus v. Russel, 270 Ill. 626, 110 N.E. 887 (1915).

- Intervening Election

This section prohibits a law increasing salaries from taking effect during the term in which it is enacted, and, consequently, an intervening election is not required. Winokur v. Bakalis, 84 Ill. App. 3d 922, 40 Ill. Dec. 237, 405 N.E.2d 1329 (1 Dist. 1980).

- Mid-Term Pay Raise

Legislation providing for annual lump sum additional amounts of money to various legislators in leadership positions, creating additional leadership positions, thereby increasing the annual lump sum payments to the members chosen to fill these positions, which would become effective

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immediately upon passage, and was to be applied retroactively, thereby increasing the amounts payable to these legislators during the terms of office for which they were elected, and in which the legislation was passed, violated the provisions of this section, which prohibit a change in a legislator's salary "during the term for which he has been elected." Rock v. Burris, 139 Ill. 2d 494, 151 Ill. Dec. 578, 564 N.E.2d 1240 (1990).

The members of the General Assembly cannot effect a change in salaries during the two year term for which they are presently serving. Winokur v. Bakalis, 84 Ill. App. 3d 922, 40 Ill. Dec. 237, 405 N.E.2d 1329 (1 Dist. 1980).

The clear and unambiguous meaning of this section is to prohibit a change in legislative salaries from taking effect during the term in which the law authorizing the change is enacted. Winokur v. Bakalis, 84 Ill. App. 3d 922, 40 Ill. Dec. 237, 405 N.E.2d 1329 (1 Dist. 1980).

Construction

- In General

This section of the state Constitution of 1970 is clear, and unambiguous. Winokur v. Bakalis, 84 Ill. App. 3d 922, 40 Ill. Dec. 237, 405 N.E.2d 1329 (1 Dist. 1980).

Scope of Salary

- In General

The word "salaries" encompasses all forms of compensation paid to the public official for performing the duties of office; the fact that institutional officers in the General Assembly are paid an additional amount above the base amount paid to all other legislators makes it no less a salary. Rock v. Burris, 139 Ill. 2d 494, 151 Ill. Dec. 578, 564 N.E.2d 1240 (1990).

Term of Service

- In General

The language employed in this section, "the term for which he has been elected," refers to the current term for which the members of the General Assembly are serving, and not to their continuance in office. Winokur v. Bakalis, 84 Ill. App. 3d 922, 40 Ill. Dec. 237, 405 N.E.2d 1329 (1 Dist. 1980).

OPINIONS OF ATTORNEY GENERAL

Analysis

Changes in Salary
- Based upon Inflation Index
- Mid-Term Pay Raise

Changes in Salary

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- Based upon Inflation Index

The General Assembly could constitutionally provide by statute for state officers, beginning in the following term, to have salary increases determined automatically based on an inflation index calculated by the federal government. 1978 Op. Atty. Gen. 125.

- Mid-Term Pay Raise

Additional amounts payable to officers of the General Assembly under Public Act 86-27, amending 25 ILCS 115/5, effective July 1, 1989, constituted salary for their services as members of the General Assembly, and since the increase in salary became effective during the terms for which the members who passed the increase were elected, these salary increases were prohibited by this section from taking effect during the current term of any member of the General Assembly. 1989 Op. Atty. Gen. (89-002).

Section 12. Legislative Immunity.

Except in cases of treason, felony or breach of peace, a member shall be privileged from arrest going to, during, and returning from sessions of the General Assembly. A member shall not be held to answer before any other tribunal for any speech or debate, written or oral, in either house. These immunities shall apply to committee and legislative commission proceedings.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Scope of Immunity
- Civil Arrest
- Constitution of 1870
- Criminal Offenses
- Limitation of General Assembly's Power
- Speech-and Debate
- Traffic Infractions

Service of Process

Scope of Immunity

- Civil Arrest

The exemption provided legislators from arrest by 725 ILCS 5/107-7 incorporates the exception contained in this section, and it affords protection only from civil arrest. People v. Flinn, 47 Ill. App. 3d 357, 5 Ill. Dec. 690, 362 N.E.2d 3 (5 Dist. 1977).

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- Constitution of 1870

The framers of the Illinois Constitution of 1970 granted the same legislative immunities to legislators as those contained in Article IV, Section 14 of the 1870 Constitution. People v. Flinn, 47 Ill. App. 3d 357, 5 Ill. Dec. 690, 362 N.E.2d 3 (5 Dist. 1977).

- Criminal Offenses

Member of county board and forest preserve commission was not entitled to legislative immunity when he was charged with violation of the Corrupt Practices Act (50 ILCS 105/3). People v. Savaiano, 66 Ill. 2d 7, 3 Ill. Dec. 836, 359 N.E.2d 475 (1976).

- Limitation of General Assembly's Power

This provision of the Constitution constitutes no exception to the general rule that our Constitution is not a grant of power, but is a limitation upon the power of the General Assembly. Phillips v. Browne, 270 Ill. 450, 110 N.E. 601 (1915).

- Speech-and Debate

Illinois State Constitution's speech-and-debate provision is limited by its terms to members of the Illinois General Assembly. Empress Casino Joliet Corp. v. Blagojevich, 638 F.3d 519, 2011 U.S. App. LEXIS 3958 (7th Cir. 2011).

- Traffic Infractions

Defendant, a member of the state General Assembly, had no privilege from arrest for speeding. People v. Flinn, 47 Ill. App. 3d 357, 5 Ill. Dec. 690, 362 N.E.2d 3 (5 Dist. 1977).

Service of Process

Former Ill. Const. (1870), Art. IV, § 14 (see now this section) did include exemption from service of civil process, as privilege from arrest did not constructively include exemption from the service of civil process. Phillips v. Browne, 270 Ill. 450, 110 N.E. 601 (1915).

LEGAL PERIODICALS

For article, "State Legislators, Speech or Debate and the Search for Truth," see 11 Loy. U. Chi. L.J. 69 (1979-80).

Section 13. Special Legislation.

The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Fam L § 10:23.

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See Illinois Jur, Municip L § 11:3.

See Illinois Jur, Pers Inj & Torts § 34:88, § 34:89, § 35:1.

CASE NOTES

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Constitutionality
In General
- Applicability
- Burden of Proof
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- Cities
- Class Legislation
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- Municipalities
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- Cable Television
- Canal State Park Act
- Charter Corporations
- Chicago Fair Housing Ordinance
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- Citations and Wage Deduction Proceedings
- City Health Ordinance
- Civil Procedures
- Civil Service Act
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- Firearms Range Liability
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- Purpose

Constitutionality

P.A. 87-1140 and P.A. 89-144 which amended 815 ILCS 505/10a and places vehicle dealers on more advantageous footing than all other retailers subject to the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et seq., are constitutionally void as impermissible special legislation in violation of Ill. Const.(1970), Art. IV, § 13. Allen v. Woodfield Chevrolet, Inc., 208 Ill. 2d 12, 280 Ill. Dec. 501, 802 N.E.2d 752, 2003 Ill. LEXIS 1493 (2003).

Because 1905 Ill. Laws 334 & 340 specified the boards of public park commissioners in general terms, it did not place the commissioners in a class by themselves, and therefore the statutes were not invalid under Ill. Const. (1970), Art. IV, § 13 (formerly Ill. Const. of 1870, Art. IV, § 22) as special legislation. Kucera v. West Chicago Park Comm'rs, 221 Ill. 488, 77 N.E. 912, 1906 Ill. LEXIS 2720 (1906).

In General

Special legislation clause of the Illinois Constitution does not protect against all classifications; it protects against arbitrary classifications that discriminate in favor of a select group without a sound and rational basis. New Heights Recovery & Power, LLC v. Bower, 347 Ill. App. 3d 89, 282 Ill. Dec. 568, 806 N.E.2d 1156, 2004 Ill. App. LEXIS 219 (1 Dist. 2004), appeal denied, 209 Ill. 2d 583, 286 Ill. Dec. 166, 813 N.E.2d 223 (2004), appeal denied, 211 Ill. 2d 583, Ill. Dec. , 823 N.E.2d 967 (2004).

Ill. Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13) prohibits the General Assembly from passing local or special laws in certain cases. People ex rel. Leimbach v. Lukenbill, 314 Ill. 64, 145 N.E. 294, 1924 Ill. LEXIS 1090 (1924).

- Applicability

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Legislation which confers a benefit upon one class of persons but denies the same to another class may be attacked both on special legislation and equal protection grounds. Highland Park Women's Club v. Department of Revenue, 206 Ill. App. 3d 447, 151 Ill. Dec. 435, 564 N.E.2d 890 (2 Dist. 1990), cert. denied, 139 Ill. 2d 596, 159 Ill. Dec. 107, 575 N.E.2d 914 (1991).

Whether a general law can be made applicable is a matter of judicial determination. Beeding v. Miller, 167 Ill. App. 3d 128, 117 Ill. Dec. 707, 520 N.E.2d 1058 (2 Dist.), cert. denied, 122 Ill. 2d 569, 125 Ill. Dec. 211, 530 N.E.2d 239 (1988), 489 U.S. 1096, 109 S. Ct. 1569, 103 L. Ed. 2d 935 (1989).

Although opponents of an act creating a special drainage district contended that one of two drainage laws in force at the time the special act was passed could have been resorted to for the purpose of organizing the new drainage district, or that some other general law could have been passed to address the situation, reviewing court refused to hold the special act unconstitutional because the subject of the act was not one upon which special legislation was specifically prohibited by Ill. Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13); under those circumstances, the question whether a general act could be made applicable was not open for judicial determination. Herschbach v. Kaskaskia Island Sanitary & Levee Dist., 265 Ill. 388, 106 N.E. 942, 1914 Ill. LEXIS 2445 (1914).

Fact that the legislature passes a special act is a legislative determination that a general law can not be made applicable and unless the subject of the act is one upon which special legislation is specifically prohibited by Ill. Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13), the question whether a general act could be made applicable is not open for judicial determination. Herschbach v. Kaskaskia Island Sanitary & Levee Dist., 265 Ill. 388, 106 N.E. 942, 1914 Ill. LEXIS 2445 (1914).

Ill. Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13) does not apply to municipal ordinances. Chicago v. Weber, 246 Ill. 304, 92 N.E. 859, 1910 Ill. LEXIS 2064 (1910).

Provision that, when a general law can be made applicable, no special law shall be enacted, is addressed to the general assembly, and not the subject of review by the courts. Wilson v. Board of Trustees, 133 Ill. 443, 27 N.E. 203 (1890).

- Burden of Proof

The burden is on a party challenged legislation to demonstrate that the legislation arbitrary and unreasonable; moreover, a legislative classification must be upheld if any reasonable state of facts may be conceived to justify it. People ex rel. Skinner v. Hellmuth, Obata & Kassabaum, Inc., 114 Ill. 2d 252, 102 Ill. Dec. 412, 500 N.E.2d 34 (1986).

- Chicago

The Illinois General Assembly's device for setting different criteria for Chicago and the rest of the state, without at the same time violating the ban on special legislation, is to make statutory provisions specifically applicable to municipalities with a population of less than 500,000. Wellwoods Dev. Co. v. City of Aurora, 631 F. Supp. 221 (N.D. Ill. 1986), aff'd, 822 F.2d 1091 (7th Cir. 1987).

- Cities

Legislature's exemption, from mandatory arbitration, of municipal employee residency disputes for municipalities with a population of at least 1,000,000 people was not constitutionally infirm as special legislation even though it mean the town was required to arbitrate such a dispute while a considerably larger city was not so required, as rational bases existed for treating the different population classifications differently. Town of Cicero v. Ill. Ass'n, IAFF Local 717, 338 Ill. App. 3d 364, 272 Ill. Dec. 982, 788 N.E.2d 286, 2003 Ill. App. LEXIS 389 (1 Dist. 2003).

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Under this section it is within the power of the legislature to classify cities on the basis of population and enact laws applicable to each class, where there is a reasonable basis for the classification in view of the object and purposes to be accomplished by the legislation. People ex rel. Lindheimer v. Schweitzer, 369 Ill. 355, 16 N.E.2d 897 (1938).

- Class Legislation

Laws will not be regarded as special or class legislation merely because they affect one class and not another, provided they affect all members of the same class alike. La Pierre v. Oak Park Fed. Sav. & Loan Ass'n, 21 Ill. App. 3d 541, 315 N.E.2d 908 (1 Dist. 1974).

- Classifications

Legislative classifications are presumed to be constitutionally valid, and any reasonable doubt will be resolved in favor of upholding the classification; a reviewing court will also presume the legislature acted conscientiously and considered the conditions prevailing before enacting the legislation, however, where appropriate courts will declare a statute unconstitutional and invalid. Vill. of Chatham v. County of Sangamon, 351 Ill. App. 3d 889, 286 Ill. Dec. 566, 814 N.E.2d 216, 2004 Ill. App. LEXIS 952 (4 Dist. 2004), aff'd, 216 Ill. 2d 402, 297 Ill. Dec. 249, 837 N.E.2d 29 (2005).

The proscription against special legislation does not prohibit all classifications; it prohibits arbitrary classifications. Jasper v. Chicago Nat'l League Ball Club, 309 Ill. App. 3d 124, 242 Ill. Dec. 947, 722 N.E.2d 731 (1 Dist. 1999).

The hallmark of an unconstitutional classification is its arbitrary application to similarly situated individuals without adequate justification or connection to the purpose of the statute. Best v. Taylor Mach. Works, 179 Ill. 2d 367, 228 Ill. Dec. 636, 689 N.E.2d 1057 (1997).

If a statutory classification is called into question, and any state of facts can reasonably be conceived to uphold the classification, the existence of those facts at the time the statute was passed must be presumed. Highland Park Women's Club v. Department of Revenue, 206 Ill. App. 3d 447, 151 Ill. Dec. 435, 564 N.E.2d 890 (2 Dist. 1990), cert. denied, 139 Ill. 2d 596, 159 Ill. Dec. 107, 575 N.E.2d 914 (1991).

The General Assembly has broad discretion in classifying objects and subjects for legislative purposes. Melbourne Corp. v. City of Chicago, 76 Ill. App. 3d 595, 31 Ill. Dec. 914, 394 N.E.2d 1291 (1 Dist. 1979).

When a classification is reasonable, is not arbitrary and bears a proper relation to the purposes of the act and the evil it seeks to remedy, the special legislation proscription is not violated. Melbourne Corp. v. City of Chicago, 76 Ill. App. 3d 595, 31 Ill. Dec. 914, 394 N.E.2d 1291 (1 Dist. 1979).

A statutory classification will not be set aside if any set of facts reasonably may be conceived to justify it. Melbourne Corp. v. City of Chicago, 76 Ill. App. 3d 595, 31 Ill. Dec. 914, 394 N.E.2d 1291 (1 Dist. 1979).

Propriety of classification determines whether or not a law is general or special. Melbourne Corp. v. City of Chicago, 76 Ill. App. 3d 595, 31 Ill. Dec. 914, 394 N.E.2d 1291 (1 Dist. 1979).

The legislature may establish classifications; a classification, however, cannot be arbitrary or unreasonable, it must be based on a rational difference of condition or situation existing in the persons or the objects upon which the classification rests. Davis v. Commonwealth Edison Co., 61 Ill. 2d 494, 336 N.E.2d 881 (1975).

Classifications made by the legislature need not be logical, harmonious, scientific or even accurate, provided they will accomplish the legislative design and are not arbitrary. People ex rel. City of Salem v. McMackin, 53 Ill. 2d 347, 291 N.E.2d 807 (1972).

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A distinction in legislation is not arbitrary if any state of facts can reasonably be conceived that would sustain it. People ex rel. City of Salem v. McMackin, 53 Ill. 2d 347, 291 N.E.2d 807 (1972).

A legislative classification is sustainable where founded upon a rational difference of situation or condition existing in persons or objects upon which the class rests, and where there is a reasonable basis for the classification in light of the object and purposes to be accomplished. People ex rel. City of Salem v. McMackin, 53 Ill. 2d 347, 291 N.E.2d 807 (1972).

The legislature, to serve the public interest, may create legislative classifications, in which perfect uniformity of treatment of all persons is neither practical nor desirable. Begich v. Industrial Comm'n, 42 Ill. 2d 32, 245 N.E.2d 457 (1969).

A classification can properly be made by statute or ordinance, without doing violence to the constitution, where there are real differences between the classes and where the selection of the particular class, as distinguished from the others, is reasonably related to the evils to be remedied by the statute or ordinance. Saladino v. City of S. Beloit, 9 Ill. 2d 320, 137 N.E.2d 364 (1956).

The legislature may reasonably classify the objects of its legislation, and a law applying alike to all within the class is not precluded by this constitutional provision. City of Waukegan v. Stanczak, 6 Ill. 2d 594, 129 N.E.2d 751 (1955).

Laws will not be regarded as special or class legislation merely because they affect one class and not another, provided they affect all members of the same class alike; a classification will be sustained if it is reasonably adapted to secure the purpose for which it is intended and not purely arbitrary. People ex rel. Judges Retirement Sys. v. Wright, 379 Ill. 328, 40 N.E.2d 719 (1942).

To avoid falling within the constitutional inhibition of local legislation, the classification of subjects or objects must be based upon some reasonable and substantial difference in kind, situation or circumstance bearing a proper relation to the purposes to be attained by the statute. People ex rel. Heydenreich, 374 Ill. 557, 30 N.E.2d 46 (1940).

An act which affects all corporations or persons within the particular class towards which the legislation is directed, and is general, - applicable to all belonging thereto, - is not obnoxious to an objection as being special legislation. Park v. Modern Woodmen of Am., 181 Ill. 214, 54 N.E. 932 (1899).

A law that, from its nature, extends only to particular classes is not obnoxious to the provisions of Ill. Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13) if all persons of the class are treated alike under similar circumstances and conditions; however it is not a proper application of the definition of a general law to say that a law is general because it applies uniformly to all persons in the conditions and circumstances for which it provides, although only a particular branch of a class or some particular description of persons. Rather, the classification must be so general that it brings within its limits all those who are in substantially the same situation or circumstances. Lippman v. People, 175 Ill. 101, 51 N.E. 872, 1898 Ill. LEXIS 3326 (1898).

A law which divided counties into classes for the purposes of assessment for taxation, and was uniform in its methods of procedure as to each class and prescribed a uniform rule for valuation throughout the state, only varying the personnel of the officers to suit the exigencies and conditions of the different classes of counties was not an attempt to regulate the county and township affairs of any county or township by a special law, as the act was applicable to the whole state, and for the purpose of facilitating and regulating assessments so that they would be uniform and more satisfactory than had previously been classified. People ex rel. Green v. Board of Comm'rs, 176 Ill. 576, 52 N.E. 334 (1898).

- Common Tie

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When properly applied to a legislative provision, the common tie is found in the tendency of the provision to promote the object and purpose of the act to which it belongs; any provision not having this tendency, which introduces new subject matter into the act, is clearly obnoxious to former Ill. Const. (1870), Art. IV, § 22 (see now this section). Dolese v. Pierce, 124 Ill. 140, 16 N.E. 218 (1888).

- Duty of Legislature

The legislature, once it undertakes to grant or deny a right, must do so without sacrificing uniformity as to proceedings and practice and without enacting special legislation. Board of Educ. v. County Bd. of Sch. Trustees, 28 Ill. 2d 15, 191 N.E.2d 65 (1963).

- Judicial Responsibility

This section has increased judicial responsibility for determining whether a general law is or can be made applicable. Grace v. Howlett, 51 Ill. 2d 478, 283 N.E.2d 474 (1972).

- Judicial Review

Though this section gives the court enlarged judicial review in the narrow area of "real" special legislation, traditional deference is given to legislative classification in this area as well as when the court is considering equal protection questions in the guise of special legislation challenges. Anderson v. Wagner, 79 Ill. 2d 295, 37 Ill. Dec. 558, 402 N.E.2d 560 (1979).

One of the most firmly established doctrines in the field of constitutional law is that a court will ordinarily inquire into the constitutionality of a statute only to the extent required by the case before it, and will not formulate a rule broader than that necessitated by the precise situation in question. Lorton v. Brown County Community Unit Sch., 35 Ill. 2d 362, 220 N.E.2d 161 (1966).

- Laws

A law is general, not because it embraces all the governed, but because it may, from its terms, embrace all who occupy a like position to those included. People v. Chicago Transit Auth., 392 Ill. 77, 64 N.E.2d 4 (1945).

While an act of the General Assembly may discriminate, it must be based on some substantial difference between the situation of one class and that of another to which it does not apply. People v. Chicago Transit Auth., 392 Ill. 77, 64 N.E.2d 4 (1945).

"Due process of law" is synonymous with "law of the land," and "the law of the land" means general public law, binding upon all of the members of the community, under all circumstances, and not partial or private laws affecting the rights of private individuals or classes of individuals. Eden v. People, 161 Ill. 296, 43 N.E. 1108, 1896 Ill. LEXIS 1606 (1896).

- Legislative Judgment

Unless legislative action is clearly unreasonable, and there is no legitimate reason for the law which would not require with equal force its extension to others whom it leaves untouched, the courts do not interfere with the legislative judgment. Schuman v. Chicago Transit Auth., 407 Ill. 313, 95 N.E.2d 447 (1950).

Whether a general law can be made applicable in any case other than those enumerated in this section is for the legislature, and not the courts, to determine. Board of Trustees of the Police Pension Fund v. Commissioners of Lincoln Park, 282 Ill. 348, 118 N.E. 746 (1918).

- Liberal Construction

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Illinois courts have uniformly given a liberal construction to the constitutional provisions of this section in favor of the validity of enactments. Cerro Wire & Cable Co. v. Department of Revenue, 111 Ill. App. 3d 882, 67 Ill. Dec. 535, 444 N.E.2d 771 (1 Dist. 1982).

- Limitations

This section did not violate the Constitution, because in prescribing limitations relative to courts, the framers of the Constitution made no mention of juries. Hunt v. Rosenbaum Grain Corp., 355 Ill. 504, 189 N.E. 907 (1934).

- Municipal Corporations

Municipal corporations, with the specific exception of "cities, towns or villages," unlike private corporations, may be created by special law and be granted special privileges. People ex rel. Coutrakon v. Lohr, 9 Ill. 2d 539, 138 N.E.2d 471 (1956).

- Passage of Local Laws

Court upheld judgment in favor of the government, because the statutes were not local or special laws in violation of former Ill. Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13), and the taxation was for a public purpose in compliance with former Ill. Const. of 1870, Art. IX, § 9 (now Ill. Const. (1970), Art. IX, § 1). Mathews v. Chicago, 342 Ill. 120, 174 N.E. 35, 1930 Ill. LEXIS 1079 (1930).

Prohibition contained in former Ill. Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13) against the passage of local or special laws in certain enumerated cases does not mean that every law shall affect alike every place and every person in the State, but it does mean that it shall operate alike in all places and on all persons in the same condition. Mathews v. Chicago, 342 Ill. 120, 174 N.E. 35, 1930 Ill. LEXIS 1079 (1930).

The prohibition against the passage of local or special laws in certain enumerated cases does not mean that every law shall affect alike every place and every person in the state, but it does mean that it shall operate alike in all places and on all persons in the same condition. Mathews v. City of Chicago, 342 Ill. 120, 174 N.E. 35 (1930).

- Prohibitions

As to those subjects enumerated in former Ill. Const. (1870), Art. IV, § 22 (see now this section), the prohibition was absolute and not conditional. Hunt v. County of Cook, 398 Ill. 412, 76 N.E.2d 48 (1947).

- Scope

Under Ill. Const. (1970), Art. IV, § 13, the Illinois General Assembly shall pass no special or local law when a general law is or can be made applicable; however, whether a general law is or can be made applicable shall be a matter for judicial determination. Wilson v. All-Steel, Inc., 87 Ill. 2d 28, 56 Ill. Dec. 897, 428 N.E.2d 489, 1981 Ill. LEXIS 369 (1981).

The available scope for legislative experimentation with special legislation is limited, and a court cannot rule that the legislature is free to enact special legislation simply because reform may take one step at a time. Grace v. Howlett, 51 Ill. 2d 478, 283 N.E.2d 474 (1972).

The proscriptions of this section against "local or special" laws do not mean that an act shall have effect upon every individual in every locality, and a law may be general notwithstanding that it may operate only in a single place where conditions necessary to its operation exist. People ex rel. County of Du Page v. Smith, 21 Ill. 2d 572, 173 N.E.2d 485 (1961).

Under former Ill. Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13), the Illinois General Assembly shall not pass local or special laws for certain specified objects, and among

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them, for the opening and conducting of any election, or designating the place of voting. People ex rel. Grinnell v. Hoffman, 116 Ill. 587, 5 N.E. 596, 1886 Ill. LEXIS 1119 (1886).

- Special Laws

Section 70 ILCS 705/14.14 is arbitrary and must be struck down as an unconstitutional special or local law. In re Village of Vernon Hills, 168 Ill. 2d 117, 212 Ill. Dec. 883, 658 N.E.2d 365 (1995).

A law violates the proscription against special legislation if there is no rational explanation for not applying the law to all persons or entities in the state, or if there is no rational explanation for not applying a general law to the persons and entities excepted from it. People v. Waisvisz, 221 Ill. App. 3d 667, 164 Ill. Dec. 439, 582 N.E.2d 1383 (4 Dist. 1991), appeal denied, 144 Ill. 2d 642, 169 Ill. Dec. 150, 591 N.E.2d 30 (1992).

Special legislation confers a benefit or privilege on an individual or a group to the exclusion of others similarly situated and discriminates in favor of the select individual or group without a sound, reasonable basis. Highland Park Women's Club v. Department of Revenue, 206 Ill. App. 3d 447, 151 Ill. Dec. 435, 564 N.E.2d 890 (2 Dist. 1990), cert. denied, 139 Ill. 2d 596, 159 Ill. Dec. 107, 575 N.E.2d 914 (1991); Illinois Polygraph Soc'y v. Pellicano, 83 Ill. 2d 130, 46 Ill. Dec. 574, 414 N.E.2d 458 (1980).

Special legislation is that which imposes a particular burden, confers a special right, privilege or immunity upon a portion of the people of the state. Fox v. Rosewell, 55 Ill. App. 3d 860, 13 Ill. Dec. 570, 371 N.E.2d 287 (1 Dist. 1977).

The prohibition against special legislation does not mean that a statute must affect everyone in the same way, it means simply that a law shall operate uniformly throughout the state in all localities and on all persons in like circumstances and conditions. Davis v. Commonwealth Edison Co., 61 Ill. 2d 494, 336 N.E.2d 881 (1975); Little v. East Lake Fork Special Drainage Dist., 166 Ill. App. 3d 209, 116 Ill. Dec. 898, 519 N.E.2d 1113 (4 Dist. 1988).

Legislation is not special or local under former Ill. Const. (1870), Art. IV, § 22 (see now this section) merely because it may operate only in a single place where the condition necessary to its operation exists or because, at the time of its enactment, it can be applied only to one city in the state. Du Bois v. Gibbons, 2 Ill. 2d 392, 118 N.E.2d 295 (1954).

Laws are not deemed special or class legislation merely because they affect one class and not another, provided they affect all members of the same class alike. Schuman v. Chicago Transit Auth., 407 Ill. 313, 95 N.E.2d 447 (1950).

The principles of former Ill. Const. (1870), Art. IV, § 22 (see now this section) governing special legislation prohibits the General Assembly from passing any local or special law granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever; this section supplements the equal protection clause (U.S. Const., Amend. 14) and prevents the enlargement of the rights of one or more persons in discrimination against the rights of others. Schuman v. Chicago Transit Auth., 407 Ill. 313, 95 N.E.2d 447 (1950).

Laws will not be regarded as special or class legislation merely because they affect one class and not another, provided they affect all members of the same class alike. Youngquist v. City of Chicago, 405 Ill. 21, 90 N.E.2d 205 (1950).

Special laws are those enacted for individual cases and appropriately apply to laws that grant some special right, privilege or immunity, or impose some particular burden upon some portion of the people of the state less than all. Hunt v. County of Cook, 398 Ill. 412, 76 N.E.2d 48 (1947); Commissioners of Hwys. v. United States, 466 F. Supp. 745 (N.D. Ill. 1979), modified on other grounds, 653 F.2d 292 (7th Cir. 1981), aff'd, 681 F.2d 821 (7th Cir. 1982).

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If the subject matter of the act is not within the enumerated case, then, under the general provision of former Ill. Const. (1870), Art. IV, § 22 (see now this section) that a special or general law could be made applicable, the legislative enactment may be special as to the members of a designated class, where the classification rested upon some disability, attribute or classification marking them as proper objects for the operation of the special legislation. Hunt v. County of Cook, 398 Ill. 412, 76 N.E.2d 48 (1947).

To avoid falling within the constitutional inhibition of special legislation the classification of subjects or objects must be based upon some reasonable and substantial difference in kind, situation or circumstance bearing a proper relation to the purposes to be attained by the statute. Michigan Millers Mut. Fire Ins. Co. v. McDonough, 358 Ill. 575, 193 N.E. 662 (1934).

Special laws are those made for individual cases, or for less than a class requiring laws appropriate to its peculiar conditions and circumstances; local laws are special as to place. People v. Borgeson, 335 Ill. 136, 166 N.E. 451 (1929).

Bulk sale of livestock from a father to a son was covered under the Bulk Sales Act, formerly 1913 Ill. Laws p. 258, which had been amended after it was declared unconstitutional under Ill. Const. (1970), Art. IV, § 13 (formerly Ill. Const. of 1870, Art. IV, § 22) as special legislation because it did not apply to farm transactions, because the sale was a sale in bulk not in the ordinary course of business. Weskalnies v. Hesterman, 288 Ill. 199, 123 N.E. 314, 1919 Ill. LEXIS 1077 (1919).

Law relative to a water district's right to enter upon rights of way to maintain bridges or to construct bridges was not "special" legislation merely because of its limited application, and was therefore not unconstitutional under Ill. Const. (1970), Art. IV, § 13 (formerly Ill. Const. of 1870, Art. IV, § 22) Rylands v. Clark, 278 Ill. 39, 115 N.E. 829, 1917 Ill. LEXIS 1038 (1917).

Beer bottler's arrest and conviction for possession of bottles owned by a brewing company, pursuant to a statute that authorized brewing companies to swear out warrants for the search and seizure of the company's bottles, wherever those bottles were located, was unlawful because the statute at issue violated constitutional protections against unreasonable searches, found at Ill. Const. of 1870, Art. II, § 6 (now Ill. Const. (1970), Art. I, § 6), and special laws found at Ill. Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13). Lippman v. People, 175 Ill. 101, 51 N.E. 872, 1898 Ill. LEXIS 3326 (1898).

Statute that authorizes manufacturers, bottlers and dealers in ale, porter, lager beer, soda, mineral water and other beverages to swear out warrants and cause law enforcement officers to search and recover their empty bottles violates the prohibition against special laws found in Ill. Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13) because the statute singles out one class of manufacturers that use bottles for their goods; because the law gives that particular class of manufacturers an additional privilege in excess of the general law of replevin, and does not protect the public in general, the law is an unlawful attempt to convey a private benefit to the specified class of manufacturers. Lippman v. People, 175 Ill. 101, 51 N.E. 872, 1898 Ill. LEXIS 3326 (1898).

- Taxing by Municipality

The prohibition against special or local laws extends to statutory provisions for the levy and collection of taxes by municipalities. Kremers v. City of W. Chicago, 406 Ill. 546, 94 N.E.2d 337 (1950).

- Terms

In those instances in which the Illinois Supreme Court, prior to the adoption of the Constitution of 1970, defined a term found therein, it should be given the same definition, unless it was clearly apparent that some other meaning was intended. Bridgewater v. Hotz, 51 Ill. 2d 103, 281 N.E.2d 317 (1972).

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Accelerated Payment Schedules

- Reasonableness

The legislature was reasonable in requiring the accelerated payments schedule in Cook County in order to alleviate the county's immediate financial situation and at the same time allow other counties the opportunity to adopt the accelerated payments schedule to alleviate a similar problem should such a problem arise. Fox v. Rosewell, 55 Ill. App. 3d 860, 13 Ill. Dec. 570, 371 N.E.2d 287 (1 Dist. 1977).

City of Chicago

Differentiating the city of Chicago from all other Illinois cities is neither a new practice nor an invalid one; the Illinois Supreme Court stated as early as 1954 that population classifications distinguishing Chicago from the rest of the state are presumed valid, and will be voided only when clearly arbitrary. Des Plaines Firemen's Ass'n v. City of Des Plaines, 267 Ill. App. 3d 920, 204 Ill. Dec. 831, 642 N.E.2d 732 (1 Dist. 1994), appeal denied, 159 Ill. 2d 565, 207 Ill. Dec. 515, 647 N.E.2d 1008 (1995).

Classification

- In General

Court determined that former Ill. Const., Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13), does not prohibit legislative classification; however, it does require that the classification be reasonably related to the legislative purpose. Skinner v. Anderson, 38 Ill. 2d 455, 231 N.E.2d 588, 1967 Ill. LEXIS 327 (1967).

Classifications

- In General

When a legislative classification was challenged as violating former Ill. Const. (1870), Art. IV, § 22 (see now this section) the reasonableness and rationality of the classification governed its validity and whether the legislative classification bore a discernible relationship to the realities of life was a significant consideration. Illinois Ass'n of Fire Fighters v. City of Waukegan, 37 Ill. 2d 423, 226 N.E.2d 606 (1967).

- Attorneys

Those who follow the legal profession constitute a class and laws may be passed applicable only to members of a class where the classification rests upon some disability, attribute, or classification marking them as proper objects for the operation of such special legislation in any case where such local or special legislation is not expressly forbidden by the constitution; accordingly, the Attorneys' Lien Law, Laws of 1909, p. 97, was not unconstitutional as special legislation. Standidge v. Chicago R. Co., 254 Ill. 524, 98 N.E. 963, 1912 Ill. LEXIS 1954 (1912).

- Based on Population

A legislative classification based upon population is valid if there is a rational difference of situation or condition existing in the persons or objects upon which the classification rests and there is a reasonable basis for the classification in view of the purposes to be accomplished; thus, since counties with more than 400,000 persons suffer worse traffic congestion than counties with less than 400,000 persons, there is a rational difference of condition upon which the population

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classification rests. There is also a reasonable basis for the classification in view of the legislative purpose of alleviating traffic congestion through a new method of financing road improvements. Northern Ill. Home Bldrs. Ass'n v. County of Du Page, 251 Ill. App. 3d 494, 190 Ill. Dec. 559, 621 N.E.2d 1012 (2 Dist. 1993), rev'd on other grounds, 165 Ill. 2d 25, 208 Ill. Dec. 328, 649 N.E.2d 384 (1995).

A legislative classification based upon population will be upheld if it is founded upon a rational difference as to the situation or condition in the persons or objects upon which the classification rests and a reasonable basis exists for the classification in view of the statutory objectives. Highland Park Women's Club v. Department of Revenue, 206 Ill. App. 3d 447, 151 Ill. Dec. 435, 564 N.E.2d 890 (2 Dist. 1990), cert. denied, 139 Ill. 2d 596, 159 Ill. Dec. 107, 575 N.E.2d 914 (1991).

A legislative classification based on population is valid if there is a reasonable basis for it. Rincon v. License Appeal Comm'n, 62 Ill. App. 3d 600, 19 Ill. Dec. 406, 378 N.E.2d 1281 (1 Dist. 1978).

Portion of the Liquor Control Act (235 ILCS 5/1-1 et seq.), which relates to municipalities having a population between 100,000 and 500,000 inhabitants and providing different procedures on the basis of population for the review of liquor control commissioner's decisions was in violation of the Illinois Constitution. Shepard v. Illinois Liquor Control Comm'n, 43 Ill. 2d 187, 251 N.E.2d 206 (1969).

Statutory classifications on the basis of population are ordinarily justified on the ground that differences in degree that result from increased populations can justify different treatment. Christen v. County of Winnebago, 34 Ill. 2d 617, 218 N.E.2d 103 (1966).

Legislative classification based upon population is valid, if there is a reasonable relationship between the objectives sought to be accomplished by the law and the population differences fixed by the General Assembly. People ex rel. Adamowski v. Wilson, 20 Ill. 2d 568, 170 N.E.2d 605 (1960).

Legislation is not special or local because it relates to only one city where the classification, based on population, has a reasonable relation to the purposes and objects of a statute and where the General Assembly could reasonably have concluded that there was a difference of situations and conditions between cities of 500,000 or more and those in cities of smaller populations. Gaca v. City of Chicago, 411 Ill. 146, 103 N.E.2d 617 (1952).

Classification by municipalities and, in particular, of counties, by population, as a basis for legislation, is valid, provided that it be uniform and general in its application and, further, that there be a reasonable relation between the situation of municipalities classified and the purposes and objects sought to be attained by the law. Kremers v. City of W. Chicago, 406 Ill. 546, 94 N.E.2d 337 (1950).

The legislature may, in the enactment of general laws, classify counties and other municipalities, and legislation has been sustained relating to counties classified on the basis of population. Hunt v. County of Cook, 398 Ill. 412, 76 N.E.2d 48 (1947).

While arbitrary legislative classification of municipalities and other political subdivisions, based only on difference in population, cannot be sustained under the constitution, they may be classified for purposes of legislation on the basis of population, if such basis has some reasonable relation to the purpose and object of the legislation, and in some rational degree accounts for the variant provisions of the enactment. People ex rel Moshier v. City of Springfield, 370 Ill. 541, 19 N.E.2d 598 (1939).

Where the legislature provided that in cities of 100,000 or more no application for judgment and sale against any property therein for unpaid special assessments should be made before the September term of the county court, even though such applications in cities of less than 100,000

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were due at a different time, the legislation did not pass a local or special law in violation of former Ill.Const. (1870), Art. IV, § 22 (see now this section). People ex rel. Carr v. Kesner, 321 Ill. 230, 151 N.E. 481 (1926).

A law is not local or special for the reason that it classifies counties or townships on the basis of population if the number of inhabitants creates substantial differences in situation and needs concerning the subject of the legislation. Booth v. Opel, 244 Ill. 317, 91 N.E. 458 (1910).

- Burden of Proof

The burden of demonstrating that a classification is unreasonable or arbitrary is upon the person attacking the validity of the classification. Davis v. Commonwealth Edison Co., 61 Ill. 2d 494, 336 N.E.2d 881 (1975).

- County Tax Assessment

Legislation fixing the rate that could be charged to a county of a certain size, but allowed larger counties to receive competitive bids for the printing of tax assessments was not a special act in violation of Ill. Const. (1970), Art. IV, § 13 (formerly Ill. Const. of 1870, Art. IV, § 22) because the legislature had the right to fix such rates. D. L. Lee Pub. Co. v. St. Clair County, 341 Ill. 257, 173 N.E. 274, 1930 Ill. LEXIS 873 (1930).

A classification of the counties of the state by population as a basis for tax assessment legislation is valid, but all legislation on that subject must be by uniform and general laws. People ex rel. Stuckart v. Knopf, 183 Ill. 410, 56 N.E. 155 (1900).

- Enabling Act

The second enabling act is not made special or local by merely incorporating home rule units within its scope because a rational basis exists for the inclusion of this class. Northern Ill. Home Bldrs. Ass'n v. County of Du Page, 165 Ill. 2d 25, 208 Ill. Dec. 328, 649 N.E.2d 384 (1995).

- Equal Protection

The tests for the validity of legislation under the federal and Illinois equal protection clauses and under this section, the special legislation provision, are generally similar and overlapping; a classification does not violate the special legislation provision if there is a reasonable basis for the classification, and it bears a reasonable and proper relation to the purposes of the act and the evil it seeks to remedy. People v. Keeven, 68 Ill. App. 3d 91, 24 Ill. Dec. 663, 385 N.E.2d 804 (5 Dist. 1979).

- Females

Where it was determined that a substantial difference existed between licensees and the mother, daughter, wife or sister of a licensee and other women when acting as bartenders, ordinance prohibiting certain women from being employed as a bartender did not violate this section; the classification was reasonable and not arbitrary, being grounded upon a proper and judicious control of the liquor supply which the legislature and the city council, in their wisdom, had determined should be controlled by a male bartender or a woman of the exempted class in the furtherance of the morals and welfare of society, and affecting all those in the same class in exactly the same manner. Henson v. City of Chicago, 415 Ill. 564, 114 N.E.2d 778 (1953).

- Municipalities

Legislature is permitted to classify counties and municipalities on the basis of population or territorial differences so long as the classification is not arbitrary or does not grant a particular class special or exclusive legislative favors, and a statute is not invalid simply because it operates in a limited area of the state. Vill. of Chatham v. County of Sangamon, 351 Ill. App. 3d 889, 286

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Ill. Dec. 566, 814 N.E.2d 216, 2004 Ill. App. LEXIS 952 (4 Dist. 2004), aff'd, 216 Ill. 2d 402, 297 Ill. Dec. 249, 837 N.E.2d 29 (2005).

Where a trial court justified classifications between multiple-family structures and single-family residences set forth in a municipality's policy statement and ordinances on the distinction between the nature and type of service needs required by multiple-family structures due to the greater amount of refuse generated by them, the municipality's assertion in its motion to dismiss its ordinances and policy statement which were entitled to a presumption of validity, coupled with the factors articulated by the trial court to justify the classification scheme, were sufficient to defeat the equal protection and special legislation challenges asserted in the plaintiff 's complaint. Szczurek v. City of Park Ridge, 97 Ill. App. 3d 649, 52 Ill. Dec. 698, 422 N.E.2d 907 (1 Dist. 1981).

Classification of the municipalities of the state, such as counties, cities, villages, and towns, may be made a basis for legislation, if such classification is based upon a rational difference of situation or condition found in the municipalities placed in the different classes. Dawson Soap Co. v. City of Chicago, 234 Ill. 314, 84 N.E. 920 (1908).

- Persons or Objects

If there is a reasonable basis for differentiating between the class to which a law is applicable and the class to which it is not, the General Assembly may constitutionally classify persons and objects for the purpose of legislative regulation or control, and may pass laws applicable only to such persons or objects. People ex rel. County of Du Page v. Smith, 21 Ill. 2d 572, 173 N.E.2d 485 (1961).

Classifications of persons or objects for purposes of legislative regulation are not open to constitutional objection if they are not arbitrary but are based upon some substantial difference bearing proper relation to the classification. People ex rel Moshier v. City of Springfield, 370 Ill. 541, 19 N.E.2d 598 (1939).

To avoid falling within the constitutional inhibition of special legislation, the classification of subjects or objects must be based upon some reasonable and substantial difference in kind, situation, or circumstance bearing a proper relation to the purposes to be attained by the statute. Marallis v. City of Chicago, 349 Ill. 422, 182 N.E. 394 (1932); Joseph Triner Corp. v. McNeil, 363 Ill. 559, 2 N.E.2d 929 (1936), aff'd, 365 Ill. 537, 57 S. Ct. 139 (1937).

- Police Power

The legislature, or its delegated subordinate body, may, under its police power, adopt classifications of persons or things based upon reasonable distinctions. Henson v. City of Chicago, 415 Ill. 564, 114 N.E.2d 778 (1953).

Where pharmacists had an exclusive right under the Illinois Pharmacy Act to sell patent medicines to the public, but no accompanying obligation to ensure the safety of the medicines, the Act did not protect the public and those provisions allowing a monopoly to pharmacists were unconstitutional as special legislation under Ill. Const. (1970), Art. IV, § 13 (formerly Ill. Const. of 1870, art. IV, § 22). Noel v. People, 187 Ill. 587, 58 N.E. 616, 1900 Ill. LEXIS 2609 (1900).

- Policemen

Permitting municipalities to exclude policemen from the operation of the Workers' Compensation Act (820 ILCS 305/1) by enacting an appropriate ordinance creating the office of policeman did not create an unreasonable classification by the division of policemen into two classes, and did not violate former Ill. Const. (1870), Art. IV, § 22 (see now this section). City of Danville v. Industrial Comm'n, 38 Ill. 2d 479, 231 N.E.2d 404 (1967).

- Population

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Provision of 735 ILCS 5/3-103 amended in 1993 limiting its application to municipalities with a population of 500,000 or less is unconstitutional as an arbitrary distinction not founded upon any rational or substantial difference of situation or condition; it violates the constitutional proscription against special legislation and denies plaintiff equal protection under the law. Lacny v. Police Bd., 291 Ill. App. 3d 397, 225 Ill. Dec. 602, 683 N.E.2d 1265 (1 Dist. 1997).

- Public Airports

"An Act in relation to airport authorities" (70 ILCS 5/0.01 et seq.) did not violate constitutional provision contained in former Ill. Const. (1870), Art. IV, § 22 (see now this section) prohibiting local or special laws since the Act applied alike to all communities in the state similarly situated and airport authorities may be created with the consent of the majority of the electors within such district, in any community of the type designated, to be operated by commissioners. People ex rel. Curren v. Wood, 391 Ill. 237, 62 N.E.2d 809 (1945).

70 ILCS 5/2 did not violate provision in former Ill. Const. (1870), Art. IV, § 22 (see now this section) prohibiting local or special laws in that it used population as a classification since greater air traffic was attracted toward larger cities, larger airplanes were to be used, longer runways and other facilities were necessary, all of which would be wholly in excess of any of the needs of small cities. People ex rel. Curren v. Wood, 391 Ill. 237, 62 N.E.2d 809 (1945).

- Renting Motor Vehicles

Section 625 ILCS 5/6-305 is not unconstitutional because subsections (d) and (f) address only those engaged in the rental of automobiles and not those engaged in the rental of other chattels, because subsection (d) classifies rental car companies differently from third parties injured by a rental car driver or a third party who damages a rental car, nor because the section does not apply to rental car leases that last over 30 days. Alamo Rent A Car, Inc. v. Ryan, 268 Ill. App. 3d 268, 205 Ill. Dec. 738, 643 N.E.2d 1345 (1 Dist. 1994), appeal denied, 161 Ill. 2d 523, 208 Ill. Dec. 357, 649 N.E.2d 413 (1995).

- Review

Just as in the equal protection analysis, review of a classification challenged under the special legislation clause requires a determination of whether there is some real difference, between those classified, that rationally explains the different treatment accorded to them. Jenkins v. Delon Wu, 102 Ill. 2d 468, 82 Ill. Dec. 382, 468 N.E.2d 1162 (1984).

The determinative question for review under this section is whether the statutory classification in question is rational. Harvey v. Clyde Park Dist., 32 Ill. 2d 60, 203 N.E.2d 573 (1964).

- Role of Legislature

The legislature is not required to be scientific, logical or consistent in its classifications. Board of Educ. v. County Bd. of Sch. Trustees, 28 Ill. 2d 15, 191 N.E.2d 65 (1963).

There is always a presumption that the General Assembly and its committees acted conscientiously and did their duty in making a survey of the conditions prevailing in the municipalities of the state before enacting the classification legislation and the result will never be nullified by Illinois Supreme Court on the ground that its judgment might differ from that of the General Assembly under former Ill. Const. (1870), Art. IV, § 22 (see now this section). Du Bois v. Gibbons, 2 Ill. 2d 392, 118 N.E.2d 295 (1954).

In the exercise of its power to make classifications in the enactment of laws concerning matters within its jurisdiction, the legislature is given a wide range of discretion; if the classification made is not wholly unreasonable and arbitrary and the statute is uniform in its operation on all members of the class to which it applies, there is no violation of the constitutional guarantee of equal protection of law. Smith v. Murphy, 384 Ill. 34, 50 N.E.2d 844 (1943).

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- Single Member

The legislature may properly classify in response to distinguishing circumstances or conditions that bear peculiarly upon a particular subject matter and it is of no consequence that the class that is thereby created has only one member, so long as the single member has attributes or needs which warrant particularized treatment. Department of Bus. & Economic Dev. v. Phillips, 43 Ill. 2d 28, 251 N.E.2d 170 (1969).

- Statute of Limitations

There was a reasonable basis for differentiating between physicians and hospitals and other members of the general class of health care providers for the purpose of former Ill. Rev. Stat., ch. 83, para. 22.1 (see now 735 ILCS 5/13-212); the General Assembly in responding to the medical malpractice insurance crisis construed the statute very narrowly and encompassed within the classification to whom the statute applied only those segments of the health care providers most acutely affected by the crisis. Anderson v. Wagner, 79 Ill. 2d 295, 37 Ill. Dec. 558, 402 N.E.2d 560 (1979).

- Statutory Immunity

Statutory immunity extended to employer's compensation insurers did not involve unreasonable classification as to due process, equal protection or denial of remedies. Towns v. Kessler, 10 Ill. App. 3d 356, 293 N.E.2d 761 (5 Dist. 1973).

- Test

In determining whether a law is special or class legislation, the controlling question is always whether its classification of persons or objects for purposes of legislative regulation is based on some substantial difference bearing proper relation to the classification or, on the other hand, is arbitrary and capricious. Adams v. Continental Cas. Co., 21 Ill. App. 3d 111, 314 N.E.2d 495 (1 Dist. 1974); Schuman v. Chicago Transit Auth., 407 Ill. 313, 95 N.E.2d 447 (1950).

- Tort Liability

Statutory and common law provisions which differentiate between municipal and private corporations as to tort liability have been held reasonable and valid classifications under both the equal protection clause and this section; therefore 745 ILCS 10/3-106 is not unconstitutional. Davis v. Chicago Hous. Auth., 136 Ill. 2d 296, 144 Ill. Dec. 224, 555 N.E.2d 343 (1990).

- Validity

To be valid under the state equal protection clause a statutory classification must be based on a real and substantial difference having a rational relation to the subject of the particular legislation. Commissioners of Hwys. v. United States, 466 F. Supp. 745 (N.D. Ill. 1979), modified on other grounds, 653 F.2d 292 (7th Cir. 1981), aff'd, 681 F.2d 821 (7th Cir. 1982).

Taxpayer could not enjoin increased retirement payments to retired teachers because the classification of retired teachers by the legislature was reasonable, was based upon a substantial distinction, and was not arbitrary. Krebs v. Board of Trustees, 410 Ill. 435, 102 N.E.2d 321, 1951 Ill. LEXIS 452 (1951).

Collection of Garbage

Ordinance limiting the number of licenses issued to scavengers for the collection of garbage to two bore real and reasonable relation to the objects of public health sought to be attained, and was not open to the objection that it was a monopoly, since the municipality was not undertaking to run, establish or operate a business of any kind, but was dealing solely in the exercise of the

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police power in the interest of public health. Strub v. Village of Deerfield, 19 Ill. 2d 401, 167 N.E.2d 178 (1960).

Conflicts of Law

- Workers' Compensation

Giving full faith and credit to a foreign state's workers' compensation law did not violate former Ill. Const. (1870), Art. I, § 2 or Art. I, § 12 or this section for being so repugnant to public policy that if employee received compensation under the foreign state workmen's compensation act, his foreign state employer could not be required to indemnify a manufacturer who was held liable to pay damages to the employee for injuries suffered by reason of the manufacturer's negligence. Kabak v. Thor Power Tool Co., 106 Ill. App. 2d 190, 245 N.E.2d 596 (1 Dist. 1969).

Construction

- In General

The fact that law under which district was brought into being may actually be, or appear to be, arbitrary and unreasonable in some of its provisions, will not make that law a local or special one in violation of this section. People ex rel. Honefenger v. Burris, 408 Ill. 68, 95 N.E.2d 882 (1950).

- Definitions

Provision in this section which provides that the General Assembly may not pass a special or local law when a general act is or can be made applicable and that whether a general law can be made applicable is a matter for judicial determination, changes the scope of judicial review, but requires no change in definition of when a law is "general and uniform," "special," or "local." Bridgewater v. Hotz, 51 Ill. 2d 103, 281 N.E.2d 317 (1972).

- Local, Special and General

Under this section, the terms "local," "special," and "general" have the same meaning that had been given them under Ill. Const (1870), Art. IV, § 22. Commissioners of Hwys. v. United States, 466 F. Supp. 745 (N.D. Ill. 1979), modified on other grounds, 653 F.2d 292 (7th Cir. 1981), aff'd, 681 F.2d 821 (7th Cir. 1982).

Under a former similar provision, it was held that the term "local," as applied to legislation, meant such legislation as related to a portion only of the state, while the word "special" referred to such legislation as granted some special right, privilege, or immunity, or imposed some particular burden upon a portion of the people of the state. People ex rel. Stuckart v. Day, 115 N.E. 732 (1917).

Corporations

- Applicability

The prohibition of former Ill. Const. (1870), Art. IV, § 22 (see now this section) against special laws granting special or exclusive privilege, immunity or franchise to any corporation applies to private corporations, and not municipal corporations. People ex rel. Curry v. Decatur Park Dist., 27 Ill. 2d 434, 189 N.E.2d 338 (1963).

- Municipal

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Statutory and common law provisions which differentiate between municipal and private corporations as to tort liability have been held reasonable and valid classifications under the equal protection and special legislation clauses. Bilyk v. Chicago Transit Auth., 125 Ill. 2d 230, 125 Ill. Dec. 822, 531 N.E.2d 1 (1988).

The word "corporation," as used in former Ill. Const. (1870), Art. IV, § 22 (see now this section) did include municipal corporations. Springfield Gas & Elec. Co. v. City of Springfield, 292 Ill. 236, 126 N.E. 739 (1920).

- Public Policy

Former Ill. Const. (1870), Art. IV, § 22 (see now this section) was a clear declaration that the public policy of the state was opposed to all exclusive and monopolistic franchises and powers, of whatsoever kind or character. Dunbar v. American Te. & Tel. Co., 238 Ill. 456, 87 N.E. 521 (1909).

Counties

- Highway Commissioners

Amendment to Road and Bridge Act, applicable only to counties not under township organization, which makes commissioners of highways in those counties personally liable for damages sustained by reason of the commissioners' failure to keep the roads and bridges within their district in good repair violates Ill. Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13) because it is a special law that places highway commissioners in counties not under township organization in one class and highway commissioners in counties under township organization in another class without any reasonable basis. Kennedy v. McGovern, 246 Ill. 497, 92 N.E. 942, 1910 Ill. LEXIS 2095 (1910).

- No Substantial Difference

There can be no actual substantial difference in counties arising from the mere fact the General Assembly gives one the right to an elected board or assessors and withholds such privilege from another; the distinction is wholly artificial, and created solely for the purpose for making a class and hence offends the provisions of this section. Giebelhausen v. Daley, 407 Ill. 25, 95 N.E.2d 84 (1950).

Court

- Defined

The definition of a court does not include a jury as necessary to its functions, therefore, the limitations prescribed by the Constitution apply to the courts, and not to the right of trial by jury. Hunt v. Rosenbaum Grain Corp., 355 Ill. 504, 189 N.E. 907 (1934).

Delegation of Power

The legislature, by virtue of its plenary power, may vacate or discontinue streets or highways, and, since it can only act in the premises through subordinate agencies, it must necessarily have the power to confer upon such agencies all the power which it possesses in this regard. People ex rel. Hill v. Eakin, 383 Ill. 383, 50 N.E.2d 474 (1943).

An act concerning the crime of wife abandonment was not an unconstitutional delegation of legislature because under an indictment or an information charging a person with the crime of wife abandonment, as in other misdemeanor cases, and because the punishment was inflicted by

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the court. While the legislature indicated the extent of the punishment, the court was given an option whether to inflict a fine, as in other cases of misdemeanor, or to require the defendant, by way of punishment, to pay a certain stipulated sum per week to the abandoned wife. People v. Heise, 257 Ill. 443, 100 N.E. 1000 (1913).

Detection of Deception

- Preemption Not Shown

Though former Ill. Rev. Stat., ch. 38, para. 202-3 (see now 225 ILCS 430/3) required an examiner to use an instrument which records cardiovascular and respiratory patterns as minimum standards, because an examiner was free to ignore the results which that instrument might yield, it did not statutorily preempt the field of deception detection, and therefore, it was not special legislation under this section. Illinois Polygraph Soc'y v. Pellicano, 83 Ill. 2d 130, 46 Ill. Dec. 574, 414 N.E.2d 458 (1980).

Drainage Districts

The amendments to the Drainage Code (70 ILCS 605/1-1), exempting public highways, streets and alleys from property subject to drainage district assessments, do not violate the prohibition against special legislation contained in this section. East Lake Fork Special Drainage Dist. v. Village of Ivesdale, 137 Ill. App. 3d 473, 91 Ill. Dec. 948, 484 N.E.2d 507 (4 Dist. 1985).

Ill. Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13) does not prohibit legislature from changing the boundaries of a municipal corporation organized for sanitary purposes because that section only mentions "cities, towns, and villages" and does not mention "sanitary districts" or "drainage districts for sanitary purposes;" under the rule that the expression of one thing is the exclusion of another, municipal corporations organized for sanitary purposes are not subject to that section. Chicago v. Cicero, 210 Ill. 290, 71 N.E. 356, 1904 Ill. LEXIS 3065 (1904).

Equal Protection

- In General

An equal protection denial is an arbitrary and invidious discrimination that occurs when the government withholds a right, benefit, or privilege from an individual or a group without any reasonable basis. Highland Park Women's Club v. Department of Revenue, 206 Ill. App. 3d 447, 151 Ill. Dec. 435, 564 N.E.2d 890 (2 Dist. 1990), cert. denied, 139 Ill. 2d 596, 159 Ill. Dec. 107, 575 N.E.2d 914 (1991).

Some legislation may be attacked as both special legislation and violative of equal protection since it confers a benefit on one class while denying a benefit to another; however, where a benefit is conferred on one class to which no other class has a right, the legislation will be attacked only as special legislation. Illinois Polygraph Soc'y v. Pellicano, 83 Ill. 2d 130, 46 Ill. Dec. 574, 414 N.E.2d 458 (1980).

- Classifications

Legislation which confers a benefit on one class and denies the same to another may be attacked both as special legislation and as a denial of equal protection, but under either ground for challenge it is the duty of courts to decide whether classifications are unreasonable. Chicago Nat'l League Ball Club, Inc. v. Thompson, 108 Ill. 2d 357, 91 Ill. Dec. 610, 483 N.E.2d 1245 (1985).

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If the legislative classification does not bear a reasonable relationship to the purposes of the act and the evil it seeks to remedy, the statute is unconstitutional as special legislation. Illinois Polygraph Soc. v. Pellicano, 78 Ill. App. 3d 340, 33 Ill. Dec. 630, 396 N.E.2d 1354 (1 Dist. 1979), rev'd on other grounds, 83 Ill. 2d 130, 46 Ill. Dec. 574, 414 N.E.2d 458 (1980).

Section 12 of the Injunction Act, 1861 Ill. Laws p. 133, which authorizes the assessment of damages in cases where an injunction is dissolved, was not unconstitutional under Ill. Const. of 1870, Art. II, §§ 2 (now Ill. Const. (1970), Art. I, § 2), 14 and 19 and Ill. Const. of 1870, Art. IV, § 22 and Ill Const. of 1870, Art. VI, § 29; the allowance of attorney's fees to the defendant upon a dissolution of an injunction, and not to the complainant when he is successful, was not an illegal discrimination between parties litigant but a reasonable distinction. Scherzer v. Keller, 321 Ill. 324, 151 N.E. 915, 1926 Ill. LEXIS 910 (1926).

- Standards

Though the constitutional protections invoked are not identical, a claim that the special legislation provision has been violated is generally judged by the same standard that is used in considering a claim that equal protection has been denied. City of Geneva v. DuPage Airport Auth., 193 Ill. App. 3d 613, 140 Ill. Dec. 625, 550 N.E.2d 261 (2 Dist.), cert. denied, 132 Ill. 2d 544, 144 Ill. Dec. 256, 555 N.E.2d 375 (1990).

Courts considering special legislation challenges employ the same test used in equal protection challenges, namely, whether the classification bears a rational relationship to a valid purpose; housing program's classifications were related to important governmental interests, and were therefore constitutional. Clayton v. Village of Oak Park, 117 Ill. App. 3d 560, 73 Ill. Dec. 112, 453 N.E.2d 937 (1 Dist. 1983).

The provision prohibiting special and local legislation is not identical to the equal protection clause, it supplements the equal protection clause, and the two provisions are generally judged according to the same standards. Maldonado v. License Appeal Comm'n, 100 Ill. App. 3d 639, 56 Ill. Dec. 145, 427 N.E.2d 225 (1 Dist. 1981).

General Laws

- In General

A law may be general notwithstanding that it may operate only in a single place where conditions necessary to its operation exist; a law is general not because it embraces all of the governed, but because it may, from its terms, embrace all who occupy a like position to those included. Bridgewater v. Hotz, 51 Ill. 2d 103, 281 N.E.2d 317 (1972).

Prohibition of former Ill. Const. art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13) of the passage of local or special laws does not mean that a law to be considered general shall affect every person and every place in the State alike; however, it simply means that a law shall operate uniformly throughout the State in all localities and on all persons in like circumstances and conditions. People ex rel Hanrahan v. Caliendo, 50 Ill. 2d 72, 277 N.E.2d 319, 1971 Ill. LEXIS 252 (1971).

The prohibition against the passage of local or special laws, does not mean that a law contained in this section in order to to be considered general, shall affect every person and every place in the state alike, but that a law shall operate uniformly throughout the state in all localities and on all persons in like circumstances and conditions. People ex rel. Vermilion County Conservation Dist. v. Lenover, 43 Ill. 2d 209, 251 N.E.2d 175 (1969).

The prohibition against the enactment of local or special laws is equivalent to a command that general laws alone shall be enacted for the purposes named. Kremers v. City of W. Chicago, 406 Ill. 546, 94 N.E.2d 337 (1950).

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A law may be general notwithstanding the fact it may operate in only a single place, where the conditions necessary to its operation exist. People ex rel Moshier v. City of Springfield, 370 Ill. 541, 19 N.E.2d 598 (1939).

The legislature has a broad discretion in making classifications for police regulation, and the requirement of the Constitution that laws shall be general does not means that every statute shall have effect upon every individual and in every locality. People v. Monroe, 349 Ill. 270, 182 N.E. 439 (1932).

If a law is general and uniform in its operation upon all persons in like circumstances, it is general in a constitutional sense, but it must operate equally and uniformly upon all brought within the relation and circumstances for which it provides. People v. Borgeson, 335 Ill. 136, 166 N.E. 451 (1929).

- Defined

A general law is one framed in general terms and restricted to no locality, operating equally upon all of a group of objects, which having regard to the purpose of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves. Department of Pub. Welfare v. Haas, 15 Ill. 2d 204, 154 N.E.2d 265 (1958).

A law general in its nature and uniform in its operation upon all persons coming within its scope is a general law. Mathews v. City of Chicago, 342 Ill. 120, 174 N.E. 35 (1930).

If a law is general, and uniform in its operation upon all persons in like circumstances, it is general in a constitutional sense, but it must operate equally and uniformly upon all brought within the relation and circumstances for which it provides; on the other hand, if the law is limited to a particular branch or designated portion of such persons, it is special. Lippman v. People, 175 Ill. 101, 51 N.E. 872, 1898 Ill. LEXIS 3326 (1898).

- Terms

A law is general not because it embraces all of the governed, but because it may, from its terms, embrace all who occupy a like position to those included. People ex rel. County of Du Page v. Smith, 21 Ill. 2d 572, 173 N.E.2d 485 (1961).

- Uniformity

A general law need not operate on all the individuals in the state but it is necessary to its validity that it operate uniformly upon all persons in the same situation, and if it does not bring within its provisions all persons and subject matter in substantially the same situation it is a local or special law. People ex rel. Hoeinghaus v. Campbell, 285 Ill. 557, 121 N.E. 183 (1918).

It does not follow that a law is not a general law because it does not operate equally upon every individual or municipal corporation in the state, but a law is a general one which operates alike upon all persons or municipal corporations in the state similarly situated. Dawson Soap Co. v. City of Chicago, 234 Ill. 314, 84 N.E. 920 (1908).

Germane

- Defined

The word germane literally means having the same parents and, like other words, the law has expanded the literary definition to mean matters never conceived of by the person or persons who originally conceived the word; Although "germane" is defined as "in close relationship, appropriate, relative, pertinent," courts have expanded the meaning of the word even further, holding that where the title of an act is general, anything germane to the subject matter passes the constitutional prohibition against special legislation. Argo High Sch. Council of Local 571 v.

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Argo Community High Sch. Dist. 217, 163 Ill. App. 3d 578, 114 Ill. Dec. 679, 516 N.E.2d 834 (1 Dist. 1987).

Hearing De Novo

It was not unreasonable for the legislature to conclude that despite the desirability of a hearing de novo, such review in municipalities of over 500,000 was simply impractical and that a review limited to the record was necessary to ensure the timely and effective discharge of the License Appeal Commission's duties; differences in the size of municipalities may raise special or unique problems in connection with many activities which justify classification. Starnawski v. License Appeal Comm'n, 101 Ill. App. 3d 1050, 57 Ill. Dec. 422, 428 N.E.2d 1102 (1 Dist. 1981).

Illustrative Cases

230 ILCS 10/11.2(a) does not violate the Illinois Constitution's special legislation clause, Ill. Const. Art. IV, § 13. Crusius v. Ill. Gaming Bd., 216 Ill. 2d 315, 297 Ill. Dec. 308, 837 N.E.2d 88, 2005 Ill. LEXIS 962 (2005).

-- Expedited Trial Court Calendar

An act allowing certain types of actions to proceed on an expedited trial court calendar was not special legislation under Ill. Const. (1970), Art. IV, § 13, (formerly Ill. Const. of 1870, Art. IV, § 22) because it applied equally to all cases, and was not a due process violation under Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2). Louisville, N. A. & C. R. Co. v. Wallace, 136 Ill. 87, 26 N.E. 493, 1891 Ill. LEXIS 951 (1891).

- Accelerated Growth Factor

House bill that authorized counties having a population between 200,000 and 1,000,000 by resolution and without referendum, to issue general obligation bonds for the construction, reconstruction or remodeling of courthouses was not substantially uniform where the "accelerated growth factor" theory was based on the average rate of increase in population in the included counties because too many excluded counties showed a rate of population increase in excess of that of the included counties; therefore, these excluded counties were discriminated against. Christen v. County of Winnebago, 34 Ill. 2d 617, 218 N.E.2d 103 (1966).

- Act for Publication of Statutes

An act of the legislature entitled "An act to provide for the publication of the general Statutes of Illinois together with all amendments" was contrary to the Constitution of the State of Illinois, in that it provided for the printing, binding, and distributing of the laws of the state and other printing by a private individual without contract or competition and without the fixing of a maximum price, and it granted to a private individual a special or exclusive privilege, immunity, and franchise. Callaghan & Co. v. Smith, 304 Ill. 532, 136 N.E. 748 (1922).

- Administrator Fees

Public administrator could not argue that former Ill. Rev. Stat., ch. 3, § 135, (see now 755 ILCS 5/27-1), discriminated between the estates of deceased World War veteran administered by individual administrators and those administered by the public administrator, in that the former is diminished to the extent of such administrator's fees while the latter is not, since he was not in any way aggrieved by such operation of the act. Crews v. Lundquist, 361 Ill. 193, 197 N.E. 768 (1935).

- Amendatory Laws

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Where the "Act in relation to suits to restrain and enjoin the disbursement of public moneys by officers of the state" was an amendatory law, and it did not purport to be complete within itself, other laws may not be amended or modified without being expressly set forth at length in the new Act. Giebelhausen v. Daley, 407 Ill. 25, 95 N.E.2d 84 (1950).

- Annexation of Land

Where a similar prior law (see now 65 ILCS 5/7-3-6), was not based on a classification which was founded on a rational difference of situation or conditions existing in the persons and objects which were the subjects of such classification, the statute fell within the constitutional prohibition against special legislation. Forsythe v. Village of Cooksville, 356 Ill. 289, 190 N.E. 421 (1934).

- Assessment of Property

Assessment of property limiting the aggregate of all the levies certified by the municipalities of county to county clerk to 5% under which the county clerk claimed the right to act was unconstitutional and void, and prayer for a writ of mandamus to compel him to compute the rates and extend the taxes due was denied. Knopf v. People ex rel. City of Chicago, 185 Ill. 20, 57 N.E. 22 (1900).

- Attorney's Fees

The allowance of attorney fees, under former Ill. Rev. Stat., ch. 40, para. 16 (see now 750 ILCS 5/508), for the prosecution of an appeal and post-judgment petitions does not conflict with the provisions of the Illinois Constitution prohibiting special and discriminatory legislation. Gilmore v. Gilmore, 74 Ill. App. 3d 831, 30 Ill. Dec. 378, 393 N.E.2d 33 (1 Dist. 1979).

The provision for allowance for attorney fees under former Ill. Rev. Stat., ch. 24, para. 73-9 (see now 65 ILCS 5/11-13-15) did not create special privileges and immunities, in violation of former Ill. Const. (1870), Art. IV, § 22 (see now this section). Pasfield v. Donovan, 7 Ill. 2d 563, 131 N.E.2d 504 (1956).

- Baseball Act

The Baseball Act (745 ILCS 38/1 et seq.), does not constitute unconstitutional special legislation. Jasper v. Chicago Nat'l League Ball Club, 309 Ill. App. 3d 124, 242 Ill. Dec. 947, 722 N.E.2d 731 (1 Dist. 1999).

- Blue Laws

Ordinance's classification of which businesses were permitted to conduct business on Sundays and which items were exempted from the Sunday ban was not unreasonable because the exemptions permitted the purchase of some items while serving a goal of promoting a day of peace and quiet. Opty's Amoco, Inc. v. Village of S. Holland, 209 Ill. App. 3d 473, 154 Ill. Dec. 260, 568 N.E.2d 260 (1 Dist. 1991), aff'd, 149 Ill. 2d 265, 172 Ill. Dec. 390, 595 N.E.2d 1060 (1992).

If the public welfare of the State of Illinois demands that all business and labor of every description, except works of necessity and charity, should cease on Sunday, the legislature has the power to enact a law requiring all persons to refrain from their ordinary calling on that day but when the legislature undertakes to single out one class of labor harmless in itself and condemn only that class, it transcends its legitimate powers and its action cannot be sustained. Eden v. People, 161 Ill. 296, 43 N.E. 1108, 1896 Ill. LEXIS 1606 (1896).

- Bonds for County Buildings

55 ILCS 5/6-3001 was not arbitrary and irrational legislation in violation of equal protection and this section prohibiting special legislation. County of Champaign v. Adams, 59 Ill. App. 3d 62, 16 Ill. Dec. 553, 375 N.E.2d 184 (4 Dist. 1978).

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Constitutional challenge to 55 ILCS 5/6-3001 based on certain home rule provisions in the 1970 Constitution was without merit. County of Champaign v. Adams, 59 Ill. App. 3d 62, 16 Ill. Dec. 553, 375 N.E.2d 184 (4 Dist. 1978).

- Breach of Promise Act

The act of 1947, relating to actions for breach of promise or agreement to marry, pursuant to former Ill. Rev. Stat., ch. 89, paras. 25 through 34 (see now 740 ILCS 15/0.01), which affected all members of the same class, and being established as the public policy of the state, on the question involved, and not being arbitrary or unreasonable, did not violate Ill. Const. (1870), Art. IV, § 22 (see now this section). Smith v. Hill, 12 Ill. 2d 588, 147 N.E.2d 321 (1958).

- Cable Television

Cable statute was not a special law, because it treated all municipalities, cable television franchisees and property owners in the same manner, and no person or entity was singled out; nor was the cable statute special legislation because it allowed a municipality to grant its right of eminent domain to a cable television franchisee for purposes of obtaining an easement. The cable statute did not violate this section. Times Mirror Cable Television v. First Nat'l Bank, 221 Ill. App. 3d 340, 164 Ill. Dec. 8, 582 N.E.2d 216 (4 Dist. 1991).

- Canal State Park Act

Section 4 of the Canal Park Act, (see now 615 ILCS 105/4), was valid under equal protection and special legislation provisions of the Illinois Constitution, as the unique circumstances surrounding construction and maintenance of the canal bridges by the United States warranted the General Assembly's enactment of § 4 to provide for maintenance of these bridges after the state accepted title to the canal, and in doing so to conform these unique circumstances to the general obligations of local governments to maintain public roads and bridges; however, if a similar situation were to arise and was not treated in a manner similar to that in which the canal, its bridges, and the communities where those bridges exist have been treated, § 4 would violate both the equal protection and special legislation provisions of the Illinois Constitution. County Bureau v. Thompson, 139 Ill. 2d 323, 151 Ill. Dec. 508, 564 N.E.2d 1170 (1990).

- Charter Corporations

A special charter corporation, organized before the 1870 Constitution, was not invalidated by the 1870 Constitution's provisions; moreover, the corporation's status as a corporation sole was also preserved by the enactment of the 1970 Constitution. Galich v. Catholic Bishop, 75 Ill. App. 3d 538, 31 Ill. Dec. 370, 394 N.E.2d 572 (1 Dist. 1979).

- Chicago Fair Housing Ordinance

Chicago Fair Housing Ordinance did not deny real estate brokers subject to its restrictions due process or equal protection of the law in violation of the Federal and State constitutions. Chicago Real Estate Bd. v. City of Chicago, 36 Ill. 2d 530, 224 N.E.2d 793 (1967).

- Child Care Act

225 ILCS 10/2.09 does not implicate a suspect or quasi suspect classification, and accordingly the appropriate standard for determining the equal protection challenge under the Illinois and federal Constitutions is whether the legislation bears a rational relationship to a legitimate governmental interest; the exemptions provided in the section do not deny equal protection or constitute special legislation. Pre-School Owners Ass'n v. Department of Children & Family Servs., 119 Ill. 2d 268, 116 Ill. Dec. 197, 518 N.E.2d 1018 (1988).

- Child Support Guidelines

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The amendment to the Illinois Marriage and Dissolution of Marriage Act (see now 750 ILCS 5/505) which established certain support guidelines was constitutional. In re Cook, 147 Ill. App. 3d 134, 100 Ill. Dec. 760, 497 N.E.2d 1029 (3 Dist. 1986).

Subsection (a) of section 505 of the Marriage and Dissolution of Marriage Act (see now 750 ILCS 5/505) is not special legislation prohibited by this section. Blaisdell v. Blaisdell, 142 Ill. App. 3d 1034, 97 Ill. Dec. 186, 492 N.E.2d 622 (1 Dist. 1986).

- Citations and Wage Deduction Proceedings

The differences between a citation proceeding and a wage deduction proceeding, what property can be reached and who it applies to, provides a rational basis for the legislature's dissimilar treatment of citations and wage deduction proceedings. In re Patterson, 216 Bankr. 413 (C.D. Ill. 1998).

- City Health Ordinance

Municipal ordinance regulating the handling and slaughtering of live poultry in retail food establishments but making no provision covering operations of retail dressed poultry dealers, or wholesale live poultry dealers was based on proper statutory authority pursuant to Revised Villages and Cities Act (former Ill. Rev. Stat., ch. 24, para. 1-1 et seq.) (see now 65 ILCS 5/1-1-1 et seq.), was designed to protect public health by imposing more stringent sanitation requirements upon a business involving the sale of food for human consumption, was reasonably designed to protect the public health, and did not violate rights guaranteed by Ill. Const. (1970), Art. I, § 2 and this section. Charles v. City of Chicago, 413 Ill. 428, 109 N.E.2d 790 (1952).

- Civil Procedures

Section 13-214 of the Code of Civil Procedure (see now 735 ILCS 5/13-214) does not violate the provisions of this section. People ex rel. Skinner v. FGM, Inc., 166 Ill. App. 3d 802, 117 Ill. Dec. 673, 520 N.E.2d 1024 (5 Dist.), appeal denied, 122 Ill. 2d 593, 125 Ill. Dec. 235, 530 N.E.2d 263 (1988), overruled on other grounds, 2314 Lincoln Park W. Condominium Ass'n v. Mann, Gin, Ebel & Frazier, Ltd., 136 Ill. 2d 302, 144 Ill. Dec. 227, 555 N.E.2d 346 (1990).

- Civil Service Act

The former Civil Service Act (see now 65 ILCS 5/10-1-1 et seq.) was not violative of equal protection, and was not special legislation. People ex rel. Sellers v. Brady, 262 Ill. 578, 105 N.E. 1 (1914).

- Clerks of Courts Act

Former provisions of the Clerks of Courts Act, Ill. Rev. Stat., ch. 25, paras. 27.2(1) and 27.2(15) (see now 705 ILCS 105/27.2a(a) and (v)) were valid under the due process, equal protection, special legislation, and uniform taxation provisions if there was a reasonable basis for the classifications created by the statute. Mlade v. Finley, 112 Ill. App. 3d 914, 68 Ill. Dec. 387, 445 N.E.2d 1240 (1 Dist. 1983).

- Colleges and Universities

The former act to revise the law in relation to universities, colleges, academies and other institutions of learning and the act of 1919 which was an amendment of 1874 which was to provide for the return to a donor of property given to any corporation mentioned, for the purpose of establishing and maintaining any institution, where the corporation was incorporated at the request of the donor, and where the property has been diverted from the purpose for which it was given, or the maintenance of the institution has become impracticable, or the corporation has misused or ceased to use its principal corporate franchise, or in case of the death of the donor, to provide for the return of the property to his heirs and, also in such case to authorize the donor or his heirs, in case of his death, to cause dissolution of the corporation, and which was to enable

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donors to educational institutions, or their heirs, to recover the property given if diverted from the designated purpose, and to cause the dissolution of the corporation for the same reason, was constitutional under former Ill. Const. (1870), Art. IV, §§ 13 and 22 (see now Ill. Const. (1970), Art. IV, § 8 and this section). People ex rel. Seeman v. Greer College, 302 Ill. 538, 135 N.E. 80 (1922).

- Commencement of Action

Where there was no reasonable basis for the restrictive provisions of either of two 1955 amendments requiring a complaint for review to be filed within 10 days following service of a copy of the decision sought to be reviewed upon the party seeking review (now 35 days), the portions of 105 ILCS 5/7-7 and former Ill. Rev. Stat., ch. 110, para. 267 (see now 735 ILCS 5/3-103) requiring a filing within 10 days were unconstitutional. Board of Educ. v. County Bd. of Sch. Trustees, 28 Ill. 2d 15, 191 N.E.2d 65 (1963).

- Construction Activities

Legislation which classified construction activities separately from other activities was upheld because plaintiff had not demonstrated why it was unreasonable or arbitrary to classify construction activities separately for purposes of the statute of limitation. People ex rel. Skinner v. Hellmuth, Obata & Kassabaum, Inc., 114 Ill. 2d 252, 102 Ill. Dec. 412, 500 N.E.2d 34 (1986).

- Construction Industry

There were sufficient differences between the industry affected, by legislation which can generally be described as the construction industry, and others to form a reasonable basis for classification. Davis v. Commonwealth Edison Co., 61 Ill. 2d 494, 336 N.E.2d 881 (1975).

- Contribution Act

Although the Contribution Act (see now 740 ILCS 100/1 et seq.) barred defendants in causes of action arising before March 1, 1978, from seeking contribution from other individuals who may also had been at fault, but did not preclude plaintiffs who might also have been partially at fault from bringing a cause of action against them, this scheme did not fall under an arbitrary or unreasonable classification. Justus v. Abex Corp., 117 Ill. App. 3d 1018, 73 Ill. Dec. 259, 454 N.E.2d 3 (1 Dist. 1983).

- Corporations

Section 1 of "An Act to prohibit corporations from practicing law," 705 ILCS 220/1, applies to any corporation which has issued a policy or undertaking of insurance, guarantee or indemnity, it operates uniformly and on all persons similarly situated and its operation is not limited to insurance companies; thus, it does not constitute special legislation. Kittay v. Allstate Ins. Co., 78 Ill. App. 3d 335, 33 Ill. Dec. 867, 397 N.E.2d 200 (1 Dist. 1979).

- County Motor Fuel Tax Law

Where the general assembly made a classification based on the rapid population growth of Du Page, McHenry, and Kane counties in northeastern Illinois and at the time the legislation was passed, these three counties were the fastest growing counties in the state and this growth created a need for building, maintenance, and repair of the counties' highway systems to a greater degree than existed in counties in other parts of the state, the County Motor Fuel Tax Law was a reasonable means by which to fund necessary transportation projects and is constitutional. Cutinello v. Whitley, 161 Ill. 2d 409, 204 Ill. Dec. 136, 641 N.E.2d 360 (1994), cert. denied, 514 U.S. 1035, 115 S. Ct. 1399, 131 L. Ed. 2d 287 (1995).

- Court of Claims Act

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Section 8(d) of the Court of Claims Act (see now 705 ILCS 505/8(d)) is not special legislation. Kane v. Board of Governors, 43 Ill. App. 3d 315, 2 Ill. Dec. 53, 356 N.E.2d 1340 (4 Dist. 1976).

- Currency Exchange Act

The Currency Exchange Act, (see now 205 ILCS 405.1 et seq.), was not unconstitutional on the grounds that it was an unreasonable exercise of the police power, that it contravened the due process clauses of the federal and state constitutions, that it violated the separation and distribution of governmental powers, nor was it an unwarranted delegation of legislative and judicial authority to an administrative agency, and it did not violate former Ill. Const. (1870), Art. IV, § 22 (see now this section) since it was not an attempt by the General Assembly to grant special privileges and franchises to individual corporations. Gadlin v. Auditor of Pub. Accounts, 414 Ill. 89, 110 N.E.2d 234 (1953).

- Dental Practice Act

The former Dental Practice Act (Ill. Rev. Stat., ch. 91, para. 60 et seq.) (see now 225 ILCS 25/1 et seq.) did not confer exclusive privileges and did not violate these constitutional provisions. Lasdon v. Hallihan, 377 Ill. 187, 36 N.E.2d 227 (1941).

Statute regulating the practice of dentistry, Ill. Laws of 1905, p. 319, does not violate the constitutional prohibition requiring the equal protection of laws found at Ill. Const. of 1870, Art. II, § 2 (now Ill. Const. (1970), Art. I, § 2), by allowing students at reputable dental colleges to perform dental operations under the supervision of competent instructors because the law operates equally and uniformly upon everyone brought within its circumstances; the reason for exempting students at reputable schools from the statute's penalties for the unlicensed practice of dentistry is that the public good and welfare is sufficiently protected by the fact that the student is at all times under the care, supervision, and control of competent instructors. Kettles v. People, 221 Ill. 221, 77 N.E. 472, 1906 Ill. LEXIS 2678 (1906).

Statute regulating the practice of dentistry, Ill. Laws of 1905, p. 319, does not violate the constitutional prohibition against special laws found at Ill. Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13), by allowing students at reputable dental colleges to perform dental operations under the supervision of competent instructors because the law was general and uniform in its application upon all persons in like circumstances. Kettles v. People, 221 Ill. 221, 77 N.E. 472, 1906 Ill. LEXIS 2678 (1906).

Statute regulating the practice of dentistry, Ill. Laws of 1905, p. 319, does not violate the constitutional prohibition against special laws found at Ill. Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13) by requiring that an applicant for the dental licensure examination produce a diploma from a dental or medical college or have lawfully practiced dentistry in another state or country for five consecutive years because the legislature has the power to prescribe the qualifications necessary to practice dentistry within the state and how those qualifications are determined; the provision allowing practicing dentists from other states to take the examination is equivalent to the qualification of producing a college diploma placed on other applicants. Kettles v. People, 221 Ill. 221, 77 N.E. 472, 1906 Ill. LEXIS 2678 (1906).

- Descent Act

Former paragraph 5 of section 1 of the Descent Act (see now 755 ILCS 5/2-1(h)) was not unconstitutional as a special law changing the law of descent. Jahnke v. Selle, 368 Ill. 268, 13 N.E.2d 980 (1938).

- Director/Officer Immunity

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Grant of immunity to directors and officers of corporation concerning work related injuries was not unconstitutional as constituting special legislation. Mier v. Staley, 28 Ill. App. 3d 373, 329 N.E.2d 1 (4 Dist. 1975).

- Dispute Resolution Act

Where fee was imposed for a court-related purpose, and there was a reasonable, nonarbitrary relationship between the purpose of the Illinois Not-for-Profit Dispute Resolution Center Act (see now 710 ILCS 20/1 et seq.), which was to improve the efficient administration of the court system, and the means adopted, imposing a $1 fee on the party initiating the litigation, did not violate due process, equal protection or the prohibition against special legislation. Wenger v. Finley, 185 Ill. App. 3d 907, 133 Ill. Dec. 782, 541 N.E.2d 1220 (1 Dist. 1989).

- Distribution of Excess Township Funds

Section authorizing proportionate distribution of excess township funds to school districts maintaining grades one through eight located wholly or partly within the town (60 ILCS 85/1) was not violative of former Ill. Const. (1870), Art. IV, § 22 (see now this section) in that the classification singling out school districts maintaining grades one to eight as recipients of surplus funds was not an arbitrary and unreasonable classification. People ex rel. Sch. Dist. No. 153 v. Wickham, 29 Ill. 2d 550, 194 N.E.2d 206 (1963).

- Domestic Relations Act

The former Domestic Relations Act (Ill. Rev. Stat., ch. 37, para. 105.1 et seq.) (see now 750 ILCS 5/101 et seq.) was not unconstitutional in violation of former Ill. Const. (1870), Art. IV, § 22 (see now this section) as a local or special law enacted for granting divorces, but was unconstitutional as a special law enacted where a general law could be made applicable, since the Domestic Relations Act applied only to one county. Hunt v. County of Cook, 398 Ill. 412, 76 N.E.2d 48 (1947).

- Drainage Code

Amendments to the Illinois Drainage Code (see now 70 ILCS 605/4-36 and 70 ILCS 605/4-37) which required reimbursement to county treasurer for the actual costs of his services did not constitute prohibited special legislation because the drainage district failed to demonstrate that the legislature acted unreasonably or arbitrarily in establishing the statutory scheme embodied by the amendments to the Code. Little v. East Lake Fork Special Drainage Dist., 166 Ill. App. 3d 209, 116 Ill. Dec. 898, 519 N.E.2d 1113 (4 Dist. 1988).

The amendments to the Drainage Code (see now 70 ILCS 605/1-1 et seq.) exempting public highways, streets and alleys from property subject to drainage district assessments did not violate the prohibition against special legislation contained in this section. East Lake Fork Special Drainage Dist. v. Village of Ivesdale, 137 Ill. App. 3d 473, 91 Ill. Dec. 948, 484 N.E.2d 507 (4 Dist. 1985).

- Dram Shop Act

Recovery against dram shop operators for injuries inflicted by an intoxicated person was entirely a legislative creation and, as such, was legitimately subject to whatever limitations the legislature imposed upon it and, as such, did not violate the state constitution's prohibition against special legislation. Stevens v. Lou's Lemon Tree, Ltd., 187 Ill. App. 3d 458, 135 Ill. Dec. 58, 543 N.E.2d 293 (1 Dist. 1989).

The statutory liability limitations imposed by the Dram Shop Act (see now 235 ILCS 5/6-21) were constitutional and did not amount to a special law. Mulhern v. Talk of the Town, Inc., 138 Ill. App. 3d 829, 93 Ill. Dec. 282, 486 N.E.2d 383 (2 Dist. 1985).

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Sections 5 and 8 of the Dramshop Act (see now 235 ILCS 5/7-5 and 235 ILCS 5/7-9), which provide for different procedures for reviewing revocation orders based on the population of the community in which the licensed premises is located, do not create an unconstitutional classification. Starnawski v. License Appeal Comm'n, 101 Ill. App. 3d 1050, 57 Ill. Dec. 422, 428 N.E.2d 1102 (1 Dist. 1981).

- Elections

Despite the substantial cost of the additional elections and diminishing of the time during which residents of the counties affected might register, Supreme Court was unable to say that the method which the General Assembly chose to provide for the elections under former Ill. Rev. Stat., ch. 34, para. 832 (see now 55 ILCS 5/2-3002), and 10 ILCS 5/4-6 and 10 ILCS 5/7-5 created invalid classifications or resulted in constitutional violations. Bridgewater v. Hotz, 51 Ill. 2d 103, 281 N.E.2d 317 (1972).

- Eminent Domain

The Department of Business and Economic Development, pursuant to the former Eminent Domain Act (Ill. Rev. Stat., ch. 47, para. 2.1 et seq.), (see now 735 ILCS 5/7-101 et seq.), could exercise control over the project of building atomic accelerator although it could have filed a formally adopted schedule as to its acquisition needs, schedule for acquiring the land, and schedule for turning the land over to the federal government. Department of Bus. & Economic Dev. v. Phillips, 43 Ill. 2d 28, 251 N.E.2d 170 (1969).

Former Ill. Rev. Stat., ch. 122, para. 32-30, (see now 105 ILCS 5/32-4.13), applied alike to all special charter districts and was thus uniform in its application and was not invalid under our this section. City of Waukegan v. Stanczak, 6 Ill. 2d 594, 129 N.E.2d 751 (1955).

- Fire Department Vehicles

Former Ill. Rev. Stat., ch. 70, para. 9 (see now 740 ILCS 75/1), which granted to a person injured by a fire department vehicle a cause of action not enjoyed by one injured by a vehicle used by a city in performing other governmental functions, since vehicles used by municipalities in extinguishing fires carry hose, pumps, ladders and other equipment, they are large and heavy, occupy more space of the street in traveling, and usually consist of several units, one following the other, and go to their destination with as much speed as the emergency may require, and there may be more danger to life and property in the operation of vehicles than of the ordinary automobiles or trucks of other departments of the city, there was a reasonable basis under former Ill. Const. (1870), Art. IV, § 22 (see now this section) for making a law applicable to operating fire department vehicles without including those of other departments of a municipality. Bryan v. City of Chicago, 371 Ill. 64, 20 N.E.2d 37 (1939).

- Fire Protection District Act

Section 14.14 of the Fire Protection District Act (70 ILCS 705/14.14) violates this section. In re Village of Vernon Hills, 265 Ill. App. 3d 46, 202 Ill. Dec. 504, 637 N.E.2d 1240 (2 Dist.), appeal granted, 158 Ill. 2d 552, 206 Ill. Dec. 836, 645 N.E.2d 1358 (1994), aff'd, 168 Ill. 2d 117, 212 Ill. Dec. 883, 658 N.E.2d 365 (1995).

- Firearms Range Liability

Statute providing certain types of immunity to firearm range owners and operators for liability under noise restrictions did not deny neighbors a certain remedy, because the operators did face possible liability under other theories, nor was it special legislation denying the neighbors equal protection, because it passed the rational basis test. Miller v. Fulton County Zoning Bd. of Appeals, 337 Ill. App. 3d 210, 271 Ill. Dec. 600, 785 N.E.2d 532, 2003 Ill. App. LEXIS 121 (3 Dist. 2003).

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- Fishing Licensing Laws

A law providing that any person desiring to fish in any of the waters within the jurisdiction of this state, with hoop net or with seine or trammel net, shall first obtain a license from a city or county clerk, who are authorized to issue such license and that the fish commissioners shall prescribe a uniform style and pattern of metal tags which shall be attached to hoop nets and each 100 yards of seine or less, or trammel nets, in such manner as to be at all times exposed to public view was held an invalid Local and Special law under former Ill. Const. (1870), Art. IV, § 22 (see now this section). People v. Wilcox, 237 Ill. 421, 86 N.E. 672 (1908).

- Foreign Exchange

Provision of statute governing foreign exchange, which provided that an application for a license must be accompanied by a bond of an applicant with a solvent and responsible surety, did not violate Ill. Const. of 1870, Art. IV, § 22 because the business of dealing in foreign exchange was impressed with a public interest and was subject to government regulation. Italia America Shipping Corp. v. Nelson, 323 Ill. 427, 154 N.E. 198, 1926 Ill. LEXIS 1013 (1926).

- Garnishment of Wages

City was not exempt from complying with wage assignment, granted in favor of ex-wife in satisfaction of certain alimony and child support obligations owed to her by her ex-husband, an employee of the city, and was liable for the amounts which it failed to withhold between the date of the service of the assignment and the date of its order. Fair v. City of Chicago, 45 Ill. App. 3d 240, 3 Ill. Dec. 914, 359 N.E.2d 773 (1 Dist. 1977).

- Governmental Tort Immunities

Section 3-106 of the Local Governmental and Governmental Employees Tort Immunity Act (see now 745 ILCS 10/3-106) did not violate this section. Sullivan v. Midlothian Park Dist., 51 Ill. 2d 274, 281 N.E.2d 659 (1972).

745 ILCS 10/9-103, a provision of the Local Governmental and Governmental Employees Tort Immunity Act, was found neither arbitrary nor unreasonable, and did not violate former Ill. Const. (1870), Art. IV, § 22 (see now this section). Sullivan v. Midlothian Park Dist., 51 Ill. 2d 274, 281 N.E.2d 659 (1972).

- Hazing Act

Because there is a rational basis for limiting the reach of the Hazing Act (720 ILCS 120/0.01 et seq.) since it is reasonable to assume that most hazing occurs in colleges, universities and other schools, the Act does not violate equal protection or the limitation on special legislation. People v. Anderson, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461, cert. denied, 506 U.S. 866, 113 S. Ct. 193, 121 L. Ed. 2d 136 (1992).

The Hazing Act (720 ILCS 120/0.01 et seq.) does not promote arbitrary enforcement and is not unconstitutionally vague. People v. Anderson, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461, cert. denied, 506 U.S. 866, 113 S. Ct. 193, 121 L. Ed. 2d 136 (1992).

- Health Care Provider Immunity

The statutory immunity granted to a health care provider under the Voluntary Health Services Plans Act (215 ILCS 165/1 et seq.) does not violate special legislation or the equal protection clause of the state Constitution. Jolly v. Michael Reese Health Plan Found., 225 Ill. App. 3d 126, 167 Ill. Dec. 448, 587 N.E.2d 1063 (1 Dist. 1992).

- Health Services Corporation

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Statute providing for the grant of immunity for voluntary health service plan corporations, (215 ILCS 165/1 et seq.), did not violate this provision against special legislation as a rational basis existed for providing it a grant of immunity from liability which was denied other health care providers. Brown v. Michael Reese Health Plan, Inc., 150 Ill. App. 3d 959, 104 Ill. Dec. 170, 502 N.E.2d 433 (1 Dist. 1986).

- Hospital Districts

The 1999 amendment to 70 ILCS 910/10, which pertained to detachment and contains a limited 24 month time period, does not constitute improper special legislation. In re Detachment of Land v. Morrison Community Hosp. Dist., 318 Ill. App. 3d 922, 251 Ill. Dec. 796, 741 N.E.2d 683, 2000 Ill. App. LEXIS 1016 (3 Dist. 2000).

- Hospital Tax

A similar prior provision authorized the levy of the hospital tax and centum in cities having a population of over 1,500 inhabitants had the effect of dividing cities into two classes - those having over 1,500 inhabitants and those having less than that number was not special legislation, and was not obnoxious to former Ill. Const. (1870), Art. IV, § 22 (see now this section). People ex rel. Johnson v. DeKalb & Great W. Ry., 256 Ill. 290, 100 N.E. 242 (1912).

- Hotel Room Attendants

820 ILCS 140/3.1 is not special legislation under Ill. Const. (1970), Art. IV, § 13 or violative of equal protection under the United States or Illinois constitutions because it applies only to hotels in Cook County. The legislature could have rationally concluded that the statute would protect hotel room attendants from overwork in the jurisdiction where the majority of such employees would be affected and in the one best positioned to absorb the costs of the new regulations. Ill. Hotel & Lodging Ass'n v. Ludwig, 374 Ill. App. 3d 193, 311 Ill. Dec. 833, 869 N.E.2d 846, 2007 Ill. App. LEXIS 537 (1 Dist. 2007), appeal denied, 225 Ill. 2d 633, 875 N.E.2d 1111, 2007 Ill. LEXIS 1494 (2007).

- Illegal Voter Classification

10 ILCS 5/17-15 created an arbitrary classification of voters under former Ill. Const. (1870), Art. IV, § 22 (see now this section) who were paid either wages or salaries as distinguished from the pieceworker, the salesman, the self-employed, and those who worked for fees or commissions as it singled out who would be paid for voting. Heimgaertner v. Benjamin Elec. Mfg. Co., 6 Ill. 2d 152, 128 N.E.2d 691 (1955).

- Illinois Credit Agreements Act

The purpose of the Credit Agreements Act (815 ILCS 160/0.01 et seq.) is to protect depositors of financial institutions, not merely the special interests of the institutions themselves and therefore does not violate equal protection. Nordstrom v. Wauconda Nat'l Bank, 282 Ill. App. 3d 142, 218 Ill. Dec. 102, 668 N.E.2d 586 (2 Dist 1996).

- Illinois Housing Development Act

The 1979 amendment to the Illinois Housing Development Act (20 ILCS 3805/22(b)) did not constitute special legislation in violation of this section. Illinois Hous. Dev. Auth. v. Van Meter, 82 Ill. 2d 116, 45 Ill. Dec. 18, 412 N.E.2d 151 (1980).

- Immunity

The distinction between a fireman operating a motor vehicle while engaged in the performance of his duties and other municipal employees operating motor vehicles while engaged in the performance of their duties, or between such fireman and the operators of other emergency vehicles, which prevents the section granting immunity to firemen from being discriminatory and

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unconstitutional is based upon the greater necessity for haste and the greater danger from delay in the fighting of fire; the only consistent and constitutional construction of this immunity provision of the statute, therefore, is that the immunity granted extends only to firemen operating motor vehicles while engaged in fire fighting or in the performance of duties directly relating thereto under former Ill. Rev. Stat., ch. 24, para. 1-13 (see now this section). Hansen v. Raleigh, 391 Ill. 536, 63 N.E.2d 851 (1945).

- Income Tax Act

An appellate court has the authority to invalidate legislation only when it violates a provision of the federal or state Constitutions or violates the mandate of a state or federal statute, and therefore appellate court could not invalidate the Illinois Income Tax Act of 1969 (see now 35 ILCS 5/101 et seq.) on the grounds that its enactment violated a rule of the legislative body. Durjak v. Thompson, 144 Ill. App. 3d 594, 98 Ill. Dec. 467, 494 N.E.2d 589 (1 Dist. 1986).

- Indemnity

Amendment to former Counties Act, Ill. Rev. Stat., ch. 34, para. 301.1 et seq. (see now 55 ILCS 5/5-1002), which exempted counties from liability for personal injuries, property damage and death caused by negligence of one of its agents was special legislation violative of former Ill. Const. (1870), Art. IV, § 22 (see now this section). Hutchings v. Kraject, 34 Ill. 2d 379, 215 N.E.2d 274 (1966).

The fact that police officer, upon payment of judgment, would receive a vicarious benefit as a creditor of plaintiff did not vitiate indemnification provisions of former Ill. Rev. Stat., ch. 24, para 1-15 (see now 65 ILCS 5/1-4-5) as unconstitutional special legislation. Karas v. Snell, 11 Ill. 2d 233, 142 N.E.2d 46 (1957).

- Industrial Home Work Act

Paragraph G of § 2 of the Industrial Home Work Act (see now 820 ILCS 240/2), which prohibited the processing of metal springs by home workers, was unconstitutional. Figura v. Cummins, 4 Ill. 2d 44, 122 N.E.2d 162, 26 Lab. Cas. (CCH) P68,743 (1954).

- Insurance Code

Section 155 of the Illinois Insurance Code (215 ILCS 5/155) is not special legislation or violative of equal protection. Mazur v. Hunt, 227 Ill. App. 3d 785, 169 Ill. Dec. 848, 592 N.E.2d 335 (1 Dist. 1992).

Attorney Fees section of the Insurance Code (see now 215 ILCS 5/155) does not constitute unconstitutional special legislation, nor does it deprive plaintiffs of their right to trial by jury. Kaniuk v. Safeco Ins. Co., 142 Ill. App. 3d 1070, 97 Ill. Dec. 156, 492 N.E.2d 592 (1 Dist. 1986).

Act of June 19, 1891, which prohibits life insurance companies from discriminating between their insureds, does not violate constitutional provisions prohibiting the deprivation of property without due process of law and prohibiting local or special laws granting any corporation a special or exclusive privilege, immunity, or franchise merely because the Act excludes fraternal associations; because the primary object of fraternal associations is to furnish assistance to members rather than to create a profit, a fraternal association is so different from a life insurance company that the State does not act arbitrarily when it classifies the two entities differently for the purpose of regulation. People v. Commercial Life Ins. Co., 247 Ill. 92, 93 N.E. 90, 1910 Ill. LEXIS 1826 (1910).

- Insurance Compensation

Illinois Insurance Guaranty Fund was granted summary judgment on a closely-held corporation's claims that 215 ILCS 5/534.3(b)(iv) violated the Special Legislation Clause of the Illinois Constitution; where the exclusion was merely an eligibility requirement that determined whether

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an insured was qualified for the benefits provided by the Illinois Insurance Guaranty Fund Act, 215 ILCS 5/532 et seq., the Act was not intended to render the Fund absolutely liable to policyholders due to the insolvency of their insurance companies, and, as a result, the exclusion was not arbitrary simply because it transcended traditional notions of corporate separateness and liability. Cresswood Farm, Inc. v. Ill. Ins. Guar. Fund, F. Supp. 2d , 2004 U.S. Dist. LEXIS 6725 (N.D. Ill. Apr. 16, 2004).

Former article XXXV of the Insurance Code entitled "Compensation of Automobile Accident Victims," former Ill. Rev. Stat., ch. 73, para. 1065.150 et seq. (now repealed), was held to be unconstitutional as being an inappropriate special law. Grace v. Howlett, 51 Ill. 2d 478, 283 N.E.2d 474 (1972).

- Judicial Election Classification

Descriptive classifications relating to Chicago and the remaining territory of Cook County outside the corporate limits of Chicago contained in the so-called Attrition Statute, Ill. Rev. Stat., ch. 37, para. 72.41 (see now 705 ILCS 40/2) did not constitute impermissible special legislation under former Ill. Const. (1870), Art. IV, § 22 (see now this section). Hirschfield v. Barrett, 40 Ill. 2d 224, 239 N.E.2d 831 (1968).

- Jury Instructions

Former sections 72 and 73 of the Practice Act (see now 735 ILCS 5/2-1107), concerning charging the jury, was a proper subject of legislative enactment under the authority of former Ill. Const. (1870), Art. IV, § 22 (see now this section). People v. Kelly, 347 Ill. 221, 179 N.E. 898 (1931).

- Landlord and Tenant Act

Former Ill. Rev. Stat., ch. 80, para. 15a (see now 765 ILCS 705/1) violated former Ill. Const. (1870), Art. IV, § 22 (see now this section) because it in effect granted immunity to governmental units and regulated corporations in an unconstitutional manner and was therefore void. Sweney Gasoline & Oil Co. v. Toledo, P. & W. R.R., 42 Ill. 2d 265, 247 N.E.2d 603 (1969).

- Lending Organizations

An association formed under an act to enable associations of persons to become a body corporate to raise funds to be loaned only among its members did not violate this section. Holmes v. Smythe, 100 Ill. 413 (1881).

- Liability Coverage for Rented Vehicles

The failure of former Ill. Rev. Stat., ch. 95 1/2, para. 8-118 (see now 625 ILCS 5/9-105) to require liability coverage for injury or death to occupants of a rented vehicle did not create an arbitrary and discriminatory classification, which would render the clause excluding occupants unconstitutional as special legislation under former Ill. Const. (1870), Art. IV, § 22 (see now this section) and as a denial to occupants of equal protection under the United States Constitution. McRoberts v. Adams, 60 Ill. 2d 458, 328 N.E.2d 321 (1975).

- Libraries

Section 13 of the former Library Act (see now 75 ILCS 5/1-0.1 et seq.), in fixing different maximum tax-rate limitations for cities, towns, and villages of substantially the same population without any reasonable basis for the classification, violated constitutional provisions prohibiting special legislation. Kremers v. City of W. Chicago, 406 Ill. 546, 94 N.E.2d 337 (1950).

- Limitations Period

Plaintiff 's bald assertion that the two year limitations period for injuries contained in 735 ILCS 5/13-214(a) resulted from activities of those in construction was unreasonable, and did not suffice

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to overcome the presumption of the section's constitutional validity. Calumet Country Club v. Roberts Envtl. Control Corp., 136 Ill. App. 3d 610, 91 Ill. Dec. 267, 483 N.E.2d 613 (1 Dist. 1985).

- Liquor Control Act

Because, under 235 ILCS 5/7-5, licensees whose liquor licenses had been revoked and who appealed to the state commission were permitted to resume the operation of their business pending decision by the reviewing agency, but licensees whose appeals went go to the License Appeal Commission were not afforded a similar privilege, the portion of the section which sanctioned this distinction violated former Ill. Const. (1870), Art. IV, § 22 (see now this section) because there was no rational basis for the difference in the treatment of licensees, which turned upon a difference in the population of the municipality in which the licensed premises were located and it was totally unrelated to the quality of the misconduct which brought about the revocation. Johnkol, Inc. v. License Appeal Comm'n, 42 Ill. 2d 377, 247 N.E.2d 901 (1969).

- Local Government Tort Claims

The provision prohibiting special privileges and immunities and special laws in former Ill. Const. (1870), Art. IV, § 22 (see now this section) did not bar any differentiation in notice requirements between tort claims against private citizens and those against governmental entities as provided in the Local Governmental and Governmental Employees Tort Immunity Act (Ill. Rev. Stat., ch. 85, paras. 8-102 and 8-103). King v. Johnson, 47 Ill. 2d 247, 265 N.E.2d 874 (1970).

- Malicious Prosecution

735 ILCS 5/2-109, which eliminates the requirement to plead or prove special injury for certain malicious prosecution plaintiffs, does not violate the prohibition against special legislation set forth in Ill. Const. Art. IV, § 13 since the classification contained in the statute is rationally related to the legitimate governmental interest of curtailing frivolous medical malpractice actions. Miller v. Rosenberg, 196 Ill. 2d 50, 255 Ill. Dec. 464, 749 N.E.2d 946, 2001 Ill. LEXIS 473 (2001).

- Marriage and Dissolution of Marriage Act

It is not special legislation to provide clients with safeguards against the potential for exploitation created by the unique power 750 ILCS 5/508 has given to divorce attorneys. Kaufman, Litwin & Feinstein v. Edgar, 301 Ill. App. 3d 826, 235 Ill. Dec. 183, 704 N.E.2d 756 (1 Dist. 1998), appeal denied, 182 Ill. 2d 551, 236 Ill. Dec. 670, 707 N.E.2d 1240 (1999).

- Mechanics Lien Act

Section 13 of the Mechanics Lien Act of 1903, which allowed mechanic lien holders second chance to recover at law, was held unconstitutional because it was special legislation, and because it deprived a defendant of the right to a trial by jury. Turnes v. Brenckle, 249 Ill. 394, 94 N.E. 495 (1911).

- Medical Malpractice Claims

Healing art malpractice section of the Code of Civil Procedure (735 ILCS 5/2-622) does not violate the equal protection and due process clauses of the Federal and State Constitutions nor is it special legislation in violation of this section. DeLuna v. St. Elizabeth's Hosp., 147 Ill. 2d 57, 167 Ill. Dec. 1009, 588 N.E.2d 1139 (1992).

- Medical Malpractice Legislation

The procedures for review panels in cases of healing art malpractice, set out in former Ill. Rev. Stat., ch. 110, paras. 2-1012 through 2-1020 (now repealed), were unconstitutional. Bernier v. Burris, 113 Ill. 2d 219, 100 Ill. Dec. 585, 497 N.E.2d 763 (1986).

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- Medical Malpractice Limitations Period

The four-year limitation period provided in former Ill. Rev. Stat., ch. 83, para. 22.1 (see now 735 ILCS 5/13-212) did not violate the due process, equal protection, and special legislation provisions of the Illinois Constitution. Anderson v. Wagner, 61 Ill. App. 3d 822, 19 Ill. Dec. 190, 378 N.E.2d 805 (4 Dist. 1978), aff'd, 79 Ill. 2d 295, 37 Ill. Dec. 558, 402 N.E.2d 560 (1979), appeal dismissed, 449 U.S. 807, 101 S. Ct., 54 66 L. Ed. 2d 11 (1980).

- Mental Health

Former provisions of the Mental Health Code (Ill. Rev. Stat., ch. 91 1/2, paras. 9-19 to 9-25) (see now 405 ILCS 5/5-105 to 405 ILCS 5/5-115) which provided for making charges against the estate or relatives of state mental patients and excluded patients in custody on criminal charges, were not arbitrary classifications in violation of the equal protection of the laws and due process of law guarantees U.S. Const., Amend. 14, nor did they constitute legislation in violation of this section, forbidding special legislation granting any special privilege or immunity, but instead was a valid exercise of the discretion vested in the legislature to make a distinction between criminal patients and those who are not criminal. Kough v. Hoehler, 413 Ill. 409, 109 N.E.2d 177 (1952).

- Metropolitan Airport Authority

Even though only one county fell within the classifications in "An Act in relation to airport authorities" (70 ILCS 5/2.7), the section did not violate the equal protection clause and was not special legislation because there was evidence that the airport in that county was different from other reliever airports and that its needs and opportunities were unique and unlike the needs and opportunities facing other reliever airports and thus the separate treatment of that airport was justified. City of Geneva v. DuPage Airport Auth., 193 Ill. App. 3d 613, 140 Ill. Dec. 625, 550 N.E.2d 261 (2 Dist.), cert. denied, 132 Ill. 2d 544, 144 Ill. Dec. 256, 555 N.E.2d 375 (1990).

- Metropolitan Transit Authority Act

Section 27 of the Metropolitan Transit Authority Act (see now 70 ILCS 3605/27) does not violate the equal protection guarantee and the proscription against special legislation because it differentiates between the Chicago Transit Authority and other municipal entities with respect to liability for negligence in protecting persons from criminal attacks of third parties. Bilyk v. Chicago Transit Auth., 125 Ill. 2d 230, 125 Ill. Dec. 822, 531 N.E.2d 1 (1988).

Notice provision of the Metropolitan Transit Authority Act (see now 70 ILCS 3605/41) was constitutional where it was clear that a reasonable basis existed for the classification made by the General Assembly in requiring that notice of an accident be given defendant within six months and that actions for personal injuries be commenced within one year from the date the injury. Schuman v. Chicago Transit Auth., 407 Ill. 313, 95 N.E.2d 447 (1950).

- Minimum Wage Acts

Former Policemen's and Firemen's Minimum Wage Acts (see now 65 ILCS 5/10-3-1 and 65 ILCS 5/10-3-2) were not unconstitutional; they did not create a corporate debt in violation of former Ill. Const. (1870), Art. IX, § 10 (see Ill. Const. (1970), Art. VII, § 7) and were not special legislation in contravention of former Ill. Const. (1870), Art. IV, § 22 (see now this section). Morgan v. City of Rockford, 375 Ill. 326, 31 N.E.2d 596 (1940); People ex rel. Bielfeldt v. Gannon, 375 Ill. 504, 31 N.E.2d 954 (1941).

- Mobile Home Parks

Because of the special treatment surrounding the establishment and continued occupation of a mobile home dwelling, separate classification and regulation of mobile home parks is rationally related to the legitimate governmental interest of protecting tenants renting lots in those parks; therefore, 765 ILCS 745/8 did not violate the special legislation provision of the Illinois

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Constitution. Beeding v. Miller, 167 Ill. App. 3d 128, 117 Ill. Dec. 707, 520 N.E.2d 1058 (2 Dist.), cert. denied, 122 Ill. 2d 569, 125 Ill. Dec. 211, 530 N.E.2d 239 (1988), 489 U.S. 1096, 109 S. Ct. 1569, 103 L. Ed. 2d 935 (1989).

- Motor Vehicle Laws

Former section 20a of the Motor Vehicle Act (see now 625 ILCS 5/10-301) which permitted a summons to be filed with the Secretary of State, was not unconstitutional; it did not constitute taking of property without due process of law, and was not class legislation. Hale v. Kinsey, 408 Ill. 282, 96 N.E.2d 577 (1951).

Where no reasonable basis existed for the classification made by ordinance requiring certain motor vehicles to be equipped with a special front bumper designed to prevent pedestrian injuries, unreasonably discriminated between persons similary situated and was in violation of former Ill. Const. (1870), Art. II, § 2 (see now Ill. Const. (1970), Art. I, § 2) and former Ill. Const. (1870), Art. IV, § 22 (see now this section), as well as U.S. Const., Amend. 14. Consumers Co. v. City of Chicago, 298 Ill. 339, 131 N.E. 628 (1921).

A law that provided that in an action for injury caused by running a motor vehicle at an excessive speed, a prima facie case was made by proving the injury and speed, was not violative of this section. Hartje v. Moxley, 235 Ill. 164, 85 N.E. 216 (1908).

- Motor Vehicle Registration Fees

625 ILCS 5/2-119 did not violate the constitutional provisions regarding due process, equal protection, uniform taxation, or special legislation. Day v. Regional Transp. Auth., 66 Ill. 2d 533, 6 Ill. Dec. 882, 363 N.E.2d 829 (1977).

- Municipal Bonds

Even though it was limited to industrial or manufacturing plants and to non-home-rule municipalities, the Industrial Project Revenue Bond Act (65 ILCS 5/11-74-1) did not violate the equal protection clause of Ill. Const. (1970), Art. I, § 2, nor did it constitute special legislation under this section. People ex rel. City of Salem v. McMackin, 53 Ill. 2d 347, 291 N.E.2d 807 (1972).

- Municipal Employees

65 ILCS 5/10-3-8 does not create an unreasonable classification for municipal employees and is valid under former Ill. Const. (1870), Art. IV, § 22 (see now this section). Illinois Ass'n of Fire Fighters v. City of Waukegan, 37 Ill. 2d 423, 226 N.E.2d 606 (1967).

- Municipal Ordinances

Ordinance standardizing the weight of bread loaves sold within the city is not special legislation within the meaning of the constitutional prohibition against such legislation because the ordinance is general in its terms and applies to all persons in the city who are engaged in the making and sale of bread by the loaf; the fact that the ordinance did not affect persons who are engaged in manufacturing or selling other food products does not change this result. Chicago v. Schmidinger, 243 Ill. 167, 90 N.E. 369, 1909 Ill. LEXIS 2340 (1909).

A municipal ordinance requiring those engaged in the business of exhibiting moving pictures to secure a permit for the exhibition of such pictures, and providing that the chief of police shall not issue a permit for the exhibition of any obscene or immoral picture or series of pictures, and providing that the chief of police shall not issue a permit for the exhibition of any obscene or immoral picture or series of pictures but that he shall issue a permit, without fee or charge, for all pictures which are not obscene or immoral, and declaring that it shall be unlawful for any persons, firms, or corporations to show or exhibit in a public place, or in a place where the public is admitted, any picture or series of pictures of the classes or kinds commonly shown in

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kinetoscopes, cinematographs, and such pictures or series of pictures as well commonly shown or exhibited in so-called penny arcades, and in all other automatic or moving picture devices, without first having secured a permit therefor from the chief of police did not violate former Ill. Const. (1870), Art. IV, § 22 (see now this section). Block v. City of Chicago, 239 Ill. 251, 87 N.E. 1011 (1909).

- Municipal Transit Authorities

This section, concerning which no local or special laws can be passed, does not include the subject of municipally owned transit authorities. Schuman v. Chicago Transit Auth., 407 Ill. 313, 95 N.E.2d 447 (1950).

- Noise Pollution

Section governing nighttime noise pollution (see now 415 ILCS 5/25), and ordinance disallowing nighttime athletic events in stadium or playing field and containing more than 15,000 seats where any seats are located within 500 feet of 100 more dwelling units, did not violate separation of powers, equal protection or special legislation provisions of the Constitution. Chicago Nat'l League Ball Club, Inc. v. Thompson, 108 Ill. 2d 357, 91 Ill. Dec. 610, 483 N.E.2d 1245 (1985).

- Notice

1971 amendment to former 35 ILCS 205/263 (see now 35 ILCS 200/22-10 through 35 ILCS 200/22-25) was applicable even though it was not yet in publication when a purchaser's notice was sent and the owner had no means of knowing about it; an act needs no promulgation to take effect. Knoll Dev. Co. v. John Allan Co., 12 Ill. App. 3d 12, 297 N.E.2d 213 (1973).

- Notice to Transit Authority

Provision requiring notice to transit authority (70 ILCS 3605/41) is not unconstitutional and does not violate equal protection and due process. Repaskey v. Chicago Transit Auth., 9 Ill. App. 3d 897, 293 N.E.2d 440 (1 Dist. 1973), aff'd, 60 Ill. 2d 185, 326 N.E.2d 771 (1975).

- Obligation of Contract

Act which provided a penalty for the exhibition to a prospective purchaser or lessee of a lease which did not fairly state the rent being paid because of a rent concession, unless the legend "Concession granted" was stamped across the face of the lease and a memorandum of the amount, extent and nature of the concession was written upon the margin thereof, was not a special privilege, nor did not impair the obligation of contract. People v. Rice, 323 Ill. 580, 154 N.E. 427 (1926).

- Occupation Disease Act

The former Occupational Disease Act of 1911 did not bestow any special privilege by special legislation. First Nat'l Bank v. Wedron Silica Co., 351 Ill. 560, 184 N.E. 897 (1933).

- Open Meetings Act

The Open Meetings Act (see now 5 ILCS 120/1 et seq.) was not designated special legislation even though it did not apply to the General Assembly where the defendants had not shown the distinction made by the General Assembly was arbitrary, unreasonable, and bore no rational relationship to a legitimate governmental interest. People ex rel. Difanis v. Barr, 78 Ill. App. 3d 842, 34 Ill. Dec. 223, 397 N.E.2d 895 (4 Dist. 1979), aff'd, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).

- Optometry

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Those practicing medicine and dentistry do not come within the same circumstances as optometrists; thus former Ill. Rev. Stat., ch. 91, para. 105.1 et seq., (see now 225 ILCS 80/1 et seq.) which clearly defined the practice of optometry, and operated equally and uniformly upon all brought within that relation and circumstance, was not "special" as prohibited by former Ill. Const. (1870), Art. IV, § 22 (see now this section). Klein v. Department of Registration & Educ., 412 Ill. 75, 105 N.E.2d 758 (1952).

Legislative enactment requiring the preservation of optometric records for a period of three years under the former Optometric Practice Act, Ill. Rev. Stat., ch. 91 1/2, para. 105.1 et seq.) (see now 225 ILCS 80/1 et seq.), has a definite relation to the public health and welfare, constituted a valid exercise of the state's police power and was not a violation of former Ill. Const. (1870), Art. IV, § 22 (see now this section). Klein v. Department of Registration & Educ., 412 Ill. 75, 105 N.E.2d 758 (1952).

- Organization of School District

An Act which provided for the organization into a high school district of any school township containing a school district of a certain population was deemed unconstitutional under this section as conferring a special privilege upon such township. Fisher v. McIntosh, 115 N.E. 529 (1917).

- Park District Code

Former Ill. Rev. Stat., ch. 105, para. 3-12 of the Park District Code (see now 70 ILCS 1205/3-13) afforded equal protection to all persons affected by it, inasmuch as it required the same means and methods for disconnection be employed by any persons seeking disconnection; the section operated uniformly upon all persons similarly situated, and no particular right, privilege or immunity was granted the petitioner that was not likewise conferred upon others in like situation. In re Worth-Palos Park Dist., 50 Ill. App. 3d 356, 8 Ill. Dec. 327, 365 N.E.2d 565 (1 Dist. 1977).

- Park District Immunity

Statute granting immunity to park districts (former Ill. Rev. Stat., ch. 105, para. 12.1-1, now repealed) was arbitrary, and unconstitutionally discriminated against plaintiff injured on a slide in park district, and, therefore, violated former Ill. Const. (1870), Art. IV, § 22 and Art. II, § 19 (see now this section and Ill. Const (1970), Art. I, § 12). Harvey v. Clyde Park Dist., 32 Ill. 2d 60, 203 N.E.2d 573 (1964).

- Pension Code

Provision of the Illinois Pension Code, (see now 40 ILCS 5/5-212), which permitted the pensions of any police officer who had served in the armed forces to be computed after being placed on the civil service eligibility list but before being certified did not violate this section. Lee v. Retirement Bd. of the Policemen's Annuity & Benefit Fund, 22 Ill. App. 3d 600, 317 N.E.2d 758 (1 Dist. 1974).

Fact that the title to the Pension Code makes no reference to the abolition of the common-law remedy, whereas 40 ILCS 5/22-307 abolishes such remedy does not render the abolition void in contravention of this section. Sweeney v. City of Chicago, 131 Ill. App. 2d 537, 266 N.E.2d 689 (1 Dist. 1971).

- Pesticide Ordinance

Where complaint that village ordinance regulating the use, and application of pesticides failed to state a cause of action for violation of the equal protection clauses of U.S. Const., Amend. 14 and Ill. Const. (1970), Art. I, § 2, it also failed to state a cause of action for violation of this section. Pesticide Pub. Policy Found. v. Village of Wauconda, 622 F. Supp. 423 (N.D. Ill. 1985), aff'd, 826 F.2d 1068 (7th Cir. 1987).

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- Plumbing License Law

The licensure requirement of the Plumbing License Law (225 ILCS 320/1 et seq.) is rationally related to a legitimate state goal and does not violate due process guarantees or the prohibition against special legislation. People ex rel. Lumpkin v. Cassidy, 184 Ill. 2d 117, 234 Ill. Dec. 389, 703 N.E.2d 1 (1998).

- Police Power

As the trade of a barber brings him in direct contact with the persons of his patrons, and careless and unsanitary practices in his trade may induce diseases of the skin, it cannot be said that the reasonable regulation of the trade of a barber has no relation to the health and safety of the public; such regulation is therefore within the scope of the police power which the state inherently possesses to restrain and control the exercise of private rights in such manner as may be necessary and appropriate to promote the public health, safety, and welfare. People v. Logan, 284 Ill. 83, 119 N.E. 913 (1918).

In granting a license to conduct a place of public amusement subject to regulation and the police power, a provision that the licensee shall not enter into an arrangement with ticket brokers or scalpers under which the licensee and the ticket brokers or scalpers both represent that the ticket brokers or scalpers are independent dealers and owners of tickets, when in reality they are not owners, but confederates, and the ticket brokers or scalpers sell the tickets at higher prices for the joint benefit of the licensee and themselves, and by means of falsehood and misrepresentation that all tickets to a performance have been sold a portion of the public are required to pay higher prices for the same accommodations than others, the statute, former Hurd's Rev.Stat., ch. 24, § 62, para. 41 (1915-16) did not invade the rights guaranteed by this section. People ex rel. Cort Theater Co. v. Thompson, 283 Ill. 87, 119 N.E. 41 (1918).

- Pollution Control Board Permits

The classification contained in Pollution Control Board Rule which excepted certain wastewater sources from obtaining a permit was based on rational distinctions and directly aided in achieving the goals of the reduction and elimination of water pollution and was a proper exercise of the state's police power and did not violate the equal protection clauses of the Illinois and United States Constitutions, nor this section. People v. Keeven, 68 Ill. App. 3d 91, 24 Ill. Dec. 663, 385 N.E.2d 804 (5 Dist. 1979).

Pollution Control Board Rule which required that an operating permit be obtained for the use of all wastewater sources for which a construction permit was required pursuant to the regulations was not violative of the equal protection guarantees of the United States and Illinois Constitutions nor the "special legislation" provision (contained in this section) because it was designed to prevent arbitrary discrimination and did not forbid legislative classification any more than that of the equal protection clause. People v. Keeven, 68 Ill. App. 3d 91, 24 Ill. Dec. 663, 385 N.E.2d 804 (5 Dist. 1979).

- Pollution Control Subsidies

1996 amendment to 220 ILCS 5/8-403 by P.A. 89-448, which benefited owners of methane-burning plants by offering them special subsidies, to the exclusion of incinerator plants, did not violate the special legislation clause of the Illinois Constitution, Ill. Const., Art. IV, § 13. New Heights Recovery & Power, LLC v. Bower, 347 Ill. App. 3d 89, 282 Ill. Dec. 568, 806 N.E.2d 1156, 2004 Ill. App. LEXIS 219 (1 Dist. 2004), appeal denied, 209 Ill. 2d 583, 286 Ill. Dec. 166, 813 N.E.2d 223 (2004), appeal denied, 211 Ill. 2d 583, Ill. Dec. , 823 N.E.2d 967 (2004).

- Port District Act

The former Chicago Regional Port District Act, now known as the Illinois International Port District Act (70 ILCS 1810/1 et seq.) was a special law violating former Ill. Const. (1870), Art. IV, § 22

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(see now this section). People ex rel. Gutknecht v. Chicago Reginal Port Dist., 4 Ill. 2d 363, 123 N.E.2d 92 (1954).

- Possession of Firearms

In view of the state's legitimate purpose of controlling the incidence of firearm use in the commission of crime, the legislature's distinction between incorporated and unincorporated areas in 720 ILCS 5/24-1 reflects a rational differentiation between areas of higher and lower crime rates, and is not violative of this section. People v. Wilkes, 31 Ill. App. 3d 902, 334 N.E.2d 910 (1 Dist. 1975).

- Property Tax Exemption

Where prior to adoption of the state constitution prohibiting the legislature from granting any special privilege under former Ill. Const. (1870), Art. IV, § 22 (see now this section) university had been granted property tax exemption, and the income received by the university from lease of property award by it had been used solely for the educational purposes set forth in its charter, property was exempt from taxation. People ex rel. County Collector v. Northwestern Univ., 51 Ill. 2d 131, 281 N.E.2d 334 (1972).

- Public Building Commission Act

It was lawful under the Public Building Commission Act (50 ILCS 20/1 et seq.) for the Board of Education to lease a schoolhouse from the Commission, that school property be donated to the Commission, and for the city council to levy a tax to cover the costs of operation under such a lease. People ex rel. Stamos v. Public Bldg. Comm'n, 40 Ill. 2d 164, 238 N.E.2d 390 (1968).

The Public Building Commission Act (50 ILCS 20/1 et seq.) is a law which is complete in itself and has equal application to all counties and localities faced with drastic building inadequacies, and does not offend the mandate of former Ill. Const. (1870), Art. IV, § 22 (see now this section) of the Constitution which forbids the enactment of special and local laws. People ex rel. Adamowski v. Public Bldg. Comm'n, 11 Ill. 2d 125, 142 N.E.2d 67 (1957).

- Public Employee Disability Act

An amendment to section 1 of the Public Employee Disability Act (5 ILCS 345/1), which makes the provisions of the section applicable to home rule units of government containing fewer than one million persons while excluding from coverage home rule units having a greater population does not violate the equal protection guarantee or the special legislation proscription of the Illinois Constitution, as it was rational for the legislature to conclude that public safety employees heavily populated units of local government face special dangers not encountered by similar employees in other parts in Illinois. Nevitt v. Langfelder, 157 Ill. 2d 116, 191 Ill. Dec. 36, 623 N.E.2d 281 (1993).

- Public Relations Labor Act

5 ILCS 315/20(b) is not violative of the special legislation clause. Metropolitan Alliance of Police v. Illinois State Labor Relations Bd., 299 Ill. App. 3d 377, 233 Ill. Dec. 760, 701 N.E.2d 825 (3 Dist. 1998).

- Public Telephone Communications

Municipal ordinance granting telephone company the right to erect and maintain its poles and wires on the streets and public ways of the municipality, for the purpose of supplying to the citizens of said municipality public telephone communications, was not a grant of a franchise, or of special privileges, and it was not, therefore, void under former Ill. Const. (1870), Art. IV, § 22 (see now this section), which prohibited granting to any corporation any special or exclusive privilege, immunity or franchise. City of Rock Island v. Central Union Tel. Co., 132 Ill. App. 248 (2 Dist. 1907).

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- Public Utility Company

There was a reasonable basis for treating public utility differently from private corporations and for limiting its liability to subscribers in the rendering of its service; without the limitations on liability set forth by the tariff, defendant telephone company would have been uniquely vulnerable to claims based on signal transmission defects which may have resulted from a variety of causes, adversely affecting its ability to fulfill the public need for reasonable telephone service charges; this would be particularly true of defects in the transmission of signals originating from customer - provided equipment over which the company could have had little control. J. Meyer & Co. v. Illinois Bell Tel. Co., 88 Ill. App. 3d 53, 42 Ill. Dec. 942, 409 N.E.2d 557 (2 Dist. 1980).

- Quick-Take

The consolidating amendment in 1968 that included the 1967 amendments to the quick-take provisions (former Ill. Rev. Stat., ch. 47, para. 2.1 et seq.) (see now 735 ILCS 5/7-101 et seq.), did not supersede or supplant the authority that had been conferred upon the Department of Business and Economic Development to take land and turn over to the federal government by the 1967 amendment. Department of Bus. & Economic Dev. v. Phillips, 43 Ill. 2d 28, 251 N.E.2d 170 (1969).

- Redistricting

Where the appellate court found at least one rational basis for the legislature's action, and having no reason why the legislature had to change every community college district at once as it sought to remedy the "evil" of at-large elections, plaintiff's special legislation claim was without merit. Pidgeon v. State Bd. of Elections, 234 Ill. App. 3d 490, 175 Ill. Dec. 615, 600 N.E.2d 858 (4 Dist. 1992).

- Regulation of Optometrists

Provision forbidding optometrists from accepting employment by opticians who advertise in a manner forbidden to the employed optometrist under former Ill. Rev. Stat., ch. 91, para. 105.1 et seq. (see now 225 ILCS 80/1 et seq.) was not invalid as special legislation. Roberts Optical Co. v. Department of Registration & Educ., 4 Ill. 2d 290, 122 N.E.2d 824 (1954).

- Retail Sales Tax

35 ILCS 120/2c and the reference thereto in 35 ILCS 120/1 did not expand the subject of the act beyond the act's title and, therefore, this section was not violated. Cerro Wire & Cable Co. v. Department of Revenue, 111 Ill. App. 3d 882, 67 Ill. Dec. 535, 444 N.E.2d 771 (1 Dist. 1982).

- Retirement Benefits

Amendatory act of 1951, which amended former Ill. Rev. Stat., ch. 122, para. 34-90 of the School Code (see now 105 ILCS 5/34-87), by providing for an additional emeritus payment to superintendents and teachers, was valid. Voigt v. Board of Educ., 413 Ill. 233, 108 N.E.2d 426 (1952).

- Revenue Act

Plaintiff did not meet his burden of proving that Revenue Act (35 ILCS 200/21-15 through 35 ILCS 200/21-25) was clearly unreasonable or palpably erroneous since it distinguished between counties of 1,000,000 or more inhabitants and those with less than 1,000,000 inhabitants; a classification based on population is not objectionable if it is reasonable and bears a rational relationship to the goal which the legislature seeks to accomplish. Fox v. Rosewell, 55 Ill. App. 3d 860, 13 Ill. Dec. 570, 371 N.E.2d 287 (1 Dist. 1977).

- Right of Appeal

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Former § 123 of The Practice Act of 1907 (see now Rule 307, Supreme Court Rules) was not a special law prohibited by Ill. Const. (1870), Art. IV, § 22 (see now this section). Bagdonas v. Liberty Land & Inv. Co., 309 Ill. 103, 140 N.E. 49 (1923).

- Road Improvement Impact Fee Law

Where evidence of record showed that counties with populations greater than 400,000 suffer significantly worse traffic congestion than counties with fewer than 400,000 persons, there was a rational difference of condition upon which population classification rested and, while transportation problems may exist to a lesser degree in other parts of the state, the legislature is not bound to pass one law meeting every exigency, but may consider degrees of evil; thus, the legislature could rationally conclude that a greater need for impact fees existed in counties with populations over 400,000. Northern Ill. Home Bldrs. Ass'n v. County of Du Page, 165 Ill. 2d 25, 208 Ill. Dec. 328, 649 N.E.2d 384 (1995).

- Salary of Firemen

The former Firemens' Minimum Wage Act, Ill. Rev. Stat., ch. 24, para. 860c, (see now 65 ILCS 5/10-3-2) was not unconstitutional as constituting special legislation. People ex rel. Gramlich v. City of Peoria, 374 Ill. 313, 29 N.E.2d 539 (1940).

- Sanitarium Act

It was reasonable and proper to exclude from the 1937 version of Sanitarium Act under former Ill. Rev. Stat., ch. 23, para. 177, (see now 70 ILCS 920/1 et seq.) cities which already possessed sanitarium facilities, and such classification was not arbitrary or capricious. Kloss v. Suburban Cook County Tuberculosis Sanitarium Dist., 404 Ill. 87, 88 N.E.2d 89 (1949).

- Sanitary Districts

Public Act 77-2819, which amended certain sections and added others to "An Act to create sanitary districts in certain localities, to drain and protect the same from overflow for sanitary purposes and to provide for sewage disposal," (70 ILCS 2205/0.01 et seq.) violated the constitution's prohibition against special legislation. People ex rel. E. Side Levee & San. Dist. v. Madison County Levee & San. Dist., 54 Ill. 2d 442, 298 N.E.2d 177 (1973).

70 ILCS 2405/7, which granted to sanitary districts the power to collect reasonable charges for connection onto the system created a legitimate method of financing needed extensions of sanitary systems by means of a service or connection charge rather than a general tax; the imposition of such a charge upon those who voluntarily seek to use the extension was not unconstitutional by allegedly imposing an unnecessary nonuniform tax. Hartman v. Aurora San. Dist., 23 Ill. 2d 109, 177 N.E.2d 214 (1961).

- School Busing

Where plaintiff was not a member of the class of nonpublic school pupils against whom it contended 105 ILCS 5/29-4 unreasonably discriminated against, it was without standing to question the validity of the section on those grounds. Board of Educ. v. Bakalis, 54 Ill. 2d 448, 299 N.E.2d 737 (1973).

- School Code

The courts of this state must be open to all those similarly situated upon the same conditions, and where procedures were provided which were applicable to some and not applicable to others under substantially like circumstances and there were no discernible logical reasons apparent for the variations, they must fall as violative of former Ill. Const. (1870), Art. IV, § 22 (see now this section); therefore, the notice provisions of former Ill. Rev. Stat., ch. 24, para. 1-4-3 (see now 745 ILCS 25/3 and 745 ILCS 25/4) questioned were null and of no force and effect. Lorton v. Brown County Community Unit Sch., 35 Ill. 2d 362, 220 N.E.2d 161 (1966).

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The classification found in 105 ILCS 5/34-1 et seq. restricting its operation to cities having a population exceeding 500,000, being based upon exigencies found in such metropolitan areas, did not create local or special legislation in violation of former Ill. Const. (1870), Art. IV, § 22 (see now this section) and was therefore constitutionally valid. Latham v. Board of Educ., 31 Ill. 2d 178, 201 N.E.2d 111 (1964).

Validating act excusing the requirement of establishing a high school was not invalid as special and local legislation. People ex rel. Lindsey v. Board of Educ., 3 Ill. 2d 159, 120 N.E.2d 887 (1954).

Tax levied by the county's board of education of the non-high school district against the railroad's property was proper because there was no merit to the railroad's argument that there were two taxing bodies exercising jurisdiction over the same territory for the same purpose; it was within the power of the legislature to provide for the establishment of township high schools and a school district and to confer the power of taxation upon their boards and there was no clash between the powers and duties of the boards of education of the non-high-school districts and the boards of education of high school districts located within the non-high-school districts. People ex rel. Holmes v. Cleveland, C., C. & S. L. R. Co., 288 Ill. 70, 122 N.E. 792, 1919 Ill. LEXIS 1062 (1919).

- School District Appropriations

The fact that some school districts, in compliance with former 105 ILCS 5/34-57, were required to charge fuel to the educational fund while school districts having a population of more than 500,000 inhabitants charged fuel to the building fund did not create any special privilege; it is clearly for the legislative branch to determine the method by which any school district must appropriate and account for such expenditure items. People ex rel. Korzen v. Englemann, 32 Ill. 2d 196, 204 N.E.2d 760 (1965).

- School Districting

105 ILCS 5/7-2a(b), providing a method for the dissolution of certain school districts, did not violate Ill. Const. Art. IV, § 13, prohibiting special legislation, because it applied to districts with less than 5,000 residents, as it applied equally to all school districts of that size, and there was no evidence that the school district raising the challenge was the only district of the indicated size. Puffer-Hefty Sch. Dist. No. 69 v. Du Page Reg'l Bd. of Sch. Trs., 339 Ill. App. 3d 194, 273 Ill. Dec. 626, 789 N.E.2d 800, 2003 Ill. App. LEXIS 528 (2 Dist. 2003), cert. denied, 540 U.S. 1219, 124 S. Ct. 1509, 158 L. Ed. 2d 155 (2004).

- Schools

Constitutional inhibition under former Ill. Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13), is directed against special or local laws providing for the management of common schools and has no reference to a law passed for the support or establishment of schools. Land Comm'rs v. President & Trustees of Commons of Kaskaskia, 249 Ill. 578, 94 N.E. 970, 1911 Ill. LEXIS 2106 (1911).

Under former Ill. Const. of 1879, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13), the General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: For providing for the management of common schools. Land Comm'rs v. President & Trustees of Commons of Kaskaskia, 249 Ill. 578, 94 N.E. 970, 1911 Ill. LEXIS 2106 (1911).

- Special Jurisdictional Districts

The formation of Cook County into two justice of the peace districts - the city of Chicago one, and the territory outside of the city and within the county, another - contravened former Ill. Const. (1870), Art. IV, § 22 (see now this section). People v. Meech, 101 Ill. 200 (1881).

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- State Parks Act

When the legislature, by the 1931 amendment to the State Parks Act (20 ILCS 835/2), delegated the power to the Department of Public Works and Buildings to acquire lands by eminent domain without the necessity of making a report, the provision was within the scope of the subject and could properly have been included in the original act, thus the amendment related to the same subject matter as the original act; it was therefore not void, nor had it created the necessity of enlarging the title of the act to include the word "establishment." Department of Pub. Works & Bldgs. v. Chicago Title & Trust Co., 408 Ill. 41, 95 N.E.2d 903 (1950).

- Statute of Repose

735 ILCS 5/13-212(b), limiting the time for filing a medical malpractice action for injury to a minor, does not constitute special legislation. Partin v. St. Francis Hosp., 296 Ill. App. 3d 220, 230 Ill. Dec. 605, 694 N.E.2d 574 (1 Dist. 1998), appeal denied, 179 Ill. 2d 590, 235 Ill. Dec. 567, 705 N.E.2d 440 (1998).

- Street Closing

Where a city ordinance did not seek to vacate, but restricted the public use of a street to pedestrian and emergency vehicular traffic, such ordinance did not violate the plaintiff's constitutional right to due process in that it alleged by took property without just compensation. Chicago Nat'l Bank v. City of Chicago Heights, 14 Ill. 2d 135, 150 N.E.2d 827 (1958).

City ordinance, which designated a public road as a pleasure driveway and prohibited business owner from driving his team on that road was not a special law, in violation of Ill. Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13), because the power to change the use of a street was part of the power to vacate or discontinue a street, a power that was permitted to cities pursuant to the constitutional provision as long as the vacation was not for the benefit of private parties or for the purpose of devoting the streets so vacated to private uses; the right of the city was to be exercised only when municipal authorities, in the exercise of their discretion, determined that the street was no long required for public use and convenience. Cicero Lumber Co. v. Cicero, 176 Ill. 9, 51 N.E. 758, 1898 Ill. LEXIS 3228 (1898).

- Streets, Pipes and Sewers

Under Laws of 1897 (see now 65 ILCS 5/11-80-7), where owners of larger part of the frontage on one street could prevent the laying of pipes in the street because they were to be used for conveying gas, while the owners of a large part of the frontage on the next street could not prevent the laying of exactly similar pipes on their street because they were to be used for carrying water, the difference in use afforded no reasonable basis for legislative discrimination; the act of 1897 was special in its operation, and therefore void; if the power of the city council to regulate the laying of pipes in the street was to be limited, it would have been by a law applicable to all persons in substantially the same situation. People ex rel. City of Kewanee v. Kewanee Light & Power Co., 262 Ill. 255, 104 N.E. 680 (1914).

- Structural Work Act

The erection, repair and alteration of buildings and structures is a dangerous occupation and that the legislature did not provide for all men engaged in occupations which involve some degree of danger does not render the former Structural Work Act (740 ILCS 150/0.01 et seq. (now repealed)) invalid; by extending the benefits of the Act to persons engaged in unloading a railroad car, the trial court did not establish a classification of persons that was so vague and arbitrary as to deny it due process of law. McNellis v. Combustion Eng'g, Inc., 13 Ill. App. 3d 733, 301 N.E.2d 96 (1 Dist. 1973), aff'd, 58 Ill. 2d 146, 317 N.E.2d 573 (1974).

- Sunday Closing Laws

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Precursor to 625 ILCS 5/5-106, a Sunday closing law applicable to automobile dealers, does not constitute special legislation in violation of this section. Fireside Chrysler-Plymouth, Mazda, Inc. v. Edgar, 102 Ill. 2d 1, 79 Ill. Dec. 677, 464 N.E.2d 275, appeal dismissed, 469 U.S. 926, 105 S. Ct. 316, 83 L. Ed. 2d 254 (1984).

625 ILCS 5/5-106 did not deny equal protection of the law in violation of the U.S. Const., Amend. 14 by singling out auto dealers for a Sunday closing law. Fireside Chrysler-Plymouth, Mazda, Inc. v. Edgar, 102 Ill. 2d 1, 79 Ill. Dec. 677, 464 N.E.2d 275, appeal dismissed, 469 U.S. 926, 105 S. Ct. 316, 83 L. Ed. 2d 254 (1984).

- Taxation of Foreign Corporations

A tax could not be applied to those receipts of foreign fire insurance companies which were produced by risks incurred for insurance other than against fire when such other types of insurance could be written by foreign casualty companies without being subjected to the same taxes or to any tax in lieu thereof, since such an application would deny the foreign insurance company equal protection of the laws. Michigan Millers Mut. Fire Ins. Co. v. McDonough, 358 Ill. 575, 193 N.E. 662 (1934).

- Taxes

Alternative homestead exemption in an amendment to 35 ILCS 200/15-176 was not unconstitutional because the amendment did not violate the taxpayers' right to equal protection under Ill. Const. Art. I, § 2, nor their right under Ill. Const. Art. IV, § 13 to not be disadvantaged by special legislation. Chicagoland Chamber of Commerce v. Pappas, 378 Ill. App. 3d 334, 317 Ill. Dec. 113, 880 N.E.2d 1105, 2007 Ill. App. LEXIS 1285 (1 Dist. 2007).

Retailers Occupation Tax Act (see now 35 ILCS 120/4) did not apply to wholesaler who made no sales at retail, but that all its sales, including those which were the subject of assessment, were made to retail grocery stores for the purpose of resale, notwithstanding fact that wholesaler failed to document the resale character of its individual sales. Dearborn Whsle. Grocers, Inc. v. Whitler, 82 Ill. 2d 471, 45 Ill. Dec. 892, 413 N.E.2d 370 (1980).

The fact that the City of Chicago was the only city within the designated class of towns which would have an increased tax levy was of no objection if the legislation could be reasonably applied to any municipalities which may become subject to its provisions in the future. People ex rel. Lindheimer v. Schweitzer, 369 Ill. 355, 16 N.E.2d 897 (1938).

Curative statute that provided for ratification of bonds issued by a town to finance road construction and maintenance did not deprive taxpayers of any vested property rights because the commissioners' authority to issue the bonds was supplied by the curative statute and by the voters' ratification of the bonds; the statute was not special or discriminatory because it applied to all towns in the same situation. Worley v. Idleman, 285 Ill. 214, 120 N.E. 472, 1918 Ill. LEXIS 854 (1918).

- Taxis

Act that required the operator of a Chicago taxicab to post a bond to cover any potential judgments was not violative of the Equal Protection Clause because it was reasonably incidental to the exercise of the police power of the state or municipality and addressed the legitimate concerns raised by the density and continuity of traffic in the city and did not violate the prohibition against special legislation because taxicabs were operated for gain and were thus in service for longer hours and at higher rates of speed; further, the contention that the act was a taking was also rejected because the taxi owner could obtain an insurance policy or bond with a surety at reasonable expense. Weksler v. Collins, 317 Ill. 132, 147 N.E. 797, 1925 Ill. LEXIS 1000 (1925).

- Telecommunications

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220 ILCS 5/13-502.5, which abated administrative proceedings against a telephone company, did not violate the special legislation clause, Ill. Const. Art. IV, § 13. As no other telecommunications carrier was similarly situated to the company, 220 ILCS 5/13-502.5 did not discriminate in favor of a select group. Big Sky Excavating, Inc. v. Ill. Bell Tel. Co., 217 Ill. 2d 221, 298 Ill. Dec. 739, 840 N.E.2d 1174, 2005 Ill. LEXIS 1628 (2005).

- Ticket Scalping Act

Ticket scalping provision (720 ILCS 375/1.5) does not violate this provision of the Illinois constitution dealing with special legislation. People v. Waisvisz, 221 Ill. App. 3d 667, 164 Ill. Dec. 439, 582 N.E.2d 1383 (4 Dist. 1991), appeal denied, 144 Ill. 2d 642, 169 Ill. Dec. 150, 591 N.E.2d 30 (1992).

- Toll Highway Act

Former Ill. Const. (1870), Art. IV, § 22 (see now this section), which prohibits the General Assembly from passing a special law was not violated by former Ill. Rev. Stat., ch. 121, para. 314a42 (see now 605 ILCS 10/21), providing that the toll highways shall become a part of the state highway system when all bond and interest obligations have been met contravenes the state constitutional injunction. People v. Illinois Toll Hwy. Comm'n, 3 Ill. 2d 218, 120 N.E.2d 35 (1954).

- Torrens Act

The Torrens Act (see now 765 ILCS 35/0.01 et seq.) is not a special law regulating practice in courts of justice, in contravention of former Ill. Const. (1870), Art. IV, § 22 (see now this section) because the act is not one relating to practice in courts of record but to rules of evidence, and no one has a vested right in a rule of evidence. Stolle v. Mitchell, 309 Ill. 341, 141 N.E. 136 (1923).

- Trusts

Act of July 1, 1893 defining a trust, and setting out the various penalties provided for violation of the act, which also provided that "the provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser" contained both class and special legislation, and was in contravention of U.S. Const., Amend. 14 and former Ill. Const. (1870), Art. IV, § 22 (see now this section), and was therefore void. Union Sewer-Pipe Co. v. Connelly, 99 F. 354 (N.D. Ill. 1900), aff'd, 184 U.S. 540, 22 S. Ct. 431, 46 L. Ed. 679 (1902).

- Unemployment Compensation Act

Amendments to the former Unemployment Compensation Act (see now 820 ILCS 405/100 et seq.) did not constitute an unlawful classification where the War Risk Amendments classified employers into three classes: (1) those employers who did not pay out as much as $100,000 in wages during the calendar year for which the rate is to be determined, (2) those employers who paid wages during the next preceding calendar year which exceeded by more than 100 per cent but less than 150 per cent the wages paid for the calendar year 1940, (3) employers who paid wages during the next preceding calendar year which exceeded by 150 per cent or more the wages paid in the calendar year 1940. S. Buchsbaum & Co. v. Gordon, 389 Ill. 493, 59 N.E.2d 832 (1945).

Provisions of the Unemployment Compensation Act, under former Ill. Rev. Stat., ch. 48, para. 218, p. 1614 (see now 820 ILCS 405/100 et seq.) did not violate the provisions of this section. Smith v. Murphy, 384 Ill. 34, 50 N.E.2d 844 (1943).

- Unlawful Use of Weapons

Subdivision (a)(4) of 720 ILCS 5/24-1 does not violate the special legislation prohibition of this section, and satisfies the equal protection requirements of the U.S. Constitution. People v. Warfield, 26 Ill. App. 3d 772, 326 N.E.2d 211 (1 Dist. 1975).

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- Using False Name

A former statute which made advertising under a false name a reason for refusing or revoking a certificate did not violate former Ill. Const. (1870), Art. II, §§ 1, 2 and 4 or Art. IV, § 22 (see now Ill. Const. (1970), Art. I, §§ 1, 2 and 4 and this section or U.S. Const., Amend. 14. People ex rel. State Bd. of Health v. Apfelbaum, 251 Ill. 18, 95 N.E. 995 (1911).

- Vacation of Street

Under former Ill. Rev. Stat., ch. 24, para. 69-11 (see now 65 ILCS 5/11-91-1) where the pleadings disclosed that petitioners alleged as a fact that the sole beneficiaries of the purported vacation of the street in controversy under a city ordinance were private corporations and that the purported vacation of the public highway was for a purely private purpose, namely, for the exclusive benefit of private corporations and, on the other hand, not for the benefit of the general public, such an allegation of fact the defendants should have been required to answer since the issue thus made would have presented for decision the question whether the purpose and effect of the city ordinance was to solely benefit private interests to the complete exclusion of public benefits. People ex rel. Foote v. Kelly, 385 Ill. 543, 53 N.E.2d 429 (1944).

- Vehicles for Hire

The power of the legislature to enact laws regulating vehicles for hire and to vest authority in municipalities to do so is well recognized that such laws and ordinances are not included in the constitutional prohibition against passing local or special laws. City of Decatur v. Chasteen, 19 Ill. 2d 204, 166 N.E.2d 29 (1960).

- Venue

Under the former Municipal Court Act (Hurd's Rev.Stat., ch. 37, § 302), which provided that no application for a change of venue in any case of the fourth or fifth class on account of the prejudice of the judge shall be allowed by the municipal court when the applicant names in his application more than three judges from whom such change of venue is desired was unconstitutional under Ill. Const. (1870), Art. IV, § 22 (see now this section) because it was in contravention of Ill. Const. (1870), Art. IV, § 22. Feigen v. Shaeffer, 256 Ill. 493, 100 N.E. 260 (1912).

- Workers' Compensation

Court concluded that Illinois Workmen's Compensation Act, former Ill. Rev. Stat. ch. 48, para. 138.8(a) (now 820 ILCS 305/8), insofar as it limited recovery, was arbitrary and unconstitutional under former Ill. Const., Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13). Begich v. Industrial Com., 42 Ill. 2d 32, 245 N.E.2d 457, 1969 Ill. LEXIS 303 (1969).

- Zoning Variations

Precursors of 65 ILCS 5/11-13-4 and 65 ILCS 5/11-13-5, which allow smaller cities to pass on zoning variations, are not prohibited class legislation or do they deny due process or equal protection of the law. Fitzpatrick v. City of Springfield, 10 Ill. App. 3d 317, 293 N.E.2d 712 (4 Dist. 1973).

Incorporated towns are units of local government which were organized under special charters granted by the legislature prior to the adoption of the Constitution of 1870. Committee of Local Imps. v. Objectors to the Assmt., 39 Ill. 2d 255, 234 N.E.2d 778 (1968).

Ilustrative Cases

- Blue Laws

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Act prohibiting barbershops from being kept open on Sunday deprived the barber of his property without due process of law because the act affected one class alone, all other types of businesses were allowed to open their respective places of business on Sunday and transact their ordinary business if they desire and only the barber was required to close his place of business. Eden v. People, 161 Ill. 296, 43 N.E. 1108, 1896 Ill. LEXIS 1606 (1896).

Incorporating Cities, Towns or Villages

Incorporated towns are units of local government which were organized under special charters granted by the legislature prior to the adoption of the Constitution of 1870. Committee of Local Imps. v. Objectors to the Assmt., 39 Ill. 2d 255, 234 N.E.2d 778 (1968).

The constitutional prohibition of local or special laws for incorporating cities, towns or villages implies that the benefit of any law for that purpose shall be available upon the same conditions to all persons in the same situation, and that the requirements of the law for persons in one locality shall not be different from the requirements for persons similarly situated in another locality. People ex rel. Hoeinghaus v. Campbell, 285 Ill. 557, 121 N.E. 183 (1918).

Indemnity Agreements

The legislature was not required to nullify the use of indemnity agreements in every industry or area where their use might be deemed to be contrary to public interest. Davis v. Commonwealth Edison Co., 61 Ill. 2d 494, 336 N.E.2d 881 (1975).

Judicial Powers

The classification contained in 210 ILCS 85/6.17(e) is reasonably related to a legitimate governmental purpose and does not constitute special legislation in violation of Ill. Const. Art. IV, § 13. Burger v. Lutheran Gen. Hosp., 198 Ill. 2d 21, 259 Ill. Dec. 753, 759 N.E.2d 533, 2001 Ill. LEXIS 1423 (2001).

Jurisdiction

- Justiciability

Unless the constitutional questions presented are debatable, the Supreme Court of Illinois does not assume jurisdiction of an appeal on the ground that a constitutional question is involved. Moore v. County Bd. of Sch. Trustees, 10 Ill. 2d 320, 139 N.E.2d 738 (1957).

Since the residence and legal voter classifications have long been considered reasonable and proper, particularly in detachment proceedings under school laws, the question may be regarded as settled, thus appellants' contention, was not properly founded upon a debatable constitutional question and the Supreme Court of Illinois would not entertain an appeal for the purpose of passing on a question which was settled; the appeals should have been prosecuted to the appellate court for consideration of objections presented other than those of a constitutional nature. Moore v. County Bd. of Sch. Trustees, 10 Ill. 2d 320, 139 N.E.2d 738 (1957).

Where an osteopath had not asserted in his petition or his appeal from an order of dismissal that the State Government Act, ch. 127, § 60a, para. 6, was unconstitutional, but had asserted that a certain construction not requiring the appointment of osteopaths to evaluate his license application had violated his rights under Ill. Const. (1970), Art. IV, § 13 (formerly Ill. Const. of 1870, Art. IV, § 22), his appeal was transferred to an appeals court because the Illinois Supreme Court lacked jurisdiction. People ex rel. Poage v. Walsh, 343 Ill. 136, 174 N.E. 881, 1931 Ill. LEXIS 699 (1931).

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Legislation

- Local and Special

Trial court erred in finding that property owner's petition did not comply with 105 ILCS 5/7-2c and that 105 ILCS 5/7-2c constituted special legislation in violation of Ill. Const. Art. IV, § 13. The statute was not violated because the language of the statute dictated that the village to which the property owner's property was annexed only had to be in either the elementary or high school district and did not require that the village be within both districts, and special legislation violation occurred because that statute did not exclude any entity from a benefit received by the property owner. Elem. Sch. Dist. 159 v. Schiller, 221 Ill. 2d 130, 302 Ill. Dec. 557, 849 N.E.2d 349, 2006 Ill. LEXIS 614 (2006).

Trial court erred in declaring that a public law, which amended the Circuit Courts Act, 705 ILCS 35/1 et seq., was unconstitutional for reconsidering and eliminating three judgeships that appeared to have been authorized by earlier legislation and which would have been part of an upcoming primary election; while the state elections board, part of the executive branch, had the authority to determine whether a statute created new judgeships, the Illinois General Assembly had the authority to create such a statute in the first instance and could reconsider and eliminate a judgeship it had authorized, which meant that the Illinois General Assembly had not violated the separation of powers doctrine nor had it been shown that public act was impermissible special legislation or that it violated the equal protection or due process doctrines. Bridges v. State Bd. of Elections, 222 Ill. 2d 482, 305 Ill. Dec. 640, 856 N.E.2d 445, 2006 Ill. LEXIS 1117 (2006).

Revised riverboat gambling law was not special legislation that conferred a special benefit on the licenses, in permitting it to move its riverboat casino to an economically viable location from one that was not economically viable; rather, the revised law was permissible legislation that promoted the legitimate governmental interests of providing revenue for the State and promoting its tourism by permitting such a relocation, even though the licensee was the only party to benefit from the revised law. Crusius v. Ill. Gaming Bd., 348 Ill. App. 3d 44, 283 Ill. Dec. 366, 807 N.E.2d 1207, 2004 Ill. App. LEXIS 333 (1 Dist. 2004), aff'd, 216 Ill. 2d 315, 297 Ill. Dec. 308, 837 N.E.2d 88 (2005).

A statute will not be held invalid on special legislation grounds simply because it operates in only limited portions of the state. Nevitt v. Langfelder, 157 Ill. 2d 116, 191 Ill. Dec. 36, 623 N.E.2d 281 (1993).

When referring to legislation the term "local" means laws relating to a portion, only, of the territory of the state, and the term "special," laws which impose a particular burden or confer a special right, privilege or immunity upon a portion of the people of the state. Mathews v. City of Chicago, 342 Ill. 120, 174 N.E. 35 (1930).

Local Laws

- In General

A law is not to be denominated local simply because it may operate only in certain of the municipalities of the state if by its terms it includes and operates uniformly throughout the state under like circumstances and situation. People ex rel. Carr v. Kesner, 321 Ill. 230, 151 N.E. 481 (1926).

- Defined

A local law in a constitutional sense is an act which relates only to a portion of the territory of the state. Commissioners of Hwys. v. United States, 466 F. Supp. 745 (N.D. Ill. 1979), modified on other grounds, 653 F.2d 292 (7th Cir. 1981), aff'd, 681 F.2d 821 (7th Cir. 1982).

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Monopolies

- Constitutional Question Not Shown

Where city ordinance did not expressly state that it granted a cable television franchise to one company exclusively, even though the practical effect of the ordinance may have been to inhibit competition and so promote a monopoly, a question of constitutionality was not presented. General Elec. Cablevision Corp. v. City of Peoria, 8 Ill. App. 3d 948, 291 N.E.2d 295 (3 Dist. 1972).

Municipal Corporations

- Tax Exemption

Since a public building commission is a municipal corporation created for a public purpose and its functions are governmental rather than proprietary, the exemption granted by the constitution extends to a municipal corporation such as a public building commission. People ex rel. Adamowski v. Public Bldg. Comm'n, 11 Ill. 2d 125, 142 N.E.2d 67 (1957).

Open Meetings Act

The Open Meetings Act does not violate the state constitutional provision which prohibits special or local legislation since a legitimate governmental interest in treating smaller governmental bodies differently from the General Assembly exists with regard to the public's access to governmental deliberations and actions. People ex rel. Difanis v. Barr, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).

Pension Code Exemption

Section 6-213 of the Pension Code (see now 40 ILCS 5/6-213) does not violate the constitutional prohibition against special legislation. Friedman & Rochester, Ltd. v. Walsh, 67 Ill. 2d 413, 10 Ill. Dec. 559, 367 N.E.2d 1325 (1977).

Prohibitive Classifications

- In General

This section only prohibits legislative classifications which are arbitrary or unreasonable. Justus v. Abex Corp., 117 Ill. App. 3d 1018, 73 Ill. Dec. 259, 454 N.E.2d 3 (1 Dist. 1983).

Property Tax

- In General

The General Assembly has the power to classify a leasehold as real property for purposes of taxation and to base the value of the leasehold on the value of the fee interest. Apex Oil Co. v. Henkhaus, 118 Ill. App. 3d 273, 73 Ill. Dec. 783, 454 N.E.2d 1032 (5 Dist. 1983).

Public Trust Doctrine

- Submerged Lands

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This section was not intended to abrogate the public trust doctrine with respect to submerged lands or to render that doctrine unworkable. Droste v. Kerner, 34 Ill. 2d 495, 217 N.E.2d 73 (1966).

Purpose

The purpose of the special legislation clause is to prohibit similarly situated people from being treated differently, if it is reasonably possible for them to be treated the same. Rodgers v. Whitley, 282 Ill. App. 3d 741, 218 Ill. Dec. 191, 668 N.E.2d 1023 (1 Dist. 1996), appeal denied, 168 Ill. 2d 624, 219 Ill. Dec. 576, 671 N.E.2d 743 (1996).

The purpose of former Ill. Const. (1870), Art. IV, § 22 (see now this section) was to remedy the evil that was sometimes present in legislative enactments, of embracing more than one subject in the title, of the collation of divergent subjects of legislation having no interrelation, and of procuring the passage of the act as a whole when such legislation could not be passed if written in separate bills. Cerro Wire & Cable Co. v. Department of Revenue, 111 Ill. App. 3d 882, 67 Ill. Dec. 535, 444 N.E.2d 771 (1 Dist. 1982).

This section was designed to prevent arbitrary discrimination, does not forbid legislative classification, but it does require that a classification be not arbitrary and requires that the classification be based on a rational difference of condition or situation existing in the persons or objects upon which the classification rests, and it must also bear a rational relation to the evil to be remedied and the purpose to be attained by the statute, otherwise the classification will be deemed arbitrary and in violation of the constitutional guaranties of due process and equal protection of the laws. Begich v. Industrial Comm'n, 42 Ill. 2d 32, 245 N.E.2d 457 (1969).

This provision of supplements the equal protection clause of the federal Constitution (U.S. Const., Amend. 14) and prevents the enlargement of the rights of one or more persons in discrimination against the rights of others. Henson v. City of Chicago, 415 Ill. 564, 114 N.E.2d 778 (1953).

Laws are not special or class legislation because they affect one class and not another, provided they affect all members of the same class alike. Henson v. City of Chicago, 415 Ill. 564, 114 N.E.2d 778 (1953).

If the classification of persons for purposes of legislative regulation is based upon some substantial difference bearing proper relation to the classification, and is not arbitrary or capricious, the statute does not violate this constitutional provision. Henson v. City of Chicago, 415 Ill. 564, 114 N.E.2d 778 (1953).

The prohibition against the passage of a special law granting to any corporation, association or individual any special privilege, immunity or franchise is intended to prevent the enlargement of the rights of one or more persons and the impairment of or discrimination against the rights of others. People ex rel. Heydenreich, 374 Ill. 557, 30 N.E.2d 46 (1940).

The purpose of this provision is to prevent the enlargement of the rights of one or more persons and the impairment of, or discrimination against, the rights of others. Michigan Millers Mut. Fire Ins. Co. v. McDonough, 358 Ill. 575, 193 N.E. 662 (1934).

The object of the prohibition of special or local laws is to prevent a diversity of laws relating to the same subject. People v. Borgeson, 335 Ill. 136, 166 N.E. 451 (1929).

The chief purpose of the provisions of former Ill. Const. (1870), Art. IV, § 22 (see now this section) was to discourage dissimilarity, and to promote and encourage legislation which should be uniform on all subjects referred to in this section. People ex rel. Rogerson v. Crawley, 274 Ill. 139, 113 N.E. 119 (1916).

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Reasonable Basis

- In General

Legislation which affects only one similarly situated entity is constitutional so long as there is a rational justification for the legislative focus and the classifications used to focus the legislation are reasonably related to that justification. City of Geneva v. DuPage Airport Auth., 193 Ill. App. 3d 613, 140 Ill. Dec. 625, 550 N.E.2d 261 (2 Dist.), cert. denied, 132 Ill. 2d 544, 144 Ill. Dec. 256, 555 N.E.2d 375 (1990).

Special legislation confers a general privilege or benefit on a person or group of persons to the exclusion of others similarly situated and discriminates in favor of a select group without a reasonable basis. Beeding v. Miller, 167 Ill. App. 3d 128, 117 Ill. Dec. 707, 520 N.E.2d 1058 (2 Dist.), cert. denied, 122 Ill. 2d 569, 125 Ill. Dec. 211, 530 N.E.2d 239 (1988), 489 U.S. 1096, 109 S. Ct. 1569, 103 L. Ed. 2d 935 (1989).

If there is a reasonable basis for differentiating between the class to which the law is applicable and the class to which it is not, the General Assembly may constitutionally classify persons and objects for the purpose of legislative regulation or control, and may pass laws applicable only to such persons or objects. Bridgewater v. Hotz, 51 Ill. 2d 103, 281 N.E.2d 317 (1972).

A reasonable basis for discrimination or classification must be found to exist in order to validate legislative actions. Board of Educ. v. County Bd. of Sch. Trustees, 28 Ill. 2d 15, 191 N.E.2d 65 (1963).

An act is not local or special merely because of a legislative classification based upon population or territorial differences, and such classification will be sustained where founded upon a rational difference of situation or condition existing in the objects upon which it rests, and where there is a reasonable basis for the classification in view of the objects and purposes to be accomplished. People ex rel. County of Du Page v. Smith, 21 Ill. 2d 572, 173 N.E.2d 485 (1961); Bridgewater v. Hotz, 51 Ill. 2d 103, 281 N.E.2d 317 (1972).

The legislature is not bound to pass one law meeting every exigency, but may consider degrees of evil, and if a law hits the evil where it is most felt, it is not to be overthrown merely because there are other circumstances to which it might have been applied. People ex rel. County of Du Page v. Smith, 21 Ill. 2d 572, 173 N.E.2d 485 (1961).

Where classifications in an Act in Relation to Hospital Authorities, 210 ILCS 85/1 et seq., (formerly Ill. Rev. Stat. ch. 23, para. 163.1 et seq.) were arbitrary, without logical relation to the object or purpose of the Act, and in contravention of Ill. Const. (1970), Art. IV, § 13, (formerly Ill. Const. of 1870, Art. IV, § 22) those portions without logical relation to the object or purpose of the statute were unconstitutional. Grennan v. Sheldon, 401 Ill. 351, 82 N.E.2d 162, 1948 Ill. LEXIS 422 (1948).

An act is not local or special merely because it operates in but one place or upon a particular class of persons or things, provided there is a reasonable basis for the legislative classification. People ex rel Moshier v. City of Springfield, 370 Ill. 541, 19 N.E.2d 598 (1939).

There was reasonable basis for the classification of public as distinguished from other administrators regarding their right to receive fees for services in administering such portion of the estate of a deceased veteran of the World War as consisted of monies received from the government representing war risk insurance. Crews v. Lundquist, 361 Ill. 193, 197 N.E. 768 (1935).

- Filing Fees

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There was a reasonable basis for the legislature's decision to classify counties according to whether they have a population of less or more than 1,000,000 inhabitants in regard to the establishment and amount of filing fees. Mlade v. Finley, 112 Ill. App. 3d 914, 68 Ill. Dec. 387, 445 N.E.2d 1240 (1 Dist. 1983).

- Revenue Laws

In the context of revenue laws, the equal protection clauses and this special legislation provision merely require that there be a reasonable basis for the statutory classifications enacted by the legislature; the same analysis is used when a revenue law is attacked under the due process clauses, and the statute will be upheld if there is a reasonable basis for the legislative classifications, and if each member of the statutory classification is treated uniformly; Ill. Const. (1970), Art. IX, § 2 is satisfied if the classifications are reasonable. Mlade v. Finley, 112 Ill. App. 3d 914, 68 Ill. Dec. 387, 445 N.E.2d 1240 (1 Dist. 1983).

- Test

The prohibitions in the Illinois Constitution against special legislation are triggered by discriminatory treatment of citizens or entities of the state otherwise similarly situated. Commissioners of Hwys. v. United States, 466 F. Supp. 745 (N.D. Ill. 1979), modified on other grounds, 653 F.2d 292 (7th Cir. 1981), aff'd, 681 F.2d 821 (7th Cir. 1982).

The prohibition against special legislation does not mean that a statute must affect everyone in the same way; it means simply that a law shall operate uniformly throughout the state in all localities and on all persons in like circumstances and conditions. Davis v. Commonwealth Edison Co., 61 Ill. 2d 494, 336 N.E.2d 881 (1975).

The fact that an act may be, or seem to be, arbitrary and unreasonable in some of its provisions does not render the same a local or special law; the test is, "is it a general law which operates uniformly throughout the state upon all persons and localities under like circumstances?" and if it is, it is not obnoxious to this provision of the constitution forbidding the enactment of local or special laws. People ex rel. Curren v. Wood, 391 Ill. 237, 62 N.E.2d 809 (1945).

Special Act

Because the disparate bargaining power between auto manufacturers and holders of dealership franchises had been found by the legislature, and by courts that included the United States Supreme Court, to be a continuing problem that justified regulating grants of franchises differently from other business decisions, the Motor Vehicle Franchise Act was found not to be an unconstitutional special act that imposed an irrational classification on manufacturers. GMC v. State Motor Vehicle Review Bd., 361 Ill. App. 3d 271, 297 Ill. Dec. 172, 836 N.E.2d 903, 2005 Ill. App. LEXIS 1028 (4 Dist. 2005).

Standard of Review

- In General

Special legislation confers a special benefit or exclusive privilege on a person or a group of persons to the exclusion of others similarly situated; the standard for reviewing legislation challenged as special is whether the classification is unreasonable in that it preferentially and arbitrarily includes a class to the exclusion of the all others. Opty's Amoco, Inc. v. Village of S. Holland, 209 Ill. App. 3d 473, 154 Ill. Dec. 260, 568 N.E.2d 260 (1 Dist. 1991), aff'd, 149 Ill. 2d 265, 172 Ill. Dec. 390, 595 N.E.2d 1060 (1992).

In reviewing a special legislation claim, the test is the same as that for an equal protection challenge: the court must determine whether a real difference exists between those classified, a

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difference that rationally explains the different treatment accorded to them. Raimondo v. Kiley, 172 Ill. App. 3d 217, 122 Ill. Dec. 198, 526 N.E.2d 457 (1 Dist. 1988).

The standards used in determining whether a law violates this special legislation provision are the same as those used in determining whether a law violates equal protection. Beeding v. Miller, 167 Ill. App. 3d 128, 117 Ill. Dec. 707, 520 N.E.2d 1058 (2 Dist.), cert. denied, 122 Ill. 2d 569, 125 Ill. Dec. 211, 530 N.E.2d 239 (1988), 489 U.S. 1096, 109 S. Ct. 1569, 103 L. Ed. 2d 935 (1989).

A statute will be held unconstitutional as special legislation and as violative of the equal protection guarantee only if it was enacted for reasons totally unrelated to the pursuit of a legitimate state goal. Bilyk v. Chicago Transit Auth., 125 Ill. 2d 230, 125 Ill. Dec. 822, 531 N.E.2d 1 (1988).

- Classifications

Special-legislation challenges are generally judged the same as an equal-protection challenge, and the controlling question is whether the legislative classification is rationally related to a legitimate state interest; under this test, the classification must be based upon a rational difference of situation or condition found to exist in the persons or objects upon which the classification rests, and the classification must bear a rational relationship to the evil to be remedied and the purpose of the legislation. Vill. of Chatham v. County of Sangamon, 351 Ill. App. 3d 889, 286 Ill. Dec. 566, 814 N.E.2d 216, 2004 Ill. App. LEXIS 952 (4 Dist. 2004), aff'd, 216 Ill. 2d 402, 297 Ill. Dec. 249, 837 N.E.2d 29 (2005).

Whether a law is challenged as special legislation or as violative of equal protection, the controlling question is the same: Is the statutory classification rationally related to a legitimate state interest? Bilyk v. Chicago Transit Auth., 125 Ill. 2d 230, 125 Ill. Dec. 822, 531 N.E.2d 1 (1988).

- Tax

The test to check whether a tax is local or special is not the effect in a given instance on a particular area, it is whether the law operates uniformly throughout the state upon all persons and localities under like circumstances; if it operates uniformly it is not a local or special law prohibited by this section. People ex rel. Honefenger v. Burris, 408 Ill. 68, 95 N.E.2d 882 (1950).

Standing

- In General

A plaintiff who is not affected by a statute cannot raise the issue of the statute's constitutionality. Karnes v. Board of Dirs., 41 Ill. App. 3d 1015, 355 N.E.2d 191 (4 Dist. 1976).

- Property Tax Exemption

Denying a taxpayer standing to file complaints about property tax exemptions granted to others only prevents him from instituting a formal process by which those exemptions will be reviewed by the county board of review; it does not prevent him from communicating his displeasure about the exemptions to the board members or any other public official, thus the taxpayer is not denied his fundamental right to petition for redress of grievances. Highland Park Women's Club v. Department of Revenue, 206 Ill. App. 3d 447, 151 Ill. Dec. 435, 564 N.E.2d 890 (2 Dist. 1990), cert. denied, 139 Ill. 2d 596, 159 Ill. Dec. 107, 575 N.E.2d 914 (1991).

Temporary Injunction

- Motion to Dissolve

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The court properly denied a motion to dissolve a temporary injunction where plaintiffs filed a complaint against the Director of Public Safety and the Superintendent of the Division of State Highway Police of the Department of Public Safety praying for a declaratory judgment declaring this section unconstitutional. Hoagland v. Bibb, 12 Ill. App. 2d 298, 139 N.E.2d 417 (3 Dist. 1957).

Theft of Property

- Equal Protection

This section did not deny a defendant equal protection of the laws in applying only to the theft of property from a retail mercantile establishment, on the theory that the nature of a retail establishment is no different from that of a wholesaler or that of an owner of any other premises from which a theft may occur. People v. Fix, 44 Ill. App. 3d 607, 3 Ill. Dec. 328, 358 N.E.2d 726 (3 Dist. 1976).

- Requirements

The title of the original act need not contain all the details of the act, or be an index to its contents, but need only set out, generally, the subject matter. Department of Pub. Works & Bldgs. v. Chicago Title & Trust Co., 408 Ill. 41, 95 N.E.2d 903 (1950).

Every act must embrace but a single subject, but it may include provisions which are not foreign to the general subject and which legitimately tend to accomplish the legislative purpose with reference to the general subject. Department of Pub. Works & Bldgs. v. Chicago Title & Trust Co., 408 Ill. 41, 95 N.E.2d 903 (1950).

This provision cannot be so narrowly construed as to require the title of an act of itself to contain the entire act; it is sufficient if the title of the act suggests the subject matter, then it includes all that is reasonable auxiliary thereto. Park v. Modern Woodmen of Am., 181 Ill. 214, 54 N.E. 932 (1899).

Title of Act

- Amendatory Act

Where the title of an original act is repeated in the title of an amendatory act, the amendatory act is as broad and comprehensive as the act amended, and any provision which might have been inserted in the original act may be inserted in the amendatory act without violating the constitutional provision that the subject of the act be expressed in the title. Department of Pub. Works & Bldgs. v. Chicago Title & Trust Co., 408 Ill. 41, 95 N.E.2d 903 (1950).

- Purpose

Although numerous provisions in an act are not expressed in the general title, the purpose of the constitutional provision is fulfilled when the general subject indicated by the title reasonably covers the provisions of the act when they are related and have some connection, more or less direct, with the subject of the legislation. Fenske Bros. v. Upholsterers Int'l Union, 358 Ill. 239, 193 N.E. 112 (1934).

- Requirements

This section is intended to require the title to give information of the legislation with which the act deals, but particulars of the legislation are to be found in the body of the act, not in the title. Department of Pub. Works & Bldgs. v. Chicago Title & Trust Co., 408 Ill. 41, 95 N.E.2d 903 (1950).

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Statute that prohibits tractors, traction engines or other metal tired vehicles weighing more than four tons from being driven onto a public highway unless the highway's edge is protected is not void on the basis that the subject matter of the statute is not embraced within the title of the act ("An act in relation to motor vehicles"), as required by Ill. Const. of 1870, Art. IV, § 13, because the purpose of the constitutional provision is to prevent the joining of incongruous and unrelated matters into one Act; because the provision is related to motor vehicles and furthers the purpose of the Act, it is properly included even if it is not reflected in the Act's title. People v. Sisk, 297 Ill. 314, 130 N.E. 696, 1921 Ill. LEXIS 1161 (1921).

Township Organization

- Purpose

The primary object of the system of township organization is to bring local affairs under the immediate control and direction of the people. Town of Somonauk v. People ex rel. Hess, 178 Ill. 631, 53 N.E. 314 (1899).

LEGAL PERIODICALS

For article, "Illinois Courts: Vital Developers of Tort Law as Constitutional Vanguards, Statutory Interpreters, and Common Law Adjudicators", see 30 Loy. U. Chi. L.J. 183 (1999).

For article, "Best v. Taylor Machine Works A Resounding 'No' to the Tort Reform Act", see 22 S. Ill. U.L.J. 825 (1998).

For article, "Best v. Taylor Machine Works: A Resounding 'No' to the Tort Reform Act," see 86 Ill. B.J. 130 (1998).

For article, "The Demise of the Praecipe," see 11 S. Ill. U.L.J. 29 (1986).

For article, "The Illinois Medical Malpractice Reform Act of 1985: A Constitutional Analysis of the Medical Review Panel Procedure," see 35 De Paul L. Rev. 345 (1986).

For note on State Constitutional Law and Special Legislation discussing Wilson v. All-Steel, 87 Ill. 2d 38, 428 N.E.2d 489 (1981), see 71 Ill. B.J. 189 (1982).

For article, "Equal Protection of the Law Under the Federal and Illinois Constitutions: A Contrast in Unequal Treatment," see 30 De Paul L. Rev. 263 (1981).

For comment, "The In Loco Parentis Status of Ill. School Teachers: An Unjustifiably Broad Extension of Immunity," see 10 J. Marshall J. Prac. & Proc. 629 (1977).

For comment, "Pre-trial Screening of Medical Malpractice Claims Versus the Illinois Constitution," see 10 J. Marshall J. Prac. & Proc. 133 (1976).

For note on Civil Rights and Housing, see 65 Ill. B.J. 164 (1976).

RESEARCH REFERENCES

Validity, construction, and application of "hazing" statutes. 30 ALR5th 683.

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Validity and construction of statute terminating right of action for product-caused injury at fixed period after manufacture, sale, or delivery of product. 30 ALR5th 1.

Practice Guides and Treatises.

Real Estate Taxation § 9.17 Tax Based on Unconstitutional Statute (IICLE).

Section 14. Impeachment.

The House of Representatives has the sole power to conduct legislative investigations to determine the existence of cause for impeachment and, by the vote of a majority of the members elected, to impeach Executive and Judicial officers. Impeachments shall be tried by the Senate. When sitting for that purpose, Senators shall be upon oath, or affirmation, to do justice according to law. If the Governor is tried, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence of two-thirds of the Senators elected. Judgment shall not extend beyond removal from office and disqualification to hold any public office of this State. An impeached officer, whether convicted or acquitted, shall be liable to prosecution, trial, judgment and punishment according to law.

(Source: Illinois Constitution.)

CASE NOTES

Construction

Court granted the United States' motion to disclose to the Illinois House of Representatives Special Investigative Committee communications that were intercepted during the corruption investigation of the Illinois Governor because the Committee members were investigative officers as defined in 18 U.S.C. § 2510(7) where the House had the power to conduct investigations to find cause for impeachment under Ill. Const. art. IV, § 14, and the resolution establishing the Committee defined its role as investigating allegations of offenses enumerated in 18 U.S.C. § 2516, namely, misfeasance, malfeasance, nonfeasance, and other misconduct of the Governor; thus, the members of the Committee were qualified to receive disclosures under 18 U.S.C. § 2517(1). United States v. Blagojevich (In re Motion to Disclose Intercepted Communs.), 594 F. Supp. 2d 993, 2009 U.S. Dist. LEXIS 4683 (N.D. Ill. 2009).

LEGAL PERIODICALS

For article, "Justice James D. Heiple: Impeachment and the Assault on Judicial Independence", see 29 Loy. U. Chi. L.J. 741 (1998).

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For article, "Citizen Remedies Against Errant Illinois Public Servants," see 11 S. Ill. U.L.J. 285 (1987).

Section 15. Adjournment.

(a) When the General Assembly is in session, neither house without the consent of the other shall adjourn for more than three days or to a place other than where the two houses are sitting.

(b) If either house certifies that a disagreement exists between the houses as to the time for adjourning a session, the Governor may adjourn the General Assembly to a time not later than the first day of the next annual session.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Evidence of Adjournment
- Journals of The Houses
Judicial Inquiry Board

Evidence of Adjournment

- Journals of The Houses

No requirement, constitutional or otherwise established the Journals of the Houses of the General Assembly as exclusive evidence of executive action in enunciating adjournment. People ex rel. Myers v. Lewis, 32 Ill. 2d 506, 207 N.E.2d 468 (1965).

Judicial Inquiry Board

In light of court holdings, policy considerations, and the fact that the evidentiary privilege was so universally recognized, the Judicial Inquiry Board's (JIB) investigatory records regarding an employee's Title VII retaliation claims against a judge were protected from disclosure; the investigation materials in no way related to her allegation regarding certain work assignments, and thus keeping these materials confidential would not preclude the court reporter from pursuing that federal claim. Also, the JIB had a strong interest in keeping the investigation materials confidential in order to preserve the integrity of future investigations. Clemmer v. Office of the Chief Judge, 544 F. Supp. 2d 722, 2008 U.S. Dist. LEXIS 28394 (N.D. Ill. 2008).

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ARTICLE V
THE EXECUTIVE

Section 1. Officers.

The Executive Branch shall include a Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller and Treasurer elected by the electors of the State. They shall keep the public records and maintain a residence at the seat of government during their terms of office.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Discretionary Power of Public Officers
- Judicial Review
Duties of Constitutional Officers
- Legislature's Power to Control
Secretary of State
- Constitutional Authority

Discretionary Power of Public Officers

- Judicial Review

Where a statute gives a discretionary power to an officer, upon his own opinion of certain facts, it is a sound rule of construction that he is the sole and exclusive judge of the existence of those facts. People ex rel. Woll v. Graber, 394 Ill. 362, 68 N.E.2d 750 (1946).

An officer, to whom public duties are confided by law, is not subject to the control of the courts in the exercise of the judgment, and discretion which the law gives to him as a part of his official functions. People ex rel. Woll v. Graber, 394 Ill. 362, 68 N.E.2d 750 (1946).

Duties of Constitutional Officers

- Legislature's Power to Control

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The legislature might properly impose additional duties upon constitutional officers without the creation of a separate office within the meaning of the constitution. Baro v. Murphy, 32 Ill. 2d 453, 207 N.E.2d 593 (1965).

The duties of a constitutional officer, such as State's attorney, are definitely stated, and a legislative body may not strip a constitutional officer of his powers, nor transfer them to others. People ex rel. Kunstman v. Shinsaku Nagano, 389 Ill. 231, 59 N.E.2d 96 (1945).

The fact that officers enumerated in this section were created by the 1870 Constitution did, not confer unrestricted power upon them, and, except as to such rights and powers as they derived from the various provisions of the Constitution, they were entirely subject to the will of the legislature. People ex rel. Gullett v. McCullough, 254 Ill. 9, 98 N.E. 156 (1912).

Secretary of State

- Constitutional Authority

Section 4b of the Personnel Code (20 ILCS 415/4b), giving the right to extend the civil service to specific group of employees, is not invalid as an encroachment upon the independent constitutional executive authority of the Secretary of State and infringement by the Governor upon the constitutional independence granted the Secretary of State. Boner v. Jones, 60 Ill. 2d 532, 328 N.E.2d 548 (1975).

LEGAL PERIODICALS

From Comments, "People ex rel. Scott v. Briceland: Powers of the Attorney General Revisited," see 11 J. Marshall J. Prac. & Proc. 441 (1978).

Section 2. Terms.

These elected officers of the Executive Branch shall hold office for four years beginning on the second Monday of January after their election and, except in the case of the Lieutenant Governor, until their successors are qualified. They shall be elected at the general election in 1978 and every four years thereafter.

(Source: Illinois Constitution.)

Section 3. Eligibility.

To be eligible to hold the office of Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller or Treasurer, a person must be a United States citizen, at least 25 years old, and a resident of this State for the three years preceding his election.

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(Source: Illinois Constitution.)

Section 4. Joint Election.

In the general election for Governor and Lieutenant Governor, one vote shall be cast jointly for the candidates nominated by the same political party or petition. The General Assembly may provide by law for the joint nomination of candidates for Governor and Lieutenant Governor.

(Source: Illinois Constitution.)

Section 5. Canvass - Contests.

The election returns for executive offices shall be sealed and transmitted to the Secretary of State, or other person or body provided by law, who shall examine and consolidate the returns. The person having the highest number of votes for an office shall be declared elected. If two or more persons have an equal and the highest number of votes for an office, they shall draw lots to determine which of them shall be declared elected. Election contests shall be decided by the courts in a manner provided by law.

(Source: Illinois Constitution.)

CASE NOTES

Analysis
Constitutionality
Election Contests
- Courts
- Manner of Conducting

Constitutionality

Former law governing election contests for offices of state government was an attempt by the legislature to alter the basic character of the circuit courts, which the General Assembly was constitutionally prohibited from doing. Therefore, the attempt by the legislature to confer authority upon a panel of three circuit judges to act as a court was invalid, and the act was unconstitutional. In re Contest of Election, 93 Ill. 2d 463, 67 Ill. Dec. 131, 444 N.E.2d 170 (1983).

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Election Contests

- Courts

The courts in which this section of the Constitution vests the power to decide election contests, are the courts created by Article VI of the Illinois Constitution. In re Contest of Election, 93 Ill. 2d 463, 67 Ill. Dec. 131, 444 N.E.2d 170 (1983).

Prior unconstitutional statute governing election contests for offices of state government was not revived where the 1970 Constitution provided in this section that election contests were to be heard by the courts. In re Contest of Election, 93 Ill. 2d 463, 67 Ill. Dec. 131, 444 N.E.2d 170 (1983).

This section does not confer upon the General Assembly the power to create a court, or to alter the basic character of a court. The power conferred upon the General Assembly is to provide for the procedure to be followed, and the manner of conducting an election contest. In re Contest of Election, 93 Ill. 2d 463, 67 Ill. Dec. 131, 444 N.E.2d 170 (1983).

- Manner of Conducting

Under this provision, it is the courts that must decide election contests, and the General Assembly may provide by law for the manner of conducting election contests. In re Contest of Election, 93 Ill. 2d 463, 67 Ill. Dec. 131, 444 N.E.2d 170 (1983).

Section 6. Gubernatorial Succession.

(a) In the event of a vacancy, the order of succession to the office of Governor or to the position of Acting Governor shall be the Lieutenant Governor, the elected Attorney General, the elected Secretary of State, and then as provided by law.

(b) If the Governor is unable to serve because of death, conviction on impeachment, failure to qualify, resignation or other disability, the office of Governor shall be filled by the officer next in line of succession for the remainder of the term or until the disability is removed.

(c) Whenever the Governor determines that he may be seriously impeded in the exercise of his powers, he shall so notify the Secretary of State and the officer next in line of succession. The latter shall thereafter become Acting Governor with the duties and powers of Governor. When the Governor is prepared to resume office, he shall do so by notifying the Secretary of State and the Acting Governor.

(d) The General Assembly by law shall specify by whom and by what procedures the ability of the Governor to serve or to resume office may be questioned and determined. The Supreme Court shall have original and exclusive jurisdiction to review such a law and any such determination and, in the absence of such a law, shall make the determination under such rules as it may adopt.

(Source: Illinois Constitution.)

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LEGAL PERIODICALS

For article, "Executive Disability in Illinois - An Unresolved Problem," see 65 Chi. B. Rec. 162 (1983).

Section 7. Vacancies in Other Elective Offices.

If the Attorney General, Secretary of State, Comptroller or Treasurer fails to qualify or if his office becomes vacant, the Governor shall fill the office by appointment. The appointee shall hold office until the elected officer qualifies or until a successor is elected and qualified as may be provided by law and shall not be subject to removal by the Governor. If the Lieutenant Governor fails to qualify or if his office becomes vacant, it shall remain vacant until the end of the term.

(Source: Illinois Constitution.)

Section 8. Governor - Supreme Executive Power.

The Governor shall have the supreme executive power, and shall be responsible for the faithful execution of the laws.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

In General
Executive Order
- Constitutionality
Privilege Against Civil Suit
- Defamation Actions

In General

Governor's inherent powers as supreme executive officer pursuant to Ill. Const., Art. V, § 8 did not provide him with the necessary authority to reserve part of an appropriation made by the General Assembly for use by Dangerous Drugs Commission. The General Assembly is vested

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with the ultimate authority to determine both the level and allocation of public spending, and the Governor is given no express authority by the constitution to reserve appropriated funds in frustration of the General Assembly's expressed intent. West Side Organization Health Services Corp. v. Thompson, 73 Ill. App. 3d 179, 29 Ill. Dec. 129, 391 N.E.2d 392, 1979 Ill. App. LEXIS 3917 (1 Dist. 1979).

Executive Order

- Constitutionality

Where an executive order requiring disclosure of financial contributions to candidates for public office, made by regulated businesses, and from persons seeking to enter into commercial relationships with the state, appeared to be to formulate a new legal requirement, rather than to execute an existing one, the order was not within the authority granted to the governor by the constitution, and consequently it was struck down. Buettell v. Walker, 59 Ill. 2d 146, 319 N.E.2d 502 (1974).

Privilege Against Civil Suit

- Defamation Actions

The Governor must be afforded an absolute privilege against actions for defamation commensurate with the scope of the discretion he is required to exercise in supervising the vast governmental apparatus of the executive branch of state government. Blair v. Walker, 64 Ill. 2d 1, 349 N.E.2d 385 (1976).

The Governor is protected from actions for civil defamation by an absolute privilege, when issuing statements which are legitimately related to matters committed to his responsibility. Blair v. Walker, 64 Ill. 2d 1, 349 N.E.2d 385 (1976).

OPINIONS OF ATTORNEY GENERAL

Governor's Authority

The Governor may not change mandatory provisions of statutes. 1977 Op. Atty. Gen. 167.

LEGAL PERIODICALS

For article, "Illinois Courts: Vital Developers of Tort Law as Constitutional Vanguards, Statutory Interpreters, and Common Law Adjudicators", see 30 Loy. U. Chi. L.J. 183 (1999).

Section 9. Governor - Appointing Power.

(a) The Governor shall nominate and, by and with the advice and consent of the Senate, a majority of the members elected concurring by record vote, shall appoint all officers whose election or appointment is not otherwise provided for. Any nomination not acted upon by the senate within 60 session days after the receipt thereof shall be deemed to

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have received the advice and consent of the Senate. The General Assembly shall have no power to elect or appoint officers of the Executive Branch.

(b) If, during a recess of the Senate, there is a vacancy in an office filled by appointment by the Governor by and with the advice and consent of the Senate, the Governor shall make a temporary appointment until the next meeting of the Senate, when he shall make a nomination to fill such office.

(c) No person rejected by the Senate for an office shall, except at the Senate's request, be nominated again for that office at the same session or be appointed to that office during a recess of that Senate.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Appointing Power
- Indirect Appointments by Legislature
- Officers of Executive Branch
- Participation of Legislature

Incompatibility Doctrine

Method of Appointment
- In General
- Unconstitutional

Appointing Power

Industrial commission's determination that the claimant did not prove that he sustained accidental injuries arising out of and in the course of his employment on a specified date was not against the manifest weight of the evidence nor was it void based on the claimant's argument that one of the commissioner's on the industrial commission may not have been qualified to render a decision; the Illinois governor, pursuant to Ill. Const., Art. V, § 9(a), the governor had the power to appoint members to the industrial commission and the claimant failed to make even a prima facie showing that the appointment of the commissioner in question was void. Sleeter v. Indus. Comm'n (Cabinetland Discount, Ltd.), 346 Ill. App. 3d 781, 282 Ill. Dec. 210, 805 N.E.2d 1227, 2004 Ill. App. LEXIS 272 (4 Dist. 2004), appeal denied, 211 Ill. 2d 616, Ill. Dec. , 823 N.E.2d 979 (2004).

Although a receiver is an officer of the court, a receiver is not an officer of the State of Illinois, and, therefore, may not obtain attachment orders without posting a bond. Witters v. Hicks, 335 Ill. App. 3d 435, 269 Ill. Dec. 241, 780 N.E.2d 713, 2002 Ill. App. LEXIS 1108 (5 Dist. 2002).

- Indirect Appointments by Legislature

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The proscriptions of subsection (a) of this section apply with equal force to indirect appointments by the General Assembly through its legislative leaders. Walker v. State Bd. of Elections, 65 Ill. 2d 543, 3 Ill. Dec. 703, 359 N.E.2d 113 (1976).

- Officers of Executive Branch

Members of the State Board of Elections are "officers of the Executive Branch" within the meaning of this section. Walker v. State Bd. of Elections, 65 Ill. 2d 543, 3 Ill. Dec. 703, 359 N.E.2d 113 (1976).

No incompatibility exists which would require the Supreme Court to treat the board of elections section of the constitution, Ill. Const. (1970), Art. III, § 5, as fashioning an exception to the proscription against legislative appointment, of officers of the executive branch contained in subsection (a) of this section. Walker v. State Bd. of Elections, 65 Ill. 2d 543, 3 Ill. Dec. 703, 359 N.E.2d 113 (1976).

Members of the interim state fair board were "officers of the Executive Branch," and appointments by constitutionally recognized officers of the General Assembly, rather than by the legislature as a whole, violated the constitutional proscription of legislative appointments of executive officers in subsection (a) of this section. King v. Lindberg, 63 Ill. 2d 159, 345 N.E.2d 474 (1976).

- Participation of Legislature

While it may technically be true that the Governor retains the power to appoint State Board of Election members, that power is so limited by statute, that legislative leaders participate in the de facto exercise of the appointive power. Walker v. State Bd. of Elections, 65 Ill. 2d 543, 3 Ill. Dec. 703, 359 N.E.2d 113 (1976).

Subsection (a) of this section specifically proscribes legislative appointment of any officer of the executive branch. Walker v. State Bd. of Elections, 65 Ill. 2d 543, 3 Ill. Dec. 703, 359 N.E.2d 113 (1976).

Incompatibility Doctrine

The governor's exercise of his constitutional appointment powers does not supersede the common law doctrine of incompatibility of offices; the fact that the governor may be vested with authority to make certain appointments has no bearing on whether the appointee holds another office that may be incompatible. People v. Claar, 293 Ill. App. 3d 211, 227 Ill. Dec. 307, 687 N.E.2d 557 (3 Dist. 1997), appeal denied, 177 Ill. 2d 574, 232 Ill. Dec. 454, 698 N.E.2d 545 (1998).

Method of Appointment

- In General

In a former Commissioner of the Illinois Industrial Commission's due process suit based upon being fired, it was determined that Commissioners have a property right in their positions, but the Commissioner was not entitled to a preliminary injunction in the due process suit, because the Commissioner had not been properly appointed and, thus, had no property right in the position, where the prior Governor had sought to appoint an interim Commissioner for a limited term and then appoint the Commissioner for the remainder of the term. Ford v. Blagojevich, 260 F. Supp. 2d 700, 2003 U.S. Dist. LEXIS 7776 (C.D. Ill. 2003).

The method of appointment, other than of constitutional officers, is solely within the discretion of the legislative branch. Continental Ill. Nat'l Bank & Trust Co. v. State Toll Hwy. Comm'n, 42 Ill. 2d 385, 251 N.E.2d 253 (1969); People v. Chicago Transit Auth., 392 Ill. 77, 64 N.E.2d 4 (1945).

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- Unconstitutional

Statutory method which provided for two nominees to the State Board of Elections to be appointed by the speaker of the house, and the house minority leader, was unconstitutional because of the proscription in subsection (a) of this section against the General Assembly electing, or appointing officers of the executive. Walker v. State Bd. of Elections, 65 Ill. 2d 543, 3 Ill. Dec. 703, 359 N.E.2d 113 (1976).

LEGAL PERIODICALS

For article, "The Illinois State Board of Elections: A History and Evaluation of the Formative Years," see 11 J. Marshall J. Prac. & Proc. 321 (1978).

Section 10. Governor - Removals.

The Governor may remove for incompetence, neglect of duty, or malfeasance in office any officer who may be appointed by the Governor.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Removal Power
- Officers of Department of Registration and Education
- Sheriffs

Removal Power

- Officers of Department of Registration and Education

Although the Governor has no specified role in the disciplinary procedure followed by the Department of Registration and Education, he does have important duties in respect to the management of that Department in that the director, assistant director and superintendent of that Department are all appointed by the Governor, and the director, assistant director and superintendent are subject to the removal power of the Governor, consequently, the officers of that department can be considered subordinates of the Governor. Blair v. Walker, 64 Ill. 2d 1, 349 N.E.2d 385 (1976).

- Sheriffs

Former version of statute which conferred upon the Governor the power to remove from office a sheriff, who by his neglect allowed a prisoner to be lynched and to declare the office vacant, was

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not invalid because it conferred upon the Governor powers not authorized by the Constitution, nor was the statute in violation of the special legislation provision of the Constitution of 1870 (see now Ill. Const. (1970), Art. IV, § 13). People ex rel. Davis v. Nellis, 249 Ill. 12, 94 N.E. 165 (1911).

LEGAL PERIODICALS

For case note, "Lunding v. Walker - Governor's Power to Remove Appointed Officer Is Limited and Subject to Judicial Review," see 1978 U. Ill. L.F. 148.

Section 11. Governor - Agency Reorganization.

The Governor, by Executive Order, may reassign functions among or reorganize executive agencies which are directly responsible to him. If such a reassignment or reorganization would contravene a statute, the Executive Order shall be delivered to the General Assembly. If the General Assembly is in annual session and if the Executive Order is delivered on or before April 1, the General Assembly shall consider the Executive Order at that annual session. If the General Assembly is not in annual session or if the Executive Order is delivered after April 1, the General Assembly shall consider the Executive Order at its next annual session, in which case the Executive Order shall be deemed to have been delivered on the first day of that annual session. Such an Executive Order shall not become effective if, within 60 calendar days after its delivery to the General Assembly, either house disapproves the Executive Order by the record vote of a majority of the members elected. An Executive Order not so disapproved shall become effective by its terms but not less than 60 calendar days after its delivery to the General Assembly.

(Source: Illinois Constitution.)

LEGAL PERIODICALS

For article, "Executive Reorganization: An Examination of the State Experience and Article V, Section 11 of the 1970 Illinois Constitution," see 9 Loy. U. Chi. L.J. 1 (1977-78).

Section 12. Governor - Pardons.

The Governor may grant reprieves, commutations and pardons, after conviction, for all offenses on such terms as he thinks proper. The manner of applying therefore may be regulated by law.

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(Source: Illinois Constitution.)

CASE NOTES

Analysis

Certificate of Restoration
- Eligibility to Hold Public Office
Commutation
- In General
Governor's Power
- In General
- Nature and Extent
- Parole
Judgments
- Modifications
Pardons
- In General
- Discretion

Certificate of Restoration

- Eligibility to Hold Public Office

Under the former State Constitution of 1870, the Constitution provided that an individual convicted of an infamous crime was ineligible to hold an office of profit and trust, however, the Constitution also provided for the removal of such ineligibility by the Governor, therefore, the governor's certificate of restoration of the rights of citizenship removed defendant's ineligibility to hold public office. People ex rel. Symonds v. Gualano, 124 Ill. App. 2d 208, 260 N.E.2d 284 (1 Dist. 1970).

Commutation

Although the Governor was allowed to commute defendant's death sentence based on her first-degree conviction to natural life imprisonment, and did so, defendant was entitled to further challenge that sentence because since the natural life sentence was based on the finding of an aggravating factor by a jury and defendant's procedural due process rights permitted her to pursue her claim that her sentence should be reduced to the 20 to 60 year sentencing range for first-degree murder because insufficient evidence supported the finding of the existence of the aggravating factor used to enhance her sentence. People v. Mata, 217 Ill. 2d 535, 299 Ill. Dec. 649, 842 N.E.2d 686, 2006 Ill. LEXIS 311 (2006), modified and rehearing denied, 2006 Ill. LEXIS 311 (2006).

While the governor was entitled to grant sentence commutations pursuant to the Illinois Constitution, and did so in defendant's case by reducing her sentence to natural life imprisonment, defendant was not then barred from seeking further relief on her first-degree

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murder conviction. Defendant was still entitled to argue that her sentence should be reduced further, within the statutory range of 20 to 60 years where no aggravating factor was found, as her procedural due process right to argue that the aggravating factor was not supported by sufficient evidence outweighed the claim that the Governor's granting of clemency rendered further sentencing issues moot. People v. Mata, Ill. 2d , Ill. Dec. , N.E.2d , 2005 Ill. LEXIS 2079 (Dec. 15, 2005).

- In General

Defendant's appeal, asserting she was entitled to a new sentencing hearing after the Governor of Illinois commuted all death penalty sentences, including defendant's, to life in prison without parole, was dismissed as moot; defendant's commuted sentence was an executively imposed one and further review by the court was not possible. People v. Mata, 353 Ill. App. 3d 784, 289 Ill. Dec. 461, 819 N.E.2d 1261, 2004 Ill. App. LEXIS 1495 (2 Dist. 2004), reversed and remanded at 217 Ill. 2d 535, 842 N.E.2d 686, 2006 Ill. LEXIS 311, 299 Ill. Dec. 649 (2006).

Power to grant a commutation is generally viewed as a subset of the Illinois Governor's pardoning power; thus, in construing a governor's clemency order, it is the substance, not the terminology, of the clemency order that controls. People v. Collins, 351 Ill. App. 3d 959, 287 Ill. Dec. 216, 815 N.E.2d 860, 2004 Ill. App. LEXIS 979 (1 Dist. 2004), appeal denied, 212 Ill. 2d 539, 291 Ill. Dec. 710, 824 N.E.2d 286 (2004).

Governor could not increase a punishment or change the nature of defendant's conviction, but since he did not do so when he commuted defendant's death sentence to natural life in prison, defendant could not challenge the imposition of sentence on him, as the commutation took the judicially-imposed sentence and replaced it with an unreviewable executively-imposed sentence. People v. Watson, 347 Ill. App. 3d 181, 283 Ill. Dec. 23, 807 N.E.2d 628, 2004 Ill. App. LEXIS 258 (1 Dist. 2004), appeal denied, 211 Ill. 2d 611, Ill. Dec. , 823 N.E.2d 977 (2004); overruled in part on other grounds by People v. Mata, 217 Ill. 2d 535, 842 N.E.2d 686, 2006 Ill. LEXIS 311, 299 Ill. Dec. 649 (2006).

Governor was entitled to grant reprieves, commutations, and pardons, after conviction, for all offenses on such terms as he thought proper, and defendant was not permitted to challenge the governor's commutation of defendant's sentence from the death penalty to natural life imprisonment without parole, as the commutation replaced a judicially-imposed sentence with an unreviewable executively-imposed sentence. People v. Watson, 347 Ill. App. 3d 181, 283 Ill. Dec. 23, 807 N.E.2d 628, 2004 Ill. App. LEXIS 258 (1 Dist. 2004), appeal denied, 211 Ill. 2d 611, Ill. Dec. , 823 N.E.2d 977 (2004); overruled in part on other grounds by People v. Mata, 217 Ill. 2d 535, 842 N.E.2d 686, 2006 Ill. LEXIS 311, 299 Ill. Dec. 649 (2006).

A commutation is the change of punishment to which a person has been condemned, to a less severe one. People ex rel. Smith v. Smith, 325 Ill. 372, 156 N.E. 290 (1927).

The power of commuting sentences cannot be vested in any other person, officer, or body than the Governor. People ex rel. Fullenwider v. Jenkins, 322 Ill. 33, 152 N.E. 549 (1926).

Governor's Power

Appellate court erred in concluding that defendant's appeal of her sentence for first-degree murder was moot since the governor had exercised his powers of executive clemency to commute her sentence from the death penalty to natural life imprisonment. Defendant's constitutional right to due process of law, namely to challenge whether sufficient evidence existed to support the aggravating factor used to enhance her first-degree murder sentence, was not subordinate to the governor's power of executive clemency, which meant defendant should have been permitted to continue challenging her sentence even after the governor had commuted it since it might be reduced further depending on additional review of the merits of her sentence. People v. Mata, Ill. 2d , Ill. Dec. , N.E.2d , 2005 Ill. LEXIS 2066 (Dec. 15, 2005).

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- In General

Former governor's clemency orders, issued to all Illinois death penalty inmates, were limited pardons that absolved defendants from the death penalty consequence of their crimes; in doing so, the clemency orders mitigated defendants to the only other possible legal consequence of the murders they committed, natural life imprisonment, and no further sentencing hearing was required before they were remanded to the custody of the Illinois Department of Corrections to serve those sentences. People v. Collins, 351 Ill. App. 3d 959, 287 Ill. Dec. 216, 815 N.E.2d 860, 2004 Ill. App. LEXIS 979 (1 Dist. 2004), appeal denied, 212 Ill. 2d 539, 291 Ill. Dec. 710, 824 N.E.2d 286 (2004).

Governor's power to grant reprieves, commutations and pardons, under this section, is not a sufficient substitute for the sentencing judge's considerations of a defendant's rehabilitative potential. People v. Taylor, 115 Ill. App. 3d 621, 71 Ill. Dec. 377, 450 N.E.2d 1256 (1 Dist. 1983), rev'd on other grounds, 102 Ill. 2d 201, 80 Ill. Dec. 76, 464 N.E.2d 1059 (1984).

This section, which vests in the governor the power to grant pardons and commutations for all offenses, after conviction, is not fundamental law, and no act of the legislature in contravention of it can be valid. People ex rel. Brundage v. Labuy, 285 Ill. 141, 120 N.E. 537 (1918).

- Nature and Extent

Illinois governor's constitutional power to issue pardons to alter convictions is sufficiently broad enough to allow him to reduce the maximum sentence a convicted, yet unsentenced, defendant is facing. People v. Collins, 351 Ill. App. 3d 959, 287 Ill. Dec. 216, 815 N.E.2d 860, 2004 Ill. App. LEXIS 979 (1 Dist. 2004), appeal denied, 212 Ill. 2d 539, 291 Ill. Dec. 710, 824 N.E.2d 286 (2004).

Power given to the former governor to grant reprieves, commutations, and pardons in Ill. Const. (1970), Art. V, § 12 was sufficiently broad to permit the governor to reduce the maximum sentence a defendant was facing. People ex rel. Madigan v. Snyder, 208 Ill. 2d 457, 281 Ill. Dec. 581, 804 N.E.2d 546, 2004 Ill. LEXIS 6 (2004).

The former Ill. Const. (1870), Art. V, § 13, (see now this section) in no way limited or modified the full force and effect of the governor's power and discretion, and vested in the governor the exclusive power to grant, after conviction, reprieves, commutations and pardons, and such power was subject only to the limitation that the legislature could establish the manner of applying therefor. People ex rel. Symonds v. Gualano, 124 Ill. App. 2d 208, 260 N.E.2d 284 (1 Dist. 1970).

The power to grant reprieves, commutations and pardons is vested exclusively in the Governor, and cannot be usurped by the legislature, or the Supreme Court. People ex rel. Gregory v. Pate, 31 Ill. 2d 592, 203 N.E.2d 425 (1964).

Having power of reprieves, commutations and pardons by the Constitution, the governor's use of it cannot be controlled by either the courts, or the legislature; his acts in the exercise of the power can be controlled only by his conscience and his sense of public duty. People ex rel. Smith v. Smith, 325 Ill. 372, 156 N.E. 290 (1927).

- Parole

The Governor has power to grant reprieves, commutations and pardons, after conviction, but this does not include the power to grant paroles. People ex rel. Abner v. Kinney, 30 Ill. 2d 201, 195 N.E.2d 651 (1964).

Judgments

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- Modifications

Under former Ill. Const. (1870), Art. V, § 13 (see now this section), except where power was given to the governor by the constitution, he had no authority to interfere with, modify, or annual, judgment of a court, or any judicial proceeding and any attempt to go beyond the powers granted by this section would be void. People ex rel. Smith v. Smith, 325 Ill. 372, 156 N.E. 290 (1927).

If in the exercise of the power to pardon or commute, the governor made an order attempting to change the judgment of the court, his order was void, and the officers charged with the execution of the judgment would be required by mandamus to disregard the order. People ex rel. Smith v. Smith, 325 Ill. 372, 156 N.E. 290 (1927).

Substituted imprisonment for a shorter term, than the minimum period fixed by law, for the punishment of a crime, does not constitute a difference in the form of punishment. People ex rel. Smith v. Smith, 325 Ill. 372, 156 N.E. 290 (1927).

Pardons

- In General

The effects of a pardon are not unlimited. People v. Glisson, 69 Ill. 2d 502, 14 Ill. Dec. 473, 372 N.E.2d 669 (1978).

- Discretion

Where petitioners claimed that a governor's failure to act pursuant to Ill. Const. Art. V and 730 ILCS 5/3-3-13(d), (e) within a reasonable time on their applications for clemency violated their rights under the Due Process Clause, their suit should have been dismissed because there was no Fourteenth Amendment interest in obtaining a pardon; moreover, the statute did not create a requirement of prompt, or indeed, of any, action by the governor, instead describing the steps in the sequences of procedures in clemency matters. If the statute did require a decision, it did not specify a time limit, and the court did not know what a reasonable time would be; indeed, executive clemency was a classic example of unreviewable executive discretion pursuant to U.S. Const. Art. II, because it was one of the traditional royal, prerogatives. Bowens v. Quinn, 561 F.3d 671, 2009 U.S. App. LEXIS 7030 (7th Cir. 2009), cert. denied, 2009 U.S. LEXIS 7621 (U.S. 2009).

OPINIONS OF ATTORNEY GENERAL

Clemency Testimony

- Procedure

The Open Meetings Act (5 ILCS 120/1 et seq.) and the Prisoner Review Board's regulations require the Board to conduct its hearings on applications for executive clemency publicly, and the Board may deliberate in closed session only for the purpose of arriving at its decision in each case. 1982 Op. Atty. Gen. 134.

LEGAL PERIODICALS

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For comment, "Abusing a Limitless Power: Executive Clemency in Illinois," see 28 S. Ill. U. L.J. 131 (2003).

For case note, "The Freestanding Claim of Innocence: The Supreme Court of Illinois Breaks Lockstep but Leaves Material Issues Unresolved: People v. Washington, 665 N.E.2d 1330 (Ill. 1996)," see 22 S. Ill. U.L.J. 763 (1998).

Section 13. Governor - Legislative Messages.

The Governor, at the beginning of each annual session of the General Assembly and at the close of his term of office, shall report to the General Assembly on the condition of the State and recommend such measures as he deems desirable.

(Source: Illinois Constitution.)

Section 14. Lieutenant Governor - Duties.

The Lieutenant Governor shall perform the duties and exercise the powers in the Executive Branch that may be delegated to him by the Governor and that may be prescribed by law.

(Source: Illinois Constitution.)

Section 15. Attorney General - Duties.

The Attorney General shall be the legal officer of the State, and shall have the duties and powers that may be prescribed by law.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Constitutionality
- Unconstitutional Subsection

Litigation
- Antitrust Actions

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- Environmental Protection
- Representation of State Agency
- Representation of State Commission
- Standing
- State as Real Party in Interest
- Whistleblower Reward and Protection Act

Powers and Duties

- In General
- At Common Law
- Illustrative Cases
- Representation of State Agencies
- Scope of Duties
- Scope of Power
- Scope of Powers

Standing

Constitutionality

- Unconstitutional Subsection

Circuit court properly dimissed actions filed by taxpayers under 735 ILCS 5/20-104(b) to recover, on behalf of the State, overcharges defendant financial entities made in connection with certain state bond transactions they handled because the statute unconstitutionally usurps the powers granted the Attorney General to act as the sole legal representative of the State in any suit or proceeding in which the State is the real party in interest. Scachitti v. UBS Fin. Servs., 215 Ill. 2d 484, 294 Ill. Dec. 594, 831 N.E.2d 544, 2005 Ill. LEXIS 949 (2005).

Former subsection (e) of the Environmental Protection Act (see now 415 ILCS 5/4) was unconstitutional to the extent that it authorized the institution and prosecution of proceedings before the Pollution Control Board by an officer other than the Attorney General, however, the Environmental Protection Act (415 ILCS 5/1 et seq.) as a whole was not held unconstitutional, as the provisions of the Act were severable. People ex rel. Scott v. Briceland, 65 Ill. 2d 485, 3 Ill. Dec. 739, 359 N.E.2d 149 (1976).

Litigation

- Antitrust Actions

The state was able to seek relief in federal antitrust cases through its Attorney General. Illinois v. Associated Milk Producers, Inc., 351 F. Supp. 436 (N.D. Ill. 1972).

- Environmental Protection

Attorney General's appeal of a Pollution Control Board determination concerning siting of a hazardous waste disposal should not have been dismissed, even though he was not a party to the agency proceeding, because, as chief legal officer of this state, he had the authority to represent the interests of the People of the state to insure a healthful environment, within this state, by commencing an action or proceeding in the circuit court of any county in which pollution has been, or is about to be, caused or has occurred. Pioneer Processing, Inc. v. EPA, 102 Ill. 2d 119, 79 Ill. Dec. 640, 464 N.E.2d 238 (1984).

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The language of Ill. Const. (1970), Art. XI, § 1 that the General Assembly "shall provide by law for the implementation and enforcement" of the state's environmental policy was too general to overcome the constitutional authority of the Attorney General, and although it required the General Assembly to provide for the implementation and enforcement of environmental policy, it could not be said that the provision was broad enough to permit the legislature to diminish the Attorney General's power to represent the state in proceedings designed to enforce that policy. People ex rel. Scott v. Briceland, 65 Ill. 2d 485, 3 Ill. Dec. 739, 359 N.E.2d 149 (1976).

- Representation of State Agency

A state agency may not employ private counsel to represent it, and have attorney fees paid by the Attorney General, in the absence of appointment of such counsel by the court, or the Attorney General. EPA v. Pollution Control Bd., 69 Ill. 2d 394, 14 Ill. Dec. 245, 372 N.E.2d 50 (1977).

The Attorney General was justified in unique instance in seeking to represent any and every state agency or school district which might have overpaid with state-appropriated funds for bleachers because of an illegal conspiracy, where no school district or other entity had appeared to challenge his right to represent them and his right to act had generally been held to be concurrent with that of the State's Attorney or other counsel for such entities. Illinois v. Brunswick Corp., 32 F.R.D. 453 (N.D. Ill. 1963).

- Representation of State Commission

The Toll Highway Act (see now 605 ILCS 10/8) which authorized the commission to appoint assistant attorneys by, and with the consent of the Attorney General, and to retain special counsel subject to the approval of the Attorney General did not violate the predecessor to this section in the Constitution of 1870 (Ill. Const. (1870), Art. V, § 1). People v. Illinois Toll Hwy. Comm'n, 3 Ill. 2d 218, 120 N.E.2d 35 (1954).

Under prior similar provisions of the Toll Highway Act (see now 605 ILCS 10/8) the Attorney General was fully recognized as the attorney, and legal adviser of the commission, and the assistant attorneys or special counsel were completely subordinate to him. People v. Illinois Toll Hwy. Comm'n, 3 Ill. 2d 218, 120 N.E.2d 35 (1954).

- Standing

Attorney general had standing, under Ill. Const. (1970), Art. V, § 15 and 815 ILCS 505/4, to bring an action against contractors under a construction contract, even though the allegedly defrauded parties were governmental units. People ex rel. Hartigan v. E & E Hauling, Inc., 153 Ill. 2d 473, 180 Ill. Dec. 271, 607 N.E.2d 165, 1992 Ill. LEXIS 212 (1992).

Possibility that the Attorney General may not act in a given case, when he should do so does not justify granting standing to anyone who desires to bring an action. Fuchs v. Bidwill, 65 Ill. 2d 503, 3 Ill. Dec. 748, 359 N.E.2d 158 (1976).

- State as Real Party in Interest

Village was not permitted to bring a private cause of action to enforce 50 ILCS 750/15.3 of the Illinois Emergency Telephone System Act, because such enforcement would have contravened Ill. Const. Art. V, § 15 where the People of the State of Illinois were the real party in interest and the Act empowered only the Attorney General of Illinois to bring such an action. Vill. of McCook v. Ill. Bell Tel. Co., 335 Ill. App. 3d 32, 269 Ill. Dec. 150, 780 N.E.2d 335, 2002 Ill. App. LEXIS 1038 (1 Dist. 2002).

The Attorney General is the chief law officer empowered to represent the people in any suit or proceeding in which the state is the real party in interest, except where the Constitution or a constitutional statute may provide otherwise. People ex rel. Kunstman v. Shinsaku Nagano, 389

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Ill. 231, 59 N.E.2d 96 (1945); People ex rel. Scott v. Briceland, 65 Ill. 2d 485, 3 Ill. Dec. 739, 359 N.E.2d 149 (1976); Fuchs v. Bidwill, 65 Ill. 2d 503, 3 Ill. Dec. 748, 359 N.E.2d 158 (1976).

The Attorney General is the law officer of the people, as represented in the state government, and its only legal representative in the courts. Fergus v. Russel, 270 Ill. 304, 110 N.E. 130 (1915).

- Whistleblower Reward and Protection Act

Illinois Whistleblower Reward and Protection Act does not violate the Attorney General clause, Ill. Const. (1970), Art. V, § 15, by improperly usurping the Attorney General's exclusive authority to initiate and conduct litigation on the State's behalf because in qui tam proceedings, the Attorney General still maintains control over the proceedings. Furthermore, the Act does not violate the Attorney General clause or the executive compensation clause, Ill. Const. (1970), Art. V, § 21, because the relator that files a claim on behalf of the State is not directly paid by the State for services rendered. State ex rel. Beeler, Schad & Diamond, P.C. v. Ritz Camera Ctrs., Inc., 377 Ill. App. 3d 990, 316 Ill. Dec. 128, 878 N.E.2d 1152, 2007 Ill. App. LEXIS 1075 (1 Dist. 2007).

Qui tam provisions of 740 ILCS 175/4 do not usurp the constitutional powers of the Illinois Attorney General to represent the state; thus, as the Attorney General retains authority to control any litigation under the provisions, a taxpayer can properly bring an action under the Whistleblower Reward and Protection Act and act as a statutorily designated agent for the State. Scachitti v. UBS Fin. Servs., 215 Ill. 2d 484, 294 Ill. Dec. 594, 831 N.E.2d 544, 2005 Ill. LEXIS 949 (2005).

Powers and Duties

- In General

The Attorney General is the chief law officer of the state, and has those powers which resided in the Attorney General at common law, and where his office is apart of the executive department, neither the legislature, nor the courts, can deprive him of his constitutionally granted authority. People ex rel. Castle v. Daniels, 8 Ill. 2d 43, 132 N.E.2d 507 (1956).

The Constitution confers no express powers upon the Attorney General, and prescribes no express duties for him to perform, and simply provides that he shall perform such duties as may be prescribed by law. Fergus v. Russel, 270 Ill. 304, 110 N.E. 130 (1915); People ex rel. Kunstman v. Shinsaku Nagano, 389 Ill. 231, 59 N.E.2d 96 (1945); People v. Massarella, 53 Ill. App. 3d 774, 10 Ill. Dec. 912, 368 N.E.2d 507 (1 Dist. 1977), rev'd on other grounds, 72 Ill. 2d 531, 21 Ill. Dec. 898, 382 N.E.2d 262 (1978).

- At Common Law

The common law powers and duties of the Attorney General include the initiation and prosecution of litigation, on behalf of the people, a power which may be exercised concurrently with the power of the State's attorney to initiate and prosecute all actions, suits, indictments and prosecutions in his county as conferred by statute. People v. Buffalo Confectionery Co., 78 Ill. 2d 447, 36 Ill. Dec. 705, 401 N.E.2d 546 (1980).

The establishment of the office of Attorney General, endows that office with all of its common-law powers, and duties. People v. Illinois Toll Hwy. Comm'n, 3 Ill. 2d 218, 120 N.E.2d 35 (1954).

The office of Attorney General was one known to the common law, and under the common law the Attorney General had well-known, and well-defined powers, and it was incumbent upon him to perform well-known, and clearly prescribed duties. Fergus v. Russel, 270 Ill. 304, 110 N.E. 130 (1915); People v. Massarella, 53 Ill. App. 3d 774, 10 Ill. Dec. 912, 368 N.E.2d 507 (1 Dist. 1977), rev'd on other grounds, 72 Ill. 2d 531, 21 Ill. Dec. 898, 382 N.E.2d 262 (1978);

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Newberg-Krug-Brighton v. Illinois State Toll Hwy. Auth., 63 Ill. App. 3d 780, 20 Ill. Dec. 820, 380 N.E.2d 1029 (2 Dist. 1978).

- Illustrative Cases

State Attorney General's office was established pursuant to Ill. Const. art. V, § 15 and the authority that office was codified in 15 ILCS 205/0.01 et seq., which gave the Attorney General the power under 15 ILCS 205/4 to appoint assistants to carry out the functions of the Attorney General's office. As a result, an assistant Attorney General was a "public official" under the statute making it a crime to threaten a public official, 720 ILCS 5/12-9(a), (b)(1). People v. Scates, 393 Ill. App. 3d 566, 333 Ill. Dec. 36, 914 N.E.2d 243, 2009 Ill. App. LEXIS 778 (4 Dist. 2009), appeal denied, 234 Ill. 2d 545, 920 N.E.2d 1079, 2009 Ill. LEXIS 2086 (2009).

Where Attorney General gave his written consent to allow the State's Attorney's representation of a state officer in county and defendant consented to representation, proper representation was established. Kaden v. Pucinski, 287 Ill. App. 3d 546, 222 Ill. Dec. 920, 678 N.E.2d 792 (1 Dist. 1997).

The duties of the Attorney General and the State's Attorney can sometimes overlap, since the Attorney General exercises his authority state wide, and the State's Attorney exercises his authority within his county in the same state. Kaden v. Pucinski, 287 Ill. App. 3d 546, 222 Ill. Dec. 920, 678 N.E.2d 792 (1 Dist. 1997).

The legislature has clearly construed the States Attorney Act (55 ILCS 5/3-9005) to give the State's Attorney the authority to represent state officers within his county, which is obvious by the plain language of the statute. Kaden v. Pucinski, 287 Ill. App. 3d 546, 222 Ill. Dec. 920, 678 N.E.2d 792 (1 Dist. 1997).

Resolution by the State Toll Highway Authority under 605 ILCS 10/1 et seq. accepting offer of settlement, predicated on the dismissal of pending litigation, was unenforceable absent approval of the Attorney General, who by promptly rejecting the proposed settlement of the pending litigation, after passage of the resolution, effectively negated any suggestion of approval inferred by the actions of his deputy. Gust K. Newberg, Inc. v. Illinois State Toll Hwy. Auth., 103 Ill. App. 3d 557, 59 Ill. Dec. 618, 431 N.E.2d 1375 (2 Dist. 1982), aff'd, 98 Ill. 2d 58, 74 Ill. Dec. 548, 456 N.E.2d 50 (1983).

- Representation of State Agencies

The Attorney General is required to represent the state, and this duty extends to the representation of state agencies; as long as the Attorney General is not an actual party, or interested as a private individual, he or she may represent opposing state agencies in a legal dispute because the Attorney General serves the broader interests of the state rather than the particular interest of any agency. People ex rel. Sklodowski v. State, 162 Ill. 2d 117, 205 Ill. Dec. 63, 642 N.E.2d 1180 (1994).

- Scope of Duties

The Attorney General's duty to defend the Constitution necessarily encompasses a duty to challenge, on behalf of the public, a statute which the Attorney General regards as constitutionally infirm. People v. Pollution Control Bd., 83 Ill. App. 3d 802, 38 Ill. Dec. 928, 404 N.E.2d 352 (1 Dist. 1980).

- Scope of Power

Illinois Constitution provided that the attorney general was the legal officer of the State and had the power and duties prescribed by law; accordingly, since one of its duties was to investigate actions involving alleged violations of the statutes that the attorney general had a duty to enforce, and since it had, by implication, those powers necessary to exercise its express powers, the

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attorney general had the power to enter into a settlement regarding alleged violations of its consumer protection statutes. People ex rel. Devine v. Time Consumer Mktg., Inc., 336 Ill. App. 3d 74, 270 Ill. Dec. 202, 782 N.E.2d 761, 2002 Ill. App. LEXIS 1150 (1 Dist. 2002).

- Scope of Powers

Attorney General's powers include those powers traditionally held by the Attorney General, at common law, and while the legislature may add to his powers, it cannot reduce the Attorney General's common law authority in directing the legal affairs of the state. Gust K. Newberg, Inc. v. Illinois State Toll Hwy. Auth., 103 Ill. App. 3d 557, 59 Ill. Dec. 618, 431 N.E.2d 1375 (2 Dist. 1982), aff'd, 98 Ill. 2d 58, 74 Ill. Dec. 548, 456 N.E.2d 50 (1983).

The Attorney General possesses all the powers associated with that office at common law, and although the legislature may add to these powers, it may not detract from the Attorney General's common law authority. People v. Buffalo Confectionery Co., 78 Ill. 2d 447, 36 Ill. Dec. 705, 401 N.E.2d 546 (1980).

The Attorney General has the authority to direct the legal affairs of the state, but his responsibilities in that regard do not authorize him to arbitrarily interfere with the exercise of powers conferred upon a state agency by the General Assembly. Newberg-Krug-Brighton v. Illinois State Toll Hwy. Auth., 63 Ill. App. 3d 780, 20 Ill. Dec. 820, 380 N.E.2d 1029 (2 Dist. 1978).

Exclusive constitutional delegation of authority to the Attorney General is not infringed where an organ of the state is represented by other counsel, who remains under the control of the Attorney General, and serves only at his pleasure. Fair Emp. Practices Comm'n v. Rush-Presbyterian-St. Luke's Medical Ctr., 41 Ill. App. 3d 712, 354 N.E.2d 596 (1 Dist. 1976).

Although the subpoena power is not vested in the Attorney General under the Constitution, the constitutional provision that the Attorney General shall have the duties, and powers prescribed by law, is sufficiently broad to warrant such a legislative grant. People v. Crawford Distrib. Co., 53 Ill. 2d 332, 291 N.E.2d 648 (1972).

Neither the General Assembly, nor the judiciary can deprive the Attorney General of any common-law power inherent in the office, and an inherent power of the Attorney General is the exclusive prerogative of conducting the law business of the state, both in and out of the courts, except where the state constitution, or a constitutional statute may provide otherwise. People v. Illinois Toll Hwy. Comm'n, 3 Ill. 2d 218, 120 N.E.2d 35 (1954).

Standing

The Attorney General had standing under his common law powers to assert claims on behalf of the state against construction contracts made with the Metropolitan Fair and Exposition Authority. People ex rel. Hartigan v. E & E Hauling, Inc., 153 Ill. 2d 473, 180 Ill. Dec. 271, 607 N.E.2d 165 (1992).

LEGAL PERIODICALS

For Note, "The Per Se Conflict of Interest Rule Applied to Special Assistant Attorneys General Serving as Defense Counsel - People v. Fife," see 29 De Paul L. Rev. 585 (1980).

For article, "The Illinois Attorney General's Representation of Opposing State Agencies - Conflicts of Interest, Policy and Practice," see 66 Ill. B.J. 308 (1978).

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From Comments, "People ex rel. Scott v. Briceland: Powers of the Attorney General Revisited," see 11 J. Marshall J. Prac. & Proc. 441 (1978).

Section 16. Secretary of State - Duties.

The Secretary of State shall maintain the official records of the acts of the General Assembly and such official records of the Executive Branch as provided by law. Such official records shall be available for inspection by the public. He shall keep the Great Seal of the State of Illinois and perform other duties that may be prescribed by law.

(Source: Illinois Constitution.)

CASE NOTES

Appointee to Vacant Senate Seat

Section 5(1) of the Illinois Secretary of State Act, 15 ILCS 305/0.01 et seq., was inapplicable to an appointment to fill a vacant United States Senate position so that no further action was required by any officer of the State of Illinois to make an appointment by the Governor of Illinois valid under 15 ILCS 305/5(1). Further, the only ministerial act required of the Secretary of State of Illinois was that the Secretary register the appointment in accordance with § 5(2) of the Secretary of State Act, 15 ILCS 305/5(2). Burris v. White, 232 Ill. 2d 1, 327 Ill. Dec. 162, 901 N.E.2d 895, 2009 Ill. LEXIS 372 (2009).

Section 17. Comptroller - Duties.

The Comptroller, in accordance with law, shall maintain the State's central fiscal accounts, and order payments into and out of the funds held by the Treasurer.

(Source: Illinois Constitution.)

CASE NOTES

Warrants

State warrant is a negotiable instrument under 810 ILCS 5/3-104 of the Uniform Commercial Code; as a signed order for the payment of a sum certain of money, the warrant is a "draft," a form of negotiable instrument. A warrant is an order by the Comptroller on the State Treasurer to pay a sum certain to the order of a named payee, and the Treasurer's and Comptroller's roles are

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established in the first instance by Ill. Const., Art. V, §§ 17, 18. Econ. Currency Exch., Inc. v. State, 50 Ill. Ct. Cl. 392, 1997 Ill. Ct. Cl. LEXIS 61 (Ct. Cl. 1997).

Section 18. Treasurer - Duties.

The Treasurer, in accordance with law, shall be responsible for the safekeeping and investment of monies and securities deposited with him, and for their disbursement upon order of the Comptroller.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Misuse of Funds
- Injunction
Powers and Duties
- Banking Act
- Scope of Duties
Powers and Duties
- Scope of Duties
Powers and Dutues
- Scope of Duties
State
- Equitable Lien
Warrants

Misuse of Funds

- Injunction

Public officials of the state, who are charged by law with the duty of granting certificates or warrants purporting to authorize the payment of moneys from the treasury of the state, may be restrained from issuing certificates or warrants for the payment of public money for any purposes other than for which such moneys may be lawfully used, and the Treasurer of the State may be enjoined from paying public funds for purposes, or objects not authorized by law. Burke v. Snively, 208 Ill. 328, 70 N.E. 327 (1904).

An unconstitutional statute is not law, and an appropriation of public funds pursuant to an unconstitutional statute is a misuse of funds, which may be restrained by injunction. Burke v. Snively, 208 Ill. 328, 70 N.E. 327 (1904).

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Powers and Duties

- Banking Act

Former Banking Act (Ill. Rev. Stat., ch. 16 1/2, paras. 201-206) (see now 205 ILCS 5/3 to 5/74) which required the treasurer to exact a pledge of securities from bank for state funds on deposit with bank, did not deprive the state Treasurer of his powers or duties, and although it may have limited the discretion of the State Treasurer as a constitutional prerogative, since the State Treasurer voluntarily followed it, it was not a matter of which creditors of failed banks could have complained. American Legion Post 279 v. Barrett, 371 Ill. 78, 20 N.E.2d 45 (1939).

- Scope of Duties

Under former similar provision of the constitution of 1870 (see now this section), duties of the State Treasurer were to be implied from the nature of the office, and of them he could not be deprived or relieved. American Legion Post 279 v. Barrett, 371 Ill. 78, 20 N.E.2d 45 (1939).

Powers and Duties

- Scope of Duties

In a breach of contract action by buyers against the Illinois State Treasurer and a bank, the "officer suit" exception to sovereign immunity did not apply because she had not acted outside the authority granted to her in Ill. Const., Art. V, § 18; thus, under 705 ILCS 505/8(b), exclusive jurisdiction over the case was in the court of claims. PHL, Inc. v. Pullman Bank & Trust Co., 216 Ill. 2d 250, 296 Ill. Dec. 828, 836 N.E.2d 351, 2005 Ill. LEXIS 947 (2005), cert. denied, U.S. , 126 S. Ct. 1469, 164 L. Ed. 2d 247 (2006).

Powers and Dutues

- Scope of Duties

In a breach of contract action by buyers against the Illinois State Treasurer and a bank, the "officer suit" exception to sovereign immunity did not apply because she had not acted outside the authority granted to her in Ill. Const., Art. V, § 18; thus, under 705 ILCS 505/8(b), exclusive jurisdiction over the case was in the court of claims. PHL, Inc. v. Pullman Bank & Trust Co., 216 Ill. 2d 250, 296 Ill. Dec. 828, 836 N.E.2d 351, 2005 Ill. LEXIS 947 (2005), cert. denied, U.S. , 126 S. Ct. 1469, 164 L. Ed. 2d 247 (2006).

State

- Equitable Lien

The Deposit Act of 1919 (see now 15 ILCS 520/0.01 et seq.) while it defined the method of preserving the equitable lien of the state of funds deposited with a bank, neither modified nor attempted to set aside the constitutional duty of the State Treasurer, as insurer of the funds, but prescribed instead, methods merely of preserving the equitable lien of the state. American Legion Post 279 v. Barrett, 371 Ill. 78, 20 N.E.2d 45 (1939).

Warrants

State warrant is a negotiable instrument under 810 ILCS 5/3-104 of the Uniform Commercial Code; as a signed order for the payment of a sum certain of money, the warrant is a "draft," a

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form of negotiable instrument. A warrant is an order by the Comptroller on the State Treasurer to pay a sum certain to the order of a named payee, and the Treasurer's and Comptroller's roles are established in the first instance by Ill. Const, Art. V, §§ 17, 18. Econ. Currency Exch., Inc. v. State, 50 Ill. Ct. Cl. 392, 1997 Ill. Ct. Cl. LEXIS 61 (Ct. Cl. 1997).

OPINIONS OF ATTORNEY GENERAL

Banking Branch

The State Treasurer does not have the authority to authorize a private banking corporation to establish a branch facility in a portion of the space allocated to the Treasurer in the State House. 1992 Op. Atty. Gen. (92-028).

Section 19. Records - Reports.

All officers of the Executive Branch shall keep accounts and shall make such reports as may be required by law. They shall provide the Governor with information relating to their respective offices, either in writing under oath, or otherwise, as the Governor may require.

(Source: Illinois Constitution.)

Section 20. Bond.

Civil officers of the Executive Branch may be required by law to give reasonable bond or other security for the faithful performance of their duties. If any officer is in default of such a requirement, his office shall be deemed vacant.

(Source: Illinois Constitution.)

Section 21. Compensation.

Officers of the Executive Branch shall be paid salaries established by law and shall receive no other compensation for their services. Changes in the salaries of these officers elected or appointed for stated terms shall not take effect during the stated terms.

(Source: Illinois Constitution.)

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CASE NOTES

Analysis

Mid-Term Pay Raise
- State's Attorneys
Private Attorney
Whistleblower Reward and Protection Act

Mid-Term Pay Raise

- State's Attorneys

For purposes of compensation, State's Attorneys are not subject to the provisions of the executive article, and therefore, they are entitled to pay increases during their terms of office. Ingemunson v. Hedges, 133 Ill. 2d 364, 140 Ill. Dec. 397, 549 N.E.2d 1269 (1990).

Private Attorney

Attorney General's contention that the allowance of fees to taxpayer's attorney, who succeeded in having real estate transfer tax declared unconstitutional, constituted the payment of fees to private attorneys for the collection of taxes, and was therefore in violation of this section, was without merit since the state did not engage the plaintiff's attorneys. Saltiel v. Olsen, 85 Ill. 2d 484, 55 Ill. Dec. 830, 426 N.E.2d 1204 (1981).

Whistleblower Reward and Protection Act

Illinois Whistleblower Reward and Protection Act does not violate the Attorney General clause, Ill. Const. (1970), Art. V, § 15, by improperly usurping the Attorney General's exclusive authority to initiate and conduct litigation on the State's behalf because in qui tam proceedings, the Attorney General still maintains control over the proceedings. Furthermore, the Act does not violate the Attorney General clause or the executive compensation clause, Ill. Const. (1970), Art. V, § 21, because the relator that files a claim on behalf of the State is not directly paid by the State for services rendered. State ex rel. Beeler, Schad & Diamond, P.C. v. Ritz Camera Ctrs., Inc., 377 Ill. App. 3d 990, 316 Ill. Dec. 128, 878 N.E.2d 1152, 2007 Ill. App. LEXIS 1075 (1 Dist. 2007).

OPINIONS OF ATTORNEY GENERAL

Analysis

Department Directors of Administrative Agencies
Salary Increases
Temporary Reappointments

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Department Directors of Administrative Agencies

Department directors of administrative agencies under the jurisdiction of the Governor are officers of the executive branch of state government within the meaning of the Illinois Constitution. 2001 Op. Atty. Gen (01-003).

Salary Increases

The General Assembly could constitutionally provide by statute for state officers, beginning in the following term, to have salary increases determined automatically based on an inflation index calculated by the federal government. 1978 Op. Atty. Gen. 125.

Temporary Reappointments

Department directors of administrative agencies under the jurisdiction of the Governor who were reappointed to office with the designation "temporary reappointment" on January 16, 2001 were entitled to receive the increased salaries authorized by the governor in a letter to the Comptroller dated January 12, 2001 as new terms of such directors began upon their qualification for office. 2001 Op. Atty. Gen (01-003).

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ARTICLE VI
THE JUDICIARY

Section 1. Courts.

The judicial power is vested in a Supreme Court, an Appellate Court and Circuit Courts.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Advisory Opinions
Agreed Order
City, Town and Village Courts
County Courts
Court of Claims
Creation of Additional Courts
Death Penalty
- Mercy Provision
- Panel of Judges
Delegation of Judicial Power
- Taxes
Delegation of Powers
- Regulatory Agency
Equity
- Injunction of Tax Collection
- Juveniles
Fact-finding bodies
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- Defendant's Motion
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Independence of Judiciary
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Interference with Judicial Authority
- Probation Officer
Judicial Function
- Administrative Law

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- Legislative Exercise Prohibited
- Wages of Women and Minors Act

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Subject Matter Jurisdiction
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Supervision of Attorneys
- In General
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Supervision of Courts

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- Supreme Court Rules
Supreme Court
- Duty
- Rulemaking Authority

Advisory Opinions

This section does not vest the authority to render advisory opinions in state judges. 28 E. Jackson Enters., Inc. v. Rosewell, 65 Ill. 2d 420, 3 Ill. Dec. 454, 358 N.E.2d 1139 (1976).

The Supreme Court did not have the authority to resolve questions of state law raised by a corporate taxpayer, who sought an injunction to restrain a county tax collector from selling its property for nonpayment of real estate taxes, where the case was shaped to exclude the Illinois courts from effective consideration of any questions under the United States Constitution, because the issues that might be determinative had been deliberately excluded from judicial consideration, and any judgment that an Illinois court might render would not definitively adjudicate the rights of anyone. 28 E. Jackson Enters., Inc. v. Rosewell, 65 Ill. 2d 420, 3 Ill. Dec. 454, 358 N.E.2d 1139 (1976).

Agreed Order

Although the application of principles of law is inherently a judicial function, an agreed order is not a judicial determination of the parties' rights; to the contrary, the trial court has no inherent authority to force parties to enter into an agreed order, and once such order is entered they are not appealable unless their entry resulted from fraudulent misrepresentation, coercion or other equitable principles. Olsen v. Staniak, 260 Ill. App. 3d 856, 198 Ill. Dec. 109, 632 N.E.2d 168 (1 Dist. 1994).

City, Town and Village Courts

For a case discussing city, town, or village courts created under the Illinois Constitution of 1870, see Turnbaugh v. Dunlop, 406 Ill. 573, 94 N.E.2d 438 (1950); Starck v. Chicago & N.W. Ry., 4 Ill. 2d 611, 123 N.E.2d 826 (1954); Chappelle v. Sorenson, 11 Ill. 2d 472, 143 N.E.2d 18 (1957).

Ill. Const. (1870), Art. VI, § 1, did not withdraw from the legislature the power to confer upon city courts jurisdiction to hear and determine transitory causes of action arising outside of the territorial limits of the city in which the particular city court was located, and did not preclude a city court from exercising jurisdiction over an action under the Federal Employers Liability Act for damages incurred outside the state. Indeed former Ill. Rev. Stat. ch. 37, para. 333, vested the city courts with concurrent jurisdiction over transitory actions wherever they arose. McGlynn & McGlynn v. Louisville & N. R. Co., 313 Ill. App. 396, 40 N.E.2d 539, 1942 Ill. App. LEXIS 1163 (1 Dist. 1942).

County Courts

For a case discussing county courts created under the Illinois Constitution of 1870, see People ex rel. Hill v. Deneen, 256 Ill. 536, 100 N.E. 180 (1912).

Court of Claims

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The Court of Claims is not a court within the meaning of this Article; it is a tribunal much akin to a court of limited jurisdiction. Klopfer v. Court of Claims, 286 Ill. App. 3d 499, 221 Ill. Dec. 876, 676 N.E.2d 679 (1 Dist. 1997).

Court of Claims Act does not violate the separation of powers provision, Ill. Const. (1970), Art. II, § 1 as the Court of Claims is not a judicial court within the meaning of Ill. Const. (1970), Art. VI. Seifert v. Standard Paving Co., 64 Ill. 2d 109, 355 N.E.2d 537, 1976 Ill. LEXIS 352 (1976).

Creation of Additional Courts

The legislature has no constitutional authority to create a new court under this article. People ex rel. Rice v. Cunningham, 61 Ill. 2d 353, 336 N.E.2d 1 (1975).

Death Penalty

- Mercy Provision

The mercy provision of a death penalty statute was defective because it did not contain standards or guidelines to be considered in determining whether there were "compelling reasons for mercy" and the imposing of a sentence other than a sentence of death. People ex rel. Rice v. Cunningham, 61 Ill. 2d 353, 336 N.E.2d 1 (1975).

- Panel of Judges

Neither the 1962 judicial amendment to the 1870 Constitution, nor the provisions of the judicial article of the 1970 Constitution, were intended to contravene the longstanding view that proceedings in the circuit court are to be conducted by one judge; therefore, a statute, which provided that a three-judge panel act collectively in determining whether a defendant should be given the death penalty, was constitutionally defective because it deprived each of the judges constituting the panel jurisdiction vested in him by the Constitution. People ex rel. Rice v. Cunningham, 61 Ill. 2d 353, 336 N.E.2d 1 (1975).

Delegation of Judicial Power

- Taxes

Where the purpose of the reassessment statute of 1928, and of the order entered thereunder, was not to make changes in the assessments of individuals, but to correct inequalities and failures to comply with the law in assessments in the entire county, while it was called a reassessment, it was, in act and in effect, a new or original assessment of all of the real property of the county, was governed by the rules of law applicable to original assessments, and did not violate due process or delegate legislative and judicial power to taxing officers. Heidenway v. Harding, 336 Ill. 606, 168 N.E. 630 (1929).

Delegation of Powers

- Regulatory Agency

The delegation to the Pollution Control Board of the regulatory and adjudicatory power to enforce provisions of the Environmental Protection Act (see now 415 ILCS 5/1 et seq.) by imposing fines on violators, and award the state the reasonable value of the fish killed was not a violation of the separation of powers doctrine. Meadowlark Farms, Inc. v. Pollution Control Bd., 17 Ill. App. 3d 851, 308 N.E.2d 829 (5 Dist. 1974).

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Equity

- Injunction of Tax Collection

Equity will not act to enjoin the collection of a tax unless the tax is imposed upon exempt property, or is not authorized by law, or is levied upon a fraudulently excessive valuation; the fact that the circuit court has unlimited jurisdiction of all justiciable matters does not detract from the sound policy considerations for generally denying injunctive relief against the collection of a tax. People ex rel. Williams v. McDonald, 44 Ill. 2d 349, 255 N.E.2d 400 (1970).

Where a petition was filed requesting a vote on the special road tax, an election was held and the proposition carried, and the proper taxing authorities made the special road tax levy at a rate permitted by statute, equity would not intervene to enjoin its collection if the tax levy was in fact made in an irregular or erroneous manner, the plaintiff had an adequate statutory remedy. People ex rel. Williams v. McDonald, 44 Ill. 2d 349, 255 N.E.2d 400 (1970).

- Juveniles

A power exists in every well-regulated society to see that infants within the jurisdiction of the court are not abused, defrauded, or neglected, and that they shall be as will make them good citizens; this power is vested in the court of chancery, representing the government. Witter v. County Comm'rs, 256 Ill. 616, 100 N.E. 148 (1912).

Fact-finding bodies

Both the Illinois Court of Claims and the Illinois Courts Commission are not courts within the meaning of the judicial article of the Illinois Constitution, but instead are fact-finding bodies. Dupree v. Patchett, 361 Ill. App. 3d 789, 297 Ill. Dec. 818, 838 N.E.2d 305, 2005 Ill. App. LEXIS 1110 (4 Dist. 2005).

Forum Non Conveniens

- Defendant's Motion

The balance of factors must strongly favor the defendant's motion for forum non conveniens before a case should be transferred to a forum other than the one chosen by the plaintiff. Peile v. Skelgas, Inc., 163 Ill. 2d 323, 206 Ill. Dec. 179, 645 N.E.2d 184 (1994).

- Intrastate

The venue provision of 735 ILCS 5/2-108 is not in conflict with the Rules of the Supreme Court concerning intrastate forum non conveniens motions because nothing in the section prevents court from exercising its constitutional authority to supervise the administration of the court system in this state. Peile v. Skelgas, Inc., 163 Ill. 2d 323, 206 Ill. Dec. 179, 645 N.E.2d 184 (1994).

Independence of Judiciary

- Local Control

This Article does not contemplate nor does it authorize the exercise of any control over or permit the imposition of a burden on the judicial system by any local entity. City of Carbondale v. Yehling, 96 Ill. 2d 495, 71 Ill. Dec. 683, 451 N.E.2d 837 (1983).

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Interference with Judicial Authority

- Probation Officer

Failure of a defendant's probation officer to consent to his election for treatment under former provisions of the Criminal Code and the Dangerous Drug Abuse Act, did not constitute an interference with judicial authority by a nonjudicial officer in violation of this section. People v. Phillips, 66 Ill. 2d 412, 6 Ill. Dec. 215, 362 N.E.2d 1037 (1977).

Judicial Function

- Administrative Law

Sections 8, 9, 10 and 12 of the Retailers' Occupation Tax Act (35 ILCS 130/8, 130/9, 130/10 and 130/12) did not violate former Ill. Const. (1870), Art. VI, section 1 (see now this section) by investing administrative officers with judicial powers. Department of Fin. v. Cohen, 369 Ill. 510, 17 N.E.2d 327 (1938).

- Legislative Exercise Prohibited

If a power is judicial in character, it necessarily follows that the legislature is expressly prohibited from exercising it. People v. Cox, 82 Ill. 2d 268, 45 Ill. Dec. 190, 412 N.E.2d 541 (1980).

- Wages of Women and Minors Act

The publication provisions provided by 820 ILCS 125/9 which authorized the Department of Labor to publish in any newspaper of the state the names of any employers failing to observe an order of the Department, was not tantamount to an imposition of a penalty for an alleged infraction of the law, without a judicial determination of the merits of the cause, and did not confer a judicial function upon an administrative agency. Vissering Mercantile Co. v. Annunzio, 1 Ill. 2d 108, 115 N.E.2d 306 (1953).

A former provision of the Wages of Women and Minors Act which provided for all questions of fact arising under the Act to be decided by the Department of Labor with no appeal therefrom, deprived the courts of judicial power, and deprived individuals of due process of law. Vissering Mercantile Co. v. Annunzio, 1 Ill. 2d 108, 115 N.E.2d 306 (1953).

Judicial Power

- In General

Ill. Const., Art. VI, § 14 was violated when the Governor and General Assembly attempted to suspend and veto the cost-of-living adjustments that had been authorized for judge salaries, as that part of the salary had been fully vested since 1990 and accordingly, 2001 Ill. Laws 607 was held unconstitutional for attempting to remove that part of the salary; pursuant to Ill. Const., Art. VI, §§ 1 and 16, the judiciary had the authority to construe the constitution and to administer the court system, which included authority to assure that judges were properly paid pursuant to the constitutional requirements. Jorgensen v. Blagojevich, 211 Ill. 2d 286, 285 Ill. Dec. 165, 811 N.E.2d 652, 2004 Ill. LEXIS 680 (2004).

The judicial power includes the adjudication and application of law, the administration of the courts and the imposition of criminal sentences. People v. Felella, 131 Ill. 2d 525, 137 Ill. Dec. 547, 546 N.E.2d 492 (1989).

Court concluded that the Illinois Anti-Injunction Act does not contravene former Ill. Const. of 1870, Art. III (now Ill. Const. (1970), Art. VI, § 1), which provides for the redress of wrongs through the

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courts. Fenske Bros., Inc. v. Upholsterers' International Union, 358 Ill. 239, 193 N.E. 112, 1934 Ill. LEXIS 996 (1934).

- Common Law

It is necessary to look to the common law as one of the sources of information as to what constitutes judicial power which is conferred on the Supreme Court by this section. People v. Callopy, 358 Ill. 11, 192 N.E. 634 (1934).

- Courts

Since the circuit court has been vested with discretion in supervising discovery, use of 735 ILCS 5/2-1009 neither conflicts with nor infringes upon the supreme court's constitutional authority to manage the judiciary. In re Air Crash Disaster, 259 Ill. App. 3d 231, 197 Ill. Dec. 843, 631 N.E.2d 1302 (1 Dist.), appeal denied, 157 Ill. 2d 501, 205 Ill. Dec. 163, 642 N.E.2d 1280 (1994).

Judicial power is not defined in the Constitution, but all such power is exclusively and exhaustively granted to the courts. People v. Davis, 93 Ill. 2d 155, 66 Ill. Dec. 294, 442 N.E.2d 855 (1982).

Although the Constitution of 1970 does not define judicial power, it is an exclusive grant of all such power to the courts. People v. Jackson, 69 Ill. 2d 252, 13 Ill. Dec. 667, 371 N.E.2d 602 (1977).

Section 1 of Article VI of the 1870 Constitution (see now this section) vested the judicial power in the courts provided in or permitted to be created by the Constitution. Although the Constitution does not define what constitutes judicial power, it is an exclusive and exhaustive grant vesting all such power in the courts. Agran v. Checker Taxi Co., 412 Ill. 145, 105 N.E.2d 713 (1952).

Municipal court judge lacked authority to vacate and set aside misdemeanor convictions in criminal cases after conviction and after the defendants had been committed to prison. People ex rel. Brundage v. La Buy, 285 Ill. 141, 120 N.E. 537, 1918 Ill. LEXIS 840 (1918).

- Sentencing

The power to impose sentence is exclusively a function of the judiciary. People v. Davis, 93 Ill. 2d 155, 66 Ill. Dec. 294, 442 N.E.2d 855 (1982).

A construction which would hold sections 5-4-1(c) and 5-8-1(b) of the Unified Code of Corrections (730 ILCS 5/5-4-1(c) and 730 ILCS 5/5-8-1(b)), requiring the trial judge to specify reasons for a sentence, to constitute a mandatory requirement would render the provisions an unconstitutional invasion of the inherent power of the judiciary; however, a construction rendering the sections to be solely directory would not. People v. Davis, 93 Ill. 2d 155, 66 Ill. Dec. 294, 442 N.E.2d 855 (1982).

- Treatment for Drug Abuse

The authority granted to a probation officer to deny treatment to persons charged with, but not convicted of, a criminal offense does not infringe upon the court's constitutional right to impose sentence. People v. Phillips, 66 Ill. 2d 412, 6 Ill. Dec. 215, 362 N.E.2d 1037 (1977).

Judicial Function

- Application of Law

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The application of principles of law is inherently a judicial function, and this section vests the exclusive and entire judicial power in the courts. Wright v. Central Du Page Hosp. Ass'n, 63 Ill. 2d 313, 347 N.E.2d 736 (1976).

- Election Contest

If a right of a candidate for senatorial office existed to contest the nomination of an opposing candidate, the jurisdiction to hear the contest would be in the circuit court. People ex rel. Hill v. Deneen, 256 Ill. 536, 100 N.E. 180 (1912).

Jurisdiction

Appellate court had jurisdiction to consider the husband's appeal of the indirect contempt order entered against him as his notice of appeal was properly filed within 30 days of the trial court's contempt order; the State Supreme Court had the sole responsibility for promulgating rules governing appeals from the trial court and it did not intend through those rules that jurisdiction would be decided according to the sequence the circuit court clerk used in stamping documents that were filed with the trial court. Nettleton v. Terrell (In re Nettleton), 348 Ill. App. 3d 961, 285 Ill. Dec. 19, 811 N.E.2d 260, 2004 Ill. App. LEXIS 654 (2 Dist. 2004).

Labor Relations

- Judicial Employees

The inclusion of judicial employees within the Illinois Public Labor Relations Act (see now 5 ILCS 315/1 et seq.) does not by itself trench on the separation of powers principle or on the general administrative and supervisory authority granted by the constitution to the judicial branch. County of Kane v. Carlson, 116 Ill. 2d 186, 107 Ill. Dec. 569, 507 N.E.2d 482 (1987).

- Nonjudicial Employees

The fact that a county, which paid the salaries of nonjudicial employees in the judicial branch, was not considered an employer for collective bargaining purposes comported with the constitution's separation of powers and unified court system provisions. Orenic v. Illinois State Labor Relations Bd., 127 Ill. 2d 453, 130 Ill. Dec. 455, 537 N.E.2d 784 (1989).

Legislative Regulation

- Conflict with Rules

The legislature has the power to enact laws governing judicial practice, provided it does not unduly infringe upon the inherent powers of the judiciary; where a rule on a matter within the Supreme Court's inherent judicial authority and a statute on the same subject conflict, the rule will prevail. People v. Mason, 145 Ill. App. 3d 218, 98 Ill. Dec. 849, 494 N.E.2d 1176 (1 Dist. 1986), rev'd on other grounds, 122 Ill. 2d 64, 118 Ill. Dec. 465, 521 N.E.2d 1158 (1988).

Section 5-5-4.1 of the Unified Code of Corrections (730 ILCS 5/5-5-4.1), which prior to 1983 amendment, purported to alter the standard of review of a sentence imposed by a trial judge and to authorize a court of review to enter any sentence that the trial judge could have entered, was null and void, as it was in direct conflict with Rule 615(b)(4), Supreme Court Rules and decisions interpreting the rule. People v. Cox, 82 Ill. 2d 268, 45 Ill. Dec. 190, 412 N.E.2d 541 (1980).

- Independence of Judiciary

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The General Assembly has the power to enact laws governing judicial practice only where they do not unduly infringe upon the inherent powers of the judiciary. People v. Davis, 93 Ill. 2d 155, 66 Ill. Dec. 294, 442 N.E.2d 855 (1982).

- Infringement Not Shown

725 ILCS 5/115-10(c) created an exception to the hearsay rule for a class of out-of-court statements by children in prosecutions for sexual acts committed upon them, provided that certain conditions were met for reliability in derogation of the common law, albeit evidentiary not procedural, which the legislature could define and then implement; subsection (c) does not represent an infringement, much less one that is undue, of the courts' judicial power. People v. Novak, 242 Ill. App. 3d 836, 183 Ill. Dec. 555, 611 N.E.2d 1203 (1 Dist. 1993), aff'd, 163 Ill. 2d 93, 205 Ill. Dec. 471, 643 N.E.2d 762 (1994).

- Statutory Procedure

Where in response to a motion filed under Rule 103(b) Supreme Court Rules, a plaintiff used (735 ILCS 5/2-1009 and 735 ILCS 5/13-217) to dismiss a civil suit without prejudice and then to refile the suit within a period of one year, such application of those sections unduly infringed upon the Supreme Court's constitutional authority to regulate the judicial system of Illinois. O'Connell v. St. Francis Hosp., 112 Ill. 2d 273, 97 Ill. Dec. 449, 492 N.E.2d 1322 (1986), aff'd, 145 Ill. 2d 1, 163 Ill. Dec. 848, 582 N.E.2d 114 (1991).

Municipal Courts

For cases discussing the municipal courts of Chicago, which were created under the 1870 Constitution, see Richter v. Burdock, 257 Ill. 410, 100 N.E. 1063 (1913); Wilcox v. Conklin, 255 Ill. 604, 99 N.E. 669 (1912).

Reassignment of Judges

Under former Article IV of the Constitution of 1870 (see now this Article), a judge of a city court could hold court for a circuit court judge. White v. Herhold, 182 Ill. App. 477 (1 Dist. 1913).

Rules

- Authority of Supreme Court

Other than the inference of rulemaking power arising from: (1) the statement of the vesting of judicial power in the courts in this section; and (2) the grant to the Supreme Court of general administrative and supervisory authority over the courts in Ill. Const. (1970), Art. VI, § 16, the Illinois Constitution is silent as to the Supreme Court's power to make rules concerning procedure in the circuit court. AFSCME v. Illinois State Labor Relations Bd., 196 Ill. App. 3d 238, 142 Ill. Dec. 901, 553 N.E.2d 415 (4 Dist.), appeal denied, 133 Ill. 2d 551, 149 Ill. Dec. 315, 561 N.E.2d 685 (1990).

- Conflict with Statute

If a statute conflicts with a rule that involves a matter within the judicial authority, the statute must yield to the rule. Peile v. Skelgas, Inc., 163 Ill. 2d 323, 206 Ill. Dec. 179, 645 N.E.2d 184 (1994).

Where a rule of the Supreme Court on a matter within the court's authority and a statute on the same subject conflict, the rule will prevail. O'Connell v. St. Francis Hosp., 112 Ill. 2d 273, 97 Ill.

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Dec. 449, 492 N.E.2d 1322 (1986), aff'd, 145 Ill. 2d 1, 163 Ill. Dec. 848, 582 N.E.2d 114 (1991).

- Courts of Concurrent Jurisdiction

One court cannot prescribe a rule binding another court which has concurrent jurisdiction. People ex rel. Bernat v. Bicek, 405 Ill. 510, 91 N.E.2d 588 (1950).

- Inferior Courts

The Supreme Court has inherent power to prescribe rules for inferior courts, and a court has power to prescribe rules regulating the practice in its own court. People ex rel. Bernat v. Bicek, 405 Ill. 510, 91 N.E.2d 588 (1950).

Inferior courts may adopt rules to facilitate procedure and practice before them, but such rules must be reasonable and subject to review by the Supreme Court. People ex rel. Bernat v. Bicek, 405 Ill. 510, 91 N.E.2d 588 (1950).

- Power to Promulgate

The Illinois Constitution clearly empowers this court to promulgate procedural rules to facilitate the judiciary in the discharge of its constitutional duties. O'Connell v. St. Francis Hosp., 112 Ill. 2d 273, 97 Ill. Dec. 449, 492 N.E.2d 1322 (1986), aff'd, 145 Ill. 2d 1, 163 Ill. Dec. 848, 582 N.E.2d 114 (1991).

Scope

This section of the constitution grants all powers necessary for complete performance of the judicial function. People v. Spegal, 5 Ill. 2d 211, 125 N.E.2d 468 (1955).

Separation of Powers

State commerce commission's action in permitting an out-of-state attorney to practice pro hac vice before the state commerce commission violated neither the separation of powers clause of the Illinois Constitution, Ill. Const. Art. II, § 1, nor encroached on the power of the judiciary under Ill. Const. Art. VI. The separation of powers doctrine did not forbid every exercise of functions by one branch of government that conventionally is exercised by another branch and the state commerce commission's exercise of quasi-judicial power was incidental to the duty of administering the law in a practical and effective manner. Alhambra-Grantfork Tel. Co. v. Ill. Commerce Comm'n, 358 Ill. App. 3d 818, 295 Ill. Dec. 419, 832 N.E.2d 869, 2005 Ill. App. LEXIS 605 (5 Dist. 2005), appeal denied, 217 Ill. 2d 557, 300 Ill. Dec. 363, 844 N.E.2d 35 (2005).

- Criminal Justice Programs

Ill. Rev. Stat., ch. 38, paras. 1003-3-3(b), 1003-11-1, 1003-13-1, and 1003-13-2 (730 ILCS 5/3-3-3, 730 ILCS 5/3-11-1, 730 ILCS 5/3-13-1, and 730 ILCS 5/3-13-2), each concerned with the manner of confinement and rehabilitation of persons committed to the Department of Corrections, through parole and work release programs, did not constitute an invalid usurpation of the judicial power by the legislature. People v. Williams, 66 Ill. 2d 179, 5 Ill. Dec. 582, 361 N.E.2d 1110 (1977).

- Independence of Judiciary

It is the court's solemn duty to protect the judicial power from legislative encroachment and to preserve the integrity and independence of the judiciary. People v. Felella, 131 Ill. 2d 525, 137 Ill. Dec. 547, 546 N.E.2d 492 (1989).

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It is the undisputed duty of the court to protect its judicial powers from encroachment by legislative enactments, and thus preserve an independent judicial department. Agran v. Checker Taxi Co., 412 Ill. 145, 105 N.E.2d 713 (1952).

- Intergovernmental Cooperation

Constitutional provision allowing for intergovernmental cooperation cannot validate any "compact" that is contrary to separation of powers or the inherent powers of a unified court system. Orenic v. Illinois State Labor Relations Bd., 127 Ill. 2d 453, 130 Ill. Dec. 455, 537 N.E.2d 784 (1989).

- Legislative Regulation of Judiciary

Where the chief judge of a judicial circuit designated a county administrative judge with authority to assign judicial duties to the judges who are regularly assigned to that county, the administrative judge's authority to assign the post-conviction petition in this case to a judge flowed directly from the provisions of the constitution and from Rule 21(b), Supreme Court Rules; Section 122-8 of the Post-Conviction Hearing Act (Ill. Rev. Stat., ch 38, para. 122-8) directly interferes with this judicial authority of assignment. People v. Joseph, 113 Ill. 2d 36, 99 Ill. Dec. 120, 495 N.E.2d 501 (1986).

Although it is true that the legislature has the power to enact laws governing judicial practice where it does not unduly infringe upon the inherent powers of the judiciary, where a rule of this court on a matter within the court's authority and a statute on the same subject conflict, the rule will prevail. People v. Cox, 82 Ill. 2d 268, 45 Ill. Dec. 190, 412 N.E.2d 541 (1980).

The legislature cannot direct the judiciary how cases should be decided, nor can it unduly circumscribe the power of courts to determine facts and apply the law to them. People v. Spegal, 5 Ill. 2d 211, 125 N.E.2d 468 (1955).

The General Assembly has power to enact laws governing judicial practice only where they do not unduly infringe upon the inherent powers of the judiciary. Agran v. Checker Taxi Co., 412 Ill. 145, 105 N.E.2d 713 (1952).

Former Ill.Rev.Stat, ch. 110, para. 50a, which regulated judicial authority in the performance of a purely judicial act, placing a restriction on the power of the courts to render a judgment of dismissal in ex parte actions by requiring a five day notice to every attorney of record before an ex parte dismissal could be granted, was an unlawful attempt by the legislature to regulate the procedure of the courts in their administration of judicial business; thus, it was contrary to the express division of governmental powers into three distinct departments. Agran v. Checker Taxi Co., 412 Ill. 145, 105 N.E.2d 713 (1952).

- Mandatory Income Withholding

The mandatory income withholding procedures contained in the Illinois Parentage Act of 1984 (Ill. Rev. Stat., ch. 40, para. 2501 et seq.) do not violate the federal and Illinois constitutional provisions for separation of powers. People ex rel. Sheppard v. Money, 124 Ill. 2d 265, 124 Ill. Dec. 561, 529 N.E.2d 542 (1988).

- Medical Malpractice Procedure

The provisions of 735 ILCS 5/2-622, outlining procedure necessary for litigating a medical malpractice suit, do not usurp judicial power, violating the separation of powers provisions of Ill. Const. (1970), Art. II, § 1, or this section. McAlister v. Schick, 147 Ill. 2d 84, 167 Ill. Dec. 1021, 588 N.E.2d 1151 (1992).

Application of precursor to 735 ILCS 5/2-622 requiring that plaintiffs in medical malpractice actions file an affidavit stating that, based on consultation with a health professional, there is a "reasonable and meritorious" cause for filing the action, does not involve interpretations of law, and therefore does not vest a judicial function in nonjudicial personnel in violation of this section

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or Ill. Const. (1970), Art. VI, § 9. Bloom v. Guth, 164 Ill. App. 3d 475, 115 Ill. Dec. 468, 517 N.E.2d 1154 (2 Dist. 1987).

- Physician-Ordered Blood or Urine Tests

625 ILCS 5/11-501.4-1, which allows the results of physician-ordered blood or urine tests conducted in the course of emergency treatment for injuries resulting from a motor vehicle accident to be reported directly to state or local law enforcement officials, does not violate a patient's right to privacy in his medical records and does not violate the separation of powers provisions. People v. Jung, 192 Ill. 2d 1, 248 Ill. Dec. 258, 733 N.E.2d 1256, 2000 Ill. LEXIS 982 (2000).

- Sentencing

The Habitual Criminal Act (720 ILCS 5/33B-1 et seq.) does not vest sole discretion in the prosecutor to decide which defendant should be sentenced under the Act in violation of this section by encroaching upon the judicial function of sentencing. People v. Tobias, 125 Ill. App. 3d 234, 80 Ill. Dec. 496, 465 N.E.2d 608 (1 Dist. 1984).

Subject Matter Jurisdiction

- Derivation

Subject matter jurisdiction is derived by the circuit courts from this Article, and consists of the power of the court to hear and determine causes of the general class to which a particular cause belongs. In re Hostetler, 124 Ill. App. 3d 31, 79 Ill. Dec. 401, 463 N.E.2d 955 (1 Dist. 1984).

Supervision of Attorneys

- In General

Attorneys are officers of the Supreme Court, and their conduct as such is subject to supervision by it. People ex rel. Ill. State Bar Ass'n v. Peoples Stock Yards State Bank, 344 Ill. 462, 176 N.E. 901 (1931).

- Exclusive Jurisdiction

The functions of the Disciplinary Commission and the Board of Law Examiners fall within the inherent, exclusive, constitutional powers of the Illinois Supreme Court. Chicago Bar Ass'n v. Cronson, 183 Ill. App. 3d 710, 132 Ill. Dec. 17, 539 N.E.2d 327 (1 Dist.), appeal denied, 136 Ill. Dec. 582, 545 N.E.2d 106 (1989), cert. denied, 493 U.S. 1057, 110 S. Ct. 867, 107 L. Ed. 2d 950 (1990).

- Inherent Power

Although this section does not expressly confer upon the Supreme Court power and jurisdiction with respect to the admission of attorneys to practice law, that power and jurisdiction are necessarily implied and are inherent in this court. People ex rel. Ill. State Bar Ass'n v. Peoples Stock Yards State Bank, 344 Ill. 462, 176 N.E. 901 (1931).

- Professional Status and Conduct

The power to prescribe the qualifications which will entitle an applicant to be admitted to the bar is judicial, as is the power to discipline or disbar attorneys for professional misconduct either in court proceedings or their relations with clients outside of court. People ex rel. Ill. State Bar Ass'n v. Peoples Stock Yards State Bank, 344 Ill. 462, 176 N.E. 901 (1931).

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Supervision of Courts

- Supreme Court Rules

The supervisory and administrative authority over all the courts is vested in the Supreme Court, to be exercised in accordance with rules. People v. Joseph, 113 Ill. 2d 36, 99 Ill. Dec. 120, 495 N.E.2d 501 (1986).

Supreme Court

- Duty

The highest duty and most sacred function of the Supreme Court is to protect and enforce the constitution, regardless of all real or imaginary inconveniences that may result from doing so. Dolese v. Pierce, 124 Ill. 140, 16 N.E. 218 (1888).

- Rulemaking Authority

The constitutional authority to promulgate procedural rules, in certain circumstances, can be concurrent between the Supreme Court and the legislature. O'Connell v. St. Francis Hosp., 112 Ill. 2d 273, 97 Ill. Dec. 449, 492 N.E.2d 1322 (1986), aff'd, 145 Ill. 2d 1, 163 Ill. Dec. 848, 582 N.E.2d 114 (1991).

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Article: Can the End Justify the Means? Illinois Lawyers Trust Fund: A Constitutional Analysis, see 23 S. Ill. U.L.J. 693 (1999).

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For article, "Stare Decisis Among the Appellate Court in Illinois," see 28 De Paul L. Rev. 571 (1979).

For article, "The Supreme Court's Exclusive Rule Making Authority," see 67 Ill. B.J. 408 (1979).

For note, "The Bounds of Power: Judicial Rule-Making in Illinois," see 10 Loy. U. Chi. L.J. 100 (1978-79).

For comment, "Pre-trial Screening of Medical Malpractice Claims Versus the Illinois Constitution," see 10 J. Marshall J. Prac. & Proc. 133 (1976).

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Section 2. Judicial Districts.

The State is divided into five Judicial Districts for the selection of Supreme and Appellate Court Judges. The First Judicial District consists of Cook County. The remainder of the State shall be divided by law into four Judicial Districts of substantially equal population, each of which shall be compact and composed of contiguous counties.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

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- Statute Held Invalid
Change of Boundary
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- Boundaries
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Change of Boundaries

- Statute Held Invalid

Provisions of the Judicial Redistricting Act of 1997 creating distinct districts for the purpose of electing Supreme Court justices, and reconfiguring Districts 2 through 5, violate this section and Ill. Const. (1970), Art. VI, §§ 6 and 7, and, because the unconstitutional provisions cannot not be

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severed from the remainder, the entire Act is invalid. Cincinnati Ins. Co. v. Chapman, 181 Ill. 2d 65, 229 Ill. Dec. 264, 691 N.E.2d 374 (1998).

The provisions of 1989 Illinois Laws Public Act 86-786, effective September 6, 1989, pertaining to the First Judicial District of the appellate court were unconstitutional, and those provisions were not severable from the provisions of the act pertaining to the Cook County Circuit Court; consequently, the provisions of Public Act 86-786, subdividing the First Judicial District for purposes of electing some appellate judges, creating six additional appellate court judgeships in the First Judicial District, and affecting the election of circuit judges in the Cook County Circuit were invalid. The provisions of the act adding two additional appellate judgeships in the Third Judicial District are severable from the rest of the act and are, therefore, valid. People ex rel. Chicago Bar Ass'n v. State Bd. of Elections, 136 Ill. 2d 513, 146 Ill. Dec. 126, 558 N.E.2d 89 (1990).

Change of Boundary

- Statute Held Valid

Act by General Assembly, changing the boundaries of the Fourth Supreme Court District, was a valid enactment, under former constitutional provision governing such changes, since the only limitation of that provision was that boundaries could only be altered at the last legislative session prior to judicial elections. People ex rel. Vandeventer v. Rose, 203 Ill. 46, 67 N.E. 746 (1903).

Intent of Framers

- Boundaries

The delegates to the 1970 constitutional convention intended that appellate court judges be elected from their respective districts at large, that Cook County be viewed as one judicial district and that the legislature could determine the boundaries of the other four judicial districts. People ex rel. Chicago Bar Ass'n v. State Bd. of Elections, 136 Ill. 2d 513, 146 Ill. Dec. 126, 558 N.E.2d 89 (1990).

Legislative Authority

- Limited

The Illinois Constitution is not regarded as a grant of powers to the legislature, but is a limitation upon its authority; the legislature may enact any legislation not expressly prohibited by the Constitution. People ex rel. Chicago Bar Ass'n v. State Bd. of Elections, 136 Ill. 2d 513, 146 Ill. Dec. 126, 558 N.E.2d 89 (1990).

Liability of County

- Case Backlog

Since the county was not responsible for establishing and operating the circuit court system in the county, it could not be held liable due to the backlog of cases therein. La Pota v. County of Cook, 10 Ill. App. 3d 1036, 295 N.E.2d 554 (1 Dist. 1973).

LEGAL PERIODICALS

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For article, "Irreconcilable Principles: Law, Politics, and the Illinois Supreme Court," see 18 N. Ill. U.L. Rev. 267 (1998).

For article, "Stare Decisis Among the Appellate Court in Illinois," see 28 De Paul L. Rev. 571 (1979).

For article, "Illinois Environment Law - State Preemption of Local Governmental Regulation of Pollution Related Activities," see 67 Ill. B.J. 118 (1978).

Practice Guides and Treatises.

Civil Practice (Illinois) Volume I: Opening the Case § 4.3 Illinois Judicial System (IICLE).

Section 3. Supreme Court - Organization.

The Supreme Court shall consist of seven Judges. Three shall be selected from the First Judicial District and one from each of the other Judicial Districts. Four judges constitute a quorum and the concurrence of four is necessary for a decision. Supreme Court Judges shall select a Chief Justice from their number to serve for a term of three years.

(Source: Illinois Constitution.)

CASE NOTES

Deadlock

Where the Supreme Court was unable to reach a decision because two judges recused themselves and the remaining members of the court were divided so that it was impossible to secure the required concurrence of four judges, the court decided, in cases that came to the Supreme Court upon appeal from the appellate court, to follow substantially the procedure employed by the Supreme Court of the United States in such cases and to affirm the judgment of the court before it for review; such an affirmance would be a conclusive determination and adjudication as between the parties to the immediate case, but not authority for the determination of other cases. The legal effect of such an affirmance would be the same as if the appeal were dismissed. Perlman v. First Nat'l Bank, 60 Ill. 2d 529, 331 N.E.2d 65 (1975).

LEGAL PERIODICALS

For article, "Stare Decisis Among the Appellate Court in Illinois," see 28 De Paul L. Rev. 571 (1979).

Practice Guides and Treatises.

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Section 4. Supreme Court - Jurisdiction.

(a) The Supreme Court may exercise original jurisdiction in cases relating to revenue, mandamus, prohibition or habeas corpus and as may be necessary to the complete determination of any case on review.

(b) Appeals from judgments of Circuit Courts imposing a sentence of death shall be directly to the Supreme Court as a matter of right. The Supreme Court shall provide by rule for direct appeal in other cases.

(c) Appeals from the Appellate Court to the Supreme Court are a matter of right if a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court, or if a division of the Appellate Court certifies that a case decided by it involves a question of such importance that the case should be decided by the Supreme Court. The Supreme Court may provide by rule for appeals from the Appellate Court in other cases.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Crim L § 12:01, § 29:19, § 30:02, § 30:05, § 31:01.

CASE NOTES

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Racial Discrimination in Jury Selection

Record on Appeal

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Uniform System of Review
- Post-Conviction Appeals
Writs
- Prohibition

Appeal by Certificate

- Record

A certificate that the validity of a municipal ordinance is involved so as to justify a direct appeal to this court is not effective if it is contrary to what is shown by the record. City of Chicago v. Krema Trucking Co., 401 Ill. 411, 82 N.E.2d 338 (1948).

Appealable Orders

- Judgment Non Obstante Verdicto

Supreme Court had jurisdiction to resolve the issue of whether a trial court had the power to enter a judgment non obstante verdicto. Fulford v. O'Connor, 3 Ill. 2d 490, 121 N.E.2d 767 (1954).

Appellate Court

- Transfer

An appeal from the dismissal of tax objections did not have to be taken to the Supreme Court, but even if it did, that would not be ground for dismissal from the appellate court since the appropriate procedure would be to transfer the case to the appellate court pursuant to Rule 365, Supreme Court Rules. People ex rel. Anders v. Burlington N., Inc., 31 Ill. App. 3d 1001, 335 N.E.2d 102 (3 Dist. 1975).

Appellate Jurisdiction

- Final Judgments

The Supreme Court can entertain appeals only from final judgments under former Art. VI, sec. 5 (see now Ill. Const. 1970, Art. VI, § 4), and Rule 302, Supreme Court Rules. Treece v. Shawnee Community Unit Sch. Dist. No. 84, 39 Ill. 2d 136, 233 N.E.2d 549 (1968).

Capital Cases

- Statute Unconstitutional

A death penalty statute provided that if an appeal is taken from a death sentence, the appellate court would consider the appeal in two separate stages: in the first stage, the case was considered as all other criminal appeals to determine whether errors occurred at trial which would require a reversal or modification of the findings; in the second stage, the appellate court would conduct an evidentiary hearing to determine whether the imposition of the death penalty by the three-judge court was the result of discrimination. This procedure for appellate review is clearly unconstitutional. People ex rel. Rice v. Cunningham, 61 Ill. 2d 353, 336 N.E.2d 1 (1975).

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Certificate of Importance

- Defect Not Fatal

Where there was no decision by the appellate court, a certificate of importance could not properly be issued; however, this formal defect was not fatal to jurisdiction over the matter, as the court considered the brief of the State as a motion for direct appeal from the judgment of the circuit court, and proceeded to the merits. People ex rel. Dir. of Fin. v. YWCA, 74 Ill. 2d 561, 25 Ill. Dec. 649, 387 N.E.2d 305 (1979).

Constitutional Question

- In General

In order for the Supreme Court of Illinois to have jurisdiction on the ground that a constitutional question is involved, it must appear that a fairly debatable constitutional question was urged in the trial court, that the ruling thereon is preserved in the record for review, and error assigned on such ruling in this court. Kimbrough v. Parker, 407 Ill. 274, 95 N.E.2d 473 (1950).

Before the jurisdiction of the Supreme court attaches on the ground that a constitutional question is involved, it must appear from the record that the question is fairly debatable, that it was urged in the lower court, that the court ruled on it, and that such ruling is preserved in the record therefore, where none of the grounds in petition for writ of certiorari included a constitutional question there was no jurisdiction, in the Supreme Court and, the cause was transferred to the Appellate Court. Dube v. Allman, 396 Ill. 470, 72 N.E.2d 180 (1947).

- Arising in Appellate Court

Under subsection (c) of this section, a constitutional question must not only be involved but the question must have arisen in the appellate court for the first time. Abrams v. Awotin, 388 Ill. 42, 57 N.E.2d 464 (1944).

- Concurrent Jurisdiction

Inadequacy of counsel could have been alleged as error in a petition under the Post-Conviction Hearing Act (see now 725 ILCS 5/122-1 et seq.), grounded on the constitutional issue of deprivation of due process of law, and an appeal from the order entered on such petition would have been directly to the Supreme Court; however, the case raised a question which lies within the penumbral area wherein either the appellate court or the Supreme Court has appellate jurisdiction. People v. Van Dyke, 106 Ill. App. 2d 411, 245 N.E.2d 324 (2 Dist. 1969).

- Enforcement of Judgment

Where it is claimed that the enforcement of a judgment or decree will deprive one against whom it is rendered of some constitutional right, no constitutional question is involved, because it only questions the validity of the judgment or decree. Chicago Bar Ass'n. v. Kellogg, 401 Ill. 375, 82 N.E.2d 639 (1948).

- Essential to Case

The Supreme Court will not consider or determine constitutional questions which are not essential to a decision of the case. People v. Valentine, 60 Ill. App. 2d 339, 208 N.E.2d 595 (1 Dist. 1965).

- Genuineness

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It does not follow that constitutional issues are genuine or substantial because an attorney on appeal bases his case on a constitutional framework and clothes it with constitutional raiment. People v. Valentine, 60 Ill. App. 2d 339, 208 N.E.2d 595 (1 Dist. 1965).

- Not Considered

Where the constitutional points raised by appellant were no longer debatable, and since the circuit court was compelled to follow the mandate of the appellate court, questions giving the Supreme Court of Illinois jurisdiction could not be raised upon a motion to disobey the mandate, and because all of the issues necessary for a final disposition of the case had been decided, the appeal of appellant was dismissed. Goodrich v. Sprague, 385 Ill. 200, 52 N.E.2d 250 (1943).

- Not Found

Defendant's contentions that the admission into evidence of tape recordings of telephone conversations violated the United States Constitution failed to raise a substantial constitutional question. People v. Wolfson, 34 Ill. 2d 585, 217 N.E.2d 791 (1966).

- Preservation for Review

A judgment of conviction for a misdemeanor cannot be reviewed by the Supreme Court on the ground that a constitutional question is involved in the case unless that question was in some manner presented to the trial court for decision and preserved for review. People v. Fuller, 369 Ill. 492, 17 N.E.2d 18 (1938).

- Ultimate Determination

The Illinois Supreme Court has the ultimate determination of questions under State and Federal Constitutions in so far as the courts of Illinois are concerned. People v. Ritchie, 66 Ill. App. 2d 302, 213 N.E.2d 651 (4 Dist.), aff'd, 36 Ill. 2d 392, 222 N.E.2d 479 (1966).

Death Penalty

Where defendant's death sentence was stayed pending direct review pursuant to Ill. Const., Art. VI, § 4(b); Rule 603, Supreme Court Rules; Rule 609, Supreme Court Rules, defendant's appeal regarding the propriety of his remand for a new sentencing hearing was rendered moot when the governor commuted his death sentence to a sentence of life imprisonment without the possibility of parole. People v. Brown, 204 Ill. 2d 422, 275 Ill. Dec. 313, 792 N.E.2d 788, 2003 Ill. LEXIS 1416 (2003).

- Forfeiture of Review

Where the Illinois Supreme Court refused to review several of capital defendant's claims, holding that he had forfeited those claims because he had not raised them in a motion for a new trial, the court had not created a new forfeiture rule and applied it retroactively, because the court had stated earlier that the general rule was that only claims raised in a motion for new trial may be appealed; the court's application of the statutory forfeiture rule was reasonably foreseeable, and it was not contrary to the Illinois Constitution or Illinois statutes which state only that a capital defendant's conviction and sentence of death shall be subject to automatic review by the Supreme Court. Enoch v. Gramley, 70 F.3d 1490 (7th Cir. 1995), cert. denied, 519 U.S. 829, 117 S. Ct. 95, 136 L. Ed. 2d 50 (1996).

- Illustrative Cases

On defendant's direct appeal to the court under Ill. Const., Art. VI, § 4(b), 720 ILCS 5/9-1(i); and Rule 603, Supreme Court Rules, the court held that defendant was properly convicted of first-degree murder under 720 ILCS 5/9-1 because, inter alia, (1) the commutation of defendant's sentence to life imprisonment without parole rendered defendant's sentencing-phase issues on

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appeal moot; (2) the court could not say that the evidence of guilt was so improbable that no rational fact finder could have found defendant guilty beyond a reasonable doubt; (3) defendant's motion for substitution was properly denied as untimely; (4) defendant's trial counsel was not ineffective for failing to object to the admission of an officer's testimony regarding defendant's inculpatory statement to him and for failing to object to a statement read and submitted to the jury by the State; and (5) even if defendant did not waive his contentions regarding the prosecutor's closing arguments, the challenged remarks were not so improper and so prejudicial that real justice was denied. People v. Evans, 209 Ill. 2d 194, 283 Ill. Dec. 651, 808 N.E.2d 939, 2004 Ill. LEXIS 368 (2004).

- Ineffective Assistance of Counsel

Although, the commutation of defendant's death sentence for violation of 720 ILCS 5/9-1(a), 720 ILCS 5/9-1(b)(3), 720 ILCS 5/9-1(b)(8), 720 ILCS 5/10-3.1 rendered the Ill. Const. Art VI, § 4(b) and Ill. Sup. Ct. R. 603, 609(a) sentencing issues moot, the trial court erroneously concluded that defendant's claim of ineffective assistance of trial counsel could be resolved by the appointment of different counsel on appeal. People v. Moore, 207 Ill. 2d 68, 278 Ill. Dec. 36, 797 N.E.2d 631, 2003 Ill. LEXIS 778 (2003).

- Life Imprisonment

Because it was intended under former Ill. Const. (1870), Art. VI, § 5 (see now Ill. Const. (1970), Art. VI, § 4) that an appeal to the Supreme Court would lie only where a sentence of capital punishment was imposed, such that where a sentence of life imprisonment was fixed, the Supreme Court had no jurisdiction, the cause was transferred to the Appellate Court. People v. Turner, 31 Ill. 2d 197, 201 N.E.2d 415 (1964).

- Mandatory Review

Regardless of the Supreme Court's duty to review death penalty cases, trial counsel has an obligation to see that this section is complied with so that the review will be limited to issues of some significance. People v. Caballero, 102 Ill. 2d 23, 79 Ill. Dec. 625, 464 N.E.2d 223 (1984), rev'd on other grounds, 126 Ill. 2d 248, 128 Ill. Dec. 1, 533 N.E.2d 1089 (1989), cert. denied, 508 U.S. 952, 113 S. Ct. 2447, 124 L. Ed. 2d 664 (1993).

In a death penalty case, the court must review a case whether or not a written motion for a new trial has been filed. Otherwise, the constitutional provision for an automatic appeal would be meaningless. People v. Caballero, 102 Ill. 2d 23, 79 Ill. Dec. 625, 464 N.E.2d 223 (1984), rev'd on other grounds, 126 Ill. 2d 248, 128 Ill. Dec. 1, 533 N.E.2d 1089 (1989), cert. denied, 508 U.S. 952, 113 S. Ct. 2447, 124 L. Ed. 2d 664 (1993).

- Post-Conviction Appeal

An appeal from a final judgment of a circuit court in a post-conviction proceeding lies directly to the Supreme Court in cases where the original conviction resulted in the imposition of the death penalty. People v. Gaines, 105 Ill. 2d 79, 85 Ill. Dec. 269, 473 N.E.2d 868 (1984), cert. denied, 471 U.S. 1131, 105 S. Ct. 2666, 86 L. Ed. 2d 282 (1985).

- Protection Against Arbitrary Imposition

Review procedures providing for direct appeal to the Supreme Court where the death penalty has been imposed sufficiently protect against the arbitrary imposition of capital punishment. People v. Lewis, 105 Ill. 2d 226, 85 Ill. Dec. 302, 473 N.E.2d 901 (1984), cert. denied, 474 U.S. 865, 106 S. Ct. 184, 88 L. Ed. 2d 153 (1985).

- Scope of Review

The Supreme Court's constitutional obligation to review death penalty cases does not require review of every issue raised on appeal when the issues are not properly preserved by an

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objection in the trial court and a written post-trial motion. People v. Enoch, 122 Ill. 2d 176, 119 Ill. Dec. 265, 522 N.E.2d 1124, cert. denied, 488 U.S. 917, 109 S. Ct. 274, 102 L. Ed. 2d 263 (1988).

In death penalty cases, when the defendant fails to comply with the statutory requirement to file a post-trial motion, the Supreme Court's review will be limited to constitutional issues which have properly been raised at trial and which can be raised later in a post-conviction hearing petition, sufficiency, and plain error. People v. Enoch, 122 Ill. 2d 176, 119 Ill. Dec. 265, 522 N.E.2d 1124, cert. denied, 488 U.S. 917, 109 S. Ct. 274, 102 L. Ed. 2d 263 (1988).

Direct Appeal

- Constitutional Question

For cases discussing the right of direct appeal to the Illinois Supreme Court based on the existence of a constitutional question; which was founded upon Ill. Const. (1870), Art. VI, § 5, see O'Brien v. Frazier, 299 Ill. 325, 132 N.E. 434 (1921); Chicago Bar Ass'n. v. Kellogg, 401 Ill. 375, 82 N.E.2d 639 (1948); Phelps v. Elgin, J. & E. Ry., 28 Ill. 2d 275, 191 N.E.2d 241 (1963); Kirk v. Urist, 31 Ill. 2d 210, 201 N.E.2d 430 (1964); Aste v. Brooks, 32 Ill. 2d 361, 205 N.E.2d 435 (1965); People v. Valentine, 60 Ill. App. 2d 339, 208 N.E.2d 595 (1 Dist. 1965).

Discretionary Review

- Insufficiency of Evidence

A judgment of the appellate court reversing defendant's conviction for insufficiency of evidence was subject to discretionary review in the Supreme Court. People v. Schwartz, 58 Ill. 2d 274, 319 N.E.2d 23 (1974).

- Issue Warranting Review

A county's contention that the Supreme court should not have granted the defendant's petition for leave to appeal because the appellate court did not abuse its discretion when declining to hear the Rule 308 appeal was without merit, where the Supreme Court's decision to review the case was not predicated on an abuse of discretion by the appellate court but was based on the court's authority to consider any issue which warranted review. County of Du Page v. Graham, Anderson, Probst & White, Inc., 109 Ill. 2d 143, 92 Ill. Dec. 833, 485 N.E.2d 1076 (1985).

Habeas Corpus

- Appeals

The appellate court was without jurisdiction under Rule 302(a), Supreme Court Rules, to hear an appeal from the final judgment of the circuit court in a habeas corpus proceeding, so transferred it to the Supreme Court. Aud v. Etienne, 124 Ill. App. 2d 478, 260 N.E.2d 311 (5 Dist. 1970).

- Concurrent Sentences

Where petitioner was lawfully confined by virtue of his first sentence for armed robbery, the court would not pass upon the validity or invalidity of a second conviction, since his restraint under such conviction, if it was invalid, would become unlawful only when the restraint under the first sentence was concluded. People ex rel. Martin v. Ragen, 401 Ill. 419, 82 N.E.2d 457 (1948).

Mandamus

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- Audit of Funds

A writ of mandamus was issued ordering defendant, the Auditor General, to audit funds appropriated by the General Assembly to the Supreme Court and disbursed at its direction by the Administrative Office of the Illinois Courts. Madden v. Cronson, 114 Ill. 2d 504, 103 Ill. Dec. 729, 501 N.E.2d 1267 (1986), cert. denied, 484 U.S. 818, 108 S. Ct. 73, 98 L. Ed. 2d 36 (1987).

- Jurisdiction

Original jurisdiction in cases relating to mandamus stems from this section; the Supreme Court has jurisdiction to decide the issues, be the decision right or wrong. Madden v. Cronson, 114 Ill. 2d 504, 103 Ill. Dec. 729, 501 N.E.2d 1267 (1986), cert. denied, 484 U.S. 818, 108 S. Ct. 73, 98 L. Ed. 2d 36 (1987).

Obstruction of Right to Review

Speculation that many defendants would be held in custody while their cases were considered by an appellate court under Ill. Rev. Stat., ch. 38, para. 110-6.2(b)) did not amount to an unconstitutional obstruction to the right of appellate review conferred by this section and Ill. Const. (1970), Art. VI, § 6. People v. Williams, 143 Ill. 2d 477, 160 Ill. Dec. 437, 577 N.E.2d 762 (1991).

Orders

- In General

The Supreme Court may in any case, either at law or in equity, render a final judgment, or, in case of a reversal may remand the cause to the inferior court. Prentice v. Crane, 240 Ill. 250, 88 N.E. 654 (1909).

Original Jurisdiction

Where defendant, who had previously been convicted of aggravated criminal sexual assault in an unrelated case, was convicted of aggravated criminal sexual assault, criminal sexual assault, armed robbery, home invasion, aggravated unlawful restraint, and unlawful restraint, and sentenced to 30 years' imprisonment rather than to natural life imprisonment pursuant to 720 ILCS 5/12-14(2)(2), the State's petition for a writ of mandamus, which was filed pursuant to Ill. Const. Art. VI, § 4(a) and Rule 381, Supreme Court Rules, compelling the trial judge to impose a life sentence upon defendant's conviction of aggravated criminal sexual assault was conditionally granted, pursuant to 730 ILCS 5/5-8-1(a)(2.5), pending the outcome of defendant's appeal. People ex rel. Devine v. Macellaio, 199 Ill. 2d 221, 262 Ill. Dec. 779, 766 N.E.2d 1082, 2002 Ill. LEXIS 294 (2002).

- In General

The Supreme Court may not exercise original jurisdiction in any case other than the three mentioned in the Constitution (see now this section). People ex rel. Ill. State Bar Ass'n v. Peoples Stock Yards State Bank, 344 Ill. 462, 176 N.E. 901 (1931).

This section should be construed as only requiring Supreme Court to take jurisdiction in such matters as pertain to the public interest either on behalf of the state or some officer of the state, or in such cases of emergency as might justify the court in taking the case; in other words, that the Supreme Court is clothed with a sound legal discretion to determine in what particular cases it will

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take jurisdiction in mandamus. People ex rel. Taylor v. Board of Educ., 197 Ill. 43, 63 N.E. 1033 (1902).

Former Ill. Const. (1870), Art. VI, § 2 (see now this section) only specifies three cases in which Supreme Court can exercise original jurisdiction, and issuance of writs of prohibition is not one of them; in all other cases than those named, its jurisdiction is appellate only. People ex rel. v. Circuit Court, 169 Ill. 201, 48 N.E. 717 (1897).

- Concurrent with Circuit Courts

Original jurisdiction for declaratory judgment proceedings lies in the circuit court as does original jurisdiction (concurrently with the Supreme Court) to issue writs of prohibition in a proper case. Office of State's Att'y v. Illinois Human Rights Comm'n, 200 Ill. App. 3d 151, 146 Ill. Dec. 705, 558 N.E.2d 668 (2 Dist. 1990).

- Declaratory Judgment and Injunction

A suit for declaratory judgment and injunction are not included within the constitutional grant of original jurisdiction which is limited to mandamus, prohibition, habeas corpus and actions relating to the revenue. People ex rel. Scott v. Kerner, 32 Ill. 2d 539, 208 N.E.2d 561 (1965).

- Habeas Corpus

Jurisdiction in all habeas corpus proceedings, original and on appeal, has been withheld from the Illinois Appellate Court without exception. People ex rel. Bryant v. Williams, 68 Ill. App. 2d 334, 216 N.E.2d 262 (1 Dist. 1966).

- Issues of Fact

Under former Ill. Const. (1870), Art. VI, sec. 2, the established rule is that the Supreme Court ordinarily would not assume jurisdiction of an original action if the pleadings presented an issue of fact. People ex rel. Jones v. Robinson, 409 Ill. 553, 101 N.E.2d 100 (1951).

- Mandamus

Supreme Court of Illinois has original jurisdiction under Ill. Const. art. VI, § 4(a) to hear a complaint, filed pursuant to a motion for leave to file under Ill. Sup. Ct. R. 381(a), for a writ of mandamus compelling the Secretary of State of Illinois to countersign and affix the seal of the State of Illinois to the appointment papers for an appointee to fill a vacant position in the United States Senate. Burris v. White, 232 Ill. 2d 1, 327 Ill. Dec. 162, 901 N.E.2d 895, 2009 Ill. LEXIS 372 (2009).

State supreme court had original jurisdiction to hear the State's request for a mandamus petition seeking to have the trial court judge vacate an order and direct that the minor be ordered to register under the Sex Offender Registration and that the minor be informed of his obligation to register. The state supreme court had jurisdiction because such jurisdiction was conferred upon it by Ill. Const. Art. VI, § 4(a). People ex rel. Birkett v. Konetski, 233 Ill. 2d 185, 330 Ill. Dec. 761, 909 N.E.2d 783, 2009 Ill. LEXIS 389 (2009).

Defendant's filing his petition for mandamus without first appealing to the appellate court constituted an attempt to circumvent the normal appellate process. People ex rel. Foreman v. Nash, 118 Ill. 2d 90, 112 Ill. Dec. 714, 514 N.E.2d 180 (1987).

Although the Illinois Constitution grants the right to appeal from final judgments only, a defendant in a criminal case who has a meritorious double jeopardy defense is not foreclosed from pretrial correction of a trial judge's erroneous denial of a motion to dismiss. A motion under Supreme Court Rule 381 for leave to file an original petition for a writ of prohibition, mandamus, or perhaps even habeas corpus, as may be appropriate, accompanied by suggestions in support of the petition will receive the serious consideration of the Illinois Supreme Court. People ex rel. Mosley

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v. Carey, 74 Ill. 2d 527, 25 Ill. Dec. 669, 387 N.E.2d 325, cert. denied, 444 U.S. 940, 100 S. Ct. 292, 62 L. Ed. 2d 306 (1979).

The framers of the Constitution intended to confer upon the Supreme Court original jurisdiction in certain classes of mandamus cases, among which are cases compelling the performance of high official duties. People ex rel. Shultz v. Russel, 294 Ill. 283, 128 N.E. 495 (1920).

The constitution confers original jurisdiction on the Supreme Court in mandamus in order that the court may have power to protect the rights, interests, and franchises of the state and the rights and interests of the whole people, to enforce the performance of high official duties affecting the public at large, and, in emergency, to assume jurisdiction of cases affecting local public interests or private rights where there is no other adequate remedy, and the exercise of such jurisdiction is necessary to prevent a failure of justice. People ex rel. Easterday v. McCullough, 239 Ill. 552, 88 N.E. 177 (1909).

Under former Ill. Const. (1870), Art. 2, sec. 6, as a general rule, the Supreme Court will not take original jurisdiction to issue the writ of mandamus in contests which concern merely private rights, but will confine the exercise of its original jurisdiction to questions of public right; purely private rights may be safely entrusted to actions of mandamus in the circuit courts, and to the appellate jurisdiction of the Supreme Court in such actions. People ex rel. Dickinson v. Board of Trade, 193 Ill. 577, 62 N.E. 196 (1901).

- Mandamus and Prohibition

Original actions of mandamus and prohibition or supervisory orders may not be used to circumvent the normal appellate process, nor may mandamus be used as a substitute for appeal except where the question is of sufficient importance to the administration of justice such that the Supreme Court, in its administrative and supervisory capacity, may consider the issuance of a writ of mandamus though all of the normal criteria for the writ's issuance do not appear. People ex rel. Foreman v. Nash, 118 Ill. 2d 90, 112 Ill. Dec. 714, 514 N.E.2d 180 (1987).

Writs of mandamus and prohibition are extraordinary remedies, having traditionally been used to compel as a matter of public right an inferior tribunal to perform purely ministerial duties where no exercise of discretion is involved. People ex rel. Foreman v. Nash, 118 Ill. 2d 90, 112 Ill. Dec. 714, 514 N.E.2d 180 (1987).

- Objections to Evidence

When neither the trial court nor the appellate court has been given an opportunity to hear objections to evidence and rule thereon, such objections cannot ordinarily be reviewed on appeal to the Supreme Court. People v. Frankowsky, 371 Ill. 493, 21 N.E.2d 582 (1939).

- Partition

Since the Supreme Court had original jurisdiction only in cases relating to revenue, mandamus and habeas corpus, it was without jurisdiction to consider the plaintiffs' brief and argument regarding partition of real estate as a petition which was brought under Ill. Rev. Stat., ch. 110, para. 1-1401(a) (1982). Lux v. Lelija, 14 Ill. 2d 540, 152 N.E.2d 853 (1958).

- Prohibition

A writ of prohibition may be used to prevent a judge from acting where he has no jurisdiction to act or to prevent a judicial act which is beyond the scope of a judge's legitimate jurisdictional authority. People ex rel. Foreman v. Nash, 118 Ill. 2d 90, 112 Ill. Dec. 714, 514 N.E.2d 180 (1987).

- Public Interest

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In actions involving state-wide interests and duties of a high official affecting the public at large, under former Ill. Const. (1870), Art. VI, § 2 (see now this section) original jurisdiction was exercised by the Supreme Court. People ex rel. Little v. Collins, 386 Ill. 83, 53 N.E.2d 853 (1944).

- Revenue

Jurisdiction over matters relating to revenue has been sparingly exercised and limited to causes of great public importance, but was appropriately asserted over an original action, relating to revenue, seeking a declaratory judgment that the School Finance Authority Act and other provisions of Public Act 81-1221, approved January 16, 1980, was invalid. Polich v. Chicago Sch. Fin. Auth., 79 Ill. 2d 188, 37 Ill. Dec. 357, 402 N.E.2d 247 (1980).

A controversy between two or more governmental agencies with respect to taxes already collected was not a case relating to the revenue under Ill. Const. (1870), Art. VI, § 2 (see now this section). People ex rel. School Dist. 118 v. Reinhardt, 21 Ill. 2d 153, 171 N.E.2d 660 (1961).

A tax upon the privilege of operating motor vehicles as an original action confers jurisdiction on the Supreme Court of Illinois. People v. Deep Rock Oil Corp., 343 Ill. 388, 175 N.E. 572 (1931).

- Statutory Conflict

Insofar as former Section 92 of the Civil Practice Act (see now Rule 366, Supreme Court Rules) attempted to give the Supreme Court original jurisdiction on the appeal of a cause of matters germane upon the trial thereof, the provision contravened Ill. Const. (1870), Art. VI, § 2 (see now this section), which provided that the Supreme Court had appellate jurisdiction only, in all cases except relating to the revenue, mandamus and habeas corpus. Schmidt v. Equitable Life Assurance Soc'y of the United States, 376 Ill. 183, 33 N.E.2d 485 (1941).

Racial Discrimination in Jury Selection

Under Batson v. Kentucky (1986), 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69, a defendant's prima facie case of purposeful racial discrimination in jury selection can be established by relying on the fact that the preemptory challenge system facilitates any intended discrimination, and by showing that: (1) the defendant belongs to "a racial group capable of being singled out for differential treatment," i.e, a "cognizable group;" (2) the state removed members of the defendant's race from the venire by using preemptory challenges; and (3) these facts "and any other relevant circumstances raise an inference" of purposeful discrimination because of race. People v. Hope, 147 Ill. 2d 315, 168 Ill. Dec. 103, 589 N.E.2d 503 (1992).

Record on Appeal

In the review of a record the court is not privileged to permit either party to introduce evidence into the record which was not made a part of the record while the cause was in the trial court. Atkins v. Atkins, 393 Ill. 202, 65 N.E.2d 801 (1946).

Uniform System of Review

- Post-Conviction Appeals

Uniform statewide appellate review is mandated in cases in which the death sentence has been imposed, even when those cases reach the post-conviction appeal stage. People v. Lewis, 105 Ill. 2d 226, 85 Ill. Dec. 302, 473 N.E.2d 901 (1984), cert. denied, 474 U.S. 865, 106 S. Ct. 184, 88 L. Ed. 2d 153 (1985).

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Writs

- Prohibition

The purpose of a writ of prohibition is to allow a court of superior jurisdiction to prevent one of inferior jurisdiction from exercising jurisdiction beyond its legal authority, and to restrain that court from further action when damage and injustice are likely to result from the inferior court's action. Maloney v. Bower, 113 Ill. 2d 473, 101 Ill. Dec. 594, 498 N.E.2d 1102 (1986).

LEGAL PERIODICALS

For article, "1997 Illinois Supreme Court Criminal Survey: Fitness Hearings, Proportionate Punishment, and More," see 86 Ill. B.J. 202 (1998).

For article, "1996 Illinois Supreme Court Criminal Law Opinions: Not Marching in Lockstep," see 85 Ill. B.J. 270 (1997).

For article, "Citizen Remedies Against Errant Illinois Public Servants," see 11 S. Ill. U.L.J. 285 (1987).

For article, "A Special Appellate Court of Workers' Compensation Review: A Polite Proposal," see 71 Ill. B.J. 44 (1982).

Practice Guides and Treatises.

Civil Practice (Illinois) Volume I: Opening the Case § 4.12 Original Jurisdiction (IICLE).

Civil Practice (Illinois) Volume I: Opening the Case § 4.5 Jurisdiction (IICLE).

Section 5. Appellate Court - Organization.

The number of Appellate Judges to be selected from each Judicial District shall be provided by law. The Supreme Court shall prescribe by rule the number of Appellate divisions in each Judicial District. Each Appellate division shall have at least three Judges. Assignments to divisions shall be made by the Supreme Court. A majority of a division constitutes a quorum and the concurrence of a majority of the division is necessary for a decision. There shall be at least one division in each Judicial District and each division shall sit at times and places prescribed by rules of the Supreme Court.

(Source: Illinois Constitution.)

CASE NOTES

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Analysis

Designation of Judges
- Review of Industrial Commission
Division of Three Judges
- Majority
Invalid Judgment
Quorum
Valid Judgment

Designation of Judges

- Review of Industrial Commission

There is no constitutional impediment to the designation of judges in the manner provided in subsection (g) of Rule 22, Supreme Court Rules, to serve on the panel which reviews orders of the Industrial Commission. Yellow Cab Co. v. Jones, 108 Ill. 2d 330, 91 Ill. Dec. 643, 483 N.E.2d 1278 (1985).

Division of Three Judges

- Majority

A determination by a panel of the appellate court did not result in a valid judgment where the determination had the concurrence of two judges, but one of the judges died before the determination was filed. People v. Ortiz, 196 Ill. 2d 236, 256 Ill. Dec. 530, 752 N.E.2d 410, 2001 Ill. LEXIS 485 (2001).

The reference to "division" of the appellate court must be interpreted as meaning "panel," traditionally consisting of three judges, since only three judges usually consider each case and the votes of two of three judges are required for a decision and, where majority vote cannot be obtained, the appellate court should affirm the judgment of the circuit court. People ex rel. Dir. of Fin. v. YWCA, 74 Ill. 2d 561, 25 Ill. Dec. 649, 387 N.E.2d 305 (1979).

Invalid Judgment

A decision of the appellate court, obtained within the meaning of this section, the Appellate Court Act (705 ILCS 25/1(d)) and Rule 22, Supreme Court Rules, where two judges concur in the opinion, the third judge dissents and one concurring judge then vacates his office before the opinion is filed, is not valid. Proctor v. Upjohn Co., 175 Ill. 2d 394, 222 Ill. Dec. 384, 677 N.E.2d 918 (1997).

Quorum

Where all three judges concurred in an opinion, the fact that one of the justices at the time of the handing down of the opinion was no longer a member of the court was immaterial, as it was concurred in by a quorum of the court which was sufficient to give it force and validity under former Ill. Rev. Stat., ch. 37, para. 31 (see now this section). Kinne v. Duncan, 383 Ill. 110, 48 N.E.2d 375 (1943).

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Valid Judgment

Dissenting justice, in a case involving restrictive covenants in employment agreements and allegations that the first employee and second employee improperly solicited business for a competing company from their employer, was incorrect in arguing that he was in the majority of the panel deciding the case on appeal. Pursuant to Ill. Const. art. VI, § 5, Ill. Sup. Ct. R. 22(c), and 705 ILCS 25/1(d), the concurrence of a majority of an appellate panel was necessary for a valid appellate decision, and the record showed that two appellate judges had concurred in the appellate court's ruling, which meant that the dissenting justice's opinion was strictly a minority one. Reliable Fire Equip. Co. v. Arredondo, 405 Ill. App. 3d 708, 346 Ill. Dec. 153, 940 N.E.2d 153, 2010 Ill. App. LEXIS 1283 (2 Dist. 2010), rev'd, remanded, 2011 Ill. LEXIS 1836 (Ill. 2011).

Because the order recited that the justice participated in the decision as required, the order was valid based on the concurrence of the two remaining judges even though the order was entered by the appellate court clerk after the justice vacated office. Cirro Wrecking Co. v. Roppolo, 153 Ill. 2d 6, 178 Ill. Dec. 750, 605 N.E.2d 544 (1992).

The requirement that all three judges participate in a decision of the appellate court is not to be equated with that which is required, in terms of judicial authority, to render a valid judgment, the authority to do so exists when any two of those judges, constituting a quorum, concur. Cirro Wrecking Co. v. Roppolo, 153 Ill. 2d 6, 178 Ill. Dec. 750, 605 N.E.2d 544 (1992).

LEGAL PERIODICALS

For article, "A Special Appellate Court of Workers' Compensation Review: A Polite Proposal," see 71 Ill. B.J. 44 (1982).

For article, "The Illinois Appellate Court: A Chronicle and Breviary of Intermediate Review," see 1981 S. Ill. U.L.J. 373.

For article, "Stare Decisis Among the Appellate Court in Illinois," see 28 De Paul L. Rev. 571 (1979).

Section 6. Appellate Court - Jurisdiction.

Appeals from final judgments of a Circuit Court are a matter of right to the Appellate Court in the Judicial District in which the Circuit Court is located except in cases appealable directly to the Supreme Court and except that after a trial on the merits in a criminal case, there shall be no appeal from a judgment of acquittal. The Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgments of Circuit Courts. The Appellate Court may exercise original jurisdiction when necessary to the complete determination of any case on review. The Appellate Court shall have such powers of direct review of administrative action as provided by law.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Crim L § 12:01, § 30:02, § 30:05, § 30:08, § 31:08.

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See Illinois Jur, Prob Est & Trusts § 37:01.

CASE NOTES

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- Directed Verdict
- Dismissal of Charges
- Double Jeopardy
- Finding of Not Guilty
- Improper Denial of Continuance
- Insufficient Evidence
- Judgment Notwithstanding the Verdict
- Mandamus Not Authorized
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- Not Guilty
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- Remand
- Substance
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Administrative Action
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- Cease and Desist Order
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Appeal from Acquittal
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- Nolle Prosequi
- Order of Transfer
- Parties and Claims
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- Remand Order Distinguished
- Special Appearance of Party
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Sentencing
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Special Elections
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Supervisory Authority
- Lacking
Venue
- Filing Requirements
Waiver
- Permitted

In General

Final judgments may be appealed as a matter of right from the circuit court to the appellate court but there is no corresponding constitutional right to appeal from interlocutory orders of the circuit court; except as specifically provided, the appellate court is without jurisdiction to review judgments, orders or decrees which are not final. Almgren v. Rush-Presbyterian-St. Luke's Medical Ctr., 162 Ill. 2d 205, 205 Ill. Dec. 147, 642 N.E.2d 1264 (1994).

The authority of this appellate court stems from the Constitution and pertains only to appeals from final judgments of a Circuit Court, with exceptions. Harlem Sav. Ass'n v. Lesniak, 91 Ill. App. 2d 194, 234 N.E.2d 160 (1 Dist. 1968).

The jurisdiction of the appellate court is limited to reviewing appeals from final judgments and from certain interlocutory orders specified by the Supreme Court. Smith v. Lewis, 85 Ill. App. 2d 246, 229 N.E.2d 323 (1 Dist. 1967).

The jurisdiction of the appellate court to entertain the review of orders and decrees of the circuit courts was derived from the provisions of Ill. Const. (1870), Art. VI, § 7 (see now Ill. Const., (1970) Art. VI, § 6), and is thereby limited to the consideration of final judgments. Impey v. City of Wheaton, 60 Ill. App. 2d 99, 208 N.E.2d 419 (2 Dist. 1965).

The appellate court has only such jurisdiction as is conferred upon it by law, and has jurisdiction of all cases other than those appealable directly to the Supreme Court. People v. Valentine, 60 Ill. App. 2d 339, 208 N.E.2d 595 (1 Dist. 1965).

Jurisdiction of the appellate court is prescribed solely by the legislature and subject only to constitutional limitations. Bradford Supply Co. v. Waite, 392 Ill. 318, 64 N.E.2d 491 (1945).

Acquittal

- Directed Verdict

Where the trial court directed a verdict in favor of the defendant at the close of the evidence, based upon a failure of proof of a key element of the offense charged (proof of defendant's underlying DUI conviction), the court's ruling, whether correct or not, resolved all the factual elements of the offense charged, and the ruling was properly characterized as an acquittal for insufficient evidence. The acquittal, even if erroneous, barred further prosecution on double jeopardy grounds and hence barred appellate review of the trial court's ruling. People v. Pender, 154 Ill. App. 3d 978, 107 Ill. Dec. 798, 507 N.E.2d 951 (4 Dist. 1987).

- Dismissal of Charges

In limiting state appeals to those orders that have the effect of dismissing charges against the defendant, Supreme Court Rule 604 must be read in conjunction with this section, since a state appeal from a judgment of acquittal would be, in effect, a second trial of the defendant inasmuch as defendant would be subjected once again to a possible conviction; it is for that reason that double jeopardy attaches when the jury is impaneled and sworn or, in the case of a bench trial,

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when the first piece of evidence is heard, and not at the time of judgment. People v. Bean, 135 Ill. App. 3d 336, 90 Ill. Dec. 88, 481 N.E.2d 888 (5 Dist. 1985).

Even assuming that a judgment dismissing the charges and discharging the defendant upon termination of supervision was a final one, it was akin to a judgment of acquittal which is expressly nonappealable under this section. People v. Tarkowski, 100 Ill. App. 3d 153, 55 Ill. Dec. 485, 426 N.E.2d 631 (2 Dist. 1981).

Where, though labeled a dismissal of the indictment, the trial court resolved factual elements of an armed robbery charge in defendant's favor holding that the state's evidence was insufficient to support the conviction, and substantively granting the defendant's motion for acquittal, the insufficiency of the evidence required that the appeal be dismissed. People v. Wallerstedt, 77 Ill. App. 3d 677, 33 Ill. Dec. 179, 396 N.E.2d 568 (3 Dist. 1979).

- Double Jeopardy

Where there has been a purported "acquittal" in a criminal proceeding, the question of whether that "acquittal" followed a "trial on the merits" as understood in Ill. Const. art. VI, § 6, is equivalent to whether jeopardy attached before the "acquittal" was rendered. People v. Martinez, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1088 (2 Dist. Oct. 5, 2011).

This provision is intended to provide rights and protections beyond those assured by the double jeopardy clause, and applies to the type of judgment of acquittal where there is no retrial of defendant, and therefore no involvement of the double jeopardy clause. People v. Van Cleve, 89 Ill. 2d 298, 59 Ill. Dec. 893, 432 N.E.2d 837 (1982).

- Finding of Not Guilty

Trial court's finding of not guilty at the close of a drunken driving trial constituted an acquittal of the defendant and was not appealable. People v. Batchelder, 107 Ill. App. 3d 295, 63 Ill. Dec. 852, 438 N.E.2d 1215 (3 Dist. 1982).

- Improper Denial of Continuance

Where the state's request for a continuance was improperly denied and was an abuse of the trial court's discretion and where there were no witnesses to be sworn and no evidence to be presented, b the state refused to participate on the grounds that the case was improperly called to trial, the judge's characterization of his action as an acquittal was not appropriate; therefore, the defendant's argument that this was an appeal from an acquittal in violation of the Illinois Constitution was not well founded. People v. Dellecarto, 67 Ill. App. 3d 490, 24 Ill. Dec. 35, 384 N.E.2d 902 (1 Dist. 1978).

- Insufficient Evidence

Where a jury was impaneled and sworn so that jeopardy had attached, opening statements had been made, and state's witnesses failed to appear, although the state did not expressly rest its case, it effectively rested when the prosecutor advised the court that the state had no more witnesses to call, and court found a lack of evidence to convict; the state's appeal from the court's dismissal for want of prosecution was barred by this section. People v. Bean, 135 Ill. App. 3d 336, 90 Ill. Dec. 88, 481 N.E.2d 888 (5 Dist. 1985).

- Judgment Notwithstanding the Verdict

A directed verdict is considered an acquittal and a judgment notwithstanding a verdict has been determined to have the same effect as a directed verdict, thus a judgment notwithstanding the verdict must also be considered a nonappealable judgment of acquittal. People v. Rey, 136 Ill. App. 3d 645, 91 Ill. Dec. 496, 483 N.E.2d 982 (1 Dist. 1985).

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Judgment notwithstanding the verdict is a judgment of acquittal and was thus a nonappealable judgment; this is true regardless of whether the court's ruling is based upon a mistake of fact or mistake of law. People v. Rey, 136 Ill. App. 3d 645, 91 Ill. Dec. 496, 483 N.E.2d 982 (1 Dist. 1985).

- Mandamus Not Authorized

Where each defendant was charged with delivery of more than 30 grams of a substance containing cocaine, but was found guilty of the offense of delivery of less than 30 grams of a substance containing cocaine, conviction of the lesser offense operated as an acquittal of a greater offense; therefore, the issuance of a writ of mandamus to order circuit judges to resentence defendants to terms of imprisonment corresponding to the greater offense would violate Federal and Illinois constitutional guarantees against double jeopardy. People ex rel. Daley v. Limperis, 86 Ill. 2d 459, 56 Ill. Dec. 666, 427 N.E.2d 1212 (1981).

The 1970 Illinois Constitution prohibits appeals in criminal cases from a judgment of acquittal. The People are precluded from taking an appeal, and mandamus may not be employed as a substitute for a direct appeal. People ex rel. Daley v. Limperis, 86 Ill. 2d 459, 56 Ill. Dec. 666, 427 N.E.2d 1212 (1981).

- Mistrial

A defendant who presents a timely motion, even during trial, is entitled to a hearing and to the suppression of illegally seized evidence if merited by the proof; in that event, however, the trial court is required to terminate the trial unless the state agrees in writing it will not seek the interlocutory appeal it is authorized to take from such an order by virtue of Rule 604(a)(1), Supreme Court Rules, and 730 ILCS 5/114-12. Such termination of trial does not bar a subsequent prosecution of the same charge and is no different in effect than is the commonly used declaration of a mistrial on legally sufficient grounds in any criminal prosecution. People v. Young, 60 Ill. App. 3d 49, 17 Ill. Dec. 566, 376 N.E.2d 712 (2 Dist. 1978), cert. denied, 440 U.S. 973, 99 S. Ct. 1539, 59 L. Ed. 2d 790 (1979).

- Not Guilty

Trial court's written order that defendants were each found "not guilty and ordered discharged" was an acquittal after a hearing on the merits and therefore not an appealable judgment. City of Peoria v. Davis, 39 Ill. App. 3d 557, 350 N.E.2d 531 (3 Dist. 1976).

- Not Guilty by Reason of Insanity

Not guilty by reason of insanity (NGRI) finding was not subject to appellate review because defendant, found NGRI, was completely resolved of the crime and would not face punishment, therefore, a finding of NGRI amounted to an acquittal. People v. Harrison, 226 Ill. 2d 427, 315 Ill. Dec. 680, 877 N.E.2d 432, 2007 Ill. LEXIS 1692 (2007).

Supreme Court of Illinois overruled the decision in People v. Trotter, 371 Ill. App. 3d 869 (2007). A finding of not guilty by reason of insanity is no less an acquittal than a general acquittal. Its effect is to absolve a defendant from guilt, thus falling within the definition of an acquittal. People v. Harrison, 226 Ill. 2d 427, 315 Ill. Dec. 680, 877 N.E.2d 432, 2007 Ill. LEXIS 1692 (2007).

- Not Permitted

Appeals from a judgment of acquittal are not permitted. People v. R.R., 159 Ill. App. 3d 313, 111 Ill. Dec. 517, 512 N.E.2d 1058 (2 Dist. 1987), appeal denied, 117 Ill. Dec. 230, 520 N.E.2d 391 (Ill. 1988).

- Remand

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Where the appellate court found insufficient evidence to prove defendant guilty of murder beyond a reasonable doubt, but sufficient evidence to convict him of voluntary manslaughter, and on remand, defendant filed a written motion to dismiss the indictment, alleging that to impose a sentence on the reduced offense would violate state constitutional and statutory prohibitions against double jeopardy, since the jury had returned a signed verdict of not guilty of voluntary manslaughter, proper judicial procedure required defendant to petition the appellate court for a rehearing and then petition the Supreme Court for leave to appeal if the relief he sought was not granted by the appellate court. People v. Goolsby, 70 Ill. App. 3d 832, 26 Ill. Dec. 893, 388 N.E.2d 894 (1 Dist. 1979), cert. denied, 445 U.S. 952, 100 S. Ct. 1602, 63 L. Ed. 2d 788 (1980).

- Substance

An acquittal occurs when the trier of fact renders a finding of not guilty based upon evidence before it; however, the word "acquittal" has no talismanic quality as the substance of what was done controls, not how it was labeled. People v. Dilger, 125 Ill. App. 3d 277, 80 Ill. Dec. 591, 465 N.E.2d 937 (2 Dist. 1984).

- Supervision and Termination

Orders granting supervision upon defendants' pleas of guilty and terminating it instanter were not "judgments of acquittal," and appeals by the state from such orders were not barred by this section or by the double jeopardy clauses of the United States and Illinois Constitutions. People v. Oswald, 106 Ill. App. 3d 645, 62 Ill. Dec. 397, 435 N.E.2d 1369 (2 Dist. 1982).

- Trial on the Merits

It is well settled that after trial on the merits in a criminal case there shall be no appeal from a judgment of acquittal. In re McGovern, 62 Ill. App. 3d 1049, 20 Ill. Dec. 104, 379 N.E.2d 937 (2 Dist. 1978).

Administrative Action

- In General

Trial court did not err in denying the claimant's request that the claimant be allowed leave to amend the claimant's complaint for administrative review to name the state unemployment benefits review board as a defendant and in dismissing the complaint; the trial court was only permitted pursuant to the Illinois Constitution to review the final administrative decision denying the claimant unemployment compensation according to the relevant statutory law and since the claimant's complaint did not name a necessary party, the state unemployment benefits review board, as a defendant in the original complaint, the trial court did not have jurisdiction to review the administrative review and that was true even though the claimant had named the state unemployment compensation benefits department's director as a defendant because the director was not the director over the state unemployment benefits review board. Van Milligen v. Dep't of Empl. Sec., 373 Ill. App. 3d 532, 311 Ill. Dec. 422, 868 N.E.2d 1083, 2007 Ill. App. LEXIS 554 (1 Dist. 2007).

- Cease and Desist Order

Where a non-Illinois licensed professional engineer did not seek review of a cease and desist order issued by the Illinois Department of Financial and Professional Regulation, which barred the engineer from testifying in litigation as a professional engineer so long as he was without an Illinois license, an appellate court was without jurisdiction to review the cease and desist order as part of a negligence action in which the expert had been retained by an estate representative and in which the expert's affidavit had been stricken because of his lack of an Illinois license as a professional engineer. The Administrative Review Law, 735 ILCS 5/3-102, 3-103 provided the

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sole means for review of the Department's cease and desist order. Thompson v. Gordon, 221 Ill. 2d 414, 303 Ill. Dec. 806, 851 N.E.2d 1231, 2006 Ill. LEXIS 1083 (2006).

- Due Process

There is no constitutional right to appeal from administrative proceedings; the right of appeal from such proceedings is not necessarily essential to due process, but is a right which may or may not be granted in a given situation as the legislature reasonably deems appropriate. Board of Educ. v. Gates, 22 Ill. App. 3d 16, 316 N.E.2d 525 (2 Dist. 1974).

- Pollution Control Board

The provisions of 415 ILCS 5/41 vest jurisdiction in the appellate court and establish venue in the district in which the cause of action arose. Willowbrook Motel Partnership v. Pollution Control Bd., 135 Ill. App. 3d 343, 90 Ill. Dec. 232, 481 N.E.2d 1032 (1 Dist. 1985).

Appellate Court had jurisdiction to consider denial of variance by Pollution Control Board and found that the parties waived venue. Willowbrook Motel Partnership v. Pollution Control Bd., 135 Ill. App. 3d 343, 90 Ill. Dec. 232, 481 N.E.2d 1032 (1 Dist. 1985).

Appeal

Trial court did not err in granting the first school district's motion to amend its complaint for administrative review to add the eight remaining members of the "Committee of Ten"; it properly granted the motion to amend because the eight remaining members met the two requirements of 735 ILCS 5/3-107(a) that had to be shown for the granting of additional time to add defendants, namely: (1) that they, as parties of record, had not been made defendants and (2) that they had not been named by the administrative agency in its final order as a party of record. Collinsville Cmty. Unit Sch. Dist. No. 10 v. Reg'l Bd., 218 Ill. 2d 175, 300 Ill. Dec. 15, 843 N.E.2d 273, 2006 Ill. LEXIS 6 (2006).

- In General

A defendant who pleads guilty simply does not have the same right to an automatic appeal as a defendant convicted after trial. People v. Wendt, 283 Ill. App. 3d 947, 219 Ill. Dec. 342, 670 N.E.2d 1230 (2 Dist. 1996).

Appeal from Acquittal

- In General

Under this section the final authority to prescribe the scope of interlocutory appeals by the state in a criminal case rests exclusively with the Supreme Court, and whether a particular order may be appealed depends solely upon the court's construction of Rule 604(a)(1), Supreme Court Rules. People v. Young, 82 Ill. 2d 234, 45 Ill. Dec. 150, 412 N.E.2d 501 (1980), overruled on other grounds, 98 Ill. App. 3d 588, 54 Ill. Dec. 35, 434 N.E.2d 785 (2 Dist. 1981).

- Entrapment

The state had no right to appeal from the finding of a trial court that the defense of entrapment was established as a matter of law in a prosecution for illegal sale of a dangerous drug, where such finding was, in substance and effect, a finding that the defendant was not guilty. People v. Augitto, 1 Ill. App. 3d 78, 273 N.E.2d 15 (4 Dist. 1971).

- Generally Not Permitted

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Generally, the state may not appeal from a judgment of acquittal. People v. Verstat, 112 Ill. App. 3d 90, 67 Ill. Dec. 691, 444 N.E.2d 1374 (2 Dist. 1983).

- Legislative Prerogative

The prohibition against state appeal from an acquittal after a trial on the merits does not automatically authorize an appeal from all other orders or judgments in criminal cases. It merely has the effect of leaving that large area open to the legislature or to the Supreme Court as a field within which either may act. People v. Petropoulos, 59 Ill. App. 2d 298, 208 N.E.2d 323 (1 Dist. 1965), aff'd, 34 Ill. 2d 179, 214 N.E.2d 765 (1966).

- Motion for Reconsideration

The constitutional prohibition of state appeals from judgments of acquittals is not applicable in a case where the state did not appeal the order of the trial judge; rather, it moved for reconsideration of the order. People v. Mink, 141 Ill. 2d 163, 152 Ill. Dec. 293, 565 N.E.2d 975 (1990), cert. denied, 501 U.S. 1235, 111 S. Ct. 2863, 115 L. Ed. 2d 1030 (1991).

- Multiple Crimes

Where the trial judge's finding in the respondent's favor for the offense of attempt armed robbery reflected that the state failed to prove beyond a reasonable doubt that he did commit the crime, a new hearing on the felony murder charge would again raise this issue of fact, and would run afoul of this section. People v. Sanders, 81 Ill. App. 3d 843, 37 Ill. Dec. 25, 401 N.E.2d 1118 (1 Dist. 1980).

- Murder

Reversal of an armed violence conviction was necessary where defendant was acquitted of murder, but found guilty of armed violence; there could be no appeal of the acquittal of the charge of murder because that acquittal stood as a valid, final determination of that issue. Furthermore, collateral estoppel prevented the retrial of the armed violence count alone because to retry the defendant on that charge would have unconstitutionally caused the defendant to relitigate an essential element of that crime (murder) of which he had previously been acquitted. People v. Frias, 99 Ill. 2d 193, 75 Ill. Dec. 674, 457 N.E.2d 1233 (1983).

- Reversal

An unqualified reversal by the appellate court does not constitute a judgment of acquittal within the meaning of the constitution; the state may appeal from such order or judgment. People v. Blanchett, 33 Ill. 2d 527, 212 N.E.2d 97 (1965).

- Suppression Orders

Court's authority to provide for appeals from other than final orders is derived not from statutes but from Ill. Const. (1970), Art. VI, § 6 and scope of appeals from orders suppressing evidence as authorized by Rule 604(a)(1), Supreme Court Rules, is not limited by the provisions of sections 114-11 and 114-12 of the Code of Criminal Procedure of 1963 (720 ILCS 5/114-11 and 5/114-12). People v. Flatt, 82 Ill. 2d 250, 45 Ill. Dec. 158, 412 N.E.2d 509 (1980).

- Supreme Court Rules

The state's right to appeal in criminal cases is governed by Supreme Court Rule 604(a)(1). People v. Montgomery, 84 Ill. App. 3d 695, 40 Ill. Dec. 183, 405 N.E.2d 1275 (1 Dist. 1980).

Appealable Orders

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As an inmate's petition was not a direct appeal since the time for appealing had expired, and was not a postconviction petition because it asserted no substantial deprivation of any constitutional right, no statute or rule provided a basis for supplying him with free transcripts and his appeal of the circuit court's denial of that request was not an appealable order. People v. Salgado, 353 Ill. App. 3d 101, 288 Ill. Dec. 429, 817 N.E.2d 1079, 2004 Ill. App. LEXIS 1180 (1 Dist. 2004).

- In General

Although the Livestock Management Facilities Act (Livestock Act) did not itself provide for review of an administrative decision by the Department of Agriculture that granted the developer the right to construct a livestock facility, Ill. Const. art. VI, § 6 and Ill. Const. art. VI, § 9 gave Illinois courts the jurisdiction to review administrative decisions as provided by law. Since the Livestock Act at the same time did not bar review or call for unreviewable agency discretion, the not-for-profit corporation and the area residents challenging the Department's decision could seek review through a common law writ of certiorari. Helping Others Maintain Envtl. Stds. v. Bos, 406 Ill. App. 3d 669, 346 Ill. Dec. 789, 941 N.E.2d 347, 2010 Ill. App. LEXIS 1392 (2 Dist. 2010).

Under this section, the question of whether judgments, including those of dissolutions or legal separation, are appealable depends upon whether they are either (1) "final" within the meaning of this section or (2) made appealable by Supreme Court rule. In re Lentz, 73 Ill. App. 3d 93, 29 Ill. Dec. 319, 391 N.E.2d 582 (4 Dist. 1979), aff'd, 79 Ill. 2d 400, 38 Ill. Dec. 582, 403 N.E.2d 1036 (1980).

- Conflict with Rules

Rule 604, Supreme Court Rules, allows appeals from orders such as those suppressing evidence; statutory provisions making such orders nonfinal are void as in conflict with the rule. People v. Roland, 5 Ill. App. 3d 53, 282 N.E.2d 500 (1 Dist. 1972).

- Finality

705 ILCS 405/2-28(3), allowing an appeal from a permanency order, is unconstitutional, because despite the language under 705 ILCS 405/2-28(2), a permanency order is not final, and any attempt by the legislature to establish its finality and to make it appealable under Ill. Sup. Ct. R. 304(b)(1) is a violation of Ill. Const. Art. VI, sec. 6. People v. Leola B (In re Curtis B.), 203 Ill. 2d 53, 271 Ill. Dec. 1, 784 N.E.2d 219, 2002 Ill. LEXIS 624 (2002).

Where an individual defendant and a defendant corporation had filed appeal bonds after criminal contempt findings had been entered against them, and the cause was reversed and remanded, a circuit court's order denying forfeiture of the appeal bonds but finding that the issues and costs had remained to be determined was not final or appealable within the meaning of Ill. Const. (1970), Art. 6, para. 6, and Rule 301, Supreme Court Rules. County of McLean v. Kickapoo Creek, Inc., 15 Ill. App. 3d 334, 304 N.E.2d 127, 1973 Ill. App. LEXIS 1666 (1 Dist. 1973).

The dismissal order is appealable only if it is final. Peach v. Peach, 73 Ill. App. 2d 72, 218 N.E.2d 504 (2 Dist. 1966).

- Order of Suppression

What constitutes an appealable trial court order of suppression is a matter for the judiciary's determination under the authority granted to it by Ill. Const. (1970), Art. VI, § 6, and it is not to be confined by any legislative provisions; thus, while §§ 114-11 and 114-12 of the Criminal Code of Procedure (720 ILCS 5/114-11, 720 ILCS 5/114-12) appear to limit the scope of appealable suppression orders, those sections should not be construed as a valid restraint upon judicial constitutional authority. People v. Rogers, 123 Ill. App. 3d 780, 79 Ill. Dec. 73, 463 N.E.2d 211 (2 Dist. 1984).

- Remand

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Where the trial court was limited on remand to the entry of judgments that conformed to the mandates of the appellate court, the judgments were nonetheless appealable. Relph v. Board of Educ., 84 Ill. 2d 436, 50 Ill. Dec. 830, 420 N.E.2d 147 (1981).

- Waiver

An order granting a petition to set aside an order allowing a claim against decedent's probate estate was appealable by plaintiff, and thus the failure to file a timely notice of appeal from that order waived the issue of the propriety of the order. McLean County Bank v. Peoples Bank, 150 Ill. App. 3d 664, 103 Ill. Dec. 927, 502 N.E.2d 74 (4 Dist. 1986).

Appeals of Right

No constitutional right to appeal an administrative decision existed, and since the businessman could not otherwise show he had a right to appeal the state labor department's determination that he "apparently" violated the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., the trial court erred in reversing the state labor department's determination. Walters v. Dep't of Labor, 356 Ill. App. 3d 785, 292 Ill. Dec. 543, 826 N.E.2d 979, 2005 Ill. App. LEXIS 274 (1 Dist. 2005).

An order denying an amended petition for rehearing by a circuit court of its own order assessing a tax under Ill. Rev. Stat., ch. 120, para. 385 (repealed) was not a final order under this section or Rule 303, Supreme Court Rules, for purposes of appeal to the Court of Appeals. People v. Clostermery, 83 Ill. App. 3d 722, 39 Ill. Dec. 249, 404 N.E.2d 840 (4 Dist. 1980).

Neither due process (Ill. Const. (1970), Art. I, § 2) nor the appeal as of right from final decisions of the circuit court under this section requires full briefing, oral argument and a lengthy judicial opinion each time the propriety of a circuit court's order granting a new trial is challenged. Robbins v. Professional Constr. Co., 72 Ill. 2d 215, 20 Ill. Dec. 577, 380 N.E.2d 786 (1978).

Except in workmen's compensation cases and cases where a statute has been declared unconstitutional, all final orders of the circuit court in civil cases are appealable as a matter of right to the appellate court. Markstahler v. Consumers Dev. & Constr., Ltd., 52 Ill. App. 3d 918, 11 Ill. Dec. 240, 368 N.E.2d 791 (4 Dist. 1977).

This section assures, as a matter of right, appeals from final judgments of a circuit court to the appellate court. Anderson v. Anderson, 28 Ill. App. 3d 1029, 329 N.E.2d 523 (1 Dist. 1975).

An order vacating a default judgment and resetting the case for hearing is neither final nor appealable. Williams v. Morton, 80 Ill. App. 2d 442, 225 N.E.2d 671 (1 Dist. 1967).

Appellate Jurisdiction

Ill. Sup. Ct. R. 306(a)(2) permitted the parents to file a petition for leave to appeal the dismissal of a negligence and strict liability case for forum non conveniens, rather than a notice of appeal under Ill. Sup. Ct. R. 301, as interpreting Rule 306(a)(2) to permit a petition for leave to appeal did not violate Ill. Const. Art. VI, § 6, or deprive the appellate court of jurisdiction. Quaid v. Baxter Healthcare Corp., 392 Ill. App. 3d 757, 331 Ill. Dec. 480, 910 N.E.2d 1236, 2009 Ill. App. LEXIS 436 (1 Dist. 2009), appeal denied, 234 Ill. 2d 551, 920 N.E.2d 1081, 2009 Ill. LEXIS 2287 (2009).

- Constitutional Questions

Where the constitutionality of an act affecting the jurisdiction of the appellate court is first questioned in that court, it has authority to pass upon the validity of the act. Sprague v. Goodrich, 376 Ill. 80, 32 N.E.2d 897 (1941).

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The jurisdiction of the Supreme Court to review judgments of the appellate court affecting the validity of a statute, where the question was first raised in that court, was provided by the constitution, and not by the former Civil Practice Act. Sprague v. Goodrich, 376 Ill. 80, 32 N.E.2d 897 (1941).

- Judgment Favoring Appellant

An appellate court had jurisdiction to consider an appeal by a municipality from a judgment imposing a fine for violation of an ordinance, where if it determined that the fine imposed was less than the minimum legally required, it could properly reverse and remand with direction to impose a proper fine, giving defendants credit for payments made on the original fine. City of Springfield v. Ushman, 71 Ill. App. 3d 112, 27 Ill. Dec. 308, 388 N.E.2d 1357 (4 Dist. 1979).

- Power of Legislature

The legislature may confer upon the Appellate Courts such jurisdiction as it deems necessary or proper: the only limitation imposed by the Constitution is that the jurisdiction conferred must be appellate and not original. Scott v. Freeport Motor Cas. Co., 379 Ill. 155, 39 N.E.2d 999 (1942).

- Scope

Appellate courts pursuant to Ill. Const. art. VI, § 6 only had jurisdiction to review administrative decisions as provided by law and, thus, could only review Commission decisions about telephone company rate reclassifications pursuant to the Public Utilities Act, 220 ILCS 5/10-201(a). Since the subject matter of the Commission's decision was in the First District Appellate Court of Illinois, the case involving the State's appeal of the rate reclassification had to be transferred there, and the First District had to consider whether it had jurisdiction over the State's appeal under the state's supreme court rules. People ex rel. Madigan v. Ill. Commerce Comm'n, 394 Ill. App. 3d 382, 333 Ill. Dec. 647, 915 N.E.2d 453, 2009 Ill. App. LEXIS 1017 (4 Dist. 2009).

The jurisdiction of the federal courts of appeals is not the same as that of this state's appellate court when reviewing administrative proceedings, because the appellate court has only such power of direct review as the legislature may provide. Central City Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 149 Ill. 2d 496, 174 Ill. Dec. 808, 599 N.E.2d 892 (1992).

- Special Statutory Jurisdiction

415 ILCS 5/41 of the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq., provided special statutory jurisdiction to a court only of final Illinois Pollution Control Board decisions, rather than a local siting authority's decision. Accordingly, the reviewing court was required to determine whether a decision by the Illinois Pollution Control Board, which denied an application for a landfill site, rather than the prior decision of a city, which affirmed the application for a landfill site, was against the manifest weight of the evidence. Town & Country Utils., Inc. v. Ill. Pollution Control Bd., 225 Ill. 2d 103, 310 Ill. Dec. 416, 866 N.E.2d 227, 2007 Ill. LEXIS 444 (2007).

- Traffic Offense

The appellate court could not entertain a defendant's appeal alleging infringement of his right to a jury trial from a finding by a magistrate of guilty of speeding, as no sentence was imposed. People ex rel. Filkin v. Flessner, 48 Ill. 2d 54, 268 N.E.2d 376 (1971).

Collateral Attack

The contention that an appellate court was not lawfully constituted would not be considered in a collateral attack on a judgment unless an absence of jurisdiction to enter the judgment appeared on the face of the record; the appointment of public officers cannot be questioned in a mere collateral proceeding. Cleary v. Chicago Title & Trust Co., 4 Ill. 2d 57, 122 N.E.2d 227 (1954).

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Concurrent Jurisdiction

- Administrative Review

An administrative review proceeding on an action brought by a city charging violation of a nursing home ordinance presented a justiciable matter over which Ill. Const. (1970), Art. VI, § 9, vested the circuit court with jurisdiction, and over which the appellate court had jurisdiction under this section. Melbourne Corp. v. Chicago Hearing Bd. for Nursing Homes, 59 Ill. 2d 409, 322 N.E.2d 481 (1974).

Constitutional Questions

Trial court pursuant to the Post-Conviction Hearing Act, 725 ILCS 5/122-1 et seq. (Act), had the authority to grant petitioner leave to file a late notice of appeal to challenge petitioner's armed robbery conviction in a case where petitioner's counsel provided ineffective assistance of counsel by failing to file a notice of appeal. Although other potential avenues of relief did not allow the filing of a late notice of appeal, such as Ill. Sup. Ct. R. 606 because too much time had passed or 725 ILCS 5/122-6 because it did not mention filing a late notice of appeal as a source of relief, the right to appeal a criminal conviction was a fundamental right, Ill. Const. Art. VI, § 6, and petitioner alleged a viable constitutional claim pursuant to Ill. Const. Art. I, § 8 that petitioner received ineffective assistance of counsel because the failure to file the notice of appeal prevented petitioner from arguing that petitioner was convicted despite lack of proof that a dangerous weapon was involved. People v. Ross, 229 Ill. 2d 255, 322 Ill. Dec. 574, 891 N.E.2d 865, 2008 Ill. LEXIS 376 (2008).

The court will determine the constitutionality of an act only to the extent required by the case before it and will not undertake to formulate a rule broader than that necessitated by the precise questions to be decided. Bathe v. Stamper, 75 Ill. App. 2d 265, 220 N.E.2d 641 (4 Dist. 1966).

Determination of Jurisdiction

- Duty of Court

An appellate court has the duty to determine whether an appeal has been properly taken so as to invoke its jurisdiction, even though that issue is not raised by a party. Deerfield Mgt. Co. v. Ohio Farmers Ins. Co., 174 Ill. App. 3d 837, 124 Ill. Dec. 423, 529 N.E.2d 243 (2 Dist. 1988).

Direct Appeal

Casino's appeal of the dismissal of its complaint seeking declaratory and injunctive relief challenging certain of the administrative rules of the Illinois Gaming Board was dismissed as a direct appeal authorized by 230 ILCS 10/17.1(a) of the Illinois Riverboat Gambling Act (RGA) of the revocation of the casino's license was pending in the Illinois Appellate Court, Fourth District, raising the same issues; the RGA created the only permissible avenue for the attack on the revocation order and authorized jurisdiction and venue only in the Fourth District. Emerald Casino, Inc. v. Ill. Gaming Bd., 366 Ill. App. 3d 622, 304 Ill. Dec. 262, 852 N.E.2d 512, 2006 Ill. App. LEXIS 569 (1 Dist. 2006).

Dismissal of Appeal

- Judicial Error

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Dismissing an appeal as untimely when the sole reason for delay lies in judicial error might well violate the due process guarantees of the State Constitution. People v. Creek, 94 Ill. 2d 526, 69 Ill. Dec. 113, 447 N.E.2d 330 (1983).

- Proper

A superior court did not err under Ill. Const. (1970), Art. VI, § 6, (formerly Ill. Const. of 1870, Art. VI, § 12) by dismissing a property owner's appeal of a judgment of a justice of the peace court awarding damages due to land appropriation for a drainage project because no statute authorized an appeal on the question of the amount of damages, which would have been a de novo review. Drainage Comm'rs of Niles v. Harms, 238 Ill. 414, 87 N.E. 277, 1909 Ill. LEXIS 2656 (1909).

Division of Three Judges

- Quorum Not Found

Since a final judgment of the circuit court was appealable as a matter of right under this section, the dismissal of an appeal deprived appellant of this constitutional right; before such action may be taken, it is a constitutional requirement that the motion to dismiss be considered by a division of three judges and the decision be concurred in by a majority; the fulfillment of these requirements must be affirmatively shown by the record. Arlington City Cab Co. v. Regional Transp. Auth., 82 Ill. 2d 458, 45 Ill. Dec. 930, 413 N.E.2d 408 (1980).

An order of the appellate court dismissing plaintiffs' appeal was vacated and the cause remanded to the appellate court for further proceedings where there was nothing in the record to indicate that the motion was heard before a division of three judges or that it was concurred in by a majority of that division. Arlington City Cab Co. v. Regional Transp. Auth., 82 Ill. 2d 458, 45 Ill. Dec. 930, 413 N.E.2d 408 (1980).

Double Jeopardy

This section has been interpreted to provide rights and protections beyond those assured by the double jeopardy clause. People v. Pender, 154 Ill. App. 3d 978, 107 Ill. Dec. 798, 507 N.E.2d 951 (4 Dist. 1987).

Effect of Judgment

- Law of the Case

Even if the appellate court were bound by the law of the case it had announced in the first appeals, that limitation would not apply to the Supreme Court if it had not yet heard the case on its merits. Relph v. Board of Educ., 84 Ill. 2d 436, 50 Ill. Dec. 830, 420 N.E.2d 147 (1981).

Final Judgments

Court held that Ill. Const., Art. VI, § 6 prohibits the State from appealing a trial court's decision to enter a judgment of acquittal notwithstanding a guilty verdict. People v. Carter, 194 Ill. 2d 88, 251 Ill. Dec. 661, 741 N.E.2d 255, 2000 Ill. LEXIS 2451 (2000).

- In General

Under Ill. Const. (1970), Art. VI, § 6, every final judgment of a circuit court in a civil case is appealable as of right. Kooyenga v. Hertz Equipment Rentals, Inc., 79 Ill. App. 3d 1051, 35 Ill. Dec. 382, 399 N.E.2d 216, 1979 Ill. App. LEXIS 3814 (1 Dist. 1979).

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- Denial of Motion to Dismiss

Appellate court lacked jurisdiction to review denial of defendants' motions to dismiss, because the denial of a motion to dismiss was not a final and appealable order within the purview of Ill. Sup. Ct. R. 307, and 735 ILCS 110/20(a) would not confer jurisdiction on the appellate court in the absence of a final judgment and to the extent the Citizen Participation Act attempted to provide for appeals from less than final judgments, it would be unconstitutional; a statute that claimed to give a right to an interlocutory appeal not covered by supreme court rules or to give the appellate court jurisdiction over that appeal would violate Ill. Const. art. VI, § 6. Mund v. Brown, 393 Ill. App. 3d 994, 332 Ill. Dec. 935, 913 N.E.2d 1225, 2009 Ill. App. LEXIS 795 (5 Dist. 2009), appeal denied, 234 Ill. 2d 525, 920 N.E.2d 1074, 2009 Ill. LEXIS 2180 (2009).

- Acquittal

An order of dismissal for lack of probable cause is not an acquittal and is not final, as the state may later indict the accused or submit a new information. People v. Zook, 177 Ill. App. 3d 62, 126 Ill. Dec. 439, 531 N.E.2d 1066 (4 Dist. 1988).

- Benefit

A decree cannot be said to be final where it is impossible for the party in whose favor the decision is made to obtain any benefit therefrom without again setting the cause down for hearing before the court, upon the part reserved to ascertain certain facts which are absolutely necessary to be ascertained before the case is finally determined by the court. Impey v. City of Wheaton, 60 Ill. App. 2d 99, 208 N.E.2d 419 (2 Dist. 1965).

- Bond Forfeiture

Bond forfeiture judgment, entered when defendant failed to appear at trial because he had accepted a voluntary deportation, was a civil rather than criminal order, and it qualified as a final and appealable order over which the appellate court had jurisdiction. People v. Albitar, 374 Ill. App. 3d 718, 313 Ill. Dec. 547, 872 N.E.2d 530, 2007 Ill. App. LEXIS 743 (1 Dist. 2007).

- Defined

A final judgment has been defined as a determination by the court on the issues presented by the pleadings which ascertains and fixes absolutely and finally the rights of the parties in the lawsuit. Department of Pub. Aid ex rel. Chiapelli v. Viviano, 195 Ill. App. 3d 1033, 142 Ill. Dec. 747, 553 N.E.2d 97 (5 Dist. 1990).

A final order is one which terminates and disposes of the parties' rights regarding issues in a suit, either on the entire controversy or on some definite part, so that if affirmed the trial court has only to proceed with execution of the judgment. Santana v. Zipperstein, 142 Ill. App. 3d 386, 96 Ill. Dec. 771, 491 N.E.2d 1231 (1 Dist. 1986).

A final and appealable order is one which terminates the litigation between the parties on the merits, so that if it is affirmed, the trial court has only to proceed with its execution. Impey v. City of Wheaton, 60 Ill. App. 2d 99, 208 N.E.2d 419 (2 Dist. 1965); Schoen v. Caterpillar Tractor Co., 77 Ill. App. 2d 315, 222 N.E.2d 332 (3 Dist. 1966).

- Denial of Motion to Dismiss

The denial of a motion to strike or dismiss is not a final and appealable order, and the appellate court is, therefore, without jurisdiction to it. Celano v. Frederick, 54 Ill. App. 2d 393, 203 N.E.2d 774 (1 Dist. 1964).

- Denial of Post Trial Motion

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While the trial court had the inherent power to vacate its final judgment within 30 days of entry, the denial of a post trial motion cannot be a final judgment in that sense, for an order denying a post-judgment motion is not itself a judgment, as that word is used in this section or in Supreme Court Rule 303 and is not an appealable order. DOT v. Roodhouse, 104 Ill. App. 3d 880, 60 Ill. Dec. 661, 433 N.E.2d 703 (4 Dist. 1982).

- Dismissal of Complaint

Where a case was dismissed after defendant paid the amount allegedly owed to plaintiff, there had been no final judgment within the meaning of Ill. Const. (1970), Art. VI, § 6 or Rule 301, Supreme Court Rules and an appellate court lacked jurisdiction to hear because the case had been dismissed prior to entry of a final judgment. Bean v. Norfolk & W. R. Co., 84 Ill. App. 3d 395, 39 Ill. Dec. 665, 405 N.E.2d 418, 1980 Ill. App. LEXIS 4322 (1 Dist. 1980).

An order of a circuit court dismissing plaintiff's amended complaint was not a final and appealable order, and therefore the appeal was dismissed. Schoen v. Caterpillar Tractor Co., 77 Ill. App. 2d 315, 222 N.E.2d 332 (3 Dist. 1966).

- Dismissal of Mandamus Application

Order dismissing application for mandamus was not a final appealable order as it was not complete in itself, nor was it enforceable by its own terms, and neither party to the controversy could derive any benefit from its terms without setting the cause for a further adjudication of matters of substantial controversy for which jurisdiction was expressly reserved, because the decree did not deny or refuse the permanent injunctive relief sought by defendant, nor did it, in its declaration that an injunction would issue upon a future adjudication of facts, direct or prohibit any conduct in terms so definite, clear and precise as to demand obedience or to be capable of enforcement or execution. Impey v. City of Wheaton, 60 Ill. App. 2d 99, 208 N.E.2d 419 (2 Dist. 1965).

- Disposition of Merits

A final decree is one which disposes of the merits of the case, although incidental matters may be reserved for consideration. Impey v. City of Wheaton, 60 Ill. App. 2d 99, 208 N.E.2d 419 (2 Dist. 1965).

- Effect During Appeal

Where the judgments of the appellate court were not final judgments in the sense that they did not terminate the litigation but remanded the cases to the trial courts with directions that judgments be entered, which judgments, in turn, would be appealable to the appellate court under the State Constitution, whose decision would then be subject to review by the Supreme Court through petitions for leave to appeal, the judgments in these cases were still subject to the appellate process, and were not to be given res judicata effect. Relph v. Board of Educ., 84 Ill. 2d 436, 50 Ill. Dec. 830, 420 N.E.2d 147 (1981).

- Fingerprint or Forensic Testing Not Available at Trial

The denial by the circuit court of a defendant's motion for fingerprint or forensic testing not available at trial regarding actual innocence is a final judgment, and the appellate court possesses jurisdiction over the defendant's appeal from the adverse ruling. People v. Savory, 197 Ill. 2d 203, 258 Ill. Dec. 530, 756 N.E.2d 804, 2001 Ill. LEXIS 486 (2001).

- Nolle Prosequi

An order dismissing criminal charges through a nolle prosequi is not a final judgment for purposes of appellate review. People v. Woolsey, 139 Ill. 2d 157, 151 Ill. Dec. 309, 564 N.E.2d 764 (1990).

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- Order of Transfer

An order of the circuit court transferring a defendant from the Department of Corrections' Juvenile Division to its Adult Division was judicial in nature and appealable because of its finality. People v. Lewis, 97 Ill. App. 3d 880, 53 Ill. Dec. 304, 423 N.E.2d 973 (4 Dist. 1981).

- Parties and Claims

A judgment final as to less than all of the parties, or all of the substantial claims in a case, is not a final order within the meaning of this rule. Markstahler v. Consumers Dev. & Constr., Ltd., 52 Ill. App. 3d 918, 11 Ill. Dec. 240, 368 N.E.2d 791 (4 Dist. 1977).

- Possibility of New Suit

Those trial orders dismissing or striking complaints, which if affirmed, might result in the filing by the plaintiff of a new suit or amended complaint arising from the same transaction, are found not to be final and appealable, because they have not terminated the litigation between the parties. Schoen v. Caterpillar Tractor Co., 77 Ill. App. 2d 315, 222 N.E.2d 332 (3 Dist. 1966).

- Post-judgment Motions

Under former sections 50(5), 68.1, and 68.3 of the Civil Practice Act, (see now 730 ILCS 5/2-1202, 5/2-1203, and 5/2-1301), the denial of a timely first post-judgment motion was always reviewable, because on appeal of the judgment the appellant could bring up all related orders entered before the notice of appeal and not previously appealable, including the denial of a post-judgment motion. Sears v. Sears, 85 Ill. 2d 253, 52 Ill. Dec. 608, 422 N.E.2d 610 (1981).

- Remand Order Distinguished

There is a marked distinction, between a final judgment which is entitled to res judicata effect and a remand order establishing the law of the case; the former is, if entered by a court of competent jurisdiction, unassailable by any court, while the latter is subject to change by direct review, or where, because during the pendency of an appeal, the highest court of the state, in a separate case, changes the applicable law which the intermediate reviewing court would be bound to apply. Relph v. Board of Educ., 84 Ill. 2d 436, 50 Ill. Dec. 830, 420 N.E.2d 147 (1981).

- Special Appearance of Party

Where, although one of the defendants in a libel case appeared only by motion, under special and limited appearance, seeking to quash service of process upon him, and the motion was never ruled upon, the order from which appeal was taken was final as to all claims and all parties in the case. Owen v. Carr, 134 Ill. App. 3d 855, 88 Ill. Dec. 343, 478 N.E.2d 658 (4 Dist. 1985), aff'd, 113 Ill. 2d 273, 100 Ill. Dec. 783, 497 N.E.2d 1145 (1986).

- Time of Appeal

Although all final orders are appealable all are not necessarily immediately appealable. Santana v. Zipperstein, 142 Ill. App. 3d 386, 96 Ill. Dec. 771, 491 N.E.2d 1231 (1 Dist. 1986).

Ineffective Assistance of Counsel

When a defendant is deprived of his right to appeal by a court appointed attorney who fails to file a notice of appeal, the proper remedy is to allow a late notice of appeal to be filed. The restraints limiting what is normally cognizable under the Post-Conviction Hearing Act (725 ILCS 5/122-1 et seq.) are not applicable in such a case; the plaintiff need not show prejudice other than that his right to appeal was denied. People v. Swanson, 276 Ill. App. 3d 130, 212 Ill. Dec. 824, 657 N.E.2d 1169 (2 Dist. 1995).

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Inherent Jurisdiction

- Contempt

The appellate court's power extends to entering such orders as may be necessary to cause a proper circuit court record to be made and filed, and the power of a court to punish for contempt does not depend on constitutional or legislative grant, but is inherent in all courts as essential to the proper and effective functioning of the courts and to the administration of justice. In re Peasley, 189 Ill. App. 3d 865, 137 Ill. Dec. 139, 545 N.E.2d 792 (4 Dist. 1989).

Upon the filing of a timely notice of appeal, the circuit court was divested of jurisdiction; from that moment forward, jurisdiction was in the appellate court, and it was the order of the appellate court requiring the production of transcripts and the failure to comply with that order which established the basis for the offending conduct which was the subject of a rule to show cause. The appellate court was a proper party to initiate these proceedings. In re Peasley, 189 Ill. App. 3d 865, 137 Ill. Dec. 139, 545 N.E.2d 792 (4 Dist. 1989).

- Denial of Stay

An order denying plaintiff's motion for stay, which was deemed a denial of an injunction, was not a final order or judgment appealable to the appellate court under former section 7 of Article VI of the Illinois Constitution (see now this section), but rather was an interlocutory order appealable to that court under former Rule 31, Supreme Court Rules, (see now Rule 307, Supreme Court Rules); the motion for stay was, in substance, an application for an interlocutory injunction based on the affirmative defense of arbitration. School Dist. No. 46 v. Del Bianco, 68 Ill. App. 2d 145, 215 N.E.2d 25 (2 Dist. 1966).

- Power of Legislature

The legislature had the power to provide for appeals to an appellate court from interlocutory orders, as well as from final judgments. Scott v. Freeport Motor Cas. Co., 379 Ill. 155, 39 N.E.2d 999 (1942).

- Prosecutorial Misconduct

Since the Supreme Court Rules do not provide for interlocutory determination of an order denying a motion to dismiss an indictment because of prosecutorial misconduct, the appellate court had no jurisdiction to decide that part of the case. People v. Keystone Auto. Plating Corp., 98 Ill. App. 3d 40, 53 Ill. Dec. 442, 423 N.E.2d 1246 (1 Dist. 1981).

- Supreme Court Rules

Appeals from final judgments of the circuit courts come as a matter of right, whereas interlocutory appeals are only permitted if provided for by Supreme Court rule. Greco v. Coleman, 127 Ill. App. 3d 806, 83 Ill. Dec. 24, 469 N.E.2d 631 (5 Dist. 1984).

There can be no appeal from a nonfinal order unless specifically authorized by the Supreme Court Rules. JFS v. ABMJ, 120 Ill. App. 3d 261, 75 Ill. Dec. 908, 458 N.E.2d 76 (1 Dist. 1983).

Prior to the end of the litigation one may appeal from an order which is not final only under the interlocutory appeal provisions of the Supreme Court Rules. Levy v. Metropolitan San. Dist., 100 Ill. App. 3d 714, 56 Ill. Dec. 297, 427 N.E.2d 377 (1 Dist. 1981), aff'd, 92 Ill. 2d 80, 65 Ill. Dec. 26, 440 N.E.2d 881 (1982).

Where the order appealed from is not a final judgment appealable as a matter of right under this section, appealability must therefore arise, if at all, from the authority lodged in the Supreme Court by the same section to provide by rule for appeals to the appellate court from other than

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final judgments of circuit courts. Kirchenberg v. Chicago Transit Auth., 13 Ill. App. 3d 184, 300 N.E.2d 482 (1 Dist. 1973).

Interlocutory Judgments

- In General

There is no appeal from an order, judgment or decree that does not finally determine the rights of the parties to the suit, unless the Supreme Court has otherwise provided by its rules for an appeal from an interlocutory order. Querciagrossa v. Querciagrossa, 65 Ill. App. 2d 280, 213 N.E.2d 13 (3 Dist. 1965); H.T.A., Ltd. v. W.W. Luxion, 211 Ill. App. 3d 739, 156 Ill. Dec. 123, 570 N.E.2d 599 (1 Dist. 1991).

- Appeal Dismissed

Although the law firm and the shareholder contended that the court of appeals had jurisdiction to review the appeal as an interlocutory appeal based on Ill. Sup. Ct. R. 307(a) and the language of 735 ILCS 110/20(a), the court of appeals disagreed and dismissed the appeal for lack of jurisdiction because although the Supreme Court of Washington could provide by rule for appeals to the appellate court from other than final judgments of circuit courts pursuant to Ill. Const. art. VI, § 6, Ill. Sup. Ct. R. 307(a)(1) provided for interlocutory appeals from a trial court order granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction, and the motion to dismiss in the instant case did not constitute an injunction. Further, a statute that claimed to give a right to an interlocutory appeal not covered by supreme court rules or to give the appellate court jurisdiction over that appeal would violate Ill. Const. art. VI, § 6 and the separation-of-powers clause in Ill. Const. art. II, § 1; therefore, appellate jurisdiction was not conferred by 735 ILCS 110/20(a) (2007). Stein v. Krislov, 405 Ill. App. 3d 538, 345 Ill. Dec. 675, 939 N.E.2d 518, 2010 Ill. App. LEXIS 1182 (1 Dist. 2010).

An order denying an appellant's motion to transfer the probate and administration of an estate was not a final order, but was interlocutory in character, and since former Rule 31, Supreme Court Rules (see now Rules 307, 308, Supreme Court Rules), did not authorize an appeal therefrom, the appeal was dismissed. Querciagrossa v. Querciagrossa, 65 Ill. App. 2d 280, 213 N.E.2d 13 (3 Dist. 1965).

- Continuance

Where an order continued, fewer than all matters in controversy were determined; the orders appealed from were interlocutory and not final, and the appeal was dismissed. Smith v. Lewis, 85 Ill. App. 2d 246, 229 N.E.2d 323 (1 Dist. 1967).

- Suppression

Section 109-3(e) of the Code of Criminal Procedure (see now 725 ILCS 5/109-3(e)), which provided that the state could not appeal from an order of suppression of evidence or dismissal of a charge allowed and issued in the course of a preliminary hearing or examination, violated Ill. Const. (1870), Art. VI, § 7, as amended (see now this section), which vested in the Supreme Court sole authority to provide by rule for appeals to the appellate court from other than final judgments. People v. Taylor, 50 Ill. 2d 136, 277 N.E.2d 878 (1971).

- Supreme Court Rules

The appellate court, subject to exceptions for appeals from interlocutory orders specified in the Supreme Court Rules, is without jurisdiction to review judgments, orders, or decrees that are not final. Department of Pub. Aid ex rel. Chiapelli v. Viviano, 195 Ill. App. 3d 1033, 142 Ill. Dec. 747, 553 N.E.2d 97 (5 Dist. 1990).

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The constitution guarantees litigants the right to appeal a circuit court's final judgment to the appellate court located in the same judicial district, but appeals from nonfinal judgments are governed by rules promulgated by the Supreme Court. Wilkey v. Illinois Racing Bd., 96 Ill. 2d 245, 70 Ill. Dec. 496, 449 N.E.2d 843 (1983).

Issues

- First Instance

The appellate court will not consider issues which were not presented to the trial court and which do not appear in the record. Kobrand Corp. v. Foremost Sales Promotions, Inc., 8 Ill. App. 3d 418, 291 N.E.2d 61 (1 Dist. 1972).

Mandamus

A proceeding in the circuit court to obtain a writ of mandamus to order the Industrial Commission to approve a settlement is not a proceeding to review that order within the meaning of subdivision (a) of Rule 302, Supreme Court Rules. Therefore, the appellate court has jurisdiction pursuant to this section. People ex rel. PPG Indus., Inc. v. Schneiderman, 92 Ill. App. 3d 546, 46 Ill. Dec. 906, 414 N.E.2d 1059 (4 Dist. 1980).

Action of mandamus could not be regarded as necessary to, or in furtherance of, appellate court's appellate jurisdiction. Hawes v. People ex rel. Pulver, 124 Ill. 560, 17 N.E. 13 (1888).

Nonappealable Order

- Denial of Dismissal

Appellate court lacked jurisdiction to consider a denial of a motion to dismiss as it was not a final and appealable order. Pizzato's, Inc. v. City of Berwyn, 168 Ill. App. 3d 796, 119 Ill. Dec. 583, 523 N.E.2d 51 (1 Dist.), appeal denied, 122 Ill. 2d 593, 125 Ill. Dec. 255, 530 N.E.2d 263 (1988), cert. denied, 489 U.S. 1053, 109 S. Ct. 1315, 103 L. Ed. 2d 584 (1989).

- Discovery Order

In a medical malpractice action against hospital where hospital moved the court for an order permitting it and its attorneys to conduct ex parte interviews with treating doctor which was granted was not immediately appealable as the order was not a final judgment, and was not among the interlocutory orders made appealable; plaintiff's right to complete confidentiality was already lost by the time hospital moved for leave to conduct the interviews and she waived her right to bar hospital from communicating with doctor when she filed suit against the hospital based on doctor's alleged negligence in treating her mental condition. Almgren v. Rush-Presbyterian-St. Luke's Medical Ctr., 162 Ill. 2d 205, 205 Ill. Dec. 147, 642 N.E.2d 1264 (1994).

Notice of Direct Appeal

- Unauthorized

A trial court in a post-conviction proceeding has no authority to allow defendant to file a second notice of direct appeal since extension of time to file leave for appeal is a function solely of the reviewing court under Rule 606(c), Supreme Court Rules; therefore, for a trial court to grant such an extension is contrary to the Supreme Court Rules and this section. People v. Hightower, 233 Ill. App. 3d 188, 174 Ill. Dec. 285, 598 N.E.2d 482 (5 Dist. 1992).

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Original Jurisdiction

- Amendment of Pleadings

Grounds that were not specified in a motion to dismiss cannot be urged on appeal; however, an amendment may be permitted that the appellate court may exercise such original jurisdiction as may be necessary to the complete determination of any case on review. Admiral Oasis Hotel Corp. v. Home Gas Indus., Inc., 68 Ill. App. 2d 297, 216 N.E.2d 282 (1 Dist. 1965).

- Motion for New Trial

Appellate court had authority to pass upon the motion for new trial instead of remanding the cause to the circuit court for that purpose. Jackson ex rel. Hoy v. Chicago Transit Auth., 133 Ill. App. 2d 529, 273 N.E.2d 748 (1 Dist. 1971).

Appellate court was allowed to exercise original jurisdiction and pass upon the defendant's motion for a new trial even though the trial court failed to do so. Franks v. North Shore Farms, Inc., 115 Ill. App. 2d 57, 253 N.E.2d 45 (1 Dist. 1969).

- Not Found

Appellate court lacked jurisdiction over an appeal challenging a decision of the Pollution Control Board determining that a property owner was not entitled to reimbursement from the leaking underground storage tank fund, because the tanks that leaked had earlier been determined not to be registrable. The owner's failure to name the Board as a respondent in its appeal was fatal to the exercise of appellate jurisdiction, because strict compliance with all applicable statutes and rules was required. Vogue Tyre & Rubber Co. v. Office of the State Fire Marshal, 354 Ill. App. 3d 20, 289 Ill. Dec. 507, 820 N.E.2d 15, 2004 Ill. App. LEXIS 1312 (1 Dist. 2004).

Certiorari was a wholly inappropriate vehicle for the type of relief sought by defendant, an alderman, who sought a summons or other order directing a city clerk to certify and put before the court a copy of the city council proceedings in which his seat was declared vacant, and vacate or reverse the resolution because certiorari only provided for review over a decision by an inferior court or tribunal where that body has acted without jurisdiction; therefore, it was unnecessary for the appellate court to address the opposing party's arguments that the party seeking certiorari failed to comply with procedural requirements of Ill. Rev. Stat. 1991, ch. 110, pars. 2-609, 2-616 and Rule 381, Supreme Court Rules. Highwood v. Obenberger, 238 Ill. App. 3d 1066, 179 Ill. Dec. 65, 605 N.E.2d 1079, 1992 Ill. App. LEXIS 2044 (1 Dist. 1992).

Former Ill. Rev. Stat., ch. 110, Para. 68 (see now 735 ILCS 5/2-1202), insofar as it purported to grant power to the appellate court to pass upon a motion for a new trial not passed on by the trial court and to enter judgment on the verdict of the jury, was an unconstitutional attempt by the legislature to confer original jurisdiction upon a reviewing court. Sprague v. Goodrich, 376 Ill. 80, 32 N.E.2d 897 (1941).

- Pendent Matters

The appellate court was not exercising original jurisdiction in violation of this provision by passing upon a matter not ruled upon by the trial court. Olson v. Chicago Transit Auth., 1 Ill. 2d 83, 115 N.E.2d 301 (1953).

- Restitution

A writ of restitution may be issued by an appellate court to restore possession of disputed premises to those entitled to them. Pleasure Driveway & Park Dist. v. Kurek, 27 Ill. App. 3d 60, 325 N.E.2d 650 (3 Dist. 1975).

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Where defendants continued in possession of pro shops at public golf courses owned by plaintiff park district under former Ill. Rev. Stat., ch. 57, para. 22 (see now 735 ILCS 5/9-116), during the pendency of an appeal of a forcible entry and detainer action, justice required that the appellate court, having reversed the trial court and ordered judgment entered for plaintiff, restore plaintiff to possession through a writ of restitution. Pleasure Driveway & Park Dist. v. Kurek, 27 Ill. App. 3d 60, 325 N.E.2d 650 (3 Dist. 1975).

Petition for Restoration as to Estate

Order denying petitioner restoration as to his estate was a final judgment, appealable as of right. Thompson v. Patner, 186 Ill. App. 3d 874, 134 Ill. Dec. 603, 542 N.E.2d 949 (1 Dist. 1989).

Right to Appeal

- Eminent Domain Judgment

Because the Eminent Domain Act, 735 ILCS 5/7-101 et seq., required the condemnor to negotiate with the landowner in good faith over the amount of compensation to be paid before it initiated proceedings to take the landowner's property through eminent domain, the question of the Illinois Department of Transportation's good faith fell within the provisions of 735 ILCS 5/7-104(b) and could be challenged by the property owners on interlocutory review pursuant to Ill. Sup. Ct. R. 307(a)(7). DOT ex rel. People v. 151 Interstate Rd. Corp., 209 Ill. 2d 471, 284 Ill. Dec. 348, 810 N.E.2d 1, 2004 Ill. LEXIS 672 (2004).

A defendant has both statutory (735 ILCS 5/1-107) and constitutional (Ill. Const. (1970), Art. VI, § 6) rights to appeal an eminent domain judgment. Department of Conservation v. Lawless, 100 Ill. App. 3d 74, 55 Ill. Dec. 399, 426 N.E.2d 545 (3 Dist. 1981).

- Incorrect Dismissal

If in dismissal of an appeal to the court is erroneous, appellants' constitutional right to appeal is infringed, as the order of dismissal precludes review of the trial court action. Air Line Stewards & Stewardesses Ass'n v. Quinn, 35 Ill. 2d 106, 219 N.E.2d 499 (1966).

- Not Obstructed

Speculation that many defendants would be held in custody while their cases were considered by an appellate court under 25 ILCS 5/110-6.2(b) did not amount to an unconstitutional obstruction of the right of appellate review. People v. Williams, 143 Ill. 2d 477, 160 Ill. Dec. 437, 577 N.E.2d 762 (1991).

- Not Preserved

Defendant's right to appeal was not preserved where defense counsel stated he was filing a motion to reconsider sentence in order to preserve defendant's appeal rights, but did not state any reasons to support the request, thus leaving defendant with no issues upon which to appeal in violation of Ill. Const. Art. VI, § 6. People v. Little, 337 Ill. App. 3d 619, 272 Ill. Dec. 97, 786 N.E.2d 636, 2003 Ill. App. LEXIS 331 (4 Dist. 20, 2003).

- Not Violated

Seventeen-year delay in perfecting the appeal in defendant's first degree murder case did not violate defendant's Ill. Const. art. VI, § 6 right to appeal although it was presumptively prejudicial and triggered a full Barker speedy appeal inquiry. Even making that inquiry, defendant could not show that defendant was entitled to relief, as defendant could not prove either that a quicker appeal would have resulted in a different outcome than the affirmance of defendant's conviction

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or that meaningful review of defendant's conviction had been precluded. People v. Sims, 403 Ill. App. 3d 9, 342 Ill. Dec. 37, 931 N.E.2d 1220, 2010 Ill. App. LEXIS 648 (1 Dist. 2010).

The failure to give an admonition not required by Rule 605(b) is not a violation of defendant's right to due process and to appeal. People v. Jogi, 308 Ill. App. 3d 302, 241 Ill. Dec. 669, 719 N.E.2d 798 (4 Dist. 1999), appeal denied, vacated, 191 Ill. 2d 547, 250 Ill. Dec. 437, 738 N.E.2d 906 (2000), superseded, 317 Ill. App. 3d 532, 251 Ill. Dec. 258, 740 N.E.2d 88 (4 Dist. 2000).

- Supersedeas Bond

Appellate court could not interpret the rule requiring supersedeas bonds other than in accordance with the plain language used by the Supreme Court of Illinois; therefore, the trial court did not have discretion to modify the amount of such a bond in a manner that would fail to assure the successful plaintiff class of the judgment awarded, and the application of the rule in this manner did not endanger the constitutional right to appeal, but simply provided that if a bond were not provided, the liability to pay the judgment would not be stayed. Price v. Philip Morris, Inc., 341 Ill. App. 3d 941, 276 Ill. Dec. 183, 793 N.E.2d 942, 2003 Ill. App. LEXIS 913 (5 Dist. 2003).

An execution which takes the funds of a judgment debtor who might otherwise use those funds to post a supersedeas bond is not denial of his right to appeal; it is a regular use of process to obtain a legitimate purpose - the collection of a money judgment. Kurek v. Kavanagh, Scully, Sudow, White & Frederick, 50 Ill. App. 3d 1033, 8 Ill. Dec. 805, 365 N.E.2d 1191 (3 Dist. 1977).

Rules

- Authority of Supreme Court

The current Supreme Court Rules and state Constitution reflect the long-held intention to place responsibility for rules governing appeal in the Supreme Court and not in the General Assembly. Chapman v. United Ins. Co. of Am., 234 Ill. App. 3d 968, 176 Ill. Dec. 738, 602 N.E.2d 45 (1 Dist. 1992).

By this section, the Supreme Court has the sole authority to provide by rule for appeals to the Appellate Court from other than final judgments. People v. Marotta, 3 Ill. App. 3d 280, 278 N.E.2d 256 (1 Dist. 1971).

- Conflict with Statute

Utility companies' petitions for direct review of an Illinois Commerce Commission order were premature and ineffectual because Rules 303(a), 335, Supreme Court Rules allowed review only after the Commission had denied the last pending applications for rehearing and the legislature under 220 ILCS 5/10-201(a) did not expressly intend to preempt Rule's time requirements pursuant to its authority under Ill. Const. (1970), Art. 6, § 6. Commonwealth Edison Co. v. Ill. Commerce Comm'n, 368 Ill. App. 3d 734, 306 Ill. Dec. 620, 858 N.E.2d 65, 2006 Ill. App. LEXIS 1025 (1 Dist. 2006).

To the extent that there are conflicts between the Illinois Public Utilities Act, 220 ILCS 5/1-101 et seq. and the Illinois Supreme Court Rules regarding appeals, those conflicts are resolved in favor of the supreme court rules. Harrisonville Tel. Co. v. Ill. Commerce Comm'n, 343 Ill. App. 3d 517, 277 Ill. Dec. 836, 797 N.E.2d 183, 2003 Ill. App. LEXIS 1157 (5 Dist. 2003), aff'd, 212 Ill. 2d 237, 288 Ill. Dec. 121, 817 N.E.2d 479 (2004).

While the Illinois Supreme Court and the Illinois Legislature have concurrent constitutional authority to enact rules regarding direct appellate court review of administrative decisions, discrepancies between the rules and the statutes must be resolved pursuant to Ill. Const. Art. VI,

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§ 6. The Supreme Court has determined that where the Legislature has not specifically included within a statute a time frame for direct appeals of administrative decisions to the appellate court, its rule governs the time frame; thus, time frame for appeals pursuant to Ill. Sup. Ct. R. 335 governed the appeal of the Illinois Commerce Commission's rehearing order. Harrisonville Tel. Co. v. Ill. Commerce Comm'n, Ill. App. 3d , Ill. Dec. , N.E.2d , 2003 Ill. App. LEXIS 639 (5 Dist. May 23, 2003).

Any legislative enactment in conflict with the Rules of the Supreme Court governing appeals would be constitutionally invalid. In re Lentz, 79 Ill. 2d 400, 38 Ill. Dec. 582, 403 N.E.2d 1036 (1980).

Sentencing

- Discretionary Review

The use of the word "may" in this section of the Constitution signifies that an appellate court has discretion in disposing of the issue of imposing sentence in a criminal case. People v. Siler, 85 Ill. App. 3d 304, 40 Ill. Dec. 688, 406 N.E.2d 891 (4 Dist. 1980).

Special Elections

A provision that the county court shall have final jurisdiction to hear and determine the merits of referendums on anti-saloon territories, which was construed as a denial of the right to appeal from the judgment of the county court, did not violate former Ill. Const. (1870), Art. VI, § 11 (see now this section)in its delegation of the power to regulate special elections. Saylor v. Duel, 236 Ill. 429, 86 N.E. 119 (1908).

Stay

Because the right to appeal and the right to obtain a stay by filing a supersedeas bond are separate, independent rights, the requirement of a bond in order to stay a judgment does not violate Ill. Const. (1970), Art. VI, § 6. Price v. Philip Morris, Inc., 341 Ill. App. 3d 941, 276 Ill. Dec. 183, 793 N.E.2d 942, 2003 Ill. App. LEXIS 913 (1 Dist. 2003).

Substantive Effect

Where the trial court allowed a defense motion to dismiss the count charged as barred by the 18 month limitation for the filing of misdemeanor charges, and the time set forth in the dismissal order for filing an amendment to the information had expired by the time the dismissal order was filed, the substantive effect of the order was to dismiss the charge and, therefore, that order was appealable. People v. Griffiths, 67 Ill. App. 3d 16, 23 Ill. Dec. 734, 384 N.E.2d 528 (4 Dist. 1978).

Supervisory Authority

- Lacking

Supervisory authority over the circuit court of Lake County rests with the Supreme Court of this state, and the appellate court lacks authority to grant a defendant's prayer for the entry of a supervisory writ. Jam Prods., Ltd. v. Dominick's Finer Foods, Inc., 120 Ill. App. 3d 8, 75 Ill. Dec. 932, 458 N.E.2d 100 (2 Dist. 1983).

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Venue

- Filing Requirements

It is the plain purport of the Constitution, the implementing statute, and the Supreme Court Rules, that all appeals to the appellate court, from final judgments or otherwise, including all petitions and applications for leave to appeal, must initially be taken to and filed with the appellate court for the judicial district in which the circuit court from which the appeal, petition, or application emanates is located; such requirement for filing is, however, in the nature of venue and is not jurisdictional. Renshaw v. General Tel. Co., 112 Ill. App. 3d 58, 67 Ill. Dec. 778, 445 N.E.2d 70 (5 Dist. 1983).

Waiver

- Permitted

Like other constitutional and statutory rights, the right to appeal may be waived, whether by neglect or by conscious choice. People v. Fearing, 110 Ill. App. 3d 643, 66 Ill. Dec. 378, 442 N.E.2d 939 (4 Dist. 1982).

There is nothing invalid or unconstitutional in the proper enforcement of the waiver rule under this section. People v. Harrawood, 66 Ill. App. 3d 163, 22 Ill. Dec. 899, 383 N.E.2d 707 (5 Dist. 1978).

Complainant's counsel failed to submit any authorities to support his position that the ordinance was unconstitutional, because it violated former Ill. Const. of 1870, Art. II, § 2 and Ill. Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. VI, § 6), and therefore, the Court lacked jurisdiction to hear and dispose of the appeal; thus, the argument was waived. Consumers Co. v. Chicago, 208 Ill. App. 203, 1917 Ill. App. LEXIS 812 (1917).

LEGAL PERIODICALS

For article, "State and Local Government: 1987-88 Illinois Law Survey," see 20 Loy. U. Chi. L.J. 623 (1988-89).

For article, "Dismissal of a Complaint or Counts Thereof: A Few Appellate and Jurisdictional Ramifications," see 69 Ill. B.J. 160 (1980).

For article, "Stare Decisis Among the Appellate Court in Illinois," see 28 De Paul L. Rev. 571 (1979).

Practice Guides and Treatises.

Civil Practice (Illinois) Volume I: Opening the Case § 4.31 Those Local in Nature (IICLE).

Civil Practice (Illinois) Volume I: Opening the Case § 4.13 Jurisdiction (IICLE).

Chancery and Special Remedies § 11.18 Jurisdiction and Venue of Actions (IICLE).

Section 7. Judicial Circuits.

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(a) The State shall be divided into Judicial Circuits consisting of one or more counties. The First Judicial District shall constitute a Judicial Circuit. The Judicial Circuits within the other Judicial Districts shall be as provided by law. Circuits composed of more than one county shall be compact and of contiguous counties. The General Assembly by law may provide for the division of a circuit for the purpose of selection of Circuit Judges and for the selection of Circuit Judges from the circuit at large.

(b) Each Judicial Circuit shall have one Circuit Court with such number of Circuit Judges as provided by law. Unless otherwise provided by law, there shall be at least one Circuit Judge from each county. In the First Judicial District, unless otherwise provided by law, Cook County, Chicago, and the area outside Chicago shall be separate units for the selection of Circuit Judges, with at least twelve chosen at large from the area outside Chicago and at least thirty-six chosen at large from Chicago.

(c) Circuit Judges in each circuit shall select by secret ballot a Chief Judge from their number to serve at their pleasure. Subject to the authority of the Supreme Court, the Chief Judge shall have general administrative authority over his court, including authority to provide for divisions, general or specialized, and for appropriate times and places of holding court.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Constitutionality
- Elimination of Judgeships
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- Authority

Constitutionality

- Elimination of Judgeships

Trial court erred in declaring that a public law, which amended the Circuit Courts Act, 705 ILCS 35/1 et seq., was unconstitutional for reconsidering and eliminating three judgeships that appeared to have been authorized by earlier legislation and which would have been part of an upcoming primary election; while the state elections board, part of the executive branch, had the authority to determine whether a statute created new judgeships, the Illinois General Assembly had the authority to create such a statute in the first instance and could reconsider and eliminate a judgeship it had authorized, which meant that the Illinois General Assembly had not violated the separation of powers doctrine nor had it been shown that public act was impermissible special legislation or that it violated the equal protection or due process doctrines. Bridges v. State Bd. of Elections, 222 Ill. 2d 482, 305 Ill. Dec. 640, 856 N.E.2d 445, 2006 Ill. LEXIS 1117 (2006).

- Judicial Election

The appellate court's decision, which essentially allowed both candidates' to fill a single judicial vacancy, was unconstitutional for the following reasons: (1) it increased the number of judges in Cook County; (2) it usurped Supreme Court's power to appoint persons to fill judicial vacancies, if viewed as an appointment; (3) it failed to place the proper constitutional limitations concerning judges on candidate, if viewed as an appointment; and (4) because it was made with no legislative appropriation of state funds. McDunn v. Williams, 156 Ill. 2d 288, 189 Ill. Dec. 417, 620 N.E.2d 385 (1993).

Abolition of Probate Courts

The abolition of probate courts and the creation of circuit courts of unlimited jurisdiction, under this section, did not alter the character of evidence statutorily permitted in a proceeding under Ill. Rev. Stat., ch. 110 1/2, para. 6-7. Marcucci v. Marcucci, 54 Ill. 2d 266, 296 N.E.2d 849 (1973).

Administrative Authority

A rule requiring attorneys representing clients in personal injury and domestic relations cases to submit an affidavit of compliance indicating the factual circumstances under which they obtained employment and which concerned enforcement of ethical behavior by attorneys, could be said to be derived from the constitutional grant of limited administrative authority over the workings of the circuit court set forth in subsection (c) of this section. People ex rel. Brazen v. Finley, 146 Ill. App. 3d 750, 100 Ill. Dec. 744, 497 N.E.2d 1013 (1 Dist. 1986), aff'd, 119 Ill. 2d 485, 116 Ill. Dec. 683, 519 N.E.2d 898 (1988).

Administrative Convenience

Subsection (a) of this section and 705 ILCS 35/1, as well as all the other provisions establishing the Illinois court system, demonstrate the state was divided into various circuits for the

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administrative convenience of the judges who actually operate the court. Clay v. Friedman, 541 F. Supp. 500 (N.D. Ill. 1982).

The circuit court of Cook County has been, as a matter of administrative convenience, divided into divisions and the fact a cause might have been more efficiently heard in another division of the circuit court of Cook County was not a basis for dismissal. American Nat'l Bank & Trust Co. v. Levy, 83 Ill. App. 3d 933, 39 Ill. Dec. 355, 404 N.E.2d 946 (1 Dist. 1980).

Assignment of Cases

Since a three-year sentence on defendant's admission to a petition for revocation of probation was lawfully imposed by a judge who had jurisdiction over defendant and who had authority to assign defendant's case to his docket, a different judge, who was the judge that accepted defendant's admission to the revocation petition, improperly vacated that sentence and erroneously resentenced defendant to a greater sentence. 730 ILCS 5/5-4-1(b) did not mandate that the judge who accepted defendant's plea had to be the judge who sentenced him. If 730 ILCS 5/5-4-1 was mandatory, it would be unconstitutional under the separation of powers clause of Ill. Const. Art. II, § 1, and it would improperly encroach on the judiciary's power to assign cases pursuant to Ill. Sup. R. 21(a), which was constitutionally granted by Ill. Const. Art. VI, § 7(c). The court ordered that defendant's original sentence be reinstated. People v. Gray, 363 Ill. App. 3d 897, 300 Ill. Dec. 692, 845 N.E.2d 113, 2006 Ill. App. LEXIS 195 (1 Dist. 2006).

Assignment of Judges

- Chief Judge's Authority

Power to assign judges is one of the exclusive powers granted to the judiciary and a chief judge's administrative authority to use it is subject only to the authority of the state supreme court. Blair v. Mackoff, 284 Ill. App. 3d 836, 220 Ill. Dec. 78, 672 N.E.2d 895 (1 Dist. 1996), appeal denied, 171 Ill. 2d 562, 222 Ill. Dec. 429, 677 N.E.2d 963 (1997).

Rule 21(b), Supreme Court Rules adopted pursuant to subsection (c) of this section, confers power on each chief judge to enter general orders for the assignment of judges, free from any express legislative limitations. People v. Joseph, 113 Ill. 2d 36, 99 Ill. Dec. 120, 495 N.E.2d 501 (1986).

Collateral Proceedings

- Validity

Where a decree is rendered by a court having jurisdiction of the person and of the subject matter, it is not subject to attack in a collateral proceeding. Knaus v. Chicago Title & Trust Co., 365 Ill. 588, 7 N.E.2d 298 (1937).

Construction

Given the explicit comments by the delegates at the constitutional convention, it is appropriate to construe the word "and" as an "or" in the last sentence of subsection (a), in order to more clearly state the proper meaning of the provision. Thies v. State Bd. of Elections, 124 Ill. 2d 317, 124 Ill. Dec. 584, 529 N.E.2d 565 (1988).

Cook County

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Under the 1870 Constitution of Illinois (see now this section) there was no distinction, except in name, between the superior court of Cook County and the circuit court of Cook County. People ex rel. Kelly v. Raymond, 186 Ill. 407, 57 N.E. 1066 (1900).

Division of Judicial Districts

The Illinois Constitution restricts and limits the power of the legislature to further divide judicial districts for the election of appellate judges. People ex rel. Chicago Bar Ass'n v. State Bd. of Elections, 136 Ill. 2d 513, 146 Ill. Dec. 126, 558 N.E.2d 89 (1990).

Juvenile Courts

Defendant's contention that, at the post trial hearing in aggravation and mitigation, the trial court improperly considered defendant's prior convictions in Boy's Court in determining the sentence, was without merit, as it confused Boy's Court with Juvenile Court, Boy's Court simply being a branch of the First Municipal District of the Circuit Court with its proceedings resulting in routine misdemeanor convictions, whereas "juvenile proceedings" exist by authority of the Juvenile Court Act. People v. Malone, 126 Ill. App. 2d 265, 261 N.E.2d 776 (1 Dist. 1970).

Nature of Entity

The Circuit Court of any county is nothing more than a geographical division to determine which judges as a group will handle which cases, and is not an entity that can be sued under federal statute. Clay v. Friedman, 541 F. Supp. 500 (N.D. Ill. 1982).

Power of Chief Judge

Although defendant, as chief judge of the circuit, possessed the inherent power to enter, in appropriate circumstances, an order commanding the county board to provide the court with additional space, such power was to be exercised sparingly and only in exigent circumstances. Knuepfer v. Fawell, 96 Ill. 2d 284, 70 Ill. Dec. 708, 449 N.E.2d 1312 (1983).

A competent chief judge is particularly well qualified to evaluate the evidence presented in an administrative hearing held to determine whether judicial action to secure court facilities is warranted, his knowledge of this administrative subject matter does not disqualify the chief judge from conducting the hearing; however, it is essential that any such administrative orders be entered only after a hearing of which adequate notice is given and at which all interested parties are afforded an opportunity to present their views in order to ensure the availability of meaningful review. Knuepfer v. Fawell, 96 Ill. 2d 284, 70 Ill. Dec. 708, 449 N.E.2d 1312 (1983).

Residency Requirement

An attempt to add the qualification that candidates for certain judgeships have to be residents of particular counties and nevertheless be elected from the circuit at large is unconstitutional. Thies v. State Bd. of Elections, 124 Ill. 2d 317, 124 Ill. Dec. 584, 529 N.E.2d 565 (1988).

Selection of Judge

- Authority of Chief Judge

Agreements by which litigants and their lawyers decided which judge would hear their post-decretal controversies infringed on the constitutional authority of the Chief Judge of the court

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involved, where the divorce division of the circuit court had a designated motion appointed by the Chief Judge of the circuit to hear all post-decretal matters. Johnson v. Johnson, 34 Ill. App. 3d 356, 340 N.E.2d 68 (1 Dist. 1975).

Subdivision of District Court

The provisions of 1989 Illinois Laws Public Act 86-786, effective September 6, 1989, pertaining to the First Judicial District of the appellate court are unconstitutional and those provisions are not severable from the provisions of the act pertaining to the Cook County circuit court; consequently, the provisions of Public Act 86-786 subdividing the First Judicial District for purposes of electing some appellate judges, creating six additional appellate court judgeships in the First Judicial District, and affecting the election of circuit judges in the Cook County circuit are invalid. The provisions of the act adding two additional appellate judgeships in the Third Judicial District are severable from the rest of the act and are, therefore, valid. People ex rel. Chicago Bar Ass'n v. State Bd. of Elections, 136 Ill. 2d 513, 146 Ill. Dec. 126, 558 N.E.2d 89 (1990).

Transfers

- Authority

The Circuit Court and its Chief Judge had the inherent power to adopt rules and orders concerning transfer assignment of actions and judges. 1616 Bldg. Corp. v. Rubinson, 64 Ill. App. 2d 114, 212 N.E.2d 338 (1 Dist. 1965).

OPINIONS OF ATTORNEY GENERAL

Circuit Court

- Holidays

Under subsection (c) of section 7 of article VI of the 1970 Illinois Constitution and under subsection (b) of Rule 21, Supreme Court Rules, the Chief Judge of the Circuit Court establishes by his general order the times and places of holding court; therefore, the Chief Judge of the Circuit Court could set the holidays for the Judges of the Circuit Court. 1979 Op. Atty. Gen. 48.

LEGAL PERIODICALS

For article, "A Special Appellate Court of Workers' Compensation Review: A Polite Proposal," see 71 Ill. B.J. 44 (1982).

RESEARCH REFERENCES

Laws governing judicial recusal or disqualification in state proceeding as violating federal or state constitution. 91 ALR5th 437.

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Practice Guides and Treatises.

Civil Practice (Illinois) Volume I: Opening the Case § 4.22 Authority and Creation (IICLE).

Chancery and Special Remedies § 7.56 Second Hearing Conducted by Judge (IICLE).

Section 8. Associate Judges.

Each Circuit Court shall have such number of Associate Judges as provided by law. Associate Judges shall be appointed by the Circuit Judges in each circuit as the Supreme Court shall provide by rule. In the First Judicial District, unless otherwise provided by law, at least one-fourth of the Associate Judges shall be appointed from, and reside, outside Chicago. The Supreme Court shall provide by rule for matters to be assigned to Associate Judges.

(Source: Illinois Constitution.)

CASE NOTES

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Equity

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A court of equity had jurisdiction of a complaint filed for the foreclosure of mortgages, and former Ill. Rev. Stat., ch. 64, para. 26 (repealed), so far as it provided that mortgages should only be foreclosed in the county court where letters of guardianship were granted, was not unconstitutional. First Trust Joint Stock Land Bank v. Cutler, 293 Ill. App. 354, 12 N.E.2d 705 (3 Dist. 1938).

Magistrates

- Due Process

Defendant was not denied due process of law because of the fact that his trial for violating a city ordinance was conducted by a magistrate who was not a lawyer. City of Decatur v. Kushmer, 43 Ill. 2d 334, 253 N.E.2d 425 (1969).

- Writ

Mandamus and prohibition are writs directed to inferior courts, and a circuit judge and a magistrate are members of the same court and the magistrate cannot be commanded by any writ of mandamus or prohibition which might be issued by a circuit judge. People ex rel. Filkin v. Flessner, 48 Ill. 2d 54, 268 N.E.2d 376 (1971).

Mandamus

- Judicial Functions

A circuit court, in acting under former section 8-7 of the School Code (repealed), was performing a judicial rather than legislative function, and thus, mandamus would not lie to expunge a circuit court order under that section. People ex rel. Dolan v. Dusher, 411 Ill. 535, 104 N.E.2d 775 (1952).

Masters

- Evidence

Evidence as reported by the master stood as evidence on the merits of the case; however, the parties had the right to present additional evidence either before the court or the master if the case was referred to a master in chancery under former Ill. Const. (1870), Art. VI, § 8, (see now this section). Cohn v. Cinman, 85 Ill. App. 2d 285, 230 N.E.2d 23 (1 Dist. 1967).

- Findings

Although the findings of a master, approved by the trial court are entitled to due weight on review, the master's report is advisory only. Oak Park Nat'l Bank v. City of Chicago, 10 Ill. App. 3d 258, 294 N.E.2d 42 (1 Dist. 1973).

- Waiver

Where the appointment of successor master and the completion and filing by him of the report of the deceased master was all done by agreement of the parties, any questions of due process of law or constitutional adequacies were effectively waived by the parties. Oak Park Nat'l Bank v. City of Chicago, 10 Ill. App. 3d 258, 294 N.E.2d 42 (1 Dist. 1973).

Obtaining Judicial Office

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Ill. Sup. Ct. R. 39 made it clear through the constitutional provision is implemented, Ill. Const. art. VI, § 8 directing the state supreme court to provide by rule for the appointment of associate judges, that the state supreme court could not change or add to the qualifications for a judgeship by state supreme court rule unless the Illinois Constitution gave it that power. Since Ill. Const. art. VI, § 11 set forth residency rule requirements, the amendment the state supreme court made to Ill. Sup. Ct. R. 39 that substituted the requirement that an attorney had to be a resident of the unit to which the attorney sought appointment to "a resident of the unit which selects him" made it clear that the judicial candidate had to be a resident of the subcircuit to which the judicial candidate sought election at the time the judicial candidate placed the judicial candidate's name on the ballot rather than later when the judicial candidate actually became a judge. Goodman v. Ward, 397 Ill. App. 3d 875, 337 Ill. Dec. 399, 922 N.E.2d 522, 2010 Ill. App. LEXIS 24 (3 Dist. 2010).

Probate

- Waiver

In proceeding which was clearly not a contest of the validity of the will, but was an action to admit a will to probate, the fact that no objection was made to the cause being referred to as a "contest" and being heard by a magistrate did not amount to a waiver. Marcucci v. Marcucci, 54 Ill. 2d 266, 296 N.E.2d 849 (1973).

Taxation

- Assessment

Although Ill. Rev. Stat., ch. 120, para. 385 (repealed) states that inheritance taxes are to be assessed by "the circuit judge designated * * * for that purpose by the chief judge of the judicial circuit," this does not preclude the designation of an associate judge to assess such taxes, as this section gives the Supreme Court the authority to provide by rule for matters to be assigned to associate judges and Supreme Court Rule 295 states the chief judge of each circuit or any circuit judge designated by him may assign an associate judge to hear and determine any matters except the trial of criminal cases in which the defendant is charged with an offense punishable by imprisonment for more than one year." Kendler v. State, 164 Ill. App. 3d 377, 115 Ill. Dec. 466, 517 N.E.2d 1152 (2 Dist. 1987).

Practice Guides and Treatises.

Civil Practice (Illinois) Volume I: Opening the Case § 4.24 Matters Assignable to Associate Circuit Judges (IICLE).

Section 9. Circuit Courts - Jurisdiction.

Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office. Circuit Courts shall have such power to review administrative action as provided by law.

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(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Crim L § 10:05, § 12:01, § 12:05.

See Illinois Jur, Fam L § 11:5.

See Illinois Jur, Prob Est & Trusts § 1:02, § 12:04, § 27:09, § 29:18, § 40:01.

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In General

Circuit courts are courts of general jurisdiction which may adjudicate any justiciable matter coming to them according to the course of common law, as well as any matter over which they are specifically given jurisdiction by statute. In re Schauberger, 253 Ill. App. 3d 595, 191 Ill.

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Dec. 675, 624 N.E.2d 863 (2 Dist. 1993), appeal denied, 155 Ill. 2d 576, 198 Ill. Dec. 552, 633 N.E.2d 14 (1994).

Administrative Agencies

Trial court did not err in granting the first school district's motion to amend its complaint for administrative review to add the eight remaining members of the "Committee of Ten"; it properly granted the motion to amend because the eight remaining members met the two requirements of 735 ILCS 5/3-107(a) that had to be shown for the granting of additional time to add defendants, namely: (1) that they, as parties of record, had not been made defendants and (2) that they had not been named by the administrative agency in its final order as a party of record. Collinsville Cmty. Unit Sch. Dist. No. 10 v. Reg'l Bd., 218 Ill. 2d 175, 300 Ill. Dec. 15, 843 N.E.2d 273, 2006 Ill. LEXIS 6 (2006).

- Environment

Where the Illinois Environmental Protection Agency threatened to act in a manner detrimental to the plaintiff's interests by issuing a violation notice and threatening prosecution if the plaintiff did not comply with permitting procedures, the Agency's action provided a sufficiently ripe controversy to warrant judicial consideration of plaintiff's complaint for a declaratory judgment. Alternate Fuels, Inc. v. Dir. of the Ill. EPA, 337 Ill. App. 3d 857, 272 Ill. Dec. 229, 786 N.E.2d 1063, 2003 Ill. App. LEXIS 296 (5 Dist. 2003), aff'd, 215 Ill. 2d 219, 294 Ill. Dec. 32, 830 N.E.2d 444 (2004); modified, Ill. 2d , Ill. Dec. , N.E.2d , 2005 Ill. LEXIS 953 (June 16, 2005).

Where request was made to revoke permits for a landfill and the requested relief was the enjoining of conduct alleged to create a nuisance and to cause pollution, where the Supreme Court has held that Pollution Control Board regulations purporting to permit an administrative appeal from the issuance of landfill permits were invalid and the existence of landfill permits is not even an affirmative defense to administrative action brought under section 31(b) of the Environmental Protection Act (415 ILCS 5/31(b)), the circuit court correctly determined that it had subject matter jurisdiction. Village of Wilsonville v. SCA Servs. Inc., 77 Ill. App. 3d 618, 33 Ill. Dec. 163, 396 N.E.2d 552 (4 Dist. 1979), aff'd, 86 Ill. 2d 1, 55 Ill. Dec. 499, 426 N.E.2d 824 (1981).

The policy in this state is not to leave the enforcement of environmental matters exclusively in the hands of administrative agencies but to have a dual system of enforcement and civil relief. Village of Wilsonville v. SCA Servs. Inc., 77 Ill. App. 3d 618, 33 Ill. Dec. 163, 396 N.E.2d 552 (4 Dist. 1979), aff'd, 86 Ill. 2d 1, 55 Ill. Dec. 499, 426 N.E.2d 824 (1981).

- Exhaustion of Remedies

Plaintiff is required to exhaust all her administrative remedies before seeking review in the circuit court. Cypress Lounge v. Town of Cicero, 165 Ill. App. 3d 867, 117 Ill. Dec. 439, 520 N.E.2d 790 (1 Dist. 1987).

- Labor Department

No constitutional right to appeal an administrative decision existed, and since the businessman could not otherwise show he had a right to appeal the state labor department's determination that he "apparently" violated the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., especially since the Act did not provide for such review, the trial court erred in reversing the state labor department's determination. Walters v. Dep't of Labor, 356 Ill. App. 3d 785, 292 Ill. Dec. 543, 826 N.E.2d 979, 2005 Ill. App. LEXIS 274 (1 Dist. 2005).

- Public Utility Rates

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The legislature has vested in the Illinois Commerce Commission the exclusive functions of fixing rates of public utilities which will be just and reasonable and produce a fair return upon the property used and employed in the public service and even though a court may hold that the rates authorized by a commission are inadequate or illegal and may restrain their enforcement, it cannot make new rates under former Ill. Rev. Stat., ch. 111 2/3, para. 36 (see now 220 ILCS 5/9-201). Peoples Gas Light & Coke Co. v. Slattery, 373 Ill. 31, 25 N.E.2d 482 (1939).

- Review

Although the Livestock Management Facilities Act (Livestock Act) did not itself provide for review of an administrative decision by the Department of Agriculture that granted the developer the right to construct a livestock facility, Ill. Const. art. VI, § 6 and Ill. Const. art. VI, § 9 gave Illinois courts the jurisdiction to review administrative decisions as provided by law. Since the Livestock Act at the same time did not bar review or call for unreviewable agency discretion, the not-for-profit corporation and the area residents challenging the Department's decision could seek review through a common law writ of certiorari. Helping Others Maintain Envtl. Stds. v. Bos, 406 Ill. App. 3d 669, 346 Ill. Dec. 789, 941 N.E.2d 347, 2010 Ill. App. LEXIS 1392 (2 Dist. 2010).

Trial court did not err in denying the claimant's request that the claimant be allowed leave to amend the claimant's complaint for administrative review to name the state unemployment benefits review board as a defendant and in dismissing the complaint; the trial court was only permitted pursuant to the Illinois Constitution to review the final administrative decision denying the claimant unemployment compensation according to the relevant statutory law and since the claimant's complaint did not name a necessary party, the state unemployment benefits review board, as a defendant in the original complaint, the trial court did not have jurisdiction to review the administrative review and that was true even though the claimant had named the state unemployment compensation benefits department's director as a defendant because the director was not the director over the state unemployment benefits review board. Van Milligen v. Dep't of Empl. Sec., 373 Ill. App. 3d 532, 311 Ill. Dec. 422, 868 N.E.2d 1083, 2007 Ill. App. LEXIS 554 (1 Dist. 2007).

The failure to name a defendant and issue summons within statutory period will bar an action where the defect is raised in the circuit court and a good-faith attempt is not shown. Kenney Country Lounge & Cafe, Inc. v. Illinois Liquor Control Comm'n, 253 Ill. App. 3d 1013, 192 Ill. Dec. 725, 625 N.E.2d 880 (4 Dist. 1993).

The circuit courts shall have such power to review administrative action as may be provided by law. Merwin v. State Bd. of Elections, 229 Ill. App. 3d 236, 170 Ill. Dec. 820, 593 N.E.2d 709 (1 Dist. 1992).

In regard to judicial review of administrative decisions, the Illinois Constitution is silent as to express rulemaking power of the Supreme Court, but the judicial article states that appellate and circuit courts respectively shall have such power to review administrative action as provided by law. AFSCME v. Illinois State Labor Relations Bd., 196 Ill. App. 3d 238, 142 Ill. Dec. 901, 553 N.E.2d 415 (4 Dist.), appeal denied, 133 Ill. 2d 551, 149 Ill. Dec. 315, 561 N.E.2d 685 (1990).

A circuit court has the power to review administrative actions only as provided by law; precursor to 735 ILCS 5/3-101 to 5/3-112 sets out the procedure for such administrative review. Greer v. Illinois Liquor Control Comm'n, 185 Ill. App. 3d 219, 133 Ill. Dec. 379, 541 N.E.2d 216 (2 Dist. 1989).

Administrative review is not a matter of right under this section. Collins Oil Co. v. Department of Revenue, 119 Ill. App. 3d 808, 75 Ill. Dec. 328, 457 N.E.2d 118 (2 Dist. 1983).

Absent legislation, administrative review is not a matter of right nor is the legislature prevented from conditioning the circuit court's jurisdiction to entertain a particular type of administrative review upon the filing of a bond to secure payment of sums of money administratively determined

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to be owed. Glasco Elec. Co. v. Department of Revenue, 87 Ill. App. 3d 1070, 42 Ill. Dec. 896, 409 N.E.2d 511 (4 Dist. 1980), aff'd, 86 Ill. 2d 346, 56 Ill. Dec. 10, 427 N.E.2d 90 (1981).

The circuit court generally may not review the actions of an administrative agency under precursor to 735 ILCS 5/3-101 until the agency itself has reached a final decision. R.D. Werner Co. v. Leyden Fire Protection Dist., 91 Ill. App. 3d 587, 47 Ill. Dec. 53, 414 N.E.2d 1169 (1 Dist. 1980).

The jurisdiction of the circuit court to review findings of the Illinois Commerce Commission is limited to that "provided by law," which is founded upon 220 ILCS 5/9-201. Rural Elec. Convenience Coop. v. Illinois Commerce Comm'n, 75 Ill. 2d 142, 25 Ill. Dec. 794, 387 N.E.2d 670 (1979).

Pursuant to former (Ill. Rev. Stat., ch. 110, para. 264) (see now 735 ILCS 3/101), circuit court had jurisdiction to exercise administrative review of Department of Local Government Affairs' denial of tax-exempt status to real estate held by not-for-profit corporation engaged in charitable activities. Christian Action Ministry v. Department of Local Gov't Affairs, 74 Ill. 2d 51, 23 Ill. Dec. 87, 383 N.E.2d 958 (1978).

Administrative review proceeding and an action brought by city charging violation of nursing home ordinance presented a justiciable matter over which this section vested the circuit court with jurisdiction, and the appellate court also had jurisdiction under Ill. Const. (1970), Art. VI. § 6. Melbourne Corp. v. Chicago Hearing Bd. for Nursing Homes, 59 Ill. 2d 409, 322 N.E.2d 481 (1974).

Orders of the Illinois Commerce Commission are entitled to great weight, and a court will not set one aside unless it is arbitrary or unreasonable or in clear violation of a rule of law and when the sufficiency of an order of the Commission is questioned it will not be set aside unless it is clearly against the manifest weight of the evidence. Peoples Gas Light & Coke Co. v. Slattery, 373 Ill. 31, 25 N.E.2d 482 (1939).

- Right to Appeal

Although the trial court dismissed the claimant's complaint for administrative review on other grounds, dismissal was warranted because the Administrative Review Law, 735 ILCS 5/3-101 et seq., applied to review of the claimant's assertion that error occurred in denying claimant's application for disability benefits, that law required the claimant to make the board of trustees a party to the action because the retirement fund's board of trustees was the administrative agency who issued the final decision, and the claimant did not timely file a complaint in the trial court that named the retirement fund's board of trustees as a party to the administrative review action. Ultsch v. Ill. Mun. Ret. Fund, 226 Ill. 2d 169, 314 Ill. Dec. 91, 874 N.E.2d 1, 2007 Ill. LEXIS 1148 (2007).

There is no constitutional right to appeal from administrative proceedings; the right of appeal from such proceedings is not necessarily essential to due process, but is a right which may or may not be granted in a given situation as the legislature reasonably deems appropriate. Board of Educ. v. Gates, 22 Ill. App. 3d 16, 316 N.E.2d 525 (2 Dist. 1974).

Amendments

- Effect

In 1964, when amendments to the Judicial Article became effective, circuit courts of this state acquired unlimited original jurisdiction of all justiciable matters; this change in the constitution reformed the judicial system, abolished all distinctions between courts of law and equity and conferred all judicial power on circuit courts without regard to specialized functions of a division

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within the court. Marcucci v. Marcucci, 5 Ill. App. 3d 484, 285 N.E.2d 141 (1 Dist. 1971), rev'd on other grounds, 54 Ill. 2d 266, 296 N.E.2d 849 (1973).

- Purpose

The intendment of the 1964 constitutional amendments was to consolidate the judiciary and vest in circuit courts the jurisdiction to adjudicate all controversies. Marcucci v. Marcucci, 5 Ill. App. 3d 484, 285 N.E.2d 141 (1 Dist. 1971), rev'd on other grounds, 54 Ill. 2d 266, 296 N.E.2d 849 (1973).

Assignment

- Post-Conviction

Circuit court's authority to assign a particular judge to preside over a post-conviction proceeding flows directly from the provisions of the Illinois Constitution and the rules of the court. People v. Dixon, 160 Ill. App. 3d 65, 111 Ill. Dec. 888, 513 N.E.2d 134 (5 Dist. 1987).

Bonds

- Reformation

In appropriate cases, a circuit court may reform a bond when acting in accordance with the equitable powers it possesses; these equitable powers may be invoked for the correction of mistakes in bonds, and where clear evidence is shown that the instrument does not conform to the intention of the parties, it may be reformed. In re Rodriguez, 131 Ill. 2d 273, 137 Ill. Dec. 78, 545 N.E.2d 731 (1989).

Citation Proceedings

The complete determination of citation proceedings now lies within the competence of the Probate Division of the Circuit Court, subject to court rules. Loftus v. Garrett, 81 Ill. App. 2d 141, 224 N.E.2d 654 (2 Dist. 1967).

Collateral Proceedings

- Validity

If the court has jurisdiction, it is altogether immaterial, when the judgment is collaterally called in question, how grossly irregular or manifestly erroneous its proceedings may have been, the judgment cannot be regarded as a nullity, and cannot, therefore, be collaterally impeached; such a judgment is binding on the parties and on every other court, unless reversed or annulled in a direct proceeding and is not open to collateral attack. Knaus v. Chicago Title & Trust Co., 365 Ill. 588, 7 N.E.2d 298 (1937).

Collection of Funds

Plaintiffs failed to establish that a constitutional violation occurred when funds collected through the civil justice system were used to finance the court system as a whole. Zamarron v. Pucinski, 282 Ill. App. 3d 354, 218 Ill. Dec. 23, 668 N.E.2d 186 (1 Dist. 1996).

Concurrent Jurisdiction

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- Administrative Agencies

Where jurisdiction of the administrative agency was concurrent with the circuit court, the jurisdiction of the circuit court was paramount. Employers Mut. Cos. v. Skilling, 163 Ill. 2d 284, 206 Ill. Dec. 110, 644 N.E.2d 1163 (1994).

- Mandamus

Circuit courts have concurrent jurisdiction in mandamus cases. People ex rel. Shultz v. Russel, 294 Ill. 283, 128 N.E. 495 (1920).

- Probate

Since both the probate division and the law division are simply divisions of the same constitutional court of general jurisdiction, it follows necessarily that both of these tribunals could have had equal and concurrent subject matter jurisdiction over the matter of the appointment of the administrator. Alfaro v. Meagher, 27 Ill. App. 3d 292, 326 N.E.2d 545 (1 Dist. 1975).

Under this section, the legislature has no power to deprive the circuit courts of their equitable jurisdiction; therefore jurisdiction conferred upon the probate court regarding repayment of a trust is concurrent. Howell v. Moores, 127 Ill. 67, 19 N.E. 863 (1889).

Construction with Other Laws

There is no conflict between the sovereign immunity and the circuit court jurisdiction clauses of the Illinois Constitution (Ill. Const. (1970), Art. XIII, § 4 and this section) and the Court of Claims Act (705 ILCS 505/1 et seq.). Healy v. Vaupel, 133 Ill. 2d 295, 140 Ill. Dec. 368, 549 N.E.2d 1240 (1990).

Court of Claims

- Certiorari

Accident victim's petition for writ of certiorari from a decision of the Court of Claims of the State of Illinois was properly dismissed by a circuit court because certiorari could not be used to review the correctness of a Court of Claims decision based upon the merits of a case. Reichert v. Court of Claims, 389 Ill. App. 3d 999, 330 Ill. Dec. 117, 907 N.E.2d 930, 2009 Ill. App. LEXIS 524 (4 Dist. 2009), appeal denied, 233 Ill. 2d 599, 335 Ill. Dec. 646, 919 N.E.2d 365, 2009 Ill. LEXIS 1707 (2009).

- Conflicts

There is no conflict between the sovereign immunity clause (Ill. Const. (1970), Art. XIII, § 4) and this section of the Illinois Constitution and the Court of Claims Act (705 ILCS 505/25). Healy v. Vaupel, 133 Ill. 2d 295, 140 Ill. Dec. 368, 549 N.E.2d 1240 (1990).

Crimes

- Charges

Failure to charge an offense does not serve to deprive the circuit court of jurisdiction. People v. Gilmore, 63 Ill. 2d 23, 344 N.E.2d 456 (1976).

- Derivation

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Jurisdiction of the circuit court is not conferred by the filing of an information or the return of an indictment, but conferred by the Constitution. People v. Mitchell, 116 Ill. App. 3d 44, 71 Ill. Dec. 780, 451 N.E.2d 934 (5 Dist. 1983), rev'd on other grounds, 105 Ill. 2d 1, 85 Ill. Dec. 465, 473 N.E.2d 1270 (1984).

- Post-Conviction Proceedings

A circuit court judge derives his authority to preside over post-conviction proceedings not from 730 ILCS 5/122-8, but from this section. People v. Dixon, 160 Ill. App. 3d 65, 111 Ill. Dec. 888, 513 N.E.2d 134 (5 Dist. 1987).

- Preemption

Appellate jurisdiction of the original indictment did not preempt the trial court from proceeding on a new indictment returned against defendant by a grand jury. People v. Palmer, 188 Ill. App. 3d 378, 135 Ill. Dec. 538, 543 N.E.2d 1106 (2 Dist. 1989).

- Speedy Trial

When the General Assembly distinguished jurisdiction and venue in the 1961 Criminal Code, it intended this distinction to be effective throughout the Code, including the speedy trial statute. People v. Goins, 119 Ill. 2d 259, 116 Ill. Dec. 193, 518 N.E.2d 1014 (1988).

- Warranty

Since jurisdiction over criminal matters is conferred by the provisions of the Illinois Constitution, and since police officers were specifically authorized to make an arrest without a warrant where they had reasonable grounds to believe that defendant had committed an offense, the issuance of an arrest warrant was not necessary to confer jurisdiction upon the trial court. People v. Mitchell, 116 Ill. App. 3d 44, 71 Ill. Dec. 780, 451 N.E.2d 934 (5 Dist. 1983), rev'd on other grounds, 105 Ill. 2d 1, 85 Ill. Dec. 465, 473 N.E.2d 1270 (1984).

Declaratory Judgment

- In General

The circuit court has subject matter jurisdiction over the genera of cases that seek enforcement of an asserted lien by an insurer, a declaratory judgment, and injunctive relief. Health Cost Controls v. Sevilla, 307 Ill. App. 3d 582, 240 Ill. Dec. 925, 718 N.E.2d 558, 1999 Ill. App. LEXIS 607 (1 Dist. 1999), appeal denied, 186 Ill. 2d 568, 243 Ill. Dec. 561, 723 N.E.2d 1162 (1999).

Since the Supreme Court does not have original and exclusive jurisdiction of actions in declaratory judgment, original jurisdiction lies in the circuit courts. Charleston Nat'l Bank v. Muller, 16 Ill. App. 3d 380, 306 N.E.2d 358 (4 Dist. 1974).

Defenses

- Forcible Entry and Detainer

While it is true that circuit courts have jurisdiction over all justiciable matters, the defenses which may be raised in a forcible entry and detainer action are limited. General Parking Corp. v. Kimmel, 79 Ill. App. 3d 883, 35 Ill. Dec. 154, 398 N.E.2d 1104 (1 Dist. 1979).

Direct Appeal

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Casino's appeal of the dismissal of its complaint seeking declaratory and injunctive relief challenging certain of the administrative rules of the Illinois Gaming Board was dismissed as a direct appeal authorized by 230 ILCS 10/17.1(a) of the Illinois Riverboat Gambling Act (RGA) of the revocation of the casino's license was pending in the Illinois Appellate Court, Fourth District, raising the same issues; the RGA created the only permissible avenue for the attack on the revocation order and authorized jurisdiction and venue only in the Fourth District. Emerald Casino, Inc. v. Ill. Gaming Bd., 366 Ill. App. 3d 622, 304 Ill. Dec. 262, 852 N.E.2d 512, 2006 Ill. App. LEXIS 569 (1 Dist. 2006).

Dismissal

- Lack of Jurisdiction

Where the question presented by plea was the propriety of granting the relief prayed for, and jurisdiction was not involved, the court erred in setting the motion for hearing on a question of jurisdiction and dismissing the complaint for want of jurisdiction. Board of Educ. v. Idle Motors, Inc., 339 Ill. App. 359, 90 N.E.2d 121 (1 Dist. 1950).

Divisions

- In General

The circuit court was incorrect in stating that it could not rule on plaintiff's proposed amended complaint because it included an equitable theory of law and requested chancery relief; where the circuit court is a court of general jurisdiction the fact that the court has been administratively divided into the law and chancery divisions does not affect the power of any of its judges to hear any matter in law or equity properly pending in the circuit court. Droen v. Wechsler, 271 Ill. App. 3d 332, 208 Ill. Dec. 59, 648 N.E.2d 981 (1 Dist. 1995).

- Allocation of Responsibility

The allocation of judicial responsibility to various divisions of the circuit court does not reflect any constitutional barriers to jurisdiction, but rather only administrative convenience. Zoglauer v. Zoglauer, 229 Ill. App. 3d 394, 170 Ill. Dec. 551, 593 N.E.2d 93 (2 Dist. 1992).

- Concurrent Jurisdiction

Divisions of circuit courts are not jurisdictional. Higgins v. Stockman, 111 Ill. App. 3d 457, 67 Ill. Dec. 152, 444 N.E.2d 191 (2 Dist. 1982).

This provision does not address time limits, but arguably it is quite explicit on where a suit may be filed in circuit court, and case law holds that each division of the circuit court has equal and concurrent subject matter jurisdiction; in short, this constitutional provision is more relevant to where a suit may be filed than to when it may be filed. Higgins v. Stockman, 111 Ill. App. 3d 457, 67 Ill. Dec. 152, 444 N.E.2d 191 (2 Dist. 1982).

- Juvenile Court

The juvenile court is a division of a single, unified circuit court and it is the circuit court as a whole which is vested with jurisdiction. People v. Woods, 78 Ill. App. 3d 431, 33 Ill. Dec. 480, 396 N.E.2d 1204 (1 Dist. 1979).

- Misdesignation

The circuit courts have almost unlimited jurisdiction over all justiciable matters and Rule 132, Supreme Court Rules, provides that misdesignation of a case with regards to circuit court division

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shall not affect the jurisdiction of the court. Olson v. Olson, 120 Ill. App. 3d 744, 76 Ill. Dec. 25, 458 N.E.2d 164 (2 Dist. 1983).

- Municipal Department

Plaintiff should have raised the issue of the constitutionality of ordinance requiring him to remove his billboard in the case first filed by the municipality in the municipal court; therefore, the law division, county department, was without jurisdiction to rule on plaintiff's plea for declaratory and injunctive relief. Foster & Kleiser v. Village of Schaumburg, 126 Ill. App. 3d 836, 82 Ill. Dec. 61, 467 N.E.2d 1134 (1 Dist. 1984).

The Municipal Department is an adjunct of the court of general jurisdiction and by definition has the same powers and it is not separate and distinct with recognizable jurisdictional limitations as to its inherent power; therefore, that court had jurisdiction to hear and determine the issues presented in a forcible entry and detainer action in answer and by counterclaim to the complaint of plaintiff. Marine Park Assocs. ex rel. M. Myers Mgt., Inc. v. Johnson, 1 Ill. App. 3d 464, 274 N.E.2d 645 (1 Dist. 1971).

Ordinance seeking to clothe the police magistrate with exclusive jurisdiction to the exclusion of justices of the peace was in direct conflict with the Revised Cities and Villages Act (65 ILCS 20/0.01), and was also clearly in violation of this section. Harms v. Wuerth, 396 Ill. 73, 71 N.E.2d 26 (1947).

- Transfer

A small claim complaint filed for a sum in excess of the amount stated in Rule 281, Supreme Court Rules this rule was not fatally defective and void for failing to state a cause of action, but such a case should have been transferred from the small claim division to another division of the circuit court. Daily Journal v. Smith, 118 Ill. App. 2d 411, 254 N.E.2d 307 (2 Dist. 1969).

- Uniformity

It is true that appeals from justices of the peace are tried de novo in the circuit court, that chancery cases are tried differently from actions at law, and in some cases the regularity of proceedings is determined by an inspection of the record certified to the court, but the jurisdiction and practice in the different classes of cases are uniform in all courts of the same class or grade. People v. Cosmopolitan Fire Ins. Co., 246 Ill. 442, 92 N.E. 922 (1910).

Double Jeopardy

- Criminal Contempt

The prohibition against double jeopardy is violated when conduct previously punished as an indirect criminal contempt is again sought to be punished as a substantive criminal offense. People v. Gray, 36 Ill. App. 3d 720, 344 N.E.2d 683 (1 Dist. 1976), aff'd, 69 Ill. 2d 44, 12 Ill. Dec. 886, 370 N.E.2d 797 (1977), cert. denied, 435 U.S. 1013, 98 S. Ct. 1887, 56 L. Ed. 2d 395 (1978).

Since all circuit courts are courts of general jurisdiction, the judge of the circuit court who held a defendant in criminal contempt in a divorce action was equal in authority to those judges who try felony criminal cases and could have presided at a criminal trial for the same occurrence, and while it was true that the contempt proceedings could not have resulted in a judgment that defendant was guilty of aggravated battery, the fact remained that he was twice punished for the same offense because the elements of proof were substantially identical in both prosecutions; a mere disparity in punishments available for the two offenses did not restrict the application of the double jeopardy bar. People v. Gray, 36 Ill. App. 3d 720, 344 N.E.2d 683 (1 Dist. 1976), aff'd,

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69 Ill. 2d 44, 12 Ill. Dec. 886, 370 N.E.2d 797 (1977), cert. denied, 435 U.S. 1013, 98 S. Ct. 1887, 56 L. Ed. 2d 395 (1978).

Elections

- In General

This section and the Cities and Villages Act (65 ILCS 5/3-11-11) did not preclude appellate court from determining whether city council elected its committee chairmen in accord with its rules. Roti v. Washington, 148 Ill. App. 3d 1006, 102 Ill. Dec. 570, 500 N.E.2d 463 (1 Dist. 1986).

The circuit court has jurisdiction over election contests if their jurisdiction is invoked on a timely basis and in a proper manner. Bilderback v. Trico Community Unit Sch., 11 Ill. App. 3d 928, 297 N.E.2d 26 (5 Dist. 1973).

- Judges

This section and Ill. Const. (1970), Art. I, § 12 do not confer jurisdiction upon the circuit courts to try election contests to the office of Superior Court Judge. Douglas v. Hutchinson, 183 Ill. 323, 55 N.E. 628 (1899).

- Qualification of Candidate

Under this section the circuit courts have original jurisdiction over all justiciable matters not explicitly assigned to the Supreme Court in addition to the power to review administrative decisions as provided by statute; where ward resident sought leave to file amended complaint seeking temporary restraining order to prevent candidate from being placed on city ballot, the circuit court properly accepted jurisdiction and considered the issue as to the correctness and completeness of the candidate's statement of economic interests in the instant case as raised in the amended complaint, notwithstanding the fact that the case first arose upon administrative review for which the court had no jurisdiction, mirroring the agency's lack of jurisdiction, to consider the issue; the circuit court's decision to accept jurisdiction of the amended complaint was also in consonance with the Supreme Court's recognition that, in particular circumstances, timeliness of judicial action is worthy of consideration in order to avoid unjust or harsh results. Troutman v. Keys, 156 Ill. App. 3d 247, 108 Ill. Dec. 757, 509 N.E.2d 453 (1 Dist. 1987).

- Tie Votes

The 25 plaintiff aldermen claimed that through their "No" votes, the council had resolved the issues in their favor by failing to enact the resolution at issue and by overruling the mayor's contrary rulings; the 25 defendant aldermen and the mayor claimed that by their "Aye" votes, the council resolved the same issues in the opposite manner; therefore, with that impasse the council had not and could not resolve the issues presented to appellate court; consequently, under the constitutional scheme of separation of powers, the appellate court had jurisdiction to decide this case. Roti v. Washington, 148 Ill. App. 3d 1006, 102 Ill. Dec. 570, 500 N.E.2d 463 (1 Dist. 1986).

Equity

- In General

The Constitution confers upon the circuit court jurisdiction of all causes in equity, and the legislature is without power to deprive it of any part of this jurisdiction. Stephens v. Chicago, B. & Q.R.R., 303 Ill. 49, 135 N.E. 68 (1922).

- Federal Jurisdiction

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Where the primary relief sought was equitable in nature (an injunction and declaratory judgment), an Illinois state court would find such action justiciable; thus the federal district court did not have the power to adjudicate the controversy under the ancillary jurisdiction theory. Rota v. Brotherhood of Ry., Airline & S.S. Clerks, 64 F.R.D. 699 (N.D. Ill. 1974).

- Injunctions

The circuit court has subject matter jurisdiction over the genera of cases that seek enforcement of an asserted lien by an insurer, a declaratory judgment, and injunctive relief. Health Cost Controls v. Sevilla, 307 Ill. App. 3d 582, 240 Ill. Dec. 925, 718 N.E.2d 558, 1999 Ill. App. LEXIS 607 (1 Dist. 1999), appeal denied, 186 Ill. 2d 568, 243 Ill. Dec. 561, 723 N.E.2d 1162 (1999).

Where the issuance of an injunction will cause great harm to the defendant and will confer little benefit in comparison on the plaintiff, an injunction may be refused; moreover, the granting of an injunction should be exercised cautiously when important public interests are involved. Biggs v. Health & Hosps. Governing Comm'n, 55 Ill. App. 3d 501, 13 Ill. Dec. 123, 370 N.E.2d 1150 (1 Dist. 1977).

Since the request for injunctive relief presented a justiciable matter, the circuit court had jurisdiction and properly granted the injunction. Biggs v. Health & Hosps. Governing Comm'n, 55 Ill. App. 3d 501, 13 Ill. Dec. 123, 370 N.E.2d 1150 (1 Dist. 1977).

- Not Exclusive Jurisdiction

The constitution, which gives the circuit court jurisdiction in all matters of equity does not mean that it has conferred exclusive jurisdiction upon the circuit courts. People ex rel. Houghland v. Leonard, 415 Ill. 135, 112 N.E.2d 697 (1953).

- Nuisance

The chancery division of the circuit court was endowed with all of the powers of every kind previously vested in courts of chancery, and no argument was required to demonstrate the fact that courts of chancery have implied and traditional powers to abate a nuisance. City of Chicago v. Nielsen, 38 Ill. App. 3d 941, 349 N.E.2d 532 (1 Dist. 1976).

An unauthorized obstruction of a public highway is a public nuisance, and it was within the jurisdiction of a court of equity to grant relief by injunction for the prevention or removal of such obstruction at the suit of the proper officials on behalf of the public or of an individual who was directly and specially injured by the obstruction. Stephens v. Chicago, B. & Q.R.R., 303 Ill. 49, 135 N.E. 68 (1922).

- Original Jurisdiction

The circuit courts of this state derive original jurisdiction in all equity cases from this section of the constitution, and the legislature cannot validly limit those powers. Iowa-Illinois Gas & Elec. Co. v. Fisher, 351 Ill. App. 215, 114 N.E.2d 581 (2 Dist. 1953).

- Pleading

Circuit court was found to have jurisdiction to enjoin the collection of fraudulently excessive taxes even though the complaint did not include an allegation of payment under protest or an allegation of inadequate remedy at law. Lopin v. Cullerton, 46 Ill. App. 3d 378, 5 Ill. Dec. 6, 361 N.E.2d 6 (1 Dist. 1977).

- Specific Performance

A trial court hearing chancery matters has full jurisdiction to award legal damages that have resulted from delay in the performance of the contract in addition to decreeing specific

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performance. Rotogravure Serv., Inc. v. R.W. Borrowdale Co., 77 Ill. App. 3d 518, 32 Ill. Dec. 762, 395 N.E.2d 1143 (1 Dist. 1979).

Exhaustion of Remedies

- Required

All circuit courts in Illinois are competent to hear all justiciable matters; however, where the legislature has created a specific statutory remedy for certain types of actions, the plaintiff must exhaust those remedies before applying for further judicial relief. R.D. Werner Co. v. Leyden Fire Protection Dist., 91 Ill. App. 3d 587, 47 Ill. Dec. 53, 414 N.E.2d 1169 (1 Dist. 1980).

Expungement

- Jurisdiction

Where judge had no jurisdiction to cause orders to be expunged, the Supreme Court of Illinois could not make an order requiring him to do so. People ex rel. Chicago Bar Ass'n v. Feinberg, 348 Ill. 549, 181 N.E. 437 (1932).

Federal Jurisdiction

Federal statutes and regulations can preempt state law in the following circumstances: (1) the language of the statute or regulation expressly preempts state law; (2) Congress implemented a comprehensive regulatory scheme in a given area, removing the entire field from state law; or (3) state law as applied conflicts with federal law. Cohen v. McDonald's Corp., 347 Ill. App. 3d 627, 283 Ill. Dec. 451, 808 N.E.2d 1, 2004 Ill. App. LEXIS 113 (1 Dist. 2004), appeal denied, 211 Ill. 2d 572, Ill. Dec. , 823 N.E.2d 963 (2004).

Preemption doctrine provides that in some instances a federal law will override state laws on the same subject; the doctrine requires courts to examine the federal statute in question to determine whether Congress intended it to supplant state laws on the same subject. Cohen v. McDonald's Corp., 347 Ill. App. 3d 627, 283 Ill. Dec. 451, 808 N.E.2d 1, 2004 Ill. App. LEXIS 113 (1 Dist. 2004), appeal denied, 211 Ill. 2d 572, Ill. Dec. , 823 N.E.2d 963 (2004).

Under the preemption doctrine, which arises from the supremacy clause in U.S. Const. Art. VI, cl. 2, Illinois courts examine whether Congress intended for federal law to preempt state law in a given case. Cohen v. McDonald's Corp., 347 Ill. App. 3d 627, 283 Ill. Dec. 451, 808 N.E.2d 1, 2004 Ill. App. LEXIS 113 (1 Dist. 2004), appeal denied, 211 Ill. 2d 572, Ill. Dec. , 823 N.E.2d 963 (2004).

- Concurrent

The circuit courts of Illinois have original jurisdiction over all justiciable matters and Illinois courts recognize the general principle that state courts have concurrent jurisdiction with federal courts where Congress has not demonstrated an intent to reserve exclusive jurisdiction to the federal courts; accordingly, actions premised upon federal statutory schemes have been entertained in the Illinois courts in the absence of a statutory provision limiting jurisdiction to the federal courts. Hall v. Riverside Lincoln Mercury - Sales, Inc., 148 Ill. App. 3d 715, 101 Ill. Dec. 789, 499 N.E.2d 156 (2 Dist. 1986).

Judicial Functions

- Medical Malpractice

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Application of 735 ILCS 5/2-622 which requires that plaintiffs in medical malpractice actions file an affidavit stating that, based on consultation with a health professional, there is a "reasonable and meritorious" cause for filing the action, does not involve interpretations of law, and therefore does not vest a judicial function in nonjudicial personnel in violation of this section. Bloom v. Guth, 164 Ill. App. 3d 475, 115 Ill. Dec. 468, 517 N.E.2d 1154 (2 Dist. 1987).

Judicial Power

- Derivation

Judicial power is not defined in the Constitution, but it is recognized that such power is exclusively and exhaustively granted to the circuit courts. People v. Bainter, 154 Ill. App. 3d 1026, 107 Ill. Dec. 940, 507 N.E.2d 1309 (5 Dist. 1987), rev'd on other grounds, 126 Ill. 2d 292, 127 Ill. Dec. 938, 533 N.E.2d 1066 (1989).

Jurisdiction

Even though the trial court apparently erred in entering judgments of conviction against defendant for both conspiracy to commit first-degree murder and the principal offense of first-degree murder, in violation of 720 ILCS 5/8-5, those judgments were merely voidable, and not void. The trial court had jurisdiction to enter the judgments pursuant to Ill. Const. (1970) Art. VI, § 9 because entry of a judgment of conviction was a justiciable issue and, thus, defendant could not assert on appeal that the judgments were void judgments. People v. Permanian, 381 Ill. App. 3d 869, 319 Ill. Dec. 904, 886 N.E.2d 1028, 2008 Ill. App. LEXIS 214 (1 Dist. 2008), appeal denied, 229 Ill. 2d 649, 325 Ill. Dec. 12, 897 N.E.2d 260, 2008 Ill. LEXIS 1147 (2008).

In a case where a mother to compel a man to pay child support for her child when she knowingly acknowledged another man as the father and later agreed to an order of support against that man, since paternity had been decided years earlier shortly after the child's birth, the trial court should have dismissed the cause of action because there was no justiciable matter remaining regarding the paternity of the child. In re Parentage of G. E. M., 382 Ill. App. 3d 1102, 322 Ill. Dec. 25, 890 N.E.2d 944, 2008 Ill. App. LEXIS 491 (1 Dist. 2008), appeal denied, 229 Ill. 2d 623, 325 Ill. Dec. 4, 897 N.E.2d 252, 2008 Ill. LEXIS 1263 (2008).

While a trial court's failure to provide defendant with an interpreter during a plea hearing might have constituted a due process violation, the error did not "oust" the trial court from jurisdiction to hear the plea; thus, the judgment entered upon defendant's plea of guilty to retail theft would have been merely voidable, not void. People v. Raczkowski, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 737 (1 Dist. July 28, 2005).

Illinois circuit courts are courts of general jurisdiction having original jurisdiction over all justiciable controversies, except (1) cases over which the federal courts have exclusive jurisdiction, (2) matters committed to administrative tribunals, and (3) those matters committed by the Illinois Constitution to the exclusive original jurisdiction of the Illinois Supreme Court. Ill. Const. Cohen v. McDonald's Corp., 347 Ill. App. 3d 627, 283 Ill. Dec. 451, 808 N.E.2d 1, 2004 Ill. App. LEXIS 113 (1 Dist. 2004), appeal denied, 211 Ill. 2d 572, Ill. Dec. , 823 N.E.2d 963 (2004).

Lower court lacked jurisdiction and authority to apportion liability between two defendants because defendant failed to cross-claim against co-defendant for contribution, and such a pleading was required to confer jurisdiction upon court, under Ill. Const. Art. VI, § 9. Zygmuntowicz v. Pepper Constr. Co., 306 Ill. App. 3d 182, 239 Ill. Dec. 246, 713 N.E.2d 777, 1999 Ill. App. LEXIS 447 (1 Dist. 1999).

- In General

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Telephone Consumer Protection Act (TCPA) did not required that the Illinois General Assembly enact legislation to enable Illinois State Courts to hear and enforce private claims, because the phase "if otherwise permitted by the laws or rules of court of a State" in 47 U.S.C.S. ' 227(b)(3), simply reflected supremacy clause jurisprudence, when the TCPA formed part of the law enforceable in Illinois Courts without the need for the Illinois General Assembly to enact enabling legislation; Illinois Constitution, not the Illinois Legislature, conferred jurisdiction on Illinois Circuit Courts. Italia Foods, Inc. v. Sun Tours, Inc., Ill. 2d , Ill. Dec. , N.E.2d , 2011 Ill. LEXIS 1091 (June 3, 2011).

Trial court did not err in denying defendant's motion to vacate defendant's 13-year-old retail theft conviction as void because although the failure to provide an interpreter during the plea proceedings might have violated defendant's constitutional and statutory rights, that failing did not divest the trial court of jurisdiction over defendant, but instead merely rendered the resultant guilty plea voidable if challenged in a timely manner, which it was not. People v. Raczkowski, 359 Ill. App. 3d 494, 296 Ill. Dec. 39, 834 N.E.2d 596, 2005 Ill. App. LEXIS 861 (1 Dist. 2005), appeal denied, 217 Ill. 2d 586, 300 Ill. Dec. 373, 844 N.E.2d 45 (2005).

Once a court has acquired jurisdiction, no subsequent error or irregularity will oust the jurisdiction thus acquired and thus, a court may not lose jurisdiction because it makes a mistake in determining either the facts, the law, or both; however, a judgment or decree may be void where a court has exceeded its jurisdiction. People v. Davis, 344 Ill. App. 3d 400, 279 Ill. Dec. 471, 800 N.E.2d 539, 2003 Ill. App. LEXIS 1390 (4 Dist. 2003), appeal denied, 208 Ill. 2d 543, 284 Ill. Dec. 342, 809 N.E.2d 1288 (2004).

Jurisdiction or power to render a particular judgment does not mean that the judgment rendered must be the one that should have been rendered, for the power to decide carries with it the power to decide wrong as well as to decide right. People v. Davis, 344 Ill. App. 3d 400, 279 Ill. Dec. 471, 800 N.E.2d 539, 2003 Ill. App. LEXIS 1390 (4 Dist. 2003), appeal denied, 208 Ill. 2d 543, 284 Ill. Dec. 342, 809 N.E.2d 1288 (2004).

Power to render a particular judgment or sentence is as important an element of jurisdiction as is personal jurisdiction and subject-matter jurisdiction; without such power the judgment or sentence is void. People v. Davis, 344 Ill. App. 3d 400, 279 Ill. Dec. 471, 800 N.E.2d 539, 2003 Ill. App. LEXIS 1390 (4 Dist. 2003), appeal denied, 208 Ill. 2d 543, 284 Ill. Dec. 342, 809 N.E.2d 1288 (2004).

Trial court had jurisdiction to hear a common law tort of false imprisonment claim by several union journeymen against a company after the company locked its premises and called law enforcement when the journeymen came onto the premises to apply for advertised employment because the tort of false imprisonment invoked interests so deeply rooted in local feeling and responsibility that it was not preempted by the National Labor Relations Act, 29 U.S.C.S. § 151 et seq. Russell v. Kinney Contrs., Inc., 342 Ill. App. 3d 666, 276 Ill. Dec. 987, 795 N.E.2d 340, 2003 Ill. App. LEXIS 952 (5 Dist. 2003).

Unlike federal courts, which possess only the power authorized by U.S. Const., Art. III, and the statutes enacted by Congress pursuant thereto, the courts of Illinois are courts of general jurisdiction. Jenner v. Wissore, 164 Ill. App. 3d 259, 115 Ill. Dec. 534, 517 N.E.2d 1220 (5 Dist. 1988).

This section did not effect an abolition of the concept of subject matter jurisdiction. Kelly v. Kelly, 105 Ill. App. 3d 136, 61 Ill. Dec. 118, 434 N.E.2d 55 (5 Dist. 1982).

- Contracts

If a contract situation between the parties amounts in law to a written agreement providing for arbitration, the circuit court has jurisdiction of the subject matter. Kaiser-Ducett Corp. v. Housewrights, Inc., 48 Ill. App. 3d 589, 6 Ill. Dec. 568, 363 N.E.2d 97 (1 Dist. 1977).

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- Defined

"Subject matter jurisdiction" has been variously defined as the power of a court to hear and decide a particular case or controversy, the power to hear and determine a class of cases and the power to grant the particular relief requested, and the power of a particular court to hear the type of case that is then before it. Knapp v. Palos Community Hosp., 176 Ill. App. 3d 1012, 126 Ill. Dec. 362, 531 N.E.2d 989 (1 Dist. 1988), cert. denied, 493 U.S. 847, 110 S. Ct. 141, 107 L. Ed. 2d 100 (1989).

Jurisdiction of the subject matter is the power of a particular court to hear the type of case before it. Kaiser-Ducett Corp. v. Housewrights, Inc., 48 Ill. App. 3d 589, 6 Ill. Dec. 568, 363 N.E.2d 97 (1 Dist. 1977).

- Derivation

Except in the case of administrative review, a circuit court's subject jurisdiction derives from the state constitution, not from legislative acts; therefore, a plaintiff's failure to sue for violation of the Illinois Motor Vehicle Franchise Act, 815 ILCS 710/1 et seq., within the time limit provided in the statute did not deprive the trial court of subject matter jurisdiction. Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc., 199 Ill. 2d 325, 264 Ill. Dec. 283, 770 N.E.2d 177, 2002 Ill. LEXIS 289 (2002).

The jurisdiction of the circuit court is no longer dependent upon statutes but derives its jurisdiction from the Illinois Constitution itself. People v. L.E.J., 115 Ill. App. 3d 993, 71 Ill. Dec. 574, 451 N.E.2d 289 (4 Dist. 1983).

Jurisdiction of the circuit courts in criminal cases is not conferred by information or indictment; but, rather, by the provisions of the constitution. People v. Williams, 79 Ill. App. 3d 806, 35 Ill. Dec. 63, 398 N.E.2d 1013 (1 Dist. 1979).

- Determination

Trial court should not have granted the alleged delinquent minor's motion to dismiss, as it erred in concluding that it lacked jurisdiction over the State's petition to find the alleged delinquent minor delinquent due to an age issue the alleged delinquent minor raised. Trial courts in general had original jurisdiction of all justiciable matters except those matters over which the state supreme court had original and exclusive jurisdiction, as contemplated by Ill. Const. art. VI, § 9, it had subject matter jurisdiction in the alleged delinquent minor's case under 705 ILCS 405/5-120, it had personal jurisdiction under 705 ILCS 405/5-525(4) based on counsel's appearance on the alleged delinquent minor's behalf in the case, and the case was justiciable under 705 ILCS 405/5-520 of the Juvenile Court Act of 1987. People v. Luis R. (In re Luis R.), 239 Ill. 2d 295, 346 Ill. Dec. 578, 941 N.E.2d 136, 2010 Ill. LEXIS 1895 (2010).

Although the mother suing the health care providers for wrongful death and survival stemming from alleged medical malpractice regarding the mother's prenatal care did not obtain leave of court pursuant to 735 ILCS 5/2-616(a) to file the mother's first amended complaint, the trial court still had jurisdiction over the mother's action. Under Ill. Const. art. VI, § 9, a trial court had original jurisdiction over all justiciable matters unless otherwise provided for, but the health care providers had been served with process, had answered, and had litigated the case for years, which meant that the health care providers had failed to object pursuant to 735 ILCS 5/2-301(a-5) as was necessary to avoid waiving a challenge to personal jurisdiction. Johnson v. Ingalls Mem. Hosp., 402 Ill. App. 3d 830, 341 Ill. Dec. 938, 931 N.E.2d 835, 2010 Ill. App. LEXIS 643 (1 Dist. 2010).

At most, defendant's earlier conviction for attempted aggravated criminal sexual assault following a 725 ILCS 5/115-4.1 trial in absentia was voidable, not void, since defendant was not given proper statutory notice of that trial. Defendant, however, was not entitled to withdraw a subsequent guilty plea defendant gave, as the trial court's jurisdiction over justiciable matters was

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derived from the Illinois constitution under Ill. Const. art. VI, § 9, and the trial court had both personal jurisdiction after defendant had appeared at a bond hearing in the case and subject matter jurisdiction after the State had filed that charge. People v. Sharifpour, 402 Ill. App. 3d 100, 341 Ill. Dec. 319, 930 N.E.2d 499, 2010 Ill. App. LEXIS 499 (2 Dist. 2010).

Corporation could file a private action under the Telephone Consumer Protection Act in the state trial court even without the state legislature passing enabling legislation. Trial courts pursuant to Ill. Const. art. VI, § 9 generally could consider matters as provided for by law given that trial court jurisdiction was conferred by the state constitution and not by the legislature. Italia Foods, Inc. v. Sun Tours, Inc., 399 Ill. App. 3d 1038, 339 Ill. Dec. 842, 927 N.E.2d 682, 2010 Ill. App. LEXIS 145 (2 Dist. 2010).

While the insurer was correct in arguing that, pursuant to 735 ILCS 5/2-1401, a void judgment could be attacked at any time, the insurer did not show that the final judgment the insurance company obtained that the insurer sought to attack was a void judgment. Under Ill. Const. Art. VI, § 9, the trial court, with limited exceptions that were not applicable, had original jurisdiction in all justiciable matters, and the insurer did not show that the trial court lacked either subject matter or personal jurisdiction over the parties' case. Gov't Emples. Ins. Co. v. Hersey, 397 Ill. App. 3d 551, 337 Ill. Dec. 395, 922 N.E.2d 518, 2010 Ill. App. LEXIS 9 (1 Dist. 2010).

Because an inmate's complaint asserted the gist of a claim under 42 U.S.C. § 1983, where the inmate sued public officials and a corrections officer for allegedly violating defendant's constitutional right to due process of law by: (1) knowingly filing false disciplinary reports; (2) failing to follow Illinois Department of Corrections rules; and (3) refusing to properly investigate defendant's allegations of staff misconduct, the Illinois circuit court had jurisdiction to adjudicate the claim. Bilski v. Walker, 392 Ill. App. 3d 153, 338 Ill. Dec. 508, 924 N.E.2d 1034, 2009 Ill. App. LEXIS 540 (4 Dist. 2009), appeal denied, 233 Ill. 2d 552, 335 Ill. Dec. 631, 919 N.E.2d 350, 2009 Ill. LEXIS 1402 (2009).

- Filing of Action

Requirement that a complaint for administrative review be filed within the specified time limit is jurisdictional as Ill. Const., Art. VI, § 9, grants the circuit court original jurisdiction of all justiciable matters and such power to review administrative actions as provided by law; if the mode of procedure for administrative review is not strictly followed, no jurisdiction is conferred on the circuit court. Nudell v. Forest Pres. Dist., 207 Ill. 2d 409, 278 Ill. Dec. 542, 799 N.E.2d 260, 2003 Ill. LEXIS 1495 (2003).

Jurisdiction of the court to hear a particular controversy is invoked by filing an action. In re Fox, 191 Ill. App. 3d 514, 138 Ill. Dec. 841, 548 N.E.2d 71 (4 Dist. 1989).

- Guilty Plea

Mandamus relief was granted to the State because a judge did not have jurisdiction to consider an untimely motion to withdraw a guilty plea, pursuant to Ill. Sup. Ct. R. 604(d). An admonition exception was not applicable because defendant did not mistakenly file a timely notice of appeal without first filing a Rule 604(d) motion in the trial court; the trial court's jurisdiction over the guilty plea and resulting conviction had long since lapsed by the time defendant requested relief under Rule 604(d). People ex rel. Alvarez v. Skryd, 241 Ill. 2d 34, 348 Ill. Dec. 384, 944 N.E.2d 337, 2011 Ill. LEXIS 425 (2011).

- Illegal Acts of State Officers

Under Ill. Const., Art. VI, § 9, the circuit court is a court of general jurisdiction, and as such, is presumed to have jurisdiction to render any judgment until the contrary is shown; therefore, because the complaint charges the state employee with statutory violations, the circuit court properly assumed jurisdiction over the case. Lorenz v. Siano, 248 Ill. App. 3d 946, 188 Ill. Dec. 96, 618 N.E.2d 666, 1993 Ill. App. LEXIS 896 (1 Dist. 1993).

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- Notice

While trial court erred in adjudicating two children neglected in the absence of service of summons or publication notice to the father, the error did not divest the trial court of subject matter jurisdiction to hear the case with regard to the adequately served mother. People v. Darlene T. (In re Brett R.), 343 Ill. App. 3d 1210, 279 Ill. Dec. 108, 799 N.E.2d 911, 2003 Ill. App. LEXIS 1298 (2 Dist. 2003), appeal denied sub nom. In re Brett R., 207 Ill. 2d 603, 283 Ill. Dec. 134, 807 N.E.2d 975 (2004).

- Pleading

The subject matter jurisdiction of a circuit court over a case is not dependent upon the allegations of the charge or complaint. People v. McElfresh, 96 Ill. App. 3d 1104, 52 Ill. Dec. 582, 422 N.E.2d 263 (4 Dist. 1981).

- Waiver

Airline did not waive benefit of Article 28 of the Convention for Unification of Certain Rules Relating to International Transportation by Air (the Warsaw Convention) (49 U.S.C. § 1502 note), which limits the places where a carrier may be sued, by appearing generally rather than filing a special appearance pursuant to former section 20 of the Civil Practice Act (see now 735 ILCS 5/2-301), since the court lacked subject matter jurisdiction, which could not be waived. People ex rel. Compagnie Nationale Air France v. Giliberto, 74 Ill. 2d 90, 23 Ill. Dec. 106, 383 N.E.2d 977 (1978).

Jurisdictional Amount

- Transfer

Where under existing orders all that was necesssary under the circumstances in the case was to transfer the cause from the third district to either the first district if the prayer for damages remained at $15,000, or to the municipal department, law division of the county department if the damages sought exceeded $15,000, the plaintiff was entitled to her day in court, and therefore the granting of petition under 735 ILCS 5/2-1401 was proper. Nashlund v. Sabade, 39 Ill. App. 3d 139, 350 N.E.2d 90 (1 Dist. 1976).

Justiciable Matters

- In General

Circuit courts are courts of general jurisdiction and may adjudicate any justiciable matter coming to them according to the course of common law, as well as any matter over which they are specifically given jurisdiction by statute. People v. Byrnes, 34 Ill. App. 3d 983, 341 N.E.2d 729 (2 Dist. 1975).

- Adjudication of Wardship

Whatever the deficiencies of the petition for adjudication of wardship, the petition presented a justiciable matter that was within the subject matter jurisdiction of the circuit court. People v. Cynthia H., 186 Ill. App. 3d 535, 134 Ill. Dec. 613, 542 N.E.2d 959 (1 Dist. 1989).

- Declaratory Judgment

Actions for declaratory judgment and conversion where held to be justiciable matters and were within the trial court's subject matter jurisdiction. Kramer v. McDonald's Sys., 61 Ill. App. 3d 947, 19 Ill. Dec. 21, 378 N.E.2d 522 (1 Dist. 1978), aff'd, 77 Ill. 2d 323, 33 Ill. Dec. 115, 396 N.E.2d 504 (1979).

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- Definition

The courts are left to define "justiciable matters" on a case by case basis. Estate of Burgeson ex rel. Murphy v. Kirshner, 125 Ill. 2d 477, 126 Ill. Dec. 954, 532 N.E.2d 825 (1988).

- Existence

Because the power of circuit courts to entertain cases in Illinois is granted by the Illinois Constitution, parties no longer need seek statutory justification for the exercise of circuit court jurisdiction; the inquiry is rather, whether there exists a justiciable controversy, and if so, whether there are any statutory conditions precedent to judicial intervention. People v. Craig, 131 Ill. App. 3d 401, 86 Ill. Dec. 737, 475 N.E.2d 1116 (4 Dist. 1985).

- Law and Equity Distinction

The distinction between courts of law and equity has been abolished, so that the state's circuit courts have original and exclusive jurisdiction of all justiciable matters. Hoover v. May Dep't Store Co., 62 Ill. App. 3d 106, 19 Ill. Dec. 147, 378 N.E.2d 762 (5 Dist. 1978), rev'd on other grounds, 77 Ill. 2d 93, 32 Ill. Dec. 311, 395 N.E.2d 541 (1979).

The Judicial Article embodied in the Illinois Constitution of 1970 has abolished the distinction between courts of law and equity so that our state's circuit courts have original jurisdiction of all justiciable matters. Biggs v. Health & Hosps. Governing Comm'n, 55 Ill. App. 3d 501, 13 Ill. Dec. 123, 370 N.E.2d 1150 (1 Dist. 1977).

The Judicial Article embodied in the Illinois Constitution of 1970 has abolished the distinction between courts of law and equity so that our state's circuit courts have original and exclusive jurisdiction of all justiciable matters. Lopin v. Cullerton, 46 Ill. App. 3d 378, 5 Ill. Dec. 6, 361 N.E.2d 6 (1 Dist. 1977).

This section abolished the distinction between courts of law and equity so that circuit courts have original jurisdiction of all justiciable matters. Stevens v. Protectoseal Co., 27 Ill. App. 3d 724, 327 N.E.2d 427 (1 Dist. 1975).

- Procedure

A Rule 224, Supreme Court Rules, petition became a justiciable matter when the Supreme Court determined that, under its rule-making authority, a litigant can file for discovery to learn the identities of potential parties before filing a lawsuit; this was analogous to the creation of a "justiciable matter" by the legislature when it enacts a statute having no counterpart in common law or equity; therefore, a petition pursuant to Rule 224, Supreme Court Rules raised a justiciable matter and the court has subject-matter jurisdiction. Shutes v. Fowler, 223 Ill. App. 3d 342, 165 Ill. Dec. 486, 584 N.E.2d 920 (4 Dist. 1991), appeal denied, 144 Ill. 2d 643, 169 Ill. Dec. 151, 591 N.E.2d 31 (1992).

Because a motion to quash a summons which was filed by coexecutors of the estate of a deceased passenger killed in a midair collision filed by the executor of the estate of the pilot of the other airplane did not present a justiciable matter, the circuit court did not have subject matter jurisdiction to rule on the motion. Wisemantle v. Hull Enters., Inc., 103 Ill. App. 3d 878, 59 Ill. Dec. 827, 432 N.E.2d 613 (1 Dist. 1981).

Where plaintiff who was injured in automobile accident brought action against three defendants, agreement between plaintiff and first and second defendants in which they agreed to pay plaintiff $2,500 whether or not jury found them liable did not require new trial on first and second defendants' cross claim against third defendant, because agreement did not remove issues from dispute between defendants on cross complaint and there was a justiciable controversy between defendants on cross complaint; however new trial was required on verdict for plaintiff against all defendants because continuing to litigate issues of liability or damages between plaintiff and first

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and second defendants was a sham. Schell v. Albrecht, 65 Ill. App. 3d 989, 22 Ill. Dec. 651, 383 N.E.2d 15 (3 Dist. 1978).

In Illinois, because jurisdiction is constitutional, vested in a unitary trial court, the failure for the parties in a "justiciable matter" to comply with the provisions of a statute may give rise to questions concerning procedure but not to questions concerning jurisdiction. Lopin v. Cullerton, 46 Ill. App. 3d 378, 5 Ill. Dec. 6, 361 N.E.2d 6 (1 Dist. 1977).

Because plenary jurisdiction is constitutional and vested in a unitary trial court, the failure of the parties or the court in a "justiciable matter" to comply with the provisions of a statute or a rule may give rise to questions concerning procedure but not to questions concerning jurisdiction. Marcucci v. Marcucci, 5 Ill. App. 3d 484, 285 N.E.2d 141 (1 Dist. 1971), rev'd on other grounds, 54 Ill. 2d 266, 296 N.E.2d 849 (1973).

- Remedies

So long as a case presents a justiciable matter, the circuit court has jurisdiction and the presence or absence of an adequate remedy at law is an irrelevant consideration. Stevens v. Protectoseal Co., 27 Ill. App. 3d 724, 327 N.E.2d 427 (1 Dist. 1975); Lopin v. Cullerton, 46 Ill. App. 3d 378, 5 Ill. Dec. 6, 361 N.E.2d 6 (1 Dist. 1977); Hoover v. May Dep't Store Co., 62 Ill. App. 3d 106, 19 Ill. Dec. 147, 378 N.E.2d 762 (5 Dist. 1978), rev'd on other grounds, 77 Ill. 2d 93, 32 Ill. Dec. 311, 395 N.E.2d 541 (1979).

Juvenile Proceedings

In a delinquency case, where a child was placed on supervision and required to attend school, and the child's mother hired an attorney in an attempt to require the child's school to provide the child with a recommended educational setting, a juvenile court had subject matter jurisdiction to consider the attorney's petition for an award of attorney fees against a school board (board) pursuant to 705 ILCS 405/1-5(2)(a); while the board was not a necessary party to the delinquency proceedings and therefore was not required to receive notice of the commencement of the proceedings, that did not mean the board was to be excluded entirely. Pursuant to § 1-5(2)(a) the juvenile court could hear from the board without the board being named as a party to the proceedings, so the juvenile court's order requiring the board to pay for the child's attorney fees was not void for lack of subject matter jurisdiction for a failure to join the board as a party. Cohen v. Bd. of Educ. (In re Dontrell H.), 382 Ill. App. 3d 612, 321 Ill. Dec. 108, 888 N.E.2d 627, 2008 Ill. App. LEXIS 402 (1 Dist. 2008), appeal denied, 229 Ill. 2d 623, 325 Ill. Dec. 4, 897 N.E.2d 252, 2008 Ill. LEXIS 1338 (2008).

- In General

The juvenile court is a division of the circuit court which under this section has jurisdiction in all justiciable matters except where the Supreme Court possesses original and exclusive jurisdiction. In re Thompson, 79 Ill. 2d 262, 37 Ill. Dec. 607, 402 N.E.2d 609 (1980).

- Age

Where neither the criminal trial court nor the prosecution noticed that offense took place three days prior to defendant's 17th birthday and where this fact only became apparent some two years after defendant's arrest, after 16 continuances agreed to by defendant or at his request and where this issue was raised more than two month after defendant's new attorney took over the case, defendant waived any objection to the delayed filing of a delinquency petition and the state acted correctly once defendant's age was affirmatively established by transferring case from criminal to juvenile court. People v. Woods, 78 Ill. App. 3d 431, 33 Ill. Dec. 480, 396 N.E.2d 1204 (1 Dist. 1979).

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The age factor in the definition of delinquency under Juvenile Court Act (see now 705 ILCS 405/5-3) was not, technically, a jurisdictional requirement since the juvenile court is simply a division of the circuit court, and thus establishment of age, unlike the subject matter jurisdiction of a court, was a matter which could be waived; state's failure to establish age was analogous to prosecuting a defendant in the wrong county or to proceeding before a court that is improperly organized, objections to which can be waived. In re Greene, 76 Ill. 2d 204, 28 Ill. Dec. 525, 390 N.E.2d 884 (1979).

The circuit court had jurisdiction to try defendant who said she was 18 years old on attempted robbery charge where she was only 17 years old. People v. Henderson, 2 Ill. App. 3d 285, 276 N.E.2d 377 (1 Dist. 1971).

- Waiver

A defendant can waive the right to be tried in the juvenile court by failing to raise age as an issue. People v. Woods, 78 Ill. App. 3d 431, 33 Ill. Dec. 480, 396 N.E.2d 1204 (1 Dist. 1979).

Liens

The circuit court has subject matter jurisdiction over the genera of cases that seek enforcement of an asserted lien by an insurer, a declaratory judgment, and injunctive relief. Health Cost Controls v. Sevilla, 307 Ill. App. 3d 582, 240 Ill. Dec. 925, 718 N.E.2d 558, 1999 Ill. App. LEXIS 607 (1 Dist. 1999), appeal denied, 186 Ill. 2d 568, 243 Ill. Dec. 561, 723 N.E.2d 1162 (1999).

Limited Jurisdiction

- Application

Although circuit courts have original jurisdiction over all justiciable matters when a court's power to act is controlled by statute, the court is governed by the rules of limited jurisdiction. DeKing v. Urban Inv. & Dev. Co., 155 Ill. App. 3d 594, 108 Ill. Dec. 216, 508 N.E.2d 377 (1 Dist. 1987).

Magistrates

- Assignability

A magistrate is a judicial officer of the circuit court which has unlimited original jurisdiction of all justiciable matters; questions concerning the kind of cases a magistrate can handle involve assignability, not jurisdiction. Marcucci v. Marcucci, 5 Ill. App. 3d 484, 285 N.E.2d 141 (1 Dist. 1971), rev'd on other grounds, 54 Ill. 2d 266, 296 N.E.2d 849 (1973).

Mandamus

- Judicial Functions

Circuit court, in acting under former section 8-7 of the School Code (repealed), was not determining what territory should have been included within the corporate limits of a municipal corporation, but was limited to affirming or reversing the county court decision after determining whether the county court had acted in accordance with the authority granted by the legislature, and since the circuit court was acting in a judicial capacity, mandamus would not lie to direct the court's exercise of discretion under the terms of said act. People ex rel. Dolan v. Dusher, 411 Ill. 535, 104 N.E.2d 775 (1952).

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Marriage Dissolution

- Attorney Fees

Circuit court had subject matter jurisdiction to award attorney fees to the attorney, because awarding of attorney fees within a dissolution proceeding was a justiciable matter, the circuit court enjoyed original jurisdiction of all justiciable matters, and the filing of a fee petition was a procedural requirement of 750 ILCS 5/508, not a jurisdictional requirement. In re Marriage of Baniak, Ill. App. 3d , 354 Ill. Dec. 153, 957 N.E.2d 469, 2011 Ill. App. LEXIS 812 (1 Dist. 2011).

The awarding of attorney fees within a dissolution proceeding is a justiciable matter over which a trial court has subject matter jurisdiction. In re Pagano, 181 Ill. App. 3d 547, 130 Ill. Dec. 331, 537 N.E.2d 398 (2 Dist. 1989).

- Child Custody

Filing a petition for contempt with respect to visitation in a dissolution proceeding does not present to the trial court a "justiciable matter" sufficient for the trial court to make a child custody determination. In re Fox, 191 Ill. App. 3d 514, 138 Ill. Dec. 841, 548 N.E.2d 71 (4 Dist. 1989).

- Child Support

Illinois trial court's exercise of jurisdiction was proper under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C.S. § 1738B, in light of the decision of the Indiana state court, where the marriage dissolution had occurred, to decline jurisdiction, and where there was no evidence the ex-wife was forum shopping. Mattmuller v. Mattmuller, 336 Ill. App. 3d 984, 271 Ill. Dec. 545, 785 N.E.2d 196, 2003 Ill. App. LEXIS 119 (5 Dist. 2003).

- Derivation of Jurisdiction

Where a circuit court is hearing matters relating to the dissolution of a marriage, it is not acting within the unlimited jurisdiction conferred upon it by the Constitution of Illinois, but it is necessarily acting in accordance with the authority vested in it by the applicable provisions of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 et seq.). In re Rifkin, 114 Ill. App. 3d 555, 70 Ill. Dec. 299, 449 N.E.2d 173 (1 Dist. 1983).

- Justiciable Matters

Where the issue of dissolution of marriage was justiciable, the circuit court had jurisdiction over the subject matter of the judgment. In re Panozzo, 93 Ill. App. 3d 1085, 49 Ill. Dec. 372, 418 N.E.2d 16 (1 Dist. 1981).

- Registering Foreign Judgments

Judgment purporting to register Scottish decree of divorce was void because the circuit court lacked subject matter jurisdiction to register the judgment; registration and enforcement of a judgment of a foreign country in a matrimonial matter is not a justiciable matter; there was no cause of action to do so at common law and no statute has created one. In re Mullins, 135 Ill. App. 3d 279, 89 Ill. Dec. 771, 481 N.E.2d 322 (4 Dist. 1985).

- Waiver

Where the respondent was present at the hearing and he and one of his several former attorneys participated therein without raising any issue as to the jurisdiction of the court, the trial court had full and complete jurisdiction for entry of the judgment of dissolution of marriage. In re Panozzo, 93 Ill. App. 3d 1085, 49 Ill. Dec. 372, 418 N.E.2d 16 (1 Dist. 1981).

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Mental Health Proceedings

- Treatment

Circuit court had jurisdiction to order the implementation of a specific court-designed treatment plan for defendant. People v. Valdez, 79 Ill. 2d 74, 37 Ill. Dec. 297, 402 N.E.2d 187 (1980).

Original Jurisdiction

Trial court erred when it ruled that it lacked subject matter jurisdiction over guardian's request for reasonable fees under 755 ILCS 5/11a-18(d), because the trial court had original jurisdiction over the subject trusts pursuant to Ill. Const. art. VI, § 9. Estate of Pellico v. Mork, 394 Ill. App. 3d 1052, 334 Ill. Dec. 12, 916 N.E.2d 45, 2009 Ill. App. LEXIS 895 (2 Dist. 2009).

Failure of counsel to file an Ill. Sup. Ct. R. 604(d) certificate did not deprive a trial court of the authority to proceed on a motion to withdraw a guilty plea; the requirement for the certificate rendered any decision on a motion to withdraw voidable, but the matter remained justiciable and thus, the trial court continued to have authority to rule on the motion under Ill. Const. Art. VI, § 9. People v. Carroll, 375 Ill. App. 3d 162, 313 Ill. Dec. 699, 872 N.E.2d 1088, 2007 Ill. App. LEXIS 827 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1821 (Ill. 2007).

- Declaratory Judgment

Original jurisdiction for declaratory judgment proceedings lies in the circuit court as does original jurisdiction under the constitution (concurrently with the Supreme Court) to issue writs of prohibition in a proper case. Office of State's Att'y v. Illinois Human Rights Comm'n, 200 Ill. App. 3d 151, 146 Ill. Dec. 705, 558 N.E.2d 668 (2 Dist. 1990).

- Divesting

The legislature may vest exclusive original jurisdiction in an administrative agency; however, if the legislative enactment does divest the circuit courts of their original jurisdiction through a comprehensive statutory administrative scheme, it must do so explicitly. Employers Mut. Cos. v. Skilling, 163 Ill. 2d 284, 206 Ill. Dec. 110, 644 N.E.2d 1163 (1994).

The Workers' Compensation Act's pronouncement that "all questions arising under this Act shall be determined by the Commission" was insufficient to divest the circuit courts of jurisdiction. Employers Mut. Cos. v. Skilling, 163 Ill. 2d 284, 206 Ill. Dec. 110, 644 N.E.2d 1163 (1994).

- Justiciable Matters

Although trial courts in general had original jurisdiction over all justiciable matters pursuant to Ill. Const. art. VI, § 9, they did not have jurisdiction to conduct criminal proceedings when considering violations of the Smoke Free Illinois Act. The legislature could divest trial courts of jurisdiction by including explicit language showing a clear intent to do so, and it did just that in the Smoke Free Illinois Act by making repeated references in that law to the Department of Public Health and enforcing agencies to show that it wanted that law to be enforced administratively. People v. Kane, 397 Ill. App. 3d 851, 338 Ill. Dec. 594, 924 N.E.2d 1120, 2010 Ill. App. LEXIS 8 (3 Dist. 2010).

Circuit court had subject matter jurisdiction to hear and determine an adjudication of wardship because it was a justiciable matter under the Illinois Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., to which the court's constitutionally granted original jurisdiction extended. People v. M.W. (In re M.W.), 232 Ill. 2d 408, 328 Ill. Dec. 868, 905 N.E.2d 757, 2009 Ill. LEXIS 171 (2009).

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Appellate court erred in ruling that 105 ILCS 5/7-2b was preempted by the Equal Educational Opportunities Act of 1974 (EEOA), 20 U.S.C. § 1701 et seq.; nothing in the EEOA required educational agencies to consider the segregative effects of their actions prior to taking them, and there was no conflict with the purposes or objectives of the EEOA because any claim that a detachment/annexation decision under § 7-2b increased segregation could be considered by a circuit court pursuant to its grant of original jurisdiction over justiciable matters. Bd. of Educ. v. Bd. of Educ., 231 Ill. 2d 184, 325 Ill. Dec. 217, 897 N.E.2d 756, 2008 Ill. LEXIS 1423 (2008).

The provision that circuit courts "have original jurisdiction over all justiciable matters" gives the circuit courts the general power to determine all matters of controversy arising under common law or equity, or by reason of statute or the Constitution, unless the Constitution requires that a matter be resolved by another body of the government or a higher court. Skilling v. Skilling, 104 Ill. App. 3d 213, 59 Ill. Dec. 937, 432 N.E.2d 881 (1 Dist. 1982).

- Presumption

A court of general jurisdiction is presumed to have the authority to render any judgment in a case arising under the common law; however, there is no such presumption of jurisdiction in cases arising under a specific statutory grant of authority. People v. Byrnes, 34 Ill. App. 3d 983, 341 N.E.2d 729 (2 Dist. 1975).

Park Districts

- Review

A circuit court had jurisdiction to review city park district's decision to refuse plaintiff a mooring slip and to issue, thereafter, its writ of certiorari. Caldbeck v. Chicago Park Dist., 97 Ill. App. 3d 452, 53 Ill. Dec. 38, 423 N.E.2d 230 (1 Dist. 1981).

Political Questions

- No Jurisdiction

Illinois circuit courts have jurisdiction over all "justiciable matters"; however, they lack jurisdiction to decide political questions. Roti v. Washington, 148 Ill. App. 3d 1006, 102 Ill. Dec. 570, 500 N.E.2d 463 (1 Dist. 1986).

Private Institutions

- Hospitals

Circuit court should have declined to exercise jurisdiction over actions seeking equitable and legal relief against private hospitals and the hospital's physicians, officers and directors based on defendant's decision regarding plaintiff's membership on its medical staff. Knapp v. Palos Community Hosp., 176 Ill. App. 3d 1012, 126 Ill. Dec. 362, 531 N.E.2d 989 (1 Dist. 1988), cert. denied, 493 U.S. 847, 110 S. Ct. 141, 107 L. Ed. 2d 100 (1989).

Decisions of private hospitals respecting the termination or curtailment of existing privileges of physicians on their medical staffs are subject only to a limited judicial review whose purpose is merely to determine whether such decisions were rendered in compliance with the bylaws of the institution. Knapp v. Palos Community Hosp., 176 Ill. App. 3d 1012, 126 Ill. Dec. 362, 531 N.E.2d 989 (1 Dist. 1988), cert. denied, 493 U.S. 847, 110 S. Ct. 141, 107 L. Ed. 2d 100 (1989).

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Probate

- Abolishment

While at one time probate courts had original and exclusive jurisdiction of probate matters, those courts were abolished years ago, and the circuit courts of each county now have original and unlimited jurisdiction. Nemeth v. Banhalmi, 125 Ill. App. 3d 938, 81 Ill. Dec. 175, 466 N.E.2d 977 (1 Dist. 1984).

- Action Against Estate

Circuit court had jurisdiction of actions against administrators and executors to enforce the legal liabilities of decedent regardless of the character or form of the action, and such jurisdiction was not impaired by the fact that probate court had jurisdiction of probate matters. Howard v. Swift, 356 Ill. 80, 190 N.E. 102 (1934).

- Attorney Fees

Since probate division of circuit court retained jurisdiction under a consent decree to determine petitioner's attorney's fees from a claim against an estate, the chancery division had jurisdiction to determine whether to impose a lien on future distributions of the estate. Murukas v. Murukas, 99 Ill. App. 2d 342, 240 N.E.2d 797 (1 Dist. 1968).

- Authority

The authority of the probate division of circuit courts to impose trusts and order accountings has been settled in Illinois; where the probate division was competent to fashion an adequate remedy, the trial court did not err in transferring this cause from a court of chancery to the probate division of the circuit court. Eiseman v. Lerner, 64 Ill. App. 3d 185, 20 Ill. Dec. 824, 380 N.E.2d 1033 (1 Dist. 1978).

- Management of Estate

Circuit court had subject matter jurisdiction over claim relating to management of an estate, notwithstanding the executor's claim that all actions relating to the management of an estate in Illinois must be filed in the court in which the will was admitted. First of Am. Trust Co. v. First Illini Bancorp, Inc., 289 Ill. App. 3d 276, 226 Ill. Dec. 248, 685 N.E.2d 351 (3 Dist. 1997).

- Res Judicata

The doctrine of res judicata was available to prevent collateral attack on judgments of the probate courts rendered within the scope of their jurisdiction. Lytton v. Cole, 54 Ill. App. 2d 161, 203 N.E.2d 590 (1 Dist. 1964).

Where all of the parties involved were represented in all of the proceedings in the Probate Court, all the facts alleged in the amended complaint were already adjudicated in the various proceedings in the Probate Court, and the issues raised in the Probate Court were substantially the same as those contained in the amended complaint, res judicata applied to bar suit in the circuit court after judgment in the Probate Court. Lytton v. Cole, 54 Ill. App. 2d 161, 203 N.E.2d 590 (1 Dist. 1964).

- Review

The question of legal propriety of order of the probate division appointing the defendant as administrator of the estate should have been submitted to and determined by the probate division; even though that order may have been erroneous, it was entered with full and complete jurisdiction of the subject matter and was not subject to review by the law division. Alfaro v. Meagher, 27 Ill. App. 3d 292, 326 N.E.2d 545 (1 Dist. 1975).

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- Validity of Judgment

When the probate courts were separate from the circuit courts, and they had jurisdiction of all probate matters specified in the Constitution, their judgments were entitled to the same protection as the courts of general jurisdiction. Lytton v. Cole, 54 Ill. App. 2d 161, 203 N.E.2d 590 (1 Dist. 1964).

Public Policy

A specific constitutional expression outweighs any public policy considerations. Higgins v. Stockman, 111 Ill. App. 3d 457, 67 Ill. Dec. 152, 444 N.E.2d 191 (2 Dist. 1982).

Purpose

- Integration

The purpose of this section was to create a single integrated trial court structure thereby vesting the circuit courts with jurisdiction to adjudicate all controversies. Stevens v. Protectoseal Co., 27 Ill. App. 3d 724, 327 N.E.2d 427 (1 Dist. 1975).

Redistricting

State legislative redistricting decisions are constitutionally within the original and exclusive jurisdiction of the Supreme Court. Merwin v. State Bd. of Elections, 229 Ill. App. 3d 236, 170 Ill. Dec. 820, 593 N.E.2d 709 (1 Dist. 1992).

Sentencing

- Authority

It is indisputable that the power to impose a sentence is exclusively a function of the judiciary. People v. Bainter, 154 Ill. App. 3d 1026, 107 Ill. Dec. 940, 507 N.E.2d 1309 (5 Dist. 1987), rev'd on other grounds, 126 Ill. 2d 292, 127 Ill. Dec. 938, 533 N.E.2d 1066 (1989).

Subject Matter Jurisdiction

- In General

Except for the trial court's power to review administrative action, which was conferred by statute, a trial court's subject matter jurisdiction was conferred entirely by the state constitution, and that jurisdiction extended to all justiciable matters; thus, the trial court was not deprived of subject matter jurisdiction to consider the justiciable matter of whether the allegedly intoxicated motorist timely filed a petition to rescind summary suspension of driving privileges as the time limitation involved was an ordinary time limitation and not a jurisdictional prerequisite under 625 ILCS 5-2/118.1. People v. Keegan, 334 Ill. App. 3d 1061, 269 Ill. Dec. 50, 779 N.E.2d 904, 2002 Ill. App. LEXIS 975 (3 Dist. 2002).

Subject matter jurisdiction is conferred on courts by the constitution or by legislative enactment. Fredman Bros. Furn. Co. v. Department of Revenue, 109 Ill. 2d 202, 93 Ill. Dec. 360, 486 N.E.2d 893 (1985).

Subject matter jurisdiction gives courts the right to hear and determine causes. Fredman Bros. Furn. Co. v. Department of Revenue, 109 Ill. 2d 202, 93 Ill. Dec. 360, 486 N.E.2d 893 (1985).

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- Consent

Although consent of the parties could not confer jurisdiction of the subject matter where jurisdiction to entertain a cause was wanting, it did not follow that the parties could not assent to faulty organization of a court. People v. Link, 365 Ill. 266, 6 N.E.2d 201 (1936).

- Defense

Lack of subject matter jurisdiction can be raised as a defense at any time, in any court, either directly or collaterally. Fredman Bros. Furn. Co. v. Department of Revenue, 109 Ill. 2d 202, 93 Ill. Dec. 360, 486 N.E.2d 893 (1985).

- Defined

Circuit courts have jurisdiction over all justiciable matters; as applied in the context of criminal proceedings, the term "subject-matter" jurisdiction means the power to hear and determine a given case. People v. Davis, 344 Ill. App. 3d 400, 279 Ill. Dec. 471, 800 N.E.2d 539, 2003 Ill. App. LEXIS 1390 (4 Dist. 2003), appeal denied, 208 Ill. 2d 543, 284 Ill. Dec. 342, 809 N.E.2d 1288 (2004).

Subject matter jurisdiction of the circuit court as derived from the constitution is the power of the court to hear and determine causes of action. In re Fox, 191 Ill. App. 3d 514, 138 Ill. Dec. 841, 548 N.E.2d 71 (4 Dist. 1989).

- Derivation

Jurisdiction is conferred by the constitution or by legislative enactment and does not depend upon the sufficiency of the bill of complaint in a particular case, the validity of the demand set forth therein, the regularity of the proceedings, or the correctness of the decision rendered. Knaus v. Chicago Title & Trust Co., 365 Ill. 588, 7 N.E.2d 298 (1937).

- Determination

Trial court did not lack subject matter jurisdiction to consider defendant's petition to vacate a bond forfeiture under 735 ILCS 5/2-1401 because it was allegedly untimely as subject matter jurisdiction was derived from Ill. Const. art. VI, § 9 and, thus, was not subject to statutory limitations. People v. Glowacki, 404 Ill. App. 3d 169, 344 Ill. Dec. 576, 937 N.E.2d 282, 2010 Ill. App. LEXIS 1042 (2 Dist. 2010).

Trial court erred in granting the insured's motion for judgment of an arbitrator's award that awarded the insured underinsured motorist benefits under the insured's policy with the insurance company; while the trial court, located in Illinois, had subject matter jurisdiction over the claim for underinsured motorist benefits because the insurance policy provided for arbitration in a forum agreeable to the parties and the parties agreed to arbitrate the dispute in Illinois, the Illinois trial court should have applied Indiana law because Indiana had the most significant relationship to the dispute given that the insurance company did business in Indiana, the insured was an Indiana resident, the policy was purchased through Indiana agents of the insurance company, the insured's car was principally located in Indiana, and the policy was signed and delivered in Indiana, despite the fact that the relevant car accident took place in Illinois. Costello v. Liberty Mut. Fire Ins. Co., 376 Ill. App. 3d 235, 315 Ill. Dec. 115, 876 N.E.2d 115, 2007 Ill. App. LEXIS 952 (1 Dist. 2007).

Circuit court's subject matter jurisdiction was determined by Ill. Const. (1970), Art. VI, § 9 and extended to all justiciable matters; thus, the circuit court was not required to meet the requirements of 755 ILCS 45/2-10 or 755 ILCS 5/11a-18(e) to have jurisdiction to temporarily suspend an agent's powers under several powers of attorney after evidence at a hearing to consider the appointment of a temporary guardian for an elderly woman revealed that the agent had withdrawn large sums from the woman's accounts and that the money had disappeared.

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Williams v. Bailey (In re Estate of Wilson), 373 Ill. App. 3d 1066, 311 Ill. Dec. 811, 869 N.E.2d 824, 2007 Ill. App. LEXIS 539 (1 Dist. 2007).

Every court has inherent power to determine the existence and limits of its own jurisdiction and such determination once made is binding unless reversed on appeal. Kaiser-Ducett Corp. v. Housewrights, Inc., 48 Ill. App. 3d 589, 6 Ill. Dec. 568, 363 N.E.2d 97 (1 Dist. 1977).

- Equal Among Divisions

As divisions of the same constitutional court of general jurisdiction, each division of the circuit court has equal and concurrent subject matter jurisdiction. Zoglauer v. Zoglauer, 229 Ill. App. 3d 394, 170 Ill. Dec. 551, 593 N.E.2d 93 (2 Dist. 1992).

Circuit courts are tribunals of general jurisdiction where all judges are invested with equal authority regardless of which division of the court they may be assigned to at a particular time; a law division judge in the circuit court of one county can enforce a decree or order entered by a judge sitting in another division. Olsen v. Karwoski, 68 Ill. App. 3d 1031, 25 Ill. Dec. 173, 386 N.E.2d 444 (1 Dist. 1979).

The probate division of the circuit court is a court with subject matter jurisdiction equal to any other division of that court and as divisions of the same constitutional court of general jurisdiction, each division of the circuit court has equal and concurrent subject matter jurisdiction. Lescher v. Barker, 57 Ill. App. 3d 776, 15 Ill. Dec. 535, 373 N.E.2d 1007 (1 Dist. 1978).

- Evolution

Although the terms of this section give the circuit court "original jurisdiction of all justiciable matters," the concept of its subject matter jurisdiction may be somewhat changed from that of a prior era. People v. Pitts, 83 Ill. App. 3d 738, 39 Ill. Dec. 266, 404 N.E.2d 857 (4 Dist. 1980).

- Residence

Issues such as the residence of the defendant's decedent and the locale of the occurrence could be pertinent in discussion of forum non conveniens but have no bearing upon subject matter jurisdiction of the law division of the circuit court. Alfaro v. Meagher, 27 Ill. App. 3d 292, 326 N.E.2d 545 (1 Dist. 1975).

- Termination of Parental Rights

Orders terminating respondent's parental rights were valid, as the trial court's failure to adhere to the procedure for serving notice by publication under 705 ILCS 405/2-15 and 2-16 did not deprive the trial court of subject matter jurisdiction, which was invoked by the filing of the original petition pursuant to Ill. Const. (1970), Art. VI, § 9, and respondent waived the issue of personal jurisdiction by appearing at the proceeding and failing to challenge the trial court's personal jurisdiction. People v. Juan S. (In re Antwan L.), 368 Ill. App. 3d 1119, 307 Ill. Dec. 408, 859 N.E.2d 1085, 2006 Ill. App. LEXIS 1127 (1 Dist. 2006).

- Wrongful Death

When a decedent's daughter sued the decedent's former husband's employer's successor, alleging the decedent's death was caused by exposure to asbestos on the former husband's work clothes, it was error for the trial court to dismiss the daughter's complaint, under 735 ILCS 5/2-615, on the theory that the trial court could not decide the matter since no appellate court had determined that an employer owed a duty of care to an employee's family members, because the trial court had both the authority and the duty to decide disputes before the court, and there was no prerequisite that an appellate court decide cases of first impression, nor did an absence of statutory or regulatory law constrain the court's power to decide disputes before the court. Simpkins v. CSX Corp., 401 Ill. App. 3d 1109, 341 Ill. Dec. 178, 929 N.E.2d 1257, 2010 Ill. App. LEXIS 557 (5 Dist. 2010).

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Law division of the circuit court did not lack subject matter jurisdiction of the claim for damages for wrongful death. Alfaro v. Meagher, 27 Ill. App. 3d 292, 326 N.E.2d 545 (1 Dist. 1975).

Termination

- Criminal Case

Once invoked in the prescribed manner, the jurisdiction of a circuit court in a criminal case continues until the case is concluded by the judgment of the court. People v. Bainter, 154 Ill. App. 3d 1026, 107 Ill. Dec. 940, 507 N.E.2d 1309 (5 Dist. 1987), rev'd on other grounds, 126 Ill. 2d 292, 127 Ill. Dec. 938, 533 N.E.2d 1066 (1989).

- Final Judgment

The jurisdiction of a court over the subject matter and parties in a case, once fully attached, continues until all issues of fact and law have been finally determined; in general, the jurisdiction ceases on the rendition of a final judgment or decree, except for such purposes as the enforcement or correction of the judgment or decree. Fiore v. City of Highland Park, 93 Ill. App. 2d 24, 235 N.E.2d 23 (2 Dist. 1968).

- Time

Jurisdiction of the circuit courts generally terminates upon passage of 30 days after entry of a final order or upon proper filing of a notice of appeal within the 30 day period. Weilmunster v. H.H. Hall Constr. Co., 72 Ill. App. 3d 101, 28 Ill. Dec. 412, 390 N.E.2d 579 (5 Dist. 1979).

Transfers

The allocation of judicial responsibility to various branches within the circuit court does not detract from the grant of jurisdiction in this section; if the state believed it was being heard in an inappropriate subdivision or department of the circuit court, it should have made a motion for transfer. People v. Bedford, 65 Ill. App. 2d 341, 212 N.E.2d 872 (1 Dist. 1965).

LEGAL PERIODICALS

For article, "Illinois Supreme Court Civil '98: Back to the Nuts and Bolts," see 87 Ill. B.J. 250 (1998).

For article, "Administrative Review, Necessary Parties, and the Lockett Legacy," see 85 Ill. B.J. 356 (1997).

For article, "Illinois Tort Law: A Rich History of Cooperation and Respect Between the Courts and the Legislature," see 28 Loy. U. Chi. L.J. 745 (1997).

For article, "The Illinois Medical Malpractice Reform Act of 1985: A Constitutional Analysis of the Medical Review Panel Procedure," see 35 De Paul L. Rev. 345 (1986).

For article, "The Supreme Court's Exclusive Rule Making Authority," see 67 Ill. B.J. 408 (1979).

For comment, "Pre-trial Screening of Medical Malpractice Claims Versus the Illinois Constitution," see 10 J. Marshall J. Prac. & Proc. 133 (1976).

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RESEARCH REFERENCES

Arbitration of medical malpractice claims. 24 ALR5th 1.

Criminal jurisdiction of municipal or other local court. 102 ALR5th 525.

Practice Guides and Treatises.

Civil Practice (Illinois) Volume II: Preparing for Trial § 4.9 Subject Matter Jurisdiction (IICLE).

Civil Practice (Illinois) Volume I: Opening the Case § 4.21 Power to Issue Orders (IICLE).

Civil Practice (Illinois) Volume I: Opening the Case § 4.20 Jurisdiction (IICLE).

Chancery and Special Remedies § 16.9 Subject Matter Jurisdiction (IICLE).

Chancery and Special Remedies § 11.2 Administrative Review, Applicability and Scope (IICLE).

Chancery and Special Remedies § 11.18 Jurisdiction and Venue of Actions (IICLE).

Chancery and Special Remedies § 1.5 Right to a Jury Trial (IICLE).

Chancery and Special Remedies § 1.2 Jurisdiction (IICLE).

Section 10. Terms of Office.

The terms of office of Supreme and Appellate Court Judges shall be ten years; of Circuit Judges, six years; and of Associate Judges, four years.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Calculation of Term
- Ending Date
Salary

Calculation of Term

- Ending Date

Under general principles of statutory construction, a six year term ends on the day preceding the sixth anniversary date of an election, for if both the original election day and the day of the

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beginning of the next term were included, the result would be a term of six years and one day. People ex rel. Sullivan v. Powell, 35 Ill. 2d 19, 217 N.E.2d 806 (1966).

Salary

Judge's claim seeking judicial salary for the two years that she had to wait to take office pending her contest of a primary election result was denied pursuant to Ill. Const. Art. VI, § 10 because the judge's six-year term was delayed for two years, not denied. McDunn v. State, 52 Ill. Ct. Cl. 310, 1999 Ill. Ct. Cl. LEXIS 42 (Ct. Cl. 1999).

LEGAL PERIODICALS

For article, "Justice James D. Heiple: Impeachment and the Assault on Judicial Independence", see 29 Loy. U. Chi. L.J. 741 (1998).

Section 11. Eligibility for Office.

No person shall be eligible to be a Judge or Associate Judge unless he is a United States citizen, a licensed attorney-at-law of this State, and a resident of the unit which selects him. No change in the boundaries of a unit shall affect the tenure in office of a Judge or Associate Judge incumbent at the time of such change.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Constitutionality
- Attorney Requirement
In General
Judges
- Attorney Requirement
- Retirement
Magistrates
- Attorney Requirement
Residency
- Requirement

Constitutionality

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- Attorney Requirement

This provision is not unconstitutional since a requirement that state judges must be attorneys advances a state's compelling need to obtain judicial candidates who are qualified to deal with the complexities of the law. Torjesen v. Smith, 114 Ill. App. 3d 147, 69 Ill. Dec. 813, 448 N.E.2d 273 (5 Dist. 1983), appeal dismissed, 465 U.S. 1015, 104 S. Ct. 1262, 79 L. Ed. 2d 670 (1984).

In General

This section sets forth the age and residence qualifications of judges in language substantially similar to section 11 of Article V of the 1848 Constitution; the only significant difference between the two sections was that the 1848 Constitution referred to the office of "judge of any court of this state" and the 1870 Constitution referred to the office of "judge of the circuit or any inferior court." People ex rel. Doner v. Dimmick, 27 Ill. 2d 379, 189 N.E.2d 284 (1963).

Judges

- Attorney Requirement

The defendant was not deprived of due process where he was tried by a non-lawyer judge for a crime for which a fine could be imposed or there was a possibility of imprisonment. People v. Sabri, 47 Ill. App. 3d 962, 6 Ill. Dec. 104, 362 N.E.2d 739 (2 Dist. 1977).

- Retirement

Illinois Compulsory Retirement of Judges Act, 705 ILCS 55/1 et seq., was declared by the Supreme Court of Illinois to be unconstitutional, as written, because the Act violated the doctrine of equal protection. Maddux v. Blagojevich, 233 Ill. 2d 508, 331 Ill. Dec. 749, 911 N.E.2d 979, 2009 Ill. LEXIS 932 (2009).

Magistrates

- Attorney Requirement

Defendant was not denied due process of law because of the fact that his trial for violating a city ordinance was conducted by a magistrate who was not a lawyer. City of Decatur v. Kushmer, 43 Ill. 2d 334, 253 N.E.2d 425 (1969).

Residency

- Requirement

General Assembly had the authority pursuant to Ill. Const. art. VI, § 12(a) to prescribe by law the requirements for petitions for judicial office, and consistent with Ill. Const. art. VI, § 11 requiring candidates for judicial office to be a resident of the unit which selects him, dictated under 10 ILCS 5/7-10 that a candidate currently be qualified for the office specified, meaning the candidate had to be a resident of the relevant judicial subcircuit at the time the candidate filed nomination papers to become a trial court judge in that subcircuit. Since the nonresident candidate conceded that the nonresident candidate was not a resident of that subcircuit at the time the nonresident candidate filed the relevant nomination papers, the nonresident candidate's name was properly kept off the ballot for an upcoming primary election. Goodman v. Ward, 241 Ill. 2d 398, 350 Ill. Dec. 300, 948 N.E.2d 580, 2011 Ill. LEXIS 446 (2011).

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While the judicial candidate and objecting party focused on Ill. Const. art. VI, § 12 in arguing about exactly when the judicial candidate had to be resident of the subcircuit in which the judicial candidate sought office for the judicial candidate to be elected to the position of subcircuit judge, Ill. Const. art. VI, § 12 merely stated that a candidate interested in the office of judge could place the candidate's name on the primary ballot. Instead, Ill. Const. art. VI, § 11 stated that a judicial candidate had to be "a resident of the unit which selects him," which meant that the judicial candidate had to be resident of the subcircuit so that the judicial candidate's name could be placed on the primary ballot for the voters of that subcircuit to elect the judicial candidate. Goodman v. Ward, 397 Ill. App. 3d 875, 337 Ill. Dec. 399, 922 N.E.2d 522, 2010 Ill. App. LEXIS 24 (3 Dist. 2010).

An attempt to add the qualification that candidates for certain judgeships have to be residents of particular counties and nevertheless be elected from the circuit at large was unconstitutional. Thies v. State Bd. of Elections, 124 Ill. 2d 317, 124 Ill. Dec. 584, 529 N.E.2d 565 (1988).

Section 12. Election and Retention.

(a) Supreme, Appellate and Circuit Judges shall be nominated at primary elections or by petition. Judges shall be elected at general or judicial elections as the General Assembly shall provide by law. A person eligible for the office of Judge may cause his name to appear on the ballot as a candidate for Judge at the primary and at the general or judicial elections by submitting petitions. The General Assembly shall prescribe by law the requirements for petitions.

(b) The office of a Judge shall be vacant upon his death, resignation, retirement, removal, or upon the conclusion of his term without retention in office. Whenever an additional Appellate or Circuit Judge is authorized by law, the office shall be filled in the manner provided for filling a vacancy in that office.

(c) A vacancy occurring in the office of Supreme, Appellate or Circuit Judge shall be filled as the General Assembly may provide by law. In the absence of a law, vacancies may be filled by appointment by the Supreme Court. A person appointed to fill a vacancy 60 or more days prior to the next primary election to nominate Judges shall serve until the vacancy is filled for a term at the next general or judicial election. A person appointed to fill a vacancy less than 60 days prior to the next primary election to nominate Judges shall serve until the vacancy is filled at the second general or judicial election following such appointment.

(d) Not less than six months before the general election preceding the expiration of his term of office, a Supreme, Appellate or Circuit Judge who has been elected to that office may file in the office of the Secretary of State a declaration of candidacy to succeed himself. The Secretary of State, not less than 63 days before the election, shall certify the Judge's candidacy to the proper election officials. The names of Judges seeking retention shall be submitted to the electors, separately and without party designation, on the sole question whether each Judge shall be retained in office for another term. The retention elections shall be conducted at general elections in the appropriate Judicial District, for Supreme and Appellate Judges, and in the circuit for Circuit Judges. The affirmative vote of three-fifths of the electors voting on the question shall elect the Judge to the office for a term commencing on the first Monday in December following his election.

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(e) A law reducing the number of Appellate or Circuit Judges shall be without prejudice to the right of the Judges affected to seek retention in office. A reduction shall become effective when a vacancy occurs in the affected unit.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Constitutionality
- Elimination of Judgeships
- Judicial Election
In General
- Construction with Other Provisions
Contempt
- Jurisdiction
Equal Protection
- Percentage Requirements
Ex Officio Judge
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Retention
- Voting Machines
Separate Contests
- Requirement
Simultaneous Elections
- Validity
Statutes
- Validity
Vacancies

Constitutionality

- Elimination of Judgeships

Trial court erred in declaring that a public law, which amended the Circuit Courts Act, 705 ILCS 35/1 et seq., was unconstitutional for reconsidering and eliminating three judgeships that appeared to have been authorized by earlier legislation and which would have been part of an upcoming primary election; while the state elections board, part of the executive branch, had the authority to determine whether a statute created new judgeships, the Illinois General Assembly

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had the authority to create such a statute in the first instance and could reconsider and eliminate a judgeship it had authorized, which meant that the Illinois General Assembly had not violated the separation of powers doctrine nor had it been shown that public act was impermissible special legislation or that it violated the equal protection or due process doctrines. Bridges v. State Bd. of Elections, 222 Ill. 2d 482, 305 Ill. Dec. 640, 856 N.E.2d 445, 2006 Ill. LEXIS 1117 (2006).

- Judicial Election

The appellate court's decision, which essentially allowed both candidates' to fill a single judicial vacancy, was unconstitutional for the following reasons: (1) it increased the number of judges in Cook County; (2) it usurped Supreme Court's power to appoint persons to fill judicial vacancies, if viewed as an appointment; (3) it failed to place the proper constitutional limitations concerning judges on candidate, if viewed as an appointment; and (4) because it was made with no legislative appropriation of state funds. McDunn v. Williams, 156 Ill. 2d 288, 189 Ill. Dec. 417, 620 N.E.2d 385 (1993).

In General

Where the office of judge is a constitutional one, the General Assembly has no power to prescribe the manner of selection or election of the judge unless authorized by this section. People ex rel. Nachman v. Carpentier, 30 Ill. 2d 475, 197 N.E.2d 32 (1964).

- Construction with Other Provisions

General Assembly had the authority pursuant to Ill. Const. art. VI, § 12(a) to prescribe by law the requirements for petitions for judicial office, and consistent with Ill. Const. art. VI, § 11 requiring candidates for judicial office to be a resident of the unit which selects him, dictated under 10 ILCS 5/7-10 that a candidate currently be qualified for the office specified, meaning the candidate had to be a resident of the relevant judicial subcircuit at the time the candidate filed nomination papers to become a trial court judge in that subcircuit. Since the nonresident candidate conceded that the nonresident candidate was not a resident of that subcircuit at the time the nonresident candidate filed the relevant nomination papers, the nonresident candidate's name was properly kept off the ballot for an upcoming primary election. Goodman v. Ward, 241 Ill. 2d 398, 350 Ill. Dec. 300, 948 N.E.2d 580, 2011 Ill. LEXIS 446 (2011).

While the judicial candidate and objecting party focused on Ill. Const. art. VI, § 12 in arguing about exactly when the judicial candidate had to be resident of the subcircuit in which the judicial candidate sought office for the judicial candidate to be elected to the position of subcircuit judge, Ill. Const. art. VI, § 12 merely stated that a candidate interested in the office of judge could place the candidate's name on the primary ballot. Instead, Ill. Const. art. VI, § 11 stated that a judicial candidate had to be "a resident of the unit which selects him," which meant that the judicial candidate had to be resident of the subcircuit so that the judicial candidate's name could be placed on the primary ballot for the voters of that subcircuit to elect the judicial candidate. Goodman v. Ward, 397 Ill. App. 3d 875, 337 Ill. Dec. 399, 922 N.E.2d 522, 2010 Ill. App. LEXIS 24 (3 Dist. 2010).

Former Judicial Vacancies Act (Ill. Rev. Stat., ch. 37, para. 72.41 (repealed)) was held not wholly void as conflicting with the clear language of this section. Hirschfield v. Barrett, 40 Ill. 2d 224, 239 N.E.2d 831 (1968).

Contempt

- Jurisdiction

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A contempt proceeding against judges and clerks of an election was not a criminal case and did not confer upon the state supreme court the jurisdiction to review the appellate court's judgement upon a writ of error. People ex rel. Rusch v. Kotwas, 363 Ill. 336, 2 N.E.2d 314 (1936).

Equal Protection

- Percentage Requirements

The retention of judges may, consistent with the equal protection clause, be subject to an affirmative vote of 60% of the electors casting ballots on the question so that the minority can never elect a judge. Lefkovit v. State Bd. of Elections, 400 F. Supp. 1005 (N.D. Ill. 1975), aff'd, 424 U.S. 901, 96 S. Ct. 1092, 47 L. Ed. 2d 306 (1976).

Ex Officio Judge

- Criminal Court

A judge of the circuit court is not a judge of the criminal court, ex officio or otherwise, until he has been assigned to that service by the judges of the circuit court in accordance with the rules of the circuit court in accordance with the rules of the court regulating such assignment, and unless assigned, has no right to hold a term of the criminal court. People ex rel. Chicago Bar Ass'n v. Feinberg, 348 Ill. 549, 181 N.E. 437 (1932).

There are no elected judges of the criminal court of Cook county, they are all selected from the judges of the circuit or superior court by their associates, and become, by virtue of their selection an by virtue of their offices, ex officio judges of the criminal court. People ex rel. Chicago Bar Ass'n v. Feinberg, 348 Ill. 549, 181 N.E. 437 (1932).

Judicial Retention Declarations

Trial court did not err in granting the judge's motion for summary judgment that found 10 ILCS 5/7A-1, regarding the time for filing judicial retention declarations to be facially unconstitutional; that statute, which had to be given a mandatory reading since it set forth a consequence for not meeting its time deadline, directly conflicted with the time deadline for filing judicial retention declarations in Ill. Const. Art. VI, § 12(d) and, thus, the statutory provision had to give way. O'Brien v. White, 219 Ill. 2d 86, 301 Ill. Dec. 154, 846 N.E.2d 116, 2006 Ill. LEXIS 319 (2006).

Objection

- Laches

By failing to object to resident circuit court judge's nomination prior to the general election, opposing candidate, who had notice of the opposing party's candidacy, was prevented from raising the validity of the eventual winning candidate's nomination after the election under the doctrine of laches. Thurston v. State Bd. of Elections, 76 Ill. 2d 385, 30 Ill. Dec. 304, 392 N.E.2d 1349 (1979).

Retention

- Voting Machines

The provision of precursor to 10 ILCS 5/16-6.1, permitting the use of voting machines for the purpose of balloting upon candidates for retention in judicial office, is in conflict with the

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constitutional provision for a special judicial ballot found in this section; therefore, respondent was to prepare for use in the judicial retention election separate paper ballots containing, in the form transmitted to him by the Secretary of State, the names of circuit court judges, and associate judges of the circuit court outside city who sought retention in office. People ex rel. Barrett v. Barrett, 31 Ill. 2d 360, 201 N.E.2d 849 (1964).

Separate Contests

- Requirement

Candidates for judicial vacancies must run on a "head-on-head" rather than a "field" basis in which there is a separate contest for each position. Johnson v. State Bd., 57 Ill. 2d 205, 311 N.E.2d 123 (1974).

Simultaneous Elections

- Validity

There was nothing in the law which declared a public policy to exist which would render the authorization of city and county bonds void because the election was held upon the same day that judges of the superior court were elected. Bilek v. City of Chicago, 396 Ill. 445, 71 N.E.2d 789 (1947).

Statutes

- Validity

Illinois Compulsory Retirement of Judges Act, 705 ILCS 55/1 et seq., was declared by the Supreme Court of Illinois to be unconstitutional, as written, because the Act violated the doctrine of equal protection. Maddux v. Blagojevich, 233 Ill. 2d 508, 331 Ill. Dec. 749, 911 N.E.2d 979, 2009 Ill. LEXIS 932 (2009).

The use of the mandatory language in this section is attributable to the drafters' design to state in unequivocal terms the method by which new judges would be initially selected to fill vacancies, by the voters at an election, unless two-thirds of the members of both Houses of the General Assembly propose a different method which is approved by the electorate in a referendum; therefore, because statute providing for judicial appointments by the Governor was not submitted to, and approved by, the voters in a general election, it did not become law and the purported appointments under it were void. People ex rel. Scott v. Powell, 42 Ill. 2d 132, 246 N.E.2d 297 (1969).

Vacancies

Interpreting subsection (a) to forbid a political party from filling vacancies in nomination would be "a restrictive interpretation" inconsistent with principles of constitutional interpretation. Phelan v. County Officers Electoral Bd., 240 Ill. App. 3d 368, 181 Ill. Dec. 142, 608 N.E.2d 215 (1 Dist. 1992), appeal granted, 149 Ill. 2d 660, 183 Ill. Dec. 871, 612 N.E.2d 523 (1993).

LEGAL PERIODICALS

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For article, "Justice James D. Heiple: Impeachment and the Assault on Judicial Independence," see 29 Loy. U. Chi. L.J. 741 (1998).

For article, "Irreconcilable Principles: Law, Politics, and the Illinois Supreme Court," see 18 N. Ill. U.L. Rev. 267 (1998).

For article, "The Partisan Factor and Judicial Behavior in the Illinois Supreme Court," see 19 S. Ill. U.L.J. 303 (1995).

For article, "From Judicial Election to Merit Selection: A Time for Change in Illinois," see 8 N. Ill. U.L. Rev. 665 (1988).

For mentorship article, "The Expansion of the First Amendment in Judicial Elections: Another Cause for Reform," see, See 38 Loy. U. Chi. L.J. 833 (2007).

Section 13. Prohibited Activities.

(a) The Supreme Court shall adopt rules of conduct for Judges and Associate Judges.

(b) Judges and Associate Judges shall devote full time to judicial duties. They shall not practice law, hold a position of profit, hold office under the United States or this State or unit of local government or school district or in a political party. Service in the State militia or armed forces of the United States for periods of time permitted by rule of the Supreme Court shall not disqualify a person from serving as a Judge or Associate Judge.

(Source: Illinois Constitution.)

CASE NOTES

Widow's Pension

Appropriations made to the widow of a deceased public officer bears no relation to the purposes of constitutional prohibitions against granting any extra compensation to a public official. People ex rel. McDavid v. Barrett, 370 Ill. 478, 19 N.E.2d 356 (1939).

LEGAL PERIODICALS

For comment, "Pre-trial Screening of Medical Malpractice Claims Versus the Illinois Constitution," see 10 J. Marshall J. Prac. & Proc. 133 (1976).

RESEARCH REFERENCES

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Arbitration of medical malpractice claims. 24 ALR5th 1.

Section 14. Judicial Salaries and Expenses - Fee Officers Eliminated.

Judges shall receive salaries provided by law which shall not be diminished to take effect during their terms of office. All salaries and such expenses as may be provided by law shall be paid by the State, except that Appellate, Circuit and Associate Judges shall receive such additional compensation from counties within their district or circuit as may be provided by law. There shall be no fee officers in the judicial system.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Fee Officers
Judge
Purpose
- Justice of Peace
- Payment
- Structure

Fee Officers

An insurance policy provision requiring arbitration, but allowing parties to reject awards in excess of a specified threshold, does not improperly create a system of fee officers. Reed v. Farmers Ins. Group, 188 Ill. 2d 168, 242 Ill. Dec. 97, 720 N.E.2d 1052 (1999).

Bail bond costs retained by the circuit clerk do not conflict with the stipulation of this section that "there shall be no fee officers in the judicial system." Walker v. Cockrell, 110 Ill. App. 3d 562, 66 Ill. Dec. 234, 442 N.E.2d 660 (2 Dist. 1982).

For a case discussing the unconstitutionality of the former compulsory arbitration provision of the Insurance Code, see Grace v. Howlett, 51 Ill. 2d 478, 283 N.E.2d 474 (1972).

Judge

Where Supreme Court of Illinois ordered the Illinois Comptroller to pay judges their salaries which included a cost-of-living adjustment, pursuant to the constitutional mandate of Ill. Const., Art. VI, § 14, such was valid for purposes of authorization of the payment, as a court order was considered "pursuant to law and authorized" under 15 ILCS 405/9(b); accordingly, the Comptroller had no cause to refuse to draw the warrant for payment. Jorgensen v. Blagojevich, 211 Ill. 2d 286, 285 Ill. Dec. 165, 811 N.E.2d 652, 2004 Ill. LEXIS 680 (2004).

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A police magistrate is not a judge within the meaning of this section. People ex rel. Doner v. Dimmick, 27 Ill. 2d 379, 189 N.E.2d 284 (1963).

Purpose

This provision of the constitution was aimed primarily at abolition of the office of master in chancery; this provision operates also to prohibit the appointment of a commissioner for the purpose of selling divorced parties real estate. Factor v. Factor, 27 Ill. App. 3d 594, 327 N.E.2d 396 (1 Dist. 1975).

- Justice of Peace

For a case discussing the payment of salaries of justices of the peace, see Crumpler v. County of Logan, 38 Ill. 2d 146, 230 N.E.2d 211 (1967).

- Payment

Ill. Const., Art. VI, § 14 was violated when the Governor and General Assembly attempted to suspend and veto the cost-of-living adjustments that had been authorized for judge salaries, as that part of the salary had been fully vested since 1990 and, accordingly, 2001 Ill. Laws 607 was held unconstitutional for attempting to remove that part of the salary; pursuant to Ill. Const., Art. VI, §§ 1 and 16, the judiciary had the authority to construe the constitution and to administer the court system, which included authority to assure that judges were properly paid pursuant to the constitutional requirements. Jorgensen v. Blagojevich, 211 Ill. 2d 286, 285 Ill. Dec. 165, 811 N.E.2d 652, 2004 Ill. LEXIS 680 (2004).

The requirement that salaries "be as provided by law" may be satisfied in various ways; for instance, the legislature may properly require the counties to pay for the salaries and expenses of circuit clerks, or it may establish a board whose salary recommendations go into effect so long as they are not disapproved by both houses of the General Assembly. County of Kane v. Carlson, 140 Ill. App. 3d 814, 95 Ill. Dec. 246, 489 N.E.2d 467 (2 Dist. 1986).

- Structure

Sections 3.2 and 3.3 of chapter 53 (see now 5 ILCS 290/3.2 and 5 ILCS 290/3.3) which set out salary structure for certain judges did not contravene this section, which governs judges' salaries. People ex rel. Cosentino v. County of Adams, 82 Ill. 2d 565, 46 Ill. Dec. 116, 413 N.E.2d 870 (1980).

OPINIONS OF ATTORNEY GENERAL

Fee Officers

The portion of 705 ILCS 105/15, which directs the compensation of employees to be paid out of the earnings of the office, has been abrogated by this section of the Illinois Constitution. 1980 Op. Atty. Gen. 96.

LEGAL PERIODICALS

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For article, "The Illinois Medical Malpractice Reform Act of 1985: A Constitutional Analysis of the Medical Review Panel Procedure," see 35 De Paul L. Rev. 345 (1986).

Section 15. Retirement - Discipline.

(a) The General Assembly may provide by law for the retirement of Judges and Associate Judges at a prescribed age. Any retired Judge or Associate Judge, with his or her consent, may be assigned by the Supreme Court to judicial service for which he or she shall receive the applicable compensation in lieu of retirement benefits. A retired Associate Judge may be assigned only as an Associate Judge.

(b) A Judicial Inquiry Board is created. The Supreme Court shall select two Circuit Judges as members and the Governor shall appoint four persons who are not lawyers and three lawyers as members of the Board. No more than two of the lawyers and two of the non-lawyers appointed by the Governor shall be members of the same political party. The terms of Board members shall be four years. A vacancy on the Board shall be filled for a full term in the manner the original appointment was made. No member may serve on the Board more than eight years.

(c) The Board shall be convened permanently, with authority to conduct investigations, receive or initiate complaints concerning a Judge or Associate Judge, and file complaints with the Courts Commission. The Board shall not file a complaint unless five members believe that a reasonable basis exists (1) to charge the Judge or Associate Judge with willful misconduct in office, persistent failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to charge that the Judge or Associate Judge is physically or mentally unable to perform his duties. All proceedings of the Board shall be confidential except the filing of a complaint with the Courts Commission. The Board shall prosecute the complaint.

(d) The Board shall adopt rules governing its procedures. It shall have subpoena power and authority to appoint and direct its staff. Members of the Board who are not Judges shall receive per diem compensation and necessary expenses; members who are Judges shall receive necessary expenses only. The General Assembly by law shall appropriate funds for the operation of the Board.

(e) An independent Courts Commission is created consisting of one Supreme Court Judge selected by that Court as a member and one as an alternate, two Appellate Court Judges selected by that Court as members and three as alternates, two Circuit Judges selected by the Supreme Court as members and three as alternates, and two citizens selected by the Governor as members and two as alternates. Members and alternates who are Appellate Court Judges must each be from a different Judicial District. Members and alternates who are Circuit Judges must each be from a different Judicial District. Members and alternates of the Commission shall not be members of the Judicial Inquiry Board. The members of the Commission shall select a chairperson to serve a two-year term.

The Commission shall be convened permanently to hear complaints filed by the Judicial Inquiry Board. The Commission shall have authority after notice and public hearing, (1)

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to remove from office, suspend without pay, censure or reprimand a Judge or Associate Judge for willful misconduct in office, persistent failure to perform his or her duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to suspend, with or without pay, or retire a Judge or Associate Judge who is physically or mentally unable to perform his or her duties.

(f) The concurrence of three members of the Commission shall be necessary for a decision. The decision of the Commission shall be final.

(g) The Commission shall adopt comprehensive rules to ensure that its procedures are fair and appropriate. These rules and any amendments shall be public and filed with the Secretary of State at least 30 days before becoming effective.

(h) A member of the Commission shall disqualify himself or herself, or the other members of the Commission shall disqualify a member, with respect to any proceeding in which disqualification or recusal would be required of a Judge under rules of the Supreme Court, under rules of the Commission, or by law.

If a Supreme Court Judge is the subject of a proceeding, then there shall be no Supreme Court Judge sitting as a member of the Commission with respect to that proceeding. Instead, an alternate Appellate Court Judge not from the same Judicial District as the subject Supreme Court Judge shall replace the subject Supreme Court Judge. If a member who is an Appellate Court Judge is the subject of a proceeding, then an alternate Appellate Court Judge shall replace the subject Appellate Court Judge. If an Appellate Court Judge who is not a member is the subject of a proceeding and an Appellate Court Judge from the same Judicial District is a member, then an alternate Appellate Court Judge shall replace that member. If a member who is a Circuit Judge is the subject of a proceeding, then an alternate Circuit Judge shall replace the subject Circuit Judge. If a Circuit Judge who is not a member is the subject of a proceeding and a Circuit Judge from the same Judicial District is a member, then an alternate Circuit Judge shall replace that member.

If a member of the Commission is disqualified under this Section with respect to any proceeding, that member shall be replaced by an alternate on a rotating basis in a manner provided by rule of the Commission. The alternate shall act as member of the Commission with respect to that proceeding only.

(i) The Commission shall have power to issue subpoenas.

(j) Members and alternates of the Commission who are not Judges shall receive per diem compensation and necessary expenses; members and alternates who are Judges shall receive necessary expenses only. The General Assembly shall provide by law for the expenses and compensation of the Commission.

(Source: Amendment adopted at general election November 3, 1998.)

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CASE NOTES

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In General

In the constitutionally created system of judicial discipline, the state Supreme Court serves in effect as the legislative body in enacting the rules of judicial conduct, the Inquiry Board serves in effect as the executive body charged with investigating and prosecuting violations of the rules of judicial conduct, and the Courts Commission serves in effect as the judicial body charged with interpreting and applying the rules of judicial conduct when it adjudicates the complaints filed by the Inquiry Board. Pincham v. Illinois Judicial Inquiry Bd., 681 F. Supp. 1309 (N.D. Ill. 1988), aff'd, 872 F.2d 1341 (7th Cir.), cert. denied, 493 U.S. 975, 110 S. Ct. 497, 107 L. Ed. 2d 501 (1989).

Applicability

This section is not relevant to a dispute which involves mandatory retirement on the basis of age in the first instance and not the possibility of returning to the bench following a competency determination by the Supreme Court. United States E.E.O.C. v. Illinois, 721 F. Supp. 156 (N.D. Ill. 1989).

Confidentiality

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Unlike a criminal prosecution of a judge, in which it has been held that the Judicial Inquiry Board can be required to disclose confidentially revealed information concerning the judge, a defamation case brought by a judge presents no cognizable liberty interest; thus an attorney cannot be required to respond to judge's discovery request in a defamation action where compliance with that request would require disclosure of confidential communications with the Board. Owen v. Mann, 105 Ill. 2d 525, 86 Ill. Dec. 507, 475 N.E.2d 886 (1985).

The confidentiality requirement of subsection (c) of the Illinois Constitution serves several important purposes, including the protecting judges against unfavorable publicity resulting from irresponsible and unfounded charges, and encouraging the participation of witnesses by providing protection against retaliation and harassment. Owen v. Mann, 105 Ill. 2d 525, 86 Ill. Dec. 507, 475 N.E.2d 886 (1985).

When assertion of a privilege by the Judicial Inquiry Board as to subpoenaed materials sought for use in a judge's criminal trial for battery was based on a general interest in confidentiality under Ill. Const. (1970), Art. VI, § 15(c), it could not prevail over fundamental demands of due process in the fair administration of criminal justice. People ex rel. Illinois Judicial Inquiry Board v. Hartel, 72 Ill. 2d 225, 20 Ill. Dec. 592, 380 N.E.2d 801, 1978 Ill. LEXIS 305 (1978).

The protection of judges from irresponsible and unfounded charges and complaints was an important consideration in the adoption of the confidentiality provision, but other elements, including the encouragement and protection of witnesses, must also be evaluated, and simply because the judge under investigation consents to disclosure, the Judicial Inquiry Board's files may not automatically be opened to inspection. People ex rel. Illinois Judicial Inquiry Bd. v. Hartel, 72 Ill. 2d 225, 20 Ill. Dec. 592, 380 N.E.2d 801 (1978).

The expressly stated mandate in subsection (c) that all proceedings of the Judicial Inquiry Board shall be confidential is impervious to legislative or judicial change, and it must be implemented except where overriding federal due process requirements compel otherwise. People ex rel. Illinois Judicial Inquiry Bd. v. Hartel, 72 Ill. 2d 225, 20 Ill. Dec. 592, 380 N.E.2d 801 (1978); Owen v. Mann, 105 Ill. 2d 525, 86 Ill. Dec. 507, 475 N.E.2d 886 (1985).

The fact that the Judicial Inquiry Board's investigation was independent from that of the police and state's attorney, and that the latter had no greater access to its results than did the defendant, did not totally insulate the Board from due process requirements: if in the course of that investigation the Board came into possession of evidence or material which in the Board's opinion on its face plainly negated defendant's guilt, it could not deny production of that evidence upon defendant's request. People ex rel. Illinois Judicial Inquiry Bd. v. Hartel, 72 Ill. 2d 225, 20 Ill. Dec. 592, 380 N.E.2d 801 (1978).

Courts Commission

- In General

The Courts Commission is the constitutionally authorized body empowered to adjudicate complaints filed by the Inquiry Board. Pincham v. Illinois Judicial Inquiry Bd., 681 F. Supp. 1309 (N.D. Ill. 1988), aff'd, 872 F.2d 1341 (7th Cir.), cert. denied, 493 U.S. 975, 110 S. Ct. 497, 107 L. Ed. 2d 501 (1989).

- Authority

The Courts Commission is vested by the state Constitution with the authority to interpret and apply the rules of judicial conduct in the cases before it. Pincham v. Illinois Judicial Inquiry Bd., 681 F. Supp. 1309 (N.D. Ill. 1988), aff'd, 872 F.2d 1341 (7th Cir.), cert. denied, 493 U.S. 975, 110 S. Ct. 497, 107 L. Ed. 2d 501 (1989).

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Inasmuch as the Courts Commission is not a part of the tripartite court system in this state, it possesses no power to interpret statutory ambiguities or to compel judges to conform their conduct to any such interpretation. People ex rel. Harrod v. Illinois Courts Comm'n, 69 Ill. 2d 445, 14 Ill. Dec. 248, 372 N.E.2d 53 (1977).

The Courts Commission exceeded its constitutional authority when, in determining whether a judge's orders were without authority of law, it applied its own independent interpretation and construction of statutory law to the judge's conduct. People ex rel. Harrod v. Illinois Courts Comm'n, 69 Ill. 2d 445, 14 Ill. Dec. 248, 372 N.E.2d 53 (1977).

Discipline

- Improper Sentencing

Where the law is clear on its face, a judge who repeatedly imposes punishment not provided for by law is subject to discipline by the Courts Commission pursuant to Supreme Court Rules 61(c)(18) and 62 regardless of whether he believes the form of punishment will have a beneficial corrective influence. People ex rel. Harrod v. Illinois Courts Comm'n, 69 Ill. 2d 445, 14 Ill. Dec. 248, 372 N.E.2d 53 (1977).

Filing of Complaints

- Standards

The standards set forth in subdivision (c)(1) were not intended to serve as the grounds upon which a complaint would originate, but, rather, were intended to serve only as a guide to the Judicial Inquiry Board in determining whether an alleged violation of rules warranted the filing of a formal complaint. People ex rel. Harrod v. Illinois Courts Comm'n, 69 Ill. 2d 445, 14 Ill. Dec. 248, 372 N.E.2d 53 (1977).

Judges

- Retirement

Illinois Compulsory Retirement of Judges Act, 705 ILCS 55/1 et seq., was declared by the Supreme Court of Illinois to be unconstitutional, as written, because the Act violated the doctrine of equal protection. Maddux v. Blagojevich, 233 Ill. 2d 508, 331 Ill. Dec. 749, 911 N.E.2d 979, 2009 Ill. LEXIS 932 (2009).

Judicial Inquiry Board

Because the State of Illinois Judicial Inquiry Board (JIB) did not exist when the Illinois Personnel Code exemptions were enacted, its predecessor was exempt, and 20 ILCS 415/4 generally exempted legislative and judicial jobs, it was reasonable to find 20 ILCS 415/2 applied only to those positions "under" the governor, which excluded the JIB; thus, plaintiff former employee of the JIB had no property interest under the Personnel Code that was protected by the due process requirements of the Fourteenth Amendment. Crull v. Sunderman, 384 F.3d 453, 2004 U.S. App. LEXIS 19441 (7th Cir. 2004).

- Duties and Powers

The Judicial Inquiry Board is the constitutionally authorized body empowered to investigate, charge, and prosecute judges accused of misconduct. Pincham v. Illinois Judicial Inquiry Bd.,

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681 F. Supp. 1309 (N.D. Ill. 1988), aff'd, 872 F.2d 1341 (7th Cir.), cert. denied, 493 U.S. 975, 110 S. Ct. 497, 107 L. Ed. 2d 501 (1989).

Mandamus

The fact that the Courts Commission was created by the 1970 Constitution, and is not, by definition, an inferior court within the judicial article, will not prevent the issuance of an original writ of mandamus. People ex rel. Harrod v. Illinois Courts Comm'n, 69 Ill. 2d 445, 14 Ill. Dec. 248, 372 N.E.2d 53 (1977).

Removal

- Grand Jury Testimony

The conduct for which a judge was removed from office may be established by the Courts Commission from the use of his testimony before a Grand Jury compelled by a grant of full transactional immunity, where it was evident from the facts presented upon appeal that the judge was appropriately insulated from future criminal prosecution as a consequence of his testimony before the Grand Jury, and he never was or has been subjected to criminal prosecution for any transaction, matter or thing arising from the immunized testimony. Napolitano v. Ward, 457 F.2d 279 (7th Cir.), cert. denied, 409 U.S. 1037, 93 S. Ct. 512, 34 L. Ed. 2d 486 (1972).

- Legislature's Authority

The authority to remove judicial officers by legislative address that was formerly given to the legislative department of the government has now been given to the judicial department, and it is the Supreme Court, as the head of that department, which is now authorized to prescribe standards of judicial conduct; the authority of the General Assembly in this area is limited to the fixing of a mandatory retirement age for judges and to the Senate's authority to request that the Courts Commission be convened. Cusack v. Howlett, 44 Ill. 2d 233, 254 N.E.2d 506 (1969).

Review

Decisions of the Courts Commission are final in that no review by the state Supreme Court or lesser Illinois courts is available Pincham v. Illinois Judicial Inquiry Bd., 681 F. Supp. 1309 (N.D. Ill. 1988), aff'd, 872 F.2d 1341 (7th Cir.), cert. denied, 493 U.S. 975, 110 S. Ct. 497, 107 L. Ed. 2d 501 (1989).

Where review of the Courts Commission's decision was precluded by subsection (f), leave to file the petition for mandamus was improvidently granted. People ex rel. Judicial Inquiry Bd. v. Courts Comm'n, 91 Ill. 2d 130, 61 Ill. Dec. 789, 435 N.E.2d 486 (1982).

The Supreme Court had both the authority and responsibility to determine whether the Courts Commission's acts were beyond its constitutional grant of authority and, if so, to declare such acts invalid. People ex rel. Harrod v. Illinois Courts Comm'n, 69 Ill. 2d 445, 14 Ill. Dec. 248, 372 N.E.2d 53 (1977).

Supreme Court

- Powers

The state Supreme Court is empowered to ensure that the Courts Commission acts only within its state constitutional authority. Pincham v. Illinois Judicial Inquiry Bd., 681 F. Supp. 1309 (N.D. Ill.

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1988), aff'd, 872 F.2d 1341 (7th Cir.), cert. denied, 493 U.S. 975, 110 S. Ct. 497, 107 L. Ed. 2d 501 (1989).

Violative Conduct

Violations of the state Supreme Court Code of Judicial Conduct must form the basis of any complaint filed with the Courts Commission. Pincham v. Illinois Judicial Inquiry Bd., 681 F. Supp. 1309 (N.D. Ill. 1988), aff'd, 872 F.2d 1341 (7th Cir.), cert. denied, 493 U.S. 975, 110 S. Ct. 497, 107 L. Ed. 2d 501 (1989).

Only conduct violative of the Supreme Court Rules of Judicial Conduct may be the subject of a complaint before the Courts Commission. People ex rel. Harrod v. Illinois Courts Comm'n, 69 Ill. 2d 445, 14 Ill. Dec. 248, 372 N.E.2d 53 (1977).

Conduct which does not constitute a criminal offense may be sufficiently violative of the Judicial Canons to warrant removal for cause. Napolitano v. Ward, 457 F.2d 279 (7th Cir.), cert. denied, 409 U.S. 1037, 93 S. Ct. 512, 34 L. Ed. 2d 486 (1972).

OPINIONS OF ATTORNEY GENERAL

Courts Commission

- In General

The General Assembly's failure to include any reference to the courts or the judiciary in the definition of "public body" in the Open Meetings Act (5 ILCS 120/1.02) is indicative of an intent to exclude the judicial branch from the requirements of that Act and the Illinois Courts Commission is not subject to the provisions of the Open Meetings Act. 1999 Op. Atty. Gen. (99-005).

The lack of any reference to the courts or judiciary in the Freedom of Information Act (5 ILCS 140/1 et seq.) must be taken as an intent to exclude the judiciary from the disclosure requirements of the Act and as the Illinois Courts Commission is an adjudicatory body of the judicial branch of government it is not subject to the provisions of the Freedom of Information Act. 1999 Op. Atty. Gen. (99-005).

To require the Courts Commission to submit to the rulemaking procedure contained in the Administrative Procedure Act, which contemplates rules review by the Joint Committee on Administrative Rules, an agency of the General Assembly (5 ILCS 100/5-90, 5 ILCS 100/5-100 and 5 ILCS 100/5-115, and, ultimately, the General Assembly itself (5 ILCS 100/5-115, 5 ILCS 100/5-125), would jeopardize the principle of judicial self-regulation considered essential to the integrity and independence of the judiciary and would be an unconstitutional intrusion into the judicial branch's exercise of its judicial power, consequently, the Illinois Courts Commission cannot be required to comply with the provisions of the Administrative Procedure Act. 1999 Op. Atty. Gen. (99-005).

LEGAL PERIODICALS

For article, "Justice James D. Heiple: Impeachment and the Assault on Judicial Independence," see 29 Loy. U. Chi. L.J. 741 (1998).

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For article, "Ethics Questions Deserve an Answer," see 76 Ill. B.J. 318 (1988).

For article, "A Search for Accountability: Judicial Discipline Under the Judicial Article of the 1970 Illinois State Constitution," see 8 N. Ill. U.L. Rev. 781 (1988).

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Civil Trial Evidence (Illinois) § 7.41 Proceedings of the Judicial Inquiry Board (IICLE).

Section 16. Administration.

General administrative and supervisory authority over all courts is vested in the Supreme Court and shall be exercised by the Chief Justice in accordance with its rules. The Supreme Court shall appoint an administrative director and staff, who shall serve at its pleasure, to assist the Chief Justice in his duties. The Supreme Court may assign a Judge temporarily to any court and an Associate Judge to serve temporarily as an Associate Judge on any Circuit Court. The Supreme Court shall provide by rule for expeditious and inexpensive appeals.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

In General
Action by Legislature
- Peripheral Effect
Administrative Court Rule
- Assignment of Judges
- Legislature's Authority
Administrative Office
- Audit of Funds
Case Consolidation
Central Supervision
Conduct Not Violative

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Conflict with Rules
Entity Created by Supreme Court
Jurisdiction of Appellate Court
Rulemaking Authority
Supervisory Authority

In General

Ill. Const., Art. VI, § 14 was violated when the Governor and General Assembly attempted to suspend and veto the cost-of-living adjustments that had been authorized for judge salaries, as that part of the salary had been fully vested since 1990 and accordingly, 2001 Ill. Laws 607 was held unconstitutional for attempting to remove that part of the salary; pursuant to Ill. Const., Art. VI, §§ 1 and 16, the judiciary had the authority to construe the constitution and to administer the court system, which included authority to assure that judges were properly paid pursuant to the constitutional requirements. Jorgensen v. Blagojevich, 211 Ill. 2d 286, 285 Ill. Dec. 165, 811 N.E.2d 652, 2004 Ill. LEXIS 680 (2004).

The supervisory and administrative authority over all the courts is vested in the Supreme Court, to be exercised in accordance with rules. People v. Joseph, 113 Ill. 2d 36, 99 Ill. Dec. 120, 495 N.E.2d 501 (1986).

This section vests the judicial power in the Supreme Court, an appellate court, and the circuit courts. People v. Joseph, 113 Ill. 2d 36, 99 Ill. Dec. 120, 495 N.E.2d 501 (1986).

Action by Legislature

- Peripheral Effect

When the Supreme Court has not acted in an area into which it is arguable that the "judicial power" extends, this section does not purport to exclude the legislature from acting in any way which may have a peripheral effect on judicial administration. People v. Winfield, 160 Ill. App. 3d 983, 112 Ill. Dec. 423, 513 N.E.2d 1032 (1 Dist.), appeal denied, 117 Ill. 2d 552, 115 Ill. Dec. 517 N.E.2d 1094 (1987).

Administrative Court Rule

- Assignment of Judges

Power to assign judges is one of the exclusive powers granted to the judiciary and a chief judge's administrative authority to use it is subject only to the authority of the state supreme court. Blair v. Mackoff, 284 Ill. App. 3d 836, 220 Ill. Dec. 78, 672 N.E.2d 895 (1 Dist. 1996), appeal denied, 171 Ill. 2d 562, 222 Ill. Dec. 429, 677 N.E.2d 963 (1997).

- Legislature's Authority

If a court rule is primarily administrative in character the legislature lacks constitutional authority to modify or defeat it. People v. Brumfield, 51 Ill. App. 3d 637, 9 Ill. Dec. 619, 366 N.E.2d 1130 (3 Dist. 1977).

Administrative Office

- Audit of Funds

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The Supreme Court could issue a writ of mandamus ordering Auditor General, to audit the funds appropriated by the General Assembly to the Supreme Court and disbursed at its direction by the Administrative Office of the Illinois Courts. Madden v. Cronson, 114 Ill. 2d 504, 103 Ill. Dec. 729, 501 N.E.2d 1267 (1986), cert. denied, 484 U.S. 818, 108 S. Ct. 73, 98 L. Ed. 2d 36 (1987).

Case Consolidation

In the exercise of general administrative and supervisory authority, the Supreme Court ordered cases in two counties transferred to third county and consolidated with the case pending in that court; the court did so by the reasoning underlying the doctrine of forum non conveniens. Horn v. Rincker, 84 Ill. 2d 139, 49 Ill. Dec. 315, 417 N.E.2d 1329 (1981).

Central Supervision

The words "and supervisory" were added in this section, in the 1970 constitution, to emphasize and strengthen the concept of central supervision of the judicial system. People v. Joseph, 113 Ill. 2d 36, 99 Ill. Dec. 120, 495 N.E.2d 501 (1986).

Conduct Not Violative

The inclusion of judicial employees within the Illinois Public Labor Relations Act (see now 5 ILCS 315/1 et seq.) does not by itself trench on the separation of powers principle or on the general administrative and supervisory authority granted by the constitution to the judicial branch. County of Kane v. Carlson, 116 Ill. 2d 186, 107 Ill. Dec. 569, 507 N.E.2d 482 (1987).

Conflict with Rules

Although post-conviction relief is statutory in origin, it was designed to implement the common law remedies of writ of error, habeas corpus, and corum nobis; rather than limiting or defining the scope of the statutory remedy, § 122-8 of the Post-Conviction Hearing Act (see now 725 ILCS 5/122-8), directly conflicts with rules of the Supreme Court of Illinois and of the circuit court adopted pursuant to this section and Ill. Const. (1970), Art. VI, § 7(c). People v. Joseph, 113 Ill. 2d 36, 99 Ill. Dec. 120, 495 N.E.2d 501 (1986).

Entity Created by Supreme Court

The functions of the Disciplinary Commission and the Board of Law Examiners fall within the inherent, exclusive, constitutional powers of the Illinois Supreme Court. Chicago Bar Ass'n v. Cronson, 183 Ill. App. 3d 710, 132 Ill. Dec. 17, 539 N.E.2d 327 (1 Dist.), appeal denied, 136 Ill. Dec. 582, 545 N.E.2d 106 (1989), cert. denied, 493 U.S. 1057, 110 S. Ct. 867, 107 L. Ed. 2d 950 (1990).

Jurisdiction of Appellate Court

Trial court erred in making a determination on the merits on defendant's motion under Ill. Sup. Ct. R. 604(d) where it was brought 16 months after sentencing, as the trial court no longer had authority or jurisdiction to entertain such a motion; similarly, the appellate court lacked jurisdiction over the trial court's void order, and its determination on the merits was also lacking in authority and jurisdiction, as it did not possess the same inherent supervisory authority conferred on the

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Illinois Supreme Court pursuant to Ill. Const. art. VI, § 16. People v. Flowers, 208 Ill. 2d 291, 280 Ill. Dec. 653, 802 N.E.2d 1174, 2004 Ill. LEXIS 10 (2004).

The General Assembly, through its legislative powers, had attempted to infringe upon the constitutional power of the Illinois Supreme Court to regulate appellate jurisdiction; accordingly, former Ill. Rev. Stat., ch. 5-6-3.1(i) (see now 730 ILCS 5/5-6-3.1(h)), violated this section and Ill. Const. (1970), Art. VI, § 6 and was void. People v. Tarkowski, 100 Ill. App. 3d 153, 55 Ill. Dec. 485, 426 N.E.2d 631 (2 Dist. 1981).

The legislature does not have power to determine the jurisdiction of the appellate court. In re Lentz, 73 Ill. App. 3d 93, 29 Ill. Dec. 319, 391 N.E.2d 582 (4 Dist. 1979), aff'd, 79 Ill. 2d 400, 38 Ill. Dec. 582, 403 N.E.2d 1036 (1980).

Rulemaking Authority

State Supreme Court had jurisdiction to hear the county's appeal of the appellate court's decision that found the fire protection district's ordinance, and not the county's fire prevention code, applied to the golf course operator's new construction; under the state supreme court's supervisory authority, the State Supreme Court could excuse noncompliance with Ill. Sup. Ct. R. 315(b) regarding the amount of time that the county had to file its appeal with the State Supreme Court, as the State Supreme Court was not required to apply that as a jurisdictional bar in the sense that the noncompliance automatically deprived the State Supreme Court of the power to adjudicate the matter before it. Wauconda Fire Prot. Dist. v. Stonewall Orchards, LLP, 214 Ill. 2d 417, 293 Ill. Dec. 246, 828 N.E.2d 216, 2005 Ill. LEXIS 318 (2005).

Appellate court could not interpret the rule requiring supersedeas bonds other than in accordance with the plain language used by the Supreme Court of Illinois; therefore, the trial court did not have discretion to modify the amount of such a bond in a manner that would fail to assure the successful plaintiff class of the judgment awarded, and the application of the rule in this manner did not endanger the constitutional right to appeal, but simply provided that if a bond were not provided, the liability to pay the judgment would not be stayed. Price v. Philip Morris, Inc., 341 Ill. App. 3d 941, 276 Ill. Dec. 183, 793 N.E.2d 942, 2003 Ill. App. LEXIS 913 (5 Dist. 2003).

A circuit court rule that required all attorneys attempting to appear on behalf of their clients or file a complaint on behalf of their clients in criminal, quasi-criminal, traffic, personal injury and dissolution of marriage actions to first file an affidavit of compliance in an attempt to enforce compliance with Rules 7.3 and 1.8 of the Rules of Professional Conduct improperly intruded into the exclusive rulemaking and disciplinary authority invested in the Supreme Court and imposed a greater burden on attorneys therefore the rule was impermissible. People ex rel. Brazen v. Finley, 119 Ill. 2d 485, 116 Ill. Dec. 683, 519 N.E.2d 898 (1988).

Although circuit courts share some authority with the Supreme Court to make rules, circuit court rules are subject to review by the Supreme Court and may not conflict with Supreme Court rules. People ex rel. Brazen v. Finley, 119 Ill. 2d 485, 116 Ill. Dec. 683, 519 N.E.2d 898 (1988).

The fact that general administrative and supervisory authority over all courts is vested in the Supreme Court and shall be exercised by the Chief Justice in accordance with its rules does not alter the powers of the judicial and legislative branches with respect to rulemaking, but the words "and supervisory" were added to this section in order to strengthen the concept of a centrally supervised court system. People v. Brumfield, 51 Ill. App. 3d 637, 9 Ill. Dec. 619, 366 N.E.2d 1130 (3 Dist. 1977).

It is only with respect to direct appeals from the circuit court to the Supreme Court that Article VI authorizes legislative revision of rules adopted by the Supreme Court; in that instance, the limitation upon the rule-making power of the court is subject to laws enacted by the legislature. People ex rel. Stamos v. Jones, 40 Ill. 2d 62, 237 N.E.2d 495 (1968).

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Supervisory Authority

Argument was foreclosed about whether the appellate court had jurisdiction to hear the injured party and spouse's appeal of the trial court's order that they pay certain costs regarding their voluntarily dismissed complaint prior to the refiling of it. The state supreme court under Ill. Const. art. VI, § 16 had supervisory authority over all of the courts beneath it and pursuant to that authority vested the appellate court with jurisdiction to consider the merits. Jones v. Chi. Cycle Ctr., 391 Ill. App. 3d 101, 330 Ill. Dec. 298, 908 N.E.2d 150, 2009 Ill. App. LEXIS 265 (1 Dist. 2009).

Intermediate appellate court's order concluding that there was no statutory or precedential basis for remanding a matter to a trial court, but deciding to remand anyway amounted to an unauthorized use of supervisory power under Ill. Sup. Ct. R. 615(b) and Ill. Const. art. VI, § 16. People v. Whitfield, Ill. 2d , Ill. Dec. , N.E.2d , 2007 Ill. LEXIS 1706 (Dec. 13, 2007).

Although an estate's executor had lost her legal representation and lacked the means for securing replacement counsel, leaving the account to be considered free of meaningful challenge, pursuant to the supervisory authority of the Supreme Court of Illinois, the Court had jurisdiction to evaluate a judgment levied against the executor even where no challenge was raised. United States v. Printy (In re Estate of Funk), 221 Ill. 2d 30, 302 Ill. Dec. 574, 849 N.E.2d 366, 2006 Ill. LEXIS 615 (2006).

Although the inmate through counsel failed to file a petition for rehearing in the appellate court within 21 days after the judgment, as required by 155 Ill. 2d R. 367(a), it was clear that the inmate was effectively deprived of the counsel the inmate was promised on appeal pursuant to 134 Ill. 2d R. 651(c) because the inmate received no assistance. Pursuant to its supervisory authority over the Illinois courts (Ill. Const. Art. VI, § 16), the state supreme court reinstated the inmate's appeal because of the tension between the general rules governing petitions for rehearing and the rule providing counsel in postconviction proceedings. People v. Lyles, 217 Ill. 2d 210, 298 Ill. Dec. 752, 840 N.E.2d 1187, 2005 Ill. LEXIS 1627 (2005).

The Illinois Appellate Court does not possess the supervisory powers enjoyed by the Illinois Supreme Court, Ill. Const. Art. VI, § 16, and cannot, therefore, reach postconviction claims not raised in the initial petition in the manner that the Supreme Court did in cases such as Davis. People v. Jones, 213 Ill. 2d 498, 290 Ill. Dec. 519, 821 N.E.2d 1093, 2004 Ill. LEXIS 1667 (2004).

Judge's claim seeking a judicial salary for the time period that she was prevented from taking her office by virtue of the Illinois Supreme Court's invocation of its constitutional powers to exercise supervisory authority over all courts, during which time it nullified the Appellate Court's effective creation of dual judicial offices in a single vacancy after another judge was elected and serving but it was shown that claimant actually won the primary election and was sworn in after another general election, was denied pursuant to Ill. Const. Art. VI, § 10. The judge was effectively seeking to have the Court of claims overrule the Supreme Court, which would have been an unconstitutional intrusion by one branch of government upon another. McDunn v. State, 52 Ill. Ct. Cl. 310, 1999 Ill. Ct. Cl. LEXIS 42 (Ct. Cl. 1999).

Supervisory authority gave Supreme Court jurisdiction to hear election contest case. McDunn v. Williams, 156 Ill. 2d 288, 189 Ill. Dec. 417, 620 N.E.2d 385 (1993).

Supreme Court's authority is not limited by any rules or means for its exercise. McDunn v. Williams, 156 Ill. 2d 288, 189 Ill. Dec. 417, 620 N.E.2d 385 (1993).

Appellate Court was without power sua sponte to grant defendant leave to file a late appeal directly with the Appellate Court unless so directed by the Supreme Court in the exercise of its supervisory powers, as the Appellate Court had no jurisdiction over the matter. People v. Baskin,

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213 Ill. App. 3d 477, 157 Ill. Dec. 603, 572 N.E.2d 1067 (1 Dist.), appeal denied, 141 Ill. 2d 546, 162 Ill. Dec. 494, 580 N.E.2d 120 (1991).

A case involving the state's appeal of a circuit court ruling that a substitution of judges statute was unconstitutional was appropriate one for the exercise of the supervisory authority of the Supreme Court. People v. Williams, 124 Ill. 2d 300, 124 Ill. Dec. 577, 529 N.E.2d 558 (1988).

The appellate court has no authority to countermand a supervisory order of the Supreme Court. Phillips Petro. Co. v. Norfolk & W. Ry., 96 Ill. App. 3d 1093, 52 Ill. Dec. 457, 422 N.E.2d 138 (4 Dist. 1981).

An order of the trial court which denied the state's motion to withdraw its general appearance in a lawsuit in which it had been joined as a defendant and for leave to file a special and limited appearance for the purpose of objecting to the jurisdiction of the trial court was not a final and appealable order, despite the trial court's finding under subsection (a) of Rule 304, Supreme Court Rules, that there was no just reason for delaying enforcement or appeal, but notwithstanding the interlocutory nature of the order, it was an appropriate occasion for the exercise of the Supreme Court's supervisory authority. Crane Paper Stock Co. v. Chicago & N.W. Ry., 63 Ill. 2d 61, 344 N.E.2d 461 (1976).

LEGAL PERIODICALS

For article, "Frivolous Pleadings in Illinois: Observations on the 1985 Medical Malpractice Reforms," see 74 Ill. B.J. 238 (1986).

For article, "Recovering Costs of the Prosecution in Criminal Cases," see 69 Ill. B.J. 686 (1981).

RESEARCH REFERENCES

Laws governing judicial recusal or disqualification in state proceeding as violating federal or state constitution. 91 ALR5th 437.

Practice Guides and Treatises.

Civil Appellate Practice: State and Federal (Illinois) § 29.6 Supervisory Authority (IICLE).

Section 17. Judicial Conference.

The Supreme Court shall provide by rule for an annual judicial conference to consider the work of the courts and to suggest improvements in the administration of justice and shall report thereon annually in writing to the General Assembly not later than January 31.

(Source: Illinois Constitution.)

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Section 18. Clerks of Courts.

(a) The Supreme Court and the Appellate Court Judges of each Judicial District, respectively, shall appoint a clerk and other non-judicial officers for their Court or District.

(b) The General Assembly shall provide by law for the election, or for the appointment by Circuit Judges, of clerks and other non-judicial officers of the Circuit Courts and for their terms of office and removal for cause.

(c) The salaries of clerks and other non-judicial officers shall be as provided by law.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Circuit Court Clerks
County Clerk
Deputy Circuit Clerks

Circuit Court Clerks

Since the clerk of the circuit court is defined by Illinois law as being an employee of the state and functions as such in that she is an employee of the state judiciary not limited by county personnel rules, a damage suit against her in her official capacity must be considered a suit against the state. McMurry v. Sheahan, 927 F. Supp. 1082 (N.D. Ill. 1996).

The circuit clerk is a nonjudicial officer of the judicial branch of government. County of Kane v. Carlson, 116 Ill. 2d 186, 107 Ill. Dec. 569, 507 N.E.2d 482 (1987).

In a suit brought by criminal defendants seeking reimbursement of fine money and costs they paid to the clerk of the county circuit court after they had been convicted under a statute later held unconstitutional, the clerks of the circuit courts in this state were held not to be county officials, but were nonjudicial members of the judicial branch of state government such that the circuit clerk was not an agent of the county, and the county was not liable for fine money paid to the circuit clerk but never received in its treasury. Drury v. County of McLean, 89 Ill. 2d 417, 60 Ill. Dec. 624, 433 N.E.2d 666 (1982).

County Clerk

The failure of the 1970 Illinois Constitution to specifically designate the clerk of the circuit court as a county officer does not affect the validity of the succession and election provisions of 705 ILCS

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105/1 and 10 ILCS 5/2A-15. Johnson v. State Electoral Bd., 53 Ill. 2d 256, 290 N.E.2d 886 (1972).

Deputy Circuit Clerks

Deputy circuit clerks are nonjudicial officers within the meaning of this section of the constitution, and the requirement that the salaries be as provided by law means that they are to be set by the General Assembly via the lawmaking process. County of Kane v. Carlson, 140 Ill. App. 3d 814, 95 Ill. Dec. 246, 489 N.E.2d 467 (2 Dist. 1986).

Section 19. State's Attorneys - Selection, Salary.

A State's Attorney shall be elected in each county in 1972 and every fourth year thereafter for a four year term. One State's Attorney may be elected to serve two or more counties if the governing boards of such counties so provide and a majority of the electors of each county voting on the issue approve. A person shall not be eligible for the office of State's Attorney unless he is a United States citizen and a licensed attorney-at-law of this State. His salary shall be provided by law.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Municip L § 6:11, § 6:23.

CASE NOTES

Analysis

Authorized Agent of State
Commencement of Prosecutions
County Liability
Election
Jurisdiction
Non-Binding Plea Agreement

Authorized Agent of State

Prisoner's petition for habeas corpus relief under 28 U.S.C.S. § 2254 was denied because under Illinois law, the State's Attorney was a constitutional officer and was part of the executive branch of the State government pursuant to Ill. Const., Art. VI, § 19; 55 ILCS 5/3-9005; therefore, his claim that he was deprived of due process and equal protection because the assistant state's attorneys were not authorized agents of the state was ludicrous and wholly without merit. United States ex rel. Burton v. Mote, F. Supp. 2d , 2003 U.S. Dist. LEXIS 23117 (N.D. Ill. Dec. 22, 2003).

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Commencement of Prosecutions

Although the Illinois Constitution provided for the election of a State's Attorney in each county, and statutory law enumerated the powers and duties of a State's Attorney, a trial court had the power to appoint a special prosecutor in case where a state's attorney had a personal interest in a proceeding and the trial court abused its discretion in not appointing a special prosecutor on defendant's motion where the assistant state's attorney was the complainant and sole witness against defendant, and, thus, the appointment of a special prosecutor was necessary to avoid the appearance of impropriety. People v. Lang, 346 Ill. App. 3d 677, 282 Ill. Dec. 232, 805 N.E.2d 1249, 2004 Ill. App. LEXIS 220 (2 Dist. 2004).

The determination to commence a felony prosecution by way of information or indictment as permitted by the 1975 amendment (see now 725 ILCS 5/111-2(a)) involved the exercise of executive powers; The amendment, consequently, did not delegate a legislative power to the State's Attorney. People v. Vaughn, 49 Ill. App. 3d 37, 6 Ill. Dec. 932, 363 N.E.2d 879 (5 Dist. 1977).

County Liability

County is not vicariously liable for the negligent actions of an assistant State's Attorney under the respondeat superior doctrine because the State's Attorney is a state officer whose office was constitutionally created under the judiciary article. Biggerstaff v. Moran, 284 Ill. App. 3d 196, 219 Ill. Dec. 614, 671 N.E.2d 781 (1 Dist. 1996).

Where the State's Attorneys were officers of the judicial branch of government, and were state officials, not county officials, who were elected on a countywide basis, accordingly, the county could not be held responsible for the allegedly unconstitutional acts of a witness for a criminal trial. Stokes v. City of Chicago, 660 F. Supp. 1459 (N.D. Ill. 1987).

Election

Statute authorizing the appointment of special State's Attorneys (see now 15 ILCS 205/6) did not violate former section 22 of Article VI of the 1870 Constitution (see now this section), which provided that the State's attorneys shall be elected. Tearney v. Harding, 335 Ill. 123, 166 N.E. 526 (1929).

Jurisdiction

Where the injured party filed a tort action against the State's Attorney of Cook County for conduct by the State's Attorney during the injured party's sentencing, the complaint was properly dismissed pursuant to 735 ILCS 5/2-619. Because the conduct occurred within the State's Attorney's scope of employment and the State's Attorney was a state employee under Ill. Const. Art. VI, § 19, the Illinois Court of Claims had exclusive jurisdiction over the matter under 705 ILCS 505/8(d). Price v. State, 354 Ill. App. 3d 90, 289 Ill. Dec. 596, 820 N.E.2d 104, 2004 Ill. App. LEXIS 1364 (1 Dist. 2004).

Non-Binding Plea Agreement

A State's Attorney in Illinois, whose jurisdiction includes the county in which the crime was committed, was not prohibited from prosecuting a defendant when a State's Attorney from another Illinois county promised the defendant that he would not be prosecuted. Staten v. Neal,

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880 F.2d 962 (7th Cir. 1989).

OPINIONS OF ATTORNEY GENERAL

Temporary Suspension of Professional License

Although the suspension from the practice of law of State's Attorney will not cause a vacancy in the office for the remainder of her term, it will prevent her Assistant State's Attorneys from exercising the powers that they derive from her; to avoid the problems presented by this situation, the circuit court may appoint one or more Special State's Attorneys to perform the duties of the State's Attorney during the period of her suspension. 2004 Op. Atty. Gen. (04-001).

Suspension from the practice of law of State's Attorney based on her violation of the Rules of Professional Conduct precludes her from practicing law or executing the duties of the office of State's Attorney for the period of suspension. 2004 Op. Atty. Gen. (04-001).

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ARTICLE VII
LOCAL GOVERNMENT

Section 1. Municipalities and Units of Local Government.

"Municipalities" means cities, villages and incorporated towns. "Units of local government" means counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Labor § 10:3.

See Illinois Jur, Municip L § 1:1, § 1:6, § 1:7, § 1:12, § 1:14, § 2:47.

CASE NOTES

Analysis

Construction
Delegation of Power
- In General
Levels of Government
- Designated
Local Government
- Due Process
- Limited Authority
Public Purpose
Special Districts
- Fire Protection Districts
- Municipal Authorities
Townships
- Limited Authority
Unit
- Defined
- Distinguished

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- Shown

Construction

Whether the county was a "municipality" as that term was used in the Fire Protection District Act, 70 ILCS 705/11, had to be determined by referencing the Statute on Statutes, 5 ILCS 70/1, which was the primary statute for interpreting statutes; since that statute adopted the definition of "municipalities" set forth in the Illinois Constitution, Ill. Const. Art. VII, § 1, that "municipalities" meant cities, villages, and incorporated towns, the term "municipalities" did not include "county," which meant the county could not enforce its fire prevention code against the golf course operator pursuant to the Act. Wauconda Fire Prot. Dist. v. Stonewall Orchards, LLP, 214 Ill. 2d 417, 293 Ill. Dec. 246, 828 N.E.2d 216, 2005 Ill. LEXIS 318 (2005).

The separate uniformity provision of Ill. Const. (1970), Art. IX, § 4 predominates over the special service area power of Article VII of the Illinois Constitution. Grais v. City of Chicago, 151 Ill. 2d 197, 176 Ill. Dec. 47, 601 N.E.2d 745 (1992).

Delegation of Power

- In General

Village of Glenwood, Illinois is a municipality, and it is not an administrative agency that was created by or pursuant to a statute with the power to promulgate rules or regulations. People v. Williams, 393 Ill. App. 3d 77, 331 Ill. Dec. 516, 910 N.E.2d 1272, 2009 Ill. App. LEXIS 593 (1 Dist. 2009).

Levels of Government

- Designated

As a school district is not a "unit of local government" under the Illinois Constitution, pursuant to 50 ILCS 105/1 of the Public Officer Prohibited Activities Act, defendant could not hold positions as both a county board member and school board member, even if the requisite lack of a contractual relationship was found. People v. Wilson, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 393 (3 Dist. Apr. 25, 2005).

The framers of the 1970 Illinois Constitution intended to recognize only three levels of government: the state and its agencies, municipalities and units of local government, and school districts. Chicago Transit Auth. v. Danaher, 40 Ill. App. 3d 913, 353 N.E.2d 97 (1 Dist. 1976).

Local Government

County clerk did not qualify as a unit of local government per the definition in 30 ILCS 805/3, nor under this section, to have standing to bring suit challenging abolition of one punch straight party voting under the State Mandates Act (30 ILCS 805/1 et seq.) Orr v. Edgar, 298 Ill. App. 3d 432, 232 Ill. Dec. 469, 698 N.E.2d 560 (1 Dist. 1998), appeal denied, 179 Ill. 2d 589, 235 Ill. Dec. 567, 705 N.E.2d 440 (1998).

- Due Process

Restraints against state action under the fourteenth amendment to the Constitution of the United States do not apply against a state in its relationship to subsidiary units of local government and

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municipalities. People v. Valentine, 50 Ill. App. 3d 447, 8 Ill. Dec. 696, 365 N.E.2d 1082 (5 Dist. 1977).

- Limited Authority

In the performance of governmental functions, the state has the power to control units of local government through legislation without regard to considerations of due process or equal protection of the laws both as to substance and procedure, and it may require a city to perform acts through its officers and employees against its corporate will. People v. Valentine, 50 Ill. App. 3d 447, 8 Ill. Dec. 696, 365 N.E.2d 1082 (5 Dist. 1977).

Public Purpose

Both 305 ILCS 5/10-1 and 305 ILCS 5/10-10 serve a public purpose by advancing the welfare of children and this public service is served by the extension of these services to all children, regardless of the financial circumstances of their custodial parents. In re Lappe, 176 Ill. 2d 414, 223 Ill. Dec. 647, 680 N.E.2d 380 (1997).

City was civilly liable to an administrator for damages in a child's death due to the negligence of an employee in performing the employee's street sweeping duty because the employee was performing a corporate, not a governmental, function of the city; while the discharge of the city's duty to cleanse the streets under the Illinois Cities and Villages Act art. 5, § 1(12) incidentally benefitted the public health, it was not a public function. Roumbos v. Chicago, 332 Ill. 70, 163 N.E. 361, 1928 Ill. LEXIS 1052 (1928).

Special Districts

- Fire Protection Districts

Under Ill. Const. (1970), Art. VII, § 1, a county was not considered a municipality; thus, a fire protection district had the power to enact and enforce fire protection ordinances in the unincorporated portions of a county, even if the county also had a fire prevention code and where the ordinances of both entities were not in conflict, compliance with both was required. Wauconda Fire Prot. Dist. v. Stonewall Orchards, 343 Ill. App. 3d 374, 278 Ill. Dec. 212, 797 N.E.2d 1130, 2003 Ill. App. LEXIS 1248 (2 Dist. 2003), aff'd, 214 Ill. 2d 417, 293 Ill. Dec. 246, 828 N.E.2d 216 (2005).

Although the statute creating fire protection districts (70 ILCS 705/1) refers to the districts as "municipal corporations," that legislative designation did not prohibit the Illinois Commerce Commission and defendant water utility from revising the utility's rate structure in such a manner that the fire protection district was considered, for rate-making purposes, a "private fire protection district." Edge-Scott Fire Protection Dist. v. Illinois Commerce Comm'n, 48 Ill. App. 3d 636, 6 Ill. Dec. 324, 362 N.E.2d 1146 (4 Dist. 1977).

- Municipal Authorities

Under the constitutional definition of "units of local government," the Chicago Housing Authority and Chicago Transit Authority are "special districts," and therefore do not have to pay filing fees to the clerk of the circuit court since they qualify for the exception under Ill. Rev. Stat., ch. 53, para. 31.1 (1973). Chicago Transit Auth. v. Danaher, 40 Ill. App. 3d 913, 353 N.E.2d 97 (1 Dist. 1976).

Townships

- Limited Authority

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Townships, like all other non-home rule units, have no inherent powers, but only those granted to them by the constitution or authorized by statute. Diversified Computer Servs., Inc. v. Town of York, 104 Ill. App. 3d 852, 60 Ill. Dec. 684, 433 N.E.2d 726 (2 Dist. 1982).

Unit

- Defined

Because, under Ill. Const. Art. VII, § 1, a school district is not a "unit of local government," 50 ILCS 105/1 did not allow defendant to hold a position as both county board member and school board member; however, because defendant's election to the school board was void, he was required to be removed from that position, rather than from his position on the county board. People v. Wilson, 357 Ill. App. 3d 204, 293 Ill. Dec. 716, 828 N.E.2d 1214, 2005 Ill. App. LEXIS 578 (3 Dist. 2005).

Illinois Antitrust Act did not apply to Airport Authority because Authority was a local unit of government, as defined in Ill. Const. art. VII, § 1; the Authority was further immune from liability under the State action antitrust immunity doctrine because a legislative act authorized the Authority to contract with parties, Ill. Rev. Stat. 1989, ch. 15 1/2, par. 68.8-03 (now 70 ILCS 5/8.03), and the anticompetitive effects of allowing the Authority to contract with parties was a foreseeable result of the legislative authorization Du Page Aviation Corp. v. Du Page Airport Auth., 229 Ill. App. 3d 793, 171 Ill. Dec. 814, 594 N.E.2d 1334, 1992 Ill. App. LEXIS 887 (1 Dist. 1992).

To determine if entities were a single unit of local government, the Constitution has a two prong test: (1) an adequate statutory designation; and (2) the exercise of limited governmental powers. District 925, Service Employees Int'l Union v. Illinois State Labor Relations Bd., 168 Ill. App. 3d 1026, 119 Ill. Dec. 686, 523 N.E.2d 154 (1 Dist. 1988).

- Distinguished

Ill. Const. Art. VII, § 1 did not establish the county police or jail as legal entities for purposes of Fed. R. Civ. P. 17(b), and the city police department was not a suable entity. Wemple v. Ill. State Police, F. Supp. 2d , 2005 U.S. Dist. LEXIS 18189 (C.D. Ill. Aug. 8, 2005).

As a school district is not a "unit of local government," 50 ILCS 105/1 of the Public Officer Prohibited Activities Act, 50 ILCS 105/0.01 et seq., would not allow defendant to hold a position as both county board member and school board member, even if the requisite lack of a contractual relationship was found. People v. Wilson, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 393 (3 Dist. Apr. 25, 2005).

A township was a separate and distinct unit from a highway district; to lump employees of a township highway department in with the township on the concept that it is a "single unit" of local government employing with township and the public aid commissioner 35 employees was error. District 925, Service Employees Int'l Union v. Illinois State Labor Relations Bd., 168 Ill. App. 3d 1026, 119 Ill. Dec. 686, 523 N.E.2d 154 (1 Dist. 1988).

- Shown

The Personnel Board was clearly an administrative unit created pursuant to a statute, specifically the Park Act, however, the Administrative Procedure Act (5 ILCS 100/1-1 et seq.) did not apply to it because it was a unit of local government and therefore specifically exempted from its provisions. Schmeier v. Chicago Park Dist., 301 Ill. App. 3d 17, 234 Ill. Dec. 535, 703 N.E.2d 396 (1 Dist. 1998).

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LEGAL PERIODICALS

For article, "Questions and Answers About Intergovernmental Agreements," see 85 Ill. B.J. 85 (1997).

For comment, "The Scope of the Public Duty/ Special Duty Doctrine in Illinois: Municipal Liability for Failure to Provide Police Protection," see 10 N. Ill. U.L. Rev. 269 (1990).

RESEARCH REFERENCES

Constitutionality of voter participation provisions for primary elections. 120 ALR5th 125.

Section 2. County Territory, Boundaries and Seats.

(a) The General Assembly shall provide by law for the formation, consolidation, merger, division, and dissolution of counties, and for the transfer of territory between counties.

(b) County boundaries shall not be changed unless approved by referendum in each county affected.

(c) County seats shall not be changed unless approved by three-fifths of those voting on the question in a county-wide referendum.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Municip L § 2:8, § 2:9, § 11:1.

CASE NOTES

Analysis

Boundary Changes
- Public Referendum
Taxation
- Motor Fuel Classification

Boundary Changes

- Public Referendum

The term "divided" in Ill. Const. (1970), Art. VII, § 5, was not meant to encompass situations in which township boundaries are changed without an increase or decrease in the number of

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townships, as the term logically refers only to those situations in which one or more townships are separated in such a fashion as to create additional townships that did not previously exist; therefore, simple boundary changes between townships need not be preceded by public referenda in the affected townships. Springfield Lakeshore Imp. Ass'n v. City of Springfield, 62 Ill. 2d 173, 340 N.E.2d 289 (1975).

Taxation

- Motor Fuel Classification

The classification of motor fuel on the basis of lead content for tax purposes was presumed constitutional since there was a reasonable basis for the classifications and each member of the class was treated uniformly. Illinois Gasoline Dealers Ass'n v. City of Chicago, 141 Ill. App. 3d 976, 96 Ill. Dec. 298, 491 N.E.2d 112 (1 Dist. 1986).

Section 3. County Boards.

(a) A county board shall be elected in each county. The number of members of the county board shall be fixed by ordinance in each county within limitations provided by law.

(b) The General Assembly by law shall provide methods available to all counties for the election of county board members. No county, other than Cook County, may change its method of electing board members except as approved by county-wide referendum.

(c) Members of the Cook County Board shall be elected from two districts, Chicago and that part of Cook County outside Chicago, unless (1) a different method of election is approved by a majority of votes cast in each of the two districts in a county-wide referendum or (2) the Cook County Board by ordinance divides the county into single member districts from which members of the County Board resident in each district are elected. If a different method of election is adopted pursuant to option (1) the method of election may thereafter be altered only pursuant to option (2) or by county-wide referendum. A different method of election may be adopted pursuant to option (2) only once and the method of election may thereafter be altered only by county-wide referendum.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Municip L § 6:15, § 6:18, § 10:8.

CASE NOTES

Analysis
Assessor

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- Duty Assigned
Board Members
- Change in Authority
- Number
- Representation Disparity
Cook County
- Powers of Board
Districts
- Compactness
Referendum
- Invalid
- Limited Scope

Assessor

- Duty Assigned

The legislature has full power to designate what officer or officers shall make tax assessments; it is not restricted in the exercise of such power, by this section, to any particular body, officer, or officers. People ex rel. Green v. Board of Comm'rs, 176 Ill. 576, 52 N.E. 334 (1898).

Board Members

- Change in Authority

A shift of power to the city board members effected by an ordinance to appropriate substantial amounts of money without the consent of the suburban board members did not constitute an unconstitutional change in the form of government of the county. Allen v. County of Cook, 65 Ill. 2d 281, 2 Ill. Dec. 291, 357 N.E.2d 458 (1976).

- Number

The referendum power to change the method of election of county board members as reserved by the electorate under this section does not include the power to fix the number of county board members. League of Women Voters v. County of Peoria, 121 Ill. 2d 236, 117 Ill. Dec. 275, 520 N.E.2d 626 (1987).

The office of county board member cannot be created or eliminated by referendum because it was both created and mandated by this section, which requires that a "county board shall be elected in each county." League of Women Voters v. County of Peoria, 121 Ill. 2d 236, 117 Ill. Dec. 275, 520 N.E.2d 626 (1987).

- Representation Disparity

Where the numerical disparity of the board of commissioners membership gave the city unjustified superiority over the county in board representation, and the disparity was constitutionally significant, plaintiffs were entitled to reapportionment of the board. Sutton v. Dunne, 365 F. Supp. 483 (N.D. Ill. 1973).

Cook County

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- Powers of Board

General provision of the Constitution vesting the management of affairs of Cook county in a board of commissions does not confer unrestricted power in the conduct, management, or supervision of the several county officers; the judgement of the court, so far as it required payment in full for the fiscal year the salary of a deputy when that salary was once fixed by the board, was not a violation of the constitutional provision concerning the management of county affairs. People ex rel. Callahan v. Whealan, 356 Ill. 328, 190 N.E. 698 (1934).

Districts

- Compactness

Compact and contiguous legislative districts while an end to be sought in the redistricting process, is clearly subservient to the dominant requirement of equality of population among legislative districts. People ex rel. Scott v. Grivetti, 50 Ill. 2d 156, 277 N.E.2d 881 (1971).

Referendum

- Invalid

The invalid portion of a referendum, which purported to change the number of board members, could not be severed from the valid portion; therefore, no portion of the referendum could be given binding legal effect. League of Women Voters v. County of Peoria, 121 Ill. 2d 236, 117 Ill. Dec. 275, 520 N.E.2d 626 (1987).

- Limited Scope

The only role of the electorate in a referendum under this section is to choose between at-large, single-member or multi-member district elections or any other appropriate method of election. League of Women Voters v. County of Peoria, 121 Ill. 2d 236, 117 Ill. Dec. 275, 520 N.E.2d 626 (1987).

OPINIONS OF ATTORNEY GENERAL

At-Large Elections

- Defined

County board members may not be elected at large from districts, but must, in accordance with the Constitution and the Counties Code, be elected either at large or from within districts. 1991 Op. Atty. Gen. (91-004).

LEGAL PERIODICALS

For article, "Citizen Remedies Against Errant Illinois Public Servants," see 11 S. Ill. U.L.J. 285 (1987).

Section 4. County Officers.

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(a) Any county may elect a chief executive officer as provided by law. He shall have those duties and powers provided by law and those provided by county ordinance.

(b) The President of the Cook County Board shall be elected from the County at large and shall be the chief executive officer of the County. If authorized by county ordinance, a person seeking election as President of the Cook County Board may also seek election as a member of the Board.

(c) Each county shall elect a sheriff, county clerk and treasurer and may elect or appoint a coroner, recorder, assessor, auditor and such other officers as provided by law or by county ordinance. Except as changed pursuant to this Section, elected county officers shall be elected for terms of four years at general elections as provided by law. Any office may be created or eliminated and the terms of office and manner of selection changed by county-wide referendum. Offices other than sheriff, county clerk and treasurer may be eliminated and the terms of office and manner of selection changed by law. Offices other than sheriff, county clerk, treasurer, coroner, recorder, assessor and auditor may be eliminated and the terms of office and manner of selection changed by county ordinance.

(d) County officers shall have those duties, powers and functions provided by law and those provided by county ordinance. County officers shall have the duties, powers or functions derived from common law or historical precedent unless altered by law or county ordinance.

(e) The county treasurer or the person designated to perform his functions may act as treasurer of any unit of local government and any school district in his county when requested by any such unit or school district and shall so act when required to do so by law.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Municip L § 6:6, § 6:7, § 6:8, § 6:12, § 6:14, § 6:18, § 6:19, § 6:26, § 6:29, § 10:7.

CASE NOTES

Analysis

Assessor
- Removal
- Selection

Board of Appeals
- Alteration

Chief Executive Officer

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- Duties
Constitutional Officers
- Duties
Cook County
- Liability for Sheriff's Negligence
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Recorder of Deeds
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Terms of Office
Title of Office
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Treasurer
- Additional Duties
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- Production of Records
Vacancies
- Authority to Fill

Assessor

- Removal

If selection of the county assessor is by appointment, then the legislature can determine the length of the term of office; it is also within the authority of the legislature to provide for the manner of and grounds for removal of an assessor. Macaluso v. West, 40 Ill. App. 3d 392, 352 N.E.2d 382 (5 Dist. 1976).

Removal of a county assessor from office is provided for under sections 322 through 324 of the Revenue Act (see now 35 ILCS 200/25-15 to 35 ILCS 200/25-25). Macaluso v. West, 40 Ill. App. 3d 392, 352 N.E.2d 382 (5 Dist. 1976).

Members of the county board were without authority to suspend or remove county assessor from office. Macaluso v. West, 40 Ill. App. 3d 392, 352 N.E.2d 382 (5 Dist. 1976).

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- Selection

Although the legislature designed the office of supervisor of assessments in the manner it found fit (35 ILCS 200/3-10 through 35 ILCS 200/3-25), the language of subsection (c) of this article, allowing local voters to alter the manner of selection of county officers, is a clear limitation on the office, as provided for by the terms of Article IX, paragraph 1, itself (Ill. Const. (1970), Art. VII, and Art. IX, sec. 1). Cook v. Pierce, 122 Ill. App. 3d 1068, 78 Ill. Dec. 438, 462 N.E.2d 557 (5 Dist. 1984).

Board of Appeals

- Alteration

Absent authority under its home rule power, the defendant county was not authorized to enact the ordinance altering its board of appeals. Chicago Bar Ass'n v. County of Cook, 102 Ill. 2d 438, 81 Ill. Dec. 709, 467 N.E.2d 580 (1984).

Chief Executive Officer

- Duties

The County Executive is elected at large by the voters and is responsible for all managerial and administrative functions within the county; this form of government is constitutionally based and statutorily controlled. County of Will v. Illinois State Labor Relations Bd., 220 Ill. App. 3d 62, 162 Ill. Dec. 704, 580 N.E.2d 887 (3 Dist. 1991).

Constitutional Officers

- Duties

Duties of a constitutional officer may be added to by statutes but none, as they were known at common law, may be taken away. People ex rel. Walsh v. Board of Comm'rs, 397 Ill. 293, 74 N.E.2d 503 (1947).

Cook County

- Liability for Sheriff's Negligence

The sheriff is a county officer and, as such, is not in an employment relationship with the County of Cook; therefore, the county may not be held vicariously liable for the sheriff's alleged negligent conduct as the county is given no authority to control the office of the sheriff. Moy v. County of Cook, 159 Ill. 2d 519, 203 Ill. Dec. 776, 640 N.E.2d 926 (1994).

- Transfer of Powers

The Cook County Board, acting pursuant to its home-rule power had authority to transfer powers, duties and functions among county officers (even to the extent that such exercise conflicts with a statute enacted prior to the adoption of the 1970 Constitution) unless otherwise limited by legislative action or a positive constitutional restriction. People ex rel. Hanrahan v. Beck, 54 Ill. 2d 561, 301 N.E.2d 281 (1973).

County Clerks

- Ability to be Sued

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A county clerk's office is a suable entity, notwithstanding the assertion that it does not have a legal existence separate from that of the county, as county clerk is an independently elected constitutional officer. Greer v. Orr, F. Supp. 2d , 2001 U.S. Dist. LEXIS 12404 (N.D. Ill. Aug. 15, 2001).

County Treasurer

- Authority of Legislature

Under Ill. Const. (1970), Art. II, § 8, the legislature was without power to compel a treasurer to put the public funds to profitable employment or to impose upon him any hazard whatever. People ex rel. Nelson v. West Englewood Trust & Sav. Bank, 353 Ill. 451, 187 N.E. 525 (1933).

Municipal Courts

- Creation

The only limitations upon the power to create municipal courts are those imposed by this section. United Biscuit Co. of Am. v. Voss Truck Lines, 407 Ill. 488, 95 N.E.2d 439 (1950).

Recorder of Deeds

- Duties

The recorder of deeds of a county is a county officer named in the Constitution, and is required by law, to exercise an intelligent discretion in the performance of his official duties; although he is required by law to record certain instruments in a well-bound book, he is not required to do so by any particular method, so long as the method adopted is accurate and durable. People ex rel. Armknecht v. Haas, 311 Ill. 164, 142 N.E. 549 (1924).

Removal of Officers

- Procedure Provided

The state Constitution does not prohibit the legislature from making provision for the removal of an imbecile, corrupt, or dishonest officer. Donahue v. County of Will, 100 Ill. 94 (1881).

Selection of Officers

- Board Members

The power to change by referendum the terms of office and manner of selection of county officers also does not give the electorate authority to fix the number of county board members by referendum. League of Women Voters v. County of Peoria, 121 Ill. 2d 236, 117 Ill. Dec. 275, 520 N.E.2d 626 (1987).

- Procedure

The manner of selection of most county officials may be changed by a county wide referendum. Cook v. Pierce, 122 Ill. App. 3d 1068, 78 Ill. Dec. 438, 462 N.E.2d 557 (5 Dist. 1984).

The constitution distinguishes between county offices whose existence, manner of selection, and term of office may be affected by county ordinance and those which can be affected only by a

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county-wide referendum or by the general law of the state. People ex rel. Endicott v. Huddleston, 34 Ill. App. 3d 799, 340 N.E.2d 662 (5 Dist. 1975).

Sheriffs

District court committed reversible error in dismissing a former county jail detainee's 42 U.S.C. § 1983 suit for failure to join necessary party: (1) the detainee asserted constitutional violation claims against a county corrections officer in his individual capacity and Monell liability claims against a county sheriff in his official capacity; (2) pursuant to existing Seventh Circuit precedent, the county was necessary party with regard to the official capacity claims asserted against the sheriff because pursuant to 745 ILCS 10/9-102, it was required it pay any judgment entered against the sheriff in his official capacity; (3) instead of dismissing the suit for failure to join the county as an additional defendant, pursuant to Fed. R. Civ. P. 19(a)(2), the district court should have ordered the county to be joined as an additional defendant in the suit because the joinder of the county would not have destroyed its subject matter jurisdiction and it had personal jurisdiction over the county; (4) in his appellate brief, however, the detainee had waived his official capacity claims against the county sheriff, and he was bound by that waiver; and (5) therefore, on remand, the suit would proceed against the corrections officer only, and the county did not have to be joined as a required party under Fed. R. Civ. P. 19(a)(2) in the remanded action because the officer was employed by the sheriff, who pursuant to Ill. Const. Art. VII, § 4(c), was an independently elected county official and not a county employee, and because any judgment entered against the officer would be against him individually, without regard to any collateral sources to which he might turn to fund that judgment. Askew v. Sheriff of Cook County, 568 F.3d 632, 2009 U.S. App. LEXIS 10466 (7th Cir. 2009).

Seventh Circuit precedent, which holds that an Illinois county is a required party under Fed. R. Civ. P. 19 that must be joined as an additional defendant in a 42 U.S.C. § 1983 suit brought against a county sheriff in his official capacity, does not apply if the suit is brought against the sheriff or a sheriff's deputy in his or her individual capacity: (1) 745 ILCS 10/9-102 is what makes a county a required party in official capacity suits brought against county sheriffs, as § 10/9-102 requires counties to pay for any judgment entered against county sheriffs in their official capacities; (2) counties do not have similar liability with regard to sheriff's deputies because they can not be held vicariously liable for the actions of those deputies, as pursuant to Ill. Const. Art. VII, § 4(c) and 55 ILCS 5/3-6008, county sheriffs are independently elected county officers who are authorized to hire and appoint their own deputies; and (3) a judgment may be entered against a sheriff or a sheriff's deputy in his or her individual capacity, without regard to any collateral sources to which that defendant might turn to fund the judgment. Askew v. Sheriff of Cook County, 568 F.3d 632, 2009 U.S. App. LEXIS 10466 (7th Cir. 2009).

- Immunity Not Shown

County sheriff was not entitled to United States Constitution Eleventh Amendment immunity as a state official in executing an arrest warrant issued by a state court as his actions did not represent the purely ministerial enforcement of the orders of the state judiciary; they were not the fulfillment of a statutory, non-discretionary duty. Jackson v. Doria, 851 F. Supp. 288 (N.D. Ill. 1994).

- Independence from County

Sheriff, because of answering to the electorate and not to the county board, was a public entity for purposes of the Illinois Tort Immunity Act, 745 ILCS 10/1-206; therefore, the county was obliged to pay the amount due to former employees under a settlement of a lawsuit, alleging sex discrimination, against the sheriff in an official capacity. Carver v. Sheriff of La Salle County, 203 Ill. 2d 497, 272 Ill. Dec. 312, 787 N.E.2d 127, 2003 Ill. LEXIS 13 (2003).

As an elected officer whose authority derives solely from statute and common law, the sheriff is independent from the control of the county board; accordingly, an agency relationship does not

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exist between the county and the sheriff and the principle of respondeat superior cannot provide a basis for the county's liability in a wrongful death and civil rights action brought against the county for failure to properly train and supervise staff of county jail. Moy v. County of Cook, 244 Ill. App. 3d 1034, 185 Ill. Dec. 131, 614 N.E.2d 265 (1 Dist.), appeal allowed, 152 Ill. 2d 562, 190 Ill. Dec. 893, 622 N.E.2d 1210 (1993), aff'd, 159 Ill. 2d 519, 203 Ill. Dec. 776, 640 N.E.2d 926 (1994).

- Salary

Under a prior similar provision, a sheriff was only entitled to his salary as fixed by the county board of supervisors, and not an allowance for fees actually collected by him in criminal cases. Marion County v. Lear, 108 Ill. 343 (1884).

Terms of Office

An amendment which changed the time fixed in former Ill. Const. (1870), Art. X, § 8 (see now this section), for holding general elections for county judges, clerks, treasurers, and probate clerks and judges, and changed certain terms of office, was not unconstitutional, and did not require a special election to be held prior to the general election. People ex rel. Lynch v. Board of Supvrs., 100 Ill. 495 (1881).

Title of Office

- Possession

A county officer does not own the title to his office in the manner that men own property; but by his commission or induction into office he acquires the legal right to exercise its functions, and to receive the emoluments that he earns, until the end of his term or his resignation, removal, or its forfeiture. Donahue v. County of Will, 100 Ill. 94 (1881).

Treasurer

- Additional Duties

A statute making the county treasurer ex officio county collector does not create a separate or an additional office, nor did it impose upon the county treasurer any duties incompatible with the general duty of a treasurer to garner and safeguard public revenues. People ex rel. Nelson v. West Englewood Trust & Sav. Bank, 353 Ill. 451, 187 N.E. 525 (1933).

- Constitutional Officer

County treasurer, as trustee of the indemnity fund created by the Property Tax Code, 35 ILCS 200/21-295, had to pay six percent per annum post-judgment interest on an indemnity-fund judgment, as that rate rather than the nine percent per annum rate urged by the claimants was the proper rate under the Interest Act, 735 ILCS 5/2-1303. Although judgments under 735 ILCS 5/2-1303 generally drew nine percent interest, they drew six percent interest where the judgment debtor, such as the county treasurer in the present case, was a unit of local government as recognized by Ill. Const. art. VII, § 4(c),(d). Demos v. Pappas, Ill. App. 3d , 353 Ill. Dec. 671, 956 N.E.2d 533, 2011 Ill. App. LEXIS 873 (1 Dist. 2011).

The county treasurer is a constitutional officer. People ex rel. Nelson v. West Englewood Trust & Sav. Bank, 353 Ill. 451, 187 N.E. 525 (1933).

- Production of Records

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The county board can require the treasurer of a county to produce tax receipts through the central addressograph and tax machine division of the office of the superintendent of public service. Kreeger v. Zender, 332 Ill. 519, 164 N.E. 15 (1928).

Vacancies

- Authority to Fill

Public Act 79-118, a statutory amendment which purported to transfer appointment power, or the authority to fill vacancies, from county boards to county central committees of the political parties to which the incumbents belonged under former Ill. Rev. Stat., ch. 34, paras. 831, 832, 839 (see now 55 ILCS 5/2-3001, 5/2-3002 and 5/2-3009), was unconstitutional on its face and was an unlawful delegation of power. People ex rel. Rudman v. Rini, 64 Ill. 2d 321, 1 Ill. Dec. 4, 356 N.E.2d 4 (1976).

OPINIONS OF ATTORNEY GENERAL

Analysis

Constitutional Officers
- Duties
Sheriff
- Agencies under Office
- Authority
Superintendent of Highways
- Election

Constitutional Officers

- Duties

Although the manner of selecting the officeholders may be changed, subsection (c) of this section does not authorize the electorate to modify the statutory qualifications of the county superintendent of highways or the supervisor of assessments. 1984 Op. Atty. Gen. 59.

Sheriff

- Agencies under Office

A non-home-rule county does not possess the authority to create a police agency of the county which is independent of the sheriff. 1982 Op. Atty. Gen. 32.

- Authority

By granting the courts and the Prisoner Review Board the express statutory authority to order electronic detention, it must be assumed that the General Assembly did not intend by implication to grant that authority to sheriffs; moreover, since electronic home detention clearly did not exist at common law, sheriffs cannot rely upon their common law powers in this regard. 1997 Op. Atty. Gen. (97-006).

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The court, and not the sheriff, is the ultimate arbiter of whether electronic home detention is appropriate for county jail inmates. 1997 Op. Atty. Gen. (97-006).

A sheriff does not possess the unilateral authority to commit an inmate to electronic home detention. 1997 Op. Atty. Gen. (97-006).

Superintendent of Highways

- Election

Since the county board is the governing body of the county, the county board may initiate a referendum to change the office of superintendent of highways from an appointive position to an elective position; furthermore, pursuant to section 11(b) of Article VII of the 1970 Illinois Constitution, the question submitted at the referendum is adopted if it is approved by a simple majority of those voting on the question. 1984 Op. Atty. Gen. 59.

Section 5. Townships.

The General Assembly shall provide by law for the formation of townships in any county when approved by county-wide referendum. Townships may be consolidated or merged, and one or more townships may be dissolved or divided, when approved by referendum in each township affected. All townships in a county may be dissolved when approved by a referendum in the total area in which township officers are elected.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Municip L § 2:34, § 2:42, § 11:1, § 11:64, § 11:68.

CASE NOTES

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Boundary Changes
- Public Referendum
Form of Government
- Practicality

Boundary Changes

- Public Referendum

Where a city had annexed, and was in the process of preparing to annex, certain parcels of land located in a township, even though the boundaries of the city and of another township were coterminous, each such annexation by the city did not effect an annexation by the second

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township, and the result was not a division of township boundaries without referendum in violation of Section 5 of Article VII of the 1970 Constitution (Ill. Const. (1970), Art. VII, sec. 5). Henke v. City of Zion, 63 Ill. 2d 46, 344 N.E.2d 466 (1976).

The term "divided" in Ill. Const. (1970), Art. VII, § 5 was not meant to encompass situations in which township boundaries are changed without an increase or decrease in the number of townships, as the term logically refers only to those situations in which one or more townships are separated in such a fashion as to create additional townships that did not previously exist; therefore, simple boundary changes between townships need not be preceded by public referenda in the affected townships. Springfield Lakeshore Imp. Ass'n v. City of Springfield, 62 Ill. 2d 173, 340 N.E.2d 289 (1975).

Form of Government

- Practicality

The town meeting form of government provides for direct participation by electors in local government and it has a long tradition of use in the United States; although township government may lack efficiency, it is not unconstitutional because plaintiff believes it to be impractical. Smith v. Town of Proviso, 13 Ill. App. 3d 519, 301 N.E.2d 145 (1 Dist. 1973).

OPINIONS OF ATTORNEY GENERAL

Discontinuance

Upon the discontinuance of township organization, the responsibility for the care and maintenance of former township roads will revert to the county and to the extent that the obligation for maintenance of the township road system is transferred to a county that must satisfy the provisions of the Property Tax Extension Limitation Law (35 ILCS 200/18-185 et seq.), the county's aggregate extension base may be increased to include that portion of the townships' aggregate extension base that funded the township roads. 1997 Op. Atty. Gen. (97-021).

Section 6. Powers of Home Rule Units.

(a) A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

(b) A home rule unit by referendum may elect not to be a home rule unit.

(c) If a home rule county ordinance conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction.

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(d) A home rule unit does not have the power (1) to incur debt payable from ad valorem property tax receipts maturing more than 40 years from the time it is incurred or (2) to define and provide for the punishment of a felony.

(e) A home rule unit shall have only the power that the General Assembly may provide by law (1) to punish by imprisonment for more than six months or (2) to license for revenue or impose taxes upon or measured by income or earnings or upon occupations.

(f) A home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provided by law, except that the form of government of Cook County shall be subject to the provisions of Section 3 of this Article. A home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office only as approved by referendum or as otherwise authorized by law. A home rule county shall have the power to provide for its officers, their manner of selection and terms of office in the manner set forth in Section 4 of this Article.

(g) The General Assembly by a law approved by the vote of three-fifths of the members elected to each house may deny or limit the power to tax and any other power or function of a home rule unit not exercised or performed by the State other than a power or function specified in subsection (l) of this section.

(h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (l) of this Section.

(i) Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.

(j) The General Assembly may limit by law the amount of debt which home rule counties may incur and may limit by law approved by three-fifths of the members elected to each house the amount of debt, other than debt payable from ad valorem property tax receipts, which home rule municipalities may incur.

(k) The General Assembly may limit by law the amount and require referendum approval of debt to be incurred by home rule municipalities, payable from ad valorem property tax receipts, only in excess of the following percentages of the assessed value of its taxable property: (1) if its population is 500,000 or more, an aggregate of three percent; (2) if its population is more than 25,000 and less than 500,000, an aggregate of one percent; and (3) if its population is 25,000 or less, an aggregate of one-half percent. Indebtedness which is outstanding on the effective date of this Constitution or which is thereafter approved by referendum or assumed from another unit of local government shall not be included in the foregoing percentage amounts.

(l) The General Assembly may not deny or limit the power of home rule units (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of this Constitution unless that power is subsequently denied

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by law to any such other units of local government or (2) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

(m) Powers and functions of home rule units shall be construed liberally.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Labor § 11:11.

See Illinois Jur, Municip L § 3:1, § 3:3, § 3:5, § 3:7, § 3:9, § 3:11, § 3:13, § 3:14, § 3:15, § 3:16, § 3:17, § 3:18, § 3:19, § 3:20, § 3:22, § 10:2, § 10:20, § 12:2, § 12:4, § 12:12, § 13:3, § 16:13, § 17:2, § 18:15, § 18:37.

See Illinois Jur, Prop § 21:44, § 21:48.

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In General

Under Ill. Const., Art. VII, § 6, home rule units of local government may enact regulations when the state has not specifically declared its exercise to be exclusive; on the other hand, non-home-rule units of local government are governed by Dillon's Rule under which non-home-rule units possess only those powers that are specifically conveyed by the Illinois Constitution or by statute. Vill. of Sugar Grove v. Rich, 347 Ill. App. 3d 689, 283 Ill. Dec. 559, 808 N.E.2d 525, 2004 Ill. App. LEXIS 213 (1 Dist. 2004), appeal denied, 212 Ill. 2d 555, 291 Ill. Dec. 716, 824 N.E.2d 292 (2004).

Granting of preliminary injunction against the City of Chicago, Ill., was upheld, where City attempted to acquire property in anticipation of the expansion of O'Hare International Airport, without first obtaining approval from the Illinois Department of Transportation, as the plain language of 620 ILCS 5/47 required certification prior to the acquisition of land under such circumstances, which the City had not obtained; the City, as a municipal corporation, was a creature of the state, and absent constitutional restraints, the City was subject to the will and discretion of the legislature, which in the instant case meant that the City was subject to the certification requirements of 620 ILCS 5/47, prior to the acquisition of the land. Philip v. Daley, 339 Ill. App. 3d 274, 274 Ill. Dec. 188, 790 N.E.2d 961, 2003 Ill. App. LEXIS 680 (2 Dist. 2003).

A home rule municipality may exercise any power or may legislate to protect the public health, safety and welfare of its community. City of De Kalb v. White, 227 Ill. App. 3d 328, 169 Ill. Dec. 349, 591 N.E.2d 522 (2 Dist. 1992).

For a home rule municipality to enact a valid ordinance, the subject to be regulated must pertain to local government affairs and not be of a statewide or national concern. Town of Normal v. Seven Kegs, Two Tappers & Two Barrels, 234 Ill. App. 3d 715, 175 Ill. Dec. 370, 599 N.E.2d 1384 (4 Dist. 1992).

An important object of this constitutional provision is to preclude the legislature from granting the power of local taxation to persons beyond the control of those affected by the taxation. People ex rel. Vermilion County Conservation Dist. v. Lenover, 43 Ill. 2d 209, 251 N.E.2d 175 (1969).

This constitutional limitation is not that a part of the territory of the school district shall not become liable for an indebtedness exceeding five percent of the value of the taxable property therein, but that no school district shall be allowed to become indebted in such an amount. McLain v. Phelps, 409 Ill. 393, 100 N.E.2d 753 (1951).

Abatement of Nuisance

As the Municipal Code of the City of Chicago specifically makes no mention of ownership as a prerequisite to liability for the expense of abating a nuisance, the fact that one is not the owner of the property upon which the nuisance exists does not insulate him from such liability. City of Chicago v. Cross City Disposal, Inc., 200 Ill. App. 3d 520, 146 Ill. Dec. 286, 558 N.E.2d 249 (1 Dist. 1990).

Abuse of Power

- Legislative Review

It is for the General Assembly, under subsection (g) of this section, to consider possible abuses of home rule powers. Chicago Park Dist. v. City of Chicago, 111 Ill. 2d 7, 94 Ill. Dec. 721, 488 N.E.2d 968 (1986).

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Applicability

- Legal Challenges

In a labor dispute between the city and the union, where the city was a home rule unit for which the Illinois Municipal Code was optional, not mandatory, the arbitration panel had the authority to adopt the union proposal regarding grievances, even though it conflicted with the Municipal Code. City of Calumet City v. Ill. FOP Labor Council, 344 Ill. App. 3d 1000, 279 Ill. Dec. 855, 801 N.E.2d 147, 2003 Ill. App. LEXIS 1396 (1 Dist. 2003).

In an action by a municipality to challenge the procedures by which county zoning ordinances are enacted, the controversy was not to be decided under the Illinois Constitution of 1970 because the original trial was tried under the Constitution of 1870. Village of Arlington Heights v. County Cook, 3 Ill. App. 3d 213, 278 N.E.2d 841 (1 Dist. 1971).

Appointment Powers

- Improperly Assumed

Where a city had not adopted a commission form of government, and where it had not attempted to secure, by a referendum vote, authority for the members of the city council to appoint or remove municipal officers or employees, the trial court correctly enjoined the defendant aldermen from exercising the powers of appointment and removal which they improperly assumed. Pechous v. Slawko, 64 Ill. 2d 576, 2 Ill. Dec. 701, 357 N.E.2d 1144 (1976).

- Upheld

Appointment provisions of the Regional Transportation Authority Act, 70 ILCS 3615/1.01 et seq., do not contravene Ill. Const. art. VII, sec. 6(f) related to home rule. Stroger v. Reg'l Transp. Auth., 201 Ill. 2d 508, 268 Ill. Dec. 417, 778 N.E.2d 683, 2002 Ill. LEXIS 626 (2002).

Assessed Valuation

A complaint of taxpayers that sought an injunction against school trustees that alleged the indebtedness of the district violated the 5% debt limitation provided in former Ill. Const., Art. IX, sec. 12 (see now this section) constitution patently demonstrated that the constitutional limit as pleaded was more than 20 times the alleged assessed valuation. People ex rel. White v. Busenhart, 29 Ill. 2d 156, 193 N.E.2d 850 (1963).

Banks

- Authority to Control

The city ordinance which permitted both state and federally chartered banks to perform banking functions at certain facilities, and electronic banking machines in community offices located away from the main office of the bank, was void. People ex rel. Lignoul v. City of Chicago, 67 Ill. 2d 480, 10 Ill. Dec. 614, 368 N.E.2d 100 (1977).

Board of Trustees

- Powers

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The board of trustees of the district is a duly constituted corporate authority under the constitution, with appropriate authority to levy taxes. People ex rel. Vermilion County Conservation Dist. v. Lenover, 43 Ill. 2d 209, 251 N.E.2d 175 (1969).

Bonds

- Annual Tax

Former Ill. Const. (1870), Art. IX, Sec. 12 (see now this section), which provided that any county incurring any indebtedness as therein provided should before, or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it fell due, and also to pay and discharge the principal thereof 20 years from the time of contracting the same, was self-executing; no special or supplemental legislation was necessary to make it effective, as it controlled any statutory direction or requirement. People ex rel. Brenza v. Anderson, 411 Ill. 252, 103 N.E.2d 629 (1952).

That the resolution providing for the issue of the bonds levied a direct annual tax sufficient to pay the interest and principal on all the property of the district for each of the years until the maturity of the last of the bonds, and that therefore it was not necessary that there should be a levy by the board of education for each year did not exempt the joint board, consisting of the board of education of district and the directors of the district detached from certifying the tax required annually to pay the debt; the county clerk could not be required to extend the tax until they did issue the certificate. People ex rel. Pegram v. Stoll, 322 Ill. 286, 153 N.E. 385 (1926).

Requiring that any county, city, school district, or other municipal corporation incurring any indebtedness, shall, before or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due and also to pay and discharge the principal thereof within 20 years from the time of contracting the same was merely a provision for the extension and collection of the tax, which had been, in effect, levied in accordance with the requirement of the Constitution when the bonds were issued. People ex rel. Heaton v. Chicago & E. Ill. R.R., 300 Ill. 258, 133 N.E. 339 (1921).

- Authority to Issue

There was no legislative enactment pursuant to subsections (g) and (h) of this section which sought to place a territorial limitation on a home rule unit's power to raise financing through the issuance of revenue bonds. Marshall Field & Co. v. Village of S. Barrington, 92 Ill. App. 3d 360, 47 Ill. Dec. 964, 415 N.E.2d 1277 (1 Dist. 1981).

The Supreme Court has determined that home rule units possess the capacity to use revenue bonds to finance certain specified projects within ten miles of their borders, not under the explicit terms of the Industrial Project Revenue Bond Act (see now subsection (1) of 65 ILCS 5/11-74-1), but under the Constitution's grant of home rule power in this article; the precise procedures are left to the determination of the home rule unit. Marshall Field & Co. v. Village of S. Barrington, 92 Ill. App. 3d 360, 47 Ill. Dec. 964, 415 N.E.2d 1277 (1 Dist. 1981).

A legislative determination that proposed bond issues serve the public purposes was upheld. Marshall Field & Co. v. Village of S. Barrington, 92 Ill. App. 3d 360, 47 Ill. Dec. 964, 415 N.E.2d 1277 (1 Dist. 1981).

Section 40 of the Counties Act (see now 55 ILCS 5/4-1001), requiring a referendum for the issuance of certain bonds is inapplicable as applied to a home rule county. Kanellos v. County of Cook, 53 Ill. 2d 161, 290 N.E.2d 240 (1972).

Appropriations in the budgets of both the Board of Education and the Park District for the loss and cost of collecting levies for the principal of and interest on numerous bond issues did not result in a needless accumulation of funds that could be said to involve an arbitrary abuse of discretion by

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the corporate authorities; the corporate authorities were within their legal rights and were performing their legal duties in making the levies, and their actions were not arbitrary. People ex rel. Korzen v. Englemann, 32 Ill. 2d 196, 204 N.E.2d 760 (1965).

Amendments to section 9 of "An Act to create sanitary districts and to remove obstructions in the DesPlaines and Illinois rivers," (see 70 ILCS 2605/9), which provided for the establishment of a corporate working cash fund and a construction working cash fund by the issuance of bonds without referendum, were valid and constitutional. People ex rel. Adamowski v. Metropolitan San. Dist., 14 Ill. 2d 271, 150 N.E.2d 361 (1958).

The issuance of bonds by a municipality for the purpose of funding its valid indebtedness does not increase its aggregate indebtedness. Elmhurst Nat'l Bank v. Village of Bellwood, 372 Ill. 204, 23 N.E.2d 41 (1939).

Issuance of judgment-funding bonds by a village to pay a tort claim, which was permitted by former Ill. Rev. Stat., ch. 24, para. 65.5, was not the creation of a new indebtedness; the bonds when issued under a prior similar constitutional provision were valid. Elmhurst Nat'l Bank v. Village of Bellwood, 372 Ill. 204, 23 N.E.2d 41 (1939).

The General Assembly cannot confer upon a municipality the power to issue bonds for an illegal purpose or for the purpose of paying a debt not incurred by the exercise of some authorized corporate function or purpose. Berman v. Board of Educ., 360 Ill. 535, 196 N.E. 464 (1935).

The Board of Education of the city of Chicago is a body politic and corporate; it has bonding powers under 105 ILCS 5/34-2, allowing for a $25,000 issue of bonds which did not violate former Ill. Const. (1870), Art. IX, § 12 (see now Ill. Const. (1970), Art. VII, § 6. Board of Educ. v. Upham, 357 Ill. 263, 191 N.E. 876 (1934).

The power of the city to borrow money and to issue bonds is conferred by this section and by the former Ill. Rev. Stat., ch. 24, para. 62. People ex rel. Carr v. Chicago & N.W. Ry., 308 Ill. 54, 139 N.E. 2 (1923).

Where bonds issued by a city contained no recital whatever of the circumstances under which the city could legally incur indebtedness for erecting and maintaining a system of water-works, a recital that the bonds were issued under the authority of a statute, and in pursuance of a city ordinance based upon that statute, did not necessarily import a compliance with the Constitution. Buchanan v. Litchfield, 102 U.S. 278, 26 L. Ed. 138 (1880).

- Industrial Development

The constitutional grant of power to home-rule municipalities is of sufficient breadth and scope to authorize such entities to adopt a vehicle such as the Industrial Project Revenue Bond Act (see now 65 ILCS 5/11-74-1 et seq.) for economic development; if they choose to do so, the precise procedures for the accomplishment of such result would be left to the determination of the respective units. People ex rel. City of Salem v. McMackin, 53 Ill. 2d 347, 291 N.E.2d 807 (1972).

- Liability

There is no obligation resting upon the municipality until a bond has been issued and delivered, for the authorization of a bond issue by the electorate creates no contractual obligation. Austin v. Healy, 376 Ill. 633, 35 N.E.2d 78 (1941).

Where the indebtedness for which an additional levy was made in 1929 was a bonded indebtedness, the municipal corporation was required not only to make the levy, but, in fact, to collect sufficient funds to pay and discharge the interest due in 1927 and the bonds maturing during 1928. People ex rel. McDonough v. New York Cent. R.R., 355 Ill. 80, 188 N.E. 807 (1933).

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The payments made to experts out of improvement funds were authorized by the bond ordinances, approved by a vote of the people. Tribune Co. v. Thompson, 342 Ill. 503, 174 N.E. 561 (1930).

Under Ill. Const. (1870), Art. IX, § 9 (see now this section), where an act under which bonds were issued was repugnant to the constitution, the bonds were were executed without legal authority and no valid lien was created or existed upon any of the lands embraced within the territory described in the proceedings instituted in the county court. O'Brien v. Wheelock, 95 F. 883 (7th Cir. 1899), aff'd, 184 U.S. 450, 22 S. Ct. 354, 46 L. Ed. 636 (1902).

Under a prior provision of the Illinois Constitution, no municipal corporation could incur a debt without legislative authority, express or implied, but the grant of authority carried with it the constitutional obligation to levy and collect a sufficient annual tax to pay the interest as it matured, and the principal within 20 years; this provision for the tax was written by the Constitution into every law passed thereafter by the legislature allowing a debt to be incurred and it took the place in existing laws of all provisions for taxation to pay debts thereafter incurred under old constitutional authority. City of E. St. Louis v. United States ex rel. Amy, 120 U.S. 600, 7 S. Ct. 739, 30 L. Ed. 798 (1887).

- Municipality Indebtedness

Section 18 of the Public Buildings Commission Act (see now 50 ILCS 20/18) does not operate to cause bonds issued by the commission to become general obligations of the leasing municipalities so as to constitute an indebtedness of the municipalities within the meaning of Article IX, section 12 of the state Constitution (see now this section). People ex rel. Adamowski v. Public Bldg. Comm'n, 11 Ill. 2d 125, 142 N.E.2d 67 (1957).

To constitute a debt against a municipality, there must be an obligation which the municipality is required to, if need be, meet with its funds or property; but if the obligation is to be paid solely from the income derived from the property purchased with the bonds or their proceeds, no indebtedness is incurred. People v. Chicago Transit Auth., 392 Ill. 77, 64 N.E.2d 4 (1945).

- Public Purpose

Village was not estopped from refuting its original legislative finding that the proposed bond issues serve the public purposes where no bonds had issued. Marshall Field & Co. v. Village of S. Barrington, 92 Ill. App. 3d 360, 47 Ill. Dec. 964, 415 N.E.2d 1277 (1 Dist. 1981).

An inducement by a private beneficiary of a public bond issue to locate, build, expand, or remain within an area by the availability of a proposed bond issuance need not be shown before a bond issue to finance construction of retail facilities could be adjudged valid. Marshall Field & Co. v. Village of S. Barrington, 92 Ill. App. 3d 360, 47 Ill. Dec. 964, 415 N.E.2d 1277 (1 Dist. 1981).

- Repayment

A sanitary district's failure to abate levies by the amounts on hand in excess of previous levies did not result in a needless accumulation of funds as the ordinances authorizing the issue of the refunding bonds and the tax levies were clearly designed to allow the sanitary district to provide for the payment of its bonded indebtedness as the same fell due. People ex rel. Brenza v. Gebbie, 5 Ill. 2d 565, 126 N.E.2d 657 (1955).

Under former Ill. Rev. Stat., ch. 24, paras. 23-6 and 23-7 (see now 65 ILCS 5/8-1-3 and 65 ILCS 5/8-1-4), statute provisions which authorized the corporate authorities of a city to borrow money and issue bonds for corporate purposes, empowered the corporate authorities to provide for the refunding of maturing bonds; if it were determined that a judgment debt for which bonds were to be issued was not incurred for corporate purposes, then the construction of the statutes would necessarily be that the corporate authorities were constitutionally without power to act. Indiana Harbor Belt R.R. v. City of Calumet City, 391 Ill. 280, 63 N.E.2d 369 (1945).

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The constitutional requirement that a school district shall, when issuing bonds, provide for the levy of a tax sufficient to pay maturing principal and interest is mandatory and self-executing. People ex rel. Henry v. New York Cent. R.R., 381 Ill. 490, 45 N.E.2d 860 (1942).

In the absence of proof, it could not be assumed that the school authorities violated the law and did not provide for the levy of a tax for the payment of the school bonds when the same were issued. People ex rel. Henry v. New York Cent. R.R., 381 Ill. 490, 45 N.E.2d 860 (1942).

Under the Constitution, the school district was required to levy a sufficient amount of taxes to pay the principal and interest on the bonded indebtedness for building purposes; the entire amount levied each year must be sufficient to pay such bonded indebtedness as is due, even if the statutory rate of taxation be exceeded. People ex rel. Peer v. Louisville & N.R.R., 300 Ill. 312, 133 N.E. 340 (1921).

- Scope of Review

In order to assess the constitutionality of village's proposed issuance of revenue bonds to finance construction of retail facilities, then, the court had to determine whether a home rule unit which intended to finance the construction of (a) a commercial facility which was not only (b) outside of its own boundaries but was also (c) within the corporate limits of another municipality was acting upon matters which sufficiently pertain to its government and affairs so as to be adjudged a valid exercise of home rule power. Marshall Field & Co. v. Village of S. Barrington, 92 Ill. App. 3d 360, 47 Ill. Dec. 964, 415 N.E.2d 1277 (1 Dist. 1981).

Building Permit Fee

City's legitimate and compelling interest in enacting building ordinances to protect the health and safety of citizens of and visitors to city, and in view of the absence of any evidence of an intent on the part of the legislature to exempt the Commission from host municipalities' building regulations, the Commission had to pay the permit fee required under city building regulations. Lake County Public Bldg. Comm'n v. City of Waukegan, 273 Ill. App. 3d 15, 209 Ill. Dec. 830, 652 N.E.2d 370 (2 Dist. 1995).

Commissioners

The commissioners appointed by the Governor with power to impose taxes did not constitute the corporate authorities of the district as the people had not assented to this mode of appointment of commissioners. People ex rel. Vermilion County Conservation Dist. v. Lenover, 43 Ill. 2d 209, 251 N.E.2d 175 (1969).

Conflicting Statutes

A referendum passed or an ordinance enacted under the grant of power found in Ill. Const. 1970, Art. VII, § 6 supersedes a conflicting statute enacted prior to the effective date of the Constitution. Nielsen-Massey Vanillas, Inc. v. City of Waukegan, 276 Ill. App. 3d 146, 212 Ill. Dec. 856, 657 N.E.2d 1201 (2 Dist. 1995).

Consent Decree

Absent particularized findings, the consent decree could not direct changes normally requiring voter approval. Perkins v. City of Chicago Heights, 47 F.3d 212 (7th Cir. 1995).

Construction

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Defendant, who worked for a municipal police department, did not violate a law by allegedly violating police department rules and regulations because the rules and regulations promulgated by the police department were not laws. Only the Illinois Legislature promulgated laws, while municipalities, promulgated ordinances under Ill. Const. Art. VII, § 6(c). People v. Williams, 393 Ill. App. 3d 77, 331 Ill. Dec. 516, 910 N.E.2d 1272, 2009 Ill. App. LEXIS 593 (1 Dist. 2009).

- Form of Government

Subsections (a) and (b) permit counties to choose an executive form of government and to opt out of home rule status and there is nothing in these sections which explicitly forbids counties from taking these actions simultaneously. Richardson v. Mulcahey, 265 Ill. App. 3d 123, 202 Ill. Dec. 481, 637 N.E.2d 1217 (3 Dist. 1994).

- Liberal

The terms of the grant of home rule power are broad and imprecise, leaving to the courts the duty to determine whether a power exercised by a home rule unit is within the grant of subsection (a) of this section. Kirwin v. Peoples Gas Light & Coke Co., 173 Ill. App. 3d 699, 123 Ill. Dec. 656, 528 N.E.2d 201 (1 Dist. 1988).

Powers and functions of home rule units shall be construed liberally. Forsberg v. City of Chicago, 151 Ill. App. 3d 354, 104 Ill. Dec. 20, 502 N.E.2d 283 (1 Dist. 1986), cert. denied, 114 Ill. 2d 545, 108 Ill. Dec. 416, 508 N.E.2d 727 (1987), appeal dismissed, 484 U.S. 490, 108 S. Ct. 363, 98 L. Ed. 2d 351 (1987).

Home rule powers provisions are to be construed liberally. Marcus Corp. v. Village of S. Holland, 120 Ill. App. 3d 300, 75 Ill. Dec. 944, 458 N.E.2d 112 (1 Dist. 1983).

The specified counties and cities receive directly under the Illinois Constitution the broadest possible range of powers to deal with the problems facing them and with demands that are made upon them by their residents and by the greater society. City of Evanston v. Create, Inc., 84 Ill. App. 3d 752, 40 Ill. Dec. 258, 405 N.E.2d 1350 (1 Dist. 1980), aff'd, 85 Ill. 2d 101, 51 Ill. Dec. 688, 421 N.E.2d 196 (1981).

The powers of home rule units are to be liberally construed and it would be unreasonable to attempt to read limitations into subsection (e) of this section beyond taxes which are "upon or measured by income or earnings or upon occupations" and thus contradict the broad authority given home rule units to tax under subsection (a) of this section; that no such unreasonable interpretation should be given under subsection (e) is evidenced by the Local Government Committee Report, Illinois Constitutional Convention 1969-70, pp. 81-82, citing sales and use taxes on cigarettes and hotel rooms as examples of local taxes empowered under the article. S. Bloom, Inc. v. Korshak, 52 Ill. 2d 56, 284 N.E.2d 257 (1972).

Contracts

- Authority to Enter Into

Home rule units are not bound by the requirements of the Illinois Municipal Code (see now 65 ILCS 5/1-1-1 et seq.); thus, a city exercised its home rule authority by approving a settlement agreement without a majority vote of the city council and entering into a contract without prior appropriation. City of Burbank v. Illinois State Labor Relations Bd., 185 Ill. App. 3d 997, 133 Ill. Dec. 821, 541 N.E.2d 1259 (1 Dist. 1989).

- Procurement Method

Trial court properly granted a county's motion to dismiss a pharmaceutical group's claim for declaratory and injunctive relief where the county used requests for information and requests for

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proposals to award a contract to supply prescription medication and other pharmaceuticals to the county, because the county in its actions did not violate Ill. Const. (1970), Art. VII, § 6. DMS Pharm. Group v. County of Cook, 345 Ill. App. 3d 430, 280 Ill. Dec. 921, 803 N.E.2d 151, 2003 Ill. App. LEXIS 1565 (1 Dist. 2003).

The General Assembly has not acted to take exclusive control over county's home rule power to procure contracts with or without competitive bidding, although it could do so. American Health Care Providers, Inc. v. County of Cook, 265 Ill. App. 3d 919, 202 Ill. Dec. 904, 638 N.E.2d 772 (1 Dist. 1994).

Cook County

- Crime

The assertion that the Illinois Constitution defines Cook County as a home rule unit and, therefore, that the county lacks the power to provide for the punishment of a felony was without merit because the Illinois legislature, and not Cook County as a home rule unit, defines and provides for the punishment of a felony. People v. Freeman, 162 Ill. App. 3d 1080, 114 Ill. Dec. 285, 516 N.E.2d 440 (1 Dist. 1987), cert. denied, 505 U.S. 1213, 112 S. Ct. 3015, 120 L. Ed. 2d 888 (1992).

- Employee Compensation

Whether its source is the Constitution under this section, the Cook County Commissioner's Act (see now 55 ILCS 5/2-6009) or the County Hospitals Act (see now 55 ILCS 5/5-37003), the power to fix compensation benefits and working conditions of the employees of a Cook County hospital required the exercise of the Board of Commissioners of Cook County's discretion. Peters v. Health & Hosps. Governing Comm'n, 88 Ill. 2d 316, 58 Ill. Dec. 877, 430 N.E.2d 1128 (1981), cert. denied, 459 U.S. 826, 103 S. Ct. 60, 74 L. Ed. 2d 63 (1982).

- Referendum Required

The power to hire and fire employees is vested in the executive officer of Cook County; thus, a resolution which gave county commissioners this power was unconstitutional because it attempted to alter the form of county government, without referendum approval, in violation of subsection (f) of the Illinois Constitution. Dunne v. County of Cook, 164 Ill. App. 3d 929, 115 Ill. Dec. 855, 518 N.E.2d 380 (1 Dist. 1987).

- Scope of Power

The City of Chicago, as a home rule unit of government, may exercise any power and perform any function pertaining to its government and affairs. City of Chicago v. State & Mun. Teamsters, 127 Ill. App. 3d 328, 82 Ill. Dec. 488, 468 N.E.2d 1268 (1 Dist. 1984).

The Cook County Board, acting pursuant to its home rule power had authority to transfer powers, duties and functions among county officers, even to the extent that such exercise conflicts with a statute enacted prior to the adoption of the 1970 Constitution, unless otherwise limited by legislative action or a positive constitutional restriction. People ex rel. Hanrahan v. Beck, 54 Ill. 2d 561, 301 N.E.2d 281 (1973).

- Special Legislation

This section's descriptive classifications relating to Chicago, and the remaining territory of Cook County outside the corporate limits of Chicago, did not constitute impermissible special legislation under Ill. Const. 1970, Art. IV, § 13. Hirschfield v. Barrett, 40 Ill. 2d 224, 239 N.E.2d 831 (1968).

- Zoning

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Since Chicago is a home rule unit, its power to zone for the public health, safety, morals, and welfare now properly derives from the Illinois Constitution and its grant of power to home rule units. Cain v. American Nat'l Bank & Trust Co., 26 Ill. App. 3d 574, 325 N.E.2d 799 (1 Dist. 1975).

Criminal Penalties

The Unified Code of Corrections (730 ILCS 5/1-1-1 et seq.) did not preempt a municipal ordinance prescribing a mandatory minimum sentence for assault against the elderly. City of Chicago v. Roman, 184 Ill. 2d 504, 235 Ill. Dec. 468, 705 N.E.2d 81 (1998).

Neither the Criminal Code (720 ILCS 5/1-1 et seq.) nor the Unified Code of Corrections (730 ILCS 5/1-1-1 et seq.) specifically excludes home rule units from establishing criminal penalties. City of Chicago v. Roman, 184 Ill. 2d 504, 235 Ill. Dec. 468, 705 N.E.2d 81 (1998).

Disconnection

Village ordinance, Village of Barrington Hills, Ill., Mun. Code § 6-1-7, was invalid because the ordinance stated that its provisions superseded the state statutory disconnection provisions of 65 ILCS 5/7-3-4 and 7-3-6; the ordinance exceeded the village's home rule powers, Ill. Const. art. VII, § 6, and interfered with the state judicial system and the village's motion to dismiss, based on interpretations of 50 ILCS 750/2.12, 750/10.2, and 50 ILCS 751/15, was properly denied under 735 ILCS 5/2-619. JLR Invs., Inc. v. Vill. of Barrington Hills, 355 Ill. App. 3d 661, 293 Ill. Dec. 695, 825 N.E.2d 1193, 2005 Ill. App. LEXIS 780 (1 Dist. 2005).

Where the ordinance passed by the Village of Elk Grove Village imposes a fee for disconnecting property from the Village that amounts to $2.7 million when multiplied by the 20-acre minimum for disconnection under 65 ILCS 5/7-3-6, the characterization of this fee as a tax to support the Village services for 40 years does not render the fee lawful under Ill. Const. Art. VII, § 6, as the Village cannot so burden access to the courts for disconnection proceedings, and accumulation of such a large amount of funds is not within the power of a home rule jurisdiction. City of Chicago v. Vill. of Elk Grove, 354 Ill. App. 3d 423, 290 Ill. Dec. 91, 820 N.E.2d 1158, 2004 Ill. App. LEXIS 1478 (1 Dist. 2004).

Village of Elk Grove Village's ordinance imposing a disconnection fee is unconstitutional. Because disconnection of property from the Village necessarily involves other municipalities, disconnection is solely within the power of the state pursuant to Ill. Const. Art. VII, § 6. City of Chicago v. Vill. of Elk Grove, 354 Ill. App. 3d 423, 290 Ill. Dec. 91, 820 N.E.2d 1158, 2004 Ill. App. LEXIS 1478 (1 Dist. 2004).

Disconnection is a matter of statewide concern and therefore not within a local government's home rule powers as a matter pertaining to local government affairs. La Salle Nat'l Trust v. Village of Mettawa, 249 Ill. App. 3d 550, 186 Ill. Dec. 665, 616 N.E.2d 1297 (2 Dist.), cert. denied, 153 Ill. 2d 560, 191 Ill. Dec. 620, 624 N.E.2d 808 (1993).

Duty to Protect

- Not Transferable

Where the city owed a duty to the general public to protect public property from subversion to purely private uses, the duty was not transferable to an individual in the event the city was negligent in performing the duty. O'Fallon Dev. Co. v. City of O'Fallon, 43 Ill. App. 3d 348, 2 Ill. Dec. 6, 356 N.E.2d 1293 (5 Dist. 1976).

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Elections

- Campaign finance

Ordinance that has not been passed by referendum, pursuant to home-rule powers as set forth in Ill. Const. art. VII, § 6(f), is not the functional equivalent of a law in force for purposes of establishing procedures and prerequisites for election to municipal office. As a result, where such an ordinance has not been passed by referendum, the failure to comply with its terms cannot be enforced by removal of a candidate's name from the ballot. Bocanegra v. City of Chi. Electoral Bd., Ill. App. 3d , 352 Ill. Dec. 776, 954 N.E.2d 859, 2011 Ill. App. LEXIS 789 (1 Dist. 2011).

Chicago's Board of Election Commissioners lacked the authority to remove a candidate's name from the ballot as a means of enforcing the city's campaign financing ordinance. Because the ordinance was not passed pursuant to a valid exercise of home-rule power, its provisions did not constitute binding changes to the eligibility requirements for its officers. Bocanegra v. City of Chi. Electoral Bd., Ill. App. 3d , 352 Ill. Dec. 776, 954 N.E.2d 859, 2011 Ill. App. LEXIS 789 (1 Dist. 2011).

- Expenses Apportioned

The legislature has the right and the authority to apportion any part, or all, of the expenses of general elections against a sanitary district or other municipality in such manner as it may determine whether or not such sanitary district or other municipality is benefited by the holding of the election. People ex rel. San. Dist. v. Schlaeger, 391 Ill. 314, 63 N.E.2d 382 (1945).

Federal Constitutionality

- Taxation

Subdivision (e) of this section is not invalid under the due process and equal protection provisions of the United States and Illinois Constitutions (see U.S. Const., Amend. XIV and Ill. Const. (1970), Art. I, § 2), and is not unreasonable and arbitrary because it singles out one class of nonproperty or privilege taxes and requires prior legislative approval for their use by home rule units, while other nonproperty or privilege taxes can be imposed by home rule units without prior approval by the General Assembly. S. Bloom, Inc. v. Korshak, 52 Ill. 2d 56, 284 N.E.2d 257 (1972).

Form of Government

- Alteration

When the constitution states that a change in the "form of government" is allowed only through the use of a referendum, the constitution is not referring to changes such as those in the operation of a board; instead, the language refers to the election of municipal governing bodies and the relationship between the legislative and executive branches of government. Kotte v. Normal Bd. of Fire & Police Comm'rs, 269 Ill. App. 3d 517, 206 Ill. Dec. 925, 646 N.E.2d 292 (4 Dist. 1995), appeal denied, 162 Ill. 2d 569, 209 Ill. Dec. 802, 652 N.E.2d 342 (1995).

City was free to supersede statute which allowed cities and villages to elect the managerial form of government through the exercise of its home rule powers in favor of ordinance which, subject to public referendum, provided that the city council would appoint and remove the city administrator, that the mayor would appoint the members of the boards and commissions with the advice and consent of the city council and that the city administrator would appoint and remove the heads of the city departments. Flowers v. City of Moline, 251 Ill. App. 3d 348, 190 Ill. Dec. 628, 622 N.E.2d 38 (3 Dist. 1993).

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Although a home rule unit can pass an ordinance which supersedes a conflicting statute enacted prior to the effective date of the 1970 Constitution, the home rule unit may not alter the form of government. Dunne v. County of Cook, 164 Ill. App. 3d 929, 115 Ill. Dec. 855, 518 N.E.2d 380 (1 Dist. 1987).

Enactment of an ordinance reducing the County Board of Commissioners president's veto from four-fifths to three-fifths altered the county's form of government; absent submission to approval by referendum as required by subsection (f) of this section of the Illinois Constitution, the ordinance was invalid. Dunne v. County of Cook, 108 Ill. 2d 161, 90 Ill. Dec. 866, 483 N.E.2d 13 (1985).

The ordinance enacted by the Cook County Board changing the veto override requirement from four-fifths to three-fifths of the Board, was an unconstitutional change in the form of government under this section of the state constitution. Dunne v. County of Cook, 123 Ill. App. 3d 468, 78 Ill. Dec. 851, 462 N.E.2d 970 (1 Dist. 1984).

Ill. Const. (1970), Art. VII, § 6(f) authorizes a home rule municipality to alter the specific forms of government and officers provided in the Illinois Municipal Code (see now 65 ILCS 5/1-1-1 through 65 ILCS 5/11-151-5). Boytor v. City of Aurora, 81 Ill. 2d 308, 43 Ill. Dec. 1, 410 N.E.2d 1 (1980).

Where an ordinance adopted by a municipal corporation operating under a commission form of government deprived the elected commissioners of the authority to hire and discharge departmental employees by diverting such responsibilities to the discretion and judgment of non-elected subordinate department heads, the adoption of the ordinance resulted in a substantial alteration of the commission form of government which was violative of the state Constitution and inappropriate in the absence of a referendum. Marshall v. City of Chicago, 59 Ill. App. 3d 986, 17 Ill. Dec. 511, 376 N.E.2d 657 (1 Dist. 1978).

Function of Government

- Appropriations

The power to determine the number of votes necessary to approve an appropriation is a power pertaining to the government and affairs of the county. Allen v. County of Cook, 65 Ill. 2d 281, 2 Ill. Dec. 291, 357 N.E.2d 458 (1976).

The manner in which the defendant county appropriated funds, and whether it did so with the approval of two-thirds or with the approval of the majority of the members elected to its board, was deemed a matter pertaining to its government and affairs and was thus within its home rule powers. Allen v. County of Cook, 65 Ill. 2d 281, 2 Ill. Dec. 291, 357 N.E.2d 458 (1976).

- Scope of Power

A section of village municipal code prohibiting certain obstructions by trains at railroad-highway grade crossings constituted an ultra vires exercise of the village's home rule authority in violation of the limited grant of power by constitution in that the section did not pertain to the village's government and affairs. Village of Dolton ex rel. Winter v. CSX Transp., Inc., 196 Ill. App. 3d 564, 143 Ill. Dec. 505, 554 N.E.2d 440 (1 Dist. 1990).

Even assuming that the procedure by which a home rule unit appropriates funds is a matter "pertaining to its government and affairs" and is permissible under the Illinois Constitution, a procedure which affects other units of government can be considered an impermissible exercise of power because it does not pertain strictly to its own government and affairs. Anderson v. Rubloff & Co., 194 Ill. App. 3d 414, 141 Ill. Dec. 413, 551 N.E.2d 406 (2 Dist. 1990).

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A home rule municipality in Illinois may now constitutionally exercise any power or perform any function relating to its government and affairs. Oak Park Trust & Sav. Bank v. Village of Mount Prospect, 181 Ill. App. 3d 10, 129 Ill. Dec. 713, 536 N.E.2d 763 (1 Dist. 1989).

The limitation "pertaining to its government and affairs" has been interpreted to limit the scope of home rule powers to those relating to their own problems, not to those of the state or the nation. Village of Park Forest v. Thomason, 145 Ill. App. 3d 327, 99 Ill. Dec. 301, 495 N.E.2d 1036 (1 Dist. 1986).

Where the ordinances in question did not "pertain to the government and affairs" of the city, they could not stand. City of Carbondale v. Yehling, 96 Ill. 2d 495, 71 Ill. Dec. 683, 451 N.E.2d 837 (1983).

The terms of the grant of power to home rule units in subsection (a) of this section are broad and imprecise; however, the qualifying language "pertaining to its government and affairs" was clearly intended as a limit upon that power. Marshall Field & Co. v. Village of S. Barrington, 92 Ill. App. 3d 360, 47 Ill. Dec. 964, 415 N.E.2d 1277 (1 Dist. 1981).

The home rule grant of powers was purposely left broad and imprecise; ultimate construction of the qualifying phrase "pertaining to its government and affairs" is a matter for the courts. Board of Educ. v. City of Peoria, 48 Ill. App. 3d 1051, 6 Ill. Dec. 834, 363 N.E.2d 648 (3 Dist. 1977).

The grant of power to local governments extends only to matters pertaining to their government and affairs. Board of Educ. v. City of Peoria, 48 Ill. App. 3d 1051, 6 Ill. Dec. 834, 363 N.E.2d 648 (3 Dist. 1977).

Health Benefits

The General Assembly has never legislated on the question whether same sex, cohabiting individuals may purchase the same health insurance as married individuals; therefore, there is no public policy prohibiting the exercise of home rule authority in this area. Crawford v. City of Chicago, 304 Ill. App. 3d 818, 237 Ill. Dec. 668, 710 N.E.2d 91 (1 Dist. 1999), appeal denied, 185 Ill. 2d 621, 242 Ill. Dec. 135, 720 N.E.2d 1090 (1999).

Home Rule Authority

Because neither the Illinois Condominium Property Act, 765 ILCS 605/19, nor the Illinois General Not for Profit Corporation Act, 805 ILCS 105/107.75, specifically prohibited a home rule unit from governing the process by which a condominium unit owner could gain access to a condominium association's financial records, the City of Chicago Condominium Ordinance's, Chicago, Il., Mun. Code § 13-72-080, provision authorizing inspection of association records by unit owners was a valid exercise of the city's home rule power. Palm v. 2800 Lake Shore Drive Condo. Ass'n, 401 Ill. App. 3d 868, 340 Ill. Dec. 990, 929 N.E.2d 641, 2010 Ill. App. LEXIS 538 (1 Dist. 2010).

Evidence showed that defendant, a part-time police dispatcher for a village, violated the official misconduct, 720 ILCS 5/33-3(b), by contacting a suspected drug dealer and informing him of police activity in an area near his home. Not only was the misconduct in violation of an expressed police department policy, but the misconduct was codified as a village ordinance that the village, with home-rule authority as recognized by Ill. Const. art. VII, § 6, had the power to enact and which a reviewing court could take judicial notice of pursuant to 735 ILCS 5/8-1004. People v. Williams, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1174 (3 Dist. Nov. 19, 2008).

Trial court erred in dismissing the city's action to recover certain cable franchise fees from the cable service providers in the amount of five percent of the cable service providers' annual gross revenues; the relevant franchise agreements were valid contracts under state law because the

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Illinois Constitution allowed the city to enforce the franchise agreements under the constitutional authority of home rule and Illinois statutory law, 65 ILCS 5/11-42-11(a), specifically permitted cable franchising, while federal law did not preempt the franchise agreements. City of Chicago v. Comcast Cable Holdings, L.L.C., 231 Ill. 2d 399, 326 Ill. Dec. 620, 900 N.E.2d 256, 2008 Ill. LEXIS 1433 (2008).

Trial court erred in dismissing the city's action to recover certain cable franchise fees from the cable service providers in the amount of five percent of cable service providers' annual gross revenues; the relevant franchise agreements were valid contracts under state law because the Illinois Constitution allowed the city to enforce the franchise agreements under the constitutional authority of home rule, Illinois statutory law, 65 ILCS 5/11-42-11(a), specifically permitted cable franchising, and federal law did not preempt the franchise agreements. City of Chicago v. Comcast Cable Holdings, LLC, Ill. App. 3d , Ill. Dec. , 872 N.E.2d 368, 2007 Ill. App. LEXIS 532 (1 Dist. 2007), rev'd, 231 Ill. 2d 399, 326 Ill. Dec. 620, 900 N.E.2d 256, 2008 Ill. LEXIS 1433 (2008).

55 ILCS 5/5-1106.1, which provides for internet access to public records, does not preempt home rule authority with regard to such records under Ill. Const., Art. VII, § 6(h). The statute does not expressly state that the State of Illinois has exclusive power over the internet posting of public records and the state legislature, in the statute, does not specifically articulate that it is preempting home rule authority. First Am. Real Estate Solutions, L.P. v. Moore, F. Supp. 2d , 2005 U.S. Dist. LEXIS 19847 (N.D. Ill. Sept. 13, 2005).

Under Ill. Const. (1970), Art. VII, § 6(a), any municipality of over 25,000 population or any county with an elected chief executive officer is a home rule unit. Evanston v. Regional Transp. Authority, 202 Ill. App. 3d 265, 147 Ill. Dec. 559, 559 N.E.2d 899, 1990 Ill. App. LEXIS 1221 (1 Dist. 1990).

Where powers or functions of a home rule unit are concerned, the scope of authority granted to home rule units under Ill. Const. (1970), Art. VII, § 6(a) is generally coextensive with that of the sovereign, except where such powers are limited expressly by the General Assembly. McLorn v. East St. Louis, 105 Ill. App. 3d 148, 61 Ill. Dec. 107, 434 N.E.2d 44, 1982 Ill. App. LEXIS 1639 (1 Dist. 1982).

Court concluded that the limitations found in Ill. Const. (1970), Art. VII, § 6(e) were not arbitrary or unreasonable, and there was nothing to suggest a non-uniform application. S. Bloom, Inc. v. Korshak, 52 Ill. 2d 56, 284 N.E.2d 257, 1972 Ill. LEXIS 310 (1972).

Home Rule Municipality

Plaintiff's attempt to enforce its recently enacted hazardous substances ordinance was an invalid exercise of home-rule authority under the Illinois Constitution where: (1) the hazardous substances ordinance, as applied in this action, was aimed at altering defendants' conduct in a way that cannot be reconciled with defendants' performance obligations under the consent order; and (2) plaintiff was attempting to indirectly regulate site cleanup activities using means which conflicted with the uniform standards of environmental protection reflected in the consent order. Village of DePue v. Viacom Int'l, Inc., 632 F. Supp. 2d 854, 2009 U.S. Dist. LEXIS 58047 (C.D. Ill. 2009).

In enacting 220 ILCS 50/14, the Illinois General Assembly exercised its power under Ill. Const. Art. VII, § 6(h) and reserved for the State the exclusive power to regulate underground utility facilities damage prevention and denied home rule units the power to regulate the subject. A village's "spiller-pays" ordinance was not preempted because it merely provided for the recoupment of expenses incurred by the village by reason of the discharge of hazardous materials. Thus, a corporation fell within the definition of "responsible party" as set forth in the ordinance because it had control over both the excavation site and the underground gas line

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when excavation at a work site resulted in a ruptured gas line, but any fine that might be assessed was preempted because the ordinance did not provide for the assessment of fines. Neri Bros. Constr. v. Vill. of Evergreen Park, 363 Ill. App. 3d 113, 298 Ill. Dec. 1005, 841 N.E.2d 148, 2005 Ill. App. LEXIS 1201 (1 Dist. 2005).

Court applies a three-part inquiry for evaluating the constitutionality of exercise of home rule power: (1) it must determine whether the disputed exercise of local government power falls within Ill. Const. Art. VII, § 6(a); (2) whether the general assembly as preempted the use of home rule powers in the area; and (3) determine the proper relationship between the local ordinance and the state statute. Schillerstrom Homes, Inc. v. City of Naperville, 198 Ill. 2d 281, 260 Ill. Dec. 835, 762 N.E.2d 494, 2001 Ill. LEXIS 1785 (2001).

- Agent for State

The legislature may direct a municipality, as an agency of the state, to perform any governmental function of the state and in such case the municipality simply becomes an agency of the state. People ex rel. San. Dist. v. Schlaeger, 391 Ill. 314, 63 N.E.2d 382 (1945).

- Concurrent Powers

While a home rule municipality such as the city could not enact ordinances in conflict with the laws of Illinois, it did have the power under Ill. Const. Art. VII, § 6 to enact ordinances that allowed it to exercise power concurrently with the state. As a result, it could under an ordinance impose a minimum fine for a traffic offense if the state laws did not do so. City of Wheaton v. Loerop, 399 Ill. App. 3d 433, 339 Ill. Dec. 529, 926 N.E.2d 1004, 2010 Ill. App. LEXIS 265 (2 Dist. 2010).

A home-rule municipality in Illinois may exercise power concurrently with the state but may not vary any state scheme establishing uniform law throughout the state. National Adv. Co. v. City of Rolling Meadows, 789 F.2d 571 (7th Cir. 1986).

- Creation by Consent

The requirement of the consent of existing municipalities before an area within 1 1/2 miles of the new municipality can incorporate as a village (see 65 ILCS 5/2-3-5a), is incidental to, and not independent of, the valid exercise of police power by municipalities within this state; the consent requirement is constitutionally permissible under the well recognized power of the state to control the formation of political subdivisions within its boundaries. Town of Godfrey v. City of Alton, 33 Ill. App. 3d 978, 338 N.E.2d 890 (5 Dist. 1975).

The legislature may lawfully require the consent of existing municipalities as one of the conditions precedent to creation of a new municipality, when the existing municipalities have a real and substantial interest in the promotion of uniform development, in the perpetuation of its existing plans and regulations for the affected area. Town of Godfrey v. City of Alton, 33 Ill. App. 3d 978, 338 N.E.2d 890 (5 Dist. 1975).

- Distinguished

A 1971 amendment to the Municipal Code (see now 65 ILCS 5/11-31-1) distinguishing between Home Rule and Non-Home Rule municipalities with regard to the power to demolish unsafe structures was unconstitutional under this section and severable from the remainder of section 11-31-1 providing for such demolition. City of Urbana v. Houser, 67 Ill. 2d 268, 10 Ill. Dec. 239, 367 N.E.2d 692 (1977).

- Extraterritorial Power

Home rule power was not intended to be limited solely to activities to be undertaken within the unit's boundaries. Marshall Field & Co. v. Village of S. Barrington, 92 Ill. App. 3d 360, 47 Ill. Dec. 964, 415 N.E.2d 1277 (1 Dist. 1981).

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The power of municipalities to own, regulate and exercise sovereign power over land outside their corporate limits must be expressly granted by the legislature. O'Fallon Dev. Co. v. City of O'Fallon, 43 Ill. App. 3d 348, 2 Ill. Dec. 6, 356 N.E.2d 1293 (5 Dist. 1976).

The intention of subsection (a) of this section was that whatever extraterritorial governmental powers home rule units may exercise were to be granted by the legislature. City of Carbondale v. Van Natta, 61 Ill. 2d 483, 338 N.E.2d 19 (1975).

A municipality does not have extraterritorial zoning authority under its home-rule powers and whatever extraterritorial governmental powers home-rule units may exercise must be granted by the legislature. City of Carbondale v. Van Natta, 61 Ill. 2d 483, 338 N.E.2d 19 (1975).

- Limitation on Power

Trial court properly granted summary judgment to the advertising companies and properly denied the city's cross-motion for summary judgment on the issue of whether the city, through its ordinance, could require alteration of the advertising companies' signs without paying them just compensation. Even though the city had home rule authority pursuant to Ill. Const. Art. VII, § 6, the city's ordinance impermissibly infringed on a statewide issue, namely, the provision of just compensation to advertising companies who owned signs affected by the ordinance and, thus, the ordinance was preempted by the eminent domain statute, 735 ILCS 5/7-101. City of Oakbrook Terrace v. Suburban Bank & Trust Co., 364 Ill. App. 3d 506, 301 Ill. Dec. 135, 845 N.E.2d 1000, 2006 Ill. App. LEXIS 231 (1 Dist. 2006).

The home rule provision of the Illinois Constitution did not grant the City of Chicago the power to impose its health and safety ordinances on the Board of Trustees of the University of Illinois since it is an arm and instrumentality of the state. Board of Trustees v. City of Chicago, 317 Ill. App. 3d 569, 251 Ill. Dec. 434, 740 N.E.2d 515, 2000 Ill. App. LEXIS 914 (1 Dist. 2000).

Once a legislative body determines that a problem exists and acts to protect and promote the general welfare of its citizens, the legislation is presumed to be a valid exercise of the city's police power. However, the mere fact that the legislature has invoked the police power is not conclusive that the power was lawfully exercised; it remains within the province of the court to determine that issue. National Paint & Coatings Ass'n v. City of Chicago, 803 F. Supp. 135 (N.D. Ill. 1992).

The constitution permits municipalities to exercise any power and perform any function pertaining to its government and affairs, except as limited by this section. City of Wheaton v. Sandberg, 215 Ill. App. 3d 220, 158 Ill. Dec. 584, 574 N.E.2d 697 (2 Dist), cert. denied, 142 Ill. 2d 666, 164 Ill. Dec. 929, 584 N.E.2d 141 (1991).

Home rule units have the same powers as the sovereign, except where such powers are limited by the general assembly. Triple A Servs., Inc. v. Rice, 131 Ill. 2d 217, 137 Ill. Dec. 53, 545 N.E.2d 706 (1989).

The General Assembly's power to limit the actions of home rule units has been circumscribed, as home rule units have been constitutionally delegated greater autonomy in the determination of their government and affairs; to accomplish this independence, the constitution conferred substantial powers upon home rule units subject only to those restrictions imposed or authorized therein. People ex rel. Critton v. American Nat'l Bank & Trust Co., 132 Ill. 2d 64, 138 Ill. Dec. 138, 547 N.E.2d 107 (1989).

Home rule units have the same powers as the sovereign except where such powers are limited by the General Assembly. Landmarks Preservation Council v. City of Chicago, 125 Ill. 2d 164, 125 Ill. Dec. 830, 531 N.E.2d 9 (1988).

An express grant of specific authority to the Illinois Commerce Commission repeals, by implication, any grant of similar authority to a municipality. Kirwin v. Peoples Gas Light & Coke Co., 173 Ill. App. 3d 699, 123 Ill. Dec. 656, 528 N.E.2d 201 (1 Dist. 1988).

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The grant of home rule powers contemplates that different communities which perceive a problem differently may adopt different measures to address the problem, provided that the legislature has taken no affirmative steps to circumscribe the measures that may be taken and that the measures taken are reasonable. Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483, 83 Ill. Dec. 308, 470 N.E.2d 266 (1984).

Although the grant of home rule powers in subsection (a) of this section is indeed broad, it may be limited in two ways: first, the legislature may deny or limit pursuant to subsections (g) and (h); and second, the grant of power in subsection (a) might be limited by judicial construction of the phrase "pertaining to its government and affairs." City of Evanston v. Create, Inc., 84 Ill. App. 3d 752, 40 Ill. Dec. 258, 405 N.E.2d 1350 (1 Dist. 1980), aff'd, 85 Ill. 2d 101, 51 Ill. Dec. 688, 421 N.E.2d 196 (1981).

The use of home rule powers was not anticipated to extend to such matters as divorce, real property law, trusts, contracts, etc. which are generally recognized as falling within the competence of state rather than local authorities. City of Evanston v. Create, Inc., 84 Ill. App. 3d 752, 40 Ill. Dec. 258, 405 N.E.2d 1350 (1 Dist. 1980), aff'd, 85 Ill. 2d 101, 51 Ill. Dec. 688, 421 N.E.2d 196 (1981).

In the event that the state wishes to exercise exclusive power on a particular home rule matter, the General Assembly must so provide by statute. Hoffman v. Board of Fire & Police Comm'rs, 86 Ill. App. 3d 505, 41 Ill. Dec. 752, 408 N.E.2d 98 (3 Dist. 1980).

A statute enacted subsequent to the 1970 Constitution which purports to limit home rule powers must be specific. Mandarino v. Village of Lombard, 92 Ill. App. 3d 78, 46 Ill. Dec. 624, 414 N.E.2d 508 (2 Dist. 1980).

The concept of home rule and the related limitations of home rule powers were "totally foreign" to the contemplation of the legislature prior to the 1970 Constitution; therefore, no legislative intent to limit the powers of home rule unit could exist prior to 1970. Aurora Pizza Hut, Inc. v. Hayter, 79 Ill. App. 3d 1102, 35 Ill. Dec. 200, 398 N.E.2d 1150 (1 Dist. 1979).

A statute enacted subsequent to the Constitution of 1970 and which purports to limit home rule powers must, to that effect, be specific. Village of Hoffman Estates v. Union Oil Co., 56 Ill. App. 3d 52, 13 Ill. Dec. 277, 370 N.E.2d 1304 (1 Dist. 1977).

A General Assembly declaration providing for the exclusive exercise by the State of a power of a home rule unit unconditionally bars a home rule unit's exercise of the affected power. United Private Detective & Sec. Ass'n v. City of Chicago, 62 Ill. 2d 506, 343 N.E.2d 453 (1976).

A statute intended to limit or deny home rule powers must contain an express statement to that effect. Stryker v. Village of Oak Park, 62 Ill. 2d 523, 343 N.E.2d 919 (1976).

A simple majority could enact legislation granting the state the right to exercise exclusively a power or function of any home rule unit provided that the state is already exercising that power or function. United Private Detective & Sec. Ass'n v. City of Chicago, 62 Ill. 2d 506, 343 N.E.2d 453 (1976).

The language of subsection (h) of this section indicates that, to exclude the exercise of home-rule powers in a certain field, the legislature must expressly say so in a statute. Illinois Liquor Control Comm'n v. City of Joliet, 26 Ill. App. 3d 27, 324 N.E.2d 453 (3 Dist. 1975).

The exclusive exercise of authority by the state may be expressed notably by enactment of a comprehensive regulatory scheme, or by establishment of a state agency for the purpose of a comprehensive regulatory scheme. Illinois Liquor Control Comm'n v. City of Joliet, 26 Ill. App. 3d 27, 324 N.E.2d 453 (3 Dist. 1975).

- Power to Tax

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In a case wherein taxpayers paid real estate taxes from a particular year under protest and then filed objections to the levies of several units of local government, alleging that 73 taxing districts accumulated improper surpluses, thereby invalidating their property-tax levies, the trial court correctly declined to review alleged unlawful accumulations by two home-rule municipalities for abuse of discretion. Pursuant to Ill. Const., Art. 7, § 6(a), a home-rule unit may exercise any power, including the power to tax, and perform any function pertaining to its government and affairs; thus, a home-rule unit exercises sovereign powers. Alpha Gamma Rho Alumni v. People ex rel. Williams, 322 Ill. App. 3d 310, 255 Ill. Dec. 701, 750 N.E.2d 282, 2001 Ill. App. LEXIS 478 (1 Dist. 2001).

The amendment to section 11-10-2 of the Illinois Municipal Code (65 ILCS 5/11-10-2) did not constitute an invalid invocation of Ill. Const., Art. VII, § 6(h); the invocation of this subsection of the constitution applied specifically only to the section of the statute regarding the election of officers of the fire department and the paying of funds received from the tax imposed on them, not to the general power of taxing insurance companies. Des Plaines Firemen's Ass'n v. City of Des Plaines, 267 Ill. App. 3d 920, 204 Ill. Dec. 831, 642 N.E.2d 732 (1 Dist. 1994), appeal denied, 159 Ill. 2d 565, 207 Ill. Dec. 515, 647 N.E.2d 1008 (1995).

- Preemption

In order to meet the requirements of subsection (h), legislation must contain express language that the area covered by the legislation is to be exclusively controlled by the state; it is not enough that the state comprehensively regulates an area which otherwise would fall into home rule power. Village of Bolingbrook v. Citizens Utils. Co., 158 Ill. 2d 133, 198 Ill. Dec. 389, 632 N.E.2d 1000 (1994).

Apart from subsection (k), applicable to only a narrow class of cases, there is nothing in the home rule measures of the constitution imposing additional restriction on legislative action, or any limitation peculiar to preemption, that would further limit the authority of the legislature to distinguish among units of local government, including home rule units. Nevitt v. Langfelder, 157 Ill. 2d 116, 191 Ill. Dec. 36, 623 N.E.2d 281 (1993).

In the context of state action versus local action, preemption means the end of local legislative control over a given subject where the legislature has adopted a scheme of regulation over the same subject. Kirwin v. Peoples Gas Light & Coke Co., 173 Ill. App. 3d 699, 123 Ill. Dec. 656, 528 N.E.2d 201 (1 Dist. 1988).

The Illinois Constitution requires the General Assembly to provide specifically by law when it wishes to effect exclusive preemption of a home rule power or function. City of Chicago v. State & Mun. Teamsters, 127 Ill. App. 3d 328, 82 Ill. Dec. 488, 468 N.E.2d 1268 (1 Dist. 1984).

- Reimbursement

Chicago is a home rule municipality, with the constitutional right to exercise any power and perform any function pertaining to its government, as contemplated by Ill. Const. art. VII, § 6(a). Obtaining reimbursement directly from a police officer, who had received third-party payment for medical expenses, mitigated litigation costs that the city would have incurred by intervening in the officer's lawsuit against the third party; nothing in this substitute method of obtaining reimbursement for the city's payments of medical expenses violated the city's ordinance provisions authorizing direct action by the city against the third party. Edwards v. City of Chicago, 389 Ill. App. 3d 350, 329 Ill. Dec. 59, 905 N.E.2d 897, 2009 Ill. App. LEXIS 128 (1 Dist. 2009), appeal denied, 2009 Ill. LEXIS 1655 (Ill. 2009); appeal denied, 2010 Ill. LEXIS 124 (Ill. 2010).

- Relationship with State

The extremely broad grant of powers to home rule units contained in subsection (a) of this section of the Illinois Constitution of 1970 reflects the new relationship which exists between local and

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state government. City of Carbondale ex rel. Ham v. Eckert, 76 Ill. App. 3d 881, 32 Ill. Dec. 377, 395 N.E.2d 607 (5 Dist. 1979).

The state may impose a duty on a municipal corporation which relates to the general welfare and security of the state; even though the performance of the duty will create a debt to be paid by local taxation, such legislation does not contravene constitutional provisions. People ex rel. San. Dist. v. Schlaeger, 391 Ill. 314, 63 N.E.2d 382 (1945).

- Repeal of Status

The referendum which repealed the municipality's home rule powers did not in effect repeal the sales tax enacted pursuant to that home rule power; the sales tax would remain in effect so long as it was pledged to, and supported, a valid obligation. Royal Liquor Mart, Inc. v. City of Rockford, 133 Ill. App. 3d 868, 88 Ill. Dec. 872, 479 N.E.2d 485 (2 Dist. 1985).

As it could be inferred that the parties may have reasonably foreseen that someday the municipality's home rule status would be repealed by referendum, repeal of home rule would not also repeal all previously valid actions taken by the city during that period. Royal Liquor Mart, Inc. v. City of Rockford, 133 Ill. App. 3d 868, 88 Ill. Dec. 872, 479 N.E.2d 485 (2 Dist. 1985).

- Scope of Power

Ill. Const. art. 7, § 6(a) empowered the village, a home rule unit, to enact its zoning code. LeCompte v. Zoning Bd. of Appeals for Barrington Hills, Ill. App. 3d , 354 Ill. Dec. 869, 958 N.E.2d 1065, 2011 Ill. App. LEXIS 1014 (1 Dist. 2011).

Despite the nearby property owners claiming that the city's ordinances used to approve the hospitals' plan to develop their campus violated the nearby property owners' due process rights, pursuant to 65 ILCS 5/11-13-25 that recognized due process rights applied to zoning decisions, the nearby property owners were actually claiming that the ordinances were invalid based on the city's failure to follow its own self-imposed regulations. Under the Landmarks decision, that ground was not an acceptable reason for invalidating an ordinance, as a home-rule unit such as the city had broad authority to zone under Ill. Const. art. VII, § 6 and the nearby home owners had not show that the city's ordinances violated an independent constitutional standard, such as depriving the nearby property owners of their substantive or procedural due process rights. Condominium Ass'n of Commonwealth Plaza v. City of Chicago, 399 Ill. App. 3d 32, 338 Ill. Dec. 390, 924 N.E.2d 596, 2010 Ill. App. LEXIS 167 (1 Dist. 2010).

Glenview, Ill., Municipal Code ch. 1, § 1.13 is an unconstitutional use of the village's home rule powers; the attorney fee shifting ordinance affects access to the state court system, which is an area of statewide concern that does not come within the purview of the village's home rule power. Vill. of Glenview v. Zwick, 356 Ill. App. 3d 630, 292 Ill. Dec. 735, 826 N.E.2d 1171, 2005 Ill. App. LEXIS 306 (1 Dist. 2005), appeal denied, 216 Ill. 2d 684, 298 Ill. Dec. 376, 839 N.E.2d 1023 (2005).

Unless a state law specifically states that a home rule unit's power is limited, the authority of a home rule unit to act concurrently with the state cannot be considered restricted. City of Chicago v. Roman, 292 Ill. App. 3d 546, 226 Ill. Dec. 512, 685 N.E.2d 967 (1 Dist. 1997), aff'd, 184 Ill. 2d 504, 235 Ill. Dec. 468, 705 N.E.2d 81 (1998).

Home rule units are free to carry on activities that relate to their communities even if the state is also interested and active in regulating the particular area. Congress Care Ctr. Assocs. v. Chicago Dep't of Health, 260 Ill. App. 3d 586, 198 Ill. Dec. 207, 632 N.E.2d 266 (1 Dist. 1994).

Provision of the Illinois Constitution granting home rule municipality the authority to exercise any power and perform any function pertaining to its government and affairs was intended to give

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home rule units the broadest powers possible. Congress Care Ctr. Assocs. v. Chicago Dep't of Health, 260 Ill. App. 3d 586, 198 Ill. Dec. 207, 632 N.E.2d 266 (1 Dist. 1994).

To constitute a legitimate exercise of the police power, a municipal regulation must bear a reasonable relationship to the public interest sought to be protected and the means adopted must be a reasonable method of accomplishing the chosen objective. National Paint & Coatings Ass'n v. City of Chicago, 803 F. Supp. 135 (N.D. Ill. 1992).

Home rule units do not have extraterritorial governmental powers. Illinois Wine & Spirits Co. v. County of Cook, 191 Ill. App. 3d 924, 139 Ill. Dec. 31, 548 N.E.2d 416 (1 Dist. 1989), appeal denied, 131 Ill. 2d 559, 142 Ill. Dec. 882, 553 N.E.2d 396, cert. denied, 498 U.S. 848, 111 S. Ct. 135, 112 L. Ed. 2d 102 (1990).

The 1970 Constitution did not revoke pre-1970 municipal powers expressly granted by the General Assembly; therefore, home rule units should not be denied pre-1970 municipal powers. Wellington v. City of Chicago, 144 Ill. App. 3d 774, 98 Ill. Dec. 481, 494 N.E.2d 603 (1 Dist. 1986).

The powers of a home rule unit are construed liberally. Webster v. City of Chicago, 132 Ill. App. 3d 666, 88 Ill. Dec. 131, 478 N.E.2d 446 (1 Dist. 1985).

The powers of home rule units relate to their own problems, not to those of the state or the nation. Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483, 83 Ill. Dec. 308, 470 N.E.2d 266 (1984).

Home rule is predicated on the assumption that problems in which local governments have a legitimate and substantial interest should be open to local solution and reasonable experimentation to meet local needs, free from veto by voters and elected representatives of other parts of the state who might disagree with the particular approach advanced by the representatives of the locality involved or fail to appreciate the local perception of the problem. Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483, 83 Ill. Dec. 308, 470 N.E.2d 266 (1984).

The grant of power to the home rule units is broad and imprecise to allow for greater flexibility. Budka v. Board of Pub. Safety Comm'rs, 120 Ill. App. 3d 348, 75 Ill. Dec. 958, 458 N.E.2d 126 (1 Dist. 1983).

The requirement that home rule powers must pertain to the government and affairs of a municipality was intended to restrict home rule powers to local subjects, not those of state or regional concern. City of Peoria v. Keehner, 115 Ill. App. 3d 130, 70 Ill. Dec. 772, 449 N.E.2d 1376 (3 Dist. 1983).

Where powers or functions of a home rule unit are concerned, the scope of authority granted to home rule units is generally coextensive with that of the sovereign, except where such powers are limited expressly by the General Assembly. McLorn v. City of E. St. Louis, 105 Ill. App. 3d 148, 61 Ill. Dec. 107, 434 N.E.2d 44 (5 Dist. 1982).

A statute enacted after the effective date of the 1970 Constitution does not restrict the home rule power unless it falls within one of the preemption provision under subsection (g), (h) and (i) of this section. Board of Trustees v. Mathias, 109 Ill. App. 3d 894, 65 Ill. Dec. 449, 441 N.E.2d 362 (1 Dist. 1982).

The Illinois Constitution establishes a presumption in favor of municipal home rule. Quilici v. Village of Morton Grove, 695 F.2d 261 (7th Cir. 1982), cert. denied, 464 U.S. 863, 104 S. Ct. 194, 78 L. Ed. 2d 170 (1983).

A home rule unit's exercise of its power will supercede any conflicting pre-1970 Constitution legislation. Mandarino v. Village of Lombard, 92 Ill. App. 3d 78, 46 Ill. Dec. 624, 414 N.E.2d 508 (2 Dist. 1980).

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To avoid the danger that the courts may read the list of powers as exclusive and as marking the outer boundaries of home rule authority, subsection (a) of this section provides that home rule powers are not limited to the enumerated list, and subsection (m) of this section instructs the courts that the powers and functions of home rule units are to be construed liberally. City of Evanston v. Create, Inc., 84 Ill. App. 3d 752, 40 Ill. Dec. 258, 405 N.E.2d 1350 (1 Dist. 1980), aff'd, 85 Ill. 2d 101, 51 Ill. Dec. 688, 421 N.E.2d 196 (1981).

Finding a matter to be within the home rule power does not preclude regulation or control by the state. County of Cook v. John Sexton Contractors Co., 75 Ill. 2d 494, 27 Ill. Dec. 489, 389 N.E.2d 553 (1979).

A home rule unit has the power to regulate matters pertaining to the public health, safety, morals and welfare. Aurora Pizza Hut, Inc. v. Hayter, 79 Ill. App. 3d 1102, 35 Ill. Dec. 200, 398 N.E.2d 1150 (1 Dist. 1979).

Cities, by subsection (a) of this section of the state constitution, can now do whatever they are not forbidden to do by the Constitution or the legislature, whereas formerly they could exercise only those powers specifically granted to them by the state. City of Rockford v. Gill, 60 Ill. App. 3d 94, 17 Ill. Dec. 421, 376 N.E.2d 420 (2 Dist. 1978), rev'd on other grounds, 75 Ill. 2d 334, 26 Ill. Dec. 669, 388 N.E.2d 384 (1979).

The 1971 Amendment to section 11-31-1 of the Municipal Code (see now 65 ILCS 5/11-31-1), which deprived home rule units of the power to demolish unsafe structures, was unconstitutional and void because there was no reasonable basis for differentiating between the classes of municipalities to which the demolition authority applied and because it purported to deny home rule units a power granted them under the Illinois Constitution. City of Urbana v. Houser, 67 Ill. 2d 268, 10 Ill. Dec. 239, 367 N.E.2d 692 (1977).

Subsection (a) of this section of the Constitution grants to home rule municipalities authority to exercise powers and perform any function pertaining to its government; affairs and municipalities which are not home rule units continue to derive governmental powers from express legislative grants from the General Assembly or Constitution. O'Fallon Dev. Co. v. City of O'Fallon, 43 Ill. App. 3d 348, 2 Ill. Dec. 6, 356 N.E.2d 1293 (5 Dist. 1976).

Generally a local government has only those powers expressly conferred upon it by the state, together with such powers as may be fairly implied or incidental thereto, however, this rule is not applicable in the case of home-rule municipalities; municipalities may freely govern themselves except as restricted by the state, according to the home rule provisions of the 1970 state Constitution. Illinois Liquor Control Comm'n v. City of Joliet, 26 Ill. App. 3d 27, 324 N.E.2d 453 (3 Dist. 1975).

In determining whether or not the legislature has provided "specifically by law for the exclusive exercise" of power by the state, a home rule unit acting in a proper sphere of authority is not bound by legislative enactments prior to 1970; and this is true even in a field where both the state and the home rule unit may exercise power concurrently. Illinois Liquor Control Comm'n v. City of Joliet, 26 Ill. App. 3d 27, 324 N.E.2d 453 (3 Dist. 1975).

A home rule unit is authorized to exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare, and has the power to require zoning. Johnny Bruce Co. v. City of Champaign, 24 Ill. App. 3d 900, 321 N.E.2d 469 (4 Dist. 1974).

A municipality which derives its existence and powers from the General Assembly does not possess inherent powers; in order to legislate, the municipality must point to a statute that expressly gives it authority. Village of River Forest v. Midwest Bank & Trust Co., 12 Ill. App. 3d 136, 297 N.E.2d 775 (1 Dist. 1973).

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While the first part of subsection (i) appears to command that the General Assembly not interfere with the home-rule power specified in this subdivision. The second part of the subdivision seems to require that the power be exercised only pursuant to a law adopted by the General Assembly; however, by adopting a construction which requires the machinery and procedures for implementing function to be established by law, while prohibiting the General Assembly from denying or limiting the exercise of the power, the two apparently conflicting provisions are harmonized. Oak Park Fed. Sav. & Loan Ass'n v. Village of Oak Park, 54 Ill. 2d 200, 296 N.E.2d 344 (1973).

The power of the General Assembly to limit the actions of home-rule units has been circumscribed by constitutional delegations of greater autonomy in the determination of home rule government and affairs; to accomplish this independence, the constitution conferred substantial powers upon home rule units subject only to those restrictions imposed or authorized therein. Kanellos v. County of Cook, 53 Ill. 2d 161, 290 N.E.2d 240 (1972).

To justify an invasion of private rights as a valid exercise of the police power, it must be shown that the power was exercised for the preservation of the safety, health, morals or general welfare of the public. Eleopoulos v. City of Chicago, 3 Ill. 2d 247, 120 N.E.2d 555 (1954).

This provision of the Constitution is self-executing. People ex rel. Schaumleffel v. Hoerr, 294 Ill. 338, 128 N.E. 572 (1920).

Implied Preemption

The courts of this state have consistently refused to find implied preemption of home rule powers. Village of Bolingbrook v. Citizens Utils. Co., 158 Ill. 2d 133, 198 Ill. Dec. 389, 632 N.E.2d 1000 (1994).

Judicial Review

- Jurisdiction

The Supreme Court would not assume jurisdiction on direct appeal merely to refer to earlier decisions regarding the constitutionality of a statute under this section. Richter v. City of Mt. Carroll, 398 Ill. 473, 76 N.E.2d 452 (1947).

- Method

Where a city Fair Housing Ordinance under which the plaintiffs were charged and convicted stated that, "any complainant aggrieved by the decision of the Board shall have full right to appeal from such order of suspension or revocation in accordance with procedures specified in the Administrative Review Act," which conferred jurisdiction in the circuit court, the Home Rule provisions of the state Constitution did not grant the necessary power to the city to choose a particular method of judicial review; therefore, the section in the city ordinance conferring jurisdiction in the circuit court through the Administrative Review Act was invalid. Quinlan & Tyson, Inc. v. City of Evanston, 25 Ill. App. 3d 879, 324 N.E.2d 65 (1 Dist. 1975).

Because the method of judicial review of the decisions of the defendant city's administrative agencies is not a function pertaining to its government and affairs within the contemplation of this section of the Constitution of 1970, the determination of the manner or method of such review is not within the powers conferred upon the city. Paper Supply Co. v. City of Chicago, 57 Ill. 2d 553, 317 N.E.2d 3 (1974).

The legislative determination of what is a proper exercise of the home rule power is not conclusive; whether the means employed have a real, substantial relation to the public health,

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comfort, morals, safety or welfare, or are unreasonable and arbitrary, is a question subject to review by the courts. Eleopoulos v. City of Chicago, 3 Ill. 2d 247, 120 N.E.2d 555 (1954).

- Standard

Trial court used proper reasonableness standard in its determination that city had abused its exercise of police power. City of Evanston v. City of Chicago, 279 Ill. App. 3d 255, 215 Ill. Dec. 894, 664 N.E.2d 291 (1 Dist. 1996).

The analysis to determine the validity of the exercise of home rule authority consists of an examination of: (1) the extent to which the conduct in question affects matters outside the municipality; (2) the traditional role of municipal versus state regulation in the field; and (3) which level of government has the more vital interest in that regulation. Village of Dolton ex rel. Winter v. CSX Transp., Inc., 196 Ill. App. 3d 564, 143 Ill. Dec. 505, 554 N.E.2d 440 (1 Dist. 1990).

Courts may not hold invalid a disputed ordinance passed by a home rule unit of local government unless it was enacted in violation of a constitutional provision or a provision of a state or federal statute. Landmarks Preservation Council v. City of Chicago, 125 Ill. 2d 164, 125 Ill. Dec. 830, 531 N.E.2d 9 (1988).

Any home rule analysis will properly proceed along three areas of inquiry: (1) whether local government is acting in an area "pertaining to its government and affairs"; (2) whether the legislature has preempted this area of otherwise valid home rule power by specifically limiting local exercise or specifically declaring the state's exercise to be exclusive; and (3) whether there is a proper relationship between the local ordinance and any state legislative acts in the same area. Peoples Gas Light & Coke Co. v. City of Chicago, 125 Ill. App. 3d 95, 80 Ill. Dec. 491, 465 N.E.2d 603 (1 Dist. 1984); City of Wheaton v. Sandberg, 215 Ill. App. 3d 220, 158 Ill. Dec. 584, 574 N.E.2d 697 (2 Dist), cert. denied, 142 Ill. 2d 666, 164 Ill. Dec. 929, 584 N.E.2d 141 (1991).

- Standing

Where the penalty provisions of a city towing ordinance were "so connected as to depend" on the portion of the ordinance which the trial court found to be unconstitutional, the towing company owner and officials had standing to challenge the ordinance which was declared unconstitutional in its entirety. City of Chicago v. Pioneer Towing, Inc., 73 Ill. App. 3d 867, 29 Ill. Dec. 575, 392 N.E.2d 132 (1 Dist. 1979).

A village, a municipality which had a population of more than 25,000, had standing to intervene as a plaintiff in a suit to enjoin the enforcement of a rezoning ordinance and a special use that concerned land outside of, but within one and one-half miles of, its territorial limits. Forestview Homeowners Ass'n v. County of Cook, 18 Ill. App. 3d 230, 309 N.E.2d 763 (1 Dist. 1974).

Legal Expenses

Legal expenses incurred by holders of public office pursuant to their conviction of criminal official misconduct and corruption charges cannot reasonably be said to pertain to a home rule unit's government and affairs. Wright v. City of Danville, 174 Ill. 2d 391, 221 Ill. Dec. 203, 675 N.E.2d 110 (1996).

Ordinance indemnifying officials convicted of crimes for their attorney fees and costs incurred in their unsuccessful criminal defense was invalid. Wright v. City of Danville, 174 Ill. 2d 391, 221 Ill. Dec. 203, 675 N.E.2d 110 (1996).

Licenses

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Town's business license ordinance was not invalid, as Illinois law permitted the town to require businesses to have licenses; the town's home-rule power under Ill. Const. art. VII, § 6(a), allowed it to regulate for the protection of public health, safety, morals, and welfare, and 65 ILCS 5/11-60-1 explicitly authorized municipalities to issue and revoke licenses. Justice v. Town of Cicero, 577 F.3d 768, 2009 U.S. App. LEXIS 18235 (7th Cir. 2009), cert. denied, 2010 U.S. LEXIS 4857 (U.S. 2010).

- Fees

The power to regulate includes the power to charge a license fee in order to defray all or part of the costs incurred as a result of regulation and inspection. Oak Park Trust & Sav. Bank v. Village of Mount Prospect, 181 Ill. App. 3d 10, 129 Ill. Dec. 713, 536 N.E.2d 763 (1 Dist. 1989).

A village's landlord-tenant ordinance contained genuine regulatory provisions; the fee assessed in licensing rental units was not an improper revenue-raising measure. Oak Park Trust & Sav. Bank v. Village of Mount Prospect, 181 Ill. App. 3d 10, 129 Ill. Dec. 713, 536 N.E.2d 763 (1 Dist. 1989).

The burden of proof is upon those seeking to invalidate license fees to show the lack of any reasonable relation between the fee and the cost of enforcement. A & H Vending Serv., Inc. v. Village of Schaumburg, 168 Ill. App. 3d 61, 118 Ill. Dec. 733, 522 N.E.2d 188 (1 Dist. 1988).

The phrase "to license for revenue" describes those situations in which a governmental unit that did not have the power to tax attempted to raise revenue by the exercise of its police power. Rozner v. Korshak, 55 Ill. 2d 430, 303 N.E.2d 389 (1973).

- Food Vendors

An ordinance prohibiting mobile food vendors in the Medical Center District was a valid restriction on the use of the plaintiffs' licenses in the interest of the public health, safety and welfare; it was not a revocation of the plaintiffs' licenses. Triple A Servs., Inc. v. Rice, 131 Ill. 2d 217, 137 Ill. Dec. 53, 545 N.E.2d 706 (1989).

- Issuance

Regulation of the sale of food is within the general scope of the police power inherent in the state, as the power to license and regulate the sale of food for human consumption is expressly conferred upon each municipality by the Municipal Code (see now 65 ILCS 5/1-1-1 et seq.), and these licensing powers have been ratified and broadened by this article of the Illinois Constitution of 1970. People ex rel. Pyrzynski v. Daley, 34 Ill. App. 3d 1077, 341 N.E.2d 24 (1 Dist. 1975).

- Liquor

Liquor licensing ordinances are a valid exercise of city ordinance's authority as a home rule unit. Aurora Pizza Hut, Inc. v. Hayter, 79 Ill. App. 3d 1102, 35 Ill. Dec. 200, 398 N.E.2d 1150 (1 Dist. 1979).

- Real Estate Brokers

The state has the exclusive power to regulate the licensing of real estate brokers and salesmen pursuant to statute (see now 225 ILCS 454/25-40) and this section; what was left to the municipality were the powers given by section 11-11.1-1 of the Illinois Municipal Code (65 ILCS 5/11-11.1-1). Andruss v. City of Evanston, 68 Ill. 2d 215, 12 Ill. Dec. 244, 369 N.E.2d 1258 (1977).

- Revocation

Where the defendant storekeeper was charged with possession of stolen property because he had items for sale which still had the price tags of stores from which they were stolen attached,

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the city's revocation of the food purveyor's license was in accord with the manifest weight of the evidence. People ex rel. Pyrzynski v. Daley, 34 Ill. App. 3d 1077, 341 N.E.2d 24 (1 Dist. 1975).

Liquor Control Act

Liquor Control Act (see 235 ILCS 5/1-1 et seq.) section was not a limitation of the home rule powers with regards to liquor license regulations under the constitution which stipulated that statute may keep out exercise of home rule powers by providing specifically for exclusive exercise by state of such powers, where the opening language of the Liquor Control Act (see 235 ILCS 5/1-1 et seq.) which allegedly declared that legislative intent of state preemption of regulation of liquor licenses, was present in the original Liquor Control Act of 1933, and the legislative intent to limit home rule powers was impossible prior to 1970 Constitution and thus Liquor Control Act (see 235 ILCS 5/1-1 et seq.) did not specifically exclude exercise by state of regulation of liquor licenses. Aurora Pizza Hut, Inc. v. Hayter, 79 Ill. App. 3d 1102, 35 Ill. Dec. 200, 398 N.E.2d 1150 (1 Dist. 1979).

- Concurrent Ordinances

The courts have approved local liquor ordinances in home rule municipalities, as within their home rule powers, which were either more restrictive than state statutes dealing with the same subject matter or which placed additional requirements on licensees not found in the Illinois Liquor Control Act (see 235 ILCS 5/1-1 et seq.). Easter Enters., Inc. v. Illinois Liquor Control Comm'n, 114 Ill. App. 3d 855, 70 Ill. Dec. 666, 449 N.E.2d 1013 (3 Dist. 1983).

A county's tax ordinance which did not conflict with any portion of the Liquor Control Act (235 ILCS 5/1-2) but rather, imposed a tax in addition to any imposed by the act without any attempt to regulate those areas now regulated by the act. Mulligan v. Dunne, 61 Ill. 2d 544, 338 N.E.2d 6 (1975).

- Local Application

Any disruption caused by the implementation of the local option provisions of the Liquor Control Act was not inconsistent with the home rule provisions of this section; nor did the disruption violate the home rule powers to enact laws to protect public safety. Duncan v. Marcin, 82 Ill. App. 3d 963, 38 Ill. Dec. 422, 403 N.E.2d 653 (1 Dist. 1980).

Granting voters the right to determine whether certain provisions of the Liquor Control Act (see now 235 ILCS 5/1-1 et seq.) would be operative in the precinct was not an improper delegation of legislative powers in violation of those home rule powers granted under this section. Duncan v. Marcin, 82 Ill. App. 3d 963, 38 Ill. Dec. 422, 403 N.E.2d 653 (1 Dist. 1980).

Where the Liquor Control Act (see now 235 ILCS 5/1-1 et seq.) did not specifically state that the state's regulation of liquor licenses was exclusive, and did not specifically limit the concurrent exercise by home rule units of the regulation of liquor licenses, consequently, Liquor Control Act, as re-enacted in 1977, did not constitute a limitation on the power of home rule units to regulate liquor licenses under the Illinois Constitution of 1970. Aurora Pizza Hut, Inc. v. Hayter, 79 Ill. App. 3d 1102, 35 Ill. Dec. 200, 398 N.E.2d 1150 (1 Dist. 1979).

The Liquor Control Act (see now 235 ILCS 5/1-1 et seq.) or the Dramshop Act (see now 235 ILCS 5/1-2 et seq.) was not an effort by the General Assembly to deny or limit the power of home rule units to tax liquor; the act, although admittedly an extensive regulation of the liquor industry, is not specifically declared as exclusive in regard to liquor taxation and in fact recognizes the local interest in liquor control. Mulligan v. Dunne, 61 Ill. 2d 544, 338 N.E.2d 6 (1975).

Liquor control is unquestionably a matter involved in the protection of public health, safety, morals and welfare; it is obvious that liquor control is within the scope of the home rule powers granted by this section of the Constitution, and cannot be limited except as provided in other sections of

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the home rule provisions of this section. Illinois Liquor Control Comm'n v. City of Joliet, 26 Ill. App. 3d 27, 324 N.E.2d 453 (3 Dist. 1975).

The broad delegations of power to local government found throughout the Liquor Control Act indicate the legislature's desire to permit substantial local control over the liquor industry. Illinois Liquor Control Comm'n v. City of Joliet, 26 Ill. App. 3d 27, 324 N.E.2d 453 (3 Dist. 1975).

- Local Authority

The Liquor Control Act (see now 235 ILCS 5/1-1 et seq.) provision that authorized local government units to license alcoholic beverages did not specifically state a purpose to limit the powers of home rule units; thus it had no restrictive effect on the home rule powers of the city in the regulation of alcoholic beverages. Aurora Pizza Hut, Inc. v. Hayter, 79 Ill. App. 3d 1102, 35 Ill. Dec. 200, 398 N.E.2d 1150 (1 Dist. 1979).

Model Codes

- Adoption not Mandatory

A statute which authorized municipalities to incorporate by reference the provisions of nationally recognized technical codes in public records (50 ILCS 220/2) did not apply to a city since it was a home rule unit, although it chose to use the statute as a reference for adopting its ordinances under its home rule powers. City of Rockford v. Suski, 90 Ill. App. 3d 681, 46 Ill. Dec. 87, 413 N.E.2d 527 (2 Dist. 1980).

Municipal Courts

- Authority to Create

The only limitations upon the power to create municipal courts are those imposed by this section of the Illinois Constitution and the Municipal Code (see 65 ILCS 5/1-1-1 et seq.). United Biscuit Co. of Am. v. Voss Truck Lines, 407 Ill. 488, 95 N.E.2d 439 (1950).

Municipal Debt

- Ascertainment

It is common knowledge that the combined debt of a city, county, school district and other municipal corporation including a common territory, in the aggregate, is often far in excess of five percent. McLain v. Phelps, 409 Ill. 393, 100 N.E.2d 753 (1951).

In order that cash in the hands of a municipality may be deducted to ascertain whether the constitutional debt limitation had been exceeded, it was necessary that such fund be clearly designated as being usable solely for the purpose of discharging some outstanding indebtedness in such a manner that its application to such purpose could be enforced by law under former Ill. Const. (1870), Art. IX, § 12 (see now this section). People ex rel. Lindheimer v. Hamilton, 373 Ill. 124, 25 N.E.2d 517 (1940).

- Installment Payments

Where a contract calls for the payment of annual installments, an indebtedness is at once created for the aggregate of all the installments; the same principle applies to future lease and rental obligations. People ex rel. Adamowski v. Public Bldg. Comm'n, 11 Ill. 2d 125, 142 N.E.2d 67 (1957).

- Judgment Against Government

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Where the plaintiff's claim in negligence was covered by insurance and resulted from a judgment by a court having jurisdiction, that judgment was of such class of claims as there was authority to pay from taxes under former Sec. 604 of the Counties Act, (see now 55 ILCS 5/6-1001); there was authority for a competent court to enter a judgment against the governmental body for negligence when that court found the tortious acts of the governmental body to be covered by insurance and the levy of taxes for payment of such a judgment was not in violation of any statute or the constitution under former Ill. Const. 1948, Art. IX, § 9 (see now this section). People ex rel. Highsmith v. County of Jefferson, 87 Ill. App. 2d 145, 230 N.E.2d 480 (5 Dist. 1967).

A law making a city or county liable for damages to property destroyed by the act of a mob of 12 or more persons or a riot was found not to be unconstitutional, but rather a mere police regulation that did not create a debt against municipal corporations of any particular amount, much less an amount exceeding the constitutional limit. City of Chicago v. Manhattan Cement Co., 178 Ill. 372, 53 N.E. 68 (1899).

- Limited

Where plaintiff, a civil engineer, sued village, a municipal corporation, for the reasonable value of services rendered by him to the defendant in connection with proposed construction of a new sewage system or remodeling defendant's old system pursuant to former section 62 of the Cities and Villages Act (see now 65 ILCS 5/11-139-3) and the question of constructing or improving the sewage system and the issuance of the revenue bonds to provide for the payment therefore was put to a referendum vote of the electors and rejected, the amount owed to the plaintiff for his work prior thereto exceeded the limitation of 5% of the value of the taxable property in the defendant municipality imposed by former Ill. Const., Art. IX, § 12 (see now this section). Hancock v. Village of Hazel Crest, 318 Ill. App. 170, 47 N.E.2d 557 (1 Dist. 1943).

A debt, payable in the future, is, obviously, no less a debt than if payable presently; and a debt payable upon a contingency, as, upon the happening of some event, such as the rendering of service or the delivery of property, etc., is some kind of a debt, and therefore was within the prohibition of former Ill. Const., Art. IX, § 12 (see now this section). Austin v. Healy, 376 Ill. 633, 35 N.E.2d 78 (1941).

The object of Ill. Const. (1870), Art. IX, § 9 (see now this section) was to protect the property of citizens from being burdened beyond five percent; any plan or scheme which has the effect of creating such excess burden is prohibited by the constitution. People ex rel. Lindheimer v. Hamilton, 373 Ill. 124, 25 N.E.2d 517 (1940).

By the terms of the Illinois Housing Authorities Act (see now 310 ILCS 10/1 et seq.), bonds or obligations issued by such authority were not payable out of any funds or properties other than those of said authority, and they were explicitly declared not to constitute an indebtedness of a municipality within the meaning of any constitutional or statutory debt limitation or restriction. Krause v. Peoria Hous. Auth., 370 Ill. 356, 19 N.E.2d 193 (1939).

Where the language of the constitution was that no city, etc., "shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of its taxable property" a complainant must clearly identify the money or the fund, or other property which represents that money lent, in such a manner that it can be reclaimed and delivered without taking other property with it, or injuring other persons or interfering with others' rights. City of Litchfield v. Ballou, 114 U.S. 190, 5 S. Ct. 820, 29 L. Ed. 132 (1885).

- Payment of Warrants

Acts providing for the payment of anticipation warrants out of any available revenue derived from taxes or otherwise, other than the fund anticipated, violated the constitution. Dimond v. Commissioner of Hwys., 366 Ill. 503, 9 N.E.2d 197 (1937).

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- Repayment

Municipal corporations incurring any indebtedness, before or at the time of doing so, shall provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within 20 years from the time of contracting the same. People ex rel. Schaumleffel v. Hoerr, 294 Ill. 338, 128 N.E. 572 (1920).

- State Creation

The legislature may compel a municipal corporation to perform any duty which relates to the general welfare and security of the state, although the performance of the duty will create a debt to be paid by local taxation. People ex rel Moshier v. City of Springfield, 370 Ill. 541, 19 N.E.2d 598 (1939).

- Use of Credit

Under a prior similar constitutional prohibition, any municipality indebted to the limit fixed by the Constitution had to carry on its business on the cash system, and not upon credit to any extent or for any purpose; a municipality so indebted could not enter into a contract for the purpose of performing its regular duties and exercising its chartered powers, even where monthly payments were to be made as the work progressed. Board of Supvrs. v. People ex rel. Comm'rs, 222 Ill. 9, 78 N.E. 13 (1906).

- Validity

The validity of a debt is to be determined by the ration of indebtedness to the assessed valuation in effect when the debt was created. Kocsis v. Chicago Park Dist., 362 Ill. 24, 198 N.E. 847 (1935).

If a debt is valid when created, it will not become invalid thereafter; conversely, if the debt is invalid when incurred because of the constitutional inhibition, a subsequent increase in the assessed valuation of taxable property cannot render it legal. Kocsis v. Chicago Park Dist., 362 Ill. 24, 198 N.E. 847 (1935).

Municipal Employees

- Arbitration

Section 10-3-8 of the Municipal Code (see now 65 ILCS 5/10-3-8), mandating advisory arbitration, was not applicable in the light of a conflicting village ordinance declaring that disputes concerning employee wages and benefits shall not be submitted to arbitration. Gust v. Village of Skokie, 125 Ill. App. 3d 102, 80 Ill. Dec. 584, 465 N.E.2d 696 (1 Dist. 1984).

- Minimum Wages

Former Policemen's Minimum Wage Act and Firemen's Minimum Wage Act (see now 65 ILCS 5/10-3-1 and 65 ILCS 5/10-3-2) did not violate constitutional prohibitions against multisubject or special legislation, and did not impermissibly infringe on a municipality's home rule authority. Morgan v. City of Rockford, 375 Ill. 326, 31 N.E.2d 596 (1940).

Because a fire department maintained by a municipal corporation was regarded as belonging to the public or governmental branch of the municipality, the Fireman's Minimum Wage Act, former Ill. Rev. Stat., ch. 24, paras. 860c and 860d (see now 65 ILCS 5/10-3-2), being clearly not local, but directly related to the general welfare and to the governmental functions of the municipalities affected, did not come within the inhibition of the constitution. People ex rel Moshier v. City of Springfield, 370 Ill. 541, 19 N.E.2d 598 (1939).

- Pensions

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Prior to the effective date of 40 ILCS 5/4-142, a village's board of trustees could validly supersede the law which was previously adopted through the municipal referendum authorized by 40 ILCS 5/4-141 which adopted a firemen pension article by enacting an ordinance abolishing the village fire department and transferring employees of that department to the fire section of the newly created village public safety service. Board of Trustees v. Mathias, 109 Ill. App. 3d 894, 65 Ill. Dec. 449, 441 N.E.2d 362 (1 Dist. 1982).

- Personnel Scheme

Where the city enacted a personnel scheme pursuant to its home rule powers after the adoption of the 1970 Illinois Constitution, the city is not bound by any conflicting standards in this section. Messina v. City of Chicago, 145 Ill. App. 3d 549, 99 Ill. Dec. 493, 495 N.E.2d 1228 (1 Dist. 1986).

Because paragraph 10-2.1-15 of the Illinois Municipal Code of 1961 (see now 65 ILCS 5/10-2.1-15) governing promotions in police departments became effective on August 10, 1965, prior to the effective date of the constitution, an October 28, 1975, personnel ordinance of the City of Peoria, a home rule unit, establishing ranks and eligibility, supersedes the provisions of the Municipal Code; therefore, the city could abolish the rank of detective and allow patrol officers as well as former detectives to take the promotional examination for sergeant. Hoffman v. Board of Fire & Police Comm'rs, 86 Ill. App. 3d 505, 41 Ill. Dec. 752, 408 N.E.2d 98 (3 Dist. 1980).

65 ILCS 5/10-2.1-4, regarding fire and police department appointments, nowhere denotes a specific purpose to limit home rule powers; accordingly, this section has no restrictive effect on home rule powers. Mandarino v. Village of Lombard, 92 Ill. App. 3d 78, 46 Ill. Dec. 624, 414 N.E.2d 508 (2 Dist. 1980).

- Probationary Period

A city ordinance was a valid exercise of its home rule powers and properly could grant authority to extend the probationary period for police officers in excess of the nine month period provided by state law. Scott v. Rochford, 66 Ill. App. 3d 338, 23 Ill. Dec. 383, 384 N.E.2d 19 (1 Dist. 1978), aff'd, 77 Ill. 2d 507, 34 Ill. Dec. 129, 397 N.E.2d 801 (1979).

- Residency Requirements

Regulation of police officers is within home rule power; residency requirements may be imposed as a condition of employment. Budka v. Board of Pub. Safety Comm'rs, 120 Ill. App. 3d 348, 75 Ill. Dec. 958, 458 N.E.2d 126 (1 Dist. 1983).

Where the plaintiff, a police officer, moved into city seven months after he was hired, during his probationary period, the city did not violate its residency requirement which allowed probationary policemen a 60-day grace period after completion of the probationary period during which time they had to establish residence in city. Budka v. Board of Pub. Safety Comm'rs, 120 Ill. App. 3d 348, 75 Ill. Dec. 958, 458 N.E.2d 126 (1 Dist. 1983).

- Salaries

Salary resolutions pertaining to the government and affairs of a county were exercises of its home rule power; therefore, since resolutions conflicted with 55 ILCS 5/5-1010 which was enacted before the 1970 Constitution, the county resolution had to prevail. Winokur v. Rosewell, 83 Ill. 2d 92, 46 Ill. Dec. 671, 414 N.E.2d 724 (1980).

It was not within the power of the Legislature to increase or diminish the salary of the judge of a city court during the term for which said judge was elected. Wolf v. Hope, 210 Ill. 50, 70 N.E. 1082 (1904).

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Municipal Services

- Area Served

A decision not to extend municipal services beyond a city's boundaries does not involve "inverse condemnation" in any reasonable sense. Forest Preserve Dist. v. Kelley, 69 Ill. App. 3d 309, 25 Ill. Dec. 712, 387 N.E.2d 368 (2 Dist. 1979).

Non-Home-Rule Units

- Dillon's Rule

Under Dillon's Rule, non-home-rule units of local government only possess those powers which are specifically conveyed by the Constitution or by statute and thus, a non-home-rule unit may regulate in a field occupied by state legislation when the Constitution or a statute specifically conveys such authority. T & S Signs, Inc. v. Village of Wadsworth, 261 Ill. App. 3d 1080, 199 Ill. Dec. 467, 634 N.E.2d 306 (2 Dist. 1994).

Occupation Tax

The amended complaint sufficiently alleged that the transaction tax as imposed upon the plaintiffs amounted to an occupation tax that was unauthorized within the meaning of subdivision (e)(2) as the nature of the transaction could be found to be one of services rather than products. Communications & Cable of Chicago Inc. v. Department of Revenue, 275 Ill. App. 3d 680, 211 Ill. Dec. 695, 655 N.E.2d 1078 (1 Dist. 1995), appeal denied, 164 Ill. 2d 560, 214 Ill. Dec. 318, 660 N.E.2d 1267 (1995).

Officers

- Annual Salaries

Where a city ordinance of a home rule unit provided that the mayor should be the liquor control commissioner, a mid-term salary grant to the liquor control commissioner acted as an indirect and impermissible increase of the salary of the mayor. Dalton v. City of Moline, 48 Ill. App. 3d 494, 3 Ill. Dec. 861, 359 N.E.2d 500 (3 Dist. 1977).

No separate ordinance is necessary, aside from an annual appropriation ordinance, in fixing the salaries of the officers of a home rule municipality. Dumke v. Anderson, 44 Ill. App. 3d 626, 3 Ill. Dec. 177, 358 N.E.2d 344 (1 Dist. 1976).

The kind of ordinance that is to be used in fixing the salaries of the officers of a home rule municipality is a matter that concerns the "government and affairs" of the municipality, and is therefore properly within the exercise of home rule power. Pechous v. Slawko, 64 Ill. 2d 576, 2 Ill. Dec. 701, 357 N.E.2d 1144 (1976).

The salary of no public officer holding place for a definite period under the laws of this state should be increased or diminished during his term of office. Wolf v. Hope, 210 Ill. 50, 70 N.E. 1082 (1904).

- Board of Appeals

A county ordinance that added a third commissioner to County Board of Appeals, staggered the terms of two commissioners, changed the manner of election of the commissioners, and provided for the election of the board chairman by board members, violated the authority of the general

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assembly to enact a uniform property tax assessment scheme, and was not supported by the "Home Rule" provision of the State Constitution. Chicago Bar Ass'n v. County of Cook, 124 Ill. App. 3d 355, 79 Ill. Dec. 824, 464 N.E.2d 728 (1 Dist. 1984).

- Consolidation of Offices

A repeal of an enabling ordinance, providing that the village clerk could hold the office of village collector, could only become effective at the expiration of the incumbent collector's term of office; the trial court correctly held the proposed ordinance to abolish the office of collector to be void. Dumke v. Anderson, 44 Ill. App. 3d 626, 3 Ill. Dec. 177, 358 N.E.2d 344 (1 Dist. 1976).

- Police Board

A city under its home rule powers could authorize the police board to appoint hearing officers without the necessity of a referendum; members of the police board were not officers in the form or structure of government of the City of Chicago and were not officers within the meaning of subsection (f) of this section. Paglini v. Police Bd., 61 Ill. 2d 233, 335 N.E.2d 480 (1975).

- Selection

The power of a home rule municipality to choose the manner of selection of its officers includes the ability to decide by referendum whether the election of officers should be on a partisan or nonpartisan basis. Boytor v. City of Aurora, 81 Ill. 2d 308, 43 Ill. Dec. 1, 410 N.E.2d 1 (1980).

A home rule municipality preempted statutory provisions enacted prior to the adoption of the 1970 Constitution which empowered home rule units to provide for their officers and manner of selection and terms of office of such officers, even though the action was contrary to prior municipal code provisions. Clarke v. Village of Arlington Heights, 57 Ill. 2d 50, 309 N.E.2d 576 (1974).

A home rule municipality properly exercised the power given directly to it by the Constitution in changing the office of municipal clerk from elective to appointed status, as well as increasing number of trustees from six to eight. Clarke v. Village of Arlington Heights, 57 Ill. 2d 50, 309 N.E.2d 576 (1974).

Ordinances

55 ILCS 5/5-1106.1, the statute that provides for internet access to public records, does not preempt Cook County, Ill., Ordinance Nos. 04-O-38, 04-O-39, which permits the Cook County Recorder to impose user fees and restrictions with regard to public documents that are electronically posted on the Recorder's internet website. 55 ILCS 5/5-1106.1 does not explicitly indicate that the internet posting of public documents is an area that has been preempted by the State of Illinois, which is required for preemption under Ill. Const., Art. VII, § 6(h). First Am. Real Estate Solutions, L.P. v. Moore, F. Supp. 2d , 2005 U.S. Dist. LEXIS 19847 (N.D. Ill. Sept. 13, 2005).

- Animals

Municipal ordinance that classified appellant's Vietnamese pig as an agricultural animal and not a household pet was not unconstitutional, because the functions of home rule units to regulate the public health, safety, morals and welfare are to be read liberally. Village of Glenview v. Ramaker, 282 Ill. App. 3d 368, 217 Ill. Dec. 921, 668 N.E.2d 106 (1 Dist. 1996).

- Authority to Adopt

The city, under its home rule powers, has had authority to adopt ordinances that differ from or conflict with state statutes regulating police and fire personnel. Provenzano v. City of Des Plaines, 256 Ill. App. 3d 458, 195 Ill. Dec. 792, 629 N.E.2d 100 (1 Dist. 1993).

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- Aviation

For a case discussing the history of state constitutional limits on the power to regulate aviation, under various acts related to aviation and airports, see People ex rel. Greening v. Barthole, 388 Ill. 445, 58 N.E.2d 172 (1944).

- Concurrent Laws

The Illinois Constitution provides for the concurrent legislation by the state and a home-rule municipality of any area not limited or preempted by the state. City of Wheaton v. Sandberg, 215 Ill. App. 3d 220, 158 Ill. Dec. 584, 574 N.E.2d 697 (2 Dist), cert. denied, 142 Ill. 2d 666, 164 Ill. Dec. 929, 584 N.E.2d 141 (1991).

Home rule units of government may exercise and perform concurrently with the state any power or function of a home rule unit, to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the state's exercise to be exclusive. Village of Carpentersville v. Pollution Control Bd., 135 Ill. 2d 463, 142 Ill. Dec. 848, 553 N.E.2d 362 (1990).

The General Assembly has determined that, under the Environmental Protection Act (see now 415 ILCS 5/1 et seq.), the zoning powers of local governmental units, both home rule and non-home-rule, should be broader than the minimum powers to share concurrent jurisdiction with the state that are provided for in subsection (i) of this section. Village of Carpentersville v. Pollution Control Bd., 135 Ill. 2d 463, 142 Ill. Dec. 848, 553 N.E.2d 362 (1990).

Regulation of liquor licenses is an area of concurrent authority between the state and home rule units. Aurora Pizza Hut, Inc. v. Hayter, 79 Ill. App. 3d 1102, 35 Ill. Dec. 200, 398 N.E.2d 1150 (1 Dist. 1979).

The field of liquor control is one in which the state and the home rule unit may exercise power concurrently. Illinois Liquor Control Comm'n v. City of Joliet, 26 Ill. App. 3d 27, 324 N.E.2d 453 (3 Dist. 1975).

The mere fact that the state, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements; so long as there is no conflict between the two, and the requirements of the municipal ordinance are not in themselves pernicious, as being unreasonable or discriminatory, both will stand. Illinois Liquor Control Comm'n v. City of Joliet, 26 Ill. App. 3d 27, 324 N.E.2d 453 (3 Dist. 1975).

- Conflicting Laws

When a home-rule unit enacts an ordinance that conflicts with a statute effective prior to the effective date of the 1970 Illinois Constitution, the ordinance is valid and supersedes the statute. Kotte v. Normal Bd. of Fire & Police Comm'rs, 269 Ill. App. 3d 517, 206 Ill. Dec. 925, 646 N.E.2d 292 (4 Dist. 1995), appeal denied, 162 Ill. 2d 569, 209 Ill. Dec. 802, 652 N.E.2d 342 (1995).

In order for subsequent legislation to affect the power of a home-rule unit, the legislation must contain an express statement to that effect. Kotte v. Normal Bd. of Fire & Police Comm'rs, 269 Ill. App. 3d 517, 206 Ill. Dec. 925, 646 N.E.2d 292 (4 Dist. 1995), appeal denied, 162 Ill. 2d 569, 209 Ill. Dec. 802, 652 N.E.2d 342 (1995).

A Chicago ordinance, regarding retaliatory action against tenants by landlords, superseded 735 ILCS 5/9-207 because the municipality of Chicago is a home rule unit and the ordinance addressed the well-being of its citizens. Reed v. Burns, 238 Ill. App. 3d 148, 179 Ill. Dec. 320, 606 N.E.2d 152 (1 Dist. 1992).

A city's home rule power did not supersede a city zoning the ordinance where ordinance was adopted prior to constitutional grant of home rule and zoning ordinance in no way did it conflict

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with land use decisions within the Medical Center District. State of Ill. Medical Ctr. Comm'n v. Carlton, 169 Ill. App. 3d 769, 120 Ill. Dec. 180, 523 N.E.2d 1091 (1 Dist. 1988).

An ordinance enacted by a home rule unit under a grant of power of this section prevails over a conflicting state statute enacted prior to July 1, 1971, the effective date of the constitution. Messina v. City of Chicago, 145 Ill. App. 3d 549, 99 Ill. Dec. 493, 495 N.E.2d 1228 (1 Dist. 1986).

A home rule unit may supersede a conflicting statute which was enacted prior to the 1970 Constitution as was the Civil Service Act (see now 65 ILCS 5/10-1-1 et seq.) unless it contains a provision which limits a city's exercise of home rule powers. Sanders v. City of Springfield, 130 Ill. App. 3d 490, 85 Ill. Dec. 710, 474 N.E.2d 438 (4 Dist. 1985).

Any exercise by a home rule unit's governing body of the power granted by subsection (a), including adoption of an ordinance, supersedes statutes enacted prior to adoption of the 1970 Illinois Constitution which are in conflict therewith. Gust v. Village of Skokie, 125 Ill. App. 3d 102, 80 Ill. Dec. 584, 465 N.E.2d 696 (1 Dist. 1984).

In the light of the superior position granted to the ordinances of home rule units, their adoption has the same effect as the repeal or amendment of a state statute by the General Assembly enacted prior to the adoption of the 1970 Illinois Constitution. Gust v. Village of Skokie, 125 Ill. App. 3d 102, 80 Ill. Dec. 584, 465 N.E.2d 696 (1 Dist. 1984).

By enacting the Illinois Human Rights Act (see now 775 ILCS 5/1-101) the legislature has preempted the subject of freedom from unlawful discrimination; insofar as a city ordinance attempted a broader scope than that set forth in subsection (A) of 775 ILCS 5/1-102, it was not permissible. Hutchcraft Van Serv., Inc. v. City of Urbana Human Relations Comm'n, 104 Ill. App. 3d 817, 60 Ill. Dec. 532, 433 N.E.2d 329 (4 Dist. 1982).

In matters concerning their government and affairs, home rule units have the same powers as the sovereign except where such powers are limited by the General Assembly; accordingly, an ordinance enacted by a home rule unit supersedes a conflicting statute which was enacted before the effective date of the 1970 Constitution. Board of Trustees v. Mathias, 109 Ill. App. 3d 894, 65 Ill. Dec. 449, 441 N.E.2d 362 (1 Dist. 1982).

An ordinance enacted by a home rule unit pursuant to subsection 6(a), of this article supersedes a conflicting statute enacted prior to the effective date of the 1970 state Constitution. City of Evanston v. Create, Inc., 85 Ill. 2d 101, 51 Ill. Dec. 688, 421 N.E.2d 196 (1981).

An ordinance enacted by a home rule unit under the grant of power in this section supersedes a conflicting statute enacted prior to the effective date of the Constitution. Hoffman v. Board of Fire & Police Comm'rs, 86 Ill. App. 3d 505, 41 Ill. Dec. 752, 408 N.E.2d 98 (3 Dist. 1980).

An ordinance enacted by a home rule unit under the grant of power of subsection (a) of this section which allowed a fine for fireworks violations between $500 and $1,000 superseded a conflicting statute enacted prior to the effective date of the Constitution (65 ILCS 5/1-2-1) which set $500 as the maximum fine permissible for violation of a municipal ordinance. City of Springfield v. Ushman, 71 Ill. App. 3d 112, 27 Ill. Dec. 308, 388 N.E.2d 1357 (4 Dist. 1979).

An ordinance enacted by a home rule unit under the grant of power found in subsection (a) of this section supersedes a conflicting statute enacted prior to the effective date of the 1970 Illinois Constitution. Stryker v. Village of Oak Park, 62 Ill. 2d 523, 343 N.E.2d 919 (1976).

An ordinance of a home rule unit enacted under this grant of power can supersede a previously enacted conflicting statute. Paglini v. Police Bd., 61 Ill. 2d 233, 335 N.E.2d 480 (1975).

Legislative provisions which existed prior to the enactment of the 1970 Constitution, limiting the authority of municipalities that are now home rule units, may be superseded by valid legislative

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action of a home rule unit. Johnny Bruce Co. v. City of Champaign, 24 Ill. App. 3d 900, 321 N.E.2d 469 (4 Dist. 1974).

- Conflicting Statutes

Home rule towns did not exceed their powers by enacting ordinances allowing police to stop drivers solely for seat belt violations even though 625 ILCS 5/12-603.1(e) prohibited law enforcement officers from making such stops. 625 ILCS 5/11-207, 625 ILCS 5/11-208, 625 ILCS 5/11-208.1, and 625 ILCS 5/11-208.2, and 725 ILCS 5/108-1(2) did not expressly forbid home rule units from passing the ordinances in question; thus, the ordinances were a valid exercise of the home rule power granted by Ill. Const., Art. VII, § 6(a). Village of Mundelein v. Franco, 317 Ill. App. 3d 512, 251 Ill. Dec. 515, 740 N.E.2d 801, 2000 Ill. App. LEXIS 1018 (1 Dist. 2000).

- Construction

Any ordinance that effectively regulates a construction project approved by the Commission after a proceeding under subsection (b) is preempted because it does not pertain to the unit's government and affairs; to hold otherwise would permit any number of home rule units to regulate construction projects that the Commission has already deemed to be necessary to promote the public convenience and necessity. Commonwealth Edison Co. v. City of Warrenville, 288 Ill. App. 3d 373, 223 Ill. Dec. 732, 680 N.E.2d 465 (2 Dist. 1997).

- Court Rules

When an ordinance purported to define the notice procedures of the courts, duties of parties in court, and specific remedies available in court proceedings, the city was attempting to set forth rules for the state judiciary to follow; this exercise of power was clearly a matter of state concern, and not a local function pertaining to a home rule unit's government and affairs. City of Carbondale v. Yehling, 96 Ill. 2d 495, 71 Ill. Dec. 683, 451 N.E.2d 837 (1983).

- Criminal

The City, as a home rule unit, had authority to set a mandatory minimum penalty of imprisonment for violation of a municipal ordinance prohibiting assault on the elderly notwithstanding that a state law allows a discretionary sentence of imprisonment, probation, or conditional discharge for committing the identical offense. City of Chicago v. Roman, 292 Ill. App. 3d 546, 226 Ill. Dec. 512, 685 N.E.2d 967 (1 Dist. 1997), aff'd, 184 Ill. 2d 504, 235 Ill. Dec. 468, 705 N.E.2d 81 (1998).

The defendant home rule district was within its constitutional authority in instituting, by ordinance, penal fines for official misconduct, in addition to the sanctions allowed by 65 ILCS 5/10-2.1-17. Kadzielawski v. Board of Fire & Police Comm'rs, 194 Ill. App. 3d 676, 141 Ill. Dec. 338, 551 N.E.2d 331 (1 Dist.), cert. denied, 132 Ill. 2d 545, 144 Ill. Dec. 258, 555 N.E.2d 377 (1990).

Penalties provided by a tax ordinance were not so disproportionate to the offense as to shock the conscience of reasonable persons, where they were limited to six months' imprisonment, as mandated in the Illinois Constitution. Forsberg v. City of Chicago, 151 Ill. App. 3d 354, 104 Ill. Dec. 20, 502 N.E.2d 283 (1 Dist. 1986), cert. denied, 114 Ill. 2d 545, 108 Ill. Dec. 416, 508 N.E.2d 727 (1987), appeal dismissed, 484 U.S. 490, 108 S. Ct. 363, 98 L. Ed. 2d 351 (1987).

Section 11-501 of the Vehicle Code (see now 625 ILCS 5/11-501), regarding drunk driving, is not void or unconstitutional as it applies to ordinance prosecutions, because subsection (e) of this section provides that home rule municipalities may punish by imprisonment for six months only when specifically empowered by the General Assembly to do so. Village of Park Forest v. Thomason, 145 Ill. App. 3d 327, 99 Ill. Dec. 301, 495 N.E.2d 1036 (1 Dist. 1986).

- Discrimination

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A county ordinance which granted plaintiffs a private right of action to bring complaints for discrimination before a state tribunal impermissibly burdened the state judicial system and, therefore, a cause of action under the ordinance would be dismissed. Quela v. Payco-General Am. Credits, Inc., 84 F. Supp. 2d 956 (N.D. Ill. 2000), aff'd sub nom. Hakim v. Payco-General Am. Credits, 272 F.3d 932 (7th Cir. 2001).

- Due Process

The plain language of city ordinance, which provided in part that before a towing firm removed unauthorized vehicles from private parking areas a notice of the arrangement between the landowner and the towing firm must be posted, clearly and definitely proscribed the conduct articulated in the ordinance. City of Chicago v. Pioneer Towing, Inc., 73 Ill. App. 3d 867, 29 Ill. Dec. 575, 392 N.E.2d 132 (1 Dist. 1979).

- Equal Protection

A challenge to the validity of an ordinance regulating massage parlors on the ground that the home rule powers of a city granted by the Illinois Constitution of 1970 violated the one man, one vote requirement of the equal protection clause of the United States Constitution (see U.S. Const., Amend. XIV) was without merit since the massage ordinance was enacted under the city's general police powers common to all municipalities and not under the city's special home rule powers. Wes Ward Enters. Ltd. v. Andrews, 42 Ill. App. 3d 458, 355 N.E.2d 131 (3 Dist. 1976).

The city council had no authority to declare and abate nuisances by a mere resolution, as was attempted in case involving railroad switch tracks; such legislation was class legislation, and obnoxious to the Illinois Constitution. People ex rel. Rinne v. Blocki, 203 Ill. 363, 67 N.E. 809 (1903).

Ordinances cannot favor or discriminate against any person or class of persons, but must be uniform and of general operation within the corporate limits. People ex rel. Rinne v. Blocki, 203 Ill. 363, 67 N.E. 809 (1903).

- Equity Assurance Program

An ordinance creating an equity assurance program which guaranteed payment of 80% of the difference between appraisal value and actual sale price of a home was a proper exercise of home rule power. Clayton v. Village of Oak Park, 117 Ill. App. 3d 560, 73 Ill. Dec. 112, 453 N.E.2d 937 (1 Dist. 1983).

- Extraterritorial Effects

An ordinance extending the time for passing an appropriation ordinance was, on its face, an unrestrained exercise of the city's power which had the potential for great abuse and could have created serious problems for the county clerk in the timely determination of rates and for the county collector in the orderly collection of taxes; as such, the ordinance had an impermissible, extraterritorial effect. Anderson v. Rubloff & Co., 194 Ill. App. 3d 414, 141 Ill. Dec. 413, 551 N.E.2d 406 (2 Dist. 1990).

- Firearms

In light of the important governmental interest the ordinance was designed to serve, and the strong presumption of validity plaintiffs must overcome to invalidate the ordinance, plaintiffs failed to show that the licensing procedure constituted an unreasonable method of reducing firearm violence among children. Illinois Sporting Goods Ass'n v. County of Cook, 845 F. Supp. 582 (N.D. Ill. 1994).

The ordinance banning handguns was a permissible exercise of city's home rule powers. Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483, 83 Ill. Dec. 308, 470 N.E.2d 266 (1984).

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- Firearm Registration

Chicago, Ill., Municipal Code § 8-20-040, requiring firearm registration, and Chicago, Ill., Municipal Code § 8-20-220, requiring the destruction of unregistered firearms, are permissible exercises of home rule powers not contrary to Ill. Const. Art. VII, § 6, as they concern the city's interest in reducing firearm-related deaths and are not preempted by state regulation. City of Chicago v. Taylor, 332 Ill. App. 3d 583, 266 Ill. Dec. 244, 774 N.E.2d 22, 2002 Ill. App. LEXIS 550 (1 Dist. 2002).

- Forcible Entry and Detainer

A local ordinance's ten day notice requirement for eviction for nonpayment of rent, was enforceable even though it was in conflict with Illinois' five day provision under the former Forcible Entry and Detainer Act (see now 735 ILCS 5/9-209) because an ordinance enacted by a home rule unit supersedes a conflicting statute enacted prior to the effective date of the Constitution. Landry v. Smith, 66 Ill. App. 3d 616, 23 Ill. Dec. 636, 384 N.E.2d 430 (1 Dist. 1978).

- Garages

A city could regulate by ordinance the location of garages. People ex rel. Busching v. Ericsson, 263 Ill. 368, 105 N.E. 315 (1914).

- Graffiti Prevention

City's home-rule powers are sufficient to enact ordinances forbidding the sale of spray paint and jumbo indelible markers within the city limits, or the possession of spray paint on the property of another or in any public building or facility. National Paint & Coatings Ass'n v. City of Chicago, 45 F.3d 1124 (7th Cir.), cert. denied, 515 U.S. 1143, 115 S. Ct. 2579, 132 L. Ed. 2d 829 (1995).

A city's motion to dismiss a challenge to its police power by manufacturers, transporters, retailers and consumers of spray paint and large markers was denied because plaintiffs had sufficiently alleged that the means adopted by the ordinance, which would regulate the sale and possession of spray paint and markers, were arbitrary, capricious and unreasonable. National Paint & Coatings Ass'n v. City of Chicago, 803 F. Supp. 135 (N.D. Ill. 1992).

- Health Benefits

An ordinance adopted to provide the same benefits available to employee spouses to same-sex domestic partners was designed to protect the health of the city's employees and their domestic partners; accordingly, the city had the power to enact the ordinance under this section. Crawford v. City of Chicago, 304 Ill. App. 3d 818, 237 Ill. Dec. 668, 710 N.E.2d 91 (1 Dist. 1999), appeal denied, 185 Ill. 2d 621, 242 Ill. Dec. 135, 720 N.E.2d 1090 (1999).

- Highways

A city's contention that, under its "Home Rule" powers under the 1970 Constitution, it had the power to enact ordinances requiring its approval before a county or any other unit of local government could construct, alter or maintain a highway within its corporate limits which approval had not been obtained, was without merit. City of Highland Park v. County of Cook, 37 Ill. App. 3d 15, 344 N.E.2d 665 (2 Dist. 1975).

- Housing

Ordinance preventing discrimination in renting according to marital status was within city's home rule power and statutory authority. Jasniowski v. Rushing, 287 Ill. App. 3d 655, 222 Ill. Dec. 871, 678 N.E.2d 743 (1 Dist. 1997), appeal denied, 174 Ill. 2d 563, 226 Ill. Dec. 367, 685 N.E.2d 622 (1997).

- Human Rights

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The General Assembly, through legislation on home rule authority and the Human Rights Act, permits the home rule regulation of sexual discrimination and harassment by small employers, as contained in the municipal code of Chicago. Page v. City of Chicago, 299 Ill. App. 3d 450, 233 Ill. Dec. 575, 701 N.E.2d 218 (1 Dist. 1998), appeal denied, 182 Ill. 2d 552, 236 Ill. Dec. 670, 707 N.E.2d 1240 (1999).

- Landlord-Tenant Relations

Acting as trustee in escrow for any rents withheld by tenants was within a village's constitutional powers to regulate matters relating to its government and affairs; requiring a tenant to pay all accrued and accruing rent to the village as trustee merely insures that the party who ultimately prevails in the dispute, whether landlord or tenant, will receive all the money that is owned. Oak Park Trust & Sav. Bank v. Village of Mount Prospect, 181 Ill. App. 3d 10, 129 Ill. Dec. 713, 536 N.E.2d 763 (1 Dist. 1989).

The Illinois Real Estate Licensing Act of 1983, 225 ILCS 455/1 et seq. (see now the Real Estate License Act of 2000, 225 ILCS 454/1-1 et seq.), is concerned solely with licensing and does not purport to preempt home rule units from legislating in the general area of landlord-tenant law. Chicago Bd. of Realtors, Inc. v. City of Chicago, 819 F.2d 732 (7th Cir. 1987).

A city may, consistent with its power as a home rule unit, regulate various aspects of the residential landlord-tenant relationship. City of Evanston v. Create, Inc., 84 Ill. App. 3d 752, 40 Ill. Dec. 258, 405 N.E.2d 1350 (1 Dist. 1980), aff'd, 85 Ill. 2d 101, 51 Ill. Dec. 688, 421 N.E.2d 196 (1981).

A local ordinance which required ten day notice to a tenant before an eviction for nonpayment of rent was a proper exercise of home rule powers where the ordinance fulfilled the requirements of subsection (a) of this section, which permits a home rule unit to enact legislation for the protection of the public health, safety, morals and welfare, and requires that the regulation enacted by a home rule unit must pertain to its government and affairs. Landry v. Smith, 66 Ill. App. 3d 616, 23 Ill. Dec. 636, 384 N.E.2d 430 (1 Dist. 1978).

- Liquor

Home rule municipalities may legislate freely in the area of liquor control, except as restricted by the state pursuant to the home rule provisions of this section of the 1970 Illinois Constitution. Easter Enters., Inc. v. Illinois Liquor Control Comm'n, 114 Ill. App. 3d 855, 70 Ill. Dec. 666, 449 N.E.2d 1013 (3 Dist. 1983).

The power to establish the minimum age at which persons may purchase or consume alcoholic beverage is within the "government and affairs" of a home-rule unit and has not been preempted by the state. Liquor Control Comm'n v. City of Calumet City, 28 Ill. App. 3d 279, 328 N.E.2d 153 (1 Dist. 1975).

A city may completely prohibit the sale of alcoholic beverages under the local option provisions or under home rule power; nothing in the law of this state prevents a home rule unit from prohibiting just the sale or consumption by persons under 21 of such beverages, as this does not run counter to express prohibitions of state statutes. Illinois Liquor Control Comm'n v. City of Joliet, 26 Ill. App. 3d 27, 324 N.E.2d 453 (3 Dist. 1975).

- Liquor Control

Home-rule municipalities may legislate freely in the area of liquor control except as restricted by the state pursuant to the home-rule provisions of this section. Carbondale Liquor v. Illinois Liquor, 227 Ill. App. 3d 71, 169 Ill. Dec. 125, 590 N.E.2d 1044 (5 Dist. 1992).

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The state has not preempted the area of liquor control so that home rule units are prohibited from exercising police power in this area. Illinois Liquor Control Comm'n v. City of Joliet, 26 Ill. App. 3d 27, 324 N.E.2d 453 (3 Dist. 1975).

- Mandatory Minimum Terms

Implicit in the power of a home rule unit to establish a term of incarceration for less than six months is the power to establish a mandatory minimum term. City of Chicago v. Roman, 184 Ill. 2d 504, 235 Ill. Dec. 468, 705 N.E.2d 81 (1998).

- Minors

A municipal curfew ordinance which applied to persons under age 18 was constitutional under the state and federal Constitutions, even though it restricted the travel and movement of minors, as a protection imposed in light of the particular vulnerability of children and to strengthen parental control. Village of Deerfield v. Greenberg, 193 Ill. App. 3d 215, 140 Ill. Dec. 530, 550 N.E.2d 12 (2 Dist. 1990).

- Motor Vehicles

The enactment of an ordinance requiring towing companies to post signs indicating that unauthorized vehicles would be towed was within the scope of legal authority granted to city as a home rule unit under this section. City of Chicago v. Pioneer Towing, Inc., 73 Ill. App. 3d 867, 29 Ill. Dec. 575, 392 N.E.2d 132 (1 Dist. 1979).

- Municipal Services

A home rule municipality has authority to enact ordinances that differ from or even conflict with state law provisions concerning police and fire personnel matters. Kadzielawski v. Board of Fire & Police Comm'rs, 194 Ill. App. 3d 676, 141 Ill. Dec. 338, 551 N.E.2d 331 (1 Dist.), cert. denied, 132 Ill. 2d 545, 144 Ill. Dec. 258, 555 N.E.2d 377 (1990).

- Noise Pollution

The attempt by a city ordinance to regulate noise pollution emissions, which is not an environmental problem of local concern, was not within the home rule power granted by the state Constitution. City of Des Plaines v. Chicago & N. W. Ry., 65 Ill. 2d 1, 2 Ill. Dec. 266, 357 N.E.2d 433 (1976).

- Nursing Homes

A city, in the exercise of its police powers (65 ILCS 5/11-8-2 and 65 ILCS 5/11-20-5), had the authority to enact an amendment to municipal code requiring nursing homes in the city to provide sprinkler systems in new and existing buildings. Rothner v. City of Chicago, 66 Ill. App. 3d 428, 23 Ill. Dec. 191, 383 N.E.2d 1218 (1 Dist. 1978).

- Pay Toilets

A city ordinance which banned pay toilets in public buildings was a proper exercise of the city's police power which allows every municipality to do all acts and make all regulations which are necessary for promotion of health and suppression of disease. Greyhound Lines, Inc. v. City of Chicago, 24 Ill. App. 3d 718, 321 N.E.2d 293 (1 Dist. 1974).

- Pollution Control

As applied to environmental pollution, home rule governmental units are limited to adopting only those uniform standards established by the Pollution Control Board pursuant to legislative authority (415 ILCS 5/1). County of Cook v. John Sexton Contractors Co., 75 Ill. 2d 494, 27 Ill. Dec. 489, 389 N.E.2d 553 (1979).

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- Preemption

If the legislature specifically denies or limits any power or function of a home rule unit in accordance with subsections (h), (i), (j), or (k) of this section, and § 7 of "An act to revise the law in relation to the construction of the statutes" (5 ILCS 70/7), no difficulty arises in resolving the issue of preemption; where a statute does not contain such specific provisions, however, the courts must determine whether the legislature intended to preempt the area which is the subject of the statute involved. Kirwin v. Peoples Gas Light & Coke Co., 173 Ill. App. 3d 699, 123 Ill. Dec. 656, 528 N.E.2d 201 (1 Dist. 1988).

State law could preempt a city ordinance enacted by a home rule unit, but preemption occurs only if a state law expressly indicates an intent to preempt home rule authority. Chicago Bd. of Realtors, Inc. v. City of Chicago, 819 F.2d 732 (7th Cir. 1987).

- Presumption of Constitutionality

An ordinance carries a presumption of constitutionality and the burden of overcoming that presumption rests on the party challenging the ordinance. Illinois Wine & Spirits Co. v. County of Cook, 191 Ill. App. 3d 924, 139 Ill. Dec. 31, 548 N.E.2d 416 (1 Dist. 1989), appeal denied, 131 Ill. 2d 559, 142 Ill. Dec. 882, 553 N.E.2d 396, cert. denied, 498 U.S. 848, 111 S. Ct. 135, 112 L. Ed. 2d 102 (1990).

An ordinance adopted by a local unit of government, which purports to exercise a power vested in that local unit of government by the Illinois Constitution is presumptively valid. Coryn v. City of Moline, 71 Ill. 2d 194, 15 Ill. Dec. 776, 374 N.E.2d 211 (1978).

- Publication

State law did not require publication of a home-rule unit's sign ordinance. City of Champaign v. Kroger Co., 88 Ill. App. 3d 498, 43 Ill. Dec. 661, 410 N.E.2d 661 (4 Dist. 1980).

- Restaurants

Where a city ordinance banning city restaurants from selling foie gras reflected the city's judgment that such ban would benefit the city and advance city morals, despite the ordinance's extraterritorial effects, it was a valid exercise of the city's home rule powers under the Illinois Constitution, Ill. Const. (1970), Art. VII, § 6(a), because it was aimed at a sufficiently local problem. Ill. Rest. Ass'n v. City of Chicago, 492 F. Supp. 2d 891, 2007 U.S. Dist. LEXIS 42760 (N.D. Ill. 2007).

Neither the constitutional provision contained in subsection (a) of this section, nor the statutory one contained in 65 ILCS 5/11-20-2 gives a municipality the right to regulate its affairs or to control its public eating places in the irregular manner attempted in this case. People ex rel. J.C. Penney Properties, Inc. v. Village of Oak Lawn, 38 Ill. App. 3d 1016, 349 N.E.2d 637 (1 Dist. 1976).

- Scope of Authority

Should the General Assembly wish to exercise exclusive power over a particular home rule matter, it must expressly indicate its intent to do so in the statute, but an ordinance need not contain a recital of the authority under which it is enacted. Messina v. City of Chicago, 145 Ill. App. 3d 549, 99 Ill. Dec. 493, 495 N.E.2d 1228 (1 Dist. 1986).

An ordinance of a home rule unit shall supersede any conflicting state statute enacted prior to the 1970 Constitution. Budka v. Board of Pub. Safety Comm'rs, 120 Ill. App. 3d 348, 75 Ill. Dec. 958, 458 N.E.2d 126 (1 Dist. 1983).

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This section allows a home rule municipality to enact an ordinance that supersedes a conflicting state statute passed prior to the effective date of the 1970 Constitution. Resman v. Personnel Bd., 96 Ill. App. 3d 919, 52 Ill. Dec. 439, 422 N.E.2d 120 (1 Dist. 1981).

Local governing bodies can create ordinances specifically suited for the unique needs of their residents. City of Evanston v. Create, Inc., 85 Ill. 2d 101, 51 Ill. Dec. 688, 421 N.E.2d 196 (1981).

A city ordinance, enacted when the city was a village, licensing and regulating tourist cabins and trailer camps, was applicable to the operation of an existing trailer camp, notwithstanding a county ordinance adopted to license and regulate mobile homes and mobile home parks. Oak Forest Mobile Home Park v. City of Oak Forest, 27 Ill. App. 3d 303, 326 N.E.2d 473 (1 Dist. 1975).

- Sign Regulations

Neither the Illinois Highway Advertising Control Act (see now 225 ILCS 40/1) nor the Federal Highway Beautification Act (see now 23 U.S.C. 131) prohibits home rule municipalities from enacting more stringent sign regulations than contained in either Act. Universal Outdoor, Inc. v. Village of Elk Grove, 194 Ill. App. 3d 303, 141 Ill. Dec. 208, 550 N.E.2d 1254 (1 Dist. 1990).

A home rule municipality's billboard ordinance affecting the use and construction of billboards was a valid exercise of home rule powers; although the ordinance's size restrictions were more restrictive than those provided by 225 ILCS 440/6.01, the sign ordinance was not preempted by that section. Scadron v. City of Des Plaines, 734 F. Supp. 1437 (N.D. Ill. 1990), aff'd, 989 F.2d 502 (7th Cir. 1993).

A city's enactment of a sign code regulating commercial signs in residential districts was a proper exercise of the city's power of regulation under its home rule authority; 65 ILCS 5/11-80-15 does not limit the areas in which a municipality may regulate signs and billboards. City of Belleville v. Kesler, 101 Ill. App. 3d 710, 57 Ill. Dec. 67, 428 N.E.2d 617 (5 Dist. 1981).

A city sign code, which prohibited a free-standing sign from projecting into the right-of-way, was not arbitrary, unreasonable, or unrelated to public welfare and safety, and thus was a proper exercise of the city's home rule authority. City of Belleville v. Kesler, 101 Ill. App. 3d 710, 57 Ill. Dec. 67, 428 N.E.2d 617 (5 Dist. 1981).

An ordinance requiring towing companies to post signs indicating that unauthorized vehicles would be towed was found to be constitutional. City of Chicago v. Pioneer Towing, Inc., 73 Ill. App. 3d 867, 29 Ill. Dec. 575, 392 N.E.2d 132 (1 Dist. 1979).

- Sovereign Immunity

A city's ordinance which created sovereign immunity was invalid. McLorn v. City of E. St. Louis, 105 Ill. App. 3d 148, 61 Ill. Dec. 107, 434 N.E.2d 44 (5 Dist. 1982).

- Streets and Alleys

The regulation and vacation of streets and alleys located wholly within the borders of a city, which do not form a link in a state highway, are matters which pertain to the city's government and affairs. Crain Enters., Inc. v. City of Mound City, 189 Ill. App. 3d 130, 136 Ill. Dec. 554, 544 N.E.2d 1329 (5 Dist. 1989).

The regulation and vacation of the streets and alleys of a city are not matters of real property law which are generally recognized as falling within the competence of state rather than local authorities. Crain Enters., Inc. v. City of Mound City, 189 Ill. App. 3d 130, 136 Ill. Dec. 554, 544 N.E.2d 1329 (5 Dist. 1989).

- Taxes

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Trial court did not err by dismissing the taxpayers' claim that the city exceeded its constitutional authority by levying a transfer tax because a home rule unit could exercise concurrently with the State any power of a home rule unit, in the absence of any specific legislative limitation on home rule units' powers and the taxpayers pointed to no provision in the School Code that specifically restricted a municipality's powers to forward monies to school districts. Rajterowski v. City of Sycamore, 405 Ill. App. 3d 1086, 346 Ill. Dec. 313, 940 N.E.2d 682, 2010 Ill. App. LEXIS 1171 (2 Dist. 2010).

Trial court properly granted summary judgment to a lumber company on its claim that a city's lumber tax ordinance was unconstitutional because it taxed sales of lumber that occurred outside of the city's territorial limits; the city was not permitted to enact an ordinance having extraterritorial effect unless the legislature expressly authorized such an enactment, and 65 ILCS 5/11-42-1 did not change that result because it permitted a city to tax owners of lumberyards, but did not permit a city to do so outside the city's own territorial limits. Seigles, Inc. v. City of St. Charles, 365 Ill. App. 3d 431, 302 Ill. Dec. 664, 849 N.E.2d 456, 2006 Ill. App. LEXIS 431 (1 Dist. 2006).

A village ordinance which was set up to prohibit the collection of the county's amusement tax impacted the government and affairs of the county and was therefore not authorized by subsection (a) of this section. County of Cook v. Village of Rosemont, 303 Ill. App. 3d 403, 236 Ill. Dec. 915, 708 N.E.2d 501 (1 Dist. 1999), appeal denied, 185 Ill. 2d 620, 242 Ill. Dec. 135, 720 N.E.2d 1090 (1999).

- Vending Machines

Where a regulatory ordinance requiring the inspection of coin-operated vending machines was enforced and resulted in a five to one ratio of revenue to cost of enforcement, the ordinance was found to be regulatory and, therefore, not unreasonable. A & H Vending Serv., Inc. v. Village of Schaumburg, 168 Ill. App. 3d 61, 118 Ill. Dec. 733, 522 N.E.2d 188 (1 Dist. 1988).

- Zoning

The application of the zoning ordinance to the regional bus facility was not within the grant of home rule power. City of Evanston v. Regional Transp. Auth., 202 Ill. App. 3d 265, 147 Ill. Dec. 559, 559 N.E.2d 899 (1 Dist. 1990).

Home-rule powers include zoning. City of Champaign v. Kroger Co., 88 Ill. App. 3d 498, 43 Ill. Dec. 661, 410 N.E.2d 661 (4 Dist. 1980); Thompson v. Cook County Zoning Bd. of Appeals, 96 Ill. App. 3d 561, 51 Ill. Dec. 777, 421 N.E.2d 285 (1 Dist. 1981).

Where the language of a city ordinance did not contemplate approval of planned unit development by an amendment to the general zoning ordinance as was required by the predecessor provision, and where the city was a home rule unit, approval of the preliminary plan for a planned unit development could be accomplished by a majority vote of the city council. Johnny Bruce Co. v. City of Champaign, 24 Ill. App. 3d 900, 321 N.E.2d 469 (4 Dist. 1974).

Evidence was sufficient to show that restrictions contained in a Chicago zoning ordinance, were not arbitrary and unreasonable when invoked to prohibit the appellants' use of their corner lot for a mobile hot dog kitchen. Eleopoulos v. City of Chicago, 3 Ill. 2d 247, 120 N.E.2d 555 (1954).

Pension Board

The promulgation of ethical standards by the village was not preempted by the Pension Code (40 ILCS 5/1-101 et seq.); the regulation of ethical conduct by the pension board can be achieved concurrently by state and municipal legislation. Board of Trustees of Barrington Police Pension Fund v. Village of Barrington Ethics Bd., 287 Ill. App. 3d 614, 222 Ill. Dec. 799, 678 N.E.2d 671 (1 Dist. 1997).

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Pension Funds

A city does not have an obligation to exercise its home rule powers to raise additional monies when the city has already contributed the statutory maximum to its pension funds. Houlihan v. City of Chicago, 306 Ill. 2d 589, 239 Ill. Dec. 650, 714 N.E.2d 569 (1 Dist. 1999), appeal denied, 187 Ill. 2d 568, 244 Ill. Dec. 183, 724 N.E.2d 1267 (2000).

Permits

Private Detectives

Local firearm registration ordinance improperly interfered with the exclusive jurisdiction of the state in regulating private detectives. City of Chicago v. Haworth, 303 Ill. App. 3d 451, 236 Ill. Dec. 839, 708 N.E.2d 425 (1 Dist. 1999).

Property Disposition

- By Sale

Where a city was a home rule municipality, and its ordinance expressly authorized the sale of parcels of urban renewal property in compliance with certain federal guidelines, the sales complied with the guidelines and the ordinance was a proper exercise of the city's home rule powers. City of Carbondale ex rel. Ham v. Eckert, 76 Ill. App. 3d 881, 32 Ill. Dec. 377, 395 N.E.2d 607 (5 Dist. 1979).

Urban renewal matters and the means by which redevelopment sales are entered into are matters of local concern which pertain to the affairs of the city wherein the problem necessitating the urban renewal efforts exists. City of Carbondale ex rel. Ham v. Eckert, 76 Ill. App. 3d 881, 32 Ill. Dec. 377, 395 N.E.2d 607 (5 Dist. 1979).

- Eminent Domain

The exercise of eminent domain is a valid home-rule power "pertaining to the local government and affairs" of the plaintiff municipality. City of Wheaton v. Sandberg, 215 Ill. App. 3d 220, 158 Ill. Dec. 584, 574 N.E.2d 697 (2 Dist), cert. denied, 142 Ill. 2d 666, 164 Ill. Dec. 929, 584 N.E.2d 141 (1991).

A municipality does not exceed its home-rule authority in adopting an ordinance authorizing the municipality to exercise its power of eminent domain. City of Wheaton v. Sandberg, 215 Ill. App. 3d 220, 158 Ill. Dec. 584, 574 N.E.2d 697 (2 Dist), cert. denied, 142 Ill. 2d 666, 164 Ill. Dec. 929, 584 N.E.2d 141 (1991).

Although the city's purpose in enacting the ordinances in question pertained to its local government and affairs, the method of enforcement prescribed to carry out the eminent domain proceedings was impermissible; therefore, the ordinances could not be considered as pertaining to the local affairs of the city. City of Carbondale v. Yehling, 96 Ill. 2d 495, 71 Ill. Dec. 683, 451 N.E.2d 837 (1983).

A city ordinance which required contribution of land, or money in lieu of land, to be used for school and park sites as a condition of approval of a plat of a subdivision or planned unit development within the defendant's boundaries, or within 1 1/2 miles therefrom, was not an unconstitutional exercise of a power of eminent domain, or of the power of taxation, and was a valid exercise of city's home rule police powers in a manner pertaining to its government and

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affairs. Krughoff v. City of Naperville, 41 Ill. App. 3d 334, 354 N.E.2d 489 (2 Dist. 1976), aff'd, 68 Ill. 2d 352, 12 Ill. Dec. 185, 369 N.E.2d 892 (1977).

- Scope of Power

Neither section 91.13 of Urban Community Conservation Act (see now 315 ILCS 25/6) nor section 91.118 of the Urban Renewal Consolidation Act of 1961 (see now 315 ILCS 30/18) as applied through section 11-11-1 of the Illinois Municipal Code (see now 65 ILCS 5/11-11-1) may be interpreted as having limited or denied the city's power to establish its own mode for disposition of urban renewal property since all of these sections and acts were passed prior to the adoption of the 1970 Illinois Constitution. City of Carbondale ex rel. Ham v. Eckert, 76 Ill. App. 3d 881, 32 Ill. Dec. 377, 395 N.E.2d 607 (5 Dist. 1979).

Public Labor Relations Act

- Local Application

The Public Labor Relations Act (see now 5 ILCS 315/1 through 5 ILCS 315/27) does not restrict home rule authority in a power or function not performed by the state; and the requirement of an extraordinary majority was not applicable for its passage. County of Kane v. Carlson, 116 Ill. 2d 186, 107 Ill. Dec. 569, 507 N.E.2d 482 (1987).

- Local Representation

Where there was an intent on the part of the legislature that the Public Labor Relations Act (see now 5 ILCS 315/1 et seq.) should have preemptive effective as of January 1, 1984, the city was not precluded from holding representation elections. City of Chicago v. State & Mun. Teamsters, 127 Ill. App. 3d 328, 82 Ill. Dec. 488, 468 N.E.2d 1268 (1 Dist. 1984).

Public Trust

- Violation

Since the city was not a philanthropic organization, were it to pay any more than necessary in settling plaintiff's wrongful death claims, it would violate the public trust under which it spends the moneys it collects from its taxpayers. Claudy v. Commonwealth Edison Co., 169 Ill. 2d 39, 214 Ill. Dec. 188, 660 N.E.2d 895 (1995).

Purpose

The constitutional intent and purpose of subsection (i) were to severely limit the circumstances under which local home rule powers are preempted by judicial interpretation of unexpressed legislative intent. Town of Cicero v. LaFrancis, 282 Ill. App. 3d 556, 218 Ill. Dec. 1, 668 N.E.2d 164 (1 Dist. 1996).

These sections are not self executing and must be enacted through "enabling legislation" adopted for this purpose by the General Assembly. Sweis v. City of Chicago, 142 Ill. App. 3d 643, 96 Ill. Dec. 882, 491 N.E.2d 1342 (1 Dist. 1986).

The concept of home rule was designed to drastically alter the relationship which previously existed between state and local government by giving local governmental entities broad and imprecise home rule powers in order to allow for greater flexibility. Peoples Gas Light & Coke Co. v. City of Chicago, 125 Ill. App. 3d 95, 80 Ill. Dec. 491, 465 N.E.2d 603 (1 Dist. 1984).

The fundamental grant of home rule power is broad and contemplates considerable flexibility; this section permits a home rule unit to regulate for the protection of the public health, safety, morals

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and welfare. Clayton v. Village of Oak Park, 117 Ill. App. 3d 560, 73 Ill. Dec. 112, 453 N.E.2d 937 (1 Dist. 1983).

Subsection (f) of this section was drawn to provide home rule units with greater flexibility in determining the form or structure and the operation of their governments. Paglini v. Police Bd., 61 Ill. 2d 233, 335 N.E.2d 480 (1975).

This provision was intended to give a qualifying unit of local government constitutional authority to exercise any power and perform any function pertaining to its government and affairs. Forestview Homeowners Ass'n v. County of Cook, 18 Ill. App. 3d 230, 309 N.E.2d 763 (1 Dist. 1974).

One of the purposes of the local government article (Ill. Const. (1970), Art. VII) is to strengthen county government. City of Evanston v. County of Cook, 53 Ill. 2d 312, 291 N.E.2d 823 (1972).

Both the language and history of former Ill. Const. (1870), Art. IV, § 34 (see now this section) evinced a clear purpose to permit legislation which heretofore had been prohibited, rather than to prohibit enactments which until then had been permitted. Alexander v. City of Chicago, 14 Ill. 2d 261, 151 N.E.2d 319 (1958).

Railway Certificates

- Limitations on Issue

Street railway certificates issued pursuant to (65 ILCS 5/11-122-4) create an indebtedness of the city; if they create indebtedness beyond constitutional limits of this section, when added to existing indebtedness, they are void. Lobdell v. City of Chicago, 227 Ill. 218, 81 N.E. 354 (1907).

Referendum

- Majority Vote

In the language of the constitution requiring the assent of a majority of the voters of the county, the words "voters of the county" should be given a practical construction, and that, in order to avoid endless inquiry, election contests, and uncertainty, they should be construed to mean the majority of the legal votes cast at the election. People ex rel. Lyerly v. Missouri Pac. R.R., 328 Ill. 504, 160 N.E. 82 (1927).

- Must Be Binding

The nonpartisan referendum is ineligible to appear on any election ballot as an advisory proposition; home rule units have the authority to alter their manner of selecting officers only as approved by binding referendum. Lipinski v. Chicago Bd. of Election Comm'rs, 114 Ill. 2d 95, 102 Ill. Dec. 417, 500 N.E.2d 39 (1986).

- Specificity

A referendum submitted under the provisions of subsection (f) of this section must be able to stand on its own terms; if the referendum submitted to voters is not self-executing, leaving gaps to be filled by either the legislature or municipal body, a coherent scheme for altering the election of officials would not be approved. Lipinski v. Chicago Bd. of Election Comm'rs, 114 Ill. 2d 95, 102 Ill. Dec. 417, 500 N.E.2d 39 (1986).

Since the referendum proposition was mute regarding the election to which it would first apply, there was no way of determining the intent of those who signed the initiating petition. Lipinski v. Chicago Bd. of Election Comm'rs, 114 Ill. 2d 95, 102 Ill. Dec. 417, 500 N.E.2d 39 (1986).

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A referendum proposition requiring a runoff election for candidates not receiving 50% of the votes cast was vague and ambiguous because it initiated a change in the election process without adequately working out and articulating the details of the new scheme; as such, it was fatally defective under subsection (f) of this section. Leck v. Michaelson, 111 Ill. 2d 523, 96 Ill. Dec. 368, 491 N.E.2d 414 (1986).

Refuse Disposal

- Location

Because the Constitution's framers intended to favor regulation by home rule units, there is no clear-cut precedent eliminating a county's home rule authority over the location of refuse disposal operations. Carlson v. Briceland, 61 Ill. App. 3d 247, 18 Ill. Dec. 502, 377 N.E.2d 1138 (1 Dist. 1978).

The plaintiffs were not permitted to operate a sanitary landfill at the cost of negating the concept of home rule and diminishing or denying the rights of local citizens in home rule units to be heard by their local officials on where refuse disposal operations should be conducted. Carlson v. Briceland, 61 Ill. App. 3d 247, 18 Ill. Dec. 502, 377 N.E.2d 1138 (1 Dist. 1978).

Counties which are home rule units of government should be given the power to legislate, with the concurrence of the Illinois Environmental Protection Agency on where refuse disposal should take place in their unincorporated areas. Carlson v. Briceland, 61 Ill. App. 3d 247, 18 Ill. Dec. 502, 377 N.E.2d 1138 (1 Dist. 1978).

- Municipal Regulation

Municipality's ordinances regarding unlawful placement and discharge of waste were designed to protect the public health, and were therefore a valid exercise of plaintiff's home rule power. Village of Bolingbrook v. Citizens Utils. Co., 158 Ill. 2d 133, 198 Ill. Dec. 389, 632 N.E.2d 1000 (1994).

Trial court's classification of asphalt, broken concrete, sand, clay and stone as construction or demolition debris under municipal ordinance which defines such debris as municipal waste and prohibits dumping of such waste except at a site which meets the requirements of the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.) was not precluded by provisions of the Environmental Protection Act, the Solid Waste Planning and Recycling Act (415 ILCS 15/1 et seq.), the Solid Waste Management Act (415 ILCS 20/1 et seq.), and the Local Solid Waste Disposal Act (415 ILCS 10/1 et seq.); city had constitutional authority to regulate operator of solid waste dump sites and to define materials dumped upon the sites as waste. City of Chicago v. Krisjon Constr. Co., 246 Ill. App. 3d 950, 186 Ill. Dec. 782, 617 N.E.2d 21 (1 Dist. 1993).

- Zoning

The county's zoning restrictions were applicable to the plaintiff's activities; as such, the trial court erred in denying the county's motion to enjoin the plaintiffs from disposing of any garbage in the county unincorporated area without first complying with the county's regulations requiring a special use permit. Carlson v. Briceland, 61 Ill. App. 3d 247, 18 Ill. Dec. 502, 377 N.E.2d 1138 (1 Dist. 1978).

Because of the broad construction to be given home rule power, that power should be interpreted to include zoning requirements for garbage disposal facilities. Carlson v. Briceland, 61 Ill. App. 3d 247, 18 Ill. Dec. 502, 377 N.E.2d 1138 (1 Dist. 1978).

Retirement

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- Age

Where the city elected to be regulated by a Board of Fire and Police Commissioners as provided in the predecessor to the Illinois Municipal Code (65 ILCS 5/10-2.1-17) and, except as changed in some respect by ordinance, continued to be governed by its provisions at the time of the 1987 repeal of the 1979 ordinance; accordingly, upon repeal of the 1979 ordinance, the provisions of the Illinois Municipal Code were in effect and regulated the rights of the city's firefighters, including the section that set the age of retirement at 65. Provenzano v. City of Des Plaines, 256 Ill. App. 3d 458, 195 Ill. Dec. 792, 629 N.E.2d 100 (1 Dist. 1993).

School Finance Authority Act

- Valid Law

The School Finance Authority Act (see now 105 ILCS 5/34A-101 et seq.) is valid under the public education, equal protection, delegation of powers, separation of powers and legislative provisions of the 1970 Illinois Constitution. Polich v. Chicago Sch. Fin. Auth., 79 Ill. 2d 188, 37 Ill. Dec. 357, 402 N.E.2d 247 (1980).

Special Services

- Defined

If the project reasonably could have been expected by the home rule unit to make the area taxed, in particular, a better place in which to reside or to conduct business, it qualifies as a "special service" even though it also may redound to the benefit of the remainder of the home rule unit. Coryn v. City of Moline, 71 Ill. 2d 194, 15 Ill. Dec. 776, 374 N.E.2d 211 (1978).

- Education

The application of the defendant city's ordinances to the plaintiff school district was not within the grant of home rule power under section (a) of this section. Board of Educ. v. City of Peoria, 48 Ill. App. 3d 1051, 6 Ill. Dec. 834, 363 N.E.2d 648 (3 Dist. 1977).

Board of Education may raise funds either by taxation direct or by the sale of bonds payable by taxation, but the money so raised must be for corporate obligations. Thorp v. Board of Educ., 404 Ill. 588, 90 N.E.2d 71 (1950).

The power of the legislature to enact laws to establish and maintain school systems is not subject to judicial review unless some limitation imposed by the constitution is exceeded. Berman v. Board of Educ., 360 Ill. 535, 196 N.E. 464 (1935).

- Exemptions

Since the creation of "semimall" in a special service area would increase the public use of retail stores and other business in the commercial area of the city and the property immediately and directly benefitted would be the commercial property, it was proper for the city to exclude residential property from taxation. Hiken Furn. Co. v. City of Belleville, 53 Ill. App. 3d 306, 11 Ill. Dec. 353, 368 N.E.2d 961 (5 Dist. 1977).

- Harbors

A district failed to show that the city did not have the Constitutional authority to impose a boat mooring tax; because harbors were within the corporate boundaries of the city, and the city was required to and did provide police protection within the area of the harbors, the city was simply taxing an event that occurred within its boundaries and in an area for which it provides services. Chicago Park Dist. v. City of Chicago, 111 Ill. 2d 7, 94 Ill. Dec. 721, 488 N.E.2d 968 (1986).

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That the state may in a limited sense regulate harbors and that it has granted certain powers to local park districts does not prohibit a home rule unit from enacting a consumer tax regarding use of harbor facilities. Chicago Park Dist. v. City of Chicago, 111 Ill. 2d 7, 94 Ill. Dec. 721, 488 N.E.2d 968 (1986).

- Local Improvements

The Local Improvement Act (see now 65 ILCS 5/9-1-1 et seq.) was enacted under the authority of this section of the constitution, which granted the General Assembly power to vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of contiguous property, or otherwise. People ex rel. Chicago Title & Trust Co. v. Village of Glencoe, 372 Ill. 280, 23 N.E.2d 697 (1939).

Former Ill. Rev. Stat., ch. 24, para. 731, (see now 65 ILCS 5/9-2-36), which required a city to pay a condemnation judgment out of corporate funds in case the assessment was not sufficient, did not deny the taxpayer due process of law although many taxpayers would not be directly benefited by the improvement. People ex rel. Chicago Title & Trust Co. v. Village of Glencoe, 372 Ill. 280, 23 N.E.2d 697 (1939).

Since the constitution authorizes cities to provide for the payment of local improvements by combination of special assessment and general taxation, it can be no violation of the constitution that a city becomes conditionally liable to pay a debt by general taxation which it might be required directly, by ordinance, to pay; the Local Improvement Act (see now 65 ILCS 5/9-1-1 et seq.) is as much a part of such an ordinance as though written into it. People ex rel. Chicago Title & Trust Co. v. Village of Glencoe, 372 Ill. 280, 23 N.E.2d 697 (1939).

Whether a given improvement is a local improvement is primarily a matter for determination by the corporate authorities. Johnson v. Village of Bellwood, 338 Ill. 605, 170 N.E. 683 (1930).

- Public Airports

The establishment and maintenance of public airports are the sole corporate purposes of the airport authority provided for in 70 ILCS 5/1 et seq.; as they are for the public health, safety and convenience, and for the public welfare, they are qualified purposes within the meaning of this section of Article VII of the Illinois Constitution of 1970. People ex rel. Curren v. Wood, 391 Ill. 237, 62 N.E.2d 809 (1945).

- Public Utilities

The legislature, in enacting and reenacting the Utilities Act (see now 220 ILCS 5/4-101) since 1913, did not limit Illinois municipalities' home rule powers over public utilities; rather, the legislature preempted whatever authority over public utilities Illinois municipalities may have possessed prior to 1913. Kirwin v. Peoples Gas Light & Coke Co., 173 Ill. App. 3d 699, 123 Ill. Dec. 656, 528 N.E.2d 201 (1 Dist. 1988).

A city ordinance imposing a blanket prohibition against termination of a gas service by gas company to any residential consumers or master metered residential buildings during the months of November through March inclusive, whether or not the customer makes any effort to pay for the service, regardless of the ability of the customer to pay and regardless of the amount owed for gas service, could not be properly characterized as an exercise of local governmental power which primarily pertained to the city's government and affairs; accordingly, such an enactment was beyond the scope of home rule power envisioned by the framers of the Illinois Constitution. Peoples Gas Light & Coke Co. v. City of Chicago, 125 Ill. App. 3d 95, 80 Ill. Dec. 491, 465 N.E.2d 603 (1 Dist. 1984).

- Scope

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Congressional townships created under the name of the "trustees of schools" were incorporated for "school purposes" only; taxation, by these corporate authorities on persons and property within the jurisdiction of such a township, to build railroads, was not taxation for a corporate purpose. Weightman v. Clark, 103 U.S. 256, 26 L. Ed. 392 (1880).

- Shopping Malls

Where the language "special services" was broad and unqualified, it was construed liberally; as such, the power to establish special service areas was broad enough to encompass the proposed shopping mall. Coryn v. City of Moline, 71 Ill. 2d 194, 15 Ill. Dec. 776, 374 N.E.2d 211 (1978).

The potential impact of the proposed mall upon the city as a whole did not prohibit its treatment as a special service to the city. Coryn v. City of Moline, 71 Ill. 2d 194, 15 Ill. Dec. 776, 374 N.E.2d 211 (1978).

- Special Service Area

A unit of local government may consider circumstances other than geography in creating a special service area. Grais v. City of Chicago, 151 Ill. 2d 197, 176 Ill. Dec. 47, 601 N.E.2d 745 (1992).

While the term "area" does include a geographical component, this did not prevent the city from determining what property within the central area would benefit most from a special service and including only that property in the special service area, as long as that determination is reasonable. Grais v. City of Chicago, 151 Ill. 2d 197, 176 Ill. Dec. 47, 601 N.E.2d 745 (1992).

The power to form a special service area is bestowed upon a municipality by the Illinois Constitution and not, as defendants claim, by the Special Service Areas Act (see now 35 ILCS 235/1). People ex rel. Zaher v. Village of Burr Ridge, 155 Ill. App. 3d 526, 108 Ill. Dec. 193, 508 N.E.2d 354 (1 Dist. 1987).

The authority for establishing the area is firmly grounded in the state constitution which allows home rule units, counties and municipalities to levy additional taxes upon areas within their boundaries; these taxes are used to provide those areas with special services not provided to other areas situated within the boundaries of the particular home rule unit, county, or municipality. Sweis v. City of Chicago, 142 Ill. App. 3d 643, 96 Ill. Dec. 882, 491 N.E.2d 1342 (1 Dist. 1986).

The enabling legislation providing the manner for levying taxes for the provision of special service areas (35 ILCS 235/1 through 35 ILCS 235/11) is not contrary to the Constitutions of the United States or the State of Illinois. Ciacco v. City of Elgin, 85 Ill. App. 3d 507, 40 Ill. Dec. 877, 407 N.E.2d 108 (2 Dist. 1980).

The scope of the legislature's role is limited to providing the "manner" or procedure for the creation of special service areas; thus, the court construes the scope of the statutory definition of "special services" to be coextensive with that of the constitutional provisions. Coryn v. City of Moline, 71 Ill. 2d 194, 15 Ill. Dec. 776, 374 N.E.2d 211 (1978).

A municipality could not, without enabling legislation adopted by the General Assembly, create a special service area or impose taxes or issue bonds to provide special services under subsection (l) of this section. Oak Park Fed. Sav. & Loan Ass'n v. Village of Oak Park, 54 Ill. 2d 200, 296 N.E.2d 344 (1973).

- Value of Benefits

The taxes imposed upon property within a special services area need not directly correspond to the monetary value of the benefits received. Coryn v. City of Moline, 71 Ill. 2d 194, 15 Ill. Dec. 776, 374 N.E.2d 211 (1978).

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- Water and Sewer

A decision by a municipality not to accept land lying outside of its boundaries for annexation, and the further decision relating to the nonextension of the sewer and water facilities into that area appeared to clearly pertain to the "government and affairs" of the municipality; such resolutions do not involve the exercise of extra-territorial jurisdiction. Forest Preserve Dist. v. Kelley, 69 Ill. App. 3d 309, 25 Ill. Dec. 712, 387 N.E.2d 368 (2 Dist. 1979).

Imposition of a tap-on fee for connecting to city water and sewer mains, regardless of whether prior costs have been recouped, is a proper exercise of the power to license, tax and regulate for the public health, safety and welfare. Heinrich v. City of Moline, 59 Ill. App. 3d 278, 16 Ill. Dec. 699, 375 N.E.2d 572 (3 Dist. 1978).

A sewer improvement was more akin to a public utility such as a municipality-owned system of waterworks and the benefits arising therefrom were general and not local; it was upheld as not in violation of Ill. Const. (1870), Art. IV, § 9,10 (see now this section). City of Edwardsville v. Jenkins, 376 Ill. 327, 33 N.E.2d 598 (1941).

An act (see 70 ILCS 605/1-1 et seq.) which enabled adjoining drainage districts to connect their ditches and drains, levees, or other works, and to provide for the apportionment of the cost of the construction, operation, and maintenance of the work of the drainage district where lands in an adjoining district were benefited thereby did not contravene the provisions of Sections 9 and 10 of Article IX of the 1870 Constitution (see now this section, and Ill. Const. (1970), Art. VII, § 7). Drainage Comm'rs v. Commissioners of Rector Special Drainage Dist., 266 Ill. 536, 107 N.E. 895 (1915).

An ordinance which ordered additional hydrants, fixed reduced rates as compared with the rates established by prior existing ordinances for other hydrants, and provided that the ordinance should not be construed to affect in any way the rates fixed by any prior ordinance for other hydrants was reasonable and acceptable. City of Danville v. Danville Water Co., 180 Ill. 235, 54 N.E. 224 (1899).

Tax Information

A county ordinance providing for the preparation and filing of a tax billing information form to facilitate the distribution of real estate tax bills to the current assessee of record does not violate this section; the county has an undisputed interest in the efficiency of the collector's operations. Loop Mtg. Corp. v. County of Cook, 291 Ill. App. 3d 442, 225 Ill. Dec. 649, 684 N.E.2d 124 (1 Dist. 1997).

Tax Rate Limits

Home rule units are free to adopt ordinances authorizing referenda to adjust tax rate limits. Sommer v. Village of Glenview, 79 Ill. 2d 383, 38 Ill. Dec. 170, 403 N.E.2d 258 (1980).

Taxation

- Admissions Tax

Where the General Assembly had not acted to limit or deny the plaintiff municipality's power to levy the admissions tax imposed, plaintiff had not exceeded its taxing powers under this section and there had been no preemption by the state. Town of Cicero v. Fox Valley Trotting Club, Inc., 65 Ill. 2d 10, 2 Ill. Dec. 675, 357 N.E.2d 1118 (1976).

- Amusement Tax

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Legislature, under the Ticket Sale and Resale Act, 720 ILCS 375/1.5(c) (Act), intended to allow internet auction listing services, including the listing service to opt out of local tax collection duties. As a result of that intent and because the State had a long-standing history of protecting consumers that the Act furthered, the city could not require electronic intermediaries such as the listing service to collect and remit amusement taxes on resold tickets, as doing so overstepped its Ill. Const. art. VII, § 6(a) home rule power. City of Chicago v. Stubhub, Inc., Ill. 2d , Ill. Dec. , N.E.2d , 2011 Ill. LEXIS 1823 (Oct. 6, 2011).

Internet auction listing service was not required to pay a city's nine-percent amusement tax each time tickets to sporting events and other amusements were resold on its website because the city's home rule taxing authority in Ill. Const. Art. VII, § 6(a), was preempted by the Municipal Retailers' Occupation Tax Act, 65 ILCS 5/8-11-6a. City of Chicago v. eBay, Inc., F. Supp. 2d , 2009 U.S. Dist. LEXIS 118782 (N.D. Ill. Dec. 21, 2009), aff'd, 663 F.3d 933, 2011 U.S. App. LEXIS 23384 (7th Cir. Ill. 2011).

Because the sale of tickets at above face-value prices by a ticket reseller is the sale of tangible personal property, any home rule authority the City of Chicago may have had under Ill. Const. art. VII, § 6(a) to impose the amusement tax on the internet auction listing service was preempted by the Preemption Act, 65 ILCS 5/8-11-6a. City of Chicago v. StubHub, Inc., 622 F. Supp. 2d 699, 2009 U.S. Dist. LEXIS 25731 (N.D. Ill. 2009).

An amendment to a city's amusement tax ordinance, as applied to ticket brokers, did not constitute an occupational or service tax and was constitutional. Mr. B's, Inc. v. City of Chicago, 302 Ill. App. 3d 930, 236 Ill. Dec. 127, 706 N.E.2d 1001 (1 Dist. 1998).

City ordinance authorizing an amusement tax on patrons of health and racquetball clubs that was to be collected, processed, and if necessary paid by the clubs was in reality an unconstitutional occupation tax, Ill. Const. (1970), Art. VII, § 6, that was outside the city's home rule taxation powers because it was not an amusement tax allowed under Ill. Rev. Stat. ch. 24, par. 11-42-5 given the wide variety of services the clubs provided. Chicago Health Clubs, Inc. v. Picur, 124 Ill. 2d 1, 124 Ill. Dec. 87, 528 N.E.2d 978, 1988 Ill. LEXIS 94 (1988).

Where an amusement tax was placed on the consumer, with exemptions based on the nature of the entity to which the net proceeds of the amusement inured, essentially parallel to those exemptions contained in the Revenue Act of 1939, the plaintiffs did not sustain the burden of establishing that the classifications were arbitrary or unreasonable. Kerasotes Rialto Theater Corp. v. City of Peoria, 77 Ill. 2d 491, 34 Ill. Dec. 118, 397 N.E.2d 790 (1979).

An amusement tax is not an illegal occupation tax. Kerasotes Rialto Theater Corp. v. City of Peoria, 77 Ill. 2d 491, 34 Ill. Dec. 118, 397 N.E.2d 790 (1979).

A tax on the privilege of witnessing and participating in amusements is not a tax on a basic human right. Kerasotes Rialto Theater Corp. v. City of Peoria, 77 Ill. 2d 491, 34 Ill. Dec. 118, 397 N.E.2d 790 (1979).

- Anticipation Warrants

A statute which undertakes to authorize the payment of tax anticipation warrants out of revenue other than the levy against which they are drawn transcends constitutional provisions. Leviton v. Board of Educ., 385 Ill. 599, 53 N.E.2d 596 (1944).

- Authority to Assess

Companies who alleged in their amended complaint that they were retailers who would be affected by the tax imposed by the County School Facility Occupation Tax Law, 55 ILCS 5/5-1006.7, had standing to challenge that law. Both companies asserted that the conducted retail sales in the county, and, thus, they were authorized to challenge the county's passage of ordinances to implement that tax on the ground that the county, as a home-rule unit of

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government, did not have the power pursuant to Ill. Const. Art. VII, § 6 to impose the tax. P&S Grain, LLC v. County of Williamson, 399 Ill. App. 3d 836, 339 Ill. Dec. 234, 926 N.E.2d 466, 2010 Ill. App. LEXIS 311 (5 Dist. 2010).

The General Assembly had no authority to enact curative legislation to render inoperative requirements in the appropriation and levy procedures which the city, as a home rule unit, had imposed upon itself. People ex rel. Critton v. American Nat'l Bank & Trust Co., 132 Ill. 2d 64, 138 Ill. Dec. 138, 547 N.E.2d 107 (1989).

A home rule unit may exercise any power and perform any function pertaining to its government and affairs, including the power to tax; as the power to tax is broad, an exercise of that power is valid unless the power is restricted by a constitutional provision or appropriate legislation. Forsberg v. City of Chicago, 151 Ill. App. 3d 354, 104 Ill. Dec. 20, 502 N.E.2d 283 (1 Dist. 1986), cert. denied, 114 Ill. 2d 545, 108 Ill. Dec. 416, 508 N.E.2d 727 (1987), appeal dismissed, 484 U.S. 490, 108 S. Ct. 363, 98 L. Ed. 2d 351 (1987).

Tax assessments, which require a greater exercise of discretion than the collection of taxes, do not pertain to the county's local government and affairs within the contemplation of subsection (a) of this section. Chicago Bar Ass'n v. County of Cook, 102 Ill. 2d 438, 81 Ill. Dec. 709, 467 N.E.2d 580 (1984).

There was sufficient leeway in the home rule legislation treating of the taxing power of municipalities, and especially that dealing with special tax districts, to preclude a taxpayer's writ of mandamus to force the taxing authorities to list for taxation and assess a tax against property omitted from the tax rolls as being exempt. Elgin Nat'l Bank v. Rowcliff, 109 Ill. App. 3d 719, 65 Ill. Dec. 320, 441 N.E.2d 112 (2 Dist. 1982).

A statute enacted after the adoption of the 1970 Illinois Constitution can restrict home rule taxing powers only if it is approved by a three-fifths majority of both houses and specifically expresses a restrictive purpose. City of Rockford v. Gill, 75 Ill. 2d 334, 26 Ill. Dec. 669, 388 N.E.2d 384 (1979).

By far the broadest and most inclusive power given to municipal corporations by the home rule provisions of the state Constitution is the power to tax. City of Rockford v. Gill, 60 Ill. App. 3d 94, 17 Ill. Dec. 421, 376 N.E.2d 420 (2 Dist. 1978), rev'd on other grounds, 75 Ill. 2d 334, 26 Ill. Dec. 669, 388 N.E.2d 384 (1979).

Under Ill. Const. (1970), Art. VII, § 6(e), a home rule unit shall have only the power that the General Assembly may provide by law to license for revenue or impose taxes upon or measured by income or earnings or upon occupations. Paper Supply Co. v. Chicago, 57 Ill. 2d 553, 317 N.E.2d 3, 1974 Ill. LEXIS 427 (1974).

The power of a home rule unit to tax is not found in statutory authorization but in the grant of that power found in subsection (a) of this section and extends to property as well as nonproperty taxation, except as limited by the provisions of this article of the Illinois Constitution. City of Evanston v. County of Cook, 53 Ill. 2d 312, 291 N.E.2d 823 (1972).

The procedures required by Article 34 of the School Code (see now 105 ILCS 5/34-1 et seq.) which applied only to cities having a population over 500,000 and resulted in the appointed Board of Education of the City of Chicago levying taxes for the city's educational system, did not constitute an unlawful exercise of the power to tax in violation of Ill. Const. (1870), Art. IX, § 9 (see now this section). Latham v. Board of Educ., 31 Ill. 2d 178, 201 N.E.2d 111 (1964).

The provision in former section 9 of Article IX (see this section) that all municipal corporations may be vested with authority to assess and collect taxes was permissive and not mandatory. People ex rel. Tuohy v. City of Chicago, 399 Ill. 551, 78 N.E.2d 285 (1948).

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A provision empowering the sponsoring municipality of an airport with the authority to prescribe conditions upon which it became a sponsor, violated this section which vested municipalities with the authority to assess and collect taxes, and such provision being so vital to the purpose of the act, its invalidity rendered the entire act unconstitutional. People ex rel. Greening v. Barthole, 388 Ill. 445, 58 N.E.2d 172 (1944).

The county board of any county in Illinois, in the absence of statutory or legislative authority, was without authority to levy taxes under a similar prior provision of the Illinois Constitution. Woodmen of World Life Ins. Soc'y v. County of Cook, 322 Ill. App. 112, 53 N.E.2d 994 (3 Dist. 1944).

The validity of a tax levy is to be determined as of the time it was made; the General Assembly has no power to increase, by a validating act, any particular tax levy after it has been made. People ex rel. Birch v. Pennsylvania R.R., 375 Ill. 85, 30 N.E.2d 739 (1940).

While the legislature may not directly levy a tax, it may grant to the different municipalities the power to levy such a tax and at such rates as in its discretion are proper, restrained only by inhibition of the constitution. People ex rel Moshier v. City of Springfield, 370 Ill. 541, 19 N.E.2d 598 (1939).

If the purpose of the tax is local and not general, the legislature cannot compel a municipality or subdivision of the state to levy, nor can the legislature itself impose, such a tax; unless the legislation is for a local corporate purpose, it is not within the constitutional inhibition. People ex rel Moshier v. City of Springfield, 370 Ill. 541, 19 N.E.2d 598 (1939).

The power of the General Assembly to grant the right to assess and collect taxes to the corporate or local authorities of the municipality or districts to be taxed is limited; a local burden of taxation or special assessment can not be imposed upon a locality without the consent of the taxpayers to be affected. O'Brien v. Wheelock, 184 U.S. 450, 22 S. Ct. 354, 46 L. Ed. 636 (1902).

A park district commissioner, who was, according to referendum, to have been appointed by a local judge, but whose appointment was unconstitutionally delegated by the General Assembly to the Governor, was not a legal corporate authority with the constitutional power to levy taxes on the citizens of his district. Cornell v. People ex rel. Walsh, 107 Ill. 372 (1883).

Under similar prior provisions of the 1848 and 1870 Constitutions, granting the corporate authorities of counties, townships, school districts, cities, towns and villages the authority to levy taxes for corporate purposes, this power extended only to those officers directly elected by the people of such district, or appointed in some manner by which the people have assented to his election. Cornell v. People ex rel. Walsh, 107 Ill. 372 (1883).

- Authority To Access

Under this provision, home rule municipalities retain the right to levy taxes. Stahl v. Village of Hoffman Estates, 296 Ill. App. 3d 550, 230 Ill. Dec. 824, 694 N.E.2d 1102 (1 Dist. 1998), appeal denied, 179 Ill. 2d 620, 235 Ill. Dec. 577, 705 N.E.2d 450 (1998).

- Cigarette Tax

A cigarette tax imposed by a city ordinance was not an occupation tax and therefore was not beyond the powers of the City of Chicago under subsection (e) of this section. S. Bloom, Inc. v. Korshak, 52 Ill. 2d 56, 284 N.E.2d 257 (1972).

- Corporate Franchises

The minimum $100 annual franchise tax imposed by former Ill. Rev. Stat., ch. 322, para. 157-133 was not unconstitutional as being contrary to the requirements of former section 1 of Article IX, of the 1870 Constitution, (see now this section), because the minimum $100 tax applied to all corporations and as such was uniform. Grenier & Co. v. Stevenson, 42 Ill. 2d 289, 247 N.E.2d 606 (1969).

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- Corporate Purpose

What constitutes a local corporate purpose must be determined from the facts and circumstances of each particular case; the term "corporate purpose" should not receive a narrow or rigid construction, rather the essential inquiry should be whether the expenditure of the tax moneys promote the general prosperity and welfare of the community which levies it. Board of Library Dirs. v. City of Lake Forest, 17 Ill. 2d 277, 161 N.E.2d 272 (1959).

A substantial benefit accrued to the township from a library located in a city partly within its boundaries, even though the library itself was outside the township; the expenditure of tax moneys for such library was a proper corporate purpose of the township. Board of Library Dirs. v. City of Lake Forest, 17 Ill. 2d 277, 161 N.E.2d 272 (1959).

Where the legislature directed that the money received from the levy in excess of the amounts needed to pay warrants shall become a part of the corporate fund and used to reduce the tax levy for corporate purposes of the subsequent year, it limited the use of the tax to a corporate purpose, and was no different from the working cash fund method where the funds realized from the taxes levied to create the fund were not earmarked for any particular or specific corporate use. People ex rel. Brenza v. Gebbie, 5 Ill. 2d 565, 126 N.E.2d 657 (1955).

The words "corporate purpose" should not receive a narrow or rigid construction; a tax for a corporate purpose can be defined in comprehensive terms as a tax to be expended in a manner which shall promote the general prosperity and welfare of the municipality which levies it. People v. City of Chicago, 413 Ill. 83, 108 N.E.2d 16 (1952).

A "corporate purpose" for which taxes may be levied by a municipality is such as is germane to the objects of the creation of the municipal corporation or has a legitimate connection with those objects and a manifest relation thereto. People v. City of Chicago, 413 Ill. 83, 108 N.E.2d 16 (1952).

In determining whether a tax levied by a municipality is properly authorized, the following principles have been applied: (1) The legislature may authorize taxation for a public purpose, but a tax imposed for an object in its nature essentially private is void; (2) it is for the legislature, in the first instance, to decide whether the object for which a tax is to be used or raised is a public purpose, but its determination of the question is not conclusive; (3) to justify a court in declaring a tax invalid on the ground that it was not imposed for the benefit of the public, the absence of a public interest in the purpose for which the money is raised by taxation must be so clear and palpable as to be immediately perceptible to every mind. People v. City of Chicago, 413 Ill. 83, 108 N.E.2d 16 (1952).

If, by any reasonable construction, a use designated by the legislature may be regarded as public, if it is only doubtful whether it is so or not, the courts will not set their judgment against that of the legislature. People v. City of Chicago, 413 Ill. 83, 108 N.E.2d 16 (1952).

The expenses of general elections are general governmental expenses; they are not expenses incurred for a local corporate purpose of the district or municipality. People ex rel. San. Dist. v. Schlaeger, 391 Ill. 314, 63 N.E.2d 382 (1945).

Corporate purposes, within the meaning of constitutional provisions allowing municipalities to assess and collect taxes for corporate purposes and providing the General Assembly shall not impose taxes on municipal corporations for corporate purposes, do not include functions which a municipal corporation performs in its governmental capacity as an agency of the state, although the performance of the duty will create a debt to be paid by local taxation. People ex rel. San. Dist. v. Schlaeger, 391 Ill. 314, 63 N.E.2d 382 (1945).

All taxation by municipal corporations must be for corporate purposes. Dimond v. Commissioner of Hwys., 366 Ill. 503, 9 N.E.2d 197 (1937).

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All taxation by municipal authorities must be for corporate purposes. Berman v. Board of Educ., 360 Ill. 535, 196 N.E. 464 (1935); People v. City of Chicago, 413 Ill. 83, 108 N.E.2d 16 (1952).

An 1870 version of this constitutional provision was intended to define the class of persons to whom the right of taxation might be granted, the purposes for which it might be exercised, and that the legislature could not constitutionally confer that power upon any other than corporate authorities of counties, townships, school districts, cities, towns, and villages, for any other than corporate purposes. Harter v. Kernochan, 103 U.S. 562, 26 L. Ed. 411 (1880).

Taxation by municipal or public corporations must be for a corporate purpose; although it is not always easy to decide whether a certain kind of tax is within or without this limitation, as a general rule, a corporate purpose must be some purpose which is germane to the general scope of the object for which the corporation was created. Weightman v. Clark, 103 U.S. 256, 26 L. Ed. 392 (1880).

The congressional or original surveyed townships in Illinois were made public corporations for the purpose of establishing schools and apparently for that alone; taxation for school purposes only would be germane to such corporations, and no one would or could reasonably suppose that they were created for managing the general affairs of a political subdivision of the state. Weightman v. Clark, 103 U.S. 256, 26 L. Ed. 392 (1880).

- Double Taxation

Where a tax levied by a village on property owned by the appellants included a levy for a library, and since the property owned by the appellants was also included within the boundaries of another library district, there was not a double taxation of the taxpayers' property for library purposes; the levy by the village was not therefore unconstitutional under Illinois Constitution (1970), Article I, section 2 or former Article IX, section 9 (see now this section). Kucharski v. White, 42 Ill. 2d 335, 247 N.E.2d 428 (1969).

- Extraterritorial

A city ordinance which imposed a tax on nonresident service providers where 50 percent or more of the work was performed in the city or 50 percent of the total cost incurred was incurred in the city exceeded the home rule powers of subsection (a) of this section, in that it had the extraterritorial effect of taxing services that were not connected to the city levying the tax. Commercial Nat'l Bank v. City of Chicago, 89 Ill. 2d 45, 59 Ill. Dec. 643, 432 N.E.2d 227 (1981).

- Fireman's Annuity and Benefit Fund

Provisions of the former Firemen's Annuity and Benefit Fund Act (Ill. Rev. Stat., ch. 24, para. 244.66) which attempted to confer the power of taxation on local retirement and supervisory board, neither of which were corporate authorities, were found to be in violation of this constitutional provision pertaining to taxing powers of local government. People ex rel. Gallenbach v. Franklin, 388 Ill. 560, 58 N.E.2d 555 (1944).

- Fuel Tax

The trial court did not err in finding that a city vehicle fuel tax was not a tax upon occupations and was a proper home rule tax, where such tax was on the transfer of a tangible object (vehicle fuel) and was not an attempt to evade the intent of the Illinois Constitution to prohibit a tax on the sale of services. Illinois Gasoline Dealers Ass'n v. City of Chicago, 119 Ill. 2d 391, 116 Ill. Dec. 555, 519 N.E.2d 447 (1988).

That the regulation of environmental matters is a matter of statewide concern does not prohibit a home rule unit from enacting a consumer tax regarding the sale of leaded gasoline. Illinois

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Gasoline Dealers Ass'n v. City of Chicago, 141 Ill. App. 3d 976, 96 Ill. Dec. 298, 491 N.E.2d 112 (1 Dist. 1986).

Where there was no constitutional provision recognizing a comparable state interest in the taxation of sales of leaded gasoline, and the General Assembly had not acted pursuant to its authority to limit or deny the city's power to levy the tax imposed, and the Environmental Protection Act (see now 415 ILCS 5/2), did not reflect a statewide constitutional interest in the regulation of environmental matters such that the city was preempted from imposing its home rule power to tax them, the city did not violate its grant of home rule authority by placing a tax on purchasers of leaded gasoline. Illinois Gasoline Dealers Ass'n v. City of Chicago, 141 Ill. App. 3d 976, 96 Ill. Dec. 298, 491 N.E.2d 112 (1 Dist. 1986).

- Hotel Room Tax

The proceeds collected by a home rule city from a tax imposed upon the rental of hotel and motel rooms may be used by the city for general corporate purposes, and are not restricted to the promotion and development of tourism and conventions, as the tax is one upon the use of tangible personal property and not upon an occupation. Springfield Hotel-Motel Ass'n v. City of Springfield, 119 Ill. App. 3d 753, 75 Ill. Dec. 575, 457 N.E.2d 1017 (4 Dist. 1983).

A home rule city ordinance imposing a tax upon the rental of hotel and motel rooms found its provenance in subsection (a) of this section of the Illinois Constitution of 1970, and was not limited by subsections (e), (g), (h) or (i) of this section. Springfield Hotel-Motel Ass'n v. City of Springfield, 119 Ill. App. 3d 753, 75 Ill. Dec. 575, 457 N.E.2d 1017 (4 Dist. 1983).

- Income or Occupation

Absent specific authorization from the General Assembly, a home rule unit may not impose a tax upon an occupation or income. Communications & Cable of Chicago, Inc. v. City of Chicago, 282 Ill. App. 3d 1038, 218 Ill. Dec. 200, 668 N.E.2d 1032 (1 Dist. 1996), appeal denied, 168 Ill. 2d 585, 219 Ill. Dec. 561, 671 N.E.2d 728 (1996).

- Lease Tax

Nothing in the history of subsection (e) of this section evidences an intent to prevent a tax on temporary transfers of personal property; the leasing tax was not a tax on occupations. Webster v. City of Chicago, 132 Ill. App. 3d 666, 88 Ill. Dec. 131, 478 N.E.2d 446 (1 Dist. 1985).

Where a leasing tax was a tax on transactions, which the legislature intended to permit, the tax was not an invalid income or earnings tax. Webster v. City of Chicago, 132 Ill. App. 3d 666, 88 Ill. Dec. 131, 478 N.E.2d 446 (1 Dist. 1985).

- License Fees

The power to regulate and the power to tax are distinct powers, but each may be exercised by the imposition of a license fee. Rozner v. Korshak, 55 Ill. 2d 430, 303 N.E.2d 389 (1973).

- Liens

Under former Ill. Rev. Stat., ch. 24, para. 84-56, (1951), (see now 65 ILCS 5/9-2-65), the statutory authority given to city to sell its liens was no more than an alternate means of collection, as distinguished from foreclosure; when the course of sale and assignment was pursued, it was not subject to the construction that the city was divesting itself of its duty to collect the assessment. People ex rel. Drobnick v. City of Waukegan, 1 Ill. 2d 456, 116 N.E.2d 365 (1953).

Under former § 9 of Article IX of the Constitution of 1870 (see now this section), former Ill. Rev. Stat., ch. 120, para. 238 (see now 35 ILCS 200/20-250), former Ill. Rev. Stat., ch. 24, para. 758 (see now 65 ILCS 5/9-2-65), and former Ill. Rev. Stat., ch. 42, para. 439 (see now 70 ILCS 605/5-

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1), liens of general taxes and of special assessments were on a parity and equal. People v. Taylorville Sanitary Dist., 371 Ill. 280, 20 N.E.2d 576 (1939).

- Liquor Tax

A county tax on the retail sale of alcoholic beverages, which was to be collected by wholesalers and retailers, was imposed on the purchaser of alcoholic beverages and was not an occupation tax. Illinois Wine & Spirits Co. v. County of Cook, 191 Ill. App. 3d 924, 139 Ill. Dec. 31, 548 N.E.2d 416 (1 Dist. 1989), appeal denied, 131 Ill. 2d 559, 142 Ill. Dec. 882, 553 N.E.2d 396, cert. denied, 498 U.S. 848, 111 S. Ct. 135, 112 L. Ed. 2d 102 (1990).

A county liquor tax was not an occupation tax requiring approval of the General Assembly where the ordinance specifically provided that the burden of the tax was to be borne by the consumer, but paid by the wholesaler, who would collect it from the retailer, who would in turn collect it from the consumer; county had not passed an occupation tax, since the ordinance clearly placed the legal incidence of the tax on the consumer, not on the wholesaler or retailer who merely served as collection agents. Mulligan v. Dunne, 61 Ill. 2d 544, 338 N.E.2d 6 (1975).

- Mooring Tax

A mooring tax was not an impermissible tax on occupations simply because some of the boat owners subject to the tax happened to use the boats in occupations or businesses; while the tax burdened some persons who moor their boats in connection with their business, it also burdened recreational and other nonprofit boat users. Forsberg v. City of Chicago, 151 Ill. App. 3d 354, 104 Ill. Dec. 20, 502 N.E.2d 283 (1 Dist. 1986), cert. denied, 114 Ill. 2d 545, 108 Ill. Dec. 416, 508 N.E.2d 727 (1987), appeal dismissed, 484 U.S. 490, 108 S. Ct. 363, 98 L. Ed. 2d 351 (1987).

- Motor Vehicles Tax

A statute regarding vehicle ownership did not restrict the home rule power to order a vehicle tax since the statute was superseded with respect to home rule units by the adoption of the Constitution of 1970. Village of Hoffman Estates v. Union Oil Co., 56 Ill. App. 3d 52, 13 Ill. Dec. 277, 370 N.E.2d 1304 (1 Dist. 1977).

A home-rule county tax may be imposed upon the sales of motor vehicles within the corporate limits of a municipality when that municipality has adopted an ordinance imposing a substantially identical tax. City of Evanston v. County of Cook, 53 Ill. 2d 312, 291 N.E.2d 823 (1972).

- Municipal Parking

Where a municipal parking tax provided that the ultimate incidence of and liability for the tax was to be borne by the person who sought the privilege of occupying the space within the parking facility, where the duty of collecting and remitting the tax only made the parking lot operator the agent of the city for the purpose of collecting the tax, and where the penalties provided in the ordinance for defalcations did not convert the collection system into a license for revenue, the tax was one imposed pursuant to the home rule power "to tax" conferred by subsection (a) of this section, and was not an attempt to exercise the restricted power to license for revenue. Jacobs v. City of Chicago, 53 Ill. 2d 421, 292 N.E.2d 401 (1973).

- Occupation Tax

Chicago, Ill., Mun. Code § 3-43-030, which imposed a tax on the sale of bottled water, was not an unconstitutional occupation tax in violation of Ill. Const. art. VII, § 6(e)(2) because the tax was on tangible personal property and the ordinance expressly declared that the tax was to be paid by the purchaser. Am. Bev. Ass'n v. City of Chicago, 404 Ill. App. 3d 682, 344 Ill. Dec. 555, 937 N.E.2d 261, 2010 Ill. App. LEXIS 1014 (1 Dist. 2010).

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The financing of nonrelated projects with Skyway Toll Bridge System tolls did not constitute an unconstitutional service tax upon occupations. Endsley v. City of Chicago, 319 Ill. App. 3d 1009, 253 Ill. Dec. 585, 745 N.E.2d 708, 2001 Ill. App. LEXIS 133 (1 Dist. 2001).

An ordinance which imposed an amusement tax was not a tax upon occupations with the meaning of subsection (e). DeWoskin v. Lowe's Chicago Cinema, Inc., 306 Ill. App. 3d 504, 239 Ill. Dec. 750, 714 N.E.2d 1047 (1 Dist. 1999).

A home rule unit requires approval from the General Assembly to impose a tax on occupations. Illinois Wine & Spirits Co. v. County of Cook, 191 Ill. App. 3d 924, 139 Ill. Dec. 31, 548 N.E.2d 416 (1 Dist. 1989), appeal denied, 131 Ill. 2d 559, 142 Ill. Dec. 882, 553 N.E.2d 396, cert. denied, 498 U.S. 848, 111 S. Ct. 135, 112 L. Ed. 2d 102 (1990).

The fact that the legal incidence of a tax is ostensibly placed upon the members of a club is not dispositive of the question of whether the tax is an unauthorized service occupation tax. Chicago Health Clubs, Inc. v. Picur, 124 Ill. 2d 1, 124 Ill. Dec. 87, 528 N.E.2d 978 (1988).

A service occupation tax that was neither solely nor even predominately a tax on amusements or places of amusements within the meaning of § 11-42-5 of the Cities and Villages Act (see now 65 ILCS 5/11-42-5) was unconstitutional. Chicago Health Clubs, Inc. v. Picur, 124 Ill. 2d 1, 124 Ill. Dec. 87, 528 N.E.2d 978 (1988).

A major limitation on home rule power is the restriction upon occupation taxes. Illinois Gasoline Dealers Ass'n v. City of Chicago, 119 Ill. 2d 391, 116 Ill. Dec. 555, 519 N.E.2d 447 (1988).

To determine if a tax constitutes an occupation tax, it must be judged by the standard of: (1) whether it regulates and controls a given occupation; (2) imposes a tax for the privilege of engaging in a given occupation, trade or profession; or (3) imposes a tax on the privilege of engaging in the business of selling services. Illinois Gasoline Dealers Ass'n v. City of Chicago, 119 Ill. 2d 391, 116 Ill. Dec. 555, 519 N.E.2d 447 (1988).

This section of the Illinois Constitution prohibits a home rule unit from imposing an occupation tax absent approval from the General Assembly. Chicago Health Clubs, Inc. v. Picur, 155 Ill. App. 3d 482, 108 Ill. Dec. 431, 508 N.E.2d 742 (1 Dist. 1987), rev'd on other grounds, 124 Ill. 2d 1, 124 Ill. Dec. 87, 528 N.E.2d 978 (1988).

A city cannot enact an occupation tax on telephone messages without specific legislative approval. Concannon v. Illinois Bell Tel. Co., 149 Ill. App. 3d 517, 103 Ill. Dec. 162, 501 N.E.2d 183 (1 Dist. 1986).

A local ordinance which sought to tax leasing personal property and which was challenged by cabdrivers who leased their cabs, was not an occupation tax since cabdrivers could work without paying the tax, by owning a cab or by being an employee of another cabdriver; therefore, the City of Chicago, a home rule unit, did not exceed its constitutional power. Wellington v. City of Chicago, 144 Ill. App. 3d 774, 98 Ill. Dec. 481, 494 N.E.2d 603 (1 Dist. 1986).

Home rule units such as the defendant village are granted broad authority in matters pertaining to their government and affairs including, but not limited to, the power to tax; there are few limitations placed upon the taxing authority of home rule units, but they are prohibited from imposing taxes upon occupations unless authorized by the General Assembly. Estate of Carey v. Village of Stickey, 81 Ill. 2d 406, 44 Ill. Dec. 240, 411 N.E.2d 209 (1980).

Where it was indisputable that the tax was designed to impose and did impose a tax upon a given occupation, those licensed to conduct racing meetings, the tax was therefore an occupation tax; the fact that the amount of the tax could be passed on to those holding tickets did not change the nature of the tax. Estate of Carey v. Village of Stickey, 81 Ill. 2d 406, 44 Ill. Dec. 240, 411 N.E.2d 209 (1980).

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The drafters of the 1970 Constitution declared that any restrictions upon taxing powers were expressly stated therein; the plaintiff's burden in establishing such a restriction, therefore, is particularly heavy in the absence of express language so providing. Walter Peckat Co. v. Regional Transp. Auth., 81 Ill. 2d 221, 40 Ill. Dec. 797, 407 N.E.2d 28 (1980).

When the city of Chicago, a home rule unit, enacted its ordinance taxing companies for each employee working in the city, it had the effect of superseding section 415 of the Insurance Code so far as the city was concerned; however, the General Assembly, in enacting 215 ILCS 5/2.1, intended to preclude home rule units from imposing any "license fees or privilege or occupation taxes or other fees" upon insurance companies. Prudential Ins. Co. of Am. v. City of Chicago, 66 Ill. 2d 437, 6 Ill. Dec. 199, 362 N.E.2d 1021 (1977).

A home rule unit's admissions tax did not impose an unauthorized tax upon occupations since the duty to pay the tax was not predicated upon the generation of revenue, but instead depended upon the number of individuals witnessing or participating in the amusement; thus, the tax ordinance by its terms was not confined to those who were engaged in businesses for profit. Town of Cicero v. Fox Valley Trotting Club, Inc., 65 Ill. 2d 10, 2 Ill. Dec. 675, 357 N.E.2d 1118 (1976).

The defendant city, under the provisions of this section, had the authority to enact an ordinance which imposed a tax upon certain employers; that the tax imposed was not violative of subsection (e) of this section. Paper Supply Co. v. City of Chicago, 57 Ill. 2d 553, 317 N.E.2d 3 (1974).

- Ordinance

Court concluded that the city, under Ill. Const. (1970), Art. VII, § 6(e), had authority to enact the ordinance, and that the tax imposed thereby was not violative of § 6(e). Paper Supply Co. v. Chicago, 57 Ill. 2d 553, 317 N.E.2d 3, 1974 Ill. LEXIS 427 (1974).

- Preemption

The preference for municipalities does not establish a doctrine of preemption rendering inoperative a home rule county's taxing ordinance within the municipal boundaries when the municipality has legislated in the same field; this preference only establishes a means of resolving conflicts and inconsistencies existing between a municipal ordinance when both ordinances are in effect in the same territory. City of Evanston v. County of Cook, 53 Ill. 2d 312, 291 N.E.2d 823 (1972).

- Privilege Tax

Subsection (e) of this section does not except the power to impose any privilege taxes from the general grant of authority given home rule units under subsection (a) of this section. S. Bloom, Inc. v. Korshak, 52 Ill. 2d 56, 284 N.E.2d 257 (1972).

- Property Tax

The collection of property taxes is not a home-rule power or function. Bridgman v. Korzen, 54 Ill. 2d 74, 295 N.E.2d 9 (1972).

Taxation of property is a legislative rather than a judicial function; under section 1 of Article IX of the 1870 Illinois Constitution (see now section (2) of this Article) the courts, in the absence of fraud, have no power to review or determine the value of property fixed for purposes of taxation by the appropriate elected or appointed administrative officers. People ex rel. Nordlund v. S.B.A. Co., 34 Ill. 2d 373, 215 N.E.2d 233 (1966).

- Referendum

Under former Ill. Const. (1870), Art. IX, § 8 (see now this section) an election to approve a tax levy in excess of the constitutional limitation had to be called and conducted in harmony with laws

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providing for the calling and conducting of elections on similar propositions, so that the voter would be advised concerning the question on which he would be asked to cast his vote. People ex rel. Gleason v. Cleveland, C., St. L. Ry., 339 Ill. 300, 171 N.E. 126 (1930).

Where the proceedings of the county board showed that an election was held upon the question of issuing bonds and "an additional tax" levy for the payment of the principal and interest, but no election was held at which the question voted upon was the question of levying a tax in excess of the constitutional limit provided, such a tax was unconstitutional and void. People ex rel. Forsythe v. Cleveland, C., C. & St. L. Ry., 327 Ill. 611, 159 N.E. 228 (1927).

- Retail

Differential tax rates imposed on retailers by the Regional Transportation Authority pursuant to section 4.03 of the Regional Transportation Authority Act (see subsection (e) of 70 ILCS 3615/4.03) were constitutional. Walter Peckat Co. v. Regional Transp. Auth., 81 Ill. 2d 221, 40 Ill. Dec. 797, 407 N.E.2d 28 (1980).

- Scope of Power

Public Act 85-855 attempted to nullify a home rule's choice to impose its own publication requirement in levying taxes, attempting to rectify a failure to act in accordance not with any state statute but in accordance with a home rule ordinance, was invading the constitutionally protected domain of a home rule unit; therefore, this curative legislation was ineffective. People ex rel. Critton v. American Nat'l Bank & Trust Co., 132 Ill. 2d 64, 138 Ill. Dec. 138, 547 N.E.2d 107 (1989).

The General Assembly in the exercise of its power to pass laws by a three-fifths majority in each house, denying or limiting the power to tax of a home rule unit, may pass legislation authorizing referenda to lower or raise tax rate limits of home rule units. Sommer v. Village of Glenview, 79 Ill. 2d 383, 38 Ill. Dec. 170, 403 N.E.2d 258 (1980).

The General Assembly has authority under the Constitution to deny or limit the power of a home rule unit to tax. Prudential Ins. Co. of Am. v. City of Chicago, 66 Ill. 2d 437, 6 Ill. Dec. 199, 362 N.E.2d 1021 (1977).

It is completely clear from the language of 215 ILCS 5/2.1 of the Insurance Code that the General Assembly was denying home rule units the power to tax pursuant to Ill. Const. subsection (g) of this section and making a declaration of exclusivity under subsections (h) and (i) of this section. Prudential Ins. Co. of Am. v. City of Chicago, 66 Ill. 2d 437, 6 Ill. Dec. 199, 362 N.E.2d 1021 (1977).

This section confers upon home rule units a broad taxing power. Town of Cicero v. Fox Valley Trotting Club, Inc., 65 Ill. 2d 10, 2 Ill. Dec. 675, 357 N.E.2d 1118 (1976).

The broad grant of the power to tax in subsection (a) of this section cannot be said to grant only the power to impose nonproperty taxes. City of Evanston v. County of Cook, 53 Ill. 2d 312, 291 N.E.2d 823 (1972).

A municipal corporation has no power to levy any tax except such as is specifically granted to it by the legislature; the legislature may not grant such power except for public purposes. Robbins v. Kadyk, 312 Ill. 290, 143 N.E. 863 (1924).

- Services Tax

Amended amusement tax ordinance was not an unconstitutional service or occupation tax under Ill. Const. (1970), Art. VII, § 6(e). Mr. B's, Inc. v. City of Chicago, 302 Ill. App. 3d 930, 236 Ill. Dec. 127, 706 N.E.2d 1001, 1998 Ill. App. LEXIS 900 (1 Dist. 1998).

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Taxes applicable to transactions principally consisting of the sale of services are prohibited. Waukegan Community Unit Sch. v. City of Waukegan, 95 Ill. 2d 244, 69 Ill. Dec. 128, 447 N.E.2d 345 (1983).

A city service tax which taxed the purchase of services was a tax "upon occupations," which were prohibited by the Illinois Constitution unless authorized by the General Assembly. Commercial Nat'l Bank v. City of Chicago, 89 Ill. 2d 45, 59 Ill. Dec. 643, 432 N.E.2d 227 (1981).

- Special Assessments

Constitution of Illinois does not authorize townships to make local improvements by special assessment. Committee of Local Imps. v. Objectors to the Assmt., 39 Ill. 2d 255, 234 N.E.2d 778 (1968).

Under former § 9 of Article IX of the Constitution of 1870 (see now this section), former Ill. Rev. Stat., ch. 120, para. 238, former Ill. Rev. Stat., ch. 24, para. 758, and former Ill. Rev. Stat., ch. 42, para. 439, a municipality had the authority to levy special assessments or special taxes; the legislature intended that collection to be enforced under the revenue law. People v. Taylorville Sanitary Dist., 371 Ill. 280, 20 N.E.2d 576 (1939).

Under Ill. Const. (1870), Art. IX, § 9 (see now this section) the legislature could vest the corporate authorities of "cities, towns and villages" with the power to make local improvements by special assessments or by special taxation of contiguous property. O'Brien v. Wheelock, 95 F. 883 (7th Cir. 1899), aff'd, 184 U.S. 450, 22 S. Ct. 354, 46 L. Ed. 636 (1902).

Where an act of the legislature granting land to a railroad company and exempting it from "all taxation under the law of this state" and a county charged the company with a special assessment under a former, similar statute for grading and paving a certain street, the court held that the charges were not taxes proper, were not contributions to the state or to the city for the purpose of enabling it either to carry on its general administration of affairs, but were charges only, and specially, for the cost for a local improvement supposed to have resulted in an enhancement of the value of the railroad company's property and were not taxes within the meaning of Ill. Const. (1870), Art. IX, § 9 (see now this section). Illinois Cent. R.R. v. City of Decatur, 147 U.S. 190, 13 S. Ct. 293, 37 L. Ed. 132 (1893).

- Stables

Under prior similar provisions in the Constitutions of 1818, 1848, and 1870, a city had the power to tax keepers of livery stables who kept carriages for hire. Howland v. City of Chicago, 108 Ill. 496 (1884).

- Transaction Tax

If a city transaction tax is not a service tax, it is not an impermissible tax on occupations. Meites v. City of Chicago, 184 Ill. App. 3d 887, 133 Ill. Dec. 107, 540 N.E.2d 973 (1 Dist. 1989).

- Uniformity

Where the city council could reasonably find that commercial property would benefit more directly from a circulator than residential property, it was appropriate not to include residential property within a special service area, and where if the parcel was included in the special service area and was taxed at the same rate as all other property in the city's scheme, the taxes within the special service area were uniform. Grais v. City of Chicago, 151 Ill. 2d 197, 176 Ill. Dec. 47, 601 N.E.2d 745 (1992).

The fact that there were levies by different public authorities having practically similar powers exercised within parts of the same territory did not in and of itself constitute lack of uniformity in taxation. Kucharski v. White, 42 Ill. 2d 335, 247 N.E.2d 428 (1969).

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The purpose of constitutional sections that provide that the taxes levied by municipal corporations shall be uniform in respect to persons and property, within the jurisdiction of the body imposing the taxes, is to guard against injustice in the taxing process, not to require it. People ex rel. Kelly v. Lund, 25 Ill. 2d 387, 185 N.E.2d 174 (1962).

Where the inhabitants of a district imposed a tax burden upon themselves when they, by majority vote, organized a park district, this section of the constitution was complied with, since each taxpayer of the district paid district taxes at a uniform rate which was set by the corporate authorities of that district, and not by those of some other municipal corporation. People ex rel. Honefenger v. Burris, 408 Ill. 68, 95 N.E.2d 882 (1950).

- Utility Taxes

Tax on natural gas was clearly placed on the consumer and valid under subsection (e) and could in no way be construed as an unconstitutional service occupation tax upon a public utility. Archer Daniels Midland Co. v. City of Chicago, 294 Ill. App. 3d 186, 228 Ill. Dec. 520, 689 N.E.2d 392 (1 Dist. 1997).

Consumer utility taxes were deemed as occupation taxes within the meaning of subsection (e) of this section and were thus prohibited. Waukegan Community Unit Sch. v. City of Waukegan, 95 Ill. 2d 244, 69 Ill. Dec. 128, 447 N.E.2d 345 (1983).

- Validity

A levy of taxes in excess of the limitation set forth in former Ill. Const. (1870), Art. IX, § VIII (see now this section and Ill. Const. (1970), Art. VII, § 7) did not render the whole tax void, but it rendered void only so much of it as was in excess of the constitutional limit, if the tax within the constitutional limit could be separated from the portion that was valid. People ex rel. Bunch v. Cleveland, C., C. & St. L. Ry., 339 Ill. 169, 171 N.E. 175 (1930).

- Vehicle Tax

A vehicle tax is consistent with a home rule unit's extensive taxing powers provided for in subsection (a) of this section of Article VII of the 1970 Constitution. Village of Hoffman Estates v. Union Oil Co., 56 Ill. App. 3d 52, 13 Ill. Dec. 277, 370 N.E.2d 1304 (1 Dist. 1977).

- Wheel Tax

Since the Village Wheel Tax Ordinance was a tax ordinance, and not a revenue ordinance, the limitations of subsection (e) of this section did not apply. Village of Hoffman Estates v. Union Oil Co., 56 Ill. App. 3d 52, 13 Ill. Dec. 277, 370 N.E.2d 1304 (1 Dist. 1977).

The adoption by the defendant county of a wheel tax on motor vehicles in unincorporated areas of the county was a proper exercise of the power conferred upon the defendant county under the home rule unit powers article of the state constitution; the classification created was reasonable and not violative of the equal protection or due process clauses of the Federal Constitution (see U.S. Const., Amend. XIV) or IX of the state Constitution (see Ill. Const. 1970, Art. I, sec. 2). Gilligan v. Korzen, 56 Ill. 2d 387, 308 N.E.2d 613 (1974).

A city's Wheel Tax License ordinance was a taxing measure, and was within the power of the city. Rozner v. Korshak, 55 Ill. 2d 430, 303 N.E.2d 389 (1973).

"Upon Occupations"

- Specificity Required

The provision "upon occupations" was intended to proscribe the imposition of a tax on a given occupation. Paper Supply Co. v. City of Chicago, 57 Ill. 2d 553, 317 N.E.2d 3 (1974).

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Utility Regulation

Utility regulation is not a matter pertaining to local government affairs but is purely a problem of statewide concern. Commonwealth Edison Co. v. City of Warrenville, 288 Ill. App. 3d 373, 223 Ill. Dec. 732, 680 N.E.2d 465 (2 Dist. 1997).

Zoning Ordinance

In a homeowner's challenge to a village's grant of a variance to certain property owners allowing them to build a patio room at the back of their home closer than the ordinance requiring property owners to maintain a 30-foot backyard, the trial court did not err by granting summary judgment to the village and the property owners as the homeowner failed to demonstrate a genuine issue of material fact that the decision was arbitrary or unreasonable as she failed to show that the variance would effect a change in the existing uses of the surrounding property; that it would cause a diminution in the value of her property; that the detriment was greater than the gain to the property owners, or that the property was unsuitable for a patio room. Further, the Zoning Enabling Act, 65 ILCS 5/11-13-15, did not provide the homeowner a valid right of suit against the village and, consequently 65 ILCS 5/11-13-25(a) afforded her no independent or expanded right of suit and, contrary to the homeowner's assertion, the village's failure to comply with its internal requirement that a variance be supported by a finding of practical difficulties or particular hardship was not, in itself, sufficient to invalidate the variance since the village, as a home rule unit, had the power to enact zoning ordinances and grant variances therefrom. Dunlap v. Village of Schaumburg, 394 Ill. App. 3d 629, 333 Ill. Dec. 819, 915 N.E.2d 890, 2009 Ill. App. LEXIS 927 (1 Dist. 2009), appeal denied, 235 Ill. 2d 587, 924 N.E.2d 455, 2010 Ill. LEXIS 36 (2010).

The state was not subject to a city's zoning ordinance with regard to a detention facility to house sexually violent persons because the housing of sexually violent persons is a statutory duty encompassing a statewide concern and does not concern the "government and affairs" of a home rule unit as provided by the Illinois Constitution of 1970. City of Joliet v. Snyder, 317 Ill. App. 3d 940, 251 Ill. Dec. 873, 741 N.E.2d 1051, 2000 Ill. App. LEXIS 968 (3 Dist. 2000).

It is beyond dispute that a village has the power to enforce its zoning ordinances on property located within its boundaries and that power is in no way diminished or curtailed merely because the property came to be located within the village boundaries through annexation. Village of Tinley Park v. Ray, 299 Ill. App. 3d 177, 233 Ill. Dec. 177, 700 N.E.2d 705 (1 Dist. 1998), appeal denied, 182 Ill. 2d 572, 236 Ill. Dec. 675, 707 N.E.2d 1245 (1999).

Court held that the application of the city's zoning ordinance to a regional bus facility was not within the grant of home rule power under Ill. Const. (1970), Art. VII, § 6(a). Evanston v. Regional Transp. Authority, 202 Ill. App. 3d 265, 147 Ill. Dec. 559, 559 N.E.2d 899, 1990 Ill. App. LEXIS 1221 (1 Dist. 1990).

OPINIONS OF ATTORNEY GENERAL

Analysis

Appointment Powers
- Transfer of Authority
Conflicting Statutes
Cook County
- Methadone Maintenance Clinics

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Liquor Control Act
- State Application
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- Authority to Assess
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Appointment Powers

- Transfer of Authority

The city council of a home rule city operating under the managerial form of government may, by referendum approval only, transfer to itself the mayor's power to make appointments to various boards and commissions, as the proposed transfer of appointment authority would constitute a change in the form of government of the city in question which, pursuant to subsection (f) of this section, may be effected only with referendum approval. 1997 Op. Atty. Gen. (97-028).

Conflicting Statutes

To the extent that a home-rule county ordinance and a municipal ordinance actually conflict, the municipal ordinance will be given effect within the municipality's corporate boundaries. 1996 Op. Atty. Gen. (96-033).

Where both a home-rule county and a municipality possess the authority to impose a substantially similar tax levy, a conflict in ordinances is not created; therefore both taxes may be imposed and collected simultaneously within a municipality's corporate boundaries. 1996 Op. Atty. Gen. (96-033).

Cook County

- Methadone Maintenance Clinics

Because the legislature has specifically provided that the power to license and regulate facilities for the treatment of drug addicts is to be exercised exclusively by the Dangerous Drugs Commission, the City of Chicago could not license and regulate methadone maintenance clinics. 1977 Op. Atty. Gen. 61.

Liquor Control Act

- State Application

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The General Assembly may, by simple majority, provide for the exercise by the state of exclusive authority in the area of alcohol regulation and prohibition. 1980 Op. Atty. Gen. 75.

Municipal Employees

- Pensions

Home rule units continue to participate in state pension systems unless they exempt themselves. 1978 Op. Atty. Gen. 83.

- Residency Requirement

A home rule municipality may, by referendum, increase the durational residency requirement for municipal officers imposed by statute from one year to 18 months, and the existence of a coterminous township will not affect the authority to hold such a referendum; further, such a referendum, to the extent that it is otherwise valid, may be made applicable to officers elected at an election held within 18 months of its adoption. 2000 Op. Atty. Gen. (00-003).

Ordinances

- Criminal

The home rule powers granted by this section do not authorize a home rule unit to enact ordinances inconsistent with provisions of the Criminal Code of 1961 (see 720 ILCS 5/1-1 et seq.). 1982 Op. Atty. Gen. 108.

- Public Records

Because the subject of the preservation of local public records does not pertain to the government and affairs of a home rule unit within the grant of powers under subsection (a) of this section of article VII of the Illinois Constitution of 1970, a home rule municipality is not authorized to enact an ordinance directly conflicting with the provisions of The Local Records Act (50 ILCS 205/1); any such ordinance is invalid. 1982 Op. Atty. Gen. 165.

Property Disposition

- Scope of Power

The home rule provision of the Constitution does not allow a local government to supersede the State Uniform Disposition of Unclaimed Property Act (765 ILCS 1025/0.05 et seq.). 1980 Op. Atty. Gen. 94.

School Districts

A home rule municipality does not possess the authority to expend corporate funds to promote or oppose changes to the boundaries of the school district in which the village is situated as a change in the boundaries of a school district is not a matter pertaining to the government and affairs of the home rule municipality. 2000 Op. Atty. Gen. 16.

Taxation

- Authority to Assess

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If the referendum to cease to be a home rule unit passed, the city would be subject to all statutory limitations on the power of taxation generally applicable to non-home-rule municipalities. 1983 Op. Atty. Gen. 13.

- School Tax

A home rule unit may enact an ordinance which levies a tax for school purposes in excess of the maximum set out in section 34-53 of the School Code (105 ILCS 5/34-53). 1980 Op. Atty. Gen. 51.

- Sharing Tax Revenue

Constitutional and statutory provisions relating to intergovernmental cooperation do not authorize a city to donate city funds to a county. 1978 Op. Atty. Gen. 165.

A city, a home rule unit, does not have the authority to donate to a county a portion of the sales tax revenue the city receives from businesses located on newly annexed territory. 1978 Op. Atty. Gen. 165.

LEGAL PERIODICALS

For note, "Home Rule Hits the Road in Illinois: American Telephone and Telegraph Co. v. Village of Arlington Heights," see 25 Loy. U. Chi. L.J. 577 (1994).

For article, "Will the 'Statewide Concern' Limitation Destroy Home Rule?," see 80 Ill. Bar. J. 182 (1992).

For article, "In Partial Preuse of Illinois Rule, or, Can Public Choice Theory Justify Local Government Law?," see 67 Chi.-Kent L. Rev. 959 (1991).

For article, "Home Rule, Majority Rule, and Dillion's Rule," see 67 Chi.-Kent L. Rev. 1011 (1991).

For article, "Reviewing and Revising Dillion's Rule," see 67 Chi.-Kent L. Rev. 1025 (1991).

For article, "Doing Business in Illinois: The Constitutional Limitation on the Taxation of Occupations by Home Rule Municipalities," see 2 De Paul Bus. L.J. 255 (1990).

For article, "Illinois Home Rule and Taxation: A New Approach to Local Government Enabling Authority," see 8 N. Ill. U.L. Rev. 665 (1988).

For note, "Enhancing the Community's Role in Landfill Siting in Illinois," see U. Ill. L. Rev. 97 (1987).

For note, "The Illinois Amendatory Veto: Defining and Enforcing the Limits," see U. Ill. L. Rev. 691 (1987).

For article, "The Legality of the Chicago Nuclear Weapon Free Zone Ordinance," see 17 Loy. U. Chi. B.J. 553 (1985-86).

For article, "Illinois Public Labor Relations Laws: A Commentary and Analysis," see 60 Chi.-Kent L. Rev. 883 (1984).

For note on constitutional law and the right to bear arms in light of Quilici v. Village of Morton Grove (695 F.2d 261 (7th Cir. 1982), cert. denied, 52 U.S.L.W. 3266 (U.S. Oct. 4, 1983) (No. 82-1822)), see 72 Ill. B.J. 426 (1984).

For comment, "Federalism, Antitrust and Illinois Home Rule," see 1983 S. Ill. U.L.J. 31.

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For article, "The Boulder Revolution in Municipal Anti Trust Law," see 70 Ill. B.J. 684 (1982).

For article, "The Siting of Sanitary Landfills and Other Waste Management Facilities - The Legislature Act," see 70 Ill. B.J. 434 (1982).

For article, "Intergovernmental Cooperation and the Municipal Insurance Crisis," see 30 De Paul L. Rev. 325 (1981).

For article, "Extraterritorial Powers of Illinois Municipalities and the Ill. Const. 1970," see 69 Ill. B.J. 32 (1980).

For note, "A New Approach to Home Rule in Illinois - County of Cook v. John Sexton Contractors Co.," see 29 De Paul L. Rev. 603 (1980).

For article, "Financing Commercial Development in Illinois by the Use of Various Forms of Municipal Bonds," see 29 De Paul L. Rev. 1009 (1980).

For case note, "County of Cook v. John Sexton Contractors Co. - Home Rule Authority to Regulate Site of Sanitary Landfills," see 1980 U. Ill. L.F. 505.

For article, "County of Cook v. John Sexton Contractors Co.: Home Rule Triumphs Over Uniform Regulation of Sanitary Landfills," see 1979 S. Ill. U.L.S. 347.

For note, "A Balancing Analysis: The Construction of Illinois Home Rule Powers - County of Cook v. John Sexton Contractors Company," see 11 Loy. U. Chi. L.

For note, "Through a Glass Darkly: Equal Protection for Home Rule Units in Illinois - Urbana v. Houser," see 27 De Paul L. Rev. 871 (1978).

For article, "Illinois Environment Law - State Preemption of Local Governmental Regulation of Pollution Related Activities," see 67 Ill. B.J. 118 (1978).

For case note, "City of Des Plaines v. Chicago & North Western Railway - Home Rule Powers Do Not Include the Right to Regulate Noise Pollution," see 1978 U. Ill. L.F. 214.

For article "Home Rule in Illinois: A Functional Analysis," see 1978 U. Ill. L.F. 559.

For article, "Home Rule in Illinois - There Are Limits," see 66 Ill. B.J. 212 (1977).

For article, "Recent Illinois Supreme Court Decisions Concerning the Authority of Home Rule Units to Control Local Environmental Problems," see 26 De Paul L. Rev. 306 (1977).

For note, "Sanitary Landfill Permits in Illinois: State Preemption of Home Rule Zoning Powers," see 8 Loy. U. Chi. L.J. 353 (1976-77).

For comment, "Land Use - Goffinet v. County of Christian: New Flexibility in Illinois Zoning Law," see 8 Loy. U. Chi. L.J. 642 (1976-77).

For comment, "Does this Home Rule the Courts? Carbondale's Tort Reform Ordinance," see, See 30 S. Ill. U.L.J. 123 (2005).

Practice Guides and Treatises.

Residential Real Estate § 16.2 Authority to Implement Zoning Restrictions (IICLE).

Eminent Domain Practice (Illinois) § 5.10 Home Rule (IICLE).

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Condominium Law (Illinois) § 10.3 The Authority To Adopt Local Condominium Ordinances (IICLE).

Real Estate Taxation § 8.17 Determination of Tax Rates (IICLE).

Real Estate Taxation § 8.2 The Power To Tax and the Effect of Home Rule Thereon (IICLE).

Section 7. Counties and Municipalities Other Than Home Rule Units.

Counties and municipalities which are not home rule units shall have only powers granted to them by law and the powers (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government; (2) by referendum, to adopt, alter or repeal their forms of government provided by law; (3) in the case of municipalities, to provide by referendum for their officers, manner of selection and terms of office; (4) in the case of counties, to provide for their officers, manner of selection and terms of office as provided in Section 4 of this Article; (5) to incur debt except as limited by law and except that debt payable from ad valorem property tax receipts shall mature within 40 years from the time it is incurred; and (6) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Municip L § 9:7, § 10:7, § 10:20, § 11:2, § 12:3, § 13:3.

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In General

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These sections are not self-executing and must be enacted through "enabling legislation" adopted for this purpose by the General Assembly. Sweis v. City of Chicago, 142 Ill. App. 3d 643, 96 Ill. Dec. 882, 491 N.E.2d 1342 (1 Dist. 1986).

The defendant, who was not a home rule unit, was subject to the rule that the powers of a municipal corporation are derived by it from the General Assembly; therefore it has no inherent power, especially where legislation by a municipal corporation is valid only when it is authorized by statute. Ross v. City of Geneva, 71 Ill. 2d 27, 15 Ill. Dec. 658, 373 N.E.2d 1342 (1978).

This section contemplates not only the levy of taxes sufficient to meet the payment of principal and interest on municipal bonds, but likewise the collection thereof in such amounts, and these constitutional provisions are mandatory and self-executing. People ex rel. Gill v. 110 S. Dearborn St. Corp., 363 Ill. 286, 2 N.E.2d 68 (1936).

The great central and dominant idea of this section is uniformity of taxation, and no power exists or should exist in any corporate authority to go counter to this command of the fundamental law. Mobile & O.R.R. v. Schnipper, 31 F.2d 587 (E.D. Ill. 1929).

- Levying Tax

The power to levy taxes for town purposes is, expressly given to the electors at the annual town meeting and no such power is conferred on the board of town auditors, and none can be implied. Hopkins v. People ex rel. Chestnut, 174 Ill. 416, 51 N.E. 757 (1898).

Alter

- Defined

The term "alter" in subsection (2) of this section does not allow local governmental units to completely abrogate the basic requirements for forms of government set forth in former 65 ILCS 5/3-5-1. Koerner v. Municipal Officers Electoral Bd., 205 Ill. App. 3d 54, 150 Ill. Dec. 304, 562 N.E.2d 1107 (3 Dist. 1990).

Applicability

- Animal Control

Counties have the express power to impound and dispose of stray animals, and the implied authority to further control and regulate dogs, cats and other animals pursuant to the provisions of the Illinois Animal Control Act (see 510 ILCS 5/4). County of Peoria v. Capitelli, 144 Ill. App. 3d 14, 98 Ill. Dec. 228, 494 N.E.2d 155 (3 Dist. 1986).

A non-home rule county ordinance requiring restraint of pets did not violate Illinois Constitution provision which governs the power of non-home-rule units, since the power to regulate pets was granted the county under the Animal Control Act (see 510 ILCS 5/4) and the Disposition of Stray Animals Act (410 ILCS 40/1 et seq.). County of Peoria v. Capitelli, 144 Ill. App. 3d 14, 98 Ill. Dec. 228, 494 N.E.2d 155 (3 Dist. 1986).

- Creation of a Debt

This section not only prohibits a direct levy by the legislature but also the creation of a debt for local purposes which must be met by local taxation. People ex rel. Lindheimer v. Gaylord Bldg. Corp., 369 Ill. 371, 16 N.E.2d 901 (1938).

Where a debt imposed is not for a corporate purpose but arises from the performance of a governmental function benefitting alike all the citizens of the state, this section is not a restriction

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since, under such circumstances, the municipality acts as an agency of the state. People ex rel. Lindheimer v. Gaylord Bldg. Corp., 369 Ill. 371, 16 N.E.2d 901 (1938).

- Election Expenses

The expenses of general elections are general governmental expenses; they are not expenses incurred for a local corporate purpose of the district or municipality. People ex rel. San. Dist. v. Schlaeger, 391 Ill. 314, 63 N.E.2d 382 (1945).

- Government Employees

65 ILCS 5/10-4-1 provides ample authority for the regulation by municipalities of the political activity of their employees; if that were not the case, then a municipality would be powerless to prevent its employees from engaging in obviously improper and unacceptable political activity and powerless to prevent its employees from being subject to political pressures from superiors. Redemske v. Village of Romeoville, 85 Ill. App. 3d 286, 40 Ill. Dec. 596, 406 N.E.2d 602 (3 Dist. 1980).

- Local Improvement

The authority to make local improvements by special assessment is granted by this section. City of Woodstock v. Wicks, 115 Ill. App. 3d 502, 71 Ill. Dec. 272, 450 N.E.2d 960 (2 Dist. 1983).

- Overvaluations

An overvaluation may be so excessive, and made under such circumstances, as to justify only the conclusion that it was not honestly made, and was known to be excessive, and that the willful disregard by members of the commission of their constitutional duty of producing a result would not otherwise be produced was against an assessment as fraud. Mobile & O.R.R. v. Schnipper, 31 F.2d 587 (E.D. Ill. 1929).

- Priority of Liens

For a case discussing priority of liens as it applies to this section and other statutes which have since been revised, see, People v. Taylorville Sanitary Dist., 371 Ill. 280, 20 N.E.2d 576 (1939).

- Shown

Because fire department maintained by a municipal corporation was regarded as belonging to the public or governmental branch of a municipality, a former similar provision (see now 65 ILCS 5/10-3-2), being clearly not local, but directly related to the general welfare and to the governmental functions of the municipalities affected, did not come within the inhibition of this section People ex rel Moshier v. City of Springfield, 370 Ill. 541, 19 N.E.2d 598 (1939).

- Special Assessments

Under former Ill. Const. (1870), Art. IX, § 9 (see now this section), a former provision (see now 35 ILCS 200/20-250), former Ill. Rev. Stat., ch. 24, para. 758 (see now 65 ILCS 5/9-2-65), and former Ill. Rev. Stat., ch. 42, para. 439 (see now 70 ILCS 605/5-1), a municipality had the authority to levy special assessments or special taxes and the legislature intended that collection to be enforced under the Revenue Law. People v. Taylorville Sanitary Dist., 371 Ill. 280, 20 N.E.2d 576 (1939).

- Supplemental Tax Levies

This section does not prohibit the enactment of enabling acts authorizing supplemental tax levies where the adoption of such levies rests in the discretion of local taxing authorities, unless it is apparent that a so-called enabling act is a mere scheme to validate levies originally illegal. People ex rel. Lindheimer v. Schweitzer, 369 Ill. 355, 16 N.E.2d 897 (1938).

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- Tax Anticipation Warrants

A statute which undertakes to authorize the payment of tax anticipation warrant out of revenue other than the levy against which they are drawn transcends constitutional provisions. Leviton v. Board of Educ., 385 Ill. 599, 53 N.E.2d 596 (1944).

- Townships

Plaintiff's proposed site for waste disposal site did not come within the definition of a regional pollution control facility because it would not serve an area that extended over the boundaries of any local general purpose unit of government because townships are not "local general purpose units of government" under (see subsection (x) of 415 ILCS 5/3), since, under this section townships are more restricted in purpose than are counties and municipalities. American Fly Ash Co. v. County of Tazewell, 120 Ill. App. 3d 57, 75 Ill. Dec. 627, 457 N.E.2d 1069 (3 Dist. 1983).

Appointment Powers

- Held Improper

Where city had not adopted a commission form of government, and where it had not attempted to secure, by a referendum vote, authority for the members of the city council to appoint or remove municipal officers or employees, the trial court correctly enjoined defendant aldermen from exercising the powers of appointment and removal which they improperly assumed. Pechous v. Slawko, 64 Ill. 2d 576, 2 Ill. Dec. 701, 357 N.E.2d 1144 (1976).

Authority of Counties

Counties, like municipalities (other than home rule units), can exercise only those powers expressly granted to them by the legislature or those which arise therefrom by necessary implication and counties are likewise under no duty to perform acts not specifically authorized by statute or necessarily arising by implication from a statute. Redmond v. Novak, 86 Ill. 2d 374, 55 Ill. Dec. 933, 427 N.E.2d 53 (1981).

Authority of Court

- Jurisdiction

The Supreme Court would not assume jurisdiction on direct appeal merely to refer to earlier decisions regarding the constitutionality of a statute. Richter v. City of Mt. Carroll, 398 Ill. 473, 76 N.E.2d 452 (1947).

- Relief

Trial court properly granted the sanitarium district's motion for summary judgment and properly ruled in doing so that the sanitarium district had implied authority pursuant to the Tuberculosis Sanitarium District Act, 70 ILCS 920/1 et seq., to sell part of its parcel of land that it was not using to treat tuberculosis patients as the fact that it, a non-home rule unit of government, retained the part of its land that contained the facilities to treat those patients and did not sell the whole tract of land that it owned meant that the county board's power to decide how to use the property and sell the real estate involved was not triggered. People ex rel. Devine v. Suburban Cook County Tuberculosis Sanitarium Dist., 349 Ill. App. 3d 790, 285 Ill. Dec. 859, 812 N.E.2d 679, 2004 Ill. App. LEXIS 822 (1 Dist. 2004), appeal denied, 212 Ill. 2d 552, 291 Ill. Dec. 714, 824 N.E.2d 290 (2004).

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Where an assessment shows a very great disparity and discrimination, which could not reasonably have arisen from an error of judgment, the courts will give relief. Mobile & O.R.R. v. Schnipper, 31 F.2d 587 (E.D. Ill. 1929).

Authority of Legislature

The legislature may compel a municipal corporation to perform any duty which relates to the general welfare and security of the state, although the performance of the duty will create a debt to be paid by local taxation. People ex rel Moshier v. City of Springfield, 370 Ill. 541, 19 N.E.2d 598 (1939).

- Levy of Tax

While the legislature may not directly levy a tax, it may grant to the different municipalities the power to levy such tax and at such rates as in its discretion are proper, restrained only by inhibition of the constitution. People ex rel Moshier v. City of Springfield, 370 Ill. 541, 19 N.E.2d 598 (1939).

Former Ill. Const. (1870), Art. IX, §§ 9 and 10 (see now this section) prohibited the Legislature from imposing taxes on the people of any district or granting power to do so to any other than corporate authorities of the district to be taxed, and the corporate authorities intended were such as had been elected directly by the people of the district or appointed in some mode to which they have given their consent. People ex rel. Egan v. City of Chicago, 310 Ill. 534, 142 N.E. 161 (1923).

- Limitation

This section is not a grant of power to the legislative department but on the contrary it is to be regarded as a restriction upon its powers and has been said that every subject within the scope of civil government which is not within some constitutional inhibition may be acted upon by the General Assembly. People ex rel. Greening v. Barthole, 388 Ill. 445, 58 N.E.2d 172 (1944).

- Municipal Taxation

The General Assembly may compel a municipal corporation to perform duties which relate to the general welfare and security of the state, although the performance of the duty results in a tax or in creating a debt to be paid by taxation. St. Hedwig's Indus. Sch. for Girls v. County of Cook, 289 Ill. 432, 124 N.E. 629 (1919).

- Municipalities as Agents

The legislature may direct a municipality, as an agency of the state, to perform any governmental function of the state and in such case the municipality simply becomes an agency of the state; the power in all its aspects remains in the legislature unchanged and unaffected by the delegation to the agent and it is delegated to smaller municipalities only that it may be more effectively exercised. People ex rel. San. Dist. v. Schlaeger, 391 Ill. 314, 63 N.E.2d 382 (1945).

Burden of Proof

Taxes are presumed to be just, and the burden rests upon the objector to sustain his objections to a particular tax. People ex rel. Gill v. 110 S. Dearborn St. Corp., 363 Ill. 286, 2 N.E.2d 68 (1936).

- Restrictions on Taxing Power

The drafters of the 1970 Constitution declared that any restrictions upon taxing powers were expressly stated; plaintiff's burden in establishing such a restriction therefore is particularly heavy

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in the absence of express language so providing. Walter Peckat Co. v. Regional Transp. Auth., 81 Ill. 2d 221, 40 Ill. Dec. 797, 407 N.E.2d 28 (1980).

Construction

- Corporate Purpose

A substantial benefit accrued to the township from a library located in a city partly within its boundaries, even though the library itself was outside the township, and the expenditure of tax moneys for such library was a proper corporate purpose of the township. Board of Library Dirs. v. City of Lake Forest, 17 Ill. 2d 277, 161 N.E.2d 272 (1959).

The creation of a debt, the issuance of bonds, if necessary, and a consequent tax resulting therefrom are component parts of the duty of the sanitary district to perform its governmental function and do not, therefore, fall within the purview of the constitutional prohibition that the General Assembly may not impose taxes upon a municipality for local corporate purposes. Ruth v. Aurora San. Dist., 17 Ill. 2d 11, 158 N.E.2d 601 (1959).

Indemnification provision of a former (see now 65 ILCS 5/1-4-5) did not impose a tax for local corporate purposes in violation of former Ill. Const. (1870), Art. IX, § 10. Karas v. Snell, 11 Ill. 2d 233, 142 N.E.2d 46 (1957).

Corporate purposes, within the meaning of constitutional provisions allowing municipalities to assess and collect taxes for corporate purposes and providing the General Assembly shall not impose taxes on municipal corporations for corporate purposes do not include functions which a municipal corporation performs in its governmental capacity as an agency of the state, although the performance of the duty will create a debt to be paid by local taxation. People ex rel. San. Dist. v. Schlaeger, 391 Ill. 314, 63 N.E.2d 382 (1945).

If the purpose of the tax is local and not general, the legislature cannot compel a municipality or subdivision of the state to levy, nor can the legislature itself impose, such a tax; unless the legislation is for a local corporate purpose it is not within the constitutional inhibition. People ex rel Moshier v. City of Springfield, 370 Ill. 541, 19 N.E.2d 598 (1939).

A statute violates the due process clause of the constitution if it results in taxation for other than corporate purposes. Berman v. Board of Educ., 360 Ill. 535, 196 N.E. 464 (1935).

- Grants of Authority

Village, which was a non-home-rule unit of government, was governed by Ill. Const. Art. VII, § 7, which conferred six basic powers on non-home-rule municipalities such as the village: (1) the power to make local improvements by special assessments; (2-4) the power, through referendum, to adopt, alter or repeal their forms of government and to provide for their officers, manner of selection and terms of office; and (5-6) the power to incur debt and to levy or impose additional taxes, subject to certain exceptions and limitations; beyond the foregoing enumerated powers, municipalities such as the village which were not home rule units had only the powers granted to them by law. Hawthorne v. Vill. of Olympia Fields, 204 Ill. 2d 243, 274 Ill. Dec. 59, 790 N.E.2d 832, 2003 Ill. LEXIS 767 (2003).

Because a municipality only derives its powers by an express grant from the legislature, the statutes granting this power are strictly construed, and any doubt concerning an asserted power is resolved against the municipality. Fischer v. Brombolich, 207 Ill. App. 3d 1053, 152 Ill. Dec. 908, 566 N.E.2d 785 (5 Dist. 1991).

- Revenue Statutes

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Revenue statutes must be given a reasonable construction, and no statute can override the positive provisions of this section making it the duty of a municipal corporation to provide for the payment of its bonded indebtedness and interest as the same fall due. People ex rel. Gill v. 110 S. Dearborn St. Corp., 363 Ill. 286, 2 N.E.2d 68 (1936).

- Voters of County

In the language of this section requiring the assent of a majority of the voters of the county, the words "voters of the county" should be given a practical construction, and that, in order to avoid endless inquiry, election contests, and uncertainty, they should be construed to mean the majority of the legal votes cast at the election. People ex rel. Lyerly v. Missouri Pac. R.R., 328 Ill. 504, 160 N.E. 82 (1927).

County Taxation Power

- In General

Former Ill. Const. (1870), Art. IX, § 12 (see now this section), which provided that any county incurring any indebtedness as therein provided should before, or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it fell due, and also to pay and discharge the principal thereof 20 years from the time of contracting the same, was self-executing, no special or supplemental legislation was necessary to make it effective, and it controlled any statutory direction or requirement. People ex rel. Brenza v. Anderson, 411 Ill. 252, 103 N.E.2d 629 (1952).

Creation of Indebtedness

- Debt Exceeding Limit

Where plaintiff, a civil engineer, sued village a municipal corporation, for $13,340, as the reasonable value of services rendered by him to the defendant in connection with proposed construction of a new sewage system or remodeling defendant's old system pursuant to the former Cities and Villages Act (see now 65 ILCS 5/11-139-3), and the question of constructing or improving the sewage system and the issuance of the revenue bonds to provide for the payment therefor was to a referendum vote of the electors and rejected, the amount owed to the plaintiff for his work prior thereto, liability on the part of the village for the amount claimed by plaintiff created a situation in which the amount of its indebtedness would exceed the limitation of five per cent of the value of the taxable property in the defendant municipality imposed by former Ill. Const., Art. IX, § 12 (1870) (see now this section). Hancock v. Village of Hazel Crest, 318 Ill. App. 170, 47 N.E.2d 557 (1 Dist. 1943).

- Installment Payments

Where a contract calls for the payment of annual installments, an indebtedness is at once created for the aggregate of all the installments; the same principle applies to future lease and rental obligations. People ex rel. Adamowski v. Public Bldg. Comm'n, 11 Ill. 2d 125, 142 N.E.2d 67 (1957).

- Not Shown

Under similar prior provisions, an ordinance which ordered additional hydrants, fixed reduced rates therefore as compared with the rates established by prior existing ordinances for other hydrants, and provided that the ordinance should not be construed to affect in any way the rates fixed by such prior ordinance for other hydrants was reasonable and acceptable, and did not create that character of indebtedness contemplated by former Ill. Const. (1870), Art. 9, § 12. City of Danville v. Danville Water Co., 180 Ill. 235, 54 N.E. 224 (1899).

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Dillon's Rule

Under Dillon's Rule, non-home-rule units of local government only possess those powers which are specifically conveyed by the Constitution or by statute and thus, a non-home-rule unit may regulate in a field occupied by state legislation when the Constitution or a statute specifically conveys such authority. T & S Signs, Inc. v. Village of Wadsworth, 261 Ill. App. 3d 1080, 199 Ill. Dec. 467, 634 N.E.2d 306 (2 Dist. 1994).

Form of Government

- Construction

Construction of this section to include within the meaning of the phrase "form of government" the number of county board members would be contrary to the common meaning of that phrase. League of Women Voters v. County of Peoria, 121 Ill. 2d 236, 117 Ill. Dec. 275, 520 N.E.2d 626 (1987).

General Benefits

- Shown

Where a sewer improvement was more akin to a public utility such as a municipality owned system of waterworks and the benefits arising therefrom were general and not local; it was upheld as not in violation of former Ill. Const. (1870), Art. IV, §§ 9, 10 (see now this section). City of Edwardsville v. Jenkins, 376 Ill. 327, 33 N.E.2d 598 (1941).

Illustrative Cases

- Applicability to Municipality

The 5,000 person population requirements in former sections 3-5-5 and 3-5-6 of the Municipal Code (see now 65 ILCS 5/3.1-25-75 and 65 ILCS 5/3.1-25-80) are not provisions which can be altered by a municipality. Koerner v. Municipal Officers Electoral Bd., 205 Ill. App. 3d 54, 150 Ill. Dec. 304, 562 N.E.2d 1107 (3 Dist. 1990).

Because there is no inconsistency between 65 ILCS 5/11-42-5 statutory authorization to tax amusements and the constitutional provision limiting the powers of non-home rule units to those authorized by law, even though 65 ILCS 5/11-42-5 was enacted prior to the adoption of the 1970 Constitution, 65 ILCS 5/11-42-5 remains in force. Isberian v. Village of Gurnee, 116 Ill. App. 3d 146, 72 Ill. Dec. 78, 452 N.E.2d 10 (1 Dist. 1983).

A municipal ordinance which prohibited taking an active part in a campaign for elective office of the village was too broad and vague for ordinary people to understand this provision prohibited riding in the parade of a candidate for village trustee. Redemske v. Village of Romeoville, 85 Ill. App. 3d 286, 40 Ill. Dec. 596, 406 N.E.2d 602 (3 Dist. 1980).

The state may impose a duty on a municipal corporation which relates to the general welfare and security of the state, and even though the performance of the duty will create a debt to be paid by local taxation, such legislation does not contravene constitutional provisions. People ex rel. San. Dist. v. Schlaeger, 391 Ill. 314, 63 N.E.2d 382 (1945).

A former similar provision (see now 70 ILCS 5/2) empowering a sponsoring municipality of an airport with the authority to prescribe conditions upon which it became a sponsor, violated former Ill. Const. (1870), Art. IX, §§ 9 and 10 (see now this section), which vested municipalities with the

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authority to assess and collect taxes, and such provision being so vital to the purpose of the Act, rendered the entire act unconstitutional. People ex rel. Greening v. Barthole, 388 Ill. 445, 58 N.E.2d 172 (1944).

A state may impose a duty on a municipal corporation which relates to the general welfare and security of the state, and even though the performance of the duty will create a debt to be paid by local taxation, such legislation does not contravene this constitutional provision. Littell v. City of Peoria, 374 Ill. 344, 29 N.E.2d 533 (1940).

The General Assembly may impose taxes, local in their character, against a municipal corporation or the inhabitants thereof, if required for the general good of the state, because such taxes are not merely and only for the corporation. St. Hedwig's Indus. Sch. for Girls v. County of Cook, 289 Ill. 432, 124 N.E. 629 (1919).

A law making a city or county liable for damages to property destroyed by the act of a mob of 12 or more persons or a riot was found not to be unconstitutional, but rather a mere police regulation that did not create a debt against municipal corporations of any particular amount, much less an amount exceeding the constitutional limit. City of Chicago v. Manhattan Cement Co., 178 Ill. 372, 53 N.E. 68 (1899).

- Drainage Laws

Act which enabled adjoining drainage districts to connect their ditches and drains, levees, or other works, and to provide for the apportionment of the cost of the construction, operation, and maintenance of the work of the drainage district where lands in an adjoining district were benefited thereby did not contravene the provisions of former Ill. Const. (1870), Art. IX, §§ 9 and 10 (see now this section) and due process. Drainage Comm'rs v. Commissioners of Rector Special Drainage Dist., 266 Ill. 536, 107 N.E. 895 (1915).

- Firemen's Minimum Wage Act

For a case discussing the unconstitutionality of the former Firemen's Minimum Wage Act, see, People ex rel. Gramlich v. City of Peoria, 374 Ill. 313, 29 N.E.2d 539 (1940).

- Levy of Tax

A statute which purports to validate a levy originally made by a local taxing body without or in excess of then existing authority, actually results in the imposition of a tax upon the inhabitants of a municipality by the legislature and consequently violates this section of the Constitution. People ex rel. Lindheimer v. Gaylord Bldg. Corp., 369 Ill. 371, 16 N.E.2d 901 (1938).

- Policemen, and Firemen's Minimum Wage Act

Former Policemen's and Firemen's Minimum Wage Acts (see now 65 ILCS 5/10-3-1 et seq.) were not unconstitutional; they did not create a corporate debt in violation of former Ill. Const. (1870), Art. IX, § 9 (see now this section) and were not special legislation in contravention of this section. People ex rel. Bielfeldt v. Gannon, 375 Ill. 504, 31 N.E.2d 954 (1941).

- Regional Transportation Authority Act

The Regional Transportation Authority Act did not alter the "form of government" of the Greater Lake County Mass Transit District in contravention of this section. Hoogasian v. Regional Transp. Auth., 58 Ill. 2d 117, 317 N.E.2d 534 (1974).

- Regulation of Aviation

For a case discussing the history of state constitutional limits on the power to regulate aviation, under various acts related to aviation and airports, see People ex rel. Greening v. Barthole, 388 Ill. 445, 58 N.E.2d 172 (1944).

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- School Code

The procedures required by 105 ILCS 5/34-1 et seq., which applied only to cities having a population over 500,000 and resulted in the Board of Education of the City of Chicago levying taxes for the city's educational system, by the Board whose members are appointed rather than elected, did not constitute an unlawful exercise of the power to tax in violation of former Ill. Const. (1870), Art. IX, § 9 (see now Ill. Const. (1970), Art. VII, § 6 and this section). Latham v. Board of Educ., 31 Ill. 2d 178, 201 N.E.2d 111 (1964).

- Tax

Former provision (see now 35 ILCS 200/21-390 and 35 ILCS 200/21-430), in authorizing a personal judgment in special assessment cases, violated former Ill. Const. (1870), Art. IX, § 9 (see now this section). City of E. St. Louis v. Illinois State Trust Co., 372 Ill. 120, 22 N.E.2d 944 (1939).

Illustrative Differential Cases

- Rates Tax

Differential tax rates imposed on retailers by the Regional Transportation Authority pursuant to subsection (e) of 70 ILCS 3615/4.03) are constitutional. Walter Peckat Co. v. Regional Transp. Auth., 81 Ill. 2d 221, 40 Ill. Dec. 797, 407 N.E.2d 28 (1980).

Intent

Former Ill. Const. (1870), Art. IX, § 8 (see now this section) was intended merely as a limitation upon the power of county authorities to levy taxes. People ex rel. Price v. Wisconsin Cent. R.R., 219 Ill. 94, 76 N.E. 80 (1905).

Levy of Tax

- In General

The power to tax was not a prerequisite to the existence of a municipal corporation. People ex rel. Tuohy v. City of Chicago, 399 Ill. 551, 78 N.E.2d 285 (1948).

Where the language of the constitution is that no city, etc., "shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of its taxable property" a complainant after the money he let the city have must clearly identify the money or the fund, or other property which represents that money, in such a manner that it can be reclaimed and delivered without taking other property with it, or injuring other persons or interfering with others' rights. City of Litchfield v. Ballou, 114 U.S. 190, 5 S. Ct. 820, 29 L. Ed. 132 (1885).

Under former Ill. Const. (1870), Art. IX, § 8 (see now this section), towns had the power to levy taxes for town purposes, and taxes so levied were not county taxes. Wabash, St. Louis and Pac. Ry. v. McCleave, 108 Ill. 368 (1884).

Under prior similar provisions in the Constitutions of 1818, 1848, and 1870, a city had the power to tax keepers of livery stables who kept carriages for hire. Howland v. City of Chicago, 108 Ill. 496 (1884).

- Anticipation of Expenditure

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Taxing authorities should, with reasonable accuracy, anticipate the amount of money necessary to be raised to meet the cost of operating their political subdivision and arrange to have on hand sufficient funds to meet the obligations thereof as they mature. People ex rel. Gill v. 110 S. Dearborn St. Corp., 363 Ill. 286, 2 N.E.2d 68 (1936).

- Authority for Establishing Area

The authority for establishing the area is firmly grounded in the state constitution which allows home rule units, counties and municipalities to levy additional taxes upon areas within their boundaries, these taxes are used to provide those areas with special services not provided to other areas situated within the boundaries of the particular home rule unit, county, or municipality. Sweis v. City of Chicago, 142 Ill. App. 3d 643, 96 Ill. Dec. 882, 491 N.E.2d 1342 (1 Dist. 1986).

- Board of Education

Board of Education may raise funds either by taxation direct or by the sale of bonds payable by taxation, but the money so raised must be for corporate obligations. Thorp v. Board of Educ., 404 Ill. 588, 90 N.E.2d 71 (1950).

- Determination of Validity

The validity of a tax levy is to be determined as of the time it was made, and the General Assembly has no power to increase, by a validating act, any particular tax levy after it has been made. People ex rel. Birch v. Pennsylvania R.R., 375 Ill. 85, 30 N.E.2d 739 (1940).

- Exemption of Property

Since the creation of "semimall" in a special service area would increase the public use of retail stores and other business in the commercial area of the city and the property immediately and directly benefitted would be the commercial property, it was proper for the city to exclude residential property from taxation. Hiken Furn. Co. v. City of Belleville, 53 Ill. App. 3d 306, 11 Ill. Dec. 353, 368 N.E.2d 961 (5 Dist. 1977).

- Held Improper

If a tax is void for lack of power in the taxing body to levy it, a subsequent attempt by the legislature to validate the tax amounts to the imposition of a tax for corporate purposes by the legislature is in violation of this section. People ex rel. Schlaeger v. Riche, 396 Ill. 85, 71 N.E.2d 333 (1947).

A tax levied by a village which failed to pass an ordinance authorizing the tax was not lawfully levied. People ex rel. Miller v. Lee, 112 Ill. 113, 1 N.E. 471 (1884).

- Held Proper

Validating act contained in a former similar provision (see now 105 ILCS 5/17-3) that was relied upon was wholly inoperative to give validity to taxes levied at additional rates pursuant to a former provision (see now 10 ILCS 5/16-7) prior to its enactment since the taxes were levied when the taxing bodies were without authority to levy such additional rates, and were therefore unauthorized. People ex rel. De Rosa v. Chicago & N.W. Ry., 391 Ill. 145, 62 N.E.2d 460 (1945).

While the General Assembly may pass a curative act waiving some defect in the exercise of an existing power, where the thing waived is not necessary to the existence of the power, it cannot be valid, by a curative act. People ex rel. Birch v. Pennsylvania R.R., 375 Ill. 85, 30 N.E.2d 739 (1940).

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Trustees of a sanitary district were within their legal rights in making a levy for payment of a district's debts and their action was not arbitrary. People ex rel. Gill v. 110 S. Dearborn St. Corp., 363 Ill. 286, 2 N.E.2d 68 (1936).

- Limitation

Neither 65 ILCS 5/10-4-1 nor any other section of the Municipal Code expressly grants to municipalities the power to set working hours, pay schedules, working conditions or other conditions or restrictions on employment. Redemske v. Village of Romeoville, 85 Ill. App. 3d 286, 40 Ill. Dec. 596, 406 N.E.2d 602 (3 Dist. 1980).

Under this section, neither a judicial officer nor an executive officer may be delegated to levy taxes; neither may the power of taxing be delegated to any person other than the corporate authorities provided for such purposes, and an assessment made by a person other than the one properly qualified to do so is void. Giebelhausen v. Daley, 407 Ill. 25, 95 N.E.2d 84 (1950).

Former Ill. Const. (1870), Art. IX, § 10 (see now this section) did not mandate that municipalities be given power to tax, but is obviously rather a limitation on the power of the legislature to levy taxes on municipal corporations. People ex rel. Tuohy v. City of Chicago, 399 Ill. 551, 78 N.E.2d 285 (1948).

A levy of taxes in excess of the limitation set forth in former Ill. Const. (1870), Art. IX, § 8 (see now this section) did not render the whole tax void, but it rendered void only so much of it as is in excess of the constitutional limit; if the tax within the constitutional limit could be separated from the portion that was valid. People ex rel. Bunch v. Cleveland, C., C. & St. L. Ry., 339 Ill. 169, 171 N.E. 175 (1930).

Under former Ill. Const. (1870), Art. IX, § 8 (see now this section), where a county board attempted to levy a county tax of 75 cents on each $100 of taxable property according to its assessed valuation, and did not specify the particular purposes for which the tax was levied, such a levy was not authorized, and the tax was vitiated by the failure to comply with the law. People ex rel. Price v. Wisconsin Cent. R.R., 219 Ill. 94, 76 N.E. 80 (1905).

- Not Curable

A levy of a tax by a South Park district in excess of the rate lawfully available cannot be cured by a curative act, as such an act would violate this section. People ex rel. Harding v. Chicago & E. Ill. Ry., 343 Ill. 101, 175 N.E. 4 (1931).

- Payment of School Bonds

In the absence of proof it could not be assumed that the school authorities violated the law and did not provide for the levy of a tax for the payment of the bonds when the same were issued. People ex rel. Henry v. New York Cent. R.R., 381 Ill. 490, 45 N.E.2d 860 (1942).

The constitutional requirement that a school district shall, when issuing bonds, provide for the levy of a tax sufficient to pay maturing principal and interest is mandatory and self-executing. People ex rel. Henry v. New York Cent. R.R., 381 Ill. 490, 45 N.E.2d 860 (1942).

- Power

The provision in former Ill. Const. (1870), Art. IX, § 9 (see now this section) that all municipal corporations may be vested with authority to assess and collect taxes was permissive and not mandatory. People ex rel. Tuohy v. City of Chicago, 399 Ill. 551, 78 N.E.2d 285 (1948).

- Private Enterprise

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A tax levied to aid in any private enterprise was prohibited, although the object might have been one which might have added to the wealth and prosperity of the city. Mather v. City of Ottawa, 114 Ill. 659, 3 N.E. 216 (1885).

- Procedure

The right of taxation can not be granted by the general assembly in any form to private persons, or to private corporations, the power of the general assembly to grant the right to assess and collect taxes to the corporate or local authorities of the municipality or districts to be taxed is limited, a local burden of taxation or special assessment can not be imposed upon a locality without the consent of the taxpayers to be affected, and corporate authorities are municipal officers directly elected by the people of the municipality or appointed in some mode to which they give their assent. O'Brien v. Wheelock, 184 U.S. 450, 22 S. Ct. 354, 46 L. Ed. 636 (1902).

- Uniformity

Where the inhabitants of the district imposed the tax burden upon themselves when they, by majority vote, organized the park district under a permissive statute, this section of was complied with, since each taxpayer of the district paid district taxes at a uniform rate which was set by the corporate authorities of that district, and not by those of some other municipal corporation. People ex rel. Honefenger v. Burris, 408 Ill. 68, 95 N.E.2d 882 (1950).

Maintenance of School Systems

- Limitations

The power of the legislature to enact laws to establish and maintain school systems is not subject to judicial review unless some limitation imposed by this section is exceeded. Berman v. Board of Educ., 360 Ill. 535, 196 N.E. 464 (1935).

Municipality

- Form of Government

Allowing realignment of subdepartments effectively converts a municipality's modified form of government back to a regular commission form of government, thus, in effect, circumventing the constitutional and statutory requirement which mandates that a municipality's form of government can only be changed by referendum. Fischer v. Brombolich, 207 Ill. App. 3d 1053, 152 Ill. Dec. 908, 566 N.E.2d 785 (5 Dist. 1991).

- Levy of Tax

There is no limitation on the legislative power to invest municipalities with power to tax for corporate purposes, but they shall be uniform as to persons and property within the corporate limits except where a statute, although in the form of an enabling act, actually validates an illegal levy already made, it is void even though, thereafter, the municipal authorities re-adopt the levy originally illegal. People ex rel. Lindheimer v. Gaylord Bldg. Corp., 369 Ill. 371, 16 N.E.2d 901 (1938).

Non-Home Rule Municipality

- Authority

City, as a non-home-rule unit of local government, could only exercise those powers granted to it by law and the Illinois Constitution, and because Illinois law and the Illinois Constitution only

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allowed it to enact legislation taxing athletic contests that were "for gain," the city's ordinance could not be used to tax the tournament operator's golf tournament, which was shown to be for charitable purposes and not "for gain." Quad Cities Open, Inc. v. City of Silvis, 208 Ill. 2d 498, 281 Ill. Dec. 534, 804 N.E.2d 499, 2004 Ill. LEXIS 9 (2004).

Under this section, a non-home rule municipality only has the authority that is expressly provided under this section or which are necessarily implicit from the express authority. Fischer v. Brombolich, 207 Ill. App. 3d 1053, 152 Ill. Dec. 908, 566 N.E.2d 785 (5 Dist. 1991).

A non-home rule municipality was held to have authority to purchase, hold and convey real estate to the United States so that a Federal correctional facility could be built thereon under subsection (1) of 65 ILCS 5/11-77-1. Brown v. City of Greenville, 203 Ill. App. 3d 1035, 149 Ill. Dec. 168, 561 N.E.2d 446 (5 Dist. 1990).

Non-Home Rule Unit

- Authority

Village as a non-home rule unit has only the powers granted by law however, non-home rule cities and villages are specifically and expressly granted the authority to adopt additional traffic regulations which are not in conflict with the provisions of 625 ILCS 5/11-503; therefore, village reckless driving ordinance was authorized by state statute, was not in conflict with the state statute and was constitutional. Village of Cherry Valley v. Schuelke, 46 Ill. App. 3d 91, 4 Ill. Dec. 411, 360 N.E.2d 158 (2 Dist. 1977).

Payment of Bonds

- Property Not Pledged

Where no property of the city was pledged to secure the payment of the bonds authorizing a sewer system improvement plan the municipality's indebtedness was not increased and so there was no violation of former Ill. Const. (1870), Art. IX, § 12 (see now this section). City of Edwardsville v. Jenkins, 376 Ill. 327, 33 N.E.2d 598 (1941).

Public Utilities

- Surcharge

A city was not authorized to levy a surcharge on commercial users of electric services provided by its utility and use those funds for the construction and maintenance of parking lots. Ross v. City of Geneva, 71 Ill. 2d 27, 15 Ill. Dec. 658, 373 N.E.2d 1342 (1978).

Where city ordinances either as originally enacted or as presently codified, made no reference to profits of the utility, and a surcharge was to be deposited in a Special Parking Improvement and Facilities Fund for the purpose of acquiring parking facilities and improvements without regard to whether profits were derived from the utility operations, the defendant was not empowered to assess the surcharge on commercial users for the purpose provided in the ordinances and that the ordinances were therefore invalid. Ross v. City of Geneva, 71 Ill. 2d 27, 15 Ill. Dec. 658, 373 N.E.2d 1342 (1978).

Purpose

Granting municipalities and counties the power to impose ad valorem taxes on limited areas within the boundaries of the governmental unit was clearly a departure from the requirement of

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uniformity in ad valorem property taxation, and it was intended that units of general local government, that is counties and municipalities, should have the power to furnish special services and improvements to limited areas within their geographic boundaries and to impose taxes only on those areas that benefit from the service furnished or improvement received. Hiken Furn. Co. v. City of Belleville, 53 Ill. App. 3d 306, 11 Ill. Dec. 353, 368 N.E.2d 961 (5 Dist. 1977).

The purpose of sections that provide that the taxes levied by municipal corporations shall be uniform in respect to persons and property, within the jurisdiction of the body imposing the taxes is to guard against injustice in the taxing process, not to require it; "jurisdiction" does not mean territorial jurisdiction and these sections of the constitution do not preclude the General Assembly from making adjustments that recognize that one governmental unit, rather than another, has been made responsible for the discharge of a particular governmental function. People ex rel. Kelly v. Lund, 25 Ill. 2d 387, 185 N.E.2d 174 (1962).

This section was adopted for the purpose of removing restrictions which had been placed upon the legislature by the Constitution of 1850, and to authorize the making of local improvements by the levy of assessments on contiguous property according to frontage. City of Chicago v. Brede, 218 Ill. 528, 75 N.E. 1044 (1905).

Referendum Not Authorized

Ill. Const. (1970), Art. VII, § 7 which gives voters the power by referendum to adopt or alter forms of local government and establish public offices, does not authorize the use of a referendum to establish a procedure for recall of elected officials. Williamson v. Doyle, 103 Ill. App. 3d 770, 59 Ill. Dec. 441, 431 N.E.2d 1198 (1 Dist. 1981).

Requirement

- Abatement

Sanitary district's failure to abate levies by the amounts on hand in excess of previous levies did not result in a needless accumulation of funds as the ordinances authorizing the issue of the refunding bonds and the tax levies were clearly designed to allow the sanitary district to provide for the payment of its bonded indebtedness as the same fell due and county court's finding was not an arbitrary abuse of discretion. People ex rel. Brenza v. Gebbie, 5 Ill. 2d 565, 126 N.E.2d 657 (1955).

- Corporate Purpose

The General Assembly cannot confer upon a municipality the power to issue bonds for an illegal purpose or for the purpose of paying a debt not incurred by the exercise of some authorized corporate function or purpose. Berman v. Board of Educ., 360 Ill. 535, 196 N.E. 464 (1935).

Scope of Review

Courts will not interfere with the exercise of sound business judgment on the part of taxing authorities, but will intervene only to prevent a clear abuse by such officers of their discretionary powers. People ex rel. Gill v. 110 S. Dearborn St. Corp., 363 Ill. 286, 2 N.E.2d 68 (1936).

Severance

- Held Improper

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Invalid portion of referendum could not be severed from the valid portion, therefore no portion of the referendum could be given binding legal effect. League of Women Voters v. County of Peoria, 121 Ill. 2d 236, 117 Ill. Dec. 275, 520 N.E.2d 626 (1987).

Subjection to Voluntary Payment

- Shown

Where ticket revealed the governmental entity which was levying a tax since plaintiff was challenging the authority of the village to impose the tax, the ticket's designation of the village as the taxing body and the labeling of the tax as an admission tax sufficiently apprised plaintiff of facts upon which he could have framed a protest; and once plaintiff paid the tax, he was subject to the voluntary payment doctrine. Isberian v. Village of Gurnee, 116 Ill. App. 3d 146, 72 Ill. Dec. 78, 452 N.E.2d 10 (1 Dist. 1983).

OPINIONS OF ATTORNEY GENERAL

Analysis

Applicability
- Dillon's Rule
Availability
- Interim Financing
County Prisoners
Effect of Referendum
- Non-Home Rule Unit
Non-Home Rule Municipality
- Authority
- Selection of Officers
Power to Borrow Money

Applicability

- Dillon's Rule

If a city should elect to become a non-home-rule municipality it will be subject to the legal principle commonly referred to as "Dillon's Rule," as embodied in this section. 1983 Op. Atty. Gen. 13.

Availability

- Interim Financing

Interim financing for construction of Farmer's Home Administration projects (7 C.F.R., § 1823.452), if interpreted to mean borrowing without referendum or provision from payment from specified taxes, is legally available for home rule municipalities and home rule counties, is not legally available for townships, fire protection districts or library districts, and is not clearly legally available for non-home rule municipalities or non-home rule counties. 1978 Op. Atty. Gen. 170.

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County Prisoners

A county cannot provide for payment for the work done by prisoners incarcerated in a county jail. 1977 Op. Atty. Gen. 10.

Effect of Referendum

- Non-Home Rule Unit

If a referendum to cease to be a home rule unit passes, the city would be precluded from imposing any taxes not statutorily authorized to be imposed by a non-home-rule unit, except for the extension of taxes under a debt service levy completed prior to the abandonment of home rule status. 1983 Op. Atty. Gen. 13.

Non-Home Rule Municipality

- Authority

Non-home rule municipalities are granted no express constitutional or statutory power to contract with private security firms to perform police functions for the municipality, nor is such power necessarily implied in the power granted to municipalities to create and maintain a municipal police force. 1982 Op. Atty. Gen. 91.

- Selection of Officers

Under this section, a non-home rule municipality is empowered to determine the manner of selection of its officers, including whether they should be elected on a nonpartisan basis. 1985 Op. Atty. Gen. (85-017).

Power to Borrow Money

A non-home rule county does not have the authority to borrow money from a financial institution and execute a multi-year installment note to secure the repayment of the loan, in the absence of specific statutory authorization so providing. 1999 Op. Atty. Gen. (99-001).

Practice Guides and Treatises.

Real Estate Taxation § 8.2 The Power To Tax and the Effect of Home Rule Thereon (IICLE).

Section 8. Powers and Officers of School Districts and Units of Local Government Other Than Counties and Municipalities.

Townships, school districts, special districts and units, designated by law as units of local government, which exercise limited governmental powers or powers in respect to limited governmental subjects shall have only powers granted by law. No law shall grant the power (1) to any of the foregoing units to incur debt payable from ad valorem property tax receipts maturing more than 40 years from the time it is incurred, or (2) to make improvements by special assessments to any of the foregoing classes of units which do not have that power on the effective date of this Constitution. The General Assembly

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shall provide by law for the selection of officers of the foregoing units, but the officers shall not be appointed by any person in the Judicial Branch.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Municip L § 2:47, § 10:14, § 11:2.

CASE NOTES

Analysis

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Abatement
- Not Required
Applicability
- Park Districts
- Penalties
- Regional Transportation Authority
Authority of Legislature
- Classification of Property
Corporate Authority
- Extension of Power
Creation of Indebtedness
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- Drainage Code
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- Requirement
Public Purposes
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- Test
Taxation and Special Assessment
- Comparison

In General

The distinction between taxation and special assessment is highly technical, and any distinction has been virtually obliterated under the 1970 Constitution. East Lake Fork Special Drainage Dist. v. Village of Ivesdale, 137 Ill. App. 3d 473, 91 Ill. Dec. 948, 484 N.E.2d 507 (4 Dist. 1985).

This section incorporates the concept of Dillon's Rule whereby units of local government, including drainage districts, possess only those powers authorized by the General Assembly. East Lake Fork Special Drainage Dist. v. Village of Ivesdale, 137 Ill. App. 3d 473, 91 Ill. Dec. 948, 484 N.E.2d 507 (4 Dist. 1985).

Former Ill. Const. (1870), Art. IX, § 12 (see now this section) did not impair the validity of bonds issued after the adoption of the section, but on which vote was had before its adoption. Board of Education v. Bolton, 104 Ill. 220 (1882).

Abatement

- Not Required

Sanitary district's failure to abate levies by the amounts on hand in excess of previous levies did not result in a needless accumulation of funds as the ordinances authorizing the issue of the refunding bonds and the tax levies were clearly designed to allow the sanitary district to provide for the payment of its bonded indebtedness as the same fell due and county court's finding was not an arbitrary abuse of discretion. People ex rel. Brenza v. Gebbie, 5 Ill. 2d 565, 126 N.E.2d 657 (1955).

Applicability

- Park Districts

Park districts are non-home rule units of government and hence have only the powers delegated to them by the legislature. Springfield Park Dist. v. Buckley, 140 Ill. App. 3d 524, 94 Ill. Dec. 824, 488 N.E.2d 1071 (4 Dist. 1986).

- Penalties

This section calls for the imposition of penalties where there is a failure to file in accord with the orderly periodic procedures set forth in the other sections of the ordinance. Metropolitan San. Dist. v. On-Cor Frozen Foods, Inc., 36 Ill. App. 3d 239, 343 N.E.2d 577 (1 Dist. 1976).

- Regional Transportation Authority

Any claim that a Regional Transportation Authority ordinance enacted pursuant to a state statute is unconstitutional necessarily includes a claim that the authorizing statute is unconstitutional. Village of Arlington Heights v. Regional Transp. Auth., 653 F.2d 1149 (7th Cir. 1981).

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Authority of Legislature

The General Assembly is constitutionally unrestricted in the manner it chooses to delegate the power to tax, and, in the manner it directs a local government to exercise that responsibility. Painter v. Board of Trustees, 161 Ill. App. 3d 26, 112 Ill. Dec. 319, 513 N.E.2d 928 (1 Dist. 1987).

- Classification of Property

The General Assembly has power to classify property subject to drainage district assessment. East Lake Fork Special Drainage Dist. v. Village of Ivesdale, 137 Ill. App. 3d 473, 91 Ill. Dec. 948, 484 N.E.2d 507 (4 Dist. 1985).

Corporate Authority

- Extension of Power

Under similar prior provisions of the 1848 and 1870 Constitutions, granting corporate authorities of counties, townships, school districts, cities, towns and villages the authority to levy taxes for corporate purposes, this power extended only to those officers directly elected by the people of such district, or appointed in some manner by which the people have assented to his election. Cornell v. People ex rel. Walsh, 107 Ill. 372 (1883).

Creation of Indebtedness

- Limitations

It makes no difference under what guise or by what sort of trick the attempt is made, an indebtedness in excess of the constitutional limit cannot be voluntarily created. Green v. Hutsonville Tp. High Sch., 356 Ill. 216, 190 N.E. 267 (1934).

- Shown

Where board of education deliberately incurred an indebtedness far beyond the constitutional limitation, and in as much as it knew it was violating the law in doing so, it was not only a fair but a necessary inference that its confession of judgment upon these claims was collusive and fraudulent. Green v. Hutsonville Tp. High Sch., 356 Ill. 216, 190 N.E. 267 (1934).

Under Ill. Const. (1870), Art. IX, § 12 (see now this section) a contract by a municipality to pay for the annual supply of necessaries, such as light and water, upon rendering the services or furnishing the supplies, was the incurring of a present indebtedness, in the constitutional sense. City of Chicago v. McDonald, 176 Ill. 404, 52 N.E. 982 (1898).

Detachment

- No Effect on Tax Liability

Where the plaintiff was obligated to pay her share of bonded indebtedness existing before the detachment of her property, this obligation was affected neither by subsequent detachment nor the refunding of the bonded indebtedness; the new levy for the refunding bonds merely continued, in a new form, the prior levy for the funding and refunding bonds which were still a subsisting debt upon the detached territory, and the constitutional prohibition against taxation of territory beyond the boundaries of a municipality was not pertinent. Prohm v. Non-High Sch. Dist. No. 216, 7 Ill. 2d 421, 130 N.E.2d 917 (1955).

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Drainage

The General Assembly has power to classify property subject to drainage district assessment. East Lake Fork Special Drainage Dist. v. Village of Ivesdale, 137 Ill. App. 3d 473, 91 Ill. Dec. 948, 484 N.E.2d 507 (4 Dist. 1985).

Excess of Indebtedness

- Held Improper

Where it was obvious that a scheme or device had been resorted to for the purpose of burdening the taxpayers of school district with a much more expensive schoolhouse than the valuation of the district would warrant or the Constitution would permit; it followed that the excess of indebtedness was void ab initio. Green v. Hutsonville Tp. High Sch., 356 Ill. 216, 190 N.E. 267 (1934).

Existence of Corporate Authority

- Not Shown

Park district commissioner, who was, according to statute passed by referendum, to have been appointed by a local judge, but whose appointment was unconstitutionally delegated by the General Assembly to the Governor, was not a legal corporate authority with the constitutional power to levy taxes on the citizens of his district. Cornell v. People ex rel. Walsh, 107 Ill. 372 (1883).

General Improvement

Where no property of the city was pledged to secure the payment of bonds authorizing a sewer system improvement plan a municipality's indebtedness was not increased and so there was no violation of former Ill. Const. (1870), Art. IX, § 12 (see now this section). City of Edwardsville v. Jenkins, 376 Ill. 327, 33 N.E.2d 598 (1941).

Illustrative Cases

- Drainage Code

Drainage districts shall have only the powers granted by law and there are no inhibitions on the plenary power of the General Assembly to enact exemptions from special assessment. East Lake Fork Special Drainage Dist. v. Village of Ivesdale, 137 Ill. App. 3d 473, 91 Ill. Dec. 948, 484 N.E.2d 507 (4 Dist. 1985).

The General Assembly could in its discretion abolish 70 ILCS 605/1-1 or eliminate the authority of drainage districts to levy special assessments. East Lake Fork Special Drainage Dist. v. Village of Ivesdale, 137 Ill. App. 3d 473, 91 Ill. Dec. 948, 484 N.E.2d 507 (4 Dist. 1985).

- Municipality

Because of the statutory responsibility placed upon Division 136 sewer commissions under 65 ILCS 5/11-136-1 et seq. to handle the financing of a sewer system, the authority to require landowners within the member municipalities to attach to the Commission's system is a power necessarily incident to the powers specified in Division 136; such power is also related, to some

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degree with the general power to operate the system. Buffalo, Dawson, Mechanicsburg Sewer Comm'n v. Boggs, 128 Ill. App. 3d 688, 83 Ill. Dec. 523, 470 N.E.2d 649 (4 Dist. 1984).

- School Code

There is nothing in the School Code (105 ILCS 5/1-1 et seq.) that allows a school board to give preferential treatment to local businesses; thus, a school board's rule that gave local businesses a 2% preference had no proper legislative authority and was an arbitrary and capricious delegation of power to a municipal unit which was unconstitutional. Best Bus Joint Venture v. Board of Educ., 288 Ill. App. 3d 770, 224 Ill. Dec. 255, 681 N.E.2d 570 (1 Dist. 1997).

Former provisions of the School Code at Ill. Rev. Stat., ch. 122, para. 19-32, 19-33 had separate purposes and did not conflict or overlap each other. McLain v. Phelps, 409 Ill. 393, 100 N.E.2d 753 (1951).

- Sewage

Where statute, governing water and sewage systems, provided for the appointment of one sewage commissioner from each municipality, and unconstitutionally provided for the judicial appointment of a commissioner, an ordinance passed by the commission, which would have carried regardless of the vote of the improperly appointed commissioner was still valid. Buffalo, Dawson, Mechanicsburg Sewer Comm'n v. Boggs, 128 Ill. App. 3d 688, 83 Ill. Dec. 523, 470 N.E.2d 649 (4 Dist. 1984).

Where the vote on an ordinance was four to zero and it would have passed regardless of the vote of a sewage commissioner improperly appointed by circuit judges, the validity of an ordinance was not negated by the invalidity of the unconstitutional appointment of the commissioner. Buffalo, Dawson, Mechanicsburg Sewer Comm'n v. Boggs, 128 Ill. App. 3d 688, 83 Ill. Dec. 523, 470 N.E.2d 649 (4 Dist. 1984).

- Township

The township elector's powers and authority to act must be grounded upon some specific delegation of authority; for the electors to have control over any matter, the electors must be able to cite some basis in the Town Code for finding that the authority was granted to the electors to act. Baldacchino v. Thompson, 289 Ill. App. 3d 104, 224 Ill. Dec. 621, 682 N.E.2d 182 (1 Dist. 1997).

The actions taken by a township indicate an intention to be bound by and subject to the legislative conditions imposed governing the holding, acquisition and disposition of township community buildings. Once the defendants held the township property pursuant to statute, elected a governing board, and levied a maintenance tax for it, they had adopted the Act within the meaning of the statute. Hill v. Butler, 107 Ill. App. 3d 721, 63 Ill. Dec. 385, 437 N.E.2d 1307 (4 Dist. 1982).

Intent

- Indebtedness

Under former Ill. Const. (1870), Art. 9, sec. 12 the Constitutional intent was to control towns with reference to that species or character of indebtedness the payment whereof has been deferred to a fixed time in the future, and which bears interest, and as to such indebtedness the payment of the principal thereof shall not be deferred beyond a period of 20 years, and that before or at the time of contracting any such indebtedness the town shall provide for a direct annual tax sufficient to pay the interest as such interest falls due, therefore, the words "any indebtedness," mean any indebtedness of the character affected by the provisions of the sentence. Town of Kankakee v. McGrew, 178 Ill. 74, 52 N.E. 893 (1899).

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Levy of Tax

- Mandatory

After the issuance of funding or refunding bonds, the levy of the tax and collection of funds with which to discharge the obligation is mandatory. Prohm v. Non-High Sch. Dist. No. 216, 7 Ill. 2d 421, 130 N.E.2d 917 (1955).

- Requirement

If a refunding bond resolution is not violative of the constitution and is, otherwise legal, there is no discretion in the county clerk with reference to levying the tax to discharge this indebtedness. Prohm v. Non-High Sch. Dist. No. 216, 7 Ill. 2d 421, 130 N.E.2d 917 (1955).

Where the language of the constitution is that no city, etc., "shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of its taxable property" a complainant after the money he let the city have must clearly identify the money or the fund, or other property which represents that money, in such a manner that it can be reclaimed and delivered without taking other property with it, or injuring other persons or interfering with others' rights. City of Litchfield v. Ballou, 114 U.S. 190, 5 S. Ct. 820, 29 L. Ed. 132 (1885).

Public Purposes

- In General

Under subsection (a) of this section, public funds and property can only be used for public purposes. City of Rolling Meadows v. National Adv. Co., 228 Ill. App. 3d 737, 170 Ill. Dec. 662, 593 N.E.2d 551 (1 Dist. 1991), appeal denied, 146 Ill. 2d 651, 176 Ill. Dec. 821, 602 N.E.2d 475 (1992), cert. denied, 507 U.S. 960, 113 S. Ct. 1385, 122 L. Ed. 2d 761 (1993).

- Restrictive Covenant

Where city was acting in its own interest to enforce a covenant applicable to its property in the industrial park, aesthetics and traffic safety were valid policy reasons for government regulation of billboards; therefore, the city had a valid public purpose to achieve the same objectives through enforcement of a restrictive covenant. City of Rolling Meadows v. National Adv. Co., 228 Ill. App. 3d 737, 170 Ill. Dec. 662, 593 N.E.2d 551 (1 Dist. 1991), appeal denied, 146 Ill. 2d 651, 176 Ill. Dec. 821, 602 N.E.2d 475 (1992), cert. denied, 507 U.S. 960, 113 S. Ct. 1385, 122 L. Ed. 2d 761 (1993).

- Test

To determine whether public funds are being devoted to a purely private purpose, whether acting in its proprietary or governmental capacity, the test is whether the attempted private use of municipal property subserves the public interest and benefits a private individual or corporation only incidentally. City of Rolling Meadows v. National Adv. Co., 228 Ill. App. 3d 737, 170 Ill. Dec. 662, 593 N.E.2d 551 (1 Dist. 1991), appeal denied, 146 Ill. 2d 651, 176 Ill. Dec. 821, 602 N.E.2d 475 (1992), cert. denied, 507 U.S. 960, 113 S. Ct. 1385, 122 L. Ed. 2d 761 (1993).

Taxation and Special Assessment

- Comparison

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The distinction between taxation and special assessment is highly technical, and any distinction has been virtually obliterated under the 1970 Constitution. East Lake Fork Special Drainage Dist. v. Village of Ivesdale, 137 Ill. App. 3d 473, 91 Ill. Dec. 948, 484 N.E.2d 507 (4 Dist. 1985).

OPINIONS OF ATTORNEY GENERAL

Analysis
Nomination and Election on Non-Partisan Basis
Vacancy

Nomination and Election on Non-Partisan Basis

Absent statutory authorization, townships may not, by referendum or otherwise, provide for the nomination and election of township officers on a non-partisan basis. 2000 Op. Atty. Gen. (00-009).

Vacancy

Since the regional superintendent has the authority under section 3-15.50 of the School Code (105 ILCS 5/3-15.10) to chose the assistant regional superintendent, (105 ILCS 5/3A-6) in effect authorizes the regional superintendent to name the person who would serve out the balance of his term should he vacate his office; there is no conflict between that provision and this section. 1981 Op. Atty. Gen. 20.

LEGAL PERIODICALS

For comment, "Collective Bargaining Rights of Illinois Public School Teachers," see 32 De Paul L. Rev. 351 (1983).

Section 9. Salaries and Fees.

(a) Compensation of officers and employees and the office expenses of units of local government shall not be paid from fees collected. Fees may be collected as provided by law and by ordinance and shall be deposited upon receipt with the treasurer of the unit. Fees shall not be based upon funds disbursed or collected, nor upon the levy or extension of taxes.

(b) An increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected.

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(Source: Illinois Constitution.)

Note.

705 ILCS 105/27.1, referred to above, was repealed.

Illinois Jurisprudence. See Illinois Jur, Crim L § 6:30.

See Illinois Jur, Municip L § 9:1, § 9:2, § 9:3, § 9:6.

CASE NOTES

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- Not Shown

Allowance of Expenses

- Fixing Expenses

County officers have no power to create a liability against the county for office expenses, except within some limit already fixed by the county board, and while expense allowance for an office may be changed from time to time as circumstances may require, there is no liability unless an allowance has previously been made. People v. Frick, 367 Ill. 446, 11 N.E.2d 955 (1937).

Applicability

Subsection (a) does not apply to the clerks of the circuit court as they are not officers of a unit of local government. Walker v. Cockrell, 110 Ill. App. 3d 562, 66 Ill. Dec. 234, 442 N.E.2d 660 (2 Dist. 1982).

This section of the Constitution applies both to tax and nontax funds. DeBruyn v. Elrod, 84 Ill. 2d 128, 49 Ill. Dec. 559, 418 N.E.2d 413 (1981).

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- In General

The provisions contained in this section apply to officers not specifically mentioned in other provisions of the Constitution, holding offices in and for any of the political subdivisions of the state created by the law under former Ill. Const. (1870), Art. IX, § 11 (see now this section) regarding increase of fees. Baumrucker v. Brink, 373 Ill. 82, 25 N.E.2d 51 (1939).

This provision of the Constitution does not apply to any municipal officer who is not elected or appointed for a definite term of office. Quernheim v. Asselmeier, 296 Ill. 494, 129 N.E. 828 (1921).

- Counterclaim

By virtue of his dual capacity, a clerk may refuse to accept a counterclaim for filing unless the fee is paid and, in such event, the court acquires no jurisdiction over the subject matter of the counterclaim; however, where the clerk accepts a counterclaim for filing without collecting the fee, the court does acquire jurisdiction over the subject matter. Ganja v. Johnson, 6 Ill. App. 3d 701, 286 N.E.2d 775 (1 Dist. 1972).

- Delinquency Penalties

The delinquency penalties of precursor of 35 ILCS 200/21-15 through 35 ILCS 200/21-25 are not for the purpose of generating additional tax revenues for the taxing bodies, but rather, to aid in the administration of tax collections by the county, the entity charged with the duty of collecting such taxes, and are, as such, clearly distinguishable from those "fees" which are prohibited by this section. Village of Oak Lawn v. Rosewell, 128 Ill. App. 3d 639, 83 Ill. Dec. 904, 471 N.E.2d 203 (1 Dist. 1984).

- Fees

This constitutional provision means that fees not based upon funds disbursed or collected and not based upon the levy or extension of taxes may be collected, providing they are collected according to a law or ordinance, deposited with the treasurer of the unit, and are not used to pay corporate officers or employees or to pay office expenses. Century Community Unit Sch. v. McClellan, 27 Ill. App. 3d 255, 327 N.E.2d 32 (5 Dist. 1975).

Subsection (a) of this section precludes a county from charging a school district for the costs of assessment, extension and collection of taxes levied by the district. Century Community Unit Sch. v. McClellan, 27 Ill. App. 3d 255, 327 N.E.2d 32 (5 Dist. 1975).

- Home Rule Unit

Since the objects of this section were indeed matters of state concern, the application of this section could not be avoided by use of home rule powers where municipality enacted provision in violation of this section. Dalton v. City of Moline, 48 Ill. App. 3d 494, 3 Ill. Dec. 861, 359 N.E.2d 500 (3 Dist. 1977).

- Interest

The fact that public officials have appropriated to their own use interest money to which they were not entitled was not permitted to defeat the purpose of former Ill. Const. (1870), Art. X, § 10 (see now this section) and the former Fees and Salaries Act (see now 55 ILCS 5/4-6001). County of Lake v. Westerfield, 273 Ill. 124, 112 N.E. 308 (1916).

- Not Shown

Where plaintiff contended that the third sentence in subsection (a), of this section, applied to the state, preventing the state from retaining two percent of the revenue collected on behalf of the counties and municipalities which impose various local sales taxes; it is clear that the third

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sentence applies only to units of local government, and permits the state to withhold, as a fee, a percentage of the funds it collects on behalf of units of local government. Village of Oak Lawn v. Zagel, 96 Ill. App. 3d 254, 51 Ill. Dec. 743, 421 N.E.2d 251 (1 Dist. 1981).

- President of Village Board

The president of a village board is a municipal officer and comes within the constitutional prohibition regarding increase of fees under former Ill. Const. (1870), Art. IX, § 11 (see now this section). Baumrucker v. Brink, 373 Ill. 82, 25 N.E.2d 51 (1939).

- Term of Office

Where neither a statute nor the Constitution fixes the term of the office, the appointee holds at the pleasure of the appointing power, although the appointing power attempted to fix a definite term. Morgan v. County of DuPage, 371 Ill. 53, 20 N.E.2d 40 (1939).

- Writ of Mandamus

A writ of mandamus was proper where county refused to return funds withheld from school district for the costs of assessment, extension and collection of taxed levied by the district. Century Community Unit Sch. v. McClellan, 27 Ill. App. 3d 255, 327 N.E.2d 32 (5 Dist. 1975).

Approval of Expenses

- Not Signed

Where telephone company orders were not countersigned by order of the county board, and there was no stipulation that they lawfully made and issued, they were invalid. People v. Frick, 367 Ill. 446, 11 N.E.2d 955 (1937).

Authority of Legislature

- Circuit Court Fees

The setting of circuit court fees is essentially a legislative function. Dobbs v. Chase, 94 Ill. App. 3d 177, 49 Ill. Dec. 899, 418 N.E.2d 919 (5 Dist. 1981).

- Compensation of Judge

It was not within the power of the Legislature to increase or diminish the salary of the judge of a city court during the term for which said judge was elected. Wolf v. Hope, 210 Ill. 50, 70 N.E. 1082 (1904).

Authority of Municipality

- Excess Fees

Where a sheriff paid over to the county all of his fees in excess of his compensation and expenses, and if after so doing, the county remained indebted to the sheriff for services rendered pursuant to the provisions of the applicable statutes, it would then be proper for the county to appropriate funds to pay for these authorized charges and services and the county, as an individual or business entity, must pay for the statutory services rendered by the sheriff. People ex rel. Sweet v. Central Ill. Pub. Serv. Co., 48 Ill. 2d 145, 268 N.E.2d 404 (1971).

Change in Compensation

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- Term of Office

Where the term of office is not fixed by a constitutional or statutory provision, it is held at the pleasure of the appointing power, and although that power has attempted to fix a definite term for the office, the constitutional provision in not allowing a change in salary during a definite term does not apply and the salary may be raised, lowered or revoked by the proper authority. Anderson v. City of Jacksonville, 380 Ill. 44, 41 N.E.2d 956 (1942).

Collected Funds

- Defined

The funds received by a defendant sheriff in connection with foreclosure sales, execution of judgments, and redemptions were collected funds within the contemplation of the constitutional prohibition. DeBruyn v. Elrod, 84 Ill. 2d 128, 49 Ill. Dec. 559, 418 N.E.2d 413 (1981).

Compensation

- In General

The compensation of an officer may be fixed by the county board in a lump sum, including both salary and expenses, in which event he may retain as his compensation the whole amount of such sum out of fees collected; or the salary may be fixed in one item and the expenses of his office as other items, in which latter case, the county officer is entitled to retain from the fees collected by him the entire salary, but can retain on account of expenses only so much as will reimburse him for the amounts actually expended for the reasonable and necessary expenses of his office, not in excess of the amounts fixed by the county board for such purpose. People ex rel. McWard v. Wabash R.R., 395 Ill. 243, 70 N.E.2d 36 (1946).

- Amount

Where the term of office is not fixed by a constitutional or statutory provision, it is held at the pleasure of the appointing power, and although that power has attempted to fix a definite term for the office, the constitutional provision in not allowing a change in salary during a definite term does not apply and the salary may be raised, lowered or revoked by the proper authority. Anderson v. City of Jacksonville, 380 Ill. 44, 41 N.E.2d 956 (1942).

Since the maximum compensation to be paid county officers was fixed by former Ill. Const. (1970), Art. X, § 10 (see now this section), their compensation was paid only out of fees actually collected and was not to exceed the fees actually collected. People ex rel. Heuer v. Chicago, B. & Q.R.R., 377 Ill. 470, 36 N.E.2d 925 (1941).

- Not Shown

Although compensating counties for the cost of collecting taxes due other units of local government would appear to be a rational basis for classification, the fundamental policy of subsection (a) of this section against such compensation appears to weigh decisively against upholding the unequal treatment of counties and other local governmental units of this basis. Board of Comm'rs v. County of Du Page, 107 Ill. App. 3d 409, 63 Ill. Dec. 274, 437 N.E.2d 923 (2 Dist. 1982), aff'd, 96 Ill. 2d 378, 70 Ill. Dec. 859, 450 N.E.2d 332 (1983).

The 2% commission payable to a town collector under the statute was not compensation for the services actually rendered, but enured to the benefit of the governing body, the town, city, or county, as the case may be. Arends v. Naughton, 11 Ill. App. 2d 227, 136 N.E.2d 697 (2 Dist. 1956).

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Excess Fees

- Diversion

To the extent that excess fees paid into the country treasury be used for countywide purposes constituted a "diversion" of taxes levied by local taxing units for local purposes, that diversion was clearly required by former Ill. Const. (1870), Art. X, § 10 (see now this section) which provided that such excess fees must be paid into the county treasury; the case illustrates one of the imperfections of the fee office system as it existed under prior Constitution which will not reoccur under the Constitution of 1970. Board of Educ. v. Clark, 51 Ill. 2d 323, 282 N.E.2d 703 (1972).

Existence of Fee

- Not Shown

The county's retention of a statutorily imposed penalty on the payment of delinquent taxes under this section did not constitute a "fee" charged by the county within the meaning of this section. Village of Oak Lawn v. Rosewell, 113 Ill. 2d 104, 100 Ill. Dec. 556, 497 N.E.2d 734 (1986).

When a tax is levied for a board of election commissioners and is paid to the county for rent, it is being spent for a purpose authorized by statute: to finance the cost of elections by providing office space for the board and is not a violation of this section because the expenditure of tax money for office space is not a payment of office expense from fees collected, nor does it constitute the payment of a fee based upon funds disbursed or collected, or upon the levying or extension of taxes. Redmond v. Novak, 86 Ill. 2d 374, 55 Ill. Dec. 933, 427 N.E.2d 53 (1981).

- Shown

A county's charge to another unit of government may be a fee even though not for the purpose of compensating the county for the expenses of tax collection, and insofar as the retention of interest is in effect a charge upon units of local government, it is proscribed by the last sentence of subsection (a) of this section. Board of Comm'rs v. County of Du Page, 107 Ill. App. 3d 409, 63 Ill. Dec. 274, 437 N.E.2d 923 (2 Dist. 1982), aff'd, 96 Ill. 2d 378, 70 Ill. Dec. 859, 450 N.E.2d 332 (1983).

The withholding by the county treasurer of 4% of all taxes paid to him under a former provision constituted a fee based upon funds collected within the proscription of the state constitution, and was therefore unconstitutional. Goldstein v. Rosewell, 65 Ill. 2d 325, 2 Ill. Dec. 714, 357 N.E.2d 1157 (1976).

Compensation which a county was authorized to pay to the official court reporter was a per diem, and such per diem allowance could not be regarded as "fees" in the sense in which that term was used in this section and Ill. Const. (1870), Art. X, §§ 10 and 13 (see now this section), but was to be regarded as compensation. People ex rel. North American Restaurant v. Chetlain, 219 Ill. 248, 76 N.E. 364 (1905).

Fees

- Incidental Work

In the case of salaried public officials, who are required to turn in all fees of office, fees for work done during office hours, and incidentally connected with their official duties, belong to the public, and not the employees, unless there is a clear valid direction to the contrary. Cook v. Richert, 1 Ill. 2d 21, 115 N.E.2d 333 (1953).

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- Town Collector

An amendatory act creating two additional classes of counties in addition to the three provided by former section 13 of the Fees and Salaries Act, for the purpose of fixing the fees of the town collector, who is a town officer, offended former Ill. Const. (1870), Art. I, §§ 11 and 12. People ex rel. City of Peoria v. Weston, 358 Ill. 610, 193 N.E. 487 (1934).

Fees and Compensation

- Defined

Interest to be collected and retained by the county on delinquent real estate taxes pursuant to § 224 of the Revenue Act of 1939, Ill. Rev. Stat., 1984 Supp., ch. 120, par. 705, on delinquent taxes collected by the county for other governmental units does not constitute a "fee" within the meaning of Ill. Const. (1970), Art. VII, § 9(a), because the counties neither take a portion of the local units' tax levies nor deprive the local units of the interest that naturally flows from the investment of those funds. Oak Lawn v. Rosewell, 113 Ill. 2d 104, 100 Ill. Dec. 556, 497 N.E.2d 734, 1986 Ill. LEXIS 286 (1986).

"Fees" are a reward or wages given to one for the execution of his office; the term being used synonymously with percentage or commission; "compensation," as used in former Ill. Const. (1870), Art. X, §§ 10 and 11 as applied to county officers, included not only the compensation to be paid the officers for the duties to be performed by them, but also embraced the expenses of stationery, fuel, and officer hire. People ex rel. City of Peoria v. Weston, 358 Ill. 610, 193 N.E. 487 (1934).

Illustrative Cases

- Compensation of Judge

Former Ill. Const. (1870), Art. X, § 10 (see now this section) had no application to an item for county judge's salary because that was not a fee office and the former section limited its own application to all cases where fees were provided for. People ex rel. Heuer v. Chicago, B. & Q.R.R., 377 Ill. 470, 36 N.E.2d 925 (1941).

- Duty of Clerk

It was circuit clerk's duty to pay funds into the county treasury, thus, he owed no duty to turn them over to his successor. People v. Jochums, 369 Ill. 348, 16 N.E.2d 894 (1938).

- Legislative Intent

Appropriation ordinance of 1931 which provided the salary of president and member of the board of examiners of stationary engineers should be $4,600 for that year, and the salary of first and second vice-presidents and members of the board $4,300 for that year and appropriation in 1932 and 1933 of the sum of $3,619.67 for the salary of president and member, and $3383.61 for the salaries of first and second vice-presidents and members of the board for those fiscal years did not violate this section since the plain intention of the legislature was that the offices could be abolished at the end of the fiscal year and, likewise, that such salaries could be changed for the succeeding year. People ex rel. Smith v. City of Chicago, 374 Ill. 157, 28 N.E.2d 93 (1940).

- Real Estate Transfer Tax

For a case discussing the unconstitutionality of the former real Estate Transfer Act, see, Saltiel v. Olsen, 77 Ill. 2d 23, 31 Ill. Dec. 820, 394 N.E.2d 1197 (1979).

- Retention of Funds

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A provision of former Ill. Rev. Stat., ch. 120, para. 1003 (see now 35 ILCS 305/3), which allowed retention of the funds by the county officer for his role in the collection of state monies was a violation of the constitutional prohibition against fee offices; the intent of the prohibition against fee offices is to preclude counties from seeking in any form, reimbursement from the various taxing bodies for country services rendered in the collection of taxes. Schlessinger v. Olsen, 107 Ill. App. 3d 302, 63 Ill. Dec. 119, 437 N.E.2d 768 (1 Dist. 1982).

- Retention of Revenues

Retention of interest on the District's tax revenues by the county pursuant to former Ill. Rev. Stat., ch. 36, para. 22.1 violates this section, and was not intended to include the interest earned on funds owned by other units of local government and any funds so collected are subject to pro-rata distribution under 30 ILCS 235/1, et seq. Board of Comm'rs v. County of Du Page, 107 Ill. App. 3d 409, 63 Ill. Dec. 274, 437 N.E.2d 923 (2 Dist. 1982), aff'd, 96 Ill. 2d 378, 70 Ill. Dec. 859, 450 N.E.2d 332 (1983).

- Salary of Clerk

The salary of the clerk of the probate court of Cook County could not be lawfully increased or diminished during his term of office. County of Cook v. Sennott, 136 Ill. 314, 26 N.E. 491 (1891).

- Sewer Service User Fees

Ordinance imposing user fees for sewer services was not unconstitutional on the theory that the charges constituted fees which would be used to pay salaries and office expenses of sewage disposal district. Board of Educ. v. Greater Peoria San. & Sewage Disposal Dist., 80 Ill. App. 3d 1101, 36 Ill. Dec. 234, 400 N.E.2d 654 (3 Dist. 1980).

- Sheriff Fees

Former Ill. Rev. Stat., ch. 53, para. 71 contravenes subsection (a) of this section. DeBruyn v. Elrod, 84 Ill. 2d 128, 49 Ill. Dec. 559, 418 N.E.2d 413 (1981).

Under former Ill. Const. (1870), Art. X, §§ 9 and 10 (see now this section), where a sheriff was disqualified and could not act, and the appellee was appointed to act in his stead, persons refusing to obey his summons would have been liable for punishment for contempt, the same as if they disobeyed the summons of the sheriff, appellee was in no sense under the control or dominion of the sheriff, but was clothed with discretion as to whom he should summons, and was under orders from no one, unless it was the court, appellee was thus occupying the position of the sheriff, but was not entitled to the fees provided by law to the sheriff for summoning jurors since those fees did not belong to the sheriff, but merely constituted a fund out of which his salary, together with the other expenses of his office, were to be paid, and the balance, if any, turned over to the county treasurer, and this only upon the theory that the fees were actually paid; otherwise they only constituted a part of the earnings of the sheriff's office. County of Carroll v. Durham, 219 Ill. 64, 76 N.E. 78 (1905).

- Term of Office

Defendants' terms of office began on the dates they were elected; consequently, the salary increase ordinances of 1975 and 1979 were adopted after their terms had begun and were, therefore, in violation of subsection (b) of this section and the former 65 ILCS 5/3-13-1 (see now 65 ILCS 5/3.1-50-5). Tupy v. Oremus, 105 Ill. App. 3d 932, 61 Ill. Dec. 708, 435 N.E.2d 197 (1 Dist. 1982).

- Worker's Compensation Act

Deputy sheriff is an official and not an employee of county within the meaning of 820 ILCS 305/1 et seq. County of Winnebago v. Industrial Comm'n, 39 Ill. 2d 260, 234 N.E.2d 781 (1968).

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Increase of Compensation

- Additional Duties

The imposition of additional duties upon an officer does not authorize an increase in his compensation during the term for which he is elected. Lee v. City of Venice, 206 Ill. App. 376 (4 Dist. 1917).

- Held Improper

If the county board fixes the compensation of the county officer including necessary clerk hire, stationery, fuel, and other expenses, in one lump sum, neither the compensation, nor the expenses of the office, can be increased during the officer's term of office. People v. Frick, 367 Ill. 446, 11 N.E.2d 955 (1937).

Under former Ill. Const. (1870), Art. IV, § 11 (see now this section), the salary of a city officer could not be changed during his term of office even though the compensation provided was as a matter of fact inadequate. Lee v. City of Venice, 206 Ill. App. 376 (4 Dist. 1917).

- Township

The right of a township to pay lump sum expenses to certain township officials pursuant to 60 ILCS 1/80-5 and 60 ILCS 5/13-7 did not violate this section, even though the payments constituted salary increases and payment was made without an accounting. DeSutter v. South Moline Tp. Bd., 107 Ill. App. 3d 86, 62 Ill. Dec. 857, 437 N.E.2d 384 (3 Dist. 1982), aff'd, 96 Ill. 2d 372, 70 Ill. Dec. 751, 449 N.E.2d 1355 (1983).

Increase of Fees

- Held Improper

Legislature had no power to tax defendant convicted of selling intoxicating liquors without a license and amount greater than that imposed under State's attorney office, since that would constitute an illegal increase in his compensation during his term in office. People v. Williams, 232 Ill. 519, 83 N.E. 1047 (1908).

Intent

It is quite clear under the plain language of subsection (b) of this section, and those cases interpreting that language that a party challenging the action of a local governmental entity setting the salary for one of its elected officers must establish that there was an action by that local governmental entity. It is equally evident that for a party challenging such action to prevail on a motion for summary judgment, it must establish, based on the pleadings, depositions, admissions, exhibits and affidavits, if any, that the action occurred during the terms of the elected official. Town of Avon v. Geary, 223 Ill. App. 3d 294, 165 Ill. Dec. 798, 585 N.E.2d 194 (2 Dist. 1991).

The purpose and intent in adopting subsection (a) was to abolish the local government "fee office" system and, in particular, local governmental fees based upon the collection of taxes. Walker v. Cockrell, 110 Ill. App. 3d 562, 66 Ill. Dec. 234, 442 N.E.2d 660 (2 Dist. 1982).

Perfect equality under this section is neither a constitutionally required nor a realistic goal, and the possibility that some taxpayers or some taxing districts in the county may receive more tax collection service from county officials, is not a viable objection. City of Joliet v. Bosworth, 64 Ill. 2d 516, 1 Ill. Dec. 355, 356 N.E.2d 543 (1976).

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Subsection (a) of this section is limited in scope to the particular functions specified therein, and does not purport in any way to limit or restrict counties and local taxing districts from contracting among themselves as to other matters. City of Joliet v. Bosworth, 64 Ill. 2d 516, 1 Ill. Dec. 355, 356 N.E.2d 543 (1976).

It was the intent of the drafters to prohibit apportioning the costs of assessment, collection, and execution of taxes and to give school districts and other local units of government the full amount of the tax revenue requested by them. Century Community Unit Sch. v. McClellan, 27 Ill. App. 3d 255, 327 N.E.2d 32 (5 Dist. 1975).

Whereas this section differentiates between "fees" and "salaries" for township and county officers, its framers intended that a distinction between the two terms be observed in all respects, with a fee being compensation for particular services rendered at irregular intervals, and a salary being a fixed compensation for regular work. People ex rel. Olson v. Atchison, T. & Santa Fe Ry., 389 Ill. 204, 58 N.E.2d 916 (1945).

Jury Fees

- Held Improper

In a criminal case the trial court properly included in its judgment for costs the witness fees and sheriff's fees but improperly included fees for the jury. People v. Hanei, 81 Ill. App. 3d 690, 38 Ill. Dec. 1, 403 N.E.2d 16 (5 Dist. 1980).

Where a county imposed fees based upon funds disbursed or collected or upon the levy or extension of taxes, such fees were unconstitutional. Century Community Unit Sch. v. McClellan, 27 Ill. App. 3d 255, 327 N.E.2d 32 (5 Dist. 1975).

Levy of Fee

- Held Improper

Items for coroner's fees, salary of three jailers, sheriff, conveying prisoners, sheriff, car expense, patrolling roads, stamps and stamped envelopes, and publication of legal notices, were not levied in violation of this section. People ex rel. Goodman v. Wabash R.R., 395 Ill. 520, 70 N.E.2d 718 (1946).

The legislature having both expressly and by implication, authorized the payment of fees of the sheriff, county clerk and circuit clerk out of the county treasury, the county board had an undoubted right to levy to pay fees of these officers, and this in no way violated any provision of the Constitution. People ex rel. McWard v. Wabash R.R., 395 Ill. 243, 70 N.E.2d 36 (1946).

Levy of Tax

- Held Proper

A county board had a right to levy to pay its sheriff per diem for attendance at county and circuit courts because a former provision (see now 55 ILCS 5/3-13001) authorized their payment out of the county treasury. In spite of the fact that the sheriff had to record their payment just as he did all money he received and could not receive more than his compensation as fixed by former Ill. Const. (1870), Art. X, § 10 (see now this section) and the county board the levy was valid. People ex rel. Heuer v. Chicago, B. & Q.R.R., 377 Ill. 470, 36 N.E.2d 925 (1941).

Limitations on Action

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- Waiver

Where statute of limitations was raised at the time of the trial in an action challenging the constitutionality of a midterm pay cut to city alderman, the defense was waived could not be raised on appeal for the first time. People ex rel. Northrup v. City Council of City of Chicago, 308 Ill. App. 284, 31 N.E.2d 337 (1 Dist. 1941).

Municipal Officers

- Defined

County rabies inspector, county superintendent of schools, county purchasing agent, county jury commissioners, and deputy sheriffs were all considered "municipal officers" within the meaning of this section. Kron v. Kucharski, 31 Ill. App. 3d 954, 335 N.E.2d 160 (1 Dist. 1975).

Objection to Compensation

- Held Proper

An objection to the salary of deputy coroner was properly overruled because this office was created by the General Assembly in 1881, and it was not a county office within the meaning of former Ill. Const. (1870), Art. X, § 10 (see now this section). People ex rel. Heuer v. Chicago, B. & Q.R.R., 377 Ill. 470, 36 N.E.2d 925 (1941).

Overseer of the Poor

- Defined

An "overseer of the poor" is not an "office" and one who discharges the duties of overseer is not an "officer" within the provisions of this section, which prohibits an salary increase or decrease during a term of office. People ex rel. Ruesch v. Hire, 406 Ill. 341, 94 N.E.2d 161 (1950).

Probation

- Collection of Fees

To prohibit counties from recovering the costs of tax collection from local taxing bodies would not violate the constitutional requirements of uniformity of taxation and equal protection of the law. City of Joliet v. Bosworth, 64 Ill. 2d 516, 1 Ill. Dec. 355, 356 N.E.2d 543 (1976).

Procedure on Appeal

- In General

An appeal calling for the construction of a statute, which is enacted to give effect to constitutional provisions, does not involve a constitutional question, where the validity of the statute is admitted, and no claim is made that the adoption of any particular construction of the constitutional provision will affect the decision of the question raised. People ex rel. Rexses v. Cermak, 317 Ill. 590, 148 N.E. 382 (1925).

Prohibition

- Acceptance of Temporary Positions

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A regular employee of Cook County, while unemployed, is not prohibited from accepting a position as an extra employee, or as a temporary employee, during the period in which he has been separated and relieved from the performance of his duties as a regular employee. People ex rel. Austin v. Board of Comm'rs, 316 Ill. App. 621, 45 N.E.2d 591 (1 Dist. 1942).

- Creation of Stipend

The constitutional prohibition of an increase in the salary of elected local officials that becomes effective during those officials' elected terms of office precluded the legislature from conferring upon the treasurers what the legislature has termed a "stipend." Harlan v. Sweet, 139 Ill. 2d 390, 151 Ill. Dec. 530, 564 N.E.2d 1192 (1990).

Public Act 84-1432, which took effect on December 3, 1986, cannot increase the compensation of those officers whose terms of office began December 1, 1986, during that term, in violation of this section. Harlan v. Sweet, 139 Ill. 2d 390, 151 Ill. Dec. 530, 564 N.E.2d 1192 (1990).

- Reimbursement

Reimbursement of the county treasurer for the actual costs of his services under 70 ILCS 605/4-36 and 70 ILCS 605/4-37 was not prohibited under this section. Little v. East Lake Fork Special Drainage Dist., 166 Ill. App. 3d 209, 116 Ill. Dec. 898, 519 N.E.2d 1113 (4 Dist. 1988).

Purpose

The purpose of subsection (a) of this section was to abolish the once-prevailing practice of "fee offices"; under the "fee office" system, tax collectors, for example, were paid for their official services by deducting a percentage commission from the taxes they collected, even though those charges bore no relation to the actual costs incurred in collecting taxes. Gross v. Washington, 171 Ill. App. 3d 213, 121 Ill. Dec. 132, 524 N.E.2d 1180 (1 Dist. 1988).

Subsection (a) of this section was designed to correct the danger of deceiving the public as to county finances and the perceived inequity of the "skim-off" for those paying higher taxes. This would appear to be present in the interest retention scheme of 55 ILCS 5/3-11005 and retaining a percentage of tax funds in interest is no different in effect from taking a portion of the principal. Board of Comm'rs v. County of Du Page, 107 Ill. App. 3d 409, 63 Ill. Dec. 274, 437 N.E.2d 923 (2 Dist. 1982), aff'd, 96 Ill. 2d 378, 70 Ill. Dec. 859, 450 N.E.2d 332 (1983).

The purpose of this section is to eliminate fee supported offices in general and tax collection fees in particular. Board of Educ. v. Greater Peoria San. & Sewage Disposal Dist., 80 Ill. App. 3d 1101, 36 Ill. Dec. 234, 400 N.E.2d 654 (3 Dist. 1980).

The constitutional prohibition against increase or diminution of fees, salary or compensation of municipal offices under this section is directed not against a change in income but against a change in the law determining such income during the term of office. Brissenden v. Howlett, 30 Ill. 2d 247, 195 N.E.2d 625 (1964).

The purpose in drafting this section evidently was to provide that the salary of no public officer holding place for a definite period under the laws of this state should be increased for diminished during his term of office. Wolf v. Hope, 210 Ill. 50, 70 N.E. 1082 (1904).

- Balance of Funds

The purpose of the constitution and statutes is that a county officer, shall, at stated intervals and upon quitting the office, turn over any balance of funds in his hands to the county treasurer. People v. Jochums, 369 Ill. 348, 16 N.E.2d 894 (1938).

- Limitation of Compensation

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The purpose of former Ill. Const. (1870), Art. X, § 10, (see now this section) providing that county boards should fix the compensation of county officers, with their necessary clerk hire and other expenses, to be paid, in all cases where fees were provided for, out of fees collected, was to limit the amount of compensation an officer was to receive to a certain sum, if the fees amounted to that sum, and the residue to be paid in the county treasury. Kreitz v. Behrensmeyer, 149 Ill. 496, 36 N.E. 983 (1894).

Recovery of Compensation

- Held Proper

A de jure officer could recover from a de facto officer the salary paid such de facto officer, who has discharged the duties of the office under a wrongful or a mistaken purpose. Kreitz v. Behrensmeyer, 149 Ill. 496, 36 N.E. 983 (1894).

Reduction of Compensation

- Emergency

There were no words in Ill. Const. (1870), Art. IX, § 11 (see now this section) which made any reference, either directly or by implication, to the subject of an emergency as justifying, pay cuts; moreover, neither the Legislature nor any executive or judicial officer may disregard the provisions of the Constitution even in case of a great emergency. People ex rel. Northrup v. City Council of City of Chicago, 308 Ill. App. 284, 31 N.E.2d 337 (1 Dist. 1941).

- Held Improper

Where it was the legislative intent, by providing a special exception to allow the elected clerk to hold the appointed office of collector, to subject that office to the same definite term of office as the elected clerk as provided in former 65 ILCS 5/3-5-9 (see now 65 ILCS 5/3.1-15-5, 65 ILCS 5/3.1-25-90), it follows then, that as the collector was appointed for a definite term, his salary could not be diminished during that term, and the trial court, correctly held that the attempt of the village board to reduce the salary of the collector to $1 per year was null and void. Dumke v. Anderson, 44 Ill. App. 3d 626, 3 Ill. Dec. 177, 358 N.E.2d 344 (1 Dist. 1976).

- Held Proper

Salaries of county superintendents of schools, elected for four year terms commencing before a federal census became effective were subject to salary reductions of $1000 per annum based upon population decreases disclosed by the federal census. Brissenden v. Howlett, 30 Ill. 2d 247, 195 N.E.2d 625 (1964).

An assistant county superintendent of schools held his position by virtue of a former provision (see now 105 ILCS 5/3-15.6) did not come under former Ill. Const. (1870), Art. IX, § 11 (see now this section); the board of supervisors had the power to reduce his salary during his term of office. Morgan v. County of DuPage, 371 Ill. 53, 20 N.E.2d 40 (1939).

The board of county commissions, in revoking an order fixing officer's salary did not violate any provision of this section; its order fixing the salary and its order revoking the same were both made before the term of plaintiff in error commenced, and officer's salary was neither raised nor lowered during her term of office. Quernheim v. Asselmeier, 296 Ill. 494, 129 N.E. 828 (1921).

Requirement

- Fund for Salaries

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Salaries of janitors of a court house and jail are not required to be paid only out of fees earned and collected by the sheriff. People ex rel. Thompson v. Chicago & N.W. Ry., 397 Ill. 266, 73 N.E.2d 418 (1947).

Retention of Commission

- Held Improper

County tax collector was not authorized to retain commissions on inheritance taxes collected by him, where his salary was fixed by resolution of the county board, and such illegal payments were recoverable by the county against the collector's sureties, notwithstanding voluntariness of such payments arising from county board's alleged acquiescence thereto. People ex rel. County of Vermilion v. McCord, 143 Ill. App. 28 (3 Dist. 1908).

Review on Appeal

- Waiver

Where a county board failed to object to the appointment of a special state's attorney who represented a county clerk in a suit alleging that the clerk's salary was unconstitutionally reduced under former Ill. Const. (1870), Art. X, § 20 (see now this section), either at an appointment hearing or during a mandamus proceeding itself, the board waived the right to review on appeal. People ex rel. Barrett v. Board of Comm'rs, 11 Ill. App. 3d 666, 297 N.E.2d 307 (1 Dist. 1973).

Revocation of Compensation

- Extra Employees

Where neither the constitution nor a statutory provision provided for the fixing of salaries of the employees of the assessor's office, and the appointment of regular extra employees of the assessor's office was held at the pleasure of the appointing power this section did not apply and employees' salaries could be raised, lowered or revoked by the proper authority. People ex rel. Austin v. Board of Comm'rs, 316 Ill. App. 621, 45 N.E.2d 591 (1 Dist. 1942).

Right to Compensation

- In General

The provision of the Constitution that the compensation of no officer shall be increased or diminished during his term of office is effective as a limitation against the right of a county board to allow a public officer to receive an increased compensation during his term of office, as it is against the authority of the legislature to increase such compensation by statutory enactment. People ex rel. County of Vermilion v. McCord, 143 Ill. App. 28 (3 Dist. 1908).

- Held Sufficient

Plaintiff alleged in the complaint material allegations of ultimate fact where complaint alleged: his appointment to the position of superintendent of the gas system, and that he assumed the duties of such position, and performed such duties; the services rendered were of value to the defendant; the services were accepted, and the defendant enriched thereby; the services were reasonably worth so much per month and were of a total value of $10,350; he rendered the said services in expectation of payment therefor, and from time to time he was assured that he would be paid and at a meeting the City Council agreed to pay him and ratified his employment and that the defendant had failed and refused to pay him for such services and to require more of the

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plaintiff in his complaint would be to require the pleading of evidence. Cunningham v. City of Sullivan, 15 Ill. App. 2d 561, 147 N.E.2d 200 (3 Dist. 1958).

- Shown

Expense allowances in a fixed amount, which were intended as additional compensation for the officers of a unit of local government, were not constitutionally objectionable since they had been approved by the township board prior to the term for which the officers were elected; thus, the officers received no increase in their salaries during their terms. DeSutter v. South Moline Tp. Bd., 96 Ill. 2d 372, 70 Ill. Dec. 751, 449 N.E.2d 1355 (1983).

City clerk who assumed duties of deputy clerk as city collector, upon latter's resignation and thereafter began to receive personally those sums previously appropriated for the functions performed by the deputy clerk did not receive an unlawful increase in salary since these ex officio duties were not considered part of the function of her elected office. LeMaster v. City of Green Rock, 114 Ill. App. 3d 163, 69 Ill. Dec. 899, 448 N.E.2d 617 (3 Dist. 1983).

Where the assessor of Cook County laid off regular employees for a two week period without pay and re-employed them as extra employees in positions in the office of the assessor of Cook County, regular employees were entitled to payment for services rendered during the two week period out of the fund appropriated by the county board for extra employees. People ex rel. Austin v. Board of Comm'rs, 316 Ill. App. 621, 45 N.E.2d 591 (1 Dist. 1942).

Salary

- Change in Duties

If the compensation of a county officer be fixed in one sum, to include both salary and expenses, the officer is entitled to receive the entire sum upon the imposition of additional duties during his term in office, but, if his salary be fixed in one sum, and another amount be provided for his expense, then he is entitled to receive only his salary and as additional amount, not exceeding the limitation, sufficient to compensate him for his actual expenses; in the latter case the amount fixed for expenses may be changed during the term of office without violating the constitutional limitation. Peabody v. Forest Preserve Dist., 320 Ill. 454, 151 N.E. 271 (1926).

Use of Fees

- Held Proper

Collection of additional fees by a county recorder and deposit of those fees into a special fund by the treasurer to pay automation costs in the recorder's office conformed to the constitutional mandate that fees shall not be used to pay office expenses. Gadeikis v. Yourell, 169 Ill. App. 3d 1033, 120 Ill. Dec. 265, 523 N.E.2d 1176 (1 Dist. 1988).

Violation

- Not Shown

Subsection (a) of this section prohibits the payment of office expenses from fees collected, and where there had been no allegation that the city had made such payments, the ordinance did not violate subsection (a) of this section. Gross v. Washington, 171 Ill. App. 3d 213, 121 Ill. Dec. 132, 524 N.E.2d 1180 (1 Dist. 1988).

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A 50 cent charge was for the cost of amenities provided to those attending a food festival did not violate this section. Gross v. Washington, 171 Ill. App. 3d 213, 121 Ill. Dec. 132, 524 N.E.2d 1180 (1 Dist. 1988).

Where the practice of a county board in setting salaries after the election for a new term but before it began was previously well established and there was no evidence to indicate anything other than an effort to set an appropriate level of compensation, this section did not prohibit the actions taken here by the board. Winokur v. Rosewell, 83 Ill. 2d 92, 46 Ill. Dec. 671, 414 N.E.2d 724 (1980).

OPINIONS OF ATTORNEY GENERAL

Analysis

Applicability
- Elected Officers
Change In Compensation
- New Duties
Clerks of Circuit Courts
Collection Fee
Compensation
- Changes
Deputy Voting Registrar
Disposition of Fees
Increase in compensation
Return of Costs
Transportation Assistance Payments

Applicability

- Elected Officers

This constitutional provision applies only to elected officers of units of local government; it does not prohibit an increase or decrease in the salary of an appointed supervisor of assessments during the term for which he or she is appointed. 1995 Op. Atty. Gen. (95-009).

Change In Compensation

- New Duties

A county board is prohibited from increasing the salary of the county auditor during the term for which she was elected, notwithstanding that subsequent to her election, certain duties have been reassigned to that office pursuant to court order. 1999 Op. Atty. Gen. (99-009).

Clerks of Circuit Courts

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Clerks of the circuit courts are not subject to the provisions of this section. 1977 Op. Atty. Gen. 159.

Collection Fee

A statute which authorized certain counties to levy and collect a tax for the purpose of paying the cost to the county of extending and collecting taxes, does not violate subsection (a). 1978 Op. Atty. Gen. 74.

The 2% collection fee authorized by subdivision (u)(1) of former 705 ILCS 105/27.1 is not unconstitutional under section 9 of Article VII of the Illinois Constitution of 1970. 1977 Op. Atty. Gen. 112.

Compensation

There can be no increase or decrease in the compensation of individuals who were elected to fill the unexpired terms of resigning county board members until the expiration of the unexpired terms. 1979 Op. Atty. Gen. 78.

- Changes

Since the provision of township funded group health insurance to a township office constituted additional compensation for the officer, coverage generally could not be initiated during the current term of office of the incumbent officers without violating the Constitution. 1994 Op. Atty. Gen. (94-022).

Mid-term changes in the compensation of elected officers of units of local government are not flatly prohibited by the Constitution; rather, the key issue is whether action is required during the term of office to effectuate the change. 1994 Op. Atty. Gen. (94-022).

Deputy Voting Registrar

Subsection (a) of section 9, Article 7 of the Illinois Constitution of 1970 does not apply to the compensation paid to the municipal clerk who acts as a deputy voting registrar under section 4-25 of the Election Code (10 ILCS 5/4-25). 1977 Op. Atty. Gen. 4

Disposition of Fees

Subsection (a) of section 9 of Article VII of the Illinois Constitution of 1970 requires a municipal clerk to pay into the municipal treasury as municipal funds all fees received for the issuance of hunting or fishing licenses, or for the registration or certification of a vital statistic. 1977 Op. Atty. Gen. 4

Increase in compensation

An ordinance which increases the compensation of elected municipal officials need not specify a date certain or an event upon which the increase is intended to take effect and is not void if it fails to provide that the salary increase will not be effective until the commencement of the next term of office occurring not less than 180 days after the ordinance is adopted. 2000 Op. Atty. Gen. 13.

Return of Costs

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The Supreme Court decision in City of Joliet v. Bosworth (1976), 64 Ill. 2d 516, declaring Ill. Rev. Stat., ch. 53, para. 39a (1977) unconstitutional, required the return to the governmental bodies from which tax collection costs were withheld of all collection fees previously withheld pursuant to that section. The county treasurer should have adequate records for ascertaining the amount of fees previously collected since the county treasurer was responsible for collecting the fees. Therefore, the governmental units should not be required to file petitions of the amount of claims and to prove them, nor is it necessary to wait for a court order before returning the fees. 1977 Op. Atty. Gen. 75.

Transportation Assistance Payments

If transportation assistance payments to certain elected officials were intended to be additional compensation and were properly established within the pertinent statutory time period prior to the beginning of such officers' terms of office, payment of the transportation assistance would not violate either the Illinois Constitution or the statutory provisions prohibiting an increase in compensation during elected officers' current terms of office. However, the failure to pay the compensation which was properly fixed within the applicable statutory period before the commencement of their terms of office might have violated the prohibition against decreasing an elected officer's salary during his or her term of office. 2000 Op. Atty. Gen. 13.

LEGAL PERIODICALS

For article, "Recovering Costs of the Prosecution in Criminal Cases," see 69 Ill. B.J. 686 (1981).

Section 10. Intergovernmental Cooperation.

(a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities.

(b) Officers and employees of units of local government and school districts may participate in intergovernmental activities authorized by their units of government without relinquishing their offices or positions.

(c) The State shall encourage intergovernmental cooperation and use its technical and financial resources to assist intergovernmental activities.

(Source: Illinois Constitution.)

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Illinois Jurisprudence. See Illinois Jur, Municip L § 4:1, § 4:3, § 4:7, § 4:9, § 4:10, § 10:20, § 13:37, § 18:15.

CASE NOTES

Analysis

Construction
Contract
- In General
- Insurance
- Water
Cooperative Agreement
- In General
- Excess Gravel Sale
- Representation
Delegation
Dillon's Rule
Discretion of Government
Illustrative Cases
- County Highway
- Regional Transportation Authority Act
Incompatibility Doctrine
Lease
Legislative Intent
Powers of Government
Purpose
State Action

Construction

Since the county did not assign or transfer property to the limited liability company, the trial court should not have found that the limited liability company was an assign of the county such that the limited liability company obtained the county's rights to use the trust property under the easement, especially regarding the stormwater detention facility the limited liability company wanted to build. Although the Illinois Constitution, Ill. Const. art. VII, § 10, and Illinois statutory law, 5 ILCS 220/3, encouraged governmental bodies to transfer and share powers, neither the state constitution nor statutory law allowed governmental bodies to transfer and share their powers with "adjacent development" such as the limited liability company, a private party, that wanted to use the county's easement rights as it own. Hahn v. County of Kane, Ill. App. 3d , Ill. Dec. , N.E.2d , 2012 Ill. App. LEXIS 39 (2 Dist. Jan. 18, 2012).

This section cannot validate any "compact" that is contrary to separation of powers or the inherent powers of a unified court system. Orenic v. Illinois State Labor Relations Bd., 127 Ill. 2d 453, 130 Ill. Dec. 455, 537 N.E.2d 784 (1989).

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Contract

Intergovernmental fire service agreement between a fire protection district and a village was void ab initio because it allowed the district to levy the maximum tax allowable by law for 10 years for future fire protection services and it did not correlate the amount of taxes to be raised with the cost of the services to be rendered; the taxing provision was unresponsive to changed conditions and denied prospective administrations and taxpayers any input into future levies as required by law. Although Ill. Const., Art. VII, § 10, the Intergovernmental Cooperation Act, former Ill. Rev. Stat. ch. 127, para. 743 (now 5 ILCS 220/1), and the Fire Protection District Act, former Ill. Rev. Stat. ch. 127 1/2, para. 31a (now 70 ILCS 705/11), provided authority for levying taxes for the purpose of providing fire protection, the statutory and constitutional authorities did not provide authority to execute blanket tax levies for extended periods of time; rather, former Ill. Rev. Stat. ch. 85, para. 803 (now 32 ILCS 200/18-70), provided that tax levies might be adopted after yearly enactment of a budget and appropriate ordinances. Elk Grove Township Rural Fire Protection Dist. v. Mt. Prospect, 228 Ill. App. 3d 228, 170 Ill. Dec. 113, 592 N.E.2d 549, 1992 Ill. App. LEXIS 567 (1 Dist. 1992).

- In General

Municipal corporations have broad power to contract among themselves. Mueller ex rel. Mueller v. City of Highland Park, 166 Ill. App. 3d 114, 116 Ill. Dec. 644, 519 N.E.2d 712 (2 Dist. 1988).

- Insurance

This section authorizes home rule entities to contract and otherwise associate with other public agencies or private corporations in any manner not prohibited by law and allows governmental units to contract for joint self-insurance and further liability or loss protection in such areas as may need insurance protection. Clayton v. Village of Oak Park, 117 Ill. App. 3d 560, 73 Ill. Dec. 112, 453 N.E.2d 937 (1 Dist. 1983).

- Water

Where plaintiff argued that the parties never intended to rely on this section but intended the entire water distribution system to be operated within the framework of section 11-135-1 et seq. of the Municipal Code (see now 65 ILCS 5/11-135-1 et seq.), plaintiff did not establish that the parties intended to restrict their powers to those expressed in the Municipal Code, because the contract made no reference to the Code; furthermore, even if the contract was beyond the scope of agreements contemplated by the Municipal Code, the contract would have been a manifestation of the parties' intent to exercise their constitutional - rather than statutory - powers. Village of Sherman v. Village of Williamsville, 106 Ill. App. 3d 174, 61 Ill. Dec. 851, 435 N.E.2d 548 (4 Dist. 1982).

Contract which authorized villages to allow a commission to be the exclusive water supplier to village and, in turn, such village was the exclusive supplier to a second village, seemed to be the type of agreement contemplated by this section. Village of Sherman v. Village of Williamsville, 106 Ill. App. 3d 174, 61 Ill. Dec. 851, 435 N.E.2d 548 (4 Dist. 1982).

Cooperative Agreement

- In General

Both this section and section 5 of the Intergovernmental Cooperation Act (see now 5 ILCS 220/5) authorize municipalities to enter into cooperative agreements, but only to the extent that the agreement encompasses subject matter over which the municipalities already have authority. Village of Lisle v. Village of Woodridge, 192 Ill. App. 3d 568, 139 Ill. Dec. 623, 548 N.E.2d 1337 (2 Dist. 1989).

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- Excess Gravel Sale

Even though a county has the right to establish a gravel pit for the maintenance of county roads, the sale of gravel by the county to other governmental units is invalid and outside the statutory grant of authority in predecessor of 605 ILCS 5/5-601; however, under 605 ILCS 5/5-601, the county has authority to sell excess gravel from its legally owned pit to other governmental units on a pro-rated cost basis, when such units enter into a joint or cooperative agreement or venture. Connelly v. County of Clark, 16 Ill. App. 3d 947, 307 N.E.2d 128 (4 Dist. 1973).

- Representation

Intergovernmental agreement between county and city, whereby city attorneys would represent the county for purposes of enforcing the Illinois Animal Control Act (see now 510 ILCS 5/1 et seq.) and a local ordinance was not unconstitutional, where the scope and purpose of the agreement was supported by the provisions contained in this section. County of Peoria v. Capitelli, 144 Ill. App. 3d 14, 98 Ill. Dec. 228, 494 N.E.2d 155 (3 Dist. 1986).

Delegation

A county board could not have transferred its obligation to decide to another unit of local government pursuant to this section or the Intergovernmental Cooperation Act (see now 5 ILCS 220/1 et seq.); the constitutional provision did not apply because the suggested transfer was prohibited by the terms of the Environmental Protection Act (see now 415 ILCS 5/1 et seq.) and therefore it did not provide an alternative to adjudication by the county board. E&E Hauling, Inc. v. Pollution Control Bd., 116 Ill. App. 3d 586, 71 Ill. Dec. 587, 451 N.E.2d 555 (2 Dist. 1983).

A school board may not contract to delegate or surrender a duty conferred upon it by statute nor to surrender discretion granted it by statute. Board of Educ. v. Cahokia Dist. Council No. 58, 93 Ill. App. 3d 376, 48 Ill. Dec. 749, 417 N.E.2d 151 (5 Dist. 1981).

Dillon's Rule

This section has abrogated Dillon's Rule of strictly construing legislative grants of authority to local governmental units. Village of Sherman v. Village of Williamsville, 106 Ill. App. 3d 174, 61 Ill. Dec. 851, 435 N.E.2d 548 (4 Dist. 1982).

Discretion of Government

Where a defendant governmental body holds land for the purpose of the education, pleasure and recreation of the public, that defendant has discretion whether to cooperate with other governmental bodies, and the courts many not order such cooperation where the neighboring plaintiff village wants to use the land to build a public baseball field. Village of Elmwood Park v. Forest Preserve, 21 Ill. App. 3d 597, 316 N.E.2d 140 (1 Dist. 1974).

Illustrative Cases

- County Highway

City and the county had authority to enter into an intergovernmental agreement whereby the county and city exchanged jurisdiction of certain property in order that the county could proceed to complete a county highway. County of Wabash v. Partee, 241 Ill. App. 3d 59, 181 Ill. Dec. 601, 608 N.E.2d 674 (5 Dist. 1993).

- Regional Transportation Authority Act

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The Regional Transportation Authority Act (see now 70 ILCS 3615/1.01 et seq.) does not deprive local governmental units of the rights, powers and duties granted to them under this section, nor Ill. Const. (1970), Art. VII, §§ 11 and 12. Hoogasian v. Regional Transp. Auth., 58 Ill. 2d 117, 317 N.E.2d 534 (1974).

Incompatibility Doctrine

The purpose of subsection (b) is to provide the maximum flexibility to units of local government working out solutions to common problems in concert with other units of government; it does not contravene the time-tested common law incompatibility doctrine. People v. Claar, 293 Ill. App. 3d 211, 227 Ill. Dec. 307, 687 N.E.2d 557 (3 Dist. 1997), appeal denied, 177 Ill. 2d 574, 232 Ill. Dec. 454, 698 N.E.2d 545 (1998).

Lease

Where a board of education had legislative authority to enter into a lease of certain land, the record showed it acted in good faith after considering the lease with a view toward maximizing long range benefits, the board acted with knowledge of the mutually beneficial pattern of cooperation with the city, and there were no allegations of fraud or corruption, the judgment that the board acted properly regarding the amount and payment of rent was not contrary to the manifest weight of the evidence. Hall v. Board of Educ., 48 Ill. App. 3d 834, 6 Ill. Dec. 587, 363 N.E.2d 116 (1 Dist. 1977).

Legislative Intent

Subsection (a) of this section reflects a legislative concern that competition between municipalities may not always accord with the public interest and reflects a decision that antitrust policies, such as efficiency and competition, should at times give way to other policies. LaSalle Nat'l Bank v. County of DuPage, 777 F.2d 377 (7th Cir. 1985), cert. denied, 476 U.S. 1170, 106 S. Ct. 2892, 90 L. Ed. 2d 979 (1986).

Powers of Government

Neither this section nor section 5 of the Intergovernmental Cooperation Act (see now 5 ILCS 220/5) gives municipalities a separate source of authority to perform functions not otherwise authorized by the Constitution or statute. Village of Lisle v. Village of Woodridge, 192 Ill. App. 3d 568, 139 Ill. Dec. 623, 548 N.E.2d 1337 (2 Dist. 1989).

Where three villages formed a sewer commission, although there was no indication that any of the villages ever took any action to transfer its power to the commission, and the only powers which could have been conferred on the commission by the enactment of the villages which authorized the commission only pursuant to the Municipal Code, then the commission lacked the power to enact an ordinance requiring property owners within each village to attach all sewage disposal systems to the drains of the commission. Buffalo, Dawson, Mechanicsburg Sewer Comm'n v. Boggs, 128 Ill. App. 3d 688, 83 Ill. Dec. 523, 470 N.E.2d 649 (4 Dist. 1984).

Purpose

The very purpose of this section is to allow a local government to do indirectly that which it cannot do directly, as long as it is otherwise lawful. County of Wabash v. Partee, 241 Ill. App. 3d 59, 181 Ill. Dec. 601, 608 N.E.2d 674 (5 Dist. 1993).

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The Illinois Constitution authorizes and encourages intergovernmental cooperation. Antiporek v. Village of Hillside, 135 Ill. App. 3d 871, 90 Ill. Dec. 596, 482 N.E.2d 415 (1 Dist. 1985).

Predecessor of this section was intended to encourage cooperation among units of government and to remove the necessity of obtaining statutory authorization for cooperative ventures. Village of Sherman v. Village of Williamsville, 106 Ill. App. 3d 174, 61 Ill. Dec. 851, 435 N.E.2d 548 (4 Dist. 1982).

Subsection (a) of this section was intended to encourage rather than enforce cooperation, and to remove the necessity of obtaining statutory authorization for each cooperative venture by a unit of local government or a school district. Village of Elmwood Park v. Forest Preserve, 21 Ill. App. 3d 597, 316 N.E.2d 140 (1 Dist. 1974).

State Action

Because this state has authorized the association of municipalities for the purpose of transferring powers, and has authorized the municipalities' refusal to provide water service to residences beyond their borders, and because these authorizations have foreseeable anticompetitive consequences, the boundary agreements constitute state action and are exempt from antitrust challenge. LaSalle Nat'l Bank v. County of DuPage, 777 F.2d 377 (7th Cir. 1985), cert. denied, 476 U.S. 1170, 106 S. Ct. 2892, 90 L. Ed. 2d 979 (1986).

OPINIONS OF ATTORNEY GENERAL

Analysis

Illustrative Cases
- Law Enforcement
Incompatible Offices
Police Services
- Private Security Firm
Pooled Loan Program
Prosecution of Ordinance Violations
Purpose
Sharing Tax Revenue

Illustrative Cases

- Law Enforcement

Based upon the provisions of the Illinois Constitution and the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.), Pike County was authorized by law to enter into an interagency agreement with a neighboring Missouri County for purposes of coordinating interstate law enforcement efforts. 1999 Op. Atty. Gen. (99-003).

Incompatible Offices

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One who holds the offices of park board president and city alderman cannot fully represent the interest of both governmental units when those interests contract with each other, and therefore the two offices are incompatible. 1985 Op. Atty. Gen. (85-015).

The offices of village mayor and school board member are incompatible. 1980 Op. Atty. Gen. 81.

Since assistant State's attorneys perform the general duties of the State's attorney, a conflict in interest could arise in a situation where a city commissioner also served as an assistant State's attorney of the county. 1979 Op. Atty. Gen. 21.

Police Services

Counties have the general statutory power to provide police protection through the office of the county sheriff and as there is no statute to the contrary, a county board may contract with municipalities or villages within the county to provide them with police protection. 1980 Op. Atty. Gen. 60.

- Private Security Firm

Because a contract by which a municipality engages a private security firm to perform police functions for the municipality will result in the delegation to the private firm of governmental powers vested in and exercisable by the corporate authorities of the municipality via statutorily authorized subsidiary board or commission, such a contract is prohibited by subsection (a) of this section. 1982 Op. Atty. Gen. 91.

Pooled Loan Program

The formation of an association by municipalities for the creation of a pooled government loan program and the utilization of the funds raised thereunder are functions authorized by the Constitution and by statute, and thus, both home-rule and non-home-rule municipalities may properly take part therein. 1986 Op. Atty. Gen. (86-005).

Prosecution of Ordinance Violations

The county board, with the approval of the State's attorney, can contract with municipalities to have the State's attorney's office prosecute ordinance violations. 1977 Op. Atty. Gen. 31.

Purpose

This section was intended to give units of local government broad powers to associate and contract together to obtain government services, to combine and transfer functions of government, and to use their credit and revenues to finance intergovernmental activities. 1986 Op. Atty. Gen. (86-005).

Sharing Tax Revenue

Constitutional and statutory provisions relating to intergovernmental cooperation do not authorize a city to donate city funds to a county. 1978 Op. Atty. Gen. 165.

A city, a home-rule municipality, does not have authority to donate to a county a portion of the sales tax revenue the city receives from businesses located on newly annexed territory. 1978 Op. Atty. Gen. 165.

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LEGAL PERIODICALS

For article, "Questions and Answers About Intergovernmental Agreements," see 85 Ill. B.J. 85 (1997).

For symposium, "Growth Management for the Next Century: Challenges & Opportunities: Annexation Agreements - Boundary Agreements: Walking a Fine Line Into the Future - A Map of the Dangers to the Unwary Land Use Traveler," see 17 N. Ill. U.L. Rev. 377 (1997).

For article, "Survey of Illinois Law [1989-90] - Municipal Corporations," see 15 S. Ill. U.L.J. 1021 (1991).

For note, "Tax Increment Financing: A New Source of Funds for Community Redevelopment in Illinois - People ex rel. City of Canton v. Crouch," see 30 De Paul L. Rev. 459 (1981).

For article, "Intergovernmental Cooperation and the Municipal Insurance Crisis," see 30 De Paul L. Rev. 325 (1981).

For article, "Intergovernmental Cooperation and the Transfer of Powers," see 1981 U. Ill. L. Rev. 775.

Practice Guides and Treatises.

Commercial Real Estate § 9.35 Economic Incentive Agreement (IICLE).

Real Estate Taxation § 8.2 The Power To Tax and the Effect of Home Rule Thereon (IICLE).

Section 11. Initiative and Referendum.

(a) Proposals for actions which are authorized by this Article or by law and which require approval by referendum may be initiated and submitted to the electors by resolution of the governing board of a unit of local government or by petition of electors in the manner provided by law.

(b) Referenda required by this Article shall be held at general elections, except as otherwise provided by law. Questions submitted to referendum shall be adopted if approved by a majority of those voting on the question unless a different requirement is specified in this Article.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Municip L § 3:3.

CASE NOTES

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Analysis
Illustrative Cases
- Regional Transportation Authority Act
- Tax Rate Elections

Illustrative Cases

- Regional Transportation Authority Act

Because it was evident that the establishment of a regional transportation authority pursuant to the Region Transportation Authority Act (see now 70 ILCS 3615/1.01 et seq.) was not a matter for which referendum was "required" by this article, it was not necessary to reach the questions raised by plaintiffs concerning the alleged inconsistencies prescribed in the Regional Transportation Authority Act and the provisions of subdivision (b) of this section. Hoogasian v. Regional Transp. Auth., 58 Ill. 2d 117, 317 N.E.2d 534 (1974).

- Tax Rate Elections

Former section 162a of the Revenue Act of 1939 (see now 35 ILCS 200/18-120 and 35 ILCS 200/18-125) presents no conflict with subsection (a) of this section, rather, it reasonably limits the consideration of tax rate referenda to one election in each year, thereby permitting local officials to engage in orderly fiscal planning. Koeppel v. Ives, 92 Ill. 2d 523, 65 Ill. Dec. 865, 442 N.E.2d 176 (1982).

OPINIONS OF ATTORNEY GENERAL

Analysis
Forms of Government
Selection of Officers

Forms of Government

Subsection (a) of this section, in the absence of independent statutory authority, does not empower units of local government other than municipalities and counties to alter or repeal their forms of government by popular referendum. 1981 Op. Atty. Gen. 86.

Selection of Officers

Since the county board is the governing body of the county the county board may initiate a referendum to change the office of superintendent of highways from an appointive position to an elective position; furthermore, pursuant to Ill.Const.(1970), Art. VII, § 11(b), the question submitted at the referendum is adopted if it is approved by a simple majority of those voting on the question. 1984 Op. Atty. Gen. 59.

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Practice Guides and Treatises.

Real Estate Taxation § 8.18 Modification of Maximum Tax Rates (IICLE).

Section 12. Implementation of Governmental Changes.

The General Assembly shall provide by law for the transfer of assets, powers and functions, and for the payment of outstanding debt in connection with the formation, consolidation, merger, division, dissolution and change in the boundaries of units of local government.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Municip L § 2:1, § 17:2.

OPINIONS OF ATTORNEY GENERAL

Method of Dissolution

This section requires only that when the Constitution or the General Assembly provides for the formation, consolidation, merger, division, dissolution, or change in the boundaries of units of local government, the General Assembly must provide by law for the continuation of the orderly processes of government and the allocation and payment of outstanding governmental debts; it does not require the General Assembly to enact statutes providing for methods of dissolving any or all units of local government. 1981 Op. Atty. Gen. 86.

This section does not create a duty on the part of the General Assembly to enact statutory methods for dissolving units of local government, including fire protection districts. 1981 Op. Atty. Gen. 86.

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ARTICLE VIII
FINANCE

Section 1. General Provisions.

(a) Public funds, property or credit shall be used only for public purposes.

(b) The State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance.

(c) Reports and records of the obligation, receipt and use of public funds of the State, units of local government and school districts are public records available for inspection by the public according to law.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Municip L § 5:23, § 14:6.

CASE NOTES

Analysis

Amount of Payments
Application
- Motor Fuel Tax Act
- Pension Code
- Retail Installment Sales Act
- Toll Highway Act

Appropriations
- State Universities

Attorney Fees
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- Definition

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- Equitable Claim
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Predicate Unlawful Act for Purposes of Official
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Amount of Payments

The question of the wisdom of the amount of payments made to retired teachers was a matter, not for the courts, but for the legislature. Gorham v. Board of Trustees, 27 Ill. 2d 593, 190 N.E.2d 329 (1963).

Application

- Motor Fuel Tax Act

Section 10 of the Motor Fuel Tax Act of 1927, (see now 35 ILCS 505/1 et seq.), which required the department of finance to pay a sum to any person who used motor fuel for any other purpose than operating a motor vehicle upon the highways of the state and upon which the license tax imposed by the Act had been paid without regard to whether such person had paid the tax himself and without regard to whether he had paid into the state treasury, was held invalid, as a distributor was taxed for the purpose of providing this gift to the consumer and thus, was deprived of his property without due process of law. Chicago Motor Club v. Kinney, 329 Ill. 120, 160 N.E. 163 (1928).

- Pension Code

Section 5-212 of the Pension Code (see now 40 ILCS 5/212) does not violate this section. Lee v. Retirement Bd. of the Policemen's Annuity & Benefit Fund, 22 Ill. App. 3d 600, 317 N.E.2d 758 (1 Dist. 1974).

- Retail Installment Sales Act

The Retail Installment Sales Act (see now 815 ILCS 405/1 et seq.) is not unconstitutional as a use of public credit for private benefit. Rose v. Sears, Roebuck & Co., 12 Ill. App. 3d 929, 299 N.E.2d 95 (1 Dist. 1973).

- Toll Highway Act

Former Ill. Rev. Stat., ch. 121, para. 314a34 (see now 605 ILCS 10/1 et seq.) did not violate former section 20 of Article IV of the state constitution (see now this section). People v. Illinois Toll Hwy. Comm'n, 3 Ill. 2d 218, 120 N.E.2d 35 (1954).

Appropriations

- State Universities

Where a taxpayer alleged that the general assembly's passage of an act to appropriate moneys for the ordinary and other expenses of the Illinois State Normal University was unlawful and in contravention of the constitution because that institution was a private corporation, his argument was rejected because the University is an agency of the state and properly received state funds. Boehm v. Hertz, 182 Ill. 154, 54 N.E. 973 (1899).

Attorney Fees

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Where trustees of a township brought an action against a township officer in his official capacity to compel him to produce certain records of the township which were in his possession, for the purposes of carrying out his duties as treasurer, the officer was entitled to reasonable attorney fees incurred as a result of defending those proceedings. Wayne Tp. Bd. of Auditors v. Ludwig, 154 Ill. App. 3d 899, 107 Ill. Dec. 535, 507 N.E.2d 199 (2 Dist. 1987).

Delegation

As the state does not have power to lend its financial aid to private undertakings, it necessarily follows that the legislature cannot grant a power broader than that which the state itself possesses. Schuler v. Board of Educ., 370 Ill. 107, 18 N.E.2d 174 (1938).

Expenditures

- Authorized

Plaintiffs were not able to show that expenditures of legislators and their aides at state governmental meetings were not authorized by law. Webb v. Rock, 80 Ill. App. 3d 891, 36 Ill. Dec. 379, 400 N.E.2d 959 (4 Dist. 1980).

Local Government

- Definition

Taxing bodies do not constitute "persons" within the meaning of the due process and equal protection clauses of the fourteenth amendment; they are municipal government entities. Commonwealth Edison Co. v. Department of Local Gov't Affairs, 126 Ill. App. 3d 277, 81 Ill. Dec. 549, 466 N.E.2d 1351 (2 Dist. 1984).

Obligations

- Authorized

A teacher must actually complete the course work and possess the qualifications as a prerequisite to qualifying for and receiving from a school board the minimum salary commensurate with the qualifications. Board of Educ. v. Schmidt, 64 Ill. App. 3d 513, 21 Ill. Dec. 291, 381 N.E.2d 400 (3 Dist. 1978).

Leasing by a city of a portion of public land to a private individual for the purpose of building a drive-in theater for a private purpose and for pecuniary profit, did not amount to the city lending its credit to a private individual in violation of the Constitution since the action of the city in executing the lease was authorized by former section 59-1 of the Revised Cities and Villages Act (Ill. Rev. Stat., ch. 24, para. 59-1) (see now 65 ILCS 5/11-76-1). Center v. City of Benton, 414 Ill. 107, 110 N.E.2d 223 (1953).

- Circuit Courts

The framers of the 1970 Constitution did not intend the requirement, that all payments from public funds be made only as authorized by law, as a limitation upon the powers of the circuit courts to fashion appropriate remedies. City of Springfield v. Allphin, 74 Ill. 2d 117, 23 Ill. Dec. 516, 384 N.E.2d 310 (1978).

- Equitable Claim

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Where member of the General Assembly died before taking office and would have received his salary had he lived but a few days longer, the salary was an incident to title to the office and was not based alone on the amount of services rendered; legislature was justified in recognizing the widow's moral or equitable claim to member's salary. People ex rel. Douglas v. Barrett, 370 Ill. 464, 19 N.E.2d 340 (1939).

Taxpayers had an equitable ownership of funds to be used for roads because they were liable to replenish the treasury for any deficiencies, and a circuit court's dismissal of their bill in equity charging misappropriations was improper under Ill. Const. (1970), Art. VIII, § 1 (formerly Ill. Const. of 1870, Art. IV, § 17), because funds were required to be used for their legislative purpose. Miller v. Hale, 308 Ill. 275, 139 N.E. 411, 1923 Ill. LEXIS 1046 (1923).

- History of Usage

Since 1889, the legislature has made appropriations to the widows, children, mothers or estates of several distinguished judges and members of the General Assembly, and, while this fact alone does not establish the constitutionality of the legislation, yet the court, in determining whether an act is public or private, may take into consideration a long course of legislation and usage of the government. People ex rel. McDavid v. Barrett, 370 Ill. 478, 19 N.E.2d 356 (1939).

- Supplementary Payments

Additional or "supplementary" payments made to certain retired public school teachers were valid and constitutional. Gorham v. Board of Trustees, 27 Ill. 2d 593, 190 N.E.2d 329 (1963).

- Unauthorized

A board of education had no authority to pay a teacher for qualifications she did not possess. Board of Educ. v. Schmidt, 64 Ill. App. 3d 513, 21 Ill. Dec. 291, 381 N.E.2d 400 (3 Dist. 1978).

No power existed in a high school board to make a contract with a private corporation for joint use of its library and equipment. Schuler v. Board of Educ., 370 Ill. 107, 18 N.E.2d 174 (1938).

- Vested Rights

Where plaintiff joined police force in 1945, his pension rights pursuant to Ill. Rev. Stat., ch. 108 1/2, para. 3-114 (now repealed) vested on July 1, 1971, the day the Illinois Constitution took effect because an employee's rights become fixed at the time he enters the system or at the time the constitutional provision becomes operative, whichever is later, but not at the time of retirement. Kuhlmann v. Board of Trustees of the Police Pension Fund, 106 Ill. App. 3d 603, 62 Ill. Dec. 335, 435 N.E.2d 1307 (1 Dist. 1982).

Predicate Unlawful Act for Purposes of Official

- Misconduct

Indictment charging defendant with official misconduct, predicated on Ill. Const. Art. VIII, § 1(a), was not defective because a violation of the Illinois Constitution can serve as a predicate unlawful act for the purposes of the official misconduct statute. It is the legislature's province, not the court's, to determine whether the statute would benefit from a de minimis exception. People v. Howard, 228 Ill. 2d 428, 320 Ill. Dec. 868, 888 N.E.2d 85, 2008 Ill. LEXIS 316 (2008).

Private Benefits

- In General

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The use of public funds for public purpose is not primarily concerned with the interest of the individual, but with the welfare of the public as a whole but such a purpose is not defeated by the fact that individuals benefit thereby; the execution of a public purpose which involves the expenditure of money is usually attended with private benefits. People ex rel. McDavid v. Barrett, 370 Ill. 478, 19 N.E.2d 356 (1939).

- Contract Debts

There is no constitutional prohibition against the use of public funds which inure to the benefit of private interests, so long as the money is utilized for a public purpose; the only constitutional prohibition is against the state contracting debts as a guarantor or surety and, in essence, loaning its credit to others. People ex rel. City of Salem v. McMackin, 53 Ill. 2d 347, 291 N.E.2d 807 (1972).

- Incidental

The Illinois Sports Facilities Authority Act, 70 ILCS 3205/1 et seq., as amended by 1999 Ill. Laws 935, does not violate the terms of Ill. Const. Art. VIII, § 1(a); the mere existence of admission charges to public facilities, such as the museums and attractions in a park, as well as stadium and parking facilities, did not impair the right of citizens to enjoy the use of public property, and the court had to defer to the legislative findings in the Act unless there was a threshold showing that the findings were evasive and that the Act's purpose was principally to benefit private interests. Friends of the Parks v. Chi. Park Dist., 203 Ill. 2d 312, 271 Ill. Dec. 903, 786 N.E.2d 161, 2003 Ill. LEXIS 451 (2003).

The public purpose of an undertaking is not defeated because participants also receive some incidental personal benefit. Webb v. Rock, 80 Ill. App. 3d 891, 36 Ill. Dec. 379, 400 N.E.2d 959 (4 Dist. 1980).

If private benefits resulting from city's acts are purely incidental to the public purposes of the act, then this section of the Illinois Constitution is not violated. O'Fallon Dev. Co. v. City of O'Fallon, 43 Ill. App. 3d 348, 2 Ill. Dec. 6, 356 N.E.2d 1293 (5 Dist. 1976).

- Nonexclusive Privilege

In an action to prevent the construction of a bank, where the bank's access to an alley did not confer upon it a distinct and exclusive privilege to the use of the alley which was not equally available to the public and to adjoining property owners, parties seeking to stop the construction could not have proceeded under subsection (a) of this section. Paschen v. Village of Winnetka, 73 Ill. App. 3d 1023, 29 Ill. Dec. 749, 392 N.E.2d 306 (1 Dist. 1979).

- Parking Rental

Former section 8 of the Parking Act (see now 65 ILCS 5/11-71-8), which gave corporate authorities the authority to lease parking facilities and to collect rentals therefor, did not violate the constitutional provision prohibiting the appropriation of public funds for the benefit of private persons. Poole v. City of Kankakee, 406 Ill. 521, 94 N.E.2d 416 (1950).

- Public Property

Where sewer facilities, when constructed, would have benefited property privately owned, that circumstance alone did not cause the contemplated improvement to be violative of this section where the facilities were public property belonging to village. Continental Ill. Nat'l Bank & Trust Co. v Village of Park Forest, 4 Ill. App. 3d 811, 282 N.E.2d 167 (3 Dist. 1972).

Public Facility

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Statutory authorization to charge a fee for the use of a public facility is not unconstitutional because public funds are to be used to acquire land on which the public facility is to be located. Foss Park Dist. v. First Nat'l Bank, 125 Ill. App. 2d 276, 260 N.E.2d 474 (2 Dist. 1970), cert. denied, 402 U.S. 907, 91 S. Ct. 1379, 28 L. Ed. 2d 648 (1971).

Public Funds

- Law Examiners

Because the Board of Law Examiners and the Disciplinary Commission are creatures of Illinois Supreme Court Rules, and because their collection and administration of funds derives exclusively from a judicial grant of authority from the Illinois Supreme Court, it is for the Illinois Supreme Court, not the General Assembly or the Governor, to determine whether the Disciplinary Commission or the Board of Law Examiners has properly discharged the responsibilities delegated to them by the Illinois Supreme Court, and to determine whether the Board of Law Examiners or the Disciplinary Commission has utilized its funds according to the particularized purposes for which each was created by the Illinois Supreme Court. Chicago Bar Ass'n v. Cronson, 183 Ill. App. 3d 710, 132 Ill. Dec. 17, 539 N.E.2d 327 (1 Dist.), appeal denied, 136 Ill. Dec. 582, 545 N.E.2d 106 (1989), cert. denied, 493 U.S. 1057, 110 S. Ct. 867, 107 L. Ed. 2d 950 (1990).

Public Purpose

Where an employee's employment as village manager was terminated just before a newly elected village board took office, the employee's severance pay did not constitute an unconstitutional gift of public funds, because: (1) the outgoing board's renewal of the employee's employment did not provide the employee with any right to severance that the employee did not already enjoy; (2) the employee's past performance constituted adequate consideration; and (3) the severance pay had a public benefit. Vill. of Oak Lawn v. Faber, 378 Ill. App. 3d 458, 316 Ill. Dec. 923, 880 N.E.2d 659, 2007 Ill. App. LEXIS 1356 (1 Dist. 2007).

Public Purposes

- In General

Under subsection (a) of this section, public funds and property can only be used for public purposes. City of Rolling Meadows v. National Adv. Co., 228 Ill. App. 3d 737, 170 Ill. Dec. 662, 593 N.E.2d 551 (1 Dist. 1991), appeal denied, 146 Ill. 2d 651, 176 Ill. Dec. 821, 602 N.E.2d 475 (1992), cert. denied, 507 U.S. 960, 113 S. Ct. 1385, 122 L. Ed. 2d 761 (1993).

Subsection (a) of this section was intended explicitly to reaffirm the general rule that public monies cannot be taken or applied for private purposes, but can only be applied to public purposes. Ziebell v. Board of Trustees, 73 Ill. App. 3d 894, 29 Ill. Dec. 544, 392 N.E.2d 101 (1 Dist. 1979).

While it is clear that the state and units of local government can lend their credit and resources to private entities, so long as a public purpose is thereby served, it is also clear that public funds and property cannot be devoted to a purely private purpose. O'Fallon Dev. Co. v. City of O'Fallon, 43 Ill. App. 3d 348, 2 Ill. Dec. 6, 356 N.E.2d 1293 (5 Dist. 1976).

This provision limits the legislature to appropriations for public purposes but the question of what is a public purpose is primarily for the legislature to determine; judicial interference with the legislature is not warranted, unless there has been a clear abuse of power. People ex rel. Douglas v. Barrett, 370 Ill. 464, 19 N.E.2d 340 (1939).

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Public money cannot be taken for or applied to a private purpose. Schuler v. Board of Educ., 370 Ill. 107, 18 N.E.2d 174 (1938).

- Bonds

Legislative determination upheld that proposed bond issues served the public purposes. Marshall Field & Co. v. Village of S. Barrington, 92 Ill. App. 3d 360, 47 Ill. Dec. 964, 415 N.E.2d 1277 (1 Dist. 1981).

Judgment against a mayor in a mandamus, seeking to require him to sign muncipal bonds and coupons issued by a city council, was affirmed where issuance of bonds and coupons was within the authority of the city council and did not violate Ill. Const. (1970), Art. VIII, § 1(a) or Ill. Const. (1970), Art. I, § 2 because any benefit to private developers was incidental to the public purpose of the bond issue. People ex rel. Urbana v. Paley, 68 Ill. 2d 62, 11 Ill. Dec. 307, 368 N.E.2d 915, 1977 Ill. LEXIS 359 (1977).

- Bus Transportation

Bus transportation of nonpublic school students is not a loan of public credit or property to private schools, and therefore section 29-4 of chapter 122 (105 ILCS 5/29-4) does not violate subsection (a) of this section. Board of Educ. v. Bakalis, 54 Ill. 2d 448, 299 N.E.2d 737 (1973).

- Change in Law

Where Pension Fund Act (see now 40 ILCS 5/3-111) was amended to increase pension amounts and to increase the amount of deductions from the salaries of policemen, police officer who had retired prior to the statutory changes was no longer subject to such deductions, and therefore was not entitled to the benefits of the amended Act, as such a construction rendered the Act unconstitutional as permitting the expenditure of public funds for private purposes. Ziebell v. Board of Trustees, 73 Ill. App. 3d 894, 29 Ill. Dec. 544, 392 N.E.2d 101 (1 Dist. 1979).

- Determination

A self-serving recitation that public purposes are served is not conclusive of that question; courts look to the goals sought by and the actual effects of the expenditure of the public funds in deciding the issue. Marshall Field & Co. v. Village of S. Barrington, 92 Ill. App. 3d 360, 47 Ill. Dec. 964, 415 N.E.2d 1277 (1 Dist. 1981).

- Held Sufficient

Where plaintiffs failed to argue the only constitutional issue, that of equal protection, but argued a separate constitutional issue, that of public purpose, which had no basis in their complaint, the court rejected summarily the contention that the Industrial Project Revenue Bond Act (see now 65 ILCS 5/11-74-1), or any portion of that Act, was unconstitutional. Potter v. Judge, 112 Ill. App. 3d 81, 67 Ill. Dec. 585, 444 N.E.2d 821 (3 Dist. 1983).

- Interpreter

Former section 48.01 of the Code of Civil Procedure (Ill. Rev. Stat., ch. 51, para. 48.01) (see now 735 ILCS 5/8-1402), which provides that in any legal proceeding in which a deaf-mute is a party or a witness, the court shall, upon request, appoint a qualified interpreter and shall determine a reasonable fee for the interpreter which shall be paid by the county, did not violate this section, because the gain to the public outweighs the disadvantage afforded by not using interpreters as well as a net saving of public funds from conserving the time of judges and jurors. Myers v. County of Cook, 34 Ill. 2d 541, 216 N.E.2d 803 (1966).

- Judicial Review

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The determination of whether a proposed public expenditure serves the public purposes is initially to be made by the legislative body empowered to expend the funds and is not to be likely set aside upon judicial review. Marshall Field & Co. v. Village of S. Barrington, 92 Ill. App. 3d 360, 47 Ill. Dec. 964, 415 N.E.2d 1277 (1 Dist. 1981).

The question of whether funds are being spent for a public purpose can ultimately be one for the courts. Webb v. Rock, 80 Ill. App. 3d 891, 36 Ill. Dec. 379, 400 N.E.2d 959 (4 Dist. 1980).

- Leases

A limitation on the power for a county to lease property is found in the constitutional provision that public funds, property and credit may only be used for public purposes. Redmond v. Novak, 86 Ill. 2d 374, 55 Ill. Dec. 933, 427 N.E.2d 53 (1981).

- Meeting Attendance

Attendance by state officials at a meeting dealing with state government serves public purpose of providing them with information to better enable them to perform their public function, and attendance by their aides also clearly serves public purpose. Webb v. Rock, 80 Ill. App. 3d 891, 36 Ill. Dec. 379, 400 N.E.2d 959 (4 Dist. 1980).

- Moral or Equitable

A moral obligation is a sufficient basis for an appropriation of public money to an individual if the purpose is a public purpose. People ex rel. McDavid v. Barrett, 370 Ill. 478, 19 N.E.2d 356 (1939).

- Pension Benefits

Amendment increasing monthly pension benefits to widows of firemen under a former Act (see now 740 ILCS 75/1), when properly construed to operate prospectively, was constitutional. People ex rel. Schmidt v. Yerger, 21 Ill. 2d 338, 172 N.E.2d 753 (1961).

- Private Compensation

Program did not violate constitutional mandate that public funds, property or credit, be used solely for public purposes by allowing the use of public funds to compensate participating homeowners for their individual real estate investment losses, as broad discretion is allowed in such matters. Use of village funds served a public purpose of enhancing racial integration. Clayton v. Village of Oak Park, 117 Ill. App. 3d 560, 73 Ill. Dec. 112, 453 N.E.2d 937 (1 Dist. 1983).

- Private Litigation

Defraying the costs of purely private litigation involving the holder of a public office, but unrelated to, or not arising out of the exercise of the duties of that office, cannot be considered a proper public purpose. City of Elmhurst ex rel. Mastrino v. City of Elmhurst, 272 Ill. App. 3d 168, 208 Ill. Dec. 673, 649 N.E.2d 1334 (2 Dist. 1994).

- Restrictive Covenant

Where city was acting in its own interest to enforce a covenant applicable to its property in the industrial park, aesthetics and traffic safety were valid policy reasons for government regulation of billboards; therefore, the city had a valid public purpose to achieve the same objectives through enforcement of a restrictive covenant. City of Rolling Meadows v. National Adv. Co., 228 Ill. App. 3d 737, 170 Ill. Dec. 662, 593 N.E.2d 551 (1 Dist. 1991), appeal denied, 146 Ill. 2d 651, 176 Ill. Dec. 821, 602 N.E.2d 475 (1992), cert. denied, 507 U.S. 960, 113 S. Ct. 1385, 122 L. Ed. 2d 761 (1993).

- Retirement Fund

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An argument by defendant board of trustees of a municipal retirement fund, that benefit payments were an expenditure of public funds for a private purpose was refuted by subdivision (b)(6) of section 7-146 of the Illinois Pension Code (see now 40 ILCS 5/7-146), which defines creditable service as contributions to the fund, and the payment of disability benefits to plaintiff was based upon contributions made throughout the period of creditable service. Therefore, there was no nexus between the payments owed and the use of public funds. Cesarini v. Board of Trustees of the Illinois Muncipal Retirement Fund, 141 Ill. App. 3d 848, 96 Ill. Dec. 195, 491 N.E.2d 9 (1 Dist. 1986).

- Street Parking

Whereas it seems unquestioned that cities have authority to condemn property adjacent to an existing street for the purpose of widening it, so as to accommodate the parking of vehicles and to facilitate the flow of traffic, the acquisition of property for off-street parking would also be a public purpose for eminent domain purposes. Poole v. City of Kankakee, 406 Ill. 521, 94 N.E.2d 416 (1950).

- Test

To determine whether public funds are being devoted to a purely private purpose, whether acting in its proprietary or governmental capacity, the test is whether the attempted private use of municipal property subserves the public interest and benefits a private individual or corporation only incidentally. City of Rolling Meadows v. National Adv. Co., 228 Ill. App. 3d 737, 170 Ill. Dec. 662, 593 N.E.2d 551 (1 Dist. 1991), appeal denied, 146 Ill. 2d 651, 176 Ill. Dec. 821, 602 N.E.2d 475 (1992), cert. denied, 507 U.S. 960, 113 S. Ct. 1385, 122 L. Ed. 2d 761 (1993).

- Urban Redevelopment

The application of the public purpose doctrine to sanction urban redevelopment can no longer be restricted to areas where crime, vagrancy, or physical decay produce undesirable living conditions or imperil public health; stimulation of commercial growth and removal of economic stagnation are also objectives which enhance the public weal. People ex rel. City of Urbana v. Paley, 68 Ill. 2d 62, 11 Ill. Dec. 307, 368 N.E.2d 915 (1977).

Where city intended to undertake redevelopment primarily for the purpose of revitalizing an economically stagnant downtown area, the purpose of the project was therefore a public purpose, and the benefit reaped by private development was merely an inevitable incident thereto. People ex rel. City of Urbana v. Paley, 68 Ill. 2d 62, 11 Ill. Dec. 307, 368 N.E.2d 915 (1977).

Public Records

- Intent

The terms, "reports and records," are intended in the general sense and are not intended to extend to every working paper nor every paper that may bear upon the financial transactions of state and local government. Rather, the general reports which might recapitulate or summarize the general records are those intended by this section. Pope v. Parkinson, 48 Ill. App. 3d 797, 6 Ill. Dec. 756, 363 N.E.2d 438 (4 Dist. 1977).

- Mayoral Funds

Records of expenditures from mayor's contingency fund account, which concerned the obligation, receipt, and use of public funds constituted local financial records under this section and the Local Records Act (see now 50 ILCS 205/3a); and, as such, records of the account were subject to public disclosure. Oberman v. Byrne, 112 Ill. App. 3d 155, 67 Ill. Dec. 894, 445 N.E.2d 374 (1 Dist. 1983).

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- Right to Privacy

Public disclosure of the names and salaries of employees of forest preserve district did not violate their right to privacy. People ex rel. Recktenwald v. Janura, 59 Ill. App. 3d 143, 17 Ill. Dec. 129, 376 N.E.2d 22 (1 Dist. 1978).

- Salaries

By the public policy of this state, and by express statutory provision, it was and is the duty of a district, along with other local governmental units, to provide public access to records of employees' salaries. People ex rel. Recktenwald v. Janura, 59 Ill. App. 3d 143, 17 Ill. Dec. 129, 376 N.E.2d 22 (1 Dist. 1978).

State Credit

Any distinction between the restriction on the expenditure of public funds and the extension of state credit that existed under the 1870 Constitution has been abolished by the 1970 Constitution, and the public purpose test that heretofore satisfied the due process requirement, and the 1870 constitutional requirement for the expenditure of public funds, will also satisfy the constitutional requirement of subsection (a) of this section concerning the use of public credit. People ex rel. City of Urbana v. Paley, 68 Ill. 2d 62, 11 Ill. Dec. 307, 368 N.E.2d 915 (1977).

Street Vacation

Under former Ill. Rev. Stat., ch. 24, para. 69-11 (see now 65 ILCS 5/11-91-1) where the pleadings disclosed that petitioners alleged as a fact that the sole beneficiaries of the purported vacation of the street under a city ordinance were private corporations and that the purported vacation of the public highway was for a purely private purpose, namely, for the exclusive benefit of private corporations and, on the other hand, not for the benefit of the general public such allegation of fact the defendants should have been required to answer since the issue thus made would have presented for decision the question whether the purpose and effect of the city ordinance was to solely benefit private interests to the complete exclusion of public benefits. People ex rel. Foote v. Kelly, 385 Ill. 543, 53 N.E.2d 429 (1944).

Validity

Cycle Rider Safety Training Fund (CRSTF) was not an irrevocable trust because finding it to be so would place an unconscionable restraint on the legislature's plenary power under the Illinois Constitution. The Illinois General Assembly was a legislative body required by the Illinois Constitution to make appropriations for all expenditures of public funds, as recognized under Ill. Const. art. VIII, § 2, and the legislature could not create vested rights in private individuals in those funds because the CRSTF funds were public money, but the legislature was authorized to allow the transfer of those funds from the CRSTF to the State's General Revenue Fund because then those funds were being permissibly used only for public purposes as required under Ill. Const. art. VIII, § 1. A.B.A.T.E. of Ill. v. Quinn, Ill. 2d , 354 Ill. Dec. 282, 957 N.E.2d 876, 2011 Ill. LEXIS 1825 (2011).

Under former Ill. Rev. Stat., ch. 24, paras. 23-6 and 23-7 (see now 65 ILCS 5/8-1-3 and 65 ILCS 5/8-1-4), statute provisions which authorized the corporate authorities of a city to borrow money corporate purposes, and issue bonds therefor and empowered the corporate authorities to provide for the refunding of maturing bonds, if it were determined that a judgment debt for which bonds were to be issued was not incurred for corporate purposes, then the construction of the statutes would necessarily be that the corporate authorities were constitutionally without power to act. Indiana Harbor Belt R.R. v. City of Calumet City, 391 Ill. 280, 63 N.E.2d 369 (1945).

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Widows of Public Officials

Appropriations made to the widow of a deceased public officer bears no relation to the purposes of constitutional prohibitions against granting any extra compensation to a public official. People ex rel. McDavid v. Barrett, 370 Ill. 478, 19 N.E.2d 356 (1939).

Widows of Retired Firemen

The legislature did not intend, by the 1951 amendment, to create special and different rights for widows of retired firemen that were not derivative from the rights of the firemen themselves and the legislature did not intend by this act to give to widows rights denied their husbands by the Constitution of Illinois. People ex rel. Schmidt v. Yerger, 21 Ill. 2d 338, 172 N.E.2d 753 (1961).

OPINIONS OF ATTORNEY GENERAL

Analysis

Banking Branch
Distribution
Parking Ticket
Public Purpose

Banking Branch

The State Treasurer does not have the authority to authorize a private banking corporation to establish a branch facility in a portion of the space allocated to the Treasurer in the State House. 1992 Op. Atty. Gen. (92-028).

Distribution

Because amounts deferred under the State Deferred Compensation Plan will be considered public funds, an appropriation will be necessary before the funds or any interest accruing thereto may be distributed by the state. 1977 Op. Atty. Gen. 99.

Parking Ticket

The payment by the state of a fine for a parking ticket is not authorized by law. 1979 Op. Atty. Gen. 148.

Public Purpose

The leasing of a county-owned building to a not-for-profit corporation for the purpose of providing dormitory facilities for a junior college is a use of public property for a public purpose and therefore not in contravention of section 1(a) of Article VIII of the Illinois Constitution. 1977 Op. Atty. Gen. 151.

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LEGAL PERIODICALS

Article: Can the End Justify the Means? Illinois Lawyers Trust Fund: A Constitutional Analysis, see 23 S. Ill. U.L.J. 693 (1999).

RESEARCH REFERENCES

Procedural issues concerning public school funding cases. 115 ALR5th 563.

State or local governmental body's action or inaction, in provision of public utility services, benefiting private company as constituting gift of money, or pledge of credit, to private party in violation of state constitutional provision. 122 ALR5th 337.

Practice Guides and Treatises.

Commercial Real Estate § 9.3 Sales Tax Rebate (IICLE).

Section 2. State Finance.

(a) The Governor shall prepare and submit to the General Assembly, at a time prescribed by law, a State budget for the ensuing fiscal year. The budget shall set forth the estimated balance of funds available for appropriation at the beginning of the fiscal year, the estimated receipts, and a plan for expenditures and obligations during the fiscal year of every department, authority, public corporation and quasi-public corporation of the State, every State college and university, and every other public agency created by the State, but not of units of local government or school districts. The budget shall also set forth the indebtedness and contingent liabilities of the State and such other information as may be required by law. Proposed expenditures shall not exceed funds estimated to be available for the fiscal year as shown in the budget.

(b) The General Assembly by law shall make appropriations for all expenditures of public funds by the State. Appropriations for a fiscal year shall not exceed funds estimated by the General Assembly to be available during that year.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

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In General
Appropriation
- In General
- Authority
- Effective
- Held Insufficient
- Source of Funds
Compelling Payment
- Improper Tax Protest
- Insufficient Appropriation
Expenditures
- Proper
Legislative Intent
Refusal to Audit
Toll Highway Act
Unauthorized Payments

In General

Cycle Rider Safety Training Fund (CRSTF) was not an irrevocable trust because finding it to be so would place an unconscionable restraint on the legislature's plenary power under the Illinois Constitution. The Illinois General Assembly was a legislative body required by the Illinois Constitution to make appropriations for all expenditures of public funds, as recognized under Ill. Const. art. VIII, § 2, and the legislature could not create vested rights in private individuals in those funds because the CRSTF funds were public money, but the legislature was authorized to allow the transfer of those funds from the CRSTF to the State's General Revenue Fund because then those funds were being permissibly used only for public purposes as required under Ill. Const. art. VIII, § 1. A.B.A.T.E. of Ill. v. Quinn, Ill. 2d , 354 Ill. Dec. 282, 957 N.E.2d 876, 2011 Ill. LEXIS 1825 (2011).

When state money has been received by the state treasurer, the constitution prevents its withdrawal except in pursuance of an appropriation made by law. AFSCME v. Netsch, 216 Ill. App. 3d 566, 159 Ill. Dec. 138, 575 N.E.2d 945 (4 Dist. 1991).

Former Ill. Const. of 1870, Art. IX, § 6 (now Ill. Const. (1970), Art. VIII, § 2) applies only to State taxes, and there was no constitutional pronhibition against the State's directing the distribution and use of funds appropriated for local purposes, such as schools. Winter v. Barrett, 352 Ill. 441, 186 N.E. 113, 1933 Ill. LEXIS 762 (1933).

Appropriation

- In General

An appropriation involves the setting apart from public revenue a certain sum of money for a specific object. AFSCME v. Netsch, 216 Ill. App. 3d 566, 159 Ill. Dec. 138, 575 N.E.2d 945 (4 Dist. 1991).

- Authority

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Only the General Assembly is authorized by the state constitution to make appropriations for all state expenditures of public funds. AFSCME v. Netsch, 216 Ill. App. 3d 566, 159 Ill. Dec. 138, 575 N.E.2d 945 (4 Dist. 1991).

- Effective

An appropriation must become effective in order to prevent government operations from being brought to a complete stop. AFSCME v. Netsch, 216 Ill. App. 3d 566, 159 Ill. Dec. 138, 575 N.E.2d 945 (4 Dist. 1991).

Where the legislature has not passed an appropriation which the governor has signed into law, and where none of the circumstances under which some state funds may be expended without corresponding legislative appropriation apply, the comptroller is prohibited from issuing paychecks to state workers. AFSCME v. Netsch, 216 Ill. App. 3d 566, 159 Ill. Dec. 138, 575 N.E.2d 945 (4 Dist. 1991).

- Held Insufficient

Where a petition for mandamus to compel the payment of salaries was lacking in any averment that there were funds available, where no appropriation for either "University Counsel" or "Assistant University Counsel," the alleged positions of relators, had been made, and where nothing existed in the applicable appropriation acts which could come under the classification of those positions or in the appropriations which would authorize the auditor to issue warrants for salaries for those positions, nor was there any appropriation for the employment of attorneys or counsel, the legislature did not approve those expenditures and refused to make appropriations therefor. People ex rel. Bd. of Trustees v. Barrett, 382 Ill. 321, 46 N.E.2d 951 (1943).

- Source of Funds

The cost of administering an act entitled "An Act to regulate professional engineering" (see now 225 ILCS 325/1 et seq.) could only be paid out of the general funds in the state treasury, in accordance with appropriations made for that purpose. Krebs v. Thompson, 387 Ill. 471, 56 N.E.2d 761 (1944).

Compelling Payment

- Improper Tax Protest

Where plaintiffs, who allegedly made erroneous payments to the Department of Finance under the provisions of the Retailer's Occupation Tax Act (see now 35 ILCS 120/6), did not make payment under protest in compliance with 30 ILCS 230/2a, and admitted that the monies paid had been paid to the State Treasurer, there was no appropriation by the legislature that could have been applied to the payment of their claims so that their lawsuit could not be maintained. Adams v. Nudelman, 375 Ill. 217, 30 N.E.2d 742 (1940).

- Insufficient Appropriation

Where a petitioner alleged that the auditor refused to issue warrants for his salary, although presented with vouchers in proper form, and a statute fixed his salary, the auditor properly refused to pay his salary, because the legislature merely created the office which petitioner held but there was no indication of a salary appropriation. People ex rel. Millner v. Russel, 311 Ill. 96, 142 N.E. 537 (1924).

Expenditures

- Proper

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The requirement of former article IV, section 17 (see now this section and Ill. Const. (1970), Art. VIII, § 3), was satisfied if the expenditure was within the proper purposes of the public authority expending the funds and was reasonably within the broad category of an appropriation made by the General Assembly. People ex rel. Conn v. Randolph, 35 Ill. 2d 24, 219 N.E.2d 337 (1966).

Legislative Intent

The Revenue and Finance Committee intended to expand the legislature's discretion in the area of fiscal control; in particular the committee intended to allow the legislature the discretion to authorize spending other than through the annual appropriations process. Graham v. Illinois State Toll Hwy. Auth., 182 Ill. 2d 287, 230 Ill. Dec. 870, 695 N.E.2d 360 (1998).

Refusal to Audit

Neither the Illinois State Auditing Act (see now 30 ILCS 5/1-1) nor the constitution confers upon the auditor general authority to refuse to conduct an audit mandated by the express provision of this Article of the Constitution. Madden v. Cronson, 114 Ill. 2d 504, 103 Ill. Dec. 729, 501 N.E.2d 1267 (1986), cert. denied, 484 U.S. 818, 108 S. Ct. 73, 98 L. Ed. 2d 36 (1987).

Toll Highway Act

Subsection (b) was not intended to preclude the legislature from authorizing the method of spending contained in 605 ILCS 10/24 and 605 ILCS 10/25 of the Toll Highway Act. Graham v. Illinois State Toll Hwy. Auth., 182 Ill. 2d 287, 230 Ill. Dec. 870, 695 N.E.2d 360 (1998).

Unauthorized Payments

Under former section 19 of Article IV, the General Assembly was prohibited from authorizing the payment of any claim, or part thereof, created against the state under any agreement or contract made without express authority of law, and all such unauthorized agreements or contracts were null and void, with the exception that the General Assembly may make appropriations for expenditures incurred in repelling invasion or suppressing insurrection. People ex rel. Bd. of Trustees v. Barrett, 382 Ill. 321, 46 N.E.2d 951 (1943).

OPINIONS OF ATTORNEY GENERAL

Analysis

Appropriations
Contract for Deed
- Payments

Appropriations

The General Assembly may fulfill its appropriation obligation with a continuing rather than annual appropriation. 1985 Op. Atty. Gen. (85-008).

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Contract for Deed

- Payments

Payments due under a contract for deed entered into pursuant to section 63a33 of The Civil Administrative Code (see now 20 ILCS 805/805-210) are not authorized in absence of a current and valid appropriation therefor. 1985 Op. Atty. Gen. (85-008).

LEGAL PERIODICALS

For article, "Illinois Supreme Court Civil '98: Back to the Nuts and Bolts," see 87 Ill. B.J. 250 (1998).

For article, "Limits on State Taxation and Spending: Implications for the Illinois Constitutional Convention Referendum," see 8 N. Ill. U.L. Rev. 801 (1988).

Section 3. State Audit and Auditor General.

(a) The General Assembly shall provide by law for the audit of the obligation, receipt and use of public funds of the State. The General Assembly, by a vote of three-fifths of the members elected to each house, shall appoint an Auditor General and may remove him for cause by a similar vote. The Auditor General shall serve for a term of ten years. His compensation shall be established by law and shall not be diminished, but may be increased, to take effect during his term.

(b) The Auditor General shall conduct the audit of public funds of the State. He shall make additional reports and investigations as directed by the General Assembly. He shall report his findings and recommendations to the General Assembly and to the Governor.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Audit of Funds
- Mandamus
- Powers of Auditor

Compelling Payment
- Standard

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Audit of Funds

- Mandamus

A writ of mandamus to determine whether the auditor general has the nondiscretionary duty to audit the funds appropriated by the General Assembly to the Supreme Court and whether, under the constitution or under 30 ILCS 5/1-1 et seq., or a combination of both, he was authorized to audit the funds of the Attorney Registration and Disciplinary Commission and the Board of Law Examiners, was issued. Madden v. Cronson, 114 Ill. 2d 504, 103 Ill. Dec. 729, 501 N.E.2d 1267 (1986), cert. denied, 484 U.S. 818, 108 S. Ct. 73, 98 L. Ed. 2d 36 (1987).

- Powers of Auditor

Although the trial court should not have declared, in its summary judgment holding, that 30 ILCS 5/3-1 violated Ill. Const. Art. VIII, § 3 in the scope of powers it gave the Illinois Auditor General to audit operations of airports located in Chicago, Ill., the judgment itself was correct; even though the Auditor General was properly authorized to audit any use of state appropriations, the fact of the matter was that none of the Chicago airports received state funding, so that the proposed audit could not help but exceed the Auditor General's constitutional and statutory powers. City of Chicago v. Holland, 206 Ill. 2d 480, 276 Ill. Dec. 887, 795 N.E.2d 240, 2003 Ill. LEXIS 1404 (2003).

Compelling Payment

- Standard

Under former Art. IV, section 17, before the Auditor of Public Accounts could be directed by mandamus to issue and deliver warrants to anyone claiming payments from the state, a clear showing that a proper appropriation had been made, and that there were available funds in the appropriation against which such warrants could be drawn, was necessary. People ex rel. Bd. of Trustees v. Barrett, 382 Ill. 321, 46 N.E.2d 951 (1943).

OPINIONS OF ATTORNEY GENERAL

Audit

The Auditor General is required to conduct a financial audit of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois. 1982 Op. Atty. Gen. 57.

Section 4. Systems of Accounting, Auditing and Reporting.

The General Assembly by law shall provide systems of accounting, auditing and reporting of the obligation, receipt and use of public funds. These systems shall be used by all units of local government and school districts.

(Source: Illinois Constitution.)

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CASE NOTES

Sheriffs

- In General

Sheriffs are county, rather than state, officers. DeGenova v. Sheriff of DuPage County, 209 F.3d 973, 2000 U.S. App. LEXIS 6704 (7th Cir. 2000).

Practice Guides and Treatises.

Real Estate Taxation § 11.12 Fee title (IICLE).

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ARTICLE IX
REVENUE

Section 1. State Revenue Power.

The General Assembly has the exclusive power to raise revenue by law except as limited or otherwise provided in this Constitution. The power of taxation shall not be surrendered, suspended, or contracted away.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

In General
- Power to Tax
- Property Valuation

Alcoholic Beverages
- Licenses

Applicability
- Not Shown

Appropriations
- Abatement and Deferred Collections

Assessment
- Equality
- Exhaustion of Remedies
- Impeachment
- Not Excessive
- Overlapping Special Tax Districts
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- Held Unconstitutional
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- Upheld

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- County Library Act
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County Referendum
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- Abatement of Tax
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- Validity
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- In General
Violation
- Not Shown
- Revestment Doctrine

In General

- Power to Tax

The power to impose burdens and to raise money is a legislative power, and may be exercised only by or under the authority of the legislature. Bistor v. McDonough, 348 Ill. 624, 181 N.E. 417 (1932).

The power to levy contributions by way of taxation for the support of government is a necessary incident of sovereignty, and is possessed by the state without being expressly conferred by the people. People ex rel. Campe v. Board of Review, 290 Ill. 467, 125 N.E. 274 (1919).

- Property Valuation

Alcoholic Beverages

- Licenses

Under former section 1 of Article IX of the Constitution of 1870 (see now this section), a city could require brewers and distillers to obtain a license to carry on their businesses, and the license fee was not a tax. United States Distilling Co. v. City of Chicago, 112 Ill. 19, 1 N.E. 166 (1884).

Applicability

- Not Shown

The fixing of a rate to be used in the extension of taxes is a process separate and distinct from a determination of the value of property upon which the assessment is to be extended, so because the provisions of former Ill. Rev. Stat., ch. 120, para. 162a where limited in their application to the fixing of rates, it did not come within the state constitution. Anderson v. City of Park Ridge, 396 Ill. 235, 72 N.E.2d 210 (1947).

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Appropriations

- Abatement and Deferred Collections

Appropriations for "abatements and for deferred collections" were proper items for which appropriations and levies could be legally made, were authorized by statute, and did not violate the 1870 state constitution. People ex rel. Toman v. 1500 Lake Shore Drive Bldg. Corp., 376 Ill. 301, 33 N.E.2d 455 (1941).

Assessment

- Equality

The appellants had the right to an equal and uniform assessment of their parcels of real estate with all other property, in proportion to value, and they could not be deprived of that right without an opportunity to protect it and to be heard in its support; however, the failure to avail themselves of their legal remedies denied them recourse to a court of equity for relief. Bistor v. McDonough, 348 Ill. 624, 181 N.E. 417 (1932).

Under the rules as to the equality and uniformity required by the Constitution in assessing and levying state taxes against the property of the Illinois Central Railroad Company, it was entitled, under the provisions of the General Revenue Law, to the deduction of its bona fide debts under the former act of 1851 from the credits, the same as other corporations and individuals. People v. Illinois Cent. R.R., 273 Ill. 220, 112 N.E. 700 (1916).

- Exhaustion of Remedies

Where taxpayers made no attempt to compel the board of review to give them a hearing upon their complaint, and where no showing was made that they were prevented from pursuing that remedy by fraud, accident, or mistake, they waived their right to question the alleged overassessment in the county court upon application of the county collector for judgment. People ex rel. Brittain v. Outwater, 360 Ill. 621, 196 N.E. 835 (1935).

- Impeachment

An assessment of property for taxation cannot be impeached by any mere difference of opinion as to its value between the assessing officers and the court. People ex rel. Nash v. Norton, 358 Ill. 272, 193 N.E. 129 (1934).

- Not Excessive

Where appellant did not show by clear and convincing proof that an assessment of his property was so grossly excessive as to shock the conscience or to be evidence of fraud or that it was made with some corrupt, dishonest, or illegal motive, although appellant was properly overassessed to some degree this unfortunate condition is one of which a court could properly take judicial notice, but one which neither the county court nor the Supreme Court had power to rectify. People ex rel. Nash v. Norton, 358 Ill. 272, 193 N.E. 129 (1934).

- Overlapping Special Tax Districts

In the situation of overlapping special tax districts, located partially in two or more counties, as long as the assessment and levy of taxes is based upon the judgment of the assessing officers in each separate county, absolute uniformity cannot be achieved; this matter is one exclusively for the legislature, and the relief, if any, in the several counties must come from the legislature and not from the courts. People ex rel. Schlaeger v. Allyn, 393 Ill. 154, 65 N.E.2d 392 (1946).

- Validity

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The contention that assessments upon lots and parcels of real estate of appellants were void because there was discrimination in favor of personal property was not tenable, because in Illinois neither the omission to assess nor the undervaluation of one kind or class of property will invalidate assessments upon other property in the same jurisdiction. Bistor v. McDonough, 348 Ill. 624, 181 N.E. 417 (1932).

Classification

- Held Unconstitutional

The classifications made by the amendatory Service Occupation Tax Act (see now 35 ILCS 115/1 et seq.) which limited servicemen subject to tax to four enumerated sub-classes is unconstitutional regardless of whether tax was levied on basis of performance of service or on the basis of transfer of property by servicemen. Fiorito v. Jones, 39 Ill. 2d 531, 236 N.E.2d 698 (1968).

- Reasonable Taxation

The statutory classification of imposing a tax on privilege of operating motor vehicles on state waters was not unreasonable where the legislature could have intended to tax those boaters for whose benefit the state's boating program was primarily designed and where it could have concluded that a tax on the marine use of diesel fuel would produce little revenue above the costs of collection and administration and that, as to sailboats, no method existed for measuring their use of the waterways. Titus v. Texas Co., 55 Ill. 2d 437, 303 N.E.2d 361 (1973).

- Upheld

The constitution requiring that taxation shall be by general law uniform as to the class upon which it shall operate means uniformity as applied to a class and does not prohibit the classification of property and taxpayers into different classes. Routt v. Barrett, 396 Ill. 322, 71 N.E.2d 660 (1947).

Compliance

- County Library Act

The library fee requirement of former Ill. Rev. Stat., ch. 81, para. 81 did not violate this section. Ali v. Danaher, 47 Ill. 2d 231, 265 N.E.2d 103 (1970).

- Retailers' Occupation Tax Act

The Retailers' Occupation Tax Act (see now 35 ILCS 120/1 et seq.) does not violate the due process of law clause of either the federal or state Constitution, and the tax is not confiscatory; the legislature has the inherent power to tax the occupation of those persons engaged in the business of selling tangible personal property to purchasers for use or consumption and the provision of the Act imposing a tax measured by a gross receipts is valid and is uniform as to the class upon which it operates. Reif v. Barrett, 355 Ill. 104, 188 N.E. 889 (1933).

- Shown

The Regional Transportation Authority Act (see now 70 ILCS 3615/1.01 et seq.) does not involve an unconstitutional delegation of legislative power to the RTA to pledge the state's credit and 70 ILCS 3615/4.04 does not involve an unconstitutional surrender of the General Assembly's exclusive power of taxation contrary to this section, nor does the issuance of RTA bonds containing the state's pledge deny voters equal protection of the laws by preventing future changes in the tax laws or deprive them without due process of law of their right to elect

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candidates pledged to reduce or alter state sales and use taxes and motor vehicle registration fees. Day v. Regional Transp. Auth., 66 Ill. 2d 533, 6 Ill. Dec. 882, 363 N.E.2d 829 (1977).

Requirement that corporation make a report in writing to the secretary of state between the first day of February and the first day of March of each year, on prescribed forms furnished by the secretary of state, who is required on or before the 15th day of January of each year, to forward to each corporation a copy of forms to be used in making the report, and which provides that if any corporation fails or refuses to file its annual report within the time required by the act, the secretary of state shall assess a franchise tax against such corporation based upon its entire authorized capital stock, was not repugnate to the Constitution. International Lumber Co. v. Emmerson, 311 Ill. 564, 143 N.E. 465 (1924).

County Referendum

Although the legislature designed the office of supervisor of assessments in the manner it found fit (35 ILCS 200/3-10 through 35 ILCS 200/3-25), the language of Ill. Const. (1970), Art. VII, §§ 4(c) and 7, allowing local voters to alter the manner of selection of county officers, is a clear limitation on the office, as provided for by the terms of Ill. Const. (1970), Art. IX, § 7. Cook v. Pierce, 122 Ill. App. 3d 1068, 78 Ill. Dec. 438, 462 N.E.2d 557 (5 Dist. 1984).

Effect of Amendment

While the 1967 amendments purport to specifically repeal the prior service occupation and service use tax provisions, invalidity of the 1967 amendments and their entirety renders the repealing sections void also, leaving the Service Occupation Tax Act (see now 35 ILCS 115/1 et seq.) and related acts in full force and effect as they existed prior to the adoption of the amendments. Fiorito v. Jones, 39 Ill. 2d 531, 236 N.E.2d 698 (1968).

Exemptions

- Foreign Corporation

A state is not bound to give its exemption privileges on taxation to foreign corporations, and foreign corporations can claim no such exemption, unless the statute plainly and expressly grants it. People v. Woman's Home Missionary Soc'y, 303 Ill. 418, 135 N.E. 749 (1922).

- Legislative Prerogative

The legislature is not constitutionally required to exempt any property from taxation and may place restrictions upon the exemptions it does grant. City of Chicago v. Illinois Dep't of Revenue, 210 Ill. App. 3d 273, 155 Ill. Dec. 65, 569 N.E.2d 65 (1 Dist. 1991), aff'd, 147 Ill. 2d 484, 168 Ill. Dec. 841, 590 N.E.2d 478 (1992).

Forgiveness of Debt

- Limitations

There is no express limitation on the legislature's ability to forgive or cancel a debt in the 1970 Illinois Constitution, although there was such a provision in the 1870 Constitution (Ill. Const. (1870), Art. IV, § 23). Hoffman v. Nustra, 143 Ill. App. 3d 259, 97 Ill. Dec. 322, 492 N.E.2d 981 (2 Dist. 1986).

Fraud

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- In General

Fraud may lie where an assessment is made excessive or unfair by corrupt practices or arbitrary action, but in such cases the proof must be clear to warrant interference by the courts. People ex rel. Nash v. Norton, 358 Ill. 272, 193 N.E. 129 (1934).

- Excessive Valuation

Whether there has been fraud in the excessive valuation of property for taxation is a question which will depend largely upon the circumstances of each particular case in which the valuation is made. Burton Stock Car Co. v. Traeger, 187 Ill. 9, 58 N.E. 418 (1900).

Excessive valuation by itself does not establish fraud, but the attending circumstances may be looked into, in order to determine whether or not the valuation was honestly made. Burton Stock Car Co. v. Traeger, 187 Ill. 9, 58 N.E. 418 (1900).

- Presumption and Burden

The presumption is that the tax is just and that the tax levying officers have performed their duties, and the objector must establish by clear nad convincing evidence that fraud has been committed. People ex rel. Schlaeger v. Allyn, 393 Ill. 154, 65 N.E.2d 392 (1946).

- Proof

Fraud in the valuation of property for the purposes of taxation cannot be presumed, but must be proved by sufficient evidence. People v. Process Corp., 377 Ill. 65, 35 N.E.2d 341 (1941).

Fraud in the assessment of property cannot always be shown by proof of its overvaluation. People ex rel. Nash v. Norton, 358 Ill. 272, 193 N.E. 129 (1934).

- Proper Motives

An assessment is not fraudulent merely because it is excessive, if the assessor has acted from proper motives. People ex rel. Nash v. Norton, 358 Ill. 272, 193 N.E. 129 (1934).

Illustrative Case

- Horse Racing

A tax imposed upon pari-mutuel betting under the Illinois Horse Racing Act (see now 230 ILCS 5/1 et seq.) was not an unjust discrimination in favor of those who engage in harness racing; although the Harness Racing Act and the Illinois Horse Racing Act bore a great deal of similarity, that did not make the subjects which were under legislative control the same. Routt v. Barrett, 396 Ill. 322, 71 N.E.2d 660 (1947).

- Reassessment Statute

Where the purpose of the reassessment statute of 1928, and of the order entered thereunder, was not to make changes in the assessments of individuals, but to correct inequalities and failures to comply with the law in assessments in the entire county, while it was called a reassessment, it was, in act and in effect, a new or original assessment of all of the real property of the county, was governed by the rules of law applicable to original assessments, and did not violate due process or delegate legislative and judicial power to taxing officers. Heidenway v. Harding, 336 Ill. 606, 168 N.E. 630 (1929).

- Sanitary District Bonds

Amendments to section 9 of "An Act to create sanitary districts and to remove obstructions in the DesPlaines and Illinois rivers" (70 ILCS 2605/9), which provided for the establishment of a

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corporate working cash fund and a construction working cash fund by the issuance of bonds without referendum, were valid and constitutional. People ex rel. Adamowski v. Metropolitan San. Dist., 14 Ill. 2d 271, 150 N.E.2d 361 (1958).

- Sanitary District Cash Fund

The establishment of a working cash fund for a sanitary district under 70 ILCS 2605/9, together with the district's other statutory fiscal powers, did not permit the district to unlawfully accumulate monies without using them for a corporate purpose, thus there was no violation of the Constitution. People ex rel. Adamowski v. Metropolitan San. Dist., 14 Ill. 2d 271, 150 N.E.2d 361 (1958).

Insolvent Laws

- Effect

Former insolvent laws could not be held to have the effect of releasing either persons or property from taxation, since under former Ill. Const. (1870), Art. IX, § 6 (see now this section), the General Assembly was denied the power to release any person or property from his or its proportionate share of taxes levied for state purposes. Jack v. Weiennett, 115 Ill. 105, 3 N.E. 445 (1885).

Intent

- Delegation of Powers

This section, as amended in 1970, demonstrates a clear intent to change the extent to which the General Assembly may delegate the power to tax, omitting former provision of Ill. Const. (1870), Art. IX, § 9, which allowed the General Assembly to delegate such powers to "all municipal corporations." Polich v. Chicago Sch. Fin. Auth., 79 Ill. 2d 188, 37 Ill. Dec. 357, 402 N.E.2d 247 (1980).

- Effect of New Taxes

It will not be presumed that the legislature, by the amendment of an existing statute to permit the levy of a higher rate of taxation, intended thereby to increase taxes already levied for the current year. People ex rel. Carr v. Pittsburgh, C., C. & St. L. Ry., 316 Ill. 410, 147 N.E. 492 (1925).

Jurisdiction

- In General

The Supreme Court would not assume jurisdiction on direct appeal merely to refer to earlier decisions regarding the constitutionality of a statute. Richter v. City of Mt. Carroll, 398 Ill. 473, 76 N.E.2d 452 (1947).

Objections

- Burden of Proof

A taxpayer objecting to a tax on the basis of lack of authority has the burden of proving the classification is arbitrary. In re County Treas., 157 Ill. App. 3d 803, 110 Ill. Dec. 83, 510 N.E.2d 1114 (1 Dist. 1987).

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The objector has the burden of establishing a right to judicial relief by clear and convincing evidence, taxes being presumed valid. People ex rel. Paschen v. Morrison Hotel Corp., 9 Ill. 2d 187, 137 N.E.2d 344 (1956).

The presumption is that a tax is just and that the officers levying it have honestly discharged their duties, and the burden is upon the objector to establish fraud by clear and sufficient evidence. People ex rel. Nash v. Norton, 358 Ill. 272, 193 N.E. 129 (1934).

Property Valuation

- In General

The power to ascertain the value of property for purposes of taxation and to impose tax burdens and raise money may be exercised only by or under the authority of the legislature. People ex rel. Brittain v. Outwater, 360 Ill. 621, 196 N.E. 835 (1935).

Courts have no power to fix the value of property for taxation, and, before a taxpayer may resort to the courts for relief, he must show that he has been diligent in pursuing his remedy to have the assessment corrected by the board of review or that he was prevented from pursuing such remedy by fraud, accident, or mistake. People ex rel. Brittain v. Outwater, 360 Ill. 621, 196 N.E. 835 (1935).

Assessed value of property for taxation purposes cannot be impeached merely because of the difference of opinion as to values between the assessing bodies and the court under former Ill. Const. (1870), Art. IX, § 1. People ex rel. Wangelin v. Wiggins Ferry Co., 357 Ill. 173, 191 N.E. 296 (1934).

- Assessment Invalid

Policy of county board of review which assessed personal property tax on intangible personal property only against the estates of deceased persons and not against living persons owning intangible personal property was violative of this section. Moniot v. Property Tax Appeal Bd., 11 Ill. App. 3d 309, 296 N.E.2d 354 (3 Dist. 1973).

- Burden of Taxation

Every person has the right under the Constitution to have his property so assessed that it shall not bear more than its proportionate share of the burden of taxation. People ex rel. Town of Cicero v. Sweitzer, 339 Ill. 28, 170 N.E. 728 (1930).

- Constructive Fraud

Concerning a taxpayer's claim of constructive fraud, the rule is that fraud in the valuation of property for purposes of taxation must be proved by clear and sufficient evidence. People ex rel. Schlaeger v. Allyn, 393 Ill. 154, 65 N.E.2d 392 (1946).

The intentional violation of the rule of uniformity in the valuation of property for taxation amounts to constructive fraud. People ex rel. Ross v. Chicago, M., St. P. & Pac. R.R., 381 Ill. 58, 44 N.E.2d 566 (1942).

- Court Review

The circuit court properly dismissed a count which asked for a direct review of property tax assessments. White v. Board of Appeals, 45 Ill. 2d 378, 259 N.E.2d 51 (1970).

- Description

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Where no description of property was given, and in no instance was its situs or ownership disclosed, then the allegations that the omitted property was liable to taxation were mere conclusions of law and were insufficient. Bistor v. McDonough, 348 Ill. 624, 181 N.E. 417 (1932).

- Equality

Court concluded that the Tax Commission, in valuing appellant's property for taxation purposes, used factors not applicable to that property and improperly used a replacement factor that did not take into account, in valuing the improvements, a proper allowance for depreciation and other applicable deductions; thus, the method used by the Tax Commission resulted in a want of uniformity contrary to the provisions of Ill. Const. of 1870, Art. IX, § 1 People ex rel. Toman v. Chicago Union Station Co., 383 Ill. 153, 48 N.E.2d 524, 1943 Ill. LEXIS 541 (1943).

The requirements of the Constitution that there shall be uniformity and equality in taxation must control over any statute or practice of assessing officers, so that the properties of persons and corporations shall pay a tax in proportion to their respective values. People v. Illinois Cent. R.R., 273 Ill. 220, 112 N.E. 700 (1916).

- Exclusive Authority

Ascertainment of the value of property for the purpose of taxation shall be vested in such persons as are determined by the legislature and in no other person. People v. Process Corp., 377 Ill. 65, 35 N.E.2d 341 (1941).

The persons elected or appointed, pursuant to Ill. Const. (1870), Art. IX, § 1, to ascertain the value of property for the purposes of taxation, are exclusively vested with that power and courts may not exercise it. People v. Charles H. Besley & Co., 353 Ill. 472, 187 N.E. 461 (1933).

- Injunction

A court will not entertain jurisdiction to enjoin the collection of a tax upon the ground of the excessive valuation of the property assessed by the assessing officer or officers. Burton Stock Car Co. v. Traeger, 187 Ill. 9, 58 N.E. 418 (1900).

- Manufacturers

The personal property of a manufacturer in the hands of an agent should be assessed at the place where the business of such agent is carried on. Selz v. Cagwin, 104 Ill. 647 (1882).

- Method of Taxation

The power to determine the method by which property may be valued for tax purposes is in the General Assembly and is unlimited except as to the constitutional requirement that it shall be valued so that every person and corporation shall pay in proportion to the value of his, her or its property. Anderson v. City of Park Ridge, 396 Ill. 235, 72 N.E.2d 210 (1947).

- Powers of Courts

The courts, in the absence of fraud, have no power to review or determine the valuation of property fixed by the proper officers for purposes of taxation. Herman H. Hettler Lumber Co. v. County of Cook, 336 Ill. 645, 168 N.E. 627 (1929).

The valuation of property for the purpose of taxation is to be ascertained by some person or persons elected or appointed by the legislature, because the constitution expressly prohibits the ascertainment of such value by any other person than a person elected or appointed by the legislature; hence the courts have no power to fix the valuation of property for taxation. Burton Stock Car Co. v. Traeger, 187 Ill. 9, 58 N.E. 418 (1900).

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- Review

Taxation of property is a legislative rather than a judicial function and under limitations expressed in this section the courts, except in cases of fraud, have no authority to review or determine the value of property which has been assessed by appropriate administrative officers. Illinois Bell Tel. Co. v. Rosewell, 82 Ill. App. 3d 975, 38 Ill. Dec. 431, 403 N.E.2d 662 (1 Dist. 1980).

Taxation of property is a function that is legislative rather than judicial, and under the limitations expressed in this section, courts of this state do not possess authority to directly review a decision of the County Board of Appeals. Coodfriend v. Board of Appeals, 18 Ill. App. 3d 412, 305 N.E.2d 404 (1 Dist. 1973).

Taxation of property is a legislative rather than a judicial function, and under limitations expressed in this section, the courts in the absence of legislative authority have no authority, except in cases of fraud, to review or determine the value of property which has been assessed for purposes of taxation by appropriate administrative officers. White v. Board of Appeals, 45 Ill. 2d 378, 259 N.E.2d 51 (1970).

The fact that there may be a difference of opinion as to the value of property between the assessing authorities and the court does not justify interference on the part of the court under former Ill. Const. (1870), Art. IX, § 1 (see now this section). People ex rel. Wangelin v. St. Louis Bridge Co., 357 Ill. 245, 191 N.E. 300 (1934).

In the absence of fraud, courts have no power to review or determine the value of property fixed for the purposes of taxation by the proper officers and cannot set up their judgment of values as against that of persons to whom the legislature has delegated the duty of determining values. People ex rel. Nash v. Norton, 358 Ill. 272, 193 N.E. 129 (1934).

Under this section the courts, in the absence of fraud, have no power to review or determine the value of property fixed by the proper officers for purposes of taxation. Bistor v. McDonough, 348 Ill. 624, 181 N.E. 417 (1932). People v. Charles H. Besley & Co., 353 Ill. 472, 187 N.E. 461 (1933).

- Supervision

Where the value of property for taxation has been fixed by the officials designated by statute, such value is not, in the absence of fraud, subject to the supervision of the judicial department of the state. People ex rel. Ingram v. Wasson Coal Co., 403 Ill. 30, 85 N.E.2d 182 (1949).

The valuation of property for taxation is not open to supervision of the judicial department of the state unless it is so excessive as to amount to fraud. People v. Process Corp., 377 Ill. 65, 35 N.E.2d 341 (1941).

Courts have no power to fix the value of property for taxation, such valuation is not open to supervision of the judicial department of the state unless it is dishonestly made and so excessive as to amount to fraud. People ex rel. Nash v. Norton, 358 Ill. 272, 193 N.E. 129 (1934).

The determination of the value to be fixed on property liable to be assessed is not, in the absence of fraud, subject to the supervision of the judicial department of this state. Burton Stock Car Co. v. Traeger, 187 Ill. 9, 58 N.E. 418 (1900).

Public Purposes

- In General

Court upheld judgment in favor of the government, because the statutes were not local or special laws in violation of former Ill. Const. of 1870, Art. IV, § 22 (now Ill. Const. (1970), Art. IV, § 13), and the taxation was for a public purpose in compliance with former Ill. Const. of 1870, IX, § 9

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(now Ill. Const. (1970), Art. IX, § 1). Mathews v. Chicago, 342 Ill. 120, 174 N.E. 35, 1930 Ill. LEXIS 1079 (1930).

Remedies

- In General

A corporation could not ignore its statutory remedy and later seek to interpose, as a defense to an action for the recovery of delinquent taxes, the excessive or unequal assessment of its property. People v. Charles H. Besley & Co., 353 Ill. 472, 187 N.E. 461 (1933).

- Abatement of Tax

For an excessive or unequal assessment, where the complaint is not fraud but an error of judgment merely, the sole remedy is an application for an abatement to such statutory agencies as have been provided for hearing the complaint. Bistor v. McDonough, 348 Ill. 624, 181 N.E. 417 (1932).

Review

- Scope

A classification of objects for taxation is valid unless shown to be unreasonable or arbitrary. People Gas Light & Coke Co. v. City of Chicago, 9 Ill. 2d 348, 137 N.E.2d 330 (1956).

Sanitary System Financing

Statute which granted to sanitary districts the power to collect reasonable charges for connection onto the system created a legitimate method of financing needed extensions of sanitary systems by means of a service or connection charge rather than a general tax; the imposition of such a charge upon those who voluntarily seek to use the extension was not unconstitutional by allegedly imposing an unnecessary nonuniform tax. Hartman v. Aurora San. Dist., 23 Ill. 2d 109, 177 N.E.2d 214 (1961).

Special Service Areas

The uniformity and exemption provisions of this Article do not prevent a city from drawing a special service area to exclude residential property. Grais v. City of Chicago, 151 Ill. 2d 197, 176 Ill. Dec. 47, 601 N.E.2d 745 (1992).

Tax Rate

- Increase

The General Assembly can increase the rate of taxation by any method it might choose to adopt. People ex rel. Campe v. Board of Review, 290 Ill. 467, 125 N.E. 274 (1919).

- Other States

Under a similar prior provision, where a higher rate of taxation was imposed by a foreign state upon Illinois companies doing business in that state, it was not unconstitutional for Illinois to impose a higher tax rate on that state's insurance companies doing business in Illinois. Home Ins. Co. v. Swigert, 104 Ill. 653 (1882).

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Taxable Income

- Gain from Appreciation

A tax on appreciation occurring prior to the effective date of a taxing act, but not realized until after that date, is a tax on income within the authority granted by this section. Warren Realty Co. v. Department of Revenue, 62 Ill. App. 3d 450, 19 Ill. Dec. 585, 379 N.E.2d 100 (1 Dist. 1978).

Where plaintiff actually realized no gain from appreciation of property until after the effective date of the Illinois Income Tax Act (35 ILCS 5/101 et seq.) the entire amount of such gain was properly taxed as income. Warren Realty Co. v. Department of Revenue, 62 Ill. App. 3d 450, 19 Ill. Dec. 585, 379 N.E.2d 100 (1 Dist. 1978).

Taxing Power

- Schools

There is no constitutional limitation placed on the right of the legislature to fix rates of taxation for school purposes as it may see fit, nor is there any constitutional limitation placed on the legislature with reference to the formation of school districts, or as to the agencies the state shall adopt for providing for free schools. People ex rel. Brockamp v. Chicago & Ill. Midland Ry., 256 Ill. 488, 100 N.E. 174 (1912).

The legislature may provide for the establishment of township high schools as well as school districts, and to confer upon each board the power of taxation to the extent of the legislature's will. People ex rel. Brockamp v. Chicago & Ill. Midland Ry., 256 Ill. 488, 100 N.E. 174 (1912).

- Validity

The power to levy taxes for the support of government is a necessary incident of sovereignty and is possessed by the state without being expressly conferred by the people; the power to determine the method by which property may be valued for tax purposes is in the General Assembly and is unlimited except as to the constitutional requirement that it shall be valued so that every person and corporation shall pay in proportion to the value of his, her or its property. People ex rel. Isbell v. Albert, 403 Ill. 469, 86 N.E.2d 237 (1949).

Uniformity

- In General

The rule of uniformity of taxes applies to property of like kind and character and similarly situated. People ex rel. Schlaeger v. Allyn, 393 Ill. 154, 65 N.E.2d 392 (1946).

The command for uniformity means that taxation must be uniform as to the class upon which it operates and that the uniformity demanded applies to property of like kind and character and similarly situated. People v. Southwestern Bell Tel. Co., 377 Ill. 303, 36 N.E.2d 362 (1941).

When the legislature, by former Ill. Rev. Stat., ch. 122, para. 314 authorized the boards of review to reduce the assessed valuation of either real or personal property, this power was granted in compliance with the constitutional rule of uniformity. People v. Southwestern Bell Tel. Co., 377 Ill. 303, 36 N.E.2d 362 (1941).

The requirement of uniformity in taxation lies at the foundation of all taxing power of the state. People ex rel. McDonough v. Illinois Cent. R.R., 355 Ill. 605, 190 N.E. 82 (1934).

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The rule of uniformity requires that one person shall not be compelled to pay a greater proportion of the taxes, according to the value of his property, than another. Bistor v. McDonough, 348 Ill. 624, 181 N.E. 417 (1932).

Violation

- Not Shown

The trial court did not err in holding that the Chicago vehicle fuel tax was not unconstitutional merely because it was imposed in addition to other taxes, where the court found there was no showing that another tax had been imposed by the City of Chicago upon the privilege of purchasing or using in the city, vehicle fuel purchased at a retail sale; therefore, there was no double taxation. Illinois Gasoline Dealers Ass'n v. City of Chicago, 119 Ill. 2d 391, 116 Ill. Dec. 555, 519 N.E.2d 447 (1988).

Plaintiffs failed to allege sufficient facts to establish that defendants violated Ill. Const., (1970), Art. IX, § 1 in action to force State to credit municipalities with interest income accrued from collected tax receipts and distributed by the defendants pursuant to the Municipal Retailers' Occupation Tax Act (65 ILCS 5/8-11-1 et seq.), as plaintiffs did not allege any facts showing that defendants unconstitutionally levied taxes. Village of Pawnee v. Johnson, 119 Ill. App. 3d 164, 74 Ill. Dec. 481, 455 N.E.2d 1105 (4 Dist. 1983).

Where the major portion or nearly all of the tax revenue raised by a district for the maintenance of parks could be applied to two parks this did not establish ipso facto that those funds were raised for purposes which were not public and corporate or, as stated in the language of plaintiffs, "for the public needs for a public purpose pertaining to the district within which the tax was levied and collected," thus plaintiffs had not shown that the General Park District Code violated this section. People ex rel. Honefenger v. Burris, 408 Ill. 68, 95 N.E.2d 882 (1950).

Reduction under former Ill. Rev. Stat., ch. 122, para. 4314 of twenty per cent in an assessed valuation of real property by the board of review, without applying the same reduction to the assessed valuation of personal property, did not violate former Ill. Const. (1870), Art. IX, § 1 (see now this section). People v. Southwestern Bell Tel. Co., 377 Ill. 303, 36 N.E.2d 362 (1941).

Sections 8, 9, 10 and 12 of the Retailers' Occupation Tax Act (35 ILCS 120/8, 35 ILCS 120/9, 35 ILCS 120/10 and 35 ILCS 120/12) did not violate former Ill. Const. (1870), Art. IX, § 1 (see now this section), by extending the powers of administrative officers in the collection of taxes. Department of Fin. v. Cohen, 369 Ill. 510, 17 N.E.2d 327 (1938).

- Revestment Doctrine

The revestment doctrine does not improperly interfere with the exclusive revenue raising powers of the state legislature. In re Savas, 139 Ill. App. 3d 68, 93 Ill. Dec. 483, 486 N.E.2d 1318 (1 Dist. 1985).

LEGAL PERIODICALS

Article: Can the End Justify the Means? Illinois Lawyers Trust Fund: A Constitutional Analysis, see 23 S. Ill. U.L.J. 693 (1999).

Section 2. Non-Property Taxes - Classification, Exemptions, Deductions, Allowances and Credits.

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In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Pers Inj & Torts § 8:83, § 8:85.

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In General

This section recognizes that there will be differences in the deductions granted to various classes of taxpayers and merely imposes a requirement of reasonableness on these deductions. Warren Realty Co. v. Department of Revenue, 62 Ill. App. 3d 450, 19 Ill. Dec. 585, 379 N.E.2d 100 (1 Dist. 1978).

Property taxes must be by valuations so that every person shall pay a tax in proportion to the value of his property; excise taxes can be levied by the authority of the General Assembly as it shall direct by general law, uniform as to the class upon which the tax operates. People ex rel. Ruchty v. Saad, 411 Ill. 390, 104 N.E.2d 273 (1952).

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The power to levy taxes for the support of government is a necessary incident of sovereignty and is possessed by the state without being expressly conferred by the people; the power to determine the method by which property may be valued for tax purposes is in the General Assembly and is unlimited except as to the constitutional requirement that it shall be valued so that every person and corporation shall pay in proportion to the value of his, her or its property. People ex rel. Isbell v. Albert, 403 Ill. 469, 86 N.E.2d 237 (1949).

Agricultural Use

- Taxable

Where evidence clearly supported the trial court finding of amount of acreage utilized for airport operations and acreage devoted to farming, one of which was exempt from taxation and one of which was not, tax should be assessed against that part which is devoted to agriculture, a use not exempt from taxation. City of Lawrenceville v. Maxwell, 6 Ill. 2d 42, 126 N.E.2d 671 (1955).

Applicability

The Uniformity Clause in section 1 of Article IX of the former state constitution (see now Ill. Const. (1970), Art. IX, §§ 2, 4, and 5) requires only that taxation be uniform among classes and that classes not be drawn arbitrarily; a class which is drawn to prevent an artificial interpretation of the import-export clause of the Federal Constitution from affording imported goods an unintended competitive advantage does not violate the uniformity clause simply because the use tax on imported articles is imposed at a later time than the tax is imposed on non-imported articles. Caterpillar Tractor Co. v. Department of Revenue, 47 Ill. 2d 278, 265 N.E.2d 675 (1970).

Arbitrary Distinction

- Transaction Tax

Ruling issued by the Department of Revenue which imposed a transaction tax on self-service car wash facilities but exempted automatic or tunnel car washes made an artificial and arbitrary distinction between car wash facilities based solely on the customer's hands-on participation in the wash process, which violated the legislative intent of the ordinance and the uniformity requirements of this section. National Pride of Chicago, Inc. v. City of Chicago, 206 Ill. App. 3d 1090, 150 Ill. Dec. 33, 562 N.E.2d 563 (1 Dist. 1990), appeal dismissed, 137 Ill. 2d 666, 156 Ill. Dec. 563, 571 N.E.2d 150 (1991).

Burden of Proof

A plaintiff challenging a tax classification has the burden of showing that it is arbitrary or unreasonable and the burden is fulfilled if the plaintiff comes forward with a good faith uniformity challenge. Terry v. Metropolitan Pier & Exposition Auth., 271 Ill. App. 3d 446, 208 Ill. Dec. 125, 648 N.E.2d 1047 (1 Dist. 1995).

Charitable Purpose

- Construed

It is the province of the courts, and not the legislature, to ascertain whether or not particular property, including property used as an old peoples home, is "used exclusively for charitable purposes" within the meaning of former constitutional provision (see now Ill. Const. (1970), Art. IX, § 2); to be exempt from taxation the property of an old peoples home must be used

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exclusively for charitable purposes. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 233 N.E.2d 537 (1968).

- Exclusive

It is not enough, to exempt property from taxation, that one of several purposes or results is charity, it must be the chief, if not the sole, object. People ex rel. Nelson v. Rockford Masonic Temple Bldg. Ass'n, 348 Ill. 567, 181 N.E. 428 (1932).

- Exempt and Nonexempt Property

An organization with charitable objectives may own property which is exempt from taxation and also property which is not exempt. People ex rel. Nelson v. Rockford Masonic Temple Bldg. Ass'n, 348 Ill. 567, 181 N.E. 428 (1932).

- Illustrative Cases

A Masonic Temple Building was used to promulgate the ideals of Masonry, which included the maintenance of a high moral standard of living and administration to the religious and spiritual life of its members, and in carrying out these ideals charity was but an incidental feature, thus, since charity was not the principal or the exclusive object of the organization, under the constitution of the state no exemption from taxation can be enjoyed by any organization which does not have charity as its primary object. People ex rel. Nelson v. Rockford Masonic Temple Bldg. Ass'n, 348 Ill. 567, 181 N.E. 428 (1932).

- Not Shown

The appellant was not a charitable organization under the law because mutual benefit and social intercourse of its members did not constitute a charitable purpose especially where the property was not used exclusively for charitable purposes. People ex rel. Nelson v. Rockford Lodge No. 64, 348 Ill. 528, 181 N.E. 432 (1932).

- Requirements

Two things are necessary to the exemption of property used for charitable purposes from taxation; one, ownership by a charitable organization; the other, its exclusive use for charitable purposes. People ex rel. Nelson v. Rockford Lodge No. 64, 348 Ill. 528, 181 N.E. 432 (1932).

Classification

- In General

Under the uniformity clause, a classification must be based on a real and substantial difference between those taxed and those not taxed and must bear some reasonable relationship to the object of the legislation or to public policy. North Pole Corp. v. Village of E. Dundee, 263 Ill. App. 3d 327, 200 Ill. Dec. 721, 635 N.E.2d 1060 (2 Dist. 1994).

Legislative bodies have very broad powers in establishing classifications defining the objects of taxation which will withstand constitutional attack so long as the classifications are reasonable. Williams v. City of Chicago, 66 Ill. 2d 423, 6 Ill. Dec. 208, 362 N.E.2d 1030 (1977).

The legislative determination as to those persons who are to be taxed and those not taxed must not be arbitrary and the classification must bear some reasonable relationship to the object of the legislation. Williams v. City of Chicago, 66 Ill. 2d 423, 6 Ill. Dec. 208, 362 N.E.2d 1030 (1977).

Differential treatment for purposes of taxation can withstand constitutional attack so long as the classifications are reasonable and a classification must be upheld if any state of facts reasonably

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can be conceived that would sustain it. Titus v. Texas Co., 55 Ill. 2d 437, 303 N.E.2d 361 (1973).

Ill. Const. (1970), Art. IX, § 2 requires that the objects and subjects of non-property taxes be reasonably classified; however, it does not speak of the classification of taxes. S. Bloom, Inc. v. Korshak, 52 Ill. 2d 56, 284 N.E.2d 257, 1972 Ill. LEXIS 310 (1972).

- Authorized

There was no limitation in the 1870 Constitution on the ability of taxing authorities to create different classes within their jurisdiction for the purpose of imposing a nonproperty tax. Walter Peckat Co. v. Regional Transp. Auth., 81 Ill. 2d 221, 40 Ill. Dec. 797, 407 N.E.2d 28 (1980).

- Burden of Proof

The validity of a tax classification under the uniformity clause is to be determined based on the "real and substantial differences" test and on whether the classification bears some reasonable relationship to the object of the legislation or to public policy. Federated Distribs., Inc. v. Johnson, 125 Ill. 2d 1, 125 Ill. Dec. 343, 530 N.E.2d 501 (1988).

One claiming exemption from taxation has the burden to show clearly that the property is within the exemption statute. City of Lawrenceville v. Maxwell, 6 Ill. 2d 42, 126 N.E.2d 671 (1955).

- Kerosene and Electricity

The arbitrary exclusion of kerosene oil and electricity as motor fuels was not an unreasonable discrimination against the use of gasoline, where the matter of classification was within legislative discretion, subject to review for abuse thereof, and such classification bears a reasonable relation to the purposes of the Act. People v. Deep Rock Oil Corp., 343 Ill. 388, 175 N.E. 572 (1931).

- Legislative Discretion

Legislative bodies have broad discretion in establishing tax classifications, and those classifications will withstand constitutional attack so long as they are reasonable. Springfield Rare Coin Galleries, Inc. v. Johnson, 115 Ill. 2d 221, 104 Ill. Dec. 743, 503 N.E.2d 300 (1986).

The reasonableness requirement demands that the legislative determination as to those persons or objects taxed and not taxed must not be arbitrary, and the classification must bear some reasonable relationship to the object of the legislation. Springfield Rare Coin Galleries, Inc. v. Johnson, 115 Ill. 2d 221, 104 Ill. Dec. 743, 503 N.E.2d 300 (1986).

- Not Reasonable

Defining an individual who is employed for some portion of a day within each of eight or more calendar weeks within a calendar quarter as a full time employee upon whom an employer must pay a tax of $3 per month creates an unreasonable classification under this section. Paper Supply Co. v. City of Chicago, 57 Ill. 2d 553, 317 N.E.2d 3 (1974).

Court determined that defining an individual who is employed for some portion of a day within each of eight or more calendar weeks within a calendar quarter as a full-time employee upon whom an employer must pay a tax of three dollars per month creates an unreasonable classification under Ill. Const. (1970), Art. IX, § 2. Paper Supply Co. v. Chicago, 57 Ill. 2d 553, 317 N.E.2d 3, 1974 Ill. LEXIS 427 (1974).

- Precision

Absolute precision is not required in establishing classifications for tax purposes. Titus v. Texas Co., 55 Ill. 2d 437, 303 N.E.2d 361 (1973).

- Presumption

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There is a presumption of legislative tax classification validity; however, a discriminatory tax law cannot be upheld if the classification involved is altogether illusory. Satellink of Chicago, Inc. v. City of Chicago, 168 Ill. App. 3d 689, 119 Ill. Dec. 545, 523 N.E.2d 13 (1 Dist. 1988).

There is a presumption favoring the validity of classifications made by legislative bodies in taxing matters and that one who attacks them has the burden of proving such classifications to be arbitrary and unreasonable; the reasons justifying the classification, moreover, need not appear on the face of the statute, and the classification must be upheld if any state of facts reasonably can be conceived that would sustain it. The burden therefore rests on one who assails the statute to negate the existence of such facts, and there is a presumption of constitutionality that can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes; the burden is on the one attacking the legislative arrangement to negative every conceivable basis that might support it. Williams v. Chicago, 66 Ill. 2d 423, 6 Ill. Dec. 208, 362 N.E.2d 1030, 1977 Ill. LEXIS 271 (1977).

There is a presumption favoring the validity of classifications made by legislative bodies in taxing matters and one who attacks them has the burden of proving such classifications to be arbitrary and unreasonable. Williams v. City of Chicago, 66 Ill. 2d 423, 6 Ill. Dec. 208, 362 N.E.2d 1030 (1977).

- Rational Basis

Persons similarly situated should be treated alike, however, in the absence of a fundamental right or suspect class a legislature may differentiate between those similarly situated provided that a rational basis exists for so doing. Satellink of Chicago, Inc. v. City of Chicago, 168 Ill. App. 3d 689, 119 Ill. Dec. 545, 523 N.E.2d 13 (1 Dist. 1988).

In the context of revenue laws, the equal protection clauses and the special legislation provision merely require that there be a reasonable basis for the statutory classifications enacted by the legislature; the same analysis is used when a revenue law is attacked under the due process clauses, and the statute will be upheld if there is a reasonable basis for the legislative classifications, and if each member of the statutory classification is treated uniformly, this section is satisfied if the classifications are reasonable. Mlade v. Finley, 112 Ill. App. 3d 914, 68 Ill. Dec. 387, 445 N.E.2d 1240 (1 Dist. 1983).

- Reasonable

Classification between those subject to the ordinance which taxed consumers who purchased natural gas from out of state sellers, and those not subject to the tax was neither arbitrary nor unreasonable. Archer Daniels Midland Co. v. City of Chicago, 294 Ill. App. 3d 186, 228 Ill. Dec. 520, 689 N.E.2d 392 (1 Dist. 1997).

- Single Member

A classification for taxation for regulatory purposes does not violate equal protection merely because the class created has but a single member. North Pole Corp. v. Village of E. Dundee, 263 Ill. App. 3d 327, 200 Ill. Dec. 721, 635 N.E.2d 1060 (2 Dist. 1994).

- Tax Challenge

Non-property tax classifications used in 2007 Ill. Laws 1008 to classify which riverboat casinos will pay 3% of their adjusted gross receipts to bolster revenues lost by horse racing tracks are not arbitrary or unreasonable; the casinos who were required to pay the tax had been the top grossing casinos since at least 2004 so it was not unreasonable or arbitrary for the general assembly to determine that as casinos with AGR in excess of $200 million, they would be best able to absorb payment of the tax for a three year period. Empress Casino Joliet Corp. v. Giannoulias, 406 Ill. App. 3d 1040, 347 Ill. Dec. 580, 942 N.E.2d 783, 2011 Ill. App. LEXIS 43 (3 Dist. 2011).

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A tax classification challenged under the uniformity clause must be based on a real and substantial difference between those taxed and those not taxed and the classification must bear some reasonable relationship to the object of the legislation or to public policy. Ball v. Village of Streamwood, 281 Ill. App. 3d 679, 216 Ill. Dec. 251, 665 N.E.2d 311 (1 Dist. 1996).

Construction

- In General

Taxpayer may challenge a tax credit under the Uniformity Clause, Ill. Const. (1970), Art. IX, § 2, only for reasonableness, not for uniformity. It cannot contend under the Uniformity Clause that there is no real and substantial difference between those receiving the credit and those not receiving the credit; its argument must be limited to whether the credit itself is reasonable. Exelon Corp. v. Ill. Dep't of Revenue, 376 Ill. App. 3d 918, 315 Ill. Dec. 491, 876 N.E.2d 1081, 2007 Ill. App. LEXIS 1027 (1 Dist. 2007), rev'd, remanded, 2009 Ill. LEXIS 190 (Ill. 2009); reported in full, 2009 Ill. LEXIS 188 (Ill. 2009).

The uniformity clause of Ill. Const. Art. IX, § 2 imposes more stringent limitations on the Illinois legislatures authority to classify the subjects and objects of taxation than other clauses in the constitution; thus, because 415 ILCS 5/12.5 did not violate the uniformity clause, it also did not violate either the equal protection or the substantive due process clauses found in Ill. Const. Art. I, § 2. Valstad v. Cipriano, 357 Ill. App. 3d 905, 293 Ill. Dec. 544, 828 N.E.2d 854, 2005 Ill. App. LEXIS 449 (4 Dist. 2005), appeal denied, 216 Ill. 2d 736, 298 Ill. Dec. 391, 839 N.E.2d 1038 (2005).

- Restrictions on Taxing Power

The drafters of the 1870 Constitution declared that any restrictions upon taxing powers were expressly stated; plaintiff's burden in establishing such a restriction therefore is particularly heavy in the absence of express language so providing. Walter Peckat Co. v. Regional Transp. Auth., 81 Ill. 2d 221, 40 Ill. Dec. 797, 407 N.E.2d 28 (1980).

Due Process

- Tax

-- Illustrative Cases

There was no violation of due process under U.S. Const. amend. XIV, Ill. Const. art. I, § 2, and Ill. Const. art. IX, § 2 when a claim for refund was time-barred by 35 ILCS 105/21. A taxpayer had a clear and certain statutory means to request a refund, and regardless of the errors or confusion that occurred within the Department of Revenue during an audit, the taxpayer's refund claim had become time-barred before the audit. Am. Airlines, Inc. v. Dep't of Revenue, 402 Ill. App. 3d 579, 341 Ill. Dec. 769, 931 N.E.2d 666, 2009 Ill. App. LEXIS 1263 (1 Dist. 2009).

Court concluded that the 1977 amendment to former Ill. Rev. Stat. ch. 120, para. 2-203 (now 35 ILCS 5/203) is violative of Ill. Const. (1970), Art. IX, § 2. Searle Pharmaceuticals, Inc. v. Department of Revenue, 117 Ill. 2d 454, 111 Ill. Dec. 603, 512 N.E.2d 1240, 1987 Ill. LEXIS 217 (1987).

Equalization

- In General

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The Constitution imposes a mandatory duty upon the taxing authorities to equalize taxes, which is executed through various bodies created by the General Assembly, such as the State Board of Equalization, the Tax Commission, and the Department of Revenue. People ex rel. Ruchty v. Saad, 411 Ill. 390, 104 N.E.2d 273 (1952).

Erroneous Assessment

- Remedies

For an excessive or unequal assessment, where the complaint is not fraud but an error of judgment merely, the sole remedy is an application for an abatement to such statutory agencies as have been provided for hearing the complaint. People v. Charles H. Besley & Co., 353 Ill. 472, 187 N.E. 461 (1933).

Exemptions

- In General

Except as to property owned by the national government within the state, the exemption of property from taxation requires affirmative action by the General Assembly. Krause v. Peoria Hous. Auth., 370 Ill. 356, 19 N.E.2d 193 (1939).

- Burden of Proof

The burden is on the person claiming that specific property is exempt from taxation to show clearly that it is within the contemplation of the law. People ex rel. Nelson v. Rockford Lodge No. 64, 348 Ill. 528, 181 N.E. 432 (1932).

- Charitable Purpose

The legislature has the power to exempt from taxation such property as may be used exclusively for charitable purposes, but only by general law. People ex rel. Nelson v. Rockford Lodge No. 64, 348 Ill. 528, 181 N.E. 432 (1932).

- Multiple Uses

Where a tract is used for two purposes, there is nothing novel in exempting the part used for an exempt purpose and subjecting the remainder to taxation. People ex rel. Kelly v. Avery Coonley Sch., 12 Ill. 2d 113, 145 N.E.2d 80 (1957).

- Not Shown

1974 amendment to ordinance reducing licensing fee for citizens 65 years or over who owned vehicles in two classes but not in third, did not add another classification or subclassification; rather, it established an exemption, or a right to a deduction or credit. Head v. Korshak, 62 Ill. 2d 226, 341 N.E.2d 706 (1976).

- Not Upheld

Merely paying a franchise fee does not justify an exemption from taxation; the distinction between cable television and subscription television, based on the franchise fee, could not justify the amendment as a rational attempt to provide an equitable taxing system. This was the kind of arbitrary legislative choice the equal protection clause forbids, and bore no reasonable relationship to the ordinance's taxing purpose. Satellink of Chicago, Inc. v. City of Chicago, 168 Ill. App. 3d 689, 119 Ill. Dec. 545, 523 N.E.2d 13 (1 Dist. 1988).

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Tax which targeted subscription television by exempting cable television, showed no compelling government interest, and neither raising revenue nor equalizing the financial burden on cable television could be shown to support the targeting of subscription television; therefore, the amendment did not withstand an equal protection challenge regardless of the degree of scrutiny employed. Satellink of Chicago, Inc. v. City of Chicago, 168 Ill. App. 3d 689, 119 Ill. Dec. 545, 523 N.E.2d 13 (1 Dist. 1988).

- Property Abandoned for School Purposes

Property owned by school trustees but abandoned for school purposes was held not exempt from taxation. People ex rel. Gill v. Trustees of Schs., 364 Ill. 131, 4 N.E.2d 16 (1936).

- Public Lands

In determining whether property is included within the scope of tax exemption, all debatable questions will be resolved in favor of taxation. City of Lawrenceville v. Maxwell, 6 Ill. 2d 42, 126 N.E.2d 671 (1955).

Whether property is exempt from taxation depends upon the facts in each case. City of Lawrenceville v. Maxwell, 6 Ill. 2d 42, 126 N.E.2d 671 (1955).

Primary use to which property is put is the test whether it is exempt from taxation. City of Lawrenceville v. Maxwell, 6 Ill. 2d 42, 126 N.E.2d 671 (1955).

Property is not exempt from taxation merely because the income from it is used for an exempt purpose where the property itself is not so employed. City of Lawrenceville v. Maxwell, 6 Ill. 2d 42, 126 N.E.2d 671 (1955).

The primary use to which property owned by a municipal corporation outside its corporate limits is devoted, and not its secondary or incidental use, is controlling in determining whether it is used exclusively for "municipal purposes" so as to exempt it from taxation. City of Lawrenceville v. Maxwell, 6 Ill. 2d 42, 126 N.E.2d 671 (1955).

Statutes passed for the purpose of exempting property from taxation must be strictly construed. City of Lawrenceville v. Maxwell, 6 Ill. 2d 42, 126 N.E.2d 671 (1955).

Lands are liable to taxation unless used exclusively for municipal or public purposes. City of Lawrenceville v. Maxwell, 6 Ill. 2d 42, 126 N.E.2d 671 (1955).

- Religious Purposes

Under former section 2 (see now this section) property of a religious organization, to be exempt from taxation, must be used exclusively for religious or school purposes; moreover, that the property is used for one of the two purposes is not enough. The use of property for both named purposes does not bring it within the exemption statute unless such uses are exclusive, since exemption, under the provision invoked, exists only when the property is used exclusively for such purposes. St. John Evangelical Lutheran Congregation v. Board of Appeals, 357 Ill. 69, 191 N.E. 282 (1934).

- School Motor Vehicles

An attempt by the legislature to exempt school districts from the requirement of purchasing city vehicle stickers or imposing any other nonproperty tax would not offend Ill. Const. (1970), Art. IX, § 6. While the general language of that section states that exemption can be given only to the property of the state, units of local government and school districts, the section must be read in connection with this section, which provides the power to uniformly impose nonproperty taxes or fees and to allow exemptions, deductions, credits, refunds and other allowances which shall be reasonable. Board of Educ. v. City of McHenry, 71 Ill. App. 3d 904, 28 Ill. Dec. 384, 390 N.E.2d 551 (2 Dist. 1979).

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Since a motor vehicle license fee was not at all a regulatory measure, it was not enacted in the exercise of the city's police power, but rather, it appeared to be a purely revenue-raising measure and made no attempt to regulate the business of school bus driving, the school district could not avoid paying a tax in the form of purchasing a motor vehicle sticker for its school buses. Board of Educ. v. City of McHenry, 71 Ill. App. 3d 904, 28 Ill. Dec. 384, 390 N.E.2d 551 (2 Dist. 1979).

- Sufficient Justification

The administrative convenience and the expense incurred in the collection or measurement of tax which was imposed on certain employees provided a sufficient justification and a reasonable basis for exempting employers of less than 15 employees, and the exemption provided was neither unreasonable nor discriminatory. Paper Supply Co. v. City of Chicago, 57 Ill. 2d 553, 317 N.E.2d 3 (1974).

Factors Considered

In order to meet the requirements of uniformity, a two-part test must be satisfied: (1) whether any real and substantial differences exist between those who are taxed and those who are not; and (2) whether the classification is reasonably related to a legislative purpose. Square D Co. v. Johnson, 233 Ill. App. 3d 1070, 175 Ill. Dec. 221, 599 N.E.2d 1235 (1 Dist.), cert. denied, 147 Ill. 2d 637, 180 Ill. Dec. 158, 606 N.E.2d 1235 (1992).

Fraud

- Assessments Upheld

Where a railroad filed objections in the county court to the county collector's application for judgment and order of sale of real estate, delinquent for nonpayment of taxes for the year 1951, a motion by the collector to strike the objections was sustained and, thereafter, the court entered judgment against appellant for the amount of tax paid under protest and embraced by the objections, the railroad, whose property was assessed at state level along with other railroads, and who alleged that its own property had been assessed at full, fair cash value but that it had been excessively and illegally taxed when locally assessed property in the county was fraudulently and intentionally undervalued at less than full, fair cash value, failed to show actual or constructive fraud in the assessments. People ex rel. Callahan v. Gulf, Mobile and O.R.R., 8 Ill. 2d 66, 132 N.E.2d 544 (1956).

- Presumption and Burden

The presumption is that a tax is just and that the tax levying officers have performed their duties, and an objector must establish by clear and convincing evidence that fraud has been committed. People ex rel. Schlaeger v. Allyn, 393 Ill. 154, 65 N.E.2d 392 (1946).

- Proof

Concerning a taxpayer's claim of constructive fraud, the rule is that fraud in the valuation of property for purposes of taxation must be proved by clear and sufficient evidence. People ex rel. Schlaeger v. Allyn, 393 Ill. 154, 65 N.E.2d 392 (1946).

Illustrative Cases

In an action in which a parent corporation appealed a decision finding that a reverse triangular merger transaction did not amount to a statutory merger for franchise tax purposes under the Illinois Business Corporation Act of 1983, 805 ILCS 5/15.70(c), the treatment of the merger did not violate the uniformity clause of the Illinois Constitution, Ill. Const., Art. IX, § 2 or the Equal

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Protection Clause given the presumption that taxing statutes are constitutional and the finding that the parent corporation did not show that the actions of the Illinois Secretary of State were arbitrary or unreasonable as certain economic advantages drove the decision to merge using a triangular merger instead of a horizontal one. USX Corp. v. White, 352 Ill. App. 3d 709, 288 Ill. Dec. 246, 817 N.E.2d 896, 2004 Ill. App. LEXIS 183 (1 Dist. 2004).

- Alcohol Tax

In an ordinance passed by the City of Chicago, there was no rational basis for imposing a tax upon those who purchased an alcoholic beverage for immediate consumption on the premises of the seller where no such tax was imposed on purchases of substantially identical beverages for off-premises consumption, and therefore such classification was arbitrary, discriminatory and bore no reasonable relationship to the purpose of the ordinance. North Sheffield, Inc. v. City of Chicago, 144 Ill. App. 3d 913, 98 Ill. Dec. 589, 494 N.E.2d 711 (1 Dist. 1986).

- Amusement Tax

Amusement tax enacted by municipality and protested by fair-profit corporation that operated an amusement park, offended neither uniformity nor equal protection as it was directed against customers rather than against plaintiff; the tax was levied upon every person who patronized an "amusement" in municipality and created an indefinitely large class of taxpayers who were treated equally and uniformly with each ticket purchaser paying the same 5% surcharge. North Pole Corp. v. Village of E. Dundee, 263 Ill. App. 3d 327, 200 Ill. Dec. 721, 635 N.E.2d 1060 (2 Dist. 1994).

- Arbitration Charge

The imposition of a $10 charge on all circuit court civil filings to fund the mandatory arbitration program does not violate the constitutional right to due process, the right to free access, the uniformity clause, or the equal protection clause, notwithstanding that the charge is levied even on cases that are statutorily and by rule precluded from using the arbitration system. Rose v. Pucinski, 321 Ill. App. 3d 92, 254 Ill. Dec. 43, 746 N.E.2d 800, 2001 Ill. App. LEXIS 160 (1 Dist. 2001), appeal denied, 195 Ill. 2d 598, 258 Ill. Dec. 100, 755 N.E.2d 483 (2001).

- County Library Act

The library fee requirement of former Ill. Rev. Stat., ch. 81, para. 81 did not violate this section. Ali v. Danaher, 47 Ill. 2d 231, 265 N.E.2d 103 (1970).

- County Wheel Tax

The adoption by defendant county of a wheel tax on motor vehicles in unincorporated areas of the county was a proper exercise of the power conferred upon the defendant county under the home rule unit powers article of the state constitution and the classification created was reasonable and not violative of the equal protection or due process clauses of the federal constitution, Ill. Const. (1970), Art. I, § 2, or this section. Gilligan v. Korzen, 56 Ill. 2d 387, 308 N.E.2d 613 (1974).

- Diesel Fuel Tax

County roadway usage was a reasonable distinction between those taxed and those not taxed under a fuel tax scheme and there was a reasonable relationship between the exemptions and the object of the legislation, therefore the tax ordinance was constitutional under the uniformity clause. Moran Transp. Corp. v. Stroger, 303 Ill. App. 3d 459, 236 Ill. Dec. 922, 708 N.E.2d 508 (1 Dist. 1999), appeal denied, 184 Ill. 2d 559, 239 Ill. Dec. 609, 714 N.E.2d 528 (1999).

- Fees Charged NPDES Permit Holders

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Because the statute imposing fees on aggregate mines holding National Pollutant Discharge Elimination System permits, 415 ILCS 5/12.5, does not violate the uniformity clause it also does not violate either the equal protection or the substantive due process clauses in Ill. Const., Art. I, § 2. Valstad v. Cipriano, 357 Ill. App. 3d 905, 293 Ill. Dec. 544, 828 N.E.2d 854, 2005 Ill. App. LEXIS 449 (4 Dist. 2005), appeal denied, 216 Ill. 2d 736, 298 Ill. Dec. 391, 839 N.E.2d 1038 (2005).

Because there exists a legally sufficient justification for imposing fees on aggregate mines holding National Pollutant Discharge Elimination System permits, 415 ILCS 5/12.5 does not violate the uniformity clause, Ill. Const. (1970), Art. IX, § 2. Valstad v. Cipriano, 357 Ill. App. 3d 905, 293 Ill. Dec. 544, 828 N.E.2d 854, 2005 Ill. App. LEXIS 449 (4 Dist. 2005), appeal denied, 216 Ill. 2d 736, 298 Ill. Dec. 391, 839 N.E.2d 1038 (2005).

- Franchise Tax

805 ILCS 5/14.30, does not violate the uniformity clause of the Illinois Constitution, Ill. Const. (1970), Art. IX, § 2, as the only rule of uniformity required with respect to taxes on franchises is that they shall be uniform upon the class on which they operate and applying an additional franchise tax in a case of a statutory merger bears some reasonable relationship to the object of the legislation, which is tax to tax periods of time when the corporation enjoyed the fruits of transacting business in the State of Illinois. NDC, LLC v. Topinka, 374 Ill. App. 3d 341, 312 Ill. Dec. 810, 871 N.E.2d 210, 2007 Ill. App. LEXIS 665 (1 Dist. 2007), appeal denied, 225 Ill. 2d 638, 875 N.E.2d 1113, 2007 Ill. LEXIS 1593 (2007).

The format for determining the annual franchise taxes of foreign corporations doing business in Illinois under 805 ILCS 5/15.65(d) did not violate the uniformity clause as it is a rational system of classification which serves public policy. Venture Stores, Inc. v. Ryan, 286 Ill. App. 3d 673, 222 Ill. Dec. 688, 678 N.E.2d 300 (4 Dist. 1997), appeal denied, 173 Ill. 2d 548, 226 Ill. Dec. 140, 684 N.E.2d 1343 (1997).

- Gambling

Taxpayers' contentions that the Illinois Income Tax Act created several classifications that violated the tax uniformity clause, Ill. Const. art. IX, § 2 were rejected because: (1) the taxpayers failed to persuade the court that no state of facts could reasonably be conceived that would sustain Illinois' decision to press the federal distinction further to eliminate any deduction for losses incurred in casual gambling; (2) the taxpayers cited no source for their claim that different reporting requirements existed for different forms of gambling; and (3) concerns over the nature of gambling justified Illinois not only in tacitly following the federal model by limiting the deduction for losses of professional gamblers but also in denying any deduction for the losses of recreational gamblers. Byrd v. Hamer, 408 Ill. App. 3d 467, 347 Ill. Dec. 825, 943 N.E.2d 115, 2011 Ill. App. LEXIS 59 (2 Dist. 2011).

- Impact Fees

Because road improvements for which impact fees are imposed must be specifically and uniquely attributable to the traffic demands generated by the fee payers, and those fee payers must receive a direct and material benefit from the road improvements constructed, although not their exclusive use, thus, the members of the class bearing the cost of the program are indeed its sole beneficiaries and impact fees are not in violation of the uniformity clause. Northern Ill. Home Bldrs. Ass'n v. County of Du Page, 165 Ill. 2d 25, 208 Ill. Dec. 328, 649 N.E.2d 384 (1995).

- Indoor Tennis Courts

Ordinance which taxed only indoor and not outdoor tennis clubs was not arbitrary, discriminatory or based upon an unreasonable classification and therefore did not violate the Illinois Constitution. Greater Chicago Indoor Tennis Clubs, Inc. v. Village of Willowbrook, 30 Ill. App. 3d 134, 332 N.E.2d 199 (2 Dist. 1975), aff'd, 63 Ill. 2d 400, 349 N.E.2d 3 (1976).

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- Municipal Parking Tax

The fact that a municipal parking tax was levied at a fixed amount each time the privilege of parking was exercised instead of at the percentage of the charge for exercising the privilege did not destroy the uniformity of the tax and therefore make it unconstitutional. Jacobs v. City of Chicago, 53 Ill. 2d 421, 292 N.E.2d 401 (1973).

Provision of municipal parking tax providing for the payment of fixed amounts of taxes for those who paid for their parking on a weekly or monthly basis did not violate the uniformity provision of the Constitution. Jacobs v. City of Chicago, 53 Ill. 2d 421, 292 N.E.2d 401 (1973).

- Occupational Tax

Trial court improperly granted summary judgment, 735 ILCS 5/2-1005, to a restaurant in an action to recover retailer's occupational taxes under 35 ILCS 120/1 et seq.; the restaurant was not entitled to an educational institution exemption, set forth in Ill. Admin. Code tit. 86, § 130.2005(a)(2)-(a)(4) and 35 ILCS 120/2-5, as the restaurant was not a university's agent because the leases provided that the restaurant was a lessee and independent contractor and because the restaurant was not a wholesaler who resold products to the university; the tax did not violate Ill. Const. (1970), Art. IX, § 2 because the restaurant was selling products for a profit to university students and faculty. Subway Rests. of Bloomington-Normal, Inc. v. Topinka, 322 Ill. App. 3d 376, 256 Ill. Dec. 150, 751 N.E.2d 203, 2001 Ill. App. LEXIS 461 (1 Dist. 2001).

- Privilege Tax

Even though the classification of foreign and domestic insurance companies under 215 ILCS 5/409 is based on real and substantial difference between those who pay the privilege tax and those who do not, imposing the privilege tax on all foreign companies does not bear a reasonable relationship to the object of the legislation or to public policy. Milwaukee Safeguard Ins. Co. v. Selcke, 179 Ill. 2d 94, 227 Ill. Dec. 731, 688 N.E.2d 68 (1997).

The uniformity clause of the Illinois Constitution is violated by 215 ILCS 5/409 because it exempts domestic insurance companies who meet certain requirements from payment of the privilege tax but does not exempt foreign companies from payment even if they meet those same requirements. Milwaukee Safeguard Ins. Co. v. Selcke, 179 Ill. 2d 94, 227 Ill. Dec. 731, 688 N.E.2d 68 (1997).

- School Code

The School Code (see now 105 ILCS 5/1-1 et seq.) permitted the defendants to offer driver education classes for persons over the age of 21, who qualify for classes, however, the defendants could not indiscriminately accept anyone or everyone over 21 who may desire to enroll. Acorn Auto Driving Sch., Inc. v. Board of Educ., 27 Ill. 2d 93, 187 N.E.2d 722 (1963).

- Tax Amnesty Legislation

An act requiring that certain taxpayers be denied amnesty for tax liability because they were under criminal investigation while other tardy taxpayers are permitted to receive the amnesty conformed to equal-protection requirements of the fourteenth amendment of the U.S. Constitution, Ill. Const. (1970), Art. I, § 2, and this section of the Illinois Constitution. Snappy Car Rental Chicago, Inc. v. Department of Revenue, 146 Ill. App. 3d 1028, 100 Ill. Dec. 662, 497 N.E.2d 840 (4 Dist. 1986).

- Tobacco Products Act

Tax imposed under the Tobacco Products Tax Act of 1995 bore a reasonable relationship to the objective of the Act and the Act did not violate the uniformity clause; as defendants asserted a justification for the tax, that the Act taxed tobacco distributors because their products cause diseases that conceivably require long-term care for those persons who cannot pay for it, it was

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then the plaintiff corporation's burden to show that the asserted justification was unsupported by the facts, which the corporation failed to do. Arangold Corp. v. Zehnder, 204 Ill. 2d 142, 272 Ill. Dec. 600, 787 N.E.2d 786, 2003 Ill. LEXIS 460 (2003).

To satisfy the uniformity clause, Ill. Const. Art. IX, § 2, the tax under the Illinois Tobacco Products Act of 1995, 35 ILCS 143/10-1 et seq., only needs to bear some reasonable relationship to the Act's object, and is not per se invalid because it taxes a narrow group of tobacco distributors to fund a general welfare program, and therefore the Act does not violate the uniformity clause. Arangold Corp. v. Zehnder, 329 Ill. App. 3d 781, 263 Ill. Dec. 631, 768 N.E.2d 391, 2002 Ill. App. LEXIS 266 (1 Dist. 2002), aff'd, 204 Ill. 2d 142, 272 Ill. Dec. 600, 787 N.E.2d 786 (2003).

- Traffic and Criminal Convictions Fund

Moneys collected pursuant to precursor provision to 730 ILCS 5/5-9-1(c) for contribution to the Traffic and Criminal Convictions Fund are penal fines and not taxes and therefore do not violate this section. People v. Wilson, 144 Ill. App. 3d 290, 98 Ill. Dec. 727, 494 N.E.2d 849 (4 Dist. 1986).

Intent

- In General

It was the aim of the framers of the Constitution that all property should bear its just portion of taxation and that there should be no favored class. People ex rel. Gill v. Trustees of Schs., 364 Ill. 131, 4 N.E.2d 16 (1936).

There should be an equality of taxation according to the value of the property taxed; one class of property within a municipality should not be assessed at one value while the same class of property similarly situated, in the same community, is assessed at a grossly higher value. People ex rel. Wangelin v. Wiggins Ferry Co., 357 Ill. 173, 191 N.E. 296 (1934).

Assessed value of property for taxation purposes cannot be impeached merely because of a difference of opinion as to values between the assessing bodies and the court. People ex rel. Wangelin v. Wiggins Ferry Co., 357 Ill. 173, 191 N.E. 296 (1934).

- Power to Raise Revenue

It was intended that the power to raise revenue through taxation is firmly vested in the General Assembly both through the inherent power of that body, and by the specific grant of the Constitution, and that this power be subject to only such limitations as are expressly stated in the Constitution and that the express limitations are to be exclusive. Hoffmann v. Clark, 69 Ill. 2d 402, 14 Ill. Dec. 269, 372 N.E.2d 74 (1977).

Jurisdiction

- In General

The Supreme Court would not assume jurisdiction on direct appeal merely to refer to earlier decisions regarding the constitutionality of a statute. Richter v. City of Mt. Carroll, 398 Ill. 473, 76 N.E.2d 452 (1947).

Mathematical Differences

Fee differences arising from variant road improvement costs, and credits which may, as in "zero-fee" districts, exceed the fee that would be due, are real and substantial differences which do not violate the uniformity clause; where county districts are reasonably drawn and the fee formula is

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equally applied, a difference in mathematical results among the districts does not destroy uniformity. Northern Ill. Home Bldrs. Ass'n v. County of Du Page, 165 Ill. 2d 25, 208 Ill. Dec. 328, 649 N.E.2d 384 (1995).

Overlapping Special Tax Districts

In the situation of overlapping special tax districts, located partially in two or more counties, as long as the assessment and levy of taxes is based upon the judgment of the assessing officers in each separate county, absolute uniformity cannot be achieved: this matter is one exclusively for the legislature, and the relief, if any, in the several counties must come from the legislature and not from the courts. People ex rel. Schlaeger v. Allyn, 393 Ill. 154, 65 N.E.2d 392 (1946).

Property Valuation

- In General

Where the value of property for taxation has been fixed by the officials designated by statute, such value is not, in the absence of fraud, subject to the supervision of the judicial department of the state. People ex rel. Ingram v. Wasson Coal Co., 403 Ill. 30, 85 N.E.2d 182 (1949).

- Applicability

The fact that there may be a difference of opinion as to the value of property between the assessing authorities and the court did not justify interference on the part of the court under former Ill. Const. (1870), Art. IX, § 1 (see now this section). People ex rel. Wangelin v. St. Louis Bridge Co., 357 Ill. 245, 191 N.E. 300 (1934).

Purpose

Officer had a sufficiently specific and articulable basis for concluding that 625 ILCS 5/11-701(a) was being broken where an officer saw defendant's car drive out of the proper lane; thus, the driver's single, momentary crossing of the center line provided a sufficient basis for stopping defendant and the stop was valid under U.S. Const., Amend. IV because the officer knew no facts that made it reasonably apparent that the crossing was legal. People v. Rush, 319 Ill. App. 3d 34, 253 Ill. Dec. 383, 745 N.E.2d 157, 2001 Ill. App. LEXIS 179 (1 Dist. 2001).

Court held the Illinois income tax credit in 35 ILCS 5/201(m) to be constitutional under Ill. Const, Art. IX, § 2, because: (1) it had a clear secular legislative purpose of ensuring a well-educated citizenry and relieving public expense; (2) had a primary effect of effectuating those purposes, as opposed to advancing or inhibiting religion; and (3) involved no more governmental entanglement with religion than many other tax laws. By creating the credit, the legislature has recognized that parents who send their children to private schools often do so at considerable expense to themselves and that they provide a benefit to the State treasury by relieving the State and local taxpayers of the expense of educating their children. It is an appropriate legislative goal to assist those schools in remaining financially viable. Toney v. Bower, 318 Ill. App. 3d 1194, 253 Ill. Dec. 69, 744 N.E.2d 351, 2001 Ill. App. LEXIS 144 (1 Dist. 2001).

This section was created to permit the legislature to enact tax laws which would exempt taxation on food and other necessities. Cerro Wire & Cable Co. v. Department of Revenue, 111 Ill. App. 3d 882, 67 Ill. Dec. 535, 444 N.E.2d 771 (1 Dist. 1982).

Rational Basis

- Filing Fees

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There was a reasonable basis for the legislature's decision to classify counties according to whether they have a population of less or more than 1,000,000 inhabitants in regard to the establishment and amount of filing fees. Mlade v. Finley, 112 Ill. App. 3d 914, 68 Ill. Dec. 387, 445 N.E.2d 1240 (1 Dist. 1983).

Complaint failed to state facts which could, if proven, rebut the presumption that the filing charge imposed by the Clerks of Courts Act (see now 705 ILCS 105/27.2(15)(a)) was a valid fee; despite the distinction between "taxes" and "fees," both are used by the government to raise revenue, and it was accurate for the county to state that the charges in question are tantamount to a tax on litigation. Mlade v. Finley, 112 Ill. App. 3d 914, 68 Ill. Dec. 387, 445 N.E.2d 1240 (1 Dist. 1983).

Reasonableness

Under Ill. Const., Art. IX, § 2, the sole requirement placed on tax credits is that the exemptions, deductions, credits, refunds, and other allowances shall be reasonable; thus, the constitution recognizes that differences will exist in the deductions granted to various classes of taxpayers and merely imposes a requirement of reasonableness. Toney v. Bower, 318 Ill. App. 3d 1194, 253 Ill. Dec. 69, 744 N.E.2d 351, 2001 Ill. App. LEXIS 144 (1 Dist. 2001).

The only limitation on the legislature's authority with regard to the creation of exemptions and other allowances is that they be reasonable. Cerro Wire & Cable Co. v. Department of Revenue, 111 Ill. App. 3d 882, 67 Ill. Dec. 535, 444 N.E.2d 771 (1 Dist. 1982).

Exemptions must meet a standard of reasonableness. That persons of the age 65 years and older who are able to afford vehicles with large horsepower engines are less in need of tax relief than others, and that motor vehicles of 55 or more horsepower can create greater environmental problems than do lower horsepower vehicles, are reasonable considerations. Head v. Korshak, 62 Ill. 2d 226, 341 N.E.2d 706 (1976).

- Shown

Tax provided by section 2(b) of the Cigarette Tax Act (see now 35 ILCS 130/2(b)) does not violate the provisions of this section as the tax is reasonable. S. Bloom, Inc. v. Mahin, 61 Ill. 2d 70, 329 N.E.2d 213 (1975).

Review

Under former section 1 of Article IX of the Illinois Constitution (see now Ill. Const. (1970), Art. IX, §§ 2, 4), the courts, in the absence of fraud, had no power to review or determine the value of property fixed for purposes of taxation by the administrative officers to whom such function has been delegated. People ex rel. Callahan v. Gulf, Mobile and O.R.R., 8 Ill. 2d 66, 132 N.E.2d 544 (1956).

Standing

- Not Shown

Under former version of Public Utilities Revenue Act (see now 35 ILCS 620/1) a "taxpayer" on whom a tax was imposed was defined as a person engaged in the business of transmitting telegraph or telephone messages or of distributing, supplying, furnishing, or selling gas or electricity for use or consumption, and not for resale; where appellant was included within the second class and not within the first, argument that the act was invalid because including in the class subject to the payment of a tax those engaged in transmitting messages by telegraph or telephone, and not including in the same class those engaged in transmitting messages by radio,

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constituted arbitrary classification, could only be raised by one engaged in the business of transmitting messages by telegraph or telephone and who was injured by the alleged unlawful discrimination. Liberty Nat'l Bank v. Collins, 388 Ill. 549, 58 N.E.2d 610 (1944).

- Shown

Plaintiff motel owners were affected by the issue whether village's tax on use and privilege of renting motel room was constitutional and had standing to raise the issue of uniformity. Marcus Corp. v. Village of S. Holland, 120 Ill. App. 3d 300, 75 Ill. Dec. 944, 458 N.E.2d 112 (1 Dist. 1983).

Strict Construction

Exemption statutes are strictly construed, and one who seeks exemption must show that the use of the property falls clearly within the statutes. People ex rel. Kelly v. Avery Coonley Sch., 12 Ill. 2d 113, 145 N.E.2d 80 (1957).

The writers of the Constitution did not intend a liberal interpretation of the exemption, but rather a restricted one, so as to attain the object sought, that property should bear only its just portion of the tax burden and no property should be exempt until declared so by legislative enactment. People ex rel. Gill v. Trustees of Schs., 364 Ill. 131, 4 N.E.2d 16 (1936).

Tax Found Proper

Illinois retaliatory tax, 215 ILCS 5/444, on alien corporations is not prohibited by the uniformity clause of the Illinois Constitution, Ill. Const. art. IX, § 2; all foreign and alien insurance companies had to pay the tax, regardless of their origin, and the retaliatory tax's legitimate purpose of equalizing tax burdens between states barred a challenge by a Canadian insurer doing business in Illinois. Sun Life Assur. Co. of Can. v. Manna, 227 Ill. 2d 128, 316 Ill. Dec. 253, 879 N.E.2d 320, 2007 Ill. LEXIS 1699 (2007).

Tax on sellers of realty in village and exemption for sellers who buy new homes in the village was found to be constitutional under the uniformity, equal protection, and due process clauses of the Illinois constitution. Ball v. Village of Streamwood, 281 Ill. App. 3d 679, 216 Ill. Dec. 251, 665 N.E.2d 311 (1 Dist. 1996).

Where the authority demonstrated in several ways a real and substantial difference between those taxed and those not taxed, and the tax on the increased benefits bore not only a reasonable relationship but a direct relationship to the source of those benefits; the tax did not violate the uniformity clause, and summary judgment was appropriate. Geja's Cafe v. Metropolitan Pier & Exposition Auth., 153 Ill. 2d 239, 180 Ill. Dec. 124, 606 N.E.2d 1212 (1992).

Chicago Transaction Tax Ordinance was not invalid as to real estate transfers or the leasing of personal property because taxpayers did not show that the classifications defining the objects of taxation or tax rates were arbitrary or unreasonable. Williams v. Chicago, 66 Ill. 2d 423, 6 Ill. Dec. 208, 362 N.E.2d 1030, 1977 Ill. LEXIS 271 (1977).

Taxing District

- Proper

The tax did not violate the uniformity clause where it was imposed on the sale of carry-out food purchased at restaurants, which were defined as businesses that derive the majority of their gross receipts from the sale of food and beverages for on-premises consumption, while excluding

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the sale of the very same carry-out food from places such as grocery stores as the classification was designed to target the types of food service establishments likely to benefit from increased convention trade and the types of food purchases likely to be made by conventioneers; therefore there was a real and substantial difference between those taxed and not taxed, which bore a reasonable relation to the legislation. Geja's Cafe v. Metropolitan Pier & Exposition Auth., 153 Ill. 2d 239, 180 Ill. Dec. 124, 606 N.E.2d 1212 (1992).

Uniformity

Section 50-50 of Illinois FY2004 Budget Implementation Act, 2003 Ill. Laws 32, which established non-consumer user fees for certain users of state administrative services, was held, in the context of fees imposed on employers who were subject to the workers' compensation laws, not to violate either the uniformity clause of Ill. Const. Art. IX, § 2 or the due process guarantee of Ill. Const. Art. I, § 2, because the challenging employer failed to carry its burden of showing that the imposition of the fee on employers rather than on employees was rational in terms of who generally bore workers' compensation costs and because the challenger also failed to show that fee collections that were transferred to the state's general revenue fund were used for any purposes other than to cover the indirect costs of the workers' compensation program. Ill. State Chamber of Commerce v. Filan, 216 Ill. 2d 653, 297 Ill. Dec. 471, 837 N.E.2d 922, 2005 Ill. LEXIS 1610 (2005).

- In General

415 ILCS 5/12.5 did not violate the uniformity clause, Ill. Const. Art. IX, § 2 because there existed a legally sufficient justification for imposing fees on aggregate mines holding National Pollutant Discharge Elimination System permits, imposing a fee on school districts holding such permits would not advance the objectives of increasing state revenues, and imposition of the fees only on point sources of pollution was reasonably related to that legislative purpose. Valstad v. Cipriano, 357 Ill. App. 3d 905, 293 Ill. Dec. 544, 828 N.E.2d 854, 2005 Ill. App. LEXIS 449 (4 Dist. 2005), appeal denied, 216 Ill. 2d 736, 298 Ill. Dec. 391, 839 N.E.2d 1038 (2005).

Distinction for taxation purposes drawn under 35 ILCS 5/1501(a)(8) between regulated and nonregulated investment companies does not violate the uniformity clause contained in Ill. Const.(1970), Art. IX, § 2. Zebra Techs. Corp. v. Topinka, 344 Ill. App. 3d 474, 278 Ill. Dec. 860, 799 N.E.2d 725, 2003 Ill. App. LEXIS 1290 (1 Dist. 2003).

If a tax is constitutional under the uniformity clause, it also passes under the equal protection clause; under the principles of equal protection, a classification is invalid if it is arbitrary and without a reasonable basis. Endsley v. City of Chicago, 319 Ill. App. 3d 1009, 253 Ill. Dec. 585, 745 N.E.2d 708, 2001 Ill. App. LEXIS 133 (1 Dist. 2001).

To survive scrutiny under the uniformity clause, a non-property tax classification must: (1) be based on a real and substantial difference between the people taxes and those not taxes; and (2) bear some reasonable relationship to the object of the legislation or to public policy. Endsley v. City of Chicago, 319 Ill. App. 3d 1009, 253 Ill. Dec. 585, 745 N.E.2d 708, 2001 Ill. App. LEXIS 133 (1 Dist. 2001).

Uniformity clause imposes more narrow limitations on the legislature's authority to classify the subjects and objects of taxation than the equal protection clause. Endsley v. City of Chicago, 319 Ill. App. 3d 1009, 253 Ill. Dec. 585, 745 N.E.2d 708, 2001 Ill. App. LEXIS 133 (1 Dist. 2001).

Uniformity in taxation, as required by the state constitution, implies equality in the burden of taxation, and this equality in burden cannot exist without uniformity in the basis of assessment as well as in the rate of taxation. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395, 169 N.E.2d 769 (1960).

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The rule of uniformity of taxes applies to property of like kind and character and similarly situated. People ex rel. Schlaeger v. Allyn, 393 Ill. 154, 65 N.E.2d 392 (1946).

The requirement of uniformity in taxation lies at the foundation of all taxing power of the state. People ex rel. McDonough v. Illinois Cent. R.R., 355 Ill. 605, 190 N.E. 82 (1934).

No person should be compelled to pay a greater proportion of taxes, according to the value of his property, than another. People v. Charles H. Besley & Co., 353 Ill. 472, 187 N.E. 461 (1933).

- Applicability

The financing of nonrelated projects with Skyway Toll Bridge System tolls did not violate the uniformity clause as such tolls did not constitute taxation. Endsley v. City of Chicago, 319 Ill. App. 3d 1009, 253 Ill. Dec. 585, 745 N.E.2d 708, 2001 Ill. App. LEXIS 133 (1 Dist. 2001).

- Illustrative Cases

Taxpayers' claim that the transfer tax violated the uniformity clause of Ill. Const. art. IX, § 2 was also properly dismissed because it was reasonable to impose on new residents the one-time burden of contributing to the maintenance of a school district, as new residents generally will add to the school population and costs. The exemption from the tax for homestead purchasers but not for nonhomestead purchasers bore a reasonable relationship to the issue of school funding. Rajterowski v. City of Sycamore, 405 Ill. App. 3d 1086, 346 Ill. Dec. 313, 940 N.E.2d 682, 2010 Ill. App. LEXIS 1171 (2 Dist. 2010).

Uniformity clause in Ill. Const. art. IX, § 2 was not violated by bottled water tax in Chicago, Ill., Mun. Code § 3-43-030 because a real and substantial difference existed between the bottled water taxed and the beverages marketed for certain specific features, such as flavoring, that were not taxed and the classification bore a reasonable relationship to the object of the legislation to discourage the purchase of bottled water to, inter alia, conserve energy from nonrenewable sources because the bottles were made from nonrenewable petroleum. Am. Bev. Ass'n v. City of Chicago, 404 Ill. App. 3d 682, 344 Ill. Dec. 555, 937 N.E.2d 261, 2010 Ill. App. LEXIS 1014 (1 Dist. 2010).

215 ILCS 5/444(1), imposing a retaliatory tax on alien insurers, did not violate the uniformity clause, Ill. Const. (1970), Art. IX, § 2, the federal equal protection clause or Ill. Const. (1970), Art. I, § 2, or the foreign commerce clause. It had the legitimate purpose of promoting domestic industry by deterring other countries from enacting discriminatory taxes, and its impact on foreign affairs was incidental. Sun Life Assur. Co. of Can. v. Manna, 368 Ill. App. 3d 591, 306 Ill. Dec. 706, 858 N.E.2d 503, 2006 Ill. App. LEXIS 996 (1 Dist. 2006).

Uniformity clause does not extend to rolls because taxes are an enforced proportional contribution levied by the state by virtue of its sovereignty for support of the government while tolls are contractual in nature and are compensation for the use of another's property; furthermore, the use of the tollway is a voluntary choice made by road users. Endsley v. City of Chicago, 319 Ill. App. 3d 1009, 253 Ill. Dec. 585, 745 N.E.2d 708, 2001 Ill. App. LEXIS 133 (1 Dist. 2001).

The retailers' occupation tax statutory scheme, under which for-profit businesses must pay retailers' occupation tax on sales of products to a university's students, faculty, and staff members, while exclusively educational facilities, like the university, are exempt from retailers' occupation tax for such sales, does not violate the uniformity clause. Subway Rests. of Bloomington-Normal, Inc. v. Topinka, 322 Ill. App. 3d 376, 256 Ill. Dec. 150, 751 N.E.2d 203, 2001 Ill. App. LEXIS 461 (4 Dist. 2001).

The provisions of 735 ILCS 5/2-1009A, which imposes a surcharge on the filing fee in civil litigation to fund court-annexed mandatory arbitration, do not violate the uniformity clause, the equal protection clause, the free access clause, or the due process clause of the constitution.

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Mellon v. Coffelt, 313 Ill. App. 3d 619, 246 Ill. Dec. 422, 730 N.E.2d 102, 2000 Ill. App. LEXIS 384 (2 Dist. 2000), appeal denied, 191 Ill. 2d 534, 250 Ill. Dec. 459, 738 N.E.2d 928 (2000).

A water district failed to show a violation of the uniformity clause arising from the imposition of taxes on the property at issue, notwithstanding the contention that taxes were not imposed on other similar property, since the district failed to present evidence concerning the extent to which it made use of the other property for its public purposes and, thus, failed to provide sufficient evidence to show that its tax exempt property was similarly situated to the property at issue. Metropolitan Water Reclamation Dist. v. Department of Revenue, 313 Ill. App. 3d 469, 246 Ill. Dec. 273, 729 N.E.2d 924, 2000 Ill. App. LEXIS 381 (1 Dist. 2000).

The disallowance to trusts of a credit against their replacement tax liability for income taxes paid to another state did not violate the uniformity clause, since taxing all of the income of the trusts, as residents of the state, was reasonably related to the purpose of the Income Tax Act. Zunamon v. Zehnder, 308 Ill. App. 3d 69, 241 Ill. Dec. 269, 719 N.E.2d 130, 1999 Ill. App. LEXIS 655 (1 Dist. 1999), appeal denied, 187 Ill. 2d 593, 244 Ill. Dec. 191, 724 N.E.2d 1275 (2000), cert. denied, 530 U.S. 1244, 120 S. Ct. 2692, 147 L. Ed. 2d 963 (2000).

The imposition of an invested capital tax upon a cellular telephone service provider did not violate the uniformity clause, notwithstanding that cellular providers and resellers engaged in some competition but were taxed differently, since there were substantial differences between them and the difference in treatment was, therefore, reasonable. Chicago SMSA Ltd. Partnership v. Illinois Dep't of Revenue, 306 Ill. App. 3d 977, 240 Ill. Dec. 32, 715 N.E.2d 719 (1 Dist. 1999), appeal denied, 187 Ill. 2d 566, 244 Ill. Dec. 182, 724 N.E.2d 1266 (2000).

The trial court properly dismissed a challenge to portions of an ordinance which imposed an amusement tax on the ground that it did not violate the uniformity clause, but improperly dismissed such challenge with regard to other portions of the ordinance. DeWoskin v. Lowe's Chicago Cinema, Inc., 306 Ill. App. 3d 504, 239 Ill. Dec. 750, 714 N.E.2d 1047 (1 Dist. 1999).

The fact that the application of the single formula contained in 805 ILCS 5/1.80(j) and applicable to all taxpayers resulted in the heavier taxation of a particular taxpayer did not render the statute violative of the uniformity clause. E & E Hauling, Inc. v. Ryan, 306 Ill. App. 3d 131, 238 Ill. Dec. 932, 713 N.E.2d 178 (1 Dist. 1999).

Airport departure taxes imposed on operators of taxicab, limousine, bus and van services as city licensed ground transportation operators did not violate uniformity clause. Allegro Servs., Ltd. v. Metropolitan Pier & Exposition Auth., 172 Ill. 2d 243, 216 Ill. Dec. 689, 665 N.E.2d 1246 (1996).

Additional charge for water and sewer service, charged on property pursuant to ordinance which provided for storm sewer financing, if regarded as a tax, offends the uniformity requirement of this section unless it can be regarded as a special assessment or special tax. Conner v. City of Elmhurst, 28 Ill. 2d 221, 190 N.E.2d 760 (1963).

- Impact Fees

Because the classifications created by county were based on real and substantial differences between the person assessed a fee and those who were not and because they bore a reasonable relationship to the legislative purpose of assuring that new development bears its fair share of the cost of meeting the demand of road improvements, the impact fees imposed by the county did not violate the uniformity clause. Northern Ill. Home Bldrs. Ass'n v. County of Du Page, 251 Ill. App. 3d 494, 190 Ill. Dec. 559, 621 N.E.2d 1012 (2 Dist. 1993), rev'd on other grounds, 165 Ill. 2d 25, 208 Ill. Dec. 328, 649 N.E.2d 384 (1995).

- Non-Property Tax Classification

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35 ILCS 5/201(k) granted all taxpayers subject to the income tax a credit for qualifying research and development expenditures incurred by the taxpayer; such a credit was perfectly uniform. Caveney v. Bower, 207 Ill. 2d 82, 278 Ill. Dec. 1, 797 N.E.2d 596, 2003 Ill. LEXIS 773 (2003).

Uniformity clause may be violated by non-property tax classifications which are either under-inclusive or over-inclusive. Allegro Servs., Ltd. v. Metropolitan Pier & Exposition Auth., 172 Ill. 2d 243, 216 Ill. Dec. 689, 665 N.E.2d 1246 (1996).

To survive scrutiny under uniformity clause, non-property tax classification must be based on real and substantial difference between people taxed and those not taxed and classification must bear some reasonable relationship to object of legislation or to public policy. Allegro Servs., Ltd. v. Metropolitan Pier & Exposition Auth., 172 Ill. 2d 243, 216 Ill. Dec. 689, 665 N.E.2d 1246 (1996).

- Not Shown

City ordinance which arbitrarily exempted commodities and securities businesses and all transactions on a futures or securities exchange from a service tax was in violation of the uniformity of taxation provision of the Illinois Constitution. Commercial Nat'l Bank v. City of Chicago, 89 Ill. 2d 45, 59 Ill. Dec. 643, 432 N.E.2d 227 (1981).

Where an assessor, in assessing appellee's personal property, did not follow the usual procedure but, without inspection, refused to accept appellee's depreciation as shown by its books and made a gross reduction of twenty percent for depreciation from not a depreciated value, but the original cost price, such a method of valuation, as compared with the method used as to other like property, violated the constitutional and statutory requirements as to uniformity. People v. Commonwealth Edison Co., 376 Ill. 70, 32 N.E.2d 902 (1941).

The uniformity requirement was violated where appellee's property was not assessed on the basis of debasing factors used in the valuing of property of other corporations, nor was that valuation fixed on the same proportional value as was the property of other corporations within the county. People v. Commonwealth Edison Co., 376 Ill. 70, 32 N.E.2d 902 (1941).

Valuation of the property of each railroad company subject to assessment by state tax, by dividing such valuation among the several counties and other taxing districts through which the lines of such railroad company operated, and then equalizing the valuation in each county at the percentage of fair cash value used by local assessing officers in equalizing other property in that county pursuant to former sections 56.1 et seq. of chapter 120 (see now 35 ILCS 200/11-70 to 35 ILCS 200/9-110), was illegal as it violated the uniformity clauses of this section. Mobile & O. R.R. v. State Tax Comm'n, 374 Ill. 75, 28 N.E.2d 100 (1940).

- Shown

Where any person who sold leaded gasoline to a purchaser other than to a "retail dealer," as defined under the ordinance, was a "retail dealer" and those purchasers were liable for the tax, regardless of whether the seller may also be a "distributor" with regard to other transfers of leaded fuel, the ordinance was constitutional because it uniformly applied to all purchasers of leaded gasoline. Illinois Gasoline Dealers Ass'n v. City of Chicago, 141 Ill. App. 3d 976, 96 Ill. Dec. 298, 491 N.E.2d 112 (1 Dist. 1986).

Exemptions that relate to property that has been used for more than three months before it is brought into Illinois do not violate the equal protection clause of the Constitution of the United States and the uniformity requirements of former Ill. Const. (1870), Art. IX, § 1 (see now this section). Philco Corp. v. Department of Revenue, 40 Ill. 2d 312, 239 N.E.2d 805 (1968).

Limitation of carter's ordinance to horse-drawn and automotive vehicles, and to such vehicles as are used in the local cartage business for hire and reward, was deemed to rest upon a rational and reasonable difference of situation and condition, and the ordinance fully satisfied the

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constitutional requirement of uniformity of operation upon the class to which it applies. City of Chicago v. Willett Co., 1 Ill. 2d 311, 115 N.E.2d 785 (1953).

Validity

- Rational Basis

Subsections (1) and (13) of § 27.2 of the Clerks of Courts Act (see now 705 ILCS 105/27.2) are valid under the due process, equal protection, special legislation, and uniform taxation provisions if there is a reasonable basis for the classifications created by the statute. Mlade v. Finley, 112 Ill. App. 3d 914, 68 Ill. Dec. 387, 445 N.E.2d 1240 (1 Dist. 1983).

- Shown

The trial court did not err in holding that the Chicago vehicle fuel tax was not unconstitutional merely because it was imposed in addition to other taxes where the court found there was no showing that another tax had been imposed by the City of Chicago upon the privilege of purchasing or using in the city vehicle fuel purchased at a retail sale; therefore, there was no double taxation. Illinois Gasoline Dealers Ass'n v. City of Chicago, 119 Ill. 2d 391, 116 Ill. Dec. 555, 519 N.E.2d 447 (1988).

- Upheld

The reporting requirements specified in the Retailers' Occupation Tax Act (see now 35 ILCS 120/1) are reasonable as to the enforcement of the taxing scheme and do not violate this section. Cerro Wire & Cable Co. v. Department of Revenue, 111 Ill. App. 3d 882, 67 Ill. Dec. 535, 444 N.E.2d 771 (1 Dist. 1982).

Differential tax rates imposed on retailers by the Regional Transportation Authority pursuant to section 4.03 of the Regional Transportation Authority Act (see now 70 ILCS 3615/4.03(e)) are constitutional. Walter Peckat Co. v. Regional Transp. Auth., 81 Ill. 2d 221, 40 Ill. Dec. 797, 407 N.E.2d 28 (1980).

Tax ordinance held not so vague, unclear and ambiguous that its application to various types of transactions would be unreasonably indefinite, doubtful and uncertain, thereby precluding its interpretation and enforcement in a fair, nondiscriminatory and nonarbitrary manner. Williams v. City of Chicago, 66 Ill. 2d 423, 6 Ill. Dec. 208, 362 N.E.2d 1030 (1977).

As a nonproperty tax, section 1203 of chapter 120 is subject to two constitutional requirements: reasonableness and uniformity. A class was held reasonable, where it encompassed a readily identifiable and commonly understood class, and since the definition of mobile home in section 1201 is neither vague nor overbroad; furthermore, the tax is uniform since it applies alike to all persons similarly situated as all owners of inhabited mobile homes are taxed at the same rate per square foot. Berry v. Costello, 62 Ill. 2d 342, 341 N.E.2d 709 (1976).

Section permitting disconnection of land from a municipality (65 ILCS 5/7-3-6) was not unconstitutional in destroying uniformity of taxation as required by the State Constitution, where municipality had built a sewerline across property sought to be disconnected, but the subject property had derived no benefit from the sewer crossing it. Geweke v. Village of Niles, 368 Ill. 463, 14 N.E.2d 482 (1938).

Violation

- Not Shown

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Legislature's decision to limit the tax credit provided by 35 ILCS 5/201(e) to "mining," "manufacturing," and "retailing" is reasonably related to the goal of the legislature in enacting the credit and does not violate the Uniformity Clause, Ill. Const. (1970), Art. IX, § 2. Exelon Corp. v. Ill. Dep't of Revenue, 376 Ill. App. 3d 918, 315 Ill. Dec. 491, 876 N.E.2d 1081, 2007 Ill. App. LEXIS 1027 (1 Dist. 2007), rev'd, remanded, 2009 Ill. LEXIS 190 (Ill. 2009); reported in full, 2009 Ill. LEXIS 188 (Ill. 2009).

Taxpayer argued that 35 ILCS 5/201(e) violated the Uniformity Clause, Ill. Const. (1970), Art. IX, § 2, by allowing a tax credit to gas companies but not electric companies. This argument failed because a Uniformity Clause challenge to a tax credit (as opposed to a tax or fee) was limited to whether the credit was reasonable, not whether it was uniformly allowed. Exelon Corp. v. Ill. Dep't of Revenue, 376 Ill. App. 3d 918, 315 Ill. Dec. 491, 876 N.E.2d 1081, 2007 Ill. App. LEXIS 1027 (1 Dist. 2007), rev'd, remanded, 2009 Ill. LEXIS 190 (Ill. 2009); reported in full, 2009 Ill. LEXIS 188 (Ill. 2009).

County ordinance providing for $5 fee imposed upon municipal traffic offenders does not violate this section. People v. Wilson, 144 Ill. App. 3d 290, 98 Ill. Dec. 727, 494 N.E.2d 849 (4 Dist. 1986).

City of Chicago's transmission of messages tax ordinance is not a violation of equal protection because it distinguishes between interstate and intrastate telephone calls. Adler v. Illinois Bell Tel. Co., 72 Ill. 2d 295, 21 Ill. Dec. 216, 381 N.E.2d 294 (1978).

Authorization of public sale of real property for less than full amount of taxes owed, with an extinguishment of any lien for balance of taxes, did not violate former Ill. Const. (1870), Art. IX, § 1 (see now this section) insuring uniformity and equality in levying and collecting taxes. Schreiber v. County of Cook, 388 Ill. 297, 58 N.E.2d 40, 155 A.L.R. 1162 (1944).

RESEARCH REFERENCES

State income tax treatment of partnerships and partners. 2 A.L.R.6th 1.

Classification, as real estate or personal property, of mobile homes or trailers for purposes of state or local taxation. 7 ALR4th 1016.

Exemption, from sales or use tax, of water, oil, gas, other fuel, or electricity provided for residential purposes. 15 ALR4th 269.

What constitutes church, religious society, or institution exempt from property tax under state constitutional or statutory provisions. 28 ALR4th 344.

Exemption of public golf courses from local property taxes. 41 ALR4th 963.

Construction and application of state corporate income tax statutes allowing net operating loss deductions. 33 ALR5th 509.

Validity, construction, and effect of state or local cabaret tax. 55 ALR5th 771.

Section 3. Limitations on Income Taxation.

(a) A tax on or measured by income shall be at a non-graduated rate. At any one time there may be no more than one such tax imposed by the State for State purposes on individuals and one such tax so imposed on corporations. In any such tax imposed upon

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corporations the rate shall not exceed the rate imposed on individuals by more than a ratio of 8 to 5.

(b) Laws imposing taxes on or measured by income may adopt by reference provisions of the laws and regulations of the United States, as they then exist or thereafter may be changed, for the purpose of arriving at the amount of income upon which the tax is imposed.

(Source: Illinois Constitution.)

CASE NOTES

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Alimony

The amount paid by plaintiff husband and received by his former wife as alimony was properly taxable as income to each individual. Wolters v. Johnson, 114 Ill. App. 3d 546, 70 Ill. Dec. 342, 449 N.E.2d 216 (1 Dist. 1983).

Corporate Net Income

In reasonably adopting a system where federal taxable income is used as a starting point in arriving at corporate net income for Illinois tax purposes, the legislature did not misinterpret or misapply the constitution in any way. Warren Realty Co. v. Department of Revenue, 62 Ill. App. 3d 450, 19 Ill. Dec. 585, 379 N.E.2d 100 (1 Dist. 1978).

Divorced Parties

Plaintiff husband and his former wife who severed their joint relationship through divorce were treated as individual natural persons, with separate and distinct obligations under the law, and no longer as a collective unit. Wolters v. Johnson, 114 Ill. App. 3d 546, 70 Ill. Dec. 342, 449 N.E.2d 216 (1 Dist. 1983).

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Filing Fees

Complaint failed to state facts which could, if proven, rebut the presumption that the filing charge imposed by precursor to 705 ILCS 105/27.2(15)(a) was a valid fee; despite the distinction between "taxes" and "fees," both are used by the government to raise revenue, and it was accurate for the county to state that the charges in question were tantamount to a tax on litigation. Mlade v. Finley, 112 Ill. App. 3d 914, 68 Ill. Dec. 387, 445 N.E.2d 1240 (1 Dist. 1983).

Individuals

- Defined

The legislature's intent that "individuals" refers to one natural person or two or more natural persons with joint legal interests and liabilities is applicable to the construction of the term in subsection (a) of this section. Wolters v. Johnson, 114 Ill. App. 3d 546, 70 Ill. Dec. 342, 449 N.E.2d 216 (1 Dist. 1983).

Partnership Income

Subsection (a) of this section does not operate to exclude partnership income from the replacement tax. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

The personal property of a partnership is distinct from and, thus, taxable apart from the personal property of individual partners. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

Presumption

A state's scheme of taxation is presumed constitutional, and this presumption is overcome only by a clear showing that it is arbitrary and unsupportable by any set of facts. Warren Realty Co. v. Department of Revenue, 62 Ill. App. 3d 450, 19 Ill. Dec. 585, 379 N.E.2d 100 (1 Dist. 1978).

Valuation Limitation

- Deduction

Denying corporate taxpayers the valuation limitation deduction contained in precursor to 35 ILCS 5/203 is not unconstitutional under the Illinois or Federal Constitutions. National Realty & Inv. Co. v. Department of Revenue, 144 Ill. App. 3d 541, 98 Ill. Dec. 802, 494 N.E.2d 924 (2 Dist. 1986).

LEGAL PERIODICALS

For article, "Limits on State Taxation and Spending: Implications for the Illinois Constitutional Convention Referendum," see 8 N. Ill. U.L. Rev. 801 (1988).

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RESEARCH REFERENCES

Exemption of public golf courses from local property taxes. 41 ALR4th 963.

When is property owned by state or local governmental body put to public use so as to be eligible for property tax exemption. 114 ALR5th 561.

Practice Guides and Treatises.

Real Estate Taxation § 1.79 Nonprofit Agricultural and Other Societies (IICLE).

Real Estate Taxation § 1.25 Charter Exemptions (IICLE).

Real Estate Taxation § 1.23 The Nature and Origin of Exemptions (IICLE).

Section 4. Real Property Taxation.

(a) Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law.

(b) Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county.

(c) Any depreciation in the value of real estate occasioned by a public easement may be deducted in assessing such property.

(Source: Illinois Constitution.)

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Reproduction Cost Method of Valuation
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Valuation

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In General

The General Assembly prescribed limitations on the authority to classify real property in Public Act 78-700 by adding former section 20a to the Revenue Act of 1939 (see now 35 ILCS 200/9-150), which became effective January 1, 1974. People ex rel. Korzen v. Mid-Continental Realty Corp., 63 Ill. App. 3d 835, 20 Ill. Dec. 643, 380 N.E.2d 852 (1 Dist. 1978).

It was intended that the power to raise revenue through taxation is firmly vested in the General Assembly both through the inherent power of that body and by the specific grant of the Constitution; moreover, this power is subject to only such limitations as are expressly stated in the Constitution and the express limitations are to be exclusive. Hoffmann v. Clark, 69 Ill. 2d 402, 14 Ill. Dec. 269, 372 N.E.2d 74 (1977).

Property taxes must be by valuations so that every person shall pay a tax in proportion to the value of his property; excise taxes can be levied by the authority of the General Assembly as it shall direct by general law, uniform as to the class upon which the tax operates. People ex rel. Ruchty v. Saad, 411 Ill. 390, 104 N.E.2d 273 (1952).

The power to levy taxes for the support of government is a necessary incident of sovereignty and is possessed by the state without being expressly conferred by the people; the power to determine the method by which property may be valued for tax purposes is in the General Assembly and is unlimited except as to the constitutional requirement that it shall be valued so that every person and corporation shall pay in proportion to the value of his, her or its property. People ex rel. Isbell v. Albert, 403 Ill. 469, 86 N.E.2d 237 (1949).

The constitution requires that one person shall not be compelled to pay a greater proportion of the taxes according to the value of his property than another and does not permit the valuation by taxing officials of one piece of property at a certain proportion of its true value and other property in the same taxing district at a substantially less or greater proportion of its true value. People ex rel. Tedrick v. Allied Oil Corp., 388 Ill. 219, 57 N.E.2d 859 (1944).

Every person and corporation is entitled to have his tax levied by valuation so that each shall pay in proportion to the value of his, her or its property, and taxing officials are precluded from adopting a method of valuating property whereby there is a discrimination in favor of or against any class of property. Tuttle v. Bell, 377 Ill. 510, 37 N.E.2d 180 (1941).

It was the aim of the framers of the Constitution that all property should bear its just portion of taxation and that there should be no favored class. People ex rel. Gill v. Trustees of Schs., 364 Ill. 131, 4 N.E.2d 16 (1936).

There should be an equality of taxation according to the value of the property taxed; that one class of property within the municipality should not be assessed at one value while the same class of property similarly situated, in the same community, should be assessed at a grossly higher value. People ex rel. Wangelin v. Wiggins Ferry Co., 357 Ill. 173, 191 N.E. 296 (1934).

Advisory Opinions

The Supreme Court did not have the authority to resolve questions of state law raised by a corporate taxpayer who sought an injunction to restrain a county tax collector from selling its property for nonpayment of real estate taxes, where the case was shaped to exclude the Illinois courts from effective consideration of any questions under the United States Constitution because the issues that might be determinative had been deliberately excluded from judicial consideration, and any judgment that an Illinois court might render would not definitively adjudicate the rights of anyone. 28 E. Jackson Enters., Inc. v. Rosewell, 65 Ill. 2d 420, 3 Ill. Dec. 454, 358 N.E.2d 1139 (1976).

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Appraisal Method

A county's use of different bases in calculating assessed values for properties, i.e., as a percentage of recent sales price as opposed to the "mass appraisal method," violated the constitutional requirement for uniformity of taxation. Walsh v. Property Tax Appeal Bd., 181 Ill. 2d 228, 229 Ill. Dec. 487, 692 N.E.2d 260 (1998).

Removing one parcel from appraisal method and subjecting it to a different method of valuation in order to increase the assessed valuation of that property violates the constitutional requirements of uniformity of taxation and equal protection. Walsh v. State Property Tax Appeal Bd., 286 Ill. App. 3d 895, 222 Ill. Dec. 286, 677 N.E.2d 489 (3 Dist. 1997), aff'd, 181 Ill. 2d 228, 229 Ill. Dec. 487, 692 N.E.2d 260 (1998).

Arbitrary Valuation

Valuation of property for taxing purposes must result from the exercise of honest judgment, not mere will or caprice. People ex rel. McDonough v. Schmuhl, 359 Ill. 446, 194 N.E. 731 (1935).

Assessment Roll

The levy of the special assessment at different rates based on the separate judgments against the defaulters and the objectors was not inherently discriminatory. City of Woodstock v. Wicks, 115 Ill. App. 3d 502, 71 Ill. Dec. 272, 450 N.E.2d 960 (2 Dist. 1983).

Where the revised assessment roll altered the figures in the original assessment roll only as to the objectors and the assessments against the defaulters remained unchanged from the original assessment roll, the defaulters were barred from objecting to the revised assessment roll on the ground that it applied a patently erroneous dual standard of private versus public benefit. City of Woodstock v. Wicks, 115 Ill. App. 3d 502, 71 Ill. Dec. 272, 450 N.E.2d 960 (2 Dist. 1983).

Assessments

- In General

Where assessment of real estate was based upon classifications of the real estate which were made by the county assessor and no action in this regard was taken by the board of commissioners, under subsection (b), which allows counties with a population of more than 200,000 to classify or to continue to classify real property for purposes of taxation assessments which were made before effective date of former section 20a of the Revenue Act of 1939 (see now 35 ILCS 200/9-150) were valid. La Salle Nat'l Bank v. County of Cook, 57 Ill. 2d 318, 312 N.E.2d 252 (1974).

- Disparities

Even though there were disparities in the assessments for the past tax years, the trial court was clearly within its discretionary powers to deny the plaintiffs' requested relief where such an order would create confusion and disorder in the public service and where the Department of Revenue no longer had the statutory power to order a reassessment for the past tax years. Hamer v. Kirk, 57 Ill. App. 3d 335, 14 Ill. Dec. 933, 373 N.E.2d 64 (2 Dist. 1978).

- Impeached

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Assessed value of property for taxation purposes cannot be impeached merely because of the difference of opinion as to values between the assessing bodies and the court. People ex rel. Wangelin v. Wiggins Ferry Co., 357 Ill. 173, 191 N.E. 296 (1934).

- Multiplier

The application of a multiplier to individual assessments of real property in Cook County does not increase individual assessments as set by the classification ordinance in violation of subsection (b) of this section, which provides that classification is subject to "such limitations as the General Assembly may hereinafter prescribe." People ex rel. Rosewell v. Johnson, 133 Ill. App. 3d 208, 88 Ill. Dec. 511, 478 N.E.2d 1119 (1 Dist. 1985).

- Overlapping Special Tax Districts

In the situation of overlapping special tax districts, located partially in two or more counties, as long as the assessment and levy of taxes is based upon the judgment of the assessing officers in each separate county, absolute uniformity cannot be achieved; such a matter is one exclusively for the legislature, and the relief, if any, in the several counties must come from the legislature and not from the courts. People ex rel. Schlaeger v. Allyn, 393 Ill. 154, 65 N.E.2d 392 (1946).

- Proper

Property tax appeal board's determination that the county board's assessment of the five manufactured homes as real property, despite evidence that the county board did not have a lawful method of assessing mobile home property or property of like kind prior to 1979, was not against the manifest weight of the evidence; the chief county assessment officer's affidavit and testimony supported the finding that there was disparate treatment of similar properties and the county board offered no explanation for the disparity. Christian County Bd. of Review v. Property Tax Appeal Bd., 368 Ill. App. 3d 792, 306 Ill. Dec. 851, 858 N.E.2d 909, 2006 Ill. App. LEXIS 1019 (1 Dist. 2006).

The taxpayers produced no evidence showing that, as compared to other property in the taxing district, the tax paid by the taxpayers was disproportionate of the value of their properties. People ex rel. Costello v. Lerner, 53 Ill. App. 3d 245, 11 Ill. Dec. 368, 368 N.E.2d 976 (5 Dist. 1977).

The trial court erred in finding revised assessments to be an invalid "attempted classification" of properties and violative of equal protection of the law, since although subsection (b) of this section authorizes certain counties to permit a classification system for the purposes of taxation, the evidence showed that St. Clair County did not permit classification. People ex rel. Costello v. Lerner, 53 Ill. App. 3d 245, 11 Ill. Dec. 368, 368 N.E.2d 976 (5 Dist. 1977).

Where a railroad filed objections in the county court to the county collector's application for judgment and order of sale of real estate delinquent for nonpayment of taxes for the year 1951, a motion by the collector to strike the objections was sustained and, thereafter, the court entered judgment against appellant for the amount of tax paid under protest and embraced by the objections; the railroad, whose property was assessed at state level along with other railroads and who alleged that its own property had been assessed at full, fair cash value but that it had been excessively and illegally taxed when locally assessed property in the county was fraudulently and intentionally undervalued at less than full, fair cash value, failed to show actual or constructive fraud in the assessments. People ex rel. Callahan v. Gulf, Mobile and O.R.R., 8 Ill. 2d 66, 132 N.E.2d 544 (1956).

Where evidence clearly supported the trial court finding of amount of acreage utilized for airport operations and acreage devoted to farming, one of which was exempt from taxation and one of which was not, tax should be assessed against that part which is devoted to agriculture, a use not exempt from taxation. City of Lawrenceville v. Maxwell, 6 Ill. 2d 42, 126 N.E.2d 671 (1955).

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Burden of Proof

Assessments of taxpayers' properties were properly upheld by the Illinois Property Tax Appeal Board because the taxpayers failed to prove by clear and convincing evidence that at county's property tax scheme lacked uniformity; the assessment ratio study conducted by the taxpayers' experts was fatally flawed because the comparables used by the expert were handpicked rather than randomly chosen and did not represent properties similar in kind to those of the taxpayers. Peacock v. Ill. Prop. Tax Appeal Bd., 339 Ill. App. 3d 1060, 275 Ill. Dec. 136, 792 N.E.2d 367, 2003 Ill. App. LEXIS 776 (4 Dist. 2003).

The burden is on the objector to the assessment of real property to prove by clear and convincing evidence that the assessment is constructively fraudulent. People ex rel. Korzen v. Mid-Continental Realty Corp., 63 Ill. App. 3d 835, 20 Ill. Dec. 643, 380 N.E.2d 852 (1 Dist. 1978).

One claiming exemption from taxation has the burden to show clearly that the property is within the exemption statute. City of Lawrenceville v. Maxwell, 6 Ill. 2d 42, 126 N.E.2d 671 (1955); People ex rel. Costello v. Lerner, 53 Ill. App. 3d 245, 11 Ill. Dec. 368, 368 N.E.2d 976 (5 Dist. 1977); Kankakee County Bd. of Review v. Property Tax Appeal Bd., 131 Ill. 2d 1, 136 Ill. Dec. 76, 544 N.E.2d 762 (1989).

The presumption is that the tax is just and that the tax levying officers properly performed their duties; moreover, the objector must establish by clear and convincing evidence that fraud has been committed. People ex rel. Schlaeger v. Allyn, 393 Ill. 154, 65 N.E.2d 392 (1946).

Burden was on objector to overcome, by clear and explicit evidence, the valuation placed by the tax commission on his property; such proof must show not a mere error of honest judgment in fixing such value by the taxing authorities, but must show such lack of knowledge of values or of such arbitrary acts in fixing values as amount to constructive, if not actual fraud. People ex rel. McDonough v. Grand Trunk W. R.R., 357 Ill. 493, 192 N.E. 645 (1934).

Classification of Property

The county tax assessor and the Board of Appeals did not create an illegal hybrid classification, nor did the trial court err in affirming the assessment where the assessor applied a 16% tax assessment to the added market value of certain real property and a 40% tax assessment to the remaining value. In re County Treas., 157 Ill. App. 3d 803, 110 Ill. Dec. 83, 510 N.E.2d 1114 (1 Dist. 1987).

A restriction on classification of real and personal property contained in 35 ILCS 200/24-5 did not encroach on the powers of the judiciary to determine what constitutes real property for purposes of this section, and what is personal property for purposes of Ill. Const. (1970), Art. IX, § 5(c), for the classification restriction was premised on the word "lawfully," which defers to judicial authority. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

Classification of real estate for taxation as "lands" or "lots" for purposes of applying different percentage of increase in assessed valuation was not an improper basis of classification and it could not be said that the action of the county board in so classifying real estate was arbitrary or capricious. People ex rel. Miller v. Doe, 22 Ill. 2d 211, 174 N.E.2d 830 (1961).

Complaint

- Dismissed

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Where complaint alleged that county taxing officials fixed the assessed value of farm lands at 35% of the fair cash value and the assessed value of city property at 25% of its fair cash value, but plaintiffs did not claim the taxing officials fraudulently valued their property too high, that value placed on their property was higher proportionately than the value placed on other farm lands of like character similarly situated, or was there any claim of unjust discrimination arising out of the application of a different equalizing factor as between the various classes of property, the decree of the circuit court dismissing plaintiffs' complaint for want of equity was correct. Tuttle v. Bell, 377 Ill. 510, 37 N.E.2d 180 (1941).

The adoption of the Illinois Constitution of 1970 has not altered the rule that Illinois courts will not review the assessed valuations arrived at by local assessing bodies absent proof of actual or constructive fraud. People ex rel. Korzen v. Mid-Continental Realty Corp., 63 Ill. App. 3d 835, 20 Ill. Dec. 643, 380 N.E.2d 852 (1 Dist. 1978).

Construction

The separate uniformity provision of this section predominates over the special service area power of Article VII of the Illinois Constitution. Grais v. City of Chicago, 151 Ill. 2d 197, 176 Ill. Dec. 47, 601 N.E.2d 745 (1992).

Constructive Fraud

A finding of constructive fraud must be supported by clear and convincing evidence, and this determination depends upon the facts and circumstances of each particular case; moreover, the court will presume that the assessing authority competently and honestly performed its function. Collector of Cook County v. Illinois Bell Tel. Co., 161 Ill. App. 3d 860, 113 Ill. Dec. 746, 515 N.E.2d 731 (1 Dist. 1987).

Our courts have invariably upheld assessments in instances where the objector does not satisfy his burden of proof regarding constructive fraud. Collector of Cook County v. Illinois Bell Tel. Co., 161 Ill. App. 3d 860, 113 Ill. Dec. 746, 515 N.E.2d 731 (1 Dist. 1987).

The doctrine of constructive fraud prohibits a trial judge from overturning an assessment of property absent a finding of fraud or constructive fraud on the part of the assessor; where an assessment does not disregard recognized elements of value or violate accepted standards it is not constructively fraudulent, since the court is powerless to substitute its opinion for that of officers making the valuation. Collector of Cook County v. Illinois Bell Tel. Co., 161 Ill. App. 3d 860, 113 Ill. Dec. 746, 515 N.E.2d 731 (1 Dist. 1987).

Where an assessment is predicated upon a purely legal error a court may intervene without making the otherwise requisite determination that the assessment was constructively fraudulent. Collector of Cook County v. Illinois Bell Tel. Co., 161 Ill. App. 3d 860, 113 Ill. Dec. 746, 515 N.E.2d 731 (1 Dist. 1987).

The adoption of the Illinois Constitution of 1970 has not altered the rule that Illinois courts will not review the assessed valuations arrived at by local assessing bodies absent proof of actual or constructive fraud. People ex rel. Korzen v. Mid-Continental Realty Corp., 63 Ill. App. 3d 835, 20 Ill. Dec. 643, 380 N.E.2d 852 (1 Dist. 1978).

Concerning a taxpayer's claim of constructive fraud, the rule is that fraud in the valuation of property for purposes of taxation must be proved by clear and sufficient evidence. People ex rel. Schlaeger v. Allyn, 393 Ill. 154, 65 N.E.2d 392 (1946).

County Assessor

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In 1972 the county assessor, without first securing authority from the county board, possessed the power to classify real property for the purposes of taxation, absent enabling legislation passed by the General Assembly. People ex rel. Korzen v. Mid-Continental Realty Corp., 63 Ill. App. 3d 835, 20 Ill. Dec. 643, 380 N.E.2d 852 (1 Dist. 1978).

Delegation of Power

This section constitutionally delegates legislative power because it permits officials to revise assessments as shall appear "just," and when the term is considered in conjunction with other constitutional and statutory standards relating to assessments, there is no constitutional infirmity. Chicago Title & Trust Co. v. Tully, 76 Ill. App. 3d 336, 32 Ill. Dec. 95, 395 N.E.2d 42 (1 Dist. 1979).

Disparity

Plaintiffs established a disparity in the assessment and equalization of values in urban and rural property for the tax years 1967-73. Hamer v. Kirk, 57 Ill. App. 3d 335, 14 Ill. Dec. 933, 373 N.E.2d 64 (2 Dist. 1978).

Equal Protection

Statutory potential for objectors to receive an advantageous judgment not available to the defaulters did not violate equal protection since not objecting to the assessment roll and consequently having an assessment confirmed by default was similar to paying a tax without protesting its validity and as a result being denied a refund of any overassessment. City of Woodstock v. Wicks, 115 Ill. App. 3d 502, 71 Ill. Dec. 272, 450 N.E.2d 960 (2 Dist. 1983).

Permitting the classification of real property for the purposes of taxation does not violate the equal protection provisions of the Constitutions of Illinois and the United States. People ex rel. Kutner v. Cullerton, 58 Ill. 2d 266, 319 N.E.2d 55 (1974); People ex rel. Jones v. Adams, 40 Ill. App. 3d 189, 350 N.E.2d 767 (5 Dist. 1976).

Equalization

Equalization is not inconsistent with and contrary to the authority granted to Cook County under subsection (b) of this section, and, as such, can be applied under § 9 of the Transition Schedule of the Constitution. People ex rel. Rosewell v. Johnson, 133 Ill. App. 3d 208, 88 Ill. Dec. 511, 478 N.E.2d 1119 (1 Dist. 1985).

The Constitution imposes a mandatory duty upon the taxing authorities to equalize taxes, which is executed through various bodies created by the General Assembly, such as the State Board of Equalization, the Tax Commission, and the Department of Revenue. People ex rel. Ruchty v. Saad, 411 Ill. 390, 104 N.E.2d 273 (1952).

Debtors were not liable to the State for unpaid property taxes because the original excess valuation of the property was in excess of the true valuation of the property and equalized assessment was violation of due process and equal protection. In re Chicago R. Co., 79 F. Supp. 989, 1948 U.S. Dist. LEXIS 2417 (N.D. Ill. 1948).

Exclusion of Administrative Remedies

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The doctrine of exhaustion of administrative remedies is still alive, and the provisions of this section did not change the doctrine. In re Korzen, 20 Ill. App. 3d 531, 314 N.E.2d 593 (1 Dist. 1974).

Exemption

Exemption statutes are strictly construed, and one who seeks exemption must show that the use of the property falls clearly within the statutes. People ex rel. Kelly v. Avery Coonley Sch., 12 Ill. 2d 113, 145 N.E.2d 80 (1957).

Where a tract is used for two purposes, there is nothing novel in exempting the part used for an exempt purpose and subjecting the remainder to taxation. People ex rel. Kelly v. Avery Coonley Sch., 12 Ill. 2d 113, 145 N.E.2d 80 (1957).

Lands are liable to taxation unless used exclusively for municipal or public purposes. City of Lawrenceville v. Maxwell, 6 Ill. 2d 42, 126 N.E.2d 671 (1955).

Property is not exempt from taxation merely because the income from it is used for an exempt purpose where the property itself is not so employed. City of Lawrenceville v. Maxwell, 6 Ill. 2d 42, 126 N.E.2d 671 (1955).

In determining whether property is included within the scope of tax exemption, all debatable questions will be resolved in favor of taxation. City of Lawrenceville v. Maxwell, 6 Ill. 2d 42, 126 N.E.2d 671 (1955).

Statutes passed for the purpose of exempting property from taxation must be strictly construed. City of Lawrenceville v. Maxwell, 6 Ill. 2d 42, 126 N.E.2d 671 (1955).

Except as to property owned by the national government within the state, the exemption of property from taxation requires affirmative action by the General Assembly. Krause v. Peoria Hous. Auth., 370 Ill. 356, 19 N.E.2d 193 (1939).

Property owned by school trustees but abandoned for school purposes was held not exempt from taxation. People ex rel. Gill v. Trustees of Schs., 364 Ill. 131, 4 N.E.2d 16 (1936).

Fair Market Value

The fact that taxpayer pays income tax upon subsidy revenue does not prohibit the taxing authority from considering that revenue when calculating the fair market value of taxpayer's property for taxation purposes. Kankakee County Bd. of Review v. Property Tax Appeal Bd., 131 Ill. 2d 1, 136 Ill. Dec. 76, 544 N.E.2d 762 (1989).

Fraud

In the absence of fraud, courts have no power to review or determine the value of property fixed for purposes of taxation by the administrative offices to whom such function has been delegated; it is only when the valuation has been fraudulently made that it is subject to judicial review and mere overvaluation is not sufficient to establish fraud. M.F.M. Corp. v. Cullerton, 16 Ill. App. 3d 681, 306 N.E.2d 505 (1 Dist. 1973).

Whether there has been fraud in the excessive valuation of property for taxation is a question which will depend largely upon the circumstances of each particular case in which the valuation is made. Burton Stock Car Co. v. Traeger, 187 Ill. 9, 58 N.E. 418 (1900).

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Excessive valuation by itself does not establish fraud, but the attending circumstances may be looked into, in order to determine whether or not the valuation was honestly made. Burton Stock Car Co. v. Traeger, 187 Ill. 9, 58 N.E. 418 (1900).

Where the valuation is so grossly out of the way as to show that the assessor could not have known of its excessive character, such valuation will be accepted as proof of a fraud upon his part against the taxpayer, and in such case a court of equity will grant relief. Burton Stock Car Co. v. Traeger, 187 Ill. 9, 58 N.E. 418 (1900).

Illustrative Cases

General taxes that became a lien against the property, after the filing of condemnation petition but before the entry of the condemnation judgment, were to be borne by the owners of the property. People v. Gill, 291 Ill. App. 143, 9 N.E.2d 581 (1 Dist. 1937).

Impact Fee Ordinances

Impact fee ordinances impose a regulatory or service fee on new development and not a tax; thus, the constitutional requirement of a levy based on valuation is inapplicable. Northern Ill. Home Bldrs. Ass'n v. County of Du Page, 165 Ill. 2d 25, 208 Ill. Dec. 328, 649 N.E.2d 384 (1995).

Inheritance

Tax assessed on classes was absolutely uniform, and was to be inherited property which was determined by valuation, so that every person and corporation would pay a tax in proportion to the value of his, her, or its property inherited; this was not inconsistent with the principle of taxation fixed by the constitution, and was clearly within the sections of the constitution, and was constitutional. Kochersperger v. Drake, 167 Ill. 122, 47 N.E. 321 (1897).

Injunction

Under the Illinois Revenue Act of 1898, the power to value property in a county was vested in the board of assessors and the board of review; under Ill. Const. (1970), Art. IX, § 4 (formerly Ill. Const. of 1870, Art. IX, § 1) in the absence of fraud, courts have no power to review valuations, and an injunction barring a tax collector from collecting the amount of the tax on the valuation of the property in excess of the court's finding as to its value was reversed. 6922 Jeffery Apartment Bldg. Corp. v. Harding, 347 Ill. 336, 179 N.E. 881, 1932 Ill. LEXIS 689 (1932).

Local Improvements

A statute authorizing a local improvement to be made by special taxation of contiguous property did not violate Ill. Const. (1870), Art. IX, § 1 (see now this section), which required that taxes shall be levied according to valuation. Harrigan v. City of Jacksonville, 220 Ill. 134, 77 N.E. 85 (1906).

Maintenance of Parks

Although a major portion of the tax revenue raised by the district for the maintenance of the parks could be applied to two parks, such did not establish that those funds were raised for purposes which were not public and corporate or, as stated in the language of plaintiffs, "for the public

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needs for a public purpose pertaining to the district within which the tax was levied and collected," thus plaintiffs had not shown that the General Park District Code (70 ILCS 1205/1-1 et seq.) violated this section. People ex rel. Honefenger v. Burris, 408 Ill. 68, 95 N.E.2d 882 (1950).

Pollution Control Facilities

Statute which excludes pollution control facilities operated by any person other than a unit of government for sewage disposal or treatment from favorable property tax treatment did not violate the constitutional requirement for the uniformity of taxation. Citizens Utils. Co. v. Pollution Control Bd., 133 Ill. App. 3d 406, 88 Ill. Dec. 362, 478 N.E.2d 853 (3 Dist. 1985).

Primary Use

The primary use to which property owned by a municipal corporation outside its corporate limits is devoted, and not its secondary or incidental use, is controlling in determining whether it is used exclusively for "municipal purposes" so as to exempt it from taxation. City of Lawrenceville v. Maxwell, 6 Ill. 2d 42, 126 N.E.2d 671 (1955).

The use to which the property is devoted rather than the use to which income derived from the property is employed is decisive. City of Lawrenceville v. Maxwell, 6 Ill. 2d 42, 126 N.E.2d 671 (1955).

Quadrennial Tax Assessments

Where the county assessor possessed authority in 1972 to classify real property for the purposes of taxation, that power was properly exercised in the form of the quadrennial assessment against objector's property, and the assessment did not invidiously discriminate against objector in violation of the federal or state guarantees of equal protection of the laws. People ex rel. Korzen v. Mid-Continental Realty Corp., 63 Ill. App. 3d 835, 20 Ill. Dec. 643, 380 N.E.2d 852 (1 Dist. 1978).

A practical and common-sense equality in taxation is maintained under the quadrennial tax assessment provisions of former 35 ILCS 205/43 (see now 35 ILCS 200/9-155 and 35 ILCS 200/9-215 through 35 ILCS 200/9-225), and it does not violate either the uniformity principle in this section or the equal protection clause in the United States Constitution. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395, 169 N.E.2d 769 (1960).

Reproduction Cost Method of Valuation

The use of the reproduction cost method of valuation has been upheld against claims that it violates the uniformity provisions of subsection (a). In re Pike County Collector, 133 Ill. App. 3d 142, 88 Ill. Dec. 311, 478 N.E.2d 626 (4 Dist. 1985).

Res Judicata

Although a decision regarding the taxable status of property is not binding on subsequent courts considering a taxpayer's claim, a former judgment does operate as an estoppel with respect to issues, such as whether claimant's property was used exclusively for school purposes so as to exempt it from taxation under 35 ILCS 200/15-35, where such issue was actually raised and decided in the earlier case. Lincoln v. Paschen, 20 Ill. 2d 229, 170 N.E.2d 111 (1960).

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Restrictive Interpretation

The writers of the Constitution did not intend a liberal interpretation of the exemption, but rather a restricted one, so as to attain the object sought, that property should bear only its just portion of the tax burden and no property should be exempt until declared so by legislative enactment. People ex rel. Gill v. Trustees of Schs., 364 Ill. 131, 4 N.E.2d 16 (1936).

Retroactive Effect

Subdivision (b) of section 4 of this article had retroactive effect and operated to ratify the de facto practice of classifying real property for purposes of taxation which existed in Cook County at the time the new constitution was adopted. People ex rel. Kutner v. Cullerton, 58 Ill. 2d 266, 319 N.E.2d 55 (1974).

Review

Under former section 1 of Article IX of the Illinois Constitution (see now Ill. Const. (1970), Art. IX, § 2 and this section), the courts, in the absence of fraud, had no power to review or determine the value of property fixed for purposes of taxation by the administrative officers to whom such function has been delegated. People ex rel. Callahan v. Gulf, Mobile and O.R.R., 8 Ill. 2d 66, 132 N.E.2d 544 (1956).

Service Fees

Because the owners of property subject to an impact fee are the beneficiaries of the service and improvements the fees provide, it is appropriate for those fees to be refunded to the person who paid the fee or to that person's successor in interest; the fact that those who create the need for road improvements are property owners does not turn a service fee into a property tax. Northern Ill. Home Bldrs. Ass'n v. County of Du Page, 165 Ill. 2d 25, 208 Ill. Dec. 328, 649 N.E.2d 384 (1995).

Trespass

Where forest preserve district, prior to condemnation judgment, dug a ditch across property and used it for drainage purposes, such an action on the part of the district amounted to a trespass and plaintiffs had a right to seek damages in a proper action, but they could not defeat a judgment which made them liable for taxes by interposing the claim of trespass. People v. Gill, 291 Ill. App. 143, 9 N.E.2d 581 (1 Dist. 1937).

Uniformity

- In General

The Property Tax Appeal Board errs as a matter of law when it selects as a comparable a parcel of property which has also received the same contested assessment; conducting uniformity analysis in such a manner will lead to absurd results and will render the assessment appeal process meaningless. Pace Realty Group v. Property Tax Appeals Bd., 306 Ill. App. 3d 718, 239 Ill. Dec. 399, 713 N.E.2d 1249 (2 Dist. 1999).

Tax payer could not establish a lack of uniformity in taxation or a violation of constitutional rights by simply asserting that the County Review Board determined that their property had a greater

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actual value than other subsidized properties. Kankakee County Bd. of Review v. Property Tax Appeal Bd., 131 Ill. 2d 1, 136 Ill. Dec. 76, 544 N.E.2d 762 (1989).

The constitutional requirement of tax uniformity is met where: (1) the intent of the statute is to adjust the burden with a reasonable degree of uniformity; and (2) the effect of the statute, in its general operation, is that it adjusts the burden with a reasonable degree of uniformity. Rosewell v. Twin Manors W. of Morton Grove Condominium Ass'n, 175 Ill. App. 3d 564, 125 Ill. Dec. 28, 529 N.E.2d 1104 (1 Dist. 1988), cert. denied, 124 Ill. 2d 555, 129 Ill. Dec. 148, 535 N.E.2d 913, cert. denied, 492 U.S. 919, 109 S. Ct. 3244, 106 L. Ed. 2d 591 (1989).

Illinois constitutionally mandates that taxes upon real property shall be levied uniformly by valuation ascertained as the general assembly shall provide by law. City of Woodstock v. Wicks, 115 Ill. App. 3d 502, 71 Ill. Dec. 272, 450 N.E.2d 960 (2 Dist. 1983).

The rule of uniformity requires that one person shall not be burdened with a greater proportion of the taxes, according to the value of his property, than another. It does not permit valuation by taxing officials of property in the same taxing district at a certain proportion of its true value while other property in that district is valued at a substantially lesser or greater proportion. People ex rel. Hawthorne v. Bartlow, 111 Ill. App. 3d 513, 67 Ill. Dec. 243, 444 N.E.2d 282 (4 Dist. 1983).

The rule of uniformity applies when there is some misconduct, or the assessment was made on a wrong basis, or an excessively high valuation is applied. People ex rel. Hawthorne v. Bartlow, 111 Ill. App. 3d 513, 67 Ill. Dec. 243, 444 N.E.2d 282 (4 Dist. 1983).

Establishing a system which provides for uniformity is a function of the legislature, and while it is true that courts may protect taxpayers from excessive valuations, knowingly and intelligently made, in violation of the rule, this is so only because an intentional violation of the rule of uniformity amounts to constructive fraud. People ex rel. Hawthorne v. Bartlow, 111 Ill. App. 3d 513, 67 Ill. Dec. 243, 444 N.E.2d 282 (4 Dist. 1983).

A practice of reassessing the market value of real estate sold could result in substantially differing and unequal tax burdens between properties subject to sale and those not subject to sale, in violation of the requirement of subsection (a) that taxes be uniformly levied. Givens v. Illinois Property Tax Appeal Bd., 84 Ill. App. 3d 218, 39 Ill. Dec. 842, 405 N.E.2d 821 (5 Dist. 1980).

Plaintiffs failed to produce sufficient evidence to substantiate their claim that Christain County, by reevaluating plaintiffs' property in years other than the quadrennial assessment years, was pursuing a practice which resulted in unequal and nonuniform tax treatment of the owners of residential property. Givens v. Illinois Property Tax Appeal Bd., 84 Ill. App. 3d 218, 39 Ill. Dec. 842, 405 N.E.2d 821 (5 Dist. 1980).

While urban property owners may bear a constitutionally impermissible proportion of the burden of real estate taxes in those counties which do not classify property for purposes of taxation, this violation of constitutionally required uniformity originates with the local assessing authorities, and does not arise from the equalization procedures required by the 1975 amendment to former section 146 of the Revenue Act (see now 35 ILCS 200/17-5); thus, the validity of the challenged legislation regarding assessment procedures were not affected. Hamer v. Kirk, 65 Ill. 2d 211, 2 Ill. Dec. 339, 357 N.E.2d 506 (1976).

The constitutional provision for uniformity in taxation does not require that property be assessed on any particular day or on the same day; nor does it call for mathematical equality. The requirement is satisfied if the intent is evident to adjust the burden with a reasonable degree of uniformity, and if such is the effect of the statute in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395, 169 N.E.2d 769 (1960).

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Uniformity in taxation, as required by the state constitution, implies equality in the burden of taxation, and this equality in burden cannot exist without uniformity in the basis of assessment as well as in the rate of taxation. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395, 169 N.E.2d 769 (1960).

The rule of uniformity requires an equality of taxation in proportion to the value of the property taxed. It prohibits the taxation of one kind of property within the taxing district at one value while the same kind of property in the same district for taxation purposes is valued at either a grossly less value or a grossly higher value. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395, 169 N.E.2d 769 (1960).

While the Constitution provides for uniformity, the rule does not require that the assessments must always be made by the same officer or class of officers or that the same methods of ascertaining values must be followed for all classes of property. People ex rel. Ruchty v. Saad, 411 Ill. 390, 104 N.E.2d 273 (1952).

The rule of uniformity of taxes applies to property of like kind and character and similarly situated. People ex rel. Schlaeger v. Allyn, 393 Ill. 154, 65 N.E.2d 392 (1946).

Uniformity in taxation does not require that the taxing officials, while engaged in the fixing of the full fair cash value of property, shall adopt the same rules as to all classes of property; they are permitted to exercise their judgment, formulate and apply such rules in the valuing of the various items of property and the classes thereof as will best enable them to arrive at the fair cash value of the property which is the subject of assessment. People ex rel. Toman v. Pickard, 377 Ill. 610, 37 N.E.2d 330 (1941).

Requirement of uniformity of taxation applies not only to the fair cash value of the property, but where an equalizing factor has been adopted by a taxing body or taxing officials by which property is listed for taxation purposes below its fair cash value, the same equalizing factor must be applied equally to other property in order to secure uniformity of taxes. Tuttle v. Bell, 377 Ill. 510, 37 N.E.2d 180 (1941).

No taxpayer can be required to pay a greater proportion of the taxes, according to the value of his property, than any other taxpayer. Taxing authorities are not justified in withdrawing any property from the protection of this uniformity provision of the Constitution. People ex rel. McDonough v. Schmuhl, 359 Ill. 446, 194 N.E. 731 (1935).

A property tax will not be invalidated because of an error in the exercise of honest judgment by the assessing bodies, but if the tax is the result of an arbitrary, intentional violation of the rule of uniformity, the action of the taxing body constitutes an invasion of constitutional rights and the tax cannot be upheld. People ex rel. McDonough v. Schmuhl, 359 Ill. 446, 194 N.E. 731 (1935).

The requirement of uniformity in taxation lies at the foundation of all taxing power of the state. People ex rel. McDonough v. Illinois Cent. R.R., 355 Ill. 605, 190 N.E. 82 (1934).

- Illustrative Cases

Objectors to real property tax assessment against the golf course they owned failed to prove by clear and convincing evidence that their open space property had not been assessed in uniformity with other open space property because they failed to establish any sort of baseline value for open space property in their area. Golf Trust of Am., L.P. v. Soat, 355 Ill. App. 3d 333, 290 Ill. Dec. 977, 822 N.E.2d 562, 2005 Ill. App. LEXIS 40 (2 Dist. 2005), appeal denied, 215 Ill. 2d 596, 295 Ill. Dec. 520, 833 N.E.2d 2 (2005).

Reviewing court never reached taxpayers' uniformity issues because they had not raised the issues, or offered Illinois Department of Revenue median sales studies in support of their arguments, in their initial challenge to their local taxing agency; it was error for the Illinois Property Tax Appeal Board to take judicial notice of those studies, and to consider the

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constitutional argument they supported, when they were not part of the original record. Cook County Bd. of Review v. Property Tax Appeal Bd., 339 Ill. App. 3d 529, 274 Ill. Dec. 212, 791 N.E.2d 8, 2003 Ill. App. LEXIS 842 (1 Dist. 2003).

Additional charge for water and sewer service, charged on property pursuant to ordinance which provided for storm sewer financing, if regarded as a tax, offended the uniformity requirement of this section unless it could be regarded as a special assessment or special tax. Conner v. City of Elmhurst, 28 Ill. 2d 221, 190 N.E.2d 760 (1963).

Where it was apparent that taxing bodies wilfully rejected the provisions of a tax statute by generally assessing property for taxation purposes at a figure substantially less than its true or market value, all property within such taxing district was to be assessed upon the same plane in order to secure the uniformity of taxation guaranteed by this section. People ex rel. Wangelin v. Gillespie, 358 Ill. 40, 192 N.E. 664 (1934).

- Not Shown

Board's finding that supervisor improperly classified the steam generators as real property was not against the manifest weight of the evidence and its reclassification was not violative of the Freeze Act (35 ILCS 200/24-5) since the supervisor's original assessment was not uniformly made and therefore was not lawful. Oregon Community Unit Sch. Dist. No. 220 v. Property Tax Appeal Bd., 285 Ill. App. 3d 170, 220 Ill. Dec. 858, 674 N.E.2d 129 (2 Dist. 1996).

County ordinance that added a third commissioner to County Board of Appeals, staggered the terms of two commissioners, changed the manner of election of the commissioners, and provided for the election of the board chairman by board members, violated the authority of the general assembly to enact a uniform property tax assessment scheme, and was not supported by the "Home Rule" provision of the State Constitution (Ill. Const. (1970), Art. VII, § 6(m)). Chicago Bar Ass'n v. County of Cook, 124 Ill. App. 3d 355, 79 Ill. Dec. 824, 464 N.E.2d 728 (1 Dist. 1984).

- Shown

Alternative homestead exemption in an amendment to 35 ILCS 200/15-176 was not unconstitutional because the exemption did not create a constitutionally infirm nonuniform real property taxation under Ill. Const. Art. IX, § 4(a). Chicagoland Chamber of Commerce v. Pappas, 378 Ill. App. 3d 334, 317 Ill. Dec. 113, 880 N.E.2d 1105, 2007 Ill. App. LEXIS 1285 (1 Dist. 2007).

Although similar property defendant owned elsewhere was classified as personal property, rather than real property, the uniformity provision was not violated; statute supported the differing treatment. Commonwealth Edison Co. v. Property Tax Appeal Bd., 219 Ill. App. 3d 550, 162 Ill. Dec. 268, 579 N.E.2d 1082 (2 Dist. 1991), cert. denied, 143 Ill. 2d 636, 167 Ill. Dec. 397, 587 N.E.2d 1012 (1992).

The tax uniformity clause requires only that taxation be uniform as to the class upon which is operates, and where subject property bore a different tax classification than the parcels which plaintiff offered as comparable, it was not shown that the assessment offended the Illinois Constitution. DuPage Bank & Trust Co. v. Property Tax Appeal Bd., 151 Ill. App. 3d 624, 104 Ill. Dec. 590, 502 N.E.2d 1250 (2 Dist. 1986), cert. denied, 484 U.S. 1003, 108 S. Ct. 694, 98 L. Ed. 2d 646 (1988).

An assessment for labor was not a tax and did not contravene Ill. Const. (1870), Art. IX, § 5 (see now this section), providing for uniformity of taxes. Foulk v. Means, 295 Ill. 310, 129 N.E. 130 (1920).

- Violation

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Violation of the rule of uniformity is a denial of equal protection and constitutes a taking of property without due process. People ex rel. Hawthorne v. Bartlow, 111 Ill. App. 3d 513, 67 Ill. Dec. 243, 444 N.E.2d 282 (4 Dist. 1983).

Valuation

The approach to valuation of building for ad valorem tax purposes was not purely a question of law to be determined by the trial judge, and the trial judge erred by intervening where there was no determination that the assessment was constructively fraudulent. Collector of Cook County v. Illinois Bell Tel. Co., 161 Ill. App. 3d 860, 113 Ill. Dec. 746, 515 N.E.2d 731 (1 Dist. 1987).

Where, after the application of the state multiplier, the maximum disparity between townships was 4.88 percent, and where the defendants presented facts which showed that they paid approximately seven and four percent more in their respective townships in taxes than they would have had township multipliers been applied, but had not shown that they sustained a greater burden of taxes as a result of the application of the multiplier, the disparity accomplished a reasonable degree of uniformity, although mathematical equality had not been attained. People ex rel. Hawthorne v. Bartlow, 111 Ill. App. 3d 513, 67 Ill. Dec. 243, 444 N.E.2d 282 (4 Dist. 1983).

It is not unconstitutional to use different valuation methods for tax valuation of property. Chrysler Corp. v. Illinois Property Tax Appeal Bd., 69 Ill. App. 3d 207, 25 Ill. Dec. 695, 387 N.E.2d 351 (2 Dist. 1979).

A method of valuing property whereby there is a discrimination in favor of or against any class of property is prohibited, and this rule applies not only to the full, fair cash value of property, but where an equalizing factor has been adopted by a taxing body or taxing officials by which property is listed for taxation purposes below its full, fair cash value; however, the same equalizing factor must be applied equally to other property in order to secure uniformity of taxes. People ex rel. Tennyson v. Texas Co., 406 Ill. 120, 92 N.E.2d 142 (1950).

A county court properly overruled the objections filed by a Texas company where no evidence was offered to show that the value listed for land and lots was not the full, fair cash value of such property, or that the ratio of assessed value to full, fair cash value was not on the same basis as that applied to other properties. People ex rel. Tennyson v. Texas Co., 406 Ill. 120, 92 N.E.2d 142 (1950).

Where the value of property for taxation is fixed by the officials designated by statute, such value is not, in the absence of fraud, subject to the supervision of the judicial department of the state. People ex rel. Ingram v. Wasson Coal Co., 403 Ill. 30, 85 N.E.2d 182 (1949).

The fact that there may be a difference of opinion as to the value of property between the assessing authorities and the court does not justify interference on the part of the court. People ex rel. Wangelin v. St. Louis Bridge Co., 357 Ill. 245, 191 N.E. 300 (1934).

When the return is made to the taxing officer, since net receipts, like money, have a fixed value, the placing of the amount of net receipts of a foreign insurance company on the assessment roll and the scaling and debasing of the same by the taxing officer are a valuing thereof by such officer as in the case of moneys or other property having a fixed value, and when scaled and debased by the taxing officer, the amount on which the tax is levied is so fixed, such is a valuing thereof with the meaning and intent of the constitution. Havover Fire Ins. Co. v. Harding, 327 Ill. 590, 158 N.E. 849 (1927).

The valuation of property for the purpose of taxation is to be ascertained by some person or persons elected or appointed by the legislature because the constitution expressly prohibits the ascertainment of such value by any other person than a person elected or appointed by the

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legislature. Hence the courts have no power to fix the valuation of property for taxation. Burton Stock Car Co. v. Traeger, 187 Ill. 9, 58 N.E. 418 (1900).

The determination of the value to be fixed on property liable to be assessed is not, in the absence of fraud, subject to the supervision of the judicial department of this state. Burton Stock Car Co. v. Traeger, 187 Ill. 9, 58 N.E. 418 (1900).

A court will not entertain jurisdiction to enjoin the collection of a tax upon the ground of the excessive valuation of the property assessed by the assessing officer or officers. Burton Stock Car Co. v. Traeger, 187 Ill. 9, 58 N.E. 418 (1900).

A subsidy agreement must be considered to determine the true income earning capacity, and thus the true value, of subsidized property; failure to consider the subsidy agreement would permit subsidized property to be taxed at less than its fair cash value in violation of the principle of uniformity. Kankakee County Bd. of Review v. Property Tax Appeal Bd., 131 Ill. 2d 1, 136 Ill. Dec. 76, 544 N.E.2d 762 (1989).

LEGAL PERIODICALS

For article, "The Illinois Constitutional Guarantee of Uniformity in Taxation Prohibits Selective Departure," see 86 Ill. B.J. 399 (1998).

For article, "Survey of Illinois Law: Property," see 19 S. Ill. U.L.J. 923 (1995).

For note and comment, "Double Taxation of Partnership Income in Illinois," see 58 Chi-Kent L. Rev. 137 (1981).

For note, "Classification of Real Property for Tax Purposes in Illinois - Hoffman v. Clark," see 28 De Paul L. Rev. 849 (1979).

For article, "The Future of Classified Real Property Taxation in Illinois: The Wake of Hoffman v. Clark," see 11 Loy. U. Chi. L.J. 21 (1979-80).

For article, "Review of Real Estate Assessments - Cook County (Chicago) v. Remainder of Illinois," see 11 J. Marshall J. Prac. & Proc. 17 (1977).

RESEARCH REFERENCES

Classification, as real estate or personal property, of mobile homes or trailers for purposes of state or local taxation. 7 ALR4th 1016.

Practice Guides and Treatises.

Residential Real Estate § 10.27 Lack of Uniformity (IICLE).

Condominium Law (Illinois) § 12.5 Classification System (IICLE).

Condominium Law (Illinois) § 12.4 Valuing Condominiums for Tax Purposes (IICLE).

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Real Estate Taxation § 10.83 The Senior Citizens Real Estate Tax Deferral Act (IICLE).

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Real Estate Taxation § 7.17 Trial of a Tax Objection Complaint (IICLE).

Real Estate Taxation § 7.3 Theories of Recovery (IICLE).

Real Estate Taxation § 6.9 Market Value - Level of Assessment (IICLE).

Real Estate Taxation § 2.82 Cook County Classification Ordinance (IICLE).

Real Estate Taxation § 2.81 In General (IICLE).

Real Estate Taxation § 2.79 Market Data Approach (IICLE).

Real Estate Taxation § 2.1 In General (IICLE).

Section 5. Personal Property Taxation.

(a) The General Assembly by law may classify personal property for purposes of taxation by valuation, abolish such taxes on any or all classes and authorize the levy of taxes in lieu of the taxation of personal property by valuation.

(b) Any ad valorem personal property tax abolished on or before the effective date of this Constitution shall not be reinstated.

(c) On or before January 1, 1979, the General Assembly by law shall abolish all ad valorem personal property taxes and concurrently therewith and thereafter shall replace all revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes subsequent to January 2, 1971. Such revenue shall be replaced by imposing statewide taxes, other than ad valorem taxes on real estate, solely on those classes relieved of the burden of paying ad valorem personal property taxes because of the abolition of such taxes subsequent to January 2, 1971. If any taxes imposed for such replacement purposes are taxes on or measured by income, such replacement taxes shall not be considered for purposes of the limitations of one tax and the ratio of 8 to 5 set forth in Section 3(a) of this Article.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Municip L § 13:59.

CASE NOTES

Analysis

In General
Ad Valorem Tax
Class Application
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In General

The underlying objective of subsection (c) of this section is to insure that local governmental entities and school districts receive operating funds sufficient to replace revenue lost through abolition of the personal property tax. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

When the 1970 Illinois constitutional convention convened there was strong sentiment in this state to abolish personal property taxes by valuation. Client Follow-Up Co. v. Hynes, 75 Ill. 2d 208, 28 Ill. Dec. 488, 390 N.E.2d 847 (1979).

Considering the provision of subsection (c) of this section in light of the history and conditions of the times during the 1970 constitutional convention, and considering the end sought to be accomplished by those dissenters who submitted to the convention the proposals that were ultimately incorporated in subsection (c), it is apparent that the end sought to be accomplished, at least by those who made the proposal, was the abolition of the ad valorem personal property tax. Client Follow-Up Co. v. Hynes, 75 Ill. 2d 208, 28 Ill. Dec. 488, 390 N.E.2d 847 (1979).

It was intended that the power to raise revenue through taxation is firmly vested in the General Assembly both through the inherent power of that body, and by the specific grant of the Constitution, and that this power be subject to only such limitations as are expressly stated in the

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Constitution and that the express limitations are to be exclusive. Hoffmann v. Clark, 69 Ill. 2d 402, 14 Ill. Dec. 269, 372 N.E.2d 74 (1977).

The power to levy taxes for the support of government is a necessary incident of sovereignty and is possessed by the state without being expressly conferred by the people; the power to determine the method by which property may be valued for tax purposes is in the General Assembly and is unlimited except as to the constitutional requirement that it shall be valued so that every person and corporation shall pay in proportion to the value of his, her or its property. People ex rel. Isbell v. Albert, 403 Ill. 469, 86 N.E.2d 237 (1949).

The requirement of uniformity in taxation lies at the foundation of all taxing power of the state. People ex rel. McDonough v. Illinois Cent. R.R., 355 Ill. 605, 190 N.E. 82 (1934).

Ad Valorem Tax

Since the method of taxation under the replacement tax act did not assign a cash value to utility property and then levy a tax on that value, it did not amount to an ad valorem mode of taxation. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

Where the provisions of a replacement tax act were directly connected with and germane to the subject of replacing the ad valorem personal property tax, the act was an appropriate legislative response to the comprehensive mandate set forth in subsection (c) of this section. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

The language of subsection (c) of this section does not constitute a continuing mandate to the legislature to abolish ad valorem taxes on personal property after January 1, 1979, which would be unenforceable by the courts; instead, the language of subsection (c) of this section constitutes a limitation on the power to tax after that date. However, this interpretation does not affect 1978 personal property taxes collectable in 1979, since under Illinois' scheme of taxation the taxes for the year 1978 had accrued prior to January 1, 1979. Client Follow-Up Co. v. Hynes, 75 Ill. 2d 208, 28 Ill. Dec. 488, 390 N.E.2d 847 (1979).

Court concluded that the provisions of Ill. Const. (1970), Art. IX, § 5(c) constitute a mandate to the Illinois General Assembly to abolish all ad valorem taxes on personal property on or before January 1, 1979. Elk Grove Engineering Co. v. Korzen, 55 Ill. 2d 393, 304 N.E.2d 65, 1973 Ill. LEXIS 272 (1973).

Class Application

Subsection (c) of this section does not require in the replacement tax an exact correlation of persons and property taxed with those formerly subject to personal property tax; rather, the replacement tax was intended to be imposed broadly on those classes rather than on those particular persons relieved of paying the personal property tax. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

Where the particular corporations and trusts forming the basis of petitioners' claim were within the classes defined under the replacement tax, and because the classes subject to the replacement tax were sufficiently correlative to those classes subject to the personal property tax, the class-imposition restriction in subsection (c) of this article was not violated. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

Classification of Property

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A restriction on classification of real and personal property contained in former section 499.1 of the Revenue Act of 1939 (see now 35 ILCS 200/24-5) did not encroach on the powers of the judiciary to determine what constitutes real property for purposes of Article IX, § 4, and what is personal property for purposes of this section, for the classification restriction was premised on the word "lawfully," which defers to judicial authority. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

Complaint

- Insufficient

Complaint failed to state facts which could, if proven, rebut the presumption that the filing charge imposed by § 27.2(15)(a) of the Clerks of Courts Act (see now 705 ILCS 105/27.2(15)(a)) was a valid fee; despite the distinction between "taxes" and "fees," both are used by the government to raise revenue, and it was accurate for the county to state that the charges in question were tantamount to a tax on litigation. Mlade v. Finley, 112 Ill. App. 3d 914, 68 Ill. Dec. 387, 445 N.E.2d 1240 (1 Dist. 1983).

Double Taxation

Where the tax on invested capital was a tax on the privilege of engaging in specified business occupations, the fact that taxpayers subject to the replacement tax on invested capital would pay taxes on the value of real estate twice in the same year to the extent that their invested capital was held in the form of real estate, did not constitute double taxation simply because there was another tax directly on the property. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

Excessive Valuation

Excessive valuation by itself does not establish fraud, but the attending circumstances may be looked into, in order to determine whether or not the valuation is honestly made. Burton Stock Car Co. v. Traeger, 187 Ill. 9, 58 N.E. 418 (1900).

Where the valuation is so grossly out of the way as to show that the assessor could not have known of its excessive character, such valuation will be accepted as proof of a fraud upon his part against the taxpayer, and in such case a court of equity will grant relief. Burton Stock Car Co. v. Traeger, 187 Ill. 9, 58 N.E. 418 (1900).

Whether there has been fraud in the excessive valuation of property for taxation is a question which will depend largely upon the circumstances of each particular case in which the valuation is made. Burton Stock Car Co. v. Traeger, 187 Ill. 9, 58 N.E. 418 (1900).

Excise Tax

The replacement tax on invested capital was not an ad valorem tax on personal property, but was sustainable as an excise tax. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

Exemption

All personal property held in trust for natural persons is not exempt from taxation. Hanley v. Kusper, 61 Ill. 2d 452, 337 N.E.2d 1 (1975).

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Fraud

In an action of debt to collect delinquent personal property taxes, nothing less than clear and sufficient evidence of fraud is available as defense; there was no basis in the evidence for assuming that the valuation placed upon personal property was so excessive as to amount to fraud. People v. Klein, 388 Ill. 353, 57 N.E.2d 893 (1944).

Illustrative Cases

It was the personal property tax for the year 1979 and subsequent years that was prohibited where at the time the 1978 tax liability accrued, at the time that liability attached for the tax, and at the time the local governmental bodies adopted their tax levy ordinances, there was no prohibition of ad valorem personal property taxes other than as to individuals, therefore, the 1978 personal property tax payable in 1979 was collectable. Client Follow-Up Co. v. Hynes, 75 Ill. 2d 208, 28 Ill. Dec. 488, 390 N.E.2d 847 (1979).

Underground cement conduits, which were laid under the requirement of an ordinance enacted in further of the police power, were not assessed as tangible personal property. People v. Commonwealth Edison Co., 376 Ill. 70, 32 N.E.2d 902 (1941).

Tea imported from foreign countries in store in a government warehouse in the original, unbroken packages was not subject to taxation. Siegfried v. Raymond, 190 Ill. 424, 60 N.E. 868 (1901).

Improvements to Leasehold

It was not against the manifest weight of the evidence for the trial court to conclude that, though the parties to a lease between themselves considered buildings and improvements to be personal property, as evidenced by the lease provision allowing removal, the buildings and improvements on the leasehold were real estate for purposes of taxation. In re Schniederjon, 181 Ill. App. 3d 646, 130 Ill. Dec. 291, 537 N.E.2d 358 (5 Dist. 1989).

Inheritance Taxes

Tax assessed on created classes was absolutely uniform on the classes upon which it operated, and, under the provisions of the statute, was to be inherited property which was determined by valuation, so that every person and corporation would pay a tax in proportion to the value of his, her, or its property inherited; this was not inconsistent with the principle of taxation fixed by the Constitution, and was constitutional. Kochersperger v. Drake, 167 Ill. 122, 47 N.E. 321 (1897).

Injunction

To entitle appellants to an injunction preventing collection of a tax, they must have shown that property belonging to them exempt from taxation was included in their assessment. Siegfried v. Raymond, 190 Ill. 424, 60 N.E. 868 (1901).

Justiciable Claim

The prohibitions against reclassifying property only apply to assessments subsequent to 1978 and, since the assessment at issue was for 1978, plaintiff had not presented a justiciable controversy. Cherry Bowl, Inc. v. Illinois Property Tax Appeal Bd., 100 Ill. App. 3d 326, 55 Ill. Dec. 472, 426 N.E.2d 618 (2 Dist. 1981).

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Legislative Discretion

The anticipated amount of revenue raised under Illinois replacement tax act was not so excessive as to constitute an unreasonable exercise of legislative discretion in carrying out the mandate of subsection (c) of this section. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

Moneyed Capital

The effect of this section is to exempt "moneyed capital," a form of personal property, from taxation in Illinois by valuation when that moneyed capital is owned by individuals. Bancorporation v. Korzen, 64 Ill. 2d 200, 355 N.E.2d 31 (1976).

Place of Taxation

An averment that personal property was liable to taxation at a certain place was simply the statement of a legal conclusion and was not sufficient proof that the property was taxable at that place. People ex rel. Christian County v. Davis, 112 Ill. 272 (1884).

Presumption of Validity

There is a presumption favoring the constitutional validity of a state's scheme of taxation, and this presumption may be overcome only by a clear showing that it is arbitrary and unsupportable by any set of facts. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

Refunds

Where personal property taxes were imposed upon or collected on bank stock owned by natural persons in violation of constitutional amendment a refund of those taxes should be made to the individuals since a refund to the banks would be grossly inequitable. Lincoln Nat'l Bank v. Cullerton, 18 Ill. App. 3d 953, 310 N.E.2d 845 (1 Dist. 1974).

Replacement Duty

While the language in subsection (c) of this section does not limit the legislature's replacement duty to the amount of actual revenue lost, as distinguished from potential revenue lost, such a limitation is supported by delegate commentary during the constitutional debates; accordingly, the mandate of the subsection (c) to replace lost revenue requires replacement of the value of the amount collected rather than the amount extended under the personal property tax. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

Replacement Tax

Since corporations were subject to personal property tax, they were a class within the scope of a replacement income tax and the source of that income was irrelevant unless excluded by the legislature. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

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The mandate to the General Assembly to enact a replacement tax under subsection (c) of this section continued after the tax was abolished on January 1, 1979. Although such a mandate was not generally judicially enforceable, it did, nonetheless, constitute a constitutional command to the General Assembly to act. Client Follow-Up Co. v. Hynes, 75 Ill. 2d 208, 28 Ill. Dec. 488, 390 N.E.2d 847 (1979).

Ill. Rev. Stat. ch. 120, para. 500.12b, which exempted personal property taxation held by a trustee for the exclusive benefit of another, was unconstitutional because the General Assembly did not impose a required replacement tax as required by Ill. Const. (1970), Art. IX, § 5(c). The General Assembly was required to concurrently replace all revenue lost by the abolished taxes by imposing statewide taxes solely on those classes relieved of the burden of the taxes abolished. American Nat'l Bank & Trust Co. v. Kusper, 69 Ill. 2d 374, 14 Ill. Dec. 261, 372 N.E.2d 66, 1977 Ill. LEXIS 438 (1977).

Court held that the standard deduction provided in former § 51.1 of the Illinois Revenue Act of 1939, Ill. Rev. Stat. ch. 120, para. 532.1 (now 35 ILCS 205/1), is an abolition within the meaning of Ill. Const. (1970), Art. IX, § 5(c), and as therein provided a replacement tax must be imposed concurrently with the granting of such deduction. Elk Grove Engineering Co. v. Korzen, 55 Ill. 2d 393, 304 N.E.2d 65, 1973 Ill. LEXIS 272 (1973).

Court determined that the revenue-replacement provisions of Ill. Const. (1970), Art. IX, § 5(c) apply to the abolition of personal property taxes, whether effected under § 5(c), or § 5(a). Elk Grove Engineering Co. v. Korzen, 55 Ill. 2d 393, 304 N.E.2d 65, 1973 Ill. LEXIS 272 (1973).

Retailers' Occupation Tax Act

The use of "retail value" rather than "gross receipts" as a tax base did not violate the uniformity requirements of former section 1 of Article IX (see now Ill. Const. (1970), Art. IX, § 5) or render the trading stamps provisions of 35 ILCS 120/1 and 35 ILCS 105/2 void. Hornof v. Kroger Co., 35 Ill. 2d 125, 219 N.E.2d 512 (1966).

Retroactivity

Since the period of retroactivity of the replacement tax act was only 45 days, the classes taxed were relieved of the abolished personal property tax, and notice was at least constructively provided by the replacement tax provision of subsection (c) of this section. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

Scope

Former Ill. Const. (1870), Art. IX, § 1 (see now this section), permits the General Assembly to establish classes among certain enumerated types of property mentioned in said section; that among such classes is the property of corporations who own or use franchises and privileges; that such a general law has been enacted authorizing the taxing of the value of the capital stock and franchises of the appellant company, which law is general in its nature and character, and creates a class within the permissive power granted by the last clause of section 1 of Article IX; that there is no requirement that the valuation of such property be uniform with property not subject to assessment by the Tax Commission, and that but for appearing in the pleading or proof the same uniform method of valuation has been pursued throughout the State of Illinois. People ex rel. Prindable v. Union Elec. Power Co., 392 Ill. 271, 64 N.E.2d 534 (1945).

Scope of Review

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The Supreme Court would not assume jurisdiction on direct appeal merely to refer to earlier decisions regarding the constitutionality of this statute. Richter v. City of Mt. Carroll, 398 Ill. 473, 76 N.E.2d 452 (1947).

Tax Refund

Foreign corporation doing business in this state was not entitled to refund out of retaliation tax for county personal property taxes paid in this state where such tax was not assessed as a condition precedent to the doing of an insurance business but on the ownership of personal property. Pacific Mut. Life Ins. Co. v. Gerber, 22 Ill. 2d 196, 174 N.E.2d 862 (1961).

Validity of Classifications

The separate classification of particular utilities for tax purposes has been upheld against a uniformity clause challenge in the absence of a showing that the classification was unreasonable and arbitrary. Continental Ill. Nat'l Bank & Trust Co. v. Zagel, 78 Ill. 2d 387, 36 Ill. Dec. 650, 401 N.E.2d 491 (1979).

Valuation

A court will not entertain jurisdiction to enjoin the collection of a tax upon the ground of the excessive valuation of the property assessed by the assessing officer or officers. Burton Stock Car Co. v. Traeger, 187 Ill. 9, 58 N.E. 418 (1900).

The valuation of property for the purpose of taxation is to be ascertained by some person or persons elected or appointed by the legislature because the constitution expressly prohibits the ascertainment of such value by any other person than a person elected or appointed by the legislature. Hence the courts have no power to fix the valuation of property for taxation. Burton Stock Car Co. v. Traeger, 187 Ill. 9, 58 N.E. 418 (1900).

LEGAL PERIODICALS

For note and comment, "Double Taxation of Partnership Income in Illinois," 58 Chi. Kent L. Rev. 137 (1981).

RESEARCH REFERENCES

Sales and use taxes on leased tangible personal property. 2 ALR4th 859.

Situs of tangible personal property for purposes of property taxation. 2 ALR4th 432.

Practice Guides and Treatises.

Residential Real Estate § 10.29 Improper Inclusion of Personal Property (IICLE).

Real Estate Taxation § 2.66 Abolition of Personal Property Tax (IICLE).

Real Estate Taxation § 1.17 Abolition of the Personal Property Tax (IICLE).

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Section 6. Exemptions from Property Taxation.

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. The General Assembly by law may grant homestead exemptions or rent credits.

(Source: Illinois Constitution.)

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In General

All property is subject to taxation unless a statute specifically exempts it. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App. 3d 431, 115 Ill. Dec. 492, 517 N.E.2d 1178 (2 Dist. 1987).

Cases construing Ill. Const. (1870), Art. IX, § 3 (see now this section), which permitted property tax exemptions for property used exclusively for religious purposes, are relevant in construing the limits of exemptions under this section. McKenzie v. Johnson, 98 Ill. 2d 87, 74 Ill. Dec. 571, 456 N.E.2d 73 (1983).

In general terms Article IX of the 1870 Constitution subjected all property to taxation, and Ill. Const. (1870), Art. IX, § 3 (see now this section) permitted the legislature to exempt certain property, but this provision was not self-executing; exemptions existed only when created by a general law enacted by the legislature; it was permissible, not mandatory, for the legislature to exempt certain property from taxation and in exempting property the legislature could place restrictions, limitations, and conditions on such exemption as was proper by general law. North Shore Post No. 21 v. Korzen, 38 Ill. 2d 231, 230 N.E.2d 833 (1967).

This section is not self-executing and requires a statute to provide the exemption. Locust Grove Cem. Ass'n v. Rose, 16 Ill. 2d 132, 156 N.E.2d 577 (1959).

To qualify property for exemption from taxes, the benefits must accrue to mankind directly, and it is not enough that incidental benefits may come to the public as a result of the property's use. Coyne Elec. Sch. v. Paschen, 12 Ill. 2d 387, 146 N.E.2d 73 (1957).

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Except as to property owned by the national government within the state, the exemption of property from taxation requires affirmative action by the General Assembly. Krause v. Peoria Hous. Auth., 370 Ill. 356, 19 N.E.2d 193 (1939).

The writers of the Constitution did not intend a liberal interpretation of the exemptions, but rather a restricted one, so as to attain the object sought, i.e., that property should bear only its just portion of the tax burden and no property should be exempt until declared so by legislative enactment. People ex rel. Gill v. Trustees of Schs., 364 Ill. 131, 4 N.E.2d 16 (1936).

This constitutional provision is not self-executing, but merely grants to the legislature, acting within the constitutional limitations imposed, the authority to enact legislation to exempt property from taxation. People ex rel. Bracher v. Salvation Army, 305 Ill. 545, 137 N.E. 430 (1922); Glen Oak Cemetery Co. v. Board of Appeals, 358 Ill. 48, 192 N.E. 673 (1934); Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135, 192 N.E. 780 (1934); People ex rel. Lawless v. City of Quincy, 395 Ill. 190, 69 N.E.2d 892 (1946); People ex rel. Paschen v. Hendrickson-Pontiac, Inc., 9 Ill. 2d 250, 137 N.E.2d 381 (1956).

This constitutional provision is not self-executing, and exemptions, within the limitations prescribed, exist only when created by a general law enacted by the legislature. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135, 192 N.E. 780 (1934).

This section does not, of itself, exempt any property in this state from taxation, but simply provides what property may be exempted from taxation by general law. In re Allerton, 296 Ill. 340, 129 N.E. 801 (1921).

Agricultural and Horticultural Societies

- In General

In order to qualify for this exemption, an entity must establish that it is a society devoting its property exclusively to agricultural or horticultural pursuits of a charitable nature and is not for pecuniary profit, and the burden of proof lies upon the party seeking to qualify its property for the exemption. People ex rel. Redfern v. Farms, 9 Ill. App. 3d 16, 291 N.E.2d 288 (5 Dist. 1972).

- Scientific Research

Where none of the attributes or trappings ordinarily associated with legitimate scientific research were visible in regard to defendant's farm, the evidence failed to present more than a facade of a legitimate scientific research and experimentation program, and more reasonable was the conclusion that the corporation was not a society devoting its property exclusively to scientific research and experimentation but a profit oriented enterprise for the benefit of the corporate president and his family, the defendant tax objector failed to meet its burden of proof. People ex rel. Redfern v. Farms, 9 Ill. App. 3d 16, 291 N.E.2d 288 (5 Dist. 1972).

Burden of Proof

- In General

One who seeks to establish the tax exempt status of property has the burden of proving that the property was used exclusively for a public purpose; proof of public ownership, unless accompanied by proof of exclusive use for a public purpose, does not establish exemption. Skil Corp. v. Korzen, 32 Ill. 2d 249, 204 N.E.2d 738 (1965).

Cemetery Purposes

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- In General

Only lands used exclusively for cemetery purposes or graveyards or grounds for burying the dead are exempt from taxation. Oak Ridge Cem. Corp. v. Tax Comm'n, 299 Ill. 430, 132 N.E. 553 (1921).

Charitable Purposes

Decision by the director of the State Department of Revenue that a hospital was not entitled to a 2002 property tax exemption as a premises used primarily for charitable purposes was not clearly erroneous where the hospital's owner failed to establish entitlement to the exemption by clear and convincing evidence. The hospital fit only one of the six criteria for establishing that it was itself a charitable institution (it was a non-profit corporation), and the director could reasonably have inferred that the hospital did not dispense charity to all who needed it where only 0.7% of its revenue was devoted to charity care. Provena Covenant Med. Ctr. v. Dep't of Revenue, 384 Ill. App. 3d 734, 323 Ill. Dec. 685, 894 N.E.2d 452, 2008 Ill. App. LEXIS 867 (4 Dist. 2008), aff'd, 2010 Ill. LEXIS 289 (Ill. 2010), aff'd, remanded, 2010 Ill. LEXIS 284 (Ill. 2010).

- In General

The legislature has the power to exempt from taxation such property as may be used exclusively for charitable purposes, but only by general law. People ex rel. Nelson v. Rockford Lodge No. 64, 348 Ill. 528, 181 N.E. 432 (1932).

- Authority of Court

Regardless of what the legislature declares to be exempt by statute, the courts of this state are empowered to determine whether an organization is a charitable organization within the meaning of this constitutional provision. Illinois Hosp. & Health Serv. v. Aurand, 58 Ill. App. 3d 79, 15 Ill. Dec. 549, 373 N.E.2d 1021 (2 Dist. 1978).

- Burden of Proof

The plaintiff has the burden of proving both that the property is owned by a charitable organization, and that the property is used exclusively for charitable purposes. Weslin Properties, Inc. v. Department of Revenue, 157 Ill. App. 3d 580, 109 Ill. Dec. 696, 510 N.E.2d 564 (2 Dist. 1987).

In proving an exemption on charitable grounds, the burden is on the claimant, and the proof must clearly show that the property comes under the statute allowing the exemption. County of Winnebago ex rel. Munson v. Owners of Property, 11 Ill. App. 3d 1064, 297 N.E.2d 6 (2 Dist. 1973).

The right to enjoy exemption from taxation can only be established by strict proof of the existence of all facts necessary to authorize the exemption. People ex rel. Thompson v. Ravenswood Hosp., 238 Ill. 137, 87 N.E. 305 (1909).

- Charity Defined

Tournament operator's property, which was the site of its golf tournament, was used for charitable purposes because the primary use of the property was to generate proceeds to be used to promote the common good and general welfare of the people of the area; since that purpose was not a secondary or incidental purpose, since there was no profit for private gain, and since net revenue from the tournament was contributed to recognized charities, the city was not entitled to tax the tournament's gross receipts on the basis that the tournament was a "for gain" venture. Quad Cities Open, Inc. v. City of Silvis, 208 Ill. 2d 498, 281 Ill. Dec. 534, 804 N.E.2d 499, 2004 Ill. LEXIS 9 (2004).

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Charity, in the legal sense, is not confined to mere almsgiving or the relief of poverty and distress, but has a wider signification, which embraces the improvement and promotion of the happiness of man; a charity is a gift to the general public use which extends to the rich as well as to the poor. Congregational Sunday Sch. & Publishing Soc'y v. Board of Review, 290 Ill. 108, 125 N.E. 7 (1919).

- Classification of Property

An organization with charitable objectives may own property which is exempt from taxation and also property which is not exempt. People ex rel. Nelson v. Rockford Masonic Temple Bldg. Ass'n, 348 Ill. 567, 181 N.E. 428 (1932).

- Determination

While the Illinois Constitution, Ill. Const. art. IX, § 6, allowed the General Assembly the power to exempt from taxation property used for, inter alia, charitable purposes, that did not mean that the General Assembly had enacted statutory law allowing just any organization to claim that a real estate tax exemption under any circumstances. Indeed, the company as a noncharitable organization could not claim a real estate tax exemption under 35 ILCS 200/15-65 for a certain tax year based on a sale-leaseback arrangement it had entered into with a previous owner, which was a charitable organization; the company was the applicant for the exemption, but it was not permitted to claim that it had "stepped into the shoes" of the previous owner for the purpose of determining whether the company itself was entitled to the exemption. OKO, LLC v. Ill. Dep't of Revenue, Ill. App. 3d , 355 Ill. Dec. 249, 959 N.E.2d 663, 2011 Ill. App. LEXIS 639 (4 Dist. 2011).

As the concept of property use which is exclusively charitable does not lend itself to easy definition, each individual claim for tax exemption must be determined from the facts presented. Highland Park Hosp. v. Department of Revenue, 155 Ill. App. 3d 272, 107 Ill. Dec. 962, 507 N.E.2d 1331 (2 Dist. 1987).

Inasmuch as the charter of a corporation provided that upon possible dissolution of the same any surplus would be donated to a charitable, benevolent or educational organization, this was an indicia of the charitable nature of the corporation. Illinois Hosp. & Health Serv. v. Aurand, 58 Ill. App. 3d 79, 15 Ill. Dec. 549, 373 N.E.2d 1021 (2 Dist. 1978).

- Elements of Exemption

To be exempt from taxation, property must (1) be owned by a charitable organization and (2) be exclusively used for charitable purposes. People ex rel. Nelson v. Rockford Lodge No. 64, 348 Ill. 528, 181 N.E. 432 (1932); Coyne Elec. Sch. v. Paschen, 12 Ill. 2d 387, 146 N.E.2d 73 (1957); Hoffman v. Lehnhausen, 48 Ill. 2d 323, 269 N.E.2d 465 (1971); Mason Dist. Hosp. v. Tuttle, 61 Ill. App. 3d 1034, 19 Ill. Dec. 138, 378 N.E.2d 753 (4 Dist. 1978); Weslin Properties, Inc. v. Department of Revenue, 157 Ill. App. 3d 580, 109 Ill. Dec. 696, 510 N.E.2d 564 (2 Dist. 1987).

Where exemption is claimed on charitable grounds, two elements must be proved: the property is owned by a charitable organization, and the property is devoted exclusively to charitable purposes. It is not sufficient to show that one of several uses results in charity, as charity must be the chief or primary use to which the property is devoted. County of Winnebago ex rel. Munson v. Owners of Property, 11 Ill. App. 3d 1064, 297 N.E.2d 6 (2 Dist. 1973).

To sustain a claim for exemption of property from taxation on the ground that it is used for charitable purposes, two conditions are essential: (1) ownership by a charitable organization, and (2) its exclusive use for charitable purposes. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135, 192 N.E. 780 (1934).

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For property to be exempt, it must belong to, and stand in the name of, an institution organized for public charity, and the property shall be used actually and exclusively for such charitable purposes. People ex rel. Thompson v. Ravenswood Hosp., 238 Ill. 137, 87 N.E. 305 (1909).

- Employee Housing

Plaintiff failed to demonstrate that employee residences were necessary to the performance of its charitable functions so as to entitle them to a tax exemption under 35 ILCS 200/15-65, where employees did not perform any of their duties at the residences, and where the nature of their duties did not require them to live on the premises. Cantigny Trust v. Department of Revenue, 171 Ill. App. 3d 1082, 122 Ill. Dec. 259, 526 N.E.2d 518 (2 Dist. 1988).

College president's residence, owned by the college, was not used for educational purposes, rather its primary use was as a residence, such a use was not necessary for charitable purposes, and denial of its exemption from property taxes had been proper. Cook County Collector v. National College of Education, 41 Ill. App. 3d 633, 354 N.E.2d 507, 1976 Ill. App. LEXIS 2999 (1 Dist. 1976).

- Exclusive Use

Although the courts do not have the power to create an exemption by judicial interpretation, the determination of whether the property use is exclusively charitable is a judicial function. Highland Park Hosp. v. Department of Revenue, 155 Ill. App. 3d 272, 107 Ill. Dec. 962, 507 N.E.2d 1331 (2 Dist. 1987).

The following principles constitute the frame of reference to determine whether or not a use was in fact exclusively for charitable purposes: (1) whether the use was for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government; (2) whether the charitable institution has no capital, capital stock or shareholders, earns no profits or dividends, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) whether the institution dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; (4) the statements of the agents of an institution and the wording of its governing legal documents evidence an intention to use its property exclusively for charitable purposes, do not relieve such institution of the burden of proving that that its property actually and factually is so used; and (5) the term "exclusively used" means the primary purpose for which property is used and not any secondary or incidental purpose. Highland Park Hosp. v. Department of Revenue, 155 Ill. App. 3d 272, 107 Ill. Dec. 962, 507 N.E.2d 1331 (2 Dist. 1987).

Although from the evidence it appeared that defendant's organizational make-up and use of its property as a retirement home conformed generally precursor to 35 ILCS 200/15-65, defendant must also comply unequivocally with the constitutional requirement of exclusively charitable use in this section. People ex rel. Nordlund v. Association of the Winnebago Home for the Aged, 40 Ill. 2d 91, 237 N.E.2d 533 (1968).

- Factors

Property tax exemption statutes are to be strictly construed and are not to be extended by judicial interpretation beyond the authority given in the constitution. In deciding whether a property is entitled to the charitable-use exemption of 35 ILCS 200/15-65, the property must comply with the exclusive charitable use of property that is required by Ill. Const. Art. IX, § 6, and courts are guided in that decision by the following six criteria: (1) the benefits derived are for an indefinite number of persons for their general welfare or in some way reducing the burdens on government; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and the funds are held in

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trust for the objects and purposes expressed in the organization's charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the exclusive, i.e. primary, use of the property is for charitable purposes. Eden Ret. Ctr., Inc. v. Dep't of Revenue, 213 Ill. 2d 273, 290 Ill. Dec. 189, 821 N.E.2d 240, 2004 Ill. LEXIS 2026 (2004).

In evaluating research institutions in the context of charitable exemptions the factors to be considered are: (1) is the institute's research available to the public; and (2) who directly benefits from the institute's research efforts, taking into consideration the ability of the research to reduce governmental burdens and the remoteness of the nature of the research from traditional notions of charity. Institute of Gas Technology v. Department of Revenue, 289 Ill. App. 3d 779, 225 Ill. Dec. 316, 683 N.E.2d 484 (1 Dist. 1997), appeal denied, 174 Ill. 2d 563, 227 Ill. Dec. 6, 686 N.E.2d 1162 (1997).

- Fraternal Organizations

Masonic lodge, which had the burden of showing a predominantly charitable use of the property in order to qualify for a property tax exemption, failed to produce sufficient evidence in that regard to make the Department of Revenue's denial of the exemption wrong as a matter of law; although 95% of the money it spent for charity was raised from meetings held within the building, no evidence was presented as to the source of any of this money, except for dues, less than one-fourth of which were used for charitable purposes and, no evidence in any detail was presented that matters of charity dominated the meetings. Pontiac Lodge No. 294 v. Department of Revenue, 243 Ill. App. 3d 186, 183 Ill. Dec. 209, 611 N.E.2d 62 (4 Dist. 1993).

The appellant was not a charitable organization under the law because mutual benefit and social intercourse of its members did not constitute a charitable purpose especially where its property was not used exclusively for charitable purposes. People ex rel. Nelson v. Rockford Lodge No. 64, 348 Ill. 528, 181 N.E. 432 (1932).

The Rockford Masonic Temple Building was used to promulgate the ideals of Masonry, which included the maintenance of a high moral standard of living and administration to the religious and spiritual life of its members, and in carrying out these ideals charity was but an incidental feature; thus, since charity was not the principal or the exclusive object of the organization, under the constitution of the state no exemption from taxation can be enjoyed by any organization which does not have charity as its primary object. People ex rel. Nelson v. Rockford Masonic Temple Bldg. Ass'n, 348 Ill. 567, 181 N.E. 428 (1932).

- Health Services

A medical center did not qualify as a charitable organization and, therefore, was not entitled to a real estate tax exemption where: (1) it did not waive fees for any of its clients, although it did assess fees on a sliding scale for clients who could not pay the full cost of medical care; and (2) it posted a profit. Alivio Medical Ctr. v. Illinois Dep't of Revenue, 299 Ill. App. 3d 647, 234 Ill. Dec. 23, 702 N.E.2d 189 (1 Dist. 1998), appeal denied, 182 Ill. 2d 547, 236 Ill. Dec. 668, 707 N.E.2d 1238 (1999).

The immediate care center of a medical center did not qualify for a charitable exemption because it was not exclusively used for charitable purposes, where all patients who utilized the center were billed, none of the advertisements for the center disclosed any charitable nature of the facility, and free or charitable care was not mentioned. Highland Park Hosp. v. Department of Revenue, 155 Ill. App. 3d 272, 107 Ill. Dec. 962, 507 N.E.2d 1331 (2 Dist. 1987).

Where plaintiff foundation failed to carry the burden of proving that it was a charitable institution entitled to tax exemption, due to the inurement of benefits received by doctor from the foundation in its entirety, the component parts of the foundation were all interrelated; hence, there was no basis for a division of its property for purposes of taxation. Hopedale Medical Found. v. Tazewell County Collector, 59 Ill. App. 3d 816, 17 Ill. Dec. 92, 375 N.E.2d 1376 (3 Dist. 1978).

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Where the plaintiff's property was not used for charitable purposes within the meaning of this section, it was therefore not entitled to exemption from tax, notwithstanding the provisions of the Voluntary Health Services Plans Act (215 ILCS 165/27). Illinois Hosp. & Health Serv. v. Aurand, 58 Ill. App. 3d 79, 15 Ill. Dec. 549, 373 N.E.2d 1021 (2 Dist. 1978).

Where the primary use of a medical center was for offices for the physicians privately practicing there, the center's purpose (although arguably a charitable one incidentally) was primarily non-charitable and was thus erroneously exempted from taxation. Mason Dist. Hosp. v. Tuttle, 61 Ill. App. 3d 1034, 19 Ill. Dec. 138, 378 N.E.2d 753 (4 Dist. 1978).

A charity hospital owned by a corporation organized for profit was not property owned by an institution of public charity. People ex rel. Thompson v. Ravenswood Hosp., 238 Ill. 137, 87 N.E. 305 (1909).

- Homes for the Aged

Property of old people's home was held not exempt from taxation as a charitable institution under this section or under the provisions of § 19.7 of the Revenue Act of 1939 as amended (see now 35 ILCS 200/15-65) which implements the constitutional provision. Small v. Pangle, 60 Ill. 2d 510, 328 N.E.2d 285 (1975).

Since defendant admitted only two people who could not pay its admission fee and, according to the record, had allocated from its sizable holdings only sufficient funds to provide for one needy applicant, defendant's property was not used exclusively for charitable purposes and not entitled to exemption from tax. People ex rel. Nordlund v. Association of the Winnebago Home for the Aged, 40 Ill. 2d 91, 237 N.E.2d 533 (1968).

- Improvements

Stadium, bleachers, press box, restroom facilities and other improvements were found to constitute part of the real property on which the improvements were constructed, despite the lease provisions which allowed removal, and taxes should not have been assessed against the not for profit corporation which constructed the improvements. Decatur Sports Found. v. Department of Revenue, 156 Ill. App. 3d 623, 109 Ill. Dec. 264, 509 N.E.2d 1103 (4 Dist. 1987).

- Intent

Plaintiff taxpayer qualified for charitable exempt tax status where actual construction of an urgent care center and accompanying parking facilities and roads had not yet begun but where significant design and planning had taken place; taxpayer had clearly exhibited more than a simple intent to convert the property for a tax exempt use and had satisfied the requirement of 35 ILCS 200/15-65 that actual development and adaptation must have occurred in the year in which tax exempt status is sought. Weslin Properties, Inc. v. Department of Revenue, 157 Ill. App. 3d 580, 109 Ill. Dec. 696, 510 N.E.2d 564 (2 Dist. 1987).

Evidence that land was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose, since intention to use is not the equivalent of use. Weslin Properties, Inc. v. Department of Revenue, 157 Ill. App. 3d 580, 109 Ill. Dec. 696, 510 N.E.2d 564 (2 Dist. 1987).

Fact that college intended to develop in the future a complete satellite campus, fully utilizing 107 acres, did not qualify the entire tract for tax exemption; evidence that land was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose; furthermore, intention to use is not the equivalent of use. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 273 N.E.2d 371 (1971).

- Ownership

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Where the sale/lease-back agreement, as originally drafted, retained solely in the for-profit lessor, the right to choose when and if to convey title and the not-for-profit lessee, had no control over the decision to convey until the lease was amended on October 2, 1990 and prior to that date, lessee was granted only the option to accept or reject lessor's terms of conveyance at such time as lessor chose to convey to a third party, thereafter, by amendment, lessee acquired not only an unconditioned option to purchase on the 15th and 20th anniversaries of the lease, but also an agreement as to how the purchase price was to be computed if lessee chose to exercise its option; consequently, and given the preference for taxation over exemption, the Department correctly ruled that the incidents of ownership in lessee changed for tax purposes upon the adoption of the amendment to the lease in October, 1990; and that prior thereto lessee was ineligible for the charitable use exemption. Henderson County Retirement Ctr., Inc. v. Department of Revenue, 237 Ill. App. 3d 522, 178 Ill. Dec. 480, 604 N.E.2d 1003 (3 Dist. 1992).

Not-for-profit corporation was not entitled to a tax exemption regarding improvements it made to the underlying real estate which it had owned for only 26 days during the tax year. Decatur Sports Found. v. Department of Revenue, 156 Ill. App. 3d 623, 109 Ill. Dec. 264, 509 N.E.2d 1103 (4 Dist. 1987).

- Payment for Service

The mere fact that an organization may charge those able to pay for the use of or services of the corporation does not make such an organization "noncharitable" where it does furnish such facilities or services to those unable to pay. Illinois Hosp. & Health Serv. v. Aurand, 58 Ill. App. 3d 79, 15 Ill. Dec. 549, 373 N.E.2d 1021 (2 Dist. 1978).

A plaintiff was not a charitable organization and its property was not devoted to charitable purposes where the corporation did nothing for anyone without payment in full. Coyne Elec. Sch. v. Paschen, 12 Ill. 2d 387, 146 N.E.2d 73 (1957).

- Personal Use

Where physician who founded hospital foundation retained use of foundation facilities, retained complete control of the foundation, drew a substantial salary for its management, and benefited, at least indirectly, from the private practice of medicine on foundation property and from the use of foundation facilities as an adjunct to his various business pursuits, defendant foundation failed to meet its burden of showing clearly and conclusively that its facilities were used exclusively for a charitable purpose within the statutory and constitutional provisions so as to qualify it for a property tax exemption under 35 ILCS 200/15-65. People ex rel. County Collector v. Hopedale Medical Found., 46 Ill. 2d 450, 264 N.E.2d 4 (1970).

- Primary Purpose

It is not enough, to exempt property from taxation, that one of several purposes or results is charity; charity must be the chief, if not the sole, object. People ex rel. Nelson v. Rockford Masonic Temple Bldg. Ass'n, 348 Ill. 567, 181 N.E. 428 (1932).

- Required

Failure by organization to put the property to any use, charitable or otherwise, from the late 1970's until 1989 compelled the conclusion that the property should not have been granted the tax exemption requested; although instantaneous use of the property for a charitable purpose was not required, if some steps had been taken over the years in furtherance of the claimed charitable purpose, the result may have been different. Comprehensive Training & Dev. Corp. v. County of Jackson, 261 Ill. App. 3d 37, 198 Ill. Dec. 727, 633 N.E.2d 189 (5 Dist. 1994).

- School

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Where a school claimed that most of its support was from tuition, then its funds were not derived mainly from public or private charity, and where the budget and expenses of the school were not in evidence, the plaintiffs had not met their burden of proving that their funds were derived mainly from public or private charity; hence, they failed to prove the school to be a charitable organization. Milward v. Paschen, 16 Ill. 2d 302, 157 N.E.2d 1 (1959).

It was not satisfactorily shown that a plaintiff electronics school performed any acts of charity during the years exemption is claimed, which would serve to change its primary purpose, and the fact that the plaintiff school allegedly established 225 scholarships for orphan children of World War II soldiers did not entitle the school to charitable exempt status where only one scholarship had actually been awarded and where the offer for such scholarships was revocable. Coyne Elec. Sch. v. Paschen, 12 Ill. 2d 387, 146 N.E.2d 73 (1957).

- Swimming Pool

Although a swimming pool belonging to a nonprofit corporation was used without charge by participating groups of the United Fund, the use was on a limited and scheduled basis, and the general use of the pool was confined to dues paying members and their guests, and the corporation failed in its burden to prove by clear evidence that the primary use of the land upon which the pool was located was devoted to charitable purposes. County of Winnebago ex rel. Munson v. Owners of Property, 11 Ill. App. 3d 1064, 297 N.E.2d 6 (2 Dist. 1973).

- Use of Income

When the income of an institution inures to the benefit of a private individual engaged in managing a charity, the institution loses its status as a charitable institution even though that institution might primarily be of a charitable nature. Hopedale Medical Found. v. Tazewell County Collector, 59 Ill. App. 3d 816, 17 Ill. Dec. 92, 375 N.E.2d 1376 (3 Dist. 1978).

- Veteran's Organizations

The exemption from taxation of property of veteran's organizations in 35 ILCS 200/15-145 presents no conflict with this section, since that section specifically limits exemptions to facilities used exclusively for charitable, patriotic and civic purposes. Schlenz v. Castle, 132 Ill. App. 3d 993, 87 Ill. Dec. 571, 477 N.E.2d 697 (2 Dist. 1985), aff'd, 115 Ill. 2d 135, 104 Ill. Dec. 684, 503 N.E.2d 241 (1987).

Exclusive Use

- Construction

In ascertaining whether the use of property for an exempt purpose is exclusive, a court must not give the statute an unreasonably narrow construction. Weslin Properties, Inc. v. Department of Revenue, 157 Ill. App. 3d 580, 109 Ill. Dec. 696, 510 N.E.2d 564 (2 Dist. 1987).

- Defined

"Exclusive use" has been defined as "primary" use. Weslin Properties, Inc. v. Department of Revenue, 157 Ill. App. 3d 580, 109 Ill. Dec. 696, 510 N.E.2d 564 (2 Dist. 1987).

- Ownership

Where the test of exemption was use and not ownership, in such a case property used by the Salvation Army was exempt, although the legal title was in an individual. People ex rel. Bracher v. Salvation Army, 305 Ill. 545, 137 N.E. 430 (1922).

- Primary Purpose

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Property satisfies the exclusive use requirement of the property tax exemption statutes if it is primarily used for the exempted purpose, even though it is also used for a secondary or incidental purpose. Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill. App. 3d 325, 108 Ill. Dec. 309, 508 N.E.2d 470 (2 Dist. 1987).

The phrase "exclusively used" refers to the primary purpose for which the property is used and not a secondary or incidental purpose. Mason Dist. Hosp. v. Tuttle, 61 Ill. App. 3d 1034, 19 Ill. Dec. 138, 378 N.E.2d 753 (4 Dist. 1978).

It is the primary use to which the property is put which determines the question of whether it is exempt from taxation: if devoted primarily to religious or charitable purposes which exempt the property from taxation, an incidental use for another purpose will not destroy the exemption, but an incidental use for religious or charitable purposes of property whose primary use is for another purpose, will not warrant exemption. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 143 N.E. 414 (1924).

Framers' Intent

It was the aim of the framers of the Constitution that all property should bear its just portion of taxation and that there should be no favored class. People ex rel. Gill v. Trustees of Schs., 364 Ill. 131, 4 N.E.2d 16 (1936).

Homestead Exemptions

- Allowed

Alternative homestead exemption in an amendment to 35 ILCS 200/15-176 was not unconstitutional because: (1) 35 ILCS 200/15-176 did not unconstitutionally delegate to the counties the exclusive power of the Illinois General Assembly under Ill Const. Art. IX, § 6 to create an alternative homestead exemption; and (2) the amendment was not an ultra vires act by the General Assembly but the enactment of a constitutionally permissible homestead exemption under Ill. Const. Art. IX, § 6. Chicagoland Chamber of Commerce v. Pappas, 378 Ill. App. 3d 334, 317 Ill. Dec. 113, 880 N.E.2d 1105, 2007 Ill. App. LEXIS 1285 (1 Dist. 2007).

- Corporation

Although a homestead exemption cannot be validly granted where the owner is a corporation, since a corporation cannot "reside" in a building, where the beneficial owner of property held under a land trust is liable for real estate taxes on the property, and if the beneficiary is a natural person residing on the premises, he would qualify for the exemption even if the trustee were a corporation. Proviso Tp. High Sch. v. Hynes, 84 Ill. 2d 229, 49 Ill. Dec. 276, 417 N.E.2d 1290 (1980).

- Improvements

Homestead improvement exemption statute (former Ill. Rev. Stat., ch. 120, para. 500.23-4) was held unconstitutional because it did not require that the owner be a natural person who resided in building, and made no provision whatever for rent credits, so that the entire benefit of the exemption, which could reach the sum of $3,600,000 for a single building, was conferred upon the owner. Proviso Tp. High Sch. v. Hynes, 84 Ill. 2d 229, 49 Ill. Dec. 276, 417 N.E.2d 1290 (1980).

- Judgments

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Under a prior similar provision, the homestead exemptions applied against a sale of property for a judgment in personam against a debtor, even though the judgment was for nonpayment of taxes. Douthett v. Winter, 108 Ill. 330 (1884).

- Occupation

Homestead exemption may not be granted to any owner of residential property without regard to his occupancy of the premises; although not employing the word "occupy," in coupling people who own their homes with those who rent them, the exemption inferentially excludes one whose relationship to a residential structure is only that of an investor. Proviso Tp. High Sch. v. Hynes, 84 Ill. 2d 229, 49 Ill. Dec. 276, 417 N.E.2d 1290 (1980).

- Purpose

It was the intention of the delegates, by adopting this section, to grant the legislature broad powers to fashion homestead exemptions like those in precursor to 35 ILCS 200/15-170 et seq., that would promote legitimate social policies such as encouraging home improvement or rewarding the patriotic service of veterans who have been obliged to drop their own affairs to take up the burdens of the nation. McKenzie v. Johnson, 98 Ill. 2d 87, 74 Ill. Dec. 571, 456 N.E.2d 73 (1983).

- Rental of Premises

Where an owner resides on one portion of a single lot, the entire lot will qualify for the homestead exemption even if the remainder is leased to another person. Proviso Tp. High Sch. v. Hynes, 84 Ill. 2d 229, 49 Ill. Dec. 276, 417 N.E.2d 1290 (1980).

- Valuation Reduction

This section of the constitution does not authorize the legislature to grant an exemption in the guise of a homestead "valuation reduction." Hoffman v. Lehnhausen, 48 Ill. 2d 323, 269 N.E.2d 465 (1971).

Illustrative Case

A city is not an institution of public charity and thus land leased by city to hospital is not exempt from taxation as a charitable organization. People ex rel. Carr v. City of Chicago, 323 Ill. 68, 153 N.E. 725 (1926).

Legislation

- Burden of Proof

Statutes granting tax exemptions must be strictly construed in favor of taxation, and the party claiming an exemption has the burden of proving clearly and conclusively that the property in question falls within both the constitutional authorization and the terms of the exempting statute. People ex rel. County Collector v. Hopedale Medical Found., 46 Ill. 2d 450, 264 N.E.2d 4 (1970); Haven v. Department of Revenue, 153 Ill. App. 3d 763, 106 Ill. Dec. 634, 506 N.E.2d 341 (4 Dist. 1987); Weslin Properties, Inc. v. Department of Revenue, 157 Ill. App. 3d 580, 109 Ill. Dec. 696, 510 N.E.2d 564 (2 Dist. 1987).

The burden of proving the right to exemption rests upon the plaintiffs who seek it. Milward v. Paschen, 16 Ill. 2d 302, 157 N.E.2d 1 (1959).

A person asserting a tax exemption has the burden of establishing statutory authority for the exemption. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135, 192 N.E. 780 (1934); City of

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Mattoon v. Graham, 386 Ill. 180, 53 N.E.2d 955 (1944); Mason Dist. Hosp. v. Tuttle, 61 Ill. App. 3d 1034, 19 Ill. Dec. 138, 378 N.E.2d 753 (4 Dist. 1978).

The burden of proof in claiming a tax exemption is upon the one claiming the exemption, and all doubts must be resolved against the claim of exemption. People ex rel. Lloyd v. University of Ill., 357 Ill. 369, 192 N.E. 243 (1934).

The burden is on the person claiming that specific property is exempt from taxation to show clearly that it is within the contemplation of the exempting statute. People ex rel. Nelson v. Rockford Lodge No. 64, 348 Ill. 528, 181 N.E. 432 (1932).

- Construction

In determining whether property is included within the scope of a tax exemption all facts are to be construed and all debatable questions resolved in favor of taxation. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 143 N.E. 414 (1924); Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135, 192 N.E. 780 (1934); People ex rel. County Collector v. Hopedale Medical Found., 46 Ill. 2d 450, 264 N.E.2d 4 (1970); Mason Dist. Hosp. v. Tuttle, 61 Ill. App. 3d 1034, 19 Ill. Dec. 138, 378 N.E.2d 753 (4 Dist. 1978); Weslin Properties, Inc. v. Department of Revenue, 157 Ill. App. 3d 580, 109 Ill. Dec. 696, 510 N.E.2d 564 (2 Dist. 1987); City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 168 Ill. Dec. 841, 590 N.E.2d 478 (1992).

This section, and any statutes enacted under its provisions by way of general law, should receive a strict construction. City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 168 Ill. Dec. 841, 590 N.E.2d 478 (1992).

Every presumption is against the state's intent to exempt property from taxation, and doubts concerning the applicability of an exemption are resolved in favor of taxation. Cantigny Trust v. Department of Revenue, 171 Ill. App. 3d 1082, 122 Ill. Dec. 259, 526 N.E.2d 518 (2 Dist. 1988).

Acts of the legislature concerning exemption from taxation are presumed constitutional and all reasonable doubts must be resolved in favor of constitutionality. East Lake Fork Special Drainage Dist. v. Village of Ivesdale, 137 Ill. App. 3d 473, 91 Ill. Dec. 948, 484 N.E.2d 507 (4 Dist. 1985).

Because the terms of this Article subject all property generally to taxation, courts of review must strictly construe statutes granting tax exemptions and require that such statutes keep clearly within the boundaries set forth in the Constitution; in determining whether property is included within the scope of an exemption, all facts are to be construed, and all debatable questions resolved, in favor of taxation. Good Samaritan Home v. Department of Revenue, 130 Ill. App. 3d 1036, 86 Ill. Dec. 190, 474 N.E.2d 1387 (4 Dist. 1985).

Since all presumptions are to the contrary, the intention that the state be bound by an exemption must be clearly stated. In re Skidmore, 75 Ill. 2d 33, 25 Ill. Dec. 634, 387 N.E.2d 290 (1979).

Statutes providing exemption from taxation shall be strictly construed. People ex rel. Lloyd v. University of Ill., 357 Ill. 369, 192 N.E. 243 (1934); People ex rel. Nordlund v. Association of the Winnebago Home for the Aged, 40 Ill. 2d 91, 237 N.E.2d 533 (1968); County of Winnebago ex rel. Munson v. Owners of Property, 11 Ill. App. 3d 1064, 297 N.E.2d 6 (2 Dist. 1973); Small v. Pangle, 60 Ill. 2d 510, 328 N.E.2d 285 (1975).

Exemption statutes are strictly construed, and one who seeks exemption must show that the use of the property falls clearly within the statutes. People ex rel. Kelly v. Avery Coonley Sch., 12 Ill. 2d 113, 145 N.E.2d 80 (1957).

Courts have no power to create exemptions from taxation by judicial construction. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135, 192 N.E. 780 (1934).

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Laws exempting property from taxation are strictly construed against the property owner and he has the burden of showing that his property falls within the exempted class. Glen Oak Cemetery Co. v. Board of Appeals, 358 Ill. 48, 192 N.E. 673 (1934).

Courts should act with great caution in declaring property exempt from taxation, and only such property as manifestly falls within this constitutional provision should escape the payment of taxes. Glen Oak Cemetery Co. v. Board of Appeals, 358 Ill. 48, 192 N.E. 673 (1934).

Statutes exempting property from taxation must be strictly construed, and cannot be extended by judicial interpretation. People ex rel. Nelson v. Rockford Lodge No. 64, 348 Ill. 528, 181 N.E. 432 (1932).

A law claimed to exempt property from taxation must be strictly construed, and it devolves upon those claiming that specific property is thus exempt to clearly show that it is within the contemplation of the law. In re Allerton, 296 Ill. 340, 129 N.E. 801 (1921).

- Determination of Exemption

Authority to exempt property from taxation was set forth in Ill. Const. art. IX, § 6 and the General Assembly had no authority to grant exemptions beyond those authorized by that state constitutional provision, but the General Assembly could place restrictions, limitations, and conditions on property tax exemptions as might be proper under general law. Thus, the General Assembly could decree that the hospital use its property for charitable purposes in order to receive a charitable property tax exemption under 35 ILCS 200/15-65 and that it use its property solely for religious purposes to receive a religious property tax exemption under 35 ILCS 200/15-40(a)(1), and since the hospital did not show by clear and convincing evidence that it was so acting in regard to either exemption, the hospital did not establish that the property in question was entitled to either exemption. Provena Covenant Med. Ctr. v. Dep't of Revenue, 236 Ill. 2d 368, 339 Ill. Dec. 10, 925 N.E.2d 1131, 2010 Ill. LEXIS 289 (2010).

Where facts are undisputed, a determination of whether property is exempt from taxation is a question of law; thus, the decision as to whether property is exempt depends solely upon an application of the appropriate legal standard to the undisputed facts. City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 168 Ill. Dec. 841, 590 N.E.2d 478 (1992).

Each individual claim for exemption from property tax must be determined from the facts presented. City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 168 Ill. Dec. 841, 590 N.E.2d 478 (1992).

- Injunctions

Issuance of an injunction permanently restraining collection of real estate taxes on allegedly exempt property was erroneous; under former Ill. Rev. Stat., ch. 110, para. 265, injunctive relief was not an available remedy. People ex rel. Tomlin v. Illinois State Bar Ass'n, 89 Ill. App. 3d 1005, 45 Ill. Dec. 65, 412 N.E.2d 198 (4 Dist. 1980).

- Limitations

The enumeration in this section of certain classes of property which may be exempted has been held to be a limitation upon the power of the legislature to exempt any other property; it is beyond the power of the legislature to add to or broaden the exemptions which this section permits it to provide. City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 168 Ill. Dec. 841, 590 N.E.2d 478 (1992).

No property except that mentioned in this section may be exempted by any law passed by the legislature, nor can a statute be made broader than the provisions of this section. City of Chicago v. Illinois Dep't of Revenue, 210 Ill. App. 3d 273, 155 Ill. Dec. 65, 569 N.E.2d 65 (1 Dist. 1991), aff'd, 147 Ill. 2d 484, 168 Ill. Dec. 841, 590 N.E.2d 478 (1992).

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The enumeration of certain classes of property which may be exempted has been held to be a limitation upon the power of the legislature to exempt any other property, and such enumeration constitutes an exclusion of all other subjects of exemption. Locust Grove Cem. Ass'n v. Rose, 16 Ill. 2d 132, 156 N.E.2d 577 (1959).

It is beyond the power of the legislature to add to or broaden the exemptions which this section permits it to provide. People ex rel. Lloyd v. University of Ill., 357 Ill. 369, 192 N.E. 243 (1934).

This provision is a limitation upon the power of the legislature to grant exemptions from taxation except as to those specifically authorized by it. City of Rock Island v. Chippiannock Cem. Ass'n, 328 Ill. 236, 159 N.E. 271 (1927).

Any exemption from the rule of equality established by former Ill. Const. (1870), Art. IX, § 1 (see now Ill. Const. (1970), Art. IX, § 4) outside of the kinds of property enumerated in this section is absolutely prohibited. Consolidated Coal Co. v. Miller, 236 Ill. 149, 86 N.E. 205 (1908).

- Local Property Taxes

This provision governs the exemption of property from taxes imposed by local governments. Hoffman v. Lehnhausen, 48 Ill. 2d 323, 269 N.E.2d 465 (1971).

- Non-Property Taxes

An attempt by the legislature to exempt school districts from the requirement of purchasing city vehicle stickers or imposing any other nonproperty tax would not offend this section: while the general language of this section states that exemption can be give only the property of the state, units of local government and school districts, the section must be read in connection with Ill. Const. (1970), Art. IX, § 2, which provides the power to uniformly impose nonproperty taxes or fees and to allow exemptions, deductions, credits, refunds and other allowances which shall be reasonable. Board of Educ. v. City of McHenry, 71 Ill. App. 3d 904, 28 Ill. Dec. 384, 390 N.E.2d 551 (2 Dist. 1979).

- Other Purposes

Exemptions for property used for "mechanical" purposes (see now 35 ILCS 200/15-85) are invalid because such exemptions exceed the scope of this section. Board of Certified Safety Professionals of Americas, Inc. v. Johnson, 112 Ill. 2d 542, 98 Ill. Dec. 363, 494 N.E.2d 485 (1986).

Provision of former Revenue Act (see now 35 ILCS 200/15-85), insofar as it purported to exempt property used for philosophical purposes, was unconstitutional. International College of Surgeons v. Brenza, 8 Ill. 2d 141, 133 N.E.2d 269 (1956).

Where the capital stock of the appellant coal company did not come within this section's enumeration of property which the Legislature was permitted to exempt from taxation, that section of the former Revenue Act permitting an exemption was in conflict with the Constitution and void. Consolidated Coal Co. v. Miller, 236 Ill. 149, 86 N.E. 205 (1908).

- Scope of Authority

Property tax exemption statutes are to be strictly construed and are not to be extended by judicial interpretation beyond the authority given in the constitution. In deciding whether a property is entitled to the charitable-use exemption of 35 ILCS 200/15-65, the property must comply with the exclusive charitable use of property that is required by Ill. Const. Art. IX, § 6, and courts are guided in that decision by the following six criteria: (1) the benefits derived are for an indefinite number of persons for their general welfare or in some way reducing the burdens on government; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the organization's charter; (4) charity is dispensed

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to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the exclusive, i.e. primary, use of the property is for charitable purposes. Eden Ret. Ctr., Inc. v. Dep't of Revenue, 213 Ill. 2d 273, 290 Ill. Dec. 189, 821 N.E.2d 240, 2004 Ill. LEXIS 2026 (2004).

The legislature is not constitutionally required to exempt any property from taxation and may place restrictions upon the exemptions it does grant. City of Chicago v. Illinois Dep't of Revenue, 210 Ill. App. 3d 273, 155 Ill. Dec. 65, 569 N.E.2d 65 (1 Dist. 1991), aff'd, 147 Ill. 2d 484, 168 Ill. Dec. 841, 590 N.E.2d 478 (1992).

- Special Assessments

The General Assembly could, in its discretion, totally abolish the Drainage Code (70 ILCS 605/1-1 et seq.) or eliminate the authority of drainage districts to levy special assessments. East Lake Fork Special Drainage Dist. v. Village of Ivesdale, 137 Ill. App. 3d 473, 91 Ill. Dec. 948, 484 N.E.2d 507 (4 Dist. 1985).

This section does not prohibit the General Assembly from legislating exemptions from special assessments. East Lake Fork Special Drainage Dist. v. Village of Ivesdale, 137 Ill. App. 3d 473, 91 Ill. Dec. 948, 484 N.E.2d 507 (4 Dist. 1985).

Local Government Property

- Buildings

Buildings which are owned by the city and used for municipal purposes are tax exempt even where the land is privately owned and is subject to taxation. City of Chicago v. Illinois Dep't of Revenue, 210 Ill. App. 3d 273, 155 Ill. Dec. 65, 569 N.E.2d 65 (1 Dist. 1991), aff'd, 147 Ill. 2d 484, 168 Ill. Dec. 841, 590 N.E.2d 478 (1992).

- Burden of Proof

The city had the burden of proving the subject property satisfied the exemption requirements of 35 ILCS 200/15-60. City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 168 Ill. Dec. 841, 590 N.E.2d 478 (1992).

- Interstate Bridge Not Exempt

Under former Ill. Const. (1870), Art. IX, § 3 (see now this section), bridge authorized by Missouri legislature to be built by city of St. Louis across the Mississippi River between St. Louis, Missouri and East St. Louis, Illinois was not exempt as a municipal corporation's property, as the municipality owning it was not a municipality of this state, and it is clear that the former section referred only to the municipal authorities within this state. People ex rel. Murray v. City of St. Louis, 291 Ill. 600, 126 N.E. 529 (1920).

- Municipal Purposes

Where a city did not object to the assessment of its property in another municipality which was partially used for municipal purposes and was also leased for farming, and it interposed no objections to the taxes levied, nor did the city file a statement of any kind disclosing to the assessor the portion of its land used exclusively for municipal purposes, such city was not entitled to an injunction against the collection and levying of general taxes. City of Mattoon v. Graham, 386 Ill. 180, 53 N.E.2d 955 (1944).

- Primary Purpose

Whether a particular parcel of property owned by a municipality outside its corporate limits was exempt from taxation required a consideration of the primary use to which the property was

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devoted and not its secondary or incidental use. City of Mattoon v. Graham, 386 Ill. 180, 53 N.E.2d 955 (1944).

- Public Purpose

No public purpose would be served by advertising of words and commercial emblem were allowed to remain on building city acquired where the benefit to company would be purely for the company's private gain and would constitute a purely private use of public property in violation of this section. O'Fallon Dev. Co. v. City of O'Fallon, 43 Ill. App. 3d 348, 2 Ill. Dec. 6, 356 N.E.2d 1293 (5 Dist. 1976).

Even though the county acquired land by eminent domain for public highway use, it could not be inferred that the land so acquired was used exclusively for public purposes; evidence that land was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose. Skil Corp. v. Korzen, 32 Ill. 2d 249, 204 N.E.2d 738 (1965).

- Use

To exempt from taxation property both owned and/or operated by units of local government is permissible. Citizens Utils. Co. v. Pollution Control Bd., 133 Ill. App. 3d 406, 88 Ill. Dec. 362, 478 N.E.2d 853 (3 Dist. 1985).

Property

- Quarry

A depleted stone quarry was real estate subject to taxation. People ex rel. McDonough v. Chicago Union Lime Works Co., 361 Ill. 304, 198 N.E. 1 (1935).

Religious Purposes

Decision by the director of the State Department of Revenue that a hospital was not entitled to a 2002 property tax exemption as a premises used primarily for religious purposes was not clearly erroneous; although the mission statement for the hospital indicated a goal of serving as the Catholic healthcare ministry and charitable hospital in an area, the hospital's actual operation, which did not include public worship, Sunday schools, or religious instruction, resembled that of a business with religious overtones rather than a property used primarily for religious purposes. Provena Covenant Med. Ctr. v. Dep't of Revenue, 384 Ill. App. 3d 734, 323 Ill. Dec. 685, 894 N.E.2d 452, 2008 Ill. App. LEXIS 867 (4 Dist. 2008), aff'd, 2010 Ill. LEXIS 289 (Ill. 2010), aff'd, remanded, 2010 Ill. LEXIS 284 (Ill. 2010).

Denial of taxpayer's request, under 35 ILCS 200/15-40(a), for a "religious purposes" tax exemption for part of its building operated as a child-care center and preschool was upheld because it could reasonably be found that the use was more characteristic of a commercial day care than a facility used primarily for religious purposes, given the limited ability of very young children to grasp theological concepts and the necessary focus on the children's day care, rather than religious, needs. Faith Builders Church, Inc. v. Dep't of Revenue, 378 Ill. App. 3d 1037, 318 Ill. Dec. 133, 882 N.E.2d 1256, 2008 Ill. App. LEXIS 94 (1 Dist. 2008).

- In General

Rooker-Feldman Doctrine barred the district court from exercising jurisdiction over an action brought by a church and a bishop arising out of the city's acquisition of a tax deed to church property because the church's claims under 42 U.S.C.S. § 1983, the Religious Land Use and Institutionalized Persons Act, and the Illinois Religious Freedom Restoration Act, all targeted to overturn the tax deed judgment, as well as the 735 ILCS 5/2-1401 proceeding and the judgment

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that resulted from it, and the state court system was not closed to the church by the fact that a petition to vacate a judgment had to be brought within two years unless the ground for relief was fraudulently concealed because a judgment approving a tax sale for tax-exempt property was void and could be attacked at any time under § 2-1401(f), so the church could have, and should have, argued in the § 2-1401 proceeding that the tax deed judgment was void due to the property being tax exempt under Ill. Const. (1970), Art. IX, § 6 and 35 ILCS 200/15-40(a)(1) as it was allegedly used for religious purposes and without a view to profit. Beth-El All Nations Church v. City of Chicago, 486 F.3d 286, 2007 U.S. App. LEXIS 11262 (7th Cir. 2007).

- Employee Housing

Where the caretakers were not performing any religious duties, and no religious activities were carried on in residences, the caretakers' residences were not exempt from taxation. Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill. App. 3d 325, 108 Ill. Dec. 309, 508 N.E.2d 470 (2 Dist. 1987).

Neither this section nor the general religious purposes exemption statute (35 ILCS 200/15-40) requires that the housing be for a church employee for it to be exempt. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App. 3d 431, 115 Ill. Dec. 492, 517 N.E.2d 1178 (2 Dist. 1987).

- Exclusive Use

In order for the property of a religious organization to be exempt from taxation under 35 ILCS 200/15-40, the property must be used exclusively for religious purposes or for school and religious purposes; the use of property for those purposes in addition to other uses does not bring it within the exemption, since the exemption, under 35 ILCS 200/15-40, exists only when the property is used exclusively for such purposes. St. John Evangelical Lutheran Congregation v. Board of Appeals, 357 Ill. 69, 191 N.E. 282 (1934).

- Ownership

The only constitutional limitation on the power of the legislature to exempt property used for religious purposes is that such use shall be exclusive, and ownership of the property is not a condition. People ex rel. Bracher v. Salvation Army, 305 Ill. 545, 137 N.E. 430 (1922).

- Parking Lot

Trial court erred in granting the corporation's motion to dismiss the church's petition to vacate the trial court's judgment that a tax deed be issued to the corporation regarding the sale of the taxes for the church's parking lot; the church had standing to contest the sale because it had a real interest in the action and the capacity to sue, and it had a meritorious defense in that the property was tax exempt pursuant to Illinois law even though the parking lot had been listed on the tax assessment rolls for a few years. New Holy Temple Missionary Baptist Church v. Disc. Inn, Inc., 371 Ill. App. 3d 443, 308 Ill. Dec. 995, 862 N.E.2d 1198, 2007 Ill. App. LEXIS 94 (1 Dist. 2007).

School Purposes

Denial of appellee taxpayer's request, under 35 ILCS 200/15-35, for a "school" tax exemption for that part of its building operated as a child-care center and preschool was upheld because there was no evidence that the curricula consisted of traditional subject matter common to accepted schools and institutions of learning. Faith Builders Church, Inc. v. Dep't of Revenue, 378 Ill. App. 3d 1037, 318 Ill. Dec. 133, 882 N.E.2d 1256, 2008 Ill. App. LEXIS 94 (1 Dist. 2008).

- In General

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The "adjacent property" clause in former 35 ILCS 205/19.1 merely provided a description or illustration of a type of property that may be entitled to exemption under the section and a party seeking to invoke the exemption still had the burden of proving clearly and conclusively that the property in question not only fell within the terms of the statute under which the exemption was claimed, but also that it comported with the constitutional authorization. Chicago Bar Ass'n v. Department of Revenue, 163 Ill. 2d 290, 206 Ill. Dec. 113, 644 N.E.2d 1166 (1994).

Former Ill. Const. (1870), Art. IX, § 3 (see now this section) was not self-executing in exempting property used for school purposes; such exemption had to be expressly granted by statute, and any statute relating to such exemption was to be strictly construed. People ex rel. Olmsted v. University of Ill., 328 Ill. 377, 159 N.E. 811 (1927).

- Elements of Exemption

The requirements necessary to be met to qualify a private institution for tax exemption as a school under former Ill. Const. (1870), Art. IX, § 3 (see now this section), were that there must have been: first, a course of study which fit into the general scheme of education founded by the state and supported by public taxation; and second, a course of study which substantially lessened what would otherwise have been a governmental function and obligation. Milward v. Paschen, 16 Ill. 2d 302, 157 N.E.2d 1 (1959).

- Exclusive Use

Where a professional organization whose headquarters serve primarily as a place where its members can meet and dine and to the extent that the property is used for educational purposes, that use is secondary and incidental, to allow an exemption under these circumstances would violate the constitutional requirement that the property be used "exclusively for school purposes." Chicago Bar Ass'n v. Department of Revenue, 163 Ill. 2d 290, 206 Ill. Dec. 113, 644 N.E.2d 1166 (1994).

Where the buildings or institutions of a religious school were not located on the tract of land assessed, and the assessed land did not appear to be used for any purpose or even leased so as to make it a source of income to the institution, the assessed land was not used "exclusively" as an institute of learning and was not exempt from taxation under former Ill. Const. (1870), Art. IX, § 3 (see now this section). Theological Seminary v. People, 101 Ill. 578 (1881).

- Fraternity

Where student did live in a fraternity house without being a pledge or member, and the testimony of the witnesses indicated that the college would place students in fraternities if necessary, a tax exemption was granted where fraternities were shown to be a part of the educational program of the college and fraternities on the campus were open to all students without regard to race, creed, or color. Knox College v. Department of Revenue, 169 Ill. App. 3d 832, 120 Ill. Dec. 401, 523 N.E.2d 1312 (3 Dist. 1988).

School owned residence hall occupied by members of a fraternity must meet the constitutional requirement that the property be used exclusively for school purposes before the exemption in 35 ILCS 200/15-35 is allowed. Knox College v. Department of Revenue, 169 Ill. App. 3d 832, 120 Ill. Dec. 401, 523 N.E.2d 1312 (3 Dist. 1988).

- Instruction

Where the courses and the intensity of their instruction at a school for funeral directors did not compare favorably with the courses offered in various colleges, the courses appeared to be only a superficial, or at least a brief, instruction in courses constituting a minor part of the study of mortuary science, and it was more a symposium on how to conduct a funeral service, rather than a course of instruction in the funeral service business, the course of study provided by the school was thus not akin to the scheme of education offered by the state in tax supported institutions and

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certainly could not be said to relieve the tax burden of the citizens, and the school was therefore not such a school as qualified for tax exempt status. Milward v. Paschen, 16 Ill. 2d 302, 157 N.E.2d 1 (1959).

- Leased for Profit

Under former section 2 of the Revenue Act (see now 35 ILCS 200/15-135), rooms of dormitories rented to students were not leased by the school or otherwise used with a view to profit; the phrase "with a view to profit" clearly modified both the word "leased" and the word "used," and the property of schools used exclusively for school purposes was not to be excluded from the operation of this statutory exemption unless such property was leased with a view to profit. People ex rel. Hesterman v. North Cent. College, 336 Ill. 263, 168 N.E. 269 (1929).

A residence property which college claimed was purchased as a site for a fraternity house or dormitory, which had never been used for school purposes but was rented to a tenant, was subject to taxation under former Ill. Const. (1870), Art. IX, § 3 (see now this section) and under former Ill. Rev. Stat., ch. 120, para. 2 (see now 35 ILCS 200/15-10 through 35 ILCS 200/15-30 and 35 ILCS 200/15-35). Knox College v. Board of Review, 308 Ill. 160, 139 N.E. 56 (1923).

- Ownership

The mere fact that property is owned by the board of education is insufficient to support a claim of exemption. People ex rel. Paschen v. Hendrickson-Pontiac, Inc., 9 Ill. 2d 250, 137 N.E.2d 381 (1956).

Property owned by school trustees but abandoned for school purposes was held not exempt from taxation. People ex rel. Gill v. Trustees of Schs., 364 Ill. 131, 4 N.E.2d 16 (1936).

The mere fact that property is owned by a school and is not leased or otherwise used with a view to profit is not sufficient to exempt it from taxation unless it is used exclusively for school purposes. People ex rel. Lloyd v. University of Ill., 357 Ill. 369, 192 N.E. 243 (1934).

- Partial Exemption

Where a tract is used for two purposes, there is nothing novel in exempting the part used for an exempt purpose and subjecting the remainder to taxation. People ex rel. Kelly v. Avery Coonley Sch., 12 Ill. 2d 113, 145 N.E.2d 80 (1957).

- Physical Education

Physical education was a part, but only a part, of the ordinary school curriculum, and while instruction in swimming and gymnastics was educational in a broad sense, it was not sufficient, standing alone, to bring an institution which specialized in physical education within the scope of the statute; the instruction given at the school did not lessen the burden of taxation necessary to support government financed and operated schools. People ex rel. Brenza v. Lincoln, 8 Ill. 2d 198, 132 N.E.2d 499 (1956).

- School Defined

A school, within the scope of this section, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptation of that word. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135, 192 N.E. 780 (1934).

- School Property

The legislature, in enacting 35 ILCS 200/15-35, did not intend to alter the requirement that school property, including staff housing facilities, in order to be exempted from tax must in fact be used exclusively for school purposes; the legislature, when listing school property, was speaking

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descriptively and illustratively and not with a declaratory intendment and did not seek to enlarge the area of constitutionally allowable exemptions. MacMurray College v. Wright, 38 Ill. 2d 272, 230 N.E.2d 846 (1967).

By enacting former Ill. Rev. Stat., ch. 120, para. 500 (see now 35 ILCS 200/15-35) pursuant to the authority granted by former Ill. Const. (1870), Art. X, § 3 (see now this section), the General Assembly has exempted from taxation all property of schools, including the real estate on which the schools are located and any other real estate used by such schools exclusively for school purposes. People ex rel. Goodman v. University of Ill. Found., 388 Ill. 363, 58 N.E.2d 33, 157 A.L.R. 851 (1944).

Property owned by a school, used exclusively for school purposes and not leased or otherwise used with a view to profit, is embraced within the exemption of this section and 35 ILCS 200/15-35. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135, 192 N.E. 780 (1934).

- Student Housing

The housing of students in international groups did not invalidate the tax exempt status of the residential property so long as the other tests of educational purpose and nondiscriminatory housing were met. Knox College v. Department of Revenue, 169 Ill. App. 3d 832, 120 Ill. Dec. 401, 523 N.E.2d 1312 (3 Dist. 1988).

College owned buildings used as student residences, dormitories, and clubs can be tax exempt as property used primarily for school purposes, at least upon a showing that such uses are considered by the governing authorities to be necessary to carrying out the educational purposes of the college. Knox College v. Department of Revenue, 169 Ill. App. 3d 832, 120 Ill. Dec. 401, 523 N.E.2d 1312 (3 Dist. 1988).

Under former section 2 of the Revenue Act (see now 35 ILCS 200/15-135), dormitories and dining halls exclusively used by students were an essential part of universities and colleges and were devoted to the purposes of which such institutions are organized. People ex rel. Hesterman v. North Cent. College, 336 Ill. 263, 168 N.E. 269 (1929).

- Use of Income

Where prior to adoption of the state Constitution prohibiting the legislature from granting any special privilege (Ill. Const. (1870), Art. IV, § 22 (see now Ill. Const. (1970), Art. IV, § 13)), university had been granted a property tax exemption, and the income received by the university from the lease of its property had been used solely for the educational purposes set forth in its charter, property was exempt from taxation. People ex rel. County Collector v. Northwestern Univ., 51 Ill. 2d 131, 281 N.E.2d 334 (1972).

- Vacant Lot

Open spaces serving as a campus lawn were considered an integral part of a college campus where lot was a part of a regular college operation and was surrounded by exempt properties; therefore, trial court erred as a matter of law in denying tax exempt status to vacant parcel. Knox College v. Department of Revenue, 169 Ill. App. 3d 832, 120 Ill. Dec. 401, 523 N.E.2d 1312 (3 Dist. 1988).

State Property

- Highways

Prior to the 1973 amendment, 605 ILCS 10/22, in which the toll highway exemption from taxation was granted, contained no language which would serve to create a contract that the grant of exemption would remain in force; the termination of a tax exemption for leasehold interests in

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tollway oases did not impair any contractual obligation between the Illinois State Toll Highway Authority or its lessee, or between the Authority and the holders of its bonds issued prior to the enactment of the amendment. In re Skidmore, 75 Ill. 2d 33, 25 Ill. Dec. 634, 387 N.E.2d 290 (1979).

Taxation

- Special Assessments

Special assessments are not taxes, and Ill. Const. (1848), Art. IX, § 3 (see now this section) prohibited the legislature from granting any exception to religious or charitable corporations except from general taxation. City of Rock Island v. Chippiannock Cem. Ass'n, 328 Ill. 236, 159 N.E. 271 (1927).

- Standing

A taxpayer, by bringing himself within the ambit of the specific guarantee set forth in this section, and by claiming that his tax liability is generally affected by a statute which facially violates that guarantee, has alleged a sufficient stake or interest in this controversy to confer standing upon him to complain of underassessment or nonassessment of property of another for state and local taxation. McKenzie v. Johnson, 98 Ill. 2d 87, 74 Ill. Dec. 571, 456 N.E.2d 73 (1983).

LEGAL PERIODICALS

For article, "The Future of Classified Real Property Taxation in Illinois: The Wake of Hoffman v. Clark," see 11 Loy. U. Chi. L.J. 21 (1979-80).

RESEARCH REFERENCES

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Real Estate Taxation § 1.35 Property of Political Subdivisions (IICLE).

Real Estate Taxation § 1.23 The Nature and Origin of Exemptions (IICLE).

Real Estate Taxation § 1.2 Taxable Real Property and Exempt Personal Property (IICLE).

Section 7. Overlapping Taxing Districts.

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The General Assembly may provide by law for fair apportionment of the burden of taxation of property situated in taxing districts that lie in more than one county.

(Source: Illinois Constitution.)

CASE NOTES

Analysis
Constructive Fraud
- School Districts
- Tax Assessments

Constructive Fraud

- School Districts

The trial court's conclusion under uniformity of taxation provision of the 1870 Illinois Constitution (see now this section) was correct that the unequal assessment levels between two counties were sufficiently great so as to permit a finding of constructive fraud so far as their tax support of the common school districts was concerned. People ex rel. Skidmore v. Anderson, 56 Ill. 2d 334, 307 N.E.2d 391 (1974).

- Tax Assessments

Deliberate misconduct in assessing taxes is not required for a finding of constructive fraud. People ex rel. Skidmore v. Anderson, 56 Ill. 2d 334, 307 N.E.2d 391 (1974).

Section 8. Tax Sales.

(a) Real property shall not be sold for the nonpayment of taxes or special assessments without judicial proceedings.

(b) The right of redemption from all sales of real estate for the nonpayment of taxes or special assessments, except as provided in subsections (c) and (d), shall exist in favor of owners and persons interested in such real estate for not less than 2 years following such sales.

(c) The right of redemption from the sale for nonpayment of taxes or special assessments of a parcel of real estate which: (1) is vacant non-farm real estate or (2) contains an improvement consisting of a structure or structures each of which contains 7 or more residential units or (3) is commercial or industrial property; shall exist in favor of owners and persons interested in such real estate for not less than one year following such sales.

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(d) The right of redemption from the sale for nonpayment of taxes or special assessments of a parcel real estate which: (1) is vacant non-farm real estate or (2) contains an improvement consisting of a structure or structures each of which contains 7 or more residential units or (3) is commercial or industrial property; and upon which all or a part of the general taxes for each of 2 or more years are delinquent shall exist in favor of owners and persons interested in such real estate for not less than 6 months following such sales.

(e) Owners, occupants and parties interested shall be given reasonable notice of the sale and the date of expiration of the period of redemption as the General Assembly provides by law.

(Source: Amendment adopted at general election November 6, 1990.)

CASE NOTES

Analysis

Action In Rem
- Distinguished from Action In Personam
Admissibility of Evidence
Adverse Possessor
Applicability
- In General
- Former Law
Burden of Proof
Construction
Court Order
Executors
Forfeited Property
Illustrative Cases
- Reconveyance Act
- Scavenger Act
Interest in Property
- Priority
- Required
- Sufficient
Interested Parties
Judicial Sale
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- By Mail
- Form
- Mortgagee

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- Persons
- Publication
- Required
- Revenue Act
- Sufficient

Record Title
- Not Required

Recovery After Redemption

Redemption
- By Agent
- Effective
- Right to

Sale Held Void

Scope of Proceeding to Vacate

Tax Title
- Validity

Action In Rem

- Distinguished from Action In Personam

Where the proceeding under former Sections 4 and 5 of Article IX of the 1870 Illinois Constitution (see now this section) was to enforce a decree or judgment in rem, or against the land itself, the officer authorized to sell the property was the treasurer or ex officio county collector, and the time of redemption was a period of two years, but where a judgment was against the owner of land for delinquent taxes, which was a judgment in personam, the right of redemption was that fixed by the statute in case of ordinary sales under judgments, and the officer who had authority to make the sale was the sheriff of the county. Langlois v. People, 212 Ill. 75, 72 N.E. 28 (1904).

Admissibility of Evidence

Where there was a break in the chain of title to property, the fact that the testimony and documents which respondent sought to have admitted into evidence may not have conclusively proved that respondent had a redeemable interest in the property was not the proper standard to be utilized in determining the admissibility of evidence. Mid-America Inv. Corp. v. Larry Corp., 14 Ill. App. 3d 765, 303 N.E.2d 476 (1 Dist. 1973).

Adverse Possessor

An adverse possessor was an "owner or person interested" with the right to redeem property sold for delinquent taxes. Fron v. Bodoh, 98 Ill. App. 3d 950, 54 Ill. Dec. 301, 424 N.E.2d 1204 (2 Dist. 1981).

Applicability

- In General

Where land was not sold for the nonpayment of taxes, but was sold upon a judgment rendered after personal service of summons in an action of debt, whether the subject of the suit was taxes

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or a promissory note made no difference, since the same rule controlled the sale and redemption of the land in both cases. Douthett v. Kettle, 104 Ill. 356 (1882).

- Former Law

Former Sections 4 and 5 of Article IX of the 1870 Illinois Constitution (see now this section) had no reference whatever to a sale of land upon an execution where a personal judgment had been rendered in an action brought to recover delinquent taxes. Douthett v. Kettle, 104 Ill. 356 (1882).

Burden of Proof

The person alleging the right to redeem bears the burden of showing he is a proper person to redeem under the law. Fron v. Bodoh, 98 Ill. App. 3d 950, 54 Ill. Dec. 301, 424 N.E.2d 1204 (2 Dist. 1981).

Construction

While a mere stranger to property has no right to redeem, it is enough if the person assuming to redeem has some "interest" therein, even though it does not amount to complete ownership; redemptions are looked upon with favor, and unless injury is to result to the purchaser at the sale, a liberal construction will be given redemption laws. In re County Treas., 63 Ill. App. 2d 135, 211 N.E.2d 127 (2 Dist. 1965).

Redemptions are looked upon with favor, and, unless injury results to the purchaser at the sale, a liberal construction will be given to redemption laws. Fron v. Bodoh, 98 Ill. App. 3d 950, 54 Ill. Dec. 301, 424 N.E.2d 1204 (2 Dist. 1981).

Courts look with favor upon redemption from tax foreclosure sales and give liberal construction to redemption laws unless injuries result to the purchasers at sale, but redemption is a statutory privilege and must be exercised in substantial compliance with the statutes. D.R.G., Inc. v. Weyerhaeuser Mtg. Co., 57 Ill. App. 3d 550, 15 Ill. Dec. 524, 373 N.E.2d 870 (1 Dist. 1978).

Court Order

Where the proceeding in the circuit court under which a tax sale was conducted was upon the order of the circuit court, it satisfied the constitutional mandate in former Ill. Const. (1870), Art. IX, § 4 (see now this section) that tax sales of real estate must be upon the order of a court of record. People v. Wrage, 20 Ill. 2d 55, 169 N.E.2d 225 (1960).

Executors

An executor has a redeemable interest in a tax sale. In re County Collector, 72 Ill. App. 2d 272, 218 N.E.2d 244 (4 Dist. 1966).

Forfeited Property

The sale of forfeited property is a sale for nonpayment of taxes and is made pursuant to judgment and order of sale. Keilty v. Chicago Real Estate Co., 25 Ill. 2d 581, 185 N.E.2d 872 (1962).

Illustrative Cases

- Reconveyance Act

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The former Reconveyance Act (see now 35 ILCS 200/21-145) did not violate former Ill. Const. (1870), Art. IX, § 5 (see now this section). Bowers v. Glos, 346 Ill. 623, 179 N.E. 80 (1931).

- Scavenger Act

Pursuant to the 1980 amendment to the former Scavenger Act (see now 35 ILCS 200/21-145 and 35 ILCS 200/21-260), redemption of any tax delinquent properties sold after January 1, 1980, had to be in accordance with the requirements of the 1980 amendments, and the trial court erred in order directing the county collector to apply the redemption provisions of that Act in effect in 1979 to the redemption of tax delinquent properties owned by plaintiffs. People ex rel. Larson v. Rosewell, 103 Ill. App. 3d 756, 59 Ill. Dec. 429, 431 N.E.2d 1186 (1 Dist. 1981).

Even a liberal construction did not foreclose any inquiry, once a tax deed had been issued, into compliance with the conditions imposed by the former Scavenger Act (see now 35 ILCS 200/21-145 and 35 ILCS 200/21-260) and the other sections of the Revenue Act which had been incorporated into it; the mandate of former Ill. Const. (1870), Art. IX, § 5 (see now this section) which expressly pertained to all sales of real estate for nonpayment of taxes, required that notice be given, and regardless of how derelict one may have been in paying his taxes, the right afforded him by the Constitution could neither be denied him nor forfeited by any legislative declaration of public policy. Gaither v. Lager, 2 Ill. 2d 293, 118 N.E.2d 4 (1954).

Interest in Property

- Priority

The right of a holder of a tax certificate after a tax sale to get a deed is subservient to the right of the owner or person interested in the property to redeem. Fron v. Bodoh, 98 Ill. App. 3d 950, 54 Ill. Dec. 301, 424 N.E.2d 1204 (2 Dist. 1981).

- Required

A stranger to the property has no right to redeem property sold for delinquent taxes; however, legal or record title is not required of the person seeking to redeem, he need only have an undefined interest in the property. Fron v. Bodoh, 98 Ill. App. 3d 950, 54 Ill. Dec. 301, 424 N.E.2d 1204 (2 Dist. 1981).

Where respondent lived on the subject property for more than 30 years and for more than 20 of those years she had a record interest in the property, where the property was deeded in 1969 to a land trust, the sole beneficiary of the land trust acknowledged that his interest was to secure repayment of his loan to respondent, where although the agreement for conveyance of the property back to respondent was ostensibly limited to a period of five years, the land trust beneficiary indicated that due to his acquaintance with respondent, he did not strictly enforce the time limitation, the trial court properly determined that respondent had a sufficient interest in the property so as to entitle her to redeem. John Allan Co. v. Campbell, 49 Ill. App. 3d 1048, 8 Ill. Dec. 459, 365 N.E.2d 697 (3 Dist. 1977).

Although the beneficiary of a land trust has no legal or equitable estate in the subject real estate, he is a "person interested" in the real estate and has an "interest" in the land sufficient to permit him to redeem. Spachman v. Overton, 16 Ill. App. 3d 385, 306 N.E.2d 743 (2 Dist. 1973).

A stranger to the record title has no right to redeem from a tax sale. Weiner v. Jobst, 22 Ill. 2d 11, 174 N.E.2d 561 (1961), superseded by statute, In re County Treasurer, 294 Ill. App. 3d 557, 229 Ill. Dec. 96, 691 N.E.2d 32 (1 Dist. 1998).

Under former Section 5 of Article IX of the 1870 Illinois Constitution (see now this section), the right to bring suit for the purpose of setting aside a tax sale and having the deed declared void was not confined to the original owner of the land, but could be exercised by his mortgagee, or by

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any person who could show such an interest in the estate as would have entitled him to redeem. Miller v. Cook, 135 Ill. 190, 25 N.E. 756 (1890).

- Sufficient

Where a recorded land sale contract marked "paid in full" vested the full equitable title to premises in the grantor, whose interest then passed to his heirs upon his death, and by quit-claim deed, one-half of the equitable interest was conveyed to the defendant, defendant's interest was sufficient to allow her to redeem the property prior to tax sale. In re County Treas., 63 Ill. App. 2d 135, 211 N.E.2d 127 (2 Dist. 1965).

Interested Parties

The circuit court erred in holding that the parents of the legal titleholder, who managed the property for the titleholder, collected the rents, and made the mortgage payments, were interested parties in real estate sold for non-payment of taxes and were entitled to notice of the purchase under former Section 5 of Article IX of the 1870 Illinois Constitution (see now this section). First Lien Co. v. Marquette Nat'l Bank, 56 Ill. 2d 132, 306 N.E.2d 23 (1973).

Judicial Sale

A judicial sale under the direction of the court is not a release, since a release is a discharge by voluntary act, and a sale of land to satisfy a tax lien constitutes an extinguishment of the lien by operation of law and the lien therefore becomes merged in the title. People v. Wrage, 20 Ill. 2d 55, 169 N.E.2d 225 (1960).

Notice

- By Mail

A tax sale notice to a property owner mailed by the Sheriff must be mailed not less than three nor more than five months prior to the expiration of the period of redemption. County Treas. v. Johnson, 213 Ill. App. 3d 535, 157 Ill. Dec. 643, 572 N.E.2d 1107 (1 Dist. 1991).

- Form

The notice provision in this section leaves with the legislature discretion with regard to the form of notice given to interested parties. Frew v. Taylor, 106 Ill. 159 (1883).

- Mortgagee

A mortgagee was not an interested party in lands sold for taxes and was not entitled to be notified by the purchaser of the expiration of the time of redemption under Ill. Const. (1870), Art. IX, § 5 (see now this section). Glos v. Evanston, etc. Building & Loan Ass'n, 186 Ill. 586, 58 N.E. 374 (1900).

- Persons

A petitioner for a tax deed must give, to owners, occupants and other persons interested in the property, written notice of both the petition and the date when the redemption period will expire. Ohr v. Prairie Material Sales, Inc., 100 Ill. App. 3d 178, 55 Ill. Dec. 622, 426 N.E.2d 947 (1 Dist. 1981).

Service on three minor daughters who lived with their parents in the purchased property was not required under former 35 ILCS 205/263 (see now 35 ILCS 200/22-10 through 35 ILCS 200/22-25), former 35 ILCS 205/266 (see now 35 ILCS 200/22-30 through 35 ILCS 200/22-55) or section

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5 of Article IX of the 1870 Illinois Constitution (see now this section). First Lien Co. v. Marquette Nat'l Bank, 56 Ill. 2d 132, 306 N.E.2d 23 (1973).

The purchaser of apartment building had no obligation under former 35 ILCS 205/263 (see now 35 ILCS 200/22-10 through 35 ILCS 200/22-25), former 35 ILCS 205/266 (see now 35 ILCS 200/22-30 through 35 ILCS 200/22-55) or section 5 of Article IX the 1870 Illinois Constitution (see now this section) to serve a woman who lived in the building with her father, and contributed something toward the rent, where notice had been given to her father and the process server asked the father if he was married, and he replied that he was not. First Lien Co. v. Marquette Nat'l Bank, 56 Ill. 2d 132, 306 N.E.2d 23 (1973).

- Publication

Constructive notice by publication is authorized by the legislature only as a last resort, if upon diligent inquiry and effort, owners and interested parties cannot be found and served. County Collector v. Associates Fin., Inc., 211 Ill. App. 3d 988, 156 Ill. Dec. 293, 570 N.E.2d 769 (1 Dist. 1991).

- Required

The notice provisions of the Constitution and of the former Revenue Act (see now 35 ILCS 200/22-10 through 35 ILCS 200/22-25) are binding and salutary directions with which full compliance is necessary. Mergili v. Midwest Concrete Prods. Co., 92 Ill. App. 3d 603, 48 Ill. Dec. 130, 416 N.E.2d 25 (1 Dist. 1980).

Although requirement of notice under former section 5 of Article IX of the 1870 Illinois Constitution (see now this section) was mandatory, and the same rule attached to all the conditions therein imposed upon one who sought a tax deed, it was, at the same time, apparent that no unalterable rules for compliance could be fixed and that each case was to be determined upon its own facts and circumstances. Gaither v. Lager, 2 Ill. 2d 293, 118 N.E.2d 4 (1954).

It was necessary for petitioner, as a condition precedent to his right to a tax deed under former section 235a of the Revenue Act (see now 35 ILCS 200/21-145 and 35 ILCS 200/21-260), to give the notice required by former section 263 of the Revenue Act (see now 35 ILCS 200/22-10 through 35 ILCS 200/22-25), and to make an affidavit of compliance with the conditions of section 263, as provided in section former 265 (now repealed). Sawicki v. Clemons, 408 Ill. 55, 95 N.E.2d 875 (1950).

Where there was no evidence of personal notice to the occupant of premises, as required by Ill. Const. (1870), Art. IX, § 5 (see now this section) and former provision of the tax laws, or to the person in whose name the land was taxed, or the owners or parties interested therein, as required by statute, nor was there any proof that plaintiff filed the affidavit required by former provisions of the tax law before he would be entitled to a deed, the direction to find for the defendant was justified by the lack of proof of notice and filing of the requisite affidavit. Palmer v. Riddle, 180 Ill. 461, 54 N.E. 227 (1899).

A tax deed executed without an affidavit showing notice and a compliance with the conditions of former section 5 of Article IX of the 1870 Illinois Constitution (see now this section) and sections 216 and 217 of the former revenue law was unauthorized. Palmer v. Riddle, 180 Ill. 461, 54 N.E. 227 (1899).

- Revenue Act

The mandatory notice provision of the former Revenue Act (see now 35 ILCS 200/22-10 through 35 ILCS 200/22-25) is designed to provide actual notice of the right of redemption pursuant to the constitutional mandate for reasonable notice in tax deed cases. County Collector v. Associates Fin., Inc., 211 Ill. App. 3d 988, 156 Ill. Dec. 293, 570 N.E.2d 769 (1 Dist. 1991).

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- Sufficient

A county's strict compliance with both this section and the applicable notice provisions of the former Revenue Act (see now 35 ILCS 200/22-10 through 35 ILCS 200/22-25 and 35 ILCS 200/22-30 through 35 ILCS 200/22-55) to ensure that all interested parties received notice of the tax sale and were advised of their rights with respect to that sale could only be construed as proper conduct. Anderson v. Drobnick, 162 Ill. App. 3d 815, 114 Ill. Dec. 705, 516 N.E.2d 860 (2 Dist. 1987).

Record Title

- Not Required

While a stranger to the property may not redeem, the law does not require record title as a prerequisite of redemption. In re County Treas., 63 Ill. App. 2d 135, 211 N.E.2d 127 (2 Dist. 1965).

Recovery After Redemption

The mere failure of the tax certificate holder to get a deed does not injure him, since the purchaser recovers the amount paid for the certificate from the court after the redemption. Fron v. Bodoh, 98 Ill. App. 3d 950, 54 Ill. Dec. 301, 424 N.E.2d 1204 (2 Dist. 1981).

Redemption

In response to perceived anti-competitive practices among the bidders at a tax auction, defendant Cook County treasurer and ex officio county collector instituted a rule that properties on which multiple, simultaneous identical bids were made would not be sold at the auction, and the circuit court improperly responded by granting a permanent injunction prohibiting enforcement of the rule; the collector had implied authority to promulgate such a rule arising from the fact that a legislative grant carried with it, by implication, the powers that were necessary to make the grant effective, and such a rule furthered the right of redemption, as was guaranteed by Ill. Const., Art. IX, § 8, and promoted competition, which was in accord with the purpose of selling delinquent taxes by auction. Phoenix Bond & Indem. Co. v. Pappas, 309 Ill. App. 3d 779, 243 Ill. Dec. 248, 723 N.E.2d 280, 2000 Ill. App. LEXIS 35 (1 Dist. 2000).

- By Agent

Although a stranger to the title, having no equitable interest, cannot redeem as agent without some color of authority from the principal, where there was no doubt that the principal and respondent did have conversations about purchasing the mortgage and the necessity of redeeming the taxes, and respondent testified that principal told her to go and pay the taxes and redeem the property, and since she had no title, legal or equitable, to base such an action on, the logic of the situation favored the implication of a special or limited agency to act on behalf of principal. Purdy v. C.H. Strong Elevator, Inc., 29 Ill. App. 3d 894, 331 N.E.2d 630 (2 Dist. 1975).

- Effective

Under former section 5 of Article IX of the 1879 Illinois Constitution (see now this section), where respondent perfected his title to the subject property and asserted his right to redemption prior to petitioner's petition to issue a tax deed and expunge respondent's redemption, such redemption was effective, notwithstanding the fact that the statutory redemption period had expired. T.P.F. Corp. v. Dirst, 130 Ill. App. 2d 296, 264 N.E.2d 830 (1 Dist. 1970).

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- Right to

Respondent's interest, as claimed through his chancery complaint which was filed three years before petitioner purchased the subject property for delinquent taxes and as decided by the chancery court in June 1991, was certainly sufficient to entitle him to the right of redemption. Monreal v. Sciortino, 238 Ill. App. 3d 475, 179 Ill. Dec. 496, 606 N.E.2d 328 (1 Dist. 1992).

Sale Held Void

Since appellee was given the right to redeem by section 5 of Article IX of the 1870 Illinois Constitution, (see now this section), when she paid the amount of the foreclosure sale, with interest, the sale and certificate were void. French v. Toman, 375 Ill. 389, 31 N.E.2d 801 (1940).

Scope of Proceeding to Vacate

Proceedings to vacate a redemption are not designed nor appropriate for trying substantial disputes as to title; the issue is simply whether the party has shown a sufficient "interest" to give him a right to redeem. Fron v. Bodoh, 98 Ill. App. 3d 950, 54 Ill. Dec. 301, 424 N.E.2d 1204 (2 Dist. 1981).

Tax Title

- Validity

Under sections 4 and 5 of Article IX of the 1870 Illinois Constitution (see now this section), a tax title depended for its validity upon a strict compliance with the former redemption statutes. Chappell v. Spire, 106 Ill. 472 (1883).

LEGAL PERIODICALS

For article, "Redemption From Tax Sales in Illinois - Confusion Galore," see 23 J. Marshall L. Rev. 107 (1989).

Practice Guides and Treatises.

Residential Real Estate § 10.95 Tax Deeds, Notice (IICLE).

Residential Real Estate § 10.92 Tax Deeds, Redemption (IICLE).

Residential Real Estate § 10.85 Judgments (IICLE).

Commercial Real Estate § 10.9 Non-Payment Statutory Penalties (IICLE).

Real Estate Taxation § 11.1 Tax Deed Proceedings (IICLE).

Real Estate Taxation § 10.49 The Redemption Period (IICLE).

Section 9. State Debt.

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(a) No State debt shall be incurred except as provided in this Section. For the purpose of this Section, "State debt" means bonds or other evidences of indebtedness which are secured by the full faith and credit of the State or are required to be repaid, directly or indirectly, from tax revenue and which are incurred by the State, any department, authority, public corporation or quasi-public corporation of the State, any State college or university, or any other public agency created by the State, but not by units of local government, or school districts.

(b) State debt for specific purposes may be incurred or the payment of State or other debt guaranteed in such amounts as may be provided either in a law passed by the vote of three-fifths of the members elected to each house of the General Assembly or in a law approved by a majority of the electors voting on the question at the next general election following passage. Any law providing for the incurring or guaranteeing of debt shall set forth the specific purposes and the manner of repayment.

(c) State debt in anticipation of revenues to be collected in a fiscal year may be incurred by law in an amount not exceeding 5% of the State's appropriations for that fiscal year. Such debt shall be retired from the revenues realized in that fiscal year.

(d) State debt may be incurred by law in an amount not exceeding 15% of the State's appropriations for that fiscal year to meet deficits caused by emergencies or failures of revenue. Such law shall provide that the debt be repaid within one year of the date it is incurred.

(e) State debt may be incurred by law to refund outstanding State debt if the refunding debt matures within the term of the outstanding State debt.

(f) The State, departments, authorities, public corporations and quasi-public corporations of the State, the State colleges and universities and other public agencies created by the State, may issue bonds or other evidences of indebtedness which are not secured by the full faith and credit or tax revenue of the State nor required to be repaid, directly or indirectly, from tax revenue, for such purposes and in such amounts as may be authorized by law.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Allowable Expenditures
- State University
Construction
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Drainage Districts

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Highways and Roads
Illustrative Cases
- Regional Transportation Authority
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- Toll Highway Cases
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Intention
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Note or Warrant in Anticipation
Purpose
Referendums

Allowable Expenditures

- State University

Television could not be singled out for special treatment merely because it was relatively new, since it was one of the many activities incident to the management and operation of a university included in the single objective of maintaining an institution of higher learning. Turkovich v. Board of Trustees, 11 Ill. 2d 460, 143 N.E.2d 229 (1957).

Under an Act in relation to the anticipation of taxes levied by the state of 1931 (see now 30 ILCS 105/6d) where a large portion of the taxes levied and extended for state purposes for the year 1929 were by reason of delay in collection, still uncollected, and had not been paid into the state treasury; where by reason of the delay in collection of state revenues, there was in the University of Illinois fund a deficit; where pursuant to the provisions of the Act, the University of Illinois fund in the state treasury was insufficient to meet ordinary and contingent expenses of the university; and where the Governor, the auditor of public accounts and the state treasurer, to provide funds to meet the deficiency in the University of Illinois fund, issued a certificate authorizing the issuance and sale of notes against and in anticipation of taxes, Act did not provide for the creation of a debt, and was not against the prohibition, of section 18 of Article IV of the 1870 Illinois Constitution (see now this section). People ex rel. Capron v. Nelson, 344 Ill. 46, 176 N.E. 59 (1931).

Construction

The issue of whether bonds constituted a debt of the state contrary to the terms of the constitution was a judicial question. Baro v. Murphy, 32 Ill. 2d 453, 207 N.E.2d 593 (1965).

Each of the Acts of 1931 and 1933, which provided for the payment of anticipation warrants out of any available revenue derived from taxes or otherwise, other than the fund anticipated, violated Ill. Const. Art. IX, § 9, and the due process clause, of the constitution, Ill. Const. Art. I, § 2. Leviton v. Board of Education, 385 Ill. 599, 53 N.E.2d 596, 1944 Ill. LEXIS 763 (1944).

Debt Not Created

A pledge of revenues from existing state park facilities did not create a debt of the city within the meaning of the constitution of Illinois. Baro v. Murphy, 32 Ill. 2d 453, 207 N.E.2d 593 (1965).

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Drainage Districts

The General Assembly could, in its discretion, totally abolish the Illinois Drainage Code (see now 70 ILCS 605/1-1 et seq.) or eliminate the authority of drainage districts to levy special assessments. East Lake Fork Special Drainage Dist. v. Village of Ivesdale, 137 Ill. App. 3d 473, 91 Ill. Dec. 948, 484 N.E.2d 507 (4 Dist. 1985).

Highways and Roads

The enactment of the State Superhighway Act (former Ill. Rev. Stat., ch. 121, para. 314a et seq.) (see now 55 ILCS 5/5-33001 et seq.) and the establishment of the State Superhighway Commission did not empower the Commission with the unlimited right to create indebtedness; it was clearly the legislature's intention to limit the power of the Commission to the issuance of bonds and the creation of other indebtedness to be payable solely and exclusively from the income derived from the tolls and the other revenues earned by the superhighway in accordance with the provisions of the former Act. People ex rel. Curren v. Schommer, 392 Ill. 17, 63 N.E.2d 744 (1945).

Illustrative Cases

- Regional Transportation Authority

The issuance of bonds by the Regional Transportation Authority did not constitute the creation of state debt in violation of this section. Day v. Regional Transp. Auth., 66 Ill. 2d 533, 6 Ill. Dec. 882, 363 N.E.2d 829 (1977).

- School Code

Tax levied by the county's board of education of the non-high school district against the railroad's property was proper because there was no merit to the railroad's argument that there were two taxing bodies exercising jurisdiction over the same territory for the same purpose; it was within the power of the legislature to provide for the establishment of township high schools and a school district and to confer the power of taxation upon their boards and there was no clash between the powers and duties of the boards of education of the non-high-school districts and the boards of education of high school districts located within the non-high-school districts. People ex rel. Holmes v. Cleveland, C., C. & S. L. R. Co., 288 Ill. 70, 122 N.E. 792, 1919 Ill. LEXIS 1062 (1919).

- Toll Highway Cases

Former Ill. Rev. Stat., ch. 121, para. 314a42 (see now 605 ILCS 10/21), which provided for no appropriation prior to withdrawal of funds, did not violate former section 18 of Article IV of the 1870 Illinois Constitution (see now this section). People v. Illinois Toll Hwy. Comm'n, 3 Ill. 2d 218, 120 N.E.2d 35 (1954).

- Transportation Authority

The Regional Transportation Authority Act (70 ILCS 3615/1.01) does not improperly delegate legislative authority by permitting the voters to determine whether or not the Regional Transportation Authority should be created. Hoogasian v. Regional Transp. Auth., 58 Ill. 2d 117, 317 N.E.2d 534 (1974).

Intention

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The intention of former section 18 of Article IV of the 1870 Illinois Constitution (see now this section) was to restrict the General Assembly in imposing an indebtedness upon the state to cases where a majority of the voters at an election for members of the General Assembly should vote in favor of the act incurring the liability. Mitchell v. Lowden, 288 Ill. 327, 123 N.E. 566 (1919).

Local Government Debt

The term "state debt" as defined in subsection (a) of this section does not include bonds or other evidences of indebtedness incurred by units of local government. Day v. Regional Transp. Auth., 66 Ill. 2d 533, 6 Ill. Dec. 882, 363 N.E.2d 829 (1977).

Municipal Debt

It is common knowledge that the combined debt of a city, county, school district and other municipal corporation including a common territory, in the aggregate, is often far in excess of 5 percent. McLain v. Phelps, 409 Ill. 393, 100 N.E.2d 753 (1951).

Note or Warrant in Anticipation

A note or warrant issued in anticipation of a tax, already an asset of the state, did not create a liability or indebtedness under former section 1 of Article 9 of the 1870 Illinois Constitution (see now this section) People ex rel. Capron v. Nelson, 344 Ill. 46, 176 N.E. 59 (1931).

Purpose

The purpose of former section 1 of Article IX of the 1870 Illinois Constitution (see now this section) was to keep the state from running into debt by keeping its expenditures within its revenues, except in certain cases therein specified. People ex rel. Capron v. Nelson, 344 Ill. 46, 176 N.E. 59 (1931).

Referendums

A referendum election was not illegal and void in that the proposition offered in the ballot at the election did not present a law for approval by electors voting on the question as provided in subdivisions (a) and (b) of this section. Hoogasian v. Regional Transp. Auth., 58 Ill. 2d 117, 317 N.E.2d 534 (1974).

In "decision-making elections," as opposed to those selecting a representative in government, states could constitutionally require a showing of widespread consent greater than a majority without violating the principle of "one man, one vote," where it was considered that an issue was of such importance to require that it be decided under former section 18 of Article IV of the 1870 Illinois Constitution (see now this section). In re Natural Resources Dev. Bond Act, 47 Ill. 2d 81, 264 N.E.2d 129 (1970).

Reference to the number of votes cast for the General Assembly to determine whether a referendum was approved as provided by former section 18 of Article IV of the 1870 Illinois Constitution (see now this section) did not violate the equal protection clause or the guaranty clause of the United States Constitution, since limitation of indebtedness was a legitimate state purpose and the reference to the General Assembly vote bore a rational relationship to this purpose. In re Natural Resources Dev. Bond Act, 47 Ill. 2d 81, 264 N.E.2d 129 (1970).

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Analysis

Contract for Deed
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- Educational Consortium
James R. Thompson Center mortgage-loan agreement
Nonappropriations Clauses
- Upheld

Contract for Deed

A properly drafted contract for a deed does not create state debt; such contract must provide that, in the event of a default by the state, forfeiture is the sole and exclusive remedy of the seller thereby barring an election by the seller, to sue for damages under a breach of contract cause of action, and therefore no claim would be preserved against the state in the event of default. 1985 Op. Atty. Gen. (85-008).

Debt Not Created

The state deferred compensation plan will not create state debt within the contemplation of this section. 1977 Op. Atty. Gen. 99.

Illustrative Cases

- Educational Consortium

Transaction whereby the Illinois Educational Consortium borrowed money for the purchase of computer equipment and then entered into a lease purchase agreement with Illinois State University violated this section. 1977 Op. Atty. Gen. 17.

James R. Thompson Center mortgage-loan agreement

The James R. Thompson Center mortgage-loan agreement creates "state debt," as that term is used in this section; accordingly, because the legislation authorizing the transaction did not receive the required three-fifths vote in each chamber of the General Assembly, the transaction is not authorized. 2004 Op. Atty. Gen. (04-003).

Nonappropriations Clauses

- Upheld

Nonappropriations of funds clauses contained in leases of electronic data processing equipment were valid under this section and under Ill. Rev. Stat., ch. 127, para. 166. 1979 Op. Atty. Gen. 24.

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Section 10. Revenue Article Not Limited.

This Article is not qualified or limited by the provisions of Article VII of this Constitution concerning the size of the majorities in the General Assembly necessary to deny or limit the power to tax granted to units of local government.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Illustrative Cases
- School Code
Public Officials
- School Finance Authority Act

Illustrative Cases

- School Code

Tax levied by the county's board of education of the non-high school district against the railroad's property was proper because there was no merit to the railroad's argument that there were two taxing bodies exercising jurisdiction over the same territory for the same purpose; it was within the power of the legislature to provide for the establishment of township high schools and a school district and to confer the power of taxation upon their boards and there was no clash between the powers and duties of the boards of education of the non-high-school districts and the boards of education of high school districts located within the non-high-school districts. People ex rel. Holmes v. Cleveland, C., C. & S. L. R. Co., 288 Ill. 70, 122 N.E. 792, 1919 Ill. LEXIS 1062 (1919).

Public Officials

Public officials have no taxing power except for that which is delegated to them by the legislature. Santiago v. Kusper, 133 Ill. 2d 318, 140 Ill. Dec. 379, 549 N.E.2d 1251 (1990).

- School Finance Authority Act

The School Finance Authority Act, Ill. Rev. Stat., ch. 122, para. 34A-101 et seq.), eff. Jan. 16, 1980, was held valid under the public education, equal protection, delegation of powers, separation of powers and legislative provisions of the 1970 Illinois Constitution. Polich v. Chicago Sch. Fin. Auth., 79 Ill. 2d 188, 37 Ill. Dec. 357, 402 N.E.2d 247 (1980).

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ARTICLE X
EDUCATION

Section 1. Goal - Free Schools.

A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.

The state shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.

The State has the primary responsibility for financing the system of public education.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Municip L § 10:17.

See Illinois Jur, Pers Inj & Torts § 35:2, § 35:4.

CASE NOTES

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- Injunction
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Personal Constitutional Rights
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Right to Education
Safe and Adequate Education
School Districts
Separation of Powers
Special Education
Standing to Enjoin Strike
Taxes
Textbooks
Tuition

In General

This section operates as a mandate to the legislature to exercise its inherent power to carry out a primary obligation that the children of the state are entitled to a good common-school education, in public schools, and at public expense; this section also places upon the legislature two

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limitations when implementing that concept: the schools established must be free and must be open to all without discrimination. People v. Deatherage, 401 Ill. 25, 81 N.E.2d 581 (1948).

Former Ill. Const. of 1870, Art. VIII, §§ 1 and 3 require the General Assembly to provide a thorough and efficient system of free schools, and that no public corporation shall make any appropriation, or pay from any public fund whatever, anything in aid of any church or sectarian purpose. People ex rel. McCollum v. Board of Education, 396 Ill. 14, 71 N.E.2d 161, 1947 Ill. LEXIS 277 (1947).

Where a community high school district constitutes a community for school purposes, it complies with the requirements of the constitution, even though some of those residing in the district may trade at stores, deliver grain, do their banking business and attend church and social functions in cities and villages lying outside the district. People ex rel Beedy v. Regnier, 377 Ill. 562, 37 N.E.2d 186 (1941).

Former section 1 of Article VIII of the 1870 Constitution (see now this section) was not a self-executing provision, but required legislation to give it effect. Fiedler v. Eckfeldt, 335 Ill. 11, 166 N.E. 504 (1929).

Ill. Const. of 1879, Art. VIII, § 1 (now Ill. Const. (1970), Art. X, § 1) is a mandate to the General Assembly to provide a thorough and efficient system of free schools, whereby all children of Illinois may receive a good common school education. People ex rel. Leimbach v. Lukenbill, 314 Ill. 64, 145 N.E. 294, 1924 Ill. LEXIS 1090 (1924).

Act of God

School district was not entitled to an act of God exception to 105 ILCS 5/18-12, which requires a minimum school year length in order to be eligible for funding mandated under this section, as the shortened school year was due to a labor strike and calling a labor strike an act of God would have been an unwarranted expansion of the settled definition of act of God to one including human conduct; moreover, it was undisputed that seven of the lost strike days were later added to the calendar, and no reduction in state aid would have occurred had it not been for the subsequent decision to close the schools earlier because of a lack of funds. Cronin v. Lindberg, 66 Ill. 2d 47, 4 Ill. Dec. 424, 360 N.E.2d 360 (1976).

Actionable Conduct

- Not Alleged

Where plaintiffs' complaint was replete with generalities and the plaintiffs' complaint identified existent conditions and performance results at plaintiffs' schools, but it did not attribute these effects to any unconstitutional statute or to any specific statutory violation by any of the named defendants, plaintiffs had not alleged actionable conduct that was palpably arbitrary, unreasonable or capricious; thus, plaintiffs' complaint failed to state a cause of action under this Article. Jenkins v. Leininger, 277 Ill. App. 3d 313, 213 Ill. Dec. 719, 659 N.E.2d 1366 (1 Dist. 1995).

Administrative Agencies

Administrative Agencies created under the mandate of Ill. Const. (1970), Art. X, §§ 1, 2, combined with 105 ILCS 5/2-3.3, 105 ILCS 5/2-3.6 and 105 ILCS 5/2-3.25 possess broad powers to set standards for schools to meet in order to qualify for state funding. Lenard v. Board of Educ., 57 Ill. App. 3d 853, 15 Ill. Dec. 131, 373 N.E.2d 477 (5 Dist. 1978), aff'd, 74 Ill. 2d 260, 24 Ill. Dec. 163, 384 N.E.2d 1321 (1979).

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Agency of State

Those who under the implementing statutes become the agents to fulfill the will of the people are themselves charged with a duty to refrain from conduct which will render our schools less efficient and thorough. Board of Educ. v. Redding, 32 Ill. 2d 567, 207 N.E.2d 427 (1965).

The Illinois Normal School, now Illinois State University which was authorized to receive donations from individuals for the purpose of advancing education, was a state agency for the instruction of teachers to be employed in public schools, which necessarily required expenditures of public money under an appropriation by the legislature, to be paid on warrants of the auditor drawn on the state treasury; the expenditures, in consideration of benefits received by the state in the gratuitous instruction of teachers, could properly be paid by the state to this private corporation. Boehm v. Hertz, 182 Ill. 154, 54 N.E. 973 (1899).

Appropriation

The power of the legislature to adopt agencies as it may deem proper to carry out the state policy authorized it to provide for the education of teachers for the common schools, and the private corporation the Illinois Normal School, now Illinois State University, which was created before the adoption of former Ill. Const. (1870), Art. IV, § 20, and was an agency of the state when the constitution was adopted, which stated that the state shall never pay, assume, or become responsible for, or loan or extend its credit to, any public or other corporation. The constitution does not prevent the state from using agencies for the advancement of public school education that may be deemed proper under the policy of the state, which is exclusively left to be determined by the legislature, under the provisions of former Ill. Const. (1870), Art. VII, § 1, which necessarily required the expenditures of public moneys. Boehm v. Hertz, 182 Ill. 154, 54 N.E. 973 (1899).

At Risk Children

The School Code does not contain minimum requirements for the education of "at risk" children, nor does the education article require the legislature to fund these aid programs; all the School Code requires is that school boards provide grants for educationally disadvantaged children. Committee for Educ. Rights v. Edgar, 267 Ill. App. 3d 18, 204 Ill. Dec. 378, 641 N.E.2d 602 (1 Dist. 1994), aff'd, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

Authority

By fair implication and intendment, the Office of the Superintendent of Public Instruction has the authority to enact the standards which had to be met by public elementary and secondary schools in order to receive funds pursuant to 105 ILCS 5/18-12. Lenard v. Board of Educ., 57 Ill. App. 3d 853, 15 Ill. Dec. 131, 373 N.E.2d 477 (5 Dist. 1978), aff'd, 74 Ill. 2d 260, 24 Ill. Dec. 163, 384 N.E.2d 1321 (1979).

Boards of Education

Constitutional duty of the state to provide and the right of the public to receive an efficient high quality educational system is discharged by the state through local boards of education which are primarily responsible for fulfilling the constitutional mandate. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

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The state has a constitutional duty to provide and the public has a right to receive an efficient, high quality educational system; this duty is discharged through local boards of education who are primarily responsible for fulfilling this constitutional mandate. Allen v. Maurer, 6 Ill. App. 3d 633, 286 N.E.2d 135 (4 Dist. 1972).

Choice of School

Where the juvenile division of a circuit court declared three children to be dependent within the meaning of former section 1 of the act to define and punish the crime of contributing to dependency contained in former Ill. Rev. Stat., ch. 38, para. 100 (see now 720 ILCS 130/1) and, with the father's consent, it was ordered that the children be committed to the care, custody and control of a charitable corporation, the children had the right to attend the public school of the district in which the charitable corporation was located under former Ill. Const. (1870), Art. VIII, § 1 (see now this section). Dean v. Board of Educ., 386 Ill. 156, 53 N.E.2d 875 (1944).

Community Colleges

The public school system protected by the 1970 Illinois Constitution does not include community colleges; there is no authority to suggest that Article X of the Illinois Constitution applies to the state's operation of community colleges. Allen v. Illinois Community College Bd., 315 Ill. App. 3d 837, 248 Ill. Dec. 635, 734 N.E.2d 926, 2000 Ill. App. LEXIS 685 (5 Dist. 2000).

Rational basis existed for granting the right to a referendum in a case involving annexation of non-college-district territory to an existing community college district and withholding the right to a referendum in a case involving the formation of a new community college district from non-college-district territory because there were substantially different problems involved in the organization of a new community college district that were not present in the annexation of territory to an existing district including: (1) problems totally unrelated to the need for or the desirability of a community college district could bring about the defeat of the organization of a new district through a back door referendum which would not be critical issues in an annexation referendum; (2) an ancillary question such as the location of the educational facilities could easily become a controlling factor in causing the defeat by way of a referendum of an otherwise desirable and needed community college district; and (3) a real or imagined dominance of the board of trustees of a new district by a geographic area or a distrusted faction could bring about a similar result. Spaulding v. Illinois Community College Board, 64 Ill. 2d 449, 1 Ill. Dec. 213, 356 N.E.2d 339, 1976 Ill. LEXIS 390 (1976).

Former Ill. Rev. Stat., ch. 122, para. 106-6.1 (1973), which granted the Illinois Community College Board the power to establish new community college districts or annex property that was not part of a district to an adjacent community college district did not violate the equal protection clause of the Illinois Constitution because the statute conferred upon one class - residents of territory annexed to existing school districts - the right to have a referendum; the statute applied uniformly to all members of that class and did not confer the right to vote on some otherwise qualified voters and deny it to others. All qualified voters who resided in the territory annexed to an existing district had a right to vote at a referendum and all qualified voters who resided in territory formed into a new school district were denied the right to vote at a referendum and, therefore the plaintiffs had not been deprived of a fundamental right. Spaulding v. Illinois Community College Board, 64 Ill. 2d 449, 1 Ill. Dec. 213, 356 N.E.2d 339, 1976 Ill. LEXIS 390 (1976).

Former Ill. Rev. Stat., ch. 122, para. 106-6.1 (1973), which provided the Illinois Community College Board to establish new community college districts or annex property that was not part of a district to an adjacent community college district did not violate the equal protection clause of the Illinois Constitution by providing for a referendum on the question of annexation but no such referendum provisions as to new districts, because the State's interest in education was so pervasive that it could constitutionally establish or alter school districts without any local

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referendum. Spaulding v. Illinois Community College Board, 64 Ill. 2d 449, 1 Ill. Dec. 213, 356 N.E.2d 339, 1976 Ill. LEXIS 390 (1976).

Compact School Districts

School districts must be compact and contiguous in order to comply with the constitutional requirement of an efficient school system. People ex rel. Community Unit Sch. v. Decatur Sch., 45 Ill. App. 2d 33, 194 N.E.2d 659 (3 Dist. 1963).

Every reasonable presumption is indulged in favor of the validity of a school district established by the authority of the legislature; courts do not hold a district invalid for lack of compactness or contiguity unless it appears from the evidence that the children of school age residing in the district cannot reasonably avail themselves of the purposes of the school. People ex rel. Community Unit Sch. v. Decatur Sch., 45 Ill. App. 2d 33, 194 N.E.2d 659 (3 Dist. 1963).

A compact school district is one so closely united and so nearly adjacent to the school building that all the students residing in the district may conveniently travel from their homes to the school building and return the same day in a reasonable length of time with a reasonable degree of comfort. People ex rel. Community Unit Sch. v. Decatur Sch., 45 Ill. App. 2d 33, 194 N.E.2d 659 (3 Dist. 1963).

The requirements of compactness and contiguity were met in the creation of a special charter school district. People ex rel. Community Unit Sch. v. Decatur Sch., 45 Ill. App. 2d 33, 194 N.E.2d 659 (3 Dist. 1963).

The fact that the territory of a new high school district embraced all or parts of existing common school districts in which high school subjects were taught did not render the organization of the new district invalid, nor was it constitutionally objectionable to include territory in a new high school district territory which already contributed to the maintenance of an existing high school. People ex rel. Tuohy v. Barrington Consol. High Sch. Dist., 396 Ill. 129, 71 N.E.2d 86 (1947).

The evidence fully supported the finding of the court that the area of the consolidated high school district was compact to create a fair and efficient system of free schools. People ex rel. Tuohy v. Barrington Consol. High Sch. Dist., 396 Ill. 129, 71 N.E.2d 86 (1947).

When the legislature undertakes to create a school district, in order to comply with the constitutional requirement of an efficient school system the district so created must be compact, and an absence of this requirement would render the district illegal. People ex rel. Reich v. McCoy, 387 Ill. 288, 56 N.E.2d 393 (1944).

The constitutional mandate that the legislature provide a thorough and efficient system of free schools whereby all children of the state may receive a good common school education requires that the territory of the district be sufficiently compact to enable children to travel from their respective homes to the school building in a reasonable length of time and with a reasonable degree of comfort. People ex rel. Tudor v. Vance, 374 Ill. 415, 29 N.E.2d 673 (1940).

A compact school district is one so closely united and so nearly adjacent to the school building that all the students residing in the district may conveniently travel from their homes to the school building and return the same day in a reasonable length of time with a reasonable degree of comfort. People ex rel. Tudor v. Vance, 374 Ill. 415, 29 N.E.2d 673 (1940).

Where a community high school district constitutes a community for school purposes, it complies with the requirements for the constitution even though some of those residing in the district may trade at cities or villages outside thereof. People ex rel. Tudor v. Vance, 374 Ill. 415, 29 N.E.2d 673 (1940).

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The presumption is indulged that a school district established by authority of the legislature is valid, and courts do not hold a district invalid for lack of compactness or contiguity unless it appears from the evidence that the children of school age residing in the district cannot reasonably avail themselves of the purposes of the school. People ex rel. Tudor v. Vance, 374 Ill. 415, 29 N.E.2d 673 (1940).

Where a school was not accessible to all children in a district due to flooding of creeks making the passage on access roads impossible, the district was not "contiguous" or "contiguous and compact" and dismissal of an information requiring the officials of the district to show by what authority they assumed to exercise the rights and privileges of a school district was improperly dismissed. People ex rel. Shake v. Simpson, 308 Ill. 418, 139 N.E. 890, 1923 Ill. LEXIS 1062 (1923).

Discretion of Court

- In General

Court concluded that the trial court abused its discretion by failing to give plaintiffs the opportunity to amend their complaint to state a cause of action under the education article of Ill. Const. (1970), Art. X, § 1. Lewis E. by Gwen E. v. Spagnolo, 287 Ill. App. 3d 822, 223 Ill. Dec. 380, 679 N.E.2d 831, 1997 Ill. App. LEXIS 258 (1 Dist. 1997).

- Injunction

Where in their pleadings, the plaintiffs alleged that they had exhausted all administrative remedies and they did not have an adequate remedy at law, that the board of education failed to provide adequate notice of the closing of the school; that their children would be deprived of their right to a public education under Ill. Const. (1970), Art. X, § 1, and would suffer immediate and irreparable harm due to the inability of their parents to make alternative arrangements for their education, trial court did not abuse its broad discretion in granting the preliminary injunction. Stasica v. Hannon, 70 Ill. App. 3d 785, 27 Ill. Dec. 147, 388 N.E.2d 1110 (1 Dist. 1979).

Dissolution

- Special Charter School District

Contentions that since there are no provisions in section 32-1 of the School Code (105 ILCS 5/32-1) for the succession of a new board of education to the rights, powers, duties and responsibilities of the former board under a dissolved special charter district, the section is so incomplete, vague and uncertain in the areas of taxation, employment of personnel, leases and contracts as to render it inoperative, void, and in violation of former Ill. Const. (1870), Art. II, § 2 (see now Ill. Const. (1970), Art. I, § 2) and U.S. Const., Amend. XIV; and that by virtue of such deficiencies the children of the district will be denied a good common school education in violation of former Ill. Const. (1870), Art. VIII, § 1 (see now this section) are without merit. People ex rel. Killeen v. Kankakee Sch., 48 Ill. 2d 419, 270 N.E.2d 36 (1971).

Donation

State teaching colleges, are a recognized method of advancing the interests of the public school system mandatorily required to be provided by the general assembly, therefore the legislature had the power, under former Ill. Const. (1870), Art. VIII (see now this section) to provide by legislation that donations to such public institutions might be offered and accepted. Boehm v. Hertz, 182 Ill. 154, 54 N.E. 973 (1899).

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Efficient System

Disparities in educational funding resulting from differences in local property wealth do not offend efficiency requirement in this section. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

The Illinois Constitution imposes a duty upon the state to provide an efficient and free public school system and any individual who implements that constitutional provision becomes an agent to fulfill the will of the people in such respect and is charged with a duty to refrain from conduct which will render the schools less efficient and thorough. Allen v. Maurer, 6 Ill. App. 3d 633, 286 N.E.2d 135 (4 Dist. 1972).

The maintenance or preservation of a thorough and efficient system of free schools is a public and governmental function in Illinois, and is delegated to a municipality only that it may be more effectively exercised. People ex rel. NeLlon v. Jackson Higland Bldg. Corp., 400 Ill. 533, 81 N.E.2d 578 (1948).

The question of the efficiency and thoroughness of the school system established by legislative permission is one solely for the legislature to answer; the courts lack power to intrude. People v. Deatherage, 401 Ill. 25, 81 N.E.2d 581 (1948).

- Equal Educational Benefits

The education article does not mandate equal educational benefits and opportunities among the state's school districts as the constitutionally required means of establishing and maintaining an "efficient" system of free public schools. Committee for Educ. Rights v. Edgar, 267 Ill. App. 3d 18, 204 Ill. Dec. 378, 641 N.E.2d 602 (1 Dist. 1994), aff'd, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

- Fiscal Neutrality

This article does not contain a "fiscal neutrality" mandate, and the court would not read one into the efficiency clause and so limit the options of the legislature in adopting a school financing scheme. Committee for Educ. Rights v. Edgar, 267 Ill. App. 3d 18, 204 Ill. Dec. 378, 641 N.E.2d 602 (1 Dist. 1994), aff'd, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

Elimination of Disparity

Elimination of disparity among school districts is a goal, but it is not required under the Illinois Constitution. Committee for Educ. Rights v. Edgar, 267 Ill. App. 3d 18, 204 Ill. Dec. 378, 641 N.E.2d 602 (1 Dist. 1994), aff'd, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

Expenditure

In order to comply with former Ill. Const. (1870), Art. VIII, § 1 (see now this section), expenditures of public moneys are necessary, with the policy of the state determining the manner of compliance with this constitutional provision. Boehm v. Hertz, 182 Ill. 154, 54 N.E. 973 (1899).

Fees

- Driver's Education

Although the minor alleged that the district's request and renewal applications for waiver under 105 ILCS 5/2-3.25g(c) (2008) of the Illinois School Code, 105 ILCS 5/27-23 (2008), which sought

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to increase the driver's education fees in the district to include staffing costs, were unconstitutional under the free education clause of the Illinois Constitution, Ill. Const. art. X, § 1, and were therefore invalid, 105 ILCS 5/27-23 (2008) provided that the school district may charge a reasonable fee, and the language of the statute must be given its plain and ordinary meaning, which illustrated that it was never intended to be free. Therefore, because driver's education was not covered by the free education clause, the $ 350 Drivers Education Course fee did not violate the free education clause of the Illinois Constitution and the minor's complaint against the school district was properly dismissed with prejudice. Sherman v. Twp. High Sch. Dist. 214, 404 Ill. App. 3d 1101, 344 Ill. Dec. 580, 937 N.E.2d 286, 2010 Ill. App. LEXIS 1053 (1 Dist. 2010).

- Lunch Program

A school board had the implied power to impose a fee for its lunch program, and in doing so did not violate the constitutional guarantee of a free education, as this guarantee applies to educational services, which must be provided to students tuition free, and not to non-educational services and school supplies for which reasonable charges may properly be assessed. Ambroiggio ex rel. Ambroiggio v. Board of Educ., 101 Ill. App. 3d 187, 56 Ill. Dec. 622, 427 N.E.2d 1027 (2 Dist. 1981).

Financing

General structure of state's system of funding public schools through state and local resources, and the amounts allocated for distribution, represent legislative efforts to strike a balance between competing considerations of educational equality and local control, and state's system of funding is rationally related to legitimate goal of promoting local control. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

Method chosen by the legislature to finance public schools did not violate the education article of the constitution. Committee for Educ. Rights v. Edgar, 267 Ill. App. 3d 18, 204 Ill. Dec. 378, 641 N.E.2d 602 (1 Dist. 1994), aff'd, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

This section is a statement of general philosophy, rather than a mandate that financing be provided in any specific form; it therefore cannot form the basis of a protectable property interest. O'Connor v. Board of Educ., 645 F.2d 578 (7th Cir.), cert. denied, 454 U.S. 1084, 102 S. Ct. 641, 70 L. Ed. 2d 619 (1981).

The School Finance Authority Act, Public Act 81-1221, eff. Jan. 16, 1980, is valid under the public education, equal protection, delegation of powers, separation of powers and legislative provisions of the 1970 Illinois Constitution. Polich v. Chicago Sch. Fin. Auth., 79 Ill. 2d 188, 37 Ill. Dec. 357, 402 N.E.2d 247 (1980).

A reduction of aid to school districts required by precursor to 105 ILCS 5/18-12 was not an unlawful penalty taking away funds which in any way belonged to the school board, but rather it was simply the recovery of state aid which was paid in advance to which the board was not entitled as a result of its failure to comply with the minimum school year requirement of 176 days. Cronin v. Lindberg, 66 Ill. 2d 47, 4 Ill. Dec. 424, 360 N.E.2d 360 (1976).

The last sentence of this section, which provides: "The State has the primary responsibility for financing the system of public education," did not invalidate precursor to 105 ILCS 5/34-54.1, which permits a board of education to levy and collect taxes at a rate which generates, out of the pockets of local taxpayers, funds in excess of the amount contributed by the State as the provision in question stated a goal, and not a mathematical formula. People ex rel. Carey v. Board of Educ., 55 Ill. 2d 533, 304 N.E.2d 273 (1973).

This section's provision that Illinois has "the primary responsibility" for financing public schools was not intended to impose a specific obligation on the General Assembly, rather, its purpose

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was to state a commitment, a purpose and/or a goal. Blase v. State, 55 Ill. 2d 94, 302 N.E.2d 46 (1973).

The legislature, having the duty to provide a system of schools, necessarily has power to impose taxes for purposes incident to the maintenance or improvement thereof. People ex rel. NeLlon v. Jackson Higland Bldg. Corp., 400 Ill. 533, 81 N.E.2d 578 (1948).

Court concluded that the intent of the statute was to enable two school district to use and own the same school buildings to save expense, and thus, did not violate former Ill. Const. of 1870, Art. VIII, § 1 (now Ill. Const. (1970), Art. X, § 1). Keime v. Community High School Dist., 348 Ill. 228, 180 N.E. 858, 1932 Ill. LEXIS 758 (1932).

There is no constitutional limit placed upon the rights and powers of the Legislature to fix rates of taxation for school purposes as it may see fit. Fisher v. Fay, 288 Ill. 11, 122 N.E. 811 (1919).

Statutes providing for the funding of public schools through property taxes were not unconstitutional because the public schools were provided for in the state constitution, former Ill. Const. of 1870, Art. VIII, § 1, and the legislature's ability to fund those schools was the natural results of that constitutional establishment and the provisions were non-discriminatory and a reasonable exercise of legislative power; the court rejected arguments that the statute required a tax without a vote by the people, violated the rule of local self-government, and discriminated in favor of the tax payers and pupils of the non-high school districts. People ex rel. Goodell v. Chicago, N. W. R. Co., 286 Ill. 384, 121 N.E. 731, 1918 Ill. LEXIS 808 (1918).

Formation of School Districts

The Constitution has imposed upon the General Assembly a duty to establish a thorough and efficient system of free schools, and this provision has been construed as permitting the legislature unrestricted authority with reference to the formation of school districts and the agencies which it shall adopt to provide this system. McLain v. Phelps, 409 Ill. 393, 100 N.E.2d 753 (1951).

In carrying out the mandate of this section to provide free schools, no limitation is placed upon the General Assembly with reference to the formation of school districts or the agencies that shall be created to institute and maintain free schools. People ex rel. Swingle v. Pinari, 332 Ill. 181, 163 N.E. 385 (1928).

Any school district may establish and maintain a high school department. People ex rel. Swingle v. Pinari, 332 Ill. 181, 163 N.E. 385 (1928).

The fact that the territory of a new high school district embraces all or parts of existing common school districts in which high school subjects are taught does not render the organization of the new district unconstitutional. People ex rel. Swingle v. Pinari, 332 Ill. 181, 163 N.E. 385 (1928).

Free Education

In light of this section, there is every reason to assume that the legislature intended the word "free" to mean financially free, the term was not meant to encompass racial equality; consequently, the Armstrong Act (105 ILCS 5/10-21.3) is not a law for establishing and maintaining free schools in the state. Aurora E. Pub. Sch. v. Cronin, 92 Ill. 2d 313, 66 Ill. Dec. 85, 442 N.E.2d 511 (1982).

The present constitution establishes an entitlement to free education broader than the former provision which mandated only free common school education; this entitlement incorporates programs of instruction other than the standard course of study established in the public school

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system. Elliot ex rel. Elliot v. Board of Educ., 64 Ill. App. 3d 229, 20 Ill. Dec. 928, 380 N.E.2d 1137 (1 Dist. 1978).

Under the state constitution provision that the General Assembly shall provide a thorough and efficient system of free schools, a high school is as much a part of our free school system, as are elementary or grade schools. Smith v. Board of Educ., 405 Ill. 143, 89 N.E.2d 893 (1950).

For the purposes of former Ill. Const. of 1870, Art. VIII, § 1 (now Ill. Const. (1970), Art. X, § 1), the General Assembly shall provide a thorough and efficient system of free schools, whereby all children of the State of Illinois may receive a good common school education Keime v. Community High School Dist., 348 Ill. 228, 180 N.E. 858, 1932 Ill. LEXIS 758 (1932).

The constitutional requirement for the provision of a system of free schools is not only a mandate to the legislature, but also a limitation of its power, it can only authorize the establishment of high schools of the character of free schools whereby all the children of the state may receive a good common school education. People v. Moore, 240 Ill. 408, 88 N.E. 979 (1909).

Home Rule

The state has "plenary power" over state operated educational institutions, and any attempt by a home rule municipality to impose burdens on those institutions, in the absence of state approval, is unauthorized. City of Chicago v. Board of Trustees, 293 Ill. App. 3d 897, 228 Ill. Dec. 253, 689 N.E.2d 125 (1 Dist. 1997), appeal denied, 176 Ill. 2d 571, 229 Ill. Dec. 53, 690 N.E.2d 1380 (1998), 177 Ill. 2d 568, 232 Ill. Dec. 451, 698 N.E.2d 542 (1998).

Immunizations

Resolution of Board of Health forbidding admission of unvaccinated children to school for two weeks during a smallpox epidemic was authorized by former Ill. Rev. Stat., ch. 24, para. 62, and was not violative of this section, providing for system of free schools. Hagler v. Larner, 284 Ill. 547, 120 N.E. 575 (1918).

Injunction

Where a school "dress code" was attacked as invalid on the grounds that the school board lacked the authority to promulgate such a code, that the code was so vague, indefinite and confusing as to be the promulgation of an unascertainable rule, and that the code was in violation of the right of the plaintiffs to a free public education, there was abuse of discretion in denying an injunction restraining enforcement of the dress code where the record consisted solely of a verified but unanswered complaint. Day ex rel. Day v. McDavid, 119 Ill. App. 2d 62, 254 N.E.2d 800 (4 Dist. 1970).

Injunctive Relief

Not-for-profit corporation and area residents could not seek an injunction involving an environmental claim under the Illinois Constitution alone, but, rather they needed a cognizable cause of action in order to obtain that remedy. Although Ill. Const. art. XI, § 1 and Ill. Const. art. XI, § 2 expressed the public policy that citizens had a right to a healthful environment, they did not provide the not-for-profit corporation and area residents with an independent basis to seek review of the Department of Agriculture's decision to allow the developer to construct a livestock facility, and, thus, they needed to seek such review by filing a common law writ of certiorari. Helping Others Maintain Envtl. Stds. v. Bos, 406 Ill. App. 3d 669, 346 Ill. Dec. 789, 941 N.E.2d 347, 2010 Ill. App. LEXIS 1392 (2 Dist. 2010).

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Interpretation

Court concluded that Ill. Const. (1970), Art. X, § 1 does provide for at least a minimally adequate education, and those allegedly harmed by the lack of education may bring that cause of action in the circuit courts of Illinois. Lewis E. by Gwen E. v. Spagnolo, 287 Ill. App. 3d 822, 223 Ill. Dec. 380, 679 N.E.2d 831, 1997 Ill. App. LEXIS 258 (1 Dist. 1997).

This article mandates only that the state provide a tuition-free education, which does not appear to include counselling services. Gary B. v. Cronin, 542 F. Supp. 102 (N.D. Ill. 1980).

Judicial Review

The power of the legislature to enact laws to establish and maintain school systems is not subject to judicial review unless some limitation imposed by the constitution is exceeded. Berman v. Board of Educ., 360 Ill. 535, 196 N.E. 464 (1935).

Legislative Acts

Under Ill. Const of 1870, art. VIII, § 1, the legislature possessed all power to legislate in reference to public school matters and no resident of a school district had an inherent right of franchise insofar as school elections were concerned; his right to vote was purely a permissive one bestowed by the legislature. Under Ill. Const. (1970), art., X, § 1, the legislature possess similar authority concerning school matters and the State of Illinois' interest in education is so pervasive that it may constitutionally establish or alter school districts without any local referendum. Spaulding v. Illinois Community College Board, 64 Ill. 2d 449, 1 Ill. Dec. 213, 356 N.E.2d 339, 1976 Ill. LEXIS 390 (1976).

- Agency

Changing boundaries of a school district is a legislative act, and in performing this function, a county board of school trustees is acting as an agent of the legislature. Kinney v. County Bd. of Sch. Trustees, 7 Ill. App. 2d 286, 129 N.E.2d 292 (2 Dist. 1955).

- Delegation

Act of local board of education in letting a contract to construct a new high school did not violate the constitution and was not contrary to public policy because the General Assembly could delegate its power to do those things it might property do itself and the legislature had delegated the authority to establish and maintain a system of free schools, including the building of schoolhouses, to the electorate of the school districts and their duly elected school boards for the adequate reason that the General Assembly could not conveniently or efficiently attend to the details of establishing, maintaining, and operating the public schools. Smith v. Board of Education, 405 Ill. 143, 89 N.E.2d 893, 1950 Ill. LEXIS 278 (1950).

- Duty

The effect of the constitutional mandate found in this section is to require the legislature, in the exercise of its powers, to establish by appropriate legislative enactment a system of free schools. Board of Educ. v. Board of Educ., 11 Ill. App. 2d 408, 137 N.E.2d 721 (3 Dist. 1956).

Duty rests on the legislature to provide for an adequate school district and how that is done is a matter that rests in the discretion and wisdom of the legislature, subject to the constitutional requirements regarding uniformity and against discrimination. Smith v. Board of Education, 405 Ill. 143, 89 N.E.2d 893, 1950 Ill. LEXIS 278 (1950).

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Under Constitution, duty rests upon the legislature to provide for an adequate school system; how this is to be done is a matter which rests in the discretion and wisdom of the legislature, subject to the constitutional requirements regarding uniformity and against discrimination. Smith v. Board of Educ., 405 Ill. 143, 89 N.E.2d 893 (1950).

This section's statement that the General Assembly shall provide a thorough and efficient system of free schools, whereby all children of this state may receive a good common school education, is a command to the legislation to provide a fair and efficient system of free schools. People ex rel. Tuohy v. Barrington Consol. High Sch. Dist., 396 Ill. 129, 71 N.E.2d 86 (1947).

- Limitation on Power

No discretion is left with the legislature to deny an efficient, high quality educational system to the public or to require any Illinois resident to pay for this system through the secondary level except by means of taxation, or by fees for items not included within the concept of tuition. Elliot ex rel. Elliot v. Board of Educ., 64 Ill. App. 3d 229, 20 Ill. Dec. 928, 380 N.E.2d 1137 (1 Dist. 1978).

There is no constitutional limitation on the legislature with reference to the agencies the State of Illinois shall adopt for providing for free schools. Smith v. Board of Education, 405 Ill. 143, 89 N.E.2d 893, 1950 Ill. LEXIS 278 (1950).

Former Ill. Const. (1870), Art. VIII, § 1 (see now this section), which states that the General Assembly shall provide a thorough and efficient system of free schools, whereby all children of this State may receive a good common school education, is not a grant, but a limitation on the power of the General Assembly. It allows the General Assembly a broad discretion as to the manner in which it will carry out the duty thus enjoined. Sloan v. School Dirs., 373 Ill. 511, 26 N.E.2d 846 (1940).

There is no constitutional limitation placed on the Legislature with reference to the formation of school districts or as to the agencies the state shall adopt for providing for free schools. Fisher v. Fay, 288 Ill. 11, 122 N.E. 811 (1919).

- Power to Form Districts

The legislature has the power to act directly and create school districts by general or special acts, it is not for the courts to say that the legislature has acted unwisely in selecting the agencies or methods which is deems best to carry out the mandate of the constitution. People ex rel. Funk v. Hagist, 401 Ill. 536, 82 N.E.2d 621 (1948).

Under former constitutional provisions, there were no restrictions or limitations placed upon the legislature with reference to the formation of school districts or the agencies which the legislature could adopt to provide the system of free schools, and the General Assembly could provide for the establishment of school districts for different purposes and confer upon the respective local authorities or boards of education the power of taxation to the extent of the legislature's will. Keime v. Community High Sch. Dist., 348 Ill. 228, 180 N.E. 858 (1932).

The legislature has the power to authorize the organization of a school district without requiring any petition or election by the people, and also the power to designate the manner of election of the members of the Board of Education and the form of the ballots used in such election. People ex rel. Pillsbury v. Edvander, 304 Ill. 400, 136 N.E. 693 (1922).

The constitution does not prevent that the Legislature from forming any territory it may see fit into a school district and give to it corporate powers as such, without any vote or consent of the people of that territory. Fisher v. Fay, 288 Ill. 11, 122 N.E. 811 (1919).

- Powers

This provision as authorizes creation of school districts by a direct legislative act without any vote upon the question. People ex rel. Reich v. McCoy, 387 Ill. 288, 56 N.E.2d 393 (1944).

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The General Assembly has the power to provide for the establishment of township high schools, as well as grade schools, and to confer the power of taxation upon the boards of the respective districts. People ex rel. Swingle v. Pinari, 332 Ill. 181, 163 N.E. 385 (1928).

The General Assembly may provide for the establishment of school districts for different purposes and confer upon the respective local authorities the power of taxation. People ex rel. Swingle v. Pinari, 332 Ill. 181, 163 N.E. 385 (1928).

- Teacher Employment

The length of term and the mode of appointment of school teachers are under the control of the General Assembly; the legislative mandate limiting the term of a teacher's employment does not violate the General Assembly's duty to provide for a thorough and of efficient system of free schools. Sloan v. School Dirs., 373 Ill. 511, 26 N.E.2d 846 (1940).

Personal Constitutional Rights

De minimus non curat lex, often a useful legal maxim, has no application where personal but nonetheless substantial constitutional rights are asserted. Day ex rel. Day v. McDavid, 119 Ill. App. 2d 62, 254 N.E.2d 800 (4 Dist. 1970).

Purpose

The primary purpose of the maintenance of the common school system was the promotion of the general intelligence of the people constituting a body politic, and thereby to increase the usefulness and efficiency of the citizens, on which the government of society depends. Lee v. Board of Educ., 234 Ill. App. 141 (3 Dist. 1924).

Former Ill. Const. (1870), Art. VIII, § 1 (see now this section) was both a limitation upon and a mandate to the legislature; it required that the legislature provide a system of free schools and in that respect it was a mandate; the system of free schools thus to be established was limited in its purpose to a good common school education for all of the children of the state, and the support of such a school was the primary object for which school districts were organized. Cook v. Board of Directors, 266 Ill. 164, 107 N.E. 327 (1914).

Right to Education

Education is not a fundamental individual right for equal protection purposes, and whether disparities in funding violate Ill. Const. (1970), Art. I, § 2, is not subject to the strict scrutiny test, but the appropriate standard of review is the rational basis test. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

Safe and Adequate Education

Plaintiffs could not state a claim for the violation of their right to a minimally adequate education since the quality of public education is a legislative matter and is not justiciable. Lewis E. v. Spagnolo, 186 Ill. 2d 198, 238 Ill. Dec. 1, 710 N.E.2d 798 (1999).

The constitution does provide for at least a minimally adequate education that those allegedly harmed by the lack of education may bring that cause of action in the circuit courts of Illinois. Lewis E. ex rel. Gwen E. v. Spagnolo, 287 Ill. App. 3d 822, 223 Ill. Dec. 380, 679 N.E.2d 831 (5 Dist. 1997), rev'd in part on other grounds, 186 Ill. 2d 198, 238 Ill. Dec. 1, 710 N.E.2d 798 (1999).

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Plaintiffs' complaint failed to state a cause of action against school officials for deprivation of minimally safe and adequate education where the complaint failed to detail the particular acts or omissions of defendants which created the abhorrent conditions in the schools but were entitled a chance to amend their complaint. Lewis E. ex rel. Gwen E. v. Spagnolo, 287 Ill. App. 3d 822, 223 Ill. Dec. 380, 679 N.E.2d 831 (5 Dist. 1997), rev'd in part on other grounds, 186 Ill. 2d 198, 238 Ill. Dec. 1, 710 N.E.2d 798 (1999).

School Districts

Where a special charter school district annexed approximately 460 acres from a community unit school district, and as a result of the annexation the remaining territory of the community unit school district included three islands completely detached from each other and totally separated from the unannexed portion of that district, this annexation and its attendant separation of the remainder of the territory of the district from which the tracts were detached was a violation of the constitutional mandate for a thorough and efficient system of schools. People ex rel. Community Unit Sch. v. Decatur Sch. Dist., 31 Ill. 2d 612, 203 N.E.2d 423 (1964).

School districts must be compact and contiguous in order to obey the constitutional mandate of this section. People ex rel. Community Unit Sch. v. Decatur Sch. Dist., 31 Ill. 2d 612, 203 N.E.2d 423 (1964).

Separation of Powers

Questions relating to the quality of education are solely for the legislative branch to answer, and outside the sphere of the judicial function. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

Special Education

Plaintiffs may not recover the cost of placing their learning disabled child in a non-public school where the school district failed to provide an appropriate learning program and failed to inform the parents of their right to contest the district's proposed inappropriate placement even though right to a free appropriate education is guaranteed by the Education Article of the Illinois Constitution and the School Code where plaintiffs did not demonstrate that child's health would have been endangered had he not been placed in the learning disabled school, nor could bad faith be inferred merely from the school district's failure to inform the parents of the procedural rights. Teplitz v. Mount Prospect Elementary Sch., 117 Ill. App. 3d 495, 73 Ill. Dec. 46, 453 N.E.2d 871 (1 Dist. 1983).

Section 14-7.02 of the School Code (105 ILCS 5/14-7.02) was unconstitutional in that it limited the amount of tuition which the state, through its school districts, must pay for the special education of handicapped students who have been excused from the public schools and who attend a non-public school or special education facility. Elliot ex rel. Elliot v. Board of Educ., 64 Ill. App. 3d 229, 20 Ill. Dec. 928, 380 N.E.2d 1137 (1 Dist. 1978).

Article XIV of the School Code, as well as rules and regulations promulgated by the Illinois Office of Education (Rules and Regulations to Govern the Administration and Operation of Special Education), acknowledge the role of the free public school system in providing for the educational development of all handicapped students enrolled by the school districts of the state. As a matter of legislative and administrative policy, this role is exercised by meeting the educational needs of the handicapped student through programs incorporating the least restrictive curricula and facilities possible; only as a last resort are handicapped students to be removed from the public school environment and placed in private special educational facilities. Elliot ex rel. Elliot v. Board of Educ., 64 Ill. App. 3d 229, 20 Ill. Dec. 928, 380 N.E.2d 1137 (1 Dist. 1978).

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The School Code and another set of regulations promulgated by the State Superintendent of Education (Rules and Regulations for Approval of Nonpublic Facilities Educating Handicapped Students Under Section 14-7.02 of the School Code of Illinois) suggest that private special educational facilities providing instruction and training to handicapped students pursuant to section 14-7.02 (105 ILCS 5/14-7.02) are but contracted extensions of existing public school systems. Elliot ex rel. Elliot v. Board of Educ., 64 Ill. App. 3d 229, 20 Ill. Dec. 928, 380 N.E.2d 1137 (1 Dist. 1978).

The education of handicapped students is part of the responsibility of the public school system, and the education of handicapped students in private special educational facilities pursuant to section 14-7.02 (105 ILCS 5/14-7.02) is also a program established as part of the public school system, and thus must be free of tuition charges for Illinois residents through the secondary level. Elliot ex rel. Elliot v. Board of Educ., 64 Ill. App. 3d 229, 20 Ill. Dec. 928, 380 N.E.2d 1137 (1 Dist. 1978).

The Illinois Constitution establishes the right of handicapped persons to tuition-free education through the secondary level entailing the prohibition of requiring parents and guardians to pay tuition for the education of their handicapped children, but does not interfere with the constitutional authority of the General Assembly to allocate limited public funds. Elliot ex rel. Elliot v. Board of Educ., 64 Ill. App. 3d 229, 20 Ill. Dec. 928, 380 N.E.2d 1137 (1 Dist. 1978).

This section does not impose a duty on boards of education to place students in special education classes; the article is not self-executing for its pronouncement of the laudable goal of the educational development of all persons to the limits of their capacities is a statement of general philosophy, rather than a mandate that certain means be provided in any specific form. Pierce v. Board of Educ., 69 Ill. 2d 89, 12 Ill. Dec. 731, 370 N.E.2d 535 (1977).

Standing to Enjoin Strike

Taxpayers who have children in public schools cannot maintain an action for injunctive relief against striking teachers grounded upon the constitutionally mandated duty of the state to maintain a free, efficient and high quality system of public education. Allen v. Maurer, 6 Ill. App. 3d 633, 286 N.E.2d 135 (4 Dist. 1972).

Individual taxpayer-parents had no standing to seek an injunction of a teachers' strike; the authority to seek and injunction rested solely in the state and its official representative, the local board of education, the members of which were elected by the people to implement the command of the constitution. Allen v. Maurer, 6 Ill. App. 3d 633, 286 N.E.2d 135 (4 Dist. 1972).

Taxes

A municipality's home rule power does not authorize it to require state educational institutions to collect and remit city taxes because such a requirement would interfere with the state's constitutional mandate to operate a statewide educational system. City of Chicago v. Board of Trustees, 293 Ill. App. 3d 897, 228 Ill. Dec. 253, 689 N.E.2d 125 (1 Dist. 1997), appeal denied, 176 Ill. 2d 571, 229 Ill. Dec. 53, 690 N.E.2d 1380 (1998), 177 Ill. 2d 568, 232 Ill. Dec. 451, 698 N.E.2d 542 (1998).

Textbooks

Fees charged students for textbooks and towels were not unconstitutional under the 1970 Constitution. People v. Board of Educ., 9 Ill. App. 3d 663, 292 N.E.2d 569 (2 Dist. 1973).

Charging pupils for the use of textbook did not violate Ill. Const. (1870), Art. VIII, § 1 (see now this section). Hamer v. Board of Educ., 47 Ill. 2d 480, 265 N.E.2d 616 (1970).

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Since the purpose of former Ill. Const. (1870), Art. VIII, § 1 (see now this section) was to compel the General Assembly to retain and perpetuate, as a minimum, the system of free schools that had already been developed, which required students to furnish their own textbooks, there was no discussion of textbooks when former section 1 was being considered. Hamer v. Board of Educ., 47 Ill. 2d 480, 265 N.E.2d 616 (1970).

The popular and natural meaning of the term "free schools" at the time the 1870 Constitution was adopted and ratified did not include furnishing textbooks to the students at public expense. Hamer v. Board of Educ., 47 Ill. 2d 480, 265 N.E.2d 616 (1970).

Former Ill. Const. (1870), Art. VIII, § 1 did not prohibit the legislature from authorizing school boards to purchase textbooks and rent them to pupils, conversely, the legislature did have the power to direct school boards to issue textbooks to students free of charge but the constitution did not require it. Hamer v. Board of Educ., 47 Ill. 2d 480, 265 N.E.2d 616 (1970).

Under a former text-book law, which provided that no person shall offer any school textbook for adoption, sale, or exchange in the state until he has complied with the act, and made it unlawful for a dealer to sell the books listed in accordance with the act, at a price to exceed 15 percent advance of the net listed price, a fair consideration of the whole act showed that the act was limited to books to be actually used in the public schools of the state and thus constitutional under former Ill. Const. (1870), Art. VIII, § 1 (see now this section). Charles Scribner's Sons v. Bd. of Educ., 278 F. 366 (7th Cir. 1921).

Tuition

The court did not err in concluding that the student was a bona fide resident of a district other than that in which his parents lived and that his move to the district was not solely for educational purposes; the student lived on a full-time basis in the district with his aunt, who exercised complete control over him and was his legal guardian, and there was ample evidence of other non-educational factors being a part of the reason for the move. Joel R. ex rel. Salazar v. Board of Educ., 292 Ill. App. 3d 607, 226 Ill. Dec. 867, 686 N.E.2d 650 (1 Dist. 1997).

OPINIONS OF ATTORNEY GENERAL

Analysis

Financing
Safe and Adequate Education

Financing

This section does not require any specific level of educational funding to be met by the State, and the courts have refused to impose such a requirement upon the General Assembly. 2003 Op. Atty. Gen. (03-004).

Safe and Adequate Education

Only the General Assembly can define what constitutes a "minimally adequate education" for the children of Illinois and decide whether the current school funding scheme is adequate to meet

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those requirements. 2003 Op. Atty. Gen. (03-004).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Education Law," see 21 S. Ill. U.L.J. 815 (1997).

For comment, "Let's Get Off the Floor: The Call for Illinois to Adopt a Higher Substantive Standard for Special Education," see 24 Loy. U. Chi. L.J. 375 (1993).

For note, "The Cause, Effect and Constitutional Consequence of Unequal Funding: Public Education in Illinois," see 26 J. Marshall L. Rev. 399 (1993).

For article: "Theoretical Foundation for a Right to Education Under the U.S. Constitution: A Beginning to the End of the National Education Crisis," see Nw. U.L. Rev. 550 (1992).

For Comment, "Public School Finance Reform: Is Illinois 'Playing Hooky'?," see 41 De Paul L. Rev. 195 (1991).

For article, "Is Illinois' School Finance System Unconstitutional?," see 79 Ill. B.J. 550 (1991).

For article, "Judicial Enforcement of the Right to an Equal Education in Illinois," see 12 N. Ill. U.L. Rev. 45 (1991).

For article, "The Education Article of the 1970 Illinois Constitution: Selected Policy Issues for Consideration and Debate at the Next Constitutional Convention," see 8 N. Ill. U.L. Rev. 731 (1988).

For article, "Student Vandalism and Public Schools: The Scope of the Illinois Educators' Directive to Discipline," see 9 N. Ill. U.L. Rev. 87 (1988).

For note, "Public School Fees in Illinois: A Re-Examination of Constitutional and Policy Questions," see U. Ill. L. Rev. 99 (1984).

For note, "A No-Strike Clause Can Serve as Valid Consideration in Tenured Public School Teachers' Contracts - Bond v. Board of Education," see 30 De Paul L. Rev. 441 (1981).

For note, "Illinois' State Subsidy of Special Education of Private Institutions Act," see 28 De Paul L. Rev. 769 (1979).

For article, "The Illinois State Board of Elections: A History and Evaluation of the Formative Years," see 11 J. Marshall J. Prac. & Proc. 321 (1978).

RESEARCH REFERENCES

Aids infection as affecting right to attend public school. 60 ALR4th 15.

Section 2. State Board of Education - Chief State Educational Officer.

(a) There is created a State Board of Education to be elected or selected on a regional basis. The number of members, their qualifications, terms of office and manner of election or selection shall be provided by law. The Board, except as limited by law, may

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establish goals, determine policies, provide for planning and evaluating education programs and recommend financing. The Board shall have such other duties and powers as provided by law.

(b) The State Board of Education shall appoint a chief state educational officer.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Municip L § 10:17.

CASE NOTES

Analysis

Right to Review
State Board of Education
- Broad Powers
- Limitations
- Not Proper Plaintiff
Superintendent
- Authority

Right to Review

Not-for-profit corporation and area residents could not seek an injunction involving an environmental claim under the Illinois Constitution alone, but, rather they needed a cognizable cause of action in order to obtain that remedy. Although Ill. Const. art. XI, § 1 and Ill. Const. art. XI, § 2 expressed the public policy that citizens had a right to a healthful environment, they did not provide the not-for-profit corporation and area residents with an independent basis to seek review of the Department of Agriculture's decision to allow the developer to construct a livestock facility, and, thus, they needed to seek such review by filing a common law writ of certiorari. Helping Others Maintain Envtl. Stds. v. Bos, 406 Ill. App. 3d 669, 346 Ill. Dec. 789, 941 N.E.2d 347, 2010 Ill. App. LEXIS 1392 (2 Dist. 2010).

State Board of Education

- Broad Powers

Ill. Const. (1970), Art. X, §§ 1, 2, combined with precursor provisions to 105 ILCS 5/2-3.3, 105 ILCS 5/2-3.6 and 105 ILCS 5/2-3.25 broad powers to set standards for schools to meet in order to qualify for state funding. Lenard v. Board of Educ., 57 Ill. App. 3d 853, 15 Ill. Dec. 131, 373 N.E.2d 477 (5 Dist. 1978), aff'd, 74 Ill. 2d 260, 24 Ill. Dec. 163, 384 N.E.2d 1321 (1979).

- Limitations

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The authority of a local board of education to promulgate rules to eliminate and prevent racial segregation, has been limited by the General Assembly (105 ILCS 5/10-22.5). Aurora E. Pub. Sch. v. Cronin, 92 Ill. 2d 313, 66 Ill. Dec. 85, 442 N.E.2d 511 (1982).

The framers of the 1970 Illinois Constitution did not envision that the State Board of Education would be performing the day to day duties of directing the educational system in the State of Illinois; had this been the intent of the delegates to the constitutional convention then there would have been no need for the provision providing for the appointment of a chief educational officer (see now 105 ILCS 5/1A-4(B)). Provision was made by the Constitution of 1970 which was implemented by legislative enactment to provide for the appointment of a State Superintendent of Education who would perform the duties and fulfill the tasks that had previously been the responsibilities of the elective office of Superintendent of Public Instruction. Thompson v. Cronin, 48 Ill. App. 3d 752, 6 Ill. Dec. 646, 363 N.E.2d 175 (3 Dist. 1977).

- Not Proper Plaintiff

State Board of Education was not a proper party plaintiff in action against local school district for alleged discrimination in educational program. Board of Educ. v. Illinois State Bd. of Educ., 810 F.2d 707 (7th Cir.), cert. denied, 484 U.S. 829, 108 S. Ct. 99, 98 L. Ed. 2d 60 (1987).

Superintendent

- Authority

By fair implication, the Office of the Superintendent of Public Instruction has the authority to enact standards which must be met by public elementary and secondary schools in order to receive funds pursuant to this section. Lenard v. Board of Educ., 57 Ill. App. 3d 853, 15 Ill. Dec. 131, 373 N.E.2d 477 (5 Dist. 1978), aff'd, 74 Ill. 2d 260, 24 Ill. Dec. 163, 384 N.E.2d 1321 (1979).

Section 3. Public Funds for Sectarian Purposes Forbidden.

Neither the General Assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other personal property ever be made by the State, or any such public corporation, to any church, or for any sectarian purpose.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Municip L § 10:17.

CASE NOTES

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Analysis

In General
Construction with U.S. Constitution
Effective Date of Legislation
Erection of Chapel
Payment to Secular Schools
Payment to Religious Reform Schools
Religious Education
Religious Educational Construction Financing
Requirements for Constitutional Law
School Busing
Tax Credits

In General

Former Ill. Const. of 1870, Art. VIII, §§ 1 and 3 require the General Assembly to provide a thorough and efficient system of free schools, and that no public corporation shall make any appropriation, or pay from any public fund whatever, anything in aid of any church or sectarian purpose. People ex rel. McCollum v. Board of Education, 396 Ill. 14, 71 N.E.2d 161, 1947 Ill. LEXIS 277 (1947).

Construction with U.S. Constitution

This section imposes restrictions on the establishment of religion that are identical to those imposed by the first amendment to the Constitution of the United States. People ex rel. Klinger v. Howlett, 56 Ill. 2d 1, 305 N.E.2d 129 (1973).

Effective Date of Legislation

Bills relating to financial assistance for nonpublic school education which were passed on October 28, 1971, became law when the governor certified them pursuant to Ill. Const. (1970), Art. IV, § 10, and were effective until July 1, 1972, because they were passed after June 30 and the legislature did not fix an earlier effective date. People ex rel. Klinger v. Howlett, 50 Ill. 2d 242, 278 N.E.2d 84 (1972).

Erection of Chapel

Where county commissioners gave church organization permission to erect a chapel on the grounds of the county poor farm, where the chapel was to be used by inmates for worship if desired, and where the chapel was open to all religious sects, such action did not violate this section because it merely gave the church a license to erect a building which would subsequently be county property. Reichwald v. Catholic Bishop, 258 Ill. 44, 101 N.E. 266 (1913).

Payment to Secular Schools

Payment by county to religious schools, where non-Catholic children were not required to attend chapel and no student was charged tuition, did not violate this section of the Constitution,

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prohibiting the donation of public funds to any denominational institution. Trost v. Ketteler Manual Training Sch. for Boys, 282 Ill. 504, 118 N.E. 743 (1918).

Payment to Religious Reform Schools

The payment of $15 a month to industrial schools for girls conducted by a religious denomination did not violate Ill. Const. (1870), Art. 8, § 3 (see now this section) prohibiting a donation of public funds to such denominational institutions, where such sum is less than the actual cost for care of such girls at such institutions and at the state institution; one who pays less for benefits or services than the actual cost of the same is not making a donation by such a payment. St. Hedwig's Indus. Sch. for Girls v. County of Cook, 289 Ill. 432, 124 N.E. 629 (1919).

Religious Education

Where taxpayers who had sought a writ of mandamus to compell a school board to revoke its action authorizing the superintendent of schools to excuse public-school children from school for religious instruction outside the public school system due to a violation of a separation of church and state, but they had not shown that teachers or principals had spent any time or that any money had been spent on enforcement of the regulation, they had not shown a clear right to the requested writ. People ex rel. Latimer v. Board of Education, 394 Ill. 228, 68 N.E.2d 305, 1946 Ill. LEXIS 374 (1946).

Religious Educational Construction Financing

Because precursor to former 110 ILCS 1015/17 authorized governmental bodies and public officers to loan public money to finance the construction of a building for a religious educational institution, it violated this section especially where the potential for entanglement in a long range relationship of debtor and creditor is great, for in the event of default the bondholders are authorized to apply for the appointment of a receiver to operate the facility. Cecrle v. Illinois Educ. Facilities Auth., 52 Ill. 2d 312, 288 N.E.2d 399 (1972).

Requirements for Constitutional Law

To pass muster under the Establishment Clause of the United States Constitution and under this section, a law must reflect a clearly secular legislative purpose, must have a primary effect that neither advances nor inhibits religion, and must avoid excessive government entanglement with religion. People ex rel. Klinger v. Howlett, 56 Ill. 2d 1, 305 N.E.2d 129 (1973).

School Busing

Transportation at public expense of parochial school students on the same basis as public school students is considered primarily a health and safety measure for the benefit of all students, and any aid to the parochial school, or the church supporting it, is incidental; therefore precursor 105 ILCS 5/29-4 did not violate this section. Board of Educ. v. Bakalis, 54 Ill. 2d 448, 299 N.E.2d 737 (1973).

Tax Credits

Court rejected plaintiffs' argument that the educational tax credit in 35 ILCS 5/201(m) constituted a public fund or an appropriation of public money under Ill. Const., Art. X, § 3. Toney v. Bower,

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318 Ill. App. 3d 1194, 253 Ill. Dec. 69, 744 N.E.2d 351, 2001 Ill. App. LEXIS 144 (1 Dist. 2001).

35 ILCS 5/201(m), which allows taxpayers to take an annual credit of up to $500 against their state income tax liability for 25% of qualified education expenses incurred on behalf of a dependent child or children in kindergarten through grade 12 at state public or nonpublic schools, violates neither Section 3 of Article I or Section 3 of Article X of the Illinois Constitution. Griffith v. Bower, 319 Ill. App. 3d 993, 254 Ill. Dec. 383, 747 N.E.2d 423, 2001 Ill. App. LEXIS 248 (5 Dist. 2001), appeal denied, 195 Ill. 2d 577, 258 Ill. Dec. 94, 755 N.E.2d 477 (2001).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Constitutional Law," see 25 S. Ill. U. L.J. 733 (2001).

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Validity of state regulation of curriculum and instruction in private and parochial schools. 18 ALR4th 649.

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ARTICLE XI
ENVIRONMENT

Section 1. Public Policy - Legislative Responsibility.

The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Constitutionality of Environmental Statutory Provision
Delegation of Power
- Improper
Duty
Evidence Held Insufficient
Exhaustion of Administrative Remedies
Local Government
- Conformity with Legislative Standards
No Fundamental Right
No Tenant Action
Noise Pollution
Property Takings
Purpose
Standing

Constitutionality of Environmental Statutory Provision

Ill. Rev. Stat., ch. 111 1/2, para. 1004(e) (see now 415 ILCS 5/4) was held unconstitutional to the extent that it authorized the institution and prosecution of proceedings before the Pollution Control Board by an officer other than the Attorney General, however, the entire Environmental Protection Act was not held unconstitutional, as the provisions of the Act are severable. People ex rel. Scott v. Briceland, 65 Ill. 2d 485, 3 Ill. Dec. 739, 359 N.E.2d 149 (1976).

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Delegation of Power

- Improper

The 1977 amendment to 415 ILCS 5/25 improperly delegated to private groups the right to determine which events would be exempt from the law and which would not and was, therefore, an unconstitutional delegation of power to private organizations. People v. Pollution Control Bd., 83 Ill. App. 3d 802, 38 Ill. Dec. 928, 404 N.E.2d 352 (1 Dist. 1980).

Duty

The General Assembly's only duty under the Constitution with regard to environmental matters is to provide by law for the implementation and enforcement of the state's public policy to provide and maintain a healthful environment. Village of Carpentersville v. Pollution Control Bd., 135 Ill. 2d 463, 142 Ill. Dec. 848, 553 N.E.2d 362 (1990).

Evidence Held Insufficient

In an action challenging the legality of agreements between the state and the U.S. Corps of Engineers regarding building of reservoir, the acts of the defendant state sought to be enjoined were not violating plaintiff property owner's right to a healthful environment, where the plaintiff did not introduce any evidence to show that river in question was in a unique area and where plaintiff also failed to show a causal connection between the destruction of wildlife to be hunted and the right to a healthful environment. Scattering Fork Drainage Dist. v. Ogilvie, 19 Ill. App. 3d 386, 311 N.E.2d 203 (4 Dist. 1974).

Exhaustion of Administrative Remedies

Where there is a dispute between the state and a home-rule unit as to jurisdiction, and a determination of the issue requires a construction of state constitution and statutes enacted implementing its provisions, there is no requirement that administrative remedies be exhausted. City of Chicago v. Pollution Control Bd., 59 Ill. 2d 484, 322 N.E.2d 11 (1974).

Local Government

- Conformity with Legislative Standards

Local governmental unit may legislate concurrently with the legislature on environmental control but such legislation by a local governmental unit must conform with the minimum standards established by the legislature. City of Chicago v. Pollution Control Bd., 59 Ill. 2d 484, 322 N.E.2d 11 (1974).

No Fundamental Right

This section guarantees the right to a healthful environment; however, the right is not a fundamental right and strict scrutiny of the statute is not required. Illinois Pure Water Comm., Inc. v. Director of Pub. Health, 104 Ill. 2d 243, 83 Ill. Dec. 568, 470 N.E.2d 988 (1984).

No Tenant Action

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This section and Ill. Const. (1970), Art. XI, § 2 do not create a private cause of action for tenants against landlords where leased premises are alleged to be unhealthful. Morford v. Lensey Corp., 110 Ill. App. 3d 792, 66 Ill. Dec. 372, 442 N.E.2d 933 (3 Dist. 1982).

Noise Pollution

Ill. Const. (1970), Art. XIII, § 3 and Ill. Const. (1970), Art. XI, § 2 and this section demonstrates that the state's interest in reducing pollution generally, including noise pollution, is sufficiently great to allow the Attorney General to maintain a suit against a company alleged to have violated 415 ILCS 5/25. People v. Pollution Control Bd., 83 Ill. App. 3d 802, 38 Ill. Dec. 928, 404 N.E.2d 352 (1 Dist. 1980).

Property Takings

Applying the broad definition of "waters" under former section 1003(o) of the Environmental Protection Act (415 ILCS 5/3.05(b)) to a lake used by a steam electric generating plant and located on private property did not constitute the taking of personal property but rather only regulated its use; therefore, petitioner's property was not taken without due process of law or just compensation. Central Ill. Pub. Serv. Co. v. Pollution Control Bd., 36 Ill. App. 3d 397, 344 N.E.2d 229 (5 Dist. 1976).

To characterize the issuance of influent standards as a taking of property without due process of law would deny the Pollution Control Board effective control in its efforts to effectuate the purposes and goals of the Environmental Protection Act (415 ILCS 5/1) and does not constitute taking property without due process of law. Central Ill. Pub. Serv. Co. v. Pollution Control Bd., 36 Ill. App. 3d 397, 344 N.E.2d 229 (5 Dist. 1976).

Purpose

Citizen group's claim had to be rejected that its right to sue the coal company and state agency for alleged violations of the Mining Act and Water Use Act should be allowed, if not under those laws, then under Ill. Const. art. XI, § 1 based on that constitutional provision's recognition of a right to a healthful environment. Although Ill. Const. art. XI, § 2 did give private citizens the right to enforce that right, it did not create any new causes of action but, rather, did away with the "special injury" requirement typically employed in environmental nuisance cases, which meant the citizen group did not have to allege a special injury, but did have to have a cognizable cause of action that it could not show under either the Mining Act or the Water Use Act. Citizens Opposing Pollution v. Exxonmobil Coal U.S.A., Ill. 2d , Ill. Dec. , N.E.2d , 2012 Ill. LEXIS 304 (Feb. 2, 2012).

By Enactment of the Environmental Protection Act, the General Assembly declared the public policy of the state with reference to water pollution, and subsequently the public policy of the state, by adoption of the 1970 Constitution, was declared to be that every person has an inherent right to a clean and healthful environment. Meadowlark Farms, Inc. v. Pollution Control Bd., 17 Ill. App. 3d 851, 308 N.E.2d 829 (5 Dist. 1974).

Standing

The Attorney General's appeal of a Pollution Control Board determination concerning siting of a hazardous waste disposal should not have been dismissed, even though he was not a party to the agency proceeding, because, as chief legal officer of this state, he has the duty authority to represent the interests of the People of the state to insure a healthful environment, the role of insuring a healthful environment, and the power and authority to prevent air, land or water

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pollution within this state by commencing an action or proceeding in the circuit court of any county in which pollution has been, or is about to be, caused or has occurred. Pioneer Processing, Inc. v. EPA, 102 Ill. 2d 119, 79 Ill. Dec. 640, 464 N.E.2d 238 (1984).

LEGAL PERIODICALS

For article, "Survey of Illinois Law [1989-90] - Environmental Law," see 15 S. Ill. U.L.J. 975 (1991).

For comment, "Smoking in Public: This Air Is My Air, This Air Is Your Air," see 1984 S. Ill. U.L.J. 665.

For case note, "County of Cook v. John Sexton Contractors Co. - Home Rule Authority to Regulate Site of Sanitary Landfills," see 1980 U. Ill. L.F. 505.

From Comments, "People ex rel. Scott v. Briceland: Powers of the Attorney General Revisited," see 11 J. Marshall J. Prac. & Proc. 441 (1978).

For article, "Financing of Pollution Control Facilities Through Tax-Exempt Bonds," see Chi. B. Rec. 248 (1977).

For article, "Recent Illinois Supreme Court Decisions Concerning the Authority of Home Rule Units to Control Local Environmental Problems," see 26 De Paul L. Rev. 306 (1977).

RESEARCH REFERENCES

State and local regulation of private landowner's disposal of solid waste on own property. 37 ALR4th 635.

Tort liability for pollution from underground storage tank. 5 ALR5th 1.

Section 2. Rights of Individuals.

Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Pers Inj & Torts § 8:5.

CASE NOTES

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Analysis

Delegation of Power
- Improper
Estoppel
Healthful Environment
No Tenant Action
Noise Pollution
Real Estate Purchaser
Third-Party Complaints

Delegation of Power

- Improper

The 1977 amendment to 415 ILCS 5/25 improperly delegated to private groups the right to determine which events would be exempt from the law and which would not and was, therefore, an unconstitutional delegation of power to private organizations. People v. Pollution Control Bd., 83 Ill. App. 3d 802, 38 Ill. Dec. 928, 404 N.E.2d 352 (1 Dist. 1980).

Estoppel

Pollution Control Board and the Environmental Protection Agency were not estopped from asserting that petitioners' activities violated Environmental Protection Act (see now 415 ILCS 5/1 et seq.) based upon the fact that the Agency's predecessor approved the landfill sites since to allow estoppel would be to permit the people of Illinois to be denied their constitutional right to a healthful environment because of the actions of certain state officials. Tri-County Landfill Co. v. Pollution Control Bd., 41 Ill. App. 3d 249, 353 N.E.2d 316 (2 Dist. 1976).

Healthful Environment

Citizen group's claim had to be rejected that its right to sue the coal company and state agency for alleged violations of the Mining Act and Water Use Act should be allowed, if not under those laws, then under Ill. Const. art. XI, § 1 based on that constitutional provision's recognition of a right to a healthful environment. Although Ill. Const. art. XI, § 2 did give private citizens the right to enforce that right, it did not create any new causes of action but, rather, did away with the "special injury" requirement typically employed in environmental nuisance cases, which meant the citizen group did not have to allege a special injury, but did have to have a cognizable cause of action that it could not show under either the Mining Act or the Water Use Act. Citizens Opposing Pollution v. Exxonmobil Coal U.S.A., Ill. 2d , Ill. Dec. , N.E.2d , 2012 Ill. LEXIS 304 (Feb. 2, 2012).

Citizens group had standing pursuant to Ill. Const. art. XI, § 2 to sue the coal company and the agency for alleged violations of the Surface Coal Mining Land Conservation and Reclamation Act (Act). Under the constitutional provision, Illinois citizens had the right to a healthful environment and its complaint that its drinking water supply was being polluted due to the conduct of the coal company meant it sufficiently alleged a claim recognized under the Act. Citizens Opposing Pollution v. ExxonMobil Coal U.S.A., 404 Ill. App. 3d 543, 344 Ill. Dec. 39, 936 N.E.2d 181, 2010 Ill. App. LEXIS 1034 (5 Dist. 2010).

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A plaintiff did not have standing under Article XI, Section 2, of the Illinois Constitution to bring a private cause of action for a violation of the Endangered Species Protection Act, (520 ILCS 10/1 et seq.) as the right to a "healthful environment" does not include the preservation of endangered and threatened species. Glisson v. City of Marion, 188 Ill. 2d 211, 242 Ill. Dec. 79, 720 N.E.2d 1034 (1999).

The drafters of this section did not intend to expand the scope of "healthful environment" to include the preservation of endangered and threatened species. Glisson v. City of Marion, 188 Ill. 2d 211, 242 Ill. Dec. 79, 720 N.E.2d 1034 (1999) Glisson v. City of Marion, 297 Ill. App. 3d 841, 231 Ill. Dec. 879, 697 N.E.2d 433 (5 Dist. 1998).

Plaintiff's interest in preserving indigenous endangered and threatened species is not a legally cognizable interest for purposes of standing because it is not included in plaintiff's constitutional right to a "healthful environment," as that term is used in this section. Glisson v. City of Marion, 297 Ill. App. 3d 841, 231 Ill. Dec. 879, 697 N.E.2d 433 (5 Dist. 1998).

No Tenant Action

This section and Ill. Const. (1970), Art. XI, § 1 do not create a private cause of action for tenants as against landlords where leased premises are alleged to be unhealthful. Morford v. Lensey Corp., 110 Ill. App. 3d 792, 66 Ill. Dec. 372, 442 N.E.2d 933 (3 Dist. 1982).

Noise Pollution

Ill. Const. (1970), Art. XIII, § 3, Ill. Const. (1970), Art. XI, § 1 and this section demonstrates that the state's interest in reducing pollution generally, including noise pollution, is sufficiently great to allow the Attorney General to maintain a suit against a company alleged to have violated 415 ILCS 5/25. People v. Pollution Control Bd., 83 Ill. App. 3d 802, 38 Ill. Dec. 928, 404 N.E.2d 352 (1 Dist. 1980).

Real Estate Purchaser

This section does not create a mechanism by which a plaintiff can recover, in a private right of action in tort, against a defendant for selling contaminated property. NBD Bank v. Krueger Ringier, Inc., 292 Ill. App. 3d 691, 226 Ill. Dec. 921, 686 N.E.2d 704 (1 Dist. 1997), appeal denied, 176 Ill. 2d 576, 229 Ill. Dec. 55, 690 N.E.2d 1382 (1998).

Third-Party Complaints

Where third-party complaints brought pursuant to the Environmental Protection Act (see now 415 ILCS 5/1 et seq.) were limited to those derivative of the liability of the original defendant, such did not constitute a violation of this section. People v. Fiorini, 143 Ill. 2d 318, 158 Ill. Dec. 499, 574 N.E.2d 612 (1991).

LEGAL PERIODICALS

For comment, "Smoking in public: This Air Is My Air, This Air Is Your Air," see 1984 S. Ill. U.L.J. 665.

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ARTICLE XII
MILITIA

Section 1. Membership.

The State militia consists of all able-bodied persons residing in the State except those exempted by law.

(Source: Illinois Constitution.)

CASE NOTES

Delegation of Military Powers

Such military powers as the State of Illinois possesses cannot, under this section, be delegated to the City of Chicago. People v. City of Chicago, 413 Ill. 83, 108 N.E.2d 16 (1952).

Section 2. Subordination of Military Power.

The military shall be in strict subordination to the civil power.

(Source: Illinois Constitution.)

CASE NOTES

Warrantless Arrest

Where martial law had not been declared, a militaman had no right pursuant to Ill. Const. (1970), Art. XII, § 2 (formerly Ill. Const. of 1870, Art. II, § 15) to shoot and kill a citizen who had refused to allow himself to be arrested, because the military was to be subordinate to the civil government, and the Court of Claims had the power to recommend compensation under 705 ILCS 505/1 (formerly § 6, Par. 4, Court of Claims Act). Gyenes v. State, 9 Ill. Ct. Cl. 185, 1936 Ill. Ct. Cl. LEXIS 37 (Ct. Cl. 1936).

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Section 3. Organization, Equipment and Discipline.

The General Assembly shall provide by law for the organization, equipment and discipline of the militia in conformity with the laws governing the armed forces of the United States.

(Source: Illinois Constitution.)

Section 4. Commander-in-Chief and Officers.

(a) The Governor is commander-in-chief of the organized militia, except when they are in the service of the United States. He may call them out to enforce the laws, suppress insurrection or repel invasion.

(b) The Governor shall commission militia officers who shall hold their commissions for such time as may be provided by law.

(Source: Illinois Constitution.)

CASE NOTES

Preservation of Peace

When this provision was put into effect, the civil authority was not suspended, nor was the power of the sheriff to appoint special deputies to aid him to preserve the peace and protect persons and property, but, on the contrary, the military authority of the state was called on to aid the civil authorities, including the sheriff and his deputies, to suppress riot and to preserve peace and good order. County of Christian v. Merrigan, 191 Ill. 484, 61 N.E. 479 (1901).

Section 5. Privilege from Arrest.

Except in cases of treason, felony or breach of peace, persons going to, returning from or on militia duty are privileged from arrest.

(Source: Illinois Constitution.)

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RESEARCH REFERENCES

Official immunity of state national guard members. 52 ALR4th 1095.

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ARTICLE XIII
GENERAL PROVISIONS

Section 1. Disqualification for Public Office.

A person convicted of a felony, bribery, perjury or other infamous crime shall be ineligible to hold an office created by this Constitution. Eligibility may be restored as provided by law.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Crim L § 55:05.

See Illinois Jur, Prob Est & Trusts § 34:02, § 59:05.

CASE NOTES

Analysis

Certificate of Restoration
Construction
Conviction
- No Imposition of Sentence
Creation of Office
Determination
Federal Rights
Governor's Power
Ineligibility
Infamous Crimes
Test

Certificate of Restoration

Under former Ill. Const. (1870), Art. V, § 13 and Ill. Const. (1870), Art. IV, § 4 (see now Ill. Const. (1970), Art. V, § 12 and this section), it provided that an individual convicted of an infamous crime was ineligible to hold an office of profit and trust; the Constitution also provided for the removal of such ineligibility by the governor. People ex rel. Symonds v. Gualano, 124 Ill. App. 2d 208, 260 N.E.2d 284 (1 Dist. 1970).

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Construction

The language of the constitution is absolute and makes no provision for a mitigation of its prohibition with the passage of time. People v. Gualano, 97 Ill. App. 2d 248, 240 N.E.2d 467 (1 Dist. 1968).

Conviction

- No Imposition of Sentence

Finding of guilty without an imposition of sentence did not constitute a conviction for purposes of ouster from an elective office. People ex rel. Grogan v. Lisinski, 113 Ill. App. 3d 276, 68 Ill. Dec. 854, 446 N.E.2d 1251 (1 Dist. 1983).

Creation of Office

Defendant was not disqualified from holding the office of township supervisor by reason of this section due to his conviction for violation of federal extortion statute, since the office of township supervisor is clearly a creature of legislative enactment and not an office "created by" the state constitution. People ex rel. Ryan v. Coles, 64 Ill. App. 3d 807, 21 Ill. Dec. 543, 381 N.E.2d 990 (2 Dist. 1978).

Determination

The determinative question is not when the conviction takes place but whether the conviction is for an infamous crime. People v. Gualano, 97 Ill. App. 2d 248, 240 N.E.2d 467 (1 Dist. 1968).

Federal Rights

Citizenship rights restored by Ill. Const. (1970), Art. III, § 2 and this section do not affect rights of citizenship which are controlled by federal law which have not been restored, including the right to serve on a jury (28 U.S.C. § 1865(b)(5)) and to possess firearms (18 U.S.C. § 925(c)). Viverito v. Levi, 395 F. Supp. 47 (N.D. Ill. 1975).

Governor's Power

Former Ill. Const. (1870), Art. V, § 13, (see now Ill. Const. (1970), Art. V, § 12) in no way limited or modified the full force and effect of the governor's power and discretion and vested in the governor the exclusive power to grant, after conviction, reprieves, commutations and pardons, such power is subject only to the limitation that the legislature may establish the manner of applying therefor; the granting of a restoration of rights fell within the ambit of the governor's employment of the pardoning power. When the framers of the Illinois Constitution incorporated that power, they meant it to be used effectively and did not intend to circumscribe its effectiveness by former Ill. Const. (1870), Art. IV, § 4, (see now this section). People ex rel. Symonds v. Gualano, 124 Ill. App. 2d 208, 260 N.E.2d 284 (1 Dist. 1970).

Ineligibility

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A person who is ineligible to the general assembly, or to any office of profit or trust in this state would be ineligible for state senator and consequently ineligible to be a delegate. Livingston v. Ogilvie, 43 Ill. 2d 9, 250 N.E.2d 138 (1969).

Mail fraud is infamous for it falls within the general classification of being inconsistent with commonly accepted principles of honesty and decency, and it also is a crime involving moral turpitude. People v. Gualano, 97 Ill. App. 2d 248, 240 N.E.2d 467 (1 Dist. 1968).

This section provides for the restoration of the rights of citizenship if there is an appropriate pardon, but where the respondent had not been pardoned and his rehabilitation did not redound to his favor insofar as the right to hold public office is concerned, conviction of mail fraud prevented the respondent from holding public office. People v. Gualano, 97 Ill. App. 2d 248, 240 N.E.2d 467 (1 Dist. 1968).

Infamous Crimes

Infamous crimes are not limited to only felonies. People ex rel. Ward v. Tomek, 54 Ill. App. 2d 197, 203 N.E.2d 744 (1 Dist. 1965).

The determination of what is an infamous crime is not an exclusively legislative function insofar as it affects a vacancy in office. People ex rel. Ward v. Tomek, 54 Ill. App. 2d 197, 203 N.E.2d 744 (1 Dist. 1965).

When the legislature listed the infamous crimes in the Code of Criminal Procedure, it left to the courts the opportunity to declare that other crimes under various circumstances might also be classed as infamous. People ex rel. Ward v. Tomek, 54 Ill. App. 2d 197, 203 N.E.2d 744 (1 Dist. 1965).

Where public officers conspired against the political unit of which they were officials, the crime was infamous for the purposes of determining whether a vacancy had occurred under the Illinois Constitution and under the Election Code (10 ILCS 5/25-2). People ex rel. Ward v. Tomek, 54 Ill. App. 2d 197, 203 N.E.2d 744 (1 Dist. 1965).

Where a county assessor was convicted of conspiracy to evade and evasion of personal and corporate income taxes, such a conviction constituted a conviction under 10 ILCS 5/29-15 as an infamous crime, which caused a vacancy in his office as county assessor; defendant's appeal from such conviction did not operate to stay the effect of such vacancy. People ex rel. Keenan v. McGuane, 13 Ill. 2d 520, 150 N.E.2d 168 (1958).

Test

When determining whether there is a vacancy in office due to the conviction of the office-holder of an infamous crime, the test set forth by the Supreme Court is whether or not the act violated the commonly accepted principles of honesty and decency. People ex rel. Ward v. Tomek, 54 Ill. App. 2d 197, 203 N.E.2d 744 (1 Dist. 1965).

LEGAL PERIODICALS

For comment, "The Scope of the Public Duty/Special Duty Doctrine in Illinois: Municipal Liability for Failure to Provide Police Protection," see 10 N. Ill. U.L. Rev. 269 (1990).

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RESEARCH REFERENCES

What constitutes conviction within statutory or constitutional provision making conviction of crime ground of disqualification for, removal from, or vacancy in, public office. 10 ALR5th 139.

Section 2. Statement of Economic Interests.

All candidates for or holders of state offices and all members of a Commission or Board created by this Constitution shall file a verified statement of their economic interests, as provided by law. The General Assembly by law may impose a similar requirement upon candidates for, or holders of, offices in units of local government and school districts. Statements shall be filed annually with the Secretary of State and shall be available for inspection by the public. The General Assembly by law shall prescribe a reasonable time for filing the statement. Failure to file a statement within the time prescribed shall result in ineligibility for, or forfeiture of, office. This Section shall not be construed as limiting the authority of any branch of government to establish and enforce ethical standards for that branch.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Campaign Receipts
Candidate for County Commissioner
Evidence of Noncompliance
Executive Order
- Beyond Scope of Authority
Governor's Authority
No Economic Right to Privacy
Scope of Authority

Campaign Receipts

The Illinois Governmental Ethics Act (5 ILCS 420/1-101 et seq.) does not violate this section in that it excludes from disclosure the assets and income most likely to produce conflicts of interest, i.e. campaign receipts. Stein v. Howlett, 52 Ill. 2d 570, 289 N.E.2d 409 (1972).

Candidate for County Commissioner

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The Cook County Board of Commissioners is a unit of local government. A candidate for nomination as a member thereof erred in filing the form in 5 ILCS 420/4A-103 with the Secretary of State, rather than filing the form in 5 ILCS 420/4A-104 with the county clerk. O'Donaghue v. Cook County Officers Electoral Bd., 295 Ill. App. 3d 493, 229 Ill. Dec. 781, 692 N.E.2d 770 (1 Dist. 1998), appeal denied, 178 Ill. 2d 582, 232 Ill. Dec. 848, 699 N.E.2d 1033 (1998).

Evidence of Noncompliance

Evidence was held to be sufficient to conclude that the plaintiffs failed to comply with this section and that they were properly declared ineligible for the office they sought. Havens v. Miller, 102 Ill. App. 3d 558, 57 Ill. Dec. 929, 429 N.E.2d 1292 (1 Dist. 1981).

Executive Order

- Beyond Scope of Authority

An executive order requiring disclosure of financial contributions to candidates for public office made by regulated businesses and person who seek to enter into commercial relationship with the state did not regulate the conduct of officers and employees of the executive branch, instead, its impact, including its sanctions, was upon third persons who were not a part of state government, and as such did not therefore fall within the authority granted by this section. Buettell v. Walker, 59 Ill. 2d 146, 319 N.E.2d 502 (1974).

Governor's Authority

Governor has the power to promulgate order requiring financial disclosure statement of plaintiffs who were state employees. State Employees Ass'n v. Walker, 57 Ill. 2d 512, 315 N.E.2d 9, cert. denied, 419 U.S. 1058, 95 S. Ct. 642, 42 L. Ed. 2d 656 (1974).

Executive order requiring financial disclosure statement was not invalid because it was not submitted to the General Assembly before it became effective, the authority of the governor to adopt this order was granted by this section. State Employees Ass'n v. Walker, 57 Ill. 2d 512, 315 N.E.2d 9, cert. denied, 419 U.S. 1058, 95 S. Ct. 642, 42 L. Ed. 2d 656 (1974).

No Economic Right to Privacy

Both the language of this section, and the history of its enactment, require rejection of the notion that the constitution created a right of privacy which restricts action by the legislative, executive or judicial branches of government with respect to the disclosure of economic interests by state officers and employees. State Employees Ass'n v. Walker, 57 Ill. 2d 512, 315 N.E.2d 9, cert. denied, 419 U.S. 1058, 95 S. Ct. 642, 42 L. Ed. 2d 656 (1974).

Scope of Authority

The power granted by this section does not include the power to establish and enforce ethical standards for persons doing business with the executive branch. Buettell v. Walker, 59 Ill. 2d 146, 319 N.E.2d 502 (1974).

LEGAL PERIODICALS

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For article, "The Local Miscarriage of Economic Disclosure," see 74 Ill. B.J. 300 (1986).

For article, "Illinois and the Right of Privacy: History and Current Status," see 11 J. Marshall J. Prac. & Proc. 91 (1977).

Section 3. Oath or Affirmation of Office.

Each prospective holder of a State office or other State position created by this Constitution, before taking office, shall take and subscribe to the following oath or affirmation:

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

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Judicial Oaths
School Board Members
Violations

Judicial Oaths

Under former Ill. Const. (1870), Art. XXVI, § 26, (see now this section), a judge's original oath was sufficient to cover all acts performed in the execution of his duties as a circuit judge, including his tour of duty in the criminal court; therefore, he was not required to take the oath anew. United States ex rel. Scott v. Babb, 199 F.2d 804 (7th Cir. 1952), cert. denied, 344 U.S. 935, 73 S. Ct. 507, 97 L. Ed. 720 (1953).

School Board Members

Members of a school board were inferior school officers elect within the meaning of this section of the Constitution, and by the express provision they could be exempted by law from taking the oath. People ex rel. Johnson v. Anderson, 325 Ill. 464, 156 N.E. 471 (1927).

Violations

Officials of a township violated their oaths of office when they conspired to defraud that township. People ex rel. Ward v. Tomek, 54 Ill. App. 2d 197, 203 N.E.2d 744 (1 Dist. 1965).

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Section 4. Sovereign Immunity Abolished.

Except as the General Assembly may provide by law, sovereign immunity in this State is abolished.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Pers Inj & Torts § 3:1.

CASE NOTES

Analysis

Cases Decided Under Constitution of 1870
Claims Against Arm of State
- Injunctions
- Toll Highway Authority
Claims Against the State
- Board of Trustees of State Colleges and Universities
- Department or Agency of State Government
- Failure to Withhold Assigned Wages
- Jurisdiction
- Real Party in Interest
- Retrospective Relief
Claims Against Municipality
- In General
Counterclaims
Court of Claims Act
- Jurisdiction
- Sovereign Immunity Limited
Illegal Acts of State Officers
- In General
- Injunctions
- Jurisdiction
- Violation of Administrative Rules
Jurisdiction
- Determination
Limitation Period
Medical Center Commission
Official's Authority Exceeded
Present Claim
Real Party in Interest

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Sovereign Immunity
- In General
- Abolition
- Comity
- Consent to Be Sued
- Municipal Ordinance Creating
- Not Applicable
- Reenactment
- Restrictions
- State
- State Employee
- Waiver

Special Duty Exception
Suits Filed During Transition Period
- In General

Tort Immunity Act
- Corrupt or Malicious Motives Exception
- Fire Fighters

Cases Decided Under Constitution of 1870

For cases decided under Ill. Const. (1870), Art. IV, § 26, which provided that the State of Illinois shall never be made defendant in any court law or equity, see Parks v. Northwestern Univ., 218 Ill. 381, 75 N.E. 991 (1905); Joos v. Illinois Nat'l Guard, 257 Ill. 138, 100 N.E. 505 (1912); Donnersberger v. People ex rel. Bennett, 293 Ill. 148, 127 N.E. 381 (1920); Schwing v. Miles, 367 Ill. 436, 11 N.E.2d 944 (1937); Monroe v. Collins, 393 Ill. 553, 66 N.E.2d 670 (1946); People v. Illinois Toll Hwy. Comm'n, 3 Ill. 2d 218, 120 N.E.2d 35 (1954); People ex rel. Haynes v. Rosenstone, 16 Ill. 2d 513, 158 N.E.2d 577 (1959); Baro v. Murphy, 32 Ill. 2d 453, 207 N.E.2d 593 (1965); Edelen v. Hogsett, 44 Ill. 2d 215, 254 N.E.2d 435 (1969); Raschillo v. Industrial Comm'n, 47 Ill. 2d 359, 265 N.E.2d 663 (1970); Manos v. State, 10 Ill. App. 3d 30, 293 N.E.2d 716 (1 Dist. 1973); Crane Paper Stock Co. v. Chicago & N.W. Ry., 63 Ill. 2d 61, 344 N.E.2d 461 (1976); Great Am. Ins. Co. v. Stilley, 212 F. Supp. 303 (E.D. Ill. 1962).

Claims Against Arm of State

Board of Governors of State Colleges and Universities is an arm of the state, and therefore, action sounding in contract against the Board must be brought in the Court of Claims. Liebman v. Board of Governors, 79 Ill. App. 3d 89, 34 Ill. Dec. 630, 398 N.E.2d 305 (1 Dist. 1979).

- Injunctions

The doctrine of sovereign immunity was inapplicable where a county, through its Department of Health, sought to enjoin it district from prohibiting sanitary inspections of the district's public school cafeterias. County of Macon v. Board of Educ., 165 Ill. App. 3d 1, 116 Ill. Dec. 31, 518 N.E.2d 653 (4 Dist. 1987).

- Toll Highway Authority

Under the State Toll Highway Authority Act (605 ILCS 10/31), which expressly consents to only two kinds of suits the legislature's silence as to all other suits could not be interpreted as the

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express retention of sovereign immunity contemplated in this section of the state Constitution. Miller-Davis Co. v. Illinois State Toll Hwy. Auth., 567 F.2d 323 (7th Cir. 1977).

Claims Against the State

Employee's intentional tort claims against the state agency supervisors arose from the state agency supervisors' conduct regarding such activities as evaluating the employee, disciplining the employee, and setting deadlines for the employee. Since the alleged misconduct over which the employee sued them involved the normal and official functions of state agency supervisors, the lawsuit was in reality one against the State, and the State did not waive sovereign immunity as contemplated by Ill. Const. Art. XIII, § 4 because the State Lawsuit Immunity Act, 745 ILCS 5/0.01 and 745 ILCS 5/1, dictated that such a lawsuit be brought in the Illinois Court of Claims, which had exclusive jurisdiction over tort claims against the State. Cortright v. Doyle, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1138 (2 Dist. Nov. 18, 2008).

- Board of Trustees of State Colleges and Universities

Circuit court erred in transferring a case from one county to another because (1) the state university board of trustees was entitled to sovereign immunity where the board was an arm of the State, and (2) 705 ILCS 505/8(a)(ii) gave the Illinois Court of Claims exclusive jurisdiction to review the board's decision where the statutes creating and governing the operations of the state university and its board of trustees did not expressly adopt the provisions of the Administrative Review Law, 735 ILCS5/3-101 et seq. Peters v. Bd. of Trs., 351 Ill. App. 3d 1143, 287 Ill. Dec. 490, 816 N.E.2d 1, 2004 Ill. App. LEXIS 1056 (5 Dist. 2004).

Under the doctrine of sovereign immunity, and the eleventh amendment of the U.S. Const., Amend. XI, the Board of Trustees of a state university may be sued only in the Court of Claims. Harvis v. Board of Trustees of Univ., 744 F. Supp. 825 (N.D. Ill. 1990).

- Department or Agency of State Government

A suit brought against a governmental agency with relation to matters in which the agency represents the state, in action and liability constitutes a suit against the state, even where the state is not a party to the record. Aurora Nat'l Bank v. Simpson, 118 Ill. App. 3d 392, 73 Ill. Dec. 883, 454 N.E.2d 1132 (2 Dist. 1983).

- Failure to Withhold Assigned Wages

City was not exempt from complying with wage assignment, granted in favor of ex-wife in satisfaction of certain alimony and child support obligations owed to her by her ex-husband, an employee of the city, and was liable for the amounts which it failed to withhold between the date of the service of the assignment, and the date of its order. Fair v. City of Chicago, 45 Ill. App. 3d 240, 3 Ill. Dec. 914, 359 N.E.2d 773 (1 Dist. 1977).

State was not immune from wage-deduction proceedings brought by judgment creditor of employee under the former Wage Deduction Act (Ill. Rev. Stat., ch. 62, para. 77) (see now 735 ILCS 5/12-808)and the circuit court had jurisdiction in wage-deduction proceeding against the Department of Mental Health. First Fin. Co. v. Pellum, 62 Ill. 2d 86, 338 N.E.2d 876 (1975).

- Jurisdiction

Even though the Court of Claims has jurisdiction over a property dispute where the State has title to the disputed property, the circuit court improperly dismissed landowner's counterclaim in Illinois Department of Conservation's action against the landowner alleging that he had constructed a building and cut down trees on state park land; it would defy logic and the efficient administration of justice for the Department to obtain a resolution of its property dispute with the landowner in circuit court while at the same time requiring the landowner to file his counterclaim, seeking

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resolution of the same property dispute, in the Court of Claims. People ex rel. Manning v. Nickerson, 292 Ill. App. 3d 346, 226 Ill. Dec. 840, 686 N.E.2d 623 (3 Dist. 1997), aff'd in part and rev'd in part on other grounds, 184 Ill. 2d 245, 234 Ill. Dec. 375, 702 N.E.2d 1278 (1998).

Where complaint alleged that IDOT employee was driving a front-end loader on a highway in violation of former Ill. Rev. Stat., Ch. 95 1/2, para. 11-205 (see now 625 ILCS 5/11-205), the circuit court, and not the Court of Claims, had jurisdiction to hear the case even though, under Ill. Const., Art. XIII, § 4, the Court of Claims had exclusive jurisdiction to hear and determine all claims against the State of Illinois for damages in cases sounding in tort. Lorenz v. Siano, 248 Ill. App. 3d 946, 188 Ill. Dec. 96, 618 N.E.2d 666, 1993 Ill. App. LEXIS 896 (1 Dist. 1993).

There is no conflict between the sovereign immunity and the circuit court jurisdiction (Ill. Const. (1970), Art. VI, § 9) clauses of the State Constitution, and the Court of Claims Act (see now 705 ILCS 505/25). Healy v. Vaupel, 133 Ill. 2d 295, 140 Ill. Dec. 368, 549 N.E.2d 1240 (1990).

Trial court properly dismissed a counterclaim against the state because the trial court lacked jurisdiction to determine the validity of the claims against the state; where actions against the state could only be brought in the Court of Claims. People v. Patrick J. Gorman Consultants, Inc., 111 Ill. App. 3d 729, 67 Ill. Dec. 540, 444 N.E.2d 776 (1 Dist. 1982).

Plaintiff's suit, which alleged fraud and misrepresentation against the director of State Department of Transportation, in the procurement of a contract, and asked no relief from the director personally, should have been brought against the state in the court of claims (745 ILCS 5/1), and the circuit court was without jurisdiction to entertain the suit, or issue the injunction. G. H. Sternberg & Co. v. Bond, 30 Ill. App. 3d 874, 333 N.E.2d 261 (5 Dist. 1975).

Court of claims has been established with exclusive jurisdiction to provide for the orderly disbursement of state funds. Scoa Industries Inc. v. Howlett, 33 Ill. App. 3d 90, 337 N.E.2d 305 (1 Dist. 1975).

Claim for a refund of franchise tax sounded in tort, and in a absence of the protest payment, and injunctive remedy, claim was exclusively within the jurisdiction of the court of claims. Scoa Industries Inc. v. Howlett, 33 Ill. App. 3d 90, 337 N.E.2d 305 (1 Dist. 1975).

Circuit court was without jurisdiction to hear a case involving an award of retroactive benefits under the Aid to Families with Dependent Children Program, where such action should have been brought in the court of claims. Chicago Welfare Rights Org. v. Weaver, 5 Ill. App. 3d 655, 284 N.E.2d 20 (1 Dist. 1972), aff'd, 56 Ill. 2d 33, 305 N.E.2d 140 (1973).

- Real Party in Interest

Allegations in plaintiff's complaint, which contained references to "defendant's employees," "defendant's office," "defendant's predecessor," and which challenged the propriety of actions relating to his official duties, indicated that the action was directed against the Secretary, not as an individual, but as an officer of the state. Brucato v. Edgar, 128 Ill. App. 3d 260, 83 Ill. Dec. 489, 470 N.E.2d 615 (1 Dist. 1984).

Where an action seeks to control an officer's conduct in governmental matters with respect to which he has been granted discretionary authority, and if a judgment for plaintiff could operate to control the actions of the state or subject it to liability, it will be deemed an action against the state even though it is not a named party therein. Brucato v. Edgar, 128 Ill. App. 3d 260, 83 Ill. Dec. 489, 470 N.E.2d 615 (1 Dist. 1984).

State community college was not immune from suit in circuit court, where the state board had contracted with a private insurance carrier for liability coverage, no provision existed whereby general funds of the state would be reached for the payment of claims and the state board, possessed that degree of administrative autonomy sufficient to make it amenable to suit in circuit

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court. Gocheff v. State Community College, 69 Ill. App. 3d 178, 25 Ill. Dec. 477, 386 N.E.2d 1141 (5 Dist. 1979).

In determining whether a suit is in fact a suit against the state, the court is not bound solely by the formal identification of the parties to the record, rather, the court is to analyze the particular issues involved and the relief sought. Hudgens v. Dean, 75 Ill. 2d 353, 27 Ill. Dec. 193, 388 N.E.2d 1242 (1979); AFSCME v. Giordano, 114 Ill. App. 3d 142, 69 Ill. Dec. 809, 448 N.E.2d 269 (4 Dist. 1983); Senn Park Nursing Ctr. v. Miller, 104 Ill. 2d 169, 83 Ill. Dec. 609, 470 N.E.2d 1029 (1984).

The constitutional inhibition against making the state a party to a suit cannot be evaded by making an action nominally owe against the servants or agents of the state, when the real claim is against the state itself, and when the state is the party vitally interested. Sass v. Kramer, 72 Ill. 2d 485, 21 Ill. Dec. 528, 381 N.E.2d 975 (1978).

A suit brought against an officer, or agency with relation to matters in which the defendant represents the state in action and liability, even though the state is not a party to the record, is in effect a suit against the state. Scoa Industries Inc. v. Howlett, 33 Ill. App. 3d 90, 337 N.E.2d 305 (1 Dist. 1975).

A suit brought against an officer or agency with relation to some matter in which defendant represents the state in action and liability, and the state while not a party to the record is the real party against which relief is sought, so that a judgment or decree for plaintiff, although nominally against the named defendant as an individual distinct from the state, could operate to control the action of the state or subject it to liability, is in effect, as suit against the state. Struve v. Department of Conservation, 14 Ill. App. 3d 1092, 303 N.E.2d 32 (3 Dist. 1973).

An action to compel a public official to perform a clear and mandatory duty is not a suit against the state, and so was not barred by former Ill. Const. (1870), Art. IV, § 26 (see now this section), which prohibited suits against the state. Bransfield v. Kingery, 283 Ill. App. 405 (3 Dist. 1936).

- Retrospective Relief

Neither this section of the Illinois Constitution, nor the mere fact that defendants removed the case to federal court could be construed as the kind of explicit waiver of federal sovereign immunity required by the court; while Illinois may well have waived retrospective claims against itself in its own courts, no evidence existed that it in any way consented to suits over such claims in federal court. Frances J. v. Wright, 19 F.3d 337 (7th Cir.), cert. denied, 513 U.S. 876, 115 S. Ct. 204, 130 L. Ed. 2d 134 (1994).

Claims Against Municipality

- In General

Municipal corporation is not immune from claims alleging violations of common-law rights, unless such immunity is provided by statute. Austin View Civic Ass'n v. City of Palos Heights, 85 Ill. App. 3d 89, 40 Ill. Dec. 164, 405 N.E.2d 1256 (1 Dist. 1980).

Counterclaims

Because the circuit court had jurisdiction to decide the state's request for an injunction and money damages, and that necessarily involved a determination of the defendant's claimed ownership interest, sovereign immunity did not bar the circuit court from exercising jurisdiction over the defendant's, property claim as raised in the counterclaim. People ex rel. Manning v. Nickerson, 184 Ill. 2d 245, 234 Ill. Dec. 375, 702 N.E.2d 1278 (1998).

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Court of Claims Act

Illinois Court of Claims had no power to transfer prisoner's claim that correctional department lost his property to another court because Ill. Const. Art. XIII, § 4 provided that the state could be made a defendant only to the extent allowed by the General Assembly and 745 IILCS 5/1 et seq. provided that the state could not be made a defendant in any court except the Court of Claims or in actions that were not applicable to the prisoner's claims. Lee v. Ill. Dep't of Corr., 52 Ill. Ct. Cl. 320, 1997 Ill. Ct. Cl. LEXIS 67 (Ct. Cl. 1997).

- Jurisdiction

Under Ill. Const. art. XIII, § 4, sovereign immunity was abolished in Illinois except as was otherwise provided for by law. However, that did not mean the trial court lacked jurisdiction over the State in a property dispute that the State had with the township, even though the State was not to be named a defendant or party in court according to the State Lawsuit Immunity Act, 745 ILCS 5/1; that action pursuant to the Court of Claims Act, 705 ILCS 505/1 et seq., did not have to be brought in the Court of Claims despite that being the exclusive forum for litigants to pursue claims against the State, 705 ILCS 505/8, as the State in the present action had filed its own quiet title action and, thus, was affirmatively acting on its own to seek a remedy rather than being named a defendant or party in a case filed in the trial court. Twp. of Jubilee v. State, Ill. 2d , 355 Ill. Dec. 668, 960 N.E.2d 550, 2011 Ill. LEXIS 2227 (2011).

Tenant's declaratory judgment action seeking a declaration of its renewal rights under a lease of commercial space it executed with the landlord, a state entity, that was governed by an enabling statute, 20 ILCS 405/405-315(a)(s), had to be brought in the Court of Claims. The Court of Claims pursuant to Ill. Const. art. XIII, § 4, 745 ILCS 5/0.01, and 745 ILCS 5/1 had exclusive jurisdiction over claims against the State under 705 ILCS 505/8 such as the tenant's declaratory judgment action seeking a declaration of rights in a lease agreement it executed with the State. State Bldg. Venture v. O'Donnell, 239 Ill. 2d 151, 346 Ill. Dec. 518, 940 N.E.2d 1122, 2010 Ill. LEXIS 1554 (2010).

Ill. Const. art. XIII, § 4 abolished sovereign immunity, but allowed it to remain in those instances where the General Assembly provided for it by law. As a result, the trial court lacked jurisdiction over the motorist's negligence action against the snowplow operator, who collided with the motorist's vehicle while plowing snow as a state employee, because the State Lawsuit Immunity Act, 745 ILCS 5/1, dictated the action be brought under 705 ILCS 505/1 et seq. in the Court of Claims given its exclusive jurisdiction pursuant to 705 ILCS 505/8(d) over tort claims against the state. Shirley v. Harmon, 405 Ill. App. 3d 86, 342 Ill. Dec. 932, 933 N.E.2d 1225, 2010 Ill. App. LEXIS 876 (2 Dist. 2010).

Duty plaintiff alleged in a negligence action that defendant breached arose independently of his state employment and was the duty every physician owes to his patient, rather than an obligation incurred by virtue of holding a public office, so that sovereign immunity did not attach and the Court of Claims had no jurisdiction to hear the case. Cottrill v. Russell, 253 Ill. App. 3d 934, 192 Ill. Dec. 733, 625 N.E.2d 888 (4 Dist. 1993).

- Sovereign Immunity Limited

There is no conflict between the sovereign immunity and the circuit court jurisdiction clauses of the Illinois Constitution (see this section and Ill. Const. (1970), Art. VI, § 9) and the Court of Claims Act (see now 705 ILCS 505/1). Healy v. Vaupel, 133 Ill. 2d 295, 140 Ill. Dec. 368, 549 N.E.2d 1240 (1990).

The 1970 Constitution abolished sovereign immunity, except as the General Assembly provided by law, however, concurrent with the effective date of the 1970 Constitution, the legislature reenacted the Court of Claims Act (see now 705 ILCS 505/1) since members of the legislature felt that maintaining limited sovereign immunity was extremely important, and necessary to prevent

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litigation chaos. Schoeberlein v. Purdue Univ., 129 Ill. 2d 372, 135 Ill. Dec. 787, 544 N.E.2d 283 (1989).

Only the General Assembly, and not the Attorney General, can determine when claims against the state will be allowed, and the legislature has determined that sovereign immunity is waived only when suits against the state are brought pursuant to the Court of Claims Act (see now 705 ILCS 505/1). People v. Patrick J. Gorman Consultants, Inc., 111 Ill. App. 3d 729, 67 Ill. Dec. 540, 444 N.E.2d 776 (1 Dist. 1982).

The cloak of sovereign immunity, and its protection, is limited only by the provisions of the Court of Claims Act (Ill. Rev. Stat., ch. 37, para. 439.1 et seq.). Liebman v. Board of Governors, 79 Ill. App. 3d 89, 34 Ill. Dec. 630, 398 N.E.2d 305 (1 Dist. 1979).

The General Assembly, exercising the authority granted to it by this section of the state Constitution, reasserted sovereign immunity for the state, except to the extent that suit was permitted by the Court of Claims Act (see now 705 ILCS 505/1) Williamson Towing Co. v. Illinois, 534 F.2d 758 (7th Cir. 1976).

Illegal Acts of State Officers

- In General

Sovereign immunity precludes actions against state agencies or public officials acting pursuant to their lawful authority, however, where an action against an agency or official alleges an unwarranted assumption of authority, the action is not an action against the state. International Bureau of Fraud Control, Ltd. v. Clayton, 188 Ill. App. 3d 703, 135 Ill. Dec. 920, 544 N.E.2d 416 (4 Dist. 1989).

While legal official acts of state officers are in effect acts of the state itself, illegal acts performed by the officers are not, and when a state officer performs illegally, or purports to act under an unconstitutional act, or under authority which he does not have, a suit may be maintained against the officer, and is not an action against the state. Sass v. Kramer, 72 Ill. 2d 485, 21 Ill. Dec. 528, 381 N.E.2d 975 (1978); AFSCME v. Giordano, 114 Ill. App. 3d 142, 69 Ill. Dec. 809, 448 N.E.2d 269 (4 Dist. 1983).

The test for determining whether a suit will lie against state officers is whether they were acting within the scope of their authority, or were transcending that authority. Joos v. Illinois Nat'l Guard, 257 Ill. 138, 100 N.E. 505 (1912).

Plaintiff's amended complaint in form and substance sought equitable relief against the State of Illinois, its agencies, and officers in their official and authorized functions and as such it is barred by sovereign immunity and was properly dismissed. Betts v. Department of Revenue, 78 Ill. App. 3d 102, 33 Ill. Dec. 426, 396 N.E.2d 1150 (1 Dist. 1979).

Where the action is to enjoin a public official from acting in excess of his authority in the future, the trial court has jurisdiction and principles of sovereign immunity do not apply. International Bureau of Fraud Control, Ltd. v. Clayton, 188 Ill. App. 3d 703, 135 Ill. Dec. 920, 544 N.E.2d 416 (4 Dist. 1989).

- Injunctions

Where an action is brought against a state officer, or the director of a department upon the ground that, while claiming to act for the state, he violates or invades the personal and property rights of the plaintiffs under an unconstitutional act, or assumes authority which he does not have, the action is not against the state, and the presumption obtains that the state, or a department of the state, will not, and does not, violate its constitution and laws, but that the violation, if it occurs, is by a state officer or the head of a department of the state, and the officer or head may be

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restrained by appropriate action instituted by a citizen. Owens v. Green, 400 Ill. 380, 81 N.E.2d 149 (1948).

- Jurisdiction

Sovereign immunity does not apply to actions brought in the circuit court, which seek to enjoin state officials from acting in excess of their delegated authority. Board of Educ. v. Sanders, 150 Ill. App. 3d 755, 104 Ill. Dec. 233, 502 N.E.2d 730 (3 Dist. 1986), cert. denied, 484 U.S. 926, 108 S. Ct. 290, 98 L. Ed. 2d 250 (1987).

Circuit court had jurisdiction over action which contested the conduct of state officials in the enforcement of an allegedly unconstitutional statute, and in allegedly proceeding in violation of law, because such an action was not considered an action against the state. County of Cook v. Ogilvie, 50 Ill. 2d 379, 280 N.E.2d 224 (1972).

- Violation of Administrative Rules

When administrative rules are violated, then violations of such rules are illegal and the shield of sovereign immunity does not protect such actions. Farmer v. McClure, 172 Ill. App. 3d 246, 122 Ill. Dec. 227, 526 N.E.2d 486 (1 Dist. 1988).

Jurisdiction

- Determination

Since the enactment of legislative sovereign immunity given under the State Lawsuit Immunity Act (745 ILCS 5/0.01 et seq.), the focus of the determination of whether an entity may be sued in the circuit court is upon whether the entity is an arm of the state based upon its characteristics, not the terms of the entity's enabling legislation. Raymond v. Goetz, 262 Ill. App. 3d 597, 200 Ill Dec. 13, 635 N.E.2d 114 (4 Dist.), appeal denied, 157 Ill. 2d 521, 205 Ill. Dec. 185, 642 N.E.2d 1302 (1994).

Limitation Period

Municipality was immune from a developer's defense of statute of limitations in an action filed by the municipality 13 years after passage of an ordinance requiring the developer to build roads in a subdivision, because the abolition of sovereign immunity under Ill. Const. (1970), Art. XIII, § 4, did not mean that the defense of statute of limitations was available against a municipality seeking to enforce a public right. Shelbyville v. Shelbyville Restorium, Inc., 96 Ill. 2d 457, 71 Ill. Dec. 720, 451 N.E.2d 874, 1983 Ill. LEXIS 399 (1983).

Medical Center Commission

Medical Center Commission is an arm of the state because not only do both the Medical Center Act (Ill. Rev. Stat. ch. 91, paras. 125 through 135a) and the Court of Claims Act, Ill. Rev. Stat. ch. 127, para. 801 (now 745 ILCS 5/1) require that tort actions against the Commission be brought in the court of claims, the Commission is substantially subject to the legislature's control; thus, the Commission is an arm of the state and the immunity granted by the Court of Claims Act is authorized by Ill. Const. (1970), Art. XIII, § 4. Williams v. Medical Center Com., 60 Ill. 2d 389, 328 N.E.2d 1, 1975 Ill. LEXIS 213 (1975).

The Medical Center Commission (70 ILCS 915/2) is an arm of the state, and immune from suit, unless an action is brought in court of claims. Williams v. Medical Ctr. Comm'n, 60 Ill. 2d 389, 328 N.E.2d 1 (1975).

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Official's Authority Exceeded

Where city sanitary district and city sought by their complaint to obtain a declaration that they had a valid variance enabling them to perform certain construction by operation of the Environmental Protection Act (see now 415 ILCS 5/38) due to Pollution Control Board's failure to take final action upon petition for variance, the declaration of the existence of the variance would constitute a declaration that defendant Pollution Control Board would be beyond its authority in acting to prevent plaintiffs from performing construction consistent with the variance and doctrine of sovereign immunity did not prevent the complaint from stating a cause of action. Sanitary Dist. v. Pollution Control Bd., 66 Ill. App. 3d 251, 23 Ill. Dec. 125, 383 N.E.2d 996 (4 Dist. 1978).

Present Claim

Because the City's complaint did not constitute a present claim, the board was not entitled to sovereign immunity. City of Chicago v. Board of Trustees, 293 Ill. App. 3d 897, 228 Ill. Dec. 253, 689 N.E.2d 125 (1 Dist. 1997), appeal denied, 176 Ill. 2d 571, 229 Ill. Dec. 53, 690 N.E.2d 1380 (1998), 177 Ill. 2d 568, 232 Ill. Dec. 451, 698 N.E.2d 542 (1998).

Real Party in Interest

When the state would be directly and adversely affected by a judgment or decree, the state is the real party against whom relief is sought, and thus the suit is against the state for purposes of sovereign immunity. Herget Nat'l Bank v. Kenney, 105 Ill. 2d 405, 86 Ill. Dec. 484, 475 N.E.2d 863 (1985).

Sovereign Immunity

As the State was not the defendant in a sexually dangerous person discharge proceeding, the reinstatement of sovereign immunity found in 705 ILCS 505/8(a) did not apply, and sovereign immunity was waived under Ill. Const. Art. XIII, § 4 order; thus, an order directing Illinois Department of Corrections, as the inmate's legal guardian, to pay the inmate's attorney's fees was proper and was not invalid based on sovereign immunity. People v. Wilcoxen, 358 Ill. App. 3d 1076, 294 Ill. Dec. 683, 831 N.E.2d 633, 2005 Ill. App. LEXIS 749 (3 Dist. 2005), appeal denied, 217 Ill. 2d 591, 300 Ill. Dec. 374, 844 N.E.2d 46 (2005).

- In General

When a court finds, on the facts of a particular case, that the General Assembly has granted a public entity immunity from liability, the court may not then negate that immunity by applying a common law exception to a common law rule; to do so would violate not only this provision, but also the separation of powers clause (Ill. Const. (1970), Art. XIII, § 4). Harinek v. 161 N. Clark St. Ltd. Partnership, 181 Ill. 2d 335, 230 Ill. Dec. 11, 692 N.E.2d 1177 (1998).

By its plain language, Ill. Const. (1970), Art. XIII, § 4 does not forbid a legislative provision of nonliability for the State or its governmental subdivisions. Wilsonville v. Earthline Corp., 65 Ill. App. 3d 392, 22 Ill. Dec. 369, 382 N.E.2d 689, 1978 Ill. App. LEXIS 3502 (1 Dist. 1978).

A close examination of the state constitution, and the Court of Claims Act (see now 705 ILCS 505/1 et seq.) reveals no language showing that this state has waived its protection afforded by the U.S. Const., Amend XI. Williamson Towing Co. v. Illinois, 396 F. Supp. 431 (E.D. Ill. 1975), aff'd, 534 F.2d 758 (7th Cir. 1976).

Whether a cause of action is barred by sovereign immunity is not to be determined solely by identification of the formal parties in the record, but depends upon the issues presented and the

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relief sought. G. H. Sternberg & Co. v. Bond, 30 Ill. App. 3d 874, 333 N.E.2d 261 (5 Dist. 1975).

The state is immune from suit without its consent. Scoa Industries Inc. v. Howlett, 33 Ill. App. 3d 90, 337 N.E.2d 305 (1 Dist. 1975).

- Abolition

Illinois General Assembly did not provide by law an exception to the Illinois Constitution of 1970's abolition of the doctrine of sovereign immunity in its statute providing police officers with immunity while they were performing police functions that negated the special administrator's cause of action for wrongful death for failing to promptly obtain emergency medical care for decedent; obtaining medical care for a shooting victim was not a police function that afforded immunity to the city on a wrongful death claim filed against it by a representative of the shooting victim. Torres v. City of Chicago, 352 Ill. App. 3d 533, 287 Ill. Dec. 849, 816 N.E.2d 816, 2004 Ill. App. LEXIS 1115 (1 Dist. 2004), appeal denied, 213 Ill. 2d 576, 293 Ill. Dec. 869, 829 N.E.2d 794 (2005).

Sovereign immunity has been abolished in this state, except as provided by law. Farmer v. McClure, 172 Ill. App. 3d 246, 122 Ill. Dec. 227, 526 N.E.2d 486 (1 Dist. 1988).

Under Ill. Const. (1970), Art. XIII, § 4, except as the General Assembly may provide by law, sovereign immunity in Illinois is abolished. McLorn v. East St. Louis, 105 Ill. App. 3d 148, 61 Ill. Dec. 107, 434 N.E.2d 44, 1982 Ill. App. LEXIS 1639 (1 Dist. 1982).

- Comity

The court concluded that on the basis of comity, it was consistent with policies expressed by the Court of Claims Act, (see now 705 ILCS 505/1 et seq). and not inconsistent with policies in the state constitution, to honor sister state's reservation of sovereign immunity. Schoeberlein v. Purdue Univ., 129 Ill. 2d 372, 135 Ill. Dec. 787, 544 N.E.2d 283 (1989).

- Consent to Be Sued

A state can waive its sovereign immunity to suit its own courts without thereby being deemed to have waived its immunity under U.S. Const., Amend. 11 to suit in federal court, and a state can confine damage suits against itself to a particular state court. Osteen v. Henley, 13 F.3d 221 (7th Cir. 1993).

The obligations of a state rest for their performance upon its honor and good faith, and cannot be made the subjects of judicial cognizance, unless the state consents to be sued, or comes itself into court. Monroe v. Collins, 393 Ill. 553, 66 N.E.2d 670 (1946).

- Municipal Ordinance Creating

Court concluded that the ordinance was an exercise in sovereign immunity; therefore, having already determined that only the General Assembly may enact legislation concerning sovereign immunity under Ill. Const. (1970), Art. XIII, § 4, the City's ordinance was invalid. McLorn v. East St. Louis, 105 Ill. App. 3d 148, 61 Ill. Dec. 107, 434 N.E.2d 44, 1982 Ill. App. LEXIS 1639 (1 Dist. 1982).

City's ordinance which created sovereign immunity was invalid. McLorn v. City of E. St. Louis, 105 Ill. App. 3d 148, 61 Ill. Dec. 107, 434 N.E.2d 44 (5 Dist. 1982).

- Not Applicable

Illinois Department of Corrections was required to reimburse a county for the attorney fees incurred in a discharge proceeding regarding the release from confinement of a sexually dangerous person. The doctrine of sovereign immunity was not applicable because the State of

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Illinois was not made a defendant or a party to the action, but rather chose to become a party when it sought to commit the person pursuant to the Illinois Sexually Dangerous Persons Act, 725 ILCS 205/0.01, and the Department, as the person's guardian, was the appropriate party to pay the person's attorney fees in the proceeding. People v. Carter, 392 Ill. App. 3d 520, 332 Ill. Dec. 80, 912 N.E.2d 266, 2009 Ill. App. LEXIS 603 (2 Dist. 2009), appeal denied, 234 Ill. 2d 529, 920 N.E.2d 1075, 2009 Ill. LEXIS 1998 (2009).

Sovereign immunity under 745 ILCS 5/1 did not apply to bar the Illinois Department of Corrections from paying an inmate's attorney's fees in discharge proceedings under the Illinois Sexually Dangerous Persons Act (725 ILCS 205/0.01 et seq.) because the State filed the proceedings and the inmate did not make the State a party. People v. Wilcoxen, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 385 (3 Dist. Apr. 22, 2005), modified, 358 Ill. App. 3d 1076, 294 Ill. Dec. 683, 831 N.E.2d 633 (2005).

- Reenactment

After the adoption of the 1970 Constitution, the legislature was not required to affirmatively reenact 820 ILCS 305/19 (f)(1) for it to effectively bar state employees from seeking judicial review of Industrial Commission decisions. Yonikus v. Industrial Comm'n, 228 Ill. App. 3d 333, 169 Ill. Dec. 386, 591 N.E.2d 890 (5 Dist.), cert. denied, 146 Ill. 2d 654, 176 Ill. Dec. 825, 602 N.E.2d 479 (1992).

- Restrictions

The 1970 Constitution abolished sovereign immunity, except as the General Assembly provided by law, however, concurrent with the effective date of the 1970 Constitution, the legislature reenacted the Court of Claims Act (see now 705 ILCS 505/1 et seq.) since members of the legislature felt that maintaining limited sovereign immunity was extremely important, and necessary to prevent litigation chaos. Schoeberlein v. Purdue Univ., 129 Ill. 2d 372, 135 Ill. Dec. 787, 544 N.E.2d 283 (1989).

The cloak of sovereign immunity, and its protection, is limited only by the provisions of the Court of Claims Act (see now 705 ILCS 505/1 et seq.). Liebman v. Board of Governors, 79 Ill. App. 3d 89, 34 Ill. Dec. 630, 398 N.E.2d 305 (1 Dist. 1979).

- State

Estate administrator's medical malpractice complaint against the intake psychiatrist and psychologist, who were state employees, did not involve a claim against the State as the claim involved the alleged breach of their duties as doctors to a patient rather independent of their state employment, which meant the claim against them could be brought in the trial court. Jinkins v. Lee, 337 Ill. App. 3d 403, 271 Ill. Dec. 720, 785 N.E.2d 914, 2003 Ill. App. LEXIS 117 (1 Dist. 2003).

- State Employee

Defendant state employees were not protected by the doctrine of sovereign immunity because the doctrine was not designed to shield state employees from being held accountable for their criminal actions; nor was the doctrine intended to shield even otherwise lawful actions by state employees, when those actions were committed in the furtherance of a conspiracy. Fritz v. Johnston, 209 Ill. 2d 302, 282 Ill. Dec. 837, 807 N.E.2d 461, 2004 Ill. LEXIS 367 (2004).

Circuit court improperly granted summary judgment to mental health center employees because the doctrine of sovereign immunity did not bar an estate administrator's complaint for counts of wrongful death and survival, based upon the alleged negligent diagnosis and release of the decedent, her husband, by the employees before his subsequent suicide, and subject matter jurisdiction lied in the circuit court because (1) the source of the employees' duty was their status as mental health professionals; (2) the source of the employees' duty arose independently of their

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employment by the State; and (3) a judgment in the action would not operate to control the actions of the State. Jinkins v. Lee, 209 Ill. 2d 320, 282 Ill. Dec. 787, 807 N.E.2d 411, 2004 Ill. LEXIS 366 (2004).

Where defendant, employee of Department of Transportation, was charged with mowing median on highway, was performing his duties as instructed by his supervisors, and there was no practice requiring mowers to inspect the areas for debris prior to mowing, sovereign immunity barred suit by plaintiff, whose windshield was shattered by flying debris, in circuit court. Starr v. Ward, 289 Ill. App. 3d 299, 224 Ill. Dec. 443, 681 N.E.2d 1064 (3 Dist. 1997), appeal denied, 174 Ill. 2d 595, 227 Ill. Dec. 17, 686 N.E.2d 1173 (1997).

- Waiver

The legislature has clearly consented to waiver of sovereign immunity in circumstances falling within the scope of the Highway Code Provision relating to permits to construct entrances or exits (605 ILCS 5/4-211). Devon Bank v. DOT, 95 Ill. App. 3d 690, 51 Ill. Dec. 191, 420 N.E.2d 605 (1 Dist. 1981).

Special Duty Exception

The special duty doctrine may not operate to impose liability upon a public entity after a court has found that entity immune from liability under the Tort Immunity Act. Harinek v. 161 N. Clark St. Ltd. Partnership, 181 Ill. 2d 335, 230 Ill. Dec. 11, 692 N.E.2d 1177 (1998).

Suits Filed During Transition Period

- In General

Actions commenced in 1971, while Ill. Const. (1870), Art. IV, § 26 remained in effect, (see now Ill. Const. (1970), Art. XIII, § 4) improperly joined the state as a defendant. Blase v. State, 55 Ill. 2d 94, 302 N.E.2d 46 (1973).

Tort Immunity Act

Because the Constitution of 1970 expressly abrogated the doctrine of sovereign immunity, except as the General Assembly may provide by law, the tort liability of a municipality is expressly controlled by constitutional provision, and legislative prerogative, as embodied in the Tort Immunity Act (745 ILCS 10/1-101 et seq.). Burdinie v. Village of Glendale Heights, 139 Ill. 2d 501, 152 Ill. Dec. 121, 565 N.E.2d 654 (1990), overruled on other grounds, McCuen v. Peoria Park Dist., 163 Ill. 2d 125, 205 Ill. Dec. 487, 643 N.E.2d 778 (1994).

- Corrupt or Malicious Motives Exception

The Illinois Constitution prohibits the insertion of the common law "corrupt or malicious motives" exception into the immunities provided by the Local Governmental and Governmental Employees Tort Immunity Act. Village of Bloomingdale v. C.D.G. Enters., 196 Ill. 2d 484, 256 Ill. Dec. 848, 752 N.E.2d 1090, 2001 Ill. LEXIS 778 (2001).

- Fire Fighters

Tort Immunity for firefighters pursuant to the Tort Immunity Act (see now 745 ILCS 10/5-103) is unaffected by the existence of the section of the State Constitution. Adams v. City of Peoria, 77 Ill. App. 3d 683, 33 Ill. Dec. 183, 396 N.E.2d 572 (3 Dist. 1979).

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LEGAL PERIODICALS

For article, "Survey of Illinois Law: Governing Lawyers," see 25 S. Ill. U. L.J. 841 (2001).

For article, "The Death of the Special Duty Exception to Statutory Governmental Immunity," see 86 Ill. B.J. 372 (1998).

For article, "Jurisdiction and Immunity in Suits Against State Employees After Healy v. Vaupel (549 N.E.2d 1240 (1990))," see 79 Ill. B.J. 612 (1991).

For article, "Medical Negligence and the Court of Claims: A Dilemma for the Sovereign Doctors," see 68 Ill. B.J. 534 (1980).

For case note, "Sass v. Kramer 'and/or' Sovereign Immunity Doctrine Bars Quiet Title Suit Against State Official in Article VI Judicial Court," see 1980 U. Ill. L.F. 571.

For note on Criminal Procedure, Guilty Pleas, Torts and Sovereign Immunity discussing Henderson v. Morgan, 426 U.S. 637 (1976), see 65 Ill. B.J. 592 (1977).

For article, "Permitted But Not Intended: Boub v. Township of Wayne, Municipal Tort Immunity in Illinois, and the Right to Local Travel," see, See 38 J. Marshall L. Rev. 545 (2004).

Section 5. Pension and Retirement Rights.

Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

(Source: Illinois Constitution.)

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In General

This section prohibits legislative action which directly diminishes the benefits to be received by those who became members of the pension system prior to the enactment of the legislation, though they are not yet eligible to retire. Legislative action directed toward another aim, but which has an incidental effect on the pensions which employees would ultimately receive, is not prohibited. Kraus v. Board of Trustees, 72 Ill. App. 3d 833, 28 Ill. Dec. 691, 390 N.E.2d 1281 (1 Dist. 1979).

Application

Board's pre-hearing determination that police officer was no longer disabled, without giving the police officer a chance to respond, was a violation of the police officer's due process rights under Ill. Const. art. I, § 2 and Ill. Const. art. XIII, § 5. Even though it was eventually determined that the police officer was no longer disabled, the police officer had a right to receive disability benefits until a ruling was made that the police officer was no longer disabled. Peacock v. Bd. of Trs. of the Police Pension Fund, 395 Ill. App. 3d 644, 335 Ill. Dec. 159, 918 N.E.2d 243, 2009 Ill. App. LEXIS 1044 (1 Dist. 2009).

Provisions of the Illinois Act to End Atrocities and Terrorism in the Sudan that amended the Illinois Pension Code, former 40 ILCS 5/1-110.5 [repealed, now see: 40 ILCS 5/1-110.6], violated the Foreign Commerce Clause, U.S. Const. Art. I, § 8, cl. 3, because: (1) it affected not just state-controlled pension funds but also the pension funds of municipal entities; (2) Ill. Const., Art. XIII, § 5 did not guarantee local pension fund benefits so the state could be claimed to be a market participant; (3) the amendment to the Pension Code also restricted the investment choices of state-funded pensions; (4) regardless of whether the market participant exception applied to the Foreign Commerce Clause, Illinois was not acting exclusively as a market participant through its enforcement of the Illinois Sudan Act; and (5) even if the Illinois Sudan Act's amendment to the Code would pass constitutional muster if only applied to state-funded pensions, the unconstitutional portion of the statute could not be severed, and because the amendment to the Pension Code applied to all pension funds established under the Code, nothing remained of the statute that could function independently. Nat'l Foreign Trade Council, Inc. v. Giannoulias, 523 F. Supp. 2d 731, 2007 U.S. Dist. LEXIS 13341 (N.D. Ill. 2007).

Where, at the time plaintiff became an employee of the police force and a member of the pension system, the applicable section of the Pension Code, former Ill. Rev. Stat., ch. 108 1/2, para. 3-114, provided that if he went on disability and then elected to retire on regular pension, he would

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receive a pension of one half the salary attached to his rank for the year preceding his retirement on regular pension, and when this section came into effect in 1971, its purpose and effect was to guarantee that he would receive not less than the benefits he would receive under that pension, and where the legislature then repealed Ill. Rev. Stat., ch. 108 1/2, para. 3-114 and replaced it with 40 ILCS 5/3-116.1, application of that amendment to plaintiff would have amounted to a change in the terms of his contract with the pension system, 17 years after he embarked upon his employment and two years after the Constitution fixed the terms of the contract, and would have directly diminished his benefits under the contract. This section was intended to prohibit just such a result, and thus 40 ILCS 5/3-116.1 could not constitutionally apply to plaintiff, he was entitled to receive benefits under the relevant sections of the Pension Code as in effect at the time the constitutional provision became effective in 1971. Kraus v. Board of Trustees, 72 Ill. App. 3d 833, 28 Ill. Dec. 691, 390 N.E.2d 1281 (1 Dist. 1979).

Although this section established that a contractual arrangement is involved in pensions, binding the government to fulfill its agreement, this section does not affect a situation where it was asserted that an increase in expected pension benefits was to be conferred without any additional payment into the pension fund, voluntary or mandatory; no contract may be found in such a unilateral arrangement. Ziebell v. Board of Trustees, 73 Ill. App. 3d 894, 29 Ill. Dec. 544, 392 N.E.2d 101 (1 Dist. 1979).

Benefits Reduction

Section 14-103.12 (40 ILCS 5/14-103.12) did not violate this section of the Illinois Constitution where plaintiffs could not demonstrate that their benefits were reduced, either directly or indirectly. Disabato v. Board of Trustees of State Employees' Retirement Sys., 285 Ill. App. 3d 827, 221 Ill. Dec. 59, 674 N.E.2d 852 (1 Dist. 1996).

Police officer's pension disability should not be reduced by the amount of his workers' compensation settlement because he contributed to his pension fund (40 ILCS 5/3-114.5) before, during and after the repeal of Ill. Rev. Stat., ch. 48, para. 138.1(b)(1) of the Workers' Compensation Act; those contributions created an additional vested contract right which could not constitutionally be diminished or impaired under this section. Schroeder v. Morton Grove Police Pension Bd., 219 Ill. App. 3d 697, 162 Ill. Dec. 183, 579 N.E.2d 997 (1 Dist.), cert. denied, 142 Ill. 2d 665, 164 Ill. Dec. 928, 584 N.E.2d 140 (1991).

Amendment to section 18-125 of the Illinois Pension Code (see now 40 ILCS 5/18-125) which resulted in a reduction of retirement benefits for members of judicial retirement system at the time of effective date of amendment was an unconstitutional impairment of contract. Felt v. Board of Trustees, 107 Ill. 2d 158, 89 Ill. Dec. 855, 481 N.E.2d 698 (1985).

Board of trustees for firemen's pension fund acted properly when it reduced claimant's pension benefits by the amount of workers' compensation benefits he was receiving. Sellards v. Board of Trustees, 133 Ill. App. 3d 415, 88 Ill. Dec. 515, 478 N.E.2d 1123 (1 Dist. 1985).

Benefits not being diminished really refers to this situation: If a police officer accepted employment under a provision where he was entitled to retire at two thirds of his salary after 20 years of service, that could not subsequently be changed to say that he was entitled to only one third of his salary after 30 years of service, or perhaps entitled to nothing. This is the thrust of the word "diminished." It is simply to give a basic protection against abolishing the employees' rights completely or changing the terms of their rights after they have embarked upon the employment - to lessen them. Kraus v. Board of Trustees, 72 Ill. App. 3d 833, 28 Ill. Dec. 691, 390 N.E.2d 1281 (1 Dist. 1979).

Cause of Action

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Claims against a statutory pension system for certain school district employees, arising from a real estate investment made by the system, did not fall within the jurisdiction of the Court of Claims, 705 ILCS 505/8, because the system's funds, governed by 40 ILCS 5/16-101, were not state funds within the meaning of Ill. Const. Art. XIII, § 5, where the only system liabilities assumed by the State were those under 40 ILCS 5/16-158; additionally, the actions did not fall within the scope of sovereign immunity under 745 ILCS 5/1. Bd. of Dirs. v. Teachers' Ret. Sys., 50 Ill. Ct. Cl. 396, 1998 Ill. Ct. Cl. LEXIS 61 (Ct. Cl. 1998).

Plaintiffs, counterplaintiffs and intervenor failed to state a cause of action under the pension protection clause; allegations of underfunding were insufficient as a matter of law to constitute an impairment of benefits. People ex rel. Sklodowski v. State, 182 Ill. 2d 220, 230 Ill. Dec. 884, 695 N.E.2d 374 (1998).

Contracts

There is no reason to distinguish between a court order that directs a pension participant to name his ex-spouse as beneficiary of a death benefit and a court order that directs a pension participant to pay his ex-spouse a portion of his pension annuity; thus, an order that directed a pension participant to name his ex-spouse as beneficiary of a death benefit did not contravene 40 ILCS 5/7-217 or, by extension, Section 5 of Article XIII of the Illinois Constitution. Smithberg v. Illinois Mun. Retirement Fund, 306 Ill. App. 3d 1139, 240 Ill. Dec. 183, 716 N.E.2d 316 (3 Dist. 1999).

Where plaintiff was accepted into the police pension fund prior to his appointment as fire chief, there were no limitations nor qualifications placed on that membership, plaintiff chose to remain a member of the police pension fund, then his rights under that fund amounted to contractual rights. Subsequent conditions upon the exercise of those contractual rights were improper. Taylor v. Board of Trustees, 125 Ill. App. 3d 1096, 81 Ill. Dec. 273, 466 N.E.2d 1075 (1 Dist. 1984).

When a fireman is employed by a unit of local government, his employment should be considered an enforceable contractual relationship. Brown v. City of Pekin, 129 Ill. App. 3d 46, 84 Ill. Dec. 327, 472 N.E.2d 77 (3 Dist. 1984).

A contractual relationship is governed by the actual terms of the contract or pension. Kraus v. Board of Trustees, 72 Ill. App. 3d 833, 28 Ill. Dec. 691, 390 N.E.2d 1281 (1 Dist. 1979).

There is nothing to prohibit an employee from agreeing, for consideration, to accept a reduction in benefits. Kraus v. Board of Trustees, 72 Ill. App. 3d 833, 28 Ill. Dec. 691, 390 N.E.2d 1281 (1 Dist. 1979).

An agreement whereby a cost of living allowance is paid and accepted by a public employee on condition that it will not be regarded as salary for pension purposes was valid and binding on the employee. Kraus v. Board of Trustees, 72 Ill. App. 3d 833, 28 Ill. Dec. 691, 390 N.E.2d 1281 (1 Dist. 1979).

A contract may be made subject to any contingency, consistent with public policy, built into the contract. Therefore, a loss of benefits through noncompliance with a condition of the contract is not protected, and the loss of pension benefits accompanying dismissal from public employment does not unconstitutionally impair or diminish benefits. Kraus v. Board of Trustees, 72 Ill. App. 3d 833, 28 Ill. Dec. 691, 390 N.E.2d 1281 (1 Dist. 1979).

Diminished Benefits

40 ILCS 5/6-210.1 of the Firemen's Pension Code, violated Ill. Const., Art. XIII, § 5, because it diminished the rights of paramedics that vested under another pension plan by requiring the paramedics to either tender their previous contributions to the other plan, which had been refunded to the paramedics several years earlier, and up to nine years of compounded interests

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or lose service credits for the years in which they served as paramedics and contributed to the other pension fund. Collins v. Board of Trustees of Firemen's Annuity & Benefit Fund, 226 Ill. App. 3d 316, 168 Ill. Dec. 399, 589 N.E.2d 799, 1992 Ill. App. LEXIS 292 (1 Dist. 1992).

Section 3-116.1 of the Pension Code (see now 40 ILCS 5/3-116.1), as it read prior to amendment in 1985, could not be used to diminish the retirement benefits for which plaintiff became eligible under former section 3-114 of the Pension Code (repealed, effective October 1, 1973); to allow such a reduction in retirement benefits would have been a violation of plaintiff's contractual rights and this section. Peifer v. Board of Trustees, 35 Ill. App. 3d 383, 342 N.E.2d 131 (1 Dist. 1976).

Effect on Pension Code

Although Ill. Const. art. XIII, § 5 recognized that membership in a pension system involved an enforceable contractual relationship, pension agreements were not contracts in the traditional sense. As a result, that constitutional provision did not provide authority for the applicant's claim that the applicant, a disabled police officer, was entitled to a prejudgment interest award under the Interest Act despite the fact that the applicant was found to be entitled to a duty disability pension. Kouzoukas v. Ret. Bd. of the Policemen's Annuity, 234 Ill. 2d 446, 334 Ill. Dec. 924, 917 N.E.2d 999, 2009 Ill. LEXIS 1293 (2009).

The adoption of this section, neither abrogated nor modified section 14-199 of the Illinois Pension Code. Kerner v. State Employees' Retirement Sys., 53 Ill. App. 3d 747, 11 Ill. Dec. 510, 368 N.E.2d 1118 (4 Dist. 1977), aff'd, 72 Ill. 2d 507, 21 Ill. Dec. 879, 382 N.E.2d 243 (1978).

Felony Conviction

Statute barring state employee convicted of felony arising out of his employment from receiving pension benefits, 40 ILCS 5/14-149, was not unconstitutional under this section. Kerner v. State Employees' Retirement Sys., 72 Ill. 2d 507, 21 Ill. Dec. 879, 382 N.E.2d 243 (1978).

Statute barring state employee convicted of felony arising out of his employment from receiving pension benefits, 40 ILCS 5/14-149, became, by its terms, a condition of the contractual relationship to which employee consented by applying for membership in pension system. Kerner v. State Employees' Retirement Sys., 72 Ill. 2d 507, 21 Ill. Dec. 879, 382 N.E.2d 243 (1978).

Intent

The intent of this section was to guarantee employees the benefits as they were at the time the employees accepted employment. Kraus v. Board of Trustees, 72 Ill. App. 3d 833, 28 Ill. Dec. 691, 390 N.E.2d 1281 (1 Dist. 1979).

The purpose and intent of this constitutional provision is to insure that pension rights of public employees which had been earned should not be diminished or impaired. Peters v. City of Springfield, 57 Ill. 2d 142, 311 N.E.2d 107 (1974).

Jurisdiction

- State's Attorneys and Circuit Court Clerks

Sovereign Immunity Clause, Ill. Const., Art. XIII, § 4, makes the State's civil immunity for the acts of State offices, as well as that of Illinois local governments, a matter of statutory law; however, the State was not liable for the civil liabilities asserted in claims arising from acts or omissions of the state's attorneys and circuit court clerks. Washington v. State, 54 Ill. Ct. Cl. 317, 2001 Ill. Ct. Cl. LEXIS 42 (Ct. Cl. 2001).

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Legislative Intent

City police pension board erred in reading statute requiring that the certificates of three appointed doctors, among other things, be submitted to assist it in determining whether the former police officer was entitled to pension benefits to mean that the the opinions of the three doctors had to be unanimous in order for him to receive such benefits, as the dissent of any one doctor would deny his right to procedural due process because it would mean he was not entitled to a hearing; the legislature did not intend such an unconstitutional result, especially since the Illinois Constitution required that pension proceedings conform to the requirements of due process of law. Coyne v. Milan Police Pension Bd., 347 Ill. App. 3d 713, 283 Ill. Dec. 435, 807 N.E.2d 1276, 2004 Ill. App. LEXIS 396 (3 Dist. 2004).

The framers of the constitution were careful to craft into the pension protection clause an amendment that would create a contractual right to benefits, while not freezing the politically sensitive area of pension financing. People ex rel. Sklodowski v. State, 182 Ill. 2d 220, 230 Ill. Dec. 884, 695 N.E.2d 374 (1998).

Limitations

- Time Barred

Former police officers, who received disability pensions from the city and who sued the city for requiring them to pay for their own health insurance, where they filed more than one year after they were required to provide their own health insurance, their claim was time-barred. Northen v. City of Chicago, 841 F. Supp. 234 (N.D. Ill. 1993).

- Application

Trial court did not err in holding that under this section, plaintiff was entitled to receive a pension based on a section of the Pension Code in effect at the time the constitutional provision became effective, although the section was subsequently repealed and replaced prior to the time plaintiff retired or became eligible to retire. Kraus v. Board of Trustees, 72 Ill. App. 3d 833, 28 Ill. Dec. 691, 390 N.E.2d 1281 (1 Dist. 1979).

Participation

Village attorney who was enrolled in municipal retirement fund based on a village resolution declaring him eligible could not avail himself of the protections afforded by the Illinois Constitution to pension fund participants where the terms of the Pension Code (40 ILCS 5/1-101 et seq.) itself excluded him from participation. Klomann v. Illinois Mun. Retirement Fund, 284 Ill. App. 3d 224, 220 Ill. Dec. 767, 674 N.E.2d 38 (1 Dist. 1996), appeal denied, 171 Ill. 2d 567, 222 Ill. Dec. 432, 677 N.E.2d 966 (1997).

Pension Rights

Trial court erred in denying a former wife's motion for a turnover of pension benefits from the State Universities Retirement System of Illinois (SURS) because, even though the former husband had not executed a consent to an Illinois qualified domestic relations order, 40 ILCS 5/1-119(m)(1) did not preempt the trial court's authority to order the turnover of assets; the former husband's consent to an order directing payments from the SURS to the former wife was binding and his consent, through the original settlement agreement, was read together with the Illinois qualified domestic relations order forms provided by the SURS to give effect to the intent of the parties in reaching the settlement and to fulfill the substantial compliance directive of 40 ILCS 5/1-

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119(m)(1). The trial court retained the authority to enforce the settlement agreement, just as it could have directed the SURS at the time of the dissolution order to direct payments to the former wife. Rafferty-Plunkett v. Plunkett, 392 Ill. App. 3d 100, 331 Ill. Dec. 261, 910 N.E.2d 670, 2009 Ill. App. LEXIS 417 (3 Dist. 2009), appeal denied, 233 Ill. 2d 599, 335 Ill. Dec. 646, 919 N.E.2d 365, 2009 Ill. LEXIS 1405 (2009).

While a circuit court was prevented from enforcing a provision of a divorce decree awarding a former wife a share of the former husband's public school teachers' pension funds through contempt as the husband was a resident of England, or a qualified Illinois domestic relations order (QUILDRO) as the husband would not consent to one under 40 ILCS 5/1-119(m)(1), the circuit court had the inherent power to enforce its decree utilizing equitable relief by establishing a constructive trust; the preliminary injunction directing the fund to make payments to a trustee thus did not violate Ill. Const. art. XIII, § 5 or 40 ILCS 5/17-151. In re Marriage of Winter, 387 Ill. App. 3d 21, 326 Ill. Dec. 429, 899 N.E.2d 1080, 2008 Ill. App. LEXIS 1176 (1 Dist. 2008).

When a mandatory retirement age required a police officer to retire before achieving 10 years of service, 40 ILCS 5/5-129.1(a) did not impair the officer's retirement annuity, in violation of this section because its intent was to enhance the officer's annuity had he reached at least 10 years of service. Thompson v. Ret. Bd., 379 Ill. App. 3d 498, 318 Ill. Dec. 640, 884 N.E.2d 195, 2008 Ill. App. LEXIS 89 (1 Dist. 2008).

- Ex Post Facto Laws

Denial of pension rights was not an ex post facto law in violation of U.S. Const., Art. I, §§ 9, 10 of the United States Constitution and Ill. Const. (1970), Art. I, § 16, since the statute (40 ILCS 5/14-149) had been in existence nearly six years before plaintiff's employment commenced in 1961. Kerner v. State Employees' Retirement Sys., 53 Ill. App. 3d 747, 11 Ill. Dec. 510, 368 N.E.2d 1118 (4 Dist. 1977), aff'd, 72 Ill. 2d 507, 21 Ill. Dec. 879, 382 N.E.2d 243 (1978).

- Funding

The clearly expressed intention of the framers of the state constitution was to protect public pension benefits, but not to control funding. McNamee v. State, 173 Ill. 2d 433, 220 Ill. Dec. 147, 672 N.E.2d 1159 (1996).

Amendment to 40 ILCS 5/3-127, which changed funding of police pensions by changing the beginning date of the 40-year amortization period and the method of computing the annual amount required to amortize the unfunded accrued liability, but which did not diminish plaintiff's right to receive pension benefits, did not violate this section. McNamee v. State, 173 Ill. 2d 433, 220 Ill. Dec. 147, 672 N.E.2d 1159 (1996).

- Illustrative Cases

No violation of an enforceable contract relationship, as provided in Ill. Const. (1970), Art. XIII, § 5, existed where a former police officer lost his right to apply for disability pension benefits once he was discharged from his position as a police officer due to a hearing impairment disability. Tucker v. Bd. of Trs., 376 Ill. App. 3d 983, 315 Ill. Dec. 121, 876 N.E.2d 121, 2007 Ill. App. LEXIS 961 (1 Dist. 2007).

Where the plaintiffs did not allege that their current benefits had been decreased or terminated, or that the pension funds were in financial jeopardy, and where the defendant city had contributed the maximum amount allowable to the funds, the city did not violate the plaintiffs' rights under the constitution. Houlihan v. City of Chicago, 306 Ill. 2d 589, 239 Ill. Dec. 650, 714 N.E.2d 569 (1 Dist. 1999), appeal denied, 187 Ill. 2d 568, 244 Ill. Dec. 183, 724 N.E.2d 1267 (2000).

Plaintiff failed to state cognizable claim based on this section that she had right not to have future employment with school board made conditional on her surrender of early retirement pension rights. Kastel v. Winnetka Bd. of Educ., Dist. 36, 946 F. Supp. 1329 (N.D. Ill. 1996).

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Disabled plaintiff who joined the police force in 1956 had a clear legal right to receive a pension based on the pertinent sections of the Pension Code in effect in 1971, the year this Constitution became effective, which requires that membership in any pension or retirement system shall be an enforceable contractual relationship and benefits will not be diminished. Redding v. Board of Trustees, 115 Ill. App. 3d 242, 71 Ill. Dec. 75, 450 N.E.2d 763 (1 Dist. 1983).

- On Dissolution of Marriage

The section does not prohibit a public pension fund from agreeing to make payments to a nonemployee, divorced spouse who is entitled to the pension benefits. Smithberg v. Illinois Mun. Retirement Fund, 192 Ill. 2d 291, 248 Ill. Dec. 909, 735 N.E.2d 560, 2000 Ill. LEXIS 1214 (2000).

Purpose

The primary purpose behind the inclusion of this section was to eliminate the uncertainty that surrounded public pension benefits at the time of the 1970 Constitution. People ex rel. Sklodowski v. State, 182 Ill. 2d 220, 230 Ill. Dec. 884, 695 N.E.2d 374 (1998).

Vested Rights

Police officers' due process claim challenging a city ordinance mandating a specific retirement age did not survive the city's motion to dismiss where neither their collective bargaining agreement nor the city's nondiscrimination ordinances had created a protected property interest in their continued employment. Drnek v. City of Chi., F. Supp. 2d , 2002 U.S. Dist. LEXIS 6013 (N.D. Ill. Mar. 25, 2002).

Police officers' due process claim challenging a city ordinance mandating a specific retirement age did not survive the city's motion to dismiss where neither their collective bargaining agreement nor the city's nondiscrimination ordinances had created a protected property interest in their continued employment. Drnek v. City of Chi., F. Supp. 2d , 2002 U.S. Dist. LEXIS 6013 (N.D. Ill. Mar. 25, 2002).

Ill. Const. Art. XIII, § 5 did not provide that a state police officer had a vested right in any beneficial changes to his pension plan. Miller v. Ret. Bd., 329 Ill. App. 3d 589, 264 Ill. Dec. 727, 771 N.E.2d 431, 2001 Ill. App. LEXIS 795 (1 Dist. 2001).

The Pension Code (40 ILCS 5/1-101 et seq.) does not establish vested contractual rights to statutory funding levels. People ex rel. Sklodowski v. State, 182 Ill. 2d 220, 230 Ill. Dec. 884, 695 N.E.2d 374 (1998).

An employee's rights in the pension system vest, either at the time he enters the system, e.g., making contribution, or in 1971 when the 1970 Constitution became effective, whichever is later. Schroeder v. Morton Grove Police Pension Bd., 219 Ill. App. 3d 697, 162 Ill. Dec. 183, 579 N.E.2d 997 (1 Dist.), cert. denied, 142 Ill. 2d 665, 164 Ill. Dec. 928, 584 N.E.2d 140 (1991); Gualano v. City of Des Plaines, 139 Ill. App. 3d 456, 94 Ill. Dec. 173, 487 N.E.2d 1050 (1 Dist. 1985); Carr v. Board of Trustees of the Police Pension Fund, 158 Ill. App. 3d 7, 110 Ill. Dec. 307, 511 N.E.2d 142 (3 Dist. 1987).

An employee's "contractual relationship" with the state incorporates the law which exists at the time when his contractual rights to his pension vest. Gualano v. City of Des Plaines, 139 Ill. App. 3d 456, 94 Ill. Dec. 173, 487 N.E.2d 1050 (1 Dist. 1985).

Since an employee's pension rights are considered contractual rights under this section where a party agrees to a provision which may act to subsequently deny him pension benefits otherwise

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due him, that provision does not become an unconstitutional impairment of his vested benefits. Taft v. Board of Trustees, 133 Ill. App. 3d 566, 88 Ill. Dec. 696, 479 N.E.2d 31 (2 Dist. 1985).

The Constitution does not provide that a person has a vested right in any beneficial changes in a pension system. Sellards v. Board of Trustees, 133 Ill. App. 3d 415, 88 Ill. Dec. 515, 478 N.E.2d 1123 (1 Dist. 1985).

The Constitution provides that an employee has a vested contractual right in a pension system which may not be diminished or impaired, and a participant is entitled to a pension based on the status of the system when his rights in the system vested, either at the time he entered the system or in 1971 when the 1970 Constitution became effective, whichever is later. Sellards v. Board of Trustees, 133 Ill. App. 3d 415, 88 Ill. Dec. 515, 478 N.E.2d 1123 (1 Dist. 1985).

Where plaintiff's pension rights were established in 1971, when the 1970 Illinois Constitution's protection of pension rights in this section went into effect, a 1975 statutory amendment that increased the incremental rate provision did not apply to plaintiff, as he made no contribution to the pension system subsequent to his disability retirement in 1968; therefore, plaintiff was entitled to the 1% annual increment schedule set forth in 40 ILCS 5/3-111. Kuhlmann v. Board of Trustees of the Police Pension Fund, 106 Ill. App. 3d 603, 62 Ill. Dec. 335, 435 N.E.2d 1307 (1 Dist. 1982).

Where the administrators of a county employees' annuity and benefit fund cancelled payment of further pension benefits to plaintiff, formerly a county employee, because he had pleaded guilty to a felony relating to his employment, the trial court's affirmance of the pension revocation was reversed since plaintiff's pension rights vested prior to the effective date of the statute disallowing pension benefits to convicted felons, (see 40 ILCS 5/14-149). Arnold v. Board of Trustees of the County Employees' Annuity & Benefit Fund, 81 Ill. App. 3d 874, 37 Ill. Dec. 82, 401 N.E.2d 1175 (1 Dist. 1980), aff'd, 84 Ill. 2d 57, 49 Ill. Dec. 199, 417 N.E.2d 1026 (1981).

The absence of such a word as "accrued" in the 1970 Illinois Constitution is conspicuous. The convention could have followed the apparent lead of Alaska, Hawaii, and Michigan and used the word "accrued" to limit the terms of the contractual relationship to rights as existing at the time of retirement; instead, the convention chose to follow New York and provide that the employees' rights vest at the time they become members of the system. Kraus v. Board of Trustees, 72 Ill. App. 3d 833, 28 Ill. Dec. 691, 390 N.E.2d 1281 (1 Dist. 1979).

RESEARCH REFERENCES

What constitutes "salary," "wages," "pay," or the like, within pension law basing benefits thereon. 91 ALR5th 225.

Section 6. Corporations.

Corporate charters shall be granted, amended, dissolved, or extended only pursuant to general laws.

(Source: Illinois Constitution.)

Illinois Jurisprudence. See Illinois Jur, Bus Rel § 3:3, § 3:4.

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See Illinois Jur, Crim L § 30:54.

CASE NOTES

Analysis

Corporate Charter
Former Constitution
Injunction
Non-stock Corporations
Not-for-Profit Corporations
- Voting for Directors
Receiver
Stockholders' Rights
Vacancies

Corporate Charter

A special charter corporation, organized before the 1870 Constitution, was not invalidated by the 1870 Constitution's provisions. Moreover, the corporation's status as a corporation was also preserved by the enactment of the 1970 Constitution. Galich v. Catholic Bishop, 75 Ill. App. 3d 538, 31 Ill. Dec. 370, 394 N.E.2d 572 (1 Dist. 1979).

Where, at the time that the Constitution of 1870 was adopted, a cemetery company had organized as a corporation and was exercising the powers conferred upon it by its charter, Ill. Const. (1870), Art. XI, § 2 (see now this section), did not operate to take away any of its charter powers. Rosehill Cem. Co. v. City of Chicago, 352 Ill. 11, 185 N.E. 170 (1933).

Former Constitution

Under former section 2 of Article XI of the Constitution of 1870 (see now this section), where an act to incorporate a railroad was passed prior to the effective date of the Constitution of 1870, but no money was received or expended or any work done in actual construction of the road previous to the time fixed by the constitution, the charter of the company was in operation at the time of the adoption of the Constitution of 1870. McCartney v. Chicago & E.R.R., 112 Ill. 611 (1884).

Under former section 2, Article XI of the Constitution of 1870 (see now this section), where an act to incorporate a railroad was passed in 1861, but no money was expended by the corporation in furtherance of the objects of its incorporation until several years after the Constitution of 1870 went into effect, the corporation was invalidated by operation of section 2 of Article XI, and an injunction would lie to enjoin threatened acts by those assuming to act in behalf and in the name of the dead corporation. Attorney Gen. v. Chicago & E. R.R., 112 Ill. 520 (1884).

Under former Ill. Const. of 1870, Art. X, § 1 (now Ill. Const. (1970), Art. XIII, § 6), corporations not possessing banking powers or privileges, may be formed under general laws, but shall not be created by special acts, except for municipal purposes and in cases where, in the judgment of the General Assembly, the objects of the corporation cannot be attained under general laws. Johnson v. Joliet & C. R. Co., 23 Ill. 124, 1859 Ill. LEXIS 304 (1859).

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Injunction

Under former section 2, Article XI of the Constitution of 1870 (see now this section), where an act to incorporate a railroad was passed in 1861, but no money was expended by the corporation in furtherance of the objects of its incorporation until several years after the Constitution of 1870 went into effect, the corporation was invalidated by operation of section 2 of Article XI, and an injunction would lie to enjoin threatened acts by those assuming to act in behalf and in the name of the dead corporation. Attorney Gen. v. Chicago & E. R.R., 112 Ill. 520 (1884).

Non-stock Corporations

Former Ill. Const. (1870), Art. XI, § 3 (see now this section) was not intended to apply to corporations not having stockholders or shares of stock. American Aberdeen-Angus Breeders' Ass'n v. Fullerton, 325 Ill. 323, 156 N.E. 314 (1927).

Not-for-Profit Corporations

- Voting for Directors

Former Ill. Const. (1870), Art. XI, § 3 has been replaced by this section; however, irrespective of this new constitutional provision, members of not-for-profit corporations have no constitutionally protected right to vote for directors. Harris v. Board of Dirs., 55 Ill. App. 3d 392, 13 Ill. Dec. 94, 370 N.E.2d 1121 (1 Dist. 1977).

Under Ill. Const. (1870), Art. XI, § 3 (see now this section), the members of corporations organized not for pecuniary profit did not have constitutional right of voting for directors, and the corollary follows that they did not have the right of cumulative voting. American Aberdeen-Angus Breeders' Ass'n v. Fullerton, 325 Ill. 323, 156 N.E. 314 (1927).

Receiver

There was no violation of defendants' Fourth Amendment rights under the U.S. Constitution or this section when the receiver, pursuant to an order of the court, surrendered possession of certain documents in his possession from corporations which had failed to pay the retailers' occupation tax to the Attorney General. People ex rel. Scott v. Pintozzi, 50 Ill. 2d 115, 277 N.E.2d 844 (1971).

Stockholders' Rights

Articles of incorporation may not limit or deny the voting power of the shares of any class in any Illinois corporation. Stroh v. Blackhawk Holding Corp., 117 Ill. App. 2d 301, 253 N.E.2d 692 (3 Dist. 1969), aff'd, 48 Ill. 2d 471, 272 N.E.2d 1 (1971).

The right of shareholders to share in dividends of any kind must be spelled out in the articles of incorporation. Stroh v. Blackhawk Holding Corp., 117 Ill. App. 2d 301, 253 N.E.2d 692 (3 Dist. 1969), aff'd, 48 Ill. 2d 471, 272 N.E.2d 1 (1971).

After a directors meeting which increased size of board from 9 to 15 which was duly ratified by the members one month later, it became proper for the members to elect a 15 person board of directors as there was neither a constitutional right in the members to vote for directors, nor a constitutional prohibition of the staggered election of directors, in that not-for-profit corporations are not governed by the constitutional mandate of this section. Westlake Hosp. Ass'n v. Blix, 13 Ill. 2d 183, 148 N.E.2d 471 (1958).

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Where the court found that a voting trust set up under a trust agreement between a corporation and a trustee did not constitute an illegal separation of the voting power; the trust agreement was valid and did not violate former Ill. Const. (1870), Art. XI, § 3, (now Ill. Const. Art. XIII, § 6). Kann v. Rosset, 307 Ill. App. 153, 30 N.E.2d 204, 1940 Ill. App. LEXIS 660 (1 Dist. 1940).

Under Ill. Const. (1870), Art. II, § 3, see now this section, was intended to provide that all stockholders must have the right to vote for directors or managers of a company, and any provision having the effect of depriving any stockholder of the right to vote for managers or directors is contrary to the Constitution. Hall v. Woods, 325 Ill. 114, 156 N.E. 258 (1927).

Vacancies

Former section 21 of the Corporation Act, which provided that the directors of a corporation would fill all vacancies which happened in the board of directors caused by death, resignation or otherwise, until the next annual meeting of the stockholders violated former Ill. Const. (1870), Art. XI, § 3 (see now this section). People ex rel. Weber v. Cohn, 339 Ill. 121, 171 N.E. 159 (1930).

LEGAL PERIODICALS

For note, "Constitutionality of the 1983 Illinois Business Corporation Act's Voting Provision," see U. Ill. L. Rev. 647 (1985).

RESEARCH REFERENCES

Reinstatement of repealed, forfeited, expired, or suspended corporate charter as validating interim acts of corporation. 42 ALR4th 392.

Section 7. Public Transportation.

Public transportation is an essential public purpose for which public funds may be expended. The General Assembly by law may provide for, aid, and assist public transportation, including the granting of public funds or credit to any corporation or public authority authorized to provide public transportation within the State.

(Source: Illinois Constitution.)

CASE NOTES

Public Policy

Arbitrator's award that reinstated the employee, a public transit bus driver, after the employer had discharged the employee for the employee's aggravated sexual abuse conviction violated Illinois

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public policy and, thus, had to be overturned. That policy was reflected in the Illinois Constitution, Illinois laws, and Illinois judicial decisions suggesting that a well-defined public policy was transporting the public safely, as indicated in Ill. Const. Art. XIII, § 7 allowing for the General Assembly to authorize the expenditure of funds for safe public transportation, and 70 ILCS 3605/6, 70 ILCS 3605/9a, and 70 ILCS 3605/27a, permitting the employer to operate a transportation system and protect against crime, which goal was not promoted by the arbitrator's decision to reinstate a convicted sex offender after the convicted sex offender had tried to keep his arrest and conviction secret from the employer. Chicago Transit Auth. v. Amalgamated Transit Union, Local 241, 399 Ill. App. 3d 689, 339 Ill. Dec. 444, 926 N.E.2d 919, 2010 Ill. App. LEXIS 230 (1 Dist. 2010).

Section 8. Branch Banking.

Branch banking shall be authorized only by law approved by three-fifths of the members voting on the question or a majority of the members elected, whichever is greater, in each house of the General Assembly.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Banking Powers
- Home Rule
City Ordinance Void
Classification
Home Rule
Statute Not Upheld
Statute Upheld

Banking Powers

- Home Rule

Under former Ill. Const. of 1870, Art. XI, § 5 (now Ill. Const. (1970), a\Art. XIII, § 8), the words "banking powers," should be used in their common, ordinary sense, and when this is done the banking powers referred to mean such as are ordinarily conferred upon and used by the various banks doing business in the country. Wedesweiler v. Brundage, 297 Ill. 228, 130 N.E. 520, 1921 Ill. LEXIS 1148 (1921).

City Ordinance Void

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A city ordinance which permitted both state and federally chartered banks to perform banking functions at certain facilities and electronic banking machines in community offices located away from the main office of the bank was void. People ex rel. Lignoul v. City of Chicago, 67 Ill. 2d 480, 10 Ill. Dec. 614, 368 N.E.2d 100 (1977).

Classification

Court noted that classification based upon a reasonable difference does not violate former Ill. Const. (1870), Art. XI, § 5 (now Ill. Const. (1970), Art. XIII, § 8), but a merely arbitrary distinction cannot be sustained. Wedesweiler v. Brundage, 297 Ill. 228, 130 N.E. 520, 1921 Ill. LEXIS 1148 (1921).

Home Rule

Home rule units are without jurisdiction over such predominantly state and national matters as banking. People ex rel. Lignoul v. City of Chicago, 67 Ill. 2d 480, 10 Ill. Dec. 614, 368 N.E.2d 100 (1977).

Statute Not Upheld

Court concluded that the law violated former Ill. Const. (1870), Art. XI, § 5 (now Ill. Const. (1970), Art. XIII, § 8), because it deprived the money-changers of the right to continue the business in which they were engaged without due process of law, and deprived them of the equal protection of the laws, Ill. Const. (1970), Art. I, § 2. Wedesweiler v. Brundage, 297 Ill. 228, 130 N.E. 520, 1921 Ill. LEXIS 1148 (1921).

Statute Upheld

Former section 1-9 of the Savings and Loan Act (Ill. Rev. Stat., ch. 32, para. 709), see now this section, was not violative of constitutional branch banking prohibition. Skokie Fed. Sav. & Loan Ass'n v. Illinois Sav. & Loan Bd., 61 Ill. App. 3d 977, 19 Ill. Dec. 215, 378 N.E.2d 1090 (1 Dist. 1978).

OPINIONS OF ATTORNEY GENERAL

Analysis

Applicability
Branch Offices

Applicability

This section applies only to banks and not to all financial institutions. 1985 Op. Atty. Gen. (85-011).

Branch Offices

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A pure trust company may establish branch offices anywhere with in the State of Illinois, including locations outside the municipality in which the trust company has its principal place of business. 1985 Op. Atty. Gen. (85-011).

LEGAL PERIODICALS

For note on Banks and Branch Banking discussing McHenry State Bank v. Harris, 89 Ill. 2d 542, 434 N.E.2d 1144 (1982), see 71 Ill. B.J. 562 (1983).

For article, "Interpreting the 1981 Amendments to the Illinois Bank Holding Company Act," see 13 Loy. U. Chi. L.J. 31 (1981-82).

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ARTICLE XIV
CONSTITUTIONAL REVISION

Section 1. Constitutional Convention.

(a) Whenever three-fifths of the members elected to each house of the General Assembly so direct, the question of whether a Constitutional Convention should be called shall be submitted to the electors at the general election next occurring at least six months after such legislative direction.

(b) If the question of whether a Convention should be called is not submitted during any twenty-year period, the Secretary of State shall submit such question at the general election in the twentieth year following the last submission.

(c) The vote on whether to call a Convention shall be on a separate ballot. A Convention shall be called if approved by three-fifths of those voting on the question or a majority of those voting in the election.

(d) The General Assembly, at the session following approval by the electors, by law shall provide for the Convention and for the election of two delegates from each Legislative District; designate the time and place of the Convention's first meeting which shall be within three months after the election of delegates; fix and provide for the pay of delegates and officers; and provide for expenses necessarily incurred by the Convention.

(e) To be eligible to be a delegate a person must meet the same eligibility requirements as a member of the General Assembly. Vacancies shall be filled as provided by law.

(f) The Convention shall prepare such revision of or amendments to the Constitution as it deems necessary. Any proposed revision or amendments approved by a majority of the delegates elected shall be submitted to the electors in such manner as the Convention determines, at an election designated or called by the Convention occurring not less than two nor more than six months after the Convention's adjournment. Any revision or amendments proposed by the Convention shall be published with explanations, as the Convention provides, at least one month preceding the election.

(g) The vote on the proposed revision or amendments shall be on a separate ballot. Any proposed revision or amendments shall become effective, as the Convention provides, if approved by a majority of those voting on the question.

(Source: Illinois Constitution.)

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CASE NOTES

Separate Ballot

Bar Association's multicount declaratory judgment action did not show that the requirement calling for a state constitutional convention had to be on a separate ballot, as contemplated by Ill. Const. Art. XIV, § 1(c), meant that the matter physically had to be on a separate paper ballot as opposed to a separate portion of the ballot in the upcoming general election. As a result, a "corrective notice", used to clarify for voters how a vote for or against the holding of a state constitutional convention would be counted, could be on a separate portion of the same ballot, which also would not violate statutes regarding voting, 10 ILCS 5/24B-6 and 10 ILCS 24C-6. Chicago Bar Ass'n v. White, 386 Ill. App. 3d 955, 325 Ill. Dec. 822, 898 N.E.2d 1101, 2008 Ill. App. LEXIS 1050 (1 Dist. 2008).

OPINIONS OF ATTORNEY GENERAL

Submission

The first two sentences of this section use some form of the word "submit" four times, the first three times explicitly with regard to the submitting to the electors of the question of whether a constitutional convention should be called, therefore, the last reference to 'submission' can only refer to submission of the same question. 1987 Op. Atty. Gen. (87-007).

LEGAL PERIODICALS

For note, "Stare Decisis and the Illinois Death Penalty," see U. Ill. L. Rev. 177 (1986).

Section 2. Amendments by General Assembly.

(a) Amendments to this Constitution may be initiated in either house of the General Assembly. Amendments shall be read in full on three different days in each house and reproduced before the vote is taken on final passage. Amendments approved by the vote of three-fifths of the members elected to each house shall be submitted to the electors at the general election next occurring at least six months after such legislative approval, unless withdrawn by a vote of a majority of the members elected to each house.

(b) Amendments proposed by the General Assembly shall be published with explanations, as provided by law, at least one month preceding the vote thereon by the electors. The vote on the proposed amendment or amendments shall be on a separate ballot. A proposed amendment shall become effective as the amendment provides if approved by either three-fifths of those voting on the question or a majority of those voting in the election.

(c) The General Assembly shall not submit proposed amendments to more than three Articles of the Constitution at any one election. No amendment shall be proposed or

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submitted under this Section from the time a Convention is called until after the electors have voted on the revision or amendments, if any, proposed by such Convention.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Amendments
Framer's Intent
Limitations to Proposals

Amendments

Ill. Const. (1870), Art. XIV, § 2 (see now this section), as changed by the "Gateway Amendment" in 1950, provided that an amendment to the Constitution shall be submitted to the electors of the state for adoption or rejection at the next election of members of the General Assembly, in such manner as may be prescribed by law, prescribed the portion of electors requisite for adoption, and further provided for printing a proposed amendment on a separate ballot or in a separate column; the section was silent with respect to the use of a cross to indicate a vote and thus, the constitution left the manner of calling and holding an election upon a constitutional amendment within the discretion of the legislature, save only that it must be submitted at the next ensuing election of members of the General Assembly. Scribner v. Sachs, 18 Ill. 2d 400, 164 N.E.2d 481 (1960).

A vote on a proposed constitutional amendment must be indicated by the use of a cross on the ballot. Scribner v. Sachs, 18 Ill. 2d 400, 164 N.E.2d 481 (1960).

Former Ill. Const. (1870), Art. XIV, § 2 (see now this section) gave the elector the right to vote on proposed amendments and also gave the legislature the power to provide the manner of submitting the proposed amendments to the electors of this state. Scribner v. Sachs, 18 Ill. 2d 400, 164 N.E.2d 481 (1960).

Former Ill. Const. (1870), Art. XIV, § 2 (see now this section) provided that a proposed amendment shall be submitted at the next election of members of the General Assembly, provided the proportion of electors requisite for adoption and for printing the proposed amendment on a separate ballot or in a separate column, but was silent as to the manner of submission. Scribner v. Sachs, 18 Ill. 2d 400, 164 N.E.2d 481 (1960).

Under former Ill. Const. of 1870, Art. IV, § 13 (now Ill. Const. (1970), Art. XIV, § 2), no law shall be revived or amended by reference to its title only, but the law revived, or the section amended, shall be inserted at length in the new act; however, this provision does not have the effect of rendering invalid an act merely because it may amend or affect other acts by implication. People v. Chicago, 349 Ill. 304, 182 N.E. 419, 1932 Ill. LEXIS 851 (1932).

Framer's Intent

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The members of the constitutional convention knew that at the election for members of the General Assembly various other officers were voted upon, and could not have intended, by making a majority "of the electors voting at said election" necessary to adopt an amendment, that a majority of those voting for members of the General Assembly was meant to be the test. People v. Stevenson, 281 Ill. 12, 117 N.E. 747 (1917).

Limitations to Proposals

The limitations imposed upon the General Assembly by former Ill. Const. (1870), Art. XIV, § 2 (see now this section) to propose amendments were to be so strictly construed, as to prevent amendments, by implication, to articles of the Constitution not expressly sought to be amended, and thereby in many, if not in all, instances destroy the broad power to propose amendments granted to the General Assembly; however, neither were those limitations to be so liberally construed as to destroy them as limitations upon the power of the General Assembly to propose amendments, and thereby, under the guise of an amendment or amendments to an article of the Constitution, permit the General Assembly to change other articles of the Constitution in matters entirely foreign to the subject-matter of the proposed amendment sought to be engrafted upon a particular article of the Constitution. City of Chicago v. Reeves, 220 Ill. 274, 77 N.E. 237 (1906).

OPINIONS OF ATTORNEY GENERAL

Analysis

Resolutions Proposing Amendments
- In General
- Reading of Bills

Resolutions Proposing Amendments

- In General

If a resolution proposing a constitutional amendment is amended in either house or in conference, so that the proposed constitutional amendment is substantially or materially different or does not preserve the identity, intent and purpose of the original proposed amendment, the resolution, as amended, must be read in full on three different days in each house; if the change made by an amendment is merely one of language or phraseology and not of substance, additional readings would not be required. 1980 Op. Atty. Gen. 63.

If an amendment to the resolution proposing a constitutional amendment creates a proposed constitutional amendment that is substantially or materially different or does not preserve or maintain the identity, intent, and purpose of the original proposed amendment, the resolution, as amended, must be read in full on three different days in each house; if the change, however, is one of language or phraseology and not of substance, additional readings would not be required. 1980 Op. Atty. Gen. 63.

- Reading of Bills

Subsection (a) of this section requires that a proposed amendment to the state constitution be read in full on three different days in each house. 1980 Op. Atty. Gen. 63.

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LEGAL PERIODICALS

For comment, "Preventive Detention: Illinois Takes a Tentative Step Towards a Safer Community," see 21 J. Marshall L. Rev. 389 (1988).

For note, "The Illinois Amendatory Veto: Defining and Enforcing the Limits," see U. Ill. L. Rev. 691 (1987).

For note, "Stare Decisis and the Illinois Death Penalty," see U. Ill. L. Rev. 177 (1986).

Section 3. Constitutional Initiative for Legislative Article.

Amendments to Article IV of this Constitution may be proposed by a petition signed by a number of electors equal in number to at least eight percent of the total votes cast for candidates for Governor in the preceding gubernatorial election. Amendments shall be limited to structural and procedural subjects contained in Article IV. A petition shall contain the text of the proposed amendment and the date of the general election at which the proposed amendment is to be submitted, shall have been signed by the petitioning electors not more than twenty-four months preceding that general election and shall be filed with the Secretary of State at least six months before that general election. The procedure for determining the validity and sufficiency of a petition shall be provided by law. If the petition is valid and sufficient, the proposed amendment shall be submitted to the electors at that general election and shall become effective if approved by either three-fifths of those voting on the amendment or a majority of those voting in the election.

(Source: Illinois Constitution.)

CASE NOTES

Analysis

Constitutionality
- Rational Basis

Election Code
- Penalty Provision

Initiative Petitions
- Unconstitutional

Limits on Restrictions

Proposed Amendment
- Term Limits

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Purpose

Constitutionality

- Rational Basis

For the same reasons that a rational basis exists to prohibit the type of gambling involving gambling machines and to permit other types of gambling, sections 28-1(b) and 28-8 of the Code (720 ILCS 5/28-1 and 720 ILCS 5/28-8), taken together, properly provide for a cause of action for a loser at gambling prohibited by section 28-1, but not for the loser at gambling exempted under section 28-1(b); every aspect of the scheme of Article 28 of the Code involved here meets constitutional muster. Moushon v. AAA Amusement, Inc., 267 Ill. App. 3d 187, 204 Ill. Dec. 582, 641 N.E.2d 1201 (4 Dist. 1994), appeal denied, 161 Ill. 2d 529, 208 Ill. Dec. 362, 649 N.E.2d 418 (1995).

Election Code

- Penalty Provision

The penalty provision of former Ill. Rev. Stat., ch. 46, para. 28-1.1 (see now 10 ILCS 5/28-3), which disqualified an entire sheet of 24 proper and valid petition signatures because the 25th was improper, was a constitutionally impermissible limitation upon the right of initiative contained in this section; this holding did not invalidate the entire section or any provision other than that disqualifying an entire sheet because of one or more improper signatures. Coalition for Political Honesty v. State Bd. of Elections, 83 Ill. 2d 236, 47 Ill. Dec. 363, 415 N.E.2d 368 (1980).

Initiative Petitions

- Unconstitutional

Where proposed initiative amendments which related to compensation and conflicts of interest within the General Assembly did not meet the requirements of this section because they did not involve both procedural and structural subjects, they could not be submitted to the electorate for approval. Coalition for Political Honesty v. State Bd. of Elections, 65 Ill. 2d 453, 3 Ill. Dec. 728, 359 N.E.2d 138 (1976).

Limits on Restrictions

While the General Assembly is authorized to establish the procedure for determining the validity and sufficiency of a petition, that procedure cannot unnecessarily restrict the initiative privilege. Coalition for Political Honesty v. State Bd. of Elections, 83 Ill. 2d 236, 47 Ill. Dec. 363, 415 N.E.2d 368 (1980).

Proposed Amendment

A proposed constitutional amendment was not limited to structural and procedural subjects contained in Article IV of the Illinois Constitution, but contained substantive matters, and in effect potential legislation, found outside of Article IV; thus, the proposed amendment did not satisfy the requirements of this section. Chicago Bar Ass'n v. State Bd. of Elections, 137 Ill. 2d 394, 148 Ill. Dec. 744, 561 N.E.2d 50 (1990).

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- Term Limits

Proposed amendment to impose term limits on state legislators did not meet the "structural and procedural" requirement of this section; the eligibility or qualifications of an individual legislator does not involve the structure of the legislature as an institution. Chicago Bar Ass'n v. Illinois State Bd. of Elections, 161 Ill. 2d 502, 204 Ill. Dec. 301, 641 N.E.2d 525 (1994).

Purpose

Constitutional initiative was an attempt to expand this section beyond the scope intended by the delegates of the constitutional convention of 1970 because the proposed amendment would have affected legislative power: injunction to enjoin disbursement of public moneys affirmed. Lousin v. State Bd. of Elections, 108 Ill. App. 3d 496, 63 Ill. Dec. 878, 438 N.E.2d 1241 (1 Dist. 1982).

LEGAL PERIODICALS

For note, "Chicago Bar Association v. Illinois State Board of Elections: The End of the Line for the Popular Initiative in Illinois?," see 26 Loy. U. Chi. L.J. 761 (1995).

For note, "The Illinois Amendatory Veto: Defining and Enforcing the Limits," see U. Ill. L. Rev. 691 (1987).

For note, "Stare Decisis and the Illinois Death Penalty," see U. Ill. L. Rev. 177 (1986).

From Articles, "The Constitutional Initiative and the Structure and Procedures of the General Assembly," see 11 J. Marshall J. Prac. & Proc. 387 (1978).

For case note, "Coalition for Political Honesty v. State Board of Elections - Constitutional Amendments by Popular Initiative Must Pertain to Both Structure and Procedural Subjects in the Legislative Article," see 1978 U. Ill. L.F. 122.

Section 4. Amendments to the Constitution of the United States.

The affirmative vote of three-fifths of the members elected to each house of the General Assembly shall be required to request Congress to call a Federal Constitutional Convention, to ratify a proposed amendment to the Constitution of the United States, or to call a State Convention to ratify a proposed amendment to the Constitution of the United States. The General Assembly shall not take action on any proposed amendment to the Constitution of the United States submitted for ratification by legislatures unless a majority of the members of the General Assembly shall have been elected after the proposed amendment has been submitted for ratification. The requirements of this Section shall govern to the extent that they are not inconsistent with requirements established by the United States.

(Source: Illinois Constitution.)

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CASE NOTES

Analysis

In General
Applicability
Challenge
- Not Ripe
Circuit Court Clerk
Ratified
Transitional Judicial Authority

In General

The constitutional guarantee of cumulative voting does not guarantee a particular voting strength; every minority shareholder is not guaranteed the right to elect one director. Chavin v. General Emp. Enters., Inc., 222 Ill. App. 3d 398, 164 Ill. Dec. 935, 584 N.E.2d 147 (1 Dist. 1991), cert. denied, 145 Ill. 2d 632, 173 Ill. Dec. 2, 596 N.E.2d 626 (1992).

Actions commenced in 1971 while Ill. Const. (1870), Art. IV, § 26 remained in effect, (see now Ill. Const. (1970), Art. XIII, § 4) improperly joined the State of Illinois as a defendant. Blase v. State, 55 Ill. 2d 94, 302 N.E.2d 46 (1973).

Applicability

Plan authorizing a participating preferred stock series and regulating its distribution, affected only the total number of shares and the number of shares held by the shareholders; accordingly, the plan did not conflict with the right to cumulative voting guaranteed by the Illinois Constitution. Chavin v. General Emp. Enters., Inc., 222 Ill. App. 3d 398, 164 Ill. Dec. 935, 584 N.E.2d 147 (1 Dist. 1991), cert. denied, 145 Ill. 2d 632, 173 Ill. Dec. 2, 596 N.E.2d 626 (1992).

Challenge

- Not Ripe

A challenge to the constitutionality of this section and House Rule 42 of the Illinois House of Representatives, both of which purported to require a three-fifths majority vote in the House before a federal constitutional amendment could have been deemed ratified, was not ripe for review where the Illinois Senate adopted a resolution but no action was taken when that legislative session was terminated so the Senate action taken had no legal effect; since both Houses must concur in any effective act of ratification, the ratification process was required to begin anew but no action had been taken by the Senate. Dyer v. Blair, 390 F. Supp. 1287 (N.D. Ill. 1974).

Circuit Court Clerk

Section 9 of the Transition Schedule requires incumbent circuit court office holders to seek re-election. Johnson v. State Electoral Bd., 53 Ill. 2d 256, 290 N.E.2d 886 (1972).

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Ratified

The precise meaning of the term "ratified" has not been given a federal definition, but the Illinois State Constitution, as well as a rule adopted by the Illinois House of Representatives and a ruling of the President of the Illinois Senate in the 78th General Assembly, prescribed a three-fifths majority requirement for amendment to the federal Constitution. Dyer v. Blair, 390 F. Supp. 1291 (N.D. Ill. 1975).

Transitional Judicial Authority

A master in chancery who took office as an associate judge of the circuit court would have continuing jurisdiction as a master to preside over the remainder of case, i.e., hearing whatever objections might be filed to his preliminary report, ruling on the objections, and then rendering his report. Mullaney, Wells & Co. v. Savage, 5 Ill. App. 3d 1, 282 N.E.2d 536 (1 Dist. 1972).

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TRANSITION SCHEDULE

The following Schedule Provisions shall remain part of this Constitution until their terms have been executed. Once each year the Attorney General shall review the following provisions and certify to the Secretary of State which, if any, have been executed. Any provisions so certified shall thereafter be removed from the Schedule and no longer published as part of this Constitution.

Section 2. Prospective Operation of Bill of Rights.

Section 4. Judicial Offices.

Section 5. Local Government.

Section 6. Authorized Bonds.

Section 8. Cumulative Voting for Directors.

Section 9. General Transition.

(Source: Illinois Constitution.)

Section 1. Delayed Effective Dates.

(a) The provisions of Section 1, 2(a), 2(b), and 2(c) of Article IV shall not apply to the General Assembly elected at the general election in 1970. Notwithstanding Section 6(b) of Article IV, the incumbent Lieutenant Governor for the remainder of his term shall be the President of the Senate with a right to vote when the Senate is equally divided.

(b) Section 9(a) of Article VII shall become effective on December 1, 1971.

(c) Section 2 of Article VIII shall become effective on January 1, 1972.

(d) The second sentence of Section 2 of Article XI shall become effective on January 1, 1972.

(e) Sections 2 and 4 of Article XIII shall become effective on January 1, 1972.

(Source: Illinois Constitution.)

Section 2. Prospective Operation of Bill of Rights.

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Any rights, procedural or substantive, created for the first time by Article I shall be prospective and not retroactive.

(Source: Illinois Constitution.)

Section 3. Election of Executive Officers.

The Governor, Lieutenant Governor, Attorney General, Secretary of State and Comptroller elected in 1972 shall serve for four years and those elected in 1976 for two years. The Treasurer elected in 1974 shall serve for four years.

(Source: Illinois Constitution.)

Section 4. Judicial Offices.

(a) On the effective date of this Constitution, Associate Judges and magistrates shall become Circuit Judges and Associate Judges, respectively, of their Circuit Courts. All laws and rules of court theretofore applicable to Associate Judges and magistrates shall remain in force and be applicable to the persons in their new offices until changed by the General Assembly or the Supreme Court, as the case may be.

(b) (Removed)

(c) (Removed)

(d) Until otherwise provided by law and except to the extent that the authority is inconsistent with Section 8 of Article VII, the Circuit Courts shall continue to exercise the non-judicial functions vested by law as of December 31, 1963, in county courts or the judges thereof.

(Source: Illinois Constitution.)

Section 5. Local Government.

(a) The number of members of a county board in a county which, as of the effective date of this Constitution, elects three members at large may be changed only as approved by county-wide referendum. If the number of members of such a county board is changed by county-wide referendum, the provisions of Section 3(a) of Article VII relating to the number of members of a county board shall govern thereafter.

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(b) In Cook County, until (1) a method of election of county board members different from the method in existence on the effective date of this Constitution is approved by a majority of votes cast both in Chicago and in the area outside Chicago in a county-wide referendum or (2) the Cook County Board by ordinance divides the county into single member districts from which members of the County Board resident in each district are elected, the number of members of the Cook County Board shall be fifteen except that the county board may increase the number if necessary to comply with apportionment requirements. If either of the foregoing changes is made, the provisions of Section 3(a) of Article VII shall apply thereafter to Cook County.

(c) Townships in existence on the effective date of this Constitution are continued until consolidated, merged, divided or dissolved in accordance with Section 5 of Article VII.

(Source: Illinois Constitution.)

Section 6. Authorized Bonds.

Nothing in Section 9 of Article IX shall be construed to limit or impair the power to issue bonds or other evidences of indebtedness authorized but unissued on the effective date of this Constitution.

(Source: Illinois Constitution.)

Section 7. Superintendent of Public Instruction.

Section 2(b) of Article X shall take effect upon the existence of a vacancy in the Office of Superintendent of Public Instruction but no later than the end of the term of the Superintendent of Public Instruction elected in 1970.

(Source: Illinois Constitution.)

Section 8. Cumulative Voting for Directors.

Shareholders of all corporations heretofore organized under any law of this State which requires cumulative voting of shares for corporate directors shall retain their right to vote cumulatively for such directors.

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(Source: Illinois Constitution.)

Section 9. General Transition.

The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution. The validity of all public and private bonds, debts and contracts, and of all suits, actions and rights of action, shall continue as if no change had taken place. All officers filling any office by election or appointment shall continue to exercise the duties thereof, until their offices shall have been abolished or their successors selected and qualified in accordance with this Constitution or laws enacted pursuant thereto.

(Source: Illinois Constitution.)

Section 10. Accelerated Effective Date.

The effective date of Section 3 of Article IV shall be January 15, 1971.

For purposes of appointing members of a Legislative Redistricting Commission in 1971, the President Pro Tempore of the Senate shall have the appointing power vested by Section 3(b) of Article IV in the President of the Senate.

(Source: Illinois Constitution.)

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CHAPTER 5.
GENERAL PROVISIONS

OPEN MEETINGS
5 ILCS 120Open Meetings Act
FREEDOM OF INFORMATION
5 ILCS 140Freedom of Information Act
RECORDS
5 ILCS 179Identity Protection
GOVERNMENTAL ETHICS
5 ILCS 420Illinois Governmental Ethics Act
STATE GIFTS
5 ILCS 430State Officials and Employee Ethics Act
STATE DESIGNATIONS
5 ILCS 470Official United States Flag Act
COMMEMORATIVE DATES
5 ILCS 490State Commemorative Dates Act

OPEN MEETINGS

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Open Meetings Act

Sec.

5 ILCS 120/1.Policy
5 ILCS 120/1.01.[Short title]
5 ILCS 120/1.02.[Definitions]
5 ILCS 120/1.05.Training
5 ILCS 120/2.Open meetings
5 ILCS 120/2.01.[Meeting times and places]
5 ILCS 120/2.02.[Notice]
5 ILCS 120/2.03.[Schedule of meetings]
5 ILCS 120/2.04.[Notice requirements additional]
5 ILCS 120/2.05.Recording meetings
5 ILCS 120/2.06.Minutes; right to speak
5 ILCS 120/2a.[Closed meetings]
5 ILCS 120/2b.[Repealed.]
5 ILCS 120/3.[Noncompliance; civil action]
5 ILCS 120/3.5.Public Access Counselor; opinions
5 ILCS 120/4.[Penalty]
5 ILCS 120/5.[Severability]
5 ILCS 120/6.[Home rule units]
5 ILCS 120/7.Attendance by a means other than physical presence
5 ILCS 120/7.3.Duty to post information pertaining to benefits offered through the Illinois Municipal Retirement Fund
5 ILCS 120/7.5.Administrative review

§ 5 ILCS 120/1. Policy

Sec. 1. Policy. It is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business. In order that the people shall be informed, the General Assembly finds and declares that it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly.

The General Assembly further declares it to be the public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way. Exceptions to the public's right to attend exist only in those limited circumstances where the General Assembly has specifically determined that the public interest would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion.

To implement this policy, the General Assembly declares:

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(1) It is the intent of this Act to protect the citizen's right to know; and

(2) The provisions for exceptions to the open meeting requirements shall be strictly construed against closed meetings.

(Source: Laws 1967, p. 1960; P.A. 88-621, § 5.)

Derivation.

Title: An Act in relation to meetings.

Cite: 5 ILCS 120/1 et seq.

Source: L. 1957, p. 2892.

Date: Approved July 11, 1957.

Note.

This section was Ill.Rev.Stat., Ch. 102, Para. 41.

Cross References.

As to exemptions from the offense of eavesdropping for recordings made of open meetings, see 720 ILCS 5/14-3.

As to the inapplicability of this Act to collective bargaining negotiations and grievance arbitration conducted pursuant to the Illinois Public Labor Relations Act, see 5 ILCS 315/24.

For use of the definitions in this Act, see the following sections: As to the Discriminatory Club Act, see 775 ILCS 25/1; as to the Quad Cities Interstate Metropolitan Authority Act, see 45 ILCS 35/35.

Illinois Administrative Code.

See 2 Illinois Administrative Code, §§ 1720.210, 1720.370, 1900.250.

CASE NOTES

Analysis

Constitutionality
- Due Process
- Equal Protection
- Freedom of Speech
- Special Legislation
- Vagueness

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Applicability
- Informal Meetings
- Political Caucuses
- Size of Meetings
- Termination of Public Employees
- Voluntary Preparation
Closed Meetings
- Disclosure of Information
- Validity of Actions Taken
- When Permitted
Hearing
- Restriction of Attendance Proper
Intervention
- Not Allowed
Invalidation of Official Acts
Mootness Doctrine
- Inapplicable
Public Attendance
Purpose
Secret Ballot
Standing
- City Officials
Substantial Compliance
Violation
- Cured
- Shown

Constitutionality

- Due Process

This Act is not so vague and ambiguous as to violate the constitutional requirement of due process. People ex rel. Difanis v. Barr, 78 Ill. App. 3d 842, 34 Ill. Dec. 223, 397 N.E.2d 895 (4 Dist. 1979), aff'd, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).

- Equal Protection

This Act does not violate the equal protection clause of the Illinois Constitution although it does not apply to the General Assembly, as there is a rational basis for the classification. People ex rel. Difanis v. Barr, 78 Ill. App. 3d 842, 34 Ill. Dec. 223, 397 N.E.2d 895 (4 Dist. 1979), aff'd, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).

Exemption of the General Assembly from the provisions of this Act does not create a classification which amounts to invidious discrimination, nor is it patently arbitrary, with no rational relationship to governmental interests; therefore, it is not violative of the equal protection clause of the Illinois Constitution (Ill. Const. (1970), Art. I, § 2). People ex rel. Hopf v. Barger, 30 Ill. App. 3d 525, 332 N.E.2d 649 (2 Dist. 1975).

- Freedom of Speech

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This Act does not prohibit the expression of any idea or make assembly illegal, but only requires public bodies to meet and deliberate public business openly rather than behind closed doors; therefore, freedom of speech principles, which protect the expression of ideas and not the right to conduct public business in closed meetings, are not violated by this Act. People ex rel. Difanis v. Barr, 78 Ill. App. 3d 842, 34 Ill. Dec. 223, 397 N.E.2d 895 (4 Dist. 1979), aff'd, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).

- Special Legislation

This Act was not designated special legislation although it did not apply to the General Assembly, since the defendants did not show that the distinction made was arbitrary, unreasonable or that it bore no rational relationship to a legitimate governmental interest. People ex rel. Difanis v. Barr, 78 Ill. App. 3d 842, 34 Ill. Dec. 223, 397 N.E.2d 895 (4 Dist. 1979), aff'd, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).

- Vagueness

This Act, as applied to certain members of a city council, was not impermissibly vague; it clearly prohibited closed meetings of members of legislative bodies where deliberations were conducted or actions taken on public business, and made any subdivision of a legislative body, including but not limited to committees and subcommittees supported by tax revenues, subject to the Act. People ex rel. Difanis v. Barr, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).

Applicability

Defendants' motion to dismiss a former charter school employee's 42 U.S.C. § 1983 action was denied because defendant corporation was a state actor for purposes of the instant lawsuit as the corporation considered itself the governing body of the charter school, and thus, under the Illinois Charter School Act, 105 ILCS 5/27A-5(c), it was subject to same disclosure requirements under the Freedom of Information Act, 5 ILCS 140/1, and the Open Meetings Act, 5 ILCS 120/1, that were applicable to other government entities. Jordan v. Northern Kane Educ. Corp., F. Supp. 2d , 2009 U.S. Dist. LEXIS 15794 (N.D. Ill. Mar. 2, 2009).

- Informal Meetings

Meeting between city officials and contractors was not required to be open to the public because the meeting was an ad hoc gathering of staff; surreptitious recording of the meeting was illegal. G.M. Harston Constr. Co. v. City of Chi., 209 F. Supp. 2d 902, 2002 U.S. Dist. LEXIS 7512 (N.D. Ill. 2002).

Where public business was deliberated by the defendants and a consensus on at least one issue was reached outside of public view, to allow the defendants to circumvent this Act simply because they designated their meeting as an informal gathering or informal caucus would thwart the intent of the Act. People ex rel. Difanis v. Barr, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).

This Act is intended to apply to meetings of public commissions, committees, boards, councils and other public agencies, but is not intended to open to the public the deliberations of merely informal advisory committees who discuss internal university affairs. Pope v. Parkinson, 48 Ill. App. 3d 797, 6 Ill. Dec. 756, 363 N.E.2d 438 (4 Dist. 1977).

- Political Caucuses

Where the defendants held a caucus for Democratic members of the city council a few hours before a scheduled city council meeting, which eight of nine Democrats on the city council and one independent member attended, where the press did not receive notice, the public was not invited, and issues on the agenda for that night's city council meeting as well as issues not on the

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agenda were discussed at the caucus, the caucus violated this Act; political caucuses are not exempt from this Act. People ex rel. Difanis v. Barr, 78 Ill. App. 3d 842, 34 Ill. Dec. 223, 397 N.E.2d 895 (4 Dist. 1979), aff'd, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).

- Size of Meetings

This Act applies to meetings of three or more persons. People ex rel. Difanis v. Barr, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).

- Termination of Public Employees

Because this Act does not confer substantive rights for due process purposes, a probationary teacher could not claim his firing deprived him of due process because of an alleged failure of the board of education to comply with this Act. Kyle v. Morton High Sch., 144 F.3d 448 (7th Cir. 1998).

- Voluntary Preparation

This Act applies to advisory committees appointed to provide professional consultation, but not to employees who voluntarily and in the interest of efficiency or good staff work meet together periodically in the performance of their duties, prior to providing their recommendations. People ex rel. Cooper v. Carlson, 28 Ill. App. 3d 569, 328 N.E.2d 675 (2 Dist. 1975).

Closed Meetings

- Disclosure of Information

There is nothing in this Act that provides a cause of action against a public body for disclosing information from a closed meeting. Swanson v. Board of Police Comm'rs, 197 Ill. App. 3d 592, 144 Ill. Dec. 138, 555 N.E.2d 35 (2 Dist.), appeal denied, 133 Ill. 2d 574, 149 Ill. Dec. 338, 561 N.E.2d 708 (1990).

- Validity of Actions Taken

Although a public agency which is subject to the provisions of this Act may have conducted business at a closed session, that does not necessarily render in the actions taken at such a meeting null and void. Betts v. Department of Registration & Educ., 103 Ill. App. 3d 654, 59 Ill. Dec. 355, 431 N.E.2d 1112 (1 Dist. 1981).

- When Permitted

To the extent that 5 ILCS 120/1 conflicted with the Pension Code, case law was clear that 5 ILCS 120/2(c)(4), which was the more recent statute, took precedence over 40 ILCS 5/4-112 (2004), which was enacted in 1983; the clear language of 5 ILCS 120/1 was that while it was public policy that public bodies such as a pension board conduct open hearings, it was allowed to hold closed meeting to consider evidence or testimony presented in an open hearing. The pension board did not violate a firefighter's rights by considering his disability application in a closed session. Calibraro v. Bd. of Trs., 367 Ill. App. 3d 259, 305 Ill. Dec. 195, 854 N.E.2d 787, 2006 Ill. App. LEXIS 780 (1 Dist. 2006).

The legislature clearly sought to permit closed meetings only when absolutely necessary. People ex rel. Ryan v. Village of Villa Park, 212 Ill. App. 3d 187, 156 Ill. Dec. 406, 570 N.E.2d 882 (2 Dist.), cert. denied, 141 Ill. 2d 558, 162 Ill. Dec. 506, 580 N.E.2d 132 (1991).

This section is aimed at guaranteeing public access to meetings of governmental bodies, but it also allows governmental bodies to meet in closed session in certain situations. Swanson v. Board of Police Comm'rs, 197 Ill. App. 3d 592, 144 Ill. Dec. 138, 555 N.E.2d 35 (2 Dist.), appeal denied, 133 Ill. 2d 574, 149 Ill. Dec. 338, 561 N.E.2d 708 (1990).

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Hearing

- Restriction of Attendance Proper

A board of police and fire commissioners conducting a hearing on a police officer's discharge did not abuse its discretion by restricting attendance to the officer's immediate family; in doing so it was properly exercising its duty to preserve order and decorum, thereby assuring to all parties a fair and impartial consideration of the case on its merits. Klein v. Board of Fire & Police Comm'rs, 23 Ill. App. 3d 201, 318 N.E.2d 726 (5 Dist. 1974).

Intervention

- Not Allowed

Pursuant to 735 ILCS 5/2-408, a faculty labor organization could not intervene as of right in a suit brought by the State's Attorney seeking mandamus and declaratory relief against a university board of trustees for alleged violations of this Act where the intervenors had no greater interest in the action than that of the general public, as that interest could be adequately represented by the State's Attorney. People ex rel. Byron v. Board of Trustees, 90 Ill. App. 3d 88, 45 Ill. Dec. 606, 412 N.E.2d 1188 (5 Dist. 1980).

Invalidation of Official Acts

This Act does not allow the court to invalidate official actions taken at proceedings held in a manner violative of the Act. WSDR, Inc. v. Olgle County, 100 Ill. App. 3d 1008, 56 Ill. Dec. 408, 427 N.E.2d 603 (2 Dist. 1981).

Mootness Doctrine

- Inapplicable

This Act was so clear and unequivocal that there was not sufficient public interest in a judicial interpretation of this statute to bring the issues within the public interest exception to the mootness rule. Illinois News Broadcasters Ass'n v. City of Springfield, 22 Ill. App. 3d 226, 317 N.E.2d 288 (5 Dist. 1974).

Public Attendance

Although a meeting of the Board of Education was not necessarily open under this statute, the defendant was not guilty of disturbing a lawful assemblage through his silent, passive presence. City of Champaign v. Williams, 13 Ill. App. 3d 418, 300 N.E.2d 27 (4 Dist. 1973).

Purpose

The overriding purpose of the this Act, within which the promotion of openness is subsumed and made a constituent part, is to aid the conduct of the people's business. Gosnell v. Hogan, 179 Ill. App. 3d 161, 128 Ill. Dec. 252, 534 N.E.2d 434 (5 Dist. 1989).

The express purpose of this Act is to require public bodies to conduct their deliberations and actions openly. People ex rel. Hartigan v. Illinois Commerce Comm'n, 131 Ill. App. 3d 376, 86 Ill. Dec. 421, 475 N.E.2d 635 (4 Dist. 1985).

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This Act, by its express terms, sacrifices the ability of public officials to act and deliberate privately to the more important governmental interest of opening the processes of government to public scrutiny; it is not intended to prohibit bona fide social gatherings of public officials, or truly political meetings at which party business is discussed, but rather to prohibit secret deliberation and action on business which properly should be discussed in a public forum due to its potential impact on the public. People ex rel. Difanis v. Barr, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).

Secret Ballot

A secret ballot for the election of a county board chairman violated the public policy of this state, as well as this Act. WSDR, Inc. v. Olgle County, 100 Ill. App. 3d 1008, 56 Ill. Dec. 408, 427 N.E.2d 603 (2 Dist. 1981).

Standing

- City Officials

Defendant city officials had standing to allege constitutional defects in this Act to the extent that they could show that the provisions applied to them in their private or official capacity, and that they had been injured by the application of the Act or would suffer likely exposure to future injury. People ex rel. Hopf v. Barger, 30 Ill. App. 3d 525, 332 N.E.2d 649 (2 Dist. 1975).

Defendant city officials had standing to claim that this Act was unconstitutional because the individual defendants could have been subject to criminal sanctions while state legislators and their committees were exempted from such sanctions. People ex rel. Hopf v. Barger, 30 Ill. App. 3d 525, 332 N.E.2d 649 (2 Dist. 1975).

Substantial Compliance

This Act only requires that a public body "substantially" comply with its provisions. Gosnell v. Hogan, 179 Ill. App. 3d 161, 128 Ill. Dec. 252, 534 N.E.2d 434 (5 Dist. 1989).

Violation

- Cured

Where there has been a prior violation of this Act, a board is not prevented from calling a subsequent meeting, in full compliance with the requirements of the Act, or from again taking identical action. Argo High Sch. Council of Local 571 v. Argo Community High Sch. Dist. 217, 163 Ill. App. 3d 578, 114 Ill. Dec. 679, 516 N.E.2d 834 (1 Dist. 1987).

Where, at a meeting of the district held after the disputed meeting, the successor board affirmed the actions taken, this meeting cured the charged violation of the Act. Argo High Sch. Council of Local 571 v. Argo Community High Sch. Dist. 217, 163 Ill. App. 3d 578, 114 Ill. Dec. 679, 516 N.E.2d 834 (1 Dist. 1987).

Even if allegations of a closed meeting stated a violation of this Act, the agency itself effectively remedied the violation by first voiding its decision to not conduct formal proceedings, allegedly reached at the closed meeting, and by then providing for a public hearing of the issues, thereby mooting the complaint. People ex rel. Hartigan v. Illinois Commerce Comm'n, 131 Ill. App. 3d 376, 86 Ill. Dec. 421, 475 N.E.2d 635 (4 Dist. 1985).

- Shown

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County board's consideration of items not set specifically forth in its agenda was in nature of deliberation and discussion requiring notice; it was was not an action taken. Rice v. Bd. of Trs., 326 Ill. App. 3d 1120, 261 Ill. Dec. 278, 762 N.E.2d 1205, 2002 Ill. App. LEXIS 51 (4 Dist. 2002).

Where there was a closed meeting of nine city council members who discussed a new ward map, the appointments of public officers, a housing development, burning of leaves within city limits, the treatment of cable television, and the possibility of rescinding an ordinance which required an appointed comptroller, the meeting violated the intent and the terms of this Act. People ex rel. Difanis v. Barr, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).

OPINIONS OF ATTORNEY GENERAL

Analysis

Notice
Violation
- Shown

Notice

At a county board meeting considering a proposed zoning amendment, citizens may comment informally on matters discussed at an earlier public hearing, but due process may be denied if they raise significant new matters; if no significant new matters are raised, however, no notice of the county board meeting need be given beyond that required by this Act. 1978 Op. Atty. Gen. 119.

Violation

- Shown

Where a majority of a quorum of incumbent council members were present at a meeting which the making of appointments to village offices for the next term was discussed, and the meeting was held without notice or an opportunity for the public to attend, the Open Meetings Act was violated. 1996 Op. Atty. Gen. (96-005).

LEGAL PERIODICALS

For note, "Casting a Shadow on Illinois' Sunshine Laws: Rice v. Board of Trustees, 762 N.E.2d 1205 (Ill. App. Ct. 2002)," see 28 S. Ill. U. L.J. 175 (2003).

For article, "Survey of Illinois Law: Administrative Law," see 22 S. Ill. U.L.J. 809 (1998).

For article, "Meetings and Records in Illinois: How Open Are They?" see 77 Ill. Bar J. 156 (1988).

For article, "Meetings and Records in Illinois: How Open Are They?" see Ill. Bar J. 156 (1988).

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For article, "The Illinois Open Meetings Act: A Reappraisal," see 1978 S. Ill. U.L.J. 193.

RESEARCH REFERENCES

Emergency exception under state law making proceedings by public bodies open to the public. 33 ALR5th 731.

Attorney-client exception under state law making proceedings by public bodies open to the public. 34 ALR5th 591.

Pending or Prospective Litigation Exception Under State Law Making Proceedings by Public Bodies Open to the Public. 35 ALR5th 113.

§ 5 ILCS 120/1.01. [Short title]

Sec. 1.01. This Act shall be known and may be cited as the Open Meetings Act.

(Source: P.A. 82-378.)

Note.

This section was Ill.Rev.Stat., Ch. 102, Para. 41.01.

Illinois Administrative Code.

See 2 Illinois Administrative Code, §§ 2950.120, 2950.240, 2950.90, 5375.210.

CASE NOTES

Local Governmental Entities

Issue of whether the board of a private school was subject to Illinois open meetings or freedom of information legislation was not determinative of whether the school was a local public entity entitled to immunity from tort liability. Brugger v. Joseph Acad., Inc., 202 Ill. 2d 435, 269 Ill. Dec. 472, 781 N.E.2d 269, 2002 Ill. LEXIS 960 (2002).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Administrative Law," see 20 S. Ill. U.L.J. 667 (1996).

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Practice Guides and Treatises.

Construction Litigation § 1.84 Exclusion of Evidence (Open Meetings Act) (IICLE).

§ 5 ILCS 120/1.02. [Definitions]

Sec. 1.02. For the purposes of this Act:

"Meeting" means any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

Accordingly, for a 5-member public body, 3 members of the body constitute a quorum and the affirmative vote of 3 members is necessary to adopt any motion, resolution, or ordinance, unless a greater number is otherwise required.

"Public body" includes all legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof. "Public body" includes tourism boards and convention or civic center boards located in counties that are contiguous to the Mississippi River with populations of more than 250,000 but less than 300,000. "Public body" includes the Health Facilities and Services Review Board. "Public body" does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act [20 ILCS 515/1 et seq.] or an ethics commission acting under the State Officials and Employees Ethics Act [5 ILCS 430/1-1 et seq.].

(Source: P.A. 82-378; 88-614, § 90; 90-517, § 2; 90-737, § 205; 91-782, § 5; 92-468, § 5; 93-617, § 60; 94-1058, § 5; 95-245, § 3; 96-31, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 102, Para. 41.02.

Section 95 of P.A. 91-782 contains a "no acceleration or delay" provision.

Section 990 of P.A. 93-617 contains a severability provision, and Section 995 contains "closed sessions" and vote requirement provisions.

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Effect of Amendments. The 1997 amendment by P.A. 90-517, effective August 22, 1997, in the definition of Public body added the second sentence.

The 1998 amendment by P.A. 90-737, effective January 1, 1999, in the last sentence of the section added "or an ethics commission, ethics officer, or ultimate jurisdictional authority acting under the State Gift Ban Act as provided by Section 80 of that Act".

The 2000 amendment by P.A. 91-782, effective June 9, 2000, substituted "members" for "commissioners" in the definition of "Meeting"; and inserted the third sentence in the definition of "public body".

The 2001 amendment by P.A. 92-468, effective August 22, 2001, inserted "or the Illinois Child Death Review Teams Executive Council" in the last sentence of the second paragraph.

The 2003 amendment by P.A. 93-617, effective December 9, 2003, in the last sentence of the definition of "Public body" substituted "acting under the State Officials and Employees Ethics Act" for "ethics officer, or ultimate jurisdictional authority acting under the State Gift Ban Act as provided by Section 80 of that Act."

The 2006 amendment by P.A. 94-1058, effective January 1, 2007, added "whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication" in the first paragraph.

The 2007 amendment by P.A. 95-245, effective August 17, 2007, added "or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business" in the first paragraph; and added the second paragraph.

The 2009 amendment by P.A. 96-31, effective June 30, 2009, substituted "Health Facilities and Services Review Board" for "Health Facilities Planning Board" in the third sentence under "Public body".

CASE NOTES

Analysis

Meetings
- Consultation with Attorney
- Informal Gatherings
- Telephone Conferences

Public Bodies
- Factors
- Informal Bodies
- Informal Gatherings
- Political Caucuses
- Private Corporations
- Publicly Funded Entities
- University Athletic Council

Meetings

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- Consultation with Attorney

Advance consultation of governmental body with its attorney is not a "meeting" of the governmental body as contemplated in this Act, and thus is not covered by this Act. People ex rel. Hopf v. Barger, 30 Ill. App. 3d 525, 332 N.E.2d 649 (2 Dist. 1975).

- Informal Gatherings

A meeting need not be prearranged, occur at an official meeting place, or have a quorum present for this Act to apply; therefore, the circumstances in each case must be analyzed to decide whether a gathering is a meeting within the scope of the Act, since not every encounter between members of a public body is subject to the Act. People ex rel. Difanis v. Barr, 78 Ill. App. 3d 842, 34 Ill. Dec. 223, 397 N.E.2d 895 (4 Dist. 1979), aff'd, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).

- Telephone Conferences

The Open Meetings Act does not prohibit telephone conferences. Freedon Oil Co. v. Illinois Pollution Control Bd., 275 Ill. App. 3d 508, 211 Ill. Dec. 801, 655 N.E.2d 1184 (4 Dist. 1995).

Public Bodies

- Factors

Council of university presidents or chancellors, formed to provide advice and recommendations to the Illinois Board of Higher Education (IBHE) was not a "public body" subject to the requirements of the Open Meetings Act, 5 ILCS 120/1 et seq.; the council was not part of the formal IBHE organizational structure, the council's members were not also members of the IBHE, and the council's members were not paid for their tenure on the council. Univ. Prof'ls, Local 4100 v. Stukel, 344 Ill. App. 3d 856, 280 Ill. Dec. 109, 801 N.E.2d 1054, 2003 Ill. App. LEXIS 1416 (1 Dist. 2003).

Factors a court should review in deciding whether an entity is a "public body" or an "advisory body" under the Illinois Open Meetings Act, 5 ILCS 120/1 et seq., include who appoints the members of the entity, the formality of their appointment, and whether they are paid for their tenure; the entity's assigned duties, including duties reflected in the entity's bylaws or authorizing statute; whether its role is solely advisory or whether it also has a deliberative or investigative function; whether the entity is subject to government control or otherwise accountable to any public body; whether the group has a budget; its place within the larger organization or institution of which it is a part; and the impact of decisions or recommendations that the group makes. Univ. Prof'ls, Local 4100 v. Stukel, 344 Ill. App. 3d 856, 280 Ill. Dec. 109, 801 N.E.2d 1054, 2003 Ill. App. LEXIS 1416 (1 Dist. 2003).

- Informal Bodies

Where a committee within a university was not formally appointed by, or accountable to, any public body of the state, but rather, the committee was an internal committee within the university whose sole function was to advise university administrators on matters pertaining to internal university affairs, its deliberations did not fall within the scope of this Act. Pope v. Parkinson, 48 Ill. App. 3d 797, 6 Ill. Dec. 756, 363 N.E.2d 438 (4 Dist. 1977).

- Informal Gatherings

This Act was intended to apply to more than meetings of full bodies or duly constituted committees; thus "body" must necessarily be interpreted to mean an informal gathering of members of a legally constituted public body. People ex rel. Difanis v. Barr, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).

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- Political Caucuses

Where the defendants held a caucus for Democratic members of the city council a few hours before a scheduled city council meeting, which eight of nine Democrats on the city council and one independent member attended, where the press did not receive notice, the public was not invited, and issues on the agenda for that night's city council meeting as well as issues not on the agenda were discussed at the caucus, the caucus violated this Act; political caucuses are not exempt from the Act. People ex rel. Difanis v. Barr, 78 Ill. App. 3d 842, 34 Ill. Dec. 223, 397 N.E.2d 895 (4 Dist. 1979), aff'd, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).

- Private Corporations

Corporations were not "subsidiary bodies" of city. City did not control the decision making process of the corporations; city contributing 50% of funding did not render corporations public bodies. Hopf v. Topcorp, Inc., 256 Ill. App. 3d 887, 194 Ill. Dec. 814, 628 N.E.2d 311 (1 Dist. 1993), appeal denied, 154 Ill. 2d 560, 197 Ill. Dec. 486, 631 N.E.2d 708 (1994).

A preliminary injunction requesting compliance with this Act was properly denied where the plaintiff failed to prove that a for-profit corporation receiving city funds was a subsidiary body of the government or that it was itself a public entity. Hopf v. Topcorp, Inc., 170 Ill. App. 3d 85, 122 Ill. Dec. 629, 527 N.E.2d 1 (1 Dist. 1988).

A local council on alcoholism and drug dependence was not a subsidiary of a legislative, administrative, executive or advisory body of state or local government since the council was incorporated as a private, not-for-profit organization, its board of directors was selected pursuant to its own bylaws and was neither elected nor appointed by any government official; therefore, the council was not subject to this Act. Rockford Newspapers, Inc. v. Northern Ill. Council, 64 Ill. App. 3d 94, 21 Ill. Dec. 16, 380 N.E.2d 1192 (2 Dist. 1978).

- Publicly Funded Entities

Although this section provides that a particular entity need not be publicly funded in order to be required to hold open meetings, it does not state that public funding alone will make a particular entity subject to this Act; to imply such a statutory intent would affect large numbers of completely private entities that receive a large portion of their funding from the state. Rockford Newspapers, Inc. v. Northern Ill. Council, 64 Ill. App. 3d 94, 21 Ill. Dec. 16, 380 N.E.2d 1192 (2 Dist. 1978).

- University Athletic Council

Athletic Council of Illinois State University is a public body and must comply with the Open Meetings Act and Freedom of Information Act. Board of Regents of Regency Univ. Sys. v. Reynard, 292 Ill. App. 3d 968, 227 Ill. Dec. 66, 686 N.E.2d 1222 (4 Dist. 1997).

OPINIONS OF ATTORNEY GENERAL

Analysis

Illinois Courts Commission
Invalid Board
Public Body Committees

Illinois Courts Commission

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The General Assembly's failure to include any reference to the courts or the judiciary in the definition of "public body" is indicative of an intent to exclude the judicial branch from the requirements of that Act and the Illinois Courts Commission is not subject to the provisions of this Act. 1999 Op. Atty. Gen. (99-005).

Invalid Board

Even if a governing board has been invalidly created, that board must comply with the provisions of this Act. 1987 Op. Atty. Gen. (87-001).

Public Body Committees

Committees of a public body, consisting of less than a majority of a quorum of such a body, are subject to the requirements of this Act. 1982 Op. Atty. Gen. 88.

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Administrative Law," see 25 S. Ill. U. L.J. 679 (2001).

§ 5 ILCS 120/1.05. Training

Sec. 1.05. Training. (a) Every public body shall designate employees, officers, or members to receive training on compliance with this Act. Each public body shall submit a list of designated employees, officers, or members to the Public Access Counselor. Within 6 months after the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-542], the designated employees, officers, and members must successfully complete an electronic training curriculum, developed and administered by the Public Access Counselor, and thereafter must successfully complete an annual training program. Thereafter, whenever a public body designates an additional employee, officer, or member to receive this training, that person must successfully complete the electronic training curriculum within 30 days after that designation.

(b) Except as otherwise provided in this Section, each elected or appointed member of a public body subject to this Act who is such a member on the effective date of this amendatory Act of the 97th General Assembly [P.A. 97-504] must successfully complete the electronic training curriculum developed and administered by the Public Access Counselor. For these members, the training must be completed within one year after the effective date of this amendatory Act.

Except as otherwise provided in this Section, each elected or appointed member of a public body subject to this Act who becomes such a member after the effective date of this amendatory Act of the 97th General Assembly shall successfully complete the electronic training curriculum developed and administered by the Public Access Counselor. For these members, the training must be completed not later than the 90th day after the date the member:

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(1) takes the oath of office, if the member is required to take an oath of office to assume the person's duties as a member of the public body; or

(2) otherwise assumes responsibilities as a member of the public body, if the member is not required to take an oath of office to assume the person's duties as a member of the governmental body.

Each member successfully completing the electronic training curriculum shall file a copy of the certificate of completion with the public body.

Completing the required training as a member of the public body satisfies the requirements of this Section with regard to the member's service on a committee or subcommittee of the public body and the member's ex officio service on any other public body.

The failure of one or more members of a public body to complete the training required by this Section does not affect the validity of an action taken by the public body.

An elected or appointed member of a public body subject to this Act who has successfully completed the training required under this subsection (b) and filed a copy of the certificate of completion with the public body is not required to subsequently complete the training required under this subsection (b).

(c) An elected school board member may satisfy the training requirements of this Section by participating in a course of training sponsored or conducted by an organization created under Article 23 of the School Code [105 ILCS 5/23-1 et seq.]. The course of training shall include, but not be limited to, instruction in:

(1) the general background of the legal requirements for open meetings;

(2) the applicability of this Act to public bodies;

(3) procedures and requirements regarding quorums, notice, and record-keeping under this Act;

(4) procedures and requirements for holding an open meeting and for holding a closed meeting under this Act; and

(5) penalties and other consequences for failing to comply with this Act.

If an organization created under Article 23 of the School Code provides a course of training under this subsection (c), it must provide a certificate of course completion to each school board member who successfully completes that course of training.

(Source: P.A. 96-542, § 5; 97-504, § 5.)

Effective Date. Section 99 of P.A. 96-542 made this section effective January 1, 2010.

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Effect of Amendments. The 2011 amendment by P.A. 97-504, effective January 1, 2012, added the (a) designation; and added (b) and (c).

§ 5 ILCS 120/2. Open meetings

Sec. 2. Open meetings. (a) Openness required. All meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a [5 ILCS 120/2a].

(b) Construction of exceptions. The exceptions contained in subsection (c) are in derogation of the requirement that public bodies meet in the open, and therefore, the exceptions are to be strictly construed, extending only to subjects clearly within their scope. The exceptions authorize but do not require the holding of a closed meeting to discuss a subject included within an enumerated exception.

(c) Exceptions. A public body may hold closed meetings to consider the following subjects:

(1) The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity.

(2) Collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees.

(3) The selection of a person to fill a public office, as defined in this Act, including a vacancy in a public office, when the public body is given power to appoint under law or ordinance, or the discipline, performance or removal of the occupant of a public office, when the public body is given power to remove the occupant under law or ordinance.

(4) Evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.

(5) The purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired.

(6) The setting of a price for sale or lease of property owned by the public body.

(7) The sale or purchase of securities, investments, or investment contracts.

(8) Security procedures and the use of personnel and equipment to respond to an actual, a threatened, or a reasonably potential danger to the safety of employees, students, staff, the public, or public property.

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(9) Student disciplinary cases.

(10) The placement of individual students in special education programs and other matters relating to individual students.

(11) Litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting.

(12) The establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act [745 ILCS 10/1-101 et seq.], if otherwise the disposition of a claim or potential claim might be prejudiced, or the review or discussion of claims, loss or risk management information, records, data, advice or communications from or with respect to any insurer of the public body or any intergovernmental risk management association or self insurance pool of which the public body is a member.

(13) Conciliation of complaints of discrimination in the sale or rental of housing, when closed meetings are authorized by the law or ordinance prescribing fair housing practices and creating a commission or administrative agency for their enforcement.

(14) Informant sources, the hiring or assignment of undercover personnel or equipment, or ongoing, prior or future criminal investigations, when discussed by a public body with criminal investigatory responsibilities.

(15) Professional ethics or performance when considered by an advisory body appointed to advise a licensing or regulatory agency on matters germane to the advisory body's field of competence.

(16) Self evaluation, practices and procedures or professional ethics, when meeting with a representative of a statewide association of which the public body is a member.

(17) The recruitment, credentialing, discipline or formal peer review of physicians or other health care professionals for a hospital, or other institution providing medical care, that is operated by the public body.

(18) Deliberations for decisions of the Prisoner Review Board.

(19) Review or discussion of applications received under the Experimental Organ Transplantation Procedures Act [20 ILCS 3935/1 et seq.].

(20) The classification and discussion of matters classified as confidential or continued confidential by the State Government Suggestion Award Board.

(21) Discussion of minutes of meetings lawfully closed under this Act, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06 [5 ILCS 120/2.06].

(22) Deliberations for decisions of the State Emergency Medical Services Disciplinary Review Board.

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(23) The operation by a municipality of a municipal utility or the operation of a municipal power agency or municipal natural gas agency when the discussion involves (i) contracts relating to the purchase, sale, or delivery of electricity or natural gas or (ii) the results or conclusions of load forecast studies.

(24) Meetings of a residential health care facility resident sexual assault and death review team or the Executive Council under the Abuse Prevention Review Team Act [210 ILCS 28/1 et seq.].

(25) Meetings of an independent team of experts under Brian's Law [405 ILCS 82/1 et seq.].

(26) Meetings of a mortality review team appointed under the Department of Juvenile Justice Mortality Review Team Act [730 ILCS 195/1 et seq.].

(27) Confidential information, when discussed by one or more members of an elder abuse fatality review team, designated under Section 15 of the Elder Abuse and Neglect Act [320 ILCS 20/15], while participating in a review conducted by that team of the death of an elderly person in which abuse or neglect is suspected, alleged, or substantiated; provided that before the review team holds a closed meeting, or closes an open meeting, to discuss the confidential information, each participating review team member seeking to disclose the confidential information in the closed meeting or closed portion of the meeting must state on the record during an open meeting or the open portion of a meeting the nature of the information to be disclosed and the legal basis for otherwise holding that information confidential.

(28) *(As added by P.A. 97-318)* Meetings between internal or external auditors and governmental audit committees, finance committees, and their equivalents, when the discussion involves internal control weaknesses, identification of potential fraud risk areas, known or suspected frauds, and fraud interviews conducted in accordance with generally accepted auditing standards of the United States of America.

(28) *(As added by P.A. 97-452)* Correspondence and records (i) that may not be disclosed under Section 11-9 of the Public Aid Code or (ii) that pertain to appeals under Section 11-8 of the Public Aid Code [305 ILCS 5/11-9 or 305 ILCS 5/11-8].

(d) Definitions. For purposes of this Section:

"Employee" means a person employed by a public body whose relationship with the public body constitutes an employer-employee relationship under the usual common law rules, and who is not an independent contractor.

"Public office" means a position created by or under the Constitution or laws of this State, the occupant of which is charged with the exercise of some portion of the sovereign power of this State. The term "public office" shall include members of the public body, but it shall not include organizational positions filled by members thereof, whether established by law or by a public body itself, that exist to assist the body in the conduct of its business.

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"Quasi-adjudicative body" means an administrative body charged by law or ordinance with the responsibility to conduct hearings, receive evidence or testimony and make determinations based thereon, but does not include local electoral boards when such bodies are considering petition challenges.

(e) Final action. No final action may be taken at a closed meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted.

(Source: P.A. 86-287; 86-727; 86-1019; 86-1027; 86-1389; 87-491; 88-530, § 5; 88-621, § 5; 89-86, § 5; 89-177, § 15; 89-626, § 2-4; 90-144, § 5; 91-730, § 5; 93-57, § 5; 93-79, § 5; 93-422, § 5; 93-577, § 90; 94-931, § 5; 95-185, § 5; 96-1235, § 90; 96-1378, § 90; 96-1428, § 5; 97-318, § 5; 97-333, § 15; 97-452, § 5.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Note.

This section was Ill.Rev.Stat., Ch. 102, para. 42.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Illinois Administrative Code.

See 2 Illinois Administrative Code, §§ 1925.260, 1925.297, 2175.120, 6000.120.

Effect of Amendments. The 1996 amendment by P.A. 89-626, effective August 9, 1996, combined the amendments of this section by P.A. 89-86 and P.A. 89-177.

The 1997 amendment by P.A. 90-144, effective July 23, 1997, in subdivision (c)(22) substituted "Deliberations for decisions" for "The business"; and added subdivision (c)(23).

The 2000 amendment by P.A. 91-730, effective January 1, 2001, in subsection (c)(8) deleted "Emergency" at the beginning of the subsection, inserted "an" and "a threatened, or a reasonably potential" and deleted "provided that a description of the actual danger shall be made a part of the motion to close the meeting" at the end of the subsection.

The 2003 amendment by P.A. 93-57, effective July 1, 2003, in subdivision (c)(1), inserted "or legal counsel for the public body," and "of the public body or against legal counsel for the public body."

The 2003 amendment by P.A. 93-79, effective July 2, 2003, inserted "the public" in subdivision (c)(8).

The 2003 amendment by P.A. 93-422, effective August 5, 2003, inserted "the public" in subsection (c)(8).

The 2003 amendment by P.A. 93-577, effective August 21, 2003, added subsection (c)(24).

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The 2006 amendment by P.A. 94-931, effective June 26, 2006, substituted "Executive Council under the Abuse Prevention" for "Residential Health Care Facility Resident Sexual Assault and Death Review Teams Executive Council under the Residential Health Care Facility Resident Sexual Assault and Death" in (c)(24).

The 2007 amendment by P.A. 95-185, effective January 1, 2008, substituted "Government" for "Employees" in (20).

The 2010 amendment by P.A. 96-1235, effective January 1, 2011, added (c)(25).

The 2010 amendment by P.A. 96-1378, effective July 29, 2010, added (c)(25).

The 2010 amendment by P.A. 96-1428, effective August 11, 2010, added (c)(25).

The 2011 amendment by P.A. 97-318, effective January 1, 2012, redesignated former duplicates of (c)(25) as (c)(26) and (c)(27); and added (c)(28).

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, redesignated former duplicates of (c)(25) as (c)(26) and (c)(27).

The 2011 amendment by P.A. 97-452, August 19, 2011, redesignated former duplicates of (c)(25) as (c)(26) and (c)(27); and added (c)(28).

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

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In General

The language of this statute is unequivocal and no guidelines the court might lay down could make for more clarity than already exists. Johnson v. Board of Educ., 79 Ill. App. 2d 22, 223 N.E.2d 434 (1 Dist. 1967).

Acquisition of Real Property

Trial court did not err in granting a city and mayor summary judgment in a citizen's action alleging that they violated the Open Meetings Act, 5 ILCS 120/1, because the city council unambiguously invoked § 2(c)(5), 5 ILCS 120/2(c)(5), when only that section applied to acquiring land, and the council stated it would be discussing land acquisition; the § 2(c)(6) exception is limited to the sale or lease of property already owned by the municipality, making it unlikely that the public would confuse a reference to land acquisition as invoking this section. Wyman v. Schweighart, 385 Ill. App. 3d 1099, 328 Ill. Dec. 315, 904 N.E.2d 77, 2008 Ill. App. LEXIS 1084 (4 Dist. 2008).

- Ambiguity

The language of this section which exempts from the general rule meetings where the acquisition of real property is being considered, is ambiguous. People ex rel. Ryan v. Village of Villa Park, 212 Ill. App. 3d 187, 156 Ill. Dec. 406, 570 N.E.2d 882 (2 Dist.), cert. denied, 141 Ill. 2d 558, 162 Ill. Dec. 506, 580 N.E.2d 132 (1991).

- Annexation and Zoning

The duty of city officials to hold an open meeting was clear under this section where they held a closed a closed and discussed land acquisition in relation to the annexation and zoning of property. People ex rel. Hopf v. Barger, 30 Ill. App. 3d 525, 332 N.E.2d 649 (2 Dist. 1975).

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- Discussion of Terms

The exemption in this section regarding the acquisition of real property only applies if public agencies are discussing formulating the terms of an offer to purchase specific real estate or discussing the seller's terms, or if they are considering strategy for obtaining specific real estate. People ex rel. Ryan v. Village of Villa Park, 212 Ill. App. 3d 187, 156 Ill. Dec. 406, 570 N.E.2d 882 (2 Dist.), cert. denied, 141 Ill. 2d 558, 162 Ill. Dec. 506, 580 N.E.2d 132 (1991).

Appointment, Employment or Dismissal of Employees

- Agency Rules

Where a closed meeting of a local fire and police commissioners board fell well within the listed exceptions of this Act as a meeting to consider the dismissal of the plaintiff, even though the board failed to follow its own rules required public meetings, the court found that the plaintiff did not show prejudice by such actions; therefore, the plaintiff's subsequent termination was not reversed. Ealey v. Board of Fire & Police Comm'rs, 188 Ill. App. 3d 111, 135 Ill. Dec. 655, 544 N.E.2d 12 (5 Dist. 1989).

- Closed Meeting Permitted

School district did not violate the Illinois Open Meetings Act because the supervisor's performance and other personnel matters were properly discussed in closed session under 5 ILCS 120/2(c)(1). Nuzzi v. St. George Cmty. Consol. Sch. Dist. No. 258, 688 F. Supp. 2d 815, 2010 U.S. Dist. LEXIS 15893 (C.D. Ill. 2010).

Former teacher failed to state a claim against a school board for violation of the Illinois Open Meetings Act, 5 ILCS 120/2(e), in connection with the board's decision not to renew the teacher's contract. It was not necessary for the meeting notice to name the teacher personally, and it did not matter whether the board held a closed session without a majority vote where the teacher did not allege that the final vote was taken during the closed session. Roller v. Bd. of Educ., F. Supp. 2d , 2006 U.S. Dist. LEXIS 2269 (N.D. Ill. Jan. 18, 2006).

Decision that the trial court erred in ordering documents related to a school superintendent's dismissal released pursuant to an exemption under 5 ILCS 140/7(b)(ii) of the Freedom of Information Act, was in harmony with 5 ILCS 120/2(c)(1) of the Open Meetings Act; under the Open Meetings Act the board could properly meet in closed session to consider the superintendent's performance, discipline and dismissal, exactly the information contained in the requested documents. Copley Press, Inc. v. Bd. of Educ., 359 Ill. App. 3d 321, 296 Ill. Dec. 1, 834 N.E.2d 558, 2005 Ill. App. LEXIS 862 (3 Dist. 2005), appeal denied, 217 Ill. 2d 559, 300 Ill. Dec. 364, 844 N.E.2d 36 (2005).

A village board did not violate this Act when it met in closed session to consider the removal of a member of a fire and police commissioners board, after the presentation of evidence in an open meeting. Kosoglad v. Porcelli, 132 Ill. App. 3d 1081, 88 Ill. Dec. 174, 478 N.E.2d 489 (1 Dist. 1985).

- Independent Contractors

The legislature did not intend to exclude independent contractors from the exception providing for discussion of information regarding the appointment, employment or dismissal of employees, since the need to discuss in private the hiring and performance of an independent contractor is generally the same as that for any other employee. Gosnell v. Hogan, 179 Ill. App. 3d 161, 128 Ill. Dec. 252, 534 N.E.2d 434 (5 Dist. 1989).

- Nontenured Teachers

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Simply because discussion of the reasons for dismissal of a nontenured school teacher took place in closed session did not make such discussions irrelevant or ineffective. Verticchio v. Divernon Community Unit Sch. Dist., 198 Ill. App. 3d 202, 144 Ill. Dec. 379, 555 N.E.2d 738 (4 Dist. 1990).

The decision to send a notice of dismissal is the decision to dismiss in the case of a nontenured teacher; the "final action" is the public roll call vote. Haight v. Board of Educ., 29 Ill. App. 3d 48, 329 N.E.2d 442 (3 Dist. 1975).

Closed Meeting Exception

Trial court did not err in granting a city and mayor summary judgment in a citizen's action alleging that they violated the Open Meetings Act, 5 ILCS 120/1 because the city council did not violate the Act when it allowed nonmembers into a closed session; the Act neither delineates who is allowed to attend closed session nor specifically prohibits a public body from inviting nonmembers into the closed session. Wyman v. Schweighart, 385 Ill. App. 3d 1099, 328 Ill. Dec. 315, 904 N.E.2d 77, 2008 Ill. App. LEXIS 1084 (4 Dist. 2008).

Trial court did not err in granting a city and mayor summary judgment in a citizen's action alleging that they violated the Open Meetings Act, 5 ILCS 120/1, because the city council announced that litigation was pending, and a council member's failure to reiterate that fact when she made the motion to go into closed session did not constitute a violation of the Act; during the open portion of the meeting, the city manager issued a reminder that there had been a request for a closed meeting to discuss land acquisition and pending litigation. Wyman v. Schweighart, 385 Ill. App. 3d 1099, 328 Ill. Dec. 315, 904 N.E.2d 77, 2008 Ill. App. LEXIS 1084 (4 Dist. 2008).

- Allowed

Trial court erred in granting summary judgment to plaintiffs as to a claim under the Open Meetings Act, because the closed meeting in question concerned a lease of real property for the use of a public body, and the meeting was thus exempt under 5 ILCS 120/2(c)(5). Galena Gazette Publ'ns, Inc. v. County of Jo Daviess, 375 Ill. App. 3d 338, 313 Ill. Dec. 660, 872 N.E.2d 1049, 2007 Ill. App. LEXIS 768 (1 Dist. 2007).

City police pension board did not violate the claimant's rights when it conducted deliberations on his disability application in a closed session; the closed session was authorized by law because it did not violated the city police pension board's own rules and regulations to hold a closed meeting. McKee v. Bd. of Trs., 367 Ill. App. 3d 538, 305 Ill. Dec. 404, 855 N.E.2d 571, 2006 Ill. App. LEXIS 822 (1 Dist. 2006).

To the extent that 5 ILCS 120/1 conflicted with the Pension Code, case law was clear that 5 ILCS 120/2(c)(4), which was the more recent statute, took precedence over 40 ILCS 5/4-112 (2004), which was enacted in 1983; the clear language of 5 ILCS 120/1 was that while it was public policy that public bodies such as a pension board conduct open hearings, it was allowed to hold closed meeting to consider evidence or testimony presented in an open hearing. The pension board did not violate a firefighter's rights by considering his disability application in a closed session. Calibraro v. Bd. of Trs., 367 Ill. App. 3d 259, 305 Ill. Dec. 195, 854 N.E.2d 787, 2006 Ill. App. LEXIS 780 (1 Dist. 2006).

Where the State Police Merit Board met to discuss the evidence relating to a police officer's suspension for conduct alleged by his superiors and found by the Deputy Director to have constituted violations of Department Rules warranting discipline, the meeting held under 20 ILCS 2610/13 fell within the closed door meeting exception under subdivision (B)(1) of this section. Scott v. Illinois State Police Merit Bd., 222 Ill. App. 3d 496, 165 Ill. Dec. 20, 584 N.E.2d 199 (1 Dist. 1991).

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This statute, so far as relevant, permits discussion of land acquisition in closed meetings; it does not eliminate the necessity for formal action nor does it contemplate that records of the closed meetings are not to be maintained. Goldman v. Zimmer, 64 Ill. App. 2d 277, 212 N.E.2d 132 (4 Dist. 1965), rev'd on other grounds, 35 Ill. 2d 450, 220 N.E.2d 466 (1966).

- Citation to Statute

5 ILCS 120/2(a) does not require a citation to the statute when a closed session is to be held; it requires a citation to the specific exception contained in the statute; thus, an announcement by members of a board of education that they were going into closed session to discuss an employment matter regarding the reclassification of an employee was sufficient and the board was not required to specifically cite to 5 ILCS 120/2(c)(1), which allowed closed sessions to discuss such matters. Henry v. Anderson, 356 Ill. App. 3d 952, 292 Ill. Dec. 993, 827 N.E.2d 522, 2005 Ill. App. LEXIS 377 (4 Dist. 2005).

- Legislative Intent

The legislature clearly sought to permit closed meetings only when absolutely necessary. People ex rel. Ryan v. Village of Villa Park, 212 Ill. App. 3d 187, 156 Ill. Dec. 406, 570 N.E.2d 882 (2 Dist.), cert. denied, 141 Ill. 2d 558, 162 Ill. Dec. 506, 580 N.E.2d 132 (1991).

- Litigation

Board of education and its members violated 5 ILCS 120/2(a) and 5 ILCS 120/2(c)(11) when they announced that they were going into closed session to discuss "potential" litigation but they failed to state on the record that the litigation was probable or imminent or the basis for their belief that litigation by an employee was probable or imminent. Henry v. Anderson, 356 Ill. App. 3d 952, 292 Ill. Dec. 993, 827 N.E.2d 522, 2005 Ill. App. LEXIS 377 (4 Dist. 2005).

A village's rule to show cause motion emanated from pending litigation and, therefore was properly discussed in a closed meeting. Allied Asphalt Paving Co. v. Village of Hillside, 314 Ill. App. 3d 138, 246 Ill. Dec. 897, 731 N.E.2d 425, 2000 Ill. App. LEXIS 457 (1 Dist. 2000).

- Narrow Construction

Since the exceptions to the general rule of open meetings set forth in this section are in derogation of the expressed intent to hold public meetings, these exceptions should be construed narrowly. People ex rel. Ryan v. Village of Villa Park, 212 Ill. App. 3d 187, 156 Ill. Dec. 406, 570 N.E.2d 882 (2 Dist.), cert. denied, 141 Ill. 2d 558, 162 Ill. Dec. 506, 580 N.E.2d 132 (1991).

- Procedure

The trial court erred in failing to find that the Athletic Council of Illinois State University failed to follow the necessary procedures under the Open Meetings Act to invoke the litigation exception for executive meetings, and the court should have issued an injunction. Board of Regents of Regency Univ. Sys. v. Reynard, 292 Ill. App. 3d 968, 227 Ill. Dec. 66, 686 N.E.2d 1222 (4 Dist. 1997).

- Related Topics

In instances when a related topic plays an integral part in the discussion of the original topic to be considered in a closed session, business practicality and efficiency dictate that the related topic be discussed along with the primary topic. Gosnell v. Hogan, 179 Ill. App. 3d 161, 128 Ill. Dec. 252, 534 N.E.2d 434 (5 Dist. 1989).

Collective Negotiating Matters

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- Open Meetings

The possibility that collective negotiating matters discussed during open session may be used by the unions to the people's detriment is very relevant in considering whether the legislature intended that particular topics be discussed openly. Gosnell v. Hogan, 179 Ill. App. 3d 161, 128 Ill. Dec. 252, 534 N.E.2d 434 (5 Dist. 1989).

- Strategy Choices

Where, during a closed session, the board of education chose mediation as an alternative to unsuccessful negotiations with the secretaries' unions, the action was within the exception for discussion of "collective negotiating matters between public employers and their employees or representatives." Gosnell v. Hogan, 179 Ill. App. 3d 161, 128 Ill. Dec. 252, 534 N.E.2d 434 (5 Dist. 1989).

Complaints Against Employees

- Resolution

The superintendent of schools and the board of education did not violate this section when they considered, during a closed executive session, educational goals, policy and programs and school district statistics, as they all related to resolving a complaint against the superintendent. Gosnell v. Hogan, 179 Ill. App. 3d 161, 128 Ill. Dec. 252, 534 N.E.2d 434 (5 Dist. 1989).

Consultations with Attorneys

- Attorney-Client Privilege

Consultations by a governing body with an attorney in private may not be used as a device to thwart the liberal implementation of the policy that the decision-making process is to be open and that confidentiality is to be strictly limited; however, the legislature did not intend that consultations between a governing body and its attorney must always be conducted openly, such as when this could result in the public being placed at a litigious disadvantage. People ex rel. Hopf v. Barger, 30 Ill. App. 3d 525, 332 N.E.2d 649 (2 Dist. 1975).

- Preliminary Discussions

"Pending," as stated in subsection (A)(h) of this section, cannot be reasonably interpreted to include preliminary discussion with an attorney to secure advice on either the bringing of suit, or the defense of a suit, which is either threatened or likely to be brought against a city. People ex rel. Hopf v. Barger, 30 Ill. App. 3d 525, 332 N.E.2d 649 (2 Dist. 1975).

Filed or Pending Litigation

- Speaking with Media

The superintendent of schools and the board of education did not violate this Act when it discussed whether to prohibit district administrators from speaking with the media under the exception for discussion of "litigation when an action against, affecting, or on behalf of the particular body has been filed and is pending in a court or administrative tribunal." Gosnell v. Hogan, 179 Ill. App. 3d 161, 128 Ill. Dec. 252, 534 N.E.2d 434 (5 Dist. 1989).

Final Action

- In General

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Where discussions held in closed meetings pertained to charges that a board of fire and police commissioners later dismissed and no other final action from any meeting that violated the Open Meetings Act, 5 ILCS 120/1 et seq., remained to impact the board's decision to discharge a police officer on other charges dealt with in an administrative hearing, the officer had no basis to claim his discharge was improper due to violations of the Act. Sangirardi v. Vill. of Stickney, 342 Ill. App. 3d 1, 276 Ill. Dec. 28, 793 N.E.2d 787, 2003 Ill. App. LEXIS 845 (1 Dist. 2003).

The statement in this section that "final action" may not be taken in a closed session indicates that action that is not final may be taken. Champaign County Bank & Trust Co. v. Brewer, 63 Ill. App. 3d 490, 20 Ill. Dec. 377, 380 N.E.2d 54 (4 Dist. 1978).

In an action challenging the dismissal of a nontenured teacher, the fact that there were two votes taken, one at the closed and one at the open session, was not considered a violation of this Act; the crucial fact was that the final vote was taken at an open session. Jewell v. Board of Educ., 19 Ill. App. 3d 1091, 312 N.E.2d 659 (5 Dist. 1974).

- Disciplinary Matters

This Act allows a public body to consider disciplinary matters in a closed session so long as its final action is taken at an open meeting. Simonis v. Countryside Fire Protection Dist., 173 Ill. App. 3d 418, 123 Ill. Dec. 210, 527 N.E.2d 673 (2 Dist. 1988).

- Not Taken

Where a board of education had a "general discussion" at a closed session regarding the superintendent of the school's salary report and recommendations for the upcoming school year, which covered employees who were not within a collective bargaining unit, and where the board reached a "tentative" consensus as to personnel retention and salaries, there was not a violation of this Act, as the board did not take any final action on such "general discussion" or "tentative" consensus at the closed session. People v. Board of Educ., 40 Ill. App. 3d 819, 353 N.E.2d 147 (2 Dist. 1976).

No Federal Action

Failure to hold public hearings as required by this Act might provide a cause of action in the state courts but it did not give rise to a cause of action cognizable by a federal court, or constitute a violation of a federally protected constitutional right. Bradford Tp. v. Illinois State Toll Hwy. Auth., 463 F.2d 537 (7th Cir.), cert. denied, 409 U.S. 1047, 93 S. Ct. 518, 34 L. Ed. 2d 499 (1972).

Open Meeting

Board considering whether the psychologist's license should be revoked for inappropriately touching three patients during treatment sessions at a residential center and for failing to maintain certain treatment records was not required to reschedule its open meeting for an earlier date to announce its ruling despite being obligate to decide the case at an open meeting under 5 ILCS 120/2. It a reviewing court were to require open meetings be moved to an earlier date every time an administrative law judge issued a decision soon after a Board meeting, the expense to the Board and state department administering the relevant professional regulations could become unduly burdensome. Morgan v. Dep't of Fin. & Prof'l Regulation, 388 Ill. App. 3d 633, 328 Ill. Dec. 139, 903 N.E.2d 799, 2009 Ill. App. LEXIS 57 (1 Dist. 2009).

Illinois Open Meetings Act, 5 ILCS 120/1 et seq., was not violated by the Illinois Racing Board in the expulsion and suspension of a horse owner, trainer, and rider because the Board did not conspire behind closed doors as: (1) the Board held a meeting open to the public; (2) the commissioner presented his overview and understanding of the facts to the quorum of six Board members; and (3) it was obvious from the transcript that the Commissioner and the other Board

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members familiarized themselves with the evidence from a hearing before the meeting and made an informed decision. Ellison v. Ill. Racing Bd., 377 Ill. App. 3d 433, 316 Ill. Dec. 18, 878 N.E.2d 740, 2007 Ill. App. LEXIS 1083 (1 Dist. 2007).

Public Bodies

Council of university presidents or chancellors, formed to provide advice and recommendations to the Illinois Board of Higher Education (IBHE) was not a "public body" subject to the requirements of the Open Meetings Act, 5 ILCS 120/1 et seq.; the council was not part of the formal IBHE organizational structure, the council's members were not also members of the IBHE, and the council's members were not paid for their tenure on the council. Univ. Prof'ls, Local 4100 v. Stukel, 344 Ill. App. 3d 856, 280 Ill. Dec. 109, 801 N.E.2d 1054, 2003 Ill. App. LEXIS 1416 (1 Dist. 2003).

Factors a court should review in deciding whether an entity is a "public body" or an "advisory body" under the Illinois Open Meetings Act, 5 ILCS 120/1 et seq., include who appoints the members of the entity, the formality of their appointment, and whether they are paid for their tenure; the entity's assigned duties, including duties reflected in the entity's bylaws or authorizing statute; whether its role is solely advisory or whether it also has a deliberative or investigative function; whether the entity is subject to government control or otherwise accountable to any public body; whether the group has a budget; its place within the larger organization or institution of which it is a part; and the impact of decisions or recommendations that the group makes. Univ. Prof'ls, Local 4100 v. Stukel, 344 Ill. App. 3d 856, 280 Ill. Dec. 109, 801 N.E.2d 1054, 2003 Ill. App. LEXIS 1416 (1 Dist. 2003).

Selling Price of Real Estate

- Not Considered

Where the minutes of a meeting of a board of education simply stated that the board voted to move into executive session "to discuss the sale of the school," and the board then voted to hold a public auction for the purpose of selling the school, there was nothing in the record to show that the executive meeting related to the selling price of the school property, as required by subsection (c) of this section; consequently, that subsection did not justify the board's holding of an executive session. Board of Educ. v. Sikorski, 214 Ill. App. 3d 945, 158 Ill. Dec. 623, 574 N.E.2d 736 (1 Dist. 1991).

Violation

- Remand Not Required

Although the record disclosed that the regional board adjourned to deliberate in private after the close of evidence at both hearings and then reconvened and voted in open forum, which may have been in violation of this Act, it did not render the proceedings null and void. Board of Educ. of Community Unit Sch. Dist. No. 337 v. Board of Educ. of Community Unit Sch. Dist. No. 338, 269 Ill. App. 3d 1020, 207 Ill. Dec. 526, 647 N.E.2d 1019 (3 Dist.), appeal denied, 163 Ill. 2d 549, 212 Ill. Dec. 415, 657 N.E.2d 616 (1995).

OPINIONS OF ATTORNEY GENERAL

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Analysis

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Acquisition of Real Property

Subsection (c) of this section clearly provides that only that portion of a meeting where the acquisition of real property is considered may be closed, however, in that closed meeting, or portion thereof, it appears that the municipal corporation may take final action concerning the acquisition of the real property. 1980 Op. Atty. Gen. 105.

Applicability

This Act does not apply to every gathering of a majority of a quorum of a public body; the requirements of the Act are applicable only to gatherings of a majority of a quorum of public bodies which are held for the purpose of discussing public business. 1995 Op. Atty. Gen. (95-004).

The board of directors of a private, non-profit corporation serving as an area detoxification center under contract with the Department of Mental Health and Developmental Disabilities was not covered by this Act. 1978 Op. Atty. Gen. 144.

Appointments to "Public Office"

When an appointment is to fill a public office such as trustee of a local fire protection district, river conservancy district and other public bodies with territory located within the county the

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appointment may properly be considered in a closed meeting pursuant subdivision (c)(3) of this section. 2003 Op. Atty. Gen. (03-006).

Clemency Testimony

This Act and the Board's own regulations required the Prisoner Review Board to conduct its hearings on applications for executive clemency publicly; the Board may deliberate in closed session only for the purpose of arriving at its decision in each case. 1982 Op. Atty. Gen. 134.

Closed Meeting Not Proper

Persons other than county board members who are appointed to serve as members of a county board committee do not thereby gain the status of a "public officer," for purposes of subdivision (c)(3) of this section, therefore, the appointment of such persons to a committee of a county board may not properly be considered in a closed meeting. 2003 Op. Atty. Gen. (03-006).

The city council improperly closed its meeting prior to deciding an annexation question on the basis that litigation over the annexation was probable or imminent, as the annexation could not have been probable or imminent until the city council voted to adopt the annexation ordinance. 1983 Op. Atty. Gen. 82.

Where the sole matter discussed during the closed session of the Board of Trustees of the Library District was an attorney's advice on the legal background of the petitioner's action and on the library board's available options, including the responses by the attorney to individual board member's questions on the matter, there was no legitimate reason for closing the meeting as no litigation was pending or reasonably foreseeable, no confidential information was discussed and the proposition in question, would have to be placed on the ballot if technical requirements were met; the petition and the statutory basis for it were public knowledge. 1980 Op. Atty. Gen. 102.

A city council cannot sit with closed doors as a "quasi-adjudicative" body to review a penalty imposed by the mayor under an ordinance. 1977 Op. Atty. Gen. 185.

Closed Preliminary Hearing

The Open Meetings Act does not prohibit the holding of a closed preliminary hearing pursuant to section 9-21 of The Election Code (10 ILCS 5/9-21). 1982 Op. Atty. Gen. 124.

Collective Negotiating Exception

It appears from the language in subsection (a) that a public body may meet privately to discuss collective negotiating matters and that the application of the provision is not limited solely to those meetings which take place between the public employer and its employees; consequently, it appears that a public body may meet privately to consider a collective negotiating response. 1980 Op. Atty. Gen. 105.

It appears that "collective negotiating matters" mentioned in subsection (a) which may be discussed between a public body and its employees or their representatives encompasses a broad scope of subjects including salaries, wages, terms of employment, working conditions and other such matters. 1980 Op. Atty. Gen. 105.

The collective negotiating exception to this Act does not include unilateral deliberations by the employer on the question of whether to extend negotiating rights. 1980 Op. Atty. Gen. 74.

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County Boards

- Joint Meeting

Where call to meeting announced a meeting "to discuss" continued local control of schools and although the meeting began with a description of the options available to the counties, including consolidation with other educational service regions, it was clear from the transcript that the host of the meeting called it for the purpose of persuading the boards of the two counties that it was in the counties' best interests to consolidate with each other, the joint meeting did constitute a meeting of each county board which was subject to this Act, and notice should have been given as required by the Act. 1995 Op. Atty. Gen. (95-004).

Deliberations for Decisions

Subsection (h) does not apply to meetings of a public body which are held to deliberate for a decision at the close of a hearing. 1983 Op. Atty. Gen. 10.

The phrase "deliberations for decisions" does not include the taking of testimony by administrative bodies. 1982 Op. Atty. Gen. 134.

Ethics Commissions

Local ethics commissions are not per se exempt from the provisions of the Open Meetings Act. 1999 Op. Atty. Gen. (99-007).

Informational Meeting

There is no absolute prohibition against the members of a public body attending an "informational meeting" without triggering the application of this Act; the mere fact that a majority of a quorum of the members of a public body attended and participated in a bona fide presentation on new legislative developments in an area of public concern within the scope of the body's power to act is not sufficient to invoke the requirements of the Act. 1995 Op. Atty. Gen. (95-004).

Meeting with Legal Counsel

Consultations between the public body and its attorney concerning the potential legal impact of an item under consideration must be done publicly unless pending, probable, or imminent litigation is the subject matter of the consultations. 1983 Op. Atty. Gen. 82.

A meeting held with legal counsel to consider a "pending" court proceeding against or on behalf of a particular governmental unit, need not be open. 1980 Op. Atty. Gen. 105.

Negotiation of Lease

Where a municipal corporation is a lessee, it occupies the position of a purchaser of an interest in land for specified rent or compensation, therefore, the municipal corporation, as a lessee, may consider the negotiation of a lease in a closed meeting and take any necessary final action thereon. 1980 Op. Atty. Gen. 105.

Notice

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Because 5 ILCS 120/2.02 of this Act does not require that notice be given of meetings that are not required to be public, those meetings which are excepted, under this section, from the application of the Act, are not public meetings and public notice is not required; however, no other business may be discussed, considered, or acted upon at such closed meetings. 1980 Op. Atty. Gen. 105.

Pending Litigation

The traditional concept of litigation begins in terms of notice, pleading, trial and appeal, and presumably it is at that point that litigation is "pending" as used in subsection (h). 1980 Op. Atty. Gen. 105.

Probable or Imminent Litigation

The condition of being "probable or imminent" is not an arbitrary standard allowing a public body to capriciously make a finding that litigation is probable or imminent, rather, "probable or imminent" is a definite standard with definite legal implications; a determination that litigation is probable or imminent must be made by examining the surrounding circumstances in light of logic, experience, and reason. 1983 Op. Atty. Gen. 82.

For litigation to be probable or imminent, warranting the closing of a meeting, there must be reasonable grounds to believe that a lawsuit is more likely than not to be instituted or that such an occurrence is close at hand. 1983 Op. Atty. Gen. 82.

Public Aid Committees

Public aid committees are public bodies for purposes of the Open Meetings Act and the general assistance appeal hearings they conduct must be open to the public. 1996 Op. Atty. Gen. (96-009).

Public Body Committees

Committees of a public body consisting of less than a majority of a quorum of such body are subject to the requirements of this Act. 1982 Op. Atty. Gen. 88.

Quasi-Judicial Capacity

Open deliberation is required when a public body is functioning in a quasi-judicial capacity. 1983 Op. Atty. Gen. 10.

Rules for Conduct of Adult Parole Hearings

Changes to Prisoner Review Board's rules are generally consistent with the provisions of the Open Meetings Act, 5 ILCS 120/1 et seq., and the other pertinent statutory provisions, provided: (1) that any decision to limit or deny access to Prisoner Review Board hearings should be made by the Board or a panel thereof acting as a body, not unilaterally by the chairman; and (2) that a live audio or video feed to broadcast the proceedings of a parole hearing is limited to those circumstances where safety or security concerns so require. 2003 Op. Atty. Gen. (03-002).

Sale of Real Property

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No portion of a meeting may be closed when the topic under consideration is the sale of real property by a municipal corporation. 1980 Op. Atty. Gen. 105.

Where a municipal meeting considered the leasing of real property by the municipal corporation, as lessor, and the lease provided that at the end of the term, all improvements on the property would become the property of the lessor, the transaction was in the nature of the sale of real property; therefore, no portion of the meeting concerning the lease could be closed. 1980 Op. Atty. Gen. 105.

Telephone Conference Call

A telephone conference call involving a majority of a quorum of a public body held for the purpose of discussing public business must be considered a meeting under this Act. 1982 Op. Atty. Gen. 124.

This Act does not prohibit the State Board of Elections from conducting its official business by means of an interconnecting telephone conference call held pursuant to its adopted regulations in which the call is broadcast over a speaker phone or other similar device at both the permanent and branch offices of the Board, open to the media representatives and the public in general. 1982 Op. Atty. Gen. 124.

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Administrative Law," see 25 S. Ill. U. L.J. 679 (2001).

For article, "The Illinois Open Meetings Act: A Reappraisal," see 1978 S. Ill. U.L.J. 193.

§ 5 ILCS 120/2.01. [Meeting times and places]

Sec. 2.01. All meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public. No meeting required by this Act to be public shall be held on a legal holiday unless the regular meeting day falls on that holiday.

A quorum of members of a public body must be physically present at the location of an open meeting. If, however, an open meeting of a public body (i) with statewide jurisdiction, (ii) that is an Illinois library system with jurisdiction over a specific geographic area of more than 4,500 square miles, or (iii) that is a municipal transit district with jurisdiction over a specific geographic area of more than 4,500 square miles is held simultaneously at one of its offices and one or more other locations in a public building, which may include other of its offices, through an interactive video conference and the public body provides public notice and public access as required under this Act for all locations, then members physically present in those locations all count towards determining a quorum. "Public building", as used in this Section, means any building or portion thereof owned or leased by any public body. The requirement that a quorum be physically present at the location of an open meeting shall not apply, however, to State

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advisory boards or bodies that do not have authority to make binding recommendations or determinations or to take any other substantive action.

A quorum of members of a public body that is not (i) a public body with statewide jurisdiction, (ii) an Illinois library system with jurisdiction over a specific geographic area of more than 4,500 square miles, or (iii) a municipal transit district with jurisdiction over a specific geographic area of more than 4,500 square miles must be physically present at the location of a closed meeting. Other members who are not physically present at a closed meeting of such a public body may participate in the meeting by means of a video or audio conference.

(Source: Laws 1967, p. 1960; P.A. 88-621, § 5; 94-1058, § 5; 96-664, § 5; 96-1043, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 102, Para. 42.01.

Effect of Amendments. The 2006 amendment by P.A. 94-1058, effective January 1, 2007, added the last two paragraphs.

The 2009 amendment by P.A. 96-664, effective August 25, 2009, substituted "(i) with statewide jurisdiction or (ii) that is an Illinois library system with jurisdiction over a specific geographic area of more than 4,500 square miles" for "(except one with jurisdiction limited to a specific geographic area that is less than statewide)" in the second sentence of the second paragraph; and in the first sentence of the last paragraph, added the item designation (i) and added "or (ii) a public body that is an Illinois library system with jurisdiction over a specific geographic area of more than 4,500 square miles."

The 2010 amendment by P.A. 96-1043, effective January 1, 2011, added item (iii) to the second sentence of the second paragraph and the first sentence of the last paragraph; deleted "a public body that is" from the beginning of item (ii) in the first sentence of the last paragraph; and made related changes.

CASE NOTES

Analysis

Construction
Convenience
Holiday
Illustrative Cases
Legislative Intent

Construction

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5 ILCS 120/2.01 requires a place that is "convenient" not merely to members of the public who show up for a meeting but to the "public" as a whole. Gerwin v. Livingston County Bd., 345 Ill. App. 3d 352, 280 Ill. Dec. 485, 802 N.E.2d 410, 2003 Ill. App. LEXIS 1621 (4 Dist. 2003).

By its plain terms, 5 ILCS 120/2.01 requires a venue that is not only "open," but "convenient," to the public. Gerwin v. Livingston County Bd., 345 Ill. App. 3d 352, 280 Ill. Dec. 485, 802 N.E.2d 410, 2003 Ill. App. LEXIS 1621 (4 Dist. 2003).

Convenience

The question of whether a county board held a meeting in a "convenient" location, as required by 5 ILCS 120/2.01, when it refused to move the meeting even though it knew its boardroom was too small to accommodate most of the public who wanted to attend, was a fact question that should have been submitted to a jury; thus dismissal of the action under 735 ILCS 5/2-615 and 735 ILCS 5/2-619(a) was error. Gerwin v. Livingston County Bd., 345 Ill. App. 3d 352, 280 Ill. Dec. 485, 802 N.E.2d 410, 2003 Ill. App. LEXIS 1621 (4 Dist. 2003).

Holiday

No meeting (regular, special, rescheduled or convened meeting) can be held on a holiday unless the legal holiday was the same day as the regular meeting day and the regular meeting was not held on that day. Argo High Sch. Council of Local 571 v. Argo Community High Sch. Dist. 217, 163 Ill. App. 3d 578, 114 Ill. Dec. 679, 516 N.E.2d 834 (1 Dist. 1987).

Illustrative Cases

Disconnect applicants did not show that the village violated the Illinois Open Meetings Act, 5 ILCS 120/2.01, in passing an ordinance that granted annexation of a single parcel of property that also had the effect of thwarting their attempted disconnection. That statutory section required meetings convenient and open to the public, and the disconnect applicants did not show that they were essentially barred from attending the relevant meeting regarding the annexation or that the meeting did not begin at a reasonable time. Foxfield Subdivision v. Vill. of Campton Hills (In re Foxfield Subdivision), 396 Ill. App. 3d 989, 336 Ill. Dec. 512, 920 N.E.2d 1102, 2009 Ill. App. LEXIS 1226 (2 Dist. 2009), appeal denied, 2010 Ill. LEXIS 502 (Ill. 2010).

Where a county board knew in advance that its meeting was likely to draw more of the public than could fit in its boardroom but refused to move the meeting, the meeting was not entirely open. Gerwin v. Livingston County Bd., 345 Ill. App. 3d 352, 280 Ill. Dec. 485, 802 N.E.2d 410, 2003 Ill. App. LEXIS 1621 (4 Dist. 2003).

Legislative Intent

The legislature's intent was to make meetings convenient to the public; by holding the special meeting on a holiday, public members who might otherwise have attended a special meeting would not do so because it was held on a holiday. Argo High Sch. Council of Local 571 v. Argo Community High Sch. Dist. 217, 163 Ill. App. 3d 578, 114 Ill. Dec. 679, 516 N.E.2d 834 (1 Dist. 1987).

OPINIONS OF ATTORNEY GENERAL

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Rules for Conduct of Adult Parole Hearings

Changes to Prisoner Review Board's rules are generally consistent with the provisions of the Open Meetings Act, 5 ILCS 120/1 et seq., and the other pertinent statutory provisions, provided: (1) that any decision to limit or deny access to Prisoner Review Board hearings should be made by the Board or a panel thereof acting as a body, not unilaterally by the chairman; and (2) that a live audio or video feed to broadcast the proceedings of a parole hearing is limited to those circumstances where safety or security concerns so require. 2003 Op. Atty. Gen. (03-002).

§ 5 ILCS 120/2.02. [Notice]

Sec. 2.02. Public notice of all meetings, whether open or closed to the public, shall be given as follows:

(a) Every public body shall give public notice of the schedule of regular meetings at the beginning of each calendar or fiscal year and shall state the regular dates, times, and places of such meetings. An agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. A public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any regular meetings of the governing body of that public body. Any agenda of a regular meeting that is posted on a public body's website shall remain posted on the website until the regular meeting is concluded. The requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda. Public notice of any special meeting except a meeting held in the event of a bona fide emergency, or of any rescheduled regular meeting, or of any reconvened meeting, shall be given at least 48 hours before such meeting, which notice shall also include the agenda for the special, rescheduled, or reconvened meeting, but the validity of any action taken by the public body which is germane to a subject on the agenda shall not be affected by other errors or omissions in the agenda. The requirement of public notice of reconvened meetings does not apply to any case where the meeting was open to the public and (1) it is to be reconvened within 24 hours, or (2) an announcement of the time and place of the reconvened meeting was made at the original meeting and there is no change in the agenda. Notice of an emergency meeting shall be given as soon as practicable, but in any event prior to the holding of such meeting, to any news medium which has filed an annual request for notice under subsection (b) of this Section.

(b) Public notice shall be given by posting a copy of the notice at the principal office of the body holding the meeting or, if no such office exists, at the building in which the meeting is to be held. In addition, a public body that has a website that the full-time staff of the public body maintains shall post notice on its website of all meetings of the governing body of the public body. Any notice of an annual schedule of meetings shall remain on the website until a new public notice of the schedule of regular meetings is approved. Any notice of a regular meeting that is posted on a public body's website shall remain posted on the website until the regular meeting is concluded. The body shall supply copies of the notice of its regular meetings, and of the notice of any special,

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emergency, rescheduled or reconvened meeting, to any news medium that has filed an annual request for such notice. Any such news medium shall also be given the same notice of all special, emergency, rescheduled or reconvened meetings in the same manner as is given to members of the body provided such news medium has given the public body an address or telephone number within the territorial jurisdiction of the public body at which such notice may be given. The failure of a public body to post on its website notice of any meeting or the agenda of any meeting shall not invalidate any meeting or any actions taken at a meeting.

(Source: P.A. 82-378; 88-621, § 5; 89-86, § 5; 94-28, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 102, Para. 42.02.

Cross References.

As to the public notice requirement of meetings, see the following sections: As to meetings held by a city council under the Municipal Code, see 65 ILCS 5/3.1-40-25; as to meetings held by councils of municipalities having a commission form of government under the Municipal Code, see 65 ILCS 5/4-5-12; as to meetings held by commissioners of the Chicago Park District, see 70 ILCS 1505/3a; as to meetings held by a regional board of school trustees under the School Code, see 105 ILCS 5/6-18; as to meetings held by a board of school directors having a population of fewer than 1000 inhabitants under the School Code, see 105 ILCS 5/10-6; as to meetings by a board of education having a population between 1000 and 500,000 inhabitants under the School Code, see 105 ILCS 5/10-6; as to meetings held by elected board members serving as either an administrative district or a governing board for joint special educational facilities under the School Code, see 105 ILCS 5/10-22.3c; as to meetings held by a board of education serving a Department of Corrections school district under the School Code, see 105 ILCS 5/13-42.

Illinois Administrative Code.

See 2 Illinois Administrative Code, §§ 2175.125, 2175.130, 6000.130.

Effect of Amendments. The 2005 amendment by P.A. 94-28, effective January 1, 2006, added the third and fourth sentences in (a); and added the second, third, and last sentences in (b).

CASE NOTES

Analysis

Germane
Notice
- Failure to Post
- Held Sufficient

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- Held Unnecessary
Rescheduling
Sanctions
- Upheld

Germane

Disconnect applicants did not show that the village violated the Illinois Open Meetings Act, 5 ILCS 120/2.02, when the village held a meeting to pass an ordinance that granted annexation of a single parcel of property, which also had the effect of thwarting the disconnect applicants' attempt to disconnect land from the village. The agenda was posted in the village hall the required 48 hours before the relevant meeting occurred, as required by that statute, and stated that annexation would be considered, which was germane to the specific parcel of property that the village eventually ended up annexing. Foxfield Subdivision v. Vill. of Campton Hills (In re Foxfield Subdivision), 396 Ill. App. 3d 989, 336 Ill. Dec. 512, 920 N.E.2d 1102, 2009 Ill. App. LEXIS 1226 (2 Dist. 2009), appeal denied, 2010 Ill. LEXIS 502 (Ill. 2010).

The appointment was not germane to any subject on the agenda nor was it in substantial compliance with the Act and therefore it was invalid. People ex rel. Redell v. Giglio, 238 Ill. App. 3d 141, 179 Ill. Dec. 296, 606 N.E.2d 128 (1 Dist. 1992).

The agenda listed in the notice of the special meeting was stated as "review and discussion of salaries involving administrators, supervisors, and other personnel not covered by an agreement," the motions presented and adopted at the meeting, which included (1) an extension of the superintendent's term, (2) a change in the appointment department chairpersons from a permanent to a three year rotational basis, and (3) the posting and receiving of applications for the position of athletic director for the 1986-1987 school year, the items considered and voted upon at the meeting were germane. Argo High Sch. Council of Local 571 v. Argo Community High Sch. Dist. 217, 163 Ill. App. 3d 578, 114 Ill. Dec. 679, 516 N.E.2d 834 (1 Dist. 1987).

Notice

- Failure to Post

Where an ordinance adopted at a special meeting was identical to, and was in effect a reenactment of, a previous ordinance adopted at an earlier regular meeting attended by hundreds of citizens, assuming notices were not posted, violation of the notice posting provisions was viewed as inconsequential and strictly technical. Williamson v. Doyle, 112 Ill. App. 3d 293, 67 Ill. Dec. 905, 445 N.E.2d 385 (1 Dist. 1983).

- Held Sufficient

Notice was given in compliance with subsection (b) of this section where the petitioner posted a copy of the notice on its main bulletin board and where copies were supplied to all local newspapers of general circulation and to other news media which had requested it. Illinois State Toll Hwy. Auth. v. Karn, 9 Ill. App. 3d 784, 293 N.E.2d 162 (2 Dist. 1973).

City council properly complied with the public notice section of this statute. Bigham v. City of Rock Island, 120 Ill. App. 2d 381, 256 N.E.2d 897 (3 Dist. 1970).

- Held Unnecessary

Nothing in this section, as it read prior to amendment in 1982, required that notice be given that a proposed ordinance would be presented for adoption at a meeting where board members had

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knowledge of the time and place of the meeting, and where the meeting was "open" within the meaning of this Act. Allen v. County of Cook, 65 Ill. 2d 281, 2 Ill. Dec. 291, 357 N.E.2d 458 (1976).

Rescheduling

Board's rescheduling from regular meeting time of 8 p.m. to 7 p.m., did not violate this Act. Board of Educ. of Community Unit Sch. Dist. No. 337 v. Board of Educ. of Community Unit Sch. Dist. No. 338, 269 Ill. App. 3d 1020, 207 Ill. Dec. 526, 647 N.E.2d 1019 (3 Dist.), appeal denied, 163 Ill. 2d 549, 212 Ill. Dec. 415, 657 N.E.2d 616 (1995).

Sanctions

- Upheld

The trial court did not abuse its discretion when it ruled that attorney's attempt to collect amounts from defendant in excess of judgment was a violation of the statute. Brubakken v. Morrison, 240 Ill. App. 3d 680, 181 Ill. Dec. 398, 608 N.E.2d 471 (1 Dist. 1992).

Attorney was properly sanctioned for failing to inform the trial court of a letter written by defendant to plaintiffs seeking to have the stipulation agreements modified due to the pending birth of a child. Brubakken v. Morrison, 240 Ill. App. 3d 680, 181 Ill. Dec. 398, 608 N.E.2d 471 (1 Dist. 1992).

The trial court imposed sanctions against attorney for violations that occurred after November 25, 1986, the effective date of amended section 2-611. Brubakken v. Morrison, 240 Ill. App. 3d 680, 181 Ill. Dec. 398, 608 N.E.2d 471 (1 Dist. 1992).

The trial court did not err when it imposed sanctions for activities that occurred before another trial judge. Brubakken v. Morrison, 240 Ill. App. 3d 680, 181 Ill. Dec. 398, 608 N.E.2d 471 (1 Dist. 1992).

OPINIONS OF ATTORNEY GENERAL

Private Meetings

Because this Act does not require that notice be given of meetings that are not required to be public, those meetings which are excepted, under 5 ILCS 120/2 of this Act, from the application of the Act, are not public meetings and public notice is not required; however, no other business may be discussed, considered, or acted upon at such closed meetings. 1980 Op. Atty. Gen. 105.

§ 5 ILCS 120/2.03. [Schedule of meetings]

Sec. 2.03. In addition to the notice required by Section 2.02 [5 ILCS 120/2.02], each body subject to this Act must, at the beginning of each calendar or fiscal year, prepare and make available a schedule of all its regular meetings for such calendar or fiscal year, listing the times and places of such meetings.

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If a change is made in regular meeting dates, at least 10 days' notice of such change shall be given by publication in a newspaper of general circulation in the area in which such body functions. However, in the case of bodies of local governmental units with a population of less than 500 in which no newspaper is published, such 10 days' notice may be given by posting a notice of such change in at least 3 prominent places within the governmental unit. Notice of such change shall also be posted at the principal office of the public body or, if no such office exists, at the building in which the meeting is to be held. Notice of such change shall also be supplied to those news media which have filed an annual request for notice as provided in paragraph (b) of Section 2.02 [5 ILCS 120/2.02].

(Source: Laws 1967, p. 1960.)

Note.

This section was Ill.Rev.Stat., Ch. 102, Para. 42.03.

§ 5 ILCS 120/2.04. [Notice requirements additional]

Sec. 2.04. The notice requirements of this Act are in addition to, and not in substitution of, any other notice required by law. Failure of any news medium to receive a notice provided for by this Act shall not invalidate any meeting provided notice was in fact given in accordance with this Act.

(Source: Laws 1967, p. 1960.)

Note.

This section was Ill.Rev.Stat., Ch. 102, Para. 42.04.

§ 5 ILCS 120/2.05. Recording meetings

Sec. 2.05. Recording meetings. Subject to the provisions of Section 8-701 of the Code of Civil Procedure [735 ILCS 5/8-701], any person may record the proceedings at meetings required to be open by this Act by tape, film or other means. The authority holding the meeting shall prescribe reasonable rules to govern the right to make such recordings.

If a witness at any meeting required to be open by this Act which is conducted by a commission, administrative agency or other tribunal, refuses to testify on the grounds that he may not be compelled to testify if any portion of his testimony is to be broadcast or

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televised or if motion pictures are to be taken of him while he is testifying, the authority holding the meeting shall prohibit such recording during the testimony of the witness. Nothing in this Section shall be construed to extend the right to refuse to testify at any meeting not subject to the provisions of Section 8-701 of the Code of Civil Procedure.

(Source: P.A. 82-378; 94-1058, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 102, Para. 42.05.

"An Act in relation to the rights of witnesses at proceedings conducted by a court, commission, administrative agency or other tribunal in this State which are televised or broadcast or at which motion pictures are taken," referred to in this section, has been repealed. For new law see 735 ILCS 5/8-701 et seq.

Illinois Administrative Code.

See 2 Illinois Administrative Code, §§ 2950.120, 6000.150.

Effect of Amendments. The 2006 amendment by P.A. 94-1058, effective January 1, 2007, twice substituted "Section 8-701 of the Code of Civil Procedure" for "An Act in relation to the rights of witnesses at proceedings conducted by a court, commission, administrative agency or other tribunal in this State which are televised or broadcast or at which motion pictures are taken, approved July 14, 1953, as amended", and added the section heading.

OPINIONS OF ATTORNEY GENERAL

Analysis

Public Meeting of Library Board
Rules for Conduct of Adult Parole Hearings

Public Meeting of Library Board

The board of trustees of a public library district may not prevent members of the public from tape recording a public meeting of the board. 1980 Op. Atty. Gen. 102.

Rules for Conduct of Adult Parole Hearings

Changes to Prisoner Review Board's rules are generally consistent with the provisions of the Open Meetings Act, 5 ILCS 120/1 et. seq., and the other pertinent statutory provisions, provided: (1) that any decision to limit or deny access to Prisoner Review Board hearings should be made by the Board or a panel thereof acting as a body, not unilaterally by the chairman; and (2) that a

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live audio or video feed to broadcast the proceedings of a parole hearing is limited to those circumstances where safety or security concerns so require. 2003 Op. Atty. Gen. (03-002).

§ 5 ILCS 120/2.06. Minutes; right to speak

Sec. 2.06. Minutes; right to speak. (a) All public bodies shall keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording. Minutes shall include, but need not be limited to:

(1) the date, time and place of the meeting;

(2) the members of the public body recorded as either present or absent and whether the members were physically present or present by means of video or audio conference; and

(3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.

(b) A public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later. The minutes of meetings open to the public shall be available for public inspection within 10 days after the approval of such minutes by the public body. Beginning July 1, 2006, at the time it complies with the other requirements of this subsection, a public body that has a website that the full-time staff of the public body maintains shall post the minutes of a regular meeting of its governing body open to the public on the public body's website within 10 days after the approval of the minutes by the public body. Beginning July 1, 2006, any minutes of meetings open to the public posted on the public body's website shall remain posted on the website for at least days after their initial posting.

(c) The verbatim record may be destroyed without notification to or the approval of a records commission or the State Archivist under the Local Records Act [50 ILCS 205/1 et seq.] or the State Records Act [5 ILCS 160/1 et seq.] no less than 18 months after the completion of the meeting recorded but only after:

(1) the public body approves the destruction of a particular recording; and

(2) the public body approves minutes of the closed meeting that meet the written minutes requirements of subsection (a) of this Section.

(d) Each public body shall periodically, but no less than semi-annually, meet to review minutes of all closed meetings. At such meetings a determination shall be made, and reported in an open session that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection. The failure of a public body to strictly comply with the semi-annual review of closed session written minutes, whether before or after the effective date of this amendatory Act of the 94th General Assembly [P.A. 94-542], shall not cause the written minutes or related verbatim record to become public or available for inspection in any judicial proceeding, other than a proceeding involving an

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alleged violation of this Act, if the public body, within 60 days of discovering its failure to strictly comply with the technical requirements of this subsection, reviews the closed session minutes and determines and thereafter reports in open session that either (1) the need for confidentiality still exists as to all or part of the minutes or verbatim record, or (2) that the minutes or recordings or portions thereof no longer require confidential treatment and are available for public inspection.

(e) Unless the public body has made a determination that the verbatim recording no longer requires confidential treatment or otherwise consents to disclosure, the verbatim record of a meeting closed to the public shall not be open for public inspection or subject to discovery in any administrative or judicial proceeding other than one brought to enforce this Act. In the case of a civil action brought to enforce this Act, the court, if the judge believes such an examination is necessary, must conduct such in camera examination of the verbatim record as it finds appropriate in order to determine whether there has been a violation of this Act. In the case of a criminal proceeding, the court may conduct an examination in order to determine what portions, if any, must be made available to the parties for use as evidence in the prosecution. Any such initial inspection must be held in camera. If the court determines that a complaint or suit brought for noncompliance under this Act is valid it may, for the purposes of discovery, redact from the minutes of the meeting closed to the public any information deemed to qualify under the attorney-client privilege. The provisions of this subsection do not supersede the privacy or confidentiality provisions of State or federal law.

(f) Minutes of meetings closed to the public shall be available only after the public body determines that it is no longer necessary to protect the public interest or the privacy of an individual by keeping them confidential.

(g) Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body.

(Source: P.A. 85-1355; 88-621, § 5; 93-523, § 5; 93-974, § 5; 94-28, § 5; 94-542, § 5; 94-1058, § 5; 96-1473, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 102, para. 42.06.

Cross References.

As to exemptions to the Freedom of Information Act regarding written minutes of meetings of public bodies closed to the public, see 5 ILCS 140/7.

Illinois Administrative Code.

See 2 Illinois Administrative Code, § 6000.140.

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Effect of Amendments. The 2003 amendment by P.A. 93-523, effective January 1, 2004, substituted "open meetings and a verbatim record of all their closed meetings in the form of an audio or video recording. Minutes" for "whether open or closed. Such minutes" in subsection (a); rewrote subsection (c) to the extent that a detailed comparison would be impracticable; added the subsection (d) designation; inserted "and recordings" and "or recordings" in present subsection (d); and added subsections (e) and (f).

The 2004 amendment by P.A. 93-974, effective January 1, 2005, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2005 amendment by P.A. 94-28, effective January 1, 2006, added the last two sentences in (b).

The 2005 amendment by P.A. 94-542, effective August 10, 2005, added the last sentence in (d).

The 2006 amendment by P.A. 94-1058, effective January 1, 2007, added the section heading; and in (a)(2) added "and whether the members were physically present or present by means of video or audio conference".

The 2010 amendment by P.A. 96-1473, effective January 1, 2011, added "right to speak" to the end of the section heading; in (b), added the first sentence and substituted "10 days after" for "7 days of" in the present second and third sentences; and added (g).

CASE NOTES

Discovery

Where a firefighter's employment was terminated following a closed board meeting and he sought to compel disclosure of an audiotape of that meeting, conversations pertaining to the board's decision to fire him were discoverable pursuant to Fed. R. Civ. P. 26(b)(1), even though the board's attorney attended the meeting. Mere attendance by the attorney did not render the entire proceeding privileged. There was a substantial need for disclosure of such relevant evidence as weighed against the reasoning behind an unsuccessful argument for the assertion of a federal common law privilege in response to the privilege that was contained in the Illinois Open Meeting Act, 5 ILCS 120/2.06(e). Kodish v. Oakbrook Terrace Fire Protection Dist., 235 F.R.D. 447, 2006 U.S. Dist. LEXIS 23987 (N.D. Ill. 2006).

§ 5 ILCS 120/2a. [Closed meetings]

Sec. 2a. A public body may hold a meeting closed to the public, or close a portion of a meeting to the public, upon a majority vote of a quorum present, taken at a meeting open to the public for which notice has been given as required by this Act. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, provided each meeting in such series involves the same particular matters and is scheduled to be held within no more than 3 months of the vote. The vote of each member on the question of holding a meeting closed to the public and a citation to the specific exception contained in Section 2 of this Act [5 ILCS 120/2] which authorizes the closing of the meeting to the public shall be publicly disclosed at the time of the vote and shall be recorded and entered into the minutes of the meeting. Nothing in

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this Section or this Act shall be construed to require that any meeting be closed to the public.

At any open meeting of a public body for which proper notice under this Act has been given, the body may, without additional notice under Section 2.02 [5 ILCS 120/2.02], hold a closed meeting in accordance with this Act. Only topics specified in the vote to close under this Section may be considered during the closed meeting.

(Source: P.A. 86-727; 88-621, § 5; 89-86, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 102 Para. 42a.

Cross References.

As to making available the transcripts of closed sessions of the Illinois Commerce Commission under the Public Utilities Act, see 220 ILCS 5/10-102.

CASE NOTES

Analysis

Closed meetings
Procedure

Closed meetings

5 ILCS 120/2a of the Illinois Open Meetings Act did not require the subject of a closed session meeting of a school board to be disclosed in open session. Nuzzi v. St. George Cmty. Consol. Sch. Dist. No. 258, 688 F. Supp. 2d 815, 2010 U.S. Dist. LEXIS 15893 (C.D. Ill. 2010).

Procedure

Trial court did not err in granting a city and mayor summary judgment in a citizen's action alleging that they violated the Open Meetings Act, 5 ILCS 120/1 because the city council did not need to put in the published agenda for the open meeting its intention to go into a closed meeting or the topics to be discussed in the closed meeting; the plain language of § 2a of the Act, 5 ILCS 120/2a, allows a public body to decide during a properly noticed open meeting to go into closed session without any additional notice. Wyman v. Schweighart, 385 Ill. App. 3d 1099, 328 Ill. Dec. 315, 904 N.E.2d 77, 2008 Ill. App. LEXIS 1084 (4 Dist. 2008).

Trial court did not err in granting a city and mayor summary judgment in a citizen's action alleging that they violated the Open Meetings Act, 5 ILCS 120/1 because each member of the city council voted "yes" during a voice vote on whether to hold a closed meeting, and that fact was recorded;

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§ 2a of the Act, 5 ILCS 120/2a, does not require that each member's vote be taken individually and recorded individually Wyman v. Schweighart, 385 Ill. App. 3d 1099, 328 Ill. Dec. 315, 904 N.E.2d 77, 2008 Ill. App. LEXIS 1084 (4 Dist. 2008).

Trial court did not err in granting a city and mayor summary judgment in a citizen's action alleging that they violated the Open Meetings Act, 5 ILCS 120/1, because the city council announced that litigation was pending, and a council member's failure to reiterate that fact when she made the motion to go into closed session did not constitute a violation of the Act; during the open portion of the meeting, the city manager issued a reminder that there had been a request for a closed meeting to discuss land acquisition and pending litigation. Wyman v. Schweighart, 385 Ill. App. 3d 1099, 328 Ill. Dec. 315, 904 N.E.2d 77, 2008 Ill. App. LEXIS 1084 (4 Dist. 2008).

The trial court erred in failing to find that the Athletic Council of Illinois State University failed to follow the necessary procedures under the Open Meetings Act to invoke the litigation exception for executive meetings, and the court should have issued an injunction as to his violation. Board of Regents of Regency Univ. Sys. v. Reynard, 292 Ill. App. 3d 968, 227 Ill. Dec. 66, 686 N.E.2d 1222 (4 Dist. 1997).

OPINIONS OF ATTORNEY GENERAL

Closed Meetings

- Disclosure by Members

Absent an express statutory provision so providing, public bodies do not have the power to sanction their members for disclosing the substance of deliberations conducted or actions taken at a closed meeting. 1991 Op. Atty. Gen. (91-001).

§ 5 ILCS 120/2b: Repealed by P.A. 88-621, § 10, effective January 1, 1995.

§ 5 ILCS 120/3. [Noncompliance; civil action]

Sec. 3. (a) Where the provisions of this Act are not complied with, or where there is probable cause to believe that the provisions of this Act will not be complied with, any person, including the State's Attorney of the county in which such noncompliance may occur, may bring a civil action in the circuit court for the judicial circuit in which the alleged noncompliance has occurred or is about to occur, or in which the affected public body has its principal office, prior to or within 60 days of the meeting alleged to be in violation of this Act or, if facts concerning the meeting are not discovered within the 60-day period, within 60 days of the discovery of a violation by the State's Attorney.

Records that are obtained by a State's Attorney from a public body for purposes of reviewing whether the public body has complied with this Act may not be disclosed to the public. Those records, while in the possession of the State's Attorney, are exempt from disclosure under the Freedom of Information Act [5 ILCS 140/1 et seq.].

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(b) In deciding such a case the court may examine in camera any portion of the minutes of a meeting at which a violation of the Act is alleged to have occurred, and may take such additional evidence as it deems necessary.

(c) The court, having due regard for orderly administration and the public interest, as well as for the interests of the parties, may grant such relief as it deems appropriate, including granting a relief by mandamus requiring that a meeting be open to the public, granting an injunction against future violations of this Act, ordering the public body to make available to the public such portion of the minutes of a meeting as is not authorized to be kept confidential under this Act, or declaring null and void any final action taken at a closed meeting in violation of this Act.

(d) The court may assess against any party, except a State's Attorney, reasonable attorney's fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with this Section, provided that costs may be assessed against any private party or parties bringing an action pursuant to this Section only upon the court's determination that the action is malicious or frivolous in nature.

(Source: P.A. 85-1355; 88-621, § 5; 96-542, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 102, Para. 43.

Effect of Amendments. The 2009 amendment by P.A. 96-542, effective January 1, 2010, added the second paragraph of (a).

CASE NOTES

Analysis

Construction
- Person

Limitations Period
- Discovery Rule
- Not Met

Prospective Application

Relief
- Injunctions
- Invalidation of Action Taken
- Mandamus
- Mootness
- Not Granted

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- Prospective Actions
Retroactivity
Standing
- City Officials
- Ratification of Prior Action
Timeliness of Complaint
- In General
- Not Shown
- Shown
- Waiver

Construction

- Person

The fact that the Illinois Open Meetings Act qualifies the word "person" as including the "State's Attorney of the county in which such non-compliance may occur" does not mandate a conclusion that the inclusion of one body politic is to the exclusion of all others. Paxson v. Board of Educ., 276 Ill. App. 3d 912, 213 Ill. Dec. 288, 658 N.E.2d 1309 (1 Dist. 1995).

There is no compelling reason to limit the word "person" in this section to an individual as opposed to a body politic; creating an impediment to the explicit command of the statute that actions of public bodies be taken openly, solely on the basis that a political body is not an individual person, ill serves the intent of the legislature and frustrates the principles underlying the Illinois Open Meetings Act. Paxson v. Board of Educ., 276 Ill. App. 3d 912, 213 Ill. Dec. 288, 658 N.E.2d 1309 (1 Dist. 1995).

Limitations Period

- Discovery Rule

All persons, other than the State's Attorney, must file suit prior to or within 45 days of the meeting alleged to be in violation of the Illinois Open Meetings Act, and not within 45 days of a discovery of a violation by the State's Attorney. Paxson v. Board of Educ., 276 Ill. App. 3d 912, 213 Ill. Dec. 288, 658 N.E.2d 1309 (1 Dist. 1995).

Under the plain language of the Illinois Open Meetings Act, the discovery rule inures only to the benefit of the State's Attorney. Paxson v. Board of Educ., 276 Ill. App. 3d 912, 213 Ill. Dec. 288, 658 N.E.2d 1309 (1 Dist. 1995).

- Not Met

Where the plaintiff did not file her complaint under this Act until over a year after the violation that she alleged had occurred, the action was barred by the 45 day limitations period. Lyman v. Board of Educ., 605 F. Supp. 193 (N.D. Ill. 1985).

Prospective Application

The 1982 amendments to subsection (c) of this section were to be applied prospectively only; therefore, on the basis of the law in effect when the cause of action arose, a violation of this Act did not invalidate the issuance of industrial project revenue bonds approved at a public body meeting. Potter v. Judge, 112 Ill. App. 3d 81, 67 Ill. Dec. 585, 444 N.E.2d 821 (3 Dist. 1983).

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Relief

- Injunctions

The Commerce Commission, unlike many other public bodies, has been and will be authorized to conduct closed meetings; thus an open-ended, broadly worded injunction enjoining the Commission from holding future meetings in violation of this Act, might serve to chill lawful activities by the Commission and so is an inappropriate remedy. People ex rel. Hartigan v. Illinois Commerce Comm'n, 131 Ill. App. 3d 376, 86 Ill. Dec. 421, 475 N.E.2d 635 (4 Dist. 1985).

Where the plaintiff prayed for the trial court to generally enjoin the defendants from continuing to violate this Act and to specifically enjoin them from continuing a specific meeting, such relief would have been duly authorized under subsection (c) of this section, which empowers the court to grant injunctions against future violations. Lindsey v. Board of Educ., 127 Ill. App. 3d 413, 82 Ill. Dec. 365, 468 N.E.2d 1019 (1 Dist. 1984).

Where, rather than issuing a narrowly drawn injunction conforming to the relief authorized by this section and to the general law governing the issuance of injunctive relief against public officials, the trial court issued an overly broad order, enjoining a local board of education not from the continuance of unauthorized or unlawful acts but rather from the lawful exercise of its statutorily delegated power, it unnecessarily and impermissibly altered the status quo. Lindsey v. Board of Educ., 127 Ill. App. 3d 413, 82 Ill. Dec. 365, 468 N.E.2d 1019 (1 Dist. 1984).

- Invalidation of Action Taken

Invalidation of actions taken at an open meeting is not an available remedy, as the statute permitting the court to declare the action void refers by its terms only to a "closed session". Chicago Sch. Reform Bd. of Trustees v. Martin, 309 Ill. App. 3d 924, 243 Ill. Dec. 428, 723 N.E.2d 731, 1999 Ill. App. LEXIS 879 (1 Dist. 1999).

A violation of this Act does not per se invalidate the legislative action taken at a closed meeting. Ciacco v. City of Elgin, 85 Ill. App. 3d 507, 40 Ill. Dec. 877, 407 N.E.2d 108 (2 Dist. 1980).

- Mandamus

The propriety of ordering that a mandamus writ issue, requiring that a meeting be open to the public, when it cannot affect a meeting already held and which applies to municipal duties generally, is questionable. People ex rel. Hopf v. Barger, 30 Ill. App. 3d 525, 332 N.E.2d 649 (2 Dist. 1975).

- Mootness

Even if allegations of a closed meeting stated a violation of this Act, the agency itself effectively remedied the violation by first voiding its decision to not conduct formal proceedings, allegedly reached at the closed meeting, and then by providing for a public hearing of the issues, the complaint became moot. People ex rel. Hartigan v. Illinois Commerce Comm'n, 131 Ill. App. 3d 376, 86 Ill. Dec. 421, 475 N.E.2d 635 (4 Dist. 1985).

Where the relief sought in a petition for mandamus becomes moot, it does not necessarily follow that the cause should be dismissed when the issues presented are of substantial public interest. People ex rel. Hopf v. Barger, 30 Ill. App. 3d 525, 332 N.E.2d 649 (2 Dist. 1975).

- Not Granted

Even though the election board might have violated the Open Meetings Act, 5 ILCS 120/1 et seq., by deliberating in private the objections to the candidates' nominating papers filed for an upcoming city election, the elections board's decisions to invalidate the candidates' nominations and keep their names off the ballots was not necessarily void as a result, and voiding the election

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board's decisions in the present case was not warranted. Powell v. E. St. Louis Electoral Bd., 337 Ill. App. 3d 334, 271 Ill. Dec. 820, 785 N.E.2d 1014, 2003 Ill. App. LEXIS 243 (5 Dist. 2003).

Where the plaintiff failed to assert specifically in what manner a meeting for a hearing on school district consolidation was repugnant to orderly administration, the public interest, or the interests of the parties, failed to assert the violation within the period provided for in this statute, and failed on appeal to indicate with any specificity the detrimental effects of conducting the first day of the hearing on a legal holiday, the meeting was not void. Bromberek Sch. Dist. v. Sanders, 174 Ill. App. 3d 301, 124 Ill. Dec. 228, 528 N.E.2d 1336 (1 Dist. 1988).

- Prospective Actions

The trial court did not err in refusing (1) to declare void a decision of the Athletic Council of Illinois State University recommending adoption of a management plan, (2) to order it to reconsider the issue of gender equity in an open meeting, and (3) to declare discussions in the Council's executive session null and void; however, the trial court should have granted injunctive relief by issuing an injunction against future violations of the Open Meetings Act. Board of Regents of Regency Univ. Sys. v. Reynard, 292 Ill. App. 3d 968, 227 Ill. Dec. 66, 686 N.E.2d 1222 (4 Dist. 1997).

Retroactivity

Where the parties enjoyed vested contract rights which could be destroyed if the court granted retroactive application to the 1982 amendments of subsection (c) of this section and invalidated the actions taken at a closed meeting, such impairment of contract rights would have been unconstitutional under both the state and federal Constitutions. Potter v. Judge, 112 Ill. App. 3d 81, 67 Ill. Dec. 585, 444 N.E.2d 821 (3 Dist. 1983).

Standing

- City Officials

Defendant city officials had standing to urge alleged constitutional defects in this Act to the extent that they could show that the provisions applied to them in their private or official capacity, and that they had been injured by the application of the Act or would suffer likely exposure to future injury. People ex rel. Hopf v. Barger, 30 Ill. App. 3d 525, 332 N.E.2d 649 (2 Dist. 1975).

Defendant city officials had standing to claim that this Act was unconstitutional because the individual defendants could have been subject to criminal sanctions while state legislators and their committees were exempted from such sanctions. People ex rel. Hopf v. Barger, 30 Ill. App. 3d 525, 332 N.E.2d 649 (2 Dist. 1975).

- Ratification of Prior Action

The school board's violation of this Act was an inadequate basis to render a sales contract between the parties void ab initio and unenforceable, since the board's decision to reschedule a public sale of school property was ratified in subsequent public meetings of the board. Board of Educ. v. Sikorski, 214 Ill. App. 3d 945, 158 Ill. Dec. 623, 574 N.E.2d 736 (1 Dist. 1991).

It is improper to declare a public body's decision null and void when its initial decision, although reached during an improper executive session, has been subsequently ratified by additional public meetings. Board of Educ. v. Sikorski, 214 Ill. App. 3d 945, 158 Ill. Dec. 623, 574 N.E.2d 736 (1 Dist. 1991).

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Timeliness of Complaint

- In General

The plain language of the Open Meetings Act provides for three time periods in which to file a claim: 1) before the meeting is held; 2) within 45 days of the violation; or 3) within 45 days of the discovery of a violation by the State's Attorney. For the third time period to be applicable, the State's Attorney must have actually found a violation. Asllani v. Board of Educ., 845 F. Supp. 1209 (N.D. Ill. 1993).

- Not Shown

The assertion of a violation of the Open Meetings Act was barred where the complaint was not brought within 60 days. Chicago Sch. Reform Bd. of Trustees v. Martin, 309 Ill. App. 3d 924, 243 Ill. Dec. 428, 723 N.E.2d 731, 1999 Ill. App. LEXIS 879 (1 Dist. 1999).

- Shown

Where the plaintiff filed a complaint 194 days after a zoning board's allegedly violative meeting, it was clearly beyond the limits of the statutory time period; however, there was no evidence that the State's Attorney ever discovered the occurrence of the meeting and, therefore, the 45-day period after such discovery had not run making the plaintiff's complaint timely filed within the statutory limit. Safanda v. Zoning Bd. of Appeals, 203 Ill. App. 3d 687, 149 Ill. Dec. 134, 561 N.E.2d 412 (2 Dist. 1990).

- Waiver

Where the plaintiff failed to complain of an alleged violation within the 45 day time period provided for in subsection (a) of this section, the issue was waived. Bromberek Sch. Dist. v. Sanders, 174 Ill. App. 3d 301, 124 Ill. Dec. 228, 528 N.E.2d 1336 (1 Dist. 1988).

OPINIONS OF ATTORNEY GENERAL

Limitations Period

- Not Met

When more than 45 days passed since joint meeting of county boards to discuss local control of schools and since the State's Attorney became aware of a possible violation, no action could be brought under this Act to invalidate the joint resolution. 1995 Op. Atty. Gen. (95-004).

§ 5 ILCS 120/3.5. Public Access Counselor; opinions

Sec. 3.5. Public Access Counselor; opinions. (a) A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. The request for review must be in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation.

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(b) Upon receipt of a request for review, the Public Access Counselor shall determine whether further action is warranted. If the Public Access Counselor determines from the request for review that the alleged violation is unfounded, he or she shall so advise the requester and the public body and no further action shall be undertaken. In all other cases, the Public Access Counselor shall forward a copy of the request for review to the public body within 7 working days. The Public Access Counselor shall specify the records or other documents that the public body shall furnish to facilitate the review. Within 7 working days after receipt of the request for review, the public body shall provide copies of the records requested and shall otherwise fully cooperate with the Public Access Counselor. If a public body fails to furnish specified records pursuant to this Section, or if otherwise necessary, the Attorney General may issue a subpoena to any person or public body having knowledge of or records pertaining to an alleged violation of this Act. For purposes of conducting a thorough review, the Public Access Counselor has the same right to examine a verbatim recording of a meeting closed to the public or the minutes of a closed meeting as does a court in a civil action brought to enforce this Act.

(c) Within 7 working days after it receives a copy of a request for review and request for production of records from the Public Access Counselor, the public body may, but is not required to, answer the allegations of the request for review. The answer may take the form of a letter, brief, or memorandum. Upon request, the public body may also furnish the Public Access Counselor with a redacted copy of the answer excluding specific references to any matters at issue. The Public Access Counselor shall forward a copy of the answer or redacted answer, if furnished, to the person submitting the request for review. The requester may, but is not required to, respond in writing to the answer within 7 working days and shall provide a copy of the response to the public body.

(d) In addition to the request for review, and the answer and the response thereto, if any, a requester or a public body may furnish affidavits and records concerning any matter germane to the review.

(e) Unless the Public Access Counselor extends the time by no more than 21 business days by sending written notice to the requester and public body that includes a statement of the reasons for the extension in the notice, or decides to address the matter without the issuance of a binding opinion, the Attorney General shall examine the issues and the records, shall make findings of fact and conclusions of law, and shall issue to the requester and the public body an opinion within 60 days after initiating review. The opinion shall be binding upon both the requester and the public body, subject to administrative review under Section 7.5 of this Act [5 ILCS 120/7.5].

In responding to any written request under this Section 3.5, the Attorney General may exercise his or her discretion and choose to resolve a request for review by mediation or by a means other than the issuance of a binding opinion. The decision not to issue a binding opinion shall not be reviewable.

Upon receipt of a binding opinion concluding that a violation of this Act has occurred, the public body shall either take necessary action as soon as practical to comply with the directive of the opinion or shall initiate administrative review under Section 7.5. If the

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opinion concludes that no violation of the Act has occurred, the requester may initiate administrative review under Section 7.5.

(f) If the requester files suit under Section 3 [5 ILCS 120/3] with respect to the same alleged violation that is the subject of a pending request for review, the requester shall notify the Public Access Counselor, and the Public Access Counselor shall take no further action with respect to the request for review and shall so notify the public body.

(g) Records that are obtained by the Public Access Counselor from a public body for purposes of addressing a request for review under this Section 3.5 may not be disclosed to the public, including the requester, by the Public Access Counselor. Those records, while in the possession of the Public Access Counselor, shall be exempt from disclosure by the Public Access Counselor under the Freedom of Information Act [5 ILCS 140/1 et seq.].

(h) The Attorney General may also issue advisory opinions to public bodies regarding compliance with this Act. A review may be initiated upon receipt of a written request from the head of the public body or its attorney. The request must contain sufficient accurate facts from which a determination can be made. The Public Access Counselor may request additional information from the public body in order to facilitate the review. A public body that relies in good faith on an advisory opinion of the Attorney General in complying with the requirements of this Act is not liable for penalties under this Act, so long as the facts upon which the opinion is based have been fully and fairly disclosed to the Public Access Counselor.

(Source: P.A. 96-542, § 5.)

Effective Date. Section 99 of P.A. 96-542 made this section effective January 1, 2010.

§ 5 ILCS 120/4. [Penalty]

Sec. 4. Any person violating any of the provisions of this Act, except subsection (b) or (c) of Section 1.05 [5 ILCS 120/1.05], shall be guilty of a Class C misdemeanor.

(Source: P.A. 77-2549; 97-504, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 102, Para. 44.

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Effect of Amendments. The 2011 amendment by P.A. 97-504, effective January 1, 2012, inserted "except subsection (b) or (c) of Section 1.05."

OPINIONS OF ATTORNEY GENERAL

Closed Meetings

- Disclosure by Members

Absent an express statutory provision so providing, public bodies do not have the power to sanction their members for disclosing the substance of deliberations conducted or actions taken at a closed meeting. 1991 Op. Atty. Gen. (91-001).

§ 5 ILCS 120/5. [Severability]

Sec. 5. If any provision of this Act, or the application of this Act to any particular meeting or type of meeting is held invalid or unconstitutional, such decision shall not affect the validity of the remaining provisions or the other applications of this Act.

(Source: Laws 1957, p. 2892.)

Note.

This section was Ill.Rev.Stat., Ch. 102, Para. 45.

§ 5 ILCS 120/6. [Home rule units]

Sec. 6. The provisions of this Act constitute minimum requirements for home rule units; any home rule unit may enact an ordinance prescribing more stringent requirements binding upon itself which would serve to give further notice to the public and facilitate public access to meetings.

(Source: P.A. 78-448.)

Note.

This section was Ill.Rev.Stat., Ch. 102, Para. 46.

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§ 5 ILCS 120/7. Attendance by a means other than physical presence

Sec. 7. Attendance by a means other than physical presence. (a) If a quorum of the members of the public body is physically present as required by Section 2.01 [5 ILCS 120/2.01], a majority of the public body may allow a member of that body to attend the meeting by other means if the member is prevented from physically attending because of: (i) personal illness or disability; (ii) employment purposes or the business of the public body; or (iii) a family or other emergency. "Other means" is by video or audio conference.

(b) If a member wishes to attend a meeting by other means, the member must notify the recording secretary or clerk of the public body before the meeting unless advance notice is impractical.

(c) A majority of the public body may allow a member to attend a meeting by other means only in accordance with and to the extent allowed by rules adopted by the public body. The rules must conform to the requirements and restrictions of this Section, may further limit the extent to which attendance by other means is allowed, and may provide for the giving of additional notice to the public or further facilitate public access to meetings.

(d) The limitations of this Section shall not apply to (i) closed meetings of (A) public bodies with statewide jurisdiction, (B) Illinois library systems with jurisdiction over a specific geographic area of more than 4,500 square miles, or (C) municipal transit districts with jurisdiction over a specific geographic area of more than 4,500 square miles or (ii) open or closed meetings of State advisory boards or bodies that do not have authority to make binding recommendations or determinations or to take any other substantive action. State advisory boards or bodies, public bodies with statewide jurisdiction, Illinois library systems with jurisdiction over a specific geographic area of more than 4,500 square miles, and municipal transit districts with jurisdiction over a specific geographic area of more than 4,500 square miles, however, may permit members to attend meetings by other means only in accordance with and to the extent allowed by specific procedural rules adopted by the body.

(Source: P.A. 94-1058, § 5; 96-664, § 5; 96-1043, § 5.)

Effective Date. This section is effective January 1, 2007, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2009 amendment by P.A. 96-664, effective August 25, 2009, added "or that are Illinois library systems with jurisdiction over a specific geographic area of more than 4,500 square miles" twice in (d).

The 2010 amendment by P.A. 96-1043, effective January 1, 2011, in the first sentence of (d), added the items (i)(A) and (i)(B) designations and added item (i)(C); deleted "or that are"

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preceding "Illinois library" in the first and second sentences of (d); inserted "and municipal transit districts with jurisdiction over a specific geographic area of more than 4,500 square miles" in the second sentence of (d); and made related changes.

§ 5 ILCS 120/7.3. Duty to post information pertaining to benefits offered through the Illinois Municipal Retirement Fund

Sec. 7.3. Duty to post information pertaining to benefits offered through the Illinois Municipal Retirement Fund. (a) Within 6 business days after an employer participating in the Illinois Municipal Retirement Fund approves a budget, that employer must post on its website the total compensation package for each employee having a total compensation package that exceeds $75,000 per year. If the employer does not maintain a website, the employer must post a physical copy of this information at the principal office of the employer. If an employer maintains a website, it may choose to post a physical copy of this information at the principal office of the employer in lieu of posting the information directly on the website; however, the employer must post directions on the website on how to access that information.

(b) At least 6 days before an employer participating in the Illinois Municipal Retirement Fund approves an employee's total compensation package that is equal to or in excess of $150,000 per year, the employer must post on its website the total compensation package for that employee. If the employer does not maintain a website, the employer shall post a physical copy of this information at the principal office of the employer. If an employer maintains a website, it may choose to post a physical copy of this information at the principal office of the employer in lieu of posting the information directly on the website; however, the employer must post directions on the website on how to access that information.

(c) For the purposes of this Section, "total compensation package" means payment by the employer to the employee for salary, health insurance, a housing allowance, a vehicle allowance, a clothing allowance, bonuses, loans, vacation days granted, and sick days granted.

(Source: P.A. 97-609, § 5.)

Effective Date. Section 99 of P.A. 97-609 made this section effective January 1, 2012.

§ 5 ILCS 120/7.5. Administrative review

Sec. 7.5. Administrative review. A binding opinion issued by the Attorney General shall be considered a final decision of an administrative agency, for purposes of administrative review under the Administrative Review Law (735 ILCS 5rt. III). An action for

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administrative review of a binding opinion of the Attorney General shall be commenced in Cook or Sangamon County. An advisory opinion issued to a public body shall not be considered a final decision of the Attorney General for purposes of this Section.

(Source: P.A. 96-542, § 5.)

Effective Date. Section 99 of P.A. 96-542 made this section effective January 1, 2010.

FREEDOM OF INFORMATION

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Freedom of Information Act

Sec.

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5 ILCS 140/1.1.[Short title]
5 ILCS 140/1.2.Presumption
5 ILCS 140/2.Definitions
5 ILCS 140/2.5.Records of funds
5 ILCS 140/2.10.Payrolls
5 ILCS 140/2.15.Arrest reports and criminal history records
5 ILCS 140/2.20.Settlement agreements
5 ILCS 140/3.[Provision of public records]
5 ILCS 140/3.1.Requests for commercial purposes
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5 ILCS 140/4.[Public bodies to display information]
5 ILCS 140/5.[Records list]
5 ILCS 140/6.Authority to charge fees
5 ILCS 140/7.Exemptions
5 ILCS 140/7.1.[Repealed.]
5 ILCS 140/7.5.Statutory Exemptions
5 ILCS 140/8.[Repealed.]
5 ILCS 140/9.[Notice of denial]
5 ILCS 140/9.5.Public Access Counselor; opinions
5 ILCS 140/10.[Repealed.]
5 ILCS 140/11. [Injunctive or declaratory relief]
5 ILCS 140/11.5.Administrative review

§ 5 ILCS 140/1. [Public policy]

Sec. 1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act. Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.

The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government

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to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act.

This Act is not intended to cause an unwarranted invasion of personal privacy, nor to allow the requests of a commercial enterprise to unduly burden public resources, or to disrupt the duly-undertaken work of any public body independent of the fulfillment of any of the fore-mentioned rights of the people to access to information.

This Act is not intended to create an obligation on the part of any public body to maintain or prepare any public record which was not maintained or prepared by such public body at the time when this Act becomes effective, except as otherwise required by applicable local, State or federal law.

Restraints on access to information, to the extent permitted by this Act, are limited exceptions to the principle that the people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people. The provisions of this Act shall be construed in accordance with this principle. This Act shall be construed to require disclosure of requested information as expediently and efficiently as possible and adherence to the deadlines established in this Act.

The General Assembly recognizes that this Act imposes fiscal obligations on public bodies to provide adequate staff and equipment to comply with its requirements. The General Assembly declares that providing records in compliance with the requirements of this Act is a primary duty of public bodies to the people of this State, and this Act should be construed to this end, fiscal obligations notwithstanding.

The General Assembly further recognizes that technology may advance at a rate that outpaces its ability to address those advances legislatively. To the extent that this Act may not expressly apply to those technological advances, this Act should nonetheless be interpreted to further the declared policy of this Act that public records shall be made available upon request except when denial of access furthers the public policy underlying a specific exemption.

This Act shall be the exclusive State statute on freedom of information, except to the extent that other State statutes might create additional restrictions on disclosure of information or other laws in Illinois might create additional obligations for disclosure of information to the public.

(Source: P.A. 83-1013; 96-542, § 10.)

Derivation.

Title: An Act in relation to access to public records and documents.

Cite: 5 ILCS 140/1 et seq.

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Source: P.A. 83-1013.

Date: Certified December 27, 1983.

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 201.

Cross References.

As to the exemption from the copying and inspection provisions of this Act with regard to written communications by the Department of Public Aid in relationship to a determination that a licensed health care professional's practice is a danger to the public, see 305 ILCS 5/8A-7.1.

As to the confidentiality of indices and records of the Department on Aging under the Elder Abuse Demonstration Project Act, see 320 ILCS 15/8.

As to exemptions from the provisions of this Act regarding the making public of information, see the following sections: As to information with regard to health finance data collection under the Health Finance Reform Act, see 20 ILCS 2215/4-2; as to applications, records, and deliberations of the Experimental Organ Transplantation Procedures Board, see 20 ILCS 3935/4; as to records of judicial and administrative proceedings with regard to the domestication of foreign and alien insurance companies, see 215 ILCS 5/186.1; as to a document containing a summary of the basis for a refusal to issue a license under the Reinsurance Intermediary Act, see 215 ILCS 100/10; as to information submitted by hospitals to the Comprehensive Health Insurance Board, see 215 ILCS 105/14; as to the contents of any particular examination with regard to licensure under the Architecture Practice Act of 1989, see 225 ILCS 305/12; as to the information gathered pursuant to the Sexually Transmissible Disease Control Act, see 410 ILCS 325/5; as to reports of HIV infection or AIDS, see 410 ILCS 325/5.5; as to information obtained under the Radon Testing Act pertaining to the medical condition of any identified individual, or the levels of radon or radon progeny in an identified dwelling, see 420 ILCS 45/3; as to written victim impact statements, see 730 ILCS 105/35.

As to the exemption from the copying and inspection provisions of this Act with regard to any evidence or communication by the director of the Department of Mental Health and Developmental Disabilities that the continued practice by a licensed health care professional constitutes an immediate danger to the public, see 20 ILCS 1705/56.

As to the use of assessment records available under this Act for the purpose of determining experience with regard to obtaining a real estate appraiser's license, see 225 ILCS 455/36.11.

As to the confidentiality of information within a groundwater protection needs assessment under the Environmental Protection Act, see 415 ILCS 5/17.1.

As to the circumstances which would allow the release of information gathered pursuant to the Sexually Transmissible Disease Control Act, see 410 ILCS 325/8.

For application to meetings of the Financial Advisory Authority, see 65 ILCS 5/8-12-12.

As to patient records disclosed pursuant to properly issued subpoena, see 420 ILCS 40/45.

Illinois Administrative Code.

See 2 Illinois Administrative Code, §§ 1226.10, 1270.110, 1901.110, 1925.260, 3001.10, 3201.10, 5155.130, 601.100, 926.200.

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Effect of Amendments. The 2009 amendment by P.A. 96-542, effective January 1, 2010, added the second paragraph; in the third paragraph, substituted "cause an unwarranted invasion of personal" for "be used to violate individual," substituted "to allow the requests of" for "for the purpose of furthering," and added "to unduly burden public resources"; rewrote the fourth paragraph, which formerly read: "These restraints on information access should be seen as limited exceptions to the general rule that the people have a right to know the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people. The provisions of this Act shall be construed to this end"; and added the fifth and sixth paragraphs.

CASE NOTES

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In General

Issue of whether the board of a private school was subject to Illinois open meetings or freedom of information legislation was not determinative of whether the school was a local public entity entitled to immunity from tort liability. Brugger v. Joseph Acad., Inc., 202 Ill. 2d 435, 269 Ill. Dec. 472, 781 N.E.2d 269, 2002 Ill. LEXIS 960 (2002).

A minor impairment cannot overcome the disclosure mandate of firearm owner's identification (FOID). Cooper v. Illinois Dep't of Lottery, 266 Ill. App. 3d 1007, 203 Ill. Dec. 926, 640 N.E.2d 1299 (1 Dist. 1994).

There is a presumption that public records be open and accessible, subject only to exemptions that are to be narrowly construed. Carbondale Convention Ctr., Inc. v. City of Carbondale, 245 Ill. App. 3d 474, 185 Ill. Dec. 405, 614 N.E.2d 539 (5 Dist. 1993).

This Act pertains only to the availability of public records and does not in any way protect the use of the information once received. Zientara v. Long Creek Tp., 211 Ill. App. 3d 226, 155 Ill. Dec. 688, 569 N.E.2d 1299 (4 Dist. 1991).

Accessibility of Information

Attorney General's rendering of written opinions to the Illinois State Board of Education was part of his legal duties pursuant to Section 4 of the Attorney General Act, 15 ILCS 205/4, and as such, could be part of the attorney-client privilege that was exempt from disclosure under the Freedom of Information Act, 5 ILCS 140/1 et seq.; pursuant to 5 ILCS 140/11(f), a trial court should conduct an in camera inspection of the records to determine if any part thereof could be withheld. Ill. Educ. Ass'n v. Ill. State Bd. of Educ., 204 Ill. 2d 456, 274 Ill. Dec. 430, 791 N.E.2d 522, 2003 Ill. LEXIS 783 (2003).

- Format

A county was entitled to elect, pursuant to its administrative authority under this Act, to furnish requested information regarding employees in certain county departments on a computer printout rather than on computer tape; accessibility of information, not convenience of format to the parties, is the focal point of this Act. AFSCME v. County of Cook, 182 Ill. App. 3d 941, 131 Ill. Dec. 401, 538 N.E.2d 776 (1 Dist. 1989).

Attorney Fees

It was error for the trial court to award attorney fees to the petitioner, because the petitioner was only entitled to a copy of the grand jury transcripts pursuant to 725 ILCS 5/112-6(c)(3), and the Illinois Code of Criminal Procedure of 1963, 725 ILCS 5/100-1 et seq., did not allow him to recover his fees, when it would be absurd to construe the statute to forbid a government body from disclosing certain records without a court order and then require it to pay the applicant's

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attorney fees in securing the court order. Taliani v. Herrmann, Ill. App. 3d , 353 Ill. Dec. 688, 956 N.E.2d 550, 2011 Ill. App. LEXIS 899 (3 Dist. 2011).

- Township Officer

Where the trustees of a township brought an action against a township officer, in his official capacity, to compel him to produce certain records of the township which were in his possession for the purposes of carrying out his duties as treasurer, the officer was entitled to reasonable attorney fees incurred as a result of defending those proceedings. Wayne Tp. Bd. of Auditors v. Ludwig, 154 Ill. App. 3d 899, 107 Ill. Dec. 535, 507 N.E.2d 199 (2 Dist. 1987).

Burden of Proof

- Exemption from Disclosure

Pursuant to the public policy embodied in the Freedom of Information Act, 5 ILCS 140/1 et seq., to provide open and accessible public records, and the competing policy of protecting the attorney-client privilege, the exemption from disclosure of documents under 5 ILCS 140/7(1)(n) is to be narrowly construed; it is the public body's burden to show its right to the exemption and a conclusory affidavit does not meet that burden, however, an in camera review by the court does constitute an appropriate procedure for such review. Ill. Educ. Ass'n v. Ill. State Bd. of Educ., 204 Ill. 2d 456, 274 Ill. Dec. 430, 791 N.E.2d 522, 2003 Ill. LEXIS 783 (2003).

In an action under the Freedom of Information Act, 5 ILCS 140/1 et seq., in which a landlord sought the names and addresses of all freshmen from a university, it was error to grant summary judgment in favor of the university because the presumption was that all public records were open and accessible and that the university had the burden to establish that the information was exempted from disclosure under 5 ILCS 140/7 Lieber v. Southern Ill. Univ., 279 Ill. App. 3d 553, 216 Ill. Dec. 227, 664 N.E.2d 1155, 1996 Ill. App. LEXIS 339 (1 Dist. 1996).

The burden of proof was on the governmental agency to establish that the documents were exempt from disclosure. Carbondale Convention Ctr., Inc. v. City of Carbondale, 245 Ill. App. 3d 474, 185 Ill. Dec. 405, 614 N.E.2d 539 (5 Dist. 1993).

The burden of proof was on the Department of Corrections to establish that the material in question was exempt from disclosure; to meet its burden, the Department had to establish, as a matter of fact, that the material was preliminary rather than final. Hoffman v. Department of Cors., 158 Ill. App. 3d 473, 110 Ill. Dec. 582, 511 N.E.2d 759 (1 Dist. 1987).

Civil Contempt

In custody determination case, where petitioner-father was prime suspect in investigation for attempt murder of mother, an Illinois State police officer and a nonparty to dissolution of marriage case, who refused to disclose certain requested information about the criminal investigation, other than the fact that petitioner and his brother were suspects, was properly held in civil contempt and fined $1,000 for each day he refused to comply with discovery order requiring him to disclose some of the information requested by petitioner. In re Daniels, 240 Ill. App. 3d 314, 180 Ill. Dec. 742, 607 N.E.2d 1255 (1 Dist. 1992).

Collective Bargaining

The court erred in ruling that a teachers' union must attempt to obtain information regarding a school district's parents and students under the union's collective bargaining agreement prior to bringing suit under this Act; the union was entitled to the desired information under the provisions

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of this Act. Local 1274, Ill. Fed'n of Teachers v. Niles Tp. High Sch., 276 Ill. App. 3d 714, 213 Ill. Dec. 388, 659 N.E.2d 18 (1 Dist. 1995).

Compliance

Car buyer's claim against the Secretary of State for the immediate turnover of vehicle ownership records under the Freedom of Information Act, 5 ILCS 140/1 et seq., was properly dismissed, The more specific 10-day provisions of 625 ILCS 5/2-123(f), pertaining to the regulation of vehicle title searches controlled the buyer's request. McCready v. Ill. Secy. of State, 382 Ill. App. 3d 789, 321 Ill. Dec. 183, 888 N.E.2d 702, 2008 Ill. App. LEXIS 428 (1 Dist. 2008), appeal denied, 229 Ill. 2d 670, 900 N.E.2d 1119, 2008 Ill. LEXIS 1483 (2008).

For purposes of determining whether Illinois Cancer Registry data should be released in response to a request under the Freedom of Information Act (FOIA), 5 ILCS 140/1 et seq., the phrase in the Illinois Health and Hazardous Substances Registry Act, 410 ILCS 525/4(d), that prohibits the public inspection or dissemination of any group of facts that tends to lead to the identity of any person whose condition or treatment information is submitted to the Registry means any group of facts that reasonably would tend to lead to the identity of specific persons. Thus, cancer registry information was properly ordered released to a newspaper under the FOIA where it was unlikely that the release of the data led to the identity of the persons described therein. Southern Illinoisan v. Dep't of Pub. Health, 349 Ill. App. 3d 431, 285 Ill. Dec. 438, 812 N.E.2d 27, 2004 Ill. App. LEXIS 677 (5 Dist. 2004), aff'd, 218 Ill. 2d 390, 300 Ill. Dec. 329, 844 N.E.2d 1 (2006).

This act does not state that a public body may reply to information requests by supplying different public records than those for which the requester asked; rather, the public body must make the public record available. AFSCME v. County of Cook, 136 Ill. 2d 334, 144 Ill. Dec. 242, 555 N.E.2d 361 (1990).

The public body must make the public record available, including computer tapes, unless it can properly invoke an exception. AFSCME v. County of Cook, 136 Ill. 2d 334, 144 Ill. Dec. 242, 555 N.E.2d 361 (1990).

Construction with Other Law

In a cross appeal involving a records request dispute wherein the requestor sought all citizen complaints made against a deputy sheriff held by the sheriff's office, the trial court erred by allowing the sheriff to withhold unfounded complaints of wrongdoing by the deputy sheriff in the performance of his duties as such information did not constitute an invasion of privacy under 5 ILCS 140/7(1)(b). Gekas v. Williamson, 393 Ill. App. 3d 573, 332 Ill. Dec. 161, 912 N.E.2d 347, 2009 Ill. App. LEXIS 687 (4 Dist. 2009).

Defendants' motion to dismiss a former charter school employee's 42 U.S.C. § 1983 action was denied because defendant corporation was a state actor for purposes of the instant lawsuit as the corporation considered itself the governing body of the charter school, and thus, under the Illinois Charter School Act, 105 ILCS 5/27A-5(c), it was subject to same disclosure requirements under the Freedom of Information Act, 5 ILCS 140/1, and the Open Meetings Act, 5 ILCS 120/1, that were applicable to other government entities. Jordan v. Northern Kane Educ. Corp., F. Supp. 2d , 2009 U.S. Dist. LEXIS 15794 (N.D. Ill. Mar. 2, 2009).

County election commission and its chairman did not violate the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., in denying a request by a citizen under 5 ILCS 140/3(a) to examine the ballots, ballot box tapes, and poll signature cards from an election because the election records were exempt from disclosure under 5 ILCS 140/7(1)(a) as the disclosure of the requested election records was prohibited by 10 ILCS 5/17-20 and 10 ILCS 5/17-22 of the Illinois Election Code, 10

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ILCS 5 - 1 et seq. Kibort v. Westrom, 371 Ill. App. 3d 247, 308 Ill. Dec. 676, 862 N.E.2d 609, 2007 Ill. App. LEXIS 32 (1 Dist. 2007).

Construction With Other Law

There is no patent conflict between the plain language of the Freedom of Information Act, 5 ILCS 140/1 et seq., and the Unified Code of Corrections, 730 ILCS 5/3-7-2(e). The Freedom of Information Act creates a general right of access to public records and includes no specific limitation on an inmate's ability to exercise this right, while the Corrections Code authorizes the Department of Corrections to inspect inmate mail for materials affecting security or safety whether or not such material is otherwise available to the public. Holloway v. Meyer, 311 Ill. App. 3d 818, 244 Ill. Dec. 703, 726 N.E.2d 678, 1999 Ill. App. LEXIS 977 (1 Dist. 2000).

Effective Date

This Act clearly applies to records and reports prepared or received on or after July 1, 1984. Carrigan v. Harkrader, 146 Ill. App. 3d 535, 100 Ill. Dec. 148, 496 N.E.2d 1213 (3 Dist. 1986).

Executions

Based on information supplied by the Illinois Department of Corrections, Public Information Office, at the time of action, there were 107 prisoners on death row in Illinois, and given the length of time that had elapsed since the legislature had required executions to be made by lethal injection, the trial court could have found it implausible that the Department's material relating to executions by lethal injection remained preliminary; therefore, the plaintiff's request for information as to what drugs were to be used by the Department to execute people pursuant to the Illinois death penalty should be honored. Hoffman v. Department of Cors., 158 Ill. App. 3d 473, 110 Ill. Dec. 582, 511 N.E.2d 759 (1 Dist. 1987).

Exhaustion of Administrative Remedies

This Act contains no requirement that administrative remedies be exhausted prior to bringing a claim. Local 1274, Ill. Fed'n of Teachers v. Niles Tp. High Sch., 276 Ill. App. 3d 714, 213 Ill. Dec. 388, 659 N.E.2d 18 (1 Dist. 1995).

Federal Law

Case law construing the federal statute should be used in Illinois to interpret the State Freedom of Information Act. Cooper v. Illinois Dep't of Lottery, 266 Ill. App. 3d 1007, 203 Ill. Dec. 926, 640 N.E.2d 1299 (1 Dist. 1994).

Final Documents

Governmental agencies cannot clothe material regarding the affairs of government with an exemption from public disclosure by ipse dixit statements that the material is part of a preliminary draft; if it appears that governmental material is de facto part of a final document, rather than a preliminary draft, it is subject to public disclosure under this Act regardless of protestations by the governmental agency. Hoffman v. Department of Cors., 158 Ill. App. 3d 473, 110 Ill. Dec. 582, 511 N.E.2d 759 (1 Dist. 1987).

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Legislative Intent

Organization interested in obtaining documents from a legislatively-mandated study of criminal identification procedures used by police agencies was entitled to production of report data in closed cases. A presumption in favor of disclosure existed in cases seeking materials under the Freedom of Information Act, 5 ILCS 140/1 et seq., and the police agencies did not rebut that presumption. Nat'l Ass'n of Crim. Def. Lawyers v. Chi. Police Dep't, 399 Ill. App. 3d 1, 338 Ill. Dec. 358, 924 N.E.2d 564, 2010 Ill. App. LEXIS 146 (1 Dist. 2010).

This Act is not designed to provide access to information to the extent that it disrupts the efficient functioning of a government agency. AFSCME v. County of Cook, 136 Ill. 2d 334, 144 Ill. Dec. 242, 555 N.E.2d 361 (1990).

Liberal Construction

In order to foster governmental accountability and an informed citizenry, the public policy of this state encourages a free flow and disclosure of information between the government and the people; this Act is to be liberally construed to achieve this goal, under a presumption that public records are open and accessible, subject only to exemptions that are to be read narrowly. Baudin v. City of Crystal Lake, 192 Ill. App. 3d 530, 139 Ill. Dec. 554, 548 N.E.2d 1110 (2 Dist. 1989).

New Records

Township officials were not obligated under the terms of this Act to answer general inquiry questions since this would have required creation of a new record or answering of questions based upon information not contained in any record. Kenyon v. Garrels, 184 Ill. App. 3d 28, 132 Ill. Dec. 595, 540 N.E.2d 11 (4 Dist. 1989).

No duty is imposed on a public body to create a new record in order to comply with a request pursuant to this Act. Hamer v. Lentz, 132 Ill. 2d 49, 138 Ill. Dec. 222, 547 N.E.2d 191 (1989).

Pension Information

- General Assembly Members

Information regarding state pension payments received by former members of the General Assembly are subject to the disclosure provisions of this Act. Hamer v. Lentz, 171 Ill. App. 3d 888, 121 Ill. Dec. 738, 525 N.E.2d 1045 (1 Dist. 1988), rev'd on other grounds, 132 Ill. 2d 49, 138 Ill. Dec. 222, 547 N.E.2d 191 (1989).

Pleadings Sufficient

(Unpublished) Court found that inmate had stated sufficient facts to state a claim for the privileged mail count, but found that the mail marked "legal" did not meet the qualifications for legal mail; therefore, the Freedom of Information Act, 5 ILCS 140/1 et seq., claim survived the motion to dismiss, 735 ILCS 5/2-615, based on inmate's allegation. Beahringer v. Roberts, 334 Ill. App. 3d 622, 267 Ill. Dec. 110, 776 N.E.2d 247, 2002 Ill. App. LEXIS 408 (3 Dist. 2002).

Presumption

Pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., a presumption exists that public records be open and accessible.

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Public Records

- Employment Contract

Public interested in fulfilling its duties to monitor government had to be allowed the most access to public records possible and, thus, the Freedom of Information Act, 5 ILCS 140/1 et seq., had to be accorded a liberal construction to that end. As a result, the resident was entitled to have disclosed to the resident the requested school superintendent's employment contract to the extent that it disclosed the school superintendent's public duties and the public funds used to pay the school superintendent; although the resident was not entitled to disclosure of purely personal information such as bank account and social security number information. Stern v. Wheaton-Warrenville Cmty. Unit Sch. Dist. 200, 233 Ill. 2d 396, 331 Ill. Dec. 12, N.E.2d , 2009 Ill. LEXIS 388 (2009).

Psychological Evaluation Material

Allowing psychological examination material to remain confidential is in keeping with the legislative intent of this Act. Roulette v. Department of Cent. Mgt. Servs., 141 Ill. App. 3d 394, 95 Ill. Dec. 587, 490 N.E.2d 60 (1 Dist. 1986).

Purpose

The main purpose of this Act is to ensure that the public be given full and complete information regarding the affairs of government. Hoffman v. Department of Cors., 158 Ill. App. 3d 473, 110 Ill. Dec. 582, 511 N.E.2d 759 (1 Dist. 1987).

Purpose of this Act is to provide disclosure of information about government's affairs and its representatives' official acts. Carrigan v. Harkrader, 146 Ill. App. 3d 535, 100 Ill. Dec. 148, 496 N.E.2d 1213 (3 Dist. 1986).

Remedies

- On Appeal

Where the relevancy of the Freedom of Information Act was resolved in the trial court and not appealed, plaintiff could not claim that remedies under the Act were relevant on appeal. Ebert ex rel. Town of Maine v. Thompson, 282 Ill. App. 3d 385, 218 Ill. Dec. 21, 668 N.E.2d 184 (1 Dist. 1996), appeal denied, 168 Ill. 2d 587, 219 Ill. Dec. 562, 671 N.E.2d 729 (1996).

School Records

- Confidential Information

A school's refusal to delete from requested records the confidential information facilitating the identification of individual students, i.e., the name, sex and race of students, would defeat the purposes of this Act. Bowie v. Evanston Community Consol. Sch. Dist., 168 Ill. App. 3d 101, 119 Ill. Dec. 7, 522 N.E.2d 669 (1 Dist. 1988).

- Masking

Masking the names and sexes of students and scrambling the alphabetical order of records of school test results did not constitute the creation of new records. Bowie v. Evanston Community Consol. Sch. Dist., 168 Ill. App. 3d 101, 119 Ill. Dec. 7, 522 N.E.2d 669 (1 Dist. 1988).

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- Test Scores

The disclosure of certain standardized test score records in a masked and scrambled format would not violate this Act. Bowie v. Evanston Community Consol. Sch., 128 Ill. 2d 373, 131 Ill. Dec. 182, 538 N.E.2d 557 (1989).

Substitute Information

- Discretion of Court

Courts have no discretion under this Act to determine that the release of information other than that requested is a sufficient substitute. Bowie v. Evanston Community Consol. Sch. Dist., 168 Ill. App. 3d 101, 119 Ill. Dec. 7, 522 N.E.2d 669 (1 Dist. 1988).

Tax Records

A motor fuel purchaser who challenged deficiencies assessed against it by the Department of Revenue in an administrative hearing was entitled to tax records of motor fuel distributors regarding the amount of fuel sold to him and the amount of each retailer's occupation tax received by distributors; the records were not exempt from disclosure under this section or the Retailer's Occupation Tax Act (35 ILCS 120/1 et seq.). Pecora Oil Co. v. Johnson, 156 Ill. App. 3d 521, 108 Ill. Dec. 799, 509 N.E.2d 495 (2 Dist. 1987).

Use as Discovery Tool

City could not claim the right to be provided a defense or indemnity by a construction contractor's insurer because the city waited for more than two years to locate the insurer, through requesting copies of contracts under the Freedom on Information Act, 5 ILCS 140/1 et seq., notify the insurer of the claim, or include the insurer in settlement negotiations; summary judgment in favor of the insured was improper under 735 ILCS 5/2-1005. N. Ins. Co. of N.Y. v. City of Chicago, 325 Ill. App. 3d 1086, 259 Ill. Dec. 664, 759 N.E.2d 144, 2001 Ill. App. LEXIS 825 (1 Dist. 2001).

In spite of the plaintiff/physician's contention that he was the victim of fraudulent concealment by one or more of the defendants, which would have triggered the limitations tolling provision of 735 ILCS 5/13-215, given the discovery rule established by case law that limits the availability of such statutory tolling where a plaintiff, through this Act, could have discovered with due diligence the asserted fraud in reasonable time to permit a timely filing, the stale claim was barred. McCabe v. Caleel, 739 F. Supp. 387 (N.D. Ill. 1990), aff'd, 931 F.2d 895 (7th Cir. 1991).

OPINIONS OF ATTORNEY GENERAL

County Recorder Fees

A county recorder may not assess a fee against persons for accessing the records of the county recorder via the Internet. 2000 Op. Atty. Gen. 12.

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For article, "Survey of Illinois Law: Administrative Law," see 22 S. Ill. U.L.J. 809 (1998).

For article, "Survey of Illinois Law: Local Government," see 19 S. Ill. U.L.J. 877 (1995).

For article, "Survey of Illinois Law [1989-90] - Municipal Corporations," see 15 S. Ill. U.L.J. 1021 (1991).

For comment, "Freedom of Information Act - Illinois Adopts a New Public Records Statute," see 1985 S. Ill. U.L.J. 79.

For article, "Information Law Overview," see 18 J. Marshall L. Rev. 815 (1985).

RESEARCH REFERENCES

Actions brought under Freedom of Information Act, 5 U.S.C.A. §§ 522 et seq. - Supreme Court cases. 167 ALR Fed. 545.

What matters are exempt from disclosure under Freedom of Information Act (5 U.S.C.A. § 552(b)) as "specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy.", 169 ALR Fed. 495.

What constitutes preliminary drafts or notes provided by or for state or local governmental agency, or intra-agency memorandums, exempt from disclosure or inspection under state freedom of information act. 26 ALR4th 639.

Patient's right to disclosure of his or her own medical records under state freedom of information act. 26 ALR4th 701.

What constitutes personal matters exempt from disclosure by invasion of privacy exemption under state freedom of information act. 26 ALR4th 666.

What constitutes an agency subject to application of state freedom of information act. 27 ALR4th 742.

What are "records" of agency which must be made available under state freedom of information act. 27 ALR4th 680.

Intrusion by news-gathering entity as invasion of right of privacy. 69 ALR4th 1059.

Emergency exception under state law making proceedings by public bodies open to the public. 33 ALR5th 731.

Practice Guides and Treatises.

Civil Practice (Illinois) Volume III: Trying the Case § 6.17 License and Title Registrations (IICLE).

Civil Practice (Illinois) Volume III: Trying the Case § 6.16 Department of Transportation Records (IICLE).

Civil Practice (Illinois) Volume III: Trying the Case § 6.15 Tract Books (IICLE).

Civil Practice (Illinois) Volume III: Trying the Case § 6.14 Liquor License Records (IICLE).

Civil Practice (Illinois) Volume III: Trying the Case § 6.13 OSHA Standards (IICLE).

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Civil Practice (Illinois) Volume III: Trying the Case § 6.12 Building Permits (IICLE).

Civil Practice (Illinois) Volume III: Trying the Case § 6.11 Coroner's Records (IICLE).

Civil Practice (Illinois) Volume III: Trying the Case § 6.10 Ambulance Reports (IICLE).

Civil Practice (Illinois) Volume III: Trying the Case § 6.9 Police Reports and Other Records (IICLE).

Civil Practice (Illinois) Volume III: Trying the Case § 6.8 Public Documents (IICLE).

Civil Practice (Illinois) Volume I: Opening the Case § 2.19 Continuation of Fact Gathering Process (FOIA) (IICLE).

Construction Litigation § 1.83 Access to Information (Freedom of Information Act) (IICLE).

Practice Forms.

Public Documents, Civil Practice (Illinois) Volume III: Trying the Case § 6.8 (ICCLE).

§ 5 ILCS 140/1.1. [Short title]

Sec. 1.1. This Act may be cited as the Freedom of Information Act.

(Source: P.A. 86-1475.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 201.1.

This section was Ill.Rev.Stat., Ch. 102, Para. 46.

Cross References.

Concerning information on the application of this Act to state records, see 5 ILCS 160/26.

For information on the application of this Act to local records, see 50 ILCS 205/15.

CASE NOTES

Purpose

The purpose of the Freedom of Information Act is to ensure disclosure of information, not to protect information from disclosure. Roehrborn v. Lambert, 277 Ill. App. 3d 181, 213 Ill. Dec. 923, 660 N.E.2d 180 (1 Dist. 1995), appeal denied, 166 Ill. 2d 554, 216 Ill. Dec. 10, 664

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N.E.2d 647 (1996).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Administrative Law," see 20 S. Ill. U.L.J. 667 (1996).

§ 5 ILCS 140/1.2. Presumption

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

(Source: P.A. 96-542, § 10.)

Effective Date. Section 99 of P.A. 96-542 made this section effective January 1, 2010.

§ 5 ILCS 140/2. Definitions

Sec. 2. Definitions. As used in this Act:

(a) "Public body" means all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof, and a School Finance Authority created under Article 1E of the School Code [105 ILCS 5/1E-1 et seq.]. "Public body" does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act [20 ILCS 515/1 et seq.].

(b) "Person" means any individual, corporation, partnership, firm, organization or association, acting individually or as a group.

(c) "Public records" means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.

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(c-5) "Private information" means unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

(c-10) "Commercial purpose" means the use of any part of a public record or records, or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services. For purposes of this definition, requests made by news media and non-profit, scientific, or academic organizations shall not be considered to be made for a "commercial purpose" when the principal purpose of the request is (i) to access and disseminate information concerning news and current or passing events, (ii) for articles of opinion or features of interest to the public, or (iii) for the purpose of academic, scientific, or public research or education.

(d) "Copying" means the reproduction of any public record by means of any photographic, electronic, mechanical or other process, device or means now known or hereafter developed and available to the public body.

(e) "Head of the public body" means the president, mayor, chairman, presiding officer, director, superintendent, manager, supervisor or individual otherwise holding primary executive and administrative authority for the public body, or such person's duly authorized designee.

(f) "News media" means a newspaper or other periodical issued at regular intervals whether in print or electronic format, a news service whether in print or electronic format, a radio station, a television station, a television network, a community antenna television service, or a person or corporation engaged in making news reels or other motion picture news for public showing.

(g) "Recurrent requester", as used in Section 3.2 of this Act [5 ILCS 140/3.2], means a person that, in the 12 months immediately preceding the request, has submitted to the same public body (i) a minimum of 50 requests for records, (ii) a minimum of 15 requests for records within a 30-day period, or (iii) a minimum of 7 requests for records within a 7-day period. For purposes of this definition, requests made by news media and non-profit, scientific, or academic organizations shall not be considered in calculating the number of requests made in the time periods in this definition when the principal purpose of the requests is (i) to access and disseminate information concerning news and current or passing events, (ii) for articles of opinion or features of interest to the public, or (iii) for the purpose of academic, scientific, or public research or education.

For the purposes of this subsection (g), "request" means a written document (or oral request, if the public body chooses to honor oral requests) that is submitted to a public body via personal delivery, mail, telefax, electronic mail, or other means available to the public body and that identifies the particular public record the requester seeks. One request may identify multiple records to be inspected or copied.

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(Source: P.A. 85-1357; 88-614, § 92; 89-681, § 5; 90-144, § 7; 90-670, § 5; 91-935, § 30; 92-335, § 5; 92-468, § 10; 92-547, § 3; 92-651, § 7; 96-261, § 900; 96-542, § 10; 96-1000, § 10; 97-579, § 3.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 202.

Section 997 of P.A. 92-651 is a "no acceleration or delay" provision, and Section 998 is a "no revival or extension" provision.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Illinois Administrative Code.

See 2 Illinois Administrative Code, §§ 3001.20, 3201.20.

Effect of Amendments. The 1996 amendment by P.A. 89-681, effective December 13, 1996, in subsection (c), in the second sentence, substituted a semicolon for "and" preceding "(xiv)" and added at the end "and (xv) waiver documents filed with the State Superintendent of Education or the president of the University of Illinois under Section 30-12.5 of the School Code, concerning nominees for General Assembly scholarships under Sections 30-9, 30-10, and 30-11 of the School Code".

The 1997 amendment by P.A. 90-144, effective July 23, 1997, added subsection (f).

The 1998 amendment by P.A. 90-670, effective July 31, 1998, incorporated the amendment by P.A. 90-144; and added the clause designated as part (xvi) and made a related change in subsection (c).

The 2001 amendment by P.A. 91-935, effective June 1, 2001, in subsection (c) added item (xvii) and made a related change.

The 2001 amendment by P.A. 92-335, effective August 10, 2001, in subsection (f), inserted "whether in print or electronic format" in two places, and inserted "a television network".

The 2001 amendment by P.A. 92-468, effective August 22, 2001, inserted "or the Illinois Child Death Review Teams Executive Council" in the last sentence of subsection (a).

The 2002 amendment by P.A. 92-547, effective June 13, 2002, inserted "and a School Finance Authority created under Article 1E of the School Code" and made a related change in the first sentence of subsection (a).

The 2002 amendment by P.A. 92-651, effective July 11, 2002, combined the amendments by P.A. 92-335 and P.A. 92-468.

The 2009 amendment by P.A. 96-261, effective January 1, 2010, added item (xviii) in (c); and made a related change

The 2009 amendment by P.A. 96-542, effective January 1, 2010, substituted "thereof" for "which are supported in whole or in part by tax revenue, or which expend tax revenue" in the first sentence of (a); in (c), added "electronic communications" and "pertaining to the transaction of

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public business"; added (c-5); rewrote (c-10); added "now known or hereafter developed and available to the public body" in (d); and made stylistic changes.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, deleted former item (xviii) in (c), which read: "reports prepared by institutions of higher education in the State of Illinois documenting their relationship with credit card issuers, otherwise disclosed to the Illinois Board of Higher Education"; and made a related change.

The 2011 amendment by P.A. 97-579, effective August 26, 2011, added (g).

CASE NOTES

Analysis

Central Office
Public Body
- City Department
- Corporation
- Court Clerk
- Individual Alderman
- Judiciary
- University Athletic Council
Public Records
- Computer Tape
- Employment Contracts

Central Office

City was in compliance with requirement for a single central office file containing denials where each of its departments maintained such a file. Duncan Publishing, Inc. v. City of Chicago, 304 Ill. App. 3d 778, 237 Ill. Dec. 568, 709 N.E.2d 1281 (1 Dist. 1999), appeal denied, 185 Ill. 2d 622, 242 Ill. Dec. 136, 720 N.E.2d 1091 (1999).

Public Body

Where plaintiff alleged that defendants held the public position of "city engineer," plaintiff's Illinois Freedom of Information Act claim survived a motion to dismiss because defendants were alleged to have positions in the municipal government. Lathrop v. Juneau & Assocs., 220 F.R.D. 322, 2004 U.S. Dist. LEXIS 1820 (S.D. Ill. 2004).

- City Department

Each of the individual city departments was a subsidiary body of the city and therefore was a public body as defined by the Act. Duncan Publishing, Inc. v. City of Chicago, 304 Ill. App. 3d 778, 237 Ill. Dec. 568, 709 N.E.2d 1281 (1 Dist. 1999), appeal denied, 185 Ill. 2d 622, 242 Ill. Dec. 136, 720 N.E.2d 1091 (1999).

- Corporation

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Corporations were not "subsidiary bodies" of city as the city did not control the decision making process of the corporations and by contributing 50% of funding, the city did not render corporations public bodies. Hopf v. Topcorp, Inc., 256 Ill. App. 3d 887, 194 Ill. Dec. 814, 628 N.E.2d 311 (1 Dist. 1993), appeal denied, 154 Ill. 2d 560, 197 Ill. Dec. 486, 631 N.E.2d 708 (1994).

A preliminary injunction requesting compliance with this Act was properly denied where the plaintiff failed to prove that a for-profit corporation receiving city funds was a subsidiary body of the government or that it was itself a public entity. Hopf v. Topcorp, Inc., 170 Ill. App. 3d 85, 122 Ill. Dec. 629, 527 N.E.2d 1 (1 Dist. 1988).

- Court Clerk

Court clerk was a judicial employee, not a county employee or "public body" subject to the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq. Newman, Raiz & Shelmadine, LLC v. Brown, 394 Ill. App. 3d 602, 333 Ill. Dec. 711, 915 N.E.2d 782, 2009 Ill. App. LEXIS 892 (1 Dist. 2009).

- Individual Alderman

An individual alderman is not a "public body" as defined under this section, and is not the proper recipient of a request for records. Quinn v. Stone, 211 Ill. App. 3d 809, 156 Ill. Dec. 200, 570 N.E.2d 676 (1 Dist.), cert. denied, 141 Ill. 2d 559, 162 Ill. Dec. 507, 580 N.E.2d 133 (1991).

- Judiciary

The lack of any reference to the courts or judiciary must be taken as an intent to exclude the judiciary from the disclosure requirements of the Act. Copley Press, Inc. v. Administrative Office of Courts, 271 Ill. App. 3d 548, 207 Ill. Dec. 868, 648 N.E.2d 324 (2 Dist. 1995), appeal denied, 163 Ill. 2d 551, 212 Ill. Dec. 416, 657 N.E.2d 617 (1995).

- University Athletic Council

Athletic Council of Illinois State University is a public body and must comply with the Open Meetings Act and Freedom of Information Act. Board of Regents of Regency Univ. Sys. v. Reynard, 292 Ill. App. 3d 968, 227 Ill. Dec. 66, 686 N.E.2d 1222 (4 Dist. 1997).

Public Records

School superintendent's employment contract was a 5 ILCS 140/2 public record subject to disclosure under the Freedom of Information Act (FOIA) to the extent it disclosed the duties of the school superintendent and the public funds the school superintendent was paid to perform those duties. As a result, the resident was entitled to that document subject to the resident's FOIA request, but was not entitled to any information exempt from disclosure as recognized by 5 ILCS 140/3, including purely personal information that did not bear upon the school superintendent's duties and compensation. Stern v. Wheaton-Warrenville Cmty. Unit Sch. Dist. 200, 233 Ill. 2d 396, 331 Ill. Dec. 12, N.E.2d , 2009 Ill. LEXIS 388 (2009).

School district improperly refused an Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., request for a superintendent's employment contract because while a personnel file was per se exempted under 5 ILCS 140/7(1)(b)(ii), individual contracts were not also per se exempt simply because they were kept in such a file as employment contracts of public officials fell within the definition of public records in 5 ILCS 140/2(c)(vii), (viii) and 5 ILCS 140/8 permitted the disclosure of nonexempt documents contained within exempt public records; an in camera inspection under 5 ILCS 140/11(f) had to be undertaken to determine if the contract was exempt from disclosure. Stern v. Wheaton-Warrenville Cmty. Unit Sch. Dist. 200, 384 Ill. App. 3d 615, 323 Ill. Dec. 792,

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894 N.E.2d 818, 2008 Ill. App. LEXIS 826 (1 Dist. 2008), aff'd in part and vacated in part, remanded, 2009 Ill. LEXIS 388 (Ill. 2009).

City failed to comply with the requirements of 5 ILCS 140/3(a) when instead of providing plaintiff the opportunity to listen to original audiotapes of certain city council meetings, it offered him the opportunity to obtain and inspect copies of the tapes; based on the definitions of "public records" and "copying" found in 5 ILCS 140/2(c), (d), it was clear that compliance with 5 ILCS 140/3(a) required the production of original public records including audiotapes. DesPain v. City of Collinsville, 382 Ill. App. 3d 572, 320 Ill. Dec. 946, 888 N.E.2d 163, 2008 Ill. App. LEXIS 422 (1 Dist. 2008).

Because the definition of copying under 5 ILCS 140/2(d) means the reproduction of any public record it follows that the term "public record" as defined in § 2(c) and used in 5 ILCS 140/3(a) necessarily refers to a public body's original record. DesPain v. City of Collinsville, 382 Ill. App. 3d 572, 320 Ill. Dec. 946, 888 N.E.2d 163, 2008 Ill. App. LEXIS 422 (1 Dist. 2008).

- Computer Tape

If the plaintiff has properly made a request for a copy of a computer tape, and the defendants cannot properly invoke an exception to their duty to make the computer tape available for copying, the plaintiff's request should be honored. AFSCME v. County of Cook, 136 Ill. 2d 334, 144 Ill. Dec. 242, 555 N.E.2d 361 (1990).

- Employment Contracts

Under the liberal construction required by the state supreme court, the definition of "public records" found in 5 ILCS 140/2(c) included the employment contracts of two university employees, which counsel admitted did not contain any confidential information. Reppert v. Southern Ill. Univ., 375 Ill. App. 3d 502, 314 Ill. Dec. 540, 874 N.E.2d 905, 2007 Ill. App. LEXIS 931 (1 Dist. 2007).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Administrative Law," see 26 S. Ill. U.L.J. 757 (2002).

RESEARCH REFERENCES

What constitutes a public record or document within statute making falsification, forgery, mutilation, removal, or other misuse thereof an offense. 75 ALR4th 1067.

§ 5 ILCS 140/2.5. Records of funds

Sec. 2.5. Records of funds. All records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public.

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(Source: P.A. 96-542, § 10.)

Effective Date. Section 99 of P.A. 96-542 made this section effective January 1, 2010.

§ 5 ILCS 140/2.10. Payrolls

Sec. 2.10. Payrolls. Certified payroll records submitted to a public body under Section 5(a)(2) of the Prevailing Wage Act [820 ILCS 130/5] are public records subject to inspection and copying in accordance with the provisions of this Act; except that contractors' employees' addresses, telephone numbers, and social security numbers must be redacted by the public body prior to disclosure.

(Source: P.A. 96-542, § 10.)

Effective Date. Section 99 of P.A. 96-542 made this section effective January 1, 2010.

§ 5 ILCS 140/2.15. Arrest reports and criminal history records

Sec. 2.15. Arrest reports and criminal history records. (a) Arrest reports. The following chronologically maintained arrest and criminal history information maintained by State or local criminal justice agencies shall be furnished as soon as practical, but in no event later than 72 hours after the arrest, notwithstanding the time limits otherwise provided for in Section 3 of this Act [5 ILCS 140/3]: (i) information that identifies the individual, including the name, age, address, and photograph, when and if available; (ii) information detailing any charges relating to the arrest; (iii) the time and location of the arrest; (iv) the name of the investigating or arresting law enforcement agency; (v) if the individual is incarcerated, the amount of any bail or bond; and (vi) if the individual is incarcerated, the time and date that the individual was received into, discharged from, or transferred from the arresting agency's custody.

(b) Criminal history records. The following documents maintained by a public body pertaining to criminal history record information are public records subject to inspection and copying by the public pursuant to this Act: (i) court records that are public; (ii) records that are otherwise available under State or local law; and (iii) records in which the requesting party is the individual identified, except as provided under Section 7(1)(d)(vi) [5 ILCS 140/7].

(c) Information described in items (iii) through (vi) of subsection (a) may be withheld if it is determined that disclosure would: (i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement agency;

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(ii) endanger the life or physical safety of law enforcement or correctional personnel or any other person; or (iii) compromise the security of any correctional facility.

(d) The provisions of this Section do not supersede the confidentiality provisions for arrest records of the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.].

(Source: P.A. 96-542, § 10.)

Effective Date. Section 99 of P.A. 96-542 made this section effective January 1, 2010.

§ 5 ILCS 140/2.20. Settlement agreements

Sec. 2.20. Settlement agreements. All settlement agreements entered into by or on behalf of a public body are public records subject to inspection and copying by the public, provided that information exempt from disclosure under Section 7 of this Act [5 ILCS 140/7] may be redacted.

(Source: P.A. 96-542, § 10.)

Effective Date. Section 99 of P.A. 96-542 made this section effective January 1, 2010.

§ 5 ILCS 140/3. [Provision of public records]

Sec. 3. (a) Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act [5 ILCS 140/7]. Notwithstanding any other law, a public body may not grant to any person or entity, whether by contract, license, or otherwise, the exclusive right to access and disseminate any public record as defined in this Act.

(b) Subject to the fee provisions of Section 6 of this Act [5 ILCS 140/6], each public body shall promptly provide, to any person who submits a request, a copy of any public record required to be disclosed by subsection (a) of this Section and shall certify such copy if so requested.

(c) Requests for inspection or copies shall be made in writing and directed to the public body. Written requests may be submitted to a public body via personal delivery, mail, telefax, or other means available to the public body. A public body may honor oral requests for inspection or copying. A public body may not require that a request be submitted on a standard form or require the requester to specify the purpose for a request, except to determine whether the records are requested for a commercial purpose or

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whether to grant a request for a fee waiver. All requests for inspection and copying received by a public body shall immediately be forwarded to its Freedom of Information officer or designee.

(d) Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under subsection (e) of this Section. Denial shall be in writing as provided in Section 9 of this Act [5 ILCS 140/9]. Failure to comply with a written request, extend the time for response, or deny a request within 5 business days after its receipt shall be considered a denial of the request. A public body that fails to respond to a request within the requisite periods in this Section but thereafter provides the requester with copies of the requested public records may not impose a fee for such copies. A public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g).

(e) The time for response under this Section may be extended by the public body for not more than 5 business days from the original due date for any of the following reasons:

(i) the requested records are stored in whole or in part at other locations than the office having charge of the requested records;

(ii) the request requires the collection of a substantial number of specified records;

(iii) the request is couched in categorical terms and requires an extensive search for the records responsive to it;

(iv) the requested records have not been located in the course of routine search and additional efforts are being made to locate them;

(v) the requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under Section 7 of this Act or should be revealed only with appropriate deletions;

(vi) the request for records cannot be complied with by the public body within the time limits prescribed by paragraph (c) of this Section without unduly burdening or interfering with the operations of the public body;

(vii) there is a need for consultation, which shall be conducted with all practicable speed, with another public body or among two or more components of a public body having a substantial interest in the determination or in the subject matter of the request.

The person making a request and the public body may agree in writing to extend the time for compliance for a period to be determined by the parties. If the requester and the public body agree to extend the period for compliance, a failure by the public body to comply with any previous deadlines shall not be treated as a denial of the request for the records.

(f) When additional time is required for any of the above reasons, the public body shall, within 5 business days after receipt of the request, notify the person making the request of the reasons for the extension and the date by which the response will be forthcoming.

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Failure to respond within the time permitted for extension shall be considered a denial of the request. A public body that fails to respond to a request within the time permitted for extension but thereafter provides the requester with copies of the requested public records may not impose a fee for those copies. A public body that requests an extension and subsequently fails to respond to the request may not treat the request as unduly burdensome under subsection (g).

(g) Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such a response shall be treated as a denial of the request for information.

Repeated requests from the same person for the same records that are unchanged or identical to records previously provided or properly denied under this Act shall be deemed unduly burdensome under this provision.

(h) Each public body may promulgate rules and regulations in conformity with the provisions of this Section pertaining to the availability of records and procedures to be followed, including:

(i) the times and places where such records will be made available, and

(ii) the persons from whom such records may be obtained.

(i) The time periods for compliance or denial of a request to inspect or copy records set out in this Section shall not apply to requests for records made for a commercial purpose. Such requests shall be subject to the provisions of Section 3.1 of this Act [5 ILCS 140/3.1].

(Source: P.A. 83-1013; 90-206, § 5; 96-542, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 203.

Illinois Administrative Code.

See 2 Illinois Administrative Code, §§ 1176.200, 1176.210, 1400.200, 1400.210, 1925.293, 2950.40, 3001.10, 3001.200, 3201.10, 3201.200, 3201.210, 6000.210, 6000.220, 6000.250.

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Effect of Amendments. The 1997 amendment by P.A. 90-206, effective July 25, 1997, in subsection (a) added the second sentence.

The 2009 amendment by P.A. 96-542, effective January 1, 2010, deleted "written" following "submits a" in (b); added (c); redesignated former (c) through (g) as (d) through (h); rewrote (d) and (f); in (e), in the introductory language, substituted "for response under" for "limits prescribed in paragraph (c) of," "by the public body" for "in each case," and "5 business days from the original due date" for "7 additional working days"; added the concluding language of (e); substituted "from the same person for the same records that are unchanged or identical to records previously provided or properly denied under this Act" for "for the same public records by the same person" in the second paragraph of (g); and added (i).

CASE NOTES

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Applicability

Where plaintiff alleged that defendants held the public position of "city engineer," plaintiff's Illinois Freedom of Information Act claim survived a motion to dismiss because defendants were alleged to have positions in the municipal government. Lathrop v. Juneau & Assocs., 220 F.R.D. 322, 2004 U.S. Dist. LEXIS 1820 (S.D. Ill. 2004).

- Judiciary

The lack of any reference to the courts or judiciary must be taken as an intent to exclude the judiciary from the disclosure requirements of the Act. Copley Press, Inc. v. Administrative Office of Courts, 271 Ill. App. 3d 548, 207 Ill. Dec. 868, 648 N.E.2d 324 (2 Dist. 1995), appeal denied, 163 Ill. 2d 551, 212 Ill. Dec. 416, 657 N.E.2d 617 (1995).

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Attorney Fees

It was error for the trial court to award attorney fees to the petitioner, because the petitioner was only entitled to a copy of the grand jury transcripts pursuant to 725 ILCS 5/112-6(c)(3), and the Illinois Code of Criminal Procedure of 1963, 725 ILCS 5/100-1 et seq., did not allow him to recover his fees, when it would be absurd to construe the statute to forbid a government body from disclosing certain records without a court order and then require it to pay the applicant's attorney fees in securing the court order. Taliani v. Herrmann, Ill. App. 3d , 353 Ill. Dec. 688, 956 N.E.2d 550, 2011 Ill. App. LEXIS 899 (3 Dist. 2011).

Denials of Requests

Although a public body may determine when and where a requested inspection will take place, 5 ILCS 140/3(g)(i), that a public body lacks the facilities for the public to listen to audiotapes is not a valid basis upon which to deny a request to inspect a tape-recorded public record. Thus, a City was not in compliance with 5 ILCS 140/3 when, because it lacked facilities for listening to audiotapes, it offered plaintiff the opportunity to obtain and inspect copies of the city council meeting audiotapes plaintiff had requested. DesPain v. City of Collinsville, 382 Ill. App. 3d 572, 320 Ill. Dec. 946, 888 N.E.2d 163, 2008 Ill. App. LEXIS 422 (1 Dist. 2008).

Depth of Disclosure

In a cross appeal involving a records request dispute wherein the requestor sought all citizen complaints made against a deputy sheriff held by the sheriff's office, the trial court erred by allowing the sheriff to withhold unfounded complaints of wrongdoing by the deputy sheriff in the performance of his duties as such information did not constitute an invasion of privacy under 5 ILCS 140/7(1)(b). Gekas v. Williamson, 393 Ill. App. 3d 573, 332 Ill. Dec. 161, 912 N.E.2d 347, 2009 Ill. App. LEXIS 687 (4 Dist. 2009).

School superintendent's employment contract was a 5 ILCS 140/2 public record subject to disclosure under the Freedom of Information Act (FOIA) to the extent it disclosed the duties of the school superintendent and the public funds the school superintendent was paid to perform those duties. As a result, the resident was entitled to that document subject to the resident's FOIA request, but was not entitled to any information exempt from disclosure as recognized by 5 ILCS 140/3, including purely personal information that did not bear upon the school superintendent's duties and compensation. Stern v. Wheaton-Warrenville Cmty. Unit Sch. Dist. 200, 233 Ill. 2d 396, 331 Ill. Dec. 12, N.E.2d , 2009 Ill. LEXIS 388 (2009).

Disclosure

Governor of Illinois could not assert Fed. R. Crim. P. 6(e)(2) as a basis for refusing to disclose federal grand jury subpoenas served on the State; the rule did not prohibit disclosure of the contents of a federal grand jury subpoena by a member of the general public, and while a private citizen had discretion regarding disclosure, the Illinois Freedom of Information Act, 5 ILCS 140/1 through 11 removed such discretion when the recipient was a public official such as the Governor. Better Gov't Ass'n v. Blagojevich, 386 Ill. App. 3d 808, 326 Ill. Dec. 165, 899 N.E.2d 382, 2008 Ill. App. LEXIS 1170 (4 Dist. 2008).

City failed to comply with the requirements of 5 ILCS 140/3(a) when instead of providing plaintiff the opportunity to listen to original audiotapes of certain city council meetings, it offered him the opportunity to obtain and inspect copies of the tapes; based on the definitions of "public records" and "copying" found in 5 ILCS 140/2(c), (d), it was clear that compliance with 5 ILCS 140/3(a) required the production of original public records including audiotapes. DesPain v. City of

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Collinsville, 382 Ill. App. 3d 572, 320 Ill. Dec. 946, 888 N.E.2d 163, 2008 Ill. App. LEXIS 422 (1 Dist. 2008).

Because the definition of copying under 5 ILCS 140/2(d) means the reproduction of any public record it follows that the term "public record" as used in 5 ILCS 140/3(a) necessarily refers to a public body's original record. DesPain v. City of Collinsville, 382 Ill. App. 3d 572, 320 Ill. Dec. 946, 888 N.E.2d 163, 2008 Ill. App. LEXIS 422 (1 Dist. 2008).

- Challenge

A university's board of regents was entitled to challenge the State's Attorney's threatened disclosure of board documents. Twin-Cities Broadcasting Corp. v. Reynard, 277 Ill. App. 3d 777, 214 Ill. Dec. 547, 661 N.E.2d 401 (4 Dist. 1996), appeal denied, 167 Ill. 2d 570, 217 Ill. Dec. 670, 667 N.E.2d 1063 (1996).

- Exemption

County election commission and its chairman did not violate the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., in denying a request by a citizen under 5 ILCS 140/3(a) to examine the ballots, ballot box tapes, and poll signature cards from an election because the election records were exempt from disclosure under 5 ILCS 140/7(1)(a) as the disclosure of the requested election records was prohibited by 10 ILCS 5/17-20 and 10 ILCS 5/17-22 of the Illinois Election Code, 10 ILCS 5 - 1 et seq. Kibort v. Westrom, 371 Ill. App. 3d 247, 308 Ill. Dec. 676, 862 N.E.2d 609, 2007 Ill. App. LEXIS 32 (1 Dist. 2007).

- Possession by Agency

Mere possession of the documents, standing alone, is not determinative of an agency's ability to release documents if another governmental entity has a substantial interest in asserting an exemption. Twin-Cities Broadcasting Corp. v. Reynard, 277 Ill. App. 3d 777, 214 Ill. Dec. 547, 661 N.E.2d 401 (4 Dist. 1996), appeal denied, 167 Ill. 2d 570, 217 Ill. Dec. 670, 667 N.E.2d 1063 (1996).

- Possession by State's Attorney

Mere possession of documents by the State's Attorney does not grant the State's Attorney the sole right to choose to assert an exemption to disclosure. Twin-Cities Broadcasting Corp. v. Reynard, 277 Ill. App. 3d 777, 214 Ill. Dec. 547, 661 N.E.2d 401 (4 Dist. 1996), appeal denied, 167 Ill. 2d 570, 217 Ill. Dec. 670, 667 N.E.2d 1063 (1996).

Document Information

There is no patent conflict between the plain language of 5 ILCS 140/3(a) of the Freedom of Information Act, 5 ILCS 140/1 et seq., and 730 ILCS 5/3-7-2(e) of the Unified Code of Corrections. The Freedom of Information Act creates a general right of access to public records and includes no specific limitation on an inmate's ability to exercise this right, while the Corrections Code authorizes the Department of Corrections to inspect inmate mail for materials affecting security or safety whether or not such material is otherwise available to the public. Holloway v. Meyer, 311 Ill. App. 3d 818, 244 Ill. Dec. 703, 726 N.E.2d 678, 1999 Ill. App. LEXIS 977 (1 Dist. 2000).

- Inmate's Right of Access

Where there were genuine issues of material fact that foreclosed any determination as a matter of law that circuit court clerk had not deprived prison inmate of his constitutional right of access to the courts, it remained entirely possible on the record before that clerk was liable to inmate for

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damages in her personal capacity; clerk's motion for summary judgment was denied. Curry v. Pucinski, 864 F. Supp. 839 (N.D. Ill. 1994).

- Proper Form Not Shown

A request for information which did not identify documents to be produced or made available was not in proper form. Kenyon v. Garrels, 184 Ill. App. 3d 28, 132 Ill. Dec. 595, 540 N.E.2d 11 (4 Dist. 1989).

Scope of Inquiry

Township officials were not obligated under the terms of this Act to answer general inquiry questions, since this would have required creation of a new record or answering of questions based upon information not contained in any record. Kenyon v. Garrels, 184 Ill. App. 3d 28, 132 Ill. Dec. 595, 540 N.E.2d 11 (4 Dist. 1989).

Unduly Burdensome Request

- Not Shown

Police agencies did not show that the production of investigative files in closed cases was unduly burdensome, as contemplated by 5 ILCS 140/3(f), and, thus, the police agencies had to produce that material in response to the organization's request seeking material on criminal identification procedures used by the police agencies. The police agencies had not made any inquiry into whether the request for material could be narrowed and had not shown that the burden on them to produce the requested material outweighed the public interest in the information sought. Nat'l Ass'n of Crim. Def. Lawyers v. Chi. Police Dep't, 399 Ill. App. 3d 1, 338 Ill. Dec. 358, 924 N.E.2d 564, 2010 Ill. App. LEXIS 146 (1 Dist. 2010).

The fact that a school would have to expend valuable labor and computer time to comply with an information request did not impose a burden on the school outweighing the public interest in the information. Bowie v. Evanston Community Consol. Sch. Dist., 168 Ill. App. 3d 101, 119 Ill. Dec. 7, 522 N.E.2d 669 (1 Dist. 1988).

OPINIONS OF ATTORNEY GENERAL

Analysis

Electronic Access to Records
Ethics Commissions
Logs
- State Fire Marshal
Names of Licensees
- Public Information

Electronic Access to Records

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A county recorder is not required to post public records in their entirety on a Web site that provides Internet access to information contained in the records of the county recorder. 2000 Op. Atty. Gen. 12.

Ethics Commissions

Local ethics commissions or local ultimate jurisdictional authorities are not per se exempt from the provisions of the Freedom of Information Act. 1999 Op. Atty. Gen. (99-007).

Logs

- State Fire Marshal

Logs that are maintained by the State Fire Marshal and that pertain to the removal of underground storage tanks are not generally exempt from disclosure; however, there may be specific circumstances in which part or all of the information contained in particular logs may be exempt. 1996 Op. Atty. Gen. (96-032).

Names of Licensees

- Public Information

The names of licensees and applicants for licenses under the Illinois Currency Exchange Act (205 ILCS 405/1) including the names of partners of partnerships and offices and shareholders of corporations which are licensed or have applied for a license, are public information which must be disclosed upon public request. 1990 Op. Atty. Gen. (90-002).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Administrative Law," see 21 S. Ill. U.L.J. 675 (1997).

§ 5 ILCS 140/3.1. Requests for commercial purposes

Sec. 3.1. Requests for commercial purposes. (a) A public body shall respond to a request for records to be used for a commercial purpose within 21 working days after receipt. The response shall (i) provide to the requester an estimate of the time required by the public body to provide the records requested and an estimate of the fees to be charged, which the public body may require the person to pay in full before copying the requested documents, (ii) deny the request pursuant to one or more of the exemptions set out in this Act, (iii) notify the requester that the request is unduly burdensome and extend an opportunity to the requester to attempt to reduce the request to manageable proportions, or (iv) provide the records requested.

(b) Unless the records are exempt from disclosure, a public body shall comply with a request within a reasonable period considering the size and complexity of the request, and giving priority to records requested for non-commercial purposes.

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(c) It is a violation of this Act for a person to knowingly obtain a public record for a commercial purpose without disclosing that it is for a commercial purpose, if requested to do so by the public body.

(Source: P.A. 96-542, § 10.)

Effective Date. Section 99 of P.A. 96-542 made this section effective January 1, 2010.

§ 5 ILCS 140/3.2. Recurrent requesters

Sec. 3.2. Recurrent requesters. (a) Nothwithstanding any provision of this Act to the contrary, a public body shall respond to a request from a recurrent requester, as defined in subsection (g) of Section 2 [5 ILCS 140/2], within 21 business days after receipt. The response shall (i) provide to the requester an estimate of the time required by the public body to provide the records requested and an estimate of the fees to be charged, which the public body may require the person to pay in full before copying the requested documents, (ii) deny the request pursuant to one or more of the exemptions set out in this Act, (iii) notify the requester that the request is unduly burdensome and extend an opportunity to the requester to attempt to reduce the request to manageable proportions, or (iv) provide the records requested.

(b) Within 5 business days after receiving a request from a recurrent requester, as defined in subsection (g) of Section 2, the public body shall notify the requester (i) that the public body is treating the request as a request under subsection (g) of Section 2, (ii) of the reasons why the public body is treating the request as a request under subsection (g) of Section 2, and (iii) that the public body will send an initial response within 21 business days after receipt in accordance with subsection (a) of this Section. The public body shall also notify the requester of the proposed responses that can be asserted pursuant to subsection (a) of this Section.

(c) Unless the records are exempt from disclosure, a public body shall comply with a request within a reasonable period considering the size and complexity of the request.

(Source: P.A. 97-579, § 3.)

Effective Date. Section 99 of P.A. 97-579 made this section effective upon becoming law. The Act was approved August 26, 2011.

§ 5 ILCS 140/3.3. [Intent of Act]

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Sec. 3.3. This Act is not intended to compel public bodies to interpret or advise requesters as to the meaning or significance of the public records.

(Source: P.A. 96-542, § 10.)

Effective Date. Section 99 of P.A. 96-542 made this section effective January 1, 2010.

§ 5 ILCS 140/3.5. Freedom of Information officers

Sec. 3.5. Freedom of Information officers. (a) Each public body shall designate one or more officials or employees to act as its Freedom of Information officer or officers. Except in instances when records are furnished immediately, Freedom of Information officers, or their designees, shall receive requests submitted to the public body under this Act, ensure that the public body responds to requests in a timely fashion, and issue responses under this Act. Freedom of Information officers shall develop a list of documents or categories of records that the public body shall immediately disclose upon request.

Upon receiving a request for a public record, the Freedom of Information officer shall:

(1) note the date the public body receives the written request;

(2) compute the day on which the period for response will expire and make a notation of that date on the written request;

(3) maintain an electronic or paper copy of a written request, including all documents submitted with the request until the request has been complied with or denied; and

(4) create a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications.

(b) All Freedom of Information officers shall, within 6 months after the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-542], successfully complete an electronic training curriculum to be developed by the Public Access Counselor and thereafter successfully complete an annual training program. Thereafter, whenever a new Freedom of Information officer is designated by a public body, that person shall successfully complete the electronic training curriculum within 30 days after assuming the position. Successful completion of the required training curriculum within the periods provided shall be a prerequisite to continue serving as a Freedom of Information officer.

(Source: P.A. 96-542, § 10.)

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Effective Date. Section 99 of P.A. 96-542 made this section effective January 1, 2010.

§ 5 ILCS 140/4. [Public bodies to display information]

Sec. 4. Each public body shall prominently display at each of its administrative or regional offices, make available for inspection and copying, and send through the mail if requested, each of the following:

(a) A brief description of itself, which will include, but not be limited to, a short summary of its purpose, a block diagram giving its functional subdivisions, the total amount of its operating budget, the number and location of all of its separate offices, the approximate number of full and part-time employees, and the identification and membership of any board, commission, committee, or council which operates in an advisory capacity relative to the operation of the public body, or which exercises control over its policies or procedures, or to which the public body is required to report and be answerable for its operations; and

(b) A brief description of the methods whereby the public may request information and public records, a directory designating the Freedom of Information officer or officers, the address where requests for public records should be directed, and any fees allowable under Section 6 of this Act [5 ILCS 140/6].

A public body that maintains a website shall also post this information on its website.

(Source: P.A. 83-1013; 96-542, § 10; 96-1000, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 204.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Illinois Administrative Code.

See 2 Illinois Administrative Code, §§ 2175.100, 6000.100.

Effect of Amendments. The 2009 amendment by P.A. 96-542, effective January 1, 2010, substituted "the Freedom of Information officer or officers, the address where" for "by titles and addresses those employees to whom" in (b); and added (c).

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, deleted the (c) designation.

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§ 5 ILCS 140/5. [Records list]

Sec. 5. As to public records prepared or received after the effective date of this Act, each public body shall maintain and make available for inspection and copying a reasonably current list of all types or categories of records under its control. The list shall be reasonably detailed in order to aid persons in obtaining access to public records pursuant to this Act. Each public body shall furnish upon request a description of the manner in which public records stored by means of electronic data processing may be obtained in a form comprehensible to persons lacking knowledge of computer language or printout format.

(Source: P.A. 83-1013.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 205.

CASE NOTES

Judicial Estoppel

Freedom of information plaintiff that argued in its application for attorneys' fees that it had the agency in question compile an adequate list of all the records in its possession was barred under judicial estoppel principles that such a list had not yet been compiled. Chi. Alliance for Neighborhood Safety v. City of Chicago, 348 Ill. App. 3d 188, 283 Ill. Dec. 506, 808 N.E.2d 56, 2004 Ill. App. LEXIS 288 (1 Dist. 2004).

§ 5 ILCS 140/6. Authority to charge fees

Sec. 6. Authority to charge fees. (a) When a person requests a copy of a record maintained in an electronic format, the public body shall furnish it in the electronic format specified by the requester, if feasible. If it is not feasible to furnish the public records in the specified electronic format, then the public body shall furnish it in the format in which it is maintained by the public body, or in paper format at the option of the requester. A public body may charge the requester for the actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium. A public body may not charge the requester for the costs of any search for and review of the records or other personnel costs associated with reproducing the records, except for commercial requests as provided in subsection (f) of this Section. Except to the extent that the General Assembly expressly provides, statutory fees applicable to copies of public records when

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furnished in a paper format shall not be applicable to those records when furnished in an electronic format.

(b) Except when a fee is otherwise fixed by statute, each public body may charge fees reasonably calculated to reimburse its actual cost for reproducing and certifying public records and for the use, by any person, of the equipment of the public body to copy records. No fees shall be charged for the first 50 pages of black and white, letter or legal sized copies requested by a requester. The fee for black and white, letter or legal sized copies shall not exceed 15 cents per page. If a public body provides copies in color or in a size other than letter or legal, the public body may not charge more than its actual cost for reproducing the records. In calculating its actual cost for reproducing records or for the use of the equipment of the public body to reproduce records, a public body shall not include the costs of any search for and review of the records or other personnel costs associated with reproducing the records, except for commercial requests as provided in subsection (f) of this Section. Such fees shall be imposed according to a standard scale of fees, established and made public by the body imposing them. The cost for certifying a record shall not exceed $1.

(c) Documents shall be furnished without charge or at a reduced charge, as determined by the public body, if the person requesting the documents states the specific purpose for the request and indicates that a waiver or reduction of the fee is in the public interest. Waiver or reduction of the fee is in the public interest if the principal purpose of the request is to access and disseminate information regarding the health, safety and welfare or the legal rights of the general public and is not for the principal purpose of personal or commercial benefit. For purposes of this subsection, "commercial benefit" shall not apply to requests made by news media when the principal purpose of the request is to access and disseminate information regarding the health, safety, and welfare or the legal rights of the general public. In setting the amount of the waiver or reduction, the public body may take into consideration the amount of materials requested and the cost of copying them.

(d) The imposition of a fee not consistent with subsections (6)(a) and (b) of this Act constitutes a denial of access to public records for the purposes of judicial review.

(e) The fee for an abstract of a driver's record shall be as provided in Section 6-118 of "The Illinois Vehicle Code", approved September 29, 1969, as amended [625 ILCS 5/6-118].

(f) A public body may charge up to $10 for each hour spent by personnel in searching for and retrieving a requested record. No fees shall be charged for the first 8 hours spent by personnel in searching for or retrieving a requested record. A public body may charge the actual cost of retrieving and transporting public records from an off-site storage facility when the public records are maintained by a third-party storage company under contract with the public body. If a public body imposes a fee pursuant to this subsection (f), it must provide the requester with an accounting of all fees, costs, and personnel hours in connection with the request for public records. The provisions of this subsection (f) apply only to commercial requests.

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(Source: P.A. 85-1357; 90-144, § 7; 96-542, § 10; 96-1000, § 10; 97-579, § 3.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 206.

The amendment by P.A. 96-542 assigned multiple (d) designations.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Cross References.

For the procedures required of a written request for public records, see 5 ILCS 140/3.

For required public information to be displayed by each public body of the State, see 5 ILCS 140/4.

For information on public records of applicants or licenses of gambling enterprises or services, see 230 ILCS 10/5.1.

Illinois Administrative Code.

See 2 Illinois Administrative Code, §§ 1875.40, 3201.400, 951.60.

Effect of Amendments. The 1997 amendment by P.A. 90-144, effective July 23, 1997, added the section catchline; and in subsection (b) added the third sentence.

The 2009 amendment by P.A. 96-542, effective January 1, 2010, added (a); redesignated former (a) through (c) as (b) through (d); in (b), added "Except when a fee is otherwise fixed by statute" at the beginning, added the second through fourth sentences, rewrote the fifth sentence, and added the last sentence; in the first version of subsection (d), deleted "purposeful" preceding "imposition" and substituted "constitutes" for "shall be considered"; added "whether furnished as a paper copy or as an electronic copy" in the second version of subsection (d); and made stylistic changes.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated former duplicate subsection (d) as (e).

The 2011 amendment by P.A. 97-579, effective August 26, 2011, added "except for commercial requests as provided in subsection (f) of this Section" to the end of the fourth sentence of (a) and (b); and added (f).

CASE NOTES

Fees

Requesting parties were not entitled to have their request fulfilled to obtain the property assessment records they sought at a fee less than that quoted by the county assessment supervisor despite that fee being more than they thought they should be charged under the

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Illinois Freedom of Information Act (Act). The Act, while limiting the fee that could be charged to actual costs pursuant to 5 ILCS 140/6(a), also provided that the cap on fees applied unless otherwise provided by State statute, and the Property Tax Code, 35 ILCS 200/9-20, applied directly to the records requested and provided that a reasonable fee not necessarily limited tan actual cost could be charged. Sage Info. Servs. v. Henderson, 397 Ill. App. 3d 1060, 337 Ill. Dec. 780, 923 N.E.2d 339, 2010 Ill. App. LEXIS 56 (3 Dist. 2010).

Cost provision of § 9-20 of the Illinois Property Tax Code, 35 ILCS 200/1-1 et seq., as found in 35 ILCS 200/9-20, in conjunction with a county board resolution, applied where requestors of information asked for a copy of a database compilation of the entire real property assessments for a county, over the actual-cost provision of § 6(a) of the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., as found in 5 ILCS 140/6(a). Sage Info. Servs. v. King, 391 Ill. App. 3d 1023, 331 Ill. Dec. 424, 910 N.E.2d 1180, 2009 Ill. App. LEXIS 316 (2 Dist. 2009).

City erred when, instead of providing plaintiff with the opportunity to listen to the originals of certain city council meeting audiotapes, it advised plaintiff that for a fee, he could inspect copies of the audiotapes; charging a fee for the inspection of public records was not allowed under 5 ILCS 140/6(a). DesPain v. City of Collinsville, 382 Ill. App. 3d 572, 320 Ill. Dec. 946, 888 N.E.2d 163, 2008 Ill. App. LEXIS 422 (1 Dist. 2008).

Cook County (Illinois) did not violate the Illinois Freedom of Information Act when it enacted Cook County, Ill., Ordinance No. 04-O-38, which allowed the County Recorder to impose fees in connection with public records that were electronically posted on the Recorder's website's; 5 ILCS 140/6(a) gave the state legislature authority to allow for fees that exceeded the actual costs of reproducing and certifying public records, and 55 ILCS 5/4-12002 allowed large counties, such as Cook County, to charge more than $ .50 per document for non-certified copies of documents. First Am. Real Estate Solutions, L.P. v. Moore, F. Supp. 2d , 2005 U.S. Dist. LEXIS 19847 (N.D. Ill. Sept. 13, 2005).

Large county's imposition of fees in connections with public records that are posted on a county's internet website is permitted under 55 ILCS 5/4-12002 and 5 ILCS 140/6(a): (1) pursuant to 5 ILCS 140/6(a) of the Freedom of Information Act, 5 ILCS 140/6(a), the state legislature, by statute, may allow for fees that exceed the actual costs of reproducing and certifying public records; and (2) 55 ILCS 5/4-12002 allows counties with populations of over 1 million residents to charge more than $ .50 per document for non-certified copies of documents, which is a fee that exceeds more than the reproduction cost with regard to electronically posted public records. First Am. Real Estate Solutions, L.P. v. Moore, F. Supp. 2d , 2005 U.S. Dist. LEXIS 19847 (N.D. Ill. Sept. 13, 2005).

§ 5 ILCS 140/7. Exemptions

Sec. 7. Exemptions. (1) When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying. Subject to this requirement, the following shall be exempt from inspection and copying:

(a) Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.

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(b) Private information, unless disclosure is required by another provision of this Act, a State or federal law or a court order.

(b-5) Files, documents, and other data or databases maintained by one or more law enforcement agencies and specifically designed to provide information to one or more law enforcement agencies regarding the physical or mental status of one or more individual subjects.

(c) Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. "Unwarranted invasion of personal privacy" means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.

(d) Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would:

(i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request;

(ii) interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request;

(iii) create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing;

(iv) unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies; except that the identities of witnesses to traffic accidents, traffic accident reports, and rescue reports shall be provided by agencies of local government, except when disclosure would interfere with an active criminal investigation conducted by the agency that is the recipient of the request;

(v) disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request;

(vi) endanger the life or physical safety of law enforcement personnel or any other person; or

(vii) obstruct an ongoing criminal investigation by the agency that is the recipient of the request.

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(e) Records that relate to or affect the security of correctional institutions and detention facilities.

(f) Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body. The exemption provided in this paragraph (f) extends to all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents.

(g) Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested.

The information included under this exemption includes all trade secrets and commercial or financial information obtained by a public body, including a public pension fund, from a private equity fund or a privately held company within the investment portfolio of a private equity fund as a result of either investing or evaluating a potential investment of public funds in a private equity fund. The exemption contained in this item does not apply to the aggregate financial performance information of a private equity fund, nor to the identity of the fund's managers or general partners. The exemption contained in this item does not apply to the identity of a privately held company within the investment portfolio of a private equity fund, unless the disclosure of the identity of a privately held company may cause competitive harm.

Nothing contained in this paragraph (g) shall be construed to prevent a person or business from consenting to disclosure.

(h) Proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body, until an award or final selection is made. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an award or final selection is made.

(i) Valuable formulae, computer geographic systems, designs, drawings and research data obtained or produced by any public body when disclosure could reasonably be expected to produce private gain or public loss. The exemption for "computer geographic systems" provided in this paragraph (i) does not extend to requests made by news media as defined in Section 2 of this Act [5 ILCS 140/2] when the requested information is not otherwise exempt and the only purpose of the request is to access and disseminate information regarding the health, safety, welfare, or legal rights of the general public.

(j) The following information pertaining to educational matters:

(i) test questions, scoring keys and other examination data used to administer an academic examination;

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(ii) information received by a primary or secondary school, college, or university under its procedures for the evaluation of faculty members by their academic peers;

(iii) information concerning a school or university's adjudication of student disciplinary cases, but only to the extent that disclosure would unavoidably reveal the identity of the student; and

(iv) course materials or research materials used by faculty members.

(k) Architects' plans, engineers' technical submissions, and other construction related technical documents for projects not constructed or developed in whole or in part with public funds and the same for projects constructed or developed with public funds, including but not limited to power generating and distribution stations and other transmission and distribution facilities, water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings, but only to the extent that disclosure would compromise security.

(l) Minutes of meetings of public bodies closed to the public as provided in the Open Meetings Act until the public body makes the minutes available to the public under Section 2.06 of the Open Meetings Act [5 ILCS 120/2.06].

(m) Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

(n) Records relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed.

(o) Administrative or technical information associated with automated data processing operations, including but not limited to software, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of materials exempt under this Section.

(p) Records relating to collective negotiating matters between public bodies and their employees or representatives, except that any final contract or agreement shall be subject to inspection and copying.

(q) Test questions, scoring keys, and other examination data used to determine the qualifications of an applicant for a license or employment.

(r) The records, documents, and information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated. With regard to a parcel involved in a pending or actually and reasonably contemplated eminent domain proceeding under the Eminent Domain Act, records, documents and information relating to that parcel shall be exempt except as may be allowed under discovery rules adopted by

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the Illinois Supreme Court. The records, documents and information relating to a real estate sale shall be exempt until a sale is consummated.

(s) Any and all proprietary information and records related to the operation of an intergovernmental risk management association or self-insurance pool or jointly self-administered health and accident cooperative or pool. Insurance or self insurance (including any intergovernmental risk management association or self insurance pool) claims, loss or risk management information, records, data, advice or communications.

(t) Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a public body responsible for the regulation or supervision of financial institutions or insurance companies, unless disclosure is otherwise required by State law.

(u) Information that would disclose or might lead to the disclosure of secret or confidential information, codes, algorithms, programs, or private keys intended to be used to create electronic or digital signatures under the Electronic Commerce Security Act [5 ILCS 175/1-101 et seq.].

(v) Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

(w) (Blank).

(x) Maps and other records regarding the location or security of generation, transmission, distribution, storage, gathering, treatment, or switching facilities owned by a utility, by a power generator, or by the Illinois Power Agency.

(y) Information contained in or related to proposals, bids, or negotiations related to electric power procurement under Section 1-75 of the Illinois Power Agency Act [20 ILCS 3855/1-75] and Section 16-111.5 of the Public Utilities Act [220 ILCS 5/16-111.5] that is determined to be confidential and proprietary by the Illinois Power Agency or by the Illinois Commerce Commission.

(z) Information about students exempted from disclosure under Sections 10-20.38 or 34-18.29 of the School Code [105 ILCS 5/10-20.38 or 105 ILCS 5/34-18.29], and information about undergraduate students enrolled at an institution of higher education exempted from disclosure under Section 25 of the Illinois Credit Card Marketing Act [110 ILCS 26/5] of 2009.

(aa) Information the disclosure of which is exempted under the Viatical Settlements Act [215 ILCS 159/1] of 2009.

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(bb) Records and information provided to a mortality review team and records maintained by a mortality review team appointed under the Department of Juvenile Justice Mortality Review Team Act [730 ILCS 195/1 et seq.].

(cc) Information regarding interments, entombments, or inurnments of human remains that are submitted to the Cemetery Oversight Database under the Cemetery Care Act or the Cemetery Oversight Act, whichever is applicable.

(dd) *(As added by P.A. 97-385)* The names, addresses, or other personal information of persons who are minors and are also participants and registrants in programs of park districts, forest preserve districts, conservation districts, recreation agencies, and special recreation associations.

(dd) *(As added by P.A. 97-452)* Correspondence and records (i) that may not be disclosed under Section 11-9 of the Public Aid Code or (ii) that pertain to appeals under Section 11-8 of the Public Aid Code [5 ILCS 140/11-9 or 5 ILCS 140/11-8].

(ee) The names, addresses, or other personal information of participants and registrants in programs of park districts, forest preserve districts, conservation districts, recreation agencies, and special recreation associations where such programs are targeted primarily to minors.

(2) A public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body, and that directly relates to the governmental function and is not otherwise exempt under this Act, shall be considered a public record of the public body, for purposes of this Act.

(3) This Section does not authorize withholding of information or limit the availability of records to the public, except as stated in this Section or otherwise provided in this Act.

(Source: P.A. 86-251; 86-870; 86-1028; 87-241; 87-673; 87-895; 88-444, § 5; 90-262, § 75; 90-273, § 50; 90-546, § 90; 90-655, § 8; 90-737, § 210; 90-759, § 95-5; 91-137, § 5; 91-357, § 7; 91-660, § 800; 92-16, § 7; 92-241, § 5; 92-281, § 5; 92-645, § 5; 92-651, § 7; 93-43, § 5; 93-209, § 3; 93-237, § 5; 93-325, § 5; 93-422, § 10; 93-577, § 93; 93-617, § 70; 94-280, § 5; 94-508, § 5; 94-664, § 5; 94-931, § 10; 94-953, § 5; 94-1055, § 95-10-5; 95-331, § 15; 95-481, § 5-900; 95-941, § 5; 95-988, § 10; 96-261, § 900; 96-328, § 15; 96-542, § 10; 96-558, § 5; 96-736, § 900; 96-863, § 90-3; 96-1378, § 92; 97-333, § 20; 97-385, § 5; 97-452, § 10.)

Multiple Versions of Subsections Multiple versions of subsections within this section have been created by the editor to reflect conflicting or postponed legislation.

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 207.

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Public Act 91-357, § 996 contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Section 997 of P.A. 92-651 is a "no acceleration or delay" provision, and Section 998 is a "no revival or extension" provision.

Section 990 of P.A. 93-617 contains a severability provision, and Section 995 contains "closed sessions" and vote requirement provisions.

Section 900-5 of P.A. 96-863 contains a severability provision.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Cross References.

For application of this Act to child abuse and neglect reports under the Child Care Act of 1969, see 225 ILCS 10/4.3.

For application of this Act to child abuse and neglect reports under the Hearing Impaired and Behavior Disordered Children Services Act, see 520 ILCS 2405/17.

For definitions of terms used in this section, see 5 ILCS 140/2.

For the procedures required of a written request for public records, see 5 ILCS 140/3.

For information on material which is not exempt from disclosure within exempt materials, see 5 ILCS 140/8.

For information on notification procedures when a public body denies a request for public records, see 5 ILCS 140/9.

For information on public records of applicants or licensees of gambling enterprises or services, see 230 ILCS 10/5.1.

Illinois Administrative Code.

See 14 Illinois Administrative Code, § 545.70, 20 Illinois Administrative Code, § 801.110.

Effect of Amendments. The 1997 amendment by P.A. 90-262, effective July 30, 1997, in subdivision (1)(dd) substituted "Section 30 of the Radon Industry Licensing Act" for "Section 7 of the Radon Mitigation Act".

The 1997 amendment by P.A. 90-273, effective July 30, 1997, added subdivision (1)(ff).

The 1997 amendment by P.A. 90-546, effective December 1, 1997, added subdivision (1)(ff).

The 1998 amendment by P.A. 90-655, effective July 30, 1998, redesignated the former second version of subsection (1)(ff), as enacted by P.A. 90-546, as subsection (1)(gg).

The 1998 amendment by P.A. 90-737, effective January 1, 1999, designated former subsection (1)(ff) as present subsection (1)(gg), and added subsection (1)(hh).

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The 1998 amendment by P.A. 90-759, effective July 1, 1999, redesignated former subsection (1)(ff) as present subsection (1)(gg) and added subsection (1)(hh), which appears above as the second subsection (1)(hh).

The 1999 amendment by P.A. 91-137, effective July 16, 1999, substituted the present subdivision (1)(ii) designation for the former second (1)(hh) designation and inserted "Beginning July 1, 1999" at the beginning of present subdivision (1)(ii); and added subdivision (1)(jj).

The 1999 amendment by P.A. 91-357, effective July 29, 1999, redesignated former subsection (hh) as added by P.A. 90-759, effective July 1, 1999 as present subsection (ii), and added "Beginning July 1, 1999" at the beginning of present subsection (ii).

The 1999 amendment by P.A. 91-660, effective December 22, 1999, substituted the subsection (1)(ii) designation for the second (1)(hh) designation and added "Beginning July 1, 1999," at the beginning; and added subsection (1)(jj).

The 2001 amendment by P.A. 92-16, effective June 28, 2001, substituted the subsection (1)(kk) designation for the former duplicate subsection (1)(jj) designation, and incorporated the amendments by P.A. 91-137, P.A. 91-357, and P.A. 91-660.

The 2001 amendment by P.A. 92-241, effective August 3, 2001, in subsection (1)(i) inserted "computer graphic systems"; and the former duplicate subsection (1)(jj) was redesignated to subsection (1)(kk).

The 2001 amendment by P.A. 92-281, effective August 7, 2001, in subsection (1)(ff) substituted "St. Clair County Transit District" for "State of Missouri"; and made stylistic changes.

The 2002 amendment by P.A. 92-645, effective July 11, 2002, substituted "geographic" for "graphic" in subsection (1)(i).

The 2002 amendment by P.A. 92-651, effective July 11, 2002, combined the amendments by P.A. 92-241 and P.A. 92-281.

The 2003 amendment by P.A. 93-43, effective July 1, 2003, added the second sentence in paragraph (i).

The 2003 amendment by P.A. 93-209, effective July 18, 2003, added subsection (1)(ll).

The 2003 amendment by P.A. 93-577, effective August 21, 2003, added subsection (ll).

The 2003 amendment by P.A. 93-237, effective July 22, 2003, added subsection (1)(b)(vi).

The 2003 amendment by P.A. 93-325, effective July 23, 2003, added "including but not limited to water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings" in subsection (1)(k).

The 2003 amendment by P.A. 93-422, effective August 5, 2003, in subsection (1)(k), inserted "and other construction related technical documents", "the same", and "but only", and made related changes; and added subsections (1)(ll) and (1)(mm).

The 2003 amendment by P.A. 93-617, effective December 9, 2003, in subsection (1)(hh) substituted "the State Officials and Employees Ethics Act" for "Section 80 of the State Gift Ban Act"; and redesignated the former duplicate versions of subsection (1)(11) as new subsections (1)(nn) and (oo).

The 2005 amendment by P.A. 94-280, effective January 1, 2006, added (1)(pp).

The 2005 amendment by P.A. 94-508, effective January 1, 2006, added the (g)(i) designation and added (g)(ii), and made a related change.

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The 2005 amendment by P.A. 94-664, effective January 1, 2006, added (1)(pp).

The 2006 amendment by P.A. 94-931, effective June 26, 2006, in (1)(oo) substituted "Executive Council under the Abuse Prevention" for "Residential Health Care Facility Resident Sexual Assault and Death Review Teams Executive Council under the Residential Health Care Facility Resident Sexual Assault and Death"; and redesignated former duplicate (1)(pp) as (1)(qq) and made a related change.

The 2006 amendment by P.A. 94-953, effective June 27, 2006, renumbered former duplicate (1)(pp) as (1)(qq) and made a related change; and deleted "and appeal" before "of the case" in (1)(qq) in the last sentence.

The 2006 amendment by P.A. 94-1055, effective January 1, 2007, substituted "the Eminent Domain Act" for "Article VII of the Code of Civil Procedure" in (1)(s); and renumbered former duplicate (1)(pp) as (1)(qq) and made a related change.

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, combined earlier multiple amendments to the section.

The 2007 amendment by P.A. 95-481, effective August 28, 2007, in (1)(mm) deleted "a utility's" after "security of" and added "owned by a utility or by the Illinois Power Agency"; and added (1)(rr).

The 2008 amendment by P.A. 95-941, effective August 29, 2008, added subsection (1)(ss).

The 2008 amendment by P.A. 95-988, effective June 1, 2009, added (b)(vii) and made related changes.

The 2009 amendment by P.A. 96-261, effective January 1, 2010, added (1)(tt).

The 2009 revisory amendment by P.A. 96-328, effective August 11, 2009, amending both versions of the section before and after the amendment by P.A. 95-958, combined earlier multiple amendments to the section.

The 2009 amendment by P.A. 96-542, effective January 1, 2010, rewrote the section.

The 2009 amendment by P.A. 96-558, effective January 1, 2010, amending both versions of the section before and after the amendment by P.A. 95-988, added (1)(b-5).

The 2009 amendment by P.A. 96-736, effective July 1, 2010, added (1)(tt).

The 2010 amendment by P.A. 96-863, effective March 1, 2010, combined the earlier amendments by P.A. 96-261, P.A. 96-328, P.A. 96-542, P.A. 96-558, and P.A. 96-736; deleted the (i) designation from the second paragraph of (1)(g); and renumbered former duplicate (1)(tt) as (1)(aa).

The 2010 amendment by P.A. 96-1378, effective July 29, 2010, amending both versions of the section before and after the amendment by P.A. 96-736, added "The information included under this exemption includes" to the beginning of the first sentence of the second paragraph of (1)(g); inserted (1)(w); redesignated former duplicates of (1)(tt) as (1)(z) and (1)(aa); added (1)(bb); and made stylistic changes.

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, redesignated former duplicate subsection (1)(bb) as (1)(cc).

The 2011 amendment by P.A. 97-385, effective August 15, 2011, redesignated former duplicate subsection (1)(bb) as (1)(cc); and added (1)(dd) and (1)(ee).

The 2011 amendment by P.A. 97-452, August 19, 2011, redesignated former duplicate subsection (1)(bb) as (1)(cc); and added (1)(dd).

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This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

CASE NOTES

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Lottery Media Plan
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Police Officer Candidate
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Trade Secrets
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Constitutionality

Construing the exemptions of subdivision (1)(b) of this section in a per se manner does not render this Act unconstitutionally overbroad under the First Amendment. Healey v. Teachers Retirement Sys., 200 Ill. App. 3d 240, 146 Ill. Dec. 803, 558 N.E.2d 766 (4 Dist. 1990).

This Act is not unconstitutional as allowing a prior restraint. City of Monmouth v. Galesburg Printing & Publishing Co., 144 Ill. App. 3d 224, 98 Ill. Dec. 774, 494 N.E.2d 896 (3 Dist. 1986).

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Attorney-Client Privilege

Attorney General's opinions to the Illinois State Board of Education as to whether certain documents were protected by the attorney-client privilege constituted part of the representation of the Board and as such, might have come under the exemption from disclosure pursuant to 5 ILCS 140/7(1)(n); however, the Board failed to show, by more than an insufficient conclusory affidavit, that the communications would not be subject to discovery in litigation and accordingly, summary judgment pursuant to 735 ILCS 5/2-1005(c) was erroneously granted to the Board. Ill. Educ. Ass'n v. Ill. State Bd. of Educ., 204 Ill. 2d 456, 274 Ill. Dec. 430, 791 N.E.2d 522, 2003 Ill. LEXIS 783 (2003).

Audit

Survey assessing a police department's performance was not an audit and thus was not exempt from disclosure. It fit more comfortably into the dictionary definition of "survey" rather than of "audit" in that questions about job performance and satisfaction seemed to have the purpose of drawing conclusions about the department as a whole. Rockford Police Benevolent & Protective Ass'n v. Morrissey, 398 Ill. App. 3d 145, 339 Ill. Dec. 84, 925 N.E.2d 1205, 2010 Ill. App. LEXIS 42 (2 Dist. 2010).

Burden of Proof

Appellate court did not err in affirming the trial court's judgment in the newspaper's favor that found that information the newspaper requested involving its investigation into a childhood cancer by type of cancer, zip code, and date of diagnosis should be disclosed to the newspaper. The state health department did not show that an exemption prohibiting disclosure applied because the concern that the disclosure of the information "tends to lead to the identity" of cancer registry patient and would compromise their privacy was outweighed by the fact that the information the newspaper sought was not shown to be usable by the general public to make those identifications, despite the fact that an expert, through skill, knowledge, and training, seemed to be able to make those identifications. Southern Illinoisan v. Ill. Dep't of Pub. Health, 218 Ill. 2d 390, 300 Ill. Dec. 329, 844 N.E.2d 1, 2006 Ill. LEXIS 309 (2006).

- Assertion of Exemption

Exemptions contained in 5 ILCS 140/7 constitute affirmative defenses which the defendant has the burden of pleading and proving. Harwood v. McDonough, 344 Ill. App. 3d 242, 279 Ill. Dec. 56, 799 N.E.2d 859, 2003 Ill. App. LEXIS 1271 (1 Dist. 2003), appeal denied, 206 Ill. 2d 621, 282 Ill. Dec. 478, 806 N.E.2d 1066 (2003).

A governmental agency may not clothe its records with an exemption from disclosure by bare assertions that the material is exempt. Osran v. Bus, 226 Ill. App. 3d 704, 168 Ill. Dec. 627, 589 N.E.2d 1027 (2 Dist. 1992).

- Bearer of Burden

A public body seeking to protect information from disclosure, bears the burden of establishing that an exemption to disclosure under this Act applies to the requested information. Wayne County Press, Inc. v. Isle, 263 Ill. App. 3d 511, 200 Ill. Dec. 874, 636 N.E.2d 65 (5 Dist. 1994).

- Case by Case

Where a public body asserts an exemption for information that is not specifically included on the list and therefore not exempt per se, the court must evaluate the particular information on a case

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by case basis. Lieber v. Board of Trustees of S. Ill. Univ., 176 Ill. 2d 401, 223 Ill. Dec. 641, 680 N.E.2d 374 (1997).

- Not Met

In an action under the Freedom of Information Act, 5 ILCS 140/1 et seq., in which a landlord sought the names and addresses of all freshmen from a university, it was error to grant summary judgment in favor of the university because the presumption was that all public records were open and accessible and that the university had the burden to establish that the information was exempted from disclosure under 5 ILCS 140/7 Lieber v. Southern Ill. Univ., 279 Ill. App. 3d 553, 216 Ill. Dec. 227, 664 N.E.2d 1155, 1996 Ill. App. LEXIS 339 (1 Dist. 1996).

Where municipality's affidavits submitted in support of its motion for summary judgment, alleging that plaintiff's request for disclosure was exempt, were entirely conclusory and merely recited or paraphrased the language of the statute without giving any clue as why the requested documents should be disclosed, they provided an insufficient factual basis to permit the trial court to grant summary judgment to the municipality, particularly in the absence of an in camera inspection of the disputed material. Baudin v. City of Crystal Lake, 192 Ill. App. 3d 530, 139 Ill. Dec. 554, 548 N.E.2d 1110 (2 Dist. 1989).

- Requirements

Pursuant to the public policy embodied in the Freedom of Information Act, 5 ILCS 140/1 et seq., to provide open and accessible public records, and the competing policy of protecting the attorney-client privilege, the exemption from disclosure of documents under 5 ILCS 140/7(1)(n) is to be narrowly construed; it is the public body's burden to show its right to the exemption and a conclusory affidavit does not meet that burden, however, an in camera review by the court does constitute an appropriate procedure for such review. Ill. Educ. Ass'n v. Ill. State Bd. of Educ., 204 Ill. 2d 456, 274 Ill. Dec. 430, 791 N.E.2d 522, 2003 Ill. LEXIS 783 (2003).

In analyzing a dispute as to whether certain requested information is exempt under subdivision (1)(b), the court must first determine whether the information is contained in any of the subsections and if the information does fall within one of the subsections, it is exempt from disclosure per se; if it does not, the court must determine whether disclosure would nonetheless constitute a clearly unwarranted invasion of personal privacy under the general provision of subdivision (1)(b). Gibson v. Illinois State Bd. of Educ., 289 Ill. App. 3d 12, 225 Ill. Dec. 391, 683 N.E.2d 894 (1 Dist. 1997).

Where the public body claims that a requested document falls within one of the specifically enumerated categories and is able to prove that claim, no further inquiry by the court is necessary. Lieber v. Board of Trustees of S. Ill. Univ., 176 Ill. 2d 401, 223 Ill. Dec. 641, 680 N.E.2d 374 (1997).

To meet its burden to prove that specific documents are exempt, an agency must provide a detailed justification for its claim of exemption, addressing the requested documents specifically and in a manner allowing for adequate adversary testing. Baudin v. City of Crystal Lake, 192 Ill. App. 3d 530, 139 Ill. Dec. 554, 548 N.E.2d 1110 (2 Dist. 1989).

Computer Tape

- Nonexempt Information

Where information is located only on computer tape, defendants must prepare a computer program which would generate nonexempt information onto hard copy. (Decided under former 5 ILCS 140/8 (repealed); see now 5 ILCS 140/7.) Hamer v. Lentz, 132 Ill. 2d 49, 138 Ill. Dec. 222, 547 N.E.2d 191 (1989).

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Construction

The exemptions from disclosure of information are not to be construed broadly. Cooper v. Illinois Dep't of Lottery, 266 Ill. App. 3d 1007, 203 Ill. Dec. 926, 640 N.E.2d 1299 (1 Dist. 1994).

Deliberative Process Privilege

Administration of the physical test and interpretation of the test results by the city's outside testing administrator involved a preliminary document that the city used to determine whether the firefighter applicant would be allowed to continue in the quest to become a city firefighter. Thus, under the Freedom of Information Act, 5 ILCS 140/7(1)(f), the outside testing administrator was protected by the deliberative process privilege from having to produce that information after it was sought so that the firefighter applicant could determine why the firefighter applicant failed a physical abilities test. Kopchar v. City of Chicago, 395 Ill. App. 3d 762, 335 Ill. Dec. 555, 919 N.E.2d 76, 2009 Ill. App. LEXIS 1066 (1 Dist. 2009), appeal denied, 2010 Ill. LEXIS 475 (Ill. 2010).

City's generalized contention that the documents an inmate sought pertaining to the investigation of a murder, and the inmate's arrest and conviction for that murder, necessarily contained analysis and opinions that triggered the deliberative process exemption to the Illinois Freedom of Information Act was insufficient to establish the exemption where the City failed to demonstrate, which, if any, of the requested documents included opinions or formulated policies or actions. Day v. City of Chicago, 388 Ill. App. 3d 70, 327 Ill. Dec. 758, 902 N.E.2d 1144, 2009 Ill. App. LEXIS 66 (1 Dist. 2009).

Consultant's report was one of the materials on which the Illinois Department of Commerce and Community Affairs (DCCA) relied in formulating its ultimate decision of whether to pursue the corporate relocation and the components of its incentive package once it made that decision. Although the report constituted the "final" product of the outside consultant, it was nonetheless a "preliminary" document in relationship to the eventual and "final" decision made by DCCA. Harwood v. McDonough, 344 Ill. App. 3d 242, 279 Ill. Dec. 56, 799 N.E.2d 859, 2003 Ill. App. LEXIS 1271 (1 Dist. 2003), appeal denied, 206 Ill. 2d 621, 282 Ill. Dec. 478, 806 N.E.2d 1066 (2003).

As a matter of public policy, 5 ILCS 140/7(1)(f) exempts from disclosure predecisional materials used by a public body in its deliberative process; it applies to an individual's request and exempts a consultant's report form public disclosure. Harwood v. McDonough, 344 Ill. App. 3d 242, 279 Ill. Dec. 56, 799 N.E.2d 859, 2003 Ill. App. LEXIS 1271 (1 Dist. 2003), appeal denied, 206 Ill. 2d 621, 282 Ill. Dec. 478, 806 N.E.2d 1066 (2003).

The court did not recognize a deliberative process privilege to protect certain advice and discussions between government officials concerning formulation of governmental decisions and policy. People ex rel. Birkett v. City of Chicago, 184 Ill. 2d 521, 235 Ill. Dec. 435, 705 N.E.2d 48 (1998).

Election Records

County election commission and its chairman did not violate the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., in denying a request by a citizen under 5 ILCS 140/3(a) to examine the ballots, ballot box tapes, and poll signature cards from an election because the election records were exempt from disclosure under 5 ILCS 140/7(1)(a) as the disclosure of the requested election records was prohibited by 10 ILCS 5/17-20 and 10 ILCS 5/17-22 of the Illinois Election Code, 10 ILCS 5 - 1 et seq. Kibort v. Westrom, 371 Ill. App. 3d 247, 308 Ill. Dec. 676, 862 N.E.2d 609, 2007 Ill. App. LEXIS 32 (1 Dist. 2007).

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Enforcement Proceedings

- Investigatory Records

Where requested records were data used by a municipal sanitary district to compel compliance with a user self-reporting system, the records were properly considered investigatory records compiled for law enforcement purposes and, therefore, were exempt from disclosure under subsection (c) of this section. Griffith Lab. U.S.A. v. Metropolitan San. Dist., 168 Ill. App. 3d 341, 119 Ill. Dec. 82, 522 N.E.2d 744 (1 Dist. 1988).

- Shown

Where a municipal sanitary district monitored users by collecting its own sampling data to ensure compliance with self-reporting system and thereby prevented violations of an ordinance, this effort constituted an "enforcement proceeding" within the meaning of subdivision (c)(1) of this section. Griffith Lab. U.S.A. v. Metropolitan San. Dist., 168 Ill. App. 3d 341, 119 Ill. Dec. 82, 522 N.E.2d 744 (1 Dist. 1988).

- Summary Judgment

Award of summary judgment to a school district was improper because there were questions of material fact as to whether any portion of the school district superintendent's employment contract was exempt from disclosure and whether the superintendent's voluntary disclosures of the contract to two newspapers waived the school district's exemption claim.

Evaluation Material

If an employee, who has a vested interest in a continued association with the state, is forbidden to view tests and evaluation material, then a job applicant, who has no vested interest in state employment, should also be forbidden to inspect his evaluation material. Roulette v. Department of Cent. Mgt. Servs., 141 Ill. App. 3d 394, 95 Ill. Dec. 587, 490 N.E.2d 60 (1 Dist. 1986).

Federal Rules

Because Fed. R. Crim. P. 6(e)(2) did not prohibit the disclosure of the receipt of or content of federal grand jury subpoenas, 5 ILCS 140/7(1)(a) could not be relied upon by the Governor of Illinois to refuse to disclose information regarding such subpoenas served on the State between January 1, 2006 and July 24, 2006. Better Gov't Ass'n v. Blagojevich, 386 Ill. App. 3d 808, 326 Ill. Dec. 165, 899 N.E.2d 382, 2008 Ill. App. LEXIS 1170 (4 Dist. 2008).

Federal Statute

- Deliberative Process Privilege

The federal deliberative process privilege, where appropriate, should be available to state agencies, including Board of Education; such privilege fosters a more effective and efficient deliberative process for such entities and protects governmental deliberative materials. Bobkoski v. Board of Educ., 141 F.R.D. 88 (N.D. Ill. 1992).

This section employs substantially the same language and the same standard as 5 U.S.C. 552(b)(6) of the Federal Freedom of Information Act. As such, the court should adopt what the federal courts have held with respect thereto as applicable to this Act. Margolis v. Director of Dep't of Revenue, 180 Ill. App. 3d 1084, 129 Ill. Dec. 777, 536 N.E.2d 827 (1 Dist. 1989).

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Case law construing the Federal Freedom of Information Act statute should be used in Illinois to interpret this Act. Roulette v. Department of Cent. Mgt. Servs., 141 Ill. App. 3d 394, 95 Ill. Dec. 587, 490 N.E.2d 60 (1 Dist. 1986).

Internal Personnel Rules and Practices

The trial court was correct in determining that a County Special Operations Group Special Services Team Policy and Procedural Manual generally came under the exemption of subsection (w), but the court erred in failing to review the manual with the purpose of redacting exempt parts and ordering the disclosure of the remainder. Carter v. Meek, 322 Ill. App. 3d 266, 255 Ill. Dec. 661, 750 N.E.2d 242, 2001 Ill. App. LEXIS 384 (5 Dist. 2001).

Internal Policies

- Investigatory or Law Enforcement Materials

When a governmental agency believes that materials sought under subsection (w) of this section are within an exempt category of investigatory or law enforcement materials, it should submit to the circuit court a detailed affidavit describing how disclosure significantly risks circumvention of the law or of the agency's regulations; where investigatory or law enforcement materials are involved, if the agency claims an exemption under the internal policies and practices provision, the test to determine whether the material is to be disclosed is if a document for which disclosure is sought meets the test of "predominant internality" and if the disclosure significantly risks circumvention of the agency's regulations or of statutes, the material is exempt from mandatory disclosure. Baudin v. City of Crystal Lake, 192 Ill. App. 3d 530, 139 Ill. Dec. 554, 548 N.E.2d 1110 (2 Dist. 1989).

Invasion of Privacy

In a cross appeal involving a records request dispute wherein the requestor sought all citizen complaints made against a deputy sheriff held by the sheriff's office, the trial court erred by allowing the sheriff to withhold unfounded complaints of wrongdoing by the deputy sheriff in the performance of his duties as such information did not constitute an invasion of privacy under 5 ILCS 140/7(1)(b). Gekas v. Williamson, 393 Ill. App. 3d 573, 332 Ill. Dec. 161, 912 N.E.2d 347, 2009 Ill. App. LEXIS 687 (4 Dist. 2009).

Because disclosure of information that related to the public duties of public officials, including the Governor of Illinois, was not considered an invasion of personal privacy under the Illinois Freedom of Information Act, 5 ILCS 140/1 through 11, 5 ILCS 140/7(1)(b)(c) could not be asserted by the Governor as a basis for refusing to disclose information regarding federal grand jury subpoenas served on the State between January 1, 2006 and July 24, 2006. Better Gov't Ass'n v. Blagojevich, 386 Ill. App. 3d 808, 326 Ill. Dec. 165, 899 N.E.2d 382, 2008 Ill. App. LEXIS 1170 (4 Dist. 2008).

- Absent Masking

This Act does not allow a public body to refuse production of records or documents in its possession merely because they contain several items of information other than that sought which, if not masked, i.e., deleted, would allow the identification of the individuals to whom those records pertain and would thus invade their privacy. Bowie v. Evanston Community Consol. Sch. Dist., 168 Ill. App. 3d 101, 119 Ill. Dec. 7, 522 N.E.2d 669 (1 Dist. 1988).

- Case by Case Basis

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The per se interpretation of exemptions from disclosure in subdivision (1)(b) of this section employed by the Fourth District Appellate Court differs from that of the First and Third District Appellate Courts: those courts reject a per se application of exemptions in favor of a case-by-case balancing of interests in which the court must determine if disclosure would constitute a clearly unwarranted invasion of personal privacy. Healey v. Teachers Retirement Sys., 200 Ill. App. 3d 240, 146 Ill. Dec. 803, 558 N.E.2d 766 (4 Dist. 1990).

In order to invoke the exemptions under this section, the public body must, on a case by case basis, show how each claim of exemption is a clearly unwarranted invasion of personal privacy. City of Monmouth v. Galesburg Printing & Publishing Co., 144 Ill. App. 3d 224, 98 Ill. Dec. 774, 494 N.E.2d 896 (3 Dist. 1986).

- Not Shown

Employment contracts of two university employees were public records that were not exempt from disclosure under 5 ILCS 140/7(1)(b) because the information contained in the contracts bore on the duties of public employees, and thus, their production was not an invasion of personal privacy; the mere fact that the contracts were kept in the employees' personnel files did not make them exempt from production in response to a Freedom of Information Act request. Reppert v. Southern Ill. Univ., 375 Ill. App. 3d 502, 314 Ill. Dec. 540, 874 N.E.2d 905, 2007 Ill. App. LEXIS 931 (1 Dist. 2007).

Subsection 7(1)(b)(i) did not exempt the disclosure by the Department of Public Health of copies of documents relating to the incidence of neuroblastoma from 1985 to the date of the letter, as they were available by the type of cancer, zip code, and date of diagnosis. S. Illinoisan v. Dep't of Pub. Health, 319 Ill. App. 3d 979, 254 Ill. Dec. 361, 747 N.E.2d 401, 2001 Ill. App. LEXIS 219 (5 Dist. 2001).

The stipulated facts failed, as a matter of law, to meet the strict standard which required that a "clearly unwarranted invasion of personal privacy" be proved; therefore, the circuit court properly granted plaintiff the requested relief of disclosure of applications for permits for pigeon shoots. Schessler v. Department of Conservation, 256 Ill. App. 3d 198, 194 Ill. Dec. 608, 627 N.E.2d 1250 (4 Dist. 1994).

- Per Se Exemptions

Trial court erred in ordering the release of documents related to a school board superintendent's dismissal; since the requested documents fit within the personnel file exemption under 5 ILCS 140/7(b)(ii) of the Freedom of Information Act, 5 ILCS 140/1 et seq., they were per se exempt. Copley Press, Inc. v. Bd. of Educ., 359 Ill. App. 3d 321, 296 Ill. Dec. 1, 834 N.E.2d 558, 2005 Ill. App. LEXIS 862 (3 Dist. 2005), appeal denied, 217 Ill. 2d 559, 300 Ill. Dec. 364, 844 N.E.2d 36 (2005).

The Fourth District Appellate Court interprets the exemptions from disclosure contained within subdivision (1)(b) of this section as per se exemptions which do not require courts to determine whether disclosure of the information described in each exemption would constitute a clearly unwarranted invasion of personal privacy. Healey v. Teachers Retirement Sys., 200 Ill. App. 3d 240, 146 Ill. Dec. 803, 558 N.E.2d 766 (4 Dist. 1990).

- Showing Required

The business names and addresses of applicants for certificates of registration to engage in retail sales in a county were not per se exempt from disclosure under subsection (b) of this section; it was necessary to show that disclosure of that information would constitute a clearly unwarranted invasion of personal privacy. Margolis v. Director of Dep't of Revenue, 180 Ill. App. 3d 1084, 129 Ill. Dec. 777, 536 N.E.2d 827 (1 Dist. 1989).

- Shown

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Where plaintiff sought copies of, or access to, every "Notice of Disciplinary Conference" and "Notice of Informal Conference" whenever such notices were mailed by the Illinois Department of Professional Regulation to professional licensees or registrants, the information sought by plaintiff constituted a clearly unwarranted invasion of personal privacy and was thus exempt from publication; the notices were sent to licensees who were either the subject of an investigation which might result in sanctions or who had been found to be in violation of a regulation and were to be disciplined and consisted of the names and addresses of the licensees, the location where the conferences were to take place and a brief summary of the licensees' alleged violation. David Blumenfeld, Ltd. v. Department of Professional Regulation, 263 Ill. App. 3d 981, 201 Ill. Dec. 162, 636 N.E.2d 594 (1 Dist. 1993).

Investigation Files

Where witnesses were deeply concerned about the confidentiality of the information they were providing to the investigators; many of the witnesses were compelled to cooperate with the state police investigation under threat of disciplinary action if they did not; none of the witnesses or sources of information consented in writing to disclosure of the information they provided; and given the nature of the investigation and the relatively limited number of sources of information pertinent to that investigation within the police department and the local community, it was readily apparent from an examination of the material in the file that the information provided by each individual interviewee would necessarily result in the disclosure of the identity of that source which meant redaction of the file could not be meaningfully accomplished; subdivision (1)(c)(iv) applied to the entire file which was exempt from disclosure. Copley Press, Inc. v. City of Springfield, 266 Ill. App. 3d 421, 203 Ill. Dec. 354, 639 N.E.2d 913 (4 Dist.), appeal denied, 158 Ill. 2d 550, 206 Ill. Dec. 834, 645 N.E.2d 1356 (1994).

Judicial Gag Order

- No Exemption

Judicial gag order requested by defendant did not apply as an exemption in Freedom of Information Act case. Carbondale Convention Ctr., Inc. v. City of Carbondale, 245 Ill. App. 3d 474, 185 Ill. Dec. 405, 614 N.E.2d 539 (5 Dist. 1993).

Legislative Intent

Application of the Freedom of Information Act, 5 ILCS 140/1 et seq., involved the balancing of restraints on information access through limited exceptions against the general rule that people had a right to know about the conduct of government, as the legislature intended. Since the appellate court correctly determined that the trial court's judgment finding that the newspaper's request for information would not tend to lead to the identity of cancer registry patients, the appellate court's judgment affirming the trial court's judgment was affirmed on appeal to the state supreme court. Southern Illinoisan v. Ill. Dep't of Pub. Health, 218 Ill. 2d 390, 300 Ill. Dec. 329, 844 N.E.2d 1, 2006 Ill. LEXIS 309 (2006).

Legislative intent requires that public access to information be construed broadly and that exemptions to disclosure be construed narrowly. City of Monmouth v. Galesburg Printing & Publishing Co., 144 Ill. App. 3d 224, 98 Ill. Dec. 774, 494 N.E.2d 896 (3 Dist. 1986).

Liquor Licenses

In issuing a city liquor license, the city is licensing an occupation, and therefore documents submitted in reference to liquor license applications are exempt under subdivision (b)(iii) of this

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section. Copley Press, Inc. v. City of Springfield, 143 Ill. App. 3d 370, 97 Ill. Dec. 645, 493 N.E.2d 127 (4 Dist. 1986).

Lottery Media Plan

There was no reason to conclude that the data requested about media plan was furnished to the Illinois Department of the Lottery (IDL) in confidence, or that disclosure of the plan would inflict competitive harm on the provider; the plan, commissioned and paid for by the IDL, was not the type of confidential business information that is exempt. Cooper v. Illinois Dep't of Lottery, 266 Ill. App. 3d 1007, 203 Ill. Dec. 926, 640 N.E.2d 1299 (1 Dist. 1994).

Lottery Sales Data

Sales data of each of city's lottery outlets were not exempt from disclosure as: (a) information of a proprietary and confidential nature or (b) personal files and information maintained with respect to licenses by a public body engaged in occupational licensure or (c) information required of any taxpayer in connection with the collection of any tax. Cooper v. Illinois Dep't of Lottery, 266 Ill. App. 3d 1007, 203 Ill. Dec. 926, 640 N.E.2d 1299 (1 Dist. 1994).

Materials

- Deliberative Process

The appellate court would vacate the part of a contempt order imposing a $100 day fine where the City willingly submitted to the contempt order so as to allow the reviewing court to resolve the City's deliberative process privilege claim; the submission constituted a good-faith effort to secure an interpretation of an issue without precedent in the State. People ex rel. Birkett v. City of Chicago, 292 Ill. App. 3d 745, 226 Ill. Dec. 717, 686 N.E.2d 66 (2 Dist. 1997), aff'd, 184 Ill. 2d 521, 235 Ill. Dec. 435, 705 N.E.2d 48 (1998).

While documents set forth in subdivision (1)(f) are protected from a request by a citizen walking in off the street without any pending litigation, the section does not create a privilege to withhold relevant documents from judicial discovery. People ex rel. Birkett v. City of Chicago, 292 Ill. App. 3d 745, 226 Ill. Dec. 717, 686 N.E.2d 66 (2 Dist. 1997), aff'd, 184 Ill. 2d 521, 235 Ill. Dec. 435, 705 N.E.2d 48 (1998).

Not Waived

Under the plain language of the statute, names of participants at beat meetings and community liaisons were exempt from disclosure as were lists of notices of denial of access; the police department had not waived the exemption by supplying the information to a research institution under stringent confidentiality safeguards. Chi. Alliance for Neighborhood Safety v. City of Chicago, 348 Ill. App. 3d 188, 283 Ill. Dec. 506, 808 N.E.2d 56, 2004 Ill. App. LEXIS 288 (1 Dist. 2004).

Occupation

Where applicants sought a license to engage in holding a pigeon shoot, this involved only a short period of time and lacked the continuity and regularity to constitute an "occupation" under subdivision (1)(b)(iii) of this section. Schessler v. Department of Conservation, 256 Ill. App. 3d 198, 194 Ill. Dec. 608, 627 N.E.2d 1250 (4 Dist. 1994).

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Pending Criminal Proceedings

Presumption existed in a case where the organization requested that the police agencies produce requested material related to a study on criminal identification procedures that all requested documents had to be produced, subject to agreed redactions. Regarding any documents over which there was a question about whether 5 ILCS 140/7 exemptions from production applied, those documents had to be presented to the trial court for a determination about whether they were in fact exempt. Nat'l Ass'n of Crim. Def. Lawyers v. Chi. Police Dep't, 399 Ill. App. 3d 1, 338 Ill. Dec. 358, 924 N.E.2d 564, 2010 Ill. App. LEXIS 146 (1 Dist. 2010).

Reports dated before the second alleged sexual assault could establish the Housing Authority failed to act or that such failure was likely to result in constitutional deprivation and should be disclosed at that point when injurious impact on the criminal proceedings and potential witnesses are no longer a concern. Doe v. Hudgins, 175 F.R.D. 511 (N.D. Ill. 1997).

Personal Information

Names and home addresses of licensed plumbers, maintained by the state regulatory agency, were not personal information protected from disclosure upon receipt of a request from the plumbers' union. Chicago Journeymen Plumbers' Local Union 130, U.A. v. Dep't of Pub. Health, 327 Ill. App. 3d 192, 260 Ill. Dec. 671, 761 N.E.2d 1227, 2001 Ill. App. LEXIS 1467 (1 Dist. 2001).

- Shown

Trial court properly concluded that plaintiffs were not entitled to obtain a deceased child's medical records under the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., because plaintiffs did not possess written consent from the deceased child, and the authorization signed by the child's mother was invalid and provided no legal basis for disclosure of the medical records where the mother was convicted of murdering the child and was forever barred by 755 ILCS 5/2-6 from receiving any property, benefit, or other interest from the child's estate. Trent v. Office of the Coroner, 349 Ill. App. 3d 276, 285 Ill. Dec. 432, 812 N.E.2d 21, 2004 Ill. App. LEXIS 626 (3 Dist. 2004), appeal denied, 212 Ill. 2d 556, 291 Ill. Dec. 716, 824 N.E.2d 292 (2004).

Names, addresses and telephone numbers constitute personal information under this Act because they will reveal the identity of particular individuals. Local 1274, Ill. Fed'n of Teachers v. Niles Tp. High Sch., Dist. 219, 287 Ill. App. 3d 187, 222 Ill. Dec. 602, 678 N.E.2d 9 (1 Dist. 1997).

Since the names and addresses requested by plaintiffs were personal information and the General Assembly scholarship recipients were receiving educational and financial services from their respective legislators, the information concerning names and address was exempt per se from disclosure under subdivision (1)(b)(1). Gibson v. Illinois State Bd. of Educ., 289 Ill. App. 3d 12, 225 Ill. Dec. 391, 683 N.E.2d 894 (1 Dist. 1997).

Personnel Files

Survey assessing a police department's performance did not fall within the exemption for personnel files. The questions did not pertain to individuals, and the department as a whole was not entitled to the exemption, which sought to prevent an invasion of an individual's personal privacy, not a public body's privacy. Rockford Police Benevolent & Protective Ass'n v. Morrissey, 398 Ill. App. 3d 145, 339 Ill. Dec. 84, 925 N.E.2d 1205, 2010 Ill. App. LEXIS 42 (2 Dist. 2010).

In a cross appeal involving a records request dispute wherein the requestor sought all citizen complaints made against a deputy sheriff held by the sheriff's office, the trial court erred by

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allowing the sheriff to withhold unfounded complaints of wrongdoing by the deputy sheriff in the performance of his duties as such information did not constitute an invasion of privacy under 5 ILCS 140/7(1)(b). Gekas v. Williamson, 393 Ill. App. 3d 573, 332 Ill. Dec. 161, 912 N.E.2d 347, 2009 Ill. App. LEXIS 687 (4 Dist. 2009).

Employment contract was not the kind of record that the General Assembly intended to keep from public view and did not fall within the exemption for personnel files in 5 ILCS 140/7(1)(b) to the extent that the material involved the duties of the employee and the compensation paid for the performance of those duties. Thus, the resident was entitled to have fulfilled a Freedom of Information Act request seeking a copy of the school superintendent's contract to the extent that the contract focused on those matters although the school superintendent pursuant to former 5 ILCS 140/8 (repealed) was exempted from having to disclose any purely personal information unconnected to performance of his duties or the related compensation. Stern v. Wheaton-Warrenville Cmty. Unit Sch. Dist. 200, 233 Ill. 2d 396, 331 Ill. Dec. 12, N.E.2d , 2009 Ill. LEXIS 388 (2009).

School district improperly refused an Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., request for a superintendent's employment contract because while a personnel file was per se exempted under 5 ILCS 140/7(1)(b)(ii), individual contracts were not also per se exempt simply because they were kept in such a file as employment contracts of public officials fell within the definition of public records in 5 ILCS 140/2(c)(vii), (viii) and former 5 ILCS 140/8 (repealed) permitted the disclosure of nonexempt documents contained within exempt public records; an in camera inspection under 5 ILCS 140/11(f) had to be undertaken to determine if the contract was exempt from disclosure. Stern v. Wheaton-Warrenville Cmty. Unit Sch. Dist. 200, 384 Ill. App. 3d 615, 323 Ill. Dec. 792, 894 N.E.2d 818, 2008 Ill. App. LEXIS 826 (1 Dist. 2008), aff'd in part and vacated in part, remanded, 2009 Ill. LEXIS 388 (Ill. 2009).

Employment contracts of two university employees were public records that were not exempt from disclosure under 5 ILCS 140/7(1)(b) because the information contained in the contracts bore on the duties of public employees, and thus, their production was not an invasion of personal privacy; the mere fact that the contracts were kept in the employees' personnel files did not make them exempt from production in response to a Freedom of Information Act request, and the contracts could be produced simply by deleting any other exempt material from the personnel files. Reppert v. Southern Ill. Univ., 375 Ill. App. 3d 502, 314 Ill. Dec. 540, 874 N.E.2d 905, 2007 Ill. App. LEXIS 931 (1 Dist. 2007).

Personnel Practices

- Test Results

Firefighter applicant was not entitled under the Freedom of Information Act to obtain the results of the physical abilities test that the firefighter did not pass. Under 5 ILCS 140/7(1)(j), the city was not required to produce such results because that statutory privilege expressly exempted from having to produce upon request test questions, scoring keys, and any other examination date, which was interpreted to include the results of physical abilities tests. Kopchar v. City of Chicago, 395 Ill. App. 3d 762, 335 Ill. Dec. 555, 919 N.E.2d 76, 2009 Ill. App. LEXIS 1066 (1 Dist. 2009), appeal denied, 2010 Ill. LEXIS 475 (Ill. 2010).

Doctor's notes and his interpretation of a job applicant's Minnesota Multiphasic Personality Inventory results qualified as information relating to defendant's personnel practices and were thus exempt from public scrutiny and were not subject to disclosure under this Act. Roulette v. Department of Cent. Mgt. Servs., 141 Ill. App. 3d 394, 95 Ill. Dec. 587, 490 N.E.2d 60 (1 Dist. 1986).

Police Investigatory Information

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Affidavits submitted in support of a city's claim that documents an inmate sought were exempt from Illinois Freedom of Information Act disclosure under the ongoing investigation exemption, 5 ILCS 140/7(1)(c), were insufficient to support the exemption without an in camera inspection as they failed to explain how the investigation of the 1991 murder the inmate was convicted of could still be ongoing or how the disclosure of the documents the inmate sought would specifically obstruct any remaining investigation into the murder. Day v. City of Chicago, 388 Ill. App. 3d 70, 327 Ill. Dec. 758, 902 N.E.2d 1144, 2009 Ill. App. LEXIS 66 (1 Dist. 2009).

- Determination of Court

The extension of the limited privilege for law enforcement investigatory information requires a court to determine whether disclosure would be contrary to public interest. In re Daniels, 240 Ill. App. 3d 314, 180 Ill. Dec. 742, 607 N.E.2d 1255 (1 Dist. 1992).

- Qualified Privilege

Legislation and caselaw in Illinois point to Illinois' recognition of the existence of a qualified privilege for law enforcement investigatory information. In re Daniels, 240 Ill. App. 3d 314, 180 Ill. Dec. 742, 607 N.E.2d 1255 (1 Dist. 1992).

A limited privilege for law enforcement investigatory information is operative in Illinois, even though not fully codified by statute or rule. In re Daniels, 240 Ill. App. 3d 314, 180 Ill. Dec. 742, 607 N.E.2d 1255 (1 Dist. 1992).

Police Officer Candidate

The disclosure of plaintiff's polygraph and psychological test results to a police training institute where plaintiff was training to be a police officer did not fall into an exempted category nor violate the Freedom of Information Act. Roehrborn v. Lambert, 277 Ill. App. 3d 181, 213 Ill. Dec. 923, 660 N.E.2d 180 (1 Dist. 1995), appeal denied, 166 Ill. 2d 554, 216 Ill. Dec. 10, 664 N.E.2d 647 (1996).

Police Officer Disciplinary Matters

Although the Illinois Freedom of Information Act (FOIA) exemptions set forth in 5 ILCS 140/7 did not create an evidentiary privilege within the meaning of Fed. R. Civ. P. 26(b)(1) and were not dispositive of disclosure in response to discovery requests in litigation, 5 ILCS 140/7(1)(b)(v) did create an expectation of privacy with respect to the identity of complainants and of persons providing information to law enforcement agencies. Therefore, there was good cause to enter a protective order limiting the public disclosure of the identity of complainants and witnesses contained in four police officers' personnel files in an action brought by a father and son against a Village and the officers for excessive force. Lepianka v. Vill. of Franklin Park, F. Supp. 2d , 2004 U.S. Dist. LEXIS 5013 (N.D. Ill. Mar. 25, 2004).

Complaint register files for police officers and matters of police discipline are not exempt from disclosure, notwithstanding the privacy interests of police officers, in light of the provision permitting disclosure of information that bears on the public duties of public employees and officials and the policy favoring the public's right to be informed of the conduct of public servants. Doe v. White, F. Supp. 2d , 2001 U.S. Dist. LEXIS 7726 (N.D. Ill. June 7, 2001).

Prisoner Access

Exemptions to this Act do not preclude access by an inmate to otherwise disclosable documents considered by the Prisoner Review Board in passing on plaintiff's parole eligibility. Etten v. Lane, 138 Ill. App. 3d 439, 92 Ill. Dec. 934, 485 N.E.2d 1177 (5 Dist. 1985).

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Probation Records

This section, when read in conjunction with 730 ILCS 110/12, specifically limits the disclosure of probation records. Smith v. Cook County Probation Dep't, 151 Ill. App. 3d 136, 104 Ill. Dec. 497, 502 N.E.2d 1157 (1 Dist. 1986).

Psychological Evaluation

Although doctor's evaluation of plaintiff was not a trade secret in the conventional sense, it was confidential information received by a government agency from its consulting psychologist, and since disclosure would have a chilling effect upon defendant's ability to receive similar information in the future, the doctor's evaluation was exempt from inspection. Roulette v. Department of Cent. Mgt. Servs., 141 Ill. App. 3d 394, 95 Ill. Dec. 587, 490 N.E.2d 60 (1 Dist. 1986).

- Race of Public Employees

The race of a public employee, as recorded in a personnel file, is not subject to disclosure under this Act. CBS, Inc. v. Partee, 198 Ill. App. 3d 936, 145 Ill. Dec. 30, 556 N.E.2d 648 (1 Dist. 1990).

Public Bodies

The term public bodies in subdivision (1)(b)(i) encompasses school districts. Local 1274, Ill. Fed'n of Teachers v. Niles Tp. High Sch., Dist. 219, 287 Ill. App. 3d 187, 222 Ill. Dec. 602, 678 N.E.2d 9 (1 Dist. 1997).

Real Estate Purchase Negotiations

Real estate purchase negotiations requires something more than mere site analysis and evaluation activity. Osran v. Bus, 226 Ill. App. 3d 704, 168 Ill. Dec. 627, 589 N.E.2d 1027 (2 Dist. 1992).

Contemplating entering into real estate purchase negotiations did not justify the withholding of particular documents. Osran v. Bus, 226 Ill. App. 3d 704, 168 Ill. Dec. 627, 589 N.E.2d 1027 (2 Dist. 1992).

Recommendations

- Publicly Cited and Identified

This Act limits access to information by providing that unless publicly cited and identified by the head of a public body, recommendations which express opinions are exempt from inspection and copying. Carrigan v. Harkrader, 146 Ill. App. 3d 535, 100 Ill. Dec. 148, 496 N.E.2d 1213 (3 Dist. 1986).

Retail Sales Registrants

The business names and addresses of applicants for certificates of registration to engage in retail sales in county would identify particular individuals, and that information thus met the threshold requirement for an exemption under subdivisions (b)(iii) and (b)(iv) of this section. Margolis v. Director of Dep't of Revenue, 180 Ill. App. 3d 1084, 129 Ill. Dec. 777, 536 N.E.2d 827 (1 Dist. 1989).

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School Records

- Housing

Requested information from school for information about housing inquiries from or on behalf of people who had been accepted as freshman, but who had not yet enrolled, was not exempt under subdivision (1)(b)(i). Lieber v. Board of Trustees of S. Ill. Univ., 176 Ill. 2d 401, 223 Ill. Dec. 641, 680 N.E.2d 374 (1997).

- Identification

A school's refusal to delete from requested records the confidential information facilitating the identification of individual students, i.e., their names and sexes, would defeat the purposes of this Act. Bowie v. Evanston Community Consol. Sch. Dist., 168 Ill. App. 3d 101, 119 Ill. Dec. 7, 522 N.E.2d 669 (1 Dist. 1988).

- Masked Records

Though the Illinois School Student Records Act (105 ILCS 10/1 et seq.), prohibits the disclosure of a school student record whereby a student may be individually identified, a masked record, which would delete individual identifying information, did not fall within the definition of a school student record, and, therefore was not prohibited from disclosure under the Act. Bowie v. Evanston Community Consol. Sch., 128 Ill. 2d 373, 131 Ill. Dec. 182, 538 N.E.2d 557 (1989).

- Names and Addresses

The newspaper was not entitled to compel the board to disclose information to a reporter regarding students under Illinois Freedom of Information Act since the information requested was subject to a per se exemption set forth in 5 ILCS 140/7(1)(b)(i). Chi. Tribune Co. v. Bd. of Educ., 332 Ill. App. 3d 60, 265 Ill. Dec. 910, 773 N.E.2d 674, 2002 Ill. App. LEXIS 558 (1 Dist. 2002), appeal denied, 201 Ill. 2d 562, 271 Ill. Dec. 923, 786 N.E.2d 181 (2002).

The names and addresses of the parents and students enrolled in school district must be produced under subdivision (1)(b). Local 1274, Ill. Fed'n of Teachers v. Niles Tp. High Sch., Dist. 219, 287 Ill. App. 3d 187, 222 Ill. Dec. 602, 678 N.E.2d 9 (1 Dist. 1997).

- Separation of Exempt Records

Records of school test results were not exempt from disclosure in their entirety merely because there might have been so few students of one race and sex in a class as to make their identification likely; rather, if masking and scrambling of the subject records would not prevent a likely identification of such students, defendants would have to separate the records exempted for that reason and disclose the remaining records. Bowie v. Evanston Community Consol. Sch. Dist., 168 Ill. App. 3d 101, 119 Ill. Dec. 7, 522 N.E.2d 669 (1 Dist. 1988).

- Test Results

Reports of test results for each school year, school, and grade within each school, containing each student's name, sex, race, and his or her raw score and percentile rank in eleven testing categories on the standardized California Achievement Test, properly masked and scrambled so as to preclude identification of the students, were not exempt from disclosure under this Act. Bowie v. Evanston Community Consol. Sch. Dist., 168 Ill. App. 3d 101, 119 Ill. Dec. 7, 522 N.E.2d 669 (1 Dist. 1988).

- Withholding of records

In case in which a newspaper requested the release of records relating to admission practices at the University of Illinois, the Family Education Rights and Privacy Act of 1974 did not specifically

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prohibit Illinois from doing anything, so the University could not use the federal law as authority to withhold the records pursuant to 5 ILCS 140/7(1)(a). Chi. Tribune Co. v. Univ. of Ill. Bd. of Trs., 781 F. Supp. 2d 672, 2011 U.S. Dist. LEXIS 33440 (N.D. Ill. 2011).

Self-Critical Analysis Privilege

Because the legislature has not adopted the self-critical analysis privilege into the Freedom of Information Act, a court will not create such a privilege, which has not been adopted by the Illinois courts. Thus, a survey assessing a police department's performance was not exempt under such a privilege. Rockford Police Benevolent & Protective Ass'n v. Morrissey, 398 Ill. App. 3d 145, 339 Ill. Dec. 84, 925 N.E.2d 1205, 2010 Ill. App. LEXIS 42 (2 Dist. 2010).

Trade Secrets

Settlement agreement that was entered into by a utility company in connection with an acquisition was properly withheld from disclosure by the Illinois Commerce Commission (ICC) under the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq. The agreement had been provided to the ICC upon a promise of confidentiality, and it fell within the trade secrets exemption under 5 ILCS 140/7(1)(g) because its disclosure would have had a chilling effect on the ICC's ability to obtain similar information in the future. Bluestar Energy Servs. v. Ill. Commerce Comm'n, 374 Ill. App. 3d 990, 313 Ill. Dec. 153, 871 N.E.2d 880, 2007 Ill. App. LEXIS 717 (1 Dist. 2007).

Traffic Accident Reports

Disclosure of the names, addresses, and statements of witnesses contained in traffic accident reports would constitute an unwarranted invasion of the personal privacy of the witnesses and, therefore, such information is exempt from disclosure under this section. Staske v. City of Champaign, 183 Ill. App. 3d 1, 132 Ill. Dec. 184, 539 N.E.2d 747 (4 Dist. 1989).

OPINIONS OF ATTORNEY GENERAL

Analysis

Logs
- State Fire Marshal
Names of Licensees
- Disclosure
Voter Registration Database

Logs

- State Fire Marshal

Logs that are maintained by the State Fire Marshal and that pertain to the removal of underground storage tanks are not generally exempt from disclosure; however, there may be specific circumstances in which part or all of the information contained in particular logs may be exempt. 1996 Op. Atty. Gen. (96-032).

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The mere fact that subsection (1)(c) or subsection (1)(f) may be applicable to some information contained in a log in specific instances, however, does not mean that storage tank removal logs are generally exempt. 1996 Op. Atty. Gen. (96-032).

With respect to any specific request, a determination must be made whether the document requested actually contains preliminary information or opinion, or whether disclosure would interfere with an administrative proceeding. Only in those instances in which facts and circumstances support the application of an exemption may logs maintained by fire marshal, or portions thereof, be withheld from disclosure. 1996 Op. Atty. Gen. (96-032).

Names of Licensees

- Disclosure

Subdivision (b)(iii) of this section does not exempt the names of licensees or applicants for licenses under the Illinois Currency Exchange Act (205 ILCS 405/.1 et seq.), from disclosure. 1990 Op. Atty. Gen. (90-002).

Voter Registration Database

The voter registration database is not exempt from disclosure under subsection (1)(a) of this section. 2002 Op. Atty. Gen. (02-009).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Administrative Law," see 26 S. Ill. U.L.J. 757 (2002).

RESEARCH REFERENCES

What are interagency or intra-agency memorandums or letters exempt from disclosure under the Freedom of Information Act (5 U.S.C.A. 552(b)). 168 ALR Fed. 143.

Construction and application of FOIA exemption 7(f), 5 U.S.C.A. § 552(b)(7)(F), which permits withholding of information compiled for law enforcement purposes if disclosure could reasonably be expected to endanger life or physical safety. 184 ALR Fed. 435.

Use of affidavits to substantiate federal agency's claim of exemption from request for documents under Freedom of Information Act (5 U.S.C.A. § 552). 187 ALR Fed. 1

When are government records reasonably "expected to interfere with enforcement proceedings" so as to be exempt from disclosure under Freedom of Information Act provision (5 U.S.C.A. § 552(b)(7)(a)) exempting any information "compiled for law enforcement purposes" whenever it "could reasonably be expected to interfere with enforcement proceedings.", 189 ALR Fed. 1

Practice Guides and Treatises.

Construction Litigation § 1.83 Access to Information (Freedom of Information Act) (IICLE).

Illinois Jurisprudence, Civil Procedure § 8:29 Governmental information.

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§ 5 ILCS 140/7.1: Repealed by P.A. 96-542, § 15, effective January 1, 2010.

§ 5 ILCS 140/7.5. Statutory Exemptions

Sec. 7.5. Statutory Exemptions. To the extent provided for by the statutes referenced below, the following shall be exempt from inspection and copying:

(a) All information determined to be confidential under Section 4002 of the Technology Advancement and Development Act [20 ILCS 700/4002].

(b) Library circulation and order records identifying library users with specific materials under the Library Records Confidentiality Act [75 ILCS 70/1 et seq.].

(c) Applications, related documents, and medical records received by the Experimental Organ Transplantation Procedures Board and any and all documents or other records prepared by the Experimental Organ Transplantation Procedures Board or its staff relating to applications it has received.

(d) Information and records held by the Department of Public Health and its authorized representatives relating to known or suspected cases of sexually transmissible disease or any information the disclosure of which is restricted under the Illinois Sexually Transmissible Disease Control Act [410 ILCS 325/1 et seq.].

(e) Information the disclosure of which is exempted under Section 30 of the Radon Industry Licensing Act [420 ILCS 44/30].

(f) Firm performance evaluations under Section 55 of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535/55].

(g) Information the disclosure of which is restricted and exempted under Section 50 of the Illinois Prepaid Tuition Act [110 ILCS 979/50].

(h) Information the disclosure of which is exempted under the State Officials and Employees Ethics Act [5 ILCS 430/1-1 et seq.], and records of any lawfully created State or local inspector general's office that would be exempt if created or obtained by an Executive Inspector General's office under that Act.

(i) Information contained in a local emergency energy plan submitted to a municipality in accordance with a local emergency energy plan ordinance that is adopted under Section 11-21.5-5 of the Illinois Municipal Code [65 ILCS 5/11-21.5-5].

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(j) Information and data concerning the distribution of surcharge moneys collected and remitted by wireless carriers under the Wireless Emergency Telephone Safety Act [50 ILCS 751/1 et seq.].

(k) Law enforcement officer identification information or driver identification information compiled by a law enforcement agency or the Department of Transportation under Section 11-212 of the Illinois Vehicle Code [625 ILCS 5/11-212].

(l) Records and information provided to a residential health care facility resident sexual assault and death review team or the Executive Council under the Abuse Prevention Review Team Act [210 ILCS 28/1 et seq.].

(m) Information provided to the predatory lending database created pursuant to Article 3 of the Residential Real Property Disclosure Act [765 ILCS 77/70 et seq.], except to the extent authorized under that Article.

(n) Defense budgets and petitions for certification of compensation and expenses for court appointed trial counsel as provided under Sections 10 and 15 of the Capital Crimes Litigation Act [725 ILCS 124/10 and 725 ILCS 124/15]. This subsection (n) shall apply until the conclusion of the trial of the case, even if the prosecution chooses not to pursue the death penalty prior to trial or sentencing.

(o) Information that is prohibited from being disclosed under Section 4 of the Illinois Health and Hazardous Substances Registry Act [410 ILCS 525/4].

(p) Security portions of system safety program plans, investigation reports, surveys, schedules, lists, data, or information compiled, collected, or prepared by or for the Regional Transportation Authority under Section 2.11 of the Regional Transportation Authority Act [70 ILCS 3615/2.11] or the St. Clair County Transit District under the Bi-State Transit Safety Act [45 ILCS 111/1 et seq.].

(q) Information prohibited from being disclosed by the Personnel Records Review Act [820 ILCS 40/0.01 et seq.].

(r) Information prohibited from being disclosed by the Illinois School Student Records Act [105 ILCS 10/1 et seq.].

(s) Information the disclosure of which is restricted under Section 5-108 of the Public Utilities Act [220 ILCS 5/5-108].

(t) All identified or deidentified health information in the form of health data or medical records contained in, stored in, submitted to, transferred by, or released from the Illinois Health Information Exchange, and identified or deidentified health information in the form of health data and medical records of the Illinois Health Information Exchange in the possession of the Illinois Health Information Exchange Authority due to its administration of the Illinois Health Information Exchange. The terms "identified" and "deidentified" shall be given the same meaning as in the Health Insurance Accountability and Portability Act of 1996, Public Law 104-191, or any subsequent amendments thereto, and any regulations promulgated thereunder.

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(u) Records and information provided to an independent team of experts under Brian's Law [405 ILCS 82/1 et seq.].

(v) *(As added by P.A. 97-80)* Names and information of people who have applied for or received Firearm Owner's Identification Cards under the Firearm Owners Identification Card Act [430 ILCS 65/0.01 et seq.].

(v) *(As added by P.A. 97-342)* Personally identifiable information which is exempted from disclosure under subsection (g) of Section 19.1 of the Toll Highway Act [605 ILCS 10/19.1].

(Source: P.A. 96-542, § 10; 96-1235, § 95; 96-1331, § 905; 97-80, § 5; 97-333, § 20; 97-342, § 5.)

Multiple Versions of Subsections Multiple versions of subsections within this section have been created by the editor to reflect conflicting or postponed legislation.

Note.

Section 995 of P.A. 96-1331 contains a severability provision.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 96-542 made this section effective January 1, 2010.

Effect of Amendments. The 2010 amendment by P.A. 96-1235, effective January 1, 2011, added (t).

The 2010 amendment by P.A. 96-1331, effective July 27, 2010, added (t).

The 2011 amendment by P.A. 97-80, effective July 5, 2011, redesignated former duplicate subsection (t) as (u); and added (v).

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, redesignated former duplicate subsection (t) as (u).

The 2011 amendment by P.A. 97-342, effective August 12, 2011, redesignated former duplicate subsection (t) as (u); and added (v).

This section was affected by multiple amendments by the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

§ 5 ILCS 140/8: Repealed by P.A. 96-542, § 15, effective January 1, 2010.

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§ 5 ILCS 140/9. [Notice of denial]

Sec. 9. (a) Each public body denying a request for public records shall notify the requester in writing of the decision to deny the request, the reasons for the denial, including a detailed factual basis for the application of any exemption claimed, and the names and titles or positions of each person responsible for the denial. Each notice of denial by a public body shall also inform such person of the right to review by the Public Access Counselor and provide the address and phone number for the Public Access Counselor. Each notice of denial shall inform such person of his right to judicial review under Section 11 of this Act [5 ILCS 140/11].

(b) When a request for public records is denied on the grounds that the records are exempt under Section 7 of this Act [5 ILCS 140/7], the notice of denial shall specify the exemption claimed to authorize the denial and the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority. Copies of all notices of denial shall be retained by each public body in a single central office file that is open to the public and indexed according to the type of exemption asserted and, to the extent feasible, according to the types of records requested.

(c) Any person making a request for public records shall be deemed to have exhausted his or her administrative remedies with respect to that request if the public body fails to act within the time periods provided in Section 3 of this Act [5 ILCS 140/3].

(Source: P.A. 83-1013; 96-542, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 209.

Cross References.

For the procedures required for written requests of public records, see 5 ILCS 140/3.

Illinois Administrative Code.

See 2 Illinois Administrative Code, §§ 3001.310, 3201.200, 3201.210, 3201.310.

Effect of Amendments. The 2009 amendment by P.A. 96-542, effective January 1, 2010, in (a), in the first sentence, deleted "or head of a public body" preceding "denying a request," substituted "the requester in writing" for "by letter the person making the request," and added "including a detailed factual basis for the application of any exemption claimed", substituted "review by the Public Access Counselor and provide the address and phone number for the Public Access Counselor" for "appeal to the head of the public body" in the second sentence, and deleted "of an appeal by the head of a public body" preceding "shall inform" in the last sentence; added "and the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal

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authority" in the first sentence of (b); added (c); and made stylistic changes.

CASE NOTES

Analysis

Assertion of Exemption
Denial of Request
Notice of Denial
- Sufficient

Assertion of Exemption

Police department carried its burden of establishing that privacy considerations protected against disclosure of lists of persons or groups whose freedom of information requests had been denied; therefore, an activist group was not granted mandamus relief on the issue of release of the lists. Chi. Alliance for Neighborhood Safety v. City of Chicago, 348 Ill. App. 3d 188, 283 Ill. Dec. 506, 808 N.E.2d 56, 2004 Ill. App. LEXIS 288 (1 Dist. 2004).

Denial of Request

Newspaper was entitled to appeal the denial of its request for information that the state health department had regarding the newspaper's investigation into a rare form of childhood cancer; once the state health department's director denied the newspaper's request for such information, the newspaper had the right to appeal that denial to the trial court, which entered a judgment that granted the newspaper's request that the appellate court properly affirmed, and the state supreme court affirmed on further review. Southern Illinoisan v. Ill. Dep't of Pub. Health, 218 Ill. 2d 390, 300 Ill. Dec. 329, 844 N.E.2d 1, 2006 Ill. LEXIS 309 (2006).

Notice of Denial

Plaintiff could not maintain a declaratory judgment action in which he sought a court order directing a city to, in the future, comply with the requirements of 5 ILCS 140/9(a) when denying requests for documents under the Freedom of Information Act, 5 ILCS 140/1 et seq. With regard to a request made by plaintiff, the issue was moot as the lack of compliance had not prejudiced plaintiff, and it was mere speculation to assume the city would fail to comply with the statute in the future. DesPain v. City of Collinsville, 382 Ill. App. 3d 572, 320 Ill. Dec. 946, 888 N.E.2d 163, 2008 Ill. App. LEXIS 422 (1 Dist. 2008).

- Sufficient

County election commission and its chairman did not violate 5 ILCS 140/9(b) of the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., because a letter that the chairman sent to the citizen sufficiently explained the basis for the denial of the citizen's request to examine the ballots, ballot box tapes, and poll signature cards from an election. The letter explained that the requested records were exempt from disclosure under 5 ILCS 140/7(1)(a) because the records were prohibited from disclosure under the requirements of 10 ILCS 5/17-20 and 10 ILCS 5/17-22 of the Illinois Election Code, 10 ILCS 5/1-1 et seq. Kibort v. Westrom, 371 Ill. App. 3d 247, 308

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Ill. Dec. 676, 862 N.E.2d 609, 2007 Ill. App. LEXIS 32 (1 Dist. 2007).

RESEARCH REFERENCES

State freedom of information act requests: Right to receive information in particular medium or format. 86 ALR4th 786.

Exhaustion of administrative remedies as prerequisite to judicial action to compel disclosure under state freedom of information acts. 114 ALR5th 283.

Construction and application of state freedom of information act provisions concerning award of attorney's fees and other litigation costs. 118 ALR5th 1.

§ 5 ILCS 140/9.5. Public Access Counselor; opinions

Sec. 9.5. Public Access Counselor; opinions. (a) A person whose request to inspect or copy a public record is denied by a public body, except the General Assembly and committees, commissions, and agencies thereof, may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the date of the final denial. The request for review must be in writing, signed by the requester, and include (i) a copy of the request for access to records and (ii) any responses from the public body.

(b) A person whose request to inspect or copy a public record is made for a commercial purpose as defined in subsection (c-10) of Section 2 of this Act [5 ILCS 140/2] may not file a request for review with the Public Access Counselor. A person whose request to inspect or copy a public record was treated by the public body as a request for a commercial purpose under Section 3.1 of this Act [5 ILCS 140/3.1] may file a request for review with the Public Access Counselor for the limited purpose of reviewing whether the public body properly determined that the request was made for a commercial purpose.

(c) Upon receipt of a request for review, the Public Access Counselor shall determine whether further action is warranted. If the Public Access Counselor determines that the alleged violation is unfounded, he or she shall so advise the requester and the public body and no further action shall be undertaken. In all other cases, the Public Access Counselor shall forward a copy of the request for review to the public body within 7 business days after receipt and shall specify the records or other documents that the public body shall furnish to facilitate the review. Within 7 business days after receipt of the request for review, the public body shall provide copies of records requested and shall otherwise fully cooperate with the Public Access Counselor. If a public body fails to furnish specified records pursuant to this Section, or if otherwise necessary, the Attorney General may issue a subpoena to any person or public body having knowledge of or records pertaining to a request for review of a denial of access to records under the Act. To the extent that records or documents produced by a public body contain information that is claimed to be exempt from disclosure under Section 7 of this Act [5 ILCS 140/7], the Public Access Counselor shall not further disclose that information.

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(d) Within 7 business days after it receives a copy of a request for review and request for production of records from the Public Access Counselor, the public body may, but is not required to, answer the allegations of the request for review. The answer may take the form of a letter, brief, or memorandum. The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy. The requester may, but is not required to, respond in writing to the answer within 7 business days and shall provide a copy of the response to the public body.

(e) In addition to the request for review, and the answer and the response thereto, if any, a requester or a public body may furnish affidavits or records concerning any matter germane to the review.

(f) Unless the Public Access Counselor extends the time by no more than 30 business days by sending written notice to the requester and the public body that includes a statement of the reasons for the extension in the notice, or decides to address the matter without the issuance of a binding opinion, the Attorney General shall examine the issues and the records, shall make findings of fact and conclusions of law, and shall issue to the requester and the public body an opinion in response to the request for review within 60 days after its receipt. The opinion shall be binding upon both the requester and the public body, subject to administrative review under Section 11.5 [5 ILCS 140/11.5].

In responding to any request under this Section 9.5, the Attorney General may exercise his or her discretion and choose to resolve a request for review by mediation or by a means other than the issuance of a binding opinion. The decision not to issue a binding opinion shall not be reviewable.

Upon receipt of a binding opinion concluding that a violation of this Act has occurred, the public body shall either take necessary action immediately to comply with the directive of the opinion or shall initiate administrative review under Section 11.5. If the opinion concludes that no violation of the Act has occurred, the requester may initiate administrative review under Section 11.5.

A public body that discloses records in accordance with an opinion of the Attorney General is immune from all liabilities by reason thereof and shall not be liable for penalties under this Act.

(g) If the requester files suit under Section 11 with respect to the same denial that is the subject of a pending request for review, the requester shall notify the Public Access Counselor, and the Public Access Counselor shall take no further action with respect to the request for review and shall so notify the public body.

(h) The Attorney General may also issue advisory opinions to public bodies regarding compliance with this Act. A review may be initiated upon receipt of a written request from the head of the public body or its attorney, which shall contain sufficient accurate facts from which a determination can be made. The Public Access Counselor may request additional information from the public body in order to assist in the review. A public body that relies in good faith on an advisory opinion of the Attorney General in responding to a request is not liable for penalties under this Act, so long as the facts upon

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which the opinion is based have been fully and fairly disclosed to the Public Access Counselor.

(Source: P.A. 96-542, § 10; 97-579, § 3.)

Effective Date. Section 99 of P.A. 96-542 made this section effective January 1, 2010.

Effect of Amendments. The 2011 amendment by P.A. 97-579, effective August 26, 2011, rewrote (b); substituted "business" for "working" throughout (c) and (d); and substituted "30 business days" for "21 business days" in the first sentence of the first paragraph of (f).

§ 5 ILCS 140/10: Repealed by P.A. 96-542, § 15, effective January 1, 2010.

§ 5 ILCS 140/11. [Injunctive or declaratory relief]

Sec. 11. (a) Any person denied access to inspect or copy any public record by a public body may file suit for injunctive or declaratory relief.

(b) Where the denial is from a public body of the State, suit may be filed in the circuit court for the county where the public body has its principal office or where the person denied access resides.

(c) Where the denial is from a municipality or other public body, except as provided in subsection (b) of this Section, suit may be filed in the circuit court for the county where the public body is located.

(d) The circuit court shall have the jurisdiction to enjoin the public body from withholding public records and to order the production of any public records improperly withheld from the person seeking access. If the public body can show that exceptional circumstances exist, and that the body is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records.

(e) On motion of the plaintiff, prior to or after in camera inspection, the court shall order the public body to provide an index of the records to which access has been denied. The index shall include the following:

(i) A description of the nature or contents of each document withheld, or each deletion from a released document, provided, however, that the public body shall not be required to disclose the information which it asserts is exempt; and

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(ii) A statement of the exemption or exemptions claimed for each such deletion or withheld document.

(f) In any action considered by the court, the court shall consider the matter de novo, and shall conduct such in camera examination of the requested records as it finds appropriate to determine if such records or any part thereof may be withheld under any provision of this Act. The burden shall be on the public body to establish that its refusal to permit public inspection or copying is in accordance with the provisions of this Act. Any public body that asserts that a record is exempt from disclosure has the burden of proving that it is exempt by clear and convincing evidence.

(g) In the event of noncompliance with an order of the court to disclose, the court may enforce its order against any public official or employee so ordered or primarily responsible for such noncompliance through the court's contempt powers.

(h) Except as to causes the court considers to be of greater importance, proceedings arising under this Section shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(i) If a person seeking the right to inspect or receive a copy of a public record prevails in a proceeding under this Section, the court shall award such person reasonable attorneys' fees and costs. In determining what amount of attorney's fees is reasonable, the court shall consider the degree to which the relief obtained relates to the relief sought. The changes contained in this subsection apply to an action filed on or after the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-542].

(j) If the court determines that a public body willfully and intentionally failed to comply with this Act, or otherwise acted in bad faith, the court shall also impose upon the public body a civil penalty of not less that $2,500 nor more than $5,000 for each occurrence. In assessing the civil penalty, the court shall consider in aggravation or mitigation the budget of the public body and whether the public body has previously been assessed penalties for violations of this Act. The changes contained in this subsection apply to an action filed on or after the effective date of this amendatory Act of the 96th General Assembly.

(Source: P.A. 85-1357; 93-466, § 5; 96-542, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 211.

Cross References.

For notification procedures for denial of a request for public records, see 5 ILCS 140/9.

Illinois Administrative Code.

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See 2 Illinois Administrative Code, §§ 1176.310, 1400.310, 2175.320, 2501.50.

Effect of Amendments. The 2003 amendment by P.A. 93-466, effective January 1, 2004, inserted the language beginning "and costs. If, however" and ending "attorneys' fees and costs" in subsection (i).

The 2009 amendment by P.A. 96-542, effective January 1, 2010, deleted "the head of" following "public record by" in (a); deleted "the head of" following "denial is from" in (b) and (c); added the last sentence of (f); rewrote (i); and added (j).

CASE NOTES

Analysis

Appellate Jurisdiction
Attorney Fees
- Allowed
- Burden of Proof
- Not Allowed
- Pro Se Attorney
- Retroactive Application

Burden of Proof
- Assertion of Exemption
- Met
- Not Met

Discovery
Entitlement to Fees
Factual Determination
Personnel Files
Summary Dismissal
Use as Punishment
- Improper

Appellate Jurisdiction

Newspaper was entitled to appeal the denial of its request for information that the state health department had regarding the newspaper's investigation into a rare form of childhood cancer. Once the state health department's director denied the newspaper's request for such information, the newspaper had the right to appeal that denial to the trial court, which entered a judgment that granted the newspaper's request that the appellate court properly affirmed, and the state supreme court affirmed on further review. Southern Illinoisan v. Ill. Dep't of Pub. Health, 218 Ill. 2d 390, 300 Ill. Dec. 329, 844 N.E.2d 1, 2006 Ill. LEXIS 309 (2006).

Insurance division's interlocutory appeal of trial court's order that denied the insurance division's motion to vacate the trial court's order that the insurance division had to index the corporation's 10th FOIA request had to be dismissed. The trial court's order to index only concerned the procedural aspects of the case, and, thus, was not the proper subject of an Ill. Sup. Ct. R. 307(a)

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interlocutory order. Goodrich Corp. v. Clark, 361 Ill. App. 3d 1033, 297 Ill. Dec. 502, 837 N.E.2d 953, 2005 Ill. App. LEXIS 1096 (4 Dist. 2005).

Attorney Fees

Trial court properly exercised its discretion in awarding a freedom of information plaintiff half its attorney fees in an action in which it had prevailed as to some issues, but where many of the issues could have been determined with less expenditure of time and money. Chi. Alliance for Neighborhood Safety v. City of Chicago, 348 Ill. App. 3d 188, 283 Ill. Dec. 506, 808 N.E.2d 56, 2004 Ill. App. LEXIS 288 (1 Dist. 2004).

- Allowed

Trial court properly awarded attorney fees under 5 ILCS 140/11(i) to a police union that sought disclosure of the results of a survey assessing the police department's performance. Defendants did not argue that there were any special circumstances that would justify denying the fee request; the trial court's properly found that advancing its commercial interests was not the union's fundamental purpose in making its request; the information sought was of significant interest to the general public; and the assertion that the fees were excessive was conclusory. Rockford Police Benevolent & Protective Ass'n v. Morrissey, 398 Ill. App. 3d 145, 339 Ill. Dec. 84, 925 N.E.2d 1205, 2010 Ill. App. LEXIS 42 (2 Dist. 2010).

When an inmate sought an award of attorney fees and costs after his successful attempt to obtain his parole file, under the Freedom of Information Act (Act), 5 ILCS 140/1 et seq., he was entitled to such an award, under the amended version of 5 ILCS 140/11(i), because: (1) he substantially prevailed in his effort to obtain the records he sought, as he was granted summary judgment; (2) he was not a commercial requester of such records, who had to satisfy a higher standard of proof; (3) no special circumstances allowing the denial of a fee award applied to him; and (4) an award of fees furthered the purposes of both the Act and its attorney fee provision. Callinan v. Prisoner Review Bd., 371 Ill. App. 3d 272, 308 Ill. Dec. 962, 862 N.E.2d 1165, 2007 Ill. App. LEXIS 91 (1 Dist. 2007).

Where requested records are of clearly significant interest to the general public and the public body lacks any reasonable basis in law for withholding the record, attorney fees are warranted. Duncan Publishing, Inc. v. City of Chicago, 304 Ill. App. 3d 778, 237 Ill. Dec. 568, 709 N.E.2d 1281 (1 Dist. 1999), appeal denied, 185 Ill. 2d 622, 242 Ill. Dec. 136, 720 N.E.2d 1091 (1999).

Where the requested records are only produced after plaintiff has filed suit, thereby mooting the suit, plaintiff has substantially prevailed under the fee provision. People ex rel. Ulrich v. Stukel, 294 Ill. App. 3d 193, 228 Ill. Dec. 447, 689 N.E.2d 319 (1 Dist. 1997), appeal denied, 178 Ill. 2d 595, 232 Ill. Dec. 852, 699 N.E.2d 1037 (1998).

- Burden of Proof

Under a 2004 amendment to 5 ILCS 140/11(i), regarding awards of attorney fees to parties prevailing in a proceeding to obtain a public record, plaintiffs without a commercial interest need only prove that they have substantially prevailed in the action, while parties with a commercial interest must prove that their request also serves a public interest and that there was no reasonable basis for withholding the records. Callinan v. Prisoner Review Bd., 371 Ill. App. 3d 272, 308 Ill. Dec. 962, 862 N.E.2d 1165, 2007 Ill. App. LEXIS 91 (1 Dist. 2007).

When an inmate sought an award of attorney fees and costs after his successful attempt to obtain his parole file, under the Freedom of Information Act (Act), 5 ILCS 140/1 et seq., but a trial court found he had to prove fraud, malice, a willful lack of compliance or an egregious violation to obtain such an award, this finding was an abuse of discretion because nothing in the statute required such proof. Callinan v. Prisoner Review Bd., 371 Ill. App. 3d 272, 308 Ill. Dec. 962, 862 N.E.2d 1165, 2007 Ill. App. LEXIS 91 (1 Dist. 2007).

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When an inmate sought an award of attorney fees and costs after his successful attempt to obtain his parole file, under the Freedom of Information Act, 5 ILCS 140/1 et seq., since the amended version of 5 ILCS 140/11(i), regarding such awards, applied retroactively to his request, he was only required to prove that he substantially prevailed in his effort to obtain the records he sought, because he was not a commercial requestor of such records. Callinan v. Prisoner Review Bd., 371 Ill. App. 3d 272, 308 Ill. Dec. 962, 862 N.E.2d 1165, 2007 Ill. App. LEXIS 91 (1 Dist. 2007).

- Not Allowed

Even though the owner of a university-approved off-campus housing facility was successful in requiring the university to disclose the names, addresses, and telephone numbers of accepted freshmen who had not yet enrolled in the university, the information was not of clearly significant interest to the general public and, therefore, the trial court did not abuse its discretion when it refused to award attorney fees to him. Lieber v. Bd. of Trustees, 316 Ill. App. 3d 266, 249 Ill. Dec. 371, 736 N.E.2d 213, 2000 Ill. App. LEXIS 744 (5 Dist. 2000).

The trial court did not err in failing to award attorney's fees because although plaintiff substantially prevailed on the merits of his Freedom of Information Act (5 ILCS 140/1 et seq.) request, it was reasonable to withhold the information in order to protect the safety of others; and additionally, even if there was not a reasonable legal basis for withholding the information, plaintiff would not be entitled to attorney's fees because he was pro se. Brazas v. Ramsey, 291 Ill. App. 3d 104, 224 Ill. Dec. 915, 682 N.E.2d 476 (2 Dist. 1997).

- Pro Se Attorney

An attorney proceeding pro se in an action brought pursuant to this Act is not entitled to an award of fees under this section. Hamer v. Lentz, 132 Ill. 2d 49, 138 Ill. Dec. 222, 547 N.E.2d 191 (1989).

- Retroactive Application

When an inmate sought an award of attorney fees and costs after his successful attempt to obtain his parole file, under the Freedom of Information Act, 5 ILCS 140/1 et seq., the amended version of 5 ILCS 140/11(i), regarding such awards, applied retroactively to his request because attorney fee provisions were generally held to be procedural, and thus retroactively applicable, and no element which created an exception to this general rule applied to the inmate's request. Callinan v. Prisoner Review Bd., 371 Ill. App. 3d 272, 308 Ill. Dec. 962, 862 N.E.2d 1165, 2007 Ill. App. LEXIS 91 (1 Dist. 2007).

Burden of Proof

City's generalized contention that the documents an inmate sought pertaining to the investigation of a murder and the inmate's arrest and conviction for that murder necessarily contained analysis and opinions that triggered the deliberative process exemption to the Illinois Freedom of Information Act was insufficient to establish the exemption where the City failed to demonstrate, which, if any, of the requested documents included opinions or formulated policies or actions. Day v. City of Chicago, 388 Ill. App. 3d 70, 327 Ill. Dec. 758, 902 N.E.2d 1144, 2009 Ill. App. LEXIS 66 (1 Dist. 2009).

Affidavits submitted in support of a city's claim that documents an inmate sought were exempt from Illinois Freedom of Information Act disclosure under the ongoing investigation exemption, 5 ILCS 140/7(1)(c), were insufficient to support the exemption as they failed to explain how the investigation of the 1991 murder the inmate was convicted of could still be ongoing or how the disclosure of the documents the inmate sought would specifically obstruct any remaining investigation into the murder. Day v. City of Chicago, 388 Ill. App. 3d 70, 327 Ill. Dec. 758, 902 N.E.2d 1144, 2009 Ill. App. LEXIS 66 (1 Dist. 2009).

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- Assertion of Exemption

A public body seeking to protect information from disclosure, bears the burden of establishing that an exemption to disclosure under this Act applies to the requested information. Wayne County Press, Inc. v. Isle, 263 Ill. App. 3d 511, 200 Ill. Dec. 874, 636 N.E.2d 65 (5 Dist. 1994).

- Met

Attorney General's rendering of written opinions to the Illinois State Board of Education was part of his legal duties pursuant to 15 ILCS 205/4 of the Attorney General Act, 15 ILCS 205/4, and as such, could be part of the attorney-client privilege that was exempt from disclosure under the Freedom of Information Act, 5 ILCS 140/1 et seq.; pursuant to 5 ILCS 140/11(f), a trial court should conduct an in camera inspection of the records to determine if any part thereof could be withheld. Ill. Educ. Ass'n v. Ill. State Bd. of Educ., 204 Ill. 2d 456, 274 Ill. Dec. 430, 791 N.E.2d 522, 2003 Ill. LEXIS 783 (2003).

- Not Met

Where the defendant submitted an affidavit which was merely conclusory and did not provide a detailed justification for his claim of exemption, but just stated that the material was exempt under § 1610.30(b) of the board's rules and regulations, the affidavit was completely inadequate to sustain the defendant's burden of proof. Williams v. Klincar, 237 Ill. App. 3d 569, 178 Ill. Dec. 463, 604 N.E.2d 986 (3 Dist. 1992).

Discovery

Trial court did not abuse its discretion by staying discovery on a claim against the Illinois Commerce Commission (ICC) under the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., pending a decision on the ICC's summary judgment motion; it was proper for the trial court to have stayed discovery and to have conducted an in camera inspection of the disputed documents pursuant to 5 ILCS 140/11(f) in order to determine whether the material fell within a claimed exemption. Bluestar Energy Servs. v. Ill. Commerce Comm'n, 374 Ill. App. 3d 990, 313 Ill. Dec. 153, 871 N.E.2d 880, 2007 Ill. App. LEXIS 717 (1 Dist. 2007).

Entitlement to Fees

Should a plaintiff be deemed eligible by having substantially prevailed, his entitlement to an award of fees next must be established. Duncan Publishing, Inc. v. City of Chicago, 304 Ill. App. 3d 778, 237 Ill. Dec. 568, 709 N.E.2d 1281 (1 Dist. 1999), appeal denied, 185 Ill. 2d 622, 242 Ill. Dec. 136, 720 N.E.2d 1091 (1999).

Factual Determination

Whether material is exempt is necessarily a factual determination to be made by the court based on its examination of the affidavits and, if required, based on an in camera examination of the documents themselves. Baudin v. City of Crystal Lake, 192 Ill. App. 3d 530, 139 Ill. Dec. 554, 548 N.E.2d 1110 (2 Dist. 1989).

Personnel Files

Trial court was authorized under the Freedom of Information Act, 5 ILCS 140/11(f) (FOIA), to review de novo the exemptions that the city claimed as the reasons for allowing the city to not produce the results of a physical abilities test given to the firefighter applicant. As a result, the city did not forfeit any exemptions that it might have had in explaining to the firefighter applicant why it

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was not producing the testing materials the firefighter sought to determine the reason for not passing the physical abilities test. Kopchar v. City of Chicago, 395 Ill. App. 3d 762, 335 Ill. Dec. 555, 919 N.E.2d 76, 2009 Ill. App. LEXIS 1066 (1 Dist. 2009), appeal denied, 2010 Ill. LEXIS 475 (Ill. 2010).

School district improperly refused an Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., request for a superintendent's employment contract because while a personnel file was per se exempted under 5 ILCS 140/7(1)(b)(ii), individual contracts were not also per se exempt simply because they were kept in such a file as employment contracts of public officials fell within the definition of public records in 5 ILCS 140/2(c)(vii), (viii) and 5 ILCS 140/8 permitted the disclosure of nonexempt documents contained within exempt public records; an in camera inspection under 5 ILCS 140/11(f) had to be undertaken to determine if the contract was exempt from disclosure. Stern v. Wheaton-Warrenville Cmty. Unit Sch. Dist. 200, 384 Ill. App. 3d 615, 323 Ill. Dec. 792, 894 N.E.2d 818, 2008 Ill. App. LEXIS 826 (1 Dist. 2008), aff'd in part and vacated in part, remanded, 2009 Ill. LEXIS 388 (Ill. 2009).

Summary Dismissal

Code of Civil Procedure did not permit dismissal of defendant's petition, in which he sought an order directing the city police department to release the documents he sought related to his criminal case, without notice given to defendant about that dismissal, and since the error was not harmless because the petition did not suffer from incurable defects, the dismissal of the petition with prejudice had to be reversed. People v. Ross, 367 Ill. App. 3d 890, 305 Ill. Dec. 872, 856 N.E.2d 677, 2006 Ill. App. LEXIS 887 (1 Dist. 2006).

Use as Punishment

- Improper

Awarding attorney fees pursuant to this section for purposes of punishing a public body is improper. Workmann v. Illinois State Bd. of Educ., 229 Ill. App. 3d 459, 170 Ill. Dec. 599, 593 N.E.2d 141 (2 Dist. 1992).

RESEARCH REFERENCES

Construction and application of state freedom of information act provisions concerning award of attorney's fees and other litigation costs. 118 ALR5th 1.

§ 5 ILCS 140/11.5. Administrative review

Sec. 11.5. Administrative review. A binding opinion issued by the Attorney General shall be considered a final decision of an administrative agency, for purposes of administrative review under the Administrative Review Law (735 ILCS 5/3-101 et seq.). An action for administrative review of a binding opinion of the Attorney General shall be commenced in Cook or Sangamon County. An advisory opinion issued to a public body shall not be considered a final decision of the Attorney General for purposes of this Section.

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(Source: P.A. 96-542, § 10.)

Effective Date. Section 99 of P.A. 96-542 made this section effective January 1, 2010.

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Identity Protection Act

Sec.

5 ILCS 179/1.Short title
5 ILCS 179/5.Definitions
5 ILCS 179/10.Prohibited Activities
5 ILCS 179/15.Public inspection and copying of documents
5 ILCS 179/20.Applicability
5 ILCS 179/25.Compliance with federal law
5 ILCS 179/30.Embedded social security numbers
5 ILCS 179/35.Identity-protection policy; local government
5 ILCS 179/37.Identity-protection policy; State
5 ILCS 179/40.Judicial branch and clerks of courts
5 ILCS 179/45.Violation
5 ILCS 179/50.Home rule
5 ILCS 179/55.[Supersession of other laws]

§ 5 ILCS 179/1. Short title

Sec. 1. Short title. This Act may be cited as the Identity Protection Act.

(Source: P.A. 96-874, § 1.)

Effective Date. This Act is effective June 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/2.

§ 5 ILCS 179/5. Definitions

Sec. 5. Definitions. In this Act:

"Identity-protection policy" means any policy created to protect social security numbers from unauthorized disclosure.

"Local government agency" means that term as it is defined in Section 1-8 of the Illinois State Auditing Act [30 ILCS 5/1-8].

"Person" means any individual in the employ of a State agency or local government agency.

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"Publicly post" or "publicly display" means to intentionally communicate or otherwise intentionally make available to the general public.

"State agency" means that term as it is defined in Section 1-7 of the Illinois State Auditing Act [30 ILCS 5/1-7].

(Source: P.A. 96-874, § 5.)

§ 5 ILCS 179/10. Prohibited Activities

Sec. 10. Prohibited Activities. (a) Beginning July 1, 2010, no person or State or local government agency may do any of the following:

(1) Publicly post or publicly display in any manner an individual's social security number.

(2) Print an individual's social security number on any card required for the individual to access products or services provided by the person or entity.

(3) Require an individual to transmit his or her social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(4) Print an individual's social security number on any materials that are mailed to the individual, through the U.S. Postal Service, any private mail service, electronic mail, or any similar method of delivery, unless State or federal law requires the social security number to be on the document to be mailed. Notwithstanding any provision in this Section to the contrary, social security numbers may be included in applications and forms sent by mail, including, but not limited to, any material mailed in connection with the administration of the Unemployment Insurance Act [820 ILCS 405/100 et seq.], any material mailed in connection with any tax administered by the Department of Revenue, and documents sent as part of an application or enrollment process or to establish, amend, or terminate an account, contract, or policy or to confirm the accuracy of the social security number. A social security number that may permissibly be mailed under this Section may not be printed, in whole or in part, on a postcard or other mailer that does not require an envelope or be visible on an envelope without the envelope having been opened.

(b) Except as otherwise provided in this Act, beginning July 1, 2010, no person or State or local government agency may do any of the following:

(1) Collect, use, or disclose a social security number from an individual, unless (i) required to do so under State or federal law, rules, or regulations, or the collection, use, or disclosure of the social security number is otherwise necessary for the performance of that agency's duties and responsibilities; (ii) the need and purpose for the social security

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number is documented before collection of the social security number; and (iii) the social security number collected is relevant to the documented need and purpose.

(2) Require an individual to use his or her social security number to access an Internet website.

(3) Use the social security number for any purpose other than the purpose for which it was collected.

(c) The prohibitions in subsection (b) do not apply in the following circumstances:

(1) The disclosure of social security numbers to agents, employees, contractors, or subcontractors of a governmental entity or disclosure by a governmental entity to another governmental entity or its agents, employees, contractors, or subcontractors if disclosure is necessary in order for the entity to perform its duties and responsibilities; and, if disclosing to a contractor or subcontractor, prior to such disclosure, the governmental entity must first receive from the contractor or subcontractor a copy of the contractor's or subcontractor's policy that sets forth how the requirements imposed under this Act on a governmental entity to protect an individual's social security number will be achieved.

(2) The disclosure of social security numbers pursuant to a court order, warrant, or subpoena.

(3) The collection, use, or disclosure of social security numbers in order to ensure the safety of: State and local government employees; persons committed to correctional facilities, local jails, and other law-enforcement facilities or retention centers; wards of the State; and all persons working in or visiting a State or local government agency facility.

(4) The collection, use, or disclosure of social security numbers for internal verification or administrative purposes.

(5) The disclosure of social security numbers by a State agency to any entity for the collection of delinquent child support or of any State debt or to a governmental agency to assist with an investigation or the prevention of fraud.

(6) The collection or use of social security numbers to investigate or prevent fraud, to conduct background checks, to collect a debt, to obtain a credit report from a consumer reporting agency under the federal Fair Credit Reporting Act [15 U.S.C. 1681 et seq.], to undertake any permissible purpose that is enumerated under the federal Gramm-Leach-Bliley Act [Public Law 106-102, 106th Congress], or to locate a missing person, a lost relative, or a person who is due a benefit, such as a pension benefit or an unclaimed property benefit.

(d) If any State or local government agency has adopted standards for the collection, use, or disclosure of social security numbers that are stricter than the standards under this Act with respect to the protection of those social security numbers, then, in the event of any conflict with the provisions of this Act, the stricter standards adopted by the State or local government agency shall control.

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(Source: P.A. 96-874, § 10; 97-333, § 25.)

Note.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, made a stylistic change.

§ 5 ILCS 179/15. Public inspection and copying of documents

Sec. 15. Public inspection and copying of documents. Notwithstanding any other provision of this Act to the contrary, a person or State or local government agency must comply with the provisions of any other State law with respect to allowing the public inspection and copying of information or documents containing all or any portion of an individual's social security number. A person or State or local government agency must redact social security numbers from the information or documents before allowing the public inspection or copying of the information or documents.

(Source: P.A. 96-874, § 15.)

§ 5 ILCS 179/20. Applicability

Sec. 20. Applicability. (a) This Act does not apply to the collection, use, or disclosure of a social security number as required by State or federal law, rule, or regulation.

(b) This Act does not apply to documents that are recorded with a county recorder or required to be open to the public under any State or federal law, rule, or regulation, applicable case law, Supreme Court Rule, or the Constitution of the State of Illinois. Notwithstanding this Section, county recorders must comply with Section 35 of this Act [5 ILCS 179/35].

(Source: P.A. 96-874, § 20.)

§ 5 ILCS 179/25. Compliance with federal law

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Sec. 25. Compliance with federal law. If a federal law takes effect requiring any federal agency to establish a national unique patient health identifier program, any State or local government agency that complies with the federal law shall be deemed to be in compliance with this Act.

(Source: P.A. 96-874, § 25.)

§ 5 ILCS 179/30. Embedded social security numbers

Sec. 30. Embedded social security numbers. Beginning December 31, 2009, no person or State or local government agency may encode or embed a social security number in or on a card or document, including, but not limited to, using a bar code, chip, magnetic strip, RFID technology, or other technology, in place of removing the social security number as required by this Act.

(Source: P.A. 96-874, § 30.)

§ 5 ILCS 179/35. Identity-protection policy; local government

Sec. 35. Identity-protection policy; local government. (a) Each local government agency must draft and approve an identity-protection policy within 12 months after the effective date of this Act. The policy must do all of the following:

(1) Identify this Act.

(2) Require all employees of the local government agency identified as having access to social security numbers in the course of performing their duties to be trained to protect the confidentiality of social security numbers. Training should include instructions on the proper handling of information that contains social security numbers from the time of collection through the destruction of the information.

(3) Direct that only employees who are required to use or handle information or documents that contain social security numbers have access to such information or documents.

(4) Require that social security numbers requested from an individual be provided in a manner that makes the social security number easily redacted if required to be released as part of a public records request.

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(5) Require that, when collecting a social security number or upon request by the individual, a statement of the purpose or purposes for which the agency is collecting and using the social security number be provided.

(b) Each local government agency must file a written copy of its privacy policy with the governing board of the unit of local government within 30 days after approval of the policy. Each local government agency must advise its employees of the existence of the policy and make a copy of the policy available to each of its employees, and must also make its privacy policy available to any member of the public, upon request. If a local government agency amends its privacy policy, then that agency must file a written copy of the amended policy with the appropriate entity and must also advise its employees of the existence of the amended policy and make a copy of the amended policy available to each of its employees.

(c) Each local government agency must implement the components of its identity-protection policy that are necessary to meet the requirements of this Act within 12 months after the date the identity-protection policy is approved. This subsection (c) shall not affect the requirements of Section 10 of this Act [5 ILCS 179/10].

(Source: P.A. 96-874, § 35.)

§ 5 ILCS 179/37. Identity-protection policy; State

Sec. 37. Identity-protection policy; State. (a) Each State agency must draft and approve an identity-protection policy within 12 months after the effective date of this Act. The policy must do all of the following:

(1) Identify this Act.

(2) Require all employees of the State agency identified as having access to social security numbers in the course of performing their duties to be trained to protect the confidentiality of social security numbers. Training should include instructions on proper handling of information that contains social security numbers from the time of collection through the destruction of the information.

(3) Direct that only employees who are required to use or handle information or documents that contain social security numbers have access to such information or documents.

(4) Require that social security numbers requested from an individual be placed in a manner that makes the social security number easily redacted if required to be released as part of a public records request.

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(5) Require that, when collecting a social security number or upon request by the individual, a statement of the purpose or purposes for which the agency is collecting and using the social security number be provided.

(b) Each State agency must provide a copy of its identity-protection policy to the Social Security Number Protection Task Force within 30 days after the approval of the policy.

(c) Each State agency must implement the components of its identity-protection policy that are necessary to meet the requirements of this Act within 12 months after the date the identity-protection policy is approved. This subsection (c) shall not affect the requirements of Section 10 of this Act [5 ILCS 179/10].

(Source: P.A. 96-874, § 37.)

§ 5 ILCS 179/40. Judicial branch and clerks of courts

Sec. 40. Judicial branch and clerks of courts. The judicial branch and clerks of the circuit court are not subject to the provisions of this Act, except that the Supreme Court shall, under its rulemaking authority or by administrative order, adopt requirements applicable to the judicial branch, including clerks of the circuit court, regulating the disclosure of social security numbers consistent with the intent of this Act and the unique circumstances relevant in the judicial process.

(Source: P.A. 96-874, § 40.)

§ 5 ILCS 179/45. Violation

Sec. 45. Violation. Any person who intentionally violates the prohibitions in Section 10 of this Act [5 ILCS 179/10] is guilty of a Class B misdemeanor.

(Source: P.A. 96-874, § 45.)

§ 5 ILCS 179/50. Home rule

Sec. 50. Home rule. A home rule unit of local government, any non-home rule municipality, or any non-home rule county may regulate the use of social security

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numbers, but that regulation must be no less restrictive than this Act. This Act is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution [Ill. Const. Art. VII, § 6] on the concurrent exercise by home rule units of powers and functions exercised by the State.

(Source: P.A. 96-874, § 50.)

§ 5 ILCS 179/55. [Supersession of other laws]

Sec. 55. This Act does not supersede any more restrictive law, rule, or regulation regarding the collection, use, or disclosure of social security numbers.

(Source: P.A. 96-874, § 55.)

GOVERNMENTAL ETHICS

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Illinois Governmental Ethics Act

Article 4A

Disclosure Of Economic Interests

5 ILCS 420/4A-101.Persons required to file
5 ILCS 420/4A-102.[Interests to be listed]
5 ILCS 420/4A-103.[Form of statement filed with Secretary of State]
5 ILCS 420/4A-104.[Form of statement filed with county clerk]
5 ILCS 420/4A-105.Time for filing
5 ILCS 420/4A-106.[Procedures concerning statements]
5 ILCS 420/4A-106.1.1994 school district and community college district filings
5 ILCS 420/4A-107.[Violations; penalties]
5 ILCS 420/4A-108.Internet-based systems of filing

Article 4A.

Disclosure of Economic Interests

§ 5 ILCS 420/4A-101. Persons required to file

Sec. 4A-101. Persons required to file. The following persons shall file verified written statements of economic interests, as provided in this Article:

(a) Members of the General Assembly and candidates for nomination or election to the General Assembly.

(b) Persons holding an elected office in the Executive Branch of this State, and candidates for nomination or election to these offices.

(c) Members of a Commission or Board created by the Illinois Constitution, and candidates for nomination or election to such Commission or Board.

(d) Persons whose appointment to office is subject to confirmation by the Senate and persons appointed by the Governor to any other position on a board or commission

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described in subsection (a) of Section 15 of the Gubernatorial Boards and Commissions Act [15 ILCS 50/15].

(e) Holders of, and candidates for nomination or election to, the office of judge or associate judge of the Circuit Court and the office of judge of the Appellate or Supreme Court.

(f) Persons who are employed by any branch, agency, authority or board of the government of this State, including but not limited to, the Illinois State Toll Highway Authority, the Illinois Housing Development Authority, the Illinois Community College Board, and institutions under the jurisdiction of the Board of Trustees of the University of Illinois, Board of Trustees of Southern Illinois University, Board of Trustees of Chicago State University, Board of Trustees of Eastern Illinois University, Board of Trustees of Governor's State University, Board of Trustees of Illinois State University, Board of Trustees of Northeastern Illinois University, Board of Trustees of Northern Illinois University, Board of Trustees of Western Illinois University, or Board of Trustees of the Illinois Mathematics and Science Academy, and are compensated for services as employees and not as independent contractors and who:

(1) are, or function as, the head of a department, commission, board, division, bureau, authority or other administrative unit within the government of this State, or who exercise similar authority within the government of this State;

(2) have direct supervisory authority over, or direct responsibility for the formulation, negotiation, issuance or execution of contracts entered into by the State in the amount of $5,000 or more;

(3) have authority for the issuance or promulgation of rules and regulations within areas under the authority of the State;

(4) have authority for the approval of professional licenses;

(5) have responsibility with respect to the financial inspection of regulated nongovernmental entities;

(6) adjudicate, arbitrate, or decide any judicial or administrative proceeding, or review the adjudication, arbitration or decision of any judicial or administrative proceeding within the authority of the State;

(7) have supervisory responsibility for 20 or more employees of the State;

(8) negotiate, assign, authorize, or grant naming rights or sponsorship rights regarding any property or asset of the State, whether real, personal, tangible, or intangible; or

(9) have responsibility with respect to the procurement of goods or services.

(g) Persons who are elected to office in a unit of local government, and candidates for nomination or election to that office, including regional superintendents of school districts.

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(h) Persons appointed to the governing board of a unit of local government, or of a special district, and persons appointed to a zoning board, or zoning board of appeals, or to a regional, county, or municipal plan commission, or to a board of review of any county, and persons appointed to the Board of the Metropolitan Pier and Exposition Authority and any Trustee appointed under Section 22 of the Metropolitan Pier and Exposition Authority Act [70 ILCS 210/22], and persons appointed to a board or commission of a unit of local government who have authority to authorize the expenditure of public funds. This subsection does not apply to members of boards or commissions who function in an advisory capacity.

(i) Persons who are employed by a unit of local government and are compensated for services as employees and not as independent contractors and who:

(1) are, or function as, the head of a department, division, bureau, authority or other administrative unit within the unit of local government, or who exercise similar authority within the unit of local government;

(2) have direct supervisory authority over, or direct responsibility for the formulation, negotiation, issuance or execution of contracts entered into by the unit of local government in the amount of $1,000 or greater;

(3) have authority to approve licenses and permits by the unit of local government; this item does not include employees who function in a ministerial capacity;

(4) adjudicate, arbitrate, or decide any judicial or administrative proceeding, or review the adjudication, arbitration or decision of any judicial or administrative proceeding within the authority of the unit of local government;

(5) have authority to issue or promulgate rules and regulations within areas under the authority of the unit of local government; or

(6) have supervisory responsibility for 20 or more employees of the unit of local government.

(j) Persons on the Board of Trustees of the Illinois Mathematics and Science Academy.

(k) Persons employed by a school district in positions that require that person to hold an administrative or a chief school business official endorsement.

(l) Special government agents. A "special government agent" is a person who is directed, retained, designated, appointed, or employed, with or without compensation, by or on behalf of a statewide executive branch constitutional officer to make an ex parte communication under Section 5-50 of the State Officials and Employees Ethics Act or Section 5-165 of the Illinois Administrative Procedure Act [5 ILCS 430/5-50 or 5 ILCS 100/5-165].

(m) Members of the board of commissioners of any flood prevention district created under the Flood Prevention District Act or the Beardstown Regional Flood Prevention District Act [70 ILCS 750/1 et seq or 70 ILCS 755/1 et seq.].

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(n) Members of the board of any retirement system or investment board established under the Illinois Pension Code, if not required to file under any other provision of this Section.

(o) Members of the board of any pension fund established under the Illinois Pension Code, if not required to file under any other provision of this Section.

This Section shall not be construed to prevent any unit of local government from enacting financial disclosure requirements that mandate more information than required by this Act.

(Source: P.A. 86-109; 87-895; 88-187, § 5; 88-511, § 8; 88-605, § 5; 89-4, § 50-25; 89-5, § 5; 89-106, § 5; 89-433, § 3; 91-622, § 5; 93-617, § 83; 93-816, § 5; 95-719, § 70; 96-6, § 5; 96-543, § 90; 96-555, § 5; 96-1000, § 25; 97-309, § 45.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 604A-101.

P.A. 89-24, § 5 amended P.A. 89-4, § 99-1 containing the effective date provision, however, P.A. 89-24 did not affect the January 1, 1996 effective date of this section.

Section 95 of P.A. 91-622 contains a "no acceleration or delay" provision.

Section 990 of P.A. 93-617 contains a severability provision, and Section 995 contains "closed sessions" and vote requirement provisions.

Section 97 of P.A. 96-6 contains a severability provision.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Cross References.

For exemption from charge for filing statement with county clerk, see 55 ILCS 5/4-4001, 55 ILCS 5/4-12003.

Effect of Amendments. The 1999 amendment by P.A. 91-622, effective August 19, 1999, deleted subdivision (l) which read "Persons appointed or elected to a local school council established pursuant to Section 34-2.1 of the School Code", and substituted "mandate" for "require" in the last paragraph.

The 2003 amendment by P.A. 93-617, effective December 9, 2003, added the text to subdivision (l).

The 2004 amendment by P.A. 93-816, effective July 27, 2004, inserted subdivision (f)(8).

The 2008 amendment by P.A. 95-719, effective May 21, 2008, added subsection (m).

The 2009 amendment by P.A. 96-6, effective April 3, 2009, added subsections (n) and (o).

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The 2009 amendment by P.A. 96-543, effective August 17, 2009, added "and persons appointed by the Governor to any other position on a board or commission described in subsection (a) of Section 15 of the Gubernatorial Boards and Commissions Act" in (d).

The 2009 amendment by P.A. 96-555, effective August 18, 2009, added (f)(9); and made related changes.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, combined earlier multiple amendments to the section.

The 2011 amendment by P.A. 97-309, effective August 11, 2011, added "created under the Flood Prevention District Act or the Beardstown Regional Flood Prevention District Act" to the end of (m).

CASE NOTES

Analysis

Candidate for County Commissioner
Position
Removal of Candidate from Ballot
Statements of Economic Interest
- Filing Requirements
- Forfeiture
Verification of List
- Not Required

Candidate for County Commissioner

The Cook County Board of Commissioners is a unit of local government. Therefore, a candidate for nomination as a member thereof erred in filing the form in 5 ILCS 420/4A-103 with the Secretary of State, rather than filing the form in 5 ILCS 420/4A-104 with the county clerk. O'Donaghue v. Cook County Officers Electoral Bd., 295 Ill. App. 3d 493, 229 Ill. Dec. 781, 692 N.E.2d 770 (1 Dist. 1998), appeal denied, 178 Ill. 2d 582, 232 Ill. Dec. 848, 699 N.E.2d 1033 (1998).

Position

The word "position" in this section was used to make clear that state employees earning over $20,000 (now $50,000) per year were required to file annual statements just as were those elected or appointed to an "office". People ex rel. Downs, 59 Ill. 2d 178, 319 N.E.2d 465 (1974).

Removal of Candidate from Ballot

Removal from the ballot of a candidate for elective office is not a permissible sanction for the candidate's filing, in relation to his candidacy, of a statement of economic interests which is not true, correct and complete due to inadvertence on the candidate's part. Welch v. Johnson, 147 Ill. 2d 40, 167 Ill. Dec. 989, 588 N.E.2d 1119 (1992).

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Statements of Economic Interest

Cook County, Illinois, Officers Electoral Board's decision that a candidate who submitted papers to run for the office of circuit court judge could not be listed on a primary election ballot because he did not file a receipt with the Illinois Board of Elections, showing that he had filed a statement of economic interests with the Illinois Secretary of State, was upheld by the courts. Kellogg v. Cook County Ill. Officers Electoral Bd., 347 Ill. App. 3d 666, 283 Ill. Dec. 320, 807 N.E.2d 1161, 2004 Ill. App. LEXIS 325 (1 Dist. 2004).

- Filing Requirements

This Act's April 30 filing date applies to those persons who hold offices or positions of employment which fall within this article on that date; the only requirement applicable to a candidate for elective office is that he must file his statement before or at the time he takes the action necessary under the laws of this state to attempt to quality for nomination, election, or retention to such office, but after the candidate has been nominated at the primary, there is no further action necessary to be taken by them to qualify for election. People ex rel. Downs, 59 Ill. 2d 178, 319 N.E.2d 465 (1974).

- Forfeiture

Judgment of the circuit court declaring that defendants had forfeited their positions as elected officials of city for failing to file economic interest statements while they were candidates pursuant to subsection (g) of this section was reversed, because the plaintiffs waived any objection to the defendants' status as candidates by not objecting to the sufficiency of the defendants' nomination papers in the manner prescribed by 10 ILCS 5/10-8, thus denying the circuit court of subject matter jurisdiction. People ex rel. Klingelmueller v. Haas, 111 Ill. App. 3d 88, 66 Ill. Dec. 856, 443 N.E.2d 782 (3 Dist. 1982).

Verification of List

- Not Required

This Act is specific, requiring the secretaries of the boards of education to certify those employees compensated at the rate of $35,000 or more to the Secretary of State, and then further prescribes for the Secretary of State the obligation to give certain statutory notices; the Act does not provide the Secretary with discretion in this regard, nor does it require him to go beyond the school board's certification, and accordingly, the Secretary of State has no duty to verify the accuracy of the list provided to him from the board of education in accordance with the Act. Nichols v. Board of Educ., 236 Ill. App. 3d 522, 177 Ill. Dec. 729, 603 N.E.2d 799 (1 Dist. 1992), appeal denied, 152 Ill. 2d 563, 190 Ill. Dec. 893, 622 N.E.2d 1210 (1993).

OPINIONS OF ATTORNEY GENERAL

Filing Fees

County clerks shall charge the applicable filing fees for all individuals filing statements of economic interest. 1977 Op. Atty. Gen. 118.

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LEGAL PERIODICALS

For comment, "Illinois Conflict of Interest Law and Municipal Officers," see 12 S. Ill. U.L.J. 571 (1988).

For article, "Citizen Remedies Against Errant Illinois Public Servants," see 11 S. Ill. U.L.J. 285 (1987).

RESEARCH REFERENCES

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interest, or relationships. 22 ALR4th 237.

§ 5 ILCS 420/4A-102. [Interests to be listed]

Sec. 4A-102. The statement of economic interests required by this Article shall include the economic interests of the person making the statement as provided in this Section. The interest (if constructively controlled by the person making the statement) of a spouse or any other party, shall be considered to be the same as the interest of the person making the statement. Campaign receipts shall not be included in this statement.

(a) The following interests shall be listed by all persons required to file:

(1) The name, address and type of practice of any professional organization or individual professional practice in which the person making the statement was an officer, director, associate, partner or proprietor, or served in any advisory capacity, from which income in excess of $1200 was derived during the preceding calendar year;

(2) The nature of professional services (other than services rendered to the unit or units of government in relation to which the person is required to file) and the nature of the entity to which they were rendered if fees exceeding $5,000 were received during the preceding calendar year from the entity for professional services rendered by the person making the statement.

(3) The identity (including the address or legal description of real estate) of any capital asset from which a capital gain of $5,000 or more was realized in the preceding calendar year.

(4) The name of any unit of government which has employed the person making the statement during the preceding calendar year other than the unit or units of government in relation to which the person is required to file.

(5) The name of any entity from which a gift or gifts, or honorarium or honoraria, valued singly or in the aggregate in excess of $500, was received during the preceding calendar year.

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(b) The following interests shall also be listed by persons listed in items (a) through (f), item (l), and item (n) of Section 4A-101 [5 ILCS 420/4A-101]:

(1) The name and instrument of ownership in any entity doing business in the State of Illinois, in which an ownership interest held by the person at the date of filing is in excess of $5,000 fair market value or from which dividends of in excess of $1,200 were derived during the preceding calendar year. (In the case of real estate, location thereof shall be listed by street address, or if none, then by legal description). No time or demand deposit in a financial institution, nor any debt instrument need be listed;

(2) Except for professional service entities, the name of any entity and any position held therein from which income of in excess of $1,200 was derived during the preceding calendar year, if the entity does business in the State of Illinois. No time or demand deposit in a financial institution, nor any debt instrument need be listed.

(3) The identity of any compensated lobbyist with whom the person making the statement maintains a close economic association, including the name of the lobbyist and specifying the legislative matter or matters which are the object of the lobbying activity, and describing the general type of economic activity of the client or principal on whose behalf that person is lobbying.

(c) The following interests shall also be listed by persons listed in items (g), (h), (i), and (o) of Section 4A-101:

(1) The name and instrument of ownership in any entity doing business with a unit of local government in relation to which the person is required to file if the ownership interest of the person filing is greater than $5,000 fair market value as of the date of filing or if dividends in excess of $1,200 were received from the entity during the preceding calendar year. (In the case of real estate, location thereof shall be listed by street address, or if none, then by legal description). No time or demand deposit in a financial institution, nor any debt instrument need be listed.

(2) Except for professional service entities, the name of any entity and any position held therein from which income in excess of $1,200 was derived during the preceding calendar year if the entity does business with a unit of local government in relation to which the person is required to file. No time or demand deposit in a financial institution, nor any debt instrument need be listed.

(3) The name of any entity and the nature of the governmental action requested by any entity which has applied to a unit of local government in relation to which the person must file for any license, franchise or permit for annexation, zoning or rezoning of real estate during the preceding calendar year if the ownership interest of the person filing is in excess of $5,000 fair market value at the time of filing or if income or dividends in excess of $1,200 were received by the person filing from the entity during the preceding calendar year.

For the purposes of this Section, the unit of local government in relation to which a person required to file under item (o) of Section 4A-101 shall be the unit of local government that contributes to the pension fund of which such person is a member of the

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board.

(Source: P.A. 77-1806; 88-511, § 8; 92-101, § 5; 93-617, § 83; 96-6, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 604A-102.

Section 990 of P.A. 93-617 contains a severability provision, and Section 995 contains "closed sessions" and vote requirement provisions.

Section 97 of P.A. 96-6 contains a severability provision.

Effect of Amendments. The 2001 amendment by P.A. 92-101, effective January 1, 2002, inserted "or units" in subdivisions (a)(2) and (a)(4); and substituted "a unit of local government" for "the unit of local government" in subdivisions (c)(1), (c)(2) and (c)(3).

The 2003 amendment by P.A. 93-617, effective December 9, 2003, inserted "and item (l)" in the introductory paragraph to subdivision (b); and substituted "and items (g), (h), (i), and (l)" in subdivision (c).

The 2009 amendment by P.A. 96-6, effective April 3, 2009, added the reference to item (n) in subsection (b); added the reference to item (o) in subsection (c); added the last paragraph; and made related changes.

CASE NOTES

Additional Compensation

- Conflicting Charges

There was an inherent flaw in university asserting on the one hand that any additional compensation department business manager received for Friday night series should have been processed through the university's employee office and on the other hand that business manager was required to report the income under the Ethics Act, which essentially monitors an employee's outside activities as they may relate to her public employment; the charges could not stand together. Corpuz v. Board of Trustees, 252 Ill. App. 3d 667, 192 Ill. Dec. 219, 625 N.E.2d 179 (1 Dist. 1993), appeal denied, 154 Ill. 2d 558, 197 Ill. Dec. 484, 631 N.E.2d 706 (1994).

OPINIONS OF ATTORNEY GENERAL

Contracts

- Reporting Required

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This section clearly requires that any contracts held by the sheriff in his own name be reported in accordance with this section. 1978 Op. Atty. Gen. 52.

§ 5 ILCS 420/4A-103. [Form of statement filed with Secretary of State]

Sec. 4A-103. The statement of economic interests required by this Article to be filed with the Secretary of State shall be filled in by typewriting or hand printing, shall be verified, dated, and signed by the person making the statement and shall contain substantially the following:

STATEMENT OF ECONOMIC INTEREST
(TYPE OR HAND PRINT)

_____

(name)

_____

(each office or position of employment for which this statement is filed)

_____

(full mailing address)

GENERAL DIRECTIONS:

The interest (if constructively controlled by the person making the statement) of a spouse or any other party, shall be considered to be the same as the interest of the person making the statement.

Campaign receipts shall not be included in this statement.

If additional space is needed, please attach supplemental listing.

1.List the name and instrument of ownership in any entity doing business in the State of Illinois, in which the ownership interest held by the person at the date of filing is in excess of $5,000 fair market value or from which dividends in excess of $1,200 were derived during the preceding calendar year. (In the case of real estate, location thereof shall be listed by street address, or if none, then by legal description.) No time or demand deposit in a financial institution, nor any debt instrument need be listed.

Business Entity	Instrument of Ownership
_____	_____
_____	_____
_____	_____

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_____ _____

2.List the name, address and type of practice of any professional organization in which the person making the statement was an officer, director, associate, partner or proprietor or served in any advisory capacity, from which income in excess of $1,200 was derived during the preceding calendar year.

Name	Address	Type of Practice
_____	_____	_____
_____	_____	_____
_____	_____	_____

3.List the nature of professional services rendered (other than to the State of Illinois) to each entity from which income exceeding $5,000 was received for professional services rendered during the preceding calendar year by the person making the statement.

_____

_____

4.List the identity (including the address or legal description of real estate) of any capital asset from which a capital gain of $5,000 or more was realized during the preceding calendar year.

_____

_____

5.List the identity of any compensated lobbyist with whom the person making the statement maintains a close economic association, including the name of the lobbyist and specifying the legislative matter or matters which are the object of the lobbying activity, and describing the general type of economic activity of the client or principal on whose behalf that person is lobbying.

Lobbyist	Legislative Matter	Client or Principal
_____	_____	_____
_____	_____	_____

6.List the name of any entity doing business in the State of Illinois from which income in excess of $1,200 was derived during the preceding calendar year other than for professional services and the title or description of any position held in that entity. (In the case of real estate, location thereof shall be listed by street address, or if none, then by legal description). No time or demand deposit in a financial institution nor any debt instrument need be listed.

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Entity	Position Held

7.List the name of any unit of government which employed the person making the statement during the preceding calendar year other than the unit or units of government in relation to which the person is required to file.

_____

_____

8.List the name of any entity from which a gift or gifts, or honorarium or honoraria, valued singly or in the aggregate in excess of $500, was received during the preceding calendar year.

_____

VERIFICATION:

"I declare that this statement of economic interests (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct and complete statement of my economic interests as required by the Illinois Governmental Ethics Act [5 ILCS 420/1-101 et seq.]. I understand that the penalty for willfully filing a false or incomplete statement shall be a fine not to exceed $1,000 or imprisonment in a penal institution other than the penitentiary not to exceed one year, or both fine and imprisonment."

_____	_____
(date of filing)	(signature of person making the statement)

(Source: P.A. 79-508; 92-101, § 5; 95-173, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 604A-103.

Effect of Amendments. The 2001 amendment by P.A. 92-101, effective January 1, 2002, at the beginning of the form inserted "each" preceding "office or position of employment"; and in paragraph 7. of the form inserted "or units".

The 2007 amendment by P.A. 95-173, effective January 1, 2008, revised the mailing address parentheticals in the form.

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CASE NOTES

Analysis

Position
- Candidate for County Commissioner
- Candidates for Elective Office
- Meaning

Position

- Candidate for County Commissioner

The Cook County Board of Commissioners is a unit of local government. Therefore, a candidate for nomination as a member thereof erred in filing the form in this section with the Secretary of State, rather than filing the form in 5 ILCS 420/4A-104 with the county clerk. O'Donaghue v. Cook County Officers Electoral Bd., 295 Ill. App. 3d 493, 229 Ill. Dec. 781, 692 N.E.2d 770 (1 Dist. 1998), appeal denied, 178 Ill. 2d 582, 232 Ill. Dec. 848, 699 N.E.2d 1033 (1998).

- Candidates for Elective Office

A candidate for elective office holds neither an office nor a position. People ex rel. Downs, 59 Ill. 2d 178, 319 N.E.2d 465 (1974).

This Act's April 30 filing date applies to those persons who hold offices or positions of employment which fall within article 4A on that date; the only requirement applicable to a candidate for elective office is that he must file his statement before or at the time he takes the action necessary under the laws of this state to attempt to quality for nomination, election, or retention to such office, but after the candidate has been nominated at the primary, there is no further action necessary to be taken by them to qualify for election. People ex rel. Downs, 59 Ill. 2d 178, 319 N.E.2d 465 (1974).

- Meaning

The word "position" was used to make clear that state employees earning over $20,000 (now $50,000) per year were required to file annual statements just as were those elected or appointed to an "office". People ex rel. Downs, 59 Ill. 2d 178, 319 N.E.2d 465 (1974).

§ 5 ILCS 420/4A-104. [Form of statement filed with county clerk]

Sec. 4A-104. The statement of economic interests required by this Article to be filed with the county clerk shall be filled in by typewriting or hand printing, shall be verified, dated, and signed by the person making the statement and shall contain substantially the following:

STATEMENT OF ECONOMIC INTERESTS
(TYPE OR HAND PRINT)

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_____

(Name)

_____

(each office or position of employment for which this statement is filed)

_____

(full mailing address)

GENERAL DIRECTIONS:

The interest (if constructively controlled by the person making the statement) of a spouse or any other party, shall be considered to be the same as the interest of the person making the statement.

Campaign receipts shall not be included in this statement.

If additional space is needed, please attach supplemental listing.

1.List the name and instrument of ownership in any entity doing business with a unit of local government in relation to which the person is required to file, in which the ownership interest held by the person at the date of filing is in excess of $5,000 fair market value or from which dividends in excess of $1,200 were received during the preceding calendar year. (In the case of real estate, location thereof shall be listed by street address, or if none, then by legal description.) No time or demand deposit in a financial institution, nor any debt instrument shall be listed.

Business Entity	Instrument of Ownership	Position of Management
_____	_____	_____
_____	_____	_____
_____	_____	_____

2.List the name, address and type of practice of any professional organization in which the person making the statement was an officer, director, associate, partner or proprietor, or served in any advisory capacity, from which income in excess of $1,200 was derived during the preceding calendar year.

Name	Address	Type of Practice
_____	_____	_____
_____	_____	_____
_____	_____	_____

3.List the nature of professional services rendered (other than to the unit or units of local government in relation to which the person is required to file) to each entity from which income exceeding $5,000 was received for professional services rendered during the preceding calendar year by the person making the statement.

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_____

_____

4.List the identity (including the address or legal description of real estate) of any capital asset from which a capital gain of $5,000 or more was realized during the preceding calendar year.

_____

_____

_____

5.List the name of any entity and the nature of the governmental action requested by any entity which has applied to a unit of local government in relation to which the person must file for any license, franchise or permit for annexation, zoning or rezoning of real estate during the preceding calendar year if the ownership interest of the person filing is in excess of $5,000 fair market value at the time of filing or if income or dividends in excess of $1200 were received by the person filing from the entity during the preceding calendar year.

_____

_____

_____

6.List the name of any entity doing business with a unit of local government in relation to which the person is required to file from which income in excess of $1,200 was derived during the preceding calendar year other than for professional services and the title or description of any position held in that entity. No time or demand deposit in a financial institution nor any debt instrument need be listed.

_____

_____

7.List the name of any unit of government which employed the person making the statement during the preceding calendar year other than the unit or units of government in relation to which the person is required to file.

_____

_____

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8.List the name of any entity from which a gift or gifts, or honorarium or honoraria, valued singly or in the aggregate in excess of $500, was received during the preceding calendar year.

_____

VERIFICATION:

"I declare that this statement of economic interests (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct and complete statement of my economic interests as required by the Illinois Governmental Ethics Act [5 ILCS 420/1-101 et seq.]. I understand that the penalty for willfully filing a false or incomplete statement shall be a fine not to exceed $1,000 or imprisonment in a penal institution other than the penitentiary not to exceed one year, or both fine and imprisonment."

_____ _____

(date of filing) (signature of person making the statement)

(Source: P.A. 79-508; 92-101, § 5; 95-173, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 604A-104.

Effect of Amendments. The 2001 amendment by P.A. 92-101, effective January 1, 2002, at the beginning of the form inserted "each" preceding "office or position of employment"; substituted "a unit of local government" for "the unit of local government" in paragraphs 1., 5., and 6.; and inserted "or units" in paragraphs 3. and 7.

The 2007 amendment by P.A. 95-173, effective January 1, 2008, revised the mailing address parentheticals in the form.

CASE NOTES

Analysis

Removal of Candidate from Ballot
Statements of Economic Interest
- Filing Requirements

Removal of Candidate from Ballot

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Removal from the ballot of a candidate for elective office is not a permissible sanction for the candidate's filing, in relation to his candidacy, of a statement of economic interests which is not true, correct and complete due to inadvertence on the candidate's part. Welch v. Johnson, 147 Ill. 2d 40, 167 Ill. Dec. 989, 588 N.E.2d 1119 (1992).

Statements of Economic Interest

- Filing Requirements

The Cook County Board of Commissioners is a unit of local government. Therefore, a candidate for nomination as a member thereof erred in filing the form in 5 ILCS 420/4A-103 with the Secretary of State, rather than filing the form in this section with the county clerk. O'Donaghue v. Cook County Officers Electoral Bd., 295 Ill. App. 3d 493, 229 Ill. Dec. 781, 692 N.E.2d 770 (1 Dist. 1998), appeal denied, 178 Ill. 2d 582, 232 Ill. Dec. 848, 699 N.E.2d 1033 (1998).

Inclusion of the office sought on statement of economic interests is made mandatory by 10 ILCS 5/10-5. Jones v. Municipal Officers Electoral Bd., 112 Ill. App. 3d 926, 68 Ill. Dec. 522, 446 N.E.2d 256 (1 Dist. 1983).

Where statement of economic interest was filed separately from other nomination papers with a different governmental agency made no reference to those papers, and such a statement was also filed by current public officials, as well as by certain governmental employees and persons seeking employment, which further negated any presumption that the filing was in reference to an election, the inclusion of the words "3rd Ward" did not describe the office of alderman of the 3rd Ward, as required not only by this section, but also by section 10-5 of the Election Code (10 ILCS 5/10-5). Jones v. Municipal Officers Electoral Bd., 112 Ill. App. 3d 926, 68 Ill. Dec. 522, 446 N.E.2d 256 (1 Dist. 1983).

§ 5 ILCS 420/4A-105. Time for filing

Sec. 4A-105. Time for filing. Except as provided in Section 4A-106.1 [5 ILCS 420/4A-106.1], by May 1 of each year a statement must be filed by each person whose position at that time subjects him to the filing requirements of Section 4A-101 [5 ILCS 420/4A-101] unless he has already filed a statement in relation to the same unit of government in that calendar year.

Statements must also be filed as follows:

(a) A candidate for elective office shall file his statement not later than the end of the period during which he can take the action necessary under the laws of this State to attempt to qualify for nomination, election, or retention to such office if he has not filed a statement in relation to the same unit of government within a year preceding such action.

(b) A person whose appointment to office is subject to confirmation by the Senate shall file his statement at the time his name is submitted to the Senate for confirmation.

(b-5) A special government agent, as defined in item (1) of Section 4A-101 of this Act, shall file a statement within 30 days after making the first ex parte communication and each May 1 thereafter if he or she has made an ex parte communication within the previous 12 months.

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(c) Any other person required by this Article to file the statement shall file a statement at the time of his or her initial appointment or employment in relation to that unit of government if appointed or employed by May 1.

If any person who is required to file a statement of economic interests fails to file such statement by May 1 of any year, the officer with whom such statement is to be filed under Section 4A-106 of this Act [5 ILCS 420/4A-106] shall, within 7 days after May 1, notify such person by certified mail of his or her failure to file by the specified date. Except as may be prescribed by rule of the Secretary of State, such person shall file his or her statement of economic interests on or before May 15 with the appropriate officer, together with a $15 late filing fee. Any such person who fails to file by May 15 shall be subject to a penalty of $100 for each day from May 16 to the date of filing, which shall be in addition to the $15 late filing fee specified above. Failure to file by May 31 shall result in a forfeiture in accordance with Section 4A-107 of this Act [5 ILCS 420/4A-107].

Any person who takes office or otherwise becomes required to file a statement of economic interests within 30 days prior to May 1 of any year may file his or her statement at any time on or before May 31 without penalty. If such person fails to file such statement by May 31, the officer with whom such statement is to be filed under Section 4A-106 of this Act shall, within 7 days after May 31, notify such person by certified mail of his or her failure to file by the specified date. Such person shall file his or her statement of economic interests on or before June 15 with the appropriate officer, together with a $15 late filing fee. Any such person who fails to file by June 15 shall be subject to a penalty of $100 per day for each day from June 16 to the date of filing, which shall be in addition to the $15 late filing fee specified above. Failure to file by June 30 shall result in a forfeiture in accordance with Section 4A-107 of this Act.

All late filing fees and penalties collected pursuant to this Section shall be paid into the General Revenue Fund in the State treasury, if the Secretary of State receives such statement for filing, or into the general fund in the county treasury, if the county clerk receives such statement for filing. The Attorney General, with respect to the State, and the several State's Attorneys, with respect to counties, shall take appropriate action to collect the prescribed penalties.

Failure to file a statement of economic interests within the time prescribed shall not result in a fine or ineligibility for, or forfeiture of, office or position of employment, as the case may be; provided that the failure to file results from not being included for notification by the appropriate agency, clerk, secretary, officer or unit of government, as the case may be, and that a statement is filed within 30 days of actual notice of the failure to file.

Beginning with statements required to be filed on or after May 1, 2009, the officer with whom a statement is to be filed may, in his or her discretion, waive the late filing fee, the monetary late filing penalty, and the ineligibility for or forfeiture of office or position for failure to file when the person's late filing of a statement or failure to file a statement is due to his or her (i) serious or catastrophic illness that renders the person temporarily incapable of completing the statement or (ii) military service.

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(Source: P.A. 83-1330; 88-187, § 5; 88-605, § 5; 89-433, § 3; 93-617, § 83; 96-550, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 604A-105.

Section 990 of P.A. 93-617 contains a severability provision, and Section 995 contains "closed sessions" and vote requirement provisions.

Effect of Amendments. The 2003 amendment by P.A. 93-617, effective December 9, 2003, inserted subdivision (b-5).

The 2009 amendment by P.A. 96-550, effective August 17, 2009, added the last paragraph.

CASE NOTES

Analysis

Duties of County Clerk
Purpose
Statements of Economic Interest
- Failure to Timely File
- Filing Requirements

Duties of County Clerk

A county clerk fulfilled his duty under this Act, including collecting from plaintiff $15 in late filing fees, and was not required by the Act or by the state constitution to verify whether plaintiff was required to file a statement. Nichols v. Board of Educ., 236 Ill. App. 3d 522, 177 Ill. Dec. 729, 603 N.E.2d 799 (1 Dist. 1992), appeal denied, 152 Ill. 2d 563, 190 Ill. Dec. 893, 622 N.E.2d 1210 (1993).

Nowhere in this Act is it expressed or implied that the county clerk has the duty or discretion to review the names of those individuals whom the local school district has determined were required to file a statement. Nichols v. Board of Educ., 236 Ill. App. 3d 522, 177 Ill. Dec. 729, 603 N.E.2d 799 (1 Dist. 1992), appeal denied, 152 Ill. 2d 563, 190 Ill. Dec. 893, 622 N.E.2d 1210 (1993).

Purpose

Purpose behind the statutory requirement that a candidate file a statement of economic interests, 5 ILCS 420/4A-105(a), is to facilitate the public's right to information regarding financial dealings between the candidate and the unit of government in which the candidate seeks an elected office. Jenkins v. McIlvain, 338 Ill. App. 3d 113, 272 Ill. Dec. 758, 788 N.E.2d 62, 2003 Ill. App. LEXIS 336 (1 Dist. 2003).

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Statements of Economic Interest

- Failure to Timely File

Status of plaintiffs, in their actions against Board of Education officer, as mothers of children enrolled in Chicago public schools, was not sufficient to establish the possession of a personal claim or right which would be substantially affected absent relief by way of a declaratory judgment or a writ in quo warranto; although the plaintiffs alleged that the defendant's failure to timely file his statement of economic interests had a direct impact on the education of their minor children, they pled no facts which would establish that the defendant's late filing had any effect whatsoever on the quality or quantity of education received by their children. Allen v. Love, 112 Ill. App. 3d 338, 68 Ill. Dec. 66, 445 N.E.2d 514 (1 Dist. 1983).

- Filing Requirements

In a case decided under an earlier version of this section, the 30-day deferral provision for filing statements of economic interest found in subsection (c) of this section is not applicable to statements filed pursuant to precursor to 10 ILCS 5/10-5. Miceli v. Lavelle, 114 Ill. App. 3d 311, 70 Ill. Dec. 111, 448 N.E.2d 989 (1 Dist. 1983).

§ 5 ILCS 420/4A-106. [Procedures concerning statements]

Sec. 4A-106. The statements of economic interests required of persons listed in items (a) through (f), item (j), item (l), and item (n) of Section 4A-101 [5 ILCS 420/4A-101] shall be filed with the Secretary of State. The statements of economic interests required of persons listed in items (g), (h), (i), (k), and (o) of Section 4A-101 shall be filed with the county clerk of the county in which the principal office of the unit of local government with which the person is associated is located. If it is not apparent which county the principal office of a unit of local government is located, the chief administrative officer, or his or her designee, has the authority, for purposes of this Act, to determine the county in which the principal office is located. On or before February 1 annually, (1) the chief administrative officer of any State agency in the executive, legislative, or judicial branch employing persons required to file under item (f) or item (l) of Section 4A-101 and the chief administrative officer of a board described in item (n) of Section 4A-101 shall certify to the Secretary of State the names and mailing addresses of those persons, and (2) the chief administrative officer, or his or her designee, of each unit of local government with persons described in items (h), (i) and (k) and a board described in item (o) of Section 4A-101 shall certify to the appropriate county clerk a list of names and addresses of persons described in items (h), (i), (k), and (o) of Section 4A-101 that are required to file. In preparing the lists, each chief administrative officer, or his or her designee, shall set out the names in alphabetical order.

On or before April 1 annually, the Secretary of State shall notify (1) all persons whose names have been certified to him under items (f), (l), and (n) of Section 4A-101, and (2) all persons described in items (a) through (e) and item (j) of Section 4A-101, other than candidates for office who have filed their statements with their nominating petitions, of the requirements for filing statements of economic interests. A person required to file with the Secretary of State by virtue of more than one item among items (a) through (f)

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and items (j), (l), and (n) shall be notified of and is required to file only one statement of economic interests relating to all items under which the person is required to file with the Secretary of State.

On or before April 1 annually, the county clerk of each county shall notify all persons whose names have been certified to him under items (g), (h), (i), (k), and (o) of Section 4A-101, other than candidates for office who have filed their statements with their nominating petitions, of the requirements for filing statements of economic interests. A person required to file with a county clerk by virtue of more than one item among items (g), (h), (i), (k), and (o) shall be notified of and is required to file only one statement of economic interests relating to all items under which the person is required to file with that county clerk.

Except as provided in Section 4A-106.1 [5 ILCS 420/4A-106.1], the notices provided for in this Section shall be in writing and deposited in the U.S. Mail, properly addressed, first class postage prepaid, on or before the day required by this Section for the sending of the notice. Alternatively, a county clerk may send the notices electronically to all persons whose names have been thus certified to him under item (h), (i), or (k) of Section 4A-101. A certificate executed by the Secretary of State or county clerk attesting that he or she has sent the notice by the means permitted by this Section constitutes prima facie evidence thereof.

From the lists certified to him under this Section of persons described in items (g), (h), (i), (k), and (o) of Section 4A-101, the clerk of each county shall compile an alphabetical listing of persons required to file statements of economic interests in his office under any of those items. As the statements are filed in his office, the county clerk shall cause the fact of that filing to be indicated on the alphabetical listing of persons who are required to file statements. Within 30 days after the due dates, the county clerk shall mail to the State Board of Elections a true copy of that listing showing those who have filed statements.

The county clerk of each county shall note upon the alphabetical listing the names of all persons required to file a statement of economic interests who failed to file a statement on or before May 1. It shall be the duty of the several county clerks to give notice as provided in Section 4A-105 [5 ILCS 420/4A-105] to any person who has failed to file his or her statement with the clerk on or before May 1.

Any person who files or has filed a statement of economic interest under this Act is entitled to receive from the Secretary of State or county clerk, as the case may be, a receipt indicating that the person has filed such a statement, the date of such filing, and the identity of the governmental unit or units in relation to which the filing is required.

The Secretary of State may employ such employees and consultants as he considers necessary to carry out his duties hereunder, and may prescribe their duties, fix their compensation, and provide for reimbursement of their expenses.

All statements of economic interests filed under this Section shall be available for examination and copying by the public at all reasonable times. Not later than 12 months after the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-617], beginning with statements filed in calendar year 2004, the Secretary of State shall

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make statements of economic interests filed with the Secretary available for inspection and copying via the Secretary's website.

(Source: P.A. 85-622; 88-187, § 5; 88-511, § 8; 88-605, § 5; 89-433, § 3; 92-101, § 5; 93-617, § 83; 94-603, § 5; 96-6, § 5; 96-1336, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 604A-106.

Section 990 of P.A. 93-617 contains a severability provision, and Section 995 contains "closed sessions" and vote requirement provisions.

Section 97 of P.A. 96-6 contains a severability provision.

Effect of Amendments. The 2001 amendment by P.A. 92-101, effective January 1, 2002, added the last sentence of the third paragraph; added the last sentence of the fourth paragraph; and in the eighth paragraph, inserted "or units" following "governmental unit".

The 2003 amendment by P.A. 93-617, effective December 9, 2003, inserted references to "item (l)" and made related changes throughout the first two paragraphs; deleted "and (l)" after "(k)" and made related changes in the second sentence of the first paragraph and twice in the third paragraph and once in the fourth paragraph; deleted the former second paragraph concerning certification of those names described in item (l) of Section 4A-101; in the next-to-last paragraph inserted the second sentence and inserted "filed with the county clerk" in the third sentence; and in the last paragraph substituted "county clerk" for "Secretary of State or county clerk, as the case may be."

The 2005 amendment by P.A. 94-603, effective August 16, 2005, deleted the former last three sentences, which concerned completion of an examiner information form with the county clerk, and notice by the county clerk to individuals required to file a statement under this Article.

The 2009 amendment by P.A. 96-6, effective April 3, 2009, added references to items (n) and (o) throughout the section; and made related changes.

The 2010 amendment by P.A. 96-1336, effective January 1, 2011, in the fourth paragraph, inserted the second sentence and substituted "sent the notice by the means permitted by this Section" for "mailed the notice" in the last sentence; and made a gender neutral change.

CASE NOTES

Analysis

Constitutionality
Candidate for County Commissioner
Duties of County Clerk
Removal of Candidate from Ballot

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Constitutionality

This Act is constitutional except insofar as it purports to authorize the Secretary of State to render advisory opinions, in writing, certified by him, on questions concerning the interpretation of Article 4A of the Ethics Act (5 ILCS 420/4A-101 et seq.) and to hire legal counsel for such purposes, as set forth in 5 ILCS 420/4A-106. Stein v. Howlett, 52 Ill. 2d 570, 289 N.E.2d 409 (1972).

Candidate for County Commissioner

The Cook County Board of Commissioners is a unit of local government. Therefore, a candidate for nomination as a member thereof erred in filing the form in 5 ILCS 420/4A-103 with the Secretary of State, rather than filing the form in 5 ILCS 420/4A-104 with the county clerk. O'Donaghue v. Cook County Officers Electoral Bd., 295 Ill. App. 3d 493, 229 Ill. Dec. 781, 692 N.E.2d 770 (1 Dist. 1998), appeal denied, 178 Ill. 2d 582, 232 Ill. Dec. 848, 699 N.E.2d 1033 (1998).

Duties of County Clerk

A county clerk fulfilled his duty under this Act, including collecting from plaintiff $15 in late filing fees, and was not required by the Act or by the state constitution to verify whether plaintiff was required to file a statement. Nichols v. Board of Educ., 236 Ill. App. 3d 522, 177 Ill. Dec. 729, 603 N.E.2d 799 (1 Dist. 1992), appeal denied, 152 Ill. 2d 563, 190 Ill. Dec. 893, 622 N.E.2d 1210 (1993).

Nowhere in this Act is it expressed or implied that the county clerk has the duty or discretion to review the names of those individuals whom the local school district has determined were required to file a statement. Nichols v. Board of Educ., 236 Ill. App. 3d 522, 177 Ill. Dec. 729, 603 N.E.2d 799 (1 Dist. 1992), appeal denied, 152 Ill. 2d 563, 190 Ill. Dec. 893, 622 N.E.2d 1210 (1993).

Removal of Candidate from Ballot

Cook County, Illinois, Officers Electoral Board's decision that a candidate who submitted papers to run for the office of circuit court judge could not be listed on a primary election ballot because he did not file a receipt with the Illinois Board of Elections, showing that he had filed a statement of economic interests with the Illinois Secretary of State, was upheld by the courts. Kellogg v. Cook County Ill. Officers Electoral Bd., 347 Ill. App. 3d 666, 283 Ill. Dec. 320, 807 N.E.2d 1161, 2004 Ill. App. LEXIS 325 (1 Dist. 2004).

Because this section requires a candidate for nomination as a member of the Cook County Board of Commissioners to file a statement of economic interests with the county clerk, the Cook County Officers Electoral Board had jurisdiction to look at the filing and, upon determining that the incorrect form was filed in the wrong office, to exclude the candidate's name from the ballot. O'Donaghue v. Cook County Officers Electoral Bd., 295 Ill. App. 3d 493, 229 Ill. Dec. 781, 692 N.E.2d 770 (1 Dist. 1998), appeal denied, 178 Ill. 2d 582, 232 Ill. Dec. 848, 699 N.E.2d 1033 (1998).

Removal from the ballot of a candidate for elective office is not a permissible sanction for the candidate's filing, in relation to his candidacy, of a statement of economic interests which is not true, correct and complete due to inadvertence on the candidate's part. Welch v. Johnson, 147 Ill. 2d 40, 167 Ill. Dec. 989, 588 N.E.2d 1119 (1992).

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Filing Fees

County clerks shall charge the applicable filing fees for all individuals filing statements of economic interest. 1977 Op. Atty. Gen. 118.

§ 5 ILCS 420/4A-106.1. 1994 school district and community college district filings

Sec. 4A-106.1. 1994 school district and community college district filings. Elected officials and appointed officials of school districts and community college districts required to file statements of economic interests in calendar year 1994 shall file those statements by October 1, 1994 rather than May 1, 1994.

(Source: P.A. 88-605, § 5.)

Effective Date. Section 99 of P.A. 88-605 made this section effective upon becoming law. The Act was approved September 1, 1994.

§ 5 ILCS 420/4A-107. [Violations; penalties]

Sec. 4A-107. Any person required to file a statement of economic interests under this Article who willfully files a false or incomplete statement shall be guilty of a Class A misdemeanor.

Except when the fees and penalties for late filing have been waived under Section 4A-105 [5 ILCS 420/4A-105], failure to file a statement within the time prescribed shall result in ineligibility for, or forfeiture of, office or position of employment, as the case may be; provided, however, that if the notice of failure to file a statement of economic interests provided in Section 4A-105 of this Act is not given by the Secretary of State or the county clerk, as the case may be, no forfeiture shall result if a statement is filed within 30 days of actual notice of the failure to file. The Secretary of State shall provide the Attorney General with the names of persons who failed to file a statement. The county clerk shall provide the State's Attorney of the county of the entity for which the filing of statement of economic interest is required with the name of persons who failed to file a statement.

The Attorney General, with respect to offices or positions described in items (a) through (f) and items (j), (l), and (n) of Section 4A-101 of this Act [5 ILCS 420/4A-101], or the

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State's Attorney of the county of the entity for which the filing of statements of economic interests is required, with respect to offices or positions described in items (g) through (i), item (k), and item (o) of Section 4A-101 of this Act, shall bring an action in quo warranto against any person who has failed to file by either May 31 or June 30 of any given year and for whom the fees and penalties for late filing have not been waived under Section 4A-105.

(Source: P.A. 83-1330; 88-187, § 5; 88-511, § 8; 93-617, § 83; 96-6, § 5; 96-550, § 5; 96-1000, § 25.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 604A-107.

Section 990 of P.A. 93-617 contains a severability provision, and Section 995 contains "closed sessions" and vote requirement provisions.

Section 97 of P.A. 96-6 contains a severability provision.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 2003 amendment by P.A. 93-617, effective December 9, 2003, in the last paragraph inserted the reference to item (l) near the beginning, and deleted "and (l)" and made related changes after "(i) and (k)" near the end.

The 2009 amendment by P.A. 96-6, effective April 3, 2009, added the last two sentences to the second paragraph; and added references to items (n) and (o) in the last paragraph and made related changes.

The 2009 amendment by P.A. 96-550, effective August 17, 2009, added "Except when the fees and penalties for late filing have been waived under Section 4A-105" in the second paragraph; added "and for whom the fees and penalties for late filing have not been waived under Section 4A-105" in the last paragraph; and made a stylistic change.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, combined earlier multiple amendments to the section.

CASE NOTES

Analysis

Jurisdiction
- Circuit Court
Mandatory Nature of Statute
Removal of Candidate from Ballot
Statements of Economic Interest

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- Failure to Timely File
- False

Jurisdiction

- Circuit Court

The circuit court, and not the electoral board, was given jurisdiction to inquire into the truth and accuracy of a statement of economic interests which had been filed; under Ill. Const., Art. VI, § 9 have original jurisdiction over all justiciable matters not explicitly assigned to the Supreme Court in addition to the power to review administrative decisions as provided by statute. Troutman v. Keys, 156 Ill. App. 3d 247, 108 Ill. Dec. 757, 509 N.E.2d 453 (1 Dist. 1987).

Mandatory Nature of Statute

The requirements of the Illinois Election Code are mandatory, not directory; thus, failure to file a statement of economic interests before the statutory deadline results in a fine and ultimately, in forfeiture of office. Purnell v. Municipal Officers Electoral Bd., 275 Ill. App. 3d 1038, 212 Ill. Dec. 360, 657 N.E.2d 55 (1 Dist. 1995).

Removal of Candidate from Ballot

Removal from the ballot of a candidate for elective office is not a permissible sanction for the candidate's filing, in relation to his candidacy, of a statement of economic interests which is not true, correct and complete due to inadvertence on the candidate's part. Welch v. Johnson, 147 Ill. 2d 40, 167 Ill. Dec. 989, 588 N.E.2d 1119 (1992).

Statements of Economic Interest

- Failure to Timely File

Status of plaintiffs, in their actions against Board of Education officer, as mothers of children enrolled in Chicago public schools, was not sufficient to establish the possession of a personal claim or right which would be substantially affected absent relief by way of a declaratory judgment or a writ in quo warranto; although the plaintiffs alleged that the defendant's failure to timely file his statement of economic interests had a direct impact on the education of their minor children, they pled no facts which would establish that the defendant's late filing could have any effect whatsoever on the quality or quantity of education received by their children. Allen v. Love, 112 Ill. App. 3d 338, 68 Ill. Dec. 66, 445 N.E.2d 514 (1 Dist. 1983).

- False

This section sets forth the criminal sanction that attaches to the willful filing of a false or incomplete statement of economic interest; it makes no provision for removal of a candidate's name from the ballot or for any other noncriminal sanctions. Crudup v. Sims, 292 Ill. App. 3d 1075, 226 Ill. Dec. 931, 686 N.E.2d 714 (1 Dist. 1997).

§ 5 ILCS 420/4A-108. Internet-based systems of filing

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Sec. 4A-108. Internet-based systems of filing. (a) Notwithstanding any other provision of this Act or any other law, a county clerk is authorized to institute an Internet-based system for the filing of statements of economic interests in his or her office. The determination to institute such a system shall be in the sole discretion of the county clerk and shall meet the requirements set out in this Section. When this Section does not modify or remove the requirements set forth elsewhere in this Article, those requirements shall apply to any system of Internet-based filing authorized by this Section. When this Section does modify or remove the requirements set forth elsewhere in this Article, the provisions of this Section shall apply to any system of Internet-based filing authorized by this Section.

(b) In any system of Internet-based filing of statements of economic interests instituted by a county clerk:

(1) Any filing of an Internet-based statement of economic interests shall be the equivalent of the filing of a verified, written statement of economic interests as required by Section 4A-101 [5 ILCS 420/4A-101] and the equivalent of the filing of a verified, dated, and signed statement of economic interests as required by Section 4A-104 [5 ILCS 420/4A-104].

(2) A county clerk who institutes a system of Internet-based filing of statements of economic interests shall establish a password-protected web site to receive the filings of such statements. A website established under this Section shall set forth and provide a means of responding to the items set forth in Section 4A-102 [5 ILCS 420/4A-102] that are required of a person who files a statement of economic interests with that officer.

(3) The times for the filing of statements of economic interests set forth in Section 4A-105 [5 ILCS 420/4A-105] shall be followed in any system of Internet-based filing of statements of economic interests; provided that a candidate for elective office who is required to file a statement of economic interests in relation to his or her candidacy pursuant to Section 4A-105(a) shall not use the Internet to file his or her statement of economic interests but shall file his or her statement of economic interests in a written or printed form and shall receive a written or printed receipt for his or her filing.

(4) In the first year of the implementation of a system of Internet-based filing of statements of economic interests, each person required to file such a statement is to be notified in writing of his or her obligation to file his or her statement of economic interests and the option to file by way of the Internet-based system or by way of standardized form. If access to the web site requires a code or password, this information shall be included in the notice prescribed by this paragraph.

(5) When a person required to file a statement of economic interests has supplied a county clerk with an email address for the purpose of receiving notices under this Article by email, a notice sent by email to the supplied email address shall be the equivalent of a notice sent by first class mail, as set forth in Section 4A-106 [5 ILCS 420/4A-106]. A person who has supplied such an email address shall notify the county clerk when his or her email address changes or if he or she no longer wishes to receive notices by email.

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(6) If any person who is required to file a statement of economic interests and who has chosen to receive notices by email fails to file his or her statement by May 10, then the county clerk shall send an additional email notice on that date, informing the person that he or she has not filed and describing the penalties for late filing and failing to file. This notice shall be in addition to other notices provided for in this Article.

(7) Each county clerk who institutes a system of Internet-based filing of statements of economic interests may also institute an Internet-based process for the filing of the list of names and addresses of persons required to file statements of economic interests by the chief administrative officers of units of local government that must file such information with that county clerk pursuant to Section 4A-106. Whenever a county clerk institutes such a system under this paragraph, every unit of local government must use the system to file this information.

(8) Any county clerk who institutes a system of Internet-based filing of statements of economic interests shall post the contents of such statements filed with him or her available for inspection and copying on a publicly accessible website. Such postings shall not include the addresses of the filers.

(Source: P.A. 96-1336, § 5; 97-212, § 5.)

Effective Date. This section became effective January 1, 2011 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2011 amendment by P.A. 97-212, effective July 29, 2011, substituted "Section 4A-104" for "Section 4A-103" in (b)(1); and in (b)(4), deleted the former first two sentences, pertaining to the system of Internet-based filing of statements of economic interests and in the present first sentence, deleted "by a notice deposited in the U.S. mail, properly addressed, first class postage prepaid" following "in writing," inserted "and the option to file," and substituted "or by way of standardized form" for "instituted for that purpose."

STATE GIFTS

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State Officials and Employee Ethics Act

Article 5

Ethical Conduct

5 ILCS 430/5-5.Personnel policies
5 ILCS 430/5-10.Ethics training
5 ILCS 430/5-15.Prohibited political activities
5 ILCS 430/5-20.Public service announcements; other promotional material
5 ILCS 430/5-30.Prohibited offer or promise
5 ILCS 430/5-35.Contributions on State property
5 ILCS 430/5-40.Fundraising in Sangamon County
5 ILCS 430/5-45.Procurement; revolving door prohibition
5 ILCS 430/5-50.Ex parte communications; special government agents
5 ILCS 430/5-55.Prohibition on serving on boards and commissions
5 ILCS 430/5-60.Administrative leave during pending criminal matter

Article 10

Gift Ban

5 ILCS 430/10-10.Gift ban
5 ILCS 430/10-15.Gift ban; exceptions
5 ILCS 430/10-30.Gift ban; disposition of gifts
5 ILCS 430/10-40.Gift ban; further restrictions

Article 70

Governmental Entities

5 ILCS 430/70-5.Adoption by governmental entities
5 ILCS 430/70-10.Penalties
5 ILCS 430/70-15.Home rule preemption

Article 5.

Ethical Conduct

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§ 5 ILCS 430/5-5. Personnel policies

Sec. 5-5. Personnel policies. (a) Each of the following shall adopt and implement personnel policies for all State employees under his, her, or its jurisdiction and control: (i) each executive branch constitutional officer, (ii) each legislative leader, (iii) the Senate Operations Commission, with respect to legislative employees under Section 4 of the General Assembly Operations Act [25 ILCS 10/4], (iv) the Speaker of the House of Representatives, with respect to legislative employees under Section 5 of the General Assembly Operations Act [25 ILCS 10/5], (v) the Joint Committee on Legislative Support Services, with respect to State employees of the legislative support services agencies, (vi) members of the General Assembly, with respect to legislative assistants, as provided in Section 4 of the General Assembly Compensation Act [25 ILCS 115/4], (vii) the Auditor General, (viii) the Board of Higher Education, with respect to State employees of public institutions of higher learning except community colleges, and (ix) the Illinois Community College Board, with respect to State employees of community colleges. The Governor shall adopt and implement those policies for all State employees of the executive branch not under the jurisdiction and control of any other executive branch constitutional officer.

(b) The policies required under subsection (a) shall be filed with the appropriate ethics commission established under this Act or, for the Auditor General, with the Office of the Auditor General.

(c) The policies required under subsection (a) shall include policies relating to work time requirements, documentation of time worked, documentation for reimbursement for travel on official State business, compensation, and the earning or accrual of State benefits for all State employees who may be eligible to receive those benefits. The policies shall comply with and be consistent with all other applicable laws. The policies shall require State employees to periodically submit time sheets documenting the time spent each day on official State business to the nearest quarter hour; contractual State employees may satisfy the time sheets requirement by complying with the terms of their contract, which shall provide for a means of compliance with this requirement. The policies for State employees shall require those time sheets to be submitted on paper, electronically, or both and to be maintained in either paper or electronic format by the applicable fiscal office for a period of at least 2 years.

(d) The policies required under subsection (a) shall be adopted by the applicable entity before February 1, 2004 and shall apply to State employees beginning 30 days after adoption.

(Source: P.A. 93-615, § 5-5; 93-617, § 5.)

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Section 990 of P.A. 93-617 contains a severability provision, and Section 995 contains "closed sessions" and vote requirement provisions.

Effect of Amendments. The 2003 amendment by P.A. 93-617, effective December 9, 2003, inserted subsections (b) and (d) and redesignated former subsection (b) as subsection (c); and in subsection (c) in the third sentence deleted "For State employees of the legislative branch" from the beginning, inserted "State" twice and made related changes, and deleted "of the legislative branch" after "State employees" in each of the third and fourth sentences.

§ 5 ILCS 430/5-10. Ethics training

Sec. 5-10. Ethics training. (a) Each officer, member, and employee must complete, at least annually beginning in 2004, an ethics training program conducted by the appropriate State agency. Each ultimate jurisdictional authority must implement an ethics training program for its officers, members, and employees. These ethics training programs shall be overseen by the appropriate Ethics Commission and Inspector General appointed pursuant to this Act in consultation with the Office of the Attorney General.

(b) Each ultimate jurisdictional authority subject to the Executive Ethics Commission shall submit to the Executive Ethics Commission, at least annually, or more frequently as required by that Commission, an annual report that summarizes ethics training that was completed during the previous year, and lays out the plan for the ethics training programs in the coming year.

(c) Each Inspector General shall set standards and determine the hours and frequency of training necessary for each position or category of positions. A person who fills a vacancy in an elective or appointed position that requires training and a person employed in a position that requires training must complete his or her initial ethics training within 30 days after commencement of his or her office or employment.

(d) Upon completion of the ethics training program, each officer, member, and employee must certify in writing that the person has completed the training program. Each officer, member, and employee must provide to his or her ethics officer a signed copy of the certification by the deadline for completion of the ethics training program.

(e) The ethics training provided under this Act by the Secretary of State may be expanded to satisfy the requirement of Section 4.5 of the Lobbyist Registration Act [25 ILCS 170/4.5].

(Source: P.A. 93-615, § 5-10; 93-617, § 5; 96-555, § 10.)

Note.

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Section 990 of P.A. 93-617 contains a severability provision, and Section 995 contains "closed sessions" and vote requirement provisions.

Effect of Amendments. The 2003 amendment by P.A. 93-617, effective December 9, 2003, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2009 amendment by P.A. 96-555, effective August 18, 2009, added the (a) and (c) designations; added (b), (d), and (e); and substituted "30 days" for "6 months" in the second sentence of (c).

§ 5 ILCS 430/5-15. Prohibited political activities

Sec. 5-15. Prohibited political activities. (a) State employees shall not intentionally perform any prohibited political activity during any compensated time (other than vacation, personal, or compensatory time off). State employees shall not intentionally misappropriate any State property or resources by engaging in any prohibited political activity for the benefit of any campaign for elective office or any political organization.

(b) At no time shall any executive or legislative branch constitutional officer or any official, director, supervisor, or State employee intentionally misappropriate the services of any State employee by requiring that State employee to perform any prohibited political activity (i) as part of that employee's State duties, (ii) as a condition of State employment, or (iii) during any time off that is compensated by the State (such as vacation, personal, or compensatory time off).

(c) A State employee shall not be required at any time to participate in any prohibited political activity in consideration for that State employee being awarded any additional compensation or employee benefit, in the form of a salary adjustment, bonus, compensatory time off, continued employment, or otherwise.

(d) A State employee shall not be awarded any additional compensation or employee benefit, in the form of a salary adjustment, bonus, compensatory time off, continued employment, or otherwise, in consideration for the State employee's participation in any prohibited political activity.

(e) Nothing in this Section prohibits activities that are otherwise appropriate for a State employee to engage in as a part of his or her official State employment duties or activities that are undertaken by a State employee on a voluntary basis as permitted by law.

(f) No person either (i) in a position that is subject to recognized merit principles of public employment or (ii) in a position the salary for which is paid in whole or in part by federal funds and that is subject to the Federal Standards for a Merit System of Personnel Administration applicable to grant-in-aid programs, shall be denied or deprived of State employment or tenure solely because he or she is a member or an officer of a political committee, of a political party, or of a political organization or club.

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(Source: P.A. 93-615, § 5-15.)

CASE NOTES

Analysis

Constitutionality
Distribution of Campaign Literature
- Not Shown
Legislative Intent
- Discharge
Soliciting
- In General

Constitutionality

For a case discussing the constitutionality of this section, see People v. Murray, 307 Ill. 349, 138 N.E. 649 (1923).

Distribution of Campaign Literature

- Not Shown

The acquiescence of a supervisor in permitting political literature to remain in his office during an election campaign did not constitute distributing campaign literature within the meaning of subsection (h) of this section. Gibbs v. Orlandi, 27 Ill. 2d 368, 189 N.E.2d 233 (1963).

Legislative Intent

- Discharge

The legislature did not intend to permit the discharge of merit employees upon mere proof that they permitted campaign literature to remain in their office. Gibbs v. Orlandi, 27 Ill. 2d 368, 189 N.E.2d 233 (1963).

Soliciting

- In General

The request of a political contribution from a civil service employee may be harmless of itself, but it affords every facility for disguising the collection of a forced assessment, and for this reason may properly be prohibited. People v. Murray, 307 Ill. 349, 138 N.E. 649 (1923).

The soliciting of contributions to a political party is not of itself harmful to society, but such solicitation from civil service employees may result in destroying the political freedom of the employees, and making their positions dependent upon their political activity; the legislature,

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deeming this an evil which should be redressed, provided a remedy by prohibiting the solicitation of contributions from officers or employees of the city government. People v. Murray, 307 Ill. 349, 138 N.E. 649 (1923).

§ 5 ILCS 430/5-20. Public service announcements; other promotional material

Sec. 5-20. Public service announcements; other promotional material. (a) Beginning January 1, 2004, no public service announcement or advertisement that is on behalf of any State administered program and contains the proper name, image, or voice of any executive branch constitutional officer or member of the General Assembly shall be (i) broadcast or aired on radio or television, (ii) printed in a commercial newspaper or a commercial magazine, or (iii) displayed on a billboard or electronic message board at any time.

(b) The proper name or image of any executive branch constitutional officer or member of the General Assembly may not appear on any (i) bumper stickers, (ii) commercial billboards, (iii) lapel pins or buttons, (iv) magnets, (v) stickers, and (vi) other similar promotional items, that are not in furtherance of the person's official State duties or governmental and public service functions, if designed, paid for, prepared, or distributed using public dollars. This subsection does not apply to stocks of items existing on the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-617].

(c) This Section does not apply to communications funded through expenditures required to be reported under Article 9 of the Election Code [10 ILCS 5/9-1 et seq.].

(Source: P.A. 93-615, § 5-20; 93-617, § 5; 93-685, § 5; 97-13, § 5.)

Note.

Section 990 of P.A. 93-617 contains a severability provision, and Section 995 contains "closed sessions" and vote requirement provisions.

Effect of Amendments. The 2003 amendment by P.A. 93-617, effective December 9, 2003, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2004 amendment by P.A. 93-685, effective July 8, 2004, inserted "that are not in furtherance of the person's official State duties or governmental and public service function" in the first sentence of subsection (b).

The 2011 amendment by P.A. 97-13, effective June 16, 2011, in (a), added the item designations (i) and (ii), and inserted item (iii); and made related changes..

§ 5 ILCS 430/5-30. Prohibited offer or promise

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Sec. 5-30. Prohibited offer or promise. (a) An officer or employee of the executive or legislative branch or a candidate for an executive or legislative branch office may not promise anything of value related to State government, including but not limited to positions in State government, promotions, salary increases, other employment benefits, board or commission appointments, favorable treatment in any official or regulatory matter, the awarding of any public contract, or action or inaction on any legislative or regulatory matter, in consideration for a contribution to a political committee, political party, or other entity that has as one of its purposes the financial support of a candidate for elective office.

(b) Any State employee who is requested or directed by an officer, member, or employee of the executive or legislative branch or a candidate for an executive or legislative branch office to engage in activity prohibited by Section 5-30 shall report such request or directive to the appropriate ethics officer or Inspector General.

(c) Nothing in this Section prevents the making or accepting of voluntary contributions otherwise in accordance with law.

(Source: P.A. 93-615, § 5-30; 96-555, § 10.)

Effect of Amendments. The 2009 amendment by P.A. 96-555, effective August 18, 2009, added the (a) and (c) designations; added "other employment benefits, board or commission appointments, favorable treatment in any official or regulatory matter, the awarding of any public contract, or action or inaction on any legislative or regulatory matter" in (a); added (b); and made a stylistic change.

§ 5 ILCS 430/5-35. Contributions on State property

Sec. 5-35. Contributions on State property. Contributions shall not be intentionally solicited, accepted, offered, or made on State property by public officials, by State employees, by candidates for elective office, by persons required to be registered under the Lobbyist Registration Act [25 ILCS 170/1 et seq.], or by any officers, employees, or agents of any political organization, except as provided in this Section. For purposes of this Section, "State property" means any building or portion thereof owned or exclusively leased by the State or any State agency at the time the contribution is solicited, offered, accepted, or made. "State property" does not however, include any portion of a building that is rented or leased from the State or any State agency by a private person or entity.

An inadvertent solicitation, acceptance, offer, or making of a contribution is not a violation of this Section so long as reasonable and timely action is taken to return the contribution to its source.

The provisions of this Section do not apply to the residences of State officers and employees, except that no fundraising events shall be held at residences owned by the

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State or paid for, in whole or in part, with State funds.

(Source: P.A. 93-615, § 5-35.)

§ 5 ILCS 430/5-40. Fundraising in Sangamon County

Sec. 5-40. Fundraising in Sangamon County. Except as provided in this Section, any executive branch constitutional officer, any candidate for an executive branch constitutional office, any member of the General Assembly, any candidate for the General Assembly, any political caucus of the General Assembly, or any political committee on behalf of any of the foregoing may not hold a political fundraising function in Sangamon County on any day the legislature is in session (i) during the period beginning February 1 and ending on the later of the actual adjournment dates of either house of the spring session and (ii) during fall veto session. For purposes of this Section, the legislature is not considered to be in session on a day that is solely a perfunctory session day or on a day when only a committee is meeting.

During the period beginning June 1 and ending on the first day of fall veto session each year, this Section does not apply to (i) a member of the General Assembly whose legislative or representative district is entirely within Sangamon County or (ii) a candidate for the General Assembly from that legislative or representative district.

(Source: P.A. 93-615, § 5-40; 96-555, § 10.)

Effect of Amendments. The 2009 amendment by P.A. 96-555, effective August 18, 2009, added "political" preceding "fundraising function" in the first sentence of the first paragraph.

§ 5 ILCS 430/5-45. Procurement; revolving door prohibition

Sec. 5-45. Procurement; revolving door prohibition. (a) No former officer, member, or State employee, or spouse or immediate family member living with such person, shall, within a period of one year immediately after termination of State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the officer, member, or State employee, during the year immediately preceding termination of State employment, participated personally and substantially in the award of State contracts, or the issuance of State contract change orders, with a cumulative value of $25,000 or more to the person or entity, or its parent or subsidiary.

(b) No former officer of the executive branch or State employee of the executive branch with regulatory or licensing authority, or spouse or immediate family member living with

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such person, shall, within a period of one year immediately after termination of State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the officer or State employee, during the year immediately preceding termination of State employment, participated personally and substantially in making a regulatory or licensing decision that directly applied to the person or entity, or its parent or subsidiary.

(c) Within 6 months after the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-555], each executive branch constitutional officer and legislative leader, the Auditor General, and the Joint Committee on Legislative Support Services shall adopt a policy delineating which State positions under his or her jurisdiction and control, by the nature of their duties, may have the authority to participate personally and substantially in the award of State contracts or in regulatory or licensing decisions. The Governor shall adopt such a policy for all State employees of the executive branch not under the jurisdiction and control of any other executive branch constitutional officer.

The policies required under subsection (c) of this Section shall be filed with the appropriate ethics commission established under this Act or, for the Auditor General, with the Office of the Auditor General.

(d) Each Inspector General shall have the authority to determine that additional State positions under his or her jurisdiction, not otherwise subject to the policies required by subsection (c) of this Section, are nonetheless subject to the notification requirement of subsection (f) below due to their involvement in the award of State contracts or in regulatory or licensing decisions.

(e) The Joint Committee on Legislative Support Services, the Auditor General, and each of the executive branch constitutional officers and legislative leaders subject to subsection (c) of this Section shall provide written notification to all employees in positions subject to the policies required by subsection (c) or a determination made under subsection (d): (1) upon hiring, promotion, or transfer into the relevant position; and (2) at the time the employee's duties are changed in such a way as to qualify that employee. An employee receiving notification must certify in writing that the person was advised of the prohibition and the requirement to notify the appropriate Inspector General in subsection (f).

(f) Any State employee in a position subject to the policies required by subsection (c) or to a determination under subsection (d), but who does not fall within the prohibition of subsection (h) below, who is offered non-State employment during State employment or within a period of one year immediately after termination of State employment shall, prior to accepting such non-State employment, notify the appropriate Inspector General. Within 10 calendar days after receiving notification from an employee in a position subject to the policies required by subsection (c), such Inspector General shall make a determination as to whether the State employee is restricted from accepting such employment by subsection (a) or (b). In making a determination, in addition to any other relevant information, an Inspector General shall assess the effect of the prospective employment or relationship upon decisions referred to in subsections (a) and (b), based on the totality of the participation by the former officer, member, or State employee in

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those decisions. A determination by an Inspector General must be in writing, signed and dated by the Inspector General, and delivered to the subject of the determination within 10 calendar days or the person is deemed eligible for the employment opportunity. For purposes of this subsection, "appropriate Inspector General" means (i) for members and employees of the legislative branch, the Legislative Inspector General; (ii) for the Auditor General and employees of the Office of the Auditor General, the Inspector General provided for in Section 30-5 of this Act [5 ILCS 430/30-5]; and (iii) for executive branch officers and employees, the Inspector General having jurisdiction over the officer or employee. Notice of any determination of an Inspector General and of any such appeal shall be given to the ultimate jurisdictional authority, the Attorney General, and the Executive Ethics Commission.

(g) An Inspector General's determination regarding restrictions under subsection (a) or (b) may be appealed to the appropriate Ethics Commission by the person subject to the decision or the Attorney General no later than the 10th calendar day after the date of the determination.

On appeal, the Ethics Commission or Auditor General shall seek, accept, and consider written public comments regarding a determination. In deciding whether to uphold an Inspector General's determination, the appropriate Ethics Commission or Auditor General shall assess, in addition to any other relevant information, the effect of the prospective employment or relationship upon the decisions referred to in subsections (a) and (b), based on the totality of the participation by the former officer, member, or State employee in those decisions. The Ethics Commission shall decide whether to uphold an Inspector General's determination within 10 calendar days or the person is deemed eligible for the employment opportunity.

(h) The following officers, members, or State employees shall not, within a period of one year immediately after termination of office or State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the person or entity or its parent or subsidiary, during the year immediately preceding termination of State employment, was a party to a State contract or contracts with a cumulative value of $25,000 or more involving the officer, member, or State employee's State agency, or was the subject of a regulatory or licensing decision involving the officer, member, or State employee's State agency, regardless of whether he or she participated personally and substantially in the award of the State contract or contracts or the making of the regulatory or licensing decision in question:

(1) members or officers;

(2) members of a commission or board created by the Illinois Constitution;

(3) persons whose appointment to office is subject to the advice and consent of the Senate;

(4) the head of a department, commission, board, division, bureau, authority, or other administrative unit within the government of this State;

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(5) chief procurement officers, State purchasing officers, and their designees whose duties are directly related to State procurement; and

(6) chiefs of staff, deputy chiefs of staff, associate chiefs of staff, assistant chiefs of staff, and deputy governors.

(i) For the purposes of this Section, with respect to officers or employees of a regional transit board, as defined in this Act, the phrase "person or entity" does not include: (i) the United States government, (ii) the State, (iii) municipalities, as defined under Article VII, Section 1 of the Illinois Constitution [Ill. Const. Art. VII, § 1], (iv) units of local government, as defined under Article VII, Section 1 of the Illinois Constitution, or (v) school districts.

(Source: P.A. 93-615, § 5-45; 93-617, § 5; 96-555, § 10; 97-653, § 5.)

Note.

Section 990 of P.A. 93-617 contains a severability provision, and Section 995 contains "closed sessions" and vote requirement provisions.

Effect of Amendments. The 2003 amendment by P.A. 93-617, effective December 9, 2003, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2009 amendment by P.A. 96-555, effective August 18, 2009, substituted "award of State contracts, or the issuance of State contract change orders" for "decision to award State contracts" in (a); in (b), substituted "or" for "of" following "receive compensation" and "participated personally and substantially in making" for "made"; rewrote (c) and (d); added (e) through (h); and made a stylistic change.

The 2012 amendment by P.A. 97-653, effective January 13, 2012, added (i).

§ 5 ILCS 430/5-50. Ex parte communications; special government agents

Sec. 5-50. Ex parte communications; special government agents. (a) This Section applies to ex parte communications made to any agency listed in subsection (e).

(b) "Ex parte communication" means any written or oral communication by any person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by the agency. "Ex parte communication" does not include the following: (i) statements by a person publicly made in a public forum; (ii) statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter; and (iii) statements made by a State employee of the agency to the agency head or other employees of that agency.

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(b-5) An ex parte communication received by an agency, agency head, or other agency employee from an interested party or his or her official representative or attorney shall promptly be memorialized and made a part of the record.

(c) An ex parte communication received by any agency, agency head, or other agency employee, other than an ex parte communication described in subsection (b-5), shall immediately be reported to that agency's ethics officer by the recipient of the communication and by any other employee of that agency who responds to the communication. The ethics officer shall require that the ex parte communication be promptly made a part of the record. The ethics officer shall promptly file the ex parte communication with the Executive Ethics Commission, including all written communications, all written responses to the communications, and a memorandum prepared by the ethics officer stating the nature and substance of all oral communications, the identity and job title of the person to whom each communication was made, all responses made, the identity and job title of the person making each response, the identity of each person from whom the written or oral ex parte communication was received, the individual or entity represented by that person, any action the person requested or recommended, and any other pertinent information. The disclosure shall also contain the date of any ex parte communication.

(d) "Interested party" means a person or entity whose rights, privileges, or interests are the subject of or are directly affected by a regulatory, quasi-adjudicatory, investment, or licensing matter.

(e) This Section applies to the following agencies:

Executive Ethics Commission

Illinois Commerce Commission

Educational Labor Relations Board

State Board of Elections

Illinois Gaming Board

Health Facilities and Services Review Board

Illinois Workers' Compensation Commission

Illinois Labor Relations Board

Illinois Liquor Control Commission

Pollution Control Board

Property Tax Appeal Board

Illinois Racing Board

Illinois Purchased Care Review Board

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Department of State Police Merit Board

Motor Vehicle Review Board

Prisoner Review Board

Civil Service Commission

Personnel Review Board for the Treasurer

Merit Commission for the Secretary of State

Merit Commission for the Office of the Comptroller

Court of Claims

Board of Review of the Department of Employment Security

Department of Insurance

Department of Professional Regulation and licensing boards under the Department

Department of Public Health and licensing boards under the Department

Office of Banks and Real Estate and licensing boards under the Office

State Employees Retirement System Board of Trustees

Judges Retirement System Board of Trustees

General Assembly Retirement System Board of Trustees

Illinois Board of Investment

State Universities Retirement System Board of Trustees

Teachers Retirement System Officers Board of Trustees

(f) Any person who fails to (i) report an ex parte communication to an ethics officer, (ii) make information part of the record, or (iii) make a filing with the Executive Ethics Commission as required by this Section or as required by Section 5-165 of the Illinois Administrative Procedure Act [5 ILCS 100/5-165] violates this Act.

(Source: P.A. 93-617, § 5; 95-331, § 45; 96-31, § 10.)

Note.

Section 990 of P.A. 93-617 contains a severability provision, and Section 995 contains "closed sessions" and vote requirement provisions.

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Effective Date. Section 999 of P.A. 93-617 made this section effective upon becoming law. The Act was approved December 9, 2003.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, substituted "Illinois Workers' Compensation Commission" for "Industrial Commission" in (e).

The 2009 amendment by P.A. 96-31, effective June 30, 2009, substituted "Health Facilities and Services Review Board" for "Health Facilities Planning Board" in (e).

§ 5 ILCS 430/5-55. Prohibition on serving on boards and commissions

Sec. 5-55. Prohibition on serving on boards and commissions. Notwithstanding any other law of this State, on and after February 1, 2004, a person, his or her spouse, and any immediate family member living with that person is ineligible to serve on a board, commission, authority, or task force authorized or created by State law or by executive order of the Governor if (i) that person is entitled to receive more than 7 1/2% of the total distributable income under a State contract other than an employment contract or (ii) that person together with his or her spouse and immediate family members living with that person are entitled to receive more than 15% in the aggregate of the total distributable income under a State contract other than an employment contract; except that this restriction does not apply to any of the following:

(1) a person, his or her spouse, or his or her immediate family member living with that person, who is serving in an elective public office, whether elected or appointed to fill a vacancy; and

(2) a person, his or her spouse, or his or her immediate family member living with that person, who is serving on a State advisory body that makes nonbinding recommendations to an agency of State government but does not make binding recommendations or determinations or take any other substantive action.

(Source: P.A. 93-617, § 5.)

Note.

Section 990 of P.A. 93-617 contains a severability provision, and Section 995 contains "closed sessions" and vote requirement provisions.

Effective Date. Section 999 of P.A. 93-617 made this section effective upon becoming law. The Act was approved December 9, 2003.

OPINIONS OF ATTORNEY GENERAL

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Applicability

Members of the State Board of Elections are subject to the provisions of this section. 2004 Op. Atty. Gen. (04-002).

§ 5 ILCS 430/5-60. Administrative leave during pending criminal matter

Sec. 5-60. Administrative leave during pending criminal matter. (a) If any officer or government employee is placed on administrative leave, either voluntarily or involuntarily, pending the outcome of a criminal investigation or prosecution and that officer or government employee is removed from office or employment due to his or her resultant criminal conviction, then the officer or government employee is indebted to the State for all compensation and the value of all benefits received during the administrative leave and must forthwith pay the full amount to the State.

(b) As a matter of law and without the necessity of the adoption of an ordinance or resolution under Section 70-5 [5 ILCS 430/70-5], if any officer or government employee of a governmental entity is placed on administrative leave, either voluntarily or involuntarily, pending the outcome of a criminal investigation or prosecution and that officer or government employee is removed from office or employment due to his or her resultant criminal conviction, then the officer or government employee is indebted to the governmental entity for all compensation and the value of all benefits received during the administrative leave and must forthwith pay the full amount to the governmental entity.

(Source: P.A. 95-947, § 5.)

Effective Date. Section 99 of P.A. 95-947 makes this section effective upon becoming law. The Act was approved August 29, 2008.

Article 10.

Gift Ban

§ 5 ILCS 430/10-10. Gift ban

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Sec. 10-10. Gift ban. Except as otherwise provided in this Article, no officer, member, or State employee shall intentionally solicit or accept any gift from any prohibited source or in violation of any federal or State statute, rule, or regulation. This ban applies to and includes the spouse of and immediate family living with the officer, member, or State employee. No prohibited source shall intentionally offer or make a gift that violates this Section.

(Source: P.A. 93-617, § 5.)

Note.

Section 990 of P.A. 93-617 contains a severability provision, and Section 995 contains "closed sessions" and vote requirement provisions.

Effective Date. Section 999 of P.A. 93-617 made this section effective upon becoming law. The Act was approved December 9, 2003.

CASE NOTES

Constitutionality

Trial court's determination that the Illinois State Gift Ban Act, 5 ILCS 425/1 et seq., was unconstitutional was reversed where plaintiffs lacked standing to raise arguments regarding alleged encroachments upon powers of executive and judicial branches of government because neither plaintiff was an official of the executive of judicial branch of government (decided under the former State Gift Ban Act, former 5 ILCS 425/1 et seq.). Flynn v. Ryan, 199 Ill. 2d 430, 264 Ill. Dec. 710, 771 N.E.2d 414, 2002 Ill. LEXIS 327 (2002).

OPINIONS OF ATTORNEY GENERAL

Judges

Judges of election are not subject to the provisions of the State Gift Ban Act (decided under the former State Gift Ban Act, former 5 ILCS 425/1 et seq.). 2000 Op. Atty. Gen. (00-002).

§ 5 ILCS 430/10-15. Gift ban; exceptions

Sec. 10-15. Gift ban; exceptions. The restriction in Section 10-10 [5 ILCS 430/10-10] does not apply to the following:

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(1) Opportunities, benefits, and services that are available on the same conditions as for the general public.

(2) Anything for which the officer, member, or State employee pays the market value.

(3) Any (i) contribution that is lawfully made under the Election Code or under this Act or (ii) activities associated with a fundraising event in support of a political organization or candidate.

(4) Educational materials and missions. This exception may be further defined by rules adopted by the appropriate ethics commission or by the Auditor General for the Auditor General and employees of the Office of the Auditor General.

(5) Travel expenses for a meeting to discuss State business. This exception may be further defined by rules adopted by the appropriate ethics commission or by the Auditor General for the Auditor General and employees of the Office of the Auditor General.

(6) A gift from a relative, meaning those people related to the individual as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, and including the father, mother, grandfather, or grandmother of the individual's spouse and the individual's fiance or fiancee.

(7) Anything provided by an individual on the basis of a personal friendship unless the member, officer, or employee has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the member, officer, or employee and not because of the personal friendship.

In determining whether a gift is provided on the basis of personal friendship, the member, officer, or employee shall consider the circumstances under which the gift was offered, such as:

(i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals;

(ii) whether to the actual knowledge of the member, officer, or employee the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and

(iii) whether to the actual knowledge of the member, officer, or employee the individual who gave the gift also at the same time gave the same or similar gifts to other members, officers, or employees.

(8) Food or refreshments not exceeding $75 per person in value on a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they were purchased or prepared or (ii) catered. For the purposes of this Section, "catered" means food or refreshments that are purchased ready to eat and delivered by any means.

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(9) Food, refreshments, lodging, transportation, and other benefits resulting from the outside business or employment activities (or outside activities that are not connected to the duties of the officer, member, or employee as an office holder or employee) of the officer, member, or employee, or the spouse of the officer, member, or employee, if the benefits have not been offered or enhanced because of the official position or employment of the officer, member, or employee, and are customarily provided to others in similar circumstances.

(10) Intra-governmental and inter-governmental gifts. For the purpose of this Act, "intra-governmental gift" means any gift given to a member, officer, or employee of a State agency from another member, officer, or employee of the same State agency; and "inter-governmental gift" means any gift given to a member, officer, or employee of a State agency, by a member, officer, or employee of another State agency, of a federal agency, or of any governmental entity.

(11) Bequests, inheritances, and other transfers at death.

(12) Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than $100.

Each of the exceptions listed in this Section is mutually exclusive and independent of one another.

(Source: P.A. 93-617, § 5.)

§ 5 ILCS 430/10-30. Gift ban; disposition of gifts

Sec. 10-30. Gift ban; disposition of gifts. A member, officer, or employee does not violate this Act if the member, officer, or employee promptly takes reasonable action to return the prohibited gift to its source or gives the gift or an amount equal to its value to an appropriate charity that is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. § 501], as now or hereafter amended, renumbered, or succeeded.

(Source: P.A. 93-617, § 5.)

§ 5 ILCS 430/10-40. Gift ban; further restrictions

Sec. 10-40. Gift ban; further restrictions. A State agency may adopt or maintain policies that are more restrictive than those set forth in this Article and may continue to follow any existing policies, statutes, or regulations that are more restrictive or are in addition to

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those set forth in this Article.

(Source: P.A. 93-617, § 5.)

OPINIONS OF ATTORNEY GENERAL

Former Gift Ban Act

Units of local government and school districts are not required to adopt the complaint procedures set forth in the statute, if they develop other procedures that are in substantial compliance with the act (decided under the former State Gift Ban Act, former 5 ILCS 425/1 et seq.). 1999 Op. Atty. Gen. (99-007).

Article 70.

Governmental Entities

§ 5 ILCS 430/70-5. Adoption by governmental entities

Sec. 70-5. Adoption by governmental entities. (a) Within 6 months after the effective date of this Act, each governmental entity other than a community college district, and each community college district within 6 months after the effective date of this amendatory Act of the 95th General Assembly [P.A. 95-880], shall adopt an ordinance or resolution that regulates, in a manner no less restrictive than Section 5-15 and Article 10 of this Act [5 ILCS 430/5-15 and 5 ILCS 430/10-10 et seq.], (i) the political activities of officers and employees of the governmental entity and (ii) the soliciting and accepting of gifts by and the offering and making of gifts to officers and employees of the governmental entity.

(b) Within 3 months after the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-617], the Attorney General shall develop model ordinances and resolutions for the purpose of this Article. The Attorney General shall advise governmental entities on their contents and adoption.

(c) As used in this Article, (i) an "officer" means an elected or appointed official; regardless of whether the official is compensated, and (ii) an "employee" means a full-

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time, part-time, or contractual employee.

(Source: P.A. 93-615, § 70-5; 93-617, § 5; 95-880, § 5.)

Note.

Section 990 of P.A. 93-617 contains a severability provision, and Section 995 contains "closed sessions" and vote requirement provisions.

Effect of Amendments. The 2003 amendment by P.A. 93-617, effective December 9, 2003, in subsection (a) inserted "and Article 10," and added the item (i) designation and item (ii); in subsection (b) added "Within 3 months after the effective date of this amendatory Act of the 93rd General Assembly" to the first sentence and "The Attorney General" to the second sentence; and made related changes.

The 2008 amendment by P.A. 95-880, effective August 19, 2008, inserted "other than a community college district, and each community college district within 6 months after the effective date of this amendatory Act of the 95th General Assembly" and made a related change in (a).

OPINIONS OF ATTORNEY GENERAL

Former Gift Ban Act

Units of local government and school districts are not required to appoint an ethics commission, if they create a suitable alternative adjudicative system (decided under the former State Gift Ban Act, former 5 ILCS 425/1 et seq.). 1999 Op. Atty. Gen. (99-007).

The Attorney General is under no statutory obligation to provide legal advice to local ethics commissions (decided under the former State Gift Ban Act, former 5 ILCS 425/1 et seq.). 1999 Op. Atty. Gen. (99-007).

A State's Attorney may enforce local ordinances that implement the provisions of the act, if the county and the unit of local government adopting the ordinance enter into an intergovernmental cooperation agreement authorizing such prosecutions, and the State's Attorney approves thereof (decided under the former State Gift Ban Act, former 5 ILCS 425/1 et seq.). 1999 Op. Atty. Gen. (99-007).

A local ethics commission may impose a fine against a person who has violated a local ethics ordinance or filed a frivolous complaint (decided under the former State Gift Ban Act, former 5 ILCS 425/1 et seq.). 1999 Op. Atty. Gen. (99-007).

The "ultimate jurisdictional authority" for an employee of a unit of local government or school district is the public officer or corporate authority otherwise authorized to discipline the public employee, and for a public officer it is the corporate authority of the unit of local government or school district he or she serves (decided under the former State Gift Ban Act, former 5 ILCS 425/1 et seq.). 1999 Op. Atty. Gen. (99-007).

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§ 5 ILCS 430/70-10. Penalties

Sec. 70-10. Penalties. A governmental entity may provide in the ordinance or resolution required by this Article for penalties similar to those provided in this Act for similar conduct.

(Source: P.A. 93-615, § 70-10.)

§ 5 ILCS 430/70-15. Home rule preemption

Sec. 70-15. Home rule preemption. This Article is a denial and limitation of home rule powers and functions in accordance with subsection (i) of Section 6 of Article VII of the Illinois Constitution [Ill. Const. Art. VII, § 6]. A home rule unit may not regulate the political activities of its officers and employees and the soliciting, offering, accepting, and making of gifts in a manner less restrictive than the provisions of Section 70-5 [5 ILCS 430/70-5].

(Source: P.A. 93-615, § 70-15; 93-617, § 5.)

Note.

Section 990 of P.A. 93-617 contains a severability provision, and Section 995 contains "closed sessions" and vote requirement provisions.

Effect of Amendments. The 2003 amendment by P.A. 93-617, effective December 9, 2003, inserted "and the soliciting, offering, accepting, and making of gifts" and substituted "Section 70-5" for "this Act".

STATE DESIGNATIONS

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Official United States Flag Act

Sec.

5 ILCS 470/1.Short title
5 ILCS 470/5.Flying the United States flag at public facilities

§ 5 ILCS 470/1. Short title

Sec. 1. Short title. This Act may be cited as the Official United States Flag Act.

(Source: P.A. 96-513, § 1.)

Effective Date. This section became effective January 1, 2010 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 5 ILCS 470/5. Flying the United States flag at public facilities

Sec. 5. Flying the United States flag at public facilities. Each agency of the State government and each unit of local government shall ensure that each United States flag that is flown at each building, structure, or facility that is owned or occupied entirely by the agency of the State government or unit of local government is manufactured in the United States.

(Source: P.A. 96-513, § 5.)

COMMEMORATIVE DATES

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State Commemorative Dates Act

Sec.

5 ILCS 490/1.Short title
5 ILCS 490/2.Ronald Reagan Day
5 ILCS 490/5.American History Month
5 ILCS 490/10.Arbor and Bird Day
5 ILCS 490/15.Casimir Pulaski Holiday
5 ILCS 490/20.Chaplains Day
5 ILCS 490/25.Citizenship Day
5 ILCS 490/30.Coal Miners Day
5 ILCS 490/31.Great Grandparents Day
5 ILCS 490/35.Columbus Day
5 ILCS 490/37.D.A.R.E. Day
5 ILCS 490/40.Fathers Day
5 ILCS 490/45.Flag Day
5 ILCS 490/50.Gold Star Mothers Day
5 ILCS 490/55.Grandmothers Day
5 ILCS 490/60.Lincoln's Birthday
5 ILCS 490/63.Juneteenth National Freedom Day
5 ILCS 490/65.Martin Luther King, Jr. Birthday
5 ILCS 490/70.Mothers Day
5 ILCS 490/71.Pearl Harbor Remembrance Day
5 ILCS 490/75.Prairie Week
5 ILCS 490/80.Retired Teachers' Week
5 ILCS 490/83.Alzheimer's Awareness Month
5 ILCS 490/85.Senior Citizens Day
5 ILCS 490/86.September 11th Day of Remembrance
5 ILCS 490/88.Spinal Cord Injury Awareness Month
5 ILCS 490/90.Veterans Day
5 ILCS 490/95.Viet Nam War Veterans Day
5 ILCS 490/100.Korean War Armistice Day
5 ILCS 490/105.POW/MIA Recognition Day
5 ILCS 490/110.Day of Prayer in Illinois
5 ILCS 490/115.Jane Addams Day
5 ILCS 490/120.Women's Heart Disease Awareness Month
5 ILCS 490/125.Parkinson's Awareness Month
5 ILCS 490/130.Ovarian and Prostate Cancer Awareness Month
5 ILCS 490/135.Brain Aneurysm Awareness Month
5 ILCS 490/140.Children's Day (El Dia de los Ninos)
5 ILCS 490/145.Peace Officers Memorial Day; National Peace Officers Memorial Day
5 ILCS 490/150.Adlai Stevenson Day

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5 ILCS 490/155.Day of Remembrance of the Victims of Slavery and the Transatlantic Slave Trade
5 ILCS 490/160.Emancipation Proclamation Week
5 ILCS 490/165.Purple Heart Day
5 ILCS 490/205.Prior law
5 ILCS 490/210.Other Acts of the 87th General Assembly
5 ILCS 490/215.Matters of form
5 ILCS 490/220.Home rule; mandates
5 ILCS 490/225.Repeals
5 ILCS 490/230.Effective date

§ 5 ILCS 490/1. Short title

Sec. 1. Short title. This Act may be cited as the State Commemorative Dates Act.

(Source: P.A. 87-272.)

Derivation.

Title: An Act to codify the law in relation to State commemorative dates, repealing named Acts or parts of Acts.

Cite: 5 ILCS 490/1 et seq.

Source: P.A. 87-272.

Date: Approved September 4, 1991.

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-1.

§ 5 ILCS 490/2. Ronald Reagan Day

Sec. 2. Ronald Reagan Day. February 6th of each year is designated as Ronald Reagan Day, to be observed throughout the State as a day set apart to honor the 40th President of the United States of America who came from humble beginnings in Illinois and worked throughout his life serving the cause of freedom and advancing the public good.

(Source: P.A. 92-584, § 5.)

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Effective Date. Section 99 of P.A. 92-584, made this section upon becoming law. The Act was approved June 26, 2002.

§ 5 ILCS 490/5. American History Month

Sec. 5. American History Month. The month of February of each year is designated as American History Month to be observed throughout the State as a month set apart to promote the study of American history.

(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-5.

§ 5 ILCS 490/10. Arbor and Bird Day

Sec. 10. Arbor and Bird Day. The last Friday in April of each year is designated as Arbor and Bird Day to be observed throughout the State as a day for planting trees, shrubs, and vines about the homes and along the highways and about public grounds within this State and for holding appropriate exercises in the public schools and elsewhere to show the value of trees and birds and the necessity of their protection, thus contributing to the comforts and attractions of our State.

(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-10.

§ 5 ILCS 490/15. Casimir Pulaski Holiday

Sec. 15. Casimir Pulaski Holiday. The first Monday in March of each year is a holiday to be observed throughout the State and to be known as the birthday of Casimir Pulaski. Within 10 days before the first Monday in March of each year, the Governor shall issue a proclamation announcing the holiday and designating the official events that shall be held in honor of the memory of Casimir Pulaski and his contribution to American

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independence.

(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-15.

§ 5 ILCS 490/20. Chaplains Day

Sec. 20. Chaplains Day. (a) Chaplains far from home in places scattered throughout the world give comfort and solace to Americans wherever they may be found; therefore, it is fitting and proper that America's and Illinois' Chaplains be officially recognized for their valuable and inspiring services.

(b) The first Sunday in May of each year is designated Chaplain's Day to be observed throughout the State as a day set apart in the honor and remembrance of Chaplains.

(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-20.

§ 5 ILCS 490/25. Citizenship Day

Sec. 25. Citizenship Day. The Governor shall annually designate by official proclamation the third Sunday in May to be designated as Citizenship Day to be observed throughout the State as a day for the purpose of holding appropriate ceremonies in the various communities of the State for the preparation as citizens of persons who during the last 12 months have reached the age of 18 years. The ceremonies shall emphasize the responsibilities attached to the rights and privileges of citizenship.

(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-25.

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§ 5 ILCS 490/30. Coal Miners Day

Sec. 30. Coal Miners Day. November 13th of each year is designated as Coal Miners Memorial Day to be observed throughout the State as a day set apart for appropriate ceremonies in honor and remembrance of the coal miners of Illinois who have given their lives while laboring in the mines for the welfare of their families and the prosperity of this State.

(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-30.

§ 5 ILCS 490/31. Great Grandparents Day

Sec. 31. Great Grandparents Day. The first Sunday after Labor Day of each year is designated as Great Grandparents Day to encourage the citizens of Illinois to honor and celebrate great grandparents throughout the State.

(Source: P.A. 93-731, § 5.)

Effective Date. This section is effective January 1, 2005, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

§ 5 ILCS 490/35. Columbus Day

Sec. 35. Columbus Day. The second Monday in October of each year shall be a holiday to be known as Christopher Columbus Day and to be observed throughout the State as a day to hold appropriate ceremonies and exercises in commemoration of the discoverer of the New World and his discovery of October 12, 1492.

(Source: P.A. 87-272.)

Note.

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This section was Ill.Rev.Stat., Ch. 1, Para. 3051-35.

§ 5 ILCS 490/37. D.A.R.E. Day

Sec. 37. D.A.R.E. Day. The second Thursday in April of each year is designated as D.A.R.E. Day.

(Source: P.A. 97-206, § 5.)

Effective Date. Section 99 of P.A. 97-206 made this section effective upon becoming law. The Act was approved July 28, 2011.

§ 5 ILCS 490/40. Fathers Day

Sec. 40. Fathers Day. The third Sunday in June of each year is designated as Fathers Day to be observed throughout the State as a day set apart in the honor and remembrance of Fathers.

(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-40.

§ 5 ILCS 490/45. Flag Day

Sec. 45. Flag Day. June 14, commonly known as Flag Day, is established as a day to be observed with fitting patriotic exercises in schools, colleges, universities, societies, clubs, and other organizations. On that day the Flag of the United States of America shall be appropriately displayed on all public buildings within the State of Illinois. It is also fitting that, as a symbol of the guarantee of the sanctity of the home, the flag be displayed from every home on that day and that, as a symbol of the guarantee of freedom of worship, public recognition be made in all places of worship on June 14th or on the Sunday preceding.

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(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-45.

§ 5 ILCS 490/50. Gold Star Mothers Day

Sec. 50. Gold Star Mothers Day. The Governor shall annually designate by official proclamation the last Sunday in September as Gold Star Mothers' Day to be observed throughout the State as a day to honor and commemorate the mothers of men and women who gave their lives while serving with the armed forces of the United States in time of war or during a period of hostilities.

(Source: P.A. 87-272; 96-521, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-50.

Effect of Amendments. The 2009 amendment by P.A. 96-521, effective January 1, 2010, substituted "last Sunday in September" for "second Sunday in August" and "to honor and commemorate" for "for the purpose of holding appropriate ceremonies in commemoration of."

§ 5 ILCS 490/55. Grandmothers Day

Sec. 55. Grandmothers Day. The second Sunday in October of each year is designated as Grandmothers Day to be observed throughout the State as a day set apart in the honor and remembrance of grandmothers.

(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-55.

§ 5 ILCS 490/60. Lincoln's Birthday

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Sec. 60. Lincoln's Birthday. The twelfth day of February of each year shall be a legal holiday to be known as Lincoln's Birthday to be observed as a day on which to hold appropriate exercises in commemoration of our illustrious President. When February twelfth shall fall on a Sunday, the following Monday shall be held and considered the holiday.

(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-60.

CASE NOTES

Illustrative Cases

Where petition regarding the involuntary admittee was not filed on Sunday when the involuntary commitment was first sought, because the courts were not open, and was not filed on Monday, because that was Lincoln's Birthday pursuant to 5 ILCS 490/60, the petition was still timely filed with the trial court where it was filed on Tuesday, within 24 hours of the time it first had to be filed under 405 ILCS 5/3-611 regarding involuntary commitment. That filing was also commensurate with the time calculations for filing set forth in 5 ILCS 70/1.11, which dictated that Saturdays, Sundays, and holidays be excluded in calculating a time for filing. Bertell v. Rockford Mem. Hosp., 393 Ill. App. 3d 469, 332 Ill. Dec. 528, 913 N.E.2d 123, 2009 Ill. App. LEXIS 703 (2 Dist. 2009), appeal denied, 234 Ill. 2d 517, 920 N.E.2d 1071, 2009 Ill. LEXIS 2222 (2009).

§ 5 ILCS 490/63. Juneteenth National Freedom Day

Sec. 63. Juneteenth National Freedom Day. The third Saturday in June of each year is designated as Juneteenth National Freedom Day to commemorate the abolition of slavery throughout the United States and its territories in 1865. Juneteenth National Freedom Day may be observed with suitable observances and exercises by civic groups and the public, and citizens of the State are urged to reflect on the suffering endured by early African-Americans and to celebrate the unique freedom and equality enjoyed by all State citizens today.

(Source: P.A. 93-550, § 5.)

Effective Date. This section is effective January 1, 2004 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

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§ 5 ILCS 490/65. Martin Luther King, Jr. Birthday

Sec. 65. Martin Luther King, Jr. Birthday. The third Monday in January of each year is a holiday to be observed throughout the State and to be known as the birthday of Dr. Martin Luther King, Jr. Within 10 days before the birthday of Dr. Martin Luther King, Jr., in each year the Governor shall issue a proclamation announcing the holiday and designating the official events that shall be held in honor of the memory of Dr. Martin Luther King, Jr., and his contributions to this nation.

(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-65.

§ 5 ILCS 490/70. Mothers Day

Sec. 70. Mothers Day. The second Sunday in May of each year is designated as Mothers Day to be observed throughout the State as a day set apart in the honor and remembrance of Mothers.

(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-70.

§ 5 ILCS 490/71. Pearl Harbor Remembrance Day

Sec. 71. Pearl Harbor Remembrance Day. December 7th of each year is designated as Pearl Harbor Remembrance Day to be observed throughout the State as a day set apart for appropriate ceremonies in honor and remembrance of the veterans who served so valiantly at Pearl Harbor on December 7, 1941.

(Source: P.A. 89-324, § 10.)

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Effective Date. Section 999 of P.A. 89-324 made this section effective upon becoming law. The Act was approved August 13, 1995.

§ 5 ILCS 490/75. Prairie Week

Sec. 75. Prairie Week. The third full week of September is designated as Illinois Prairie Week to be observed throughout the State as a week for holding appropriate events and observances in the public schools and elsewhere to demonstrate the value of preserving and reestablishing native Illinois prairies.

(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-75.

§ 5 ILCS 490/80. Retired Teachers' Week

Sec. 80. Retired Teachers' Week. (a) The progress of this State, this nation, and in fact all civilization is due to the passing on of knowledge from one generation to the next. The burden of the transmittal and expansion of this body of knowledge has historically been borne by our teachers. The teachers of this State have tirelessly and selflessly taken on the noble and sacred trust of educating and training our children. The State of Illinois is proud to be the home of many teachers who have retired after spending most of their lives rendering this priceless service. The State of Illinois, in appreciation of this service, bestows upon the retired teachers of the State the recognition and honor they deserve.

(b) The fourth week of May of each year is designated as Retired Teachers' Week. The Governor may annually issue a proclamation designating the fourth week of May as Retired Teachers' Week and calling upon public schools and citizens of the State to observe the occasion and honor the retired teachers of the State.

(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-80.

§ 5 ILCS 490/83. Alzheimer's Awareness Month

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Sec. 83. Alzheimer's Awareness Month. The month of November of each year is designated as Alzheimer's Awareness Month to be observed throughout the State as a month set apart to promote advocacy activities and the study of Alzheimer's Disease and to honor those whose lives have been impacted by Alzheimer's. The Governor may annually issue a proclamation designating November as Alzheimer's Awareness Month and calling upon the citizens of the State to promote awareness of Alzheimer's Disease.

(Source: P.A. 94-443, § 5.)

Effective Date. This section is effective January 1, 2006, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

§ 5 ILCS 490/85. Senior Citizens Day

Sec. 85. Senior Citizens Day. The third Sunday in May of each year is designated as Senior Citizens Day to be observed throughout the State as a day to honor and remember senior citizens.

(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-85.

§ 5 ILCS 490/86. September 11th Day of Remembrance

Sec. 86. September 11th Day of Remembrance. September 11th of each year is designated as September 11th Day of Remembrance to be observed throughout the State as a day set apart in honor and remembrance of the persons killed and injured in the terrorist attacks on September 11, 2001.

(Source: P.A. 92-704, § 5.)

Effective Date. Section 99 of P.A. 92-704 made this section effective upon becoming law. The Act was approved July 19, 2002.

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§ 5 ILCS 490/88. Spinal Cord Injury Awareness Month

Sec. 88. Spinal Cord Injury Awareness Month. September of each year is designated as Spinal Cord Injury Awareness Month.

(Source: P.A. 95-44, § 5.)

Effective Date. Section 99 of P.A. 95-44 makes this section effective upon becoming law. The Act was approved August 10, 2007.

§ 5 ILCS 490/90. Veterans Day

Sec. 90. Veterans Day. The eleventh day of November of each year shall be a holiday to be known as Veterans Day and to be observed throughout the State as a day to hold appropriate exercises in commemoration of the victory of the United States Army, the United States Navy, the United States Air Force, the United States Marines, the United States Coast Guard, and the United States Merchant Marines in all wars.

(Source: P.A. 87-272; 96-92, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-90.

Effect of Amendments. The 2009 amendment by P.A. 96-92, effective July 27, 2009, inserted "the United States Marines, the United States Coast Guard, and the United States Merchant Marines" and made related changes.

§ 5 ILCS 490/95. Viet Nam War Veterans Day

Sec. 95. Viet Nam War Veterans Day. The 29th day of March of each year is designated a commemorative holiday to be known as Viet Nam War Veterans Day and to be observed throughout the State as a day in honor and remembrance of the men and women of this Nation who served so valiantly in the cause of freedom.

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(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-95.

§ 5 ILCS 490/100. Korean War Armistice Day

Sec. 100. Korean War Armistice Day. The 27th day of July of each year is designated Korean War Armistice Day to be observed throughout the State as a day to honor and remember the men and women of this State who served so valiantly in the cause of freedom.

(Source: P.A. 90-752, § 5.)

Effect of Amendments. Section 99 of P.A. 90-752 made this section effective upon becoming law. The Act was approved August 14, 1998.

§ 5 ILCS 490/105. POW/MIA Recognition Day

Sec. 105. POW/MIA Recognition Day. The third Friday of September in each year is designated as POW/MIA Recognition Day to be observed throughout the State as a day in honor and remembrance of the men and women of this State who were recognized as POWs or MIAs while serving with the armed forces of the United States in a time of war or during a period of hostilities.

(Source: P.A. 90-752, § 5.)

Effective Date. Section 99 of P.A. 90-752 made this section effective upon becoming law. The Act was approved August 14, 1998.

§ 5 ILCS 490/110. Day of Prayer in Illinois

Sec. 110. Day of Prayer in Illinois. The first Thursday in May of each year is designated as a Day of Prayer in Illinois, and the citizens of Illinois are urged to observe the day in

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ways appropriate to its importance and significance.

(Source: P.A. 91-320, § 5.)

Effective Date. Section 99 of P.A. 91-320 made this section effective upon becoming law. The Act was approved July 29, 1999.

§ 5 ILCS 490/115. Jane Addams Day

Sec. 115. Jane Addams Day. December 10 of each year is designated as Jane Addams Day, to be observed throughout the State as a day to remember her and teach about her great accomplishments, compassion, and social conscience.

(Source: P.A. 94-796, § 5.)

Effective Date. This section is effective January 1, 2007, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

§ 5 ILCS 490/120. Women's Heart Disease Awareness Month

Sec. 120. Women's Heart Disease Awareness Month. February of each year is designated as Women's Heart Disease Awareness Month, to be observed throughout the State as a month to promote the awareness of women's heart disease.

(Source: P.A. 95-774, § 5.)

Effective Date. This section is effective January 1, 2009, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

§ 5 ILCS 490/125. Parkinson's Awareness Month

Sec. 125. Parkinson's Awareness Month. April of each year is designated as Parkinson's Awareness Month, to be observed throughout the State as a month to promote the awareness of Parkinson's disease.

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(Source: P.A. 96-375, § 5; 96-1000, § 30.)

Note.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. This section is effective January 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, reenacted the section without changes.

§ 5 ILCS 490/130. Ovarian and Prostate Cancer Awareness Month

Sec. 130. Ovarian and Prostate Cancer Awareness Month. The month of September of each year is designated as Ovarian and Prostate Cancer Awareness Month to be observed throughout the State as a month set apart to promote advocacy activities and the study of ovarian and prostate cancer and to honor those whose lives have been impacted by the disease. The Governor may annually issue a proclamation designating September as Ovarian and Prostate Cancer Awareness Month and calling upon the citizens of the State to promote awareness of ovarian and prostate cancer.

(Source: P.A. 96-396, § 5; 96-1000, § 30.)

Note.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. This section is effective January 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 5 ILCS 490/125 as 5 ILCS 490/130.

§ 5 ILCS 490/135. Brain Aneurysm Awareness Month

Sec. 135. Brain Aneurysm Awareness Month. September of each year is designated as Brain Aneurysm Awareness Month, to be observed throughout the State as a month to

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promote the awareness of brain aneurysm prevention and treatment.

(Source: P.A. 96-463, § 5; 96-1000, § 30.)

Note.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. This section is effective January 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 5 ILCS 490/125 as 5 ILCS 490/135.

§ 5 ILCS 490/140. Children's Day (El Dia de los Ninos)

Sec. 140. Children's Day (El Dia de los Ninos). The second Sunday in June each year is a holiday to be known as Children's Day (El Dia de los Ninos). Children's Day is to be observed throughout the State as a day to recognize and acknowledge the lives of all children and to pledge our dedication to their future and ours.

(Source: P.A. 96-465, § 5; 96-1000, § 30.)

Note.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. This section is effective January 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 5 ILCS 490/125 as 5 ILCS 490/140.

§ 5 ILCS 490/145. Peace Officers Memorial Day; National Peace Officers Memorial Day

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Sec. 145. Peace Officers Memorial Day; National Peace Officers Memorial Day. (a) The first Thursday in May of each year is designated Peace Officers Memorial Day in Illinois. Peace Officers Memorial Day shall be observed throughout the State by the citizens of Illinois with civic remembrances of the sacrifices made on their behalf by the peace officers of Illinois, especially the ultimate sacrifice given by those officers who lost their lives in the line of duty.

(b) May 15th of each year is recognized in Illinois as National Peace Officers Memorial Day, to be observed throughout the State in coordination with the citizens of the United States with respect and gratitude for the service to America given by peace officers across the nation.

(Source: P.A. 96-518, § 5; 96-1000, § 30.)

Note.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. This section is effective January 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 5 ILCS 490/125 as 5 ILCS 490/145.

§ 5 ILCS 490/150. Adlai Stevenson Day

Sec. 150. Adlai Stevenson Day. February 5 of each year is designated as Adlai Stevenson Day, to be observed throughout the State as a day to remember and honor the legacy of public service of Adlai Stevenson II (1900-1965), Governor of Illinois and United States Ambassador to the United Nations.

(Source: P.A. 96-559, § 5; 96-1000, § 30.)

Note.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. This section is effective January 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

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Effect of Amendments. The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 5 ILCS 490/125 as 5 ILCS 490/150.

§ 5 ILCS 490/155. Day of Remembrance of the Victims of Slavery and the Transatlantic Slave Trade

Sec. 155. Day of Remembrance of the Victims of Slavery and the Transatlantic Slave Trade. March 25 of each year is designated as the Day of Remembrance of the Victims of Slavery and the Transatlantic Slave Trade, a day for the people of the State to commemorate and reflect upon the contributions of African American slaves to Illinois and to the United States, in concert with the United Nations' International Day of Remembrance of the Victims of Slavery and the Transatlantic Slave Trade.

(Source: P.A. 96-930, § 5; 97-333, § 30.)

Note.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

"The 2011 revisory amendment, effective August 12, 2012, renumbered the version of 5 ILCS 490/155 as enacted by P.A. 96-1238, as 5 ILCS 490/160".

Effective Date. Section 99 of P.A. 96-930, made this section effective upon becoming law. The Act was approved June 18, 2010.

Effect of Amendments. The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, reenacted the section without changes.

§ 5 ILCS 490/160. Emancipation Proclamation Week

Sec. 160. Emancipation Proclamation Week. The first full week of January of each year is designated as Emancipation Proclamation Week, to be observed throughout the State as a week for holding appropriate educational and celebratory events and observances in the public schools and elsewhere to honor and remember the work of Abraham Lincoln and others in emancipating Americans from slavery and in leading to the end of slavery in America.

(Source: P.A. 96-1238, § 5; 97-333, § 30.)

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Note.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. This section became effective January 1, 2011 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, redesignated a former multiple version of 5 ILCS 490/155 as 5 ILCS 490/160.

§ 5 ILCS 490/165. Purple Heart Day

Sec. 165. Purple Heart Day. The 7th day of August of each year is designated Purple Heart Day to be observed as a day to honor and remember those who have been wounded or killed in battle.

(Source: P.A. 97-258, § 3.)

Effective Date. This section became effective January 1, 2012 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 5 ILCS 490/205. Prior law

Sec. 205. Prior law. (a) A provision of this Act that is the same or substantially the same as a prior law shall be construed as a continuation of the prior law and not as a new or different law.

(b) A citation in another Act to an Act or to a Section of an Act that is continued in this Act shall be construed to be a citation to that continued provision in this Act.

(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-205.

§ 5 ILCS 490/210. Other Acts of the 87th General Assembly

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Sec. 210. Other Acts of the 87th General Assembly. If any other Act of the 87th General Assembly changes, adds, or repeals a provision of prior law that is continued in this Act, then that change, addition, or repeal in the other Act shall be construed together with this Act.

(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-210.

§ 5 ILCS 490/215. Matters of form

Sec. 215. Matters of form. (a) The parenthetic citation before a Section in the form "(from Ch. XX, par. XX)" (i) is an informational reference to the prior law from which the Section is derived and (ii) is not part of the text of the law.

(b) In the text of a Section, (i) matter that is stricken indicates a deletion from the prior law and (ii) matter that is underscored indicates an addition to the prior law.

(c) The parenthetic citation after a Section in the form "(Source: Laws 19XX, p. XX)" or "(Source: P.A. XX-XXX)" (i) is an informational reference to the most recent sources of the continued text in the Session Laws of Illinois and (ii) is not part of the text of the law.

(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-215.

§ 5 ILCS 490/220. Home rule; mandates

Sec. 220. Home rule; mandates. Nothing in this Act as initially enacted (i) is a denial or limitation on home rule powers where no denial or limitation existed under prior law or (ii) creates a State mandate under the State Mandates Act [30 ILCS 805/1 et seq.] where no mandate existed under prior law.

(Source: P.A. 87-272.)

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Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-220.

§ 5 ILCS 490/225. Repeals

Sec. 225. Repeals. (a) The following Acts or parts of Acts are repealed:

The American History Month Act.

The Arbor and Bird Day Act.

The Casimir Pulaski Holiday Act.

The Columbus Holiday Act.

The Citizenship Day Act.

The Mothers Day and Fathers Day Act.

The Flag Day Act.

The Gold Star Mothers Day Act.

The Grandmothers Day Act.

The Lincoln Holiday Act.

The Martin Luther King, Jr., Holiday Act.

The Senior Citizens Day Act.

The Veterans Day Act.

The Prairie Week Act.

The Retired Teachers Week Act.

The Coal Miners Memorial Day Act.

The Chaplains Day Act.

The Viet Nam War Veterans Act.

(b) The following Sections are repealed in subsection (a) without being continued in the State Commemorative Dates Act: Section 0.01 (short title) of the American History Month Act, Section 0.01 (short title) and Section 2 (repealer) of the Arbor and Bird Day Act, Section 0.01 (short title) of the Casimir Pulaski Holiday Act, Section 0.01 (short title) of the Columbus Holiday Act, Section 0.01 (short title) of the Mothers Day and Fathers Day Act, Section 0.01 (short title) of the Flag Day Act, Section 0.01 (short title) of the Gold Star Mothers Day Act, Section 0.01 (short title) of the Grandmothers Day Act, Section 0.01 (short title) of the Lincoln Holiday Act, Section 0.01 (short title) of the

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Martin Luther King, Jr., Holiday Act, Section 0.01 (short title) of the Senior Citizens Day Act, Section 0.01 (short title) and Section 2 (duplicated by subsection (d) of Section 17 of the Promissory Note and Bank Holiday Act read in conjunction with Section 15 of that Act) of the Veterans Day Act, Section 0.01 (short title) and Section 3 (effective date) of the Retired Teachers Week Act, Section 0.01 (short title) and Section 2 (effective date) of the Coal Miners Memorial Day Act, Section 0.01 (short title) of the Chaplains Day Act, Section 0.01 (short title) of the Citizenship Day Act, Section 0.01 (short title) and Section 2 (effective date) of the Prairie Week Act, and Section 1 (short title), Section 9 (repealer), and Section 10 (effective date) of the Viet Nam War Veterans Act.

(Source: P.A. 87-272; 87-895.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-225.

§ 5 ILCS 490/230. Effective date

Sec. 230. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 87-272.)

Note.

This section was Ill.Rev.Stat., Ch. 1, Para. 3051-230.

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CHAPTER 10.
ELECTIONS

10 ILCS 5Election Code

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Election Code

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10 ILCS 5/1-8.Canvassing boards abolished
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10 ILCS 5/1A-3.1.[Terms]
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10 ILCS 5/1A-11.[Principal office; hours]
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10 ILCS 5/1A-30.[Repealed.]
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10 ILCS 5/9-12.[Repealed].
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10 ILCS 5/9-15.[Duties of the board]
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10 ILCS 5/9-22.[Judicial review of complaint]
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10 ILCS 5/9-23.5.Public database of founded complaints
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10 ILCS 5/9-26.[Violations; criminal penalties]
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10 ILCS 5/18-9.1.[Write-in votes]

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Article 1.

General Provisions

§ 10 ILCS 5/1-1. [Title]

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Sec. 1-1. This Act may be cited as the Election Code. This Act is the general election law of Illinois and any reference in any other Act to "the general election law" or "the general election law of this State" is a reference to this Act, as now or hereafter amended.

(Source: P.A. 86-1475.)

Derivation.

Title: An Act concerning elections.

Cite: 10 ILCS 5/1-1 et seq.

Source: L. 1943, vol. 2, p. 1.

Date: Approved May 11, 1943.

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1-1.

Cross References.

As to certification by the State Board of Elections of proposal to amend the Constitution, see 5 ILCS 20/2a.

As to electing officers of consolidated municipalities, see 65 ILCS 5/7-7-11.

As to vacancy in the office of coroner, see 55 ILCS 5/3-3039.

As to vacancy in the sheriff's office, see 55 ILCS 5/3-6030.

As to conducting discovery, recounts and election contests, see 10 ILCS 5/24A-15.1.

As to special referendum election for regional transportation authority, see 70 ILCS 3615/1.05.

As to eligibility to vote for regional board of school trustees, see 105 ILCS 5/6-5.

Illinois Jurisprudence. See Illinois Jur, Municip L § 2:24, § 2:34, § 2:40, § 6:8, § 6:49.

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- In General
- Elections to Fill Vacancies
- Sanitarium Districts Act

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- School Code
Board's Authority
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In General

This Act provides for uniformity in elections and supersedes other statutes on the same subjects. Moon v. Rolson, 189 Ill. App. 3d 262, 136 Ill. Dec. 723, 545 N.E.2d 247 (1 Dist. 1989); United Citizens v. Coalition To Let The People Decide in 1989, 125 Ill. 2d 332, 126 Ill. Dec. 175, 531 N.E.2d 802 (1988).

In exercising their powers of supervision over elections and in setting qualifications for voters, a state may not infringe upon basic constitutional protections. Kusper v. Pontikes, 414 U.S. 51, 94 S. Ct. 303, 38 L. Ed. 2d 260 (1973).

The regulation of elections is within the power of the legislature, within constitutional limitations. People ex rel. Schnackenberg v. Czarnecki, 256 Ill. 320, 100 N.E. 283 (1912).

The legislature must provide the method of conducting an election, counting the votes, and declaring the result, and adopt regulations that will be practicable, to secure a full and fair expression of the wish of the voters. People ex rel. Schnackenberg v. Czarnecki, 256 Ill. 320, 100 N.E. 283 (1912).

Former Illinois Election Law, Ill. Rev. Stat. ch. 46 (now 10 ILCS 5/1-1), is not local or special because of the limited number of cities, towns, and villages, which may have adopted it; but it may rather be said of it, that it is general, because of the possibility, that all the cities, town, and villages in Illinois may accept its provisions, if they choose. People ex rel. Grinnell v. Hoffman, 116 Ill. 587, 5 N.E. 596, 1886 Ill. LEXIS 1119 (1886).

Applicability

- In General

Trial court erred in striking several signatures from petition and enjoining the election board from placing the issue about whether to prohibit the retail sale of alcoholic liquor within a particular precincts boundaries as its conclusion that signatures were validly revoked was erroneous; statutory law specified not only a procedure for placing items on the ballot for local elections, but also for revoking petition signatures, and since the procedure for revoking petition signatures was not met, the trial court was not entitled to find that not enough valid signatures remained to place the issue on the ballot for the upcoming local election. Mashni Corp. v. Laski, 351 Ill. App. 3d 727, 286 Ill. Dec. 653, 814 N.E.2d 879, 2004 Ill. App. LEXIS 735 (1 Dist. 2004), appeal denied, 212 Ill. 2d 534, 291 Ill. Dec. 709, 824 N.E.2d 285 (2004).

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This Code governs special elections called under statutes not prescribing the manner for holding and conducting the elections. Natt v. Suburban Cook County Tuberculosis Sanitarium Dist., 407 Ill. 436, 95 N.E.2d 611 (1950).

- Elections to Fill Vacancies

This Code does not prescribe an election in the event of a vacancy but, rather, prescribes the timing of regularly scheduled elections where the incumbent official continues in office. United Citizens v. Coalition To Let The People Decide in 1989, 125 Ill. 2d 332, 126 Ill. Dec. 175, 531 N.E.2d 802 (1988).

- Sanitarium Districts Act

This Code applies to any special, general or primary election, including a special election on a bond issue proposition under section 14 of the Sanitarium Districts Act (70 ILCS 920/14). Natt v. Suburban Cook County Tuberculosis Sanitarium Dist., 407 Ill. 436, 95 N.E.2d 611 (1950).

- School Code

Limitation of voting in an annual school board election in the precinct of a voter's residence was a reasonable compliance with section 9-2 of the School Code (105 ILCS 5/9-2); in the absence of any provision in the School Code as to where the voter should vote, the harmonious and consistent requirement of the Election Code could be inferred. Tremper v. Board of Educ., 3 Ill. App. 3d 264, 278 N.E.2d 451 (1 Dist. 1971).

Board's Authority

Language of the Illinois School Code, 105 ILCS 5/1-1 et seq., and the Illinois Election Code, 10 ILCS 5/1-1 et seq., unambiguously indicates that the legislature intended to empower a school board, the entity with the authority to fill a vacancy (105 ILCS 10/10), to determine whether or not the facts giving rise to a vacancy exist (10 ILCS 5/25-3(a)). The clear language of 10 ILCS 5/25-3(a), therefore, indicates that a school board is entitled to conduct a factual inquiry and reach a determination of whether a vacancy exists based on disputed facts. Brown v. Johnson, 362 Ill. App. 3d 413, 298 Ill. Dec. 311, 839 N.E.2d 634, 2005 Ill. App. LEXIS 1151 (1 Dist. 2005).

School district electoral board's statutory authority permitted it to act in an administrative capacity and function in an adjudicatory or quasi-judicial capacity, but did not allow the school district electoral board to assume the role of advocate for the purpose of prosecuting an appeal, and, thus, the school district electoral board did not have standing to appeal the trial court's reversal of its decision regarding the election candidate's nominating documents. Bendell v. Educ. Officers Electoral Bd., 338 Ill. App. 3d 458, 272 Ill. Dec. 869, 788 N.E.2d 173, 2003 Ill. App. LEXIS 386 (1 Dist. 2003).

The Code does not expressly or implicitly authorize the Board to assume the role of advocate for the purpose of prosecuting an appeal. Kozenczak v. Du Page County Officers Electoral Bd., 299 Ill. App. 3d 205, 233 Ill. Dec. 365, 700 N.E.2d 1073 (2 Dist. 1998).

Construction with Other Laws

While this Code provides for uniformity and stability in the elected offices, the Municipal Code (65 ILCS 5/1-1-1 et seq.) responds to specific and extraordinary circumstances not covered in the general scheme of elections created by the Election Code. United Citizens v. Coalition To Let The People Decide in 1989, 125 Ill. 2d 332, 126 Ill. Dec. 175, 531 N.E.2d 802 (1988).

Construing this Code, the former Roads and Bridges Act, and the former Township Organization Act (see now 60 ILCS 1/1-1 et seq.) together, the geographical area designated as an election

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precinct is to be the same for all elections covered by these three acts and attended with the same legal significance; thus, a township is a single election precinct unless and until further election precincts are fixed under the several acts. People ex rel. Schwartz v. Fagerholm, 17 Ill. 2d 131, 161 N.E.2d 20 (1959).

Eligibility of Candidates

Candidate's due process rights were violated and the error was not harmless where the city clerk had personally received his petitions and testified regarding whether they had been bound prior to deciding issues of credibility as an electoral board member. Girot v. Keith, 212 Ill. 2d 372, 289 Ill. Dec. 29, 818 N.E.2d 1232, 2004 Ill. LEXIS 1614 (2004).

- Objections

All objections to a candidate's eligibility to run for office must be resolved by the procedures set out in this Act. People ex rel. Klingelmueller v. Haas, 111 Ill. App. 3d 88, 66 Ill. Dec. 856, 443 N.E.2d 782 (3 Dist. 1982).

Political Party Affiliation

While having a voice in elections is regarded as one of the most important and protected rights, and the vote itself is traditionally within the "zone of privacy," such is not the case with party affiliation; one's political party affiliation does not constitute a privacy right under the Illinois Constitution. Small v. Kusper, 161 Ill. App. 3d 42, 112 Ill. Dec. 499, 513 N.E.2d 1108 (1 Dist. 1987).

Purpose

The basic intent of this Code is to give all persons an opportunity to vote and to prevent fraud. Ole, Ole, Inc. v. Kozubowski, 187 Ill. App. 3d 277, 134 Ill. Dec. 895, 543 N.E.2d 178 (1 Dist. 1989).

This Code is strengthened from time to time under the constitutional admonition to provide free and equal elections; its basic intent is to give all persons an opportunity to vote and to prevent fraud. People ex rel. Schwartz v. Fagerholm, 17 Ill. 2d 131, 161 N.E.2d 20 (1959).

One object of this Code is to obtain a correct expression of the intention of the voters without having the manner in which any particular voter has cast his vote known to anyone save himself, with the necessary exception of the election officials, who may assist certain voters according to law. Giffin v. Rausa, 2 Ill. 2d 421, 118 N.E.2d 249 (1954).

Standing

Since the right to hold public office is a necessary concomitant of the right to vote, there was no valid reason to deny the plaintiffs, one of whom sought election and two who wished to support him, standing to sue. Jackson v. Ogilvie, 325 F. Supp. 864 (N.D. Ill.), aff'd, 403 U.S. 925, 91 S. Ct. 2247, 29 L. Ed. 2d 705 (1971).

Technical Requirements

- In General

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After an election, mere technical statutory duties relating to elections will generally be held to be directory only and a failure to comply with them will not invalidate the election if such failure does not affect its fairness or merits nor obstruct or prevent a free and intelligent vote of the people and ascertainment of the result. Foster v. Chicago Bd. of Elections Comm'rs, 176 Ill. App. 3d 776, 126 Ill. Dec. 293, 531 N.E.2d 920 (1 Dist. 1988).

Women Voters

The former Primary Election Law (see now 10 ILCS 5/7-1 et seq.) gave women the right to vote at primary elections for such offices as they may have voted for at the election for which the primary was held, but they were not entitled to vote for the election of delegates to national conventions and for party committeemen. People ex rel. Garretson v. Byers, 271 Ill. 600, 111 N.E. 564 (1916).

RESEARCH REFERENCES

Validity, construction, and application of state statutes governing "minor political parties". 120 ALR5th 1.

§ 10 ILCS 5/1-2. [Prior provisions; continuation]

Sec. 1-2. The provisions of this Act, so far as they are the same as those of any prior statute, shall be construed as a continuation of such prior provisions, and not as a new enactment.

If in any other statute reference is made to an Act of the General Assembly, or a section of such an Act, which is continued in this election Code [10 ILCS 5/1-1 et seq.], such reference shall be held to refer to the Act or section thereof so continued in this Code.

(Source: Laws 1943, vol. 2, p. 1.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1-2.

CASE NOTES

In General

Actions of the defendants, in prohibiting contestants who were duly elected to the position of delegate to the Democratic National Convention by operation of the Illinois election code, Ill. Rev. Stat. ch. 46, para. 1-2, from attending that convention based on race, violated the due process

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and equal protection rights of the contestants and the voters' right to a free and equal election under Ill. Const. (1970), Art. IV, § 3. Wigoda v. Cousins, 14 Ill. App. 3d 460, 302 N.E.2d 614, 1973 Ill. App. LEXIS 1865 (1 Dist. 1973).

This Act is the general law for the conduct of elections in Illinois, and it is a codification and continuation of all existing general laws relating to elections. Natt v. Suburban Cook County Tuberculosis Sanitarium Dist., 407 Ill. 436, 95 N.E.2d 611 (1950).

§ 10 ILCS 5/1-3. [Definitions]

Sec. 1-3. As used in this Act, unless the context otherwise requires:

1."Election" includes the submission of all questions of public policy, propositions, and all measures submitted to popular vote, and includes primary elections when so indicated by the context.

2."Regular election" means the general, general primary, consolidated and consolidated primary elections regularly scheduled in Article 2A [10 ILCS 5/2A-1 et seq.]. The even numbered year municipal primary established in Article 2A is a regular election only with respect to those municipalities in which a primary is required to be held on such date.

3."Special election" means an election not regularly recurring at fixed intervals, irrespective of whether it is held at the same time and place and by the same election officers as a regular election.

4."General election" means the biennial election at which members of the General Assembly are elected. "General primary election", "consolidated election" and "consolidated primary election" mean the respective elections or the election dates designated and established in Article 2A of this Code.

5."Municipal election" means an election or primary, either regular or special, in cities, villages, and incorporated towns; and "municipality" means any such city, village or incorporated town.

6."Political or governmental subdivision" means any unit of local government, or school district in which elections are or may be held. "Political or governmental subdivision" also includes, for election purposes, Regional Boards of School Trustees, and Township Boards of School Trustees.

7.The word "township" and the word "town" shall apply interchangeably to the type of governmental organization established in accordance with the provisions of the Township Code [60 ILCS 1/1-1 et seq.]. The term "incorporated town" shall mean a municipality referred to as an incorporated town in the Illinois Municipal Code [65 ILCS 5/1-1-1 et seq.], as now or hereafter amended.

8."Election authority" means a county clerk or a Board of Election Commissioners.

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9."Election Jurisdiction" means (a) an entire county, in the case of a county in which no city board of election commissioners is located or which is under the jurisdiction of a county board of election commissioners; (b) the territorial jurisdiction of a city board of election commissioners; and (c) the territory in a county outside of the jurisdiction of a city board of election commissioners. In each instance election jurisdiction shall be determined according to which election authority maintains the permanent registration records of qualified electors.

10."Local election official" means the clerk or secretary of a unit of local government or school district, as the case may be, the treasurer of a township board of school trustees, and the regional superintendent of schools with respect to the various school officer elections and school referenda for which the regional superintendent is assigned election duties by The School Code [105 ILCS 5/1-1 et seq.], as now or hereafter amended.

11."Judges of election", "primary judges" and similar terms, as applied to cases where there are 2 sets of judges, when used in connection with duties at an election during the hours the polls are open, refer to the team of judges of election on duty during such hours; and, when used with reference to duties after the closing of the polls, refer to the team of tally judges designated to count the vote after the closing of the polls and the holdover judges designated pursuant to Section 13-6.2 or 14-5.2 [10 ILCS 5/13-6.2 or 10 ILCS 5/14-5.2]. In such case, where, after the closing of the polls, any act is required to be performed by each of the judges of election, it shall be performed by each of the tally judges and by each of the holdover judges.

12."Petition" of candidacy as used in Sections 7-10 and 7-10.1 [10 ILCS 5/7-10 and 10 ILCS 5/7-10.1] shall consist of a statement of candidacy, candidate's statement containing oath, and sheets containing signatures of qualified primary electors bound together.

13."Election district" and "precinct", when used with reference to a 30-day residence requirement, means the smallest constituent territory in which electors vote as a unit at the same polling place in any election governed by this Act.

14."District" means any area which votes as a unit for the election of any officer, other than the State or a unit of local government or school district, and includes, but is not limited to, legislative, congressional and judicial districts, judicial circuits, county board districts, municipal and sanitary district wards, school board districts, and precincts.

15."Question of public policy" or "public question" means any question, proposition or measure submitted to the voters at an election dealing with subject matter other than the nomination or election of candidates and shall include, but is not limited to, any bond or tax referendum, and questions relating to the Constitution.

16."Ordinance providing the form of government of a municipality or county pursuant to Article VII of the Constitution" [Ill. Const. (1970) Art. VII, § 1 et seq.]. includes ordinances, resolutions and petitions adopted by referendum which provide for the form of government, the officers or the manner of selection or terms of office of officers of such municipality or county, pursuant to the provisions of Sections 4, 6 or 7 of Article VII of the Constitution. [Ill. Const. (1970) Art. VII, § 4, Ill. Const. (1970) Art. VII, § 6 or Ill. Const. (1970) Art. VII, § 7].

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17."List" as used in Sections 4-11, 4-22, 5-14, 5-29, 6-60, and 6-66 [10 ILCS 5/4-11, 10 ILCS 5/4-22, 10 ILCS 5/5-14, 10 ILCS 5/5-29, 10 ILCS 5/6-60, and 10 ILCS 5/6-66] shall include a computer tape or computer disc or other electronic data processing information containing voter information.

18."Accessible" means accessible to handicapped and elderly individuals for the purpose of voting or registration, as determined by rule of the State Board of Elections.

19."Elderly" means 65 years of age or older.

20."Handicapped" means having a temporary or permanent physical disability.

21."Leading political party" means one of the two political parties whose candidates for governor at the most recent three gubernatorial elections received either the highest or second highest average number of votes. The political party whose candidates for governor received the highest average number of votes shall be known as the first leading political party and the political party whose candidates for governor received the second highest average number of votes shall be known as the second leading political party.

22."Business day" means any day in which the office of an election authority, local election official or the State Board of Elections is open to the public for a minimum of 7 hours.

23."Homeless individual" means any person who has a nontraditional residence, including, but not limited to, a shelter, day shelter, park bench, street corner, or space under a bridge.

(Source: P.A. 86-873; 86-1348; 87-1241, § 1; 88-670, § 3-5; 90-358, § 5; 96-1000, § 35.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1-3.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 1992 amendment by P.A. 87-1241, effective December 23, 1992, added subsection 23.

The 1994 amendment by P.A. 88-670, effective December 2, 1994, in subsection 7 substituted "the Township Code" for "the 'Township Law of 1874' ".

The 1997 amendment by P.A. 90-358, effective January 1, 1998, in subsection 2, in the first sentence, deleted "nonpartisan" preceding "consolidated"; and in subsection 4 deleted "nonpartisan election" preceding "consolidated election".

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, made a stylistic change.

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CASE NOTES

Analysis

Constitutionality
Filing
General Elections
- Defined
Regular Elections
- Defined
Special Elections
- Applicable Law
- City Bonds
- Notice

Constitutionality

Independent candidate who sought to be placed on the ballot for the Tenth Congressional District in Illinois was not entitled to injunctive relief on his 42 U.S.C. § 1983 claim that application of the 5% signatory requirements of the Illinois Election Code, 10 ILCS 5/1-1 et seq. violated his First and Fourteenth Amendment rights and his claim was dismissed because the United States Supreme Court and the United States Court of Appeals for the Seventh Circuit had recognized that 5% signatory requirements were constitutional; independent candidates for Congress were treated equally under 10 ILCS 5/10-3, and the candidate pointed to no case holding that it was an Equal Protection violation to have differing standards for being placed on the ballot in different election years. Stevo v. Keith, F. Supp. 2d , 2008 U.S. Dist. LEXIS 75913 (C.D. Ill. Aug. 27, 2008), aff'd, 546 F.3d 405, 2008 U.S. App. LEXIS 20701 (7th Cir. Ill. 2008).

Filing

Election Code does not provide a "floor" or a "ceiling" time in which a clerk's office must open and close, but simply states the minimum number of hours; it is silent as to when an elected official responsible for accepting objector's petitions is allowed or prohibited from maintaining extended hours. Although the appellate court was mindful of the political manipulation that might occur in elections and may arise under similar circumstances, there was no legitimate evidence or properly founded allegations in this case that any such mischief occurred here and the court did not assume such impropriety based on the record. Hamm v. Twp. Officers of Bremen Electoral Bd., 389 Ill. App. 3d 827, 329 Ill. Dec. 842, 907 N.E.2d 433, 2009 Ill. App. LEXIS 225 (1 Dist. 2009).

The only relevant part of the Election Code that speaks to the hours for which the election office is to remain open to be considered a business day is 10 ILCS 5/1-3(22), which requires that the election office be open for 7 hours, but it does not mandate any specific hours, only the minimum number of hours. The fact that the Township Clerk accepted an objector's petition and stamped it as received on February 2, 2009, at approximately 4:45 p.m., showed that the office remained "open to the public" for filing and the objector's petition was in fact filed on the fifth day following the relevant nominating petitions. Hamm v. Twp. Officers of Bremen Electoral Bd., 389 Ill. App. 3d 827, 329 Ill. Dec. 842, 907 N.E.2d 433, 2009 Ill. App. LEXIS 225 (1 Dist. 2009).

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Only statutory mandate with regard to the time in which an election office was to remain open was a minimum of 7 hours as required in 10 ILCS 5/1-3(22). Even though a time stamp on an objection to a candidate's nominating petition was well after a Township Clerk's normal business hours, there was no statutory authority requiring the Township Clerk's office to close at the time published on its doors. Hamm v. Twp. Officers of Bremen Electoral Bd., 389 Ill. App. 3d 827, 329 Ill. Dec. 842, 907 N.E.2d 433, 2009 Ill. App. LEXIS 225 (1 Dist. 2009).

This section and 10 ILCS 5/7-10 do not require that a candidate must simultaneously file his statement of candidacy and petition sheets; it is sufficient if a candidate files both within the statutorily prescribed filing period. Courtney v. County Officers Electoral Bd., 314 Ill. App. 3d 870, 247 Ill. Dec. 861, 732 N.E.2d 1193, 2000 Ill. App. LEXIS 542 (1 Dist. 2000).

General Elections

- Defined

The term general election means the selection of officers to serve after the expiration of the terms of former ones. People ex rel. Elder v. Quilici, 309 Ill. App. 466, 33 N.E.2d 492 (1 Dist. 1941).

Regular Elections

- Defined

A regular election is one which recurs at stated intervals as fixed by law without any superinducing cause other than the efflux of time. People ex rel. Elder v. Quilici, 309 Ill. App. 466, 33 N.E.2d 492 (1 Dist. 1941).

A regular election is one held to select an officer to succeed to the office upon the expiration of the full term of the incumbent. People ex rel. Elder v. Quilici, 309 Ill. App. 466, 33 N.E.2d 492 (1 Dist. 1941).

Special Elections

- Applicable Law

Since this Code prescribed in detail the rules necessary for the conduct of a special election, it followed that section 14 of the Sanitarium District Act (70 ILCS 920/14) was complete and not subject to the objection that its provisions were vague, indefinite and uncertain as to offend constitutional guaranties; this being so, the Sanitarium Districts Act afforded ample authority for calling and holding a special election. Natt v. Suburban Cook County Tuberculosis Sanitarium Dist., 407 Ill. 436, 95 N.E.2d 611 (1950).

Where a statute provides for a special election but makes no provision for the method of calling and conducting it, the general law for the conduct of elections controls. Natt v. Suburban Cook County Tuberculosis Sanitarium Dist., 407 Ill. 436, 95 N.E.2d 611 (1950).

- City Bonds

An election on six propositions for distributing city bonds was a special election. Bilek v. City of Chicago, 396 Ill. 445, 71 N.E.2d 789 (1947).

- Notice

It is essential to the validity of a special election that the mode prescribed for conducting it be complied with in all material respects, and this includes the giving of adequate notice. Solomon v. North Shore San. Dist., 48 Ill. 2d 309, 269 N.E.2d 457 (1971).

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The only notice that is jurisdictional and required for a special election is that prescribed by statute; the notice need not contain more than that described by statute as mandatory. Solomon v. North Shore San. Dist., 48 Ill. 2d 309, 269 N.E.2d 457 (1971).

§ 10 ILCS 5/1-4. [Nomination petitions; filing hours]

Sec. 1-4. In any case in which this Act prescribes a period of time within which petitions for nomination must be filed, the office in which petitions must be filed shall remain open for the receipt of such petitions until 5:00 P.M. on the last day of the filing period.

(Source: P.A. 80-1469.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1-4.

CASE NOTES

Time for Filing Nomination Papers

Nomination papers for four candidates were timely filed where they were time stamped between 5:04 PM and 5:10 PM on the last day for filing since the statute requires only that the office in which nomination papers are to be filed must remain open until at least 5:00 PM on the last day for filing, but does not require that the office must close at that time or that nomination papers must be filed by 5:00 PM. Welch v. Educ. Officers Electoral Bd., 322 Ill. App. 3d 568, 255 Ill. Dec. 641, 750 N.E.2d 222, 2001 Ill. App. LEXIS 359 (1 Dist. 2001).

§ 10 ILCS 5/1-5: Repealed by P.A. 89-653, § 95, effective August 14, 1996.

Note.

For new provisions, see 10 ILCS 5/1-6.

§ 10 ILCS 5/1-6. Computing dates of various acts; Saturday, Sunday, and holidays

Sec. 1-6. Computing dates of various acts; Saturday, Sunday, and holidays. (a) If the first or last day fixed by law to do any act required or allowed by this Code falls on a State holiday or a Saturday or a Sunday, the period shall extend through the first business

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day next following the day otherwise fixed as the first or last day, irrespective of whether any election authority or local election official conducts business on the State holiday, Saturday, or Sunday.

(b) For the purposes of this Section, "State holiday" means New Year's Day, Dr. Martin Luther King, Jr.'s Birthday, Lincoln's Birthday, President's Day, Casimir Pulaski's Birthday, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day from time to time declared by the President of the United States or the Governor of Illinois to be a day during which the agencies of the State of Illinois that are ordinarily open to do business with the public shall be closed for business.

(c) Notwithstanding any other provision of this Code, nominating papers, petitions of objection to nominating papers, certificates of withdrawal of candidacy, and reports of political committees actually received by election authorities and local election officials on a State holiday, a Saturday, or a Sunday shall not be deemed invalid or defective for that reason alone.

(Source: P.A. 89-653, § 5; 90-672, § 5.)

Effective Date. Section 99 of P.A. 89-653 made this section effective upon becoming law. The Act was approved August 14, 1996.

Effect of Amendments. The 1998 amendment by P.A. 90-672, effective July 31, 1998, rewrote the section catchline; and rewrote subsection (a).

§ 10 ILCS 5/1-7. No straight party voting

Sec. 1-7. No straight party voting. Notwithstanding any provision of law to the contrary, straight party voting by a single vote is not permitted in Illinois.

(Source: P.A. 89-700, § 5.)

Effective Date. Section 99 of P.A. 89-700 made this section effective upon becoming law. The Act was approved January 17, 1997.

§ 10 ILCS 5/1-8. Canvassing boards abolished

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Sec. 1-8. Canvassing boards abolished. Notwithstanding any other provision of this Code, local canvassing boards are abolished. In this Code or any other law a reference to a local or county canvassing board means (i) for elections in which the political subdivision that is choosing candidates or submitting a public question is located entirely within the jurisdiction of a single election authority, that election authority and (ii) for elections for offices and public questions not listed in Section 22-1 of this Code [10 ILCS 5/22-1] in which the political subdivision that is choosing candidates or submitting a public question is located within the jurisdiction of 2 or more election authorities, the election authority having jurisdiction over the location at which the political subdivision has its principal office.

(Source: P.A. 94-647, § 5.)

Effective Date. This section is effective January 1, 2006, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

CASE NOTES

Analysis

Canvassing Board
- Result Binding
Mandamus

Canvassing Board

- Result Binding

Where the Canvassing Board determined the result of an election and from those figures tabulated the result, such result was binding and conclusive; any understanding as between the candidates would not be binding upon the Canvassing Board, nor would it be proper for the Canvassing Board to declare the result of the vote in any precinct in any manner which was inconsistent with the facts as found by the Canvassing Board. People ex rel. Ganschinietz v. Renner, 334 Ill. App. 302, 79 N.E.2d 298 (4 Dist. 1948).

Mandamus

The right to political office could not be tried in a proceeding for mandamus; the proper way to seek a review of the decision of the Canvassing Board was by an election contest, and not by mandamus. People ex rel. Ganschinietz v. Renner, 334 Ill. App. 302, 79 N.E.2d 298 (4 Dist. 1948).

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§ 10 ILCS 5/1-9. Central counting of grace period, early, absentee, and provisional ballots

Sec. 1-9. Central counting of grace period, early, absentee, and provisional ballots. Notwithstanding any statutory provision to the contrary enacted before the effective date of this amendatory Act of the 94th General Assembly [P.A. 94-1000], all grace period ballots, early voting ballots, absentee ballots, and provisional ballots to be counted shall be delivered to and counted at an election authority's central ballot counting location and not in precincts. References in this Code enacted before the effective date of this amendatory Act of the 94th General Assembly to delivery and counting of grace period ballots, early voting ballots, absentee ballots, or provisional ballots to or at a precinct polling place or to the proper polling place shall be construed as references to delivery and counting of those ballots to and at the election authority's central ballot counting location.

(Source: P.A. 94-1000, § 5.)

Effective Date. Section 99 of P.A. 94-1000 made the section effective upon becoming law. The Act was approved July 3, 2006.

§ 10 ILCS 5/1-10. Public comment

Sec. 1-10. Public comment. Notwithstanding any law to the contrary, the State Board of Elections in evaluating the feasibility of any new voting system shall seek and accept public comment from persons of the disabled community, including but not limited to organizations of the blind.

(Source: P.A. 93-574, § 5.)

Note.

Section 97 of P.A. 93-574 contains a severability provision.

Effective Date. Section 99 of P.A. 93-574 made this section effective upon becoming law. The Act was approved August 21, 2003.

§ 10 ILCS 5/1-15. Procedures for the disposal of election records

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Sec. 1-15. Procedures for the disposal of election records. This Code is subject to the provisions of Section 14a of the Local Records Act [50 ILCS 205/14a].

(Source: P.A. 96-475, § 10.)

Effective Date. Section 99 of P.A. 96-475 makes this section effective upon becoming law. The Act was approved August 14, 2009.

§ 10 ILCS 5/1-20: Repealed by P.A. 96-1008, § 5, effective March 2, 2011.

Article 1A.

State Board of Elections

§ 10 ILCS 5/1A-1. [Establishment]

Sec. 1A-1. A State Board of Elections is hereby established which shall have general supervision over the administration of the registration and election laws throughout the State, and shall perform only such duties as are or may hereafter be prescribed by law.

(Source: P.A. 78-918.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1A-1.

CASE NOTES

Analysis
Constitutionality

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Powers
- Limitations

Constitutionality

The method used to select members of the State Board of Elections in former Ill. Rev. Stat., ch. 46, para. 7.1 and the tie breaker provision of said statute were declared unconstitutional. Walker v. State Bd. of Elections, 65 Ill. 2d 543, 3 Ill. Dec. 703, 359 N.E.2d 113 (1976).

Where plaintiffs contended that the statute providing for the selection of members of the State Board of Elections was unconstitutional, they were not required to exhaust their administrative remedies because they did not merely attack the statute as it was applied to them, but rather challenged the statute on its face. Walker v. State Bd. of Elections, 65 Ill. 2d 543, 3 Ill. Dec. 703, 359 N.E.2d 113 (1976).

Powers

Illinois State Board of Elections may only act in the manner prescribed by the Illinois Election Code, 10 ILCS 5/1-1 et seq. Ill. Campaign for Political Reform v. Ill. State Bd. of Elections, 388 Ill. App. 3d 517, 328 Ill. Dec. 486, 904 N.E.2d 996, 2009 Ill. App. LEXIS 93 (1 Dist. 2009).

Though the Illinois Election Code does not expressly permit the Illinois State Board of Elections to mechanically add page numbers to a candidate's petition, doing so is both necessary and reasonably incidental to the achieving the purposes for which the Board was created: administrating and protecting the integrity of the election laws of Illinois. Nader v. Ill. State Bd. of Elections, 354 Ill. App. 3d 335, 289 Ill. Dec. 348, 819 N.E.2d 1148, 2004 Ill. App. LEXIS 1380 (1 Dist. 2004).

Trial court erred in granting declaratory judgment in the county election commission's favor because the State Board of Elections had the discretionary authority to issue an amended certification reflecting the withdrawal of a candidate after certification pursuant to 10 ILCS 5/7-14 had occurred any time before the election took place where (1) the word "shall" was directory, not mandatory, (2) "in error" meant inaccurate, and (3) local election authorities had to comply with all amended certifications properly issued pursuant to 10 ILCS 5/7-14. Du Page County Election Comm'n v. State Bd. of Elections, 345 Ill. App. 3d 200, 279 Ill. Dec. 695, 800 N.E.2d 1278, 2003 Ill. App. LEXIS 1522 (2 Dist. 2003).

- Limitations

This section, establishing the State Board of Elections and its duties and powers, specifically limits the Board's authority to those areas prescribed by this Act. Troy v. State Bd. of Elections, 84 Ill. App. 3d 740, 40 Ill. Dec. 556, 406 N.E.2d 562 (1 Dist. 1980).

OPINIONS OF ATTORNEY GENERAL

Advisory Opinions

The State Board of Elections may not issue "advisory opinions" or other interpretations of the provisions of the Election Code [10 ILCS 5/1-1 et seq.]. 1987 Op. Atty. Gen. (87-004).

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LEGAL PERIODICALS

For article, "The Illinois State Board of Elections: A History and Evaluation of the Formative Years," see 11 J. Marshall J. Prac. & Proc. 321 (1978).

§ 10 ILCS 5/1A-2. [Composition]

Sec. 1A-2. The State Board of Elections shall consist of 8 members, 4 of whom shall be residents of Cook County and 4 of whom shall be residents of the State outside of Cook County. Of the 4 members from each area of required residence, 2 shall be affiliated with the same political party as the Governor, and 2 shall be affiliated with the political party whose nominee for Governor in the most recent general election received the second highest number of votes. Members shall be persons who have extensive knowledge of the election laws of this State.

(Source: P.A. 80-1178.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1A-2.

CASE NOTES

Composition

Pursuant to 10 ILCS 5/1A-2, the Illinois State Board of Elections consists of eight members; four members must be affiliated with the Governor's political party and four must be affiliated with the political party whose nominee for Governor in the most recent general election received the second highest number of votes. Pursuant to 10 ILCS 5/1A-7, five votes are required for an action of the Board to become effective. Cook County Republican Party v. Ill. State Bd. of Elections, 232 Ill. 2d 231, 327 Ill. Dec. 531, 902 N.E.2d 652, 2009 Ill. LEXIS 174 (2009).

§ 10 ILCS 5/1A-2.1. [Oath and bond]

Sec. 1A-2.1. Each member of the State Board of Elections, before entering upon his duties, shall subscribe to the Constitutional oath and shall give an official bond in the penal sum of $100,000, with a corporate surety or individual sureties approved by the Governor, conditioned upon the faithful discharge of the duties of his office. The bond and oath shall be filed with the office of the Secretary of State within 10 days after the

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appointment.

(Source: P.A. 78-918.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1A-2.1.

§ 10 ILCS 5/1A-3. [Appointment]

Sec. 1A-3. Subject to the confirmation requirements of Section 1A-4 [10 ILCS 5/1A-4], 4 members of the State Board of Elections shall be appointed in each odd-numbered year as follows:

(1) The Governor shall appoint 2 members of the same political party with which he is affiliated, one from each area of required residence.

(2) The Governor shall appoint 2 members of the political party whose candidate for Governor in the most recent general election received the second highest number of votes, one from each area of required residence, from a list of nominees submitted by the first state executive officer in the order indicated herein affiliated with such political party: Attorney General, Secretary of State, Comptroller, and Treasurer. If none of the State executive officers listed herein is affiliated with such political party, the nominating State officer shall be the first State executive officer in the order indicated herein affiliated with an established political party other than that of the Governor.

(3) The nominating state officer shall submit in writing to the Governor 3 names of qualified persons for each membership on the Board of Election to be appointed from the political party of that officer. The Governor may reject any or all of the nominees on any such list and may request an additional list. The second list shall be submitted by the nominating officer and shall contain 3 new names of qualified persons for each remaining appointment, except that if the Governor expressly reserves any nominee's name from the first list, that nominee shall not be replaced on the second list. The second list shall be final.

(4) Whenever all the state executive officers designated in paragraph (2) are affiliated with the same political party as that of the Governor, all 4 members of the Board to be appointed that year, from both designated political parties, shall be appointed by the Governor without nominations.

(5) The Governor shall submit in writing to the President of the Senate the name of each person appointed to the State Board of Elections, and shall designate the term for which the appointment is made and the name of the member whom the appointee is to succeed.

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(6) The appointments shall be made and submitted by the Governor no later than April 1 and a nominating state officer required to submit a list of nominees to the Governor pursuant to paragraph (3) shall submit a list no later than March 1.

(7) In the appointment of the initial members of the Board pursuant to this amendatory Act of 1978, the provisions of paragraphs (1), (2), (3), (5) and (6) of this Section shall apply except that the Governor shall appoint all 8 members, 2 from each of the designated political parties from each area of required residence.

(Source: P.A. 85-958.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1A-3.

OPINIONS OF ATTORNEY GENERAL

Law Counsel

A member of a law firm which contracts to advise and represent a municipal corporation on particular matters has the status of an independent contractor rather than that of an employee of the municipal corporation and therefore is not prohibited from being a member of the State Board of Elections. 1978 Op. Atty. Gen. 163.

§ 10 ILCS 5/1A-3.1. [Terms]

Sec. 1A-3.1. Of the members initially appointed to the State Board of Elections pursuant to this amendatory Act of 1978, one member affiliated with each political party from each area of required residence shall serve a term commencing July 1, 1978 and ending June 30, 1979, and the other initial members shall serve terms commencing July 1, 1978 and ending June 30, 1981.

Notwithstanding any provision in this Section to the contrary, the term of office of each member of the State Board of Elections is abolished on the effective date of this amendatory Act of 1985. Subject to the confirmation requirements of Section 1A-4 [10 ILCS 5/1A-4], 8 members of the State Board of Elections shall be appointed in accordance with the provisions of Section 1A-3 [10 ILCS 5/1A-3], except that the Governor shall appoint 4 members of the same political party with which he is affiliated and 4 members of the political party whose candidate for Governor in the most recent general election received the second highest number of votes and except that a nominating State officer shall submit to the Governor his required list of nominees within 15 days after the current terms of office are abolished and the Governor shall make

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appointments within 30 days after the current terms of office are abolished. Of the members initially appointed to the State Board of Elections pursuant to this amendatory Act of 1985, one member affiliated with each political party for each area of required residence shall serve a term commencing July 1, 1985, and ending July 1, 1987, and the other initial members shall serve terms commencing July 1, 1985, and ending July 1, 1989.

The terms of subsequent members of the State Board of Elections shall be 4 years commencing on July 1 of the year in which the appointments are made.

A member shall serve until his successor is duly appointed and has qualified. No appointee shall enter upon the duties of his office until all members required to be appointed in that year have been confirmed by the Senate by record vote pursuant to Section 1A-4.

(Source: P.A. 84-115.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1A-3.1.

CASE NOTES

Analysis

Removal Power
- Cause
- Judicial Review
Substitution of Members
- Political Bias

Removal Power

- Cause

The governor can only remove a member of the State Board of Elections for cause. Lunding v. Walker, 65 Ill. 2d 516, 3 Ill. Dec. 686, 359 N.E.2d 96 (1976).

- Judicial Review

Whether a Board member's failure to file a financial disclosure statement in compliance with an executive order was a sufficient "neglect of duty" to justify the Governor's exercise of his removal power was properly reviewable by the court. Lunding v. Walker, 65 Ill. 2d 516, 3 Ill. Dec. 686, 359 N.E.2d 96 (1976).

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Substitution of Members

- Political Bias

This Code does not provide an implied right for substitution of Electoral Board members when an objector alleges political bias. Ryan v. Landek, 159 Ill. App. 3d 10, 111 Ill. Dec. 97, 512 N.E.2d 1 (1 Dist. 1987).

§ 10 ILCS 5/1A-4. [Advice and consent]

Sec. 1A-4. All appointments of members to the State Board of Elections shall be subject to the advice and consent of the Senate pursuant to this Section. Appointments by the Governor pursuant to paragraphs (1), (2) and (7) of Section 1A-3 [10 ILCS 5/1A-3] shall require the advice and consent of a 3/5 vote of the members elected to the Senate. Appointments by the Governor pursuant to paragraph (4) of Section 1A-3 [10 ILCS 5/1A-3] shall require the advice and consent of a 2/3 vote of the members elected to the Senate.

The Senate shall confirm or reject appointments within 30 session days or 60 calendar days after they are submitted by the Governor, whichever occurs first. Except in the case of appointments to fill vacancies, the confirmation time period specified in this Section shall not commence until all appointments required to be made in that year have been submitted by the Governor.

(Source: P.A. 80-1178.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1A-4.

§ 10 ILCS 5/1A-5. [Vacancies]

Sec. 1A-5. An appointment to fill each vacancy on the State Board of Elections shall be made pursuant to the appropriate paragraph of Section 1A-3 [10 ILCS 5/1A-3] in the same manner as the appointment of members for new terms. Each appointment to fill a vacancy shall be for the completion of the term of that position.

The Governor shall make an appointment to fill each vacancy and shall submit it to the President of the Senate within 30 days of the occurrence of the vacancy, or within 30 days of the submission of a list of nominees to him pursuant to paragraph (3) of Section 1A-3 [10 ILCS 5/1A-3], whichever is later. A nominating state officer shall submit to the Governor his required list of nominees to fill a vacancy within 15 days of the occurrence

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of the vacancy. If the Governor does not fill a vacancy required to be filled pursuant to paragraph (3) of Section 1A-3 within the required 30 days, the nominating state officer shall make the appointment from among the nominees he previously submitted.

(Source: P.A. 80-1178.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1A-5.

§ 10 ILCS 5/1A-6. [Chairman]

Sec. 1A-6. One member of the State Board of Elections shall be elected by the members of the Board to be chairman and shall serve as chairman of the Board for a term ending June 30, 1979. On July 1 of 1979 and on July 1 of each odd-numbered year thereafter, a chairman shall be elected by the members of the Board for a 2 year term ending June 30 of the next odd-numbered year. If July 1 of any odd-numbered year does not fall on a business day, said election shall be held on the first business day thereafter. The chairman elected for each 2 year term shall not be of the same political party affiliation as the prior chairman. Whenever a vacancy occurs in the office of chairman, a new chairman of the same political party affiliation shall be elected for the remainder of the vacating chairman's term. Whenever a chairman is elected, the Board shall elect from among its members, a vice chairman who shall not be of the same political party affiliation as the chairman.

Upon the confirmation of all of the members of the State Board of Elections initially appointed under the amendatory Act of 1978, the Governor shall designate one of the members as interim chairman who shall preside over the Board until a chairman is elected pursuant to this Section.

(Source: P.A. 80-1178.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1A-6.

OPINIONS OF ATTORNEY GENERAL

Holdover

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A chairman holding over after the expiration of his term until the board obeys its statutorily mandated duty to elect a new chairman is a de facto officer whose acts with regard to the public and the rights of a third person are valid. 1979 Op. Atty. Gen. 100.

§ 10 ILCS 5/1A-6.1. [Authority; salary; expenses]

Sec. 1A-6.1. The chairman of the State Board of Elections shall preside at all meetings of the Board, except that the vice chairman shall preside at any meeting when the chairman is absent. The salary of the chairman shall be $25,000 per year, or as set by the Compensation Review Board, whichever is greater, and the salary of the vice-chairman shall be $20,000 per year, or as set by the Compensation Review Board, whichever is greater. The salary of the other Board members shall be $15,000 per year, or as set by the Compensation Review Board, whichever is greater. Each member shall be reimbursed for actual expenses incurred in the performance of his duties.

(Source: P.A. 83-1177.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1A-6.1.

§ 10 ILCS 5/1A-7. [Meetings; quorum; proxy vote]

Sec. 1A-7. The State Board of Elections shall meet at such time or times as the chairman or any 4 members shall direct, but at least once per month. Five members of the Board are necessary to constitute a quorum and 5 votes are necessary for any action of the Board to become effective, including the appointment of the executive director, the employment of technical consultants and the employment of other persons.

If a quorum is present at a meeting of the Board, one of the members present may vote for the absent member pursuant to a written proxy signed by the absent member. A member voting by proxy who is not in attendance may not be counted towards the presence of a quorum.

(Source: P.A. 80-1178.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1A-7.

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CASE NOTES

Analysis

Deadlock
Five Votes
Vote

Deadlock

Illinois State Board of Elections is entitled to deadlock on issues where it cannot obtain the five votes necessary to take any action. The Board's deadlock is not required to be broken in favor of proceeding on a complaint. Ill. Campaign for Political Reform v. Ill. State Bd. of Elections, 388 Ill. App. 3d 517, 328 Ill. Dec. 486, 904 N.E.2d 996, 2009 Ill. App. LEXIS 93 (1 Dist. 2009).

In dismissing the complaint of petitioners, a political organization and an individual, under 10 ILCS 5/9-21 and 10 ILCS 5/1A-7 based on a four-to-four deadlock, the Illinois State Board of Elections had not violated petitioners' due process rights to meaningful judicial review and protection against arbitrary government actions. Judicial review was not precluded, as 10 ILCS 5/9-22 provided for judicial review to any party filing a complaint, whether or not the Board had taken any action, and nothing in the Election Code required that the deadlock be broken. Ill. Campaign for Political Reform v. Ill. State Bd. of Elections, 382 Ill. App. 3d 51, 320 Ill. Dec. 151, 886 N.E.2d 1220, 2008 Ill. App. LEXIS 269 (1 Dist. 2008).

Decision by the Illinois State Board of Elections must contain findings from the evidence to permit judicial review. Accordingly, when after a motion was made to find that a complaint was filed on justifiable grounds and to order a public hearing, the Board dismissed the complaint under 10 ILCS 5/9-21 and 10 ILCS 5/1A-7 because of a four-to-four deadlock, remand was required for a statement of findings by the four members who had voted against the motion. Ill. Campaign for Political Reform v. Ill. State Bd. of Elections, 382 Ill. App. 3d 51, 320 Ill. Dec. 151, 886 N.E.2d 1220, 2008 Ill. App. LEXIS 269 (1 Dist. 2008).

Five Votes

Pursuant to 10 ILCS 5/1A-2, the Illinois State Board of Elections consists of eight members; four members must be affiliated with the Governor's political party and four must be affiliated with the political party whose nominee for Governor in the most recent general election received the second highest number of votes. Pursuant to 10 ILCS 5/1A-7, five votes are required for an action of the Board to become effective. Cook County Republican Party v. Ill. State Bd. of Elections, 232 Ill. 2d 231, 327 Ill. Dec. 531, 902 N.E.2d 652, 2009 Ill. LEXIS 174 (2009).

Even if the county political party chairman's complaints alleged justifiable grounds for believing that the Election Code had been violated, the state election board was authorized to dismiss those complaints. The board's belief that a public hearing should be held on the complaints did not mean the board's action was effective because the board's tie vote as to those complaints meant that the complaints had not received the majority vote necessary to warrant a public hearing on the merits. Cook County Republican Party v. State Bd. of Elections, 378 Ill. App. 3d 752, 317 Ill. Dec. 519, 882 N.E.2d 93, 2007 Ill. App. LEXIS 1295 (1 Dist. 2007).

A five-vote majority of the Board of Elections is not required to dismiss a complaint. People v. West, 294 Ill. App. 3d 939, 229 Ill. Dec. 241, 691 N.E.2d 177 (5 Dist. 1998), appeal denied, 179 Ill. 2d 614, 235 Ill. Dec. 575, 705 N.E.2d 448 (1998).

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Vote

Fine or civil penalty under Article 9 of the Illinois Election Code must be approved by at least a majority of the Illinois State Board of Elections itself to become a final judgment of the Board; if a Board employee issues an assessment notice and the subject of the notice pays of its own accord the fine described therein, then the Board need not reduce the fine to a judgment and the fine is valid without Board approval, but if the subject of the notice does not pay the fine voluntarily and the Board wants to collect the fine, or the Board wants to reduce the civil penalty to a judgment for some other reason, then the Board must vote by at least a majority to impose the fine. Citizens to Elect Collins v. Ill. State Bd. of Elections, 366 Ill. App. 3d 993, 304 Ill. Dec. 521, 853 N.E.2d 53, 2006 Ill. App. LEXIS 586 (1 Dist. 2006).

§ 10 ILCS 5/1A-8. [Powers and Duties]

Sec. 1A-8. The State Board of Elections shall exercise the following powers and perform the following duties in addition to any powers or duties otherwise provided for by law:

(1) Assume all duties and responsibilities of the State Electoral Board and the Secretary of State as heretofore provided in this Act;

(2) Disseminate information to and consult with election authorities concerning the conduct of elections and registration in accordance with the laws of this State and the laws of the United States;

(3) Furnish to each election authority prior to each primary and general election and any other election it deems necessary, a manual of uniform instructions consistent with the provisions of this Act which shall be used by election authorities in the preparation of the official manual of instruction to be used by the judges of election in any such election. In preparing such manual, the State Board shall consult with representatives of the election authorities throughout the State. The State Board may provide separate portions of the uniform instructions applicable to different election jurisdictions which administer elections under different options provided by law. The State Board may by regulation require particular portions of the uniform instructions to be included in any official manual of instructions published by election authorities. Any manual of instructions published by any election authority shall be identical with the manual of uniform instructions issued by the Board, but may be adapted by the election authority to accommodate special or unusual local election problems, provided that all manuals published by election authorities must be consistent with the provisions of this Act in all respects and must receive the approval of the State Board of Elections prior to publication; provided further that if the State Board does not approve or disapprove of a proposed manual within 60 days of its submission, the manual shall be deemed approved.

(4) Prescribe and require the use of such uniform forms, notices, and other supplies not inconsistent with the provisions of this Act as it shall deem advisable which shall be used by election authorities in the conduct of elections and registrations;

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(5) Prepare and certify the form of ballot for any proposed amendment to the Constitution of the State of Illinois, or any referendum to be submitted to the electors throughout the State or, when required to do so by law, to the voters of any area or unit of local government of the State;

(6) Require such statistical reports regarding the conduct of elections and registration from election authorities as may be deemed necessary;

(7) Review and inspect procedures and records relating to conduct of elections and registration as may be deemed necessary, and to report violations of election laws to the appropriate State's Attorney or the Attorney General;

(8) Recommend to the General Assembly legislation to improve the administration of elections and registration;

(9) Adopt, amend or rescind rules and regulations in the performance of its duties provided that all such rules and regulations must be consistent with the provisions of this Article 1A or issued pursuant to authority otherwise provided by law;

(10) Determine the validity and sufficiency of petitions filed under Article XIV, Section 3, of the Constitution of the State of Illinois of 1970; [Ill. Const. (1970) Art. XIV, § 3].

(11) Maintain in its principal office a research library that includes, but is not limited to, abstracts of votes by precinct for general primary elections and general elections, current precinct maps and current precinct poll lists from all election jurisdictions within the State. The research library shall be open to the public during regular business hours. Such abstracts, maps and lists shall be preserved as permanent records and shall be available for examination and copying at a reasonable cost;

(12) Supervise the administration of the registration and election laws throughout the State;

(13) Obtain from the Department of Central Management Services, under Section 405-250 of the Department of Central Management Services Law (20 ILCS 405/405-250), such use of electronic data processing equipment as may be required to perform the duties of the State Board of Elections and to provide election-related information to candidates, public and party officials, interested civic organizations and the general public in a timely and efficient manner; and

(14) To take such action as may be necessary or required to give effect to directions of the national committee or State central committee of an established political party under Sections 7-8, 7-11 and 7-14.1 [10 ILCS 5/7-8, 10 ILCS 5/7-11, and 10 ILCS 5/7-14.1] or such other provisions as may be applicable pertaining to the selection of delegates and alternate delegates to an established political party's national nominating conventions or, notwithstanding any candidate certification schedule contained within the Election Code [10 ILCS 5/1-1 et seq.], the certification of the Presidential and Vice Presidential candidate selected by the established political party's national nominating convention.

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The Board may by regulation delegate any of its duties or functions under this Article, except that final determinations and orders under this Article shall be issued only by the Board.

The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report with the Speaker, the Minority Leader and the Clerk of the House of Representatives and the President, the Minority Leader and the Secretary of the Senate and the Legislative Research Unit, as required by Section 3.1 of "An Act to revise the law in relation to the General Assembly" [25 ILCS 5/3.1], approved February 25, 1874, as amended, and filing such additional copies with the State Government Report Distribution Center for the General Assembly as is required under paragraph (t) of Section 7 of the State Library Act [15 ILCS 320/7].

(Source: P.A. 86-1089; 91-239, § 5-115; 93-686, § 5; 95-6, § 5; 95-699, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1A-8.

Section 97 of P.A. 95-699 contains a severability provision.

Effect of Amendments. The 1999 amendment by P.A. 91-239, effective January 1, 2000, substituted "Section 405-250 of the Department of Central Management Services Law (20 ILCS 405/405-250)" for "Section 35.7a of the Civil Administrative Code of Illinois" in subdivision (13).

The 2004 amendment by P.A. 93-686, effective July 8, 2004, in the first paragraph of subsection (14) inserted "national committee or" and inserted the language beginning "or, notwithstanding" to the end of the paragraph.

The 2007 amendment by P.A. 95-6, effective June 20, 2007, in (14): added "political" before "party's", and deleted "in 2004" from the end.

The 2007 amendment by P.A. 95-699, effective November 9, 2007, inserted "or the Attorney General" in (7).

CASE NOTES

Authority

Bar association, as well as other plaintiffs seeking a declaratory judgment regarding a ballot in an upcoming election, were not entitled to a determination that the State Board of Elections lacked the authority to certify a provision on the ballot regarding the calling of a state constitutional convention. Pursuant to 10 ILCS 5/1A-8(5), the State Board of Elections had the authority to prepare and certify the form of ballot for any referendum to be submitted to electors throughout the State. Chicago Bar Ass'n v. White, 386 Ill. App. 3d 955, 325 Ill. Dec. 822, 898 N.E.2d 1101, 2008 Ill. App. LEXIS 1050 (1 Dist. 2008).

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State board of elections had supervision over the administration of election laws and, thus, it could dismiss without a public hearing the 10 complaints filed by the county political party chairman. Those complaints either did not contain justifiable grounds for believing that the politicians violated the Election Code or the complaints did not receive the state election board's majority vote as required by 10 ILCS 5/9-21. Cook County Republican Party v. State Bd. of Elections, 378 Ill. App. 3d 752, 317 Ill. Dec. 519, 882 N.E.2d 93, 2007 Ill. App. LEXIS 1295 (1 Dist. 2007).

OPINIONS OF ATTORNEY GENERAL

Advisory Opinions

The State Board of Elections may not issue "advisory opinions" or other interpretations of the provisions of the Election Code [10 ILCS 5/1-1 et seq.]. 1987 Op. Atty. Gen. (87-004).

LEGAL PERIODICALS

For article, "The Illinois State Board of Elections: A History and Evaluation of the Formative Years," see 11 J. Marshall J. Prac. & Proc. 321 (1978).

For article, "The Constitutional Initiative and the Structure and Procedures of the General Assembly," see 11 J. Marshall J. Prac. & Proc. 387 (1978).

§ 10 ILCS 5/1A-9. [Executive director; consultants]

Sec. 1A-9. The State Board of Elections shall appoint an executive director and an assistant executive director. The annual compensation of the executive director and assistant executive director shall be determined by the Board.

The executive director and assistant executive director may be removed from office at any time by a vote of at least 5 members of the Board. Upon any such removal a vacancy is created which shall be filled as provided for the initial appointments.

The Board, upon the affirmative vote of a majority of its members, may from time to time contract with technical consultants to assist it in the performance of its duties. Such technical consultants shall be compensated only under contracts which specify the duties to be performed and the compensation therefor. Except as otherwise provided in this Section, contracts with technical consultants, other than hearing officers and attorneys representing the Board in litigation, shall terminate no more than 60 days after the commencement of the specified duties and may be extended once for a period of no more than 30 days upon the affirmative vote of a majority of the Board. The time limitations imposed by this Section on contracts with technical consultants shall not apply to a contract with a technical consultant for the provision of electronic data processing services in connection with the Board's performance of the duties assigned to it pursuant

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to paragraph (11) of Section 1A-8 [10 ILCS 5/1A-8] or in connection with the Board's performance of the duties assigned to it pursuant to Sections 4-8, 5-7 and 6-35 [10 ILCS 5/4-8, 10 ILCS 5/5-7 and 10 ILCS 5/6-35] concerning the furnishing of electronic data or compilations containing voter registration information to state political committees registered pursuant to the Illinois Campaign Finance Act [10 ILCS 5/9-1 et seq.] or the Federal Election Campaign Act [2 U.S.C. § 431 et seq.]. No technical consultant, other than a hearing officer or an attorney engaged to represent the Board in litigation, may be compensated under more than one contract in any fiscal year.

(Source: P.A. 84-1026; 93-1091, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1A-9.

Effect of Amendments. The 2005 amendment by P.A. 93-1091, effective March 29, 2005, deleted "Subject to the provisions of the 'Personnel Code'" from the beginning of the second sentence in the first paragraph.

§ 10 ILCS 5/1A-10. [Public record]

Sec. 1A-10. The State Board of Elections shall keep a full and true public record of all of its proceedings and of all monies received and expended. The Board shall file and preserve in its principal office all orders and records pertaining to its duties. The executive director shall exercise general supervision over the operation of the business of the Board and its equipment, facilities, employees and consultants, in accordance with the rules and regulations of the Board and as otherwise directed by the Board. The assistant executive director shall administer the operations and staff of the permanent branch office of the Board.

(Source: P.A. 83-941.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1A-10.

§ 10 ILCS 5/1A-11. [Principal office; hours]

Sec. 1A-11. The principal office of the State Board of Elections shall be maintained in Springfield and a permanent branch office shall be maintained in Chicago. The

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permanent offices of the Board shall be kept open during the ordinary business hours of State offices. However, on the day of any election, or at any other time, the offices of the Board may be kept open such additional time as the Board shall deem necessary to carry out its duties.

(Source: P.A. 78-918.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1A-11.

§ 10 ILCS 5/1A-12. [Additional personnel]

Sec. 1A-12. The State Board of Elections may employ, promote or discharge such additional persons as are necessary for the proper performance of its duties under this Code, including investigators, examiners and hearing officers. However, persons employed by the State Board of Elections prior to January 1, 1978 and previously certified under a merit plan adopted by the Board shall not be subject to any probationary period nor required to qualify by examination under "The Personnel Code" [20 ILCS 415/1 et seq.] to continue in their positions. No employee or consultant may appear before the Board in any representative capacity within 6 months after termination of his employment or contractual relationship with the Board.

(Source: P.A. 80-1437; 93-1091, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1A-12.

Effect of Amendments. The 2005 amendment by P.A. 93-1091, effective March 29, 2005, deleted "Subject to the provisions of the 'Personnel Code', approved July 18, 1955, as heretofore or hereafter amended," from the beginning of the first sentence.

§ 10 ILCS 5/1A-13. [Political activity]

Sec. 1A-13. No employee of the State Board of Elections including its executive director and assistant executive director shall engage in any partisan political activity whatsoever, except to vote at elections, nor shall such person contribute, either financially or in services or goods or any other way, to any political party, candidate or organization engaged in political activity. No employee of the Board shall become a candidate for

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nomination for, or election to, or accept appointment to any public office. Whoever violates any provision of this Section shall be deemed to have vacated his position and shall be discharged. No such person shall be thereafter rehired unless the State Civil Service Commission, upon appeal, finds that this Section has not been violated by such person.

(Source: P.A. 83-941.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1A-13.

§ 10 ILCS 5/1A-14. [Other officer or employment]

Sec. 1A-14. No member of the State Board of Elections may become a candidate for nomination for, or election to, or accept appointment to or hold any other remunerative public office or public employment or any office in a political party. Violation of any prohibition in this Section shall disqualify a member of the Board and a vacancy is thereby created. A vacancy also exists upon the occurrence of any of the events enumerated in Section 25-2 of this Act [10 ILCS 5/25-2] as in the case of an elective office.

(Source: P.A. 80-1178.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1A-14.

OPINIONS OF ATTORNEY GENERAL

National Party Delegate

Because a delegate to a party's national nominating convention holds an office in the party, this section prohibits a member of the State Board of Elections from serving as delegate to the party's national nominating convention. 1978 Op. Atty. Gen. 163.

§ 10 ILCS 5/1A-15. [Provision of information]

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Sec. 1A-15. On the request of the Department of Healthcare and Family Services, the State Board of Elections shall provide the Department with tapes, discs, other electronic data or compilations thereof which only provide the name, address and, when available, the Social Security number of registered voters for the purpose of tracing absent parents and the collection of child support. Such information shall be provided at reasonable cost, which shall include the cost of duplication plus 15% for administration. The confidentiality of all information contained on such tapes, discs and other electronic data or combination thereof shall be protected as provided in Section 11-9 of "The Illinois Public Aid Code" [305 ILCS 5/11-9].

(Source: P.A. 85-114; 95-331, § 60.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 1A-15.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, substituted "Department of Healthcare and Family Services" for "Illinois Department of Public Aid".

OPINIONS OF ATTORNEY GENERAL

Disclosure of Voter Registration Database

This section does not specifically prohibit the disclosure of the electronic voter registration records to the public. 2002 Op. Atty. Gen. (02-009).

§ 10 ILCS 5/1A-16. Voter registration information; internet posting; processing of voter registration forms; content of such forms

Sec. 1A-16. Voter registration information; internet posting; processing of voter registration forms; content of such forms. Notwithstanding any law to the contrary, the following provisions shall apply to voter registration under this Code.

(a) Voter registration information; Internet posting of voter registration form. Within 90 days after the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-574], the State Board of Elections shall post on its World Wide Web site the following information:

(1) A comprehensive list of the names, addresses, phone numbers, and websites, if applicable, of all county clerks and boards of election commissioners in Illinois.

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(2) A schedule of upcoming elections and the deadline for voter registration.

(3) A downloadable, printable voter registration form, in at least English and in Spanish versions, that a person may complete and mail or submit to the State Board of Elections or the appropriate county clerk or board of election commissioners.

Any forms described under paragraph (3) must state the following:

If you do not have a driver's license or social security number, and this form is submitted by mail, and you have never registered to vote in the jurisdiction you are now registering in, then you must send, with this application, either (i) a copy of a current and valid photo identification, or (ii) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. If you do not provide the information required above, then you will be required to provide election officials with either (i) or (ii) described above the first time you vote at a voting place or by absentee ballot.

(b) Acceptance of registration forms by the State Board of Elections and county clerks and board of election commissioners. The State Board of Elections, county clerks, and board of election commissioners shall accept all completed voter registration forms described in subsection (a)(3) of this Section and Sections 1A-17 and 1A-30 [10 ILCS 5/1A-17 and 10 ILCS 5/1A-30 [repealed__ that are:

(1) postmarked on or before the day that voter registration is closed under the Election Code [10 ILCS 5/1-1 et seq.];

(2) not postmarked, but arrives no later than 5 days after the close of registration;

(3) submitted in person by a person using the form on or before the day that voter registration is closed under the Election Code; or

(4) submitted in person by a person who submits one or more forms on behalf of one or more persons who used the form on or before the day that voter registration is closed under the Election Code.

Upon the receipt of a registration form, the State Board of Elections shall mark the date on which the form was received and send the form via first class mail to the appropriate county clerk or board of election commissioners, as the case may be, within 2 business days based upon the home address of the person submitting the registration form. The county clerk and board of election commissioners shall accept and process any form received from the State Board of Elections.

(c) Processing of registration forms by county clerks and boards of election commissioners. The county clerk or board of election commissioners shall promulgate procedures for processing the voter registration form.

(d) Contents of the voter registration form. The State Board shall create a voter registration form, which must contain the following content:

(1) Instructions for completing the form.

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(2) A summary of the qualifications to register to vote in Illinois.

(3) Instructions for mailing in or submitting the form in person.

(4) The phone number for the State Board of Elections should a person submitting the form have questions.

(5) A box for the person to check that explains one of 3 reasons for submitting the form:

(a) new registration;

(b) change of address; or

(c) change of name.

(6) a box for the person to check yes or no that asks, "Are you a citizen of the United States?", a box for the person to check yes or no that asks, "Will you be 18 years of age on or before election day?", and a statement of "If you checked 'no' in response to either of these questions, then do not complete this form.".

(7) A space for the person to fill in his or her home telephone number.

(8) Spaces for the person to fill in his or her first, middle, and last names, street address (principal place of residence), county, city, state, and zip code.

(9) Spaces for the person to fill in his or her mailing address, city, state, and zip code if different from his or her principal place of residence.

(10) A space for the person to fill in his or her Illinois driver's license number if the person has a driver's license.

(11) A space for a person without a driver's license to fill in the last four digits of his or her social security number if the person has a social security number.

(12) A space for a person without an Illinois driver's license to fill in his or her identification number from his or her State Identification card issued by the Secretary of State.

(13) A space for the person to fill the name appearing on his or her last voter registration, the street address of his or her last registration, including the city, county, state, and zip code.

(14) A space where the person swears or affirms the following under penalty of perjury with his or her signature:

(a) "I am a citizen of the United States.";

(b) "I will be at least 18 years old on or before the next election.";

(c) "I will have lived in the State of Illinois and in my election precinct at least 30 days as of the date of the next election."; and

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"The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, then I may be fined, imprisoned, or if I am not a U.S. citizen, deported from or refused entry into the United States."

(d-5) Compliance with federal law; rulemaking authority. The voter registration form described in this Section shall be consistent with the form prescribed by the Federal Election Commission under the National Voter Registration Act of 1993 [42 U.S.C.S. 1973gg et seq.], P.L. 103-31, as amended from time to time, and the Help America Vote Act of 2002 [42 U.S.C.S. 15301 et seq.], P.L. 107-252, in all relevant respects. The State Board of Elections shall periodically update the form based on changes to federal or State law. The State Board of Elections shall promulgate any rules necessary for the implementation of this Section; provided that the rules comport with the letter and spirit of the National Voter Registration Act of 1993 and Help America Vote Act of 2002 and maximize the opportunity for a person to register to vote.

(e) Forms available in paper form. The State Board of Elections shall make the voter registration form available in regular paper stock and form in sufficient quantities for the general public. The State Board of Elections may provide the voter registration form to the Secretary of State, county clerks, boards of election commissioners, designated agencies of the State of Illinois, and any other person or entity designated to have these forms by the Election Code in regular paper stock and form or some other format deemed suitable by the Board. Each county clerk or board of election commissioners has the authority to design and print its own voter registration form so long as the form complies with the requirements of this Section. The State Board of Elections, county clerks, boards of election commissioners, or other designated agencies of the State of Illinois required to have these forms under the Election Code shall provide a member of the public with any reasonable number of forms that he or she may request. Nothing in this Section shall permit the State Board of Elections, county clerk, board of election commissioners, or other appropriate election official who may accept a voter registration form to refuse to accept a voter registration form because the form is printed on photocopier or regular paper stock and form.

(f) Internet voter registration study. The State Board of Elections shall investigate the feasibility of offering voter registration on its website and consider voter registration methods of other states in an effort to maximize the opportunity for all Illinois citizens to register to vote. The State Board of Elections shall assemble its findings in a report and submit it to the General Assembly no later than January 1, 2006. The report shall contain legislative recommendations to the General Assembly on improving voter registration in Illinois.

(Source: P.A. 93-574, § 5; 94-492, § 5; 94-645, § 5; 95-331, § 60.)

Note.

Section 97 of P.A. 93-574 contains a severability provision.

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This section as enacted by P.A. 93-574, contains multiple versions of subsection (d).

Section 10 ILCS 5/1A-30 was repealed by 95-331, § 62, effective August 21, 2007.

Effective Date. Section 99 of P.A. 93-574 made this section effective upon becoming law. The Act was approved August 21, 2003.

Effect of Amendments. The 2005 amendment by P.A. 94-492, effective January 1, 2006, added "of this Section and Section 1A-30" in the first paragraph of (b), and made a grammatical correction.

The 2005 amendment by P.A. 94-645, effective August 22, 2005, added "of this Section and Section 1A-17" in the first paragraph of (b); and made a grammatical correction.

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, redesignated former duplicate subsection (d) as (d-5); and made a stylistic change.

§ 10 ILCS 5/1A-17. Voter registration outreach

Sec. 1A-17. Voter registration outreach. (a) The Secretary of State, the Department of Human Services, the Department of Children and Family Services, the Department of Public Aid, the Department of Employment Security, and each public institution of higher learning in Illinois must make available on its World Wide Web site a downloadable, printable voter registration form that complies with the requirements in subsection (d) of Section 1A-16 [10 ILCS 5/1A-16] for the State Board of Elections' voter registration form.

(b) Each public institution of higher learning in Illinois must include voter registration information and a voter registration form supplied by the State Board of Elections under subsection (e) of Section 1A-16 in any mailing of student registration materials to an address located in Illinois. Each public institution of higher learning must provide voter registration information and a voter registration form supplied by the State Board of Elections under subsection (e) of Section 1A-16 to each person with whom the institution conducts in-person student registration.

(c) As used in this Section, a public institution of higher learning means a public university, college, or community college in Illinois.

(Source: P.A. 94-645, § 5; 95-331, § 60.)

Effective Date. Section 999 of P.A. 94-645 made this section effective upon becoming law. The Act was approved August 22, 2005.

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Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, combined earlier multiple amendments to the section.

§ 10 ILCS 5/1A-18. Voter registration applications; General Assembly district offices

Sec. 1A-18. Voter registration applications; General Assembly district offices. Each member of the General Assembly, and his or her State employees (as defined in Section 1-5 of the State Officials and Employees Ethics Act [5 ILCS 430/1-5]) authorized by the member, may make available voter registration forms supplied by the State Board of Elections under subsection (e) of Section 1A-16 [10 ILCS 5/1A-16] to the public and may undertake that and other voter registration activities at the member's district office, during regular business hours or otherwise, in a manner determined by the member.

(Source: P.A. 94-645, § 5.)

Effective Date. Section 999 of P.A. 94-645 made this section effective upon becoming law. The Act was approved August 22, 2005.

§ 10 ILCS 5/1A-19. Effect of extension of canvassing period on terms of public offices and official acts

Sec. 1A-19. Effect of extension of canvassing period on terms of public offices and official acts. (a) Notwithstanding any law to the contrary, if the proclamation of election results for an elected office has not been issued by the date of the commencement of the term of that elected office because of the extension of canvassing periods under this amendatory Act of the 93rd General Assembly [P.A. 93-847], then the term of the elected office shall commence on a date 14 days after the proclamation of election results is issued for that elected office.

(b) If subsection (a) applies to the commencement date of an elected official's term, and if the elected official is authorized or required by law to perform an official act by a date occurring before the commencement of his or her term of office, including but not limited to holding an organizational meeting of the public body to which the public official is elected, then notwithstanding any law to the contrary the date by which the act shall be performed shall be a date 14 days after the date otherwise established by law.

(c) Notwithstanding any other provision of this Section or of this Code to the contrary, the terms of office for Supreme, Appellate, and Circuit Judges commence on the first Monday in December following their election or retention. Judicial election results must be proclaimed before that date.

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(Source: P.A. 93-847, § 5.)

Note.

Section 95 of P.A. 93-847 contains a severability provision.

Effective Date. Section 99 of P.A. 93-847 made this section effective upon becoming law. The Act was approved July 30, 2004.

§ 10 ILCS 5/1A-20. Help Illinois Vote Fund

Sec. 1A-20. Help Illinois Vote Fund. The Help Illinois Vote Fund is created as a special fund in the State treasury. All federal funds received by the State for the implementation of the federal Help America Vote Act of 2002 [42 U.S.C.S. 15301 et seq.] shall be deposited into the Help Illinois Vote Fund. Moneys from any other source may be deposited into the Help Illinois Vote Fund. The Help Illinois Vote Fund shall be appropriated solely to the State Board of Elections for use only in the performance of activities and programs authorized or mandated by or in accordance with the federal Help America Vote Act of 2002.

(Source: P.A. 93-574, § 5.)

Note.

Section 97 of P.A. 93-574 contains a severability provision.

Effective Date. Section 99 of P.A. 93-574 made this section effective upon becoming law. The Act was approved August 21, 2003.

§ 10 ILCS 5/1A-25. Centralized statewide voter registration list

Sec. 1A-25. Centralized statewide voter registration list. The centralized statewide voter registration list required by Title III, Subtitle A, Section 303 of the Help America Vote Act of 2002 [42 USCS 15301 et seq.] shall be created and maintained by the State Board of Elections as provided in this Section.

(1) The centralized statewide voter registration list shall be compiled from the voter registration data bases of each election authority in this State.

(2) All new voter registration forms and applications to register to vote, including those reviewed by the Secretary of State at a driver services facility, shall be transmitted only to

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the appropriate election authority as required by Articles 4, 5, and 6 of this Code [10 ILCS 5/4-1 et seq., 10 ILCS 5/5-1 et seq., and 10 ILCS 5/6-1 et seq.] and not to the State Board of Elections. The election authority shall process and verify each voter registration form and electronically enter verified registrations on an expedited basis onto the statewide voter registration list. All original registration cards shall remain permanently in the office of the election authority as required by this Code.

(3) The centralized statewide voter registration list shall:

(i) Be designed to allow election authorities to utilize the registration data on the statewide voter registration list pertinent to voters registered in their election jurisdiction on locally maintained software programs that are unique to each jurisdiction.

(ii) Allow each election authority to perform essential election management functions, including but not limited to production of voter lists, processing of absentee voters, production of individual, pre-printed applications to vote, administration of election judges, and polling place administration, but shall not prevent any election authority from using information from that election authority's own systems.

(4) The registration information maintained by each election authority shall be synchronized with that authority's information on the statewide list at least once every 24 hours.

To protect the privacy and confidentiality of voter registration information, the disclosure of any portion of the centralized statewide voter registration list to any person or entity other than to a State or local political committee and other than to a governmental entity for a governmental purpose is specifically prohibited except as follows: subject to security measures adopted by the State Board of Elections which, at a minimum, shall include the keeping of a catalog or database, available for public view, including the name, address, and telephone number of the person viewing the list as well as the time of that viewing, any person may view the list on a computer screen at the Springfield office of the State Board of Elections, during normal business hours other than during the 27 days before an election, but the person viewing the list under this exception may not print, duplicate, transmit, or alter the list.

(Source: P.A. 93-1071, § 5; 94-136, § 5; 94-645, § 5; 95-331, § 60.)

Effective Date. Section 99 of P.A. 93-1069, purported to make this section effective upon becoming law; however the section is effective June 1, 2005, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/2.

Effect of Amendments. The 2005 amendment by P.A. 94-136, effective July 7, 2005, in the last paragraph added the language beginning "except as follows" through the end of the paragraph.

The 2005 amendment by P.A. 94-645, effective August 22, 2005, in (2), in the first sentence added the language beginning "including those" through "facility", added "only", and added the language "as required by Articles" through the end of the sentence, and in the last sentence

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substituted "this Code" for "Sections 4-20, 5-28, and 6-65"; and in (4) deleted "at all times" after "authority shall", and substituted "at least once every 24 hours" for "on a constant, real-time basis".

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, combined earlier multiple amendments to the section.

§ 10 ILCS 5/1A-30: Repealed by P.A. 95-331, § 62, effective August 21, 2007.

§ 10 ILCS 5/1A-35. Early and grace period voting education

Sec. 1A-35. Early and grace period voting education. Subject to appropriation, the State Board of Elections must develop and implement an educational program to inform the public about early voting and grace period voting. The State Board shall conduct the program beginning August 1, 2006, and until the 2006 general election.

(Source: P.A. 94-1000, § 5.)

Effective Date. Section 99 of P.A. 94-1000 made the section effective upon becoming law. The Act was approved July 3, 2006.

§ 10 ILCS 5/1A-40: Repealed internally by P.A. 95-441, § 5, effective January 1, 2009.

Article 2A.

Time of Holding Elections

§ 10 ILCS 5/2A-1.1. All Elections - Consolidated Schedule

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Sec. 2A-1.1. All Elections - Consolidated Schedule. (a) In even-numbered years, the general election shall be held on the first Tuesday after the first Monday of November; and an election to be known as the general primary election shall be held on the third Tuesday in March;

(b) In odd-numbered years, an election to be known as the consolidated election shall be held on the first Tuesday in April except as provided in Section 2A-1.1a of this Act [10 ILCS 5/2A-1.1a]; and an election to be known as the consolidated primary election shall be held on the last Tuesday in February.

(Source: P.A. 82-1014; 90-358, § 5; 95-6, § 5; 96-886, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 2A-1.1.

Cross References.

As to the initial election of officers in consolidated municipalities, see 65 ILCS 5/7-7-11.

As to election of township officers, see 60 ILCS 1/30-5.

Effect of Amendments. The 1997 amendment by P.A. 90-358, effective January 1, 1998, in subsection (b) substituted a period for a semicolon; and deleted subsection (c) which read "In odd numbered years, an election to be known as the nonpartisan election shall be held on the first Tuesday after the first Monday in November".

The 2007 amendment by P.A. 95-6, effective June 20, 2007, in (a) substituted "first Tuesday in February" for "third Tuesday in March".

The 2010 amendment by P.A. 96-887, effective January 1, 2011, substituted "the third Tuesday in March" for "the first Tuesday in February" in (a).

CASE NOTES

Analysis

Applicability
- Retroactive
Election Dates
- Limits
- Proper Certification

Applicability

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- Retroactive

Even though petitions for an election were circulated before the effective date of this Code, the Code applied to the election, and such application was not unconstitutionally retroactive. Chicago Ridge Park Dist. v. Oak Lawn Park Dist., 112 Ill. App. 3d 364, 68 Ill. Dec. 46, 445 N.E.2d 494 (1 Dist. 1983).

Election Dates

- Limits

This section limits the dates and the number of elections which can be held in a given year: a maximum of three elections in odd-numbered years, and a maximum of two elections in even-numbered years. Korte-Reinheimer v. City Council, 94 Ill. App. 3d 219, 49 Ill. Dec. 763, 418 N.E.2d 783 (1 Dist. 1981).

- Proper Certification

Where language in a petition called for an election on a park district's disconnection/annexation proposal on "November 22, 1980, or such other time as the court may deem proper," and where opposition to the proposal extended the court certification proceedings beyond November 22, the court could properly order the election to be held on February 24, 1981, the first election date provided by subsection (b) of this section after the court's certification decision. Chicago Ridge Park Dist. v. Oak Lawn Park Dist., 112 Ill. App. 3d 364, 68 Ill. Dec. 46, 445 N.E.2d 494 (1 Dist. 1983).

§ 10 ILCS 5/2A-1.1a. [Conflict with Passover]

Sec. 2A-1.1a. Whenever the date designated in paragraph (b) of Section 2A-1.1 [10 ILCS 5/2A-1.1] for the consolidated election conflicts with the celebration of Passover, that election shall be postponed to the first Tuesday following the last day of Passover.

(Source: P.A. 82-1014.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 2A-1.1a.

§ 10 ILCS 5/2A-1.2. Consolidated Schedule of Elections - Offices Designated

Sec. 2A-1.2. Consolidated Schedule of Elections - Offices Designated. (a) At the general election in the appropriate even-numbered years, the following offices shall be filled or shall be on the ballot as otherwise required by this Code:

(1) Elector of President and Vice President of the United States;

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(2) United States Senator and United States Representative;

(3) State Executive Branch elected officers;

(4) State Senator and State Representative;

(5) County elected officers, including State's Attorney, County Board member, County Commissioners, and elected President of the County Board or County Chief Executive;

(6) Circuit Court Clerk;

(7) Regional Superintendent of Schools, except in counties or educational service regions in which that office has been abolished;

(8) Judges of the Supreme, Appellate and Circuit Courts, on the question of retention, to fill vacancies and newly created judicial offices;

(9) (Blank);

(10) Trustee of the Metropolitan Sanitary District of Chicago, and elected Trustee of other Sanitary Districts;

(11) Special District elected officers, not otherwise designated in this Section, where the statute creating or authorizing the creation of the district requires an annual election and permits or requires election of candidates of political parties.

(b) At the general primary election:

(1) in each even-numbered year candidates of political parties shall be nominated for those offices to be filled at the general election in that year, except where pursuant to law nomination of candidates of political parties is made by caucus.

(2) in the appropriate even-numbered years the political party offices of State central committeeman, township committeeman, ward committeeman, and precinct committeeman shall be filled and delegates and alternate delegates to the National nominating conventions shall be elected as may be required pursuant to this Code. In the even-numbered years in which a Presidential election is to be held, candidates in the Presidential preference primary shall also be on the ballot.

(3) in each even-numbered year, where the municipality has provided for annual elections to elect municipal officers pursuant to Section 6(f) or Section 7 of Article VII of the Constitution,[Ill. Const. (1970) Art. VII, § 6 or Ill. Const. (1970) Art. VII, § 7]. pursuant to the Illinois Municipal Code [65 ILCS 5/1-1-1 et seq.] or pursuant to the municipal charter, the offices of such municipal officers shall be filled at an election held on the date of the general primary election, provided that the municipal election shall be a nonpartisan election where required by the Illinois Municipal Code. For partisan municipal elections in even-numbered years, a primary to nominate candidates for municipal office to be elected at the general primary election shall be held on the Tuesday 6 weeks preceding that election.

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(4) in each school district which has adopted the provisions of Article 33 of the School Code [105 ILCS 5/33-1 et seq.], successors to the members of the board of education whose terms expire in the year in which the general primary is held shall be elected.

(c) At the consolidated election in the appropriate odd-numbered years, the following offices shall be filled:

(1) Municipal officers, provided that in municipalities in which candidates for alderman or other municipal office are not permitted by law to be candidates of political parties, the runoff election where required by law, or the nonpartisan election where required by law, shall be held on the date of the consolidated election; and provided further, in the case of municipal officers provided for by an ordinance providing the form of government of the municipality pursuant to Section 7 of Article VII of the Constitution, such offices shall be filled by election or by runoff election as may be provided by such ordinance;

(2) Village and incorporated town library directors;

(3) City boards of stadium commissioners;

(4) Commissioners of park districts;

(5) Trustees of public library districts;

(6) Special District elected officers, not otherwise designated in this section, where the statute creating or authorizing the creation of the district permits or requires election of candidates of political parties;

(7) Township officers, including township park commissioners, township library directors, and boards of managers of community buildings, and Multi-Township Assessors;

(8) Highway commissioners and road district clerks;

(9) Members of school boards in school districts which adopt Article 33 of the School Code.

(10) The directors and chairman of the Chain O Lakes - Fox River Waterway Management Agency;

(11) Forest preserve district commissioners elected under Section 3.5 of the Downstate Forest Preserve District Act [70 ILCS 805/3.5];

(12) Elected members of school boards, school trustees, directors of boards of school directors, trustees of county boards of school trustees (except in counties or educational service regions having a population of 2,000,000 or more inhabitants) and members of boards of school inspectors, except school boards in school districts that adopt Article 33 of the School Code;

(13) Members of Community College district boards;

(14) Trustees of Fire Protection Districts;

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(15) Commissioners of the Springfield Metropolitan Exposition and Auditorium Authority;

(16) Elected Trustees of Tuberculosis Sanitarium Districts;

(17) Elected Officers of special districts not otherwise designated in this Section for which the law governing those districts does not permit candidates of political parties.

(d) At the consolidated primary election in each odd-numbered year, candidates of political parties shall be nominated for those offices to be filled at the consolidated election in that year, except where pursuant to law nomination of candidates of political parties is made by caucus, and except those offices listed in paragraphs (12) through (17) of subsection (c).

At the consolidated primary election in the appropriate odd-numbered years, the mayor, clerk, treasurer, and aldermen shall be elected in municipalities in which candidates for mayor, clerk, treasurer, or alderman are not permitted by law to be candidates of political parties, subject to runoff elections to be held at the consolidated election as may be required by law, and municipal officers shall be nominated in a nonpartisan election in municipalities in which pursuant to law candidates for such office are not permitted to be candidates of political parties.

At the consolidated primary election in the appropriate odd-numbered years, municipal officers shall be nominated or elected, or elected subject to a runoff, as may be provided by an ordinance providing a form of government of the municipality pursuant to Section 7 of Article VII of the Constitution.

(e) (Blank).

(f) At any election established in Section 2A-1.1 [10 ILCS 5/2A-1.1], public questions may be submitted to voters pursuant to this Code and any special election otherwise required or authorized by law or by court order may be conducted pursuant to this Code.

Notwithstanding the regular dates for election of officers established in this Article, whenever a referendum is held for the establishment of a political subdivision whose officers are to be elected, the initial officers shall be elected at the election at which such referendum is held if otherwise so provided by law. In such cases, the election of the initial officers shall be subject to the referendum.

Notwithstanding the regular dates for election of officials established in this Article, any community college district which becomes effective by operation of law pursuant to Section 6-6.1 of the Public Community College Act [110 ILCS 805/6-6.1], as now or hereafter amended, shall elect the initial district board members at the next regularly scheduled election following the effective date of the new district.

(g) At any election established in Section 2A-1.1, if in any precinct there are no offices or public questions required to be on the ballot under this Code then no election shall be held in the precinct on that date.

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(h) There may be conducted a referendum in accordance with the provisions of Division 6-4 of the Counties Code [55 ILCS 5/6-4001 et seq.].

(Source: P.A. 86-469; 87-654; 87-969, § 1; 88-89, § 3-5; 88-443, § 5; 88-670, § 2-5; 89-5, § 10; 89-95, § 5; 89-626, § 2-7; 90-358, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 2A-1.2.

The Chain O Lakes-Fox River Waterway Management Agency was renamed the Fox Waterway Agency by P.A. 89-162.

Effect of Amendments. The 1992 amendment, effective August 28, 1992, inserted "(except in counties or educational service regions having a population of 2,000,000 or more inhabitants)," following "boards of school trustees" in subdivision (e)(1).

The 1993 amendment by P.A. 88-89, effective July 14, 1993, in subdivision (a)(7) substituted "in which that office has been abolished" for "having a population of 2,000,000 or more inhabitants".

The 1993 amendment by P.A. 88-443, effective August 20, 1993, added subdivision (c)(11).

The 1994 amendment by P.A. 88-670, effective December 2, 1994, combined the amendments by P.A. 88-89 and P.A. 88-443.

The 1995 amendment by P.A. 89-5, effective January 1, 1996, deleted the language in subdivision (a)(9) which read "Trustee of the University of Illinois".

The 1995 amendment by P.A. 89-95, effective January 1, 1996, in subsection (d), in the second paragraph, inserted "the mayor, clerk, treasurer, and" and inserted "mayor, clerk, treasurer, or".

The 1996 amendment by P.A. 89-626, effective August 9, 1996, combined the amendments of this section by P.A. 89-5 and P.A. 89-95.

The 1997 amendment by P.A. 90-358, effective January 1, 1998, in subdivision (c)(11) substituted a semicolon for a period; added subdivisions (c)(12) through (c)(17); in subsection (d), in the first paragraph, added at the end "and except those offices listed in paragraph (12) through (17) of subsection (c)"; deleted subsection (e) regarding the offices to be filled in nonpartisan elections; and in subsection (h) deleted from the beginning "Except at the nonpartisan election in 1981".

CASE NOTES

Analysis

Aldermanic Elections
Construction with Other Laws
Municipal Officers
Public Policy Questions

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- Submissibility
Purpose

Aldermanic Elections

A City of Chicago aldermanic election is neither a primary election nor a special election. Velazquez v. Soliz, 141 Ill. App. 3d 1024, 96 Ill. Dec. 141, 490 N.E.2d 1346 (1 Dist. 1986).

Construction with Other Laws

Because 65 ILCS 5/2-3-7 of the Municipal Code provides that the election of the municipal officers could occur at a subsequent date to the consideration of the referendum of incorporation, the requirement of simultaneous elections under subsection (f) was not applicable; because simultaneous elections were not required, the notice provision in 10 ILCS 5/38-2 of the Election Code was likewise not applicable, therefore, the incorporators' notice was correct, and the petition and referendum on incorporation were valid. In re Village of Godfrey, 243 Ill. App. 3d 915, 183 Ill. Dec. 943, 612 N.E.2d 870 (5 Dist. 1993).

Section 3-2-7 of the Municipal Code (65 ILCS 5/3-2-7) must be read with reference to this Code, which establishes a consolidated schedule of elections; by eliminating the use of special elections to fill aldermanic vacancies, section 3-2-7 of the Municipal Code (65 ILCS 5/3-2-7) (now repealed), in conjunction with this section, allows suspension of representation by ballot for up to 28 months plus 129 days. Lynch v. Illinois State Bd. of Elections, 682 F.2d 93 (7th Cir. 1982).

Municipal Officers

The power of a home rule municipality to choose the manner of selection of its officers includes the ability to decide by referendum whether the election of officers should be on a partisan or nonpartisan basis. Boytor v. City of Aurora, 81 Ill. 2d 308, 43 Ill. Dec. 1, 410 N.E.2d 1 (1980).

Public Policy Questions

- Submissibility

Under subsection (f) of this section, public policy questions are specifically made submissible to voters at any election designated by the consolidated schedule of elections. Korte-Reinheimer v. City Council, 94 Ill. App. 3d 219, 49 Ill. Dec. 763, 418 N.E.2d 783 (1 Dist. 1981).

Purpose

The consolidated schedule of elections, through the elimination of the special election method of filling vacancies and providing for all elections to be held on one of five regular dates over a two year cycle, was enacted to lessen voter confusion, increase voter participation, and provide uniformity in elections administration. City of Springfield v. Board of Election Comm'rs, 105 Ill. 2d 336, 85 Ill. Dec. 508, 473 N.E.2d 1313 (1985).

OPINIONS OF ATTORNEY GENERAL

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Election Required

If there is a favorable vote for the establishment of a community consolidated school district, an election for school board members is required to be held on the next regular school election date. 1982 Op. Atty. Gen. 73.

§ 10 ILCS 5/2A-1.3. Calendar of Elections - Determination and Publication - State Board

Sec. 2A-1.3. Calendar of Elections - Determination and Publication - State Board. On December 1, 1980 and on December 1 of each even-numbered year the State Board of Elections shall have prepared and published an official State calendar of elections listing the elections to be held during that year and the following year, the election dates, and the offices to be on the ballot at each such election and any functional dates or other information relevant to the conduct of elections. The official calendar shall include all offices in the State.

The official State Calendar shall comply with the schedule of elections established in this Article 2A [10 ILCS 5/2A-1 et seq.]. The official calendar may be amended from time to time by the Board by adoption and publication of modifications or additions or by adoption and publication of a revised official calendar.

On December 1, 1981 and each odd-numbered year thereafter the Board shall have prepared and published a revised official calendar if any modifications or additions were made by separate publication after the initial adoption of the official calendar for that biennium.

(Source: P.A. 81-929.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 2A-1.3.

§ 10 ILCS 5/2A-1.4. Emergency Referenda - Petition - Approval

Sec. 2A-1.4. Emergency Referenda - Petition - Approval. Whenever any public question is to be submitted pursuant to law, whether by action of the governing body of a unit of local government or school district, by petition, or by court order, the governing body of the unit of local government or school district whose powers or duties are directly affected by the result of the vote on the public question may petition the circuit court for an order declaring such proposition to be an emergency and fixing a date other than a

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regularly scheduled election date under Section 2A-1.1 [10 ILCS 5/2A-1.1] on which a special referendum election shall be held for the submission of the public question.

The petition shall set forth the public question and the action taken which requires the submission of the question, the next regularly scheduled election under Section 2A-1.1 at which the proposition could otherwise be placed on the ballot, the estimated costs of conducting a separate special election, and the reasons why an emergency exists to justify such special election prior to the next ensuing regular election. The petition must be approved by a majority of the members, elected or appointed, of the governing body.

The court shall conduct a hearing on the petition. Any resident of the area in which the referendum is to be conducted may oppose the petition.

The court may approve the petition for an emergency referendum only upon a finding, supported by the evidence, that the referendum is necessitated by an imminent need for approval of additional authority in order to maintain the operations or facilities of the unit of government or school district and that such need is due to circumstances beyond the control of the governing body.

(Source: P.A. 80-2dSS-6.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 2A-1.4.

CASE NOTES

Analysis
Citizen Initiation
Procedure

Citizen Initiation

There is no provision in this section for initiating proceedings for an emergency referendum by private persons. Gasick v. Dunlap Pub. Library Dist., 164 Ill. App. 3d 232, 115 Ill. Dec. 489, 517 N.E.2d 1175 (3 Dist. 1987).

Procedure

Once a governing body decides to use the petitioning process, this section mandates that the petition be approved by a majority of that governing body; only then is the circuit court in a position to approve the petition. Gasick v. Dunlap Pub. Library Dist., 164 Ill. App. 3d 232, 115

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Ill. Dec. 489, 517 N.E.2d 1175 (3 Dist. 1987).

§ 10 ILCS 5/2A-48. Board of School Directors - Member - Time of Election

Sec. 2A-48. Board of School Directors - Member - Time of Election. A member of a Board of School Directors or a member of an elected Board of Education, as the case may be, shall be elected at each consolidated election to succeed each incumbent member whose term ends before the following consolidated election.

(Source: P.A. 80-936; 90-358, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 2A-48.

Effect of Amendments. The 1997 amendment by P.A. 90-358, effective January 1, 1998, substituted "consolidated" for "nonpartisan" twice.

§ 10 ILCS 5/2A-49. Board of School Inspectors - Member - Time of Election

Sec. 2A-49. Board of School Inspectors - Member - Time of Election. A member of a Board of School Inspectors shall be elected at the consolidated election which immediately precedes the expiration of the term of any incumbent school inspector, to succeed each incumbent school inspector whose term ends before the following consolidated election.

(Source: P.A. 80-936; 90-358, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 2A-49.

Effect of Amendments. The 1997 amendment by P.A. 90-358, effective January 1, 1998, substituted "consolidated" for "nonpartisan" twice.

§ 10 ILCS 5/2A-50. Regional Board of School Trustees - Trustee - Time of Election

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Sec. 2A-50. Regional Board of School Trustees - Trustee - Time of Election. Except in educational service regions having a population of 2,000,000 or more inhabitants, a trustee of a Regional Board of School Trustees shall be elected at the consolidated election to succeed each incumbent trustee whose term ends before the following consolidated election.

(Source: P.A. 80-2dSS-6; 87-969, § 1; 90-358, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 2A-50.

Effect of Amendments. The 1992 amendment by P.A. 87-969, effective August 28, 1992, added "Except in educational service regions having a population of 2,000,000 or more inhabitants," at the beginning of the section.

The 1997 amendment by P.A. 90-358, effective January 1, 1998, substituted "consolidated" for "nonpartisan" twice.

§ 10 ILCS 5/2A-51. Schools - Trustee - Time of Election

Sec. 2A-51. Schools - Trustee - Time of Election. Except in a township in which all school districts located therein have withdrawn from the jurisdiction and authority of the trustees of schools under the provisions of subsection (b) of Section 5-1 of the School Code [105 ILCS 5/5-1] and except in townships in which the office of trustee of schools has been abolished as provided in subsection (c) of Section 5-1 of the School Code a trustee of schools shall be elected in townships at the consolidated election which immediately precedes the expiration of the term of any incumbent trustee, to succeed each incumbent trustee whose term ends before the following consolidated election.

(Source: P.A. 86-1441; 87-473; 90-358, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 2A-51.

Effect of Amendments. The 1997 amendment by P.A. 90-358, effective January 1, 1998, substituted "consolidated" for "nonpartisan" twice.

§ 10 ILCS 5/2A-52. Community College District - Member - Time of Election

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Sec. 2A-52. Community College District - Member - Time of Election. A member of the Board of a Community College District shall be elected at each consolidated election to succeed each elected incumbent member of the Board whose term expires before the following consolidated election.

(Source: P.A. 80-936; 90-358, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 2A-52.

Effect of Amendments. The 1997 amendment by P.A. 90-358, effective January 1, 1998, substituted "consolidated" for "nonpartisan" twice.

§ 10 ILCS 5/2A-53: Repealed by P.A. 89-5, § 15, effective January 1, 1996.

§ 10 ILCS 5/2A-54. [Office term; transition]

Sec. 2A-54. In those cases in which the election to an office is changed by the consolidation of elections to an earlier or later month in the same year or to a different year, the term of any incumbent serving on December 1, 1980 is extended to the first Monday in the first month following the election of his successor and until the successor has qualified, and the term of the successor in office shall commence on that first Monday.

The term of office of a person elected at a nonpartisan election whose term begins before the effective date of this amendatory Act of 1997 shall expire on the date that his or her term would have expired had this amendatory Act of 1997 not been enacted. The term of office of a person elected at a consolidated election held on or after the effective date of this amendatory Act of 1997 to succeed to a term of office of a person elected at a nonpartisan election shall begin upon the termination of the predecessor's term of office. The term of office of a person elected to succeed to a term of office of a person elected at a nonpartisan election shall end after the next consolidated election at which a successor is elected and at the regularly scheduled time for the ending of terms of office as provided in the Act or Acts creating or governing that unit of local government or school district.

However, this general provision for the transition of terms of office in relation to the adoption of a uniform schedule of elections shall be subject to the specific provisions for the transition of terms of office in the several Acts creating or governing the creation of various units of local government and school districts, as amended.

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(Source: P.A. 81-1433; 90-358, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 2A-54.

Effect of Amendments. The 1997 amendment by P.A. 90-358, effective January 1, 1998, added the second paragraph.

Article 6.

Registration of Electors in Certain Cities, Villages, and Incorporated Towns

§ 10 ILCS 5/6-27. [Persons entitled to vote and register]

Sec. 6-27. Every person having resided in the State and in election precinct 30 days next preceding any election therein and who shall be a citizen of the United States of the age of 18 or more years, shall be entitled to vote at such elections described in the last preceding Section.

After the first registration provided by this Article, the vote of no person, other than an elector voting pursuant to Article 20 of this Act [10 ILCS 5/20-1 et seq.] or exempt under Section 6-67.01 or 6-67.02 of this Article [10 ILCS 5/6-67.01] from registration, shall be received in any election conducted under the provisions of this Article 6 or Articles 14 and 18 of this Act [10 ILCS 5/6-1 et seq. or 10 ILCS 5/14-1 et seq. and 10 ILCS 5/18-1 et seq.] unless such person has registered under the provisions of this Article in the precinct in which such person resides. For the purposes of this Article, the word "election" shall include primary.

No person shall be entitled to be registered in or from any precinct unless such person shall, by the date of the election next following, have resided in the State and within the precinct for 30 days, and be otherwise qualified to vote at such election. Every applicant who shall be 18 years of age on the day of the next election shall be permitted to register, if otherwise qualified.

To constitute residence under this Act, Article 3 [10 ILCS 5/3-1 et seq.] is controlling.

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(Source: P.A. 81-953.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 6-27.

Section 6-67.02 of this Article, referred to above, has been repealed.

Illinois Administrative Code.

See 26 Illinois Administrative Code, § 216.90.

CASE NOTES

Nominating Petitions

- Signature Requirements

A person who signs a nominating petition must be registered to vote at the residence address set forth on the nominating petition. Greene v. Board of Election Comm'rs, 112 Ill. App. 3d 862, 68 Ill. Dec. 484, 445 N.E.2d 1337 (1 Dist. 1983).

Article 7.

The Making of Nominations by Political Parties

§ 10 ILCS 5/7-13.1. Certification of Candidates - Consolidated primary

Sec. 7-13.1. Certification of Candidates - Consolidated primary. Not less than 68 days before the date of the consolidated primary, each local election official of each political subdivision required to nominate candidates for the respective offices by primary shall certify to each election authority whose duty it is to prepare the official ballot for the consolidated primary in such political subdivision the names of all candidates in whose behalf nomination papers have been filed in the office of such local election official and direct the election authority to place upon the official ballot for the consolidated primary election the names of such candidates in the same manner and in the same order as shown upon the certification. However, subject to appeal, the names of candidates whose

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nomination papers have been held invalid by the appropriate electoral board provided in Section 10-9 of this Code [10 ILCS 5/10-9] shall not be so certified. The certification shall be modified as necessary to comply with the requirements of any other statute or any ordinance adopted pursuant to Article VII of the Constitution [Ill. Const. (1970) Art. VII, § 1 et seq.] prescribing specific provisions for nonpartisan elections, including without limitation Articles 3 (now repealed), 4 and 5 of "The Municipal Code" [65 ILCS 5/3-1-1 et seq., 65 ILCS 5/4-1-1 et seq. and 65 ILCS 5/5-1-1 et seq.].

The names of candidates shall be listed on the certification for the respective offices in the order in which the candidates have filed their nomination papers, or as determined by lot, or as otherwise specified by statute.

In every instance where applicable, the following shall also be indicated in the certification:

(1) Where there is to be more than one candidate elected to an office from a political subdivision or district;

(2) Where a voter has the right to vote for more than one candidate for an office;

(3) The terms of the office to be on the ballot, when a vacancy is to be filled for less than a full term, or when offices of a particular subdivision to be on the ballot at the same election are to be filled for different terms;

(4) The territory in which a candidate is required by law to reside, when such residency requirement is not identical to the territory of the political subdivision from which the candidate is to be elected or nominated;

(5) Where a candidate's nominating papers or petitions have been objected to and the objection has been sustained by the electoral board established in Section 10-10 [10 ILCS 5/10-10], the words "OBJECTION SUSTAINED" shall be placed under the title of the office being sought by the candidate and the name of the aggrieved candidate shall not appear; and

(6) Where a candidate's nominating papers or petitions have been objected to and the decision of the electoral board established in Section 10-10 is either unknown or known to be in judicial review, the words "OBJECTION PENDING" shall be placed under the title of the office being sought by the candidate and next to the name of the candidate.

The local election official shall issue an amended certification whenever it is discovered that the original certification is in error.

(Source: P.A. 84-757; 95-699, § 5; 96-1008, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 7-13.1.

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Section 97 of P.A. 95-699 contains a severability provision.

Article 3, referred to above in this section, has been repealed.

Effect of Amendments. The 2007 amendment by P.A. 95-699, effective November 9, 2007, added (5) and added the first paragraph of (6).

The 2010 amendment by P.A. 96-1008, effective July 6, 2010, substituted "68 days" for "61 days" in the first sentence of the first paragraph.

§ 10 ILCS 5/7-14. [Petition examinations]

Sec. 7-14. Not less than 68 days before the date of the general primary the State Board of Elections shall meet and shall examine all petitions filed under this Article 7 [10 ILCS 5/7-1 et seq.], in the office of the State Board of Elections. The State Board of Elections shall then certify to the county clerk of each county, the names of all candidates whose nomination papers or certificates of nomination have been filed with the Board and direct the county clerk to place upon the official ballot for the general primary election the names of such candidates in the same manner and in the same order as shown upon the certification.

The State Board of Elections shall, in its certificate to the county clerk, certify the names of the offices, and the names of the candidates in the order in which the offices and names shall appear upon the primary ballot; such names to appear in the order in which petitions have been filed in the office of the State Board of Elections except as otherwise provided in this Article.

Not less than 62 days before the date of the general primary, each county clerk shall certify the names of all candidates whose nomination papers have been filed with such clerk and declare that the names of such candidates for the respective offices shall be placed upon the official ballot for the general primary in the order in which such nomination papers were filed with the clerk, or as determined by lot, or as otherwise specified by statute. Each county clerk shall place a copy of the certification on file in his or her office and at the same time issue to the board of election commissioners a copy of the certification that has been filed in the county clerk's office, together with a copy of the certification that has been issued to the clerk by the State Board of Elections, with directions to the board of election commissioners to place upon the official ballot for the general primary in that election jurisdiction the names of all candidates that are listed on such certification in the same manner and in the same order as shown upon such certifications.

The certification shall indicate, where applicable, the following:

(1) The political party affiliation of the candidates for the respective offices;

(2) If there is to be more than one candidate elected or nominated to an office from the State, political subdivision or district;

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(3) If the voter has the right to vote for more than one candidate for an office;

(4) The term of office, if a vacancy is to be filled for less than a full term or if the offices to be filled in a political subdivision or district are for different terms.

The State Board of Elections or the county clerk, as the case may be, shall issue an amended certification whenever it is discovered that the original certification is in error.

Subject to appeal, the names of candidates whose nomination papers have been held invalid by the appropriate electoral board provided in Section 10-9 of this Code [10 ILCS 5/10-9] shall not be certified.

(Source: P.A. 86-867; 96-1008, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 7-14.

Effect of Amendments. The 2010 amendment by P.A. 96-1008, effective July 6, 2010, substituted "68 days" for "61 days" in the first sentence of the first paragraph; and substituted "62 days" for "55 days" in the first sentence of the third paragraph.

CASE NOTES

Analysis

Allocation of Ballot Position
Certification of Candidates
- In General
- Simultaneous Filing
Construction
Electoral Board
- Powers
- Refusal to Certify Petition

Allocation of Ballot Position

The Fourteenth Amendment requires all candidates, newcomers and incumbents alike, to be treated equally; the attempt to favor personal acquaintances and party regulars by awarding them top positions on the ballot is not constitutionally allowed. Mann v. Powell, 333 F. Supp. 1261 (N.D. Ill. 1969).

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The order of listing candidates' names on the ballot can affect the outcome of an election, and candidates have a right to equal protection in the allocation of ballot positions. Mann v. Powell, 333 F. Supp. 1261 (N.D. Ill. 1969).

Certification of Candidates

- In General

Certification of candidates' names for inclusion on the primary ballot is a function reserved to the State Board of Elections, acting in its own capacity. Kozel v. State Bd. of Elections, 126 Ill. 2d 58, 127 Ill. Dec. 714, 533 N.E.2d 796 (1988).

- Simultaneous Filing

Lottery system used to break ties resulting from the simultaneous filing of petitions with the State Board of Elections for the same office did not violate any constitutional or statutory right of candidates for the office of judge. Bradley v. Lunding, 63 Ill. 2d 91, 344 N.E.2d 472 (1976).

Construction

Trial court erred in granting declaratory judgment in the county election commission's favor because the State Board of Elections had the discretionary authority to issue an amended certification reflecting the withdrawal of a candidate after certification pursuant to 10 ILCS 5/7-14 had occurred any time before the election took place where (1) the word "shall" was directory, not mandatory, (2) "in error" meant inaccurate, and (3) local election authorities had to comply with all amended certifications properly issued pursuant to 10 ILCS 5/7-14. Du Page County Election Comm'n v. State Bd. of Elections, 345 Ill. App. 3d 200, 279 Ill. Dec. 695, 800 N.E.2d 1278, 2003 Ill. App. LEXIS 1522 (2 Dist. 2003).

Electoral Board

- Powers

The Illinois Electoral Board, consisting of the Governor, Secretary of State, Attorney General, State Treasurer and Auditor of Public Accounts, all customarily elected by the voters, has the power to examine all petitions filed with the Secretary of State and, only after such examination, is authorized to certify a candidate named therein for inclusion on the ballot. Daly v. Stratton, 326 F.2d 340 (7th Cir. 1964).

- Refusal to Certify Petition

The Electoral Board had authority to refuse to certify a defective or insufficient petition. Daly v. Stratton, 326 F.2d 340 (7th Cir. 1964).

LEGAL PERIODICALS

For article, "Federal Protections of Individual Rights in Local Elections," see 13 J. Marshall L. Rev. 503 (1980).

§ 10 ILCS 5/7-60. [Nominated candidates; certification]

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Sec. 7-60. Not less than 74 days before the date of the general election, the State Board of Elections shall certify to the county clerks the names of each of the candidates who have been nominated as shown by the proclamation of the State Board of Elections as a canvassing board or who have been nominated to fill a vacancy in nomination and direct the election authority to place upon the official ballot for the general election the names of such candidates in the same manner and in the same order as shown upon the certification, except as otherwise provided in this Section.

Not less than 68 days before the date of the general election, each county clerk shall certify the names of each of the candidates for county offices who have been nominated as shown by the proclamation of the county election authority or who have been nominated to fill a vacancy in nomination and declare that the names of such candidates for the respective offices shall be placed upon the official ballot for the general election in the same manner and in the same order as shown upon the certification, except as otherwise provided by this Section. Each county clerk shall place a copy of the certification on file in his or her office and at the same time issue to the State Board of Elections a copy of such certification. In addition, each county clerk in whose county there is a board of election commissioners shall, not less than 68 days before the date of the general election, issue to such board a copy of the certification that has been filed in the county clerk's office, together with a copy of the certification that has been issued to the clerk by the State Board of Elections, with directions to the board of election commissioners to place upon the official ballot for the general election in that election jurisdiction the names of all candidates that are listed on such certifications, in the same manner and in the same order as shown upon such certifications, except as otherwise provided in this Section.

Whenever there are two or more persons nominated by the same political party for multiple offices for any board, the name of the candidate of such party receiving the highest number of votes in the primary election as a candidate for such office, as shown by the official election returns of the primary, shall be certified first under the name of such offices, and the names of the remaining candidates of such party for such offices shall follow in the order of the number of votes received by them respectively at the primary election as shown by the official election results.

No person who is shown by the final proclamation to have been nominated or elected at the primary as a write-in candidate shall have his or her name certified unless such person shall have filed with the certifying office or board within 10 days after the election authority's proclamation a statement of candidacy pursuant to Section 7-10 [10 ILCS 5/7-10], a statement pursuant to Section 7-10.1 [10 ILCS 5/7-10.1], and a receipt for the filing of a statement of economic interests in relation to the unit of government to which he or she has been elected or nominated.

Each county clerk and board of election commissioners shall determine by a fair and impartial method of random selection the order of placement of established political party candidates for the general election ballot. Such determination shall be made within 30 days following the canvass and proclamation of the results of the general primary in the office of the county clerk or board of election commissioners and shall be open to the public. Seven days written notice of the time and place of conducting such random

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selection shall be given, by each such election authority, to the County Chairman of each established political party, and to each organization of citizens within the election jurisdiction which was entitled, under this Article, at the next preceding election, to have pollwatchers present on the day of election. Each election authority shall post in a conspicuous, open and public place, at the entrance of the election authority office, notice of the time and place of such lottery. However, a board of election commissioners may elect to place established political party candidates on the general election ballot in the same order determined by the county clerk of the county in which the city under the jurisdiction of such board is located.

Each certification shall indicate, where applicable, the following:

(1) The political party affiliation of the candidates for the respective offices;

(2) If there is to be more than one candidate elected to an office from the State, political subdivision or district;

(3) If the voter has the right to vote for more than one candidate for an office;

(4) The term of office, if a vacancy is to be filled for less than a full term or if the offices to be filled in a political subdivision are for different terms.

The State Board of Elections or the county clerk, as the case may be, shall issue an amended certification whenever it is discovered that the original certification is in error.

(Source: P.A. 86-867; 86-875; 86-1028; 94-645, § 5; 94-647, § 5; 94-1000, § 5; 96-1008, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 7-60.

Effect of Amendments. The 2005 amendment by P.A. 94-645, effective August 22, 2005, in the fourth paragraph added "or elected" and added the language beginning "and a receipt" through the end.

The 2005 amendment by P.A. 94-647, effective January 1, 2006, substituted references to "election authority" for references to "canvassing board" throughout the section.

The 2006 amendment by P.A. 94-1000, effective July 3, 2006, substituted "final" for "election authority's" near the beginning of the fourth paragraph.

The 2010 amendment by P.A. 96-1008, effective July 6, 2010, substituted "74 days" for "67 days" in the first paragraph; and substituted "68 days" for "61 days" in the first and last sentences of the second paragraph.

CASE NOTES

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Analysis
Construction
Mandamus
Objections

Construction

As used in this section, "name" should be given its usual sense and ordinary meaning unless it has become a word of art or has been given another accepted meaning, and it ordinarily means the distinctive designation of a person or thing; this does not include other descriptive terminology, and it is not permissible to place on an official ballot a characterization or designation before or after a candidate's name. People ex rel. Richter v. Telford, 103 Ill. App. 2d 132, 242 N.E.2d 464 (4 Dist. 1968).

Mandamus

Where petitioner was a candidate of a political party at its primary, and at the time of that primary the respondent was nominated by his party on a ballot using the designations of "Dr." and "O.D.," the same prefix and suffix as were sought to be eliminated by the petitioner, the petitioner thus had notice of the descriptive matter sought to be removed, and he should have used the mechanics provided by the Election Code so as to avoid the necessity for application for a writ of mandamus. People ex rel. Richter v. Telford, 103 Ill. App. 2d 132, 242 N.E.2d 464 (4 Dist. 1968).

Objections

This Code provides adequate mechanics for an aggrieved person to present objections to the manner and style in which a candidate's name is to be placed on the ballot, and it further prescribes the time for pursuing such remedies. People ex rel. Richter v. Telford, 103 Ill. App. 2d 132, 242 N.E.2d 464 (4 Dist. 1968).

OPINIONS OF ATTORNEY GENERAL

Analysis
Filling Vacancies
Retroactivity

Filling Vacancies

Vacancies in nomination created by the failure of a political party to slate candidates for nomination at a primary election may be filled only until such time as the appropriate canvassing board certifies the candidates nominated at such election. 1984 Op. Atty. Gen. 66.

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Retroactivity

Attorney General Opinion No. 84-018 (1984 Op. Atty. Gen. 66), issued September 13, 1984, which stated that vacancies in nomination created by the failure of a political party to slate candidates for nomination at a primary election could be filled only until such time as the appropriate canvassing board certifies the candidates nominated at the primary, overruled opinion No. S-511, issued September 14, 1972 (1972 Ill. Atty. Gen. Op. 222), in which Attorney General Scott advised that such vacancies could be filled at any time prior to certification by the State Board of Elections pursuant to this section; notwithstanding the fact that opinion No. 84-018 concludes that the law provides for a substantially shorter period of time within which certain vacancies in nomination may be filled, the construction of the law contained therein does not, at this juncture, affect nominations which were made in accordance with the earlier interpretation. 1984 Op. Atty. Gen. 70.

§ 10 ILCS 5/7-60.1. Certification of Candidates - Consolidated Election

Sec. 7-60.1. Certification of Candidates - Consolidated Election. Each local election official of a political subdivision in which candidates for the respective local offices are nominated at the consolidated primary shall, no later than 5 days following the canvass and proclamation of the results of the consolidated primary, certify to each election authority whose duty it is to prepare the official ballot for the consolidated election in that political subdivision the names of each of the candidates who have been nominated as shown by the proclamation of the appropriate election authority or who have been nominated to fill a vacancy in nomination and direct the election authority to place upon the official ballot for the consolidated election the names of such candidates in the same manner and in the same order as shown upon the certification, except as otherwise provided by this Section.

Whenever there are two or more persons nominated by the same political party for multiple offices for any board, the name of the candidate of such party receiving the highest number of votes in the consolidated primary election as a candidate for such consolidated primary, shall be certified first under the name of such office, and the names of the remaining candidates of such party for such offices shall follow in the order of the number of votes received by them respectively at the consolidated primary election as shown by the official election results.

No person who is shown by the election authority's proclamation to have been nominated at the consolidated primary as a write-in candidate shall have his or her name certified unless such person shall have filed with the certifying office or board within 5 days after the election authority's proclamation a statement of candidacy pursuant to Section 7-10 [10 ILCS 5/7-10] and a statement pursuant to Section 7-10.1 [10 ILCS 5/7-10.1].

Each board of election commissioners of the cities in which established political party candidates for city offices are nominated at the consolidated primary shall determine by a fair and impartial method of random selection the order of placement of the established political party candidates for the consolidated ballot. Such determination shall be made within 5 days following the canvass and proclamation of the results of the consolidated

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primary and shall be open to the public. Three days written notice of the time and place of conducting such random selection shall be given, by each such election authority, to the County Chairman of each established political party, and to each organization of citizens within the election jurisdiction which was entitled, under this Article, at the next preceding election, to have pollwatchers present on the day of election. Each election authority shall post in a conspicuous, open and public place, at the entrance of the election authority office, notice of the time and place of such lottery.

Each local election official of a political subdivision in which established political party candidates for the respective local offices are nominated by primary shall determine by a fair and impartial method of random selection the order of placement of the established political party candidates for the consolidated election ballot and, in the case of certain municipalities having annual elections, on the general primary ballot for election. Such determination shall be made prior to the canvass and proclamation of results of the consolidated primary or special municipal primary, as the case may be, in the office of the local election official and shall be open to the public. Three days written notice of the time and place of conducting such random selection shall be given, by each such local election official, to the County Chairman of each established political party, and to each organization of citizens within the election jurisdiction which was entitled, under this Article, at the next preceding election, to have pollwatchers present on the day of election. Each local election official shall post in a conspicuous, open and public place notice of such lottery. Immediately thereafter, the local election official shall certify the ballot placement order so determined to the proper election authorities charged with the preparation of the consolidated election, or general primary, ballot for that political subdivision.

Not less than 68 days before the date of the consolidated election, each local election official of a political subdivision in which established political party candidates for the respective local offices have been nominated by caucus or have been nominated because no primary was required to be held shall certify to each election authority whose duty it is to prepare the official ballot for the consolidated election in that political subdivision the names of each of the candidates whose certificates of nomination or nomination papers have been filed in his or her office and direct the election authority to place upon the official ballot for the consolidated election the names of such candidates in the same manner and in the same order as shown upon the certification. Such local election official shall, prior to certification, determine by a fair and impartial method of random selection the order of placement of the established political party candidates for the consolidated election ballot. Such determination shall be made in the office of the local election official and shall be open to the public. Three days written notice of the time and place of conducting such random selection shall be given by each such local election official to the county chairman of each established political party, and to each organization of citizens within the election jurisdiction which was entitled, under this Article, at the next preceding election, to have pollwatchers present on the day of election. Each local election official shall post in a conspicuous, open and public place, at the entrance of the office, notice of the time and place of such lottery. The local election official shall certify the ballot placement order so determined as part of his official certification of candidates

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to the election authorities whose duty it is to prepare the official ballot for the consolidated election in that political subdivision.

The certification shall indicate, where applicable, the following:

(1) The political party affiliation of the candidates for the respective offices;

(2) If there is to be more than one candidate elected or nominated to an office from the State, political subdivision or district;

(3) If the voter has the right to vote for more than one candidate for an office;

(4) The term of office, if a vacancy is to be filled for less than a full term or if the offices to be filled in a political subdivision or district are for different terms.

The local election official shall issue an amended certification whenever it is discovered that the original certification is in error.

(Source: P.A. 84-1308; 94-647, § 5; 96-1008, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 7-60.1.

Effect of Amendments. The 2005 amendment by P.A. 94-647, effective January 1, 2006, substituted references to "election authority" for references to "canvassing board" throughout the section.

The 2010 amendment by P.A. 96-1008, effective July 6, 2010, substituted "68 days" for "61 days" in the first sentence of the sixth paragraph.

Article 9.

Disclosure and Regulation of Campaign Contributions and Expenditures

§ 10 ILCS 5/9-1. [Definition of terms]

Sec. 9-1. As used in this Article, unless the context otherwise requires, the terms defined in Sections 9-1.1 through 9-1.13 [10 ILCS 5/9-1.1 through 10 ILCS 5/9-1.13], have the

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respective meanings as defined in those Sections.

(Source: P.A. 86-873.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-1.

CASE NOTES

Analysis
Applicability
Campaign Committee Reports

Applicability

There is no portion of the Campaign Disclosure Act (see now this Article) which purports to regulate the disbursal of funds while a campaign committee is a continuing, viable organization; rather, the Act is a disclosure statute, with sanctions for failure to account accurately for funds designated by the statute as contributions and expenditures, and for noncompliance with organizational, advertising and accounting provisions. Troy v. State Bd. of Elections, 84 Ill. App. 3d 740, 40 Ill. Dec. 556, 406 N.E.2d 562 (1 Dist. 1980).

No provision in this Article gives the Board of Elections the authority to question the propriety of disbursals whether for political or non-political accounts; the Act is designed to mandate and regulate the extent and explicitness of campaign disclosure but not to allow inquiry into the seemliness or legality of personal vis-a-vis political disbursals. Troy v. State Bd. of Elections, 84 Ill. App. 3d 740, 40 Ill. Dec. 556, 406 N.E.2d 562 (1 Dist. 1980).

Campaign Committee Reports

All candidates and their campaign committees are required to report their loans and campaign contributions; copies of such reports are then available to the public. In re Neistein, 132 Ill. 2d 104, 138 Ill. Dec. 229, 547 N.E.2d 198 (1989), cert. denied, 495 U.S. 905, 110 S. Ct. 1924, 109 L. Ed. 2d 288 (1990).

LEGAL PERIODICALS

McFadden, Integrity, Accountability, and Efficiency: Using Disclosure to Fight the Appearance of Nepotism in School Board Contracting, 94 Nw. U.L. Rev. 657 (Winter, 2000).

For article, "Joint Campaigning by State and Federal Candidates: A Practical Legal Guide," see 72 Ill. B.J. 354 (1984).

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For article, "The Illinois State Board of Elections: A History and Evaluation of the Formative Years," see 11 J. Marshall J. Prac. & Proc. 321 (1978).

§ 10 ILCS 5/9-1.1. [Board defined]

Sec. 9-1.1. "Board" means the State Board of Elections.

(Source: P.A. 78-1183.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-1.1.

§ 10 ILCS 5/9-1.3. [Candidate defined]

Sec. 9-1.3. "Candidate" means any person who seeks nomination for election, election to or retention in public office, or any person who seeks election as ward or township committeeman in counties of 3,000,000 or more population, whether or not such person is elected. A person seeks nomination for election, election or retention if he (1) takes the action necessary under the laws of this State to attempt to qualify for nomination for election, election to or retention in public office or election as ward or township committeeman in counties of 3,000,000 or more population, or (2) receives contributions or makes expenditures, or gives consent for any other person to receive contributions or make expenditures with a view to bringing about his nomination for election or election to or retention in public office, or his or her election as ward or township committeeman in counties of 3,000,000 or more population.

(Source: P.A. 83-259; 89-405, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-1.3.

Illinois Administrative Code.

See 26 Illinois Administrative Code, § 100.10.

Effect of Amendments. The 1995 amendment by P.A. 89-405, effective November 8, 1995, in the first sentence, inserted "or any person who seeks election as ward or township committeeman in counties of 3,000,000 or more population"; and in the second sentence, deleted

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a comma following "public office", inserted "or election as ward or township committeeman in counties of 3,000,000 or more population", substituted "public" for "such" preceding "office" and added "or his or her election as ward or township committeeman in counties of 3,000,000 or more population" at the end.

CASE NOTES

No Candidacy Found

County merit commission's determination that a deputy sheriff had become a candidate for public office was contrary to the manifest weight of the evidence where the deputy had no intention of announcing his candidacy prematurely and any information that was disseminated to the public in regard to his intention to become a candidate in the future was initiated by sheriff. Shearer v. Hulick, 150 Ill. App. 3d 1098, 104 Ill. Dec. 369, 502 N.E.2d 866 (3 Dist. 1986).

§ 10 ILCS 5/9-1.4. Contribution

Sec. 9-1.4. Contribution. (A) "Contribution" means:

(1) a gift, subscription, donation, dues, loan, advance, deposit of money, or anything of value, knowingly received in connection with the nomination for election, election, or retention of any candidate or person to or in public office or in connection with any question of public policy;

(1.5) a gift, subscription, donation, dues, loan, advance, deposit of money, or anything of value that constitutes an electioneering communication made in concert or cooperation with or at the request, suggestion, or knowledge of a candidate, a political committee, or any of their agents;

(2) the purchase of tickets for fund-raising events, including but not limited to dinners, luncheons, cocktail parties, and rallies made in connection with the nomination for election, election, or retention of any person in or to public office, or in connection with any question of public policy;

(3) a transfer of funds received by a political committee from another political committee;

(4) the services of an employee donated by an employer, in which case the contribution shall be listed in the name of the employer, except that any individual services provided voluntarily and without promise or expectation of compensation from any source shall not be deemed a contribution; and

(5) an expenditure by a political committee made in cooperation, consultation, or concert with another political committee.

(B) "Contribution" does not include:

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(a) the use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual in rendering voluntary personal services on the individual's residential premises for candidate-related activities; provided the value of the service provided does not exceed an aggregate of $150 in a reporting period;

(b) the sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if such charge for use in a candidate's campaign is at least equal to the cost of such food or beverage to the vendor;

(c) communications by a corporation to its stockholders and executive or administrative personnel or their families;

(d) communications by an association to its members and executive or administrative personnel or their families;

(e) voter registration or other campaigns encouraging voting that make no mention of any clearly identified candidate, public question, political party, group, or combination thereof;

(f) a loan of money by a national or State bank or credit union made in accordance with the applicable banking laws and regulations and in the ordinary course of business, but the loan shall be listed on disclosure reports required by this Article; however, the use, ownership, or control of any security for such a loan, if provided by a person other than the candidate or his or her committee, qualifies as a contribution; or

(g) an independent expenditure.

(C) Interest or other investment income, earnings or proceeds, and refunds or returns of all or part of a committee's previous expenditures shall not be considered contributions but shall be listed on disclosure reports required by this Article.

(Source: P.A. 80-1166; 89-405, § 10; 94-645, § 5; 96-832, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-1.4.

Section 97 of P.A. 96-832, provides: "The provisions of this act are severable under Section 1.31 of the Statute on Statutes."

Illinois Administrative Code.

See 26 Illinois Administrative Code, § 100.10.

Effect of Amendments. The 1995 amendment by P.A. 89-405, effective November 8, 1995, inserted "in connection with the election of any person as ward or township committeeman in counties of 3,000,000 or more population" in subsections (1) and (2).

The 2005 amendment by P.A. 94-645, effective August 22, 2005, added (1.5).

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The 2009 amendment by P.A. 96-832, effective January 1, 2011, rewrote the section.

CASE NOTES

Solicitation of Funds

- Propriety

A plaintiff's allegations of impropriety in the solicitation of legal defense funds which were based upon a newspaper article which reported that a candidate's attorneys were investigating the legality of formation of such a fund failed to support a cause of action under this Article. Troy v. State Bd. of Elections, 84 Ill. App. 3d 740, 40 Ill. Dec. 556, 406 N.E.2d 562 (1 Dist. 1980).

§ 10 ILCS 5/9-1.5. Expenditure

Sec. 9-1.5. Expenditure. (A) "Expenditure" means:

(1) a payment, distribution, purchase, loan, advance, deposit, gift of money, or anything of value, in connection with the nomination for election, election, or retention of any person to or in public office or in connection with any question of public policy;

(2) a payment, distribution, purchase, loan, advance, deposit, gift of money, or anything of value that constitutes an electioneering communication made in concert or cooperation with or at the request, suggestion, or knowledge of a candidate, a political committee, or any of their agents; or

(3) a transfer of funds by a political committee to another political committee.

(B) "Expenditure" does not include:

(a) the use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual in rendering voluntary personal services on the individual's residential premises for candidate-related activities; provided the value of the service provided does not exceed an aggregate of $150 in a reporting period; or

(b) the sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if such charge for use in a candidate's campaign is at least equal to the cost of such food or beverage to the vendor.

(Source: P.A. 80-1165; 89-405, § 10; 93-574, § 5; 93-615, § 90-10; 93-847, § 5; 96-832, § 5.)

Note.

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This section was Ill.Rev.Stat., Ch. 46, Para. 9-1.5.

Section 95 of P.A. 93-847 contains a severability provision.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Effect of Amendments. The 1995 amendment by P.A. 89-405, effective November 8, 1995, in subsection (1), in the introductory language, inserted "in connection with the election of any person as ward or township committeeman in counties of 3,000,000 or more population".

The 2003 amendment by P.A. 93-574, effective August 21, 2003 and the 2003 amendment by P.A. 93-615, effective November 19, 2003, made identical changes: they each added the section heading and the definition of "Expenditure".

The 2004 amendment by P.A. 93-847, effective July 30, 2004, in the last sentence of the introductory paragraph of subsection (1), twice substituted "a candidate" for "the candidate" and inserted "a political committee in support of or opposition to a question of public policy".

The 2009 amendment by P.A. 96-832, effective January 1, 2011, rewrote the section.

§ 10 ILCS 5/9-1.6. Person

Sec. 9-1.6. Person. "Person" or "whoever" means a natural person, trust, partnership, committee, association, corporation, or any other organization or group of persons.

(Source: P.A. 78-1183; 96-832, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-1.6.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Illinois Administrative Code.

See 26 Illinois Administrative Code, § 100.10.

Effect of Amendments. The 2009 amendment by P.A. 96-832, effective January 1, 2011, added the section heading and substituted "a natural person" for "an individual".

§ 10 ILCS 5/9-1.7: Repealed by P.A. 96-832, § 10, effective January 1, 2011.

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§ 10 ILCS 5/9-1.8. Political committees

Sec. 9-1.8. Political committees. (a) "Political committee" includes a candidate political committee, a political party committee, a political action committee, and a ballot initiative committee.

(b) "Candidate political committee" means the candidate himself or herself or any natural person, trust, partnership, corporation, or other organization or group of persons designated by the candidate that accepts contributions or makes expenditures during any 12-month period in an aggregate amount exceeding $3,000 on behalf of the candidate.

(c) "Political party committee" means the State central committee of a political party, a county central committee of a political party, a legislative caucus committee, or a committee formed by a ward or township committeeman of a political party. For purposes of this Article, a "legislative caucus committee" means a committee established for the purpose of electing candidates to the General Assembly by the person elected President of the Senate, Minority Leader of the Senate, Speaker of the House of Representatives, Minority Leader of the House of Representatives, or a committee established by 5 or more members of the same caucus of the Senate or 10 or more members of the same caucus of the House of Representatives.

(d) "Political action committee" means any natural person, trust, partnership, committee, association, corporation, or other organization or group of persons, other than a candidate, political party, candidate political committee, or political party committee, that accepts contributions or makes expenditures during any 12-month period in an aggregate amount exceeding $3,000 on behalf of or in opposition to a candidate or candidates for public office. "Political action committee" includes any natural person, trust, partnership, committee, association, corporation, or other organization or group of persons, other than a candidate, political party, candidate political committee, or political party committee, that makes electioneering communications during any 12-month period in an aggregate amount exceeding $3,000 related to any candidate or candidates for public office.

(e) "Ballot initiative committee" means any natural person, trust, partnership, committee, association, corporation, or other organization or group of persons that accepts contributions or makes expenditures during any 12-month period in an aggregate amount exceeding $3,000 in support of or in opposition to any question of public policy to be submitted to the electors. "Ballot initiative committee" includes any natural person, trust, partnership, committee, association, corporation, or other organization or group of persons that makes electioneering communications during any 12-month period in an aggregate amount exceeding $3,000 related to any question of public policy to be submitted to the voters. The $3,000 threshold applies to any contributions or expenditures received or made with the purpose of securing a place on the ballot for, advocating the defeat or passage of, or engaging in electioneering communication regarding the question of public policy, regardless of the method of initiation of the question of public policy and regardless of whether petitions have been circulated or filed with the appropriate office or whether the question has been adopted and certified by the governing body.

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(Source: P.A. 80-1495; 90-737, § 220; 93-847, § 5; 95-963, § 5; 96-832, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-1.8.

Section 95 of P.A. 93-847 contains a severability provision.

Section 97 of P.A. 96-832, provides: "The provisions of this act are severable under Section 1.31 of the Statute on Statutes."

Effect of Amendments. The 1998 amendment by P.A. 90-737, effective January 1, 1999, in subsection (a) substituted "$3,000" for "$1,000"; and in subsection (c) substituted "$3,000" for "$1,000 ($3,000 in the case of question of public policy to be submitted to the electors of an area encompassing more than one county)".

The 2004 amendment by P.A. 93-847, effective July 30, 2004, added subsection (d).

The 2008 amendment by P.A. 95-963, effective January 1, 2009, added the second sentence in (b).

The 2009 amendment by P.A. 96-832, effective January 1, 2011, rewrote the section.

CASE NOTES

Political Committee

- Shown

Mailer of campaign promotional material produced and procured campaign literature in the form of a sample ballot, paid for the materials with his own cash funds, and paid for the dissemination of the sample ballot to voters through two mailings. Thus, he satisfied the transactional requirements for the definition of a political committee under 10 ILCS 5/9-1.8, despite his contention that he was working as a volunteer for a political committee and was to be reimbursed, because he failed to show that an agency relationship with any political committee actually existed. Santana v. State Bd. of Elections, 371 Ill. App. 3d 1044, 309 Ill. Dec. 703, 864 N.E.2d 944, 2007 Ill. App. LEXIS 234 (1 Dist. 2007).

OPINIONS OF ATTORNEY GENERAL

Filing Fees

A county clerk shall charge the filing fee for filing statements applicable for individuals filing reports made by political committees under the Election Code. 1977 Op. Atty. Gen. 118.

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§ 10 ILCS 5/9-1.9. Election cycle

Sec. 9-1.9. Election cycle. "Election cycle" means any of the following:

(1) For a candidate political committee organized to support a candidate to be elected at a general primary election or general election, (i) the period beginning January 1 following the general election for the office to which a candidate seeks nomination or election and ending on the day of the general primary election for that office or (ii) the period beginning the day after a general primary election for the office to which the candidate seeks nomination or election and through December 31 following the general election.

(2) Notwithstanding paragraph (1), for a candidate political committee organized to support a candidate for the General Assembly, (i) the period beginning January 1 following a general election and ending on the day of the next general primary election or (ii) the period beginning the day after the general primary election and ending on December 31 following a general election.

(3) For a candidate political committee organized to support a candidate for a retention election, (i) the period beginning January 1 following the general election at which the candidate was elected through the day the candidate files a declaration of intent to seek retention or (ii) the period beginning the day after the candidate files a declaration of intent to seek retention through December 31 following the retention election.

(4) For a candidate political committee organized to support a candidate to be elected at a consolidated primary election or consolidated election, (i) the period beginning July 1 following a consolidated election and ending on the day of the consolidated primary election or (ii) the period beginning the day after the consolidated primary election and ending on June 30 following a consolidated election.

(5) For a political party committee, political action committee, or ballot initiative committee, the period beginning on January 1 and ending on December 31 of each calendar year.

(Source: P.A. 80-767; 90-737, § 220; 93-847, § 5; 96-832, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-1.9.

Section 95 of P.A. 93-847 contains a severability provision.

Section 97 of P.A. 96-832, provides: "The provisions of this act are severable under Section 1.31 of the Statute on Statutes."

Effect of Amendments. The 1998 amendment by P.A. 90-737, effective January 1, 1999, twice substituted "$3,000" for "$1,000" and deleted "to be submitted to the electors of an area

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encompassing no more than one county (or $3,000 in support of or in opposition to any question of public policy to be submitted to the electors of an area encompassing more than one county)" following "public policy".

The 2004 amendment by P.A. 93-847, effective July 30, 2004, inserted the item (i) designation and item (ii).

The 2009 amendment by P.A. 96-832, effective January 1, 2011, added the section heading and rewrote the section.

CASE NOTES

Purpose

This Article is designed to preserve the integrity of the electoral process by requiring full public disclosure of the sources and amounts of campaign contributions and expenditures, and the regulation of practices incident to political campaigns. Walker v. State Board of Elections, 72 Ill. App. 3d 877, 29 Ill. Dec. 244, 391 N.E.2d 507 (1 Dist. 1979).

§ 10 ILCS 5/9-1.10. Public Office

Sec. 9-1.10. Public Office. "Public office" means any elective office or judicial office subject to retention.

(Source: P.A. 78-1183; 96-832, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-1.10.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Effect of Amendments. The 2009 amendment by P.A. 96-832, effective January 1, 2011, added the section heading and rewrote the section.

§ 10 ILCS 5/9-1.10b. Severability

Sec. 9-1.10b. Severability. The provisions of this amendatory Act of 1995 are severable under Section 1.31 of the Statute on Statutes [5 ILCS 70/1.31].

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(Source: P.A. 89-405, § 10.)

Effective Date. Section 99 of P.A. 89-405 made this section effective upon becoming law. The Act was approved November 8, 1995.

§ 10 ILCS 5/9-1.11. [Public official defined]

Sec. 9-1.11. "Public official" means any person who is elected or appointed to public office.

(Source: P.A. 78-1183.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-1.11.

§ 10 ILCS 5/9-1.12. Anything of value

Sec. 9-1.12. Anything of value. "Anything of value" means any item, thing, service, or good, regardless of whether it may be valued in monetary terms according to ascertainable market value. Anything of value which does not have an ascertainable market value must be reported by describing the item, thing, service, or good contributed and by using the contributor's certified market value required under Section 9-6 [10 ILCS 5/9-6].

(Source: P.A. 78-1183; 90-737, § 220; 96-832, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-1.12.

Section 97 of P.A. 96-832, provides: "The provisions of this act are severable under Section 1.31 of the Statute on Statutes."

Effect of Amendments. The 1998 amendment by P.A. 90-737, effective January 1, 1999, in the first sentence substituted "must be reported" for "may be reported", and added "and by using the contributor's certified market value required under Section 9-6" at the end.

The 2009 amendment by P.A. 96-832, effective January 1, 2011, added the section heading; substituted "means any time, thing, service" for "includes all things, services"; inserted "item"

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following "describing the"; and made stylistic changes.

§ 10 ILCS 5/9-1.13. Transfer of funds

Sec. 9-1.13. Transfer of funds. "Transfer of funds" means any conveyance of money from one political committee to another political committee.

(Source: P.A. 86-873; 96-832, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-1.13.

Section 97 of P.A. 96-832, provides: "The provisions of this act are severable under Section 1.31 of the Statute on Statutes."

Effect of Amendments. The 2009 amendment by P.A. 96-832, effective January 1, 2011, added the section heading and deleted "or the purchase of tickets made in connection with the nomination for election, election or retention of any person to or in public office or in connection with any question of public policy" following "conveyance of money".

§ 10 ILCS 5/9-1.14. Electioneering communication

Sec. 9-1.14. Electioneering communication. (a) "Electioneering communication" means, for the purposes of this Article [10 ILCS 5/9-1 et seq.], any broadcast, cable, or satellite communication, including radio, television, or Internet communication, that (1) refers to (i) a clearly identified candidate or candidates who will appear on the ballot for nomination for election, election, or retention, (ii) a clearly identified political party, or (iii) a clearly identified question of public policy that will appear on the ballot, (2) is made within (i) 60 days before a general election or consolidated election or (ii) 30 days before a primary election, (3) is targeted to the relevant electorate, and (4) is susceptible to no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate for nomination for election, election, or retention, a political party, or a question of public policy.

(b) "Electioneering communication" does not include:

(1) A communication, other than an advertisement, appearing in a news story, commentary, or editorial distributed through the facilities of any legitimate news organization, unless the facilities are owned or controlled by any political party, political committee, or candidate.

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(2) A communication made solely to promote a candidate debate or forum that is made by or on behalf of the person sponsoring the debate or forum.

(3) A communication made as part of a non-partisan activity designed to encourage individuals to vote or to register to vote.

(4) A communication by an organization operating and remaining in good standing under Section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. § 501].

(5) A communication exclusively between a labor organization, as defined under federal or State law, and its members.

(6) A communication exclusively between an organization formed under Section 501(c)(6) of the Internal Revenue Code and its members.

(Source: P.A. 93-574, § 5; 93-615, § 90-10; 93-847, § 5; 94-461, § 5; 94-645, § 5; 96-832, § 5.)

Note.

Section 97 of P.A. 93-574 contains a severability provision.

Section 95 of P.A. 93-847 contains a severability provision.

Section 97 of P.A. 96-832, provides: "The provisions of this act are severable under Section 1.31 of the Statute on Statutes."

Effective Date. Section 99 of P.A. 93-574 made this section effective upon becoming law. The Act was approved August 21, 2003.

Section 99-99 of P.A. 93-615 made this section effective upon becoming law. The Act was approved November 19, 2003.

Effect of Amendments. The 2004 amendment by P.A. 93-847, effective July 30, 2004, rewrote subsection (a) and made a typographical correction.

The 2005 amendment by P.A. 94-461, effective August 4, 2005, added (b)(5) and (6).

The 2005 amendment by P.A. 94-645, effective August 22, 2005, added (b)(5) and (6).

The 2009 amendment by P.A. 96-832, effective January 1, 2011, deleted "defined" from the end of the section heading; in (a), substituted "broadcast, cable, or satellite communication, including" for "form of communication, in whatever medium"; added the item designations for (1)(i) through (1)(iii); added "for nomination for election, election, or retention" at the end of item (1)(i); deleted "refers to" at the beginning of items (1)(ii) and (1)(iii); added item (3); and made related changes.

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

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CASE NOTES

Electioneering

Because the newsletters mailed to voters by a school district did not discuss voting or encourage individuals to vote, but rather clearly addressed and focused on the district's referendum, they were electioneering communications under 10 ILCS 5/ 9-1.14; therefore, the state board of elections erred in finding that 10 ILCS 5/9-25.1 exempted the district from registration and financial disclosure requirements. Citizens Organized v. State Bd. of Elections of Ill., 392 Ill. App. 3d 392, 331 Ill. Dec. 196, 910 N.E.2d 605, 2009 Ill. App. LEXIS 298 (1 Dist. 2009), appeal denied, 234 Ill. 2d 518, 920 N.E.2d 1071, 2009 Ill. LEXIS 2047 (2009).

§ 10 ILCS 5/9-1.15. Independent expenditure

Sec. 9-1.15. Independent expenditure. "Independent expenditure" means any payment, gift, donation, or expenditure of funds (i) by a natural person or political committee for the purpose of making electioneering communications or of expressly advocating for or against the nomination for election, election, retention, or defeat of a clearly identifiable public official or candidate and (ii) that is not made in connection, consultation, or concert with or at the request or suggestion of the public official or candidate, the public official's or candidate's designated political committee or campaign, or the agent or agents of the public official, candidate, or political committee or campaign.

(Source: P.A. 96-832, § 5.)

Note.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Effective Date. Section 99 of P.A. 96-832 made this section effective July 1, 2010.

§ 10 ILCS 5/9-2. Political committee designations

Sec. 9-2. Political committee designations. (a) Every political committee shall be designated as a (i) candidate political committee, (ii) political party committee, (iii) political action committee, or (iv) ballot initiative committee.

(b) Beginning January 1, 2011, no public official or candidate for public office may maintain or establish more than one candidate political committee for each office that public official or candidate holds or is seeking. The name of each candidate political

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committee shall identify the name of the public official or candidate supported by the candidate political committee. If a candidate establishes separate candidate political committees for each public office, the name of each candidate political committee shall also include the public office to which the candidate seeks nomination for election, election, or retention. If a candidate establishes one candidate political committee for multiple offices elected at different elections, then the candidate shall designate an election cycle, as defined in Section 9-1.9 [10 ILCS 5/9-1.9], for purposes of contribution limitations and reporting requirements set forth in this Article. No political committee, other than a candidate political committee, may include the name of a candidate in its name.

(c) Beginning January 1, 2011, no State central committee of a political party, county central committee of a political party, committee formed by a ward or township committeeman, or committee established for the purpose of electing candidates to the General Assembly may maintain or establish more than one political party committee. The name of the committee must include the name of the political party.

(d) Beginning January 1, 2011, no natural person, trust, partnership, committee, association, corporation, or other organization or group of persons forming a political action committee shall maintain or establish more than one political action committee. The name of a political action committee must include the name of the entity forming the committee.

(e) Beginning January 1, 2011, the name of a ballot initiative committee must include words describing the question of public policy and whether the group supports or opposes the question.

(f) Every political committee shall designate a chairman and a treasurer. The same person may serve as both chairman and treasurer of any political committee. A candidate who administers his own campaign contributions and expenditures shall be deemed a political committee for purposes of this Article and shall designate himself as chairman, treasurer, or both chairman and treasurer of such political committee. The treasurer of a political committee shall be responsible for keeping the records and filing the statements and reports required by this Article.

(g) No contribution and no expenditure shall be accepted or made by or on behalf of a political committee at a time when there is a vacancy in the office of chairman or treasurer thereof. No expenditure shall be made for or on behalf of a political committee without the authorization of its chairman or treasurer, or their designated agents.

(h) For purposes of implementing the changes made by this amendatory Act of the 96th General Assembly [P.A. 96-832], every political committee in existence on the effective date of this amendatory Act of the 96th General Assembly shall make the designation required by this Section by December 31, 2010.

(Source: P.A. 80-756; 96-832, § 5.)

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Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-2.

Section 97 of P.A. 96-832, provides: "The provisions of this act are severable under Section 1.31 of the Statute on Statutes."

Effect of Amendments. The 2009 amendment by P.A. 96-832, effective July 1, 2010, added subsections (a) through (e) and (h); and redesignated the former undesignated paragraphs as subsections (f) and (g).

CASE NOTES

Analysis
Improper Expenditure
Violation

Improper Expenditure

Organizer of a committee formed to oppose candidates for school board violated 10 ILCS 5/9-2, by paying for the production and distribution of a videotape prior to the appointment of a chairman or treasurer of the committee. Brennan v. Ill. State Bd. of Elections, 336 Ill. App. 3d 749, 271 Ill. Dec. 300, 784 N.E.2d 854, 2002 Ill. App. LEXIS 1257 (1 Dist. 2002), appeal denied, 204 Ill. 2d 656, 275 Ill. Dec. 74, 792 N.E.2d 305 (2003).

Violation

Record supported the Illinois State Board of Elections' decision that an attorney violated 10 ILCS 5/9-2, 10 ILCS 5/9-3, 10 ILCS 5/9-7, 10 ILCS 5/9-10(b-5), and 10 ILCS 5/9-26 when he paid for a videotape opposing the election of four candidates to a school board two weeks before he filed a statement of organization on behalf of a political committee and named someone else as the chairman and treasurer of the political committee when the attorney really held those positions, and the fact that the Board did not render its decision within 60 days of the date on which the Board filed its complaint, in accordance with 10 ILCS 5/9-21, did not invalidate the Board's decision. Brennan v. Ill. State Bd. of Elections, 336 Ill. App. 3d 749, 271 Ill. Dec. 300, 784 N.E.2d 854, 2002 Ill. App. LEXIS 1257 (1 Dist. 2002), appeal denied, 204 Ill. 2d 656, 275 Ill. Dec. 74, 792 N.E.2d 305 (2003).

§ 10 ILCS 5/9-3. Political committee statement of organization

Sec. 9-3. Political committee statement of organization. (a) Every political committee shall file with the State Board of Elections a statement of organization within 10 business days of the creation of such committee, except any political committee created within the 30 days before an election shall file a statement of organization within 2 business days in

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person, by facsimile transmission, or by electronic mail. Any change in information previously submitted in a statement of organization shall be reported, as required for the original statement of organization by this Section, within 10 days following that change. A political committee that acts as both a state political committee and a local political committee shall file a copy of each statement of organization with the State Board of Elections and the county clerk. The Board shall impose a civil penalty of $50 per business day upon political committees for failing to file or late filing of a statement of organization. Such penalties shall not exceed $5,000, and shall not exceed $10,000 for statewide office political committees. There shall be no fine if the statement is mailed and postmarked at least 72 hours prior to the filing deadline.

In addition to the civil penalties authorized by this Section, the State Board of Elections or any other political committee may apply to the circuit court for a temporary restraining order or a preliminary or permanent injunction against the political committee to cease the expenditure of funds and to cease operations until the statement of organization is filed.

For the purpose of this Section, "statewide office" means the Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, and State Comptroller.

(b) The statement of organization shall include:

(1) the name and address of the political committee and the designation required by Section 9-2 [10 ILCS 5/9-2];

(2) the scope, area of activity, party affiliation, and purposes of the political committee;

(3) the name, address, and position of each custodian of the committee's books and accounts;

(4) the name, address, and position of the committee's principal officers, including the chairman, treasurer, and officers and members of its finance committee, if any;

(5) the name and address of any sponsoring entity;

(6) a statement of what specific disposition of residual fund will be made in the event of the dissolution or termination of the committee;

(7) a listing of all banks or other financial institutions, safety deposit boxes, and any other repositories or custodians of funds used by the committee; and

(8) the amount of funds available for campaign expenditures as of the filing date of the committee's statement of organization.

For purposes of this Section, a "sponsoring entity" is (i) any person, organization, corporation, or association that contributes at least 33% of the total funding of the political committee or (ii) any person or other entity that is registered or is required to register under the Lobbyist Registration Act and contributes at least 33% of the total funding of the political committee.

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(c) Each statement of organization required to be filed in accordance with this Section shall be verified, dated, and signed by either the treasurer of the political committee making the statement or the candidate on whose behalf the statement is made and shall contain substantially the following verification:

"VERIFICATION:

I declare that this statement of organization (including any accompanying schedules and statements) has been examined by me and, to the best of my knowledge and belief, is a true, correct, and complete statement of organization as required by Article 9 of the Election Code [10 ILCS 5/9-1 et seq.]. I understand that willfully filing a false or incomplete statement is subject to a civil penalty of at least $1,001 and up to $5,000_____ _____. _____ _____ _____ _____ _____ . (date of filing) (signature of person making the statement)".

(d) The statement of organization for a ballot initiative committee also shall include a verification signed by the chairperson of the committee that (i) the committee is formed for the purpose of supporting or opposing a question of public policy, (ii) all contributions and expenditures of the committee will be used for the purpose described in the statement of organization, (iii) the committee may accept unlimited contributions from any source, provided that the ballot initiative committee does not make contributions or expenditures in support of or opposition to a candidate or candidates for nomination for election, election, or retention, and (iv) failure to abide by these requirements shall deem the committee in violation of this Article.

(e) For purposes of implementing the changes made by this amendatory Act of the 96th General Assembly [P.A. 96-832], every political committee in existence on the effective date of this amendatory Act of the 96th General Assembly shall file the statement required by this Section with the Board by December 31, 2010.

(Source: P.A. 86-873; 90-495, § 5; 90-737, § 220; 93-574, § 5; 93-615, § 90-10; 94-645, § 5; 96-832, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-3.

Section 97 of P.A. 93-574 contains a severability provision.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Illinois Administrative Code.

See 26 Illinois Administrative Code, § 100.10.

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Effect of Amendments. The 1997 amendment by P.A. 90-495, effective January 1, 1998, in the first paragraph, in the first sentence, substituted "10 business" for "30" and added at the end "except any political committee created within 30 days before an election shall file a statement of organization within 5 business days"; and deleted subsection (e) which read "a statement whether the committee is a continuing one".

The 1998 amendment by P.A. 90-737, effective January 1, 1999, added the parenthetical phrase to the end of subdivision (a) in the second paragraph; and added the last paragraph.

The 2003 amendment by P.A. 93-574, effective August 21, 2003, and the 2003 amendment by P.A. 93-615, effective November 19, 2003, made identical changes: they each added the last two sentences to the first paragraph; and inserted the second and third paragraphs.

The 2005 amendment by P.A. 94-645, effective August 22, 2005, added the exception language in the last paragraph, including (i) through (iii).

The 2009 amendment by P.A. 96-832, effective July 1, 2010, added the section heading and rewrote the section.

CASE NOTES

Analysis

Constitutionality
Applicability
- Campaign Committees
- Political Committees
Violation

Constitutionality

The filing requirements of this Article applied only prospectively, not retroactively; therefore, the Article was not ex post facto legislation. Walker v. State Board of Elections, 72 Ill. App. 3d 877, 29 Ill. Dec. 244, 391 N.E.2d 507 (1 Dist. 1979).

Applicability

- Campaign Committees

Disclosure not only applies to those persons who seek nominations for, or election to, public office, but to a broad range of campaign activity; therefore, this Article requires the filing of all campaign reports by state political committees in existence after its effective date. Walker v. State Board of Elections, 72 Ill. App. 3d 877, 29 Ill. Dec. 244, 391 N.E.2d 507 (1 Dist. 1979).

Organizer of committee formed to oppose candidates for school board violated 10 ILCS 5/9-3, by failing to file a statement of organization within 10 business days of the creation of the committee, and failed to include his name as a sponsoring party since he contributed 33 percent of the committee funds. Brennan v. Ill. State Bd. of Elections, 336 Ill. App. 3d 749, 271 Ill. Dec. 300, 784 N.E.2d 854, 2002 Ill. App. LEXIS 1257 (1 Dist. 2002), appeal denied, 204 Ill. 2d 656, 275 Ill. Dec. 74, 792 N.E.2d 305 (2003).

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- Political Committees

Mailer of campaign promotional material formed a political committee prior to the primary election as early as the time he placed the order for the materials, and evidence of the formation of a political committee was shown by his total cash payment covering the two mailings of the materials; thus, he was required to file campaign financing reports under the Illinois Election Code, 10 ILCS 5/1-1 et seq. Furthermore, the mailer's contention that he was acting as a volunteer for political committees and would be reimbursed for the expense of the mailings was unavailing to the mailer because he was unable to show that an agency relationship with any political committee existed. Santana v. State Bd. of Elections, 371 Ill. App. 3d 1044, 309 Ill. Dec. 703, 864 N.E.2d 944, 2007 Ill. App. LEXIS 234 (1 Dist. 2007).

Violation

Record supported the Illinois State Board of Elections' decision that an attorney violated 10 ILCS 5/9-2, 10 ILCS 5/9-3, 10 ILCS 5/9-7, 10 ILCS 5/9-10(b-5), and 10 ILCS 5/9-26 when he paid for a videotape opposing the election of four candidates to a school board two weeks before he filed a statement of organization on behalf of a political committee and named someone else as the chairman and treasurer of the political committee when the attorney really held those positions, and the fact that the Board did not render its decision within 60 days of the date on which the Board filed its complaint, in accordance with 10 ILCS 5/9-21, did not invalidate the Board's decision. Brennan v. Ill. State Bd. of Elections, 336 Ill. App. 3d 749, 271 Ill. Dec. 300, 784 N.E.2d 854, 2002 Ill. App. LEXIS 1257 (1 Dist. 2002), appeal denied, 204 Ill. 2d 656, 275 Ill. Dec. 74, 792 N.E.2d 305 (2003).

OPINIONS OF ATTORNEY GENERAL

Filing Fees

A county clerk shall charge the filing fee for filing statements applicable for individuals filing reports made by political committees under the Election Code. 1977 Op. Atty. Gen. 118.

§ 10 ILCS 5/9-4: Repealed by P.A. 96-832, § 10, effective January 1, 2011.

§ 10 ILCS 5/9-5. Dissolved or inactive committee

Sec. 9-5. Dissolved or inactive committee. Any political committee which, after having filed a statement of organization, dissolves as a political committee or determines that it will no longer receive any campaign contributions nor make any campaign expenditures shall notify the Board of that fact and file with the Board a final report with respect to its contributions and expenditures, including the final disposition of its funds and assets.

In the event that a political committee dissolves, all contributions in its possession, after payment of the committee's outstanding liabilities, including staff salaries, shall be

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refunded to the contributors in amounts not exceeding their individual contributions, or transferred to other political or charitable organizations consistent with the positions of the committee or the candidates it represented. In no case shall these funds be used for the personal aggrandizement of any committee member or campaign worker.

(Source: P.A. 86-873; 90-495, § 5; 96-832, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-5.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Effect of Amendments. The 1997 amendment by P.A. 90-495, effective January 1, 1998, in the second paragraph, added at the end "and assets".

The 2009 amendment by P.A. 96-832, effective January 1, 2011, deleted the first paragraph which read: "Any change in information previously submitted in a statement of organization except for information submitted under Section 9-3(h) shall be reported, as required of statements of organization by Section 9-3 of this Article, within 10 days following such change"; in the present first paragraph, deleted "or the Board and the county clerk, as required of statements of organization by Section 9-3 of this Article" following "expenditures shall notify the Board" and following "fact and file with the Board".

§ 10 ILCS 5/9-6. Accounting for contributions

Sec. 9-6. Accounting for contributions. (a) A person who collects or accepts a contribution for a political committee shall, within 5 days after receipt of such contribution, submit to the treasurer a detailed account of the contribution, including (i) the amount, (ii) the name and address of the person making such contribution, (iii) the date on which the contribution was received, and (iv) the name and address of the person collecting or accepting the contribution for the political committee. A political committee shall disclose on the quarterly statement the name, address, and occupation of any person who collects or accepts contributions from at least 5 persons in the aggregate of $3,000 or more outside of the presence of a candidate or not in connection with a fundraising event sanctioned or coordinated by the political committee during a reporting period. This subsection does not apply to a person who is an officer of the committee, a compensated employee, a person authorized by an officer or the candidate of a committee to accept contributions on behalf of the committee, or an entity used for processing financial transactions by credit card or other means.

(b) Within 5 business days of contributing goods or services to a political committee, the contributor shall submit to the treasurer a detailed account of the contribution, including (i) the name and address of the person making the contribution, (ii) a description and

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market value of the goods or services, and (iii) the date on which the contribution was made.

(c) All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members, or associates of such committee.

(Source: P.A. 78-1183; 90-737, § 220; 96-832, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-6.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Effect of Amendments. The 1998 amendment by P.A. 90-737, effective January 1, 1999, added the section catchline; added the subsection (a) and (c) designations; and added subsection (b).

The 2009 amendment by P.A. 96-832, effective January 1, 2011, rewrote the section.

§ 10 ILCS 5/9-7. [Treasurer; required accounts]

Sec. 9-7. The treasurer of a political committee shall keep a detailed and exact account of -

(a) the total of all contributions made to or for the committee;

(b) the full name and mailing address of every person making a contribution and the date and amount thereof;

(c) the total of all expenditures made by or on behalf of the committee;

(d) the full name and mailing address of every person to whom any expenditure is made, and the date and amount thereof;

(e) proof of payment, stating the particulars, for every expenditure made by or on behalf of the committee.

The treasurer shall preserve all records and accounts required by this section for a period of 2 years.

(Source: P.A. 79-293; 96-832, § 5.)

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Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-7.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Effect of Amendments. The 2009 amendment by P.A. 96-832, effective January 1, 2011, deleted "in excess of $20" following "contribution" in (b); and in (d) and (e), deleted "in excess of $20" following "expenditure".

CASE NOTES

Analysis

Failure to Document
Violation

Failure to Document

Organizer of a committee formed to oppose election to the school board violated 10 ILCS 5/9-7 by failing to provide the treasurer with invoices and receipts from certain transactions; thus, failing to permit the treasurer to keep the detailed records required. Brennan v. Ill. State Bd. of Elections, 336 Ill. App. 3d 749, 271 Ill. Dec. 300, 784 N.E.2d 854, 2002 Ill. App. LEXIS 1257 (1 Dist. 2002), appeal denied, 204 Ill. 2d 656, 275 Ill. Dec. 74, 792 N.E.2d 305 (2003).

Violation

Record supported the Illinois State Board of Elections' decision that an attorney violated 10 ILCS 5/9-2, 10 ILCS 5/9-3, 10 ILCS 5/9-7, 10 ILCS 5/9-10(b-5), and 10 ILCS 5/9-26 when he paid for a videotape opposing the election of four candidates to a school board two weeks before he filed a statement of organization on behalf of a political committee and named someone else as the chairman and treasurer of the political committee when the attorney really held those positions, and the fact that the Board did not render its decision within 60 days of the date on which the Board filed its complaint, in accordance with 10 ILCS 5/9-21, did not invalidate the Board's decision. Brennan v. Ill. State Bd. of Elections, 336 Ill. App. 3d 749, 271 Ill. Dec. 300, 784 N.E.2d 854, 2002 Ill. App. LEXIS 1257 (1 Dist. 2002), appeal denied, 204 Ill. 2d 656, 275 Ill. Dec. 74, 792 N.E.2d 305 (2003).

§ 10 ILCS 5/9-7.5: Repealed by P.A. 96-832, § 10, effective January 1, 2011.

§ 10 ILCS 5/9-8. [Contributions not authorized by candidate]

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Sec. 9-8. Any political committee which solicits or receives contributions or makes expenditures on behalf of any candidate that is not authorized in writing by such candidate to do so shall include a notice on the face or front page of all literature and advertisements published and following all commercials broadcast, that are authorized by the committee and that mention the candidate, stating that the committee is not authorized by such candidate and that such candidate is not responsible for the activities of such committee.

(Source: P.A. 78-1183; 96-832, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-8.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Effect of Amendments. The 2009 amendment by P.A. 96-832, effective January 1, 2011, substituted "that are authorized by the committee and that mention the candidate" for "in connection with such candidate's campaign by such committee or on its behalf".

§ 10 ILCS 5/9-8.5. Limitations on campaign contributions

Sec. 9-8.5. Limitations on campaign contributions. (a) It is unlawful for a political committee to accept contributions except as provided in this Section.

(b) During an election cycle, a candidate political committee may not accept contributions with an aggregate value over the following: (i) $5,000 from any individual, (ii) $10,000 from any corporation, labor organization, or association, or (iii) $50,000 from a candidate political committee or political action committee. A candidate political committee may accept contributions in any amount from a political party committee except during an election cycle in which the candidate seeks nomination at a primary election. During an election cycle in which the candidate seeks nomination at a primary election, a candidate political committee may not accept contributions from political party committees with an aggregate value over the following: (i) $200,000 for a candidate political committee established to support a candidate seeking nomination to statewide office, (ii) $125,000 for a candidate political committee established to support a candidate seeking nomination to the Senate, the Supreme Court or Appellate Court in the First Judicial District, or an office elected by all voters in a county with 1,000,000 or more residents, (iii) $75,000 for a candidate political committee established to support a candidate seeking nomination to the House of Representatives, the Supreme Court or Appellate Court for a Judicial District other than the First Judicial District, an office elected by all voters of a county of fewer than 1,000,000 residents, and municipal and county offices in Cook County other than those elected by all voters of Cook County, and

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(iv) $50,000 for a candidate political committee established to support the nomination of a candidate to any other office. A candidate political committee established to elect a candidate to the General Assembly may accept contributions from only one legislative caucus committee. A candidate political committee may not accept contributions from a ballot initiative committee.

(c) During an election cycle, a political party committee may not accept contributions with an aggregate value over the following: (i) $10,000 from any individual, (ii) $20,000 from any corporation, labor organization, or association, or (iii) $50,000 from a political action committee. A political party committee may accept contributions in any amount from another political party committee or a candidate political committee, except as provided in subsection (c-5). Nothing in this Section shall limit the amounts that may be transferred between a State political committee and federal political committee. A political party committee may not accept contributions from a ballot initiative committee. A political party committee established by a legislative caucus may not accept contributions from another political party committee established by a legislative caucus.

(c-5) During the period beginning on the date candidates may begin circulating petitions for a primary election and ending on the day of the primary election, a political party committee may not accept contributions with an aggregate value over $50,000 from a candidate political committee or political party committee. A political party committee may accept contributions in any amount from a candidate political committee or political party committee if the political party committee receiving the contribution filed a statement of nonparticipation in the primary as provided in subsection (c-10). The Task Force on Campaign Finance Reform shall study and make recommendations on the provisions of this subsection to the Governor and General Assembly by September 30, 2012. This subsection becomes inoperative on July 1, 2013 and thereafter no longer applies.

(c-10) A political party committee that does not intend to make contributions to candidates to be nominated at a general primary election or consolidated primary election may file a Statement of Nonparticipation in a Primary Election with the Board. The Statement of Nonparticipation shall include a verification signed by the chairperson and treasurer of the committee that (i) the committee will not make contributions or coordinated expenditures in support of or opposition to a candidate or candidates to be nominated at the general primary election or consolidated primary election (select one) to be held on (insert date), (ii) the political party committee may accept unlimited contributions from candidate political committees and political party committees, provided that the political party committee does not make contributions to a candidate or candidates to be nominated at the primary election, and (iii) failure to abide by these requirements shall deem the political party committee in violation of this Article and subject the committee to a fine of no more than 150% of the total contributions or coordinated expenditures made by the committee in violation of this Article. This subsection becomes inoperative on July 1, 2013 and thereafter no longer applies.

(d) During an election cycle, a political action committee may not accept contributions with an aggregate value over the following: (i) $10,000 from any individual, (ii) $20,000 from any corporation, labor organization, political party committee, or association, or (iii)

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$50,000 from a political action committee or candidate political committee. A political action committee may not accept contributions from a ballot initiative committee.

(e) A ballot initiative committee may accept contributions in any amount from any source, provided that the committee files the document required by Section 9-3 of this Article [10 ILCS 5/9-3].

(f) Nothing in this Section shall prohibit a political committee from dividing the proceeds of joint fundraising efforts; provided that no political committee may receive more than the limit from any one contributor.

(g) On January 1 of each odd-numbered year, the State Board of Elections shall adjust the amounts of the contribution limitations established in this Section for inflation as determined by the Consumer Price Index for All Urban Consumers as issued by the United States Department of Labor and rounded to the nearest $100. The State Board shall publish this information on its official website.

(h) Self-funding candidates. If a public official, a candidate, or the public official's or candidate's immediate family contributes or loans to the public official's or candidate's political committee or to other political committees that transfer funds to the public official's or candidate's political committee or makes independent expenditures for the benefit of the public official's or candidate's campaign during the 12 months prior to an election in an aggregate amount of more than (i) $250,000 for statewide office or (ii) $100,000 for all other elective offices, then the public official or candidate shall file with the State Board of Elections, within one day, a Notification of Self-funding that shall detail each contribution or loan made by the public official, the candidate, or the public official's or candidate's immediate family. Within 2 business days after the filing of a Notification of Self-funding, the notification shall be posted on the Board's website and the Board shall give official notice of the filing to each candidate for the same office as the public official or candidate making the filing, including the public official or candidate filing the Notification of Self-funding. Upon receiving notice from the Board, all candidates for that office, including the public official or candidate who filed a Notification of Self-funding, shall be permitted to accept contributions in excess of any contribution limits imposed by subsection (b). For the purposes of this subsection, "immediate family" means the spouse, parent, or child of a public official or candidate.

(i) For the purposes of this Section, a corporation, labor organization, association, or a political action committee established by a corporation, labor organization, or association may act as a conduit in facilitating the delivery to a political action committee of contributions made through dues, levies, or similar assessments and the political action committee may report the contributions in the aggregate, provided that: (i) the dues, levies, or similar assessments paid by any natural person, corporation, labor organization, or association in a calendar year may not exceed the limits set forth in this Section and (ii) the corporation, labor organization, association, or a political action committee established by a corporation, labor organization, or association facilitating the delivery of contributions maintains a list of natural persons, corporations, labor organizations, and associations that paid the dues, levies, or similar assessments from which the contributions comprising the aggregate amount derive. A political action committee

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facilitating the delivery of contributions or receiving contributions shall disclose the amount of dues delivered or received and the name of the corporation, labor organization, association, or political action committee delivering the contributions, if applicable.

(j) A political committee that receives a contribution or transfer in violation of this Section shall dispose of the contribution or transfer by returning the contribution or transfer, or an amount equal to the contribution or transfer, to the contributor or transferor or donating the contribution or transfer, or an amount equal to the contribution or transfer, to a charity. A contribution or transfer received in violation of this Section that is not disposed of as provided in this subsection within 15 days after its receipt shall escheat to the General Revenue Fund and the political committee shall be deemed in violation of this Section and subject to a civil penalty not to exceed 150% of the total amount of the contribution.

(k) For the purposes of this Section, "statewide office" means the Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller, and Treasurer.

(l) This Section is repealed if and when the United States Supreme Court invalidates contribution limits on committees formed to assist candidates, political parties, corporations, associations, or labor organizations established by or pursuant to federal law.

(Source: P.A. 96-832, § 5.)

Note.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Effective Date. Section 99 of P.A. 96-832 made this section effective January 1, 2011.

§ 10 ILCS 5/9-8.6. Independent expenditures

Sec. 9-8.6. Independent expenditures. (a) An independent expenditure is not considered a contribution to a political committee. An expenditure made by a natural person or political committee for an electioneering communication in connection, consultation, or concert with or at the request or suggestion of the public official or candidate, the public official's or candidate's candidate political committee, or the agent or agents of the public official, candidate, or political committee or campaign shall not be considered an independent expenditure but rather shall be considered a contribution to the public official's or candidate's candidate political committee.

A natural person who makes an independent expenditure supporting or opposing a public official or candidate that, alone or in combination with any other independent expenditure

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made by that natural person supporting or opposing that public official or candidate during any 12-month period, equals an aggregate value of at least $3,000 must file a written disclosure with the State Board of Elections within 2 business days after making any expenditure that results in the natural person meeting or exceeding the $3,000 threshold. Each disclosure must identify the natural person, the public official or candidate supported or opposed, the date, amount, and nature of each independent expenditure, and the natural person's occupation and employer.

(b) Any entity other than a natural person that makes expenditures of any kind in an aggregate amount exceeding $3,000 during any 12-month period supporting or opposing a public official or candidate must organize as a political committee in accordance with this Article.

(c) Every political committee that makes independent expenditures must report all such independent expenditures as required under Section 9-10 of this Article [10 ILCS 5/9-10].

(Source: P.A. 96-832, § 5.)

Note.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Effective Date. Section 99 of P.A. 96-832 made this section effective July 1, 2010.

§ 10 ILCS 5/9-8.10. Use of political committee and other reporting organization funds

Sec. 9-8.10. Use of political committee and other reporting organization funds. (a) A political committee shall not make expenditures:

(1) In violation of any law of the United States or of this State.

(2) Clearly in excess of the fair market value of the services, materials, facilities, or other things of value received in exchange.

(3) For satisfaction or repayment of any debts other than loans made to the committee or to the public official or candidate on behalf of the committee or repayment of goods and services purchased by the committee under a credit agreement. Nothing in this Section authorizes the use of campaign funds to repay personal loans. The repayments shall be made by check written to the person who made the loan or credit agreement. The terms and conditions of any loan or credit agreement to a committee shall be set forth in a written agreement, including but not limited to the method and amount of repayment, that shall be executed by the chairman or treasurer of the committee at the time of the loan or

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credit agreement. The loan or agreement shall also set forth the rate of interest for the loan, if any, which may not substantially exceed the prevailing market interest rate at the time the agreement is executed.

(4) For the satisfaction or repayment of any debts or for the payment of any expenses relating to a personal residence. Campaign funds may not be used as collateral for home mortgages.

(5) For clothing or personal laundry expenses, except clothing items rented by the public official or candidate for his or her own use exclusively for a specific campaign-related event, provided that committees may purchase costumes, novelty items, or other accessories worn primarily to advertise the candidacy.

(6) For the travel expenses of any person unless the travel is necessary for fulfillment of political, governmental, or public policy duties, activities, or purposes.

(7) For membership or club dues charged by organizations, clubs, or facilities that are primarily engaged in providing health, exercise, or recreational services; provided, however, that funds received under this Article may be used to rent the clubs or facilities for a specific campaign-related event.

(8) In payment for anything of value or for reimbursement of any expenditure for which any person has been reimbursed by the State or any person. For purposes of this item (8), a per diem allowance is not a reimbursement.

(9) For the purchase of or installment payment for a motor vehicle unless the political committee can demonstrate that purchase of a motor vehicle is more cost-effective than leasing a motor vehicle as permitted under this item (9). A political committee may lease or purchase and insure, maintain, and repair a motor vehicle if the vehicle will be used primarily for campaign purposes or for the performance of governmental duties. A committee shall not make expenditures for use of the vehicle for non-campaign or non-governmental purposes. Persons using vehicles not purchased or leased by a political committee may be reimbursed for actual mileage for the use of the vehicle for campaign purposes or for the performance of governmental duties. The mileage reimbursements shall be made at a rate not to exceed the standard mileage rate method for computation of business expenses under the Internal Revenue Code.

(10) Directly for an individual's tuition or other educational expenses, except for governmental or political purposes directly related to a candidate's or public official's duties and responsibilities.

(11) For payments to a public official or candidate or his or her family member unless for compensation for services actually rendered by that person. The provisions of this item (11) do not apply to expenditures by a political committee in an aggregate amount not exceeding the amount of funds reported to and certified by the State Board or county clerk as available as of June 30, 1998, in the semi-annual report of contributions and expenditures filed by the political committee for the period concluding June 30, 1998.

(b) The Board shall have the authority to investigate, upon receipt of a verified complaint, violations of the provisions of this Section. The Board may levy a fine on any person who

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knowingly makes expenditures in violation of this Section and on any person who knowingly makes a malicious and false accusation of a violation of this Section. The Board may act under this subsection only upon the affirmative vote of at least 5 of its members. The fine shall not exceed $500 for each expenditure of $500 or less and shall not exceed the amount of the expenditure plus $500 for each expenditure greater than $500. The Board shall also have the authority to render rulings and issue opinions relating to compliance with this Section.

(c) Nothing in this Section prohibits the expenditure of funds of a political committee controlled by an officeholder or by a candidate to defray the customary and reasonable expenses of an officeholder in connection with the performance of governmental and public service functions.

(d) Nothing in this Section prohibits the funds of a political committee which is controlled by a person convicted of a violation of any of the offenses listed in subsection (a) of Section 10 of the Public Corruption Profit Forfeiture Act [5 ILCS 283/10] from being forfeited to the State under Section 15 of the Public Corruption Profit Forfeiture Act [5 ILCS 283/15].

(Source: P.A. 90-737, § 220; 93-615, § 90-10; 93-685, § 10; 96-1019, § 50.)

Note.

Section 45 of P.A. 96-1019 contains a severability provision.

Effective Date. Section 999 of P.A. 90-737 makes this section effective January 1, 1999.

Effect of Amendments. The 2003 amendment by P.A. 93-615, effective November 19, 2003, added subsection (c).

The 2004 amendment by P.A. 93-685, effective July 8, 2004, rewrote subsection (c), which formerly read "Nothing in this Section prohibits the expenditure of funds of (i) a political committee controlled by an officeholder or by a candidate or (ii) an organization subject to Section 9-7.5 to defray the ordinary and necessary expenses of an officeholder in connection with the performance of governmental duties. For the purposes of this subsection, 'ordinary and necessary expenses' include, but are not limited to, expenses in relation to the operation of the district office of a member of the General Assembly."

The 2011 amendment by P.A. 96-1019, effective January 1, 2011, deleted "or organization subject to Section 9-7.5" in the introductory language of (a); in (c), deleted the (i) designation and deleted "or (ii) an organization subjection to Section 9-7.5"; and added (d).

CASE NOTES

Political group money

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Board should not have dismissed the concerned citizen's complaint to the extent that it alleged that the wife and political group violated campaign finance laws under the Election Code by getting the political group to pay the husband's mortgage with political group money and by making expenditures to the husband for loans that he never made and for services that he never rendered. Payment of personal expenses was potentially a violation of 10 ILCS 5/9-8.10(a)(3) and 10 ILCS 5/9-8.10(a)(4), while making expenditures for a loan not made or compensating a person for services not rendered alleged a violation of 10 ILCS 5/9-8.10(a)(11), and, thus, those claims needed to be considered upon remand of the case to the Board. Thompson v. Ill. State Bd. of Elections, 408 Ill. App. 3d 410, 348 Ill. Dec. 856, 945 N.E.2d 625, 2011 Ill. App. LEXIS 241 (1 Dist. 2011).

§ 10 ILCS 5/9-8.15. Contributions on State property

Sec. 9-8.15. Contributions on State property. In addition to any other provision of this Code, the solicitation, acceptance, offer, and making of contributions on State property by public officials, State employees, candidates for elective office, and others are subject to the State Officials and Employees Ethics Act [5 ILCS 430/1-1 et seq.]. If a political committee receives and retains a contribution that is in violation of Section 5-35 of the State Officials and Employees Ethics Act [5 ILCS 430/5-35], then the State Board may impose a civil penalty upon that political committee in an amount equal to 100% of that contribution.

(Source: P.A. 90-737, § 220; 93-615, § 90-10.)

Effective Date. Section 999 of P.A. 90-737 makes this section effective January 1, 1999.

Effect of Amendments. The 2003 amendment by P.A. 93-615, effective November 19, 2003, rewrote the section to the extent that a detailed comparison would be impracticable.

§ 10 ILCS 5/9-9. [Notice on literature soliciting funds]

Sec. 9-9. Any political committee shall include on all literature and advertisements soliciting funds the following notice:

"A copy of our report filed with the State Board of Elections is (or will be) available on the Board's official website (insert the current website address) or for purchase from the State Board of Elections, Springfield, Illinois."

(Source: P.A. 83-259; 96-832, § 5.)

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Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-9.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Effect of Amendments. The 2009 amendment by P.A. 96-832, effective January 1, 2011, rewrote the section.

RESEARCH REFERENCES

Validity and construction of state statute prohibiting anonymous political advertising. 4 ALR4th 741.

§ 10 ILCS 5/9-9.5. Disclosures in political communications

Sec. 9-9.5. Disclosures in political communications. (a) Any political committee, organized under the Election Code [10 ILCS 5/1-1 et seq.], that makes an expenditure for a pamphlet, circular, handbill, Internet or telephone communication, radio, television, or print advertisement, or other communication directed at voters and mentioning the name of a candidate in the next upcoming election shall ensure that the name of the political committee paying for any part of the communication, including, but not limited to, its preparation and distribution, is identified clearly within the communication as the payor. This subsection does not apply to items that are too small to contain the required disclosure. Nothing in this subsection shall require disclosure on any telephone communication using random sampling or other scientific survey methods to gauge public opinion for or against any candidate or question of public policy.

Whenever any vendor or other person provides any of the services listed in this subsection, other than any telephone communication using random sampling or other scientific survey methods to gauge public opinion for or against any candidate or question of public policy, the vendor or person shall keep and maintain records showing the name and address of the person who purchased or requested the services and the amount paid for the services. The records required by this subsection shall be kept for a period of one year after the date upon which payment was received for the services.

(b) Any political committee, organized under this Code, that makes an expenditure for a pamphlet, circular, handbill, Internet or telephone communication, radio, television, or print advertisement, or other communication directed at voters and (i) mentioning the name of a candidate in the next upcoming election, without that candidate's permission, or (ii) advocating for or against a public policy position shall ensure that the name of the political committee paying for any part of the communication, including, but not limited to, its preparation and distribution, is identified clearly within the communication. Nothing in this subsection shall require disclosure on any telephone communication using

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random sampling or other scientific survey methods to gauge public opinion for or against any candidate or question of public policy.

(c) A political committee organized under this Code shall not make an expenditure for any unsolicited telephone call to the line of a residential telephone customer in this State using any method to block or otherwise circumvent that customer's use of a caller identification service.

(Source: P.A. 90-737, § 220; 93-615, § 90-10; 93-847, § 5; 94-645, § 5; 94-1000, § 5; 95-699, § 5.)

Note.

Section 95 of P.A. 93-847 contains a severability provision.

Section 97 of P.A. 95-699 contains a severability provision.

Effective Date. Section 999 of P.A. 90-737 makes this section effective January 1, 1999.

Effect of Amendments. The 2003 amendment by P.A. 93-615, effective November 19, 2003, revised the section heading, and rewrote the section to the extent that a detailed comparison would be impracticable.

The 2004 amendment by P.A. 93-847, effective July 30, 2004, inserted "Internet communication" in the first sentence; and added the last sentence.

The 2005 amendment by P.A. 94-645, effective August 22, 2005, added "or telephone" in the first sentence of the first paragraph; and added the last paragraph.

The 2006 amendment by P.A. 94-1000, effective July 3, 2006, added the (a) designation; added (b) and (c), and made related changes.

The 2007 amendment by P.A. 95-699, effective November 9, 2007, substituted "or" for "and" prior to (b)(ii).

CASE NOTES

Compliance

Mailer of campaign promotional material produced and procured campaign literature in the form of a sample ballot, paid for the materials with his own cash funds, and paid for the dissemination of the sample ballot to voters through two mailings. Thus, he was required to comply with the disclosure requirements of 10 ILCS 5/9-9.5, despite his contention that he was working as a volunteer for political committees and was to be reimbursed, because he could not establish that he was an agent for any political committee or that his work procuring the sample ballots fell within the scope of any purported authority. Santana v. State Bd. of Elections, 371 Ill. App. 3d 1044, 309 Ill. Dec. 703, 864 N.E.2d 944, 2007 Ill. App. LEXIS 234 (1 Dist. 2007).

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§ 10 ILCS 5/9-10. Disclosure of contributions and expenditures

Sec. 9-10. Disclosure of contributions and expenditures. (a) The treasurer of every political committee shall file with the Board reports of campaign contributions and expenditures as required by this Section on forms to be prescribed or approved by the Board.

(b) Every political committee shall file quarterly reports of campaign contributions, expenditures, and independent expenditures. The reports shall cover the period January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31 of each year. A political committee shall file quarterly reports no later than the 15th day of the month following each period. Reports of contributions and expenditures must be filed to cover the prescribed time periods even though no contributions or expenditures may have been received or made during the period. The Board shall assess a civil penalty not to exceed $5,000 for failure to file a report required by this subsection. The fine, however, shall not exceed $1,000 for a first violation if the committee files less than 10 days after the deadline. There shall be no fine if the report is mailed and postmarked at least 72 hours prior to the filing deadline. When considering the amount of the fine to be imposed, the Board shall consider whether the violation was committed inadvertently, negligently, knowingly, or intentionally and any past violations of this Section.

(c) A political committee shall file a report of any contribution of $1,000 or more electronically with the Board within 5 business days after receipt of the contribution, except that the report shall be filed within 2 business days after receipt if (i) the contribution is received 30 or fewer days before the date of an election and (ii) the political committee supports or opposes a candidate or public question on the ballot at that election or makes expenditures in excess of $500 on behalf of or in opposition to a candidate, candidates, a public question, or public questions on the ballot at that election. The State Board shall allow filings of reports of contributions of $1,000 or more by political committees that are not required to file electronically to be made by facsimile transmission. The Board shall assess a civil penalty for failure to file a report required by this subsection. Failure to report each contribution is a separate violation of this subsection. The Board shall impose fines for willful or wanton violations of this subsection (c) not to exceed 150% of the total amount of the contributions that were untimely reported, but in no case shall it be less than 10% of the total amount of the contributions that were untimely reported. When considering the amount of the fine to be imposed for willful or wanton violations, the Board shall consider the number of days the contribution was reported late and past violations of this Section and Section 9-3 [10 ILCS 5/9-3]. The Board may impose a fine for negligent or inadvertent violations of this subsection not to exceed 50% of the total amount of the contributions that were untimely reported, or the Board may waive the fine. When considering whether to impose a fine and the amount of the fine, the Board shall consider the following factors: (1) whether the political committee made an attempt to disclose the contribution and any attempts made to correct the violation, (2) whether the violation is attributed to a clerical or computer error, (3) the amount of the contribution, (4) whether the violation arose from a

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discrepancy between the date the contribution was reported transferred by a political committee and the date the contribution was received by a political committee, (5) the number of days the contribution was reported late, and (6) past violations of this Section and Section 9-3 by the political committee.

(d) For the purpose of this Section, a contribution is considered received on the date (i) a monetary contribution was deposited in a bank, financial institution, or other repository of funds for the committee, (ii) the date a committee receives notice a monetary contribution was deposited by an entity used to process financial transactions by credit card or other entity used for processing a monetary contribution that was deposited in a bank, financial institution, or other repository of funds for the committee, or (iii) the public official, candidate, or political committee receives the notification of contribution of goods or services as required under subsection (b) of Section 9-6 [10 ILCS 5/9-6].

(e) A political committee that makes independent expenditures of $1,000 or more during the period 30 days or fewer before an election shall electronically file a report with the Board within 5 business days after making the independent expenditure. The report shall contain the information required in Section 9-11(c) of this Article [10 ILCS 5/9-11].

(f) A copy of each report or statement filed under this Article shall be preserved by the person filing it for a period of two years from the date of filing.

(Source: P.A. 86-873; 90-737, § 220; 93-574, § 5; 93-615, § 90-10; 94-645, § 5; 95-6, § 5; 95-957, § 5; 96-832, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-10.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Illinois Administrative Code.

See 26 Illinois Administrative Code, §§ 100.110, 125.420.

Effect of Amendments. The 1998 amendment by P.A. 90-737, effective January 1, 1999, added the section catchline; added the subsection (a) through (d) designations; and added all of subsection (b-5); in subsection (a) added the third sentence; in subsection (b) substituted the third and fourth sentences for the exception phrase which read: ", except that any contribution of $500 or more received in the interim between the last date of the period covered by the last report filed prior to the election and the date of the election shall be reported within 2 business days after its receipt"; and in subsection (c) added the last three sentences.

The 2003 amendment by P.A. 93-574, effective August 21, 2003, added subsection (c-5).

The 2003 amendment by P.A. 93-615, effective November 19, 2003, rewrote subsection (b-5) to the extent that a detailed comparison would be impracticable, regarding the filing of election contributions.

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The 2005 amendment by P.A. 94-645, effective August 22, 2005, in the last sentence of (b) substituted "does not make expenditures in excess of $500" for "neither accepts contributions nor makes expenditures", and added the exception clause at the end.

The 2007 amendment by P.A. 95-6, effective June 20, 2007, rewrote the section.

The 2008 amendment by P.A. 95-957, effective January 1, 2009, in the last sentence of (b), inserted "an expenditure or", substituted "an aggregate amount of more than" for "excess of", and inserted "candidates" "or questions, or (iii) candidate or candidates and public question or questions".

The 2009 amendment by P.A. 96-832, effective January 1, 2011, rewrote the section heading and the section.

CASE NOTES

Analysis

Applicability
Contributions
Violation

Applicability

Mailer of campaign promotional material formed a political committee prior to the primary election as early as the time he placed the order for the materials, and evidence of the formation of a political committee was shown by his total cash payment covering the two mailings of the materials. Thus, he was required to file campaign financing reports under 10 ILCS 5/9-10 of the Illinois Election Code, 10 ILCS 5/1-1 et seq. Santana v. State Bd. of Elections, 371 Ill. App. 3d 1044, 309 Ill. Dec. 703, 864 N.E.2d 944, 2007 Ill. App. LEXIS 234 (1 Dist. 2007).

This section and 10 ILCS 5/9-11 and 10 ILCS 5/9-13 could not constitutionally be applied to the Socialist Workers Party because evidence showed a pattern of violence and harassment towards them; therefore, the state was permanently enjoined and restrained from enforcing certain provisions of these sections against that party. 1980 Ill. Socialist Workers Campaign v. Illinois Bd. of Elections, 531 F. Supp. 915 (N.D. Ill. 1981).

Contributions

Organizer of committee formed to oppose elections to school board violated 10 ILCS 5/9-10(b-5), when he failed to report his contribution of over $12,000 for the production of a videotape to the Illinois Election Board within two business days. Brennan v. Ill. State Bd. of Elections, 336 Ill. App. 3d 749, 271 Ill. Dec. 300, 784 N.E.2d 854, 2002 Ill. App. LEXIS 1257 (1 Dist. 2002), appeal denied, 204 Ill. 2d 656, 275 Ill. Dec. 74, 792 N.E.2d 305 (2003).

Violation

Fact that a campaign disclosure calendar issued by the Illinois State Board of Elections contained a misstatement of the filing requirements for certain campaign contributions did not constitute an

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extraordinary circumstance that would entitle a political committee to reconsideration of its untimely filed appeal of a fine imposed for the failure to timely report two campaign contributions. Citizens to Elect Collins v. Ill. State Bd. of Elections, 366 Ill. App. 3d 993, 304 Ill. Dec. 521, 853 N.E.2d 53, 2006 Ill. App. LEXIS 586 (1 Dist. 2006).

Fine or civil penalty under Article 9 of the Illinois Election Code must be approved by at least a majority of the Illinois State Board of Elections itself to become a final judgment of the Board; if a Board employee issues an assessment notice and the subject of the notice pays of its own accord the fine described therein, then the Board need not reduce the fine to a judgment and the fine is valid without Board approval, but if the subject of the notice does not pay the fine voluntarily and the Board wants to collect the fine, or the Board wants to reduce the civil penalty to a judgment for some other reason, then the Board must vote by at least a majority to impose the fine. Citizens to Elect Collins v. Ill. State Bd. of Elections, 366 Ill. App. 3d 993, 304 Ill. Dec. 521, 853 N.E.2d 53, 2006 Ill. App. LEXIS 586 (1 Dist. 2006).

Record supported the Illinois State Board of Elections' decision that an attorney violated 10 ILCS 5/9-2,9-3, 9-7, 9-10(b-5), and 9-26 when he paid for a videotape opposing the election of four candidates to a school board two weeks before he filed a statement of organization on behalf of a political committee and named someone else as the chairman and treasurer of the political committee when the attorney really held those positions, and the fact that the Board did not render its decision within 60 days of the date on which the Board filed its complaint, in accordance with 10 ILCS 5/9-21, did not invalidate the Board's decision. Brennan v. Ill. State Bd. of Elections, 336 Ill. App. 3d 749, 271 Ill. Dec. 300, 784 N.E.2d 854, 2002 Ill. App. LEXIS 1257 (1 Dist. 2002), appeal denied, 204 Ill. 2d 656, 275 Ill. Dec. 74, 792 N.E.2d 305 (2003).

§ 10 ILCS 5/9-11. Financial reports

Sec. 9-11. Financial reports. (a) Each quarterly report of campaign contributions, expenditures, and independent expenditures under Section 9-10 [10 ILCS 5/9-10] shall disclose the following:

(1) the name and address of the political committee;

(2) the name and address of the person submitting the report on behalf of the committee, if other than the chairman or treasurer;

(3) the amount of funds on hand at the beginning of the reporting period;

(4) the full name and mailing address of each person who has made one or more contributions to or for the committee within the reporting period in an aggregate amount or value in excess of $150, together with the amounts and dates of those contributions, and, if the contributor is an individual who contributed more than $500, the occupation and employer of the contributor or, if the occupation and employer of the contributor are unknown, a statement that the committee has made a good faith effort to ascertain this information;

(5) the total sum of individual contributions made to or for the committee during the reporting period and not reported under item (4);

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(6) the name and address of each political committee from which the reporting committee received, or to which that committee made, any transfer of funds in the aggregate amount or value in excess of $150, together with the amounts and dates of all transfers;

(7) the total sum of transfers made to or from the committee during the reporting period and not reported under item (6);

(8) each loan to or from any person, political committee, or financial institution within the reporting period by or to the committee in an aggregate amount or value in excess of $150, together with the full names and mailing addresses of the lender and endorsers, if any; the dates and amounts of the loans; and, if a lender or endorser is an individual who loaned or endorsed a loan of more than $500, the occupation and employer of that individual or, if the occupation and employer of the individual are unknown, a statement that the committee has made a good faith effort to ascertain this information;

(9) the total amount of proceeds received by the committee from (i) the sale of tickets for each dinner, luncheon, cocktail party, rally, and other fund-raising events; (ii) mass collections made at those events; and (iii) sales of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials;

(10) each contribution, rebate, refund, income from investments, or other receipt in excess of $150 received by the committee not otherwise listed under items (4) through (9) and, if the contributor is an individual who contributed more than $500, the occupation and employer of the contributor or, if the occupation and employer of the contributor are unknown, a statement that the committee has made a good faith effort to ascertain this information;

(11) the total sum of all receipts by or for the committee or candidate during the reporting period;

(12) the full name and mailing address of each person to whom expenditures have been made by the committee or candidate within the reporting period in an aggregate amount or value in excess of $150; the amount, date, and purpose of each of those expenditures; and the question of public policy or the name and address of, and the office sought by, each candidate on whose behalf that expenditure was made;

(13) the full name and mailing address of each person to whom an expenditure for personal services, salaries, and reimbursed expenses in excess of $150 has been made and that is not otherwise reported, including the amount, date, and purpose of the expenditure;

(14) the value of each asset held as an investment, as of the final day of the reporting period;

(15) the total sum of expenditures made by the committee during the reporting period; and

(16) the full name and mailing address of each person to whom the committee owes debts or obligations in excess of $150 and the amount of those debts or obligations.

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For purposes of reporting campaign receipts and expenses, income from investments shall be included as receipts during the reporting period they are actually received. The gross purchase price of each investment shall be reported as an expenditure at time of purchase. Net proceeds from the sale of an investment shall be reported as a receipt. During the period investments are held they shall be identified by name and quantity of security or instrument on each semi-annual report during the period.

(b) Each report of a campaign contribution of $1,000 or more required under subsection (c) of Section 9-10 shall disclose the following:

(1) the name and address of the political committee;

(2) the name and address of the person submitting the report on behalf of the committee, if other than the chairman or treasurer; and

(3) the full name and mailing address of each person who has made a contribution of $1,000 or more.

(c) Each quarterly report shall include the following information regarding any independent expenditures made during the reporting period: (1) the full name and mailing address of each person to whom an expenditure in excess of $150 has been made in connection with an independent expenditure; (2) the amount, date, and purpose of such expenditure; (3) a statement whether the independent expenditure was in support of or in opposition to a particular candidate; (4) the name of the candidate; (5) the office and, when applicable, district, sought by the candidate; and (6) a certification, under penalty of perjury, that such expenditure was not made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee. The report shall also include (I) the total of all independent expenditures of $150 or less made during the reporting period and (II) the total amount of all independent expenditures made during the reporting period.

(d) The Board shall by rule define a "good faith effort".

The reports of campaign contributions filed under this Article shall be cumulative during the reporting period to which they relate.

(e) Each report shall be verified, dated, and signed by either the treasurer of the political committee or the candidate on whose behalf the report is filed and shall contain the following verification:

"I declare that this report (including any accompanying schedules and statements) has been examined by me and, to the best of my knowledge and belief, is a true, correct, and complete report as required by Article 9 of the Election Code [10 ILCS 5/9-1 et seq.]. I understand that willfully filing a false or incomplete statement is subject to a civil penalty of up to $5,000.".

(f) A political committee may amend a report filed under subsection (a) or (b). The Board may reduce or waive a fine if the amendment is due to a technical or inadvertent error and the political committee files the amended report, except that a report filed under subsection (b) must be amended within 5 business days. The State Board shall ensure that

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a description of the amended information is available to the public. The Board may promulgate rules to enforce this subsection.

(Source: P.A. 86-873; 90-495, § 5; 90-737, § 220; 96-832, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-11.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Illinois Administrative Code.

See 26 Illinois Administrative Code, § 100.160.

Effect of Amendments. The 1997 amendment by P.A. 90-495, effective January 1, 1998, deleted item (2) which read "the scope, area of activity, party affiliation, candidate affiliation, and purposes of the political committee"; and in the second paragraph deleted from the end "but where there has been no change in an item reported in a previous report during such year, only the amount need to be carried forward".

The 1998 amendment by P.A. 90-737, effective January 1, 1999, in the first paragraph, item (4) added the phrase beginning ", and if a contributor" and ending "this information"; in item (8) added the phrase beginning ", and if a lender" and ending "this information"; in item (10) added the phrase beginning ", and if a contributor" and ending "this information"; and added the second paragraph.

The 2009 amendment by P.A. 96-832, effective January 1, 2011, added the section heading and rewrote the section.

CASE NOTES

Applicability

Since the concerned citizen alleged in a complaint alleging violations of the Election Code against the wife and political group that they falsely reported the identity of the parties that loaned the political group money, in violation of 10 ILCS 5/9-11, and/or violated 10 ILCS 5/9-25 by receiving loans made in the name of another person other than the real donor, the concerned citizen alleged justifiable grounds for believing that such violations had occurred after evidence submitted to the Board at a preliminary hearing supported those contentions. Accordingly, further proceedings before the Board were warranted on those claims. Thompson v. Ill. State Bd. of Elections, 408 Ill. App. 3d 410, 348 Ill. Dec. 856, 945 N.E.2d 625, 2011 Ill. App. LEXIS 241 (1 Dist. 2011).

Concerned citizen was entitled under 10 ILCS 5/9-20 to file a verified complaint alleging that the wife and political group violated the Election Code, and the concerned citizen's complaint had to be considered upon remand of the case from the appellate court, as the Board was not entitled to

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dismiss it based on its erroneous conclusion that the complaint had not alleged the required 10 ILCS 5/9-21 justifiable grounds. The concerned citizen's claim that the wife and political group had falsely reported, in violation of 10 ILCS 5/9-11(8), the identity of the party making loans to the political group had a basis in law and fact, as they reported that the husband had made the loans due to their incorrect assumption that the husband was the same lender as each of the two corporations in which the husband owned at least a 90 percent ownership, as the husband and the corporations were separate and distinct, and the political group under 10 ILCS 5/9-25 was not allowed to accept a contribution in the name of one party when it was made in another person's name. Thompson v. Gorman, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 20 (1 Dist. Jan. 13, 2011).

This section and 10 ILCS 5/9-10 and 10 ILCS 5/9-13 could not constitutionally be applied to the Socialist Workers Party because evidence showed a pattern of violence and harassment towards them; therefore, the state was permanently enjoined and restrained from enforcing certain provisions of these sections against that party. 1980 Ill. Socialist Workers Campaign v. Illinois Bd. of Elections, 531 F. Supp. 915 (N.D. Ill. 1981).

§ 10 ILCS 5/9-12: Repealed by P.A. 96-832, § 10, effective January 1, 2011.

§ 10 ILCS 5/9-13. Audits of political committees

Sec. 9-13. Audits of political committees. (a) The Board shall have the authority to order a political committee to conduct an audit of the financial records required to be maintained by the committee to ensure compliance with Sections 9-8.5 and 9-10 [10 ILCS 5/9-8.5 and 10 ILCS 5/9-10]. Audits ordered by the Board shall be conducted as provided in this Section and as provided by Board rule.

(b) The Board may order a political committee to conduct an audit of its financial records for any of the following reasons: (i) a discrepancy between the ending balance of a reporting period and the beginning balance of the next reporting period, (ii) failure to account for previously reported investments or loans, or (iii) a discrepancy between reporting contributions received by or expenditures made for a political committee that are reported by another political committee, except the Board shall not order an audit pursuant to this item (iii) unless there is a willful pattern of inaccurate reporting or there is a pattern of similar inaccurate reporting involving similar contributions by the same contributor. Prior to ordering an audit, the Board shall afford the political committee due notice and an opportunity for a closed preliminary hearing. A political committee shall hire an entity qualified to perform an audit; except, a political committee shall not hire a person that has contributed to the political committee during the previous 4 years.

(c) In each calendar year, the Board shall randomly order no more than 3% of registered political committees to conduct an audit. The Board shall establish a standard, scientific method of selecting the political committees that are to be audited so that every political committee has an equal mathematical chance of being selected.

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(d) Upon receipt of notification from the Board ordering an audit, a political committee shall conduct an audit of the financial records required to be maintained by the committee to ensure compliance with the contribution limitations established in Section 9-8.5 and the reporting requirements established in Section 9-3 and Section 9-10 [10 ILCS 5/9-3 and 10 ILCS 5/9-10] for a period of 2 years or the period since the committee was previously ordered to conduct an audit, whichever is shorter. The entity performing the audit shall review the amount of funds and investments maintained by the political committee and ensure the financial records accurately account for any contributions and expenditures made by the political committee. A certified copy of the audit shall be delivered to the Board within 60 calendar days after receipt of notice from the Board, unless the Board grants an extension to complete the audit. A political committee ordered to conduct an audit through the random selection process shall not be required to conduct another audit for a minimum of 5 years unless the Board has reason to believe the political committee is in violation of Section 9-3, 9-8.5, or 9-10.

(e) The Board shall not disclose the name of any political committee ordered to conduct an audit or any documents in possession of the Board related to an audit unless, after review of the audit findings, the Board has reason to believe the political committee is in violation of Section 9-3, 9-8.5, or 9-10 and the Board imposed a fine.

(f) Failure to deliver a certified audit in a timely manner is a business offense punishable by a fine of $250 per day that the audit is late, up to a maximum of $5,000.

(Source: P.A. 86-873; 90-495, § 5; 90-737, § 220; 96-832, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-13.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Effect of Amendments. The 1997 amendment by P.A. 90-495, effective January 1, 1998, deleted subsection (2) which read "the scope, area of activity, party affiliation, candidate affiliation, and purposes of the political committee".

The 1998 amendment by P.A. 90-737, effective January 1, 1999, in items (4) and (10) added the phrase at the end beginning ", and if the contributor is an individual who"; in item (8) added the phrase at the end beginning ", and if a lender or endorser is an individual who"; and added the last paragraph.

The 2009 amendment by P.A. 96-832, effective January 1, 2011, added the section heading and rewrote the section.

CASE NOTES

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Applicability

This section, 10 ILCS 5/9-10 and 10 ILCS 5/9-11 could not constitutionally be applied to the Socialist Workers Party because evidence showed a pattern of violence and harassment towards them; therefore, the state was permanently enjoined and restrained from enforcing certain provisions of these sections against that party. 1980 Ill. Socialist Workers Campaign v. Illinois Bd. of Elections, 531 F. Supp. 915 (N.D. Ill. 1981).

§ 10 ILCS 5/9-14: Repealed by P.A. 96-832, § 10, effective January 1, 2011.

§ 10 ILCS 5/9-15. [Duties of the board]

Sec. 9-15. It shall be the duty of the Board -

(1) to develop prescribed forms for filing statements of organization and required reports;

(2) to prepare, publish, and furnish to the appropriate persons a manual of instructions setting forth recommended uniform methods of bookkeeping and reporting under this Article;

(3) to prescribe suitable rules and regulations to carry out the provisions of this Article. Such rules and regulations shall be published and made available to the public;

(4) to send by first class mail, after the general primary election in even numbered years, to the chairman of each regularly constituted State central committee, county central committee and, in counties with a population of more than 3,000,000, to the committeemen of each township and ward organization of each political party notice of their obligations under this Article, along with a form for filing the statement of organization;

(5) to promptly make all reports and statements filed under this Article available for public inspection and copying no later than 2 business days after their receipt and to permit copying of any such report or statement at the expense of the person requesting the copy;

(6) to develop a filing, coding, and cross-indexing system consistent with the purposes of this Article;

(7) to compile and maintain a list of all statements or parts of statements pertaining to each candidate;

(8) to prepare and publish such reports as the Board may deem appropriate; and

(9) to annually notify each political committee that has filed a statement of organization with the Board of the filing dates for each quarterly report, provided that such notification shall be made by first-class mail unless the political committee opts to receive

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notification electronically via email.

(Source: P.A. 86-873; 96-1263, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-15.

Effect of Amendments. The 2010 amendment by P.A. 96-1263, effective January 1, 2011, rewrote (1); deleted "and election authorities" following "appropriate persons" in (2); in (3), deleted "at reasonable cost" from the end of the second sentence and deleted the former last sentence, which read: "The Board may determine which of its prescribed rules and regulations shall be binding on the county clerks in carrying out their duties under this Article"; added (5) through (9); and made a related change.

§ 10 ILCS 5/9-16. [Board and county clerk; duties]

Sec. 9-16. It shall be the duty of the board and of each county clerk to provide to each candidate at the time he files his nomination papers a notice of obligations under this Article. However, if a candidate files his nomination papers by mail or if an agent of the candidate files nomination papers on behalf of the candidate, the Board or the county clerk shall within 2 business days of the day and hour endorsed on the petition send such notice to the candidate by first class mail. Such notice shall briefly outline who is required to file under the campaign disclosure law and the penalties for failure to file. The notice of obligations under this Article shall be prepared by the Board.

(Source: P.A. 86-873; 96-832, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-16.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Effect of Amendments. The 2009 amendment by P.A. 96-832, effective January 1, 2011, rewrote the section.

§ 10 ILCS 5/9-17. [Statements and reports; public access]

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Sec. 9-17. All statements and reports filed under this Article with the board or county clerk shall be available for examination and copying by the public at all reasonable times.

Any person who alters or falsifies information on a copy of a statement or report obtained from the State Board of Elections or the county clerk pursuant to Article 9 of this Code [10 ILCS 5/9-1 et seq.] and publishes, circulates or distributes such altered or falsified information with the intent to misrepresent contributions received or expenditures made by a candidate or political committee shall be guilty of a Class B misdemeanor.

Any person who shall sell or utilize information copied from statements and reports filed with the State Board of Elections or the county clerk pursuant to Article 9 of this Code for the purpose of soliciting contributions or for the purpose of business solicitation shall be guilty of a Class B misdemeanor.

(Source: P.A. 81-310; 90-495, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-17.

Effect of Amendments. The 1997 amendment by P.A. 90-495, effective August 18, 1997, in the first paragraph, deleted the former second and third sentences requiring form from examiner; and deleted the former second paragraph regarding notification of Board of county clerk of examination.

§ 10 ILCS 5/9-18. [Investigations and hearings]

Sec. 9-18. The Board may hold investigations, inquiries, and hearings concerning any matter covered by this Article [10 ILCS 5/9-1 et seq.], subject to such rules and regulations as the Board may establish. In the process of holding such investigations, inquiries, and hearings, the Board may administer oaths and affirmations, certify to all official acts, issue subpoenas to be authorized by a vote of 5 members of the Board, compel the attendance and testimony of witnesses, and the production of papers, books, accounts, and documents. Hearings conducted by the Board shall be open to the public.

(Source: P.A. 81-1117.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-18.

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LEGAL PERIODICALS

For article, "The Illinois State Board of Elections: A History and Evaluation of the Formative Years," see 11 J. Marshall J. Prac. & Proc. 321 (1978).

§ 10 ILCS 5/9-19. [Investigators, examiners and hearing officers]

Sec. 9-19. The Board may hire such investigators, examiners, and hearing officers as may be necessary to carry out its functions under this Article, and may by regulation delegate any of its duties or functions under Sections 9-18 and 9-21 of this Article [10 ILCS 5/9-18 and 10 ILCS 5/9-21] to such persons, except that final judgments and orders shall be issued only by the Board. Reports of violations under Section 9-23 [10 ILCS 5/9-23] shall be made only by the Board.

(Source: P.A. 78-1183.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-19.

CASE NOTES

Violation

Fine or civil penalty under Article 9 of the Illinois Election Code must be approved by at least a majority of the Illinois State Board of Elections itself to become a final judgment of the Board; if a Board employee issues an assessment notice and the subject of the notice pays of its own accord the fine described therein, then the Board need not reduce the fine to a judgment and the fine is valid without Board approval, but if the subject of the notice does not pay the fine voluntarily and the Board wants to collect the fine, or the Board wants to reduce the civil penalty to a judgment for some other reason, then the Board must vote by at least a majority to impose the fine. Citizens to Elect Collins v. Ill. State Bd. of Elections, 366 Ill. App. 3d 993, 304 Ill. Dec. 521, 853 N.E.2d 53, 2006 Ill. App. LEXIS 586 (1 Dist. 2006).

§ 10 ILCS 5/9-20. [Verified complaint; filing]

Sec. 9-20. Any person who believes a violation of this Article has occurred may file a verified complaint with the Board. Such verified complaint shall be directed to a candidate or the chairman or treasurer of a political committee, and shall be subject to the following requirements:

(1) The complaint shall be in writing.

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(2) The complaint shall state the name of the candidate or chairman or treasurer of a political committee against whom the complaint is directed.

(3) The complaint shall state the statutory provisions which are alleged to have been violated.

(4) The complaint shall state the time, place, and nature of the alleged offense.

The complaint shall be verified, dated, and signed by the person filing the complaint in substantially the following manner:

VERIFICATION:

"I declare that this complaint (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true and correct complaint as required by Article 9 of The Election Code [10 ILCS 5/9-1 et seq.]. I understand that the penalty for willfully filing a false complaint shall be a fine not to exceed $500 or imprisonment in a penal institution other than the penitentiary not to exceed 6 months, or both fine and imprisonment."

....

(date of filing) (signature of person filing the complaint)

(Source: P.A. 78-1183.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-20.

CASE NOTES

Analysis

Standing

- Corporate Entity

Verified Complaint

Standing

- Corporate Entity

The object of this Code, the nature of the duties imposed by it, and the benefits resulting from its protections are directed to the registered voters of Illinois. A liquor licensee, as a corporate entity,

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has no protected statutory interest under this Code, and it cannot fulfill the fundamental requirements of standing. Ole, Ole, Inc. v. Kozubowski, 187 Ill. App. 3d 277, 134 Ill. Dec. 895, 543 N.E.2d 178 (1 Dist. 1989).

Verified Complaint

Not only was the concerned citizen entitled to file a verified complaint pursuant to 10 ILCS 5/9-20 alleging campaign finance violations of the Election Code, but the Board was obligated under 10 ILCS 5/9-21 to determine whether the complaint alleged any justifiable grounds for believing that a violation had in fact occurred. Since the concerned citizen was adversely affected by the Board's decision that the concerned citizen's complaint alleged no such grounds against the wife and political group and was thus worthy of dismissal, the concerned citizen was entitled to review of that decision, as dictated by 10 ILCS 5/9-22, under the governing provisions of the Administrative Review Law, 735 ILCS 5/3-101 et seq., and its accompanying rules. Thompson v. Ill. State Bd. of Elections, 408 Ill. App. 3d 410, 348 Ill. Dec. 856, 945 N.E.2d 625, 2011 Ill. App. LEXIS 241 (1 Dist. 2011).

Concerned citizen was entitled under 10 ILCS 5/9-20 to file a verified complaint alleging that the wife and political group violated the Election Code, and the concerned citizen's complaint had to be considered upon remand of the case from the appellate court, as the Board was not entitled to dismiss it based on its erroneous conclusion that the complaint had not alleged the required 10 ILCS 5/9-21 justifiable grounds. The concerned citizen's claim that the wife and political group had falsely reported, in violation of 10 ILCS 5/9-11(8), the identity of the party making loans to the political group had a basis in law and fact, as they reported that the husband had made the loans due to their incorrect assumption that the husband was the same lender as each of the two corporations in which the husband owned at least a 90 percent ownership, as the husband and the corporations were separate and distinct, and the political group under 10 ILCS 5/9-25 was not allowed to accept a contribution in the name of one party when it was made in another person's name. Thompson v. Gorman, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 20 (1 Dist. Jan. 13, 2011).

Concerned citizen was entitled under 10 ILCS 5/9-20 to file a verified complaint alleging violation of the state's Election Code, and the Board was then tasked with first determining whether the verified complaint alleged justifiable grounds for proceeding to a preliminary hearing regarding the allegations. In the concerned citizen's case, further proceedings were required because the Board in dismissing the concerned citizen's complaint decided that justifiable grounds did not exist to proceed further, but failed to explain its reason for reaching that conclusion, which made review impossible under the Administrative Review Law, 735 ILCS 5/3-101, and accompanying rules under 10 ILCS 5/9-22. Thompson v. Gorman, 405 Ill. App. 3d 979, 345 Ill. Dec. 730, 939 N.E.2d 573, 2010 Ill. App. LEXIS 1238 (1 Dist. 2010).

Pursuant to 10 ILCS 5/9-20, any person may file a verified complaint with the Illinois State Board of Elections alleging a campaign finance violation. Upon receiving a complaint, the Board holds a closed preliminary hearing to determine whether it appears to have been filed on justifiable grounds, as contemplated by 10 ILCS 5/9-21. Cook County Republican Party v. Ill. State Bd. of Elections, 232 Ill. 2d 231, 327 Ill. Dec. 531, 902 N.E.2d 652, 2009 Ill. LEXIS 174 (2009).

Letter alleging violations of campaign disclosure requirements from the executive director of a political party to the general counsel for the Board of Elections was not a valid complaint. People v. West, 294 Ill. App. 3d 939, 229 Ill. Dec. 241, 691 N.E.2d 177 (5 Dist. 1998), appeal denied, 179 Ill. 2d 614, 235 Ill. Dec. 575, 705 N.E.2d 448 (1998).

§ 10 ILCS 5/9-21. [Preliminary and public hearings]

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Sec. 9-21. Upon receipt of a complaint as provided in Section 9-20 [10 ILCS 5/9-20], the Board shall hold a closed preliminary hearing to determine whether or not the complaint appears to have been filed on justifiable grounds. Such closed preliminary hearing shall be conducted as soon as practicable after affording reasonable notice, a copy of the complaint, and an opportunity to testify at such hearing to both the person making the complaint and the person against whom the complaint is directed. If the Board fails to determine that the complaint has been filed on justifiable grounds, it shall dismiss the complaint without further hearing. Any additional hearings shall be open to the public.

Whenever the Board, in an open meeting, determines, after affording due notice and an opportunity for a public hearing, that any person has engaged or is about to engage in an act or practice which constitutes or will constitute a violation of any provision of this Article or any regulation or order issued thereunder, the Board shall issue an order directing such person to take such action as the Board determines may be necessary in the public interest to correct the violation. In addition, if the act or practice engaged in consists of the failure to file any required report within the time prescribed by this Article, the Board, as part of its order, shall further provide that if, within the 12-month period following the issuance of the order, such person fails to file within the time prescribed by this Article any subsequent report as may be required, such person may be subject to a civil penalty pursuant to Section 9-23 [10 ILCS 5/9-23]. The Board shall render its final judgment within 60 days of the date the complaint is filed; except that during the 60 days preceding the date of the election in reference to which the complaint is filed, the Board shall render its final judgment within 7 days of the date the complaint is filed, and during the 7 days preceding such election, the Board shall render such judgment before the date of such election, if possible.

At any time prior to the issuance of the Board's final judgment, the parties may dispose of the complaint by a written stipulation, agreed settlement or consent order. Any such stipulation, settlement or order shall, however, be submitted in writing to the Board and shall become effective only if approved by the Board in an open meeting. If the act or practice complained of consists of the failure to file any required report within the time prescribed by this Article, such stipulation, settlement or order may provide that if, within the 12-month period following the approval of such stipulation, agreement or order, the person complained of fails to file within the time prescribed by this Article any subsequent reports as may be required, such person may be subject to a civil penalty pursuant to Section 9-23.

Any person filing a complaint pursuant to Section 9-20 may, upon written notice to the other parties and to the Board, voluntarily withdraw the complaint at any time prior to the issuance of the Board's final determination.

(Source: P.A. 83-1362; 90-495, § 5; 93-574, § 5; 96-832, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-21.

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Section 97 of P.A. 93-574 contains a severability provision.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Illinois Administrative Code.

See 26 Illinois Administrative Code, § 125.420.

Effect of Amendments. The 1997 amendment by P.A. 90-495, effective January 1, 1998, in the second paragraph, deleted the former third sentence regarding complaint directed to or about elected public official during year official is not a candidate seeking nomination and in the fourth sentence deleted from the beginning "If the complaint is directed to a candidate seeking nomination for, election to or retention in public office or to the chairman or treasurer of his political committee" and substituted "60" for "21".

The 2003 amendment by P.A. 93-574, effective August 21, 2003, substituted "fails to determine" for "determines" in the first paragraph.

The 2009 amendment by P.A. 96-832, effective January 1, 2011, in the first paragraph, inserted "as provided in Section 9-20", and added the last sentence; in the second paragraph, deleted "in the judgment" following "Whenever", inserted "in an open meeting, determines" preceding "after affording due notice", and inserted "that" preceding "any person has engaged"; inserted "in an open meeting" at the end of the second sentence in the third paragraph.

CASE NOTES

Analysis

Closed Preliminary Hearing
- Justifiable Grounds
Dismissal
Public Hearing
Review
Time Limitations
Validity of Board's Decision

Closed Preliminary Hearing

Pursuant to 10 ILCS 5/9-20, any person may file a verified complaint with the Illinois State Board of Elections alleging a campaign finance violation. Upon receiving a complaint, the Board holds a closed preliminary hearing to determine whether it appears to have been filed on justifiable grounds, as contemplated by 10 ILCS 5/9-21. Cook County Republican Party v. Ill. State Bd. of Elections, 232 Ill. 2d 231, 327 Ill. Dec. 531, 902 N.E.2d 652, 2009 Ill. LEXIS 174 (2009).

- Justifiable Grounds

Justifiable grounds means some preliminary showing that a complaint was based on reasonable grounds and that the violations alleged were within the ambit of the Board of Elections'

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cognizance under this Code; thus, to sustain his burden under this Code, a plaintiff was required to make allegations with some degree of substance that acts were performed which constituted violations of this Code. Troy v. State Bd. of Elections, 84 Ill. App. 3d 740, 40 Ill. Dec. 556, 406 N.E.2d 562 (1 Dist. 1980).

Dismissal

Not only was the concerned citizen entitled to file a verified complaint pursuant to 10 ILCS 5/9-20 alleging campaign finance violations of the Election Code, but the Board was obligated under 10 ILCS 5/9-21 to determine whether the complaint alleged any justifiable grounds for believing that a violation had in fact occurred. Since the concerned citizen was adversely affected by the Board's decision that the concerned citizen's complaint alleged no such grounds against the wife and political group and was thus worthy of dismissal, the concerned citizen was entitled to review of that decision, as dictated by 10 ILCS 5/9-22, under the governing provisions of the Administrative Review Law, 735 ILCS 5/3-101 et seq., and its accompanying rules. Thompson v. Ill. State Bd. of Elections, 408 Ill. App. 3d 410, 348 Ill. Dec. 856, 945 N.E.2d 625, 2011 Ill. App. LEXIS 241 (1 Dist. 2011).

Concerned citizen was entitled under 10 ILCS 5/9-20 to file a verified complaint alleging that the wife and political group violated the Election Code, and the concerned citizen's complaint had to be considered upon remand of the case from the appellate court, as the Board was not entitled to dismiss it based on its erroneous conclusion that the complaint had not alleged the required 10 ILCS 5/9-21 justifiable grounds. The concerned citizen's claim that the wife and political group had falsely reported, in violation of 10 ILCS 5/9-11(8), the identity of the party making loans to the political group had a basis in law and fact, as they reported that the husband had made the loans due to their incorrect assumption that the husband was the same lender as each of the two corporations in which the husband owned at least a 90 percent ownership, as the husband and the corporations were separate and distinct, and the political group under 10 ILCS 5/9-25 was not allowed to accept a contribution in the name of one party when it was made in another person's name. Thompson v. Gorman, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 20 (1 Dist. Jan. 13, 2011).

Decision by the Illinois State Board of Elections must contain findings from the evidence to permit judicial review. Accordingly, when after a motion was made to find that a complaint was filed on justifiable grounds and to order a public hearing, the Board dismissed the complaint under 10 ILCS 5/9-21 and 10 ILCS 5/1A-7 because of a four-to-four deadlock, remand was required for a statement of findings by the four members who had voted against the motion. Ill. Campaign for Political Reform v. Ill. State Bd. of Elections, 382 Ill. App. 3d 51, 320 Ill. Dec. 151, 886 N.E.2d 1220, 2008 Ill. App. LEXIS 269 (1 Dist. 2008).

In dismissing a complaint based on a four-to-four deadlock, the Illinois State Board of Elections had acted consistent with 10 ILCS 5/9-21, which had been amended to specifically require a majority vote before a complaint could proceed to a public hearing. Ill. Campaign for Political Reform v. Ill. State Bd. of Elections, 382 Ill. App. 3d 51, 320 Ill. Dec. 151, 886 N.E.2d 1220, 2008 Ill. App. LEXIS 269 (1 Dist. 2008).

In dismissing the complaint of petitioners, a political organization and an individual, under 10 ILCS 5/9-21 and 10 ILCS 5/1A-7 based on a four-to-four deadlock, the Illinois State Board of Elections had not violated petitioners' due process rights to meaningful judicial review and protection against arbitrary government actions. Judicial review was not precluded, as 10 ILCS 5/9-22 provided for judicial review to any party filing a complaint, whether or not the Board had taken any action, and nothing in the Election Code required that the deadlock be broken. Ill. Campaign for Political Reform v. Ill. State Bd. of Elections, 382 Ill. App. 3d 51, 320 Ill. Dec. 151, 886 N.E.2d 1220, 2008 Ill. App. LEXIS 269 (1 Dist. 2008).

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State board of elections had supervision over the administration of election laws and, thus, it could dismiss without a public hearing the 10 complaints filed by the county political party chairman. Those complaints either did not contain justifiable grounds for believing that the politicians violated the Election Code or the complaints did not receive the state election board's majority vote as required by 10 ILCS 5/9-21. Cook County Republican Party v. State Bd. of Elections, 378 Ill. App. 3d 752, 317 Ill. Dec. 519, 882 N.E.2d 93, 2007 Ill. App. LEXIS 1295 (1 Dist. 2007).

Because five votes are necessary for any action of the Board of Elections to become effective, the board may not dismiss a complaint after a closed preliminary hearing unless at least five members vote to do so. Illinois Republican Party v. Illinois State Bd. of Elections, 188 Ill. 2d 70, 241 Ill. Dec. 776, 720 N.E.2d 231 (1999).

A five-vote majority of the Board of Elections is not required to dismiss a complaint. People v. West, 294 Ill. App. 3d 939, 229 Ill. Dec. 241, 691 N.E.2d 177 (5 Dist. 1998), appeal denied, 179 Ill. 2d 614, 235 Ill. Dec. 575, 705 N.E.2d 448 (1998).

Public Hearing

A majority vote of at least five members of the Board of Elections is not required to proceed with a public hearing on a complaint; rather, every complaint not dismissed by a majority vote of at least five members of the board must proceed to a public hearing. Illinois Republican Party v. Illinois State Bd. of Elections, 188 Ill. 2d 70, 241 Ill. Dec. 776, 720 N.E.2d 231 (1999).

Review

Election Board's final and appealable orders were judgments of the Board, and a political party was adversely affected because the orders resulted in dismissal of the party's complaints without a public hearing. The dismissals were subject to judicial review under the plain language of 10 ILCS 5/9-22; accordingly, a plain reading of 10 ILCS 5/9-21 and 10 ILCS 5/9-22 compelled a conclusion that the tie-vote dismissals of the complaints were subject to judicial review in the appellate court under the provisions of the Administrative Review Law, 735 ILCS 5/3-110, which extends to all questions of law and fact presented by the entire record before the court. Cook County Republican Party v. Ill. State Bd. of Elections, 232 Ill. 2d 231, 327 Ill. Dec. 531, 902 N.E.2d 652, 2009 Ill. LEXIS 174 (2009).

"Rational basis" standard applied to review is a due process challenge to 10 ILCS 5/9-21. Ill. Campaign for Political Reform v. Ill. State Bd. of Elections, 382 Ill. App. 3d 51, 320 Ill. Dec. 151, 886 N.E.2d 1220, 2008 Ill. App. LEXIS 269 (1 Dist. 2008).

Time Limitations

Illinois Election Board is not required to enter an order on an administrative appeal within 60 days of the filing of the complaint; the 60-day provision is directory rather than mandatory. Brennan v. Ill. State Bd. of Elections, 336 Ill. App. 3d 749, 271 Ill. Dec. 300, 784 N.E.2d 854, 2002 Ill. App. LEXIS 1257 (1 Dist. 2002), appeal denied, 204 Ill. 2d 656, 275 Ill. Dec. 74, 792 N.E.2d 305 (2003).

Validity of Board's Decision

Concerned citizen was entitled under 10 ILCS 5/9-20 to file a verified complaint alleging violation of the state's Election Code, and the Board was then tasked with first determining whether the verified complaint alleged justifiable grounds for proceeding to a preliminary hearing regarding the

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allegations. In the concerned citizen's case, further proceedings were required because the Board in dismissing the concerned citizen's complaint decided that justifiable grounds did not exist to proceed further, but failed to explain its reason for reaching that conclusion, which made review impossible under the Administrative Review Law, 735 ILCS 5/3-101, and accompanying rules under 10 ILCS 5/9-22. Thompson v. Gorman, 405 Ill. App. 3d 979, 345 Ill. Dec. 730, 939 N.E.2d 573, 2010 Ill. App. LEXIS 1238 (1 Dist. 2010).

Illinois State Board of Elections did not err by dismissing a complaint because the members who voted to dismiss did not clearly err in determining that the complaint was not filed on justifiable grounds, and the deadlocked vote did not violate the petitioners' rights to meaningful judicial review and protection against arbitrary government actions. Ill. Campaign for Political Reform v. Ill. State Bd. of Elections, 388 Ill. App. 3d 517, 328 Ill. Dec. 486, 904 N.E.2d 996, 2009 Ill. App. LEXIS 93 (1 Dist. 2009).

Record supported the Illinois State Board of Elections' decision that an attorney violated 10 ILCS 5/9-3, 10 ILCS 5/9-7, 10 ILCS 5/9-10(b-5), and 10 ILCS 5/9-26 when he paid for a videotape opposing the election of four candidates to a school board two weeks before he filed a statement of organization on behalf of a political committee and named someone else as the chairman and treasurer of the political committee when the attorney really held those positions, and the fact that the Board did not render its decision within 60 days of the date on which the Board filed its complaint, in accordance with 10 ILCS 5/9-21, did not invalidate the Board's decision. Brennan v. Ill. State Bd. of Elections, 336 Ill. App. 3d 749, 271 Ill. Dec. 300, 784 N.E.2d 854, 2002 Ill. App. LEXIS 1257 (1 Dist. 2002), appeal denied, 204 Ill. 2d 656, 275 Ill. Dec. 74, 792 N.E.2d 305 (2003).

OPINIONS OF ATTORNEY GENERAL

Analysis

Closed Preliminary Hearing
Telephone Conference Call

Closed Preliminary Hearing

The Open Meetings Act (5 ILCS 120/1 et seq.) does not prohibit the holding of a closed preliminary hearing pursuant to this section. 1982 Op. Atty. Gen. 124.

Telephone Conference Call

The Open Meetings Act (5 ILCS 120/1 et seq.) does not prohibit the State Board of Elections from conducting its official business by means of an interconnecting telephone conference call held pursuant to its adopted regulations in which the call is broadcast over a speaker phone or other similar device at both the permanent and branch offices of the Board, open to the media representatives and the public in general. 1982 Op. Atty. Gen. 124.

§ 10 ILCS 5/9-22. [Judicial review of complaint]

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Sec. 9-22. Any party to a Board hearing, any person who files a complaint on which a hearing was denied or not acted upon within the time specified in Section 9-21 of this Act [10 ILCS 5/9-21], and any party adversely affected by a judgment of the Board may obtain judicial review, which shall be governed by the provisions of the Administrative Review Law, as amended, and all amendments and modifications thereof and the rules adopted pursuant thereto, except that -

(1) such judicial review shall be afforded directly in the Appellate Court for the District in which the cause of action arose and not in the Circuit Court,

(2) such judicial review shall be obtained by filing a petition for review within 7 days after entry of the order of other action complained of,

(3) the time limit for filing such petition for review may be waived with the consent of all parties involved, and

(4) if such petition for review is appealing an order of the Board, the effect of such order of the Board shall not be stayed unless the Appellate Court so orders upon the motion of the petitioner and upon prior notice to the Board.

(Source: P.A. 82-783.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-22.

CASE NOTES

Analysis

Direct Review
Findings required
Review

Direct Review

Appellate court had the authority to directly review the state elections board's dismissal of the county political party chairman's complaints alleging violations of the Election Code. Thus, the appellate court, pursuant to 10 ILCS 5/9-22, could the chairman's request that the dismissal in all 10 cases be reversed and that the cases be remanded for a public hearing on the merits. Cook County Republican Party v. State Bd. of Elections, 378 Ill. App. 3d 752, 317 Ill. Dec. 519, 882 N.E.2d 93, 2007 Ill. App. LEXIS 1295 (1 Dist. 2007).

Appellate Court of Illinois reviewed an administrative order of the Illinois State Board of Elections directly, pursuant to 10 ILCS 5/9-22 of the Illinois Election Code, 10 ILCS 5/1-1 et seq. Santana v.

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State Bd. of Elections, 371 Ill. App. 3d 1044, 309 Ill. Dec. 703, 864 N.E.2d 944, 2007 Ill. App. LEXIS 234 (1 Dist. 2007).

Findings required

Decision by the Illinois State Board of Elections must contain findings from the evidence to permit judicial review. Accordingly, when after a motion was made to find that a complaint was filed on justifiable grounds and to order a public hearing, the Board dismissed the complaint under 10 ILCS 5/9-21 and 10 ILCS 5/1A-7 because of a four-to-four deadlock, remand was required for a statement of findings by the four members who had voted against the motion. Ill. Campaign for Political Reform v. Ill. State Bd. of Elections, 382 Ill. App. 3d 51, 320 Ill. Dec. 151, 886 N.E.2d 1220, 2008 Ill. App. LEXIS 269 (1 Dist. 2008).

Review

Not only was the concerned citizen entitled to file a verified complaint pursuant to 10 ILCS 5/9-20 alleging campaign finance violations of the Election Code, but the Board was obligated under 10 ILCS 5/9-21 to determine whether the complaint alleged any justifiable grounds for believing that a violation had in fact occurred. Since the concerned citizen was adversely affected by the Board's decision that the concerned citizen's complaint alleged no such grounds against the wife and political group and was thus worthy of dismissal, the concerned citizen was entitled to review of that decision, as dictated by 10 ILCS 5/9-22, under the governing provisions of the Administrative Review Law, 735 ILCS 5/3-101 et seq., and its accompanying rules. Thompson v. Ill. State Bd. of Elections, 408 Ill. App. 3d 410, 348 Ill. Dec. 856, 945 N.E.2d 625, 2011 Ill. App. LEXIS 241 (1 Dist. 2011).

Concerned citizen who filed a verified complaint alleging that the wife and political group violated the Election Code in multiple respects was entitled to have the Board reconsider the concerned citizen's entire complaint on remand, as review of the Board's decision of the Administrative Review Law, 735 ILCS 5/3-101 et seq., and its accompanying rules, as contemplated by 10 ILCS 5/9-22, showed that the concerned citizen's claim had a basis in law and fact. As a result, the Board should not have dismissed the concerned citizen's complaint should not have been dismissed based on the conclusion that there was no justifiable grounds to support it. Thompson v. Gorman, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 20 (1 Dist. Jan. 13, 2011).

Concerned citizen was entitled under 10 ILCS 5/9-20 to file a verified complaint alleging violation of the state's Election Code, and the Board was then tasked with first determining whether the verified complaint alleged justifiable grounds for proceeding to a preliminary hearing regarding the allegations. In the concerned citizen's case, further proceedings were required because the Board in dismissing the concerned citizen's complaint decided that justifiable grounds did not exist to proceed further, but failed to explain its reason for reaching that conclusion, which made review impossible under the Administrative Review Law, 735 ILCS 5/3-101 et seq., and accompanying rules under 10 ILCS 5/9-22. Thompson v. Gorman, 405 Ill. App. 3d 979, 345 Ill. Dec. 730, 939 N.E.2d 573, 2010 Ill. App. LEXIS 1238 (1 Dist. 2010).

Illinois State Board of Elections did not err by dismissing a complaint because the members who voted to dismiss did not clearly err in determining that the complaint was not filed on justifiable grounds, and the deadlocked vote did not violate the petitioners' rights to meaningful judicial review and protection against arbitrary government actions. Ill. Campaign for Political Reform v. Ill. State Bd. of Elections, 388 Ill. App. 3d 517, 328 Ill. Dec. 486, 904 N.E.2d 996, 2009 Ill. App. LEXIS 93 (1 Dist. 2009).

Appellate court's review of a tie vote dismissal was a simple ministerial act of confirming that the Illinois State Board of Election's dismissal decision was correct based on the vote count; the

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legislature did not mean for "judicial review" by the appellate court to be limited in that manner. Cook County Republican Party v. Ill. State Bd. of Elections, 232 Ill. 2d 231, 327 Ill. Dec. 531, 902 N.E.2d 652, 2009 Ill. LEXIS 174 (2009).

Election Board's final and appealable orders were judgments of the Board, and a political party was adversely affected because the orders resulted in dismissal of the party's complaints without a public hearing. The dismissals were subject to judicial review under the plain language of 10 ILCS 5/9-22; accordingly, a plain reading of 10 ILCS 5/9-21 and 10 ILCS 5/9-22 compelled a conclusion that the tie-vote dismissals of the complaints were subject to judicial review in the appellate court under the provisions of the Administrative Review Law. Cook County Republican Party v. Ill. State Bd. of Elections, 232 Ill. 2d 231, 327 Ill. Dec. 531, 902 N.E.2d 652, 2009 Ill. LEXIS 174 (2009).

In dismissing the complaint of petitioners, a political organization and an individual, under 10 ILCS 5/9-21 and 10 ILCS 5/1A-7 based on a four-to-four deadlock, the Illinois State Board of Elections had not violated petitioners' due process rights to meaningful judicial review and protection against arbitrary government actions. Judicial review was not precluded, as 10 ILCS 5/9-22 provided for judicial review to any party filing a complaint, whether or not the Board had taken any action, and nothing in the Election Code required that the deadlock be broken. Ill. Campaign for Political Reform v. Ill. State Bd. of Elections, 382 Ill. App. 3d 51, 320 Ill. Dec. 151, 886 N.E.2d 1220, 2008 Ill. App. LEXIS 269 (1 Dist. 2008).

§ 10 ILCS 5/9-23. [Penalty]

Sec. 9-23. Whenever the Board, pursuant to Section 9-21 [10 ILCS 5/9-21], has issued an order, or has approved a written stipulation, agreed settlement or consent order, directing a person determined by the Board to be in violation of any provision of this Article or any regulation adopted thereunder, to cease or correct such violation or otherwise comply with this Article and such person fails or refuses to comply with such order, stipulation, settlement or consent order within the time specified by the Board, the Board, after affording notice and an opportunity for a public hearing, may impose a civil penalty on such person in an amount not to exceed $5,000; except that for State officers and candidates and political committees formed for statewide office, the civil penalty may not exceed $10,000. For the purpose of this Section, "statewide office" and "State officer" means the Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller, and Treasurer.

Civil penalties imposed on any such person by the Board shall be enforceable in the Circuit Court. The Board shall petition the Court for an order to enforce collection of the penalty and, if the Court finds it has jurisdiction over the person against whom the penalty was imposed, the Court shall issue the appropriate order. Any civil penalties collected by the Court shall be forwarded to the State Treasurer.

In addition to or in lieu of the imposition of a civil penalty, the board may report such violation and the failure or refusal to comply with the order of the Board to the Attorney General and the appropriate State's Attorney.

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(Source: P.A. 83-540; 90-737, § 220; 93-615, § 90-10.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-23.

Effect of Amendments. The 1998 amendment by P.A. 90-737, effective January 1, 1999, in the first sentence of the first paragraph substituted "$5,000", the exception phrase, and the last sentence for "$1,000"; and added the last paragraph.

The 2003 amendment by P.A. 93-615, effective November 19, 2003, deleted the last paragraph which read, "The name of a person who has not paid a civil penalty imposed against him or her under this Section shall not appear upon any ballot for any office in any election while the penalty is unpaid."

CASE NOTES

Removal from Office

There is no provision in this Act for removal from office for any violation of its requirements. Henderson v. Miller, 228 Ill. App. 3d 260, 170 Ill. Dec. 134, 592 N.E.2d 570 (1 Dist. 1992).

§ 10 ILCS 5/9-23.5. Public database of founded complaints

Sec. 9-23.5. Public database of founded complaints. The State Board of Elections shall establish and maintain on its official website a searchable database, freely accessible to the public, of each complaint filed with the Board under this Article with respect to which Board action was taken, including all Board actions and penalties imposed, if any. The Board must update the database within 5 business days after an action is taken or a penalty is imposed to include that complaint, action, or penalty in the database. The Task Force on Campaign Finance Reform shall make recommendations on improving access to information related to founded complaints.

(Source: P.A. 96-832, § 5.)

Note.

Section 97 of P.A. 96-832, effective January 1, 2011, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

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Effective Date. Section 99 of P.A. 96-832 made this section effective January 1, 2011.

§ 10 ILCS 5/9-24. [Order to compel compliance]

Sec. 9-24. The Board may also petition the Circuit Court to issue an order of the Court compelling compliance with an order issued by the Board, or to restrain or prohibit a person who is engaging or has engaged in acts or practices which constitute a violation of any provision of this Article from engaging in such acts or practices. If the Court finds that it has jurisdiction over the person of the alleged violator and that a violation has occurred or is occurring by reasons of the acts or practices of such person, the Court shall issue the appropriate order.

(Source: P.A. 78-1183.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-24.

CASE NOTES

Removal from Office

This Act does not provide for removal from office as a penalty for violation of its provisions. Henderson v. Miller, 228 Ill. App. 3d 260, 170 Ill. Dec. 134, 592 N.E.2d 570 (1 Dist. 1992).

§ 10 ILCS 5/9-25. [Anonymous contributions]

Sec. 9-25. No person shall make an anonymous contribution or a contribution in the name of another person, and no person shall knowingly accept any anonymous contribution or contribution made by one person in the name of another person. Anonymous contributions shall escheat to the State of Illinois. Any political committee that receives such a contribution shall forward it immediately to the State Treasurer.

(Source: P.A. 78-1183.)

Note.

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This section was Ill.Rev.Stat., Ch. 46, Para. 9-25.

CASE NOTES

Analysis

Anonymous Contribution
- Defined
- Distinguished
Contributions in the Name of Another
Escheat
Fraud
- Not Shown
- Shown

Anonymous Contribution

- Defined

Anonymous contributions are contributions received where the contributor is unknown or unnamed, or the source of origin cannot be identified. People ex rel. Illinois State Board of Elections v. DeGrazia, 105 Ill. App. 3d 509, 61 Ill. Dec. 390, 434 N.E.2d 543 (1 Dist. 1982).

- Distinguished

Anonymous contributions and contributions in the name of another person are not synonymous, as this section plainly refers to two separate types of prohibited contributions, providing different sanctions for each type of contribution. People ex rel. Illinois State Board of Elections v. DeGrazia, 105 Ill. App. 3d 509, 61 Ill. Dec. 390, 434 N.E.2d 543 (1 Dist. 1982).

Where contributions were identified as from a specific person, those contributions, as a matter of law, could not be characterized as anonymous. People ex rel. Illinois State Board of Elections v. DeGrazia, 105 Ill. App. 3d 509, 61 Ill. Dec. 390, 434 N.E.2d 543 (1 Dist. 1982).

Contributions in the Name of Another

Since the concerned citizen alleged in a complaint alleging violations of the Election Code against the wife and political group that they falsely reported the identity of the parties that loaned the political group money, in violation of 10 ILCS 5/9-11, and/or violated 10 ILCS 5/9-25 by receiving loans made in the name of another person other than the real donor, the concerned citizen alleged justifiable grounds for believing that such violations had occurred after evidence submitted to the Board at a preliminary hearing supported those contentions. Accordingly, further proceedings before the Board were warranted on those claims. Thompson v. Ill. State Bd. of Elections, 408 Ill. App. 3d 410, 348 Ill. Dec. 856, 945 N.E.2d 625, 2011 Ill. App. LEXIS 241 (1 Dist. 2011).

Concerned citizen was entitled under 10 ILCS 5/9-20 to file a verified complaint alleging that the wife and political group violated the Election Code, and the concerned citizen's complaint had to be considered upon remand of the case from the appellate court, as the Board was not entitled to

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dismiss it based on its erroneous conclusion that the complaint had not alleged the required 10 ILCS 5/9-21 justifiable grounds. The concerned citizen's claim that the wife and political group had falsely reported, in violation of 10 ILCS 5/9-11(8), the identity of the party making loans to the political group had a basis in law and fact, as they reported that the husband had made the loans due to their incorrect assumption that the husband was the same lender as each of the two corporations in which the husband owned at least a 90 percent ownership, as the husband and the corporations were separate and distinct, and the political group under 10 ILCS 5/9-25 was not allowed to accept a contribution in the name of one party when it was made in another person's name. Thompson v. Gorman, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 20 (1 Dist. Jan. 13, 2011).

This section does not provide a statutory remedy to the Board of Elections for contributions made by one person in the name of another person. People ex rel. Illinois State Board of Elections v. DeGrazia, 105 Ill. App. 3d 509, 61 Ill. Dec. 390, 434 N.E.2d 543 (1 Dist. 1982).

Escheat

As used in this section, escheat is penal in nature. People ex rel. Illinois State Board of Elections v. DeGrazia, 105 Ill. App. 3d 509, 61 Ill. Dec. 390, 434 N.E.2d 543 (1 Dist. 1982).

Escheat, as used in this section, means the reversion or forfeiture of property to the state upon the happening of some event. People ex rel. Illinois State Board of Elections v. DeGrazia, 105 Ill. App. 3d 509, 61 Ill. Dec. 390, 434 N.E.2d 543 (1 Dist. 1982).

Fraud

- Not Shown

Where a trade association for the currency exchange industry, filing its Board of Elections reports as an ad hoc group, relied on an opinion by the Illinois Attorney General which discussed the manner in which park district commissioners who expended district funds to campaign for the passage of bonding referenda should file their reports, the trial judge did not abuse his discretion in failing to find prima facie fraud merely because the reports were not filed in the name of the trade association. In re Special September 1978 Grand Jury, 640 F.2d 49 (7th Cir. 1980).

- Shown

A reasonable inference could be drawn from the entire record that a trade association intentionally failed to report a secret fund used to reimburse its members for political contributions, which constituted prima facie evidence of fraud. In re Special September 1978 Grand Jury, 640 F.2d 49 (7th Cir. 1980).

OPINIONS OF ATTORNEY GENERAL

Analysis

Contributions in the Name of Another

- Corporations

Contributor

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Contributions in the Name of Another

- Corporations

This section does not prohibit a subsidiary corporation from making a political contribution in its name and from its own funds even though directed to do so by its parent corporation. 1998 Op. Atty. Gen. (98-004).

Contributor

Whether a contribution might further the interests of the contributor or some other person or cause is irrelevant to compliance with this section. 1998 Op. Atty. Gen. (98-004).

§ 10 ILCS 5/9-25.1. Election interference

Sec. 9-25.1. Election interference. (a) As used in this Section, "public funds" means any funds appropriated by the Illinois General Assembly or by any political subdivision of the State of Illinois.

(b) No public funds shall be used to urge any elector to vote for or against any candidate or proposition, or be appropriated for political or campaign purposes to any candidate or political organization. This Section shall not prohibit the use of public funds for dissemination of factual information relative to any proposition appearing on an election ballot, or for dissemination of information and arguments published and distributed under law in connection with a proposition to amend the Constitution of the State of Illinois.

(c) The first time any person violates any provision of this Section, that person shall be guilty of a Class B misdemeanor. Upon the second or any subsequent violation of any provision of this Section, the person violating any provision of this Section shall be guilty of a Class A misdemeanor.

(Source: P.A. 80-962; 87-1052, § 5-30.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 102.

This section was derived from former 10 ILCS 35/2, 10 ILCS 35/3 and 10 ILCS 35/4. The historical citations to the former sections have been retained.

P.A. 87-1052, § 5-30 added the section catchline; added the subsections (a)-(c) designations; in subsections (a) and (c) substituted "Section" for "Act"; in subsection (b) substituted "Section" for "provision" in the second sentence; and in subsection (b) near the end of the second sentence substituted "under" for "pursuant to".

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CASE NOTES

Analysis
Public Relations Consultant
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Standing

Public Relations Consultant

School districts' hiring of a public relations consultant did not constitute a violation of former 10 ILCS 35/3 where the consultant was hired only to promote the school board's idea to build a new school rather than to promote the candidates themselves. Ryan v. Warren Tp. High Sch. Dist., 155 Ill. App. 3d 203, 109 Ill. Dec. 843, 510 N.E.2d 911 (2 Dist. 1987).

School District Not Exempt

Because the newsletters mailed to voters by a school district did not discuss voting or encourage individuals to vote, but rather clearly addressed and focused on the district's referendum, they were electioneering communications under 10 ILCS 5/9-1.14; therefore, the state board of elections erred in finding that 10 ILCS 5/9-25.1 exempted the district from registration and financial disclosure requirements. Citizens Organized v. State Bd. of Elections of Ill., 392 Ill. App. 3d 392, 331 Ill. Dec. 196, 910 N.E.2d 605, 2009 Ill. App. LEXIS 298 (1 Dist. 2009), appeal denied, 234 Ill. 2d 518, 920 N.E.2d 1071, 2009 Ill. LEXIS 2047 (2009).

Standing

Under former 10 ILCS 35/3 Plaintiff lacked standing to sue to enjoin alleged misuse of college facilities and equipment because the prohibitions in 735 ILCS 5/11-301 and 735 ILCS 5/11-303 are directed only toward expenditures of public funds. Jenner v. Wissore, 164 Ill. App. 3d 259, 115 Ill. Dec. 534, 517 N.E.2d 1220 (5 Dist. 1988).

§ 10 ILCS 5/9-25.2. Contributions; candidate or treasurer of political committee

Sec. 9-25.2. Contributions; candidate or treasurer of political committee. (a) No candidate may knowingly receive any contribution solicited or received in violation of Section 33-3.1 or Section 33-3.2 of the Criminal Code of 1961 [720 ILCS 5/33-3.1 or 720 ILCS 5/33-3.2].

(b) The receipt of political contributions in violation of this Section shall constitute a Class A misdemeanor.

The appropriate State's Attorney or the Attorney General shall bring actions in the name of the people of the State of Illinois.

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(Source: P.A. 92-853, § 5.)

Effective Date. Section 99 of P.A. 92-853, made this section effective upon becoming law. The Act was approved August 28, 2002.

§ 10 ILCS 5/9-26. [Violations; criminal penalties]

Sec. 9-26. Willful failure to file or willful filing of false or incomplete information required by this Article shall constitute a business offense subject to a fine of up to $5,000.

Willful filing of a false complaint under this Article shall constitute a Class B misdemeanor.

A prosecution for any offense designated by this Article shall be commenced no later than 18 months after the commission of the offense.

The appropriate State's Attorney or the Attorney General shall bring such actions in the name of the people of the State of Illinois.

(Source: P.A. 78-1183; 90-737, § 220.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-26.

Illinois Administrative Code.

See 26 Illinois Administrative Code, § 125.420.

Effect of Amendments. The 1998 amendment by P.A. 90-737, effective January 1, 1999, in the first paragraph substituted "business offense subject to a fine of up to $5,000" for "Class B misdemeanor".

CASE NOTES

Analysis
Illustrative Cases
Willful Disregard

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Illustrative Cases

Record supported the Illinois State Board of Elections' decision that an attorney violated 10 ILCS 5/9-2, 10 ILCS 5/9-3, 10 ILCS 5/9-7, 10 ILCS 5/9-10(b-5), and 10 ILCS5 5/9-26 when he paid for a videotape opposing the election of four candidates to a school board two weeks before he filed a statement of organization on behalf of a political committee and named someone else as the chairman and treasurer of the political committee when the attorney really held those positions, and the fact that the Board did not render its decision within 60 days of the date on which the Board filed its complaint, in accordance with 10 ILCS 5/9-21, did not invalidate the Board's decision. Brennan v. Ill. State Bd. of Elections, 336 Ill. App. 3d 749, 271 Ill. Dec. 300, 784 N.E.2d 854, 2002 Ill. App. LEXIS 1257 (1 Dist. 2002), appeal denied, 204 Ill. 2d 656, 275 Ill. Dec. 74, 792 N.E.2d 305 (2003).

Willful Disregard

Chairman of a committee formed to oppose election of school board members acted willfully in disregarding the requirements of 10 ILCS 5/9-26; conclusion was based on the chairman's history of involvement in electoral campaigns. Brennan v. Ill. State Bd. of Elections, 336 Ill. App. 3d 749, 271 Ill. Dec. 300, 784 N.E.2d 854, 2002 Ill. App. LEXIS 1257 (1 Dist. 2002), appeal denied, 204 Ill. 2d 656, 275 Ill. Dec. 74, 792 N.E.2d 305 (2003).

§ 10 ILCS 5/9-27. [Venue]

Sec. 9-27. As to any civil or criminal proceedings instituted under this Article, venue shall lie in the county where the political committee was organized or in the county where the defendant resides.

(Source: P.A. 78-1183.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 9-27.

§ 10 ILCS 5/9-27.5. Fundraising in Sangamon County

Sec. 9-27.5. Fundraising in Sangamon County. In addition to any other provision of this Code, fundraising events in Sangamon County by certain executive branch officers and candidates, legislative branch members and candidates, political caucuses, and political committees are subject to the State Officials and Employees Ethics Act [5 ILCS 430/1-1 et seq.]. If a political committee receives and retains a contribution that is in violation of Section 5-40 of the State Officials and Employees Ethics Act [5 ILCS 430/5-40], then the State Board may impose a civil penalty upon that political committee in an amount equal

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to 100% of that contribution.

(Source: P.A. 90-737, § 220; 93-615, § 90-10.)

Effective Date. Section 999 of P.A. 90-737 makes this section effective January 1, 1999.

Effect of Amendments. The 2003 amendment by P.A. 93-615, effective November 19, 2003, revised the section heading, and rewrote the section to the extent that a detailed comparison would be impracticable.

§ 10 ILCS 5/9-28. Electronic filing and availability

Sec. 9-28. Electronic filing and availability. The Board shall by rule provide for the electronic filing of expenditure and contribution reports as follows:

Electronic filing is required for all political committees that during the reporting period (i) had at any time a balance or an accumulation of contributions of $10,000 or more, (ii) made aggregate expenditures of $10,000 or more, or (iii) received loans of an aggregate of $10,000 or more.

The Board may provide by rule for the optional electronic filing of expenditure and contribution reports for all other political committees. The Board shall promptly make all reports filed under this Article by all political committees publicly available by means of a searchable database that is accessible on the Board's website.

The Board shall provide all software necessary to comply with this Section to candidates, public officials, political committees, and election authorities.

The Board shall implement a plan to provide computer access and assistance to candidates, public officials, political committees, and election authorities with respect to electronic filings required under this Article.

(Source: P.A. 90-495, § 5; 90-737, § 220; 96-832, § 5.)

Note.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Illinois Administrative Code.

See 26 Illinois Administrative Code, § 100.150.

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Effective Date. Section 99 of P.A. 90-495 made this section effective upon becoming law. The Act was approved August 18, 1997.

Effect of Amendments. The 1998 amendment by P.A. 90-737, effective January 1, 1999, rewrote the section.

The 2009 amendment by P.A. 96-832, effective January 1, 2011, rewrote the section.

§ 10 ILCS 5/9-28.5. Injunctive relief for electioneering communications

Sec. 9-28.5. Injunctive relief for electioneering communications. (a) Whenever the Attorney General, or a State's Attorney with jurisdiction over any portion of the relevant electorate, believes that any person, as defined in Section 9-1.6 [10 ILCS 5/9-1.6], is making, producing, publishing, republishing, or broadcasting an electioneering communication paid for by any person, as defined in Section 9-1.6, who has not first complied with the registration and disclosure requirements of this Article, he or she may bring an action in the name of the People of the State of Illinois or, in the case of a State's Attorney, the People of the County, against such person or persons to restrain by preliminary or permanent injunction the making, producing, publishing, republishing, or broadcasting of such electioneering communication until the registration and disclosure requirements have been met.

(b) Any political committee that believes any person, as defined in Section 9-1.6, is making, producing, publishing, republishing, or broadcasting an electioneering communication paid for by any person, as defined in Section 9-1.6, who has not first complied with the registration and disclosure requirements of this Article may bring an action in the circuit court against such person or persons to restrain by preliminary or permanent injunction the making, producing, publishing, republishing, or broadcasting of such electioneering communication until the registration and disclosure requirements have been met.

(Source: P.A. 96-832, § 5.)

Note.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Effective Date. Section 99 of P.A. 96-832 made this section effective July 1, 2010.

§ 10 ILCS 5/9-30. Ballot forfeiture

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Sec. 9-30. Ballot forfeiture. The State Board of Elections shall not certify the name of any person who has not paid a civil penalty imposed against his or her political committee under this Article to appear upon any ballot for any office in any election if the penalty is unpaid by the date required for certification.

The State Board of Elections shall generate a list of all candidates whose political committees have not paid any civil penalty assessed against them under this Article. Such list shall be transmitted to any election authority whose duty it is to place the name of any such candidate on the ballot. The election authority shall not place upon the ballot the name of any candidate appearing on this list for any office in any election while the penalty is unpaid, unless the candidate has requested a hearing and the Board has not disposed of the matter by the date of certification.

(Source: P.A. 96-832, § 5; 93-615, § 90-10.)

Note.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Effective Date. Section 99-99 of P.A. 93-615 made this section effective upon becoming law. The Act was approved November 19, 2003.

Effect of Amendments. The 2009 amendment by P.A. 96-832, effective January 1, 2011, rewrote the section.

§ 10 ILCS 5/9-35. Registration of business entities

Sec. 9-35. Registration of business entities. (a) This Section governs the procedures for the registration required under Section 20-160 of the Illinois Procurement Code [30 ILCS 500/20-160].

For the purposes of this Section, the terms "officeholder", "State contract", "business entity", "State agency", "affiliated entity", and "affiliated person" have the meanings ascribed to those terms in Section 50-37 of the Illinois Procurement Code [30 ILCS 500/50-37].

(b) Registration under Section 20-160 of the Illinois Procurement Code, and any changes to that registration, must be made electronically, and the State Board of Elections by rule shall provide for electronic registration; except that the State Board may adopt emergency rules providing for a temporary filing system, effective through August 1, 2009, under which business entities must file the required registration forms provided by the Board via e-mail attachment in a PDF file or via another type of mail service and must receive from the State Board registration certificates via e-mail or paper registration certificates.

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The State Board shall retain the registrations submitted by business entities via e-mail or another type of mail service for at least 6 months following the establishment of the electronic registration system required by this subsection.

Each registration must contain substantially the following:

(1) The name and address of the business entity.

(2) The name and address of any affiliated entity of the business entity, including a description of the affiliation.

(3) The name and address of any affiliated person of the business entity, including a description of the affiliation.

(c) The Board shall provide a certificate of registration to the business entity. The certificate shall be electronic, except as otherwise provided in this Section, and accessible to the business entity through the State Board of Elections' website and protected by a password. Within 60 days after establishment of the electronic system, each business entity that submitted a registration via e-mail attachment or paper copy pursuant to this Section shall re-submit its registration electronically. At the time of re-submission, the State Board of Elections shall provide an electronic certificate of registration to that business entity.

(d) Any business entity required to register under Section 20-160 of the Illinois Procurement Code shall provide a copy of the registration certificate, by first class mail or hand delivery within 10 days after registration, to each affiliated entity or affiliated person whose identity is required to be disclosed. Failure to provide notice to an affiliated entity or affiliated person is a business offense for which the business entity is subject to a fine not to exceed $1,001.

(e) In addition to any penalty under Section 20-160 of the Illinois Procurement Code, intentional, willful, or material failure to disclose information required for registration is subject to a civil penalty imposed by the State Board of Elections. The State Board shall impose a civil penalty of $1,000 per business day for failure to update a registration.

(f) Any business entity required to register under Section 20-160 of the Illinois Procurement Code shall notify any political committee to which it makes a contribution, at the time of the contribution, that the business entity is registered with the State Board of Elections under Section 20-160 of the Illinois Procurement Code. Any affiliated entity or affiliated person of a business entity required to register under Section 20-160 of the Illinois Procurement Code shall notify any political committee to which it makes a contribution that it is affiliated with a business entity registered with the State Board of Elections under Section 20-160 of the Illinois Procurement Code.

(g) The State Board of Elections on its official website shall have a searchable database containing (i) all information required to be submitted to the Board under Section 20-160 of the Illinois Procurement Code and (ii) all reports filed under this Article with the State Board of Elections by all political committees. For the purposes of databases maintained by the State Board of Elections, "searchable" means able to search by "political committee", as defined in this Article, and by "officeholder", "State agency", "business

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entity", "affiliated entity", and "affiliated person". The Board shall not place the name of a minor child on the website. However, the Board shall provide a link to all contributions made by anyone reporting the same residential address as any affiliated person. In addition, the State Board of Elections on its official website shall provide an electronic connection to any searchable database of State contracts maintained by the Comptroller, searchable by business entity.

(h) The State Board of Elections shall have rulemaking authority to implement this Section.

(Source: P.A. 95-971, § 5; 95-1038, § 5.)

Note.

Section 97 of P.A. 95-971 contains a severability provision.

Effective Date. This section is effective January 1, 2009, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2009 amendment by P.A. 95-1038, effective March 11, 2009, in (b) added the exception language through the end of the first sentence, added the second sentence, and made stylistic changes; and in (c) in the first sentence added the exception language and added the last two sentences.

§ 10 ILCS 5/9-40. Campaign Finance Reform Task Force

Sec. 9-40. Campaign Finance Reform Task Force. (a) There is hereby created the Campaign Finance Reform Task Force. The purpose of the Task Force is to conduct a thorough review of the implementation of campaign finance reform legislation in the State of Illinois, and the feasibility of implementing a mechanism of campaign finance regulation that would subsidize political campaigns in exchange for voluntary adherence to specified expenditure limitations.

(b) The Task Force shall consist of 11 members, appointed as follows: 2 each by the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the President of the Senate, and the Minority Leader of the Senate; and 3 by the Governor, one of whom shall serve as chairperson. Members shall be adults and residents of Illinois. The individual (or his or her successor) who appointed a member may remove that appointed member before the expiration of his or her term on the Task Force for official misconduct, incompetence, or neglect of duty. Members shall serve without compensation, but may be reimbursed for expenses. Appointments shall be made within 60 days after the effective date of this amendatory Act of the 96th General Assembly.

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(c) The Task Force shall conduct meetings and conduct a public hearing before filing any report mandated by this Section. At the public hearings, the Task Force shall allow interested persons to present their views and comments. The Task Force shall submit all reports required by this Section to the Governor, the State Board of Elections, and the General Assembly. In addition to the reports required by this Section, the Task Force may provide, at its discretion, interim reports and recommendations. The State Board of Elections shall provide administrative support to the Task Force.

(d) The Task Force shall study the feasibility of implementing a mechanism of campaign finance regulation that would subsidize political campaigns in exchange for voluntary adherence to specified expenditure limitations. In conducting its study, the Task Force shall consider a system of public financing by State government for the conduct and finance of election campaigns for the following: (1) Representatives and Senators in the General Assembly, (2) constitutional offices of State government, and (3) judges. The Task Force may propose financing campaigns through funding mechanisms including, but not limited to, fines, voluntary contributions, surcharges on lobbying activities, and a whistleblower fund. In determining a plan for election to each office, the Task Force shall consider the following factors:

(i) the amount of funds raised by past candidates for that office;

(ii) the amount of funds expended by past candidates for that office;

(iii) the disparity in the amount of funds raised by candidates of different political parties;

(iv) the amount of funds expended by entities not affiliated with a candidate;

(v) the amount of money contributed to or expended by a committee of a political party to promote a candidate;

(vi) jurisprudence with relation to campaign finance and public financing; and

(vii) such other factors, not confined to the foregoing, that the Task Force determines to be related to the public financing of elections in this State.

The Task Force shall also study the feasibility of creating public financing within the statutory system of limits, or if the system of limits should be changed to facilitate a system of public financing and the need for a process to protect candidates who receive public financing against candidates who do not opt to participate in public financing or who self-finance.

The Task Force shall submit the report required by this subsection no later than December 31, 2011. The Task Force may provide, at its discretion, interim reports and recommendations before that date.

(e) The Task Force shall examine and make recommendations related to the provisions of this amendatory Act of the 96th General Assembly in Section 9-8.5(c-5) and (c-10) [10 ILCS 5/9-8.5] limiting contributions to a political party committee from a candidate political committee or political party committee. The Task Force shall submit a report with recommendations required by this subsection no later than September 30, 2012. The

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Task Force may provide, at its discretion, interim reports and recommendations before that date.

(f) The Task Force shall review the implementation of this amendatory Act of the 96th General Assembly [P.A. 96-832] and any additional campaign finance reform legislation considered by the General Assembly. The Task Force shall examine each provision of this amendatory Act of the 96th General Assembly and make recommendations for changes, deletions, or improvements. In conducting its review of campaign finance reform implementation, the Task Force shall also consider and address a variety of empirical measures, case studies, and comparative analyses, including, but not limited to the following:

(i) campaign finance legislation in other states as well as the federal system of campaign finance regulation;

(ii) the impact of contribution limits in Illinois, including the impact on contributions from individuals, corporations, associations, and labor organizations;

(iii) the impact of contribution limits on independent expenditures in Illinois;

(iv) the effectiveness, reliability, and cost of various enforcement mechanisms;

(v) the best practices in mandating timely disclosure of the origin of campaign contributions; and

(vi) the best way to require and conduct random audits and audits for cause.

The Task Force shall also submit a report detailing the following: (i) the effectiveness of enforcement mechanisms, (ii) whether the disclosure requirements and the definition of receipt result in accurate reporting; (iii) issues related to audits, (iv) the effect of using the same election cycle for all members of the General Assembly, and (v) the impact of Section 9-8.5(h) [10 ILCS 5/9-8.5].

The Task Force shall submit reports required by this subsection no later than March 1, 2013 and March 1, 2015.

(g) The Task Force shall submit a final report by March 10, 2015. The Task Force is abolished and this Section is repealed on March 15, 2015.

(Source: P.A. 96-832, § 5.)

Note.

Section 97 of P.A. 96-832, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Effective Date. Section 99 of P.A. 96-832 made this section effective July 1, 2010.

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Article 10.

Making of Nominations in Certain Other Cases

§ 10 ILCS 5/10-1. Application of Article to minor political parties

Sec. 10-1. Application of Article to minor political parties. (a) Political parties as defined in this Article and individual voters to the number and in the manner specified in this Article may nominate candidates for public offices whose names shall be placed on the ballot to be furnished, as provided in this Article. No nominations may be made under this Article 10, however, by any established political party which, at the general election next preceding, polled more than 5% of the entire vote cast in the State, district, or unit of local government for which the nomination is made. Those nominations provided for in Section 45-5 of the Township Code [60 ILCS 1/45-5] shall be made as prescribed in Sections 45-10 through 45-45 of that Code [60 ILCS 1/45-10 through 60 ILCS 1/45-45] for nominations by established political parties, but minor political parties and individual voters are governed by this Article. Any convention, caucus, or meeting of qualified voters of any established political party as defined in this Article may, however, make one nomination for each office therein to be filled at any election for officers of a municipality with a population of less than 5,000 by causing a certificate of nomination to be filed with the municipal clerk no earlier than 113 and no later than 106 days before the election at which the nominated candidates are to be on the ballot. The municipal caucuses shall be conducted on the first Monday in December of even-numbered years, except that, when that Monday is a holiday or the eve of a holiday, the caucuses shall be held on the next business day following the holiday. Every certificate of nomination shall state the facts required in Section 10-5 of this Article [10 ILCS 5/10-5] and shall be signed by the presiding officer and by the secretary of the convention, caucus, or meeting, who shall add to their signatures their places of residence. The certificates shall be sworn to by them to be true to the best of their knowledge and belief, and a certificate of the oath shall be annexed to the certificate of nomination.

(b) Publication of the time and place of holding the caucus shall be given by the municipal clerk. For municipalities of over 500 population, notice of the caucus shall be published in a newspaper published in the municipality. If there is no such newspaper, then the notice shall be published in a newspaper published in the county and having general circulation in the municipality. For municipalities of 500 population or less, notice of the caucus shall be given by the municipal clerk by posting the notice in 3 of the most public places in the municipality. The publication or posting shall be given at least 10 days before the caucus.

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(c) As provided in Sections 3.1-25-20 through 3.1-25-60 of the Illinois Municipal Code [65 ILCS 5/3.1-25-20 through ILCS 5/3.1-25-60], a village may adopt a system of nonpartisan primary and general elections for the election of village officers.

(d) Any city, village, or incorporated town with a population of 5,000 or less may, by ordinance, determine that established political parties shall nominate candidates for municipal office in the city, village, or incorporated town by primary in accordance with Article 7 [10 ILCS 5/7-1 et seq.].

(e) Only those voters who reside within the territory for which the nomination is made shall be permitted to vote or take part in the proceedings of any convention, caucus, or meeting of individual voters or of any political party held under this Section. No voter shall vote or take part in the proceedings of more than one convention, caucus, or meeting to make a nomination for the same office.

(Source: P.A. 84-861; 87-1119, § 6; 88-670, § 3-5; 97-81, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 10-1.

Illinois Jurisprudence. See Illinois Jur, Municip L § 6:41.

Effect of Amendments. The 1992 amendment, effective May 13, 1993, designated the first through the fifth paragraphs as subsections (a) through (e), respectively; in subsection (c) substituted "3.1-25-20" for "3-5-3a" and substituted "3.1-25-60" for "3-5-3i,"; and made stylistic changes throughout the section.

The 1994 amendment by P.A. 88-670, effective December 2, 1994, in subsection (a), in the third sentence substituted "45-5 of the Township Code" for "6A-1 of the Township Law of 1874", inserted "Sections 45-10 through 45-45 of" and substituted "Code" for "Section".

The 2011 amendment by P.A. 97-81, effective July 5, 2011, in the fourth sentence of (a), substituted "than 113" for "than 78" and "106 days" for "71 days"; and substituted "first Monday in December of even-numbered years" for "Monday immediately preceding the first day for filing caucus certificates of nomination in each year in which municipal officers are to be elected" in the fifth sentence of (a).

CASE NOTES

Analysis

Applicability
- Established Political Party
- Judicial Elections
- New Political Party

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- Nominations
Certificates of Nomination
- Sufficiency
Filing of Certificates
Nominations
- Prior Law
- Right of Public
Party Officers
Public Officers

Applicability

- Established Political Party

The clearly expressed intent of this section is that an established political party may not nominate candidates for office by petition. Foster v. Municipal Officers Electoral Bd., 113 Ill. App. 3d 721, 69 Ill. Dec. 555, 447 N.E.2d 990 (1 Dist. 1983).

An individual or group of less than five percent has a right to place a name upon the primary ballot by petition with the requisite number of signatures, and if such group or political party in the ensuing election polls more than five percent of the vote in such election, then it becomes an "established political party" for the subdivision in which the election was held and is entitled to the identical rights to which political parties are entitled with a like percentage of votes. Progressive Party v. Flynn, 400 Ill. 102, 79 N.E.2d 516 (1948).

- Judicial Elections

The failure of a new political party to include judicial candidates on its slate did not invalidate the entire slate under this section because the judges at issue were elected not from the county as a unit of local government, but rather from the county judicial district. Reed v. Kusper, 154 Ill. 2d 77, 180 Ill. Dec. 685, 607 N.E.2d 1198 (1992), cert. denied, 509 U.S. 906, 113 S. Ct. 3000, 125 L. Ed. 2d 693 (1993).

- New Political Party

This section clearly required that the petition for the formation of the newly formed political party contain a complete list of candidates for all offices to be filled within the political subdivision of county. Reed v. Kusper, 154 Ill. 2d 77, 180 Ill. Dec. 685, 607 N.E.2d 1198 (1992), cert. denied, 509 U.S. 906, 113 S. Ct. 3000, 125 L. Ed. 2d 693 (1993).

- Nominations

The provisions of the Election Code governing the making of nominations by political parties (10 ILCS 5/7-1 et seq.) apply to nominations for the established political parties, and 10 ILCS 5/10-1 et seq. applies to nominations for minority parties. Bergenson v. Mullinix, 399 Ill. 470, 78 N.E.2d 297 (1948).

Certificates of Nomination

- Sufficiency

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Even though nomination papers, filed by candidates for local offices, were certified by a temporary replacement for the Republican Party committeeman, they were sufficient at law. Moon v. Rolson, 189 Ill. App. 3d 262, 136 Ill. Dec. 723, 545 N.E.2d 247 (1 Dist. 1989).

Filing of Certificates

Former section 10-6 of the Election Code (see now this section), which required that certificates of nomination for township offices be filed 35 days prior to election, was applicable only in townships, villages, and towns with a population of less than 5,000. People ex rel. Ferry v. Palmer, 1 Ill. 2d 384, 115 N.E.2d 609 (1953).

Nominations

- Prior Law

The power to nominate candidates for office was not conferred by the former Primary Act of 1910 (see now 10 ILCS 5/10-1 et seq.) upon members or representatives of members of political parties; it simply recognized the right already existing in them and prescribed the manner in which that right should be exercised. People ex rel. Brundage v. Brady, 302 Ill. 576, 135 N.E. 87 (1922).

- Right of Public

The right to nominate candidates for public office is vested in the legal voters of the state, and the General Assembly cannot deprive them of this right. People ex rel. Brundage v. Brady, 302 Ill. 576, 135 N.E. 87 (1922).

Party Officers

Party officers were not public officers under the former Primary Act of 1910 (see now 10 ILCS 5/10-1 et seq.), and quo warranto was not a proper proceeding by which to try title to such an office. People ex rel. Brundage v. Brady, 302 Ill. 576, 135 N.E. 87 (1922).

Public Officers

Pursuant to 10 ILCS 5/10-15, a local election official has a responsibility to examine nominating papers to determine whether, upon their face, they are in apparent conformity with the Illinois Election Code, 10 ILCS 5/10-1 et seq., and the authority to refuse to certify the name of any candidate whose papers are not. Jenkins v. McIlvain, 338 Ill. App. 3d 113, 272 Ill. Dec. 758, 788 N.E.2d 62, 2003 Ill. App. LEXIS 336 (1 Dist. 2003).

Under the former Primary Act of 1910 (see now 10 ILCS 5/10-1 et seq.), committeemen and officers of political parties were not public officers. People ex rel. Brundage v. Brady, 302 Ill. 576, 135 N.E. 87 (1922).

The fact that the General Assembly may by law confer certain powers on individuals and require of them the performance of certain duties does not necessarily make individuals public officers. People ex rel. Brundage v. Brady, 302 Ill. 576, 135 N.E. 87 (1922).

LEGAL PERIODICALS

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For note, "Constitutional Law and Election," discussing Anderson v. Schneider, 67 Ill. 2d 165, 365 N.E.2d 900 (1977), see 66 Ill. B.J. 419 (1978).

§ 10 ILCS 5/10-2. [Political parties]

Sec. 10-2. The term "political party", as hereinafter used in this Article 10 [10 ILCS 5/10-1 et seq.], shall mean any "established political party", as hereinafter defined and shall also mean any political group which shall hereafter undertake to form an established political party in the manner provided for in this Article 10: Provided, that no political organization or group shall be qualified as a political party hereunder, or given a place on a ballot, which organization or group is associated, directly or indirectly, with Communist, Fascist, Nazi or other un-American principles and engages in activities or propaganda designed to teach subservience to the political principles and ideals of foreign nations or the overthrow by violence of the established constitutional form of government of the United States and the State of Illinois.

A political party which, at the last general election for State and county officers, polled for its candidate for Governor more than 5% of the entire vote cast for Governor, is hereby declared to be an "established political party" as to the State and as to any district or political subdivision thereof.

A political party which, at the last election in any congressional district, legislative district, county, township, municipality or other political subdivision or district in the State, polled more than 5% of the entire vote cast within such territorial area or political subdivision, as the case may be, has voted as a unit for the election of officers to serve the respective territorial area of such district or political subdivision, is hereby declared to be an "established political party" within the meaning of this Article as to such district or political subdivision.

Any group of persons hereafter desiring to form a new political party throughout the State, or in any congressional, legislative or judicial district, or in any other district or in any political subdivision (other than a municipality) not entirely within a single county, shall file with the State Board of Elections a petition, as hereinafter provided; and any such group of persons hereafter desiring to form a new political party within any county shall file such petition with the county clerk; and any such group of persons hereafter desiring to form a new political party within any municipality or township or within any district of a unit of local government other than a county shall file such petition with the local election official or Board of Election Commissioners of such municipality, township or other unit of local government, as the case may be. Any such petition for the formation of a new political party throughout the State, or in any such district or political subdivision, as the case may be, shall declare as concisely as may be the intention of the signers thereof to form such new political party in the State, or in such district or political subdivision; shall state in not more than 5 words the name of such new political party; shall at the time of filing contain a complete list of candidates of such party for all offices to be filled in the State, or such district or political subdivision as the case may be, at the next ensuing election then to be held; and, if such new political party shall be formed for

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the entire State, shall be signed by 1% of the number of voters who voted at the next preceding Statewide general election or 25,000 qualified voters, whichever is less. If such new political party shall be formed for any district or political subdivision less than the entire State, such petition shall be signed by qualified voters equaling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district or political subdivision in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area. However, whenever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number of signatures for State-wide new political party petitions at the next preceding State-wide general election, such State-wide petition signature requirement shall be the minimum for such district or political subdivision new political party petition.

For the first election following a redistricting of congressional districts, a petition to form a new political party in a congressional district shall be signed by at least 5,000 qualified voters of the congressional district. For the first election following a redistricting of legislative districts, a petition to form a new political party in a legislative district shall be signed by at least 3,000 qualified voters of the legislative district. For the first election following a redistricting of representative districts, a petition to form a new political party in a representative district shall be signed by at least 1,500 qualified voters of the representative district.

For the first election following redistricting of county board districts, or of municipal wards or districts, or for the first election following the initial establishment of such districts or wards in a county or municipality, a petition to form a new political party in a county board district or in a municipal ward or district shall be signed by qualified voters of the district or ward equal to not less than 5% of the total number of votes cast at the preceding general or municipal election, as the case may be, for the county or municipal office voted on throughout the county or municipality for which the greatest total number of votes were cast for all candidates, divided by the number of districts or wards, but in any event not less than 25 qualified voters of the district or ward.

In the case of a petition to form a new political party within a political subdivision in which officers are to be elected from districts and at-large, such petition shall consist of separate components for each district from which an officer is to be elected. Each component shall be circulated only within a district of the political subdivision and signed only by qualified electors who are residents of such district. Each sheet of such petition must contain a complete list of the names of the candidates of the party for all offices to be filled in the political subdivision at large, but the sheets comprising each component shall also contain the names of those candidates to be elected from the particular district. Each component of the petition for each district from which an officer is to be elected must be signed by qualified voters of the district equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district. The entire petition, including all components, must be signed by a total of qualified voters of the entire political subdivision equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such political subdivision at which an officer was elected to serve the political subdivision at large.

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The filing of such petition shall constitute the political group a new political party, for the purpose only of placing upon the ballot at such next ensuing election such list or an adjusted list in accordance with Section 10-11 [10 ILCS 5/10-11], of party candidates for offices to be voted for throughout the State, or for offices to be voted for in such district or political subdivision less than the State, as the case may be, under the name of and as the candidates of such new political party.

If, at such ensuing election, the new political party's candidate for Governor shall receive more than 5% of the entire votes cast for Governor, then such new political party shall become an "established political party" as to the State and as to every district or political subdivision thereof. If, at such ensuing election, the other candidates of the new political party, or any other candidate or candidates of the new political party shall receive more than 5% of all the votes cast for the office or offices for which they were candidates at such election, in the State, or in any district or political subdivision, as the case may be, then and in that event, such new political party shall become an "established political party" within the State or within such district or political subdivision less than the State, as the case may be, in which such candidate or candidates received more than 5% of the votes cast for the office or offices for which they were candidates. It shall thereafter nominate its candidates for public offices to be filled in the State, or such district or political subdivision, as the case may be, under the provisions of the laws regulating the nomination of candidates of established political parties at primary elections and political party conventions, as now or hereafter in force.

A political party which continues to receive for its candidate for Governor more than 5% of the entire vote cast for Governor, shall remain an "established political party" as to the State and as to every district or political subdivision thereof. But if the political party's candidate for Governor fails to receive more than 5% of the entire vote cast for Governor, or if the political party does not nominate a candidate for Governor, the political party shall remain an "established political party" within the State or within such district or political subdivision less than the State, as the case may be, only so long as, and only in those districts or political subdivisions in which, the candidates of that political party, or any candidate or candidates of that political party, continue to receive more than 5% of all the votes cast for the office or offices for which they were candidates at succeeding general or consolidated elections within the State or within any district or political subdivision, as the case may be.

Any such petition shall be filed at the same time and shall be subject to the same requirements and to the same provisions in respect to objections thereto and to any hearing or hearings upon such objections that are hereinafter in this Article 10 contained in regard to the nomination of any other candidate or candidates by petition. If any such new political party shall become an "established political party" in the manner herein provided, the candidate or candidates of such new political party nominated by the petition hereinabove referred to for such initial election, shall have power to select any such party committeeman or committeemen as shall be necessary for the creation of a provisional party organization and provisional managing committee or committees for such party within the State, or in any district or political subdivision in which the new political party has become established; and the party committeeman or committeemen so selected shall constitute a provisional party organization for the new political party and

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shall have and exercise the powers conferred by law upon any party committeeman or committeemen to manage and control the affairs of such new political party until the next ensuing primary election at which the new political party shall be entitled to nominate and elect any party committeeman or committeemen in the State, or in such district or political subdivision under any parts of this Act relating to the organization of political parties.

A candidate for whom a nomination paper has been filed as a partisan candidate at a primary election, and who is defeated for his or her nomination at the primary election, is ineligible for nomination as a candidate of a new political party for election in that general election.

(Source: P.A. 86-875.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 10-2.

CASE NOTES

Analysis

Constitutionality
Applicability
Ballots
- Barring a Party
- Improper Party Designation
- Removal of Candidates
Constitutional Challenges
Established Political Party
- Effect of Redistricting
- Formation
- Label Designation
Legislative Authority
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- In General
- Invalid Certificate of Nomination
- Petitions for Nomination
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Signature Requirements

Constitutionality

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Minimum signature requirements in 10 ILCS 5/10-2 for a new party formed in a district, which were different from the requirements for a new party formed in the entire state, were not unconstitutional under Ill. Const. art. I, §§ 2, 4, 5 as the State had a legitimate interest in only putting candidates on the ballot who demonstrated a measurable quantum of support or a level of political viability; thus, a candidate's nominating petition, which did not contain the minimum number of signatures, was properly invalidated. Druck v. Ill. State Bd. of Elections, 387 Ill. App. 3d 144, 326 Ill. Dec. 220, 899 N.E.2d 437, 2008 Ill. App. LEXIS 1309 (1 Dist. 2008).

The full-slate requirement of this section is not so burdensome on a new party that it violates the constitution; the requirement merely forces the party to show that, within a district, it has support sufficient to allow it to field a candidate for each open position. Green Party v. Henrichs, 355 Ill. App. 3d 445, 291 Ill. Dec. 35, 822 N.E.2d 910, 2005 Ill. App. LEXIS 37 (3 Dist. 2005).

It is neither irrational nor unfair to require a candidate from a new party to obtain a greater percentage of petition signatures to appear on the general election ballot than a candidate from an established party for the primary election ballot; the two petitioning requirements contain different percentages because they are used at two different times for two different purposes. Libertarian Party v. Rednour, 108 F.3d 768 (7th Cir. 1997), cert. denied, 522 U.S. 858, 118 S. Ct. 158, 139 L. Ed. 2d 103 (1997).

State's interest in preventing ballot clutter, avoiding voter confusion and requiring a party to demonstrate a significant modicum of public support before it has access to the ballot was sufficiently weighty to justify the limitations placed on defendants by this section. Libertarian Party v. Rednour, 108 F.3d 768 (7th Cir. 1997), cert. denied, 522 U.S. 858, 118 S. Ct. 158, 139 L. Ed. 2d 103 (1997).

The ballot access requirements imposed are entirely procedural and merely assure that candidates meet a minimum threshold of voter support in order to maintain the integrity and regularity of the electoral process but they do not pose a substantive handicap that systematically excluded defendant's party candidates from office. Libertarian Party v. Rednour, 108 F.3d 768 (7th Cir. 1997), cert. denied, 522 U.S. 858, 118 S. Ct. 158, 139 L. Ed. 2d 103 (1997).

The signature requirement in this section is not unconstitutional. Black v. Cook County Officers Electoral Bd., 750 F. Supp. 901 (N.D. Ill. 1990).

A requirement that persons seeking to run as independent candidates for state and county offices were required to file with the state 323 days before a general election was constitutionally permissible. Stevenson v. State Bd. of Elections, 794 F.2d 1176 (7th Cir. 1986).

The portion of 10 ILCS 5/10-3 which required that the 25,000 signatures on a nominating petition for an independent candidate include 200 signatures from each of at least 50 of the state's 102 counties applied a rigid, arbitrary formula to sparsely settled counties and populous counties alike, contrary to the constitutional theme of equality among citizens in the exercise of their political rights, and violated the equal protection clause of the United States Constitution. Moore v. Ogilvie, 394 U.S. 814, 89 S. Ct. 1493, 23 L. Ed. 2d 1 (1969).

If the term Communist was to be taken to mean simply a belief in a system in which goods and the instruments of production were held in common by the people, then the statute was clearly unconstitutional, since a party could not be excluded from a place on the ballot because it advocated economic ideas which may have happened to be unpopular at the time. Feinglass v. Reinecke, 48 F. Supp. 438 (N.D. Ill. 1942).

This section was void for uncertainty as to the meaning of Communist principles. Feinglass v. Reinecke, 48 F. Supp. 438 (N.D. Ill. 1942).

Applicability

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A provision which prevented a political party from being disqualified from participating in a primary election by reason of its failure to name candidates in a preceding judicial election did not apply and was not intended to apply to a political party entitled to nominate after it became such as a result of the provisions of this section. Progressive Party v. Flynn, 400 Ill. 102, 79 N.E.2d 516 (1948).

Ballots

- Barring a Party

Political party lost its status as an established political party when a new district was created, and a county election commission was not estopped from refusing to place a candidate's name on the ballot because the Illinois State Board of Elections misinterpreted 10 ILCS 5/10-2. Vestrup v. Du Page County Election Comm'n, 335 Ill. App. 3d 156, 268 Ill. Dec. 762, 779 N.E.2d 376, 2002 Ill. App. LEXIS 1064 (2 Dist. 2002).

By the terms of this section, to bar a party from the ballot, it must be shown not only that it is associated with Communist, Nazi or Fascist or other un-American principles, but also that it engages in certain activities or propaganda, to wit, "activities or propaganda, designed to teach subservience to the political principles and ideals of foreign nations or the overthrow by violence of the established constitutional form of government of the United States and the State of Illinois." Feinglass v. Reinecke, 48 F. Supp. 438 (N.D. Ill. 1942).

Where there was no showing made to the officials of the state charged with receiving petitions for nomination that the Communist Party was engaged in the activities listed in this section, the action of those officers in refusing to endorse the petition and deposit it was purely arbitrary. Feinglass v. Reinecke, 48 F. Supp. 438 (N.D. Ill. 1942).

- Improper Party Designation

Where persons were not properly nominated as candidates of an established party but their nominating petitions were signed by sufficient voters to entitle them to be placed on the ballot as individuals, their improper party designation could be stricken and they could be placed on the ballot as individuals without any party designation. Vasquez v. Municipal Officers Electoral Bd., 115 Ill. App. 3d 1014, 71 Ill. Dec. 500, 450 N.E.2d 1379 (3 Dist. 1983).

- Removal of Candidates

This section confers no authority on a township electoral board to remove from a ballot all of the qualified candidates because one is unqualified; therefore, action by board ordering that the names of all candidates not be printed on the ballot because one candidate was unqualified violated due process. Anderson v. Schneider, 67 Ill. 2d 165, 8 Ill. Dec. 514, 365 N.E.2d 900 (1977).

Constitutional Challenges

Where a plaintiff challenged the constitutionality of this section, alleging that its requirements were arbitrary, unreasonable, and unconstitutional, since the complaint failed to allege facts which would warrant holding that the decision of the Electoral Board was arbitrary or capricious, that decision would not be disturbed; it was therefore the duty of a federal district court to hold that the complaint failed to allege a substantial federal question, and the court would not take the steps necessary to convene a three-judge district court. People ex rel. Sankstone v. Jarecki, 116 F. Supp. 422 (N.D. Ill.), appeal dismissed, 346 U.S. 861, 74 S. Ct. 107, 98 L. Ed. 373 (1953).

Established Political Party

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- Effect of Redistricting

Candidates of a party reaching the requisite number of votes in a prior election in a district subsequently eliminated due to redistricting were entitled to rely on the voter's guide prepared by the Illinois State Boarrd of Elections, which specifically provided that the party was established in the districts now containing the voters from the eliminated district. Preuter v. State Officers Electoral Bd., 334 Ill. App. 3d 979, 268 Ill. Dec. 708, 779 N.E.2d 268, 2002 Ill. App. LEXIS 978 (1 Dist. 2002).

- Formation

Even though a party was not organized as an established party, it was not precluded from being an established party within the meaning of this section; the party could become established if its candidates received more than five percent of the electorate's vote, and thereafter nominated its candidates by either the primary of caucus proceedings described in 10 ILCS 5/7-1 et seq. Vasquez v. Municipal Officers Electoral Bd., 115 Ill. App. 3d 1014, 71 Ill. Dec. 500, 450 N.E.2d 1379 (3 Dist. 1983).

- Label Designation

Where the "Action IV Party" was the same party which was designated "Action III Party" in 1981 and in prior years under the Action Party label, the Action Party did not become a new party in terms of label designation solely by adding a number which merely designated the number of times the party had been on the ballot. Vasquez v. Municipal Officers Electoral Bd., 115 Ill. App. 3d 1014, 71 Ill. Dec. 500, 450 N.E.2d 1379 (3 Dist. 1983).

Legislative Authority

The Illinois legislature possesses a very wide latitude in determining the method and means by which a new political party may be permitted to have the names of its candidates printed on the ballots, but this does not mean that it could arbitrarily make such requirements as would deprive a legal voter of his right to vote or of his right to participate in all other related matters, such as the nomination of candidates with the added right of supporting them by his ballot. Blackman v. Stone, 101 F.2d 500 (7th Cir. 1939).

New Party

- In General

Persons wishing to create a new political party and submit a slate of candidates are governed by this section. People ex rel. Vigilant Party v. Village of Dolton, 118 Ill. App. 2d 392, 254 N.E.2d 832 (1 Dist. 1969).

- Invalid Certificate of Nomination

Where a new political party failed to nominate candidates to all open positions in a county, the party's nominating petition was properly invalidated. Green Party v. Henrichs, 355 Ill. App. 3d 445, 291 Ill. Dec. 35, 822 N.E.2d 910, 2005 Ill. App. LEXIS 37 (3 Dist. 2005).

Where the plaintiffs' original filing pursuant to this section was declared invalid by the Municipal Officers Election Board, no political party was in existence at the time of their subsequent attempted filing, and no vacancies existed either, the plaintiffs could not have availed themselves of 10 ILCS 5/10-11, and the new filing could not have constituted certificates of nomination. People ex rel. Vigilant Party v. Village of Dolton, 118 Ill. App. 2d 392, 254 N.E.2d 832 (1 Dist. 1969).

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Where plaintiffs' petition to form a new political party was held insufficient and inoperative by the Electoral Board, there was no new political party or any certifiable nominees thereof and no vacancies to fill, and their subsequent petition could not be considered to be a certificate of nomination to fill a vacancy. People ex rel. Voters for Progress Party v. Wilk, 118 Ill. App. 2d 386, 254 N.E.2d 834 (1 Dist. 1969).

- Petitions for Nomination

Plaintiffs argued that three provisions of state law, 10 ILCS 5/10-2, 10 ILCS 5/10-3,10 ILCS 5/3-1, 10 ILCS 5/3-2, and 10 ILCS5/10-6, unconstitutionally prevented presidential candidates from qualifying for a place on the ballot. The denial of their request for preliminary injunctive relief to place a name on the ballot was affirmed as the appellate court could not say that the district court abused its discretion in refusing to issue the injunction. It would have been inequitable to order preliminary relief in a suit filed so gratuitously late in the campaign season. In Illinois, requiring a third-party candidate to obtain 25,000 signed nominating petitions could not be thought excessive and plaintiffs did not present evidence that would enable a court to prescribe a shorter period for submitting to the State the qualifying number of nominating petitions. Nader v. Keith, 385 F.3d 729, 2004 U.S. App. LEXIS 19804 (7th Cir. 2004).

Under this provision, nominating petitions for aldermanic candidates for a new party must be signed by not less than 5% of the qualified voters who voted for that aldermanic position at the last preceding regular election in such ward. Foster v. Municipal Officers Electoral Bd., 113 Ill. App. 3d 721, 69 Ill. Dec. 555, 447 N.E.2d 990 (1 Dist. 1983).

Powers of City Clerk

In determining for himself that an election held on April 21, 1931, rather than that held on April 19, 1932, was the last preceding similar general election which furnished a basis for determining how many signatures should be signed to a petition to organize a new political party and nominate its candidates for office, a city clerk undertook to exercise judicial powers which he did not possess. People ex rel. Deaton v. Gifford, 353 Ill. 107, 186 N.E. 530 (1933).

Signature Requirements

Signature requirements for a nominating petition under 10 ILCS 5/10-2 were not illusory based on a candidate's claim that they could only be enforced when objections were filed under 10 ILCS 5/10-8 because that provision's plain language indicated that two conditions precedent had to be met before the nominating papers would be deemed valid: the papers had to be filed with the proper election authority under 10 ILCS 5/10-6 and in apparent conformity with the Election Code. Druck v. Ill. State Bd. of Elections, 387 Ill. App. 3d 144, 326 Ill. Dec. 220, 899 N.E.2d 437, 2008 Ill. App. LEXIS 1309 (1 Dist. 2008).

OPINIONS OF ATTORNEY GENERAL

Analysis

Established Political Party

Measure

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Established Political Party

The Illinois Solidarity Party is not an established political party. 1991 Op. Atty. Gen. (91-022).

Measure

The only method of measurement which accurately meets the terms of this section is a determination of whether the total vote received by the full slate of candidates nominated by a party for those offices exceeds the specified percentage of the cumulative votes cast for all of the offices to be filled. 1991 Op. Atty. Gen. (91-022).

LEGAL PERIODICALS

For note, "The First Amendment Freedom of Association, in light of Norman v. Reed, 112 S.Ct. 698 (1992)," see 80 Ill. B.J. 416 (1992).

For article, "Federal Protections of Individual Rights in Local Elections," see 13 J. Marshall L. Rev. 503 (1980).

For article, "The Illinois State Board of Elections: A History and Evaluation of the Formative Years," see 11 J. Marshall J. Prac. & Proc. 321 (1978).

For note, "Constitutional Law and Election," discussing Anderson v. Schneider, 67 Ill. 2d 165, 365 N.E.2d 900 (1977), see 66 Ill. B.J. 419 (1978).

RESEARCH REFERENCES

Validity, construction, and application of state statutes governing "minor political parties". 120 ALR5th 1.

§ 10 ILCS 5/10-3. [Independent candidates; nomination]

Sec. 10-3. Nomination of independent candidates (not candidates of any political party), for any office to be filled by the voters of the State at large may also be made by nomination papers signed in the aggregate for each candidate by 1% of the number of voters who voted in the next preceding Statewide general election or 25,000 qualified voters of the State, whichever is less. Nominations of independent candidates for public office within any district or political subdivision less than the State, may be made by nomination papers signed in the aggregate for each candidate by qualified voters of such district, or political subdivision, equaling not less than 5%, nor more than 8% (or 50 more than the minimum, whichever is greater) of the number of persons, who voted at the next preceding regular election in such district or political subdivision in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area. However, whenever the minimum signature requirement for an

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independent candidate petition for a district or political subdivision office shall exceed the minimum number of signatures for an independent candidate petition for an office to be filled by the voters of the State at large at the next preceding State-wide general election, such State-wide petition signature requirement shall be the minimum for an independent candidate petition for such district or political subdivision office. For the first election following a redistricting of congressional districts, nomination papers for an independent candidate for congressman shall be signed by at least 5,000 qualified voters of the congressional district. For the first election following a redistricting of legislative districts, nomination papers for an independent candidate for State Senator in the General Assembly shall be signed by at least 3,000 qualified voters of the legislative district. For the first election following a redistricting of representative districts, nomination papers for an independent candidate for State Representative in the General Assembly shall be signed by at least 1,500 qualified voters of the representative district. For the first election following redistricting of county board districts, or of municipal wards or districts, or for the first election following the initial establishment of such districts or wards in a county or municipality, nomination papers for an independent candidate for county board member, or for alderman or trustee of such municipality, shall be signed by qualified voters of the district or ward equal to not less than 5% nor more than 8% (or 50 more than the minimum, whichever is greater) of the total number of votes cast at the preceding general or general municipal election, as the case may be, for the county or municipal office voted on throughout such county or municipality for which the greatest total number of votes were cast for all candidates, divided by the number of districts or wards, but in any event not less than 25 qualified voters of the district or ward. Each voter signing a nomination paper shall add to his signature his place of residence, and each voter may subscribe to one nomination for such office to be filled, and no more: Provided that the name of any candidate whose name may appear in any other place upon the ballot shall not be so added by petition for the same office.

The person circulating the petition, or the candidate on whose behalf the petition is circulated, may strike any signature from the petition, provided that;

(1) the person striking the signature shall initial the petition at the place where the signature is struck; and

(2) the person striking the signature shall sign a certification listing the page number and line number of each signature struck from the petition. Such certification shall be filed as a part of the petition.

(3) the persons striking signatures from the petition shall each sign an additional certificate specifying the number of certification pages listing stricken signatures which are attached to the petition and the page numbers indicated on such certifications. The certificate shall be filed as a part of the petition, shall be numbered, and shall be attached immediately following the last page of voters' signatures and before the certifications of stricken signatures.

(4) all of the foregoing requirements shall be necessary to effect a valid striking of any signature. The provisions of this Section authorizing the striking of signatures shall not

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impose any criminal liability on any person so authorized for signatures which may be fraudulent.

In the case of the offices of Governor and Lieutenant Governor a joint petition including one candidate for each of those offices must be filed.

A candidate for whom a nomination paper has been filed as a partisan candidate at a primary election, and who is defeated for his or her nomination at the primary election, is ineligible to be placed on the ballot as an independent candidate for election in that general or consolidated election.

A candidate seeking election to an office for which candidates of political parties are nominated by caucus who is a participant in the caucus and who is defeated for his or her nomination at such caucus, is ineligible to be listed on the ballot at that general or consolidated election as an independent candidate.

(Source: P.A. 86-867; 86-875; 86-1028; 86-1348; 95-699, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 10-3.

Section 97 of P.A. 95-699 contains a severability provision.

Effect of Amendments. The 2007 amendment by P.A. 95-699, effective November 9, 2007, rewrote the section.

CASE NOTES

Analysis

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Constitutionality

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Independent candidate's challenge to 10 ILCS 5/10-3's rule that the candidate submit with his petition to appear on the 2008 general election ballot the signatures of five percent of the number of people who voted in the district in the last congressional election was properly dismissed because the rule did not deny the candidate equal protection of the law; the disparate treatment in 10 ILCS 5/10-3 of newly redistricted districts, which only required 5,000 signatures, and unchanged districts showed that a five percent minimum was not arbitrary as it was plausible that it would be more difficult for candidates to obtain signatures after redistricting, so the required number was reduced. Stevo v. Keith, 546 F.3d 405, 2008 U.S. App. LEXIS 20701 (7th Cir. 2008), cert. denied, 2009 U.S. LEXIS 3546 (U.S. 2009).

Illinois' petition deadline and signature requirements to get on the presidential ballot survived heightened constitutional scrutiny, and did not impose a severe burden on an independent Presidential candidate, under prior U.S. Supreme Court rulings. Nader v. Keith, F. Supp. 2d , 2004 U.S. Dist. LEXIS 16660 (N.D. Ill. Aug. 23, 2004), aff'd, 385 F.3d 729 (7th Cir. 2004).

The fact that filing deadlines for independent candidates are the same as those for established party candidates and different from those for newly formed parties does not render this section unconstitutional under the First and Fourteenth Amendments to the United States Constitution. Stevenson v. State Bd. of Elections, 638 F. Supp. 547 (N.D. Ill.), aff'd, 794 F.2d 1176 (7th Cir. 1986).

The former provisions of this Code which required new political parties and independent candidates to obtain the signatures of 25,000 qualified voters in order to appear on the ballot in statewide elections and which set the minimum number of signatures required for offices of political subdivisions of the state at 5% of the number of persons who voted at the previous election for offices of the particular subdivision violated the equal protection clause of the United States Constitution as applied to the city of Chicago, since the application of this standard produced the result that a new party or an independent candidate needed substantially more signatures to gain access to the ballot than a similarly-situated party or candidate for statewide office. Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 99 S. Ct. 983, 59 L. Ed. 2d 230 (1979).

The portion of this section which provides that in the first election following a redistricting of congressional districts, petitions for independent candidates for nomination for Congress must contain 5,000 signatures, reflects a reasonable limitation serving a compelling state interest, and is sufficiently narrow to satisfy due process. Stout v. Black, 8 Ill. App. 3d 167, 289 N.E.2d 456 (2 Dist. 1972).

This section was found to be constitutional. Jackson v. Ogilvie, 325 F. Supp. 864 (N.D. Ill.), aff'd, 403 U.S. 925, 91 S. Ct. 2247, 29 L. Ed. 2d 705 (1971).

The portion of this section which required that the 25,000 signatures on a nominating petition for an independent candidate include 200 signatures from each of at least 50 of the state's 102 counties applied a rigid, arbitrary formula to sparsely settled counties and populous counties alike, contrary to the constitutional theme of equality among citizens in the exercise of their political rights, and violated the equal protection clause of the United States Constitution. Moore v. Ogilvie, 394 U.S. 814, 89 S. Ct. 1493, 23 L. Ed. 2d 1 (1969).

Nominating Petitions

Plaintiffs argued that three provisions of state law, 10 ILCS 5/10-2, 10 ILCS 5/10-3,10 ILCS 5/3-1, 10 ILCS 5/10-2, and 10 ILCS 5/10-6, unconstitutionally prevented presidential candidates from qualifying for a place on the ballot. The denial of their request for preliminary injunctive relief to place a name on the ballot was affirmed as the appellate court could not say that the district court abused its discretion in refusing to issue the injunction. It would have been inequitable to order preliminary relief in a suit filed so gratuitously late in the campaign season. In Illinois, requiring a

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third-party candidate to obtain 25,000 signed nominating petitions could not be thought excessive and plaintiffs did not present evidence that would enable a court to prescribe a shorter period for submitting to the State the qualifying number of nominating petitions. Nader v. Keith, 385 F.3d 729, 2004 U.S. App. LEXIS 19804 (7th Cir. 2004).

The use of nominating petitions by independents to obtain a place on the ballot is an integral part of the elective system. Moore v. Ogilvie, 394 U.S. 814, 89 S. Ct. 1493, 23 L. Ed. 2d 1 (1969).

Percentage Requirement

While the 5% requirement set out in this section is higher than the percentage required in a majority of other states, it was a reasonable limitation that served a compelling state interest, and therefore, the state could limit the availability of the ballot to only those candidates who evidenced the support of 5% of the electorate. Jackson v. Ogilvie, 325 F. Supp. 864 (N.D. Ill.), aff'd, 403 U.S. 925, 91 S. Ct. 2247, 29 L. Ed. 2d 705 (1971).

Qualified Voter

A "qualified voter" refers to a person who has met all the statutory qualifications to vote, including registration when registration is required in the election for the particular office for which the nomination is made. Stout v. Black, 8 Ill. App. 3d 167, 289 N.E.2d 456 (2 Dist. 1972).

Signature Requirement

- Noncompliance

Where candidates failed to comply with the minimum statutory signature requirement under this statute, because they relied on an erroneous information sheet distributed by the city clerk in determining the number of signatures that were necessary to place their names on the ballot, and where the candidates demonstrated at least a minimum appeal to the voters, the interests of justice were best served by allowing the names of all three candidates to appear on the ballot. Merz v. Volberding, 94 Ill. App. 3d 1111, 50 Ill. Dec. 520, 419 N.E.2d 628 (1 Dist. 1981).

- Purpose

The state has the right to require candidates to make a preliminary showing of substantial support in order to qualify for a place on the ballot, because it is both wasteful and confusing to encumber the ballot with the names of frivolous candidates. Johnson v. Cook County Officers Electoral Bd., 680 F. Supp. 1229 (N.D. Ill. 1988).

The primary purpose of this section's signature requirement is to reduce the electoral process to manageable proportions by confining ballot positions to a relatively small number of candidates who have demonstrated initiative and at least a minimal appeal to eligible voters. Merz v. Volberding, 94 Ill. App. 3d 1111, 50 Ill. Dec. 520, 419 N.E.2d 628 (1 Dist. 1981).

- Valid

No equal protection violation arose from the fact that, pursuant to 10 ILCS 5/10-3,10 ILCS 5/28-9, Illinois law set lower petition signature requirements on candidates who were seeking to be placed on the ballot than it did on citizens who were seeking to place advisory opinions on the ballots. There was a rational basis for the different treatment of candidates versus questions because Illinois was not required to place advisory questions on the ballot, the primary purpose of ballots was to list candidates, not questions, and the state had an interest in preventing voter confusion engendered by overlong ballots. Protect Marriage Ill. v. Orr, F.3d , 2006 U.S. App. LEXIS 22645 (7th Cir. Sept. 6, 2006).

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Requiring the candidates for the suburban-district commissioner seats to obtain 25,000 nominating signatures from the suburbs did not unduly burden the candidates' right to run for those seats under a party name because the 25,000 signature rule required the support of only slightly more than 2% of suburban voters; therefore, just as the state could not cite the party's failure in the suburbs as reason for disqualifying its candidates in an urban county, neither could the party cite its success in the city district as a sufficient condition for running candidates in the suburbs. Norman v. Reed, 502 U.S. 279, 112 S. Ct. 698, 116 L. Ed. 2d 711 (1992).

Signers of Nominating Petition

The signers of nominating petitions for an office to be voted upon in an election in which registration is a prerequisite to voting must be registered. Stout v. Black, 8 Ill. App. 3d 167, 289 N.E.2d 456 (2 Dist. 1972).

LEGAL PERIODICALS

For mentorship article, "The Expansion of the First Amendment in Judicial Elections: Another Cause for Reform," see 38 Loy. U. Chi. L.J. 833 (2007).

§ 10 ILCS 5/10-3.1. [Nonpartisan candidates; petitions]

Sec. 10-3.1. Petitions for nomination of nonpartisan candidates for offices to be filled at an election provided in Article 2A of this Code [10 ILCS 5/2A-1 et seq.] shall be in conformity with any requirements as to contents and number of signatures specified in the statute creating the political subdivision or providing the applicable form of government thereof. Petitions for nomination of nonpartisan candidates for municipal offices where the statute creating the municipality or providing the form of government thereof, or the ordinance so providing, pursuant to Article VII of the Constitution [Ill. Const. (1970) Art. VII, § 1 et seq], requires election to such office on a nonpartisan basis and does not permit political party nominations (including without limitation Articles 4 and 5 of the Municipal Code [65 ILCS 5/4-1-1 et seq. and 65 ILCS 5/5-1-1 et seq.]) shall be in conformity with any requirements as to contents and number of signatures specified in such statute or ordinance.

The provisions of this Article 10 [10 ILCS 5/10-1 et seq.] relating to independent candidate petition requirements shall apply to nonpartisan petitions to the extent they are not inconsistent with the requirements of such other statutes or ordinances.

If signature requirements for petitions for nomination of nonpartisan candidates are not specified in the statute creating the political subdivision or the signature requirements cannot be determined under Article 10, the signature requirements for the nonpartisan candidates shall be at least 0.5% of the total number of registered voters of the political subdivision for which the nomination is made or a minimum of 25, whichever is greater.

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(Source: P.A. 83-999; 87-1052, § 3.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 10-3.1.

Effect of Amendments. The 1992 amendment, effective September 11, 1992, added the last paragraph of the section.

CASE NOTES

Municipal Officers

- Manner of Selection

The power of a home rule municipality to choose the manner of selection of its officers includes the ability to decide by referendum whether the election of officers should be on a partisan or nonpartisan basis. Boytor v. City of Aurora, 81 Ill. 2d 308, 43 Ill. Dec. 1, 410 N.E.2d 1 (1980).

§ 10 ILCS 5/10-4. Form of petition for nomination

Sec. 10-4. Form of petition for nomination. All petitions for nomination under this Article 10 [10 ILCS 5/10-1 et seq.] for candidates for public office in this State, shall in addition to other requirements provided by law, be as follows: Such petitions shall consist of sheets of uniform size and each sheet shall contain, above the space for signature, an appropriate heading, giving the information as to name of candidate or candidates in whose behalf such petition is signed; the office; the party; place of residence; and such other information or wording as required to make same valid, and the heading of each sheet shall be the same. Such petition shall be signed by the qualified voters in their own proper persons only, and opposite the signature of each signer his residence address shall be written or printed. The residence address required to be written or printed opposite each qualified primary elector's name shall include the street address or rural route number of the signer, as the case may be, as well as the signer's county, and city, village or town, and state. However, the county or city, village or town, and state of residence of such electors may be printed on the petition forms where all of the such electors signing the petition reside in the same county or city, village or town, and state. Standard abbreviations may be used in writing the residence address, including street number, if any. No signature shall be valid or be counted in considering the validity or sufficiency of such petition unless the requirements of this Section are complied with. At the bottom of each sheet of such petition shall be added a circulator's statement, signed by a person 18 years of age or older who is a citizen of the United States; stating the street address or rural route number, as the case may be, as well as the county, city, village or town, and

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state; certifying that the signatures on that sheet of the petition were signed in his or her presence; certifying that the signatures are genuine; and either (1) indicating the dates on which that sheet was circulated, or (2) indicating the first and last dates on which the sheet was circulated, or (3) certifying that none of the signatures on the sheet were signed more than 90 days preceding the last day for the filing of the petition; and certifying that to the best of his knowledge and belief the persons so signing were at the time of signing the petition duly registered voters under Articles 4, 5 or 6 of the Code [10 ILCS 5/4-1 et seq., 10 ILCS 5/5-1 et seq., or 10 ILCS 5/6-1 et seq.] of the political subdivision or district for which the candidate or candidates shall be nominated, and certifying that their respective residences are correctly stated therein. Such statement shall be sworn to before some officer authorized to administer oaths in this State. No petition sheet shall be circulated more than 90 days preceding the last day provided in Section 10-6 [10 ILCS 5/10-6] for the filing of such petition. Such sheets, before being presented to the electoral board or filed with the proper officer of the electoral district or division of the state or municipality, as the case may be, shall be neatly fastened together in book form, by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner, and the sheets shall then be numbered consecutively. The sheets shall not be fastened by pasting them together end to end, so as to form a continuous strip or roll. All petition sheets which are filed with the proper local election officials, election authorities or the State Board of Elections shall be the original sheets which have been signed by the voters and by the circulator, and not photocopies or duplicates of such sheets. A petition, when presented or filed, shall not be withdrawn, altered, or added to, and no signature shall be revoked except by revocation in writing presented or filed with the officers or officer with whom the petition is required to be presented or filed, and before the presentment or filing of such petition. Whoever forges any name of a signer upon any petition shall be deemed guilty of a forgery, and on conviction thereof, shall be punished accordingly. The word "petition" or "petition for nomination", as used herein, shall mean what is sometimes known as nomination papers, in distinction to what is known as a certificate of nomination. The words "political division for which the candidate is nominated", or its equivalent, shall mean the largest political division in which all qualified voters may vote upon such candidate or candidates, as the state in the case of state officers; the township in the case of township officers et cetera. Provided, further, that no person shall circulate or certify petitions for candidates of more than one political party, or for an independent candidate or candidates in addition to one political party, to be voted upon at the next primary or general election, or for such candidates and parties with respect to the same political subdivision at the next consolidated election.

(Source: P.A. 86-867; 87-1052, § 3; 88-89, § 3-5; 91-57, § 5; 92-129, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 10-4.

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Effect of Amendments. The 1992 amendment, effective September 11, 1992, added "who has been a registered voter at all times he or she circulated the petition" preceding "for which the candidate or candidates shall be nominated" in the seventh sentence.

The 1993 amendment by P.A. 88-89, effective July 14, 1993, inserted in the seventh sentence and added at the end of the ninth sentence "or more than 45 days preceding the last day for filing of the petition in the case of political party and independent candidates for single or multi-county regional superintendents of schools in the 1994 general primary election".

The 1999 amendment by P.A. 91-57, effective June 30, 1999, added the section heading; and substituted "county, and city, village or town, and state" for "city village or town" two times.

The 2001 amendment by P.A. 92-129, effective July 20, 2001, in the seventh sentence of the first paragraph inserted "circulator's", substituted "person 18 years of age or older who is a citizen of the United States" for "registered voter of the political division, who has been a registered voter at all times he or she circulated the petition, for which the candidate or candidates shall be nominated", deleted "of the voter" following "or rural route number", and substituted "county, city" for "voter's county, and city" preceding "village or town"; and deleted "or more than 45 days preceding the last day for filing of the petition in the case of political party and independent candidates for single or multi-county regional superintendents of schools in the 1994 general primary election" after "petition" at the end of the seventh and ninth sentences.

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- Multiple Filing Prohibited
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Signers of Nominating Petitions

Constitutionality

Although federal court decisions have found the statute unconstitutional to the extent that it requires petition circulators to be registered voters, this is not a basis for invalidating the entire statute. Schober v. Young, 322 Ill. App. 3d 996, 256 Ill. Dec. 220, 751 N.E.2d 610, 2001 Ill. App. LEXIS 481 (4 Dist. 2001).

The dual-circulation prohibition is constitutional as applied to a candidate's circulation of petitions both on his own behalf and for another candidate. Schober v. Young, 322 Ill. App. 3d 996, 256 Ill. Dec. 220, 751 N.E.2d 610, 2001 Ill. App. LEXIS 481 (4 Dist. 2001).

The requirement that a nomination petition circulator for candidates running for public office in Illinois must add a statement, signed by a registered voter certifying that the signatures on that sheet of the petition were signed in his presence was unconstitutional. Tobin for Governor v. Illinois State Bd. of Elections, 105 F. Supp. 2d 882, 2000 U.S. Dist. LEXIS 10983 (N.D. Ill. 2000).

The requirement that a petition circulator must be a registered voter in the political district in which the petition is being circulated violates the First Amendment of the United States Constitution. Young v. Illinois State Bd. of Elections, 116 F. Supp. 2d 977, 2000 U.S. Dist. LEXIS 15235 (N.D. Ill. 2000), aff'd, 234 F.3d 1275 (7th Cir. 2000).

This section is not unconstitutional in providing that persons having voted in a preceding primary election are precluded from signing an independent's nominating petition for an office for which candidates were selected at the primary. Stout v. Black, 8 Ill. App. 3d 167, 289 N.E.2d 456 (2 Dist. 1972).

This section was found to be constitutional. Jackson v. Ogilvie, 325 F. Supp. 864 (N.D. Ill.), aff'd, 403 U.S. 925, 91 S. Ct. 2247, 29 L. Ed. 2d 705 (1971).

Applicability

Plain language in 10 ILCS 5/10-4 merely prohibits a potential candidate from doing anything to a petition once it is "presented or filed," be it withdrawing it, altering it, or adding to it. It would be unreasonable to read this language, contained in a provision of the Illinois Election Code dealing specifically with requirements imposed upon a candidate who seeks to file a nominating petition, as a limitation upon the Illinois State Board of Elections. Nader v. Ill. State Bd. of Elections, 354 Ill. App. 3d 335, 289 Ill. Dec. 348, 819 N.E.2d 1148, 2004 Ill. App. LEXIS 1380 (1 Dist. 2004).

This section applies to persons who did not run for office in the primary but simply circulated petitions on behalf of a candidate of a different party, or an independent candidate, and who later decided to run themselves. Citizens ex rel. Moore Party v. Board of Election Comm'rs, 845 F.2d 144 (7th Cir. 1988), cert. denied, 488 U.S. 1029, 109 S. Ct. 836, 102 L. Ed. 2d 968 (1989).

This section affected a person in his quest to be a candidate, not in his role as a speaker, since it does not regulate speech, and there is no fundamental right to be a candidate. Citizens ex rel.

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Moore Party v. Board of Election Comm'rs, 845 F.2d 144 (7th Cir. 1988), cert. denied, 488 U.S. 1029, 109 S. Ct. 836, 102 L. Ed. 2d 968 (1989).

Candidate's Address

- Mistyped

The legislature did not intend to deny voters and candidates important substantive rights due to minor paperwork defects; thus, one mistyped digit in a candidate's address in his nomination papers was not sufficient to have his name removed from the ballot. Ryan v. Landek, 159 Ill. App. 3d 10, 111 Ill. Dec. 97, 512 N.E.2d 1 (1 Dist. 1987).

Circulator's Affidavits

- Mandatory Requirements

The statutory requirements of a circulator's affidavit of a petition for nomination are mandatory and not directory. Schumann v. Kumarich, 102 Ill. App. 3d 454, 58 Ill. Dec. 157, 430 N.E.2d 99 (1 Dist. 1981); Ballentine v. Bardwell, 132 Ill. App. 3d 1033, 88 Ill. Dec. 185, 478 N.E.2d 500 (1 Dist. 1985); Jones v. Dodendorf, 190 Ill. App. 3d 557, 137 Ill. Dec. 468, 546 N.E.2d 92 (2 Dist. 1989).

- Noncompliance

Where a circulator's affidavits failed to provide the residence address of circulator, and an attestation that voters signing petition were registered voters, the information did not comply with the requirements of this section. Schumann v. Kumarich, 102 Ill. App. 3d 454, 58 Ill. Dec. 157, 430 N.E.2d 99 (1 Dist. 1981).

Evidence supported the trial court's finding that three persons paid to circulate a candidate's petitions for nomination did not comply with this section by failing to appear before a notary public and acknowledge that they circulated petitions and that signatures were signed in their presence and were genuine; therefore the petitions circulated by those individuals were invalid. Williams v. Butler, 35 Ill. App. 3d 532, 341 N.E.2d 394 (4 Dist. 1976).

- Political Division

Circulator's affidavits which stated that the circulators were registered voters of a "political division for which the candidate is seeking election" were sufficient and did not violate the terms of this section. Ryan v. Landek, 159 Ill. App. 3d 10, 111 Ill. Dec. 97, 512 N.E.2d 1 (1 Dist. 1987).

- Purpose

The statutory requirement that a circulator of a petition certify that he did circulate the petition and that the signatures were placed thereon in his presence and that they were genuine and that by his sworn statement he would subject himself to possible perjury prosecution, is a meaningful and realistic requirement designed to eliminate fraudulent signatures or perhaps a signing of large numbers of names to petitions by a few people. Williams v. Butler, 35 Ill. App. 3d 532, 341 N.E.2d 394 (4 Dist. 1976).

Compliance

While the provisions of Illinois election law requiring that nominating petitions be fastened together in book form in a secure and suitable manner were mandatory and strict compliance with the law was required, the election candidate's use of a single large paper clip to bind the nomination papers amounted to substantial compliance. Bendell v. Educ. Officers Electoral Bd.,

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338 Ill. App. 3d 458, 272 Ill. Dec. 869, 788 N.E.2d 173, 2003 Ill. App. LEXIS 386 (1 Dist. 2003).

Despite signatures on unnumbered pages and the absence of pages from nomination petition, where it was filed with more than the number of signatures required and petitioners never challenged most of those signatures, the nomination petition substantially complied with the requirements of this section. King v. Justice Party, 284 Ill. App. 3d 886, 220 Ill. Dec. 83, 672 N.E.2d 900 (1 Dist. 1996).

Technical compliance with every single provision of the Code is unnecessary to sustain a ballot, however, where the statute, as in this section, mandates the performance of certain acts or things and provides a penalty for noncompliance, strict compliance is deemed mandatory, and noncompliance with such provisions will invalidate the ballot. Wollan v. Jacoby, 274 Ill. App. 3d 388, 210 Ill. Dec. 841, 653 N.E.2d 1303 (1 Dist. 1995), appeal denied, 164 Ill. 2d 585, 214 Ill. Dec. 333, 660 N.E.2d 1282 (1995).

Constitutional Challenges

- Standard

A state election regulation will pass constitutional muster if it is nondiscriminatory and reasonably related to the state's important interest in protecting the integrity and reliability of the electoral process itself. Johnson v. Cook County Officers Electoral Bd., 680 F. Supp. 1229 (N.D. Ill. 1988).

Constitutional challenges to specific provisions of a state's election laws cannot be resolved by any "litmus-paper" test that will separate valid from invalid restrictions; instead, a court must resolve such a challenge by an analytic process that parallels its work in ordinary litigation, by considering the character and magnitude of the asserted injury to the protected rights, identifying and evaluating the interests put forth by the state as its justifications, and by determining the legitimacy and strength of each of those interests and the extent to which those interests make it necessary to burden the plaintiff's rights. Johnson v. Cook County Officers Electoral Bd., 680 F. Supp. 1229 (N.D. Ill. 1988).

Construction

This section is a less restrictive alternative to a permissible "sore loser statute," one that would keep out of the general election everyone who entered a primary and did not win; one could lose a primary by withdrawing in the face of defeat as well as by sticking in to the bitter end, and where a candidate withdrew, this statute simply required him to show extra support by attracting a new group of circulators, a group large enough to replace his services as a circulator in addition to the services of his other circulators. Citizens ex rel. Moore Party v. Board of Election Comm'rs, 845 F.2d 144 (7th Cir. 1988), cert. denied, 488 U.S. 1029, 109 S. Ct. 836, 102 L. Ed. 2d 968 (1989).

Mandatory Requirements

Even though there was no knowledge or evidence of fraud or corruption and a candidate fully believed that he was certifying the election papers before an authorized notary, because the statement of candidacy and nearly all of the nominating petitions had not been sworn to before an appropriate officer, they did not comply with the mandatory provisions of 10 ILCS 5/10-4,10-5 of the Illinois Election Code. Knobeloch v. Electoral Bd., 337 Ill. App. 3d 1137, 272 Ill. Dec. 826, 788 N.E.2d 130, 2003 Ill. App. LEXIS 456 (5 Dist. 2003), appeal denied, 204 Ill. 2d 661, 275 Ill. Dec. 76, 792 N.E.2d 307 (2003).

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Page Numbering

Illinois State Board of Elections did not exceed its authority by mechanically adding page numbers to candidates' nominating petition, as numbering the pages furthered the requirement under 10 ILCS 5/10-4 that the petition sheets be numbered consecutively. Nader v. Ill. State Bd. of Elections, 354 Ill. App. 3d 335, 289 Ill. Dec. 348, 819 N.E.2d 1148, 2004 Ill. App. LEXIS 1380 (1 Dist. 2004).

Far from being an ultra vires act, the State Board of Elections' act of mechanically numbering a candidate's petition was reasonably incidental to achieving the objectives for which the Board was created. Code § 10 ILCS 5/10-4 of the Election Code mandates that petition sheets be "numbered consecutively," and a potential candidate who does not substantially comply with it risks having his nominating petition invalidated. Nader v. Ill. State Bd. of Elections, Ill. App. 3d , Ill. Dec. , N.E.2d , 2004 Ill. App. LEXIS 1277 (1 Dist. Oct. 22, 2004).

While the State Board of Elections can "invalidate" a potential candidate's petition if the mandates of § 10 ILCS 5/10-4 are not met, it cannot simply "withdraw" a petition filed by a candidate. Simply put, the Board cannot "withdraw" something it did not file; therefore, because the requirements in § 10 ILCS 5/10-4 do not limit the powers or actions of the Board, candidates could not rely upon language in § 10 ILCS 5/10-4 to invalidate the Board's act of numbering the pages of their petition. Nader v. Ill. State Bd. of Elections, Ill. App. 3d , Ill. Dec. , N.E.2d , 2004 Ill. App. LEXIS 1277 (1 Dist. Oct. 22, 2004).

The page numbering provision of this section is mandatory and not directory. Wollan v. Jacoby, 274 Ill. App. 3d 388, 210 Ill. Dec. 841, 653 N.E.2d 1303 (1 Dist. 1995), appeal denied, 164 Ill. 2d 585, 214 Ill. Dec. 333, 660 N.E.2d 1282 (1995).

A registered voter in a county, who observed that the pages in a candidate's package were unnumbered, lacked standing to intervene in the candidate's suit to issue an injunction directing the county Board of Election Commissioners to place his name on the ballot. Moy v. Cowen, 958 F.2d 168 (7th Cir. 1992).

Failure to number the pages of petitions for nomination invalidated them; argument that the numbering requirement was merely technical was without merit. Jones v. Dodendorf, 190 Ill. App. 3d 557, 137 Ill. Dec. 468, 546 N.E.2d 92 (2 Dist. 1989).

Page numbering requirement, aside from aiding in identification of specific pages, prevents tampering, by preserving not only the integrity of the petitions submitted, but also the election process in general. Jones v. Dodendorf, 190 Ill. App. 3d 557, 137 Ill. Dec. 468, 546 N.E.2d 92 (2 Dist. 1989).

Petition Forms

Language in § 10 ILCS 5/10-4 of the Election Code, i.e. that a petition, when presented or filed, shall not be withdrawn, altered, or added to, is a limitation placed, not upon the State Board of Elections, but upon a potential candidate; therefore, when the Board stamped page numbers on candidates' petition, it was not violating the code. Nader v. Ill. State Bd. of Elections, Ill. App. 3d , Ill. Dec. , N.E.2d , 2004 Ill. App. LEXIS 1277 (1 Dist. Oct. 22, 2004).

- Distribution

Although the distribution of nominating petition forms by a community college was an affirmative act of a public body the failure of the form to include specific spaces for the necessary information omitted by candidates for the board of trustees of the community college could at most be seen as a ministerial error and not a governmental action of the board of trustees sufficient to warrant

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estoppel against the board. Schumann v. Kumarich, 102 Ill. App. 3d 454, 58 Ill. Dec. 157, 430 N.E.2d 99 (1 Dist. 1981).

Responsibility of the board of trustees of a community college to provide candidates for board with nominating petition forms did not absolve the candidates of the duty to provide the information required by this section to ensure a place on a ballot. Schumann v. Kumarich, 102 Ill. App. 3d 454, 58 Ill. Dec. 157, 430 N.E.2d 99 (1 Dist. 1981).

Petitions for Nomination

- Address of Candidate

Where a candidate first circulated petitions for nomination under her former married name, and where she re-registered to vote in her maiden surname before the petitions were filed, candidate was a registered voter within the context of this section and should not have been prevented from having her name placed on the ballot, absent any intent to defraud the electoral board. Marszalek v. Kelenson, 212 Ill. App. 3d 836, 156 Ill. Dec. 897, 571 N.E.2d 877 (1 Dist. 1991).

- Dual Circulation

This section does not contain any express terms which prohibit a circulator from circulating nominating petitions for two or more independent candidates; therefore this section cannot be interpreted to prohibit dual circulation for two independent candidates. McGuire v. Nogaj, 146 Ill. App. 3d 280, 99 Ill. Dec. 945, 496 N.E.2d 1037 (1 Dist. 1986).

Due process was not violated when the Board of Election Commissioners circumvented its own regulation and allowed dual circulation of nominating petitions. McGuire v. Nogaj, 146 Ill. App. 3d 280, 99 Ill. Dec. 945, 496 N.E.2d 1037 (1 Dist. 1986).

- Fraud

Where a number of petition sheets were found to be false, the Board's refusal to undertake a particularized examination of individual signatures was not unreasonable and did not violate plaintiffs' First Amendment rights. Johnson v. Cook County Officers Electoral Bd., 680 F. Supp. 1229 (N.D. Ill. 1988).

Where the Electoral Board invalidated all of a candidate's petition sheets after it found a pattern of fraud and false-swearing in some of them, this was not a change in agency policy in violation of the due process clause of the United States Constitution because it was an open question as to whether state election laws actually required the Board to invalidate the sheets, and logic and common sense suggested the possibility that a Board charged with avoiding election fraud might adopt such an approach. Johnson v. Cook County Officers Electoral Bd., 680 F. Supp. 1229 (N.D. Ill. 1988).

- Freedom of Speech

Where a candidate circulated signature petitions for one party, then withdraw and attempted to do the same for another party during the same election season, preventing him from doing so did not violate his First Amendment rights because this section regulates conduct, and it is both viewpoint-neutral and content-neutral; it did not affect the candidate's speech because he could go wherever he wanted and say anything he liked and he could even circulate all the petitions he wanted and collect all the signatures he liked, even though the signatures would not count toward the number needed to get him a place on the ballot. Citizens ex rel. Moore Party v. Board of Election Comm'rs, 845 F.2d 144 (7th Cir. 1988), cert. denied, 488 U.S. 1029, 109 S. Ct. 836, 102 L. Ed. 2d 968 (1989).

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This section does not violate the First Amendment to the United States Constitution because it does not regulate speech; first, it attaches a consequence to running in a primary election and leaves unfettered those who did not, and second, it regulates conduct, the collection of signatures. Citizens ex rel. Moore Party v. Board of Election Comm'rs, 845 F.2d 144 (7th Cir. 1988), cert. denied, 488 U.S. 1029, 109 S. Ct. 836, 102 L. Ed. 2d 968 (1989).

- Invalid

Respondents' noncompliance with the mandatory provision of this section regarding page numbers and a statement as to when the petition was circulated invalidated the nominating petitions and required respondents' removal from the ballot. Hagen v. Stone, 277 Ill. App. 3d 388, 213 Ill. Dec. 932, 660 N.E.2d 189 (1 Dist. 1995).

Where a nominating petition circulator permitted individuals to sign their own names and the names of family members who were not present, and where someone other than the affiant actually presented the petition to signers, the entire petition sheets were invalidated rather than merely individual signatures. Huskey v. Municipal Officers Electoral Bd., 156 Ill. App. 3d 201, 108 Ill. Dec. 859, 509 N.E.2d 555 (1 Dist. 1987).

- Multiple Filing Prohibited

This section prohibits candidates from filing multiple sets of nomination papers for a single office. Stephens v. Education Officers Electoral Bd., 236 Ill. App. 3d 159, 177 Ill. Dec. 572, 603 N.E.2d 642 (1 Dist. 1992).

Signature Requirement

- Noncompliance

State Board of Election Commissioner's finding that a candidate lacked the minimum number of valid signatures necessary to be placed on the ballot was not improper. Greene v. Board of Election Comm'rs, 112 Ill. App. 3d 862, 68 Ill. Dec. 484, 445 N.E.2d 1337 (1 Dist. 1983).

- Presence

Election board relied on the credible testimony of the candidate to establish the fact that she was present when certain contested signatures were obtained; the fact that the circulator who signed the affidavit on the petition sheets was not in the doorway was not conclusive on the issue of "presence" for purposes of 10 ILCS 5/10-4 (2004) and board's decision to allow the candidate's name on the ballot was not clearly erroneous. Ramirez v. Andrade, 372 Ill. App. 3d 68, 310 Ill. Dec. 184, 865 N.E.2d 508, 2007 Ill. App. LEXIS 323 (1 Dist. 2007), appeal denied, 875 N.E.2d 1123, 2007 Ill. LEXIS 1595 (Ill. 2007).

- Residence

A person who signs a nominating petition must be registered to vote at the residence address set forth on the nominating petition. Greene v. Board of Election Comm'rs, 112 Ill. App. 3d 862, 68 Ill. Dec. 484, 445 N.E.2d 1337 (1 Dist. 1983).

Signers of Nominating Petitions

The signers of nominating petitions for an office to be voted upon in an election in which registration is a prerequisite to voting must be registered. Stout v. Black, 8 Ill. App. 3d 167, 289 N.E.2d 456 (2 Dist. 1972).

In order for a signatory to be disqualified, he must vote in a specific political primary and thereafter sign an independent nominating petition. Jackson v. Ogilvie, 325 F. Supp. 864 (N.D.

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Ill.), aff'd, 403 U.S. 925, 91 S. Ct. 2247, 29 L. Ed. 2d 705 (1971).

LEGAL PERIODICALS

For article, "State and Local Government: 1986-87 Illinois Law Survey," see 19 Loy. U. Chi. L.J. 691 (1987-88).

For article, "Survey of Illinois Law: Significant Developments in Education Law 2003- 2004," see 29 S. Ill. U.L.J. 603 (2005).

§ 10 ILCS 5/10-5. [Candidate information]

Sec. 10-5. All petitions for nomination shall, besides containing the names of candidates, specify as to each:

1.The office or offices to which such candidate or candidates shall be nominated.

2.The new political party, if any, represented, expressed in not more than 5 words. However, such party shall not bear the same name as, nor include the name of any established political party as defined in this Article. This prohibition does not preclude any established political party from making nominations in those cases in which it is authorized to do so.

3.The place of residence of any such candidate or candidates with the street and number thereof, if any. In the case of electors for President and Vice-President of the United States, the names of candidates for President and Vice-President may be added to the party name or appellation.

Such certificate of nomination or nomination papers in addition shall include as a part thereof, the oath required by Section 7-10.1 of this Act [10 ILCS 5/7-10.1] and must include a statement of candidacy for each of the candidates named therein, except candidates for electors for President and Vice-President of the United States. Each such statement shall set out the address of such candidate, the office for which he is a candidate, shall state that the candidate is qualified for the office specified and has filed (or will file before the close of the petition filing period) a statement of economic interests as required by the Illinois Governmental Ethics Act [5 ILCS 420/1-101 et seq.] shall request that the candidate's name be placed upon the official ballot and shall be subscribed and sworn to by such candidate before some officer authorized to take acknowledgments of deeds in this State, and may be in substantially the following form:

State of Illinois)

) SS.

County of .....)

I, ..., being first duly sworn, say that I reside at ..... street, in the city (or village) of ..... in the county of ..... State of

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Illinois; and that I am a qualified voter therein; that I am a candidate for election to the office of ..... to be voted upon at the election to be held on the ..... day of ....., ...; and that I am legally qualified to hold such office and that I have filed (or will file before the close of the petition filing period) a statement of economic interests as required by the Illinois Governmental Ethics Act, and I hereby request that my name be printed upon the official ballot for election to such office.

Signed .....

Subscribed and sworn to (or affirmed) before me by ..... who is to me personally known, this ..... day of ....., ...

Signed .....

(Official Character)

(Seal, if officer has one.)

In addition, a new political party petition shall have attached thereto a certificate stating the names and addresses of the party officers authorized to fill vacancies in nomination pursuant to Section 10-11 [10 ILCS 5/10-11].

Nomination papers filed under this Section are not valid if the candidate named therein fails to file a statement of economic interests as required by the Illinois Governmental Ethics Act in relation to his candidacy with the appropriate officer by the end of the period for the filing of nomination papers unless he has filed a statement of economic interests in relation to the same governmental unit with that officer during the same calendar year as the year in which such nomination papers were filed. If the nomination papers of any candidate and the statement of economic interest of that candidate are not required to be filed with the same officer, the candidate must file with the officer with whom the nomination papers are filed a receipt from the officer with whom the statement of economic interests is filed showing the date on which such statement was filed. Such receipt shall be so filed not later than the last day on which nomination papers may be filed.

(Source: P.A. 84-551.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 10-5.

CASE NOTES

Analysis

Constitutionality

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Timeliness of Nominating Papers

Constitutionality

Politician and supporters' claims with regard to the constitutionality of 10 ILCS 5/10-5 were barred by res judicata where a final judgment was received on the merits in state court; even though the politician's interests were slightly different than those of the supporters, the politician adequately protected their interests because he had the same arguments to raise as the supporters. Lawrence v. Bd. of Election Comm'rs, 524 F. Supp. 2d 1011, 2007 U.S. Dist. LEXIS 13351 (N.D. Ill. 2007).

In General

Even though there was no knowledge or evidence of fraud or corruption and a candidate fully believed that he was certifying the election papers before an authorized notary, because the statement of candidacy and nearly all of the nominating petitions had not been sworn to before an appropriate officer, they did not comply with the mandatory provisions of 10 ILCS 5/10-4, 10 ILCS 5/10-5 of the Illinois Election Code. Knobeloch v. Electoral Bd., 337 Ill. App. 3d 1137, 272 Ill. Dec. 826, 788 N.E.2d 130, 2003 Ill. App. LEXIS 456 (5 Dist. 2003), appeal denied, 204 Ill. 2d 661, 275 Ill. Dec. 76, 792 N.E.2d 307 (2003).

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Circulator's Affidavits

- In General

This section requires that a circulator, not the signers, of petitions for nomination certify under oath that the required statements are true; since the nominating petition itself is not an affidavit, certificate, or sworn oral declaration, the requirement of a circulator's affidavit is one of the primary safeguards against fraudulent petitions for nomination. Havens v. Miller, 102 Ill. App. 3d 558, 57 Ill. Dec. 929, 429 N.E.2d 1292 (1 Dist. 1981).

Denial of Ballot Placement

Pursuant to 65 ILCS 5/3.1-10-5(b) of the Illinois Municipal Code, 65 ILCS 5/3.1-10-5(b), read in conjunction with 10 ILCS 5/10-5 of the Illinois Election Code, 10 ILCS 5/10-5, a candidate was not eligible to run for a municipal office because the candidate was in arrears of a debt owed to the municipality at the time the candidate filed the candidate's nomination papers, even though after the objection was filed the candidate attempted to tender the payment of the debt. Cinkus v. Stickney Mun. Officers Electoral Bd., 228 Ill. 2d 200, 319 Ill. Dec. 887, 886 N.E.2d 1011, 2008 Ill. LEXIS 1414 (2008).

Improper Denial of Ballot Placement

Although the word "nonpartisan" on candidacy statement forms for candidates who were running for a village position on behalf of a particular political party was improper, as there was no fraud, the merits of the election were not affected, and there was no basis for confusion, the candidates' names should have been placed on the local election ballot pursuant to § 10-5 of the Election Code, 10 ILCS 5/10-5. Lyons MVP Party v. Lyons, Ill, Mun. Officers Electoral Bd., 407 Ill. App. 3d 1004, 349 Ill. Dec. 23, 945 N.E.2d 1175, 2011 Ill. App. LEXIS 192 (1 Dist. 2011).

Where the village clerk notified plaintiff candidates that their names would not appear on the ballot because, after conferring with the village attorney, he had reached the decision that they were not in compliance with 10 ILCS 5/10-1 et seq., plaintiffs were improperly denied placement upon the ballot by the action of the village clerk. Reynolds v. Conti, 132 Ill. App. 2d 505, 270 N.E.2d 505 (1 Dist. 1971).

Legislative Intent

Reading 10 ILCS 5/10-5, regarding the statement of candidacy, together with 65 ILCS 5/3.1-10-5(b), regarding candidate disqualifications, supported the conclusion that the legislature intended that a candidate be presently qualified to run for office, and not just that the candidate be qualified upon taking office since the statement of candidacy was phrased in the present tense. As a result, the candidate was not even qualified to file nomination papers for the office of village trustee because the candidate was disqualified given that the candidate had an indebtedness with the village. Cinkus v. Vill. of Stickney, Ill. 2d , Ill. Dec. , N.E.2d , 2008 Ill. LEXIS 294 (Mar. 20, 2008).

The intent of this section is that the name of the party, the names of the candidates, their residences, the offices they seek, their oaths, statements of candidacy, and statements of economic interest are all conditions precedent to access to the ballot; however, attachment of a certificate of the names and addresses of the persons authorized to fill vacancies is not a condition precedent to access to the ballot. Peoples Indep. Party v. Petroff, 191 Ill. App. 3d 706, 138 Ill. Dec. 915, 548 N.E.2d 145 (5 Dist. 1989).

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New Political Party

- Directory Language

The provision in this section, stating that a new political party petition shall have the names and addresses of party officers attached, is directory, not mandatory. Peoples Indep. Party v. Petroff, 191 Ill. App. 3d 706, 138 Ill. Dec. 915, 548 N.E.2d 145 (5 Dist. 1989).

Party Names

- Corporate City Name

Use of the corporate name of a city in the name of a new political party did not violate this section, since the city's name was not that of an established political party. Ryan v. Landek, 159 Ill. App. 3d 10, 111 Ill. Dec. 97, 512 N.E.2d 1 (1 Dist. 1987).

- Established Party Abbreviation

The plain and ordinary meaning of the language of this section, which prohibits use of a party name that includes the name of an established political party, also prohibits including such name in any abbreviated form. Doty v. Representation for Every Person Party, 97 Ill. App. 3d 316, 52 Ill. Dec. 947, 422 N.E.2d 1156 (1 Dist. 1981).

This section prohibited the Representation for Every Person (REP) Party from using REP as a part of its political party name because REP was a commonly accepted abbreviation for the Republican Party, an established party. Doty v. Representation for Every Person Party, 97 Ill. App. 3d 316, 52 Ill. Dec. 947, 422 N.E.2d 1156 (1 Dist. 1981).

- Established Party Name

To prevent misrepresentation and electoral confusion, the state may prohibit candidates running for office in one subdivision from adopting the name of a party established in another if they are not in any way affiliated with the party, particularly where the party and its self-described candidates coexist in the same geographical area, but the state could avoid these ills merely by requiring the candidates to get formal permission to use the name from the established party they seek to represent; therefore, the provision that prohibits "use of the name of an established party," so as to bar candidates running in one political subdivision from ever using the name of a political party established only in another, sweeps broader than necessary to advance electoral order and accordingly violates the right of political association of the First Amendment to the United States Constitution. Norman v. Reed, 502 U.S. 279, 112 S. Ct. 698, 116 L. Ed. 2d 711 (1992).

Where candidates may have in fact violated this section's prohibition against including the name of an established political party within the name of a new political party, they were nevertheless allowed to appear on the ballot as individuals without any party designation. Ballentine v. Bardwell, 132 Ill. App. 3d 1033, 88 Ill. Dec. 185, 478 N.E.2d 500 (1 Dist. 1985).

Where the name Independent Party of Countryside, although similar, was not the same as the name Countryside Independent Party, there was no violation of this section. Foster v. Municipal Officers Electoral Bd., 113 Ill. App. 3d 721, 69 Ill. Dec. 555, 447 N.E.2d 990 (1 Dist. 1983).

- Municipality

It is a common practice to allow the use of the name of a municipality in the name of a new party; however, use of the name of a municipality should not be permitted if its use would cause any

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confusion or mistaken impressions in the minds of voters that the city has endorsed the new party. Ryan v. Landek, 159 Ill. App. 3d 10, 111 Ill. Dec. 97, 512 N.E.2d 1 (1 Dist. 1987).

Petitions for Nomination

A political party's failure to attach to its nominating petitions a certificate stating the names and addresses of the party officers authorized to nominate or fill vacancies did not preclude that party's candidates from being placed on the ballot. Peoples Indep. Party v. Petroff, 191 Ill. App. 3d 706, 138 Ill. Dec. 915, 548 N.E.2d 145 (5 Dist. 1989).

Statement of Candidacy

- Compliance

City clerk had the authority to withhold candidates' names from the ballot where the candidate failed to file a statement of candidacy with their nominating papers. North v. Hinkle, 295 Ill. App. 3d 84, 229 Ill. Dec. 579, 692 N.E.2d 352 (2 Dist. 1998).

While the statement of candidacy requirement of this section is mandatory in the sense that it may not be disregarded, it is not mandatory in the sense that substantial rather than strict compliance mandates the removal of a candidate's names from the ballot. Ballentine v. Bardwell, 132 Ill. App. 3d 1033, 88 Ill. Dec. 185, 478 N.E.2d 500 (1 Dist. 1985).

- Subscribe and Swear

The word "shall" in reference to the clause requiring candidates to subscribe and swear to their statements of candidacy was held, because it activated the perjury provisions of the code, to be a mandatory, rather than a directory provision; therefore, a candidate for alderman who failed to subscribe to his statement of candidacy was precluded from having his name appear on the ballot. Serwinski v. Board of Election Comm'rs, 156 Ill. App. 3d 257, 108 Ill. Dec. 813, 509 N.E.2d 509 (1 Dist. 1987).

Statement of Economic Interest

- Accuracy

The determination not to allow a candidate on the ballot constituted an improper sanction for a failure to adequately indicate which office was being sought. Requena v. Cook County Officers Electoral Bd., 295 Ill. App. 3d 728, 230 Ill. Dec. 51, 692 N.E.2d 1217 (1 Dist. 1998), appeal denied, 178 Ill. 2d 595, 232 Ill. Dec. 852, 699 N.E.2d 1037 (1998).

Removal from the ballot of a candidate for elective office is not a permissible sanction for the candidate's filing, in relation to his candidacy, of a statement of economic interests which is not true, correct and complete due to inadvertence on the candidate's part. Welch v. Johnson, 147 Ill. 2d 40, 167 Ill. Dec. 989, 588 N.E.2d 1119 (1992).

County electoral board was not authorized to inquire into the truth and accuracy of a statement of economic interests which had been filed. Troutman v. Keys, 156 Ill. App. 3d 247, 108 Ill. Dec. 757, 509 N.E.2d 453 (1 Dist. 1987).

- Failure to File

Cook County, Illinois, Officers Electoral Board's decision that a candidate who submitted papers to run for the office of circuit court judge could not be listed on a primary election ballot because he did not file a receipt with the Illinois Board of Elections, showing that he had filed a statement of economic interests with the Illinois Secretary of State, was upheld by the courts. Kellogg v.

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Cook County Ill. Officers Electoral Bd., 347 Ill. App. 3d 666, 283 Ill. Dec. 320, 807 N.E.2d 1161, 2004 Ill. App. LEXIS 325 (1 Dist. 2004).

Candidates failure to file statements of economic interest with the county clerk, as required under the Election Code, 10 ILCS 10-5/1-1 et seq., meant the election board properly decided that their nominating papers were invalid and that their names should be kept off the ballot for the upcoming city elections. Powell v. E. St. Louis Electoral Bd., 337 Ill. App. 3d 334, 271 Ill. Dec. 820, 785 N.E.2d 1014, 2003 Ill. App. LEXIS 243 (5 Dist. 2003).

Plaintiff's failure to comply with the requirement of filing a statement of economic interests rendered his nomination papers invalid. Bolger v. Electoral Bd., 210 Ill. App. 3d 958, 155 Ill. Dec. 447, 569 N.E.2d 628 (2 Dist. 1991).

- False

This section provides no authority for the court to order removal of a candidate's name from the ballot for filing a false statement of economic interests. Crudup v. Sims, 292 Ill. App. 3d 1075, 226 Ill. Dec. 931, 686 N.E.2d 714 (1 Dist. 1997).

- Filing

Where a statement of economic interest was filed separately from other nomination papers, and with a different governmental agency, and where the statement made no reference to those papers nor that candidate was filing in reference to an election, the inclusion of the words "3rd Ward" on the statement did not describe the office of alderman of the 3rd Ward, as required not only by the Governmental Ethics Act in 5 ILCS 420/4A-104 but also by this section. Jones v. Municipal Officers Electoral Bd., 112 Ill. App. 3d 926, 68 Ill. Dec. 522, 446 N.E.2d 256 (1 Dist. 1983).

- Filing Requirements

Since a statement of economic interest filed by petitioner in relation to his employment by the Board of Education could not be used to satisfy the filing requirements of this section with respect to his candidacy for alderman, the trial court properly affirmed the decision of the electoral board striking petitioner's name from the ballot. Miceli v. Lavelle, 114 Ill. App. 3d 311, 70 Ill. Dec. 111, 448 N.E.2d 989 (1 Dist. 1983).

- Office Designation

A candidate for circuit court judge failed to adequately indicate which office she was seeking when she listed "Circuit Court of Cook County". Requena v. Cook County Officers Electoral Bd., 295 Ill. App. 3d 728, 230 Ill. Dec. 51, 692 N.E.2d 1217 (1 Dist. 1998), appeal denied, 178 Ill. 2d 595, 232 Ill. Dec. 852, 699 N.E.2d 1037 (1998).

Inclusion of the office sought on statement of economic interests is a mandatory requirement of this section. Jones v. Municipal Officers Electoral Bd., 112 Ill. App. 3d 926, 68 Ill. Dec. 522, 446 N.E.2d 256 (1 Dist. 1983).

- Purpose

The legislature in enacting this section intended that certain information be available to the public prior to an election with respect to actual or potential conflicts of interest that a candidate might have. Miceli v. Lavelle, 114 Ill. App. 3d 311, 70 Ill. Dec. 111, 448 N.E.2d 989 (1 Dist. 1983).

- Thirty Day Deferral

The 30 day deferral provision for filing statements of economic interest pursuant to the Governmental Ethics Act in 5 ILCS 420/4A-105 was not applicable to statements filed pursuant to

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this section. Miceli v. Lavelle, 114 Ill. App. 3d 311, 70 Ill. Dec. 111, 448 N.E.2d 989 (1 Dist. 1983).

Timeliness of Nominating Papers

Candidate must file a statement of economic interests both by the end of the period for the filing of nomination papers and during the same calendar year in which the candidate files the nomination papers. Jenkins v. McIlvain, 338 Ill. App. 3d 113, 272 Ill. Dec. 758, 788 N.E.2d 62, 2003 Ill. App. LEXIS 336 (1 Dist. 2003).

LEGAL PERIODICALS

For note, "The First Amendment Freedom of Association, in light of Norman v. Reed, 112 S.Ct. 698 (1992)," see 80 Ill. B.J. 416 (1992).

§ 10 ILCS 5/10-5.1. [Nomination certificate; candidates' name]

Sec. 10-5.1. In the designation of the name of a candidate on a certificate of nomination or nomination papers the candidate's given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof, may be used in addition to the candidate's surname. If a candidate has changed his or her name, whether by a statutory or common law procedure in Illinois or any other jurisdiction, within 3 years before the last day for filing the certificate of nomination or nomination papers for that office, whichever is applicable, then (i) the candidate's name on the certificate or papers must be followed by "formerly known as (list all prior names during the 3-year period) until name changed on (list date of each such name change)" and (ii) the certificate or paper must be accompanied by the candidate's affidavit stating the candidate's previous names during the period specified in (i) and the date or dates each of those names was changed; failure to meet these requirements shall be grounds for denying certification of the candidate's name for the ballot or removing the candidate's name from the ballot, as appropriate, but these requirements do not apply to name changes resulting from adoption to assume an adoptive parent's or parents' surname, marriage to assume a spouse's surname, or dissolution of marriage or declaration of invalidity of marriage to assume a former surname. No other designation such as a political slogan, title, or degree, or nickname suggesting or implying possession of a title, degree or professional status, or similar information may be used in connection with the candidate's surname.

(Source: P.A. 81-135; 93-574, § 5; 94-1090, § 5.)

Note.

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This section was Ill.Rev.Stat., Ch. 46, Para. 10-5.1.

Effect of Amendments. The 2003 amendment by P.A. 93-574, effective August 21, 2003, inserted "political slogan" and made related changes in the last sentence.

The 2007 amendment by P.A. 94-1090, effective June 1, 2007, added the second sentence; and deleted "except that the title "Mrs." may be used in the case of a married woman" from the end of the last sentence.

CASE NOTES

Use of Title

- Sanctions

Removal of a candidate's name from the ballot, rather than the mere deletion of his title from the ballot, was an appropriate sanction for violation of this section where the candidate included title "Reverend" on his nomination papers. Jones v. Municipal Officers Electoral Bd., 112 Ill. App. 3d 926, 68 Ill. Dec. 522, 446 N.E.2d 256 (1 Dist. 1983).

§ 10 ILCS 5/10-6. Time and manner of filing

Sec. 10-6. Time and manner of filing. Certificates of nomination and nomination papers for the nomination of candidates for offices to be filled by electors of the entire State, or any district not entirely within a county, or for congressional, state legislative or judicial offices, shall be presented to the principal office of the State Board of Elections not more than 141 nor less than 134 days previous to the day of election for which the candidates are nominated. The State Board of Elections shall endorse the certificates of nomination or nomination papers, as the case may be, and the date and hour of presentment to it. Except as otherwise provided in this section, all other certificates for the nomination of candidates shall be filed with the county clerk of the respective counties not more than 141 but at least 134 days previous to the day of such election. Certificates of nomination and nomination papers for the nomination of candidates for the offices of political subdivisions to be filled at regular elections other than the general election shall be filed with the local election official of such subdivision:

(1) (Blank);

(2) not more than 113 nor less than 106 days prior to the consolidated election; or

(3) not more than 113 nor less than 106 days prior to the general primary in the case of municipal offices to be filled at the general primary election; or

(4) not more than 99 nor less than 92 days before the consolidated primary in the case of municipal offices to be elected on a nonpartisan basis pursuant to law (including without

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limitation, those municipal offices subject to Articles 4 and 5 of the Municipal Code [65 ILCS 5/4-1-1 et seq. and 65 ILCS 5/5-1-1 et seq.]); or

(5) not more than 113 nor less than 106 days before the municipal primary in even numbered years for such nonpartisan municipal offices where annual elections are provided; or

(6) in the case of petitions for the office of multi-township assessor, such petitions shall be filed with the election authority not more than 113 nor less than 106 days before the consolidated election.

However, where a political subdivision's boundaries are co-extensive with or are entirely within the jurisdiction of a municipal board of election commissioners, the certificates of nomination and nomination papers for candidates for such political subdivision offices shall be filed in the office of such Board.

(Source: P.A. 84-861; 90-358, § 5; 91-317, § 5; 95-699, § 5; 96-1008, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 10-6.

Section 97 of P.A. 95-699 contains a severability provision.

Effect of Amendments. The 1997 amendment by P.A. 90-358, effective January 1, 1998, deleted subsection (1) which read "not more than 78 or less than 71 days prior to the nonpartisan election; or".

The 1999 amendment by P.A. 91-317, effective July 29, 1999, added the section heading; and substituted "141 days" for "99 days" and "134 days" for "92 days" in the first and third sentences.

The 2007 amendment by P.A. 95-699, effective November 9, 2007, substituted "Certificates" for "Except as provided in Section 10-3, certificates" in the first sentence.

The 2010 amendment by P.A. 96-1008, effective July 6, 2010, in (2), (3), (5), and (6), substituted "113" for "78" and "106" for "71"; and in (4), substituted "99" for "78" and "92" for "71."

CASE NOTES

Analysis

Constitutionality
Filing

Constitutionality

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Illinois' petition deadline and signature requirements to get on the presidential ballot survived heightened constitutional scrutiny, and did not impose a severe burden on an independent Presidential candidate, under prior U.S. Supreme Court rulings. Nader v. Keith, F. Supp. 2d , 2004 U.S. Dist. LEXIS 16660 (N.D. Ill. Aug. 23, 2004), aff'd, 385 F.3d 729 (7th Cir. 2004).

This section was found to be constitutional. Jackson v. Ogilvie, 325 F. Supp. 864 (N.D. Ill.), aff'd, 403 U.S. 925, 91 S. Ct. 2247, 29 L. Ed. 2d 705 (1971).

Filing

Signature requirements for a nominating petition under 10 ILCS 5/10-2 were not illusory based on a candidate's claim that they could only be enforced when objections were filed under 10 ILCS 5/10-8 because that provision's plain language indicated that two conditions precedent had to be met before the nominating papers would be deemed valid: the papers had to be filed with the proper election authority under 10 ILCS 5/10-6 and in apparent conformity with the Election Code. Druck v. Ill. State Bd. of Elections, 387 Ill. App. 3d 144, 326 Ill. Dec. 220, 899 N.E.2d 437, 2008 Ill. App. LEXIS 1309 (1 Dist. 2008).

Plaintiffs argued that three provisions of state law, 10 ILCS 5/10-2, 10 ILCS 5/10-3,10 ILCS 5/3-1, 10 ILCS 5/3-2 and 10 ILCS 5/10-6, unconstitutionally prevented presidential candidates from qualifying for a place on the ballot. The denial of their request for preliminary injunctive relief to place a name on the ballot was affirmed as the appellate court could not say that the district court abused its discretion in refusing to issue the injunction. It would have been inequitable to order preliminary relief in a suit filed so gratuitously late in the campaign season. In Illinois, requiring a third-party candidate to obtain 25,000 signed nominating petitions could not be thought excessive and plaintiffs did not present evidence that would enable a court to prescribe a shorter period for submitting to the State the qualifying number of nominating petitions. Nader v. Keith, 385 F.3d 729, 2004 U.S. App. LEXIS 19804 (7th Cir. 2004).

Objections are only properly filed with the election entity with whom the original nomination papers were filed. Bush v. City of Champaign Electoral Bd., 271 Ill. App. 3d 991, 208 Ill. Dec. 509, 649 N.E.2d 565 (4 Dist. 1995).

Candidates' failure to file their statements of candidacy simultaneously with their nomination papers did not require that their names be removed from the ballot. Ballentine v. Bardwell, 132 Ill. App. 3d 1033, 88 Ill. Dec. 185, 478 N.E.2d 500 (1 Dist. 1985).

A former version of this section which required that certificates of nomination for township offices be filed 35 days prior to election was applicable only in townships, villages, and towns with a population of less than 5,000. People ex rel. Ferry v. Palmer, 1 Ill. 2d 384, 115 N.E.2d 609 (1953).

The former version of this statute stated that nominating papers were to be filed with the clerk of court, which direction was construed to mean with the clerk at his official office and during usual business hours, and to allow the clerk to accept nomination papers at any other time was contrary to the former election statute and gave unintended arbitrary power to the clerk. Daniels v. Cavner, 404 Ill. 372, 88 N.E.2d 823 (1949).

§ 10 ILCS 5/10-6.1. [Statements and reports; notice of required filing]

Sec. 10-6.1. The board or clerk with whom a certificate of nomination or nomination papers are filed shall notify the person for whom such papers are filed of the obligation to file statements of organization, reports of campaign contributions, and annual reports of

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campaign contributions and expenditures under Article 9 of this Act [10 ILCS 5/9-1 et seq.]. Such notice shall be given in the manner prescribed by paragraph (7) of Section 9-16 of this Code [10 ILCS 5/9-16].

(Source: P.A. 81-1189.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 10-6.1.

§ 10 ILCS 5/10-6.2. [Nomination petitions; place of filing]

Sec. 10-6.2. The State Board of Elections, the election authority or the local election official with whom petitions for nomination are filed pursuant to this Article 10 [10 ILCS 5/10-1 et seq.] shall specify the place where filings shall be made and upon receipt shall endorse thereon the day and the hour at which each petition was filed. Except as provided by Article 9 of The School Code [105 ILCS 5/9-1 et seq.], all petitions filed by persons waiting in line as of 8:00 a.m. on the first day for filing, or as of the normal opening hour of the office involved on such day, shall be deemed filed as of 8:00 a.m. or the normal opening hour, as the case may be. Petitions filed by mail and received after midnight of the first day for filing and in the first mail delivery or pickup of that day shall be deemed filed as of 8:00 a.m. of that day or as of the normal opening hour of such day, as the case may be. All petitions received thereafter shall be deemed filed in the order of actual receipt. Where 2 or more petitions are received simultaneously, the State Board of Elections, the election authority or the local election official with whom such petitions are filed shall break ties and determine the order of filing by means of a lottery or other fair and impartial method of random selection approved by the State Board of Elections. Such lottery shall be conducted within 9 days following the last day for petition filing and shall be open to the public. Seven days written notice of the time and place of conducting such random selection shall be given, by the State Board of Elections, the election authority, or local election official, to the Chairman of each political party, and to each organization of citizens within the election jurisdiction which was entitled, under this Code, at the next preceding election, to have pollwatchers present on the day of election. The State Board of Elections, the election authority or local election official shall post in a conspicuous, open and public place, at the entrance of the office, notice of the time and place of such lottery. The State Board of Elections shall adopt rules and regulations governing the procedures for the conduct of such lottery. All candidates shall be certified in the order in which their petitions have been filed and in the manner prescribed by Section 10-14 and 10-15 of this Article [10 ILCS 5/10-14 and 10 ILCS 5/10-15]. Where candidates have filed simultaneously, they shall be certified in the order determined by lot and prior to candidates who filed for the same office or offices at a later time. Certificates of nomination filed within the period prescribed in Section 10-6(2) [10 ILCS 5/10-6] for candidates nominated by caucus for township or municipal offices shall be

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subject to the ballot placement lottery for established political parties prescribed in Section 7-60 of this Code [10 ILCS 5/7-60].

If multiple sets of nomination papers are filed for a candidate to the same office, the State Board of Elections, appropriate election authority or local election official where the petitions are filed shall within 2 business days notify the candidate of his or her multiple petition filings and that the candidate has 3 business days after receipt of the notice to notify the State Board of Elections, appropriate election authority or local election official that he or she may cancel prior sets of petitions. If the candidate notifies the State Board of Elections, appropriate election authority or local election official, the last set of petitions filed shall be the only petitions to be considered valid by the State Board of Elections, election authority or local election official. If the candidate fails to notify the State Board of Elections, appropriate election authority or local election official then only the first set of petitions filed shall be valid and all subsequent petitions shall be void.

(Source: P.A. 86-867; 86-874; 86-1028; 87-1052, § 3; 91-357, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 10-6.2.

P.A. 91-357, § 996 contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1992 amendment, effective September 11, 1992, added the last paragraph.

The 1999 amendment by P.A. 91-357, effective July 29, 1999, inserted "Section" twice in the last sentence of the first paragraph.

CASE NOTES

Numbering

State Board of Elections' act of mechanically numbering a candidate's petition aided its own internal processing of the candidate's petition; in this sense, the mechanical page numbers are no different than the stamp bearing the date and time the petition was filed and received by the Board. Nader v. Ill. State Bd. of Elections, Ill. App. 3d , Ill. Dec. , N.E.2d , 2004 Ill. App. LEXIS 1277 (1 Dist. Oct. 22, 2004).

§ 10 ILCS 5/10-7. [Withdrawal of name from nomination]

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Sec. 10-7. Any person whose name has been presented as a candidate may cause his name to be withdrawn from any such nomination by his request in writing, signed by him and duly acknowledged before an officer qualified to take acknowledgment of deeds, and presented to the principal office or permanent branch office of the Board, the election authority, or the local election official, as the case may be, not later than the date for certification of candidates for the ballot. No name so withdrawn shall be printed upon the ballots under the party appellation or title from which the candidate has withdrawn his name. If the name of the same person has been presented as a candidate for 2 or more offices which are incompatible so that the same person could not serve in more than one of such offices if elected, that person must withdraw as a candidate for all but one of such offices within the 5 business days following the last day for petition filing. If he fails to withdraw as a candidate for all but one of such offices within such time, his name shall not be certified, nor printed on the ballot, for any office. However, nothing in this section shall be construed as precluding a judge who is seeking retention in office from also being a candidate for another judicial office. Except as otherwise herein provided, in case the certificate of nomination or petition as provided for in this Article shall contain or exhibit the name of any candidate for any office upon more than one of said certificates or petitions (for the same office), then and in that case the Board or election authority or local election official, as the case may be, shall immediately notify said candidate of said fact and that his name appears unlawfully upon more than one of said certificates or petitions and that within 3 days from the receipt of said notification, said candidate must elect as to which of said political party appellations or groups he desires his name to appear and remain under upon said ballot, and if said candidate refuses, fails or neglects to make such election, then and in that case the Board or election authority or local election official, as the case may be, shall permit the name of said candidate to appear or be printed or placed upon said ballot only under the political party appellation or group appearing on the certificate of nomination or petition, as the case may be, first filed, and shall strike or cause to be stricken the name of said candidate from all certificates of nomination and petitions filed after the first such certificate of nomination or petition.

Whenever the name of a candidate for an office is withdrawn from a new political party petition, it shall constitute a vacancy in nomination for that office which may be filled in accordance with Section 10-11 of this Article [10 ILCS 5/10-11]; provided, that if the names of all candidates for all offices on a new political party petition are withdrawn or such petition is declared invalid by an electoral board or upon judicial review, no vacancies in nomination for those offices shall exist and the filing of any notice or resolution purporting to fill vacancies in nomination shall have no legal effect.

Whenever the name of an independent candidate for an office is withdrawn or an independent candidate's petition is declared invalid by an electoral board or upon judicial review, no vacancy in nomination for that office shall exist and the filing of any notice or resolution purporting to fill a vacancy in nomination shall have no legal effect.

All certificates of nomination and nomination papers when presented or filed shall be open, under proper regulation, to public inspection, and the State Board of Elections and the several election authorities and local election officials having charge of nomination papers shall preserve the same in their respective offices not less than 6 months.

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(Source: P.A. 86-875.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 10-7.

CASE NOTES

Analysis

Dual Candidacy
- Aldermanic Elections
Incompatibility
- Not Shown
Multiple Filing
Vacancies
Withdrawal

Dual Candidacy

- Aldermanic Elections

This section's prohibition against an individual's dual candidacy for incompatible offices was not applicable to a nonpartisan aldermanic election. Velazquez v. Soliz, 141 Ill. App. 3d 1024, 96 Ill. Dec. 141, 490 N.E.2d 1346 (1 Dist. 1986).

Incompatibility

- Not Shown

Two positions on the board of trustees of a community college district were not "incompatible" offices within the meaning of this section. Stephens v. Education Officers Electoral Bd., 236 Ill. App. 3d 159, 177 Ill. Dec. 572, 603 N.E.2d 642 (1 Dist. 1992).

Multiple Filing

Since the two offices of trustee were not incompatible, a candidate's filing of a second set of nomination papers for a position as trustee constituted an attempt to add to the nomination papers previously filed, in violation of § 10-4 of the Election Code (10 ILCS 5/10-4). Stephens v. Education Officers Electoral Bd., 236 Ill. App. 3d 159, 177 Ill. Dec. 572, 603 N.E.2d 642 (1 Dist. 1992).

Vacancies

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This section provides for the filling of vacancies in the case of minority party candidates, and 10 ILCS 5/7-61 provides a means for filling vacancies or withdrawals in the case of candidates of majority parties who are nominated under 10 ILCS 5/7-1 et seq. Bergenson v. Mullinix, 399 Ill. 470, 78 N.E.2d 297 (1948).

Withdrawal

Voluntary withdrawal cannot serve to validate nomination papers which were void when filed. Stephens v. Education Officers Electoral Bd., 236 Ill. App. 3d 159, 177 Ill. Dec. 572, 603 N.E.2d 642 (1 Dist. 1992).

Although it appeared that a candidate disregarded the moral obligation to be the candidate at the election after he had been nominated by the party, and although it appeared that he withdrew from that nomination in consideration of being paid by someone, this did not affect the validity of his withdrawal, provided it was not the result of a conspiracy by his opponent. Bergenson v. Mullinix, 399 Ill. 470, 78 N.E.2d 297 (1948).

This section provides that after the five day period allowed for the withdrawal of candidates has expired, any purported withdrawal filed after that time shall be null and void. Bergenson v. Mullinix, 399 Ill. 470, 78 N.E.2d 297 (1948).

§ 10 ILCS 5/10-8. [Objections to nomination certificates]

Sec. 10-8. Certificates of nomination and nomination papers, and petitions to submit public questions to a referendum, being filed as required by this Code, and being in apparent conformity with the provisions of this Act, shall be deemed to be valid unless objection thereto is duly made in writing within 5 business days after the last day for filing the certificate of nomination or nomination papers or petition for a public question, with the following exceptions:

A.In the case of petitions to amend Article IV of the Constitution of the State of Illinois [Illinois Const., Art. IV, § 1], there shall be a period of 35 business days after the last day for the filing of such petitions in which objections can be filed.

B.In the case of petitions for advisory questions of public policy to be submitted to the voters of the entire State, there shall be a period of 35 business days after the last day for the filing of such petitions in which objections can be filed.

Any legal voter of the political subdivision or district in which the candidate or public question is to be voted on, or any legal voter in the State in the case of a proposed amendment to Article IV of the Constitution or an advisory public question to be submitted to the voters of the entire State, having objections to any certificate of nomination or nomination papers or petitions filed, shall file an objector's petition together with a copy thereof in the principal office or the permanent branch office of the State Board of Elections, or in the office of the election authority or local election official with whom the certificate of nomination, nomination papers or petitions are on file. In the case of nomination papers or certificates of nomination, the State Board of Elections, election authority or local election official shall note the day and hour upon which such objector's petition is filed, and shall, not later than 12:00 noon on the second business day

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after receipt of the petition, transmit by registered mail or receipted personal delivery the certificate of nomination or nomination papers and the original objector's petition to the chairman of the proper electoral board designated in Section 10-9 [10 ILCS 5/10-9] hereof, or his authorized agent, and shall transmit a copy by registered mail or receipted personal delivery of the objector's petition, to the candidate whose certificate of nomination or nomination papers are objected to, addressed to the place of residence designated in said certificate of nomination or nomination papers. In the case of objections to a petition for a proposed amendment to Article IV of the Constitution or for an advisory public question to be submitted to the voters of the entire State, the State Board of Elections shall note the day and hour upon which such objector's petition is filed and shall transmit a copy of the objector's petition by registered mail or receipted personal delivery to the person designated on a certificate attached to the petition as the principal proponent of such proposed amendment or public question, or as the proponents' attorney, for the purpose of receiving notice of objections. In the case of objections to a petition for a public question, to be submitted to the voters of a political subdivision, or district thereof, the election authority or local election official with whom such petition is filed shall note the day and hour upon which such objector's petition was filed, and shall, not later than 12:00 noon on the second business day after receipt of the petition, transmit by registered mail or receipted personal delivery the petition for the public question and the original objector's petition to the chairman of the proper electoral board designated in Section 10-9 hereof, or his authorized agent, and shall transmit a copy by registered mail or receipted personal delivery, of the objector's petition to the person designated on a certificate attached to the petition as the principal proponent of the public question, or as the proponent's attorney, for the purposes of receiving notice of objections.

The objector's petition shall give the objector's name and residence address, and shall state fully the nature of the objections to the certificate of nomination or nomination papers or petitions in question, and shall state the interest of the objector and shall state what relief is requested of the electoral board.

The provisions of this Section and of Sections 10-9, 10-10 and 10-10.1 [10 ILCS 5/10-9, 10 ILCS 5/10-10 and 10 ILCS 5/10-10.1] shall also apply to and govern objections to petitions for nomination filed under Article 7 or Article 8 [10 ILCS 5/7-1 et seq. or 10 ILCS 5/8-1 et seq.], except as otherwise provided in Section 7-13 [10 ILCS 5/7-13] for cases to which it is applicable, and also apply to and govern petitions for the submission of public questions under Article 28 [10 ILCS 5/28-1 et seq.].

(Source: P.A. 86-1348.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 10-8.

Cross References.

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As to the publication requirements for an Amendment to Ill. Const. (1970), Art. IV, see 5 ILCS 20/2.

CASE NOTES

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(Unpublished) Nomination objection provisions of 10 ILCS 5/10-8 do not violate the Voting Rights Act because the statute neither prevents anyone from voting nor keeps a potential candidate off the ballot because of race or color. And the provision also complies with the Seventeenth and Twenty-Fourth Amendments because it does not interfere with the direct-election requirement for senators or impose any tax on voters. Gould v. Schneider, F.3d , 2011 U.S. App. LEXIS 22683 (7th Cir. Nov. 9, 2011).

Plaintiff failed to state a claim that 10 ILCS 5/10-8 violated the Constitution because the 25,000-signature figure was constitutional as a reasonable requirement for access to the ballot, and 10 ILCS 5/10-8 did not violate the Twenty-Fourth Amendment because 10 ILCS 5/10-8 did not impose a tax on Illinois voters or anyone else. Gould v. Schneider, F. Supp. 2d , 2011 U.S. Dist. LEXIS 19289 (C.D. Ill. Feb. 28, 2011).

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Ballot-access provisions of this section and 10 ILCS 5/7-10 did not place an unconstitutional burden on candidates for primary elections because provisions sufficiently guarded against frivolous challenges and a neutral body holds a judicially reviewable hearing to determine whether any objections are well founded. Krislov v. Rednour, 946 F. Supp. 563 (N.D. Ill. 1996).

Certification

Order compelling a village clerk to certify a binding referendum for placement on a ballot was error because the petition was facially deficient, and 10 ILCS 5/10-8 contemplated that the question of whether papers were duly filed and in apparent conformity with the law was to be answered through a procedure other than statutory objection; contrary to plaintiff's argument, the village clerk had the authority to withdraw her prior certification despite the fact that she had previously accepted and certified the petition and the deadline to certify the question to the county clerk had expired. Haymore v. Orr, 385 Ill. App. 3d 915, 325 Ill. Dec. 89, 897 N.E.2d 337, 2008 Ill. App. LEXIS 1008 (1 Dist. 2008).

Construction with Other Laws

Plaintiff failed to state a claim that 10 ILCS 5/10-8 violated § 2 of the Voting Rights Act because plaintiff had not alleged that the voting power of African Americans had been diluted by the availability of citizen challenges in Illinois. Even if plaintiff had included his allegations in support of his argument under 42 U.S.C.S. § 1973aa in his complaint, he would still fail to state a claim because that section dealt with the denial of the right to vote, not the right to be a candidate on the ballot, and plaintiff's arguments made clear that he challenged 10 ILCS 5/10-8 to the extent it prevented certain would-be candidates from placement on the ballot, but did not allege that 10 ILCS 5/10-8 or the 25,000-signature requirement denied those candidates of their right to vote, and further, the United States Court of Appeals for the Seventh Circuit had upheld the 25,000-signature requirement as constitutional. Gould v. Schneider, F. Supp. 2d , 2011 U.S. Dist. LEXIS 19289 (C.D. Ill. Feb. 28, 2011).

- Filing of Objection

5 ILCS 70/1, relating to the construction of statutes, does not apply to the 5 day period in which objections to nomination papers must be filed under this section. Mierswa v. Kusper, 121 Ill. App. 3d 430, 77 Ill. Dec. 14, 459 N.E.2d 1110 (1 Dist 1984).

Legislative Intent

- Notice Requirement

In requiring that notice be sent either by registered mail or receipted personal delivery, the legislature intended to increase the likelihood that interested parties would actually receive notice of a hearing. Shipley v. Stephenson County Electoral Bd., 130 Ill. App. 3d 900, 85 Ill. Dec. 945, 474 N.E.2d 905 (2 Dist. 1985).

Libel

Objections filed to a petition to nominate an alderman rendered the person filing them, where the statements made in the objections were relevant, immune from a suit for an alleged libel. Kimball v. Ryan, 283 Ill. App. 456 (1 Dist. 1936).

Notice

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- Method of Service

Although some notice to interested parties is mandatory under the statute, the manner and method of service prescribed in this section is merely directory. Shipley v. Stephenson County Electoral Bd., 130 Ill. App. 3d 900, 85 Ill. Dec. 945, 474 N.E.2d 905 (2 Dist. 1985).

- Substantial Compliance

Since the notice provision of this section is directory in nature, where it was substantially complied with, the electoral board had jurisdiction over a hearing on objection. Shipley v. Stephenson County Electoral Bd., 130 Ill. App. 3d 900, 85 Ill. Dec. 945, 474 N.E.2d 905 (2 Dist. 1985).

Objections to Nominating Papers

- Not Waived

Objectors did not waive their objections when they did not file them, in writing, within five business days after the petition to place a referendum on the ballot was filed. Nothing within the Code article covering the manner of bringing this referendum question (10 ILCS 5/6A-1 et seq.), is inconsistent with the provision of 10 ILCS 5/28-4, that at the hearing on the petition, the court may entertain all objections properly presented on or before the hearing date. In re Voters, 234 Ill. App. 3d 294, 176 Ill. Dec. 893, 602 N.E.2d 839 (2 Dist. 1992).

- Power of School Board Secretary

A school board secretary does not have the power to make determinations as to the timeliness of nominating papers from a mere time-stamp on the face of the papers since a time-stamp does not clearly establish that such papers are not in conformity with the Election Code. Welch v. Educ. Officers Electoral Bd., 322 Ill. App. 3d 568, 255 Ill. Dec. 641, 750 N.E.2d 222, 2001 Ill. App. LEXIS 359 (1 Dist. 2001).

- Untimely Motion to Amend

Where separate petitioners filed objectors' petitions to candidate's nomination papers and one petitioner subsequently withdrew her petition, and appellant filed a motion to amend his petition to include the objection to signatures found in other petition, the County Officers Electoral Board did not abuse its discretion in refusing to permit appellant to amend his petition; the objector's petitions were filed on the final day for filing objections and, accordingly, when petitioner's motion to withdraw her objections was approved by the Board, the time for filing further objections had expired. Stein v. Cook County Officers Electoral Bd., 264 Ill. App. 3d 447, 201 Ill. Dec. 628, 636 N.E.2d 1060 (1 Dist. 1994).

- Waived

Judgment of the circuit court declaring that defendants had forfeited their positions as elected officials of city for failing to file economic interest statements while they were candidates pursuant to the Governmental Ethics Acts in 5 ILCS 420/4A-101(g) was reversed due to the court's lack of subject matter jurisdiction where plaintiffs waived any objection to the defendants' status as candidates by not objecting to the sufficiency of the defendants' nomination papers in the manner prescribed by this section. People ex rel. Klingelmueller v. Haas, 111 Ill. App. 3d 88, 66 Ill. Dec. 856, 443 N.E.2d 782 (3 Dist. 1982).

- With Whom Original Papers Filed

Objections are only properly filed with the election entity with whom the original nomination papers were filed. Bush v. City of Champaign Electoral Bd., 271 Ill. App. 3d 991, 208 Ill. Dec. 509, 649 N.E.2d 565 (4 Dist. 1995).

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Petitions for Nomination

Signature requirements for a nominating petition under 10 ILCS 5/10-2 were not illusory based on a candidate's claim that they could only be enforced when objections were filed under 10 ILCS 5/10-8 because that provision's plain language indicated that two conditions precedent had to be met before the nominating papers would be deemed valid: the papers had to be filed with the proper election authority under 10 ILCS 5/10-6 and in apparent conformity with the Election Code. Druck v. Ill. State Bd. of Elections, 387 Ill. App. 3d 144, 326 Ill. Dec. 220, 899 N.E.2d 437, 2008 Ill. App. LEXIS 1309 (1 Dist. 2008).

- Evidence of Noncompliance

Evidence was held to be sufficient to show that the nomination petitions filed by the plaintiffs failed to comply with the requirements of this section. Havens v. Miller, 102 Ill. App. 3d 558, 57 Ill. Dec. 929, 429 N.E.2d 1292 (1 Dist. 1981).

- Statement of Candidacy

City clerk had the authority to withhold candidates' names from the ballot where they failed to file a statement of candidacy with their nominating papers. North v. Hinkle, 295 Ill. App. 3d 84, 229 Ill. Dec. 579, 692 N.E.2d 352 (2 Dist. 1998).

Residence Address

The "residence address" requirement of this section is mandatory. Pochie v. Cook County Officers Electoral Bd., 289 Ill. App. 3d 585, 224 Ill. Dec. 697, 682 N.E.2d 258 (1 Dist. 1997).

Standing

Plaintiff had standing to bring his claim that his right to vote had been burdened by 10 ILCS 5/10-8 because although he had not explicitly stated that he was an Illinois voter, he had stated that he was a United States citizen, inhabitant of Illinois, and a taxpayer in Illinois and the United States. His allegations pertained to the way in which he believed 10 ILCS 5/10-8 violated the Constitution and ultimately had the affect of changing the results of elections by removing certain candidates from the ballot. Such pleadings, read liberally, provided that plaintiff was challenging an Illinois election law that was burdening his rights as a voter. Gould v. Schneider, F. Supp. 2d , 2011 U.S. Dist. LEXIS 19289 (C.D. Ill. Feb. 28, 2011).

Petitioner failed to sustain his burden of proving the affirmative defense of objector's lack of standing to challenge his nomination papers. Morton v. State Officers Electoral Bd., 311 Ill. App. 3d 982, 244 Ill. Dec. 605, 726 N.E.2d 201, 2000 Ill. App. LEXIS 146 (4 Dist. 2000).

An objector must prove his standing as a registered voter as part of his prima facie case. Dunham v. Naperville Tp. Officers Electoral Bd., 265 Ill. App. 3d 719, 203 Ill. Dec. 655, 640 N.E.2d 314 (2 Dist.), appeal denied, 158 Ill. 2d 550, 206 Ill. Dec. 835, 645 N.E.2d 1357 (1994).

The object of this Act, the nature of the duties imposed by it, and the benefits resulting from its protections are directed to the registered voters of Illinois. A liquor licensee, as a corporate entity, has no protected statutory interest under this Act, and it cannot fulfill the fundamental requirements of standing. Ole, Ole, Inc. v. Kozubowski, 187 Ill. App. 3d 277, 134 Ill. Dec. 895, 543 N.E.2d 178 (1 Dist. 1989).

Sufficiency of Nomination

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Respondents did not waive their ability to challenge the sufficiency of the papers for a candidate's failure to include the true date of the candidate's nomination under 10 ILCS 5/10-8 as when respondents specifically alleged that the resolution did not reflect the true date of the meeting, they crafted a more precise argument; respondents' objection to the occurrence of the District Committee meeting included the specific objection pertaining to the true date of the meeting. Siegel v. Lake County Officers Electoral Bd., 385 Ill. App. 3d 452, 324 Ill. Dec. 69, 895 N.E.2d 69, 2008 Ill. App. LEXIS 925 (2 Dist. 2008).

Timeliness

Where the Republican party did not timely file a resolution with the appropriate office to place the candidate's name on the upcoming general election ballot, after no candidate appeared on the primary ballot and no-write in candidate was nominated, the objector could obtain relief because an objection petition was timely filed pursuant to 10 ILCS 5/10-8. Under that statute, the objector had five business days after the last day for filing the certificate of nomination papers in which to file an objection petition and the evidence showed that the objector met that deadline. Wisnasky-Bettorf v. Pierce, 403 Ill. App. 3d 1080, 343 Ill. Dec. 299, 934 N.E.2d 623, 2010 Ill. App. LEXIS 877 (5 Dist. 2010).

The last day defendant could file his nomination papers was January 21, and, where record showed the petition was stamped received on January 30, the objection was untimely. Thomas v. Powell, 289 Ill. App. 3d 143, 224 Ill. Dec. 163, 681 N.E.2d 145 (1 Dist. 1997).

Objections to certificates of nomination and nomination papers are, in effect, dissolved by the general election. Geer v. Kadera, 173 Ill. 2d 398, 219 Ill. Dec. 525, 671 N.E.2d 692 (1996).

Where plaintiff did not file an objection until the day after the election, the defendant's nomination papers were already deemed valid by operation of this section and the board no longer had statutory authority to entertain plaintiff's objection. Geer v. Kadera, 173 Ill. 2d 398, 219 Ill. Dec. 525, 671 N.E.2d 692 (1996).

§ 10 ILCS 5/10-9. [Electoral boards; designation]

Sec. 10-9. The following electoral boards are designated for the purpose of hearing and passing upon the objector's petition described in Section 10-8 [10 ILCS 5/10-8].

1.The State Board of Elections will hear and pass upon objections to the nominations of candidates for State offices, nominations of candidates for congressional, legislative and judicial offices of districts, subcircuits, or circuits situated in more than one county, nominations of candidates for the offices of State's attorney or regional superintendent of schools to be elected from more than one county, and petitions for proposed amendments to the Constitution of the State of Illinois as provided for in Section 3 of Article XIV of the Constitution [Illinois Const., Art. IV, § 3].

2.The county officers electoral board to hear and pass upon objections to the nominations of candidates for county offices, for congressional, legislative and judicial offices of a district, subcircuit, or circuit coterminous with or less than a county, for school trustees to be voted for by the electors of the county or by the electors of a township of the county, for the office of multi-township assessor where candidates for such office are nominated in accordance with this Code, and for all special district offices, shall be composed of the

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county clerk, or an assistant designated by the county clerk, the State's attorney of the county or an Assistant State's Attorney designated by the State's Attorney, and the clerk of the circuit court, or an assistant designated by the clerk of the circuit court, of the county, of whom the county clerk or his designee shall be the chairman, except that in any county which has established a county board of election commissioners that board shall constitute the county officers electoral board ex-officio.

3.The municipal officers electoral board to hear and pass upon objections to the nominations of candidates for officers of municipalities shall be composed of the mayor or president of the board of trustees of the city, village or incorporated town, and the city, village or incorporated town clerk, and one member of the city council or board of trustees, that member being designated who is eligible to serve on the electoral board and has served the greatest number of years as a member of the city council or board of trustees, of whom the mayor or president of the board of trustees shall be the chairman.

4.The township officers electoral board to pass upon objections to the nominations of township officers shall be composed of the township supervisor, the town clerk, and that eligible town trustee elected in the township who has had the longest term of continuous service as town trustee, of whom the township supervisor shall be the chairman.

5.The education officers electoral board to hear and pass upon objections to the nominations of candidates for offices in school or community college districts shall be composed of the presiding officer of the school or community college district board, who shall be the chairman, the secretary of the school or community college district board and the eligible elected school or community college board member who has the longest term of continuous service as a board member.

6.In all cases, however, where the Congressional, Legislative, or Representative district is wholly or partially within the jurisdiction of a single municipal board of election commissioners in Cook County and in all cases where the school district or special district is wholly within the jurisdiction of a municipal board of election commissioners and in all cases where the municipality or township is wholly or partially within the jurisdiction of a municipal board of election commissioners, the board of election commissioners shall ex-officio constitute the electoral board.

For special districts situated in more than one county, the county officers electoral board of the county in which the principal office of the district is located has jurisdiction to hear and pass upon objections. For purposes of this Section, "special districts" means all political subdivisions other than counties, municipalities, townships and school and community college districts.

In the event that any member of the appropriate board is a candidate for the office with relation to which the objector's petition is filed, he shall not be eligible to serve on that board and shall not act as a member of the board and his place shall be filled as follows:

a.In the county officers electoral board by the county treasurer, and if he or she is ineligible to serve, by the sheriff of the county.

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b.In the municipal officers electoral board by the eligible elected city council or board of trustees member who has served the second greatest number of years as a city council or board of trustees member.

c.In the township officers electoral board by the eligible elected town trustee who has had the second longest term of continuous service as a town trustee.

d.In the education officers electoral board by the eligible elected school or community college district board member who has had the second longest term of continuous service as a board member.

In the event that the chairman of the electoral board is ineligible to act because of the fact that he is a candidate for the office with relation to which the objector's petition is filed, then the substitute chosen under the provisions of this Section shall be the chairman; In this case, the officer or board with whom the objector's petition is filed, shall transmit the certificate of nomination or nomination papers as the case may be, and the objector's petition to the substitute chairman of the electoral board.

When 2 or more eligible individuals, by reason of their terms of service on a city council or board of trustees, township board of trustees, or school or community college district board, qualify to serve on an electoral board, the one to serve shall be chosen by lot.

Any vacancies on an electoral board not otherwise filled pursuant to this Section shall be filled by public members appointed by the Chief Judge of the Circuit Court for the county wherein the electoral board hearing is being held upon notification to the Chief Judge of such vacancies. The Chief Judge shall be so notified by a member of the electoral board or the officer or board with whom the objector's petition was filed. In the event that none of the individuals designated by this Section to serve on the electoral board are eligible, the chairman of an electoral board shall be designated by the Chief Judge.

(Source: P.A. 87-570; 94-645, § 5; 96-1008, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 10-9.

Effect of Amendments. The 2005 amendment by P.A. 94-645, effective August 22, 2005, twice added "subcircuits" in each of 1. and 2.

The 2010 amendment by P.A. 96-1008, effective July 6, 2010, in 6., inserted "or Representative," inserted "or partially" following "district is wholly," inserted "single municipal," and inserted "in Cook County"; and made a related change.

CASE NOTES

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Analysis

Authority of Electoral Board
- Legislative Intent
- Statutory Powers
City Clerk
Excusal of Members
Hearing on Objections
- Change of Venue
Jurisdiction
- Candidate's Eligibility
- Circuit Court
Members
Necessary Party

Authority of Electoral Board

- Legislative Intent

The legislature did not intend the Electoral Board to entertain constitutional challenges to procedures employed in obtaining signatures for primary nominating petitions. Wiseman v. Elward, 5 Ill. App. 3d 249, 283 N.E.2d 282 (1 Dist. 1972).

- Statutory Powers

School district electoral board's statutory authority permitted it to act in an administrative capacity and function in an adjudicatory or quasi-judicial capacity, but did not allow the school board to assume the role of advocate for the purpose of prosecuting an appeal, and, thus, the board did not have standing to appeal the trial court's reversal of its decision regarding an election candidate's nominating documents. Bendell v. Educ. Officers Electoral Bd., 338 Ill. App. 3d 458, 272 Ill. Dec. 869, 788 N.E.2d 173, 2003 Ill. App. LEXIS 386 (1 Dist. 2003).

As an administrative agency created by statute, a county officers electoral board may only exercise the powers conferred upon it by the legislature. Sullivan v. County Officers Electoral Bd., 225 Ill. App. 3d 691, 167 Ill. Dec. 834, 588 N.E.2d 475 (2 Dist. 1992).

City Clerk

In determining for himself that an election held on April 21, 1931, rather than one held on April 19, 1932, was the last preceding similar general election which furnished a basis for determining how many signatures should be signed to a petition to organize a new political party and nominate its candidates for office, a city clerk undertook to exercise judicial powers which he did not possess. People ex rel. Deaton v. Gifford, 353 Ill. 107, 186 N.E. 530 (1933).

Excusal of Members

This section, made applicable to the submission of referenda by 10 ILCS 5/28-4, should have been used to excuse the members of the Electoral Board and to appoint disinterested members to hear the objections, because petitioner's referendum mounted a direct challenge to each

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member's position and continued employment. Anderson v. McHenry Tp., 289 Ill. App. 3d 830, 225 Ill. Dec. 56, 682 N.E.2d 1133 (2 Dist. 1997).

Hearing on Objections

- Change of Venue

Where county supervisor of assessments brought an action before the county electoral board to contest a petition for a referendum to make her position elective instead of appointive, supervisor did not have an implied right to a change of venue or substitution of judges despite allegations of partisanship raised by the supervisor in her petition. Cook v. Pierce, 122 Ill. App. 3d 1068, 78 Ill. Dec. 438, 462 N.E.2d 557 (5 Dist. 1984).

Jurisdiction

- Candidate's Eligibility

Appellate court lacked jurisdiction, as had the trial court, to review the decision of an improperly constituted county electoral board, where the same objections were made to the nominating papers of four different candidates, all of whose opponents were ex officio board members, since the potential opponents of any of those candidates should have been excused from ruling on all of the objections. Kaemmerer v. St. Clair County Electoral Bd., 333 Ill. App. 3d 956, 267 Ill. Dec. 528, 776 N.E.2d 900, 2002 Ill. App. LEXIS 920 (5 Dist. 2002).

The appropriate administrative agency to consider a candidate's eligibility for the office of state representative was not the city board of election commissioners, but rather the State Board of Elections. Velazquez v. Soliz, 141 Ill. App. 3d 1024, 96 Ill. Dec. 141, 490 N.E.2d 1346 (1 Dist. 1986).

- Circuit Court

In a proceeding to challenge the nomination of a candidate and to contest an election, the village clerk who certified the nomination papers and the municipal officers electoral board were indispensable parties and were entitled to be heard in an action which so vitally affected their official functions, and since they were necessary parties and were not named as defendants, any order entered by the trial court would have been subject to direct or collateral attack for want of jurisdiction. Black v. Termunde, 14 Ill. App. 3d 937, 303 N.E.2d 803 (1 Dist. 1973).

Members

Candidates claim that service on the Electoral Board of the candidates' process regarding the candidates challenges to the Electoral Board's decisions sustaining objections to the nominating petitions that compliance was nearly impossible because the Board was temporary, unknown, or nonexistent was unfounded. Although it was true that the Electoral Board was a temporary entity, 10 ILCS 5/10-9, detailed who must comprise the Electoral Board and 10 ILCS 5/10-10 stated where and when the Electoral Board was required to meet. Nelson v. Qualkinbush, 389 Ill. App. 3d 79, 329 Ill. Dec. 809, 907 N.E.2d 400, 2009 Ill. App. LEXIS 122 (1 Dist. 2009).

Necessary Party

Trial court did not err in denying the prospective candidate's motion to dismiss, as the trial court had jurisdiction to review whether the prospective candidate could add the designation "THE COACH" to his election nominating papers. The opposing candidate who appealed the county electoral board's ruling that the designation was permissible served all of the necessary parties to

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the ruling with a notice that he was appealing to the trial court, and those necessary parties were the county electoral board that made the ruling and other parties to the proceeding in which the ruling had been made. Rita v. Mayden, 364 Ill. App. 3d 913, 301 Ill. Dec. 568, 847 N.E.2d 578, 2006 Ill. App. LEXIS 183 (1 Dist. 2006).

§ 10 ILCS 5/10-10. [Notice of objection to petition; hearing]

Sec. 10-10. Within 24 hours after the receipt of the certificate of nomination or nomination papers or proposed question of public policy, as the case may be, and the objector's petition, the chairman of the electoral board other than the State Board of Elections shall send a call by registered or certified mail to each of the members of the electoral board, and to the objector who filed the objector's petition, and either to the candidate whose certificate of nomination or nomination papers are objected to or to the principal proponent or attorney for proponents of a question of public policy, as the case may be, whose petitions are objected to, and shall also cause the sheriff of the county or counties in which such officers and persons reside to serve a copy of such call upon each of such officers and persons, which call shall set out the fact that the electoral board is required to meet to hear and pass upon the objections to nominations made for the office, designating it, and shall state the day, hour and place at which the electoral board shall meet for the purpose, which place shall be in the county court house in the county in the case of the County Officers Electoral Board, the Municipal Officers Electoral Board, the Township Officers Electoral Board or the Education Officers Electoral Board, except that the Municipal Officers Electoral Board, the Township Officers Electoral Board, and the Education Officers Electoral Board may meet at the location where the governing body of the municipality, township, or school or community college district, respectively, holds its regularly scheduled meetings, if that location is available; provided that voter records may be removed from the offices of an election authority only at the discretion and under the supervision of the election authority. In those cases where the State Board of Elections is the electoral board designated under Section 10-9 [10 ILCS 5/10-9], the chairman of the State Board of Elections shall, within 24 hours after the receipt of the certificate of nomination or nomination papers or petitions for a proposed amendment to Article IV of the Constitution [Illinois Const., Art. IV, § 1] or proposed statewide question of public policy, send a call by registered or certified mail to the objector who files the objector's petition, and either to the candidate whose certificate of nomination or nomination papers are objected to or to the principal proponent or attorney for proponents of the proposed Constitutional amendment or statewide question of public policy and shall state the day, hour and place at which the electoral board shall meet for the purpose, which place may be in the Capitol Building or in the principal or permanent branch office of the State Board. The day of the meeting shall not be less than 3 nor more than 5 days after the receipt of the certificate of nomination or nomination papers and the objector's petition by the chairman of the electoral board.

The electoral board shall have the power to administer oaths and to subpoena and examine witnesses and at the request of either party the chairman may issue subpoenas requiring the attendance of witnesses and subpoenas duces tecum requiring the production of such books, papers, records and documents as may be evidence of any

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matter under inquiry before the electoral board, in the same manner as witnesses are subpoenaed in the Circuit Court.

Service of such subpoenas shall be made by any sheriff or other person in the same manner as in cases in such court and the fees of such sheriff shall be the same as is provided by law, and shall be paid by the objector or candidate who causes the issuance of the subpoena. In case any person so served shall knowingly neglect or refuse to obey any such subpoena, or to testify, the electoral board shall at once file a petition in the circuit court of the county in which such hearing is to be heard, or has been attempted to be heard, setting forth the facts, of such knowing refusal or neglect, and accompanying the petition with a copy of the citation and the answer, if one has been filed, together with a copy of the subpoena and the return of service thereon, and shall apply for an order of court requiring such person to attend and testify, and forthwith produce books and papers, before the electoral board. Any circuit court of the state, excluding the judge who is sitting on the electoral board, upon such showing shall order such person to appear and testify, and to forthwith produce such books and papers, before the electoral board at a place to be fixed by the court. If such person shall knowingly fail or refuse to obey such order of the court without lawful excuse, the court shall punish him or her by fine and imprisonment, as the nature of the case may require and may be lawful in cases of contempt of court.

The electoral board on the first day of its meeting shall adopt rules of procedure for the introduction of evidence and the presentation of arguments and may, in its discretion, provide for the filing of briefs by the parties to the objection or by other interested persons.

In the event of a State Electoral Board hearing on objections to a petition for an amendment to Article IV of the Constitution [Illinois Const., Art. IV, § 1] pursuant to Section 3 of Article XIV of the Constitution [Illinois Const., Art. XIV, § 3], or to a petition for a question of public policy to be submitted to the voters of the entire State, the certificates of the county clerks and boards of election commissioners showing the results of the random sample of signatures on the petition shall be prima facie valid and accurate, and shall be presumed to establish the number of valid and invalid signatures on the petition sheets reviewed in the random sample, as prescribed in Section 28-11 and 28-12 of this Code [10 ILCS 5/28-11 and 10 ILCS 5/28-12]. Either party, however, may introduce evidence at such hearing to dispute the findings as to particular signatures. In addition to the foregoing, in the absence of competent evidence presented at such hearing by a party substantially challenging the results of a random sample, or showing a different result obtained by an additional sample, this certificate of a county clerk or board of election commissioners shall be presumed to establish the ratio of valid to invalid signatures within the particular election jurisdiction.

The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and

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in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10-10.1 [10 ILCS 5/10-10.1]. The electoral board must state its findings in writing and must state in writing which objections, if any, it has sustained. A copy of the decision shall be served upon the parties to the proceedings in open proceedings before the electoral board. If a party does not appear for receipt of the decision, the decision shall be deemed to have been served on the absent party on the date when a copy of the decision is personally delivered or on the date when a copy of the decision is deposited in the Unites States mail, in a sealed envelope or package, with postage prepaid, addressed to each party affected by the decision or to such party's attorney of record, if any, at the address on record for such person in the files of the electoral board.

Upon the expiration of the period within which a proceeding for judicial review must be commenced under Section 10-10.1, the electoral board shall, unless a proceeding for judicial review has been commenced within such period, transmit, by registered or certified mail, a certified copy of its ruling, together with the original certificate of nomination or nomination papers or petitions and the original objector's petition, to the officer or board with whom the certificate of nomination or nomination papers or petitions, as objected to, were on file, and such officer or board shall abide by and comply with the ruling so made to all intents and purposes.

(Source: P.A. 85-293; 86-1348; 91-285, § 5; 95-872, § 5; 96-1008, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 10-10.

Effect of Amendments. The 1999 amendment by P.A. 91-285, effective January 1, 2000, inserted the second sentence in the first paragraph.

The 2008 amendment by P.A. 95-872, effective January 1, 2009, in the first paragraph, added the exception to the end of the first sentence and made a related change; and deleted the former second sentence, which read "The Township Officers Electoral Board may meet in the township offices, if they are available, rather than the county courthouse".

The 2010 amendment by P.A. 96-1008, effective July 6, 2010, added the last two sentences of the sixth paragraph.

CASE NOTES

Analysis

Amended Decision

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- Time for Review
Authority of Electoral Board
- Advocacy
- Exceeded
- Grounds for Invalidation
- Subpoenas
Hearing on Objections
- Appearance
- Delayed
- Timeliness
Jurisdiction
- Electoral Board
Notice of Hearings
- In General
- Compliance
- Location
- Method of Service
Objections
- Candidate's Eligibility
Rules of Procedure
Subpoenas
- Issuance Not Error
Written Findings

Amended Decision

- Time for Review

Where an electoral board issued a decision denying an objector's objections to certification of a candidate, and four days later issued an amended decision clarifying its original decision, the ten day limit on filing petitions for review began on the day of the original decision, not the amended one. Kozel v. State Bd. of Elections, 126 Ill. 2d 58, 127 Ill. Dec. 714, 533 N.E.2d 796 (1988).

Authority of Electoral Board

- Advocacy

School district electoral board's statutory authority permitted it to act in an administrative capacity and function in an adjudicatory or quasi-judicial capacity, but did not allow the board to assume the role of advocate for the purpose of prosecuting an appeal, and, thus, the board did not have standing to appeal the trial court's reversal of its decision regarding the election candidate's nominating documents. Bendell v. Educ. Officers Electoral Bd., 338 Ill. App. 3d 458, 272 Ill. Dec. 869, 788 N.E.2d 173, 2003 Ill. App. LEXIS 386 (1 Dist. 2003).

- Exceeded

Electoral Board exceeded its authority when it undertook a constitutional analysis about whether a candidate for judicial office had to be a resident of the relevant subcircuit at the time the candidate filed his nomination papers for election to the office of trial court judge of the subcircuit.

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Under the Election Code, 10 ILCS 5/10-10, which was applicable to judicial elections pursuant to 10 ILCS 5/7-12.1, the scope of an election board's inquiry with respect to nominating papers was limited to ascertaining whether those papers complied with the governing provisions of the Election Code. Goodman v. Ward, 241 Ill. 2d 398, 350 Ill. Dec. 300, 948 N.E.2d 580, 2011 Ill. LEXIS 446 (2011).

Election board exceeded its authority under 10 ILCS 5/10-10 of the Illinois Election Code, 10 ILCS 5/1-1 et seq., in declaring 65 ILCS 5/3.1-10-5, which prohibited a convicted felon from holding municipal elective office, to be unconstitutional as a violation of equal protection under the United States and Illinois Constitutions. Bryant v. Bd. of Election Comm'rs, 224 Ill. 2d 473, 309 Ill. Dec. 826, 865 N.E.2d 189, 2007 Ill. LEXIS 440 (2007).

Election board exceeded its authority under 10 ILCS 5/10-10 of the Illinois Election Code, 10 ILCS 5/1-1 et seq., in declaring 65 ILCS 5/3.1-10-5, which prohibited a convicted felon from holding municipal elective office, to be unconstitutional as a violation of equal protection under the United States and Illinois Constitutions. Delgado v. Bd. of Election Comm'rs, 224 Ill. 2d 481, 309 Ill. Dec. 820, 865 N.E.2d 183, 2007 Ill. LEXIS 439 (2007).

- Grounds for Invalidation

The Board invalidated the plaintiff's nomination papers on a ground never raised in the objection, and in so doing, exceeded its statutory authority. Delay v. Board of Election Comm'rs, 312 Ill. App. 3d 206, 244 Ill. Dec. 780, 726 N.E.2d 755, 2000 Ill. App. LEXIS 161 (1 Dist. 2000).

- Subpoenas

Electoral board properly refused a request by candidates whose petition had been challenged to subpoena state payroll records to determine whether state employees improperly worked on the objector's petition. The electoral board was not required or empowered to conduct an investigation into how the objector's petition was compiled, but could determine only whether the candidates' nomination petition complied with the requirements of the Illinois Election Code. Nader v. Ill. State Bd. of Elections, 354 Ill. App. 3d 335, 289 Ill. Dec. 348, 819 N.E.2d 1148, 2004 Ill. App. LEXIS 1380 (1 Dist. 2004).

The Electoral Board did not commit reversible error in denying plaintiff's subpoena requests; however, the Electoral Board does not have unlimited discretion to deny the issuance of subpoenas. Wiseman v. Elward, 5 Ill. App. 3d 249, 283 N.E.2d 282 (1 Dist. 1972).

Hearing on Objections

The Illinois State Board of Elections acted in the functional capacity of judges when they ruled on objections to a nomination petition where (1) written objections to the petition were filed; (2) a hearing on the objections was scheduled, and the parties were given notice of the hearing date; (3) both the objectors and the candidates were represented by attorneys at the hearing and were given the opportunity to present evidence in support of their cases; (4) the hearing officer, who functioned much like a magistrate judge, evaluated the evidence and the arguments, considered their merits in light of the relevant law, and issued a recommendation; and (5) the board then considered the hearing officer's recommendation and decided whether to accept it, just as a district court would do. Tobin for Governor v. Ill. Bd. of Elections, 268 F.3d 517, 2001 U.S. App. LEXIS 21513 (7th Cir. 2001), cert. denied, 535 U.S. 929, 122 S. Ct. 1300, 152 L. Ed. 2d 212 (2002).

- Appearance

A candidate's participation in a proceeding contesting the validity of his nomination papers effectively waived his special and limited appearance where, although he repeatedly stated that he was making a special and limited appearance, he testified under oath as an adverse witness,

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cross-examined other witnesses and exhaustively argued the merits of his case before the board. Greene v. Board of Election Comm'rs, 112 Ill. App. 3d 862, 68 Ill. Dec. 484, 445 N.E.2d 1337 (1 Dist. 1983).

- Delayed

Where the Electoral Board convened one day after the time limit set forth in this section, but the plaintiff did not indicate what prejudice occurred by the delay, if any, under such circumstances, the Election Board's failing to convene in the designated time frame was not a fatal flaw. Maske v. Kane County Officers Electoral Bd., 234 Ill. App. 3d 508, 175 Ill. Dec. 582, 600 N.E.2d 513 (2 Dist.), cert. denied, 147 Ill. 2d 628, 180 Ill. Dec. 151, 606 N.E.2d 1228 (1992).

- Timeliness

A candidate's rights may be adversely affected when the Electoral Board schedules its hearing well outside the time limits or fails to convene at all. Maske v. Kane County Officers Electoral Bd., 234 Ill. App. 3d 508, 175 Ill. Dec. 582, 600 N.E.2d 513 (2 Dist.), cert. denied, 147 Ill. 2d 628, 180 Ill. Dec. 151, 606 N.E.2d 1228 (1992).

Although a hearing occurred two days beyond the statutory time limit, a petitioner did not show how he was prejudiced by the delay in the hearing date, and as he failed to raise the issue below, the issue was deemed waived. Craig v. Electoral Bd., 207 Ill. App. 3d 1042, 152 Ill. Dec. 898, 566 N.E.2d 775 (5 Dist. 1991).

Where the chairman of the electoral board received objections to nomination petitions on September 1, and the hearing on those objections was held on September 8, following a Saturday, Sunday and legal holiday on Monday, the hearing was timely, and the board had authority to act. Havens v. Miller, 102 Ill. App. 3d 558, 57 Ill. Dec. 929, 429 N.E.2d 1292 (1 Dist. 1981).

Where objections were received by the chairman of the electoral board on a Monday so that the fifth day, or the last day, for the meeting was a Sunday, and a meeting was scheduled for the next Monday but two of the four members of the State Board of Elections were not able to be present on that Monday due to a winter storm, and the meeting was adjourned until Tuesday and where petitioner did not object to this delay, and the hearing was held on Tuesday, there was no merit to petitioner's objection to the jurisdiction of the board. Williams v. Butler, 35 Ill. App. 3d 532, 341 N.E.2d 394 (4 Dist. 1976).

Jurisdiction

- Electoral Board

Despite objector's complaints on appeal, the Board's decision to strike tainted nominating petitions rather than terminate the candidacy of the judicial office candidate or terminate her statement of candidacy was warranted. In so acting, the Board was conducting itself within its function and powers as set forth in 10 ILCS 5/10-10. Mitchell v. Cook County Officers Electoral Bd., 399 Ill. App. 3d 18, 338 Ill. Dec. 379, 924 N.E.2d 585, 2010 Ill. App. LEXIS 173 (1 Dist. 2010).

Since the function of an electoral board is limited to a consideration of objections to a candidate's nomination papers, an electoral board has no authority to certify, or to refuse to certify, candidates. Kozel v. State Bd. of Elections, 126 Ill. 2d 58, 127 Ill. Dec. 714, 533 N.E.2d 796 (1988).

Electoral board was not given statutory jurisdiction to inquire into the truth and accuracy of a statement of economic interests. Troutman v. Keys, 156 Ill. App. 3d 247, 108 Ill. Dec. 757, 509 N.E.2d 453 (1 Dist. 1987).

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Notice of Hearings

Candidates claim that service on the Electoral Board of the candidates' process regarding the candidates challenges to the Electoral Board's decisions sustaining objections to the nominating petitions that compliance was nearly impossible because the Board was temporary, unknown, or nonexistent was unfounded. Although it was true that the Electoral Board was a temporary entity, 10 ILCS 5/10-9, detailed who must comprise the Electoral Board and 10 ILCS 5/10-10 stated where and when the Electoral Board was required to meet. Nelson v. Qualkinbush, 389 Ill. App. 3d 79, 329 Ill. Dec. 809, 907 N.E.2d 400, 2009 Ill. App. LEXIS 122 (1 Dist. 2009).

- In General

An election board is not required to attempt to give actual notice of a hearing regarding an objection to a nominating petition to all individuals that have signed the petition. Tobin for Governor v. Illinois State Bd. of Elections, 105 F. Supp. 2d 882, 2000 U.S. Dist. LEXIS 10983 (N.D. Ill. 2000).

- Compliance

Strict compliance with this section's notice provisions was made impossible for the defendant by the plaintiffs' own failure to name a principal proponent with the submission of their petitions. Johnson v. Theis, 282 Ill. App. 3d 966, 218 Ill. Dec. 447, 669 N.E.2d 590 (2 Dist. 1996), appeal denied, 168 Ill. 2d 593, 219 Ill. Dec. 565, 671 N.E.2d 732 (1996).

- Location

The Electoral Board's failure to include the location of the initial hearing on the notices mailed to the circulators did not nullify the Electoral Board's action in sustaining the objections to the plaintiffs' petitions and because the Electoral Board had jurisdiction over the objections to the petitions, no action for mandamus would lie. Johnson v. Theis, 282 Ill. App. 3d 966, 218 Ill. Dec. 447, 669 N.E.2d 590 (2 Dist. 1996), appeal denied, 168 Ill. 2d 593, 219 Ill. Dec. 565, 671 N.E.2d 732 (1996).

- Method of Service

Where a defendant received notice of a hearing by registered or certified mail, the failure to send him an identical copy of the notice by the redundant method of sheriff's service was not a fatal flaw. Havens v. Miller, 102 Ill. App. 3d 558, 57 Ill. Dec. 929, 429 N.E.2d 1292 (1 Dist. 1981).

Objections

- Candidate's Eligibility

All objections to a candidate's eligibility to run for office must be resolved by the procedures set out in the Election Code (see this section). People ex rel. Klingelmueller v. Haas, 111 Ill. App. 3d 88, 66 Ill. Dec. 856, 443 N.E.2d 782 (3 Dist. 1982).

Rules of Procedure

Since the Board stated its findings it writing about why it invalidated the candidacy of the prospective candidate for a city aldermanic position and served a copy of that decision on the prospective candidate, as it was required to do under 10 ILCS 5/10-10, by mailing it to the prospective candidate, the prospective candidate had to follow the statutory requirements for filing a petition for review of the Board's decision. Since the prospective candidate failed to do so within the time allotted because the prospective candidate did not use registered or certified mail

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and did not personally serve the relevant parties, the trial court did not obtain subject matter jurisdiction over the prospective candidate's petition and the appellate court thus lacked jurisdiction to consider an appeal of the dismissal of that petition for review. Rivera v. City of Chicago Electoral Bd., Ill. App. 3d , 353 Ill. Dec. 500, 956 N.E.2d 20, 2011 Ill. App. LEXIS 811 (1 Dist. 2011), appeal denied, 2011 Ill. LEXIS 2106 (Ill. 2011).

The statute does not require that rules of procedure of the Electoral Board be written or published. Carnell v. Madison County Officers Electoral Bd., 299 Ill. App. 3d 419, 233 Ill. Dec. 698, 701 N.E.2d 548 (5 Dist. 1998).

Subpoenas

Nowhere in the Election Code is the Electoral Board allowed or required to conduct an investigation into the propriety of the methods used by an objector in raising his objections to a candidate's nominating petition; therefore, the Board properly denied candidates' motion to subpoena information in their effort to determine whether the objector's petition was compiled in violation of the Code. Nader v. Ill. State Bd. of Elections, Ill. App. 3d , Ill. Dec. , N.E.2d , 2004 Ill. App. LEXIS 1277 (1 Dist. Oct. 22, 2004).

- Issuance Not Error

Where subpoenas were issued by the circuit court rather than by the electoral board's chairman, and where no allegation was made that witnesses served with said subpoenas were not present at the hearing, there was no error in the issuance of the subpoena. Craig v. Electoral Bd., 207 Ill. App. 3d 1042, 152 Ill. Dec. 898, 566 N.E.2d 775 (5 Dist. 1991).

Written Findings

Where the record before the appellate court contained a four-page written decision that made reference to a hearing record containing findings made by a county electoral board at the conclusion of a hearing, the findings of the electoral board were sufficient for purposes of the appellate court's review. Lockhart v. Cook County Officers Electoral Bd., 328 Ill. App. 3d 838, 262 Ill. Dec. 968, 767 N.E.2d 428, 2002 Ill. App. LEXIS 172 (1 Dist. 2002).

§ 10 ILCS 5/10-10.1. [Electoral board decisions; judicial review]

Sec. 10-10.1. (a) Except as otherwise provided in this Section, a candidate or objector aggrieved by the decision of an electoral board may secure judicial review of such decision in the circuit court of the county in which the hearing of the electoral board was held. The party seeking judicial review must file a petition with the clerk of the court and must serve a copy of the petition upon the electoral board and other parties to the proceeding by registered or certified mail within 5 days after service of the decision of the electoral board as provided in Section 10-10 [10 ILCS 5/10-10]. The petition shall contain a brief statement of the reasons why the decision of the board should be reversed. The petitioner shall file proof of service with the clerk of the court. No answer to the petition need be filed, but the electoral board shall cause the record of proceedings before the electoral board to be filed with the clerk of the court on or before the date of the hearing on the petition or as ordered by the court.

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The court shall set the matter for hearing to be held within 30 days after the filing of the petition and shall make its decision promptly after such hearing.

(b) An objector or proponent aggrieved by the decision of an electoral board regarding a petition filed pursuant to Section 18-120 of the Property Tax Code [35 ILCS 200/18-120] may secure a review of such decision by the State Board of Elections. The party seeking such review must file a petition therefor with the State Board of Elections within 10 days after the decision of the electoral board. Any such objector or proponent may apply for and obtain judicial review of a decision of the State Board of Elections entered under this amendatory Act of 1985, in accordance with the provisions of the Administrative Review Law, as amended [735 ILCS 5/3-101 et seq.].

(Source: P.A. 84-751; 88-670, § 3-5; 96-1008, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 10-10.1.

Effect of Amendments. The 1994 amendment by P.A. 88-670, effective December 2, 1994, in the third paragraph, in the first sentence, substituted "18-120 of the Property Tax Code" for "162a of the 'Revenue Act of 1939', filed May 17, 1939, as amended".

The 2010 amendment by P.A. 96-1008, effective July 6, 2010, added subdivision designations; in the second sentence of the first paragraph of (a), substituted "and must serve a copy of the petition upon the electoral board and other parties to the proceeding by registered or certified mail within 5 days after service of" for "within 10 days after" and added "as provided in Section 10-10" to the end; deleted "shall serve a copy of the petition upon the electoral board and other parties to the proceeding by registered or certified mail and" following "petitioner" in the fourth sentence of the first paragraph of (a); and substituted "the electoral board shall cause the record of proceedings before the electoral board to be filed with the clerk of the court on or before the date of the hearing on the petition or as ordered by the court" for "any answer must be filed within 10 days after the filing of the petition" in the last sentence of the first paragraph of (a).

CASE NOTES

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Abstention by Federal Court

Illinois' petition deadline and signature requirements to get on the presidential ballot survived heightened constitutional scrutiny, and did not impose a severe burden on an independent Presidential candidate, under prior U.S. Supreme Court rulings; the court rejected the election board's motion to dismiss the case based on Younger v. Harris abstention, as no State court action was pending. Nader v. Keith, F. Supp. 2d , 2004 U.S. Dist. LEXIS 16660 (N.D. Ill. Aug. 23, 2004), aff'd, 385 F.3d 729 (7th Cir. 2004).

The three-part test for determining whether a federal court should abstain from hearing a particular case is: (1) is there an ongoing state judicial proceeding; (2) do the proceedings implicate important state interests; and (3) is there an adequate opportunity in the state proceedings to raise constitutional issues. Johnson v. Cook County Officers Electoral Bd., 680 F. Supp. 1229 (N.D. Ill. 1988).

Adequate State Remedy

In an action challenging the constitutionality of section 10 ILCS 5/7-10, since this section provides for state court judicial review of decisions of the Electoral Board and provides an adequate remedy at law, and since there were several actions involving virtually the same parties and the same legal and factual issues pending in state courts initiated pursuant to this section, a temporary restraining order issued by a federal district court would not have been proper. Ament v. Kusper, 370 F. Supp. 65 (N.D. Ill. 1974).

Complaint

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- Failure to Name Party

In an action objecting to the nominating documents for local elections, the circuit court did not err in refusing to dismiss petitioner's petition for failure to name the county clerk as a party. Allord v. Municipal Officers Electoral Bd., 288 Ill. App. 3d 897, 224 Ill. Dec. 564, 682 N.E.2d 125 (1 Dist. 1997).

- Timeliness

Timely filing of an administrative review complaint is jurisdictional and cannot be waived. Merwin v. State Bd. of Elections, 229 Ill. App. 3d 236, 170 Ill. Dec. 820, 593 N.E.2d 709 (1 Dist. 1992).

Decision of Electoral Board

- Legislative Intent

The legislative intent is that the decisions of the Electoral Board are final and, unless "clearly fraudulent," cannot be reviewed; relief from unjust and unfair decisions is confined to exceptional and extraordinary cases and where there was nothing in the record which showed that the decision of the Board was clearly fraudulent, that decision could not be reviewed. Coles v. Holzman, 55 Ill. App. 2d 93, 204 N.E.2d 162 (1 Dist. 1964).

- Mandamus

Mandamus will lie to expunge a void order or decision entered by an electoral board. Caldwell v. Nolan, 167 Ill. App. 3d 1057, 118 Ill. Dec. 720, 522 N.E.2d 175 (1 Dist. 1988).

- Rehearing

Once an electoral board has issued a written decision on an objection to a statement of candidacy, the board lacks jurisdiction to permit a rehearing of that decision or entertain any motions to alter or modify that decision; rather an aggrieved party's remedy lies in the judicial review procedure specifically authorized by the Election Code. Caldwell v. Nolan, 167 Ill. App. 3d 1057, 118 Ill. Dec. 720, 522 N.E.2d 175 (1 Dist. 1988).

- Review

Objector was not entitled relief on the petition the objector filed that claimed the candidate was not a proper candidate to run as a Republican in a primary election for a state senate seat in a particular legislative district because the candidate a year earlier had voted as a Democrat in a consolidated primary election. Although the Election Code pursuant to 10 ILCS 5/10-10.1 permitted the objector to obtain judicial review of the state election board's decision that failed to grant the objector relief, there was no longer any time limit for switching parties in the applicable section of the Election Code, 10 ILCS 5/8-8, there was no showing that the candidate was the candidate of more than one party in violation of 10 ILCS 5/7-10, and there was no showing that the candidate was not a qualified primary voter under 10 ILCS 5/7-43, especially since the candidate's vote as a Democrat occurred in a year-earlier election cycle and not the current election cycle. Hossfeld v. Ill. State Bd. of Elections, 238 Ill. 2d 418, 345 Ill. Dec. 525, 939 N.E.2d 368, 2010 Ill. LEXIS 1533 (2010).

The decision of a majority of the Electoral Board as to the validity of all nomination papers and any objections filed thereto is final and, unless clearly fraudulent, will not be reviewed. People ex rel. Talerico v. Lata, 96 Ill. App. 2d 34, 238 N.E.2d 217 (1 Dist. 1968).

Without a showing that the Electoral Board's action was clearly fraudulent, its order denying names a place on the ballot would not be upset. People ex rel. Talerico v. Lata, 96 Ill. App. 2d 34, 238 N.E.2d 217 (1 Dist. 1968).

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Where the Electoral Board's interpretation of the law, as to certain objections, was not so unreasonable as to make the Board's decision fraudulent, the appellate court had no power to review it even though the Board's interpretation of the law may have been incorrect. Hatch v. Holzman, 55 Ill. App. 2d 168, 204 N.E.2d 157 (1 Dist. 1964).

Illustrative Cases

State supreme court viewed an electoral board as an administrative agency, and while a trial court did not have original jurisdiction over objections to candidate nomination papers, electoral boards did have original jurisdiction to hear such disputes. Thus, the state supreme court pursuant to 10 ILCS 5/10-10.1 reviewed the decision of the electoral board, which used substantially the same procedure as provided in the Administrative Review Law, 735 ILCS 5/3-101 et seq., to determine whether the electoral board correctly found the candidate ineligible under 65 ILCS 5/3.1-10-5(b) to seek election to a municipal office. Cinkus v. Vill. of Stickney, Ill. 2d , Ill. Dec. , N.E.2d , 2008 Ill. LEXIS 294 (Mar. 20, 2008).

Affiants saw a photograph of a nominating petition circulator and swore that he was not the person who obtained their signatures; the circulator's sworn statement that the candidate did not talk to him before he testified was contradicted by a surveillance tape and a witness who overheard him discussing his testimony with the candidate. As the evidence supported a finding that the circulator lied under oath, it further supported the electoral board's decision to refuse to count any signatures the circulator purportedly witnessed. Harmon v. Town of Cicero Mun. Officers Electoral Bd., 371 Ill. App. 3d 1111, 309 Ill. Dec. 755, 864 N.E.2d 996, 2007 Ill. App. LEXIS 236 (1 Dist. 2007), appeal denied, 225 Ill. 2d 632, 875 N.E.2d 1111, 2007 Ill. LEXIS 1457 (2007).

Electoral board struck candidates' nomination papers after finding many signatures on the nominating petitions invalid. The trial court erred in reversing the board's decision on the basis that the admission of affidavits violated the candidate's due process rights, as the board's rules permitted the use of affidavits, and the candidates had right to subpoena the affiants but failed to exercise it. Harmon v. Town of Cicero Mun. Officers Electoral Bd., 371 Ill. App. 3d 1111, 309 Ill. Dec. 755, 864 N.E.2d 996, 2007 Ill. App. LEXIS 236 (1 Dist. 2007), appeal denied, 225 Ill. 2d 632, 875 N.E.2d 1111, 2007 Ill. LEXIS 1457 (2007).

Petitioner did not comply with the four requirements of this section; therefore, the circuit court was prevented from exercising jurisdiction. Allord v. Municipal Officers Electoral Bd., 288 Ill. App. 3d 897, 224 Ill. Dec. 564, 682 N.E.2d 125 (1 Dist. 1997).

Injunctions

A court of equity will not use its injunctive powers to interfere in any manner with the freedom of elections, for the reason that elections involve political and not civil rights. People ex rel. Schlaman v. Electoral Bd., 4 Ill. 2d 504, 122 N.E.2d 532 (1954).

Judicial Review

- Appeals

Prospective candidate's argument that the prospective candidate should have been allowed the 35 days set forth in the Administrative Review Law, 735 ILCS 5/3-103 et seq., to serve the prospective candidate's petition for review of the Board's decision to invalidate the candidacy of the prospective candidate for a city aldermanic position had to be rejected because the Illinois Election Code specifically set forth a five-day period. The Administrative Review Law could not be used to override the Illinois Election Code because the Illinois Election Code, 10 ILCS 5/10-10.1

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et seq., only applied the Administrative Review Law in one specific instance, that of aggrieved parties challenging the Board's decision under the Property Tax Code, 35 ILCS 200/18-120 et seq., which meant the Administrative Review Law's longer time period for serving a petition for review did not apply to a challenge under the Illinois Election Code. Rivera v. City of Chicago Electoral Bd., Ill. App. 3d , 353 Ill. Dec. 500, 956 N.E.2d 20, 2011 Ill. App. LEXIS 811 (1 Dist. 2011), appeal denied, 2011 Ill. LEXIS 2106 (Ill. 2011).

The Administrative Review Law does not dictate procedural requirements that must be followed in order to appeal a decision rendered by the Electoral Board, and does not require that petitioners be allowed to amend their petition for judicial review. Bill v. Education Officers Electoral Bd., 299 Ill. App. 3d 548, 233 Ill. Dec. 619, 701 N.E.2d 262 (1 Dist. 1998), appeal denied, 182 Ill. 2d 547, 236 Ill. Dec. 668, 707 N.E.2d 1238 (1999).

Judicial review of an Electoral Board's findings does not end with the judgment of the circuit court following its review of the record of the hearing before that Electoral Board; a contrary construction of this section is an unconstitutional limitation upon the exclusive authority of the Supreme Court to make rules governing appeals and contrary to the plain language of Rule 301, Supreme Court Rules. Gilbert v. Municipal Officers Electoral Bd., 97 Ill. App. 3d 847, 53 Ill. Dec. 283, 423 N.E.2d 952 (2 Dist. 1981).

Although there was no substantial question presented in an appeal of an election certification case, and the appeal was disposed of without oral argument, where an opinion could have precedential value, especially when a decision of an Electoral Board was contested close to the primary elections, a written opinion was issued. Petterson v. Scoville, 83 Ill. App. 3d 746, 39 Ill. Dec. 204, 404 N.E.2d 795 (5 Dist. 1980).

- Deferential Approach

The court is required to take a deferential approach to the factual findings made on disputed issues and review of the electoral board's decision on such questions of fact does not extend to a de novo assessment of the evidence. Dillavou v. County Officers Electoral Bd., 260 Ill. App. 3d 127, 198 Ill. Dec. 516, 632 N.E.2d 1127 (4 Dist.), appeal denied, 157 Ill. 2d 498, 205 Ill. Dec. 159, 642 N.E.2d 1276 (1994).

- Final Order

The legislature intended that a decision of a circuit court in reviewing an order of an electoral board be final; therefore, the appellate court had no jurisdiction to hear an appeal. Lawrence v. Board of Election Comm'rs, 45 Ill. App. 3d 776, 4 Ill. Dec. 421, 360 N.E.2d 168 (5 Dist. 1977).

- Hearing Timing

The plain language of the statute indicates that the legislature intended the judicial review to be an expedited proceeding; however, the statute does not provide that the 30 day requirement is jurisdictional or that the hearing must be concluded within 30 days of the filing of the petition. Sakonyi v. Lindsey, 261 Ill. App. 3d 821, 199 Ill. Dec. 605, 634 N.E.2d 444 (5 Dist. 1994).

- Multiple Board Decisions

Where petitioner's filing of a single complaint related to four separate objections to the nominating petitions for a school board election, the court had jurisdiction to hear the single petition for review; petitioner did not have to file four separate complaints. Hagen v. Stone, 277 Ill. App. 3d 388, 213 Ill. Dec. 932, 660 N.E.2d 189 (1 Dist. 1995).

- Purpose

Judicial review of decisions of an electoral board is not intended to provide a de novo hearing but merely to provide a remedy against arbitrary or unsupported decisions. Williams v. Butler, 35 Ill. App. 3d 532, 341 N.E.2d 394 (4 Dist. 1976).

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- Standard for Reversal

On appeal, a decision of the electoral board will not be reversed or set aside unless it is against the manifest weight of the evidence. Jones v. Dodendorf, 190 Ill. App. 3d 557, 137 Ill. Dec. 468, 546 N.E.2d 92 (2 Dist. 1989); Bryant v. Cook County Electoral Bd., 195 Ill. App. 3d 556, 142 Ill. Dec. 675, 553 N.E.2d 25 (1 Dist. 1990).

Jurisdiction

Neither trial court nor appellate court had subject matter jurisdiction to consider the candidates' challenges to the Electoral Board's decisions sustaining the objections to the candidates' nomination papers pertaining to the city primary election. Pursuant to 10 ILCS 5/10-10.1, the candidates were required to file a proof of service, regarding the petitions for judicial review that they filed, with the trial court clerk within 10 days of the Electoral Board's decisions and since they did not make that filing, the trial court and appellate court lacked subject matter jurisdiction to consider the challenges. Nelson v. Qualkinbush, 389 Ill. App. 3d 79, 329 Ill. Dec. 809, 907 N.E.2d 400, 2009 Ill. App. LEXIS 122 (1 Dist. 2009).

Trial court should not have concluded that it lacked subject matter jurisdiction over the objector's petition for judicial review of the county electoral board's decision to order that a referendum be placed on a ballot. The statute governing the filing of a petition for review of an electoral board's decision, 10 ILCS 5/10-10.1, did not mandate a caption at all, let alone one identifying particular parties, and, thus, the objector's petition for judicial review was not deficient for not naming the members of the county electoral board as parties. Zack v. Ott, 381 Ill. App. 3d 545, 319 Ill. Dec. 724, 886 N.E.2d 487, 2008 Ill. App. LEXIS 291 (1 Dist. 2008).

- Appellate Court

Because appellate court jurisdiction to hear appeals from final judgments of the circuit court is granted by Ill. Const. (1970), Art. VI, § 11, it is of no consequence that an applicable statute does not provide for appellate review. Havens v. Miller, 102 Ill. App. 3d 558, 57 Ill. Dec. 929, 429 N.E.2d 1292 (1 Dist. 1981).

The appellate court has no jurisdiction to hear an appeal from circuit court on review of an order of electoral board. Lawrence v. Board of Election Comm'rs, 45 Ill. App. 3d 776, 4 Ill. Dec. 421, 360 N.E.2d 168 (5 Dist. 1977).

- Circuit Court

A petition for a writ of mandamus to require an election board to place a question on a primary election ballot was properly denied, because a resident's failure to file a timely judicial review proceeding deprived the trial court of jurisdiction pursuant to 10 ILCS 5/10-10. Russo v. Vill. of Winfield (In re Russo), 331 Ill. App. 3d 111, 264 Ill. Dec. 591, 770 N.E.2d 1287, 2002 Ill. App. LEXIS 502 (2 Dist. 2002).

Where the plaintiff filed his petition for judicial review with the clerk of the court within ten days after the Board issued its decision, stated the reasons why the Board's decision should be reversed, served copies of the petition upon the Board and all other parties to the proceeding via certified mail within ten days of the filing of the petition, and filed a proof of service with the clerk of the court, the plaintiff complied with each of the requirements of this section and the trial court erred in dismissing the cause for lack of subject matter jurisdiction. Delay v. Board of Election Comm'rs, 312 Ill. App. 3d 200, 244 Ill. Dec. 682, 726 N.E.2d 657, 2000 Ill. App. LEXIS 133 (1 Dist. 2000).

The plaintiffs' failure to name and serve the individual members of the Electoral Board deprived the circuit court of subject matter jurisdiction over the proceedings. Bill v. Education Officers

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Electoral Bd., 299 Ill. App. 3d 548, 233 Ill. Dec. 619, 701 N.E.2d 262 (1 Dist. 1998), appeal denied, 182 Ill. 2d 547, 236 Ill. Dec. 668, 707 N.E.2d 1238 (1999).

There exist four distinct requirements that must be complied with in order to properly confer jurisdiction upon the circuit court: (1) a challenging petition must be filed with the clerk of the court within 10 days after the Electoral Board issues its decision, (2) the petition must state briefly the reasons why the board's decision should be reversed, (3) the petitioner must serve copies of the petition upon the electoral board and other parties to the proceeding by registered or certified mail, and (4) the petitioner must file proof of service with the clerk of the court. Bill v. Education Officers Electoral Bd., 299 Ill. App. 3d 548, 233 Ill. Dec. 619, 701 N.E.2d 262 (1 Dist. 1998), appeal denied, 182 Ill. 2d 547, 236 Ill. Dec. 668, 707 N.E.2d 1238 (1999).

The granting of judicial review under this section was never intended to vest the circuit courts with jurisdiction to conduct a de novo hearing into the validity of a candidate's nomination papers; the electoral board is vested with original jurisdiction to hear such disputes. Geer v. Kadera, 173 Ill. 2d 398, 219 Ill. Dec. 525, 671 N.E.2d 692 (1996).

A circuit court has the power to review a decision of an electoral board but has no original jurisdiction in such matters. People ex rel. Klingelmueller v. Haas, 111 Ill. App. 3d 88, 66 Ill. Dec. 856, 443 N.E.2d 782 (3 Dist. 1982).

Judgment of circuit court declaring that defendants had forfeited their positions as elected officials of city for failing to file economic interest statements while they were candidates pursuant to the Governmental Ethics Acts (5 ILCS 420/4A-101(g)) was reversed, because plaintiffs waived any objection to the defendants' status as candidates by not objecting to the sufficiency of the defendants' nomination papers in the manner prescribed by 10 ILCS 5/10-8, thus denying the circuit court of subject matter jurisdiction. People ex rel. Klingelmueller v. Haas, 111 Ill. App. 3d 88, 66 Ill. Dec. 856, 443 N.E.2d 782 (3 Dist. 1982).

In a proceeding to challenge the nomination of a candidate and to contest an election, the village clerk who certified the nomination papers and the Municipal Officers Electoral Board were indispensable parties and were entitled to be heard in an action which so vitally affected their official functions, and since they were necessary parties and were not named as defendants, any order entered by the trial court would have been subject to direct or collateral attack for want of jurisdiction. Black v. Termunde, 14 Ill. App. 3d 937, 303 N.E.2d 803 (1 Dist. 1973).

The question of whether a person elected to office possesses the necessary qualifications can only be determined by information in the nature of quo warranto; the jurisdiction of the court in a contest of an election is limited to the question of who was elected. Dilcher v. Schorik, 207 Ill. 528, 69 N.E. 807 (1904).

Necessary Party

Trial court did not err in denying the prospective candidate's motion to dismiss, as the trial court had jurisdiction to review whether the prospective candidate could add the designation "THE COACH" to his election nominating papers. The opposing candidate who appealed the county electoral board's ruling that the designation was permissible served all of the necessary parties to the ruling with a notice that he was appealing to the trial court, and those necessary parties were the county electoral board that made the ruling and other parties to the proceeding in which the ruling had been made. Rita v. Mayden, 364 Ill. App. 3d 913, 301 Ill. Dec. 568, 847 N.E.2d 578, 2006 Ill. App. LEXIS 183 (1 Dist. 2006).

The individual members of the Electoral Board were necessary parties for review of its decision that petitioner's nominating papers were insufficient because each of the board's members signed the written decision from which the plaintiff sought review. Russ v. Hoffman, 288 Ill. App. 3d 281, 224 Ill. Dec. 204, 681 N.E.2d 519 (1 Dist. 1997).

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Since it was the editorial board that made the decision from which petitioner sought judicial review, it was a necessary party to the action. Russ v. Hoffman, 288 Ill. App. 3d 281, 224 Ill. Dec. 204, 681 N.E.2d 519 (1 Dist. 1997).

Nomination Papers

A person cannot be removed from office vis-a-vis a statutory election contest merely because of a deficiency in his or her nomination papers. Geer v. Kadera, 173 Ill. 2d 398, 219 Ill. Dec. 525, 671 N.E.2d 692 (1996).

Petition for Review

- Time of Filing

Where the official office hours of the clerk of the circuit court of county ended at 4:30 p.m. on each business day, the petitioners did not timely file their petition for judicial review by presenting it to a deputy clerk prior to 4:30 p.m.; as a result, the petition was not filed until the next day, when it was file stamped and the petition was properly dismissed as not timely filed. McReynolds v. Hartley, 251 Ill. App. 3d 1038, 191 Ill. Dec. 323, 623 N.E.2d 913 (3 Dist. 1993).

Requirements for Jurisdiction

Prospective candidate failure to strictly comply with the 10 ILCS 5/10-10.1 service requirements of the Illinois Election Code divested the trial court of subject matter jurisdiction to consider the prospective candidate's petition for judicial review of the Board's invalidation of the candidacy of the prospective candidate for an city aldermanic election and also meant that the appellate court lacked jurisdiction to hear an appeal. The prospective candidate failed to serve the petition by the required registered or certified mail, and failed to serve the relevant parties personally because the prospective candidate served them through their attorneys, which was not sufficient. Rivera v. City of Chicago Electoral Bd., Ill. App. 3d , 353 Ill. Dec. 500, 956 N.E.2d 20, 2011 Ill. App. LEXIS 811 (1 Dist. 2011), appeal denied, 2011 Ill. LEXIS 2106 (Ill. 2011).

When a candidate sought judicial review of an election board's decision denying his petition for a place on the ballot, the service of his petition on the attorney who represented those objecting to it at a hearing before the election board was insufficient to give the trial or appellate courts jurisdiction to consider his case, as personal service on each objector was required, as was the filing of proof of such service with the clerk of the court. Hough v. Will County Bd. of Elections, 338 Ill. App. 3d 1092, 273 Ill. Dec. 621, 789 N.E.2d 795, 2003 Ill. App. LEXIS 521 (3 Dist. 2003).

When a candidate sought judicial review of an election board's decision denying his petition for a place on the ballot, neither the trial court nor the appellate court had jurisdiction to consider his case because he did not personally serve his petition on those objecting to it, nor did he file proof of such service with the clerk of the court. Hough v. Will County Bd. of Elections, 338 Ill. App. 3d 1092, 273 Ill. Dec. 621, 789 N.E.2d 795, 2003 Ill. App. LEXIS 521 (3 Dist. 2003).

This section includes four explicit requirements that must be met before the circuit court may obtain jurisdiction over the case: (1) a challenging petition must be filed with the clerk of the court within ten days after the electoral board issues its decision; (2) the petition shall state briefly the reasons why the board's decision should be reversed; (3) the petitioner shall serve copies of the petition upon the electoral board and other parties to the proceeding by registered or certified mail; and (4) the petitioner shall file proof of service with the clerk of the court. Allord v. Municipal Officers Electoral Bd., 288 Ill. App. 3d 897, 224 Ill. Dec. 564, 682 N.E.2d 125 (1 Dist. 1997).

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Scope of Review

Although the provisions for review in the Electoral Code, 10 ILCS 5/10-10.1, did not expressly incorporate the procedures set forth in the Administrative Review Law, 735 ILCS 5/3-101 et seq., for reviewing the decisions of the Board, the procedure was essentially the same. Thus, the appellate court was obligated to review the decision of the Board concerning the objections of the objector to the candidacy of the judicial office candidate rather than the decision of the trial court. Mitchell v. Cook County Officers Electoral Bd., 399 Ill. App. 3d 18, 338 Ill. Dec. 379, 924 N.E.2d 585, 2010 Ill. App. LEXIS 173 (1 Dist. 2010).

Where the court was limited in its jurisdictional authority by the review procedures set forth in this section and the plaintiffs failed to strictly pursue those procedures, the trial court had no jurisdiction to review the Electoral Board's decision on the merits. Johnson v. Theis, 282 Ill. App. 3d 966, 218 Ill. Dec. 447, 669 N.E.2d 590 (2 Dist. 1996), appeal denied, 168 Ill. 2d 593, 219 Ill. Dec. 565, 671 N.E.2d 732 (1996).

Review of Electoral Board decisions should not exceed the record made before that Board. Wiseman v. Elward, 5 Ill. App. 3d 249, 283 N.E.2d 282 (1 Dist. 1972).

§ 10 ILCS 5/10-11. [Vacancy in nomination of a candidate]

Sec. 10-11. Any vacancy in the nomination of a new political party candidate occurring prior to the date of certification of candidates for the ballot by the certifying board or officer must be filled prior to the date of certification. The resolution to fill such vacancy shall be sent by U.S. mail or personal delivery to the certifying officer or board within 3 days of the action by which the vacancy was filled; provided, if such resolution is sent by mail and the U.S. postmark on the envelope containing such resolution is dated prior to the expiration of such 3 day limit, the notice or resolution shall be deemed filed within such 3 day limit. Failure to so transmit the notice or resolution within the time specified in this Section shall authorize the certifying officer or board to certify the original candidate. Vacancies shall be filled by the new political party officers.

Any vacancy in nomination occurring after certification but prior to 15 days before a regular election shall be filled by the new political party officers within 8 days after the event creating the vacancy in the manner heretofore prescribed.

The resolution to fill a vacancy in nomination shall be duly acknowledged before an officer qualified to take acknowledgements of deeds and shall include, upon its face, the following information:

(a) the name of the original nominee and the office vacated;

(b) the date on which the vacancy occurred;

(c) the name and address of the nominee selected to fill the vacancy and the date of selection.

The resolution to fill a vacancy in nomination shall be accompanied by a Statement of Candidacy, as prescribed in Section 10-5 [10 ILCS 5/10-5], completed by the selected

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nominee and a receipt indicating that such nominee has filed a statement of economic interests as required by the Illinois Governmental Ethics Act [5 ILCS 420/1-101 et seq.].

The provisions of Sections 10-8 through 10-10.1 [10 ILCS 5/10-8 through 10 ILCS 5/10-10.1] relating to objections to certificates of nomination and nomination papers, hearings on objections, and judicial review, shall apply to and govern objections to resolutions for filling a vacancy in nomination.

Any vacancy in nomination occurring 15 days or less before a regular election shall not be filled. In this event the certification of the original candidate shall stand and his name shall appear on the official ballot to be voted at the election.

A vacancy in nomination occurs when a candidate who has been nominated under the provisions of Section 10-2 [10 ILCS 5/10-2] dies before the election, or declines the nomination; provided that nomination may become vacant for other reasons.

However, the provisions of this Section shall not apply to any vacancy in nomination for a municipal office for which the Municipal Code [65 ILCS 5/1-1-1 et seq.], as now or hereafter amended, provides a different method for filling such vacancy, and the applicable provision of the Municipal Code shall govern in such cases.

Any vacancy in a nomination by caucus of an established political party for a township or municipal office shall be filled in accordance with Section 7-61 of this Code [10 ILCS 5/7-61].

For purposes of this Section, the words "certify" and "certification" shall refer to the act of officially declaring the names of candidates entitled to be printed upon the official ballot at an election and directing election authorities to place the names of such candidates upon the official ballot. "Certifying officers or board" shall refer to the local election official, election authority or the State Board of Elections, as the case may be, with whom nomination papers, certificates of nomination papers and resolutions to fill vacancies in nomination are filed and whose duty it is to "certify" candidates.

(Source: P.A. 84-757.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 10-11.

CASE NOTES

Analysis
New Party
- Invalid

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New Party

- Invalid

Where the plaintiffs' original filing pursuant to 10 ILCS 5/10-2 was declared invalid by the Municipal Officers Election Board, no political party was in existence at the time of their subsequent attempted filing, and no vacancies existed either; thus, the plaintiffs could not have availed themselves of this section, and the new filing could not have constituted certificates of nomination. People ex rel. Vigilant Party v. Village of Dolton, 118 Ill. App. 2d 392, 254 N.E.2d 832 (1 Dist. 1969).

Vacancies

Vacancies are created when a candidate, duly nominated, dies or declines the nomination or when a certificate of nomination is held insufficient or inoperative by the Electoral Board. People ex rel. Voters for Progress Party v. Wilk, 118 Ill. App. 2d 386, 254 N.E.2d 834 (1 Dist. 1969).

§ 10 ILCS 5/10-11.1. [Office of state senator; vacancy]

Sec. 10-11.1. Whenever a vacancy in the office of State Senator is to be filled by election pursuant to Article IV, Section 2(d) of the Constitution [Illinois Const., Art. IV, § 2] and Section 25-6 of this Code [10 ILCS 5/25-6], nominations shall be made pursuant to this Section:

(1) If the vacancy in office occurs before the first date provided in Section 10-3 [10 ILCS 5/10-3] for filing nomination papers for the general election in the next even-numbered year following the commencement of the term, the nomination of independent candidates for such office shall be made as otherwise provided in this Article.

(2) If the vacancy occurs in office after the first day for filing nomination papers for independent candidates as provided in Section 10-3 but before the first day provided in Section 10-6 [10 ILCS 5/10-6] for filing nomination papers for the general election in the next even-numbered year following the commencement of the term, independent candidates for such office shall file their nomination papers during the filing period set forth in Section 10-6 for new political party candidates.

(3) If a vacancy in office occurs prior to the first day provided in Section 10-6 for filing nomination papers for new political party candidates for the next ensuing general election, new political party candidates for such office shall file their nomination papers during the filing period as set forth in Section 10-6 as otherwise provided in this Article [10 ILCS 5/10-1 et seq.].

(4) If the vacancy in office occurs during the time provided in Section 10-6 for filing nomination papers for new political party candidates for the next ensuing general election, the time for independent and new political party candidates to file nomination

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papers for such office shall be not more than 92 days nor less than 85 days prior to the date of the general election.

(5) If the vacancy in office occurs after the last day provided in Section 10-6 for filing nomination papers for new political party candidates, independent and new political party candidates shall be nominated as provided by rules and regulations of the State Board of Elections.

The provisions of Sections 10-8 and 10-10.1 [10 ILCS 5/10-8 and 10 ILCS 5/10-10.1] relating to objections to nomination papers, hearings on objections and judicial review, shall also apply to and govern objections to nomination papers filed pursuant to this Section.

Unless otherwise specified herein, the nomination and election provided for in this Section shall be governed by this Code.

(Source: P.A. 84-790; 96-1008, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 10-11.1.

Effect of Amendments. The 2010 amendment by P.A. 96-1008, effective July 6, 2010, in (4), substituted "92 days" for "78 days" and "85 days" for "71 days."

§ 10 ILCS 5/10-11.2. [Elective county office; vacancy]

Sec. 10-11.2. Whenever a vacancy in any elective county office is to be filled by election pursuant to Section 25-11 of this Code [10 ILCS 5/25-11], nominations shall be made and any vacancy in nomination shall be filled pursuant to this Section:

(1) If the vacancy in office occurs before the first date provided in Section 10-3 [10 ILCS 5/10-3] for filing nomination papers for the general election in the next even-numbered year following the commencement of the term, the nomination of independent candidates for such office shall be made as otherwise provided in this Article [10 ILCS 5/10-1 et seq.].

(2) If the vacancy in office occurs after the first day for filing nomination papers for independent candidates as provided in Section 10-3 but before the first day provided in Section 10-6 [10 ILCS 5/10-6] for filing nomination papers for new political party candidates for the general election in the next even-numbered year following the commencement of the term, independent candidates for such office shall file their nomination papers during the filing period set forth in Section 10-6 for new political party candidates.

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(3) If the vacancy in office occurs prior to the first date provided in Section 10-6 for filing nomination papers for new political party candidates for the next ensuing general election, new political party candidates for such office shall file their nomination papers during the filing period as set forth in Section 10-6 for new political party candidates.

(4) If the vacancy in office occurs during the time provided in Section 10-6 for filing nomination papers for new political party candidates for the next ensuing general election the time for independent and new political party candidates to file nomination papers for such office shall be not more than 92 days nor less than 85 days prior to the date of the general election.

The provisions of Sections 10-8 through 10-10.1 [10 ILCS 5/10-8 through 10 ILCS 5/10-10.1] relating to objections to nomination papers, hearings on objections and judicial review, shall also apply to and govern objections to nomination papers filed pursuant to this Section.

Unless otherwise specified herein, the nomination and election provided for in this Section shall be governed by this Code.

(Source: P.A. 84-790; 96-1008, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 10-11.2.

Effect of Amendments. The 2010 amendment by P.A. 96-1008, effective July 6, 2010, in (4), substituted "92 days" for "78 days" and "85 days" for "71 days."

§ 10 ILCS 5/10-14. [Candidate certification before general election]

Sec. 10-14. Not less than 74 days before the date of the general election the State Board of Elections shall certify to the county clerk of each county the name of each candidate whose nomination papers, certificate of nomination or resolution to fill a vacancy in nomination has been filed with the State Board of Elections and direct the county clerk to place upon the official ballot for the general election the names of such candidates in the same manner and in the same order as shown upon the certification. The name of no candidate for an office to be filled by the electors of the entire state shall be placed upon the official ballot unless his name is duly certified to the county clerk upon a certificate signed by the members of the State Board of Elections. The names of group candidates on petitions shall be certified to the several county clerks in the order in which such names appear on such petitions filed with the State Board of Elections.

Not less than 68 days before the date of the general election, each county clerk shall certify the names of each of the candidates for county offices whose nomination papers,

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certificates of nomination or resolutions to fill a vacancy in nomination have been filed with such clerk and declare that the names of such candidates for the respective offices shall be placed upon the official ballot for the general election in the same manner and in the same order as shown upon the certification. Each county clerk shall place a copy of the certification on file in his or her office and at the same time issue to the State Board of Elections a copy of such certification. In addition, each county clerk in whose county there is a board of election commissioners shall, not less than 69 days before the election, certify to the board of election commissioners the name of the person or persons nominated for such office as shown by the certificate of the State Board of Elections, together with the names of all other candidates as shown by the certification of county officers on file in the clerk's office, and in the order so certified. The county clerk or board of election commissioners shall print the names of the nominees on the ballot for each office in the order in which they are certified to or filed with the county clerk; provided, that in printing the name of nominees for any office, if any of such nominees have also been nominated by one or more political parties pursuant to this Act, the location of the name of such candidate on the ballot for nominations made under this Article shall be precisely in the same order in which it appears on the certification of the State Board of Elections to the county clerk.

For the general election, the candidates of new political parties shall be placed on the ballot for said election after the established political party candidates and in the order of new political party petition filings.

Each certification shall indicate, where applicable, the following:

(1) The political party affiliation if any, of the candidates for the respective offices;

(2) If there is to be more than one candidate elected to an office from the State, political subdivision or district;

(3) If the voter has the right to vote for more than one candidate for an office;

(4) The term of office, if a vacancy is to be filled for less than a full term or if the offices to be filled in a political subdivision are for different terms.

The State Board of Elections or the county clerk, as the case may be, shall issue an amended certification whenever it is discovered that the original certification is in error.

(Source: P.A. 86-867; 93-847, § 5; 96-1008, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 10-14.

Section 95 of P.A. 93-847 contains a severability provision.

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Effect of Amendments. The 2004 amendment by P.A. 93-847, effective July 30, 2004, substituted "67 days" for "61 days" in the first sentence of the first paragraph; and substituted "61 days" for "55 days" in the first sentence of the second paragraph.

The 2010 amendment by P.A. 96-1008, effective July 6, 2010, substituted "74 days" for "67 days" in the first sentence of the first paragraph; and in the second paragraph, substituted "68 days" for "61 days" in the first sentence and "69 days" for "55 days" in the third sentence.

§ 10 ILCS 5/10-15. [Consolidated and nonpartisan elections; certification]

Sec. 10-15. Not less than 68 days before the date of the consolidated and nonpartisan elections, each local election official with whom certificates of nomination or nominating petitions have been filed shall certify to each election authority having jurisdiction over any of the territory of his political subdivision the names of all candidates entitled to be printed on the ballot for offices of that political subdivision to be voted upon at such election and direct the election authority to place upon the official ballot for such election the names of such candidates in the same manner and in the same order as shown upon the certification.

The local election officials shall certify such candidates for each office in the order in which such candidates' certificates of nomination or nominating petitions were filed in his office. However, subject to appeal, the names of candidates whose petitions have been held invalid by the appropriate electoral board provided in Section 10-9 of this Act [10 ILCS 5/10-9] shall not be so certified. The certification shall be modified as necessary to comply with the requirements of any other statute or any ordinance adopted pursuant to Article VII of the Constitution [Illinois Const., Art. VII, § 1] prescribing specific provisions for nonpartisan elections, including without limitation Articles 4 and 5 of "The Municipal Code" or Article 9 of The School Code [65 ILCS 5/4-1-1 et seq. and 65 ILCS 5/5-1-1 et seq. or 105 ILCS 5/9-1 et seq.].

In every instance where applicable, the following shall also be indicated in the certification:

(1) The political party affiliation, if any, of the candidates for the respective offices;

(2) Where there is to be more than one candidate elected to an office from a political subdivision or district;

(3) Where a voter has the right to vote for more than one candidate for an office;

(4) The terms of the office to be on the ballot, when a vacancy is to be filled for less than a full term, or when offices of a particular subdivision to be on the ballot at the same election are to be filled for different terms;

(5) The territory in which a candidate is required by law to reside, when such residency requirement is not identical to the territory of the political subdivision from which the candidate is to be elected or nominated;

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(6) Where a candidate's nominating papers or petitions have been objected to and the objection has been sustained by the electoral board established in Section 10-10 [10 ILCS 5/10-10], the words "OBJECTION SUSTAINED" shall be placed under the title of the office being sought by the candidate and the name of the aggrieved candidate shall not appear; and

(7) Where a candidate's nominating papers or petitions have been objected to and the decision of the electoral board established in Section 10-10 is either unknown or known to be in judicial review, the words "OBJECTION PENDING" shall be placed under the title of the office being sought by the candidate and next to the name of the candidate.

For the consolidated election, and for the general primary in the case of certain municipalities having annual elections, the candidates of new political parties shall be placed on the ballot for such elections after the established political party candidates and in the order of new political party petition filings.

The local election official shall issue an amended certification whenever it is discovered that the original certification is in error.

(Source: P.A. 86-874; 95-699, § 5; 96-1008, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 10-15.

Section 97 of P.A. 95-699 contains a severability provision.

Cross References.

As to certification of candidates under the School Code, see 105 ILCS 5/9-11.1.

Effect of Amendments. The 2007 amendment by P.A. 95-699, effective November 9, 2007, added (6) and the first paragraph in (7).

The 2010 amendment by P.A. 96-1008, effective July 6, 2010, substituted "68 days" for "61 days" in the first paragraph.

CASE NOTES

Analysis

Certification
Petitions for Nomination
- Statement of Candidacy

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Certification

Order compelling a village clerk to certify a binding referendum for placement on a ballot was error because the petition was facially deficient, and 10 ILCS 5/10-8 contemplated that the question of whether papers were duly filed and in apparent conformity with the law was to be answered through a procedure other than statutory objection; contrary to plaintiff's argument, the village clerk had the authority to withdraw her prior certification despite the fact that she had previously accepted and certified the petition and the deadline to certify the question to the county clerk had expired. Haymore v. Orr, 385 Ill. App. 3d 915, 325 Ill. Dec. 89, 897 N.E.2d 337, 2008 Ill. App. LEXIS 1008 (1 Dist. 2008).

Petitions for Nomination

- Statement of Candidacy

City clerk had the authority to withhold candidates' names from the ballot where they failed to file a statement of candidacy with their nominating papers. North v. Hinkle, 295 Ill. App. 3d 84, 229 Ill. Dec. 579, 692 N.E.2d 352 (2 Dist. 1998).

Timeliness of Nominating Papers

City clerk properly refused to certify candidates' names for placement on the ballot for an election because the candidates did not file their statements of economic interests in the same year as their nomination papers. Jenkins v. McIlvain, 338 Ill. App. 3d 113, 272 Ill. Dec. 758, 788 N.E.2d 62, 2003 Ill. App. LEXIS 336 (1 Dist. 2003).

A school board secretary does not have the power to make determinations as to the timeliness of nominating papers from a mere time-stamp on the face of the papers since a time-stamp does not clearly establish that such papers are not in conformity with the Election Code. Welch v. Educ. Officers Electoral Bd., 322 Ill. App. 3d 568, 255 Ill. Dec. 641, 750 N.E.2d 222, 2001 Ill. App. LEXIS 359 (1 Dist. 2001).

Article 17.

Conduct of Elections and Making Returns

§ 10 ILCS 5/17-16.1. [Write-in votes]

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Sec. 17-16.1. Write-in votes shall be counted only for persons who have filed notarized declarations of intent to be write-in candidates with the proper election authority or authorities not later than 61 days prior to the election. However, whenever an objection to a candidate's nominating papers or petitions for any office is sustained under Section 10-10 [10 ILCS 5/10-10] after the 61st day before the election, then write-in votes shall be counted for that candidate if he or she has filed a notarized declaration of intent to be a write-in candidate for that office with the proper election authority or authorities not later than 7 days prior to the election.

Forms for the declaration of intent to be a write-in candidate shall be supplied by the election authorities. Such declaration shall specify the office for which the person seeks election as a write-in candidate.

The election authority or authorities shall deliver a list of all persons who have filed such declarations to the election judges in the appropriate precincts prior to the election.

A candidate for whom a nomination paper has been filed as a partisan candidate at a primary election, and who is defeated for his or her nomination at the primary election is ineligible to file a declaration of intent to be a write-in candidate for election in that general or consolidated election.

A candidate seeking election to an office for which candidates of political parties are nominated by caucus who is a participant in the caucus and who is defeated for his or her nomination at such caucus is ineligible to file a declaration of intent to be a write-in candidate for election in that general or consolidated election.

A candidate seeking election to an office for which candidates are nominated at a primary election on a nonpartisan basis and who is defeated for his or her nomination at the primary election is ineligible to file a declaration of intent to be a write-in candidate for election in that general or consolidated election.

Nothing in this Section shall be construed to apply to votes cast under the provisions of subsection (b) of Section 16-5.01 [10 ILCS 5/16-5.01].

(Source: P.A. 86-867; 86-873; 86-875; 86-1028; 86-1348; 89-653, § 5; 95-699, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 17-16.1.

Section 97 of P.A. 95-699 contains a severability provision.

Effect of Amendments. The 1996 amendment by P.A. 89-653, effective August 14, 1996, in the first paragraph, in the first sentence, substituted "Tuesday" for "Friday" and deleted "unless a candidate, whose name is printed on the ballot, dies later than 5:00 p.m. on the Friday immediately preceding the election" from the end and deleted the second through fourth sentences regarding a candidate's death and replacement by write in candidate.

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The 2007 amendment by P.A. 95-699, effective November 9, 2007, in the first paragraph: substituted "61 days prior to" for "5:00 p.m. on the Tuesday immediately preceding" in the first sentence, and added the last sentence.

CASE NOTES

Analysis

Declaration of Intent
Intention of Voters
Requirements
Write-In Votes

Declaration of Intent

The amendment of this section has merely added another requirement for a write-in candidate, the filing of a declaration of intent, and was not intended to eliminate any previous requirements. Nagel v. Kindy, 227 Ill. App. 3d 332, 169 Ill. Dec. 343, 591 N.E.2d 516 (2 Dist. 1992).

Intention of Voters

While the circumstances attending an election may be considered in ascertaining a voter's intention, that intention must be ascertained from his or her ballot. Nagel v. Kindy, 227 Ill. App. 3d 332, 169 Ill. Dec. 343, 591 N.E.2d 516 (2 Dist. 1992).

Requirements

A write-in ballot must include a designation of the office or term voted for in order to be valid if more than one office or term is on the ballot. Nagel v. Kindy, 227 Ill. App. 3d 332, 169 Ill. Dec. 343, 591 N.E.2d 516 (2 Dist. 1992).

Write-In Votes

Although neither the trial court nor appellate court had subject matter jurisdiction to consider the Electoral Board's decisions that sustained objections to the candidates' nomination papers, the candidates were not left without an alternative to running in the election. Pursuant to 10 ILCS 5/17-16.1 1, they could still seek write-in votes running as write-in candidates. Nelson v. Qualkinbush, 389 Ill. App. 3d 79, 329 Ill. Dec. 809, 907 N.E.2d 400, 2009 Ill. App. LEXIS 122 (1 Dist. 2009).

Ballots which were voted by writing in a last name without any Christian name or initials, and otherwise properly marked, were correctly counted for the individual who was the only candidate of that name known to be running for the office of president of the village. Gulino v. Cerny, 13 Ill. 2d 244, 148 N.E.2d 724 (1958).

Where the name of a candidate is written in on the ballot, the title of the office must be clearly designated if there is more than one office on the ballot. Gulino v. Cerny, 13 Ill. 2d 244, 148

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N.E.2d 724 (1958).

§ 10 ILCS 5/17-22. The judges of election shall make the tally sheet and certificate of results in triplicate

Sec. 17-22. The judges of election shall make the tally sheet and certificate of results in triplicate. The judges of election shall make the tally sheet and certificate of results in triplicate. If, however, the number of established political parties, as defined in Section 10-2 [10 ILCS 5/10-2], exceeds 2, one additional copy shall be made for each established political party in excess of 2. One list of voters, or other proper return with such certificate written thereon, and accompanying tally sheet footed up so as to show the correct number of votes cast for each person voted for, shall be carefully enveloped and sealed up by the judges of election, 2 of whom (one from each of the 2 major political parties) shall immediately deliver same to the county clerk, or his deputy, at the office of the county clerk, or to an officially designated receiving station established by the county clerk where a duly authorized representative of the county clerk shall receive said envelopes for immediate transmission to the office of county clerk, who shall safely keep them. The other certificates of results and accompanying tally sheet shall be carefully enveloped and sealed up and duly directed, respectively, to the chairman of the county central committee of each then existing established political party, and by another of the judges of election deposited immediately in the nearest United States letter deposit. However, if any county chairman notifies the county clerk not later than 10 days before the election of his desire to receive the envelope addressed to him at the point and at the time same are delivered to the county clerk, his deputy or receiving station designee the envelopes shall be delivered to such county chairman or his designee immediately upon receipt thereof by the county clerk, his deputy or his receiving station designee. The person or persons so designated by a county chairman shall sign an official receipt acknowledging receipt of said envelopes. The poll book and tally list filed with the county clerk shall be kept one year, and certified copies thereof shall be evidence in all courts, proceedings and election contests. Before the returns are sealed up, as aforesaid, the judges shall compare the tally papers, footings and certificates and see that they are correct and duplicates of each other, and certify to the correctness of the same.

At the consolidated election, the judges of election shall make a tally sheet and certificate of results for each political subdivision for which candidates or public questions are on the ballot at such election, and shall sign, seal in a marked envelope and deliver them to the county clerk with the other certificates of results herein required. Such tally sheets and certificates of results may be duplicates of the tally sheet and certificate of results otherwise required by this Section, showing all votes for all candidates and public questions voted for or upon in the precinct, or may be on separate forms prepared by the election authority and showing only those votes cast for candidates and public questions of each such political subdivision.

Within 2 days of delivery of complete returns of the consolidated election, the county clerk shall transmit an original, sealed tally sheet and certificate of results from each precinct in his jurisdiction in which candidates or public questions of a political

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subdivision were on the ballot to the local election official of such political subdivision. Each local election official, within 24 hours of receipt of all of the tally sheets and certificates of results for all precincts in which candidates or public questions of his political subdivision were on the ballot, shall transmit such sealed tally sheets and certificates of results to the canvassing board for that political subdivision.

In the case of referenda for the formation of a political subdivision, the tally sheets and certificates of results shall be transmitted by the county clerk to the circuit court that ordered the proposition submitted or to the officials designated by the court to conduct the canvass of votes. In the case of school referenda for which a regional superintendent of schools is responsible for the canvass of votes, the county clerk shall transmit the tally sheets and certificates of results to the regional superintendent of schools.

Where voting machines or electronic voting systems are used, the provisions of this section may be modified as required or authorized by Article 24 or Article 24A [10 ILCS 5/24-1 et seq. or 10 ILCS 5/24A-1 et seq.], whichever is applicable.

Only judges appointed under the provisions of subsection (a) of Section 13-4 or subsection (b) of Section 14-1 [10 ILCS 5/13-4 or 10 ILCS 5/14-1] may make any delivery required by this Section from judges of election to a county clerk, or his or her deputy, at the office of the county clerk or to a county clerk's duly authorized representative at the county clerk's officially designated receiving station.

(Source: P.A. 80-1469; 96-1003, § 4.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 17-22.

Effect of Amendments. The 2010 amendment by P.A. 96-1003, effective July 6, 2010, substituted "consolidated election" for "nonpartisan and consolidated elections" in the first sentence of the second paragraph; substituted "consolidated election" for "consolidated and nonpartisan elections" in the first sentence of the third paragraph; and added the last paragraph.

CASE NOTES

Secrecy

County election commission and its chairman did not violate the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., in denying a request by a citizen under 5 ILCS 140/3(a) to examine the ballots, ballot box tapes, and poll signature cards from an election because the election records were exempt from disclosure under 5 ILCS 140/7(1)(a) as the disclosure of the requested election records was prohibited by 10 ILCS 5/17-20 and 10 ILCS 5/17-22 of the Illinois Election Code, 10 ILCS 5/1-1. Kibort v. Westrom, 371 Ill. App. 3d 247, 308 Ill. Dec. 676, 862 N.E.2d 609, 2007

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Ill. App. LEXIS 32 (1 Dist. 2007).

§ 10 ILCS 5/17-23. [Pollwatchers; authorization]

Sec. 17-23. Pollwatchers in a general election shall be authorized in the following manner:

(1) Each established political party shall be entitled to appoint two pollwatchers per precinct. Such pollwatchers must be affiliated with the political party for which they are pollwatching. For all elections, the pollwatchers must be registered to vote in Illinois.

(2) Each candidate shall be entitled to appoint two pollwatchers per precinct. For all elections, the pollwatchers must be registered to vote in Illinois.

(3) Each organization of citizens within the county or political subdivision, which has among its purposes or interests the investigation or prosecution of election frauds, and which shall have registered its name and address and the name and addresses of its principal officers with the proper election authority at least 40 days before the election, shall be entitled to appoint one pollwatcher per precinct. For all elections, the pollwatcher must be registered to vote in Illinois.

(3.5) Each State nonpartisan civic organization within the county or political subdivision shall be entitled to appoint one pollwatcher per precinct, provided that no more than 2 pollwatchers appointed by State nonpartisan civic organizations shall be present in a precinct polling place at the same time. Each organization shall have registered the names and addresses of its principal officers with the proper election authority at least 40 days before the election. The pollwatchers must be registered to vote in Illinois. For the purpose of this paragraph, a "State nonpartisan civic organization" means any corporation, unincorporated association, or organization that:

(i) as part of its written articles of incorporation, bylaws, or charter or by separate written declaration, has among its stated purposes the provision of voter information and education, the protection of individual voters' rights, and the promotion of free and equal elections;

(ii) is organized or primarily conducts its activities within the State of Illinois; and

(iii) continuously maintains an office or business location within the State of Illinois, together with a current listed telephone number (a post office box number without a current listed telephone number is not sufficient).

(4) In any general election held to elect candidates for the offices of a municipality of less than 3,000,000 population that is situated in 2 or more counties, a pollwatcher who is a resident of Illinois shall be eligible to serve as a pollwatcher in any poll located within such municipality, provided that such pollwatcher otherwise complies with the respective requirements of subsections (1) through (3) of this Section and is a registered voter in Illinois.

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(5) Each organized group of proponents or opponents of a ballot proposition, which shall have registered the name and address of its organization or committee and the name and address of its chairman with the proper election authority at least 40 days before the election, shall be entitled to appoint one pollwatcher per precinct. The pollwatcher must be registered to vote in Illinois.

All pollwatchers shall be required to have proper credentials. Such credentials shall be printed in sufficient quantities, shall be issued by and under the facsimile signature(s) of the election authority and shall be available for distribution at least 2 weeks prior to the election. Such credentials shall be authorized by the real or facsimile signature of the State or local party official or the candidate or the presiding officer of the civic organization or the chairman of the proponent or opponent group, as the case may be. The election authority may not require any such party official or the candidate or the presiding officer of the civic organization or the chairman of the proponent or opponent group to submit the names or other information concerning pollwatchers before making credentials available to such persons or organizations.

Pollwatcher credentials shall be in substantially the following form:

POLLWATCHER CREDENTIALS

TO THE JUDGES OF ELECTION:

In accordance with the provisions of the Election Code, the undersigned hereby appoints ..... (name of pollwatcher) who resides at ..... (address) in the county of ....., ... (township or municipality) of ..... (name), State of Illinois and who is duly registered to vote from this address, to act as a pollwatcher in the ..... precinct of the ..... ward (if applicable) of the ..... (township or municipality) of ..... at the ..... election to be held on (insert date).

..... (Signature of Appointing Authority)

..... TITLE (party official, candidate, civic organization president, proponent or opponent group chairman)

Under penalties provided by law pursuant to Section 29-10 of The Election Code [10 ILCS 5/29-10], the undersigned pollwatcher certifies that he or she resides at ..... (address) in the county of ....., ... (township or municipality) of ..... (name), State of Illinois, and is duly registered to vote in Illinois.

....

(Precinct and/or Ward in Which Pollwatcher Resides) (Signature of Pollwatcher)

Pollwatchers must present their credentials to the Judges of Election upon entering the polling place. Pollwatcher credentials properly executed and signed shall be proof of the qualifications of the pollwatcher authorized thereby. Such credentials are retained by the Judges and returned to the Election Authority at the end of the day of election with the

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other election materials. Once a pollwatcher has surrendered a valid credential, he may leave and reenter the polling place provided that such continuing action does not disrupt the conduct of the election. Pollwatchers may be substituted during the course of the day, but established political parties, candidates and qualified civic organizations can have only as many pollwatchers at any given time as are authorized in this Article. A substitute must present his signed credential to the judges of election upon entering the polling place. Election authorities must provide a sufficient number of credentials to allow for substitution of pollwatchers. After the polls have closed pollwatchers shall be allowed to remain until the canvass of votes is completed; but may leave and reenter only in cases of necessity, provided that such action is not so continuous as to disrupt the canvass of votes.

Candidates seeking office in a district or municipality encompassing 2 or more counties shall be admitted to any and all polling places throughout such district or municipality without regard to the counties in which such candidates are registered to vote. Actions of such candidates shall be governed in each polling place by the same privileges and limitations that apply to pollwatchers as provided in this Section. Any such candidate who engages in an activity in a polling place which could reasonably be construed by a majority of the judges of election as campaign activity shall be removed forthwith from such polling place.

Candidates seeking office in a district or municipality encompassing 2 or more counties who desire to be admitted to polling places on election day in such district or municipality shall be required to have proper credentials. Such credentials shall be printed in sufficient quantities, shall be issued by and under the facsimile signature of the election authority of the election jurisdiction where the polling place in which the candidate seeks admittance is located, and shall be available for distribution at least 2 weeks prior to the election. Such credentials shall be signed by the candidate.

Candidate credentials shall be in substantially the following form:

CANDIDATE CREDENTIALS

TO THE JUDGES OF ELECTION:

In accordance with the provisions of the Election Code, I ..... (name of candidate) hereby certify that I am a candidate for ..... (name of office) and seek admittance to ..... precinct of the ..... ward (if applicable) of the ..... (township or municipality) of ..... at the ..... election to be held on (insert date).

....

(Signature of Candidate) OFFICE FOR WHICH CANDIDATE SEEKS NOMINATION OR ELECTION

Pollwatchers shall be permitted to observe all proceedings and view all reasonably requested records relating to the conduct of the election, provided the secrecy of the

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ballot is not impinged, and to station themselves in a position in the voting room as will enable them to observe the judges making the signature comparison between the voter application and the voter registration record card; provided, however, that such pollwatchers shall not be permitted to station themselves in such close proximity to the judges of election so as to interfere with the orderly conduct of the election and shall not, in any event, be permitted to handle election materials. Pollwatchers may challenge for cause the voting qualifications of a person offering to vote and may call to the attention of the judges of election any incorrect procedure or apparent violations of this Code.

If a majority of the judges of election determine that the polling place has become too overcrowded with pollwatchers so as to interfere with the orderly conduct of the election, the judges shall, by lot, limit such pollwatchers to a reasonable number, except that each established or new political party shall be permitted to have at least one pollwatcher present.

Representatives of an election authority, with regard to an election under its jurisdiction, the State Board of Elections, and law enforcement agencies, including but not limited to a United States Attorney, a State's attorney, the Attorney General, and a State, county, or local police department, in the performance of their official election duties, shall be permitted at all times to enter and remain in the polling place. Upon entering the polling place, such representatives shall display their official credentials or other identification to the judges of election.

Uniformed police officers assigned to polling place duty shall follow all lawful instructions of the judges of election.

The provisions of this Section shall also apply to supervised casting of absentee ballots as provided in Section 19-12.2 of this Act [10 ILCS 5/19-12.2].

(Source: P.A. 86-867; 90-655, § 14; 91-357, § 10; 93-574, § 5; 94-645, § 5; 95-267, § 5; 95-699, § 5; 95-876, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 17-23.

P.A. 91-357, § 996 contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Section 97 of P.A. 93-574 contains a severability provision.

Section 97 of P.A. 95-699 contains a severability provision.

Effect of Amendments. The 1998 amendment by P.A. 90-655, effective July 30, 1998, substituted "facsimile" for "fascimile" in the third paragraph following the form regarding pollwatcher credentials and made a change in punctuation in the third-from-last paragraph.

The 1999 amendment by P.A. 91-357, effective July 29, 1999, changed the date blank in the forms.

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The 2003 amendment by P.A. 93-574, effective August 21, 2003, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2005 amendment by P.A. 94-645, effective August 22, 2005, in the fifth paragraph from the end added "and view all reasonably requested records" and added the proviso.

The 2007 amendment by P.A. 95-267, effective August 17, 2007, added (3.5).

The 2007 amendment by P.A.95-699, effective November 9, 2007, added the last sentence to the second paragraph in (5).

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, combined earlier multiple amendments.

CASE NOTES

Analysis

Eligibility of Voters
Illegally Cast Ballots

Eligibility of Voters

The circuit court did not err in considering the ballots of voters who were both challenged by pollwatchers and election judges at the polls on election day, because candidate did not waive his right to challenge the eligibility of voters by not utilizing the procedures provided by this section. Gribble v. Willeford, 190 Ill. App. 3d 610, 137 Ill. Dec. 881, 546 N.E.2d 994 (5 Dist. 1989).

Illegally Cast Ballots

Trial court did err by examining voters' party affiliations in prior elections in determining how to properly apportion illegally cast votes. Gribble v. Willeford, 190 Ill. App. 3d 610, 137 Ill. Dec. 881, 546 N.E.2d 994 (5 Dist. 1989).

Article 18.

Conduct of Elections and Making Returns (In Municipalities Under Jurisdiction of Boards of Election Commissioners)

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§ 10 ILCS 5/18-9.1. [Write-in votes]

Sec. 18-9.1. Write-in votes shall be counted only for persons who have filed notarized declarations of intent to be write-in candidates with the proper election authority or authorities not later than 61 days prior to the election. However, whenever an objection to a candidate's nominating papers or petitions is sustained under Section 10-10 [10 ILCS 5/10-10] after the 61st day before the election, then write-in votes shall be counted for that candidate if he or she has filed a notarized declaration of intent to be a write-in candidate for that office with the proper election authority or authorities not later than 7 days prior to the election.

Forms for the declaration of intent to be a write-in candidate shall be supplied by the election authorities. Such declaration shall specify the office for which the person seeks election as a write-in candidate.

The election authority or authorities shall deliver a list of all persons who have filed such declarations to the election judges in the appropriate precincts prior to the election.

A candidate for whom a nomination paper has been filed as a partisan candidate at a primary election, and who is defeated for his or her nomination at the primary election, is ineligible to file a declaration of intent to be a write-in candidate for election in that general or consolidated election.

A candidate seeking election to an office for which candidates of political parties are nominated by caucus who is a participant in the caucus and who is defeated for his or her nomination at such caucus is ineligible to file a declaration of intent to be a write-in candidate for election in that general or consolidated election.

A candidate seeking election to an office for which candidates are nominated at a primary election on a nonpartisan basis and who is defeated for his or her nomination at the primary election is ineligible to file a declaration of intent to be a write-in candidate for election in that general or consolidated election.

Nothing in this Section shall be construed to apply to votes cast under the provisions of subsection (b) of Section 16-5.01 [10 ILCS 5/16-5.01].

(Source: P.A. 86-867; 86-873; 86-875; 86-1028; 86-1348; 89-653, § 5; 95-699, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 18-9.1.

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Section 97 of P.A. 95-699 contains a severability provision.

Effect of Amendments. The 1996 amendment by P.A. 89-653, effective August 14, 1996, in the first paragraph, in the first sentence, substituted "Tuesday" for "Friday" and deleted "unless a candidate, whose name is printed on the ballot, dies later than 5:00 p.m. on the Friday immediately preceding the election" from the end and deleted the next second through fourth sentences regarding a candidate's death and replacement by a write in candidate.

The 2007 amendment by P.A. 95-699, effective November 9, 2007, in the first paragraph: substituted "61 days prior to" for "5:00 p.m. on the Tuesday immediately preceding" in the first sentence; and added the last sentence.

CASE NOTES

Late Filing

Trial properly declined to grant relief on the candidate's petition for mandamus and his declaratory relied request; the language of 10 ILCS 5/18-9.1 regarding the deadline for filing a declaration of intent to be a write-in candidate was specifically and unambiguously set forth in the statute, and the mandatory nature of the language meant that the candidate could not be granted relief where he filed the relevant papers one day after the deadline expired. Marquez v. Aurora Bd. of Election Comm'rs, 357 Ill. App. 3d 187, 293 Ill. Dec. 567, 828 N.E.2d 877, 2005 Ill. App. LEXIS 450 (2 Dist. 2005).

Write-in votes for the candidate could not be counted where he filed file papers showing his intent to run as a write-in candidate one day after the deadline expired. Marquez v. Aurora Bd. of Election Comm'rs, 357 Ill. App. 3d 187, 293 Ill. Dec. 567, 828 N.E.2d 877, 2005 Ill. App. LEXIS 450 (2 Dist. 2005).

Article 22.

Canvassing Votes

§ 10 ILCS 5/22-17. [Nonpartisan and consolidated elections]

Sec. 22-17. (a) Except as provided in subsection (b), the canvass of votes cast at the consolidated election shall be conducted by the election authority within 21 days after the close of such elections.

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(b) The board of election commissioners as provided in Section 22-8 [10 ILCS 5/22-8] shall canvass the votes cast at the consolidated election for offices of any political subdivision entirely within the jurisdiction of a municipal board of election commissioners.

(c) The canvass of votes cast upon any public questions submitted to the voters of any political subdivision, or any precinct or combination of precincts within a political subdivision, at any regular election or at any emergency referendum election, including votes cast by voters outside of the political subdivision where the question is for annexation thereto, shall be canvassed by the same election authority as for the canvass of votes of the officers of such political subdivision. However, referenda conducted throughout a county and referenda of sanitary districts whose officers are elected at general elections shall be canvassed by the county clerk. The votes cast on a public question for the formation of a political subdivision shall be canvassed by the relevant election authority and filed with the circuit court that ordered the question submitted.

(c-5) No person who is shown by the election authority's proclamation to have been elected at the consolidated election or general election as a write-in candidate shall take office unless that person has first filed with the certifying office or board a statement of candidacy pursuant to Section 7-10 or Section 10-5 [10 ILCS 5/7-10 or 10 ILCS 5/10-5], a statement pursuant to Section 7-10.1 [10 ILCS 5/7-10.1], and a receipt for filing a statement of economic interests in relation to the unit of government to which he or she has been elected. For officers elected at the consolidated election, the certifying officer shall notify the election authority of the receipt of those documents, and the county clerk shall issue the certification of election under the provisions of Section 22-18 [10 ILCS 5/22-18].

(d) The canvass of votes for offices of political subdivisions cast at special elections to fill vacancies held on the day of any regular election shall be conducted by the election authority which is responsible for canvassing the votes at the regularly scheduled election for such office.

(e) Abstracts of votes prepared pursuant to canvasses under this Section shall report returns by precinct or ward.

(Source: P.A. 87-738; 87-1052, § 3; 93-847, § 5; 94-645, § 5; 94-647, § 5; 95-331, § 60.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 22-17.

Section 95 of P.A. 93-847 contains a severability provision.

Effect of Amendments. The 1992 amendment, effective September 11, 1992, added subdivision (a)(10).

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The 2004 amendment by P.A. 93-847, effective July 30, 2004, substituted "21 days " for "7 days " in the first sentence.

The 2005 amendment by P.A. 94-645, effective August 22, 2005, substituted "consolidated election " for "nonpartisan and consolidated elections " twice; and added (c-5) and (e).

The 2005 amendment by P.A. 94-647, effective January 1, 2006, rewrote the section.

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, substituted "election authority's" for "canvassing board's" in the (c-5).

§ 10 ILCS 5/22-18. [Local boards; canvassing; disposition of results]

Sec. 22-18. The canvass of votes and the proclamation of results by the election authority provided in Section 22-17 [10 ILCS 5/22-17] shall be conducted in accordance with the procedures and requirements otherwise provided in this Article. A signed copy or original duplicate of its completed abstract of votes must be transmitted to each election authority having jurisdiction over any of the territory of the respective political subdivision and transmitted, by facsimile, e-mail, or any other electronic means, to the State Board of Elections in the same manner as provided in Section 22-5 [10 ILCS 5/22-5].

The county clerk shall make out a certificate of election to each person declared elected to an office by the election authorities and transmit such certificate to the person so entitled, upon his application. For political subdivisions whose territory extends into more than one county, the certificates of election shall be issued by the county clerk of the county which contains the principal office of the political subdivision.

Whenever an election authority canvasses the votes cast upon a public question submitted to referendum pursuant to a court order, the election authority shall immediately transmit a signed copy or an original duplicate of its completed abstract of the votes to the court which ordered the referendum.

(Source: P.A. 81-1050; 94-647, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 22-18.

Effect of Amendments. The 2005 amendment by P.A. 94-647, effective January 1, 2006, rewrote the section.

Article 25.

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Resignations and Vacancies

§ 10 ILCS 5/25-1. [Elective offices]

Sec. 25-1. Except as otherwise provided in Section 25-2 [10 ILCS 5/25-2], resignations of elective offices shall be made to the officer, court or county board authorized by law to fill a vacancy in such office by appointment, or to order an election to fill such vacancy.

(Source: Laws 1943, vol. 2, p. 1; P.A. 88-419, § 4.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 25-1.

Effect of Amendments. The 1993 amendment by P.A. 88-419, effective August 20, 1993, added at the beginning "Except as otherwise provided in Section 25-2,".

§ 10 ILCS 5/25-2. Events on which an elective office becomes vacant

Sec. 25-2. Events on which an elective office becomes vacant. Every elective office shall become vacant on the happening of any of the following events before the expiration of the term of such office:

(1) The death of the incumbent.

(2) His or her resignation.

(3) His or her becoming a person under legal disability.

(4) His or her ceasing to be an inhabitant of the State; or if the office is local, his or her ceasing to be an inhabitant of the district, county, town, or precinct for which he or she was elected; provided, that the provisions of this paragraph shall not apply to township officers whose township boundaries are changed in accordance with Section 10-20 of the Township Code [60 ILCS 1/10-20], to a township officer after disconnection as set forth in Section 15-17 of the Township Code [60 ILCS 1/15-17], nor to township or multi-township assessors elected under Sections 2-5 through 2-15 of the Property Tax Code [35 ILCS 200/2-5 through 35 ILCS 200/2-15].

(5) His or her conviction of an infamous crime, or of any offense involving a violation of official oath.

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(6) His or her removal from office.

(7) His or her refusal or neglect to take his or her oath of office, or to give or renew his or her official bond, or to deposit or file such oath or bond within the time prescribed by law.

(8) The decision of a competent tribunal declaring his or her election void.

No elective office, except as herein otherwise provided, shall become vacant until the successor of the incumbent of such office has been appointed or elected, as the case may be, and qualified.

An unconditional resignation, effective at a future date, may not be withdrawn after it is received by the officer authorized to fill the vacancy. Such resignation shall create a vacancy in office for the purpose of determining the time period which would require an election. The resigning office holder may continue to hold such office until the date or event specified in such resignation, but no later than the date at which his or her successor is elected and qualified.

An admission of guilt of a criminal offense that would, upon conviction, disqualify the holder of an elective office from holding that office, in the form of a written agreement with State or federal prosecutors to plead guilty to a felony, bribery, perjury, or other infamous crime under State or federal law, shall constitute a resignation from that office, effective at the time the plea agreement is made. For purposes of this Section, a conviction for an offense that disqualifies the holder of an elective office from holding that office shall occur on the date of the return of a guilty verdict or, in the case of a trial by the court, the entry of a finding of guilt.

This Section does not apply to any elected or appointed officers or officials of any municipality having a population under 500,000.

(Source: P.A. 86-1435; 88-419, § 4; 88-670, § 3-5; 90-707, § 5; 94-529, § 3; 95-646, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 25-2.

Cross References.

As to vacancy in the office of town assessor under the Revenue Act, see 35 ILCS 200/2-60.

As to resignations of elective offices, see 10 ILCS 5/25-1.

Effect of Amendments. The 1993 amendment by P.A. 88-419, effective August 20, 1993, in the introductory language substituted "any of the following" for "either of the following"; in the listing inserted "or her" following "Fourth - His"; and added the last paragraph.

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The 1994 amendment by P.A. 88-670, effective December 2, 1994, in subsection (4) substituted "10-20 of the Township Code" for "3-4 of the 'Township Law of 1874' " and substituted "2-5 through 2-15 of the Property Tax Code" for "1.1 through 1.12 of the 'Revenue Act of 1939', filed May 17, 1939, as amended"; and made other minor stylistic changes.

The 1998 amendment by P.A. 90-707, effective August 7, 1998, added the section catchline; and added the last sentence to the last paragraph.

The 2005 amendment by P.A. 94-529, effective August 10, 2005, added "to a township officer after disconnection as set forth in Section 15-17 of the Township Code" in (4).

The 2007 amendment by P.A. 95-646, effective January 1, 2008, added the last paragraph.

CASE NOTES

Analysis

Applicability
Infamous Crime
Resignation from Office
- Immediate Vacancy
- Salary Payment

Applicability

A prior similar provision only applied to those officers whose election was provided for in previous sections of the Act, and were by other express provisions required to take and subscribe an oath of office or to give or renew their official bond, or both, and those officers included all state and county officers, judges and clerks of courts, and members of the General Assembly. People ex rel. Johnson v. Anderson, 325 Ill. 464, 156 N.E. 471 (1927).

Infamous Crime

Where defendant's conduct in attempting to defraud both the federal and state governments certainly offended commonly accepted principles of honesty and decency, his subsequent conviction for the infamous crime rendered him ineligible to hold his office. People ex rel. City of Kankakee v. Morris, 126 Ill. App. 3d 722, 81 Ill. Dec. 718, 467 N.E.2d 589 (3 Dist. 1984).

Where public officers conspired against the political unit of which they were officials, the crime was infamous for the purposes of determining whether a vacancy had occurred under the Illinois Constitution and under this section. People ex rel. Ward v. Tomek, 54 Ill. App. 2d 197, 203 N.E.2d 744 (1 Dist. 1965).

When determining whether there is a vacancy in office due to the conviction of the office-holder of an infamous crime, the test is whether or not the act violated the commonly accepted principles of honesty and decency. People ex rel. Ward v. Tomek, 54 Ill. App. 2d 197, 203 N.E.2d 744 (1 Dist. 1965).

Where a county assessor was convicted of conspiracy to evade and evasion of personal and corporate income taxes, such a conviction constituted a conviction of an infamous crime, which

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caused a vacancy in his office as county assessor; and defendant's appeal from such conviction did not operate to stay the effect of such vacancy. People ex rel. Keenan v. McGuane, 13 Ill. 2d 520, 150 N.E.2d 168 (1958).

Resignation from Office

- Immediate Vacancy

Where the Board of Town Auditors in a special meeting unanimously voted to accept plaintiff's resignation as tax assessor, the office was immediately vacant despite failure to fill the position for several months. Gates v. Town of East Eldorado, 54 Ill. App. 3d 293, 12 Ill. Dec. 85, 369 N.E.2d 582 (5 Dist. 1977).

- Salary Payment

Once an assessor resigned his office, he was no longer entitled to be paid his salary even though the evidence showed that he had completed all the assessments for that year's taxes. Gates v. Town of East Eldorado, 54 Ill. App. 3d 293, 12 Ill. Dec. 85, 369 N.E.2d 582 (5 Dist. 1977).

OPINIONS OF ATTORNEY GENERAL

Analysis

Temporary Suspension of Professional License
Vacancy
- Community College District Trustee

Temporary Suspension of Professional License

For purposes of this section, the temporary suspension of a State's Attorney's law license does not work a vacancy in the office. 2004 Op. Atty. Gen. (04-001).

Vacancy

- Community College District Trustee

A vacancy in the office of community college district trustee occurs under 110 ILCS 805/3-7 when the officeholder ceases to be an actual resident to the board of which he or she was elected. 1996 Op. Atty. Gen. (96-012).

RESEARCH REFERENCES

What constitutes conviction within statutory or constitutional provision making conviction of crime ground for disqualification for, removal from, or vacancy in, public office. 10 ALR5th 139.

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§ 10 ILCS 5/25-3. [Authority to determine vacancy]

Sec. 25-3. (a) Whenever it is alleged that a vacancy in any office exists, the officer, body, or county board who has authority to fill the vacancy by appointment, or to order an election to fill such vacancy, shall have power to determine whether or not the facts occasioning such vacancy exist.

(b) On or before the 100th day previous to the day of election for which judicial candidates are to be nominated:

(1) the Chief Justice of the Supreme Court shall certify to the State Board of Elections the names of all judges who have died, resigned, retired or forfeited their office since the last general election and whose vacancies will be filled at the next general election.

(2) the secretary of the Illinois Courts Commission shall certify to the State Board of Elections the names of judges who have been removed from office and whose vacancies will be filled at the next general election.

(3) the Secretary of State shall certify to the State Board of Elections the names of judges who were eligible to stand for retention at the next general election, but failed to file a declaration of candidacy to succeed themselves in office or, having timely filed such a declaration, withdrew it.

(4) the State Board of Elections shall determine whether the General Assembly has created new judgeships which are to be filled at the next general election. If one of the events described in subsection (a) of Section 2A-9 of this Code [10 ILCS 5/2A-9] occurs between the 100th day and the 92nd day previous to the day of election for which judicial candidates are to be nominated, the appropriate aforementioned officer shall promptly certify the vacancy to the State Board of Elections.

(c) Except with regard to new judgeships which have been created by the General Assembly, the State Board of Elections may rely upon the certifications from the Supreme Court, the Illinois Courts Commission and the Secretary of State to determine (1) when vacancies in judicial office exist and (2) the judicial positions for which elections are to be held.

(Source: P.A. 86-1348.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 25-3.

CASE NOTES

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Analysis
Special Election
State Elections Board
Town Supervisors

Special Election

Every election called to fill a vacancy is a special election, and the fact that it is held on the same day as the general election does not change its character. People ex rel. Anderson v. Czarnecki, 312 Ill. 271, 143 N.E. 840 (1924).

State Elections Board

Trial court erred in declaring that a public law, which amended the Circuit Courts Act, 705 ILCS 35/1 et seq., was unconstitutional for reconsidering and eliminating three judgeships that appeared to have been authorized by earlier legislation and which would have been part of an upcoming primary election; while the state elections board, part of the executive branch, had the authority to determine whether a statute created new judgeships, the Illinois General Assembly had the authority to create such a statute in the first instance and could reconsider and eliminate a judgeship it had authorized, which meant that the Illinois General Assembly had not violated the separation of powers doctrine nor had it been shown that public act was impermissible special legislation or that it violated the equal protection or due process doctrines. Bridges v. State Bd. of Elections, 222 Ill. 2d 482, 305 Ill. Dec. 640, 856 N.E.2d 445, 2006 Ill. LEXIS 1117 (2006).

Town Supervisors

A vacancy in the office of town supervisor could not be filled at an annual town meeting. People v. Pillman et al., 284 Ill. App. 287, 1 N.E.2d 788 (4 Dist. 1936).

Article 28.

Submitting Public Questions

§ 10 ILCS 5/28-1. [Applicability; ballot; number of questions]

Sec. 28-1. The initiation and submission of all public questions to be voted upon by the electors of the State or of any political subdivision or district or precinct or combination of precincts shall be subject to the provisions of this Article.

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Questions of public policy which have any legal effect shall be submitted to referendum only as authorized by a statute which so provides or by the Constitution. Advisory questions of public policy shall be submitted to referendum pursuant to Section 28-5 [10 ILCS 5/28-5] or pursuant to a statute which so provides.

The method of initiating the submission of a public question shall be as provided by the statute authorizing such public question, or as provided by the Constitution.

All public questions shall be initiated, submitted and printed on the ballot in the form required by Section 16-7 of this Act [10 ILCS 5/16-7], except as may otherwise be specified in the statute authorizing a public question.

Whenever a statute provides for the initiation of a public question by a petition of electors, the provisions of such statute shall govern with respect to the number of signatures required, the qualifications of persons entitled to sign the petition, the contents of the petition, the officer with whom the petition must be filed, and the form of the question to be submitted. If such statute does not specify any of the foregoing petition requirements, the corresponding petition requirements of Section 28-6 [10 ILCS 5/28-6] shall govern such petition.

Irrespective of the method of initiation, not more than 3 public questions other than (a) back door referenda, (b) referenda to determine whether a disconnection may take place where a city coterminous with a township is proposing to annex territory from an adjacent township, (c) referenda held under the provisions of the Property Tax Extension Limitation Law in the Property Tax Code [35 ILCS 200/1-1 et seq.], or (d) referenda held under Section 2-3002 of the Counties Code [55 ILCS 5/2-3002] may be submitted to referendum with respect to a political subdivision at the same election.

If more than 3 propositions are timely initiated or certified for submission at an election with respect to a political subdivision, the first 3 validly initiated, by the filing of a petition or by the adoption of a resolution or ordinance of a political subdivision, as the case may be, shall be printed on the ballot and submitted at that election. However, except as expressly authorized by law not more than one proposition to change the form of government of a municipality pursuant to Article VII of the Constitution [Illinois Const., Art. VII, § 1] may be submitted at an election. If more than one such proposition is timely initiated or certified for submission at an election with respect to a municipality, the first validly initiated shall be the one printed on the ballot and submitted at that election.

No public question shall be submitted to the voters of a political subdivision at any regularly scheduled election at which such voters are not scheduled to cast votes for any candidates for nomination for, election to or retention in public office, except that if, in any existing or proposed political subdivision in which the submission of a public question at a regularly scheduled election is desired, the voters of only a portion of such existing or proposed political subdivision are not scheduled to cast votes for nomination for, election to or retention in public office at such election, but the voters in one or more other portions of such existing or proposed political subdivision are scheduled to cast votes for nomination for, election to or retention in public office at such election, the

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public question shall be voted upon by all the qualified voters of the entire existing or proposed political subdivision at the election.

Not more than 3 advisory public questions may be submitted to the voters of the entire state at a general election. If more than 3 such advisory propositions are initiated, the first 3 timely and validly initiated shall be the questions printed on the ballot and submitted at that election; provided however, that a question for a proposed amendment to Article IV of the Constitution [Illinois Const., Art. IV, § 1] pursuant to Section 3, Article XIV of the Constitution [Illinois Const., Art. XIV, § 3], or for a question submitted under the Property Tax Cap Referendum Law [35 ILCS 248/1-1 et seq.], shall not be included in the foregoing limitation.

(Source: P.A. 87-17; 87-919, § 15; 88-116, § 1-105; 89-510, § 5; 93-308, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 28-1.

P.A. 87-1052, § 5-30 amended the Article head, which formerly read "Submitting Questions of Public Policy".

Cross References.

As to the requirements associated with submitting a public question to be voted upon which has been initiated and certified in accordance with this section, see 10 ILCS 5/16-7.

Illinois Jurisprudence. See Illinois Jur, Municip L § 2:53.

Effect of Amendments. The 1992 amendment, effective August 15, 1992, added "or for a question submitted under the State Mandates Referendum Act," following "Article XIV of the Constitution" in the last sentence of the final paragraph.

The 1993 amendment by P.A. 88-116, effective July 23, 1993, in the last sentence of the last paragraph substituted "Property Tax Cap Referendum Law" for "State Mandates Referendum Act".

The 1996 amendment by P.A. 89-510, effective July 11, 1996, in the sixth paragraph substituted "Law in the Property Tax Code" for "Act".

The 2003 amendment by P.A. 93-308, effective July 23, 2003, inserted "or (d) referenda held under Section 2-3002 of the Counties Code" in the sixth paragraph.

CASE NOTES

Analysis

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Constitutionality
In General
Applicability
- In General
- Election District
Library
- Library Construction
- Three Limitation Rule
Bond Propositions
Construction
- In General
- With Other Laws
Referenda
Three Question Limit
- De Minimus Burden
- Not Arbitrary

Constitutionality

Suit filed by plaintiffs, who unsuccessfully sought to place an advisory question on the Illinois ballot, was properly dismissed because 10 ILCS 5/28-1 to 10 ILCS 5/28-13, the Illinois advisory question laws, were not so onerous as to violate U.S. Const. Amend. I. Illinois was not constitutionally required to allow citizens to place advisory questions on the ballot, it could impose reasonable requirements on the advisory question process, in order to prevent ballot clutter, and the requirements imposed under 10 ILCS 5/28-1 to 5/28-13, were reasonable. Protect Marriage Ill. v. Orr, F.3d , 2006 U.S. App. LEXIS 22645 (7th Cir. Sept. 6, 2006).

10 ILCS 5/28-1 to 10 ILCS 5/28-13, the Illinois advisory question laws, are not so onerous as to violate the U.S. Const. Amend. I rights of Illinois citizens: (1) Illinois does have any federal constitutional obligation to allow citizens to place advisory questions on the ballot; (2) Illinois can impose reasonable requirements on the advisory question process, in order to prevent ballot clutter, which can engender voter confusion; and (3) the requirements imposed under 10 ILCS 5/28-1 to 10 ILCS 5/28-13, including the requirements as to signatures, are reasonable. Protect Marriage Ill. v. Orr, F.3d , 2006 U.S. App. LEXIS 22645 (7th Cir. Sept. 6, 2006).

Restrictions on citizen-initiated advisory questions, pursuant to 10 ILCS 5/28-1 and 10 ILCS 5/28-6, exclusive of the 25% signature requirement, did not unconstitutionally impair plaintiff's First or Fourteenth Amendment rights. Georges v. Carney, 546 F. Supp. 469 (N.D. Ill.), aff'd, 691 F.2d 297 (7th Cir. 1982).

Where a private group challenged the constitutionality of a provision of the Election Code [10 ILCS 5/1-1 et seq.] regarding binding and advisory questions as violative of the First and Fourteenth Amendments, the provisions were found not to be discriminatory either directly or indirectly against the free expression of controversial ideas; the state had no constitutional obligation to provide a forum for advocating ideas of any kind. Georges v. Carney, 691 F.2d 297 (7th Cir. 1982).

The preference given to binding questions placed before the voters reflects an arbitrary judgment, that it is more important to get before the electorate questions that it can answer with legal effect than to provide another soapbox for the advocates and opponents of great causes. Georges v. Carney, 691 F.2d 297 (7th Cir. 1982).

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In General

The submission of binding questions to the electorate is a technique of direct, as distinct from representative, democracy; it allows the people to vote directly for a law rather than indirectly by voting for the lawmaker, but a state does not obligate itself to allow the ballot also to be used as a means of pure advocacy. Georges v. Carney, 691 F.2d 297 (7th Cir. 1982).

Direct democracy is not an interference with the marketplace of ideas; it therefore does not put the state under an obligation to compensate for such an interference by taking measures to promote or enlarge that marketplace, as by allowing the ballot to be used to take official polls on controversial issues of public policy. Georges v. Carney, 691 F.2d 297 (7th Cir. 1982).

Applicability

- In General

Trial court erred in concluding that while certain statutory procedures applied to collecting enough signatures to put an issue on a local election ballot, those same procedures did not apply when the people who supplied those signatures sought to revoke them as the Election Code controlled all aspects of a public question to be voted upon by the electors of Illinois, or any of its political subdivisions, districts, or precincts; accordingly, since the proper procedures were not followed regarding the revocation of signatures, the trial court should have concluded the signatures were not properly revoked and permitted the issue to be placed on the ballot. Mashni Corp. v. Laski, 351 Ill. App. 3d 727, 286 Ill. Dec. 653, 814 N.E.2d 879, 2004 Ill. App. LEXIS 735 (1 Dist. 2004), appeal denied, 212 Ill. 2d 534, 291 Ill. Dec. 709, 824 N.E.2d 285 (2004).

- Election District

Limitation of three public questions per election does not apply to an election district or precinct but only applies to a political subdivision. Chambers v. Board of Election Comm'rs, 183 Ill. App. 3d 567, 131 Ill. Dec. 914, 539 N.E.2d 267 (1 Dist. 1989).

Library

- Library Construction

Where village placed question of whether funds should be used to construct and equip a public library and voters approved, the village obtained approval of the measure "in accord with then applicable state and local laws". Xinos v. Village of Oak Brook, 298 Ill. App. 3d 520, 232 Ill. Dec. 576, 698 N.E.2d 667 (2 Dist. 1998), appeal denied, 182 Ill. 2d 573, 236 Ill. Dec. 676, 707 N.E.2d 1246 (1999).

- Three Limitation Rule

When the three limitation rule is read in conjunction with the other provisions of this section, it is clear that the legislature's intent was for it to apply only to political subdivisions and not to districts. Foster v. Chicago Bd. of Elections Comm'rs, 176 Ill. App. 3d 776, 126 Ill. Dec. 293, 531 N.E.2d 920 (1 Dist. 1988).

Bond Propositions

The provision which prohibits the submission of more than three public policy questions at the same election did not make it illegal to submit several special propositions for bonds at one election. Bilek v. City of Chicago, 396 Ill. 445, 71 N.E.2d 789 (1947).

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Construction

- In General

Under former Ill. Rev. Stat., ch. 46, paras. 334, 335 (see now 10 ILCS 5/28-1 et seq.), the power to register an expression of opinion on questions of public policy was not analogous to the initiative and referendum. City v. Hart, 306 Ill. App. 621, 29 N.E.2d 678 (3 Dist. 1940).

- With Other Laws

Where, with respect to the three limitation rule, only the validity of an election itself was attacked and not its results, the 10-day contest period provided by the Liquor Control Act in 235 ILCS 5/9-19 applied. Foster v. Chicago Bd. of Elections Comm'rs, 176 Ill. App. 3d 776, 126 Ill. Dec. 293, 531 N.E.2d 920 (1 Dist. 1988).

Referenda

Although the right to place a question on the ballot is not fundamental, once the state decided to confer such right, it became obligated to do so in a constitutional manner. Georges v. Carney, 546 F. Supp. 469 (N.D. Ill.), aff'd, 691 F.2d 297 (7th Cir. 1982).

There is no fundamental right to require a referendum whereby a citizen-initiated question of public policy may be submitted for voter consideration under Illinois law. Georges v. Carney, 546 F. Supp. 469 (N.D. Ill.), aff'd, 691 F.2d 297 (7th Cir. 1982).

Three Question Limit

- De Minimus Burden

Limit of three public questions, in conjunction with the holdover clause, presented only a de minimus burden on a citizen's access to the ballot. Georges v. Carney, 546 F. Supp. 469 (N.D. Ill.), aff'd, 691 F.2d 297 (7th Cir. 1982).

- Not Arbitrary

The requirement that only the first three validly initiated questions gain a ballot slot was not improper, since by utilizing a first-come/first-serve procedure, a determination based on the content of the question or a weighing of its source was avoided. Georges v. Carney, 546 F. Supp. 469 (N.D. Ill.), aff'd, 691 F.2d 297 (7th Cir. 1982).

LEGAL PERIODICALS

For note, "The Election Ballot as a Forum for the Expression of Ideas - Georges v. Carney," see 32 De Paul L. Rev. 901 (1983).

§ 10 ILCS 5/28-2. [Petition; time of filing; affidavit]

Sec. 28-2. (a) Except as otherwise provided in this Section, petitions for the submission of public questions to referendum must be filed with the appropriate officer or board not

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less than 92 days prior to a regular election to be eligible for submission on the ballot at such election; and petitions for the submission of a question under Section 18-120 of the Property Tax Code [35 ILCS 200/18-120] must be filed with the appropriate officer or board not more than 10 months nor less than 6 months prior to the election at which such question is to be submitted to the voters.

(b) However, petitions for the submission of a public question to referendum which proposes the creation or formation of a political subdivision must be filed with the appropriate officer or board not less than 122 days prior to a regular election to be eligible for submission on the ballot at such election.

(c) Resolutions or ordinances of governing boards of political subdivisions which initiate the submission of public questions pursuant to law must be adopted not less than 79 days before a regularly scheduled election to be eligible for submission on the ballot at such election.

(d) A petition, resolution or ordinance initiating the submission of a public question may specify a regular election at which the question is to be submitted, and must so specify if the statute authorizing the public question requires submission at a particular election. However, no petition, resolution or ordinance initiating the submission of a public question, other than a legislative resolution initiating an amendment to the Constitution, may specify such submission at an election more than one year, or 15 months in the case of a back door referendum as defined in subsection (f), after the date on which it is filed or adopted, as the case may be. A petition, resolution or ordinance initiating a public question which specifies a particular election at which the question is to be submitted shall be so limited, and shall not be valid as to any other election, other than an emergency referendum ordered pursuant to Section 2A-1.4 [10 ILCS 5/2A-1.4].

(e) If a petition initiating a public question does not specify a regularly scheduled election, the public question shall be submitted to referendum at the next regular election occurring not less than 92 days after the filing of the petition, or not less than 122 days after the filing of a petition for referendum to create a political subdivision. If a resolution or ordinance initiating a public question does not specify a regularly scheduled election, the public question shall be submitted to referendum at the next regular election occurring not less than 79 days after the adoption of the resolution or ordinance.

(f) In the case of back door referenda, any limitations in another statute authorizing such a referendum which restrict the time in which the initiating petition may be validly filed shall apply to such petition, in addition to the filing deadlines specified in this Section for submission at a particular election. In the case of any back door referendum, the publication of the ordinance or resolution of the political subdivision shall include a notice of (1) the specific number of voters required to sign a petition requesting that a public question be submitted to the voters of the subdivision; (2) the time within which the petition must be filed; and (3) the date of the prospective referendum. The secretary or clerk of the political subdivision shall provide a petition form to any individual requesting one. The legal sufficiency of that form, if provided by the secretary or clerk of the political subdivision, cannot be the basis of a challenge to placing the back door referendum on the ballot. As used herein, a "back door referendum" is the submission of

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a public question to the voters of a political subdivision, initiated by a petition of voters or residents of such political subdivision, to determine whether an action by the governing body of such subdivision shall be adopted or rejected.

(g) A petition for the incorporation or formation of a new political subdivision whose officers are to be elected rather than appointed must have attached to it an affidavit attesting that at least 122 days and no more than 152 days prior to such election notice of intention to file such petition was published in a newspaper published within the proposed political subdivision, or if none, in a newspaper of general circulation within the territory of the proposed political subdivision in substantially the following form:

NOTICE OF PETITION TO FORM A NEW .....

Residents of the territory described below are notified that a petition will or has been filed in the Office of ..... requesting a referendum to establish a new ....., to be called the .....

* The officers of the new ..... will be elected on the same day as the referendum. Candidates for the governing board of the new ..... may file nominating petitions with the officer named above until .....

The territory proposed to comprise the new ..... is described as follows:

(description of territory included in petition)

(signature) .....

Name and address of person or persons proposing the new political subdivision.

* Where applicable.

Failure to file such affidavit, or failure to publish the required notice with the correct information contained therein shall render the petition, and any referendum held pursuant to such petition, null and void.

Notwithstanding the foregoing provisions of this subsection (g) or any other provisions of this Code, the publication of notice and affidavit requirements of this subsection (g) shall not apply to any petition filed under Article 7 or 11E of the School Code [105 ILCS 5/7-1 et seq. or 105 ILCS 5/11E-5 et seq.] nor to any referendum held pursuant to any such petition, and neither any petition filed under any of those Articles nor any referendum held pursuant to any such petition shall be rendered null and void because of the failure to file an affidavit or publish a notice with respect to the petition or referendum as required under this subsection (g) for petitions that are not filed under any of those Articles of the School Code [105 ILCS 5/1-1 et seq.].

(Source: P.A. 86-1253; 87-185; 88-670, § 3-5; 90-459, § 5; 94-30, § 5; 94-578, § 5; 94-1019, § 5; 96-1008, § 5.)

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Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 28-2.

Section 90 of P.A. 94-1019 contains a savings provision, and section 95 contains a "no acceleration or delay" provision.

Cross References.

For provisions for the failure to publish notice of intention to file a petition or to attach to the petition an affidavit attesting to the publication of that notice as required under this section, see 105 ILCS 5/11D-2.

Illinois Jurisprudence. See Illinois Jur, Municip L § 2:19, § 13:50.

Effect of Amendments. The 1994 amendment by P.A. 88-670, effective December 2, 1994, in subsection (a) substituted "18-120 of the Property Tax Code" for "162a of the 'Revenue Act of 1939', filed May 17, 1939, as amended".

The 1997 amendment by P.A. 90-459, effective August 17, 1997, in subsection (g), in the third paragraph inserted "7".

The 2005 amendment by P.A. 94-30, effective June 14, 2005, added the next-to-last sentence in (f).

The 2005 amendment by P.A. 94-578, effective August 12, 2005, added ", or 15 months in the case of a back door referendum as defined in subsection (f)" in (d).

The 2006 amendment by P.A. 94-1019, effective July 10, 2006, in (g) substituted "Article 7 or 11E" for "Article 7 or 7A, 11A, 11B, or 11D".

The 2010 amendment by P.A. 96-1008, effective July 6, 2010, substituted "92 days" for "78 days" in (a) and (e); substituted "122 days" for "108 days" in (b) and (e) and in the introductory language of (g); substituted "79 days" for "65 days" in (c) and (e); and substituted "152 days" for "138 days" in the introductory language of (g).

CASE NOTES

Analysis

Construction
Legislative Intent
Notice
Petition
Time of Filing
Validity of Election

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Construction

Under former Ill. Rev. Stat., ch. 46, paras. 334, 335 (see now 10 ILCS 5/28-1 et seq.), the power to register an expression of opinion on questions of public policy was not analogous to the initiative and referendum. City v. Hart, 306 Ill. App. 621, 29 N.E.2d 678 (3 Dist. 1940).

This section does not conflict with 70 ILCS 1205/13-1, relating to a park district's designation of election. Shick v. Dixmoor Park Dist., 184 Ill. App. 3d 513, 132 Ill. Dec. 691, 540 N.E.2d 431 (1 Dist. 1989).

Legislative Intent

The legislature in this section sought to avoid the confusion emanating from circulating a petition setting a proposition for consideration at one election which does not take place on the appointed day, as well as precluding the unfairness inherent in obscuring consideration of important questions by shifting the elections thereon from one date to another or still others. Korte-Reinheimer v. City Council, 94 Ill. App. 3d 219, 49 Ill. Dec. 763, 418 N.E.2d 783 (1 Dist. 1981).

Notice

Because the election of the municipal officers could occur at a subsequent date to the consideration of the referendum of incorporation, under 65 ILCS 5/2-3-7 of the Municipal Code, the requirement of simultaneous elections under 10 ILCS 5/2A-1.2(f) of the Election Code was not applicable; because simultaneous elections were not required, the notice provision of this section was likewise not applicable, therefore, the incorporators' notice was correct, and the petition and referendum on incorporation were valid. In re Village of Godfrey, 243 Ill. App. 3d 915, 183 Ill. Dec. 943, 612 N.E.2d 870 (5 Dist. 1993).

Petition

In a case where the village municipal electoral board directed that a public question be printed on the ballot for the March 16, 2004, primary election in the village, the board's decision was not against the manifest weight of the evidence where it made its factual determinations as to the validity of the signatures based on the affidavits of those voters attesting to the signatures as theirs. Bergman v. Vachata, 347 Ill. App. 3d 339, 282 Ill. Dec. 934, 807 N.E.2d 558, 2004 Ill. App. LEXIS 234 (1 Dist. 2004).

In a case where the village municipal electoral board directed that a public question be printed on the ballot for the March 16, 2004, primary election in the village, the fact that some voters printed their names on the petition, instead of "signing" in cursive, did not violate the Illinois Election Code, 10 ILCS 5/1-1 et seq., because there was substantial compliance where there was no evidence that the voters did not sign "in their own proper person only." Bergman v. Vachata, 347 Ill. App. 3d 339, 282 Ill. Dec. 934, 807 N.E.2d 558, 2004 Ill. App. LEXIS 234 (1 Dist. 2004).

In a case where the village municipal electoral board directed that a public question be printed on the ballot for the March 16, 2004, primary election in the village, the lack of a circulator's signature and the lack of the word "knowledge" in the circulator's affidavit did not violate the Illinois Election Code, 10 ILCS 5/1-1 et seq., because the circulator's signature was found within the notary's jurat, and the circulators' affidavits were in substantial compliance with the Illinois Election Code where they contained the phrase "to the best of his or her belief." Bergman v. Vachata, 347 Ill. App. 3d 339, 282 Ill. Dec. 934, 807 N.E.2d 558, 2004 Ill. App. LEXIS 234 (1 Dist. 2004).

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Election held pursuant to appellee's petition to disconnect certain territory from one park district and annex it to another complied with the requirements of this Act. Chicago Ridge Park Dist. v. Oak Lawn Park Dist., 112 Ill. App. 3d 364, 68 Ill. Dec. 46, 445 N.E.2d 494 (1 Dist. 1983).

Time of Filing

As long as the statutory requirements of this section and the Park District Code in 70 ILCS 1205/2-2 have been substantially met, a petition for formation of a park district may be filed with a circuit court prior to publication of notice to residents. Widman v. Full, 202 Ill. App. 3d 765, 147 Ill. Dec. 736, 559 N.E.2d 1076 (3 Dist. 1990).

Where a petition was filed with an affidavit attached which stated that a notice of intent to petition for the formation of a new park district had been delivered to newspaper, and where the record showed that the notice to the residents was published exactly 138 days prior to the election, the filing of the petition with the affidavit and the subsequent publication substantially complied with this section and the Park District Code in 70 ILCS 1205/2-2. Widman v. Full, 202 Ill. App. 3d 765, 147 Ill. Dec. 736, 559 N.E.2d 1076 (3 Dist. 1990).

A petition for organization of a park district may be filed before its publication. Citizens' Committee v. Village of Lake in the Hills, 103 Ill. App. 3d 1056, 59 Ill. Dec. 722, 432 N.E.2d 306 (2 Dist. 1982).

Validity of Election

Generally, an election should be held at the time and in the place provided by law in order that it have validity. Widman v. Village of Seneca, 224 Ill. App. 3d 614, 167 Ill. Dec. 132, 587 N.E.2d 14 (3 Dist. 1992).

§ 10 ILCS 5/28-3. Form of petition for public question

Sec. 28-3. Form of petition for public question. Petitions for the submission of public questions shall consist of sheets of uniform size and each sheet shall contain, above the space for signature, an appropriate heading, giving the information as to the question of public policy to be submitted, and specifying the state at large or the political subdivision or district or precinct or combination of precincts or other territory in which it is to be submitted and, where by law the public question must be submitted at a particular election, the election at which it is to be submitted. In the case of a petition for the submission of a public question described in subsection (b) of Section 28-6 [10 ILCS 5/28-6], the heading shall also specify the regular election at which the question is to be submitted and include the precincts included in the territory concerning which the public question is to be submitted, as well as a common description of such territory in plain and nonlegal language, such description to describe the territory by reference to streets, natural or artificial landmarks, addresses or any other method which would enable a voter signing the petition to be informed of the territory concerning which the question is to be submitted. The heading of each sheet shall be the same. Such petition shall be signed by the registered voters of the political subdivision or district or precinct or combination of precincts in which the question of public policy is to be submitted in their own proper persons only, and opposite the signature of each signer his residence address shall be

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written or printed, which residence address shall include the street address or rural route number of the signer, as the case may be, as well as the signer's county, and city, village or town, and state; provided that the county or city, village or town, and state of residence of such electors may be printed on the petition forms where all of the such electors signing the petition reside in the same county or city, village or town, and state. Standard abbreviations may be used in writing the residence address, including street number, if any. No signature shall be valid or be counted in considering the validity or sufficiency of such petition unless the requirements of this Section are complied with.

At the bottom of each sheet of such petition shall be added a circulator's statement, signed by a person 18 years of age or older who is a citizen of the United States, stating the street address or rural route number, as the case may be, as well as the county, city, village or town, and state; certifying that the signatures on that sheet of the petition were signed in his or her presence and are genuine, and that to the best of his or her knowledge and belief the persons so signing were at the time of signing the petition registered voters of the political subdivision or district or precinct or combination of precincts in which the question of public policy is to be submitted and that their respective residences are correctly stated therein. Such statement shall be sworn to before some officer authorized to administer oaths in this State.

Such sheets, before being filed with the proper officer or board shall be bound securely and numbered consecutively. The sheets shall not be fastened by pasting them together end to end, so as to form a continuous strip or roll. All petition sheets which are filed with the proper local election officials, election authorities or the State Board of Elections shall be the original sheets which have been signed by the voters and by the circulator, and not photocopies or duplicates of such sheets. A petition, when presented or filed, shall not be withdrawn, altered, or added to, and no signature shall be revoked except by revocation in writing presented or filed with the board or officer with whom the petition is required to be presented or filed, and before the presentment or filing of such petition, except as may otherwise be provided in another statute which authorize the public question. Whoever forges any name of a signer upon any petition shall be deemed guilty of a forgery, and on conviction thereof, shall be punished accordingly.

In addition to the foregoing requirements, a petition proposing an amendment to Article IV of the Constitution [Illinois Const., Art. IV, § 1] pursuant to Section 3 of Article XIV of the Constitution [Illinois Const., Art. XIV, § 3] or a petition proposing a question of public policy to be submitted to the voters of the entire State shall be in conformity with the requirements of Section 28-9 of this Article [10 ILCS 5/28-9].

If multiple sets of petitions for submission of the same public questions are filed, the State Board of Elections, appropriate election authority or local election official where the petitions are filed shall within 2 business days notify the proponent of his or her multiple petition filings and that proponent has 3 business days after receipt of the notice to notify the State Board of Elections, appropriate election authority or local election official that he or she may cancel prior sets of petitions. If the proponent notifies the State Board of Elections, appropriate election authority or local election official, the last set of petitions filed shall be the only petitions to be considered valid by the State Board of Elections, appropriate election authority or local election official. If the proponent fails to

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notify the State Board of Elections, appropriate election authority or local election official then only the first set of petitions filed shall be valid and all subsequent petitions shall be void.

(Source: P.A. 86-867; 87-1052, § 3; 91-57, § 5; 92-129, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 28-3.

Cross References.

As to the application of this section see the following sections: as to a referendum to consolidate soil and water conservation districts, see 70 ILCS 405/26a.1; as to a referendum forming sub-districts of a soil and water conservation district, see 70 ILCS 405/26b.3; as to a referendum requesting disconnection from the Illinois Valley Regional Port Authority, see 70 ILCS 1815/3.1; as to a referendum on the adoption of a merit system for deputies in the office of the sheriff, see 55 ILCS 5/3-8002.

Effect of Amendments. The 1992 amendment, effective September 11, 1992, inserted "who has been a registered voter at all times he or she circulated the petition" following "signed by a registered voter" near the beginning of the second paragraph; and added the last paragraph.

The 1999 amendment by P.A. 91-57, effective June 30, 1999, added the section heading; and substituted "county, and city, village or town, and state" for "city, village or town" in the first and second paragraphs.

The 2001 amendment by P.A. 92-129, effective July 20, 2001, in the first sentence of the second paragraph inserted "circulator's", substituted "person 18 years of age or older who is a citizen of the United States" for "registered voter, who has been a registered voter at all times he or she circulated the petition, of the political subdivision or district or precinct or combination of precincts in which the question of public policy is to the submitted" before "stating the street address", deleted "of the voter" following "rural route number", substituted "the county, city" for "the voter's county, and city" following "as well as the", and made gender-neutralizing changes.

CASE NOTES

Analysis

Constitutionality
Applicability
- Park District
- School District
Circuit Court Jurisdiction
Headings
Jurat

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Local Option Elections
Oath Requirements
Petition
- Compliance
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- Purpose
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Revocation

Constitutionality

The penalty provision of former section 28-1.1 of this chapter (see now this section), which disqualified an entire sheet of 24 proper and valid signatures because the 25th was improper, was a constitutionally impermissible limitation upon the right of initiative contained in Ill. Const. (1970), Art. XIV, § 3. Coalition for Political Honesty v. State Bd. of Elections, 83 Ill. 2d 236, 47 Ill. Dec. 363, 415 N.E.2d 368 (1980).

Applicability

- Park District

A petition to form a new park district must comply with the mandatory certification and oath requirements of this section. In re New Park Dist., 182 Ill. App. 3d 973, 131 Ill. Dec. 474, 538 N.E.2d 849 (1 Dist. 1989).

This section does not govern the number of signatures and qualifications of persons entitled to sign a petition for a new park district since the Park District Code (70 ILCS 1205/1-1) provides more specific requirements on the same topic. Citizens' Committee v. Village of Lake in the Hills, 103 Ill. App. 3d 1056, 59 Ill. Dec. 722, 432 N.E.2d 306 (2 Dist. 1982).

- School District

The requirements of this section apply to a petition for consolidation of school districts. Adsit v. Sanders, 157 Ill. App. 3d 416, 109 Ill. Dec. 679, 510 N.E.2d 547 (4 Dist. 1987).

This section's requirements were not applicable in determining the validity of a petition for school district detachment brought pursuant to the School Code in 105 ILCS 5/7-6. Shapiro v. Regional Bd. of Sch. Trustees, 116 Ill. App. 3d 397, 71 Ill. Dec. 915, 451 N.E.2d 1282 (1 Dist. 1983).

Circuit Court Jurisdiction

Circuit court was without jurisdiction to order withdrawal of petitions to place proposition on ballot. League of Women Voters v. Harkrader, 127 Ill. App. 3d 438, 82 Ill. Dec. 721, 469 N.E.2d 255 (3 Dist. 1984).

Headings

A petition for the consolidation of school districts was dismissed where it did not comply with the provisions of this section requiring an informative heading on the petition. Adsit v. Sanders, 157 Ill. App. 3d 416, 109 Ill. Dec. 679, 510 N.E.2d 547 (4 Dist. 1987).

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Jurat

In a local option election, where it was undisputed that a petition circulator signed the certification on each petition sheet, but it was also undisputed that two notary publics erroneously completed the jurat, where one of the notaries printed his or her name in the space where the name of the circulator should appear and thus a notary's name appeared in the jurat twice where it should have appeared only once, and it was a consistent mistake that appeared on each of the petition's 39 sheets, this defect did not invalidate the petition. Cintuc, Inc. v. Kozubowski, 230 Ill. App. 3d 969, 172 Ill. Dec. 822, 596 N.E.2d 101 (1 Dist. 1992).

While the statutory forms of jurat are sufficient for a local option referendum petition, those forms are merely directory and not mandatory. Cintuc, Inc. v. Kozubowski, 230 Ill. App. 3d 969, 172 Ill. Dec. 822, 596 N.E.2d 101 (1 Dist. 1992).

Local Option Elections

A petition for a local option election must meet the applicable requirements of Article 28 of the Election Code, specifically this section. Cintuc, Inc. v. Kozubowski, 230 Ill. App. 3d 969, 172 Ill. Dec. 822, 596 N.E.2d 101 (1 Dist. 1992).

Oath Requirements

Although circulators of a petition took their oath before public notaries who had changed their place of residence to another county and were without "de jure" authority to administer the oath, there was substantial compliance with this section since circulators believed the notaries had the authority to administer the oath and the integrity of the political process was not harmed. Shipley v. Stephenson County Electoral Bd., 130 Ill. App. 3d 900, 85 Ill. Dec. 945, 474 N.E.2d 905 (2 Dist. 1985).

Petition

Where 12 of the 60 pages of the public question petition were unbound and the remainder of the pages were bound in several groups by paperclips, the citizen failed to substantially comply with the requirement under 10 ILCS 5/28-3 that the petition be securely bound; since 20 percent of the document was unbound, substantial compliance was not established. Jakstas v. Koske, 352 Ill. App. 3d 861, 288 Ill. Dec. 75, 817 N.E.2d 200, 2004 Ill. App. LEXIS 1263 (2 Dist. 2004).

Where 10 ILCS 5/28-3 contains mandatory language requiring that a public question petition be bound, substantial compliance with that requirement is all that is necessary. Jakstas v. Koske, 352 Ill. App. 3d 861, 288 Ill. Dec. 75, 817 N.E.2d 200, 2004 Ill. App. LEXIS 1263 (2 Dist. 2004).

- Compliance

In a case where the village municipal electoral board directed that a public question be printed on the ballot for the March 16, 2004, primary election in the village, the board's decision was not against the manifest weight of the evidence where it made its factual determinations as to the validity of the signatures based on the affidavits of those voters attesting to the signatures as theirs. Bergman v. Vachata, 347 Ill. App. 3d 339, 282 Ill. Dec. 934, 807 N.E.2d 558, 2004 Ill. App. LEXIS 234 (1 Dist. 2004).

In a case where the village municipal electoral board directed that a public question be printed on the ballot for the March 16, 2004, primary election in the village, the fact that some voters printed their names on the petition, instead of "signing" in cursive, did not violate the Illinois Election

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Code, 10 ILCS 5/1-1 et seq., because there was substantial compliance where there was no evidence that the voters did not sign "in their own proper person only." Bergman v. Vachata, 347 Ill. App. 3d 339, 282 Ill. Dec. 934, 807 N.E.2d 558, 2004 Ill. App. LEXIS 234 (1 Dist. 2004).

In a case where the village municipal electoral board directed that a public question be printed on the ballot for the March 16, 2004, primary election in the village, the lack of a circulator's signature and the lack of the word "knowledge" in the circulator's affidavit did not violate the Illinois Election Code, 10 ILCS 5/1-1 et seq., because the circulator's signature was found within the notary's jurat, and the circulators' affidavits were in substantial compliance with the Illinois Election Code where they contained the phrase "to the best of his or her belief." Bergman v. Vachata, 347 Ill. App. 3d 339, 282 Ill. Dec. 934, 807 N.E.2d 558, 2004 Ill. App. LEXIS 234 (1 Dist. 2004).

Where the citizen handed in a partially unbound public question petition in violation of 10 ILCS 5/28-3, the clerk did not correct the error by placing a large binder clip on the petition, as the citizen was required to comply with § 28-3, not the clerk. Jakstas v. Koske, 352 Ill. App. 3d 861, 288 Ill. Dec. 75, 817 N.E.2d 200, 2004 Ill. App. LEXIS 1263 (2 Dist. 2004).

Requirement in 10 ILCS 5/28-3 that the circulator of a petition to place a referenda on the election ballot attest that the signers were registered voters was mandatory; however, that the opening line of each petition, "We, the undersigned, being registered voters..." satisfied that requirement. Brennan v. Kolman, 335 Ill. App. 3d 716, 269 Ill. Dec. 847, 781 N.E.2d 644, 2002 Ill. App. LEXIS 1114 (1 Dist. 2002).

The integrity of the electoral process was not in jeopardy and the address requirement of this section was substantially complied with when candidate's address, although not on petition sheets 50, 52, and 53, was available on sheet 51. Sakonyi v. Lindsey, 261 Ill. App. 3d 821, 199 Ill. Dec. 605, 634 N.E.2d 444 (5 Dist. 1994).

The evidence was sufficient to sustain the trial court's finding that a petition did not meet the requirements of former Ill. Rev. Stat., ch. 24, para. 19-58 (see now this section), since the right to contest an election was purely statutory and the procedure prescribed by statute was required to be strictly followed. City of Olney v. City of Olney, 322 Ill. App. 43, 53 N.E.2d 728 (4 Dist. 1944).

Residential Address

- Purpose

One purpose of the address requirement is to protect the integrity of the electoral process by furnishing the circulator's address which enables the board to locate her, question her about the signatures, and hold her responsible for her oath. Sakonyi v. Lindsey, 261 Ill. App. 3d 821, 199 Ill. Dec. 605, 634 N.E.2d 444 (5 Dist. 1994).

- Rural Route Number

A particular rural route is a proper statement of address for a circulator of a petition. Board of Educ. v. Regional Bd. of Sch. Trustees, 247 Ill. App. 3d 555, 187 Ill. Dec. 234, 617 N.E.2d 442 (4 Dist.), appeal denied, 152 Ill. 2d 554, 190 Ill. Dec. 883, 622 N.E.2d 1200 (1993).

Revocation

Trial court erred in striking several signatures from petition and enjoining the election board from placing the issue about whether to prohibit the retail sale of alcoholic liquor within a particular precincts boundaries as its conclusion that signatures were validly revoked was erroneous; statutory law specified not only a procedure for placing items on the ballot for local elections, but

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also for revoking petition signatures and, since the procedure for revoking petition signatures was not met, the trial court was not entitled to find that not enough valid signatures remained to place the issue on the ballot for the upcoming local election. Mashni Corp. v. Laski, 351 Ill. App. 3d 727, 286 Ill. Dec. 653, 814 N.E.2d 879, 2004 Ill. App. LEXIS 735 (1 Dist. 2004), appeal denied, 212 Ill. 2d 534, 291 Ill. Dec. 709, 824 N.E.2d 285 (2004).

§ 10 ILCS 5/28-4. [Objections to petitions]

Sec. 28-4. The provisions of Sections 10-8 through 10-10.1 [10 ILCS 5/10-8 through 10 ILCS 5/10-10.1] relating to objections to nominating petitions, hearings on objections, and judicial review, shall apply to and govern, insofar as may be practicable, objections to petitions for the submission of questions of public policy required to be filed with local election officials and election authorities, and to petitions for proposed Constitutional amendments and statewide advisory public questions required to be filed with the State Board of Elections, except that objections to petitions for the submission of proposed Constitutional amendments and statewide advisory public questions may be filed within 42 business days after the petition is filed.

The electoral board to hear and pass on objections shall be the electoral board specified in Section 10-9 [10 ILCS 5/10-9] to have jurisdiction over objections to the nominating petitions of candidates for offices of the political subdivision in which the question of public policy is proposed to be submitted to the electors. The electoral board to hear and pass upon objections to petitions for proposed Constitutional amendments or statewide advisory public questions shall be the State Board of Elections.

Objections to petitions for the submission of public questions which are required by law to be filed with the circuit court shall be presented to and heard by the court with which such petitions are filed. In such cases, unless otherwise provided in the statute authorizing the public question, the court shall (1) set a hearing on the petition, (2) cause notice of such hearing to be published, as soon as possible after the filing of the petition but not later than 14 days after such filing and not less than 5 days before the hearing, in a newspaper of general circulation published in the political subdivision to which the public question relates and if there is no such newspaper, then in one newspaper published in the county and having a general circulation in the political subdivision, (3) conduct such hearing and entertain all objections as may be properly presented on or before such hearing date in the manner as provided in Article 10 [10 ILCS 5/10-1 et seq.] for the conduct of proceedings before electoral boards, insofar as practicable, (4) conduct further hearings as necessary to a decision on the objections properly raised, and (5) enter a final order not later than 7 days after the initial hearing.

Where a statute authorizing a public question specifies judicial procedures for the determination of the validity of such petition, or for the determination by the court as to any findings required prior to ordering the proposition submitted to referendum, the procedures specified in that statute shall govern.

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(Source: P.A. 83-999.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 28-4.

Cross References.

As to objections to petitions for the disconnection of a township from the Illinois Valley Regional Port Authority, see 70 ILCS 1815/3.1.

CASE NOTES

Analysis

Constitutionality
Excusal of Members
Final Order
Incorporation of Village
Jurisdiction
Objections to Petition
- In General
- Standing
Personal Service
Timeliness of Publication
Waiver

Constitutionality

Legislation establishing minor variances in the percentages of petitioning voters necessary to referenda on questions of home rule abandonment in Cook County, as contrasted to the other counties, neither impermissibly affected the right to vote of any citizen of the state nor created a classification that offended the traditional requirements of federal and state equal protection. Mulligan v. Dunne, 61 Ill. 2d 544, 338 N.E.2d 6 (1975).

Excusal of Members

Section 10-9 (10 ILCS 5/10-9), made applicable to the submission of referenda by this section, should have been used to excuse the members of the Electoral Board and to appoint disinterested members to hear the objections, because petitioner's referendum mounted a direct challenge to each member's position and continued employment. Anderson v. McHenry Tp., 289 Ill. App. 3d 830, 225 Ill. Dec. 56, 682 N.E.2d 1133 (2 Dist. 1997).

Final Order

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A "final order" issued pursuant to this section is a final order only as it relates to these procedural requirements; it does not necessarily constitute a final order for purposes of conferring jurisdiction on an appellate court. In re Village of Greenwood, 275 Ill. App. 3d 465, 211 Ill. Dec. 813, 655 N.E.2d 1196 (2 Dist. 1995), appeal denied, 164 Ill. 2d 565, 214 Ill. Dec. 321, 660 N.E.2d 1270 (1995).

Incorporation of Village

Even if a hearing on objections to petition under this section is required, the inquiry under 65 ILCS 5/2-3-18 into the determinations by the county board should be made before such a hearing. In re Village of Homer Glen, 288 Ill. App. 3d 1048, 224 Ill. Dec. 431, 681 N.E.2d 1052 (3 Dist. 1997).

This section, rather than excluding inquiry into the requirements of 65 ILCS 5/2-3-18, may simply mean the entire objection procedure outlined in this section is not applicable to a petition to incorporate a village because 65 ILCS 5/2-3-6 specifies judicial procedures for the determination of the validity of such petition and 65 ILCS 5/2-3-18 provides the determination by the court as to any findings required prior to ordering the proposition submitted to referendum. In re Village of Homer Glen, 288 Ill. App. 3d 1048, 224 Ill. Dec. 431, 681 N.E.2d 1052 (3 Dist. 1997).

Jurisdiction

Circuit courts do not have original jurisdiction over objections to election matters such as objections to nomination papers and referendums of public questions; electoral boards have been vested with original jurisdiction to hear election disputes. Libbra v. Madison County Reg'l Bd. of Sch. Trs., 346 Ill. App. 3d 867, 282 Ill. Dec. 290, 806 N.E.2d 265, 2004 Ill. App. LEXIS 238 (5 Dist. 2004).

Objections to Petition

- In General

Trial court should not have invalidated signatures that were on a petition requesting that the issue of whether to prohibit the retail sale of alcoholic beverages in a particular precinct be placed on the ballot for an upcoming election as the proper procedure for revoking signatures had not been followed and, thus, the allegedly invalid signatures could not be considered to have been revoked, which meant that the two corporations seeking to invalidate the petition did not show that there were a sufficient number of invalid signatures on the petition to block it from being placed on the ballot for the upcoming election. Mashni Corp. v. Laski, 351 Ill. App. 3d 727, 286 Ill. Dec. 653, 814 N.E.2d 879, 2004 Ill. App. LEXIS 735 (1 Dist. 2004), appeal denied, 212 Ill. 2d 534, 291 Ill. Dec. 709, 824 N.E.2d 285 (2004).

- Standing

Objector had standing to appeal the trial court's ruling that the election candidate properly filed the election candidate's nominating papers by securing the papers in "book form" with a paper clip, as the objector filed a verified petition claiming that the election candidate did not meet Illinois election law in filing the election candidate's nominating papers, the objector was not barred under Illinois law from challenging the election candidate in that regard, and the objector filed an appellant's brief. Bendell v. Educ. Officers Electoral Bd., 338 Ill. App. 3d 458, 272 Ill. Dec. 869, 788 N.E.2d 173, 2003 Ill. App. LEXIS 386 (1 Dist. 2003).

This section rather than 10 ILCS 5/10-8, relating to objections to petitions required to be filed with an electoral board, was applicable in determining a party's standing to contest the formation of a

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new park district; therefore party did not have to be a legal voter to have standing. Maywood Park Dist. v. Rivers, 194 Ill. App. 3d 731, 141 Ill. Dec. 354, 551 N.E.2d 347 (1 Dist. 1990).

Plaintiff had no standing to challenge the legality of city referendum, primary, and general election where plaintiff knew or could have ascertained the irregularities he sought to assert in the conduct of the referendum and the primary election but waited until 95 days after the general election to file the action. Boytor v. City of Aurora, 70 Ill. App. 3d 303, 26 Ill. Dec. 734, 388 N.E.2d 449 (2 Dist. 1979), aff'd, 81 Ill. 2d 308, 43 Ill. Dec. 1, 410 N.E.2d 1 (1980).

Personal Service

Completion of personal service is of no consequence in the matter of satisfaction of the publication requirements of this section. In re Voters, 234 Ill. App. 3d 294, 176 Ill. Dec. 893, 602 N.E.2d 839 (2 Dist. 1992).

Timeliness of Publication

The timely publication requirement in this section is mandatory. In re Voters, 234 Ill. App. 3d 294, 176 Ill. Dec. 893, 602 N.E.2d 839 (2 Dist. 1992).

Waiver

Resident who objected to a school district annexation waived his objections to the placement of an annexation referendum on a general election ballot when he tried to make his objections through the Illinois School Code, 105 ILCS 5/1-1 et seq. and not through the Illinois Election Code, 10 ILCS 5/1-1 et seq. as required under 10 ILCS 5/28-4. Libbra v. Madison County Reg'l Bd. of Sch. Trs., 346 Ill. App. 3d 867, 282 Ill. Dec. 290, 806 N.E.2d 265, 2004 Ill. App. LEXIS 238 (5 Dist. 2004).

Objectors did not waive their objections when they did not file them, in writing, within five business days after the petition to place a referendum on the ballot was filed. Nothing within the Code article covering the manner of bringing this referendum question (10 ILCS 5/6A-1 et seq.) is inconsistent with the provision of 10 ILCS 5/28-4, that at the hearing on the petition, the court may entertain all objections properly presented on or before the hearing date. In re Voters, 234 Ill. App. 3d 294, 176 Ill. Dec. 893, 602 N.E.2d 839 (2 Dist. 1992).

§ 10 ILCS 5/28-5. [Certification]

Sec. 28-5. Not less than 68 days before a regularly scheduled election, each local election official shall certify the public questions to be submitted to the voters of or within his political subdivision at that election which have been initiated by petitions filed in his office or by action of the governing board of his political subdivision.

Not less than 68 days before a regularly scheduled election, each circuit court clerk shall certify the public questions to be submitted to the voters of a political subdivision at that election which have been ordered to be so submitted by the circuit court pursuant to law. Not less than 30 days before the date set by the circuit court for the conduct of an emergency referendum pursuant to Section 2A-1.4 [10 ILCS 5/2A-1.4], the circuit court clerk shall certify the public question as herein required.

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Local election officials and circuit court clerks shall make their certifications, as required by this Section, to each election authority having jurisdiction over any of the territory of the respective political subdivision in which the public question is to be submitted to referendum.

Not less than 68 days before the next regular election, the county clerk shall certify the public questions to be submitted to the voters of the entire county at that election, which have been initiated by petitions filed in his office or by action of the county board, to the board of election commissioners, if any, in his county.

Not less than 74 days before the general election, the State Board of Elections shall certify any questions proposing an amendment to Article IV of the Constitution [Illinois Const., Art. IV, § 1] pursuant to Section 3, Article XIV of the Constitution [Illinois Const., Art. XIV, § 3] and any advisory public questions to be submitted to the voters of the entire State, which have been initiated by petitions received or filed at its office, to the respective county clerks. Not less than 62 days before the general election, the county clerk shall certify such questions to the board of election commissioners, if any, in his county.

The certifications shall include the form of the public question to be placed on the ballot, the date on which the public question was initiated by either the filing of a petition or the adoption of a resolution or ordinance by a governing body, as the case may be, and a certified copy of any court order or political subdivision resolution or ordinance requiring the submission of the public question. Certifications of propositions for annexation to, disconnection from, or formation of political subdivisions or for other purposes shall include a description of the territory in which the proposition is required to be submitted, whenever such territory is not coterminous with an existing political subdivision.

The certification of a public question described in subsection (b) of Section 28-6 [10 ILCS 5/28-6] shall include the precincts included in the territory concerning which the public question is to be submitted, as well as a common description of such territory, in plain and nonlegal language, and specify the election at which the question is to be submitted. The description of the territory shall be prepared by the local election official as set forth in the resolution or ordinance initiating the public question.

Whenever a local election official, an election authority, or the State Board of Elections is in receipt of an initiating petition, or a certification for the submission of a public question at an election at which the public question may not be placed on the ballot or submitted because of the limitations of Section 28-1 [10 ILCS 5/28-1], such officer or board shall give notice of such prohibition, by registered mail, as follows:

(a) in the case of a petition, to any person designated on a certificate attached thereto as the proponent or as the proponents' attorney for purposes of notice of objections;

(b) in the case of a certificate from a local election authority, to such local election authority, who shall thereupon give notice as provided in subparagraph (a), or notify the governing board which adopted the initiating resolution or ordinance;

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(c) in the case of a certification from a circuit court clerk of a court order, to such court, which shall thereupon give notice as provided in subparagraph (a) and shall modify its order in accordance with the provisions of this Act.

If the petition, resolution or ordinance initiating such prohibited public question did not specify a particular election for its submission, the officer or board responsible for certifying the question to the election authorities shall certify or recertify the question, in the manner required herein, for submission on the ballot at the next regular election no more than one year, or 15 months in the case of a back door referendum as defined in subsection (f) of Section 28-2 [10 ILCS 5/28-2], subsequent to the filing of the initiating petition or the adoption of the initiating resolution or ordinance and at which the public question may be submitted, and the appropriate election authorities shall submit the question at such election, unless the public question is ordered submitted as an emergency referendum pursuant to Section 2A-1.4 or is withdrawn as may be provided by law.

(Source: P.A. 86-875; 94-578, § 5; 97-81, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 28-5.

Cross References.

As to certification of question as to whether municipality shall impose a tax, see 65 ILCS 5/8-11-1.1.

As to certification of question as to whether municipality shall impose a motor fuel tax, see 65 ILCS 5/8-11-15.

Effect of Amendments. The 2005 amendment by P.A. 94-578, effective August 12, 2005, added "or 15 months in the case of a back door referendum as defined in subsection (f) of Section 28-2" in the last paragraph.

The 2011 amendment by P.A. 97-81, effective July 5, 2011, substituted "68 days" for "61 days" in the first, second, and fourth paragraphs; and in the fifth paragraph, substituted "74 days" for "67 days" in the first sentence and substituted "62 days" for "61 days" in the second sentence.

CASE NOTES

Analysis

Applicability
Certification

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Applicability

Where village placed question of whether funds should be used to construct and equip a public library and voters approved, the village obtained approval of the measure "in accord with then applicable state and local laws". Xinos v. Village of Oak Brook, 298 Ill. App. 3d 520, 232 Ill. Dec. 576, 698 N.E.2d 667 (2 Dist. 1998), appeal denied, 182 Ill. 2d 573, 236 Ill. Dec. 676, 707 N.E.2d 1246 (1999).

Certification

Order compelling a village clerk to certify a binding referendum for placement on a ballot was error because the petition was facially deficient, and 10 ILCS 5/10-8 contemplated that the question of whether papers were duly filed and in apparent conformity with the law was to be answered through a procedure other than statutory objection; contrary to plaintiff's argument, the village clerk had the authority to withdraw her prior certification despite the fact that she had previously accepted and certified the petition and the deadline to certify the question to the county clerk had expired. Haymore v. Orr, 385 Ill. App. 3d 915, 325 Ill. Dec. 89, 897 N.E.2d 337, 2008 Ill. App. LEXIS 1008 (1 Dist. 2008).

Mandamus

Where plaintiffs put trial court in a position of violating the statutory notice provisions for an election if it issued a writ of mandamus to require a school board to hold an election on whether to close two schools, the trial court properly exercised its discretion by denying plaintiffs' petition for the writ of mandamus. McRell v. Jackson, 49 Ill. App. 3d 86, 7 Ill. Dec. 19, 363 N.E.2d 940 (3 Dist. 1977).

OPINIONS OF ATTORNEY GENERAL

Electronic Certification of Documents

Circuit clerks are not currently authorized to certify documents electronically. 1999 Op. Atty. Gen. (99-018).

§ 10 ILCS 5/28-6. Petitions; filing

Sec. 28-6. Petitions; filing. (a) On a written petition signed by a number of voters equal to at least 8% of the total votes cast for candidates for Governor in the preceding gubernatorial election by the registered voters of the municipality, township, county or school district, it shall be the duty of the proper election officers to submit any question of public policy so petitioned for, to the electors of such political subdivision at any regular election named in the petition at which an election is scheduled to be held

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throughout such political subdivision under Article 2A [10 ILCS 5/2A-1 et seq.]. Such petitions shall be filed with the local election official of the political subdivision or election authority, as the case may be. Where such a question is to be submitted to the voters of a municipality which has adopted Article 6 [10 ILCS 5/6-1 et seq.], or a township or school district located entirely within the jurisdiction of a municipal board of election commissioners, such petitions shall be filed with the board of election commissioners having jurisdiction over the political subdivision.

(b) In a municipality with more than 1,000,000 inhabitants, when a question of public policy exclusively concerning a contiguous territory included entirely within but not coextensive with the municipality is initiated by resolution or ordinance of the corporate authorities of the municipality, or by a petition which may be signed by registered voters who reside in any part of any precinct all or part of which includes all or part of the territory and who equal in number to at least 8% of the total votes cast for candidates for Governor in the preceding gubernatorial election by the voters of the precinct or precincts in the territory where the question is to be submitted to the voters, it shall be the duty of the election authority having jurisdiction over such municipality to submit such question to the electors throughout each precinct all or part of which includes all or part of the territory at the regular election specified in the resolution, ordinance or petition initiating the public question. A petition initiating a public question described in this subsection shall be filed with the election authority having jurisdiction over the municipality. A resolution, ordinance or petition initiating a public question described in this subsection shall specify the election at which the question is to be submitted.

(c) Local questions of public policy authorized by this Section and statewide questions of public policy authorized by Section 28-9 [10 ILCS 5/28-9] shall be advisory public questions, and no legal effects shall result from the adoption or rejection of such propositions.

(d) This Section does not apply to a petition filed pursuant to Article IX of the Liquor Control Act of 1934 [235 ILCS 5/9-1 et seq.].

(Source: P.A. 84-1467; 93-574, § 20; 95-699, § 5; 97-81, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 46, Para. 28-6.

Section 97 of P.A. 95-699 contains a severability provision.

Effect of Amendments. The 2003 amendment by P.A. 93-574, effective August 21, 2003, added the section heading; twice substituted "a number of voters equal to at least 8% of the votes cast for candidates for Governor in the preceding gubernatorial election by" for "10% of"; and in the first sentence of subsection (a) substituted "the municipality" for "any municipality".

The 2007 amendment by P.A.95-699, effective November 9, 2007, rewrote the section.

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The 2011 amendment by P.A. 97-81, effective July 5, 2011, in the first sentence of (a), deleted "(i) through the general election in 2008" following "voters equal to" and deleted "and (ii) beginning with elections in 2009 and thereafter, at least 11% of the total ballots cast by the registered voters of the municipality, township, county, or school district in the last regular election conducted in the municipality, township, county, or school district" following "or school district"; and in the first sentence of (b), substituted "to at least 8%" for "(i) through the general election in 2008 at least 8%" and deleted "and (ii) beginning with elections in 2009 and thereafter, at least 11% of the total ballots cast at the last regular election conducted in the precinct or precincts in the territory where the question is to be submitted to the voters" following "to the voters."

CASE NOTES

Analysis

Constitutionality
- Signature Requirement
Placing Question on Ballot
Referenda
School Closings

Constitutionality

A 25% signature requirement for an advisory question was overly burdensome and therefore unconstitutional. Georges v. Carney, 546 F. Supp. 469 (N.D. Ill.), aff'd, 691 F.2d 297 (7th Cir. 1982).

Restrictions on citizen-initiated advisory questions, pursuant to 10 ILCS 5/28-1 and 10 ILCS 5/28-6, exclusive of the 25% signature requirement, did not unconstitutionally impair plaintiff's First or Fourteenth Amendment rights. Georges v. Carney, 546 F. Supp. 469 (N.D. Ill.), aff'd, 691 F.2d 297 (7th Cir. 1982).

Where a private group challenged the constitutionality of a provision of this Act regarding binding and advisory questions as violative of the First and Fourteenth Amendments, the provisions were found not to be discriminatory either directly or indirectly against the free expression of controversial ideas; the state had no constitutional obligation to provide a forum for advocating ideas of any kind. Georges v. Carney, 691 F.2d 297 (7th Cir. 1982).

- Signature Requirement

A 25% signature requirement for an advisory question was overly burdensome and therefore unconstitutional. Georges v. Carney, 546 F. Supp. 469 (N.D. Ill.), aff'd, 691 F.2d 297 (7th Cir. 1982).

Placing Question on Ballot

Where the public question to be placed on the ballot was that of closing places where liquor was sold on Sunday, it was one of public policy within the meaning of a prior similar provision; the election commissioners had no discretion in the matter, and it became their duty to submit it to be voted upon at the election. People ex rel. Koelling v. Cannon, 236 Ill. 179, 86 N.E. 215 (1908).

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Referenda

Although the right to place a question on the ballot is not fundamental, once the state decided to confer such right, it became obligated to do so in a constitutional manner. Georges v. Carney, 546 F. Supp. 469 (N.D. Ill.), aff'd, 691 F.2d 297 (7th Cir. 1982).

There is no fundamental right to require a referendum whereby a citizen-initiated question of public policy may be submitted for voter consideration under Illinois law. Georges v. Carney, 546 F. Supp. 469 (N.D. Ill.), aff'd, 691 F.2d 297 (7th Cir. 1982).

School Closings

The Board of Education of a Community Unit School District should have conducted an election asking whether two specific schools in the school district should be kept in operation. McRell v. Jackson, 49 Ill. App. 3d 86, 7 Ill. Dec. 19, 363 N.E.2d 940 (3 Dist. 1977).

OPINIONS OF ATTORNEY GENERAL

Referenda

- Advisory Questions

Referenda on advisory questions of public policy may be initiated by the county board of a non-home rule county only when express constitutional or statutory authority exists for such action; in the absence of such authority, such referenda may be initiated only by the method prescribed in this section. 1983 Op. Atty. Gen. 39.

LEGAL PERIODICALS

For note, "The Election Ballot as a Forum for the Expression of Ideas - Georges v. Carney," see 32 De Paul L. Rev. 901 (1983).

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CHAPTER 20.
EXECUTIVE BRANCH

CAPITAL DEVELOPMENT BOARD
20 ILCS 3105Capital Development Board Act

CAPITAL DEVELOPMENT BOARD

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Capital Development Board Act

[Article I]

20 ILCS 3105/1.[Short title]
20 ILCS 3105/1.1.[Applicability of Act]
20 ILCS 3105/2.[Legislative intent]
20 ILCS 3105/3.[Definitions]
20 ILCS 3105/4.[Capital Development Board created; purposes]
20 ILCS 3105/4.01.[Capital improvements]
20 ILCS 3105/4.02.[Continuous studies]
20 ILCS 3105/4.03.[Research]
20 ILCS 3105/4.04.[Periodic revisions]
20 ILCS 3105/4.05.[Advice to State agencies and localities]
20 ILCS 3105/5.[Members of Board]
20 ILCS 3105/6.[Compensation of members; oath; bond]
20 ILCS 3105/7.[Board meetings]
20 ILCS 3105/8.[Executive director; employees]
20 ILCS 3105/9.[Powers of Board]
20 ILCS 3105/9.01.[Acquisition, etc., of capital facilities and open spaces; exceptions]
20 ILCS 3105/9.01a.[Functions conferred by School Code]
20 ILCS 3105/9.01b.[Functions conferred by Specialized Living Centers Act]
20 ILCS 3105/9.01c.[Functions conferred by Asbestos Abatement Authority Act]
20 ILCS 3105/9.02.[Contracts]
20 ILCS 3105/9.02a.[Contract administration fees].
20 ILCS 3105/9.03.[Disbursement of funds]
20 ILCS 3105/9.04.[Repealed].
20 ILCS 3105/9.05.[Certification of vouchers]
20 ILCS 3105/9.06.[Rules and regulations; reports]
20 ILCS 3105/9.07.[Assignment of contracts]
20 ILCS 3105/9.08.[Other powers]
20 ILCS 3105/9.08a.[Power of eminent domain]
20 ILCS 3105/9.08b.[Subpoena power; hearings]
20 ILCS 3105/9.08c.Eminent domain
20 ILCS 3105/9.09.[Community college grants]
20 ILCS 3105/10.[Additional duties]
20 ILCS 3105/10.01.[Supervision of construction; exceptions]
20 ILCS 3105/10.01A.[Successor to Illinois Building Authority; defeasance of bonds]
20 ILCS 3105/10.02.[Plans and estimates]

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20 ILCS 3105/10.02a.[Professional sports stadium; feasibility study]
20 ILCS 3105/10.02b.[Child care study]
20 ILCS 3105/10.03.[Advertising for bids]
20 ILCS 3105/10.04.Construction and repair of buildings; green building
20 ILCS 3105/10.05.[Inspection of building materials]
20 ILCS 3105/10.06.[Construction contracts]
20 ILCS 3105/10.07.[Planning contracts]
20 ILCS 3105/10.08.[Comprehensive development plans]
20 ILCS 3105/10.09.[Comprehensive construction codes]
20 ILCS 3105/10.09-1.Adoption of building code; enforcement
20 ILCS 3105/10.09-5.Standards for an energy code
20 ILCS 3105/10.10.[Bidding and construction priorities]
20 ILCS 3105/10.11.[Continuing space inventory]
20 ILCS 3105/10.12.[Compliance with Human Rights Act]
20 ILCS 3105/10.13.[Indemnification of Board members]
20 ILCS 3105/10.15.[Federal funds]
20 ILCS 3105/10.16.[Site for community college or school facilities; selection; disapproval]
20 ILCS 3105/10.17.Use of Illinois resident labor
20 ILCS 3105/11.[Repealed.]
20 ILCS 3105/12.[Powers of boards of trustees of community colleges and universities not abrogated]
20 ILCS 3105/13.[Cargo handling facilities]
20 ILCS 3105/14.[Works of art in public buildings; Fine Arts Review Committee; Public Arts Advisory Committee]
20 ILCS 3105/15.[Incorporation of Administrative Procedure Act]
20 ILCS 3105/16.[Regulations concerning prequalification of architect, engineer, or contractor; suspension or modification]
20 ILCS 3105/17.Historic area preference
20 ILCS 3105/18.Study; building energy labels

Article 1A

School Construction And Debt Service Grants

20 ILCS 3105/1A-1.1 through 20 ILCS 3105/1A-11 [Repealed].

[Article II]

[Reserved]

[Article III]

20 ILCS 3105/1 (Art. III).[Effective date]
20 ILCS 3105/2 (Art. III).[Severability]

[Article I].

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§ 20 ILCS 3105/1. [Short title]

Sec. 1. This Act shall be known and may be cited as the Capital Development Board Act, hereafter referred to as "this Act".

(Source: P.A. 77-1995.)

Derivation.

Title: An Act creating the Capital Development Board and defining its powers and duties.

Cite: 20 ILCS 3105/1 et seq.

Source: P.A. 77-1995. Title amended by P.A. 78-223.

Date: Approved July 10, 1972.

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 771.

Cross References.

As to financing a building construction project by a community college district, see 110 ILCS 805/5-9.

CASE NOTES

Alter Ego

The Illinois Capital Development Board was an alter ego of the State of Illinois and the State of Illinois was not a citizen for purposes of diversity jurisdiction under 28 U.S.C. § 1332, which provided for original jurisdiction by a federal district court for civil actions between citizens of different states. United Pac. Ins. Co. v. Capital Dev. Bd., 482 F. Supp. 541 (N.D. Ill. 1979).

§ 20 ILCS 3105/1.1. [Applicability of Act]

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Sec. 1.1. Nothing herein applies to the design, planning, construction, reconstruction, improvement, and installation of capital facilities within the State Capitol Building and other areas of the legislative complex, as defined in Section 8A-15 of the Legislative Commission Reorganization Act of 1984 [25 ILCS 130/8A-15], which functions shall be within the exclusive jurisdiction of the Architect of the Capitol.

(Source: P.A. 79-835; 93-632, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 771.1.

Effect of Amendments. The 2003 amendment by P.A. 93-632, effective February 1, 2004, inserted the language beginning "and other areas" through "1984", and substituted "the Architect of the Capitol" for "Space Needs Commission created by "The Space Needs Act", approved September 8, 1967, as now and hereafter amended."

§ 20 ILCS 3105/2. [Legislative intent]

Sec. 2. It is intended that the State of Illinois will utilize the resources of the private sector of the economy for the design, planning, construction, reconstruction, improvement, and installation of capital facilities included within the scope of this Act.

(Source: P.A. 77-1995.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 772.

§ 20 ILCS 3105/3. [Definitions]

Sec. 3. As used in this Act, unless the context otherwise requires:

"Board" means the Capital Development Board.

"State agency" means and includes each officer, department, board, commission, institution, body politic and corporate of the State including the Illinois Building Authority, school districts, and any other person expending or encumbering State or federal funds by virtue of an appropriation or other authorization by the General Assembly or federal authorization or grant. Except as otherwise expressly authorized by the General Assembly, the term does not include the Department of Transportation, the

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Department of Natural Resources, or Environmental Protection Agency, except as respects buildings used by the Department or Agency for its officers, employees, or equipment, or any of them, and for capital improvements related to such buildings. Nor does the term include the Illinois Housing Development Authority, the Illinois Finance Authority or the St. Louis Metropolitan Area Airport Authority.

"School District" means any school district or special charter district as defined in Section 1-3 of "The School Code", approved March 18, 1961, as amended [105 ILCS 5/1-3], or any administrative district, or governing board, of a joint agreement organized under Section 10-22.31 of the School Code [105 ILCS 5/10-22.31].

(Source: P.A. 81-1093; 89-445, § 9E-3; 93-205, § 890-30.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 773.

Effect of Amendments. The 2003 amendment by P.A. 93-205, effective January 1, 2004, substituted "Illinois Finance" for "Educational Facilities" preceding "Authority or" in the paragraph defining "State agency".

CASE NOTES

Jurisdiction

- Capital Development Board

The Capital Development Board, formerly the Illinois Building Authority, is a state agency which may be sued only in the Illinois Court of Claims. Talandis Constr. Corp. v. Illinois Bldg. Auth., 60 Ill. App. 3d 715, 18 Ill. Dec. 84, 377 N.E.2d 237 (1 Dist. 1978).

§ 20 ILCS 3105/4. [Capital Development Board created; purposes]

Sec. 4. There is created the Capital Development Board. The purposes of the Board are as described in Sections 4.01 through 4.05 [20 ILCS 3105/4.01 through 20 ILCS 3105/4.05].

(Source: P.A. 77-1995.)

Note.

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This section was Ill.Rev.Stat., Ch. 127, Para. 774.

Cross References.

As to the assumption of financial obligations to the Board under this Act by school districts created under the provisions of the School Code, see the following sections:

As to a new unit school district, see 105 ILCS 5/11A-12;

As to a newly combined school district, see 105 ILCS 5/11B-11;

As to school district conversions, see 105 ILCS 5/11D-9.

§ 20 ILCS 3105/4.01. [Capital improvements]

Sec. 4.01. To build or otherwise provide hospital, housing, penitentiary, administrative, recreational, educational, laboratory, parking, environmental equipment and other capital improvements for which money has been appropriated or authorized by the General Assembly.

(Source: P.A. 79-1098.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 774.01.

§ 20 ILCS 3105/4.02. [Continuous studies]

Sec. 4.02. To conduct continuous studies into the costs of building or otherwise providing the facilities described in Section 4.01 [20 ILCS 3105/4.01].

(Source: P.A. 77-1995.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 774.02.

§ 20 ILCS 3105/4.03. [Research]

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Sec. 4.03. To conduct research on improvements in choice and use of materials, energy systems, including solar energy systems, and in construction methods for reducing construction costs and operating and maintenance costs of the facilities described in Section 4.01 [20 ILCS 3105/4.01].

(Source: P.A. 80-430.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 774.03.

§ 20 ILCS 3105/4.04. [Periodic revisions]

Sec. 4.04. To review and recommend periodic revisions in established building and construction codes to promote public safety, energy efficiency and economy, including the use of solar energy, and reduce construction costs and operating and maintenance costs of the facilities described in Section 4.01 [20 ILCS 3105/4.01].

(Source: P.A. 80-430.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 774.04.

§ 20 ILCS 3105/4.05. [Advice to State agencies and localities]

Sec. 4.05. To advise State agencies, and units of local government, on request, on any matter related to the purpose of this Act and to assist State agencies in the preparation of their annual long-range capital expenditure plans.

(Source: P.A. 81-1094.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 774.05.

§ 20 ILCS 3105/5. [Members of Board]

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Sec. 5. The Board shall consist of 7 members, no more than 4 of whom may be of the same political party, all of whom shall be appointed by the Governor, by and with the consent of the Senate, and one of whom shall be designated as chairman by the Governor. No person may be appointed as a member of the Board who is serving as an elected officer for the State or for any unit of local government within the State.

If the Senate is not in session when the first appointments are made, the Governor shall make temporary appointments as in the case of a vacancy. In making the first appointments, the Governor shall designate 2 members to serve until January, 1974, 2 members to serve until January, 1975, 2 members to serve until January, 1976 and 1 member to serve until January, 1977, or until their successors are appointed and qualified. Their successors shall be appointed to serve for 4 year terms expiring on the third Monday in January or until their successors are appointed and qualified. Any vacancy occurring on the Board, whether by death, resignation or otherwise, shall be filled by appointment by the Governor in the same manner as original appointments. A member appointed to fill a vacancy shall serve for the remainder of the unexpired term or until his successor is qualified.

(Source: P.A. 87-776.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 775.

Illinois Administrative Code.

See 2 Illinois Administrative Code, § 1650.110.

§ 20 ILCS 3105/6. [Compensation of members; oath; bond]

Sec. 6. Members of the Board shall serve without compensation but shall be reimbursed for their reasonable expenses necessarily incurred in the performance of their duties and the exercise of their powers under this Act. Each member shall before entering upon the duties of his office, take and subscribe the constitutional oath of office and give bond in the penal sum of $100,000 conditioned upon the faithful performance of his duties. The oath and bond shall be filed in the office of the Secretary of State.

(Source: P.A. 77-1995.)

Note.

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This section was Ill.Rev.Stat., Ch. 127, Para. 776.

§ 20 ILCS 3105/7. [Board meetings]

Sec. 7. The Board shall meet at such times and places as is provided for by the Board or, in the absence of such a provision, on call of the chairman after at least 5 day's written notice to the members and the request of 2 or more members. Four members shall constitute a quorum. No vacancy in the membership shall impair the right of a quorum of the members to exercise all of the rights and powers, and to perform all of the duties, of the Board.

(Source: P.A. 77-1995.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 777.

§ 20 ILCS 3105/8. [Executive director; employees]

Sec. 8. The Board may employ and fix the compensation of an executive director, to serve as the chief executive officer of the Board, and such other agents or employees as it considers necessary or desirable. Such employment other than of technical or engineering personnel shall be subject to the Personnel Code [20 ILCS 415/1 et seq.]. If any employees are transferred to the Board from any other State agency, such a transfer shall not affect the status of such employees under the Personnel Code [20 ILCS 415/1 et seq.], under any retirement system under the Illinois Pension Code [20 ILCS 415/1 et seq.], or under any civil service, merit service or other law relating to State employment.

(Source: P.A. 77-1995.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 778.

§ 20 ILCS 3105/9. [Powers of Board]

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Sec. 9. The Board has the powers enumerated in Sections 9.01 through 9.09 [20 ILCS 3105/9.01 through 20 ILCS 3105/9.09].

(Source: P.A. 80-1200.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 779.

Cross References.

As to the continuation of the School Building Commission's powers and duties with the Board under this Act, see 105 ILCS 5/35-1.

§ 20 ILCS 3105/9.01. [Acquisition, etc., of capital facilities and open spaces; exceptions]

Sec. 9.01. To provide for the acquisition, planning, construction, reconstruction, improvement and installation of capital facilities, consisting of buildings, structures and equipment and for the acquisition and improvement of real property and interest in real property required, or expected to be required, in connection therewith and for the acquisition, protection and development of land within the State of Illinois for open spaces, recreational and conservation purposes, as authorized by the General Assembly by appropriations from the Capital Development Fund, the School Construction Fund, General Revenue Fund, other funds, or revenue bonds, but not including capital facilities provided entirely by local community college district or local school district funds or capital facilities at non-profit, non-public health service educational institutions.

(Source: P.A. 87-895.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 779.01.

CASE NOTES

Analysis

Capital Development Board

- Receipt of Property

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Eminent Domain
- Public Use

Capital Development Board

- Receipt of Property

The Illinois Capital Development Board is authorized to receive real property and construct public buildings; therefore, the receipt of land that had been condemned by city was proper. City of Chicago v. Gorham, 80 Ill. App. 3d 496, 35 Ill. Dec. 905, 400 N.E.2d 42 (1 Dist. 1980).

Eminent Domain

- Public Use

Eminent domain is the right of a sovereign state or its lawful delegate to condemn private property for public use upon payment of just compensation to the owner; however, when the primary purpose of an eminent domain proceeding is a public use, it is immaterial that a private enterprise or another governmental entity incidentally gains a benefit. City of Chicago v. Gorham, 80 Ill. App. 3d 496, 35 Ill. Dec. 905, 400 N.E.2d 42 (1 Dist. 1980).

OPINIONS OF ATTORNEY GENERAL

Acquisition of Real Estate

- Severance of Minimum Interest

Because real property interests include fee simple and lesser interests, and because this section clearly empowers the board to acquire "real property," the board is authorized, pursuant to this section, to acquire real estate even though the minimum interests have been severed. 1982 Op. Atty. Gen. 96.

§ 20 ILCS 3105/9.01a. [Functions conferred by School Code]

Sec. 9.01a. To exercise the powers and perform the functions and duties conferred on the Board by Section 14-11.02 of "The School Code", approved March 18, 1961, as amended [105 ILCS 5/14-11.02].

(Source: P.A. 79-966.)

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This section was Ill.Rev.Stat., Ch. 127, Para. 779.01a.

§ 20 ILCS 3105/9.01b. [Functions conferred by Specialized Living Centers Act]

Sec. 9.01b. To exercise the powers and perform the functions and duties conferred on the Board by the "Specialized Living Centers Act", enacted by the Seventy-ninth General Assembly, as such Act may be now or hereafter amended [405 ILCS 25/1 et seq.].

(Source: P.A. 79-966; 79-970; 79-1454.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 779.01b.

§ 20 ILCS 3105/9.01c. [Functions conferred by Asbestos Abatement Authority Act]

Sec. 9.01c. To exercise the powers and perform the functions and duties transferred to and conferred upon the Board by the Asbestos Abatement Authority Act [20 ILCS 3120/0.01 et seq.].

(Source: P.A. 87-14.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 779.01c.

§ 20 ILCS 3105/9.02. [Contracts]

Sec. 9.02. To enter into contracts on behalf of the State of Illinois to effectuate the purposes of this Act, subject to The Illinois Purchasing Act [30 ILCS 505/1 et seq.].

(Source: P.A. 77-1995.)

Note.

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This section was Ill.Rev.Stat., Ch. 127, Para. 779.02.

§ 20 ILCS 3105/9.02a. (Repealed effective June 30, 2012) [Contract administration fees]

Sec. 9.02a. To charge contract administration fees used to administer and process the terms of contracts awarded by this State. Contract administration fees shall not exceed 3% of the contract amount. This Section is repealed June 30, 2012.

(Source: P.A. 89-483; 91-795, § 10; 93-32, § 75-2; 93-827, § 5; 95-726, § 5.)

Effect of Amendments. The 2000 amendment by P.A. 91-795, effective June 9, 2000, substituted "repealed June 30, 2004" for "repealed June 30, 2000" in the last sentence.

The 2003 amendment by P.A. 93-32, effective July 1, 2003, substituted "3%" for "1.5%".

The 2004 amendment by P.A. 93-827, effective July 28, 2004, substituted "2008" for "2004" in the last sentence.

The 2008 amendment by P.A. 95-725, effective June 30, 2008, substituted "June 30, 2012" for "June 30, 2008".

§ 20 ILCS 3105/9.03. [Disbursement of funds]

Sec. 9.03. Pursuant to appropriations, to direct disbursements from the Capital Development Fund, the School Construction Fund, the Capital Development Board Revolving Fund, or the General Revenue Fund for the purposes of this Act.

(Source: P.A. 87-895.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 779.03.

§ 20 ILCS 3105/9.04: Repealed by P.A. 94-1105, § 80, effective June 1, 2007.

§ 20 ILCS 3105/9.05. [Certification of vouchers]

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Sec. 9.05. To certify vouchers payable from appropriations to the Board.

(Source: P.A. 77-1995.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 779.05.

§ 20 ILCS 3105/9.06. [Rules and regulations; reports]

Sec. 9.06. To establish rules and regulations governing the acquisition, planning, construction, reconstruction, improvement and installation of capital facilities as defined in Section 9.01 of this Act [20 ILCS 3105/9.01]. The Board may require any state agency to submit information deemed necessary for the Board to fulfill its responsibilities under this Act, and may prescribe the form of such report.

(Source: P.A. 77-1995.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 779.06.

§ 20 ILCS 3105/9.07. [Assignment of contracts]

Sec. 9.07. To accept assignment of contracts entered into by other state agencies for construction services on projects over which the Board shall have jurisdiction, whether or not such contracts shall have been awarded in accordance with the terms of the Illinois Purchasing Act [30 ILCS 505/1 et seq.].

(Source: P.A. 77-1995.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 779.07.

§ 20 ILCS 3105/9.08. [Other powers]

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Sec. 9.08. To exercise all other powers necessary or desirable to accomplish the purposes of this Act and to the performance of its duties under this Act.

(Source: P.A. 77-1995.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 779.08.

§ 20 ILCS 3105/9.08a. [Power of eminent domain]

Sec. 9.08a. The Capital Development Board is authorized, with the consent in writing of the Director of Central Management Services and of the Governor, to acquire by condemnation in the manner provided for the exercise of the power of eminent domain under the Eminent Domain Act [735 ILCS 30/1-1-1 et seq.], all lands, buildings and grounds for which an appropriation may be made by the General Assembly, other than those acquired by those agencies specified under Section 5-675 of the Departments of State Government Law (20 ILCS 5/5-675).

(Source: P.A. 85-846; 91-239, § 5-170; 94-1055, § 95-10-30.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 779.08a.

Effect of Amendments. The 1999 amendment by P.A. 91-239, effective January 1, 2000, substituted "Section 5-675 of the Departments of State Government Law (20 ILCS 5/5-675)" for "Section 51 of the Civil Administrative Code of Illinois, as amended".

The 2006 amendment by P.A. 94-1055, effective January 1, 2007, substituted "the Eminent Domain Act" for "Article VII of the Code of Civil Procedure".

CASE NOTES

Condemned Property

- Resale

Tenants' attack upon city's resale of condemned property to the state was an improper attempt to delve into the city's motive for condemnation. City of Chicago v. Gorham, 80 Ill. App. 3d 496,

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35 Ill. Dec. 905, 400 N.E.2d 42 (1 Dist. 1980).

§ 20 ILCS 3105/9.08b. [Subpoena power; hearings]

Sec. 9.08b. The Board shall have power to subpoena and bring before it any person in this State in conjunction with hearings regarding the suspension of the prequalification of contractors, architects, engineers, sureties or insurance carriers, and to take testimony either orally or by deposition, or both, with the same fees and mileage and in the same manner as prescribed by law in judicial proceedings in civil cases in circuit courts of this State.

(Source: P.A. 85-846.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 779.08b.

§ 20 ILCS 3105/9.08c. Eminent domain

Sec. 9.08c. Eminent domain. Notwithstanding any other provision of this Act, any power granted under this Act to acquire property by condemnation or eminent domain is subject to, and shall be exercised in accordance with, the Eminent Domain Act [735 ILCS 30/1-1-1 et seq.].

(Source: P.A. 94-1055, § 95-5-45.)

Effective Date. Section 99-5-5 of P.A. 94-1055 makes this section effective January 1, 2007.

§ 20 ILCS 3105/9.09. [Community college grants]

Sec. 9.09. Pursuant to appropriation, to make payment of grants authorized by Section 5-11 of the Public Community College Act [110 ILCS 805/5-11].

(Source: P.A. 80-1200.)

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Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 779.09.

§ 20 ILCS 3105/10. [Additional duties]

Sec. 10. The Board has the duties and responsibilities enumerated in Sections 10.01 through 10.20 [20 ILCS 3105/10.01 through 20 ILCS 3105/10.16].

(Source: P.A. 80-380; 80-381; 80-1130; 80-1364.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 780.

Sections 10.17 to 10.20, referred to above, do not exist.

§ 20 ILCS 3105/10.01. [Supervision of construction; exceptions]

Sec. 10.01. To exercise the general supervision of the construction of any capital improvement authorized by the General Assembly to be financed from the Capital Development Fund, the School Construction Fund, the General Revenue Fund, any revenue bonds, or any other fund as authorized by the General Assembly, but not including capital facilities at non-profit, non-public health service educational institutions, or projects funded from the General Revenue Fund under $25,000 for the Department of Corrections where inmate labor is used.

(Source: P.A. 87-895.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 780.01.

§ 20 ILCS 3105/10.01A. [Successor to Illinois Building Authority; defeasance of bonds]

Sec. 10.01A. (a) To exercise all the powers, functions and duties, as the successor agency to the Illinois Building Authority, authorized or required by "An Act to create the Illinois

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Building Authority and to define its powers and duties", approved August 15, 1961, as amended.

(b) In addition to the foregoing powers, the Authority shall have the power (1) to effect net defeasance of all outstanding bonds of the Authority. The term net defeasance, as used in this Section, means the deposit in escrow of moneys in an amount sufficient, when added to guaranteed interest earnings of such funds, to pay all remaining principal and interest until maturity of all series of bonds outstanding, or (2) in the event net defeasance is not effected, the Authority is hereby directed to effect gross defeasance of all outstanding bonds of the Authority as soon as feasible. The term gross defeasance, as used in this Section means the deposit in escrow of cash or cash equivalents in an amount sufficient to pay all remaining principal and interest until maturity of any or all series of bonds outstanding.

(c) When any such escrow has been established, moneys so deposited will be invested and reinvested only at the direction of the Treasurer, and all interest income or profit derived therefrom in excess of the amount needed for expenses of administration of the escrow, the cost of insurance unless otherwise provided for, and the amount necessary to pay all remaining principal and interest until maturity of bonds which are the subject of that escrow shall be transmitted when earned to the Treasurer, pursuant to directions from the Treasurer, to be credited to the Public Building Fund.

(d) When all outstanding bonds of the Authority are so defeased, all interest income or profit derived therefrom in excess of the amount required for purposes of subparagraph (c) shall be transmitted, when earned, to the Treasurer. The Treasurer shall transfer quarterly any balance remaining in the Public Building Fund to the General Revenue Fund.

(Source: P.A. 82-790.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 780.01A.

The Act approved August 15, 1961, referred to above, has been repealed.

§ 20 ILCS 3105/10.02. [Plans and estimates]

Sec. 10.02. To prepare, or cause to be prepared, general plans, drawings and estimates, including the life-cycle cost estimate of energy systems, for public buildings and improvements to be erected for any State agency.

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(Source: P.A. 80-430.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 780.02.

§ 20 ILCS 3105/10.02a. [Professional sports stadium; feasibility study]

Sec. 10.02a. To conduct a study concerning the feasibility of constructing a professional sports stadium with a seating capacity of not less than 70,000, to be situated near the Mississippi River within the territory of the Metro East Mass Transit District created under the Local Mass Transit District Act [70 ILCS 3610/1 et seq.]; to prepare or consider possible plans for or designs of such a stadium; to estimate the costs of such construction and the economic return therefrom; to consider possible sites for such a stadium; and to report its recommendations and findings to the General Assembly as soon as possible.

(Source: P.A. 84-591.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 780.02a.

§ 20 ILCS 3105/10.02b. [Child care study]

Sec. 10.02b. To conduct, before awarding any contract for the construction or substantial renovation of any facility to be used by any State agency, a study concerning the child care needs of the State employees located, or to be located, at the facility, and the feasibility of providing child care services at the facility, in accordance with the State Agency Employees Child Care Services Act, approved September 20, 1985 [30 ILCS 590/1 et seq.]. Such study shall be conducted in conjunction with the Department of Central Management Services. A study shall be required only when the number of State employees who shall work in the completed facility is 150 or more.

(Source: P.A. 85-919.)

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This section was Ill.Rev.Stat., Ch. 127, Para. 780.02b.

§ 20 ILCS 3105/10.03. [Advertising for bids]

Sec. 10.03. To prepare, or cause to be prepared, such plans, specifications and other documents as are necessary to the taking and acceptance of bids and letting of construction contracts and to advertise for bids for such projects, as required in The Illinois Purchasing Act [30 ILCS 505/1 et seq.].

(Source: P.A. 81-945.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 780.03.

§ 20 ILCS 3105/10.04. Construction and repair of buildings; green building

Sec. 10.04. Construction and repair of buildings; green building. (a) To construct and repair, or contract for and supervise the construction and repair of, buildings under the control of or for the use of any State agency, as authorized by the General Assembly. To the maximum extent feasible, any construction or repair work shall utilize the best available technologies for minimizing building energy costs as determined through consultation with the Department of Commerce and Economic Opportunity.

(b) (Repealed by Public Act 94-573).

(Source: P.A. 87-852; 89-445, § 9G-12; 94-573, § 5; 96-1000, § 105.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 780.04.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 2005 amendment by P.A. 94-573, effective January 1, 2006, rewrote the section.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, implemented the internal repeal provision in subsection (b), which provided: "'This subsection (b) of this section is repealed on January 1, 2009.'"

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§ 20 ILCS 3105/10.05. [Inspection of building materials]

Sec. 10.05. To inspect all materials to be incorporated into any building constructed or repaired by or under the supervision of the Board.

(Source: P.A. 77-1995.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 780.05.

§ 20 ILCS 3105/10.06. [Construction contracts]

Sec. 10.06. To enter into contracts for construction management or supervision on all projects constructed by or under the supervision of the Board.

(Source: P.A. 77-1995.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 780.06.

§ 20 ILCS 3105/10.07. [Planning contracts]

Sec. 10.07. To enter into contracts for professional services for planning, testing, design or consulting on all projects constructed by or under the supervision of the Board.

(Source: P.A. 77-1995.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 780.07.

§ 20 ILCS 3105/10.08. [Comprehensive development plans]

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Sec. 10.08. To prepare, or cause to be prepared, comprehensive plans for the development of real property involving any project to be constructed by or to be supervised by the Board.

(Source: P.A. 79-1098.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 780.08.

§ 20 ILCS 3105/10.09. [Comprehensive construction codes]

Sec. 10.09. To recommend to the General Assembly comprehensive building construction codes and to review and recommend any necessary revisions to existing codes.

(Source: P.A. 77-1995.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 780.09.

§ 20 ILCS 3105/10.09-1. Adoption of building code; enforcement

Sec. 10.09-1. Adoption of building code; enforcement. (a) After July 1, 2011, no person may occupy a newly constructed commercial building in a non-building code jurisdiction until:

(1) The property owner or his or her agent has first contracted for the inspection of the building by an inspector who meets the qualifications established by the Board; and

(2) The qualified inspector files a certification of inspection with the municipality or county having such jurisdiction over the property indicating that the building meets compliance with the building codes adopted by the Board for non-building code jurisdictions based on the following:

(A) The 2006 or later editions of the following codes developed by the International Code Council:

(i) International Building Code;

(ii) International Existing Building Code; and

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(iii) International Property Maintenance Code.

(B) The 2008 or later edition of the National Electrical Code NFPA 70.

(b) This Section does not apply to any area in a municipality or county having jurisdiction that has registered its adopted building code with the Board as required by Section 55 of the Illinois Building Commission Act [20 ILCS 3918/55].

(c) The qualification requirements of this Section do not apply to building enforcement personnel employed by jurisdictions as defined in subsection (b).

(d) For purposes of this Section:

"Commercial building" means any building other than a single-family home or a dwelling containing 2 or fewer apartments, condominiums, or townhomes or a farm building as exempted from Section 3 of the Illinois Architecture Practice Act [225 ILCS 305/3].

"Newly constructed commercial building" means any commercial building for which original construction has commenced on or after July 1, 2011.

"Non-building code jurisdiction" means any area of the State not subject to a building code imposed by either a county or municipality.

"Qualified inspector" means an individual qualified by the State of Illinois, certified by a nationally recognized building official certification organization, qualified by an apprentice program certified by the Bureau of Apprentice Training, or who has filed verification of inspection experience according to rules adopted by the Board for the purposes of conducting inspections in non-building code jurisdictions.

(e) New residential construction is exempt from this Section and is defined as any original construction of a single-family home or a dwelling containing 2 or fewer apartments, condominiums, or townhomes in accordance with the Illinois Residential Building Code Act [815 ILCS 670/1 et seq.].

(f) Local governments may establish agreements with other governmental entities within the State to issue permits and enforce building codes and may hire third-party providers that are qualified in accordance with this Section to provide inspection services.

(g) This Section does not regulate any other statutorily authorized code or regulation administered by State agencies. These include without limitation the Illinois Plumbing Code [225 ILCS 320/0.01 et seq.], the Illinois Environmental Barriers Act, the International Energy Conservation Code, and administrative rules adopted by the Office of the State Fire Marshal.

(h) This Section applies beginning July 1, 2011.

(Source: P.A. 96-704, § 5.)

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Effective Date. This section is effective January 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

§ 20 ILCS 3105/10.09-5. Standards for an energy code

Sec. 10.09-5. Standards for an energy code. To adopt rules implementing a statewide energy code for the construction or repair of State facilities described in Section 4.01 [20 ILCS 3105/4.01]. The energy code adopted by the Board shall incorporate standards promulgated by the American Society of Heating, Refrigerating and Air-conditioning Engineers, Inc., (ASHRAE). In proposing rules, the Board shall consult with the Department of Commerce and Economic Opportunity.

(Source: P.A. 93-190, § 5; 94-793, § 275; 94-815, § 5.)

Note.

Section 995 of P.A. 94-793 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 93-190, made this section effective upon becoming law. The Act was approved July 14, 2003.

Effect of Amendments. The 2006 amendment by P.A. 94-815, effective May 26, 2006, deleted "by January 1, 2004" after "adopt rules" in the first sentence; and substituted "Economic Opportunity" for "Community Affairs" in the last sentence.

The 2006 amendment by revisory act P.A. 94-793, effective May 19, 2006, substituted references to "Governor's Office of Management and Budget" for references to "Bureau of the Budget", and substituted references to "Department of Commerce and Economic Opportunity" for references to "Department of Commerce and Community Affairs".

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

§ 20 ILCS 3105/10.10. [Bidding and construction priorities]

Sec. 10.10. To establish priorities and schedules for bidding and construction of projects under its jurisdiction.

(Source: P.A. 77-1995.)

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Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 780.10.

§ 20 ILCS 3105/10.11. [Continuing space inventory]

Sec. 10.11. To conduct and maintain a continuing space inventory of state capital facilities to ensure maximum utilization and inter-agency coordination of existing facilities.

(Source: P.A. 77-1995.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 780.11.

§ 20 ILCS 3105/10.12. [Compliance with Human Rights Act]

Sec. 10.12. As a general supervisor, to ensure compliance with the provisions of the Illinois Human Rights Act as amended [775 ILCS 5/1-101 et seq.].

(Source: P.A. 81-1216.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 780.12.

§ 20 ILCS 3105/10.13. [Indemnification of Board members]

Sec. 10.13. To defend, indemnify and keep and hold harmless the members of the Board and its employees against suits, claims, damages, losses and expenses arising out of any act or failure to act for which they may be liable while acting within the scope of employment. The Board may obtain insurance, if available, affording coverage for such suits, claims, damages, losses and expenses and the defense thereof. Such insurance shall be carried in a company licensed to write such coverage in this State.

Such protection shall extend to persons who were members of the Board or its employees at the time of the incident giving rise to the suit, claim, damage, loss or expense if that

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incident occurred on or after July 10, 1972.

(Source: P.A. 79-1479.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 780.13.

§ 20 ILCS 3105/10.15. [Federal funds]

Sec. 10.15. To receive, accept, and disburse federal funds provided by the Federal Government for the State of Illinois, provided that such monies may be used only if first appropriated by the General Assembly.

(Source: P.A. 80-1364.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 780.15.

§ 20 ILCS 3105/10.16. [Site for community college or school facilities; selection; disapproval]

Sec. 10.16. In the case of capital facilities for community colleges, the board of the community college district shall select the site, subject to the approval of the Illinois Community College Board; and the board of the local common school district shall select the site in the case of capital facilities for local common schools. The Capital Development Board may, however, disapprove any site selected either by the board of the community college district or the board of the common school district if the Capital Development Board determines that the site does not meet its minimum engineering and construction standards.

(Source: P.A. 80-1364.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 780.16.

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Cross References.

As to a community college receiving or expending funds for building purposes under the direction of the Community College Board pursuant to this Act, see 110 ILCS 805/5-1.

§ 20 ILCS 3105/10.17. Use of Illinois resident labor

Sec. 10.17. Use of Illinois resident labor. To the extent permitted by any applicable federal law or regulation, for all work performed for State construction projects which are funded in whole or in part by a capital infrastructure bill enacted by the 96th General Assembly [P.A. 96-37] by sums appropriated to the Capital Development Board, at least 50% of the total labor hours must be performed by actual residents of the State of Illinois. For purposes of this Section, "actual residents of the State of Illinois" means persons domiciled in the State of Illinois. The Department of Labor shall promulgate rules providing for the enforcement of this Section.

(Source: P.A. 96-37, § 80-25.)

Note.

P.A. 96-37, § 1, provides: "It is the purpose of this Act to make changes in state programs that are necessary to implement the Governor's Fiscal Year 2010 budget recommendations concerning capital."

Section 60-95 of P.A. 96-37 contains a "no acceleration or delay" provision.

Effective Date. Section 99-99 of P.A. 96-37 makes this section effective upon becoming law. The Act was approved July 13, 2009.

§ 20 ILCS 3105/11: Repealed effective July 1, 1998.

Note.

This section was repealed by its own terms, effective July 1, 1998. The repealer language was added to this section by P.A. 90-372, § 5-161.

§ 20 ILCS 3105/12. [Powers of boards of trustees of community colleges and universities not abrogated]

Sec. 12. Nothing in this Act shall be construed to include the power to abrogate those powers vested in the boards of the local public community college districts and the

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Illinois Community College Board by the Public Community College Act [110 ILCS 805/1-1 et seq.], the Board of Trustees of the University of Illinois, The Board of Trustees of Southern Illinois University, the Board of Trustees of Chicago State University, the Board of Trustees of Eastern Illinois University, the Board of Trustees of Governors State University, the Board of Trustees of Illinois State University, the Board of Trustees of Northeastern Illinois University, the Board of Trustees of Northern Illinois University, and the Board of Trustees of Western Illinois University, hereinafter referred to as Governing Boards. In the exercise of the powers conferred by law upon the Board and in the exercise of the powers vested in such Governing Boards, it is hereby provided that (i) the Board and any such Governing Board may contract with each other and other parties as to the design and construction of any project to be constructed for or upon the property of such Governing Board or any institution under its jurisdiction; (ii) in connection with any such project, compliance with the provisions of the Illinois Purchasing Act [30 ILCS 505/1 et seq.] by either the Board or such Governing Board shall be deemed to be compliance by the other; (iii) funds appropriated to any such Governing Board may be expended for any project constructed by the Board for such Governing Board; (iv) in connection with any such project the architects and engineers retained for the project and the plans and specifications for the project must be approved by both the Governing Board and the Board before undertaking either design or construction of the project, as the case may be.

(Source: P.A. 82-622; 89-4, § 50-55.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 782.

§ 20 ILCS 3105/13. [Cargo handling facilities]

Sec. 13. The Board may provide cargo handling facilities and facilities designed for the movement of cargo to or from cargo handling facilities for the use of regional port districts. Pursuant to appropriations setting forth specific projects and regional port districts, the Board shall contract with the regional port district named in the Act making the appropriation for cargo handling facilities. Such contract shall provide that the regional port district shall remit to the State of Illinois an amount equal to not more than 20% of the gross receipts attributable to those facilities, and not less than 20% of the profit attributable to those facilities, whether collected by the regional port district or through an operator or other intermediary, until the full amount appropriated and expended by the State of Illinois has been remitted to the State. The exact amount of, the manner of, the method of and the time for such remittances shall be agreed upon by the particular port district and the Board acting through its Executive Director, and such agreement may, from time to time, be amended by the parties so as to alter or modify the amount of, manner of, method of and time for the remittance, including, but not limited

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to, the temporary forgiveness, suspension or delay of the remittances not to exceed 24 months for any single suspension or delay. The payback is subordinate solely to any outstanding public bond agreements existing at the time of the contract and solely for the period of time of the running of those bond agreements.

This Section shall apply to all regional port district facilities to be constructed by the Board, including projects for which appropriations or reappropriations have been made prior to June 30, 1976, and to all contracts existing prior to the effective date of this amendatory Act of 1985 as well as contracts entered into on or after such date.

(Source: P.A. 84-781.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 783.

OPINIONS OF ATTORNEY GENERAL

Gross Receipt Payback

- Illustrative Cases

Where, pursuant to this section, the Capital Development Board and the Chicago Regional Port District entered into a contract which was amended by a supplemental agreement which clearly subordinated the 20% gross receipt payback requirement to the bond ordinance in accordance with this section, it required that the 20% gross receipt payback attributable to the cargo handling facilities be paid only to the extent that moneys are available for such use in the surplus account, the second supplemental agreement implements Public Act 81-1420. 1982 Op. Atty. Gen. (82-040).

§ 20 ILCS 3105/14. [Works of art in public buildings; Fine Arts Review Committee; Public Arts Advisory Committee]

Sec. 14. (a) It is the purpose of this Act to provide for the promotion and preservation of the arts by securing suitable works of art for the adornment of public buildings constructed or subjected to major renovation by the State or which utilize State funds, and thereby reflecting our cultural heritage, with emphasis on the works of Illinois artists.

(b) As used in this Act: "Works of art" shall apply to and include paintings, prints, sculptures, graphics, mural decorations, stained glass, statues, bas reliefs, ornaments, fountains, ornamental gateways, or other creative works which reflect form, beauty and aesthetic perceptions.

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(c) Beginning with the fiscal year ending June 30, 1979, and for each succeeding fiscal year thereafter, the Capital Development Board shall set aside 1/2 of 1 percent of the amount authorized and appropriated for construction or reconstruction of each public building financed in whole or in part by State funds and generally accessible to and used by the public for purchase and placement of suitable works of art in such public buildings. The location and character of the work or works of art to be installed in such public buildings shall be determined by the designing architect, provided, however, that the work or works of art shall be in a permanent and prominent location.

(d) There is created a Fine Arts Review Committee consisting of the designing architect, the Chairman of the Illinois Arts Council or his designee, the Director of the Illinois State Museum or his designee, and three persons from the area in which the project is to be located who are familiar with the local area and are knowledgeable in matters of art. Of the three local members, two shall be selected by the County Board to the County in which the project is located and one shall be selected by the Mayor or other chief executive officer of the municipality in which the project is located. The Committee, after such study as it deems necessary, shall recommend three artists or works of art in order of preference, to the Capital Development Board. The Board will make the final selection from among the recommendations submitted to it.

(e) There is created a Public Arts Advisory Committee whose function is to advise the Capital Development Board and the Fine Arts Review Committee on various technical and aesthetic perceptions that may be utilized in the creation or major renovation of public buildings. The Public Arts Advisory Committee shall consist of 12 members who shall serve for terms of 2 years ending on June 30 of odd numbered years, except the first appointees to the Committee shall serve for a term ending June 30, 1979. The Public Arts Advisory Committee shall meet four times each fiscal year. Four members shall be appointed by the Governor; four shall be chosen by the Senate, two of whom shall be chosen by the President, two by the minority leader; and four shall be appointed by the House of Representatives, two of whom shall be chosen by the Speaker and two by the minority leader. There shall also be a Chairman who shall be chosen from the committee members by the majority vote of that Committee.

(f) All necessary expenses of the Public Arts Advisory Committee and the Fine Arts Review Committee shall be paid by the Capital Development Board.

(Source: P.A. 80-241; 90-655, § 34.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 783.01.

§ 20 ILCS 3105/15. [Incorporation of Administrative Procedure Act]

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Sec. 15. The provisions of "The Illinois Administrative Procedure Act", as now or hereafter amended [5 ILCS 100/1-1 et seq.], are hereby expressly adopted and incorporated herein as though a part of this Act, and shall apply to all administrative rules and procedures of the Board under this Act.

(Source: P.A. 80-961; 80-1494.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 783a.

§ 20 ILCS 3105/16. [Regulations concerning prequalification of architect, engineer, or contractor; suspension or modification]

Sec. 16. (a) In addition to any other power granted in this Act to adopt rules or regulations, the Board may adopt regulations or rules relating to the issuance or renewal of the prequalification of an architect, engineer or contractor or the suspension or modification of the prequalification of any such person or entity including, without limitation, an interim or emergency suspension or modification without a hearing founded on any one or more of the bases set forth in this Section.

(b) Among the bases for an interim or emergency suspension or modification of prequalification are:

(1) A finding by the Board that the public interest, safety or welfare requires a summary suspension or modification of a prequalification without hearings.

(2) The occurrence of an event or series of events which, in the Board's opinion, warrants a summary suspension or modification of a prequalification without a hearing including, without limitation, (i) the indictment of the holder of the prequalification by a State or federal agency or other branch of government for a crime; (ii) the suspension or modification of a license or prequalification by another State agency or federal agency or other branch of government after hearings; (iii) a material breach of a contract made between the Board and an architect, engineer or contractor; and (iv) the failure to comply with State law including, without limitation, the Business Enterprise for Minorities, Females, and Persons with Disabilities Act [30 ILCS 575/0.01 et seq.], the prevailing wage requirements, and the Steel Products Procurement Act [30 ILCS 565/1 et seq.].

(c) If a prequalification is suspended or modified by the Board without hearings for any reason set forth in this Section or in Section 10-65 of the Illinois Administrative Procedure Act, as amended [5 ILCS 100/10-65], the Board shall within 30 days of the issuance of an order of suspension or modification of a prequalification initiate proceedings for the suspension or modification of or other action upon the

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prequalification.

(Source: P.A. 85-443; 88-45, § 3-10.5; 92-16, § 26.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 783b.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Effect of Amendments. The 2001 amendment by P.A. 92-16, effective June 28, 2001, substituted "Business Enterprise for Minorities, Females, and Persons with Disabilities Act" for "Minority and Female Business Enterprise Act" in subsection (b)(2).

§ 20 ILCS 3105/17. Historic area preference

Sec. 17. Historic area preference. (a) The State of Illinois shall give preference to locating its facilities, whenever operationally appropriate and economically feasible, in historic properties and buildings located within government recognized historic districts or central business districts designated as such by a local or regional planning agency.

When making a determination that a project is operationally appropriate and economically feasible, the following shall also be taken into consideration:

(1) Need for geographic diversity to service a clientele population.

(2) Promoting regional and local economic development.

(3) Availability of space in historic buildings, districts, and central business districts.

(4) Cost of available space.

(5) Proximity of public transportation and affordable housing.

(6) Public safety.

(b) The following State facilities are exempted from the requirements of this Section:

(1) Correctional facilities.

(2) Facilities owned or used by any public university or college.

(3) State parks, nature areas, and similar facilities.

(4) State highways and roads and supporting facilities.

(5) New buildings that support the function or operation of an existing facility or campus.

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This Section shall not apply to any facilities occupied by the State of Illinois prior to the effective date of this amendatory Act of the 95th General Assembly [P.A. 95-101] or to any project for which a lease or construction contract is in effect as of the effective date of this amendatory Act of the 95th General Assembly.

(Source: P.A. 95-101, § 5.)

Effective Date. Section 99 of P.A. 95-101, provides "This Act takes effect upon becoming law". P.A. 95-101 became effective August 13, 2007.

§ 20 ILCS 3105/18. Study; building energy labels

Sec. 18. Study; building energy labels. (a) On and after the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-896], the Board, in consultation with the Department of Commerce and Economic Opportunity, shall initiate a study of building energy performance measures for the purposes of identifying a simple and easily understood label for a building or facility that indicates its energy use.

(b) The Board shall identify no less than 10 buildings to serve as case studies for measuring, reporting, and comparing the energy consumption using widely recognized and accepted indicators such as British Thermal Units per square foot. Consideration shall be given for a variety of representative building types in different geographic regions of the State to provide additional information and data. The Board shall use existing reports and data from the Illinois Energy Efficiency Committee created by Executive Order 2009-07, the Commercial Buildings Energy Consumption Survey, the Residential Energy Consumption Survey, and other available sources.

(c) The Board shall report its findings and recommendations to the General Assembly by July 1, 2012.

(Source: P.A. 96-896, § 5.)

Effective Date. Section 99 of P.A. 96-896, provides, "This Act takes effect upon becoming law". P.A. 96-896 became effective May 24, 2010.

Article 1A.

School Construction and Debt Service Grants

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§§ 20 ILCS 3105/1A-1.1 through 20 ILCS 3105/1A-11: Repealed by P.A. 90-548, § 5-900, effective January 1, 1998.

[Article II].

[Reserved]

[Article III].

§ 20 ILCS 3105/1 (Art. III). [Effective date]

Sec. 1 (Art. III). This Act takes effect on July 1, 1972 or upon its becoming a law, whichever is later.

(Source: P.A. 77-1995.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 791.

§ 20 ILCS 3105/2 (Art. III). [Severability]

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Sec. 2 (Art. III). If any clause or other portion of this Act shall be held invalid, that decision shall not affect the validity of the remaining portions of this Act. It is hereby declared that all such remaining portions of this Act are severable, and that the General Assembly would have enacted such remaining portions if the portions that may be so held to be invalid had not been included in this Act.

(Source: P.A. 77-1995.)

Note.

This section was Ill.Rev.Stat., Ch. 127, Para. 792.

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CHAPTER 30.
FINANCE

RECEIPT, INVESTMENT, AND DISBURSEMENT
30 ILCS 235Public Funds Investment Act
BONDS AND DEBT
30 ILCS 390School Construction Bond Act

RECEIPT, INVESTMENT, AND DISBURSEMENT

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Public Funds Investment Act

Sec.
30 ILCS 235/0.01.Short title
30 ILCS 235/1.[Definitions]
30 ILCS 235/2.Authorized investments
30 ILCS 235/2.5.Investment policy
30 ILCS 235/2.10.Unit of local government; deposit at reduced rate of interest
30 ILCS 235/3.[Payees of securities; registration]
30 ILCS 235/4.[Treatment of securities]
30 ILCS 235/5.[Statement of authority]
30 ILCS 235/6.Report of financial institutions
30 ILCS 235/6.5.Federally insured deposits at Illinois financial institutions
30 ILCS 235/7.[Use of minority-owned institutions]
30 ILCS 235/8.Consideration of financial institution's commitment to its community

§ 30 ILCS 235/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Public Funds Investment Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act relating to certain investments of public funds by public agencies.

Cite: 30 ILCS 235/0.01 et seq.

Source: L. 1943, vol. 1, p. 951. Title amended by L. 1959, p. 108; L. 1961, p. 2548.

Date: Approved July 23, 1943.

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 900.

§ 30 ILCS 235/1. [Definitions]

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Sec. 1. The words "public funds", as used in this Act, mean current operating funds, special funds, interest and sinking funds, and funds of any kind or character belonging to or in the custody of any public agency.

The words "public agency", as used in this Act, mean the State of Illinois, the various counties, townships, cities, towns, villages, school districts, educational service regions, special road districts, public water supply districts, fire protection districts, drainage districts, levee districts, sewer districts, housing authorities, the Illinois Bank Examiners' Education Foundation, the Chicago Park District, and all other political corporations or subdivisions of the State of Illinois, now or hereafter created, whether herein specifically mentioned or not. This Act does not apply to the Illinois Prepaid Tuition Trust Fund, private funds collected by the Illinois Conservation Foundation, or pension funds or retirement systems established under the Illinois Pension Code, except as otherwise provided in that Code [40 ILCS 5/1-101 et seq.].

(Source: P.A. 85-1411; 87-968, § 1; 90-507, § 3; 91-669, § 5; 92-797, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 901.

Effect of Amendments. The 1992 amendment, effective January 1, 1993, inserts "educational service regions," in the second paragraph following "school districts,".

The 1997 amendment by P.A. 90-507, effective August 22, 1997, in the second paragraph, added the second sentence.

The 1999 amendment by P.A. 91-669, effective January 1, 2000, inserted "the Illinois Prepaid Tuition Trust Fund," preceding "pension funds" near the end of the second paragraph.

The 2002 amendment by P.A. 92-797, effective August 15, 2002, inserted "private funds collected by the Illinois Conservation Foundation, or" in the second paragraph.

CASE NOTES

Analysis
Quo Warranto
Standing

Quo Warranto

The exercise of discretion by defendant Board of Education in the performance of its authorized powers under this section was not subject to challenge by quo warranto. People ex rel. Hamer v. Board of Educ., 132 Ill. App. 2d 46, 267 N.E.2d 1 (2 Dist. 1971).

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Standing

In a tax derivative suit, taxpayer lacked standing to bring a claim on behalf of the county, where it was alleged that the defendant bank violated the Deposit of Public Funds Act, 30 ILCS 225/0.01 et seq. McKay v. Kusper, 252 Ill. App. 3d 450, 191 Ill. Dec. 762, 624 N.E.2d 1140 (1 Dist. 1993).

OPINIONS OF ATTORNEY GENERAL

Pool Investment

Policemen's and firemen's pension funds may elect to utilize the Illinois Public Treasurer's Investment Pool. 1977 Op. Atty. Gen. 176.

Practice Guides and Treatises.

Real Estate Taxation § 8.33 Return, Settlement, and Distribution of Taxes (IICLE).

§ 30 ILCS 235/2. Authorized investments

Sec. 2. Authorized investments. (a) Any public agency may invest any public funds as follows:

(1) in bonds, notes, certificates of indebtedness, treasury bills or other securities now or hereafter issued, which are guaranteed by the full faith and credit of the United States of America as to principal and interest;

(2) in bonds, notes, debentures, or other similar obligations of the United States of America, its agencies, and its instrumentalities;

(3) in interest-bearing savings accounts, interest-bearing certificates of deposit or interest-bearing time deposits or any other investments constituting direct obligations of any bank as defined by the Illinois Banking Act [205 ILCS 5/1 et seq.];

(4) in short term obligations of corporations organized in the United States with assets exceeding $500,000,000 if (i) such obligations are rated at the time of purchase at one of the 3 highest classifications established by at least 2 standard rating services and which mature not later than 270 days from the date of purchase, (ii) such purchases do not exceed 10% of the corporation's outstanding obligations and (iii) no more than one-third of the public agency's funds may be invested in short term obligations of corporations; or

(5) in money market mutual funds registered under the Investment Company Act of 1940 [15 U.S.C. § 80a-1 et seq.], provided that the portfolio of any such money market mutual

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fund is limited to obligations described in paragraph (1) or (2) of this subsection and to agreements to repurchase such obligations.

(a-1) In addition to any other investments authorized under this Act, a municipality or a county may invest its public funds in interest bearing bonds of any county, township, city, village, incorporated town, municipal corporation, or school district, of the State of Illinois, of any other state, or of any political subdivision or agency of the State of Illinois or of any other state, whether the interest earned thereon is taxable or tax-exempt under federal law. The bonds shall be registered in the name of the municipality or county or held under a custodial agreement at a bank. The bonds shall be rated at the time of purchase within the 4 highest general classifications established by a rating service of nationally recognized expertise in rating bonds of states and their political subdivisions.

(b) Investments may be made only in banks which are insured by the Federal Deposit Insurance Corporation. Any public agency may invest any public funds in short term discount obligations of the Federal National Mortgage Association or in shares or other forms of securities legally issuable by savings banks or savings and loan associations incorporated under the laws of this State or any other state or under the laws of the United States. Investments may be made only in those savings banks or savings and loan associations the shares, or investment certificates of which are insured by the Federal Deposit Insurance Corporation. Any such securities may be purchased at the offering or market price thereof at the time of such purchase. All such securities so purchased shall mature or be redeemable on a date or dates prior to the time when, in the judgment of such governing authority, the public funds so invested will be required for expenditure by such public agency or its governing authority. The expressed judgment of any such governing authority as to the time when any public funds will be required for expenditure or be redeemable is final and conclusive. Any public agency may invest any public funds in dividend-bearing share accounts, share certificate accounts or class of share accounts of a credit union chartered under the laws of this State or the laws of the United States; provided, however, the principal office of any such credit union must be located within the State of Illinois. Investments may be made only in those credit unions the accounts of which are insured by applicable law.

(c) For purposes of this Section, the term "agencies of the United States of America" includes: (i) the federal land banks, federal intermediate credit banks, banks for cooperative, federal farm credit banks, or any other entity authorized to issue debt obligations under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and Acts amendatory thereto; (ii) the federal home loan banks and the federal home loan mortgage corporation; and (iii) any other agency created by Act of Congress.

(d) Except for pecuniary interests permitted under subsection (f) of Section 3-14-4 of the Illinois Municipal Code or under Section 3.2 of the Public Officer Prohibited Practices Act [50 ILCS 105/3.2], no person acting as treasurer or financial officer or who is employed in any similar capacity by or for a public agency may do any of the following:

(1) have any interest, directly or indirectly, in any investments in which the agency is authorized to invest.

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(2) have any interest, directly or indirectly, in the sellers, sponsors, or managers of those investments.

(3) receive, in any manner, compensation of any kind from any investments in which the agency is authorized to invest.

(e) Any public agency may also invest any public funds in a Public Treasurers' Investment Pool created under Section 17 of the State Treasurer Act [15 ILCS 505/17]. Any public agency may also invest any public funds in a fund managed, operated, and administered by a bank, subsidiary of a bank, or subsidiary of a bank holding company or use the services of such an entity to hold and invest or advise regarding the investment of any public funds.

(f) To the extent a public agency has custody of funds not owned by it or another public agency and does not otherwise have authority to invest such funds, the public agency may invest such funds as if they were its own. Such funds must be released to the appropriate person at the earliest reasonable time, but in no case exceeding 31 days, after the private person becomes entitled to the receipt of them. All earnings accruing on any investments or deposits made pursuant to the provisions of this Act shall be credited to the public agency by or for which such investments or deposits were made, except as provided otherwise in Section 4.1 of the State Finance Act [30 ILCS 105/4.1] or the Local Governmental Tax Collection Act, and except where by specific statutory provisions such earnings are directed to be credited to and paid to a particular fund.

(g) A public agency may purchase or invest in repurchase agreements of government securities having the meaning set out in the Government Securities Act of 1986, as now or hereafter amended or succeeded [P.L. 99-571], subject to the provisions of said Act and the regulations issued thereunder. The government securities, unless registered or inscribed in the name of the public agency, shall be purchased through banks or trust companies authorized to do business in the State of Illinois.

(h) Except for repurchase agreements of government securities which are subject to the Government Securities Act of 1986, as now or hereafter amended or succeeded, no public agency may purchase or invest in instruments which constitute repurchase agreements, and no financial institution may enter into such an agreement with or on behalf of any public agency unless the instrument and the transaction meet the following requirements:

(1) The securities, unless registered or inscribed in the name of the public agency, are purchased through banks or trust companies authorized to do business in the State of Illinois.

(2) An authorized public officer after ascertaining which firm will give the most favorable rate of interest, directs the custodial bank to "purchase" specified securities from a designated institution. The "custodial bank" is the bank or trust company, or agency of government, which acts for the public agency in connection with repurchase agreements involving the investment of funds by the public agency. The State Treasurer may act as custodial bank for public agencies executing repurchase agreements. To the extent the Treasurer acts in this capacity, he is hereby authorized to pass through to such public agencies any charges assessed by the Federal Reserve Bank.

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(3) A custodial bank must be a member bank of the Federal Reserve System or maintain accounts with member banks. All transfers of book-entry securities must be accomplished on a Reserve Bank's computer records through a member bank of the Federal Reserve System. These securities must be credited to the public agency on the records of the custodial bank and the transaction must be confirmed in writing to the public agency by the custodial bank.

(4) Trading partners shall be limited to banks or trust companies authorized to do business in the State of Illinois or to registered primary reporting dealers.

(5) The security interest must be perfected.

(6) The public agency enters into a written master repurchase agreement which outlines the basic responsibilities and liabilities of both buyer and seller.

(7) Agreements shall be for periods of 330 days or less.

(8) The authorized public officer of the public agency informs the custodial bank in writing of the maturity details of the repurchase agreement.

(9) The custodial bank must take delivery of and maintain the securities in its custody for the account of the public agency and confirm the transaction in writing to the public agency. The Custodial Undertaking shall provide that the custodian takes possession of the securities exclusively for the public agency; that the securities are free of any claims against the trading partner; and any claims by the custodian are subordinate to the public agency's claims to rights to those securities.

(10) The obligations purchased by a public agency may only be sold or presented for redemption or payment by the fiscal agent bank or trust company holding the obligations upon the written instruction of the public agency or officer authorized to make such investments.

(11) The custodial bank shall be liable to the public agency for any monetary loss suffered by the public agency due to the failure of the custodial bank to take and maintain possession of such securities.

(i) Notwithstanding the foregoing restrictions on investment in instruments constituting repurchase agreements the Illinois Housing Development Authority may invest in, and any financial institution with capital of at least $250,000,000 may act as custodian for, instruments that constitute repurchase agreements, provided that the Illinois Housing Development Authority, in making each such investment, complies with the safety and soundness guidelines for engaging in repurchase transactions applicable to federally insured banks, savings banks, savings and loan associations or other depository institutions as set forth in the Federal Financial Institutions Examination Council Policy Statement Regarding Repurchase Agreements and any regulations issued, or which may be issued by the supervisory federal authority pertaining thereto and any amendments thereto; provided further that the securities shall be either (i) direct general obligations of, or obligations the payment of the principal of and/or interest on which are unconditionally guaranteed by, the United States of America or (ii) any obligations of any agency, corporation or subsidiary thereof controlled or supervised by and acting as an

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instrumentality of the United States Government pursuant to authority granted by the Congress of the United States and provided further that the security interest must be perfected by either the Illinois Housing Development Authority, its custodian or its agent receiving possession of the securities either physically or transferred through a nationally recognized book entry system.

(j) In addition to all other investments authorized under this Section, a community college district may invest public funds in any mutual funds that invest primarily in corporate investment grade or global government short term bonds. Purchases of mutual funds that invest primarily in global government short term bonds shall be limited to funds with assets of at least $100 million and that are rated at the time of purchase as one of the 10 highest classifications established by a recognized rating service. The investments shall be subject to approval by the local community college board of trustees. Each community college board of trustees shall develop a policy regarding the percentage of the college's investment portfolio that can be invested in such funds.

Nothing in this Section shall be construed to authorize an intergovernmental risk management entity to accept the deposit of public funds except for risk management purposes.

(Source: P.A. 86-426; 86-683; 86-952; 86-1038; 86-1271; 87-288; 87-940; 87-1098; 88-45, § 2-15; 88-355, § 3; 88-555, § 5; 90-319, § 10; 93-360, § 5; 96-741, § 5; 97-129, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 902.

Section 3-14-4 of the Illinois Municipal Code, referred to above, has been repealed. See now 65 ILCS 5/3.1-55-10.

The Local Governmental Tax Collection Act, referred to above, has been repealed. See now 35 ILCS 200/20-130 and 35 ILCS 200/20-135.

Effect of Amendments. The 1992 amendment by P.A. 87-940, effective August 28, 1992, added the section catchline "Authorized investments", and added "subsidiary of a bank, or subsidiary of a bank holding company or used the services of such an entity to hold and invest or advise regarding the investment of any public funds" to the end of subsection (e).

The 1992 amendment by P.A. 87-1098, effective September 15, 1992, added the section catchline "Permitted investments," inserted "savings banks or" preceding "savings and loan associations" in both the second and third sentences of subsection (b), substituted "Deposit" for "Savings and Loan" in the third sentence of subsection (b), and inserted "savings banks," in subsection (i) following "federally insured banks".

The 1993 amendment by P.A. 88-45, effective July 6, 1993 combined the separate amendments of P.A. 87-940 and P.A. 87-1098.

The 1993 amendment by P.A. 88-355, effective August 16, 1993, in the section catchline deleted "Permitted" preceding "investments"; and added subsection (a-1).

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The 1994 amendment by P.A. 88-555, effective July 27, 1994, added subsection (j).

The 1997 amendment by P.A. 90-319, effective August 1, 1997, in subsection (j) added the second paragraph.

The 2003 amendment by P.A. 93-360, effective July 24, 2003, inserted "of the State of Illinois, of any other state, or of any political subdivision or agency of the State of Illinois or of any other state, whether the interest earned theron is taxable or tax-exempt under federal law" in subsection (a-1).

The 2009 amendment by P.A. 96-741, effective August 25, 2009, added "and its instrumentalities" to the end of (a)(2); substituted "270 days" for "180 days" in (a)(4); and inserted "as now or hereafter amended or succeeded" in the first sentence of (g) and the introductory language of (h).

The 2011 amendment by P.A. 97-129, effective July 14, 2011, in (a-1), inserted "or a county" in the first sentence and inserted "or county" in the second sentence.

CASE NOTES

Analysis

Agency Relationship
Applicability
- County Clerk
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Interest Income
- Credit
- Past Sums
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- Estate Deposit
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- Interest

Agency Relationship

Where there were no contract or statutory provisions for interest to anyone other than the public agency, an agency relationship did not exist and tax certificate holders were not entitled to receive the earnings from investments and interest. Thornton, LTD v. Kusper, 77 Ill. App. 3d 192, 32 Ill. Dec. 669, 395 N.E.2d 1050 (1 Dist. 1979).

This section, former 35 ILCS 205/253 (see now 35 ILCS 200/21-345 through 35 ILCS 200/21-365 and 35 ILCS 200/21-380) and 30 ILCS 235/1 do not refer to the existence of an agency relationship, and specifically state that any earnings accruing on investments are to be credited to the agency, not to the tax certificate holder. Thornton, LTD v. Kusper, 77 Ill. App. 3d 192, 32 Ill. Dec. 669, 395 N.E.2d 1050 (1 Dist. 1979).

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Applicability

- County Clerk

Since a county clerk is under a duty to release funds to the appropriate person at the earliest possible time, he is not liable for interest. Thornton, LTD v. Kusper, 77 Ill. App. 3d 192, 32 Ill. Dec. 669, 395 N.E.2d 1050 (1 Dist. 1979).

Directory Application

This section is not a precondition to the power to invest, but rather is a direction of the manner of exercise of the authority of a board of education, involving a broad grant of discretion. People ex rel. Hamer v. Board of Educ., 22 Ill. App. 3d 130, 316 N.E.2d 820 (2 Dist. 1974); People ex rel. Hamer v. Board of Educ., 132 Ill. App. 2d 46, 267 N.E.2d 1 (2 Dist. 1971).

Interest Income

- Credit

When the Municipal Retailers' Occupation Tax Act (65 ILCS 5/8-11-1 et seq.) is considered in conjunction with this section, municipalities, the taxing bodies for which investments were made, are entitled to be credited with the interest income. Village of Pawnee v. Johnson, 103 Ill. 2d 411, 83 Ill. Dec. 219, 469 N.E.2d 1365 (1984).

The Municipal Retailers' Occupation Tax Act (65 ILCS 5/8-11-1 et seq.), this section, and section 1 of "An Act in relation to the deposit of public funds" (30 ILCS 225/0.01 et seq.) required the State Department of Revenue to credit municipalities with the interest income which accrued on tax receipts collected, invested, and distributed by defendants pursuant to the Municipal Retailers' Occupation Tax Act. Village of Pawnee v. Johnson, 119 Ill. App. 3d 164, 74 Ill. Dec. 481, 455 N.E.2d 1105 (4 Dist. 1983).

- Past Sums

Municipalities were entitled to recover the undistributed and future interest income earned on tax receipts held by the State Treasurer but they were unable to recover for past sums of interest income which had already been placed by the Treasurer in the general revenue fund. Village of Pawnee v. Johnson, 103 Ill. 2d 411, 83 Ill. Dec. 219, 469 N.E.2d 1365 (1984).

Investment

- Estate Deposit

State treasurer was authorized to invest estate's deposit and keep the interest income. Mannix v. Donnewald, 187 Ill. App. 3d 472, 135 Ill. Dec. 94, 543 N.E.2d 329 (1 Dist. 1989).

Private Right of Action

This section creates a private right of action which may be maintained by government agencies, and through them citizens, injured by the wrongdoing of financial institutions. Board of Trustees v. Chicago Corp., 708 F. Supp. 1499 (N.D. Ill. 1989).

Return of Funds

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The 31 day time limit is not excessive and is reasonable to return the funds to the appropriate person. Thornton, LTD v. Kusper, 77 Ill. App. 3d 192, 32 Ill. Dec. 669, 395 N.E.2d 1050 (1 Dist. 1979).

The legislature's purpose in creating a time limit was to allow the clerk to dispense with necessary bookkeeping tasks. Thornton, LTD v. Kusper, 77 Ill. App. 3d 192, 32 Ill. Dec. 669, 395 N.E.2d 1050 (1 Dist. 1979).

Tax Refund

- Interest

The state is not obligated to pay interest on funds deposited with the state pending a determination of inheritance taxes due when excess funds are refunded to the estate. Mannix v. Donnewald, 187 Ill. App. 3d 472, 135 Ill. Dec. 94, 543 N.E.2d 329 (1 Dist. 1989).

OPINIONS OF ATTORNEY GENERAL

Analysis

Agency
Authority of Court Clerk
Federal National Mortgage Association Investments
Interest Income
Investment

Agency

Although the Small Business Administration and the Government National Mortgage Association are agencies of the United States, within the meaning of this section, the Federal National Mortgage Association is not. 1991 Op. Atty. Gen. (91-045).

Authority of Court Clerk

The circuit court clerk has authority to invest bail deposits or bond money, but any earnings accruing from such investment must be paid over to the county treasurer. 1980 Op. Atty. Gen. 96.

Federal National Mortgage Association Investments

Because no statute specifically referring to the federal Secondary Mortgage Market Enhancement Act of 1984 and prohibiting or limiting investments in Federal National Mortgage Association securities was enacted within the period provided by the law, it is permissible for public entities in Illinois to invest in such securities. 1999 Op. Atty. Gen. (99-014).

Interest Income

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Interest income earned from the investment of special fund moneys should be credited to those special funds generating the interest, and not to the county corporate fund. 1991 Op. Atty. Gen. (91-035).

Interest earned while funds appropriated to the Metropolitan Fair and Exposition Authority were under the Authority's custody and control may not be retained by the Authority but must be paid over to the state. 1977 Op. Atty. Gen. 207.

Investment

The state treasurer is authorized, pursuant to this section, to invest state funds in obligations of agencies of the United States which mature more than one year after the date of purchase. 1991 Op. Atty. Gen. (91-045).

There was no authority under this section to invest in bank securities described. 1982 Op. Atty. Gen. 19.

Policemen's and firemen's pension funds may elect to utilize the Illinois Public Treasurer's Investment Pool. 1977 Op. Atty. Gen. 176.

§ 30 ILCS 235/2.5. Investment policy

Sec. 2.5. Investment policy. (a) Investment of public funds by a public agency shall be governed by a written investment policy adopted by the public agency. The level of detail and complexity of the investment policy shall be appropriate to the nature of the funds, the purpose for the funds, and the amount of the public funds within the investment portfolio. The policy shall address safety of principal, liquidity of funds, and return on investment and shall require that the investment portfolio be structured in such manner as to provide sufficient liquidity to pay obligations as they come due. In addition, the investment policy shall include or address the following:

(1) a listing of authorized investments;

(2) a rule, such as the "prudent person rule", establishing the standard of care that must be maintained by the persons investing the public funds;

(3) investment guidelines that are appropriate to the nature of the funds, the purpose for the funds, and the amount of the public funds within the investment portfolio;

(4) a policy regarding diversification of the investment portfolio that is appropriate to the nature of the funds, the purpose for the funds, and the amount of the public funds within the investment portfolio;

(5) guidelines regarding collateral requirements, if any, for the deposit of public funds in a financial institution made pursuant to this Act, and, if applicable, guidelines for contractual arrangements for the custody and safekeeping of that collateral;

(6) a policy regarding the establishment of a system of internal controls and written operational procedures designed to prevent losses of funds that might arise from fraud,

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employee error, misrepresentation by third parties, or imprudent actions by employees of the entity;

(7) identification of the chief investment officer who is responsible for establishing the internal controls and written procedures for the operation of the investment program;

(8) performance measures that are appropriate to the nature of the funds, the purpose for the funds, and the amount of the public funds within the investment portfolio;

(9) a policy regarding appropriate periodic review of the investment portfolio, its effectiveness in meeting the public agency's needs for safety, liquidity, rate of return, and diversification, and its general performance;

(10) a policy establishing at least quarterly written reports of investment activities by the public agency's chief financial officer for submission to the governing body and chief executive officer of the public agency. The reports shall include information regarding securities in the portfolio by class or type, book value, income earned, and market value as of the report date;

(11) a policy regarding the selection of investment advisors, money managers, and financial institutions; and

(12) a policy regarding ethics and conflicts of interest.

(b) For purposes of the State or a county, the investment policy shall be adopted by the elected treasurer and presented to the chief executive officer and the governing body. For purposes of any other public agency, the investment policy shall be adopted by the governing body of the public agency.

(c) The investment policy shall be made available to the public at the main administrative office of the public agency.

(d) The written investment policy required under this Section shall be developed and implemented by January 1, 2000.

(Source: P.A. 90-688, § 5.)

Effective Date. Section 99 of P.A. 90-688 made this section effective upon becoming law. The Act was approved July 31, 1998.

§ 30 ILCS 235/2.10. Unit of local government; deposit at reduced rate of interest

Sec. 2.10. Unit of local government; deposit at reduced rate of interest. The treasurer of a unit of local government may, in his or her discretion, deposit public moneys of that unit of local government in a financial institution pursuant to an agreement that provides for a reduced rate of interest, provided that the institution agrees to expend an amount of

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money equal to the amount of the reduction for senior centers.

(Source: P.A. 93-246, § 92.)

Effective Date. Section 99 of P.A. 93-246 made this section effective upon becoming law. The Act was approved July 22, 2003.

§ 30 ILCS 235/3. [Payees of securities; registration]

Sec. 3. If any securities, purchased under authority of Section 2 hereof [30 ILCS 235/2], are issuable to a designated payee or to the order of a designated payee, then the public agency shall be so designated, and further, if such securities are purchased with money taken from a particular fund of a public agency, the name of such fund shall be added to that of such public agency. If any such securities are registerable, either as to principal or interest, or both, then such securities shall be so registered in the name of the public agency, and in the name of the fund to which they are to be credited.

(Source: Laws 1943, vol. 1, p. 951.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 903.

§ 30 ILCS 235/4. [Treatment of securities]

Sec. 4. All securities purchased under the authority of this Act shall be held for the benefit of the public agency which purchased them, and if purchased with money taken from a particular fund, such securities shall be credited to and deemed to be a part of such fund, and shall be held for the benefit thereof. All securities so purchased shall be deposited and held in a safe place by the person or persons having custody of the fund to which they are credited, and such person or persons are responsible upon his or their official bond or bonds for the safekeeping of all such securities. Any securities purchased by any such public agency under authority of this Act, may be sold at any time, at the then current market price thereof, by the governing authority of such public agency. Except as provided in Section 4.1 of "An Act in relation to State finance" [30 ILCS 105/4.1], all payments received as principal or interest, or otherwise, derived from any such securities shall be credited to the public agency and to the fund by or for which such securities were purchased.

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(Source: P.A. 84-1378.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 904.

CASE NOTES

Construction

Plain language of the statute shows that § 4.1 of the State Finance Act, 30 ILCS 105/4.1, is an exception to § 4 of the Public Funds Investment Act, 30 ILCS 235/4, not vice versa. Morawicz v. Hynes, 401 Ill. App. 3d 142, 340 Ill. Dec. 893, 929 N.E.2d 544, 2010 Ill. App. LEXIS 309 (1 Dist. 2010).

OPINIONS OF ATTORNEY GENERAL

Analysis
Interest Income
Securities

Interest Income

Interest income earned from the investment of special fund moneys should be credited to those special funds generating the interest, and not to the county corporate fund. 1991 Op. Atty. Gen. (91-035).

Securities

The term "securities" appears to include all types of investment instruments, including interest-bearing deposits and accounts. 1991 Op. Atty. Gen. (91-035).

§ 30 ILCS 235/5. [Statement of authority]

Sec. 5. This Act, without reference to any other statute, shall be deemed full and complete authority for the investment of public funds, as hereinabove provided, and shall be construed as an additional and alternative method therefor.

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(Source: Laws 1943, vol. 1, p. 951.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 905.

§ 30 ILCS 235/6. Report of financial institutions

Sec. 6. Report of financial institutions. (a) No bank shall receive any public funds unless it has furnished the corporate authorities of a public agency submitting a deposit with copies of the last two sworn statements of resources and liabilities which the bank is required to furnish to the Commissioner of Banks and Real Estate or to the Comptroller of the Currency. Each bank designated as a depository for public funds shall, while acting as such depository, furnish the corporate authorities of a public agency with a copy of all statements of resources and liabilities which it is required to furnish to the Commissioner of Banks and Real Estate or to the Comptroller of the Currency; provided, that if such funds or moneys are deposited in a bank, the amount of all such deposits not collateralized or insured by an agency of the federal government shall not exceed 75% of the capital stock and surplus of such bank, and the corporate authorities of a public agency submitting a deposit shall not be discharged from responsibility for any funds or moneys deposited in any bank in excess of such limitation.

(b) No savings bank or savings and loan association shall receive public funds unless it has furnished the corporate authorities of a public agency submitting a deposit with copies of the last 2 sworn statements of resources and liabilities which the savings bank or savings and loan association is required to furnish to the Commissioner of Banks and Real Estate or the Federal Deposit Insurance Corporation. Each savings bank or savings and loan association designated as a depository for public funds shall, while acting as such depository, furnish the corporate authorities of a public agency with a copy of all statements of resources and liabilities which it is required to furnish to the Commissioner of Banks and Real Estate or the Federal Deposit Insurance Corporation; provided, that if such funds or moneys are deposited in a savings bank or savings and loan association, the amount of all such deposits not collateralized or insured by an agency of the federal government shall not exceed 75% of the net worth of such savings bank or savings and loan association as defined by the Federal Deposit Insurance Corporation, and the corporate authorities of a public agency submitting a deposit shall not be discharged from responsibility for any funds or moneys deposited in any savings bank or savings and loan association in excess of such limitation.

(c) No credit union shall receive public funds unless it has furnished the corporate authorities of a public agency submitting a share deposit with copies of the last two reports of examination prepared by or submitted to the Illinois Department of Financial Institutions or the National Credit Union Administration. Each credit union designated as a depository for public funds shall, while acting as such depository, furnish the corporate

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authorities of a public agency with a copy of all reports of examination prepared by or furnished to the Illinois Department of Financial Institutions or the National Credit Union Administration; provided that if such funds or moneys are invested in a credit union account, the amount of all such investments not collateralized or insured by an agency of the federal government or other approved share insurer shall not exceed 50% of the unimpaired capital and surplus of such credit union, which shall include shares, reserves and undivided earnings and the corporate authorities of a public agency making an investment shall not be discharged from responsibility for any funds or moneys invested in a credit union in excess of such limitation.

(d) Whenever a public agency deposits any public funds in a financial institution, the public agency may enter into an agreement with the financial institution requiring any funds not insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration or other approved share insurer to be collateralized by any of the following classes of securities, provided there has been no default in the payment of principal or interest thereon:

(1) Bonds, notes, or other securities constituting direct and general obligations of the United States, the bonds, notes, or other securities constituting the direct and general obligation of any agency or instrumentality of the United States, the interest and principal of which is unconditionally guaranteed by the United States, and bonds, notes, or other securities or evidence of indebtedness constituting the obligation of a U.S. agency or instrumentality.

(2) Direct and general obligation bonds of the State of Illinois or of any other state of the United States.

(3) Revenue bonds of this State or any authority, board, commission, or similar agency thereof.

(4) Direct and general obligation bonds of any city, town, county, school district, or other taxing body of any state, the debt service of which is payable from general ad valorem taxes.

(5) Revenue bonds of any city, town, county, or school district of the State of Illinois.

(6) Obligations issued, assumed, or guaranteed by the International Finance Corporation, the principal of which is not amortized during the life of the obligation, but no such obligation shall be accepted at more than 90% of its market value.

(7) Illinois Affordable Housing Program Trust Fund Bonds or Notes as defined in and issued pursuant to the Illinois Housing Development Act [20 ILCS 3805/1 et seq.].

(8) In an amount equal to at least market value of that amount of funds deposited exceeding the insurance limitation provided by the Federal Deposit Insurance Corporation or the National Credit Union Administration or other approved share insurer: (i) securities, (ii) mortgages, (iii) letters of credit issued by a Federal Home Loan Bank, or (iv) loans covered by a State Guarantee under the Illinois Farm Development Act [repealed], if that guarantee has been assumed by the Illinois Finance Authority under Section 845-75 of the Illinois Finance Authority Act [20 ILCS 3501/845-75], and loans

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covered by a State Guarantee under Article 830 of the Illinois Finance Authority Act [20 ILCS 3501/830].

(9) Certificates of deposit or share certificates issued to the depository institution pledging them as security. The public agency may require security in the amount of 125% of the value of the public agency deposit. Such certificate of deposit or share certificate shall:

(i) be fully insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Share Insurance Fund or issued by a depository institution which is rated within the 3 highest classifications established by at least one of the 2 standard rating services;

(ii) be issued by a financial institution having assets of $15,000,000 or more; and

(iii) be issued by either a savings and loan association having a capital to asset ratio of at least 2%, by a bank having a capital to asset ratio of at least 6% or by a credit union having a capital to asset ratio of at least 4%.

The depository institution shall effect the assignment of the certificate of deposit or share certificate to the public agency and shall agree that, in the event the issuer of the certificate fails to maintain the capital to asset ratio required by this Section, such certificate of deposit or share certificate shall be replaced by additional suitable security.

(e) The public agency may accept a system established by the State Treasurer to aggregate permissible securities received as collateral from financial institutions in a collateral pool to secure public deposits of the institutions that have pledged securities to the pool.

(f) The public agency may at any time declare any particular security ineligible to qualify as collateral when, in the public agency's judgment, it is deemed desirable to do so.

(g) Notwithstanding any other provision of this Section, as security a public agency may, at its discretion, accept a bond, executed by a company authorized to transact the kinds of business described in clause (g) of Section 4 of the Illinois Insurance Code [215 ILCS 5/4], in an amount not less than the amount of the deposits required by this Section to be secured, payable to the public agency for the benefit of the People of the unit of government, in a form that is acceptable to the public agency.

(h) Paragraphs (a), (b), (c), (d), (e), (f), and (g) of this Section do not apply to the University of Illinois, Southern Illinois University, Chicago State University, Eastern Illinois University, Governors State University, Illinois State University, Northeastern Illinois University, Northern Illinois University, Western Illinois University, the Cooperative Computer Center and public community colleges.

(Source: P.A. 86-1213; 87-1098, § 4; 89-4, § 50-75; 89-508, § 25; 91-324, § 5; 91-773, § 5; 93-205, § 890-37; 93-561, § 815; 95-331, § 325.)

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Note.

The Illinois Farm Development Act, 20 ILCS 3605/1 et seq., referred to above, was repealed. See now the Illinois Finance Authority Act, 20 ILCS 3501/801-1 et seq.

This section was Ill.Rev.Stat., Ch. 85, Para. 906.

P.A. 89-24, § 5 amended P.A. 89-4, § 99-1 containing the effective date provisions; however, P.A. 89-24 did not affect the January 1, 1996 effective date of this section.

Cross References.

For bank or savings and loan association receiving public funds, see 20 ILCS 805/805-410; 20 ILCS 3515/16; 30 ILCS 105/13.3; 30 ILCS 230/2c; 30 ILCS 415/6; 30 ILCS 420/8; 70 ILCS 1910/20.

Effect of Amendments. The 1992 amendment, effective September 15, 1992, inserted the section catchline "Report of financial institutions"; inserted "savings bank or" preceding "savings and loan association" and substituted "Deposit Insurance Corporation" for "Home Loan Bank" throughout subsection (b); substituted "Deposit" for "Savings and Loan" in the last sentence of subsection (b); inserted the designation for present subsection (d) preceding "Whenever a public agency,"; deleted "Federal Savings and Loan Insurance Corporation" throughout the present subsection (d); and inserted the designation for present subsection (e) and inserted "and (d)" in the last paragraph.

The 1995 amendment by P.A. 89-4, effective January 1, 1996, in subsection (e) substituted "Chicago State University, Eastern Illinois University, Governors State University, Illinois State University, Northeastern Illinois University, Northern Illinois University, Western Illinois University" for "the universities under the jurisdiction of the Board of Regents and the colleges and universities and" and deleted "under the jurisdiction of the Board of Governors of State Colleges and Universities" preceding "and public community colleges".

The 1996 amendment by P.A. 89-508, effective June 1, 1996, approved July 3, 1996, in subsection (a), in the first and second sentences, substituted "Real Estate" for "Trust Companies"; and in subsection (b), in the first and second sentences, substituted "Banks and Real Estate" for "Savings and Residential Finance".

The 1999 amendment by P.A. 91-324, effective January 1, 2000, in subsection (d) inserted "or loans covered by a State Guaranty under the Illinois Farm Development Act" and made related changes.

The 2000 amendment by P.A. 91-773, effective June 9, 2000, inserted "letters of credit issued by a Federal Home Loan Bank" in subsection (d).

The 2003 amendment by P.A. 93-205, effective January 1, 2004, substituted "Finance Authority" for "Farm Development" in subsection (d).

The 2003 amendment by P.A. 93-561, effective January 1, 2004, rewrote subsection (d), added subsections (e) through (g), redesignated former subsection (e) as subsection (h), and in (h), inserted "(e), (f), and (g)" and made a minor change.

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, in (d)(8) added the language beginning "if that guarantee has been assumed" through the end of the subsection and made a stylistic change; and deleted "Finance Authority" from the end of (g).

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CASE NOTES

Surety

A surety who was the moving spirit in securing state bank's deposit liability in excess of statutory limit on school bonds could not assert a claim for subrogation which would have been superior to the claims of the innocent depositors and creditors of the bank. People ex rel. Barrett v. Fon Du Lac State Bank, 295 Ill. App. 71, 14 N.E.2d 686 (1938).

§ 30 ILCS 235/6.5. Federally insured deposits at Illinois financial institutions

Sec. 6.5. Federally insured deposits at Illinois financial institutions. (a) Notwithstanding any other provision of this Act or any other statute, whenever a public agency invests public funds in an interest-bearing savings account, interest-bearing certificate of deposit, or interest-bearing time deposit under Section 2 of this Act [30 ILCS 235/2], the provisions of Section 6 of this Act [30 ILCS 235/6] and any other statutory requirements pertaining to the eligibility of a bank to receive or hold public deposits or to the pledging of collateral by a bank to secure public deposits do not apply to any bank receiving or holding all or part of the invested public funds if (i) the public agency initiates the investment at or through a bank located in Illinois and (ii) the invested public funds are at all time fully insured by an agency or instrumentality of the federal government.

(b) Nothing in this Section is intended to:

(1) prohibit a public agency from requiring the bank at or through which the investment of public funds is initiated to provide the public agency with the information otherwise required by subsections (a), (b), or (c) of Section 6 of this Act [30 ILCS 235/6] as a condition of investing the public funds at or through that bank; or

(2) permit a bank to receive or hold public deposits if that bank is prohibited from doing so by any rule, sanction, or order issued by a regulatory agency or by a court.

(c) For purposes of this Section, the term "bank" includes any person doing a banking business whether subject to the laws of this or any other jurisdiction.

(Source: P.A. 93-756, § 5.)

Effective Date. Section 99 of P.A. 93-756 made this section effective upon becoming law. The Act was approved July 16, 2004.

§ 30 ILCS 235/7. [Use of minority-owned institutions]

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Sec. 7. When investing or depositing public funds, each custodian shall, to the extent permitted by this Act and by the lawful and reasonable performance of his custodial duties, invest or deposit such funds with or in minority-owned financial institutions within this State.

(Source: P.A. 84-754.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 907.

§ 30 ILCS 235/8. Consideration of financial institution's commitment to its community

Sec. 8. Consideration of financial institution's commitment to its community. (a) In addition to any other requirements of this Act, a public agency is authorized to consider the financial institution's record and current level of financial commitment to its local community when deciding whether to deposit public funds in that financial institution. The public agency may consider factors including, but not necessarily limited to:

(1) for financial institutions subject to the federal Community Reinvestment Act of 1977 [12 U.S.C. § 2901 et seq.], the current and historical ratings that the financial institution has received, to the extent that those ratings are publicly available, under the federal Community Reinvestment Act of 1977 [12 U.S.C. § 2901 et seq.];

(2) any changes in ownership, management, policies, or practices of the financial institution that may affect the level of the financial institution's commitment to its community;

(3) the financial impact that the withdrawal or denial of deposits of public funds might have on the financial institution;

(4) the financial impact to the public agency as a result of withdrawing public funds or refusing to deposit additional public funds in the financial institution; and

(5) any additional burden on the resources of the public agency that might result from ceasing to maintain deposits of public funds at the financial institution under consideration.

(b) Nothing in this Section shall be construed as authorizing the public agency to conduct an examination or investigation of a financial institution or to receive information that is not publicly available and the disclosure of which is otherwise prohibited by law.

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(Source: P.A. 93-251, § 10.)

Effective Date. Section 99 of P.A. 93-251 made this section effective July 1, 2004.

BONDS AND DEBT

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School Construction Bond Act

Sec.
30 ILCS 390/1.[Short title]
30 ILCS 390/2.[Legislative objective]
30 ILCS 390/3.[Bonds; authority; proceeds]
30 ILCS 390/4.[Bonds; sale and issuance]
30 ILCS 390/5.[Signatures; facsimile signatures]
30 ILCS 390/6.[Method of sale; School Construction Fund]
30 ILCS 390/7.[Proceeds]
30 ILCS 390/8.[Investment of School Construction Fund]
30 ILCS 390/9.[School Construction Bond Retirement and Interest Fund]
30 ILCS 390/10.[Bonds; general obligations]
30 ILCS 390/11.[Civil action]
30 ILCS 390/12.[Comptroller's duties]
30 ILCS 390/13.[Refunding bonds]
30 ILCS 390/14.[Severability]
30 ILCS 390/15.[Termination date]

§ 30 ILCS 390/1. [Short title]

Sec. 1. This Act shall be known and may be cited as the "School Construction Bond Act".

(Source: P.A. 78-220.)

Derivation.

Title: An Act to provide for the orderly, efficient and economic planning, financing, acquisition, construction and development by the State of Illinois of capital school facilities consisting of buildings, structures, and durable equipment, as well as the acquisition of real estate in connection therewith, and to meet, in part, the State of Illinois' responsibility for financing the system of public education, by authorizing the issuance and sale of general obligation bonds of the State of Illinois, the proceeds of which are to be used for making grants to school districts for such purposes, and for debt service on school district bonds issued for such purposes after January 1, 1969; and, to provide for the payment of the principal of and interest on such general obligation bonds of the State of Illinois and authorizing the issuance and sale of refunding bonds.

Cite: 30 ILCS 390/1 et seq.

Source: P.A. 78-220. Title amended by P.A. 79-1480.

Date: Approved July 19, 1973.

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1201.

§ 30 ILCS 390/2. [Legislative objective]

Sec. 2. The General Assembly has examined the long-term capital facility and land needs of the local school districts within the State of Illinois. The General Assembly also recognizes the State of Illinois' primary responsibility for financing the system of public education. The objective of this Act is to provide for capital facilities planning assistance and to provide such capital facilities consisting of buildings, structures, durable equipment and land as will permit the State's elementary, vocational and secondary schools to provide the People of Illinois with essential educational services and the issuance and sale of the Bonds in an economical and efficient method of financing such planning assistance, acquisitions, construction, development, reconstruction, rehabilitation, improvement, architectural planning and installation. This Act will also provide funds for making grants to school districts for debt service on bonds issued for such capital purposes after January 1, 1969. As used in this Act, "School District" means any school district or special charter district as defined in Section 1-3 of "The School Code" approved March 18, 1961, as amended [105 ILCS 5/1-3].

(Source: P.A. 79-1480.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1202.

§ 30 ILCS 390/3. [Bonds; authority; proceeds]

Sec. 3. The State of Illinois is authorized to issue, sell and provide for the retirement of general obligation bonds of the State of Illinois in the amount of $330,000,000 hereinafter called the "Bonds", for the specific purpose of providing funds to make grants to local school districts for capital facilities program planning assistance and for the acquisition, development, construction, reconstruction, rehabilitation, improvement, financing, architectural planning and installation of capital facilities, including but not limited to those required for special education building projects provided for in Article 14 of The School Code [105 ILCS 5/14-1.01 et seq.], consisting of buildings, structures, and durable equipment and for the acquisition and improvement of real property and interests in real property required, or expected to be required, in connection therewith and for debt service on school district bonds issued for such purposes after January 1, 1969.

The proceeds from the sale of the Bonds shall be used in the following specific manner:

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(a) $251,550,000, with the addition of such sums as may be authorized under Subsection (c) of this Section, for grants to school districts for capital facilities program planning assistance and for the acquisition, development, construction, reconstruction, rehabilitation improvement, architectural planning and installation of capital facilities consisting of buildings, structures, durable equipment and land for educational purposes; and

(b) $58,450,000, or so much thereof as may be necessary, for grants to school districts for the making of principal and interest payments, required to be made, on bonds issued by such school districts after January 1, 1969, pursuant to any indenture, ordinance, resolution, agreement or contract to provide funds for the acquisition, development, construction, reconstruction, rehabilitation, improvement, architectural planning and installation of capital facilities consisting of buildings, structures, durable equipment and land for educational purposes or for lease payments required to be made by a school district for principal and interest payments on bonds issued by a Public Building Commission after January 1, 1969; and

(c) $20,000,000 for reimbursements to school districts for the acquisition, development, construction, reconstruction, rehabilitation, improvement, architectural planning and installation of capital facilities consisting of buildings, structures, durable equipment and land for special education building projects as provided for in Article 14 of The School Code [105 ILCS 5/14-1.01 et seq.].

(d) If, in any fiscal year, the funds appropriated for grants to school districts under Subsection (b) of this Section are not needed in their entirety for the purpose of grants to school districts for debt service, the surplus funds may be used for grants to accomplish the purposes of Subsection (a) of this Section.

(Source: P.A. 84-832.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1203.

§ 30 ILCS 390/4. [Bonds; sale and issuance]

Sec. 4. The Bonds shall be issued and sold from time to time in such amounts as directed by the Governor, upon recommendation by the Director of the Governor's Office of Management and Budget. The Bonds shall be serial bonds and shall be in such form, in the denomination of $5,000 or some multiple thereof, payable within 30 years from their date, bearing interest payable annually or semi-annually from their date at the rate of not more than 7% per annum, and be dated as shall be fixed and determined by the Director of the Governor's Office of Management and Budget in the order authorizing the issuance and sale of the Bonds, which order shall be approved by the Governor prior to the giving

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of notice of the sale of any of the Bonds. Said Bonds shall be payable as to both principal and interest at such place or places, within or without the State of Illinois, and may be made registrable as to either principal or as to both principal and interest, as shall be fixed and determined by the Director of the Governor's Office of Management and Budget in the order authorizing the issuance and sale of such Bonds. The Bonds may be callable as fixed and determined by the Director of the Governor's Office of Management and Budget in the order authorizing the issuance and sale of the Bonds; provided however, that the State shall not pay a premium of more than 3% of the principal of any Bonds so called.

(Source: P.A. 78-220; 94-793, § 390.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1204.

Section 995 of P.A. 94-793 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 2006 amendment by revisory act P.A. 94-793, effective May 19, 2006, substituted references to "Governor's Office of Management and Budget" for references to "Bureau of the Budget", and substituted references to "Department of Commerce and Economic Opportunity" for references to "Department of Commerce and Community Affairs".

§ 30 ILCS 390/5. [Signatures; facsimile signatures]

Sec. 5. The Bonds shall be signed by the Governor and attested by the Secretary of State under the printed facsimile seal of the State and countersigned by the Treasurer by his manual signature or by his duly authorized deputy. The signatures of the Governor and the Secretary of State may be printed facsimile signatures. Interest coupons with facsimile signatures of the Governor, Secretary of State and Treasurer may be attached to the Bonds. The fact that an officer whose signature or facsimile thereof appears on a Bond or interest coupon no longer holds such office at the time the Bond or coupon is delivered shall not invalidate such Bond or interest coupon.

(Source: P.A. 78-220.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1205.

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§ 30 ILCS 390/6. [Method of sale; School Construction Fund]

Sec. 6. The Bonds shall be sold from time to time by the Director of the Governor's Office of Management and Budget to the highest and best bidders, for not less than their par value, upon sealed bids, at not exceeding the maximum interest rate fixed in the order authorizing the issuance of the Bonds, provided, that at no one time shall Bonds in excess of the amount of $150,000,000 be offered for sale. The right to reject any and all bids may be reserved. The Secretary of State shall, from time to time, as the Bonds are to be sold, advertise in at least two daily newspapers, one of which is published in the City of Springfield and one in the City of Chicago, for proposals to purchase the Bonds. Each of such advertisements for proposals shall be published once at least 10 days prior to the date of the opening of the bids. The executed Bonds shall, upon payment therefore, be delivered to the purchaser, and the proceeds of the Bonds shall be paid into the State Treasury. The proceeds of the Bonds shall be deposited in a separate fund known as the "School Construction Fund", which separate fund is hereby created.

(Source: P.A. 78-220; 94-793, § 390.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1206.

Section 995 of P.A. 94-793 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 2006 amendment by revisory act P.A. 94-793, effective May 19, 2006, substituted references to "Governor's Office of Management and Budget" for references to "Bureau of the Budget", and substituted references to "Department of Commerce and Economic Opportunity" for references to "Department of Commerce and Community Affairs".

§ 30 ILCS 390/7. [Proceeds]

Sec. 7. At all times, the proceeds from the sale of the Bonds are subject to appropriation by the General Assembly to the Capital Development Board or its successor, or, for the 1976 and 1977 fiscal years only, to the State Board of Education for reimbursements for special education building purposes. Proceeds from the sale of Bonds which are appropriated to the Capital Development Board may be expended, with approval of the Governor, in such amounts and at such times as the Capital Development Board deems necessary or desirable for the specific purposes contemplated by this Act. Proceeds from the sale of Bonds which are appropriated to the State Board of Education for the 1976 and 1977 fiscal years only for reimbursements for special education building purposes may be expended in such amounts and at such times as the State Board of Education

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deems necessary or desirable.

(Source: P.A. 79-1480.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1207.

§ 30 ILCS 390/8. [Investment of School Construction Fund]

Sec. 8. The Treasurer may, with the approval of the Governor, invest and reinvest any money in the School Construction Fund in the State Treasury which, in the opinion of the Governor communicated in writing to the Treasurer, is not needed for current expenditures due or about to become due from such funds. Such investments shall be made at the existing market price and in any event not to exceed 102% or par plus accrued interest, in obligations, the principal of and interest on which is guaranteed by the United States Government, or any certificates of deposit of any savings and loan association or State or national bank which are fully secured by obligations, the principal of and interest on which is guaranteed by the United States Government or secured by bonds of this State or any of its units of local government, school districts, or public community college districts or municipal bonds of other states, or bonds, notes or debentures of the Illinois Building Authority, Illinois Toll Highway Authority, or Illinois Housing Development Authority. Securities of other states and their political subdivisions shall not be accepted at an amount exceeding 90% of their market value. All securities shall be subject to acceptance only upon the approval of the Treasurer. The cost price of all such obligations shall be considered as cash in the custody of the Treasurer, and such obligations shall be conveyed at cost price as cash by the Treasurer to his successor. The money in the School Construction Fund in the form of such obligations shall be set up by the Treasurer as separate accounts and shown distinctly in every report issued by him regarding fund balances. All earnings received upon any such investment shall be paid into the School Construction Bond Retirement and Interest Fund. All of the monies other than accrued interest received from the sale of redemption of such investments shall be replaced by the Treasurer in the funds from which the money was removed for such investment.

No bank or savings and loan association shall receive public funds as permitted by this Section, unless it has complied with the requirements established pursuant to Section 6 of "An Act relating to certain investments of public funds by public agencies", approved July 23, 1943, as now or hereafter amended [30 ILCS 235/6].

(Source: P.A. 83-541.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1208.

§ 30 ILCS 390/9. [School Construction Bond Retirement and Interest Fund]

Sec. 9. To provide for the manner of repayment of the Bonds, the Governor shall include an appropriation in each annual State Budget of monies in such amount as shall be necessary and sufficient, for the period covered by such budget, to pay the interest, as it shall accrue, on all Bonds issued under this Act and also to pay and discharge the principal of the Bonds as shall by their terms fall due during such period. A separate fund in the State Treasury called the "School Construction Bond Retirement and Interest Fund" is hereby created. The General Assembly shall make appropriations to pay the principal of and interest on the Bonds from the School Construction Bond Retirement and Interest Fund. If for any reason the General Assembly fails to make appropriations of amounts sufficient for the State to pay the principal of and interest on the Bonds as the same shall by the terms of the Bonds become due, this Act shall constitute an irrevocable and continuing appropriation of all amounts necessary for that purpose, and the irrevocable and continuing authority for and direction to the Comptroller and to the Treasurer of the State to make the necessary transfers out of and disbursements from the revenues and funds of the State available for that purpose.

(Source: P.A. 78-3rd S.S.-24.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1209.

§ 30 ILCS 390/10. [Bonds; general obligations]

Sec. 10. All Bonds issued in accordance with the provisions of this Act shall be direct, general obligations of the State of Illinois and shall so state on the face thereof, and the full faith and credit of the State of Illinois are hereby pledged for the punctual payment of the interest thereon as the same shall become due and for the punctual payment of the principal thereof at maturity, and the provisions of this Section shall be irrepealable until all such Bonds are paid in full as to both principal and interest.

(Source: P.A. 78-220.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 1210.

§ 30 ILCS 390/11. [Civil action]

Sec. 11. If the State fails to pay the principal of or interest on any of the Bonds as the same become due, a civil action to compel payment may be instituted in the Supreme Court of Illinois as a court of original jurisdiction by the holder or holders of the Bonds on which such default of payment exists. Delivery of a summons and a copy of the complaint to the Attorney General shall constitute sufficient service to give the Supreme Court of Illinois jurisdiction of the subject matter of such a suit and jurisdiction over the State and its officers named as defendants for the purpose of compelling such payment. Any case, controversy or cause of action concerning the validity of this Act relates to the revenue of the State of Illinois.

If the Supreme Court of Illinois denies the holder or holders of bonds leave to file an original action in the Supreme Court, the bond holder or holders may bring the action in the Circuit Court of Sangamon County.

(Source: P.A. 79-1363.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1211.

CASE NOTES

Levy of Tax

- Held Improper

Objection to school tax should have been sustained, where a tax levy was void because it was made at a meeting held after the first Tuesday in August, and the validating act did not purport to cure this defect. People ex rel. Ricker v. Chicago, M. & St.P. Ry., 310 Ill. 508, 142 N.E. 167 (1923).

§ 30 ILCS 390/12. [Comptroller's duties]

Sec. 12. Upon each delivery of Bonds authorized to be issued under this Act, the Comptroller shall compute and certify to the State Treasurer the total amount of principal of and interest on the Bonds issued that will be payable in order to retire such Bonds and the amount of principal of and interest on such Bonds that will be payable on each

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payment date according to the tenure of such Bonds during the then current and each succeeding fiscal year. On or before the last day of the month preceding each payment date, the Treasurer and the Comptroller shall transfer from the General Revenue Fund in the State Treasury to the School Construction Bond Retirement and Interest Fund a sum of money, appropriated for such purpose, so such Fund contains an amount equal to the aggregate of the amount of principal of and interest on the Bonds payable by the terms of the Bonds on the next payment date. Such computations and transfers shall be made for each series of the Bonds issued and delivered. The transfer of monies herein above directed is not required if monies in the School Construction Bond Retirement and Interest Fund received from other sources are more than the amount otherwise to be transferred as hereinabove provided, and if the Governor notifies the Comptroller and the Treasurer of such fact.

(Source: P.A. 83-1280.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1212.

§ 30 ILCS 390/13. [Refunding bonds]

Sec. 13. The State of Illinois is authorized, from time to time as the Governor shall determine, to issue, sell and provide for the retirement of Bonds of the State of Illinois for the sole purpose of refunding all or any portion of the principal of the Bonds; provided that such refunding bonds shall mature no later than the final maturity date of the Bonds being refunded. Such refunding bonds shall in all other respects be subject to the terms and conditions of Sections 4, 5, 7, 8, 9, 10, 11 and 12 of this Act [30 ILCS 390/4, 30 ILCS 390/5 and 30 ILCS 390/7 through 30 ILCS 390/12]. The principal amount of any such refunding bonds shall not exceed 103% of the principal amount of the Bonds refunded with the proceeds of such refunding Bonds.

(Source: P.A. 78-220.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1213.

§ 30 ILCS 390/14. [Severability]

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Sec. 14. If any Section, sentence, or clause of this Act is for any reason held invalid or to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act.

(Source: P.A. 78-220.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1214.

§ 30 ILCS 390/15. [Termination date]

Sec. 15. After December 1, 1984 no additional bonds shall be issued or sold pursuant to this Act; instead all State of Illinois general obligation bonds shall be issued and sold pursuant to the "General Obligation Bond Act" [30 ILCS 330/1 et seq.].

(Source: P.A. 83-1490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1215.

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CHAPTER 35.
REVENUE

PROPERTY TAXES

35 ILCS 200Property Tax Code

PROPERTY TAXES

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Property Tax Code

Title 6

Levy And Extension

Article 18

Levy And Extension Process

Division 1

Levying Process

35 ILCS 200/18-10.County levies
35 ILCS 200/18-15.Filing of levies of taxing districts
35 ILCS 200/18-20.Abatement of levies
35 ILCS 200/18-25.County clerk to provide collector's books
35 ILCS 200/18-30.Books by township
35 ILCS 200/18-35.Collector's books; columns
35 ILCS 200/18-40.Application of equalization factor
35 ILCS 200/18-45.Computation of rates
35 ILCS 200/18-50.Filing of budget and appropriation ordinance
35 ILCS 200/18-50.1.School Finance Authority and Financial Oversight Panel levies

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35 ILCS 200/18-55.Short title and definitions
35 ILCS 200/18-56.Legislative purpose
35 ILCS 200/18-60.Estimate of taxes to be levied
35 ILCS 200/18-65.Restriction on extension
35 ILCS 200/18-70.More than 5% increase; notice and hearing required
35 ILCS 200/18-72.[Public hearing to amend tax levy]
35 ILCS 200/18-75.Notice; place of publication
35 ILCS 200/18-80.Time and form of notice
35 ILCS 200/18-85.Notice if adopted levy exceeds proposed levy
35 ILCS 200/18-90.Limitation on extension of county clerk
35 ILCS 200/18-92.Downstate School Finance Authority for Elementary Districts Law and Financial Oversight Panel Law
35 ILCS 200/18-93.Maywood Public Library District Tax Levy Validation (2002) Law

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35 ILCS 200/18-95.Effect of Truth in Taxation Law
35 ILCS 200/18-100.Defective publication

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Cook County Truth In Taxation

35 ILCS 200/18-101.1 through 35 ILCS 200/18-101.45 [Repealed].
35 ILCS 200/18-101.47.[Repealed.]
35 ILCS 200/18-101.50 through 35 ILCS 200/18-101.65 [Repealed].

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35 ILCS 200/18-105.Extension exceeding authorized rate
35 ILCS 200/18-107.Multi-township assessment district; 1994 extension validated
35 ILCS 200/18-110.Chicago school district
35 ILCS 200/18-112.Extension of taxes for additional or supplemental budget of school district
35 ILCS 200/18-115.Use of equalized assessed valuation
35 ILCS 200/18-120.Increase or decrease of rate limit
35 ILCS 200/18-125.Rate limit referenda
35 ILCS 200/18-130.Restrictions
35 ILCS 200/18-135.Taxing district in 2 or more counties
35 ILCS 200/18-140.Extension upon equalized assessment of current levy year
35 ILCS 200/18-145.Error in calculation of rate or extension
35 ILCS 200/18-150.Extension in one total
35 ILCS 200/18-155.Apportionment of taxes for district in two or more counties
35 ILCS 200/18-157.Apportionment; tax objections; court decisions; adjustments of levies and refunds to tax objectors
35 ILCS 200/18-160.Notification of local officials

Division 4

Abatement Procedures

35 ILCS 200/18-165.Abatement of taxes
35 ILCS 200/18-170.Enterprise zone and River Edge Redevelopment Zone abatement
35 ILCS 200/18-173.Housing opportunity area abatement program
35 ILCS 200/18-175.Leasehold abatement
35 ILCS 200/18-177.Leased low-rent housing abatement
35 ILCS 200/18-178.Abatement for the residence of a surviving spouse of a fallen police officer or rescue worker
35 ILCS 200/18-180.Abatement; urban decay

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35 ILCS 200/18-181.Abatement of neighborhood redevelopment corporation property
35 ILCS 200/18-183.Cancellation and repayment of tax benefits
35 ILCS 200/18-184.Abatement; annexation agreement
35 ILCS 200/18-184.5.Abatement for vacant facilities
35 ILCS 200/18-184.10.Business corridors; abatement

Division 5

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35 ILCS 200/18-185.Short title; definitions
35 ILCS 200/18-190.Direct referendum; new rate or increased limiting rate
35 ILCS 200/18-190.5.School districts
35 ILCS 200/18-195.Limitation
35 ILCS 200/18-197.Maywood Public Library District Tax Levy Validation (2002) Law
35 ILCS 200/18-198.Summit Park District Tax Levy Validation (2010) Act
35 ILCS 200/18-200.School Code
35 ILCS 200/18-205.Referendum to increase the extension limitation
35 ILCS 200/18-210.Establishing a new levy
35 ILCS 200/18-212.Referendum on debt service extension base
35 ILCS 200/18-213.Referenda on applicability of the Property Tax Extension Limitation Law
35 ILCS 200/18-214.Referenda on removal of the applicability of the Property Tax Extension Limitation Law to non-home rule taxing districts
35 ILCS 200/18-215.Merging and consolidating taxing districts; transfer of service
35 ILCS 200/18-220.[Repealed.]
35 ILCS 200/18-225.Annexed or disconnected property
35 ILCS 200/18-230.Rate increase or decrease factor
35 ILCS 200/18-235.Tax increment financing districts
35 ILCS 200/18-240.Certification of new property
35 ILCS 200/18-241.School Finance Authority and Financial Oversight Panel
35 ILCS 200/18-243.Severability
35 ILCS 200/18-245.Rules

Division 5.1

One-year Property Tax Extension Limitation Law

35 ILCS 200/18-246.Short title; definitions
35 ILCS 200/18-247.Limitation
35 ILCS 200/18-248.Adjustments to the limiting rate
35 ILCS 200/18-249.Miscellaneous provisions

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35 ILCS 200/18-249.5.Severability

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Levy and Extension

Article 18.
Levy and Extension Process

Division 1.

Levying Process

§ 35 ILCS 200/18-10. County levies

Sec. 18-10. County levies. The county board of each county with less than 3,000,000 inhabitants shall, annually, at the September session, determine the amount of county taxes to be levied for all purposes. Any county with less than 3,000,000 inhabitants which has changed its fiscal year may, at the September session or at any adjourned meeting

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thereof, instead of determining the amount of all county taxes to be levied for a one-year period, determine the amount of taxes to be levied during a period greater or less than a year as required by the change of the fiscal year. The county board of each county with 3,000,000 or more inhabitants shall, annually, prior to the third Monday of March, determine the amount of county taxes to be levied for all purposes. The amount for each purpose shall be stated separately. All counties shall certify to the county clerk annually, on or before the last Tuesday in December the amounts that they have levied.

(Source: P.A. 87-17; 88-455, § 18-10.)

Note.

This section was Ill.Rev.Stat., Ch. 120, Para. 637.

This section was derived from 35 ILCS 205/156, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 637.

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Adjournment of Session

Where at September meeting a motion was made to recess until October but in October no motion was made to recess until November, the September session was not properly adjourned until November. People ex rel. Martin v. Commonwealth Edison Co., 286 Ill. App. 3d 189, 221 Ill. Dec. 584, 675 N.E.2d 1008 (2 Dist. 1997).

The finding that the September meeting was, in fact, adjourned to December as the corrected records of the county board indicated was not against the manifest weight of the evidence. People ex rel. Penrod v. Chicago & N.W. Ry., 17 Ill. 2d 307, 161 N.E.2d 126 (1959).

County tax, having been adopted at a proper adjournment of the annual meeting, was not illegal. People ex rel. Lunn v. Chicago Title & Trust Co., 409 Ill. 505, 100 N.E.2d 578 (1951).

A county board was not required under a prior similar provision to make a tax levy on the first or any other particular day of its September session, but it could lawfully make a levy at any time during the September session; the county board also had the right to adjourn from time to time until it had completed the business which lawfully might come before it at its September session. Bowyer v. People ex rel. Hanberg, 220 Ill. 93, 77 N.E. 91 (1906).

Amendment of Itemization

An error of insufficient itemization or failure to define the purpose is an error that may be corrected by amendment. People ex rel. Novak v. Susman, 193 Ill. App. 3d 210, 140 Ill. Dec. 535, 550 N.E.2d 17 (2 Dist. 1990).

Amount of Levy

- Maintenance

Items of the county tax for repairs of county property was clearly within reason because it would have been impossible to anticipate the amount of such items in advance, or where, either from

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ordinary wear and tear or from accident, some repair might become necessary. People ex rel. Brown v. Toledo, St. L. & W. R.R., 265 Ill. 502, 107 N.E. 220 (1914).

Annual Assessments

- Validity

Where the voters authorized the county board to extend an additional annual tax against taxable property for the purpose of improving the roads designated as state aid roads, the county board had to specify each year the amount of tax to be used for the construction of roads and the amount that was to be used for the construction of bridges, and the fact that the county board in 1920 and in 1921 failed to conform to the requirements of former section 121 of the Revenue Act (see now this section) had no bearing on the question of whether the 1922 tax levy was valid. People ex rel. Ricker v. Chicago, M. & St.P. Ry., 310 Ill. 508, 142 N.E. 167 (1923).

Annual Meeting

- Validity of Taxes

Since county boards have only those powers expressly given them by statute or as arise by necessary implication from the powers granted, a county tax levy not passed at the annual September meeting or at any adjourned session of the annual September meeting is void. People ex rel. Lunn v. Chicago Title & Trust Co., 409 Ill. 505, 100 N.E.2d 578 (1951).

A tax levied at the annual meeting or at any adjourned session thereof is legal and valid. People ex rel. Lunn v. Chicago Title & Trust Co., 409 Ill. 505, 100 N.E.2d 578 (1951).

Applicability

The provision of former section 121 of the Revenue Act (see now this section) that, when a levy was for several purposes, the amount for each purpose should be stated separately, applied to every levy made by a county board. People ex rel. Bothfuhr v. New York Cent. R.R., 305 Ill. 434, 137 N.E. 473 (1922).

Budget Unsatisfactory

Where a county budget was detailed with respect to appropriations and anticipated revenue from all sources, but it was impossible to derive from the budget the amounts of property taxes to be raised for each purpose, which were the amounts required to be stated separately, the statute was not complied with and taxpayer's objections to the tax levy were sustained. In re Novak, 142 Ill. App. 3d 1004, 97 Ill. Dec. 220, 492 N.E.2d 656 (2 Dist. 1986).

Computation

Taxing districts, such as municipalities, counties, townships and school districts, are permitted to levy taxes pursuant to 35 ILCS 200/18-10 and 35 ILCS 200/18-15. The taxing districts submit their levies to their respective county clerks who, in turn, calculate the tax rate required to meet the levies by dividing the total taxable value of all the property in the taxing district, ensure that the proposed tax levy will not require a tax rate in excess of the maximum rate available by statute, and apply the tax rate to the taxable value of each piece of property that is both within the taxing district and the clerk's county. Chicagoland Chamber of Commerce v. Pappas, 378 Ill. App. 3d 334, 317 Ill. Dec. 113, 880 N.E.2d 1105, 2007 Ill. App. LEXIS 1285 (1 Dist. 2007).

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- Purpose

The computation that must be made where tax objections to items in the general corporate purposes levy are sustained, must be made to determine what rate of tax results when the invalid items are subtracted from the total amount levied; the value of the objector's property for taxation purposes must be multiplied by the reduced rate and this amount must be subtracted from the original amount levied against his property, so that it can be known what part of that original amount of tax is to be abated. People ex rel. Heuer v. Chicago, B. & Q.R.R., 377 Ill. 470, 36 N.E.2d 925 (1941).

Construction

The itemization rule should receive a common-sense interpretation. People ex rel. Harrell v. B & O R.R., 411 Ill. 55, 103 N.E.2d 76 (1951); People ex rel. Thompson v. Chicago & N.W. Ry., 397 Ill. 266, 73 N.E.2d 418 (1947).

Where a statute fixes a period within which or a day on which a tax is to be levied, time is of the essence of the power to levy, and the command of the statute in that respect is mandatory. People ex rel. Ward v. Chicago & E. I. Ry., 365 Ill. 202, 6 N.E.2d 119 (1936).

Former section 109 of the Revenue Act (see now this section), which made it the duty of the county board to determine annually the amount of all county taxes to be raised for all purposes, and, when for several purposes, to determine the amount for each purpose and state it separately, was mandatory, and a material or substantial failure to comply with it invalidated the tax. People ex rel. Applen v. Chicago, B. & Q. R.R., 360 Ill. 433, 196 N.E. 472 (1935).

The provision that, when county taxes are levied for several purposes, the amount for each purpose shall be stated separately, is mandatory. People v. Friedlander, 328 Ill. 35, 159 N.E. 187 (1927).

Under former section 121 of the Revenue Act (see now this section), it was neither necessary nor practicable that each particular claim for which the tax was levied be specifically stated; the former section should have received a reasonable, common sense construction. People ex rel. Rogers v. Chicago, B. & Q. R.R., 266 Ill. 196, 107 N.E. 222 (1914).

Construction With Other Laws

When the provisions of the former County Budget Act (see now 55 ILCS 5/6-24001 et seq.) dealing with a fiscal year were read together, the legislative intention was clear that the period embraced by the budget was to coincide with the levy period. People ex rel. Rockwell v. Chicago, B. & Q. R.R., 386 Ill. 114, 53 N.E.2d 959 (1944).

Itemization

- Purpose

The purpose of requiring itemization is to afford taxpayers information with respect to a particular appropriation and the levy of the tax. People ex rel. Oller v. New York Cent. R.R., 388 Ill. 382, 58 N.E.2d 51 (1944); People ex rel. Thompson v. Chicago & N.W. Ry., 397 Ill. 266, 73 N.E.2d 418 (1947); People ex rel. Harrell v. B & O R.R., 411 Ill. 55, 103 N.E.2d 76 (1951).

While no hard and fast rule as to the amount or percentage of the total tax levied can be laid down, the purpose of the requirement that the purposes for which taxes are levied be itemized is to give the taxpayer an opportunity to know the purposes for which the tax is being levied and

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collected, and an opportunity to object to an unjust tax levy. People ex rel. Ross v. Chicago, M., St. P. & Pac. R.R., 381 Ill. 58, 44 N.E.2d 566 (1942).

The object of this section is to enable the taxpayer to compel the application of public funds to the purposes for which they were appropriated, to prevent the application of such funds to other purposes, and to prevent the raising or expenditure of greater sums of money than are necessary for legitimate corporate purposes. Siegel v. City of Belleville, 349 Ill. 240, 181 N.E. 687 (1932).

Under a prior similar provision, the object of stating the amount for each purpose separately in the levy was to give the taxpayer an opportunity to present objections to the levy of an unjust assessment. People ex rel. Rogers v. Chicago, B. & Q. R.R., 266 Ill. 196, 107 N.E. 222 (1914).

- Sufficient

Item in county corporate fund levy providing for office supplies of county officers exclusive of constitutional officers constituted a single appropriate general purpose giving the necessary information to the tax, and this section did not require that each type of office supply be itemized. People ex rel. Thompson v. Chicago & N.W. Ry., 397 Ill. 266, 73 N.E.2d 418 (1947).

Where the different items of a county tax levy for court costs bore a definite relation to one another with regard to the operation of the courts, it was not necessary to particularize the several items and the amount levied for each as directed under former section 121 of the Revenue Act (see now this section). People ex rel. Ghent v. Cleveland, C., C. & St. L. Ry., 365 Ill. 443, 6 N.E.2d 851 (1937).

Under former section 121 of the Revenue Act (see now this section), items contained in tax levy for repair, care, support and maintenance of county courthouse and jail were sufficiently specific. People ex rel. Rogers v. Chicago, B. & Q. R.R., 266 Ill. 196, 107 N.E. 222 (1914).

- Unrelated Items

"Courthouse, janitor supplies, water, lights, telephone, etc.," were not related, incidental items which could properly be embraced in a general designation. People ex rel. Smith v. Wabash Ry., 377 Ill. 68, 35 N.E.2d 325 (1941).

Legislative Purpose

The object of this section is to provide taxpayers information and an opportunity to object to unjust and illegal levies. People ex rel. Novak v. Susman, 193 Ill. App. 3d 210, 140 Ill. Dec. 535, 550 N.E.2d 17 (2 Dist. 1990).

The object of this section requiring a separate statement of the purposes for which taxes are levied is to give the taxpayer information and an opportunity to object to unjust and illegal levies and assessments. In re Novak, 142 Ill. App. 3d 1004, 97 Ill. Dec. 220, 492 N.E.2d 656 (2 Dist. 1986).

Levy for Contingencies

- Held Excessive

Where a total tax levy for general county purposes was $49,000.00, a levy of $2500.00 for contingent purposes was excessive. People ex rel. Ross v. Chicago, M., St. P. & Pac. R.R., 381 Ill. 58, 44 N.E.2d 566 (1942).

- Small Amount Valid

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It is not unlawful to levy a comparatively small amount to meet contingencies which cannot be anticipated. People ex rel. Ross v. Chicago, M., St. P. & Pac. R.R., 381 Ill. 58, 44 N.E.2d 566 (1942).

Noncompliance Fatal

Failure to comply with the requirements of such a statute is not a mere irregularity, but rather, is a fatal omission. In re Novak, 142 Ill. App. 3d 1004, 97 Ill. Dec. 220, 492 N.E.2d 656 (2 Dist. 1986).

Objection of Taxpayer

Where a railroad company objected to the 1939 county general corporate purposes tax levy of a county on the grounds that the county board failed to itemize properly the purposes and amounts, contrary to this section, and where the county board of supervisors adopted the appropriation ordinance on September 13, 1939, and the levy ordinance on December 13, 1939, the objection was rejected because the assumed invalidity of items in the levy could not be made the basis of a claim that the whole levy for general county corporate purposes, of which the items were a part, was void. To permit the claim would have been equivalent to allowing an objector to make matters that happened subsequent to the adoption of the levy ordinance a basis for tax objections. People ex rel. Heuer v. Chicago, B. & Q.R.R., 377 Ill. 470, 36 N.E.2d 925 (1941).

Purposes

- Insufficient Description

A county tax levy "for payment of outstanding legal indebtedness due and unpaid at the close of the fiscal year" was indefinite and uncertain, did not sufficiently state the purpose of the tax, and was therefore void. People ex rel. Montgomery v. Wabash Ry., 360 Ill. 173, 195 N.E. 665 (1935).

Tax levy for police and firemen's pensions funds was invalid under the Illinois Municipal Code, 65 ILCS 5/1-1-1, et seq., where the levy did not specify the amount of the total tax that was to be allocated to each fund as required by 35 ILCS 200/18-10 (formerly § 1 of article 8 of the Illinois Cities and Villages Act), because the due process protections of Ill. Const. (1970), Art. I, § 2 (formerly Ill. Const. of 1870, Art. II, § 2) required such notice and an opportunity for objections of a property owner to be heard. People ex rel. Stuckart v. Arnold Bros., 282 Ill. 305, 118 N.E. 702, 1917 Ill. LEXIS 1244 (1917).

Where in making a levy for county purposes, the board of supervisors specified five different items for which the taxes were to be extended, with the third as follows: "Three - For payment of county claims (janitor's services, supplies, repairs, improvements and current expenses) $12,000," this statement was indefinite as to how much was levied for the defraying of the expenses for each of the items and added nothing to the general statement that the tax was levied for the payment of county claims, and it did not comply with the requirements of this section that when the amount of county taxes was raised for several purposes, the amount for each purpose should be stated separately. People ex rel. Biebinger v. Cincinnati, I. & W. Ry., 224 Ill. 523, 79 N.E. 657 (1906).

- Single Sum

A special tax levy providing for a lump sum for the purpose of acquiring and maintaining machinery and equipment used for the improvement, repair and maintenance of state aid roads was sufficiently itemized and specific to comply with this section where the item included only one purpose, namely, defraying the expense of the improvement, repair and maintenance of

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highways designated as state aid roads, and where the expense of acquiring and maintaining equipment to accomplish the improvements and repair was embraced in the one general purpose. People ex rel. Harrell v. B & O R.R., 411 Ill. 55, 103 N.E.2d 76 (1951).

There can be no valid objection to levying a single sum for several purposes which are embraced within some general designation giving the necessary information to the taxpayer. People ex rel. Thompson v. Chicago & N.W. Ry., 397 Ill. 266, 73 N.E.2d 418 (1947); People ex rel. Harrell v. B & O R.R., 411 Ill. 55, 103 N.E.2d 76 (1951).

A single appropriate general purpose is sufficient to include every expenditure although there may be many items; there is no valid objection to levying a single sum for several purposes which are embraced within some general designation giving the necessary information to the taxpayer. People ex rel. Oller v. New York Cent. R.R., 388 Ill. 382, 58 N.E.2d 51 (1944).

- Sufficient Description

A levy reading "for the purpose of improving and maintaining state aid road including grading, graveling, draining, dragging, excavating, filing, opening, widening, etc., to be known as a County Highway Tax, as a special tax," was sufficiently itemized and thus not void. People ex rel. Moore v. Chicago, B. & Q. R.R., 414 Ill. 419, 111 N.E.2d 509 (1953).

If a particular appropriation was not sufficiently definite to disclose to the taxpayer the purpose for which the money was to be expended, the appropriation failed to comply with the requirements of the former Cities and Villages Act (see now 65 ILCS 5/1-1-1 et seq.) and this section, and was therefore void. Siegel v. City of Belleville, 349 Ill. 240, 181 N.E. 687 (1932).

A levy for "light and water, court house and jail, $1,200; court house and jail, supplies and repairs, $1,500; fuel, court house and jail, $1,500," was a sufficient description. People ex rel. Winkler v. Chicago & E. Ill. Ry., 336 Ill. 506, 168 N.E. 294 (1929).

It is not necessary to describe minutely each purpose for which a county tax is levied, but it is the duty of the authorities levying a tax under this section, which requires the purpose for which it is levied to be stated, to specify the various purposes with reasonable certainty; a tax is illegal and void in the absence of compliance with this requirement. People ex rel. Biebinger v. Cincinnati, I. & W. Ry., 224 Ill. 523, 79 N.E. 657 (1906).

Rights of Taxpayers

The right of a taxpayer to have stated separately the purpose for which public money is appropriated or a tax levied is a substantial right of which he may not be deprived. Siegel v. City of Belleville, 349 Ill. 240, 181 N.E. 687 (1932); People ex rel. McWard v. Wabash R.R., 395 Ill. 243, 70 N.E.2d 36 (1946); People ex rel. Harrell v. B & O R.R., 411 Ill. 55, 103 N.E.2d 76 (1951).

Separate Purposes

- Construction

This section expressly provides that, when a county tax is levied for several purposes, the amount levied for each purpose shall be stated separately, and this provision is mandatory. People ex rel. Schnipper v. Missouri Pac. R.R., 332 Ill. 53, 163 N.E. 348 (1928).

- Levy Invalid

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Adoption of a resolution by a board of supervisors specifying separate purposes for a tax levy did not cure the defect in the original levy where separate purposes had not been set out. People ex rel. Schnipper v. Missouri Pac. R.R., 332 Ill. 53, 163 N.E. 348 (1928).

- Maintenance

Item in village tax levy for maintenance of Water Department was not objectionable on the ground that it included more than one purpose because maintenance was a separate purpose under this section. People ex rel. Thompson v. Chicago & N.W. Ry., 397 Ill. 266, 73 N.E.2d 418 (1947).

The word "construction" as used in a levy for the improvement, maintenance and repair of highways amounted to a separate purpose under this section, thereby rendering the levy invalid because it was for more than one purpose. People ex rel. Prindable v. New York Cent. R.R., 397 Ill. 247, 73 N.E.2d 302 (1947).

The levy made for the improvement and maintenance of state-aid roads was for a single purpose, since a levy for improvement and maintenance of a highway without material for that purpose could not be complete or effective, and procuring material was included in the single purpose for which the highway tax was levied. People ex rel. Bothfuhr v. New York Cent. R.R., 305 Ill. 434, 137 N.E. 473 (1922).

- Repairs and Improvements

A county tax levy for roads and bridges was a levy for two purposes, and the amount levied for the repair and improvement of roads, and likewise the amount levied for the repair and improvement of bridges, should have been stated separately. People ex rel. Schnipper v. Missouri Pac. R.R., 332 Ill. 53, 163 N.E. 348 (1928).

Appellant's contention that a levy for bridges and a right of way was made for the single purpose of county aid bridge improvements, and could be spent for anything connected therewith, either a bridge or a right of way upon which to set the bridge, could not succeed because those two uses were distinct and thus had to be separately specified for the purposes of the tax levy. People v. Friedlander, 328 Ill. 35, 159 N.E. 187 (1927).

Several Purposes

- Levy Invalid

Because of the requirement of this section that when county taxes are to be raised for several purposes, the amount for each purpose shall be stated separately, a levy for "fuel, light, water, telephone, insurance, street improvements," was for several purposes and was invalid. People ex rel. Bothfuhr v. Chicago & E. I. R.R., 300 Ill. 251, 133 N.E. 284 (1921).

Single General Purpose

- Held Valid

While it was sometimes difficult to determine whether a tax was levied for a single or a multiple purpose, an item was held sufficiently itemized and specific to comply with this section, and included only one purpose, namely, defraying the expense of holding elections; the expense of ballots and pollbooks and the fees of judges and clerks of elections were all embraced in the one general purpose. People ex rel. McWard v. Wabash R.R., 395 Ill. 243, 70 N.E.2d 36 (1946).

An attack on the validity of a tax appropriation ordinance as being indefinite, uncertain and vague, and upon the ground that it stated more than one purpose without designating the amount of each purpose separately, was without merit where a single general purpose was stated, which

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was sufficient to include appropriate expenditures, even though there were several items. People ex rel. Oller v. New York Cent. R.R., 388 Ill. 382, 58 N.E.2d 51 (1944).

Statement of Purpose

Tax levies that failed to itemize or state separate purposes could be amended to itemize more specifically the purposes of the levies without affecting the substantial justice of the tax. People ex rel. Novak v. Susman, 193 Ill. App. 3d 210, 140 Ill. Dec. 535, 550 N.E.2d 17 (2 Dist. 1990).

The county board need not make its statement of the amounts of taxes for each purpose in the levy ordinance itself, but may do so in a separate instrument. In re Novak, 142 Ill. App. 3d 1004, 97 Ill. Dec. 220, 492 N.E.2d 656 (2 Dist. 1986).

Practice Guides and Treatises.

Residential Real Estate § 10.70 Tax Levy (IICLE).

Commercial Real Estate § 10.47 Tax Rate Challenges (IICLE).

Real Estate Taxation § 9.4 Determination of the Rate (IICLE).

Real Estate Taxation § 8.9 Counties (IICLE).

§ 35 ILCS 200/18-15. Filing of levies of taxing districts

Sec. 18-15. Filing of levies of taxing districts. (a) Notwithstanding any other law to the contrary, all taxing districts, other than a school district subject to the authority of a Financial Oversight Panel pursuant to Article 1H of the School Code [105 ILCS 5/1H-1 et seq.], shall annually certify to the county clerk, on or before the last Tuesday in December, the several amounts that they have levied.

(b) A school district subject to the authority of a Financial Oversight Panel pursuant to Article 1H of the School Code shall file a certificate of tax levy, necessary to effect the implementation of the approved financial plan and the approval of the Panel, as otherwise provided by this Section, except that the certificate must be certified to the county clerk on or before the first Tuesday in November.

(c) If a school district as specified in subsection (b) of this Section fails to certify and return the certificate of tax levy, necessary to effect the implementation of the approved financial plan and the approval of the Financial Oversight Panel, to the county clerk on or before the first Tuesday in November, then the Financial Oversight Panel for the school district shall proceed to adopt, certify, and return a certificate of tax levy for the school district to the county clerk on or before the last Tuesday in December.

(Source: P.A. 87-17; 87-738; 87-895; 88-455, § 18-15; 97-429, § 5.)

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Note.

This section was derived from 35 ILCS 205/157, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 638.

Cross References.

As for the duty of the board of trustees of any sanitary district to cause the amount required to be raised by taxation to be certified to the county clerk, see 70 ILCS 2305/12; 70 ILCS 1005/9.

Effect of Amendments. The 2011 amendment by P.A. 97-429, effective August 16, 2011, added the (a) designation; inserted "other than a school district subject to the authority of a Financial Oversight Panel pursuant to Article 1H of the School Code" in (a); and added (b) and (c).

CASE NOTES

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Time of Adoption of Ordinance
Time of Certification
Time of Incorporation

Adjournment of Session

Board's parliamentary error of not properly adjourning September session did not affect the substantial justice of the levy and the levy was held valid. People ex rel. Martin v. Commonwealth Edison Co., 286 Ill. App. 3d 189, 221 Ill. Dec. 584, 675 N.E.2d 1008 (2 Dist. 1997).

Certification

- Errors by Clerk

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Where a county clerk had extended township taxes for a special road tax fund on the basis of an admittedly accurate document revealing a valid levy, the absence of the town clerk's certification constituted an error of the town clerk in certifying within the intended scope of former section 236 of this Act (see now 35 ILCS 200/23-40), which could be cured by subsequent amendment. People ex rel. Davis v. Chicago, B. & Q. R.R., 48 Ill. 2d 176, 268 N.E.2d 411 (1971).

Divided Lots

The county clerk extended a village tax levy against the assessed valuation of the portion of a divided lot which was within the village; the Board of Appeals, upon completion of hearing, certified the assessment for the entire lot, but the Board of Appeals did not have any connection with the determination as to which parts of the assessed valuations were within a taxing body. People ex rel. Village of Inverness v. Barrett, 38 Ill. App. 2d 334, 187 N.E.2d 349 (1 Dist. 1962).

Extension of Town Tax

The authority of the county clerk to extend a town tax is the certificate of the town clerk and without that certificate, any attempt to extend such a tax is illegal and void. People ex rel. Schnipper v. Missouri Pac. R.R., 332 Ill. 53, 163 N.E. 348 (1928).

Injunctions

An injunction to restrain a city, its mayor, clerk, and treasurer, from expending public money in the purchase of certain fire apparatus, based solely upon the ground that the appropriation made by the city council for the fiscal year did not authorize or justify the purchase of the fire engine or apparatus, was held valid. Siegel v. City of Belleville, 349 Ill. 240, 181 N.E. 687 (1932).

Itemization

- Not Required

It was not necessary to specify every item which a city could expect to pay out of a particular appropriation; a single general purpose was sufficient to include every appropriate expenditure, although there may have been many items. Siegel v. City of Belleville, 349 Ill. 240, 181 N.E. 687 (1932).

- Not Sufficient

A tax levy by a township to furnish relief to needy veterans, their families and paupers was not authorized where the levy was not separated so as to show what part was for the poor of the town; therefore, the entire tax was invalid. People ex rel. Thompson v. Chicago & N.W. Ry., 397 Ill. 266, 73 N.E.2d 418 (1947).

Lien Date

The assessment of property as of January 1 is merely the value placed upon the property at which the rate per cent is applied to reach the amount of taxes required by such local taxing authorities; the lien date has no bearing on the validity of taxes levied uniformly by all taxing bodies after January 1. People ex rel. Village of Inverness v. Barrett, 38 Ill. App. 2d 334, 187 N.E.2d 349 (1 Dist. 1962).

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Park Districts

For a case discussing the maximum rate at which taxes for a park district, except for bonded indebtedness and interest thereon, could be extended for a certain year, see People ex rel. Joseph v. St. Louis & B. Elec. Ry., 7 Ill. 2d 492, 131 N.E.2d 22 (1955).

Purposes

- Sufficient Description

Where the exclusive purpose for a which public health tax levy was made, as shown by the minutes of the Board of Health, was the creation of a fund to preserve the public health, it was specifically authorized by the particular statute under which it was levied, and was referred to both in the minutes of the Board and in the levy, the taxpayers were fully informed of the legality of the purpose by the record and by the levy. People ex rel. Wangelin v. Pennsylvania R.R., 372 Ill. 223, 23 N.E.2d 38 (1939).

If a particular appropriation was not sufficiently definite to disclose to the taxpayer the purpose for which the money was to be expended, the appropriation failed to comply with the requirements of the former Cities and Villages Act (see now 65 ILCS 5/1-1-1 et seq.) and this section, and was therefore void. Siegel v. City of Belleville, 349 Ill. 240, 181 N.E. 687 (1932).

Under a prior similar provision, a town tax, levied for town purposes without defining the particular purpose, was sufficiently described where the town clerk's certificate referred to the record entries of moneys voted to be raised at the town meeting and the certificate of the board of town auditors, and was in substantially the form adjudged sufficient by the Illinois Supreme Court in previous cases. People ex rel. Lusk v. Cairo, V. & C. Ry., 256 Ill. 286, 100 N.E. 241 (1912).

Streets and Bridges

A city, by a three-fourths vote of its city council, had a right to levy a tax of .06%, plus an additional rate of .04166% for streets and bridges, as determined by former section 162b of the Revenue Act (now repealed) and by 65 ILCS 5/11-81-1 and 65 ILCS 5/11-81-2. People ex rel. Sweet v. Central Ill. Pub. Serv. Co., 48 Ill. 2d 145, 268 N.E.2d 404 (1971).

The evidence was sufficient to find that a levy for street and bridge purposes by the municipal authorities of a city under former section 6 of article 69 of the Revised Cities and Villages Act (see now 65 ILCS 5/11-18-1) was a levy for two separate purposes which should have specified the amount for streets and the amount for bridges separately. Central Ill. Pub. Serv. Co. v. Lawless, 400 Ill. 161, 79 N.E.2d 67 (1948).

Time of Adoption of Ordinance

Where a village board adopted the annual appropriation ordinance at a special meeting, and thereafter, at the same meeting, adopted the annual tax levy ordinance, which sum was levied for village purposes, such a tax levy ordinance was void unless there had been theretofore adopted and in effect an appropriation ordinance. People ex rel. Montgomery v. Wabash Ry., 360 Ill. 173, 195 N.E. 665 (1935).

Time of Certification

Since under a prior version of this section, the amount required to be raised by taxation had to be certified by the second Tuesday in August, the levy from which the amount was ascertained had

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to be enacted by that date; where the proper authorities failed either to make the levy or to certify the amount to be raised by taxation by that date, objection to a fire district tax was sustained. People ex rel. Heuer v. Chicago, B. & Q.R.R., 377 Ill. 470, 36 N.E.2d 925 (1941).

Under a prior similar provision, a tax levy not submitted for certification to the county clerk on or before the statutory due date was void. Gage v. Nichols, 135 Ill. 128, 25 N.E. 672 (1890).

Time of Incorporation

There is no statutory provision preventing or nullifying a tax levy on the ground that the village was incorporated after January 1. People ex rel. Village of Inverness v. Barrett, 38 Ill. App. 2d 334, 187 N.E.2d 349 (1 Dist. 1962).

The county clerk has a duty to extend taxes for villages incorporated prior to the last date for levying taxes. People ex rel. Village of Inverness v. Barrett, 38 Ill. App. 2d 334, 187 N.E.2d 349 (1 Dist. 1962).

Practice Guides and Treatises.

Real Estate Taxation § 9.7 Developing Rate Objections (IICLE).

Real Estate Taxation § 8.13 Certifying the Tax Levy (IICLE).

Real Estate Taxation § 8.9 Counties (IICLE).

§ 35 ILCS 200/18-20. Abatement of levies

Sec. 18-20. Abatement of levies. (a) Notwithstanding any other law to the contrary, if any taxing district receives funds under Section 12 of the State Revenue Sharing Act [30 ILCS 115/12], which may lawfully be used by the district, the governing authority of the district, upon determining that a surplus of funds is available for any purpose, shall adopt a resolution or ordinance reducing its tax levy for the year for which the resolution or ordinance is adopted.

(b) If any taxing district reduces its levy, the governing authority of the district shall certify its action to the county clerk of each county collecting those taxes. The county clerk shall abate the levy of the district in accordance with the provisions of the certified resolution or ordinance.

(Source: P.A. 81-1255; 88-455, § 18-20.)

Note.

This section was derived from 35 ILCS 205/157a, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 638a.

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CASE NOTES

Constitutionality

Parents of school-aged children who resided in poor school districts were not denied equal protection of the laws by Illinois' method of financing public education in 1971 and 1972 under former Ill. Rev. Stat., ch. 120, para. 635 (now repealed). People ex rel. Jones v. Adams, 40 Ill. App. 3d 189, 350 N.E.2d 767 (5 Dist. 1976).

Practice Guides and Treatises.

Real Estate Taxation § 9.11 Underestimate of Surplus (IICLE).

§ 35 ILCS 200/18-25. County clerk to provide collector's books

Sec. 18-25. County clerk to provide collector's books. The county clerk shall, annually, make out for the use of collectors, in books to be furnished by the county, correct lists of taxable property, as assessed and equalized.

(Source: Laws 1939, p. 886; P.A. 88-455, § 18-25.)

Note.

This section was derived from 35 ILCS 205/158, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 639.

CASE NOTES

Analysis

County Clerk
- Authority
- Duties

County Clerk

- Authority

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The authority of the county clerk to extend a town tax is the certificate of the town clerk and without that certificate, any attempt to extend such a tax is illegal and void. People ex rel. Schnipper v. Missouri Pac. R.R., 332 Ill. 53, 163 N.E. 348 (1928).

- Duties

A county clerk has no power to levy taxes or determine whether taxes have been legally assessed, and as such his duties in the extension of taxes are purely ministerial. People ex rel. Weber v. Crossfield Chems., Inc., 223 Ill. App. 3d 896, 166 Ill. Dec. 79, 585 N.E.2d 1101 (3 Dist.), appeal denied, 145 Ill. 2d 634, 173 Ill. Dec. 5, 596 N.E.2d 629 (1992).

The county clerk is a ministerial officer, and no judicial acts are required of him in extending taxes. People ex rel. Schnipper v. Missouri Pac. R.R., 332 Ill. 53, 163 N.E. 348 (1928).

The county clerk has no right, nor is it his duty, to determine whether taxes have been legally assessed. People ex rel. Schnipper v. Missouri Pac. R.R., 332 Ill. 53, 163 N.E. 348 (1928).

Practice Guides and Treatises.

Real Estate Taxation § 8.15 Preparation of Collectors' Books (IICLE).

§ 35 ILCS 200/18-30. Books by township

Sec. 18-30. Books by township. In counties not under township organization, the collector's books shall be made up by congressional townships; but fractional townships may be added to full townships, at the discretion of the county board. In counties under township organization, the books shall correspond with the organized townships. Separate books may be made for the collection of all taxes within the corporate limits of cities, incorporated towns and villages. These books shall be in addition to the tax book provided for in this Code, for the use of county collectors, for collecting taxes against railroad property.

(Source: Laws 1939, p. 886; P.A. 88-455, § 18-30.)

Note.

This section was derived from 35 ILCS 205/159, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 640.

§ 35 ILCS 200/18-35. Collector's books; columns

Sec. 18-35. Collector's books; columns. Each county clerk shall prepare the collector's books with 4 columns for the value of each property, the first to show the assessed value by the chief county assessment officer, the second to show the value as corrected by the

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board of review or board of appeals, the third to show the value as equalized by the board of review under Sections 16-60 and 16-65 [35 ILCS 200/16-60 and 35 ILCS 200/16-65], and the fourth to show the value as equalized or assessed by the Department. If a municipality has adopted tax increment allocation financing under Division 74.4 of Article 11 of the Illinois Municipal Code [65 ILCS 5/11-74.4-1 et seq.], the county clerk, or clerks if a municipality is located in more than one county, shall provide additional columns for the initial equalized assessed value, for the extension of the taxes and other purposes, and for the amount of the tax to be deposited in the special tax allocation fund. The books also shall contain a column to insert opposite each parcel of property any tax sale or forfeiture for taxes or special assessments for the 2 preceding years not canceled or withdrawn from collection at any tax sale. Tax sales shall be designated by the word "sold", forfeited, withdrawn or other appropriate designation to be stamped in the proper column opposite the property listing not released prior to December 1st of each year. Each county collector shall stamp upon all receipts given for taxes the information in those columns, to be known as the tax sale column and the delinquent special assessment column. The county clerk shall collect the same fee for stamping forfeitures, as for tax sales and withdrawals.

(Source: P.A. 79-1525; 88-455, § 18-35.)

Note.

This section was derived from 35 ILCS 205/160, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 641.

CASE NOTES

Applicability

Under a prior similar provision, where the assessors were directed, in assessing property for taxation, to set down in one column, headed "Full Value," the full value of the property, and in another column, headed "Assessed Value," one half part thereof, and it was provided that the one half value of all property so ascertained and set down should be the assessed value for all purposes of taxation, an amendment to the provision applied to the assessment and taxes of 1927. People ex rel. Harding v. Panagakis, 339 Ill. 90, 170 N.E. 667 (1929).

Practice Guides and Treatises.

Real Estate Taxation § 8.22 Proving Up Extensions (IICLE).

§ 35 ILCS 200/18-40. Application of equalization factor

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Sec. 18-40. Application of equalization factor. Each county clerk shall apply the percentages certified by the Department and enter the equalized valuations in the columns provided for that purpose. The percentages certified by the Department shall be applied to the assessed valuation of property, as corrected and equalized by the board of review, board of appeals, or local assessment officers. In all cases of extension of valuations where the equalized valuations are fractional, the clerk shall reject all fractions that fall below 50õ. Fractions of 50õ or more shall be extended as $1.

If the equalized assessed value of any property is less than $150 for an assessment year, the county clerk may declare the imposition and collection of all tax for that year to be extended on the parcel to be unfeasible and cancelled. No tax shall be extended or collected on the parcel for that year and the parcel shall not be sold for delinquent taxes.

(Source: P.A. 85-312; 88-455, § 18-40.)

Note.

This section was derived from 35 ILCS 205/161, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 642.

Practice Guides and Treatises.

Real Estate Taxation § 10.82 Small Bills (IICLE).

Real Estate Taxation § 9.2 Determination of the Multiplier (IICLE).

§ 35 ILCS 200/18-45. Computation of rates

Sec. 18-45. Computation of rates. Except as provided below, each county clerk shall estimate and determine the rate per cent upon the equalized assessed valuation for the levy year of the property in the county's taxing districts and special service areas, as established under Article VII of the Illinois Constitution, so that the rate will produce, within the proper divisions of that county, not less than the net amount that will be required by the county board or certified to the county clerk according to law. Prior to extension, the county clerk shall determine the maximum amount of tax authorized to be levied by any statute. If the amount of any tax certified to the county clerk for extension exceeds the maximum, the clerk shall extend only the maximum allowable levy.

The county clerk shall exclude from the total equalized assessed valuation, whenever estimating and determining it under this Section and Sections 18-50 through 18-105 [35 ILCS 200/18-50 through 35 ILCS 200/18-105], the equalized assessed valuation in the percentage which has been agreed to by each taxing district, of any property or portion thereof within an Enterprise Zone upon which an abatement of taxes was made under Section 18-170 [35 ILCS 200/18-170]. However, if a municipality has adopted tax

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increment financing under Division 74.4 of Article 11 of the Illinois Municipal Code [65 ILCS 5/11-74.4-1 et seq.], the county clerk shall estimate and determine rates in accordance with Sections 11-74.4-7 through 11-74.4-9 of that Act [65 ILCS 5/11-74.4-7 through 65 ILCS 5/11-74.4-9]. Beginning on January 1, 1998 and thereafter, the equalized assessed value of all property for the computation of the amount to be extended within a county with 3,000,000 or more inhabitants shall be the sum of (i) the equalized assessed value of such property for the year immediately preceding the levy year as established by the assessment and equalization process for the year immediately prior to the levy year, (ii) the equalized assessed value of any property that qualifies as new property, as defined in Section 18-185 [35 ILCS 200/18-185], or annexed property, as defined in Section 18-225 [35 ILCS 200/18-225], for the current levy year, and (iii) any recovered tax increment value, as defined in Section 18-185 [35 ILCS 200/18-185], for the current levy year, less the equalized assessed value of any property that qualifies as disconnected property, as defined in Section 18-225 [35 ILCS 200/18-225], for the current levy year.

(Source: P.A. 86-233; 86-953; 86-957; 86-1475; 87-17; 87-477; 87-895; 88-455, § 18-45; 90-320, § 5.)

Note.

This section was derived from 35 ILCS 205/162, in part, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 643.

Cross References.

As for the limitation on tax extensions made under this section, see 35 ILCS 200/18-195.

As for calculating state aid to schools under the Common School Fund Article, see 105 ILCS 5/18-8.

As for tax levies by the board of education for the establishment and support of free schools, see 105 ILCS 5/34-53.

CASE NOTES

Analysis

Amended Tax Bill Procedure
Amendment
Applicability
- City Corporate Fund
Ascertainable Taxes
Computation of Rate
Corrections to Tax

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County Clerks
- Authority
Discretion of Taxing Authorities
Factors Affecting Estimated Loss
Legislative Purpose
Limitations on Taxing Authority
Objection
Original Assessment Values
- Determination
Uniformity

Amended Tax Bill Procedure

Neither this section nor 35 ILCS 200/18-150, nor any other provisions in the Code, explicitly govern the role, if any, which the county clerk is to play in issuing an amended tax bill following an increased assessment. Lake County Bd. of Review v. Property Tax Appeal Bd., 119 Ill. 2d 419, 116 Ill. Dec. 567, 519 N.E.2d 459 (1988).

Amendment

The 1933 amendments to this section and former 35 ILCS 205/191 (see now 35 ILCS 200/23-5 et seq.) authorized payments under protest of the tax challenged and required prior payment as a condition precedent to filing objections to the county collector's application for judgment. Chicago Title & Trust Co. v. Tully, 76 Ill. App. 3d 336, 32 Ill. Dec. 95, 395 N.E.2d 42 (1 Dist. 1979).

Applicability

- City Corporate Fund

The tax rate for a city's corporate fund was not subject to a statutory rate limit as provided by general statutes or to the formula rates under the provisions of this section. Certain Taxpayers v. Sheahen, 45 Ill. 2d 75, 256 N.E.2d 758 (1970).

Ascertainable Taxes

Real estate tax was computed upon three distinct bases: the assessed value of the property, the state equalization factor (35 ILCS 200/17-25), and the applicable tax rate; however, the amount of the tax bill for the next year could not be "ascertained" until all of these items had been determined by the proper governmental authorities, and because the state equalization factor and the precise tax rate to be applied to the new valuation were not established, the amount of the general taxes for the subsequent year were not "ascertainable" for proration taxes based on real estate sales contract. Lenzi v. Morkin, 116 Ill. App. 3d 1014, 72 Ill. Dec. 414, 452 N.E.2d 667 (1 Dist. 1983).

Computation of Rate

The county clerk must determine the rate at which the taxes shall be extended by him by taking into consideration the levies filed in his office by all the various taxing bodies within his county; he

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must scale, or reduce, the levies certified so as to bring the rate within the limits fixed by law. People ex rel. Toman v. Chicago & N.W. Ry., 377 Ill. 547, 37 N.E.2d 169 (1941).

Corrections to Tax

Where the carelessness of the assessor in not performing his legal duty to set down the full value as the assessed value of real estate could not be held to defeat the collection of the tax, it became the ministerial duty of the county clerk to determine the correct and just amount of the tax by a simple calculation based upon the full value found by the assessor, and in doing this he was neither making nor altering an assessment made by the properly constituted authority, and what he did in no manner affected the substantial justice of the tax imposed under former sections of the Revenue Act. People ex rel. Smith v. Fleming, 355 Ill. 91, 188 N.E. 818 (1933).

County Clerks

- Authority

A county clerk has no power to levy taxes or determine whether taxes have been legally assessed, and as such, his duties in the extension of taxes are purely ministerial. People ex rel. Weber v. Crossfield Chems., Inc., 223 Ill. App. 3d 896, 166 Ill. Dec. 79, 585 N.E.2d 1101 (3 Dist.), appeal denied, 145 Ill. 2d 634, 173 Ill. Dec. 5, 596 N.E.2d 629 (1992).

A county clerk did not exceed his authority in extending a tax rate. People ex rel. Carter v. Touchette, 5 Ill. 2d 303, 125 N.E.2d 473 (1955).

Discretion of Taxing Authorities

In determining the percentage to be allowed for loss and costs in levying taxes, the amount allowable usually rests in the sound discretion of the taxing authorities, and the courts will not interfere with the exercise of sound business judgment on the part of the officer extending the tax unless it clearly appears that such discretionary powers have been abused. People ex rel. Schlaeger v. Jourdan Packing Co., 389 Ill. 163, 58 N.E.2d 910 (1945).

Factors Affecting Estimated Loss

The question of reasonableness of a tax appropriation was not to be determined upon the ratio of the levy to the percentage of the delinquencies shown in any prior case; rather, in estimating the amount necessary to cover loss and cost, the city council should have properly taken into consideration previous experience with reference to collections, and all other factors affecting the estimated loss and cost of collecting taxes for the fiscal year. People ex rel. Schlaeger v. Jourdan Packing Co., 389 Ill. 163, 58 N.E.2d 910 (1945).

Legislative Purpose

The purpose of the section was to facilitate attracting business enterprises to Illinois; however, competition between counties for business enterprises already operating facilities within the state was not intended to be encouraged. Toys "R" Us, Inc. v. Adelman, 215 Ill. App. 3d 561, 158 Ill. Dec. 935, 574 N.E.2d 1328 (3 Dist.), cert. denied, 141 Ill. 2d 562, 162 Ill. Dec. 510, 580 N.E.2d 136 (1991).

While the legislature did not want Illinois counties to compete against each other when a company is already doing business in Illinois, the legislature did not expressly require that the expansion of the facility occur in the same taxing district wherein the preexisting facility was

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situated. Toys "R" Us, Inc. v. Adelman, 215 Ill. App. 3d 561, 158 Ill. Dec. 935, 574 N.E.2d 1328 (3 Dist.), cert. denied, 141 Ill. 2d 562, 162 Ill. Dec. 510, 580 N.E.2d 136 (1991).

Limitations on Taxing Authority

Where a city was not authorized to levy a tax of more than two per centum for general city purposes, it did not exceed that authority where it was able to exclude interest on bonded indebtedness and the library tax under a prior similar provision. B & O S.W. R.R. v. People ex rel. Parker, 200 Ill. 623, 66 N.E. 246 (1903).

Objection

Under the objection procedure, a taxpayer could obtain a judicial determination of the validity of a tax, or its underlying assessment, and if successful obtain a refund of any excess amounts paid. Chicago Title & Trust Co. v. Tully, 76 Ill. App. 3d 336, 32 Ill. Dec. 95, 395 N.E.2d 42 (1 Dist. 1979).

Original Assessment Values

- Determination

Publication of original assessment values by the Department of Revenue was to be at the full fair cash value of the property involved. People ex rel. Little v. Collins, 386 Ill. 83, 53 N.E.2d 853 (1944).

Uniformity

Uniformity in taxation does not require that the taxing officials, while engaged in the fixing of the full fair cash value of property, adopt the same rules as to all classes of property; they are permitted to exercise their judgment and formulate and apply such rules in the valuing of the various items of property and the classes thereof as will best enable them to arrive at the fair cash value of the subject property. People ex rel. Toman v. Pickard, 377 Ill. 610, 37 N.E.2d 330 (1941).

Practice Guides and Treatises.

Residential Real Estate § 10.75 Tax Rates (IICLE).

Real Estate Taxation § 9.15 Levy at Rate in Excess of Maximum Allowed by Law (IICLE).

Real Estate Taxation § 9.14 Excessive Provision for Loss in Collection of Taxes (IICLE).

Real Estate Taxation § 9.4 Determination of the Rate (IICLE).

Real Estate Taxation § 8.19 Computation of Actual Tax Rate (IICLE).

§ 35 ILCS 200/18-50. Filing of budget and appropriation ordinance

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Sec. 18-50. Filing of budget and appropriation ordinance. The governing authority of each taxing district shall file with the county clerk within 30 days of their adoption a certified copy of its appropriation and budget ordinances or resolutions, as well as an estimate, certified by its chief fiscal officer, of revenues, by source, anticipated to be received by the taxing district in the following fiscal year. If the governing authority fails to file the required documents, the county clerk shall have the authority, after giving timely notice of the failure to the taxing district, to refuse to extend the tax levy until the documents are so filed.

In determining the amount of maximum tax authorized to be levied by any statute of this State, the assessed valuation of the current year of property as assessed and reviewed by the local assessment officials or the Department, and as equalized or confirmed by the Department, shall be used.

(Source: P.A. 86-233; 86-953; 86-957; 86-1475; 87-17; 87-477; 87-895; 88-455, § 18-50.)

Note.

This section was derived from 35 ILCS 205/162, in part, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 643.

CASE NOTES

Analysis

Discretion of Clerk
Errors
Refusal of Clerk to Extend Levy

Discretion of Clerk

The Debt Reform Act in combination with the Revenue Act (now see the Property Tax Code, 35 ILCS 200/1-1, et seq.) provides sufficient guidelines to assist the county clerk in accepting a collection-year filing of a levy ordinance under 30 ILCS 350/16. The county clerk is not allowed unbounded discretion under the Debt Reform Act and the Revenue Act, and section 16 does not thereby result in an improper delegation of legislative authority to the county clerk. In re Delinquent Properties for Tax Year 1989, 167 Ill. 2d 161, 212 Ill. Dec. 215, 656 N.E.2d 1049 (1995).

A governmental unit may levy a tax for the payment of bond indebtedness at any time before the bonds are issued, but the county clerk may decide whether to extend the tax for the next collection when the usual time has passed for closing and delivering the tax books. In re Delinquent Properties for Tax Year 1989, 167 Ill. 2d 161, 212 Ill. Dec. 215, 656 N.E.2d 1049 (1995).

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Errors

Failure of taxing districts to file budget and appropriations ordinances with the county clerk prior to the tax extensions did not invalidate the levies where the clerk did not notify the districts of the failure to file. In re County Collector, 294 Ill. App. 3d 958, 229 Ill. Dec. 302, 691 N.E.2d 775 (1 Dist. 1997), appeal denied, 178 Ill. 2d 576, 232 Ill. Dec. 846, 699 N.E.2d 1031 (1998).

Failure of the governmental unit to file the required documents directing the extension of taxes authorizes the county clerk to refuse to extend the levy until such filing occurs; however, any error or informality in certifying or filing the levy documents not affecting the substantial justice of the levy may be corrected by subsequent amendment. In re Delinquent Properties for Tax Year 1989, 167 Ill. 2d 161, 212 Ill. Dec. 215, 656 N.E.2d 1049 (1995).

Refusal of Clerk to Extend Levy

A county clerk may not refuse to extend tax levy in a legally authorized amount on the ground that the levy is void for failure to comply with statutorily prescribed procedures; however, the refusal of the county clerk to either extend taxes or his inadvertent failure to extend taxes on certain property does not vitiate the tax levy. In re Delinquent Properties for Tax Year 1989, 167 Ill. 2d 161, 212 Ill. Dec. 215, 656 N.E.2d 1049 (1995).

Practice Guides and Treatises.

Real Estate Taxation § 9.7 Developing Rate Objections (IICLE).

Real Estate Taxation § 8.20 Extension of Taxes and Additions Thereto (IICLE).

§ 35 ILCS 200/18-50.1. School Finance Authority and Financial Oversight Panel levies

Sec. 18-50.1. School Finance Authority and Financial Oversight Panel levies. (a) Notwithstanding any other law to the contrary, any levy adopted by a School Finance Authority created under Article 1F of the School Code [105 ILCS 5/1F-1 et seq.] is valid and shall be extended by the county clerk if it is certified to the county clerk by the Authority in sufficient time to allow the county clerk to include the levy in the extension for the taxable year.

(b) Notwithstanding any other law to the contrary, any levy adopted by a Financial Oversight Panel created under Article 1H of the School Code [105 ILCS 5/1H-1 et seq.] and levied pursuant to Section 1H-75 of the School Code [105 ILCS 5/1H-75] is valid and shall be extended by the county clerk if it is certified to the county clerk by the Panel in sufficient time to allow the county clerk to include the levy in the extension for the taxable year.

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(Source: P.A. 92-855, § 5; 97-429, § 5.)

Effective Date. Section 99 of P.A. 92-855, made this section effective upon becoming law. The Act was approved December 6, 2002.

Effect of Amendments. The 2011 amendment by P.A. 97-429, effective August 16, 2011, added the section heading; added the (a) designation; and added (b).

Division 2.
Truth in Taxation

§ 35 ILCS 200/18-55. Short title and definitions

Sec. 18-55. Short title and definitions. This Division 2 may be cited as the Truth in Taxation Law [35 ILCS 200/18-55 et seq.]. As used in this Division 2:

(a) "Taxing district" has the meaning specified in Section 1-150 [35 ILCS 200/1-150] and includes home rule units, but from January 1, 2000 through December 31, 2002 does not include taxing districts that have territory in Cook County.

(b) "Aggregate levy" means the annual corporate levy of the taxing district and those special purpose levies which are made annually (other than debt service levies and levies made for the purpose of paying amounts due under public building commission leases).

(c) "Special purpose levies" include, but are not limited to, levies made on an annual basis for contributions to pension plans, unemployment and worker's compensation, or self-insurance.

(d) "Debt service" means levies made by any taxing district pursuant to home rule authority, statute, referendum, ordinance, resolution, indenture, agreement, or contract to retire the principal or pay interest on bonds, notes, debentures or other financial instruments which evidence indebtedness.

(Source: P.A. 86-957; 86-1475; 88-455, § 18-55; 91-357, § 61; 91-523, § 5.)

Note.

This section was derived from 35 ILCS 215/1 and 35 ILCS 215/2, which were themselves derived from Ill.Rev.Stat., Ch. 120, para. 861 and 862.

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P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted references to Division 2 for references to Sections 18-55 through 18-95 in the introductory language and made stylistic changes.

The 1999 amendment by P.A. 91-523, effective January 1, 2000, substituted "Division 2" for "Section and Sections 18-60 through 18-95" twice in the introductory language and made related changes; in subdivision (a), added the language beginning "but from January 1, 2000"; and made stylistic changes throughout.

Although the amendments made to this section by P.A. 91-357, § 61 and P.A. 91-523, § 5 did not take into account the amendments made by the other, the amendments have been combined into a single version by the publisher.

CASE NOTES

Analysis

Aggregate Levy
- Construed
Supplemental Tax Levy
- Requirements

Aggregate Levy

- Construed

When the Code speaks of the aggregate levy, it is speaking of that levy which a taxing body makes annually, and refers to the total of all levies included in the annual levy ordinance except election costs. Board of Educ. v. Kusper, 92 Ill. 2d 333, 65 Ill. Dec. 868, 442 N.E.2d 179 (1982).

Supplemental Tax Levy

- Requirements

Adoption of a supplemental budget under 105 ILCS 5/17-3.2 can only be accomplished through voter approval, and therefore meets the requirements of this section. Verdung v. Palatine Nat'l Bank, 181 Ill. App. 3d 345, 130 Ill. Dec. 77, 536 N.E.2d 1288 (2 Dist. 1989).

OPINIONS OF ATTORNEY GENERAL

Analysis

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Applicability
- Amount of Levy
- Use of Funds

Applicability

- Amount of Levy

If the tax proposed to be levied for a particular purpose was in an amount more than 105% of the amount extended for that purpose for the preceding year, but the proposed aggregate levy for the taxing district does not exceed 105% of the aggregate levy for the preceding year, the provisions of the Code do not apply to the levy proposed. 1981 Op. Atty. Gen. 72.

- Use of Funds

The provisions of this Code do not apply to taxes levied by taxing districts, as defined in the Code, for the purpose of paying principal and interest on bonds, notes and other obligations secured by ad valorem property tax levies or for the purpose of paying amounts due under public building commission leases entered into pursuant to section 18 of the Public Building Commission Act (50 ILCS 20/1), which tax levies would otherwise be required by law to be unlimited as to rate or amount. 1981 Op. Atty. Gen. 72.

Practice Guides and Treatises.

Residential Real Estate § 10.71 Truth in Taxation Law (IICLE).

Real Estate Taxation § 8.6 Truth in Taxation Law (IICLE).

Practice Forms.

Sample Village Ordinance, Real Estate Taxation § 8.34 (IICLE).

§ 35 ILCS 200/18-56. Legislative purpose

Sec. 18-56. Legislative purpose. The purpose of this Law is to require taxing districts to disclose by publication and to hold a public hearing on their intention to adopt an aggregate levy in amounts more than 105% of the amount of property taxes extended or estimated to be extended, including any amount abated by the taxing district prior to such extension, upon the final aggregate levy of the preceding year.

(Source: P.A. 88-660, § 64.)

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Effective Date. Section 900 of P.A. 88-660 made this section effective upon becoming law. The Act was approved September 16, 1994.

Practice Guides and Treatises.

Residential Real Estate § 10.71 Truth in Taxation Law (IICLE).

Real Estate Taxation § 8.6 Truth in Taxation Law (IICLE).

§ 35 ILCS 200/18-60. Estimate of taxes to be levied

Sec. 18-60. Estimate of taxes to be levied. Not less than 20 days prior to the adoption of its aggregate levy, hereafter referred to as "levy", the corporate authority of each taxing district shall determine the amounts of money, exclusive of any portion of that levy attributable to the cost of conducting an election required by the general election law, hereafter referred to as "election costs", estimated to be necessary to be raised by taxation for that year upon the taxable property in its district.

(Source: P.A. 82-102; 88-455, § 18-60.)

Note.

This section was derived from 35 ILCS 215/4, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 864.

CASE NOTES

Aggregate Levy

- Construed

The term "aggregate levy" as used in this section can only refer to the single annual levy adopted pursuant to the annual budget and levy process. Board of Educ. v. Kusper, 92 Ill. 2d 333, 65 Ill. Dec. 868, 442 N.E.2d 179 (1982).

§ 35 ILCS 200/18-65. Restriction on extension

Sec. 18-65. Restriction on extension. Until it has complied with the notice and hearing provisions of this Article, no taxing district shall levy an amount of ad valorem tax which is more than 105% of the amount, exclusive of election costs, which has been extended or is estimated will be extended, plus any amount abated by the taxing district before

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extension, upon the final aggregate levy of the preceding year.

(Source: P.A. 86-957; 88-455, § 18-65.)

Note.

This section was derived from 35 ILCS 215/5, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 865.

Practice Guides and Treatises.

Residential Real Estate § 10.71 Truth in Taxation Law (IICLE).

Real Estate Taxation § 8.6 Truth in Taxation Law (IICLE).

§ 35 ILCS 200/18-70. More than 5% increase; notice and hearing required

Sec. 18-70. More than 5% increase; notice and hearing required. If the estimate of the corporate authority made as provided in Section 18-60 [35 ILCS 200/18-60] is more than 105% of the amount extended or estimated to be extended, plus any amount abated by the corporate authority prior to extension, upon the final aggregate levy of the preceding year, exclusive of election costs, the corporate authority shall give public notice of and hold a public hearing on its intent to adopt an aggregate levy in an amount which is more than 105% of the amount extended or estimated to be extended upon the final aggregate levy extensions, plus any amount abated, exclusive of election costs, for the preceding year. The hearing shall not coincide with the hearing on the proposed budget of the taxing district.

(Source: P.A. 86-957; 88-455, § 18-70.)

Note.

This section was derived from 35 ILCS 215/6, in part, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 866.

CASE NOTES

Analysis
Failure to Comply

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Publication Requirements
Taxes for Future Services

Failure to Comply

The failure to strictly comply with the mandatory requirements of this section will cause a taxing body's levy to be found invalid following a proper tax protest. In re County Collector, 229 Ill. App. 3d 641, 171 Ill. Dec. 314, 593 N.E.2d 1134 (3 Dist.), cert. denied, 146 Ill. 2d 628, 176 Ill. Dec. 799, 602 N.E.2d 453 (1992).

Publication Requirements

The publication requirements contained in this section were enacted to afford the taxpayers information as well as the opportunity to evaluate the reasonableness of their assessments. The publication requirements of this act are mandatory and must be strictly complied with by the taxing body. In re County Collector, 229 Ill. App. 3d 641, 171 Ill. Dec. 314, 593 N.E.2d 1134 (3 Dist.), cert. denied, 146 Ill. 2d 628, 176 Ill. Dec. 799, 602 N.E.2d 453 (1992).

Taxes for Future Services

Intergovernmental fire service agreement between a fire protection district and a village was void ab initio because it allowed the district to levy the maximum tax allowable by law for 10 years for future fire protection services and it did not correlate the amount of taxes to be raised with the cost of the services to be rendered; the taxing provision was unresponsive to changed conditions and denied prospective administrations and taxpayers any input into future levies as required by law. Although Ill. Const., Art. VII, § 10, the Intergovernmental Cooperation Act, Ill. Rev. Stat. ch. 127, para. 743, and the Fire Protection District Act, Ill. Rev. Stat. ch. 127 1/2, para. 31a, provided authority for levying taxes for the purpose of providing fire protection, the statutory and constitutional authorities did not provide authority to execute blanket tax levies for extended periods of time; rather, former Ill. Rev. Stat. ch. 85, para. 803 (now 32 ILCS 200/18-70) provided that tax levies might be adopted after yearly enactment of a budget and appropriate ordinances. Elk Grove Township Rural Fire Protection Dist. v. Mt. Prospect, 228 Ill. App. 3d 228, 170 Ill. Dec. 113, 592 N.E.2d 549, 1992 Ill. App. LEXIS 567 (1 Dist. 1992).

§ 35 ILCS 200/18-72. [Public hearing to amend tax levy]

Sec. 18-72. A school board shall give public notice of and hold a public hearing on its intent to amend a certificate of tax levy under Section 17-11.1 of the School Code [105 ILCS 5/17-11.1].

(Source: P.A. 91-850, § 3.)

Effective Date. Section 99 of P.A. 91-850 made this section effective upon becoming law. The Act was approved June 22, 2000.

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§ 35 ILCS 200/18-75. Notice; place of publication

Sec. 18-75. Notice; place of publication. If the taxing district is located entirely in one county, the notice shall be published in an English language newspaper of general circulation published in the taxing district, or if there is no such newspaper, in an English language newspaper of general circulation published in the county and having circulation in the taxing district.

If the taxing district is located primarily in one county but extends into smaller portions of adjoining counties, the notice shall be published in a newspaper of general circulation published in the taxing district, or if there is no such newspaper, in a newspaper of general circulation published in each county in which any part of the district is located.

If the taxing district includes all or a large portion of 2 or more counties, the notice shall be published in a newspaper of general circulation published in each county in which any part of the district is located.

(Source: P.A. 86-957; 88-455, § 18-75.)

Note.

This section was derived from 35 ILCS 215/6, in part, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 866.

§ 35 ILCS 200/18-80. Time and form of notice

Sec. 18-80. Time and form of notice. The notice shall appear not more than 14 days nor less than 7 days prior to the date of the public hearing. The notice shall be no less than 1/8 page in size, and the smallest type used shall be 12 point and shall be enclosed in a black border no less than 1/4 inch wide. The notice shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The notice shall be published in substantially the following form:

Notice of Proposed Property Tax Increase for ... (commonly known name of taxing district).

I.A public hearing to approve a proposed property tax levy increase for ... (legal name of the taxing district) ... for ... (year) ... will be held on ... (date) ... at ... (time) ... at ... (location).

Any person desiring to appear at the public hearing and present testimony to the taxing district may contact ... (name, title, address and telephone number of an appropriate official).

II.The corporate and special purpose property taxes extended or abated for ... (preceding year) ... were ... (dollar amount of the final aggregate levy as extended, plus the amount abated by the taxing district prior to extension).

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The proposed corporate and special purpose property taxes to be levied for ... (current year) ... are ... (dollar amount of the proposed aggregate levy). This represents a ... (percentage) ... increase over the previous year.

III.The property taxes extended for debt service and public building commission leases for ... (preceding year) ... were ... (dollar amount).

The estimated property taxes to be levied for debt service and public building commission leases for ... (current year) ... are ... (dollar amount). This represents a ... (percentage increase or decrease) ... over the previous year.

IV.The total property taxes extended or abated for ... (preceding year) ... were ... (dollar amount).

The estimated total property taxes to be levied for ... (current year) ... are ... (dollar amount). This represents a ... (percentage increase or decrease) ... over the previous year.

Any notice which includes any information not specified and required by this Article shall be an invalid notice.

All hearings shall be open to the public. The corporate authority of the taxing district shall explain the reasons for the proposed increase and shall permit persons desiring to be heard an opportunity to present testimony within reasonable time limits as it determines.

(Source: P.A. 86-957; 88-455, § 18-80; 92-382, § 5.)

Note.

This section was derived from 35 ILCS 215/6, in part, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 866.

Effect of Amendments. The 2001 amendment by P.A. 92-382, effective August 16, 2001, inserted "substantially" in the last sentence of the first paragraph.

§ 35 ILCS 200/18-85. Notice if adopted levy exceeds proposed levy

Sec. 18-85. Notice if adopted levy exceeds proposed levy. If the final aggregate tax levy resolution or ordinance adopted is more than 105% of the amount, exclusive of election costs, which was extended or is estimated to be extended, plus any amount abated by the taxing district prior to extension, upon the final aggregate levy of the preceding year and is in excess of the amount of the proposed levy stated in the notice published under Section 18-70 [35 ILCS 200/18-70], or is more than 105% of that amount and no notice was required under Section 18-70, the corporate authority shall give public notice of its action within 15 days of the adoption of the levy in the following form:

Notice of Adopted Property Tax Increase for ... (commonly known name of taxing district).

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I.The corporate and special purpose property taxes extended or abated for ... (preceding year) ... were ... (dollar amount of the final aggregate levy as extended).

The adopted corporate and special purpose property taxes to be levied for ... (current year) ... are ... (dollar amount of the proposed aggregate levy). This represents a ... (percentage) ... increase over the previous year.

II.The property taxes extended for debt service and public building commission leases for ... (preceding year) ... were ... (dollar amount).

The estimated property taxes to be levied for debt service and public building commission leases for ... (current year) ... are ... (dollar amount). This represents a ... (percentage increase or decrease) ... over the previous year.

III.The total property taxes extended or abated for ... (preceding year) ... were ... (dollar amount).

IV.The estimated total property taxes to be levied for ... (current year) ... are ... (dollar amount). This represents a ... (percentage increase or decrease) ... over the previous year.

A taxing district may, in its discretion and if applicable, include the following in the notice:

V.The taxing district has estimated its equalized assessed valuation to secure new growth revenue and must adhere to the Property Tax Extension Limitation Law (PTELL or "tax cap" law). PTELL limits the increase over the prior year in the property tax extension of this taxing district to the lesser of 5% or the percentage increase in the Consumer Price Index (CPI), which is (insert applicable CPI percentage increase).

(Source: P.A. 86-957; 88-455, § 18-85; 96-504, § 5.)

Note.

This section was derived from 35 ILCS 215/7, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 867.

Effect of Amendments. The 2009 amendment by P.A. 96-504, effective August 14, 2009, added the designation IV; added the undesignated paragraph following IV; and added V.

§ 35 ILCS 200/18-90. Limitation on extension of county clerk

Sec. 18-90. Limitation on extension of county clerk. The tax levy resolution or ordinance approved in the manner provided for in this Article shall be filed with the county clerk in the manner and at the time otherwise provided by law. No amount more than 105% of the amount, exclusive of election costs, which has been extended or is estimated to be

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extended, plus any amount abated by the taxing district prior to extension, upon the final aggregate levy of the preceding year shall be extended unless the tax levy ordinance or resolution is accompanied by a certification by the presiding officer of the corporate authority certifying compliance with or inapplicability of the provisions of Sections 18-60 through 18-85 [35 ILCS 200/18-60 through 35 ILCS 200/18-85]. An amount extended under Section 18-107 [35 ILCS 200/18-107] in 1994 for a multi-township assessment district that did not file a certification of compliance with the Truth in Taxation Law [35 ILCS 200/18-55 et seq.] may not exceed 105% of the amount, exclusive of election costs, that was extended in 1993, plus a proportional amount abated before extension, upon the levy or portion of a levy that is allocable to assessment purposes in each township that is a member of that multi-township assessment district.

(Source: P.A. 86-957; 88-455, § 18-90; 88-660, § 64.)

Note.

This section was derived from 35 ILCS 215/8, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 867.

Cross References.

For violations of this section by a taxing district, see 35 ILCS 200/18-45, 35 ILCS 200/18-50, 35 ILCS 200/18-105 through 35 ILCS 200/18-115 and 35 ILCS 200/18-165.

CASE NOTES

In General

This section simply refers to the annual levy which must be filed in the manner and within the time provided by law, which levy, if it exceeds 105% of the taxes extended on the prior year's levy, must be approved in the manner provided for in this Act. Board of Educ. v. Kusper, 92 Ill. 2d 333, 65 Ill. Dec. 868, 442 N.E.2d 179 (1982).

§ 35 ILCS 200/18-92. Downstate School Finance Authority for Elementary Districts Law and Financial Oversight Panel Law

Sec. 18-92. Downstate School Finance Authority for Elementary Districts Law and Financial Oversight Panel Law. (a) The provisions of the Truth in Taxation Law are subject to the Downstate School Finance Authority for Elementary Districts Law.

(b) A Financial Oversight Panel created under Article 1H of the School Code [105 ILCS 5/1H-1 et seq.] is subject to the provisions of the Truth in Taxation Law with respect to

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tax levies filed by it on behalf of a school district, as well as with respect to any tax levies it may file on its own behalf.

(Source: P.A. 92-855, § 5; 95-331, § 410; 97-429, § 5.)

Note.

The section was renumbered as 35 ILCS 200/18-93 by P.A. 331, § 410, effective August, 21, 2007.

Effective Date. Section 99 of P.A. 92-855, made this section effective upon becoming law. The Act was approved December 6, 2002.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, reenacted the section, and made no additional changes.

The 2011 amendment by P.A. 97-429, effective August 16, 2011, added "and Financial Oversight Panel Law" to the end of the section heading; added the (a) designation; and added (b).

§ 35 ILCS 200/18-93. Maywood Public Library District Tax Levy Validation (2002) Law

Sec. 18-93. Maywood Public Library District Tax Levy Validation (2002) Law. The provisions of the Truth in Taxation Law [35 ILCS 200/18-55 et seq.] are subject to the Maywood Public Library District Tax Levy Validation (2002) Law [75 ILCS 23/10-1 et seq.].

(Source: P.A. 92-884, § 10-905; 95-331, § 410.)

Effective Date. Section 99-99 of P.A. 92-884, made this section effective upon becoming law. The Act was approved January 13, 2003.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, renumbered the section, which was formerly a multiple version of 35 ILCS 200/18-92; and made a stylistic change.

§ 35 ILCS 200/18-95. Effect of Truth in Taxation Law

Sec. 18-95. Effect of Truth in Taxation Law. Nothing contained in Sections 18-55 through 18-90 [35 ILCS 200/18-55 through 35 ILCS 200/18-90] shall serve to extend or

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authorize any tax rate in excess of the maximum permitted by law nor prevent the reduction of any tax rate.

(Source: P.A. 82-102; 88-455, § 18-95.)

Note.

This section was derived from 35 ILCS 215/9, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 869.

§ 35 ILCS 200/18-100. Defective publication

Sec. 18-100. Defective publication. A levy of a taxing district shall not be invalidated for failure to comply with the provisions of this Article if the failure is attributable to the newspaper's failure to reproduce the information in the notice accurately or to publish the notice as directed by the taxing district.

(Source: P.A. 87-201; 88-455, § 18-100.)

Note.

This section was derived from 35 ILCS 215/9.2, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 869.2.

Division 2.1.
Cook County Truth In Taxation

§§ 35 ILCS 200/18-101.1 through 35 ILCS 200/18-101.45: Repealed; see P.A. 91-523, § 5.

§ 35 ILCS 200/18-101.47: Repealed by P.A. 95-331, § 410, effective August 21, 2007.

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§§ 35 ILCS 200/18-101.50 through 35 ILCS 200/18-101.65: Repealed; see P.A. 91-523, § 5.

Division 3.

Extension Procedures

§ 35 ILCS 200/18-105. Extension exceeding authorized rate

Sec. 18-105. Extension exceeding authorized rate. No county clerk shall extend a tax levy imposed by any taxing district, other than a home rule unit, based on a rate that exceeds the rate authorized by statute or referendum for that taxing district. If a taxing district is in violation of Section 18-90 [35 ILCS 200/18-90], no county clerk shall extend the final aggregate levy, as defined in Section 18-55 [35 ILCS 200/18-55], in an amount more than 105% of the final aggregate levy extended for the preceding year.

(Source: P.A. 86-233; 86-953; 86-957; 86-1475; 87-17; 87-477; 87-895; 88-455, § 18-105.)

Note.

This section was derived from 35 ILCS 205/162, in part, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 643.

CASE NOTES

Analysis

Rate Held Excessive
Refusal to Extend Levy

Rate Held Excessive

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Where county board levied an amount for road reconstruction at a tax rate of .05% and it was stipulated that the statutory tax rate limit was .067% and that the .05% rate exceeded the limit and no referendum was held to authorize the excessive rate, the tax levy was invalid. People ex rel. Nordstrom v. Chicago, Burlington & Quincy R.R., 15 Ill. 2d 602, 155 N.E.2d 649 (1959).

Refusal to Extend Levy

A county clerk may not refuse to extend a levy in an amount authorized by law on the ground that the levy is void for failure to comply with statutorily prescribed procedures. City of Rockford v. Gill, 75 Ill. 2d 334, 26 Ill. Dec. 669, 388 N.E.2d 384 (1979).

§ 35 ILCS 200/18-107. Multi-township assessment district; 1994 extension validated

Sec. 18-107. Multi-township assessment district; 1994 extension validated. For property tax extensions in 1994 only, notwithstanding any other provision of this Code to the contrary, if a 1993 levy was filed before the last Tuesday in December 1993 by a multi-township assessment district that was promulgated by the Department under Section 2-10 [35 ILCS 200/2-10] effective January 1, 1994 either for the first time or with different township members than in 1993, and if that levy has not been excluded from the 1994 extension of taxes in the county in which the district is situated, that levy is not an invalid levy because the multi-township assessment district allegedly lacked authority to adopt that levy in 1993, and that levy may be extended in 1994. All taxes collected from that extension shall be distributed to the multi-township assessment district by the collector in accordance with the provisions of this Code.

(Source: P.A. 88-660, § 64.)

Effective Date. Section 900 of P.A. 88-660 made this section effective upon becoming law. The Act was approved September 16, 1994.

§ 35 ILCS 200/18-110. Chicago school district

Sec. 18-110. Chicago school district. In each county in which there is a school district and a School Finance Authority organized under Articles 34 and 34a respectively of the School Code [105 ILCS 5/34-1 et seq. and 105 ILCS 5/34A-1 et seq.], the county clerk shall each year determine the rate for that year's extension of taxes levied by or on behalf of the Authority, and then immediately certify to the school district that rate. However, in making such determination and certification, the county clerk shall disregard the tax rate calculated for the extension of any taxes levied to pay and discharge the principal of and interest on any bonds issued by the Authority under Article 34A of the School Code [105 ILCS 5/34A-1 et seq.] on or after January 1, 1984 and prior to July 1, 1993 (other than

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bonds issued to refund or to continue the refunding of bonds issued before January 1, 1984).

(Source: P.A. 86-233; 86-953; 86-957; 86-1475; 87-17; 87-477; 87-895; 88-455, § 18-110; 88-511, §§ 2.2, 2.3.)

Note.

This section was derived from 35 ILCS 205/162, in part, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 643.

CASE NOTES

School Districts

- Levy Held Valid

The appropriation and levy of a Board of Education for a school district for its retirement fund was not excessive or illegal because it was substantially larger than the contributions for the three preceding years. People ex rel. Sweet v. Central Ill. Pub. Serv. Co., 48 Ill. 2d 145, 268 N.E.2d 404 (1971).

Practice Guides and Treatises.

Real Estate Taxation § 8.22 Proving Up Extensions (IICLE).

§ 35 ILCS 200/18-112. Extension of taxes for additional or supplemental budget of school district

Sec. 18-112. Extension of taxes for additional or supplemental budget of school district. Notwithstanding any other provision of this Code and in accordance with Section 17-3.2 of the School Code [105 ILCS 5/17-3.2], if a school district adopts, in a fiscal year, an additional or supplemental budget under the authority of Section 17-3.2 of the School Code, the county clerk shall include, in the extension of taxes made during that fiscal year, the extension of taxes for the supplemental or additional budget adopted by the school district.

(Source: P.A. 93-346, § 5.)

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Effective Date. Section 99 of P.A. 93-346 made this section effective upon becoming law. The Act was approved July 24, 2003.

§ 35 ILCS 200/18-115. Use of equalized assessed valuation

Sec. 18-115. Use of equalized assessed valuation. The equalized assessed value of all property, as determined under this Code, after equalization by the Department, shall be the assessed valuation for all purposes of taxation, limitation of taxation, and limitation of indebtedness prescribed in any statute.

(Source: P.A. 86-233; 86-953; 86-957; 86-1475; 87-17; 87-477; 87-895; 88-455, § 18-115.)

Note.

This section was derived from 35 ILCS 205/162, in part, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 643.

§ 35 ILCS 200/18-120. Increase or decrease of rate limit

Sec. 18-120. Increase or decrease of rate limit. This Section applies only to rates which are specifically made subject to increase or decrease according to the referendum provisions of the General Revenue Law of Illinois. The question of establishing a maximum tax rate limit other than that applicable to the next taxes to be extended may be presented to the legal voters of any taxing district by resolution of the corporate authorities of the taxing district at any regular election. Whenever any taxing district establishes a maximum tax rate lower than that otherwise applicable, it shall publish the ordinance or resolution establishing the maximum tax rate in one or more newspapers in the district within 10 days after the maximum tax rate is established. If no newspaper is published in the district, the ordinance or resolution shall be published in a newspaper having general circulation within the district. The publication of the ordinance or resolution shall include a notice of (a) the specific number of voters required to sign a petition requesting that the question of the adoption of the maximum tax rate be submitted to the voters of the district; (b) the time within which the petition must be filed; and (c) the date of the prospective referendum. The district clerk or secretary shall provide a petition form to any individual requesting one.

Either in response to the taxing district's publication or by the voters' own initiative, the question of establishing a maximum tax rate lower than that in effect shall be submitted to the voters of any taxing district at the regular election for officers of the taxing district in accordance with the general election law, but only if the voters have submitted a petition signed by not fewer than 10% of the legal voters in the taxing district. That

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percentage shall be based on the number of votes cast at the last general election preceding the filing of the petition. The petition shall specify the tax rate to be submitted. The petition shall be filed with the clerk, secretary or other recording officer of the taxing district not more than 10 months nor less than 6 months prior to the election at which the question is to be submitted to the voters, and its validity shall be determined as provided by the general election law. The officer receiving the petition shall certify the question to the proper election officials, who shall submit the question to the voters.

Notice shall be given in the manner provided by the general election law.

(Source: P.A. 86-1253; 88-455, § 18-120.)

Note.

This section was derived from 35 ILCS 205/162a, in part, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 643a.

Cross References.

As to the General Revenue Law of Illinois, see 5 ILCS 70/1.23.

As for review by the State Board of Elections of a decision of an electoral board rendered pursuant to this section, see 10 ILCS 5/10-10.1.

As for time frame for filing petitions for the submission of a question under this section, see 10 ILCS 5/28-2.

As for the levy by county having less than 1,000,000 inhabitants of additional annual tax in addition to all other county taxes pursuant to referendum, see 605 ILCS 5/5-602.

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Constitutionality

This section presents no conflict with Article VII, section 11(a), of the Constitution of Illinois (Ill. Const. (1970), Art. VII, § 11(a)); rather, it reasonably limits the consideration of tax rate referenda to one election in each year, thereby permitting local officials to engage in orderly fiscal planning. Koeppel v. Ives, 92 Ill. 2d 523, 65 Ill. Dec. 865, 442 N.E.2d 176 (1982).

The provision in former subsection (2) of this section that "the question of establishing a tax rate limit lower than that otherwise applicable shall be presented to the voters of any taxing district upon the receipt by such corporate authorities, not less than 30 days before the next regular election," was an unconstitutional limitation on home rule units. Sommer v. Village of Glenview, 79 Ill. 2d 383, 38 Ill. Dec. 170, 403 N.E.2d 258 (1980).

The fixing of a rate to be used in the extension of taxes was a process separate and distinct from a determination of the value of property upon which the assessment was to be extended, so because the provisions of a former version of this section were limited in their application to the fixing of rates, it did not come within section 1 of Article IX of the 1870 Illinois Constitution (see now Ill. Const. (1970), Art. IX, § 2). Anderson v. City of Park Ridge, 396 Ill. 235, 72 N.E.2d 210 (1947).

Consent of Town Auditors

Where a board of town auditors did not give its written consent to the extension by the commissioner of highways for an increase in the maximum statutory rate limitation for road and bridge purposes of 25 cents for each $100 of assessed valuation for the year 1945, and where the maximum rate extended in 1945 was not the same as the maximum permissible rate, so far as the objection to the tax levy of the township for the year 1948 was concerned, the fact that the consent of the board was not obtained for the year 1945 was immaterial. People ex rel. Bailey v. Illinois Cent. R.R., 407 Ill. 426, 95 N.E.2d 352 (1950).

Construction With Other Laws

Prospective candidate's argument that the prospective candidate should have been allowed the 35 days set forth in the Administrative Review Law, 735 ILCS 5/3-103, to serve the prospective candidate's petition for review of the Board's decision to invalidate the candidacy of the prospective candidate for a city aldermanic position had to be rejected because the Illinois Election Code specifically set forth a five-day period. The Administrative Review Law could not be used to override the Illinois Election Code because the Illinois Election Code, 10 ILCS 5/10-10.1, only applied the Administrative Review Law in one specific instance, that of aggrieved parties challenging the Board's decision under the Property Tax Code, 35 ILCS 200/18-120, which meant the Administrative Review Law's longer time period for serving a petition for review did not apply to a challenge under the Illinois Election Code. Rivera v. City of Chicago Electoral Bd., Ill. App.

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3d , 353 Ill. Dec. 500, 956 N.E.2d 20, 2011 Ill. App. LEXIS 811 (1 Dist. 2011), appeal denied, 2011 Ill. LEXIS 2106 (Ill. 2011).

10 ILCS 5/10-10.1 provides that an objector aggrieved by a decision of an electoral board may secure judicial review in the circuit court, but such section does not generally adopt the provisions of the Administrative Review Law, 735 ILCS 5/3-101 et seq., which is expressly adopted only with respect to objectors or proponents aggrieved by decisions of an electoral board regarding a petition filed under 35 ILCS 200/18-120. Preuter v. State Officers Electoral Bd., 334 Ill. App. 3d 979, 268 Ill. Dec. 708, 779 N.E.2d 268, 2002 Ill. App. LEXIS 978 (1 Dist. 2002).

Under a former version of this section, minor differences between the referenda procedure of an amendment to this section and that prescribed by Article 17 of the School Code (105 ILCS 5/17-1 et seq.) did not have any significance upon the substantive question of whether the maximum rate could be reached without the successive steps prescribed in the School Code; the two acts had to be construed together in order to carry out the plain legislative intent, and the rate extended was excessive, since the word "maximum" in this section did not mean the maximum ultimately obtainable under the School Code after compliance with all of the successive steps, but meant the rate to be reached by the next successive rate step upward which the school district was entitled to take. People ex rel. Ruchty v. Chicago & N.W. Ry., 1 Ill. 2d 574, 116 N.E.2d 388 (1953).

Election Held Invalid

Where, at the time an election was held, a school district was entitled to levy only .584%, instead of .75%, the rate which was prerequisite to the holding of a referendum to obtain authority to levy .90% under section 17-5 of the School Law (105 ILCS 5/17-5), the election purporting to authorize a maximum rate of .90% was invalid, and the maximum extendible rate immediately before and after the election was .584%; therefore, a rate of .864% was excessive. People ex rel. Ross v. Chicago, B. & Q. R.R., 411 Ill. 60, 103 N.E.2d 79 (1951).

As it was necessary for school authorities to go through several steps before they were justified in levying a tax rate, the rate submitted by the election was void and of no effect whatsoever where the election was void. People ex rel. Ruchty v. Chicago, M., St. P. & Pac. R.R., 408 Ill. 480, 97 N.E.2d 463 (1951).

Failure to Hold Election

- Illegal Tax Rate

An educational tax rate of 76 cents on each $100 of assessed valuation of objectors' property, approved by election, was null and void where the district failed to follow the statutory requirements in that no election was held to first increase the established 45.1 cent tax rate to 50 cents, and no election held to increase that rate to 75 cents before the authorization of the 76 cent rate. People ex rel. Harding v. Chicago & N.W. Ry., 413 Ill. 93, 108 N.E.2d 22 (1952).

Form of Ballot

Not every deviation from the form of ballot prescribed by the applicable statute for voting on a proposition will render the election void; the test is whether the ballot used gives the voter as clear an alternative to vote for or against the proposition as is given by the form prescribed by the statute. People ex rel. Kramer v. Chicago, Rock Island & Pac. R.R., 6 Ill. 2d 266, 128 N.E.2d 710 (1955).

Where a special statute declares the form of the ballot, there must be substantial compliance with the special statutory mandate, and a failure to observe such provisions of the law is a matter of

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substance and renders the election void. People ex rel. Kramer v. Chicago, Rock Island & Pac. R.R., 6 Ill. 2d 266, 128 N.E.2d 710 (1955).

History

Lack of uniformity in tax rates and in the assessment of property, with attendant inequities, caused the legislature in 1945 to revise the laws pertaining to tax rates and assessments; this legislation was commonly referred to as the Butler Laws (see now 35 ILCS 200/17-5). People ex rel. Krapf v. Hayes, 13 Ill. 2d 143, 148 N.E.2d 428 (1958).

Implementation of Higher Tax Rate

If a higher tax rate referendum is approved by the voters in a given district, the tax rate limit so established shall become effective with the levy next following the referendum. Alexander v. County of Tazewell, 181 Ill. App. 3d 1070, 130 Ill. Dec. 820, 537 N.E.2d 1149 (3 Dist. 1989).

Legislative Purpose

The legislature intended that the party who first properly initiates a request for a tax-rate election to be held in a calendar year has priority over any party who subsequently submits a request for a tax rate election to be held on a different date in the same calendar year. Koeppel v. Ives, 92 Ill. 2d 523, 65 Ill. Dec. 865, 442 N.E.2d 176 (1982).

Notice of Increase

Where the voters were led to believe they were authorizing an increase of 2% when, in reality, they were authorizing an increase of almost 85% over the amount of tax that would be produced by the maximum rate otherwise applicable to the next taxes to be extended, when an attempt to exceed the normal rate was made, the voters should have been fairly appraised of the amount of increase they were being asked to authorize, and the objection to the school district's tax was correctly sustained. People ex rel. Kramer v. Chicago, B. & Q.R.R., 8 Ill. 2d 382, 134 N.E.2d 335 (1956).

Priority System

Under this section, whenever a party properly initiates a request for the submission of a tax rate proposition at a specified election during a calendar year, other tax-rate proposition may not thereafter be scheduled for any other election during that year. Koeppel v. Ives, 92 Ill. 2d 523, 65 Ill. Dec. 865, 442 N.E.2d 176 (1982).

Purpose

This section was intended to avoid unequal and excessive tax increases following the establishment of means to acquire uniformity in assessments, and was likewise intended to be a temporary measure to allow local taxing units, or the taxpayers, to adjust their local taxing rate limits by referendum if they wished, prior to the end of the temporary period. People ex rel. Rose v. New York Cent. R.R., 22 Ill. 2d 266, 174 N.E.2d 809 (1961).

A former version of this section and companion bills were adopted to permit corrections to the irregularities appearing in the assessment of property. Anderson v. City of Park Ridge, 396 Ill. 235, 72 N.E.2d 210 (1947).

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Rate Not Excessive

Where a county board adopted a resolution establishing a permanent rate limit of .0375% for the machinery and equipment segment of the county highway tax, which rate was no greater than the tax-rate limit for such purposes fixed by the former State Highways Act (see now 605 ILCS 5/5-601 et seq.) and thus became immediately effective without the necessity of a referendum and superseded the rate which would have otherwise been established under the debasement provisions, the rate of .031% extended by the county clerk was proper and should not have been scaled down in accordance with the provisions of a former version of this section. People ex rel. Kramer v. Chicago, B. & Q.R.R., 8 Ill. 2d 382, 134 N.E.2d 335 (1956).

Referendum

- Held Proper

A proposition establishing a maximum tax rate for an educational fund to be voted upon properly stated the maximum tax rate permissible for the educational fund under the provisions of sections 17-2 of the School Code (105 ILCS 5/17-2) as the rate limit created by the restrictions imposed by a former version of this section. People ex rel. Kramer v. Chicago, B. & Q.R.R., 8 Ill. 2d 382, 134 N.E.2d 335 (1956).

- Not Prerequisite

A referendum election to authorize a taxing district to levy at the normal maximum rate prescribed by section 17-2 of the School Code (105 ILCS 5/17-2), where rates lower than the maximum rate were in effect, was not a condition precedent to a valid referendum to attain a higher rate. People ex rel. Ross v. Chicago, B. & Q. R.R., 411 Ill. 167, 103 N.E.2d 615 (1952).

- School Districts

The referendum provisions of former 35 ILCS 205/162a did not apply to school districts. Fayhee v. State Bd. of Elections, 295 Ill. App. 3d 392, 229 Ill. Dec. 667, 692 N.E.2d 440 (4 Dist. 1998).

- Veterans Assistance

Where the tax rate for general county purposes and for civil defense and veterans assistance, when added together, did not exceed the permitted .01% increase for the year, and when added to the old rate of .085%, did not exceed .125%, the statutory authority clearly authorized the levying of these taxes without a referendum. People ex rel. Sweet v. Central Ill. Pub. Serv. Co., 48 Ill. 2d 145, 268 N.E.2d 404 (1971).

Practice Guides and Treatises.

Real Estate Taxation § 9.7 Developing Rate Objections (IICLE).

Real Estate Taxation § 8.18 Modification of Maximum Tax Rates (IICLE).

§ 35 ILCS 200/18-125. Rate limit referenda

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Sec. 18-125. Rate limit referenda. Referenda initiated under Section 18-120 [35 ILCS 200/18-120] shall be subject to the provisions and limitations of the general election law.

The question of adopting a maximum tax rate other than that applicable shall be in substantially the following form for all elections held after March 21, 2006:

Shall the maximum tax rate for ..... purposes of ..... (insert legal name, number, if any, and county or counties of taxing district), Illinois, be established at .... % of the equalized assessed value of the taxable property therein instead of ..... %, the maximum rate otherwise applicable to the next taxes to be extended?

The votes must be recorded as "Yes" or "No".

The ballot shall have printed thereon, but not as a part of the proposition submitted, (i) a statement of the purpose or reason for the proposed change in the tax rate, (ii) an estimate of the approximate amount extendable under the proposed rate and of the approximate amount extendable under the current rate applicable to the next taxes extended, such amounts being computed upon the last known equalized assessed value, and (iii) the approximate amount of the tax extendable against property containing a single family residence and having a fair market value of $100,000 at the current maximum rate and at the proposed rate. The approximate amount of the tax extendable against property containing a single family residence shall be calculated (i) without regard to any property tax exemptions and (ii) based upon the percentage level of assessment prescribed for such property by statute or by ordinance of the county board in counties which classify property for purposes of taxation in accordance with Section 4 of Article IX of the Constitution [Ill. Const. (1970) Art. IX,§ 4]. Any error, miscalculation or inaccuracy in computing such amounts that is not deliberate shall not invalidate or affect the validity of any maximum tax rate so adopted.

If a majority of all ballots cast on the proposition are in favor of the proposition, the maximum tax rate so established shall become effective with the levy next following the referendum. It is the duty of the county clerk to reduce, if necessary, the amount of any taxes levied thereafter. Nothing in this Section shall be construed as precluding the extension of taxes at rates less than that authorized by the referendum.

(Source: P.A. 86-1253; 88-455, § 18-125; 94-976, § 5.)

Note.

This section was derived from 35 ILCS 205/162a, in part, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 643a.

Effect of Amendments. The 2006 amendment by P.A. 94-976, effective June 30, 2006, rewrote the section.

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CASE NOTES

School Districts

The referendum provisions of former 35 ILCS 205/162a did not apply to school districts. Fayhee v. State Bd. of Elections, 295 Ill. App. 3d 392, 229 Ill. Dec. 667, 692 N.E.2d 440 (4 Dist. 1998).

§ 35 ILCS 200/18-130. Restrictions

Sec. 18-130. Restrictions. The proposition to authorize a maximum tax rate other than that applicable may, in the discretion of the corporate authorities, be restricted to the tax levy of a given year or series of years, either by resolution of the corporate authorities or by the petitioners requesting a vote on that proposition. The maximum rate limitation thereafter shall revert to that prior to the referendum. If more than one proposition is submitted for any one fund of any taxing district at any one election and a majority of votes cast on any one or more of the propositions are in favor thereof, only the maximum tax rate authorized in the proposition receiving the highest number of favorable votes shall become effective. Propositions to establish a maximum tax rate other than those applicable shall not be submitted more than once in any one year.

No proposition to increase or decrease a maximum tax rate under the referendum provisions of this Section, when there is no other applicable statute for an increase or decrease in a tax rate limit by referendum or otherwise, shall increase or decrease the maximum tax rate in effect on the date of the referendum by more than 25%.

Except as provided in this Section and Sections 18-120 and 18-125 [35 ILCS 200/18-120 and 35 ILCS 200/18-125], the referenda authorized by Sections 18-120 and 18-125 [35 ILCS 200/18-120 and 35 ILCS 200/18-125] shall be conducted in all respects as provided by the general election law.

(Source: P.A. 86-1253; 88-455, § 18-130.)

Note.

This section was derived from 35 ILCS 205/162a, in part, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 643a.

§ 35 ILCS 200/18-135. Taxing district in 2 or more counties

Sec. 18-135. Taxing district in 2 or more counties. (a) Notwithstanding any other provisions to the contrary, in counties which have an overlapping taxing district or districts that extend into one or more other counties, the county clerk, upon receipt of the

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assessments from the Board of Review or Board of Appeals, and of the equalization factor from the Department, may use estimated valuations or estimated rates, as provided in subsection (b) of this Section, for the overlapping taxing district or districts if the county clerk in any other county into which the overlapping taxing district or districts extend cannot certify the actual valuations or rates for the district or districts.

(b) If the county clerk of a county which has an overlapping taxing district which extends into another county has not received the certified valuations or rates from the county clerk of any county into which such districts overlap, he or she may subsequent to March 15, make written demand for actual or estimated valuations or rates upon the county clerk of that county. Within 10 days of receiving a written demand, the county clerk receiving the demand shall furnish certified or estimated valuations or rates for the overlapping taxing district, as pertaining to his or her county, to the county clerk who made the request. If no valuations or rates are received, the requesting county may make the estimate.

(c) If the use of estimated valuations or rates results in over or under extension for the overlapping taxing district in the county using estimated valuations or rates, the county clerk shall make appropriate adjustments in the subsequent year. Any adjustments necessitated by the estimation procedure authorized by this Section shall be made by increasing or decreasing the tax extension by fund for each taxing district where the estimation procedures were used.

(d) For taxing districts subject to the Property Tax Extension Limitation Law, the adjustment for paragraph (c) shall be made after the limiting rate has been calculated using the aggregate extension base, as defined in Section 18-185 [35 ILCS 200/18-185], adjusted for the over or under extension due to the use of an estimated valuation by the county on the last preceding aggregate extension.

(Source: P.A. 82-932; 88-455, § 18-135; 90-291, § 5; 95-404, § 5.)

Note.

This section was derived from 35 ILCS 205/162d, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 643d.

Effect of Amendments. The 2007 amendment by P.A. 95-404, effective January 1, 2008, added (d).

CASE NOTES

Constitutionality

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This section is not unconstitutional as violative of the due process clause of the Illinois Constitution because it lacks a notice provision to taxpayers where there is a deficiency levy utilized for a previous year's taxes which were underestimated through the county clerk's estimation process. In re McHenry County, 166 Ill. App. 3d 11, 116 Ill. Dec. 273, 518 N.E.2d 1253 (2 Dist. 1988).

§ 35 ILCS 200/18-140. Extension upon equalized assessment of current levy year

Sec. 18-140. Extension upon equalized assessment of current levy year. All taxes shall be extended by each county clerk upon the valuation produced by the equalization and assessment of property by the Department for the levy year. In the computation of rates, a fraction of a mill shall be extended as the next higher mill. Each installment of taxes shall be extended in a separate column. Installments shall be equal and as to each installment a fraction of a cent shall be extended as one cent.

(Source: P.A. 87-17; 88-455, § 18-140.)

Note.

This section was derived from 35 ILCS 205/163, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 644.

CASE NOTES

Analysis

Applicability
Divided Lots
Equalization
- Department of Revenue
Fractional Computations

Applicability

The county clerk has a duty to extend taxes for villages incorporated prior to the last date for levying taxes. People ex rel. Village of Inverness v. Barrett, 38 Ill. App. 2d 334, 187 N.E.2d 349 (1 Dist. 1962).

Where levy certified by the highway commissioner was 421/2 cents on $100, the county clerk was justified in extending the tax at the rate of 43 cents. People ex rel. Olmsted v. Chicago E. I. Ry., 316 Ill. 458, 147 N.E. 457 (1925).

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A prior similar provision applied to the rate at which the extension was to be made, and not to the tax itself after it was extended. St. Louis, A. & Terre Haute R.R. v. People ex rel. Wolf, 224 Ill. 155, 79 N.E. 664 (1906).

Divided Lots

The county clerk extended the village tax levy against the assessed valuation of the portion of a divided lot which was within the village; the Board of Appeals, upon completion of hearing, certified the assessment for the entire lot, but the Board of Appeals did not have any connection with the determination as to which parts of the assessed valuations were within a taxing body. People ex rel. Village of Inverness v. Barrett, 38 Ill. App. 2d 334, 187 N.E.2d 349 (1 Dist. 1962).

Equalization

- Department of Revenue

Equalization by the Department of Revenue was to be performed as a separate act. People ex rel. Little v. Collins, 386 Ill. 83, 53 N.E.2d 853 (1944).

Fractional Computations

Where a similar prior provision authorized the clerk to treat the fraction of a cent as one cent, it very materially facilitated the labor of the clerk in extending the taxes, and gave the county the benefit of the additional revenue so levied. St. Louis, A. & Terre Haute R.R. v. People ex rel. Wolf, 224 Ill. 155, 79 N.E. 664 (1906).

Practice Guides and Treatises.

Real Estate Taxation § 8.20 Extension of Taxes and Additions Thereto (IICLE).

Real Estate Taxation § 8.19 Computation of Actual Tax Rate (IICLE).

§ 35 ILCS 200/18-145. Error in calculation of rate or extension

Sec. 18-145. Error in calculation of rate or extension. Notwithstanding any other provision of law to the contrary, if, because of an error in the calculation of tax rates or extension of taxes by the county clerk, the taxes paid on any property are higher than required by law, the county clerk shall in the following year abate an amount equal to the excess taxes from the property taxes extended for any tax levy or fund affected by the error. This Section shall not deprive any taxpayer of the right to maintain a tax objection under Sections 23-5 and 23-10 [35 ILCS 200/23-5 and 35 ILCS 200/23-10] challenging the legality of the county clerk's actions; but the amount of any subsequent tax abatement shall be credited toward the payment of any refund ordered by the court.

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(Source: P.A. 86-422; 88-455, § 18-145.)

Note.

This section was derived from 35 ILCS 205/222a, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 703a.

CASE NOTES

Analysis
Equitable Relief
Private Cause of Action

Equitable Relief

The plaintiffs were not entitled to equitable relief under the statute where they did not assert that their property was exempt from taxation and, therefore, a tax objection process was available to them and constituted an adequate remedy at law. Givot v. Orr, 321 Ill. App. 3d 78, 254 Ill. Dec. 53, 746 N.E.2d 810, 2001 Ill. App. LEXIS 164 (1 Dist. 2001).

Private Cause of Action

The statute does not authorize a private cause of action beyond the remedies available through the tax objection process. Givot v. Orr, 321 Ill. App. 3d 78, 254 Ill. Dec. 53, 746 N.E.2d 810, 2001 Ill. App. LEXIS 164 (1 Dist. 2001).

§ 35 ILCS 200/18-150. Extension in one total

Sec. 18-150. Extension in one total. In counties with 3,000,000 or more inhabitants, the county clerk shall, and in all other counties the county clerk may, extend on each valuation of property the sum of the taxes to be extended upon the property in one total. When collected, the taxes shall be divided among the taxing bodies levying the same in proportion to the rates as determined by the clerk, after deducting from any tax the amount or amounts, if any, ruled invalid by the final judgment of a court of competent jurisdiction, and in the event a municipality has adopted tax increment financing under Division 74.4 of Article 11 of the Illinois Municipal Code [65 ILCS 5/11-74.4-1 et seq.], after deducting from any tax, except from a tax levied by a township to retire bonds issued to satisfy court-ordered damages, the amount to be placed in the special tax allocation fund, and distributing the amount to be placed in the special fund to the municipal treasurer under Section 11-74.4-8 of that Act [65 ILCS 5/11-74.4-8]. The clerk shall certify in the collector's books the rates as determined for extension in such manner

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as to indicate the different taxes entering into each total. All officers dealing with such extensions, shall record them by totals. The clerk shall show in the collector's books the total tax due each taxing body as extended.

If (i) a county clerk does not extend in one total on each valuation of property the sum of the taxes to be extended upon the property and (ii) a municipality has adopted tax increment financing under Division 74.4 of Article 11 of the Illinois Municipal Code [65 ILCS 5/11-74.4], then the clerk may not deduct the amount to be placed in the special tax allocation fund from a tax levied by a township to retire bonds issued to satisfy court-ordered damages.

(Source: P.A. 79-1525; 88-455, § 18-150; 91-190, § 5.)

Note.

This section was derived from 35 ILCS 205/164, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 645.

Effect of Amendments. The 1999 amendment by P.A. 91-190, effective July 20, 1999, inserted "except from a tax levied by a township to retire bonds issued to satisfy court-ordered damages" in the second sentence of the first paragraph; and added the last paragraph.

CASE NOTES

Analysis

Amended Tax Bill Procedure
Legislative Intent

Amended Tax Bill Procedure

Neither this section, 35 ILCS 200/18-45, nor any other provisions in the Act explicitly govern the role, if any, which the county clerk is to play in issuing an amended tax bill following an increased assessment. Lake County Bd. of Review v. Property Tax Appeal Bd., 119 Ill. 2d 419, 116 Ill. Dec. 567, 519 N.E.2d 459 (1988).

Legislative Intent

This section does not prohibit more than one tax bill for all personal property; it only requires the county clerk to extend the taxes in one total on each valuation, and the intent of this section is to prevent the taxpayer from getting a separate tax bill from each taxing unit on each valuation of property. La Salle Constr. Co. v. Korzen, 30 Ill. 2d 267, 195 N.E.2d 614 (1964).

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§ 35 ILCS 200/18-155. Apportionment of taxes for district in two or more counties

Sec. 18-155. Apportionment of taxes for district in two or more counties. The burden of taxation of property in taxing districts that lie in more than one county shall be fairly apportioned as provided in Article IX, Section 7, of the Constitution of 1970.

The Department may, and on written request made before July 1 to the Department shall, proceed to apportion the tax burden. The request may be made only by an assessor, chief county assessment officer, Board of Review, Board of Appeals, overlapping taxing district or 25 or more interested taxpayers. The request shall specify one or more taxing districts in the county which lie in one or more other specified counties, and also specify the civil townships, if any, in which the overlapping taxing districts lie. When the Department has received a written request for equalization for overlapping tax districts as provided in this Section, the Department shall promptly notify the county clerk and county treasurer of each county affected by that request that tax bills with respect to property in the parts of the county which are affected by the request may not be prepared or mailed until the Department certifies the apportionment among counties of the taxing districts' levies, except as provided in subsection (c) of this Section. To apportion, the Department shall:

(a) On or before December 31 of that year cause an assessment ratio study to be made in each township in which each of the named overlapping taxing districts lies, using equalized assessed values as certified by the county clerk, and an analysis of property transfers prior to January 1 of that year. The property transfers shall be in an amount deemed reasonable and proper by the Department. The Department may conduct hearings, at which the evidence shall be limited to the written presentation of assessment ratio study data.

(b) Request from the County Clerk in each County in which the overlapping taxing districts lie, certification of the portion of the assessed value of the prior year for each overlapping taxing district's portion of each township. Beginning with the 1999 taxable year, for those counties that classify property by county ordinance pursuant to subsection (b) of Section 4 of Article IX of the Illinois Constitution, the certification shall be listed by property class as provided in the classification ordinance. The clerk shall return the certification within 30 days of receipt of the request.

(c) Use the township assessment ratio studies to apportion the amount to be raised by taxation upon property within the district so that each county in which the district lies bears that burden of taxation as though all parts of the overlapping taxing district had been assessed at the same proportion of actual value. The Department shall certify to each County Clerk, by March 15, the percent of burden. Except as provided below, the County Clerk shall apply the percentage to the extension as provided in Section 18-45 [35 ILCS 200/18-45] to determine the amount of tax to be raised in the county.

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If the Department does not certify the percent of burden in the time prescribed, the county clerk shall use the most recent prior certification to determine the amount of tax to be raised in the county.

If the use of a prior certified percentage results in over or under extension for the overlapping taxing district in the county using same, the county clerk shall make appropriate adjustments in the subsequent year. Any adjustments necessitated by the procedure authorized by this Section shall be made by increasing or decreasing the tax extension by fund for each taxing district where a prior certified percentage was used. No tax rate limit shall render any part of a tax levy illegally excessive which has been apportioned as herein provided. The percentages certified by the Department shall remain until changed by reason of another assessment ratio study made under this Section.

To determine whether an overlapping district has met any qualifying rate prescribed by law for eligibility for State aid, the tax rate of the district shall be considered to be that rate which would have produced the same amount of revenue had the taxes of the district been extended at a uniform rate throughout the district, even if by application of this Section the actual rate of extension in a portion of the district is less than the qualifying rate.

(Source: P.A. 86-905; 87-17; 87-1189, § 5-4; 88-455, § 18-155; 90-594, § 5.)

Note.

This section was derived from 35 ILCS 205/164a, in part, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 645a.

Effect of Amendments. The 1998 amendment by P.A. 90-594, effective June 24, 1998, in subsection (b), substituted "district's portion of each township" for "district in each township" in the first sentence, and inserted the second sentence.

Practice Guides and Treatises.

Real Estate Taxation § 9.5 Refund of Illegal Tax Levy (IICLE).

Real Estate Taxation § 8.8 Cities and Villages (IICLE).

Real Estate Taxation § 5.61 Data Used in Sales Ratio Study (IICLE).

§ 35 ILCS 200/18-157. Apportionment; tax objections; court decisions; adjustments of levies and refunds to tax objectors

Sec. 18-157. Apportionment; tax objections; court decisions; adjustments of levies and refunds to tax objectors. If a court, in any tax objection based on the apportionment of an

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overlapping taxing district under Section 18-155 [35 ILCS 200/18-155], enters a final judgment that there was an over extension or under extension of taxes for an overlapping taxing district based on the apportionment under Section 18-155 for the year for which the objection was filed, the county clerks of each county in which there was an under extension shall proportionately increase the levy of that taxing district by an amount specified in the court order in that county in the subsequent year or in any subsequent year following the final judgment of the court. The increase in the levy, when extended, shall be set forth as a separate item on the tax bills of affected taxpayers. Notwithstanding any other provision of law, the increase in the levy and the extension thereof shall not be subject to any limitations on levies or extensions imposed by the School Code [105 ILCS 5/1-1 et seq.] or this Code. The funds collected pursuant to a levy increase authorized by this Section shall be delivered to the county collector of each county in which there was an over extension for distribution to the tax objectors in accordance with the court order.

No person who, under any other provision of this Code, has received any payment in satisfaction of a tax objection based in whole or in part on apportionment under Section 18-155 may receive any payment under this Section in satisfaction of a tax objection based in whole or in part on apportionment under Section 18-155.

(Source: P.A. 92-377, § 5; 93-855, § 5.)

Effective Date. Section 99 of P.A. 92-377 made this section effective upon becoming law. The Act was approved August 16, 2001.

Effect of Amendments. The 2004 amendment by P.A. 93-855, effective August 2, 2004, deleted "for any year prior to the year of the effective date of this amendatory Act of the 92nd General Assembly" after "18-155" in the first sentence of the first paragraph.

RESEARCH REFERENCES

Validity and applicability of statutory time limit concerning taxpayer's claim for state tax refund. 1 A.L.R.6th 1.

§ 35 ILCS 200/18-160. Notification of local officials

Sec. 18-160. Notification of local officials. The Department shall notify, in writing, the overlapping taxing district of the proposed apportionment under this Section, by August 1 of the year in question. If the overlapping taxing district enacts a resolution in opposition to the apportionment and files a certified copy of the resolution with the Department by the following December 31, the Department shall not apportion the tax burden of the overlapping district for that tax year or any subsequent tax year unless a written request for apportionment in accordance with Section 18-155 [35 ILCS 200/18-155] is received

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in a subsequent year.

(Source: P.A. 86-905; 87-17; 87-1189, § 5-4; 88-455, § 18-160.)

Note.

This section was derived from 35 ILCS 205/164a, in part, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 645a.

Division 4.
Abatement procedures

§ 35 ILCS 200/18-165. Abatement of taxes

Sec. 18-165. Abatement of taxes. (a) Any taxing district, upon a majority vote of its governing authority, may, after the determination of the assessed valuation of its property, order the clerk of that county to abate any portion of its taxes on the following types of property:

(1) Commercial and industrial.

(A) The property of any commercial or industrial firm, including but not limited to the property of (i) any firm that is used for collecting, separating, storing, or processing recyclable materials, locating within the taxing district during the immediately preceding year from another state, territory, or country, or having been newly created within this State during the immediately preceding year, or expanding an existing facility, or (ii) any firm that is used for the generation and transmission of electricity locating within the taxing district during the immediately preceding year or expanding its presence within the taxing district during the immediately preceding year by construction of a new electric generating facility that uses natural gas as its fuel, or any firm that is used for production operations at a new, expanded, or reopened coal mine within the taxing district, that has been certified as a High Impact Business by the Illinois Department of Commerce and Economic Opportunity. The property of any firm used for the generation and transmission of electricity shall include all property of the firm used for transmission facilities as defined in Section 5.5 of the Illinois Enterprise Zone Act [20 ILCS 655/5.5]. The abatement shall not exceed a period of 10 years and the aggregate amount of abated taxes for all taxing districts combined shall not exceed $4,000,000.

(A-5) Any property in the taxing district of a new electric generating facility, as defined in Section 605-332 of the Department of Commerce and Economic Opportunity Law of the Civil Administrative Code of Illinois [20 ILCS 605/605-332]. The abatement shall

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not exceed a period of 10 years. The abatement shall be subject to the following limitations:

(i) if the equalized assessed valuation of the new electric generating facility is equal to or greater than $25,000,000 but less than $50,000,000, then the abatement may not exceed (i) over the entire term of the abatement, 5% of the taxing district's aggregate taxes from the new electric generating facility and (ii) in any one year of abatement, 20% of the taxing district's taxes from the new electric generating facility;

(ii) if the equalized assessed valuation of the new electric generating facility is equal to or greater than $50,000,000 but less than $75,000,000, then the abatement may not exceed (i) over the entire term of the abatement, 10% of the taxing district's aggregate taxes from the new electric generating facility and (ii) in any one year of abatement, 35% of the taxing district's taxes from the new electric generating facility;

(iii) if the equalized assessed valuation of the new electric generating facility is equal to or greater than $75,000,000 but less than $100,000,000, then the abatement may not exceed (i) over the entire term of the abatement, 20% of the taxing district's aggregate taxes from the new electric generating facility and (ii) in any one year of abatement, 50% of the taxing district's taxes from the new electric generating facility;

(iv) if the equalized assessed valuation of the new electric generating facility is equal to or greater than $100,000,000 but less than $125,000,000, then the abatement may not exceed (i) over the entire term of the abatement, 30% of the taxing district's aggregate taxes from the new electric generating facility and (ii) in any one year of abatement, 60% of the taxing district's taxes from the new electric generating facility;

(v) if the equalized assessed valuation of the new electric generating facility is equal to or greater than $125,000,000 but less than $150,000,000, then the abatement may not exceed (i) over the entire term of the abatement, 40% of the taxing district's aggregate taxes from the new electric generating facility and (ii) in any one year of abatement, 60% of the taxing district's taxes from the new electric generating facility;

(vi) if the equalized assessed valuation of the new electric generating facility is equal to or greater than $150,000,000, then the abatement may not exceed (i) over the entire term of the abatement, 50% of the taxing district's aggregate taxes from the new electric generating facility and (ii) in any one year of abatement, 60% of the taxing district's taxes from the new electric generating facility.

The abatement is not effective unless the owner of the new electric generating facility agrees to repay to the taxing district all amounts previously abated, together with interest computed at the rate and in the manner provided for delinquent taxes, in the event that the owner of the new electric generating facility closes the new electric generating facility before the expiration of the entire term of the abatement.

The authorization of taxing districts to abate taxes under this subdivision (a)(1)(A-5) expires on January 1, 2010.

(B) The property of any commercial or industrial development of at least 500 acres having been created within the taxing district. The abatement shall not exceed a period of

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20 years and the aggregate amount of abated taxes for all taxing districts combined shall not exceed $12,000,000.

(C) The property of any commercial or industrial firm currently located in the taxing district that expands a facility or its number of employees. The abatement shall not exceed a period of 10 years and the aggregate amount of abated taxes for all taxing districts combined shall not exceed $4,000,000. The abatement period may be renewed at the option of the taxing districts.

(2) Horse racing. Any property in the taxing district which is used for the racing of horses and upon which capital improvements consisting of expansion, improvement or replacement of existing facilities have been made since July 1, 1987. The combined abatements for such property from all taxing districts in any county shall not exceed $5,000,000 annually and shall not exceed a period of 10 years.

(3) Auto racing. Any property designed exclusively for the racing of motor vehicles. Such abatement shall not exceed a period of 10 years.

(4) Academic or research institute. The property of any academic or research institute in the taxing district that (i) is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C. § 501], (ii) operates for the benefit of the public by actually and exclusively performing scientific research and making the results of the research available to the interested public on a non-discriminatory basis, and (iii) employs more than 100 employees. An abatement granted under this paragraph shall be for at least 15 years and the aggregate amount of abated taxes for all taxing districts combined shall not exceed $5,000,000.

(5) Housing for older persons. Any property in the taxing district that is devoted exclusively to affordable housing for older households. For purposes of this paragraph, "older households" means those households (i) living in housing provided under any State or federal program that the Department of Human Rights determines is specifically designed and operated to assist elderly persons and is solely occupied by persons 55 years of age or older and (ii) whose annual income does not exceed 80% of the area gross median income, adjusted for family size, as such gross income and median income are determined from time to time by the United States Department of Housing and Urban Development. The abatement shall not exceed a period of 15 years, and the aggregate amount of abated taxes for all taxing districts shall not exceed $3,000,000.

(6) *(Effective until June 1, 2012)* Historical society. For assessment years 1998 through 2013, the property of an historical society qualifying as an exempt organization under Section 501(c)(3) of the federal Internal Revenue Code.

(6) *(As amended by P.A. 97-636, effective June 1, 2012)* Historical society. For assessment years 1998 through 2018, the property of an historical society qualifying as an exempt organization under Section 501(c)(3) of the federal Internal Revenue Code.

(7) Recreational facilities. Any property in the taxing district (i) that is used for a municipal airport, (ii) that is subject to a leasehold assessment under Section 9-195 of this Code [35 ILCS 200/9-195] and (iii) which is sublet from a park district that is leasing the

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property from a municipality, but only if the property is used exclusively for recreational facilities or for parking lots used exclusively for those facilities. The abatement shall not exceed a period of 10 years.

(8) Relocated corporate headquarters. If approval occurs within 5 years after the effective date of this amendatory Act of the 92nd General Assembly [P.A. 92-207], any property or a portion of any property in a taxing district that is used by an eligible business for a corporate headquarters as defined in the Corporate Headquarters Relocation Act [20 ILCS 611/1 et seq.]. Instead of an abatement under this paragraph (8), a taxing district may enter into an agreement with an eligible business to make annual payments to that eligible business in an amount not to exceed the property taxes paid directly or indirectly by that eligible business to the taxing district and any other taxing districts for premises occupied pursuant to a written lease and may make those payments without the need for an annual appropriation. No school district, however, may enter into an agreement with, or abate taxes for, an eligible business unless the municipality in which the corporate headquarters is located agrees to provide funding to the school district in an amount equal to the amount abated or paid by the school district as provided in this paragraph (8). Any abatement ordered or agreement entered into under this paragraph (8) may be effective for the entire term specified by the taxing district, except the term of the abatement or annual payments may not exceed 20 years.

(9) United States Military Public/Private Residential Developments. Each building, structure, or other improvement designed, financed, constructed, renovated, managed, operated, or maintained after January 1, 2006 under a "PPV Lease", as set forth under Division 14 of Article 10 [35 ILCS 200/10-365 et seq.], and any such PPV Lease.

(10) Property located in a business corridor that qualifies for an abatement under Section 18-184.10 [35 ILCS 200/18-184].

(b) Upon a majority vote of its governing authority, any municipality may, after the determination of the assessed valuation of its property, order the county clerk to abate any portion of its taxes on any property that is located within the corporate limits of the municipality in accordance with Section 8-3-18 of the Illinois Municipal Code [65 ILCS 5/8-3-18].

(Source: P.A. 86-233; 86-953; 86-957; 86-1475; 87-17; 87-477; 87-895; 88-455, § 18-165; 88-657, § 10; 88-670, § 2-25; 89-561, § 5; 90-46, § 5; 90-415, § 5; 90-568, § 10; 90-655, § 43; 91-644, § 25; 91-885, § 3; 92-12, § 940; 92-207, § 920; 92-247, § 5; 92-651, § 29; 93-270, § 5; 94-793, § 500; 94-974, § 5; 96-1136, § 5; 97-577, § 5; 97-636, § 15-37.)

Multiple Versions of Subsections Multiple versions of subsections within this section have been created by the editor to reflect conflicting or postponed legislation.

Note.

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This section was derived from 35 ILCS 205/162, in part, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 643.

Section 997 of P.A. 92-651 is a no acceleration or delay provision, and Section 998 is a no revival or extension provision.

Section 995 of P.A. 94-793 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 1998 amendment by P.A. 90-655, effective July 30, 1998, incorporated the amendments made by P.A. 90-46 and P.A. 90-415.

The 1999 amendment by P.A. 91-644, effective August 20, 1999, added subdivision (a)(6).

The 2000 amendment by P.A. 91-885, effective July 6, 2000, added subsection (a)(7).

The 2001 amendment by P.A. 92-12, effective July 1, 2001, in subsection (a)(1)(A) inserted the item (i) designation and item (ii), and the next-to-last sentence; and inserted subsection (a)(1)(A-5) and made related changes.

The 2001 amendment by P.A. 92-207, effective August 1, 2001, inserted subsection (a)(8).

The 2001 amendment by P.A. 92-247, effective August 3, 2001, substituted "2003" for "2000" in subsection (a)(6).

The 2002 amendment by P.A. 92-651, effective July 11, 2002, combined the amendments by P.A. 92-12, P.A. 92-207 and P.A. 92-247.

The 2003 amendment by P.A. 93-255, effective July 22, 2003, substituted "2008" for "2003" in subsection (a)(6).

The 2006 amendment by revisory act P.A. 94-793, effective May 19, 2006, substituted references to "Governor's Office of Management and Budget" for references to "Bureau of the Budget", and substituted references to "Department of Commerce and Economic Opportunity" for references to "Department of Commerce and Community Affairs".

The 2006 amendment by P.A. 94-974, effective June 30, 2006, substituted "Economic Opportunity" for "Community Affairs" twice; and added (a)(9).

The 2010 amendment by P.A. 96-1136, effective July 21, 2010, substituted "2013" for "2008" in (a)(6).

The 2011 amendment by P.A. 97-577, effective January 1, 2012, added (a)(10).

The 2011 amendment by P.A. 97-636, effective June 1, 2012, substituted "1998 through 2018" for "1998 through 2013" in (a)(6).

This section was affected by multiple amendments by the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

CASE NOTES

Analysis

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Facility
Reduction
- Levy for Tuberculosis Hospital
- Determination of Taxes

Facility

"Facility" means a thing, such as a hospital, that is built, installed, or established to serve a particular purpose. Toys "R" Us, Inc. v. Adelman, 215 Ill. App. 3d 561, 158 Ill. Dec. 935, 574 N.E.2d 1328 (3 Dist.), cert. denied, 141 Ill. 2d 562, 162 Ill. Dec. 510, 580 N.E.2d 136 (1991).

Reduction

- Levy for Tuberculosis Hospital

The provision in former Ill. Rev. Stat., ch. 34, para. 175i1 (see now 55 ILCS 5/5-23029) that a tax levied for a tuberculosis sanitarium was to be in addition to other taxes which the county was authorized to levy meant only that it was to be in addition to other taxes authorized by the General Assembly, and not subject to reduction with other taxes under this section. People ex rel. Nordstrom v. Chicago & N. W. RY., 11 Ill. 2d 99, 142 N.E.2d 26 (1957).

- Determination of Taxes

OPINIONS OF ATTORNEY GENERAL

Analysis

Abatement
- Limitations
- Not Allowed
- Timing of Location
- Total Amount

Applicability
- Expansion
- Foreign Corporation
- Subsidiaries

Increase in Assessment
- Expansion

Industrial Firm
- In General

Tax Abatement Plan
- Establishment

Abatement

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The taxes abated by a taxing district pursuant to former section 162e of this Act (see now 35 ILCS 200/18-170) are not included in determining the amount of taxes which may be abated pursuant to this section. 1985 Op. Atty. Gen. (85-014).

- Limitations

The limitations on the maximum term and aggregate amount of taxes abated pursuant to this section do not apply to taxes abated pursuant to former section 162e of this Act (see now 35 ILCS 200/18-170). 1985 Op. Atty. Gen. (85-014).

The limitation of former section 162e of this Act (see now 35 ILCS 200/18-170), which limits the amount of taxes which may be abated on any parcel to the amount attributable to the construction or renovation of improvements on the parcel, does not apply to taxes abated pursuant to this section. 1985 Op. Atty. Gen. (85-014).

- Not Allowed

The location of a new facility in a taxing district by a business already operating in Illinois does not fall within any of the three statutory categories under this section with respect to which a taxing body is authorized to abate property taxes, and therefore, there is no authority for the abatement of taxes under such circumstances. 1982 Op. Atty. Gen. 24.

- Timing of Location

There is no express or implied requirement in this section that an industrial firm or its facility must have been located within the taxing district for a full year before the governing authority may elect to abate taxes on its property. 1982 Op. Atty. Gen. 24.

- Total Amount

The phrase in this section which limits the total amount of abated taxes to $1,000,000 applies separately to each taxing district which elects to abate taxes. 1982 Op. Atty. Gen. 24.

Applicability

- Expansion

Where the proposed improvements included several additions and modifications to the existing manufacturing facility as part of its renovation, these additions and modifications would result in the enlargement of the facility itself and as it would constitute the expansion of a previously existing facility within the meaning of this section, the property would be eligible for tax abatement under this section. 1985 Op. Atty. Gen. (85-014).

- Foreign Corporation

A newly-incorporated foreign corporation which locates its initial manufacturing facility within Illinois locates within the taxing district from another state within the meaning of this section and is therefore eligible for property tax abatement by taxing districts in which the new facility is located. 1983 Op. Atty. Gen. (83-021).

- Subsidiaries

An otherwise qualified subsidiary corporation is eligible for tax abatement under this even though its parent or other affiliated corporations currently operate facilities within the state. 1983 Op. Atty. Gen. (83-021).

Increase in Assessment

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- Expansion

There is no requirement under this section that the expansion of a previously existing facility increase the assessed valuation of the real property in order for a taxing district to elect to abate taxes on the property. 1985 Op. Atty. Gen. (85-014).

Industrial Firm

- In General

The term "industrial firm," when given its ordinary and commonly understood meaning, is intended to mean those enterprises utilizing labor and engaging in "industrial" activities, such as production, manufacture, or assembly of goods, or other products; it does not include businesses colloquially referred to as "industries," such as the "banking industry" or the "insurance industry.", 1982 Op. Atty. Gen. 24.

Tax Abatement Plan

- Establishment

A taxing district may establish a tax abatement plan which provides that the amount of taxes to be abated will be contingent upon the occurence of well defined future events, so long as the express limitations in those sections are not exceeded. 1985 Op. Atty. Gen. (85-014).

Practice Guides and Treatises.

Real Estate Taxation § 2.93 Industrial Property (IICLE).

Real Estate Taxation § 2.88 In General (IICLE).

§ 35 ILCS 200/18-170. Enterprise zone and River Edge Redevelopment Zone abatement

Sec. 18-170. Enterprise zone and River Edge Redevelopment Zone abatement. In addition to the authority to abate taxes under Section 18-165 [35 ILCS 200/18-165], any taxing district, upon a majority vote of its governing authority, may order the county clerk to abate any portion of its taxes on property, or any class thereof, located within an Enterprise Zone created under the Illinois Enterprise Zone Act [20 ILCS 655/1 et seq.] or a River Edge Redevelopment Zone created under the River Edge Redevelopment Zone Act [65 ILCS 115/10-1 et seq.], and upon which either new improvements have been constructed or existing improvements have been renovated or rehabilitated after December 7, 1982. However, any abatement of taxes on any parcel shall not exceed the amount attributable to the construction of the improvements and the renovation or rehabilitation of existing improvements on the parcel. In the case of property within a redevelopment area created under the Tax Increment Allocation Redevelopment Act [65 ILCS 5/11-74.4-1 et seq.], the abatement shall not apply unless a business enterprise or individual with regard to new improvements or renovated or rehabilitated improvements has met the requirements of Section 5.4.1 of the Illinois Enterprise Zone Act [20 ILCS

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655/5.4.1] or under Section 10-5.4.1 of the River Edge Redevelopment Zone Act [65 ILCS 115/10-5.4.1]. If an abatement is discontinued under this Section, a municipality shall notify the county clerk and the board of review or board of appeals of the change in writing not later than July 1 of the assessment year to be first affected by the change. However, within a county economic development project area created under the County Economic Development Project Area Property Tax Allocation Act [55 ILCS 85/1 et seq.], any municipality or county which has adopted tax increment allocation financing under the Tax Increment Allocation Redevelopment Act or the County Economic Development Project Area Tax Increment Allocation Act may abate any portion of its taxes as provided in this Section. Any other taxing district within the county economic development project area may order any portion or all of its taxes abated as provided above if the county or municipality which created the tax increment district has agreed, in writing, to the abatement.

A copy of an abatement order adopted under this Section shall be delivered to the county clerk and to the board of review or board of appeals not later than July 1 of the assessment year to be first affected by the order. If it is delivered on or after that date, it will first affect the taxes extended on the assessment of the following year. The board of review or board of appeals shall, each time the assessment books are delivered to the county clerk, also deliver a list of parcels affected by an abatement and the assessed value attributable to new improvements or to the renovation or rehabilitation of existing improvements.

(Source: P.A. 86-1388; 88-455, § 18-170; 89-126, § 5; 89-671, § 10; 90-258, § 10; 94-1021, § 90-40.)

Note.

This section was derived from 35 ILCS 205/162e, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 643e.

Effect of Amendments. The 2006 amendment by P.A. 94-1021, effective July 12, 2006, added references to "River Edge Redevelopment Zone Act" and related references throughout the section.

OPINIONS OF ATTORNEY GENERAL

Analysis

Applicability
- In General
- Construction or Renovation
- Limitations

Prerequisites

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- Increase in Assessment
Tax Abatement Plan
- Establishment
Taxes
- Determination

Applicability

- In General

The limitation on the aggregate amount of taxes abated under this section apply individually to each taxing district which abates taxes under this section. 1985 Op. Atty. Gen. (85-014).

- Construction or Renovation

The limitation of this section which limits the amount of taxes which may be abated on any parcel under the terms of this section to the amount attributable to the construction or renovation of improvements on the parcel does not apply to taxes abated pursuant to former section 162 of this Act (see now 35 ILCS 200/18-165). 1985 Op. Atty. Gen. (85-014).

- Limitations

The limitations on the maximum term and aggregate amount of taxes abated pursuant to former section 162 of this Act (see now 35 ILCS 200/18-165) apply to taxes abated pursuant to this section. 1985 Op. Atty. Gen. (85-014).

Prerequisites

- Increase in Assessment

Under this section the amount of taxes which may be abated is expressly limited to the amount attributable to the construction and renovation of improvements and this language necessarily implies that an increase in assessed valuation is a prerequisite to abating taxes pursuant to this section. 1985 Op. Atty. Gen. (85-014).

Tax Abatement Plan

- Establishment

A taxing district may establish a tax abatement plan which provides that the amount of taxes to be abated will be contingent upon the occurrence of well defined future events, so long as the express limitations in those sections are not exceeded. 1985 Op. Atty. Gen. (85-014).

Taxes

- Determination

The taxes abated by a taxing district pursuant to this section are not included in determining the amount of taxes which may be abated pursuant to former section 162 of this Act (see now 35 ILCS 200/18-165). 1985 Op. Atty. Gen. (85-014).

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Practice Guides and Treatises.

Land Use Law (Illinois) § 17.118 Enterprise Zones (IICLE).

Real Estate Taxation § 1.27 Exemptions vs. Preferential Assessments and Tax Relief Measures (IICLE).

§ 35 ILCS 200/18-173. Housing opportunity area abatement program

Sec. 18-173. Housing opportunity area abatement program. (a) For the purpose of promoting access to housing near work and in order to promote economic diversity throughout Illinois and to alleviate the concentration of low-income households in areas of high poverty, a housing opportunity area tax abatement program is created.

(b) As used in this Section:

"Housing authority" means either a housing authority created under the Housing Authorities Act or other government agency that is authorized by the United States government under the United States Housing Act of 1937 [42 U.S.C.S. §§ 1401-1404 [Omitted__ to administer a housing choice voucher program, or the authorized agent of such a housing authority that is authorized to act upon that authority's behalf.

"Housing choice voucher" means a tenant voucher issued by a housing authority under Section 8 of the United States Housing Act of 1937 [42 U.S.C. § 1437f] and a tenant voucher converted to a project-based voucher by a housing authority.

"Housing opportunity area" means a census tract where less than 10% of the residents live below the poverty level, as defined by the United States government and determined by the most recent United States census, that is located within a qualified township, except for census tracts located within any township that is located wholly within a municipality with 1,000,000 or more inhabitants. A census tract that is located within a township that is located wholly within a municipality with 1,000,000 or more inhabitants is considered a housing opportunity area if less than 12% of the residents of the census tract live below the poverty level.

"Housing opportunity unit" means a dwelling unit located in residential property that is located in a housing opportunity area, that is owned by the applicant, and that is rented to and occupied by a tenant who is participating in a housing choice voucher program administered by a housing authority as of January 1st of the tax year for which the application is made.

"Qualified units" means the number of housing opportunity units located in the property with the limitation that no more than 2 units or 20% of the total units contained within the property, whichever is greater, may be considered qualified units. Further, no unit may be considered qualified unless the property in which it is contained is in substantial compliance with local building codes, and, moreover, no unit may be considered qualified unless it meets the United States Department of Housing and Urban

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Development's housing quality standards as of the most recent housing authority inspection.

"Qualified township" means a township located within a county with 200,000 or more inhabitants whose tax capacity exceeds 80% of the average tax capacity of the county in which it is located, except for townships located within a county with 3,000,000 or more inhabitants, where a qualified township means a township whose tax capacity exceeds 115% of the average tax capacity of the county except for townships located wholly within a municipality with 1,000,000 or more inhabitants. All townships located wholly within a municipality with 1,000,000 or more inhabitants are considered qualified townships.

"Tax capacity" means the equalized assessed value of all taxable real estate located within a township or county divided by the total population of that township or county.

(c) The owner of property located within a housing opportunity area who has a housing choice voucher contract with a housing authority may apply for a housing opportunity area tax abatement by annually submitting an application to the housing authority that administers the housing choice voucher contract. The application must include the number of housing opportunity units as well as the total number of dwelling units contained within the property. The owner must, under oath, self-certify as to the total number of dwelling units in the property and must self-certify that the property is in substantial compliance with local building codes. The housing authority shall annually determine the number of qualified units located within each property for which an application is made.

The housing authority shall establish rules and procedures governing the application processes and may charge an application fee. The county clerk may audit the applications to determine that the properties subject to the tax abatement meet the requirements of this Section. The determination of eligibility of a property for the housing opportunity area abatement shall be made annually; however, no property may receive an abatement for more than 10 tax years.

(d) The housing authority shall determine housing opportunity areas within its service area and annually deliver to the county clerk, in a manner determined by the county clerk, a list of all properties containing qualified units within that service area by December 31st of the tax year for which the property is eligible for abatement; the list shall include the number of qualified units and the total number of dwelling units for each property.

The county clerk shall deliver annually to a housing authority, upon that housing authority's request, the most recent available equalized assessed value for the county as a whole and for those taxing districts and townships so specified by the requesting housing authority.

(e) The county clerk shall abate the tax attributed to a portion of the property determined to be eligible for a housing opportunity area abatement. The portion eligible for abatement shall be determined by reducing the equalized assessment value by a percentage calculated using the following formula: 19% of the equalized assessed value

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of the property multiplied by a fraction where the numerator is the number of qualified units and denominator is the total number of dwelling units located within the property.

(f) Any municipality, except for municipalities with 1,000,000 or more inhabitants, may annually petition the county clerk to be excluded from a housing opportunity area if it is able to demonstrate that more than 2.5% of the total residential units located within that municipality are occupied by tenants under the housing choice voucher program. Properties located within an excluded municipality shall not be eligible for the housing opportunity area abatement for the tax year in which the petition is made.

(g) Applicability. This Section applies to tax years 2004 through 2014, unless extended by law.

(Source: P.A. 93-316, § 5; 96-685, § 5.)

Effective Date. Section 99 of P.A. 93-316 made this section effective upon becoming law. The Act was approved July 23, 2003.

Effect of Amendments. The 2009 amendment by P.A. 96-685, effective August 25, 2009, in (b), added "and a tenant voucher converted to a project-based voucher by a housing authority" to the end of the second paragraph, in the third paragraph, added the exception language to the end of the first sentence and added the second sentence, and substituted "80%" for "100%" in the first sentence of the sixth paragraph.

§ 35 ILCS 200/18-175. Leasehold abatement

Sec. 18-175. Leasehold abatement. The county clerk may abate property taxes levied by one or more taxing districts under this Code on any leasehold interest in a property leased from the Department of Natural Resources on which is situated a restaurant and overnight lodging facility that was constructed using at least 50% private, non-State funding and that first opened for business after January 1, 1992.

(Source: P.A. 87-813; 88-455, § 18-175; 89-445, § 9A-36.)

Note.

This section was derived from 35 ILCS 205/162h, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 643h.

§ 35 ILCS 200/18-177. Leased low-rent housing abatement

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Sec. 18-177. Leased low-rent housing abatement. (a) In counties of 3,000,000 or more inhabitants, the county clerk shall abate property taxes levied by any taxing district under this Code on property that meets the following requirements:

(1) The property does not qualify as exempt property under Section 15-95 of this Code [35 ILCS 200/15-95].

(2) The property is situated in a municipality with 1,000,000 or more inhabitants and improved with either a multifamily dwelling or a multi-building development that is subject to a leasing agreement, regulatory and operating agreement, or other similar instrument with a Housing Authority created under the Housing Authorities Act [310 ILCS 10/1 et seq.] that sets forth the terms for leasing low-rent housing.

(3) For a period of not less than 20 years, the property and improvements are used solely for low-rent housing and related uses.

Property and portions of property used or intended to be used for commercial purposes are not eligible for the abatement provided in this Section.

A housing authority created under the Housing Authorities Act shall file annually with the county clerk for any property eligible for an abatement under this Section, on a form prescribed by the county clerk, a certificate of the property's use during the immediately preceding year. The certificate shall certify that the property or a portion of the property meets the requirements of this Section and that the eligible residential units have been inspected within the previous 90 days and meet or exceed all housing quality standards of the authority. If only a portion of the property meets these requirements, the certificate shall state the amount of that portion as a percentage of the total equalized and assessed value of the property. If the property is improved with an eligible multifamily dwelling or multi-building development containing residential units that are individually assessed, then, except as provided in subsection (b), no more than 40% of those residential units may be certified. If the property is improved with an eligible multifamily dwelling or multi-building development containing residential units that are not individually assessed, then, except as provided in subsection (b), the portion of the property certified shall represent no more than 40% of those residential units.

The county clerk shall abate the taxes only if a certificate of use has been timely filed for that year. If only a portion of the property has been certified as eligible, the county clerk shall abate the taxes in the percentage so certified.

Whenever property receives an abatement under this Section, the rental rate set under the lease, regulatory and operating agreement, or other similar instrument for that property shall not include property taxes.

No property shall be eligible for abatement under this Section if the owner of the property has any outstanding and overdue debts to the municipality in which the property is situated.

(b) The percentage limitation on the certification of residential units set forth in subsection (a) shall be deemed to be satisfied in the case of developments described in resolutions adopted by the Board of Commissioners of the Chicago Housing Authority on

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September 19, 2000, December 17, 2002, or September 16, 2003, as amended, approving the disposition of certain land and buildings on which all or a portion of the developments are or will be situated, if no more than 50% of the units in the development are so certified.

(Source: P.A. 90-767, § 5; 92-621, § 5; 94-296, § 5.)

Effective Date. Section 99 of P.A. 90-767 made this section effective January 1, 1999.

Effect of Amendments. The 2002 amendment by P.A. 92-620, effective July 11, 2002, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2005 amendment by P.A. 94-296, effective July 21, 2005, added the subsection (a) designation and added subsection (b); added "The property" in (a)(1) and (a)(2); and twice added "then, except as provided in subsection (b)" in the second undesignated paragraph of (a).

§ 35 ILCS 200/18-178. Abatement for the residence of a surviving spouse of a fallen police officer or rescue worker

Sec. 18-178. Abatement for the residence of a surviving spouse of a fallen police officer or rescue worker. (a) The governing body of any county or municipality may, by ordinance, order the county clerk to abate any percentage of the taxes levied by the county or municipality on each parcel of qualified property within the boundaries of the county or municipality that is owned by the surviving spouse of a fallen police officer or rescue worker.

(b) The governing body may provide, by ordinance, for the percentage amount and duration of an abatement under this Section and for any other provision necessary to carry out the provisions of this Section. Upon passing an ordinance under this Section, the county or municipality must deliver a certified copy of the ordinance to the county clerk.

(c) As used in this Section:

"Fallen police officer or rescue worker" means an individual who dies:

(1) as a result of or in the course of employment as a police officer; or

(2) while in the active service of a fire, rescue, or emergency medical service.

"Fallen police officer or rescue worker", however, does not include any individual whose death was the result of that individual's own willful misconduct or abuse of alcohol or drugs.

"Qualified property" means a parcel of real property that is occupied by not more than 2 families, that is used as the principal residence by a surviving spouse, and that:

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(1) was owned by the fallen police officer or rescue worker or surviving spouse at the time of the police officer's or rescue worker's death;

(2) was acquired by the surviving spouse within 2 years after the police officer's or rescue worker's death if the surviving spouse was domiciled in the State at the time of that death; or

(3) was acquired more than 2 years after the police officer's or rescue worker's death if surviving spouse qualified for an abatement for a former qualified property located in that municipality.

"Surviving spouse" means a spouse, who has not remarried, of a fallen police officer or rescue worker.

(Source: P.A. 95-644, § 10.)

Effective Date. Section 99 of P.A. 95-644 made this section effective upon becoming law. The Act was approved October 12, 2007.

§ 35 ILCS 200/18-180. Abatement; urban decay

Sec. 18-180. Abatement; urban decay. (a) Except as provided below, a home rule municipality upon adoption of an ordinance by majority vote of its governing authority, may order the county clerk to abate, for a period not to exceed 10 years, any percentage of the taxes levied by the municipality and any other taxing district on each parcel of property located in an area of urban decay within the corporate limits of the municipality and upon which a newly constructed single-family or duplex residential dwelling unit is located, except that the total abatement for any levy year shall not be in an amount in excess of 2% of the taxes extended by all taxing districts on all parcels located within the township that contain residential dwelling units of 6 units or less. An abatement adopted under this Section shall be extended to all subsequent owners of an eligible property during the abatement period. The ordinance shall provide that the same percentage abatement of taxes shall apply to all eligible property subject to the abatement ordinance, except that any abatement granted for any parcel that is within a redevelopment area created under Division 74.4 of Article 11 of the Illinois Municipal Code [65 ILCS 5/11-74.4-1 et seq.] at the time the ordinance is adopted shall not exceed the amount of taxes allocable to taxing districts. No abatement adopted under this Section shall apply to a parcel of property if the owner does not live in the single-family or one of the duplex residential units. Before final adoption of an abatement ordinance under this Section, the governing authority of the home rule municipality shall notify by mail each affected taxing district of the pending ordinance. This Section does not apply to property annexed by a municipality after January 1, 1989.

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(b) The governing authority of each affected taxing district shall within 10 days appoint one member to serve on an Abatement Review Board to review the terms and conditions of the proposed abatement ordinance. The Board shall be convened by the mayor or village president of the municipality considering the abatement ordinance. The ordinance shall not be adopted less than 45 days after the Board is convened. Failure to appoint a member to the Board does not affect work of the Board. The Board shall report the findings and conclusions to the governing authority of the municipality not later than 30 days after it is convened.

(c) Any abatement granted under this Section shall be reduced in 20% increments annually during the last 4 years of the abatement period for the property.

(d) For purposes of this Section:

(1) "Area of urban decay" means an area demonstrating conditions of a "blighted area" or "conservation area" as defined by Section 11-74.4-3 of the Illinois Municipal Code [65 ILCS 5/11-74.4-3 et seq.], notwithstanding the minimum acreage requirement contained in the definition of a "redevelopment project area" under that Section. Qualifying factors of blight or conservation shall be defined as those present within the year prior to adoption of the ordinance designating the area of urban decay.

(2) "Duplex" means a 2 family residence that is not more than 2 stories plus a basement in height and is located on a single parcel of property.

(3) "Newly constructed" means constructed and ready for occupancy not earlier than one year before the date the municipality first orders the abatement for the parcel under this Section.

(Source: P.A. 87-1189, § 5-2; 88-455, § 18-180.)

Note.

This section was derived from 35 ILCS 205/162i, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 643i.

§ 35 ILCS 200/18-181. Abatement of neighborhood redevelopment corporation property

Sec. 18-181. Abatement of neighborhood redevelopment corporation property. The county clerk shall abate the property taxes imposed on the property of a neighborhood redevelopment corporation as provided in Section 15-5 of the Neighborhood Redevelopment Corporation Law [315 ILCS 20/15-5].

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(Source: P.A. 93-1037, § 5.)

Effective Date. This section is effective June 1, 2005, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/2.

§ 35 ILCS 200/18-183. Cancellation and repayment of tax benefits

Sec. 18-183. Cancellation and repayment of tax benefits. Beginning with tax year 1996, if any taxing district enters into an agreement that explicitly sets forth the terms and length of a contract and thereby grants a tax abatement or other tax benefit under Sections 18-165 through 18-180 of this Code [35 ILCS 200/18-165 through 35 ILCS 200/18-180], under the Economic Development Area Tax Increment Allocation Act [20 ILCS 620/1 et seq.], the County Economic Development Project Area Tax Increment Allocation Act of 1991 [55 ILCS 90/1 et seq.], the Tax Increment Allocation Redevelopment Act [65 ILCS 5/11-74.4-1 et seq.], the Industrial Jobs Recovery Law [65 ILCS 5/11-74.6-1 et seq.], the Economic Development Project Area Tax Increment Allocation Act of 1995 [65 ILCS 110/1 et seq.], or under any other statutory or constitutional authority implemented under the Property Tax Code [35 ILCS 200/1-1 et seq.] to a private individual or entity for the purpose of originating, locating, maintaining, rehabilitating, or expanding a business facility within the taxing district and the individual or entity relocates the entire facility from the taxing district in violation of the terms and length of the contract explicitly set forth in the agreement, the abatement or other tax benefit for the remainder of the term is cancelled and the amount of the abatements or other tax benefits granted before cancellation shall be repaid to the taxing district within 30 days. This Section may be waived by the mutual agreement of the individual or entity and the taxing district.

(Source: P.A. 89-591, § 15; 90-14, § 2-95.)

Note.

Another 35 ILCS 200/18-183 as enacted by P.A. 89-537 was renumbered as 35 ILCS 200/18-184.

Effective Date. Section 99 of P.A. 89-591 made this section effective upon becoming law. The Act was approved August 1, 1996.

§ 35 ILCS 200/18-184. Abatement; annexation agreement

Sec. 18-184. Abatement; annexation agreement. Upon a majority vote of its governing authority, any municipality may, after the determination of the assessed valuation of its

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property, order the county clerk to abate any portion of its taxes on any property that is the subject of an annexation agreement between the municipality and the property owner.

(Source: P.A. 89-537, § 5; 90-14, § 2-95.)

Effective Date. This section became effective January 1, 1997, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 1997 amendment by P.A. 90-14, effective July 1, 1997, renumbered this section which was 35 ILCS 200/18-183 as enacted by P.A. 89-537.

§ 35 ILCS 200/18-184.5. Abatement for vacant facilities

Sec. 18-184.5. Abatement for vacant facilities. Upon a majority vote of its governing body, any taxing district may, after the determination of the assessed valuation of its property, order the county clerk to abate any portion of its taxes on any property if (i) a new business first occupies a facility located on the property during the taxable year, and (ii) the facility was vacant for a period of at least 24 continuous months prior to being occupied by the business. The abatement shall not exceed a period of 2 years and the aggregate amount of abated taxes for all taxing districts combined shall not exceed $4,000,000.

(Source: P.A. 96-755, § 5.)

Effective Date. This section is effective January 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

§ 35 ILCS 200/18-184.10. Business corridors; abatement

Sec. 18-184.10. Business corridors; abatement. (a) Each taxing district may, by a majority vote of its governing authority, order the county clerk to abate any portion of its taxes on property that meets the following requirements:

(1) the property does not qualify as exempt property under Section 15-95 of this Code [35 ILCS 200/15-95]; and

(2) the property is situated in a business corridor created by intergovernmental agreement between 2 adjoining disadvantaged municipalities.

An abatement under this Section may not exceed a period of 10 years.

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(b) A business corridor created under this Section shall encompass only territory along the common border of the municipalities that is (i) undeveloped or underdeveloped and (ii) not likely to be developed without the creation of the business corridor.

The intergovernmental agreement shall specify the territory to be included in the business corridor. The agreement shall also provide for the duration of an abatement under this Section and for any other provision necessary to carry out the provisions of this Section. No abatement under this Section shall exceed 10 years in duration. Upon adoption of the agreement provided for under this Section, the municipalities must deliver a certified copy of the agreement to the county clerk.

(c) Before adopting an intergovernmental agreement proposing the designation of a business corridor, each municipality, by its corporate authorities, must adopt an ordinance or resolution fixing a time and place for a public hearing. At least 10 days before adopting the ordinance or resolution establishing the time and place for the public hearing, the municipality must make available for public inspection the boundaries of the proposed business corridor.

At the public hearing, any interested person or affected taxing district may file with the municipal clerk written objections to the business corridor and may be heard orally with respect to any issues embodied in the notice. The municipality must hear all protests and objections at the hearing, and the hearing may be adjourned to another date without further notice other than a motion entered upon the minutes fixing the time and place of the subsequent hearing. At the public hearing or at any time before the municipality adopts an ordinance approving the intergovernmental agreement, the municipality may make changes to the boundaries of the business corridor. Changes that add additional parcels of property to the proposed business corridor may be made only after each municipality gives notice and conducts a public hearing pursuant to the procedures set forth in this Section.

Except as otherwise provided in this Section, notice of the public hearing must be given by publication. Notice by publication must be given by publication at least twice. The first publication must be not more than 30 nor less than 10 days before the hearing in a newspaper of general circulation within the taxing districts having property in the proposed business corridor. The notice must include the following:

(1) the time and place of the public hearing;

(2) the boundaries of the proposed business corridor by legal description and by street location, if possible;

(3) a statement that all interested persons will be given an opportunity to be heard at the public hearing; and

(4) such other matters as the municipality may deem appropriate.

(d) As used in this Section:

"Disadvantaged municipality" means a municipality with (i) a per capita equalized assessed valuation (EAV) less than 60% of the State average and (ii) more than 15% of

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its population below the national poverty level.

(Source: P.A. 97-577, § 5.)

Effective Date. This section is effective January 1, 2012 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Division 5.
Property Tax Extension Limitation Law

§ 35 ILCS 200/18-185. Short title; definitions

Sec. 18-185. Short title; definitions. This Division 5 may be cited as the Property Tax Extension Limitation Law. As used in this Division 5:

"Consumer Price Index" means the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor.

"Extension limitation" means (a) the lesser of 5% or the percentage increase in the Consumer Price Index during the 12-month calendar year preceding the levy year or (b) the rate of increase approved by voters under Section 18-205 [35 ILCS 200/18-205].

"Affected county" means a county of 3,000,000 or more inhabitants or a county contiguous to a county of 3,000,000 or more inhabitants.

"Taxing district" has the same meaning provided in Section 1-150 [35 ILCS 200/1-150], except as otherwise provided in this Section. For the 1991 through 1994 levy years only, "taxing district" includes only each non-home rule taxing district having the majority of its 1990 equalized assessed value within any county or counties contiguous to a county with 3,000,000 or more inhabitants. Beginning with the 1995 levy year, "taxing district" includes only each non-home rule taxing district subject to this Law before the 1995 levy year and each non-home rule taxing district not subject to this Law before the 1995 levy year having the majority of its 1994 equalized assessed value in an affected county or counties. Beginning with the levy year in which this Law becomes applicable to a taxing district as provided in Section 18-213 [35 ILCS 200/18-213], "taxing district" also includes those taxing districts made subject to this Law as provided in Section 18-213.

"Aggregate extension" for taxing districts to which this Law applied before the 1995 levy year means the annual corporate extension for the taxing district and those special purpose extensions that are made annually for the taxing district, excluding special purpose extensions: (a) made for the taxing district to pay interest or principal on general obligation bonds that were approved by referendum; (b) made for any taxing district to

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pay interest or principal on general obligation bonds issued before October 1, 1991; (c) made for any taxing district to pay interest or principal on bonds issued to refund or continue to refund those bonds issued before October 1, 1991; (d) made for any taxing district to pay interest or principal on bonds issued to refund or continue to refund bonds issued after October 1, 1991 that were approved by referendum; (e) made for any taxing district to pay interest or principal on revenue bonds issued before October 1, 1991 for payment of which a property tax levy or the full faith and credit of the unit of local government is pledged; however, a tax for the payment of interest or principal on those bonds shall be made only after the governing body of the unit of local government finds that all other sources for payment are insufficient to make those payments; (f) made for payments under a building commission lease when the lease payments are for the retirement of bonds issued by the commission before October 1, 1991, to pay for the building project; (g) made for payments due under installment contracts entered into before October 1, 1991; (h) made for payments of principal and interest on bonds issued under the Metropolitan Water Reclamation District Act [70 ILCS 2605/1 et seq.] to finance construction projects initiated before October 1, 1991; (i) made for payments of principal and interest on limited bonds, as defined in Section 3 of the Local Government Debt Reform Act [30 ILCS 350/3], in an amount not to exceed the debt service extension base less the amount in items (b), (c), (e), and (h) of this definition for non-referendum obligations, except obligations initially issued pursuant to referendum; (j) made for payments of principal and interest on bonds issued under Section 15 of the Local Government Debt Reform Act [30 ILCS 350/15]; (k) made by a school district that participates in the Special Education District of Lake County, created by special education joint agreement under Section 10-22.31 of the School Code [105 ILCS 5/10-22.31], for payment of the school district's share of the amounts required to be contributed by the Special Education District of Lake County to the Illinois Municipal Retirement Fund under Article 7 of the Illinois Pension Code [40 ILCS 5/7-101 et seq.]; the amount of any extension under this item (k) shall be certified by the school district to the county clerk; (l) made to fund expenses of providing joint recreational programs for the handicapped under Section 5-8 [70 ILCS 1205/5-8] of the Park District Code or Section 11-95-14 of the Illinois Municipal Code [65 ILCS 5/11-95-14]; (m) made for temporary relocation loan repayment purposes pursuant to Sections 2-3.77 [105 ILCS 5/2-3.77] and 17-2.2d [105 ILCS 5/17-2.2d] of the School Code; (n) made for payment of principal and interest on any bonds issued under the authority of Section 17-2.2d of the School Code; (o) made for contributions to a firefighter's pension fund created under Article 4 [40 ILCS 5/4-101 et seq.] of the Illinois Pension Code, to the extent of the amount certified under item (5) of Section 4-134 [40 ILCS 5/4-134] of the Illinois Pension Code; and (p) made for road purposes in the first year after a township assumes the rights, powers, duties, assets, property, liabilities, obligations, and responsibilities of a road district abolished under the provisions of Section 6-133 of the Illinois Highway Code [605 ILCS 5/6-133].

"Aggregate extension" for the taxing districts to which this Law did not apply before the 1995 levy year (except taxing districts subject to this Law in accordance with Section 18-213) means the annual corporate extension for the taxing district and those special purpose extensions that are made annually for the taxing district, excluding special purpose extensions: (a) made for the taxing district to pay interest or principal on general

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obligation bonds that were approved by referendum; (b) made for any taxing district to pay interest or principal on general obligation bonds issued before March 1, 1995; (c) made for any taxing district to pay interest or principal on bonds issued to refund or continue to refund those bonds issued before March 1, 1995; (d) made for any taxing district to pay interest or principal on bonds issued to refund or continue to refund bonds issued after March 1, 1995 that were approved by referendum; (e) made for any taxing district to pay interest or principal on revenue bonds issued before March 1, 1995 for payment of which a property tax levy or the full faith and credit of the unit of local government is pledged; however, a tax for the payment of interest or principal on those bonds shall be made only after the governing body of the unit of local government finds that all other sources for payment are insufficient to make those payments; (f) made for payments under a building commission lease when the lease payments are for the retirement of bonds issued by the commission before March 1, 1995 to pay for the building project; (g) made for payments due under installment contracts entered into before March 1, 1995; (h) made for payments of principal and interest on bonds issued under the Metropolitan Water Reclamation District Act to finance construction projects initiated before October 1, 1991; (h-4) made for stormwater management purposes by the Metropolitan Water Reclamation District of Greater Chicago under Section 12 of the Metropolitan Water Reclamation District Act [70 ILCS 2605/12]; (i) made for payments of principal and interest on limited bonds, as defined in Section 3 of the Local Government Debt Reform Act, in an amount not to exceed the debt service extension base less the amount in items (b), (c), and (e) of this definition for non-referendum obligations, except obligations initially issued pursuant to referendum and bonds described in subsection (h) of this definition; (j) made for payments of principal and interest on bonds issued under Section 15 of the Local Government Debt Reform Act [30 ILCS 350/15]; (k) made for payments of principal and interest on bonds authorized by Public Act 88-503 and issued under Section 20a of the Chicago Park District Act [70 ILCS 1505/20a] for aquarium or museum projects; (l) made for payments of principal and interest on bonds authorized by Public Act 87-1191 or 93-601 and (i) issued pursuant to Section 21.2 of the Cook County Forest Preserve District Act [70 ILCS 810/21.2], (ii) issued under Section 42 of the Cook County Forest Preserve District Act [70 ILCS 810/42] for zoological park projects, or (iii) issued under Section 44.1 of the Cook County Forest Preserve District Act [70 ILCS 810/44.1] for the botanical gardens projects; (m) made pursuant to Section 34-53.5 of the School Code [105 ILCS 5/34-53.5], whether levied annually or not; (n) made to fund expenses of providing joint recreational programs for the handicapped under Section 5-8 of the Park District Code or Section 11-95-14 of the Illinois Municipal Code; (o) made by the Chicago Park District for recreational programs for the handicapped under subsection (c) of Section 7.06 of the Chicago Park District Act [70 ILCS 1505/7.06]; (p) made for contributions to a firefighter's pension fund created under Article 4 of the Illinois Pension Code, to the extent of the amount certified under item (5) of Section 4-134 of the Illinois Pension Code; and (q) made by Ford Heights School District 169 under Section 17-9.02 of the School Code [105 ILCS 5/17-9.02].

"Aggregate extension" for all taxing districts to which this Law applies in accordance with Section 18-213, except for those taxing districts subject to paragraph (2) of subsection (e) of Section 18-213, means the annual corporate extension for the taxing

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district and those special purpose extensions that are made annually for the taxing district, excluding special purpose extensions: (a) made for the taxing district to pay interest or principal on general obligation bonds that were approved by referendum; (b) made for any taxing district to pay interest or principal on general obligation bonds issued before the date on which the referendum making this Law applicable to the taxing district is held; (c) made for any taxing district to pay interest or principal on bonds issued to refund or continue to refund those bonds issued before the date on which the referendum making this Law applicable to the taxing district is held; (d) made for any taxing district to pay interest or principal on bonds issued to refund or continue to refund bonds issued after the date on which the referendum making this Law applicable to the taxing district is held if the bonds were approved by referendum after the date on which the referendum making this Law applicable to the taxing district is held; (e) made for any taxing district to pay interest or principal on revenue bonds issued before the date on which the referendum making this Law applicable to the taxing district is held for payment of which a property tax levy or the full faith and credit of the unit of local government is pledged; however, a tax for the payment of interest or principal on those bonds shall be made only after the governing body of the unit of local government finds that all other sources for payment are insufficient to make those payments; (f) made for payments under a building commission lease when the lease payments are for the retirement of bonds issued by the commission before the date on which the referendum making this Law applicable to the taxing district is held to pay for the building project; (g) made for payments due under installment contracts entered into before the date on which the referendum making this Law applicable to the taxing district is held; (h) made for payments of principal and interest on limited bonds, as defined in Section 3 of the Local Government Debt Reform Act, in an amount not to exceed the debt service extension base less the amount in items (b), (c), and (e) of this definition for non-referendum obligations, except obligations initially issued pursuant to referendum; (i) made for payments of principal and interest on bonds issued under Section 15 of the Local Government Debt Reform Act; (j) made for a qualified airport authority to pay interest or principal on general obligation bonds issued for the purpose of paying obligations due under, or financing airport facilities required to be acquired, constructed, installed or equipped pursuant to, contracts entered into before March 1, 1996 (but not including any amendments to such a contract taking effect on or after that date); (k) made to fund expenses of providing joint recreational programs for the handicapped under Section 5-8 of the Park District Code or Section 11-95-14 of the Illinois Municipal Code; (l) made for contributions to a firefighter's pension fund created under Article 4 of the Illinois Pension Code [40 ILCS 5/4 et seq.], to the extent of the amount certified under item (5) of Section 4-134 of the Illinois Pension Code; and (m) made for the taxing district to pay interest or principal on general obligation bonds issued pursuant to Section 19-3.10 of the School Code [105 ILCS 5/19-3.10].

"Aggregate extension" for all taxing districts to which this Law applies in accordance with paragraph (2) of subsection (e) of Section 18-213 means the annual corporate extension for the taxing district and those special purpose extensions that are made annually for the taxing district, excluding special purpose extensions: (a) made for the taxing district to pay interest or principal on general obligation bonds that were approved by referendum; (b) made for any taxing district to pay interest or principal on general obligation bonds issued before the effective date of this amendatory Act of 1997; (c)

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made for any taxing district to pay interest or principal on bonds issued to refund or continue to refund those bonds issued before the effective date of this amendatory Act of 1997; (d) made for any taxing district to pay interest or principal on bonds issued to refund or continue to refund bonds issued after the effective date of this amendatory Act of 1997 if the bonds were approved by referendum after the effective date of this amendatory Act of 1997; (e) made for any taxing district to pay interest or principal on revenue bonds issued before the effective date of this amendatory Act of 1997 for payment of which a property tax levy or the full faith and credit of the unit of local government is pledged; however, a tax for the payment of interest or principal on those bonds shall be made only after the governing body of the unit of local government finds that all other sources for payment are insufficient to make those payments; (f) made for payments under a building commission lease when the lease payments are for the retirement of bonds issued by the commission before the effective date of this amendatory Act of 1997 to pay for the building project; (g) made for payments due under installment contracts entered into before the effective date of this amendatory Act of 1997; (h) made for payments of principal and interest on limited bonds, as defined in Section 3 of the Local Government Debt Reform Act, in an amount not to exceed the debt service extension base less the amount in items (b), (c), and (e) of this definition for non-referendum obligations, except obligations initially issued pursuant to referendum; (i) made for payments of principal and interest on bonds issued under Section 15 of the Local Government Debt Reform Act; (j) made for a qualified airport authority to pay interest or principal on general obligation bonds issued for the purpose of paying obligations due under, or financing airport facilities required to be acquired, constructed, installed or equipped pursuant to, contracts entered into before March 1, 1996 (but not including any amendments to such a contract taking effect on or after that date); (k) made to fund expenses of providing joint recreational programs for the handicapped under Section 5-8 of the Park District Code or Section 11-95-14 of the Illinois Municipal Code; and (l) made for contributions to a firefighter's pension fund created under Article 4 of the Illinois Pension Code, to the extent of the amount certified under item (5) of Section 4-134 of the Illinois Pension Code [5 ILCS 4/4-134].

"Debt service extension base" means an amount equal to that portion of the extension for a taxing district for the 1994 levy year, or for those taxing districts subject to this Law in accordance with Section 18-213, except for those subject to paragraph (2) of subsection (e) of Section 18-213, for the levy year in which the referendum making this Law applicable to the taxing district is held, or for those taxing districts subject to this Law in accordance with paragraph (2) of subsection (e) of Section 18-213 for the 1996 levy year, constituting an extension for payment of principal and interest on bonds issued by the taxing district without referendum, but not including excluded non-referendum bonds. For park districts (i) that were first subject to this Law in 1991 or 1995 and (ii) whose extension for the 1994 levy year for the payment of principal and interest on bonds issued by the park district without referendum (but not including excluded non-referendum bonds) was less than 51% of the amount for the 1991 levy year constituting an extension for payment of principal and interest on bonds issued by the park district without referendum (but not including excluded non-referendum bonds), "debt service extension base" means an amount equal to that portion of the extension for the 1991 levy year constituting an extension for payment of principal and interest on bonds issued by the

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park district without referendum (but not including excluded non-referendum bonds). A debt service extension base established or increased at any time pursuant to any provision of this Law, except Section 18-212 [35 ILCS 200/18-212], shall be increased each year commencing with the later of (i) the 2009 levy year or (ii) the first levy year in which this Law becomes applicable to the taxing district, by the lesser of 5% or the percentage increase in the Consumer Price Index during the 12-month calendar year preceding the levy year. The debt service extension base may be established or increased as provided under Section 18-212. "Excluded non-referendum bonds" means (i) bonds authorized by and issued under Section 20a of the Chicago Park District Act for aquarium and museum projects; (ii) bonds issued under Section 15 of the Local Government Debt Reform Act; and (iii) refunding obligations issued to refund or to continue to refund obligations initially issued pursuant to referendum.

"Special purpose extensions" include, but are not limited to, extensions for levies made on an annual basis for unemployment and workers' compensation, self-insurance, contributions to pension plans, and extensions made pursuant to Section 6-601 of the Illinois Highway Code [605 ILCS 5/6-601] for a road district's permanent road fund whether levied annually or not. The extension for a special service area is not included in the aggregate extension.

"Aggregate extension base" means the taxing district's last preceding aggregate extension as adjusted under Sections 18-135, 18-215, and 18-230 [35 ILCS 200/18-135, 35 ILCS 200/18-215, and 35 ILCS 200/18-230]. An adjustment under Section 18-135 shall be made for the 2007 levy year and all subsequent levy years whenever one or more counties within which a taxing district is located (i) used estimated valuations or rates when extending taxes in the taxing district for the last preceding levy year that resulted in the over or under extension of taxes, or (ii) increased or decreased the tax extension for the last preceding levy year as required by Section 18-135(c). Whenever an adjustment is required under Section 18-135, the aggregate extension base of the taxing district shall be equal to the amount that the aggregate extension of the taxing district would have been for the last preceding levy year if either or both (i) actual, rather than estimated, valuations or rates had been used to calculate the extension of taxes for the last levy year, or (ii) the tax extension for the last preceding levy year had not been adjusted as required by subsection (c) of Section 18-135.

"Levy year" has the same meaning as "year" under Section 1-155 [35 ILCS 200/1-155].

"New property" means (i) the assessed value, after final board of review or board of appeals action, of new improvements or additions to existing improvements on any parcel of real property that increase the assessed value of that real property during the levy year multiplied by the equalization factor issued by the Department under Section 17-30 [35 ILCS 200/17-30], (ii) the assessed value, after final board of review or board of appeals action, of real property not exempt from real estate taxation, which real property was exempt from real estate taxation for any portion of the immediately preceding levy year, multiplied by the equalization factor issued by the Department under Section 17-30, including the assessed value, upon final stabilization of occupancy after new construction is complete, of any real property located within the boundaries of an otherwise or previously exempt military reservation that is intended for residential use and owned by

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or leased to a private corporation or other entity, and (iii) in counties that classify in accordance with Section 4 of Article IX of the Illinois Constitution [Ill. Const. (1970) Art. IX,§ 4], an incentive property's additional assessed value resulting from a scheduled increase in the level of assessment as applied to the first year final board of review market value. In addition, the county clerk in a county containing a population of 3,000,000 or more shall include in the 1997 recovered tax increment value for any school district, any recovered tax increment value that was applicable to the 1995 tax year calculations.

"Qualified airport authority" means an airport authority organized under the Airport Authorities Act [70 ILCS 5/0.01 et seq.] and located in a county bordering on the State of Wisconsin and having a population in excess of 200,000 and not greater than 500,000.

"Recovered tax increment value" means, except as otherwise provided in this paragraph, the amount of the current year's equalized assessed value, in the first year after a municipality terminates the designation of an area as a redevelopment project area previously established under the Tax Increment Allocation Development Act in the Illinois Municipal Code [65 ILCS 5/10-2.1-1 et seq.], previously established under the Industrial Jobs Recovery Law in the Illinois Municipal Code [65 ILCS 5/11-74.6-1 et seq.], or previously established under the Economic Development Area Tax Increment Allocation Act [20 ILCS 620/1 et seq.], of each taxable lot, block, tract, or parcel of real property in the redevelopment project area over and above the initial equalized assessed value of each property in the redevelopment project area. For the taxes which are extended for the 1997 levy year, the recovered tax increment value for a non-home rule taxing district that first became subject to this Law for the 1995 levy year because a majority of its 1994 equalized assessed value was in an affected county or counties shall be increased if a municipality terminated the designation of an area in 1993 as a redevelopment project area previously established under the Tax Increment Allocation Development Act in the Illinois Municipal Code, previously established under the Industrial Jobs Recovery Law in the Illinois Municipal Code, previously established under the Economic Development Project Area Tax Increment Act of 1995, or previously established under the Economic Development Area Tax Increment Allocation Act, by an amount equal to the 1994 equalized assessed value of each taxable lot, block, tract, or parcel of real property in the redevelopment project area over and above the initial equalized assessed value of each property in the redevelopment project area. In the first year after a municipality removes a taxable lot, block, tract, or parcel of real property from a redevelopment project area established under the Tax Increment Allocation Development Act in the Illinois Municipal Code, the Industrial Jobs Recovery Law in the Illinois Municipal Code, or the Economic Development Area Tax Increment Allocation Act, "recovered tax increment value" means the amount of the current year's equalized assessed value of each taxable lot, block, tract, or parcel of real property removed from the redevelopment project area over and above the initial equalized assessed value of that real property before removal from the redevelopment project area.

Except as otherwise provided in this Section, "limiting rate" means a fraction the numerator of which is the last preceding aggregate extension base times an amount equal to one plus the extension limitation defined in this Section and the denominator of which is the current year's equalized assessed value of all real property in the territory under the

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jurisdiction of the taxing district during the prior levy year. For those taxing districts that reduced their aggregate extension for the last preceding levy year, the highest aggregate extension in any of the last 3 preceding levy years shall be used for the purpose of computing the limiting rate. The denominator shall not include new property or the recovered tax increment value. If a new rate, a rate decrease, or a limiting rate increase has been approved at an election held after March 21, 2006, then (i) the otherwise applicable limiting rate shall be increased by the amount of the new rate or shall be reduced by the amount of the rate decrease, as the case may be, or (ii) in the case of a limiting rate increase, the limiting rate shall be equal to the rate set forth in the proposition approved by the voters for each of the years specified in the proposition, after which the limiting rate of the taxing district shall be calculated as otherwise provided.

(Source: P.A. 87-17; 88-455, § 18-185; 89-1, § 10; 89-138, § 5; 89-385, § 15; 89-436, § 5; 89-449, § 5; 89-510, § 10; 89-718, § 5; 90-485, § 10; 90-511, § 1.5; 90-568, § 10; 90-616, § 5; 90-655, § 43; 91-357, § 61; 91-478, § 5; 92-547, § 5; 93-601, § 5; 93-606, § 5; 93-612, § 5; 93-689, § 5; 93-690, § 5; 93-1049, § 5; 94-974, § 5; 94-976, § 5; 94-1078, § 5; 95-90, § 5; 95-331, § 410; 95-404, § 5; 95-876, § 140; 96-501, § 5; 96-517, § 3; 96-1000, § 215; 96-1202, § 5; 97-611, § 5.)

Note.

This section was derived from 35 ILCS 245/1-1 and 35 ILCS 245/1-5, which were themselves derived from Ill.Rev.Stat., Ch. 120, para. 2501-1 and 2501-5.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Cross References.

For property annexed into the taxing district during the current levy year, see 35 ILCS 200/18-225.

Effect of Amendments. The 1998 amendment by P.A. 90-616, effective July 10, 1998, incorporated the amendments by P.A. 90-485 and P.A. 90-511; and added the last sentence in the definition of "new property".

The 1998 amendment by P.A. 90-655, effective July 30, 1998, incorporated the amendments by P.A. 90-485 and P.A. 90-511.

The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted references to Division 5 for references to Sections 18-190 through 18-245 in the introductory paragraph.

The 1999 amendment by P.A. 91-478, effective November 11, 1999, substituted "Division 5" for "Sections 10-190 through 10-245" and made related changes in each of the two introductory sentences; and in the definition of "Recovered tax increment value" inserted "except as otherwise provided in this paragraph" and added the last sentence.

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The 2002 amendment by P.A. 92-547, effective June 13, 2002, inserted "and (m) made pursuant to Section 34-53.5 of the School Code, whether levied annually or not" at the end of the second definition of "Aggregate extension", and made a related change.

The 2003 amendment by P.A. 93-601, effective January 1, 2004, in subdivision (l) of the first paragraph of the definition of "Aggregate extension" inserted "or this amendatory Act of the 93rd General Assembly", and inserted item (i), the item (ii) designation, and item (iii) and made related changes; and in the definition of "Debt service extension base" added "excluded non-referendum bonds" at the end of the first sentence, inserted the second and third sentences, inserted "Excluded non-referendum bonds" means at the beginning of the fourth sentence, and deleted the former fifth sentence, which read "The debt service extension base may be established or increased as provided under Section 18-212".

The 2003 amendment by P.A. 93-606, effective November 18, 2003, inserted item (iii) and made a related change in the definition of "New property".

The 2003 amendment by P.A. 93-612, effective November 18, 2003, in the definition of "Aggregate extension", inserted "and (l) made to fund expenses of providing joint recreational programs for the handicapped under Section 5-8 of the Park District Code or Section 11-95-14 of the Illinois Municipal Code" at the end of the last sentence of the first instance; inserted "(n) made to fund expenses of providing joint recreational programs for the handicapped under Section 5-8 of the Park District Code or Section 11-95-14 of the Illinois Municipal Code; and (o) made by the Chicago Park District for recreational programs for the handicapped under subsection (c) of Section 7.06 of the Chicago Park District Act" in the second instance; inserted "and (k) made to fund expenses of providing joint recreational programs for the handicapped under Section 5-8 of the Park District Code or Section 11-95-14 of the Illinois Municipal Code" in the third and fourth instances, and made related changes.

The 2004 amendment by P.A. 93-689, effective July 1, 2004, in the fifth paragraph definition of "Aggregate Extension" added item (m); in the sixth paragraph definition of "Aggregate Extension" added item (p); in the seventh paragraph definition of "Aggregate Extension" added item (l); and in the eighth paragraph definition of "Aggregate Extension" added item (l); and made related and stylistic changes.

The 2004 amendment by P.A. 93-690, effective July 1, 2004, in the fifth paragraph definition of "Aggregate Extension" added item (m), and made related and stylistic changes.

The 2004 amendment by P.A. 93-1049, effective November 17, 2004, in the definition of "Aggregate extension" inserted subdivision (h-4); and in subdivision (l) substituted "93-601" for "this amendatory Act of the 93rd General Assembly".

The 2006 amendment by P.A. 94-974, effective June 30, 2006, added "including the assessed value, upon final stabilization of occupancy after new construction is complete, of any real property located within the boundaries of an otherwise or previously exempt military reservation that is intended for residential use and owned by or leased to a private corporation or other entity" in the definition of "New property"; and made a stylistic change.

The 2006 amendment by P.A. 94-976, effective June 30, 2006, rewrote the last paragraph; and made a stylistic change.

The 2006 amendment by P.A. 94-1078, effective January 9, 2007, added item (q) at the end of the second paragraph beginning "Aggregate extension".

The 2007 amendment by P.A. 95-90, effective January 1, 2008, made a stylistic change; and inserted "previously established under the Economic Development Project Area Tax Increment Act of 1995" in the definition of "Recovered tax increment value".

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The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, combined earlier multiple amendments to the section.

The 2007 amendment by P.A. 95-404, effective January 1, 2008, rewrote the definition of "Aggregate extension base".

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, combined earlier multiple amendments.

The 2009 amendment by P.A. 96-501, effective August 14, 2009, added "increased each year, commencing with the 2009 levy year, by the lesser of 5% or the percentage increase in the Consumer Price Index during the 12-month calendar year preceding the levy year" in the first sentence of the definition of "Debt service extension base."

The 2009 amendment by P.A. 96-517, effective August 14, 2009, added item (m) in the eighth paragraph and made related changes.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, combined earlier multiple amendments to the section.

The 2010 amendment by P.A. 96-1202, effective July 22, 2010, in the definition of Debt service extension base, deleted "increased each year, commencing with the 2009 levy year, by the lesser of 5% or the percentage increase in the Consumer Price Index during the 12-month calendar year preceding the levy year" following "without referendum" in the first sentence and inserted the third sentence.

The 2011 amendment by P.A. 97-611, effective January 1, 2012, added item (p) to the end of the definition of Aggregate extension; and made related changes.

CASE NOTES

Analysis

In General
Applicability
- Taxing District Annexation

In General

School district did not become a new taxing district when it was partly annexed into a second county. As a result, under the Property Tax Extension Limitation Law it remained entirely in the first county for tax purposes. Bd. of Educ. of Auburn Cmty. Unit Sch. Dist. No. 10 v. Dep't of Revenue, 242 Ill. 2d 272, 351 Ill. Dec. 156, 950 N.E.2d 652, 2011 Ill. LEXIS 779 (2011).

Applicability

- Taxing District Annexation

Taxing district's annexation of a tiny amount of property in a neighboring county that had never held a referendum to determine whether the Property Tax Extension Limitation Law, 35 ILCS 200/18-185 et seq. (PTELL), should be approved pursuant to 35 ILCS 200/18-213 did not affect

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the status of the taxing district's property in the forum county where the county voters had approved PTELL and had not revoked that approval through 35 ILCS 200/18-214. Thus, that part of the taxing district in the county not approving PTELL was not subject to PTELL while that part of the taxing district in the county that had approved PTELL was subject to PTELL, especially since the legislature could have specified a different result in its annexation statute, 35 ILCS 200/18-225, and chose not to do so. Bd. of Educ. v. Ill. Dep't of Revenue, 398 Ill. App. 3d 629, 347 Ill. Dec. 19, 941 N.E.2d 888, 2010 Ill. App. LEXIS 174 (4 Dist. 2010).

OPINIONS OF ATTORNEY GENERAL

Analysis

Applicability
- Consolidated Taxing District
- Levy Authority
Extension Increase

Applicability

- Consolidated Taxing District

Where two school districts are combined, the resulting district is a "consolidated taxing district" which is subject to the statute, and the new consolidated school district must establish a new aggregate extension by combining the last preceding aggregate extensions for the two school districts which formed the consolidated taxing district. 2001 Op. Atty. Gen (01-005).

- Levy Authority

The statute is applicable to the levy authority of the school district beginning with its first levy year. 2001 Op. Atty. Gen (01-005).

Extension Increase

Upon the discontinuance of township organization, the responsibility for the care and maintenance of former township roads will revert to the county and to the extent that the obligation for maintenance of the township road system is transferred to a county that must satisfy the provisions of this Law, the county's aggregate extension base may be increased to include that portion of the townships' aggregate extension base that funded the township roads. 1997 Op. Atty. Gen. (97-021).

Practice Guides and Treatises.

Residential Real Estate § 10.76 Property Tax Extension Limitation Law (IICLE).

Real Estate Taxation § 8.21 Property Tax Extension Limitation Law (IICLE).

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LEGAL PERIODICALS

For symposium, "Emerging Issues in Election Law," article: "Dollars, CPI, and Voter Empowerment: Public Act 94-976 and its Impact on Local Government Tax Referenda," see 27 N. Ill. U. L. Rev. 377 (2007).

§ 35 ILCS 200/18-190. Direct referendum; new rate or increased limiting rate

Sec. 18-190. Direct referendum; new rate or increased limiting rate. (a) If a new rate is authorized by statute to be imposed without referendum or is subject to a backdoor referendum, as defined in Section 28-2 of the Election Code [10 ILCS 5/28-2], the governing body of the affected taxing district before levying the new rate shall submit the new rate to direct referendum under the provisions of this Section and of Article 28 of the Election Code [10 ILCS 5/28-1 et seq.]. Notwithstanding the provisions, requirements, or limitations of any other law, any tax levied for the 2005 levy year and all subsequent levy years by any taxing district subject to this Law may be extended at a rate exceeding the rate established for that tax by referendum or statute, provided that the rate does not exceed the statutory ceiling above which the tax is not authorized to be further increased either by referendum or in any other manner. Notwithstanding the provisions, requirements, or limitations of any other law, all taxing districts subject to this Law shall follow the provisions of this Section whenever seeking referenda approval after March 21, 2006 to (i) levy a new tax rate authorized by statute or (ii) increase the limiting rate applicable to the taxing district. All taxing districts subject to this Law are authorized to seek referendum approval of each proposition described and set forth in this Section.

The proposition seeking to obtain referendum approval to levy a new tax rate as authorized in clause (i) shall be in substantially the following form:

Shall .... (insert legal name, number, if any, and county or counties of taxing district and geographic or other common name by which a school or community college district is known and referred to), Illinois, be authorized to levy a new tax for .... purposes and have an additional tax of .... % of the equalized assessed value of the taxable property therein extended for such purposes?

The votes must be recorded as "Yes" or "No".

The proposition seeking to obtain referendum approval to increase the limiting rate as authorized in clause (ii) shall be in substantially the following form:

Shall the limiting rate under the Property Tax Extension Limitation Law for .... (insert legal name, number, if any, and county or counties of taxing district and geographic or other common name by which a school or community college district is known and referred to), Illinois, be increased by an additional amount equal to .... % above the limiting rate for the purpose of .... (insert purpose) for levy year .... (insert the most recent levy year for which the limiting rate of the taxing district is known at the time the submission of the proposition is initiated by the taxing district) and be equal to .... % of the equalized assessed value of the taxable property therein for levy year(s) (insert each

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levy year for which the increase will be applicable, which years must be consecutive and may not exceed 4)?

The votes must be recorded as "Yes" or "No".

The ballot for any proposition submitted pursuant to this Section shall have printed thereon, but not as a part of the proposition submitted, only the following supplemental information (which shall be supplied to the election authority by the taxing district) in substantially the following form:

(1) The approximate amount of taxes extendable at the most recently extended limiting rate is $ ...., and the approximate amount of taxes extendable if the proposition is approved is $ ....

(2) For the .... (insert the first levy year for which the new rate or increased limiting rate will be applicable) levy year the approximate amount of the additional tax extendable against property containing a single family residence and having a fair market value at the time of the referendum of $100,000 is estimated to be $ .....

(3) Based upon an average annual percentage increase (or decrease) in the market value of such property of % .... (insert percentage equal to the average annual percentage increase or decrease for the prior 3 levy years, at the time the submission of the proposition is initiated by the taxing district, in the amount of (A) the equalized assessed value of the taxable property in the taxing district less (B) the new property included in the equalized assessed value), the approximate amount of the additional tax extendable against such property for the .... levy year is estimated to be $ .... and for the .... levy year is estimated to be $ .....

(4) If the proposition is approved, the aggregate extension for .... (insert each levy year for which the increase will apply) will be determined by the limiting rate set forth in the proposition, rather than the otherwise applicable limiting rate calculated under the provisions of the Property Tax Extension Limitation Law (commonly known as the Property Tax Cap Law).

The approximate amount of taxes extendable shown in paragraph (1) shall be computed upon the last known equalized assessed value of taxable property in the taxing district (at the time the submission of the proposition is initiated by the taxing district). Paragraph (3) shall be included only if the increased limiting rate will be applicable for more than one levy year and shall list each levy year for which the increased limiting rate will be applicable. The additional tax shown for each levy year shall be the approximate dollar amount of the increase over the amount of the most recently completed extension at the time the submission of the proposition is initiated by the taxing district. The approximate amount of the additional taxes extendable shall be calculated (i) without regard to any property tax exemptions and (ii) based upon the percentage level of assessment prescribed for such property by statute or by ordinance of the county board in counties which classify property for purposes of taxation in accordance with Section 4 of Article IX of the Constitution [Ill. Const., Art. IX, § 4]. Paragraph (4) shall be included if the proposition concerns a limiting rate increase but shall not be included if the proposition concerns a new rate. Any notice required to be published in connection with the

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submission of the proposition shall also contain this supplemental information and shall not contain any other supplemental information regarding the proposition. Any error, miscalculation, or inaccuracy in computing any amount set forth on the ballot and in the notice that is not deliberate shall not invalidate or affect the validity of any proposition approved. Notice of the referendum shall be published and posted as otherwise required by law, and the submission of the proposition shall be initiated as provided by law.

If a majority of all ballots cast on the proposition are in favor of the proposition, the following provisions shall be applicable to the extension of taxes for the taxing district:

(A) a new tax rate shall be first effective for the levy year in which the new rate is approved;

(B) if the proposition provides for a new tax rate, the taxing district is authorized to levy a tax after the canvass of the results of the referendum by the election authority for the purposes for which the tax is authorized;

(C) a limiting rate increase shall be first effective for the levy year in which the limiting rate increase is approved, provided that the taxing district may elect to have a limiting rate increase be effective for the levy year prior to the levy year in which the limiting rate increase is approved unless the extension of taxes for the prior levy year occurs 30 days or less after the canvass of the results of the referendum by the election authority in any county in which the taxing district is located;

(D) in order for the limiting rate increase to be first effective for the levy year prior to the levy year of the referendum, the taxing district must certify its election to have the limiting rate increase be effective for the prior levy year to the clerk of each county in which the taxing district is located not more than 2 days after the date the results of the referendum are canvassed by the election authority; and

(E) if the proposition provides for a limiting rate increase, the increase may be effective regardless of whether the proposition is approved before or after the taxing district adopts or files its levy for any levy year.

Rates required to extend taxes on levies subject to a backdoor referendum in each year there is a levy are not new rates or rate increases under this Section if a levy has been made for the fund in one or more of the preceding 3 levy years. Changes made by this amendatory Act of 1997 to this Section in reference to rates required to extend taxes on levies subject to a backdoor referendum in each year there is a levy are declarative of existing law and not a new enactment.

(b) Whenever other applicable law authorizes a taxing district subject to the limitation with respect to its aggregate extension provided for in this Law to issue bonds or other obligations either without referendum or subject to backdoor referendum, the taxing district may elect for each separate bond issuance to submit the question of the issuance of the bonds or obligations directly to the voters of the taxing district, and if the referendum passes the taxing district is not required to comply with any backdoor referendum procedures or requirements set forth in the other applicable law. The direct referendum shall be initiated by ordinance or resolution of the governing body of the

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taxing district, and the question shall be certified to the proper election authorities in accordance with the provisions of the Election Code [10 ILCS 5/1-1 et seq.].

(Source: P.A. 87-17; 88-455, § 18-190; 88-670, § 3-16; 89-385, § 15; 89-718, § 5; 94-976, § 5; 96-764, § 5.)

Note.

This section was derived from 35 ILCS 245/1-7, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 2501-7.

Effect of Amendments. The 2006 amendment by P.A. 94-976, effective June 30, 2006, rewrote the section.

The 2009 amendment by P.A. 96-764, effective August 25, 2009, inserted "for the purpose of .... (insert purpose)" following "above the limiting rate" in the third paragraph of (a).

CASE NOTES

Analysis

Construction
New Rate
Validity
- Amount of Tax

Construction

The terms "new rate" and "rate increase" are followed by the phrase "authorized by statute" thus subsection (a) applies only to rates that have been newly authorized by statute or rate limits that have been increased by statute. Du Page County Collector for Year 1993 v. 1212 Assocs. - MB Mgt. Co., 288 Ill. App. 3d 480, 224 Ill. Dec. 153, 681 N.E.2d 135 (2 Dist. 1997).

New Rate

"New rate," as used in 35 ILCS 200/18-190, applied to new taxes newly authorized by statutes enacted after the section's January 1, 1994, effective date. As a tax levy for detention homes was authorized under 55 ILCS 75/5, and as far back 1907, a county's 1997 tax levy for a detention center was not a new rate, and it did not require approval through referendum. ACME Mkts., Inc. v. Callanan, 378 Ill. App. 3d 676, 317 Ill. Dec. 607, 882 N.E.2d 181, 2008 Ill. App. LEXIS 2 (1 Dist. 2008), rev'd, cause remanded, 236 Ill. 2d 29, 337 Ill. Dec. 867, 923 N.E.2d 718, 2009 Ill. LEXIS 1930 (2009).

The fact that each year an ordinance must be passed to levy the tax under 75 ILCS 16/35-5 does not mean that the authority expires and is then renewed each year thus making each year's rate

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a "new rate". Du Page County Collector for Year 1993 v. 1212 Assocs. - MB Mgt. Co., 288 Ill. App. 3d 480, 224 Ill. Dec. 153, 681 N.E.2d 135 (2 Dist. 1997).

Validity

Tax levy to fund operation of county detention home pursuant to 55 ILCS 75/5 was invalid because it had not been submitted to a direct referendum of county voters as required by the Property Tax Extension Limitation Law, 35 ILCS 200/18-190. The date for determining whether the levy was a new tax subject to the direct referendum requirement was the date of the levy and not the date that the statute authorizing the levy was enacted, and the levy was a new tax as measured in that regard because prior levies of the tax were invalid because they had not met the direct referendum requirement. Acme Mkts., Inc. v. Callanan, 236 Ill. 2d 29, 337 Ill. Dec. 867, 923 N.E.2d 718, 2009 Ill. LEXIS 1930 (2009).

- Amount of Tax

Under similar prior law, a valid order for an election could specify the number of years during which the excessive rate would be levied, or could accomplish the same purpose by setting forth substantially the amount to be levied by virtue of the vote of the people. Peoria & Pekin Union Ry. v. People ex rel. Knupp, 198 Ill. 318, 64 N.E. 969 (1902).

OPINIONS OF ATTORNEY GENERAL

Increase

- Referendum Required

A public library district which is subject to the Property Tax Extension Limitation Law may not increase taxes in excess of the limitations imposed by the Law to a rate approved by referendum prior to the enactment of the Property Tax Extension Limitation Law, without holding another referendum. 1996 Op. Atty. Gen. (96-028).

§ 35 ILCS 200/18-190.5. School districts

Sec. 18-190.5. School districts. The requirements of Section 18-190 of this Code [35 ILCS 200/18-190] for a direct referendum on the imposition of a new or increased tax rate do not apply to tax levies that are not included in the aggregate extension for those taxing districts to which this Law did not apply before the 1995 levy year (except taxing districts subject to this Law in accordance with Section 18-213 of this Code [35 ILCS 200/18-213]) pursuant to clauses (m) and (q) of Section 18-185 of this Code [35 ILCS 200/18-185].

(Source: P.A. 92-547, § 5; 94-1078, § 5.)

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Effective Date. Section 99 of P.A. 92-547 made this section effective upon becoming law. The Act was approved June 13, 2002.

Effect of Amendments. The 2006 amendment by P.A. 94-1078, effective January 9, 2007, added the reference to "clause (q)" and made a related change near the end.

§ 35 ILCS 200/18-195. Limitation

Sec. 18-195. Limitation. Tax extensions made under Sections 18-45 and 18-105 [35 ILCS 200/18-45 and 35 ILCS 200/18-105] are further limited by the provisions of this Law.

For those taxing districts that have levied in any previous levy year for any funds included in the aggregate extension, the county clerk shall extend a rate for the sum of these funds that is no greater than the limiting rate.

For those taxing districts that have never levied for any funds included in the aggregate extension, the county clerk shall extend an amount no greater than the amount approved by the voters in a referendum under Section 18-210 [35 ILCS 200/18-210].

If the county clerk is required to reduce the aggregate extension of a taxing district by provisions of this Law, the county clerk shall proportionally reduce the extension for each fund unless otherwise requested by the taxing district.

Upon written request of the corporate authority of a village, the county clerk shall calculate separate limiting rates for the library funds and for the aggregate of the other village funds in order to reduce the funds as may be required under provisions of this Law. In calculating the limiting rate for the library, the county clerk shall use only the part of the aggregate extension base applicable to the library, and for any rate increase or decrease factor under Section 18-230 [35 ILCS 200/18-230] the county clerk shall use only any new rate or rate increase applicable to the library funds and the part of the rate applicable to the library in determining factors under that Section. The county clerk shall calculate the limiting rate for all other village funds using only the part of the aggregate extension base not applicable to the library, and for any rate increase or decrease factor under Section 18-230 the county clerk shall use only any new rate or rate increase not applicable to the library funds and the part of the rate not applicable to the library in determining factors under that Section. If the county clerk is required to reduce the aggregate extension of the library portion of the levy, the county clerk shall proportionally reduce the extension for each library fund unless otherwise requested by the library board. If the county clerk is required to reduce the aggregate extension of the portion of the levy not applicable to the library, the county clerk shall proportionally reduce the extension for each fund not applicable to the library unless otherwise requested by the village.

Beginning with the 1998 levy year upon written direction of a county or township community mental health board, the county clerk shall calculate separate limiting rates for the community mental health funds and for the aggregate of the other county or

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township funds in order to reduce the funds as may be required under provisions of this Law. In calculating the limiting rate for the community mental health funds, the county clerk shall use only the part of the aggregate extension base applicable to the community mental health funds; and for any rate increase or decrease factor under Section 18-230, the county clerk shall use only any new rate or rate increase applicable to the community mental health funds and the part of the rate applicable to the community mental health board in determining factors under that Section. The county clerk shall calculate the limiting rate for all other county or township funds using only the part of the aggregate extension base not applicable to community mental health funds; and for any rate increase or decrease factor under Section 18-230, the county clerk shall use only any new rate or rate increase not applicable to the community mental health funds and the part of the rate not applicable to the community mental health board in determining factors under that Section. If the county clerk is required to reduce the aggregate extension of the community mental health board portion of the levy, the county clerk shall proportionally reduce the extension for each community mental health fund unless otherwise directed by the community mental health board. If the county clerk is required to reduce the aggregate extension of the portion of the levy not applicable to the community mental health board, the county clerk shall proportionally reduce the extension for each fund not applicable to the community mental health board unless otherwise directed by the county or township.

If the county is not subject to Section 1.1 or 1.2 of the County Care for Persons with Developmental Disabilities Act [55 ILCS 105/1.1 or 55 ILCS 105/1.2], then, beginning with the 2001 levy year, upon written direction of a county or township board for care and treatment of persons with a developmental disability, the county clerk shall calculate separate limiting rates for the funds for persons with a developmental disability and for the aggregate of the other county or township funds in order to reduce the funds as may be required under provisions of this Law. If the county is subject to Section 1.1 or 1.2 of the County Care for Persons with Developmental Disabilities Act, then, beginning with the levy year in which the voters approve the tax under Section 1.1 or 1.2 of that Act, the county clerk shall calculate separate limiting rates for the funds for persons with a developmental disability and for the aggregate of the other county or township funds in order to reduce the funds as may be required under provisions of this Law. In calculating the limiting rate for the funds for persons with a developmental disability, the county clerk shall use only the part of the aggregate extension base applicable to the funds for persons with a developmental disability; and for any rate increase or decrease factor under Section 18-230, the county clerk shall use only any new rate or rate increase applicable to the funds for persons with a developmental disability and the part of the rate applicable to the board for care and treatment of persons with a developmental disability in determining factors under that Section. The county clerk shall calculate the limiting rate for all other county or township funds using only the part of the aggregate extension base not applicable to funds for persons with a developmental disability; and for any rate increase or decrease factor under Section 18-230, the county clerk shall use only any new rate or rate increase not applicable to the funds for persons with a developmental disability and the part of the rate not applicable to the board for care and treatment of persons with a developmental disability in determining factors under that Section. If the county clerk is required to reduce the aggregate extension of the board for care and

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treatment of persons with a developmental disability portion of the levy, the county clerk shall proportionally reduce the extension for each fund for persons with a developmental disability unless otherwise directed by the board for care and treatment of persons with a developmental disability. If the county clerk is required to reduce the aggregate extension of the portion of the levy not applicable to the board for care and treatment of persons with a developmental disability, the county clerk shall proportionally reduce the extension for each fund not applicable to the board for care and treatment of persons with a developmental disability unless otherwise directed by the county or township.

(Source: P.A. 87-17; 88-455, § 18-195; 90-339, § 5; 90-652, § 5; 91-859, § 5; 96-1350, § 5.)

Note.

This section was derived from 35 ILCS 245/1-10, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 2501-10.

Effect of Amendments. The 1998 amendment by P.A. 90-652, effective July 28, 1998, added the last paragraph.

The 2000 amendment by P.A. 91-859, effective June 22, 2000, added the last paragraph.

The 2010 amendment by P.A. 96-1350, effective July 28, 2010, in the last paragraph, added "If the county is not subject to Section 1.1 or 1.2 of the County Care for Persons with Developmental Disabilities Act, then" to the beginning of the first sentence and inserted the second sentence; and made stylistic changes.

CASE NOTES

Applicability

A police pension fund tax is subject to the property tax extension limitation law and, therefore, the defendant county properly imposed this section, which caused all of the corporate funds, including the police pension fund, to receive less than was requested. Vill. of Spring Grove v. County of McHenry, 309 Ill. App. 3d 1010, 243 Ill. Dec. 527, 723 N.E.2d 830, 2000 Ill. App. LEXIS 21 (2 Dist. 2000).

OPINIONS OF ATTORNEY GENERAL

Increase

- Referendum Required

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A public library district which is subject to the Property Tax Extension Limitation Law may not increase taxes in excess of the limitations imposed by the Law to a rate approved by referendum prior to the enactment of the Property Tax Extension Limitation Law, without holding another referendum. 1996 Op. Atty. Gen. (96-028).

Practice Guides and Treatises.

Real Estate Taxation § 9.4 Determination of the Rate (IICLE).

§ 35 ILCS 200/18-197. Maywood Public Library District Tax Levy Validation (2002) Law

Sec. 18-197. Maywood Public Library District Tax Levy Validation (2002) Law. The provisions of the Property Tax Extension Limitation Law [35 ILCS 200/18-185 et seq.] are subject to the Maywood Public Library District Tax Levy Validation (2002) Law [75 ILCS 23/10-1 et seq.].

(Source: P.A. 92-884, § 10-905.)

Effective Date. Section 99-99 of P.A. 92-884, made this section effective upon becoming law. The Act was approved January 13, 2003.

§ 35 ILCS 200/18-198. Summit Park District Tax Levy Validation (2010) Act

Sec. 18-198. Summit Park District Tax Levy Validation (2010) Act. The provisions of the Property Tax Extension Limitation Law [35 ILCS 200/18-185 et seq.] are subject to the Summit Park District Tax Levy Validation (2010) Act [70 ILCS 1610/1].

(Source: P.A. 96-1205, § 90.)

Effective Date. Section 99 of P.A. 96-1205 made this section effective upon becoming law. The Act was approved July 22, 2010.

§ 35 ILCS 200/18-200. School Code

Sec. 18-200. School Code. A school district's State aid shall not be reduced under the computation under subsections 5(a) through 5(h) of Part A of Section 18-8 of the School

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Code [105 ILCS 5/18-8] due to the operating tax rate falling from above the minimum requirement of that Section of the School Code to below the minimum requirement of that Section of the School Code due to the operation of this Law.

(Source: P.A. 87-17; 88-455, § 18-200.)

Note.

This section was derived from 35 ILCS 245/1-13, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 2501-13.

§ 35 ILCS 200/18-205. Referendum to increase the extension limitation

Sec. 18-205. Referendum to increase the extension limitation. A taxing district is limited to an extension limitation of 5% or the percentage increase in the Consumer Price Index during the 12-month calendar year preceding the levy year, whichever is less. A taxing district may increase its extension limitation for one or more levy years if that taxing district holds a referendum before the levy date for the first levy year at which a majority of voters voting on the issue approves adoption of a higher extension limitation. Referenda shall be conducted at a regularly scheduled election in accordance with the Election Code [10 ILCS 5/1-1 et seq.]. The question shall be presented in substantially the following manner for all elections held after March 21, 2006:

Shall the extension limitation under the Property Tax Extension Limitation Law for (insert the legal name, number, if any, and county or counties of the taxing district and geographic or other common name by which a school or community college district is known and referred to), Illinois, be increased from the lesser of 5% or the percentage increase in the Consumer Price Index over the prior levy year to (insert the percentage of the proposed increase)% per year for (insert each levy year for which the increased extension limitation will apply)?

The votes must be recorded as "Yes" or "No".

If a majority of voters voting on the issue approves the adoption of the increase, the increase shall be applicable for each levy year specified.

The ballot for any question submitted pursuant to this Section shall have printed thereon, but not as a part of the question submitted, only the following supplemental information (which shall be supplied to the election authority by the taxing district) in substantially the following form:

(1) For the (insert the first levy year for which the increased extension limitation will be applicable) levy year the approximate amount of the additional tax extendable against property containing a single family residence and having a fair market value at the time of the referendum of $100,000 is estimated to be $ ....

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(2) Based upon an average annual percentage increase (or decrease) in the market value of such property of .... % (insert percentage equal to the average annual percentage increase or decrease for the prior 3 levy years, at the time the submission of the question is initiated by the taxing district, in the amount of (A) the equalized assessed value of the taxable property in the taxing district less (B) the new property included in the equalized assessed value), the approximate amount of the additional tax extendable against such property for the .... levy year is estimated to be $ .... and for the .... levy year is estimated to be $ ....

Paragraph (2) shall be included only if the increased extension limitation will be applicable for more than one year and shall list each levy year for which the increased extension limitation will be applicable. The additional tax shown for each levy year shall be the approximate dollar amount of the increase over the amount of the most recently completed extension at the time the submission of the question is initiated by the taxing district. The approximate amount of the additional tax extendable shall be calculated by using (A) the lesser of 5% or the percentage increase in the Consumer Price Index for the prior levy year (or an estimate of the percentage increase for the prior levy year if the increase is unavailable at the time the submission of the question is initiated by the taxing district), (B) the percentage increase proposed in the question, and (C) the last known equalized assessed value and aggregate extension base of the taxing district at the time the submission of the question is initiated by the taxing district. The approximate amount of the tax extendable shall be calculated (i) without regard to any property tax exemptions and (ii) based upon the percentage level of assessment prescribed for such property by statute or by ordinance of the county board in counties which classify property for purposes of taxation in accordance with Section 4 of Article IX of the Constitution [Ill. Const. Art. IX,§ 4]. Any notice required to be published in connection with the submission of the question shall also contain this supplemental information and shall not contain any other supplemental information. Any error, miscalculation, or inaccuracy in computing any amount set forth on the ballot or in the notice that is not deliberate shall not invalidate or affect the validity of any proposition approved. Notice of the referendum shall be published and posted as otherwise required by law, and the submission of the question shall be initiated as provided by law.

(Source: P.A. 87-17; 88-455, § 18-205; 90-812, § 10; 91-57, § 20; 94-976, § 5.)

Note.

This section was derived from 35 ILCS 245/1-15, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 2501-15. P.A. 88-455, effective January 1, 1994, substituted "Referenda" for "Those referenda held after the effective date of this Act" in the third sentence; and substituted "Law" for "Act" in the form.

Effect of Amendments. The 1998 amendment by P.A. 90-812, effective January 26, 1999, added "provided that notice of the referendum, if heretofore or hereafter held, has been or shall be given in accordance with the provisions of Section 12-5 of the Election Code, at least 10 and

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not more than 45 days before the date of the election, notwithstanding the time for publication otherwise imposed by Section 12-5" at the end of the third sentence.

The 1999 amendment by P.A. 91-57, effective June 30, 1999, in the third sentence substituted "if held before July 1, 1999, has been given" for "if heretofore or hereafter held, has been or shall be given" and inserted "in effect at the time of the bond referendum"; and inserted the fourth sentence.

The 2006 amendment by P.A. 94-976, effective June 30, 2006, rewrote the section.

Practice Guides and Treatises.

Real Estate Taxation § 8.21 Property Tax Extension Limitation Law (IICLE).

§ 35 ILCS 200/18-210. Establishing a new levy

Sec. 18-210. Establishing a new levy. Except as provided in Section 18-215 [35 ILCS 200/18-215], as it relates to a transfer of a service, before a county clerk may extend taxes for funds subject to the limitations of this Law, a new taxing district or a taxing district with an aggregate extension base of zero shall hold a referendum establishing a maximum aggregate extension for the levy year. The maximum aggregate extension is established for the current levy year if a taxing district has held a referendum before the levy date at which the majority voting on the issue approves its adoption. The referendum under this Section may be held at the same time as the referendum on creating a new taxing district. The question shall be submitted to the voters at a regularly scheduled election in accordance with the Election Code [10 ILCS 5/1-1 et seq.] provided that notice or referendum, if held before July 1, 1999, has been given in accordance with the provisions of Section 12-5 of the Election Code [10 ILCS 5/12-5] in effect at the time of the bond referendum, at least 10 and not more than 45 days before the date of the election, notwithstanding the time for publication otherwise imposed by Section 12-5 [10 ILCS 5/12-5]. Notices required in connection with the submission of public questions on or after July 1, 1999 shall be as set forth in Section 12-5 of the Election Code [10 ILCS 5/12-5]. The question shall be submitted in substantially the following form:

```
Under the Property Tax Extension
Limitation Law, may an aggregate
extension not to exceed  ........          YES
(aggregate extension amount)  ........
be made for the  ........ (taxing
district name)  ........ for the           NO
........ (levy year)  ........ levy
year?
```

If a majority of voters voting on the increase approves the adoption of the aggregate extension, the extension shall be effective for the levy year specified.

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(Source: P.A. 87-17; 88-455, § 18-210; 90-812, § 10; 91-57, § 20.)

Note.

This section was derived from 35 ILCS 205/1-20, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 2501-20.

Effect of Amendments. The 1998 amendment by P.A. 90-812, effective January 26, 1999, inserted "provided that notice of referendum, if heretofore or hereafter held, has been or shall be given in accordance with the provisions of Section 12-5 of the Election Code, at least 10 and not more than 45 days before the date of the election, notwithstanding the time for publication otherwise imposed by Section 12-5" in the fourth sentence; created a fifth sentence by inserting "The question shall be submitted" preceding "in substantially" and substituting "form" for "manner".

The 1999 amendment by P.A. 91-57, effective June 30, 1999, in the fourth sentence substituted "if held before July 1, 1999, has been given" for "if heretofore or hereafter held, has been or shall be given" and inserted "in effect at the time of the bond referendum", and inserted the fifth sentence.

Practice Guides and Treatises.

Real Estate Taxation § 9.8 Ballot Not in Statutory Form (IICLE).

§ 35 ILCS 200/18-212. Referendum on debt service extension base

Sec. 18-212. Referendum on debt service extension base. A taxing district may establish or increase its debt service extension base if (i) that taxing district holds a referendum before the date on which the levy must be filed with the county clerk of the county or counties in which the taxing district is situated and (ii) a majority of voters voting on the issue approves the establishment of or increase in the debt service extension base. A debt service extension base established or increased by a referendum held pursuant to this Section after February 2, 2010, shall be increased each year, commencing with the first levy year beginning after the date of the referendum, by the lesser of 5% or the percentage increase in the Consumer Price Index during the 12-month calendar year preceding the levy year if the optional language concerning the annual increase is included in the question submitted to the electors of the taxing district. Referenda under this Section shall be conducted at a regularly scheduled election in accordance with the Election Code [10 ILCS 5/1-1 et seq.]. The governing body of the taxing district shall certify the question to the proper election authorities who shall submit the question to the electors of the taxing district in substantially the following form:

"Shall the debt service extension base under the Property Tax Extension Limitation Law [35 ILCS 200/18-185 et seq.] for ... (taxing district name) ... for payment of principal and interest on limited bonds be .... ((established at $ ....). (or) (increased from $ .... to $ ....)) ... for the ..... levy year and all subsequent levy years (optional language: , such debt service extension base to be increased each year by the lesser of 5% or

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the percentage increase in the Consumer Price Index during the 12-month calendar year preceding the levy year)?"

Votes on the question shall be recorded as "Yes" or "No".

If a majority of voters voting on the issue approves the establishment of or increase in the debt service extension base, the establishment of or increase in the debt service extension base shall be applicable for the levy years specified.

(Source: P.A. 89-385, § 15; 96-1202, § 5.)

Effective Date. Section 99 of P.A. 89-385 made this section effective upon becoming law. The Act was approved August 18, 1995.

Effect of Amendments. The 2010 amendment by P.A. 96-1202, effective July 22, 2010, in the first paragraph, inserted the second sentence and added "(optional language:, such debt service extension base to be increased each year by the lesser of 5% or the percentage increase in the Consumer Price Index during the 12-month calendar year preceding the levy year)" to the end of the form.

§ 35 ILCS 200/18-213. Referenda on applicability of the Property Tax Extension Limitation Law

Sec. 18-213. Referenda on applicability of the Property Tax Extension Limitation Law. (a) The provisions of this Section do not apply to a taxing district subject to this Law because a majority of its 1990 equalized assessed value is in a county or counties contiguous to a county of 3,000,000 or more inhabitants, or because a majority of its 1994 equalized assessed value is in an affected county and the taxing district was not subject to this Law before the 1995 levy year.

(b) The county board of a county that is not subject to this Law may, by ordinance or resolution, submit to the voters of the county the question of whether to make all non-home rule taxing districts that have all or a portion of their equalized assessed valuation situated in the county subject to this Law in the manner set forth in this Section.

For purposes of this Section only:

"Taxing district" has the same meaning provided in Section 1-150 [35 ILCS 200/1-150].

"Equalized assessed valuation" means the equalized assessed valuation for a taxing district for the immediately preceding levy year.

(c) The ordinance or resolution shall request the submission of the proposition at any election, except a consolidated primary election, for the purpose of voting for or against making the Property Tax Extension Limitation Law [35 ILCS 200/18-185 et seq.]

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applicable to all non-home rule taxing districts that have all or a portion of their equalized assessed valuation situated in the county.

The question shall be placed on a separate ballot and shall be in substantially the following form:

Shall the Property Tax Extension Limitation Law [35 ILCS 200/18-185 through 18-245], which limits annual property tax extension increases, apply to non-home rule taxing districts with all or a portion of their equalized assessed valuation located in (name of county)?

Votes on the question shall be recorded as "yes" or "no".

(d) The county clerk shall order the proposition submitted to the electors of the county at the election specified in the ordinance or resolution. If part of the county is under the jurisdiction of a board or boards of election commissioners, the county clerk shall submit a certified copy of the ordinance or resolution to each board of election commissioners, which shall order the proposition submitted to the electors of the taxing district within its jurisdiction at the election specified in the ordinance or resolution.

(e)(1) With respect to taxing districts having all of their equalized assessed valuation located in the county, if a majority of the votes cast on the proposition are in favor of the proposition, then this Law becomes applicable to the taxing district beginning on January 1 of the year following the date of the referendum.

(2) With respect to taxing districts that meet all the following conditions this Law shall become applicable to the taxing district beginning on January 1, 1997. The districts to which this paragraph (2) is applicable

(A) do not have all of their equalized assessed valuation located in a single county,

(B) have equalized assessed valuation in an affected county,

(C) meet the condition that each county, other than an affected county, in which any of the equalized assessed valuation of the taxing district is located has held a referendum under this Section at any election, except a consolidated primary election, held prior to the effective date of this amendatory Act of 1997, and

(D) have a majority of the district's equalized assessed valuation located in one or more counties in each of which the voters have approved a referendum under this Section prior to the effective date of this amendatory Act of 1997. For purposes of this Section, in determining whether a majority of the equalized assessed valuation of the taxing district is located in one or more counties in which the voters have approved a referendum under this Section, the equalized assessed valuation of the taxing district in any affected county shall be included with the equalized assessed value of the taxing district in counties in which the voters have approved the referendum.

(3) With respect to taxing districts that do not have all of their equalized assessed valuation located in a single county and to which paragraph (2) of subsection (e) is not applicable, if each county other than an affected county in which any of the equalized

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assessed valuation of the taxing district is located has held a referendum under this Section at any election, except a consolidated primary election, held in any year and if a majority of the equalized assessed valuation of the taxing district is located in one or more counties that have each approved a referendum under this Section, then this Law shall become applicable to the taxing district on January 1 of the year following the year in which the last referendum in a county in which the taxing district has any equalized assessed valuation is held. For the purposes of this Law, the last referendum shall be deemed to be the referendum making this Law applicable to the taxing district. For purposes of this Section, in determining whether a majority of the equalized assessed valuation of the taxing district is located in one or more counties that have approved a referendum under this Section, the equalized assessed valuation of the taxing district in any affected county shall be included with the equalized assessed value of the taxing district in counties that have approved the referendum.

(f) Immediately after a referendum is held under this Section, the county clerk of the county holding the referendum shall give notice of the referendum having been held and its results to all taxing districts that have all or a portion of their equalized assessed valuation located in the county, the county clerk of any other county in which any of the equalized assessed valuation of any taxing district is located, and the Department of Revenue. After the last referendum affecting a multi-county taxing district is held, the Department of Revenue shall determine whether the taxing district is subject to this Law and, if so, shall notify the taxing district and the county clerks of all of the counties in which a portion of the equalized assessed valuation of the taxing district is located that, beginning the following January 1, the taxing district is subject to this Law. For each taxing district subject to paragraph (2) of subsection (e) of this Section, the Department of Revenue shall notify the taxing district and the county clerks of all of the counties in which a portion of the equalized assessed valuation of the taxing district is located that, beginning January 1, 1997, the taxing district is subject to this Law.

(g) Referenda held under this Section shall be conducted in accordance with the Election Code [10 ILCS 5/1-1 et seq.].

(Source: P.A. 89-510, § 10; 89-718, § 5.)

Effective Date. Section 99 of P.A. 89-510 made this section effective upon becoming law. The Act was approved July 11, 1996.

CASE NOTES

Analysis
In General

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Approval

In General

School district did not become a new taxing district when it was partly annexed into a second county. As a result, under the Property Tax Extension Limitation Law it remained entirely in the first county for tax purposes. Bd. of Educ. of Auburn Cmty. Unit Sch. Dist. No. 10 v. Dep't of Revenue, 242 Ill. 2d 272, 351 Ill. Dec. 156, 950 N.E.2d 652, 2011 Ill. LEXIS 779 (2011).

Approval

Taxing district's annexation of a tiny amount of property in a neighboring county that had never held a referendum to determine whether the Property Tax Extension Limitation Law, 35 ILCS 200/18-185 et seq. (PTELL), should be approved pursuant to 35 ILCS 200/18-213 did not affect the status of the taxing district's property in the forum county where the county voters had approved PTELL and had not revoked that approval through 35 ILCS 200/18-214. Thus, that part of the taxing district in the county not approving PTELL was not subject to PTELL while that part of the taxing district in the county that had approved PTELL was subject to PTELL, especially since the legislature could have specified a different result in its annexation statute, 35 ILCS 200/18-225, and chose not to do so. Bd. of Educ. v. Ill. Dep't of Revenue, 398 Ill. App. 3d 629, 347 Ill. Dec. 19, 941 N.E.2d 888, 2010 Ill. App. LEXIS 174 (4 Dist. 2010).

§ 35 ILCS 200/18-214. Referenda on removal of the applicability of the Property Tax Extension Limitation Law to non-home rule taxing districts

Sec. 18-214. Referenda on removal of the applicability of the Property Tax Extension Limitation Law to non-home rule taxing districts. (a) The provisions of this Section do not apply to a taxing district that is subject to this Law because a majority of its 1990 equalized assessed value is in a county or counties contiguous to a county of 3,000,000 or more inhabitants, or because a majority of its 1994 equalized assessed value is in an affected county and the taxing district was not subject to this Law before the 1995 levy year.

(b) For purposes of this Section only:

"Taxing district" means any non-home rule taxing district that became subject to this Law under Section 18-213 of this Law [35 ILCS 200/18-213].

"Equalized assessed valuation" means the equalized assessed valuation for a taxing district for the immediately preceding levy year.

(c) The county board of a county that became subject to this Law by a referendum approved by the voters of the county under Section 18-213 [35 ILCS 200/18-213] may, by ordinance or resolution, in the manner set forth in this Section, submit to the voters of the county the question of whether this Law applies to all non-home rule taxing districts that have all or a portion of their equalized assessed valuation situated in the county in the manner set forth in this Section.

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(d) The ordinance or resolution shall request the submission of the proposition at any election, except a consolidated primary election, for the purpose of voting for or against the continued application of the Property Tax Extension Limitation Law to all non-home rule taxing districts that have all or a portion of their equalized assessed valuation situated in the county.

The question shall be placed on a separate ballot and shall be in substantially the following form:

Shall the Property Tax Extension Limitation Law (35 ILCS 200/18-185 through 35 ILCS 200/18-245), which limits annual property tax extension increases, apply to non-home rule taxing districts with all or a portion of their equalized assessed valuation located in (name of county)?

Votes on the question shall be recorded as "yes" or "no".

(e) The county clerk shall order the proposition submitted to the electors of the county at the election specified in the ordinance or resolution. If part of the county is under the jurisdiction of a board or boards of election commissioners, the county clerk shall submit a certified copy of the ordinance or resolution to each board of election commissioners, which shall order the proposition submitted to the electors of the taxing district within its jurisdiction at the election specified in the ordinance or resolution.

(f) With respect to taxing districts having all of their equalized assessed valuation located in one county, if a majority of the votes cast on the proposition are against the proposition, then this Law shall not apply to the taxing district beginning on January 1 of the year following the date of the referendum.

(g) With respect to taxing districts that do not have all of their equalized assessed valuation located in a single county, if both of the following conditions are met, then this Law shall no longer apply to the taxing district beginning on January 1 of the year following the date of the referendum.

(1) Each county in which the district has any equalized assessed valuation must either, (i) have held a referendum under this Section, (ii) be an affected county, or (iii) have held a referendum under Section 18-213 [35 ILCS 200/18-213] at which the voters rejected the proposition at the most recent election at which the question was on the ballot in the county.

(2) The majority of the equalized assessed valuation of the taxing district, other than any equalized assessed valuation in an affected county, is in one or more counties in which the voters rejected the proposition. For purposes of this Section, in determining whether a majority of the equalized assessed valuation of the taxing district is located in one or more counties in which the voters have rejected the proposition under this Section, the equalized assessed valuation of any taxing district in a county which has held a referendum under Section 18-213 [35 ILCS 200/18-213] at which the voters rejected that proposition, at the most recent election at which the question was on the ballot in the county, will be included with the equalized assessed value of the taxing district in counties in which the voters have rejected the referendum held under this Section.

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(h) Immediately after a referendum is held under this Section, the county clerk of the county holding the referendum shall give notice of the referendum having been held and its results to all taxing districts that have all or a portion of their equalized assessed valuation located in the county, the county clerk of any other county in which any of the equalized assessed valuation of any such taxing district is located, and the Department of Revenue. After the last referendum affecting a multi-county taxing district is held, the Department of Revenue shall determine whether the taxing district is no longer subject to this Law and, if the taxing district is no longer subject to this Law, the Department of Revenue shall notify the taxing district and the county clerks of all of the counties in which a portion of the equalized assessed valuation of the taxing district is located that, beginning on January 1 of the year following the date of the last referendum, the taxing district is no longer subject to this Law.

(Source: P.A. 89-718, § 5.)

Effective Date. Section 99 of P.A. 89-718 made this section effective upon becoming law. The Act was approved March 7, 1997.

CASE NOTES

Analysis

In General
Revocation

In General

School district did not become a new taxing district when it was partly annexed into a second county. As a result, under the Property Tax Extension Limitation Law it remained entirely in the first county for tax purposes. Bd. of Educ. of Auburn Cmty. Unit Sch. Dist. No. 10 v. Dep't of Revenue, 242 Ill. 2d 272, 351 Ill. Dec. 156, 950 N.E.2d 652, 2011 Ill. LEXIS 779 (2011).

Revocation

Taxing district's annexation of a tiny amount of property in a neighboring county that had never held a referendum to determine whether the Property Tax Extension Limitation Law, 35 ILCS 200/18-185 et seq. (PTELL), should be approved pursuant to 35 ILCS 200/18-213 did not affect the status of the taxing district's property in the forum county where the county voters had approved PTELL and had not revoked that approval through 35 ILCS 200/18-214. Thus, that part of the taxing district in the county not approving PTELL was not subject to PTELL while that part of the taxing district in the county that had approved PTELL was subject to PTELL, especially since the legislature could have specified a different result in its annexation statute, 35 ILCS 200/18-225, and chose not to do so. Bd. of Educ. v. Ill. Dep't of Revenue, 398 Ill. App. 3d 629,

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347 Ill. Dec. 19, 941 N.E.2d 888, 2010 Ill. App. LEXIS 174 (4 Dist. 2010).

§ 35 ILCS 200/18-215. Merging and consolidating taxing districts; transfer of service

Sec. 18-215. Merging and consolidating taxing districts; transfer of service. For purposes of this Law, when 2 or more taxing districts merge or consolidate, the sum of the last preceding aggregate extensions for each taxing district shall be combined for the resulting merged or consolidated taxing district. When a service performed by one taxing district is transferred to another taxing district, that part of the aggregate extension base for that purpose shall be transferred and added to the aggregate extension base of the transferee taxing district for purposes of this Law and shall be deducted from the aggregate extension base of the transferor taxing district. If the service and corresponding portion of the aggregate extension base transferred to the taxing district are for a service that the transferee district does not currently levy for, the provisions of Section 18-190 [35 ILCS 200/18-190] of this Law requiring a referendum to establish a new levy shall not apply.

(Source: P.A. 87-17; 88-455, § 18-215; 90-719, § 5.)

Note.

This section was derived from 35 ILCS 245/1-25, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 2501-25.

Effect of Amendments. The 1998 amendment by P.A. 90-719, effective August 7, 1998 added "; transfer of service" to the section catchline and added the third sentence.

§ 35 ILCS 200/18-220: Repealed by P.A. 89-1, § 95, effective February 12, 1995.

§ 35 ILCS 200/18-225. Annexed or disconnected property

Sec. 18-225. Annexed or disconnected property. If property is annexed into the taxing district or is disconnected from a taxing district during the current levy year, the calculation of the limiting rate under Section 18-185 [35 ILCS 200/18-185] is not affected. The rates as limited under this Law are applied to all property in the district for the current levy year, excluding property that was annexed after the adoption of the levy for the current levy year.

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(Source: P.A. 87-17; 88-455, § 18-225; 89-1, § 10.)

Note.

This section was derived from 35 ILCS 245/1-32, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 2501-32.

CASE NOTES

Effect of Annexation

Taxing district's annexation of a tiny amount of property in a neighboring county that had never held a referendum to determine whether the Property Tax Extension Limitation Law, 35 ILCS 200/18-185 et seq. (PTELL), should be approved pursuant to 35 ILCS 200/18-213 did not affect the status of the taxing district's property in the forum county where the county voters had approved PTELL and had not revoked that approval through 35 ILCS 200/18-214. Thus, that part of the taxing district in the county not approving PTELL was not subject to PTELL while that part of the taxing district in the county that had approved PTELL was subject to PTELL, especially since the legislature could have specified a different result in its annexation statute, 35 ILCS 200/18-225, and chose not to do so. Bd. of Educ. v. Ill. Dep't of Revenue, 398 Ill. App. 3d 629, 347 Ill. Dec. 19, 941 N.E.2d 888, 2010 Ill. App. LEXIS 174 (4 Dist. 2010).

§ 35 ILCS 200/18-230. Rate increase or decrease factor

Sec. 18-230. Rate increase or decrease factor. Only when a new rate or a rate increase or decrease has been approved by referendum held prior to March 22, 2006, the aggregate extension base, as adjusted in Section 18-215 [35 ILCS 200/18-215], shall be multiplied by a rate increase (or decrease) factor. The numerator of the rate increase (or decrease) factor is the total combined rate for the funds that made up the aggregate extension for the taxing district for the prior year plus the rate increase approved or minus the rate decrease approved. The denominator of the rate increase or decrease factor is the total combined rate for the funds that made up the aggregate extension for the prior year. For those taxing districts for which a new rate or a rate increase has been approved by referendum held after December 31, 1988 and prior to March 22, 2006, and that did not increase their rate to the new maximum rate for that fund, the rate increase factor shall be adjusted for 4 levy years after the year of the referendum (unless the governing body of a taxing district to which this Law applied before the 1995 levy year that approved a tax rate increase at a general election held after 2002 directs the county clerk or clerks by resolution to make such adjustment for a lesser number of years) by a factor the numerator of which is the portion of the new or increased rate for which taxes were not extended plus the aggregate rate in effect for the levy year prior to the levy year in which the referendum was passed and the denominator of which is the aggregate rate in effect

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for the levy year prior to the levy year in which the referendum was passed.

(Source: P.A. 87-17; 88-455, § 18-230; 94-976, § 5.)

Note.

This section was derived from 35 ILCS 245/1-35, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 2501-35.

Section 18-220, referred to above, has been repealed.

Effect of Amendments. The 2006 amendment by P.A. 94-976, effective June 30, 2006, rewrote the section.

CASE NOTES

Increase Approved by Referendum

105 ILCS 5/17-3.4, regarding the form of a ballot, does not require a reading of 35 ILCS 200/18-230, regarding an increase by referendum in a school district's tax rate, that "rate increase approved" should be measured from the currently levied rate. Bd. of Educ. v. Cunningham, 346 Ill. App. 3d 1027, 282 Ill. Dec. 631, 806 N.E.2d 1219, 2004 Ill. App. LEXIS 318 (2 Dist. 2004), appeal denied, 211 Ill. 2d 571, Ill. Dec. , 823 N.E.2d 963 (2004).

Plain and ordinary meaning of the phrase "rate increase approved," in 35 ILCS 200/18-230, regarding the approval of a tax rate increase for a school district, requires use of the actual rate increase approved, not the difference between the current rate levied and the rate tax payers might expect to pay after the referendum is passed because a referendum is not required to increase an individual fund rate if the individual fund rate is not currently at its maximum, and an increase in an individual fund rate may not be possible because to do so could cause the aggregate levied rate for all school district taxes to exceed the maximum aggregate rate. but, even in such a situation, an individual fund rate may be raised if another individual fund rate is lowered such that the maximum aggregate rate is not exceeded. So the purpose of a referendum seeking an increase in an individual fund rate is to seek approval for increasing the maximum rate for that fund, not to seek approval simply to increase the rate; such approval is not necessary if the individual fund rate is not currently at its maximum, and the rate actually approved through such a referendum is the difference between the old maximum rate and the new maximum rate. Bd. of Educ. v. Cunningham, 346 Ill. App. 3d 1027, 282 Ill. Dec. 631, 806 N.E.2d 1219, 2004 Ill. App. LEXIS 318 (2 Dist. 2004), appeal denied, 211 Ill. 2d 571, Ill. Dec. , 823 N.E.2d 963 (2004).

When a county clerk was sued regarding his calculation of a school district's tax increase approved by a referendum, he was entitled to summary judgment because he correctly found, under 35 ILCS 200/18-230, that the increase approved was the difference between the maximum tax rate previously approved and the maximum tax rate newly approved, rather than the difference between the tax rate previously levied and the newly approved maximum. Bd. of Educ. v. Cunningham, 346 Ill. App. 3d 1027, 282 Ill. Dec. 631, 806 N.E.2d 1219, 2004 Ill. App. LEXIS 318 (2 Dist. 2004), appeal denied, 211 Ill. 2d 571, Ill. Dec. , 823 N.E.2d 963 (2004).

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Use of Rule Increase

- Prohibited

Taxing districts which did not implement the full rate increase approved by a referendum passed prior to December 31, 1988, are excluded from using the adjustment to the rate increase factor provided by this section and must submit any tax increase in excess of the limiting rate to approval by referendum. 1996 Op. Atty. Gen. (96-028).

§ 35 ILCS 200/18-235. Tax increment financing districts

Sec. 18-235. Tax increment financing districts. Extensions allocable to a special tax allocation fund and the amount of taxes abated under Sections 18-165 and 18-170 [35 ILCS 200/18-165 and 35 ILCS 200/18-170] are not included in the aggregate extension base when computing the limiting rate.

(Source: P.A. 87-17; 88-455, § 18-235.)

Note.

This section was derived from 35 ILCS 245/1-40, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 2501-40.

§ 35 ILCS 200/18-240. Certification of new property

Sec. 18-240. Certification of new property. (a) The township assessor, the multi-township assessor, the chief county assessment officer, the board of review, and the board of appeals shall cause the assessed value attributable to new property to be entered and certified in the assessment books under rules promulgated by the Department.

(b) For the levy year in which this Law first becomes applicable to a county pursuant to Section 18-213 [35 ILCS 200/18-213], the chief county assessment officer shall certify to the county clerk, after all changes by the board of review or board of appeals, as the case may be, the assessed value of new property by taxing districts for that levy year under rules promulgated by the Department.

(Source: P.A. 87-17; 88-455, § 18-240; 89-510, § 10.)

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Note.

This section was derived from 35 ILCS 245/1-45, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 2501-45.

§ 35 ILCS 200/18-241. School Finance Authority and Financial Oversight Panel

Sec. 18-241. School Finance Authority and Financial Oversight Panel. (a) A School Finance Authority established under Article 1E or 1F of the School Code [105 ILCS 5/1E-1 et seq. or 105 ILCS 5/1F-1 et seq.] shall not be a taxing district for purposes of this Law. A Financial Oversight Panel established under Article 1H of the School Code [105 ILCS 5/1H-1 et seq.] shall not be a taxing district for purposes of this Law.

(b) This Law shall not apply to the extension of taxes for a school district for the levy year in which a School Finance Authority for the district is created pursuant to Article 1E or 1F of the School Code. This Law shall not apply to the extension of taxes for the purpose of repaying an emergency financial assistance loan levied pursuant to Section 1H-65 of the School Code [105 ILCS 5/1H-65].

(Source: P.A. 92-547, § 5; 93-501, § 3; 97-429, § 5.)

Effective Date. Section 99 of P.A. 92-547 made this section effective upon becoming law. The Act was approved June 13, 2002.

Effect of Amendments. The 2003 amendment by P.A. 93-501, effective August 11, 2003, inserted "or 1F" following "Article 1E" in subsections (a) and (b).

The 2011 amendment by P.A. 97-429, effective August 16, 2011, added "and Financial Oversight Panel" to the end of the section heading; and added the second sentence to (a) and (b).

§ 35 ILCS 200/18-243. Severability

Sec. 18-243. Severability. The provisions of the Property Tax Extension Limitation Law [35 ILCS 200/18-246 et seq.] are severable under Section 1.31 of the Statute on Statutes [5 ILCS 70/1.31].

(Source: P.A. 89-1, § 10.)

Effective Date. Section 99 of P.A. 89-1 made this section effective upon becoming law. The Act was approved February 12, 1995.

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§ 35 ILCS 200/18-245. Rules

Sec. 18-245. Rules. The Department shall make and promulgate reasonable rules relating to the administration of the purposes and provisions of Sections 18-185 through 18-240 [35 ILCS 200/18-185 through 35 ILCS 200/18-240] as may be necessary or appropriate.

(Source: P.A. 87-17; 88-455, § 18-245.)

Note.

This section was derived from 35 ILCS 245/1-50, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 2501-50.

Division 5.1.
One-year Property Tax Extension Limitation Law

§ 35 ILCS 200/18-246. Short title; definitions

Sec. 18-246. Short title; definitions. This Division 5.1 may be cited as the One-year Property Tax Extension Limitation Law [35 ILCS 200/18-85 et seq.].

As used in this Division 5.1:

"Taxing district" has the same meaning provided in Section 1-150 [35 ILCS 200/1-150], except that it includes only each non-home rule taxing district with the majority of its 1993 equalized assessed value contained in one or more affected counties, as defined in Section 18-185 [35 ILCS 200/18-185], other than those taxing districts subject to the Property Tax Extension Limitation Law [35 ILCS 200/18-185 et seq.] before the effective date of this amendatory Act of 1995.

"Aggregate extension" means the annual corporate extension for the taxing district and those special purpose extensions that are made annually for the taxing district, excluding special purpose extensions: (a) made for the taxing district to pay interest or principal on general obligation bonds that were approved by referendum; (b) made for any taxing district to pay interest or principal on general obligation bonds issued before March 1, 1995; (c) made for any taxing district to pay interest or principal on bonds issued to refund or continue to refund those bonds issued before March 1, 1995; (d) made for any taxing district to pay interest or principal on bonds issued to refund or continue to refund bonds issued after March 1, 1995 that were approved by referendum; (e) made for any taxing district to pay interest or principal on revenue bonds issued before March 1, 1995

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for payment of which a property tax levy or the full faith and credit of the unit of local government is pledged; however, a tax for the payment of interest or principal on those bonds shall be made only after the governing body of the unit of local government finds that all other sources for payment are insufficient to make those payments; (f) made for payments under a building commission lease when the lease payments are for the retirement of bonds issued by the commission before March 1, 1995, to pay for the building project; (g) made for payments due under installment contracts entered into before March 1, 1995; and (h) made for payments of principal and interest on bonds issued under the Metropolitan Water Reclamation District Act [70 ILCS 2605/1 et seq.] to finance construction projects initiated before October 1, 1991.

"Special purpose extensions" includes, but is not limited to, extensions for levies made on an annual basis for unemployment compensation, workers' compensation, self-insurance, contributions to pension plans, and extensions made under Section 6-601 of the Illinois Highway Code [605 ILCS 5/6-601] for a road district's permanent road fund, whether levied annually or not. The extension for a special service area is not included in the aggregate extension.

"Aggregate extension base" means the taxing district's aggregate extension for the 1993 levy year as adjusted under Section 18-248 [35 ILCS 200/18-248].

"Levy year" has the same meaning as "year" under Section 1-155 [35 ILCS 200/1-155].

"New property" means (i) the assessed value, after final board of review or board of appeals action, of new improvements or additions to existing improvements on any parcel of real property that increase the assessed value of that real property during the levy year multiplied by the equalization factor issued by the Department under Section 17-30 [35 ILCS 200/17-30] and (ii) the assessed value, after final board of review or board of appeals action, of real property not exempt from real estate taxation, which real property was exempt from real estate taxation for any portion of the immediately preceding levy year, multiplied by the equalization factor issued by the Department under Section 17-30 [35 ILCS 200/17-30].

"Recovered tax increment value" means the amount of the 1994 equalized assessed value, in the first year after a city terminates the designation of an area as a redevelopment project area previously established under the Tax Increment Allocation Development Act of the Illinois Municipal Code or previously established under the Industrial Jobs Recovery Law of the Illinois Municipal Code [65 ILCS 5/11-74.6-1 et seq.], or previously established under the Economic Development Area Tax Increment Allocation Act [20 ILCS 620/1 et seq.], of each taxable lot, block, tract, or parcel of real property in the redevelopment project area over and above the initial equalized assessed value of each property in the redevelopment project area.

Except as otherwise provided in this Section, "limiting rate" means a fraction the numerator of which is the aggregate extension base times 1.05 and the denominator of which is the 1994 equalized assessed value of all real property in the territory under the jurisdiction of the taxing district during the 1993 levy year. The denominator shall not include new property and shall not include the recovered tax increment value.

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(Source: P.A. 89-1, § 10; 89-138, § 5; 89-436, § 5; 91-357, § 61.)

Note.

The reference to the Tax Increment Allocation Development Act above appears to be a reference to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 89-1 made this Division effective upon becoming law. The Act was approved February 12, 1995.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted references to Division 5.1 for references to Sections 18-247 through 18-249.5 in the first two sentences.

§ 35 ILCS 200/18-247. Limitation

Sec. 18-247. Limitation. Tax extensions for the 1994 levy year made under Sections 18-45 and 18-105 [35 ILCS 200/18-45 and 35 ILCS 200/18-105] are further limited by the provisions of this Law.

For those taxing districts for which the county clerk extended taxes for any funds included in the aggregate extension base for the 1993 levy year, the county clerk shall extend a rate for the sum of the funds in the aggregate extension base that is no greater than the limiting rate.

This limitation does not apply to those taxing districts for which the county clerk did not extend taxes for any funds included in the aggregate extension base for the 1993 levy year, except that it does apply to those districts that have an aggregate extension base established under subsection (a) of Section 18-248 [35 ILCS 200/18-248].

If the county clerk is required to reduce the aggregate extension of a taxing district by provisions of this Law, the county clerk shall proportionally reduce the extension for each fund unless otherwise requested by the taxing district.

(Source: P.A. 89-1, § 10.)

§ 35 ILCS 200/18-248. Adjustments to the limiting rate

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Sec. 18-248. Adjustments to the limiting rate. (a) Merging and consolidating taxing districts. For purpose of this Law, when 2 or more taxing districts merge or consolidate, the sum of the last preceding aggregate extension for each taxing district shall be combined for the resulting merged or consolidated taxing district. When a service performed by one taxing district is transferred to another taxing district, that part of the aggregate extension base for that purpose shall be transferred and added to the aggregate extension base of the transferee taxing district for purposes of this Law and shall be deducted from the aggregate extension base of the transferor taxing district.

(b) Annexed or disconnected property. If property is annexed into the taxing district or is disconnected from a taxing district during the current levy year, the calculation of the limiting rate under Section 18-246 [35 ILCS 200/18-246] is not affected. The rates as limited under this Law are applied to all property in the district for the 1994 levy year, excluding property that was annexed after the adoption of the levy for the current levy year.

(c) Rate increase or decrease factor. When a new rate or a rate increase or decrease that is first effective for the 1994 levy year has been approved by referendum, the aggregate extension base, as adjusted in subsection (a), shall be multiplied by a rate increase or decrease factor. The numerator of the rate increase or decrease factor is the total combined rate for the funds that made up the aggregate extension for the taxing district for the 1993 levy year plus the rate increase approved or minus the rate decrease approved. The denominator of the rate increase or decrease factor is the total combined rate for the funds that made up the aggregate extension for the 1993 levy year. For those taxing districts for which a new rate or a rate increase has been approved by referendum held after December 31, 1989, and that did not increase their rate to the new maximum rate for that fund, the rate increase factor for the 1994 levy year shall be adjusted by a factor the numerator of which is the portion of the new or increased rate for which taxes were not extended plus the aggregate rate in effect for the levy year prior to the levy year in which the referendum was passed and the denominator of which is the aggregate rate in effect for the levy year prior to the levy year in which the referendum was passed.

(d) Tax increment financing districts. Extensions allocable to a special tax allocation fund and the amount of taxes abated under Sections 18-165 and 18-170 [35 ILCS 200/18-165 and 35 ILCS 200/18-170] are not included in the aggregate extension base when computing the limiting rate.

(Source: P.A. 89-1, § 10.)

§ 35 ILCS 200/18-249. Miscellaneous provisions

Sec. 18-249. Miscellaneous provisions. (a) Certification of new property. For the 1994 levy year, the chief county assessment officer shall certify to the county clerk, after all changes by the board of review or board of appeals, as the case may be, the assessed

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value of new property by taxing district for the 1994 levy year under rules promulgated by the Department.

(b) School Code. A school district's State aid shall not be reduced under the computation under subsections 5(a) through 5(h) of Part A of Section 18-8 of the School Code [105 ILCS 5/18-8] due to the operating tax rate falling from above the minimum requirement of that Section of the School Code [105 ILCS 5/18-8] to below the minimum requirement of that Section of the School Code [105 ILCS 5/18-8] due to the operation of this Law.

(c) Rules. The Department shall make and promulgate reasonable rules relating to the administration of the purposes and provisions of Sections 18-246 through 18-249 [35 ILCS 200/18-246 through 35 ILCS 200/18-249] as may be necessary or appropriate.

(Source: P.A. 89-1, § 10.)

§ 35 ILCS 200/18-249.5. Severability

Sec. 18-249.5. Severability. The provisions of the One-year Property Tax Extension Limitation Law [35 ILCS 200/18-246] are severable under Section 1.31 of the Statute on Statutes [5 ILCS 70/1.31].

(Source: P.A. 89-1, § 10.)

Division 6.

Preparation and delivery of books

§ 35 ILCS 200/18-250. Additions to forfeited taxes and unpaid special assessments; fee for estimate

Sec. 18-250. Additions to forfeited taxes and unpaid special assessments; fee for estimate. (a) When any property has been forfeited for taxes or special assessments, the clerk shall compute the amount of back taxes and special assessments, interest, statutory costs, and printer's fees remaining due, with one year's interest on all taxes forfeited, and

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enter them upon the collector's books as separate items. Except as otherwise provided in Section 21-375 [35 ILCS 200/21-375], the aggregate so computed shall be collected in the same manner as the taxes on other property for that year. The county clerk shall examine the forfeitures, and strike all errors and make corrections as necessary. Interest added to forfeitures under this Section shall be at the rate of 12% per year.

(b) In counties with 3,000,000 or more inhabitants, taxes first extended for prior years, or previously extended for prior years for which application for judgment and order of sale is not already pending, shall be added to the tax of the current year, with interest and costs as provided by law. Forfeitures shall not be so added, but they shall remain a lien on the property upon which they were charged until paid or sold as provided by law. There shall be added to such forfeitures annually the same interest as would be added if forfeited annually, until paid or sold, and the addition of each year's interest shall be considered a separate forfeiture. Forfeitures may be redeemed in the manner provided in Section 21-370 or 21-375 [35 ILCS 200/21-370 or 35 ILCS 200/21-375]. Taxes and special assessments for which application for judgment and order of sale is pending, or entered but not enforced for any reason, shall not be added to the tax for the current year. However, if the taxes and special assessments remain unpaid, the property, shall be advertised and sold under judgments and orders of sale to be entered in pending applications, or already entered in prior applications, including judgments and orders of sale under which the purchaser fails to complete his or her purchase.

(c) In counties with 3,000,000 or more inhabitants, on or before January 1, 2001 and during each year thereafter, the county clerk shall compute the amount of taxes on each property that remain due or forfeited for any year prior to the current year and have not become subject to Sections 20-180 through 20-190 [35 ILCS 200/20-180 through 35 ILCS 200/20-190], and the clerk shall enter the same upon the collector's warrant books of the current and all following years as separate items in a suitable column. The county clerk shall examine the collector's warrant books and the Tax Judgment, Sale, Redemption and Forfeiture records for the appropriate years and may take any other actions as the clerk finds to be necessary or convenient in order to comply with this subsection. On and after January 1, 2001, any taxes for any year remaining due or forfeited against real property in such county not entered on the current collector's warrant books shall be deemed uncollectible and void, but shall not be subject to the posting or other requirements of Sections 20-180 through 20-190 [35 ILCS 200/20-180 through 35 ILCS 200/20-190].

(d) In counties with 100,000 or more inhabitants, the county clerk shall, when making the annual collector's books, in a suitable column, insert and designate previous forfeitures of general taxes by the word "forfeiture", to be stamped opposite each property forfeited at the last previous tax sale for general taxes and not redeemed or purchased previous to the completion of the collector's books. The collectors of general taxes shall stamp upon all bills rendered and receipts given the information on the collector's books regarding forfeiture of general taxes, and the stamped notation shall also refer the recipient to the county clerk for full information. The county clerk shall be allowed to collect from the person requesting an estimate of costs of redemption of a forfeited property, the fee provided by law.

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(Source: P.A. 83-348; 88-451, § 30; 88-455, § 18-250; 88-670, § 2-25; 91-668, § 5.)

Note.

This section was derived from 35 ILCS 205/165, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 646.

Effect of Amendments. The 1999 amendment by P.A. 91-668, effective December 22, 1999, rewrote subsection (c) to such an extent that a detailed comparison would be impracticable.

CASE NOTES

Analysis

Assessments
- Penalty
Subdivided Land

Assessments

- Penalty

In a prior similar provision which provided a penalty of 25% where property had been forfeited to the state, but did not mention assessments, only taxes, since assessments were not considered the same as taxes, within the meaning of the statute, there was no authority for adding 25% to the unpaid back assessments. Hosmer v. Hunt Drainage Dist., 134 Ill. 317, 25 N.E. 747 (1890).

Subdivided Land

Under a prior similar provision, where a tract of land upon which there were unpaid back taxes was subdivided into blocks and lots, a county clerk had no authority to divide such back taxes and extend the several parts upon the lots and blocks. Mecartney v. Morse, 137 Ill. 481, 26 N.E. 376 (1890).

Practice Guides and Treatises.

Residential Real Estate § 10.93 Sales in Error (IICLE).

Real Estate Taxation § 10.79 Eminent Domain (IICLE).

Real Estate Taxation § 10.17 The Warrant Books (IICLE).

Real Estate Taxation § 8.22 Proving Up Extensions (IICLE).

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§ 35 ILCS 200/18-255. Abstract of assessments and extensions

Sec. 18-255. Abstract of assessments and extensions. When the collector's books are completed, the county clerk shall make a complete statement of the assessment and extensions, in conformity to the instructions of the Department. The clerk shall certify the statement to the Department.

(Source: Laws 1943, vol. 1, p. 1136; P.A. 88-455, § 18-255.)

Note.

This section was derived from 35 ILCS 205/168, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 649.

§ 35 ILCS 200/18-260. Equalization certificate

Sec. 18-260. Equalization certificate. The county clerk shall make, in each collector's book, a certificate of the equalization factor as determined by the Department.

(Source: Laws 1943, vol. 1, p. 1136; P.A. 88-455, § 18-260.)

Note.

This section was derived from 35 ILCS 205/169, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 650.

Practice Guides and Treatises.

Real Estate Taxation § 8.24 Certificate of Tax Rates and Delivery of Collectors' Books to Collectors (IICLE).

§ 35 ILCS 200/18-265. Collector's warrant

Sec. 18-265. Collector's warrant. A warrant, under the signature and official seal of the county clerk, shall be annexed to each collector's book, commanding the collector to collect from the persons named in the book the sums entered opposite their respective names. The warrant shall direct the collector to pay the taxes collected to the officers

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entitled to them.

(Source: P.A. 84-550; 88-455, § 18-265.)

Note.

This section was derived from 35 ILCS 205/170, which was itself derived from Ill.Rev.Stat., Ch. 120, para 651.

CASE NOTES

Analysis

Construction
Evidence
- County Collector's Return
- Warrants

Construction

This section requires the county clerk to annex to each collector's book a warrant under his hand and seal, commanding the collector to collect from the several persons named in said book the several sums entered in the column of totals opposite their respective names. United States v. Meyer, 199 F. Supp. 508 (S.D. Ill. 1961).

Evidence

- County Collector's Return

To maintain an action of debt for the recovery of personal property taxes, the introduction in evidence of the county collector's return is not essential if other competent evidence that the taxes remain due and unpaid is adduced. People v. Calumet Steel Co., 355 Ill. 375, 189 N.E. 305 (1934).

- Warrants

Where the assessment roll, the warrant, and the additional evidence established prima facie the liability of appellee to pay taxes on his personal property, the warrant should not have been excluded. People v. Calumet Steel Co., 355 Ill. 375, 189 N.E. 305 (1934).

§ 35 ILCS 200/18-270. Delivery of collector's books

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Sec. 18-270. Delivery of collector's books. County clerks shall deliver the books for the collection of taxes and the books for the collection of taxes charged against railroad property to the duly qualified county or township collectors on or before December 31 annually, or as soon as practicable. Each collector shall receive the books or as soon as he or she is qualified. However, for the 10 years next following the completion of a general reassessment of property in any county with 3,000,000 or more inhabitants made under an order of the Department, as soon as such books are ready for delivery the county clerk shall specify a day for the delivery of the books to the collectors, shall give notice to the collectors of the specified day, and shall deliver the books on that day.

(Source: P.A. 76-2254; 88-455, § 18-270.)

Note.

This section was derived from 35 ILCS 205/172, which was itself derived from Ill.Rev.Stat., Ch. 120, para. 653.

CASE NOTES

Analysis

Constitutionality
Certificate of Levy
- Date of Amendment
Delivery Date
- Not Mandatory
Filing of Bond Ordinance
Time of Levy
- Mandatory

Constitutionality

The language of Ill. Const. (1970), Art. IV, § 5(c) does not constitute a continuing mandate to the legislature to abolish ad valorem taxes on personal property after January 1, 1979, which would be unenforceable by the courts; instead, it constitutes a limitation on the power to tax after that date; however, this interpretation does not affect 1978 personal property taxes collectable in 1979, since under Illinois' scheme of taxation the taxes for the year 1978 had accrued prior to January 1, 1979. Client Follow-Up Co. v. Hynes, 75 Ill. 2d 208, 28 Ill. Dec. 488, 390 N.E.2d 847 (1979).

The mandate to the General Assembly to enact a replacement tax under Ill. Const. (1970), Art. IX, § 5(c) continued after the tax was abolished on January 1, 1979; although such a mandate was not generally judicially enforceable, it did, nonetheless, constitute a constitutional command

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to the General Assembly to act. Client Follow-Up Co. v. Hynes, 75 Ill. 2d 208, 28 Ill. Dec. 488, 390 N.E.2d 847 (1979).

Certificate of Levy

- Date of Amendment

A writ of mandamus that directed the tax commissioner to amend a certificate of levy of roads and bridges was invalid because it required levy of a tax after the date the tax books were to be completed and in the county collector's possession. People ex. rel. Euziere v. Rice, 290 Ill. App. 514, 8 N.E.2d 683 (2 Dist. 1937).

Delivery Date

- Not Mandatory

Under a prior similar provision, delivery of the tax books by the county clerk to the county collector on or before December 1 was not mandatory. People ex rel. Ward v. Chicago & E. I. Ry., 365 Ill. 202, 6 N.E.2d 119 (1936).

Filing of Bond Ordinance

Where a bond ordinance was not filed at the time of issuance of the bonds, and was not filed until after the time for the books to be closed, the alleged infirmities were not fatal because a levy could be made later in an annual tax levy ordinance for the current year's debt and interest. Central Ill. Pub. Serv. Co. v. Miller, 42 Ill. 2d 542, 248 N.E.2d 89 (1969).

Time of Levy

- Mandatory

Where a statute fixes a period within which or a day on which a tax is to be levied, time is of the essence and the command of the statute in that respect is mandatory. People ex rel. Ward v. Chicago & E. I. Ry., 365 Ill. 202, 6 N.E.2d 119 (1936).

Practice Guides and Treatises.

Residential Real Estate § 10.79 Property Tax Collection Process and Due Dates (IICLE).

Real Estate Taxation § 8.24 Certificate of Tax Rates and Delivery of Collectors' Books to Collectors (IICLE).

Real Estate Taxation § 8.14 Overview of the Tax Extension Process (IICLE).

§ 35 ILCS 200/18-275. Delivery to township collectors

Sec. 18-275. Delivery to township collectors. On the delivery of the tax books to the township collectors, the clerk shall make a certified statement setting forth the name of each township collector, the amount of taxes to be collected and paid for each purpose for

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which the tax is levied in each taxing district and furnish the same statement to the county collector.

(Source: Laws 1939, p. 886; P.A. 88-455, § 18-275.)

Note.

This section was derived from 35 ILCS 205/173, which itself was derived from Ill.Rev.Stat., Ch. 120, para. 654.

Practice Guides and Treatises.

Real Estate Taxation § 8.24 Certificate of Tax Rates and Delivery of Collectors' Books to Collectors (IICLE).

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CHAPTER 40.
PENSIONS

40 ILCS 5Illinois Pension Code

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Illinois Pension Code

Article 1

General Provisions: Short Title, Effect Of Code And Other Provisions

40 ILCS 5/1-160.Provisions applicable to new hires

Article 16

Teachers' Retirement System Of The State Of Illinois

40 ILCS 5/16-127.Computation of creditable service
40 ILCS 5/16-128.Creditable service - required contributions
40 ILCS 5/16-129.1.Optional increase in retirement annuity
40 ILCS 5/16-130.Creditable service - whole or portion of year
40 ILCS 5/16-133.2.Early retirement without discount
40 ILCS 5/16-133.3.Early retirement incentives for State employees
40 ILCS 5/16-133.4.Early retirement incentives for teachers
40 ILCS 5/16-133.5.Early retirement incentives for teachers
40 ILCS 5/16-152.Contributions by members
40 ILCS 5/16-152.1.Pickup of contributions
40 ILCS 5/16-154.Deductions from salary
40 ILCS 5/16-155.Report to system and payment of deductions
40 ILCS 5/16-158.1.Actions to enforce payments by school districts and other employing units

Article 17

Public School Teachers' Pension And Retirement Fund - Cities Of Over 500,000 Inhabitants

40 ILCS 5/17-116.1.Early retirement without discount
40 ILCS 5/17-116.3.Early retirement incentives
40 ILCS 5/17-116.4.Early retirement incentives
40 ILCS 5/17-116.5.Early retirement incentives
40 ILCS 5/17-116.6.Early retirement incentives
40 ILCS 5/17-130.Participants' contributions by payroll deductions
40 ILCS 5/17-130.1.Employer contributions on behalf of employees
40 ILCS 5/17-130.2.Pickup of optional contributions
40 ILCS 5/17-130.3.Election of medicare coverage
40 ILCS 5/17-131.Administration of payroll deductions
40 ILCS 5/17-132.Payments and certification of salary deductions

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Article 1.

General Provisions: Short Title, Effect of Code and other Provisions

§ 40 ILCS 5/1-160. Provisions applicable to new hires

Sec. 1-160. Provisions applicable to new hires. (a) The provisions of this Section apply to a person who, on or after January 1, 2011, first becomes a member or a participant under any reciprocal retirement system or pension fund established under this Code, other than a retirement system or pension fund established under Article 2, 3, 4, 5, 6, or 18 of this Code [40 ILCS 5/2-101 et seq., 40 ILCS 5/3-101 et seq., 40 ILCS 5/4-101 et seq., 40 ILCS 5/5-101 et seq., 40 ILCS 5/6-101 et seq., or 40 ILCS 5/18-101 et seq.], notwithstanding any other provision of this Code to the contrary, but do not apply to any self-managed plan established under this Code, to any person with respect to service as a sheriff's law enforcement employee under Article 7 [40 ILCS 5/7-101 et seq.], or to any participant of the retirement plan established under Section 22-101 [40 ILCS 5/22-101].

(b) "Final average salary" means the average monthly (or annual) salary obtained by dividing the total salary or earnings calculated under the Article applicable to the member or participant during the 96 consecutive months (or 8 consecutive years) of service within the last 120 months (or 10 years) of service in which the total salary or earnings calculated under the applicable Article was the highest by the number of months (or years) of service in that period. For the purposes of a person who first becomes a member or participant of any retirement system or pension fund to which this Section applies on or after January 1, 2011, in this Code, "final average salary" shall be substituted for the following:

(1) In Articles 7 (except for service as sheriff's law enforcement employees) and 15 [40 ILCS 5/15-101 et seq.], "final rate of earnings".

(2) In Articles 8, 9, 10, 11, and 12 [40 ILCS 5/8-101 et seq., 40 ILCS 5/9-101 et seq., 40 ILCS 5/10-101 et seq., 40 ILCS 5/11-101 and 40 ILCS 5/18-101 et seq.], "highest average annual salary for any 4 consecutive years within the last 10 years of service immediately preceding the date of withdrawal".

(3) In Article 13 40 ILCS 5/13-101 et seq., "average final salary".

(4) In Article 14 40 ILCS 5/14-101 et seq., "final average compensation".

(5) In Article 17 40 ILCS 5/17-101 et seq., "average salary".

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(6) In Section 22-207 [40 ILCS 5/22-207], "wages or salary received by him at the date of retirement or discharge".

(b-5) Beginning on January 1, 2011, for all purposes under this Code (including without limitation the calculation of benefits and employee contributions), the annual earnings, salary, or wages (based on the plan year) of a member or participant to whom this Section applies shall not exceed $106,800; however, that amount shall annually thereafter be increased by the lesser of (i) 3% of that amount, including all previous adjustments, or (ii) one-half the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 months ending with the September preceding each November 1, including all previous adjustments.

For the purposes of this Section, "consumer price index-u" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers, United States city average, all items, 1982-84 = 100. The new amount resulting from each annual adjustment shall be determined by the Public Pension Division of the Department of Insurance and made available to the boards of the retirement systems and pension funds by November 1 of each year.

(c) A member or participant is entitled to a retirement annuity upon written application if he or she has attained age 67 and has at least 10 years of service credit and is otherwise eligible under the requirements of the applicable Article.

A member or participant who has attained age 62 and has at least 10 years of service credit and is otherwise eligible under the requirements of the applicable Article may elect to receive the lower retirement annuity provided in subsection (d) of this Section.

(d) The retirement annuity of a member or participant who is retiring after attaining age 62 with at least 10 years of service credit shall be reduced by one-half of 1% for each full month that the member's age is under age 67.

(e) Any retirement annuity or supplemental annuity shall be subject to annual increases on the January 1 occurring either on or after the attainment of age 67 or the first anniversary of the annuity start date, whichever is later. Each annual increase shall be calculated at 3% or one-half the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 months ending with the September preceding each November 1, whichever is less, of the originally granted retirement annuity. If the annual unadjusted percentage change in the consumer price index-u for the 12 months ending with the September preceding each November 1 is zero or there is a decrease, then the annuity shall not be increased.

(f) The initial survivor's or widow's annuity of an otherwise eligible survivor or widow of a retired member or participant who first became a member or participant on or after January 1, 2011 shall be in the amount of 66 2/3% of the retired member's or participant's retirement annuity at the date of death. In the case of the death of a member or participant who has not retired and who first became a member or participant on or after January 1, 2011, eligibility for a survivor's or widow's annuity shall be determined by the applicable Article of this Code. The initial benefit shall be 66 2/3% of the earned annuity without a

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reduction due to age. A child's annuity of an otherwise eligible child shall be in the amount prescribed under each Article if applicable. Any survivor's or widow's annuity shall be increased (1) on each January 1 occurring on or after the commencement of the annuity if the deceased member died while receiving a retirement annuity or (2) in other cases, on each January 1 occurring after the first anniversary of the commencement of the annuity. Each annual increase shall be calculated at 3% or one-half the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 months ending with the September preceding each November 1, whichever is less, of the originally granted survivor's annuity. If the annual unadjusted percentage change in the consumer price index-u for the 12 months ending with the September preceding each November 1 is zero or there is a decrease, then the annuity shall not be increased.

(g) The benefits in Section 14-110 [40 ILCS 5/14-110] apply only if the person is a State policeman, a fire fighter in the fire protection service of a department, or a security employee of the Department of Corrections or the Department of Juvenile Justice, as those terms are defined in subsection (b) of Section 14-110. A person who meets the requirements of this Section is entitled to an annuity calculated under the provisions of Section 14-110, in lieu of the regular or minimum retirement annuity, only if the person has withdrawn from service with not less than 20 years of eligible creditable service and has attained age 60, regardless of whether the attainment of age 60 occurs while the person is still in service.

(h) If a person who first becomes a member or a participant of a retirement system or pension fund subject to this Section on or after January 1, 2011 is receiving a retirement annuity or retirement pension under that system or fund and becomes a member or participant under any other system or fund created by this Code and is employed on a full-time basis, except for those members or participants exempted from the provisions of this Section under subsection (a) of this Section, then the person's retirement annuity or retirement pension under that system or fund shall be suspended during that employment. Upon termination of that employment, the person's retirement annuity or retirement pension payments shall resume and be recalculated if recalculation is provided for under the applicable Article of this Code.

If a person who first becomes a member of a retirement system or pension fund subject to this Section on or after January 1, 2012 and is receiving a retirement annuity or retirement pension under that system or fund and accepts on a contractual basis a position to provide services to a governmental entity from which he or she has retired, then that person's annuity or retirement pension earned as an active employee of the employer shall be suspended during that contractual service. A person receiving an annuity or retirement pension under this Code shall notify the pension fund or retirement system from which he or she is receiving an annuity or retirement pension, as well as his or her contractual employer, of his or her retirement status before accepting contractual employment. A person who fails to submit such notification shall be guilty of a Class A misdemeanor and required to pay a fine of $1,000. Upon termination of that contractual employment, the person's retirement annuity or retirement pension payments shall resume and, if appropriate, be recalculated under the applicable provisions of this Code.

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(i) Notwithstanding any other provision of this Section, a person who first becomes a participant of the retirement system established under Article 15 on or after January 1, 2011 shall have the option to enroll in the self-managed plan created under Section 15-158.2 of this Code [40 ILCS 5/15-158.2].

(j) In the case of a conflict between the provisions of this Section and any other provision of this Code, the provisions of this Section shall control.

(Source: P.A. 96-889, § 10; 96-1490, § 5; 97-609, § 10.)

Note.

Section 97 of P.A. 96-889, provides: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes."

Section 95 of P.A. 96-1490 contains a "no acceleration or delay" provision.

Effective Date. This section is effective January 1, 2011, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2010 amendment by P.A. 96-1490, effective January 1, 2011, rewrote the section.

The 2011 amendment by P.A. 97-609, effective August 26, 2011, added the second paragraph to (h).

Article 16.

Teachers' Retirement System of the State of Illinois

§ 40 ILCS 5/16-127. Computation of creditable service

Sec. 16-127. Computation of creditable service. (a) Each member shall receive regular credit for all service as a teacher from the date membership begins, for which satisfactory evidence is supplied and all contributions have been paid.

(b) The following periods of service shall earn optional credit and each member shall receive credit for all such service for which satisfactory evidence is supplied and all contributions have been paid as of the date specified:

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(1) Prior service as a teacher.

(2) Service in a capacity essentially similar or equivalent to that of a teacher, in the public common schools in school districts in this State not included within the provisions of this System, or of any other State, territory, dependency or possession of the United States, or in schools operated by or under the auspices of the United States, or under the auspices of any agency or department of any other State, and service during any period of professional speech correction or special education experience for a public agency within this State or any other State, territory, dependency or possession of the United States, and service prior to February 1, 1951 as a recreation worker for the Illinois Department of Public Safety, for a period not exceeding the lesser of 2/5 of the total creditable service of the member or 10 years. The maximum service of 10 years which is allowable under this paragraph shall be reduced by the service credit which is validated by other retirement systems under paragraph (i) of Section 15-113 [40 ILCS 5/15-113] and paragraph 1 of Section 17-133 [40 ILCS 5/17-133]. Credit granted under this paragraph may not be used in determination of a retirement annuity or disability benefits unless the member has at least 5 years of creditable service earned subsequent to this employment with one or more of the following systems: Teachers' Retirement System of the State of Illinois, State Universities Retirement System, and the Public School Teachers' Pension and Retirement Fund of Chicago. Whenever such service credit exceeds the maximum allowed for all purposes of this Article, the first service rendered in point of time shall be considered. The changes to this subdivision (b)(2) made by Public Act 86-272 shall apply not only to persons who on or after its effective date (August 23, 1989) are in service as a teacher under the System, but also to persons whose status as such a teacher terminated prior to such effective date, whether or not such person is an annuitant on that date.

(3) Any periods immediately following teaching service, under this System or under Article 17 [40 ILCS 5/17-101 et seq.], (or immediately following service prior to February 1, 1951 as a recreation worker for the Illinois Department of Public Safety) spent in active service with the military forces of the United States; periods spent in educational programs that prepare for return to teaching sponsored by the federal government following such active military service; if a teacher returns to teaching service within one calendar year after discharge or after the completion of the educational program, a further period, not exceeding one calendar year, between time spent in military service or in such educational programs and the return to employment as a teacher under this System; and a period of up to 2 years of active military service not immediately following employment as a teacher.

The changes to this Section and Section 16-128 [40 ILCS 5/16-128] relating to military service made by P.A. 87-794 shall apply not only to persons who on or after its effective date are in service as a teacher under the System, but also to persons whose status as a teacher terminated prior to that date, whether or not the person is an annuitant on that date. In the case of an annuitant who applies for credit allowable under this Section for a period of military service that did not immediately follow employment, and who has made the required contributions for such credit, the annuity shall be recalculated to include the additional service credit, with the increase taking effect on the date the System received written notification of the annuitant's intent to purchase the credit, if payment of all the required contributions is made within 60 days of such notice, or else

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on the first annuity payment date following the date of payment of the required contributions. In calculating the automatic annual increase for an annuity that has been recalculated under this Section, the increase attributable to the additional service allowable under P.A. 87-794 shall be included in the calculation of automatic annual increases accruing after the effective date of the recalculation.

Credit for military service shall be determined as follows: if entry occurs during the months of July, August, or September and the member was a teacher at the end of the immediately preceding school term, credit shall be granted from July 1 of the year in which he or she entered service; if entry occurs during the school term and the teacher was in teaching service at the beginning of the school term, credit shall be granted from July 1 of such year. In all other cases where credit for military service is allowed, credit shall be granted from the date of entry into the service.

The total period of military service for which credit is granted shall not exceed 5 years for any member unless the service: (A) is validated before July 1, 1964, and (B) does not extend beyond July 1, 1963. Credit for military service shall be granted under this Section only if not more than 5 years of the military service for which credit is granted under this Section is used by the member to qualify for a military retirement allotment from any branch of the armed forces of the United States. The changes to this subdivision (b)(3) made by Public Act 86-272 shall apply not only to persons who on or after its effective date (August 23, 1989) are in service as a teacher under the System, but also to persons whose status as such a teacher terminated prior to such effective date, whether or not such person is an annuitant on that date.

(4) Any periods served as a member of the General Assembly.

(5)(i) Any periods for which a teacher, as defined in Section 16-106 [40 ILCS 5/16-106], is granted a leave of absence, provided he or she returns to teaching service creditable under this System or the State Universities Retirement System following the leave; (ii) periods during which a teacher is involuntarily laid off from teaching, provided he or she returns to teaching following the lay-off; (iii) periods prior to July 1, 1983 during which a teacher ceased covered employment due to pregnancy, provided that the teacher returned to teaching service creditable under this System or the State Universities Retirement System following the pregnancy and submits evidence satisfactory to the Board documenting that the employment ceased due to pregnancy; and (iv) periods prior to July 1, 1983 during which a teacher ceased covered employment for the purpose of adopting an infant under 3 years of age or caring for a newly adopted infant under 3 years of age, provided that the teacher returned to teaching service creditable under this System or the State Universities Retirement System following the adoption and submits evidence satisfactory to the Board documenting that the employment ceased for the purpose of adopting an infant under 3 years of age or caring for a newly adopted infant under 3 years of age. However, total credit under this paragraph (5) may not exceed 3 years.

Any qualified member or annuitant may apply for credit under item (iii) or (iv) of this paragraph (5) without regard to whether service was terminated before the effective date of this amendatory Act of 1997. In the case of an annuitant who establishes credit under item (iii) or (iv), the annuity shall be recalculated to include the additional service credit.

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The increase in annuity shall take effect on the date the System receives written notification of the annuitant's intent to purchase the credit, if the required evidence is submitted and the required contribution paid within 60 days of that notification, otherwise on the first annuity payment date following the System's receipt of the required evidence and contribution. The increase in an annuity recalculated under this provision shall be included in the calculation of automatic annual increases in the annuity accruing after the effective date of the recalculation.

Optional credit may be purchased under this subsection (b)(5) for periods during which a teacher has been granted a leave of absence pursuant to Section 24-13 of the School Code [105 ILCS 5/24-13]. A teacher whose service under this Article terminated prior to the effective date of P.A. 86-1488 shall be eligible to purchase such optional credit. If a teacher who purchases this optional credit is already receiving a retirement annuity under this Article, the annuity shall be recalculated as if the annuitant had applied for the leave of absence credit at the time of retirement. The difference between the entitled annuity and the actual annuity shall be credited to the purchase of the optional credit. The remainder of the purchase cost of the optional credit shall be paid on or before April 1, 1992.

The change in this paragraph made by Public Act 86-273 shall be applicable to teachers who retire after June 1, 1989, as well as to teachers who are in service on that date.

(6) Any days of unused and uncompensated accumulated sick leave earned by a teacher. The service credit granted under this paragraph shall be the ratio of the number of unused and uncompensated accumulated sick leave days to 170 days, subject to a maximum of 2 years of service credit. Prior to the member's retirement, each former employer shall certify to the System the number of unused and uncompensated accumulated sick leave days credited to the member at the time of termination of service. The period of unused sick leave shall not be considered in determining the effective date of retirement. A member is not required to make contributions in order to obtain service credit for unused sick leave.

Credit for sick leave shall, at retirement, be granted by the System for any retiring regional or assistant regional superintendent of schools at the rate of 6 days per year of creditable service or portion thereof established while serving as such superintendent or assistant superintendent.

(7) Periods prior to February 1, 1987 served as an employee of the Illinois Mathematics and Science Academy for which credit has not been terminated under Section 15-113.9 of this Code [40 ILCS 5/15-113.9].

(8) Service as a substitute teacher for work performed prior to July 1, 1990.

(9) Service as a part-time teacher for work performed prior to July 1, 1990.

(10) Up to 2 years of employment with Southern Illinois University - Carbondale from September 1, 1959 to August 31, 1961, or with Governors State University from September 1, 1972 to August 31, 1974, for which the teacher has no credit under Article 15. To receive credit under this item (10), a teacher must apply in writing to the Board

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and pay the required contributions before May 1, 1993 and have at least 12 years of service credit under this Article.

(b-1) A member may establish optional credit for up to 2 years of service as a teacher or administrator employed by a private school recognized by the Illinois State Board of Education, provided that the teacher (i) was certified under the law governing the certification of teachers at the time the service was rendered, (ii) applies in writing on or after August 1, 2009 and on or before August 1, 2012, (iii) supplies satisfactory evidence of the employment, (iv) completes at least 10 years of contributing service as a teacher as defined in Section 16-106 [40 ILCS 5/16-106], and (v) pays the contribution required in subsection (d-5) of Section 16-128 [40 ILCS 5/16-128]. The member may apply for credit under this subsection and pay the required contribution before completing the 10 years of contributing service required under item (iv), but the credit may not be used until the item (iv) contributing service requirement has been met.

(c) The service credits specified in this Section shall be granted only if: (1) such service credits are not used for credit in any other statutory tax-supported public employee retirement system other than the federal Social Security program; and (2) the member makes the required contributions as specified in Section 16-128. Except as provided in subsection (b-1) of this Section, the service credit shall be effective as of the date the required contributions are completed.

Any service credits granted under this Section shall terminate upon cessation of membership for any cause.

Credit may not be granted under this Section covering any period for which an age retirement or disability retirement allowance has been paid.

(Source: P.A. 86-272; 86-273; 86-1028; 86-1488; 87-11; 87-794; 87-895; 87-1265, § 1; 88-45, § 3-31; 89-430, § 10; 90-32, § 5; 92-867, § 5; 96-546, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 108 1/2, Para. 16-127.

Effect of Amendments. The 2002 amendment by P.A. 92-867, effective January 3, 2003, in subsection (b)(6) substituted "2 years" for "one year" in the first sentence; inserted subsection (b-1); and in the last sentence of the first paragraph of subsection (c) inserted "Except as provided in subsection (b-1) of this Section".

The 2009 amendment by P.A. 96-546, effective August 17, 2009, in the first sentence of (b-1), substituted "August 1, 2009" for "June 1, 2002" and "August 1, 2012" for "June 1, 2005."

CASE NOTES

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Analysis

Constitutionality
Construction
Legislative Intent
Service Credit
- Eligibility

Constitutionality

The fact that former subsection (5) of this section (see now subdivision (b)(3) of this section) created two classifications consisting of one group of teachers who were "members" of the system at the time of their entry into the service and who returned "to teaching service" within a specified short period thereafter, and thus could obtain retirement credit, and another group not meeting the requirements of the first class, who, therefore, were ineligible for benefits, did not deny the plaintiffs, who were in the latter group, equal protection or due process of the law. Fishman v. Teachers' Retirement Sys., 86 Ill. App. 3d 649, 41 Ill. Dec. 767, 408 N.E.2d 113 (4 Dist. 1980), cert. denied, 452 U.S. 915, 101 S. Ct. 3048, 69 L. Ed. 2d 418 (1981).

Construction

Under former subsection (5) of this section (see now subdivision (b)(3)) the Board of Trustees of the Teachers' Retirement System and the circuit court properly held that a teacher was not entitled to pension credit because use of the phrase "member returns to teaching" implies that the teacher must be a "member" at the time of returning to teaching and not a teacher who returns to teaching and, at that time, becomes a member. Fishman v. Teachers' Retirement Sys., 86 Ill. App. 3d 649, 41 Ill. Dec. 767, 408 N.E.2d 113 (4 Dist. 1980), cert. denied, 452 U.S. 915, 101 S. Ct. 3048, 69 L. Ed. 2d 418 (1981).

Legislative Intent

Prior to 1967, the prohibition against the use of annual credits was limited to any other "statutory public school Teachers' Retirement System," and it is thus apparent that it was the intention of the General Assembly that taxpayers would not be taxed for periods of service which were used by the claimant to obtain a pension from some other Teachers' Retirement System. Likewise, it would seem equally clear that it was the intention of the General Assembly that a teacher might not use service credits to obtain a pension in this state when that same annual credit was being used by the same teacher to obtain a pension from any other "statutory tax-supported public employee retirement system." It was thus apparent that until and unless the record indicated that an applicant was not within the perimeter of this section, he was entitled to a pension where he had complied with all of the provisions of the Teachers' Retirement System except to grow old before the amendment. Sarff v. Teachers' Retirement Sys., 130 Ill. App. 2d 670, 263 N.E.2d 504 (4 Dist. 1970).

Service Credit

- Eligibility

An individual must actually be employed in the public common school system in order to qualify as a "teacher," and therefore to be eligible for service credit. Falato v. Teachers' Retirement Sys.,

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209 Ill. App. 3d 419, 154 Ill. Dec. 233, 568 N.E.2d 233 (1 Dist. 1991).

RESEARCH REFERENCES

Services included in computing period of service for purpose of teachers' seniority, salary, tenure, or retirement benefits. 56 ALR5th 493.

§ 40 ILCS 5/16-128. Creditable service - required contributions

Sec. 16-128. Creditable service - required contributions. (a) In order to receive the creditable service specified under subsection (b) of Section 16-127 [40 ILCS 5/16-127], a member is required to make the following contributions: (i) an amount equal to the contributions which would have been required had such service been rendered as a member under this System; (ii) for military service not immediately following employment and for service established under subdivision (b)(10) of Section 16-127, an amount determined by the Board to be equal to the employer's normal cost of the benefits accrued for such service; and (iii) interest from the date the contributions would have been due (or, in the case of a person establishing credit for military service under subdivision (b)(3) of Section 16-127, the date of first membership in the System, if that date is later) to the date of payment, at the following rate of interest, compounded annually: for periods prior to July 1, 1965, regular interest; from July 1, 1965 to June 30, 1977, 4% per year; on and after July 1, 1977, regular interest.

(b) In order to receive creditable service under paragraph (2) of subsection (b) of Section 16-127 [40 ILCS 5/16-127] for those who were not members on June 30, 1963, the minimum required contribution shall be $420 per year of service together with interest at 4% per year compounded annually from July 1, preceding the date of membership until June 30, 1977 and at regular interest compounded annually thereafter to the date of payment.

(c) In determining the contribution required in order to receive creditable service under paragraph (3) of subsection (b) of Section 16-127, the salary rate for the remainder of the school term in which a member enters military service shall be assumed to be equal to the member's salary rate at the time of entering military service. However, for military service not immediately following employment, the salary rate on the last date as a participating teacher prior to such military service, or on the first date as a participating teacher after such military service, whichever is greater, shall be assumed to be equal to the member's salary rate at the time of entering military service. For each school term thereafter, the member's salary rate shall be assumed to be 5% higher than the salary rate in the previous school term.

(d) In determining the contribution required in order to receive creditable service under paragraph (5) of subsection (b) of Section 16-127, a member's salary rate during the period for which credit is being established shall be assumed to be equal to the member's last salary rate immediately preceding that period.

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(d-5) For each year of service credit to be established under subsection (b-1) of Section 16-127, a member is required to contribute to the System (i) the employee and employer contribution that would have been required had such service been rendered as a member based on the annual salary rate during the first year of full-time employment as a teacher under this Article following the private or parochial school service, plus (ii) interest thereon at the actuarially assumed rate from the date of first full-time employment as a teacher under this Article following the private or parochial school service to the date of payment, compounded annually, at a rate determined by the Board.

(d-10) For service credit established under paragraph (6) of subsection (b) of Section 16-127 for days granted by an employer in excess of the member's normal annual sick leave allotment, the employer is required to pay the normal cost of benefits based upon such service credit. This subsection (d-10) does not apply to sick leave granted to teachers under contracts or collective bargaining agreements entered into, amended, or renewed before June 1, 2005 (the effective date of Public Act 94-4). The employer contributions required under this subsection (d-10) shall be paid in the form of a lump sum within 30 days after receipt of the bill after the teacher begins receiving benefits under this Article.

(e) Except for contributions under subsection (d-10), the contributions required under this Section may be made from the date the statement for such creditable service is issued until retirement date. All such required contributions must be made before any retirement annuity is granted.

(Source: P.A. 86-1028; 86-1488; 87-794; 87-1265, § 1; 89-430, § 10; 92-867, § 5; 94-4, § 5; 94-1057, § 5; 96-546, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 108 1/2, Para. 16-128.

Effect of Amendments. The 2002 amendment by P.A. 92-867, effective January 3, 2003, inserted subsection (d-5).

The 2005 amendment by P.A. 94-4, effective June 1, 2005, added (d-10).

The 2006 amendment by P.A. 94-1057, effective July 31, 2006, in (d-10) added the last sentence and made stylistic changes; and added the exception language at the beginning of (e).

The 2009 amendment by P.A. 96-546, effective August 17, 2009, rewrote (d-5).

§ 40 ILCS 5/16-129.1. Optional increase in retirement annuity

Sec. 16-129.1. Optional increase in retirement annuity. (a) A member of the System may qualify for the augmented rate under subdivision (a)(B)(1) of Section 16-133 [40 ILCS 5/16-133] for all years of creditable service earned before July 1, 1998 by making the

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optional contribution specified in subsection (b). A member may not elect to qualify for the augmented rate for only a portion of his or her creditable service earned before July 1, 1998.

(b) The contribution shall be an amount equal to 1.0% of the member's highest salary rate in the 4 consecutive school years immediately prior to but not including the school year in which the application occurs, multiplied by the number of years of creditable service earned by the member before July 1, 1998 or 20, whichever is less. This contribution shall be reduced by 1.0% of that salary rate for every 3 full years of creditable service earned by the member after June 30, 1998. The contribution shall be further reduced at the rate of 25% of the contribution (as reduced for service after June 30, 1998) for each year of the member's total creditable service in excess of 34 years. The contribution shall not in any event exceed 20% of that salary rate.

The member shall pay to the System the amount of the contribution as calculated at the time of application under this Section. The amount of the contribution determined under this subsection shall be recalculated at the time of retirement, and if the System determines that the amount paid by the member exceeds the recalculated amount, the System shall refund the difference to the member with regular interest from the date of payment to the date of refund.

The contribution required by this subsection shall be paid in one of the following ways or in a combination of the following ways that does not extend over more than 5 years:

(i) in a lump sum on or before the date of retirement;

(ii) in substantially equal installments over a period of time not to exceed 5 years, as a deduction from salary in accordance with subsection (b) of Section 16-154 [40 ILCS 5/16-154];

(iii) in substantially equal monthly installments over a 24-month period, by reducing the annuitant's monthly benefit over a 24-month period by the amount of the otherwise applicable contribution. For federal and Illinois tax purposes, the monthly amount by which the annuitant's benefit is reduced shall not be treated as a contribution by the annuitant, but rather as a reduction of the annuitant's monthly benefit.

(c) If the member fails to make the full contribution under this Section in a timely fashion, the payments made under this Section shall be refunded to the member, without interest. If the member dies before making the full contribution, the payments made under this Section, together with regular interest thereon, shall be refunded to the member's designated beneficiary for benefits under Section 16-138 [40 ILCS 5/16-138].

(d) For purposes of this Section and subdivision (a)(B)(1) of Section 16-133 [40 ILCS 5/16-133], optional creditable service established by a member shall be deemed to have been earned at the time of the employment or other qualifying event upon which the service is based, rather than at the time the credit was established in this System.

(e) The contributions required under this Section are the responsibility of the teacher and not the teacher's employer. However, an employer of teachers may, after the effective

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date of this amendatory Act of 1998, specifically agree, through collective bargaining or otherwise, to make the contributions required by this Section on behalf of those teachers.

(f) A person who, on or after July 1, 1998 and before June 4, 1999, began receiving a retirement annuity calculated at the augmented rate may apply in writing to have the annuity recalculated to reflect the changes to this Section and Section 16-133 [40 ILCS 5/16-133] that were enacted in Public Act 91-17. The amount of any resulting decrease in the optional contribution shall be refunded to the annuitant, without interest. Any resulting increase in retirement annuity shall take effect on the next annuity payment date following the date of application under this subsection.

(Source: P.A. 90-582, § 10; 91-17, § 5; 92-416, § 5; 93-469, § 5.)

Effect of Amendments. The 2001 amendment by P.A. 92-416, effective August 17, 2001, added subsection (f).

The 2003 amendment by P.A. 93-469, effective August 8, 2003, deleted "if the member becomes an annuitant before June 30, 2003" at the beginning of subsection (b)(iii).

§ 40 ILCS 5/16-130. Creditable service - whole or portion of year

Sec. 16-130. Creditable service - whole or portion of year. (a) Except as provided in paragraph (6) of subsection (b) of Section 16-127 [40 ILCS 5/16-127], only one year of service is creditable for all service in any one school year.

(b) For employment prior to July 1, 1990, service rendered for the regular legal school term, if creditable hereunder, is equivalent to one year of service, and time less than a legal school term shall be counted as a portion of a year in the ratio that the number of days paid bears to the number of days required at the time to constitute a legal school term; however, service of 170 or more days in any school year after June 30, 1959 shall constitute a year of service.

(c) Creditable service for periods of employment after June 30, 1990 shall be calculated as follows:

For full-time, part-time, and substitute teachers, creditable service in any school year shall be that fraction of a year equal to the ratio of days paid in the legal school term, or the employment agreement if longer, to 170 days.

(d) Creditable service for optional service verified after July 1, 1990 for periods of employment prior to July 1, 1990 shall be calculated as follows:

For full-time, part-time, and substitute teachers, creditable service in any school year shall be that fraction of a year that is equal to the ratio of days paid in the legal school term, or employment agreement if longer, to either the number of days required at the

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time of service to constitute a legal school term or the number of days in the employment agreement, whichever is greater. However, service of 170 or more days in any school year after June 30, 1959 shall constitute a year of service.

(Source: P.A. 86-273; 86-1028; 86-1488.)

Note.

This section was Ill.Rev.Stat., Ch. 108 1/2, Para. 16-130.

§ 40 ILCS 5/16-133.2. Early retirement without discount

Sec. 16-133.2. Early retirement without discount. (a) A member retiring after June 1, 1980 and on or before June 30, 2005 (or as provided in subsection (b) of this Section), and applying for a retirement annuity within 6 months of the last day of teaching for which retirement contributions were required, may elect at the time of application for a retirement annuity, to make a one time member contribution to the System and thereby avoid the reduction in the retirement annuity for retirement before age 60 specified in paragraph (B) of Section 16-133 [40 ILCS 5/16-133]. The exercise of the election shall also obligate the last employer to make a one time non-refundable contribution to the System. Substitute teachers wishing to exercise this election must teach 85 or more days in one school term with one employer, who shall be deemed the last employer for purposes of this Section. The last day of teaching with that employer must be within 6 months of the date of application for retirement. All substitute teaching credit applied toward the required 85 days must be earned after June 30, 1990.

The one time member and employer contributions shall be a percentage of the retiring member's highest annual salary rate used in the determination of the average salary for retirement annuity purposes. However, when determining the one-time member and employer contributions, that part of a member's salary with the same employer which exceeds the annual salary rate for the preceding year by more than 20% shall be excluded. The member contribution shall be at the rate of 7% for the lesser of the following 2 periods: (1) for each year that the member is less than age 60; or (2) for each year that the member's creditable service is less than 35 years. If a member is at least age 55 and has at least 34 years of creditable service, no member or employer contribution for the early retirement option shall be required. The employer contribution shall be at the rate of 20% for each year the member is under age 60.

Upon receipt of the application and election, the System shall determine the one time employee and employer contributions required. The member contribution shall be credited to the individual account of the member and the employer contribution shall be credited to the Benefit Trust Reserve. The provisions of this subsection (a) providing for the avoidance of the reduction in retirement annuity shall not be applicable until the member's contribution, if any, has been received by the System; however, the date such

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contributions are received shall not be considered in determining the effective date of retirement.

The number of members working for a single employer who may retire under this subsection or subsection (b) in any year may be limited at the option of the employer to a specified percentage of those eligible, not less than 30%, with the right to participate to be allocated among those applying on the basis of seniority in the service of the employer.

(b) The provisions of subsection (a) of this Section shall remain in effect for a member retiring after June 30, 2005 and on or before July 1, 2007, provided that the member satisfies both of the following requirements:

(1) the member notified his or her employer of intent to retire under this Article on or before the effective date of this amendatory Act of the 94th General Assembly [P.A. 94-4] under the terms of a contract or collective bargaining agreement entered into, amended, or renewed with the employer on or before the effective date of this amendatory Act of the 94th General Assembly; and

(2) the effective date of the member's retirement is on or before July 1, 2007.

The member's employer must give evidence of the member's notification by providing to the System:

(i) a copy of the member's notification to the employer or the record of that notification;

(ii) an affidavit signed by the member and the employer, verifying the notification; and

(iii) any additional documentation that the System may require.

(c) Except as otherwise provided in subsection (b), and subject to the provisions of Section 16-176 [40 ILCS 5/16-176], a member retiring on or after July 1, 2005, and applying for a retirement annuity within 6 months of the last day of teaching for which retirement contributions were required, may elect at the time of application for a retirement annuity, to make a one-time member contribution to the System and thereby avoid the reduction in the retirement annuity for retirement before age 60 specified in paragraph (B) of Section 16-133 [40 ILCS 5/16-133]. The exercise of the election shall also obligate the last employer to make a one-time nonrefundable contribution to the System. Substitute teachers wishing to exercise this election must teach 85 or more days in one school term with one employer, who shall be deemed the last employer for purposes of this Section. The last day of teaching with that employer must be within 6 months of the date of application for retirement. All substitute teaching credit applied toward the required 85 days must be earned after June 30, 1990.

The one-time member and employer contributions shall be a percentage of the retiring member's highest annual salary rate used in the determination of the average salary for retirement annuity purposes. However, when determining the one-time member and employer contributions, that part of a member's salary with the same employer which exceeds the annual salary rate for the preceding year by more than 20% shall be excluded. The member contribution shall be at the rate of 11.5% for the lesser of the

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following 2 periods: (1) for each year that the member is less than age 60; or (2) for each year that the member's creditable service is less than 35 years. The employer contribution shall be at the rate of 23.5% for each year the member is under age 60.

Upon receipt of the application and election, the System shall determine the one-time employee and employer contributions required. The member contribution shall be credited to the individual account of the member and the employer contribution shall be credited to the Benefit Trust Reserve. The avoidance of the reduction in retirement annuity provided under this subsection (c) is not applicable until the member's contribution, if any, has been received by the System; however, the date that contribution is received shall not be considered in determining the effective date of retirement.

The number of members working for a single employer who may retire under this subsection (c) in any year may be limited at the option of the employer to a specified percentage of those eligible, not less than 10%, with the right to participate to be allocated among those applying on the basis of seniority in the service of the employer.

(Source: P.A. 86-273; 86-1488; 87-794; 89-10, § 5; 90-582, § 10; 91-17, § 5; 93-469, § 5; 94-4, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 108 1/2, Para. 16-133.2.

Effect of Amendments. The 2003 amendment by P.A. 93-469, effective August 8, 2003, substituted "Benefit Trust Reserve" for "Employer's Contribution Reserve" in the next-to-last paragraph.

The 2005 amendment by P.A. 94-4, effective June 1, 2005, rewrote the section, in part by adding (b) and (c).

§ 40 ILCS 5/16-133.3. Early retirement incentives for State employees

Sec. 16-133.3. Early retirement incentives for State employees. (a) To be eligible for the benefits provided in this Section, a person must:

(1) be a member of this System who, on any day during June, 2002, is (i) in active payroll status as a full-time teacher employed by a department and an active contributor to this System with respect to that employment, or (ii) on layoff status from such a position with a right of re-employment or recall to service, or (iii) receiving a disability benefit under Section 16-149 or 16-149.1 [40 ILCS 5/16-149 or 40 ILCS 5/16-149.1], but only if the member has not been receiving that benefit for a continuous period of more than 2 years as of the date of application;

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(2) not have received any retirement annuity under this Article beginning earlier than August 1, 2002;

(3) file with the Board on or before December 31, 2002 a written application requesting the benefits provided in this Section;

(4) terminate employment under this Article no later than December 31, 2002 (or the date established under subsection (d), if applicable);

(5) by the date of termination of service, have at least 8 years of creditable service under this Article, without the use of any creditable service established under this Section;

(6) by the date of termination of service, have at least 5 years of service credit earned while participating in the System as a teacher employed by a department; and

(7) not receive any early retirement benefit under Section 14-108.3 of this Code [40 ILCS 5/14-108.3].

For the purposes of this Section, "department" means a department as defined in Section 14-103.04 [40 ILCS 5/14-103.04] that employs a teacher as defined in this Article.

(b) An eligible person may establish up to 5 years of creditable service under this Article by making the contributions specified in subsection (c). In addition, for each period of creditable service established under this Section, a person's age at retirement shall be deemed to be enhanced by an equivalent period.

The creditable service established under this Section may be used for all purposes under this Article and the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.], except for the computation of final average salary, the determination of salary or compensation under this Article or any other Article of this Code, or the determination of eligibility for or the computation of benefits under Section 16-133.2 [40 ILCS 5/16-133.2].

The age enhancement established under this Section may be used for all purposes under this Article (including calculation of a proportionate annuity payable by this System under the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.]), except for purposes of a retirement annuity under Section 16-133(a)(A) [40 ILCS 5/16-133], a reversionary annuity under Section 16-136 [40 ILCS 5/16-136], the required distributions under Section 16-142.3 [40 ILCS 5/16-142.3], and the determination of eligibility for or the computation of benefits under Section 16-133.2. Age enhancement established under this Section may be used in determining benefits payable under Article 14 of this Code under the Retirement Systems Reciprocal Act (subject to the limitations on the use of age enhancement provided in Section 14-108.3 [40 ILCS 5/14-108.3]); age enhancement established under this Section shall not be used in determining benefits payable under other Articles of this Code under the Retirement Systems Reciprocal Act.

(c) For all creditable service established under this Section, a person must pay to the System an employee contribution to be determined by the System, equal to 9.0% of the member's highest annual salary rate that would be used in the determination of the

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average salary for retirement annuity purposes if the member retired immediately after withdrawal, for each year of creditable service established under this Section.

If the member receives a lump sum payment for accumulated vacation, sick leave, and personal leave upon withdrawal from service, and the net amount of that lump sum payment is at least as great as the amount of the contribution required under this Section, the entire contribution must be paid by the employee by payroll deduction. If there is no such lump sum payment, or if it is less than the contribution required under this Section, the member shall make an initial payment by payroll deduction, equal to the net amount of the lump sum payment for accumulated vacation, sick leave, and personal leave, and have the remaining amount due treated as a reduction from the retirement annuity in 24 equal monthly installments beginning in the month in which the retirement annuity takes effect. The required contribution may be paid as a pre-tax deduction from earnings.

(d) In order to ensure that the efficient operation of State government is not jeopardized by the simultaneous retirement of large numbers of key personnel, the director or other head of a department may, for key employees of that department, extend the December 31, 2002 deadline for terminating employment under this Article established in subdivision (a)(4) of this Section to a date not later than April 30, 2003 by so notifying the System in writing by December 31, 2002.

(e) A person who has received any age enhancement or creditable service under this Section and who reenters contributing service under this Article or Article 14 [40 ILCS 5/14-101 et seq.] shall thereby forfeit that age enhancement and creditable service, and become entitled to a refund of the contributions made pursuant to this Section.

(f) The System shall determine the amount of the increase in the present value of future benefits resulting from the granting of early retirement incentives under this Section and shall report that amount to the Governor and the Commission on Government Forecasting and Accountability on or after the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-839] and on or before November 15, 2004. Beginning with State fiscal year 2008, the increase in liability reported under this subsection (f) shall be included in the calculation of the required State contribution under Section 16-158 [40 ILCS 5/16-158].

(g) In addition to the contributions otherwise required under this Article, the State shall appropriate and pay to the System an amount equal to $1,000,000 in State fiscal year 2004.

(h) The Pension Laws Commission (or its successor, the Commission on Government Forecasting and Accountability) shall determine and report to the General Assembly, on or before January 1, 2004 and annually thereafter through the year 2013, its estimate of (1) the annual amount of payroll savings likely to be realized by the State as a result of the early retirement of persons receiving early retirement incentives under this Section and (2) the net annual savings or cost to the State from the program of early retirement incentives created under this Section.

The System, the Department of Central Management Services, the Governor's Office of Management and Budget (formerly Bureau of the Budget), and all other departments

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shall provide to the Commission any assistance that the Commission may request with respect to its reports under this Section. The Commission may require departments to provide it with any information that it deems necessary or useful with respect to its reports under this Section, including without limitation information about (1) the final earnings of former department employees who elected to receive benefits under this Section, (2) the earnings of current department employees holding the positions vacated by persons who elected to receive benefits under this Section, and (3) positions vacated by persons who elected to receive benefits under this Section that have not yet been refilled.

(i) The changes made to this Section by this amendatory Act of the 92nd General Assembly [P.A. 92-566] do not apply to persons who retired under this Section on or before May 1, 1992.

(Source: P.A. 87-14; 89-21, § 5-45; 92-566, § 10; 93-632, § 90; 93-839, § 10-155; 93-1067, § 105; 94-4, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 108 1/2, Para. 16-133.3.

Effect of Amendments. The 2002 amendment by P.A. 92-566, effective June 25, 2002, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2003 amendment by P.A. 93-632, effective February 1, 2004, inserted the parenthetical in each of subsections (f), (g) in the first paragraph, and (h); and inserted "Governor's Office of Management and Budget (formerly" in each of subsections (g) and (h).

The 2004 amendment by P.A. 93-839, effective July 30, 2004, rewrote subsections (f) and (g).

The 2005 amendment by P.A. 93-1067, effective January 15, 2005, substituted "Commission on Government Forecasting and Accountability" for "Illinois Economic and Fiscal Commission" throughout the section.

The 2005 amendment by P.A. 94-4, effective June 1, 2005, in the last sentence of (f) inserted "Beginning with State fiscal year 2008" and substituted "shall be included" for "shall not be included"; and in (g) deleted the former item (1) designation and deleted former item (2), which concerned appropriations for a level dollar increase in the present value of future benefits in early retirement for fiscal years 2006 through 2015.

§ 40 ILCS 5/16-133.4. Early retirement incentives for teachers

Sec. 16-133.4. Early retirement incentives for teachers. (a) To be eligible for the benefits provided in this Section, a member must:

(1) be a member of this System who, on or after May 1, 1993, is (i) in active payroll status as a full-time teacher employed by an employer under this Article, or (ii) on layoff

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status from such a position with a right of re-employment or recall to service, or (iii) on disability or a leave of absence from such a position, but only if the member has not been receiving benefits under Section 16-149 or 16-149.1 [40 ILCS 5/16-149 or 40 ILCS 5/16-149.1] for a continuous period of 2 years or more as of the date of application;

(2) have never previously received a retirement annuity under this Article, except that receipt of a disability retirement annuity does not disqualify a member if the annuity has been terminated and the member has returned to full-time employment under this Article before the effective date of this Section;

(3) file with the Board before March 1, 1993, an application requesting the benefits provided in this Section;

(4) in the case of an employee of an employer that is a not State agency, be eligible to receive a retirement annuity under this Article (for which purpose any age enhancement or creditable service received under this Section may be used), and elect to receive the retirement annuity beginning not earlier than June 1, 1993 and not later than September 1, 1993 (September 1, 1994 if retirement is delayed under subsection (e) of this Section);

(5) in the case of an employee of an employer that is a State agency, be eligible to receive a retirement annuity under this Article (for which purpose any age enhancement or creditable service received under this Section may be used), and elect to receive the retirement annuity beginning not earlier than July 1, 1993 and not later than March 1, 1994 (March 1, 1995 if retirement is delayed under subsection (e) of this Section);

(6) have attained age 50 (without the use of any age enhancement received under this Section) by the effective date of the retirement annuity;

(7) have at least 5 years of creditable service under this System or any of the participating systems under the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.] (without the use of any creditable service received under this Section) by the effective date of the retirement annuity.

(b) An eligible person may establish up to 5 years of creditable service under this Section. In addition, for each period of creditable service established under this Section, a person shall have his or her age at retirement deemed enhanced by an equivalent period.

The creditable service established under this Section may be used for all purposes under this Article and the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.], except for the computation of final average salary, the determination of salary or compensation under this or any other Article of the Code, or the determination of eligibility for and the computation of benefits under Section 16-133.2 of this Article [40 ILCS 5/16-133.2].

The age enhancement established under this Section may be used for all purposes under this Article (including calculation of a proportionate annuity payable by this System under the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.]), except for purposes of a reversionary annuity under Section 16-136 [40 ILCS 5/16-136], the retirement annuity under Section 16-133(a)(A) [40 ILCS 5/16-133], the required distributions under Section 16-142.3 [40 ILCS 5/16-142.3], and the determination of

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eligibility for and the computation of benefits under Section 16-133.2 of this Article [40 ILCS 5/16-133.2]. However, age enhancement established under this Section shall not be used in determining benefits payable under other Articles of this Code under the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.].

(c) For all creditable service established under this Section by an employee of an employer that is not a State agency, the employer must pay to the System an employer contribution consisting of 20% of the member's highest annual salary rate used in the determination of the average salary for retirement annuity purposes for each year of creditable service granted under this Section. No employer contribution is required under this Section from any employer that is a State agency.

The employer contribution shall be paid to the System in one of the following ways: (i) in a single sum at the time of the member's retirement, (ii) in equal quarterly installments over a period of 5 years from the date of retirement, or (iii) subject to the approval of the Board of the System, in unequal installments over a period of no more than 5 years from the date of retirement, as provided in a payment plan designed by the System to accommodate the needs of the employer. The employer's failure to make the required contributions in a timely manner shall not affect the payment of the retirement annuity.

For all creditable service established under this Section, the employee must pay to the System an employee contribution consisting of 4% of the member's highest annual salary rate used in the determination of the retirement annuity for each year of creditable service granted under this Section. The employee may elect either to pay the employee contribution in full before the retirement annuity commences, or to have it deducted from the retirement annuity in 24 monthly installments.

(d) An annuitant who has received any age enhancement or creditable service under this Section and who re-enters contributing service under this Article shall thereby forfeit the age enhancement and creditable service, and upon re-retirement the annuity shall be recomputed. The forfeiture of creditable service under this subsection shall not entitle the employer to a refund of the employer contribution paid under this Section, nor to forgiveness of any part of that contribution that remains unpaid. The forfeiture of creditable service under this subsection shall not entitle the employee to a refund of the employee contribution paid under this Section.

(e) If the number of employees of an employer that actually apply for early retirement under this Section exceeds 30% of those eligible, the employer may require that, for the number of applicants in excess of that 30%, the starting date of the retirement annuity enhanced under this Section may not be earlier than June 1, 1994. The right to have the retirement annuity begin before that date shall be allocated among the applicants on the basis of seniority in the service of that employer.

This delay applies only to persons who are applying for early retirement incentives under this Section, and does not prevent a person whose application for early retirement incentives has been withdrawn from receiving a retirement annuity on the earliest date upon which the person is otherwise eligible under this Article.

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(f) For a member who is notified after February 15, 1993, but before September 15, 1993, that he or she will be laid off in the 1993-1994 school year: (1) the March 1 application deadline in subdivision (a)(3) of this Section is extended to a date 15 days after the date of issuance of the layoff notice, and (2) the member shall not be included in the calculation of the 30% under subsection (e) and is not subject to delay in retirement under that subsection.

(g) A member who receives any early retirement incentive under Section 16-133.5 [40 ILCS 5/16-133.5] may not receive any early retirement incentive under this Section.

(Source: P.A. 87-1265, § 1.)

§ 40 ILCS 5/16-133.5. Early retirement incentives for teachers

Sec. 16-133.5. Early retirement incentives for teachers. (a) To be eligible for the benefits provided in this Section, a member must:

(1) be a member of this System who, on or after May 1, 1994, is (i) in active payroll status as a full-time teacher employed by an employer under this Article, or (ii) on layoff status from such a position with a right of re-employment or recall to service, or (iii) on disability or a leave of absence from such a position, but only if the member has not been receiving benefits under Section 16-149 or 16-149.1 [40 ILCS 5/16-149 or 40 ILCS 5/16-149.1] for a continuous period of 2 years or more as of the date of application;

(2) have never previously received a retirement annuity under this Article, except that receipt of a disability retirement annuity does not disqualify a member if the annuity has been terminated and the member has returned to full-time employment under this Article before the effective date of this Section;

(3) file with the Board before March 1, 1994, an application requesting the benefits provided in this Section;

(4) be eligible to receive a retirement annuity under this Article (for which purpose any age enhancement or creditable service received under this Section may be used), and elect to receive the retirement annuity beginning not earlier than June 1, 1994 and not later than September 1, 1994 (September 1, 1995 if retirement is delayed under subsection (e) of this Section);

(5) have attained age 50 (without the use of any age enhancement received under this Section) by the effective date of the retirement annuity;

(6) have at least 5 years of creditable service under this System or any of the participating systems under the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.] (without the use of any creditable service received under this Section) by the effective date of the retirement annuity.

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(b) An eligible person may establish up to 5 years of creditable service under this Section. In addition, for each period of creditable service established under this Section, a person shall have his or her age at retirement deemed enhanced by an equivalent period.

The creditable service established under this Section may be used for all purposes under this Article and the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.], except for the computation of final average salary, the determination of salary or compensation under this or any other Article of the Code, or the determination of eligibility for and the computation of benefits under Section 16-133.2 of this Article [40 ILCS 5/16-133.2].

The age enhancement established under this Section may be used for all purposes under this Article (including calculation of a proportionate annuity payable by this System under the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.]), except for purposes of a reversionary annuity under Section 16-136, the retirement annuity under Section 16-133(a)(A) [40 ILCS 5/16-133], the required distributions under Section 16-142.3 [40 ILCS 5/16-142.3], and the determination of eligibility for and the computation of benefits under Section 16-133.2 of this Article [40 ILCS 5/16-133.2]. However, age enhancement established under this Section shall not be used in determining benefits payable under other Articles of this Code under the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.].

(c) For all creditable service established under this Section, the employer must pay to the System an employer contribution consisting of 20% of the member's highest annual salary rate used in the determination of the average salary for retirement annuity purposes for each year of creditable service granted under this Section.

The employer contribution shall be paid to the System in one of the following ways: (i) in a single sum at the time of the member's retirement, (ii) in equal quarterly installments over a period of 5 years from the date of retirement, or (iii) subject to the approval of the Board of the System, in unequal installments over a period of no more than 5 years from the date of retirement, as provided in a payment plan designed by the System to accommodate the needs of the employer. The employer's failure to make the required contributions in a timely manner shall not affect the payment of the retirement annuity.

For all creditable service established under this Section, the employee must pay to the System an employee contribution consisting of 4% of the member's highest annual salary rate used in the determination of the retirement annuity for each year of creditable service granted under this Section. The employee may elect either to pay the employee contribution in full before the retirement annuity commences, or to have it deducted from the retirement annuity in 24 monthly installments.

(d) An annuitant who has received any age enhancement or creditable service under this Section and who re-enters contributing service under this Article shall thereby forfeit the age enhancement and creditable service, and upon re-retirement the annuity shall be recomputed. The forfeiture of creditable service under this subsection shall not entitle the employer to a refund of the employer contribution paid under this Section, nor to forgiveness of any part of that contribution that remains unpaid. The forfeiture of

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creditable service under this subsection shall not entitle the employee to a refund of the employee contribution paid under this Section.

(e) If the number of employees of an employer that actually apply for early retirement under this Section exceeds 30% of those eligible, the employer may require that, for the number of applicants in excess of that 30%, the starting date of the retirement annuity enhanced under this Section may not be earlier than June 1, 1995. The right to have the retirement annuity begin before that date shall be allocated among the applicants on the basis of seniority in the service of that employer.

This delay applies only to persons who are applying for early retirement incentives under this Section, and does not prevent a person whose application for early retirement incentives has been withdrawn from receiving a retirement annuity on the earliest date upon which the person is otherwise eligible under this Article.

(f) A member who receives any early retirement incentive under Section 16-133.4 [40 ILCS 5/16-133.4] may not receive any early retirement incentive under this Section.

(Source: P.A. 87-1265, § 1.)

§ 40 ILCS 5/16-152. Contributions by members

Sec. 16-152. Contributions by members. (a) Each member shall make contributions for membership service to this System as follows:

(1) Effective July 1, 1998, contributions of 7.50% of salary towards the cost of the retirement annuity. Such contributions shall be deemed "normal contributions".

(2) Effective July 1, 1969, contributions of 1/2 of 1% of salary toward the cost of the automatic annual increase in retirement annuity provided under Section 16-133.1 [40 ILCS 5/16-133.1].

(3) Effective July 24, 1959, contributions of 1% of salary towards the cost of survivor benefits. Such contributions shall not be credited to the individual account of the member and shall not be subject to refund except as provided under Section 16-143.2 [40 ILCS 5/16-143.2].

(4) Effective July 1, 2005, contributions of 0.40% of salary toward the cost of the early retirement without discount option provided under Section 16-133.2 [40 ILCS 5/16-133.2]. This contribution shall cease upon termination of the early retirement without discount option as provided in Section 16-176 [40 ILCS 5/16-176].

(b) The minimum required contribution for any year of full-time teaching service shall be $192.

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(c) Contributions shall not be required of any annuitant receiving a retirement annuity who is given employment as permitted under Section 16-118 or 16-150.1 [40 ILCS 5/16-118 or 40 ILCS 5/16-150.1].

(d) A person who (i) was a member before July 1, 1998, (ii) retires with more than 34 years of creditable service, and (iii) does not elect to qualify for the augmented rate under Section 16-129.1 [40 ILCS 5/16-129.1] shall be entitled, at the time of retirement, to receive a partial refund of contributions made under this Section for service occurring after the later of June 30, 1998 or attainment of 34 years of creditable service, in an amount equal to 1.00% of the salary upon which those contributions were based.

(e) A member's contributions toward the cost of early retirement without discount made under item (a)(4) of this Section shall not be refunded if the member has elected early retirement without discount under Section 16-133.2 [40 ILCS 5/16-133.2] and has begun to receive a retirement annuity under this Article calculated in accordance with that election. Otherwise, a member's contributions toward the cost of early retirement without discount made under item (a)(4) of this Section shall be refunded according to whichever one of the following circumstances occurs first:

(1) The contributions shall be refunded to the member, without interest, within 120 days after the member's retirement annuity commences, if the member does not elect early retirement without discount under Section 16-133.2 [40 ILCS 5/16-133.2].

(2) The contributions shall be included, without interest, in any refund claimed by the member under Section 16-151 [40 ILCS 5/16-151].

(3) The contributions shall be refunded to the member's designated beneficiary (or if there is no beneficiary, to the member's estate), without interest, if the member dies without having begun to receive a retirement annuity under this Article.

(4) The contributions shall be refunded to the member, without interest, within 120 days after the early retirement without discount option provided under Section 16-133.2 is terminated under Section 16-176 [40 ILCS 5/16-176].

(Source: P.A. 83-1440; 90-582, § 10; 93-320, § 10; 94-4, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 108 1/2, Para. 16-152.

Effect of Amendments. The 2003 amendment by P.A. 93-320, effective July 23, 2003, in (c), substituted "employment as" for "temporary employment not exceeding that" and added "or 16-150.1", following "Section 16-118".

The 2005 amendment by P.A. 94-4, effective June 1, 2005, added (a)(4); and added (e).

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§ 40 ILCS 5/16-152.1. Pickup of contributions

Sec. 16-152.1. Pickup of contributions. (a) Each employer may pick up the member contributions required under Section 16-152 [40 ILCS 5/16-152] for all salary earned after December 31, 1981. If an employer decides not to pick up the member contributions, the amount that would have been picked up shall continue to be deducted from salary. If contributions are picked up, they shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code [26 U.S.C. § 1 et seq.]. The employer shall pay these member contributions from the same source of funds which is used in paying salary to the member. The employer may pick up these contributions by a reduction in the cash salary of the member or by an offset against a future salary increase or by a combination of a reduction in salary and offset against a future salary increase. If member contributions are picked up, they shall be treated for all purposes of this Article 16 in the same manner as member contributions made prior to the date the pick up began.

(b) The State Board of Education shall pick up the contributions of regional superintendents required under Section 16-152 [40 ILCS 5/16-152] for all salary earned for the 1982 calendar year and thereafter.

(c) Effective July 1, 1983, each employer shall pick up the member contributions required under Section 16-152 [40 ILCS 5/16-152] for all salary earned after such date. Contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code [26 U.S.C. § 1 et seq.]. The employer shall pay these member contributions from the same source of funds which is used in paying salary to the member. The employer may pick up these contributions by a reduction in the cash salary of the member or by an offset against a future salary increase or by a combination of a reduction in salary and offset against a future salary increase. Member contributions so picked up shall be treated for all purposes of this Article 16 in the same manner as member contributions made prior to the date the pick up began.

(d) Subject to the requirements of federal law and the rules of the board, beginning July 1, 1998 a member who is employed on a full-time basis may elect to have the employer pick up optional contributions that the member has elected to pay to the System, and the contributions so picked up shall be treated as employer contributions for the purposes of determining federal tax treatment. The election to have optional contributions picked up is irrevocable. At the time of making the election, the member shall execute a binding, irrevocable payroll deduction authorization. Upon receiving notice of the election, the employer shall pick up the contributions by a reduction in the cash salary of the member and shall pay the contributions from the same source of funds that is used to pay earnings to the member.

(Source: P.A. 83-1440; 90-448, § 20.)

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Note.

This section was Ill.Rev.Stat., Ch. 108 1/2, Para. 16-152.1.

§ 40 ILCS 5/16-154. Deductions from salary

Sec. 16-154. Deductions from salary. (a) Required contributions. The governing body of each school district and of each employing unit coming under this System, and the State Comptroller or other State officer certifying payroll vouchers, including payments of salary or wages to teachers, shall pick up or retain on every pay day the contributions required under Section 16-152 [40 ILCS 5/16-152] of each member. Each governing body or officer shall furnish a statement to each member showing the amount picked up or retained from his or her salary.

(b) Optional contributions. For the purposes of this Section and Section 16-152.1 [40 ILCS 5/16-152.1], "optional contributions" means contributions that a member elects to make in order to establish optional service credit or to reinstate creditable service that was terminated upon payment of a refund.

The governing body of each school district and of each employing unit coming under this System and the State Comptroller or other State officer certifying payroll vouchers shall take the steps necessary to comply with the requirements of Section 414(h)(2) of the Internal Revenue Code of 1986 [26 U.S.C. § 414], as amended, to permit the pickup of optional contributions on a tax-deferred basis. Beginning July 1, 1998, a school district or other employing unit shall not withhold optional contributions from the salary of any member on an after-tax basis.

(Source: P.A. 83-1440; 90-448, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 108 1/2, Para. 16-154.

§ 40 ILCS 5/16-155. Report to system and payment of deductions

Sec. 16-155. Report to system and payment of deductions. (a) The governing body of each school district shall make two deposits each month. The deposit for member contributions for salary paid between the first and the fifteenth of the month is due by the 25th of the month. The deposit of member contributions for salary paid between the sixteenth and last day of the month is due by the 10th of the following month. All required contributions for salary earned during a school term are due by July 10 next following the close of such school term.

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The governing body of each State institution coming under this retirement system, the State Comptroller or other State officer certifying payroll vouchers including payments of salary or wages to teachers, and any other employer of teachers, shall, monthly, forward to the secretary of the retirement system the member contributions required under this Article.

Each employer specified above shall, prior to August 15 of each year, forward to the System a detailed statement, verified in all cases of school districts by the secretary or clerk of the district, of the amounts so contributed since the period covered by the last previous annual statement, together with required contributions not yet forwarded, such payments being payable to the System.

The board may prescribe rules governing the form, content, investigation, control, and supervision of such statements. If no teacher in a school district comes under the provisions of this Article, the governing body of the district shall so state under the oath of its secretary to this system, and shall at the same time forward a copy of the statement to the regional superintendent of schools.

(b) If the governing body of an employer that is not a State agency fails to forward such required contributions within the time permitted in subsection (a) above, the System shall notify the employer of an additional amount due, equal to the greater of the following: (1) an amount representing the interest lost by the system due to late forwarding of contributions, calculated for the number of days which the employer is late in forwarding contributions at a rate of interest prescribed by the board, based on its investment experience; or (2) $50.

(c) If the system, on August 15, is not in receipt of the detailed statements required under this Section of any school district or other employing unit, such school district or other employing unit shall pay to the system an amount equal to $250 for each day that elapses from August 15, until the day such statement is filed with the system.

(Source: P.A. 86-273; 90-448, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 108 1/2, Para. 16-155.

§ 40 ILCS 5/16-158.1. Actions to enforce payments by school districts and other employing units

Sec. 16-158.1. Actions to enforce payments by school districts and other employing units. Any school district or other employing unit failing to transmit to the System contributions required of it under this Article or contributions required of teachers, for more than 90 days after such contributions are due is subject to the following: after

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giving notice to the district or other unit, the System may certify to the State Comptroller or the Regional Superintendent of Schools the amounts of such delinquent payments and the State Comptroller or the Regional Superintendent of Schools shall deduct the amounts so certified or any part thereof from any State funds to be remitted to the school district or other employing unit involved and shall pay the amount so deducted to the System. If State funds from which such deductions may be made are not available, the System may proceed against the school district or other employing unit to recover the amounts of such delinquent payments in the appropriate circuit court.

The System may provide for an audit of the records of a school district or other employing unit as may be required to establish the amounts of required contributions. The school district or other employing unit shall make its records available to the System for the purpose of such audit. The cost of such audit shall be added to the amount of the delinquent payments and shall be recovered by the System from the school district or other employing unit at the same time and in the same manner as the delinquent payments are recovered.

(Source: P.A. 85-1008; 90-448, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 108 1/2, Para. 16-158.1.

Article 17.

Public School Teachers' Pension and Retirement Fund - Cities of over 500,000 Inhabitants

§ 40 ILCS 5/17-116.1. Early retirement without discount

Sec. 17-116.1. Early retirement without discount. (a) A member retiring after June 1, 1980 and before June 30, 2005 and within 6 months of the last day of teaching for which retirement contributions were required, may elect at the time of application to make a one time employee contribution to the system and thereby avoid the early retirement reduction in allowance specified in paragraph (4) of Section 17-116 of this Article [40 ILCS 5/17-116]. The exercise of the election shall obligate the last Employer to also make a one time non-refundable contribution to the Fund.

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(b) Subject to authorization by the Employer as provided in subsection (c), a member retiring on or after June 30, 1995 and on or before June 30, 2010 and within 6 months of the last day of teaching for which retirement contributions were required may elect at the time of application to make a one-time employee contribution to the Fund and thereby avoid the early retirement reduction in allowance specified in paragraph (4) of Section 17-116. The exercise of the election shall obligate the last Employer to also make a one-time nonrefundable contribution to the Fund.

(c) The benefits provided in subsection (b) are available only to members who retire, during a specified period, from employment with an Employer that has adopted and filed with the Board a resolution expressly providing for the creation of an early retirement without discount program under this Section for that period.

The Employer has the full discretion and authority to determine whether an early retirement without discount program is in its best interest and to provide such a program to its eligible employees in accordance with this Section. The Employer may decide to authorize such a program for one or more of the following periods: for the period beginning July 1, 1997 and ending June 30, 1998, in which case the resolution must be adopted by January 1, 1998; for the period beginning July 1, 1998 and ending June 30, 1999, in which case the resolution must be adopted by March 31, 1998; for the period beginning July 1, 1999 and ending June 30, 2000, in which case the resolution must be adopted by March 31, 1999; for the period beginning July 1, 2000 and ending June 30, 2001, in which case the resolution must be adopted by March 31, 2000; for the period beginning July 1, 2001 and ending June 30, 2002, in which case the resolution must be adopted by March 31, 2001; for the period beginning July 1, 2002 and ending June 30, 2003, in which case the resolution must be adopted by March 31, 2002; for the period beginning July 1, 2003 and ending June 30, 2004, in which case the resolution must be adopted by March 31, 2003; for the period beginning July 1, 2004 and ending June 30, 2005, in which case the resolution must be adopted by March 31, 2004; for the period beginning July 1, 2005 and ending June 30, 2006, in which case the resolution must be adopted by August 31, 2005; for the period beginning July 1, 2006 and ending June 30, 2007, in which case the resolution must be adopted by June 30, 2006; for the period beginning July 1, 2007 and ending June 30, 2008, in which case the resolution must be adopted by June 30, 2007; for the period beginning July 1, 2008 and ending June 30, 2009, in which case the resolution must be adopted by June 30, 2008; and for the period beginning July 1, 2009 and ending June 30, 2010, in which case the resolution must be adopted by June 30, 2009. The resolution must be filed with the Board within 10 days after it is adopted. A single resolution may authorize an early retirement without discount program as provided in this Section for more than one period.

Notwithstanding Section 17-157 [40 ILCS 5/17-157], the Employer shall also have full discretion and authority to determine whether to allow its employees who withdrew from service on or after June 30, 1995 and before June 27, 1997 to participate in an early retirement without discount program under subsection (b). An early retirement without discount program for those who withdrew from service on or after June 30, 1995 and before June 27, 1997 may be authorized only by a resolution of the Employer that is adopted by January 1, 1998 and filed with the Board within 10 days after its adoption. If such a resolution is duly adopted and filed, a person who (i) withdrew from service with

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the Employer on or after June 30, 1995 and before June 27, 1997, (ii) qualifies for early retirement without discount under subsection (b), (iii) applies to the Fund within 90 days after the authorizing resolution is adopted, and (iv) pays the required employee contribution shall have his or her retirement pension recalculated in accordance with subsection (b). The resulting increase shall be effective retroactively to the starting date of the retirement pension.

(d) The one-time employee contribution shall be equal to 7% of the retiring member's highest full-time annual salary rate used in the determination of the average salary rate for retirement pension, or if not full-time then the full-time equivalent, multiplied by (1) the number of years the teacher is under age 60, or (2) the number of years the employee's creditable service is less than 34 years, whichever is less.

The Employer contribution shall be 20% of such salary multiplied by such number of years.

(e) Upon receipt of the application and election, the Board shall determine the one time employee and Employer contributions. The provisions of this Section shall not be applicable until the employee contribution, if any, has been received by the Fund; however, the date that contribution is received shall not be considered in determining the effective date of retirement.

(f) The number of employees who may retire under this Section in any year may be limited at the option of the Employer to a specified number of those eligible, not lower than 200, but the Employer and the collective bargaining agent for teachers may agree upon a greater limitation to the specified number of employees who may retire under this Section in any year. The right to participate in the early retirement without discount authorized under this Section shall be allocated among those applying on the basis of seniority in the service of the Employer or on such other basis for allocation as the Employer and the collective bargaining agent for teachers agree, in which case, such other basis may be employed among other eligible employees as well.

(Source: P.A. 86-272; 90-32, § 5; 90-448, § 20; 90-566, § 3; 91-17, § 5; 94-4, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 108 1/2, Para. 17-116.1.

Effect of Amendments. The 2005 amendment by P.A. 94-4, effective June 1, 2005, in (b): substituted "2010" for "2005"; and rewrote (c) and (f).

CASE NOTES

Benefit Determinations

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Without early retirement incentives, the pension benefits of a teacher who chooses to retire prior to reaching age 60 or earning 34 years of credited service are reduced by six percent for each year the teacher's age at retirement is below age 60 (the early retirement discount). An early retirement option under 40 ILCS 5/17-116.1(d) allows a teacher with at least 20 years of service to retire at age 55; however, to avoid the early retirement deduction, both the teacher and his employer must make a one-time contribution to the Teachers' Retirement System of the State of Illinois as follows: the teacher must contribute seven percent of his highest annual salary multiplied by either the number of years until he reaches age 60 or the difference between the number of years of service he actually has and 35, whichever number is smaller, and the employer must contribute 20 percent of the teacher's highest salary multiplied by the number of years until he reaches age 60. In re Marriage of Ramsey, 339 Ill. App. 3d 752, 275 Ill. Dec. 106, 792 N.E.2d 337, 2003 Ill. App. LEXIS 725 (5 Dist. 2003).

§ 40 ILCS 5/17-116.3. Early retirement incentives

Sec. 17-116.3. Early retirement incentives. (a) A teacher who is covered by a collective bargaining agreement shall not be eligible for the early retirement incentives provided under this Section unless the collective bargaining agent and the Board of Education have entered into an agreement under which the agent agrees that any payment for accumulated unused sick days to which the employee is entitled upon withdrawal from service may be paid by the Board of Education in installments over a period of up to 5 years, and a copy of this agreement has been filed with the Board of the Fund.

To be eligible for the benefits provided in this Section, a person must:

(1) be a member of this Fund who, on or after May 1, 1993, is (i) in active payroll status as a teacher, or (ii) on layoff status from such a position with a right of re-employment or recall to service, or (iii) on leave of absence from such a position, but only if the member on leave has not been receiving a disability benefit under this Article for a continuous period of 2 years or more as of the date of application;

(2) have not previously received a retirement pension under this Article;

(3) file with the Board and the Board of Education, before August 15, 1993, a written application requesting the benefits provided in this Section and a notice of resignation from employment, which resignation must take effect before September 1, 1993 unless the applicant's retirement is delayed under subsection (e), (f), or (f-5) of this Section;

(4) be eligible to receive a retirement pension under this Article (for which purpose any age enhancement or creditable service received under this Section may be used) and elect to receive the retirement pension beginning no earlier than June 1, 1993 and no later than September 1, 1993 or the date established under subsection (e), (f), or (f-5) of this Section, if applicable;

(5) have attained age 50 (without the use of any age enhancement or creditable service received under this Section) by the effective date of the retirement pension;

(6) have at least 5 years of creditable service under this Fund or any of the participating systems under the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.]

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(without the use of any creditable service received under this Section) by the effective date of the retirement pension.

(b) An eligible person may establish up to 5 years of creditable service under this Section. In addition, for each period of creditable service established under this Section, a person's age at retirement shall be deemed to be increased by an equal period.

The creditable service established under this Section may be used for all purposes under this Article and the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.], except for the purposes of Section 17-116.1 [40 ILCS 5/17-116.1], and the determination of average salary or compensation under this or any other Article of this Code.

The age enhancement established under this Section may be used for all purposes under this Article (including calculation of a proportionate pension payable by this Fund under the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.]), except for purposes of the reversionary pension under Section 17-120 [40 ILCS 5/17-120], and distributions required by federal law on account of age. However, age enhancement established under this Section shall not be used in determining benefits payable under other Articles of this Code under the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.].

(c) For all creditable service established under this Section, the employer must pay to the Fund an employer contribution consisting of 12% of the member's highest annual full-time rate of compensation for each year of creditable service granted under this Section.

The employer contribution shall be paid to the Fund in one of the following ways: (i) in a single sum at the time of the member's retirement, (ii) in equal quarterly installments over a period of 5 years from the date of retirement, or (iii) subject to the approval of the Board of the Fund, in unequal installments over a period of no more than 5 years from the date of retirement, as provided in a payment plan designed by the Fund to accommodate the needs of the employer. The employer's failure to make the required contributions in a timely manner shall not affect the payment of the retirement pension.

For all creditable service established under this Section, the employee must pay to the Fund an employee contribution consisting of 4% of the member's highest annual salary rate used in the determination of the retirement pension for each year of creditable service granted under this Section. The employee contribution shall be deducted from the retirement annuity in 24 monthly installments.

(d) An annuitant who has received any age enhancement or creditable service under this Section and whose pension is suspended or cancelled under Section 17-149 or 17-150 [40 ILCS 5/17-149 or 40 ILCS 5/17-150] shall thereby forfeit the age enhancement and creditable service. The forfeiture of creditable service under this subsection shall not entitle the employer to a refund of the employer contribution paid under this Section, nor to forgiveness of any part of that contribution that remains unpaid. The forfeiture of creditable service under this subsection shall not entitle the employee to a refund of the employee contribution paid under this Section.

(e) If the number of employees of an employer that apply for early retirement under this Section exceeds 30% of those eligible, the employer may require that, for any or all of the

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number of applicants in excess of that 30%, the starting date of the retirement pension enhanced under this Section be no earlier than June 1, 1994 and no later than September 1, 1994. The right to have the retirement pension begin before June 1, 1994 shall be allocated among the applicants on the basis of seniority in the service of that employer.

This delay applies only to persons who are applying for early retirement incentives under this Section, and does not prevent a person whose application for early retirement incentives has been withdrawn from beginning to receive a retirement pension on the earliest date upon which the person is otherwise eligible under this Article.

(f) For a member who is notified after July 30, 1993, but before November 29, 1993, that he or she will become a supernumerary or reserve teacher in the 1993-1994 school year: (1) the August 15, 1993 application deadline in subdivision (a)(3) of this Section is extended to December 14, 1993, (2) the September 1, 1993 deadline in subdivision (a)(4) of this Section is extended to December 14, 1993, and (3) the member shall not be included in the calculation of the 30% under subsection (e) and is not subject to delay in retirement under that subsection.

(f-5) For a member who is notified after January 1, 1994, but before March 1, 1994, that he or she will become a reserve teacher in the 1993-1994 school year: (1) the August 15, 1993 application deadline in subdivision (a)(3) of this Section is extended to April 1, 1994; (2) the September 1, 1993 deadline in subdivision (a)(4) of this Section is extended to April 1, 1994; and (3) the member shall not be included in the calculation of the 30% under subsection (e) and is not subject to delay in retirement under that subsection.

(g) A member who receives any early retirement incentive under Section 17-116.4, 17-116.5 or 17-116.6 [40 ILCS 5/17-116.4, 40 ILCS 5/17-116.5 or 40 ILCS 5/17-116.6] may not receive any early retirement incentive under this Section.

(h) The version of this Section included in Public Act 88-85 is intended to and shall control over the version of this Section included in Public Act 88-89, notwithstanding Section 6 of the Statute on Statutes [5 ILCS 70/6]. All persons qualifying for early retirement incentives under this Section shall be subject to the limitations and restrictions provided in the version of this Section included in Public Act 88-85, as amended by Public Act 88-511.

(i) In addition to the benefits provided under the other provisions of this Section, every person who receives early retirement benefits under this Section is entitled to one additional year of creditable service and a corresponding year of additional age enhancement, for which no additional contribution is required. Every person who receives early retirement benefits under this Section whose retirement annuity has been calculated on the basis of a 4-year average salary is also entitled to have the annuity recalculated on the basis of the average salary for the 3 highest consecutive years within the last 10 years of service.

The additional benefits provided by this subsection (i) shall begin to accrue on the date the retirement annuity began, notwithstanding Section 17-157 [40 ILCS 5/17-157]. The Fund shall recalculate all annuities originally calculated under this Section to reflect the additional benefits provided under this subsection and shall pay to the annuitant in a lump

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sum the difference between the annuity payments paid before the date of the recalculation and the recalculated amount of those payments.

(Source: P.A. 88-85, § 50; 88-89, § 6-5; 88-511, § 30; 88-670, § 2-28; 92-416, § 5.)

Effect of Amendments. The 2001 amendment by P.A. 92-416, effective August 17, 2001, added subsection (i).

§ 40 ILCS 5/17-116.4. Early retirement incentives

Sec. 17-116.4. Early retirement incentives. (a) A teacher who is covered by a collective bargaining agreement shall not be eligible for the early retirement incentives provided under this Section unless the collective bargaining agent and the Board of Education have entered into an agreement under which the agent agrees that any payment for accumulated unused sick days to which the employee is entitled upon withdrawal from service may be paid by the Board of Education in installments over a period of up to 5 years, and a copy of this agreement has been filed with the Board of the Fund.

To be eligible for the benefits provided in this Section, a person must:

(1) be a member of this Fund who, on or after May 1, 1994, is (i) in active payroll status as a teacher, or (ii) on layoff status from such a position with a right of re-employment or recall to service, or (iii) on leave of absence from such a position, but only if the member on leave has not been receiving a disability benefit under this Article for a continuous period of 2 years or more as of the date of application;

(2) have not previously received a retirement pension under this Article;

(3) file with the Board and the Board of Education, before March 1, 1994, a written application requesting the benefits provided in this Section and a notice of resignation from employment, which resignation must take effect no earlier than June 1, 1994 and no later than September 1, 1994 unless the applicant's retirement is delayed under subsection (e) of this Section;

(4) be eligible to receive a retirement pension under this Article (for which purpose any age enhancement or creditable service received under this Section may be used) and elect to receive the retirement pension beginning no earlier than June 1, 1994 and no later than September 1, 1994 or the date established under subsection (e) of this Section, if applicable;

(5) have attained age 50 (without the use of any age enhancement or creditable service received under this Section) after September 1, 1993 and no later than September 1, 1994;

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(6) have at least 5 years of creditable service under this Fund or any of the participating systems under the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.] (without the use of any creditable service received under this Section) by the effective date of the retirement pension.

(b) An eligible person may establish up to 5 years of creditable service under this Section. In addition, for each period of creditable service established under this Section, a person's age at retirement shall be deemed to be increased by an equal period.

The creditable service established under this Section may be used for all purposes under this Article and the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.], except for the purposes of Section 17-116.1 [40 ILCS 5/17-116.1], and the determination of average salary or compensation under this or any other Article of this Code.

The age enhancement established under this Section may be used for all purposes under this Article (including calculation of a proportionate pension payable by this Fund under the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.]), except for purposes of the reversionary pension under Section 17-120 [40 ILCS 5/17-120], and distributions required by federal law on account of age. However, age enhancement established under this Section shall not be used in determining benefits payable under other Articles of this Code under the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.].

(c) For all creditable service established under this Section, the employer must pay to the Fund an employer contribution consisting of 12% of the member's highest annual full-time rate of compensation for each year of creditable service granted under this Section.

The employer contribution shall be paid to the Fund in one of the following ways: (i) in a single sum at the time of the member's retirement, (ii) in equal quarterly installments over a period of 5 years from the date of retirement, or (iii) subject to the approval of the Board of the Fund, in unequal installments over a period of no more than 5 years from the date of retirement, as provided in a payment plan designed by the Fund to accommodate the needs of the employer. The employer's failure to make the required contributions in a timely manner shall not affect the payment of the retirement pension.

For all creditable service established under this Section, the employee must pay to the Fund an employee contribution consisting of 4% of the member's highest annual salary rate used in the determination of the retirement pension for each year of creditable service granted under this Section. The employee contribution shall be deducted from the retirement annuity in 24 monthly installments.

(d) An annuitant who has received any age enhancement or creditable service under this Section and whose pension is suspended or cancelled under Section 17-149 or 17-150 [40 ILCS 5/17-149 or 40 ILCS 5/17-150] shall thereby forfeit the age enhancement and creditable service. The forfeiture of creditable service under this subsection shall not entitle the employer to a refund of the employer contribution paid under this Section, nor to forgiveness of any part of that contribution that remains unpaid. The forfeiture of creditable service under this subsection shall not entitle the employee to a refund of the employee contribution paid under this Section.

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(e) If the number of employees of an employer that apply for early retirement under this Section exceeds 30% of those eligible, the employer may require that, for any or all of the number of applicants in excess of that 30%, the starting date of the retirement pension enhanced under this Section be no earlier than June 1, 1995 and no later than September 1, 1995. The right to have the retirement pension begin before June 1, 1995 shall be allocated among the applicants on the basis of seniority in the service of that employer.

This delay applies only to persons who are applying for early retirement incentives under this Section, and does not prevent a person whose application for early retirement incentives has been withdrawn from beginning to receive a retirement pension on the earliest date upon which the person is otherwise eligible under this Article.

(f) A member who receives any early retirement incentive under Section 17-116.3 [40 ILCS 5/17-116.3] may not receive any early retirement incentive under this Section.

(g) Notwithstanding Section 17-157 [40 ILCS 5/17-157], a person who is receiving early retirement benefits under this Section may establish service credit for a period of up to 3 weeks during the month of January, 1968, during which the person was prevented from working due to civil unrest or a wildcat strike. A person wishing to establish this credit must apply in writing to the Board within 30 days after the effective date of this amendatory Act of the 92nd General Assembly [P.A. 92-416] and pay to the Fund an employee contribution calculated at the rate and salary applicable to the employee at the time for which credit is being established, without interest. When a person establishes additional service credit under this subsection, the Fund shall recalculate the annuity originally granted under this Section to reflect the additional credit and shall pay to the annuitant in a lump sum the difference between the annuity payments paid before the date of the recalculation and the recalculated amount of those payments.

(Source: P.A. 88-85, § 50; 92-416, § 5.)

§ 40 ILCS 5/17-116.5. Early retirement incentives

Sec. 17-116.5. Early retirement incentives. (a) A teacher who is covered by a collective bargaining agreement shall not be eligible for the early retirement incentives provided under this Section unless the collective bargaining agent and the Board of Education have entered into an agreement under which the agent agrees that any payment for accumulated unused sick days to which the employee is entitled upon withdrawal from service may be paid by the Board of Education in installments over a period of up to 5 years, and a copy of this agreement has been filed with the Board of the Fund.

To be eligible for the benefits provided in this Section, a person must:

(1) be a member of this Fund who, on November 1, 1993, is (i) in active payroll status as a teacher, or (ii) on layoff status from such a position with a right of re-employment or recall to service, or (iii) on leave of absence from such a position, but only if the member

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on leave has not been receiving a disability benefit under this Article for a continuous period of 2 years or more as of the date of application;

(2) be a member of this Fund who, on or after May 1, 1994, is (i) in active payroll status as a teacher, or (ii) on layoff status from such a position with a right of re-employment or recall to service, or (iii) on leave of absence from such a position, but only if the member on leave has not been receiving a disability benefit under this Article for a continuous period of 2 years or more as of the date of application;

(3) have not previously received a retirement pension under this Article;

(4) file with the Board and the Board of Education, before March 1, 1994, a written application requesting the benefits provided in this Section and a notice of resignation from employment, which resignation must take effect no earlier than the last day of the 1993-94 school year and no later than September 1, 1994, unless the applicant's retirement is delayed under subsection (e) or (f) of this Section;

(5) be eligible to receive a retirement pension under this Article (for which purpose any age enhancement or creditable service received under this Section may be used) and elect to receive the retirement pension beginning no earlier than the first day after the last day of the 1993-94 school year and no later than September 1, 1994 or the date established under subsection (e) or (f) of this Section, if applicable;

(6) have attained age 50 (without the use of any age enhancement or creditable service received under this Section) by the effective date of the retirement pension;

(7) have at least 5 years of creditable service under this Fund or any of the participating systems under the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.] (without the use of any creditable service received under this Section) by the effective date of the retirement pension.

(b) An eligible person may establish up to 5 years of creditable service under this Section. In addition, for each period of creditable service established under this Section, a person's age at retirement shall be deemed to be increased by an equal period.

The creditable service established under this Section may be used for all purposes under this Article and the Retirement Systems Reciprocal Act, except for the purposes of Section 17-116.1 [40 ILCS 5/17-116.1], and the determination of average salary or compensation under this or any other Article of this Code.

The age enhancement established under this Section may be used for all purposes under this Article (including calculation of a proportionate pension payable by this Fund under the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.]), except for purposes of the reversionary pension under Section 17-120 [40 ILCS 5/17-120], and distributions required by federal law on account of age. However, age enhancement established under this Section shall not be used in determining benefits payable under other Articles of this Code under the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.].

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(c) For all creditable service established under this Section, the employer must pay to the Fund an employer contribution consisting of 12% of the member's highest annual full-time rate of compensation for each year of creditable service granted under this Section.

The employer contribution shall be paid to the Fund in one of the following ways: (i) in a single sum at the time of the member's retirement, (ii) in equal quarterly installments over a period of 5 years from the date of retirement, or (iii) subject to the approval of the Board of the Fund, in unequal installments over a period of no more than 5 years from the date of retirement, as provided in a payment plan designed by the Fund to accommodate the needs of the employer. The employer's failure to make the required contributions in a timely manner shall not affect the payment of the retirement pension.

For all creditable service established under this Section, the employee must pay to the Fund an employee contribution consisting of 4% of the member's highest annual salary rate used in the determination of the retirement pension for each year of creditable service granted under this Section. The employee contribution shall be deducted from the retirement annuity in 24 monthly installments.

(d) An annuitant who has received any age enhancement or creditable service under this Section and whose pension is suspended or cancelled under Section 17-149 or 17-150 [40 ILCS 5/17-149 or 40 ILCS 5/17-150] shall thereby forfeit the age enhancement and creditable service. The forfeiture of creditable service under this subsection shall not entitle the employer to a refund of the employer contribution paid under this Section, nor to forgiveness of any part of that contribution that remains unpaid. The forfeiture of creditable service under this subsection shall not entitle the employee to a refund of the employee contribution paid under this Section.

(e) If the number of employees of an employer that apply for early retirement under this Section exceeds 30% of those eligible, the employer may require that, for any or all of the number of applicants in excess of that 30%, the starting date of the retirement pension enhanced under this Section be no earlier than June 1, 1995 and no later than September 1, 1995. The right to have the retirement pension begin before June 1, 1995 shall be allocated among the applicants on the basis of seniority in the service of that employer.

This delay applies only to persons who are applying for early retirement incentives under this Section, and does not prevent a person whose application for early retirement incentives has been withdrawn from beginning to receive a retirement pension on the earliest date upon which the person is otherwise eligible under this Article.

(f) For a member who receives notice that he or she has been declared a reserve teacher pursuant to a collective bargaining agreement after February 15, 1994, but before September 15, 1994: (1) the March 1, 1994 application deadline in subdivision (a)(4) of this Section is extended to a date 15 days after the date of notification of the reserve teacher declaration, (2) the September 1, 1994 deadline in subdivision (a)(5) of this Section is extended to October 1, 1994, and (3) the member shall not be included in the calculation of the 30% under subsection (e) and is not subject to delay in retirement under that subsection.

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(g) A member who receives any early retirement incentive under Section 17-116.3, 17-116.4, or 17-116.6 [40 ILCS 5/17-116.3, 40 ILCS 5/17-116.4, or 40 ILCS 5/17-116.6] may not receive any early retirement incentive under this Section.

(Source: P.A. 88-511, § 5.)

§ 40 ILCS 5/17-116.6. Early retirement incentives

Sec. 17-116.6. Early retirement incentives. (a) A teacher who is covered by a collective bargaining agreement shall not be eligible for the early retirement incentives provided under this Section unless the collective bargaining agent and the Board of Education have entered into an agreement under which the agent agrees that any payment for accumulated unused sick days to which the employee is entitled upon withdrawal from service may be paid by the Board of Education in installments over a period of up to 5 years, and a copy of this agreement has been filed with the Board of the Fund.

To be eligible for the benefits provided in this Section, a person must:

(1) be a member of this Fund who is a reserve teacher as defined in Section 34-1.1 of the School Code [105 ILCS 5/34-1.1];

(2) have not previously received a bachelor's or more advanced degree from an accredited college or university;

(3) have not previously received a retirement pension under this Article;

(4) file with the Board and the Board of Education, by the later of 60 days after the effective date of this amendatory Act of 1993 or 60 days after becoming a reserve teacher, but in no event later than December 31, 1995, a written application requesting the benefits provided in this Section;

(5) be eligible to receive a retirement pension under this Article (for which purpose any age enhancement or creditable service received under this Section may be used) and elect to receive the retirement pension beginning no earlier than September 1, 1993, and no later than 120 days after becoming a reserve teacher;

(6) have attained age 50 (without the use of any age enhancement or creditable service received under this Section) by the effective date of the retirement pension;

(7) have at least 5 years of creditable service under this Fund or any of the participating systems under the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.] (without the use of any creditable service received under this Section) by the effective date of the retirement pension.

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(b) An eligible person may establish up to 5 years of creditable service under this Section. In addition, for each period of creditable service established under this Section, a person's age at retirement shall be deemed to be increased by an equal period.

The creditable service established under this Section may be used for all purposes under this Article and the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.], except for the purposes of Section 17-116.1 [40 ILCS 5/17-116.1], and the determination of average salary or compensation under this or any other Article of this Code.

The age enhancement established under this Section may be used for all purposes under this Article (including calculation of a proportionate pension payable by this Fund under the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.]), except for purposes of the reversionary pension under Section 17-120 [40 ILCS 5/17-120], and distributions required by federal law on account of age. However, age enhancement established under this Section shall not be used in determining benefits payable under other Articles of this Code under the Retirement Systems Reciprocal Act [40 ILCS 5/20-101 et seq.].

(c) For all creditable service established under this Section, the employer must pay to the Fund an employer contribution consisting of 12% of the member's highest annual full-time rate of compensation for each year of creditable service granted under this Section.

The employer contribution shall be paid to the Fund in one of the following ways: (i) in a single sum at the time of the member's retirement, (ii) in equal quarterly installments over a period of 5 years from the date of retirement, or (iii) subject to the approval of the Board of the Fund, in unequal installments over a period of no more than 5 years from the date of retirement, as provided in a payment plan designed by the Fund to accommodate the needs of the employer. The employer's failure to make the required contributions in a timely manner shall not affect the payment of the retirement pension.

For all creditable service established under this Section, the employee must pay to the Fund an employee contribution consisting of 4% of the member's highest annual salary rate used in the determination of the retirement pension for each year of creditable service granted under this Section. The employee contribution shall be deducted from the retirement annuity in 24 monthly installments.

(d) An annuitant who has received any age enhancement or creditable service under this Section and whose pension is suspended or cancelled under Section 17-149 or 17-150 [40 ILCS 5/17-149 or 40 ILCS 5/17-150] shall thereby forfeit the age enhancement and creditable service. The forfeiture of creditable service under this subsection shall not entitle the employer to a refund of the employer contribution paid under this Section, nor to forgiveness of any part of that contribution that remains unpaid. The forfeiture of creditable service under this subsection shall not entitle the employee to a refund of the employee contribution paid under this Section.

(e) A member who receives any early retirement incentive under Section 17-116.3, 17-116.4, or 17-116.5 [40 ILCS 5/17-116.3, 40 ILCS 5/17-116.4, or 40 ILCS 5/17-116.5] may not receive any early retirement incentive under this Section.

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(Source: P.A. 88-511, § 5; 90-655, § 48.)

§ 40 ILCS 5/17-130. Participants' contributions by payroll deductions

Sec. 17-130. Participants' contributions by payroll deductions. (a) There shall be deducted from the salary of each teacher 7.50% of his salary for service or disability retirement pension and 0.5% of salary for the annual increase in base pension.

In addition, there shall be deducted from the salary of each teacher 1% of his salary for survivors' and children's pensions.

(b) An Employer and any employer of eligible contributors as defined in Section 17-106 [40 ILCS 5/17-106] is authorized to make the necessary deductions from the salaries of its teachers. Such amounts shall be included as a part of the Fund. An Employer and any employer of eligible contributors as defined in Section 17-106 shall formulate such rules and regulations as may be necessary to give effect to the provisions of this Section.

(c) All persons employed as teachers shall, by such employment, accept the provisions of this Article and of Sections 34-83 to 34-85 [105 ILCS 5/34-83 to 105 ILCS 5/34-85], inclusive, of "The School Code", approved March 18, 1961, as amended, and thereupon become contributors to the Fund in accordance with the terms thereof. The provisions of this Article and of those Sections shall become a part of the contract of employment.

(d) A person who (i) was a member before July 1, 1998, (ii) retires with more than 34 years of creditable service, and (iii) does not elect to qualify for the augmented rate under Section 17-119.1 [40 ILCS 5/17-119.1] shall be entitled, at the time of retirement, to receive a partial refund of contributions made under this Section for service occurring after the later of June 30, 1998 or attainment of 34 years of creditable service, in an amount equal to 1.00% of the salary upon which those contributions were based.

(Source: P.A. 81-1536; 90-566, § 3; 90-582, § 15; 94-1105, § 15; 97-8, § 3.)

Note.

This section was Ill.Rev.Stat., Ch. 108 1/2, Para. 17-130.

Effect of Amendments. The 2007 amendment by P.A. 94-1105, effective June 1, 2007, in (c) substituted "34-85b" for "34-87".

The 2011 amendment by P.A. 97-8, effective June 13, 2011, substituted "Sections 34-83 to 34-85" for "Sections 34-83 to 34-85b" in the first sentence of (c).

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§ 40 ILCS 5/17-130.1. Employer contributions on behalf of employees

Sec. 17-130.1. Employer contributions on behalf of employees. An Employer and the Board may make and may incur an obligation to make contributions on behalf of its employees in an amount not to exceed the employee contributions required by Section 17-130 [40 ILCS 5/17-130] for all compensation earned after September 21, 1981. If the Employer or the Board of Education determines not to make such contributions or incur an obligation to make such contributions, the amount that it could have contributed on behalf of its employees shall continue to be deducted from salary. If contributions are made by an Employer or the Board on behalf of its employees they shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code [26 U.S.C. § 1 et seq.]. An Employer or the Board may make these contributions on behalf of its employees by a reduction in the cash salary of the employee or by an offset against a future salary increase or by a combination of a reduction in salary and offset against a future salary increase. An Employer or the Board shall pay these employee contributions from the same source of funds which is used in paying salary to the employee, or it may also or alternatively make such contributions from the proceeds of the tax authorized by Section 34-60 of the School Code. Such employee contributions shall be treated for all purposes of this Article 17 in the same manner and to the same extent as employee contributions made by employees and deducted from salary; provided, however, that contributions made by the Board of Education on behalf of its employees which are to be paid from the proceeds of the tax, as provided in Section 34-60 of the School Code, shall not be treated as teachers' pension contributions for the purposes of Section 17-132 of the Illinois Pension Code [40 ILCS 5/17-132], and provided further, that contributions which are made by the Board of Education on behalf of its employees shall not be treated as a pension or retirement obligation of the Board of Education for purposes of Section 12 of "An Act in relation to State revenue sharing with local governmental entities", approved July 31, 1969 [30 ILCS 115/12].

(Source: P.A. 86-1471; 86-1488; 90-566, § 3.)

Note.

This section was Ill.Rev.Stat., Ch. 108 1/2, Para. 17-130.1.

Section 34-60 of the School Code, referred to above, has been repealed.

§ 40 ILCS 5/17-130.2. Pickup of optional contributions

Sec. 17-130.2. Pickup of optional contributions. (a) For the purposes of this Section, "optional contributions" means contributions that a member elects to make in order to

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qualify for the augmented service retirement pension rate under Section 17-119.1 [40 ILCS 5/17-119.1].

(b) Subject to the requirements of federal law and the rules of the Board, beginning July 1, 1998 a member who is employed on a full-time basis may elect to have the Employer pick up optional contributions that the member has elected to pay to the Fund, and the contributions so picked up shall be treated as employer contributions for the purposes of determining federal tax treatment. The election to have optional contributions picked up is irrevocable. At the time of making the election, the member shall execute a binding, irrevocable payroll deduction authorization. Upon receiving notice of the election, the Employer shall pick up the contributions by a reduction in the cash salary of the member and shall pay the contributions from the same source of funds that is used to pay earnings to the member.

(c) Each Employer under this Fund shall take the steps necessary to comply with the requirements of Section 414(h) of the Internal Revenue Code of 1986, as amended [26 U.S.C. § 414], to permit the pickup of optional contributions on a tax-deferred basis.

(Source: P.A. 90-582, § 15.)

§ 40 ILCS 5/17-130.3. Election of medicare coverage

Sec. 17-130.3. Election of medicare coverage. (a) The Fund shall conduct a divided medicare coverage referendum, open to teachers continuously employed by the same employer since March 31, 1986. The referendum shall be conducted in accordance with the applicable provisions of federal law and Article 21 of this Code [40 ILCS 5/21-101 et seq.].

(b) As used in this Section and in compliance with federal law, "referendum" means the process whereby teachers are granted the opportunity to make an irrevocable individual election to participate in the medicare program on a prospective basis.

(c) Employers shall pay the necessary employer contributions and make the necessary deductions from salary for teachers who elect to participate in the federal medicare program under this Section, as required by the System, Article 21 of this Code and federal law.

(Source: P.A. 94-724, § 5.)

Effective Date. Section 99 of P.A. 94-724 made this section effective upon becoming law. The Act was approved January 20, 2006.

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§ 40 ILCS 5/17-131. Administration of payroll deductions

Sec. 17-131. Administration of payroll deductions. (a) An Employer or the Board shall make pension deductions in each pay period on the basis of the salary earned in that period, exclusive of salaries for overtime, special services, or any employment on an optional basis, such as in summer school.

(b) If a salary paid in a pay period includes adjustments on account of errors or omissions in prior pay periods, then salary amounts and related pension deductions shall be separately identified as to the adjusted pay period and deductions by the Employer or the Board shall be at rates in force during the applicable adjusted pay period.

(c) If members earn salaries for the school year, as established by an Employer, or if they earn annual salaries over more than a 10-calendar month period, or if they earn annual salaries over more than 170 calendar days, the required contribution amount shall be deducted by the Employer in installments on the basis of salary earned in each pay period. The total amounts for each pay period shall be deducted whenever salary payments represent a partial or whole day's pay.

(d) If an Employer or the Board pays a salary to a member for vacation periods, then the salary shall be considered part of the member's pensionable salary, shall be subject to the standard deductions for pension contributions, and shall be considered to represent pay for the number of whole days of vacation.

(e) If deductions from salaries result in amounts of less than one cent, the fractional sums shall be increased to the next higher cent. Any excess of these fractional increases over the prescribed annual contributions shall be credited to the members' accounts.

(f) In the event that, pursuant to Section 17-130.1 [40 ILCS 5/17-130.1], employee contributions are picked up or made by the Board of Education on behalf of its employees, then the amount of the employee contributions which are picked up or made in that manner shall not be deducted from the salaries of such employees.

(Source: P.A. 86-1471; 86-1488; 90-566, § 3; 97-30, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 108 1/2, Para. 17-131.

Section 34-60 of the School Code, referred to in the second paragraph, has been repealed.

Effect of Amendments. The 2011 amendment by P.A. 97-30, effective July 1, 2011, rewrote the section.

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§ 40 ILCS 5/17-132. Payments and certification of salary deductions

Sec. 17-132. Payments and certification of salary deductions. (a) An Employer shall cause the Fund to receive all members' payroll records and pension contributions within 30 calendar days after each predesignated payday. For purposes of this Section, the predesignated payday shall be determined in accordance with each Employer's payroll schedule for contributions to the Fund.

(b) Amounts not received by the 30th calendar day after the predesignated payday shall be deemed delinquent and subject to late interest penalty (calculated at the average short-term rate of interest earned by the Fund for the calendar month preceding the calendar month in which the delinquency occurs) starting from the predesignated payday and ending on the date payment is received.

(c) The payroll records shall report (1) all pensionable salary earned in that pay period, exclusive of salaries for overtime, special services, or any employment on an optional basis, such as in summer school; (2) adjustments to pensionable salary, exclusive of salaries for overtime, special services, or any employment on an optional basis, such as in summer school, made in a pay period for any prior pay periods; (3) pension contributions attributable to pensionable salary earned in the reported pay period or the adjusted pay period as required by subsection (b) of Section 17-131 [40 ILCS 5/17-131].

(d) The appropriate officers of the Employer shall certify and submit the payroll records no later than 30 calendar days after each predesignated payday. The certification shall constitute a confirmation of the accuracy of such deductions according to the provisions of this Article.

(e) The Board has the authority to conduct payroll audits of a charter school to determine the existence of any delinquencies in contributions to the Fund, and such charter school shall be required to provide such books and records and contribution information as the Board or its authorized representative may require. The Board is also authorized to collect delinquent contributions from charter schools and develop procedures for the collection of such delinquencies. Collection procedures may include legal proceedings in the courts of the State of Illinois. Expenses, including reasonable attorneys' fees, incurred in the collection of delinquent contributions may be assessed by the Board against the charter school.

(Source: P.A. 82-581; 90-566, § 3; 97-30, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 108 1/2, Para. 17-132.

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Effect of Amendments. The 2011 amendment by P.A. 97-30, effective July 1, 2011, rewrote the section.

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CHAPTER 45.
INTERSTATE COMPACTS

45 ILCS 90Interstate Compact for Education Act
45 ILCS 95Border State School Interstate Compact Act

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Interstate Compact for Education Act

Sec.

45 ILCS 90/0.01.Short title
45 ILCS 90/1.[Execution of compact]
45 ILCS 90/2.[Commission representatives; appointment; term; vacancies]
45 ILCS 90/3.[Illinois Educational Council; Creation]
45 ILCS 90/4.[Commission bylaws; filing]

§ 45 ILCS 90/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Interstate Compact for Education Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act ratifying and approving an Interstate Compact for Education, providing for the administration thereof and making appropriations in connection therewith.

Cite: 45 ILCS 90/0.01 et seq.

Source: L. 1967, p. 2201.

Date: Approved July 26, 1967.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 100-0.1.

§ 45 ILCS 90/1. [Execution of compact]

Sec. 1. The State of Illinois ratifies and approves the following compact:

THE COMPACT FOR EDUCATION

Article I. Purpose and Policy.

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A. It is the purpose of this compact to:

1.Establish and maintain close cooperation and understanding among executive, legislative, professional educational and lay leadership on a nationwide basis at the State and local levels.

2.Provide a forum for the discussion, development, crystalization and recommendation of public policy alternatives in the field of education.

3.Provide a clearing house of information on matters relating to educational problems and how they are being met in different places throughout the Nation, so that the executive and legislative branches of State Government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.

4.Facilitate the improvement of State and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advance in educational opportunities, methods and facilities.

B.It is the policy of this compact to encourage and promote local and State initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and States.

C.The party States recognize that each of them has an interest in the quality and quantity of education furnished in each of the other States, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the Nation, and because the products and services contributing to the health, welfare and economic advancement of each State are supplied in significant part by persons educated in other States.

Article II. State Defined.

As used in this Compact, "State" means a State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Article III. The Commission.

A.The Educational Commission of the States, hereinafter called "the Commission", is hereby established. The Commission shall consist of seven members representing each party State. One of such members shall be the Governor; two shall be members of the State legislature selected by its respective houses and serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the Governor, unless the laws of the State otherwise provide. If the laws of a State prevent legislators from serving on the Commission, six members shall be appointed and serve at the pleasure of the Governor, unless the laws of the State otherwise provide. In addition

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to any other principles or requirements which a State may establish for the appointment and service of its members of the Commission, the guiding principle for the composition of the membership on the Commission from each party State shall be that the members representing such State shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the State Government, higher education, the State education system, local education, lay and professional, public and non-public educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the Governor, having responsibility for one or more programs of public education. In addition to the members of the Commission representing the party States, there may be not to exceed ten nonvoting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

B.The members of the Commission shall be entitled to one vote each on the Commission. No action of the Commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the Commission are cast in favor thereof. Action of the Commission shall be only at a meeting at which a majority of the Commissioners are present. The Commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the Commission may delegate the exercise of any of its powers to the steering committee or the Executive Director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III (j).

C.The Commission shall have a seal.

D.The Commission shall elect annually, from among its members, a chairman, who shall be a Governor, a vice chairman and a treasurer. The Commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the Commission, and together with the treasurer and such other personnel as the Commission may deem appropriate shall be bonded in such amount as the Commission shall determine. The executive director shall be secretary.

E.Irrespective of the civil service, personnel or other merit system laws of any of the party States, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Commission, and shall fix the duties and compensation of such personnel. The Commission in its bylaws shall provide for the personnel policies and programs of the Commission.

F.The Commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

G.The Commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any State, the United States, or any other governmental

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agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the Commission pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the Commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant or services borrowed, and the identity of the donor or lender.

H.The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.

I.The Commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party States.

J.The Commission annually shall make to the Governor and legislature of each party State a report covering the activities of the Commission for the preceding year. The Commission may make such additional reports as it may deem desirable.

Article IV. Powers.

In addition to authority conferred on the Commission by other provisions of the compact, the Commission shall have authority to:

1.Collect, correlate, analyze and interpret information and data concerning educational needs and resources.

2.Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.

3.Develop proposals for adequate financing of education as a whole and at each of its many levels.

4.Conduct or participate in research of the types referred to in this Article in any instance where the Commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.

5.Formulate suggested policies and plans for the improvement of public education as a whole or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.

6.Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

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Article V. Cooperation With Federal Government.

A.If the laws of the United States specifically so provide, or if administrative provision is made therefor within the Federal Government, the United States may be represented on the Commission by not to exceed ten representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to Federal law, and may be drawn from any one or more branches of the Federal Government, but no such representative shall have a vote on the Commission.

B.The Commission may provide information and make recommendations to any executive or legislative agency or officer of the Federal Government concerning the common educational policies of the States, and may advise with any such agencies or officers concerning any matter of mutual interest.

Article VI. Committees.

A.To assist in the expeditious conduct of its business when the full Commission is not meeting, the Commission shall elect a steering committee of thirty-two members which, subject to the provisions of this compact and consistent with the policies of the Commission, shall be constituted and function as provided in the bylaws of the Commission. One-fourth of the voting membership of the steering committee shall consist of Governors, one-fourth shall consist of Legislators, and the remainder shall consist of other members of the Commission. A Federal representative on the Commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the Commission shall be elected as follows: sixteen for one year and sixteen for two years. The chairman, vice chairman, and treasurer of the Commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the Commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee; provided that service for a partial term of one year or less shall not be counted toward the two term limitation.

B.The Commission may establish advisory and technical committees composed of State, local, and Federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the States concerned, be established to consider any matter of special concern to two or more of the party States.

C.The Commission may establish such additional committees as its bylaws may provide.

Article VII. Finance.

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A.The Commission shall advise the Governor or designated officer or officers of each party State of its budget and estimated expenditures for such period as may be required by the laws of that party State. Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party States.

B.The total amount of appropriation requests under any budget shall be apportioned among the party States. In making such apportionment, the Commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party States.

C.The Commission shall not pledge the credit of any party States. The Commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III (g) of this compact, provided that the Commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it pursuant to Article III (g) thereof, the Commission shall not incur any obligation prior to the allotment of funds by the party States adequate to meet the same.

D.The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the Commission.

E.The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party States and by any persons authorized by the Commission.

F.Nothing contained herein shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

Article VIII. Eligible Parties, Entry Into and Withdrawal.

A.This compact shall have as eligible parties all States, Territories and Possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a Governor, the term "Governor", as used in this compact, shall mean the closest equivalent official of such jurisdiction.

B.Any State or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same: provided that in order to enter into initial effect, adoption by at least ten eligible party jurisdictions shall be required.

C.Adoption of the compact may be either by enactment thereof or by adherence thereto by the Governor; provided that in the absence of enactment, adherence by the Governor shall be sufficient to make his State a party only until December 31, 1967. During any

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period when a State is participating in this compact through gubernatorial action, the Governor shall appoint those persons who, in addition to himself, shall serve as the members of the Commission from his State, and shall provide to the Commission an equitable share of the financial support of the Commission from any source available to him.

D.Except for a withdrawal effective on December 31, 1967 in accordance with paragraph C of this Article, any party State may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing State has given notice in writing of the withdrawal to the Governors of all other party States. No withdrawal shall affect any liability already incurred by or chargeable to a party State prior to the time of such withdrawal.

Article IX. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any State or of the United States, or the application thereof to any Government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any Government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any State participating therein, the compact shall remain in full force and effect as to the State affected as to all severable matters.

(Source: Laws 1967, p. 2201.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 100-1.

§ 45 ILCS 90/2. [Commission representatives; appointment; term; vacancies]

Sec. 2. The members representing the State of Illinois on the Educational Commission of the States shall consist of the Governor, 2 persons appointed by the Governor, the State Superintendent of Education, one person appointed by the State Board of Education, one member of the Senate appointed by the President and one member of the House of Representatives appointed by the Speaker thereof. Initial appointments shall be made within 30 days after this Act takes effect, and the appointees shall serve until January 31, 1969. Their successors shall serve for a 2 year term and until their successors are appointed. Vacancies shall be filled by appointment by the appropriate appointing authority, to serve for the balance of the unexpired term. All appointments shall be made

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after consideration of the principles stated in Section III A of the Compact on Education [45 ILCS 90/1].

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 100-2.

§ 45 ILCS 90/3. [Illinois Educational Council; Creation]

Sec. 3. There is created the Illinois Educational Council composed of the members of the Educational Commission of the States representing this State and of 6 other persons appointed by the Governor. The Governor shall make these appointments in such a manner that those 6 persons will be broadly representative of professional and lay interests in this State having the responsibility for, knowledge with respect to and interest in educational matters. The Governor shall designate one of the members of the Council as chairman. In making the initial appointments to the Council the Governor shall designate 2 members to serve until September 1, 1968; 2, until September 1, 1969; and 2, until September 1, 1970. Their successors shall be appointed for a 3 year term. Vacancies shall be filled by appointment for the unexpired term. The Council shall meet, at least 3 times a year, on the call of the chairman or at the request of a majority of the members of the Council. The Council may consider any matter related to the recommendations of the Educational Commission of the States or to the activities of the Commission members representing this State.

(Source: Laws 1967, p. 2201.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 100-3.

§ 45 ILCS 90/4. [Commission bylaws; filing]

Sec. 4. Pursuant to Article III paragraph I of the Compact for Education [45 ILCS 90/1, Article III, para. I], the Commission shall file a copy of its bylaws and of any amendment thereto with the Secretary of State.

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(Source: Laws 1967, p. 2201.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 100-4.

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Border State School Interstate Compact Act

Sec.

45 ILCS 95/0.01.Short title
45 ILCS 95/1.[Execution of Compact]
45 ILCS 95/2.[Board of education to administer compact]
45 ILCS 95/3.[Enforcement]

§ 45 ILCS 95/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Border State School Interstate Compact Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act authorizing the Governor to enter into a compact with other states concerning border school districts.

Cite: 45 ILCS 95/0.01 et seq.

Source: L. 1955, p. 1858.

Date: Approved July 13, 1955.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 738.9.

§ 45 ILCS 95/1. [Execution of Compact]

Sec. 1. The Governor of this State is hereby authorized to enter into a compact on behalf of this State with any of the United States bordering this State and legally joining in such compact substantially in the following terms:

INTERSTATE COMPACT ON PUBLIC SCHOOL ADMINISTRATION

The contracting party states agree:

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Article I - Purpose

The purpose of this compact is to create a pattern of organizations through which all the people of an educational community which crosses state lines may participate in the government of such unit.

Article II - Organization

The state superintendent of public instruction or similarly titled officer of the respective party states designated in the enabling acts approving this compact may by agreement provide for the establishment and operation of interstate public school districts for the operation of elementary and secondary schools.

Article III - Scope of the Agreements

Such agreements may cover:

(a) The establishment of an interstate school district.

(b) The allocation of costs of operation and capital expenditure between the portions of the district in each state.

(c) The scope of the educational program.

(d) The procedures whereby the electors in each state may participate in the formation of school policy.

(e) The allocation of state school aids.

(f) The determination of the state's laws under which the contracts for the purchase of materials, supplies and personal services will be made so as to prevent all conflict as to the applicable statutes. Arrangements shall be made for the employment of persons by one state only and for the pro rata reimbursement of that state for services rendered to citizens of another state, but no such agreement shall require that all employees be hired by a particular state.

(g) All other matters as are reasonably necessary to carry out the purposes set forth in Article I.

Article IV - Effective Date

This compact shall become operative between any state and another state when, following the adoption of the compact by the legislatures of both such states, the appropriate officers of 2 states execute an agreement.

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Article V - Renunciation

This compact shall continue in effect and remain binding upon each executing party state until 6 months after any such state has given written notice of renunciation by the same authority which executed the agreement.

Article VI - Severability

The provisions of this compact are severable.

(Source: Laws 1955, p. 1858.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 739.

§ 45 ILCS 95/2. [Board of education to administer compact]

Sec. 2. The State Board of Education of this State shall administer the provisions of the foregoing compact when the same becomes effective; shall collaborate with the compact administrators of the other states which join in the compact, in making rules to enforce the terms of the compact; and shall arrange for the discharge of any financial obligations incurred under the provisions thereof.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 740.

§ 45 ILCS 95/3. [Enforcement]

Sec. 3. The departments and officers of this State and its subdivisions shall enforce the provisions of the compact and take all action necessary and appropriate to effectuate the purposes and intent thereof.

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(Source: Laws 1955, p. 1858.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 741.

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CHAPTER 50.
LOCAL GOVERNMENT

OFFICERS AND EMPLOYEES
50 ILCS 145Local Government Officer Compensation Act
RECORDS
50 ILCS 205Local Records Act
PURCHASES AND CONTRACTS
50 ILCS 505Local Government Prompt Payment Act
50 ILCS 510Local Government Professional Services Selection Act
50 ILCS 515Local Government Energy Conservation Act

OFFICERS AND EMPLOYEES

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Local Government Officer Compensation Act

Sec.

50 ILCS 145/1.Short title
50 ILCS 145/2.Time of fixing compensation
50 ILCS 145/3.Preemption
50 ILCS 145/4.Severability
50 ILCS 145/5 through 50 ILCS 145/20 [Not Set Out]
50 ILCS 145/99.Effective date

§ 50 ILCS 145/1. Short title

Sec. 1. Short title. This Act may be cited as the Local Government Officer Compensation Act.

(Source: P.A. 89-405, § 1.)

Effective Date. Section 99 of P.A. 89-405 made this Act effective upon becoming law. The Act was approved November 8, 1995.

§ 50 ILCS 145/2. Time of fixing compensation

Sec. 2. Time of fixing compensation. Notwithstanding any other law to the contrary, the compensation of elected officers of school districts and units of local government, including home rule units, which compensation is to be fixed by that school district or unit of local government, shall be fixed at least 180 days before the beginning of the terms of the officers whose compensation is to be fixed.

(Source: P.A. 89-405, § 2.)

OPINIONS OF ATTORNEY GENERAL

Analysis

Additional Compensation

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Effective Date of Increase

Additional Compensation

If transportation assistance payments to certain elected officials were intended to be additional compensation and were properly established within the pertinent statutory time period prior to the beginning of such officers' terms of office, payment of the transportation assistance would not violate either the Illinois Constitution or the statutory provisions prohibiting an increase in compensation during elected officers' current terms of office; however, the failure to pay the compensation which was properly fixed within the applicable statutory period before the commencement of their terms of office might have violated the prohibition against decreasing an elected officer's salary during his or her term of office. 2000 Op. Atty. Gen. 13.

Effective Date of Increase

An ordinance which increases the compensation of elected municipal officials need not specify a date certain or an event upon which the increase is intended to take effect, and is not void if it fails to provide that the salary increase will not be effective until the commencement of the next term of office occurring not less than 180 days after the ordinance is adopted. 2000 Op. Atty. Gen. 13.

§ 50 ILCS 145/3. Preemption

Sec. 3. Preemption. A home rule unit may not fix the compensation of elected officers of that unit of local government in a manner inconsistent with this Act. This Act is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.

(Source: P.A. 89-405, § 3.)

§ 50 ILCS 145/4. Severability

Sec. 4. Severability. The provisions and application of this Act are severable as provided in Section 1.31 of the Statute on Statutes [5 ILCS 70/1.31].

(Source: P.A. 89-405, § 4.)

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§§ 50 ILCS 145/5 through 50 ILCS 145/20 [Not Set Out]

Note.

These sections, as found in P.A. 89-405, § 5 through § 20, contained amendatory provisions.

§ 50 ILCS 145/99. Effective date

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 89-405, § 99.)

Note.

The Act was approved November 8, 1995.

RECORDS

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Local Records Act

Sec.

50 ILCS 205/1.[Short title]
50 ILCS 205/2.[Legislative declaration]
50 ILCS 205/3.[Definitions]
50 ILCS 205/3a.[Public records defined; location; hours of availability; notice]
50 ILCS 205/3b.Arrest reports
50 ILCS 205/4.[Damage or disposal of records; storage in State Archives]
50 ILCS 205/5.[Archivist; assistants]
50 ILCS 205/6.[Administration of Act]
50 ILCS 205/7.Disposition rules
50 ILCS 205/8.[Reproduction deemed original]
50 ILCS 205/9.[Destruction of nonrecords]
50 ILCS 205/10.[Commission; authorization of destruction]
50 ILCS 205/11.[Procedure for preservation in emergency]
50 ILCS 205/12.[Determination of essential records for emergency government operation]
50 ILCS 205/13.[Fees for copies]
50 ILCS 205/14.[Relation to Uniform Commercial Code]
50 ILCS 205/14a.Procedures for the disposal of election records
50 ILCS 205/15.[Preparation after July 1, 1984]

§ 50 ILCS 205/1. [Short title]

Sec. 1. This Act may be cited as the Local Records Act.

(Source: P.A. 86-1475.)

Derivation.

Title: An Act in relation to the destruction and preservation of public records of courts, counties, municipal corporations and political subdivisions of the State of Illinois, making an appropriation in connection therewith, and to repeal an Act herein named.

Cite: 50 ILCS 205/1 et seq.

Source: L. 1961, p. 3503.

Date: Approved August 18, 1961.

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Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 43.101.

Cross References.

As to the application of this Act to the Clerk of Courts Act, see 705 ILCS 105/0.01.

As to the application of this Act to county clerks, see 55 ILCS 5/3-2013.

As to the application of this Act to county clerks serving as recorders, see 55 ILCS 5/3-5001.

As to the application of this Act to county treasurers, see 55 ILCS 5/3-10001.

As to the application of this Act to the Cook County auditor, see 55 ILCS 5/3-14048.

As to the application of this Act to the Public Building Commission Act, see 50 ILCS 20/10.

As to the application of this Act to school finance authorities, see 105 ILCS 5/34A-306.

CASE NOTES

Analysis

Disclosure
- Delay
Legislative Intent
Purpose

Disclosure

- Delay

A delay in the disclosure of public records which promotes the public interest is not unreasonable and may serve to promote the function of the public agency involved. Lopez v. Fitzgerald, 53 Ill. App. 3d 164, 10 Ill. Dec. 761, 368 N.E.2d 356 (1 Dist. 1977), aff'd, 76 Ill. 2d 107, 28 Ill. Dec. 476, 390 N.E.2d 835 (1979).

Legislative Intent

In enacting this Act, it is plainly clear that the legislature intended to "facilitate and expedite" the operation of local government. Lopez v. Fitzgerald, 53 Ill. App. 3d 164, 10 Ill. Dec. 761, 368 N.E.2d 356 (1 Dist. 1977), aff'd, 76 Ill. 2d 107, 28 Ill. Dec. 476, 390 N.E.2d 835 (1979).

Purpose

This Act is not intended to be used to violate individual privacy, nor for the purpose of furthering a commercial enterprise, nor to disrupt the duly undertaken work of any public body independent of the fulfillment of any of the rights of the People to access to information. Family Life League v.

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Department of Pub. Aid, 132 Ill. App. 3d 929, 88 Ill. Dec. 117, 478 N.E.2d 432 (1 Dist. 1985), rev'd on other grounds, 112 Ill. 2d 449, 98 Ill. Dec. 33, 493 N.E.2d 1054 (1986).

The title and declaration of purpose of this Act manifest a statutory concern for determining which local governmental records should or should not be preserved on film. The definition of public records is broad and serves to ensure that no important records will be destroyed, and because the Act is concerned with the preservation of records, a cursory provision referring to public access to preserved records found toward the end of the Act cannot be construed to establish a basis for disclosure of specific records preserved; different considerations are involved in determining which records are available for public disclosure than are raised in determining whether records should be preserved by a unit of government, and the basis for determining which records are open to disclosure must be found outside the Act. Lopez v. Fitzgerald, 76 Ill. 2d 107, 28 Ill. Dec. 476, 390 N.E.2d 835 (1979).

OPINIONS OF ATTORNEY GENERAL

Analysis

Sheriff Candidate Files
- Confidentiality
Student Records
- Disposal

Sheriff Candidate Files

- Confidentiality

A deputy sheriff's merit commission is not required to make available for inspection and copying by the news media background investigations and psychological and polygraph reports of candidates for certification for appointment as deputy sheriffs by the commission. 1980 Op. Atty. Gen. 57.

Student Records

- Disposal

Permanent retention of student records is not required if reasonable efforts to give notice have been made but the person entitled to notice cannot be located; once a school's obligation to give reasonable notice has been met, the records may be disposed of as authorized under this Act. 1991 Op. Atty. Gen. (91-030).

LEGAL PERIODICALS

For comment, "Freedom of Information Act - Illinois Adopts a New Public Records Statute," see 1985 S. Ill. U.L.J. 79.

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§ 50 ILCS 205/2. [Legislative declaration]

Sec. 2. This Act declares that a program for the efficient and economical management of local records will promote economy and efficiency in the day-by-day recordkeeping activities of local governments and will facilitate and expedite governmental operations.

(Source: Laws 1961, p. 3503.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 43.102.

CASE NOTES

Purpose

- Disclosure

The title and declaration of purpose of this Act manifest a statutory concern for determining which local governmental records should or should not be preserved on film. The definition of public records is broad and serves to ensure that no important records will be destroyed, and because the Act is concerned with the preservation of records, a cursory provision referring to public access to preserved records found toward the end of the Act cannot be construed to establish a basis for disclosure of specific records preserved; different considerations are involved in determining which records are available for public disclosure than are raised in determining whether records should be preserved by a unit of government, and the basis for determining which records are open to disclosure must be found outside the Act. Lopez v. Fitzgerald, 76 Ill. 2d 107, 28 Ill. Dec. 476, 390 N.E.2d 835 (1979).

§ 50 ILCS 205/3. [Definitions]

Sec. 3. Except where the context indicates otherwise, the terms used in this Act are defined as follows:

"Agency" means any court, and all parts, boards, departments, bureaus and commissions of any county, municipal corporation or political subdivision.

"Archivist" means the Secretary of State.

"Commission" means a Local Records Commission.

"Court" means a court, other than the Supreme Court.

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"Officer" means any elected or appointed official of a court, county, municipal corporation or political subdivision.

"Public record" means any book, paper, map, photograph, digitized electronic material, or other official documentary material, regardless of physical form or characteristics, made, produced, executed or received by any agency or officer pursuant to law or in connection with the transaction of public business and preserved or appropriate for preservation by such agency or officer, or any successor thereof, as evidence of the organization, function, policies, decisions, procedures, or other activities thereof, or because of the informational data contained therein. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of public record. Paper copies of registration records, as defined in Section 1 of the Library Records Confidentiality Act (75 ILCS 70/1), shall not be considered public records once the information contained in the paper registration records is transferred into a secure electronic format and checked for accuracy.

(Source: Laws 1965, p. 3692; P.A. 89-272, § 5; 97-100, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 43.103.

Effect of Amendments. The 2011 amendment by P.A. 97-100, effective July 14, 2011, added the last sentence to the definition of Public record.

CASE NOTES

Analysis

Investigation Reports
- Nondisclosure
Public Record
- Cable Franchise Records
- Deeds
- Drug Reports
- Legislative Commission Report

Investigation Reports

- Nondisclosure

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Even if investigation reports fall within the definition of public records under this Act, it does not follow that they are subject to public disclosure. Lopez v. Fitzgerald, 76 Ill. 2d 107, 28 Ill. Dec. 476, 390 N.E.2d 835 (1979).

Public Record

- Cable Franchise Records

Financial records submitted to city by applicants for cable television franchises were not "public records" within the meaning of this Act and, therefore, were not subject to disclosure to the public. People ex rel. Better Broadcasting Council, Inc. v. Keane, 17 Ill. App. 3d 1090, 309 N.E.2d 362 (1 Dist. 1973).

- Deeds

Certified copy of deed filed with the Registrar of Titles which conveyed plaintiffs' parcel was a public record and as such the court took judicial notice of it. Swieton v. Landoch, 106 Ill. App. 3d 292, 62 Ill. Dec. 181, 435 N.E.2d 1153 (1 Dist. 1982).

- Drug Reports

The reports from the Dangerous Drugs Advisory Council and from the United States Department of Justice Drug Enforcement Administration are public records and judicial notice may be taken of them. People v. Matkovick, 101 Ill. 2d 268, 78 Ill. Dec. 130, 461 N.E.2d 964, appeal dismissed, 469 U.S. 806, 105 S. Ct. 64, 83 L. Ed. 2d 15 (1984).

- Legislative Commission Report

A report of the Legislative Investigating Commission, created under this section, was a public record, of which judicial notice could be taken. Finish Line Express, Inc. v. City of Chicago, 72 Ill. 2d 131, 19 Ill. Dec. 626, 379 N.E.2d 290 (1978).

OPINIONS OF ATTORNEY GENERAL

Analysis

Agency
- Shown
Officers
- State's Attorneys
Records
- Jurisdiction

Agency

DuPage Public Safety Communications, an entity created pursuant to an intergovernmental cooperation agreement for the purpose of providing a centralized public safety communications system, is an "agency" as that term is used in the Local Records Act, and must therefore maintain its records in accordance with the provisions of that Act. 1999 Op. Atty. Gen. (99-021).

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- Shown

The Chicago World's Fair-1992 Authority created under former Ill. Rev. Stat., ch. 127, para. 2101.04 was created as a political subdivision of the state and was clearly an agency for the purposes of the application of this Act and therefore subject to its requirements. 1985 Op. Atty. Gen. (85-009).

Officers

- State's Attorneys

The legislature intended State's attorneys to be considered "officers" for the purposes of this Act. 1978 Op. Atty. Gen. 157.

Records

- Jurisdiction

In view of the local nature of soil and water conservation districts and the fact that they are created as public bodies corporate and politic exercising public powers, such districts are municipal corporations as contemplated by this Act and the records of such districts are under the jurisdiction of the appropriate Local Records Commission. 1977 Op. Atty. Gen. 155.

§ 50 ILCS 205/3a. [Public records defined; location; hours of availability; notice]

Sec. 3a. Reports and records of the obligation, receipt and use of public funds of the units of local government and school districts, including certified audits, management letters and other audit reports made by the Auditor General, County Auditors, other officers or by licensed Certified Public Accountants permitted to perform audits under the Illinois Public Accounting Act [225 ILCS 450/0.01 et seq.] and presented to the corporate authorities or boards of the units of local government, are public records available for inspection by the public. These records shall be kept at the official place of business of each unit of local government and school district or at a designated place of business of the unit or district. These records shall be available for public inspection during regular office hours except when in immediate use by persons exercising official duties which require the use of those records. The person in charge of such records may require a notice in writing to be submitted 24 hours prior to inspection and may require that such notice specify which records are to be inspected. Nothing in this Section shall require units of local government and school districts to invade or assist in the invasion of any person's right to privacy.

(Source: P.A. 82-239; 91-357, § 68; 94-465, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 43.103a.

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P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 2005 amendment by P.A. 94-465, effective August 4, 2005, in the first sentence substituted "licensed Certified Public Accountants permitted to perform audits" for "certified public accountants licensed".

CASE NOTES

Analysis

Application
- State University
Attorney Fees
- Township Officer
Building Inspection Reports
- Nondisclosure
Employees' Salaries
- Disclosure
Notice and Hearing
- Prerequisite to Disclosure
Public Funds
- Disclosure
Right to Privacy
- Effect of Disclosure
Voter Affidavits
- Disclosure

Application

- State University

A state university is not a unit of local government or a school district to which this section might apply; rather, the university is an arm of the state of Illinois. Pope v. Parkinson, 48 Ill. App. 3d 797, 6 Ill. Dec. 756, 363 N.E.2d 438 (4 Dist. 1977).

Attorney Fees

- Township Officer

Where the trustees of a township brought an action against a township officer in his official capacity to compel him to produce certain records of the township which were in his possession for the purposes of carrying out his duties as treasurer, the officer was entitled to reasonable attorney fees incurred as a result of defending those proceedings. Wayne Tp. Bd. of Auditors v. Ludwig, 154 Ill. App. 3d 899, 107 Ill. Dec. 535, 507 N.E.2d 199 (2 Dist. 1987).

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Building Inspection Reports

- Nondisclosure

Neither this Act nor the Municipal Code of Chicago provide for public access of building inspection reports made by the Department of Buildings of the City of Chicago. Lopez v. Fitzgerald, 76 Ill. 2d 107, 28 Ill. Dec. 476, 390 N.E.2d 835 (1979).

Employees' Salaries

- Disclosure

By the public policy of this state, and by express statutory provision, it was and is the duty of a district, along with other local governmental units, to provide public access to records of employees' salaries. People ex rel. Recktenwald v. Janura, 59 Ill. App. 3d 143, 17 Ill. Dec. 129, 376 N.E.2d 22 (1 Dist. 1978).

Notice and Hearing

- Prerequisite to Disclosure

A building owner must be provided a notice and an opportunity to be heard before a building investigation report may be open to public scrutiny. Lopez v. Fitzgerald, 76 Ill. 2d 107, 28 Ill. Dec. 476, 390 N.E.2d 835 (1979).

Public Funds

- Disclosure

Records of expenditures from mayor's contingency fund account which concerned the obligation, receipt, and use of public funds constituted local financial records under Ill.Const.(1970), Art. VIII, § (1) and this Act, and, as such, were subject to public disclosures. Oberman v. Byrne, 112 Ill. App. 3d 155, 67 Ill. Dec. 894, 445 N.E.2d 374 (1 Dist. 1983).

Landlords benefitting from federal rent subsidy funds would not have their right of privacy invaded simply by disclosing records showing that they received public funds and neither would there be any invasion of the tenants' privacy. Mid-America Television Co. v. Peoria Hous. Auth., 93 Ill. App. 3d 314, 48 Ill. Dec. 808, 417 N.E.2d 210 (3 Dist. 1981).

The state does not consider the receipt of public aid to be a private fact and therefore the identities of the recipients must be made available for public inspection; the possibility that some tenants could have been recognized as receiving public aid did not constitute an invasion of privacy as the result of disclosure of a subsidized property to a local television station. Mid-America Television Co. v. Peoria Hous. Auth., 93 Ill. App. 3d 314, 48 Ill. Dec. 808, 417 N.E.2d 210 (3 Dist. 1981).

Right to Privacy

- Effect of Disclosure

Public disclosure of the names and salaries of employees of forest preserve district did not violate their right to privacy. People ex rel. Recktenwald v. Janura, 59 Ill. App. 3d 143, 17 Ill. Dec. 129, 376 N.E.2d 22 (1 Dist. 1978).

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Voter Affidavits

- Disclosure

Inspection or copying of voter affidavits should be permitted after expiration of the time for filing an election contest pursuant to the statutory right to inspect and copy public records. People ex rel. Sherman v. Slater, 42 Ill. App. 3d 396, 355 N.E.2d 735 (1 Dist. 1976).

OPINIONS OF ATTORNEY GENERAL

Disclosure

- Illustrative Cases

Funds paid to county-contracted medical specialists are received and disbursed by the county treasurer and are therefore open to public inspection. 1980 Op. Atty. Gen. 152.

§ 50 ILCS 205/3b. Arrest reports

Sec. 3b. Arrest reports. (a) When an individual is arrested, the following information must be made available to the news media for inspection and copying:

(1) Information that identifies the individual, including the name, age, address, and photograph, when and if available.

(2) Information detailing any charges relating to the arrest.

(3) The time and location of the arrest.

(4) The name of the investigating or arresting law enforcement agency.

(5) If the individual is incarcerated, the amount of any bail or bond.

(6) If the individual is incarcerated, the time and date that the individual was received, discharged, or transferred from the arresting agency's custody.

(b) The information required by this Section must be made available to the news media for inspection and copying as soon as practicable, but in no event shall the time period exceed 72 hours from the arrest. The information described in paragraphs (3), (4), (5), and (6) of subsection (a), however, may be withheld if it is determined that disclosure would:

(1) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency;

(2) endanger the life or physical safety of law enforcement or correctional personnel or any other person; or

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(3) compromise the security of any correctional facility.

(c) For the purposes of this Section the term "news media" means personnel of a newspaper or other periodical issued at regular intervals whether in print or electronic format, a news service whether in print or electronic format, a radio station, a television station, a television network, a community antenna television service, or a person or corporation engaged in making news reels or other motion picture news for public showing.

(d) Each law enforcement or correctional agency may charge fees for arrest records, but in no instance may the fee exceed the actual cost of copying and reproduction. The fees may not include the cost of the labor used to reproduce the arrest record.

(e) The provisions of this Section do not supersede the confidentiality provisions for arrest records of the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.].

(Source: P.A. 91-309, § 15; 92-16, § 42; 92-335, § 20.)

Note.

Section 95 of P.A. 91-309 contains a "no acceleration or delay" provision.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 91-309 made this section effective upon becoming law. The Act was approved July 29, 1999.

Effect of Amendments. The 2001 amendment by P.A. 92-16, effective June 28, 2001, added "of 1987" in subsection (e); and made stylistic changes.

The 2001 amendment by P.A. 92-335, effective August 10, 2001, in subsection (a)(1) substituted "individual" for "person"; inserted "the individual is" in subsections (a)(5) and (a)(6); in subsection (b), substituted "paragraphs (3), (4), (5), and (6)" for "paragraphs 3, 4, 5, and 6"; in subsection (c), inserted "whether in print or electronic format" in two places and inserted "a television network"; and, at the end of subsection (e), added "of 1987".

Although the amendments made by P.A. 92-16, § 42 and P.A. 92-335, § 20 did not take into account the amendments made by the other, the amendments have been combined into a single version by the publisher.

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Administrative Law," see 26 S. Ill. U.L.J. 757 (2002).

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§ 50 ILCS 205/4. [Damage or disposal of records; storage in State Archives]

Sec. 4. All public records made or received by, or under the authority of, or coming into the custody, control or possession of any officer or agency shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part, except as provided by law.

Court records filed with the clerks of the Circuit Court shall be destroyed in accordance with the Supreme Court's General Administrative Order on Recordkeeping in the Circuit Courts. The clerks of the Circuit Courts shall notify the Supreme Court, in writing, specifying case records or other documents which they intend to destroy. The Supreme Court shall review the schedule of items to be destroyed and notify the appropriate Local Records Commission of the Court's intent to destroy such records. The Local Records Commission, within 90 days after receipt of the Supreme Court's notice, may undertake to photograph, microphotograph, or digitize electronically any or all such records and documents, or, in the alternative, may transport such original records to the State Archives or other storage location under its supervision.

The Archivist may accept for deposit in the State Archives or regional depositories official papers, drawings, maps, writings and records of every description of counties, municipal corporations, political subdivisions and courts of this State, when such materials are deemed by the Archivist to have sufficient historical or other value to warrant their continued preservation by the State of Illinois.

The officer or clerk depositing such records may, upon request, obtain from the Archivist, without charge, a certified copy or reproduction of any specific record, paper or document when such record, paper or document is required for public use.

(Source: P.A. 85-1278; 89-272, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 43.104.

OPINIONS OF ATTORNEY GENERAL

Applicability

- Student Records

This Act is applicable to student records maintained pursuant to the Illinois School Student Records Act (105 ILCS 10/1), and therefore, a local school district must obtain the written approval of the appropriate local records commission before destroying or otherwise disposing of

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such records. 1983 Op. Atty. Gen. 60.

§ 50 ILCS 205/5. [Archivist; assistants]

Sec. 5. The Archivist shall be local records advisor and shall appoint such assistants as necessary to assist local governments in carrying out the purposes of this Act.

(Source: Laws 1961, p. 3503.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 43.105.

§ 50 ILCS 205/6. [Administration of Act]

Sec. 6. For those agencies comprising counties of 3,000,000 or more inhabitants or located in or co-terminous with any such county or a majority of whose inhabitants reside in any such county, this Act shall be administered by a Local Records Commission consisting of the president of the county board of the county wherein the records are kept, the mayor of the most populous city in such county, the State's attorney of such county, the County comptroller, the State archivist, and the State historian. The president of the county board shall be the chairman of the Commission.

For all other agencies, this Act shall be administered by a Local Records Commission consisting of a chairman of a county board, who shall be chairman of the Commission, a mayor or president of a city, village or incorporated town, a county auditor, and a State's attorney, all of whom shall be appointed by the Governor, the State archivist, and the State historian.

A member of either Commission may designate a substitute.

Either Commission may employ such technical, professional and clerical assistants as are necessary.

Either Commission shall meet upon call of its chairman.

(Source: Laws 1961, p. 3503.)

Note.

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This section was Ill.Rev.Stat., Ch. 116, Para. 43.106.

OPINIONS OF ATTORNEY GENERAL

Analysis

College District Records
- Jurisdiction
Disposal by State's Attorneys
- Approval Required

College District Records

- Jurisdiction

The records of a local community college district are under the jurisdiction of the appropriate Local Records Commission. 1977 Op. Atty. Gen. 94.

Disposal by State's Attorneys

- Approval Required

State's attorneys must obtain the approval of the local records commission before disposing of their records, except as otherwise provided by law. 1978 Op. Atty. Gen. 157.

§ 50 ILCS 205/7. Disposition rules

Sec. 7. Disposition rules. Except as otherwise provided by law, no public record shall be disposed of by any officer or agency unless the written approval of the appropriate Local Records Commission is first obtained.

The Commission shall issue regulations which shall be binding on all such officers. Such regulations shall establish procedures for compiling and submitting to the Commission lists and schedules of public records proposed for disposal; procedures for the physical destruction or other disposition of such public records; and standards for the reproduction of such public records by photography, microphotographic processes, or digitized electronic format. Such standards shall relate to the quality of the film to be used, preparation of the public records for filming or electronic conversion, proper identification matter on such records so that an individual document or series of documents can be located on the film or digitized electronic form with reasonable facility, and that the copies contain all significant record detail, to the end that the copies will be adequate. Any public record may be reproduced in a microfilm or digitized electronic format. The agency may dispose of the original of any reproduced record providing: (i) the reproduction process forms a durable medium that accurately and

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legibly reproduces the original record in all details, that does not permit additions, deletions, or changes to the original document images, and, if electronic, that are retained in a trustworthy manner so that the records, and the information contained in the records, are accessible and usable for subsequent reference at all times while the information must be retained, (ii) the reproduction is retained for the prescribed retention period, and (iii) the Commission is notified when the original record is disposed of and also when the reproduced record is disposed of.

Such regulations shall also provide that the State archivist may retain any records which the Commission has authorized to be destroyed, where they have a historical value, and that the State archivist may deposit them in the State Archives, State Historical Library, or a university library, or with a historical society, museum, or library.

(Source: P.A. 76-1666; 89-272, § 5; 90-701, § 5; 91-886, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 43.107.

Effect of Amendments. The 2000 amendment by P.A. 91-886, effective January 1, 2001, rewrote the section to the extent that a detailed comparison would be impracticable.

§ 50 ILCS 205/8. [Reproduction deemed original]

Sec. 8. Any such reproduction shall be deemed to be an original public record for all purposes including introduction in evidence in all courts or before administrative agencies. A transcript, exemplification or certified copy of such reproduction shall, for all purposes recited herein, be deemed to be a transcript, exemplification, or certified copy of the original public record.

(Source: Laws 1961, p. 3503.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 43.108.

§ 50 ILCS 205/9. [Destruction of nonrecords]

Sec. 9. Nonrecord materials or materials not included within the definition of records as contained in this Act may be destroyed at any time by the agency in possession of such

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materials without the prior approval of the Commission. The Commission may formulate advisory procedures and interpretations to guide in the disposition of nonrecord materials.

(Source: Laws 1961, p. 3503.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 43.109.

§ 50 ILCS 205/10. [Commission; authorization of destruction]

Sec. 10. The head of each agency shall submit to the appropriate Commission, in accordance with the regulations of the Commission, lists or schedules of public records in his custody that are not needed in the transaction of current business and that do not have sufficient administrative, legal or fiscal value to warrant their further preservation. The head of each agency shall also submit lists or schedules proposing the length of time each records series warrants retention for administrative, legal or fiscal purposes after it has been received by the agency. The Commission shall determine what public records have no administrative, legal, research or historical value and should be destroyed or otherwise disposed of and shall authorize destruction or other disposal thereof. No public record shall be destroyed or otherwise disposed of by any Local Records Commission on its own initiative, nor contrary to law. This Section shall not apply to court records as governed by Section 4 of this Act [50 ILCS 205/4].

(Source: P.A. 85-1278.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 43.110.

§ 50 ILCS 205/11. [Procedure for preservation in emergency]

Sec. 11. Both Commissions with the assistance of the Secretary of State and State Archivist, shall establish a system for the protection and preservation of essential local records necessary for the continuity of governmental functions in the event of emergency arising from enemy action or natural disaster and for the reestablishment of local government thereafter.

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(Source: Laws 1961, p. 3503.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 43.111.

§ 50 ILCS 205/12. [Determination of essential records for emergency government operation]

Sec. 12. Both Commissions shall with the assistance of the Secretary of State and State Archivist determine what records are essential for emergency government operation through consultation with all branches of government, state agencies, and with the State Civilian Defense agency, to determine what records are essential for post-emergency government operation and provide for their protection and preservation and provide for the security storage or relocation of essential local records in the event of an emergency arising from enemy attack or natural disaster.

(Source: Laws 1961, p. 3503.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 43.112.

§ 50 ILCS 205/13. [Fees for copies]

Sec. 13. In any case where public records have been reproduced by photography, microphotography or other reproductions on film, in accordance with the provisions of this Act, any person or organization shall be supplied with copies of such photographs, microphotographs, or other reproductions on film upon payment of the required fee to the officer having custody thereof. The fee required to be paid shall be the actual cost of such copies, plus a service charge of 15% of such cost.

(Source: Laws 1961, p. 3503.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 43.113.

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CASE NOTES

Analysis
Court Records
Disclosure

Court Records

Statutes governing clerk's duty to maintain court records and to allow free access to examine and take memoranda of the records do not, alone or together, impose a general duty on the clerk to reproduce court records. Lee v. Pucinski, 267 Ill. App. 3d 489, 204 Ill. Dec. 868, 642 N.E.2d 769 (1 Dist. 1994).

Disclosure

This section is not a general disclosure authorization provision. Lopez v. Fitzgerald, 76 Ill. 2d 107, 28 Ill. Dec. 476, 390 N.E.2d 835 (1979).

OPINIONS OF ATTORNEY GENERAL

Computer Tape

- Fee

When the county clerk furnishes an individual or organization with a copy of a computer tape containing voter registration records, he has the authority to require the individual or organization to pay a fee. 1977 Op. Atty. Gen. 219.

§ 50 ILCS 205/14. [Relation to Uniform Commercial Code]

Sec. 14. Part 5 of Article 9 of the Uniform Commercial Code [810 ILCS 5/9-501 et seq.] is subject to the provisions of this Act.

(Source: P.A. 76-1708; 91-893, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 43.114.

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Effect of Amendments. The 2000 amendment by P.A. 91-893, effective July 1, 2001, substituted "5" for "4"; deleted "approved July 31, 1961, as amended" following "Uniform Commercial Code" and "as now or hereafter amended" following "provisions of this Act", and made minor stylistic changes.

§ 50 ILCS 205/14a. Procedures for the disposal of election records

Sec. 14a. Procedures for the disposal of election records. The provisions of the Election Code [10 ILCS 5/1-1 et seq.] do not supersede the provisions of this Act with regard to procedures for the disposal of election records. Local election authorities must comply with the provisions of this Act when destroying or disposing of public records.

(Source: P.A. 96-475, § 5.)

Effective Date. Section 99 of P.A. 96-475 makes this section effective upon becoming law. The Act was approved August 14, 2009.

§ 50 ILCS 205/15. [Preparation after July 1, 1984]

Sec. 15. Beginning July 1, 1984, the provisions of Section 3a of this Act [50 ILCS 205/3a], as it relates to inspection of records, shall apply only as to records and reports prepared or received prior to this date. Records and reports prepared or received on or after July 1, 1984, shall be covered under the provisions of "The Freedom of Information Act", approved by the 83rd General Assembly [5 ILCS 140/1 et seq.].

(Source: P.A. 83-1013.)

Note.

This section was Ill.Rev.Stat., Ch. 116, Para. 43.115.

PURCHASES AND CONTRACTS

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Local Government Prompt Payment Act

Sec.

50 ILCS 505/1.[Short title]
50 ILCS 505/2.[Application]
50 ILCS 505/3.[Period for approval or disapproval; period for testing; notice on disapproval]
50 ILCS 505/4.[Period for payment]
50 ILCS 505/5.[Failure to approve or disapprove; penalty for late payment]
50 ILCS 505/6.[Time periods set by contract]
50 ILCS 505/7.[Distribution of appropriated funds]
50 ILCS 505/9.Payments to subcontractors and material suppliers; failure to make timely payments; additional amount due

§ 50 ILCS 505/1. [Short title]

Sec. 1. This Act shall be known and may be cited as the "Local Government Prompt Payment Act".

(Source: P.A. 84-731.)

Derivation.

Title: An Act to create the "Local Government Prompt Payment Act", and to amend certain Acts named therein.

Cite: 50 ILCS 505/1 et seq.

Source: P.A. 84-731.

Date: Approved September 21, 1985.

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 5601.

CASE NOTES

Interest

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There is no conflict between the Interest Act (815 ILCS 205/0.01 et seq.) and this Act with respect to the imposition of prejudgment interest. Superior Structures Co. v. City of Sesser, 292 Ill. App. 3d 848, 226 Ill. Dec. 927, 686 N.E.2d 710 (5 Dist. 1997).

RESEARCH REFERENCES

Amount of appropriation as limitation on damages for breach of contract recoverable by one contracting with government agency. 40 ALR4th 998.

Practice Guides and Treatises.

Construction Litigation § 4.10 Recovery of Interest (IICLE).

§ 50 ILCS 505/2. [Application]

Sec. 2. This Act shall apply to every county, township, municipality, municipal corporation, school district, school board, forest preserve district, park district, fire protection district, sanitary district and all other local governmental units. It shall not apply to the State or any office, officer, department, division, bureau, board, commission, university or similar agency of the State, except as provided in Section 7 [50 ILCS 505/7].

(Source: P.A. 85-1159.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 5602.

§ 50 ILCS 505/3. [Period for approval or disapproval; period for testing; notice on disapproval]

Sec. 3. The appropriate local governmental official or agency receiving goods or services must approve or disapprove a bill from a vendor or contractor for goods or services furnished the local governmental agency within 30 days after the receipt of such bill or within 30 days after the date on which the goods or services were received, whichever is later. If one or more items on a construction related bill or invoice are disapproved, but not the entire bill or invoice, then the portion that is not disapproved shall be paid. When safety or quality assurance testing of goods by the local governmental agency is necessary before the approval or disapproval of a bill and such testing cannot be completed within 30 days after receipt of the goods, approval or disapproval of the bill

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must be made immediately upon completion of the testing or within 60 days after receipt of the goods, whichever occurs first. Written notice shall be mailed to the vendor or contractor immediately if a bill is disapproved.

(Source: P.A. 87-773; 94-972, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 5603.

Effect of Amendments. The 2006 amendment by P.A. 94-972, effective July 1, 2007, added the second sentence.

CASE NOTES

Period

- Immediacy Not Shown

Formal notification of disapproval 29 days after completion of safety testing was clearly not immediate. Superior Structures Co. v. City of Sesser, 277 Ill. App. 3d 653, 214 Ill. Dec. 413, 660 N.E.2d 1362 (5 Dist. 1996), appeal denied, 167 Ill. 2d 570, 217 Ill. Dec. 670, 667 N.E.2d 1063 (1996).

§ 50 ILCS 505/4. [Period for payment]

Sec. 4. Any bill approved for payment pursuant to Section 3 [50 ILCS 505/3] shall be paid within 30 days after the date of approval. If payment is not made within such 30 day period, an interest penalty of 1% of any amount approved and unpaid shall be added for each month or fraction thereof after the expiration of such 30 day period, until final payment is made.

(Source: P.A. 84-731.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 5604.

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CASE NOTES

Interest

Imposing the interest penalty under this Act during the time after judgment, while a case is appealed, in addition to imposing postjudgment interest under the Code of Civil Procedure, would raise the postjudgment interest rate far above that intended by the legislature. Superior Structures Co. v. City of Sesser, 292 Ill. App. 3d 848, 226 Ill. Dec. 927, 686 N.E.2d 710 (5 Dist. 1997).

The interest penalty, imposed for the City's untimely disapproval of a contractor's bill for services, stopped accruing upon final payment. Superior Structures Co. v. City of Sesser, 292 Ill. App. 3d 848, 226 Ill. Dec. 927, 686 N.E.2d 710 (5 Dist. 1997).

§ 50 ILCS 505/5. [Failure to approve or disapprove; penalty for late payment]

Sec. 5. If the local governmental official or agency whose approval is required for any bill fails to approve or disapprove that bill within the period provided for approval by Section 3 [50 ILCS 505/3], the penalty for late payment of that bill shall be computed from the date 60 days after the receipt of that bill or the date 60 days after the goods or services are received, whichever is later.

(Source: P.A. 84-731.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 5605.

§ 50 ILCS 505/6. [Time periods set by contract]

Sec. 6. The time periods specified in Sections 3, 4 and 5 [50 ILCS 505/3, 50 ILCS 505/4 and 50 ILCS 505/5], as they pertain to particular goods or services, are superseded by any greater time periods as agreed to by the local government agency and the particular vendor or contractor.

(Source: P.A. 87-773.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 5606.

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§ 50 ILCS 505/7. [Distribution of appropriated funds]

Sec. 7. If the funds from which the local governmental official or agency is to pay for goods or services are funds appropriated or controlled by the State, then the local governmental official or agency may certify to the State Treasurer, Comptroller and State agency responsible for administering such funds that a specified amount is anticipated to be necessary within 45 days after certification to pay for specified goods or services and that such amount is not currently available to the local governmental official or agency. The State Treasurer, Comptroller and State agency shall than expedite distribution of funds to the local governmental unit to make such payments. The certification shall be mailed on the date of certification by certified U. S. mail, return receipt requested. Any interest penalty incurred by the local governmental unit under Section 3 or 4 [50 ILCS 505/3 or 50 ILCS 505/4] because of the failure of funds to be distributed from the State to the local governmental unit within the 45 day period shall be reimbursed by the State to the local governmental unit as an amount in addition to the funds to be otherwise distributed from the State.

(Source: P.A. 85-1159.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 5607.

§ 50 ILCS 505/9. Payments to subcontractors and material suppliers; failure to make timely payments; additional amount due

Sec. 9. Payments to subcontractors and material suppliers; failure to make timely payments; additional amount due. When a contractor receives any payment, the contractor shall pay each subcontractor and material supplier in proportion to the work completed by each subcontractor and material supplier their application less any retention. If the contractor receives less than the full payment due under the public construction contract, the contractor shall be obligated to disburse on a pro rata basis those funds received, with the contractor, subcontractors and material suppliers each receiving a prorated portion based on the amount of payment. All interest payments received pursuant to Section 4 [50 ILCS 505/4] also shall be disbursed to subcontractors and material suppliers to whom payment has been delayed, on a pro rata basis. When, however, the public owner does not release the full payment due under the contract because there are specific areas of work or materials the contractor is rejecting or because the contractor has otherwise determined such areas are not suitable for payment, then those specific subcontractors or suppliers involved shall not be paid for that portion of the work rejected or deemed not suitable for payment and all other subcontractors and suppliers shall be paid in full.

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If the contractor, without reasonable cause, fails to make any payment to his subcontractors and material suppliers within 15 days after receipt of payment under the public construction contract, the contractor shall pay to his subcontractors and material suppliers, in addition to the payment due them, interest in the amount of 2% per month, calculated from the expiration of the 15-day period until fully paid. This Section shall also apply to any payments made by subcontractors and material suppliers to their subcontractors and material suppliers and to all payments made to lower tier subcontractors and material suppliers throughout the contracting chain.

(Source: P.A. 87-773; 94-972, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 5609.

Effect of Amendments. The 2006 amendment by P.A. 94-972, effective July 1, 2007, added the section heading; added the third sentence; and made a stylistic change.

CASE NOTES

Scope

A subcontractor has no claim against a public body under the statute; the statute limits the rights of subcontractors working to seek payment from the contractor, not the public body. Shaw Indus. v. Community College Dist. No. 515, 318 Ill. App. 3d 661, 251 Ill. Dec. 755, 741 N.E.2d 642, 2000 Ill. App. LEXIS 957 (1 Dist. 2000).

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Local Government Professional Services Selection Act

Sec.

50 ILCS 510/0.01.Short title
50 ILCS 510/1.Policy
50 ILCS 510/2.Federal Requirements
50 ILCS 510/3.Definitions
50 ILCS 510/4.Public notice
50 ILCS 510/5.Evaluation Procedure
50 ILCS 510/6.Selection procedure
50 ILCS 510/7.Contract negotiation
50 ILCS 510/8.Waiver of competition

§ 50 ILCS 510/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Local Government Professional Services Selection Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act concerning municipalities, counties and other political subdivisions.

Cite: 50 ILCS 510/0.01 et seq.

Source: P.A. 85-854.

Date: Approved September 24, 1987.

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 6400.

Practice Guides and Treatises.

Construction Litigation § 1.46 Architects, engineers, and surveyors (IICLE).

Construction Litigation § 1.3 Engagement of the Design Professional (IICLE).

§ 50 ILCS 510/1. Policy

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Sec. 1. Policy. It shall be the policy of the political subdivisions of the State of Illinois to negotiate and enter into contracts for architectural, engineering and land surveying services on the basis of demonstrated competence and qualifications for the type of services required and at fair and reasonable compensation.

(Source: P.A. 85-854.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 6401.

Cross References.

As to conflicts between Division 9 of Article 8 of the Illinois Municipal Code and this Act, see 65 ILCS 5/8-9-3.

§ 50 ILCS 510/2. Federal Requirements

Sec. 2. Federal Requirements. In the procurement of architectural, engineering and land surveying services and in the awarding of contracts, a political subdivision of the State of Illinois may comply with federal law and regulations and take all necessary steps to adapt its rules, specifications, policies and procedures accordingly to remain eligible for federal aid.

(Source: P.A. 85-854.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 6402.

§ 50 ILCS 510/3. Definitions

Sec. 3. Definitions. As used in this Act unless the context specifically requires otherwise:

(1) "Firm" means any individual, firm, partnership, corporation, association or other legal entity permitted by law to practice the profession of architecture, engineering or land surveying and provide architectural, engineering or land surveying services.

(2) "Architectural services" means any professional service as defined in Section 5 of the Illinois Architecture Practice Act of 1989 [225 ILCS 305/5].

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(3) "Engineering services" means any professional service as defined in Section 4 of the Professional Engineering Practice Act of 1989 [225 ILCS 325/4] or Section 5 of the Structural Engineering Practice Act of 1989 [225 ILCS 340/5].

(4) "Land surveying services" means any professional service as defined in Section 5 of the Illinois Professional Land Surveyor Act of 1989 [225 ILCS 330/5].

(5) "Political subdivision" means any school district and any unit of local government of fewer than 3,000,000 inhabitants, except home rule units.

(6) "Project" means any capital improvement project or any study, plan, survey or new or existing program activity of a political subdivision, including development of new or existing programs which require architectural, engineering or land surveying services.

(Source: P.A. 86-711; 86-987; 86-1028; 86-1475; 91-91, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 6403.

CASE NOTES

Political Subdivision

Trial court erred in dismissing the community college board's declaratory judgment action seeking a declaration that its community college was a "political subdivision" subject to the Local Governmental Professional Services Selection Act, 50 ILCS 510/0.01 et seq., and, thus, was not prohibited from soliciting fee or cost information from professionals before negotiating construction projects with professional service firms. A community college was a "political subdivision" and was not, as the state professional regulation agency and its director contended, a "state agency" under the Qualifications Based Selection Act, 30 ILCS 535/1 et seq., that was not entitled to solicit such information. Bd. of Trs. v. Dep't of Prof'l Regulation, 363 Ill. App. 3d 190, 299 Ill. Dec. 903, 842 N.E.2d 1255, 2006 Ill. App. LEXIS 48 (1 Dist. 2006).

§ 50 ILCS 510/4. Public notice

Sec. 4. Public notice. Present provisions of law notwithstanding, in the procurement of architectural, engineering or land surveying services, each political subdivision which utilizes architectural, engineering or land surveying services shall permit firms engaged in the lawful practice of their professions to annually file a statement of qualifications and performance data with the political subdivision. Whenever a project requiring architectural, engineering or land surveying services is proposed for a political

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subdivision, the political subdivision shall, unless it has a satisfactory relationship for services with one or more firms:

(1) Mail a notice requesting a statement of interest in the specific project to all firms who have a current statement of qualifications and performance data on file with the political subdivision; or

(2) Place an advertisement in a secular English language daily newspaper of general circulation throughout such political subdivision, requesting a statement of interest in the specific project and further requesting statements of qualifications and performance data from those firms which do not have such a statement on file with the political subdivision. Such advertisement shall state the day, hour and place the statement of interest and the statements of qualifications and performance data shall be due.

(Source: P.A. 85-854.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 6404.

§ 50 ILCS 510/5. Evaluation Procedure

Sec. 5. Evaluation Procedure. A political subdivision shall, unless it has a satisfactory relationship for services with one or more firms, evaluate the firms submitting letters of interest, taking into account qualifications, ability of professional personnel, past record and experience, performance data on file, willingness to meet time requirements, location, workload of the firm, and such other qualifications-based factors as the political subdivision may determine in writing are applicable. The political subdivision may conduct discussions with and require public presentations by firms deemed to be the most qualified regarding their qualifications, approach to the project, and ability to furnish the required services. In no case shall a political subdivision, prior to selecting a firm for negotiation under Section 7 [50 ILCS 510/7], seek formal or informal submission of verbal or written estimates of costs or proposals in terms of dollars, hours required, percentage of construction cost, or any other measure of compensation.

(Source: P.A. 85-854; 94-1097, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 6405.

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Effect of Amendments. The 2007 amendment by P.A. 94-1097, effective February 2, 2007, revised the section heading; in the first sentence deleted "and budget" after "meet time" and added "qualifications-based"; and added the last sentence.

§ 50 ILCS 510/6. Selection procedure

Sec. 6. Selection procedure. On the basis of evaluations, discussions and presentations, the political subdivision shall, unless it has a satisfactory relationship for services with one or more firms, select no less than 3 firms which it determines to be the most qualified to provide services for the project and rank them in order of qualifications to provide services regarding the specific project. The political subdivision shall then contact the firm ranked most preferred and attempt to negotiate a contract at a fair and reasonable compensation, taking into account the estimated value, scope, complexity, and professional nature of the services to be rendered. If fewer than 3 firms submit letters of interest and the political subdivision determines that one or both of those firms are so qualified, the political subdivision may proceed to negotiate a contract pursuant to this Section and Section 7 [50 ILCS 510/7].

(Source: P.A. 85-854.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 6406.

§ 50 ILCS 510/7. Contract negotiation

Sec. 7. Contract negotiation. (1) The political subdivision shall prepare a written description of the scope of the proposed services to be used as a basis for negotiations and shall negotiate a contract with the highest qualified firm at compensation that the political subdivision determines in writing to be fair and reasonable. In making this decision the political subdivision shall take into account the estimated value, scope, complexity and professional nature of the services to be rendered.

(2) If the political subdivision is unable to negotiate a satisfactory contract with the firm which is most preferred, negotiations with that firm shall be terminated. The political subdivision shall then begin negotiations with the firm which is next preferred. If the political subdivision is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be terminated. The political subdivision shall then begin negotiations with the firm which is next preferred.

(3) If the political subdivision is unable to negotiate a satisfactory contract with any of the selected firms, the political subdivision shall re-evaluate the architectural, engineering

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or land surveying services requested, including the estimated value, scope, complexity and fee requirements. The political subdivision shall then compile a second list of not less than three qualified firms and proceed in accordance with the provisions of this Act.

(Source: P.A. 85-854.)

Note.

This section was Ill.Rev.Stat., Ch. 85, para. 6407.

§ 50 ILCS 510/8. Waiver of competition

Sec. 8. Waiver of competition. A political subdivision may waive the requirements of Sections 4, 5, and 6 [50 ILCS 510/4, 50 ILCS 510/5, and 50 ILCS 510/6] if it determines, by resolution, that an emergency situation exists and a firm must be selected in an expeditious manner, or the cost of architectural, engineering, and land surveying services for the project is expected to be less than $25,000.

(Source: P.A. 87-1034, § 1.)

Effective Date. This section became effective January 1, 1993, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

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Local Government Energy Conservation Act

Sec.

50 ILCS 515/1.Short title
50 ILCS 515/3.Applicable laws
50 ILCS 515/4.Applicability
50 ILCS 515/5.Definitions
50 ILCS 515/10.Evaluation of proposal
50 ILCS 515/15.Award of guaranteed energy savings contract
50 ILCS 515/20.Guarantee
50 ILCS 515/25.Installment payment contract; lease purchase agreement
50 ILCS 515/30.Term; budget and appropriations
50 ILCS 515/35.Operational and energy cost savings
50 ILCS 515/40.Available funds
50 ILCS 515/45.Funding
50 ILCS 515/75.[Not Set Out]
50 ILCS 515/99.[Effective date]

§ 50 ILCS 515/1. Short title

Sec. 1. Short title. This Act may be cited as the Local Government Energy Conservation Act.

(Source: P.A. 88-173, § 1.)

Derivation.

Title: An Act relating to energy conservation.

Cite: 50 ILCS 515/1 et seq.

Source: P.A. 88-173.

Date: Approved July 28, 1993.

Short title: Local Government Energy Conservation Act.

Effective Date. Section 99 of P.A. 88-173 [50 ILCS 515/99] made this Act effective upon becoming law. The Act was approved July 28, 1993.

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§ 50 ILCS 515/3. Applicable laws

Sec. 3. Applicable laws. Other State laws and related administrative requirements apply to this Act, including, but not limited to, the following laws and related administrative requirements: the Illinois Human Rights Act [775 ILCS 5/1-101 et seq.], the Prevailing Wage Act [820 ILCS 130/0.01 et seq.], the Public Construction Bond Act [30 ILCS 550/0.01 et seq.], the Public Works Preference Act [30 ILCS 560/0.01 et seq.] (repealed on June 16, 2010 by Public Act 96-929), the Employment of Illinois Workers on Public Works Act [30 ILCS 570/0.01 et seq.], the Freedom of Information Act [5 ILCS 140/1 et seq.], the Open Meetings Act [5 ILCS 120/1 et seq.], the Illinois Architecture Practice Act of 1989 [225 ILCS 305/1 et seq.], the Professional Engineering Practice Act of 1989 [225 ILCS 325/1 et seq.], the Structural Engineering Practice Act of 1989 [225 ILCS 340/1 et seq.], the Local Government Professional Services Selection Act [50 ILCS 510/0.01 et seq.], and the Contractor Unified License and Permit Bond Act [50 ILCS 830/1 et seq.].

(Source: P.A. 94-1062, § 5; 97-333, § 150.)

Note.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 94-1062 made the section effective upon becoming law. The Act was approved July 31, 2006.

Effect of Amendments. The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, inserted "(repealed on June 16, 2010 by Public Act 96-929)."

§ 50 ILCS 515/4. Applicability

Sec. 4. Applicability. In order to protect the integrity of historic buildings, no provision of this Act shall be interpreted to require the implementation of energy conservation measures that conflict with respect to any property eligible for, nominated to, or entered on the National Register of Historic Places, pursuant to the National Historic Preservation Act of 1966 [16 U.S.C. § 470 et seq.], or the Illinois Register of Historic Places, pursuant to the Illinois Historic Preservation Act [20 ILCS 3410/1 et seq.].

(Source: P.A. 94-1062, § 5.)

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Effective Date. Section 99 of P.A. 94-1062 made the section effective upon becoming law. The Act was approved July 31, 2006.

§ 50 ILCS 515/5. Definitions

Sec. 5. Definitions. As used in this Act, unless the context clearly requires otherwise:

"Energy conservation measure" means any improvement, repair, alteration, or betterment of any building or facility owned or operated by a unit of local government or any equipment, fixture, or furnishing to be added to or used in any such building or facility, subject to all applicable building codes, that is designed to reduce energy consumption or operating costs, and may include, without limitation, one or more of the following:

(1) Insulation of the building structure or systems within the building.

(2) Storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption.

(3) Automated or computerized energy control systems.

(4) Heating, ventilating, or air conditioning system modifications or replacements.

(5) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code for the lighting system after the proposed modifications are made.

(6) Energy recovery systems.

(7) Energy conservation measures that provide long-term operating cost reductions.

"Guaranteed energy savings contract" means a contract for: (i) the implementation of an energy audit, data collection, and other related analyses preliminary to the undertaking of energy conservation measures; (ii) the evaluation and recommendation of energy conservation measures; (iii) the implementation of one or more energy conservation measures; and (iv) the implementation of project monitoring and data collection to verify post-installation energy consumption and energy-related operating costs. The contract shall provide that all payments, except obligations on termination of the contract before its expiration, are to be made over time and that the savings are guaranteed to the extent necessary to pay the costs of the energy conservation measures. Energy savings may include energy reduction and offsetting sources of renewable energy funds including renewable energy credits and carbon credits.

"Qualified provider" means a person or business whose employees are experienced and trained in the design, implementation, or installation of energy conservation measures. The minimum training required for any person or employee under this paragraph shall be

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the satisfactory completion of at least 40 hours of course instruction dealing with energy conservation measures. A qualified provider to whom the contract is awarded shall give a sufficient bond to the unit of local government for its faithful performance.

"Request for proposals" means a competitive selection achieved by negotiated procurement. The request for proposals shall be announced through at least one public notice, at least 14 days before the request date in a newspaper published in the territory comprising the unit of local government or, if no newspaper is published in that territory, in a newspaper of general circulation in the area of the unit of local government, from a unit of local government that will administer the program, requesting innovative solutions and proposals for energy conservation measures. Proposals submitted shall be sealed. The request for proposals shall include all of the following:

(1) The name and address of the unit of local government.

(2) The name, address, title, and phone number of a contact person.

(3) Notice indicating that the unit of local government is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.

(4) The date, time, and place where proposals must be received.

(5) The evaluation criteria for assessing the proposals.

(6) Any other stipulations and clarifications the unit of local government may require.

"Unit of local government" means a county, township, municipality, or park district.

(Source: P.A. 88-173, § 5; 94-1062, § 5; 96-1197, § 5.)

Effect of Amendments. The 2006 amendment by P.A. 94-1062, effective July 31, 2006, added "subject to all applicable building codes" in the first paragraph of "Energy conservation measure"; in the definition of "Request for proposals" added "competitive selection achieved by" and substituted "14" for "10"; and added "or park district" in the last paragraph.

The 2010 amendment by P.A. 96-1197, effective July 22, 2010, added the last sentence to the end of the definition of Guaranteed energy savings contract.

§ 50 ILCS 515/10. Evaluation of proposal

Sec. 10. Evaluation of proposal. Before entering into a guaranteed energy savings contract under Section 15 [50 ILCS 515/15], a unit of local government shall submit a request for proposals. The unit of local government shall evaluate any sealed proposal from a qualified provider. The evaluation shall analyze the estimates of all costs of installations, modifications, or remodeling, including, without limitation, costs of a pre-installation energy audit or analysis, design, engineering, installation, maintenance,

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repairs, debt service, conversions to a different energy or fuel source, or post-installation project monitoring, data collection, and reporting. The evaluation shall include a detailed analysis of whether either the energy consumed or the operating costs, or both, will be reduced. If technical assistance is not available by a licensed architect or registered professional engineer on the unit of local government's staff, then the evaluation of the proposal shall be done by a registered professional engineer or architect who is retained by the unit of local government. Any licensed architect or registered professional engineer evaluating a proposal under this Section may not have any financial or contractual relationship with a qualified provider or other source that would constitute a conflict of interest. The unit of local government may pay a reasonable fee for evaluation of the proposal or include the fee as part of the payments made under Section 20 [50 ILCS 515/20].

(Source: P.A. 88-173, § 10; 94-1062, § 5.)

Effect of Amendments. The 2006 amendment by P.A. 94-1062, effective July 31, 2006, added the next-to-last sentence.

§ 50 ILCS 515/15. Award of guaranteed energy savings contract

Sec. 15. Award of guaranteed energy savings contract. Sealed proposals must be opened by a member of the unit of local government's governing body or an employee of the unit of local government at a public opening at which the contents of the proposals must be announced. Each person or entity submitting a sealed proposal must receive at least 10 days notice of the time and place of the opening. The unit of local government shall select the qualified provider that best meets the needs of the unit of local government. The unit of local government shall provide public notice of (i) the meeting at which it proposes to award a guaranteed energy savings contract, (ii) the names of the parties to the proposed contract, and (iii) the purpose of the contract. The public notice shall be made at least 10 days prior to the meeting. After evaluating the proposals under Section 10 [50 ILCS 515/10], a unit of local government may enter into a guaranteed energy savings contract with a qualified provider if it finds that the amount it would spend on the energy conservation measures recommended in the proposal would not exceed the amount to be saved in either energy or operational costs, or both, within a 10 year period from the date of installation, if the recommendations in the proposal are followed.

(Source: P.A. 88-173, § 15.)

§ 50 ILCS 515/20. Guarantee

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Sec. 20. Guarantee. The guaranteed energy savings contract shall include a written guarantee of the qualified provider that either the energy or operational cost savings, or both, will meet or exceed within 20 years the costs of the energy conservation measures. The qualified provider shall reimburse the unit of local government for any shortfall of guaranteed energy savings projected in the contract. A qualified provider shall provide a sufficient bond to the unit of local government for the installation and the faithful performance of all the measures included in the contract. The guaranteed energy savings contract may provide for payments over a period of time, not to exceed 20 years from the date of the final installation of the measures.

(Source: P.A. 88-173, § 20; 88-615, § 12; 96-1197, § 5.)

Effect of Amendments. The 2010 amendment by P.A. 96-1197, effective July 22, 2010, substituted "20 years" for "10 years" in the first and last sentences.

§ 50 ILCS 515/25. Installment payment contract; lease purchase agreement

Sec. 25. Installment payment contract; lease purchase agreement. A unit of local government, or units of local government in combination, may enter into an installment payment contract or lease purchase agreement with a qualified provider or with a third party, as authorized by law, for the funding or financing of the purchase and installation of energy conservation measures by a qualified provider. Every unit of local government may issue certificates evidencing the indebtedness incurred pursuant to the contracts or agreements. Any such contract or agreement shall be valid whether or not an appropriation with respect thereto is first included in any annual or supplemental budget adopted by the unit of local government. Each contract or agreement entered into by a unit of local government pursuant to this Section shall be authorized by official action of the unit of local government's governing body. The authority granted under this Section is in addition to any other authority granted by law.

If an energy audit is performed by an energy services contractor for a unit of local government within the 3 years immediately preceding the solicitation, then the unit of local government must publish as a reference document in the solicitation for energy conservation measures the following:

(1) an executive summary of the energy audit provided that the unit of local government may exclude any proprietary or trademarked information or practices; or

(2) the energy audit provided that the unit of local government may redact any proprietary or trademarked information or practices.

A unit of local government may not withhold the disclosure of information related to (i) the unit of local government's consumption of energy, (ii) the physical condition of the

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unit of local government's facilities, and (iii) any limitations prescribed by the unit of local government.

The solicitation must include a written disclosure that identifies any energy services contractor that participated in the preparation of the specifications issued by the unit of local government. If no energy services contractor participated in the preparation of the specifications issued by the unit of local government, then the solicitation must include a written disclosure that no energy services contractor participated in the preparation of the specifications for the unit of local government. The written disclosure shall be published in the Capital Development Board Procurement Bulletin with the Request for Proposal.

(Source: P.A. 88-173, § 25; 95-612, § 3; 96-1197, § 5.)

Effect of Amendments. The 2007 amendment by P.A. 95-612, effective September 11, 2007, in the section heading, inserted "contract" and added "agreement; or other agreement"; rewrote the first sentence, which read: "A unit of local government, or units of local government in combination, may enter into an installment payment contract, or lease purchase agreement with a qualified provider for the purchase and installation of energy conservation measures"; in the fourth sentence, substituted "official action" for "resolution"; and added the fifth sentence.

The 2010 amendment by P.A. 96-1197, effective July 22, 2010, deleted "or other agreement" from the end of the section heading and following "agreement" in the first sentence of the first paragraph; added the last two paragraphs; and made a related change.

§ 50 ILCS 515/30. Term; budget and appropriations

Sec. 30. Term; budget and appropriations. Guaranteed energy savings contracts may extend beyond the fiscal year in which they become effective. The unit of local government shall include, in its annual budget and appropriations measures for each subsequent fiscal year, any amounts payable under guaranteed energy savings contracts during that fiscal year.

(Source: P.A. 88-173, § 30.)

§ 50 ILCS 515/35. Operational and energy cost savings

Sec. 35. Operational and energy cost savings. The unit of local government shall document the operational and energy cost savings specified in the guaranteed energy savings contract and shall designate and appropriate that amount for an annual payment of the contract. If the annual energy savings are less than projected under the guaranteed energy savings contract, the qualified provider shall pay the difference as provided in

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Section 20 [50 ILCS 515/20].

(Source: P.A. 88-173, § 35.)

§ 50 ILCS 515/40. Available funds

Sec. 40. Available funds. A unit of local government may use funds designated for operating or capital expenditures for any guaranteed energy savings contract, including purchases using installment payment contracts or lease purchase agreements. A unit of local government that enters into such a contract or agreement may covenant in the contract or agreement that payments made under the contract shall be payable from the first funds legally available in each fiscal year.

(Source: P.A. 88-173, § 40.)

§ 50 ILCS 515/45. Funding

Sec. 45. Funding. State aid and other amounts appropriated for distribution to or reimbursement of a unit of local government shall not be reduced as a result of energy savings realized from a guaranteed energy savings contract or a lease purchase agreement for the purchase and installation of energy conservation measures.

(Source: P.A. 88-173, § 45.)

§ 50 ILCS 515/75. [Not Set Out]

Note.

This section, as found in P.A. 88-173, § 75, contained amendatory provisions.

§ 50 ILCS 515/99. [Effective date]

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Sec. 99. This Act takes effect upon becoming a law.

(Source: P.A. 88-173, § 99.)

Note.

This Act was approved July 28, 1993.

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CHAPTER 55.
COUNTIES

55 ILCS 5Counties Code

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Counties Code

Article 5

Powers And Duties Of County Boards

Division 5-1

In General

55 ILCS 5/5-1006.7.School facility occupation taxes
55 ILCS 5/5-1041.Maps, plats and subdivisions
55 ILCS 5/5-1041.1.School land donations
55 ILCS 5/5-1042.Maps, plats and subdivisions in certain counties

Article 5.

Powers and Duties of County Boards

Division 5-1.
In General

§ 55 ILCS 5/5-1006.7. School facility occupation taxes

Sec. 5-1006.7. School facility occupation taxes. (a) In any county, a tax shall be imposed upon all persons engaged in the business of selling tangible personal property, other than personal property titled or registered with an agency of this State's government, at retail in the county on the gross receipts from the sales made in the course of business to provide revenue to be used exclusively for school facility purposes if a proposition for the tax has been submitted to the electors of that county and approved by a majority of those voting on the question as provided in subsection (c). The tax under this Section shall be imposed only in one-quarter percent increments and may not exceed 1%.

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This additional tax may not be imposed on the sale of food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) and prescription and non-prescription medicines, drugs, medical appliances and insulin, urine testing materials, syringes and needles used by diabetics. The Department of Revenue has full power to administer and enforce this subsection, to collect all taxes and penalties due under this subsection, to dispose of taxes and penalties so collected in the manner provided in this subsection, and to determine all rights to credit memoranda arising on account of the erroneous payment of a tax or penalty under this subsection. The Department shall deposit all taxes and penalties collected under this subsection into a special fund created for that purpose.

In the administration of and compliance with this subsection, the Department and persons who are subject to this subsection (i) have the same rights, remedies, privileges, immunities, powers, and duties, (ii) are subject to the same conditions, restrictions, limitations, penalties, and definitions of terms, and (iii) shall employ the same modes of procedure as are set forth in Sections 1 through 1o, 2 through 2-70 (in respect to all provisions contained in those Sections other than the State rate of tax), 2a through 2h, 3 (except as to the disposition of taxes and penalties collected), 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, 11a, 12, and 13 of the Retailers' Occupation Tax Act [35 ILCS 120/1 through 35 ILCS 120/1o, 35 ILCS 120/2 through 35 ILCS 120/2-70, 35 ILCS 120/2a through 35 ILCS 120/2h, 35 ILCS 120/4, 35 ILCS 120/5, 35 ILCS 120/5a, 35 ILCS 120/5b, 35 ILCS 120/5c, 35 ILCS 120/5d, 35 ILCS 120/5e, 35 ILCS 120/5f, 35 ILCS 120/5g, 35 ILCS 120/5h, 35 ILCS 120/5i, 35 ILCS 120/5j, 35 ILCS 120/5k, 35 ILCS 120/5l, 35 ILCS 120/6, 35 ILCS 120/6a, 35 ILCS 120/6b, 35 ILCS 120/6c, 35 ILCS 120/7, 35 ILCS 120/8, 35 ILCS 120/9, 35 ILCS 120/10, 35 ILCS 120/11, 35 ILCS 120/11a, 35 ILCS 120/12, and 35 ILCS 120/13] and all provisions of the Uniform Penalty and Interest Act as if those provisions were set forth in this subsection.

The certificate of registration that is issued by the Department to a retailer under the Retailers' Occupation Tax Act [35 ILCS 120/1 et seq.] permits the retailer to engage in a business that is taxable without registering separately with the Department under an ordinance or resolution under this subsection.

Persons subject to any tax imposed under the authority granted in this subsection may reimburse themselves for their seller's tax liability by separately stating that tax as an additional charge, which may be stated in combination, in a single amount, with State tax that sellers are required to collect under the Use Tax Act [35 ILCS 105/1 et seq.], pursuant to any bracketed schedules set forth by the Department.

(b) If a tax has been imposed under subsection (a), then a service occupation tax must also be imposed at the same rate upon all persons engaged, in the county, in the business of making sales of service, who, as an incident to making those sales of service, transfer tangible personal property within the county as an incident to a sale of service.

This tax may not be imposed on sales of food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks,

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and food prepared for immediate consumption) and prescription and non-prescription medicines, drugs, medical appliances and insulin, urine testing materials, syringes, and needles used by diabetics.

The tax imposed under this subsection and all civil penalties that may be assessed as an incident thereof shall be collected and enforced by the Department and deposited into a special fund created for that purpose. The Department has full power to administer and enforce this subsection, to collect all taxes and penalties due under this subsection, to dispose of taxes and penalties so collected in the manner provided in this subsection, and to determine all rights to credit memoranda arising on account of the erroneous payment of a tax or penalty under this subsection.

In the administration of and compliance with this subsection, the Department and persons who are subject to this subsection shall (i) have the same rights, remedies, privileges, immunities, powers and duties, (ii) be subject to the same conditions, restrictions, limitations, penalties and definition of terms, and (iii) employ the same modes of procedure as are set forth in Sections 2 (except that that reference to State in the definition of supplier maintaining a place of business in this State means the county), 2a through 2d, 3 through 3-50 (in respect to all provisions contained in those Sections other than the State rate of tax), 4 (except that the reference to the State shall be to the county), 5, 7, 8 (except that the jurisdiction to which the tax is a debt to the extent indicated in that Section 8 is the county), 9 (except as to the disposition of taxes and penalties collected), 10, 11, 12 (except the reference therein to Section 2b of the Retailers' Occupation Tax Act) [35 ILCS 120/2, 35 ILCS 120/2a through 35 ILCS 120/2d, 35 ILCS 120/3 through 35 ILCS 120/3-50, 35 ILCS 120/4, 35 ILCS 120/5, 35 ILCS 120/7, 35 ILCS 120/8, 35 ILCS 120/9, 35 ILCS 120/10, 35 ILCS 120/11, 35 ILCS 120/12 (35 ILCS 120/2b)], 13 (except that any reference to the State means the county), Section 15, 16, 17, 18, 19, and 20 of the Service Occupation Tax Act [35 ILCS 115/13, 35 ILCS 115/15, 35 ILCS 115/16, 35 ILCS 115/17, 35 ILCS 115/18, 35 ILCS 115/19, and 35 ILCS 115/20] and all provisions of the Uniform Penalty and Interest Act [35 ILCS 735/3-1 et seq.], as fully as if those provisions were set forth herein.

Persons subject to any tax imposed under the authority granted in this subsection may reimburse themselves for their serviceman's tax liability by separately stating the tax as an additional charge, which may be stated in combination, in a single amount, with State tax that servicemen are authorized to collect under the Service Use Tax Act [35 ILCS 110/1 et seq.], pursuant to any bracketed schedules set forth by the Department.

(c) The tax under this Section may not be imposed until the question of imposing the tax has been submitted to the electors of the county at a regular election and approved by a majority of the electors voting on the question. For all regular elections held prior to the effective date of this amendatory Act of the 97th General Assembly [P.A. 97-542], upon a resolution by the county board or a resolution by school district boards that represent at least 51% of the student enrollment within the county, the county board must certify the question to the proper election authority in accordance with the Election Code [10 ILCS 5/1-1 et seq.].

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For all regular elections held prior to the effective date of this amendatory Act of the 97th General Assembly, the election authority must submit the question in substantially the following form:

Shall (name of county) be authorized to impose a retailers' occupation tax and a service occupation tax (commonly referred to as a "sales tax") at a rate of (insert rate) to be used exclusively for school facility purposes?

The election authority must record the votes as "Yes" or "No".

If a majority of the electors voting on the question vote in the affirmative, then the county may, thereafter, impose the tax.

For all regular elections held on or after the effective date of this amendatory Act of the 97th General Assembly, the regional superintendent of schools for the county must, upon receipt of a resolution or resolutions of school district boards that represent more than 50% of the student enrollment within the county, certify the question to the proper election authority for submission to the electors of the county at the next regular election at which the question lawfully may be submitted to the electors, all in accordance with the Election Code.

For all regular elections held on or after the effective date of this amendatory Act of the 97th General Assembly, the election authority must submit the question in substantially the following form:

Shall a retailers' occupation tax and a service occupation tax (commonly referred to as a "sales tax") be imposed in (name of county) at a rate of (insert rate) to be used exclusively for school facility purposes?

The election authority must record the votes as "Yes" or "No".

If a majority of the electors voting on the question vote in the affirmative, then the tax shall be imposed at the rate set forth in the question.

For the purposes of this subsection (c), "enrollment" means the head count of the students residing in the county on the last school day of September of each year, which must be reported on the Illinois State Board of Education Public School Fall Enrollment/Housing Report.

(d) The Department shall immediately pay over to the State Treasurer, ex officio, as trustee, all taxes and penalties collected under this Section to be deposited into the School Facility Occupation Tax Fund, which shall be an unappropriated trust fund held outside the State treasury.

On or before the 25th day of each calendar month, the Department shall prepare and certify to the Comptroller the disbursement of stated sums of money to the regional superintendents of schools in counties from which retailers or servicemen have paid taxes or penalties to the Department during the second preceding calendar month. The amount to be paid to each regional superintendent of schools and disbursed to him or her in accordance with 3-14.31 of the School Code [105 ILCS 5/3-14.31], is equal to the

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amount (not including credit memoranda) collected from the county under this Section during the second preceding calendar month by the Department, (i) less 2% of that amount, which shall be deposited into the Tax Compliance and Administration Fund and shall be used by the Department, subject to appropriation, to cover the costs of the Department in administering and enforcing the provisions of this Section, on behalf of the county, (ii) plus an amount that the Department determines is necessary to offset any amounts that were erroneously paid to a different taxing body; (iii) less an amount equal to the amount of refunds made during the second preceding calendar month by the Department on behalf of the county; and (iv) less any amount that the Department determines is necessary to offset any amounts that were payable to a different taxing body but were erroneously paid to the county. When certifying the amount of a monthly disbursement to a regional superintendent of schools under this Section, the Department shall increase or decrease the amounts by an amount necessary to offset any miscalculation of previous disbursements within the previous 6 months from the time a miscalculation is discovered.

Within 10 days after receipt by the Comptroller from the Department of the disbursement certification to the regional superintendents of the schools provided for in this Section, the Comptroller shall cause the orders to be drawn for the respective amounts in accordance with directions contained in the certification.

If the Department determines that a refund should be made under this Section to a claimant instead of issuing a credit memorandum, then the Department shall notify the Comptroller, who shall cause the order to be drawn for the amount specified and to the person named in the notification from the Department. The refund shall be paid by the Treasurer out of the School Facility Occupation Tax Fund.

(e) For the purposes of determining the local governmental unit whose tax is applicable, a retail sale by a producer of coal or another mineral mined in Illinois is a sale at retail at the place where the coal or other mineral mined in Illinois is extracted from the earth. This subsection does not apply to coal or another mineral when it is delivered or shipped by the seller to the purchaser at a point outside Illinois so that the sale is exempt under the United States Constitution as a sale in interstate or foreign commerce.

(f) Nothing in this Section may be construed to authorize a tax to be imposed upon the privilege of engaging in any business that under the Constitution of the United States may not be made the subject of taxation by this State.

(g) If a county board imposes a tax under this Section pursuant to a referendum held before the effective date of this amendatory Act of the 97th General Assembly at a rate below the rate set forth in the question approved by a majority of electors of that county voting on the question as provided in subsection (c), then the county board may, by ordinance, increase the rate of the tax up to the rate set forth in the question approved by a majority of electors of that county voting on the question as provided in subsection (c). If a county board imposes a tax under this Section pursuant to a referendum held before the effective date of this amendatory Act of the 97th General Assembly, then the board may, by ordinance, discontinue or reduce the rate of the tax. If a tax is imposed under this Section pursuant to a referendum held on or after the effective date of this amendatory

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Act of the 97th General Assembly, then the county board may reduce or discontinue the tax, but only in accordance with subsection (h-5) of this Section [55 ILCS 5/h-5]. If, however, a school board issues bonds that are secured by the proceeds of the tax under this Section, then the county board may not reduce the tax rate or discontinue the tax if that rate reduction or discontinuance would adversely affect the school board's ability to pay the principal and interest on those bonds as they become due or necessitate the extension of additional property taxes to pay the principal and interest on those bonds. If the county board reduces the tax rate or discontinues the tax, then a referendum must be held in accordance with subsection (c) of this Section in order to increase the rate of the tax or to reimpose the discontinued tax.

The results of any election that imposes, reduces, or discontinues a tax under this Section must be certified by the election authority, and any ordinance that increases or lowers the rate or discontinues the tax must be certified by the county clerk and, in each case, filed with the Illinois Department of Revenue either (i) on or before the first day of April, whereupon the Department shall proceed to administer and enforce the tax or change in the rate as of the first day of July next following the filing; or (ii) on or before the first day of October, whereupon the Department shall proceed to administer and enforce the tax or change in the rate as of the first day of January next following the filing.

(h) For purposes of this Section, "school facility purposes" means (i) the acquisition, development, construction, reconstruction, rehabilitation, improvement, financing, architectural planning, and installation of capital facilities consisting of buildings, structures, and durable equipment and for the acquisition and improvement of real property and interest in real property required, or expected to be required, in connection with the capital facilities and (ii) the payment of bonds or other obligations heretofore or hereafter issued, including bonds or other obligations heretofore or hereafter issued to refund or to continue to refund bonds or other obligations issued, for school facility purposes, provided that the taxes levied to pay those bonds are abated by the amount of the taxes imposed under this Section that are used to pay those bonds. "School-facility purposes" also includes fire prevention, safety, energy conservation, disabled accessibility, school security, and specified repair purposes set forth under Section 17-2.11 of the School Code [105 ILCS 5/17-2.11].

(h-5) A county board in a county where a tax has been imposed under this Section pursuant to a referendum held on or after the effective date of this amendatory Act of the 97th General Assembly may, by ordinance or resolution, submit to the voters of the county the question of reducing or discontinuing the tax. In the ordinance or resolution, the county board shall certify the question to the proper election authority in accordance with the Election Code. The election authority must submit the question in substantially the following form:

Shall the school facility retailers' occupation tax and service occupation tax (commonly referred to as the "school facility sales tax") currently imposed in (name of county) at a rate of (insert rate) be (reduced to (insert rate))(discontinued)?

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If a majority of the electors voting on the question vote in the affirmative, then, subject to the provisions of subsection (g) of this Section, the tax shall be reduced or discontinued as set forth in the question.

(i) This Section does not apply to Cook County.

(j) This Section may be cited as the County School Facility Occupation Tax Law.

(Source: P.A. 95-675, § 10; 97-542, § 10.)

Effective Date. Section 99 of P.A. 95-675 makes this section effective upon becoming law. The Act was approved October 11, 2007.

Effect of Amendments. The 2011 amendment by P.A. 97-542, effective August 23, 2011, in the first paragraph of (a), substituted "In any county, a tax shall be imposed" for "The county board of any county may impose a tax" in the first sentence and substituted "shall be" for "may be" in the second sentence; in the first paragraph of (c), deleted "by ordinance or resolution of the county board" following "be imposed until" in the first sentence and added "For all regular elections held prior to the effective date of this amendatory Act of the 97th General Assembly" to the beginning of the second sentence; added "For all regular elections held prior to the effective date of this amendatory Act of the 97th General Assembly" in the second paragraph of (c); inserted the third and fourth paragraphs of (c); substituted "a tax to be imposed" for "a county board to impose a tax" in (f); rewrote (g); in the first sentence of (h), added the item (i) designation and added item (ii); inserted (h-5); and made related changes.

CASE NOTES

Retail Sales Tax

Companies who alleged in their amended complaint that they were retailers who would be affected by the tax imposed by the County School Facility Occupation Tax Law, 55 ILCS 5/5-1006.7, had standing to challenged that law. Both companies asserted that the conducted retail sales in the county, and, thus, they were authorized to challenge the county's passage of ordinances to implement that tax on the ground that the county, as a home-rule unit of government, did not have the power pursuant to Ill. Const. Art. VII, § 6 to impose the tax. P&S Grain, LLC v. County of Williamson, 399 Ill. App. 3d 836, 339 Ill. Dec. 234, 926 N.E.2d 466, 2010 Ill. App. LEXIS 311 (5 Dist. 2010).

§ 55 ILCS 5/5-1041. Maps, plats and subdivisions

Sec. 5-1041. Maps, plats and subdivisions. A county board may prescribe, by resolution or ordinance, reasonable rules and regulations governing the location, width and course of streets and highways and of floodplain, stormwater and floodwater runoff channels and basins, and the provision of necessary public grounds for schools, public libraries,

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parks or playgrounds, in any map, plat or subdivision of any block, lot or sub-lot or any part thereof or any piece or parcel of land, not being within any city, village or incorporated town. The rules and regulations may include such reasonable requirements with respect to water supply and sewage collection and treatment as may be established by the Environmental Protection Agency, and such reasonable requirements with respect to floodplain and stormwater management as may be established by the County Stormwater Management Committee established under Section 5-1062 of this Code [55 ILCS 5/5-1062], and such reasonable requirements with respect to street drainage and surfacing as may be established by the county engineer or superintendent of highways and which by resolution shall be deemed to be the minimum requirements in the interest of the health, safety, education and convenience of the public of the county; and may provide by resolution that the map, plat or subdivision shall be submitted to the county board or to some officer to be designated by the county board for their or his approval. The county board shall have a qualified engineer make an estimate of the probable expenditures necessary to enable any person to conform with the standards of construction established by the board pursuant to the provisions of this Section. Except as provided in Section 3 of the Public Construction Bond Act [30 ILCS 550/3], each person who seeks the county board's approval of a map, plat or subdivision shall post a good and sufficient cash bond, irrevocable letter of credit, surety bond, or other adequate security with the county clerk, in a penal sum sufficient to cover the estimate of expenditures made by the estimating engineer. The cash bond, irrevocable letter of credit, surety bond, or other adequate security shall be conditioned upon faithful adherence to the rules and regulations of the county board promulgated pursuant to the authorization granted to it by this Section or by Section 5-1062 of this Code, and in such cases no such map, plat or subdivision shall be entitled to record in the proper county or have any validity until it has been so approved. If the county board requires a cash bond, letter of credit, surety, or any other method to cover the costs and expenses and to insure completion of the requirements, the requirements shall be subject to the provisions of Section 5-1123 of this Code [55 ILCS 5/5-1123]. This Section is subject to the provisions of Section 5-1123.

The county board may, by resolution, provide a schedule of fees sufficient to reimburse the county for the costs incurred in reviewing such maps, plats and subdivisions submitted for approval to the county board. The fees authorized by this Section are to be paid into the general corporate fund of the county by the party desiring to have the plat approved.

For purposes of implementing ordinances regarding developer donations or impact fees and only for the purpose of expenditures thereof, "public grounds for schools" is defined as including land or site improvements, which include school buildings or other infrastructure necessitated and specifically and uniquely attributable to the development or subdivision in question. This amendatory Act of the 93rd General Assembly [P.A. 93-330] applies to all impact fees or developer donations paid into a school district or held in a separate account or escrow fund by any school district or county for a school district.

No officer designated by a county board for the approval of plats shall engage in the business of surveying, and no map, plat or subdivision shall be received for record or have any validity which has been prepared by or under the direction of such plat officer.

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It is the intention of this amendatory Act of 1990 to repeal the language added to Section 25.09 of "An Act to revise the law in relation to counties", approved March 31, 1874, by P.A. 86-614, Section 25.09 of that Act being the predecessor of this Section.

(Source: P.A. 86-962; 86-1028; 86-1039; 86-1463; 87-217; 87-435; 90-558, § 2; 91-328, § 5; 92-479, § 10; 93-330, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 34, Para. 5-1041.

Effect of Amendments. The 1997 amendment by P.A. 90-558, effective December 12, 1997, in the first paragraph added the sixth sentence.

The 1999 amendment by P.A. 91-328, effective January 1, 2000, added "Except as provided in Section 3 of the Public Construction Bond Act" at the beginning of the fourth sentence.

The 2001 amendment by P.A. 92-479, effective January 1, 2002, inserted "cash" and "irrevocable letter of credit, surety bond" in two places and added the second to last sentence in the first paragraph.

The 2003 amendment by P.A. 93-330, effective July 24, 2003, inserted the third paragraph.

CASE NOTES

Analysis

Approval
- In General
- Discretion of Officer
- Enforcement

Bond or Other Security
Condominiums
Scope of Review
Strict Compliance

Approval

- In General

Subdivision regulations that empowered county board to contract for outside evaluation of applications and to contract with the applicant for reimbursement of the extra expense was declared to be within the county board's delegated powers; the property owner applicants failed to show that they agreed to reimbursement obligations under duress. Inland Land Appreciation

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Fund, L.P. v. County of Kane, 344 Ill. App. 3d 720, 279 Ill. Dec. 649, 800 N.E.2d 1232, 2003 Ill. App. LEXIS 1425 (2 Dist. 2003).

- Discretion of Officer

A plat officer has no discretion, when asked to approve a plat, to refuse to execute a plat; he has only those powers given to his office by the legislative body establishing the office, and may not make any determinations of what standards must be met to allow approval of a plat. Urban Inv. & Dev. Co. v. Graham, 49 Ill. App. 3d 661, 7 Ill. Dec. 467, 364 N.E.2d 628 (2 Dist. 1977).

Any authority a plat officer might have to withhold approval of a plat for suspected drainage deficiencies was entirely dependent upon the county board having first adopted regulations effecting drainage to be met by a subdivider before being entitled to plat approval. Urban Inv. & Dev. Co. v. Graham, 49 Ill. App. 3d 661, 7 Ill. Dec. 467, 364 N.E.2d 628 (2 Dist. 1977).

- Enforcement

The act of approving a plat by an officer designated by a county board for that purpose is ministerial when the statute and ordinances have been complied with, and may be enforced by a writ of mandamus. Urban Inv. & Dev. Co. v. Graham, 49 Ill. App. 3d 661, 7 Ill. Dec. 467, 364 N.E.2d 628 (2 Dist. 1977).

Bond or Other Security

Under former section 25.09 of "An Act to revise the law in relation to counties" (see now this section), township highway commissioner could not under county subdivision regulations require the defendant, a subdivider, to post additional bonds or other security, in light of the fact that about six years had passed since the subdivision was accepted by the county board of supervisors. McKenzie v. Arthur T. McIntosh & co., 50 Ill. App. 2d 370, 200 N.E.2d 138 (2 Dist. 1964).

Under former section 25.09 of "An Act to revise the law in relation to counties" (see now this section), defendant subdivider, by posting bonds with the highway commissioner in 1956 and 1957 to insure construction of subdivision streets in accordance with county regulations, and by proceeding with the development of the subdivision, did not waive any right to question township highway commissioner's authority to bring action to compel subdivider to post additional bonds to meet requirements of county subdivision regulations. McKenzie v. Arthur T. McIntosh & co., 50 Ill. App. 2d 370, 200 N.E.2d 138 (2 Dist. 1964).

Condominiums

County had the authority to regulate a condominium pursuant to its subdivision ordinance. County of Montgomery v. Deer Creek, Inc., 294 Ill. App. 3d 851, 229 Ill. Dec. 249, 691 N.E.2d 185 (5 Dist. 1998), appeal denied, 179 Ill. 2d 588, 235 Ill. Dec. 566, 705 N.E.2d 439 (1998).

Scope of Review

In mandamus proceeding to determine whether there was an abuse of discretion in the denial of a subdivision plat by a county board, the trial court should have considered only the record of the proceedings before the planning commission and the county board, and should not have conducted a trial de novo. First Nat'l Bank v. County of Grundy, 197 Ill. App. 3d 660, 144 Ill. Dec. 50, 554 N.E.2d 1089 (3 Dist. 1990).

Strict Compliance

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Inasmuch as the plat in question was certified by a deputy county surveyor, and not by the county surveyor, and inasmuch as the map or plat was not certified to have been laid out by the owner, but merely by an agent of the owner, the plat was not executed in accordance with the provisions this section and cannot be considered a statutory plat; consequently under a similar prior provision, the fee of the street did not vest in the city. Wilder v. Aurora, Dekalb & Rockford Traction Co., 216 Ill. 493, 75 N.E. 194 (1905).

OPINIONS OF ATTORNEY GENERAL

Analysis

Approval of Subdivision Plat
Bond with Cash Deposit
Incompatible Offices

Approval of Subdivision Plat

A non-home rule county has no authority to condition its approval of a subdivision plat on the completion of street improvements, according to specific standards, and acceptance by the county of such improvements. 1978 Op. Atty. Gen. 186.

Bond with Cash Deposit

An individual bond with a cash deposit can be accepted in lieu of a corporation surety bond only if such deposit is equal to the amount of bond required by statute. Portions of the cash deposit may not be returned as the developer's work is completed, however, and the entire deposit must be retained until completion of the project. 1977 Op. Atty. Gen. 39.

Incompatible Offices

The offices of school board member and county board are incompatible, and one person may not serve simultaneously in both offices, as a conflict may arise under the activity covered by this section. 1993 Op. Atty. Gen. (93-011).

Practice Guides and Treatises.

Ward on Title Examinations § 11.27 Subdivision Plats (§ 140) (IICLE).

Residential Real Estate § 17.2 Authority to Implement Zoning Restrictions (IICLE).

Land Use Law (Illinois) § 4.16 County or Municipal Board (IICLE).

Land Use Law (Illinois) § 4.9 County Authority (IICLE).

Land Use Law (Illinois) § 1.22 General Powers (IICLE).

Commercial Real Estate § 12.9 Counties' Ability To Regulate Subdivisions (IICLE).

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12-401 Midwest Transaction Guide § 401.04 Restrictions on Use and Alteration of Natural Features.

12-400 Midwest Transaction Guide § 400.219 Subdivision Completion (Improvement) Bond - Illinois/Michigan Form.

12-400 Midwest Transaction Guide § 400.70 State Statutes.

12-400 Midwest Transaction Guide § 400.22 Jurisdiction of Local Government.

12-400 Midwest Transaction Guide § 400.21 Subdivision Control Ordinances.

12-400 Midwest Transaction Guide § 400.20 Governing Law.

Practice Checklists.

Procedural Guide to the Approval of Subdivisions, 12-400 Midwest Transaction Guide § 400.121.

§ 55 ILCS 5/5-1041.1. School land donations

Sec. 5-1041.1. School land donations. The governing board of a school district that is located in a county having a population of less than 3,000,000 may submit to the county board a written request that a meeting be held to discuss school land donations from a developer of a subdivision or resubdivision of land included within the area served by the school district. For the purposes of this Section, "school land donation" means a donation of land for public school purposes or a cash contribution in lieu thereof, or a combination of both.

(Source: P.A. 86-1039.)

Note.

This section was Ill.Rev.Stat., Ch. 34, Para. 5-1041.1.

§ 55 ILCS 5/5-1042. Maps, plats and subdivisions in certain counties

Sec. 5-1042. Maps, plats and subdivisions in certain counties. In any county with a population not in excess of 500,000 located in the area served by the Northeastern Illinois Metropolitan Planning Commission, a county board may establish by ordinance or resolution of record reasonable rules and regulations governing the location, width and course of streets and highways, and the provision of public grounds for schools, parks or playgrounds, in any map, plat or subdivision of any block, lot or sub-lot or any part thereof or any piece or parcel of land in the county, not being within any city, village or incorporated town in the county which rules and regulations may include such reasonable

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requirements with respect to water supply and sewage collection and treatment, and such reasonable requirements with respect to street drainage and surfacing, as may be established by the county board as minimum requirements in the interest of the health, safety and convenience of the public of the county; and may require by ordinance or resolution of record that any map, plat or subdivision shall be submitted to the county board or some officer to be designated by the county board for its or his approval in the manner provided in Section 5-1041 [55 ILCS 5/5-1041], and to require bonds and charge fees as provided in Section 5-1041. This Section is subject to the provisions of Section 5-1123 [55 ILCS 5/5-1123].

For purposes of implementing ordinances regarding developer donations or impact fees and only for the purpose of expenditures thereof, "public grounds for schools" is defined as including land or site improvements, which include school buildings or other infrastructure necessitated and specifically and uniquely attributable to the development or subdivision in question. This amendatory Act of the 93rd General Assembly [P.A. 93-330] applies to all impact fees or developer donations paid into a school district or held in a separate account or escrow fund by any school district or county for a school district.

(Source: P.A. 86-962; 86-1028; 90-558, § 2; 93-330, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 34, Para. 5-1042.

Effect of Amendments. The 1997 amendment by P.A. 90-558, effective December 12, 1997, added the second sentence.

The 2003 amendment by P.A. 93-330, effective July 24, 2003, inserted the second paragraph.

OPINIONS OF ATTORNEY GENERAL

Analysis

Powers Limited
Refusal to Approve Plat

Powers Limited

The county is limited to establishing only those regulations that are set forth in this section. 1977 Op. Atty. Gen. 47.

Refusal to Approve Plat

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The only circumstances under which the county may refuse to approve a plat are those set forth in the statute. 1977 Op. Atty. Gen. 47.

When a proposed plat would violate the reasonable rules and regulations set by the county board, the county may refuse to approve it unless the violation relates to matters left to the exclusive control and approval of the municipality, or unless the plat is exempt from the county rules and regulations under Division 12 of Article 11 of the Illinois Municipal Code (65 ILCS 5/11-12-4 et seq.). 1977 Op. Atty. Gen. 47.

Practice Guides and Treatises.

Residential Real Estate § 17.2 Authority to Implement Zoning Restrictions (IICLE).

Land Use Law (Illinois) § 10.1 Scope of Chapter (IICLE).

Land Use Law (Illinois) § 4.16 County or Municipal Board (IICLE).

Land Use Law (Illinois) § 1.22 General Powers (IICLE).

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CHAPTER 65.
MUNICIPALITIES

65 ILCS 5Illinois Municipal Code

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Illinois Municipal Code

ARTICLE 11

Corporate Powers And Functions

Planning, Zoning Urban Rehabilitation

Division 12

Plan Commissions
65 ILCS 5/11-12-5.[Plan commission; powers]
65 ILCS 5/11-12-5.1.School land donations

ARTICLE 11.

CORPORATE POWERS AND FUNCTIONS

Planning, Zoning Urban Rehabilitation

Division 12.

Plan Commissions

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§ 65 ILCS 5/11-12-5. [Plan commission; powers]

Sec. 11-12-5. Every plan commission and planning department authorized by this division 12 has the following powers and whenever in this division 12 the term plan commission is used such term shall be deemed to include the term planning department:

(1) To prepare and recommend to the corporate authorities a comprehensive plan for the present and future development or redevelopment of the municipality. Such plan may be adopted in whole or in separate geographical or functional parts, each of which, when adopted, shall be the official comprehensive plan, or part thereof, of that municipality. This plan may include reasonable requirements with reference to streets, alleys, public grounds, and other improvements hereinafter specified. The plan, as recommended by the plan commission and as thereafter adopted in any municipality in this state, may be made applicable, by the terms thereof, to land situated within the corporate limits and contiguous territory not more than one and one-half miles beyond the corporate limits and not included in any municipality. Such plan may be implemented by ordinances (a) establishing reasonable standards of design for subdivisions and for resubdivisions of unimproved land and of areas subject to redevelopment in respect to public improvements as herein defined; (b) establishing reasonable requirements governing the location, width, course, and surfacing of public streets and highways, alleys, ways for public service facilities, curbs, gutters, sidewalks, street lights, parks, playgrounds, school grounds, size of lots to be used for residential purposes, storm water drainage, water supply and distribution, sanitary sewers, and sewage collection and treatment; and (c) may designate land suitable for annexation to the municipality and the recommended zoning classification for such land upon annexation.

(2) To recommend changes, from time to time, in the official comprehensive plan.

(3) To prepare and recommend to the corporate authorities, from time to time, plans for specific improvements in pursuance of the official comprehensive plan.

(4) To give aid to the municipal officials charged with the direction of projects for improvements embraced within the official plan, to further the making of these projects, and, generally, to promote the realization of the official comprehensive plan.

(5) To prepare and recommend to the corporate authorities schemes for regulating or forbidding structures or activities which may hinder access to solar energy necessary for the proper functioning of solar energy systems, as defined in Section 1.2 of The Comprehensive Solar Energy Act of 1977 [30 ILCS 725/1.2], or to recommend changes in such schemes.

(6) To exercise such other powers germane to the powers granted by this article as may be conferred by the corporate authorities.

(7) For purposes of implementing ordinances regarding developer donations or impact fees, and specifically for expenditures thereof, "school grounds" is defined as including land or site improvements, which include school buildings or other infrastructure necessitated and specifically and uniquely attributed to the development or subdivision in

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question. This amendatory Act of the 93rd General Assembly [P.A. 93-330] applies to all impact fees or developer donations paid into a school district or held in a separate account or escrow fund by any school district or municipality for a school district.

(Source: P.A. 86-614; 86-1039; 93-330, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 24, Para. 11-12-5.

Effect of Amendments. The 2003 amendment by P.A. 93-330, effective July 24, 2003, added subdivision (7).

CASE NOTES

Analysis

Constitutionality
Construction With Other Laws
Contiguous Territory
- Development Design
- Police Power
- Restrictive Covenants
- Zoning Power
County Zoning Jurisdiction
Dedication
- Population Basis
- Public Use
- Upheld
Developmental Impact
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Interest of Municipality
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Ordinance Overbroad
- Held Invalid
Planned Unit Development
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Resubdivide
Scope
Subdivisions
- Municipal Powers
- Recommendatory Powers

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Constitutionality

This section does not constitute an unconstitutional delegation of legislative power to an administrative agency. City of Chicago v. Central Nat'l Bank, 5 Ill. 2d 164, 125 N.E.2d 94 (1955).

Construction With Other Laws

Fact that the Illinois Department of Transportation (IDOT) had authority to regulate access to state highways, pursuant to 605 ILCS 5/4-210, did not preclude a city from passing more stringent regulations governing access, and the courts upheld the city's decision rejecting a subdivision plat that met IDOT requirements but did not meet the city's requirements. State Bank of Waterloo v. City of Waterloo, 339 Ill. App. 3d 767, 275 Ill. Dec. 98, 792 N.E.2d 329, 2003 Ill. App. LEXIS 688 (5 Dist. 2003).

An annexation agreement pertaining to noncontiguous property is valid, even where the property is within 1.5 miles of another municipality, with the exception of those counties specifically listed in 65 ILCS 5/11-15-2.1. City of Springfield v. Judith Jones Dietsch Trust, 321 Ill. App. 3d 239, 254 Ill. Dec. 224, 746 N.E.2d 1272, 2001 Ill. App. LEXIS 280 (4 Dist. 2001), appeal denied, 195 Ill. 2d 598, 258 Ill. Dec. 100, 755 N.E.2d 483 (2001).

Contiguous Territory

- Development Design

A municipality has the right to review and approve as well as give input into the character and design of plats of development on property located within one and one half miles of its boundaries. Derby Meadows Util. Co. v. Inter-Continental Real Estate, 202 Ill. App. 3d 345, 147 Ill. Dec. 646, 559 N.E.2d 986 (1 Dist. 1990).

- Police Power

This section gives municipalities the right to exercise their police power over extraterritorial developments in the same way that they exercise that power over developments within their territory, in recognition that a municipality's concerns do not end at its borders. Village of Lake Bluff v. Jacobson, 118 Ill. App. 3d 102, 73 Ill. Dec. 637, 454 N.E.2d 734 (2 Dist. 1983).

- Restrictive Covenants

The power to zone may be a sufficient grant of power to justify the authority to enter into a restrictive covenant, but there is no independent power to enter into restrictive covenants to regulate use of land beyond the city's borders. People ex rel. Aurora Nat'l Bank v. City of Batavia, 91 Ill. App. 3d 716, 46 Ill. Dec. 863, 414 N.E.2d 916 (2 Dist. 1980).

- Zoning Power

City has no power to zone territory outside its corporate boundaries and within county zoning. People ex rel. Aurora Nat'l Bank v. City of Batavia, 91 Ill. App. 3d 716, 46 Ill. Dec. 863, 414 N.E.2d 916 (2 Dist. 1980).

County Zoning Jurisdiction

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Where in proceedings to enact county zoning ordinance city did not appear or submit zoning proposals in writing for zoning area contiguous to, but within one and one-half miles of city's boundaries, and county zoning ordinance subsequently passed was passed by less than 3/4 vote of county board, county zoning ordinance superseded zoning ordinance of city even though city had adopted plan prior to county's subsequent passing of plan. City of Canton v. County of Fulton, 11 Ill. App. 3d 171, 296 N.E.2d 97 (3 Dist. 1973).

Dedication

- Population Basis

Dedication requirement based on population is constitutionally permissible. Krughoff v. City of Naperville, 68 Ill. 2d 352, 12 Ill. Dec. 185, 369 N.E.2d 892 (1977).

- Public Use

Section of ordinance providing that subdivider had to dedicate portion of approved land for public use was unreasonable where dedicated land would be used to build a school, since the school problem which allegedly existed was one which the subdivider should not have been obliged to pay the total cost of remedying, and to so construe the statute would have amounted to an exercise of the power of eminent domain without compensation. Pioneer Trust & Sav. Bank v. Village of Mount Prospect, 22 Ill. 2d 375, 176 N.E.2d 799 (1961).

- Upheld

Where the evidence showed that the required contributions of land, or money in lieu of land, were uniquely attributable to and fairly proportioned to the need for new school and park facilities created by proposed developments, the land dedication was valid. Krughoff v. City of Naperville, 68 Ill. 2d 352, 12 Ill. Dec. 185, 369 N.E.2d 892 (1977).

Developmental Impact

This section is concerned with such traditional planning concepts as the location, width, course, and surfacing of public streets and the size of lots to be used for residential purposes; it may not be read to also authorize a municipality to impose impact fees for school construction on new development. Thompson v. Vill. of Newark, 329 Ill. App. 3d 536, 263 Ill. Dec. 775, 768 N.E.2d 856, 2002 Ill. App. LEXIS 333 (2 Dist. 2002).

There is nothing in this section intending to impose a preliminary evidentiary burden on a municipality to show "developmental impact" before proceeding to enforce subdivision regulations over contiguous territory. However, the lack of developmental impact upon facilities protecting the health and safety of municipal residents by property which is within one and one half miles of the municipality's corporate limits would support an argument in a hearing on the merits that a subdivision ordinance was unconstitutional as applied, as the lack of impact would indicate that the municipal legitimate interests were not being advanced by application of its regulations in such a case. Village of Lake Bluff v. Jacobson, 118 Ill. App. 3d 102, 73 Ill. Dec. 637, 454 N.E.2d 734 (2 Dist. 1983).

Impact Fees

Trial court properly determined that a village's ordinances charging school and open space impact fees were in excess of its authority and violated the Illinois Municipal Code, 65 ILCS 5/11-12-5(1)(b), because the school fees were being inappropriately forwarded to a school's general operating fund and the language in the ordinance failed to limit expenditures of the school districts' general operation funds to expenditures for school buildings and the land surrounding

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school buildings only. Raintree Homes, Inc. v. Vill. of Long Grove, 389 Ill. App. 3d 836, 329 Ill. Dec. 553, 906 N.E.2d 751, 2009 Ill. App. LEXIS 221 (2 Dist. 2009).

Interest of Municipality

This section clearly recognizes that a municipality has a legitimate interest in regulating the development of land near its borders to protect the health and safety of its people. City of Urbana v. County of Champaign, 76 Ill. 2d 63, 27 Ill. Dec. 777, 389 N.E.2d 1185 (1979).

Legislative Intent

The plan commission was clearly designed to serve public interest, and the powers set forth in this section are to prepare and recommend to the corporate authorities a comprehensive plan for the development of the municipality, to recommend changes, to prepare and recommend for specific improvement, to give aid to the municipal officials charged with the direction of the projects and to exercise such other powers as are inherent to the powers granted by this section; it is irrelevant that the recommendations of the commission are advisory. People v. Drish, 24 Ill. App. 3d 225, 321 N.E.2d 179 (4 Dist. 1974).

The power to prescribe reasonable requirements for public streets in the interest of the health and safety of the inhabitants of the city and contiguous territory includes more than a mere designation of the location and width of streets as plaintiffs seem to contend; the legislature undoubtedly had in mind the complex problems connected with the development of territory contiguous to cities as bearing on the health and safety of all inhabitants within and without the municipality. Petterson v. City of Naperville, 9 Ill. 2d 233, 137 N.E.2d 371 (1956).

Ordinance Overbroad

- Held Invalid

Ordinance which required that every plat by which land was subdivided dedicate for educational purposes such area as might be deemed necessary by the plan commission to facilitate the establishment of school facilities convenient to the proposed subdivision was invalid because it was broader than the statute authorizing plan commissions and because it fixed no standards whatever to govern the plan commission in determining the amount of land to be dedicated. Rosen v. Village of Downers Grove, 19 Ill. 2d 448, 167 N.E.2d 230 (1960).

Planned Unit Development

A planned unit development where subdivision of the tract into parcels was allegedly not contemplated, although the possibility of such action in the future seemed apparent from the wording of the developer's affidavit, was a subdivision within the meaning of this section. City of Urbana v. County of Champaign, 76 Ill. 2d 63, 27 Ill. Dec. 777, 389 N.E.2d 1185 (1979).

Public Officer

A member of a city planning commission who was appointed by the mayor and subject to confirmation by the city council was a public officer for purposes of the official misconduct and bribery statutes. People v. Drish, 24 Ill. App. 3d 225, 321 N.E.2d 179 (4 Dist. 1974).

Resubdivide

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Municipalities cannot impose covenants forbidding resubdivision. LaSalle Nat'l Bank v. City of Lake Forest, 297 Ill. App. 3d 36, 231 Ill. Dec. 651, 696 N.E.2d 1222 (2 Dist. 1998).

Scope

Provisions of an ordinance requiring curbs and gutters and proper drainage for a street were within the powers conferred by statute. Petterson v. City of Naperville, 9 Ill. 2d 233, 137 N.E.2d 371 (1956).

Subdivisions

- Municipal Powers

Village had subdivision jurisdiction over a developer of the land outside of its borders and within one and one half miles despite the fact that the development did not involve the division of the subject property into two or more parcels. Village of Lake Bluff v. Jacobson, 118 Ill. App. 3d 102, 73 Ill. Dec. 637, 454 N.E.2d 734 (2 Dist. 1983).

The touchstone of a city's power to impose subdivision controls is not the division of a tract into two or more parcels, but its developmental impact upon existing facilities protecting the health and safety of the municipal residents. City of Urbana v. County of Champaign, 76 Ill. 2d 63, 27 Ill. Dec. 777, 389 N.E.2d 1185 (1979).

- Recommendatory Powers

This section gives municipal plan commissions broad subdivision recommendatory powers, which include the power to establish reasonable requirements governing public streets and highways, alleys, ways for public service facilities, curbs, gutters, sidewalks, street lights, parks, playgrounds, and school grounds. Department of Pub. Works & Bldgs. v. Exchange Nat'l Bank, 31 Ill. App. 3d 88, 334 N.E.2d 810 (2 Dist. 1975).

Sufficiency of Petition

Condemnation petition contained proper and sufficient allegations in compliance with the terms of the Parking Act (65 ILCS 5/11-71-1). City of Chicago v. Central Nat'l Bank, 5 Ill. 2d 164, 125 N.E.2d 94 (1955).

OPINIONS OF ATTORNEY GENERAL

Analysis

Incompatible Offices
Jurisdiction

Incompatible Offices

The offices of city plan commissioner and township trustee are incompatible and one person may not, therefore, hold both offices. 1997 Op. Atty. Gen. (97-013).

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Because of the actual and potential areas of conflict and competing interests of a city and a county in zoning matters, the offices of county zoning administrator and city alderman are necessarily incompatible. 1982 Op. Atty. Gen. 53.

Jurisdiction

Where a proposed "planned unit development" (PUD) is to be located in territory contiguous to and within 11/2 miles of a municipality, and where the municipality has adopted subdivision regulations applicable to such area and the county has adopted a zoning ordinance, the PUD is subject to the county zoning regulations and to the municipality's subdivision regulations, and neither the county nor the municipality has exclusive jurisdiction to approve the PUD with respect to both zoning and subdivision of the tract. 1977 Op. Atty. Gen. 90.

LEGAL PERIODICALS

For symposium, "Growth Management for the Next Century: Challenges & Opportunities: Annexation Agreements - Boundary Agreements: Walking a Fine Line Into the Future - A Map of the Dangers to the Unwary Land Use Traveler", see 17 N. Ill. U.L. Rev. 377 (1997).

For article, "Impact Fees: Et Tu, Illinois?" see 21 J. Marshall L. Rev. 489 (1988).

For article, "Extraterritorial Powers of Illinois Municipalities and the Ill.Const. 1970," see 69 Ill. B.J. 32 (1980).

Practice Guides and Treatises.

Illinois Jurisprudence, Property § 21:10 Generally.

12-400 Midwest Transaction Guide § 400.21 Subdivision Control Ordinances.

§ 65 ILCS 5/11-12-5.1. School land donations

Sec. 11-12-5.1. School land donations. The governing board of a school district may submit to the corporate authorities of a municipality having a population of less than 500,000 which is served by the school district a written request that a meeting be held to discuss school land donations from a developer of a subdivision or resubdivision of land included within the area served by the school district. For the purposes of this Section, "school land donation" means a donation of land for public school purposes or a cash contribution in lieu thereof, or a combination of both.

(Source: P.A. 86-1023; 86-1039.)

Note.

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This section was Ill.Rev.Stat., Ch. 24, Para. 11-12-5.1.

CASE NOTES

Impact Fees

Trial court properly determined that a village's ordinances charging school and open space impact fees were in excess of its authority and violated the Illinois Municipal Code, 65 ILCS 5/11-12-5(1)(b), because the school fees were being inappropriately forwarded to a school's general operating fund and the language in the ordinance failed to limit expenditures of the school districts' general operation funds to expenditures for school buildings and the land surrounding school buildings only. Raintree Homes, Inc. v. Vill. of Long Grove, 389 Ill. App. 3d 836, 329 Ill. Dec. 553, 906 N.E.2d 751, 2009 Ill. App. LEXIS 221 (2 Dist. 2009).

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CHAPTER 105.
SCHOOLS

COMMON SCHOOLS

105 ILCS 5School Code
105 ILCS 10Illinois School Student Records Act
105 ILCS 13P-20 Longitudinal Education Data System Act
105 ILCS 15Surplus Federal Property for Schools Act
105 ILCS 20Silent Reflection and Student Prayer Act
105 ILCS 25Interscholastic Athletic Organization Act
105 ILCS 30Illinois Peace Corps Fellowship Program Law
105 ILCS 35Children and Family Community Protection Act
105 ILCS 40Illinois Distance Learning Foundation Act
105 ILCS 45Education for Homeless Children Act
105 ILCS 50Voting by Minors Act
105 ILCS 55School Employee Benefit Act
105 ILCS 60Community Service Education Act
105 ILCS 65Children's Low-Cost Laptop Act
105 ILCS 70Educational Opportunity for Military Children Act

HEALTH AND SAFETY

105 ILCS 105Asbestos Abatement Act
105 ILCS 110Critical Health Problems and Comprehensive Health Education Act
105 ILCS 112Dissection Alternatives Act
105 ILCS 115Eye Protection in School Act
105 ILCS 120Fire Drill Act
105 ILCS 124Farm Fresh Schools Program Act
105 ILCS 125School Breakfast and Lunch Program Act
105 ILCS 126Childhood Hunger Relief Act
105 ILCS 127School Reporting of Drug Violations Act
105 ILCS 128School Safety Drill Act
105 ILCS 129School Health Center Act
105 ILCS 130Sex Education Act
105 ILCS 135Toxic Art Supplies in Schools Act
105 ILCS 140Green Cleaning Schools Act
105 ILCS 145Care of Students with Diabetes Act

FINANCES AND REFORM

105 ILCS 205School District Educational Effectiveness and Fiscal Efficiency Act
105 ILCS 210School Bus Performance Bond Act
105 ILCS 215Chicago Community Schools Study Commission Act

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105 ILCS 2201985 School District Reorganization Act
105 ILCS 225Education Cost-Effectiveness Agenda Act
105 ILCS 230School Construction Law
105 ILCS 235State Aid Continuing Appropriation Law
105 ILCS 240School District Intergovernmental Cooperation
Renewable Energy Act
EDUCATIONAL ENHANCEMENT
105 ILCS 302College and Career Success for All Students Act
105 ILCS 305Illinois Mathematics and Science Academy Law
105 ILCS 310Illinois Summer School for the Arts Act
ADULT AND VOCATIONAL EDUCATION
105 ILCS 405Adult Education Act
105 ILCS 410Adult Education Reporting Act
105 ILCS 415Conservation Education Act
105 ILCS 420Council on Vocational Education Act
105 ILCS 423Occupational Skill Standards Act
105 ILCS 425Private Business and Vocational Schools Act
105 ILCS 426Private Business and Vocational Schools Act of
2012
105 ILCS 430Recognized Normal School Act
105 ILCS 433Vocational Academies Act
105 ILCS 435Vocational Education Act
VALIDATION ACTS
105 ILCS 505Education Ballot and Bond Validation Act
105 ILCS 510School Election Validation (1965) Act
105 ILCS 515School Tax Rate Validation (1967) Act
105 ILCS 520School Tax Rate Validation (1968) Act
105 ILCS 525School Tax Rate Validation (1969) Act
105 ILCS 530School Election Validation (1970) Act
105 ILCS 535Municipal and School Tax Levy Validation Act
105 ILCS 540School District Validation (1971) Act
105 ILCS 545School District Validation (1975) Act
105 ILCS 550School District Validation (1988) Act
105 ILCS 555School District Validation (1995) Act
105 ILCS 560School District Validation (2001) Act

COMMON SCHOOLS

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School Code

Article 1

Short Title - Construction - Definitions'

105 ILCS 5/1-1.Short title
105 ILCS 5/1-2.Construction
105 ILCS 5/1-3.Definitions
105 ILCS 5/1-3.5.Use of term "registered mail"
105 ILCS 5/1-4.[Policy]

Article 1A

State Board Of Education

105 ILCS 5/1A-1.Members and terms
105 ILCS 5/1A-2.Qualifications
105 ILCS 5/1A-2.1.Vacancies
105 ILCS 5/1A-4.Powers and duties of the Board
105 ILCS 5/1A-6.[Repealed].
105 ILCS 5/1A-8.Powers of the Board in Assisting Districts Deemed in Financial Difficulties
105 ILCS 5/1A-9.Duty of the Board to disseminate information concerning the Children's Privacy Protection and Parental Empowerment Act
105 ILCS 5/1A-10.Divisions of Board
105 ILCS 5/1A-11.Children; methamphetamine; protocol

Article 1B

School District Financial Oversight Panel And Emergency Financial Assistance Law

105 ILCS 5/1B-1.Short title
105 ILCS 5/1B-2.Findings and purpose
105 ILCS 5/1B-3.Definitions
105 ILCS 5/1B-4.Establishment of Emergency Financial Assistance and Financial Oversight Panel
105 ILCS 5/1B-5.[Members of Panel; powers; dissolution]
105 ILCS 5/1B-6.General powers
105 ILCS 5/1B-7.Financial Administrator; Powers and Duties
105 ILCS 5/1B-7.5.Hiring of a district superintendent or chief executive officer
105 ILCS 5/1B-7.10.Hiring of a chief fiscal officer
105 ILCS 5/1B-8.[School District Emergency Financial Assistance Fund; payments]

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105 ILCS 5/1B-9.Assistance by State agencies, units of local government or school districts
105 ILCS 5/1B-10.Approval of Financial Plan, budget and contracts
105 ILCS 5/1B-11.Balanced Budget
105 ILCS 5/1B-12.Financial Plans
105 ILCS 5/1B-13.Budgets
105 ILCS 5/1B-14.Contracts and Other Obligations
105 ILCS 5/1B-15.Expenditures
105 ILCS 5/1B-16.Cash accounts and bank accounts
105 ILCS 5/1B-17.Hearings
105 ILCS 5/1B-18.Limitations of actions after abolition; indemnification
105 ILCS 5/1B-19.Abolition of Panel
105 ILCS 5/1B-20.Sanctions
105 ILCS 5/1B-21.[Repealed].
105 ILCS 5/1B-22.Additional powers of the panel
105 ILCS 5/1B-25.Establishment prohibited

Article 1C

Block Grants

105 ILCS 5/1C-1.Purpose
105 ILCS 5/1C-2.Block grants
105 ILCS 5/1C-3.Application
105 ILCS 5/1C-4.Reports
105 ILCS 5/1C-5.Rules

Article 1D

Block Grants For Districts With Over 500,000 Inhabitants

105 ILCS 5/1D-1.Block grant funding

Article 1E

Downstate School Finance Authority

105 ILCS 5/1E-1.Short title
105 ILCS 5/1E-5.Findings; purpose; intent
105 ILCS 5/1E-10.Definitions
105 ILCS 5/1E-15.Establishment of Authority; duties of district
105 ILCS 5/1E-20.Members of Authority; meetings
105 ILCS 5/1E-25.General powers
105 ILCS 5/1E-30.Chief executive officer
105 ILCS 5/1E-35.Chief educational officer
105 ILCS 5/1E-40.Chief fiscal officer
105 ILCS 5/1E-45.Collective bargaining agreements

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105 ILCS 5/1E-50.Deposits and investments
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105 ILCS 5/1E-60.Financial, management, and budgetary structure
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105 ILCS 5/1E-70.Terms of bonds
105 ILCS 5/1E-75.Tax levy
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105 ILCS 5/1F-5.Findings; purpose; intent
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105 ILCS 5/1F-20.Members of Authority; meetings
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105 ILCS 5/1F-62.School District Emergency Financial Assistance Fund; grants and loans
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105 ILCS 5/1H-70.Tax anticipation warrants, tax anticipation notes, revenue anticipation certificates or notes, general State aid anticipation certificates, and lines of credit
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105 ILCS 5/2-3.16.[Repealed].
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105 ILCS 5/2-3.22.Withholding school funds or compensation of regional superintendent of schools
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105 ILCS 5/2-3.24.Withholding funds from school officer or teacher
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105 ILCS 5/2-3.38.[Repealed].

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105 ILCS 5/2-3.39.Department of Transitional Bilingual Education
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105 ILCS 5/2-3.41.Chronic truants and truancy prevention
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105 ILCS 5/2-3.43.[Repealed].
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105 ILCS 5/2-3.70.Alcohol and substance abuse education and prevention programs
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105 ILCS 5/2-3.72.[Repealed].
105 ILCS 5/2-3.73.Missing child program
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105 ILCS 5/2-3.76.[Educational services for eligible children]
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105 ILCS 5/2-3.83.Individual transition plan model pilot program
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105 ILCS 5/2-3.86.[On-site auditing]
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105 ILCS 5/2-3.88.[Repealed].
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Article 3

Regional Superintendent Of Schools

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Article 3A

Educational Service Regions

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Article 4

Duties Of County Board

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ARTICLE 5

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Article 6

Regional Board Of School Trustees

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105 ILCS 5/10-20.43.School facility occupation tax fund
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Article 11

[reserved]

Article 11A

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Article 13

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105 ILCS 5/34-2.2.Local school councils - Manner of operation
105 ILCS 5/34-2.3.Local school councils - Powers and duties
105 ILCS 5/34-2.3a.Recommendations of the Principal
105 ILCS 5/34-2.3b.Local School Council Training
105 ILCS 5/34-2.4.School improvement plan
105 ILCS 5/34-2.4a.Professional personnel leadership committee
105 ILCS 5/34-2.4b.Limitation upon applicability
105 ILCS 5/34-2.4c.Whistle Blower Protection
105 ILCS 5/34-2.5.[Repealed.]
105 ILCS 5/34-3.Chicago School Reform Board of Trustees; new Chicago Board of Education; members; term; vacancies
105 ILCS 5/34-3.1.[Repealed.]
105 ILCS 5/34-3.2.Board training
105 ILCS 5/34-3.3.Chicago School Reform Board of Trustees; powers and duties; chief operating, fiscal, educational, and purchasing officers
105 ILCS 5/34-3.4.[Repealed.]
105 ILCS 5/34-3.5.Partnership agreement on advancing student achievement; No Child Left Behind Act of 2001
105 ILCS 5/34-4.Eligibility
105 ILCS 5/34-4.5.Chronic truants
105 ILCS 5/34-5.[Repealed.]
105 ILCS 5/34-6.Superintendent of schools
105 ILCS 5/34-6.1.[Report on Freedom of Information Act requests]
105 ILCS 5/34-7.Establishment of departments
105 ILCS 5/34-8.Powers and duties of general superintendent
105 ILCS 5/34-8.05.Reporting firearms in schools
105 ILCS 5/34-8.1.Principals
105 ILCS 5/34-8.1a.Waiver of collective bargaining agreement provisions
105 ILCS 5/34-8.1b.Exemption from bargaining unit membership
105 ILCS 5/34-8.3.Remediation and probation of attendance centers
105 ILCS 5/34-8.3a.Financial supervision of attendance centers
105 ILCS 5/34-8.4.Intervention
105 ILCS 5/34-8.5.[Repealed.]
105 ILCS 5/34-8.6.Short title
105 ILCS 5/34-8.7.Findings
105 ILCS 5/34-8.8 through 105 ILCS 5/34-8.9 [Repealed].
105 ILCS 5/34-8.10.Applications for Learning Zone designation
105 ILCS 5/34-8.11.Evaluation criteria
105 ILCS 5/34-8.12.Attendance center support
105 ILCS 5/34-8.13.Learning Zone designation principles
105 ILCS 5/34-8.14.Non-waivable provisions
105 ILCS 5/34-8.15.Reports
105 ILCS 5/34-8.16.Disapproval or amendment of reports
105 ILCS 5/34-8.17.Lump-sum allocation; key centralized functions
105 ILCS 5/34-8.18.[Revocation of Learning Zone designation]
105 ILCS 5/34-8.19.[Repealed.]

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105 ILCS 5/34-9.Report and estimates
105 ILCS 5/34-10.Revised report - Amendments - Excessive appropriations
105 ILCS 5/34-11.Duties of general counsel; assistants
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105 ILCS 5/34-13.Appointment, removal or suspension of attorney and assistants
105 ILCS 5/34-13.1.Inspector General
105 ILCS 5/34-14.Section 34-15 Not limited by Sections 34-6 To 34-13
105 ILCS 5/34-15.Other officers and employees
105 ILCS 5/34-15a.Active military service
105 ILCS 5/34-16.Powers of board respecting officers and employees
105 ILCS 5/34-17.Powers not exercised by city council
105 ILCS 5/34-18.Powers of the board
105 ILCS 5/34-18.1.Protection from suit
105 ILCS 5/34-18.2.Bilingual programs
105 ILCS 5/34-18.3.[Peer assistance; tutorial programs]
105 ILCS 5/34-18.4.Before and after school programs
105 ILCS 5/34-18.5.Criminal history records checks and checks of the Statewide Sex Offender Database and Statewide Murderer and Violent Offender Against Youth Database
105 ILCS 5/34-18.6.Child abuse and neglect - detection, reporting and prevention
105 ILCS 5/34-18.6a.Orders of protection
105 ILCS 5/34-18.7.Adolescent and teen suicide detection and intervention
105 ILCS 5/34-18.8.AIDS training
105 ILCS 5/34-18.9.Electronic paging devices on school property
105 ILCS 5/34-18.10.Minority recruitment policy
105 ILCS 5/34-18.10a.Transfer of employees
105 ILCS 5/34-18.11.Tobacco prohibition
105 ILCS 5/34-18.12.Inspection for drugs
105 ILCS 5/34-18.13.Infectious disease policies and rules
105 ILCS 5/34-18.14.Cellular radio telecommunication devices
105 ILCS 5/34-18.15.Recycled paper and paper products and solid waste management
105 ILCS 5/34-18.16.[Repealed.]
105 ILCS 5/34-18.17.No pass-no play policy
105 ILCS 5/34-18.18.Occupational standards
105 ILCS 5/34-18.19.[Repealed.]
105 ILCS 5/34-18.20.Time out and physical restraint
105 ILCS 5/34-18.21.Medicaid-eligible children; health care resources
105 ILCS 5/34-18.22.Unfilled teaching positions list

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105 ILCS 5/34-18.23.Medical information form for bus drivers and emergency medical technicians
105 ILCS 5/34-18.24.Transfer of students
105 ILCS 5/34-18.25.Psychotropic or psychostimulant medication; disciplinary action
105 ILCS 5/34-18.26.Sharing information on school lunch applicants
105 ILCS 5/34-18.27.Summer kindergarten
105 ILCS 5/34-18.28.Prison tour pilot program
105 ILCS 5/34-18.29.Provision of student information prohibited
105 ILCS 5/34-18.30.Dependents of military personnel; no tuition charge
105 ILCS 5/34-18.31.Highly qualified teachers; No Child Left Behind Act funds
105 ILCS 5/34-18.32.Healthy Kids - Healthy Minds Expanded Vision Program
105 ILCS 5/34-18.33.Principal mentoring program
105 ILCS 5/34-18.34.Student biometric information
105 ILCS 5/34-18.35.Use of facilities by community organizations
105 ILCS 5/34-18.36.Wind and solar farms
105 ILCS 5/34-18.37.Veterans' Day; moment of silence
105 ILCS 5/34-18.38.Administrator and teacher salary and benefits; report
105 ILCS 5/34-18.39.Radon testing
105 ILCS 5/34-18.40.Compliance with Chemical Safety Acts
105 ILCS 5/34-18.41.[Repealed].
105 ILCS 5/34-18.42.Press boxes; accessibility
105 ILCS 5/34-18.43.Establishing an equitable and effective school facility development process
105 ILCS 5/34-18.44.American Sign Language courses
105 ILCS 5/34-18.45.(As enacted by P.A. 97-88) Minimum reading instruction
105 ILCS 5/34-18.45.(As enacted by P.A. 97-204) Student athletes; concussions and head injuries
105 ILCS 5/34-19.By-laws, rules and regulations; business transacted at regular meetings; voting; records
105 ILCS 5/34-19.1.Comment at meetings
105 ILCS 5/34-19.2.Mailing list
105 ILCS 5/34-20.Acquisition of real estate - Condemnation proceedings - Title - Conveyances
105 ILCS 5/34-20.1.Limitation on use for school purposes
105 ILCS 5/34-21.Rentals and leases - Sale of real estate - Engagement of real estate broker - Indirect and participating ownership interest - Conveyance, payment and disclosure
105 ILCS 5/34-21.1.Additional powers
105 ILCS 5/34-21.2.Playgrounds
105 ILCS 5/34-21.3.Contracts
105 ILCS 5/34-21.4.Full year feasibility study - grant - transitional expenditure reimbursement

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105 ILCS 5/34-21.5.[Repealed].
105 ILCS 5/34-21.6.Waiver of fees
105 ILCS 5/34-21.7.Racial reports
105 ILCS 5/34-21.8.Chicago public schools violence prevention hotline

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105 ILCS 5/34-22.Buildings
105 ILCS 5/34-22.1.Issuance of bonds
105 ILCS 5/34-22.2.Issuance of bonds
105 ILCS 5/34-22.3.Issuance of bonds
105 ILCS 5/34-22.4.Issuance of bonds
105 ILCS 5/34-22.5.Issuance of bonds
105 ILCS 5/34-22.6.Issuance of bonds
105 ILCS 5/34-22.7.[Bond issuance]
105 ILCS 5/34-22.8.[Repealed].
105 ILCS 5/34-22.9.Termination of authority to issue bonds for rehabilitation and deferred maintenance of school buildings
105 ILCS 5/34-22.10.Issuance of bonds
105 ILCS 5/34-23.Tax anticipation warrants
105 ILCS 5/34-23.5.Issuance of notes, bonds, or other obligations in lieu of tax anticipation warrants
105 ILCS 5/34-24.Numbering of warrants - Setting apart taxes - Interest
105 ILCS 5/34-25.Use of special funds to purchase tax anticipation warrants - Payment
105 ILCS 5/34-26.Resale of tax anticipation warrants - Sale of new warrants
105 ILCS 5/34-27.Use of special funds to purchase outstanding bonds
105 ILCS 5/34-28.Investment of school funds
105 ILCS 5/34-29.Audit of accounts
105 ILCS 5/34-29.1.General obligation notes - Limitations - Issuance - Tax levy - Tax rate - Reimbursement to working cash fund
105 ILCS 5/34-29.2.Debt service funds for obligations
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105 ILCS 5/34-31.Bond issue to increase fund
105 ILCS 5/34-32.Resolution for bond issue - Signature - Sale
105 ILCS 5/34-33.Tax for payment of bonds

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105 ILCS 5/34-34.Bond moneys set apart - Use and reimbursement of fund
105 ILCS 5/34-35.Resolution for transfer from fund - Amount transferred
105 ILCS 5/34-36.Violations of provisions - Liability
105 ILCS 5/34-37.Abolishment of working cash funds
105 ILCS 5/34-38.Re-creation of working cash fund

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105 ILCS 5/34-42.Fiscal year
105 ILCS 5/34-42.1, 105 ILCS 5/34-42.2 [Repealed].
105 ILCS 5/34-43.Adoption of budget and resolution
105 ILCS 5/34-43.1.[Limitations; certification; reports]
105 ILCS 5/34-43a.Post annual budget on web site
105 ILCS 5/34-44.Budget estimates
105 ILCS 5/34-44.1.Supplemental budget estimate
105 ILCS 5/34-45.Budget appropriations
105 ILCS 5/34-45.1.[Administration of programs included]
105 ILCS 5/34-46.Public participation
105 ILCS 5/34-47.Revision of items - Amendment - Publication
105 ILCS 5/34-48.Supplemental budgets - Emergencies
105 ILCS 5/34-49.Contracts, expense and liabilities without appropriation
105 ILCS 5/34-50.Transfers between appropriations - Delay
105 ILCS 5/34-51.Appropriation not to be construed as approval of board of liabilities
105 ILCS 5/34-52.Wilful violation of budget provisions
105 ILCS 5/34-52.1.Form of ballot and notice
105 ILCS 5/34-53.Tax levies; Purpose; Rates
105 ILCS 5/34-53.1.Supplemental tax levy
105 ILCS 5/34-53.2, 105-5/34-53.3 [Repealed].
105 ILCS 5/34-53.5.Capital improvement tax levy; purpose; maximum amount
105 ILCS 5/34-53A.[Repealed.]
105 ILCS 5/34-54.[Repealed].
105 ILCS 5/34-54.1.Tax levies and extensions
105 ILCS 5/34-54.2.Taxes levied in 1989 and 1990
105 ILCS 5/34-55.Expenditures in excess of receipts
105 ILCS 5/34-56.Amount to cover loss and cost of collecting tax not added
105 ILCS 5/34-57 through 105 ILCS 5/34-63 [Repealed.]
105 ILCS 5/34-64.Numbering warrants - Contents - Interest
105 ILCS 5/34-65.Refunding bonds authorized - Interest

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105 ILCS 5/34-66.Resolution for refunding bonds - Name in which issued - Signatures
105 ILCS 5/34-67.Sale or exchange of bonds - Use of proceeds
105 ILCS 5/34-68.Issuance without submission to voters
105 ILCS 5/34-69.Tax for payment of refunding bonds
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105 ILCS 5/34-71.Authority cumulative
105 ILCS 5/34-72.[Repealed].
105 ILCS 5/34-73.Certain taxes additional to maximum otherwise authorized - not reducible
105 ILCS 5/34-74.Custody of school moneys
105 ILCS 5/34-75.Duties of city treasurer as to school moneys
105 ILCS 5/34-76.Unpaid warrants for wages
105 ILCS 5/34-77.Depositories
105 ILCS 5/34-78.Money kept separate - Unlawful use
105 ILCS 5/34-79.Annual account of treasurer
105 ILCS 5/34-80.Liability on treasurer's bond
105 ILCS 5/34-81.Interest on fund
105 ILCS 5/34-82.Designation of person to sign for president

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105 ILCS 5/34-83.Board of examiners - Certificates - Examinations
105 ILCS 5/34-83.1.Residence Requirements
105 ILCS 5/34-84.Appointments and promotions of teachers
105 ILCS 5/34-84a.Maintenance of discipline
105 ILCS 5/34-84a.1.Principals shall report incidents of intimidation
105 ILCS 5/34-84b.Conviction of sex or narcotics offense, first degree murder, attempted first degree murder, or Class X felony as grounds for revocation of certificate
105 ILCS 5/34-84.1.Teachers employed in Department of Defense overseas dependents' schools
105 ILCS 5/34-85.Removal for cause; Notice and hearing; Suspension
105 ILCS 5/34-85b.[Repealed].
105 ILCS 5/34-85c.Alternative procedures for teacher evaluation, remediation, and removal for cause after remediation
105 ILCS 5/34-87.[Repealed].
105 ILCS 5/34-88.District and school report cards
105 ILCS 5/34-128.[Transportation for trainable mentally handicapped children]

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School Action And Facility Master Planning

105 ILCS 5/34-200.Definitions
105 ILCS 5/34-205.Educational facility standards
105 ILCS 5/34-210.The Educational Facility Master Plan
105 ILCS 5/34-215.Capital improvement plans
105 ILCS 5/34-220.Financial transparency
105 ILCS 5/34-225.School transition plans
105 ILCS 5/34-230.School action public meetings and hearings
105 ILCS 5/34-235.Emergencies

Article 34A

School Finance Authority

105 ILCS 5/34A-101.Short title
105 ILCS 5/34A-102.Findings and purpose
105 ILCS 5/34A-103.Definitions
105 ILCS 5/34A-104.Establishment of Authority
105 ILCS 5/34A-201.General powers
105 ILCS 5/34A-201.1.[Repealed.]
105 ILCS 5/34A-201a.[Repealed.]
105 ILCS 5/34A-202.Deposits and Investments
105 ILCS 5/34A-301.Board of Directors
105 ILCS 5/34A-302.Terms, vacancies and removal
105 ILCS 5/34A-303.Chairman and other officers
105 ILCS 5/34A-304.Assistance by state agencies, units of local government or school districts
105 ILCS 5/34A-305.Compensation
105 ILCS 5/34A-306.Meetings and records
105 ILCS 5/34A-401.Approval of Financial Plan and Budget
105 ILCS 5/34A-401.1.Limitation
105 ILCS 5/34A-402.Balanced budget
105 ILCS 5/34A-403.Financial Plans
105 ILCS 5/34A-403.1.Fiscal year 1994 contracts
105 ILCS 5/34A-404.Budgets
105 ILCS 5/34A-405.Contracts
105 ILCS 5/34A-405.1.Interim operations
105 ILCS 5/34A-405.2.Staffing levels
105 ILCS 5/34A-406.Expenditures
105 ILCS 5/34A-406.1.[Number of education fund positions for 1984-85]
105 ILCS 5/34A-406.2.Interim Operations for Fiscal Year 1994 Pending Budget Adoption and Approval
105 ILCS 5/34A-407.Approval of chief financial officer
105 ILCS 5/34A-408.Financial and managerial audits
105 ILCS 5/34A-409.Cash accounts and bank accounts
105 ILCS 5/34A-410.Financial, management and budgetary structure

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105 ILCS 5/34A-411.Termination and reinstatement of Authority's power under this Article
105 ILCS 5/34A-412 through 105 ILCS 5/34A-415 [Repealed].
105 ILCS 5/34A-501.Power to issue Bonds
105 ILCS 5/34A-501.1.Additional bond authority
105 ILCS 5/34A-502.Terms of Bonds
105 ILCS 5/34A-503.Tax levy
105 ILCS 5/34A-504.Debt service fund
105 ILCS 5/34A-505.Debt service reserve fund
105 ILCS 5/34A-506.Bond Anticipation Notes
105 ILCS 5/34A-507.Resolution vesting powers in trustee
105 ILCS 5/34A-508.Property of Authority exempt from taxation
105 ILCS 5/34A-509.Discharge of Bonds
105 ILCS 5/34A-510.Pledge of the State
105 ILCS 5/34A-511.Statutory lien
105 ILCS 5/34A-512.Complete authority
105 ILCS 5/34A-601.Hearings
105 ILCS 5/34A-602.Limitations of actions after abolition; indemnification
105 ILCS 5/34A-603.State, City or Board not liable on Obligations
105 ILCS 5/34A-604.Abolition of Authority
105 ILCS 5/34A-605.Obligations as legal investments
105 ILCS 5/34A-606.Reports
105 ILCS 5/34A-607.Audit of Authority
105 ILCS 5/34A-608.Sanctions

Article 34B

Bridge Note Statute

105 ILCS 5/34B-1 through 105 ILCS 5/34B-16 [Repealed].

Article 35

Buildings - School Building Commission

105 ILCS 5/35-1 through 105 ILCS 5/35-31 [Repealed].

Article 36

Repeal - Saving

105 ILCS 5/36-1.Repeal - Saving Clause
105 ILCS 5/95.No acceleration or delay

Article 1.

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Short Title - Construction - Definitions

§ 105 ILCS 5/1-1. Short title

Sec. 1-1. Short title. This Act may be cited as the School Code.

(Source: P.A. 86-1475.)

Derivation.

Title: An Act in relation to the establishment, operation and maintenance of public schools, providing for the transportation of and scholarships in institutions of higher learning for students of all schools, and to repeal certain acts herein named.

Cite: 105 ILCS 5/1-1 et seq.

Source: L. 1961, p. 31.

Date: Approved March 18, 1961.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1-1.

Cross References.

As to public meeting requirements, see 5 ILCS 120/2.02, and see 105 ILCS 5/6-18 and 105 IlCS 5/10-6; as to the ethical requirements for filing a statement of economic interest under the School Code, see 5 ILCS 420/1-101.

CASE NOTES

Analysis

Constitutionality
- Funding
Authority
Immunity from Tort Liability
Placement
Purpose

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Constitutionality

- Funding

General structure of state's system of funding public schools through state and local resources, and the amounts allocated for distribution, represent legislative efforts to strike a balance between competing considerations of educational equality and local control, and state's system of funding is rationally related to legitimate goal of promoting local control. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

Authority

Board of education had broad statutory authority pursuant to 105 ILCS 5/1-1 and 105 ILCS 5/10-22.4 to dismiss a nontenured teacher during a probationary period and was not required to show just cause. Thus, that authority could not be limited by a collective bargaining agreement and since the dismissal of the three nontenured probationary teachers was not otherwise shown to be improper, whether they were properly dismissed was not arbitrable. Niles Twp. High Sch. Dist. 219 v. Ill. Educ. Labor Rels. Bd., 379 Ill. App. 3d 22, 318 Ill. Dec. 195, 883 N.E.2d 29, 2007 Ill. App. LEXIS 1291 (1 Dist. 2007).

Immunity from Tort Liability

Under the Illinois School Code, 105 ILCS 5/1-1 et seq. (1994), educators are immunized from acts involving ordinary negligence but not from acts involving willful and wanton misconduct. Brugger v. Joseph Academy, Inc., 326 Ill. App. 3d 328, 260 Ill. Dec. 56, 760 N.E.2d 135, 2001 Ill. App. LEXIS 863 (1 Dist. 2001), aff'd, 202 Ill. 2d 435, 269 Ill. Dec. 472, 781 N.E.2d 269 (2002).

Placement

School district wherein a delinquent minor was a special education student was not financially responsible for the delinquent minor's residential placement at an out-of-state residential facility under the Juvenile Court Act; a school district has financial responsibility for an out-of-district special education program only when it is unable to meet the needs of the student in its own district. People v. D.D. (In re D.D.), 212 Ill. 2d 410, 289 Ill. Dec. 143, 819 N.E.2d 300, 2004 Ill. LEXIS 1023 (2004).

Purpose

When a tenured teacher was terminated for cause, the Illinois School Code, 105 ILCS 5/1-1 et seq., did not apply to give her statutory rights to employment because the school was a private school; the teacher had been employed by the school pursuant to a personal services contract, and the contract provided that she could be terminated for cause following a hearing, an appeal of which was final. Chady v. Solomon Schechter Day Sch., 269 Ill. App. 3d 31, 206 Ill. Dec. 731, 645 N.E.2d 983, 1995 Ill. App. LEXIS 6 (1 Dist. 1995).

The School Code of 1961, like its predecessor, was designed to gather into one statute the provisions relating to the establishment, operation and maintenance of the schools. People ex rel. Carey v. Board of Educ., 55 Ill. 2d 533, 304 N.E.2d 273 (1973).

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LEGAL PERIODICALS

For article, "Survey of Illinois Law: Education Law," see 21 S. Ill. U.L.J. 815 (1997).

For article, "Illinois Public Labor Relations Laws: A Commentary and Analysis," see 60 Chi.-Kent L. Rev. 883 (1984).

For article, "The Permissible Scope of Public Sector Bargaining in Illinois: A Proposed Solution," see 12 J. Marshall J. Prac. & Proc. 509 (1979).

For note, "Illinois' State Subsidy of Special Education of Private Institutions Act," see 28 De Paul L. Rev. 769 (1979).

Practice Guides and Treatises.

Disability Law Today: An Accessible Guide for Illinois Practitioners § 6.8 The Rowley Standard and Its Application in Determining Whether a Student Has Realized FAPE Under the IDEIA (IICLE).

§ 105 ILCS 5/1-2. Construction

Sec. 1-2. Construction. The provisions of this Act, so far as they are the same as those of any prior statute, shall be construed as a continuation of such prior provisions, and not as a new enactment.

If in any other statute reference is made to an Act of the General Assembly, or a section of such an Act, which is continued in this School Code, such reference shall be held to refer to the Act or section thereof so continued in this Code.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1-2.

CASE NOTES

Uniformity of Laws

Although the School Code must be considered and construed as a single act, and it is true that several sections authorize the consolidation of like districts upon approval of the voters residing in each district, either by petition or an election, it could not be said that the School Code was uniform in this respect. People ex rel. Bodecker v. Community Unit Sch. Dist., 409 Ill. 526, 100 N.E.2d 573 (1951).

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§ 105 ILCS 5/1-3. Definitions

Sec. 1-3. Definitions. The terms "common schools", "free schools" and "public schools" are used interchangeably to apply to any school operated by authority of this Act.

"School board" means the governing body of any district created or operating under authority of this Act, including board of school directors and board of education. When the context so indicates it also means the governing body of any non-high school district and of any special charter district, including board of school inspectors.

"Special charter district" means any city, township or district organized into a school district, under a special Act or charter of the General Assembly or in which schools are now managed and operating within such unit in whole or in part under the terms of such special Act or charter.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1-3.

§ 105 ILCS 5/1-3.5. Use of term "registered mail"

Sec. 1-3.5. Use of term "registered mail". Whenever the term "registered mail" is used in this Code, it shall be deemed to authorize the use of either registered mail or certified mail, return receipt requested.

(Source: P.A. 95-790, § 5.)

Effective Date. Section 99 of P.A. 95-790 makes this section effective upon becoming law. The Act was approved August 8, 2008.

§ 105 ILCS 5/1-4. [Policy]

Sec. 1-4. It is the policy of this State that all powers granted, either expressly or by necessary implication, by this Act, other Illinois statute, or the Illinois Constitution to any public school district may be exercised by those public school districts notwithstanding effects on competition. It is the intention of the General Assembly that the "State action exemption" to the application of federal antitrust statutes be fully available to all public

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school districts to the extent their activities are authorized by law as stated herein.

(Source: P.A. 83-929.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1-4.

CASE NOTES

Private Schools

Since the School Code recognizes and authorizes the creation of public school districts in one county or multiple counties in this state, it would follow that a private school may serve more than one county in this state. Voisard v. County of Lake, 27 Ill. App. 2d 365, 169 N.E.2d 805 (2 Dist. 1960).

LEGAL PERIODICALS

For article, "Local Governmental Exposure to Antitrust Liability and Treble Damages Awards in the Wake of City of Lafayette and City of Boulder," see 15 Loy. U. Chi. L.J. 645 (1983-84).

Article 1A.

State Board of Education

§ 105 ILCS 5/1A-1. Members and terms

Sec. 1A-1. Members and terms. (a) (Blank).

(b) The State Board of Education shall consist of 8 members and a chairperson, who shall be appointed by the Governor with the advice and consent of the Senate from a pattern of regional representation as follows: 2 appointees shall be selected from among those counties of the State other than Cook County and the 5 counties contiguous to Cook

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County; 2 appointees shall be selected from Cook County, one of whom shall be a resident of the City of Chicago and one of whom shall be a resident of that part of Cook County which lies outside the city limits of Chicago; 2 appointees shall be selected from among the 5 counties of the State that are contiguous to Cook County; and 3 members shall be selected as members-at-large (one of which shall be the chairperson). The Governor who takes office on the second Monday of January after his or her election shall be the person who nominates members to fill vacancies whose terms begin after that date and before the term of the next Governor begins.

The term of each member of the State Board of Education whose term expires on January 12, 2005 shall instead terminate on the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-1036]. Of these 3 seats, (i) the member initially appointed pursuant to this amendatory Act of the 93rd General Assembly [P.A. 93-1036] whose seat was vacant on April 27, 2004 shall serve until the second Wednesday of January, 2009 and (ii) the other 2 members initially appointed pursuant to this amendatory Act of the 93rd General Assembly [P.A. 93-1036] shall serve until the second Wednesday of January, 2007.

The term of the member of the State Board of Education whose seat was vacant on April 27, 2004 and whose term expires on January 10, 2007 shall instead terminate on the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-1036]. The member initially appointed pursuant to this amendatory Act of the 93rd General Assembly [P.A. 93-1036] to fill this seat shall be the chairperson and shall serve until the second Wednesday of January, 2007.

The term of the member of the State Board of Education whose seat was vacant on May 28, 2004 but after April 27, 2004 and whose term expires on January 10, 2007 shall instead terminate on the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-1036]. The member initially appointed pursuant to this amendatory Act of the 93rd General Assembly [P.A. 93-1036] to fill this seat shall serve until the second Wednesday of January, 2007.

The term of the other member of the State Board of Education whose term expires on January 10, 2007 shall instead terminate on the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-1036]. The member initially appointed pursuant to this amendatory Act of the 93rd General Assembly [P.A. 93-1036] to fill this seat shall serve until the second Wednesday of January, 2007.

The term of the member of the State Board of Education whose term expires on January 14, 2009 and who was selected from among the 5 counties of the State that are contiguous to Cook County and is a resident of Lake County shall instead terminate on the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-1036]. The member initially appointed pursuant to this amendatory Act of the 93rd General Assembly [P.A. 93-1036] to fill this seat shall serve until the second Wednesday of January, 2009.

Upon expiration of the terms of the members initially appointed under this amendatory Act of the 93rd General Assembly [P.A. 93-1036] and members whose terms were not terminated by this amendatory Act of the 93rd General Assembly [P.A. 93-1036], their

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respective successors shall be appointed for terms of 4 years, from the second Wednesday in January of each odd numbered year and until their respective successors are appointed and qualified.

(c) Of the 4 members, excluding the chairperson, whose terms expire on the second Wednesday of January, 2007 and every 4 years thereafter, one of those members must be an at-large member and at no time may more than 2 of those members be from one political party. Of the 4 members whose terms expire on the second Wednesday of January, 2009 and every 4 years thereafter, one of those members must be an at-large member and at no time may more than 2 of those members be from one political party. Party membership is defined as having voted in the primary of the party in the last primary before appointment.

(d) Vacancies in terms shall be filled by appointment by the Governor with the advice and consent of the Senate for the extent of the unexpired term. If a vacancy in membership occurs at a time when the Senate is not in session, the Governor shall make a temporary appointment until the next meeting of the Senate, when the Governor shall appoint a person to fill that membership for the remainder of its term. If the Senate is not in session when appointments for a full term are made, the appointments shall be made as in the case of vacancies.

(Source: P.A. 79-296; 79-690; 79-1454; 89-610, § 5; 93-1036, § 90.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1A-1.

Effect of Amendments. The 1996 amendment by P.A. 89-610, effective August 6, 1996, rewrote this section.

The 2004 amendment by P.A. 93-1036, effective September 14, 2004, rewrote the section to the extent that a detailed comparison would be impracticable.

CASE NOTES

Constitutionality

Although Ill. Const. (1970) Art. X prescribes regional representation, it does not prescribe the method to be used in establishing the regions, and certainly does not prohibit the method chosen; therefore, the method of allocating membership on the Board of Education according to judicial districts does not violate the Constitution. Hoskins v. Walker, 57 Ill. 2d 503, 315 N.E.2d 25 (1974).

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Analysis
Acts of Board as Improperly Constituted
Party Affiliation

Acts of Board as Improperly Constituted

The members of the Board, having been appointed by the Governor with the advice and consent of the Senate, as required by statute, clearly held office with legal indicia of title even though the membership did not conform to the statutory party affiliation limitation; therefore, all were, throughout their tenure, at least de facto officers, and their acts as members of the State Board of Education were valid as to the public generally and to persons specifically affected by them. 1998 Op. Atty. Gen. (98-19).

Party Affiliation

The voting records of the initial nine members of the reorganized Board appointed on January 9, 1997, show that, in 1996, six voted in the Republican primary election, and three voted in the Democratic primary election; therefore, the membership did not conform to the statutory party affiliation limitation. However, since one of the members of the Board who had voted in the Republican primary in 1996 submitted his resignation to the Governor, effective September 18, 1998, there are now no more than five members of the Board who are affiliated with any one political party, under the definition contained in this section, and the composition of the Board is presently in compliance with the statutory requirements. 1998 Op. Atty. Gen. (98-19).

§ 105 ILCS 5/1A-2. Qualifications

Sec. 1A-2. Qualifications. The members of the State Board of Education shall be citizens of the United States and residents of the State of Illinois and shall be selected as far as may be practicable on the basis of their knowledge of, or interest and experience in, problems of public education. No member of the State Board of Education shall be gainfully employed or administratively connected with any school system, nor have any interest in or benefit from funds provided by the State Board of Education to an institution of higher learning, public or private, within Illinois, nor shall they be members of a school board or board of school trustees of a public or nonpublic school, college, university or technical institution within Illinois. No member shall be appointed to more than 2 4-year terms. Members shall be reimbursed for all ordinary and necessary expenses incurred in performing their duties as members of the Board. Expenses shall be approved by the Board and be consistent with the laws, policies, and requirements of the State of Illinois regarding such expenditures, plus any member may include in his claim for expenses $50 per day for meeting days.

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(Source: P.A. 80-1513; 90-548, § 5-915; 96-328, § 145.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1A-2.

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, in the second sentence, substituted "nor have any interest in or benefit from funds provided by the State Board of Education to an" for "or".

The 2009 revisory amendment by P.A. 96-328, effective August 11, 2009, substituted "4-year" for "six year" in the third sentence.

CASE NOTES

Analysis

Constitutionality
- Equal Protection
Criteria
- Experience
- Reasonable Basis Test

Constitutionality

- Equal Protection

Purpose to be served in limiting membership on the State Board of Education to persons not actively engaged in or connected with any school or school system is to prevent any potential conflict of interests and to prevent placing people on the Board whose other interests would naturally tend to promote or favor one segment of the state's educational structure over another; the state has a legitimate interest in acting to accomplish these goals, and consequently, this section does not violate petitioners' rights to equal protection of the laws. Hoskins v. Walker, 57 Ill. 2d 503, 315 N.E.2d 25 (1974).

Criteria

- Experience

The disqualifications of this section are not inconsistent with the prescription that Board of Education members are to be selected on the basis of their experience in the educational field, as the persons disqualified are not the only persons with the knowledge, interest and experience-in-education qualifications which the appointees must possess. Hoskins v. Walker, 57 Ill. 2d 503, 315 N.E.2d 25 (1974).

- Reasonable Basis Test

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The qualification requirements of this section will have no effect on voting rights; therefore, the classification is presumed to be valid, and will not be set aside if any state of facts may reasonably be conceived which justify it. Hoskins v. Walker, 57 Ill. 2d 503, 315 N.E.2d 25 (1974).

§ 105 ILCS 5/1A-2.1. Vacancies

Sec. 1A-2.1. Vacancies. The Governor may remove for incompetence, neglect of duty, or malfeasance in office any member of the State Board of Education. A vacancy also exists on the State Board of Education when one or more of the following events occur:

1.A member dies.

2.A member files a written resignation with the Governor.

3.A member is adjudicated to be a person under legal disability under the Probate Act of 1975 [755 ILCS 5/1-1 et seq.], or a person subject to involuntary admission under the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-100 et seq.].

4.A member ceases to be a resident of the region from which he or she was appointed.

5.A member is convicted of an infamous crime or of any offense involving a violation of his or her duties under this Code.

6.A member fails to maintain the qualifications stated in Section 1A-2 of this Code [105 ILCS 5/1A-2].

(Source: P.A. 83-706; 93-1036, § 90.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1A-2.1.

Effect of Amendments. The 2004 amendment by P.A. 93-1036, effective September 14, 2004, rewrote the section to the extent that a detailed comparison would be impracticable.

§ 105 ILCS 5/1A-4. Powers and duties of the Board

Sec. 1A-4. Powers and duties of the Board. A.(Blank).

B.The Board shall determine the qualifications of and appoint a chief education officer, to be known as the State Superintendent of Education, who may be proposed by the Governor and who shall serve at the pleasure of the Board and pursuant to a performance-based contract linked to statewide student performance and academic

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improvement within Illinois schools. Upon expiration or buyout of the contract of the State Superintendent of Education in office on the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-1036], a State Superintendent of Education shall be appointed by a State Board of Education that includes the 7 new Board members who were appointed to fill seats of members whose terms were terminated on the effective date of this amendatory Act of the 93rd General Assembly. Thereafter, a State Superintendent of Education must, at a minimum, be appointed at the beginning of each term of a Governor after that Governor has made appointments to the Board. A performance-based contract issued for the employment of a State Superintendent of Education entered into on or after the effective date of this amendatory Act of the 93rd General Assembly must expire no later than February 1, 2007, and subsequent contracts must expire no later than February 1 each 4 years thereafter. No contract shall be extended or renewed beyond February 1, 2007 and February 1 each 4 years thereafter, but a State Superintendent of Education shall serve until his or her successor is appointed. Each contract entered into on or before January 8, 2007 with a State Superintendent of Education must provide that the State Board of Education may terminate the contract for cause, and the State Board of Education shall not thereafter be liable for further payments under the contract. With regard to this amendatory Act of the 93rd General Assembly, it is the intent of the General Assembly that, beginning with the Governor who takes office on the second Monday of January, 2007, a State Superintendent of Education be appointed at the beginning of each term of a Governor after that Governor has made appointments to the Board. The State Superintendent of Education shall not serve as a member of the State Board of Education. The Board shall set the compensation of the State Superintendent of Education who shall serve as the Board's chief executive officer. The Board shall also establish the duties, powers and responsibilities of the State Superintendent, which shall be included in the State Superintendent's performance-based contract along with the goals and indicators of student performance and academic improvement used to measure the performance and effectiveness of the State Superintendent. The State Board of Education may delegate to the State Superintendent of Education the authority to act on the Board's behalf, provided such delegation is made pursuant to adopted board policy or the powers delegated are ministerial in nature. The State Board may not delegate authority under this Section to the State Superintendent to (1) nonrecognize school districts, (2) withhold State payments as a penalty, or (3) make final decisions under the contested case provisions of the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.] unless otherwise provided by law.

C.The powers and duties of the State Board of Education shall encompass all duties delegated to the Office of Superintendent of Public Instruction on January 12, 1975, except as the law providing for such powers and duties is thereafter amended, and such other powers and duties as the General Assembly shall designate. The Board shall be responsible for the educational policies and guidelines for public schools, pre-school through grade 12 and Vocational Education in the State of Illinois. The Board shall analyze the present and future aims, needs, and requirements of education in the State of Illinois and recommend to the General Assembly the powers which should be exercised by the Board. The Board shall recommend the passage and the legislation necessary to determine the appropriate relationship between the Board and local boards of education

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and the various State agencies and shall recommend desirable modifications in the laws which affect schools.

D.Two members of the Board shall be appointed by the chairperson to serve on a standing joint Education Committee, 2 others shall be appointed from the Board of Higher Education, 2 others shall be appointed by the chairperson of the Illinois Community College Board, and 2 others shall be appointed by the chairperson of the Human Resource Investment Council. The Committee shall be responsible for making recommendations concerning the submission of any workforce development plan or workforce training program required by federal law or under any block grant authority. The Committee will be responsible for developing policy on matters of mutual concern to elementary, secondary and higher education such as Occupational and Career Education, Teacher Preparation and Certification, Educational Finance, Articulation between Elementary, Secondary and Higher Education and Research and Planning. The joint Education Committee shall meet at least quarterly and submit an annual report of its findings, conclusions, and recommendations to the State Board of Education, the Board of Higher Education, the Illinois Community College Board, the Human Resource Investment Council, the Governor, and the General Assembly. All meetings of this Committee shall be official meetings for reimbursement under this Act. On the effective date of this amendatory Act of the 95th General Assembly [P.A. 95-626], the Joint Education Committee is abolished.

E.Five members of the Board shall constitute a quorum. A majority vote of the members appointed, confirmed and serving on the Board is required to approve any action, except that the 7 new Board members who were appointed to fill seats of members whose terms were terminated on the effective date of this amendatory act of the 93rd General Assembly may vote to approve actions when appointed and serving.

Using the most recently available data, the Board shall prepare and submit to the General Assembly and the Governor on or before January 14, 1976 and annually thereafter a report or reports of its findings and recommendations. Such annual report shall contain a separate section which provides a critique and analysis of the status of education in Illinois and which identifies its specific problems and recommends express solutions therefor. Such annual report also shall contain the following information for the preceding year ending on June 30: each act or omission of a school district of which the State Board of Education has knowledge as a consequence of scheduled, approved visits and which constituted a failure by the district to comply with applicable State or federal laws or regulations relating to public education, the name of such district, the date or dates on which the State Board of Education notified the school district of such act or omission, and what action, if any, the school district took with respect thereto after being notified thereof by the State Board of Education. The report shall also include the statewide high school dropout rate by grade level, sex and race and the annual student dropout rate of and the number of students who graduate from, transfer from or otherwise leave bilingual programs. The Auditor General shall annually perform a compliance audit of the State Board of Education's performance of the reporting duty imposed by this amendatory Act of 1986. A regular system of communication with other directly related State agencies shall be implemented.

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The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report with the Speaker, the Minority Leader and the Clerk of the House of Representatives and the President, the Minority Leader and the Secretary of the Senate and the Legislative Council, as required by Section 3.1 of the General Assembly Organization Act [25 ILCS 5/3.1], and filing such additional copies with the State Government Report Distribution Center for the General Assembly as is required under paragraph (t) of Section 7 of the State Library Act [15 ILCS 320/7].

F.Upon appointment of the 7 new Board members who were appointed to fill seats of members whose terms were terminated on the effective date of this amendatory Act of the 93rd General Assembly, the Board shall review all of its current rules in an effort to streamline procedures, improve efficiency, and eliminate unnecessary forms and paperwork.

(Source: P.A. 85-524; 89-430, § 15; 89-610, § 5; 89-698, § 5; 90-548, § 5-915; 93-1036, § 90; 95-626, § 5; 95-793, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1A-4.

Effect of Amendments. The 1995 amendment by P.A. 89-430, effective December 15, 1995, in subsection D, in the first sentence, substituted "Two" for "Three", substituted "2" for "and 3" and added at the end "2 others shall be appointed by the chairperson of the Illinois Community College Board, and 2 others shall be appointed by the chairperson of the Human Resources Investment Council", added the second sentence and in the fourth sentence deleted "State" preceding "Board of Higher Education" and inserted "the Illinois Community College Board, the Human Resources Investment Council, the Governor".

The 1996 amendment by P.A. 89-610, effective August 6, 1996, rewrote subsection A which formerly read "The Board shall select a chairperson from its membership who shall serve as chairperson for 2 years"; and in subsection E, in the first paragraph, substituted "Five" for "Nine".

The 1996 amendment by P.A. 89-698, effective January 14, 1997, incorporated the amendments by P.A. 89-610; and in subsection (C), in the second sentence, deleted "and private" following "policies and guidelines for public".

The 1997 amendment by P.A. 90-548, effective January 1, 1998, in subsection B, in the first sentence, substituted "and pursuant to a performance-based contract linked to statewide student performance and academic improvement within Illinois schools" for "except that", in the second sentence inserted "performance-based" and added at the end "and no contract shall be extended or renewed prior to its scheduled expiration unless the performance and improvement goals contained in the contract have been met" and in the fifth sentence substituted "the State Superintendent, which shall be included in the State Superintendent's performance-based contract along with the goals and indicators of student performance and academic improvement used to measure the performance and effectiveness of the State Superintendent" for "such officer"; in subsection D, in the first and fourth sentences, substituted "Resource" for "Resources"; and in subsection E in the third paragraph, substituted "the General Assembly Organization Act" for "'An Act to revise the law in relation to the General Assembly', approved February 25,1874, as amended".

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The 2004 amendment by P.A. 93-1036, effective September 14, 2004, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2007 amendment by P.A. 95-626, effective June 1, 2008, added the last sentence of D.

The 2008 amendment by P.A. 95-793, effective August 8, 2008, added "Using the most recently available data" and made a related change at the beginning of the second paragraph of E.

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

CASE NOTES

Analysis

Authority of Superintendent
- Discretionary Power
Community Unit School Districts
- Superintendent's Role
Corporations
- Court Interference
Day-to-Day Operations
- Superintendent's Role
Procedure
- Proper Parties

Authority of Superintendent

- Discretionary Power

The power of recognition vested in the Superintendent of Public Instruction as head of the public school system of the state was a discretionary one requiring investigation and the application of sound, expert judgment to the findings of such investigation and in the absence of abuse or arbitrary or capricious exercise of such power on the part of a public officer charged with such administrative discretion, the court was loath to interfere and would not substitute its discretion for that of the administrative officer. Games v. County Bd., 13 Ill. 2d 78, 147 N.E.2d 306 (1958).

Community Unit School Districts

- Superintendent's Role

By agreement, the State Board of Education delegated to the State Superintendent of Education the requisite power and duty to approve or disapprove the organization of a community unit school district pursuant to the legislative provisions as contained in former Ill. Rev. Stat., ch. 122, para. 11-6(e)(1) (see now 105 ILCS 5/11A-3). Thompson v. Cronin, 48 Ill. App. 3d 752, 6 Ill. Dec. 646, 363 N.E.2d 175 (3 Dist. 1977).

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Corporations

- Court Interference

Whenever a board of education entrusted with the management of the property and financial affairs of respective districts acts in pursuance thereto in allowing a claim against municipal or quasi-municipal corporation, courts will not interfere with such action unless fraud, collusion or corruption can be shown or unless the claim was not of a character which could be paid by the corporation. Norman v. School Dist. No. 1, 8 Ill. App. 2d 466, 131 N.E.2d 811 (4 Dist. 1956).

Day-to-Day Operations

- Superintendent's Role

The framers of the Illinois Constitution of 1970 did not envision that the State Board of Education would be performing the day-to-day duties of directing the educational system in the state of Illinois; had this been the intent of the delegates to the constitutional convention then there would have been no need for the provision providing for the appointment of a chief educational officer in subsection B. of this section. Provision was made by the Constitution of 1970 which was implemented by legislative enactment to provide for the appointment of a State Superintendent of Education who would perform the duties and fulfill the tasks that had previously been the responsibilities of the elective office of Superintendent of Public Instruction. Thompson v. Cronin, 48 Ill. App. 3d 752, 6 Ill. Dec. 646, 363 N.E.2d 175 (3 Dist. 1977).

Procedure

State Department of Education Superintendent was a proper defendant in a case where a student challenged the Silent Reflection and Student Prayer Act, 105 ILCS 20/1 et seq., because pursuant to 105 ILCS 5/1A-4(C), the chief executive officer of the Illinois State Board of Education was responsible for the educational policies and guidelines for public schools in Illinois, and presumably these powers would include the authority to compel school districts to comply with this statute. Sherman v. Twp. High Sch. Dist. 214, 624 F. Supp. 2d 907, 2007 U.S. Dist. LEXIS 84440 (N.D. Ill. 2007).

- Proper Parties

State Board of Education was not a proper party plaintiff in action against local school district for alleged discrimination in educational program. Board of Educ. v. Illinois State Bd. of Educ., 810 F.2d 707 (7th Cir.), cert. denied, 484 U.S. 829, 108 S. Ct. 99, 98 L. Ed. 2d 60 (1987).

OPINIONS OF ATTORNEY GENERAL

Sick Leave Bank

- Permitted

The State Board of Education may establish a "sick leave bank" for its employees, composed of unused sick leave days contributed by employees to be used by any employee who exhausts his or her accumulated sick leave. 1978 Op. Atty. Gen. 71.

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§ 105 ILCS 5/1A-6: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/1A-8. Powers of the Board in Assisting Districts Deemed in Financial Difficulties

Sec. 1A-8. Powers of the Board in Assisting Districts Deemed in Financial Difficulties. To promote the financial integrity of school districts, the State Board of Education shall be provided the necessary powers to promote sound financial management and continue operation of the public schools.

(a) The State Superintendent of Education may require a school district, including any district subject to Article 34A of this Code [105 ILCS 5/34A-101 et seq.], to share financial information relevant to a proper investigation of the district's financial condition and the delivery of appropriate State financial, technical, and consulting services to the district if the district (i) has been designated, through the State Board of Education's School District Financial Profile System, as on financial warning or financial watch status, (ii) has failed to file an annual financial report, annual budget, deficit reduction plan, or other financial information as required by law, (iii) has been identified, through the district's annual audit or other financial and management information, as in serious financial difficulty in the current or next school year, or (iv) is determined to be likely to fail to fully meet any regularly scheduled, payroll-period obligations when due or any debt service payments when due or both. In addition to financial, technical, and consulting services provided by the State Board of Education, at the request of a school district, the State Superintendent may provide for an independent financial consultant to assist the district review its financial condition and options.

(b) The State Board of Education, after proper investigation of a district's financial condition, may certify that a district, including any district subject to Article 34A, is in financial difficulty when any of the following conditions occur:

(1) The district has issued school or teacher orders for wages as permitted in Sections 8-16, 32-7.2 and 34-76 of this Code [105 ILCS 5/8-16, 105 ILCS 5/32-7.2 and 105 ILCS 5/34-76].

(2) The district has issued tax anticipation warrants or tax anticipation notes in anticipation of a second year's taxes when warrants or notes in anticipation of current year taxes are still outstanding, as authorized by Sections 17-16, 34-23, 34-59 and 34-63 of this Code [105 ILCS 5/17-16, 105 ILCS 5/34-23,105 ILCS 5/34-59 (now repealed) and 105 ILCS 5/34-63 (now repealed)], or has issued short-term debt against 2 future revenue sources, such as, but not limited to, tax anticipation warrants and general State Aid certificates or tax anticipation warrants and revenue anticipation notes.

(3) The district has for 2 consecutive years shown an excess of expenditures and other financing uses over revenues and other financing sources and beginning fund balances on

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its annual financial report for the aggregate totals of the Educational, Operations and Maintenance, Transportation, and Working Cash Funds.

(4) The district refuses to provide financial information or cooperate with the State Superintendent in an investigation of the district's financial condition.

(5) The district is likely to fail to fully meet any regularly scheduled, payroll-period obligations when due or any debt service payments when due or both.

No school district shall be certified by the State Board of Education to be in financial difficulty solely by reason of any of the above circumstances arising as a result of (i) the failure of the county to make any distribution of property tax money due the district at the time such distribution is due or (ii) the failure of this State to make timely payments of general State aid or any of the mandated categoricals; or if the district clearly demonstrates to the satisfaction of the State Board of Education at the time of its determination that such condition no longer exists. If the State Board of Education certifies that a district in a city with 500,000 inhabitants or more is in financial difficulty, the State Board shall so notify the Governor and the Mayor of the city in which the district is located. The State Board of Education may require school districts certified in financial difficulty, except those districts subject to Article 34A, to develop, adopt and submit a financial plan within 45 days after certification of financial difficulty. The financial plan shall be developed according to guidelines presented to the district by the State Board of Education within 14 days of certification. Such guidelines shall address the specific nature of each district's financial difficulties. Any proposed budget of the district shall be consistent with the financial plan submitted to and approved by the State Board of Education.

A district certified to be in financial difficulty, other than a district subject to Article 34A, shall report to the State Board of Education at such times and in such manner as the State Board may direct, concerning the district's compliance with each financial plan. The State Board may review the district's operations, obtain budgetary data and financial statements, require the district to produce reports, and have access to any other information in the possession of the district that it deems relevant. The State Board may issue recommendations or directives within its powers to the district to assist in compliance with the financial plan. The district shall produce such budgetary data, financial statements, reports and other information and comply with such directives. If the State Board of Education determines that a district has failed to comply with its financial plan, the State Board of Education may rescind approval of the plan and appoint a Financial Oversight Panel for the district as provided in Section 1B-4 [105 ILCS 5/1B-4]. This action shall be taken only after the district has been given notice and an opportunity to appear before the State Board of Education to discuss its failure to comply with its financial plan.

No bonds, notes, teachers orders, tax anticipation warrants or other evidences of indebtedness shall be issued or sold by a school district or be legally binding upon or enforceable against a local board of education of a district certified to be in financial difficulty unless and until the financial plan required under this Section has been approved by the State Board of Education.

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Any financial profile compiled and distributed by the State Board of Education in Fiscal Year 2009 or any fiscal year thereafter shall incorporate such adjustments as may be needed in the profile scores to reflect the financial effects of the inability or refusal of the State of Illinois to make timely disbursements of any general State aid or mandated categorical aid payments due school districts or to fully reimburse school districts for mandated categorical programs pursuant to reimbursement formulas provided in this School Code [105 ILCS 5/1-1 et seq.].

(Source: P.A. 86-954; 87-1014, § 1; 88-555, § 10; 88-618, § 10; 89-235, § 2-90; 90-802, § 5; 94-234, § 5; 96-668, § 5; 96-1423, § 5; 97-429, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1A-8.

Sections 105 ILCS 5/34-59 and 105 ILCS 5/34-63, referred to in subsection (b)(2), has been repealed.

Effect of Amendments. The 1992 amendment by P.A. 87-1014, effective September 3, 1992, substituted "certified" for "deemed" and substituted "at" for "to" following "State Board of Education" in the first sentence of the first full paragraph following paragraph (8); substituted "may" for "is empowered to" in the third sentence in the same paragraph; and added the final paragraph.

The 1994 amendment by P.A. 88-555, effective July 27, 1994, rewrote the conditions listed by deleting former conditions (1) through (5) and redesignating former (6) through (8) as present (1) through (3); in subsection (1) added "or the director has issued funding bonds to retire teacher orders in 3 of the 5 last years" at the end; in subsection (2) inserted "or tax anticipation notes" and inserted "or notes"; and in subsection (3) substituted "shown an excess of expenditures and other financing uses over revenues or other financing sources and beginning fund balances on its annual financial report for the aggregate totals of the Educational, Operations and Maintenance, Transportation, and Working Cash Funds" for "adopted a budget in which budgeted expenditures exceed budgeted revenues and reserves".

The 1994 amendment by P.A. 88-618, effective September 9, 1994, in the fourth paragraph, added the fifth and sixth sentences.

The 1995 amendment by P.A. 89-235, effective August 4, 1995, combined the amendments by P.A. 88-555, § 10 and P.A. 88-618, § 10.

The 1998 amendment by P.A. 90-802, effective December 15, 1998, in the second paragraph, added item (4) and made a punctuation change.

The 2005 amendment by P.A. 94-234, effective July 1, 2006, rewrote the section.

The 2009 amendment by P.A. 96-668, effective August 25, 2009, in the first sentence of the fourth paragraph, inserted "solely," added the item designation (i), and added "or (ii) the failure of this State to make timely payments of general State aid or any of the mandated categoricals"; and rewrote the last paragraph.

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The 2010 amendment by P.A. 96-1423, effective August 3, 2010, added item (iv) to the end of the first sentence of the second paragraph; added subsection (5) to the end of the third paragraph; and made related changes.

The 2011 amendment by P.A. 97-429, effective August 16, 2011, added the (a) and (b) designations.

RESEARCH REFERENCES

Validity of public school funding systems. 110 ALR5th 293.

§ 105 ILCS 5/1A-9. Duty of the Board to disseminate information concerning the Children's Privacy Protection and Parental Empowerment Act

Sec. 1A-9. Duty of the Board to disseminate information concerning the Children's Privacy Protection and Parental Empowerment Act. The Board shall (i) prepare and disseminate to the local educational agencies and the regional offices of education materials advising parents of their rights under the Children's Privacy Protection and Parental Empowerment Act [325 ILCS 17/1 et seq.] and (ii) add notice to its website advising parents of their rights under the Children's Privacy Protection and Parental Empowerment Act [325 ILCS 17/1 et seq.].

(Source: P.A. 93-462, § 80.)

Effective Date. This section is effective January 1, 2004, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 5/1A-10. Divisions of Board

Sec. 1A-10. Divisions of Board. The State Board of Education shall, before April 1, 2005, create divisions within the Board, including without limitation the following:

(1) Teaching and Learning Services for All Children.

(2) School Support Services for All Schools.

(3) Fiscal Support Services.

(4) (Blank).

(5) Internal Auditor.

(6) Human Resources.

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The State Board of Education may, after consultation with the General Assembly, add any divisions or functions to the Board that it deems appropriate and consistent with Illinois law.

(Source: P.A. 93-1036, § 90; 95-793, § 5.)

Effective Date. Section 99 of P.A. 93-1036 made this section effective upon becoming law. The Act was approved September 14, 2004.

Effect of Amendments. The 2008 amendment by P.A. 95-793, effective January 1, 2009, deleted "Special Education Services" in (4).

§ 105 ILCS 5/1A-11. Children; methamphetamine; protocol

Sec. 1A-11. Children; methamphetamine; protocol. The State Board of Education shall cooperate with the Department of Children and Family Services and the Department of State Police in developing the protocol required under Section 6.5 of the Children and Family Services Act [20 ILCS 505/6.5]. The Board must post the protocol on the official Web site maintained by the Board.

(Source: P.A. 94-554, § 15.)

Effective Date. This section is effective January 1, 2006, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

Article 1B.

School District Financial Over-

sight Panel and Emergency

Financial Assistance Law

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§ 105 ILCS 5/1B-1. Short title

Sec. 1B-1. Short title. This Article may be cited as the School District Financial Oversight Panel and Emergency Financial Assistance Law.

(Source: P.A. 86-954; 88-618, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1B-1.

Effect of Amendments. The 1994 amendment by P.A. 88-618, effective September 9, 1994, inserted in the article head and in the section "Financial Oversight Panel and".

§ 105 ILCS 5/1B-2. Findings and purpose

Sec. 1B-2. Findings and purpose. (a) The General Assembly finds:

(1) A fundamental goal of the people of the State, as expressed in Section 1 of Article X of the Illinois Constitution, is the educational development of all persons to the limits of their capacities. When a board of education faces financial difficulties, continued operation of the public school system is threatened.

(2) A sound financial structure is essential to the continued operation of any school system. It is vital to commercial, educational and cultural interests that the public schools remain in operation. To achieve that goal, public school systems must have effective access to the private market to borrow short and long term funds.

(3) To promote the financial integrity of boards of education of school districts with a population of less than 500,000, it is necessary to provide for emergency State financial assistance and the creation of financial oversight panels with the powers necessary to promote sound financial management to assure the continued availability of educational opportunities.

(b) It is the purpose of this Article to provide financial oversight panels and emergency State financial assistance to school districts and establish a secure financial basis for their continued existence. The intention of the General Assembly, in enacting this legislation, is to establish procedures, provide powers and impose restrictions to assure the financial and educational integrity of the public schools while leaving principal responsibility for

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the educational policies of the public schools to the boards of education within the State, consistent with the requirements for satisfying the public policy and purpose herein set forth.

(Source: P.A. 86-954; 88-618, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1B-2.

Effect of Amendments. The 1994 amendment by P.A. 88-618, effective September 9, 1994, in subsection (b), in the first sentence, inserted "financial oversight panels and" and in the second sentence, deleted "emergency financial assistance" preceding "legislation".

§ 105 ILCS 5/1B-3. Definitions

Sec. 1B-3. Definitions. As used in this Article:

(a) "Financial Oversight Panel" or "Panel" means the Financial Oversight Panel created under Section 1B-4 [105 ILCS 5/1B-4];

(b) "Board" means a local board of education;

(c) "Budget" means the annual budget of the board required under Section 17-1 [105 ILCS 5/17-1] and is subject to the authority of the Panel as provided in this Article;

(d) "Chairman" means the chairman of the Panel appointed pursuant to Section 1B-5 of this Article [105 ILCS 5/1B-5];

(e) "District" means any school district of this State not subject to the provisions of Article 34;

(f) "Financial plan" means the financial plan of the board required to be developed pursuant to this Article;

(g) "Fiscal year" means the fiscal year of the board;

(h) "School year" means the school year of the board;

(i) "State Board" means the Illinois State Board of Education;

(j) "State Superintendent" means the State Superintendent of Education.

(Source: P.A. 86-954; 88-618, § 10.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1B-3.

Effect of Amendments. The 1994 amendment by P.A. 88-618, effective September 9, 1994, in subsection (a) deleted "for a school district at the request of the local board of education for emergency financial assistance" from the end.

§ 105 ILCS 5/1B-4. Establishment of Emergency Financial Assistance and Financial Oversight Panel

Sec. 1B-4. Establishment of Emergency Financial Assistance and Financial Oversight Panel. When approved by the State Board under this Article there is established a body both corporate and politic to be known as the "(Name of School District) Financial Oversight Panel" which, in such name, shall exercise all authority vested in such Panels by this Article.

Upon the affirmative vote of not less than a majority of its full membership, a local board of education of a school district that has been certified to be in financial difficulty under Section 1A-8 [105 ILCS 5/1A-8] may petition the State Board of Education for emergency financial assistance and the establishment of a Financial Oversight Panel for the district as provided under this Article. In addition, the State Superintendent of Education may petition the State Board of Education for the establishment of a Financial Oversight Panel, with or without emergency financial assistance, for any district that has failed to comply with its financial plan and has had the plan rescinded by the State Board as provided in Section 1A-8 [105 ILCS 5/1A-8]. No petition for emergency financial assistance shall be approved by the State Board unless there is also established a Financial Oversight Panel.

In determining whether to allow the petition the State Board shall consider the following factors among others that it deems relevant:

(a) whether the petition is in the best educational interests of the pupils of the district;

(b) whether the petition is in the near and long term best financial interests of the district;

(c) whether the district has sufficient pupil enrollment and assessed valuation to provide and maintain recognized schools;

(d) whether the petition is in the best interests of the other schools of the area and the educational welfare of all of the pupils therein; and

(e) whether the board of education has complied with the requirements of Section 1A-8 [105 ILCS 5/1A-8].

The State Board may vote to either grant or deny the petition based upon the recommendation of the State Superintendent of Education and any other testimony or documentary evidence the State Board deems relevant. The decision of the State Board

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whether to grant or deny the petition shall be final. If an approved petition requests emergency financial assistance, the school district shall be eligible for emergency State financial assistance, subject to the other provisions of this Article.

(Source: P.A. 86-954; 88-618, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1B-4.

Effect of Amendments. The 1994 amendment by P.A. 88-618, effective September 9, 1994, in the first paragraph substituted "When approved" for "For each school district which has been authorized" and deleted "to receive emergency State financial assistance" preceding "under this Article"; in the second paragraph added the second sentence; and in the fourth paragraph, in the third sentence substituted "an approved" for "the" and substituted "requests emergency financial assistance" for "is granted".

OPINIONS OF ATTORNEY GENERAL

State Employees

Members, officers and employees of financial oversight panels are to be considered State employees, for purposes of the State Employee Indemnification Act (5 ILCS 350/0.01 et seq.), and are therefore entitled to be defended and indemnified in accordance with its terms. 1996 Op. Atty. Gen. (96-015).

§ 105 ILCS 5/1B-5. [Members of Panel; powers; dissolution]

Sec. 1B-5. When a petition for emergency financial assistance for a school district is allowed by the State Board under Section 1B-4 [105 ILCS 5/1B-4], the State Superintendent shall within 10 days thereafter appoint 3 members to serve at the State Superintendent's pleasure on a Financial Oversight Panel for the district. The State Superintendent shall designate one of the members of the Panel to serve as its Chairman. In the event of vacancy or resignation the State Superintendent shall appoint a successor within 10 days of receiving notice thereof.

Members of the Panel shall be selected primarily on the basis of their experience and education in financial management, with consideration given to persons knowledgeable in education finance. A member of the Panel may not be a board member or employee of the district for which the Panel is constituted, nor may a member have a direct financial interest in that district.

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Panel members shall serve without compensation, but may be reimbursed for travel and other necessary expenses incurred in the performance of their official duties by the State Board. The amount reimbursed Panel members for their expenses shall be charged to the school district as part of any emergency financial assistance and incorporated as a part of the terms and conditions for repayment of such assistance or shall be deducted from the district's general State aid as provided in Section 1B-8 [105 ILCS 5/1B-8].

The first meeting of the Panel shall be held at the call of the Chairman. The Panel may elect such other officers as it deems appropriate. The Panel shall prescribe the times and places for its meetings and the manner in which regular and special meetings may be called, and shall comply with the Open Meetings Act [5 ILCS 120/1.01 et seq.].

Two members of the Panel shall constitute a quorum, and the affirmative vote of 2 members shall be necessary for any decision or action to be taken by the Panel.

The Panel and the State Superintendent shall cooperate with each other in the exercise of their respective powers. The Panel shall report not later than September 1 annually to the State Board and the State Superintendent with respect to its activities and the condition of the school district for the previous fiscal year.

Any Financial Oversight Panel established under this Article shall remain in existence for not less than 3 years nor more than 10 years from the date the State Board grants the petition under Section 1B-4 [105 ILCS 5/1B-4]. If after 3 years the school district has repaid all of its obligations resulting from emergency State financial assistance provided under this Article and has improved its financial situation, the board of education may, not more frequently than once in any 12 month period, petition the State Board to dissolve the Financial Oversight Panel, terminate the oversight responsibility, and remove the district's certification under Section 1A-8 [105 ILCS 5/1A-8] as a district in financial difficulty. In acting on such a petition the State Board shall give additional weight to the recommendations of the State Superintendent and the Financial Oversight Panel.

(Source: P.A. 86-954; 88-618, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1B-5.

Effect of Amendments. The 1994 amendment by P.A. 88-618, effective September 9, 1994, in the third paragraph, in the first sentence, deleted from the end "from appropriations from the School District Emergency Financial Assistance Fund" and in the second sentence, added at the end "or shall be deducted from the district's general State aid as provided in Section 1B-8"; and in the seventh paragraph, in the second sentence, inserted "and has improved its financial situation".

§ 105 ILCS 5/1B-6. General powers

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Sec. 1B-6. General powers. The purpose of the Financial Oversight Panel shall be to exercise financial control over the board of education, and, when approved by the State Board and the State Superintendent of Education, to furnish financial assistance so that the board can provide public education within the board's jurisdiction while permitting the board to meet its obligations to its creditors and the holders of its notes and bonds. Except as expressly limited by this Article, the Panel shall have all powers necessary to meet its responsibilities and to carry out its purposes and the purposes of this Article, including, but not limited to, the following powers:

(a) to sue and be sued;

(b) to provide for its organization and internal management;

(c) to appoint a Financial Administrator to serve as the chief executive officer of the Panel. The Financial Administrator may be an individual, partnership, corporation, including an accounting firm, or other entity determined by the Panel to be qualified to serve; and to appoint other officers, agents, and employees of the Panel, define their duties and qualifications and fix their compensation and employee benefits;

(d) to approve the local board of education appointments to the positions of treasurer in a Class I county school unit and in each school district which forms a part of a Class II county school unit but which no longer is subject to the jurisdiction and authority of a township treasurer or trustees of schools of a township because the district has withdrawn from the jurisdiction and authority of the township treasurer and the trustees of schools of the township or because those offices have been abolished as provided in subsection (b) or (c) of Section 5-1 [105 ILCS 5/5-1], and chief school business official, if such official is not the superintendent of the district. Either the board or the Panel may remove such treasurer or chief school business official;

(e) to approve any and all bonds, notes, teachers orders, tax anticipation warrants, and other evidences of indebtedness prior to issuance or sale by the school district; and notwithstanding any other provision of The School Code, as now or hereafter amended [105 ILCS 5/1-1 et seq.], no bonds, notes, teachers orders, tax anticipation warrants or other evidences of indebtedness shall be issued or sold by the school district or be legally binding upon or enforceable against the local board of education unless and until the approval of the Panel has been received;

(f) to approve all property tax levies of the school district and require adjustments thereto as the Panel deems necessary or advisable;

(g) to require and approve a school district financial plan;

(h) to approve and require revisions of the school district budget;

(i) to approve all contracts and other obligations as the Panel deems necessary and appropriate;

(j) to authorize emergency State financial assistance, including requirements regarding the terms and conditions of repayment of such assistance, and to require the board of education to levy a separate local property tax, subject to the limitations of Section 1B-8

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[105 ILCS 5/1B-8], sufficient to repay such assistance consistent with the terms and conditions of repayment and the district's approved financial plan and budget;

(k) to request the regional superintendent to make appointments to fill all vacancies on the local school board as provided in Section 10-10 [105 ILCS 5/10-10];

(l) to recommend dissolution or reorganization of the school district to the General Assembly if in the Panel's judgment the circumstances so require;

(m) to direct a phased reduction in the oversight responsibilities of the Financial Administrator and of the Panel as the circumstances permit;

(n) to determine the amount of emergency State financial assistance to be made available to the school district, and to establish an operating budget for the Panel to be supported by funds available from such assistance, with the assistance and the budget required to be approved by the State Superintendent;

(o) to procure insurance against any loss in such amounts and from such insurers as it deems necessary;

(p) to engage the services of consultants for rendering professional and technical assistance and advice on matters within the Panel's power;

(q) to contract for and to accept any gifts, grants or loans of funds or property or financial or other aid in any form from the federal government, State government, unit of local government, school district or any agency or instrumentality thereof, or from any other private or public source, and to comply with the terms and conditions thereof;

(r) to pay the expenses of its operations based on the Panel's budget as approved by the State Superintendent from emergency financial assistance funds available to the district or from deductions from the district's general State aid;

(s) to do any and all things necessary or convenient to carry out its purposes and exercise the powers given to the Panel by this Article; and

(t) to recommend the creation of a school finance authority pursuant to Article 1F of this Code [105 ILCS 5/1F-1 et seq.].

(Source: P.A. 86-954; 86-1051; 86-1441; 87-473; 88-618, § 10; 91-357, § 101; 92-855, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1B-6.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

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Effect of Amendments. The 1994 amendment by P.A. 88-618, effective September 9, 1994, in the first paragraph, in the first sentence, inserted "when approved by the State Board and the State Superintendent of Education"; and in subsection (r), inserted "or from deductions from the district's general State aid".

The 1999 amendment by P.A. 91-357, effective July 29, 1999, made a stylistic change.

The 2002 amendment by P.A. 92-855, effective December 6, 2002, added subdivision (t) and made related changes.

CASE NOTES

Scope of Authority

Given the Panel's right under 105 ILCS 5/1B-9 to borrow school district employees, 105 ILCS 5/1B-22(c)'s admonishment that the Panel appoint employees "when district resources are not readily available or appropriate for use," and 105 ILCS 5/1B-10's statement that the Panel "shall have no power to impair any existing contract or obligation of the board," the trial court did not err in concluding that the Panel exceeded its statutory authority by hiring persons to assume the routine functions of the business office. East St. Louis Fed'n of Teachers, Local 1220 v. East St. Louis Sch. Dist., 311 Ill. App. 3d 987, 244 Ill. Dec. 324, 725 N.E.2d 797, 2000 Ill. App. LEXIS 120 (5 Dist. 2000).

§ 105 ILCS 5/1B-7. Financial Administrator; Powers and Duties

Sec. 1B-7. Financial Administrator; Powers and Duties. The Financial Administrator appointed by the Financial Oversight Panel shall serve as the Panel's chief executive officer. The Financial Administrator shall exercise the powers and duties required by the Panel, including but not limited to the following:

(a) to provide guidance and recommendations to the local board and officials of the school district in developing the district's financial plan and budget prior to board action;

(b) to direct the local board to reorganize its financial accounts, budgetary systems, and internal accounting and financial controls, in whatever manner the Panel deems appropriate to achieve greater financial responsibility and to reduce financial inefficiency, and to provide technical assistance to aid the district in accomplishing the reorganization;

(c) to make recommendations to the Financial Oversight Panel concerning the school district's financial plan and budget, and all other matters within the scope of the Panel's authority;

(d) to prepare and recommend to the Panel a proposal for emergency State financial assistance for the district, including recommended terms and conditions of repayment, and an operations budget for the Panel to be funded from the emergency assistance or from deductions from the district's general State aid;

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(e) to require the local board to prepare and submit preliminary staffing and budgetary analyses annually prior to February 1 in such manner and form as the Financial Administrator shall prescribe; and

(f) subject to the direction of the Panel, to do all other things necessary or convenient to carry out its purposes and exercise the powers given to the Panel under this Article.

(Source: P.A. 86-954; 88-618, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1B-7.

Effect of Amendments. The 1994 amendment by P.A. 88-618, effective September 9, 1994, in subsection (d), added "or from deductions from the district's general State aid" at the end.

§ 105 ILCS 5/1B-7.5. Hiring of a district superintendent or chief executive officer

Sec. 1B-7.5. Hiring of a district superintendent or chief executive officer. (a) Upon expiration of the contract of the school district's superintendent who is serving at the time the Financial Oversight Panel is established, a school district under the authority of a Financial Oversight Panel, after consultation with the Financial Oversight Panel, shall have the authority to appoint a district superintendent with a type 75 certificate or a chief executive officer who has the skills of school operations and school finance and who shall have the ultimate responsibility for implementing the policies, procedures, directives, and decisions of the school board and the Financial Oversight Panel.

(b) The chief executive officer shall have the authority to determine the agenda and order of business at school board meetings, as needed in order to carry forward and implement the objectives and priorities of the school board and Financial Oversight Panel in the administration and management of the school district.

(c) The chief executive officer shall have all of the powers and duties of a school district superintendent under this Code and such other duties as may be assigned by the school board and Financial Oversight Panel, in accordance with this Code. The district shall not thereafter employ a superintendent during the period that a chief executive officer is serving the district.

(d) The Financial Oversight Panel shall have the final approval of the superintendent or chief executive officer position under this Section as well as the person, based upon his or her skills to fulfill the position.

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(Source: P.A. 96-401, § 5.)

Effective Date. Section 99 of P.A. 96-401 makes this section effective upon becoming law. The Act was approved August 13, 2009.

§ 105 ILCS 5/1B-7.10. Hiring of a chief fiscal officer

Sec. 1B-7.10. Hiring of a chief fiscal officer. (a) In lieu of a Financial Oversight Panel Financial Administrator under Section 1B-7 of this Code [105 ILCS 5/1B-7], a school district under the authority of a Financial Oversight Panel, after consultation with the Financial Oversight Panel, may appoint a chief fiscal officer who, under the direction of the school board and Financial Oversight Panel, shall have the powers and duties of the district's chief school business official and any other duties regarding budgeting, accounting, and other financial matters that are assigned by the school board or Financial Oversight Panel in accordance with this Code. The district may not employ a chief school business official during the period that the chief fiscal officer is serving in the district. The chief fiscal officer may but is not required to hold a certificate with a chief school business official endorsement issued under Article 21 of this Code [105 ILCS 5/21-1a et seq.].

(b) The Financial Oversight Panel shall have the final approval of the chief fiscal officer position under this Section as well as the person, based upon his or her skills to fulfill the position.

(Source: P.A. 96-401, § 5.)

Effective Date. Section 99 of P.A. 96-401 makes this section effective upon becoming law. The Act was approved August 13, 2009.

§ 105 ILCS 5/1B-8. [School District Emergency Financial Assistance Fund; payments]

Sec. 1B-8. There is created in the State Treasury a special fund to be known as the School District Emergency Financial Assistance Fund (the "Fund"). The School District Emergency Financial Assistance Fund shall consist of appropriations, loan repayments, grants from the federal government, and donations from any public or private source. Moneys in the Fund may be appropriated only to the Illinois Finance Authority and the State Board for those purposes authorized under this Article and Articles 1F and 1H of this Code [105 ILCS 5/1B-1 et seq. and 105 ILCS 5/1F-1 et seq. and 105 ILCS 5/1H-1 et seq.]. The appropriation may be allocated and expended by the State Board for

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contractual services to provide technical assistance or consultation to school districts to assess their financial condition and to Financial Oversight Panels that petition for emergency financial assistance grants. The Illinois Finance Authority may provide loans to school districts which are the subject of an approved petition for emergency financial assistance under Section 1B-4, 1F-62, or 1H-65 of this Code [105 ILCS 5/1B-4, 105 ILCS 5/1F-62, or 105 ILCS 5/1H-65]. Neither the State Board of Education nor the Illinois Finance Authority may collect any fees for providing these services.

From the amount allocated to each such school district under this Article the State Board shall identify a sum sufficient to cover all approved costs of the Financial Oversight Panel established for the respective school district. If the State Board and State Superintendent of Education have not approved emergency financial assistance in conjunction with the appointment of a Financial Oversight Panel, the Panel's approved costs shall be paid from deductions from the district's general State aid.

The Financial Oversight Panel may prepare and file with the State Superintendent a proposal for emergency financial assistance for the school district and for its operations budget. No expenditures from the Fund shall be authorized by the State Superintendent until he or she has approved the request of the Panel, either as submitted or in such lesser amount determined by the State Superintendent.

The maximum amount of an emergency financial assistance loan which may be allocated to any school district under this Article, including moneys necessary for the operations of the Panel, shall not exceed $4,000 times the number of pupils enrolled in the school district during the school year ending June 30 prior to the date of approval by the State Board of the petition for emergency financial assistance, as certified to the local board and the Panel by the State Superintendent. An emergency financial assistance grant shall not exceed $1,000 times the number of such pupils. A district may receive both a loan and a grant.

The payment of an emergency State financial assistance grant or loan shall be subject to appropriation by the General Assembly. Payment of the emergency State financial assistance loan is subject to the applicable provisions of the Illinois Finance Authority Act [20 ILCS 3501/801-1 et seq.]. Emergency State financial assistance allocated and paid to a school district under this Article may be applied to any fund or funds from which the local board of education of that district is authorized to make expenditures by law.

Any emergency financial assistance grant proposed by the Financial Oversight Panel and approved by the State Superintendent may be paid in its entirety during the initial year of the Panel's existence or spread in equal or declining amounts over a period of years not to exceed the period of the Panel's existence. An emergency financial assistance loan proposed by the Financial Oversight Panel and approved by the Illinois Finance Authority may be paid in its entirety during the initial year of the Panel's existence or spread in equal or declining amounts over a period of years not to exceed the period of the Panel's existence. All loans made by the Illinois Finance Authority for a school district shall be required to be repaid, with simple interest over the term of the loan at a rate equal to 50% of the one-year Constant Maturity Treasury (CMT) yield as last

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published by the Board of Governors of the Federal Reserve System before the date on which the district's loan is approved by the Illinois Finance Authority, not later than the date the Financial Oversight Panel ceases to exist. The Panel shall establish and the Illinois Finance Authority shall approve the terms and conditions, including the schedule, of repayments. The schedule shall provide for repayments commencing July 1 of each year or upon each fiscal year's receipt of moneys from a tax levy for emergency financial assistance. Repayment shall be incorporated into the annual budget of the school district and may be made from any fund or funds of the district in which there are moneys available. An emergency financial assistance loan to the Panel or district shall not be considered part of the calculation of a district's debt for purposes of the limitation specified in Section 19-1 of this Code [105 ILCS 5/19-1]. Default on repayment is subject to the Illinois Grant Funds Recovery Act [30 ILCS 705/1 et seq.]. When moneys are repaid as provided herein they shall not be made available to the local board for further use as emergency financial assistance under this Article at any time thereafter. All repayments required to be made by a school district shall be received by the State Board and deposited in the School District Emergency Financial Assistance Fund.

In establishing the terms and conditions for the repayment obligation of the school district the Panel shall annually determine whether a separate local property tax levy is required. The board of any school district with a tax rate for educational purposes for the prior year of less than 120% of the maximum rate for educational purposes authorized by Section 17-2 [105 ILCS 5/17-2] shall provide for a separate tax levy for emergency financial assistance repayment purposes. Such tax levy shall not be subject to referendum approval. The amount of the levy shall be equal to the amount necessary to meet the annual repayment obligations of the district as established by the Panel, or 20% of the amount levied for educational purposes for the prior year, whichever is less. However, no district shall be required to levy the tax if the district's operating tax rate as determined under Section 18-8 or 18-8.05 [105 ILCS 5/18-8 (now repealed) or 105 ILCS 5/18-8.05] exceeds 200% of the district's tax rate for educational purposes for the prior year.

(Source: P.A. 86-954; 88-618, § 10; 90-548, § 5-915; 90-802, § 5; 92-855, § 10; 94-234, § 5; 97-429, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1B-8.

Section 105 ILCS 5/18-8, referred to in above, has been repealed.

Effect of Amendments. The 1994 amendment by P.A. 88-618, effective September 9, 1994, added the last sentence of the first paragraph; and in the second paragraph, in the first sentence, substituted "may" for "shall".

The 1997 amendment by P.A. 90-548, effective January 1, 1998, in the sixth paragraph, in the fifth sentence, deleted "subparagraph (A)(5)(b) of " preceding "Section" and inserted "or 18-8.05".

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The 1998 amendment by P.A. 90-802, effective December 15, 1998, in the third sentence of the first paragraph inserted "grants or"; in the third paragraph inserted the word "an" following "maximum amount of" and inserted the word "loan" following "financial assistance" and added the last sentence; in the fourth paragraph inserted "grant or loan"; in the fifth paragraph inserted the word "loan" near the beginning of the second sentence and substituted "over the term of the loan at a rate equal to 50% of the discount rate on one-year United States Treasury Bills as determined by the last auction of those one-year bills that precedes the date on which the district's loan is approved by the State Board of Education" for "at the rate of 4%".

The 2002 amendment by P.A. 92-855, effective December 6, 2002, inserted "and for the purposes of Section 1F-62 of this Code" in the first paragraph; and in the next-to-last paragraph, in the second sentence substituted the language beginning "one-year Constant Maturity" and ending "Reserve System before" for "discount rate on one-year United States Treasury Bills as determined by the last auction of those one-year bills that precedes".

The 2005 amendment by P.A. 94-234, effective July 1, 2006, rewrote the section.

The 2011 amendment by P.A. 97-429, effective August 16, 2011, in the first paragraph, substituted "Articles 1F and 1H" for "Article 1F" in the third sentence, in the fourth sentence, substituted "for contractual services" for "as grants," substituted "assistance or consultation" for "and consulting services," and added "and to Financial Oversight Panels that petition for emergency financial assistance grants" to the end, and in the fifth sentence, inserted "may provide" and inserted "or 1H-65"; inserted "under this Article" in the first sentence of the second paragraph; in the second sentence of the third paragraph, inserted "from the Fund" and substituted "request" for "proposal"; inserted the second sentence of the fifth paragraph; in the sixth paragraph, inserted "grant" in the first sentence, inserted the second sentence, in the present third sentence, substituted "loans made by the Illinois Finance Authority" for "from the School District Emergency Financial Assistance Fund" and "Illinois Finance Authority" for "State Board of Education," and inserted the seventh sentence; and made related and stylistic changes.

§ 105 ILCS 5/1B-9. Assistance by State agencies, units of local government or school districts

Sec. 1B-9. Assistance by State agencies, units of local government or school districts. The local board shall render such services to, and permit the use of its facilities and resources by, the Financial Oversight Panel at no charge as may be requested by the Panel. Any State agency, unit of local government, or school district may, within its respective lawful powers and duties, render such services to the Panel as may be requested by the Panel. Upon request of the Panel any such agency, unit of local government or school district is hereby authorized and empowered to loan to the Panel such officers and employees as the Panel may deem necessary and request in carrying out its powers and duties. Officers and employees so transferred shall not lose or forfeit their employment status or rights.

(Source: P.A. 86-954.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 1B-9.

CASE NOTES

Construction with Other Law

Given the Panel's right under this section to borrow school district employees, 105 ILCS 5/1B-22(c)'s admonishment that the Panel appoint employees "when district resources are not readily available or appropriate for use," and 105 ILCS 5/1B-10's statement that the Panel "shall have no power to impair any existing contract or obligation of the board," the trial court did not err in concluding that the Panel exceeded its statutory authority by hiring persons to assume the routine functions of the business office. East St. Louis Fed'n of Teachers, Local 1220 v. East St. Louis Sch. Dist., 311 Ill. App. 3d 987, 244 Ill. Dec. 324, 725 N.E.2d 797, 2000 Ill. App. LEXIS 120 (5 Dist. 2000).

§ 105 ILCS 5/1B-10. Approval of Financial Plan, budget and contracts

Sec. 1B-10. Approval of Financial Plan, budget and contracts. In carrying out the purposes of this Article, the Panel shall have the power to approve or to reject the financial plans, budgets and contracts of the board; provided, however, that the Panel shall have no power to impair any existing contract or obligation of the board.

(Source: P.A. 86-954.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1B-10.

CASE NOTES

Construction with Other Law

Given the Panel's right under 105 ILCS 5/1B-9 to borrow school district employees, 105 ILCS 5/1B-22(c)'s admonishment that the Panel appoint employees "when district resources are not readily available or appropriate for use," and this section's statement that the Panel "shall have no power to impair any existing contract or obligation of the board," the trial court did not err in concluding that the Panel exceeded its statutory authority by hiring persons to assume the routine functions of the business office. East St. Louis Fed'n of Teachers, Local 1220 v. East St. Louis Sch. Dist., 311 Ill. App. 3d 987, 244 Ill. Dec. 324, 725 N.E.2d 797, 2000 Ill. App. LEXIS 120 (5 Dist. 2000).

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§ 105 ILCS 5/1B-11. Balanced Budget

Sec. 1B-11. Balanced Budget. The local board's budget for each fiscal year shall be balanced in accordance with an accounting system and procedure to be prescribed by the Panel.

(Source: P.A. 86-954.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1B-11.

§ 105 ILCS 5/1B-12. Financial Plans

Sec. 1B-12. Financial Plans. The local board shall develop, adopt and submit to the Panel for approval an initial financial plan with respect to the remaining portion of the current fiscal year and for the 2 succeeding fiscal years. The board shall develop and adopt subsequent financial plans as directed by the Panel. The financial plans shall supersede any financial plan developed pursuant to Section 1A-8 of this Act [105 ILCS 5/1A-8]. The Panel shall require that each financial plan cover a period of at least 3 fiscal years. After adoption by the board, the board shall submit each plan to the Panel for its approval not later than the date required by the Panel. The Panel shall approve or reject the financial plan within 30 days of its receipt. No financial plan shall have force or effect without approval of the Panel. Each financial plan shall be developed, submitted, approved and monitored in accordance with the following procedures:

(a) The board shall determine and submit to the Panel, at a time and in a manner prescribed by the Panel, estimates of revenues available to the board during the period for which the financial plan is to be in effect. The Panel shall approve, reject or amend the revenue estimates. In the event the board fails, for any reason, to submit to the Panel estimates of revenue as required by this paragraph, the Panel may prepare such estimates. The financial plan submitted by the board shall be based upon revenue estimates approved or prepared by the Panel. As soon as practicable following the establishment of the Panel, the president of the board shall, at the request of the Chairman of the Panel, make available to the Panel copies of the audited financial statements and of the books and records of account of the board for the preceding 5 fiscal years of the board.

(b) Each financial plan for each fiscal year or part thereof to which it relates, shall contain (1) a description of revenues and expenditures, provision for debt service, cash resources and uses, capital improvements, and a building utilization component requiring maximum efficient use of all classrooms and buildings, in such manner and detail as the Panel shall prescribe, (2) a description of the means by which the budget will be brought into

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balance, and (3) such other matters that the Panel, in its discretion, requires. For Panels established under Section 1B-4 [105 ILCS 5/1B-4] for a district that had its financial plan rescinded by the State Board for violating that plan as provided in Section 1A-8 [105 ILCS 5/1A-8], the financial plan required under this Section shall also include the staffing plan required pursuant to subsection (e) of Section 1B-22 [105 ILCS 5/1B-22], provisions for addressing findings or violations identified by the Inspector General or the school district audit, provisions for implementing directives of the Panel, and the plan of action to be followed by the district to maintain long-term financial stability, provide for transition of the Panel's authority, and analyze the need for additional State funding for the district. The initial financial plan shall also include a description of the means by which any outstanding short-term indebtedness shall be paid or refunded by the board. The Panel may prescribe any reasonable time, standards, procedures or forms for preparation and submission of the financial plan.

(c) The Panel shall approve the initial and each subsequent financial plan if, in its judgment, the plan is complete, is reasonably capable of being achieved, and meets the requirements set forth in this Article. Otherwise, the Panel shall reject the financial plan. In the event of rejection, the Panel may prescribe a procedure and standards for revision of the financial plan by the board.

(d) The board shall report to the Panel, at such times and in such manner as the Panel may direct, concerning the board's compliance with each financial plan. The Panel may review the board's operations, obtain budgetary data and financial statements, require the board to produce reports, and have access to any other information in the possession of the board that it deems relevant. The Panel may issue recommendations or directives within its powers to the board to assure compliance with the financial plan. The board shall produce such budgetary data, financial statements, reports and other information and comply with such directives.

(e) After approval of each financial plan, the board shall regularly reexamine the revenue and expenditure estimates on which it was based and revise them as necessary. The board shall promptly notify the Panel of any material change in the revenue or expenditure estimates in the financial plan. The board may submit to the Panel, or the Panel may require the board to submit, modified financial plans based upon revised revenue or expenditure estimates or for any other good reason. The Panel shall approve or reject each modified financial plan.

(Source: P.A. 86-954; 89-572, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1B-12.

Effect of Amendments. The 1996 amendment by P.A. 89-572, effective July 30, 1996, in subsection (b), in the first sentence, deleted "and" preceding "capital improvements" and added

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the second sentence.

§ 105 ILCS 5/1B-13. Budgets

Sec. 1B-13. Budgets. The board shall develop, adopt and submit to the Panel for approval by the Panel the annual budget for each fiscal year required by Section 17-1 [105 ILCS 5/17-1]. After adoption by the board, the board shall submit each budget to the Panel for its approval not later than 30 days prior to the commencement of the fiscal year to which the budget relates. The Panel shall approve or reject the budget within 30 days of its receipt from the board. No budget shall have force or effect without approval of the Panel. Each budget shall be developed, submitted, approved and monitored in accordance with the following procedures:

(a) Each budget submitted by the board shall be based upon revenue estimates approved or prepared by the Panel.

(b) Each budget shall be consistent with the budgetary structure required by the Panel and contain such information and detail as may be prescribed by the Panel. The Panel may also prescribe any reasonable time, standards, procedures or forms for preparation and submission of the budget. Any deficit for the prior fiscal year and for any fiscal year thereafter shall be included as a current expense item for the succeeding fiscal year.

(c) The Panel shall approve each budget if, in its judgment, the budget is complete, is reasonably capable of being achieved, will meet the requirements set forth in this Article, and will be consistent with the financial plan in effect. Otherwise, the Panel shall reject the budget. In the event of rejection, the Panel may prescribe a procedure and standards for revision of the budget by the board. In the event the local board fails to adopt a budget approved by the Panel prior to the end of the first quarter of the fiscal year as required by Section 17-1 [105 ILCS 5/17-1], the offices of all local board members shall be deemed vacant by operation of law.

(d) The board shall report to the Panel and the Financial Administrator at such times and in such manner as the Panel may direct, concerning the board's compliance with each budget. The Panel may review the board's operations, obtain budgetary data and financial statements, require the board to produce reports, and have access to any other information in the possession of the board that the Panel deems relevant. The Panel may issue recommendations or directives within its powers to the board to assure compliance with the budget. The board shall produce such budgetary data, financial statements, reports and other information and comply with such directives.

(e) After approval of each budget, the board shall promptly notify the Panel of any material change in the revenue or expenditure estimates in the budget. The board may submit to the Panel, or the Panel may require the board to submit, an amended budget. The Panel shall approve or reject each amended budget pursuant to this Section.

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(Source: P.A. 86-954.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1B-13.

§ 105 ILCS 5/1B-14. Contracts and Other Obligations

Sec. 1B-14. Contracts and Other Obligations. (a) No contract or other obligation shall be entered into by the board unless it is consistent with the financial plan and budget in effect, including any employment contract or collective bargaining agreement.

(b) The Panel may identify categories and types of contracts and other obligations that shall be subject to approval by the Panel and the procedure for submitting contracts for approval. Each contract or other obligation that is entered into by the board which requires approval by the Panel shall contain a provision stating that it shall not become legally binding on the board unless and until it has received such approval. No contract or other obligation that requires the approval of the Panel shall be legally binding on the board unless and until it has received such approval.

(c) The board shall submit to the Panel a copy of any contract or other obligation for which the approval of the Panel is required, along with a cost analysis and such other information as the Panel may require. The Panel may prescribe any reasonable time, standards, procedures or forms for submission of the contract or other obligation.

(d) The Panel shall approve the contract or obligation if, in its judgment, the information required to be submitted is complete and the contract or other obligation is consistent with the budget and financial plan in effect. Otherwise, the Panel shall reject the contract or other obligation. Contracts or other obligations not rejected within 30 days after submission to the Panel shall be considered approved. However, the Panel shall have an additional 30 days to approve or reject the contract or other obligation if it so advises the board within the initial 30 day period.

(Source: P.A. 86-954.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1B-14.

§ 105 ILCS 5/1B-15. Expenditures

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Sec. 1B-15. Expenditures. The board shall meet its debt service obligations as they become due. No other expenditure shall be made by the board unless it is consistent with the financial plan and budget in effect.

(Source: P.A. 86-954.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1B-15.

§ 105 ILCS 5/1B-16. Cash accounts and bank accounts

Sec. 1B-16. Cash accounts and bank accounts. (a) The Panel shall require the board or any officer of the board, including the board's treasurer or any person acting as the board's official or ex officio treasurer, to establish and maintain separate cash accounts and separate bank accounts in accordance with such standards and procedures as the Panel may prescribe.

(b) The Panel shall have the power to assume exclusive administration of the cash accounts and bank accounts of the board, to establish and maintain whatever new cash accounts and bank accounts it may deem appropriate, and to withdraw funds from such accounts for the lawful expenditures of the board.

(Source: P.A. 86-954.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1B-16.

§ 105 ILCS 5/1B-17. Hearings

Sec. 1B-17. Hearings. To the extent feasible, the Financial Oversight Panel shall provide for and encourage participation by the public in the development and review of financial policy. The Panel shall hold public hearings as it may deem appropriate to the performance of any of its functions. The Panel may designate one or more of its members or the Financial Administrator to preside over any hearing.

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(Source: P.A. 86-954.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1B-17.

§ 105 ILCS 5/1B-18. Limitations of actions after abolition; indemnification

Sec. 1B-18. Limitations of actions after abolition; indemnification. (a) Termination of the Financial Oversight Panel shall bar any remedy available against the Panel, its members, employees, or agents, for any right or claim existing, or any liability incurred, prior to such abolition unless the action or other proceeding thereon is commenced prior to the expiration of 2 years after the date of such termination.

(b) The Panel may indemnify any member, officer, employee, or agent who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he was a member, officer, employee or agent of the Panel, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Panel and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith in a manner which he reasonably believed to be in or not opposed to the best interests of the Panel, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

To the extent that a member, officer, employee or agent of the Panel has been successful, on the merits or otherwise, in the defense of any such action, suit or proceeding referred to in this subsection or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith. Any such indemnification shall be made by the Panel only as authorized in the specific case, upon a determination that indemnification of the member, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct. The determination shall be made by the Panel by a majority vote of a quorum consisting of members who are not parties to such action, suit or proceeding, or if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested members so directs, by independent legal counsel in a written opinion.

Reasonable expenses incurred in defending an action, suit or proceeding shall be paid by the Panel in advance of the final disposition of such action, suit or proceeding, as authorized by the Panel in the specific case, upon receipt of an undertaking by or on behalf of the member, officer, employee or agent to repay such amount, unless it shall

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ultimately be determined that he is entitled to be indemnified by the Panel as authorized in this Section.

Any member, officer, employee or agent against whom any action, suit or proceeding is brought may employ his or her own attorney to appear on his or her behalf.

The right to indemnification accorded by this Section shall not limit any other right to indemnification to which the member, officer, employee or agent may be entitled. Any rights hereunder shall inure to the benefit of the heirs, executors and administrators of any member, officer, employee or agent of the Panel.

The Panel may purchase and maintain insurance on behalf of any person who is or was a member, officer, employee or agent of the Panel against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Panel would have the power to indemnify him against such liability under the provisions of this Section.

(Source: P.A. 86-954.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1B-18.

OPINIONS OF ATTORNEY GENERAL

Other Indemnification

This section does not limit any right to defense or indemnity which exists under the State Employee Indemnification Act (5 ILCS 350/0.01 et seq.). 1996 Op. Atty. Gen. (96-015).

§ 105 ILCS 5/1B-19. Abolition of Panel

Sec. 1B-19. Abolition of Panel. The Financial Oversight Panel shall be abolished 10 years after approval of the petition providing for its creation, or at such earlier date determined by the State Board. Upon the abolition of the Panel, all of its rights and property shall pass to and be vested in the State.

(Source: P.A. 86-954.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 1B-19.

§ 105 ILCS 5/1B-20. Sanctions

Sec. 1B-20. Sanctions. (a) No member, officer, employee, or agent of the board shall commit the board to any contract or other obligation or incur any liability on behalf of the board for any purpose if the amount of such contract, obligation or liability is in excess of the amount authorized for that purpose then available under the financial plan and budget then in effect.

(b) No member, officer, employee or agent of the board shall commit the board to any contract or other obligation on behalf of the board for the payment of money for any purpose required to be approved by the Financial Oversight Panel unless such contract or other obligation has been approved by the Panel.

(c) No member, officer, employee or agent of the board shall take any action in violation of any valid order of the Panel or shall fail or refuse to take any action required by any such order or shall prepare, present, or certify any information (including any projections or estimates) or report for the Panel or any of its agents that is false or misleading, or, upon learning that any such information is false or misleading, shall fail promptly to advise the Panel or its agents.

(d) In addition to any penalty or liability under any other law, any member, officer, employee or agent of the board who violates subsection (a), (b), or (c) of this Section shall be subject to appropriate administrative discipline, including, if warranted, suspension from duty without pay, removal from office, or termination of employment.

(Source: P.A. 86-954.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1B-20.

CASE NOTES

Constitutionality

This section is not invalid on its face, although it was found to be unconstitutional as applied to school board for failure to provide the members with procedural due process before their removal from office. East St. Louis Fed'n of Teachers, Local 1220 v. East St. Louis Sch. Dist. No. 189 Fin. Oversight Panel, 178 Ill. 2d 399, 227 Ill. Dec. 568, 687 N.E.2d 1050 (1997).

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§ 105 ILCS 5/1B-21: Repealed by P.A. 94-1105, § 90, effective June 1, 2007.

§ 105 ILCS 5/1B-22. Additional powers of the panel

Sec. 1B-22. Additional powers of the panel. For Panels established under Section 1B-4 [105 ILCS 5/1B-4] for a district which had its financial plan rescinded by the State Board for violating that plan as provided in Section 1A-8 [105 ILCS 5/1A-8], the Panel shall have the following additional powers:

(a) As necessary to carry out its purposes when district resources are not readily available or appropriate for use by the Panel, the Panel may make and execute contracts, leases, subleases and all other instruments or agreements necessary or convenient for the exercise of the powers and functions granted by this Article.

(b) As necessary to carry out its purposes when district resources are not readily available or appropriate for use by the Panel, the Panel may purchase personal property necessary or convenient for its purposes; mortgage, pledge or otherwise grant security interests in such properties; and convey to the district such of its property as, in the judgment of the Panel, is no longer necessary for its purposes.

(c) As necessary to carry out its purposes when district resources are not readily available or appropriate for use by the Panel, the Panel may appoint officers, agents, and employees of the Panel, define their duties and qualifications, and fix their compensation and employee benefits.

(d) In order to investigate allegations of or incidents of waste, fraud, or financial mismanagement which the Board is unable or unwilling to properly investigate as requested by the Panel, the Panel may appoint an Inspector General who shall have the authority to conduct investigations into such allegations or incidents. The Inspector General shall make recommendations to the Panel about its investigations. The Inspector General shall be independent of the operations of the Panel and the Board and perform other duties requested by the Panel. The Inspector General shall have access to all information and personnel necessary to perform the duties of the office. If the Inspector General determines that a possible criminal act has been committed or that special expertise is required in the investigation, he shall immediately notify the State's Attorney in the county in which the district is located. All investigations conducted by the Inspector General shall be conducted in a manner that ensures the preservation of evidence for use in criminal prosecutions. At all times the Inspector General shall be granted access to any building or facility that is owned, operated, or leased by the Panel or the Board. The Inspector General shall have the power to subpoena witnesses and compel the production of books and papers pertinent to an investigation authorized by this Code. Any person who (1) fails to appear in response to a subpoena; (2) fails to answer any question; (3) fails to produce any books or papers pertinent to an investigation under this Code; or (4) knowingly gives false testimony during an

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investigation under this Code is guilty of a Class A misdemeanor. The Inspector General shall provide to the Panel and the State Board of Education a summary of reports and investigations made under this Section for the previous fiscal year no later than January 1 of each year. The summaries shall detail the final disposition of those recommendations. The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations. The summaries shall also include detailed recommended administrative actions and matters for consideration by the State Board of Education or the General Assembly.

(e) No hiring or appointment of any person in any position by the Board, the superintendent, or any other officer or employee of the Board shall be made or entered into unless it is consistent with the Financial Plan and Budget in effect and the staffing plan approved by the Panel under this Section. The hiring or appointment of any person shall not be binding on the Board unless and until it is in compliance with this Section. The Board shall submit to the Panel for approval by the Panel a staffing plan for the upcoming school year at the same time as the submission of the Budget, except that the staffing plan for the fiscal year ending in 1997 shall be submitted to the Panel within 90 days after the effective date of this amendatory Act of 1996. The staffing plan shall be accompanied by a cost analysis and such other information as the Panel may require. The Panel may prescribe standards, procedures, and forms for submission of the staffing plan. The Panel shall approve the staffing plan if the information required to be submitted is complete and the staffing plan is consistent with the Budget and Financial Plan in effect. Otherwise, the Panel shall reject the staffing plan. In the event of rejection, the Panel shall prescribe a procedure and standards for revision of the staffing plan. The Panel shall act on the staffing plan at the same time as the approval of the Budget, except that the staffing plan for the fiscal year ending in 1997 shall be acted upon within 60 days of the submission of the staffing plan by the Board. The Board shall report to the Panel, at such times and in such manner as the Panel may direct, concerning the Board's compliance with each staffing plan. The Panel may review the Board's operations, obtaining budgetary data and financial statements, may require the Board to produce reports, and shall have access to any other information in the possession of the Board that it deems relevant. The Panel may issue directives to the Board to assure compliance with the staffing plan, including the issuance of reduction in force notices, non-renewal of employment contracts, or any other notices or actions required by contract or law. The Board shall produce such budgetary data, financial statements, reports, and other information and shall comply with such directives. After approval of each staffing plan, the Board shall regularly reexamine the estimates on which it was based and revise them as necessary. The Board shall promptly notify the Panel of any material change in the estimates in the staffing plan. The Board may submit to the Panel, or the Panel may require the Board to submit, modifications to the staffing plan based upon revised revenue or expenditure estimates or for any other good reason. The Panel shall approve or reject each modified staffing plan within 60 days of its submission in a manner similar to the provisions of this subsection for the approval or rejection of the initial staffing plan.

(f) The Panel shall examine the business records and audit the accounts of the Board or require that the Board examine its business records and audit its accounts at such time

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and in such manner as the Panel may prescribe. The Board shall appoint a certified public accountant annually, approved by the Panel, to audit its financial statements. The audit conducted pursuant to this paragraph shall be in lieu of the audit that the Board is required to undertake pursuant to Section 3-7 [105 ILCS 5/3-7].

(g) The Panel shall initiate and direct financial management assessments and similar analyses of the operations of the Board as may, in the judgment of the Panel, assure sound and efficient financial management of the Board. Upon the completion of these assessments, the Panel shall give directives to the Board regarding improvements and changes that derive from these assessments, which the Board shall implement. In conjunction with its budgetary submission to the Panel for each fiscal year, the Board shall demonstrate to the satisfaction of the Panel that the directives of the Panel have been implemented in whole or in part or, in the alternative, are not capable of being implemented. In consideration of whether to approve or reject the budget for a fiscal year, the Panel shall adjudge whether the Board has fully considered and responsibly proposed implementation of the Panel's directives.

(h) The Panel shall initiate and direct a management audit of the Board at least once every 2 years. The audit shall review the personnel, organization, contracts, leases, and physical properties of the Board to determine whether the Board is managing and utilizing its resources in an economical and efficient manner. The audit shall determine the causes of any inefficiencies or uneconomical practices, including inadequacies in internal and administrative procedures, organizational structure, uses of resources, utilization of real property, allocation of personnel, purchasing policies, and equipment.

(i) In the event that the Board refuses or fails to follow a directive of the Panel to issue notices of non-renewal of contracts, to issue notices of reduction in force to employees, to issue requests for bids or proposals, or to obtain financial or other information that the Panel finds necessary for the implementation of its responsibilities under this Article, the Panel may take such action in the name of the district, and such action shall be binding the same as if the action had been taken by the Board. The powers established by this paragraph do not authorize the Panel to enter into contracts in the name of the Board.

(j) The Panel shall meet with the Board or its designees in closed session prior to the Board commencing any collective bargaining negotiations to discuss the financial issues relevant to the bargaining and for the purpose of the Panel approving the budget limitations for the potential collective bargaining agreement. The Board shall not make or consider any proposal which does not comply with the collective bargaining budget approved by the Panel. The Board shall keep the Panel apprised as to the status of the bargaining. The Board shall present any proposed change in the approved collective bargaining budget to the Panel in closed session for approval. Prior to the Board taking a final vote on any tentative agreement approved by the employee organization, the Board shall discuss the tentative agreement with the Panel in closed session. Upon final approval of a collective bargaining agreement by both the Board and the employee organization, the Board shall submit the final collective bargaining agreement to the Panel for approval. At the same time that the Board submits the final agreement to the Panel, the Board shall notify the employee organization that the final agreement has been submitted and the date of the Panel meeting at which the final agreement will be

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considered. The employee organization shall be provided an opportunity to discuss the final agreement with the Panel prior to the Panel taking action on the agreement. No collective bargaining agreement shall be binding upon the district unless the Board has followed the requirements of this paragraph and the final agreement has been approved by the Panel.

(k) The budget of the Panel or any revisions to the budget, including any costs to the Panel associated with the appointment of an Inspector General, shall be approved by the State Superintendent upon request of the Panel and after opportunity for response by the Board.

(Source: P.A. 89-572, § 5.)

Effective Date. Section 99 of P.A. 89-572 made this Section effective upon becoming law. The Act was approved July 30, 1996.

CASE NOTES

Construction with Other Law

Given the Panel's right under 105 ILCS 5/1B-9 to borrow school district employees, this section's admonishment that the Panel appoint employees "when district resources are not readily available or appropriate for use," and 105 ILCS 5/1B-10's statement that the Panel "shall have no power to impair any existing contract or obligation of the board," the trial court did not err in concluding that the Panel exceeded its statutory authority by hiring persons to assume the routine functions of the business office. East St. Louis Fed'n of Teachers, Local 1220 v. East St. Louis Sch. Dist., 311 Ill. App. 3d 987, 244 Ill. Dec. 324, 725 N.E.2d 797, 2000 Ill. App. LEXIS 120 (5 Dist. 2000).

§ 105 ILCS 5/1B-25. Establishment prohibited

Sec. 1B-25. Establishment prohibited. No school district may have a Financial Oversight Panel established pursuant to this Article after Article 1H of this Code [105 ILCS 5/1H-1 et seq.] is established.

(Source: P.A. 97-429, § 15.)

Effective Date. Section 99 of P.A. 97-429 made this section effective upon becoming law. The Act was approved August 16, 2011.

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Article 1C.

Block Grants

§ 105 ILCS 5/1C-1. Purpose

Sec. 1C-1. Purpose. The purpose of this Article is to permit greater flexibility and efficiency in the distribution and use of certain State funds available to local education agencies for the improvement of the quality of educational services pursuant to locally established priorities.

This Article does not apply to school districts having a population in excess of 500,000 inhabitants.

(Source: P.A. 88-555, § 10; 89-15, § 5; 89-397, § 5; 89-626, § 2-32.)

Effective Date. Section 99 of P.A. 88-555 made this Article effective upon becoming law. The Act was approved July 27, 1994.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, added the last sentence.

The 1995 amendment by P.A. 89-397, effective August 20, 1995, substituted "State funds available" for "grants".

The 1996 amendment by P.A. 89-626, effective August 9, 1996, combined the amendments of this section by P.A. 89-15 and P.A. 89-397.

§ 105 ILCS 5/1C-2. Block grants

Sec. 1C-2. Block grants. (a) For fiscal year 1999, and each fiscal year thereafter, the State Board of Education shall award to school districts block grants as described in subsection (c). The State Board of Education may adopt rules and regulations necessary to implement this Section. In accordance with Section 2-3.32 [105 ILCS 5/2-3.32], all state block grants are subject to an audit. Therefore, block grant receipts and block grant expenditures shall be recorded to the appropriate fund code.

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(b) (Blank).

(c) An Early Childhood Education Block Grant shall be created by combining the following programs: Preschool Education, Parental Training and Prevention Initiative. These funds shall be distributed to school districts and other entities on a competitive basis. Not less than 11% of this grant shall be used to fund programs for children ages 0-3, which percentage shall increase to at least 20% by Fiscal Year 2015. However, if, in a given fiscal year, the amount appropriated for the Early Childhood Education Block Grant is insufficient to increase the percentage of the grant to fund programs for children ages 0-3 without reducing the amount of the grant for existing providers of preschool education programs, then the percentage of the grant to fund programs for children ages 0-3 may be held steady instead of increased.

(Source: P.A. 88-555, § 10; 89-397, § 5; 90-548, § 5-915; 90-653, § 10; 93-396, § 5; 95-793, § 5; 96-423, § 5.)

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the first sentence inserted "block grant", deleted "of this Article" following "purposes", and substituted "funds" for "block grants".

The 1997 amendment by P.A. 90-548, effective January 1, 1998, rewrote this section which read "From appropriations made for block grant purposes, the State Board of Education is authorized to award funds to eligible recipients upon application. Semiannual installment payments shall be made and semiannual expenditure reports shall be required".

The 1998 amendment by P.A. 90-653, effective July 29, 1998, incorporated the amendments by P.A. 90-548; and added the last two sentences in subsection (a).

The 2003 amendment by P.A. 93-396, effective July 29, 2003, substituted "Eleven percent" for "Eight percent" in the last sentence of subsection (c).

The 2008 amendment by P.A. 95-793, effective August 8, 2008, substituted "subsection (c)" for "subsections (b) and (c)" in the first sentence of (a); and deleted the text from (b) relating to the creation of a Professional Development Block Grant.

The 2009 amendment by P.A. 96-423, effective August 13, 2009, in the third sentence of (c), substituted "Not less than 11%" for "Eleven percent" and added "which percentage shall increase to at least 20% by Fiscal Year 2015"; and added the last sentence of (c).

§ 105 ILCS 5/1C-3. Application

Sec. 1C-3. Application. Block grants shall be available, pursuant to appropriation, upon applications made pursuant to school improvement plans. Block grants shall be made utilizing a per pupil basis to determine entitlement.

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(Source: P.A. 88-555, § 10; 89-397, § 5.)

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, substituted the present section catchline for "School planning and school improvement grants"; in the first sentence deleted "To improve student performance a" from the beginning, substituted "grants" for "grant", substituted "upon" for "for the following programs: second language planning; staff development; outcomes and assessment; and other instructional priorities related to the 3 programs listed in this Section or as identified in the district's school improvement plan.", deleted "shall be" preceding "made pursuant"; deleted "the" preceding "school" and added "plans" at the end, and in the second sentence substituted "Block grants shall be made" for "plan for each school district".

§ 105 ILCS 5/1C-4. Reports

Sec. 1C-4. Reports. The State Superintendent of Education, in cooperation with the school districts participating under this Article, shall annually report to the leadership of the General Assembly on the progress made in implementing this Article. By February 1, 1997, the State Board of Education shall submit to the Governor and General Assembly a comprehensive plan for Illinois school districts, including the school district that has been organized under Article 34 [105 ILCS 5/34-1 et seq.] and is under the jurisdiction of the Chicago Board of Education, to establish and implement a block grant funding system for educational programs that are currently funded through single-program grants. Before submitting its plan to establish and implement a block grant funding system to the Governor and General Assembly as required by this Section, the State Board of Education shall give appropriate notice of and hold statewide public hearings on the subject of funding educational programs through block grants. The plan shall be designed to relieve school districts of the administrative burdens that impede efficiency and accompany single-program funding.

A school district that receives an Early Childhood Education Block Grant shall report to the State Board of Education on its use of the block grant in such form and detail as the State Board of Education may specify. In addition, the report must include the following description for the district, which must also be reported to the General Assembly: block grant allocation and expenditures by program; population and service levels by program; and administrative expenditures by program. The State Board of Education shall ensure that the reporting requirements for a district organized under Article 34 of this Code are the same as for all other school districts in this State.

(Source: P.A. 88-555, § 10; 89-397, § 5; 89-610, § 5; 97-238, § 5.)

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, deleted "and with recommendations for inclusion of additional programs for block grant funding" from the end.

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The 1996 amendment by P.A. 89-610, effective August 6, 1996, added the second through fourth sentences.

The 2011 amendment by P.A. 97-238, effective August 2, 2011, added the second paragraph.

§ 105 ILCS 5/1C-5. Rules

Sec. 1C-5. Rules. The State Board of Education shall adopt such rules and regulations as may be necessary to implement the provisions of this Article.

(Source: P.A. 88-555, § 10.)

Article 1D.

Block Grants for Districts with over 500,000 Inhabitants

§ 105 ILCS 5/1D-1. Block grant funding

Sec. 1D-1. Block grant funding. (a) For fiscal year 1996 and each fiscal year thereafter, the State Board of Education shall award to a school district having a population exceeding 500,000 inhabitants a general education block grant and an educational services block grant, determined as provided in this Section, in lieu of distributing to the district separate State funding for the programs described in subsections (b) and (c). The provisions of this Section, however, do not apply to any federal funds that the district is entitled to receive. In accordance with Section 2-3.32 [105 ILCS 5/2-3.32], all block grants are subject to an audit. Therefore, block grant receipts and block grant expenditures shall be recorded to the appropriate fund code for the designated block grant.

(b) The general education block grant shall include the following programs: REI Initiative, Summer Bridges, Preschool At Risk, K-6 Comprehensive Arts, School Improvement Support, Urban Education, Scientific Literacy, Substance Abuse Prevention, Second Language Planning, Staff Development, Outcomes and Assessment, K-6 Reading Improvement, 7-12 Continued Reading Improvement, Truants' Optional Education, Hispanic Programs, Agriculture Education, Parental Education, Prevention Initiative, Report Cards, and Criminal Background Investigations. Notwithstanding any

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other provision of law, all amounts paid under the general education block grant from State appropriations to a school district in a city having a population exceeding 500,000 inhabitants shall be appropriated and expended by the board of that district for any of the programs included in the block grant or any of the board's lawful purposes.

(c) The educational services block grant shall include the following programs: Regular and Vocational Transportation, State Lunch and Free Breakfast Program, Special Education (Personnel, Transportation, Orphanage, Private Tuition), funding for children requiring special education services, Summer School, Educational Service Centers, and Administrator's Academy. This subsection (c) does not relieve the district of its obligation to provide the services required under a program that is included within the educational services block grant. It is the intention of the General Assembly in enacting the provisions of this subsection (c) to relieve the district of the administrative burdens that impede efficiency and accompany single-program funding. The General Assembly encourages the board to pursue mandate waivers pursuant to Section 2-3.25g [105 ILCS 5/2-3.25g].

The funding program included in the educational services block grant for funding for children requiring special education services in each fiscal year shall be treated in that fiscal year as a payment to the school district in respect of services provided or costs incurred in the prior fiscal year, calculated in each case as provided in this Section. Nothing in this Section shall change the nature of payments for any program that, apart from this Section, would be or, prior to adoption or amendment of this Section, was on the basis of a payment in a fiscal year in respect of services provided or costs incurred in the prior fiscal year, calculated in each case as provided in this Section.

(d) For fiscal year 1996 and each fiscal year thereafter, the amount of the district's block grants shall be determined as follows: (i) with respect to each program that is included within each block grant, the district shall receive an amount equal to the same percentage of the current fiscal year appropriation made for that program as the percentage of the appropriation received by the district from the 1995 fiscal year appropriation made for that program, and (ii) the total amount that is due the district under the block grant shall be the aggregate of the amounts that the district is entitled to receive for the fiscal year with respect to each program that is included within the block grant that the State Board of Education shall award the district under this Section for that fiscal year. In the case of the Summer Bridges program, the amount of the district's block grant shall be equal to 44% of the amount of the current fiscal year appropriation made for that program.

(e) The district is not required to file any application or other claim in order to receive the block grants to which it is entitled under this Section. The State Board of Education shall make payments to the district of amounts due under the district's block grants on a schedule determined by the State Board of Education.

(f) A school district to which this Section applies shall report to the State Board of Education on its use of the block grants in such form and detail as the State Board of Education may specify. In addition, the report must include the following description for the district, which must also be reported to the General Assembly: block grant allocation and expenditures by program; population and service levels by program; and

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administrative expenditures by program. The State Board of Education shall ensure that the reporting requirements for the district are the same as for all other school districts in this State.

(g) This paragraph provides for the treatment of block grants under Article 1C [105 ILCS 5/1C-1 et seq.] for purposes of calculating the amount of block grants for a district under this Section. Those block grants under Article 1C are, for this purpose, treated as included in the amount of appropriation for the various programs set forth in paragraph (b) above. The appropriation in each current fiscal year for each block grant under Article 1C shall be treated for these purposes as appropriations for the individual program included in that block grant. The proportion of each block grant so allocated to each such program included in it shall be the proportion which the appropriation for that program was of all appropriations for such purposes now in that block grant, in fiscal 1995.

Payments to the school district under this Section with respect to each program for which payments to school districts generally, as of the date of this amendatory Act of the 92nd General Assembly [P.A. 92-568], are on a reimbursement basis shall continue to be made to the district on a reimbursement basis, pursuant to the provisions of this Code governing those programs.

(h) Notwithstanding any other provision of law, any school district receiving a block grant under this Section may classify all or a portion of the funds that it receives in a particular fiscal year from any block grant authorized under this Code or from general State aid pursuant to Section 18-8.05 of this Code [105 ILCS 5/18-8.05] (other than supplemental general State aid) as funds received in connection with any funding program for which it is entitled to receive funds from the State in that fiscal year (including, without limitation, any funding program referred to in subsection (c) of this Section), regardless of the source or timing of the receipt. The district may not classify more funds as funds received in connection with the funding program than the district is entitled to receive in that fiscal year for that program. Any classification by a district must be made by a resolution of its board of education. The resolution must identify the amount of any block grant or general State aid to be classified under this subsection (h) and must specify the funding program to which the funds are to be treated as received in connection therewith. This resolution is controlling as to the classification of funds referenced therein. A certified copy of the resolution must be sent to the State Superintendent of Education. The resolution shall still take effect even though a copy of the resolution has not been sent to the State Superintendent of Education in a timely manner. No classification under this subsection (h) by a district shall affect the total amount or timing of money the district is entitled to receive under this Code. No classification under this subsection (h) by a district shall in any way relieve the district from or affect any requirements that otherwise would apply with respect to the block grant as provided in this Section, including any accounting of funds by source, reporting expenditures by original source and purpose, reporting requirements, or requirements of provision of services.

(Source: P.A. 89-15, § 5; 89-698, § 5; 90-566, § 5; 90-653, § 10; 91-711, § 5; 92-568, § 5; 92-651, § 37; 93-21, § 5-5; 93-53, § 5; 93-1022, § 5; 97-238, § 5; 97-324, § 5.)

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Note.

Section 997 of P.A. 92-651 is a no acceleration or delay provision, and Section 998 is a no revival or extension provision.

Effective Date. Section 99 of P.A. 89-15 made this Article effective upon becoming law. The Act was approved May 30, 1995.

Effect of Amendments. The 1996 amendment by P.A. 89-698, effective January 14, 1997, in subsection (a), in the first sentence, deleted "through but not subsequent to fiscal year 1999" preceding "the State Board"; and in subsection (d) deleted "through fiscal year 1999" preceding "the amount of".

The 1997 amendment by P.A. 90-566, effective January 2, 1998, in subsection (b), in the first sentence, inserted "REI Initiative, Preschool At Risk"; in subsection (c), in the first sentence, deleted "Preschool At Risk" preceding "Special Education"; and added subsection (g).

The 1998 amendment by P.A. 90-653, effective July 29, 1998, incorporated the amendments by P.A. 90-566; and added the last two sentences in subsection (a).

The 2000 amendment by P.A. 91-711, effective July 1, 2000, inserted "Summer Bridges" preceding "Preschool At Risk" in the first sentence of subsection (b); and added the last sentence in subsection (d).

The 2002 amendment by P.A. 92-568, effective June 26, 2002, substituted "1C" for "IC" in the second sentence of subsection (g); added the last paragraph of subsection (g); and added subsection (h).

The 2002 amendment by P.A. 92-651, effective July 11, 2002, made a typographical correction.

The 2003 amendment by P.A. 93-21, effective July 1, 2003, deleted "Gifted Education" after "Agriculture Education" in the first sentence of subsection (b).

The 2003 amendment by P.A. 93-53, effective July 1, 2003 added "7-12 Continued Reading Improvement" to the list of programs in subsection (b).

The 2004 amendment by P.A. 93-1022, effective August 24, 2004, in subsection (c) deleted "Extraordinary" after "Personnel" and inserted "funding for children requiring special education services" in the first sentence of the first paragraph, and inserted the second paragraph.

The 2011 amendment by P.A. 97-238, effective August 2, 2011, added the last two sentence to (f).

The 2011 amendment by P.A. 97-324, effective August 12, 2011, deleted "Bilingual" following "following programs" in the first sentence of the first paragraph of (c).

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

Article 1E.

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Downstate School Finance Authority

§ 105 ILCS 5/1E-1. Short title

Sec. 1E-1. Short title. This Article may be cited as the Downstate School Finance Authority Law.

(Source: P.A. 92-547, § 10.)

Effective Date. Section 99 of P.A. 92-547 made this article effective upon becoming law. The Act was approved June 13, 2002.

§ 105 ILCS 5/1E-5. Findings; purpose; intent

Sec. 1E-5. Findings; purpose; intent. (a) The General Assembly finds all of the following:

(1) A fundamental goal of the people of this State, as expressed in Section 1 of Article X of the Illinois Constitution, is the educational development of all persons to the limits of their capacities. When a board of education faces financial difficulties, continued operation of the public school system is threatened.

(2) A sound financial structure is essential to the continued operation of any school system. It is vital to commercial, educational, and cultural interests that public schools remain in operation. To achieve that goal, public school systems must have effective access to the private market to borrow short and long term funds.

(3) To promote the financial integrity of districts, as defined in this Article, it is necessary to provide for the creation of school finance authorities with the powers necessary to promote sound financial management and to ensure the continued operation of the public schools.

(b) It is the purpose of this Article to provide a secure financial basis for the continued operation of public schools. The intention of the General Assembly, in creating this Article, is to establish procedures, provide powers, and impose restrictions to ensure the financial and educational integrity of the public schools, while leaving principal responsibility for the educational policies of public schools to the boards of education within the State, consistent with the requirements for satisfying the public policy and

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purpose set forth in this Article.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-10. Definitions

Sec. 1E-10. Definitions. As used in this Article:

"Authority" means a School Finance Authority created under this Article.

"Bonds" means bonds authorized to be issued by the Authority under Section 1E-65 of this Code [105 ILCS 5/1E-65].

"Budget" means the annual budget of the district required under Section 17-1 of this Code [105 ILCS 5/1E-17-1], as in effect from time to time.

"Chairperson" means the Chairperson of the Authority.

"District" means any school district having a population of not more than 500,000 that prior to the effective date of this amendatory Act of the 92nd General Assembly [P.A. 92-547] has had a Financial Oversight Panel established for the district under Section 1B-4 of this Code [105 ILCS 5/1B-4] following the district's petitioning of the State Board of Education for the creation of the Financial Oversight Panel and for which the Financial Oversight Panel has been in existence for at least one year.

"Financial plan" means the financial plan of the district to be developed pursuant to this Article, as in effect from time to time.

"Fiscal year" means the fiscal year of the district.

"State Board" means the State Board of Education.

"State Superintendent" means the State Superintendent of Education.

"Obligations" means bonds and notes of the Authority.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-15. Establishment of Authority; duties of district

Sec. 1E-15. Establishment of Authority; duties of district. (a) A Financial Oversight Panel created under Article 1B of this Code [105-5/1B-1 et seq.] for a district may petition the State Board for the establishment of a School Finance Authority for the

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district. The petition shall cite the reasons why the creation of a School Finance Authority for the district is necessary. The State Board may grant the petition upon determining that the approval of the petition is in the best educational and financial interests of the district.

(b) Upon approval of the petition by the State Board all of the following shall occur:

(1) There is established a body both corporate and politic to be known as the "(Name of School District) School Finance Authority", which in this name shall exercise all authority vested in an Authority by this Article.

(2) The Financial Oversight Panel is abolished, and all of its rights, property, assets, contracts, and liabilities shall pass to and be vested in the Authority.

(3) The duties and obligations of the district under Article 1B of this Code [105 ILCS 5/1B-1 et seq.] shall be transferred and become duties and obligations owed by the district to the School Finance Authority.

(c) In the event of a conflict between the provisions of this Article and the provisions of Article 1B of this Code [105 ILCS 5/1B-1 et seq.], the provisions of this Article control.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-20. Members of Authority; meetings

Sec. 1E-20. Members of Authority; meetings. (a) When a petition for a School Finance Authority is allowed by the State Board under Section 1E-15 of this Code [105 ILCS 5/1E-15], the State Superintendent shall within 10 days thereafter appoint 5 members to serve on a School Finance Authority for the district. Of the initial members, 2 shall be appointed to serve a term of 2 years and 3 shall be appointed to serve a term of 3 years. Thereafter, each member shall serve for a term of 3 years and until his or her successor has been appointed. The State Superintendent shall designate one of the members of the Authority to serve as its Chairperson. In the event of vacancy or resignation, the State Superintendent shall, within 10 days after receiving notice, appoint a successor to serve out that member's term. The State Superintendent may remove a member for incompetence, malfeasance, neglect of duty, or other just cause.

Members of the Authority shall be selected primarily on the basis of their experience and education in financial management, with consideration given to persons knowledgeable in education finance. Two members of the Authority shall be residents of the school district that the Authority serves. A member of the Authority may not be a member of the district's school board or an employee of the district nor may a member have a direct financial interest in the district.

Authority members shall serve without compensation, but may be reimbursed by the State Board for travel and other necessary expenses incurred in the performance of their

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official duties. Unless paid from bonds issued under Section 1E-65 of this Code [105 ILCS 5/1E-65], the amount reimbursed members for their expenses shall be charged to the school district as part of any emergency financial assistance and incorporated as a part of the terms and conditions for repayment of the assistance or shall be deducted from the district's general State aid as provided in Section 1B-8 of this Code [105 ILCS 5/1B-8].

The Authority may elect such officers as it deems appropriate.

(b) The first meeting of the Authority shall be held at the call of the Chairperson. The Authority shall prescribe the times and places for its meetings and the manner in which regular and special meetings may be called and shall comply with the Open Meetings Act [5 ILCS 120/1 et seq.].

Three members of the Authority shall constitute a quorum. When a vote is taken upon any measure before the Authority, a quorum being present, a majority of the votes of the members voting on the measure shall determine the outcome.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-25. General powers

Sec. 1E-25. General powers. The purposes of the Authority shall be to exercise financial control over the district and to furnish financial assistance so that the district can provide public education within the district's jurisdiction while permitting the district to meet its obligations to its creditors and the holders of its debt. Except as expressly limited by this Article, the Authority shall have all powers granted to a voluntary or involuntary Financial Oversight Panel and to a Financial Administrator under Article 1B of this Code [105 ILCS 5/1B-1 et seq.] and all other powers necessary to meet its responsibilities and to carry out its purposes and the purposes of this Article, including without limitation all of the following powers, provided that the Authority shall have no power to violate any statutory provision, to impair any contract or obligation of the district, or to terminate any employee without following the statutory procedures for such terminations set forth in this Code:

(1) To sue and to be sued.

(2) To make and execute contracts, leases, subleases and all other instruments or agreements necessary or convenient for the exercise of the powers and functions granted by this Article.

(3) To purchase real or personal property necessary or convenient for its purposes; to execute and deliver deeds for real property held in its own name; and to sell, lease, or otherwise dispose of such of its property as, in the judgment of the Authority, is no longer necessary for its purposes.

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(4) To appoint officers, agents, and employees of the Authority, including a chief executive officer, a chief fiscal officer, and a chief educational officer to administer and manage, under the direction of the Authority, the operations and educational programs of the district, in accordance with this Article and all other provisions of this Code; to define their duties and qualifications; and to fix their compensation and employee benefits.

(5) To transfer to the district such sums of money as are not required for other purposes.

(6) To borrow money and to issue obligations pursuant to this Article; to fund, refund, or advance refund the same; to provide for the rights of the holders of its obligations; and to repay any advances.

(7) Subject to the provisions of any contract with or for the benefit of the holders of its obligations, to purchase or redeem its obligations.

(8) To procure all necessary goods and services for the Authority in compliance with the purchasing laws and requirements applicable to the district.

(8.5) To take action on behalf of the district as the Authority deems necessary and in accordance with this Article and all other provisions of this Code, based on the recommendation of the chief executive officer, chief educational officer, or chief fiscal officer, and the district shall be bound by such action in all respects as if the action had been approved by the district itself.

(9) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given to it by this Article.

(Source: P.A. 92-547, § 10; 94-234, § 5.)

Effect of Amendments. The 2005 amendment by P.A. 94-234, effective July 14, 2005, in (4) added the language beginning "to administer" and ending "provisions of this Code"; and added (8.5).

§ 105 ILCS 5/1E-30. Chief executive officer

Sec. 1E-30. Chief executive officer. The Authority may appoint a chief executive officer who, under the direction of the Authority, shall supervise the Authority's staff, including the chief educational officer and the chief fiscal officer, and shall have ultimate responsibility for implementing the policies, procedures, directives, and decisions of the Authority.

(Source: P.A. 92-547, § 10.)

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§ 105 ILCS 5/1E-35. Chief educational officer

Sec. 1E-35. Chief educational officer. Upon expiration of the contract of the school district's superintendent who is serving at the time the Authority is established, the Authority shall, following consultation with the district, employ a chief educational officer for the district. The chief educational officer shall report to the Authority or the chief executive officer appointed by the Authority.

The chief educational officer shall have authority to determine the agenda and order of business at school board meetings, as needed in order to carry forward and implement the objectives and priorities of the Authority in the administration and management of the district.

The chief educational officer shall have all of the powers and duties of a school district superintendent under this Code and such other duties as may be assigned by the Authority, in accordance with this Code. The district shall not thereafter employ a superintendent during the period that a chief educational officer is serving in the district. The chief educational officer shall hold a certificate with a superintendent endorsement issued under Article 21 of this Code [105 ILCS 5/21-0.01 et seq.].

(Source: P.A. 92-547, § 10; 94-234, § 5.)

Effect of Amendments. The 2005 amendment by P.A. 94-234, effective July 14, 2005, added the second paragraph.

§ 105 ILCS 5/1E-40. Chief fiscal officer

Sec. 1E-40. Chief fiscal officer. The Authority may appoint a chief fiscal officer who, under the direction of the Authority, shall have all of the powers and duties of the district's chief school business official and any other duties regarding budgeting, accounting, and other financial matters that are assigned by the Authority, in accordance with this Code. The district may not employ a chief school business official during the period that the chief fiscal officer is serving in the district. The chief fiscal officer may but is not required to hold a certificate with a chief school business official endorsement issued under Article 21 of this Code [105 ILCS 5/21-0.01 et seq.].

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-45. Collective bargaining agreements

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Sec. 1E-45. Collective bargaining agreements. The Authority shall have the power to negotiate collective bargaining agreements with the district's employees in lieu of and on behalf of the district. Upon concluding bargaining, the district shall execute the agreements negotiated by the Authority, and the district shall be bound by and shall administer the agreements in all respects as if the agreements had been negotiated by the district itself.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-50. Deposits and investments

Sec. 1E-50. Deposits and investments. (a) The Authority shall have the power to establish checking and whatever other banking accounts it may deem appropriate for conducting its affairs.

(b) Subject to the provisions of any contract with or for the benefit of the holders of its obligations, the Authority may invest any funds not required for immediate use or disbursement, as provided in the Public Funds Investment Act [30 ILCS 235/0.01 et seq.].

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-55. Cash accounts and bank accounts

Sec. 1E-55. Cash accounts and bank accounts. (a) The Authority shall require the district or any officer of the district, including the district's treasurer, to establish and maintain separate cash accounts and separate bank accounts in accordance with such rules, standards, and procedures as the Authority may prescribe.

(b) The Authority shall have the power to assume exclusive administration of the cash accounts and bank accounts of the district, to establish and maintain whatever new cash accounts and bank accounts it may deem appropriate, and to withdraw funds from these accounts for the lawful expenditures of the district.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-60. Financial, management, and budgetary structure

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Sec. 1E-60. Financial, management, and budgetary structure. Upon direction of the Authority, the district shall reorganize the financial accounts, management, and budgetary systems of the district in whatever manner the Authority deems appropriate to achieve greater financial responsibility and to reduce financial inefficiency.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-65. Power to issue bonds

Sec. 1E-65. Power to issue bonds. (a) The Authority may incur indebtedness by the issuance of negotiable full faith and credit general obligation bonds of the Authority in an outstanding amount not to exceed at any time, including existing indebtedness, 13.8% of the district's most recent equalized assessed valuation, excluding Bonds of the Authority that have been refunded, for (i) the purpose of providing the district with moneys for ordinary and necessary expenditures and other operational needs of the district; (ii) payment or refunding of outstanding debt obligations or tax anticipation warrants of the district, the proceeds of which were used to provide financing for the district; (iii) payment of fees for arrangements as provided in subsection (b) of Section 1E-70 of this Code [105 ILCS 5/1E-70]; (iv) payment of interest on Bonds; (v) establishment of reserves to secure Bonds; (vi) the payment of costs of issuance of Bonds; (vii) payment of principal of or interest or redemption premium on any Bonds or notes of the Authority; and (viii) all other expenditures of the Authority incidental to and necessary or convenient for carrying out its corporate purposes and powers.

(b) The Authority may from time to time (i) issue Bonds to refund any outstanding Bonds or notes of the Authority, whether the Bonds or notes to be refunded have or have not matured or become redeemable, and (ii) issue Bonds partly to refund Bonds or notes then outstanding and partly for any other purpose set forth in this Section.

(c) Bonds issued in accordance with subsection (a) of this Section are not subject to any other statutory limitation as to debt, including without limitation that established by the Local Government Debt Limitation Act [50 ILCS 405/0.01 et seq.], and may be issued without referendum.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-70. Terms of bonds

Sec. 1E-70. Terms of bonds. (a) Whenever the Authority desires or is required to issue Bonds as provided in this Article, it shall adopt a resolution designating the amount of the

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Bonds to be issued, the purposes for which the proceeds of the Bonds are to be used, and the manner in which the proceeds shall be held pending the application thereof. The Bonds shall be issued in the corporate name of the Authority and shall bear such date or dates and shall mature at such time or times, not exceeding 20 years from their date, as the resolution may provide. The Bonds may be issued as serial bonds payable in installments, as term bonds with sinking fund installments, or as a combination of these as the Authority may determine in the resolution. The Bonds shall be in such denominations as the Authority may determine. The Bonds shall be in such form, carry such registration privileges, be executed in such manner, be payable at such place or places, and be subject to such terms of redemption at such redemption prices, including premium, as the resolution may provide. The Bonds shall be sold by the Authority at public or private sale, as determined by the Authority.

(b) In connection with the issuance of its Bonds, the Authority may enter into arrangements to provide additional security and liquidity for the Bonds. These may include without limitation municipal bond insurance, letters of credit, lines of credit by which the Authority may borrow funds to pay or redeem its Bonds, and purchase or remarketing arrangements for ensuring the ability of owners of the Authority's Bonds to sell their Bonds or to have their Bonds redeemed. The Authority may enter into contracts and may agree to pay fees to persons providing the arrangements, including from Bond proceeds, but only under circumstances in which the total interest paid or to be paid on the Bonds, together with the fees for the arrangements (being treated as if interest), would not, taken together, cause the Bonds to bear interest, calculated to their absolute maturity, at a rate in excess of the maximum rate allowed by law.

The resolution of the Authority authorizing the issuance of its Bonds may provide that interest rates may vary from time to time depending upon criteria established by the Authority, which may include without limitation a variation in interest rates as may be necessary to cause the Bonds to be remarketable from time to time at a price equal to their principal amount, and may provide for appointment of a national banking association, bank, trust company, investment banker, or other financial institution to serve as a remarketing agent in that connection. The resolution of the Authority authorizing the issuance of its Bonds may provide that alternative interest rates or provisions shall apply during such times as the Bonds are held by a person providing a letter of credit or other credit enhancement arrangement for those Bonds.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-75. Tax levy

Sec. 1E-75. Tax levy. (a) Before or at the time of issuing any Bonds, the Authority shall provide by resolution for the levy and collection of a direct annual tax upon all the taxable property located within the district without limit as to rate or amount sufficient to pay and discharge the principal thereof at maturity or on sinking fund installment dates

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and to pay the interest thereon as it falls due. The taxes as levied shall also include additional amounts to the extent that the collections in the prior years were insufficient to pay and discharge the principal thereof at maturity, sinking fund installments, if any, and interest thereon as it fell due, and the amount so collected shall be placed in the debt service reserve fund. The tax shall be in addition to and exclusive of the maximum of all taxes that the Authority or the district is authorized by law to levy for any and all school purposes. The resolution shall be in force upon its adoption.

(b) The levy shall be for the sole benefit of the holders of the Bonds, and the holders of the Bonds shall have a security interest in and lien upon all rights, claims, and interests of the Authority arising pursuant to the levy and all present and future proceeds of the levy until the principal of and sinking fund installments and interest on the Bonds are paid in full. All proceeds from the levy shall be deposited by each county collector directly in the debt service fund established pursuant to Section 1E-80 of this Code [105 ILCS 5/1E-80], shall be applied solely for the payment of principal of and sinking fund installments and interest on the Bonds, and shall not be used for any other purpose.

(c) Upon the filing in the office of the county clerk of each county where the school district is located of a duly certified copy of the resolution, it shall be the duty of each county clerk to extend the tax provided for in the resolution, including an amount determined by the Authority to cover loss and cost of collection and also deferred collections and abatements in the amount of the taxes as extended on the collectors' books. The tax shall be separate and apart from all other taxes of the Authority or the district and shall be separately identified by the collectors.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-80. Debt service fund

Sec. 1E-80. Debt service fund. The Authority shall establish a debt service fund for the Bonds to be maintained by a paying agent, escrow agent, depository, or corporate trustee, which may be any trust company or bank having the power of a trust company within this State, separate and segregated from all other funds and accounts of the Authority and the district. All moneys on deposit in the debt service fund shall be held in trust in the debt service fund for the benefit of the holders of the Bonds, shall be applied solely for the payment of the principal of and sinking fund installment, redemption premium, if any, and interest on the Bonds, and shall not be used for any other purpose. The holders of the Bonds shall have a security interest in and lien upon all such moneys.

(Source: P.A. 92-547, § 10.)

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§ 105 ILCS 5/1E-85. Debt service reserve fund

Sec. 1E-85. Debt service reserve fund. (a) The Authority may create and establish a debt service reserve fund to be maintained by a paying agent, escrow agent, depository, or corporate trustee, which may be any trust company or bank having the power of a trust company within the State, separate and segregated from all other funds and accounts of the Authority. The Authority may pay the following into the debt service reserve fund:

(1) any proceeds from the sale of Bonds to the extent provided in the resolution authorizing the issuance of the Bonds; and

(2) any other moneys that may be available to the Authority for the purpose of the fund.

(b) The amount to be accumulated in the debt service reserve fund shall be determined by the Authority but shall not exceed the maximum amount of interest, principal, and sinking fund installments due in any succeeding calendar year.

(c) All moneys on deposit in the debt service reserve fund shall be held in trust for the benefit of the holders of the Bonds, shall be applied solely for the payment of principal of and sinking fund installments and interest on the Bonds to the extent not paid from the debt service fund, and shall not be used for any other purpose.

(d) Any moneys in the debt service reserve fund in excess of the amount determined by the Authority pursuant to a resolution authorizing the issuance of Bonds may be withdrawn by the Authority and used for any of its lawful purposes.

(e) In computing the amount of the debt service reserve fund, investments shall be valued as the Authority provides in the resolution authorizing the issuance of the Bonds.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-90. Bond anticipation notes

Sec. 1E-90. Bond anticipation notes. (a) After the issuance of Bonds has been authorized, the Authority shall have power to issue from time to time, pursuant to a resolution or resolutions of the Authority, negotiable bond anticipation notes of the Authority in anticipation of the issuance of Bonds.

(b) Bond anticipation notes shall mature not later than 2 years after the date of issuance, may be made redeemable prior to their maturity, and may be sold in such manner, in such denominations, and at such price or prices and shall bear interest at such rate or rates not to exceed the maximum annual rate authorized by law, as a resolution authorizing the issuance of the bond anticipation notes may provide.

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(c) The bond anticipation notes may be made payable as to both principal and interest from the proceeds of the Bonds. The Authority may provide for payment of interest on the bond anticipation notes from direct annual taxes upon all the taxable property located within the district that are authorized to be levied annually for that purpose without limit as to rate or amount sufficient to pay the interest as it falls due, in the manner, subject to the security interest and lien, and with the effect provided in Section 1E-75 of this Code [105 ILCS 5/1E-75].

(d) The Authority is authorized to issue renewal notes in the event it is unable to issue Bonds to pay outstanding bond anticipation notes, on terms the Authority deems reasonable.

(e) A debt service fund shall be established in the manner provided in Section 1E-80 of this Code [105 ILCS 5/1E-80] by the Authority for the bond anticipation notes, and the proceeds of any tax levy made pursuant to this Section shall be deposited in the fund upon receipt.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-95. Vesting powers in trustee or other authorized agent

Sec. 1E-95. Vesting powers in trustee or other authorized agent. The resolution authorizing issuance of the Bonds shall vest in a trustee, paying agent, escrow agent, or depository such rights, powers, and duties in trust as the Authority may determine and may contain such provisions for protecting and enforcing the rights and remedies of the holders of the Bonds and limiting such rights and remedies as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the exercise of its corporate powers and the custody, safeguarding, and application of all moneys. The resolution shall provide for the manner in which moneys in the various funds and accounts of the Authority may be invested and the disposition of the earnings on the investments.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-100. Discharge of bonds

Sec. 1E-100. Discharge of bonds. (a) If the Authority pays or causes to be paid to the holders of all Bonds then outstanding the principal, redemption price, if any, and interest to become due on the Bonds, at the times and in the manner stipulated therein and in the

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resolution authorizing the issuance of the Bonds, then the covenants, agreements, and other obligations of the Authority to the Bondholders shall be discharged and satisfied.

(b) Bonds or interest installments for the payment or redemption of which moneys have been set aside and held in trust by the trustee or other authorized agent provided for in Section 1E-95 of this Code [105 ILCS 5/1E-95], through deposit by the Authority of funds for the payment, redemption, or otherwise, at the maturity or redemption date, are deemed to have been paid within the meaning and with the effect expressed in subsection (a) of this Section. All outstanding Bonds of any series, prior to the maturity or redemption date, are deemed to have been paid within the meaning and with the effect expressed in subsection (a) of this Section if (1) there has been deposited with the trustee or other authorized agent either (A) moneys in an amount that is sufficient or (B) direct obligations of the United States of America the principal of and the interest on which, when due, will provide moneys that, together with the moneys, if any, deposited with the trustee or other authorized agent at the same time, are sufficient to pay, when due, the principal, sinking fund installment, or redemption price, if applicable, of and interest due and to become due on the Bonds on and prior to the redemption date, sinking fund installment date, or maturity date, as the case may be, and (2) the Authority has given the trustee or other authorized agent, in form satisfactory to it, irrevocable instructions to give notice to the effect and in accordance with the procedures provided in the resolution authorizing the issuance of the Bonds. Neither direct obligations of the United States of America, moneys deposited with the trustee or other authorized agent, or principal or interest payments on the securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal or redemption price, if applicable, and interest on the Bonds.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-105. Pledge of the State

Sec. 1E-105. Pledge of the State. The State of Illinois pledges to and agrees with the holders of Bonds that the State will not limit or alter the rights and powers vested in the Authority by this Article with respect to the issuance of obligations so as to impair the terms of any contract made by the Authority with these holders or in any way impair the rights and remedies of these holders until the Bonds, together with interest on the Bonds, interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of these holders, are fully met and discharged or provisions made for their payment. The Authority is authorized to include this pledge and agreement of the State in any resolution or contract with the holders of Bonds.

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(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-110. Statutory lien

Sec. 1E-110. Statutory lien. Any pledge, assignment, lien, or security interest for the benefit of the holders of Bonds or bond anticipation notes, if any, created pursuant to this Article are valid and binding from the time the Bonds are issued, without any physical delivery or further act, and are valid and binding as against and prior to any claims of all other parties having claims of any kind in tort, contract, or otherwise against the State, the Authority, the district, or any other person, irrespective of whether the other parties have notice.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-115. State or district not liable on obligations

Sec. 1E-115. State or district not liable on obligations. Obligations shall not be deemed to constitute (i) a debt or liability of the State, the district, or any political subdivision of the State or district other than the Authority or (ii) a pledge of the full faith and credit of the State, the district, or any political subdivision of the State or district other than the Authority but shall be payable solely from the funds and revenues provided for in this Article. The issuance of obligations shall not directly, indirectly, or contingently obligate the State, the district, or any political subdivision of the State or district other than the Authority to levy any form of taxation therefor or to make any appropriation for their payment. Nothing in this Section shall prevent or be construed to prevent the Authority from pledging its full faith and credit to the payment of obligations. Nothing in this Article shall be construed to authorize the Authority to create a debt of the State or the district within the meaning of the Constitution or laws of Illinois, and all obligations issued by the Authority pursuant to the provisions of this Article are payable and shall state that they are payable solely from the funds and revenues pledged for their payment in accordance with the resolution authorizing their issuance or any trust indenture executed as security therefor. The State or the district shall not in any event be liable for the payment of the principal of or interest on any obligations of the Authority or for the performance of any pledge, obligation, or agreement of any kind whatsoever that may be undertaken by the Authority. No breach of any such pledge, obligation, or agreement may impose any liability upon the State or the district or any charge upon their general credit or against their taxing power.

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(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-120. Obligations as legal investments

Sec. 1E-120. Obligations as legal investments. The obligations issued under the provisions of this Article are hereby made securities in which all public officers and bodies of this State, all political subdivisions of this State, all persons carrying on an insurance business, all banks, bankers, trust companies, saving banks, and savings associations (including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business), and all credit unions, pension funds, administrators, and guardians who are or may be authorized to invest in bonds or in other obligations of the State may properly and legally invest funds, including capital, in their control or belonging to them. The obligations are also hereby made securities that may be deposited with and may be received by all public officers and bodies of the State, all political subdivisions of the State, and public corporations for any purpose for which the deposit of bonds or other obligations of the State is authorized.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-125. Complete authority

Sec. 1E-125. Complete authority. This Article, without reference to any other law, shall be deemed full and complete authority for the issuance of Bonds and bond anticipation notes as provided in this Article.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-130. Reports

Sec. 1E-130. Reports. (a) The Authority, upon taking office and annually thereafter, shall prepare and submit to the Governor, General Assembly, and State Superintendent a report that includes the audited financial statement for the preceding fiscal year, an approved financial plan, and a statement of the major steps necessary to accomplish the objectives of the financial plan.

(b) Annual reports shall be submitted on or before March 1 of each year.

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(c) The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report as provided in Section 3.1 of the General Assembly Organization Act [25 ILCS 5/0.01 et seq.] and by filing additional copies with the State Government Report Distribution Center for the General Assembly as required under subdivision (t) of Section 7 of the State Library Act [15 ILCS 320/7].

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-135. Audit of Authority

Sec. 1E-135. Audit of Authority. The Authority shall be subject to audit in the manner provided for the audit of State funds and accounts. A copy of the audit report shall be submitted to the State Superintendent, the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-140. Assistance by State agencies, units of local government, and school districts

Sec. 1E-140. Assistance by State agencies, units of local government, and school districts. The district shall render such services to and permit the use of its facilities and resources by the Authority at no charge as may be requested by the Authority. Any State agency, unit of local government, or school district may, within its lawful powers and duties, render such services to the Authority as may be requested by the Authority. Upon request of the Authority, any State agency, unit of local government, or school district is authorized and empowered to loan to the Authority such officers and employees as the Authority may deem necessary in carrying out its functions and duties. Officers and employees so transferred shall not lose or forfeit their employment status or rights.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-145. Property of Authority exempt from taxation

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Sec. 1E-145. Property of Authority exempt from taxation. The property of the Authority is exempt from taxation.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-150. Sanctions

Sec. 1E-150. Sanctions. (a) No member, officer, employee, or agent of the district may commit the district to any contract or other obligation or incur any liability on behalf of the district for any purpose if the amount of the contract, obligation, or liability is in excess of the amount authorized for that purpose then available under the financial plan and budget then in effect.

(b) No member, officer, employee, or agent of the district may commit the district to any contract or other obligation on behalf of the district for the payment of money for any purpose required to be approved by the Authority unless the contract or other obligation has been approved by the Authority.

(c) No member, officer, employee, or agent of the district may take any action in violation of any valid order of the Authority, may fail or refuse to take any action required by any such order, may prepare, present, certify, or report any information, including any projections or estimates, for the Authority or any of its agents that is false or misleading, or, upon learning that any such information is false or misleading, may fail promptly to advise the Authority or its agents.

(d) In addition to any penalty or liability under any other law, any member, officer, employee, or agent of the district who violates subsection (a), (b), or (c) of this Section is subject to appropriate administrative discipline as may be imposed by the Authority, including, if warranted, suspension from duty without pay, removal from office, or termination of employment.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-155. Abolition of Authority

Sec. 1E-155. Abolition of Authority. The Authority shall be abolished 10 years after its creation or one year after all its obligations issued under the provisions of this Article have been fully paid and discharged, whichever comes later. However, the State Board, upon recommendation of the Authority and if no obligations are outstanding, may abolish the Authority at any time after the Authority has been in existence for 3 years. Upon the

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abolition of the Authority, all of its records shall be transferred to the State Board and any property of the Authority shall pass to and be vested in the State Board.

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-160. Limitations of actions after abolition; indemnification; legal representation

Sec. 1E-160. Limitations of actions after abolition; indemnification; legal representation. (a) Abolition of the Authority pursuant to Section 1E-155 of this Code [105 ILCS 5/1E-155] shall bar any remedy available against the Authority, its members, employees, or agents for any right or claim existing or any liability incurred prior to the abolition unless the action or other proceeding is commenced prior to the expiration of 2 years after the date of the abolition.

(b) The Authority may indemnify any member, officer, employee, or agent who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he or she was a member, officer, employee, or agent of the Authority, against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit, or proceeding) if he or she acted in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the Authority and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith in a manner that he or she reasonably believed to be in or not opposed to the best interest of the Authority and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

To the extent that a member, officer, employee, or agent of the Authority has been successful, on the merits or otherwise, in the defense of any such action, suit, or proceeding referred to in this subsection (b) or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses, including attorney's fees, actually and reasonably incurred by him or her in connection therewith. Any such indemnification shall be made by the Authority only as authorized in the specific case, upon a determination that indemnification of the member, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct. The determination shall be made (i) by the Authority by a majority vote of a quorum consisting of members who are not parties to the action, suit, or proceeding or (ii) if such a quorum is not obtainable or, even if obtainable, a quorum of disinterested members so directs, by independent legal counsel in a written opinion.

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Reasonable expenses incurred in defending an action, suit, or proceeding shall be paid by the Authority in advance of the final disposition of the action, suit, or proceeding, as authorized by the Authority in the specific case, upon receipt of an undertaking by or on behalf of the member, officer, employee, or agent to repay the amount, unless it is ultimately determined that he or she is entitled to be indemnified by the Authority as authorized in this Section.

Any member, officer, employee, or agent against whom any action, suit, or proceeding is brought may employ his or her own attorney to appear on his or her behalf.

The right to indemnification accorded by this Section shall not limit any other right to indemnification to which the member, officer, employee, or agent may be entitled. Any rights under this Section shall inure to the benefit of the heirs, executors, and administrators of any member, officer, employee, or agent of the Authority.

The Authority may purchase and maintain insurance on behalf of any person who is or was a member, officer, employee, or agent of the Authority against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Authority would have the power to indemnify him or her against the liability under the provisions of this Section.

The Authority shall be considered a State agency for purposes of receiving representation by the Attorney General. Members, officers, employees, and agents of the Authority shall be entitled to representation and indemnification under the State Employee Indemnification Act [5 ILCS 350/0.01 et seq.].

(Source: P.A. 92-547, § 10.)

§ 105 ILCS 5/1E-165. Repeal

Sec. 1E-165. Repeal. When the Authority established pursuant to this Article is abolished pursuant to Section 1E-155 [105 ILCS 5/1E-155], this Article shall be repealed.

(Source: P.A. 97-429, § 15.)

Effective Date. Section 99 of P.A. 97-429 made this section effective upon becoming law. The Act was approved August 16, 2011.

§ 105 ILCS 5/1E-999-99. Effective Date

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Sec. 1E-999-99. Effective Date. This Act [P.A. 92-547, which enacted Article 1E] takes effect upon becoming law.

(Source: P.A. 92-547, § 99.)

Note.

P.A. 92-547 was approved June 13, 2002.

Article 1F.

Downstate School Finance Authority for Elementary Districts

§ 105 ILCS 5/1F-1. Short title

Sec. 1F-1. Short title. This Article may be cited as the Downstate School Finance Authority for Elementary Districts Law.

(Source: P.A. 92-855, § 10.)

Effective Date. Section 99 of P.A. 92-855, made this Article effective upon becoming law. The Act was approved December 6, 2002.

§ 105 ILCS 5/1F-5. Findings; purpose; intent

Sec. 1F-5. Findings; purpose; intent. (a) The General Assembly finds all of the following:

(1) A fundamental goal of the people of this State, as expressed in Section 1 of Article X of the Illinois Constitution, is the educational development of all persons to the limits of their capacities. When a board of education faces financial difficulties, continued operation of the public school system is threatened.

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(2) A sound financial structure is essential to the continued operation of any school system. It is vital to commercial, educational, and cultural interests that public schools remain in operation. To achieve that goal, public school systems must have effective access to the private market to borrow short and long term funds.

(3) To promote the financial integrity of districts, as defined in this Article, it is necessary to provide for the creation of school finance authorities with the powers necessary to promote sound financial management and to ensure the continued operation of the public schools.

(b) It is the purpose of this Article to provide a secure financial basis for the continued operation of public schools. The intention of the General Assembly, in creating this Article, is to establish procedures, provide powers, and impose restrictions to ensure the financial and educational integrity of the public schools, while leaving principal responsibility for the educational policies of public schools to the boards of education within the State, consistent with the requirements for satisfying the public policy and purpose set forth in this Article.

(Source: P.A. 92-855, § 10.)

CASE NOTES

Public Education

Given the importance of the development of public education, such that it has been recognized in Illinois as fundamental constitutional goal under 105 ILCS 5/1F-5, the Authority had to be able to exercise the power given to it to manage the school district's troubled finances consistent with the State Board of Education's power under 105 ILCS 5/1F-15(a) to form it to keep the school district from sinking into further financial difficulty. However, while the Authority did have the power pursuant to 105 ILCS 5/1F-25(2) to cancel the school district's lease of portable classrooms with the lessor as a means of managing the school district's finances, it could only do so consistent with the relevant lease terms, which meant that the school district was still liable for cancellation penalties in the lease agreements that were owed because those agreements were cancelled prematurely. Innovative Modular Solutions v. Hazel Crest Sch. Dist. 152.5, Ill. 2d , Ill. Dec. , N.E.2d , 2012 Ill. LEXIS 307 (Feb. 2, 2012).

§ 105 ILCS 5/1F-10. Definitions

Sec. 1F-10. Definitions. As used in this Article:

"Authority" means a School Finance Authority created under this Article.

"Bonds" means bonds authorized to be issued by the Authority under Section 1F-65 of this Code [105 ILCS 5/1F-65].

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"Budget" means the annual budget of the district required under Section 17-1 of this Code [105 ILCS 5/17-1], as in effect from time to time.

"Chairperson" means the Chairperson of the Authority.

"District" means any elementary school district having a population of not more than 500,000 that prior to December 1, 2002 has had a Financial Oversight Panel established for the district under Section 1B-4 of this Code [105 ILCS 5/1B-4] following the district's petitioning of the State Board of Education for the creation of the Financial Oversight Panel.

"Financial plan" means the financial plan of the district to be developed pursuant to this Article, as in effect from time to time.

"Fiscal year" means the fiscal year of the district.

"State Board" means the State Board of Education.

"State Superintendent" means the State Superintendent of Education.

"Obligations" means bonds and notes of the Authority.

(Source: P.A. 92-855, § 10.)

§ 105 ILCS 5/1F-15. Establishment of Authority; duties of district

Sec. 1F-15. Establishment of Authority; duties of district. (a) A Financial Oversight Panel created under Article 1B of this Code [105 ILCS 5/1B-1 et seq.] for a district may petition the State Board for the establishment of a School Finance Authority for the district. The petition shall cite the reasons why the creation of a School Finance Authority for the district is necessary. The State Board may grant the petition upon determining that the approval of the petition is in the best educational and financial interests of the district. The State Board may establish an Authority without a petition from a Financial Oversight Panel. In any event, an Authority may only be established by resolution of the State Board within 5 days after the effective date of this amendatory Act of the 92nd General Assembly [P.A. 92-855].

(b) Upon establishment of the Authority, all of the following shall occur:

(1) There is established a body both corporate and politic to be known as the "(Name of School District) School Finance Authority", which in this name shall exercise all authority vested in an Authority by this Article.

(2) The Financial Oversight Panel is abolished, and all of its rights, property, assets, contracts, and liabilities shall pass to and be vested in the Authority.

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(3) The duties and obligations of the district under Article 1B of this Code [105 ILCS 5/1B-1 et seq.] shall be transferred and become duties and obligations owed by the district to the School Finance Authority.

(c) In the event of a conflict between the provisions of this Article and the provisions of Article 1B of this Code [105 ILCS 5/1B-1 et seq.], the provisions of this Article control.

(Source: P.A. 92-855, § 10.)

CASE NOTES

Financial Oversight

Given the importance of the development of public education, such that it has been recognized in Illinois as fundamental constitutional goal under 105 ILCS 5/1F-5, the Authority had to be able to exercise the power given to it to manage the school district's troubled finances consistent with the State Board of Education's power under 105 ILCS 5/1F-15(a) to form it to keep the school district from sinking into further financial difficulty. However, while the Authority did have the power pursuant to 105 ILCS 5/1F-25(2) to cancel the school district's lease of portable classrooms with the lessor as a means of managing the school district's finances, it could only do so consistent with the relevant lease terms, which meant that the school district was still liable for cancellation penalties in the lease agreements that were owed because those agreements were cancelled prematurely. Innovative Modular Solutions v. Hazel Crest Sch. Dist. 152.5, Ill. 2d , Ill. Dec. , N.E.2d , 2012 Ill. LEXIS 307 (Feb. 2, 2012).

§ 105 ILCS 5/1F-20. Members of Authority; meetings

Sec. 1F-20. Members of Authority; meetings. (a) Upon establishment of a School Finance Authority under Section 1F-15 of this Code [105 ILCS 5/1F-15], the State Superintendent shall within 15 days thereafter appoint 5 members to serve on a School Finance Authority for the district. Of the initial members, 2 shall be appointed to serve a term of 2 years and 3 shall be appointed to serve a term of 3 years. Thereafter, each member shall serve for a term of 3 years and until his or her successor has been appointed. The State Superintendent shall designate one of the members of the Authority to serve as its Chairperson. In the event of vacancy or resignation, the State Superintendent shall, within 10 days after receiving notice, appoint a successor to serve out that member's term. The State Superintendent may remove a member for incompetence, malfeasance, neglect of duty, or other just cause.

Members of the Authority shall be selected primarily on the basis of their experience and education in financial management, with consideration given to persons knowledgeable in education finance. Two members of the Authority shall be residents of the school district that the Authority serves. A member of the Authority may not be a member of the

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district's school board or an employee of the district nor may a member have a direct financial interest in the district.

Authority members shall be paid a stipend approved by the State Superintendent of not more than $100 per meeting and may be reimbursed by the State Board for travel and other necessary expenses incurred in the performance of their official duties. Unless paid from bonds issued under Section 1F-65 of this Code [105 ILCS 5/1F-65], the amount reimbursed members for their expenses shall be charged to the school district as part of any emergency financial assistance and incorporated as a part of the terms and conditions for repayment of the assistance or shall be deducted from the district's general State aid as provided in Section 1B-8 of this Code [105 ILCS 5/1B-8].

The Authority may elect such officers as it deems appropriate.

(b) The first meeting of the Authority shall be held at the call of the Chairperson. The Authority shall prescribe the times and places for its meetings and the manner in which regular and special meetings may be called and shall comply with the Open Meetings Act [5 ILCS 120/1 et seq.].

Three members of the Authority shall constitute a quorum. When a vote is taken upon any measure before the Authority, a quorum being present, a majority of the votes of the members voting on the measure shall determine the outcome.

(Source: P.A. 92-855, § 10; 94-234, § 5.)

Effect of Amendments. The 2005 amendment by P.A. 94-234, effective July 1, 2006, in the third paragraph of (a) substituted "be paid a stipend approved by the State Superintendent of not more than $100 per meeting and" for "serve without compensation, but" in the first sentence.

§ 105 ILCS 5/1F-25. General powers

Sec. 1F-25. General powers. The purposes of the Authority shall be to exercise financial control over the district and to furnish financial assistance so that the district can provide public education within the district's jurisdiction while permitting the district to meet its obligations to its creditors and the holders of its debt. Except as expressly limited by this Article, the Authority shall have all powers granted to a voluntary or involuntary Financial Oversight Panel and to a Financial Administrator under Article 1B of this Code [105 ILCS 5/1B-1 et seq.] and all other powers necessary to meet its responsibilities and to carry out its purposes and the purposes of this Article, including without limitation all of the following powers, provided that the Authority shall have no power to terminate any employee without following the statutory procedures for such terminations set forth in this Code:

(1) To sue and to be sued.

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(2) To make, cancel, modify, and execute contracts, leases, subleases, and all other instruments or agreements necessary or convenient for the exercise of the powers and functions granted by this Article, subject to Section 1F-45 of this Code [105 ILCS 5/1F-45]. The Authority may at a regular or special meeting find that the district has insufficient or inadequate funds with respect to any contract, other than collective bargaining agreements.

(3) To purchase real or personal property necessary or convenient for its purposes; to execute and deliver deeds for real property held in its own name; and to sell, lease, or otherwise dispose of such of its property as, in the judgment of the Authority, is no longer necessary for its purposes.

(4) To appoint officers, agents, and employees of the Authority, including a chief executive officer, a chief fiscal officer, and a chief educational officer; to define their duties and qualifications; and to fix their compensation and employee benefits.

(5) To transfer to the district such sums of money as are not required for other purposes.

(6) To borrow money, including without limitation accepting State loans, and to issue obligations pursuant to this Article; to fund, refund, or advance refund the same; to provide for the rights of the holders of its obligations; and to repay any advances.

(6.5) To levy all property tax levies that otherwise could be levied by the district, and to make levies pursuant to Section 1F-62 of this Code [105 ILCS 5/1F-62]. This levy or levies shall be exempt from the Truth in Taxation Law and the Cook County Truth in Taxation Law [35 ILCS 200/18-55 et seq. and 35 ILCS 200/18-101.1 et seq.].

(7) Subject to the provisions of any contract with or for the benefit of the holders of its obligations, to purchase or redeem its obligations.

(8) To procure all necessary goods and services for the Authority in compliance with the purchasing laws and requirements applicable to the district.

(9) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given to it by this Article.

(10) To recommend annexation, consolidation, dissolution, or reorganization of the district, in whole or in part, to the State Board if in the Authority's judgment the circumstances so require. No such proposal for annexation, consolidation, dissolution, or reorganization shall occur unless the Authority and the school boards of all other districts directly affected by the annexation, consolidation, dissolution, or reorganization have each approved by majority vote the annexation, consolidation, dissolution, or reorganization. Notwithstanding any other law to the contrary, upon approval of the proposal by the State Board, the State Board and all other affected entities shall forthwith implement the proposal. When a dissolution and annexation becomes effective for purposes of administration and attendance, the positions of teachers in contractual continued service in the district being dissolved shall be transferred to the annexing district or districts, pursuant to the provisions of Section 24-12 of this Code [105 ILCS 5/24-12]. In the event that the territory is added to 2 or more districts, the decision on which positions shall be transferred to which annexing districts shall be made by giving

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consideration to the proportionate percentage of pupils transferred and the annexing districts' staffing needs, and the transfer of teachers in contractual continued service into positions shall be based upon the request of those teachers in contractual continued service in order of seniority in the dissolving district. The status of all teachers in contractual continued service transferred to an annexing district shall not be lost, and the board of the annexing district is subject to this Code with respect to teachers in contractual continued service who are transferred in the same manner as if the person were the annexing district's employee and had been its employee during the time the person was actually employed by the board of the dissolving district from which the position was transferred.

(Source: P.A. 92-855, § 10.)

Note.

The Cook County Truth in Taxation Law, 35 ILCS 200/18-101.1 et seq., referred to above has been repealed.

CASE NOTES

Analysis

Financial Oversight
Payment of debts

Financial Oversight

Given the importance of the development of public education, such that it has been recognized in Illinois as fundamental constitutional goal under 105 ILCS 5/1F-5, the Authority had to be able to exercise the power given to it to manage the school district's troubled finances consistent with the State Board of Education's power under 105 ILCS 5/1F-15(a) to form it to keep the school district from sinking into further financial difficulty. However, while the Authority did have the power pursuant to 105 ILCS 5/1F-25(2) to cancel the school district's lease of portable classrooms with the lessor as a means of managing the school district's finances, it could only do so consistent with the relevant lease terms, which meant that the school district was still liable for cancellation penalties in the lease agreements that were owed because those agreements were cancelled prematurely. Innovative Modular Solutions v. Hazel Crest Sch. Dist. 152.5, Ill. 2d , Ill. Dec. , N.E.2d , 2012 Ill. LEXIS 307 (Feb. 2, 2012).

Payment of debts

Court did not err when it found, due to a legal impossibility created when the State invoked the School Finance Law, 105 ILCS 5/1F-1 et seq., that the school district lacked statutory authority to pay the lessor its cancellation fees, because the State invoked the School Finance Law, which

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provided the finance authority exclusive control over the school district's finances, the school district was divested of control over its finances and had no statutory authority to pay its debts. Innovative Modular Solutions v. Hazel Crest Sch. Dist. 152.5, 407 Ill. App. 3d 143, 347 Ill. Dec. 993, 943 N.E.2d 283, 2011 Ill. App. LEXIS 76 (1 Dist. 2011).

§ 105 ILCS 5/1F-30. Chief executive officer

Sec. 1F-30. Chief executive officer. The Authority may appoint a chief executive officer who, under the direction of the Authority, shall supervise the Authority's staff, including the chief educational officer and the chief fiscal officer, and shall have ultimate responsibility for implementing the policies, procedures, directives, and decisions of the Authority.

(Source: P.A. 92-855, § 10.)

§ 105 ILCS 5/1F-35. Chief educational officer

Sec. 1F-35. Chief educational officer. The Authority may at a regular or special meeting find that cause exists to cancel the contract of the school district's superintendent who is serving at the time the Authority is established. If there is no superintendent, then the Authority shall, following consultation with the district, employ a chief educational officer for the district, who shall have all of the powers and duties of a school district superintendent under this Code and such other duties as may be assigned by the Authority in accordance with this Code. The chief educational officer shall report to the Authority or the chief executive officer appointed by the Authority.

The district shall not thereafter employ a superintendent during the period that a chief educational officer is serving in the district. The chief educational officer shall hold a certificate with a superintendent endorsement issued under Article 21 of this Code [105 ILCS 5/21-0.01 et seq.].

(Source: P.A. 92-855, § 10.)

§ 105 ILCS 5/1F-40. Chief fiscal officer

Sec. 1F-40. Chief fiscal officer. The Authority may appoint a chief fiscal officer who, under the direction of the Authority, shall have all of the powers and duties of the district's chief school business official and any other duties regarding budgeting,

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accounting, and other financial matters that are assigned by the Authority, in accordance with this Code. The district may not employ a chief school business official during the period that the chief fiscal officer is serving in the district. The chief fiscal officer may but is not required to hold a certificate with a chief school business official endorsement issued under Article 21 of this Code [105 ILCS 5/21-0.01 et seq.].

(Source: P.A. 92-855, § 10.)

§ 105 ILCS 5/1F-45. Collective bargaining agreements

Sec. 1F-45. Collective bargaining agreements. The Authority shall have the power to negotiate collective bargaining agreements with the district's employees in lieu of and on behalf of the district. Upon concluding bargaining, the district shall execute the agreements negotiated by the Authority, and the district shall be bound by and shall administer the agreements in all respects as if the agreements had been negotiated by the district itself.

(Source: P.A. 92-855, § 10.)

§ 105 ILCS 5/1F-50. Deposits and investments

Sec. 1F-50. Deposits and investments. (a) The Authority shall have the power to establish checking and whatever other banking accounts it may deem appropriate for conducting its affairs.

(b) Subject to the provisions of any contract with or for the benefit of the holders of its obligations, the Authority may invest any funds not required for immediate use or disbursement, as provided in the Public Funds Investment Act [30 ILCS 235/0.01 et seq.].

(Source: P.A. 92-855, § 10.)

§ 105 ILCS 5/1F-55. Cash accounts and bank accounts

Sec. 1F-55. Cash accounts and bank accounts. (a) The Authority shall require the district or any officer of the district, including the district's treasurer, to establish and maintain

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separate cash accounts and separate bank accounts in accordance with such rules, standards, and procedures as the Authority may prescribe.

(b) The Authority shall have the power to assume exclusive administration of the cash accounts and bank accounts of the district, to establish and maintain whatever new cash accounts and bank accounts it may deem appropriate, and to withdraw funds from these accounts for the lawful expenditures of the district.

(Source: P.A. 92-855, § 10.)

CASE NOTES

Financial Oversight

While the Authority had extensive control over the school district's finances pursuant to 105 ILCS 5/1F-55 and 105 ILCS 5/1F-60 in order to steer the school district out of financial difficulty, it could not cancel contracts that the school district had with third parties unless it did so according to the contractual provisions involved. As a result, while the Authority could cancel the school district's lease agreements with the lessor under which the school district leased portable classrooms, the school district was still liable for contractual cancellation penalties because the Authority cancelled those lease agreements prematurely and contrary to a lease provision expressly setting forth a cancellation penalty for early termination of the lease agreement. Innovative Modular Solutions v. Hazel Crest Sch. Dist. 152.5, Ill. 2d , Ill. Dec. , N.E.2d , 2012 Ill. LEXIS 307 (Feb. 2, 2012).

§ 105 ILCS 5/1F-60. Financial, management, and budgetary structure

Sec. 1F-60. Financial, management, and budgetary structure. Upon direction of the Authority, the district shall reorganize the financial accounts, management, and budgetary systems of the district in whatever manner the Authority deems appropriate to achieve greater financial responsibility and to reduce financial inefficiency.

(Source: P.A. 92-855, § 10.)

CASE NOTES

Financial Oversight

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While the Authority had extensive control over the school district's finances pursuant to 105 ILCS 5/1F-55 and 105 ILCS 5/1F-60 in order to steer the school district out of financial difficulty, it could not cancel contracts that the school district had with third parties unless it did so according to the contractual provisions involved. As a result, while the Authority could cancel the school district's lease agreements with the lessor under which the school district leased portable classrooms, the school district was still liable for contractual cancellation penalties because the Authority cancelled those lease agreements prematurely and contrary to a lease provision expressly setting forth a cancellation penalty for early termination of the lease agreement. Innovative Modular Solutions v. Hazel Crest Sch. Dist. 152.5, Ill. 2d , Ill. Dec. , N.E.2d , 2012 Ill. LEXIS 307 (Feb. 2, 2012).

§ 105 ILCS 5/1F-62. School District Emergency Financial Assistance Fund; grants and loans

Sec. 1F-62. School District Emergency Financial Assistance Fund; grants and loans. (a) Moneys in the School District Emergency Financial Assistance Fund established under Section 1B-8 of this Code [105 ILCS 5/1B-8] may be allocated and expended by the State Board as grants to provide technical and consulting services to school districts to assess their financial condition and by the Illinois Finance Authority for emergency financial assistance loans to a School Finance Authority that petitions for emergency financial assistance. An emergency financial assistance loan to a School Finance Authority or borrowing from sources other than the State shall not be considered as part of the calculation of a district's debt for purposes of the limitation specified in Section 19-1 of this Code [105 ILCS 5/19-1]. From the amount allocated to each School Finance Authority, the State Board shall identify a sum sufficient to cover all approved costs of the School Finance Authority. If the State Board and State Superintendent have not approved emergency financial assistance in conjunction with the appointment of a School Finance Authority, the Authority's approved costs shall be paid from deductions from the district's general State aid.

The School Finance Authority may prepare and file with the State Superintendent a proposal for emergency financial assistance for the school district and for its operations budget. No expenditures shall be authorized by the State Superintendent until he or she has approved the proposal of the School Finance Authority, either as submitted or in such lesser amount determined by the State Superintendent.

(b) The amount of an emergency financial assistance loan that may be allocated to a School Finance Authority under this Article, including moneys necessary for the operations of the School Finance Authority, and borrowing from sources other than the State shall not exceed, in the aggregate, $4,000 times the number of pupils enrolled in the district during the school year ending June 30 prior to the date of approval by the State Board of the petition for emergency financial assistance, as certified to the school board and the School Finance Authority by the State Superintendent. However, this limitation does not apply to borrowing by the district secured by amounts levied by the district prior to establishment of the School Finance Authority. An emergency financial assistance grant shall not exceed $1,000 times the number of such pupils. A district may receive both a loan and a grant.

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(c) The payment of a State emergency financial assistance grant or loan shall be subject to appropriation by the General Assembly. State emergency financial assistance allocated and paid to a School Finance Authority under this Article may be applied to any fund or funds from which the School Finance Authority is authorized to make expenditures by law.

(d) Any State emergency financial assistance proposed by the School Finance Authority and approved by the State Superintendent may be paid in its entirety during the initial year of the School Finance Authority's existence or spread in equal or declining amounts over a period of years not to exceed the period of the School Finance Authority's existence. The State Superintendent shall not approve any loan to the School Finance Authority unless the School Finance Authority has been unable to borrow sufficient funds to operate the district.

All loan payments made from the School District Emergency Financial Assistance Fund to a School Finance Authority shall be required to be repaid not later than the date the School Finance Authority ceases to exist, with simple interest over the term of the loan at a rate equal to 50% of the one-year Constant Maturity Treasury (CMT) yield as last published by the Board of Governors of the Federal Reserve System before the date on which the School Finance Authority's loan is approved by the State Board.

The School Finance Authority shall establish and the Illinois Finance Authority shall approve the terms and conditions of the loan, including the schedule of repayments. The schedule shall provide for repayments commencing July 1 of each year or upon each fiscal year's receipt of moneys from a tax levy for emergency financial assistance. Repayment shall be incorporated into the annual budget of the district and may be made from any fund or funds of the district in which there are moneys available. Default on repayment is subject to the Illinois Grant Funds Recovery Act [30 ILCS 705/1 et seq.]. When moneys are repaid as provided in this Section, they shall not be made available to the School Finance Authority for further use as emergency financial assistance under this Article at any time thereafter. All repayments required to be made by a School Finance Authority shall be received by the State Board and deposited in the School District Emergency Financial Assistance Fund.

In establishing the terms and conditions for the repayment obligation of the School Finance Authority, the School Finance Authority shall annually determine whether a separate local property tax levy is required to meet that obligation. The School Finance Authority shall provide for a separate tax levy for emergency financial assistance repayment purposes. This tax levy shall not be subject to referendum approval. The amount of the levy shall not exceed the amount necessary to meet the annual emergency financial repayment obligations of the district, including principal and interest, as established by the School Finance Authority.

(Source: P.A. 92-855, § 10; 94-234, § 5.)

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Effect of Amendments. The 2005 amendment by P.A. 94-234, effective July 1, 2006, rewrote the section.

§ 105 ILCS 5/1F-90. Tax anticipation warrants

Sec. 1F-90. Tax anticipation warrants. An Authority shall have the same power to issue tax anticipation warrants as a school board under Section 17-16 of this Code [105 ILCS 5/17-16]. Tax anticipation warrants are considered borrowing from sources other than the State and are subject to Section 1F-62 of this Code [105 ILCS 5/1F-62].

(Source: P.A. 92-855, § 10.)

§ 105 ILCS 5/1F-115. State or district not liable on obligations

Sec. 1F-115. State or district not liable on obligations. Obligations shall not be deemed to constitute (i) a debt or liability of the State, the district, or any political subdivision of the State or district other than the Authority or (ii) a pledge of the full faith and credit of the State, the district, or any political subdivision of the State or district other than the Authority but shall be payable solely from the funds and revenues provided for in this Article. The issuance of obligations shall not directly, indirectly, or contingently obligate the State, the district, or any political subdivision of the State or district other than the Authority to levy any form of taxation therefor or to make any appropriation for their payment. Nothing in this Section shall prevent or be construed to prevent the Authority from pledging its full faith and credit to the payment of obligations. Nothing in this Article shall be construed to authorize the Authority to create a debt of the State or the district within the meaning of the Constitution or laws of Illinois, and all obligations issued by the Authority pursuant to the provisions of this Article are payable and shall state that they are payable solely from the funds and revenues pledged for their payment in accordance with the resolution authorizing their issuance or any trust indenture executed as security therefor. The State or the district shall not in any event be liable for the payment of the principal of or interest on any obligations of the Authority or for the performance of any pledge, obligation, or agreement of any kind whatsoever that may be undertaken by the Authority. No breach of any such pledge, obligation, or agreement may impose any liability upon the State or the district or any charge upon their general credit or against their taxing power.

(Source: P.A. 92-855, § 10.)

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§ 105 ILCS 5/1F-120. Obligations as legal investments

Sec. 1F-120. Obligations as legal investments. The obligations issued under the provisions of this Article are hereby made securities in which all public officers and bodies of this State, all political subdivisions of this State, all persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, and savings associations (including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business), and all credit unions, pension funds, administrators, and guardians who are or may be authorized to invest in bonds or in other obligations of the State may properly and legally invest funds, including capital, in their control or belonging to them. The obligations are also hereby made securities that may be deposited with and may be received by all public officers and bodies of the State, all political subdivisions of the State, and public corporations for any purpose for which the deposit of bonds or other obligations of the State is authorized.

(Source: P.A. 92-855, § 10.)

§ 105 ILCS 5/1F-130. Reports

Sec. 1F-130. Reports. (a) The Authority, upon taking office and annually thereafter, shall prepare and submit to the Governor, General Assembly, and State Superintendent a report that includes the audited financial statement for the preceding fiscal year, an approved financial plan, and a statement of the major steps necessary to accomplish the objectives of the financial plan.

(b) Annual reports shall be submitted on or before March 1 of each year.

(c) The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report as provided in Section 3.1 of the General Assembly Organization Act [25 ILCS 5/3.1] and by filing additional copies with the State Government Report Distribution Center for the General Assembly as required under subdivision (t) of Section 7 of the State Library Act [15 ILCS 320/7].

(Source: P.A. 92-855, § 10.)

§ 105 ILCS 5/1F-135. Audit of Authority

Sec. 1F-135. Audit of Authority. The Authority shall be subject to audit in the manner provided for the audit of State funds and accounts. A copy of the audit report shall be

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submitted to the State Superintendent, the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate.

(Source: P.A. 92-855, § 10.)

§ 105 ILCS 5/1F-140. Assistance by State agencies, units of local government, and school districts

Sec. 1F-140. Assistance by State agencies, units of local government, and school districts. The district shall render such services to and permit the use of its facilities and resources by the Authority at no charge as may be requested by the Authority. Any State agency, unit of local government, or school district may, within its lawful powers and duties, render such services to the Authority as may be requested by the Authority. Upon request of the Authority, any State agency, unit of local government, or school district is authorized and empowered to loan to the Authority such officers and employees as the Authority may deem necessary in carrying out its functions and duties. Officers and employees so transferred shall not lose or forfeit their employment status or rights.

(Source: P.A. 92-855, § 10.)

§ 105 ILCS 5/1F-145. Property of Authority exempt from taxation

Sec. 1F-145. Property of Authority exempt from taxation. The property of the Authority is exempt from taxation.

(Source: P.A. 92-855, § 10.)

§ 105 ILCS 5/1F-150. Sanctions

Sec. 1F-150. Sanctions. (a) No member, officer, employee, or agent of the district may commit the district to any contract or other obligation or incur any liability on behalf of the district for any purpose if the amount of the contract, obligation, or liability is in excess of the amount authorized for that purpose then available under the financial plan and budget then in effect.

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(b) No member, officer, employee, or agent of the district may commit the district to any contract or other obligation on behalf of the district for the payment of money for any purpose required to be approved by the Authority unless the contract or other obligation has been approved by the Authority.

(c) No member, officer, employee, or agent of the district may take any action in violation of any valid order of the Authority, may fail or refuse to take any action required by any such order, may prepare, present, certify, or report any information, including any projections or estimates, for the Authority or any of its agents that is false or misleading, or, upon learning that any such information is false or misleading, may fail promptly to advise the Authority or its agents.

(d) In addition to any penalty or liability under any other law, any member, officer, employee, or agent of the district who violates subsection (a), (b), or (c) of this Section is subject to appropriate administrative discipline as may be imposed by the Authority, including, if warranted, suspension from duty without pay, removal from office, or termination of employment.

(Source: P.A. 92-855, § 10.)

CASE NOTES

Analysis
Financial Oversight
Payment of debts

Financial Oversight

While the school district was prohibited from taking certain actions without the approval of the Authority, under 105 ILCS 5/1F-150, and could be punished for doing so, the Authority had to issue valid orders. As a result, the school district remained liable for contractual cancellation penalties in lease agreements that the school district executed with the lessor to obtain portable classrooms after the Authority prematurely cancelled those agreements because the Authority had the statutory power to cancel those agreements, but the school district remained liable for the cancellation penalties since the Authority could not terminate those agreements without liability for the penalties set forth in them. Innovative Modular Solutions v. Hazel Crest Sch. Dist. 152.5, Ill. 2d , Ill. Dec. , N.E.2d , 2012 Ill. LEXIS 307 (Feb. 2, 2012).

Payment of debts

Court did not err when it found, due to a legal impossibility created when the State invoked the School Finance Law, 105 ILCS 5/1F-1 et seq., that the school district lacked statutory authority to pay the lessor its cancellation fees, because the State invoked the School Finance Law, which

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provided the finance authority exclusive control over the school district's finances, the school district was divested of control over its finances and had no statutory authority to pay its debts. Innovative Modular Solutions v. Hazel Crest Sch. Dist. 152.5, 407 Ill. App. 3d 143, 347 Ill. Dec. 993, 943 N.E.2d 283, 2011 Ill. App. LEXIS 76 (1 Dist. 2011).

§ 105 ILCS 5/1F-155. Abolition of Authority

Sec. 1F-155. Abolition of Authority. The Authority shall be abolished 10 years after its creation or one year after all its obligations issued under the provisions of this Article have been fully paid and discharged, whichever comes later. However, the State Board, upon recommendation of the Authority and if no obligations are outstanding, may abolish the Authority at any time after the Authority has been in existence for 3 years. Upon the abolition of the Authority, all of its records shall be transferred to the State Board and any property of the Authority shall pass to and be vested in the State Board.

(Source: P.A. 92-855, § 10.)

§ 105 ILCS 5/1F-160. Limitations of actions after abolition; indemnification; legal representation

Sec. 1F-160. Limitations of actions after abolition; indemnification; legal representation. (a) Abolition of the Authority pursuant to Section 1F-155 of this Code [105 ILCS 5/1F-155] shall bar any remedy available against the Authority, its members, employees, or agents for any right or claim existing or any liability incurred prior to the abolition unless the action or other proceeding is commenced prior to the expiration of 2 years after the date of the abolition.

(b) The Authority may indemnify any member, officer, employee, or agent who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he or she was a member, officer, employee, or agent of the Authority, against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit, or proceeding) if he or she acted in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the Authority and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith in a manner that he or she reasonably believed to be in or not opposed to the best interest of the Authority and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

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To the extent that a member, officer, employee, or agent of the Authority has been successful, on the merits or otherwise, in the defense of any such action, suit, or proceeding referred to in this subsection (b) or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses, including attorney's fees, actually and reasonably incurred by him or her in connection therewith. Any such indemnification shall be made by the Authority only as authorized in the specific case, upon a determination that indemnification of the member, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct. The determination shall be made (i) by the Authority by a majority vote of a quorum consisting of members who are not parties to the action, suit, or proceeding or (ii) if such a quorum is not obtainable or, even if obtainable, a quorum of disinterested members so directs, by independent legal counsel in a written opinion.

Reasonable expenses incurred in defending an action, suit, or proceeding shall be paid by the Authority in advance of the final disposition of the action, suit, or proceeding, as authorized by the Authority in the specific case, upon receipt of an undertaking by or on behalf of the member, officer, employee, or agent to repay the amount, unless it is ultimately determined that he or she is entitled to be indemnified by the Authority as authorized in this Section.

Any member, officer, employee, or agent against whom any action, suit, or proceeding is brought may employ his or her own attorney to appear on his or her behalf.

The right to indemnification accorded by this Section shall not limit any other right to indemnification to which the member, officer, employee, or agent may be entitled. Any rights under this Section shall inure to the benefit of the heirs, executors, and administrators of any member, officer, employee, or agent of the Authority.

The Authority may purchase and maintain insurance on behalf of any person who is or was a member, officer, employee, or agent of the Authority against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Authority would have the power to indemnify him or her against the liability under the provisions of this Section.

The Authority shall be considered a State agency for purposes of receiving representation by the Attorney General. Members, officers, employees, and agents of the Authority shall be entitled to representation and indemnification under the State Employee Indemnification Act [5-350/0.01 et seq.].

(Source: P.A. 92-855, § 10.)

Effective Date. Section 99 of P.A. 92-855, made this Article effective upon becoming law. The Act was approved December 6, 2002.

§ 105 ILCS 5/1F-165. Repeal

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Sec. 1F-165. Repeal. When the Authority established pursuant to this Article is abolished pursuant to Section 1F-155 [105 ILCS 5/1F-155], this Article shall be repealed.

(Source: P.A. 97-429, § 15.)

Effective Date. Section 99 of P.A. 97-429 made this section effective upon becoming law. The Act was approved August 16, 2011.

Article 1G.

Mathematics and Science Block Grant Program

§ 105 ILCS 5/1G-1. Purpose

Sec. 1G-1. Purpose. The purpose of this Article is to permit greater flexibility and efficiency in the distribution and use of certain State funds available to local education agencies in order to ensure that students meet or exceed the Illinois Learning Standards in mathematics and science. The State Board of Education shall administer a Mathematics and Science Block Grant Program and award Program funds to eligible recipients upon application. As used in this Section, "school district" shall include those schools designated as "laboratory schools".

(Source: P.A. 93-50, § 5.)

Effective Date. Section 99 of P.A. 93-50 made this Article effective July 1, 2003.

§ 105 ILCS 5/1G-5. Authorized Uses

Sec. 1G-5. Authorized Uses. Mathematics and Science Block Grant Program funds shall be used in the following manner consistent with application requirements established by the State Board of Education as provided in Section 1G-15 of this Article [105 ILCS 5/1G-15]:

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(1) To expand learning opportunities in grades kindergarten through 8, to ensure that every student meets the Illinois Learning Standards for mathematics, as defined by the learning benchmarks and relevant performance standards for middle and junior high schools, by the end of eighth grade, including standards related to number sense, estimation and measurement, algebra and analytical methods, geometry, data analysis, and probability;

(2) To expand learning opportunities in grades kindergarten through 8, to ensure that every student meets the Illinois Learning Standards for science, as defined by the learning benchmarks and relevant performance standards for middle and junior high schools, by the end of eighth grade, including standards related to inquiry and design; concepts and principles of science; and science, technology, and society;

(3) To train and retrain teachers of grades kindergarten through 12 to be more proficient in the teaching of mathematics and science by providing professional development opportunities;

(4) To improve curriculum, instruction, and assessment relevant to the Illinois Learning Standards for grades kindergarten through 12; and

(5) To supply classrooms with materials and equipment related to the teaching and learning of mathematics and science.

(Source: P.A. 93-50, § 5.)

§ 105 ILCS 5/1G-10. Allocation

Sec. 1G-10. Allocation. Mathematics and Science Block Grant Program funds shall be distributed to school districts, subject to appropriation and based upon rules established by the State Board of Education. Distribution of moneys to school districts shall be made in semi-annual installment payments, one payment to be made on or before October 30, and one payment to be made prior to April 30 of each year.

(Source: P.A. 93-50, § 5.)

§ 105 ILCS 5/1G-15. Application

Sec. 1G-15. Application. Mathematics and Science Block Grant Program funds shall be made available to each eligible school district upon completion of an application process that is consistent with rules established by the State Board of Education. The application

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shall include the planned use of the funds.

(Source: P.A. 93-50, § 5.)

§ 105 ILCS 5/1G-20. Rules

Sec. 1G-20. Rules. The State Board of Education shall adopt rules as may be necessary to implement the provisions of this Article.

(Source: P.A. 93-50, § 5.)

§ 105 ILCS 5/1G-99. Effective date

Sec. 1G-99. Effective date. This Act takes effect July 1, 2003.

(Source: P.A. 93-50, § 99.)

Article 1H.

Financial Oversight Panels

§ 105 ILCS 5/1H-1. Short title

Sec. 1H-1. Short title. This Article may be cited as the Financial Oversight Panel Law.

(Source: P.A. 97-429, § 15.)

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Effective Date. Section 99 of P.A. 97-429 made this Article effective upon becoming law. The Act was approved August 16, 2011.

§ 105 ILCS 5/1H-5. Findings; purpose; intent

Sec. 1H-5. Findings; purpose; intent. (a) The General Assembly finds all of the following:

(1) A fundamental goal of the people of this State, as expressed in Section 1 of Article X of the Illinois Constitution [Illinois Const., Art. X, § 1], is the educational development of all persons to the limits of their capacities. When a board of education faces financial difficulties, continued operation of the public school system is threatened.

(2) A sound financial structure is essential to the continued operation of any school system. It is vital to commercial, educational, and cultural interests that public schools remain in operation. To achieve that goal, public school systems must have effective access to the private market to borrow short and long term funds.

(3) To promote the financial integrity of districts, as defined in this Article, it is necessary to provide for the creation of financial oversight panels with the powers necessary to promote sound financial management and to ensure the continued operation of the public schools.

(b) It is the purpose of this Article to provide a secure financial basis for the continued operation of public schools. The intention of the General Assembly, in creating this Article, is to establish procedures, provide powers, and impose restrictions to ensure the financial and educational integrity of public school districts, while leaving principal responsibility for the educational policies of public schools to their boards of education, consistent with the requirements for satisfying the public policy and purpose set forth in this Article.

(Source: P.A. 97-429, § 15.)

§ 105 ILCS 5/1H-10. Definitions

Sec. 1H-10. Definitions. As used in this Article:

"Budget" means the annual budget of the district required under Section 17-1 of this Code [105 ILCS 5/17-1], as in effect from time to time.

"Chairperson" means the Chairperson of the Panel.

"District" means any school district having a population of not more than 500,000 that has had a Financial Oversight Panel established under this Article.

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"Financial plan" means the financial plan of the district to be developed pursuant to this Article, as in effect from time to time.

"Fiscal year" means the fiscal year of the district.

"Obligations" means notes or other short-term debts or liabilities of the Panel.

"Panel" means a Financial Oversight Panel created under this Article.

"State Board" means the State Board of Education.

"State Superintendent" means the State Superintendent of Education.

(Source: P.A. 97-429, § 15.)

§ 105 ILCS 5/1H-15. Establishment of Financial Oversight Panels; duties of district

Sec. 1H-15. Establishment of Financial Oversight Panels; duties of district. (a) A school district may petition the State Board for the establishment of a Financial Oversight Panel for the district or the State Board may establish a Panel without a petition from the district. The petition shall cite the reasons why the creation of a Financial Oversight Panel for the district is necessary. In determining whether or not to place a district under a Panel, the State Board shall consider all of the following:

(1) If a Panel is in the best educational and financial interests of the district.

(2) If a Panel is in the best interest of other schools in the area and the educational welfare of all the pupils therein.

(3) Whether the board of education has complied with the requirements of Section 1A-8 of this Code [105 ILCS 5/1A-8].

(b) Upon establishment of a Financial Oversight Panel, all of the following shall occur:

(1) There is established a body both corporate and politic to be known as the "(Name of School District) Financial Oversight Panel", which in this name shall exercise all authority vested in a Panel by this Article.

(2) The powers and duties of a Financial Oversight Panel established pursuant to this Article shall include the duties and obligations of financial oversight panels established under Article 1B of this Code [105 ILCS 5/1B-1 et seq.], in addition to any duties and obligations established under this Article. However, if there is any conflict between the provisions of this Article and the provisions of Article 1B of this Code, the provisions of this Article control.

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(3) The Financial Oversight Panel, the school board, and the district superintendent or chief executive officer shall develop goals and objectives to assist the district in obtaining financial stability. The goals and objectives must be developed as part of the financial plan that the school board is required to develop, adopt, and submit to the Panel in accordance with Section 1B-12 of this Code [105 ILCS 5/1B-12]. The goals and objectives must be formally reviewed at agreed to intervals, but at least one time per year. Review shall include progress made and recommendations and modifications needed to achieve abolition of financial oversight provided for under Section 1H-115 of this Code [105 ILCS 5/1H-115].

(c) Any school district having a Financial Oversight Panel established under Article 1B of this Code or any Financial Oversight Panel established under Article 1B may petition the State Board for the establishment of a Financial Oversight Panel under this Article and concurrent dissolution of the Article 1B Panel. All records, papers, books, funds, or other assets or liabilities belonging to the dissolving Financial Oversight Panel shall be transferred to the newly established Financial Oversight Panel.

(Source: P.A. 97-429, § 15.)

§ 105 ILCS 5/1H-20. Members of Panel; meetings

Sec. 1H-20. Members of Panel; meetings. (a) Upon establishment of a Financial Oversight Panel under Section 1H-15 of this Code [105 ILCS 5/1H-15], the State Superintendent shall within 15 working days thereafter appoint 5 members to serve on a Financial Oversight Panel for the district. Members appointed to the Panel shall serve at the pleasure of the State Superintendent. The State Superintendent shall designate one of the members of the Panel to serve as its Chairperson. In the event of vacancy or resignation, the State Superintendent shall, within 10 days after receiving notice, appoint a successor to serve out that member's term.

(b) Members of the Panel shall be selected primarily on the basis of their experience and education in financial management, with consideration given to persons knowledgeable in education finance. Two members of the Panel shall be residents of the school district that the Panel serves. A member of the Panel may not be a member of the district's school board or an employee of the district nor may a member have a direct financial interest in the district.

(c) Panel members may be reimbursed by the State Board for travel and other necessary expenses incurred in the performance of their official duties. The amount reimbursed members for their expenses shall be charged to the school district as part of any emergency financial assistance and incorporated as a part of the terms and conditions for repayment of the assistance or shall be deducted from the district's general State aid as provided in Section 1H-65 of this Code [105 ILCS 5/1H-65].

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(d) With the exception of the chairperson, who shall be designated as provided in subsection (a) of this Section, the Panel may elect such officers as it deems appropriate.

(e) The first meeting of the Panel shall be held at the call of the Chairperson. The Panel shall prescribe the times and places for its meetings and the manner in which regular and special meetings may be called and shall comply with the Open Meetings Act [5 ILCS 120/1 et seq.]. The Panel shall also comply with the Freedom of Information Act [5 ILCS 140/1 et seq.].

(f) Three members of the Panel shall constitute a quorum. A majority of members present is required to pass a measure.

(Source: P.A. 97-429, § 15.)

§ 105 ILCS 5/1H-25. General powers

Sec. 1H-25. General powers. (a) The purposes of the Panel shall be to exercise financial control over the district and to furnish financial assistance so that the district can provide public education within the district's jurisdiction while permitting the district to meet its obligations to its creditors and the holders of its debt. Except as expressly limited by this Article, the Panel shall have all powers granted to a voluntary or involuntary Financial Oversight Panel and to a Financial Administrator under Article 1B of this Code [105 ILCS 5/1B-1 et seq.] and all other powers necessary to meet its responsibilities and to carry out its purposes and the purposes of this Article, including without limitation all of the following powers, provided that the Panel shall have no power to terminate an employee without following the statutory procedures for such terminations set forth in this Code:

(1) To sue and to be sued.

(2) To determine at a regular or special meeting that the district has insufficient or inadequate funds or other financial resources with respect to any contract (other than collective bargaining agreements), leases, subleases, and other instruments or agreements applicable to or binding upon the school board, and to make, cancel, modify, or execute contracts (other than collective bargaining agreements), leases, subleases, and all other instruments or agreements necessary, convenient, or otherwise beneficial to the district and consistent with the powers and functions granted by this Article or other applicable law.

(3) To lease or purchase real or personal property necessary or convenient for its purposes; to execute and deliver deeds for real property held in its own name; and to sell, lease, or otherwise dispose of such of its property as, in the judgment of the Panel, is no longer necessary for its purposes.

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(4) To employ officers, agents, and employees of the Panel, to define their duties and qualifications, and to fix their compensation and benefits.

(5) To transfer to the district such sums of money as are not required for other purposes.

(6) To borrow money, including without limitation accepting State loans, and to issue obligations pursuant to this Article; to fund, refund, or advance refund the same; to provide for the rights of the holders of its obligations; and to repay any advances.

(7) To levy all property tax levies that otherwise could be levied by the district if the district fails to certify and return the certificate of tax levy to the county clerk on or before the first Tuesday in November, and to make levies pursuant to Section 1H-65 of this Code [105 ILCS 5/1H-65].

(8) Subject to the provisions of any contract with or for the benefit of the holders of its obligations, to purchase or redeem its obligations.

(9) To procure all necessary goods and services for the Panel in compliance with the purchasing laws and requirements applicable to the district.

(10) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given to it by this Article.

(11) To recommend any type of reorganization of the district, in whole or in part, pursuant to Article 7 or 11E of this Code [105 ILCS 5/7-01 et seq. or 105 ILCS 5/11E-5 et seq.] or Section 10-22.22b or 10-22.22c of this Code [105 ILCS 5/10-22.22b or 105 ILCS 5/10-22.22c] to the General Assembly if in the Panel's judgment the circumstances so require.

(b) Notwithstanding the provisions of subsection (a) of this Section, the Panel shall have no power to do any of the following:

(1) Unilaterally cancel or modify any collective bargaining agreement in force upon the date of creation of the Panel.

(2) Lease, sublease, buy, build, or otherwise acquire any additional school buildings or grounds for or on behalf of the district without prior approval by referendum held pursuant to Section 19-2 or 19-3 of this Code [105 ILCS 5/19-2 or 105 ILCS 5/19-3].

(3) Authorize payments for or incur any debt for any additional school buildings or grounds as specified in subdivision (2) of this subsection (b) without prior approval via referendum pursuant to the provisions of Sections 19-2 through 19-7 of this Code [105 ILCS 5/19-2 through 105 ILCS 5/19-7], the provisions of Section 10-22.36 of this Code [105 ILCS 5/10-22.36] to the contrary notwithstanding.

(Source: P.A. 97-429, § 15.)

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§ 105 ILCS 5/1H-30. Employees

Sec. 1H-30. Employees. The Panel may employ individuals under this Section if it is so warranted. These individuals may include any of the following:

(1) A chief executive officer who shall supervise the Panel's staff, including the chief educational officer and the chief fiscal officer, and shall have ultimate responsibility for implementing the policies, procedures, directives, and decisions of the Panel. The chief executive officer shall have the authority to determine the agenda and order of business at school board meetings, as needed in order to carry forward and implement the objectives and priorities of the school board and Financial Oversight Panel in the administration and management of the district. This individual is not required to hold any certificate issued under Article 21 of this Code [105 ILCS 5/21-1a et seq.]. The chief executive officer shall have the powers and duties as assigned by the Panel in accordance with this Code.

(2) A chief educational officer, who may be employed by the Panel if there is no superintendent in the district or if the Panel, at a regular or special meeting, finds that cause exists to cancel the contract of the district's superintendent who is serving at the time the Panel is established. Cancellation of an existing superintendent contract may be done only pursuant to the same requirements and in the same manner as the school board may cancel the contract. A chief educational officer employed under this subdivision (2) shall have the powers and duties of a school district superintendent under this Code and such other duties as may be assigned by the Panel in accordance with this Code.

(3) A chief fiscal officer, who may be employed by the Panel. This individual shall be under the direction of the Panel or the chief executive officer employed by the Panel and shall have all of the powers and duties of the district's chief school business official and any other duties regarding budgeting, accounting, and other financial matters that are assigned by the Panel, in accordance with this Code.

(4) A superintendent, who shall be under the direction of the Panel or the chief executive officer employed by the Panel and shall have all of the powers and duties of a school district superintendent under this Code assigned by the Panel and such other duties as may be assigned by the Panel in accordance with this Code.

(5) A chief school business official, who shall have all of the powers and duties of a chief school business official under this Code assigned by the Panel and such other duties as may be assigned by the Panel in accordance with this Code.

An individual employed by the Panel as a superintendent or a chief school business official under this Section must hold the appropriate certification for these positions. Individuals employed by the Panel as a chief executive officer, chief educational officer, or chief fiscal officer under this Section are not required to hold certification. A chief educational officer under this Section must not be employed by the Panel during a period a superintendent is employed by the district and a chief fiscal officer under this Section must not be employed by the Panel during a period a chief school business official is employed by the district.

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Individuals employed under subdivision (2), (3), (4), or (5) of this Section shall report to the Panel or to the chief executive officer under this Section if there is one.

(Source: P.A. 97-429, § 15.)

§ 105 ILCS 5/1H-35. School treasurer

Sec. 1H-35. School treasurer. (a) In Class I county school units and in each district that forms part of a Class II county school unit but that has withdrawn from the jurisdiction and authority of the trustees of schools of the township in which the district is located and from the jurisdiction and authority of the township treasurer in the Class II county school unit, the Panel may, in its discretion, remove the treasurer appointed or elected by the school board of the district and appoint a new treasurer to succeed the removed treasurer as provided in Section 8-19 of this Code [105 ILCS 5/8-19].

(b) In the case of a district located in a Class II county school unit where such district is subject to the jurisdiction and authority of township trustees and the jurisdiction and authority of the township treasurer, the Panel may require production of bank reconciliations and other reports or statements as required under Sections 8-6 and 8-13 through 8-15 of this Code [105 ILCS 5/8-6 and 105 ILCS 5/8-13 through 105 ILCS 5/8-15].

(c) All school treasurers appointed or elected pursuant to this Section shall be subject to the provisions of Sections 8-2 through 8-20 and other applicable provisions of the School Code [105 ILCS 5/8-2 through 105 ILCS 5/8-20].

(Source: P.A. 97-429, § 15.)

§ 105 ILCS 5/1H-45. Collective bargaining agreements

Sec. 1H-45. Collective bargaining agreements. In conjunction with the district, the Panel shall have the power to negotiate collective bargaining agreements with the district's employees. Upon union ratification, the district and the Panel shall execute the agreements negotiated by the Panel, and the district shall be bound by and shall administer the agreements in all respects as if the agreements had been negotiated by the district itself.

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(Source: P.A. 97-429, § 15.)

§ 105 ILCS 5/1H-50. Deposits and investments

Sec. 1H-50. Deposits and investments. (a) The Panel shall have the power to establish checking and whatever other banking accounts it may deem appropriate for conducting its affairs.

(b) Subject to the provisions of any contract with or for the benefit of the holders of its obligations, the Panel may invest any funds not required for immediate use or disbursement, as provided in the Public Funds Investment Act [30 ILCS 235/0.01 et seq.].

(Source: P.A. 97-429, § 15.)

§ 105 ILCS 5/1H-55. Cash accounts and bank accounts

Sec. 1H-55. Cash accounts and bank accounts. (a) The Panel shall require the district or any officer of the district, including the district's treasurer, to establish and maintain separate cash accounts and separate bank accounts in accordance with such rules, standards, and procedures as the Panel may prescribe.

(b) The Panel shall have the power to assume exclusive administration of the cash accounts and bank accounts of the district, to establish and maintain whatever new cash accounts and bank accounts it may deem appropriate, and to withdraw funds from these accounts for the lawful expenditures of the district.

(Source: P.A. 97-429, § 15.)

§ 105 ILCS 5/1H-60. Financial, management, and budgetary structure

Sec. 1H-60. Financial, management, and budgetary structure. Upon direction of the Panel, the district shall reorganize the financial accounts, management, and budgetary systems of the district in a manner consistent with rules adopted by the State Board regarding accounting, budgeting, financial reporting, and auditing as the Panel deems appropriate to remedy the conditions that led the Panel to be created and to achieve

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greater financial responsibility and to reduce financial inefficiency.

(Source: P.A. 97-429, § 15.)

§ 105 ILCS 5/1H-65. School district emergency financial assistance; grants and loans

Sec. 1H-65. School district emergency financial assistance; grants and loans. The Panel may prepare and file with the State Superintendent a proposal for emergency financial assistance for the school district and for the operations budget of the Panel, in accordance with Section 1B-8 of this Code [105 ILCS 5/1B-8]. A school district may receive both a loan and a grant.

(Source: P.A. 97-429, § 15.)

§ 105 ILCS 5/1H-70. Tax anticipation warrants, tax anticipation notes, revenue anticipation certificates or notes, general State aid anticipation certificates, and lines of credit

Sec. 1H-70. Tax anticipation warrants, tax anticipation notes, revenue anticipation certificates or notes, general State aid anticipation certificates, and lines of credit. With the approval of the State Superintendent and provided that the district is unable to secure short-term financing after 3 attempts, a Panel shall have the same power as a district to do the following:

(1) issue tax anticipation warrants under the provisions of Section 17-16 of this Code [105 ILCS 5/17-16] against taxes levied by either the school board or the Panel pursuant to Section 1H-25 of this Code [105 ILCS 5/1H-25];

(2) issue tax anticipation notes under the provisions of the Tax Anticipation Note Act against taxes levied by either the school board or the Panel pursuant to Section 1H-25 of this Code;

(3) issue revenue anticipation certificates or notes under the provisions of the Revenue Anticipation Act [50 ILCS 425/0.01 et seq.];

(4) issue general State aid anticipation certificates under the provisions of Section 18-18 of this Code [105 ILCS 5/18-18]; and

(5) establish and utilize lines of credit under the provisions of Section 17-17 of this Code [105 ILCS 5/17-17].

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Tax anticipation warrants, tax anticipation notes, revenue anticipation certificates or notes, general State aid anticipation certificates, and lines of credit are considered borrowing from sources other than the State and are subject to Section 1H-65 of this Code [105 ILCS 5/1H-65].

(Source: P.A. 97-429, § 15.)

§ 105 ILCS 5/1H-75. Tax for emergency Financial Oversight Panel financial aid

Sec. 1H-75. Tax for emergency Financial Oversight Panel financial aid. If the Panel is unable to secure short-term borrowing pursuant to Section 1H-70 of this Code [105 ILCS 5/1H-70], the Panel:

(1) based upon an original or amended budget filed by a Financial Oversight Panel and approved by the State Board of Education, may levy a one-time-only tax, in an amount not to exceed 75% of the amount expended by the school district subject to the oversight of the Panel in the immediately preceding year for educational, operations and maintenance, transportation, and municipal retirement purposes; as reflected in the most recently filed annual financial report, and as adjusted by the CPI most recently under the Property Tax Extension Limitation Law [35 ILCS 200/18-185 et seq.];

(2) following approval by the State Board of Education, shall file a certificate of tax levy with the county clerk or clerks with whom the school district must file tax levies, such taxes to be extended against all the property of the school district upon the value of the taxable property within its territory, as equalized or assessed by the Department of Revenue; and

(3) may issue warrants, or may provide a fund to meet the expenses by issuing and disposing of warrants, drawn against and in anticipation of the tax levied pursuant to this Section, for the payment of the necessary expenses of the district, either for transportation, educational, or all operations and maintenance purposes or for payments to the Illinois Municipal Retirement Fund, as the case may be, to the extent of 75% of the total amount of the tax so levied. The warrants shall show upon their face that they are payable in the numerical order of their issuance solely from such taxes when collected, and shall be received by any collector of taxes in payment of the taxes against which they are issued, and such taxes shall be set apart and held for their payment; every warrant shall bear interest, payable only out of the taxes against which it is drawn, at a rate not exceeding the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, if issued before July 1, 1971 and if issued thereafter at the rate of not to exceed the maximum rate authorized by the Bond Authorization Act, as amended at the time of the making of the contract, from the date of its issuance until paid or until notice shall be given by publication in a newspaper or otherwise that the money for its payment is available and that it will be paid on presentation, unless a lower rate of interest is specified therein, in

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which case the interest shall be computed and paid at the lower rate.

(Source: P.A. 97-429, § 15.)

§ 105 ILCS 5/1H-85. Obligations as legal investments

Sec. 1H-85. Obligations as legal investments. The obligations issued under the provisions of this Article are hereby made securities in which all public officers and bodies of this State, all political subdivisions of this State, all persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, and savings associations (including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business), and all credit unions, pension funds, administrators, and guardians who are or may be authorized to invest in bonds or in other obligations of the State may properly and legally invest funds, including capital, in their control or belonging to them. The obligations are also hereby made securities that may be deposited with and may be received by all public officers and bodies of the State, all political subdivisions of the State, and public corporations for any purpose for which the deposit of bonds or other obligations of the State is authorized.

(Source: P.A. 97-429, § 15.)

§ 105 ILCS 5/1H-90. Reports

Sec. 1H-90. Reports. The Panel, upon taking office and annually thereafter, shall prepare and submit to the State Superintendent a report that includes the audited financial statement for the preceding fiscal year prepared and audited in compliance with the provisions of Sections 3-7 and 3-15.1 of this Code [105 ILCS 5/3-7 and 105 ILCS 5/3-15.1], an approved financial plan, and a statement of the major steps necessary to accomplish the objectives of the financial plan. This report must be submitted annually by March 1 of each year and must detail information from the previous school year. The school board must be allowed to comment on the annual report of the Panel, and the comments of the school board shall be included as an appendix to such annual report of the Panel.

(Source: P.A. 97-429, § 15.)

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§ 105 ILCS 5/1H-95. Audit of Panel

Sec. 1H-95. Audit of Panel. The State Superintendent may require a separate audit of the Panel, otherwise the activities of the Panel must be included in the scope of the audit of the school district. A copy of the audit report covering the Panel must be submitted to the State Superintendent.

(Source: P.A. 97-429, § 15.)

§ 105 ILCS 5/1H-100. Assistance by State agencies, units of local government, and school districts

Sec. 1H-100. Assistance by State agencies, units of local government, and school districts. The district shall render such services to and permit the use of its facilities and resources by the Panel at no charge as may be requested by the Panel. Any State agency, unit of local government, or school district may, within its lawful powers and duties, render such services to the Panel as may be requested by the Panel. Upon request of the Panel, any State agency, unit of local government, or school district is authorized and empowered to loan to the Panel such officers and employees as the Panel may deem necessary in carrying out its functions and duties. Officers and employees so transferred shall not lose or forfeit their employment status or rights.

(Source: P.A. 97-429, § 15.)

§ 105 ILCS 5/1H-105. Property of Panel exempt from taxation

Sec. 1H-105. Property of Panel exempt from taxation. The property of the Panel is exempt from taxation.

(Source: P.A. 97-429, § 15.)

§ 105 ILCS 5/1H-110. Sanctions

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Sec. 1H-110. Sanctions. (a) No member, officer, employee, or agent of the district may commit the district to any contract or other obligation or incur any liability on behalf of the district for any purpose if the amount of the contract, obligation, or liability is in excess of the amount authorized for that purpose then available under the financial plan and budget then in effect.

(b) No member, officer, employee, or agent of the district may commit the district to any contract or other obligation on behalf of the district for the payment of money for any purpose required to be approved by the Panel unless the contract or other obligation has been approved by the Panel.

(c) No member, officer, employee, or agent of the district may take any action in violation of any valid order of the Panel, may fail or refuse to take any action required by any such order, may prepare, present, certify, or report any information, including any projections or estimates, for the Panel or any of its agents that is false or misleading, or, upon learning that any such information is false or misleading, may fail promptly to advise the Panel or its agents.

(d) In addition to any penalty or liability under any other law, any member, officer, employee, or agent of the district who violates subsection (a), (b), or (c) of this Section is subject to appropriate administrative discipline as may be imposed by the Panel, including, if warranted, suspension from duty without pay, removal from office, or termination of employment.

(Source: P.A. 97-429, § 15.)

§ 105 ILCS 5/1H-115. Abolition of Panel

Sec. 1H-115. Abolition of Panel. (a) Except as provided in subsections (b), (c), and (d) of this Section, the Panel shall be abolished 10 years after its creation.

(b) The State Board, upon recommendation of the Panel or petition of the school board, may abolish the Panel at any time after the Panel has been in existence for 3 years if no obligations of the Panel are outstanding or remain undefeased and upon investigation and finding that:

(1) none of the factors specified in Section 1A-8 of this Code [105 ILCS 5/1A-8] remain applicable to the district; and

(2) substantial achievement of the goals and objectives established pursuant to the financial plan and required under Section 1H-15 of this Code [105 ILCS 5/1H-15].

(c) The Panel of a district that otherwise meets all of the requirements for abolition of a Panel under subsection (b) of this Section except for the fact that there are outstanding financial obligations of the Panel may petition the State Board for reinstatement of all of

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the school boards powers and duties assumed by the Panel; and if approved by the State Board, then:

(1) the Panel shall continue in operation, but its powers and duties shall be limited to those necessary to manage and administer its outstanding obligations;

(2) the school board shall once again begin exercising all of the powers and duties otherwise allowed by statute; and

(3) the Panel shall be abolished as provided in subsection (a) of this Section.

(d) If the Panel of a district that otherwise meets all of the requirements for abolition of a Panel under subsection (b) of this Section, except for outstanding obligations of the Panel, then the district may petition the State Board for abolition of the Panel if the district:

(1) establishes an irrevocable trust fund, the purpose of which is to provide moneys to defease the outstanding obligations of the Panel; and

(2) issues funding bonds pursuant to the provisions of Section 19-8 and 19-9 of this Code [105 ILCS 5/19-8 and 105 ILCS 5/19-9].

A district with a Panel that falls under these provisions shall be abolished as provided in subsection (a) of this Section.

(Source: P.A. 97-429, § 15.)

§ 105 ILCS 5/1H-120. Indemnification; legal representation; limitations of actions after abolition

Sec. 1H-120. Indemnification; legal representation; limitations of actions after abolition. (a) The Panel may indemnify any member, officer, employee, or agent who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he or she was a member, officer, employee, or agent of the Panel, against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit, or proceeding) if he or she acted in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the Panel and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith in a manner that he or she reasonably believed to be in or not opposed to the best interests of the Panel and, with

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respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

To the extent that a member, officer, employee, or agent of the Panel has been successful, on the merits or otherwise, in the defense of any such action, suit, or proceeding referred to in this subsection (b) or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses, including attorney's fees, actually and reasonably incurred by him or her in connection therewith. Any such indemnification shall be made by the Panel only as authorized in the specific case, upon a determination that indemnification of the member, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct. The determination shall be made (i) by the Panel by a majority vote of a quorum consisting of members who are not parties to the action, suit, or proceeding or (ii) if such a quorum is not obtainable or, even if obtainable, a quorum of disinterested members so directs, by independent legal counsel in a written opinion.

Reasonable expenses incurred in defending an action, suit, or proceeding shall be paid by the Panel in advance of the final disposition of the action, suit, or proceeding, as authorized by the Panel in the specific case, upon receipt of an undertaking by or on behalf of the member, officer, employee, or agent to repay the amount, unless it is ultimately determined that he or she is entitled to be indemnified by the Panel as authorized in this Section.

Any member, officer, employee, or agent against whom any action, suit, or proceeding is brought may employ his or her own attorney to appear on his or her behalf.

The right to indemnification accorded by this Section shall not limit any other right to indemnification to which the member, officer, employee, or agent may be entitled. Any rights under this Section shall inure to the benefit of the heirs, executors, and administrators of any member, officer, employee, or agent of the Panel.

The Panel may purchase and maintain insurance on behalf of any person who is or was a member, officer, employee, or agent of the Panel against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Panel could have the power to indemnify him or her against liability under the provisions of this Section.

(b) The Panel shall be considered a State agency for purposes of receiving representation by the Attorney General. Members, officers, employees, and agents of the Panel shall be entitled to representation and indemnification under the State Employee Indemnification Act [5 ILCS 350/0.01 et seq.].

(c) Abolition of the Panel pursuant to Section 1H-115 of this Code [105 ILCS 5/1H-115] shall bar any remedy available against the Panel, its members, employees, or agents for any right or claim existing or any liability incurred prior to the abolition, unless the action or other proceeding is commenced prior to the expiration of 2 years after the date of the abolition.

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(Source: P.A. 97-429, § 15.)

Article 2.

State Board of Education - Powers and Duties

§ 105 ILCS 5/2-2. Oath - Bond

Sec. 2-2. Oath - Bond. Before entering upon their duties the members of the State Board of Education shall take and subscribe the oath of office prescribed by the Constitution. Such oath shall be filed with the Secretary of State.

(Source: P.A. 81-1508; 90-372, § 5-280.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-2.

Effect of Amendments. The 1997 amendment by P.A. 90-372, effective July 1, 1998, in the first sentence deleted from the end "and execute a bond in the penalty of $25,000.00 payable to the People of the State of Illinois, with sureties to be approved by the Governor, conditioned upon the faithful discharge of their duties"; and in the second sentence deleted "bond and" preceding "oath" and substituted "filed" for "deposited".

CASE NOTES

Inferior Officers

- No Oath Requirement

School directors, school trustees, school treasurers, members of boards of education of high school districts, and all other inferior school officers are not required to take an oath. People ex rel. Johnson v. Anderson, 325 Ill. 464, 156 N.E. 471 (1927).

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§ 105 ILCS 5/2-3. Powers and duties

Sec. 2-3. Powers and duties. The State Board of Education shall have the powers and duties enumerated in the subsequent sections of this article, and may delegate its authority to the State Superintendent of Education as provided in Section 1A-4 [105 ILCS 5/1A-4].

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.

§ 105 ILCS 5/2-3.1. Office - Records

Sec. 2-3.1. Office - Records. To have an office at the seat of government, and to keep a record of all matters pertaining to the business of such office.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.1.

§ 105 ILCS 5/2-3.2. Papers, reports, documents

Sec. 2-3.2. Papers, reports, documents. To file all papers, reports and public documents transmitted to it by the school officers of the several counties, for each year separately; and to keep all other public documents, books and papers relative to schools, coming into its hands as State Board of Education.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.2.

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§ 105 ILCS 5/2-3.2a. Electronic transmission and collection of data and funds

Sec. 2-3.2a. Electronic transmission and collection of data and funds. The State Board of Education may require that the transmission or collection of any document, record, form, claim, proposal, other data, or funds, between the State Board of Education and any entity doing business with the State Board of Education, be handled by electronic transmission or collection. The State Board shall establish standards for the electronic transmission and collection of data and funds, including data encryption standards, that must be used by all entities doing business with the State Board. These standards must comply with the Electronic Commerce Security Act [5 ILCS 175/1-101 et seq.].

(Source: P.A. 92-121, § 5.)

Effective Date. Section 99 of P.A. 92-121 made this section effective upon becoming law. The Act was approved July 20, 2001.

§ 105 ILCS 5/2-3.3. Supervision of public schools

Sec. 2-3.3. Supervision of public schools. To supervise all the public schools in the State.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.3.

CASE NOTES

Analysis

Broad Delegation of Power
Procedure
- Proper Parties

Broad Delegation of Power

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This section, Ill. Const. (1970), Art. X, §§ 1 and 2, 105 ILCS 5/2-3.25 and 105 ILCS 5/2-3.6 evidence a broad delegation of power to the State Board of Education and the Superintendent of Public Instruction (now State Superintendent of Education). Lenard v. Board of Educ., 57 Ill. App. 3d 853, 15 Ill. Dec. 131, 373 N.E.2d 477 (5 Dist. 1978), aff'd, 74 Ill. 2d 260, 24 Ill. Dec. 163, 384 N.E.2d 1321 (1979).

Procedure

- Proper Parties

State Board of Education was not a proper party plaintiff in action against local school district for alleged discrimination in educational program. Board of Educ. v. Illinois State Bd. of Educ., 810 F.2d 707 (7th Cir.), cert. denied, 484 U.S. 829, 108 S. Ct. 99, 98 L. Ed. 2d 60 (1987).

§ 105 ILCS 5/2-3.4: Repealed by P.A. 89-159, § 15, effective January 1, 1996.

§ 105 ILCS 5/2-3.5. Assist county superintendents

Sec. 2-3.5. Assist county superintendents. To advise and assist county superintendents of schools, addressing to them from time to time circular letters relating to the best manner of conducting schools, constructing and furnishing schoolhouses, and examining and procuring competent teachers.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.5.

§ 105 ILCS 5/2-3.6. Rules and policies

Sec. 2-3.6. Rules and policies. To make rules, in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.], that are necessary to carry into efficient and uniform effect all laws for establishing and maintaining free schools in the State. The State Board of Education may not adopt any rule or policy that alters the intent of the authorizing law or that supersedes federal or State law. The Board may not make policies affecting school districts that have the effect of rules without following the procedures of the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.].

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(Source: Laws 1961, p. 31; 93-1036, § 90.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.6.

Effect of Amendments. The 2004 amendment by P.A. 93-1036, effective September 14, 2004, rewrote the section to the extent that a detailed comparison would be impracticable.

CASE NOTES

Broad Delegation of Power

This section, Ill. Const. (1970), Art. X, §§ 1 and 2, 105 ILCS 5/2-3.25 and 105 ILCS 5/2-3.3 evidence a broad delegation of power to the State Board of Education and the Superintendent of Public Instruction (now State Superintendent of Education). Lenard v. Board of Educ., 57 Ill. App. 3d 853, 15 Ill. Dec. 131, 373 N.E.2d 477 (5 Dist. 1978), aff'd, 74 Ill. 2d 260, 24 Ill. Dec. 163, 384 N.E.2d 1321 (1979).

§ 105 ILCS 5/2-3.7. Legal adviser of school officers - Opinions

Sec. 2-3.7. Legal adviser of school officers - Opinions. To be the legal adviser of school officers, and, when requested by any school officer, to give an opinion in writing upon any question arising under the school laws of the State.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.7.

CASE NOTES

Analysis
Constitutionality
- Separation of Powers
Legal Advisers

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Persuasive Authority

Constitutionality

- Separation of Powers

This section does not purport to take from the Attorney General any of his common law duties or powers and does not violate separation of powers principles contained in Ill. Const. (1970), Art. II, § 1. Board of Educ. v. Bakalis, 54 Ill. 2d 448, 299 N.E.2d 737 (1973).

Legal Advisers

In utilizing the services of licensed attorneys as legal advisers to perform the duties imposed upon him under this section, the Superintendent of Public Instruction (now State Superintendent of Education) was not engaged in the unauthorized practice of law. Board of Educ. v. Bakalis, 54 Ill. 2d 448, 299 N.E.2d 737 (1973).

Persuasive Authority

Statutory interpretations by administrative agencies are an informed source for ascertaining legislative intent; thus, letter opinions stating the position of the legal adviser are, if not binding on courts, persuasive. Board of Educ. v. Regional Board of Sch. Trustees, 121 Ill. App. 3d 848, 77 Ill. Dec. 241, 460 N.E.2d 100 (5 Dist. 1984).

§ 105 ILCS 5/2-3.7a. Advisory committees and their composition

Sec. 2-3.7a. Advisory committees and their composition. To create, form, or appoint task forces, study committees, blue ribbon panels, commissions, or any other type of organization, by whatever name designated, to study or examine educational policy issues, problems, or concerns. Any task force, study committee, blue ribbon panel, commission, or organization created or appointed by the State Board of Education or the State Superintendent of Education after this amendatory Act takes effect shall include parents or guardians of students involved in or directly affected by the issues, problems, or concerns under study. The parents or guardians appointed to comply with this Section shall not be employed by or administratively connected with any school system or institution of higher learning in Illinois, employed by any educational collective bargaining organization within Illinois, employed by any association of school boards or school administrative officers, employed by the State Board of Education, or members of any school board or board of school trustees of any public or private school, college, university, or technical institution within Illinois.

(Source: P.A. 87-916, § 1.)

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Effective Date. Section 1 of P.A. 87-916 made this section effective upon becoming law. The Act was approved August 14, 1992.

§ 105 ILCS 5/2-3.8. Hear and determine controversies

Sec. 2-3.8. Hear and determine controversies. To hear and determine all controversies arising under the school laws of the State, coming to it by appeal from a regional superintendent of schools.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.8.

CASE NOTES

Analysis

Constitutionality
- Separation of Powers
Administrative Review

Constitutionality

- Separation of Powers

This section is not an unconstitutional delegation of judicial power in violation of Ill. Const. (1970), Art. II, § 1. Board of Educ. v. Bakalis, 54 Ill. 2d 448, 299 N.E.2d 737 (1973).

Administrative Review

Where the former teacher, in the appeal of his termination, failed to name as a defendant the Illinois State Board of Education, which was charged with hearing and determining the teacher's appeal pursuant to 105 ILCS 5/2-3.8, and the hearing officer, pursuant to 735 ILCS 5/3-107(a), failed to timely serve the State Board, under 735 ILCS 5/3-103, judicial review was unavailable under 735 ILCS 5/3-102. Jones v. Cahokia Unit Sch. Dist. No. 187, 363 Ill. App. 3d 939, 301 Ill. Dec. 1, 845 N.E.2d 866, 2006 Ill. App. LEXIS 170 (1 Dist. 2006).

§ 105 ILCS 5/2-3.9. Grant and suspend teachers' certificates

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Sec. 2-3.9. Grant and suspend teachers' certificates. Subject to the provisions of Article 21, to grant certificates to such teachers as may be found qualified to receive them and to suspend the operation of any State certificate for immorality or other unprofessional conduct.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.9.

§ 105 ILCS 5/2-3.10. Visit charitable institutions

Sec. 2-3.10. Visit charitable institutions. To visit such of the charitable institutions of the State as are educational in character, to examine their facilities for instruction, and to prescribe forms for such reports as it may desire from their superintendents.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.10.

§ 105 ILCS 5/2-3.11. Report to Governor and General Assembly

Sec. 2-3.11. Report to Governor and General Assembly. To report to the Governor and General Assembly annually on or before January 14 the condition of the schools of the State using the most recently available data.

Such annual report shall contain reports of the State Teacher Certification Board; the schools of the State charitable institutions; reports on driver education, special education, and transportation; and for such year the annual statistical reports of the State Board of Education, including the number and kinds of school districts; number of school attendance centers; number of men and women teachers; enrollment by grades; total enrollment; total days attendance; total days absence; average daily attendance; number of elementary and secondary school graduates; assessed valuation; tax levies and tax rates for various purposes; amount of teachers' orders, anticipation warrants, and bonds outstanding; and number of men and women teachers and total enrollment of private schools. The report shall give for all school districts receipts from all sources and expenditures for all purposes for each fund; the total operating expense, the per capita

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cost, and instructional expenditures; federal and state aids and reimbursements; new school buildings, and recognized schools; together with such other information and suggestions as the State Board of Education may deem important in relation to the schools and school laws and the means of promoting education throughout the state.

In this Section, "instructional expenditures" means the annual expenditures of school districts properly attributable to expenditure functions defined in rules of the State Board of Education as: 1100 (Regular Education); 1200-1220 (Special Education); 1250 (Ed. Deprived/Remedial); 1400 (Vocational Programs); 1600 (Summer School); 1650 (Gifted); 1800 (Bilingual Programs); 1900 (Truant Alternative); 2110 (Attendance and Social Work Services); 2120 (Guidance Services); 2130 (Health Services); 2140 (Psychological Services); 2150 (Speech Pathology and Audiology Services); 2190 (Other Support Services Pupils); 2210 (Improvement of Instruction); 2220 (Educational Media Services); 2230 (Assessment and Testing); 2540 (Operation and Maintenance of Plant Services); 2550 (Pupil Transportation Service); 2560 (Food Service); 4110 (Payments for Regular Programs); 4120 (Payments for Special Education Programs); 4130 (Payments for Adult Education Programs); 4140 (Payments for Vocational Education Programs); 4170 (Payments for Community College Programs); 4190 (Other payments to in-state government units); and 4200 (Other payments to out of state government units).

(Source: P.A. 84-1308; 84-1424; 93-679, § 15; 95-793, § 5; 96-734, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.11.

Effect of Amendments. The 2004 amendment by P.A. 93-679, effective June 30, 2004, inserted "and instructional expenditures" and made a related change in the last sentence of the next-to-last paragraph; and added the last paragraph.

The 2008 amendment by P.A. 95-793, effective August 8, 2008, added "Using the most recently available data" and made related changes at the beginning of the first paragraph.

The 2009 amendment by P.A. 96-734, effective August 25, 2009, deleted "for the preceding year, ending on June 30" from the end of the first paragraph; and made stylistic changes.

§ 105 ILCS 5/2-3.11b: Repealed by P.A. 94-875, § 10, effective July 1, 2006.

§ 105 ILCS 5/2-3.11c. Teacher supply and demand report

Sec. 2-3.11c. Teacher supply and demand report. Through January 1, 2009, to report annually, on or before January 1, on the relative supply and demand for education staff of

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the public schools to the Governor, to the General Assembly, and to institutions of higher education that prepare teachers, administrators, school service personnel, other certificated individuals, and other professionals employed by school districts or joint agreements. After the report due on January 1, 2009 is submitted, future reports shall be submitted once every 3 years, with the first report being submitted on or before January 1, 2012. The report shall contain the following information:

(1) the relative supply and demand for teachers, administrators, and other certificated and non-certificated personnel by field, content area, and levels;

(2) State and regional analyses of fields, content areas, and levels with an over-supply or under-supply of educators; and

(3) projections of likely high demand and low demand for educators, in a manner sufficient to advise the public, individuals, and institutions regarding career opportunities in education.

(Source: P.A. 91-102, § 5; 96-734, § 5; 97-256, § 5.)

Effective Date. Section 99 of P.A. 91-102 made this section effective July 12, 1999.

Effect of Amendments. The 2009 amendment by P.A. 96-734, effective August 25, 2009, in the introductory language, added "Through January 1, 2009" to the beginning of the first sentence and inserted the second sentence, and made a related change.

The 2011 amendment by P.A. 97-256, effective January 1, 2012, substituted "January 1, 2012" for "January 1, 2011" in the second sentence of the introductory language.

§ 105 ILCS 5/2-3.11d. Data on tests required for teacher preparation and certification

Sec. 2-3.11d. Data on tests required for teacher preparation and certification. Beginning with the effective date of this amendatory Act of the 94th General Assembly [P.A. 94-935], to collect and maintain all of the following data for each institution of higher education engaged in teacher preparation in this State:

(1) The number of individuals taking the test of basic skills under Section 21-1a of this Code [105 ILCS 5/21-1a].

(2) The number of individuals passing the test of basic skills under Section 21-1a of this Code.

(3) The total number of subject-matter tests attempted under Section 21-1a of this Code.

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(4) The total number of subject-matter tests passed under Section 21-1a of this Code. The data regarding subject-matter tests shall be reported in sum, rather than by separately listing each subject, in order to better protect the identity of the test-takers.

On or before August 1, 2007, the State Board of Education shall file with the General Assembly and the Governor and shall make available to the public a report listing the institutions of higher education engaged in teacher preparation in this State, along with the data listed in items (1) and (2) of this Section pertinent to each institution.

On or before October 1, 2012 and every 3 years thereafter, the State Board of Education shall file with the General Assembly and the Governor and shall make available to the public a report listing the institutions of higher education engaged in teacher preparation in this State, along with the data listed in items (1) through (4) of this Section pertinent to each institution.

(Source: P.A. 94-935, § 5; 96-1423, § 5.)

Effective Date. Section 99 of P.A. 94-935 made the section effective upon becoming law. The Act was approved June 26, 2006.

Effect of Amendments. The 2010 amendment by P.A. 96-1423, effective August 3, 2010, substituted "October 1, 2012" for "August 1, 2009" in the last paragraph.

§ 105 ILCS 5/2-3.12. School building code

Sec. 2-3.12. School building code. (a) To prepare for school boards with the advice of the Department of Public Health, the Capital Development Board, and the State Fire Marshal a school building code that will conserve the health and safety and general welfare of the pupils and school personnel and others who use public school facilities.

(b) Within 2 years after September 23, 1983, and every 10 years thereafter, or at such other times as the State Board of Education deems necessary or the regional superintendent so orders, each school board subject to the provisions of this Section shall again survey its school buildings and effectuate any recommendations in accordance with the procedures set forth herein.

(1) An architect or engineer licensed in the State of Illinois is required to conduct the surveys under the provisions of this Section and shall make a report of the findings of the survey titled "safety survey report" to the school board.

(2) The school board shall approve the safety survey report, including any recommendations to effectuate compliance with the code, and submit it to the Regional Superintendent.

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(3) The Regional Superintendent shall render a decision regarding approval or denial and submit the safety survey report to the State Superintendent of Education.

(4) The State Superintendent of Education shall approve or deny the report including recommendations to effectuate compliance with the code and, if approved, issue a certificate of approval.

(5) Upon receipt of the certificate of approval, the Regional Superintendent shall issue an order to effect any approved recommendations included in the report. The report shall meet all of the following requirements:

(A) Items in the report shall be prioritized.

(B) Urgent items shall be considered as those items related to life safety problems that present an immediate hazard to the safety of students.

(C) Required items shall be considered as those items that are necessary for a safe environment but present less of an immediate hazard to the safety of students.

(D) Urgent and required items shall reference a specific rule in the code authorized by this Section that is currently being violated or will be violated within the next 12 months if the violation is not remedied.

(6) The school board of each district so surveyed and receiving a report of needed recommendations to be made to maintain standards of safety and health of the pupils enrolled shall effectuate the correction of urgent items as soon as achievable to ensure the safety of the students, but in no case more than one year after the date of the State Superintendent of Education's approval of the recommendation.

(7) Required items shall be corrected in a timely manner, but in no case more than 5 years from the date of the State Superintendent of Education's approval of the recommendation.

(8) Once each year the school board shall submit a report of progress on completion of any recommendations to effectuate compliance with the code.

(c) As soon as practicable, but not later than 2 years after January 1, 1993, the State Board of Education shall combine the document known as "Efficient and Adequate Standards for the Construction of Schools" with the document known as "Building Specifications for Health and Safety in Public Schools" together with any modifications or additions that may be deemed necessary. The combined document shall be known as the "Health/Life Safety Code for Public Schools" and shall be the governing code for all facilities that house public school students or are otherwise used for public school purposes, whether such facilities are permanent or temporary and whether they are owned, leased, rented, or otherwise used by the district. Facilities owned by a school district but that are not used to house public school students or are not used for public school purposes shall be governed by separate provisions within the code authorized by this Section.

(d) The 10 year survey cycle specified in this Section shall continue to apply based upon the standards contained in the "Health/Life Safety Code for Public Schools", which shall

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specify building standards for buildings that are constructed prior to January 1, 1993 and for buildings that are constructed after that date.

(e) The "Health/Life Safety Code for Public Schools" shall be the governing code for public schools; however, the provisions of this Section shall not preclude inspection of school premises and buildings pursuant to Section 9 of the Fire Investigation Act [425 ILCS 25/9], provided that the provisions of the "Health/Life Safety Code for Public Schools", or such predecessor document authorized by this Section as may be applicable are used, and provided that those inspections are coordinated with the Regional Superintendent having jurisdiction over the public school facility.

(f) Nothing in this Section shall be construed to prohibit the State Fire Marshal or a qualified fire official to whom the State Fire Marshal has delegated his or her authority from conducting a fire safety check in a public school.

(g) The Regional Superintendent shall address any violations that are not corrected in a timely manner pursuant to subsection (b) of Section 3-14.21 of this Code [105 ILCS 5/3-14.21].

(h) Any agency having jurisdiction beyond the scope of the applicable document authorized by this Section may issue a lawful order to a school board to effectuate recommendations, and the school board receiving the order shall certify to the Regional Superintendent and the State Superintendent of Education when it has complied with the order.

(i) The State Board of Education is authorized to adopt any rules that are necessary relating to the administration and enforcement of the provisions of this Section.

(j) The code authorized by this Section shall apply only to those school districts having a population of less than 500,000 inhabitants.

(k) In this Section, a "qualified fire official" means an individual that meets the requirements of rules adopted by the State Fire Marshal in cooperation with the State Board of Education to administer this Section. These rules shall be based on recommendations made by the task force established under Section 2-3.137 of this Code [105 ILCS 5/2-3.137].

(Source: P.A. 84-1115; 87-984, § 1; 89-397, § 5; 90-811, § 5; 92-593, § 5; 94-225, § 5; 94-875, § 5; 94-1105, § 20; 95-876, § 175.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.12.

Effect of Amendments. The 1992 amendment by P.A. 87-984, effective January 1, 1993, rewrote this section to the extent that a detailed comparison would be impracticable.

The 1995 amendment by P.A. 89-397, effective August 20, 1995, deleted the sixth paragraph.

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The 1998 amendment by P.A. 90-811, effective January 26, 1999, in the tenth sentence of the third paragraph added ", but in no case more than one year after the date of the State Superintendent of Educations's approval of the recommendation", and substituted "5" for "3" in the eleventh sentence of that paragraph.

The 2002 amendment by P.A. 92-593, effective January 1, 2003, added the last three sentences of the second paragraph; and added the second, third, and fourth sentences of the sixth paragraph.

The 2005 amendment by P.A. 94-225, effective July 14, 2005, rewrote the section.

The 2006 amendment by P.A. 94-875, effective July 1, 2006, rewrote the section.

The 2007 amendment by P.A. 94-1105, effective June 1, 2007, added "(now repealed)" in the second paragraph.

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, combined earlier multiple amendments, and deleted "(now repealed)" at the end of the second paragraph.

CASE NOTES

Analysis

Constitutionality
- Delegation
Legislative Intent
- Enforcement of Fire Standards
Regulations
- Held Invalid
- Priority
Sanitation Regulations
- School Cafeterias
Statutory Construction

Constitutionality

- Delegation

The legislature's command to the superintendent to prepare "specifications for the minimum requirements which will conserve the health and safety of the pupils" is a proper delegation of administrative authority to the superintendent. Board of Educ. v. Page, 33 Ill. 2d 372, 211 N.E.2d 361 (1965).

Legislative Intent

- Enforcement of Fire Standards

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The legislature clearly meant to have the enforcement of fire standards lie with the State Fire Marshal, as well as with the school boards and the Superintendent. Board of Educ. v. Carter, 119 Ill. App. 3d 857, 75 Ill. Dec. 882, 458 N.E.2d 50 (3 Dist. 1983).

Regulations

- Held Invalid

Specifications for building safety promulgated by superintendent pursuant to this section which were considerably more voluminous and stringent than normal for school construction, which preempted the entire field of school safety regulation and purported to strike down all local codes and ordinances pertaining to school safety, were in excess of authority delegated to superintendent and were therefore invalid. Board of Educ. v. Page, 33 Ill. 2d 372, 211 N.E.2d 361 (1965).

- Priority

There is not a clear intention to have the rules and regulations promulgated by the Fire Marshal under 425 ILCS 25/9 take precedence over those promulgated by the State Board of Education under this section as to standards to be applied to school buildings; compliance with the latter regulations is sufficient. Board of Educ. v. Carter, 119 Ill. App. 3d 857, 75 Ill. Dec. 882, 458 N.E.2d 50 (3 Dist. 1983).

Sanitation Regulations

- School Cafeterias

The specific delegation of authority granted to the county board of public health to promulgate and enforce sanitation regulations which impact on the general public health implied that the authority to regulate food service operations in a school rested with the county board of health, and not with the State Board of Education under its powers, under this section, to insure proper heating, ventilating, lighting, seating, and water supply; the State Board's authority to regulate sanitation was very likely only to have been meant to extend to sanitation conditions of the building itself. County of Winnebago v. Davis, 156 Ill. App. 3d 535, 108 Ill. Dec. 717, 509 N.E.2d 143 (2 Dist. 1987).

Statutory Construction

Use of building by school board to store property on 10 to 15 percent of building's floor space, and holding events in gym of building about twice per month constituted use of building for school purposes, and therefore county building code did not apply and building was subject to Illinois Health/Life Safety Code for Public Schools, Ill. Admin. Code tit. 23, § 180.10 et seq. County of Lake v. Bd. of Educ., 325 Ill. App. 3d 694, 259 Ill. Dec. 869, 759 N.E.2d 930, 2001 Ill. App. LEXIS 845 (2 Dist. 2001).

A school district's construction of a school building under the School Code within the boundaries of a municipality was to be excepted from the Building Code of that municipality, because under rules of statutory construction, where there are two statutory provisions, one of which is general and designed to apply to cases generally, and the other of which is particular and relates only to one subject, the particular provision must prevail, and must be treated as an exception to the general provision. Board of Educ. v. City of W. Chicago, 55 Ill. App. 2d 401, 205 N.E.2d 63 (2 Dist. 1965).

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Practice Guides and Treatises.

Land Use Law (Illinois) § 13.9 Regulatory Authority in Relation to State Agencies and Units of Local Government Within Territorial Jurisdiction (IICLE).

§ 105 ILCS 5/2-3.12a: Repealed by P.A. 91-89, § 5, effective December 31, 1999.

Note.

P.A. 91-89, § 5, effective July 9, 1999, amended this section, creating the Health/Life Safety Code Advisory Committee, which had been enacted by P.A. 90-811, § 5, by changing the date on which the Committee was to report its findings and recommendations to the General Assembly from April 15, 1999, to September 1, 1999, and by changing the date for repeal of the section from May 1, 1999, to December 31, 1999. The section is set out as repealed pursuant to subsection (c) of the section, as amended.

This section was amended by P.A. 91-89, § 5 with the repeal provision in subsection (c) being changed May 1, 1999 to December 31, 1999.

§ 105 ILCS 5/2-3.13: Repealed by P.A. 96-734, § 25, effective August 25, 2009.

§ 105 ILCS 5/2-3.13a. School records; transferring students

Sec. 2-3.13a. School records; transferring students. (a) The State Board of Education shall establish and implement rules requiring all of the public schools and all private or nonpublic elementary and secondary schools located in this State, whenever any such school has a student who is transferring to any other public elementary or secondary school located in this or in any other state, to forward within 10 days of notice of the student's transfer an unofficial record of that student's grades to the school to which such student is transferring. Each public school at the same time also shall forward to the school to which the student is transferring the remainder of the student's school student records as required by the Illinois School Student Records Act [105 ILCS 10/1 et seq.]. In addition, if a student is transferring from a public school, whether located in this or any other state, from which the student has been suspended or expelled for knowingly possessing in a school building or on school grounds a weapon as defined in the Gun Free Schools Act [20 U.S.C.S. § 7151 et seq.], for knowingly possessing, selling, or delivering in a school building or on school grounds a controlled substance or cannabis, or for battering a staff member of the school, and if the period of suspension or expulsion has not expired at the time the student attempts to transfer into another public school in the same or any other school district: (i) any school student records required to be transferred shall include the date and duration of the period of suspension or expulsion; and (ii) with the exception of transfers into the Department of Juvenile Justice school district, the

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student shall not be permitted to attend class in the public school into which he or she is transferring until the student has served the entire period of the suspension or expulsion imposed by the school from which the student is transferring, provided that the school board may approve the placement of the student in an alternative school program established under Article 13A of this Code [105 ILCS 5/13A-0.5 et seq.]. A school district may adopt a policy providing that if a student is suspended or expelled for any reason from any public or private school in this or any other state, the student must complete the entire term of the suspension or expulsion before being admitted into the school district. This policy may allow placement of the student in an alternative school program established under Article 13A of this Code, if available, for the remainder of the suspension or expulsion. Each public school and each private or nonpublic elementary or secondary school in this State shall within 10 days after the student has paid all of his or her outstanding fines and fees and at its own expense forward an official transcript of the scholastic records of each student transferring from that school in strict accordance with the provisions of this Section and the rules established by the State Board of Education as herein provided.

(b) The State Board of Education shall develop a one-page standard form that Illinois school districts are required to provide to any student who is moving out of the school district and that contains the information about whether or not the student is "in good standing" and whether or not his or her medical records are up-to-date and complete. As used in this Section, "in good standing" means that the student is not being disciplined by a suspension or expulsion, but is entitled to attend classes. No school district is required to admit a new student who is transferring from another Illinois school district unless he or she can produce the standard form from the student's previous school district enrollment. No school district is required to admit a new student who is transferring from an out-of-state public school unless the parent or guardian of the student certifies in writing that the student is not currently serving a suspension or expulsion imposed by the school from which the student is transferring.

(c) The State Board of Education shall, by rule, establish a system to provide for the accurate tracking of transfer students. This system shall, at a minimum, require that a student be counted as a dropout in the calculation of a school's or school district's annual student dropout rate unless the school or school district to which the student transferred (known hereafter in this subsection (c) as the transferee school or school district) sends notification to the school or school district from which the student transferred (known hereafter in this subsection (c) as the transferor school or school district) documenting that the student has enrolled in the transferee school or school district. This notification must occur on or before July 31 following the school year during which the student withdraws from the transferor school or school district or the student shall be counted in the calculation of the transferor school's or school district's annual student dropout rate. A request by the transferee school or school district to the transferor school or school district seeking the student's academic transcripts or medical records shall be considered without limitation adequate documentation of enrollment. Each transferor school or school district shall keep documentation of such transfer students for the minimum period provided in the Illinois School Student Records Act. All records indicating the school or school district to which a student transferred are subject to the Illinois School Student

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Records Act.

(Source: P.A. 85-711; 89-261, § 5; 89-622, § 5; 89-698, § 5; 91-365, § 5; 92-64, § 5; 93-859, § 5; 94-696, § 15; 96-1423, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.13a.

Effect of Amendments. The 1995 amendment by P.A. 89-261, effective August 10, 1995, added a semicolon in the section catchline; in the first paragraph, in the second sentence, substituted "remainder of the student's school student records as required by the Illinois School Student Records Act" for "current mathematics and language arts placement levels, health records and most current set of standardized test reports"; and added the second paragraph.

The 1996 amendment by P.A. 89-622, effective August 9, 1996, in the first paragraph added the third sentence.

The 1996 amendment by P.A. 89-698, effective January 14, 1997, incorporated the amendments by P.A. 89-622; and in the first paragraph, in the third sentence, inserted "with the exception of transfers into the Department of Corrections school district".

The 1999 amendment by P.A. 91-365, effective July 30, 1999, in the first paragraph inserted "whether located in this or any other state" following "transferring from a public school" in the third sentence, added "provided that the school board may approve the placement of the student in an alternative school program established under Article 13A of this Act" at the end of the next-to-last sentence; and in the second paragraph substituted "Illinois school districts" for "school districts" in the first sentence, inserted "who is transferring from another Illinois school district" in the middle of the third sentence, and added the last sentence.

The 2001 amendment by P.A. 92-64, effective July 12, 2001, substituted "Code" for "Act" at the end of the third sentence; and inserted the fourth and fifth sentences.

The 2004 amendment by P.A. 93-859, effective January 1, 2005, revised the section heading; added the (a) and (b) subsection designations; and added subsection (c).

The 2005 amendment by P.A. 94-696, effective June 1, 2006, twice substituted "Juvenile Justice" for "Corrections" in (a)(ii).

The 2010 amendment by P.A. 96-1423, effective August 3, 2010, substituted "on or before July 31 following the school year during which the student" for "within 150 days after the date the student" in the third sentence of (c).

CASE NOTES

Reimbursement

When a youth is expelled from one school district and, while being enrolled in a residential treatment facility, receives educational services from another district, that youth is not attending a public school but receiving educational services, therefore the second district was entitled to

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reimbursement for services from expelling school district. Carbondale Community High Sch. Dist. #165 v. Herrin Community Unit Sch. Dist. #4, 303 Ill. App. 3d 656, 237 Ill. Dec. 41, 708 N.E.2d 844 (5 Dist. 1999).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Education Law," see 25 S. Ill. U. L.J. 761 (2001).

§ 105 ILCS 5/2-3.14. Representative government

Sec. 2-3.14. Representative government. To put into effect the provisions of Sections 27-3 and 27-4 [105 ILCS 5/27-3 and 105 ILCS 5/27-4] relative to representative government.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.14.

§ 105 ILCS 5/2-3.15. Designation of statistics

Sec. 2-3.15. Designation of statistics. To designate the reports relating to public schools which school officers are required to submit to the county superintendent of schools. In Class I county school units, and in each school district which forms a part of a Class II county school unit but which is not subject to the jurisdiction of the trustees of schools of any township in which such school district is located, all financial reports shall be signed by the teacher, principal or superintendent of schools.

Any person who makes a false affidavit or knowingly swears or affirms falsely to any matter or thing required by the terms of this Act to be sworn or affirmed is guilty of perjury.

(Source: P.A. 86-1441; 87-473.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.15.

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§ 105 ILCS 5/2-3.16: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/2-3.17. Information furnished by regional superintendents

Sec. 2-3.17. Information furnished by regional superintendents. To require the regional superintendent of schools to furnish the State Board with such information as it may desire to include in its report to the General Assembly.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.17.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 110.115.

§ 105 ILCS 5/2-3.17a. Financial audits by Auditor General

Sec. 2-3.17a. Financial audits by Auditor General. The Auditor General shall annually cause an audit to be made, as of June 30th of each year, of the financial statements of all accounts, funds and other moneys in the care, custody or control of the regional superintendent of schools of each educational service region in the State and of each educational service center established under Section 2-3.62 of this Code [105 ILCS 5/2-3.62] other than an educational service center serving a school district in a city having a population exceeding 500,000. The audit shall be conducted in accordance with Generally Accepted Governmental Auditing Standards and shall include an examination of supporting books and records and a representative sample of vouchers for distributions and expenditures. On February 15 of each year, the Auditor General shall notify the Legislative Audit Commission in writing of the completion or of the reasons for the noncompletion of each audit required by this Section to be made as of the preceding June 30. An audit report shall be prepared for each audit made pursuant to this Section, and all such audit reports shall be kept on file in the office of the Auditor General. Within 60 days after each audit report required to be prepared under this Section is completed, the Auditor General: (i) shall furnish a copy of such audit report to each member of the General Assembly whose legislative or representative district includes any part of the educational service region served by the regional superintendent of schools with respect to whose financial statements that audit report was prepared or any part of the area served by the educational service center that is the subject of the audit; and (ii) shall publish in a

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newspaper published in that educational service region or area served by the educational service center that is the subject of the audit a notice that the audit report has been prepared and is available for inspection during regular business hours at the office of the regional superintendent of schools of that educational service region or at the administrative office of the educational service center. Each audit shall be made in such manner as to determine, and each audit report shall be prepared in such manner as to state:

(1) The balances on hand of all accounts, funds and other moneys in the care, custody or control of the regional superintendent of schools or educational service center at the beginning of the fiscal year being audited;

(2) the amount of funds received during the fiscal year by source;

(3) the amount of funds distributed or otherwise paid by the regional superintendent of schools or educational service center to each school treasurer in his or her educational service region or area, including the purpose of such distribution or payment and the fund or account from which such distribution or payment is made;

(4) the amounts paid or otherwise disbursed by the regional superintendent of schools or educational service center - other than the amounts distributed or paid by the regional superintendent of schools or educational service center to school treasurers as described in paragraph (3) above - for all other purposes and expenditures, including the fund or account from which such payments or disbursements are made and the purpose thereof; and

(5) the balances on hand of all accounts, funds and other moneys in the care, custody or control of the regional superintendent of schools or educational service center at the end of the fiscal year being audited.

The Auditor General shall adopt rules and regulations relative to the time and manner by which the regional superintendent of schools or educational service center shall present for inspection or make available to the Auditor General, or to the agents designated by the Auditor General to make an audit and prepare an audit report pursuant to this Section, all financial statements, books, records, vouchers for distributions and expenditures, and records of accounts, funds and other moneys in the care, custody or control of the regional superintendent of schools or educational service center and required for purposes of making such audit and preparing an audit and preparing an audit report. All rules and regulations adopted by the State Board of Education under this Section before the effective date of this amendatory Act of the 92nd General Assembly [P.A. 92-544] shall continue in effect as the rules and regulations of the Auditor General, until they are modified or abolished by the Auditor General.

The Auditor General shall require the regional superintendent of schools of each educational service region or administrator of each educational service center to promptly implement all recommendations based on audit findings resulting from a violation of law made in audits prepared pursuant to this Section, unless the Auditor General, upon review, determines, with regard to any such finding, that implementation of the

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recommendation is not appropriate.

(Source: P.A. 85-1389; 86-1332; 90-802, § 5; 92-544, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.17a.

Effect of Amendments. The 1998 amendment by P.A. 90-802, effective December 15, 1998, in the first sentence of the introductory paragraph inserted "and of each educational service center established under Section 2-3.62 of this Act other than an educational service center serving a school district in a city having a population exceeding 500,000"; in item (i) of the fifth sentence of the introductory paragraph, inserted "or any part of the area served by the educational service center that is the subject of the audit", and in item (ii), inserted "or area served by the educational service center that is the subject of the audit" and "or at the administrative office of the educational service center"; inserted "or educational service center" throughout the section; in paragraph (c), inserted "or area"; and, in paragraph (f), inserted "or administrator of each educational service center".

The 2002 amendment by P.A. 92-544, effective June 12, 2002, revised the section heading; substituted "Auditor General" for references to "State Board of Education" throughout the section; in the first paragraph: in the first sentence deleted "as of June 30, 1986 and" following "audit to be made" and made a related change and substituted "Code" for "Act", in the third sentence deleted "February 15, 1991, and on" following "On" and made a related change; substituted the subdivision (1) through (5) designations for the former subdivision (a) through (e) designations and deleted the former subdivision (f) designation; and added the last sentence in the next-to-last paragraph.

§ 105 ILCS 5/2-3.17b. School Funds; payment to school districts, other education agencies, and providers

Sec. 2-3.17b. School Funds; payment to school districts, other education agencies, and providers. To prepare and send vouchers to the State Comptroller for the payment of funds due school districts, other education agencies, and providers of services for programs administered by the State Board of Education from the State school funds.

(Source: P.A. 88-641, § 10.)

Effective Date. Section 99 of P.A. 88-641 made this section effective upon becoming law. The Act was approved September 9, 1994.

§ 105 ILCS 5/2-3.19. Reports by trustees

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Sec. 2-3.19. Reports by trustees. To require the trustees of schools of each township to make, at any time, a report similar to that required of trustees of schools on or before July 15 next preceding each regular session of the General Assembly.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.19.

§ 105 ILCS 5/2-3.20. Reports - Special charter districts

Sec. 2-3.20. Reports - Special charter districts. To require annual reports from the authorities maintaining schools by authority of special charters.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.20.

§ 105 ILCS 5/2-3.21: Repealed by P.A. 95-793, § 11, effective August 8, 2008.

§ 105 ILCS 5/2-3.22. Withholding school funds or compensation of regional superintendent of schools

Sec. 2-3.22. Withholding school funds or compensation of regional superintendent of schools. To require the State Comptroller to withhold from the regional superintendent of schools the amount due the regional superintendent of schools for his compensation, until the reports, statements, books, vouchers and other records provided for in Sections 2-3.17, 2-3.17a and 3-15.8 [105 ILCS 5/2-3.17, 105 ILCS 5/2-3.17a and 105 ILCS 5/3-15.8] have been furnished.

(Source: P.A. 84-1308; 88-641, § 10.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.22.

Effect of Amendments. The 1994 amendment by P.A. 88-641, effective September 9, 1994, deleted "his educational service region from the State school fund or" preceding the second occurrence of "the regional superintendent".

§ 105 ILCS 5/2-3.23: Repealed by P.A. 90-372, § 5-280, effective July 1, 1998.

§ 105 ILCS 5/2-3.24. Withholding funds from school officer or teacher

Sec. 2-3.24. Withholding funds from school officer or teacher. To require the Comptroller, regional superintendent of schools, trustees, township treasurer, directors or other school officer to withhold from any township, district, officer or teacher any part of the common school, township or other school fund until such treasurer, officer or teacher has made all schedules, reports and returns required of him by this Act and until such officer has executed and filed all official bonds and accounted for all common school, township or other school funds which have come into his hands.

(Source: Laws 1961, p. 31; P.A. 88-641, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.24.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 110.110.

Effect of Amendments. The 1994 amendment by P.A. 88-641, effective September 9, 1994, substituted "Comptroller, regional" for "county".

§ 105 ILCS 5/2-3.25. Standards for schools

Sec. 2-3.25. Standards for schools. (a) To determine for all types of schools conducted under this Act efficient and adequate standards for the physical plant, heating, lighting, ventilation, sanitation, safety, equipment and supplies, instruction and teaching, curriculum, library, operation, maintenance, administration and supervision, and to issue, refuse to issue or revoke certificates of recognition for schools or school districts

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pursuant to standards established hereunder; to determine and establish efficient and adequate standards for approval of credit for courses given and conducted by schools outside of the regular school term.

(b) Whenever it appears that a secondary or unit school district may be unable to offer courses enabling students in grades 9 through 12 to meet the minimum preparation and admission requirements for public colleges and universities adopted by the Board of Higher Education, the State Board of Education shall assist the district in reviewing and analyzing its existing curriculum with particular reference to the educational needs of all pupils of the district and the sufficiency of existing and future revenues and payments available to the district for development of a curriculum which will provide maximum educational opportunity to pupils of the district. The review and analysis may consider achievement of this goal not only through implementation of traditional classroom methods but also through development of and participation in joint educational programs with other school districts or institutions of higher education, or alternative programs employing modern technological methods including but not limited to the use of television, telephones, computers, radio and other electronic devices.

(Source: P.A. 87-559.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.25.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 1.10, 1.100, 1.100, 1.30, 1.80, 180.30.

CASE NOTES

Analysis

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Certificates of Recognition

- Conditional Language

Where the words "probationary" or "conditional" appearing upon certificates of recognition were adopted by the Superintendent of Public Instruction (now State Superintendent of Education) as guideposts to indicate to the districts, the boards of education, and to himself the degree in which a district had met the established standards, these defining, guiding, or warning words did not detract from the fact of recognition, and the district was not deprived of any part of its apportioned share of the common-school fund for which it filed a claim. Games v. County Bd., 13 Ill. 2d 78, 147 N.E.2d 306 (1958).

Driver's Education

Although the minor alleged that the district's request and renewal applications for waiver under 105 ILCS 5/2-3.25g(c) (2008) of the Illinois School Code, 105 ILCS 5/27-23 (2008) (now repealed), which sought to increase the driver's education fees in the district to include staffing costs, were unconstitutional under the free education clause of the Illinois Constitution, Ill. Const. art. X, § 1, and were therefore invalid, 105 ILCS 5/27-23 (2008) (now repealed) provided that the school district may charge a reasonable fee, and the language of the statute must be given its plain and ordinary meaning, which illustrated that it was never intended to be free. Therefore, because driver's education was not covered by the free education clause, the $350 Drivers Education Course fee did not violate the free education clause of the Illinois Constitution and the minor's complaint against the school district was properly dismissed with prejudice. Sherman v. Twp. High Sch. Dist. 214, 404 Ill. App. 3d 1101, 344 Ill. Dec. 580, 937 N.E.2d 286, 2010 Ill. App. LEXIS 1053 (1 Dist. 2010).

Order of Nonrecognition

A letter from the Director of Recognition of the office of the State Superintendent of Public Instruction (now State Superintendent of Education) to a county superintendent of educational service region did not constitute an order of nonrecognition from the State Superintendent where there was no statement that the State Superintendent made a finding based on the report of the visitation team or that, if he did make such a finding, it was communicated by him to the district involved; the Director of Recognition of the State Superintendent's office is not the State Superintendent whose action is required under the statute. Puckett v. County Bd. of Sch. Trustees, 36 Ill. App. 3d 535, 344 N.E.2d 487 (5 Dist. 1976).

Racial Desegregation

Nowhere in this section is the Board of Education granted express authority to determine standards for racial desegregation, and the fact that the Board may set standards for the "operation, maintenance, administration and supervision" of schools does not imply such authority. Aurora E. Pub. Sch. v. Cronin, 92 Ill. 2d 313, 66 Ill. Dec. 85, 442 N.E.2d 511 (1982).

Sanitation Regulations

- School Cafeterias

The specific delegation of authority granted to the county board of public health to promulgate and enforce sanitation regulations which impact on the general public health implied that the authority to regulate food service operations in a school rested with the county board of health,

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and not with the State Board of Education; the school board's authority to regulate sanitation was very likely only to have been meant to extend to sanitation conditions of the building itself. County of Winnebago v. Davis, 156 Ill. App. 3d 535, 108 Ill. Dec. 717, 509 N.E.2d 143 (2 Dist. 1987).

Scope of Authority

Illinois State Board of Education's requirements under the waiver provision, 105 ILCS 5/2-3.25g(d) (2008) were explicit and simple: The Board shall review the applications and requests for completeness and shall compile the requests in reports to be filed with the General Assembly; therefore, the plain and ordinary meaning of the waiver provision required the Board to ensure the school district's proper documentation was in order before submitting the waiver application to the General Assembly. The Board did not have the obligation to reject the school district's waiver request for anything other than completeness and that completeness review did not warrant consideration of Ill. Adm. Code tit. 23, § 252.30(a)(3); therefore, the appellate court affirmed the dismissal of the minor's claim pursuant to 735 ILCS 5/2-615 because the Board was not a proper party defendant. Sherman v. Twp. High Sch. Dist. 214, 404 Ill. App. 3d 1101, 344 Ill. Dec. 580, 937 N.E.2d 286, 2010 Ill. App. LEXIS 1053 (1 Dist. 2010).

This section, Ill. Const. (1970), Art. X, §§ 1 and 2, 105 ILCS 5/2-3.3 and 105 ILCS 5/2-3.6 evidence a broad delegation of power to the State Board of Education and the Superintendent of Public Instruction (now the State Superintendent of Education). Lenard v. Board of Educ., 57 Ill. App. 3d 853, 15 Ill. Dec. 131, 373 N.E.2d 477 (5 Dist. 1978), aff'd, 74 Ill. 2d 260, 24 Ill. Dec. 163, 384 N.E.2d 1321 (1979).

Training of Teachers

Under this section, the Superintendent of Public Instruction (now the State Superintendent of Education) had authority to promulgate a regulation that required that secondary and certain upper elementary teachers have a specific minimum number of semester hours in each field to be taught. Lenard v. Board of Educ., 74 Ill. 2d 260, 24 Ill. Dec. 163, 384 N.E.2d 1321 (1979).

By fair implication and intendment, the Office of the Superintendent of Public Instruction (now the State Superintendent of Education) had the authority to enact regulations governing the educational requirements for public elementary and secondary school teachers for the areas of their teaching assignments. Lenard v. Board of Educ., 57 Ill. App. 3d 853, 15 Ill. Dec. 131, 373 N.E.2d 477 (5 Dist. 1978), aff'd, 74 Ill. 2d 260, 24 Ill. Dec. 163, 384 N.E.2d 1321 (1979).

§ 105 ILCS 5/2-3.25a. "School district" defined; additional standards

Sec. 2-3.25a. "School district" defined; additional standards. (a) For the purposes of this Section and Sections 3.25b, 3.25c, 3.25d, 3.25e, and 3.25f of this Code [105 ILCS 5/2-3.25b, 105 ILCS 5/2-3.25c, 105 ILCS 5/2-3.25d, 105 ILCS 5/2-3.25e (repealed), and 105 ILCS 5/2-3.25f], "school district" includes other public entities responsible for administering public schools, such as cooperatives, joint agreements, charter schools, special charter districts, regional offices of education, local agencies, and the Department of Human Services.

(b) In addition to the standards established pursuant to Section 2-3.25 [105 ILCS 5/2-3.25], the State Board of Education shall develop recognition standards for student performance and school improvement in all public schools operated by school districts.

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The indicators to determine adequate yearly progress shall be limited to the State assessment of student performance in reading and mathematics, student attendance rates at the elementary school level, graduation rates at the high school level, and participation rates on student assessments. The standards shall be designed to permit the measurement of student performance and school improvement by schools and school districts compared to student performance and school improvement for the preceding academic years.

(Source: P.A. 87-559; 89-398, § 5; 93-470, § 5; 94-666, § 5; 96-734, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.25a.

Section 105 ILCS 5/2-3.25e, referred to in subsection (a), has been repealed.

Cross References.

As to non-waivability of provisions, see 105 ILCS 5/34-8.14.

Effect of Amendments. The 1995 amendment by P.A. 89-398, effective August 20, 1995, added the second paragraph.

The 2003 amendment by P.A. 93-470, effective August 8, 2003, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2005 amendment by P.A. 94-666, effective August 23, 2005, added the third sentence in (b).

The 2009 amendment by P.A. 96-734, effective August 25, 2009, deleted the former third sentence of (b) which read: "Unless the federal government formally disapproves of such policy through the submission and review process for the Illinois Accountability Workbook, the indicators to determine adequate yearly progress for children with disabilities shall be based on their individualized education plans."

§ 105 ILCS 5/2-3.25b. Recognition levels

Sec. 2-3.25b. Recognition levels. The State Board of Education shall, consistent with adopted recognition standards, provide for levels of recognition or nonrecognition. The State Board of Education shall promulgate rules governing the procedures whereby school districts may appeal a recognition level.

The State Board of Education shall have the authority to collect from schools and school districts the information, data, test results, student performance and school improvement indicators as may be necessary to implement and carry out the purposes of this Act. Schools and school districts that fail to submit accurate data within the State Board of

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Education's timeframes may have federal funds withheld.

(Source: P.A. 87-559; 89-398, § 5; 93-470, § 5; 96-734, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.25b.

Cross References.

As to non-waivability of provisions, see 105 ILCS 5/34-8.14.

Effect of Amendments. The 1995 amendment by P.A. 89-398, effective August 20, 1995, in the second paragraph added at the beginning "Subject to the provisions of Section 2-3.25k".

The 2003 amendment by P.A. 93-470, effective August 8, 2003, in the second paragraph, deleted "Subject to the provisions of Section 2-3.25k" at the beginning, and inserted "schools and" preceding "school districts".

The 2009 amendment by P.A. 96-734, effective August 25, 2009, added the second sentence of the second paragraph.

§ 105 ILCS 5/2-3.25c. Rewards and acknowledgements

Sec. 2-3.25c. Rewards and acknowledgements. The State Board of Education shall implement a system of rewards for school districts, and the schools themselves, whose students and schools consistently meet adequate yearly progress criteria for 2 or more consecutive years and a system to acknowledge schools and districts that meet adequate yearly progress criteria in a given year as specified in Section 2-3.25d of this Code [105 ILCS 5/2-3.25d].

If a school or school district meets adequate yearly progress criteria for 2 consecutive school years, that school or district shall be exempt from review and approval of its improvement plan for the next 2 succeeding school years.

(Source: P.A. 87-559; 93-470, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.25c.

Cross References.

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As to non-waivability of provisions, see 105 ILCS 5/34-8.14.

Effect of Amendments. The 2003 amendment by P.A. 93-470, effective August 8, 2003, added "and acknowledgements" to the section heading; rewrote the first paragraph to the extent that a detailed comparison would be impracticable; and added the second paragraph.

§ 105 ILCS 5/2-3.25d. Academic early warning and watch status

Sec. 2-3.25d. Academic early warning and watch status. (a) Beginning with the 2005-2006 school year, unless the federal government formally disapproves of such policy through the submission and review process for the Illinois Accountability Workbook, those schools that do not meet adequate yearly progress criteria for 2 consecutive annual calculations in the same subject or in their participation rate, attendance rate, or graduation rate shall be placed on academic early warning status for the next school year. Schools on academic early warning status that do not meet adequate yearly progress criteria for a third annual calculation in the same subject or in their participation rate, attendance rate, or graduation rate shall remain on academic early warning status. Schools on academic early warning status that do not meet adequate yearly progress criteria for a fourth annual calculation in the same subject or in their participation rate, attendance rate, or graduation rate shall be placed on initial academic watch status. Schools on academic watch status that do not meet adequate yearly progress criteria for a fifth or subsequent annual calculation in the same subject or in their participation rate, attendance rate, or graduation rate shall remain on academic watch status. Schools on academic early warning or academic watch status that meet adequate yearly progress criteria for 2 consecutive calculations shall be considered as having met expectations and shall be removed from any status designation.

The school district of a school placed on either academic early warning status or academic watch status may appeal the status to the State Board of Education in accordance with Section 2-3.25m of this Code [105 ILCS 5/2-3.25m].

A school district that has one or more schools on academic early warning or academic watch status shall prepare a revised School Improvement Plan or amendments thereto setting forth the district's expectations for removing each school from academic early warning or academic watch status and for improving student performance in the affected school or schools. Districts operating under Article 34 of this Code [105 ILCS 5/34-1 et seq.] may prepare the School Improvement Plan required under Section 34-2.4 of this Code [105 ILCS 5/34-2.4].

The revised School Improvement Plan for a school that is initially placed on academic early warning status or that remains on academic early warning status after a third annual calculation must be approved by the school board (and by the school's local school council in a district operating under Article 34 of this Code, unless the school is on probation pursuant to subsection (c) of Section 34-8.3 of this Code [105 ILCS 5/34-8.3]).

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The revised School Improvement Plan for a school that is initially placed on academic watch status after a fourth annual calculation must be approved by the school board (and by the school's local school council in a district operating under Article 34 of this Code, unless the school is on probation pursuant to subsection (c) of Section 34-8.3 of this Code).

The revised School Improvement Plan for a school that remains on academic watch status after a fifth annual calculation must be approved by the school board (and by the school's local school council in a district operating under Article 34 of this Code, unless the school is on probation pursuant to subsection (c) of Section 34-8.3 of this Code). In addition, the district must develop a school restructuring plan for the school that must be approved by the school board (and by the school's local school council in a district operating under Article 34 of this Code).

A school on academic watch status that does not meet adequate yearly progress criteria for a sixth annual calculation shall implement its approved school restructuring plan beginning with the next school year, subject to the State interventions specified in Section 2-3.25f of this Code [105 ILCS 5/2-3.25f].

(b) Beginning with the 2005-2006 school year, unless the federal government formally disapproves of such policy through the submission and review process for the Illinois Accountability Workbook, those school districts that do not meet adequate yearly progress criteria for 2 consecutive annual calculations in the same subject or in their participation rate, attendance rate, or graduation rate shall be placed on academic early warning status for the next school year. Districts on academic early warning status that do not meet adequate yearly progress criteria for a third annual calculation in the same subject or in their participation rate, attendance rate, or graduation rate shall remain on academic early warning status. Districts on academic early warning status that do not meet adequate yearly progress criteria for a fourth annual calculation in the same subject or in their participation rate, attendance rate, or graduation rate shall be placed on initial academic watch status. Districts on academic watch status that do not meet adequate yearly progress criteria for a fifth or subsequent annual calculation in the same subject or in their participation rate, attendance rate, or graduation rate shall remain on academic watch status. Districts on academic early warning or academic watch status that meet adequate yearly progress criteria for one annual calculation shall be considered as having met expectations and shall be removed from any status designation.

A district placed on either academic early warning status or academic watch status may appeal the status to the State Board of Education in accordance with Section 2-3.25m of this Code.

Districts on academic early warning or academic watch status shall prepare a District Improvement Plan or amendments thereto setting forth the district's expectations for removing the district from academic early warning or academic watch status and for improving student performance in the district.

All District Improvement Plans must be approved by the school board.

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(c) All revised School and District Improvement Plans shall be developed in collaboration with parents, staff in the affected school or school district, and outside experts. All revised School and District Improvement Plans shall be developed, submitted, and monitored pursuant to rules adopted by the State Board of Education. The revised Improvement Plan shall address measurable outcomes for improving student performance so that such performance meets adequate yearly progress criteria as specified by the State Board of Education. All school districts required to revise a School Improvement Plan in accordance with this Section shall establish a peer review process for the evaluation of School Improvement Plans.

(d) All federal requirements apply to schools and school districts utilizing federal funds under Title I, Part A of the federal Elementary and Secondary Education Act of 1965 [20 U.S.C. § 2981 et seq.].

(e) The State Board of Education, from any moneys it may have available for this purpose, must implement and administer a grant program that provides 2-year grants to school districts on the academic watch list and other school districts that have the lowest achieving students, as determined by the State Board of Education, to be used to improve student achievement. In order to receive a grant under this program, a school district must establish an accountability program. The accountability program must involve the use of statewide testing standards and local evaluation measures. A grant shall be automatically renewed when achievement goals are met. The Board may adopt any rules necessary to implement and administer this grant program.

(Source: P.A. 87-559; 89-398, § 5; 89-698, § 5; 93-470, § 5; 93-890, § 5; 94-666, § 5; 94-875, § 5; 96-734, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.25d.

Cross References.

As to non-waivability of provisions, see 105 ILCS 5/34-8.14.

Effect of Amendments. The 1995 amendment by P.A. 89-398, effective August 20, 1995, added the fourth paragraph.

The 1996 amendment by P.A. 89-698, effective January 14, 1997, in the first paragraph, substituted "measured by the State assessment of student performance" for "and improvement", deleted "under the criteria set forth in Section 2-3.25a" following "State Board of Education" and inserted "after serving for 2 years on the State Board of Education Early Academic Warning List".

The 2003 amendment by P.A. 93-470, effective August 8, 2003, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2004 amendment by P.A. 93-890, effective August 9, 2004, added subsection (e).

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The 2005 amendment by P.A. 94-666, effective August 23, 2005, rewrote the section.

The 2006 amendment by P.A. 94-875, effective July 1, 2006, rewrote the section, in part by deleting references to "State Superintendent of Education".

The 2009 amendment by P.A. 96-734, effective August 25, 2009, deleted "same subgroup and in the" preceding "same subject or" throughout in the first paragraph of (a) and (b); and substituted "2 consecutive calculations" for "one annual calculation" in the last sentence of the first paragraph of (a).

§ 105 ILCS 5/2-3.25e: Repealed by P.A. 94-875, § 10, effective July 1, 2006.

§ 105 ILCS 5/2-3.25f. State interventions

Sec. 2-3.25f. State interventions. (a) The State Board of Education shall provide technical assistance to assist with the development and implementation of School and District Improvement Plans.

Schools or school districts that fail to make reasonable efforts to implement an approved Improvement Plan may suffer loss of State funds by school district, attendance center, or program as the State Board of Education deems appropriate.

(a-5) In this subsection (a-5), "school" means any of the following named public schools or their successor name:

(1) Dirksen Middle School in Dolton School District 149.

(2) Diekman Elementary School in Dolton School District 149.

(3) Caroline Sibley Elementary School in Dolton School District 149.

(4) Berger-Vandenberg Elementary School in Dolton School District 149.

(5) Carol Moseley Braun School in Dolton School District 149.

(6) New Beginnings Learning Academy in Dolton School District 149.

(7) McKinley Junior High School in South Holland School District 150.

(8) Greenwood Elementary School in South Holland School District 150.

(9) McKinley Elementary School in South Holland School District 150.

(10) Eisenhower School in South Holland School District 151.

(11) Madison School in South Holland School District 151.

(12) Taft School in South Holland School District 151.

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(13) Wolcott School in Thornton School District 154.

(14) Memorial Junior High School in Lansing School District 158.

(15) Oak Glen Elementary School in Lansing School District 158.

(16) Lester Crawl Primary Center in Lansing School District 158.

(17) Brookwood Junior High School in Brookwood School District 167.

(18) Brookwood Middle School in Brookwood School District 167.

(19) Hickory Bend Elementary School in Brookwood School District 167.

(20) Medgar Evers Primary Academic Center in Ford Heights School District 169.

(21) Nathan Hale Elementary School in Sunnybrook School District 171.

(22) Ira F. Aldridge Elementary School in City of Chicago School District 299.

(23) William E.B. DuBois Elementary School in City of Chicago School District 299.

If, after 2 years following its placement on academic watch status, a school remains on academic watch status, then, subject to federal appropriation money being available, the State Board of Education shall allow the school board to opt in the process of operating that school on a pilot full-year school plan approved by the State Board of Education upon expiration of its teachers' current collective bargaining agreement until the expiration of the next collective bargaining agreement. A school board must notify the State Board of Education of its intent to opt in the process of operating a school on a pilot full-year school plan.

(b) In addition, if after 3 years following its placement on academic watch status a school district or school remains on academic watch status, the State Board of Education shall take one of the following actions for the district or school:

(1) The State Board of Education may authorize the State Superintendent of Education to direct the regional superintendent of schools to remove school board members pursuant to Section 3-14.28 of this Code [105 ILCS 5/3-14.28]. Prior to such direction the State Board of Education shall permit members of the local board of education to present written and oral comments to the State Board of Education. The State Board of Education may direct the State Superintendent of Education to appoint an Independent Authority that shall exercise such powers and duties as may be necessary to operate a school or school district for purposes of improving pupil performance and school improvement. The State Superintendent of Education shall designate one member of the Independent Authority to serve as chairman. The Independent Authority shall serve for a period of time specified by the State Board of Education upon the recommendation of the State Superintendent of Education.

(2) The State Board of Education may (A) change the recognition status of the school district or school to nonrecognized, or (B) authorize the State Superintendent of Education to direct the reassignment of pupils or direct the reassignment or replacement

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of school district personnel who are relevant to the failure to meet adequate yearly progress criteria. If a school district is nonrecognized in its entirety, it shall automatically be dissolved on July 1 following that nonrecognition and its territory realigned with another school district or districts by the regional board of school trustees in accordance with the procedures set forth in Section 7-11 of the School Code [105 ILCS 5/7-11]. The effective date of the nonrecognition of a school shall be July 1 following the nonrecognition.

(c) All federal requirements apply to schools and school districts utilizing federal funds under Title I, Part A of the federal Elementary and Secondary Education Act of 1965.

(Source: P.A. 87-559; 89-398, § 5; 89-698, § 5; 93-470, § 5; 94-875, § 5; 97-370, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.25f.

Cross References.

As to non-waivability of provisions, see 105 ILCS 5/34-8.14.

Effect of Amendments. The 1995 amendment by P.A. 89-398, effective August 20, 1995, added the subsection (a) designation; in subsection (a) added the third paragraph; and added the subsection (b) designation.

The 1996 amendment by P.A. 89-698, effective January 14, 1997, in subsection (b), in the introductory language, substituted "2" for "4".

The 2003 amendment by P.A. 93-470, effective August 8, 2003, rewrote subsection (a) to the extent that a detailed comparison would be impracticable; in the introductory language of subsection (b), substituted "status" for "list" twice, inserted "school" preceding "district", deleted "the" preceding "academic" twice, and added "for the district or school" at the end; rewrote subsection (b)2. to the extent that a detailed comparison would be impracticable; added subsection (c); and made related stylistic changes.

The 2006 amendment by P.A. 94-875, effective July 1, 2006, in (a): deleted the former first sentence, which read: "A school or school district must submit the required revised Improvement Plan pursuant to rules adopted by the State Board of Education"; and substituted "School and District Improvement Plans" for "the improvement plan".

The 2011 amendment by P.A. 97-370, effective January 1, 2012, inserted (a-5).

§ 105 ILCS 5/2-3.25g. Waiver or modification of mandates within the School Code and administrative rules and regulations

Sec. 2-3.25g. Waiver or modification of mandates within the School Code and administrative rules and regulations. (a) In this Section:

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"Board" means a school board or the governing board or administrative district, as the case may be, for a joint agreement.

"Eligible applicant" means a school district, joint agreement made up of school districts, or regional superintendent of schools on behalf of schools and programs operated by the regional office of education.

"Implementation date" has the meaning set forth in Section 24A-2.5 of this Code [105 ILCS 5/24A-2.5].

"State Board" means the State Board of Education.

(b) Notwithstanding any other provisions of this School Code or any other law of this State to the contrary, eligible applicants may petition the State Board of Education for the waiver or modification of the mandates of this School Code or of the administrative rules and regulations promulgated by the State Board of Education. Waivers or modifications of administrative rules and regulations and modifications of mandates of this School Code may be requested when an eligible applicant demonstrates that it can address the intent of the rule or mandate in a more effective, efficient, or economical manner or when necessary to stimulate innovation or improve student performance. Waivers of mandates of the School Code may be requested when the waivers are necessary to stimulate innovation or improve student performance. Waivers may not be requested from laws, rules, and regulations pertaining to special education, teacher certification, teacher tenure and seniority, or Section 5-2.1 of this Code [105 ILCS 5/5-2.1] or from compliance with the No Child Left Behind Act of 2001 (Public Law 107-110) [20 U.S.C.S. § 6301 et seq.]. On and after the applicable implementation date, eligible applicants may not seek a waiver or seek a modification of a mandate regarding the requirements for (i) student performance data to be a significant factor in teacher or principal evaluations or (ii) for teachers and principals to be rated using the 4 categories of "excellent", "proficient", "needs improvement", or "unsatisfactory". On the applicable implementation date, any previously authorized waiver or modification from such requirements shall terminate.

(c) Eligible applicants, as a matter of inherent managerial policy, and any Independent Authority established under Section 2-3.25f [105 ILCS 5/2-3.25f] may submit an application for a waiver or modification authorized under this Section. Each application must include a written request by the eligible applicant or Independent Authority and must demonstrate that the intent of the mandate can be addressed in a more effective, efficient, or economical manner or be based upon a specific plan for improved student performance and school improvement. Any eligible applicant requesting a waiver or modification for the reason that intent of the mandate can be addressed in a more economical manner shall include in the application a fiscal analysis showing current expenditures on the mandate and projected savings resulting from the waiver or modification. Applications and plans developed by eligible applicants must be approved by the board or regional superintendent of schools applying on behalf of schools or programs operated by the regional office of education following a public hearing on the application and plan and the opportunity for the board or regional superintendent to hear testimony from staff directly involved in its implementation, parents, and students. The time period for such testimony shall be separate from the time period established by the

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eligible applicant for public comment on other matters. If the applicant is a school district or joint agreement requesting a waiver or modification of Section 27-6 of this Code [105 ILCS 5/27-6], the public hearing shall be held on a day other than the day on which a regular meeting of the board is held. If the applicant is a school district, the public hearing must be preceded by at least one published notice occurring at least 7 days prior to the hearing in a newspaper of general circulation within the school district that sets forth the time, date, place, and general subject matter of the hearing. If the applicant is a joint agreement or regional superintendent, the public hearing must be preceded by at least one published notice (setting forth the time, date, place, and general subject matter of the hearing) occurring at least 7 days prior to the hearing in a newspaper of general circulation in each school district that is a member of the joint agreement or that is served by the educational service region, provided that a notice appearing in a newspaper generally circulated in more than one school district shall be deemed to fulfill this requirement with respect to all of the affected districts. The eligible applicant must notify in writing the affected exclusive collective bargaining agent and those State legislators representing the eligible applicant's territory of its intent to seek approval of a waiver or modification and of the hearing to be held to take testimony from staff. The affected exclusive collective bargaining agents shall be notified of such public hearing at least 7 days prior to the date of the hearing and shall be allowed to attend such public hearing. The eligible applicant shall attest to compliance with all of the notification and procedural requirements set forth in this Section.

(d) A request for a waiver or modification of administrative rules and regulations or for a modification of mandates contained in this School Code shall be submitted to the State Board of Education within 15 days after approval by the board or regional superintendent of schools. The application as submitted to the State Board of Education shall include a description of the public hearing. Following receipt of the request, the State Board shall have 45 days to review the application and request. If the State Board fails to disapprove the application within that 45 day period, the waiver or modification shall be deemed granted. The State Board may disapprove any request if it is not based upon sound educational practices, endangers the health or safety of students or staff, compromises equal opportunities for learning, or fails to demonstrate that the intent of the rule or mandate can be addressed in a more effective, efficient, or economical manner or have improved student performance as a primary goal. Any request disapproved by the State Board may be appealed to the General Assembly by the eligible applicant as outlined in this Section.

A request for a waiver from mandates contained in this School Code shall be submitted to the State Board within 15 days after approval by the board or regional superintendent of schools. The application as submitted to the State Board of Education shall include a description of the public hearing. The description shall include, but need not be limited to, the means of notice, the number of people in attendance, the number of people who spoke as proponents or opponents of the waiver, a brief description of their comments, and whether there were any written statements submitted. The State Board shall review the applications and requests for completeness and shall compile the requests in reports to be filed with the General Assembly. The State Board shall file reports outlining the waivers requested by eligible applicants and appeals by eligible applicants of requests

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disapproved by the State Board with the Senate and the House of Representatives before each March 1 and October 1. The General Assembly may disapprove the report of the State Board in whole or in part within 60 calendar days after each house of the General Assembly next convenes after the report is filed by adoption of a resolution by a record vote of the majority of members elected in each house. If the General Assembly fails to disapprove any waiver request or appealed request within such 60 day period, the waiver or modification shall be deemed granted. Any resolution adopted by the General Assembly disapproving a report of the State Board in whole or in part shall be binding on the State Board.

(e) An approved waiver or modification (except a waiver from or modification to a physical education mandate) may remain in effect for a period not to exceed 5 school years and may be renewed upon application by the eligible applicant. However, such waiver or modification may be changed within that 5-year period by a board or regional superintendent of schools applying on behalf of schools or programs operated by the regional office of education following the procedure as set forth in this Section for the initial waiver or modification request. If neither the State Board of Education nor the General Assembly disapproves, the change is deemed granted.

An approved waiver from or modification to a physical education mandate may remain in effect for a period not to exceed 2 school years and may be renewed no more than 2 times upon application by the eligible applicant. An approved waiver from or modification to a physical education mandate may be changed within the 2-year period by the board or regional superintendent of schools, whichever is applicable, following the procedure set forth in this Section for the initial waiver or modification request. If neither the State Board of Education nor the General Assembly disapproves, the change is deemed granted.

(f) (Blank).

(Source: P.A. 87-559; 89-3, § 5; 89-626, § 3-17; 90-62, § 5; 90-462, § 5; 90-655, § 77; 93-470, § 5; 93-557, § 5; 93-707, § 5; 94-198, § 5; 94-432, § 5; 94-875, § 5; 95-223, § 5; 96-861, § 10; 96-1423, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.25g.

Cross References.

As to non-waivability of provisions, see 105 ILCS 5/34-8.14.

Effect of Amendments. The 1995 amendment by P.A. 89-3, effective February 27, 1995, rewrote the section.

The 1996 amendment by P.A. 89-626, effective August 9, 1996, deleted an extra period at the end of the third sentence of the first paragraph.

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The 1997 amendment by P.A. 90-62, effective July 3, 1997, added the sixth paragraph.

The 1997 amendment by P.A. 90-462, effective August 17, 1997, in the seventh sentence of the second paragraph, inserted "notified of such public hearing at least 7 days prior to the date of the hearing and shall be"; in the fourth paragraph, in the second sentence substituted "with" for "within", in the fourth sentence substituted "and" for a comma preceding "the House" and deleted "and the Secretary of State before October 1, 1995, and thereafter" following "the House of Representatives" and in the fifth sentence substituted "General Assembly" for "legislature"; and in the fifth paragraph, in the first sentence substituted "5" for "five" and added the second and third sentences.

The 1998 amendment by P.A. 90-655, effective July 30, 1998, incorporated the amendments made by P.A. 90-62 and P.A. 90-462, and in the last sentence of the section substituted "or modification" for "of modification".

The 2003 amendment by P.A. 93-470, effective August 8, 2003, added "or from compliance with the No Child Left Behind Act of 2001 (Public Law 107-110)" at the end of the first paragraph.

The 2003 amendment by P.A. 93-557, effective August 20, 2003, in the second paragraph, added the fifth and last sentence; inserted "and those State legislators representing the district holding the public hearing" in the seventh sentence; added the second sentence in the third paragraph; and added the second and third sentences in the fourth paragraph.

The 2004 amendment by P.A. 93-707, effective July 9, 2004, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2005 amendment by P.A. 94-198, effective January 1, 2006, in the last paragraph of (d), twice substituted "60" for "30", and substituted "March 1" for "May 1" in the fifth sentence.

The 2005 amendment by P.A. 94-432, effective August 2, 2005, added "or Section 5-2.1 of this Code" in the last sentence of (b).

The 2006 amendment by P.A. 94-875, effective July 1, 2006, in rewrote (c).

The 2007 amendment by P.A. 95-223, effective January 1, 2008, inserted "(except a waiver from or modification to a physical education mandate)" and added the second paragraph in (e).

The 2010 amendment by P.A. 96-861, effective January 15, 2010, added the definition of "Implementation date" in (a); and added the last sentence in (b).

The 2010 amendment by P.A. 96-1423, effective August 3, 2010, deleted the text of subsection (f).

CASE NOTES

Analysis

Constitutionality
Standing

Constitutionality

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Statute permitting schools to apply for a waiver for their physical education curriculum was not unconstitutional where it was modified in accordance with all procedural requirements for passage of bill and there was no impermissible delegation since the schools had to petition for the waiver. Reece v. Bd. of Educ., 328 Ill. App. 3d 773, 262 Ill. Dec. 935, 767 N.E.2d 395, 2002 Ill. App. LEXIS 167 (1 Dist. 2002).

Standing

Physical education teachers and taxpayers did not have standing to challenge the constitutionality of this section as the teachers had not sustained and were not in danger of sustaining a direct injury as the result of its enforcement, and as the section did not require the disbursement of public funds by an officer of the state government. Chicago Teachers Union, Local 1 v. Board of Educ. of Chicago, 189 Ill. 2d 200, 244 Ill. Dec. 26, 724 N.E.2d 914, 2000 Ill. LEXIS 10 (2000).

§ 105 ILCS 5/2-3.25h. Technical assistance; State support services

Sec. 2-3.25h. Technical assistance; State support services. Schools, school districts, local school councils, school improvement panels, and any Independent Authority established under Section 2-3.25f [105 ILCS 5/2-3.25f] may receive technical assistance that the State Board of Education shall make available. Such technical assistance shall include without limitation assistance in the areas of curriculum evaluation, the instructional process, student performance, school environment, staff effectiveness, school and community relations, parental involvement, resource management, leadership, data analysis processes and tools, school improvement plan guidance and feedback, information regarding scientifically based research-proven curriculum and instruction, and professional development opportunities for teachers and administrators.

(Source: P.A. 87-559; 93-470, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.25h.

Cross References.

As to non-waivability of provisions, see 105 ILCS 5/34-8.14.

Effect of Amendments. The 2003 amendment by P.A. 93-470, effective August 8, 2003, rewrote the section to the extent that a detailed comparison would be impracticable.

§ 105 ILCS 5/2-3.25i. Rules

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Sec. 2-3.25i. Rules. The State Board of Education shall promulgate rules and regulations necessary to implement the provisions of Public Act 87-559 and this amendatory Act of the 93rd General Assembly [P.A. 93-470]. The State Board of Education may waive any of its rules or regulations which conflict with Public Act 87-559 or this amendatory Act of the 93rd General Assembly [P.A. 93-470] except those requirements for special education and teacher certification.

(Source: P.A. 87-559; 93-470, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.25i.

Cross References.

As to non-waivability of provisions, see 105 ILCS 5/34-8.14.

Effect of Amendments. The 2003 amendment by P.A. 93-470, effective August 8, 2003, rewrote the section to the extent that a detailed comparison would be impracticable.

§ 105 ILCS 5/2-3.25j. Implementation

Sec. 2-3.25j. Implementation. Commencing with the 1992-93 school year and thereafter the provisions of this amendatory Act and any rules adopted hereunder shall be implemented on a schedule identified by the State Board of Education and incorporated as an integral part of the recognition process of the State Board of Education.

(Source: P.A. 87-559; 89-398, § 5; 93-470, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.25j.

Cross References.

As to non-waivability of provisions, see 105 ILCS 5/34-8.14.

Effect of Amendments. The 1995 amendment by P.A. 89-398, effective August 20, 1995, added the second sentence.

The 2003 amendment by P.A. 93-470, effective August 8, 2003, deleted the last sentence.

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§ 105 ILCS 5/2-3.25k: Repealed by P.A. 93-470, § 5, effective August 8, 2003.

§ 105 ILCS 5/2-3.25m. Appeals

Sec. 2-3.25m. Appeals. The appeals process outlined in this Section applies to all appeals from school districts pertaining to school or district status levels, recognition levels, or corrective action. The State Board of Education shall provide notice and an opportunity for hearing to the affected school district. The hearing shall take place not later than 30 calendar days following receipt of the written appeal. The appeals advisory committee created as specified in this Section may extend the hearing under special circumstances, in consultation with the State Superintendent of Education. The State Board of Education may take into account exceptional or uncontrollable circumstances.

The State Board of Education shall process school and district appeals through an appeals advisory committee. The committee shall be composed of 9 members appointed by the State Superintendent of Education as follows:

(1) One representative of each of 2 professional teachers' organizations.

(2) Two school administrators employed in the public schools of this State who have been nominated by an administrator organization.

(3) One member of an organization that represents school principals.

(4) One member of an organization that represents both parents and teachers.

(5) One representative of the business community of this State who has been nominated by a statewide business organization.

(6) One representative of City of Chicago School District 299.

(7) One member of the public.

Five members of the committee shall serve for terms of 2 years, and 4 members shall serve for terms of 3 years. The State Superintendent of Education shall appoint initial members on or before July 1, 2003. The committee shall annually elect one member as chairperson.

The committee shall hear appeals and, within 30 calendar days after a hearing, make recommendations for action to the State Superintendent of Education. The committee shall recommend action to the State Superintendent of Education on all appeals. The State Board of Education shall make all final determinations.

(Source: P.A. 93-470, § 5.)

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Effective Date. Section 99 of P.A. 93-470 made this section effective upon becoming law. The Act was approved August 8, 2003.

§ 105 ILCS 5/2-3.25n. No Child Left Behind Act; requirements and construction

Sec. 2-3.25n. No Child Left Behind Act; requirements and construction. (a) The changes in the State accountability system made by this amendatory Act of the 93rd General Assembly [P.A. 93-470] are a direct result of the federal No Child Left Behind Act of 2001 (Public Law 107-110), which requires that each state develop and implement a single, statewide accountability system applicable to all schools and school districts.

(b) As provided in the federal No Child Left Behind Act of 2001 (Public Law 107-110), nothing in this amendatory Act of the 93rd General Assembly [P.A. 93-470] shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school district or school employees under federal, State, or local law (including applicable rules, regulations, or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.

(Source: P.A. 93-470, § 5.)

Effective Date. Section 99 of P.A. 93-470 made this section effective upon becoming law. The Act was approved August 8, 2003.

§ 105 ILCS 5/2-3.25o. Registration and recognition of non-public elementary and secondary schools

Sec. 2-3.25o. Registration and recognition of non-public elementary and secondary schools. (a) Findings. The General Assembly finds and declares (i) that the Constitution of the State of Illinois provides that a "fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities" and (ii) that the educational development of every school student serves the public purposes of the State. In order to ensure that all Illinois students and teachers have the opportunity to enroll and work in State-approved educational institutions and programs, the State Board of Education shall provide for the voluntary registration and recognition of non-public elementary and secondary schools.

(b) Registration. All non-public elementary and secondary schools in the State of Illinois may voluntarily register with the State Board of Education on an annual basis. Registration shall be completed in conformance with procedures prescribed by the State Board of Education. Information required for registration shall include assurances of compliance (i) with federal and State laws regarding health examination and

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immunization, attendance, length of term, and nondiscrimination and (ii) with applicable fire and health safety requirements.

(c) Recognition. All non-public elementary and secondary schools in the State of Illinois may voluntarily seek the status of "Non-public School Recognition" from the State Board of Education. This status may be obtained by compliance with administrative guidelines and review procedures as prescribed by the State Board of Education. The guidelines and procedures must recognize that some of the aims and the financial bases of non-public schools are different from public schools and will not be identical to those for public schools, nor will they be more burdensome. The guidelines and procedures must also recognize the diversity of non-public schools and shall not impinge upon the noneducational relationships between those schools and their clientele.

(c-5) Prohibition against recognition. A non-public elementary or secondary school may not obtain "Non-public School Recognition" status unless the school requires all certified and non-certified applicants for employment with the school, after July 1, 2007, to authorize a fingerprint-based criminal history records check as a condition of employment to determine if such applicants have been convicted of any of the enumerated criminal or drug offenses set forth in Section 21-23a of this Code [105 ILCS 5/21-23a (now repealed)] or have been convicted, within 7 years of the application for employment, of any other felony under the laws of this State or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in this State, would have been punishable as a felony under the laws of this State.

Authorization for the check shall be furnished by the applicant to the school, except that if the applicant is a substitute teacher seeking employment in more than one non-public school, a teacher seeking concurrent part-time employment positions with more than one non-public school (as a reading specialist, special education teacher, or otherwise), or an educational support personnel employee seeking employment positions with more than one non-public school, then only one of the non-public schools employing the individual shall request the authorization. Upon receipt of this authorization, the non-public school shall submit the applicant's name, sex, race, date of birth, social security number, fingerprint images, and other identifiers, as prescribed by the Department of State Police, to the Department of State Police.

The Department of State Police and Federal Bureau of Investigation shall furnish, pursuant to a fingerprint-based criminal history records check, records of convictions, forever and hereafter, until expunged, to the president or principal of the non-public school that requested the check. The Department of State Police shall charge that school a fee for conducting such check, which fee must be deposited into the State Police Services Fund and must not exceed the cost of the inquiry. Subject to appropriations for these purposes, the State Superintendent of Education shall reimburse non-public schools for fees paid to obtain criminal history records checks under this Section.

A non-public school may not obtain recognition status unless the school also performs a check of the Statewide Sex Offender Database, as authorized by the Sex Offender Community Notification Law [730 ILCS 152/101 et seq.], for each applicant for

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employment, after July 1, 2007, to determine whether the applicant has been adjudicated a sex offender.

Any information concerning the record of convictions obtained by a non-public school's president or principal under this Section is confidential and may be disseminated only to the governing body of the non-public school or any other person necessary to the decision of hiring the applicant for employment. A copy of the record of convictions obtained from the Department of State Police shall be provided to the applicant for employment. Upon a check of the Statewide Sex Offender Database, the non-public school shall notify the applicant as to whether or not the applicant has been identified in the Sex Offender Database as a sex offender. Any information concerning the records of conviction obtained by the non-public school's president or principal under this Section for a substitute teacher seeking employment in more than one non-public school, a teacher seeking concurrent part-time employment positions with more than one non-public school (as a reading specialist, special education teacher, or otherwise), or an educational support personnel employee seeking employment positions with more than one non-public school may be shared with another non-public school's principal or president to which the applicant seeks employment. Any person who releases any criminal history record information concerning an applicant for employment is guilty of a Class A misdemeanor and may be subject to prosecution under federal law, unless the release of such information is authorized by this Section.

No non-public school may obtain recognition status that knowingly employs a person, hired after July 1, 2007, for whom a Department of State Police and Federal Bureau of Investigation fingerprint-based criminal history records check and a Statewide Sex Offender Database check has not been initiated or who has been convicted of any offense enumerated in Section 21B-80 of this Code [105 ILCS 5/21B-80] or any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in this State, would have been punishable as one or more of those offenses. No non-public school may obtain recognition status under this Section that knowingly employs a person who has been found to be the perpetrator of sexual or physical abuse of a minor under 18 years of age pursuant to proceedings under Article II of the Juvenile Court Act of 1987 [705 ILCS 405/2-1 et seq.].

In order to obtain recognition status under this Section, a non-public school must require compliance with the provisions of this subsection (c-5) from all employees of persons or firms holding contracts with the school, including, but not limited to, food service workers, school bus drivers, and other transportation employees, who have direct, daily contact with pupils. Any information concerning the records of conviction or identification as a sex offender of any such employee obtained by the non-public school principal or president must be promptly reported to the school's governing body.

(d) Public purposes. The provisions of this Section are in the public interest, for the public benefit, and serve secular public purposes.

(e) Definition. For purposes of this Section, a non-public school means any non-profit, non-home-based, and non-public elementary or secondary school that is in compliance with Title VI of the Civil Rights Act of 1964 [42 U.S.C. § 2000d et seq.] and attendance

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at which satisfies the requirements of Section 26-1 [105 ILCS 5/26-1] of this Code.

(Source: P.A. 93-661, § 5; 95-351, § 5; 96-431, § 10; 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Section 105 ILCS 5/21-23a, referred to in subsection (c-5), has been repealed.

Cross References.

As to non-public elementary schools, see 105 ILCS 5/2-3,120 and 105 ILCS 5/29-4.

Effective Date. Section 5 of P.A. 93-661 made this section effective upon becoming law. The Act was approved February 10, 2004.

Effect of Amendments. The 2007 amendment by P.A. 95-351, effective August 23, 2007, added (c-5).

The 2009 amendment by P.A. 96-431, effective August 13, 2009, substituted "Section 21-23a of this Code" for "this subsection (c-5)" in the first paragraph of (c-5); and in the first sentence of the sixth paragraph of (c-5), substituted "of any offense enumerated in Section 21-23a of this Code or" for "for committing attempted first degree murder or for committing or attempting to commit first degree murder or a Class X felony or any one or more of the following offenses: (i) those defined in Sections 11-6, 11-9, 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18, 11-19, 11-19.1, 11-19.2, 11-20, 11-20.1, 11-21, 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961; (ii) those defined in the Cannabis Control Act, except those defined in Sections 4(a), 4(b), and 5(a) of that Act; (iii) those defined in the Illinois Controlled Substances Act; and (iv)" and substituted "those offenses" for "the foregoing offenses" at the end.

The 2011 amendment by P.A. 97-607, effective August 26, 2011, substituted "Section 21B-80" for "Section 21-23a" in the first sentence of the sixth paragraph of (c-5).

§ 105 ILCS 5/2-3.26. Federal funds

Sec. 2-3.26. Federal funds. For the purpose of promoting and coordinating school programs for which federal allotments are available, to cooperate with the United States Department of Health, Education and Welfare in the establishment of such standards as may be deemed necessary by the State Board of Education, and to accept and expend federal funds made available for such purpose.

(Source: P.A. 81-1508.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.26.

§ 105 ILCS 5/2-3.27. Budgets and accounting practices - Forms and procedures

Sec. 2-3.27. Budgets and accounting practices - Forms and procedures. To formulate and approve forms, procedure and regulations for school district accounts and budgets required by this Act reflecting the gross amount of income and expenses, receipts and disbursements and extending a net surplus or deficit on operating items, to advise and assist the officers of any district in respect to budgets and accounting practices and in the formulation and use of such books, records and accounts or other forms as may be required to comply with the provisions of this Act; to publish and keep current pamphlets or manuals in looseleaf form relating to budgetary and accounting procedure or similar topics; to make all rules and regulations as may be necessary to carry into effect the provisions of this Act relating to budgetary procedure and accounting, such rules and regulations to include but not to be limited to the establishment of a decimal classification of accounts; to confer with various district, county and State officials or take such other action as may be reasonably required to carry out the provisions of this Act relating to budgets and accounting.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.27.

§ 105 ILCS 5/2-3.28. Rules and regulations of budget and accounting systems

Sec. 2-3.28. Rules and regulations of budget and accounting systems. To prescribe rules and regulations defining what shall constitute a budget and accounting system required under this Act. The rules and regulations shall prescribe the minimum extent of verification, the type of audit, the extent of the audit report and shall require compliance with statutory requirements and standards and such requirements as the State Board of Education deems necessary for an adequate budget and accounting system.

(Source: P.A. 81-1508.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.28.

§ 105 ILCS 5/2-3.30. Census for special education

Sec. 2-3.30. Census for special education. To require on or before December 22 of each year reports as to the census of all children 3 years of age through 21 years of age inclusive of the types described in definitions under the rules authorized in Section 14-1.02 [105 ILCS 5/14-1.02] who were receiving special education and related services on December 1 of the current school year.

To require an annual report, on or before December 22 of each year, from the Department of Corrections containing a census of all children 3 years of age through 21 years of age inclusive of the types described in Section 14-1.02 who were receiving special education services on December 1 of the current school year within State facilities. Such report shall be submitted pursuant to rules and regulations issued by the State Board of Education.

(Source: P.A. 85-410; 87-995, § 1; 89-507, § 90D-40; 91-764, § 5; 95-793, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.30.

Effect of Amendments. The 1992 amendment by P.A. 87-995, effective September 1, 1992, in the first and second paragraphs twice substituted "birth" for "3" after "all children age" and added the third paragraph.

The 1996 amendment by P.A. 89-507, effective July 1, 1997, in the second paragraph, in the first sentence, deleted "Department of Rehabilitation Services" following "Department of Corrections" and substituted "Human Services" for "Mental Health and Developmental Disabilities"; and in the third paragraph, in the first sentence, deleted "Department of Rehabilitation Services" following "Children and Family Services" and substituted "the Department of Human Services" for "Department of Mental Health and Developmental Disabilities".

The 2000 amendment by P.A. 91-764, effective June 9, 2000, deleted "submitted through the regional superintendent" following "each year reports" in the first sentence.

The 2008 amendment by P.A. 95-793, effective August 8, 2008, substituted "3 years of age" for "birth" in the first and second paragraphs; in the second paragraph substituted "from the Department Corrections" for "from the Department of Children and Family Services, Department of Corrections, and Department of Human Services" and made related changes; and deleted the former third paragraph relating to the reporting of services received by children of non-English background.

§ 105 ILCS 5/2-3.31. Data Division

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Sec. 2-3.31. Data Division. To maintain a Data Division staffed with competent, full-time persons whose duty it shall be to secure, compile, catalog, publish and preserve information and data relative to the public school system of Illinois, making such comparison as will assist the General Assembly in determining the priorities of educational programs to be of value to the public school system of Illinois and of other states.

(Source: Laws 1965, p. 1985; P.A. 96-734, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.31.

Effect of Amendments. The 2009 amendment by P.A. 96-734, effective August 25, 2009, substituted "Data Division" for "Research department" throughout.

§ 105 ILCS 5/2-3.32. Auditing department

Sec. 2-3.32. Auditing department. To maintain a division of audits to consist of one qualified supervisor and junior accountants who are to be competent persons whose duty it shall be to audit all claims for state moneys relative to the public school system of Illinois.

(Source: Laws 1965, p. 1985.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.32.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 145.10.

§ 105 ILCS 5/2-3.33. Recomputation of claims

Sec. 2-3.33. Recomputation of claims. To recompute within 3 years from the final date for filing of a claim any claim for reimbursement to any school district if the claim has been found to be incorrect and to adjust subsequent claims accordingly, and to recompute and adjust any such claims within 6 years from the final date for filing when there has been an adverse court or administrative agency decision on the merits affecting the tax

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revenues of the school district. However, no such adjustment shall be made regarding equalized assessed valuation unless the district's equalized assessed valuation is changed by greater than $250,000 or 2%.

Except in the case of an adverse court or administrative agency decision no recomputation of a State aid claim shall be made pursuant to this Section as a result of a reduction in the assessed valuation of a school district from the assessed valuation of the district reported to the State Board of Education by the Department of Revenue under Section 18-8.05 [105 ILCS 5/18-8.05] unless the requirements of Section 16-15 of the Property Tax Code [35 ILCS 200/16-15] and Section 2-3.84 of this Code [105 ILCS 5/2-3.84] are complied with in all respects.

This paragraph applies to all requests for recomputation of a general State aid claim received after June 30, 2003. In recomputing a general State aid claim that was originally calculated using an extension limitation equalized assessed valuation under paragraph (3) of subsection (G) of Section 18-8.05 of this Code [105 ILCS 5/18-8.05], a qualifying reduction in equalized assessed valuation shall be deducted from the extension limitation equalized assessed valuation that was used in calculating the original claim.

From the total amount of general State aid to be provided to districts, adjustments as a result of recomputation under this Section together with adjustments under Section 2-3.84 [105 ILCS 5/2-3.84] must not exceed $25 million, in the aggregate for all districts under both Sections combined, of the general State aid appropriation in any fiscal year; if necessary, amounts shall be prorated among districts. If it is necessary to prorate claims under this paragraph, then that portion of each prorated claim that is approved but not paid in the current fiscal year may be resubmitted as a valid claim in the following fiscal year.

(Source: P.A. 86-237; 88-555, § 10; 88-670, § 3-54; 89-235, § 2-90; 89-397, § 5; 93-845, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.33.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 452.30.

Effect of Amendments. The 1994 amendment by P.A. 88-555, effective July 27, 1994, added the second sentence of the first paragraph.

The 1994 amendment by P.A. 88-670, effective December 2, 1994, in the second paragraph substituted "16-15 of the Property Tax Code" for "129.1 of the Revenue Act of 1939".

The 1995 amendment by P.A. 89-235, effective August 4, 1995, combined the amendments by P.A. 88-555, § 10 and P.A. 88-670, § 3-54.

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The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the first and second paragraphs, in the first sentence inserted "or administrative agency".

The 2004 amendment by P.A. 93-845, effective July 30, 2004, in the second paragraph substituted "18-8.05" for "18-8" and "Code" for "Act"; and added the third and fourth paragraphs.

CASE NOTES

Analysis

Adverse Court Decision
- Dismissal of Administrative Review
Incorrect Property Assessment

Adverse Court Decision

- Dismissal of Administrative Review

Where a decision of the Property Tax Appeal Board reducing the assessed valuation of taxable property within certain districts caused a decrease in tax revenues in the districts, the dismissal of the administrative review complaint had the legal effect of affirming that administrative decision and was, therefore, an adverse court decision for purposes of this section. Board of Educ. v. Gill, 176 Ill. App. 3d 567, 127 Ill. Dec. 508, 533 N.E.2d 380 (3 Dist. 1988).

Incorrect Property Assessment

When one of the factors in the state aid formula such as a property assessment is later determined to have been wrong, a recomputation should be made under this statute. Board of Educ. v. Gill, 176 Ill. App. 3d 567, 127 Ill. Dec. 508, 533 N.E.2d 380 (3 Dist. 1988).

§ 105 ILCS 5/2-3.33a. Audit adjustments prohibited; alternative education program

Sec. 2-3.33a. Audit adjustments prohibited; alternative education program. The State Board of Education shall not make audit adjustments to general State aid claims paid in fiscal years 1999, 2000, 2001, 2002, and 2003 based upon the claimant's failure to provide a minimum of 5 clock hours of daily instruction to students in an alternative education program or based upon the claimant's provision of service to non-resident students in an alternative education program without charging tuition, provided that the non-resident students were enrolled in the alternative education program on or before April 1, 2000.

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(Source: P.A. 91-844, § 5; 92-42, § 5.)

Effective Date. Section 99 of P.A. 91-844 made this section effective upon becoming law. The Act was approved June 22, 2000.

Effect of Amendments. The 2001 amendment by P.A. 92-42, effective January 1, 2002, inserted "and 2003" and made a related change.

§ 105 ILCS 5/2-3.34: Repealed by P.A. 94-108, § 15, effective July 1, 2005.

§ 105 ILCS 5/2-3.35: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/2-3.36. Gifts, grants, legacies

Sec. 2-3.36. Gifts, grants, legacies. To accept and expend gifts, grants or legacies from any source when made for educational purposes if such purposes have been authorized in advance by resolution of the General Assembly.

(Source: P.A. 83-388.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.36.

§ 105 ILCS 5/2-3.37: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/2-3.38: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/2-3.39. Department of Transitional Bilingual Education

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Sec. 2-3.39. Department of Transitional Bilingual Education. To establish a Department of Transitional Bilingual Education. In selecting staff for the Department of Transitional Bilingual Education the State Board of Education shall give preference to persons who are natives of foreign countries where languages to be used in transitional bilingual education programs are the predominant languages. The Department of Transitional Bilingual Education has the power and duty to:

(1) Administer and enforce the provisions of Article 14C of this Code including the power to promulgate any necessary rules and regulations.

(2) Study, review, and evaluate all available resources and programs that, in whole or in part, are or could be directed towards meeting the language capability needs of children and adults of limited English-speaking ability residing in the State.

(3) Gather information about the theory and practice of bilingual education in this State and elsewhere, and encourage experimentation and innovation in the field of bilingual education.

(4) Provide for the maximum practical involvement of parents of bilingual children, transitional bilingual education teachers, representatives of community groups, educators, and laymen knowledgeable in the field of bilingual education in the formulation of policy and procedures relating to the administration of Article 14C of this Code.

(5) Consult with other public departments and agencies, including but not limited to the Department of Community Affairs, the Department of Public Welfare, the Division of Employment Security, the Commission Against Discrimination, and the United States Department of Health, Education, and Welfare in connection with the administration of Article 14C of this Code.

(6) Make recommendations in the areas of preservice and in-service training for transitional bilingual education teachers, curriculum development, testing and testing mechanisms, and the development of materials for transitional bilingual education programs.

(7) Undertake any further activities which may assist in the full implementation of Article 14C of this Code and to make an annual report to the General Assembly to include an evaluation of the program, the need for continuing such a program, and recommendations for improvement.

The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report with the Speaker, the Minority Leader and the Clerk of the House of Representatives and the President, the Minority Leader and the Secretary of the Senate and the Legislative Research Unit, as required by Section 3.1 of "An Act to revise the law in relation to the General Assembly", approved February 25, 1874, as amended [25 ILCS 5/3.1], and filing such additional copies with the State Government Report Distribution Center for the General Assembly as is required under paragraph (t) of Section 7 of the State Library Act [15 ILCS 320/7].

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(Source: P.A. 84-1438.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.39.

§ 105 ILCS 5/2-3.40: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/2-3.41. Chronic truants and truancy prevention

Sec. 2-3.41. Chronic truants and truancy prevention. The State Board of Education is empowered to enter into contracts with public or private agencies for the provision of educational services to chronic truants and for the prevention of truancy including training and developmental assistance provided an appropriation is made specifically for such purpose.

(Source: P.A. 84-1420.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.41.

§ 105 ILCS 5/2-3.42: Repealed by P.A. 90-372, § 5-280, effective July 1, 1998.

§ 105 ILCS 5/2-3.43: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/2-3.44. Ethnic school program standards

Sec. 2-3.44. Ethnic school program standards. To establish minimum standards for foreign language instruction in ethnic schools. Such standards shall seek to insure that the level of foreign language instruction in the ethnic school is at least as high as the level of foreign language instruction in public high schools. An ethnic school is a part time private school which teaches the foreign language of a particular ethnic group as well as

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the culture, geography, history and other aspects of a particular ethnic group.

(Source: P.A. 83-1362.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.44.

§ 105 ILCS 5/2-3.45. Approval of ethnic schools instruction

Sec. 2-3.45. Approval of ethnic schools instruction. To approve ethnic schools programs for the purpose of teaching a foreign language if such programs meet the minimum standards established for such programs by the State Board of Education. The Board shall consider for approval only those ethnic schools which voluntarily apply to the Board for approval.

(Source: P.A. 83-1362.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.45.

§ 105 ILCS 5/2-3.47. Comprehensive Educational Plan

Sec. 2-3.47. Comprehensive Educational Plan. The State Board of Education shall analyze the current and anticipated problems and deficiencies, present and future minimum needs and requirements and immediate and future objectives and goals of elementary and secondary education in the State of Illinois, and shall design and prepare a Comprehensive Educational Plan for the development, expansion, integration, coordination, and improved and efficient utilization of the personnel, facilities, revenues, curricula and standards of elementary and secondary education for the public schools in the areas of teaching (including preparation, certification, compensation, classification, performance rating and tenure), administration, program content and enrichment, student academic achievement, class size, transportation, educational finance and budgetary and accounting procedure, and educational policy and resource planning. In formulating the Comprehensive Educational Plan for elementary and secondary education, pre-school through grade 12, in this State, the State Board of Education shall give consideration to disabled, occupational, career and other specialized areas of elementary and secondary education, and further shall consider the problems, requirements and objectives of private elementary and secondary schools within the State as the same relate to the present and

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future problems, deficiencies, needs, requirements, objectives and goals of the public school system of Illinois. As an integral part of the Comprehensive Educational Plan, the State Board of Education shall develop an annual budget for education for the entire State which details the required, total revenues from all sources and the estimated total expenditures for all purposes under the Comprehensive Educational Plan. The budgets shall specify the amount of revenue projected from each source and the amount of expenditure estimated for each purpose for the fiscal year, and shall specifically relate and identify such projected revenues and estimated expenditures to the particular problem, deficiency, need, requirement, objective or goal set forth in the Comprehensive Educational Plan to which such revenues for expenditures are attributable. The State Board of Education shall prepare and submit to the General Assembly and the Governor drafts of proposed legislation to implement the Comprehensive Educational Plan; shall engage in a continuing study, analysis and evaluation of the Comprehensive Educational Plan so designed and prepared; and shall from time to time as required with respect to such annual budgets, and as the State Board of Education shall determine with respect to any proposed amendments or modifications of any Comprehensive Educational Plan enacted by the General Assembly, submit its drafts or recommendations for proposed legislation to the General Assembly and the Governor.

(Source: P.A. 83-1411; 89-397, § 5; 90-372, § 5-280; 93-21, § 5-5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.47.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the second sentence, substituted "disabled" for "handicapped".

The 1997 amendment by P.A. 90-372, effective July 1, 1998, in the first sentence, deleted "promptly undertake to" preceding "analyze"; in the third sentence deleted "for each of the first 3 fiscal years of operation" preceding "under the"; in the fourth sentence substituted "the fiscal" for "each such fiscal"; and in the fifth sentence deleted "shall timely continue to develop an annual budget for education for the entire State for operation under the Comprehensive Educational Plan for fiscal years subsequent to the 3 fiscal years covered by the budgets initially developed".

The 2003 amendment by P.A. 93-21, effective July 1, 2003, deleted "gifted" after "consideration to disabled" in the second sentence.

§ 105 ILCS 5/2-3.47a. Strategic plan

Sec. 2-3.47a. Strategic plan. (a) The State Board of Education shall develop and maintain a continuing 5-year comprehensive strategic plan for elementary and secondary education. The strategic plan shall include without limitation all of the following topic areas:

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(1) Service and support to school districts to improve student performance.

(2) Equity, adequacy, and predictability of educational opportunities and resources for all schools.

(3) Program development and improvements, including financial planning and support services.

(4) Efficient means of delivering services to schools on a regional basis.

(5) Assistance to students at risk of academic failure and the use of proven support programs and services to close the achievement gap.

(6) Educational research and development and access and training in the use of a centralized student achievement data system.

(7) Recommendations for streamlining the School Code to eliminate laws that interfere with local control, taking into account those foundational standards that have already been established.

(8) Streamlining certification of teachers and administrators to provide quality personnel and ongoing professional development.

(9) Support services to enhance the capacity of school districts to meet federal and State statutory standards.

(10) Enhanced technology for use in administration, classroom, and nontraditional educational settings.

(11) Recognition of successful, exemplary schools.

(12) The unique needs of rural school districts.

(13) School reorganization issues.

(14) Attraction and retention of qualified teachers.

(15) Additional duties that should be assigned to regional offices of education and regional administrative service centers to support local control of school districts and eliminate any duplication and inefficiency.

The State Board of Education shall consult with the educational community, hold public hearings, and receive input from all interested groups in drafting the strategic plan.

(b) To meet the requirements of this Section, the State Board of Education shall issue to the Governor and General Assembly a preliminary report within 6 months after the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-1036] and a final 5-year strategic plan within one year after the effective date of this amendatory Act of the 93rd General Assembly. Thereafter, the strategic plan shall be updated and issued to the Governor and General Assembly on or before July 1 of each year.

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(Source: P.A. 93-1036, § 90.)

Effective Date. Section 99 of P.A. 93-1036 made this Act effective upon becoming law. The Act was approved September 14, 2004.

§ 105 ILCS 5/2-3.48. Evaluation institutes

Sec. 2-3.48. Evaluation institutes. To conduct such inservice institutes on evaluation of certified personnel as are necessary to make such training available to all public school district administrators who evaluate other certified personnel. To report to the employing school board the absence of any administrator registered for such training but not in attendance.

(Source: P.A. 84-972.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.48.

§ 105 ILCS 5/2-3.49. Review of evaluation plans

Sec. 2-3.49. Review of evaluation plans. To review evaluation plans submitted by school districts and make public its comments thereon. To reject as unacceptable any plan in which evaluation is to be conducted by administrators who lack the training described in Section 24A-3 [105 ILCS 5/24A-3].

(Source: P.A. 84-972.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.49.

§ 105 ILCS 5/2-3.50. Conduct of evaluations

Sec. 2-3.50. Conduct of evaluations. To supply a consulting teacher, as defined in subsection (g) of Section 24A-5 [105 ILCS 5/24A-5], to a district requiring one under the mandates of that Section, and to conduct an evaluation of school district personnel when

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so required by Section 24A-6 [105 ILCS 5/24A-6].

(Source: P.A. 84-972.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.50.

§ 105 ILCS 5/2-3.51. Reading Improvement Block Grant Program

Sec. 2-3.51. Reading Improvement Block Grant Program. To improve the reading and study skills of children from kindergarten through sixth grade in school districts. The State Board of Education is authorized to administer a Reading Improvement Block Grant Program. As used in this Section:

"School district" includes those schools designated as "laboratory schools".

"Scientifically based reading research" means the application of rigorous, systematic, and objective procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading difficulties. The term includes research that employs systematic, empirical methods that draw on observation or experiment, involves rigorous data analysis that is adequate to test the stated hypotheses and to justify the general conclusions drawn, relies on measurements or observational methods that provide valid data across evaluators and observers and across multiple measurements and observations, and has been accepted by peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective and scientific review.

(a) Funds for the Reading Improvement Block Grant Program shall be distributed to school districts on the following basis: 70% of monies shall be awarded on the prior year's best 3 months average daily attendance and 30% shall be distributed on the number of economically disadvantaged (E.C.I.A. Chapter I) pupils in the district, provided that the State Board may distribute an amount not to exceed 2% of the monies appropriated for the Reading Improvement Block Grant Program for the purpose of providing teacher training and re-training in the teaching of reading. Program funds shall be distributed to school districts in 2 semi-annual installments, one payment on or before October 30, and one payment prior to April 30, of each year. The State Board shall promulgate rules and regulations necessary for the implementation of this program. Programs provided with grant funds shall not replace quality classroom reading instruction, but shall instead supplement such instruction.

(a-5) Reading Improvement Block Grant Program funds shall be used by school districts in the following manner:

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(1) to hire reading specialists, reading teachers, and reading aides in order to provide early reading intervention in kindergarten through grade 2 and programs of continued reading support for students in grades 3 through 6;

(2) in kindergarten through grade 2, to establish short-term tutorial early reading intervention programs for children who are at risk of failing to learn to read; these programs shall (i) focus on scientifically based research and best practices with proven long-term results, (ii) identify students in need of help no later than the middle of first grade, (iii) provide ongoing training for teachers in the program, (iv) focus instruction on strengthening a student's phonemic awareness, phonics, fluency, and comprehension skills, (v) provide a means to document and evaluate student growth, and (vi) provide properly trained staff;

(3) to continue direct reading instruction for grades 3 through 6;

(4) in grades 3 through 6, to establish programs of support for students who demonstrate a need for continued assistance in learning to read and in maintaining reading achievement; these programs shall (i) focus on scientifically based research and best practices with proven long-term results, (ii) provide ongoing training for teachers and other staff members in the program, (iii) focus instruction on strengthening a student's phonics, fluency, and comprehension skills in grades 3 through 6, (iv) provide a means to evaluate and document student growth, and (v) provide properly trained staff;

(5) in grades K through 6, to provide classroom reading materials for students; each district may allocate up to 25% of the funds for this purpose; and

(6) to provide a long-term professional development program for classroom teachers, administrators, and other appropriate staff; the program shall (i) focus on scientifically based research and best practices with proven long-term results, (ii) provide a means to evaluate student progress in reading as a result of the training, (iii) and be provided by approved staff development providers.

(a-10) Reading Improvement Block Grant Program funds shall be made available to each eligible school district submitting an approved application developed by the State Board beginning with the 1998-99 school year. Applications shall include a proposed assessment method or methods for measuring the reading growth of students who receive direct instruction as a result of the funding and the impact of staff development activities on student growth in reading. Such methods may include the reading portion of the Illinois Standards Achievement Testing Program. At the end of each school year the district shall report performance of progress results to the State Board. Districts not demonstrating performance progress using an approved assessment method shall not be eligible for funding in the third or subsequent years until such progress is established.

(a-15) The State Superintendent of Education, in cooperation with the school districts participating in the program, shall annually report to the leadership of the General Assembly on the results of the Reading Improvement Block Grant Program and the progress being made on improving the reading skills of students in kindergarten through the sixth grade.

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(b) (Blank).

(c) (Blank).

(d) Grants under the Reading Improvement Program shall be awarded provided there is an appropriation for the program, and funding levels for each district shall be prorated according to the amount of the appropriation.

(e) (Blank).

(f) (Blank).

(Source: P.A. 86-237; 86-750; 86-1028; 87-280; 90-548, § 5-915; 90-640, § 5; 92-25, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.51.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 260.20.

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, rewrote the section.

The 1998 amendment by P.A. 90-640, effective January 1, 1999, rewrote subsection (a-10).

The 2001 amendment by P.A. 92-25, effective July 1, 2001, rewrote the text of the section to the extent that a detailed comparison would be impracticable.

§ 105 ILCS 5/2-3.51a. Continued Reading Improvement Block Grant Program

Sec. 2-3.51a. Continued Reading Improvement Block Grant Program. To improve the reading and study skills of children from seventh through twelfth grade in school districts. The State Board of Education is authorized to administer a Continued Reading Improvement Block Grant Program. As used in this Section, "school district" includes those schools designated as laboratory schools.

(a) Funds for the Continued Reading Improvement Block Grant Program shall be distributed to school districts on the following basis: 70% of moneys shall be awarded on the prior year's best 3 months average daily attendance and 30% shall be distributed on the number of economically disadvantaged (E.C.I.A. Chapter I) pupils in the district, provided that the State Board may distribute an amount not to exceed 2% of the moneys appropriated for the Continued Reading Improvement Block Grant Program for the purpose of providing teacher training and re-training in the teaching of reading. Program

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funds shall be distributed to school districts in 2 semi-annual installments, one payment on or before October 30 and one payment prior to April 30 of each year. The State Board shall adopt any rules necessary for the implementation of this program.

(b) Continued Reading Improvement Block Grant Program funds shall be used by school districts in the following manner to support students in grades 7 through 12 who are reading significantly below grade level:

(1) to continue direct reading instruction for grades 7 through 12, focusing on the application of reading skills for understanding informational text;

(2) to focus on and to commit time and resources to the reading of rich literature;

(3) to conduct intense vocabulary, spelling, and related writing programs that promote better understanding of language and words;

(4) to provide professional development based on scientifically based research and best practices and delivered by providers approved by the State Board of Education; and

(5) to increase the availability of reading specialists and teacher aides trained in research-based reading intervention or improvement practices or both.

(c) Continued Reading Improvement Block Grant Program funds shall be made available to each eligible school district submitting an approved application developed by the State Board, beginning with the 2003-2004 school year. Applications shall include a proposed assessment method or methods for measuring student reading skills. Such methods may include the reading portion of State tests. At the end of each school year the district shall report assessment results to the State Board. Districts not demonstrating performance progress using an approved assessment method shall not be eligible for funding in the third or subsequent years until such progress is established.

(d) The State Superintendent of Education, in cooperation with the school districts participating in the program, shall annually report to the leadership of the General Assembly on the results of the Continued Reading Improvement Block Grant Program and the progress being made on improving the reading skills of students in grades 7 through 12.

(e) Grants under the Continued Reading Improvement Block Grant Program shall be awarded provided there is an appropriation for the program, and funding levels for each district shall be prorated according to the amount of the appropriation. Funding for the program established under Section 2-3.51 of this Code [105 ILCS 5/2-3.51 et seq.] shall not be reduced in order to fund the Continued Reading Improvement Block Grant Program.

(Source: P.A. 93-53, § 5.)

Effective Date. Section 99 of P.A. 93-53 made this section effective July 1, 2003.

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§ 105 ILCS 5/2-3.51.5. School Safety and Educational Improvement Block Grant Program

Sec. 2-3.51.5. School Safety and Educational Improvement Block Grant Program. To improve the level of education and safety of students from kindergarten through grade 12 in school districts and State-recognized, non-public schools. The State Board of Education is authorized to fund a School Safety and Educational Improvement Block Grant Program.

(1) For school districts, the program shall provide funding for school safety, textbooks and software, electronic textbooks and the technological equipment necessary to gain access to and use electronic textbooks, teacher training and curriculum development, school improvements, remediation programs under subsection (a) of Section 2-3.64 [105 ILCS 5/2-3.64], school report cards under Section 10-17a [105 ILCS 5/10-17a], and criminal history records checks under Sections 10-21.9 and 34-18.5 [105 ILCS 5/10-21.9 and 105 ILCS 5/34-18.5]. For State-recognized, non-public schools, the program shall provide funding for secular textbooks and software, criminal history records checks, and health and safety mandates to the extent that the funds are expended for purely secular purposes. A school district or laboratory school as defined in Section 18-8 or 18-8.05 [105 ILCS 5/18-8 (repealed) or 105 ILCS 5/18-8.05] is not required to file an application in order to receive the categorical funding to which it is entitled under this Section. Funds for the School Safety and Educational Improvement Block Grant Program shall be distributed to school districts and laboratory schools based on the prior year's best 3 months average daily attendance. Funds for the School Safety and Educational Improvement Block Grant Program shall be distributed to State-recognized, non-public schools based on the average daily attendance figure for the previous school year provided to the State Board of Education. The State Board of Education shall develop an application that requires State-recognized, non-public schools to submit average daily attendance figures. A State-recognized, non-public school must submit the application and average daily attendance figure prior to receiving funds under this Section. The State Board of Education shall promulgate rules and regulations necessary for the implementation of this program.

(2) Distribution of moneys to school districts and State-recognized, non-public schools shall be made in 2 semi-annual installments, one payment on or before October 30, and one payment prior to April 30, of each fiscal year.

(3) Grants under the School Safety and Educational Improvement Block Grant Program shall be awarded provided there is an appropriation for the program, and funding levels for each district shall be prorated according to the amount of the appropriation.

(4) The provisions of this Section are in the public interest, are for the public benefit, and serve secular public purposes.

(Source: P.A. 89-610, § 5; 90-548, § 5-915; 91-711, § 5; 93-909, § 10; 95-707, § 5-20; 96-1403, § 5.)

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Note.

Section 105 ILCS 5/18-8, referred to in subsection (1), has been repealed.

Effective Date. Section 99 of P.A. 89-610 made this section effective upon becoming law. The Act was approved August 6, 1996.

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, in subsection (1), in the first sentence, substituted "Section 18-8 or 18-8.05" for "subsection B of Section 18-8".

The 2000 amendment by P.A. 91-711, effective July 1, 2000, added "school report cards under Section 10-17a, and criminal background investigations under Sections 10-21.9 and 34-18.5" in the first sentence of subdivision (1) and made a related change.

The 2004 amendment by P.A. 93-909, effective August 12, 2004, substituted "history records checks" for "background investigations" in the first sentence of subsection (1).

The 2008 amendment by P.A. 95-707, effective January 11, 2008, rewrote the section.

The 2010 amendment by P.A. 96-1403, effective July 29, 2010, inserted "electronic textbooks and the technological equipment necessary to gain access to and use electronic textbooks" in the first sentence of (1).

§ 105 ILCS 5/2-3.52: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/2-3.52A. Pilot programs

Sec. 2-3.52A. Pilot programs. To improve the quality of teaching as a profession the State Board of Education may, pursuant to appropriations for such purposes, establish pilot programs for teachers relating to clinical schools, restructuring the teaching workplace, and providing special assistance and support to beginning teachers. Such programs shall be conducted in accordance with rules adopted by the State Board of Education. Such rules shall provide for, but not be limited to, advisory councils and annual reports on the progress of the pilot programs.

(Source: P.A. 85-322.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.52A.

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§ 105 ILCS 5/2-3.53. Administrators' Academy

Sec. 2-3.53. Administrators' Academy. The State Board of Education shall cause to be established an Illinois Administrators' Academy. This Academy shall develop programs which provide for development of skills in the areas of instructional staff development, school improvement, school accountability, effective communication skills, public school relations, evaluation of personnel, including documentation of employee performance and remediation of unsatisfactory employee performance.

By January 1, 1986, the State Board of Education shall establish a schedule by which administrators throughout Illinois must receive training through the Academy.

(Source: P.A. 84-126; 87-1076, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.53.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 525.110.

Effect of Amendments. The 1992 amendment by P.A. 87-1076, effective September 15, 1992, inserted "school improvement, school accountability" in the second sentence of the first paragraph.

§ 105 ILCS 5/2-3.53a. New principal mentoring program

Sec. 2-3.53a. New principal mentoring program. (a) Beginning on July 1, 2007, and subject to an annual appropriation by the General Assembly, to establish a new principal mentoring program for new principals. Any individual who is first hired as a principal on or after July 1, 2007 shall participate in a new principal mentoring program for the duration of his or her first year as a principal and must complete the program in accordance with the requirements established by the State Board of Education by rule or, for a school district created by Article 34 of this Code [105 ILCS 5/34-1 et seq.], in accordance with the provisions of Section 34-18.27 of this Code [105 ILCS 5/34-18.27]. School districts created by Article 34 are not subject to the requirements of subsection (b), (c), (d), (e), (f), or (g) of this Section. Any individual who is first hired as a principal on or after July 1, 2008 may participate in a second year of mentoring if it is determined by the State Superintendent of Education that sufficient funding exists for such participation. The new principal mentoring program shall match an experienced principal who meets the requirements of subsection (b) of this Section with each new principal in

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order to assist the new principal in the development of his or her professional growth and to provide guidance.

(b) Any individual who has been a principal in Illinois for 3 or more years and who has demonstrated success as an instructional leader, as determined by the State Board by rule, is eligible to apply to be a mentor under a new principal mentoring program. Mentors shall complete mentoring training by entities approved by the State Board and meet any other requirements set forth by the State Board and by the school district employing the mentor.

(c) The State Board shall certify an entity or entities approved to provide training of mentors.

(d) A mentor shall be assigned to a new principal based on (i) similarity of grade level or type of school, (ii) learning needs of the new principal, and (iii) geographical proximity of the mentor to the new principal. The principal, in collaboration with the mentor, shall identify areas for improvement of the new principal's professional growth, including, but not limited to, each of the following:

(1) Analyzing data and applying it to practice.

(2) Aligning professional development and instructional programs.

(3) Building a professional learning community.

(4) Observing classroom practices and providing feedback.

(5) Facilitating effective meetings.

(6) Developing distributive leadership practices.

(7) Facilitating organizational change. The mentor shall not be required to provide an evaluation of the new principal on the basis of the mentoring relationship.

(e) On or before July 1, 2008 and on or after July 1 of each year thereafter, the State Board shall facilitate a review and evaluate the mentoring training program in collaboration with the approved providers. Each new principal and his or her mentor must complete a verification form developed by the State Board in order to certify their completion of a new principal mentoring program.

(f) The requirements of this Section do not apply to any individual who has previously served as an assistant principal in Illinois acting under an administrative certificate for 5 or more years and who is hired, on or after July 1, 2007, as a principal by the school district in which the individual last served as an assistant principal, although such an individual may choose to participate in this program or shall be required to participate by the school district.

(g) The State Board may adopt any rules necessary for the implementation of this Section.

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(h) On an annual basis, the State Superintendent of Education shall determine whether appropriations are likely to be sufficient to require operation of the mentoring program for the coming year. In doing so, the State Superintendent of Education shall first determine whether it is likely that funds will be sufficient to require operation of the mentoring program for individuals in their first year as principal and shall then determine whether it is likely that funds will be sufficient to require operation of the mentoring program for individuals in their second year as principal.

(Source: P.A. 94-1039, § 5; 96-373, § 5.)

Effective Date. Section 99 of P.A. 94-1039 made the section effective upon becoming law. The Act was approved July 20, 2006.

Effect of Amendments. The 2009 amendment by P.A. 96-373, effective August 13, 2009, in (a), substituted "first hired as a principal" for "hired as a principal in the State of Illinois" in the second sentence, added the fourth sentence, and in the last sentence, deleted "in his or her first year in that position" preceding "in order" and "during the new principal's first year of service" at the end; deleted the former first sentence of (e), which read: "On or after January 1, 2008 and on or after January 1 of each year thereafter, each mentor and each new principal shall complete a survey of progress on a form developed by their respective school districts"; and added (h).

§ 105 ILCS 5/2-3.53b. New superintendent mentoring program

Sec. 2-3.53b. New superintendent mentoring program. (a) Beginning on July 1, 2009 and subject to an annual appropriation by the General Assembly, to establish a new superintendent mentoring program for new superintendents. Any individual who begins serving as a superintendent in this State on or after July 1, 2009 and has not previously served as a school district superintendent in this State shall participate in the new superintendent mentoring program for the duration of his or her first 2 school years as a superintendent and must complete the program in accordance with the requirements established by the State Board of Education by rule. The new superintendent mentoring program shall match an experienced superintendent who meets the requirements of subsection (b) of this Section with each new superintendent in his or her first 2 school years in that position in order to assist the new superintendent in the development of his or her professional growth and to provide guidance during the new superintendent's first 2 school years of service.

(b) Any individual who has actively served as a school district superintendent in this State for 3 or more years and who has demonstrated success as an instructional leader, as determined by the State Board of Education by rule, is eligible to apply to be a mentor under the new superintendent mentoring program. Mentors shall complete mentoring training through a provider selected by the State Board of Education and shall meet any other requirements set forth by the State Board and by the school district employing the mentor.

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(c) Under the new superintendent mentoring program, a provider selected by the State Board of Education shall assign a mentor to a new superintendent based on (i) similarity of grade level or type of school district, (ii) learning needs of the new superintendent, and (iii) geographical proximity of the mentor to the new superintendent. The new superintendent, in collaboration with the mentor, shall identify areas for improvement of the new superintendent's professional growth, including, but not limited to, each of the following:

(1) Analyzing data and applying it to practice.

(2) Aligning professional development and instructional programs.

(3) Building a professional learning community.

(4) Effective school board relations.

(5) Facilitating effective meetings.

(6) Developing distributive leadership practices.

(7) Facilitating organizational change.

The mentor must not be required to provide an evaluation of the new superintendent on the basis of the mentoring relationship.

(d) From January 1, 2010 until May 15, 2010 and from January 1 until May 15 each year thereafter, each mentor and each new superintendent shall complete a survey of progress of the new superintendent on a form developed by the school district. On or before September 1, 2010 and on or before September 1 of each year thereafter, the provider selected by the State Board of Education shall submit a detailed annual report to the State Board of how the appropriation for the new superintendent mentoring program was spent, details on each mentor-mentee relationship, and a qualitative evaluation of the outcomes. The provider shall develop a verification form that each new superintendent and his or her mentor must complete and submit to the provider to certify completion of each year of the new superintendent mentoring program by July 15 immediately following the school year just completed.

(e) The requirements of this Section do not apply to any individual who has previously served as an assistant superintendent in a school district in this State acting under an administrative certificate for 5 or more years and who, on or after July 1, 2009, begins serving as a superintendent in the school district where he or she had served as an assistant superintendent immediately prior to being named superintendent, although such an individual may choose to participate in the new superintendent mentoring program or may be required to participate by the school district. The requirements of this Section do not apply to any superintendent or chief executive officer of a school district organized under Article 34 of this Code [105 ILCS 5/34-1 et seq.].

(f) The State Board may adopt any rules that are necessary for the implementation of this Section.

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(Source: P.A. 96-62, § 5.)

Effective Date. Section 99 of P.A. 96-62 makes this section effective upon becoming law. The Act was approved July 23, 2009.

§§ 105 ILCS 5/2-3.54 through 105 ILCS 5/2-3.55A: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/2-3.56. Evaluation institutes

Sec. 2-3.56. Evaluation institutes. To conduct as a part of the Administrators' Academy such inservice institutes on evaluation of certified personnel as are necessary to make such training available to all public school district administrators who evaluate other certified personnel. To report to the employing school board the absence of any administrator registered for such training but not in attendance.

(Source: P.A. 84-126.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.56.

§ 105 ILCS 5/2-3.57. Review of evaluation plans

Sec. 2-3.57. Review of evaluation plans. To review evaluation plans submitted by school districts and make public its comments thereon. To reject as unacceptable any plan in which evaluation is to be conducted by administrators who lack the training described in Section 24A-3 [105 ILCS 5/24A-3].

(Source: P.A. 84-126.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.57.

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§ 105 ILCS 5/2-3.58. Conduct of evaluations

Sec. 2-3.58. Conduct of evaluations. To supply a consulting teacher, as defined in subsection (g) of Section 24A-5 [105 ILCS 5/24A-5], to a district requiring one under the mandates of that Section, and to conduct an evaluation of school district personnel when so required by Section 24A-6 [105 ILCS 5/24A-6].

(Source: P.A. 84-126.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.58.

§ 105 ILCS 5/2-3.59. Staff development programs

Sec. 2-3.59. Staff development programs. School districts, cooperatives or joint agreements with a governing board or board of control, administrative agents for educational service centers, and regional superintendents acting on behalf of such entities shall conduct staff development programs and may contract with not-for-profit organizations to conduct summer staff development program institutes which specify outcome goals, including the improvement of specific instructional competencies, and which conform to locally developed plans.

(Source: P.A. 84-1220; 84-1283; 84-1438; 94-875, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.59.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.10.

Effect of Amendments. The 2006 amendment by P.A. 94-875, effective July 1, 2006, deleted the former last two sentences, which concerned approval and funding by the Board of Education of improvement plans.

§ 105 ILCS 5/2-3.60. [Teacher development programs]

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Sec. 2-3.60. The State Board of Education shall require school districts, cooperatives or joint agreements with a governing board or board of control, administrative agents for educational service centers, and regional superintendents acting on behalf of such entities to design programs which provide continuing education to update or improve a teacher's skill or knowledge in order to maintain a high level of performance.

(Source: P.A. 84-1283.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.60.

§ 105 ILCS 5/2-3.61: Repealed by P.A. 95-793, § 11, effective August 8, 2008.

§ 105 ILCS 5/2-3.61a. 21st Century Community Learning Center Grant Program

Sec. 2-3.61a. 21st Century Community Learning Center Grant Program. (a) The State Board of Education shall be the designated agency responsible for the administration of programs under Part I of Subchapter X of Chapter 70 of the federal Elementary and Secondary Education Act of 1965.

(b) The State Board of Education shall establish and implement a 21st Century Community Learning Center Grant Program, in accordance with federal guidelines, to provide grants to support academically focused after-school programs for students who attend high-poverty, low-performing schools. These grants shall be used to help those students who attend high-poverty, low-performing schools meet State and local performance standards in core academic subjects and to offer families of participating students opportunities for improved literacy and related educational development.

The State Board of Education shall award grants to applicants that are of sufficient size and scope to support high-quality, effective after-school programs, to ensure reasonable success of achieving the goals identified in the grant application, and to offer those activities that are necessary to achieve these goals.

(c) Using State funds, subject to appropriation, and any federal funds received for this purpose, the State Board of Education may establish any other grant programs that are necessary to establish high-quality, academically based, after-school programs that include family-centered education activities.

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(d) The State Board of Education may adopt any rules necessary to implement this Section.

(Source: P.A. 93-374, § 5.)

Effective Date. Section 99 of P.A. 93-374 made this section effective upon becoming law. The Act was approved July 24, 2003.

§ 105 ILCS 5/2-3.62. Educational Service Centers

Sec. 2-3.62. Educational Service Centers. (a) A regional network of educational service centers shall be established by the State Board of Education to coordinate and combine existing services in a manner which is practical and efficient and to provide new services to schools as provided in this Section. Services to be made available by such centers shall include the planning, implementation and evaluation of:

(1) (blank);

(2) computer technology education;

(3) mathematics, science and reading resources for teachers including continuing education, inservice training and staff development.

The centers may provide training, technical assistance, coordination and planning in other program areas such as school improvement, school accountability, financial planning, consultation, and services, career guidance, early childhood education, alcohol/drug education and prevention, family life - sex education, electronic transmission of data from school districts to the State, alternative education and regional special education, and telecommunications systems that provide distance learning. Such telecommunications systems may be obtained through the Department of Central Management Services pursuant to Section 405-270 of the Department of Central Management Services Law (20 ILCS 405/405-270). The programs and services of educational service centers may be offered to private school teachers and private school students within each service center area provided public schools have already been afforded adequate access to such programs and services.

Upon the abolition of the office, removal from office, disqualification for office, resignation from office, or expiration of the current term of office of the regional superintendent of schools, whichever is earlier, centers serving that portion of a Class II county school unit outside of a city of 500,000 or more inhabitants shall have and exercise, in and with respect to each educational service region having a population of 2,000,000 or more inhabitants and in and with respect to each school district located in any such educational service region, all of the rights, powers, duties, and responsibilities

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theretofore vested by law in and exercised and performed by the regional superintendent of schools for that area under the provisions of this Code or any other laws of this State.

The State Board of Education shall promulgate rules and regulations necessary to implement this Section. The rules shall include detailed standards which delineate the scope and specific content of programs to be provided by each Educational Service Center, as well as the specific planning, implementation and evaluation services to be provided by each Center relative to its programs. The Board shall also provide the standards by which it will evaluate the programs provided by each Center.

(b) Centers serving Class 1 county school units shall be governed by an 11-member board, 3 members of which shall be public school teachers nominated by the local bargaining representatives to the appropriate regional superintendent for appointment and no more than 3 members of which shall be from each of the following categories, including but not limited to superintendents, regional superintendents, school board members and a representative of an institution of higher education. The members of the board shall be appointed by the regional superintendents whose school districts are served by the educational service center. The composition of the board will reflect the revisions of this amendatory Act of 1989 as the terms of office of current members expire.

(c) The centers shall be of sufficient size and number to assure delivery of services to all local school districts in the State.

(d) From monies appropriated for this program the State Board of Education shall provide grants paid from the Personal Property Tax Replacement Fund for fiscal year 2012 only, and from the General Revenue Fund for fiscal year 2013 and beyond to qualifying Educational Service Centers applying for such grants in accordance with rules and regulations promulgated by the State Board of Education to implement this Section.

(e) The governing authority of each of the 18 regional educational service centers shall appoint a family life - sex education advisory board consisting of 2 parents, 2 teachers, 2 school administrators, 2 school board members, 2 health care professionals, one library system representative, and the director of the regional educational service center who shall serve as chairperson of the advisory board so appointed. Members of the family life - sex education advisory boards shall serve without compensation. Each of the advisory boards appointed pursuant to this subsection shall develop a plan for regional teacher-parent family life - sex education training sessions and shall file a written report of such plan with the governing board of their regional educational service center. The directors of each of the regional educational service centers shall thereupon meet, review each of the reports submitted by the advisory boards and combine those reports into a single written report which they shall file with the Citizens Council on School Problems prior to the end of the regular school term of the 1987-1988 school year.

(f) The 14 educational service centers serving Class I county school units shall be disbanded on the first Monday of August, 1995, and their statutory responsibilities and programs shall be assumed by the regional offices of education, subject to rules and regulations developed by the State Board of Education. The regional superintendents of schools elected by the voters residing in all Class I counties shall serve as the chief administrators for these programs and services. By rule of the State Board of Education,

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the 10 educational service regions of lowest population shall provide such services under cooperative agreements with larger regions.

(Source: P.A. 86-1002; 87-583; 87-704; 87-895; 87-1076, § 1; 88-89, § 3-10; 89-335, § 5; 91-239, § 5-255; 93-21, § 5-5; 94-1105, § 20; 96-893, § 5; 97-619, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.62.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 120.10, 130.10.

Effect of Amendments. The 1992 amendment by P.A. 87-1076, effective September 15, 1992, inserted "school improvement, school accountability" following "coordination and planning in other program areas such as" in the second paragraph of subsection (a); and added a comma following "alternative education and regional special education" in that paragraph.

The 1993 amendment by P.A. 88-89, effective July 14, 1993, in the first sentence of subsection (e) substituted "authority" for "board" and added subsection (f).

The 1995 amendment by P.A. 89-335, effective August 17, 1995, in subsection (f), in the first sentence, substituted "offices of education" for "office of education oversight board" and in the third sentence deleted "oversight boards of the" preceding "10 educational service regions".

The 1999 amendment by P.A. 91-239, effective January 1, 2000, substituted "Section 405-270 of the Department of Central Management Services Law (20 ILCS 405/405-270)" for "Section 67.18 of the Civil Administrative Code of Illinois" in the second sentence of the second paragraph of subsection (a).

The 2003 amendment by P.A. 93-21, effective July 1, 2003, deleted the text from subsection (a)(1), which read: "education for gifted children through area service centers, experimental projects and institutes as provided in Section 14A-6".

The 2007 amendment by P.A. 94-1105, effective June 1, 2007, deleted "including the evaluation, use and application of state-of-the-art technology in computer software as provided in Section 2-3.43" from the end of (a)(2).

The 2010 amendment by P.A. 96-893, effective July 1, 2010, inserted "financial planning, consultation, and services" in the second paragraph of (a); and added the third paragraph.

The 2011 amendment by P.A. 97-619, effective November 14, 2011, inserted "paid from the Personal Property Tax Replacement Fund for fiscal year 2012 only, and from the General Revenue Fund for fiscal year 2013 and beyond" in (d).

§ 105 ILCS 5/2-3.62a. Regional services

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Sec. 2-3.62a. Regional services. The State Board of Education is granted the power to provide the following regional services, either through a regional administrative technology center or otherwise:

(1) Coordinate the delivery of educational resources and support services statewide, including assistance in complying with State and federal law.

(2) Issue annual report cards, in conjunction with school report cards under Section 10-17a [105 ILCS 5/10-17a] of this Code and in cooperation with school districts, for regional offices of education, grading without limitation all of the following:

(A) The efficiency and effectiveness of school districts served resulting from technical assistance and program support.

(B) The regional delivery of quality services.

(C) School district satisfaction.

(D) Delivery of support services that enhance student performance.

(3) Direct services provided to assist schools designated as not meeting Illinois learning and federal student performance standards.

(4) Support programs and services to close the achievement gap.

(5) Assist school districts in pooling administrative or other services and facilitate cooperation among school districts that may be able to achieve economies of scale through shared services. The State Board of Education may exercise this power in cooperation with regional superintendents of schools. The State Board shall not have the power to require a school district to enter into a shared service agreement.

(Source: P.A. 93-1036, § 90.)

Effective Date. Section 99 of P.A. 93-1036 made this section effective upon becoming law. The Act was approved September 14, 2004.

§ 105 ILCS 5/2-3.63. Local learning objectives and assessment

Sec. 2-3.63. Local learning objectives and assessment. Each school district may set student learning objectives which meet or exceed goals established by the State and to also establish local goals for excellence in education. If established, such objectives and goals shall be disseminated to the public along with information on the degree to which they are being achieved, and if not, what appropriate actions are being taken. As part of its local assessment system each district shall identify the grade levels used to document progress to parents, the community, and the State in all the fundamental learning areas

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described in Section 27-1 [105 ILCS 5/27-1].

(Source: P.A. 84-126; 87-934, § 1; 88-686, § 5; 94-875, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.63.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.10.

Effect of Amendments. The 1992 amendment by P.A. 87-934, effective January 1, 1993, substituted "Local" for "Student" in the section catchline and added "and assessment" at the end of the section catchline; and inserted the third, fourth and fifth sentences.

The 1994 amendment by P.A. 88-686, effective January 24, 1995, added the seventh sentence.

The 2006 amendment by P.A. 94-875, effective July 1, 2006, in rewrote the section.

§ 105 ILCS 5/2-3.64. State goals and assessment

Sec. 2-3.64. State goals and assessment. (a) Beginning in the 1998-1999 school year, the State Board of Education shall establish standards and periodically, in collaboration with local school districts, conduct studies of student performance in the learning areas of fine arts and physical development/health.

Beginning with the 1998-1999 school year until the 2004-2005 school year, the State Board of Education shall annually test: (i) all pupils enrolled in the 3rd, 5th, and 8th grades in English language arts (reading, writing, and English grammar) and mathematics; and (ii) all pupils enrolled in the 4th and 7th grades in the biological and physical sciences and the social sciences (history, geography, civics, economics, and government). Unless the testing required to be implemented no later than the 2005-2006 school year under this subsection (a) is implemented for the 2004-2005 school year, for the 2004-2005 school year, the State Board of Education shall test: (i) all pupils enrolled in the 3rd, 5th, and 8th grades in English language arts (reading and English grammar) and mathematics and (ii) all pupils enrolled in the 4th and 7th grades in the biological and physical sciences. The maximum time allowed for all actual testing required under this paragraph shall not exceed 25 hours, as allocated among the required tests by the State Board of Education, across all grades tested.

Beginning no later than the 2005-2006 school year, the State Board of Education shall annually test: (i) all pupils enrolled in the 3rd, 4th, 5th, 6th, 7th, and 8th grades in reading and mathematics and (ii) all pupils enrolled in the 4th and 7th grades in the biological and physical sciences. In addition, the State Board of Education shall test (1) all pupils

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enrolled in the 5th and 8th grades in writing during the 2006-2007 school year; (2) all pupils enrolled in the 5th, 6th, and 8th grades in writing during the 2007-2008 school year; and (3) all pupils enrolled in the 3rd, 5th, 6th, and 8th grades in writing during the 2008-2009 school year and each school year thereafter. After the addition of grades and change in subjects as delineated in this paragraph and including whatever other tests that may be approved from time to time no later than the 2005-2006 school year, the maximum time allowed for all State testing in grades 3 through 8 shall not exceed 38 hours across those grades.

Beginning with the 2004-2005 school year, the State Board of Education shall not test pupils under this subsection (a) in physical development and health, fine arts, and the social sciences (history, geography, civics, economics, and government). The State Board of Education shall not test pupils under this subsection (a) in writing during the 2005-2006 school year.

The State Board of Education shall establish the academic standards that are to be applicable to pupils who are subject to State tests under this Section beginning with the 1998-1999 school year. However, the State Board of Education shall not establish any such standards in final form without first providing opportunities for public participation and local input in the development of the final academic standards. Those opportunities shall include a well-publicized period of public comment, public hearings throughout the State, and opportunities to file written comments. Beginning with the 1998-99 school year and thereafter, the State tests will identify pupils in the 3rd grade or 5th grade who do not meet the State standards.

If, by performance on the State tests or local assessments or by teacher judgment, a student's performance is determined to be 2 or more grades below current placement, the student shall be provided a remediation program developed by the district in consultation with a parent or guardian. Such remediation programs may include, but shall not be limited to, increased or concentrated instructional time, a remedial summer school program of not less than 90 hours (with an emphasis on reading and mathematics if the student has performed below grade level for 2 consecutive school years), improved instructional approaches, tutorial sessions, retention in grade, and modifications to instructional materials. Each pupil for whom a remediation program is developed under this subsection shall be required to enroll in and attend whatever program the district determines is appropriate for the pupil. Districts may combine students in remediation programs where appropriate and may cooperate with other districts in the design and delivery of those programs. The parent or guardian of a student required to attend a remediation program under this Section shall be given written notice of that requirement by the school district a reasonable time prior to commencement of the remediation program that the student is to attend. The State shall be responsible for providing school districts with the new and additional funding, under Section 2-3.51.5 [105 ILCS 5/2-3.51.5] or by other or additional means, that is required to enable the districts to operate remediation programs for the pupils who are required to enroll in and attend those programs under this Section. Every individualized educational program as described in Article 14 [105 ILCS 5/14-1.01 et seq.] shall identify if the State test or components thereof are appropriate for that student. The State Board of Education shall develop rules and regulations governing the administration of alternative tests prescribed within each

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student's individualized educational program which are appropriate to the disability of each student.

All pupils who are in a State approved transitional bilingual education program or transitional program of instruction shall participate in the State tests. The time allotted to take the State tests, however, may be extended as determined by the State Board of Education by rule. Any student who has been enrolled in a State approved bilingual education program less than 3 cumulative academic years may take an accommodated Limited English Proficient student academic content assessment, as determined by the State Board of Education, if the student's lack of English as determined by an English language proficiency test would keep the student from understanding the regular State test. If the school district determines, on a case-by-case individual basis, that a Limited English Proficient student academic content assessment would likely yield more accurate and reliable information on what the student knows and can do, the school district may make a determination to assess the student using a Limited English Proficient student academic content assessment for a period that does not exceed 2 additional consecutive years, provided that the student has not yet reached a level of English language proficiency sufficient to yield valid and reliable information on what the student knows and can do on the regular State test.

Reasonable accommodations as prescribed by the State Board of Education shall be provided for individual students in the testing procedure. All test procedures prescribed by the State Board of Education shall require: (i) that each test used for State and local student testing under this Section identify by name the pupil taking the test; (ii) that the name of the pupil taking the test be placed on the test at the time the test is taken; (iii) that the results or scores of each test taken under this Section by a pupil of the school district be reported to that district and identify by name the pupil who received the reported results or scores; and (iv) that the results or scores of each test taken under this Section be made available to the parents of the pupil. In addition, in each school year the scores attained by a student on the Prairie State Achievement Examination administered under subsection (c) of this Section and any Prairie State Achievement Awards received by the student shall become part of the student's permanent record and shall be entered on the student's transcript pursuant to regulations that the State Board of Education shall promulgate for that purpose in accordance with Section 3 and subsection (e) of Section 2 of the Illinois School Student Records Act [105 ILCS 10/3 and 105 ILCS 10/2]. Beginning with the 1998-1999 school year and in every school year thereafter, scores received by students on the State assessment tests administered in grades 3 through 8 shall be placed into students' temporary records.

The State Board of Education shall establish a period of time, to be referred to as the State test window, in each school year for which State testing shall occur to meet the objectives of this Section. However, if the schools of a district are closed and classes are not scheduled during any week that is established by the State Board of Education as the State test window, the school district may (at the discretion of the State Board of Education) move its State test window one week earlier or one week later than the established State test window, so long as the school district gives the State Board of Education written notice of its intention to deviate from the established schedule by

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December 1 of the school year in which falls the State test window established by the State Board of Education for the testing.

(a-5) All tests administered pursuant to this Section shall be academically based. For the purposes of this Section "academically based tests" shall mean tests consisting of questions and answers that are measurable and quantifiable to measure the knowledge, skill, and ability of students in the subject matters covered by tests. The scoring of academically based tests shall be reliable, valid, unbiased and shall meet the guidelines for test development and use prescribed by the American Psychological Association, the National Council of Measurement and Evaluation, and the American Educational Research Association. Academically based tests shall not include assessments or evaluations of attitudes, values, or beliefs, or testing of personality, self-esteem, or self-concept. Nothing in this amendatory Act is intended, nor shall it be construed, to nullify, supersede, or contradict the legislative intent on academic testing expressed during the passage of HB 1005/P.A. 90-296. Nothing in this Section is intended, nor shall it be construed, to nullify, supersede, or contradict the legislative intent on academic testing expressed in the preamble of this amendatory Act of the 93rd General Assembly [P.A. 93-426].

The State Board of Education shall monitor the use of short answer questions in the math and reading assessments or in other assessments in order to demonstrate that the use of short answer questions results in a statistically significant improvement in student achievement as measured on the State assessments for math and reading or on other State assessments and is justifiable in terms of cost and student performance.

(b) It shall be the policy of the State to encourage school districts to continuously test pupil proficiency in the fundamental learning areas in order to: (i) provide timely information on individual students' performance relative to State standards that is adequate to guide instructional strategies; (ii) improve future instruction; and (iii) complement the information provided by the State testing system described in this Section. To assist school districts in testing pupil proficiency in reading in the primary grades, the State Board shall make optional reading inventories for diagnostic purposes available to each school district that requests such assistance. Districts that administer the reading inventories may develop remediation programs for students who perform in the bottom half of the student population. Those remediation programs may be funded by moneys provided under the School Safety and Educational Improvement Block Grant Program established under Section 2-3.51.5.

(c) Beginning with the 2000-2001 school year, each school district that operates a high school program for students in grades 9 through 12 shall annually administer the Prairie State Achievement Examination established under this subsection to its students as set forth below. The Prairie State Achievement Examination shall be developed by the State Board of Education to measure student performance in the academic areas of reading, writing, mathematics, science, and social sciences. Beginning with the 2004-2005 school year, however, the State Board of Education shall not test a student in the social sciences (history, geography, civics, economics, and government) as part of the Prairie State Achievement Examination unless the student is retaking the Prairie State Achievement Examination in the fall of 2004. In addition, the State Board of Education shall not test a

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student in writing as part of the Prairie State Achievement Examination during the 2005-2006 school year. The State Board of Education shall establish the academic standards that are to apply in measuring student performance on the Prairie State Achievement Examination including the minimum examination score in each area that will qualify a student to receive a Prairie State Achievement Award from the State in recognition of the student's excellent performance. Each school district that is subject to the requirements of this subsection (c) shall afford all students one opportunity to take the Prairie State Achievement Examination beginning as late as practical during the spring semester of grade 11, but in no event before March 1. The State Board of Education shall annually notify districts of the weeks during which this test administration shall be required to occur. Every individualized educational program as described in Article 14 shall identify if the Prairie State Achievement Examination or components thereof are appropriate for that student. Each student, exclusive of a student whose individualized educational program developed under Article 14 identifies the Prairie State Achievement Examination as inappropriate for the student, shall be required to take the examination in grade 11. For each academic area the State Board of Education shall establish the score that qualifies for the Prairie State Achievement Award on that portion of the examination. Districts shall inform their students of the timelines and procedures applicable to their participation in every yearly administration of the Prairie State Achievement Examination. Students receiving special education services whose individualized educational programs identify the Prairie State Achievement Examination as inappropriate for them nevertheless shall have the option of taking the examination, which shall be administered to those students in accordance with standards adopted by the State Board of Education to accommodate the respective disabilities of those students. A student who successfully completes all other applicable high school graduation requirements but fails to receive a score on the Prairie State Achievement Examination that qualifies the student for receipt of a Prairie State Achievement Award shall nevertheless qualify for the receipt of a regular high school diploma. In no case, however, shall a student receive a regular high school diploma without taking the Prairie State Achievement Examination, unless the student is exempted from taking the Prairie State Achievement Examination under this subsection (c) because (i) the student's individualized educational program developed under Article 14 of this Code identifies the Prairie State Achievement Examination as inappropriate for the student, (ii) the student is exempt due to the student's lack of English language proficiency under subsection (a) of this Section, (iii) the student is enrolled in a program of Adult and Continuing Education as defined in the Adult Education Act [105 ILCS 405/1-1 et seq.], (iv) the school district is not required to test the individual student for purposes of accountability under federal No Child Left Behind Act of 2001 [Public Law 107-110] requirements, or (v) the student is otherwise identified by the State Board of Education through rules as being exempt from the assessment.

(d) Beginning with the 2002-2003 school year, all schools in this State that are part of the sample drawn by the National Center for Education Statistics, in collaboration with their school districts and the State Board of Education, shall administer the biennial State academic assessments of 4th and 8th grade reading and mathematics under the National Assessment of Educational Progress carried out under Section 411(b)(2) of the National

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Education Statistics Act of 1994 (20 U.S.C. 9010) if the Secretary of Education pays the costs of administering the assessments.

(e) Beginning no later than the 2005-2006 school year, subject to available federal funds to this State for the purpose of student assessment, the State Board of Education shall provide additional tests and assessment resources that may be used by school districts for local diagnostic purposes. These tests and resources shall include without limitation additional high school writing, physical development and health, and fine arts assessments. The State Board of Education shall annually distribute a listing of these additional tests and resources, using funds available from appropriations made for student assessment purposes.

(f) For the assessment and accountability purposes of this Section, "all pupils" includes those pupils enrolled in a public or State-operated elementary school, secondary school, or cooperative or joint agreement with a governing body or board of control, a charter school operating in compliance with the Charter Schools Law, a school operated by a regional office of education under Section 13A-3 of this Code [105 ILCS 5/13A-3], or a public school administered by a local public agency or the Department of Human Services.

(Source: P.A. 86-954; 86-993; 86-1028; 87-389; 87-934, § 1; 88-192, § 1; 88-227, § 5; 88-670, § 2-34; 88-686, § 5; 89-610, § 5; 90-566, § 5; 90-789, § 1; 91-283, § 5; 92-604, § 5; 93-426, § 5; 93-838, § 15; 93-857, § 5; 94-69, § 15; 94-642, § 5; 94-875, § 5; 96-430, § 5; 96-1000, § 260; 97-86, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.64.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 1.50, 260.55, 260.55, 375.10.

Effect of Amendments. The 1992 amendment by P.A. 87-934, effective January 1, 1993, substituted "State goals and" for "Student" in the section catchline; at the beginning of subsection (a), substituted the present first seven sentences for the former first five sentences, relating to testing procedures between the 1987-88 and 1992-93 academic years; in the next-to-last sentence of subsection (a) inserted "State" following "for which"; in the last sentence of subsection (a), added "maximum" as the second word, substituted "allowed" for "required", inserted "all actual" after "for", inserted "required" after "testing", inserted "during the school year" after "subsection", substituted "25" for "5", and substituted "as allocated among the required tests by the State Board of Education" for "per school year per pupil." rewrote the last sentence of subsection (a); rewrote the second sentence of subsection (b) relating to individual remedial plans; and in the third sentence of subsection (b) substituted "Such activities" for "Such remediation plans".

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The 1993 amendment by P.A. 88-192, effective August 5, 1993, in the sixth sentence of subsection (a) inserted "three"; inserted "shall"; inserted "as determined by an English language proficiency test" and added the seventh sentence.

The 1993 amendment by P.A. 88-227, effective August 6, 1993, in subsection (a) added the tenth sentence.

The 1994 amendment by P.A. 88-670, effective December 2, 1994, combined the amendments by P.A. 88-192 and P.A. 88-227.

The 1994 amendment by P.A. 88-686, effective January 24, 1995, in subsection (a), in the sixth sentence substituted "3" for "three" and added a comma after "test".

The 1996 amendment by P.A. 89-610, effective August 6, 1996, combined the amendments by P.A. 88-670 and P.A. 88-686; in subsection (a), in the first and second sentences, inserted "through the 1997-1998 school year", added the third through twelfth sentences, in the thirteenth sentence deleted "Beginning in 1994-95, or earlier if appropriate" from the beginning, in the fourteenth sentence deleted "by April 1, 1993" preceding "rules", in the nineteenth sentence deleted "Beginning with the 1992-1993 school year" from the beginning and added the twentieth sentence; added subsection (a-5); in subsection (b), in the first sentence, deleted "and to discourage promotion from grade to grade for purely social reasons" from the end, in the third sentence inserted "but shall not be limited to" and added the fourth through sixth sentences; and added subsection (c).

The 1997 amendment by P.A. 90-566, effective January 2, 1998, rewrote this section.

The 1998 amendment by P.A. 90-789, effective August 14, 1998, substituted "test" for "assessment" and made similar substitutions throughout the section; in subdivision (a) substituted "test" for "assess the performance of", inserted "and English grammar" and "(history, geography, civics, economics, and government)", and made minor stylistic changes; and, in subsection (a-5), in the first paragraph substituted "All tests" for "Any IGAP tests" in the first sentence and added the second through fifth sentences, and added the second and third paragraphs.

The 1999 amendment by P.A. 91-283, effective July 23, 1999, rewrote this section to the extent that a detailed comparison would be impracticable.

The 2002 amendment by P.A. 92-604, effective July 1, 2002, added subsection (d).

The 2003 amendment by P.A. 93-426, effective August 5, 2003, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2004 amendment by P.A. 93-838, effective July 30, 2004, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2004 amendment by P.A. 93-857, effective August 3, 2004, added the last sentence in subsection (c).

The 2005 amendment by P.A. 94-69, effective July 1, 2005, rewrote the section, adding references throughout concerning testing of pupils in writing during the 2005-2006 and 2007-2008 years.

The 2005 amendment by P.A. 94-642, effective January 1, 2006, rewrote the seventh paragraph in (a), adding the second sentence and adding references to the Limited English Proficient student assessment.

The 2006 amendment by P.A. 94-875, effective July 1, 2006, in rewrote (b).

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The 2009 amendment by P.A. 96-430, effective August 13, 2009, deleted "highest" preceding "scores attained" in the third sentence of the eighth paragraph of (a); in the sixth sentence of (c), substituted "one opportunity" for "2 opportunities" and "spring semester" for "second semester"; substituted "this test administration" for "these test administrations" in the seventh sentence of (c); deleted the former eleventh sentence of (c), which read: "Any student who fails to earn a qualifying score for a Prairie State Achievement Award in any one or more of the academic areas on the initial test administration or who wishes to improve his or her score on any portion of the examination shall be permitted to retake such portion or portions of the examination during grade 12"; added items (iv) and (v) in the last sentence of (c); and made a related change.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, substituted "Section 411(b)(2)" for "Section m11(b)(2)" in (d).

The 2011 amendment by P.A. 97-86, effective January 1, 2012, inserted "(with an emphasis on reading and mathematics if the student has performed below grade level for 2 consecutive school years)" in the second sentence of the sixth paragraph of (a).

§ 105 ILCS 5/2-3.64a. State Testing Review Committee

Sec. 2-3.64a. State Testing Review Committee. The State Superintendent shall appoint a committee of no more than 20 consisting of parents, teachers, school administrators, and concerned citizens to review the Illinois Goals and Assessment Program tests administered by the State Board of Education. The Committee shall select one of the parent representatives as its chairman. The Committee shall meet on an ongoing basis to review the content and design of the tests (including whether the requirements of subsection a-5 of Section 2-3.64 [105 ILCS 5/2-3.64] have been met), the time and money expended at the local and state levels to prepare for and administer the tests, the collective results of the tests as measured against the stated purpose of testing student performance, and other issues involving the tests identified by the Committee. The Committee shall make periodic recommendations to the State Superintendent and the General Assembly concerning the tests.

(Source: P.A. 89-184, § 1; 90-789, § 1.)

Effective Date. Section 2 of P.A. 89-184 made this section effective upon becoming law. The Act was approved July 19, 1995.

Effect of Amendments. The 1998 amendment by P.A. 90-789, effective August 14, 1998, rewrote the section.

§ 105 ILCS 5/2-3.64b. Innovation, Intervention, and Restructuring Task Force

Sec. 2-3.64b. Innovation, Intervention, and Restructuring Task Force. (a) In keeping with the goals outlined in the federal American Recovery and Reinvestment Act of 2009

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[2 CFR 176.10 et seq.], the State of Illinois hereby creates the Innovation, Intervention, and Restructuring Task Force to develop recommendations for the innovation, intervention, and restructuring of schools, including those that need comprehensive or focused intervention, as those terms are defined by this State's proposal for participation in the No Child Left Behind differentiated accountability pilot project.

(b) The task force shall consist of the following members:

(1) One chairperson, appointed by the Governor.

(2) Two additional members, each appointed by the Governor.

(3) Two members appointed by the State Superintendent of Education.

(4) One member appointed by the President of the Senate.

(5) One member appointed by the Speaker of the House of Representatives.

(6) One member appointed by the Minority Leader of the Senate.

(7) One member appointed by the Minority Leader of the House of Representatives.

(c) The task force shall compile data, study, and, pursuant to subsection (e) of this Section, report on all of the following matters, among any others deemed relevant by the task force:

(1) Ways in which this State can identify schools requiring more intensive intervention.

(2) Strategies for strengthening leadership at struggling schools and otherwise strengthening school district capacity to effectively implement reforms and ensure continuous improvement.

(3) Strategies that have been involved in successful turnaround efforts and a template for evaluating turnaround efforts.

(4) The autonomies, resources, and support that need to be available to achieve and maintain over time a successful turnaround.

(5) Mechanisms for model innovations to be captured and shared across this State.

(6) The amount of funding necessary to accomplish any and all strategies included in the task force's recommendation.

(7) The identification of any statutory or regulatory changes that would be necessary or helpful to promote successful innovation, intervention, and restructuring.

(d) In developing its recommendations, the task force shall compile relevant data. Moreover, the task force shall seek input from statewide school community organizations, including organizations representing teachers, administrators, and parents, as well as civic, business, and child advocacy organizations and any other source deemed appropriate.

The State Board of Education shall provide administrative support to the task force.

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(e) The task force shall submit a comprehensive report to the Governor, the General Assembly, and the State Superintendent of Education not later than December 31, 2009. The task force may, with the written approval of the Governor, reconvene for the purposes of continued study and the development of additional recommendations.

(Source: P.A. 96-109, § 5.)

Effective Date. Section 99 of P.A. 96-109 makes this section effective upon becoming law. The Act was approved July 30, 2009.

§ 105 ILCS 5/2-3.65: Repealed by P.A. 95-793, § 11, effective August 8, 2008.

§ 105 ILCS 5/2-3.65a. Arts and foreign language education grant program

Sec. 2-3.65a. Arts and foreign language education grant program. There is created an arts and foreign language education grant program to fund arts education and foreign language education programs in the public schools, subject to appropriation to the State Board of Education. The grants shall be for the purpose of supporting arts and foreign language education in the schools, with an emphasis on ensuring that art and foreign language courses are available as part of a school's core curriculum. The State Board of Education shall enter into an agreement with the Illinois Arts Council to cooperate in administering and awarding grants under the program.

(Source: P.A. 94-835, § 90-10.)

Effective Date. Section 99 of P.A. 94-835 made the section effective upon becoming law. The Act was approved June 6, 2006.

§ 105 ILCS 5/2-3.66. Truants' alternative and optional education programs

Sec. 2-3.66. Truants' alternative and optional education programs. To establish projects to offer modified instructional programs or other services designed to prevent students from dropping out of school, including programs pursuant to Section 2-3.41 [105 ILCS 5/2-3.41], and to serve as a part time or full time option in lieu of regular school attendance and to award grants to local school districts, educational service regions or community college districts from appropriated funds to assist districts in establishing such projects. The education agency may operate its own program or enter into a contract

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with another not-for-profit entity to implement the program. The projects shall allow dropouts, up to and including age 21, potential dropouts, including truants, uninvolved, unmotivated and disaffected students, as defined by State Board of Education rules and regulations, to enroll, as an alternative to regular school attendance, in an optional education program which may be established by school board policy and is in conformance with rules adopted by the State Board of Education. Truants' Alternative and Optional Education programs funded pursuant to this Section shall be planned by a student, the student's parents or legal guardians, unless the student is 18 years or older, and school officials and shall culminate in an individualized optional education plan. Such plan shall focus on academic or vocational skills, or both, and may include, but not be limited to, evening school, summer school, community college courses, adult education, preparation courses for the high school level test of General Educational Development, vocational training, work experience, programs to enhance self concept and parenting courses. School districts which are awarded grants pursuant to this Section shall be authorized to provide day care services to children of students who are eligible and desire to enroll in programs established and funded under this Section, but only if and to the extent that such day care is necessary to enable those eligible students to attend and participate in the programs and courses which are conducted pursuant to this Section. School districts and regional offices of education may claim general State aid under Section 18-8.05 [105 ILCS 5/18-8.05] for students enrolled in truants' alternative and optional education programs, provided that such students are receiving services that are supplemental to a program leading to a high school diploma and are otherwise eligible to be claimed for general State aid under Section 18-8.05.

(Source: P.A. 86-339; 90-802, § 5; 96-734, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.66.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 205.20.

Effect of Amendments. The 1998 amendment by P.A. 90-802, effective December 15, 1998, added the last sentence.

The 2009 amendment by P.A. 96-734, effective August 25, 2009, deleted "pilot" preceding "projects" in the first and third sentences; and deleted the former seventh sentence, which read: "The Board shall report on the status of the pilot projects pursuant to Section 1A-4."

§ 105 ILCS 5/2-3.66a. WECE program

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Sec. 2-3.66a. WECE program. The State Board of Education is authorized to develop and establish a work experience and career exploration program. Such program, if established as authorized by this Section shall be designed to provide career related classroom instruction and cooperative work experience for 14 and 15 year old potential dropouts who are full time students in the regular school program. Participation in any work experience and career exploration program established under this Section shall provide school credit for successful completion of the class and paid work experience. The purpose of the program shall be to help academically disadvantaged students with the following special services: (1) basic education development and enrichment leading to improved self-image; (2) career education coupled with work training experiences, not exceeding 23 hours per week, provided by the private sector; and (3) motivation leading to continuation in school after age 16.

The State Board of Education is authorized to fund school district work experience and career exploration programs, with priority being given to those school districts which have annual dropout rate data and unemployment rates greater than the Statewide average for the previous year.

Funds for a work experience and career exploration program established under this Section shall be distributed to eligible school districts based on relative ability to pay factors and upon the number of economically disadvantaged students (E.C.I.A. Chapter I pupils) in the districts. The State Board of Education shall promulgate rules and regulations necessary for implementation and continuation of any work experience and career exploration program established as authorized by this Section.

From funds distributed for purposes of this Section, the State Board of Education is authorized to approve applications from qualifying school districts to help meet each such district's costs of employing teacher coordinators, teacher coordinators' travel expenses, student transportation costs and added training costs to employers.

Each person employed as a teacher coordinator pursuant to this Section shall possess one year (2,000 hours) of employment in an occupation or occupations directly related to those career or employment areas with respect to which classroom instruction or cooperative work experience is to be provided under the program, and 6 semester hours of formal coursework in the area of organization and administration of work experience and career exploration education, including techniques of coordinating on-the-job experiences and individualized instructional methodology.

Each work experience and career exploration program shall be limited to a minimum of 12 students and a maximum of 25 students per full-time teacher coordinator. Student limitation is based on the need for individual instruction and supervision time equivalent to one-half hour or more per week per student. Also, each qualified teacher coordinator shall be required to provide a minimum of 200 minutes of instruction per week on general and specific topics related to careers and employment.

School district applications for participation in a work experience and career exploration program established under this Section shall be approved by the State Board of Education.

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(Source: P.A. 86-1441.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.66a.

§ 105 ILCS 5/2-3.66b. IHOPE Program

Sec. 2-3.66b. IHOPE Program. (a) There is established the Illinois Hope and Opportunity Pathways through Education (IHOPE) Program. The State Board of Education shall implement and administer the IHOPE Program. The goal of the IHOPE Program is to develop a comprehensive system in this State to re-enroll significant numbers of high school dropouts in programs that will enable them to earn their high school diploma.

(b) The IHOPE Program shall award grants, subject to appropriation for this purpose, to educational service regions and a school district organized under Article 34 of this Code [105 ILCS 5/34-1 et seq.] from appropriated funds to assist in establishing instructional programs and other services designed to re-enroll high school dropouts. From any funds appropriated for the IHOPE Program, the State Board of Education may use up to 5% for administrative costs, including the performance of a program evaluation and the hiring of staff to implement and administer the program.

The IHOPE Program shall provide incentive grant funds for regional offices of education and a school district organized under Article 34 of this Code to develop partnerships with school districts, public community colleges, and community groups to build comprehensive plans to re-enroll high school dropouts in their regions or districts.

Programs funded through the IHOPE Program shall allow high school dropouts, up to and including age 21 notwithstanding Section 26-2 of this Code [105 ILCS 5/26-2], to re-enroll in an educational program in conformance with rules adopted by the State Board of Education. Programs may include without limitation comprehensive year-round programming, evening school, summer school, community college courses, adult education, vocational training, work experience, programs to enhance self-concept, and parenting courses. Any student in the IHOPE Program who wishes to earn a high school diploma must meet the prerequisites to receiving a high school diploma specified in Section 27-22 of this Code [105 ILCS 5/27-22] and any other graduation requirements of the student's district of residence. Any student who successfully completes the requirements for his or her graduation shall receive a diploma identifying the student as graduating from his or her district of residence.

(c) In order to be eligible for funding under the IHOPE Program, an interested regional office of education or a school district organized under Article 34 of this Code shall develop an IHOPE Plan to be approved by the State Board of Education. The State Board of Education shall develop rules for the IHOPE Program that shall set forth the

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requirements for the development of the IHOPE Plan. Each Plan shall involve school districts, public community colleges, and key community programs that work with high school dropouts located in an educational service region or the City of Chicago before the Plan is sent to the State Board for approval. No funds may be distributed to a regional office of education or a school district organized under Article 34 of this Code until the State Board has approved the Plan.

(d) A regional office of education or a school district organized under Article 34 of this Code may operate its own program funded by the IHOPE Program or enter into a contract with other not-for-profit entities, including school districts, public community colleges, and not-for-profit community-based organizations, to operate a program.

A regional office of education or a school district organized under Article 34 of this Code that receives an IHOPE grant from the State Board of Education may provide funds under a sub-grant, as specified in the IHOPE Plan, to other not-for-profit entities to provide services according to the IHOPE Plan that was developed. These other entities may include school districts, public community colleges, or not-for-profit community-based organizations or a cooperative partnership among these entities.

(e) In order to distribute funding based upon the need to ensure delivery of programs that will have the greatest impact, IHOPE Program funding must be distributed based upon the proportion of dropouts in the educational service region or school district, in the case of a school district organized under Article 34 of this Code, to the total number of dropouts in this State. This formula shall employ the dropout data provided by school districts to the State Board of Education.

A regional office of education or a school district organized under Article 34 of this Code may claim State aid under Section 18-8.05 of this Code [105 ILCS 5/18-8.05] for students enrolled in a program funded by the IHOPE Program, provided that the State Board of Education has approved the IHOPE Plan and that these students are receiving services that are meeting the requirements of Section 27-22 of this Code for receipt of a high school diploma and are otherwise eligible to be claimed for general State aid under Section 18-8.05 of this Code, including provisions related to the minimum number of days of pupil attendance pursuant to Section 10-19 of this Code [105 ILCS 5/10-19] and the minimum number of daily hours of school work and any exceptions thereto as defined by the State Board of Education in rules.

(f) IHOPE categories of programming may include the following:

(1) Full-time programs that are comprehensive, year-round programs.

(2) Part-time programs combining work and study scheduled at various times that are flexible to the needs of students.

(3) Online programs and courses in which students take courses and complete on-site, supervised tests that measure the student's mastery of a specific course needed for graduation. Students may take courses online and earn credit or students may prepare to take supervised tests for specific courses for credit leading to receipt of a high school diploma.

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(4) Dual enrollment in which students attend high school classes in combination with community college classes or students attend community college classes while simultaneously earning high school credit and eventually a high school diploma.

(g) In order to have successful comprehensive programs re-enrolling and graduating low-skilled high school dropouts, programs funded through the IHOPE Program shall include all of the following components:

(1) Small programs (70 to 100 students) at a separate school site with a distinct identity. Programs may be larger with specific need and justification, keeping in mind that it is crucial to keep programs small to be effective.

(2) Specific performance-based goals and outcomes and measures of enrollment, attendance, skills, credits, graduation, and the transition to college, training, and employment.

(3) Strong, experienced leadership and teaching staff who are provided with ongoing professional development.

(4) Voluntary enrollment.

(5) High standards for student learning, integrating work experience, and education, including during the school year and after school, and summer school programs that link internships, work, and learning.

(6) Comprehensive programs providing extensive support services.

(7) Small teams of students supported by full-time paid mentors who work to retain and help those students graduate.

(8) A comprehensive technology learning center with Internet access and broad-based curriculum focusing on academic and career subject areas.

(9) Learning opportunities that incorporate action into study.

(h) Programs funded through the IHOPE Program must report data to the State Board of Education as requested. This information shall include, but is not limited to, student enrollment figures, attendance information, course completion data, graduation information, and post-graduation information, as available.

(i) Rules must be developed by the State Board of Education to set forth the fund distribution process to regional offices of education and a school district organized under Article 34 of this Code, the planning and the conditions upon which an IHOPE Plan would be approved by State Board, and other rules to develop the IHOPE Program.

(Source: P.A. 96-106, § 5.)

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Effective Date. Section 99 of P.A.96-106 purports to make this section effective July 1, 2009. This Act was approved July 30, 2009.

§§ 105 ILCS 5/2-3.67, 105 ILCS 5/2-3.68: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/2-3.69. Tutoring services

Sec. 2-3.69. Tutoring services. The State Board of Education shall adopt rules and regulations defining basic requirements which must be met by students of institutions of higher education who are selected by such institutions to furnish tutoring services under the Educational Partnership Act, as now or hereafter amended [110 ILCS 40/1 et seq.].

(Source: P.A. 84-1308.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.69.

§ 105 ILCS 5/2-3.70. Alcohol and substance abuse education and prevention programs

Sec. 2-3.70. Alcohol and substance abuse education and prevention programs. To review, subject to the rules and regulations of the State Board of Education, grants made available to all education agencies by the Department of Human Services for school based alcohol and substance abuse education and prevention programs, and to enter into agreements with the Department to establish such programs.

(Source: P.A. 84-1308; 89-507, § 90C-13.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.70.

Effect of Amendments. The 1996 amendment by P.A. 89-507, effective July 1, 1997, substituted "Human Services" for "Alcoholism and Substance Abuse".

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§ 105 ILCS 5/2-3.71. Grants for preschool educational programs

Sec. 2-3.71. Grants for preschool educational programs. (a) Preschool program.

(1) The State Board of Education shall implement and administer a grant program under the provisions of this subsection which shall consist of grants to public school districts and other eligible entities, as defined by the State Board of Education, to conduct voluntary preschool educational programs for children ages 3 to 5 which include a parent education component. A public school district which receives grants under this subsection may subcontract with other entities that are eligible to conduct a preschool educational program. These grants must be used to supplement, not supplant, funds received from any other source.

(2) (Blank).

(3) Any teacher of preschool children in the program authorized by this subsection shall hold an early childhood teaching certificate.

(4) (Blank)

(4.5) The State Board of Education shall provide the primary source of funding through appropriations for the program. Such funds shall be distributed to achieve a goal of "Preschool for All Children" for the benefit of all children whose families choose to participate in the program. Based on available appropriations, newly funded programs shall be selected through a process giving first priority to qualified programs serving primarily at-risk children and second priority to qualified programs serving primarily children with a family income of less than 4 times the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2). For purposes of this paragraph (4.5), at-risk children are those who because of their home and community environment are subject to such language, cultural, economic and like disadvantages to cause them to have been determined as a result of screening procedures to be at risk of academic failure. Such screening procedures shall be based on criteria established by the State Board of Education.

Except as otherwise provided in this paragraph (4.5), grantees under the program must enter into a memorandum of understanding with the appropriate local Head Start agency. This memorandum must be entered into no later than 3 months after the award of a grantee's grant under the program, except that, in the case of the 2009-2010 program year, the memorandum must be entered into no later than the deadline set by the State Board of Education for applications to participate in the program in fiscal year 2011, and must address collaboration between the grantee's program and the local Head Start agency on certain issues, which shall include without limitation the following:

(A) educational activities, curricular objectives, and instruction;

(B) public information dissemination and access to programs for families contacting programs;

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(C) service areas;

(D) selection priorities for eligible children to be served by programs;

(E) maximizing the impact of federal and State funding to benefit young children;

(F) staff training, including opportunities for joint staff training;

(G) technical assistance;

(H) communication and parent outreach for smooth transitions to kindergarten;

(I) provision and use of facilities, transportation, and other program elements;

(J) facilitating each program's fulfillment of its statutory and regulatory requirements;

(K) improving local planning and collaboration; and

(L) providing comprehensive services for the neediest Illinois children and families.

If the appropriate local Head Start agency is unable or unwilling to enter into a memorandum of understanding as required under this paragraph (4.5), the memorandum of understanding requirement shall not apply and the grantee under the program must notify the State Board of Education in writing of the Head Start agency's inability or unwillingness. The State Board of Education shall compile all such written notices and make them available to the public.

(5) The State Board of Education shall develop and provide evaluation tools, including tests, that school districts and other eligible entities may use to evaluate children for school readiness prior to age 5. The State Board of Education shall require school districts and other eligible entities to obtain consent from the parents or guardians of children before any evaluations are conducted. The State Board of Education shall encourage local school districts and other eligible entities to evaluate the population of preschool children in their communities and provide preschool programs, pursuant to this subsection, where appropriate.

(6) The State Board of Education shall report to the General Assembly by November 1, 2010 and every 3 years thereafter on the results and progress of students who were enrolled in preschool educational programs, including an assessment of which programs have been most successful in promoting academic excellence and alleviating academic failure. The State Board of Education shall assess the academic progress of all students who have been enrolled in preschool educational programs.

On or before November 1 of each fiscal year in which the General Assembly provides funding for new programs under paragraph (4.5) of this Section, the State Board of Education shall report to the General Assembly on what percentage of new funding was provided to programs serving primarily at-risk children, what percentage of new funding was provided to programs serving primarily children with a family income of less than 4 times the federal poverty level, and what percentage of new funding was provided to other programs.

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(b) (Blank).

(Source: P.A. 86-316; 86-400; 86-1028; 87-141; 87-515; 87-895; 94-506, § 5; 94-1054, § 5; 95-724, § 5; 96-119, § 5; 96-944, § 5; 96-948, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.71.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 235.20.

Effect of Amendments. The 2005 amendment by P.A. 94-506, approved August 8, 2005, rewrote the section.

The 2006 amendment by P.A. 94-1054, effective July 25, 2006, in (a)(4) added the first sentence and made a stylistic change; added (a)(4.5); and in (a)(6) substituted "2007" for "1989'.

The 2008 amendment by P.A. 95-724, effective June 30, 2008, twice substituted "June 30, 2010" for "June 30, 2008"; deleted the former last paragraph of (a)(4.5), which read: "On or before November 1 of each fiscal year in which the General Assembly provides funding for new programs under this paragraph (4.5), the State Board of Education shall report to the General Assembly on what percentage of new funding was provided to programs serving primarily at-risk children, what percentage of new funding was provided to programs serving primarily children with a family income of less than 4 times the federal poverty level, and what percentage of new funding was provided to other programs"; and in (a)(6) substituted "November 1, 2010" for "July 1, 2007" in the first sentence, and added the second paragraph.

The 2009 amendment by P.A. 96-119, effective August 4, 2009, added the two paragraphs following (4.5).

The 2010 amendment by P.A. 96-944, effective June 25, 2010 and the 2010 amendment by P.A. 96-948, effective June 25, 2010, made identical changes: they each deleted the text from (a)(4), which read: "This paragraph (4) applies before July 1, 2006 and after June 30, 2010. The State Board of Education shall provide the primary source of funding through appropriations for the program. Such funds shall be distributed for the benefit of children who because of their home and community environment are subject to such language, cultural, economic and like disadvantages that they have been determined as a result of screening procedures to be at risk of academic failure. Such screening procedures shall be based on criteria established by the State Board of Education"; and deleted the first sentence in (4.5), which read: "This paragraph (4.5) applies from July 1, 2006 through June 30, 2010".

CASE NOTES

Analysis

Constitutionality

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- Equal Protection
- Funding Disparities

At Risk Children

Grant Program

Constitutionality

- Equal Protection

General structure of state's system of funding public schools through state and local resources, and the amounts allocated for distribution, represent legislative efforts to strike a balance between competing considerations of educational equality and local control, and state's system of funding is rationally related to legitimate goal of promoting local control. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

- Funding Disparities

Disparities in educational funding resulting from differences in local property wealth do not offend efficiency requirement in Ill. Const. (1970), Art. X, § 1. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

At Risk Children

The School Code does not contain minimum requirements for the education of "at risk" children, nor does the education article require the legislature to fund these aid programs; all the School Code requires is that school boards provide grants for educationally disadvantaged children. Committee for Educ. Rights v. Edgar, 267 Ill. App. 3d 18, 204 Ill. Dec. 378, 641 N.E.2d 602 (1 Dist. 1994), aff'd, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

Grant Program

The School Code does not operate to deny many school districts with at risk children the equal protection of the laws; the statutory requirements for the operation of the grant program are rationally related to the goal of local control. Committee for Educ. Rights v. Edgar, 267 Ill. App. 3d 18, 204 Ill. Dec. 378, 641 N.E.2d 602 (1 Dist. 1994), aff'd, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

RESEARCH REFERENCES

Validity of public school funding systems. 110 ALR5th 293.

§ 105 ILCS 5/2-3.71a. Grants for early childhood parental training programs

Sec. 2-3.71a. Grants for early childhood parental training programs. The State Board of Education shall implement and administer a grant program consisting of grants to public school districts and other eligible entities, as defined by the State Board of Education, to

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conduct early childhood parental training programs for the parents of children in the period of life from birth to kindergarten. A public school district that receives grants under this Section may contract with other eligible entities to conduct an early childhood parental training program. These grants must be used to supplement, not supplant, funds received from any other source. A school board or other eligible entity shall employ appropriately qualified personnel for its early childhood parental training program, including but not limited to certified teachers, counselors, psychiatrists, psychologists and social workers.

(a) As used in this Section, "parental training" means and includes instruction in the following:

(1) Child growth and development, including prenatal development.

(2) Childbirth and child care.

(3) Family structure, function and management.

(4) Prenatal and postnatal care for mothers and infants.

(5) Prevention of child abuse.

(6) The physical, mental, emotional, social, economic and psychological aspects of interpersonal and family relationships.

(7) Parenting skill development.

The programs shall include activities that require substantial participation and interaction between parent and child.

(b) The Board shall annually award funds through a grant approval process established by the State Board of Education, providing that an annual appropriation is made for this purpose from State, federal or private funds. Nothing in this Section shall preclude school districts from applying for or accepting private funds to establish and implement programs.

(c) The State Board of Education shall assist those districts and other eligible entities offering early childhood parental training programs, upon request, in developing instructional materials, training teachers and staff, and establishing appropriate time allotments for each of the areas included in such instruction.

(d) School districts and other eligible entities may offer early childhood parental training courses during that period of the day which is not part of the regular school day. Residents of the community may enroll in such courses. The school board or other eligible entity may establish fees and collect such charges as may be necessary for attendance at such courses in an amount not to exceed the per capita cost of the operation thereof, except that the board or other eligible entity may waive all or part of such charges if it determines that the parent is indigent or that the educational needs of the parent require his or her attendance at such courses.

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(e) Parents who participate in early childhood parental training programs under this Section may be eligible for reasonable reimbursement of any incidental transportation and child care expenses from the school district receiving funds pursuant to this Section.

(f) Districts and other eligible entities receiving grants pursuant to this Section shall coordinate programs created under this Section with other preschool educational programs, including "at-risk" preschool programs, special and vocational education, and related services provided by other governmental agencies and not-for-profit agencies.

(g) The State Board of Education shall report to the General Assembly by July 1, 1991, on the results of the programs funded pursuant to this Section and whether a need continues for such programs.

(h) After July 1, 2006, any parental training services funded pursuant to this Section on the effective date of this amendatory Act of the 94th General Assembly [P.A. 94-506] shall continue to be funded pursuant to this Section, subject to appropriation and the meeting of program standards. Any additional parental training services must be funded, subject to appropriation, through preschool education grants pursuant to subdivision (4) of subsection (a) of Section 2-3.71 of this Code [105 ILCS 5/2-3.71] for families with children ages 3 to 5 and through prevention initiative grants pursuant to subsection (b) of Section 2-3.89 of this Code [105 ILCS 5/2-3.89] for expecting families and those with children from birth to 3 years of age.

(Source: P.A. 85-1046; 94-506, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.71a.

Effect of Amendments. The 2005 amendment by P.A. 94-506, approved August 8, 2005, rewrote the section.

§ 105 ILCS 5/2-3.72: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/2-3.73. Missing child program

Sec. 2-3.73. Missing child program. The State Board of Education shall administer and implement a missing child program in accordance with the provisions of this Section. Upon receipt of each periodic information bulletin from the Department of State Police pursuant to Section 6 of the Intergovernmental Missing Child Recovery Act of 1984 [325 ILCS 40/6], the State Board of Education shall promptly disseminate the information to each school district in this State and to the principal or chief administrative officer of

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every nonpublic elementary and secondary school in this State registered with the State Board of Education. Upon receipt of such information, each school board shall compare the names on the bulletin to the names of all students presently enrolled in the schools of the district. If a school board or its designee determines that a missing child is attending one of the schools within the school district, or if the principal or chief administrative officer of a nonpublic school is notified by school personnel that a missing child is attending that school, the school board or the principal or chief administrative officer of the nonpublic school shall immediately give notice of this fact to the Department of State Police and the law enforcement agency having jurisdiction in the area where the missing child resides or attends school.

(Source: P.A. 84-1308; 91-357, § 101; 95-793, § 5; 96-734, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.73.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "Department of State Police" for "Department of Law Enforcement" in the second and last sentences.

The 2008 amendment by P.A. 95-793, effective August 8, 2008, substituted "promptly disseminate the information to each" for "promptly make copies of the same and mail one copy to the school board of each", substituted "every nonpublic" for "each nonpublic" and inserted "registered with the State Board of Education" in the second sentence; and inserted "of such information" in the third sentence.

The 2009 amendment by P.A. 96-734, effective August 25, 2009, deleted "the State Board of Education" following "of this fact to" in the last sentence; and made a stylistic change.

§ 105 ILCS 5/2-3.74: Repealed by P.A. 97-256, § 10, effective January 1, 2012.

Note.

The repealed section related to creation of tax exempt foundations.

§ 105 ILCS 5/2-3.76. [Educational services for eligible children]

Sec. 2-3.76. The State Board of Education shall be the State agency responsible for ensuring that educational services are provided to all eligible children in Illinois. This

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shall enhance the ability of the State Board to guarantee that an appropriate education is made available to each eligible child regardless of which agency places a child or is responsible for its care and custody. In order to fully implement this Section the State Board shall have the authority to ensure that the educational programs provided by the Department of Human Services and the Department of Corrections, the educational components of the residential schools operated by the Department of Human Services, and the educational placements paid for by the Department of Children and Family Services shall meet the standards of programs that shall be provided to all eligible children.

(Source: P.A. 84-1308; 89-507, § 90D-40.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.76.

Effect of Amendments. The 1996 amendment by P.A. 89-507, effective July 1, 1997, in the third sentence substituted "Human Services" for "Mental Health and Developmental Disabilities" and substituted "Human Services" for "Rehabilitation Services".

§ 105 ILCS 5/2-3.77. Temporary relocation expenses

Sec. 2-3.77. Temporary relocation expenses. (a) The State Board of Education may distribute loan or grant moneys appropriated for temporary relocation expenses incurred by school districts as a result of fires, earthquakes, tornados, mine subsidence, or other natural or man-made disasters which destroy school buildings, or as a result of the condemnation of a school building under Section 3-14.22 [105 ILCS 5/3-14.22]. The State Board of Education shall by rule prescribe those expenses which qualify as temporary relocation expenses and the manner of determining and reporting the same, provided that such expenses shall be deemed to include amounts reasonably required to be expended for the lease, rental, and renovation of educational facilities and for additional transportation and other expenses directly associated with the temporary relocation and housing of the normal operations, activities, and affairs of a school district.

(b) Except as provided in subsection (c), no moneys appropriated to the State Board of Education for purposes of distribution in accordance with the provisions of this Section shall be distributed to any school district unless the school board of such district, as an express condition of any such distribution, agrees to levy the tax provided for by Section 17-2.2c [105 ILCS 5/17-2.2c] at the maximum rate permitted thereunder and to pay to the State of Illinois for deposit in the Temporary Relocation Expenses Revolving Grant Fund (i) all proceeds of such tax attributable to the first year and succeeding years for which the tax is levied after moneys appropriated for purposes of this Section have been distributed to the school district, and (ii) all insurance proceeds which become payable to

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the district under those provisions of any contract or policy of insurance which provide reimbursement for or other coverage against loss with respect to any temporary relocation expenses of the school district; provided, that the aggregate of any tax and insurance proceeds paid by the school district to the State pursuant to this Section shall not exceed in amount the moneys distributed to the school district pursuant to this Section.

(c) The State Board of Education may, from appropriations made for this purpose from the Temporary Relocation Expenses Revolving Grant Fund, make grants that do not require repayment to school districts that qualify for temporary relocation assistance under this Section to the extent that the amount of temporary relocation expenses incurred by a district exceeds the amount that the district is able to repay to the State through insurance proceeds and the tax levy authorized in Section 17-2.2c.

(d) The Temporary Relocation Expenses Revolving Grant Fund is hereby established as a special fund within the State treasury. Appropriations and amounts that school districts repay to the State under subsection (b) of this Section shall be deposited into that Fund. If the balance in that Fund exceeds $3,000,000, the excess shall be transferred into the General Revenue Fund.

(e) The State Board of Education shall promulgate such rules and regulations, not inconsistent with the provisions of this Section, as are necessary to provide for the distribution of loan and grant moneys and for the repayment of loan moneys distributed pursuant to this Section.

(Source: P.A. 84-1308; 90-464, § 10; 96-102, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.77.

Effect of Amendments. The 1997 amendment by P.A. 90-464, effective August 17, 1997, added the subsection (a) and (b) designations; in subsection (a), in the first sentence, substituted "The State Board of Education may" for "To", inserted "loan or grant", substituted a comma for "or" preceding "tornados", inserted "or other natural or man-made disasters" and added at the end "or as a result of the condemnation of a school building under Section 3-14.22" and in the second sentence, added a comma after "rental", added a comma after "activities" and deleted from the end "as a result of fire, earthquake or tornado which destroys any school building of the district"; in subsection (b), added at the beginning "Except as provided in subsection (c)", substituted "Temporary Relocation Expenses Revolving Grant Fund" for "General Revenue Fund" and inserted "and succeeding years"; added subsections (c) and (d); added the subsection (e) designation; and in subsection (e) substituted "loan and grant moneys" of "moneys appropriated" and inserted "loan".

The 2009 amendment by P.A. 96-102, effective July 29, 2009, inserted "mine subsidence" in the first sentence of (a) and made a related change.

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§ 105 ILCS 5/2-3.78. Rights of children with disabilities to free appropriate public education

Sec. 2-3.78. Rights of children with disabilities to free appropriate public education. The State Board of Education is encouraged to use free access radio and television to inform the public of the right of all children with disabilities to a free appropriate public education under this Code and the Education of the Handicapped Act, as amended [20 U.S.C. § 1400 et seq.].

(Source: P.A. 84-1308; 89-397, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.78.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the section catchline deleted "Handicapped" preceding "children" and inserted "with disabilities"; and substituted "children with disabilities" for "handicapped children".

§ 105 ILCS 5/2-3.79. Pilot programs and special education services for preschool children with disabilities from birth to age 3

Sec. 2-3.79. Pilot programs and special education services for preschool children with disabilities from birth to age 3. The State Board of Education may enter into contracts with public or not-for-profit private organizations or agencies to establish model pilot programs which provide services to children with disabilities from birth up to the age of 3 years. Annual grants shall be awarded on a competitive basis pursuant to established criteria provided that there is an annual appropriation for this purpose. Public or not-for-profit private organizations or agencies that are providing services to children with disabilities up to the age of 3 years prior to September 22, 1985 are eligible to receive grants awarded pursuant to this Section.

Each pilot program shall include, but not be limited to: a process for identification of infants with disabilities in the region; community awareness of the project and the services provided; an intervention system; methods to assess and diagnose infants with disabilities; written individual treatment programs that include parental involvement; an interdisciplinary treatment approach to include other agencies and not-for-profit organizations; and a written evaluation submitted to the State Board of Education at the end of the grant period.

An Interagency Coordination Council shall be established consisting of a representative of the State Superintendent of Education who shall serve as chairman, and one

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representative from the following departments appointed by the respective directors or secretary: Children and Family Services, Public Health, Human Services, Public Aid, and the Division of Specialized Care for Children of the University of Illinois. The council shall recommend criteria to the State Board of Education for the awarding of grants pursuant to this Section and shall assist in coordinating the services provided by agencies to the children with disabilities described in this Section.

A report containing recommendations concerning all of the pilot programs shall be submitted by the State Board of Education to the General Assembly by January of 1989. The report which shall analyze the results of the pilot programs funded under this Section and make recommendations concerning existing and proposed programs shall include, but not be limited to: recommendations for staff licensure and qualifications; the number of children and families eligible for services statewide; the cost of serving the children and their families; the types of services to be provided; and designs for the most effective delivery systems of these services.

(Source: P.A. 87-895; 89-397, § 5; 89-507, § 90D-40.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.79.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the section catchline substituted "preschool children with disabilities" for "handicapped preschool children"; in the first paragraph, in the first and third sentences substituted "children with disabilities" for "handicapped children"; in the second paragraph substituted "infants with disabilities" for "handicapped infants" twice; and in the third paragraph, in the second sentence, substituted "children with disabilities" for "handicapped children".

The 1996 amendment by P.A. 89-507, effective July 1, 1997, in the third paragraph, in the first sentence, inserted "or secretary", deleted "Mental Health and Developmental Disabilities" following "Children and Family Services" and substituted "Human Services" for "Rehabilitation Services".

§ 105 ILCS 5/2-3.80. [Agricultural education program]

Sec. 2-3.80. (a) The General Assembly recognizes that agriculture is the most basic and singularly important industry in the State, that agriculture is of central importance to the welfare and economic stability of the State, and that the maintenance of this vital industry requires a continued source of trained and qualified individuals for employment in agriculture and agribusiness. The General Assembly hereby declares that it is in the best interests of the people of the State of Illinois that a comprehensive education program in agriculture be created and maintained by the State's public school system in order to ensure an adequate supply of trained and skilled individuals and to ensure appropriate representation of racial and ethnic groups in all phases of the industry. It is the intent of

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the General Assembly that a State program for agricultural education shall be a part of the curriculum of the public school system K through adult, and made readily available to all school districts which may, at their option, include programs in education in agriculture as a part of the curriculum of that district.

(b) The State Board of Education shall adopt such rules and regulations as are necessary to implement the provisions of this Section. The rules and regulations shall not create any new State mandates on school districts as a condition of receiving federal, State, and local funds by those entities. It is in the intent of the General Assembly that, although this Section does not create any new mandates, school districts are strongly advised to follow the guidelines set forth in this Section.

(c) The State Superintendent of Education shall assume responsibility for the administration of the State program adopted under this Section throughout the public school system as well as the articulation of the State program to the requirements and mandates of federally assisted education. There is currently within the State Board of Education an agricultural education unit to assist school districts in the establishment and maintenance of educational programs pursuant to the provisions of this Section. The staffing of the unit shall at all times be comprised of an appropriate number of full-time employees who shall serve as program consultants in agricultural education and shall be available to provide assistance to school districts. At least one consultant shall be responsible for the coordination of the State program, as Head Consultant. At least one consultant shall be responsible for the coordination of the activities of student and agricultural organizations and associations.

(d) A committee of 13 agriculturalists representative of the various and diverse areas of the agricultural industry in Illinois shall be established to at least develop a curriculum and overview the implementation of the Build Illinois through Quality Agricultural Education plans of the Illinois Leadership Council for Agricultural Education and to advise the State Board of Education on vocational agricultural education. The Committee shall be composed of the following: (6) agriculturalists representing the Illinois Leadership Council for Agricultural Education; (2) Secondary Agriculture Teachers; (1) "Ag In The Classroom" Teacher; (1) Community College Agriculture Teacher; (1) Adult Agriculture Education Teacher; (1) University Agriculture Teacher Educator; and (1) FFA Representative. All members of the Committee shall be appointed by the Governor by and with the advice and consent of the Senate. The terms of all members so appointed shall be for 3 years, except that of the members initially appointed, 5 shall be appointed to serve for terms of 1 year, 4 shall be appointed to serve for terms of 2 years and 4 shall be appointed to serve for terms of 3 years. All members of the Committee shall serve until their successors are appointed and qualified. Vacancies in terms shall be filled by appointment of the Governor with the advice and consent of the Senate for the extent of the unexpired term. The State Board of Education shall implement a Build Illinois through Quality Agricultural Education plan following receipt of these recommendations which shall be made available on or before March 31, 1987. Recommendations shall include, but not be limited to, the development of a curriculum and a strategy for the purpose of establishing a source of trained and qualified individuals in agriculture, a strategy for articulating the State program in agricultural education throughout the public school system, and a consumer education outreach strategy regarding the importance of

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agriculture in Illinois. The committee of agriculturalists shall serve without compensation.

(e) A school district that offers a secondary agricultural education program that is approved for State and federal funding must ensure that, at a minimum, all of the following are available to its secondary agricultural education students:

(1) An instructional sequence of courses approved by the State Board of Education.

(2) A State and nationally affiliated FFA (Future Farmers of America) chapter that is integral to instruction and is not treated solely as an extracurricular activity.

(3) A mechanism for ensuring the involvement of all secondary agricultural education students in formal, supervised, agricultural-experience activities and programs.

(f) Nothing in this Section may prevent those secondary agricultural education programs that are in operation before the effective date of this amendatory Act of the 94th General Assembly [P.A. 94-855] and that do not have an active State and nationally affiliated FFA chapter from continuing to operate or from continuing to receive funding from the State Board of Education.

(Source: P.A. 84-1452; 94-855, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.80.

Effect of Amendments. The 2006 amendment by P.A. 94-855, effective January 1, 2007, added (e) and (f).

§ 105 ILCS 5/2-3.80a. Agricultural science teacher education

Sec. 2-3.80a. Agricultural science teacher education. (a) Subject to appropriation, the State Board of Education shall develop an agricultural science teacher education training continuum beginning at the secondary level and shall provide grants to the following:

(1) institutions of higher education that offer State-approved agricultural science teacher preparation programs; and

(2) public community colleges in this State that provide an articulated agricultural science teacher education course of study.

(b) The funds provided by the State Board of Education under subsection (a) of this Section may be used to support the following activities:

(1) Teacher education candidate recruitment and retention incentives.

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(2) Having Master teachers and practitioners assist with various aspects of the recruitment of potential candidates and the preparation of those candidates as skilled and qualified teachers of agricultural education.

(3) Establishing, delivering, arranging for, or providing financial support for professional development experiences for new agricultural science teachers during their first 5 years of teaching.

(4) Professional development for faculty in universities' agricultural education teacher preparation programs and for community college agriculture faculty responsible for instruction in agricultural education teacher preparation transfer programs.

(Source: P.A. 95-153, § 5; 96-404, § 5.)

Effective Date. This section became effective January 1, 2008, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2009 amendment by P.A. 96-404, effective August 13, 2009, substituted "Agricultural" for "Agriculture" in the section heading and rewrote the section.

§ 105 ILCS 5/2-3.81. Alternative education diplomas

Sec. 2-3.81. Alternative education diplomas. The State Board of Education shall award diplomas to students who successfully complete alternative education programs, including those programs which utilize student learning objectives and goals, when such programs are approved by the State Superintendent of Education and the organization providing the alternative program does not have the authority to award secondary education diplomas.

(Source: P.A. 84-1383; 84-1438.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.81.

§ 105 ILCS 5/2-3.82: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/2-3.83. Individual transition plan model pilot program

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Sec. 2-3.83. Individual transition plan model pilot program. (a) The General Assembly finds that transition services for special education students in secondary schools are needed for the increasing numbers of students exiting school programs. Therefore, to ensure coordinated and timely delivery of services, the State shall establish a model pilot program to provide such services. Local school districts, using joint agreements and regional service delivery systems for special and vocational education selected by the Governor's Planning Council on Developmental Disabilities, shall have the primary responsibility to convene transition planning meetings for these students who will require post-school adult services.

(b) For purposes of this Section:

(1) "Post-secondary Service Provider" means a provider of services for adults who have any developmental disability as defined in Section 1-106 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-106] or who are disabled as defined in the Disabled Persons Rehabilitation Act [20 ILCS 2405/0.01 et seq.].

(2) "Individual Education Plan" means a written statement for an exceptional child that provides at least a statement of: the child's present levels of educational performance, annual goals and short-term instructional objectives; specific special education and related services; the extent of participation in the regular education program; the projected dates for initiation of services; anticipated duration of services; appropriate objective criteria and evaluation procedures; and a schedule for annual determination of short-term objectives.

(3) "Individual Transition Plan" (ITP) means a multi-agency informal assessment of a student's needs for post-secondary adult services including but not limited to employment, post-secondary education or training and residential independent living.

(4) "Developmental Disability" means a disability which is attributable to: (a) an intellectual disability, cerebral palsy, epilepsy or autism; or to (b) any other condition which results in impairment similar to that caused by an intellectual disability and which requires services similar to those required by intellectually disabled persons. Such disability must originate before the age of 18 years, be expected to continue indefinitely, and constitute a substantial handicap.

(5) "Exceptional Characteristic" means any disabling or exceptional characteristic which interferes with a student's education including, but not limited to, a determination that the student is severely or profoundly mentally disabled, trainably mentally disabled, deaf-blind, or has some other health impairment.

(c) The model pilot program required by this Section shall be established and administered by the Governor's Planning Council on Developmental Disabilities in conjunction with the case coordination pilot projects established by the Department of Human Services pursuant to Section 4.1 of the Community Services Act, as amended [405 ILCS 30/4.1].

(d) The model pilot program shall include the following features:

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(1) Written notice shall be sent to the student and, when appropriate, his or her parent or guardian giving the opportunity to consent to having the student's name and relevant information shared with the local case coordination unit and other appropriate State or local agencies for purposes of inviting participants to the individual transition plan meeting.

(2) Meetings to develop and modify, as needed, an Individual Transition Plan shall be conducted annually for all students with a developmental disability in the pilot program area who are age 16 or older and who are receiving special education services for 50% or more of their public school program. These meetings shall be convened by the local school district and conducted in conjunction with any other regularly scheduled meetings such as the student's annual individual educational plan meeting. The Governor's Planning Council on Developmental Disabilities shall cooperate with and may enter into any necessary written agreements with the Department of Human Services and the State Board of Education to identify the target group of students for transition planning and the appropriate case coordination unit to serve these individuals.

(3) The ITP meetings shall be co-chaired by the individual education plan coordinator and the case coordinator. The ITP meeting shall include but not be limited to discussion of the following: the student's projected date of exit from the public schools; his projected post-school goals in the areas of employment, residential living arrangement and post-secondary education or training; specific school or post-school services needed during the following year to achieve the student's goals, including but not limited to vocational evaluation, vocational education, work experience or vocational training, placement assistance, independent living skills training, recreational or leisure training, income support, medical needs and transportation; and referrals and linkage to needed services, including a proposed time frame for services and the responsible agency or provider. The individual transition plan shall be signed by participants in the ITP discussion, including but not limited to the student's parents or guardian, the student (where appropriate), multi-disciplinary team representatives from the public schools, the case coordinator and any other individuals who have participated in the ITP meeting at the discretion of the individual education plan coordinator, the developmental disability case coordinator or the parents or guardian.

(4) At least 10 days prior to the ITP meeting, the parents or guardian of the student shall be notified in writing of the time and place of the meeting by the local school district. The ITP discussion shall be documented by the assigned case coordinator, and an individual student file shall be maintained by each case coordination unit. One year following a student's exit from public school the case coordinator shall conduct a follow up interview with the student.

(5) Determinations with respect to individual transition plans made under this Section shall not be subject to any due process requirements prescribed in Section 14-8.02 of this Code [105 ILCS 5/14-8.02].

(e) (Blank).

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(Source: P.A. 85-874; 88-380, § 50; 89-397, § 5; 89-507, § 90D-40; 89-626, § 3-17; 91-96, § 10; 97-227, § 60.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.83.

Rule of construction. This Act shall be construed to make amendments to provisions of State law to substitute the term "intellectual disability" for "mental retardation", "intellectually disabled" for "mentally retarded", "ID/DD Community Care Act" for "MR/DD Community Care Act", "physically disabled" for "crippled", and "physical disability" or "physically disabling", as appropriate, for "crippling" without any intent to change the substantive rights, responsibilities, coverage, eligibility, or definitions referred to in the amended provisions represented in this Act.

Effect of Amendments. The 1993 amendment by P.A. 88-380, effective August 20, 1993, substituted "students with a developmental disability" for "developmentally disabled students" in the first sentence of subdivision (d)(2).

The 1995 amendment by P.A. 89-397, effective August 20, 1995, in subdivision (b)(5), substituted "disabling" for "handicapping", and "disabled" for "handicapped" twice.

The 1996 amendment by P.A. 89-507, effective July 1, 1997, in subdivision (b)(1) substituted "the Disabled Persons Rehabilitation Act" for "'An Act in relation to rehabilitation of disabled persons', approved June 28, 1921, as amended"; and in subsection (c) and in the third sentence of subdivision (d)(2) substituted "Human Services" for "Mental Health and Developmental Disabilities".

The 1996 amendment by P.A. 89-626, effective August 9, 1996, substituted "the Disabled Persons Rehabilitation Act" for " 'An Act in relation to rehabilitation of disabled persons', approved June 28, 1921, as amended" in subdivision (b)(1).

The 1999 amendment by P.A. 91-96, effective July 7, 1999, deleted former subsection (e).

The 2011 amendment by P.A. 97-227, effective January 1, 2012, in the first sentence of (b)(4), substituted "an intellectual disability" for "mental retardation" twice and substituted "intellectually disabled" for "mentally retarded."

§ 105 ILCS 5/2-3.84. [Calculation of amount of State aid]

Sec. 2-3.84. In calculating the amount of State aid to be apportioned to the various school districts in this State, the State Board of Education shall incorporate and deduct the total aggregate adjustments to assessments made by the State Property Tax Appeal Board or Cook County Board of Appeals, as reported pursuant to Section 16-15 of the Property Tax Code [35 ILCS 200/16-15] or Section 129.1 of the Revenue Act of 1939 by the Department of Revenue, from the equalized assessed valuation that is otherwise to be utilized in the initial calculation.

From the total amount of general State aid to be provided to districts, adjustments under this Section together with adjustments as a result of recomputation under Section 2-3.33

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[105 ILCS 5/2-3.33] must not exceed $25 million, in the aggregate for all districts under both Sections combined, of the general State aid appropriation in any fiscal year; if necessary, amounts shall be prorated among districts. If it is necessary to prorate claims under this paragraph, then that portion of each prorated claim that is approved but not paid in the current fiscal year may be resubmitted as a valid claim in the following fiscal year.

(Source: P.A. 86-237; 88-670, § 3-54; 93-845, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.84.

Section 129.1 of the Revenue Act of 1939, referred to above, was repealed. See now 35 ILCS 200/16-15.

Effect of Amendments. The 1994 amendment by P.A. 88-670, effective December 2, 1994, inserted "Section 16-15 of the Property Tax Code or".

The 2004 amendment by P.A. 93-845, effective July 30, 2004, in the first paragraph inserted "and deduct", and added "from the equalized assessed valuation that is otherwise to be utilized in the initial calculation" at the end; and added the second paragraph.

§ 105 ILCS 5/2-3.85: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/2-3.86. [On-site auditing]

Sec. 2-3.86. The State Board of Education may conduct on-site auditing at the classrooms of any school district for the purpose of verifying attendance records.

(Source: P.A. 85-1209.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.86.

§ 105 ILCS 5/2-3.87: Repealed by P.A. 97-256, § 10, effective January 1, 2012.

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Note.

The repealed section related to a catalogue of reports.

§ 105 ILCS 5/2-3.88: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/2-3.89. Programs concerning services to at-risk children and their families

Sec. 2-3.89. Programs concerning services to at-risk children and their families. (a) The State Board of Education may provide grants to eligible entities, as defined by the State Board of Education, to establish programs which offer coordinated services to at-risk infants and toddlers and their families. Each program shall include a parent education program relating to the development and nurturing of infants and toddlers and case management services to coordinate existing services available in the region served by the program. These services shall be provided through the implementation of an individual family service plan. Each program will have a community involvement component to provide coordination in the service system.

(b) The State Board of Education shall administer the programs through the grants to public school districts and other eligible entities. These grants must be used to supplement, not supplant, funds received from any other source. School districts and other eligible entities receiving grants pursuant to this Section shall conduct voluntary, intensive, research-based, and comprehensive prevention services, as defined by the State Board of Education, for expecting parents and families with children from birth to age 3 who are at-risk of academic failure. A public school district that receives a grant under this Section may subcontract with other eligible entities.

(c) The State Board of Education shall report to the General Assembly by July 1, 2006 and every 2 years thereafter, using the most current data available, on the status of programs funded under this Section, including without limitation characteristics of participants, services delivered, program models used, unmet needs, and results of the programs funded.

(Source: P.A. 85-1046; 94-506, § 5; 96-734, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.89.

Effect of Amendments. The 2005 amendment by P.A. 94-506, approved August 8, 2005, revised the section heading, rewrote (a) and added (b) and (c).

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The 2009 amendment by P.A. 96-734, effective August 25, 2009, inserted "using the most current data available" in (c).

§§ 105 ILCS 5/2-3.90, 105 ILCS 5/2-3.91: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§§ 105 ILCS 5/2-3.92 through 105 ILCS5/2-3.95: Repealed by P.A. 95-793, § 11, effective August 8, 2008.

§ 105 ILCS 5/2-3.96. Waiver of school fees

Sec. 2-3.96. Waiver of school fees. The State Board of Education shall promulgate regulations governing waiver of school fees authorized in Sections 10-20.13 and 34-21.6 [105 ILCS 5/10-20.13 and 105 ILCS 5/34-21.6]. Board regulations shall require that each school district adopt written policies for the administration of the waiver of school fees. Such policies shall include, but not be limited to: standards for determination of eligibility, procedures for notice to parents and procedures for resolving disputes regarding the administration of the waiver of school fees.

(Source: P.A. 86-195; 86-1028.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.96.

§ 105 ILCS 5/2-3.97: Repealed by P.A. 96-1423, § 15, effective August 3, 2010.

§ 105 ILCS 5/2-3.98. Developmentally disabled transition program

Sec. 2-3.98. Developmentally disabled transition program. The State Board of Education shall establish and implement, in conjunction with the Department of Human Services, a pilot program for the provision of transitional, educational services to persons with a developmental disability 18 years of age or older who have completed public school programs.

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(Source: P.A. 86-922; 86-1028; 88-380, § 50; 89-507, § 90D-40.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.98.

Effect of Amendments. The 1993 amendment by P.A. 88-380, effective August 20, 1993, substituted "persons with a developmental disability" for "developmentally disabled persons."

The 1996 amendment by P.A. 89-507, effective July 1, 1997, substituted "Human Services" for "Mental Health and Developmental Disabilities".

§ 105 ILCS 5/2-3.99: Repealed by P.A. 95-793, § 11, effective August 8, 2008.

§§ 105 ILCS 5/2-3.100, 105 ILCS 5/2-3.101: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/2-3.102: Repealed by P.A. 95-793, § 11, effective August 8, 2008.

§ 105 ILCS 5/2-3.103. Salary and benefit survey

Sec. 2-3.103. Salary and benefit survey. For each school year commencing on or after January 1, 1992, the State Board of Education shall conduct, in each school district, a school district salary and benefits survey covering the district's certificated and educational support personnel. However, the collection of information covering educational support personnel must be limited to districts with 1,000 or more students enrolled.

A survey form shall be developed and furnished by the State Board of Education to each school district on or before October 1 of the school year covered by the survey, and each school district shall submit a completed survey to the State Board of Education on or before February 1 of the school year covered by the survey.

The State Board of Education shall compile, by April 30 of the school year covered by the survey, a statewide salary and benefit survey report based upon the surveys completed and submitted for that school year by the individual school districts as required by this Section, and shall make the survey report available to all school districts and to all

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"employee organizations" as defined in Section 2 of the Illinois Educational Labor Relations Act [115 ILCS 5/2].

The data required to be reported by each school district on the salary and benefits survey developed and furnished under this Section for the school year covered by the survey shall include, but shall not be limited to, the following:

(1) the district's estimated fall enrollment;

(2) with respect to both its certificated and educational support personnel employees:

(A) whether the district has a salary schedule, salary policy but no salary schedule, or no salary policy and no salary schedule;

(B) when each such salary schedule or policy of the district was or will be adopted;

(C) whether there is a negotiated agreement between the school board and any teacher, educational support personnel or other employee organization and, if so, the affiliation of the local of such organization, together with the month and year of expiration of the negotiated agreement and whether it contains a fair share provision; and if there is no such negotiated agreement but the district does have a salary schedule or policy, a brief explanation of the manner in which each such salary schedule or policy was developed prior to its adoption by the school board, including a statement of whether any meetings between the school board and the superintendent leading up to adoption of the salary schedule or policy were based upon, or were conducted without any discussions between the superintendent and the affected teachers, educational support personnel or other employees;

(D) whether the district's salary program, policies or provisions are based upon merit or performance evaluation of individual teachers, educational support personnel or other employees, and whether they include: severance pay provisions; early retirement incentives; sick leave bank provisions; sick leave accumulation provisions and, if so, to how many days; personal, business or emergency leave with pay and, if so, the number of days; or direct reimbursement in whole or in part for expenses, such as tuition and materials, incurred in acquiring additional college credit;

(E) whether school board paid or tax sheltered retirement contributions are included in any existing salary schedule or policy of the school district; what percent (if any) of the salary of each different certified and educational support personnel employee classification (using the employee salary which reflects the highest regularly scheduled step in that classification on the salary schedule or policy of the district) is school board paid to an employee retirement system; the highest scheduled salary and the level of education or training required to reach the highest scheduled salary in each certified and educational support personnel employee classification; using annual salaries from the school board's salary schedule or policy for each certified and educational support personnel employee classification (and excluding from such salaries items of individual compensation resulting from extra-curricular duties, employment beyond the regular school year and longevity service pay, but including additional compensation such as grants and cost of living bonuses that are received by all employees in a classification or

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by all employees in a classification who are at the maximum experience level), the beginning, maximum and specified intermediate salaries reported to an employee retirement system (including school board paid or tax sheltered retirement contributions, but excluding fringe benefits) for each educational or training category within each certified and educational support personnel employee classification; and the completed years of experience required to reach such maximum regularly scheduled and highest scheduled salaries;

(F) whether the school district provides longevity pay beyond the last annual regular salary increase available under the district's salary schedule or policy; and if so, the maximum earnings with longevity for each educational or training category specified by the State Board of Education in its survey form (based on salary reported to an employee's retirement system, including school board paid and tax sheltered retirement contributions, but excluding fringe benefits, and with maximum longevity step numbers and completed years of experience computed as provided in the survey form);

(G) for each dental, disability, hospitalization, life, prescription or vision insurance plan, cafeteria plan or other fringe benefit plan sponsored by the school board: (i) a statement of whether such plan is available to full time teachers or other certificated personnel covered by a district salary schedule or policy, whether such plan is available to full time educational support personnel covered by a district salary schedule or policy, and whether all full time employees to whom coverage under such plan is available are entitled to receive the same benefits under that plan; and (ii) the total annual cost of coverage under that plan for a covered full time employee who is at the highest regularly scheduled step on the salary schedule or policy of the district applicable to such employee, the percent of that total annual cost paid by the school board, the total annual cost of coverage under that plan for the family of that employee, and the percent of that total annual cost for family coverage paid by the school board.

In addition, each school district shall provide to the State Board of Education, on or before February 1 of the school year covered by the survey, as required by this Section, a copy of each salary schedule, salary policy and negotiated agreement which is identified or otherwise referred to in the completed survey form.

(Source: P.A. 87-547; 87-895; 96-1423, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.103.

Effect of Amendments. The 2010 amendment by P.A. 96-1423, effective August 3, 2010, added the last sentence to the end of the first paragraph; in the second paragraph, substituted "on or before October 1" for "within 30 days after the commencement," "submit a completed survey" for "complete and return the survey form," and "on or before February 1 of the school year covered by the survey" for "within the succeeding 30 day period"; substituted "surveys completed and submitted" for "survey forms completed and returned" in the third paragraph; deleted "form" following "benefits survey" in the introductory language of the fourth paragraph; in the last

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paragraph, substituted "shall provide" for "shall attach to the completed survey form which it returns" and inserted "on or before February 1 of the school year covered by the survey"; and made a stylistic change.

§ 105 ILCS 5/2-3.104. State mandate reports

Sec. 2-3.104. State mandate reports. The State Board of Education shall prepare an annual report listing all State mandates applicable to the common schools during the school year covered by the report, excluding only those mandates that relate to school elections. The annual report shall set forth for each listed mandate the date or approximate date that the mandate became effective and the cost of implementing that mandate during the school year covered by the report; provided that if the mandate has not been in effect for the entire school year covered by the report, the estimated annual cost of implementing that mandate shall be set forth in that report, and provided that if the mandate exists because of a federal law, rule or regulation, the report shall note that fact. The State Board of Education shall highlight on each annual report each mandate listed thereon that first became effective and applicable to the common schools during the school year covered by the current annual report. Each annual report prepared by the State Board of Education shall be filed by the State Board of Education with the General Assembly on or before March 1 of the calendar year, beginning with calendar year 1992, and shall cover the school year ending during the calendar year immediately preceding the calendar year in which the annual report is required to be filed.

(Source: P.A. 87-632; 87-895.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.104.

§ 105 ILCS 5/2-3.105. Services to educational service regions and school districts

Sec. 2-3.105. Services to educational service regions and school districts. Commencing July 1, 1994 and thereafter, the State Board of Education through the office of the State Superintendent of Education shall have and exercise, in and with respect to an educational service region located in a city of 500,000 or more inhabitants, and in and with respect to each school district located in any such educational service region, all rights, powers, duties and responsibilities theretofore vested in and exercised and performed by the regional superintendent of schools in that educational service region under the provisions of this Act or any other law of this State.

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(Source: P.A. 87-654; 87-895; 87-1251, § 2; 96-893, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2-3.105.

Effect of Amendments. The 1992 amendment by P.A. 87-1251, effective July 1, 1993, substituted "July 1, 1994" for "August 7, 1995".

The 2010 amendment by P.A. 96-893, effective July 1, 2010, substituted "located in a city of 500,000" for "having a population of 2,000,000" and made a stylistic change.

§ 105 ILCS 5/2-3.105a: Repealed by P.A. 91-46, § 10, effective June 30, 1999.

§ 105 ILCS 5/2-3.106: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/2-3.107. Test administration ethics

Sec. 2-3.107. Test administration ethics. The State Board of Education shall develop a code of ethics for test administration and shall provide assistance to school districts upon request in the implementation of the code. The code of ethics shall at least include a procedure to be followed and safeguards to be observed in the administration of tests.

(Source: P.A. 87-1039, § 1; 88-45, § 2-31; 88-670, § 2-34.)

Note.

This section as enacted by P.A. 87-1082 was renumbered as 105 ILCS 5/2-3.108.

This section as enacted by P.A. 87-1124 was renumbered as 105 ILCS 5/2-3.109.

This section as enacted by P.A. 88-71, was renumbered as 105 ILCS 5/2-3.111.

Effective Date. This section became effective January 1, 1993, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 1993 amendment by P.A. 88-45, effective July 6, 1993, appears to have made no changes to this section.

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The 1994 amendment by P.A. 88-670, effective December 2, 1994, appears to have made no changes to this section.

§ 105 ILCS 5/2-3.108. Volunteer service credit program

Sec. 2-3.108. Volunteer service credit program. The State Board of Education shall offer guidance and assistance to any school district that chooses to establish a volunteer service credit program under Section 27-22.3 [105 ILCS 5/27-22.3].

(Source: P.A. 87-1082, § 1; 88-45, § 2-31.)

Effective Date. This section became effective January 1, 1993, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 1993 amendment by P.A. 88-45, effective July 6, 1993, renumbered this section, which was formerly 105 ILCS 5/2-3.107 as enacted by P.A. 87-1082.

§ 105 ILCS 5/2-3.109. Service region as local education agency

Sec. 2-3.109. Service region as local education agency. The State Board shall define local education agency to include an otherwise qualified educational service region when determining eligibility for any grant, loan, program authorization or other assistance provided to local education agencies by the State Board.

(Source: P.A. 87-1124, § 1; 88-45, § 2-31.)

Effective Date. Section 2 of P.A. 87-1124 made this section effective upon becoming law. The Act was approved September 16, 1992.

Effect of Amendments. The 1993 amendment by P.A. 88-45, effective July 6, 1993, renumbered this section, which was formerly 105 ILCS 5/2-3.107 as enacted by P.A. 87-1124.

§ 105 ILCS 5/2-3.109a. Laboratory schools grant eligibility

Sec. 2-3.109a. Laboratory schools grant eligibility. A laboratory school as defined in Section 18-8 [105 ILCS 5/18-8] may apply for and be eligible to receive, subject to the same restrictions applicable to school districts, any grant administered by the State Board

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of Education that is available for school districts.

(Source: P.A. 90-566, § 5.)

Effective Date. Section 99 of P.A. 90-566 made this section effective upon becoming law. The Act was approved January 2, 1998.

§ 105 ILCS 5/2-3.109b. Vocational center grant eligibility

Sec. 2-3.109b. Vocational center grant eligibility. An area vocational center, as designated by the State Board of Education, may apply for and be eligible to receive any school maintenance grant, federal or State technology grant, or other competitive grant administered by the State Board of Education that is available for school districts, subject to the same restrictions applicable to school districts.

(Source: P.A. 92-56, § 5.)

Effective Date. Section 99 of P.A. 92-56 made this section effective upon becoming law. The Act was approved July 12, 2001.

§ 105 ILCS 5/2-3.110: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/2-3.111: Repealed by P.A. 97-256, § 10, effective January 1, 2012.

Note.

The repealed section related to racial reports.

§ 105 ILCS 5/2-3.112. Service evaluation reports

Sec. 2-3.112. Service evaluation reports. (a) The Service Evaluation Committee is hereby created to design and develop, under the direction of the Office of the Lieutenant Governor, a form to be used by school districts as provided in this Section to annually evaluate the nature and quality of the services furnished to those school districts by the State Board of Education and the regional offices of education. The Service Evaluation

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Committee shall be composed of 7 members, consisting of one member from each of the following entities, designated in each case by the governing board of the entity from which the member is designated:

(1) the Regional Superintendents Association;

(2) the staff employed by the State Board of Education;

(3) the Illinois Parent Teacher Association;

(4) the Illinois Education Association;

(5) the Illinois Federation of Teachers;

(6) the Illinois Association of School Boards; and

(7) the Illinois Association of School Administrators.

Members of the Service Evaluation Committee shall serve at the pleasure of the governing board of the entity by which they are designated to serve as members of the Committee. Committee members shall serve without compensation but shall be reimbursed for the reasonable expenses which they necessarily incur in the performance of their responsibilities as members of the Committee.

(b) Under the direction of the Office of the Lieutenant Governor, the Committee, at periodic intervals not to exceed 3 years, shall review the form to be used for the evaluation and make any modifications in the form that it determines are necessary. The design, development, and any modifications that are to be made to the form shall be determined not later than August 1 of each year, beginning in 1998.

(c) The Office of the Lieutenant Governor shall cause the form of evaluation as last designed, developed, or modified under this Section to be printed and distributed to the board of education of each school district in the State not later than September 1 of each year, beginning in 1998.

(d) The president of the board of education is authorized to cause the evaluation form to be completed and may sign the form as president of the board of education and forward the completed form to the Office of the Lieutenant Governor not later than November 1 of each year, beginning in 1998. Before completing and signing the evaluation form, the president, acting through the board of education, shall request and receive comments, opinions, and other input from the district's administrators, teachers, and teacher organizations to assist the board of education in evaluating, rating, and reporting, on the form to be transmitted to the Office of the Lieutenant Governor, the nature and quality of the services furnished to the district by the State Board of Education and the regional office of education for the educational service region in which the school district is located.

(e) The Office of the Lieutenant Governor shall review and tally the results of all evaluation forms received from the several school districts of the State and submit a written report of the evaluation results to the Governor, the General Assembly, the members of the State Board of Education, and each of the several regional

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superintendents of schools not later than December 15 of each year, beginning in 1998. The Office of the Lieutenant Governor, in making the annual written report required by this subsection, shall not report, publish, or otherwise release the evaluation results separately for any regional offices of education but instead the evaluation results with respect to the regional offices of education shall be tallied and reported on an aggregate or composite basis, in such manner as to avoid reporting evaluation results on a regional office of education by regional office of education basis.

(f) This Section is subject to the provisions of Section 405-500 of the Department of Central Management Services Law (20 ILCS 405/405-500).

(Source: P.A. 89-212, § 5; 89-626, § 2-33; 90-96, § 5; 90-498, § 5; 90-609, § 35; 91-239, § 5-255.)

Note.

This section, as enacted by P.A. 89-435, was renumbered as 105 ILCS 5/2-3.113.

Effective Date. Section 99 of P.A. 89-212 made this section effective January 1, 1996.

Effect of Amendments. The 1996 amendment by P.A. 89-626, effective August 9, 1996, appears to have made no changes to this section.

The 1997 amendment by P.A. 90-96, effective January 1, 1998 and the 1997 amendment by P.A. 90-498, effective January 1, 1998 made identical changes: they each, in subsection (a), in the first sentence, substituted "Service Evaluation Committee is hereby created to" for "staff of the State Board of Education, under the direction of the State Superintendent of Education, and the regional offices of education, under the direction of the respective regional superintendent of schools, shall jointly" and inserted "under the direction of the Office of the Lieutenant Governor" and added the second through fourth sentences; in subsection (b), in the first sentence, substituted "Under the direction of the Office of the Lieutenant Governor, the Committee, at the periodic intervals not to exceed 3 years" for "The staff of the State Board of Education and the regional offices of education", deleted "annually" preceding "review" and substituted "it determines" for "they jointly determine" and in the second sentence, deleted "and agreed upon" preceding "not later" and substituted "1998" for "1996"; in subsection (c) substituted "Office of the Lieutenant Governor" and substituted "1998" for "1996"; and in subsections (d) and (e), in the first sentence, substituted "1998" for "1996".

The 1998 amendment by P.A. 90-609, effective June 30, 1998, added subsection (f).

The 1999 amendment by P.A. 91-239, effective January 1, 2000, substituted "Section 405-500 of the Department of Central Management Services Law (20 ILCS 405/405-500)" for "Section 67.35 of the Civil Administrative Code of Illinois" in subsection (f).

§§ 105 ILCS 5/2-3.113, 105 ILCS 5/2-3.114: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

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§ 105 ILCS 5/2-3.115. Tech Prep Programs

Sec. 2-3.115. Tech Prep Programs. (a) Programs of academic credit. The State Superintendent of Education is encouraged to establish a program of academic credit for Tech Prep work based learning for secondary school students with an interest in pursuing such career training. The program may be instituted by any school district seeking to provide its secondary school students with an opportunity to participate in Tech Prep work based learning programs.

(b) Partnership for Careers grants. The State Board of Education may make grants, subject to appropriations for such purpose, to school districts to be used for Tech Prep Partnership for Careers programs. School districts must submit joint applications for the grants along with one or more companies who commit to (i) make off-campus, privately owned facilities available for the use of the program, (ii) provide significant financial contributions to the program in order to supplement State grants, and (iii) provide career opportunities for students who successfully complete the program training. The State Board of Education may use a portion of the funds appropriated for the program to promote its availability and successes with school districts, businesses, and communities.

(Source: P.A. 88-270, § 1; 90-649, § 3.)

Effective Date. This section became effective January 1, 1994, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 1998 amendment by P.A. 90-649, effective July 24, 1998, rewrote subsection (a); and added subsection (b).

§ 105 ILCS 5/2-3.116. Electronic transfer of funds to school districts, regional offices of education, and other providers

Sec. 2-3.116. Electronic transfer of funds to school districts, regional offices of education, and other providers. The State Board of Education shall, in consultation with the regional superintendents of schools and with the advice and approval of the Comptroller, adopt and implement rules establishing a system for the electronic transfer of funds to school districts, regional offices of education, and other providers entitled to payment under programs administered by the State Board of Education. Beginning July 1, 2002, all payments for school districts, regional offices of education, and other providers entitled to payment under programs administered by the State Board of Education must be disbursed by the Comptroller through electronic funds transfer, except as the State Board of Education otherwise directs. If a school district entitled to payment wishes an electronic payment to be made to the district's regional office of education on the district's behalf, the school board, with the approval of the regional office of

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education, must provide a resolution to the State Board of Education directing that the electronic deposit be made into the account of the regional office of education.

(Source: P.A. 88-641, § 10; 92-121, § 5.)

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 155.10.

Effective Date. Section 99 of P.A. 88-641 made this section effective upon becoming law. The Act was approved September 9, 1994.

Effect of Amendments. The 2001 amendment by P.A. 92-121, effective July 20, 2001, added the section heading; inserted "regional offices of education" in the first sentence, and rewrote the last sentence.

§ 105 ILCS 5/2-3.117. School Technology Program

Sec. 2-3.117. School Technology Program. (a) The State Board of Education is authorized to provide technology-based learning resources to school districts to improve educational opportunities and student achievement throughout the State.

(b) The State Board of Education is authorized, to the extent funds are available, to establish a statewide support system for information, professional development, technical assistance, network design consultation, leadership, technology planning consultation, and information exchange; to expand school district connectivity; and to increase the quantity and quality of student and educator access to on-line resources, experts, and communications avenues from moneys appropriated for the purposes of this Section.

(b-5) The State Board of Education may enter into intergovernmental contracts or agreements with other State agencies, public community colleges, public libraries, public and private colleges and universities, museums on public land, and other public agencies in the areas of technology, telecommunications, and information access, under such terms as the parties may agree, provided that those contracts and agreements are in compliance with the Department of Central Management Services' mandate to provide telecommunications services to all State agencies.

(c) (Blank).

(d) (Blank).

(Source: P.A. 89-21, § 5-50; 90-388, § 5; 90-566, § 5; 95-793, § 5.)

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Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 575.10, 575.100.

Effective Date. Section 99-99 of P.A. 89-21 made this section effective July 1, 1995.

Effect of Amendments. The 1997 amendment by P.A. 90-388, effective August 15, 1997, added subsection (b-5).

The 1997 amendment by P.A. 90-566, effective January 2, 1998, incorporated the amendments by P.A. 90-388; and in subsection (b-5) inserted "and private colleges and".

The 2008 amendment by P.A. 95-793, effective August 8, 2008, rewrote (a); and deleted the text from (c) relating to the adoption of rules for the School Technology Program and from (d) relating to local finance matching.

§ 105 ILCS 5/2-3.117a. School Technology Revolving Loan Program

Sec. 2-3.117a. School Technology Revolving Loan Program. (a) The State Board of Education is authorized to administer a School Technology Revolving Loan Program from funds appropriated from the School Technology Revolving Loan Fund for the purpose of making the financing of school technology hardware improvements affordable and making the integration of technology in the classroom possible. School technology loans shall be made available to public school districts, charter schools, area vocational centers, laboratory schools, and State-recognized, non-public schools to purchase technology hardware for eligible grade levels on a 2-year rotating basis: grades 9 through 12 in fiscal year 2004 and each second year thereafter and grades K through 8 in fiscal year 2005 and each second year thereafter. However, priority shall be given to public school districts, charter schools, area vocational centers, and laboratory schools that apply prior to October 1 of each year.

The State Board of Education shall determine the interest rate the loans shall bear which shall not be greater than 50% of the rate for the most recent date shown in the 20 G.O. Bonds Index of average municipal bond yields as published in the most recent edition of The Bond Buyer, published in New York, New York. The repayment period for School Technology Revolving Loans shall not exceed 3 years. Participants shall use at least 90% of the loan proceeds for technology hardware investments for students and staff (including computer hardware, technology networks, related wiring, and other items as defined in rules adopted by the State Board of Education) and up to 10% of the loan proceeds for computer furniture. No participant whose equalized assessed valuation per pupil in average daily attendance is at the 99th percentile and above for all districts of the same type shall be eligible to receive a School Technology Revolving Loan under the provisions of this Section for that year.

The State Board of Education shall have the authority to adopt all rules necessary for the implementation and administration of the School Technology Revolving Loan Program, including, but not limited to, rules defining application procedures, prescribing a

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maximum amount per pupil that may be requested annually, requiring appropriate local commitments for technology investments, prescribing a mechanism for disbursing loan funds in the event requests exceed available funds, specifying collateral, prescribing actions necessary to protect the State's interest in the event of default, foreclosure, or noncompliance with the terms and conditions of the loans, and prescribing a mechanism for reclaiming any items or equipment purchased with the loan funds in the case of the closure of a non-public school.

(b) There is created in the State treasury the School Technology Revolving Loan Fund. The State Board shall have the authority to make expenditures from the Fund pursuant to appropriations made for the purposes of this Section, including refunds. There shall be deposited into the Fund such amounts, including but not limited to:

(1) Transfers from the School Infrastructure Fund;

(2) All receipts, including principal and interest payments, from any loan made from the Fund;

(3) All proceeds of assets of whatever nature received by the State Board as a result of default or delinquency with respect to loans made from the Fund;

(4) Any appropriations, grants, or gifts made to the Fund; and

(5) Any income received from interest on investments of money in the Fund.

(Source: P.A. 90-548, § 5-915; 93-368, § 5; 96-734, § 5; 96-783, § 5; 96-1000, § 260.)

Note.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. Section 990-5 of P.A. 90-548 made this section effective January 1, 1998.

Effect of Amendments. The 2003 amendment by P.A. 93-368, effective July 24, 2003, rewrote subsection (a) to the extent that a detailed comparison would be impracticable.

The 2009 amendment by P.A. 96-734, effective August 25, 2009, added "including refunds" to the end of the second sentence of the introductory language of (b).

The 2009 amendment by P.A. 96-783, effective August 28, 2009, in the first paragraph of (a), inserted "and State-recognized, non-public schools" in the second sentence and added the last sentence; in the last paragraph of (a), deleted "by districts" following "requested annually" and added the language beginning with "and prescribing a mechanism" through the end; and made stylistic changes.

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

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The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, combined earlier multiple amendments to the section.

§ 105 ILCS 5/2-3.118. Technology utilization

Sec. 2-3.118. Technology utilization. The State Superintendent of Education shall, from funds appropriated for that purpose, provide assistance to public schools for the implementation or improved utilization of technology, such as support for the development of communication networks and infrastructure, efforts to promote the use of technology in the classroom, and the initiation of technology leadership and capacity-building activities. Assistance may include the provision of staff development resources, curriculum planning and implementation resources, the establishment of demonstration sites, and the integration of technology into school improvement activities.

(Source: P.A. 89-397, § 5.)

Effective Date. Section 99 of P.A. 89-397 made this section effective upon becoming law. The Act was approved August 20, 1995.

§ 105 ILCS 5/2-3.119: Repealed by P.A. 89-698, § 10, effective January 14, 1997.

§ 105 ILCS 5/2-3.120. Non-Public school students' access to technology

Sec. 2-3.120. Non-Public school students' access to technology. (a) The General Assembly finds and declares that the Constitution of the State of Illinois provides that a "fundamental goal of the People of the State is the educational development of all persons to the limit of their capacities", and that the educational development of every school student serves the public purposes of the State. In order to enable Illinois students to leave school with the basic skills and knowledge that will enable them to find and hold jobs and otherwise function as productive members of society in the 21st Century, all students must have access to the vast educational resources provided by computers. The provisions of this Section are in the public interest, for the public benefit, and serve a secular public purpose.

(b) The State Board of Education shall provide non-public schools with ports to the Board's statewide educational network, provided that this access does not diminish the services available to public schools and students. The State Board of Education shall charge for this access in an amount necessary to offset its cost. Amounts received by the

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State Board of Education under this Section shall be deposited in the General Revenue Fund. The statewide network may be used only for secular educational purposes.

(c) For purposes of this Section, a non-public school means: (i) any non-profit, non-public college; or (ii) any non-profit, non-home-based, non-public elementary or secondary school that is in compliance with Title VI of the Civil Rights Act of 1964 [42 U.S.C. § 2000d et seq.] and attendance at which satisfies the requirements of Section 26-1 of the School Code [105 ILCS 5/26-1].

(Source: P.A. 90-463, § 10; 90-566, § 5; 90-655, § 77; 94-91, § 55-95.)

Note.

Section 105 ILCS 5/2-3.120 as enacted by P.A. 90-361, was renumbered as 105 ILCS 5/3.123 and Section 105 ILCS 5/2-3.120 as enacted by P.A. 90-498 was renumbered as 105 ILCS 5/2-3.125, by the 1998 amendment by P.A. 90-655, effective July 30, 1998.

Effective Date. Section 99 of P.A. 90-463 made this section effective upon becoming law. The Act was approved August 17, 1997.

Effect of Amendments. The 1997 amendment by P.A. 90-566, effective January 2, 1998, in subsection (a), in the first sentence, deleted "elementary and secondary" preceding "school student"; and in subsection (c) inserted "(i) any non-profit, non-public college; or (ii)".

The 1998 amendment by P.A. 90-655, effective July 30, 1998, appears to have made no changes to this section.

The 2005 amendment by P.A. 94-91, effective July 1, 2005, substituted "General Revenue Fund" for "School Technology Revolving Fund as described in Section 2-3.121" in (b).

§ 105 ILCS 5/2-3.121: Repealed by P.A. 94-91, § 55-210, effective July 1, 2005.

§ 105 ILCS 5/2-3.122. Dissection alternatives

Sec. 2-3.122. Dissection alternatives. The State Board of Education shall make available to school districts sources of information concerning alternatives to the dissection of animals. Such information may include, but need not be limited to, names, addresses, and contact personnel of organizations that offer free instructional and teaching materials as alternatives to dissection.

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(Source: P.A. 90-566, § 5.)

Effective Date. Section 99 of P.A. 90-566 made this section effective upon becoming law. The Act was approved January 2, 1998.

§ 105 ILCS 5/2-3.123. Giant Steps Autism Center for Excellence pilot program

Sec. 2-3.123. Giant Steps Autism Center for Excellence pilot program. From appropriations made for purposes of this Section, the State Board of Education shall implement and administer a Giant Steps Autism Center for Excellence pilot program for the study and evaluation of autism and to provide related training for teachers, paraprofessionals, and respite workers, therapist training, and consultative services. The program shall be operated over a period of 3 school years, beginning with the 2005-2006 school year. The State Board of Education is authorized to make grants to school districts and other programs that apply to participate in the Giant Steps Autism Center for Excellence program as implemented and administered by the State Board of Education. The State Board of Education shall by rule provide the form of application and criteria to be used and applied in selecting participating school districts and other programs.

(Source: P.A. 90-498, § 5; 90-655, § 77; 94-196, § 5.)

Effective Date. Section 99 of P.A. 90-498 made this section effective July 1, 1997. The Act was approved August 18, 1997.

Effect of Amendments. The 1998 amendment by P.A. 90-655, effective July 30, 1998, renumbered this section which was formerly 105 ILCS 5/2-3.120 as enacted by P.A. 90-498.

The 2005 amendment by P.A. 94-196, effective July 12, 2005, rewrote the section, adding references to the Autism Center for Excellence.

§ 105 ILCS 5/2-3.124: Repealed by P.A. 95-793, § 11, effective August 8, 2008.

§ 105 ILCS 5/2-3.125. Arts and humanities organizations and cultural institutions

Sec. 2-3.125. Arts and humanities organizations and cultural institutions. The State Board of Education is authorized to reimburse not-for-profit arts and humanities organizations and cultural institutions of Illinois, including but not limited to, museums

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and theater or dance companies, for the costs of providing educational programs to public elementary and secondary school students.

(Source: P.A. 90-361, § 5; 90-655, § 77.)

Effective Date. This section became effective January 1, 1998 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 1998 amendment by P.A. 90-655, effective July 30, 1998, renumbered this section which was formerly 105 ILCS 5/2-3.120 as enacted by P.A. 90-361.

§ 105 ILCS 5/2-3.126: Repealed internally by P.A. 91-143, § 10, effective July 16, 2003.

(Source: P.A. 91-143, § 10; 92-16, § 49.)

Note.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 91-143 made this section effective upon becoming law. The Act was approved July 16, 1999.

Effect of Amendments. The 2001 amendment by P.A. 92-16, effective June 28, 2001, renumbered the former versions of this section as follows: the version enacted by P.A. 91-175, was renumbered as 105 ILCS 5/2-3.128; the version enacted by P.A. 91-491, was renumbered as 105 ILCS 5/2-3.129; and the version enacted by P.A. 91-600, was renumbered as 105 ILCS 5/2-3.130.

§ 105 ILCS 5/2-3.127: Repealed internally by P.A. 91-143, § 10, effective July 16, 2003.

§ 105 ILCS 5/2-3.127a. The State Board of Education Special Purpose Trust Fund

Sec. 2-3.127a. The State Board of Education Special Purpose Trust Fund. The State Board of Education Special Purpose Trust Fund is created as a special fund in the State

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treasury. The State Board of Education shall deposit all indirect costs recovered from federal programs into the State Board of Education Special Purpose Trust Fund. These funds may be used by the State Board of Education for its ordinary and contingent expenses. Additionally and unless specifically directed to be deposited into other funds, all moneys received by the State Board of Education from gifts, grants, or donations from any source, public or private, shall be deposited into the State Board of Education Special Purpose Trust Fund. These funds shall be used, subject to appropriation by the General Assembly, by the State Board of Education for the purposes established by the gifts, grants, or donations.

(Source: P.A. 94-69, § 15; 95-707, § 5-20.)

Effective Date. Section 99 of P.A. 94-69 made this section effective July 1, 2005.

Effect of Amendments. The 2008 amendment by P.A. 95-707, effective January 11, 2008, added the second and third sentences; added "Additionally and unless" and substituted "the State Board of Education Special Purpose Trust Fund" for "this Fund" in the fourth sentence; and substituted "These funds" for "Moneys in this Fund" in the last sentence.

§ 105 ILCS 5/2-3.128. Job training program; prohibition

Sec. 2-3.128. Job training program; prohibition. The State Board of Education shall not require a school district or a student of any district to participate in any school-to-work or job training program.

(Source: P.A. 91-175, § 5; 92-16, § 49.)

Note.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Effective Date. This section became effective January 1, 2000, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2001 amendment by P.A. 92-16, effective June 28, 2001, renumbered this section, which was formerly 105 ILCS 5/2-3.126.

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§ 105 ILCS 5/2-3.129: Repealed by P.A. 94-600, § 910, effective August 16, 2005.

§ 105 ILCS 5/2-3.130. Time out and physical restraint rules

Sec. 2-3.130. Time out and physical restraint rules. The State Board of Education shall promulgate rules governing the use of time out and physical restraint in the public schools. The rules shall include provisions governing recordkeeping that is required when physical restraint or more restrictive forms of time out are used.

(Source: P.A. 91-600, § 5; 92-16, § 49.)

Note.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 91-600 made this section effective upon becoming law. The Act was approved August 14, 1999.

Effect of Amendments. The 2001 amendment by P.A. 92-16, effective June 28, 2001, renumbered this section, which was formerly 105 ILCS 5/2-3.126.

§ 105 ILCS 5/2-3.131. Transitional assistance payments

Sec. 2-3.131. Transitional assistance payments. (a) If the amount that the State Board of Education will pay to a school district from fiscal year 2004 appropriations, as estimated by the State Board of Education on April 1, 2004, is less than the amount that the State Board of Education paid to the school district from fiscal year 2003 appropriations, then, subject to appropriation, the State Board of Education shall make a fiscal year 2004 transitional assistance payment to the school district in an amount equal to the difference between the estimated amount to be paid from fiscal year 2004 appropriations and the amount paid from fiscal year 2003 appropriations.

(b) If the amount that the State Board of Education will pay to a school district from fiscal year 2005 appropriations, as estimated by the State Board of Education on April 1, 2005, is less than the amount that the State Board of Education paid to the school district from fiscal year 2004 appropriations, then the State Board of Education shall make a fiscal year 2005 transitional assistance payment to the school district in an amount equal to the difference between the estimated amount to be paid from fiscal year 2005 appropriations and the amount paid from fiscal year 2004 appropriations.

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(c) If the amount that the State Board of Education will pay to a school district from fiscal year 2006 appropriations, as estimated by the State Board of Education on April 1, 2006, is less than the amount that the State Board of Education paid to the school district from fiscal year 2005 appropriations, then the State Board of Education shall make a fiscal year 2006 transitional assistance payment to the school district in an amount equal to the difference between the estimated amount to be paid from fiscal year 2006 appropriations and the amount paid from fiscal year 2005 appropriations.

(d) If the amount that the State Board of Education will pay to a school district from fiscal year 2007 appropriations, as estimated by the State Board of Education on April 1, 2007, is less than the amount that the State Board of Education paid to the school district from fiscal year 2006 appropriations, then the State Board of Education, subject to appropriation, shall make a fiscal year 2007 transitional assistance payment to the school district in an amount equal to the difference between the estimated amount to be paid from fiscal year 2007 appropriations and the amount paid from fiscal year 2006 appropriations.

(e) Subject to appropriation, beginning on July 1, 2007, the State Board of Education shall adjust prior year information for the transitional assistance calculations under this Section in the event of the creation or reorganization of any school district pursuant to Article 11E of this Code [105 ILCS 5/11E-5 et seq.], the dissolution of an entire district and the annexation of all of its territory to one or more other districts pursuant to Article 7 of this Code [105 ILCS 5/7-01 et seq.], or a boundary change whereby the enrollment of the annexing district increases by 90% or more as a result of annexing territory detached from another district pursuant to Article 7 of this Code.

(f) If the amount that the State Board of Education will pay to a school district from fiscal year 2008 appropriations, as estimated by the State Board of Education on April 1, 2008, is less than the amount that the State Board of Education paid to the school district from fiscal year 2007 appropriations, then the State Board of Education, subject to appropriation, shall make a fiscal year 2008 transitional assistance payment to the school district in an amount equal to the difference between the estimated amount to be paid from fiscal year 2008 appropriations and the amount paid from fiscal year 2007 appropriations.

(g) If the amount that the State Board of Education will pay to a school district from fiscal year 2009 appropriations, as estimated by the State Board of Education on April 1, 2009, is less than the amount that the State Board of Education paid to the school district from fiscal year 2008 appropriations, then the State Board of Education, subject to appropriation, shall make a fiscal year 2009 transitional assistance payment to the school district in an amount equal to the difference between the estimated amount to be paid from fiscal year 2009 appropriations and the amount paid from fiscal year 2008 appropriations.

(Source: P.A. 93-21, § 5-5; 93-838, § 15; 94-69, § 15; 94-835, § 90-10; 95-331, § 540; 95-707, § 5-20; 95-744, § 50.)

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Note.

Former versions of 105 ILCS 5/2-3.131 were renumbered as 105 ILCS 5/2-3.132 through 105 ILCS 5/2-3.134 by P.A. 95-331, effective August 21, 2007.

Effective Date. Section 99 of P.A. 93-21 made this section effective July 1, 2003.

Effect of Amendments. The 2004 amendment by P.A. 93-838, effective July 30, 2004, revised the section heading; and inserted the subsection (a) designation and subsection (b).

The 2005 amendment by P.A. 94-69, effective July 1, 2005, added (c).

The 2006 amendment by P.A. 94-835, effective June 6, 2006, added (d).

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, reenacted the section without changes.

The 2008 amendment by P.A. 95-707, effective January 11, 2008, added (e) and (f).

The 2008 amendment by P.A. 95-744, effective July 18, 2008, added (g).

§ 105 ILCS 5/2-3.132. Sharing information on school lunch applicants

Sec. 2-3.132. Sharing information on school lunch applicants. The State Board of Education shall, whenever requested by the Department of Healthcare and Family Services (formerly Department of Public Aid), agree in writing with the Department of Healthcare and Family Services (as the State agency that administers the State Medical Assistance Program as provided in Title XIX of the federal Social Security Act [42 U.S.C. § 1396 et seq.] and the State Children's Health Insurance Program as provided in Title XXI of the federal Social Security Act [42 U.S.C. § 1396 et seq. and 42 U.S.C. § 1397aa et seq.]) to share with the Department of Healthcare and Family Services information on applicants for free or reduced-price lunches. This sharing of information shall be for the sole purpose of helping the Department of Healthcare and Family Services identify and enroll children in the State Medical Assistance Program or the State Children's Health Insurance Program or both as allowed under 42 U.S.C. Sec. 1758(b)(2)(C)(iii)(IV) and under the restrictions set forth in 42 U.S.C. Sec. 1758(b)(2)(C)(vi) and (vii). The State Board of Education may not adopt any rule that would prohibit a child from receiving any form of subsidy or benefit due to his or her parent or guardian withholding consent under Section 22-35 of this Code [105 ILCS 5/22-35].

(Source: P.A. 93-404, § 5; 95-331, § 540.)

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Effective Date. Section 99 of P.A. 93-404 makes this section effective August 1, 2003.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, substituted references to "Department of Healthcare and Family Services" for references to "Department of Public Aid" throughout the section; and renumbered the section, which was formerly a multiple version of 105 ILCS 5/2-3.131.

§ 105 ILCS 5/2-3.133. Homework assistance information for parents

Sec. 2-3.133. Homework assistance information for parents. The State Board of Education shall provide information on its Internet web site regarding strategies that parents can use to assist their children in successfully completing homework assignments. The State Board of Education shall notify all school districts about this information's availability on the State Board of Education's Internet web site.

(Source: P.A. 93-471, § 5; 95-331, § 540.)

Effective Date. This section is effective January 1, 2004 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, renumbered the section, which was formerly a multiple version of 105 ILCS 5/2-3.131.

§ 105 ILCS 5/2-3.134. Persistently dangerous schools

Sec. 2-3.134. Persistently dangerous schools. The State Board of Education shall maintain data and publish a list of persistently dangerous schools on an annual basis.

(Source: P.A. 93-633, § 5; 95-331, § 540.)

Effective Date. Section 99 of P.A. 93-633 made this section effective upon becoming law. The Act was approved December 23, 2003.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, renumbered the section, which was formerly a multiple version of 105 ILCS 5/2-3.131.

§ 105 ILCS 5/2-3.135: Repealed internally by P.A. 95-949, § 10, effective August 31, 2010.

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Note.

The repealed section related to a technology immersion pilot project.

§ 105 ILCS 5/2-3.136. Class size reduction grant programs

Sec. 2-3.136. Class size reduction grant programs. (a) A K-3 class size reduction grant program is created. The program shall be implemented and administered by the State Board of Education. From appropriations made for purposes of this Section, the State Board shall award grants to schools that meet the criteria established by this subsection (a) for the award of those grants.

Grants shall be awarded pursuant to application. The form and manner of applications and the criteria for the award of grants shall be prescribed by the State Board of Education. The grant criteria as so prescribed, however, shall provide that only those schools that are on the State Board of Education Early Academic Warning List or the academic watch list under Section 2-3.25d [105 ILCS 5/2-3.25d] that maintain grades kindergarten through 3 are grant eligible.

Grants awarded to eligible schools under this subsection (a) shall be used and applied by the schools to defray the costs and expenses of operating and maintaining classes in grades kindergarten through 3 with an average class size within a specific grade of no more than 20 pupils. If a school's facilities are inadequate to allow for this specified class size, then a school may use the grant funds for teacher aides instead.

(b) A K-3 pilot class size reduction grant program is created. The program shall be implemented and administered by the State Board of Education. From appropriations made for purposes of this subsection (b), the State Board shall award grants to schools that meet the criteria established by this Section for the award of those grants.

Grants shall be awarded pursuant to application. The form and manner of application and the criteria for the award of grants shall be prescribed by the State Board of Education.

Grants awarded to eligible schools under this subsection (b) shall be used and applied by the schools to defray the costs and expenses of operating and maintaining classes in grades kindergarten through 3 of no more than 15 pupils per teacher per class. A teacher aide may not be used to meet this requirement.

(c) If a school board determines that a school is using funds awarded under this Section for purposes not authorized by this Section, then the school board, rather than the school, shall determine how the funds are used.

(d) The State Board of Education shall adopt any rules, consistent with the requirements of this Section, that are necessary to implement and administer the class size reduction

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grant programs.

(Source: P.A. 93-814, § 5; 94-566, § 5; 94-894, § 5.)

Effective Date. Section 99 of P.A. 93-814 made this section effective upon becoming law. The Act was approved July 27, 2004.

Effect of Amendments. The 2005 amendment by P.A. 94-566, effective January 1, 2006, renumbered the section, which was formerly 105 ILCS 5/2-3.134; and added the fourth paragraph.

The 2006 amendment by P.A. 94-894, effective July 1, 2006, rewrote the section.

§ 105 ILCS 5/2-3.137. Inspection and review of school facilities; task force

Sec. 2-3.137. Inspection and review of school facilities; task force. (a) The State Board of Education shall adopt rules for the documentation of school plan reviews and inspections of school facilities, including the responsible individual's signature. Such documents shall be kept on file by the regional superintendent of schools. The State Board of Education shall also adopt rules for the qualifications of persons performing the reviews and inspections, which must be consistent with the recommendations in the task force's report issued to the Governor and the General Assembly under subsection (b) of this Section. Those qualifications shall include requirements for training, education, and at least 2 years of relevant experience.

(a-5) Rules adopted by the State Board of Education in accordance with subsection (a) of this Section shall require fees to be collected for use in defraying costs associated with the administration of these and other provisions contained in the Health/Life Safety Code for Public Schools required by Section 2-3.12 of this Code [105 ILCS 5/2-3.12].

(b) The State Board of Education shall convene a task force for the purpose of reviewing the documents required under rules adopted under subsection (a) of this Section and making recommendations regarding training and accreditation of individuals performing reviews or inspections required under Section 2-3.12, 3-14.20, 3-14.21, or 3-14.22 of this Code [105 ILCS 5/2-3.12, 105 ILCS 5/3-14.20, 105 ILCS 5/3-14.21, or 105 ILCS 5/3-14.22], including regional superintendents of schools and others performing reviews or inspections under the authority of a regional superintendent (such as consultants, municipalities, and fire protection districts).

The task force shall consist of all of the following members:

(1) The Executive Director of the Capital Development Board or his or her designee and a staff representative of the Division of Building Codes and Regulations.

(2) The State Superintendent of Education or his or her designee.

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(3) A person appointed by the State Board of Education.

(4) A person appointed by an organization representing school administrators.

(5) A person appointed by an organization representing suburban school administrators and school board members.

(6) A person appointed by an organization representing architects.

(7) A person appointed by an organization representing regional superintendents of schools.

(8) A person appointed by an organization representing fire inspectors.

(9) A person appointed by an organization representing Code administrators.

(10) A person appointed by an organization representing plumbing inspectors.

(11) A person appointed by an organization that represents both parents and teachers.

(12) A person appointed by an organization representing municipal governments in the State.

(13) A person appointed by the State Fire Marshal from his or her office.

(14) A person appointed by an organization representing fire chiefs.

(15) The Director of Public Health or his or her designee.

(16) A person appointed by an organization representing structural engineers.

(17) A person appointed by an organization representing professional engineers.

The task force shall issue a report of its findings to the Governor and the General Assembly no later than January 1, 2006.

(Source: P.A. 94-225, § 5; 94-973, § 5; 95-331, § 540; 96-734, § 5.)

Note.

Former versions of 105 ILCS 5/2-3.137 were renumbered as 105 ILCS 5/2-3.138 through 105 ILCS 5/2-3.141 by P.A. 95-331, effective August 21, 2007.

Effective Date. Section 99 of P.A. 94-225 made this section effective upon becoming law. The Act was approved July 14, 2005.

Effect of Amendments. The 2006 amendment by P.A. 94-973, effective January 1, 2007, added the last two sentences in (a).

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, reenacted the section without changes.

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The 2009 amendment by P.A. 96-734, effective August 25, 2009, inserted (a-5).

§ 105 ILCS 5/2-3.138. School health recognition program

Sec. 2-3.138. School health recognition program. The State Board of Education shall establish a school health recognition program that:

(1) publicly identifies those schools that have implemented programs to increase the level of physical activity of their students;

(2) publicly identifies those schools that have adopted policies or implemented programs to promote healthy nutritional choices for their students; and

(3) allows recognized schools to share best practices and model services with other schools throughout the State.

(Source: P.A. 94-190, § 5; 95-331, § 540.)

Effective Date. Section 99 of P.A. 94-190 made this section effective upon becoming law. The Act was approved July 12, 2005.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, renumbered the section, which was formerly a multiple version of 105 ILCS 5/2-3.131.

§ 105 ILCS 5/2-3.139. School wellness policies; taskforce

Sec. 2-3.139. School wellness policies; taskforce. (a) The State Board of Education shall establish a State goal that all school districts have a wellness policy that is consistent with recommendations of the Centers for Disease Control and Prevention (CDC), which recommendations include the following:

(1) nutrition guidelines for all foods sold on school campus during the school day;

(2) setting school goals for nutrition education and physical activity;

(3) establishing community participation in creating local wellness policies; and

(4) creating a plan for measuring implementation of these wellness policies.

The Department of Public Health, the Department of Human Services, and the State Board of Education shall form an interagency working group to publish model wellness policies and recommendations. Sample policies shall be based on CDC recommendations for nutrition and physical activity. The State Board of Education shall distribute the model wellness policies to all school districts before June 1, 2006.

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(b) There is created the School Wellness Policy Taskforce, consisting of the following members:

(1) One member representing the State Board of Education, appointed by the State Board of Education.

(2) One member representing the Department of Public Health, appointed by the Director of Public Health.

(3) One member representing the Department of Human Services, appointed by the Secretary of Human Services.

(4) One member of an organization representing the interests of school nurses in this State, appointed by the interagency working group.

(5) One member of an organization representing the interests of school administrators in this State, appointed by the interagency working group.

(6) One member of an organization representing the interests of school boards in this State, appointed by the interagency working group.

(7) One member of an organization representing the interests of regional superintendents of schools in this State, appointed by the interagency working group.

(8) One member of an organization representing the interests of parent-teacher associations in this State, appointed by the interagency working group.

(9) One member of an organization representing the interests of pediatricians in this State, appointed by the interagency working group.

(10) One member of an organization representing the interests of dentists in this State, appointed by the interagency working group.

(11) One member of an organization representing the interests of dieticians in this State, appointed by the interagency working group.

(12) One member of an organization that has an interest and expertise in heart disease, appointed by the interagency working group.

(13) One member of an organization that has an interest and expertise in cancer, appointed by the interagency working group.

(14) One member of an organization that has an interest and expertise in childhood obesity, appointed by the interagency working group.

(15) One member of an organization that has an interest and expertise in the importance of physical education and recreation in preventing disease, appointed by the interagency working group.

(16) One member of an organization that has an interest and expertise in school food service, appointed by the interagency working group.

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(17) One member of an organization that has an interest and expertise in school health, appointed by the interagency working group.

(18) One member of an organization that campaigns for programs and policies for healthier school environments, appointed by the interagency working group.

(19) One at-large member with a doctorate in nutrition, appointed by the State Board of Education.

Members of the taskforce shall serve without compensation. The taskforce shall meet at the call of the State Board of Education. The taskforce shall report its identification of barriers to implementing school wellness policies and its recommendations to reduce those barriers to the General Assembly and the Governor on or before January 1, 2006. The taskforce shall report its recommendations on statewide school nutrition standards to the General Assembly and the Governor on or before January 1, 2007. The taskforce shall report its evaluation of the effectiveness of school wellness policies to the General Assembly and the Governor on or before January 1, 2008. The evaluation shall review a sample size of 5 to 10 school districts. Reports shall be made to the General Assembly by filing copies of each report as provided in Section 3.1 of the General Assembly Organization Act [25 ILCS 5/3.1]. Upon the filing of the last report, the taskforce is dissolved.

(c) The State Board of Education may adopt any rules necessary to implement this Section.

(d) Nothing in this Section may be construed as a curricular mandate on any school district.

(Source: P.A. 94-199, § 5; 95-331, § 540.)

Effective Date. Section 99 of P.A. 94-199 made this section effective upon becoming law. The Act was approved July 12, 2005.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, renumbered the section, which was formerly a multiple version of 105 ILCS 5/2-3.131.

§ 105 ILCS 5/2-3.140. Child abduction prevention instruction

Sec. 2-3.140. Child abduction prevention instruction. The State Board of Education, in coordination with the Department of State Police, shall develop child abduction prevention instruction for inclusion in elementary and secondary school curricula throughout the State. The State Board of Education and the Department of State Police shall encourage the inclusion of the child abduction prevention instruction in private

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elementary and secondary school curricula throughout the State.

(Source: P.A. 93-310, § 25.)

Effective Date. Section 99 of P.A. 93-310 made this section effective upon becoming law. The Act was approved July 23, 2003.

§ 105 ILCS 5/2-3.141: Repealed by P.A. 95-331, § 540, effective December 31, 2010.

§ 105 ILCS 5/2-3.142. Grants to Illinois School Psychology Internship Consortium

Sec. 2-3.142. Grants to Illinois School Psychology Internship Consortium. Subject to appropriations for this purpose, the State Board of Education shall provide grants to the Illinois School Psychology Internship Consortium for aid in providing training programs and facilitating interns to improve the educational and mental health services of children in this State.

(Source: P.A. 95-102, § 5; 95-876, § 175.)

Note.

Former multiple versions of this section were renumbered by P.A. 95-876 as 105 ILCS 5/2-3.144, 105 ILCS 5/2-3.145, and 105 ILCS 5/2-3.147.

Effective Date. This section is effective January 1, 2008, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, reenacted the section and made no additional changes.

§ 105 ILCS 5/2-3.143. Lincoln's ChalleNGe Academy study

Sec. 2-3.143. Lincoln's ChalleNGe Academy study. The State Board of Education shall conduct a study to consider the need for an expansion of enrollment at or the replication of services in other portions of this State for the Lincoln's ChalleNGe Academy as an

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alternative program for students who have dropped out of traditional school.

(Source: P.A. 95-707, § 5-20.)

Effective Date. Section 99 of P.A. 95-707 made this section effective upon becoming law. The Act was approved January 11, 2008.

§ 105 ILCS 5/2-3.144. Community college enrollments

Sec. 2-3.144. Community college enrollments. The State Board of Education shall annually assemble all data reported to the State Board of Education under Section 10-21.4 or 34-8 of this Code [105 ILCS 5/10-21.4 or 105 ILCS 5/34-8] by district superintendents, relating to the number of high school students in the educational service region who are enrolled in accredited courses at any community college, together with the name and number of the course or courses that each such student is taking, assembled both by individual school district and by educational service region totals.

(Source: P.A. 95-496, § 5; 95-876, § 175.)

Note.

Section 95 of P.A. 95-496 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 95-496 makes this section effective upon becoming law. The Act was approved August 28, 2007.

Effect of Amendments. The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, renumbered this section, which was formerly a multiple version of 105 ILCS 5/2-3.142.

§ 105 ILCS 5/2-3.145. Special education expenditure and receipt report

Sec. 2-3.145. Special education expenditure and receipt report. The State Board of Education shall issue an annual report to the General Assembly and Governor identifying each school district's special education expenditures; receipts received from State, federal, and local sources; and net special education expenditures over receipts received, if applicable. Expenditures and receipts shall be calculated in a manner specified by the State Board using data obtained from the Annual Financial Report, the Funding and Child Tracking System, and district enrollment information. This report must be issued on or

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before May 1, 2008 and on or before each May 1 thereafter.

(Source: P.A. 95-555, § 5; 95-876, § 175.)

Effective Date. Section 99 of P.A. 95-555 makes this section effective upon becoming law. The Act was approved August 30, 2007.

Effect of Amendments. The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, renumbered this section, which was formerly a multiple version of 105 ILCS 5/2-3.142.

§ 105 ILCS 5/2-3.146. Severely overcrowded schools grant program

Sec. 2-3.146. Severely overcrowded schools grant program. There is created a grant program, subject to appropriation, for severely overcrowded schools. The State Board of Education shall administer the program. Grant funds may be used for purposes of relieving overcrowding. In order for a school district to be eligible for a grant under this Section, (i) the main administrative office of the district must be located in a city of 85,000 or more in population, according to the 2000 U.S. Census, (ii) the school district must have a district-wide percentage of low-income students of 70% or more, as identified by the 2005-2006 School Report Cards published by the State Board of Education, and (iii) the school district must not be eligible for a fast growth grant under Section 18-8.10 of this Code [105 ILCS 5/18-8.10]. The State Board of Education shall distribute the funds on a proportional basis with no single district receiving more than 75% of the funds in any given year. The State Board of Education may adopt rules as needed for the implementation and distribution of grants under this Section.

(Source: P.A. 95-707, § 5-20.)

Effective Date. Section 99 of P.A. 95-707 made this section effective upon becoming law. The Act was approved January 11, 2008.

§ 105 ILCS 5/2-3.147. The Ensuring Success in School Task Force

Sec. 2-3.147. The Ensuring Success in School Task Force. (a) In this Section:

"Domestic violence" means abuse by a family or household member, as "abuse" and "family or household members" are defined in Section 103 of the Illinois Domestic Violence Act of 1986 [750 ILCS 60/103].

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"Sexual violence" means sexual assault, abuse, or stalking of an adult or minor child proscribed in the Criminal Code of in Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-7.3, 12-7.4, 12-7.5, 12-12, 12-13, 12-14, 12-14.1, 12-15, and 12-16 [720 ILCS 5/11-1.20, 720 ILCS 5/11-1.30, 720 ILCS 5/11-1.40, 720 ILCS 5/11-1.50, 720 ILCS 5/11-1.60, 720 ILCS 5/12-7.3, 720 ILCS 5/12-7.4, 720 ILCS 5/12-7.5, 720 ILCS 5/12-12 (now repealed), 720 ILCS 5/12-13, 720 ILCS 5/12-14, 720 ILCS 5/12-14.1, 720 ILCS 5/12-15, and 720 ILCS 5/12-16], including sexual violence committed by perpetrators who are strangers to the victim and sexual violence committed by perpetrators who are known or related by blood or marriage to the victim.

(b) The State Board of Education shall convene an Ensuring Success in School Task Force to develop policies, procedures, and protocols to be adopted by school districts for addressing the educational and related needs of children and youth who are parents, expectant parents, or victims of domestic or sexual violence to ensure their ability to stay in school, stay safe while in school, and successfully complete their education. The State Board of Education shall be the agency responsible for providing staff and administrative support to the task force.

(c) The Ensuring Success in School Task Force shall do all of the following:

(1) Conduct a thorough examination of the barriers to school attendance, safety, and completion for children and youth who are parents, expectant parents, or victims of domestic or sexual violence.

(2) Conduct a discovery process that includes relevant research and the identification of effective policies, protocols, and programs within this State and elsewhere.

(3) Conduct meetings and public hearings in geographically diverse locations throughout the State to ensure the maximum input from area advocates and service providers, from local education agencies, and from children and youth who are parents, expectant parents, or victims of domestic or sexual violence and their parents or guardians.

(4) Establish and adhere to procedures and protocols to allow children and youth who are parents, expectant parents, or victims of domestic or sexual violence, their parents or guardians, and advocates who work on behalf of such children and youth to participate in the task force anonymously and confidentially.

(5) Invite the testimony of and confer with experts on relevant topics.

(6) Produce a report of the task force's findings on best practices and policies, which shall include a plan with a phased and prioritized implementation timetable with focus on ensuring the successful and safe completion of school for children and youth who are parents, expectant parents, or victims of domestic or sexual violence. The task force shall submit a report to the General Assembly on or before December 1, 2009 on its findings, recommendations, and implementation plan. Any task force reports shall be published on the State Board of Education's Internet website on the date the report is delivered to the General Assembly.

(7) Recommend new legislation or proposed rules developed by the task force.

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(d) The President of the Senate and the Speaker of the House of Representatives shall each appoint one co-chairperson of the Ensuring Success in School Task Force. In addition to the 2 co-chairpersons, the task force shall be comprised of each of the following members, appointed by the State Board of Education, and shall be representative of the geographic, racial, ethnic, and cultural diversity of this State:

(1) A representative of a statewide nonprofit, nongovernmental domestic violence organization.

(2) A domestic violence victims' advocate or service provider from a different nonprofit, nongovernmental domestic violence organization.

(3) A representative of a statewide nonprofit, nongovernmental sexual assault organization.

(4) A sexual assault victims' advocate or service provider from a different nonprofit, nongovernmental sexual assault organization.

(5) A teen parent advocate or service provider from a nonprofit, nongovernmental organization.

(6) A school social worker.

(7) A school psychologist.

(8) A school counselor.

(9) A representative of a statewide professional teachers' organization.

(10) A representative of a different statewide professional teachers' organization.

(11) A representative of a statewide organization that represents school boards.

(12) A representative of a statewide organization representing principals.

(13) A representative of City of Chicago School District 299.

(14) A representative of a nonprofit, nongovernmental youth services provider.

(15) A representative of a statewide nonprofit, nongovernmental multi-issue advocacy organization with expertise in a cross-section of relevant issues.

(16) An alternative education service provider.

(17) A representative from a regional office of education.

(18) A truancy intervention services provider.

(19) A youth who is a parent or expectant parent directly affected by the issues, problems, and concerns of staying in school and successfully completing his or her education through high school.

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(20) A youth who is a victim of domestic or sexual violence directly affected by the issues, problems, and concerns of staying in school and successfully completing his or her education.

(21) A parent or guardian of a child or youth who is a parent or expectant parent directly affected by the issues, problems, and concerns of staying in school and successfully completing his or her education.

(22) A parent or guardian of a child or youth who is a victim of domestic or sexual violence directly affected by the issues, problems, and concerns of staying in school and successfully completing his or her education.

The task force shall also consist of one member appointed by the Minority Leader of the Senate, one member appointed by the Minority Leader of the House of Representatives, the State Superintendent of Education, the Secretary of Human Services, the Director of Healthcare and Family Services, the Director of Children and Family Services, and the Director of Public Health or their designees.

(e) Members of the Ensuring Success in School Task Force shall receive no compensation for their participation, but may be reimbursed by the State Board of Education for expenses in connection with their participation, including travel, if funds are available. However, members of the task force who are youth who are parents, expectant parents, or victims of domestic or sexual violence and the parents or guardians of such youth shall be reimbursed for their travel expenses connected to their participation in the task force.

(Source: P.A. 95-558, § 5; 95-876, § 175; 96-364, § 5; 96-1551, § 965.)

Note.

Section 9995 of P.A. 96-1551 contains a "no acceleration or delay" provision.

Section 720 ILCS 5/12-12, referred to in subsection (a), has been repealed.

Effective Date. Section 99 of P.A. 95-558 makes this Act effective upon becoming law. The Act was approved August 30, 2007.

Effect of Amendments. The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, renumbered this section, which was formerly a multiple version of 105 ILCS 5/2-3.142.

The 2009 amendment by P.A. 96-364, effective August 13, 2009, substituted "December 1, 2009" for "January 1, 2009" in the second sentence of (c)(6).

The 2011 amendment by P.A. 96-1551, effective July 1, 2011, inserted "11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60" to the section listing of the definition of Sexual violence of (a).

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§ 105 ILCS 5/2-3.148. Disability history and awareness campaign

Sec. 2-3.148. Disability history and awareness campaign. The State Board of Education shall promote an annual campaign about disability history and awareness in this State. The campaign shall be designed to increase public awareness and respect for people with disabilities who comprise a substantial percentage of this State's population, teach future generations that people with disabilities have a rich history and have made valuable contributions throughout this State and the United States, and teach future generations that disability is a natural part of life and that people with disabilities have a right to be treated with civil, legal, and human rights and as full human beings above all else.

(Source: P.A. 96-191, § 5; 96-1000, § 260.)

Note.

There was another version of this section enacted by P.A. 96-349, § 5 and redesignated as 105 ILCS 5/2-3.149 by P.A. 96-1000, § 260.

There was another version of this section enacted by P.A. 96-647, § 5 and redesignated as 105 ILCS 5/2-3.150 by P.A. 96-1000, § 260.

There was another version of this section enacted by P.A. 96-659, § 5 and redesignated as 105 ILCS 5/2-3.151 by P.A. 96-1000, § 260.

There was another version of this section enacted by P.A. 96-746, § 5 and redesignated as 105 ILCS 5/2-3.152 by P.A. 96-1000, § 260.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. This section is effective January 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, reenacted the section without changes.

§ 105 ILCS 5/2-3.149. Food allergy guidelines

Sec. 2-3.149. Food allergy guidelines. (a) Not later than July 1, 2010, the State Board of Education, in conjunction with the Department of Public Health, shall develop and make available to each school board guidelines for the management of students with life-threatening food allergies. The State Board of Education and the Department of Public Health shall establish an ad hoc committee to develop the guidelines. The committee shall include experts in the field of food allergens, representatives on behalf of students

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with food allergies, representatives from the several public school management organizations, which shall include school administrators, principals, and school board members, and representatives from 2 statewide professional teachers' organizations. The guidelines shall include, but need not be limited to, the following:

(1) education and training for school personnel who interact with students with life-threatening food allergies, such as school and school district administrators, teachers, school advisors and counselors, school health personnel, and school nurses, on the management of students with life-threatening food allergies, including training related to the administration of medication with an auto-injector;

(2) procedures for responding to life-threatening allergic reactions to food;

(3) a process for the implementation of individualized health care and food allergy action plans for every student with a life-threatening food allergy; and

(4) protocols to prevent exposure to food allergens.

(b) Not later than January 1, 2011, each school board shall implement a policy based on the guidelines developed pursuant to subsection (a) of this Section for the management of students with life-threatening food allergies enrolled in the schools under its jurisdiction. Nothing in this subsection (b) is intended to invalidate school district policies that were implemented before the development of guidelines pursuant to subsection (a) of this Section as long as such policies are consistent with the guidelines developed pursuant to subsection (a) of this Section.

(Source: P.A. 96-349, § 5; 96-1000, § 260.)

Note.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 105 ILCS 5/2-3.148 as 105 ILCS 5/2-3.149.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 96-349 makes this section effective upon becoming law. The Act was approved August 13, 2009.

§ 105 ILCS 5/2-3.150. Textbook digital technology; pilot program

Sec. 2-3.150. Textbook digital technology; pilot program. (a) The General Assembly makes the following findings:

(1) The use of digital technologies in the kindergarten through grade 12 school environment is rapidly increasing in this State.

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(2) There is a need for the State Board of Education to explore the expanded use of digital technologies in classrooms and the impact of technological innovation on both educational achievement and textbook weight.

(b) The State Board of Education shall implement a pilot program, subject to appropriation, to test digital technologies in 3 geographically diverse school districts on or before July 1, 2011. The pilot program shall examine the following issues:

(1) the development of alternative textbook formats, including various digital formats; and

(2) any possible adaptation of existing standard print textbooks that would be beneficial to the health and educational achievement of pupils in this State.

(c) The State Board of Education shall report the results of its findings on the pilot program and make recommendations to the Governor and the General Assembly on or before January 15, 2013 with regard to the success of digital technologies used in the pilot program. The State Board of Education may submit other reports as it deems appropriate.

(d) The pilot program is abolished on January 16, 2013. This Section is repealed on January 16, 2013.

(Source: P.A. 96-647, § 5; 96-1000, § 260.)

Note.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 105 ILCS 5/2-3.148 as 105 ILCS 5/2-3.150.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 96-647 made this section effective upon becoming law. The Act was approved August 24, 2009.

§ 105 ILCS 5/2-3.151. Green career and technical education programs

Sec. 2-3.151. Green career and technical education programs. (a) As used in this Section, "green industries" means industries that contribute directly to preserving or enhancing environmental quality by reducing waste and pollution or producing sustainable products using sustainable processes and materials and that provide opportunities for advancement along a career track of increasing skills and wages. Green industries include any of the following:

(1) Energy system retrofits to increase energy efficiency and conservation.

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(2) The production and distribution of biofuels and vehicle retrofits for biofuels.

(3) Building design and construction that meet the equivalent of the best available technology in energy and environmental design standards.

(4) Organic and community food production.

(5) The manufacture of products from non-toxic, environmentally certified or recycled materials.

(6) The manufacture and production of sustainable technologies, including, but not limited to, solar panels, wind turbines, and fuel cells.

(7) Solar technology installation and maintenance.

(8) Recycling, green composting, and large-scale reuse of construction and demolition materials and debris.

(9) Water system retrofits to increase water efficiency and conservation.

(10) Horticulture.

(b) It is the purpose and intent of this Section to establish a State grant program that develops secondary programs that introduce students to developing green industries.

(c) Subject to appropriation, the State Board of Education shall establish a State grant program that develops, through a competitive process, 2-year pilot programs to assist in the creation and promotion of green career and technical education programs in public secondary schools in this State. Preference must be given to proposals that include the integration of academic and career and technical education content, arranged in sequences of courses that lead to post-secondary completion.

(d) The State Board of Education may adopt any rules necessary for the implementation of this Section.

(e) The State Board of Education may use up to 5% of the funds appropriated for the purposes of this Section for administrative costs, including the hiring of positions for the implementation and administration of the grant program, provided that if no appropriation is made to the State Board for a given fiscal year for the purposes of the grant program, then the State Board is not required to make any expenditures in support of the program during that fiscal year.

(Source: P.A. 96-659, § 5; 96-1000, § 260.)

Note.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 105 ILCS 5/2-3.148 as 105 ILCS 5/2-3.151.

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Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 96-659 made this section effective July 1, 2009.

§ 105 ILCS 5/2-3.152. Community schools

Sec. 2-3.152. Community schools. (a) This Section applies beginning with the 2009-2010 school year.

(b) The General Assembly finds all of the following:

(1) All children are capable of success.

(2) Schools are the centers of vibrant communities.

(3) Strong families build strong educational communities.

(4) Children succeed when adults work together to foster positive educational outcomes.

(5) Schools work best when families take active roles in the education of children.

(6) Schools today are limited in their ability to dedicate time and resources to provide a wide range of educational opportunities to students because of the focus on standardized test outcomes.

(7) By providing learning opportunities outside of normal school hours, including programs on life skills and health, students are more successful academically, more engaged in their communities, safer, and better prepared to make a successful transition from school to adulthood.

(8) A community school is a traditional school that actively partners with its community to leverage existing resources and identify new resources to support the transformation of the school to provide enrichment and additional life skill opportunities for students, parents, and community members at-large. Each community school is unique because its programming is designed by and for the school staff, in partnership with parents, community stakeholders, and students.

(9) Community schools currently exist in this State in urban, rural, and suburban communities.

(10) Research shows that community schools have a powerful positive impact on students, as demonstrated by increased academic success, a positive change in attitudes toward school and learning, and decreased behavioral problems.

(11) After-school and evening programs offered by community schools provide academic enrichment consistent with the Illinois Learning Standards and general school curriculum; an opportunity for physical fitness activities for students, fine arts programs,

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structured learning "play" time, and other recreational opportunities; a safe haven for students; and work supports for working families.

(12) Community schools are cost-effective because they leverage existing resources provided by local, State, federal, and private sources and bring programs to the schools, where the students are already congregated. Community schools have been shown to leverage between $5 to $8 in existing programming for every $1 spent on a community school.

(c) Subject to an appropriation or the availability of funding for such purposes, the State Board of Education shall make grants available to fund community schools and to enhance programs at community schools. A request-for-proposal process must be used in awarding grants under this subsection (c). Proposals may be submitted on behalf of a school, a school district, or a consortium of 2 or more schools or school districts. Proposals must be evaluated and scored on the basis of criteria consistent with this Section and other factors developed and adopted by the State Board of Education. Technical assistance in grant writing must be made available to schools, school districts, or consortia of school districts through the State Board of Education directly or through a resource and referral directory established and maintained by the State Board of Education.

(d) In order to qualify for a community school grant under this Section, a school must, at a minimum, have the following components:

(1) Before and after-school programming each school day to meet the identified needs of students.

(2) Weekend programming.

(3) At least 4 weeks of summer programming.

(4) A local advisory group comprised of school leadership, parents, and community stakeholders that establishes school-specific programming goals, assesses program needs, and oversees the process of implementing expanded programming.

(5) A program director or resource coordinator who is responsible for establishing a local advisory group, assessing the needs of students and community members, identifying programs to meet those needs, developing the before and after-school, weekend, and summer programming and overseeing the implementation of programming to ensure high quality, efficiency, and robust participation.

(6) Programming that includes academic excellence aligned with the Illinois Learning Standards, life skills, healthy minds and bodies, parental support, and community engagement and that promotes staying in school and non-violent behavior and non-violent conflict resolution.

(7) Maintenance of attendance records in all programming components.

(8) Maintenance of measurable data showing annual participation and the impact of programming on the participating children and adults.

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(9) Documentation of true collaboration between the school and community stakeholders, including local governmental units, civic organizations, families, businesses, and social service providers.

(10) A non-discrimination policy ensuring that the community school does not condition participation upon race, ethnic origin, religion, sex, or disability.

(Source: P.A. 96-746, § 5; 96-1000, § 260.)

Note.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 105 ILCS 5/2-3.148 as 105 ILCS 5/2-3.152.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 96-746 made this section effective August 25, 2009.

§ 105 ILCS 5/2-3.153. (As enacted by P.A. 97-8) Survey of learning conditions

Sec. 2-3.153. (As enacted by P.A. 97-8) Survey of learning conditions. The State Board of Education shall select for statewide administration an instrument to provide feedback from, at a minimum, students in grades 6 through 12 and teachers on the instructional environment within a school after giving consideration to the recommendations of the Performance Evaluation Advisory Council made pursuant to subdivision (6) of subsection (a) of Section 24A-20 of this Code [105 ILCS 5/24A-20]. Subject to appropriation to the State Board of Education for the State's cost of development and administration and commencing with the 2012-2013 school year, each school district shall administer, at least biannually, the instrument in every public school attendance center by a date specified by the State Superintendent of Education, and data resulting from the instrument's administration must be provided to the State Board of Education. The survey component that requires completion by the teachers must be administered during teacher meetings or professional development days or at other times that would not interfere with the teachers' regular classroom and direct instructional duties. The State Superintendent, following consultation with teachers, principals, and other appropriate stakeholders, shall publicly report on selected indicators of learning conditions resulting from administration of the instrument at the individual school, district, and State levels and shall identify whether the indicators result from an anonymous administration of the instrument. If in any year the appropriation to the State Board of Education is insufficient for the State's costs associated with statewide administration of the instrument, the State Board of Education shall give priority to districts with low-performing schools and a representative sample of other districts.

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(Source: P.A. 97-8, § 5.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Effective Date. Section 99 of P.A. 97-8 made this section effective upon becoming law. The Act was approved June 13, 2011.

§ 105 ILCS 5/2-3.153. (As enacted by P.A. 97-72) Low Performing Schools Intervention Program

Sec. 2-3.153. (As enacted by P.A. 97-72) Low Performing Schools Intervention Program. From any funds appropriated to the State Board of Education for the purposes of intervening in low performing schools, the State Superintendent may, in his or her discretion, select school districts and schools in which to directly or indirectly intervene; provided however that such school districts and schools are within the lowest 5% in terms of performance in the State as determined by the State Superintendent. Intervention may take the form of a needs assessment or additional, more intensive intervention, as determined by the State Superintendent. Expenditures from funds appropriated for this purpose may include, without limitation, contracts, grants and travel to support the intervention.

(Source: P.A. 97-72, § 5-25.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Note.

Section 97-97 of P.A. 97-72 contains a severability provision.

Effective Date. Section 99-99 of P.A. 97-72, made this section effective July 1, 2011.

§ 105 ILCS 5/2-3.153. (As enacted by P.A. 97-570) Textbook block grant program

Sec. 2-3.153. (As enacted by P.A. 97-570) Textbook block grant program. (a) The provisions of this Section are in the public interest, for the public benefit, and serve secular public purposes.

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(b) As used in this Section, "textbook" means any book or book substitute that a pupil uses as a text or text substitute, including electronic textbooks. "Textbook" includes books, reusable workbooks, manuals, whether bound or in loose-leaf form, instructional computer software, and electronic textbooks and the technological equipment necessary to gain access to and use electronic textbooks intended as a principal source of study material for a given class or group of students. "Textbook" also includes science curriculum materials in a kit format that includes pre-packaged consumable materials if (i) it is shown that the materials serve as a textbook substitute, (ii) the materials are for use by the pupils as a principal learning source, (iii) each component of the materials is integrally necessary to teach the requirements of the intended course, (iv) the kit includes teacher guidance materials, and (v) the purchase of individual consumable materials is not allowed.

(c) Beginning July 1, 2011, subject to annual appropriation by the General Assembly, the State Board of Education is authorized to provide annual funding to public school districts and State-recognized, non-public schools serving students in grades kindergarten through 12 for the purchase of selected textbooks. The textbooks authorized to be purchased under this Section are limited without exception to textbooks that have been preapproved and designated by the State Board of Education for use in any public school and that are secular, non-religious, and non-sectarian. The State Board of Education shall annually publish a list of the textbooks authorized to be purchased under this Section. Each public school district and State-recognized, non-public school shall, subject to appropriations for that purpose, receive a per pupil grant for the purchase of secular textbooks. The per pupil grant amount must be calculated by the State Board of Education utilizing the total appropriation made for these purposes divided by the most current student enrollment data available.

(d) The State Board of Education may adopt rules as necessary for the implementation of this Section and to ensure the religious neutrality of the textbook block grant program, as well as provide for the monitoring of all textbooks authorized in this Section to be purchased directly by State-recognized, nonpublic schools serving students in grades kindergarten through 12.

(Source: P.A. 97-570, § 5.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Effective Date. Section 99 of P.A 97-570 purported to make this section effective July 1, 2011; however P.A. 97-570 was approved August 25, 2011.

Article 3.

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Regional Superintendent of Schools

§ 105 ILCS 5/3-0.01. "County superintendent of schools" and "regional superintendent of schools" defined - Application of Article

Sec. 3-0.01. "County superintendent of schools" and "regional superintendent of schools" defined - Application of Article. (a) Except as otherwise provided by subsection (b), after the effective date of this amendatory Act of 1975, the chief administrative officer of an educational service region shall be designated and referred to as the "regional superintendent of schools" or the "regional superintendent" and after the effective date of this amendatory Act of 1993 the office held by the chief administrative officer shall be designated and referred to as the "regional office of education". For purposes of the School Code and except as otherwise provided by subsection (b), any reference to "county superintendent of schools" or "county superintendent" means the regional superintendent of schools.

(b) Notwithstanding any other provisions of this Article, but subject to subsection (b-1), in educational service regions containing 2,000,000 or more inhabitants, the office of regional superintendent of schools is abolished. Subject to Section 2-3.105 of this Code, [105 ILCS 5/2-3.105] beginning on the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-893], all rights, powers, duties and responsibilities theretofore vested by law in, and exercised and performed by the regional superintendent of schools and by any assistant regional superintendents or other assistants or employees in the office of the regional superintendent of schools being abolished shall be vested in, exercised and performed by educational service centers established pursuant to Section 2-3.62 of this Code [105 ILCS 5/2-3.62] for any educational service region containing 2,000,000 or more inhabitants. Beginning on the effective date of this amendatory Act of the 96th General Assembly, in an educational service region containing 2,000,000 or more inhabitants: (i) all books, records, maps, papers and other documents belonging to or subject to the control or disposition of the former regional superintendent of schools by virtue of his office shall be transferred and delivered to the State Board of Education; (ii) possession or control over all moneys, deposits and accounts in the possession or subject to the control or disposition of the former regional superintendent of schools by virtue of his office, including but not limited to undistributed or unexpended moneys drawn from, and all amounts on deposit in, the county, institute and supervisory expense funds, shall be transferred to and placed under the control and disposition of the State Board of Education, excepting only those moneys or accounts, if any, the source of which is the county treasury, for proper redistribution to the educational service centers; and (iii) all other equipment, furnishings, supplies and other personal property belonging to or subject to the control or disposition of the former regional superintendent of schools by virtue of his office, excepting only those items which were provided by the county board,

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shall be transferred and delivered to the State Board of Education. Beginning on the effective date of this amendatory Act of the 96th General Assembly, any reference in this Code to "regional superintendent of schools" or "regional superintendent", or "county superintendent of schools" or "county superintendent" shall mean, with respect to any educational service region containing 2,000,000 or more inhabitants in which the office of regional superintendent of schools is abolished, the educational service centers established pursuant to Section 2-3.62 of this Code for the educational service region. Upon and after the first Monday of August 1995, references in this Code and elsewhere to educational service regions of 2,000,000 or fewer inhabitants shall exclude any educational service region containing a city of 500,000 or more inhabitants and references in this Code and elsewhere to educational service regions of 2,000,000 or more inhabitants shall mean an educational service region containing a city of 500,000 or more inhabitants regardless of the actual population of the region.

(b-1) References to "regional superintendent" shall also include the educational service centers established under Section 2-3.62 of this Code and serving that portion of a Class II county outside a city of 500,000 or more population elected at the general election in 1994 and every 4 years thereafter.

(c) This Article applies to the regional superintendent of a multicounty educational service region formed under Article 3A [105 ILCS 5/3A-1 et seq.] as well as to a single county or partial county region, except that in case of conflict between the provisions of this Article and of Article 3A in the case of a multicounty region, the provisions of Article 3A shall apply. Any reference to "county" or to "educational service region" in this Article means a regional office of education.

(Source: P.A. 87-654; 87-895; 87-1251, § 2; 88-89, § 3-10; 96-893, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-0.01.

Effect of Amendments. The 1992 amendment by P.A. 87-1251, effective July 1, 1993, substituted "July 1, 1994" for "August 7, 1995" throughout subsection (b).

The 1993 amendment by P.A. 88-89, effective July 14, 1993, in subsection (a) added at the end of the first sentence "and after the effective date of this amendatory Act of 1993 the office held by the chief administrative officer shall be designated and referred to as the 'regional office of education'"; in subsection (b) added at the beginning of the first sentence "Subject to subsection (b-1)" and added the last sentence of subsection (b); added subsection (b-1); and in subsection (c) inserted "or partial county" and substituted "or to 'educational service region'" for "in this Article means an educational service region".

The 2010 amendment by P.A. 96-893, effective July 1, 2010, rewrote (b); and substituted "educational service centers established under Section 2-3.62 of this Code and" for "regional superintendent of schools in regions" in (b-1).

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CASE NOTES

Analysis
Election Code
- Compliance
Funding Obligation

Election Code

- Compliance

Even though a candidate's nomination petition stated incorrectly the name of the office he was seeking as "Superintendent of an Educational Service Region" on some pages and as "Superintendent of an Educational Service Region, Will County Illinois" on other pages, and even though the candidate's petitions used the former title and not the current statutory designation, there was substantial compliance with the Election Code (10 ILCS 5/1-1 et seq.). Stevenson v. County Officers Electoral Bd., 58 Ill. App. 3d 24, 15 Ill. Dec. 571, 373 N.E.2d 1043 (3 Dist. 1978).

Funding Obligation

County Board was not obligated to provide funds for the County Regional Office of Education in light of the amendment to this section by P.A. 88-89; 105 ILCS 5/4-2, 105 ILCS 5/4-4 and 105 ILCS 5/4-6 exempt counties with more than 2,000,000 inhabitants and this section does not state that reference to counties of 2,000,000 or more inhabitants shall mean "an educational service region containing a city of 500,000 or more inhabitants". Suburban Cook County Regional Office of Educ. v. Cook County Bd., 282 Ill. App. 3d 560, 217 Ill. Dec. 671, 667 N.E.2d 1064 (1 Dist. 1996), appeal denied, 168 Ill. 2d 627, 219 Ill. Dec. 577, 671 N.E.2d 744 (1996).

§ 105 ILCS 5/3-1. Election; eligibility

Sec. 3-1. Election; eligibility. Quadrennially there shall be elected in every county, except those which have been consolidated into a multicounty educational service region under Article 3A [105 ILCS 5/3A-1 et seq.] and except those having a population of 2,000,000 or more inhabitants, a regional superintendent of schools, who shall enter upon the discharge of his duties on the first Monday of August next after his election; provided, however, that the term of office of each regional superintendent of schools in office on June 30, 2003 is terminated on July 1, 2003, except that an incumbent regional superintendent of schools shall continue to serve until his successor is elected and qualified, and each regional superintendent of schools elected at the general election in 2002 and every four years thereafter shall assume office on the first day of July next after his election. No one is eligible to file his petition at any primary election for the nomination as candidate for the office of regional superintendent of schools nor to enter upon the duties of such office either by election or appointment unless he possesses the following qualifications: (1) he is of good character, (2) he has a master's degree, (3) he

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has earned at least 20 semester hours of credit in professional education at the graduate level, (4) he holds a valid all grade supervisory certificate or a valid state limited supervisory certificate, or a valid state life supervisory certificate, or a valid administrative certificate, (5) he has had at least 4 years experience in teaching, and (6) he was engaged for at least 2 years of the 4 previous years in full time teaching or supervising in the common public schools or serving as a county superintendent of schools or regional superintendent of schools for an educational service region in the State of Illinois.

No petition of any candidate for nomination for the office of regional superintendent of schools may be filed and no such candidate's name may be placed on a primary or general election ballot, unless such candidate files as part of his petition a certificate from the State Board of Education certifying that from the records of its office such candidate has the qualifications required by this Section; however, any incumbent filing his petition for nomination for a succeeding term of office shall not be required to attach such certificate to his petition of candidacy.

Nomination papers filed under this Section are not valid unless the candidate named therein files with the county clerk or State Board of Elections a statement of economic interests as required by the Illinois Governmental Ethics Act [5 ILCS 420/1-101 et seq.]. Such receipt shall be so filed either previously during the calendar year in which his nomination papers were filed or within the period for the filing of nomination papers in accordance with the general election law.

The changes in qualifications made by Public Act 76-1563 do not affect the right of an incumbent to seek reelection.

On and after July 1, 1994, the provisions of this Section shall have no application in any educational service region having a population of 2,000,000 or more inhabitants; provided further that no election shall be held in November of 1994 or at any other time after July 1, 1992 for the office of regional superintendent of schools in any county or educational service region having a population of 2,000,000 or more inhabitants.

(Source: P.A. 87-654; 87-1251, § 2; 88-89, § 3-10; 89-383, § 10; 90-280, § 5; 96-893, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-1.

Cross References.

As to ethical requirements for filing of statements, see 5 ILCS 420/1-101 et seq.

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Effect of Amendments. The 1992 amendment by P.A. 87-1251, effective July 1, 1993, substituted "July 1, 1994" for "August 7, 1995" and "July 1, 1992" for "the effective date of this amendatory Act of 1991" in the last paragraph.

The 1993 amendment by P.A. 88-89, effective July 14, 1993, in the first sentence inserted "and beginning in 1994 in that portion of a Class II county outside a city of 500,000 or more inhabitants and constituting an educational service region".

The 1995 amendment by P.A. 89-383, effective August 18, 1995, inserted a semicolon in the section catchline; and in the first paragraph, in the first sentence, added at the end "provided, however, that the term of office of each regional superintendent of schools in office on November 30, 2002 is terminated on December 1, 2002, except that an incumbent regional superintendent of schools shall continue to serve until his successor is elected and qualified, and each regional superintendent of schools elected at the general election in 2002 and every four years thereafter shall assume office on the first day of December next after his election".

The 1997 amendment by P.A. 90-280, effective July 31, 1997, in the first paragraph, in the first sentence, substituted "June 30, 2003" for "November 30, 2002", substituted "July 1, 2003" for "December 1, 2002" and substituted "July next" for "December next".

The 2010 amendment by P.A. 96-893, effective July 1, 2010, deleted "and beginning in 1994 in that portion of a Class II county outside a city of 500,000 or more inhabitants and constituting an educational service region" following "population of 2,000,000 or more inhabitants" in the introductory paragraph.

CASE NOTES

Analysis

Constitutionality
Authority
- Administrative
Compliance
- Mandatory
Mandamus
- Detachment
Qualification Dispute
- Jurisdiction
- Proof
- Quo Warranto

Constitutionality

The requirement stated in subsection (6) of this section that a person wishing to run for Regional Superintendent of Schools must have been a teacher or supervisor in the public schools for two of the last four years was not unconstitutional and did not deny plaintiff seeking to run for regional superintendent of schools the free exercise of his First Amendment rights, arbitrarily deprive him of the fundamental right to seek public office, or deny him equal protection of the law. Donaldson v. Illinois State Bd. of Educ., 730 F. Supp. 1456 (C.D. Ill. 1990).

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Subsection (6) of this section was unconstitutional because it was not rationally related to the state interest in insuring that candidates for office of regional superintendent of schools be familiar with school code and regulations. Hammond v. Illinois State Bd. of Educ., 624 F. Supp. 1151 (S.D. Ill. 1986).

Authority

- Administrative

This section gives the superintendent of schools no discretionary power, as he acts in an administrative capacity and not as a judicial officer, and his only function in this respect is to determine whether a petition for election is prima facie in compliance with the law. People ex rel. Musgrave v. Talbert, 314 Ill. App. 398, 41 N.E.2d 553 (4 Dist. 1942).

Where the superintendent of schools received petition to call an election to vote on the proposition of whether a community high school district should be established, in determining whether the territory in question was in fact compact and contiguous and also in determining the effect of the alleged detachment and annexation proceedings, the superintendent attempted to exercise a judicial function, which was not allowed by this section. People ex rel. Musgrave v. Talbert, 314 Ill. App. 398, 41 N.E.2d 553 (4 Dist. 1942).

Compliance

- Mandatory

This section is mandatory and the duties of the superintendent imperative. People ex rel. Reed v. McKinney, 318 Ill. 385, 149 N.E. 310 (1925).

Mandamus

- Detachment

In mandamus action to compel school superintendent to detach common school districts, objection that no provision was made for the distribution or return of the property of the common school districts detached was provided for by other sections of the former General School Law (see now 105 ILCS 5/1-1 et seq.), and was without merit. People ex rel. Reed v. McKinney, 318 Ill. 385, 149 N.E. 310 (1925).

Qualification Dispute

- Jurisdiction

The question as to who was entitled to the office of county superintendent of schools was a political question involving no property rights, and was not within the jurisdiction of a court of equity. Bloome v. Juergensmeyer, 344 Ill. App. 625, 101 N.E.2d 851 (3 Dist. 1951).

- Proof

County superintendent of schools elected in primary and general elections would not be ousted from office by means of quo warranto proceeding on ground that he was not of good character at time of filing of petition for nomination where the information offered no proof of such charge. People ex rel. Aken v. Puffer, 290 Ill. App. 196, 8 N.E.2d 198 (1 Dist. 1937).

- Quo Warranto

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The proper remedy to determine the question of whether a person elected to office possesses the requisite qualifications for eligibility under this section is by information in the nature of quo warranto. Bloome v. Juergensmeyer, 344 Ill. App. 625, 101 N.E.2d 851 (3 Dist. 1951).

§ 105 ILCS 5/3-1.1. Eligible voters

Sec. 3-1.1. Eligible voters. Whenever a unit school district is located in more than one educational service region, a qualified elector residing in that unit school district but outside of the educational service region administered by the regional superintendent of schools having supervision and control over that unit school district shall be eligible to vote in any election held to elect the regional superintendent of schools of the educational service region that is administered by the regional superintendent of schools who has supervision and control over that unit school district, but the elector shall not also be eligible to vote in the election held to elect the regional superintendent of schools of the educational service region in which the elector resides.

Not less than 100 days before each general primary election, the regional superintendent of schools shall certify to the State Board of Elections a list of each unit school district under his or her supervision and control and each county in which all or any part of each of those districts is located. The State Board of Elections shall certify each of those unit school districts and counties to the appropriate election authorities within 20 days after receiving the list certified by the regional superintendent of schools.

The election authority in a single county educational service region whose regional superintendent of schools exercises supervision and control over a unit school district that is located in that single county educational service region and in one or more other educational service regions shall certify to the election authority of each of those other educational service regions in which the unit school district is located the candidates for the office of the regional superintendent of schools exercising supervision and control over that unit school district.

(Source: P.A. 87-328; 88-535, § 16.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-1.1.

Effect of Amendments. The 1993 amendment by P.A. 88-535, effective January 26, 1994, in the first paragraph, inserted "unit" preceding "school district" throughout, deleted "but all public schools and attendance centers of that school district are located exclusively in only one of those educational service regions" following "more than one educational service region", substituted "a qualified elector" for "qualified electors", substituted "administered by the regional superintendent of schools who has supervision and control over that unit school district shall" for "in which all public schools and attendance centers of that school district are located shall nevertheless", substituted "that is administered by the regional superintendent of schools who has supervision

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and control over" for "in which all public schools and attendance centers", deleted "are located" preceding "but the elector shall not", substituted "the elector shall" for "they shall" and substituted "the elector resides" for "they reside"; and added the second and third paragraphs.

§ 105 ILCS 5/3-2. Oath of office - Bond - Salary

Sec. 3-2. Oath of office - Bond - Salary. Before entering upon his or her duties a regional superintendent of schools shall take and subscribe the oath prescribed by the Constitution and execute a bond payable to the People of the State of Illinois with 2 or more responsible persons having an interest in real estate as sureties (or, if the county is self-insured, the county through its self-insurance program may provide bonding), to be approved by the county board in a penalty of not less than $100,000, conditioned upon the faithful discharge of his or her duties and upon the delivery to his or her successor in office of all monies, books, papers and property in his or her custody as such regional superintendent of schools.

This bond shall be filed in the office of the county clerk, and action upon it may be maintained by any corporate body interested, for the benefit of any township or fund injured by any breach of its condition.

If any vacancy in the office of regional superintendent of schools occurs, such vacancy shall be filled in the manner provided by Section 3A-6 [105 ILCS 5/3A-6].

Regional Superintendents of Schools shall receive the salary provided by Section 3-2.5 [105 ILCS 5/3-2.5].

On and after July 1, 1994, the provisions of this Section shall have no application in any educational service region having a population of 2,000,000 or more inhabitants.

(Source: P.A. 87-307; 87-654; 87-895; 87-1251, § 2; 88-387, § 15; 89-233, § 5-30.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-2.

Effect of Amendments. The 1992 amendment by P.A. 87-1251, effective July 1, 1993, substituted "July 1, 1994" for "August 7, 1995" in the last paragraph.

The 1993 amendment by P.A. 88-387, effective August 20, 1993, inserted "(or, if the county is self-insured, the county through its self-insurance program may provide bonding)" in the first paragraph.

The 1995 amendment by P.A. 89-233, effective January 1, 1996, in the fourth paragraph, substituted "3-2.5" for "27.1 of the Fees and Salaries Act".

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§ 105 ILCS 5/3-2.5. Salaries

Sec. 3-2.5. Salaries. (a) Except as otherwise provided in this Section, the regional superintendents of schools shall receive for their services an annual salary according to the population, as determined by the last preceding federal census, of the region they serve, as set out in the following schedule:

SALARIES OF REGIONAL SUPERINTENDENTS OF SCHOOLS

POPULATION OF REGION	ANNUAL SALARY
Less than 48,000	$73,500
48,000 to 99,999	$78,000
100,000 to 999,999	$81,500
1,000,000 and over	$83,500

The changes made by Public Act 86-98 in the annual salary that the regional superintendents of schools shall receive for their services shall apply to the annual salary received by the regional superintendents of schools during each of their elected terms of office that commence after July 26, 1989 and before the first Monday of August, 1995.

The changes made by Public Act 89-225 in the annual salary that regional superintendents of schools shall receive for their services shall apply to the annual salary received by the regional superintendents of schools during their elected terms of office that commence after August 4, 1995 and end on August 1, 1999.

The changes made by this amendatory Act of the 91st General Assembly [P.A. 91-276] in the annual salary that the regional superintendents of schools shall receive for their services shall apply to the annual salary received by the regional superintendents of schools during each of their elected terms of office that commence on or after August 2, 1999.

Beginning July 1, 2000, the salary that the regional superintendent of schools receives for his or her services shall be adjusted annually to reflect the percentage increase, if any, in the most recent Consumer Price Index, as defined and officially reported by the United States Department of Labor, Bureau of Labor Statistics, except that no annual increment may exceed 2.9%. If the percentage of change in the Consumer Price Index is a percentage decrease, the salary that the regional superintendent of schools receives shall not be adjusted for that year.

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When regional superintendents are authorized by the School Code [105 ILCS 5/1-1 et seq.] to appoint assistant regional superintendents, the assistant regional superintendent shall receive an annual salary based on his or her qualifications and computed as a percentage of the salary of the regional superintendent to whom he or she is assistant, as set out in the following schedule:

SALARIES OF ASSISTANT REGIONAL SUPERINTENDENTS

QUALIFICATIONS OF ASSISTANT REGIONAL SUPERINTENDENT	PERCENTAGE OF SALARY OF REGIONAL SUPERINTENDENT
No Bachelor's degree, but State certificate valid for teaching and supervising.	70%
Bachelor's degree plus State certificate valid for supervising.	75%
Master's degree plus State certificate valid for supervising.	90%

However, in any region in which the appointment of more than one assistant regional superintendent is authorized, whether by Section 3-15.10 of this Code [105 ILCS 5/3-15.10] or otherwise, not more than one assistant may be compensated at the 90% rate and any other assistant shall be paid at not exceeding the 75% rate, in each case depending on the qualifications of the assistant.

The salaries provided in this Section plus an amount for other employment-related compensation or benefits for regional superintendents and assistant regional superintendents are payable monthly by the State Board of Education out of the Personal Property Tax Replacement Fund through a specific appropriation to that effect in the

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State Board of Education budget for the fiscal year 2012 only, and are payable monthly from the Common School Fund for fiscal year 2013 and beyond through a specific appropriation to that effect in the State Board of Education budget. The State Comptroller in making his or her warrant to any county for the amount due it from the Personal Property Tax Replacement Fund for the fiscal year 2012 only, and from the Common School Fund for fiscal year 2013 and beyond shall deduct from it the several amounts for which warrants have been issued to the regional superintendent, and any assistant regional superintendent, of the educational service region encompassing the county since the preceding apportionment from the Personal Property Tax Replacement Fund for the fiscal year 2012 only, and from the Common School Fund for fiscal year 2013 and beyond.

County boards may provide for additional compensation for the regional superintendent or the assistant regional superintendents, or for each of them, to be paid quarterly from the county treasury.

(b) Upon abolition of the office of regional superintendent of schools in educational service regions containing 2,000,000 or more inhabitants as provided in Section 3-0.01 of this Code [105 ILCS 5/3-0.01], the funds provided under subsection (a) of this Section shall continue to be appropriated and reallocated, as provided for pursuant to subsection (b) of Section 3-0.01 of this Code, to the educational service centers established pursuant to Section 2-3.62 of this Code [105 ILCS 5/2-3.62] for an educational service region containing 2,000,000 or more inhabitants.

(c) If the State pays all or any portion of the employee contributions required under Section 16-152 of the Illinois Pension Code [40 ILCS 5/16-152] for employees of the State Board of Education, it shall also, subject to appropriation in the State Board of Education budget for such payments to Regional Superintendents and Assistant Regional Superintendents, pay the employee contributions required of regional superintendents of schools and assistant regional superintendents of schools on the same basis, but excluding any contributions based on compensation that is paid by the county rather than the State.

This subsection (c) applies to contributions based on payments of salary earned after the effective date of this amendatory Act of the 91st General Assembly, except that in the case of an elected regional superintendent of schools, this subsection does not apply to contributions based on payments of salary earned during a term of office that commenced before the effective date of this amendatory Act.

(Source: P.A. 86-98; 86-1028; 87-435; 87-654; 87-895; 87-1251, § 1; 89-225, § 5; 89-233, § 5-30; 89-626, § 2-34; 91-276, § 5; 96-893, § 5; 96-1086, § 10; 97-333, § 185; 97-619, § 15.)

Note.

This section was derived from 55 ILCS 45/27.1, which itself was derived from Ill.Rev.Stat., Ch. 53, para. 45.1.

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Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Cross References.

For appropriations for the compensation of regional school superintendents and assistants, see 105 ILCS 5/18-5.

Effect of Amendments. The 1992 amendment by P.A. 87-1251, effective July 1, 1993, substituted "July 1, 1994" for "August 7, 1995" in subsection (b).

The 1995 amendment by P.A. 89-225, effective August 4, 1995, in subsection (a), in the schedule substituted "$66,000" for "$51,000", "$70,500" for "$55,500", "$74,000" for "$59,000" and "$76,000" for "$61,000", in the second paragraph, added at the end "and before the first Monday of August, 1995"; and added the third paragraph.

The 1995 amendment by P.A. 89-233, effective January 1, 1996, added the section catchline; in subsection (a), in the second paragraph, substituted "that the regional" for "which the regional" and substituted "that commence" for "which commence", in the fourth paragraph, substituted "this Code" for "the School Code" and in the fifth paragraph, in the second sentence, inserted "or her"; in subsection (b) substituted "this Code" for "the School Code" and deleted "27.1" following "Section" twice; and made minor punctuation changes.

The 1996 amendment by P.A. 89-626, effective August 9, 1996, in subsection (a), in the schedule substituted "$66,000" for "$51,000", "$70,500" for "$55,500", "$74,000" for "$59,000" and "$76,000" for "$61,000", added "and before the first Monday of August, 1995" to the end of the second paragraph and added the third paragraph.

The 1999 amendment by P.A. 91-276, effective July 23, 1999, in subsection (a) substituted "this Section" for "subsection (b)", "$73,500" for "$66,000", "$78,000" for "$70,500", "$81,500" for "$74,000", and "$83,500" for "$76,000", added "and end on August 1, 1999" at the end of the third paragraph, inserted the present fourth and fifth paragraphs, and made gender-neutralizing changes; and added subsection (c).

The 2010 amendment by P.A. 96-893, effective July 1, 2010, rewrote (b).

The 2010 amendment by P.A. 96-1086, effective July 16, 2010, in the next to last paragraph of (a), deleted "from the Common School Fund" from the end of the first sentence and following "amount due it" in the last sentence and deleted "of the Common School Fund" from the end of the last sentence.

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, combined earlier multiple amendments to the section.

The 2011 amendment by P.A. 97-619, effective November 14, 2011, in the first sentence of the eighth paragraph of (a), inserted "plus an amount for other employment-related compensation or benefits" and added the language beginning with "by the State Board of Education" to the end; in the second sentence of the eighth paragraph of (a), inserted "from the Personal Property Tax Replacement Fund for the fiscal year 2012 only, and from the Common School Fund for fiscal year 2013 and beyond" and added "from the Personal Property Tax Replacement Fund for the fiscal year 2012 only, and from the Common School Fund for fiscal year 2013 and beyond" to the end; inserted "subject to appropriation in the State Board of Education budget for such payments to Regional Superintendents and Assistant Regional Superintendents" in the first paragraph of (c).

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CASE NOTES

Analysis

Change in Law
- Determining Income
Salary Reduction
- Based on Census

Change in Law

- Determining Income

Under former Ill. Rev. Stat., ch. 53, para. 45 (see now this section), the constitutional prohibition against increase or diminution of fees, salary or compensation of municipal offices (see Ill. Const. (1970) Art. VII, § 9) is directed not against a change in income but against a change in the law determining such income during the term of office. Brissenden v. Howlett, 30 Ill. 2d 247, 195 N.E.2d 625 (1964).

Salary Reduction

- Based on Census

Under former Ill. Rev. Stat., ch. 53, para. 45 (see now this section), salaries of county superintendents of schools, elected for four year terms commencing before a federal census became effective, were subject to salary reductions of $1000 per annum based upon population decreases disclosed by the federal census. Brissenden v. Howlett, 30 Ill. 2d 247, 195 N.E.2d 625 (1964).

§ 105 ILCS 5/3-3. Practice of other profession

Sec. 3-3. Practice of other profession. It is unlawful for any county superintendent of schools to practice or to hold himself out as practicing any other profession. Violation of this section shall be a cause of forfeiture of office.

On and after July 1, 1994, the provisions of this Section shall have no application in any educational service region having a population of 2,000,000 or more inhabitants.

(Source: P.A. 87-654; 87-1251, § 2.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-3.

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Effect of Amendments. The 1992 amendment by P.A. 87-1251, effective July 1, 1993, substituted "July 1, 1994" for "August 7, 1995" in the last paragraph.

§ 105 ILCS 5/3-5. Report of official acts

Sec. 3-5. Report of official acts. The county superintendent shall present under oath or affirmation to the county board at its meeting in September and as nearly quarterly thereafter as it may have regular or special meetings, a report of all his acts as county superintendent, including a list of all the schools visited with the dates of visitation.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-5.

§ 105 ILCS 5/3-6. Financial report - Presentation of books and vouchers for inspection

Sec. 3-6. Financial report - Presentation of books and vouchers for inspection. The regional superintendent shall report, in writing, to the county board, on or before January 1 of each year, stating, (1) the balance on hand at the time of the last report, and all receipts since that date, with the sources from which they were derived; (2) the amount distributed to each of the school treasurers in his county; (3) any balance on hand. At the same time he shall present for inspection his books and vouchers for all expenditures, and submit in writing a statement of the condition of the institute fund and of any other funds in his care, custody or control.

(Source: P.A. 81-624.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-6.

§ 105 ILCS 5/3-6.1. Presentation of records for financial audit

Sec. 3-6.1. Presentation of records for financial audit. Each regional superintendent of schools, whether for a multicounty or for a single county educational service region, shall

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present for inspection or otherwise make available to the Auditor General, or to the agents designated by the Auditor General, all financial statements, books, vouchers and other records required to be so presented or made available pursuant to Section 2-3.17a [105 ILCS 5/2-3.17a] and the rules and regulations of the Auditor General pursuant to that Section.

(Source: P.A. 84-965; 84-920; 92-544, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-6.1.

Effect of Amendments. The 2002 amendment by P.A. 92-544, effective June 12, 2002, substituted "Auditor General" for references to "State Board of Education" throughout the section, and substituted "of" for "adopted by" near the end.

§ 105 ILCS 5/3-7. Failure to prepare and forward information

Sec. 3-7. Failure to prepare and forward information. If the trustees of schools of any township in Class II county school units, or any school district which forms a part of a Class II county school unit but which is not subject to the jurisdiction of the trustees of schools of any township in which such district is located, or any school district in any Class I county school units fail to prepare and forward or cause to be prepared and forwarded to the regional superintendent of schools, reports required by this Act, the regional superintendent of schools shall furnish such information or he shall employ a person or persons to furnish such information, as far as practicable. Such person shall have access to the books, records and papers of the school district to enable him or them to prepare such reports, and the school district shall permit such person or persons to examine such books, records and papers at such time and such place as such person or persons may desire for the purpose aforesaid. For such services the regional superintendent of schools shall bill the district an amount to cover the cost of preparation of such reports if he employs a person to prepare such reports.

Each school district shall, as of June 30 of each year, cause an audit of its accounts to be made by a person lawfully qualified to practice public accounting as regulated by the Illinois Public Accounting Act [225 ILCS 450/0.01 et seq.]. Such audit shall include financial statements of the district applicable to the type of records required by other sections of this Act and in addition shall set forth the scope of audit and shall include the professional opinion signed by the auditor, or if such an opinion is denied by the auditor, shall set forth the reasons for such denial. Each school district shall on or before October 15 of each year, submit an original and one copy of such audit to the regional superintendent of schools in the educational service region having jurisdiction in which case the regional superintendent of schools shall be relieved of responsibility in regard to

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the accounts of the school district. If any school district fails to supply the regional superintendent of schools with a copy of such audit report on or before October 15, or within such time extended by the regional superintendent of schools from that date, not to exceed 60 days, then it shall be the responsibility of the regional superintendent of schools having jurisdiction to cause such audit to be made by employing an accountant licensed to practice in the State of Illinois to conduct such audit and shall bill the district for such services, or shall with the personnel of his office make such audit to his satisfaction and bill the district for such service. In the latter case, if the audit is made by personnel employed in the office of the regional superintendent of schools having jurisdiction, then the regional superintendent of schools shall not be relieved of the responsibility as to the accountability of the school district. The copy of the audit shall be forwarded by the regional superintendent to the State Board of Education on or before November 15 of each year and shall be filed by the State Board of Education.

Each school district that is the administrative district for several school districts operating under a joint agreement as authorized by this Act shall, as of June 30 each year, cause an audit of the accounts of the joint agreement to be made by a person lawfully qualified to practice public accounting as regulated by the Illinois Public Accounting Act [225 ILCS 450/0.01 et seq.]. Such audit shall include financial statements of the operation of the joint agreement applicable to the type of records required by this Act and, in addition, shall set forth the scope of the audit and shall include the professional opinion signed by the auditor, or if such an opinion is denied, the auditor shall set forth the reason for such denial. Each administrative district of a joint agreement shall on or before October 15 each year, submit an original and one copy of such audit to the regional superintendent of schools in the educational service region having jurisdiction in which case the regional superintendent of schools shall be relieved of responsibility in regard to the accounts of the joint agreement. The copy of the audit shall be forwarded by the regional superintendent to the State Board of Education on or before November 15 of each year and shall be filed by the State Board of Education. The cost of such an audit shall be apportioned among and paid by the several districts who are parties to the joint agreement, in the same manner as other costs and expenses accruing to the districts jointly.

The State Board of Education shall determine the adequacy of the audits. All audits shall be kept on file in the office of the State Board of Education.

(Source: P.A. 86-1441; 87-473.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-7.

§ 105 ILCS 5/3-8. School treasurer's bond - Duties of regional superintendent

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Sec. 3-8. School treasurer's bond - Duties of regional superintendent. Whenever the bond of any school treasurer, approved by the trustees of schools or school board as required by law, is filed with the regional superintendent of schools, he shall carefully examine it, and if it is found to be in all respects according to law, and the sureties sufficient, he shall endorse his approval thereon, and file it with the papers of his office; but if the bond is in any respect defective, or if the penalty is or sureties are insufficient, he shall return it for correction. When the bond has been received and filed, the superintendent shall, on demand, deliver to the school treasurer a written statement certifying that his bond has been approved and filed and that the school treasurer is entitled to the care and custody, on demand, of all moneys and securities belonging to the township or district for which he is treasurer and all books and papers pertaining to his office. The regional superintendent of schools shall file with the State Board of Education before September 1 in each year an affidavit showing which treasurers of school districts under his supervision and control are properly bonded.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-8.

§ 105 ILCS 5/3-9. School funds; apportionment and payment

Sec. 3-9. School funds; apportionment and payment. Whenever the regional superintendent receives amounts due to local school districts, the regional superintendent shall apportion and distribute the moneys to the appropriate local school districts as directed. No part of the State or other school funding, however, shall be paid to any school treasurer or other persons authorized to receive it unless such treasurer has filed the required bond, or if reelected, has renewed the bond and filed it as required by law.

(Source: P.A. 86-1441; 87-473; 88-89, § 3-10; 88-641, § 10; 92-121, § 5; 95-496, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-9.

Section 95 of P.A. 95-496 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1993 amendment by P.A. 88-89, effective July 14, 1993, rewrote the first sentence.

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The 1994 amendment by P.A. 88-641, effective September 9, 1994, added the semicolon in the section catchline; in the first sentence, substituted "between" for "of", inserted "and a regional superintendent directing that payments be made to the regional superintendent by the State Comptroller", inserted "the State Comptroller through" and added the second sentence.

The 2001 amendment by P.A. 92-121, effective July 20, 2001, rewrote the first sentence to the extent that a detailed comparison would be impracticable; and in the second sentence deleted "In the event a written agreement exists, upon receipt of" at the beginning and "from the State school fund" following "amounts due to local school districts", and in the third sentence substituted "funding" for "fund", "the required bond" for "his bond" and "the bond" for "his bond".

The 2007 amendment by P.A. 95-496, effective August 28, 2007, deleted "and unless the publication of the annual fiscal statement required in Section 10-17 has been made and properly certified" from the end of the section.

§ 105 ILCS 5/3-9.1. Investment of funds

Sec. 3-9.1. Investment of funds. Funds of the educational service region are public funds within the meaning of the Public Funds Investment Act [30 ILCS 235/0.01 et seq.] and may be invested by the educational service region as provided in that Act, except as otherwise provided in this Code.

Any educational service region, with the approval of its regional superintendent of schools, is authorized to enter into agreements of any definite or indefinite term regarding the deposit, redeposit, investment, reinvestment or withdrawal of educational service region funds, including, without limitation, agreements with other educational service regions, agreements with community college districts authorized by Section 3-47 of the Public Community College Act [110 ILCS 805/3-47] and agreements with township and school treasurers authorized by Section 8-7 of this Code [105 ILCS 5/8-7].

Each educational service region is permitted to (i) combine moneys of the educational service region for the purpose of investing the moneys and (ii) join with other educational service regions, community college districts, and township and school treasurers in investing educational service region funds, community college funds and school funds. Those joint investments shall be made only in investments authorized by law for the investment of educational service region funds or, in the case of investments made jointly with community colleges and school and township treasurers, in investments authorized by law for the investment of educational service region funds, community college funds and school funds. When moneys of more than one fund of a single educational service region are combined for investment purposes or when moneys of an educational service region are combined with moneys of other educational service regions or moneys of community college districts and school districts, the moneys combined for that purpose shall be accounted for separately in all respects, and the earnings from that investment shall be separately and individually computed and recorded, and credited to the fund or educational service region, community college district or school district, as the case may be, for which the investment was acquired.

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(Source: P.A. 87-968, § 2; 88-641, § 10.)

Effective Date. This section became effective January 1, 1993, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 1994 amendment by P.A. 88-641, effective September 9, 1994, in the third paragraph, deleted "Prior to apportioning funds due the county from the State school fund," from the beginning.

§ 105 ILCS 5/3-9.5. Interfund loans allowed

Sec. 3-9.5. Interfund loans allowed. A regional office of education is allowed to make interfund loans. If a regional office of education makes an interfund loan, then it must repay the loan by the end of the fiscal year.

(Source: P.A. 92-169, § 5.)

Effective Date. This section is effective January 1, 2002, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 5/3-10. Controversies - opinion and advice - Appeal

Sec. 3-10. Controversies - opinion and advice - Appeal. In all controversies arising under the school law, the opinion and advice of the regional superintendent shall first be sought, whence appeal may be taken upon a written statement of facts certified by the regional superintendent to the State Board of Education.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-10.

CASE NOTES

Limitation of Actions

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Amended complaint of taxpayers seeking declaratory judgment and injunction regarding school district referendum failed to set forth a justiciable issue or controversy which would entitle plaintiffs to declaratory judgment, where suit was not filed until after the statutory period for contesting the referendum had expired. Wood v. School Dist. No. 65, 18 Ill. App. 3d 33, 309 N.E.2d 408 (1 Dist. 1974).

§ 105 ILCS 5/3-11. Institutes or inservice training workshops

Sec. 3-11. Institutes or inservice training workshops. In counties of less than 2,000,000 inhabitants, the regional superintendent may arrange for or conduct district, regional, or county institutes, or equivalent professional educational experiences, not more than 4 days annually. Of those 4 days, 2 days may be used as a teacher's and educational support personnel workshop, when approved by the regional superintendent, up to 2 days may be used for conducting parent-teacher conferences, or up to 2 days may be utilized as parental institute days as provided in Section 10-22.18d [105 ILCS 5/10-22.18d]. Educational support personnel may be exempt from a workshop if the workshop is not relevant to the work they do. A school district may use one of its 4 institute days on the last day of the school term. "Institute" or "Professional educational experiences" means any educational gathering, demonstration of methods of instruction, visitation of schools or other institutions or facilities, sexual abuse and sexual assault awareness seminar, or training in First Aid (which may include cardiopulmonary resuscitation or defibrillator training) held or approved by the regional superintendent and declared by him to be an institute day, or parent-teacher conferences. With the concurrence of the State Superintendent of Education, he or she may employ such assistance as is necessary to conduct the institute. Two or more adjoining counties may jointly hold an institute. Institute instruction shall be free to holders of certificates good in the county or counties holding the institute, and to those who have paid an examination fee and failed to receive a certificate.

In counties of 2,000,000 or more inhabitants, the regional superintendent may arrange for or conduct district, regional, or county inservice training workshops, or equivalent professional educational experiences, not more than 4 days annually. Of those 4 days, 2 days may be used as a teacher's and educational support personnel workshop, when approved by the regional superintendent, up to 2 days may be used for conducting parent-teacher conferences, or up to 2 days may be utilized as parental institute days as provided in Section 10-22.18d. Educational support personnel may be exempt from a workshop if the workshop is not relevant to the work they do. A school district may use one of those 4 days on the last day of the school term. "Inservice Training Workshops" or "Professional educational experiences" means any educational gathering, demonstration of methods of instruction, visitation of schools or other institutions or facilities, sexual abuse and sexual assault awareness seminar, or training in First Aid (which may include cardiopulmonary resuscitation or defibrillator training) held or approved by the regional superintendent and declared by him to be an inservice training workshop, or parent-teacher conferences. With the concurrence of the State Superintendent of Education, he may employ such assistance as is necessary to conduct the inservice training workshop. With the approval of the regional superintendent, 2 or more adjoining districts may jointly hold an inservice

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training workshop. In addition, with the approval of the regional superintendent, one district may conduct its own inservice training workshop with subject matter consultants requested from the county, State or any State institution of higher learning.

Such teachers institutes as referred to in this Section may be held on consecutive or separate days at the option of the regional superintendent having jurisdiction thereof.

Whenever reference is made in this Act to "teachers institute", it shall be construed to include the inservice training workshops or equivalent professional educational experiences provided for in this Section.

Any institute advisory committee existing on April 1, 1995, is dissolved and the duties and responsibilities of the institute advisory committee are assumed by the regional office of education advisory board.

Districts providing inservice training programs shall constitute inservice committees, 1/2 of which shall be teachers, 1/4 school service personnel and 1/4 administrators to establish program content and schedules.

The teachers institutes shall include teacher training committed to (i) peer counseling programs and other anti-violence and conflict resolution programs, including without limitation programs for preventing at risk students from committing violent acts, and (ii) educator ethics and teacher-student conduct. Beginning with the 2009-2010 school year, the teachers institutes shall include instruction on prevalent student chronic health conditions.

(Source: P.A. 86-225; 86-1250; 87-453; 88-89, § 3-10; 89-335, § 5; 91-491, § 5; 94-197, § 5; 95-969, § 5; 96-431, § 10; 97-525, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-11.

Effect of Amendments. The 1993 amendment by P.A. 88-89, effective July 14, 1993, rewrote the fifth paragraph.

The 1995 amendment by P.A. 89-335, effective August 17, 1995, in the fifth paragraph substituted "advisory" for "oversight".

The 1999 amendment by P.A. 91-491, effective August 13, 1999, made a gender-neutralization change; and added the last paragraph.

The 2005 amendment by P.A. 94-197, effective July 12, 2005, twice added "or training in First Aid" and the parenthetical following, and made related changes.

The 2008 amendment by P.A. 95-969, effective January 1, 2009, added the last sentence.

The 2009 amendment by P.A. 96-431, effective August 13, 2009, in the first sentence of the last paragraph, added the item designation (i) and item (ii); and made related changes.

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The 2011 amendment by P.A. 97-525, effective January 1, 2012, inserted "and educational support personnel" in the second sentence of the first paragraph; inserted the third sentence of the first and second paragraphs; in the second sentence of the second paragraph, inserted "2 days may be used as a teacher's and educational support personnel workshop, when approved by the regional superintendent, up to" and substituted "or" for "and" following "parent-teacher conferences"; and made a stylistic change.

CASE NOTES

Analysis

Calendar
- Required
Construction
- With Other Provisions

Calendar

- Required

A school board is to prepare an annual calendar for the school term with a minimum term of 185 days required to insure 176 days of pupil attendance. Purn v. Board of Educ., 106 Ill. App. 3d 790, 62 Ill. Dec. 796, 437 N.E.2d 33 (2 Dist. 1982).

Construction

- With Other Provisions

Under 105 ILCS 5/24-1, the school term includes institute days, and 105 ILCS 5/24-3 makes teacher attendance on such days mandatory and is considered time expended in the service of the school district; this section permits a school district to use one of its four institute days on the last day of the school term. Howard v. Board of Educ., 160 Ill. App. 3d 309, 112 Ill. Dec. 131, 513 N.E.2d 545 (2 Dist. 1987).

§ 105 ILCS 5/3-11.5. Regional professional development review committee

Sec. 3-11.5. Regional professional development review committee. The regional superintendent of schools shall constitute a regional professional development review committee or committees, as provided in paragraph (2) of subsection (g) of Section 21-14 of this Code [105 ILCS 5/21-14], to advise the regional superintendent of schools, upon his or her request, and to hear appeals relating to the renewal of teaching certificates, in accordance with Section 21-14 of this Code. The expenses of these review committees shall be funded, in part, from the fees collected pursuant to Section 21-16 or 21B-40 of this Code [105 ILCS 5/21-16 or 105 ILCS 5/21B-40] and deposited into the institute

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fund.

(Source: P.A. 91-102, § 5; 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effect of Amendments. Section 99 of P.A. 91-102 made this section effective July 12, 1999.

The 2011 amendment by P.A. 97-607, effective August 26, 2011, inserted "or 21B-40" in the second sentence.

§ 105 ILCS 5/3-12. Institute fund

Sec. 3-12. Institute fund. (a) All certificate registration fees and a portion of renewal and duplicate fees shall be kept by the regional superintendent as described in Section 21-16 or 21B-40 of this Code [105 ILCS 5/21-16 or 105 ILCS 5/21B-40], together with a record of the names of the persons paying them. Such fees shall be deposited into the institute fund and shall be used by the regional superintendent to defray expenses associated with the work of the regional professional development review committees established pursuant to paragraph (2) of subsection (g) of Section 21-14 of this Code [105 ILCS 5/21-14] to advise the regional superintendent, upon his or her request, and to hear appeals relating to the renewal of teaching certificates, in accordance with Section 21-14 of this Code; to defray expenses connected with improving the technology necessary for the efficient processing of certificates; to defray all costs associated with the administration of teaching certificates; to defray expenses incidental to teachers' institutes, workshops or meetings of a professional nature that are designed to promote the professional growth of teachers or for the purpose of defraying the expense of any general or special meeting of teachers or school personnel of the region, which has been approved by the regional superintendent.

(b) In addition to the use of moneys in the institute fund to defray expenses under subsection (a) of this Section, the State Superintendent of Education, as authorized under Section 2-3.105 of this Code [105 ILCS 5/2-3.105], shall use moneys in the institute fund to defray all costs associated with the administration of teaching certificates within a city having a population exceeding 500,000.

(c) The regional superintendent shall on or before January 1 of each year publish in a newspaper of general circulation published in the region or shall post in each school building under his jurisdiction an accounting of (1) the balance on hand in the Institute fund at the beginning of the previous year; (2) all receipts within the previous year deposited in the fund, with the sources from which they were derived; (3) the amount distributed from the fund and the purposes for which such distributions were made; and

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(4) the balance on hand in the fund.

(Source: P.A. 84-120; 88-89, § 3-10; 89-335, § 5; 91-102, § 5; 94-839, § 5-73; 96-893, § 5; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-12.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1993 amendment by P.A. 88-89, effective July 14, 1993, in the second sentence of the first paragraph inserted "subject to approval of the oversight board" and deleted "administrative" preceding "expenses".

The 1995 amendment by P.A. 89-335, effective August 17, 1995, in the first paragraph, in the second sentence, deleted "subject to approval of the oversight board" preceding "to defray".

The 1999 amendment by P.A. 91-102, effective July 12, 1999, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2006 amendment by P.A. 94-839, effective June 6, 2006, added (b), and added the (a) and (c) subsection designations.

The 2010 amendment by P.A. 96-893, effective July 1, 2010, inserted "to defray all costs associated with the administration of teaching certificates" in the last sentence of (a).

The 2011 amendment by P.A. 97-607, effective August 26, 2011, inserted "or 21B-40" in the first sentence of (a).

CASE NOTES

Improper Spending of Funds

Whether or not funds derived from sources such as engraving fees, copying charges and grants could have properly been used for expenditures in administering and scoring examinations once those moneys were placed in the institute fund, their use was restricted by this section. People v. Gornik, 227 Ill. App. 3d 272, 169 Ill. Dec. 159, 591 N.E.2d 39 (3 Dist. 1992).

There was ample evidence to prove that defendant knew he was forbidden by law to expend funds other than for examination registration or renewal fees. People v. Gornik, 227 Ill. App. 3d 272, 169 Ill. Dec. 159, 591 N.E.2d 39 (3 Dist. 1992).

§ 105 ILCS 5/3-13. Truant officer - Duties

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Sec. 3-13. Truant officer - Duties. Each county superintendent of schools shall appoint a county truant officer. Such appointee shall receive such compensation as may be fixed by the county board, together with his necessary traveling expenses, to be paid out of the county treasury. He shall file his acceptance with the county clerk and shall take and subscribe an oath of office. He shall perform the duties of truant officer in all the school districts of the county; provided, that the school board in any school district may appoint one or more truant officers and fix his or their compensation, which shall be paid by the district.

The county superintendent of schools shall furnish the county truant officer, at the opening of the schools, with a list of the teachers and superintendents employed in his county other than in school districts that employ truant officers.

(Source: P.A. 77-1266; 88-50, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-13.

Effect of Amendments. The 1993 amendment by P.A. 88-50, effective January 1, 1994, deleted the second sentence of the first paragraph which read "He shall also file with such clerk a bond in the penal sum of $1,000, conditioned for the faithful performance of his duties as such officer, to be approved by a circuit judge residing in the county".

§ 105 ILCS 5/3-13.5: Repealed internally by P.A. 96-798, § 5, effective August 2, 2010.

§ 105 ILCS 5/3-14. Duties of regional superintendent

Sec. 3-14. Duties of regional superintendent. The regional superintendent of schools shall perform the duties enumerated in the following Sections preceding Section 3-15 [105 ILCS 5/3-15].

(Source: P.A. 83-503; 93-404, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.

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Effect of Amendments. The 2003 amendment by P.A. 93-404, effective August 1, 2003, inserted "the following" preceding "Sections"; and substituted "preceding Section 3-15" for "3-14.1 through 3-14.25".

CASE NOTES

Ouster

- Held Proper

The judgment to oust a county superintendent of schools from office was properly entered where his answer to quo warranto proceeding failed to show that he had a valid state limited supervisory certificate. People ex rel. Phelps v. Kerstein, 413 Ill. 333, 108 N.E.2d 915 (1952).

LEGAL PERIODICALS

For article, "Implementing the Illinois Educational Labor Relations Act," see 61 Chi.-Kent L. Rev. 101 (1985).

§ 105 ILCS 5/3-14.1. New bond

Sec. 3-14.1. New bond. To execute, upon notice by the county board, a new bond, conditioned and approved as the first bond.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.1.

§ 105 ILCS 5/3-14.2. Supervision and control of school districts

Sec. 3-14.2. Supervision and control of school districts. Except in regions established within that portion of a Class II county school unit outside of a city of 500,000 or more inhabitants, the county superintendent of schools shall exercise supervision and control over all school districts within the county. If a district is divided by a county line or lines the county superintendent in the county where the majority of the children attend school at the time the district is organized shall exercise supervision and control over all aspects of supervision, reports, and financial accounting of the district until it has been

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determined by the State Superintendent of Education that 60 per cent of the children attend school in another county or that a majority of the children have attended a school in another county for three consecutive years and the school board has adopted a resolution requesting the supervision and control be transferred to the county superintendent in the county in which the majority of children attend school. The county superintendent under whose direction a school district has been established shall retain supervision and control until July 1 following the date of the election establishing the district. Whenever a change in supervision and control shall result from a change in school district boundaries, population shifts, or other cause, such change in supervision and control shall not be effective until July 1 following the date of its determination. All references to the county superintendent of schools, in relation to school districts, in this Act shall be interpreted to mean the county superintendent of schools having supervision and control of the district or districts as defined in this Section.

(Source: P.A. 81-1146; 96-893, § 5.)

Effect of Amendments. The 2010 amendment by P.A. 96-893, effective July 1, 2010, added the exception language at the beginning of the first sentence.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.2.

CASE NOTES

Supervision and Control

- Contract Compliance

A superintendent of an educational service region did not have a duty to supervise, control and advise the business manager-treasurer and superintendent of a school district in the administration of a contract fund, because the superintendent of an educational service region is charged with overseeing compliance by local school districts with state educational policies and is not concerned with the control of the day to day operation of the school districts or their compliance with their contracts. Wilbur Waggoner Equip. Rental & Excavating Co. v. Johnson, 33 Ill. App. 3d 358, 342 N.E.2d 266 (5 Dist. 1975).

§ 105 ILCS 5/3-14.3. Township fund lands

Sec. 3-14.3. Township fund lands. To sell township fund lands, issue certificates of purchase, report to the county board and the Secretary of State in the manner provided in Article 15 of this Code [105 ILCS 5/15-1 et seq.], and perform all other duties pertaining

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thereto.

(Source: P.A. 78-592; 95-496, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.3.

Section 95 of P.A. 95-496 contains a "no acceleration or delay" provision.

Effect of Amendments. The 2007 amendment by P.A. 95-496, effective August 28, 2007, substituted "the Secretary of State" for "State Comptroller"; and substituted "Code" for "Act".

§§ 105 ILCS 5/3-14.4, 105 ILCS 5/3-14.5: Repealed by P.A. 95-496, § 10, effective August 28, 2007.

§ 105 ILCS 5/3-14.6. Directions to teacher and school officers

Sec. 3-14.6. Directions to teacher and school officers. To give teachers and school officers such directions in the science, art and methods of teaching, and in regard to courses of study, as he deems expedient.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.6.

§ 105 ILCS 5/3-14.7. Official adviser and assistant of school officers and teachers

Sec. 3-14.7. Official adviser and assistant of school officers and teachers. To act as the official adviser and assistant of the school officers and teachers in his region. In the performance of this duty he shall carry out the advice of the State Board of Education.

(Source: P.A. 81-1508.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.7.

§ 105 ILCS 5/3-14.8. Teachers' institute and other meetings

Sec. 3-14.8. Teachers' institute and other meetings. To conduct a teachers' institute, to insure that instruction in the warning signs of suicidal behavior in adolescents and teens and intervention techniques are offered at such an institute, to aid and encourage the formation of other teachers' meetings, and to assist in their management.

(Source: P.A. 85-297.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.8.

§ 105 ILCS 5/3-14.9. Elevation of standard of teaching - Improvement of schools

Sec. 3-14.9. Elevation of standard of teaching - Improvement of schools. To labor in every practicable way to elevate the standard of teaching and improve the condition of the common schools of his county.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.9.

§ 105 ILCS 5/3-14.11: Repealed by P.A. 95-496, § 10, effective August 28, 2007.

§ 105 ILCS 5/3-14.12. Examine evidences of indebtedness

Sec. 3-14.12. Examine evidences of indebtedness. In Class II county school units with respect to townships wherein trustees of schools maintain jurisdiction and in which township funds have not heretofore been liquidated and distributed, to examine all notes,

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bonds, mortgages, and other evidences of indebtedness which the township or school treasurer holds officially with respect to such fund or funds, and if he or she finds that the papers are not in proper form or that the securities are insufficient, he or she shall so state, in writing, to the trustees of schools or school board.

(Source: P.A. 86-1441; 95-496, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.12.

Section 95 of P.A. 95-496 contains a "no acceleration or delay" provision.

Effect of Amendments. The 2007 amendment by P.A. 95-496, effective August 28, 2007, rewrote the section.

§ 105 ILCS 5/3-14.15. Returns, reports, statements

Sec. 3-14.15. Returns, reports, statements. To file and keep all the returns of elections required to be returned to him and the reports and statements returned by school treasurers and trustees of schools.

(Source: P.A. 81-1490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.15.

§ 105 ILCS 5/3-14.16. Census

Sec. 3-14.16. Census. To take a special census of a school district when petitioned by 10% or 1,500 legal voters, whichever is less, to determine if such district has the proper type of school board, either of directors or a board of education, required by this Act. The expense of such census shall be a school district expense. If such census shows that the proper type of board does not exist, then such regional superintendent shall immediately notify the school district and certify to the proper election authorities that an election shall be held at the time next provided for the regular election of school district officers and in the manner provided by the general election law to select an entirely new board of the type legally required. The length of term of each of the members of the new board

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shall be determined in the manner provided for such type of board in this Act.

(Source: P.A. 81-1490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.16.

§ 105 ILCS 5/3-14.17. Notice of amount of money distributed

Sec. 3-14.17. Notice of amount of money distributed. To notify the presidents of boards of trustees and the clerks and secretaries of school districts, on or before September 30, annually, of the amount of money distributed by him to the school treasurer, with the date of distribution.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.17.

§ 105 ILCS 5/3-14.18. Map - Numbering of districts

Sec. 3-14.18. Map - Numbering of districts. To keep in his office a map of his county on a scale of not less than two inches to the mile and to indicate thereon the boundary lines and numbers of all school districts. Districts shall be numbered consecutively. If a new district composed of parts of two or more counties is formed, the county superintendents of such counties shall agree upon a number by which the district shall be designated, which number shall not be a duplicate of any number in either of such counties.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.18.

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§ 105 ILCS 5/3-14.19: Repealed by P.A. 95-496, § 10, effective August 28, 2007.

§ 105 ILCS 5/3-14.20. Building plans and specifications

Sec. 3-14.20. Building plans and specifications. To inspect the building plans and specifications, including but not limited to plans and specifications for the heating, ventilating, lighting, seating, water supply, toilets and safety against fire of public school rooms and buildings submitted to him by school boards, and to approve all those which comply substantially with the building code authorized in Section 2-3.12 [105 ILCS 5/2-3.12].

If a municipality or, in the case of an unincorporated area, a county or, if applicable, a fire protection district wishes to be notified of plans and specifications received by a regional office of education for any future construction or alteration of a public school facility located within that entity's jurisdiction, then the entity must register this wish with the regional superintendent of schools. Within 10 days after the regional superintendent of schools receives the plans and specifications from a school board and prior to the bidding process, he or she shall notify, in writing, the registered municipality and, if applicable, the registered fire protection district where the school that is being constructed or altered lies that plans and specifications have been received. In the case of an unincorporated area, the registered county shall be notified. If the municipality, fire protection district, or county requests a review of the plans and specifications, then the school board shall submit a copy of the plans and specifications. The municipality and, if applicable, the fire protection district or the county may comment in writing on the plans and specifications based on the building code authorized in Section 2-3.12 [105 ILCS 5/2-3.12], referencing the specific code where a discrepancy has been identified, and respond back to the regional superintendent of schools within 15 days after a copy of the plans and specifications have been received or, if needed for plan review, such additional time as agreed to by the regional superintendent of schools. This review must be at no cost to the school district.

If such plans and specifications are not approved or denied approval by the regional superintendent of schools within 3 months after the date on which they are submitted to him or her, the school board may submit such plans and specifications directly to the State Superintendent of Education for approval or denial.

(Source: P.A. 86-1312; 87-984, § 1; 92-593, § 5; 94-225, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.20.

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Effect of Amendments. The 1992 amendment by P.A. 87-984, effective January 1, 1993, inserted in the first sentence "building" before "plans", "including but not limited to plans and specifications" and substituted "building code authorized in Section 2-3.12" for "specifications prepared and published by the State Board of Education".

The 2002 amendment by P.A. 92-593, effective January 1, 2003, added the second through fifth sentences in the first paragraph.

The 2005 amendment by P.A. 94-225, effective July 14, 2005, rewrote the second paragraph.

CASE NOTES

Statutory Construction

- With Local Laws

A school district's construction of school building under the School Code within the boundaries of a municipality was to be excepted from the Building Code of that municipality, because under the rules of statutory construction, where there are two statutory provisions, one of which is general and designed to apply to cases generally, and the other of which is particular and relates only to one subject, the particular provision must prevail, and must be treated as an exception to the general provision. Board of Educ. v. City of W. Chicago, 55 Ill. App. 2d 401, 205 N.E.2d 63 (2 Dist. 1965).

§ 105 ILCS 5/3-14.21. Inspection of schools

Sec. 3-14.21. Inspection of schools. (a) The regional superintendent shall inspect and survey all public schools under his or her supervision and notify the board of education, or the trustees of schools in a district with trustees, in writing before July 30, whether or not the several schools in their district have been kept as required by law, using forms provided by the State Board of Education which are based on the Health/Life Safety Code for Public Schools adopted under Section 2-3.12 [105 ILCS 5/2-3.12]. The regional superintendent shall report his or her findings to the State Board of Education on forms provided by the State Board of Education.

(b) If the regional superintendent determines that a school board has failed in a timely manner to correct urgent items identified in a previous life-safety report completed under Section 2-3.12 or as otherwise previously ordered by the regional superintendent, the regional superintendent shall order the school board to adopt and submit to the regional superintendent a plan for the immediate correction of the building violations. This plan shall be adopted following a public hearing that is conducted by the school board on the violations and the plan and that is preceded by at least 7 days' prior notice of the hearing published in a newspaper of general circulation within the school district. If the regional superintendent determines in the next annual inspection that the plan has not been completed and that the violations have not been corrected, the regional superintendent shall submit a report to the State Board of Education with a recommendation that the

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State Board withhold from payments of general State aid due to the district an amount necessary to correct the outstanding violations. The State Board, upon notice to the school board and to the regional superintendent, shall consider the report at a meeting of the State Board, and may order that a sufficient amount of general State aid be withheld from payments due to the district to correct the violations. This amount shall be paid to the regional superintendent who shall contract on behalf of the school board for the correction of the outstanding violations.

(c) The Office of the State Fire Marshal or a qualified fire official, as defined in Section 2-3.12 of this Code, to whom the State Fire Marshal has delegated his or her authority shall conduct an annual fire safety inspection of each school building in this State. The State Fire Marshal or the fire official shall coordinate its inspections with the regional superintendent. The inspection shall be based on the fire safety code authorized in Section 2-3.12 of this Code. Any violations shall be reported in writing to the regional superintendent and shall reference the specific code sections where a discrepancy has been identified within 15 days after the inspection has been conducted. The regional superintendent shall address those violations that are not corrected in a timely manner pursuant to subsection (b) of this Section. The inspection must be at no cost to the school district.

(d) If a municipality or, in the case of an unincorporated area, a county or, if applicable, a fire protection district wishes to perform new construction inspections under the jurisdiction of a regional superintendent, then the entity must register this wish with the regional superintendent. These inspections must be based on the building code authorized in Section 2-3.12 of this Code. The inspections must be at no cost to the school district.

(Source: P.A. 86-507; 86-1257; 87-196; 87-984, § 1; 90-464, § 10; 94-225, § 5; 94-973, § 5; 96-734, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.21.

Effect of Amendments. The 1992 amendment by P.A. 87-984, effective January 1, 1993, in the first sentence inserted "and survey" after "To inspect", deleted "and to survey building and school facilities" and inserted "or the code authorized by this amendatory Act of 1992" and substituted the present second sentence for the former second and third sentences relating to the annual facilities survey.

The 1997 amendment by P.A. 90-464, effective August 17, 1997, added the subsection (a) designation; in subsection (a), in the first sentence, substituted "The regional superintendent shall" for "To" and substituted "Health/Life Safety Code for Public Schools adopted under Section 2-3.12" for "documents known as 'Efficient and Adequate Standards for the Construction of Schools' and 'Building Specifications for Health and Safety in Public Schools' or the code authorized by this amendatory Act of 1992" and in the second sentence inserted "or her"; and added subsection (b).

The 2005 amendment by P.A. 94-225, effective July 14, 2005, added (c).

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The 2006 amendment by P.A. 94-973, effective January 1, 2007, added (d).

The 2009 amendment by P.A. 96-734, effective August 25, 2009, deleted "and school board" following "superintendent" in the fourth sentence of (c).

§ 105 ILCS 5/3-14.22. Condemnation of school buildings

Sec. 3-14.22. Condemnation of school buildings. To request the Department of Public Health, the State Fire Marshal or the State Superintendent of Education to inspect public school buildings and temporary school facilities which appear to him to be unsafe, insanitary or unfit for occupancy. These officials shall inspect such buildings and temporary school facilities and if, in their opinion, such buildings or temporary facilities are unsafe, insanitary or unfit for occupancy, shall state in writing in what particular they are unsafe, insanitary or unfit for occupancy. Upon the receipt of such statement the regional superintendent shall condemn the building or temporary facility and notify the school board thereof in writing and the reasons for such condemnation. He shall also notify, in writing, the board of school trustees that the school or temporary facility so condemned is not kept as required by law.

The provisions of this Section shall not preclude inspection of school premises and buildings pursuant to Section 9 of the Fire Investigation Act [425 ILCS 25/9], although not requested as hereinabove provided.

(Source: P.A. 84-25; 87-984, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.22.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 145.10.

Effect of Amendments. The 1992 amendment by P.A. 87-984, effective January 1, 1993, substituted "Condemnation" for "Inspection" in the section catchline; at the beginning of the first sentence substituted "State Superintendent of Education" for "supervising architect" and in the second paragraph substituted "the Fire Investigation Act" for "An Act in relation to the investigation and prevention of fire and dangerous conditions in and near buildings and other structures, approved June 15, 1989, as now or hereafter amended".

CASE NOTES

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Analysis
Legislative Intent
Sanitation
- School Cafeterias

Legislative Intent

The plain language of this section indicates a concern that the grant of authority, respecting requesting inspections, to the State Board and Superintendents not be construed to preclude inspections by the Fire Marshal. Board of Educ. v. Carter, 119 Ill. App. 3d 857, 75 Ill. Dec. 882, 458 N.E.2d 50 (3 Dist. 1983).

Sanitation

- School Cafeterias

The Health Department has the authority to make all necessary sanitary and health inspections of public food service operations within its jurisdiction, including a district's public school cafeterias. County of Macon v. Board of Educ., 165 Ill. App. 3d 1, 116 Ill. Dec. 31, 518 N.E.2d 653 (4 Dist. 1987).

The regional superintendent does not have the exclusive authority to conduct sanitary inspections of school cafeterias for health control purposes. County of Macon v. Board of Educ., 165 Ill. App. 3d 1, 116 Ill. Dec. 31, 518 N.E.2d 653 (4 Dist. 1987).

§ 105 ILCS 5/3-14.23. School bus driver permits

Sec. 3-14.23. School bus driver permits. (a) To conduct courses of instruction for school bus drivers pursuant to the standards established by the Secretary of State under Section 6-106.1 of the Illinois Vehicle Code [625 ILCS 5/6-106.1] and to charge a fee based upon the cost of providing such courses of up to $6 per person for fiscal years 2010, 2011, and 2012; up to $8 per person for fiscal years 2013, 2014, and 2015; and up to $10 per person for fiscal year 2016 and each fiscal year thereafter for the initial classroom course in school bus driver safety and of up to $6 per person for fiscal years 2010, 2011, and 2012; up to $8 per person for fiscal years 2013, 2014, and 2015; and up to $10 per person for fiscal year 2016 and each fiscal year thereafter for the annual refresher course.

(b) To conduct such investigations as may be necessary to insure that all persons hired to operate school buses have valid school bus driver permits as required under Sections 6-104 and 6-106.1 of "The Illinois Vehicle Code" [625 ILCS 5/6-104 and 625 ILCS 5/6-106.1]. If a regional superintendent finds evidence of non-compliance with this requirement, he shall submit such evidence together with his recommendations in writing to the school board.

If the regional superintendent finds evidence of noncompliance with the requirement that all persons employed directly by the school board to operate school buses have valid

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school bus driver permits as required under Sections 6-104 and 6-106.1 of "The Illinois Vehicle Code", the regional superintendent shall schedule a hearing on a date not less than 5 days nor more than 10 days after notifying the district of his findings. If based on the evidence presented at the hearing the regional superintendent finds that persons employed directly by the school board to operate school buses do not have valid school bus driver permits as required under Sections 6-104 and 6-106.1 of "The Illinois Vehicle Code", the regional superintendent shall submit such evidence and his findings together with his recommendations to the State Superintendent of Education. The State Superintendent of Education may reduce the district's claim for reimbursement under Sections 29-5 and 14-13.01 [105 ILCS 5/29-5 and 105 ILCS 5/14-13.01] for transportation by 1.136% for each day of noncompliance.

If a school board finds evidence of noncompliance with the requirement that all persons employed by a contractor to operate school buses have valid school bus driver permits as required under Sections 6-104 and 6-106.1 of "The Illinois Vehicle Code", the school board shall request a hearing before the regional superintendent. The regional superintendent shall schedule a hearing on a date not less than 5 days nor more than 10 days after receiving the request. If based on the evidence presented at the hearing the regional superintendent finds that persons employed by a contractor to operate school buses do not have valid school bus driver permits as required under Sections 6-104 and 6-106.1 of "The Illinois Vehicle Code", the school board's financial obligations under the contract shall be reduced by an amount equal to 1.136% for each day of noncompliance. The findings of the regional superintendent and the relief provided herein shall not impair the obligations of the contractor to continue to provide transportation services in accordance with the terms of the contract.

The provisions of the Administrative Review Law [735 ILCS 5/3-101 et seq.], and all amendments and modifications thereof and the rules adopted pursuant thereto shall apply to and govern all proceedings instituted for judicial review of final administrative decisions of the regional superintendent under this Section.

(Source: P.A. 82-783; 88-612, § 5; 90-811, § 5; 96-616, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.23.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 275.80.

Effect of Amendments. The 1994 amendment by P.A. 88-612, effective July 1, 1995, added subsection (a); added the subsection (b) designation; and in subsection (b), in the second and third paragraphs substituted "1.136%" for ".568%".

The 1998 amendment by P.A. 90-811, effective January 26, 1999, rewrote subsection (a).

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The 2009 amendment by P.A. 96-616, effective January 1, 2010, in (a), substituted "$6 per person for fiscal years 2010, 2011, and 2012; up to $8 per person for fiscal years 2013, 2014, and 2015; and up to $10 per person for fiscal year 2016 and each fiscal year thereafter" for "$4 per person" twice; and deleted the former last two sentences, which read: "The State Board of Education shall annually request such additional appropriation as may be necessary to ensure that adequate and sufficient training is provided to all school bus drivers in Illinois. This appropriation shall be used to supplement, not supplant, programs conducted using fees received from applicants for school bus driver permits."

§ 105 ILCS 5/3-14.25. Unfilled teaching positions list; subject shortage area certifications

Sec. 3-14.25. Unfilled teaching positions list; subject shortage area certifications. (a) To maintain, and make available to the public during regular business hours, a list of unfilled teaching positions within the region. The most current version of the list must be posted on or linked to the regional office of education's Internet web site. If the regional office of education does not have an Internet web site, the regional superintendent of schools must make the list available to the State Board of Education and the State Board of Education must post the list on the State Board of Education's Internet web site. The State Board of Education's Internet web site must provide a link to each regional office of education's list.

(b) To certify to the Teachers' Retirement System of the State of Illinois that a school district has submitted satisfactory evidence of compliance with the requirements of subsection (e) of Section 16-150.1 of the Illinois Pension Code [40 ILCS 5/16-150.1], for the purpose of authorizing the employment of retired teachers in subject shortage areas under the program established in that Section.

(Source: P.A. 83-503; 92-41, § 5; 93-320, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.25.

Effect of Amendments. The 2001 amendment by P.A. 92-41, effective July 1, 2001, added the section heading and the last three sentences.

The 2003 amendment by P.A. 93-320, effective July 23, 2003, inserted "subject shortage area certifications" in the section heading; added the subsection (a) designation; and added subsection (b).

§ 105 ILCS 5/3-14.26. [Indemnification of members of regional boards of school trustees]

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Sec. 3-14.26. To coordinate, aid and encourage the indemnification of members of regional boards of school trustees by county boards, as provided in Section 5-1102 of the Counties Code [55 ILCS 5/5-1102].

(Source: P.A. 86-1475.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.26.

§ 105 ILCS 5/3-14.27: Repealed by P.A. 95-496, § 10, effective August 28, 2007.

§ 105 ILCS 5/3-14.28. [Removal of school board member]

Sec. 3-14.28. To remove any member of a school board from office upon the direction of the State Superintendent of Education pursuant to action of the State Board of Education authorized under Section 2-3.25f [105 ILCS 5/2-3.25f] and to appoint individuals to fill vacancies thereby created within 30 days.

(Source: P.A. 87-559.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-14.28.

§ 105 ILCS 5/3-14.29. Sharing information on school lunch applicants

Sec. 3-14.29. Sharing information on school lunch applicants. Whenever requested by the Department of Healthcare and Family Services (formerly Department of Public Aid), to agree in writing with the Department of Healthcare and Family Services (as the State agency that administers the State Medical Assistance Program as provided in Title XIX of the federal Social Security Act [42 U.S.C. § 1396 et seq.] and the State Children's Health Insurance Program as provided in Title XXI of the federal Social Security Act [42 U.S.C. § 1396 et seq. and 42 U.S.C. § 1397aa et seq]) to share with the Department of Healthcare and Family Services information on applicants for free or reduced-price lunches. This sharing of information shall be for the sole purpose of helping the Department of Healthcare and Family Services identify and enroll children in the State

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Medical Assistance Program or the State Children's Health Insurance Program or both as allowed under 42 U.S.C. Sec. 1758(b)(2)(C)(iii)(IV) and under the restrictions set forth in 42 U.S.C. Sec. 1758(b)(2)(C)(vi) and (vii).

(Source: P.A. 93-404, § 5; 95-331, § 540.)

Effective Date. Section 99 of P.A. 93-404 made this section effective August 1, 2003.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, substituted references to "Department of Healthcare and Family Services" for references to "Department of Public Aid" throughout the section.

§ 105 ILCS 5/3-14.30. Grant applications

Sec. 3-14.30. Grant applications. To assist and support school districts with the preparation and submission of grant applications.

(Source: P.A. 93-1036, § 90.)

Effective Date. Section 99 of P.A. 93-1036 made this section effective upon becoming law. The Act was approved September 14, 2004.

§ 105 ILCS 5/3-14.31. School facility occupation tax proceeds

Sec. 3-14.31. School facility occupation tax proceeds. (a) Within 30 days after receiving any proceeds of a school facility occupation tax under Section 5-1006.7 of the Counties Code [55 ILCS 5/5-1006.7], each regional superintendent must disburse those proceeds to each school district that is located in the county in which the tax was collected.

(b) The proceeds must be disbursed on an enrollment basis and allocated based upon the number of each school district's resident pupils that reside within the county collecting the tax divided by the total number of resident students within the county.

(Source: P.A. 95-675, § 15; 95-850, § 5.)

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Effective Date. Section 99 of P.A. 95-675 makes this section effective upon becoming law. The Act was approved October 11, 2007.

Effect of Amendments. The 2008 amendment by P.A. 95-850, effective January 1, 2009, substituted "resident students" for "students for all school districts" in (b).

§ 105 ILCS 5/3-15. Powers of county superintendent

Sec. 3-15. Powers of county superintendent. The county superintendent shall have the powers enumerated in the subsequent sections of this article.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-15.

CASE NOTES

Analysis

In General
Duty

In General

Purpose of the construction of all the parts of former Ill. Rev. Stat. ch. 122, para. 91, § 84(g) (now 105 ILCS 5/3-15), together and with reference to one another is that of giving, by the means of such comparison, a sensible and intelligent effect to each without permitting any one to nullify any other and to harmonize every detailed provision of the statute with the general purpose or particular design, which the whole is intended to subserve. People ex rel. Leimbach v. Lukenbill, 314 Ill. 64, 145 N.E. 294, 1924 Ill. LEXIS 1090 (1924).

Duty

Trial court erred in sustaining the demurrer and dismissing the petition, because the county superintendent of schools had a specific duty to perform under former Ill. Rev. Stat. ch. 122, para. 91, § 84(g) (now 105 ILCS 5/3-15), he had no discretion to determine whether he would or would not obey the law; thus, his refusal was without legal justification, and mandamus was the proper remedy to compel performance of that duty. People ex rel. Leimbach v. Lukenbill, 314 Ill. 64, 145 N.E. 294, 1924 Ill. LEXIS 1090 (1924).

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§ 105 ILCS 5/3-15.1. Reports

Sec. 3-15.1. Reports. To require the appointed school treasurer in Class II counties, in each school district which forms a part of a Class II county school unit but which is not subject to the jurisdiction of the trustees of schools of any township in which such district is located, and in each school district of the Class I counties to prepare and forward to his office on or before October 15, annually, and at such other times as may be required by him or by the State Board of Education a statement exhibiting the financial condition of the school for the preceding year commencing on July 1 and ending June 30.

In Class I county school units, and in each school district which forms a part of a Class II county school unit but which is not subject to the jurisdiction of the trustees of schools of any township in which such school district is located, the statement shall in the case of districts on the accrual basis show the assets, liabilities and fund balance of the funds as of the end of the fiscal year. The statement shall show the operation of the funds for the fiscal year with a reconciliation and analysis of changes in the funds at the end of the period. For districts on a cash basis the statement shall show the receipts and disbursements by funds including the source of receipts and purpose for which the disbursements were made together with the balance at the end of the fiscal year. Each school district that is the administrator of a joint agreement shall cause an Annual Financial Statement to be submitted on forms prescribed by the State Board of Education exhibiting the financial condition of the program established pursuant to the joint agreement, for the fiscal year ending on the immediately preceding June 30.

The regional superintendent shall send all required reports to the State Board of Education on or before November 15, annually.

For all districts the statements shall show bonded debt, tax warrants, taxes received and receivable by funds and such other information as may be required by the State Board of Education. Any district from which such report is not so received when required shall have its portion of the distributive fund withheld for the next ensuing year until such report is filed.

If a district is divided by a county line or lines the foregoing required statement shall be forwarded to the regional superintendent of schools having supervision and control of the district.

(Source: P.A. 86-1441; 87-473.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-15.1.

Illinois Administrative Code.

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See 23 Illinois Administrative Code, §§ 110.110, 130.10.

§ 105 ILCS 5/3-15.2. Recommending imposition or remission of penalty

Sec. 3-15.2. Recommending imposition or remission of penalty. To recommend to the State Board of Education the imposition or remission of the penalty provided in Section 2-3.24 [105 ILCS 5/2-3.24].

(Source: P.A. 81-1508; 88-641, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-15.2.

Effect of Amendments. The 1994 amendment by P.A. 88-641, effective September 9, 1994, in the section catchline and in the text inserted "imposition or"; and substituted "in Section 2-3.24" for "for a failure of the trustees of schools to make the report required by law".

§ 105 ILCS 5/3-15.3. School treasurer's accounts

Sec. 3-15.3. School treasurer's accounts. To direct in what manner school treasurers shall keep their books and accounts.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-15.3.

§ 105 ILCS 5/3-15.4. Suit against county collector

Sec. 3-15.4. Suit against county collector. To bring suit against the county collector for failure to pay the amount due upon the auditor's warrant.

(Source: Laws 1961, p. 31.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-15.4.

§ 105 ILCS 5/3-15.5. Removal of school board members

Sec. 3-15.5. Removal of school board members. To remove any member of a school board from office for wilful failure to perform his official duties.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-15.5.

CASE NOTES

Analysis

Authority of Superintendent
Discretion of Superintendent

Authority of Superintendent

Court rejected the claim of a regional superintendent of schools that when a school board member moved from the district and did not resign, under 105 ILCS 5/3-15.5, only he, not the school board, could remove her for failing to perform her duty to resign; neither statutory nor case law imposed such a duty. Brown v. Johnson, 362 Ill. App. 3d 413, 298 Ill. Dec. 311, 839 N.E.2d 634, 2005 Ill. App. LEXIS 1151 (1 Dist. 2005).

Discretion of Superintendent

The superintendent is vested with discretion in determining that there has been a wilful violation of duties by school board member. People ex rel. Kolker v. Blair, 8 Ill. App. 3d 197, 289 N.E.2d 688 (5 Dist. 1972).

§ 105 ILCS 5/3-15.6. Additional employees

Sec. 3-15.6. Additional employees. To employ, with the approval of the county board, such additional employees as are needed for the discharge of the duties of the office. The

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non-clerical employees shall be persons versed in the principles and methods of education, familiar with public school work, competent to visit schools and certificated pursuant to this Code if their duties are comparable to those for which certification is required by this Code.

On and after July 1, 1994, the provisions of this Section shall have no application in any educational service region having a population of 2,000,000 or more inhabitants.

(Source: P.A. 86-361; 87-654; 87-1251, § 2.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-15.6.

Effect of Amendments. The 1992 amendment by P.A. 87-1251, effective July 1, 1993, substituted "July 1, 1994" for "August 7, 1995" in the second paragraph.

CASE NOTES

Salary Reduction

An assistant county superintendent of schools who held his position by virtue of former Ill. Rev. Stat., ch. 122, para. 16 (see now this section) did not come under Ill. Const. (1970), Art. VII, § 9; the board of supervisors had the power to reduce his salary during his term of office. Morgan v. County of DuPage, 371 Ill. 53, 20 N.E.2d 40 (1939).

OPINIONS OF ATTORNEY GENERAL

Assistant Regional Superintendent

- County Board Approval

Because 105 ILCS 5/3-15.10 distinguishes the assistant regional superintendent from other assistants appointed by the regional superintendent, and because neither that section nor any other requires consent of the county board to the appointment of assistant regional superintendent, approval of the county board is not a prerequisite to such appointment. 1981 Op. Atty. Gen. 20.

§ 105 ILCS 5/3-15.7. Maps and records of new districts

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Sec. 3-15.7. Maps and records of new districts. To demand of the trustees of schools or regional board of school trustees having custody of maps and records of school districts as organized certified copies of the same. In case of discrepancies or defects in defining the boundaries of school districts the county superintendent, or in case of a district lying in two or more counties, the county superintendents of such counties acting jointly, may define such boundaries in conformity with what appears to have been the intention of the trustees of schools when such boundaries were established.

(Source: P.A. 87-473.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-15.7.

CASE NOTES

Detachment

- Appropriateness

Where for approximately 95 years the tax assessor and collector caused taxes to be assessed, levied and collected in the territory in dispute, and the clerk had given this tax money to the school district where the tax basis for both school districts and the rate levied thereon had been calculated, obviously, on the basis that the disputed territory was within the school district and where no voter residing in the school district, nor any inhabitant from the territory, ever made any objection to this procedure, and where no resident of the area had ever attended a school in a district other than the district in question, it was clear that no benefit could result from cutting off the territory from the school district territory, after so many years of peaceful and satisfactory inclusion in such district, which was universally acquiesced to by all parties involved. People ex rel. Collins v. Young, 83 Ill. App. 2d 312, 227 N.E.2d 524 (3 Dist. 1967).

§ 105 ILCS 5/3-15.8. Report to State Board of Education

Sec. 3-15.8. Report to State Board of Education. On or before November 15, annually, to present to the State Board of Education such information relating to schools in his region as the State Board of Education may require.

(Source: P.A. 82-143.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 3-15.8.

§ 105 ILCS 5/3-15.9. Delivery of money, books, papers and property to successor

Sec. 3-15.9. Delivery of money, books, papers and property to successor. Upon his removal or resignation, or at the expiration of his term of office, or in case of his death his representatives to deliver to his successor in office, on demand, all moneys, books, papers and personal property belonging to his office or subject to his control or disposition.

On and after July 1, 1994, the provisions of this Section shall have no application in any educational service region having a population of 2,000,000 or more inhabitants.

(Source: P.A. 87-654; 87-1251, § 2.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-15.9.

Effect of Amendments. The 1992 amendment by P.A. 87-1251, effective July 1, 1993, substituted "July 1, 1994" for "August 7, 1995" in the second paragraph.

§ 105 ILCS 5/3-15.10. Assistant Regional Superintendent

Sec. 3-15.10. Assistant Regional Superintendent. To employ, in counties or regions of 2,000,000 inhabitants or less, in addition to any assistants authorized to be employed with the approval of the county board, an assistant regional superintendent of schools who shall be a person of good attainment, versed in the principles and methods of education, and qualified to teach and supervise schools under Article 21 of this Act [105 ILCS 5/21-1a et seq.]; to fix the term of such assistant and direct his work and define his duties. On the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-893], in regions established within that portion of a Class II county school unit outside of a city of 500,000 or more inhabitants, the employment of all persons serving as assistant county or regional superintendents of schools is terminated, the position of assistant regional superintendent of schools in each such region is abolished, and this Section shall, beginning on the effective date of this amendatory Act of the 96th General Assembly, have no further application in the educational service region. Assistant regional superintendents shall each be a person of good attainment, versed in the principles and methods of education, and qualified to teach and supervise schools under Article 21 of this Act. The work of such assistant regional superintendent shall be so arranged and directed that the county or regional superintendent and assistant superintendent, together,

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shall devote an amount of time during the school year, equal to at least the full time of one individual, to the supervision of schools and of teaching in the schools of the county.

A regional superintendent of schools shall not employ his or her spouse, child, stepchild, or relative as an assistant regional superintendent of schools. By September 1 each year, a regional superintendent shall certify to the State Board of Education that he or she has complied with this paragraph. If the State Board of Education becomes aware of the fact that a regional superintendent is employing his or her spouse, child, stepchild, or relative as an assistant regional superintendent, the State Board of Education shall report this information to the Governor and the Comptroller, and the State Board of Education shall not request for payment from the State Comptroller any warrants for the payment of the assistant regional superintendent's salary or other employment-related compensation or benefits. In this paragraph, "relative" means a grandparent, parent, aunt, uncle, sibling, first cousin, nephew, niece, grandchild, or spouse of one of these persons. This paragraph applies only to contracts for employment entered into on or after the effective date of this amendatory Act of the 91st General Assembly [P.A. 91-764].

(Source: P.A. 87-654; 87-1251, § 2; 88-89, § 3-10; 91-764, § 5; 96-893, § 5; 97-619, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-15.10.

Effect of Amendments. The 1992 amendment by P.A. 87-1251, effective July 1, 1993, substituted "July 1, 1994" for "August 7, 1995" throughout the section.

The 1993 amendment by P.A. 88-89, effective July 14, 1993, deleted "county or" preceding "Regional" in the section catchline and throughout the section, and added the second sentence of the first paragraph.

The 2000 amendment by P.A. 91-764, effective June 9, 2000, inserted the last paragraph.

The 2010 amendment by P.A. 96-893, effective July 1, 2010, rewrote the section.

The 2011 amendment by P.A. 97-619, effective November 14, 2011, in the third sentence of the second paragraph, inserted "report this information to the Governor and the Comptroller, and the State Board of Education shall" and added "or other employment-related compensation or benefits" to the end.

OPINIONS OF ATTORNEY GENERAL

Analysis

Assistant Regional Superintendent
- County Board Approval

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Vacancy
- Filling Position

Assistant Regional Superintendent

- County Board Approval

Because this section distinguishes the assistant regional superintendent from other assistants appointed by the regional superintendent, and because neither that section nor any other requires consent of the county board to the appointment of assistant regional superintendent, approval of the county board is not a prerequisite to such appointment. 1981 Op. Atty. Gen. 20.

Vacancy

- Filling Position

Since the regional superintendent has the authority under this section to chose the assistant regional superintendent, 105 ILCS 5/3A-6 in effect authorizes the regional superintendent to name the person who would serve out the balance of his term should he vacate his office; there is no conflict between this provision and Ill. Const. (1970), Art. VII, § 8. 1981 Op. Atty. Gen. 20.

§ 105 ILCS 5/3-15.11: Repealed by P.A. 95-496, § 10, effective August 28, 2007.

§ 105 ILCS 5/3-15.12. High school equivalency testing program

Sec. 3-15.12. High school equivalency testing program. The regional superintendent of schools shall make available for qualified individuals residing within the region a High School Equivalency Testing Program. For that purpose the regional superintendent alone or with other regional superintendents may establish and supervise a testing center or centers to administer the secure forms of the high school level Test of General Educational Development to qualified persons. Such centers shall be under the supervision of the regional superintendent in whose region such centers are located, subject to the approval of the President of the Illinois Community College Board.

An individual is eligible to apply to the regional superintendent of schools for the region in which he or she resides if he or she is: (a) a person who is 17 years of age or older, has maintained residence in the State of Illinois, and is not a high school graduate; (b) a person who is successfully completing an alternative education program under Section 2-3.81, Article 13A, or Article 13B [105 ILCS 5/2-3.81, 105 ILCS 5/13A-0.5 et seq., or 105 ILCS 5/13B-1 et seq.]; or (c) a person who is enrolled in a youth education program sponsored by the Illinois National Guard. For purposes of this Section, residence is that abode which the applicant considers his or her home. Applicants may provide as sufficient proof of such residence and as an acceptable form of identification a driver's license, valid passport, military ID, or other form of government-issued national or

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foreign identification that shows the applicant's name, address, date of birth, signature, and photograph or other acceptable identification as may be allowed by law or as regulated by the Illinois Community College Board. Such regional superintendent shall determine if the applicant meets statutory and regulatory state standards. If qualified the applicant shall at the time of such application pay a fee established by the Illinois Community College Board, which fee shall be paid into a special fund under the control and supervision of the regional superintendent. Such moneys received by the regional superintendent shall be used, first, for the expenses incurred in administering and scoring the examination, and next for other educational programs that are developed and designed by the regional superintendent of schools to assist those who successfully complete the high school level test of General Education Development in furthering their academic development or their ability to secure and retain gainful employment, including programs for the competitive award based on test scores of college or adult education scholarship grants or similar educational incentives. Any excess moneys shall be paid into the institute fund.

Any applicant who has achieved the minimum passing standards as established by the Illinois Community College Board shall be notified in writing by the regional superintendent and shall be issued a high school equivalency certificate on the forms provided by the Illinois Community College Board. The regional superintendent shall then certify to the Illinois Community College Board the score of the applicant and such other and additional information that may be required by the Illinois Community College Board. The moneys received therefrom shall be used in the same manner as provided for in this Section.

Any applicant who has attained the age of 17 years and maintained residence in the State of Illinois and is not a high school graduate, any person who has enrolled in a youth education program sponsored by the Illinois National Guard, or any person who has successfully completed an alternative education program under Section 2-3.81, Article 13A, or Article 13B is eligible to apply for a high school equivalency certificate (if he or she meets the requirements prescribed by the Illinois Community College Board) upon showing evidence that he or she has completed, successfully, the high school level General Educational Development Tests, administered by the United States Armed Forces Institute, official GED Centers established in other states, or at Veterans' Administration Hospitals or the office of the State Superintendent of Education administered for the Illinois State Penitentiary System and the Department of Corrections. Such applicant shall apply to the regional superintendent of the region wherein he has maintained residence, and upon payment of a fee established by the Illinois Community College Board the regional superintendent shall issue a high school equivalency certificate, and immediately thereafter certify to the Illinois Community College Board the score of the applicant and such other and additional information as may be required by the Illinois Community College Board.

Notwithstanding the provisions of this Section, any applicant who has been out of school for at least one year may request the regional superintendent of schools to administer the restricted GED test upon written request of: The director of a program who certifies to the Chief Examiner of an official GED center that the applicant has completed a program of instruction provided by such agencies as the Job Corps, the Postal Service Academy or

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apprenticeship training program; an employer or program director for purposes of entry into apprenticeship programs; another State Department of Education in order to meet regulations established by that Department of Education, a post high school educational institution for purposes of admission, the Department of Professional Regulation for licensing purposes, or the Armed Forces for induction purposes. The regional superintendent shall administer such test and the applicant shall be notified in writing that he is eligible to receive the Illinois High School Equivalency Certificate upon reaching age 18, provided he meets the standards established by the Illinois Community College Board.

Any test administered under this Section to an applicant who does not speak and understand English may at the discretion of the administering agency be given and answered in any language in which the test is printed. The regional superintendent of schools may waive any fees required by this Section in case of hardship.

In counties of over 3,000,000 population a GED certificate shall contain the signatures of the President of the Illinois Community College Board, the superintendent, president or other chief executive officer of the institution where GED instruction occurred and any other signatures authorized by the Illinois Community College Board.

The regional superintendent of schools shall furnish the Illinois Community College Board with any information that the Illinois Community College Board requests with regard to testing and certificates under this Section.

(Source: P.A. 85-1209; 85-1315; 85-1440; 87-990, § 1; 88-67, § 5; 88-386, § 15; 88-670, § 2-34; 89-273, § 5; 89-358, § 5; 89-626, § 2-34; 89-629, § 5; 90-643, § 5; 92-42, § 5; 94-108, § 5; 95-609, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-15.12.

Effect of Amendments. The 1992 amendment by P.A. 87-990, effective September 1, 1992, inserted the third sentence regarding proof of residence in the middle of the second paragraph.

The 1993 amendment by P.A. 88-67, effective July 1, 1994, added the last paragraph.

The 1993 amendment by P.A. 88-386, effective August 20, 1993, in the second paragraph deleted "or" preceding "(f)" and added "; or (g) a person who is enrolled in a youth education program sponsored by the Illinois National Guard".

The 1994 amendment by P.A. 88-670, effective December 2, 1994, combined the amendments by P.A. 88-67 and P.A. 88-386; and in the last paragraph substituted "a GED certificate issued on or after July 1, 1994" for "the GED certificate".

The 1995 amendment by P.A. 89-273, effective January 1, 1996, in the second paragraph, in the fifth sentence, inserted "first" and substituted "and next for other educational programs that are developed and designed by the regional superintendent of schools to assist those who successfully complete the high school level test of General Education Development in furthering

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their academic development or their ability to secure and retain gainful employment, including programs for the competitive award based on test scores of college or adult education scholarship grants or similar educational incentives" for "and may be accumulated by the regional superintendent for a period not to exceed 3 years, the excess of which money"; and in the sixth sentence added at the beginning, "Any excess moneys".

The 1995 amendment by P.A. 89-358, effective January 1, 1996, in the second paragraph, in the first sentence, deleted "or" preceding "(g)" and added at the end "or (h) a person who is 17 years of age or older who has been a dropout for a period of at least one year".

The 1996 amendment by P.A. 89-626, effective August 9, 1996, combined the amendments of this section by P.A. 89-273 and P.A. 89-358.

The 1996 amendment by P.A. 89-629, effective August 9, 1996, in the second paragraph, in the first sentence, inserted "or Article 13A"; and in the fourth paragraph, in the first sentence, inserted "or any person who has successfully completed an alternative education program under Section 2-3.81 or Article 13A".

The 1998 amendment by 90-643, effective July 24, 1998, incorporated the amendments by P.A. 89-273, P.A. 89-358, P.A. 89-626, and P.A. 89-629; substituted "a fee established by the State Board of Education" for "a fee of $10 for tests to be taken through June 30, 1998 and $15 for tests to be taken thereafter, and when making application for reexamination a fee of $2 shall be paid for each test to be retaken, except that after June 30, 1998 a fee of $7 shall be paid for each essay test retaken" in the fifth sentence of the second paragraph; substituted "shall be issued" for "upon payment of an additional $10 by the applicant the regional superintendent shall issue" in the first sentence of the third paragraph; and substituted "a fee established by the State Board of Education" for "a $10 fee" in the second sentence of the fourth paragraph.

The 2001 amendment by P.A. 92-42, effective January 1, 2002, in the first sentence of the second paragraph, inserted "or Article 13B" in item (f) and made a related change; and inserted "or Article 13B" and made a related change in the fourth paragraph.

The 2005 amendment by P.A. 94-108, effective July 1, 2005, rewrote the section, substituting references to the Illinois Community College Board for references to the Superintendent of Education.

The 2007 amendment by P.A. 95-609, effective June 1, 2008, rewrote the second and fourth paragraphs, regarding eligibility.

§ 105 ILCS 5/3-15.14. Cooperative Educational and Operational Programs

Sec. 3-15.14. Cooperative Educational and Operational Programs. To administer and direct a cooperative or joint educational or operational program or project when 2 or more districts request and authorize him or her to provide and administer these services. Each regional superintendent of schools is encouraged to offer school districts the opportunity to share in joint educational or operational programs and to urge school districts to participate in such programs when the school district determines that such participation is fiscally prudent. The regional superintendent of schools may provide and contract for the staff, space, necessary materials, supplies, books and apparatus for such agreements. The school boards of the respective districts shall pay to the regional superintendent the pro rata share of the expenses of the operation of such programs, and the regional superintendent shall use such funds in payment of such operational expenses.

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The regional superintendent shall collect and remit the required pension contributions from the participating districts if the board of control of the program participates in Article 7 of the Illinois Pension Code [40 ILCS 5/7-101 et seq.].

A board of control composed of one member from each cooperating district and one member from the office of the regional superintendent will set policy for the cooperative. The agreement establishing the cooperative may provide that the cooperative shall act as its own administrative district and shall be an entity separate and apart from the Educational Service Region.

Each regional superintendent that is the administrator of a joint agreement shall cause an annual financial statement to be submitted on forms prescribed by the State Board of Education exhibiting the financial condition of the program established pursuant to the joint agreement for the fiscal year ending on the immediately preceding June 30.

The regional superintendent may also administer, direct and account for educational programs of single or multi-county educational service region, or of multi-regional design which are sponsored and financed by State or federal educational agencies, or by both such agencies. In cases where funding for any such approved program is delayed, the regional superintendent may borrow the funds required to begin operation of the program in accordance with the terms of the grant; and the principal amount so borrowed, together with the interest due thereon, shall be paid from the grant moneys when received.

(Source: P.A. 83-815; 86-1332; 97-357, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3-15.14.

Effect of Amendments. The 2011 amendment by P.A. 97-357, effective January 1, 2012, inserted "and Operational" in the section heading; in the first paragraph, inserted "or operational" in the first sentence, inserted the second sentence, and substituted "The regional superintendent of schools" for "He" in the present third sentence; and made a gender neutral change.

§ 105 ILCS 5/3-15.14a. Shared services

Sec. 3-15.14a. Shared services. The regional superintendent of schools may, at the request of a school district, present to the school district possible services and functions that multiple schools may share or consolidate. Such services and functions may include, but are not limited to, bidding and purchasing, office functions such as payroll and accounting, information technology, professional development, grant writing, food service management, or administrative positions. Regional superintendents of schools may share best financial practices with school districts that are exploring new methods to

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become more financially efficient.

(Source: P.A. 97-357, § 5.)

Effective Date. This section became effective January 1, 2012 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 5/3-15.15. Local education agency

Sec. 3-15.15. Local education agency. To apply as a local education agency for any grant, loan, program authorization or other assistance provided to local education agencies by the State Board of Education.

(Source: P.A. 87-1124, § 1; 88-670, § 2-34.)

Note.

This section as enacted by P.A. 88-71 was renumbered as 105 ILCS 5/3-15.16.

Effective Date. Section 2 of P.A. 87-1124 made this section effective upon becoming law. The Act was approved September 16, 1992.

Effect of Amendments. The 1994 amendment by P.A. 88-670, effective December 2, 1994, appears to have made no changes to this section.

§ 105 ILCS 5/3-15.16: Repealed by P.A. 96-734, § 25, effective August 25, 2009.

§ 105 ILCS 5/3-15.17. Civic education advancement

Sec. 3-15.17. Civic education advancement. (a) The General Assembly finds that civic education and participation are fundamental elements of a healthy democracy, and schools are in need of support to identify civic learning opportunities and to implement new strategies to prepare and sustain high quality citizenship among their student body.

(b) Subject to appropriation, funding for civic education professional development for high school teachers must be provided by line item appropriation made to the State Board of Education for that purpose. When appropriated, the State Board of Education must

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provide this funding to each regional superintendent of schools based on high school enrollment as reported on the State Board of Education's most recent fall enrollment and housing report, except that 20% of each annual appropriation must be reserved for a school district organized under Article 34 of this Code [105 ILCS 5/34-1 et seq.].

(c) In order to establish eligibility for one or more of its schools to receive funding under this Section, a school district shall submit to its regional superintendent of schools an application, accompanied by a completed civic audit, for each school. A regional superintendent shall award funds to a district based on the number of teachers identified by the district to receive professional development multiplied by $250. A district must not be awarded more than $3,000 in any year, unless additional funds remain available after all eligible applicants have received funding. A district may not use funds authorized under this Section in any school more than once every 2 years. Funds provided under this Section must be used exclusively for professional development provided by entities that are approved providers for purposes of certificate renewal under Section 21-14 of this Code [105 ILCS 5/21-14].

(d) The civic audit form and its content must be designed and updated as deemed necessary by the Illinois Civic Mission Coalition. Data from completed civic audits must be processed by the Illinois Civic Mission Coalition. The civic audit must be made available by the Illinois Civic Mission Coalition and must be designed to provide teachers and principals with a blueprint to better understand how current curriculum, service learning, and extracurricular activities are providing civic learning experiences for their students.

(Source: P.A. 95-225, § 5.)

Effective Date. Section 99 of P.A. 95-225 makes this section effective upon becoming law. The Act was approved August 16, 2007.

Article 3A.

Educational Service Regions

§ 105 ILCS 5/3A-1. County or portion of county as educational service region

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Sec. 3A-1. County or portion of county as educational service region. Each county of the State shall, except as otherwise provided in this Article, be designated as an educational service region, referred to in this Article as a "region". Beginning the first Monday of August, 1995, that portion of a Class II county outside a city of at least 500,000 shall constitute a region. References in this Code to a county as a region shall also mean a portion of a county as a region when appropriate.

(Source: P.A. 76-735; 88-89, § 3-10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3A-1.

Effect of Amendments. The 1993 amendment by P.A. 88-89, effective July 14, 1993, inserted "or portion of county" in the section catchline; in the first sentence deleted "When this Article 3A takes effect" from the beginning; and added the second and third sentences.

CASE NOTES

Capacity to Sue

An education service region is not a legal entity capable of being sued. Bowers ex rel. Bowers v. DuPage County Regional Bd. of Sch. Trustees, 183 Ill. App. 3d 367, 131 Ill. Dec. 893, 539 N.E.2d 246 (2 Dist. 1989).

There is no governmental entity known as the "DuPage County Education Service Region" which is capable of being sued. Bowers ex rel. Bowers v. DuPage County Regional Bd. of Sch. Trustees, 183 Ill. App. 3d 367, 131 Ill. Dec. 893, 539 N.E.2d 246 (2 Dist. 1989).

§ 105 ILCS 5/3A-2. Regional superintendent - County superintendent of schools

Sec. 3A-2. Regional superintendent - County superintendent of schools. The chief administrative officer of an educational service region shall be designated and referred to as "Regional Superintendent of Schools" or "regional superintendent."

Such person shall, in his region, have the powers and duties and perform the functions required of or exercisable by a county superintendent of schools, except as otherwise provided by law.

Any reference to "county superintendent of schools" in The School Code or any other Illinois statute means and refers to the regional superintendent of schools for an educational service region.

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(Source: P.A. 79-1057.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3A-2.

CASE NOTES

Misnomer in Election Petition

Even though a candidate's petition stated incorrectly the name of the office he was seeking as "Superintendent of an Educational Service Region" on some pages and, on other pages, as "Superintendent of an Educational Service Region, Will County, Illinois" and even though the candidate's petitions used the former title and not the current statutory designation, there was substantial compliance with the Election Code. Stevenson v. County Officers Electoral Bd., 58 Ill. App. 3d 24, 15 Ill. Dec. 571, 373 N.E.2d 1043 (3 Dist. 1978).

§ 105 ILCS 5/3A-3. Voluntary consolidation of educational service regions

Sec. 3A-3. Voluntary consolidation of educational service regions. Any 2 or more educational service regions may be consolidated into a single region in the manner provided in this Section. All of the territory of any educational service region shall be determined by county boundaries, but supervision and control over school districts that are divided by a county line shall be determined under Section 3-14.2 of this Act [105 ILCS 5/3-14.2].

Each regional superintendent of a region that does not conform to the population requirements of Section 3A-4 [105 ILCS 5/3A-4] and seeks voluntary consolidation under this Section shall appoint a nonpartisan citizens committee consisting of 5 members to consider the advisability of such a consolidation. Such regional superintendent shall serve as ex officio secretary to the citizens committee. This citizens committee may petition the regional board of school trustees serving each of the regions involved for consolidation of those regions into a single educational service region. When such a petition is filed, the regional board of school trustees shall conduct a hearing on the petition, after notice of the hearing has been published once, not more than 15 nor less than 10 days before the day of the hearing, in a newspaper having general circulation in the region. The secretary of the regional board of school trustees shall also notify the secretary of each school board affected by the proposed consolidation, the chairman of the county board of each county affected thereby and the State Board of Education that such petition has been filed. The notice shall state the date when the petition was filed, the prayer of the petition and the date, time and place of the hearing. Such hearing shall be held jointly by all of the regional boards of school trustees affected by such petition and the State Board of Education shall arrange for such joint hearing and pay the

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expenses thereof. Evidence admissible at the hearing shall include, but not be limited to, the school needs and conditions in the territory affected by the proposed consolidation, whether or not such area is compact and contiguous; and whether or not the proposed consolidation would be in the best interests of the schools of the area and the educational welfare of the pupils of such schools. At the hearing each resident of the region shall have the rights provided for residents under Section 7-6 [105 ILCS 5/7-6] and the final order of the regional board of school trustees shall be subject to review as provided in Sections 7-6 and 7-7 [105 ILCS 5/7-6 and 105 ILCS 5/7-7].

Within 10 days after the conclusion of the joint hearing each regional board of school trustees shall meet and render a decision with regard to the hearing on the petition. A copy of the final order of each regional board of school trustees shall be filed with the State Board of Education within 30 days after the conclusion of the joint hearing. If the regional board of school trustees in each of those regions enters an order approving the consolidation, those regions shall be consolidated into a single educational service region, and the State Board of Education shall authorize the establishment of such single educational service region and to notify all interested parties, including the county clerks of the counties affected thereby and the State Board of Elections.

(Source: P.A. 86-1028; 88-89, § 3-10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3A-3.

Effect of Amendments. The 1993 amendment by P.A. 88-89, effective July 14, 1993, deleted "Beginning August 2, 1971" from the beginning of the first sentence of the first paragraph; in the second paragraph, in the first sentence inserted "of a region that does not conform to the population requirements of Section 3A-4 and seeks voluntary consolidation under this Section", deleted the former second sentence regarding appointment of the committee and deleted the former fourth sentence regarding quarterly reports by the committee.

CASE NOTES

Former Law

- Application

Act to legalize the organization of certain community consolidated school districts had no application to a district for the reason that validity of the organization of the district was no longer in question. People ex rel. Ehler v. Exton, 303 Ill. 47, 135 N.E. 13 (1922).

§ 105 ILCS 5/3A-4. Mandatory consolidation of educational service regions

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Sec. 3A-4. Mandatory consolidation of educational service regions. (a) After October 15, 1993, each region must contain at least 43,000 inhabitants. Regions may be consolidated voluntarily under Section 3A-3 [105 ILCS 5/3A-3] or by joint resolution of the county boards of regions seeking to join a voluntary consolidation to meet these population requirements. The boundaries of regions already meeting these population requirements on the effective date of this amendatory Act of 1993 may not be changed except to consolidate with another region or a whole county portion of another region which does not meet these population requirements. If locally determined consolidation decisions result in more than 45 regions of population greater than 43,000 each, the State Board of Education shall direct further consolidation, beginning with the region of lowest population, until the number of 45 regions is achieved.

(b) (Blank).

(c) If any region does not meet the population requirements of this Section the State Board of Education, within 15 days after the above said dates, shall direct such consolidation of that region with another region or regions to which it is contiguous as will result in a region conforming to these population requirements.

(d) All population determinations shall be based on the most recent federal census.

(Source: P.A. 81-1508; 88-89, § 3-10; 89-608, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3A-4.

Effect of Amendments. The 1993 amendment by P.A. 88-89, effective July 14, 1993, added the subsection designations; in the first sentence of subsection (a) deleted from the beginning "Except in the case of an educational service region that has been formed from the consolidation of 3 or more regions", substituted "October 15, 1993, and until the first Monday of August, 1999," for "April 1, 1973, each region must contain at least 16,000 inhabitants and after April 1, 1977" and substituted "43,000" for "33,000"; in the second sentence inserted "or by joint resolution of the county boards of regions seeking to join a voluntary consolidation"; added the third and fourth sentence of subsection (a); added subsection (b); and in subsection (c) substituted "15 days" for "60 days" and deleted "and to any plan for regional organization that may be developed by the State Board of Education" from the end.

The 1996 amendment by P.A. 89-608, effective August 2, 1996, in subsection (a), in the first sentence, deleted "and until the first Monday of August, 1999" preceding "each region"; and deleted subsection (b) regarding regulations after first Monday of August 1999.

OPINIONS OF ATTORNEY GENERAL

Consolidated Region

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- Disconnection

In the absence of a statute authorizing the county board to dissolve or disconnect from the consolidated region, a county board has no such authority. 1995 Op. Atty. Gen. (95-004).

§ 105 ILCS 5/3A-5. Effective date of consolidation

Sec. 3A-5. Effective date of consolidation. Any consolidation of regions, whether under Section 3A-3 or 3A-4 [105 ILCS 5/3A-3 or 105 ILCS 5/3A-4], shall take effect at the expiration of the terms of office of the regional superintendents in office at the time the consolidation is approved under Section 3A-3 [105 ILCS 5/3A-3] or directed under Section 3A-4 [105 ILCS 5/3A-4]. However, at the regular election immediately preceding the effective date of the consolidation at which regional superintendents are to be elected in accordance with the general election law, regional superintendents shall not be elected from each of the regions comprising the consolidated region, but one regional superintendent shall be elected to take office on the effective date of the consolidation.

(Source: P.A. 81-1490; 88-89, § 3-10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3A-5.

Effect of Amendments. The 1993 amendment by P.A. 88-89, effective July 14, 1993, substituted "shall take effect" for "takes effect".

§ 105 ILCS 5/3A-6. Election of Superintendent for consolidated region - Bond - Vacancies in any educational service region

Sec. 3A-6. Election of Superintendent for consolidated region - Bond - Vacancies in any educational service region. (a) The regional superintendent to be elected under Section 3A-5 [105 ILCS 5/3A-5] shall be elected at the time provided in the general election law and must possess the qualifications described in Section 3-1 of this Act [105 ILCS 5/3-1].

(b) The bond required under Section 3-2 [105 ILCS 5/3-2] shall be filed in the office of the county clerk in the county where the regional office is situated, and a certified copy of that bond shall be filed in the office of the county clerk in each of the other counties in the region.

(c) When a vacancy occurs in the office of regional superintendent of schools of any educational service region which is not located in a county which is a home rule unit, such vacancy shall be filled within 60 days (i) by appointment of the chairman of the county board, with the advice and consent of the county board, when such vacancy

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occurs in a single county educational service region; or (ii) by appointment of a committee composed of the chairmen of the county boards of those counties comprising the affected educational service region when such vacancy occurs in a multicounty educational service region, each committeeman to be entitled to one vote for each vote that was received in the county represented by such committeeman on the committee by the regional superintendent of schools whose office is vacant at the last election at which a regional superintendent was elected to such office, and the person receiving the highest number of affirmative votes from the committeemen for such vacant office to be deemed the person appointed by such committee to fill the vacancy. The appointee shall be a member of the same political party as the regional superintendent of schools the appointee succeeds was at the time such regional superintendent of schools last was elected. The appointee shall serve for the remainder of the term. However, if more than 28 months remain in that term, the appointment shall be until the next general election, at which time the vacated office shall be filled by election for the remainder of the term. Nominations shall be made and any vacancy in nomination shall be filled as follows:

(1) If the vacancy in office occurs before the first date provided in Section 7-12 of the Election Code [10 ILCS 5/7-12] for filing nomination papers for county offices for the primary in the next even-numbered year following commencement of the term of office in which the vacancy occurs, nominations for the election for filling the vacancy shall be made pursuant to Article 7 of the Election Code [10 ILCS 5/7-1 et seq.].

(2) If the vacancy in office occurs during the time provided in Section 7-12 of the Election Code for filing nomination papers for county offices for the primary in the next even-numbered year following commencement of the term of office in which the vacancy occurs, the time for filing nomination papers for the primary shall not be more than 91 days nor less than 85 days prior to the date of the primary.

(3) If the vacancy in office occurs after the last day provided in Section 7-12 of the Election Code for filing nomination papers for county offices for the primary in the next even-numbered year following commencement of the term of office in which the vacancy occurs, a vacancy in nomination shall be deemed to have occurred and the county central committee of each established political party (if the vacancy occurs in a single county educational service region) or the multi-county educational service region committee of each established political party (if the vacancy occurs in a multi-county educational service region) shall nominate, by resolution, a candidate to fill the vacancy in nomination for election to the office at the general election. In the nomination proceedings to fill the vacancy in nomination, each member of the county central committee or the multi-county educational service region committee, whichever applies, shall have the voting strength as set forth in Section 7-8 or 7-8.02 of the Election Code [10 ILCS 5/7-8 or 10 ILCS 5/7-8.02], respectively. The name of the candidate so nominated shall not appear on the ballot at the general primary election. The vacancy in nomination shall be filled prior to the date of certification of candidates for the general election.

(4) The resolution to fill the vacancy shall be duly acknowledged before an officer qualified to take acknowledgments of deeds and shall include, upon its face, the following information: (A) the name of the original nominee and the office vacated; (B)

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the date on which the vacancy occurred; and (C) the name and address of the nominee selected to fill the vacancy and the date of selection. The resolution to fill the vacancy shall be accompanied by a statement of candidacy, as prescribed in Section 7-10 of the Election Code [10 ILCS 5/7-10], completed by the selected nominee, a certificate from the State Board of Education, as prescribed in Section 3-1 of this Code, and a receipt indicating that the nominee has filed a statement of economic interests as required by the Illinois Governmental Ethics Act [5 ILCS 420/1-101 et seq.].

The provisions of Sections 10-8 through 10-10.1 of the Election Code [10 ILCS 5/10-8 through 10 ILCS 5/10-10.1] relating to objections to nomination papers, hearings on objections, and judicial review shall also apply to and govern objections to nomination papers and resolutions for filling vacancies in nomination filed pursuant to this Section. Unless otherwise specified in this Section, the nomination and election provided for in this Section is governed by the general election law.

Except as otherwise provided by applicable county ordinance or by law, if a vacancy occurs in the office of regional superintendent of schools of an educational service region that is located in a county that is a home rule unit and that has a population of less than 2,000,000 inhabitants, that vacancy shall be filled by the county board of such home rule county.

Any person appointed to fill a vacancy in the office of regional superintendent of schools of any educational service region must possess the qualifications required to be elected to the position of regional superintendent of schools, and shall obtain a certificate of eligibility from the State Superintendent of Education and file same with the county clerk of the county in which the regional superintendent's office is located.

If the regional superintendent of schools is called into the active military service of the United States, his office shall not be deemed to be vacant, but a temporary appointment shall be made as in the case of a vacancy. The appointee shall perform all the duties of the regional superintendent of schools during the time the regional superintendent of schools is in the active military service of the United States, and shall be paid the same compensation apportioned as to the time of service, and such appointment and all authority thereunder shall cease upon the discharge of the regional superintendent of schools from such active military service. The appointee shall give the same bond as is required of a regularly elected regional superintendent of schools.

(Source: P.A. 87-654; 87-1251, § 2; 92-277, § 5; 92-869, § 5; 96-893, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3A-6.

Effect of Amendments. The 1992 amendment by P.A. 87-1251, effective July 1, 1993, substituted "July 1, 1994" for "August 7, 1995" throughout the section.

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The 2001 amendment by P.A. 92-277, effective August 7, 2001, added the subsection designations; in subsection (c), in the third sentence substituted "shall serve for the remainder of the term" for "shall serve until the next general election when a successor shall be elected in accordance with the general election law for the unexpired term or for a full term, as the case may require", and added subsections (c)(1) through (c)(4).

The 2002 amendment by P.A. 92-869, effective January 3, 2003, rewrote the third undesignated paragraph following subsection (c)(4), which formerly read: "Until July 1, 1994, if a vacancy occurs in the office of regional superintendent of schools of an educational service region that is located in a county that is a home rule unit and that has a population of 2,000,000 or more inhabitants, that vacancy shall be filled by the county board of that home rule county unless otherwise provided by applicable county ordinance or by law. On and after July 1, 1994, the provisions of this Section shall have no application in any educational service region that is located in any county, including a county that is a home rule unit, if that educational service region has a population of 2,000,000 or more inhabitants."

The 2010 amendment by P.A. 96-893, effective July 1, 2010, deleted the former third paragraph of (c), which read: "Until July 1, 2003 or until the regional superintendent of schools elected in 2002 takes office, whichever occurs first, if a vacancy exists in the office of regional superintendent of schools of an educational service region that is located in a county that is a home rule unit and that has a population of 2,000,000 or more inhabitants, then that vacancy shall be filled by the first assistant superintendent/deputy superintendent until the end of the term to which the regional superintendent was elected."

OPINIONS OF ATTORNEY GENERAL

Analysis

In General
Filling Vacancies

In General

Since the regional superintendent has the authority to chose the assistant regional superintendent, this section, in effect, authorizes the regional superintendent to name the person who would serve out the balance of his term should he vacate his office; there is no conflict between this provision and Ill. Const. (1970), Art. VII, § 8. 1981 Op. Atty. Gen. 20.

Filling Vacancies

Should a vacancy occur in the office of regional superintendent of schools of a single county of a multi-county region, the unexpired term of the regional superintendent should be filled by the assistant regional superintendent. 1981 Op. Atty. Gen. 20.

§ 105 ILCS 5/3A-7. Expenses of regional office - Budget

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Sec. 3A-7. Expenses of regional office - Budget. When 2 or more regions have been consolidated into a single educational service region, the costs of secretarial service, office space and other expenses necessarily incurred in the operation of the office of the regional superintendent shall be allocated to and borne by the counties comprising the region in the proportion that the equalized and assessed value of the taxable property in the county bears to the total equalized and assessed value of all taxable property in the region. For the purposes of calculating equalized assessed valuation of taxable property under this Section for any tax year beginning January 1, 1981 or thereafter, the equalized assessed valuation for a county shall be determined by adding to the real property equalized assessed valuation for the county an amount computed by dividing the amount of money received by the county under the provisions of "An Act in relation to the abolition of ad valorem personal property tax and the replacement of revenues lost thereby, and amending and repealing certain Acts and parts of Acts in connection therewith", certified August 14, 1979, as amended, by the total tax rate for the county.

By October 1 annually, the regional superintendent shall prepare a budget, setting out the anticipated income for his educational service region and a statement of the costs of secretarial services, office space and other expenses to be incurred in the operation of his office, and shall submit that budget to the county board of each of the counties in his region for approval. No such costs or expenses may be incurred except pursuant to that budget as approved by each of the county boards concerned. The budget may be amended, modified or supplemented upon the vote of a 2/3 majority of each of those county boards.

(Source: P.A. 82-646.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3A-7.

The Act approved August 14, 1979, referred to above, is Public Act 81-1, 1st Special Session.

§ 105 ILCS 5/3A-8. [Location of regional office]

Sec. 3A-8. The location of the office for a multi-county educational service region, which has been consolidated pursuant to the terms of this Article, shall be determined by a committee composed of the chairmen of the county boards of all counties in the region. In the event of a tie vote by such committee, the chairman of the regional board of school trustees shall cast the deciding vote.

(Source: P.A. 86-1028.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3A-8.

§ 105 ILCS 5/3A-9. Disconnection

Sec. 3A-9. Disconnection. An educational service region, consisting of 2 or more counties, may be restructured by the disconnection of a county from the educational service region as provided in this Article. However, no educational service region involved in the disconnection may contain less than 33,000 inhabitants after the disconnection, unless it is a region which after the disconnection contains an area that was formed from the consolidation of 3 or more regions.

Disconnection may be initiated by a petition requesting an election on whether the county should be disconnected from the present educational service region and whether the county should be consolidated with a different specified educational service region. A petition shall be signed by 10% of the legal resident voters of the county to which the petition refers; the petitioners' addresses shall be included.

A petition shall be filed with the regional superintendent of the educational service region of which the county is a part not more than 99 nor less than 92 days prior to a regular scheduled election. The regional superintendent and the county clerk shall determine the sufficiency of the petition. If the petition is deemed sufficient by the regional superintendent and the county clerk, the regional superintendent shall call an election at the next regular scheduled election for the purpose of presenting a public measure, in accord with the petition, to the voters of the county to be disconnected as specified in the petition.

(Source: P.A. 81-1489.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3A-9.

§ 105 ILCS 5/3A-10. Notice of Election

Sec. 3A-10. Notice of Election. A notice of the election shall be given in accordance with the general election law. In addition to the requirements of the general election law the notice shall be in substantially the following form:

NOTICE OF EDUCATIONAL SERVICE REGION ELECTION

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```
  Notice is hereby given that on (insert date) an election will be held in
.............. County, Illinois, for the purpose of voting upon this question:

  Shall  .............. County be disconnected from the Educational Service
Region for the Counties of  .............. and  .............. and shall the
regional board of school trustees for  .............. County be requested to
approve the consolidation of the counties into a single educational service
region?
```

(Source: P.A. 81-1489; 91-357, § 101.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3A-10.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "on (insert date)" for "on ....., 19.." near the beginning of the form.

§ 105 ILCS 5/3A-12. Limitation on successive petitions

Sec. 3A-12. Limitation on successive petitions. If a majority of those voting in a disconnection election do not favor disconnection, no petition for a disconnection election shall be submitted to the regional superintendent unless the resulting election would be held at a regular election in accordance with the general election law.

(Source: P.A. 82-458.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3A-12.

§ 105 ILCS 5/3A-13. Petition for Consolidation

Sec. 3A-13. Petition for Consolidation. If a majority of those voting in the disconnection election favor disconnection and requesting consolidation with another educational service region, the regional superintendent shall notify, within 30 days of the declaration of official results, the regional board of school trustees for the educational service region approved by the voters in the election of the official results. When the official results are received, the regional board of school trustees shall conduct a hearing on the petition,

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after notice of hearing has been published once, not more than 15 nor less than 10 days before the day of the hearing, in one or more newspapers having general circulation in the region and in one or more newspapers having general circulation in the county which is petitioning for the consolidation. The secretary of the regional board of school trustees shall notify the secretary of each school board affected by the proposed consolidation, the chairman of the county board of each county affected thereby and the State Superintendent of Education that the petition has been filed. The notice shall state the prayer of the petition and the date, time and place of the hearing. The State Board of Education shall pay the expenses of the hearing. Evidence admissible at the hearing shall include, but not be limited to, the school needs and conditions in the territory affected by the proposed consolidation, whether or not the area is compact and contiguous; and whether or not the proposed consolidation would be in the best interests of the schools in the area and the educational welfare of the pupils of these schools. A record of the proceedings shall be kept and a competent reporter shall be employed to take stenographic or stenotype notes of all testimony. At the hearing each resident of the region or of the county petitioning for consolidation shall have the rights provided for residents under Section 7-6 [105 ILCS 5/7-6] and the final order of the regional board of school trustees shall be subject to review as provided in Sections 7-6 and 7-7 [105 ILCS 5/7-6 and 105 ILCS 5/7-7].

Within 10 days of the hearing the regional board of school trustees shall meet and render a decision with regard to the hearing on the petition. A copy of the final decision of the regional board of school trustees shall be filed with the State Board of Education within 30 days after the conclusion of the hearing. If the regional board of school trustees renders a decision approving the consolidation, the region and the county shall be consolidated into a single educational service region and the State Board of Education shall notify all interested parties, including the county clerks of the counties affected thereby and the Secretary of State. The effective date of the consolidation shall be immediately after the time for appeal of the order of consolidation has passed or after the final disposition of any appeal taken from a consolidation order.

If the regional board of school trustees renders a decision denying the consolidation, a majority of the school boards located within the county disconnected, upon the adoption of appropriate resolutions, may petition another educational service region for consolidation. The proceedings on this petition shall be consistent with this Section.

(Source: P.A. 86-1028.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3A-13.

§ 105 ILCS 5/3A-14. Interim Period

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Sec. 3A-14. Interim Period. An educational service region shall continue to serve a county as herein provided until the time the consolidation is effective as provided for in Section 3A-13 [105 ILCS 5/3A-13].

(Source: P.A. 80-951.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3A-14.

§ 105 ILCS 5/3A-15. Legal representation

Sec. 3A-15. Legal representation. Except as otherwise provided in this Section, upon request the State's attorney of the county where the regional superintendent's office is located shall act as the legal representative of the regional superintendent of schools; however, where matters arise which are within the exclusive jurisdiction of another State's attorney, said State's attorney shall provide legal representation. If, in multicounty educational service regions, the county boards grant approval through an intergovernmental agreement, or if, in educational service regions serving only one county, the county board grants approval, then the regional superintendent of schools is authorized to hire private legal counsel to represent him or her in legal matters, and each county located within the region shall pay a per capita share of the legal fees incurred, based on the number of people in the county according to the most recent U.S. census.

(Source: P.A. 81-1090; 94-153, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 3A-15.

Effect of Amendments. The 2005 amendment by P.A. 94-153, effective July 8, 2005, added the exception language at the beginning, and added the last sentence.

CASE NOTES

Analysis

Applicability

Appointment of Private Counsel

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Appointment of Special Attorney General
Irreconcilable Conflict

Applicability

This section clearly removed any obligation of the Attorney General to provide legal representation for the regional representative of an educational service region having a population of 2,000,000 or more inhabitants in suit against county board over funding issues and placed it squarely on the State's Attorney. Suburban Cook County Regional Office of Educ. v. Cook County Bd., 282 Ill. App. 3d 560, 217 Ill. Dec. 671, 667 N.E.2d 1064 (1 Dist. 1996), appeal denied, 168 Ill. 2d 627, 219 Ill. Dec. 577, 671 N.E.2d 744 (1996).

Appointment of Private Counsel

Where official had a colorable claim and the State's Attorney, who was obligated to represent the official and the board against who he had a complaint, was unwilling to represent the official, the court did not abuse its discretion in appointing a firm; however, the firm should have been appointed as a special State's Attorney rather than a special Attorney General. Suburban Cook County Regional Office of Educ. v. Cook County Bd., 282 Ill. App. 3d 560, 217 Ill. Dec. 671, 667 N.E.2d 1064 (1 Dist. 1996), appeal denied, 168 Ill. 2d 627, 219 Ill. Dec. 577, 671 N.E.2d 744 (1996).

If an official is able to establish a colorable claim which the State's Attorney is unwilling to support or if the State's Attorney is representing two agencies which are in conflict, the court should be able to exercise its discretion and to appoint private counsel. Suburban Cook County Regional Office of Educ. v. Cook County Bd., 282 Ill. App. 3d 560, 217 Ill. Dec. 671, 667 N.E.2d 1064 (1 Dist. 1996), appeal denied, 168 Ill. 2d 627, 219 Ill. Dec. 577, 671 N.E.2d 744 (1996).

Appointment of Special Attorney General

The appointment of a special Attorney General to represent a regional representative of an educational service region having a population of 2,000,000 or more inhabitants in suit against county board over funding issues was vacated since this section placed the obligation to provide representation squarely on the State's Attorney. Suburban Cook County Regional Office of Educ. v. Cook County Bd., 282 Ill. App. 3d 560, 217 Ill. Dec. 671, 667 N.E.2d 1064 (1 Dist. 1996), appeal denied, 168 Ill. 2d 627, 219 Ill. Dec. 577, 671 N.E.2d 744 (1996).

Irreconcilable Conflict

A proper procedure in cases where an irreconcilable conflict arises between two officials the State's Attorney is obliged to represent would require the invocation of the court's discretion by either the State's Attorney or the officials; this would insure that the official could not arbitrarily seek representation from a private attorney nor seek private representation to advance a frivolous suit. Suburban Cook County Regional Office of Educ. v. Cook County Bd., 282 Ill. App. 3d 560, 217 Ill. Dec. 671, 667 N.E.2d 1064 (1 Dist. 1996), appeal denied, 168 Ill. 2d 627, 219 Ill. Dec. 577, 671 N.E.2d 744 (1996).

§ 105 ILCS 5/3A-16. Regional office of education advisory board

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Sec. 3A-16. Regional office of education advisory board. (a) Beginning October 1, 2009, a regional office of education advisory board shall be established within each region serving Class I counties or within each group of regions participating in an intergovernmental agreement for the provision of professional development to advise the regional superintendent of schools of the region or regions involved concerning the planning and delivery of professional development programs and services.

(b) The advisory board shall consist of at least 9 members. All members of the advisory board shall be certified pursuant to Article 21 of this Code [105 ILCS 5/21-1a et seq.] and be currently employed in positions requiring certification by a school district, special education cooperative, joint agreement, or regional office of education program. A majority of members shall be nominated by statewide organizations representing teachers within the region or regions and selected by the regional superintendent of the region or regions involved. Administrators shall be nominated by statewide organizations representing administrators within the region or regions and selected by the regional superintendent of the region or regions involved.

(c) The regional office of education advisory board shall meet at least annually for the performance of its advisory duties.

(Source: P.A. 88-89, § 3-10; 89-335, § 5; 96-568, § 5.)

Effective Date. Section 8-5 of P.A. 88-89 made this section effective July 1, 1993.

Effect of Amendments. The 1995 amendment by P.A. 89-335, effective August 17, 1995, substituted "advisory" for "oversight" in the section catchline and throughout the section; in subsection (a) substituted "advise the regional superintendent of schools concerning" for "oversee" and substituted "under the control of" for "as may be assigned and to advise"; added the subsection (b) designation; redesignated former subsection (b) as present subsection (c); in subsection (c) substituted "for the performance of its advisory duties under Section 3-11 and subsection (a) of this Section 3A-16" for "Its duties shall include"; deleted former subdivisions (b)(1) through (b)(7) listing duties of the former oversight board; and deleted former subsection (c) which read "The State Board of Education shall establish rules for the establishment and operation of the regional office of education oversight board".

The 2009 amendment by P.A. 96-568, effective August 18, 2009, in (a), substituted "October 1, 2009" for "April 1, 1995," added "or within each group of regions participating in an intergovernmental agreement for the provision of professional development," added "of the region or regions involved," added "professional development," and deleted "under Section 2-3.62 and other programs under the control of the regional superintendent of schools" from the end; rewrote (b); and in (c), substituted "annually" for "bi-monthly 6 times a year" and deleted "under Section 3-11 and subsection (a) of this Section 3A-16" from the end.

§ 105 ILCS 5/3A-17: Repealed by P.A. 96-893, effective July 1, 2010.

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§ 105 ILCS 5/3A-18. Streamlining Illinois' Regional Offices of Education Commission

Sec. 3A-18. Streamlining Illinois' Regional Offices of Education Commission. (a) Recognizing the virtue of the regional offices of education in that locally elected public servants are working closely with local school boards and superintendents and in partnership with the State Board of Education, and in an effort to deliver these educational services more efficiently and effectively, there is hereby established the Streamlining Illinois' Regional Offices of Education Commission. The Commission shall explore and examine all duties of the State Board of Education and all regional offices of education and intermediate service centers, as well as the boundaries of the educational service regions as defined in this Article, in order to determine which duties and responsibilities should be provided regionally to more appropriately and efficiently deliver services and whether the boundaries of the education service regions can be expanded to streamline the regional offices of education. The Commission shall ensure that its recommendations include specifics as to the necessary funding to carry out identified responsibilities.

(b) The Commission shall consist of all of the following voting members:

(1) One person appointed by the Governor, who shall serve as chairperson of the Commission.

(2) One member appointed by the President of the Senate.

(3) One member appointed by the Minority Leader of the Senate.

(4) One member appointed by the Speaker of the House of Representatives.

(5) One member appointed by the Minority Leader of the House of Representatives.

(6) One member appointed by an association representing regional superintendents of schools.

(7) One member appointed by an association representing school boards.

(8) One member appointed by an association representing school administrators.

(9) One member appointed by an association representing school business officials.

(10) One member appointed by each of 2 statewide associations representing teachers.

(11) One member from an intermediate service center appointed by the State Superintendent of Education.

(12) One district superintendent from an urban school district appointed by the State Superintendent of Education.

(13) One district superintendent from a rural school district appointed by the State Superintendent of Education.

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(14) One representative from the State Board of Education appointed by the State Superintendent of Education.

Members appointed by the legislative leaders shall be appointed for the duration of the Commission; in the event of a vacancy, the appointment to fill the vacancy shall be made by the legislative leader of the same house and party as the leader who made the original appointment.

(c) The Commission may begin to conduct business upon the appointment of a majority of the voting members.

(d) The State Board of Education shall be the agency responsible for providing staff and administrative support to the Commission.

(e) Members of the Commission shall receive no compensation for their participation, but may be reimbursed by the State Board of Education for expenses in connection with their participation, including travel, if funds are available.

(f) The Commission shall submit a final report of its findings and recommendations to the Governor and the General Assembly on or before August 1, 2012. The Commission may submit other reports as it deems appropriate.

(g) The Commission is abolished on August 2, 2012, and this Section is repealed on August 2, 2012.

(Source: P.A. 97-619, § 15.)

Effective Date. Section 99 of P.A. 97-619 made this section effective upon becoming law. The Act was approved November 14, 2011.

Article 4.

Duties of County Board

§ 105 ILCS 5/4-1. Duties of county board

Sec. 4-1. Duties of county board. The county board of each county shall perform the duties prescribed in this article.

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(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 4-1.

§ 105 ILCS 5/4-2. Office and supplies

Sec. 4-2. Office and supplies. Provide for the county superintendent of schools a suitable office with necessary furniture and office supplies.

On and after July 1, 1994, the provisions of this Section shall have no application in any county having a population of 2,000,000 or more inhabitants.

(Source: P.A. 87-654; 87-1251, § 2.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 4-2.

Effect of Amendments. The 1992 amendment by P.A. 87-1251, effective July 1, 1993, substituted "July 1, 1994" for "August 7, 1995" in the second paragraph.

CASE NOTES

Funding Obligation

County Board was not obligated to provide funds for the County Regional Office of Education in light of the amendment to 105 ILCS 5/3-0.01 by P.A. 88-89; this section, 105 ILCS 5/4-4 and 105 ILCS 5/4-6 exempt counties with more than 2,000,000 inhabitants and 105 ILCS 5/3-0.01 does not state that reference to counties of 2,000,000 or more inhabitants shall mean "an educational service region containing a city of 500,000 or more inhabitants". Suburban Cook County Regional Office of Educ. v. Cook County Bd., 282 Ill. App. 3d 560, 217 Ill. Dec. 671, 667 N.E.2d 1064 (1 Dist. 1996), appeal denied, 168 Ill. 2d 627, 219 Ill. Dec. 577, 671 N.E.2d 744 (1996).

§ 105 ILCS 5/4-3. Report of county superintendent

Sec. 4-3. Report of county superintendent. Examine and approve or reject the report of the county superintendent of schools made to it.

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(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 4-3.

§ 105 ILCS 5/4-4. Traveling expenses

Sec. 4-4. Traveling expenses. Allow, when they deem it proper, reasonable traveling expenses for the office of county superintendent of schools.

On and after July 1, 1994, the provisions of this Section shall have no application in any county having a population of 2,000,000 or more inhabitants.

(Source: P.A. 87-654; 87-1251, § 2.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 4-4.

Effect of Amendments. The 1992 amendment by P.A. 87-1251, effective July 1, 1993, substituted "July 1, 1994" for "August 7, 1995" in the second paragraph.

CASE NOTES

Funding Obligation

County Board was not obligated to provide funds for the County Regional Office of Education in light of the amendment to 105 ILCS 5/3-0.01 by P.A. 88-89; this section, 105 ILCS 5/4-2 and 105 ILCS 5/4-6 exempt counties with more than 2,000,000 inhabitants and 105 ILCS 5/3-0.01 does not state that reference to counties of 2,000,000 or more inhabitants shall mean "an educational service region containing a city of 500,000 or more inhabitants". Suburban Cook County Regional Office of Educ. v. Cook County Bd., 282 Ill. App. 3d 560, 217 Ill. Dec. 671, 667 N.E.2d 1064 (1 Dist. 1996), appeal denied, 168 Ill. 2d 627, 219 Ill. Dec. 577, 671 N.E.2d 744 (1996).

§ 105 ILCS 5/4-5. Audit of bills

Sec. 4-5. Audit of bills. Audit at the regular meeting in September, and as near quarterly thereafter as it may have regular or special meetings, the itemized bills of the county

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superintendent of schools for his office and traveling expenses.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 4-5.

§ 105 ILCS 5/4-6. Employment of assistants

Sec. 4-6. Employment of assistants. Authorize the county superintendent of schools to employ such assistants as he needs for the discharge of his duties and fix the compensation thereof, which compensation shall be paid out of the county treasury.

On and after July 1, 1994, the provisions of this Section shall have no application in any county having a population of 2,000,000 or more inhabitants.

(Source: P.A. 87-654; 87-1251, § 2.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 4-6.

Effect of Amendments. The 1992 amendment by P.A. 87-1251, effective July 1, 1993, substituted "July 1, 1994" for "August 7, 1995" in the second paragraph.

CASE NOTES

Funding Obligation

County Board was not obligated to provide funds for the County Regional Office of Education in light of the amendment to 105 ILCS 5/3-0.01 by P.A. 88-89; this section, 105 ILCS 5/4-2 and 105 ILCS 5/4-4 exempt counties with more than 2,000,000 inhabitants and 105 ILCS 5/3-0.01 does not state that reference to counties of 2,000,000 or more inhabitants shall mean "an educational service region containing a city of 500,000 or more inhabitants". Suburban Cook County Regional Office of Educ. v. Cook County Bd., 282 Ill. App. 3d 560, 217 Ill. Dec. 671, 667 N.E.2d 1064 (1 Dist. 1996), appeal denied, 168 Ill. 2d 627, 219 Ill. Dec. 577, 671 N.E.2d 744 (1996).

§ 105 ILCS 5/4-7. Examination of financial statements

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Sec. 4-7. Examination of financial statements. (a) Examine the financial statements of the county superintendent of schools required by Section 15-21 [105 ILCS 5/15-21] and compare them with vouchers.

(b) The county board, or so many thereof as are present at its meeting, shall be liable individually to the fund injured and to the sureties of the county superintendent, if judgment is recovered from the sureties, for all damages occasioned by neglect of the duties, or any of them, required of the board by this section; but nothing herein shall be construed to exempt the sureties and they shall remain liable to the fund injured the same as if the members of the county board were not liable to them for neglect of their duty. On and after July 1, 1994, the provisions of this subsection (b) shall have no application in any county having a population of 2,000,000 or more inhabitants.

(Source: P.A. 87-654; 87-1251, § 2.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 4-7.

Effect of Amendments. The 1992 amendment by P.A. 87-1251, effective July 1, 1993, substituted "July 1, 1994" for "August 7, 1995" in subsection (b).

§ 105 ILCS 5/4-8. Bond - approval - increase

Sec. 4-8. Bond - approval - increase. Approve the bond of the county superintendent of schools, and increase the penalty thereof if, in its judgment the penalty should be increased.

On and after July 1, 1994, the provisions of this Section shall have no application in any county having a population of 2,000,000 or more inhabitants.

(Source: P.A. 87-654; 87-1251, § 2.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 4-8.

Effect of Amendments. The 1992 amendment by P.A. 87-1251, effective July 1, 1993, substituted "July 1, 1994" for "August 7, 1995" in the second paragraph.

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§ 105 ILCS 5/4-9. New bond

Sec. 4-9. New bond. Require the county superintendent of schools, after notice given, to execute a new bond, conditioned and approved as the first bond, whenever it deems a new bond necessary, but the execution of such new bond shall not affect the old bond or the liability of the sureties thereon.

On and after July 1, 1994, the provisions of this Section shall have no application in any county having a population of 2,000,000 or more inhabitants.

(Source: P.A. 87-654; 87-1251, § 2.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 4-9.

Effect of Amendments. The 1992 amendment by P.A. 87-1251, effective July 1, 1993, substituted "July 1, 1994" for "August 7, 1995" in the second paragraph.

§ 105 ILCS 5/4-10. Reports - Removal from office

Sec. 4-10. Reports - Removal from office. (a) Require the county superintendent of schools to make the reports to it provided for by law.

(b) Remove the county superintendent of schools from office in case of neglect or refusal so to do, or for any palpable violation of law or omission of duty. On and after July 1, 1994, the provisions of this subsection (b) shall have no application in any county having a population of 2,000,000 or more inhabitants.

(Source: P.A. 87-654; 87-1251, § 2.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 4-10.

Effect of Amendments. The 1992 amendment by P.A. 87-1251, effective July 1, 1993, substituted "July 1, 1994" for "August 7, 1995" in subsection (b).

§ 105 ILCS 5/4-10.5. Expenses for life-skills programs

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Sec. 4-10.5. Expenses for life-skills programs. Allow, when the county board deems it proper, reasonable expenses of the regional superintendent of schools to administer life-skills programs related to the healthy social and emotional development of children.

(Source: P.A. 95-391, § 5.)

Effective Date. Section 99 of P.A.95-391 made this section effective August 23, 2007.

§ 105 ILCS 5/4-11. Depositories

Sec. 4-11. Depositories. The county board, when requested by the county superintendent of schools, shall designate one or more banks or savings and loan associations in which the funds and moneys received by him by virtue of his office may be deposited. When a bank or savings and loan association has been designated as a depository, it shall continue as such until 10 days have elapsed after a new depository is designated and qualified by furnishing the statement of resources and liabilities required by this Section. When a new depository is designated, the county board shall notify the sureties of the county superintendent of that fact, in writing, at least 5 days before the transfer of funds. The county superintendent of schools shall be discharged from responsibility for all funds and moneys deposited in the banks or savings and loan association so designated while such funds and moneys are so deposited.

No bank or savings and loan association shall receive public funds as permitted by this Section, unless it has complied with the requirements established pursuant to Section 6 of "An Act relating to certain investments of public funds by public agencies", approved July 23, 1943, as now or hereafter amended [30 ILCS 235/6].

(Source: P.A. 83-541.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 4-11.

§ 105 ILCS 5/4-12. Educational service center support

Sec. 4-12. Educational service center support. Notwithstanding Sections 4-2, 4-4, 4-6, 4-7, 4-8, 4-9, and 4-10 of this Code [105 ILCS 5/4-2, 105 ILCS 5/4-4, 105 ILCS 5/4-6, 105 ILCS 5/4-7, 105 ILCS 5/4-8, 105 ILCS 5/4-9, and 105 ILCS 5/4-10], a county having a population of 2,000,000 or more inhabitants may provide financial or in-kind support to

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the educational service centers serving that county.

(Source: P.A. 96-893, § 5.)

Effective Date. Section 99 of P.A. 96-893 made this section effective July 1, 2010.

ARTICLE 5.

Trustees of Schools

§ 105 ILCS 5/5-1. County school units

Sec. 5-1. County school units. (a) The territory in each county, exclusive of any school district governed by any special act which requires the district to appoint its own school treasurer, shall constitute a county school unit. County school units of less than 2,000,000 inhabitants shall be known as Class I county school units and the office of township trustees, where existing on July 1, 1962, in such units shall be abolished on that date and all books and records of such former township trustees shall be forthwith thereafter transferred to the county board of school trustees. County school units of 2,000,000 or more inhabitants shall be known as Class II county school units and shall retain the office of township trustees unless otherwise provided in subsection (b) or (c).

(b) Notwithstanding subsections (a) and (c), the school board of any elementary school district having a fall, 1989 aggregate enrollment of at least 2,500 but less than 6,500 pupils and having boundaries that are coterminous with the boundaries of a high school district, and the school board of any high school district having a fall, 1989 aggregate enrollment of at least 2,500 but less than 6,500 pupils and having boundaries that are coterminous with the boundaries of an elementary school district, may, whenever the territory of such school district forms a part of a Class II county school unit, by proper resolution withdraw such school district from the jurisdiction and authority of the trustees of schools of the township in which such school district is located and from the jurisdiction and authority of the township treasurer in such Class II county school unit; provided that the school board of any such school district shall, upon the adoption and passage of such resolution, thereupon elect or appoint its own school treasurer as provided in Section 8-1 [105 ILCS 5/8-1]. Upon the adoption and passage of such resolution and the election or appointment by the school board of its own school treasurer: (1) the trustees of schools in such township shall no longer have or exercise any

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powers and duties with respect to the school district governed by such school board or with respect to the school business, operations or assets of such school district; and (2) all books and records of the township trustees relating to the school business and affairs of such school district shall be transferred and delivered to the school board of such school district. Upon the effective date of this amendatory Act of 1993, the legal title to, and all right, title and interest formerly held by the township trustees in any school buildings and school sites used and occupied by the school board of such school district for school purposes, that legal title, right, title and interest thereafter having been transferred to and vested in the regional board of school trustees under P.A. 87-473 until the abolition of that regional board of school trustees by P.A. 87-969, shall be deemed transferred by operation of law to and shall vest in the school board of that school district.

Notwithstanding subsections (a) and (c), the school boards of Oak Park & River Forest District 200, Oak Park Elementary School District 97, and River Forest School District 90 may, by proper resolution, withdraw from the jurisdiction and authority of the trustees of schools of Proviso and Cicero Townships and the township treasurer, provided that the school board shall, upon the adoption and passage of the resolution, elect or appoint its own school treasurer as provided in Section 8-1 of this Code. Upon the adoption and passage of the resolution and the election or appointment by the school board of its own school treasurer: (1) the trustees of schools in the township or townships shall no longer have or exercise any powers or duties with respect to the school district or with respect to the school business, operations, or assets of the school district; (2) all books and records of the trustees of schools and all moneys, securities, loanable funds, and other assets relating to the school business and affairs of the school district shall be transferred and delivered to the school board; and (3) all legal title to and all right, title, and interest formerly held by the trustees of schools in any common school lands, school buildings, or school sites used and occupied by the school board and all rights of property and causes of action pertaining to or constituting a part of the common school lands, buildings, or sites shall be deemed transferred by operation of law to and shall vest in the school board.

Notwithstanding subsections (a) and (c), the respective school boards of Berwyn North School District 98, Berwyn South School District 100, Cicero School District 99, and J.S. Morton High School District 201 may, by proper resolution, withdraw from the jurisdiction and authority of the trustees of schools of Cicero Township and the township treasurer, provided that the school board shall, upon the adoption and passage of the resolution, elect or appoint its own school treasurer as provided in Section 8-1 of this Code. Upon the adoption and passage of the resolution and the election or appointment by the school board of its own school treasurer: (1) the trustees of schools in the township shall no longer have or exercise any powers or duties with respect to the school district or with respect to the school business, operations, or assets of the school district; (2) all books and records of the trustees of schools and all moneys, securities, loanable funds, and other assets relating to the school business and affairs of the school district shall be transferred and delivered to the school board; and (3) all legal title to and all right, title, and interest formerly held by the trustees of schools in any common school lands, school buildings, or school sites used and occupied by the school board and all rights of property and causes of action pertaining to or constituting a part of the common school lands,

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buildings, or sites shall be deemed transferred by operation of law to and shall vest in the school board.

(c) Notwithstanding the provisions of subsection (a), the offices of township treasurer and trustee of schools of any township located in a Class II county school unit shall be abolished as provided in this subsection if all of the following conditions are met:

(1) During the same 30 day period, each school board of each elementary and unit school district that is subject to the jurisdiction and authority of the township treasurer and trustees of schools of the township in which those offices are sought to be abolished gives written notice by certified mail, return receipt requested to the township treasurer and trustees of schools of that township of the date of a meeting of the school board, to be held not more than 90 nor less than 60 days after the date when the notice is given, at which meeting the school board is to consider and vote upon the question of whether there shall be submitted to the electors of the school district a proposition to abolish the offices of township treasurer and trustee of schools of that township. None of the notices given under this paragraph to the township treasurer and trustees of schools of a township shall be deemed sufficient or in compliance with the requirements of this paragraph unless all of those notices are given within the same 30 day period.

(2) Each school board of each elementary and unit school district that is subject to the jurisdiction and authority of the township treasurer and trustees of schools of the township in which those offices are sought to be abolished, by the affirmative vote of at least 5 members of the school board at a school board meeting of which notice is given as required by paragraph (1) of this subsection, adopts a resolution requiring the secretary of the school board to certify to the proper election authorities for submission to the electors of the school district at the next consolidated election in accordance with the general election law a proposition to abolish the offices of township treasurer and trustee of schools of that township. None of the resolutions adopted under this paragraph by any elementary or unit school districts that are subject to the jurisdiction and authority of the township treasurer and trustees of schools of the township in which those offices are sought to be abolished shall be deemed in compliance with the requirements of this paragraph or sufficient to authorize submission of the proposition to abolish those offices to a referendum of the electors in any such school district unless all of the school boards of all of the elementary and unit school districts that are subject to the jurisdiction and authority of the township treasurer and trustees of schools of that township adopt such a resolution in accordance with the provisions of this paragraph.

(3) The school boards of all of the elementary and unit school districts that are subject to the jurisdiction and authority of the township treasurer and trustees of schools of the township in which those offices are sought to be abolished submit a proposition to abolish the offices of township treasurer and trustee of schools of that township to the electors of their respective school districts at the same consolidated election in accordance with the general election law, the ballot in each such district to be in substantially the following form:

OFFICIAL BALLOT

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```
                                                YES
Shall the offices of township
treasurer and trustee of schools
of Township . . . . . .  Range . . .
. . . . .  be
abolished?                                      NO
```

(4) At the consolidated election at which the proposition to abolish the offices of township treasurer and trustee of schools of a township is submitted to the electors of each elementary and unit school district that is subject to the jurisdiction and authority of the township treasurer and trustee of schools of that township, a majority of the electors voting on the proposition in each such elementary and unit school district votes in favor of the proposition as submitted to them.

If in each elementary and unit school district that is subject to the jurisdiction and authority of the township treasurer and trustees of schools of the township in which those offices are sought to be abolished a majority of the electors in each such district voting at the consolidated election on the proposition to abolish the offices of township treasurer and trustee of schools of that township votes in favor of the proposition as submitted to them, the proposition shall be deemed to have passed; but if in any such elementary or unit school district a majority of the electors voting on that proposition in that district fails to vote in favor of the proposition as submitted to them, then notwithstanding the vote of the electors in any other such elementary or unit school district on that proposition the proposition shall not be deemed to have passed in any of those elementary or unit school districts, and the offices of township treasurer and trustee of schools of the township in which those offices were sought to be abolished shall not be abolished, unless in each of those elementary and unit school districts remaining subject to the jurisdiction and authority of the township treasurer and trustees of schools of that township proceedings are again initiated to abolish those offices and all of the proceedings and conditions prescribed in paragraphs (1) through (4) of this subsection are repeated and met in each of those elementary and unit school districts.

Notwithstanding the foregoing provisions of this Section or any other provision of the School Code [105 ILCS 5/1-1 et seq.], the offices of township treasurer and trustee of schools of a township that has a population of less than 200,000 and that contains a unit school district and is located in a Class II county school unit shall also be abolished as provided in this subsection if all of the conditions set forth in paragraphs (1), (2), and (3) of this subsection are met and if the following additional condition is met:

The electors in all of the school districts subject to the jurisdiction and authority of the township treasurer and trustees of schools of the township in which those offices are sought to be abolished shall vote at the consolidated election on the proposition to abolish the offices of township treasurer and trustee of schools of that township. If a majority of the electors in all of the school districts combined voting on the proposition vote in favor of the proposition, then the proposition shall be deemed to have passed; but if a majority of the electors voting on the proposition in all of the school district fails to vote in favor of the proposition as submitted to them, then the proposition shall not be deemed to have

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passed and the offices of township treasurer and trustee of schools of the township in which those offices were sought to be abolished shall not be abolished, unless and until the proceedings detailed in paragraphs (1) through (3) of this subsection and the conditions set forth in this paragraph are met.

If the proposition to abolish the offices of township treasurer and trustee of schools of a township is deemed to have passed at the consolidated election as provided in this subsection, those offices shall be deemed abolished by operation of law effective on January 1 of the calendar year immediately following the calendar year in which that consolidated election is held, provided that if after the election, the trustees of schools by resolution elect to abolish the offices of township treasurer and trustee of schools effective on July 1 immediately following the election, then the offices shall be abolished on July 1 immediately following the election. On the date that the offices of township treasurer and trustee of schools of a township are deemed abolished by operation of law, the school board of each elementary and unit school district and the school board of each high school district that is subject to the jurisdiction and authority of the township treasurer and trustees of schools of that township at the time those offices are abolished: (i) shall appoint its own school treasurer as provided in Section 8-1; and (ii) unless the term of the contract of a township treasurer expires on the date that the office of township treasurer is abolished, shall pay to the former township treasurer its proportionate share of any aggregate compensation that, were the office of township treasurer not abolished at that time, would have been payable to the former township treasurer after that date over the remainder of the term of the contract of the former township treasurer that began prior to but ends after that date. In addition, on the date that the offices of township treasurer and trustee of schools of a township are deemed abolished as provided in this subsection, the school board of each elementary school, high school and unit school district that until that date is subject to the jurisdiction and authority of the township treasurer and trustees of schools of that township shall be deemed by operation of law to have agreed and assumed to pay and, when determined, shall pay to the Illinois Municipal Retirement Fund a proportionate share of the unfunded liability existing in that Fund at the time these offices are abolished in that calendar year for all annuities or other benefits then or thereafter to become payable from that Fund with respect to all periods of service performed prior to that date as a participating employee in that Fund by persons serving during those periods of service as a trustee of schools, township treasurer or regular employee in the office of the township treasurer of that township. That unfunded liability shall be actuarially determined by the board of trustees of the Illinois Municipal Retirement Fund, and the board of trustees shall thereupon notify each school board required to pay a proportionate share of that unfunded liability of the aggregate amount of the unfunded liability so determined. The amount so paid to the Illinois Municipal Retirement Fund by each of those school districts shall be credited to the account of the township in that Fund. For each elementary school, high school and unit school district under the jurisdiction and authority of a township treasurer and trustees of schools of a township in which those offices are abolished as provided in this subsection, each such district's proportionate share of the aggregate compensation payable to the former township treasurer as provided in this paragraph and each such district's proportionate share of the aggregate amount of the unfunded liability payable to the Illinois Municipal Retirement Fund as provided in this paragraph shall be computed in accordance with the

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ratio that the number of pupils in average daily attendance in each such district for the school year last ending prior to the date on which the offices of township treasurer and trustee of schools of that township are abolished bears to the aggregate number of pupils in average daily attendance in all of those districts as so reported for that school year.

Upon abolition of the offices of township treasurer and trustee of schools of a township as provided in this subsection: (i) the regional board of school trustees, in its corporate capacity, shall be deemed the successor in interest to the former trustees of schools of that township with respect to the common school lands and township loanable funds of the township; (ii) all right, title and interest existing or vested in the former trustees of schools of that township in the common school lands and township loanable funds of the township, and all records, moneys, securities and other assets, rights of property and causes of action pertaining to or constituting a part of those common school lands or township loanable funds, shall be transferred to and deemed vested by operation of law in the regional board of school trustees, which shall hold legal title to, manage and operate all common school lands and township loanable funds of the township, receive the rents, issues and profits therefrom, and have and exercise with respect thereto the same powers and duties as are provided by this Code to be exercised by regional boards of school trustees when acting as township land commissioners in counties having at least 220,000 but fewer than 2,000,000 inhabitants; (iii) the regional board of school trustees shall select to serve as its treasurer with respect to the common school lands and township loanable funds of the township a person from time to time also serving as the appointed school treasurer of any school district that was subject to the jurisdiction and authority of the township treasurer and trustees of schools of that township at the time those offices were abolished, and the person selected to also serve as treasurer of the regional board of school trustees shall have his compensation for services in that capacity fixed by the regional board of school trustees, to be paid from the township loanable funds, and shall make to the regional board of school trustees the reports required to be made by treasurers of township land commissioners, give bond as required by treasurers of township land commissioners, and perform the duties and exercise the powers of treasurers of township land commissioners; (iv) the regional board of school trustees shall designate in the manner provided by Section 8-7 [105 ILCS 5/8-7], insofar as applicable, a depositary for its treasurer, and the proceeds of all rents, issues and profits from the common school lands and township loanable funds of that township shall be deposited and held in the account maintained for those purposes with that depositary and shall be expended and distributed therefrom as provided in Section 15-24 [105 ILCS 5/15-24] and other applicable provisions of this Code; and (v) whenever there is vested in the trustees of schools of a township at the time that office is abolished under this subsection the legal title to any school buildings or school sites used or occupied for school purposes by any elementary school, high school or unit school district subject to the jurisdiction and authority of those trustees of school at the time that office is abolished, the legal title to those school buildings and school sites shall be deemed transferred by operation of law to and invested in the school board of that school district, in its corporate capacity Section 7-28 [105 ILCS 5/7-28], the same to be held, sold, exchanged leased or otherwise transferred in accordance with applicable provisions of this Code.

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Notwithstanding Section 2-3.25g of this Code [105 ILCS 5/2-3.25g], a waiver of a mandate established under this Section may not be requested.

(Source: P.A. 86-225; 86-1051; 86-1441; 87-473; 88-155, § 5; 89-560, § 5; 91-269, § 5; 92-448, § 5; 94-1078, § 15; 94-1105, § 20; 95-4, § 5; 95-876, § 175.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-1.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.100.

Effect of Amendments. The 1993 amendment by P.A. 88-155, effective January 1, 1994, rewrote the last sentence of subsection (b) and in the last sentence of the last paragraph of subsection (c) substituted "school board of that school district" for "regional board of school trustees" and deleted "as provided in" preceding "Section 7-28".

The 1996 amendment by P.A. 89-560, effective July 26, 1996, in subsection (c) added the third paragraph.

The 1999 amendment by P.A. 91-269, effective July 23, 1999, added the last sentence in subsection (c)(4).

The 2001 amendment by P.A. 92-448, effective August 21, 2001, substituted "consolidated election" for "nonpartisan election" each place it appears throughout the section; and in the third paragraph from the end: in the first sentence substituted "January 1" for "July 1", and added the proviso at the end of the sentence, and in the second sentence substituted "On the date that" for "On July 1 of the calendar year in which", in item (ii) of that sentence, substituted "at that time" for "on July 1 of that calendar year" and substituted "on the date that" for "July 1 of the calendar year in which", and substituted "at the time these offices are abolished in" for "on July 1 of".

The 2006 amendment by P.A. 94-1078, effective January 9, 2007, added the last paragraph in (b).

The 2007 amendment by P.A. 94-1105, effective June 1, 2007, in the third paragraph from the end deleted "as reported in schedules prepared under Section 24-19" after "such district".

The 2007 amendment by P.A. 95-4, effective May 31, 2007, added the last paragraph in (b).

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, combined earlier multiple amendments.

CASE NOTES

Dissolution

- General School Law

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If the electors of a special charter school district vote to organize under the general school law pursuant to 105 ILCS 5/32-1, the special charter school district is dissolved; the county board of school trustees would cause a new school district, which would be governed under the general school laws, to be formed and established, and would call an election for the directors of such district, and as the successor school district to the special charter district, the new common school district would become liable for all of the financial obligations of the dissolved district. People ex rel. Killeen v. Kankakee Sch., 48 Ill. 2d 419, 270 N.E.2d 36 (1971).

§ 105 ILCS 5/5-1a. High school districts

Sec. 5-1a. High school districts. Notwithstanding any other provision of this Article or the School Code, the school board of any high school district that is located in a Class II county school unit and that on or after the effective date of this amendatory Act of 1991 is subject to the jurisdiction and authority of a township treasurer and trustees of schools of a township in which all or any part of that school district is located may not withdraw from the jurisdiction and authority of that township treasurer and those trustees of schools and transfer or otherwise submit to the jurisdiction and authority of a township treasurer or trustees of school of another township, unless the school board of each underlying elementary school district whose territory includes all or any part of the territory included within that high school district, by resolution, consents to the proposed withdrawal by the school board of that high school district from the jurisdiction and authority of the township treasurer and trustees of schools of the township to which that high school district is subject and the transfer or other submission by the school board of that high school district to the jurisdiction and authority of a township treasurer or trustees of schools of another township.

A high school district that is subject to the jurisdiction and authority of the township treasurer and trustees of schools of a township in which those offices are abolished as provided in subsection (c) of Section 5-1 [105 ILCS 5/5-1] shall thereupon be required to appoint its own school treasurer as provided in paragraph (4) of subsection (c) of Section 5-1 [105 ILCS 5/5-1] and subsection (c) of Section 8-1 [105 ILCS 5/8-1], and shall be subject to and governed by the other changes made to the School Code by this amendatory Act of 1991, insofar as the same are applicable to a high school district.

(Source: P.A. 87-473.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-1a.

§ 105 ILCS 5/5-1b: Repealed internally by P.A. 94-432, effective January 1, 2010.

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§ 105 ILCS 5/5-2. Governing board

Sec. 5-2. Governing board.

The school business of all school townships having school trustees shall be transacted by three trustees, to be elected by the qualified voters of the township, as hereinafter provided. The trustees shall be a body politic and corporate, by the name of "trustees of schools of township No. ....., range No. ....." according to the number, or in case of school townships created from two or more congressional townships, such name shall be "trustees of ..... township ..... county, Illinois." Such corporation shall have perpetual existence, with power to sue and be sued, and to plead and be impleaded, in all courts and places where judicial proceedings are had.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-2.

CASE NOTES

Analysis

Education Service Region
Procedure
- Proper Parties
- Unnumbered Warrants

Education Service Region

There is no governmental entity known as the "DuPage County Education Service Region" which is capable of being sued. Bowers ex rel. Bowers v. DuPage County Regional Bd. of Sch. Trustees, 183 Ill. App. 3d 367, 131 Ill. Dec. 893, 539 N.E.2d 246 (2 Dist. 1989).

Procedure

- Proper Parties

School trustees can sue on the bond of the township treasurer for the use of the anticipation warrant holders for treasurer's acts of misappropriating proceeds of taxes. Stefanich v. Richard, 314 Ill. App. 183, 41 N.E.2d 104 (2 Dist. 1942).

- Unnumbered Warrants

Suit by school trustees against sureties on bond of township treasurer who failed to pay proceeds of taxes was not void because warrants were not numbered in order of their sale or issuance,

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since there was more than the amount necessary to pay all warrants issued against the tax levy, which was collected and paid to the township treasurer. Stefanich v. Richard, 314 Ill. App. 183, 41 N.E.2d 104 (2 Dist. 1942).

§ 105 ILCS 5/5-2.1. Eligible Voters

Sec. 5-2.1. Eligible Voters. For the purposes of this Article persons who are qualified to vote in school elections shall be eligible to vote for the trustees of schools who have jurisdiction over the elementary school district or unit school district in which the person resides.

If the application of this Section results in an elector voting for trustees of a school township in which he does not reside because the elementary or unit school district crosses township boundaries and has been assigned to the jurisdiction of the trustees of an adjoining township, that elector shall also be eligible to vote for the trustees of the township within which he resides. Moreover, an elector who resides in a high school district that crosses township boundaries and has been assigned to the jurisdiction of the trustees of an adjoining township shall be eligible to vote for both the trustees of the township in which he or she resides and the trustees of the township having jurisdiction over the high school district in which he or she resides.

(Source: P.A. 85-1435; 94-432, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-2.1.

Effect of Amendments. The 2005 amendment by P.A. 94-432, effective August 2, 2005, added the last sentence in the second paragraph and made a stylistic change.

§ 105 ILCS 5/5-2.2. Designation of trustees; Township 36 North, Range 13 East

Sec. 5-2.2. Designation of trustees; Township 36 North, Range 13 East. After the April 5, 2011 consolidated election, the trustees of schools in Township 36 North, Range 13 East shall no longer be elected pursuant to the provisions of Sections 5-2, 5-2.1, 5-3, 5-4, 5-12, and 5-13 of this Code [105 ILCS 5/5-2, 105 ILCS 5/5-2.1, 105 ILCS 5/5-3, 105 ILCS 5/5-4, 105 ILCS 5/5-12, and 105 ILCS 5/5-13]. Any such trustees elected before such date may complete the term to which that trustee was elected, but shall not be succeeded by election. Instead, the board of education or board of school directors of each of the elementary and high school districts that are subject to the jurisdiction of Township 36 North, Range 13 East shall appoint one of the members to serve as trustee of schools. The trustees of schools shall be appointed by each board of education or board

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of school directors within 60 days after the effective date of this amendatory Act of the 97th General Assembly [P.A. 97-631] and shall reorganize within 30 days after all the trustees of schools have been appointed or within 30 days after all the trustees of schools were due to have been appointed, whichever is sooner. Trustees of schools so appointed shall serve at the pleasure of the board of education or board of school directors appointing them, but in no event longer than 2 years unless reappointed.

A majority of members of the trustees of schools shall constitute a quorum for the transaction of business. The trustees shall organize by appointing one of their number president, who shall hold the office for 2 years. If the president is absent from any meeting, or refuses to perform any of the duties of the office, a president pro-tempore may be appointed. Trustees who serve on the board as a result of appointment or election at the time of the reorganization shall continue to serve as a member of the trustees of schools, with no greater or lessor authority than any other trustee, until such time as their elected term expires.

Each trustee of schools appointed by a board of education or board of school directors shall be entitled to indemnification and protection against claims and suits by the board that appointed that trustee of schools for acts or omissions as a trustee of schools in the same manner and to the same extent as the trustee of schools is entitled to indemnification and protection for acts or omissions as a member of the board of education or board of school directors under Section 10-20.20 of this Code [105 ILCS 5/10-20.20].

(Source: P.A. 97-631, § 5.)

Effective Date. Section 99 of P.A. 97-631 made this section effective upon becoming law. The Act was approved December 8, 2011.

§ 105 ILCS 5/5-3. Eligibility of trustees

Sec. 5-3. Eligibility of trustees. No person shall be eligible to the office of trustee of schools who is not a resident of the township and at least 18 years of age. If there are 3 or more school districts in a township which are subject to the jurisdiction of the trustees of schools of that township, no 2 trustees shall reside, when elected, in the same school district; except that in townships in which at least 90% of the electors reside in one school district which is subject to the jurisdiction of the trustees of schools of that township, this restriction shall not apply. No person shall be eligible to the office of trustee of schools and school director or school board member at the same time.

(Source: P.A. 86-1441.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-3.

§ 105 ILCS 5/5-4. Election of trustees

Sec. 5-4. Election of trustees. The election of trustees of schools shall be held in odd-numbered years at the election specified in the general election law. In townships in which no election for school trustees has been held, or in townships in which from any cause there are no trustees of schools and the law requires that there be school trustees, the election of trustees of schools shall be held at the same time.

No person shall be nominated for the office of trustee of schools, in townships containing 20,000 inhabitants or over, except by petition signed by at least twenty-five voters of the school township in which he is seeking nomination and election filed with the township treasurer, or, in case of a first election, with the county clerk.

A candidate for election as a school trustee, who has petitioned for nomination to fill a full term and to fill a vacant term to be voted upon at the same election, must withdraw his or her petition for nomination from either the full term or the vacant term by written declaration, which shall be signed and acknowledged by an officer authorized to take such acknowledgments and which is filed with the township treasurer in the township in which he or she is a candidate within the time provided by the general election law.

(Source: P.A. 80-1469.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-4.

CASE NOTES

Signatures

Fact that a candidate for the office of school trustee obtained 50 signatures on his nominating petition, which was the number required for placing his name on the ballot as a candidate for "member of regional board of school trustees," rather than the 25 signatures required for the office of school trustee, could not have caused voters confusion as to which office he was seeking because it was doubtful that the voters were aware of what number of signatures was required for the respective offices. Pascente v. County Officers Electoral Bd., 373 Ill. App. 3d 871, 311 Ill. Dec. 789, 869 N.E.2d 802, 2007 Ill. App. LEXIS 520 (1 Dist. 2007).

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§ 105 ILCS 5/5-12. Trustees' names and townships to regional superintendent

Sec. 5-12. Trustees' names and townships to regional superintendent. The returns of an election for trustees of schools shall be made to the county clerk. He shall furnish to the regional superintendent of schools, within 7 days after the returns have been made, the names of the trustees so returned to him, and shall specify the townships in which they have been elected.

(Source: P.A. 81-1490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-12.

§ 105 ILCS 5/5-13. Term of office of trustees

Sec. 5-13. Term of office of trustees. In townships already organized, the school trustee shall be elected in each odd numbered year for a term of 6 years to succeed the trustee whose term expires in such odd numbered year.

The first-elected trustees in a newly organized township shall at their first meeting cast lots for their respective terms of office, for 2, 4 and 6 years; and thereafter 1 trustee shall be elected in each odd-numbered year.

(Source: P.A. 81-1490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-13.

§ 105 ILCS 5/5-14. Term of office of successors - Vacancies

Sec. 5-14. Term of office of successors - Vacancies. Successors to the trustees whose terms of office expire at the time prescribed in Section 5-13 [105 ILCS 5/5-13], and their successors, shall hold their offices for 6 years and until their respective successors are elected and qualified. Trustees of schools shall enter upon the duties of their office on the third Monday of the month following their election.

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Whenever a vacancy occurs, the remaining trustees shall fill the vacancy until the next regular school election, at which election a successor shall be elected to serve the remainder of the unexpired term. However, if the vacancy occurs with less than 28 months remaining in the term, or if the vacancy occurs less than 88 days before the next regularly scheduled election for this office then the person so appointed shall serve the remainder of the unexpired term, and no election to fill the vacancy shall be held. The successor shall have the same residential qualifications as his predecessor. Should they fail so to act, within 30 days after the vacancy occurs, the regional superintendent of the region in which the township lies, or if the township is divided by a county line or lines, the regional superintendent of the region in which a majority of the children, who reside in districts subject to the jurisdiction of the trustees of schools of such township, attend school, shall within 15 days after the remaining trustees have failed to fill the vacancy, fill the vacancy as provided for herein. The successor shall have the same type of residential qualifications as his predecessor.

(Source: P.A. 86-1441; 93-847, § 40.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-14.

Section 95 of P.A. 93-847 contains a severability provision.

Effect of Amendments. The 2004 amendment by P.A. 93-847, effective July 30, 2004, substituted "third Monday" for "first Monday" in the first paragraph.

§ 105 ILCS 5/5-15. Organization

Sec. 5-15. Organization. Within 10 days following commencement of their terms, the trustees shall organize by appointing 1 of their number president, who shall hold his office for 2 years. The president shall preside at all meetings of the board and shall sign the proceedings thereof when recorded. If the president is absent from any meeting, or refuses to perform any of the duties of his office, a president pro tempore may be appointed. The president may be removed by the trustees of schools for sufficient cause.

(Source: P.A. 81-1490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-15.

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§ 105 ILCS 5/5-16. Meetings - Quorum

Sec. 5-16. Meetings - Quorum. The trustees of school shall hold regular meetings on the first Monday of each calendar quarter or if such Monday falls on a holiday, then on the following Monday. Special meetings may be called at any time by the president or by two members. Two members shall constitute a quorum for the transaction of business.

(Source: P.A. 81-338.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-16.

§ 105 ILCS 5/5-17. Payment of claims - Apportionment and distribution of funds

Sec. 5-17. Payment of claims - Apportionment and distribution of funds. At the regular meetings, the trustees shall appropriate and pay from the income of the permanent township fund, if it is sufficient, all valid claims for the following:

1.The compensation of the treasurer.

2.The cost of publishing the annual statement.

3.The cost of a record book, if any.

4.The cost of dividing school lands and making plats.

If the income of the permanent township fund is not sufficient to meet such items the additional amount needed may be taken from the total of other funds subject to distribution, each district - exclusive of any district which has withdrawn from the jurisdiction and authority of the trustees of schools of the township and which has elected or appointed its own school treasurer as provided in subsection (b) of Section 5-1 [105 ILCS 5/5-1] - being charged as its share of such items the proportion which the amount of school funds of the district handled by the township treasurer bears to the total amount of all school funds handled by such treasurer.

In Class II county school units (excluding therefrom, however, any township therein in which the offices of township treasurer and trustee of schools have been abolished as provided in subsection (c) of Section 5-1 [105 ILCS 5/5-1]) if any balance of the income from the permanent township fund in any township remains after paying such items, such balance shall be apportioned and distributed to the districts and parts of districts in the township - including any district which has withdrawn from the jurisdiction and authority of the trustees of schools of the township and which has elected or appointed its own school treasurer as provided in subsection (b) of Section 5-1 [105 ILCS 5/5-1] - in which

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schools have been kept as required by law during the preceding year ending June 30, according to the number of pupils in average daily attendance in grades one to eight inclusive. At the semi-annual meetings in all such townships all remaining funds subject to distribution shall be apportioned and distributed to the districts and parts of districts in the township in which schools have been kept as required by law during the preceding year ending June 30, in the manner and subject to the limitations prescribed in Sections 18-2 through 18-11 [105 ILCS 5/18-2 through 105 ILCS 5/18-11] for the distribution of the common school fund among the counties, provided that - except for any balance of the income from the permanent township fund remaining after payment of the items set forth in subparagraphs 1, 2, 3 and 4 of this Section - no funds shall be apportioned or distributed to any school district which has withdrawn from the jurisdiction and authority of the trustees of schools and appointed its own school treasurer pursuant to Section 5-1 [105 ILCS 5/5-1]; and the trustees shall direct the treasurer to make a regular monthly apportionment and distribution between semi-annual meetings, in the manner prescribed by those sections, of any available funds on hand from the common school fund. The funds distributed shall be credited to the respective districts and parts of districts.

In Class I county school units and in any township forming a part of a Class II county school unit in which township the offices of township treasurer and trustee of schools have been abolished as provided in subsection (c) of Section 5-1 [105 ILCS 5/5-1], if any balance of income from the permanent township fund in any township remains after paying such items, such balance or a part thereof equal to but not greater than the then current tax levy or tax levies for common school purposes by all the school districts or parts of school districts in said township on property in said township in process of collection in the county wherein the township having such fund is located, shall, upon an order drawn by the treasurer and signed by the president and secretary of the township land commissioners or regional board of school trustees, be paid annually on or before February 1 to the County Treasurer of the county in which such township is situated. It shall then be the duty of the County Treasurer to apply and credit the sum so received upon all tax bills for school purposes of the taxpayers in the township, said sum to be applied and credited proportionately upon the basis of the value of assessed property represented by each such tax bill. Any sum received by the County Treasurer in excess of the amount required to discharge in full the amount of all taxes for school purposes so extended against taxable property within the township shall be held by the County Treasurer and applied to taxes subsequently extended for such purposes: Provided, that if a petition, signed by at least 5% of the legal voters of the township, is presented to the regional superintendent of schools of the educational service region in which the township is located requesting a vote on the proposition that such balance of the income from the permanent township fund shall be apportioned and distributed to the districts and parts of districts in the township in which schools have been kept as required by law during the preceding year ending June 30, according to the number of pupils in average daily attendance in grades one to eight, inclusive, upon an order drawn by the treasurer and signed by the president and secretary of the township land commissioners or regional board of school trustees, to be paid annually on or before February 1, the regional superintendent of schools shall certify to the proper election authority the proposition for submission to the voters of the township in accordance with the general election law. The treasurer shall cause a copy of the order to be published in one or more newspapers

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published in the county school unit within 10 days after the order is drawn. If no newspaper is published in the county school unit, the order shall be published in a newspaper having general circulation within the county school unit. The publication of the order shall include a notice of (1) the specific number of voters required to sign a petition requesting that the proposition to apportion and distribute to the several school districts the excess of the income from the permanent township fund be submitted to the voters of the township; (2) the time within which the petition must be filed; and (3) the date of the prospective referendum. The treasurer shall provide a petition form to any individual requesting one. If the proposition receives a majority of the votes cast thereon, it shall supersede the preceding provisions for the distribution of such balance.

(Source: P.A. 86-1253; 86-1441; 87-435; 87-473; 94-1105, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-17.

Effect of Amendments. The 2007 amendment by P.A. 94-1105, effective June 1, 2007, deleted "as reported in schedules prepared under Section 24-19" after "grades one to eight inclusive" twice.

§ 105 ILCS 5/5-18. Statements of conditions of schools

Sec. 5-18. Statements of conditions of schools. Trustees of schools shall prepare, or cause to be prepared, by the township treasurer, the directors or board members of the several districts or other person, and forwarded to the regional superintendent of the region in which the township lies, on or before July 15 annually, and at such other times as may be required by the regional superintendent of schools or by the State Board of Education, a statement exhibiting the condition of the schools subject to the jurisdiction and authority of such trustees in the respective townships for the preceding year, commencing on July 1 and ending June 30 which statement shall be in the form, and shall contain the information required by the State Board of Education. Any township from which such report is not so received shall forfeit its portion of the distributive fund for the next ensuing year.

(Source: P.A. 86-1441.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-18.

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§ 105 ILCS 5/5-19. Township divided by county lines - Statistics and information

Sec. 5-19. Township divided by county lines - Statistics and information. If a township is divided by a county line or lines, the trustees of schools shall make, or cause to be made, separate enumerations of all statistics and other information required by the State Board of Education, and report them separately to the several regional superintendents. All parts of such statistical information which cannot practically be reported separately shall be reported to the regional superintendent of the county in which the sixteenth section of such township is situated.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-19.

§ 105 ILCS 5/5-20. Examination of books, securities and effects - Accounts and vouchers

Sec. 5-20. Examination of books, securities and effects - Accounts and vouchers. At each regular meeting, and at such other meetings as they may think proper, the trustees of schools shall examine all books, notes, mortgages, securities, papers, moneys and effects of the corporation, and the accounts and vouchers of the township treasurer or other township school officer, and shall make such order for their security, preservation, collection, correction of errors, if any, and for their proper disposition, as may be necessary.

(Source: P.A. 81-338.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-20.

CASE NOTES

Analysis
Defenses

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- Laches
Purpose
- Duty to Examine

Defenses

- Laches

Where school trustees lacked knowledge about the true state of treasurer's accounts because of their failure to exercise the degree of diligence imposed on them by law and this failure permitted the treasurer to effectively conceal his misappropriation of funds, the defense of laches was sustained by the evidence and there could be no recovery against the surety company for treasurer's misappropriations. Trustees of Schools v. American Sur. Co., 307 Ill. App. 308, 30 N.E.2d 513 (2 Dist. 1940).

Purpose

- Duty to Examine

The duty of the school trustees to examine the school treasurer's accounts is for the benefit of the general public and is not for the benefit of the school treasurer and his prospective bondsmen. Trustees of Schools v. American Sur. Co., 307 Ill. App. 308, 30 N.E.2d 513 (2 Dist. 1940).

§ 105 ILCS 5/5-21. Gifts, grants, donations, legacies - Title to property

Sec. 5-21. Gifts, grants, donations, legacies - Title to property. The trustees of schools in townships in which that office has not been abolished as provided in subsection (c) of Section 5-1 [105 ILCS 5/5-1] may receive any gift, grant, donation or legacy made for the use of any school or library or for any other school purpose within their jurisdiction. They are invested in their corporate capacity with the title of all school buildings and school sites, except as otherwise provided by clause (3) of subsection (b) of Section 5-1 [105 ILCS 5/5-1] with respect to school districts which have withdrawn from the jurisdiction and authority of the trustees of school. All conveyances of real estate made to the trustees of schools shall be made to them in their corporate name and to their successors in office. School districts may take and convey title to real estate to be improved by buildings or other structures for vocational or other educational training of pupils as provided in Section 10-23.3 [105 ILCS 5/10-23.3]. If legal title to the real estate to be so improved for vocational or other educational training of pupils as provided in Section 10-23.3 [105 ILCS 5/10-23.3] is not held by the school board of the school district, the trustees of schools or other school officials having legal title to those school sites or other school property shall convey to the school district the title to any such school site or other school property or portion thereof held for such district, to be used as provided in Section 10-23.3 [105 ILCS 5/10-23.3], upon being presented with a resolution adopted by at least 2/3 of the members of such board requesting such conveyance.

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If the trustees of schools for a township are no longer in existence, the school district shall take and convey title to all school buildings and school sites to be acquired within such township. If the trustees of schools had previously taken title to a school building or a school site and such trustees are no longer in existence, the school district shall by operation of law automatically be vested with title to all school buildings and school sites within such township and shall have authority to convey title thereto.

(Source: P.A. 86-334; 86-1441; 87-473; 88-155, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-21.

Effect of Amendments. The 1993 amendment by P.A. 88-155, effective January 1, 1993, in the first paragraph, created the third sentence by adding a period; in the fifth sentence of the first paragraph substituted "If legal title to the real estate to be so improved for vocational or other educational training of pupils as provided in Section 10-23.3 is not held by the school board of the school district" for "and", inserted "those" preceding "school sites", inserted "such" preceding "school site"; deleted the last sentence of the second paragraph regarding application of provisions; and made other stylistic changes.

CASE NOTES

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Delegation of Power
- Execution of Contract
Eminent Domain
- Prior Owner
Ownership of Property
- Allowed
Reverter Clause
- Interpretation
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Delegation of Power

- Execution of Contract

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Where trustees simply delegated to the school board the ministerial function of executing a sales contract and the board asserted no harm or prejudice to school interests because of this delegation of ministerial power, there was insufficient ground to affirm the trial court's ruling that the contract was void. Board of Educ. v. Sikorski, 214 Ill. App. 3d 945, 158 Ill. Dec. 623, 574 N.E.2d 736 (1 Dist. 1991).

Eminent Domain

- Prior Owner

In the absence of a showing to the contrary, it was presumed that trustees took possession of real estate, either with or without the owner's consent, under the authority granted them by the eminent domain statute then in force (see now 735 ILCS 5/17-101 et seq.), and this being true, their possession was subservient to the rights of the record owner and consistent with his title, and nothing but a clear, unequivocal and notorious disavowal of the title of the owner could thereafter render their possession adverse to him. Miner v. Yantis, 410 Ill. 401, 102 N.E.2d 524 (1951).

Ownership of Property

- Allowed

Inasmuch as a school district is a quasi-municipal corporation and has the power to take and convey title to real estate, it constitutes an entity that may be the owner of property. People v. Furman, 26 Ill. 2d 334, 186 N.E.2d 262 (1962).

Reverter Clause

- Interpretation

Where evidence disclosed that building upon school site was large and substantial and must have cost several thousand dollars and that the grantor received $50 for one acre of land, which at the time was a substantial consideration, it rebutted any actual intention that reverter clause included any buildings, because to so infer would be to imply a right to make a gift, wholly beyond the power of school trustees. Low v. Blakeney, 403 Ill. 156, 85 N.E.2d 741 (1949).

- Necessity

Where a school board did not acquire a school site by eminent domain, and where its deed did not contain a reverter clause, the school board obtained fee simple title to the land even though it decided the school site was not needed because of the increase of neighboring schools. Mattion v. Trustees of Schs., 2 Ill. App. 3d 1035, 279 N.E.2d 66 (1 Dist. 1971).

Type of Title

- Fee Simple Absolute

School trustees are not so limited that they do not have the power to acquire realty in fee simple absolute: trustees of schools may, by proper grant, take title in fee simple absolute to real estate to be used for school purposes. Miner v. Yantis, 410 Ill. 401, 102 N.E.2d 524 (1951).

Vesting of Title

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- Severence

The vesting of title in the trustees of all school houses and all school sites, and granting them with the power to sell separately school houses or school sites, or school sites with school houses, clearly indicates the legislature intended school houses and school sites to be considered severed for title or sale. Low v. Blakeney, 403 Ill. 156, 85 N.E.2d 741 (1949).

Wills

Under similar prior provision, appellants, trustees of a school, had no interest in lands where the lands were not devised to them, but were devised to "the school at Arenzville," and there was nothing in the will which disclosed any intention on the part of the testator to vest the title in the trustees of school lands or to give them any control over the property. Trustees of Schs. v. Petefish, 181 Ill. 255, 54 N.E. 920 (1899).

A title to a devise of land did not vest in appellants as trustees, although they were the only persons or corporation within the provisions of the will authorized by law to take the title, where they did not come within the designation of devisee mentioned in the will, and it could not have been inferred from any provision of the will or the language used therein that it was the intention of the testator to vest the title to the land in the trustees of school lands of the township. Trustees of Schs. v. Petefish, 181 Ill. 255, 54 N.E. 920 (1899).

§ 105 ILCS 5/5-22. Sales of school sites, buildings or other real estate

Sec. 5-22. Sales of school sites, buildings or other real estate. When in the opinion of the school board, a school site, or portion thereof, building, or site with building thereon, or any other real estate of the district, has become unnecessary or unsuitable or inconvenient for a school, or unnecessary for the uses of the district, the school board, by a resolution adopted by at least two-thirds of the board members, may sell or direct that the property be sold in the manner provided in the Local Government Property Transfer Act [50 ILCS 605/0.01 et seq.], or in the manner herein provided. Unless legal title to the land is held by the school board, the school board shall forthwith notify the trustees of schools or other school officials having legal title to such land of the terms upon which they desire the property to be sold. If the property is to be sold to another unit of local government or school district, the school board, trustees of schools, or other school officials having legal title to the land shall proceed in the manner provided in the Local Government Property Transfer Act [50 ILCS 605/0.01 et seq.]. In all other cases, except if the property is to be sold to a tenant that has leased the property for 10 or more years and that tenant is a non-profit agency, the school board, trustees of schools, or other school officials having legal title to the land shall, within 60 days after adoption of the resolution (if the school board holds legal title to the land), or within 60 days after the trustees of school or other school officials having legal title receive the notice (if the school board does not hold legal title to the land), sell the property at public sale, by auction or sealed bids, after first giving notice of the time, place, and terms thereof by notice published once each week for 3 successive weeks prior to the date of the sale if sale is by auction, or prior to the final date of acceptance of bids if sale is by sealed bids, in a newspaper published in the district or, if no such newspaper is published in the district, then in a newspaper published in the county and having a general circulation in the district; however, if territory containing a school site, building, or site with building thereon, is detached from the school district of which it is a part after proceedings have been commenced under this Section for the sale of that school site, building, or site with building thereon, but before the sale is held, then the school board, trustees of schools, or other school officials

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having legal title shall not advertise or sell that school site, building, or site with building thereon, pursuant to those proceedings. The notices may be in the following form:

NOTICE OF SALE

Notice is hereby given that on (insert date), the (here insert title of the school board, trustees of school, or other school officials holding legal title) of (county) (township No. ....., Range No. ..... P.M. .....) will sell at public sale (use applicable alternative) (at ..... (state location of sale which shall be within the district), at .... M.,) (by taking sealed bids which shall be accepted until .... M., on (insert date), at (here insert location where bids will be accepted which shall be within the district) which bids will be opened at .... M. on (insert date) at (here insert location where bids will be opened which shall be within the district) the following described property: (here describe the property), which sale will be made on the following terms to-wit: (here insert terms of sale)

....

....

....

(Here insert title of school officials holding legal title)

For purposes of determining "terms of sale" under this Section, the General Assembly declares by this clarifying and amendatory Act of 1983 that "terms of sale" are not limited to sales for cash only but include contracts for deed, mortgages, and such other seller financed terms as may be specified by the school board.

If a school board specifies a reasonable minimum selling price and that price is not met or if no bids are received, the school board may adopt a resolution determining or directing that the services of a licensed real estate broker be engaged to sell the property for a commission not to exceed 7%, contingent on the sale of the property within 120 days. If legal title to the property is not held by the school board, the trustees of schools or other school officials having legal title shall, upon receipt of the resolution, engage the services of a licensed real estate broker as directed in the resolution. The board may accept a written offer equal to or greater than the established minimum selling price for the described property. The services of a licensed real estate broker may be utilized to seek a buyer. If the board lowers the minimum selling price on the described property, the public sale procedures set forth in this Section must be followed. The board may raise the minimum selling price without repeating the public sale procedures.

In the case of a sale of property to a tenant that has leased the property for 10 or more years and that is a non-profit agency, an appraisal is required prior to the sale. If the non-

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profit agency purchases the property for less than the appraised value and subsequently sells the property, the agency may retain only a percentage of the profits that is proportional to the percentage of the appraisal, plus any improvements made by the agency while the agency was the owner, that the agency paid in the initial sale. The remaining portion of the profits made by the non-profit agency shall revert to the school district.

The deed of conveyance shall be executed by the president and clerk or secretary of the school board, trustees of schools, or other school officials having legal title to the land, and the proceeds paid to the school treasurer for the benefit of the district; provided, that the proceeds of any such sale on the island of Kaskaskia shall be paid to the State Treasurer for the use of the district and shall be disbursed by him in the same manner as income from the Kaskaskia Commons permanent school fund. The school board shall use the proceeds from the sale first to pay the principal and interest on any outstanding bonds on the property being sold, and after all such bonds have been retired, the remaining proceeds from the sale next shall be used by the school board to meet any urgent district needs as determined under Sections 2-3.12 and 17-2.11 [105 ILCS 5/2-3.12 and 105 ILCS 5/17-2.11] and then for any other authorized purpose and for deposit into any district fund. But whenever the school board of any school district determines that any schoolhouse site with or without a building thereon is of no further use to the district, and agrees with the school board of any other school district within the boundaries of which the site is situated, upon the sale thereof to that district, and agrees upon the price to be paid therefor, and the site is selected by the purchasing district in the manner required by law, then after the payment of the compensation the school board, township trustees, or other school officials having legal title to the land of the schools shall, by proper instrument in writing, convey the legal title of the site to the school board of the purchasing district, or to the trustees of schools for the use of the purchasing district, in accordance with law. The provisions of this Section shall not apply to any sale made pursuant to Section 5-23 [105 ILCS 5/5-23] or Section 5-24 [105 ILCS 5/5-24] or Section 32-4 [105 ILCS 5/32-4].

(Source: P.A. 83-1362; 87-984, § 1; 88-155, § 5; 91-357, § 101; 92-365, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-22.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1992 amendment by P.A. 87-984, effective January 1, 1993, at the beginning and middle of the first paragraph twice substituted "the Local Government Property Transfer Act" for "An Act in relation to the transfer of interest in real estate by units of local government or school districts, approved July 2, 1925, as now or hereafter amended", and in the third paragraph, in the second sentence substituted "the remaining proceeds from the sale next shall be used by the school board to meet any urgent district needs as determined under

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Sections 2-3.12 and 17-2.11 and then" for "may utilize the proceeds from the sale" and made stylistic changes throughout this section.

The 1993 amendment by P.A. 88-155, effective January 1, 1994, rewrote this section.

The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "on (insert date)" for "on the .... day of ...., 19.." three times in the form.

The 2001 amendment by P.A. 92-365, effective August 15, 2001, inserted "except if the property is to be sold to a tenant that has leased the property for 10 or more years and that tenant is a non-profit agency" in the fifth sentence of the first paragraph; and added the next-to-last paragraph, which begins "In the case of a sale of property to a tenant".

CASE NOTES

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In General

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This statute provides a form notice which may be used for the purposes of such sales by public sale, auction, or sealed bid. Harrisburg Community Unit Sch. v. Steapleton, 195 Ill. App. 3d 1020, 142 Ill. Dec. 726, 553 N.E.2d 76 (5 Dist. 1990).

Abandonment

- Effect

The natural result of an abandonment of property used for school purposes would affect only the property which was acquired for the site and would leave the trustees free to sell the buildings for the benefit of the school fund; to infer otherwise would imply a right in the trustees to make an unauthorized gift of school property upon the termination of a lease or abandonment of a site for school purposes. Miner v. Yantis, 410 Ill. 401, 102 N.E.2d 524 (1951).

Conveyance

- Complaints by Landowners

As the holder of title in fee simple, the school board was free to convey the land, upon the failure of the contemplated public purpose, regardless of complaints by other landowners. La Salle Nat'l Bank v. County Bd. of Sch. Trustees, 61 Ill. 2d 524, 337 N.E.2d 19 (1975).

Delegation of Power

- Execution of Contract

Where the trustees simply delegated to the school board the ministerial function of executing a sales contract and the board asserted no harm or prejudice to school interests because of this delegation of ministerial power, there was insufficient ground to affirm the trial court's ruling that the contract was void. Board of Educ. v. Sikorski, 214 Ill. App. 3d 945, 158 Ill. Dec. 623, 574 N.E.2d 736 (1 Dist. 1991).

Ejectment

- Limitation of Actions

Where the People of the state in general have no interest in common with the inhabitants of a school district in the sale of a schoolhouse site or the proceeds of it, the statute of limitations is a good defense to an action in ejectment brought by school trustees to recover school property. Brown v. Trustees of Sch., 224 Ill. 184, 79 N.E. 579 (1906).

Estoppel

- Board's Violations of Code

The school board will be estopped from asserting its own violation of the School Code as a ground to render a sale contract null and void ab initio. Board of Educ. v. Sikorski, 214 Ill. App. 3d 945, 158 Ill. Dec. 623, 574 N.E.2d 736 (1 Dist. 1991).

Notice

- Rescheduled Sale

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All parties who expressed an interest in the original public sale of school property were promptly and fully notified of the rescheduled date for the sale, where public notice of the rescheduled date of sale was plainly posted by the board for public viewing, where the necessity for rescheduling the date of public sale was created by litigation that was not instituted by the board, and where the new date chosen by the board was only three days after the initially scheduled date, and the board's actions did not violate the publication requirements of this section. Board of Educ. v. Sikorski, 214 Ill. App. 3d 945, 158 Ill. Dec. 623, 574 N.E.2d 736 (1 Dist. 1991).

- Sale by Sealed Bids

In situations where sealed bids are taken after no bids are received at a public sale, this statute does not require that the notice of sale be republished if the minimum selling price is met. Harrisburg Community Unit Sch. v. Steapleton, 195 Ill. App. 3d 1020, 142 Ill. Dec. 726, 553 N.E.2d 76 (5 Dist. 1990).

Ownership

- People of State

The scheme and plan of the law was to vest title to lands and buildings in the trustees and the supervision and management in the directors, but the real owners are the People of the state. Low v. Blakeney, 403 Ill. 156, 85 N.E.2d 741 (1949).

Reverter Clause

- Interpretation

Where evidence disclosed that building upon school site was large and substantial and must have cost several thousand dollars and that the grantor received $50 for one acre of land, which at the time was a substantial consideration, it rebutted any actual intention that reverter clause included any buildings, because to so infer would be to imply a right to make a gift wholly beyond the power of school trustees. Low v. Blakeney, 403 Ill. 156, 85 N.E.2d 741 (1949).

- Necessity

Where a school board did not acquire a school site by eminent domain, and where its deed did not contain a reverter clause, the school board obtained fee simple title to the land even though it decided the school site was not needed because of the increase of neighboring schools. Mattion v. Trustees of Schs., 2 Ill. App. 3d 1035, 279 N.E.2d 66 (1 Dist. 1971).

Terms of Sale

- Effect on Later Sale

This statute does not provide that all terms and conditions of sale included in the notice of public sale are binding upon the parties in a subsequent sale of the realty by sealed bid. Harrisburg Community Unit Sch. v. Steapleton, 195 Ill. App. 3d 1020, 142 Ill. Dec. 726, 553 N.E.2d 76 (5 Dist. 1990).

Title

- Eminent Domain

Where in eminent domain proceedings, judgment was entered vesting fee simple title in board of school trustees, where the jurisdiction of the court was not disputed, where property owners had

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the opportunity to contend during the eminent domain action that the school authorities would take less than a fee simple estate but did not do so and where no appeal was taken from the final judgment, the judgment was not subject to later collateral attack. La Salle Nat'l Bank v. County Bd. of Sch. Trustees, 61 Ill. 2d 524, 337 N.E.2d 19 (1975).

- Separate Title

This section placed a separate title to school buildings and school sites in the school trustees. Miner v. Yantis, 410 Ill. 401, 102 N.E.2d 524 (1951).

- Severance

The vesting of title in the trustees of all school houses and all school sites, and granting them with the power to sell separately school houses or school sites, or school sites with school houses, clearly indicates the legislature intended school houses and school sites to be considered severed for title or sale. Low v. Blakeney, 403 Ill. 156, 85 N.E.2d 741 (1949).

Practice Guides and Treatises.

Ward on Title Examinations § 4.24 Sale of School Property (§ 46) (IICLE).

§ 105 ILCS 5/5-23. Exchange of properties

Sec. 5-23. Exchange of properties. Whenever the school board, by a two-thirds majority of its members shall find and declare the following propositions and shall cause to be recorded in the Recorder's Office a certificate embodying such findings and declarations duly signed by its president and attested by its secretary or clerk, then said school board may cause the exchange of a present school site or site with building thereon for a substitutional site without a referendum approving such exchange. The above findings and declarations shall establish the following: (1) That in the opinion of the school board a school site or site with building thereon has become unsuitable or inconvenient for a school; (2) that a substitutional school site has been offered in exchange for the present site which is a suitable, convenient and desirable site for a school and (3) that the value of the substitutional site is equal to or exceeds the value of the present site for which it is to be exchanged, the criterion of value to be that of a fair market value. When such certificate has been recorded as aforesaid, the school board shall transmit a copy of said certificate to the trustees of schools or other school officials having legal title to such land and shall request the execution of a deed of conveyance by the president and clerk, or secretary, as the case may be, to be delivered upon the receipt of a good and sufficient deed conveying to the trustees of schools or other school officials entitled under the statute to hold legal title to lands in the particular school district a good title to the substitutional site; and such president and clerk, or secretary, as the case may be, shall comply with such request. If the school board of a school district holds legal title to any lands to be exchanged under this Section, the certificate shall be recorded by the school board, and the deed of conveyance shall be executed by the president and by the secretary or clerk of the school board, as the case may be, and shall be delivered when a good and sufficient deed conveying the legal title of the substitutional site to the school board is

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delivered to the school board. The certificate provided for shall set forth an accurate legal description of the present school site and of the substitutional site offered as aforesaid.

(Source: Laws 1961, p. 31; P.A. 88-155, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-23.

Effect of Amendments. The 1993 amendment by P.A. 88-155, effective January 1, 1994, added the fifth sentence.

§ 105 ILCS 5/5-24. Sale to another school district or municipality

Sec. 5-24. Sale to another school district or municipality. Whenever a petition is presented to the school board of a school district requesting the sale of school grounds and buildings to another school district or other municipality, which petition is signed by 10% of the voters of the district, the school board of the district shall adopt a resolution for the sale of such school grounds and buildings, and fix the price therefor, and shall thereupon order the secretary to certify to the proper election authorities the proposition for submission to the voters of the district in accordance with the general election law; and if a majority of the votes cast upon the proposition are in favor of the sale, then the school board, trustees of schools of the township in which the school district is located, or other school officials having legal title shall convey by its president and clerk or secretary, upon receipt of the purchase price, the property so to be sold; and the purchase price thereof shall be placed with the proper treasurer for the benefit of the school district so selling the property. The proposition shall be substantially in the following form:

```
Shall School District Number  ........, of
.......... County, Illinois, sell                YES
to School District Number  ........,
(or other municipality) of  ........ County,
Illinois, the following
described property (here describe the
ground) for the sum of  ........                  NO
Dollars?
```

(Source: P.A. 81-1489; 88-155, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-24.

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Effect of Amendments. The 1993 amendment by P.A. 88-155, effective January 1, 1994, inserted "school board" preceding "trustees of schools of the township" and inserted a comma after "is located".

CASE NOTES

Analysis
In General
Eminent Domain

In General

105 ILCS 5/5-24 is an alternate mechanism and there is nothing in 105 ILCS 5/5-24 intended to prevent a municipality from proceeding under 65 ILCS 5/11-61-2 or to preclude the judiciary from entertaining such an action. Vill. of Woodridge v. Bd. of Educ. of Cmty. High Sch. Dist. 99, 403 Ill. App. 3d 559, 342 Ill. Dec. 806, 933 N.E.2d 392, 2010 Ill. App. LEXIS 753 (2 Dist. 2010).

Eminent Domain

In an eminent domain proceeding, a justiciable controversy existed because there was no political question to be decided; the use of the criteria set forth in 65 ILCS 5/11-61-2 would not have impermissibly intruded upon the realm of the legislature. Moreover, no deference was given to the legislative enactments of the two local government entities involved in this case, nothing in the language of 105 ILCS 5/10-22.13 suggested that it was intended to divest a court of authority over disputes arising under 65 ILCS 5/11-61-2, and nothing in 105 ILCS 5/5-24, an alternative mechanism, prevented a village from proceeding under 65 ILCS 5/11-61-2. Vill. of Woodridge v. Bd. of Educ. of Cmty. High Sch. Dist. 99, 403 Ill. App. 3d 559, 342 Ill. Dec. 806, 933 N.E.2d 392, 2010 Ill. App. LEXIS 753 (2 Dist. 2010).

§ 105 ILCS 5/5-25. Moneys paid to treasurer

Sec. 5-25. Moneys paid to treasurer. The trustees of schools or township land commissioners shall cause all moneys for the use of the school districts to be paid to the proper treasurer thereof.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-25.

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§ 105 ILCS 5/5-26. Purchase of real estate in satisfaction of judgment

Sec. 5-26. Purchase of real estate in satisfaction of judgment. The trustees of schools or township land commissioners may purchase real estate in satisfaction of any judgment in any action wherein the trustees or township land commissioners or the county superintendent of schools are parties, if, in their opinion the interests of the township fund will be promoted thereby.

(Source: P.A. 79-1366.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-26.

§ 105 ILCS 5/5-27. Compromise, settlements and cancellations

Sec. 5-27. Compromise, settlements and cancellations. The trustees of schools or township land commissioners may: make all settlements with persons indebted to them in their official capacity; receive deeds to real estate in compromise; and may cancel notes, bonds, mortgages, and judgments for the benefit of any school township or district.

(Source: P.A. 84-452.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-27.

§ 105 ILCS 5/5-28. Lease or sale of lands

Sec. 5-28. Lease or sale of lands. The trustees of schools or township land commissioners may lease or sell any lands that come into their possession in the manner described in Sections 5-26 or 5-27 [105 ILCS 5/5-26 or 105 ILCS 5/5-27]. When in their opinion it is to the best interest of the schools of the township or district interested in any such lands that they be sold, the trustees shall adopt a resolution to such effect and in such resolution shall specify the time, place and terms of sale. The sale shall be at public auction and the trustees shall give notice thereof by publishing notice once each week for three successive weeks prior to the date of the sale in a newspaper published in the township to which the real estate belongs, and if the lands to be sold lie outside of the

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township to which they belong then such notice is to be published as herein provided in a newspaper published in the township in which the land lies or, if no such newspaper is published either in the township where the real estate belongs or in the township where the land lies, then in a newspaper published in the county and having a general circulation in the township affected. The notices shall describe the property and state the time, place and terms of the sale. The trustees have the right to reject any and all bids. Upon the sale being made, deed of conveyance shall be executed by the president and clerk of the trustees and the proceeds shall be paid to the township treasurer for the benefit of the township or the district interested in the lands; provided, that the proceeds of any such sale on the island of Kaskaskia shall be paid to the State Treasurer for the use of such district and shall be disbursed by him in the same manner as income from the Kaskaskia Commons permanent school funds.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-28.

§ 105 ILCS 5/5-29. Sale of school land for roads

Sec. 5-29. Sale of school land for roads. Whenever the State, county, city, village, incorporated town, township or road district authorities lay out a new road, street or highway, or alter, widen or relocate existing roads, streets or highways, and for such purposes require lands used for school sites, or land owned for school purposes, the trustees of schools or school officials having legal title to such lands have the power, with the consent of the school board of the district, to sell and convey to the State, county, city, village, incorporated town, township or road district the land required for such purposes, or may dedicate to public use for street and highway purposes as much of said school land as may be necessary to open, extend, alter, widen or relocate any street or highway which may be required by the municipal authorities to be opened, extended, altered, widened or relocated, if they are of the opinion that the benefit to accrue for the opening, extending, altering, widening or relocating of such street or highway will compensate for the strip so dedicated.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-29.

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Practice Guides and Treatises.

Illinois Jurisprudence, Property § 14:22 Authority to dedicate highways.

§ 105 ILCS 5/5-30. Easements

Sec. 5-30. Easements. The trustees of schools or other school officials having legal title to school sites or land owned for school purposes shall have the power, with the consent of the school board of the district wherein the lands are located, to grant temporary or permanent easements for sewer, water drainage or utility purposes to municipalities, corporations or persons on such terms as the school board may determine.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-30.

§ 105 ILCS 5/5-31. Division of township into districts - Territory taken from special charter district

Sec. 5-31. Division of township into districts - Territory taken from special charter district. The trustees of schools in newly organized townships shall divide the township into school districts to suit the wishes or convenience of a majority of the inhabitants of the township, and shall prepare or cause to be prepared a map of the township, on which the district or districts shall be designated by their respective numbers. The trustees of schools shall also cause any territory taken from a school district acting under a special charter to be formed and established into a school district to be governed under such general school laws of the State within thirty days from the time such territory is taken from the district acting under a special charter; and the trustees shall order an election for the purpose of electing directors for such district and shall certify such offices within ten days after the organization thereof. The first election shall be held at the next regular election for school district officers, and until the directors elected at that time take office, the Regional Superintendent may fill the office by appointment. If such territory has not sufficient inhabitants and children to establish and maintain a school, the trustees may annex it to an adjoining district or districts.

(Source: P.A. 81-1490.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-31.

§ 105 ILCS 5/5-32. Failure to maintain schools - Transportation and tuition

Sec. 5-32. Failure to maintain schools - Transportation and tuition. If any school district other than a non-high school district shall for 1 year fail to maintain within the boundaries of the school district a recognized public school as required by law, such district shall become automatically dissolved and the property and territory of such district shall be disposed of in the manner provided for the disposal of territory and property in Section 7-11 of this Act [105 ILCS 5/7-11]. However, a school district shall not be dissolved where the State Board of Education and the regional superintendent of the region in which a district has legally authorized the building of a school and legally selected a school house site and has issued bonds for such building shall jointly find and certify that such building has been authorized, site selected and bonds issued.

If a district has its territory included within a petition to form a community unit district under Article 11E of this Code, that district may not be dissolved under this Section until the end of the school year in which all proceedings relating to formation of that community unit district are finally concluded, whether by disallowance of the petition, by referendum, by a final court decision or otherwise. Until such proceedings are finally concluded, the regional superintendent having jurisdiction of the district that is not maintaining a recognized school shall assign the pupils of that district to an adjoining school district, subject to the requirement that the district from which the pupils are so assigned shall pay tuition for such pupils to the district to which the pupils are assigned, in accordance with Section 10-20.12a of this Act [105 ILCS 5/10-20.12a] or in such lesser amount as may be agreed to by the 2 districts.

However, until July 1, 1969 or one year after the entry of a final decision by a court of competent jurisdiction in the event of litigation with respect to any of the matters set forth in this Section, whichever is the later, notwithstanding the provisions of this Section, any protectorate high school district composed of contiguous and compact territory having not less than 2,000 inhabitants and which has an equalized assessed valuation of not less than $6,000,000, shall be and remain a protectorate high school district if a majority of the pupils attend a high school in a special charter district maintaining grades 1 through 12 and if during that period the voters of the district, by referendum to be ordered by the board, vote in favor of the proposition that such district maintain and operate a high school within such district, and also authorize the purchase of a school site, the building of a school building and the issuance of bonds for such purpose, which bonds are duly issued. The Board shall certify the proposition to the proper election authorities for submission, in accordance with the general election law.

The proposition to maintain and operate a high school within such district shall be in substantially the following form:

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```
Shall  ..................... High School
District Number  ..........,  ..............      YES
County, Illinois, maintain and operate
a high school within that High
School District and for the benefit               NO
of the pupils residing therein?
```

and is approved if a majority of the voters voting on the proposition is in favor thereof. The proposition of purchasing a school site, the building of a school building and the issuance of bonds for such purpose shall be submitted to the voters and may be voted upon at the same election that the proposition of maintaining and operating a high school within the district is submitted or at any regularly scheduled election subsequent thereto as may be ordered by the board. Thereupon, that protectorate high school district shall thereafter exist as a community high school district and possess and enjoy all of the powers, duties and authorities of a community high school district under Article 12 of this Act.

Throughout its existence as a protectorate district and until the legal voters residing in the district have determined to maintain and operate a high school within the district and have been authorized to purchase a school site, build a school building and to issue bonds for such purpose and which bonds are duly issued, or until the dissolution of the district as required by this Section, such protectorate district may use its funds to pay for the tuition and transportation of the pupils in such district that attend a high school in a special charter district maintaining grades 1 through 12. A protectorate high school district is defined to be a district which does not own or operate its own school buildings.

(Source: P.A. 81-1550; 94-1019, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-32.

Article 11 of this Act and Section 11-12 thereof, referred to above, have been repealed.

Section 90 of P.A. 94-1019 contains a savings provision, and section 95 contains a no acceleration or delay provision.

Effect of Amendments. The 2006 amendment by P.A. 94-1019, effective July 10, 2006, in the second paragraph substituted "Article 11E" for "Article 11" in the first sentence, and deleted "subject to Section 11-12 of this Act and" before "subject to the" in the second sentence; and in the next-to-last paragraph deleted "organized" before "under Article 12".

CASE NOTES

Analysis

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Annexation
- Authority of Trustees
Dissolution
- Failure to Maintain Public School
Jurisdiction
- Attachment of District
- Certificate of Nonrecognition
- Factual Findings
Statement of Finding
Transportation
- Number of Pupils

Annexation

- Authority of Trustees

County board of school trustees had the power to annex high school district's territory to a community unit district though another high school district also adjoined it, and to pass on the question of the propriety of its exercise of that power on the evidence presented. Spaulding Elementary Sch. v. County Bd. of Sch. Trustees, 22 Ill. App. 3d 974, 317 N.E.2d 592 (2 Dist. 1974).

Dissolution

- Failure to Maintain Public School

Prior to June 27, 1951, under the authority of former Ill. Rev. Stat., ch. 10-15 (repealed), a high school district was not required by law to maintain a school within its boundaries to comply with former Ill. Rev. Stat., ch. 122, para. 4-34 (see now this section), and therefore a high school district organized on April 18, 1949, had not failed for two consecutive years after June 30, 1949, to maintain within its boundaries a recognized public school as required by law and had not been dissolved under former Ill. Rev. Stat., ch. 122, para. 4-34. Board of Educ. v. Puffer, 411 Ill. 552, 104 N.E.2d 627 (1952).

Jurisdiction

- Attachment of District

Jurisdiction to annex one entire school district to another under 105 ILCS 5/7-11 because the district has failed for one year to maintain a public school as required by this section does not accrue to a county board of school trustees simply because the state official does not issue a certificate of recognition, nor should the taxpayers and all other parties interested in an existing school district lose an entity created by them through such an indefinite and negative process. Puckett v. County Bd. of Sch. Trustees, 36 Ill. App. 3d 535, 344 N.E.2d 487 (5 Dist. 1976).

- Certificate of Nonrecognition

The absence of a statement in the School Code that the Superintendent of Public Instruction (now the Board of Education) shall issue a certificate of nonrecognition following a finding that the school has not maintained prescribed standards does not mean that such a certificate is unnecessary or that failure to hear from the Superintendent that a district has been recognized

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then gives the County Board of School Trustees jurisdiction to act under 105 ILCS 5/7-11. Puckett v. County Bd. of Sch. Trustees, 36 Ill. App. 3d 535, 344 N.E.2d 487 (5 Dist. 1976).

- Factual Findings

Jurisdiction of a county board of school trustees to attach a school district for failure to comply with this section cannot be based on the opinion of the county board or on unsupported conclusions by the board which appear in the record; there must be tangible and sufficient proof emanating from the proper authority and introduced at a hearing to show that there is jurisdiction. Puckett v. County Bd. of Sch. Trustees, 36 Ill. App. 3d 535, 344 N.E.2d 487 (5 Dist. 1976).

Statement of Finding

Even though neither this section nor 105 ILCS 5/7-11 says in so many words that the Superintendent of Public Instruction (now the Board of Education) shall issue a statement of any kind, the dissolution of any school district is of sufficient importance and grave consequence to warrant a statement of finding and a directive from the superintendent to the proper authorities stating that such a finding has been made, that the school is no longer recognized and that it is dissolved as of a specified date. Puckett v. County Bd. of Sch. Trustees, 36 Ill. App. 3d 535, 344 N.E.2d 487 (5 Dist. 1976).

Transportation

- Number of Pupils

A district with less than six pupils was permitted to send all of them, transportation paid, to other districts. People ex rel. Gamble v. McKinstry, 379 Ill. 528, 42 N.E.2d 68 (1942).

§ 105 ILCS 5/5-34. Evidence of indebtedness not in proper form - Securities insufficient - Action taken

Sec. 5-34. Evidence of indebtedness not in proper form - Securities insufficient - Action taken. When any county superintendent of schools notifies the trustees of schools of a township, in writing, that the notes, bonds, mortgages or other evidences of indebtedness which have been taken officially by the township treasurer are not in proper form, or that securities which he has taken are insufficient, the trustees shall at once take such action as may be necessary to protect the property or fund of the township and the district. For a failure or refusal to take such action within 20 days after such notice the trustees of schools, each in his individual capacity, shall be guilty of a petty offense and shall be liable to a fine of not less than twenty-five nor more than one hundred dollars, to be recovered before any circuit court, which when collected shall be paid to the county superintendent of the proper county for the use of the schools. The payment of this fine shall not relieve the trustees from any civil liability they may have incurred from such neglect of duty.

(Source: P.A. 77-2267.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-34.

§ 105 ILCS 5/5-35. Liability of trustees for sufficiency of securities taken from township treasurer

Sec. 5-35. Liability of trustees for sufficiency of securities taken from township treasurer. Trustees of schools shall be liable, jointly and severally, for the sufficiency of securities taken from township treasurers; and in case of judgment against any treasurer and his sureties for or on account of any default of such treasurer, on which the money is not made for want of sufficient property whereon to levy for the enforcement of a judgment, a civil action may be maintained against the trustees, jointly and severally, and the amount not collected on the judgment shall be recovered with costs of the action from such trustees. If the trustees can show, satisfactorily, that the security taken from the treasurer, was, at the time it was taken, sufficient, they shall not be held liable.

(Source: P.A. 84-546.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-35.

§ 105 ILCS 5/5-36. Failure to follow law as to distribution when new district formed

Sec. 5-36. Failure to follow law as to distribution when new district formed. If the trustees of schools fail to observe the provisions of this Act in reference to the distribution of funds and property when a new district is formed, they shall be individually and jointly liable to the district interested, in a civil action to the full amount of the damages sustained by the district aggrieved.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-36.

§ 105 ILCS 5/5-37. Returns of children - Penalty for failure or false return

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Sec. 5-37. Returns of children - Penalty for failure or false return. Any trustee of schools who fails or refuses to make returns of children in his township according to the provisions of this Act, or who knowingly makes a false return thereof, is guilty of a petty offense and shall be liable to a fine of not less than $10.00 nor more than $100.00, to be recovered by an action before the circuit court of the county; which penalty, when collected, shall be added to the distributive fund of the township in which the trustee resides.

(Source: P.A. 77-2267.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 5-37.

Article 6.

Regional Board of School Trustees

§ 105 ILCS 5/6-1. Fractional townships of less than 200 persons

Sec. 6-1. Fractional townships of less than 200 persons. Each congressional township is a township for school purposes. When a fractional congressional township contains fewer than 200 persons under 21 years of age and has not heretofore been united with any township for school purposes it is hereby attached for school purposes to the adjacent congressional township having the longest territorial line bordering on such fractional township and all the provisions of this Article shall apply to such united townships the same as though they were one township.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 6-1.

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CASE NOTES

Analysis
In General
Application

In General

By enactment of former Articles 4A (see now this Article) and 4B (see now 105 ILCS 5/7-1 et seq.), the legislature recognized the inadequacies of the system of township boards of school trustees, discontinued its use, and created a county board of school trustees with broad powers in connection with the change in school boundaries generally. Spaulding Sch. Dist. No. 58 v. Waukegan City Sch. Dist. No. 61, 18 Ill. 2d 351, 164 N.E.2d 63 (1960).

Application

The general provisions of former Ill. Rev. Stat., ch. 122, para. 4A-2 (see now this section and 105 ILCS 5/6-2) were not all encompassing, but rather specifically excluded special charter districts from their operation. Spaulding Sch. Dist. No. 58 v. Waukegan City Sch. Dist. No. 61, 18 Ill. 2d 351, 164 N.E.2d 63 (1960).

§ 105 ILCS 5/6-2. Regional board; creation; membership; abolition and transfer of duties

Sec. 6-2. Regional board; creation; membership; abolition and transfer of duties. (a) There is created a regional board of school trustees for that territory in each educational service region exclusive of any school district organized under Article 34 and exclusive of any school district whose school board has been given the powers of school trustees; provided that on the effective date of this amendatory Act of 1992 the regional board of school trustees theretofore created and existing for any territory in an educational service region containing 2,000,000 or more inhabitants is abolished, the terms of office of all members of the regional board of school trustees so abolished are terminated on that effective date, and from and after that effective date all rights, powers, duties, and responsibilities that were vested in or required by law to be exercised and performed by the former regional board of school trustees shall be vested in and exercised and performed by the successors to the former regional board of school trustees as provided in subsection (b) of this Section 6-2 [105 ILCS 5/6-2]. Any school district whose board of education acts as a board of school trustees shall have within its district the powers and duties of a regional board of school trustees.

Unless abolished as provided in this Section, the regional board of school trustees, in both single county and multi-county educational service regions, shall consist of 7 members. In single county regions not more than one trustee may be a resident of any one congressional township; however, in case there are fewer than 7 congressional townships in the region then not more than two of such trustees may be residents of the same congressional township. In 2 county

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regions at least 2 trustees shall be residents of each county. In 3 or more county regions at least one trustee shall be a resident of each county. If more than 7 counties constitute the educational service region, the regional board of school trustees shall consist of one resident of each county.

The regional board of school trustees shall be a body politic and corporate by the name of "Regional Board of School Trustees of ..... County (or Counties), Illinois." Such corporation shall have perpetual existence with power to sue and be sued and to plead and be impleaded in all courts and places where judicial proceedings are had.

(b) Upon the abolition of the regional board of school trustees and the termination of the terms of office of the members of that former regional board of school trustees in an educational service region containing 2,000,000 or more inhabitants as provided in subsection (a), the trustees of schools of each township included within the territory of that educational service region that was served by the former regional board of school trustees, or if any such township is a township referred to in subsection (b) of Section 5-1 [105 ILCS 5/5-1] and there are no trustees of schools acting in that township then the school board of each school district located in that township, shall be the successors to the former regional board of school trustees. As successors to the former regional board of school trustees, the trustees of schools of each such township and the school board of each such school district, with respect to all territory included within the school township or school district served by the trustees of schools of the township or school board, shall be vested with and shall exercise and perform all rights, powers, duties, and responsibilities formerly held, exercised, and performed with respect to that territory by the regional board of school trustees abolished under subsection (a) of this Section.

Upon abolition of the regional board of school trustees in an educational service region having 2,000,000 or more inhabitants as provided in subsection (a) of this Section, all books, records, maps, papers, documents, equipment, supplies, accounts, deposits, and other personal property belonging to or subject to the control or disposition of the former regional board of school trustees (excepting only such items as may have been provided by the county board) shall be transferred and delivered to the trustees of schools of the townships and the school boards that are the successors to the former regional board of school trustees for the territory included within their respective school townships or school districts.

From and after the effective date of this amendatory Act of 1992, any reference in the School Code or any other law of this State to the regional board of school trustees or county board of school trustees shall mean, with respect to all territory within an educational service region containing 2,000,000 or more inhabitants that formerly was served by a regional board of school trustees abolished under subsection (a) of this Section, the trustees of schools of the township or the school board of the school district that is the successor to the former regional board of school trustees with respect to the territory included within that school township or school district.

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(Source: P.A. 81-1509; 87-969, § 2.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 6-2.

Effect of Amendments. The 1992 amendment P.A. 87-969, effective August 28, 1992, in the catchline inserted ";" between "board" and "creation" and between "creation" and "membership", added "; abolition and transfer of duties" at the end of catchline; added the subsection "(a)" designation prior to; inserted language beginning "; provided that" and ending "Section 6-2" in the first paragraph of subsection (a); at the beginning of the second paragraph of the present subsection (a), added "Unless abolished as provided in this Section,"; and added entire subsection (b) at the end.

CASE NOTES

Analysis

Abolished Offices
Authority
- Scope

Abolished Offices

Candidate's name was properly placed on the ballot for the April 2007 general election; while the candidate used the wrong designation for the township school trustee office he sought - member of the regional board of school trustees - the public could not have been confused because there were only two possible school trustee offices, and in Cook County, Illinois, where the township in which the candidate was seeking office was located, the office of "member of the regional board of school trustees" had been abolished in 1992 by 105 ILCS 5/6-2. Pascente v. County Officers Electoral Bd., 373 Ill. App. 3d 871, 311 Ill. Dec. 789, 869 N.E.2d 802, 2007 Ill. App. LEXIS 520 (1 Dist. 2007).

Authority

- Scope

County boards under former Ill. Rev. Stat., ch. 122, para. 4A-2 (see now this section) were given sole authority over all school boundary changes in the county, with two exceptions: school districts in cities of over 500,000 in population, and any school district whose school board has been given the powers of school trustees. Spaulding Sch. Dist. No. 58 v. Waukegan City Sch. Dist. No. 61, 18 Ill. 2d 351, 164 N.E.2d 63 (1960).

OPINIONS OF ATTORNEY GENERAL

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In General

A member of a regional board is not a county official. 1979 Op. Atty. Gen. 56.

§ 105 ILCS 5/6-2.1. [Inapplicability of certain provisions to educational service region of over 2,000,000]

Sec. 6-2.1. On and after the effective date of this amendatory Act, the provisions of Sections 6-3, 6-4, 6-5, 6-10, 6-11, 6-12, 6-17, 6-18, 6-19, 6-20, and 6-21 of this School Code [105 ILCS 5/6-3, 105 ILCS 5/6-4, 105 ILCS 5/6-5, 105 ILCS 5/6-10,105 ILCS 5/6-11 (now repealed), 105 ILCS 5/6-12, 105 ILCS 5/6-17, 105 ILCS 5/6-18, 105 ILCS 5/6-19, 105 ILCS 5/6-20, and 105 ILCS 5/6-21] shall have no application in any educational service region having a population of 2,000,000 or more inhabitants.

(Source: P.A. 87-969, § 2; 95-496, § 5.)

Note.

Section 95 of P.A. 95-496 contains a "no acceleration or delay" provision.

Section 105 ILCS 5/6-11, referred to above, was repealed by P.A. 95-496, § 10, effective August 28, 2007.

Section 105 ILCS 5/6-3, referred to in the above section, has been repealed.

Cross References.

As to districts in educational service regions of 2,000,000 or more inhabitants, see 105 ILCS 5/7-04.

Effective Date. Section 3 of P.A. 87-969 made this section effective upon becoming law. The Act was approved August 28, 1992.

Effect of Amendments. The 2007 amendment by P.A. 95-496, effective August 28, 2007, added the parenthetical.

§ 105 ILCS 5/6-3. Eligibility for trustee's office

Sec. 6-3. Eligibility for trustee's office. No person shall be eligible to the office of member of the regional board of school trustees who is not a voter of the educational service region and qualified to vote in the election for members of the regional board of school trustees, or who is a member of a school board, or who is a school board

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employee, or who holds any county office.

(Source: P.A. 78-514.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 6-3.

§ 105 ILCS 5/6-4. Election date

Sec. 6-4. Election date. Members of the regional board of school trustees shall be elected at the regular election specified in the general election law in each odd-numbered year.

(Source: P.A. 81-1490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 6-4.

CASE NOTES

Location of Polling Place

- Fairness

Where every elector was afforded an opportunity to vote for the school trustee candidate of his choice, the change in polling places did not prevent the election from being full, free, and fair. Simons v. People ex rel. Dunning, 119 Ill. 617, 9 N.E. 220 (1886).

§ 105 ILCS 5/6-5. Qualifications and eligibility of voters

Sec. 6-5. Qualifications and eligibility of voters. A person is qualified to vote at an election for members of the regional board of school trustees who is a registered voter as provided in the Election Code [10 ILCS 5/1-1 et seq.] and has resided within the State and in the voting precinct for 28 days immediately preceding the election, and who is a citizen of the United States and has attained the age of 18 years.

Whenever a unit school district is located in more than one educational service region, a qualified elector residing in that unit school district but outside of the educational service

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region administered by the regional superintendent of schools having supervision and control over that unit school district shall be eligible to vote in any election held to elect members of the regional board of school trustees for the educational service that is administered by the regional superintendent of schools who has supervision and control over that unit school district, but the elector shall not also be eligible to vote in the election held to elect the members of the regional board of school trustees for the educational service region in which the elector resides.

Not less than 100 days before each nonpartisan election, the regional superintendent of schools shall certify to the State Board of Elections a list of each unit school district under his or her supervision and control and each county in which all or any part of each of those districts is located. The State Board of Elections shall certify each of those unit school districts and counties to the appropriate election authorities within 20 days after receiving the list certified by the regional superintendent of schools.

The election authority in a single county educational service region whose regional superintendent of schools exercises supervision and control over a unit school district that is located in that single county educational service region and in one or more other educational service regions shall certify to the election authority of each of those other educational service regions in which the unit school district is located the candidates for members of the regional board of school trustees for the educational service region that is administered by the regional superintendent of schools exercising supervision and control over that unit school district.

(Source: P.A. 78-514; 78-1297; 88-535, § 16.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 6-5.

Effect of Amendments. The 1993 amendment by P.A. 88-535, effective January 26, 1994, added "Qualifications and" at the beginning of the section catchline; in the first paragraph substituted "A person is qualified" for "Any person is eligible" and substituted "an election" for "any election"; and added the second through fourth paragraphs.

§ 105 ILCS 5/6-10. Nominating petition

Sec. 6-10. Nominating petition. The nomination of candidates for members of the regional board of school trustees in single county or multi-county educational service regions shall be made by a petition filed with the county clerk, in the case of a single county region, and, in the case of multi-county regions with the State Board of Elections and signed by at least 50 voters qualified to vote at the election. In addition to the requirements of the general election law, the petition shall specify the county and township (or road district) of the candidate's residence.

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Nomination papers filed under this Section are not valid unless the candidate named therein files with the county clerk or State Board of Elections a statement of economic interests as required by the Illinois Governmental Ethics Act [5 ILCS 420/1-101 et seq.]. Such receipt shall be so filed either previously during the calendar year in which his nomination papers were filed or within the period for the filing of nomination papers in accordance with the general election law.

A candidate for membership on the regional board of school trustees, who has petitioned for nomination to fill a full term and to fill a vacant term to be voted upon at the same election, must withdraw his or her petition for nomination to the regional board of school trustees from either the full term or the vacant term by written declaration, within the time and in the manner provided by the general election law.

(Source: P.A. 81-1490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 6-10.

Cross References.

As to the general election law referred to above, see the Election Code, 10 ILCS 5/1-1 et seq.

CASE NOTES

Signatures

Fact that a candidate for the office of school trustee obtained 50 signatures on his nominating petition, which was the number required for placing his name on the ballot as a candidate for "member of regional board of school trustees," rather than the 25 signatures required for the office of school trustee, could not have caused voters confusion as to which office he was seeking because it was doubtful that the voters were aware of what number of signatures was required for the respective offices. Pascente v. County Officers Electoral Bd., 373 Ill. App. 3d 871, 311 Ill. Dec. 789, 869 N.E.2d 802, 2007 Ill. App. LEXIS 520 (1 Dist. 2007).

§ 105 ILCS 5/6-11: Repealed by P.A. 95-496, § 10, effective August 28, 2007.

§ 105 ILCS 5/6-12. Ballot form

Sec. 6-12. Ballot form. The ballots for members of the regional board of school trustees shall be in substantially one of the following forms:

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OFFICIAL BALLOT FOR SINGLE COUNTY REGIONS

For members of the Regional Board of School Trustees

(Vote for ..... Not more than ..... may serve from the same congressional township.)

( ) JOHN C. CALHOUN

of Township ..... Range .....

( ) JAMES MADISON

of Township ..... Range .....

( ) .....

of Township ..... Range .....

( ) .....

of Township ..... Range .....

OFFICIAL BALLOT FOR MULTI-COUNTY REGIONS

For members of the Regional Board of School Trustees

(Vote for ..... At least ..... shall serve from each county.)

( ) JOHN C. CALHOUN

of ..... County .....

( ) JAMES MADISON

of ..... County .....

( ) .....

of ..... County .....

( ) .....

of ..... County .....

(Source: P.A. 83-1362.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 6-12.

§ 105 ILCS 5/6-17. Election of president - Terms of members

Sec. 6-17. Election of president - Terms of members. Except as otherwise provided in Section 2A-54 of the Election Code [10 ILCS 5/2A-54], on the third Monday in May, following the first election, or if such day is a holiday then the next day, the regional superintendent of schools who shall be the ex-officio secretary of the board shall convene the newly elected regional board of school trustees for the purpose of organization. Except as provided in Section 2A-54 of the Election Code [10 ILCS 5/2A-54], at this meeting the members shall elect a president from among their number who shall serve as president for a term of 2 years and shall determine by lot the length of the term of each member so that 2 shall serve for a term of 2 years, 2 for 4 years and 3 for 6 years from the third Monday of the month following the date of their election. Except as provided in Section 2A-54 of the Election Code [10 ILCS 5/2A-54], thereafter members shall be elected to serve for a term of 6 years from the third Monday of the month following the date of their election or until their successors are elected and qualified.

All succeeding meetings for the purpose of organization shall be held on the third Monday in May following the election; however, in case the third Monday in May is a holiday the organization meeting shall be held on the next day.

If educational service regions are consolidated under Section 3A-3 or 3A-4 of this Act [105 ILCS 5/3A-3 or 105 ILCS 5/3A-4], however, the expiring terms of members of each regional board of school trustees in those regions being consolidated shall be extended so as to terminate on the first Monday of August of the year that consolidation takes effect, as defined in Section 3A-5 of this Act [105 ILCS 5/3A-5], and, on such day, the Regional Superintendent of the consolidated region shall convene all the members of each regional board of school trustees in the consolidated region, and shall by lot select from among such trustees an interim regional board of school trustees for the consolidated region in accord with the specifications as to membership and residency in Section 6-2 [105 ILCS 5/6-2]. The interim board so selected shall serve until their successors are elected at the succeeding regular election of regional school trustees and have qualified. A single regional board of school trustees shall be elected at such succeeding regular election to take office on the third Monday of the month following such election. The board elected for the consolidated region shall be convened on such third Monday of the month following such election for organizational purposes, to elect a president and determine terms for its members by lot as provided in this Section. The respective regional boards of school trustees of educational service regions involved in consolidations under Section 3A-3 or 3A-4 [105 ILCS 5/3A-3 or 105 ILCS 5/3A-4] shall cease to exist at the time the board elected for the consolidated region is so organized.

(Source: P.A. 80-231; 80-1469; 80-1494; 90-358, § 11; 93-847, § 40.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 6-17.

Section 95 of P.A. 93-847 contains a severability provision.

Effect of Amendments. The 1997 amendment by P.A. 90-358, effective January 1, 1998, in the first paragraph, in the first sentence, added at the beginning "Except as otherwise provided in Section 2A-54 of the Election Code" and substituted "May" for "January" and in the second and third sentences added at the beginning "Except as provided in Section 2A-54 of the Election Code"; and in the second paragraph, substituted "May" for "January" twice.

The 2004 amendment by P.A. 93-847, effective July 30, 2004, substituted "third Monday" for "first Monday" throughout the section.

§ 105 ILCS 5/6-18. Meeting dates - Place - Quorum

Sec. 6-18. Meeting dates - Place - Quorum. The regional board of school trustees shall hold a regular meeting in July, October, January and April. With appropriate public notice, the board may cancel its regular quarterly meeting if no issues for action have been presented to the board and it has no pending business.

All regular meetings of the board shall be held at the office of the regional superintendent.

Special meetings may be called by the president or by 4 members of the board by giving a 48-hour written notice of the meeting stating the time and place of the meeting and the purpose thereof. Public notice of meetings must also be given as prescribed in Sections 2.02 and 2.03 of the Open Meetings Act [5 ILCS 120/2.02 and 5 ILCS 120/2.03].

A majority of the members elected to the board shall constitute a quorum. Unless otherwise provided a majority vote of all the board shall be required to decide a measure.

(Source: P.A. 81-1509; 89-106, § 10; 92-172, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 6-18.

Effect of Amendments. The 1995 amendment by P.A. 89-106, effective July 1, 1995 and approved July 7, 1995, in the first paragraph added the second sentence; and in the third paragraph, in the second sentence, substituted "the Open Meetings Act" for "'An Act in relation to meetings', approved July 11, 1957, as now or hereafter amended".

The 2001 amendment by P.A. 92-172, effective January 1, 2002, substituted "hold a regular meeting in July, October, January" for "hold regular meetings on the first Monday of July, October, January and April; however, in case the first Monday of any of these months falls on a legal holiday the regular meeting shall be held on the next day" in the first sentence of the first

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paragraph.

CASE NOTES

Detachment

- Lack of Majority

Where petition for detachment and annexation was denied by the county board, the lack of a majority of the whole board was of no importance. Calvert v. Board of Educ., 41 Ill. App. 2d 389, 190 N.E.2d 640 (4 Dist. 1963).

§ 105 ILCS 5/6-19. Vacancy on regional board

Sec. 6-19. Vacancy on regional board. Any vacancy on the regional board of school trustees shall be filled from the same territory by the remaining members until the next regular election for members of the regional board of school trustees, when the vacancy shall be filled for the unexpired time. Removal of a member from the township from which such member was elected into a township which has its quota of members on the board shall constitute a vacancy.

(Source: P.A. 80-1469.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 6-19.

§ 105 ILCS 5/6-20. Expenses of members

Sec. 6-20. Expenses of members. Members of the regional board of school trustees shall serve without remuneration; however, the necessary expenses including travel attendant upon any meeting of the board shall be paid from the fund from which all other expenses of the board are paid.

(Source: P.A. 78-514.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 6-20.

§ 105 ILCS 5/6-21. Legal Representation

Sec. 6-21. Legal Representation. Upon request, the State's Attorney of the county, other than a county of over 3,000,000 inhabitants, where the regional superintendent's office is located shall act as the legal representative of the regional board of school trustees; however, where matters arise which are within the exclusive jurisdiction of another State's Attorney, that State's Attorney shall provide legal representation.

(Source: P.A. 82-236.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 6-21.

OPINIONS OF ATTORNEY GENERAL

Indemnification

- Not Authorized

Neither this section nor any other provision of the School Code authorizes a county to indemnify members of a regional board of school trustees. 1982 Op. Atty. Gen. 18.

Article 7.

Boundary Change

§ 105 ILCS 5/7-01. [Definitions]

Sec. 7-01. For purposes of this Article 7, "county board of school trustees" means the regional board of school trustees elected under Article 6 of this Act, and "county" means

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an educational service region, as determined under Article 3A of this Act.

(Source: P.A. 78-514.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-01.

CASE NOTES

Analysis
Administrative Procedure
- Delegation
- Standard on Review

Administrative Procedure

- Delegation

Legislature has designated county board of school trustees as the administrative agency to hear and determine whether petitions to change school district boundaries should be granted or denied. Long v. County Bd. of Sch. Trustees, 15 Ill. App. 2d 162, 145 N.E.2d 741 (3 Dist. 1957).

- Standard on Review

In matters involving discretion by an administrative agency, such as that exercised by a county board of school trustees, a court will not substitute its judgment for that of such agency. Long v. County Bd. of Sch. Trustees, 15 Ill. App. 2d 162, 145 N.E.2d 741 (3 Dist. 1957).

§ 105 ILCS 5/7-02. Limitations

Sec. 7-02. Limitations. The provisions of this Article providing for the change in school district boundaries by detachment, annexation, division or dissolution, or by any combination of those methods, are subject to the provisions of this Section. Whenever due to fire, explosion, tornado or any Act of God the school buildings or one or more of the principal school buildings comprising an attendance center within a school district are destroyed or substantially destroyed and rendered unfit for school purposes, the provisions of this Article shall not be available to permit a division of that district, or a dissolution, detachment or annexation of any part thereof, or any combination of such results during a period from the date of such destruction or substantial destruction until 30 days after the second regular election of board members following such destruction or

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substantial destruction. Nothing in this Section shall be deemed to prohibit the combining of the entire district with another entire district or with other entire districts during such period pursuant to the provisions of Article 11E.

(Source: P.A. 85-833; 94-1019, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-02.

Section 90 of P.A. 94-1019 contains a savings provision, and section 95 contains a no acceleration or delay provision.

Effect of Amendments. The 2006 amendment by P.A. 94-1019, effective July 10, 2006, substituted "Article 11E" for "Article 11A or 11B" in the last sentence.

§ 105 ILCS 5/7-03: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/7-04. Districts in educational service regions of 2,000,000 or more inhabitants

Sec. 7-04. Districts in educational service regions of 2,000,000 or more inhabitants. (a) In all proceedings under this Article to change by detachment, annexation, division, dissolution, or any combination of those methods the boundaries of any school district (other than a school district organized under Article 34) located in an educational service region of 2,000,000 or more inhabitants in which the regional board of school trustees is abolished as provided in subsection (a) of Section 6-2 [105 ILCS 5/6-2], the trustees of schools of the township in which that school district is located, as the successor under subsection (b) of Section 6-2 [105 ILCS 5/6-2] to the former regional board of school trustees with respect to all territory located in that school township, shall have, exercise, and perform all powers, duties, and responsibilities required under this Article to be exercised and performed in those proceedings by a regional board of school trustees; provided that if any school district affected by those proceedings is located in a school township referred to in subsection (b) of Section 5-1 [105 ILCS 5/5-1] and there are no trustees of schools acting in that township then the school board of any such district, as the successor under subsection (b) of Section 6-2 [105 ILCS 5/6-2] to the former regional board of school trustees with respect to the territory comprising that school district, shall have, exercise, and perform all powers, duties, and responsibilities required under this Article to be exercised and performed in those proceedings with respect to the territory of that school district by a regional board of school trustees; and provided further that: (i) when any school district affected by those proceedings is located not only in an

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educational service region of 2,000,000 or more inhabitants but also in 2 or more school townships in that region that each have trustees of schools of the township, then the boundaries of that school district may be changed under this Article by detachment, annexation, division, dissolution, or any combination of those methods only by the concurrent action of, taken following a joint hearing before the trustees of schools of those townships (in that educational service region) in which that school district is located; and (ii) if any part of the school district referred to in item (i) of this subsection also lies within an educational service region that has a regional board of school trustees, the boundaries of that district may be changed under this Article only by the concurrent action of, taken following a joint hearing before the trustees of schools of the townships referred to in item (i) of this subsection and the regional board of school trustees of the educational service region referred to in this item (ii) of this subsection. Whenever concurrent action and joint hearings are required under this subsection, the original petition shall be filed with the trustees of schools of the township in which the territory or greatest portion of the territory being detached is located, or if the territory is being detached from more than one educational service region then with the regional board of school trustees of the region or the trustees of schools of the township in which the territory or greatest portion of the territory being detached is located.

(b) Except as otherwise provided in this Section, all other provisions of this Article shall apply to any proceedings under this Article to change the boundaries of any school district located in an educational service region having 2,000,000 or more inhabitants in the same manner that those provisions apply to any proceedings to change the boundaries of any school district located in any other educational service region; provided, that any reference in those other provisions to the regional board of school trustees shall mean, with respect to all territory within an educational service region containing 2,000,000 or more inhabitants that formerly was served by a regional board of school trustees abolished under subsection (a) of Section 6-2 [105 ILCS 5/6-2], the trustees of schools of the township or the school board of the school district that is the successor under subsection (b) of Section 6-2 [105 ILCS 5/6-2] to the former regional board of school trustees with respect to the territory included within that school township or school district.

(Source: P.A. 87-969, § 2.)

Effective Date. Section 3 of P.A. 87-969 made this section effective upon becoming law. The Act was approved August 28, 1992.

§ 105 ILCS 5/7-1. Districts in one educational service region - changing boundaries

Sec. 7-1. Districts in one educational service region - changing boundaries. (a) School district boundaries lying entirely within any educational service region may be changed

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by detachment, annexation, division or dissolution or any combination thereof by the regional board of school trustees of such region, or by the State Superintendent of Education as provided in subsection (l) of Section 7-6 [105 ILCS 5/7-6], when petitioned by the boards of each district affected or by a majority of the registered voters in each district affected or by two-thirds of the registered voters in any territory proposed to be detached from one or more districts or in each of one or more districts proposed to be annexed to another district. Registered voters shall be determined by the official voter registration lists as of the date the petition is filed. No signatures shall be added after the date the petition is filed. If there are no registered voters within the territory proposed to be detached from one or more districts, then the petition may be signed by all of the owners of record of the real estate of the territory. Notwithstanding any other provisions of this Article, if pursuant to a petition filed under this subsection all of the territory of a school district is to be annexed to another school district, any action by the regional board of school trustees or State Superintendent of Education in granting or approving the petition and any change in school district boundaries pursuant to that action is subject to and the change in school district boundaries shall not be made except upon approval at a regular scheduled election, in the manner provided by Section 7-7.7 [105 ILCS 5/7-7.7], of a proposition for the annexation of all of the territory of that school district to the other school district.

Each page of the circulated petition shall include the full prayer of the petition, and each signature contained therein shall match the official signature and address of the registered voters as recorded in the office of the election authority having jurisdiction over the county. Each petitioner shall also record the date of his signing. Each page of the petition shall be signed by a circulator who has witnessed the signature of each petitioner on that page. The length of time for signatures to be valid, before filing of the petition, shall not exceed 6 months.

Where there is only one school building in an approved operating district, the building and building site may not be included in any detachment proceeding unless petitioned by two-thirds of the registered voters within the entire district wherein the school is located.

(b) Any elementary or high school district with 100 or more of its students residing upon territory located entirely within a military base or installation operated and maintained by the government of the United States, or any unit school district or any combination of the above mentioned districts with 300 or more of its students residing upon territory located entirely within a military base or installation operated and maintained by the government of the United States, shall, upon the filing with the regional board of school trustees of a petition adopted by resolution of the board of education or a petition signed by a majority of the registered voters residing upon such military base or installation, have all of the territory lying entirely within such military base or installation detached from such school district, and a new school district comprised of such territory shall be created. The petition shall be filed with and decided solely by the regional board of school trustees of the region in which the regional superintendent of schools has supervision of the school district affected. The regional board of school trustees shall have no authority to deny the detachment and creation of a new school district requested in a proper petition filed under this subsection. This subsection shall apply only to those school districts having a

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population of not fewer than 1,000 and not more than 500,000 residents, as ascertained by any special or general census.

The new school district shall tuition its students to the same districts that its students were previously attending and the districts from which the new district was detached shall continue to educate the students from the new district, until the federal government provides other arrangements. The federal government shall pay for the education of such children as required by Section 6 of Public Law 81-874 [105 ILCS 5/6].

If a school district created under this subsection (b) has not elected a school board and has not become operational within 2 years after the date of detachment, then this district is automatically dissolved and the territory of this district reverts to the school district from which the territory was detached or any successor district thereto. Any school district created under this subsection (b) on or before September 1, 1996 that has not elected a school board and has not been operational since September 1, 1996 is automatically dissolved on the effective date of this amendatory Act of 1999, and on this date the territory of this district reverts to the school district from which the territory was detached. For the automatic dissolution of a school district created under this subsection (b), the regional superintendent of schools who has supervision of the school district from which the territory was detached shall certify to the regional board of school trustees that the school district created under this subsection (b) has been automatically dissolved.

(Source: P.A. 87-210; 87-1080, § 1; 90-459, § 10; 91-460, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-1.

Effect of Amendments. The 1992 amendment by P.A. 87-1080, effective September 15, 1992, added the subsection (a) designation; and added subsection (b).

The 1997 amendment by P.A. 90-459, effective August 17, 1997, in the first paragraph of subsection (a), added the fifth sentence.

The 1999 amendment by P.A. 91-460, effective August 6, 1999, added the last paragraph in subsection (b), beginning with "If a school district".

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By enactment of Articles 4A (see now 105 ILCS 5/6-1 et seq.) and 4B (see now 105 ILCS 5/7-1 et seq.), the legislature recognized the inadequacies of the system of township boards of school trustees, discontinued its use, and created a county board of school trustees with broad powers in connection with the change in school boundaries generally. Spaulding Sch. Dist. No. 58 v. Waukegan City Sch. Dist. No. 61, 18 Ill. 2d 351, 164 N.E.2d 63 (1960).

The changing of boundaries of a school district is a legislative act, and in performing this function the county board of school trustees is acting as an agent of the legislature. Kinney v. County Bd. of Sch. Trustees, 7 Ill. App. 2d 286, 129 N.E.2d 292 (2 Dist. 1955); Community Unit Sch. Dist. No. 1 v. County Bd. of Sch. Trustees, 11 Ill. App. 2d 561, 137 N.E.2d 874 (2 Dist. 1956).

Administrative Procedure

- Modification of Petition Not Allowed

Board's decision granting a petition to detach property from one school district and attach it to another school district was improper because, under 105 ILCS 5/7-6, the petition had to stand on its own and be approved or rejected as a whole and the board lacked authority to modify the petition to remove an illegal school choice provision; the more specific 105 ILCS 5/7-1 et seq. controlled over the more general provisions of 735 ILCS 5/3-111 and Ill. Sup. Ct. R. 366. Bd. of Educ. of Indian Prairie Cmty. Unit Sch. Dist. No. 204 v. Reg'l Bd. of Sch. Trs., 393 Ill. App. 3d 561, 332 Ill. Dec. 698, 913 N.E.2d 630, 2009 Ill. App. LEXIS 748 (3 Dist. 2009), appeal denied, 234 Ill. 2d 517, 920 N.E.2d 1071, 2009 Ill. LEXIS 2152 (2009).

- Representation at Hearing

Where attorney for plaintiff landowners who filed a petition to detach territory from school district did not attend hearing held by board of school trustees, this did not deprive the board of its decision making power or make its decision denying the petition illegal or unfair. Bloom Tp. High Sch. Dist. v. County Bd. of Sch. Trustees, 59 Ill. App. 2d 415, 207 N.E.2d 694 (1 Dist. 1965).

- Standard of Proof

The findings of a county school board in a school district annexation proceeding must be supported by substantial evidence; where it is found that the order of such an agency is without substantial foundation in the evidence, it is the duty of the courts to set it aside. McNary v. County Bd. of Sch. Trustees, 64 Ill. App. 2d 165, 211 N.E.2d 141 (3 Dist. 1965).

Where county board denies a detachment, the findings of such an administrative agency must be based on facts established by evidence which is introduced as such, and the administrative agency may not rely on its own information to support its findings. Albrecht v. Newcomer, 53 Ill. App. 2d 24, 202 N.E.2d 353 (3 Dist. 1964).

- Standards

The standards prescribed in this Article are sufficient to serve as an adequate guide for the administrative body it establishes. Board of Educ. v. County Bd. of Sch. Trustees, 13 Ill. App. 2d 561, 142 N.E.2d 742 (3 Dist. 1957).

Annexation

- Balancing Test

In considering annexation of a portion of a school district, the county board of school trustees must consider the advantage and detriment to the districts involved, as well as to the educational program of the entire area and the educational welfare of the pupils involved and the wishes and

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desires of the residents of the affected area; where it was in fact conceded by both parties that neither the districts involved nor the area as a whole would be affected in any way by the outcome of this proceeding, the decision to annex could not stand, as it was unsupported by evidence. McNary v. County Bd. of Sch. Trustees, 64 Ill. App. 2d 165, 211 N.E.2d 141 (3 Dist. 1965).

- Special Charter District

A special charter district could annex adjoining land according to the provisions of its charter and did not have to follow the statutory annexation procedures of the School Code. People ex rel. Community Unit Sch. v. Decatur Sch., 45 Ill. App. 2d 33, 194 N.E.2d 659 (3 Dist. 1963).

Applicability

Provisions of 105 ILCS 5/7-4 are clearly applicable only to petitions granted under this section or 105 ILCS 5/7-2. Board of Educ. v. Hearing Bd., 152 Ill. App. 3d 936, 105 Ill. Dec. 906, 505 N.E.2d 32 (2 Dist. 1987).

The boundaries of existing school districts lying entirely within any county can be changed by detachment under this section, but where high school district involved in boundary change was located in two counties, this section was not applicable. Community High Sch. Dist. v. County Bd. of Sch. Trustees, 131 Ill. App. 2d 740, 267 N.E.2d 691 (3 Dist. 1971).

Boundary Change

- Factors Considered

Where there would have been a division of funds resulting from change of boundaries, such circumstance should have been taken into consideration by county board of school trustees in determining whether the boundaries should have been changed. Board of Educ. v. Board of Educ., 12 Ill. App. 2d 97, 139 N.E.2d 173 (2 Dist. 1956).

It was not in the best interests of the schools of the districts or the educational welfare of the districts or the educational welfare of the pupils that changes in boundaries be granted, and therefore petition was denied. Community Unit Sch. Dist. No. 1 v. County Bd. of Sch. Trustees, 11 Ill. App. 2d 561, 137 N.E.2d 874 (2 Dist. 1956).

Construction of Statute

- Dissolution and Annexation

This section and section 7-2a(b) of the School Code (105 ILCS 5/7-2a(b)) are not in conflict, and should be read and construed in harmony with each other; section 7-2a(b) (105 ILCS 5/7-2a(b)) does not repeal any aspect of this section. This section and section 7-2a(b) (105 ILCS 5/7-2a(b)) provide school districts with less than 5,000 residents with alternative means of effectuating dissolution and annexation. Helmig v. John F. Kennedy Community Consol. Sch. Dist. 129, 241 Ill. App. 3d 653, 182 Ill. Dec. 728, 610 N.E.2d 152 (3 Dist.), appeal denied, 151 Ill. 2d 563, 186 Ill. Dec. 381, 616 N.E.2d 334 (1993).

- Illustrative Cases

For case discussing specific objections to 105 ILCS 5/7-1 to 105 ILCS 5/7-19 as unintelligible and failing to prescribe the manner and method of election members of board of education, see People ex rel. Christensen v. Board of Educ., 393 Ill. 345, 65 N.E.2d 825 (1946).

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Creation of Districts

- Definition

The word "create" used in certain provisions of the School Code refers to new, not existing, school districts, and when a boundary change is mentioned it is in connection with an existing school district. Stehl v. County Bd. of Sch. Trustees, 7 Ill. App. 2d 257, 129 N.E.2d 297 (2 Dist. 1955).

Date of Eligibility

By setting a date for determining eligibility of all legal voters in the territory, and by setting a date to be used to count all withdrawals, reinstatements and additions, the court preserved the right of every legal voter in the territory to participate in the petitioning process. Board of Educ. v. Regional Bd., 82 Ill. App. 3d 1067, 38 Ill. Dec. 347, 403 N.E.2d 578 (1 Dist. 1980).

Detachment

- Approval

It is the petitioner's duty to get approval of both boards of school trustees in landowner's petition to detach territory from two school districts. Bloom Tp. High Sch. Dist. v. County Bd. of Sch. Trustees, 59 Ill. App. 2d 415, 207 N.E.2d 694 (1 Dist. 1965).

- Evidence

Where petition was filed to detach territory from school districts and attach territory to community unit school district, the board of school trustees could consider evidence of detachments in the past. Bloom Tp. High Sch. Dist. v. County Bd. of Sch. Trustees, 59 Ill. App. 2d 415, 207 N.E.2d 694 (1 Dist. 1965).

- Illustrative Cases

Decision of the county board of school trustees that territory should not be separated from school district was supported by substantial evidence of sound educational factors. Bloom Tp. High Sch. Dist. v. County Bd. of Sch. Trustees, 59 Ill. App. 2d 415, 207 N.E.2d 694 (1 Dist. 1965).

Where it was clear that detachment would greatly enhance the educational welfare of students in the detachment area, and the remaining students would at least benefit to the extent that each of two teachers would have a smaller group to work with, and the revenue of the district from which the territory was to be detached apparently would be very nearly adequate, if not completely so, the decision of the county board of school trustees denying detachment and annexation was contrary to the manifest weight of the evidence and was properly reversed by the court of administrative review. Calvert v. Board of Educ., 41 Ill. App. 2d 389, 190 N.E.2d 640 (4 Dist. 1963).

Evidence in the record was ample to support the findings and decision of the county board of school trustees based on the knowledge possessed by the trustees of local conditions and other factors requiring consideration in determining whether the granting of a petition for detachment would be in the best interests of the schools of the area concerned and the educational welfare of the pupils therein. Long v. County Bd. of Sch. Trustees, 15 Ill. App. 2d 162, 145 N.E.2d 741 (3 Dist. 1957).

The decision of the county board of school trustees in detaching disputed territory from the one high school district and annexing same to another high school district was amply supported by

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the evidence and was within the authority of the board. Kinney v. County Bd. of Sch. Trustees, 7 Ill. App. 2d 286, 129 N.E.2d 292 (2 Dist. 1955).

- Petition Content

Order of county board of school trustees was void because the boundaries of the territory which it sought to detach from one school district and annex to another school district were not located and defined in the initiating petition. Muddy Grade Sch. v. Raleigh Grade Sch., 53 Ill. App. 2d 223, 202 N.E.2d 653 (5 Dist. 1964).

Fact that plaintiffs did not enter their entire farm in the petition for detachment was not a basis for denial of the petition. Albrecht v. Newcomer, 53 Ill. App. 2d 24, 202 N.E.2d 353 (3 Dist. 1964).

- Right to Funds

Where detachment and annexation occurred prior to the holding of any school or the incurring of any bonded indebtedness by the district from which the detachment was made, the detached territory which contributed to the unobligated fund existing at the time of the detachment was entitled to its benefit; thus such funds became the property of the district to which the territory was annexed. Board of Educ. v. Board of Educ., 12 Ill. App. 2d 97, 139 N.E.2d 173 (2 Dist. 1956).

- Tax Effect

While it is true that with every detachment and annexation there is a resulting loss of tax based valuation and income when a portion of the territory is lost, this alone should not be considered as preventing detachment and annexation where it appears that the maximum tax rate is not being levied. Albrecht v. Newcomer, 53 Ill. App. 2d 24, 202 N.E.2d 353 (3 Dist. 1964).

With every detachment and annexation, there is a resulting loss of tax base valuation and loss in income to the district losing a portion of its territory, but this alone cannot be considered as preventing detachments and annexations when it appears that the maximum rate is not being levied by the district from which the territory is being detached. Calvert v. Board of Educ., 41 Ill. App. 2d 389, 190 N.E.2d 640 (4 Dist. 1963).

Jurisdiction

- In General

School trustees of townships seeking to form a new district had jurisdiction to consider petitions for detachment, and had power to grant or refuse the same, and the superintendents of schools and the county judge became vested with like jurisdiction and power by the appeal taken from the action of the school trustees. Hamilton v. Frette, 189 Ill. 190, 59 N.E. 588 (1901).

- Challenge and Removal of Voters

A regional board of school trustees properly ruled that it did not have jurisdiction to consider the merits of the petition because plaintiffs' survey was not the proper method of challenging and removing registered voters from the official register. Shapiro v. Regional Bd. of Sch. Trustees, 116 Ill. App. 3d 397, 71 Ill. Dec. 915, 451 N.E.2d 1282 (1 Dist. 1983).

- Form of Petition

A petition in compliance with the School Code is essential to give a regional board of school trustees jurisdiction over a detachment proceeding. Betts v. Regional Bd. of Sch. Trustees, 151 Ill. App. 3d 465, 104 Ill. Dec. 290, 502 N.E.2d 787 (2 Dist. 1986).

Where the petition was defective in its statutorily required designation of a committee of ten as required by 105 ILCS 5/7-6 to act as attorney-in-fact for all petitioners, the regional board of

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school trustees lacked jurisdiction. Betts v. Regional Bd. of Sch. Trustees, 151 Ill. App. 3d 465, 104 Ill. Dec. 290, 502 N.E.2d 787 (2 Dist. 1986).

- Invalid Act

Where the Act under the former School Law (see now this section) upon which the ex officio board was acting was unconstitutional, the record of its proceedings could not confer jurisdiction. McKeown v. Moore, 303 Ill. 448, 135 N.E. 747 (1922).

- Mandamus Pending

The removal from a township of an individual trustee who was a party defendant to pending mandamus proceedings did not affect the jurisdiction of the court to proceed against the board and its member trustees. People ex rel. Chamberlin v. Trustees of Sch., 319 Ill. App. 370, 49 N.E.2d 666 (3 Dist. 1943).

Mandamus

- Costs

Where the duty of a public official was fixed and a mandamus writ necessarily issued to compel him to perform that official duty, costs could properly be assessed against him as an individual under former Ill. Rev. Stat., ch. 87, para. 5 (see now 735 ILCS 5/14-105). People ex rel. Chamberlin v. Trustees of Sch., 319 Ill. App. 370, 49 N.E.2d 666 (3 Dist. 1943).

Ministerial Acts

Duties imposed upon Board of Trustees pursuant to former Ill. Rev. Stat., ch. 122, para. 54 (see now this section) involved an exercise of ministerial powers and not one of discretionary judicial powers. People ex rel. Chamberlin v. Trustees of Sch., 319 Ill. App. 370, 49 N.E.2d 666 (3 Dist. 1943).

Petition

- Not Required

Petition by either citizens of township, or by citizens of the districts to be affected, was not required to authorize township trustees to redistrict the township. People ex rel. Smith v. Bicker, 142 Ill. 650, 32 N.E. 671 (1892).

- Sufficiency

Signatures on a petition were not stale even if they were over one year old at the time of the hearing, because they were less than six months old at the time of the filing of the petition. Board of Educ. v. Brown, 311 Ill. App. 3d 478, 244 Ill. Dec. 68, 724 N.E.2d 956, 1999 Ill. App. LEXIS 957 (1 Dist. 1999), cert. denied, 531 U.S. 958, 121 S. Ct. 383, 148 L. Ed. 2d 295 (2000).

Signatures on a petition were valid, notwithstanding that they did not include a municipal designation along with a street address, since the identity of each and every individual could be readily determined by the name and street address when read in conjunction with the remaining contents of the petition. Board of Educ. v. Brown, 311 Ill. App. 3d 478, 244 Ill. Dec. 68, 724 N.E.2d 956, 1999 Ill. App. LEXIS 957 (1 Dist. 1999), cert. denied, 531 U.S. 958, 121 S. Ct. 383, 148 L. Ed. 2d 295 (2000).

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Petition for detachment and annexation signed by school district presidents and attested by their respective secretaries sufficiently indicated it was brought by action of the boards of the districts and sufficiently complied with this section. Calvert v. Board of Educ., 41 Ill. App. 2d 389, 190 N.E.2d 640 (4 Dist. 1963).

- Technical Errors

Where an examination of the petition revealed that if each page had contained the full prayer and the circulator's sworn verification, there would have been space left on the 81/2 x 11 form for the signature of one petitioner, at most, and if the legal description of the territory were four lines longer, compliance with the statute would be impossible, common sense dictated that appellees be allowed to state the full prayer in the first page of the petition and bind it to the second page of signatures. Seelhoefer v. Regional Bd. of Sch. Trustees, 266 Ill. App. 3d 516, 203 Ill. Dec. 701, 640 N.E.2d 360 (5 Dist. 1994).

Where no objection was made to the inapplicable section numbers referred to in the petition for detachment and annexation at the hearing, and where it was apparent that there was no doubt about the purposes of the petition and what it would accomplish if allowed, the technical errors in the proceedings before the administrative agency did not constitute grounds for reversal of the decision because the error did not materially affect the rights of a party. Calvert v. Board of Educ., 41 Ill. App. 2d 389, 190 N.E.2d 640 (4 Dist. 1963).

Post-Filing Signatures

Additional signatures as well as withdrawals and reinstatements are allowable after a petition has been filed. Board of Educ. v. Regional Bd., 82 Ill. App. 3d 1067, 38 Ill. Dec. 347, 403 N.E.2d 578 (1 Dist. 1980).

Purpose

The object and intention of this section is to empower the state Superintendent of Education to form new districts, when properly petitioned, to suit the wishes and convenience of a majority of the inhabitants of the township or townships. Fisher v. Birkey, 299 Ill. 145, 132 N.E. 498 (1921).

Record Keeping

- Necessity

Although not expressly required by the former School Law (see now this section), it was the duty of the ex officio board to keep a record of its proceedings as it would introduce inextricable confusion if the acts of a public body creating school districts and changing their boundaries were not authenticated by a record, but rested entirely in parol, subject to be proved by the testimony of witnesses. McKeown v. Moore, 303 Ill. 448, 135 N.E. 747 (1922).

Registration and Residency

- Relevance of Election Code

This section requires that the petition contain the signatures of two-thirds of the registered voters residing in the detachment area, and nowhere defines those terms, but the Election Code concerns the same subject matter, i.e., registration of voters and their residency; therefore, to this extent, the Election Code has been and must continue to be read in pari materia with the School Code. The School Code could properly have provided for a petition signed by residents of the detachment area, since all residents were affected to some extent by a detachment proceeding

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regardless of whether they were registered voters; instead, the legislature chose to limit qualified petitioners to those who are registered voters, and that can be determined only by reference to the Election Code. Shapiro v. Regional Bd. of Sch. Trustees, 116 Ill. App. 3d 397, 71 Ill. Dec. 915, 451 N.E.2d 1282 (1 Dist. 1983).

Two-Thirds Requirement

- Satisfied

Despite the fact that the first page of the petition was not signed by the circulator, the two-thirds requirement of this section was satisfied by the signatures contained on the second page. Seelhoefer v. Regional Bd. of Sch. Trustees, 266 Ill. App. 3d 516, 203 Ill. Dec. 701, 640 N.E.2d 360 (5 Dist. 1994).

- Waiver

While the petitioners may not have proved they represented two-thirds or more of the legal voters living in the proposed area of detachment, the regional board of school trustees was not in a position to challenge that requirement where it never raised the question at the hearing and its order denying the petition recited in its jurisdictional finding that the petition was in all respects in compliance with the law as to form and content and signature. Manning v. Regional Bd. of Sch. Trustees, 92 Ill. App. 3d 945, 48 Ill. Dec. 350, 416 N.E.2d 381 (2 Dist. 1981).

OPINIONS OF ATTORNEY GENERAL

Community Unit School District

- Illustrative Cases

Because North Greene District No. 3 was created pursuant to this section rather than pursuant to Article 11 of The School Code (former Ill. Rev. Stat., ch. 122. para. 11-1 et seq.), it was not a community unit school district and thus, its board of education was not subject to the restrictions contained in section 11-8 of The School Code (former Ill. Rev. Stat., ch. 122, para. 11-8). 1983 Op. Atty. Gen. 18.

§ 105 ILCS 5/7-2. Districts in two or more counties; Change of boundaries

Sec. 7-2. Districts in two or more counties; Change of boundaries. Boundaries of existing school districts lying within two or more counties may be changed by detachment, annexation, division, dissolution or any combination thereof by the concurrent action of, taken following a joint hearing before, the regional boards of school trustees of each region affected. For purposes of this Section and Section 7-6 [105 ILCS 5/7-6], an educational service region shall be deemed to be a region affected if any portion of the territory which the petition seeks to have detached from any school district is located in the region. The petition may be by the boards of each district affected, or by a majority of the legal voters residing in each district affected, or by two-thirds of the legal voters residing in any territory proposed to be detached from one or more districts or in each of

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one or more districts proposed to be annexed to another district. The original petition shall be filed with the regional board of school trustees of the region in which the territory being detached is located or if territory is being detached from more than one region then the petition shall be filed with the regional board of school trustees of the region in which the regional superintendent has supervision over the greatest portion of such territory. A certified true copy of the petition shall be filed with the regional board of school trustees of each other region affected. Notwithstanding any other provisions of this Article, if pursuant to a petition filed under this Section all of the territory of a school district is to be annexed to another school district, any action by the regional boards of school trustees in granting the petition and any changes in school district boundaries pursuant to that action is subject to and the change in school district boundaries shall not be made except upon approval at a regular scheduled election, in the manner provided by Section 7-7.7 [105 ILCS 5/7-7.7], of a proposition for the annexation of all of the territory of that school district to the other school district.

The regional board of school trustees in whose region the joint hearing on the original petition is conducted shall send a certified true copy of the transcript of the hearing to each other region affected. If there are no legal voters residing within the territory proposed to be detached from one or more districts, then the petition may be signed by all of the owners of record of the real estate of the territory. The annexing district is that district to which territory is proposed to be added.

Where there is only one school building in an approved operating district, the building and building site may not be included in any detachment proceeding unless petitioned by two-thirds of the eligible voters within the entire district wherein the school is located.

After September 23, 1983, no petition shall be filed under Sections 7-1 and 7-2 [105 ILCS 5/7-1 and 105 ILCS 5/7-2] to form a new school district under this Article except that such a petition may be filed under Section 7-1 [105 ILCS 5/7-1] to form a new school district where the boundaries of such new school district lie entirely within the boundaries of a military base or installation operated and maintained by the government of the United States.

(Source: P.A. 86-743; 87-1080, § 1; 90-459, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-2.

Effect of Amendments. The 1992 amendment by P.A. 87-1080, effective September 15, 1992, in the fourth paragraph, substituted "September 23" for "the effective date of this amendatory Act of "; and added at the end of the sentence "except that such a petition may be filed under Section 7-1 to form a new school district where the boundaries of such new school district lie entirely within the boundaries of a military base or installation operated and maintained by the government of the United States."

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The 1997 amendment by P.A. 90-459, effective August 17, 1997, in the first paragraph, added the sixth sentence; and made a stylistic change.

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Administrative Procedure

- Time of Review

In reducing the time of review from 35 days to 10 days, it was the legislative intent that the administrative proceedings should abate and that the parties should proceed anew, if they should so desire, under the provisions of the amended statute pertaining to detachment and annexation of school territory. Board of Educ. v. Brittin, 11 Ill. 2d 411, 143 N.E.2d 555 (1957).

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Applicability of Other Sections

105 ILCS 5/7-4 is clearly applicable only to petitions granted under this section or 105 ILCS 5/7-1. Board of Educ. v. Hearing Bd., 152 Ill. App. 3d 936, 105 Ill. Dec. 906, 505 N.E.2d 32 (2 Dist. 1987).

Community Unit Districts

- Creation

Where annexation of territory of two school districts left no buildings or territory in the districts annexed, the concurrent actions of the school boards did not create a new community unit district since the district annexing the territory existed both before, and after the annexation. Hogan v. Livingston County Bd., 116 Ill. App. 2d 169, 252 N.E.2d 481 (4 Dist. 1969).

Concurrent Action

- In General

The phrase "concurrent action" means the independent action of each board acting separately, each agreeing to the change. Harris v. Regional Bd., 82 Ill. App. 3d 710, 38 Ill. Dec. 18, 403 N.E.2d 33 (5 Dist. 1980).

- Decision and Hearing

105 ILCS 5/7-6, when considered in conjunction with this section, indicates that a decision denying or granting a petition must be made by both the detaching and attaching school districts; moreover, a subsequent hearing by the attaching school district is imperative when the detaching district grants the petition for detachment. Harris v. Regional Bd., 82 Ill. App. 3d 710, 38 Ill. Dec. 18, 403 N.E.2d 33 (5 Dist. 1980).

- Legislative Intent

By eliminating an annexing district from the definition of a "region affected," the legislature intended to omit any requirement that the regional board of an educational service region to which property is proposed to be annexed take concurrent action or participate in a joint hearing on the petition. Tower Hill Sch. Dist. No. 10 v. Regional Bd. of Sch. Trustees, 267 Ill. App. 3d 180, 204 Ill. Dec. 37, 640 N.E.2d 1386 (4 Dist. 1994), appeal denied, 159 Ill. 2d 581, 207 Ill. Dec. 524, 647 N.E.2d 1017 (1995).

An examination of the language used in the statutes reveals that the legislature did not intend the regional boards to vote as one body or to render a single decision based on a cumulative tally of their votes; both the current version of this section and its predecessor provide that the action to be taken by the regional boards is concurrent and the words "concurrent action" do not mean or imply joint action, but the independent action of each board acting separately, each agreeing to such change. Carver v. Bond/Fayette/Effingham Regional Bd. of Sch. Trustees, 203 Ill. App. 3d 799, 148 Ill. Dec. 829, 561 N.E.2d 135 (5 Dist. 1990), aff'd, 146 Ill. 2d 347, 167 Ill. Dec. 1, 586 N.E.2d 1273 (1992).

Contiguity

- Relevance

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A school district will not be held invalid for lack of contiguity or compactness unless it clearly appears from the evidence that children of school age residing in the district cannot reasonably avail themselves of the privileges of the school. Streator Tp. High Sch. Distr. No. 40 v. County Bd. of Sch. Trustees, 14 Ill. App. 2d 251, 144 N.E.2d 531 (2 Dist. 1957).

Detachment

- Territory

The word "territory" as used in former Ill. Rev. Stat. ch. 122, para. 4B-2 (see now this section), denotes not just a single tract of land but rather the composite of all the tracts of land included in a petition to detach; a "territory" might well include one or more separate and distinct tracts of land, and these separate and distinct tracts when combined in a petition to detach constitute the "territory" contemplated by the legislature. Streator Tp. High Sch. Distr. No. 40 v. County Bd. of Sch. Trustees, 14 Ill. App. 2d 251, 144 N.E.2d 531 (2 Dist. 1957).

Jurisdiction

- In General

County Board had jurisdiction to consider a petition seeking to detach territory from one distinct and attach it to another. Streator Tp. High Sch. Distr. No. 40 v. County Bd. of Sch. Trustees, 14 Ill. App. 2d 251, 144 N.E.2d 531 (2 Dist. 1957).

School trustees of townships seeking to form a new district had jurisdiction to consider petitions for detachment, and had power to grant or refuse the same, and the superintendents of schools and the county judge became vested with like jurisdiction and power by the appeal taken from the action of the school trustees. Hamilton v. Frette, 189 Ill. 190, 59 N.E. 588 (1901).

- Mandamus Pending

The removal from a township of an individual trustee who was a party defendant to pending mandamus proceedings did not affect the jurisdiction of the court to proceed against the board and its member trustees. People ex rel. Chamberlin v. Trustees of Sch., 319 Ill. App. 370, 49 N.E.2d 666 (3 Dist. 1943).

Mandamus

- Costs

Where the duty of a public official was fixed and a mandamus writ necessarily issued to compel him to perform that official duty, costs could properly be assessed against him as an individual under former Ill. Rev. Stat., ch. 87, para. 5 (see now 735 ILCS 5/14-105). People ex rel. Chamberlin v. Trustees of Sch., 319 Ill. App. 370, 49 N.E.2d 666 (3 Dist. 1943).

Ministerial Acts

- In General

Duty imposed upon Board of Trustees pursuant to former Ill. Rev. Stat., ch. 122, para. 54 (see now this section) was an exercise of ministerial powers and not one of discretionary judicial powers. People ex rel. Chamberlin v. Trustees of Sch., 319 Ill. App. 370, 49 N.E.2d 666 (3 Dist. 1943).

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Petition

- Not Required

Filing petition for rehearing is not a mandatory requirement under this Code (105 ILCS 5/1-1 et seq.) and therefore a court of review can hear and determine all issues raised on appeal. Community High Sch. Dist. v. County Bd. of Sch. Trustees, 131 Ill. App. 2d 740, 267 N.E.2d 691 (3 Dist. 1971).

Petition by either citizens of township, or by citizens of the districts to be affected, was not required to authorize township trustees to redistrict the township. People ex rel. Smith v. Bicker, 142 Ill. 650, 32 N.E. 671 (1892).

- Where Filed

Under this section, the original petition in an annexation proceeding is required to be filed with the county board of school trustees of the county from which the petition seeks to have the territory detached. Community High Sch. Dist. v. County Bd. of Sch. Trustees, 131 Ill. App. 2d 740, 267 N.E.2d 691 (3 Dist. 1971).

Refusal to Hold Hearing

- Administrative Review

Where a county board in a county where school attachment was sought refused to hold a hearing as required by 105 ILCS 5/7-6, there was no final administrative decision which could be reviewed by the appellate court; rather than filing a complaint for administrative review, petitioners' proper remedy would have been to petition the circuit court for a writ of mandamus to compel the county board to hold a hearing. Harris v. Regional Bd., 82 Ill. App. 3d 710, 38 Ill. Dec. 18, 403 N.E.2d 33 (5 Dist. 1980).

Required Hearing

A county board in a county where a school district attachment was sought was required to hold a hearing on the petition for attachment regardless of the fact that the county board previously denied the petition for detachment of the county in which the greatest portion of the school district was situated. Harris v. Regional Bd., 82 Ill. App. 3d 710, 38 Ill. Dec. 18, 403 N.E.2d 33 (5 Dist. 1980).

Withdrawal of Petitioners

- Loss of Jurisdiction

A county regional board of school trustees lost jurisdiction to hear a petition to change school districts where 78 of the original petitioners withdrew their names from the petition to detach, thus dropping the number of petitioners below 2/3 of the voters residing in the proposed detachment territory before the board had reached a final decision. Konald v. Board of Educ., 114 Ill. App. 3d 512, 69 Ill. Dec. 837, 448 N.E.2d 555 (2 Dist. 1983).

LEGAL PERIODICALS

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For article, "Survey of Illinois Law: Significant Developments in Education Law 2003- 2004," see 29 S. Ill. U.L.J. 603 (2005).

§ 105 ILCS 5/7-2a. [Petition for dissolution; district to which annexed; transfers]

Sec. 7-2a. (a) Except as provided in subsection (b) of this Section, any petition for dissolution filed under this Article must specify the school district or districts to which all of the territory of the district proposed to be dissolved will be annexed. Any petition for dissolution may be made by the board of education of the district or a majority of the legal voters residing in the district proposed to be dissolved. No petition from any other district affected by the proposed dissolution shall be required.

(b) Any school district with a population of less than 5,000 residents shall be dissolved and its territory annexed as provided in Section 7-11 [105 ILCS 5/7-11] by the regional board of school trustees upon the filing with the regional board of school trustees of a petition adopted by resolution of the board of education or a petition signed by a majority of the registered voters of the district seeking such dissolution. No petition shall be adopted or signed under this subsection until the board of education or the petitioners, as the case may be, shall have given at least 10 days' notice to be published once in a newspaper having general circulation in the district and shall have conducted a public informational meeting to inform the residents of the district of the proposed dissolution and to answer questions concerning the proposed dissolution. The petition shall be filed with and decided solely by the regional board of school trustees of the region in which the regional superintendent of schools has supervision of the school district being dissolved. The regional board of school trustees shall not act on a petition filed by a board of education if within 45 days after giving notice of the hearing required under Section 7-11 [105 ILCS 5/7-11] a petition in opposition to the petition of the board to dissolve, signed by a majority of the registered voters of the district, is filed with the regional board of school trustees. The regional board of school trustees shall have no authority to deny dissolution requested in a proper petition for dissolution filed under this subsection (b), but shall exercise its discretion in accordance with Section 7-11 [105 ILCS 5/7-11] on the issue of annexing the territory of a district being dissolved, giving consideration to but not being bound by the wishes expressed by the residents of the various school districts that may be affected by such annexation.

When dissolution and annexation become effective for purposes of administration and attendance as determined pursuant to Section 7-11 [105 ILCS 5/7-11], the positions of teachers in contractual continued service in the district being dissolved are transferred to an annexing district or to annexing districts pursuant to the provisions of Section 24-12 [105 ILCS 5/24-12] relative to teachers having contractual continued service status whose positions are transferred from one board to the control of a different board, and those said provisions of Section 24-12 [105 ILCS 5/24-12] shall apply to said transferred teachers. In the event that the territory is added to 2 or more districts, the decision on which positions shall be transferred to which annexing districts shall be made giving consideration to the proportionate percent of pupils transferred and the annexing districts' staffing needs, and the transfer of specific individuals into such positions shall be based

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upon the request of those teachers in order of seniority in the dissolving district. The contractual continued service status of any teacher thereby transferred to an annexing district is not lost and the different board is subject to this Act with respect to such transferred teacher in the same manner as if such teacher was that district's employee and had been its employee during the time such teacher was actually employed by the board of the dissolving district from which the position was transferred.

(Source: P.A. 86-13; 87-1215, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-2a.

Effect of Amendments. The 1992 amendment by P.A. 87-1215, effective November 23, 1992, inserted the second sentence in subsection (b).

CASE NOTES

Analysis

Constitutionality
Annexation
- Evidence Held Sufficient
Application and Construction
Dissolution Petition
- Denied
- Presumption of Validity
Form
- Consecutive Numbering
Residential Address
- No Municipality Listed
- Post Office Box
- Rural Route Number
Signatures
- Cutoff Date
- Withdrawal

Constitutionality

105 ILCS 5/7-2a(b) did not violate equal protection as it was subject to a rational basis analysis, because it did not infringe the right to vote but merely determined the manner in which that right was exercised, and it was rationally related to the legitimate state goal of promoting local control

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of education efficiently. Puffer-Hefty Sch. Dist. No. 69 v. Du Page Reg'l Bd. of Sch. Trs., 339 Ill. App. 3d 194, 273 Ill. Dec. 626, 789 N.E.2d 800, 2003 Ill. App. LEXIS 528 (2 Dist. 2003), cert. denied, 540 U.S. 1219, 124 S. Ct. 1509, 158 L. Ed. 2d 155 (2004).

Annexation

- Evidence Held Sufficient

The regional board did not breach its discretion, and its decision to allow annexation was not contrary to the manifest weight of the evidence where evidence was presented that the tax rate for property owners would be less if annexed to other school district, a greater variety of courses were offered by that district, the evidence did not indicate any substantially greater traveling would be required and a study presented indicated that the annexation to that district would be most feasible. Board of Educ. v. Regional Bd. of Sch. Trustees, 245 Ill. App. 3d 776, 185 Ill. Dec. 698, 614 N.E.2d 1383 (4 Dist. 1993).

Application and Construction

Resident who objected to a school district annexation waived his objections to the placement of an annexation referendum on a general election ballot when he tried to make his objections through the Illinois School Code, 105 ILCS 5/1-1 et seq. and not through the Illinois Election Code, 10 ILCS 5/1-1 et seq. as required under 10 ILCS 5/28-4. Libbra v. Madison County Reg'l Bd. of Sch. Trs., 346 Ill. App. 3d 867, 282 Ill. Dec. 290, 806 N.E.2d 265, 2004 Ill. App. LEXIS 238 (5 Dist. 2004).

A subsequent petition filed under subsection (b) of this section was not barred by 105 ILCS 5/7-8, where the earlier petition was dismissed for failure to designate properly a committee of 10 petitioners. Holbrook v. Regional Bd. of Sch. Trustees, 305 Ill. App. 3d 744, 238 Ill. Dec. 982, 713 N.E.2d 228 (2 Dist. 1999).

Section 7-1 (105 ILCS 5/7-1) and subsection (b) of this section of the School Code are not in conflict and, should be read and construed in harmony with each other; subsection (b) does not repeal any aspect of Section 7-1 (105 ILCS 5/7-1). Section 7-1 (105 ILCS 5/7-1) and subsection (b) provide school districts with less than 5,000 residents with alternative means of effectuating dissolution and annexation. Helmig v. John F. Kennedy Community Consol. Sch. Dist. 129, 241 Ill. App. 3d 653, 182 Ill. Dec. 728, 610 N.E.2d 152 (3 Dist.), appeal denied, 151 Ill. 2d 563, 186 Ill. Dec. 381, 616 N.E.2d 334 (1993).

Dissolution Petition

- Denied

Under 105 ILCS 5/7-2a(b), a regional board of school trustees had no authority to deny the dissolution of a school district requested in a proper petition for dissolution. Puffer-Hefty Sch. Dist. No. 69 v. Du Page Reg'l Bd. of Sch. Trs., 339 Ill. App. 3d 194, 273 Ill. Dec. 626, 789 N.E.2d 800, 2003 Ill. App. LEXIS 528 (2 Dist. 2003), cert. denied, 540 U.S. 1219, 124 S. Ct. 1509, 158 L. Ed. 2d 155 (2004).

- Presumption of Validity

The intent of the legislature in providing that the dissolution of school districts will occur upon the filing of a petition was to create a presumption of validity which attaches immediately upon the filing of the petition without the further necessity of the regional board taking final action, which presumption would be subject to a condition subsequent of filed and proved objections to the petition; however, the presumption of immediate validity of the petition is sufficient to prevent

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requests to withdraw from the petition being filed after the petition for dissolution has been filed. Board of Educ. v. Regional Bd. of Sch. Trustees, 245 Ill. App. 3d 776, 185 Ill. Dec. 698, 614 N.E.2d 1383 (4 Dist. 1993).

Form

- Consecutive Numbering

Petition that was not numbered consecutively was not invalidated as no statutory provision makes that a requirement of a subsection (b) petition. Board of Educ. v. Regional Bd. of Sch. Trustees, 247 Ill. App. 3d 555, 187 Ill. Dec. 234, 617 N.E.2d 442 (4 Dist.), appeal denied, 152 Ill. 2d 554, 190 Ill. Dec. 883, 622 N.E.2d 1200 (1993).

Residential Address

- No Municipality Listed

The address given for petitioner which listed a street and number but did not state the municipality of that address, was inadequate. Board of Educ. v. Regional Bd. of Sch. Trustees, 247 Ill. App. 3d 555, 187 Ill. Dec. 234, 617 N.E.2d 442 (4 Dist.), appeal denied, 152 Ill. 2d 554, 190 Ill. Dec. 883, 622 N.E.2d 1200 (1993).

- Post Office Box

Petitioners who listed their address as a post office box did not properly set forth their residence. Board of Educ. v. Regional Bd. of Sch. Trustees, 247 Ill. App. 3d 555, 187 Ill. Dec. 234, 617 N.E.2d 442 (4 Dist.), appeal denied, 152 Ill. 2d 554, 190 Ill. Dec. 883, 622 N.E.2d 1200 (1993).

- Rural Route Number

Addresses of petitioners which are stated in terms of a particular rural route are sufficient regardless of whether the designated mail box number for the residence of that petitioner is given. Board of Educ. v. Regional Bd. of Sch. Trustees, 247 Ill. App. 3d 555, 187 Ill. Dec. 234, 617 N.E.2d 442 (4 Dist.), appeal denied, 152 Ill. 2d 554, 190 Ill. Dec. 883, 622 N.E.2d 1200 (1993).

Signatures

- Cutoff Date

Regional board of trustees' determination to allow no more withdrawals or additions of signatures to petition as of a given date was reasonable, because cutoff date was necessary to prohibit the matter from becoming protracted. Augustine v. Regional Bd. of Sch. Trustees, 253 Ill. App. 3d 827, 193 Ill. Dec. 33, 625 N.E.2d 1154 (5 Dist. 1993), appeal denied, 155 Ill. 2d 561, 198 Ill. Dec. 539, 633 N.E.2d 1 (1994).

- Withdrawal

When a petition was circulated, pursuant to 105 ILCS 5/7-2a(b), to dissolve a school district, it was error for the regional board of school trustees with which the petition was filed to allow signatures to be withdrawn from the petition after it was filed, as the legislature provided that the requested dissolution occurred upon the filing of the petition, and a presumption of the petition's validity attached upon its filing without the further necessity of the regional board taking "final action" to determine the petition's validity. Puffer-Hefty Sch. Dist. No. 69 v. Du Page Reg'l Bd. of Sch. Trs., 339 Ill. App. 3d 194, 273 Ill. Dec. 626, 789 N.E.2d 800, 2003 Ill. App. LEXIS 528 (2 Dist. 2003), cert. denied, 540 U.S. 1219, 124 S. Ct. 1509, 158 L. Ed. 2d 155 (2004).

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One has a right to withdraw his or her signature from a petition before final action is taken on the petition. Augustine v. Regional Bd. of Sch. Trustees, 253 Ill. App. 3d 827, 193 Ill. Dec. 33, 625 N.E.2d 1154 (5 Dist. 1993), appeal denied, 155 Ill. 2d 561, 198 Ill. Dec. 539, 633 N.E.2d 1 (1994).

Petition to dissolve school district was not final until it was determined by the regional board of school trustees that signatures were proper, and petitioners' signatures could be withdrawn after the date the petition was filed. Augustine v. Regional Bd. of Sch. Trustees, 253 Ill. App. 3d 827, 193 Ill. Dec. 33, 625 N.E.2d 1154 (5 Dist. 1993), appeal denied, 155 Ill. 2d 561, 198 Ill. Dec. 539, 633 N.E.2d 1 (1994).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Significant Developments in Education Law 2003- 2004," See 29 S. Ill. U.L.J. 603 (2005).

§ 105 ILCS 5/7-2b. Annexation of non-coterminous territory from an elementary or high school district

Sec. 7-2b. Annexation of non-coterminous territory from an elementary or high school district. (a) Any contiguous portion of a high school district that constitutes 5% or less of the equalized assessed value of the district and 5% or less of the territory of the district shall upon petition of two-thirds of the registered voters of the territory proposed to be detached and annexed be so detached and annexed by the regional board of school trustees if granting such petition shall make the affected segment of the boundaries of the high school district the territory is proposed to be annexed to identical, for the entirety of such affected segment, to the boundaries of the elementary school district in which the territory is located.

Any contiguous portion of an elementary school district that constitutes 5% or less of the equalized assessed value of the district and 5% or less of the territory of the district shall upon petition of two-thirds of the registered voters of the territory proposed to be detached and annexed be so detached and annexed by the regional board of school trustees if granting such petition shall make the affected segment of the boundaries of the elementary school district the territory is proposed to be annexed to identical, for the entirety of such affected segment, to the boundaries of the high school district in which the territory is located.

The regional board of school trustees shall have no authority or discretion to hear any evidence or consider any issues except those that may be necessary to determine whether the limitations and conditions of this Section have been met.

No district may lose more than 5% of its equalized assessed value or more than 5% of its territory through petitions filed under this Section. If a petition seeks to detach territory that would result in a cumulative total of more than 5% of a district's equalized assessed value or more than 5% of the district's territory being detached under this Section, the

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petition shall be denied without prejudice to its being filed pursuant to Section 7-6 of this Code [105 ILCS 5/7-6]. Notwithstanding any other provision of this Section, this paragraph shall apply to any detachments effected pursuant to the provisions of this Section as they existed prior to the effective date of this amendatory Act of the 91st General Assembly [P.A. 91-46].

(b) At any time prior to the granting of the petition calling for the detachment and annexation of non-coterminous territory under this Section, the Committee of Ten designated in the petition may amend the petition to withdraw the detachment and annexation proposal and substitute in its place a proposal to require the school district from which the territory would have been detached to pay the per capita tuition costs for each pupil residing in the non-coterminous territory to attend the school district to which the territory would have been annexed. If such amended petition is granted, the school district from which the territory would have been detached shall pay to the school district to which the territory would have been annexed the per capita tuition costs as determined under Section 10-20.12a [105 ILCS 5/10-20.12a] for each pupil residing in the territory who chooses to attend the school district to which the territory would have been annexed. Notwithstanding the provisions of Section 10-22.5 [105 ILCS 5/10-22.5], the school district to which the territory would have been annexed shall admit any pupil that resides in the non-coterminous territory and provide such pupils with any services of the school. The payment and collection of tuition and any other such matters as may need to be resolved shall be established by an intergovernmental agreement developed between the two affected school districts. Section 7-6 of this Code [105 ILCS 5/7-6] shall apply to petitions filed under this Section except as otherwise provided in this Section.

The changes made by this amendatory Act of the 91st General Assembly [P.A. 91-46] shall not apply to petitions pending on the effective date of this amendatory Act of the 91st General Assembly [P.A. 91-46].

(Source: P.A. 87-667; 87-1270, § 2; 88-386, § 15; 89-397, § 5; 91-46, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-2b.

Effect of Amendments. The 1992 amendment by P.A. 87-1270, effective March 3, 1993, added the title of this section "Annexation of non-coterminous territory from an elementary or high school district"; inserted "the affected segment of" following "the boundaries of the district the territory is proposed to be annexed to coterminous" in the first sentence; and added the last sentence of this section.

The 1993 amendment by P.A. 88-386, effective August 20, 1993, in the first paragraph, substituted "a high school district" for "an elementary or high school district," inserted "high school" following "the boundaries of the," and substituted "identical, for the entirety of such affected segment, to the boundaries of the elementary school district in which the territory is located" for "coterminous"; and added the second paragraph.

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The 1995 amendment by P.A. 89-397, effective August 20, 1995, added the subsection (a) designation; in subsection (a), in the first through third paragraphs, substituted "State Board of Education" for "regional board of school trustees" and added subsection (b).

The 1999 amendment by P.A. 91-46, effective June 30, 1999, in each of the first two paragraphs of subsection (a) substituted "5%" for "10%", and inserted "and 5% or less of the territory of the district"; substituted "regional board of school trustees" for "State Board of Education" in each of the first three paragraphs of subsection (a); added the last paragraph of subsection (a); and in subsection (b), added the last two sentences.

CASE NOTES

Analysis

Constitutionality
- Challenge
- Delegation of Power
Construction
Evidence Sufficient
Nature of Proceedings
Recusal from Voting

Constitutionality

- Challenge

The defendant-objectors could challenge the decision of the Township Trustees, and the constitutionality of this section, in state court. Committee of Ten v. Board of Educ., 878 F. Supp. 111 (N.D. Ill. 1995).

- Delegation of Power

A review of this section makes plain that the provision grants such a privilege of organizing school districts subject to specific rules and conditions and is thus not an unconstitutional delegation of lawmaking authority. Rogers v. Desiderio, 274 Ill. App. 3d 446, 211 Ill. Dec. 547, 655 N.E.2d 930 (3 Dist. 1995), appeal denied, 164 Ill. 2d 582, 214 Ill. Dec. 331, 660 N.E.2d 1280 (1995), cert. dismissed, 517 U.S. 1164, 116 S. Ct. 1562, 134 L. Ed. 2d 662 (1996).

Construction

Appellate court erred in ruling that 105 ILCS 5/7-2b was preempted by the Equal Educational Opportunities Act of 1974 (EEOA), 20 U.S.C. § 1701 et seq.; nothing in the EEOA required educational agencies to consider the segregative effects of their actions prior to taking them, and there was no conflict with the purposes or objectives of the EEOA because any claim that a detachment/annexation decision under 105 ILCS 5/7-2b increased segregation could be considered by a circuit court pursuant to its grant of original jurisdiction over justiciable matters. Bd. of Educ. v. Bd. of Educ., 231 Ill. 2d 184, 325 Ill. Dec. 217, 897 N.E.2d 756, 2008 Ill. LEXIS 1423 (2008).

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Illinois State Board of Education is not required to consider whether a petition for detachment/annexation is in compliance with the Equal Educational Opportunities Act of 1974 (EEOA), 20 U.S.C. § 1701 et seq., when deciding whether a petition should be granted, and the EEOA does not require that states mandate educational agencies to consider the EEOA or vest them with power to consider the segregative effect of detachment/annexation petitions. Bd. of Educ. v. Bd. of Educ., 231 Ill. 2d 184, 325 Ill. Dec. 217, 897 N.E.2d 756, 2008 Ill. LEXIS 1423 (2008).

Evidence Sufficient

Evidence was sufficient to support detachment of a subdivision from one school district and attachment of that subdivision to another school district, notwithstanding that no witness testimony was presented at the hearing, as sufficient evidence was tendered by officially prepared and certified documents. Board of Educ. v. Brown, 311 Ill. App. 3d 478, 244 Ill. Dec. 68, 724 N.E.2d 956, 1999 Ill. App. LEXIS 957 (1 Dist. 1999), cert. denied, 531 U.S. 958, 121 S. Ct. 383, 148 L. Ed. 2d 295 (2000).

The plaintiffs presented map evidence sufficient to conclude that the contiguity requirement was met, and the defendants did not offer any competent evidence to the contrary. Ambrose v. Thornton Tp. Sch. Trustees, 274 Ill. App. 3d 676, 211 Ill. Dec. 83, 654 N.E.2d 545 (1 Dist. 1995), appeal denied, 164 Ill. 2d 557, 214 Ill. Dec. 316, 660 N.E.2d 1265 (1995).

Nature of Proceedings

Annexation proceeding for detaching a territory from one school district and annexing it to another is not judicial in character, and annexation proceeding cannot be properly removed to federal court because it is not a proceeding commenced "in a state court." Committee of Ten v. Board of Educ., 874 F. Supp. 200 (N.D. Ill. 1995).

Recusal from Voting

Prosser rule that a failure to vote has the legal effect of an acquiescence or concurrence applies only to municipal legislators and did not apply to a quasi-judicial regional board trustee. Jackson v. Cook County Regional Bd. of Sch. Trustees, 282 Ill. App. 3d 191, 217 Ill. Dec. 759, 667 N.E.2d 1335 (1 Dist. 1996).

§ 105 ILCS 5/7-2c. Change of school district boundaries following annexation of vacant and unincorporated territory to a contiguous municipality

Sec. 7-2c. Change of school district boundaries following annexation of vacant and unincorporated territory to a contiguous municipality. Notwithstanding any other provision of this Code, any contiguous portion of an elementary school district may be detached from that district and annexed to an adjoining elementary school district, and any contiguous portion of a high school district may be detached from that district and annexed to an adjoining high school district, upon a petition or petitions filed under this Section, when all of the following conditions are met with respect to each petition so filed:

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(1) The portion of the district to be so detached and annexed to an adjoining elementary or high school district consists of not more than 160 acres of vacant land that is located in an unincorporated area of a county of 2,000,000 or more inhabitants and, on the effective date of this amendatory Act of 1997, is contiguous to one municipality that is (i) wholly outside the elementary or high school district from which the vacant land is to be detached and (ii) located entirely within the territorial boundaries of the adjoining elementary or high school district to which the vacant land is to be annexed.

(2) The equalized assessed valuation of the taxable property located in the portion of the district that is to be so detached and annexed to the adjoining elementary or high school district constitutes less than 1% of the equalized assessed valuation of the taxable property of the district from which it is to be detached.

(3) The portion of the district to be so detached and annexed to the adjoining elementary or high school district is annexed to the contiguous municipality pursuant to a petition for annexation filed and pending with the annexing municipality upon the effective date of this amendatory Act.

A petition filed under this Section shall be filed with the State Superintendent of Education and shall be signed by all of the owners of record of the vacant land that comprises the portion of the district that is to be detached and annexed to the adjoining elementary or high school district under the provisions of this Section. The State Superintendent shall: (i) hold a hearing on the petition within 90 days after the date of filing; (ii) render a decision granting or denying the petition within 30 days after the hearing; and (iii) promptly serve a copy of the decision by certified mail, return receipt requested, upon the petitioners and upon the school boards of the school districts from which the territory described in the petition is sought to be detached and to which that territory is sought to be annexed.

The State Superintendent of Education has no authority or discretion to hear any evidence or consider any issues at the hearing except those that may be necessary to determine whether the limitations and conditions of this Section have been met.

The State Superintendent of Education: (i) shall give written notice of the time and place of the hearing, not less than 30 days prior to the date of the hearing, to the school board of the school district from which the territory described in the petition is to be detached and to the school board of the school district to which that territory is to be annexed; and (ii) shall publish notice of the hearing in a newspaper that is published in the county in which the territory described in the petition is located and that has circulation within the school districts whose school boards are entitled to written notice of the hearing.

In the event that the granting of a petition filed under this Section has become final, either through failure to seek administrative review or by the final decision of a court on review, the change in boundaries shall become effective forthwith and for all purposes, except that if the granting of the petition becomes final between September 1 and June 30 of any year, the administration of and attendance at the schools shall not be affected until the following July 1, when the change in boundaries shall become effective for all purposes. After the granting of a petition has become final, the date when the change shall become effective for purposes of administration and attendance may be accelerated or postponed

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by stipulation of the school boards of the school districts from which the territory described in the petition is detached and to which that territory is annexed.

The decision of the State Superintendent of Education shall be deemed an "administrative decision" as defined in Section 3-101 of the Administrative Review Law [735 ILCS 5/3-101], and any petitioner or the school board of a school district affected by the detachment and annexation of the territory described in the petition may within 35 days after a copy of the decision sought to be reviewed was served by certified mail upon the party affected thereby, or upon the attorney of record for such party, apply for a review of such decision in accordance with the Administrative Review Law [735 ILCS 5/3-101 et seq.], and all amendments and modifications thereof and the rules adopted pursuant thereto.

The commencement of any action for review shall operate as a supersedeas, and no further proceedings shall be had until final disposition of such review. The circuit court of the county in which the petition is filed with the State Superintendent of Education shall have sole jurisdiction to entertain a complaint for such review.

This Section: (i) is not limited by and operates independently of all other provisions of this Article, and (ii) constitutes complete authority for the granting or denial by the State Superintendent of Education of a petition filed under this Section when the conditions prescribed by this Section for the filing of that petition are met.

(Source: P.A. 90-459, § 10.)

Effective Date. Section 99 of P.A. 90-459 made this section effective upon becoming law. The Act was approved August 17, 1997.

CASE NOTES

Constitutionality

105 ILCS 5/7-2c did not constitute special legislation in violation of Ill. Const. Art. IV, § 13. The statute was not violated because the language of the statute dictated that the village to which the property owner's property was annexed only had to be either the elementary or high school district and did not require that the village be within both districts, and special legislation violation occurred because that statute did not exclude any entity from a benefit received by the property owner. Elem. Sch. Dist. 159 v. Schiller, 221 Ill. 2d 130, 302 Ill. Dec. 557, 849 N.E.2d 349, 2006 Ill. LEXIS 614 (2006).

§ 105 ILCS 5/7-2.3. Annexation to special charter district

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Sec. 7-2.3. Annexation to special charter district. (a) Notwithstanding any provision to the contrary contained in any special act or special charter of any school district, annexation of territory to any city or village under the Illinois Municipal Code [65 ILCS 5/1-1-1 et seq.] after the effective date of this amendatory Act of 1967 does not constitute annexation of the territory to the special charter school district nor detachment from any school district adjacent to the special charter district. Except as otherwise provided in subsection (b) of this Section, the boundaries of a special charter district may be changed as provided in Sections 7-2.4 through 7-2.7 [105 ILCS 5/7-2.4 through 105 ILCS 5/7-2.7].

(b) If all or any part of a special charter school district is located in a special charter city, then upon the filing with the governing body of the special charter school district of a petition to detach the territory described in the petition from the school district of which that territory forms a part and to annex that territory to the special charter school district, the territory described in the petition shall be deemed to be so detached and annexed to the special charter school district by operation of law, if all of the following conditions are met: (i) the petition is signed by at least 51% of the owners of record and 51% of the electors, if any, residing in the territory described in the petition; and (ii) the territory described in the petition is located in the special charter city, is contiguous to the special charter school district, and does not include any commercially zoned properties that are contiguous to each other and together constitute in excess of 100 acres of land and are not separated by a State highway and that are used solely for office/research and hotel purposes. A certified copy of the petition and the resolution or order of the governing body of the special charter school district evidencing the annexation of the territory described in the petition to the special charter school district by operation of law shall be mailed by that governing body to each school district affected and to the regional board or boards of school trustees for the educational service region or regions in which the affected school districts are located. A person who is a resident of any territory described in the petition at the time of its detachment from one school district and its annexation to a special charter school district under this subsection, and whose child or children are then attending school in the district from which that territory is being detached, may elect to have that child or those children and their siblings attend the schools of the district from which the territory is being detached. However, in that event the special charter school district shall pay tuition in the amount provided by law to the school district from which the territory is detached for each of those children and siblings who attend the schools of that district.

(Source: Laws 1967, p. 2540; P.A. 89-494, § 35.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-2.3.

Effect of Amendments. The 1996 amendment by P.A. 89-494, effective June 21, 1996, added the subsection (a) designation; in subsection (a), in the second sentence, added at the beginning

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"Except as otherwise provided in subsection (b) of this Section, the" and deleted "such" preceding "a special charter"; and added subsection (b).

CASE NOTES

Analysis

Effective Date
- Prerequisites
Hearing
- Due Process
Procedure
Property
- Disposition
- Final Judgment
- Interest
Tax Effect
- Consideration
- Illustrative Cases

Effective Date

- Prerequisites

The legislative intent of former Ill. Rev. Stat., ch. 122, para. 7-2.1 (see now this section) was that annexation to a special charter district and resulting disconnection from an outlying school district would be effective upon the occurrence of one of the following events: either the expiration of 60 days from and after the effective date of annexation to a municipality with a special charter school district if no petition was filed under the School Code, or if a petition was filed, then upon the expiration of 30 days after the entry of the order in the proceedings before the respective school boards, unless appeal was taken or the order set aside or suspended. Board of Educ. v. Board of Educ., 63 Ill. App. 2d 196, 211 N.E.2d 482 (2 Dist. 1965).

Hearing

- Due Process

An allegation of a constitutional violation of due process by school district which sought to prevent the annexation of two territories of its district to a special charter school district under former Ill. Rev. Stat., ch. 122, para. 7-2.1 (see now this section) did not present a debatable constitutional question where statutory procedure was followed and a decision by the special charter school district denied both of plaintiff's petitions requesting a hearing on the annexation. Board of Educ. v. Special Charter Sch., 32 Ill. 2d 342, 205 N.E.2d 459 (1965).

Procedure

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Prior to the adoption of this section in 1961, the annexation or disconnection of territory to or from a city, village or town in which a special charter school district existed effected an annexation or disconnection of the territory not only as to the municipality, but as to the special charter school district as well; the annexation or disconnection was automatic, and no method was provided for appraising the effect that it might have upon existing patterns of school administration, upon the pupils living in the annexed territory or upon the owners of property in that area. Schreiber v. County Bd. of Sch., 31 Ill. 2d 121, 198 N.E.2d 848 (1964).

Property

- Disposition

Under former Ill. Rev. Stat., ch. 122, para. 7-2.1 (see now this section), property could be returned to the outlying school district by the unilateral action of either the county board of school trustees or the board of education of the special charter district; however, if property was to be retained in the special charter school district, there had to be the bilateral and combined action of both the county board of school trustees and the board of education of the special charter school district. Board of Educ. v. Board of Educ., 63 Ill. App. 2d 196, 211 N.E.2d 482 (2 Dist. 1965).

- Final Judgment

Where defendant school district did not appeal decision returning annexed property to outlying school district, the decision became final and binding under the provisions of former Ill. Rev. Stat., ch. 110, para. 265 (see now 735 ILCS 5/3-102). Board of Educ. v. Board of Educ., 63 Ill. App. 2d 196, 211 N.E.2d 482 (2 Dist. 1965).

- Interest

Individuals do not have a property interest in the location of school district boundaries. Schreiber v. County Bd. of Sch., 31 Ill. 2d 121, 198 N.E.2d 848 (1964).

Tax Effect

- Consideration

With every detachment and annexation there is a resulting loss of tax base valuation and of income to the district losing a portion of its territory, but this alone cannot be considered as preventing detachments and annexations when it appears that the maximum rate is not being levied by the district from which the territory is being detached. Board of Educ. v. Special Charter Sch., 62 Ill. App. 2d 40, 209 N.E.2d 679 (2 Dist. 1965).

- Illustrative Cases

Under former Ill. Rev. Stat., ch. 122, para. 7-2.1 (see now this section), where a proposed detachment and annexation to a charter district would in no way have affected the educational facilities of either district, and the loss in revenue by the district losing the property appeared to be the only detrimental factor which would result from the proposed detachment, the contention of the appellant that this and the previous 100 annexations, more or less, were contrary to the public interest and the persons involved, in that they had created a situation which jeopardized the physical integrity of its school system, was not supported by the evidence, and there was no showing the district had reached its legal limit of taxation or that it was unable to continue its operations without the tax revenue from the territories in question. Board of Educ. v. Special Charter Sch., 62 Ill. App. 2d 40, 209 N.E.2d 679 (2 Dist. 1965).

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§ 105 ILCS 5/7-2.4. [Petition for annexation to or detachment from special charter district]

Sec. 7-2.4. A petition for annexation to or detachment of territory from a special charter school district must be filed with the governing body of the special charter district and a certified copy thereof must be sent to each district affected and to the county board of school trustees of the county in which the county superintendent has supervision of the district from which the petition seeks to have territory detached, or if territory is being detached from more than one county, to the county board of school trustees of the county in which the county superintendent has supervision over the greatest portion of such territory. A request for such annexation or detachment of territory may be initiated by any district affected by such proposed annexation or detachment of territory by a petition signed by the board of education and by 25% or 1,000 of the legal voters of the district, whichever is less, or by 50% of the legal voters residing in any territory requesting to be annexed or detached. If there are no legal voters residing within the territory proposed to be detached or annexed, then the petition may be signed by 50% of the owners of record of the real estate of the territory.

Where there is only one school building in an approved operating school district, the building and building site may not be included in any detachment proceeding unless the petition is signed by 2/3 of the eligible voters within the entire district wherein the school is located.

(Source: Laws 1967, p. 2540.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-2.4.

CASE NOTES

Analysis

In General
Authority
- Boundary Questions
- Statutory
Bilateral Approval
Boundaries
- Conformance with Deed
Contiguity
Evidence

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- Held Insufficient
Factors Considered
- Balancing
- Illustrative Cases
- Interest of Pupils
Substitution of Petitioners
Sufficiency of Petition
- Technical Errors

In General

As long as a constitutionally mandated system of "face schools" prevails, individual choice in the matter of paying the price of schools is subordinated to the will of a majority within boundaries determined in the manner prescribed by statute. Oakdale Community Consol. Sch. Dist. v. County Bd. of Sch. of Trustees, 12 Ill. 2d 190, 145 N.E.2d 736 (1957).

Authority

- Boundary Questions

School boards have been given the power, within the limits of a reasonable discretion, to decide school district boundary questions. Oakdale Community Consol. Sch. Dist. v. County Bd. of Sch. of Trustees, 12 Ill. 2d 190, 145 N.E.2d 736 (1957).

- Statutory

Under former Ill. Rev. Stat., ch. 122, para. 7-2.1 (see now this section), there was an express statutory authority which authorized a board to determine that annexation should not be prevented. Horth v. Board of Educ., 42 Ill. App. 2d 65, 191 N.E.2d 601 (2 Dist. 1963).

Bilateral Approval

Under former Ill. Rev. Stat., ch. 122, para. 7-2.1 (see now this section), a school board had no authority to enter an order denying a petition to prevent annexation unless a like order was entered by the county board of school trustees. Horth v. Board of Educ., 42 Ill. App. 2d 65, 191 N.E.2d 601 (2 Dist. 1963).

Under former Ill. Rev. Stat., ch. 122, para. 7-2.1 (see now this section), in the event two boards of school trustees determined that annexation should not be prevented, the boards would so order. Horth v. Board of Educ., 42 Ill. App. 2d 65, 191 N.E.2d 601 (2 Dist. 1963).

Under former Ill. Rev. Stat., ch. 122, para. 7-2.1 (see now this section), the legislature anticipated that annexation must be bilaterally approved and that prevention of annexation could be accomplished by the action of either or both boards. Horth v. Board of Educ., 42 Ill. App. 2d 65, 191 N.E.2d 601 (2 Dist. 1963).

Boundaries

- Conformance with Deed

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This section does not require that district boundaries must conform to the outlines of farms as they may exist by deed. School Dirs. v. County Bd. Of Sch. Trustees, 15 Ill. App. 2d 115, 145 N.E.2d 285 (2 Dist. 1957).

Contiguity

Decisions of the trustees that the districts affected after detachment were compact and contiguous as required by former Sec. 4B-3(c) of the School Code (see now this section) were supported by the evidence; the districts did not have to be rectangular nor the boundaries straight lines, and the proposed change did not affect the distance traveled by any pupil in the disconnected district nor his route. School Dirs. v. County Bd. Of Sch. Trustees, 15 Ill. App. 2d 115, 145 N.E.2d 285 (2 Dist. 1957).

Evidence

- Held Insufficient

Where defendant school board offered no evidence and where testimony and evidence received by way of stipulations of the parties did not support the decision of the defendant board to support annexation, the trial court correctly found the decision of the defendant board under former Ill. Rev. Stat., ch. 122, para. 7-2 (see now this section) to be contrary to the manifest weight of the evidence, and the board was not therefore authorized to annex territory. Horth v. Board of Educ., 42 Ill. App. 2d 65, 191 N.E.2d 601 (2 Dist. 1963).

Factors Considered

- Balancing

Although residents of territories within district may initiate a petition for detachment because of personal desires or convenience, much more is needed to support the board's decision to change established boundaries; the welfare of the affected districts and their pupils as a whole must control rather than the wishes of a few, and such petitions should be granted only where the benefit derived by the annexing district and the affected areas clearly outweighs the detriment resulting to the losing district and the surrounding community as a whole. Oakdale Community Consol. Sch. Dist. v. County Bd. of Sch. of Trustees, 12 Ill. 2d 190, 145 N.E.2d 736 (1957).

- Illustrative Cases

Annexation of the involved premises under former Ill. Rev. Stat., ch. 122, para. 7-2.1 (see now this section) was for the best interests of the schools of the area and the educational welfare of the pupils. Board of Educ. v. County Bd. of Sch. Trustees of McLean County, 77 Ill. App. 2d 368, 222 N.E.2d 343 (4 Dist. 1966).

Statutory standards for changing school boundaries were not satisfied where aside from the personal considerations proffered by the witnesses, there was nothing which tended to show the proposed change would effect an educational improvement in the territories as a whole, and where, on the contrary, there would be a serious depletion in the tax resources of the appellant districts and an overcrowded condition in the appellees' schools. Oakdale Community Consol. Sch. Dist. v. County Bd. of Sch. of Trustees, 12 Ill. 2d 190, 145 N.E.2d 736 (1957).

- Interest of Pupils

Neither convenience nor the wish of the residents can be determinative of what is in the best interests of the school area and the pupils therein. Board of Educ. v. County Bd. of Sch. Trustees of McLean County, 77 Ill. App. 2d 368, 222 N.E.2d 343 (4 Dist. 1966).

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This section contemplates an order changing school district boundaries only if the division of funds and assets will not jeopardize the educational resources of existing districts and if the change will serve the best interests of the pupils in the entire area. Oakdale Community Consol. Sch. Dist. v. County Bd. of Sch. of Trustees, 12 Ill. 2d 190, 145 N.E.2d 736 (1957).

Orders effecting a change of boundary must not be made in an arbitrary manner, but must be in conformity with the standards prescribed by the legislature and designed with an eye to the educational welfare of the children residing in all the territory to be affected. Oakdale Community Consol. Sch. Dist. v. County Bd. of Sch. of Trustees, 12 Ill. 2d 190, 145 N.E.2d 736 (1957).

Substitution of Petitioners

Where a school district failed to file a petition requesting relief signed by the board of education as required by this section, the district could not escape those requirements by stepping into the shoes of other petitioners who had abandoned their petitions for relief. Becker Bros. v. Kirkhus, 80 Ill. App. 3d 1127, 36 Ill. Dec. 131, 400 N.E.2d 551 (3 Dist. 1980).

Sufficiency of Petition

- Technical Errors

Where no objection was made to the inapplicable section numbers referred to in the petition for detachment and annexation at the hearing, and where it was apparent that there was no doubt about the purposes of the petition and what it would accomplish if allowed, the technical errors in the proceedings before the administrative agency did not constitute grounds for reversal of the decision because the error did not materially affect the rights of a party. Calvert v. Board of Educ., 41 Ill. App. 2d 389, 190 N.E.2d 640 (4 Dist. 1963).

§ 105 ILCS 5/7-2.5. [Objections to annexation or detachment; Hearing Board]

Sec. 7-2.5. If no objection to the annexation or detachment of territory, prayed for in a petition under Section 7-2.4 [105 ILCS 5/7-2.4], is filed with the special charter school district or with the regional board of school trustees within 30 days after notice of the filing of such petition for annexation or detachment is given to each district affected, the annexation or detachment of territory takes effect, subject to Section 7-9 of this Act [105 ILCS 5/7-9]. However, if an objection to the proposed annexation or detachment of territory is filed with either the special charter district or the regional board of school trustees, the regional board of school trustees, within 15 days after receiving the objection, shall appoint 2 legal voters from the district or districts under their jurisdiction and involved in the proposed annexation or detachment of territory, subject to the approval of the boards of education of the districts affected, and the board or governing body of the special charter district shall appoint 2 legal voters from the special charter district. Those 4 appointees shall meet within 20 days of their appointment and by a majority vote select 3 persons who reside outside the jurisdiction of the districts affected by the proposed annexation or detachment of territory and who have a demonstrated interest and background in education. If a majority of the original 4 appointees cannot agree on the selection of the 3 additional members within 20 days of their appointment, the State Board of Education shall select the 3 additional persons, subject to the same

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criteria as required when selection is by the 4 appointees. The 4 appointees and the 3 additional persons selected under this Section constitute the Hearing Board and 4 members shall constitute a quorum.

Within 10 days after the Hearing Board has been selected the regional superintendent of schools of the region in which the special charter district is located shall call an organization meeting of said Hearing Board.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-2.5.

CASE NOTES

Districts Affected

The words "districts affected" did not include the special charter district and special charter school district; thus, a special charter district which objected to detachment of certain real estate from its district did not have authority to approve or disapprove regional board's appointees to hearing board which was to hear and decide an objection to a petition for detachment or annexation of territory from the special charter school district. Board of Educ. v. Regional Bd. of Trustees, 135 Ill. App. 3d 486, 90 Ill. Dec. 355, 481 N.E.2d 1266 (2 Dist. 1985).

§ 105 ILCS 5/7-2.6. [Proceedings by Hearing Board]

Sec. 7-2.6. At its organization meeting, the Hearing Board shall choose from its membership a chairman and a secretary. The secretary shall cause a copy of such petition to be sent to each board of any district involved in the proposed boundary change, and shall cause a notice thereof to be published once in a newspaper having general circulation within the area of the territory described in the petition for the proposed change of boundaries. The petitioners shall pay the expenses of publishing the notice and of any transcript taken at the hearing. In case of an appeal from the decision of the Hearing Board, the appellants shall pay the cost of preparing the record for appeal. The notice must state when the petition was filed, the description of the territory, the prayer of the petition, and the day on which the hearing upon the petition will be held, which day may not be more than 15 nor less than 10 days after the publication of notice. Any additional expense not enumerated above shall be borne equally by the school districts involved.

The Hearing Board shall hear the petition and determine the sufficiency thereof and may adjourn the hearing from time to time or continue the matter for want of sufficient notice

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or for other good cause. The Hearing Board (a) shall hear evidence as to the school needs and conditions of the territory in the area within and adjacent thereto, and as to the ability of the districts affected to meet the standards of recognition as prescribed by the State Board of Education, (b) shall take into consideration the division of funds and assets which will result from any change of boundaries, and the will of the people of the area affected, and (c) shall determine whether it is to the best interests of the schools of the area and the educational welfare of the pupils should such change in boundaries be granted.

The Hearing Board may administer oaths, determine the admissibility of evidence and issue subpoenas for the attendance of witnesses and subpoena duces tecum for the production of documents. At the hearing any resident in the territory prescribed in the petition, or any resident in any district affected by the proposed change of boundaries, may appear in person or by attorney in support of the petition or to object to the granting of the petition and may give evidence in support of his or her position. At the conclusion of the hearing, the Hearing Board shall, within 30 days, enter an order either granting or denying the petition, and shall deliver to the petitioners, to all affected districts, to any person who has filed his or her appearance in writing at the hearing or to any attorney who appears for any person, to any objector who testified at such hearing, and to the regional superintendent of schools of each region in which the territory or any district affected lies, a certified copy of its order by registered mail.

Within 10 days after service of the certified copy of the order, any person so served may petition for rehearing and upon sufficient cause being shown, the Hearing Board may grant a rehearing. The filing of a petition for rehearing operates as a stay of enforcement until the board enters its final order on that petition for rehearing.

(Source: P.A. 84-551.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-2.6.

CASE NOTES

Analysis

Detachment
- In General
- Future and Pending
- Held Proper
- Properly Denied

Educational Welfare of Pupils
- Relevant Factors

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- Students and Schools
Evidence
- Held Sufficient
Irregular Boundaries
Judicial Review
- In General
- Evidence
Natural Gravitation to Community
Substantial Detriment
- Evidence Held Insufficient
- Financial Detriment
- Lack of Detriment

Detachment

- In General

Detachment is allowed only where the benefit to the annexing district and the detachment area clearly outweigh the detriment resulting to the detaching district and the surrounding community as a whole. Phillips v. Special Hearing Bd., 154 Ill. App. 3d 799, 105 Ill. Dec. 733, 504 N.E.2d 1251 (2 Dist. 1986).

- Future and Pending

Evidence of other future and pending detachments which might be encouraged if a petition under consideration were granted is only admissible where a succession of detachment petitions has actually been filed against the detaching district. Phillips v. Special Hearing Bd., 154 Ill. App. 3d 799, 105 Ill. Dec. 733, 504 N.E.2d 1251 (2 Dist. 1986).

- Held Proper

Where detachment area residents identified strongly with the annexing district, the annexing district schools were closer and more convenient to them, petitioners and their children were far more likely to participate in the annexing district activities, and they overwhelmingly favored detachment, the evidence did not support the hearing board's decision to deny detachment. Phillips v. Special Hearing Bd., 154 Ill. App. 3d 799, 105 Ill. Dec. 733, 504 N.E.2d 1251 (2 Dist. 1986).

Where petitioners provided evidence that disconnection would not just serve the personal and financial interests of the petitioners, but also the educational development of the future students of the proposed subdivision, and where it was clear there would be a "community of interest" closely connected with a village and that allowing the disconnection would foster the development of the "whole child" and, thus, result in an improvement in the educational picture of the entire area, the overall benefit to the annexing district outweighed the detriment resulting to the losing district. City Nat'l Bank v. Shott, 113 Ill. App. 3d 388, 69 Ill. Dec. 261, 447 N.E.2d 478 (3 Dist. 1983).

The ruling of the Hearing Board that a school district seeking detachment of a tract from a defendant district which completely surrounded the property did not show the detachment to be in the best interest of the schools and pupils was contrary to the manifest weight of the evidence. Knapp v. Hearing Bd. of the County Bd. of Sch. Trustees, 52 Ill. App. 3d 905, 10 Ill. Dec. 595, 367 N.E.2d 1361 (4 Dist. 1977).

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- Properly Denied

Where a property owner filed petition seeking to have his property detached from one school district and annexed to another, even though a misstatement of the law occurred and certain nonstatutory factors were before the board, they did not form the basis of the board's decision, and therefore the decision of the board to deny the detachment petition was not against the manifest weight of the evidence; detachment is allowed only where the benefits to the annexing district and the detachment area clearly outweigh the detriment to the detaching district and the surrounding community as a whole. Desmond v. Regional Bd. of Sch. Trustees, 183 Ill. App. 3d 316, 131 Ill. Dec. 794, 538 N.E.2d 1350 (2 Dist. 1989).

Educational Welfare of Pupils

- Relevant Factors

The hearing board must consider the following factors relative to the students' educational welfare: (1) the differences between the districts' facilities; (2) the effect detachment will have on either district's ability to meet statutory standards of recognition; (3) the effects on tax revenues; (4) the relative distances of the districts from students' homes; (5) identification of the detaching area with the annexing district; (6) the likelihood of child and parent participation in school activities, and (7) the convenience and personal desires of parents and children. Phillips v. Special Hearing Bd., 154 Ill. App. 3d 799, 105 Ill. Dec. 733, 504 N.E.2d 1251 (2 Dist. 1986).

The educational welfare of pupils should be determined by considering the "whole child" and "community of interest" factors; these factors can be evaluated simply by discerning, from the available evidence, the practical educational and social needs of the future residents, requiring a comparing of the quality and physical proximity of both the schools and the extracurricular facilities and programs offered by the competing school districts, as well as the safety of the children. City Nat'l Bank v. Shott, 113 Ill. App. 3d 388, 69 Ill. Dec. 261, 447 N.E.2d 478 (3 Dist. 1983).

- Students and Schools

Where the only significant gain which would have resulted had the petition been allowed would have been to the petitioners, the decision of the regional superintendent and the circuit court denying the petition was not contrary to the manifest weight of the evidence, as it is the welfare of the students and the districts as a whole which must govern in the consideration of an annexation petition. Carver v. Bond/Fayette/Effingham Regional Bd. of Sch. Trustees, 203 Ill. App. 3d 799, 148 Ill. Dec. 829, 561 N.E.2d 135 (5 Dist. 1990), aff'd, 146 Ill. 2d 347, 167 Ill. Dec. 1, 586 N.E.2d 1273 (1992).

Evidence

- Held Sufficient

Finding of hearing board which allowed annexation to city of a special charter district was not against the manifest weight of the evidence where there was no evidence presented which indicated that the welfare of the pupils would be enhanced by remaining in their prior unit. Rhinehart v. Board of Educ., 132 Ill. App. 2d 1078, 271 N.E.2d 104 (4 Dist. 1971).

Irregular Boundaries

A school district will not be held invalid for lack of contiguity or compactness unless it clearly appears from the evidence that children of school age residing in the district cannot reasonably

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avail themselves of the privileges of the school. Wirth v. Green, 96 Ill. App. 3d 89, 51 Ill. Dec. 642, 420 N.E.2d 1200 (3 Dist. 1981).

Judicial Review

- In General

A reviewing court must affirm a hearing board's decision unless it is contrary to the manifest weight of the evidence. Phillips v. Special Hearing Bd., 154 Ill. App. 3d 799, 105 Ill. Dec. 733, 504 N.E.2d 1251 (2 Dist. 1986).

- Evidence

Although a reviewing court is not permitted to reweigh evidence presented to the hearing board, or to substitute its judgment for that of the board, it must nevertheless examine the evidence and set aside an order not supported in fact. Phillips v. Special Hearing Bd., 154 Ill. App. 3d 799, 105 Ill. Dec. 733, 504 N.E.2d 1251 (2 Dist. 1986).

Natural Gravitation to Community

When competing districts are located in separate communities, a determination must be made in evaluating a petition for disconnection as to the natural gravitation of the future residents to one or the other community. City Nat'l Bank v. Shott, 113 Ill. App. 3d 388, 69 Ill. Dec. 261, 447 N.E.2d 478 (3 Dist. 1983).

Substantial Detriment

- Evidence Held Insufficient

Where a district produced no evidence showing that the loss of territory would render the district financially unsound and, in fact, conceded that the detachment would not impair its ability to meet statutory standards, the district's argument that its plans may have been different had detachment been anticipated was mere speculation and, where there had not been a succession of petitions filed against the district, the district failed to establish that detachment would result in a substantial detriment to it. Phillips v. Special Hearing Bd., 154 Ill. App. 3d 799, 105 Ill. Dec. 733, 504 N.E.2d 1251 (2 Dist. 1986).

- Financial Detriment

A financial detriment to the losing district alone is not a sufficient basis for denying a detachment petition unless the loss would be a serious one. Phillips v. Special Hearing Bd., 154 Ill. App. 3d 799, 105 Ill. Dec. 733, 504 N.E.2d 1251 (2 Dist. 1986).

Whether a detaching district will remain financially healthy and able to meet the statutory standards for recognition is more important than the size of the loss it must bear. Phillips v. Special Hearing Bd., 154 Ill. App. 3d 799, 105 Ill. Dec. 733, 504 N.E.2d 1251 (2 Dist. 1986).

- Lack of Detriment

Proof of no detriment to the old district is insufficient to support detachment in the absence of any evidence of benefit to the new district. First Nat'l Bank v. West Aurora Sch., 200 Ill. App. 3d 210, 146 Ill. Dec. 723, 558 N.E.2d 686 (2 Dist. 1990).

Even in the absence of substantial detriment to the losing district, petitioners must establish that detachment is in the best interests of the affected district and the educational welfare of the pupils. Phillips v. Special Hearing Bd., 154 Ill. App. 3d 799, 105 Ill. Dec. 733, 504 N.E.2d 1251

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(2 Dist. 1986).

§ 105 ILCS 5/7-2.7. [Judicial review of decision of Hearing Board]

Sec. 7-2.7. The decision of the Hearing Board under Section 7-2.6 [105 ILCS 5/7-2.6] is an "administrative decision" as defined in Section 3-101 of the Code of Civil Procedure [735 ILCS 5/3-101], and any resident who appears at the hearings, or any petitioner or board of education of any district affected, may, within 35 days after a copy of the decision sought to be reviewed was served by registered mail upon the party affected thereby, file a complaint for a review of that decision in accordance with the Administrative Review Law [735 ILCS 5/3-101 et seq.]. The commencement of any action for judicial review operates as a stay of enforcement, and no further proceedings may be had until final disposition of such review. Any change in boundaries resulting from the proceedings under Sections 7-2.4 through 7-2.7 [105 ILCS 5/7-2.4 through 105 ILCS 5/7-2.7] takes effect on the date determined pursuant to Section 7-9 of this Act [105 ILCS 5/7-9].

(Source: P.A. 84-551.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-2.7.

§ 105 ILCS 5/7-3. Limitation on change of boundaries when bond election pending

Sec. 7-3. Limitation on change of boundaries when bond election pending. No petition affecting the boundaries of any school district may be filed under this Article after the district has published the required legal notice calling an election to authorize the issuance of bonds to be held on a date not later than 21 days after such publication until the first of the following events shall have occurred (1) the voters did not authorize the issuance of the bonds at the election, (2) the bonds have been issued, (3) the school board of the district has adopted a resolution abandoning its plan to issue such bonds, or (4) seventy-five days have elapsed since such election, provided that if proceedings are pending hereunder affecting the boundaries of such district at the time the notice of such election is published or if the district is a party to litigation affecting the legality of its existence or its boundaries at such time, the said seventy-five days shall not begin to run until the final determination of such proceedings or litigation and the expiration of the time for review, appeal or rehearing, and provided that the provisions of this section shall be applicable only to the first such election called to be held in any one calendar year.

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(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-3.

§ 105 ILCS 5/7-4. Requirements for granting petitions

Sec. 7-4. Requirements for granting petitions. No petition shall be granted under Sections 7-1 or 7-2 of this Act [105 ILCS 5/7-1 or 105 ILCS 5/7-2]:

(a) If there will be any non-high school territory resulting from the granting of the petition.

(b) Unless after granting the petition any community unit district, community consolidated district, elementary district or high school district created shall have a population of at least 2,000 and an equalized assessed valuation of at least $6,000,000 based upon the last value as equalized by the Department of Revenue as of the date of filing of the petition.

(c) Unless the territory within any district so created or any district whose boundaries are affected by the granting of a petition shall after the granting thereof be compact and contiguous except as provided in Section 7-6 of this Act [105 ILCS 5/7-6]. The fact that a district is divided by territory lying within the corporate limits of the city of Chicago shall not render it non-compact or non-contiguous.

(d) To create any school district with a population of less than 2,000 unless the State Board of Education and the regional superintendent of schools for the region in which the proposed district will lie shall certify to the regional board or boards of school trustees that the creation of such new district will not interfere with the ultimate reorganization of the territory of such proposed district as a part of a district having a population of 2,000 or more. Notwithstanding any other provisions of this Article, the granting or approval by a regional board or regional boards of school trustees or by the State Superintendent of Education of a petition that under subsection (b-5) of Section 7-6 [105 ILCS 5/7-6] is required to request the submission of a proposition at a regular scheduled election for the purpose of voting for or against the annexation of the territory described in the petition to the school district proposing to annex that territory is subject to, and any change in school district boundaries pursuant to the granting of the petition shall not be made except upon, approval of the proposition at the election in the manner provided by Section 7-7.7 [105 ILCS 5/7-7.7].

(Source: P.A. 83-733; 89-397, § 5; 90-459, § 10.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-4.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, deleted subsection (e) which read "If after the change of boundaries any district has less population or equalized assessed valuation than required for the creation of a district of like type".

The 1997 amendment by P.A. 90-459, effective August 17, 1997, in subsection (d), added the second sentence.

CASE NOTES

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Application

- New District

Subsection (b) of this section applies, by its own terms, only to petitions which would have the effect of creating a new district; it is inapplicable to a petition which would merely produce a change in the boundaries of existing districts. Davis v. Regional Bd. of Sch. Trustees, 155 Ill. App. 3d 185, 108 Ill. Dec. 11, 507 N.E.2d 1352 (5 Dist. 1987).

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This section does not apply to a case of annexation of an existing school district, but it does apply to the creation of a new district. Kinney v. County Bd. of Sch. Trustees, 7 Ill. App. 2d 286, 129 N.E.2d 292 (2 Dist. 1955).

- Petitions

This section is clearly applicable only to petitions granted under 105 ILCS 5/7-1 or 105 ILCS 5/7-2. Board of Educ. v. Hearing Bd., 152 Ill. App. 3d 936, 105 Ill. Dec. 906, 505 N.E.2d 32 (2 Dist. 1987).

Boundary Changes

- Existing District

The word "create" used in certain provisions of the School Code has reference to new, not existing, school districts, and when a boundary change is mentioned it is in connection with an existing school district. Stehl v. County Bd. of Sch. Trustees, 7 Ill. App. 2d 257, 129 N.E.2d 297 (2 Dist. 1955).

Contiguity

Dividing a school district into one large parcel and several smaller islands impaired the ability of the district to furnish the necessary educational service to the islands and was adverse to the public interest. Board of Educ. v. Hearing Bd., 152 Ill. App. 3d 936, 105 Ill. Dec. 906, 505 N.E.2d 32 (2 Dist. 1987).

Where the evidence showed that, while there was a common boundary between the two districts, there also existed eight islands of territory which destroyed the contiguity of each district, the ruling of the Special Hearing Board and the trial court that the territory was contiguous was against the weight of the evidence. Board of Educ. v. Hearing Bd., 152 Ill. App. 3d 936, 105 Ill. Dec. 906, 505 N.E.2d 32 (2 Dist. 1987).

A consolidated school district was found to be sufficiently compact and contiguous under similar prior provision. People ex rel. Dittus v. Downey, 305 Ill. 153, 137 N.E. 124 (1922).

- Not Jurisdictional

Subsection (c) of this section is not jurisdictional, but rather a standard provided by the legislature as part of its legislative delegation to the county board of school trustees to be used in connection with 105 ILCS 5/7-6 in reaching decisions in detachment proceedings. Board of Educ. v. County Bd. of Sch. Trustees, 34 Ill. App. 3d 855, 340 N.E.2d 710 (5 Dist. 1976).

Detachment of "Old Type Unit"

Enactment of the School Code (105 ILCS 5/1-1 et seq.) did not eliminate "old type units" created prior to its enactment; there is nothing in the School Code or case law to support the claim that they must be treated for detachment purposes under the same standards applicable to "community unit districts." Davis v. Regional Bd. of Sch. Trustees, 155 Ill. App. 3d 185, 108 Ill. Dec. 11, 507 N.E.2d 1352 (5 Dist. 1987).

Evidence

- Held Sufficient

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Where county board of school trustees recited no valid reasons nor was any evidence presented justifying denial of the petitioners' request for detachment of certain territory from community school district, it was apparent from lower court record that petitioners presented evidence which would justify the relief requested of detachment. Zejmowicz v. County Bd. of Sch. Trustees, 133 Ill. App. 2d 735, 272 N.E.2d 783 (3 Dist. 1971).

Where there was evidence heard by the Board of School Trustees as to lack of facilities in a district and by the superintendent of the district, who testified that in his opinion recognition would be granted by the Superintendent of Public Instruction even though the area would be detached therefrom, the findings by the trustees that the granting of the petition would not cause either district to lose recognition, was not contrary to the manifest weight of the evidence, and where the trustees found that the granting of the detachment petition would be in the best interests of the schools and the educational welfare of the pupils, there was substantial evidence in the record in support of the findings. Community Unit Sch. Dist. No. 6 v. County Bd. of Sch. Trustees, 9 Ill. App. 2d 116, 132 N.E.2d 584 (3 Dist. 1956).

- Judicial Review

On review of order for detachment of certain territory from community school district in circuit court, no new or additional evidence was authorized under the Administrative Review Act (735 ILCS 5/3-101 et seq.) and the findings and conclusions of the administrative agencies on questions of fact are held to be prima facie true and correct. Zejmowicz v. County Bd. of Sch. Trustees, 133 Ill. App. 2d 735, 272 N.E.2d 783 (3 Dist. 1971).

Factors Considered

- Change in Boundaries

The plain meaning of subsection (e) is that a prerequisite for approval of a change of boundaries, such as a petition for detachment of territory from an existing community unit school district, requires compliance with the minimum population and assessed valuation standards of 105 ILCS 5/11A-2. Board of Educ. v. Regional Bd. of Sch. Trustees, 266 Ill. App. 3d 461, 203 Ill. Dec. 748, 640 N.E.2d 668 (4 Dist. 1994), appeal denied, 159 Ill. 2d 563, 207 Ill. Dec. 513, 647 N.E.2d 1006 (1995).

- Illustrative Cases

Evidence clearly showed that the best interests of the schools in concerned area and the educational welfare of the pupils, on the basis of the record would be best subserved by detachment, and while no pupils lived on petitioners' property, it was apparent that the property would be developed and settled and children and pupils would be present in the future. Zejmowicz v. County Bd. of Sch. Trustees, 133 Ill. App. 2d 735, 272 N.E.2d 783 (3 Dist. 1971).

Where record indicated that petitioners for detachment of certain territory from community school district were within the geographical, social and economic area revolving about the village sought to be joined, and the community interest was centered in the area of school district rather than in the district from which petitioners sought detachment, and there was nothing in the record which indicated any detriment would result to the district if the premises were detached, other than loss of tax revenue from the particular lots, the decision of circuit court in reversing the order denying detachment was proper and was affirmed. Zejmowicz v. County Bd. of Sch. Trustees, 133 Ill. App. 2d 735, 272 N.E.2d 783 (3 Dist. 1971).

Where it was shown that in the event petition for detachment of certain territory from community school district was granted, both school districts would continue to have a population of more than 2,000 and an assessed valuation of more than $6,000,000, that no non-high school district would be created and that both districts would remain compact and contiguous, it was proper for

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the county boards of school trustees to consider the petitions. Zejmowicz v. County Bd. of Sch. Trustees, 133 Ill. App. 2d 735, 272 N.E.2d 783 (3 Dist. 1971).

Petition Content

- Technical Errors

Where no objection was made to inapplicable section numbers referred to in petition for detachment and annexation at hearing, and where it was apparent that there was no doubt about the purposes of the petition and what it would accomplish if allowed, the technical errors in the proceedings before the administrative agency did not constitute grounds for reversal of the decision because the error did not materially affect the rights of a party. Calvert v. Board of Educ., 41 Ill. App. 2d 389, 190 N.E.2d 640 (4 Dist. 1963).

Population

- Purpose

The purpose of subsection (e) of this section is to encourage the development of districts to a population of 2,000 and once that figure has been reached, changes should not be made to reduce them again below that figure. School Dirs. v. County Bd. Of Sch. Trustees, 15 Ill. App. 2d 115, 145 N.E.2d 285 (2 Dist. 1957).

- Requirement

A small district which presently does not have and never has had a population of 2,000 is not included in the population requirement found in this section. School Dirs. v. County Bd. Of Sch. Trustees, 15 Ill. App. 2d 115, 145 N.E.2d 285 (2 Dist. 1957).

Taxation

- Consequences

With every detachment and annexation, there is a resulting loss of tax base valuation and loss in income to the district losing a portion of its territory, but this alone cannot be considered as preventing detachments and annexations when it appears that the maximum rate is not being levied by the district from which the territory is being detached. Calvert v. Board of Educ., 41 Ill. App. 2d 389, 190 N.E.2d 640 (4 Dist. 1963).

- Rates

It is true that with every detachment there is a resulting loss of tax base valuation and in income to the district losing a portion of its territory, but this cannot be considered as preventing detachments and annexations, for the legislature has seen fit to permit such action with evident knowledge of the consequences. School districts are given the remedy of increased tax income by referendum, and a failure or a refusal of the electorate to accept this remedy is not conclusive in a detachment proceeding; any tax rate, approved by proper referendum, within the limits set by the legislature, is valid. Community Unit Sch. Dist. No. 6 v. County Bd. of Sch. Trustees, 9 Ill. App. 2d 116, 132 N.E.2d 584 (3 Dist. 1956).

LEGAL PERIODICALS

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For article, "State and Local Government: 1986-87 Illinois Law Survey," see 19 Loy. U. Chi. L.J. 691 (1987-88).

§ 105 ILCS 5/7-4.1. Copies of petition

Sec. 7-4.1. Copies of petition. Each petition submitted under the provisions of Section 7-1 or 7-2 [105 ILCS 5/7-1 or 105 ILCS 5/7-2] shall be accompanied by sufficient copies thereof for distribution to the board of each school district involved. The copies need not be signed by the petitioners as is required of the original petition.

(Source: Laws 1963, p. 3037.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-4.1.

§ 105 ILCS 5/7-5. Detachment set aside upon petition

Sec. 7-5. Detachment set aside upon petition. If there is a recognized school district which as a result of detachment is without a school building, the detachment may be set aside by the county board of school trustees of the county over which the county superintendent of schools had supervision and control prior to the detachment upon petition by two-thirds of the eligible voters in the school district after such detachment and the detached area. The county board of school trustees shall conduct a hearing upon the petition as prescribed and in the manner provided in Section 7-6 [105 ILCS 5/7-6].

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-5.

CASE NOTES

Voters

- Statutory Construction

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Former version of this section required a petition of two-thirds of the eligible voters in the area not detached and the area detached, or, in other words, two-thirds of the voters in both districts before detachment; the legislative intent was to use the word "and" in a conjunctive sense, requiring two-thirds of the voters of the two areas, not separately, but as a whole. Hailey v. County Bd. of Sch. Trustees, 21 Ill. App. 2d 105, 157 N.E.2d 570 (3 Dist. 1959).

§ 105 ILCS 5/7-6. Petition filing; Notice; Hearing; Decision

Sec. 7-6. Petition filing; Notice; Hearing; Decision. (a) Upon the filing of a petition with the secretary of the regional board of school trustees under the provisions of Section 7-1 or 7-2 of this Act [105 ILCS 5/7-1 or 105 ILCS 5/7-2] the secretary shall cause a copy of such petition to be given to each board of any district involved in the proposed boundary change and shall cause a notice thereof to be published once in a newspaper having general circulation within the area of the territory described in the petition for the proposed change of boundaries.

(b) When a joint hearing is required under the provisions of Section 7-2 [105 ILCS 5/7-2], the secretary also shall cause a copy of the notice to be sent to the regional board of school trustees of each region affected. Notwithstanding the foregoing provisions of this Section, if the secretary of the regional board of school trustees with whom a petition is filed under Section 7-2 [105 ILCS 5/7-2] fails, within 30 days after the filing of such petition, to cause notice thereof to be published and sent as required by this Section, then the secretary of the regional board of school trustees of any other region affected may cause the required notice to be published and sent, and the joint hearing may be held in any region affected as provided in the notice so published.

(b-5) If a petition filed under subsection (a) of Section 7-1 [105 ILCS 5/7-1] or under Section 7-2 [105 ILCS 5/7-2] proposes to annex all the territory of a school district to another school district, the petition shall request the submission of a proposition at a regular scheduled election for the purpose of voting for or against the annexation of the territory described in the petition to the school district proposing to annex that territory. No petition filed or election held under this Article shall be null and void, invalidated, or deemed in noncompliance with the Election Code [10 ILCS 5/1-1 et seq.] because of a failure to publish a notice with respect to the petition or referendum as required under subsection (g) of Section 28-2 of that Code [10 ILCS 5/28-2] for petitions that are not filed under this Article or Article 11E of this Code.

(c) When a petition contains more than 10 signatures the petition shall designate a committee of 10 of the petitioners as attorney in fact for all petitioners, any 7 of whom may make binding stipulations on behalf of all petitioners as to any question with respect to the petition or hearing or joint hearing, and the regional board of school trustees, or regional boards of school trustees in cases of a joint hearing may accept such stipulation in lieu of evidence or proof of the matter stipulated. The committee of petitioners shall have the same power to stipulate to accountings or waiver thereof between school districts; however, the regional board of school trustees, or regional boards of school trustees in cases of a joint hearing may refuse to accept such stipulation. Those designated as the committee of 10 shall serve in that capacity until such time as the

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regional superintendent of schools or the committee of 10 determines that, because of death, resignation, transfer of residency from the territory, or failure to qualify, the office of a particular member of the committee of 10 is vacant. Upon determination that a vacancy exists, the remaining members shall appoint a petitioner to fill the designated vacancy on the committee of 10. The appointment of any new members by the committee of 10 shall be made by a simple majority vote of the remaining designated members.

(d) The petition may be amended to withdraw not to exceed a total of 10% of the territory in the petition at any time prior to the hearing or joint hearing; provided that the petition shall after amendment comply with the requirements as to the number of signatures required on an original petition.

(e) The petitioners shall pay the expenses of publishing the notice and of any transcript taken at the hearing or joint hearing; and in case of an appeal from the decision of the regional board of school trustees, or regional boards of school trustees in cases of a joint hearing, or State Superintendent of Education in cases determined under subsection (l) of this Section, the appellants shall pay the cost of preparing the record for appeal.

(f) The notice shall state when the petition was filed, the description of the territory, the prayer of the petition and the return day on which the hearing or joint hearing upon the petition will be held which shall not be more than 15 nor less than 10 days after the publication of notice.

(g) On such return day or on a day to which the regional board of school trustees, or regional boards of school trustees in cases of a joint hearing shall continue the hearing or joint hearing the regional board of school trustees, or regional boards of school trustees in cases of a joint hearing shall hear the petition but may adjourn the hearing or joint hearing from time to time or may continue the matter for want of sufficient notice or other good cause.

(h) Prior to the hearing or joint hearing the secretary of the regional board of school trustees shall submit to the regional board of school trustees, or regional boards of school trustees in cases of a joint hearing maps showing the districts involved, a written report of financial and educational conditions of districts involved and the probable effect of the proposed changes. The reports and maps submitted shall be made a part of the record of the proceedings of the regional board of school trustees, or regional boards of school trustees in cases of a joint hearing. A copy of the report and maps submitted shall be sent by the secretary of the regional board of school trustees to each board of the districts involved, not less than 5 days prior to the day upon which the hearing or joint hearing is to be held.

(i) The regional board of school trustees, or regional boards of school trustees in cases of a joint hearing shall hear evidence as to the school needs and conditions of the territory in the area within and adjacent thereto and as to the ability of the districts affected to meet the standards of recognition as prescribed by the State Board of Education, and shall take into consideration the division of funds and assets which will result from the change of boundaries and shall determine whether it is to the best interests of the schools of the area and the educational welfare of the pupils that such change in boundaries be granted, and in case non-high school territory is contained in the petition the normal high school

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attendance pattern of the children shall be taken into consideration. If the non-high school territory overlies an elementary district, a part of which is in a high school district, such territory may be annexed to such high school district even though not contiguous to the high school district. However, upon resolution by the regional board of school trustees, or regional boards of school trustees in cases of a joint hearing the secretary or secretaries thereof shall conduct the hearing or joint hearing upon any boundary petition and present a transcript of such hearing to the trustees who shall base their decision upon the transcript, maps and information and any presentation of counsel.

(j) At the hearing or joint hearing any resident of the territory described in the petition or any resident in any district affected by the proposed change of boundaries may appear in person or by an attorney in support of the petition or to object to the granting of the petition and may present evidence in support of his position.

(k) At the conclusion of the hearing, other than a joint hearing, the regional superintendent of schools as ex officio member of the regional board of school trustees shall within 30 days enter an order either granting or denying the petition and shall deliver to the committee of petitioners, if any, and any person who has filed his appearance in writing at the hearing and any attorney who appears for any person and any objector who testifies at the hearing and the regional superintendent of schools a certified copy of its order.

(l) Notwithstanding the foregoing provisions of this Section, if within 9 months after a petition is submitted under the provisions of Section 7-1 [105 ILCS 5/7-1] the petition is not approved or denied by the regional board of school trustees and the order approving or denying that petition entered and a copy thereof served as provided in this Section, the school boards or registered voters of the districts affected that submitted the petition (or the committee of 10, or an attorney acting on its behalf, if designated in the petition) may submit a copy of the petition directly to the State Superintendent of Education for approval or denial. The copy of the petition as so submitted shall be accompanied by a record of all proceedings had with respect to the petition up to the time the copy of the petition is submitted to the State Superintendent of Education (including a copy of any notice given or published, any certificate or other proof of publication, copies of any maps or written report of the financial and educational conditions of the school districts affected if furnished by the secretary of the regional board of school trustees, copies of any amendments to the petition and stipulations made, accepted or refused, a transcript of any hearing or part of a hearing held, continued or adjourned on the petition, and any orders entered with respect to the petition or any hearing held thereon). The school boards, registered voters or committee of 10 submitting the petition and record of proceedings to the State Superintendent of Education shall give written notice by certified mail, return receipt requested to the regional board of school trustees and to the secretary of that board that the petition has been submitted to the State Superintendent of Education for approval or denial, and shall furnish a copy of the notice so given to the State Superintendent of Education. The cost of assembling the record of proceedings for submission to the State Superintendent of Education shall be the responsibility of the school boards, registered voters or committee of 10 that submits the petition and record of proceedings to the State Superintendent of Education. When a petition is submitted to

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the State Superintendent of Education in accordance with the provisions of this paragraph:

(1) The regional board of school trustees loses all jurisdiction over the petition and shall have no further authority to hear, approve, deny or otherwise act with respect to the petition.

(2) All jurisdiction over the petition and the right and duty to hear, approve, deny or otherwise act with respect to the petition is transferred to and shall be assumed and exercised by the State Superintendent of Education.

(3) The State Superintendent of Education shall not be required to repeat any proceedings that were conducted in accordance with the provisions of this Section prior to the time jurisdiction over the petition is transferred to him, but the State Superintendent of Education shall be required to give and publish any notices and hold or complete any hearings that were not given, held or completed by the regional board of school trustees or its secretary as required by this Section prior to the time jurisdiction over the petition is transferred to the State Superintendent of Education.

(4) If so directed by the State Superintendent of Education, the regional superintendent of schools shall submit to the State Superintendent of Education and to such school boards as the State Superintendent of Education shall prescribe accurate maps and a written report of the financial and educational conditions of the districts affected and the probable effect of the proposed boundary changes.

(5) The State Superintendent is authorized to conduct further hearings, or appoint a hearing officer to conduct further hearings, on the petition even though a hearing thereon was held as provided in this Section prior to the time jurisdiction over the petition is transferred to the State Superintendent of Education.

(6) The State Superintendent of Education or the hearing officer shall hear evidence and approve or deny the petition and shall enter an order to that effect and deliver and serve the same as required in other cases to be done by the regional board of school trustees and the regional superintendent of schools as an ex officio member of that board.

(m) Within 10 days after the conclusion of a joint hearing required under the provisions of Section 7-2 [105 ILCS 5/7-2], each regional board of school trustees shall meet together and render a decision with regard to the joint hearing on the petition. If the regional boards of school trustees fail to enter a joint order either granting or denying the petition, the regional superintendent of schools for the educational service region in which the joint hearing is held shall enter an order denying the petition, and within 30 days after the conclusion of the joint hearing shall deliver a copy of the order denying the petition to the regional boards of school trustees of each region affected, to the committee of petitioners, if any, to any person who has filed his appearance in writing at the hearing and to any attorney who appears for any person at the joint hearing. If the regional boards of school trustees enter a joint order either granting or denying the petition, the regional superintendent of schools for the educational service region in which the joint hearing is held shall, within 30 days of the conclusion of the hearing, deliver a copy of the joint order to those same committees and persons as are entitled to receive copies of the

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regional superintendent's order in cases where the regional boards of school trustees have failed to enter a joint order.

(n) Within 10 days after service of a copy of the order granting or denying the petition, any person so served may petition for a rehearing and, upon sufficient cause being shown, a rehearing may be granted. The filing of a petition for rehearing shall operate as a stay of enforcement until the regional board of school trustees, or regional boards of school trustees in cases of a joint hearing, or State Superintendent of Education in cases determined under subsection (l) of this Section enter the final order on such petition for rehearing.

(o) If a petition filed under subsection (a) of Section 7-1 [105 ILCS 5/7-1] or under Section 7-2 [105 ILCS 5/7-2] is required under the provisions of subsection (b-5) of this Section 7-6 to request submission of a proposition at a regular scheduled election for the purpose of voting for or against the annexation of the territory described in the petition to the school district proposing to annex that territory, and if the petition is granted or approved by the regional board or regional boards of school trustees or by the State Superintendent of Education, the proposition shall be placed on the ballot at the next regular scheduled election.

(Source: P.A. 87-210; 87-1215, § 1; 87-1270, § 2; 88-45, § 2-31; 90-459, § 10; 94-1019, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-6.

Section 90 of P.A. 94-1019 contains a savings provision, and section 95 contains a no acceleration or delay provision.

Effect of Amendments. The 1992 amendment by P.A. 87-1215, effective November 23, 1992, added the second paragraph in subsection (c), inserted "or an attorney acting on behalf of the committee of 10" in the first sentence of subsection (l), and added "and may appoint a hearing officer to hear evidence and rule on petitions submitted under this subsection" in subdivision (l)(5).

The 1992 amendment by P.A. 87-1270, effective March 3, 1993, added the last three sentences of subsection (c); added in the first sentence of subsection (l) "or an attorney acting on its behalf" preceding "if designated in the petition" and made related changes, and in subdivision (l)(5) added "or appoint a hearing officer to conduct further hearings" following "The State Superintendent is authorized to conduct further hearings", and in subdivision (l)(6) added "or the hearing officer" and "hear evidence and".

The 1993 amendment by P.A. 88-45, effective July 6, 1993, combined the separate amendments of P.A. 87-1215 and P.A. 87-1270.

The 1997 amendment by P.A. 90-459, effective August 17, 1997, in the section catchline added semicolons; and added subsections (b-5) and (o).

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The 2006 amendment by P.A. 94-1019, effective July 10, 2006, in (b-5) substituted "11E of this Code" for "18-8.3 of the School Code" in the last sentence.

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Constitutionality

- Lawful Delegation

Prior version of this section did not fail to provide a proper rule or standard for the guidance of county boards acting thereunder, and hence was not void as an unlawful delegation of legislative power, in violation of Ill. Const. (1970), Art. II, § 1. School Dist. No. 79 v. County Bd. of Sch. Trustees, 4 Ill. 2d 533, 123 N.E.2d 475 (1954).

Administrative Procedure

- Delegation of Power

In passing upon petitions for annexation or detachment of a territory, county board of school trustees can either allow or deny the petition before it, but it cannot modify the petition; the function of passing upon a petition is neither a delegation of legislative nor judicial power. Board of Educ. v. County Bd. of Sch. Trustees, 13 Ill. App. 2d 561, 142 N.E.2d 742 (3 Dist. 1957).

- Evidence

Regional board erred in denying parents' petition to detach land and attach it to another district; because neither district would be affected in any substantial measure, the determination should have been made to turn solely upon the welfare of the children. Dukett v. Reg'l Bd. of Sch. Trs., 342 Ill. App. 3d 635, 277 Ill. Dec. 277, 795 N.E.2d 945, 2003 Ill. App. LEXIS 1126 (4 Dist. 2003).

Where county board denies a detachment, the findings of such administrative agency must be based on facts established by evidence which is introduced as such and not by reliance of the administrative agency on its own information to support its findings. Wheeler v. County Bd. of Sch. Trustees, 62 Ill. App. 2d 467, 210 N.E.2d 609 (2 Dist. 1965).

In holding hearings provided for by former version of this section, the board was acting as an arm of the legislature and could order the detaching of territory from school districts after it informed itself of pertinent matters in accordance with the mandate of the legislature. Bridgeport Tp. High Sch. Dist. No. 3-12 v. Shank, 7 Ill. App. 2d 183, 129 N.E.2d 264 (4 Dist. 1955).

- Failure to Furnish Report

In view of the fact that no objection was made to the lack of a report at hearing, that the county board of school trustees had full knowledge of the financial and educational conditions of the districts involved at the time of the hearing and so found in their order approving the disconnection, and that the granting of the petition could not under any conceivable circumstances affect the financial or educational condition of either district, the failure to furnish the report did not invalidate the hearing on the petition for disconnection. Panhandle Community Unit Sch. v. Goebel, 94 Ill. App. 2d 462, 238 N.E.2d 209 (5 Dist. 1968).

- Mandamus

Circuit court, in acting under former section, did not have authority to determine which territory should have been included within corporate limits of a municipal corporation, but was limited to affirming or reversing the county court decision after determining whether the county court had acted in accordance with the authority granted by the legislature; since the circuit court was acting in a judicial capacity, mandamus would not lie to direct the court's exercise of discretion. People ex rel. Dolan v. Dusher, 411 Ill. 535, 104 N.E.2d 775 (1952).

- Modification of Petition Not Allowed

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Board's decision granting a petition to detach property from one school district and attach it to another school district was improper because, under 105 ILCS 5/7-6, the petition had to stand on its own and be approved or rejected as a whole and the board lacked authority to modify the petition to remove an illegal school choice provision; the more specific 105 ILCS 5/7-1 et seq. controlled over the more general provisions of 735 ILCS 5/3-111 and Ill. Sup. Ct. R. 366. Bd. of Educ. of Indian Prairie Cmty. Unit Sch. Dist. No. 204 v. Reg'l Bd. of Sch. Trs., 393 Ill. App. 3d 561, 332 Ill. Dec. 698, 913 N.E.2d 630, 2009 Ill. App. LEXIS 748 (3 Dist. 2009), appeal denied, 234 Ill. 2d 517, 920 N.E.2d 1071, 2009 Ill. LEXIS 2152 (2009).

- Notice

A notice of public hearing was not defective for not containing a proper designation of the districts affected or a description of the territory affected by the petition for annexation since the basic purpose of giving notice of a public hearing is to inform all interested persons of the time, place and purpose of the hearing, although it was contended by the parties that they were either misled by the notice or that they did not attend the hearing because they felt it did not concern their own school district. School Dist. No. 79 v. County Bd. of Sch. Trustees, 4 Ill. 2d 533, 123 N.E.2d 475 (1954).

- Petition Content

Order of the country board of school trustees was void because the boundaries of the territory which it sought to detach from one school district and annex to another school district were not located and defined in the initiating petition and the required statutory notice of hearing was not sent. Muddy Grade Sch. v. Raleigh Grade Sch., 53 Ill. App. 2d 223, 202 N.E.2d 653 (5 Dist. 1964).

- Record

While technical errors of the school board should be overlooked, it is necessary that all mandatory requirements of the statute be, in some manner, shown in the record. Bellevue Realty Co. v. School Dist. No. 111, 7 Ill. App. 2d 196, 129 N.E.2d 231 (4 Dist. 1955).

- Review

Order of the county board of school trustees on a petition for detachment and annexation of school district property is subject to the provisions of the Administrative Review Act (735 ILCS 5/3-101 et seq.) and under the provisions of that Act, any judicial review thereof would be based upon the record of the administrative proceedings before the board. Board of Educ. v. County Bd. of Sch. Trustees, 13 Ill. App. 2d 561, 142 N.E.2d 742 (3 Dist. 1957).

- Rights of Appellant

There would be no purpose in presenting notice to appellant of a hearing before the county board of school trustees unless it would have a right to appear and be heard before the county board of school trustees made its decision and, after having made a decision which affected its rights, duties, and privileges, it must have been the intention of both the School Code and the Administrative Review Act (735 ILCS 5/3-101 et seq.) to afford it an opportunity to seek a judicial review of a decision which so vitally affects its interest. Wauconda Tp. High Sch. Dist. v. County Bd. of Sch. Trustees, 7 Ill. App. 2d 65, 129 N.E.2d 177 (2 Dist. 1955).

- Standard of Proof

In exercising the power and discretion vested in it by this Act, the county board of school trustees must carefully observe the standards of proof prescribed by the legislature. Bellevue Realty Co. v. School Dist. No. 111, 7 Ill. App. 2d 196, 129 N.E.2d 231 (4 Dist. 1955).

- Standard of Review

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Decision of county board in ruling on a petition under this section should not be set aside upon administrative review unless manifestly against the weight of the evidence. Lorenson v. County Bd. of Sch. Trustees, 13 Ill. App. 2d 468, 142 N.E.2d 493 (3 Dist. 1957).

- Standards of Procedure

County board of school trustees as an administrative agency is not held to the refined legal standards of procedure that exists in courts of record. Bridgeport Tp. High Sch. Dist. No. 3-12 v. Shank, 7 Ill. App. 2d 183, 129 N.E.2d 264 (4 Dist. 1955).

- Standing

Parties seeking review of county board's dismissal petition of for detachment of territory from one school district and annexation to another who (1) were not among original petitioners for annexation, (2) were not an affected board of education or school district, and (3) were not individuals who approved detachment in person or by an attorney before an administrative agency, were not entitled to seek review of the school board of trustee's decision. Stirniman v. County Bd. of Sch. Trustees, 26 Ill. App. 2d 245, 167 N.E.2d 829 (2 Dist. 1960).

Annexation

- Identification with District

In annexation-application hearings it is proper to ascertain whether the petitioning area is identified with the school district and the community to which annexation is requested. Board of Educ. v. Regional Bd. of Sch. Trustees, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

- Removal to Federal Court

Annexation proceeding for detaching a territory from one school district and annexing it to another is not judicial in character, and annexation proceeding cannot be properly removed to federal court because it is not a proceeding commenced "in a state court." Committee of Ten v. Board of Educ., 874 F. Supp. 200 (N.D. Ill. 1995).

Authority

- Scope

The county boards of school trustees have broad powers to create new school districts, and to change boundaries of existing districts by detachment or in other ways. Board of Educ. v. County Bd. of Sch. Trustees, 45 Ill. App. 2d 292, 196 N.E.2d 3 (4 Dist. 1963).

- Time Limit

There are no negative terms in this section which would deny the exercise of the county board's power after the running of the 30 day period. Board of Educ. v. County Bd. of Sch. Trustees, 60 Ill. App. 3d 415, 17 Ill. Dec. 725, 376 N.E.2d 1054 (2 Dist. 1978).

Burden of Proof

Petitioners have the burden to show that is in the best interests of the area schools and the pupils' welfare to allow a change of boundaries. Fixmer v. Regional Bd. of Sch. Trustees, 146 Ill. App. 3d 660, 100 Ill. Dec. 272, 497 N.E.2d 152 (2 Dist. 1986).

Change of Boundaries

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- In General

Regional board's decision to deny petition for redistricting was against the manifest weight of the evidence where residents presented an uncontested, prima facie case showing the benefit of redistricting but where the board failed to show, as required under 105 ILCS 5/7-6(i), a financial detriment to the affected school districts or an inability to comply with state standards. Pochopien v. Reg'l Bd. of Sch. Trs. Educ. Serv. Region, 322 Ill. App. 3d 185, 255 Ill. Dec. 6, 748 N.E.2d 710, 2001 Ill. App. LEXIS 458 (1 Dist. 2001).

A change of boundary must be made in conformity with the standards prescribed by the legislature and designed with an eye to the best interests of the schools of the area and the educational welfare of the pupils. Board of Educ. v. Regional Bd. of Sch. Trustees, 84 Ill. App. 3d 501, 39 Ill. Dec. 742, 405 N.E.2d 495 (2 Dist. 1980).

- Held Proper

Where there was evidence of a positive advantage educationally for both students and parents resulting from the proposed change in school communities, the trial court was correct in finding the order denying the change to be against the manifest weight of the evidence. Manning v. Regional Bd. of Sch. Trustees, 92 Ill. App. 3d 945, 48 Ill. Dec. 350, 416 N.E.2d 381 (2 Dist. 1981).

Committee of Ten

- Amendment to Include

Trial court did not err in granting the first school district's motion to amend its complaint for administrative review to add the eight remaining members of the "Committee of Ten;" it properly granted the motion to amend because the eight remaining members met the two requirements of 735 ILCS 5/3-107(a) that had to be shown for the granting of additional time to add defendants, namely: (1) that they, as parties of record, had not been made defendants and (2) that they had not been named by the administrative agency in its final order as a party of record. Collinsville Cmty. Unit Sch. Dist. No. 10 v. Reg'l Bd., 218 Ill. 2d 175, 300 Ill. Dec. 15, 843 N.E.2d 273, 2006 Ill. LEXIS 6 (2006).

- Jurisdiction

Loss of a committee of 10 member in a proceeding is not tantamount to loss of jurisdiction. Board of Educ. v. Regional Bd. of Sch. Trustees, 242 Ill. App. 3d 229, 181 Ill. Dec. 444, 608 N.E.2d 517 (2 Dist. 1992).

- Loss of a Committee Member

There is no magic in the number 10 once the jurisdiction of the regional board has been established; while the committee must be constituted in conformity with this section in order initially to confer jurisdiction, such a committee primarily provides a convenient and effective mechanism to accomplish the task of detachment. That a committee may at some point have fewer than 10 members is not enough to destroy the board's jurisdiction over the petition. Board of Educ. v. Regional Bd., 242 Ill. App. 3d 229, 184 Ill. Dec. 437, 613 N.E.2d 754, appeal denied, 151 Ill. 2d 561, 186 Ill. Dec. 378, 616 N.E.2d 331 (1993).

- Substitution

This section does not give a regional board of school trustees the power to appoint members to fill vacancies on a committee of ten. Betts v. Regional Bd. of Sch. Trustees, 151 Ill. App. 3d 465, 104 Ill. Dec. 290, 502 N.E.2d 787 (2 Dist. 1986).

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Comparative Educational Values

Comparative educational values of the two schools involved must be considered in any decision to change school boundaries. Fromm v. Will County Bd. of Sch. Trustees, 41 Ill. App. 3d 1045, 355 N.E.2d 172 (3 Dist. 1976).

Compliance

- Appraisal by Board

Where county school board of trustees failed to apprise itself of the matters prescribed in this section, circuit court properly reversed the denial of plaintiff's petition. Bellevue Realty Co. v. School Dist. No. 111, 7 Ill. App. 2d 196, 129 N.E.2d 231 (4 Dist. 1955).

- Procedure

The "hearing" requirement in this section means an orderly proceeding, and the term "evidence" refers to the commonly accepted definition of that word; where the procedure used was not in keeping with either, the board's subsequent order granting petition was invalid. Board of Educ. v. County Bd. of Sch. Trustees, 13 Ill. App. 2d 561, 142 N.E.2d 742 (3 Dist. 1957).

Concurrent Action

When considered in conjunction with 105 ILCS 5/7-2, this section indicates that a decision denying or granting a petition must be made by both the detaching and attaching school districts; moreover, a subsequent hearing by the attaching school district is imperative when the detaching district grants the petition for detachment. Harris v. Regional Bd., 82 Ill. App. 3d 710, 38 Ill. Dec. 18, 403 N.E.2d 33 (5 Dist. 1980).

Contiguity

Subsection (c) of 105 ILCS 5/7-4 is not jurisdictional, but rather a standard provided by the legislature as part of its legislative delegation to the county board of school trustees to be used in connection with this section in reaching decisions in detachment proceedings. Board of Educ. v. County Bd. of Sch. Trustees, 34 Ill. App. 3d 855, 340 N.E.2d 710 (5 Dist. 1976).

Costs

- Dilatory Tactics

Where, after a hearing, the court ruled that plaintiff was responsible for costs of an appeal from the decision of county board of school trustees and plaintiff paid for the transcript, and where defendants' argument that plaintiff was guilty of dilatory tactics was meritless, the trial court did not err in denying the motion to dismiss. Board of Educ. v. County Bd. of Sch. Trustees, 34 Ill. App. 3d 901, 341 N.E.2d 10 (5 Dist. 1976).

Detachment and Annexation

- After Dissolution

Unlike the ban on successive detachment petitions in 105 ILCS 5/7-8, nothing in the School Code prohibits consideration of a detachment petition for a period following dissolution proceedings.

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Board of Educ. of Community Unit Sch. Dist. No. 337 v. Board of Educ. of Community Unit Sch. Dist. No. 338, 269 Ill. App. 3d 1020, 207 Ill. Dec. 526, 647 N.E.2d 1019 (3 Dist.), appeal denied, 163 Ill. 2d 549, 212 Ill. Dec. 415, 657 N.E.2d 616 (1995).

- Balancing Test

Detachment and annexation petitions should be granted only when the overall benefits to the annexing district and the area seeking detachment, considered together, clearly outweigh any detriment to the district losing territory and the surrounding community as a whole. Board of Educ. v. Regional Bd., 242 Ill. App. 3d 229, 184 Ill. Dec. 437, 613 N.E.2d 754, appeal denied, 151 Ill. 2d 561, 186 Ill. Dec. 378, 616 N.E.2d 331 (1993).

Petitions for detachment should be granted only where the overall benefit to the annexing district and the detachment area considered together clearly outweighs the detriment resulting to the losing district and the surrounding community as a whole. Fosdyck v. Regional Bd. of Sch. Trustees, 233 Ill. App. 3d 398, 174 Ill. Dec. 524, 599 N.E.2d 70 (4 Dist. 1992).

Detachment-annexation petitions should be granted only where the benefit derived by the annexing and affected areas clearly outweighs the detriment resulting to the losing district and the surrounding community as a whole; the wishes and desires of the residents of the affected area may be considered along with the advantages and detriment to the districts involved, the educational programs of the entire area, and the educational welfare of the pupils involved, although personal preferences may not be the sole criteria. Newman v. County Bd. of Sch. Trustees, 19 Ill. App. 3d 584, 312 N.E.2d 35 (4 Dist. 1974).

The benefits derived by the areas annexing territory should clearly outweigh the detriment to the losing district and there must also be no jeopardy to the educational resources of the losing district or to the annexing district; the basic consideration is the best interest of the pupils in the entire area as well as the school districts involved, and it is the welfare of the districts and the pupils which will control. Ottowa Tp. High Sch. v. County Bd. of Sch. Trustees, 106 Ill. App. 2d 439, 246 N.E.2d 138 (3 Dist. 1969).

The detriment to the losing district and the benefit to the annexing district shall be considered in annexation-detachment proceeding. Burgner v. County Bd. of Sch. Trustees, 60 Ill. App. 2d 267, 208 N.E.2d 54 (3 Dist. 1965).

- Benefit

In the absence of substantial detriment to either school district, some benefit to the educational welfare of the students in the detachment area was sufficient to justify the granting of a petition for detachment and annexation. Carver v. Bond/Fayette/Effingham Regional Bd. of Sch. Trustees, 146 Ill. 2d 347, 167 Ill. Dec. 1, 586 N.E.2d 1273 (1992).

It is the overall benefit, rather than a separate finding of benefit, to the annexing district and the detachment area considered together that must clearly outweigh the detriment resulting to the losing district and the surrounding community as a whole. Board of Educ. v. Regional Bd. of Sch. Trustees, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

Mere proof that no detriment would occur as a result of the boundary change is insufficient to grant a petition under this section; benefit must be evident, and therefore, a reviewing court should examine the benefits, if any, which would result by allowing the detachment and annexation. Bowman v. County Bd. of Sch. Trustees, 16 Ill. App. 3d 1082, 307 N.E.2d 419 (2 Dist. 1974).

- Benefit-Detriment Test Factors

A reviewing court applying the benefit-detriment test to a regional board's decision is to consider the following factors: differences between the facilities and curricula of the school districts, the

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effect of detachment on the ability of either district to meet state standards of recognition, the distances from petitioners homes to the schools in both districts, and the impact of shifting boundaries on both districts' tax revenues; the "whole child" and "community of interest" factors may also be taken into account and these include the petitioning area's identification with the annexing district and the community in which that district is located and the attendant probability of beneficial participation in school affairs and extracurricular activities. Board of Educ. v. Regional Bd., 242 Ill. App. 3d 229, 184 Ill. Dec. 437, 613 N.E.2d 754, appeal denied, 151 Ill. 2d 561, 186 Ill. Dec. 378, 616 N.E.2d 331 (1993).

- Community of Interest

The "community of interest" notion takes into consideration whether the petitioning area is identified with the school district and community to which annexation is requested. Pontiac Tp. High Sch. Dist. v. Regional Bd. of Sch. Trustees, 183 Ill. App. 3d 885, 132 Ill. Dec. 322, 539 N.E.2d 885 (4 Dist. 1989).

The "community of interest" factor figures importantly with the "whole child" concept in determining the benefits and detriments to the school districts involved in a detachment petition. Pontiac Tp. High Sch. Dist. v. Regional Bd. of Sch. Trustees, 183 Ill. App. 3d 885, 132 Ill. Dec. 322, 539 N.E.2d 885 (4 Dist. 1989).

- Denial Held Proper

Petitioners failed to present sufficient facts to demonstrate that the benefit to the area and its residents clearly outweighed the detriment to be suffered by their current district if the detachment and annexation petition was granted; furthermore, they did not establish a need for their children to belong to the desired district rather than their current district. Dresner v. Regional Bd. of Sch. Trustees, 150 Ill. App. 3d 765, 103 Ill. Dec. 666, 501 N.E.2d 983 (2 Dist. 1986).

Where plaintiffs-appellants petitioned for detachment of a parcel of land from one school district and for annexation of the parcel to another school district, which petition to detach was denied by the county board of school trustees, the decision of the order of the board denying detachment was not contrary to the manifest weight of the evidence, and was based upon substantial evidence in the record, and was not based entirely on the financial impact which would result from the detachment. Locher v. County Bd. of Sch. Trustees, 29 Ill. App. 3d 271, 330 N.E.2d 282 (4 Dist. 1975).

- Existing School Districts

The word "create" used in certain provisions of the School Code has reference to new, not existing, school districts, and when a boundary change is mentioned it is in connection with an existing school district. Stehl v. County Bd. of Sch. Trustees, 7 Ill. App. 2d 257, 129 N.E.2d 297 (2 Dist. 1955).

- Factors Considered

Regional boards must consider all evidence presented regarding the factors listed in Carver v. Bond/Fayette/Effingham Regional Board of School Trustees (1992), 146 Ill. 2d 347, 356, 167 Ill. Dec. 1, 5, 586 N.E.2d 1273, 1277, including evidence regarding the "whole child," the "community of interest" concepts, and any personal preferences of plaintiffs. Fosdyck v. Regional Bd. of Sch. Trustees, 233 Ill. App. 3d 398, 174 Ill. Dec. 524, 599 N.E.2d 70 (4 Dist. 1992).

- Held Proper

The trial court's grant of the detachment petition was not against the manifest weight of the evidence. Board of Educ. of Community Unit Sch. Dist. No. 337 v. Board of Educ. of Community Unit Sch. Dist. No. 338, 269 Ill. App. 3d 1020, 207 Ill. Dec. 526, 647 N.E.2d 1019 (3 Dist.), appeal denied, 163 Ill. 2d 549, 212 Ill. Dec. 415, 657 N.E.2d 616 (1995).

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Where petitioner's children would benefit from the shorter distance they would have to travel to school and their strong identification and association with the annexing school district, they had friends in the annexing district and participated in community and school activities there, they obtained needed medical services there, they had no social or economic ties with the detaching district, and the annexing district was larger and offered a wider curriculum and extracurricular activities which the children wished to participate in, the educational welfare of the students in the detachment area would be enhanced by detachment, and the fact that petitioners moved into the area knowing it was in the detaching school district did not diminish their eligibility to have their petition granted. Fosdyck v. Regional Bd. of Sch. Trustees, 233 Ill. App. 3d 398, 174 Ill. Dec. 524, 599 N.E.2d 70 (4 Dist. 1992).

Where plaintiffs' community of interest lay in the school district to which they petitioned to be annexed, the location of their rural property was contiguous therewith, it was there where they found all their friends, the children's baby-sitter, and the school bus which was absolutely necessary for the safety of their children, their contacts with the district from which they petitioned to be detached were minimal, the detachment of the plaintiffs' property would not harm the tax base, and the children would increase their school participation through the use of safe bus transportation, and would not have to walk down a steep hill or through an industrial area to get to school, and the benefit to be derived from annexing the plaintiffs' property was great and the detriment to the detaching district slight, there was sufficient evidence established to support their requested annexation and detachment petition. Utica Grade Sch. Dist. No. 135 v. Skolek, 232 Ill. App. 3d 278, 173 Ill. Dec. 945, 597 N.E.2d 919 (3 Dist. 1992).

County board of school trustees' determination granting detachment was not against the manifest weight of the evidence where it considered the proper statutory standards, and there was sufficient evidence to support its conclusion that the benefit to the annexing and affected areas clearly outweighed the detriment to the losing district and the surrounding community as a whole. Board of Educ. v. Regional Bd. of Sch. Trustees, 88 Ill. App. 3d 121, 43 Ill. Dec. 362, 410 N.E.2d 362 (1 Dist. 1980), aff'd, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

Transfer of land from one school district to another was upheld where the benefit which would be derived by the annexing district and the detachment area clearly outweighed the resulting detriment to the detaching district. Board of Educ. v. Regional Bd. of Sch. Trustees, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

Detachment and annexation were properly granted, and there was no error in the circuit court's decision, based upon its findings that such detachment and annexation met the requirements set forth in the statute. Francois v. Regional Bd. of Sch. Trustees, 97 Ill. App. 3d 112, 53 Ill. Dec. 826, 424 N.E.2d 617 (3 Dist. 1981).

Where the direct effect of granting petition for detachment and annexation on the districts involved was held to be minimal and not deleterious, and the benefit to the residents of the area to be annexed, and to board of education thereof, substantial, the decision of the circuit court to grant the petition was not contrary to the manifest weight of the evidence presented. Board of Educ. v. Regional Bd. of Sch. Trustees, 86 Ill. App. 3d 230, 41 Ill. Dec. 586, 407 N.E.2d 1084 (5 Dist. 1980).

School board's decision permitting detachment of part of a school district and its annexation to another was upheld. Sesser Community Unit Dist. No. 196 v. County Bd. of Sch. Trustees, 74 Ill. App. 2d 152, 219 N.E.2d 364 (5 Dist. 1966).

Disputed territory was properly detached from one community consolidated school district of county, and annexed to another consolidated school district of that county. Community Consol. Sch. Dist. v. County Bd. of Sch. Trustees, 7 Ill. App. 2d 98, 129 N.E.2d 43 (2 Dist. 1955).

- Illustrative Cases

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Where territory was sought to be detached from one school district and annexed to another because the territory was naturally identified with the district to which it sought to be annexed, it was physically close to the district, the district was preferred by the residents of the territory, and annexation would have resulted in increased land values for the territory and convenience to the parents and children of the territory, it was against the manifest weight of the evidence for the school board to deny the petition to detach on the ground that the two school districts involved had equal educational facilities. Burnidge v. County Bd. of Sch. Trustees, 25 Ill. App. 2d 503, 167 N.E.2d 21 (2 Dist. 1960).

- Personal Preference

The personal preferences or convenience of the petitioning parents and their children may be considered in a detachment and annexation petition proceeding but more than personal preference on the part of the petitioners is required to support a change in school district boundaries. Board of Educ. v. Regional Bd., 242 Ill. App. 3d 229, 184 Ill. Dec. 437, 613 N.E.2d 754, appeal denied, 151 Ill. 2d 561, 186 Ill. Dec. 378, 616 N.E.2d 331 (1993).

- School Report Cards

In a detachment and annexation proceeding, where the petitioners placed into evidence certified copies of the 1988-89 Illinois school report cards for all three school districts involved, in light of the clear statutory mandate regarding school report cards, the reports were an exception to the hearsay rule and could have been considered by both the regional board and the trial court. Board of Educ. v. Regional Bd., 242 Ill. App. 3d 229, 184 Ill. Dec. 437, 613 N.E.2d 754, appeal denied, 151 Ill. 2d 561, 186 Ill. Dec. 378, 616 N.E.2d 331 (1993).

- Whole Child Factor

The "whole child" concept recognizes that extracurricular participation in social, religious, and even commercial activities is important in a child's development as a beneficial supplement to the child's academic involvement. Pontiac Tp. High Sch. Dist. v. Regional Bd. of Sch. Trustees, 183 Ill. App. 3d 885, 132 Ill. Dec. 322, 539 N.E.2d 885 (4 Dist. 1989).

The "whole child" factor and the closely related "community of interest" factor are proper considerations in determining the wisdom or of shifting the boundaries of school districts. Board of Educ. v. Regional Bd. of Sch. Trustees, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

- Whole Interest Test

The test for granting detachment and annexation petitions is that the welfare of the affected districts and their pupils as a whole must control rather than the wishes of a few, and such petitions are granted only where the benefit derived by the annexing and affected areas clearly outweighs the detriment resulting to the losing district and the surrounding community as a whole. Bowman v. County Bd. of Sch. Trustees, 16 Ill. App. 3d 1082, 307 N.E.2d 419 (2 Dist. 1974); Fromm v. Will County Bd. of Sch. Trustees, 41 Ill. App. 3d 1045, 355 N.E.2d 172 (3 Dist. 1976); Board of Educ. v. Regional Bd. of Sch. Trustees, 86 Ill. App. 3d 230, 41 Ill. Dec. 586, 407 N.E.2d 1084 (5 Dist. 1980); Board of Educ. v. Regional Bd. of Sch. Trustees, 88 Ill. App. 3d 121, 43 Ill. Dec. 362, 410 N.E.2d 362 (1 Dist. 1980), aff'd, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982); Board of Educ. v. Regional Bd. of Sch. Trustees, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982); Steichen v. Lemon, 192 Ill. App. 3d 714, 139 Ill. Dec. 671, 548 N.E.2d 1385 (3 Dist. 1990); Ikemire v. Regional Bd. of Sch. Trustees, 200 Ill. App. 3d 896, 146 Ill. Dec. 331, 558 N.E.2d 294 (5 Dist. 1990); Carver v. Bond/Fayette/Effingham Regional Bd. of Sch. Trustees, 146 Ill. 2d 347, 167 Ill. Dec. 1, 586 N.E.2d 1273 (1992).

Detriment

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- Finding

The Regional Board's conclusion that the overall benefit to District 200 and the petitioning territory outweighed any detriment to Districts 33 and 94, as well as the surrounding community as a whole, was not contrary to the manifest weight of the evidence. Board of Educ. v. Regional Bd. of Sch. Trustees, 242 Ill. App. 3d 229, 181 Ill. Dec. 444, 608 N.E.2d 517 (2 Dist. 1992).

- Test

Petitions for detachment and annexation should be granted only where the overall benefit to the annexing district and the detachment area clearly outweighs the resulting detriment to the losing district and the surrounding community as a whole. Board of Educ. v. Regional Bd. of Sch. Trustees, 261 Ill. App. 3d 348, 198 Ill. Dec. 715, 633 N.E.2d 177 (2 Dist.), appeal denied, 157 Ill. 2d 496, 205 Ill. Dec. 157, 642 N.E.2d 1274 (1994).

In applying the benefit-detriment test, reviewing courts are to consider differences between school facilities and curricula, the distances from the petitioners' homes to the respective schools, the effect detachment would have on the ability of either district to meet state standards of recognition, and the impact of the proposed boundary change on the tax revenues of both districts. Board of Educ. v. Regional Bd. of Sch. Trustees, 261 Ill. App. 3d 348, 198 Ill. Dec. 715, 633 N.E.2d 177 (2 Dist.), appeal denied, 157 Ill. 2d 496, 205 Ill. Dec. 157, 642 N.E.2d 1274 (1994).

Division of District

Dividing a school district into one large parcel and several smaller islands impaired the ability of the district to furnish the necessary educational service to the islands and was adverse to the public interest. Board of Educ. v. Hearing Bd., 152 Ill. App. 3d 936, 105 Ill. Dec. 906, 505 N.E.2d 32 (2 Dist. 1987).

Educational Welfare

- In General

Where the board did not have any evidence before it regarding the education welfare of the children of the area, the decision of the board ordering detachment was erroneous. Pontiac Tp. High Sch. Dist. v. Regional Bd. of Sch. Trustees, 183 Ill. App. 3d 885, 132 Ill. Dec. 322, 539 N.E.2d 885 (4 Dist. 1989).

In a decision whether to change school boundaries, the educational welfare of the affected districts and their pupils as a whole must control, rather than the wishes of a few. Fromm v. Will County Bd. of Sch. Trustees, 41 Ill. App. 3d 1045, 355 N.E.2d 172 (3 Dist. 1976).

In determining questions dealing with the change of school boundaries, local authorities must consider the best interest of the schools in the area and the educational welfare of the school children. Savanna Community High Sch. v. County Bd. of Sch. Trustees, 73 Ill. App. 2d 202, 218 N.E.2d 811 (2 Dist. 1966).

Orders effecting a change of boundary must be made in conformity with the standards prescribed by the legislature and designed with an eye to the educational welfare of the children residing in all the territory to be affected. Burgner v. County Bd. of Sch. Trustees, 60 Ill. App. 2d 267, 208 N.E.2d 54 (3 Dist. 1965).

- Factors

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A number of factors have been relied upon to define the concept of educational welfare of the pupils, such as, the degree to which the child in the detachment area naturally identifies with the area to which annexation is sought, distances from petitioners' homes to various schools, convenience to petitioning parents and their children, the promotion of continuity in the educational experience, and the choice of parents and children in the detachment area. Fixmer v. Regional Bd. of Sch. Trustees, 146 Ill. App. 3d 660, 100 Ill. Dec. 272, 497 N.E.2d 152 (2 Dist. 1986).

- Remedial Learning Program

Where the record contained undisputed evidence that a particular student had a serious learning disability, that the granting of the petition to detach had no substantial impact on either district involved, and that, although there was some dispute as to whether the annexing district had a superior remedial learning program, there was substantial evidence tending to show that the program of the annexing district was superior for treating the student's particular disability, the decision favoring detachment was not contrary to the manifest weight of the evidence. Board of Educ. v. Maycroft, 86 Ill. App. 3d 1130, 43 Ill. Dec. 128, 410 N.E.2d 128 (4 Dist. 1980).

Errors

- Correction

Where there were certain technical errors in the report, but these were all corrected at the hearing and it did not appear that any prejudice resulted, the county board of school trustees had before it sufficient information upon which to base its decision. Savanna Community High Sch. v. County Bd. of Sch. Trustees, 73 Ill. App. 2d 202, 218 N.E.2d 811 (2 Dist. 1966).

- Harmless

Where no objection was made to the inapplicable section numbers referred to in the petition for detachment and annexation at the hearing, and where it was apparent that there was no doubt about the purposes of the petition and what it would accomplish if allowed, the technical errors in the proceedings before the administrative agency did not constitute grounds for reversal of the decision because the error did not materially affect the rights of a party. Calvert v. Board of Educ., 41 Ill. App. 2d 389, 190 N.E.2d 640 (4 Dist. 1963).

- Inadequate Description

Mere error in description of territory to be annexed would not invalidate detachment proceedings where there could be no doubt as to the meaning and intent thereof. Oakdale Community Consol. Sch. v. County Bd. of Sch. Trustees, 12 Ill. App. 2d 260, 139 N.E.2d 795 (4 Dist. 1956), rev'd on other grounds, 12 Ill. 2d 190, 145 N.E.2d 736 (1957).

Evidence Held Insufficient

In light of the applicable tests under this section, trial court was correct in finding that a county board of school trustees' order which denied a petition to detach and annex a certain territory was against the manifest weight of the evidence. Bowman v. County Bd. of Sch. Trustees, 16 Ill. App. 3d 1082, 307 N.E.2d 419 (2 Dist. 1974).

Decision of the county board of school trustees denying a detachment petition was contrary to the manifest weight of the evidence. Wheeler v. County Bd. of Sch. Trustees, 62 Ill. App. 2d 467, 210 N.E.2d 609 (2 Dist. 1965).

Where evidence wholly failed to meet the statutory requirements for detaching territory from one school district and annexing it to another pursuant to former Ill. Rev. Stat., ch. 122, para. 4B-4

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(see now this section), the judgment of the trial court affirming the detachment was reversed. Crainville Sch. Dist. v. County Bd. of Sch. Trustees, 32 Ill. App. 2d 143, 177 N.E.2d 248 (4 Dist. 1961).

The manifest weight of the evidence was contrary to the County Board of School Trustees' decision grant of petition to return part of school district to former district. Patton v. Browning, 28 Ill. App. 2d 79, 170 N.E.2d 176 (4 Dist. 1960).

The omission of any showing that report was furnished coupled with the fact that the only testimony at detachment-annexation hearing was in support of the petition left the board's order denying petition unsupported by an competent evidence. Bellevue Realty Co. v. School Dist. No. 111, 7 Ill. App. 2d 196, 129 N.E.2d 231 (4 Dist. 1955).

Evidence Held Sufficient

Evidence held sufficient to grant petition for detachment and annexation of property between school districts. Granfield v. Regional Bd., 108 Ill. App. 3d 703, 64 Ill. Dec. 246, 439 N.E.2d 497 (3 Dist. 1982).

County Board of School Trustees' order detaching a certain tract of land from a school district to another and annexing same school district was not against the manifest weight of the evidence. Panhandle Community Unit Sch. v. Goebel, 94 Ill. App. 2d 462, 238 N.E.2d 209 (5 Dist. 1968).

Order of county board of school trustees directing transfer of certain land from one school district to another because the transfer would be in the best interests of schools and educational welfare of the pupils was against the manifest weight of the evidence. Board of Educ. v. County Bd. of Sch. Trustees, 19 Ill. App. 2d 196, 153 N.E.2d 378 (2 Dist. 1958).

Decision of the county board of school trustees to deny petition for detachment of school district was not against the manifest weight of the evidence. Lorenson v. County Bd. of Sch. Trustees, 13 Ill. App. 2d 468, 142 N.E.2d 493 (3 Dist. 1957).

Exhaustion of Remedies

- Defective Petition

Although, normally, a party aggrieved by administrative action cannot seek relief in the courts without first pursuing all administrative remedies available to him, a school district could resort to the courts without taking action before the regional boards because a petition not authorized by the Code was a jurisdictional defect. Board of Educ. v. Regional Board of Sch. Trustees, 121 Ill. App. 3d 848, 77 Ill. Dec. 241, 460 N.E.2d 100 (5 Dist. 1984).

Factors Considered

- Activities

Attendance at a school in closer physical proximity to a child's home and in the natural community center will increase the likelihood that a child and parents would participate in school activities. Ottowa Tp. High Sch. v. County Bd. of Sch. Trustees, 106 Ill. App. 2d 439, 246 N.E.2d 138 (3 Dist. 1969).

- Better Facilities

When the educational programs of the respective school districts are equivalent, petitions for detachment and annexation have been granted where the annexing school district had more

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modern classrooms and better maintained facilities. Carver v. Bond/Fayette/Effingham Regional Bd. of Sch. Trustees, 146 Ill. 2d 347, 167 Ill. Dec. 1, 586 N.E.2d 1273 (1992).

- Boundary Change

That part of this section which provides that the school trustees shall determine whether it is in the best interests of the schools of the area and the educational welfare of the pupils that such change in boundaries be granted, despite the fact that such language is coupled with financial considerations, certainly did not take away from the great weight of evidence of educational opportunity and continuity in education; work experiences and inspiration obtained outside the classroom may be as valuable as the classroom experience. Sesser Community Unit Dist. No. 196 v. County Bd. of Sch. Trustees, 74 Ill. App. 2d 152, 219 N.E.2d 364 (5 Dist. 1966).

- Budget

School district's gross loss of $10,000 of its total budget of $420,000 as a result of a school district board order transferring land to another district was not sufficient to stand in the way of an otherwise desirable territory loss. School Dist. No. 106 v. County Bd. of Sch. Trustees, 48 Ill. App. 2d 158, 198 N.E.2d 164 (1 Dist. 1964).

- Convenience

Personal wishes of property owner standing alone would not justify detachment of land from one district to another. Board of Educ. v. Will County Bd. of Sch. Trustees, 132 Ill. App. 2d 947, 271 N.E.2d 87 (3 Dist. 1971).

There must be a measure of stability in the boundaries of school districts and they cannot be changed by reasons of mere personal preference of the residents in the territory, without regard to other material considerations. Ottowa Tp. High Sch. v. County Bd. of Sch. Trustees, 106 Ill. App. 2d 439, 246 N.E.2d 138 (3 Dist. 1969).

While the personal wishes of individuals standing alone would not justify detachment of land from one school district and annexation to another district, the factor of convenience to parents and children must be considered. Ottowa Tp. High Sch. v. County Bd. of Sch. Trustees, 106 Ill. App. 2d 439, 246 N.E.2d 138 (3 Dist. 1969).

Merely because petitioners find it more convenient to go to one school district than another is not a sufficient reason to change school boundaries; however, if factors involving the educational welfare of the children dictate a change in school boundaries, the mere fact that the change is more convenient to the parents will not prohibit the change in school boundaries. Savanna Community High Sch. v. County Bd. of Sch. Trustees, 73 Ill. App. 2d 202, 218 N.E.2d 811 (2 Dist. 1966).

The personal wishes of the petitioners, standing alone, will not justify a change from one school district to another, but the factor of convenience to the parents and children should be considered as it is an obvious advantage to attend a school close to home and within one's natural community center. Burgner v. County Bd. of Sch. Trustees, 60 Ill. App. 2d 267, 208 N.E.2d 54 (3 Dist. 1965).

The legislature has given school trustees a standard under which their administrative discretion may be properly exercised and the personal desires or convenience of the petitioners must not be regarded as controlling to the exclusion of all other material factors. Lorenson v. County Bd. of Sch. Trustees, 13 Ill. App. 2d 468, 142 N.E.2d 493 (3 Dist. 1957).

- Effect on Surrounding Area

Before it acts on a petition under this section, board of school trustees has the duty of ascertaining the effect of its decision not only upon the particular territory described in the petition

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but also upon the schools of the surrounding area. Lorenson v. County Bd. of Sch. Trustees, 13 Ill. App. 2d 468, 142 N.E.2d 493 (3 Dist. 1957).

- Illustrative Cases

In applying the benefit-detriment test for detachment and annexation, regional boards of education and the courts reviewing their decisions are to consider differences between school facilities and curricula, the distances from the petitioners' homes to the respective schools, the effect detachment would have on the ability of either district to meet state standards of recognition, and the impact of the proposed boundary change on the tax revenues of both districts; they also may consider the "whole child" and "community of interest" factors the identification of the petitioning territory with the district to which annexation is sought, and the corresponding likelihood of participation in school and extracurricular activities. Carver v. Bond/Fayette/Effingham Regional Bd. of Sch. Trustees, 146 Ill. 2d 347, 167 Ill. Dec. 1, 586 N.E.2d 1273 (1992).

The obligation of a regional school board in considering a proposed boundary change is to hear evidence as to the school's needs and the conditions of the territory in the area within and adjacent thereto, the ability of the districts affected to meet the standards of recognition as prescribed by the State Board of Education, to take into consideration the division of funds and assets which will result from a change of boundaries, and to determine whether it is in the best interests of the schools of the area and the educational welfare of the pupils that such change in boundaries be granted. Board of Educ. v. Regional Bd. of Sch. Trustees, 160 Ill. App. 3d 59, 111 Ill. Dec. 795, 513 N.E.2d 41 (5 Dist. 1987).

Decision of the county board of school trustees denying petition for detachment was against the manifest weight of the evidence although evidence showed defendant school district, which was not levying its maximum education fund tax rate, would lose about $8,000 in revenue, but there was evidence concerning similarities in the educational programs of the districts, the normal high school attendance pattern of the children residing on the tract in question, the shorter bus rides required for these children, the increased possibilities for participation in school and extra-curricular activities, and the personal preferences of residents. Newman v. County Bd. of Sch. Trustees, 19 Ill. App. 3d 584, 312 N.E.2d 35 (4 Dist. 1974).

Petitioners should have been granted detachment by trial court where the requested detachment and annexation would have had nosubstantial financial effect on either district, the petitioners would be better served and their children would be better served by the bus routes of the new district in that the required bus ride would be substantially shorter, petitioners were oriented, both socially and in a business sense, with reference to the new district, and the detachment and annexation would in no way adversely affect the ability of either school district to meet the standards as prescribed by the superintendent of public instruction. Richey v. County Bd. of Sch. Trustees, 13 Ill. App. 3d 68, 299 N.E.2d 609 (4 Dist. 1973).

Where there was no substantial detriment to school district if it lost area in question, there would have been no substantial benefit to other district if annexation to it occurred, there would be appreciable benefits to pupils of being able to attend a high school with superior educational, athletic, and extracurricular facilities and programs, and where they would be attending high school in the same area in which they had their natural community contacts, decision of County Board of School Trustees which refused the requested detachment and annexation petition was contrary to the manifest weight of the evidence. Burgner v. County Bd. of Sch. Trustees, 60 Ill. App. 2d 267, 208 N.E.2d 54 (3 Dist. 1965).

Where there would have been no detriment to annexing district, the overcrowded condition of the annexed district would have, at least, in some measure, been alleviated, the annexed district's remaining tax base would have been sufficient to maintain and even increase the present facilities without exceeding the maximum tax rate, and where it was patent that the educational welfare of the detached territory would be improved, these factors, supported by the record, were

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sufficient to permit the local board of school trustees to determine under former Ill. Rev. Stat., ch. 122, para. 4B-4 (see now this section) that the granting of the detachment petition would have been in the best interests of the schools of the area and the educational welfare of the pupils. School Dirs. of Sch. Dist. No. 82 v. Wolever, 26 Ill. 2d 264, 186 N.E.2d 281 (1962).

Under former Ill. Rev. Stat., ch. 122, para. 4B-4 (see now this section), where county superintendent of schools gave his opinion that the granting of the proposed petition requesting detachment of certain territory from one school district for annexation to another would not change the ability of either district to meet the standards of recognition as prescribed by the superintendent of public instruction, where the county superintendent further stated that neither district was required to levy the maximum educational rate and that the teaching load in the two districts was approximately the same, but where there was no evidence that there would be an inequitable division of funds and assets and no showing of any adverse financial burden upon either district if the proposed change were granted, and where there was no evidence that the best interests of the schools of the area and the educational welfare of the pupils would be adversely affected in the slightest degree by the allowance of the proposed change, the judgment order of the trial court affirming the decision of the defendant county board of school trustees denying petition was reversed. Smith ex rel. Smith v. Polukey, 22 Ill. App. 2d 238, 160 N.E.2d 508 (2 Dist. 1959).

- Loss of Revenue

Loss of revenue cannot be the basis for denying detachment. Board of Educ. v. County Bd. of Sch. Trustees, 45 Ill. App. 2d 292, 196 N.E.2d 3 (4 Dist. 1963).

- Property Valuation

School board's decision allowing annexation of real estate to defendant's district and from plaintiff's district was not against the manifest weight of the evidence where the defendant's district had been increasing at a far greater rate than the pupil population of plaintiff's district, and the ability of defendant district to obtain a greater assessed valuation of the property within its district was limited while plaintiff's opportunities in that regard appeared to be somewhat unlimited. Board of Educ. v. Will County Bd. of Sch. Trustees, 132 Ill. App. 2d 947, 271 N.E.2d 87 (3 Dist. 1971).

- Separation

Substantial evidence supported county school board's order transferring land to another school district based upon separation of districts by construction of an interstate highway. School Dist. No. 106 v. County Bd. of Sch. Trustees, 48 Ill. App. 2d 158, 198 N.E.2d 164 (1 Dist. 1964).

- Shorter Distances

Boundary changes have been allowed because of shorter distances from the petitioners' homes to the annexing school, and where students' identification with their "natural community center" would increase participation in school and extracurricular activities. Carver v. Bond/Fayette/Effingham Regional Bd. of Sch. Trustees, 146 Ill. 2d 347, 167 Ill. Dec. 1, 586 N.E.2d 1273 (1992).

- Superior Curriculum

There is no requirement that in all detachment cases the moving parties must show that the district to which they propose annexation has superior educational curriculum or facilities. Ottowa Tp. High Sch. v. County Bd. of Sch. Trustees, 106 Ill. App. 2d 439, 246 N.E.2d 138 (3 Dist. 1969).

- Tax Effect

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Depletion of tax revenues must be serious in order to be a valid basis denying a detachment petition. Carver v. Bond/Fayette/Effingham Regional Bd. of Sch. Trustees, 146 Ill. 2d 347, 167 Ill. Dec. 1, 586 N.E.2d 1273 (1992).

For loss of revenue to be a valid basis for denial of a detachment-annexation petition, it must be shown that a serious depletion in the tax resources of the defendant district would occur; however, the tax base valuation loss and resulting loss of revenues can in no way affect educational facilities detrimentally unless the maximum legal tax rate is already being levied, and if it is not, the loss of assessed valuation alone will not prevent detachment. Newman v. County Bd. of Sch. Trustees, 19 Ill. App. 3d 584, 312 N.E.2d 35 (4 Dist. 1974).

Although every detachment and annexation results in a loss of tax base valuation and tax income to the losing district, this alone should not prevent detachment and annexation when the maximum tax rate is not being levied by the losing district. Burgner v. County Bd. of Sch. Trustees, 60 Ill. App. 2d 267, 208 N.E.2d 54 (3 Dist. 1965).

It was not the intention of the legislature to freeze boundaries of school districts in order to prevent an increase in tax rate. Board of Educ. v. County Bd. of Sch. Trustees, 45 Ill. App. 2d 292, 196 N.E.2d 3 (4 Dist. 1963).

With every detachment and annexation, there is a resulting loss of tax base valuation and loss in income to the district losing a portion of its territory, but this alone cannot be considered as preventing detachments and annexations when it appears that the maximum rate is not being levied by the district from which the territory is being detached. Calvert v. Board of Educ., 41 Ill. App. 2d 389, 190 N.E.2d 640 (4 Dist. 1963).

- Welfare of Pupils

Where the record showed neither district would be affected in any substantial measure, the determination to grant or deny petition for annexation should have been made to turn solely on the welfare of the pupils in the area to be detached. Newman v. County Bd. of Sch. Trustees, 19 Ill. App. 3d 584, 312 N.E.2d 35 (4 Dist. 1974).

The personal welfare of four or five pupils will not justify a substantial detriment to the educational facilities of an entire community. School Dirs. of Sch. Dist. No. 82 v. Wolever, 26 Ill. 2d 264, 186 N.E.2d 281 (1962).

- Whole Child Theory

Courts may consider the "whole child" and "community of interest" factors; these factors explore the identification of the petitioning territory with the district to which annexation is sought, and the corresponding likelihood of participation in school and extracurricular activities. Board of Educ. v. Regional Bd. of Sch. Trustees, 261 Ill. App. 3d 348, 198 Ill. Dec. 715, 633 N.E.2d 177 (2 Dist.), appeal denied, 157 Ill. 2d 496, 205 Ill. Dec. 157, 642 N.E.2d 1274 (1994).

The "whole child" factor recognizes that extracurricular participation in social, religious, and even commercial activities are important in a child's development as a beneficial supplement to academics. Board of Educ. v. Regional Bd. of Sch. Trustees, 261 Ill. App. 3d 348, 198 Ill. Dec. 715, 633 N.E.2d 177 (2 Dist.), appeal denied, 157 Ill. 2d 496, 205 Ill. Dec. 157, 642 N.E.2d 1274 (1994).

The "whole child" factor recognizes that extracurricular participation in social, religious and even commercial activities is important in a child's development as a beneficial supplement of the child's academic involvement. Board of Educ. v. Regional Bd. of Sch. Trustees, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

If a child attends school in his natural community it enhances not only his educational opportunity but encourages his participation in social and other extracurricular activities that figure importantly

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in the "whole child" idea. Board of Educ. v. Regional Bd. of Sch. Trustees, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

Financial Detriment

- In General

Although the financial detriment of the losing district will not alone justify denial of a petition unless the financial loss would seriously interfere with the operation of the district, it is nevertheless one factor to be weighed by the board. Fromm v. Will County Bd. of Sch. Trustees, 41 Ill. App. 3d 1045, 355 N.E.2d 172 (3 Dist. 1976).

- Decrease in Tax Assessment

A resulting loss of assessed valuation and tax revenue to the district losing a portion of its territory alone will not prevent redistricting if it appears that the maximum tax rate is not being levied by the detaching district. Board of Educ. v. Regional Bd. of Sch. Trustees, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

- Depletion of Tax Resources

A depletion of tax resources, alone, is not sufficient to prevent the granting of a detachment petition if maximum taxes were not being levied. Board of Educ. v. Regional Bd. of Sch. Trustees, 88 Ill. App. 3d 121, 43 Ill. Dec. 362, 410 N.E.2d 362 (1 Dist. 1980), aff'd, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

- Finding Upheld

County board of school trustees' finding that detachment would not have a significant adverse economic impact on the losing district was proper. Board of Educ. v. Regional Bd. of Sch. Trustees, 88 Ill. App. 3d 121, 43 Ill. Dec. 362, 410 N.E.2d 362 (1 Dist. 1980), aff'd, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

- Loss of Tax Base

A 0.1% loss in tax revenue and a 0.19% loss in assessed valuation was de minimis and thus an insufficient basis for denying plaintiffs' petition for detachment. Fosdyck v. Regional Bd. of Sch. Trustees, 233 Ill. App. 3d 398, 174 Ill. Dec. 524, 599 N.E.2d 70 (4 Dist. 1992).

Every detachment results in some loss of tax base valuation to the district from which the land concerned is being detached; denial of a detachment or annexation petition requires a showing that the resultant tax resource depletion would be a serious one. Board of Educ. v. Regional Bd. of Sch. Trustees, 86 Ill. App. 3d 230, 41 Ill. Dec. 586, 407 N.E.2d 1084 (5 Dist. 1980).

Findings of Board of Trustees

This section does not require that findings be memorialized in any particular form when a decision is reached by a county board of school trustees. Board of Educ. v. County Bd. of Sch. Trustees, 60 Ill. App. 3d 415, 17 Ill. Dec. 725, 376 N.E.2d 1054 (2 Dist. 1978).

Hearings

- Prior Petition

A county board in county where school district attachment was sought was required to hold a hearing on the petition for attachment regardless of the fact that the county board previously had

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denied the petition for detachment of the county in which the greatest portion of the school district was situated. Harris v. Regional Bd., 82 Ill. App. 3d 710, 38 Ill. Dec. 18, 403 N.E.2d 33 (5 Dist. 1980).

Individual Needs

Where disconnection from one district and attachment to another will neither benefit nor damage the schools or the community or their pupils generally, the educational welfare of an individual student may well be determinative of whether or not to grant such a petition. Board of Educ. v. Regional Bd. of Sch. Trustees, 84 Ill. App. 3d 501, 39 Ill. Dec. 742, 405 N.E.2d 495 (2 Dist. 1980).

Joint Hearings

- Method of Voting

Two regional school boards did not err in voting separately and rendering separate decisions on a petition under 105 ILCS 5/7-2; had the legislature intended the regional boards to vote as one body with the votes cumulatively tabulated, the last sentence of this section would be meaningless. Carver v. Bond/Fayette/Effingham Regional Bd. of Sch. Trustees, 203 Ill. App. 3d 799, 148 Ill. Dec. 829, 561 N.E.2d 135 (5 Dist. 1990), aff'd, 146 Ill. 2d 347, 167 Ill. Dec. 1, 586 N.E.2d 1273 (1992).

Judicial Review

- In General

It is not the role of the judiciary to sit as a super school board to analyze the complex factors involved in a determination of what is best for the educational welfare of the students; rather, it must determine if the decision of the regional boards was against the manifest weight of the evidence and if the proper legislative standards were complied with. Steichen v. Lemon, 192 Ill. App. 3d 714, 139 Ill. Dec. 671, 548 N.E.2d 1385 (3 Dist. 1990).

The judiciary does not sit as a super school board to analyze the complex factors involved in a determination of the best interests of the schools and pupils. Board of Educ. v. Regional Bd. of Sch. Trustees, 88 Ill. App. 3d 121, 43 Ill. Dec. 362, 410 N.E.2d 362 (1 Dist. 1980), aff'd, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

The judiciary must decide whether the determination of a school board is against the manifest weight of the evidence and make certain that the standards prescribed by the legislature are complied with. Board of Educ. v. Regional Bd. of Sch. Trustees, 88 Ill. App. 3d 121, 43 Ill. Dec. 362, 410 N.E.2d 362 (1 Dist. 1980), aff'd, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

The various factors established by the evidence cannot be placed upon a scale and weighed to produce a result which is correct to a mathematical certainty. The trustees are better acquainted with local conditions, and the decision to permit or to deny detachment is best left to local decision without interference by the courts, provided the general statutory guidelines have been complied with, and the record contains evidence to support the decision. Whether the reviewing court, given the same facts, would have reached the same decision is beside the point. Fromm v. Will County Bd. of Sch. Trustees, 41 Ill. App. 3d 1045, 355 N.E.2d 172 (3 Dist. 1976).

- Scope of Review

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The role of the judiciary on administrative review is limited to determining whether the board applied the statutory standards and whether the decision was contrary to the manifest weight of the evidence. Fixmer v. Regional Bd. of Sch. Trustees, 146 Ill. App. 3d 660, 100 Ill. Dec. 272, 497 N.E.2d 152 (2 Dist. 1986).

On review of a decision by the school trustees involving a change of boundaries, a court of review is under a duty to consider the record to see whether the determination is supported by the evidence, but the court cannot substitute its judgment for that of the county board of school trustees; the court of review may consider whether the board conformed to requirements of the School Code and whether the decision was against the manifest weight of the evidence. Ottowa Tp. High Sch. v. County Bd. of Sch. Trustees, 106 Ill. App. 2d 439, 246 N.E.2d 138 (3 Dist. 1969).

Appellate court was not called upon to substitute its judgment for that of county board of school trustees; its duty was to read and consider the record in order to ascertain whether there was substantial evidence to support the board's order. Stehl v. County Bd. of Sch. Trustees, 7 Ill. App. 2d 257, 129 N.E.2d 297 (2 Dist. 1955).

- Standing

Where plaintiff did none of those acts enumerated in this section which would have cast her as a party of record who was entitled to receive a copy of the school board's order, she was nothing more than a passive spectator at the administrative hearing and had no standing to seek judicial review. Robinson v. Regional Bd. of Sch. Trustees, 130 Ill. App. 3d 509, 85 Ill. Dec. 748, 474 N.E.2d 708 (5 Dist. 1985).

- Substantial Evidence

Where a decision of a county board of school trustees denying a petition to detach certain land from a school district within a county was supported by substantial evidence it was properly affirmed. Fromm v. Will County Bd. of Sch. Trustees, 41 Ill. App. 3d 1045, 355 N.E.2d 172 (3 Dist. 1976).

Jurisdiction

- Method of Challenge

A petition in compliance with this section is a prerequisite to the regional board of school trustees' jurisdiction to act, and where the board acts upon a defective petition, its order is void; therefore, it stands to reason that the board, like any other agency, may inquire into its jurisdiction to act at any time, at the request of any party or upon its own motion, since it simply has no power to act in the absence of that jurisdiction. Shapiro v. Regional Bd. of Sch. Trustees, 116 Ill. App. 3d 397, 71 Ill. Dec. 915, 451 N.E.2d 1282 (1 Dist. 1983).

- Petition

Where a petition was defective in its statutorily required designation of a committee of ten to act as attorney-in-fact for all petitioners, the regional board of school trustees lacked jurisdiction. Betts v. Regional Bd. of Sch. Trustees, 151 Ill. App. 3d 465, 104 Ill. Dec. 290, 502 N.E.2d 787 (2 Dist. 1986).

A petition in compliance with this Code is essential to give a regional board of school trustees jurisdiction over a detachment proceeding. Betts v. Regional Bd. of Sch. Trustees, 151 Ill. App. 3d 465, 104 Ill. Dec. 290, 502 N.E.2d 787 (2 Dist. 1986).

Lack of Advance Written Report

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Where no written report was submitted in advance of a hearing, but the record revealed that such a report was attached to and made part of the record of proceedings at the public hearing and that the financial and educational conditions of the school districts were fully discussed by the participants, the absence of this written report did not invalidate the proceedings. Board of Educ. v. Regional Bd. of Sch. Trustees, 98 Ill. App. 3d 599, 54 Ill. Dec. 58, 424 N.E.2d 808 (2 Dist. 1981).

Lack of Pupils

The mere lack of pupils in a detachment area is not fatal to a petition pursuant to this section. Pontiac Tp. High Sch. Dist. v. Regional Bd. of Sch. Trustees, 183 Ill. App. 3d 885, 132 Ill. Dec. 322, 539 N.E.2d 885 (4 Dist. 1989).

Order

- Timeliness

Where there was a continuation hearing held 14 days after the conclusion of first hearing, and copies of the order were mailed within 30 days after the conclusion of the continuation hearing, since the hearing was continued there was adequate technical compliance with this section. Savanna Community High Sch. v. County Bd. of Sch. Trustees, 73 Ill. App. 2d 202, 218 N.E.2d 811 (2 Dist. 1966).

Personal Preference and Convenience

Personal preference and convenience, standing alone, are insufficient to support a detachment; however, considering this factor along with other evidence, a regional board may authorize the detachment. Ikemire v. Regional Bd. of Sch. Trustees, 200 Ill. App. 3d 896, 146 Ill. Dec. 331, 558 N.E.2d 294 (5 Dist. 1990).

Although parents' commercial and social ties are not improper considerations, those considerations should not control if there is sufficient evidence to show that a different district provides better educational and extracurricular opportunities. Steichen v. Lemon, 192 Ill. App. 3d 714, 139 Ill. Dec. 671, 548 N.E.2d 1385 (3 Dist. 1990).

In detachment and annexation proceeding the personal preferences and convenience of those in the detachment area, parents and children, were to be considered, though they were not to be determinative of the detachment issue standing alone. Fixmer v. Regional Bd. of Sch. Trustees, 146 Ill. App. 3d 660, 100 Ill. Dec. 272, 497 N.E.2d 152 (2 Dist. 1986).

Although the wishes or convenience of petitioning parents and their children is to be considered, more than the personal preference of petitioners must be shown to warrant a change in district boundaries. Board of Educ. v. Regional Bd. of Sch. Trustees, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

Mere personal preference or convenience is not sufficient alone to support a petition for detachment; however, it must be considered as one factor. Board of Educ. v. Regional Bd. of Sch. Trustees, 88 Ill. App. 3d 121, 43 Ill. Dec. 362, 410 N.E.2d 362 (1 Dist. 1980), aff'd, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

Personal preferences alone are not a sufficient justification for detachment. Board of Educ. v. Maycroft, 86 Ill. App. 3d 1130, 43 Ill. Dec. 128, 410 N.E.2d 128 (4 Dist. 1980).

While personal preference and convenience alone would be insufficient to authorize a boundary change for an individual pupil, such a transfer, when taken together with the educational benefit

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to that pupil the standards of this section are met. Board of Educ. v. Regional Bd. of Sch. Trustees, 84 Ill. App. 3d 501, 39 Ill. Dec. 742, 405 N.E.2d 495 (2 Dist. 1980).

Although the convenience to the petitioning parents and their child was one factor to be considered, personal preference and convenience, standing alone, were insufficient to support a detachment of land from one school district and annexation of it to another. Eble v. Hamilton, 52 Ill. App. 3d 550, 10 Ill. Dec. 335, 367 N.E.2d 788 (3 Dist. 1977).

Persons Entitled to Review

105 ILCS 5/7-7 does not limit the right of review of a decision involving a boundary change only to a petitioner, a board of education of an affected district, or a resident of the territory directly involved in the change of boundaries, since this section provides that at the hearing held pursuant to a petition for a change of boundaries any resident of the territory described in the petition or any resident in any district affected by the change of boundaries may appear and object to the petition, and it would be inconsistent to permit a resident of an affected district to object at a hearing and offer evidence and then to preclude his right to a judicial review of the ultimate decision. Thompson v. County Bd. of Sch. Trustees, 130 Ill. App. 2d 660, 265 N.E.2d 168 (2 Dist. 1970), cert. denied, 404 U.S. 883, 30 L. Ed. 2d 164, 92 S. Ct. 213 (1971).

Powers of Local Boards

- Closing Compelled by Detachment

The consideration by the regional board of a local school board's announced decision and plans to close one of its schools and to reduce staff size was not a usurpation of the local board's functions under 105 ILCS 5/10-20 to 105 ILCS 5/10-22 (now repealed), even though the regional board's decision compelled the closing of that school in the local board's district and compelled staff cuts and program consolidation. Board of Educ. v. Regional Bd. of Sch. Trustees, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

Refusal to Hold Hearing

- Appealability

Where a county board in a county where school attachment was sought refused to hold a hearing as required by this section, there was no final administrative decision which could be reviewed by the appellate court; rather than filing a complaint for administrative review, petitioners' proper remedy would have been to petition the circuit court for a writ of mandamus to compel the county board to hold a hearing. Harris v. Regional Bd., 82 Ill. App. 3d 710, 38 Ill. Dec. 18, 403 N.E.2d 33 (5 Dist. 1980).

Report

- Mandatory

Under a similar prior provision, the submission prior to the hearing of maps and a report specified to the county board of trustees was held to be mandatory. Long v. County Bd. of Sch. Trustees, 15 Ill. App. 2d 162, 145 N.E.2d 741 (3 Dist. 1957).

The portion of this section requiring that the report of financial and educational conditions of the districts involved and the probable effect of proposed changes be furnished to the board is mandatory. Bellevue Realty Co. v. School Dist. No. 111, 7 Ill. App. 2d 196, 129 N.E.2d 231 (4 Dist. 1955).

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Significance of Precedent

A detachment petition cannot be denied because of the possibility of setting a precedent. Board of Educ. v. Regional Bd. of Sch. Trustees, 86 Ill. App. 3d 230, 41 Ill. Dec. 586, 407 N.E.2d 1084 (5 Dist. 1980).

Standard of Proof

Petitioners must be able to show support of their petition with substantial evidence. Fixmer v. Regional Bd. of Sch. Trustees, 146 Ill. App. 3d 660, 100 Ill. Dec. 272, 497 N.E.2d 152 (2 Dist. 1986).

Standing

Only a party of record affected by administrative action has standing to seek judicial review of such action. Robinson v. Regional Bd. of Sch. Trustees, 130 Ill. App. 3d 509, 85 Ill. Dec. 748, 474 N.E.2d 708 (5 Dist. 1985).

Time Limit

- Directory

The phrase "who shall within 30 days" is to be read as meaning "who should within 30 days." Board of Educ. v. County Bd. of Sch. Trustees, 60 Ill. App. 3d 415, 17 Ill. Dec. 725, 376 N.E.2d 1054 (2 Dist. 1978).

The time limit in this section is merely directory. Board of Educ. v. County Bd. of Sch. Trustees, 60 Ill. App. 3d 415, 17 Ill. Dec. 725, 376 N.E.2d 1054 (2 Dist. 1978).

Two-Thirds Requirements

- Waiver

Even if the petitioners did not have to prove they represented two-thirds or more of the legal voters living in the proposed area of detachment, the regional board of school trustees was not in a position to challenge that requirement since it never raised the question at the hearing and its order denying the petition recited in its jurisdictional finding that the petition was in all respects in compliance with the law as to form, content and signature." Manning v. Regional Bd. of Sch. Trustees, 92 Ill. App. 3d 945, 48 Ill. Dec. 350, 416 N.E.2d 381 (2 Dist. 1981).

Written Findings

- In General

Written findings of fact are highly desirable and greatly facilitate meaningful administrative review of detachment cases, but the failure to make explicit findings does not require a reversal in every case. Board of Educ. v. Regional Bd. of Sch. Trustees, 85 Ill. App. 3d 394, 40 Ill. Dec. 870, 407 N.E.2d 101 (3 Dist. 1980).

- Amount of Detail

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While the findings apparently were not as detailed as those in other detachment decisions, where they were sufficient to allow an orderly review based upon the petition, pleadings and transcripts, the cause would not be remanded to the regional school board for formal issuance of extensive written findings as remand would be a useless act which would extol form over substance. Dresner v. Regional Bd. of Sch. Trustees, 150 Ill. App. 3d 765, 103 Ill. Dec. 666, 501 N.E.2d 983 (2 Dist. 1986).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Significant Developments in Education Law 2003- 2004," See 29 S. Ill. U.L.J. 603 (2005).

§ 105 ILCS 5/7-7. Administrative Review Law

Sec. 7-7. Administrative Review Law. The decision of the regional board of school trustees, or the decision of the regional boards of school trustees following a joint hearing, or the decision of the State Superintendent of Education in cases determined pursuant to subsection (l) of Section 7-6 [105 ILCS 5/7-6], shall be deemed an "administrative decision" as defined in Section 3-101 of the Code of Civil Procedure [735 ILCS 5/3-101]; and any resident who appears at the hearing or any petitioner or board of education of any district affected may within 35 days after a copy of the decision sought to be reviewed was served by registered mail upon the party affected thereby file a complaint for a judicial review of such decision in accordance with the Administrative Review Law [735 ILCS 5/3-101 et seq.] and the rules adopted pursuant thereto. The commencement of any action for judicial review shall operate as a stay of enforcement, and no further proceedings shall be had until final disposition of such review. If the transcript of the hearing is required to be presented to another county board of school trustees the time within which a complaint for review must be filed shall not begin to run until the decision of the regional board of school trustees hearing the petition has been granted or denied by the regional board of school trustees conducting a hearing on the transcript. The circuit court of the county in which the petition is filed with the regional board of school trustees shall have sole jurisdiction to entertain a complaint for such review when only one regional board of school trustees must act; however, when the regional boards of school trustees act following a joint hearing, the circuit court of the county in which the joint hearing on the original petition is conducted shall have sole jurisdiction of the complaint for such review.

(Source: P.A. 87-210.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-7.

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CASE NOTES

Analysis

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- Special Law

The 10 day limitation on filing a complaint to review a final administrative decision of the county board of school trustees, as distinguished from the 35 day limitation applicable to all other reviews of administrative decisions under this Code, was a local or special law in violation of Ill. Const. (1970), Art. IV, § 13. Board of Educ. v. County Bd. of Sch. Trustees, 28 Ill. 2d 15, 191 N.E.2d 65 (1963).

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Administrative Review Law

- In General

The Administrative Review Law permitted judicial review of a decision of the regional board of school trustees, the first school district sought review within the time allotted by the Administrative Review Law, and the motion to amend was filed within the time allotted and the conditions provided for in 735 ILCS 5/3-107(a). Collinsville Cmty. Unit Sch. Dist. No. 10 v. Reg'l Bd., 218 Ill. 2d 175, 300 Ill. Dec. 15, 843 N.E.2d 273, 2006 Ill. LEXIS 6 (2006).

- Applicability

Provision in School Code found in 105 ILCS 5/7-7 that stated any school district could seek review of an adverse administrative law decision if it served a copy of that decision on a party affected within 35 days lent support that the trial court under the Administrative Review Law lacked jurisdiction over the concerned citizens where the school district did not name them individually in their complaint for administrative review within that time. Collinsville Cmty. Unit Sch. Dist. No. 10 v. Reg'l Bd. of Sch. Trs., 348 Ill. App. 3d 685, 284 Ill. Dec. 720, 810 N.E.2d 510, 2004 Ill. App. LEXIS 506 (5 Dist. 2004), aff'd, remanded, 218 Ill. 2d 175, 300 Ill. Dec. 15, 843 N.E.2d 273 (2006).

Regional board of school trustees' decision on a petition for detachment and annexation is an administrative decision for purposes of the Administrative Review Law, 735 ILCS 5/3-101 et seq. Pochopien v. Reg'l Bd. of Sch. Trs. Educ. Serv. Region, 322 Ill. App. 3d 185, 255 Ill. Dec. 6, 748 N.E.2d 710, 2001 Ill. App. LEXIS 458 (1 Dist. 2001).

Where a school board's decision to grant detachment of territory constituted final administrative action, the appellate court's review of that decision was required to be in accordance with the Administrative Review Law (735 ILCS 5/3-101 et seq.). Robinson v. Regional Bd. of Sch. Trustees, 130 Ill. App. 3d 509, 85 Ill. Dec. 748, 474 N.E.2d 708 (5 Dist. 1985).

This section makes decisions of a county board of school trustees subject to judicial review under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.). Board of Educ. v. Will County Bd. of Sch. Trustees, 20 Ill. App. 3d 218, 313 N.E.2d 471 (3 Dist. 1974).

- Regional Board of School Trustees

Regional Board of school trustees order to detach territory for annexation was administrative decision for purposes of the Administrative Review Law (735 ILCS 5/3-101 et seq.). Board of Educ. of Community Unit Sch. Dist. No. 337 v. Board of Educ. of Community Unit Sch. Dist. No. 338, 269 Ill. App. 3d 1020, 207 Ill. Dec. 526, 647 N.E.2d 1019 (3 Dist.), appeal denied, 163 Ill. 2d 549, 212 Ill. Dec. 415, 657 N.E.2d 616 (1995).

Review of decisions of the Regional Board of School Trustees is subject to 735 ILCS 5/3-101 et seq. Board of Educ. v. Regional Bd. of Sch. Trustees, 160 Ill. App. 3d 59, 111 Ill. Dec. 795, 513 N.E.2d 41 (5 Dist. 1987).

Annexation

- Construction With Other Laws

Trial court's order partially lifting the stay in a school district annexation proceeding, imposed under 105 ILCS 5/7-7, so that the annexation issue could be placed on an election ballot, was unnecessary; annexation referendum procedures were governed by the Illinois Election Code, 10 ILCS 5/1-1 et seq., not the Illinois School Code, 105 ILCS 5/1-1 et seq. and the School Code stay

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did not extend to those procedures. Libbra v. Madison County Reg'l Bd. of Sch. Trs., 346 Ill. App. 3d 867, 282 Ill. Dec. 290, 806 N.E.2d 265, 2004 Ill. App. LEXIS 238 (5 Dist. 2004).

- Factors Considered

It is the welfare of the pupils and the districts as a whole which must govern in the consideration of an annexation petition. Board of Educ. v. Regional Bd. of Sch. Trustees, 160 Ill. App. 3d 59, 111 Ill. Dec. 795, 513 N.E.2d 41 (5 Dist. 1987).

Authority

- Grant by Legislature

The power of the board of education to build schoolhouses was conferred upon it by the legislature and not from the vote of the electorate of a district; therefore the approval of a proposition for a building program by a majority vote of the electorate could not be said to constitute a mandate imposing a duty upon the board to carry out such program. People ex rel. Irish v. Board of Educ., 6 Ill. App. 2d 402, 128 N.E.2d 348 (3 Dist. 1955).

Evidence Held Sufficient

Decision of county board of school trustees in detaching disputed territory from one high school district and annexing same to another high school district was amply supported by the evidence and was within the authority of the board. Kinney v. County Bd. of Sch. Trustees, 7 Ill. App. 2d 286, 129 N.E.2d 292 (2 Dist. 1955).

Final Administrative Decision

- Refusal to Hold Hearing

Where a county board in a county where school attachment was sought refused to hold a hearing as required by 105 ILCS 5/7-6, there was no final administrative decision which could be reviewed by the appellate court; rather than filing a complaint for administrative review, petitioners' proper remedy would have been to petition the circuit court for a writ of mandamus to compel the county board to hold a hearing. Harris v. Regional Bd., 82 Ill. App. 3d 710, 38 Ill. Dec. 18, 403 N.E.2d 33 (5 Dist. 1980).

Judicial Review

- Standing

Parties seeking review of county board of school trustees' dismissal of petition for detachment of territory from one school district and annexation to another, who were not among original petitioners for annexation, were not an affected board of education or school district, and neither were they individuals who appeared in person or by an attorney before an administrative agency, and they were not entitled to seek review of the county board of school trustees' decision. Stirniman v. County Bd. of Sch. Trustees, 26 Ill. App. 2d 245, 167 N.E.2d 829 (2 Dist. 1960).

Necessary Parties

- Illustrative Cases

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The Regional Board was a necessary party-defendant in judicial review of detachment petition and the Regional Board acted properly when it took steps to support its decision during the process of judicial review. Board of Educ. v. Regional Bd. of Sch. Trustees, 242 Ill. App. 3d 229, 181 Ill. Dec. 444, 608 N.E.2d 517 (2 Dist. 1992).

Persons Entitled to Review

This section does not limit the right of review of a decision involving a boundary change only to a petitioner, a board of education of an affected district, or a resident of the territory directly involved in the change of boundaries, since 105 ILCS 5/7-6 provides that at the hearing held pursuant to a petition for a change of boundaries any resident of the territory described in the petition or any resident in any district affected by the change of boundaries may appear and object to the petition, and it would be inconsistent to permit a resident of an affected district to object at a hearing and offer evidence and then to preclude his right to a judicial review of the ultimate decision. Thompson v. County Bd. of Sch. Trustees, 130 Ill. App. 2d 660, 265 N.E.2d 168 (2 Dist. 1970), cert. denied, 404 U.S. 883, 30 L. Ed. 2d 164, 92 S. Ct. 213 (1971).

Purpose

The obvious design of this section is to prevent confusion among students, school bodies and others affected and to avoid unnecessary complications in the expenditure or public funds. Board of Educ. v. Regional Bd. of Sch. Trustees, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

Questions of Fact

The findings and conclusions of regional boards on questions of fact are held to be prima facie true and correct; however, this rule does not relieve a court of the important duty to examine the evidence in an impartial manner and to set aside an order which is unsupported in fact. Fosdyck v. Regional Bd. of Sch. Trustees, 233 Ill. App. 3d 398, 174 Ill. Dec. 524, 599 N.E.2d 70 (4 Dist. 1992).

Service

- Actual Receipt

Where there was no dispute that notice and a copy of a board of school trustees decision were received by the plaintiff within days after the decision was rendered, the actual date of the receipt of the notice by the plaintiff should have controlled for purposes of filing the review action. Board of Educ. v. Regional Bd. of Sch. Trustees, 156 Ill. App. 3d 504, 108 Ill. Dec. 706, 509 N.E.2d 132 (2 Dist. 1987).

- Method

The express terms of 735 ILCS 5/3-101 require a review of this section in order to determine the method of service of an administrative decision. Board of Educ. v. Regional Bd. of Sch. Trustees, 156 Ill. App. 3d 504, 108 Ill. Dec. 706, 509 N.E.2d 132 (2 Dist. 1987).

Where notice of the decision of a regional board of school trustees was not shown to have complied with the requirements of this Code and was not given by registered mail, but rather, only by first class mail, it could not be presumed that notice was received on the date of mailing. Board of Educ. v. Regional Bd. of Sch. Trustees, 156 Ill. App. 3d 504, 108 Ill. Dec. 706, 509 N.E.2d 132 (2 Dist. 1987).

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Status Quo

The appeal of an administrative order of detachment had the effect of maintaining the original status quo of the district in question until the matter reached final disposition. People ex rel. Nordstrom v. Barry, 11 Ill. 2d 259, 142 N.E.2d 33 (1957).

Stay of Enforcement

An order permitting detachment-area children to attend school in the annexing district pending appeal, which was entered subsequent to the regional board's order granting the detachment, violated this section. Board of Educ. v. Regional Bd. of Sch. Trustees, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

The trial court erred in entering an order which permitted children from the detachment area to attend school in the annexing district during the pendency of an appeal; the clear mandate of this section prevented the court from altering the attendance of schools, and this mandate takes precedence over the general power of the circuit court to stay the decision of the administrative agency. Board of Educ. v. Regional Bd. of Sch. Trustees, 88 Ill. App. 3d 121, 43 Ill. Dec. 362, 410 N.E.2d 362 (1 Dist. 1980), aff'd, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

Time for Review

- Legislative Intent

In reducing the time for review from 35 days to 10, it was the legislative intent that the administrative proceedings should abate and that the parties should proceed anew, if they should so desire, under the provisions of the amended statute pertaining to detachment and annexation of school territory. Board of Educ. v. Brittin, 11 Ill. 2d 411, 143 N.E.2d 555 (1957).

Township Trustees' Decision

The defendant-objectors could challenge the decision of the Township Trustees, and the constitutionality of 105 ILCS 5/7-2b, in state court. Committee of Ten v. Board of Educ., 878 F. Supp. 111 (N.D. Ill. 1995).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Significant Developments in Education Law 2003- 2004," See 29 S. Ill. U.L.J. 603 (2005).

§ 105 ILCS 5/7-7.5. Holding of elections

Sec. 7-7.5. Holding of elections. (a) Elections provided by this Article shall be conducted in accordance with the general election law.

(b) The notice shall be in substantially the following form:

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NOTICE OF REFERENDUM FOR ANNEXATION

BY ..... (Name of Annexing District)

OF ALL TERRITORY OF ..... (Name Of

District Or Districts All Of

Whose Territory Is To Be Annexed)

NOTICE is hereby given that on (insert date), a referendum will be held in part(s) of ..... County (Counties) for the purpose of voting for or against the proposition to annex all of the territory comprising ..... (name of each such school district) of ..... County, Illinois to ..... (name of annexing school district) of ..... County, Illinois.

The territory which now comprises all of the territory of ..... (name of the school district or districts) of ..... County, Illinois, which territory is the same as the territory which is proposed to be annexed to ..... (name of annexing school district) of ..... County, Illinois, is described as follows: (Here describe such territory.)

The territory which now comprises ..... (name of annexing school district) of ..... County, Illinois, which district it is proposed shall annex the territory above described in this Notice, is described as follows: (Here describe such territory.)

The election is called and will be held pursuant to an order of the regional board of school trustees (or, State Superintendent of Education) dated on (insert date), which order states that the change of boundaries pursuant to the annexation granted or approved by the order shall be made if a majority of those voters in each of the affected school districts who vote on the proposition at the election vote in favor thereof.

Dated (insert date).

Regional Board of School Trustees (or State

Superintendent of Education)

By .....

(Source: P.A. 90-459, § 10; 91-357, § 101.)

Note.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

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Effective Date. Section 99 of P.A. 90-459 made this section effective upon becoming law. The Act was approved August 17, 1997.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, in subsection (b) substituted "on (insert date)" for "on the .... day of ...., 19..." in the first and fourth paragraphs of the form, and "Dated (insert date)" for "Dated this ..... day of ...., 19...." near the end of the form.

§ 105 ILCS 5/7-7.6. Ballots

Sec. 7-7.6. Ballots. The ballot shall be in substantially the following form:

OFFICIAL BALLOT

Shall the following described territory comprising all of the territory of ..... (name of school district or districts) of ..... County, Illinois be annexed to and made a part of ..... (name of annexing school district) of ..... County, Illinois? (Here describe such territory.)	YES NO

(Source: P.A. 90-459, § 10.)

Effective Date. Section 99 of P.A. 90-459 made this section effective upon becoming law. The Act was approved August 17, 1997.

§ 105 ILCS 5/7-7.7. Passage requirements

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Sec. 7-7.7. Passage requirements. The proposition for the annexation of all of the territory of one or more school districts to another school district shall be submitted to the voters of the annexing district and the voters of each district all of the territory of which is to be annexed to the annexing district, and if a majority of the voters in each such district who vote on the proposition vote in favor of the proposition, the proposition shall be deemed to have passed.

(Source: P.A. 90-459, § 10.)

Effective Date. Section 99 of P.A. 90-459 made this section effective upon becoming law. The Act was approved August 17, 1997.

§ 105 ILCS 5/7-8. Limitation on successive petitions

Sec. 7-8. Limitation on successive petitions. No territory, nor any part thereof, which is involved in any proceeding to change the boundaries of a school district by detachment from or annexation to such school district of such territory, and which is not so detached nor annexed, shall be again involved in proceedings to change the boundaries of such school district for at least two years after final determination of such first proceeding unless during that 2 year period a petition filed is substantially different than any other previously filed petition during the previous 2 years or if a school district involved is placed on academic watch status or the financial watch list by the State Board of Education or is certified as being in financial difficulty during that 2 year period or if such first proceeding involved a petition brought under Section 7-2b of this Article 7 [105 ILCS 5/7-2b].

(Source: Laws 1961, p. 31; P.A. 87-1139, § 1; 88-386, § 15; 93-470, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-8.

Effect of Amendments. The 1992 amendment by P.A. 87-1139, effective September 17, 1992, substituted "two years" for "one year" preceding "after final determination" and added at the end of the section "unless during that two year period a petition filed is substantially different than any other previously filed petition during the previous two years or if a school district involved is placed on the state board of education's academic watch list or financial watch list or is certified as being in financial difficulty during that two year period."

The 1993 amendment by P.A. 88-386, effective August 20, 1993 added "or if such first proceeding involved a petition brought under Section 7-2b of this Article 7" at the end of the section.

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The 2003 amendment by P.A. 93-470, effective August 8, 2003, substituted "academic watch status or the financial watch list by the State Board of Education" for "the State Board of Education's academic watch list or financial watch list".

CASE NOTES

Analysis

Applicability
Detachment
Failure to Consider
- Specific Findings
Final Determination
Priority
Purpose
Substantially Different
Technical Insufficiency

Applicability

This section did not bar a subsequent petition filed under 105 ILCS 5/7-2a(b) where the earlier petition was dismissed for failure to designate properly a committee of 10 petitioners. Holbrook v. Regional Bd. of Sch. Trustees, 305 Ill. App. 3d 744, 238 Ill. Dec. 982, 713 N.E.2d 228 (2 Dist. 1999).

Detachment

Unlike the ban on successive detachment petitions in this section, nothing in the School Code prohibits consideration of a detachment petition for a period following dissolution proceedings. Board of Educ. of Community Unit Sch. Dist. No. 337 v. Board of Educ. of Community Unit Sch. Dist. No. 338, 269 Ill. App. 3d 1020, 207 Ill. Dec. 526, 647 N.E.2d 1019 (3 Dist.), appeal denied, 163 Ill. 2d 549, 212 Ill. Dec. 415, 657 N.E.2d 616 (1995).

Failure to Consider

- Specific Findings

The record did not show that the Regional Board failed to consider the successive petition issue where board considered written and oral arguments on the issue before denying the motion to dismiss; thus, even though the Regional Board did not make an explicit finding, it was obvious that the Board considered the matter and found that this section did not bar consideration of the petition. Board of Educ. of Community Unit Sch. Dist. No. 337 v. Board of Educ. of Community Unit Sch. Dist. No. 338, 269 Ill. App. 3d 1020, 207 Ill. Dec. 526, 647 N.E.2d 1019 (3 Dist.), appeal denied, 163 Ill. 2d 549, 212 Ill. Dec. 415, 657 N.E.2d 616 (1995).

Final Determination

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The final determination contemplated by this section, from which the one year limitation commences, is one entered in a valid proceeding where jurisdiction to adjudicate is present, and where the denial of the petition for change of boundaries is based upon its substantive merits. Hall Tp. High Sch. Dist. v. County Bd. of Sch. Trustees, 80 Ill. App. 2d 475, 225 N.E.2d 28 (3 Dist. 1967).

Where action of the county board approving the first petition for detachment was held void by the circuit court for want of jurisdiction and no final determination was had on the substantive merits, the one year limitation did not apply to second petition. Hall Tp. High Sch. Dist. v. County Bd. of Sch. Trustees, 80 Ill. App. 2d 475, 225 N.E.2d 28 (3 Dist. 1967).

Priority

A petition to organize a new unit district, whether filed before or after the filing of annexation proceedings involving all or part of the same territory, has priority and proceeds independently of the annexation proceedings; therefore, the affirmance or reversal of judgment cannot affect the status of the territory in question as a part of the new community school district. Gholson v. County Bd., 111 Ill. App. 2d 313, 250 N.E.2d 190 (5 Dist. 1969).

Purpose

The purpose of this section is to prevent the harassment of county boards, school boards of affected districts, and interested persons, by successive petitions to detach or annex the same territories. Hall Tp. High Sch. Dist. v. County Bd. of Sch. Trustees, 80 Ill. App. 2d 475, 225 N.E.2d 28 (3 Dist. 1967).

Substantially Different

Certain factors are relevant in determining whether a subsequent petition fits within the statutory exception of being substantially different: 1) the geographic boundaries of the subject areas; 2) the identity and the purposes of the petitioners and the districts; 3) the convergence of the subject territory and the petitioners' interests; 4) the similarity of the evidence supporting the petitions; 5) public policy concerns; and 6) the length of time between the filings. Helmig v. Regional Bd. of Sch. Trustees, 286 Ill. App. 3d 220, 221 Ill. Dec. 542, 675 N.E.2d 966 (3 Dist. 1997).

The two petitions were not substantially different and the second petition should have been dismissed; although the changes in boundaries, assessed valuations, or the number of petitioners and students may be significant, these quantitative factors alone did not make the subsequent petition substantially different per se, where there were many similarities. Helmig v. Regional Bd. of Sch. Trustees, 286 Ill. App. 3d 220, 221 Ill. Dec. 542, 675 N.E.2d 966 (3 Dist. 1997).

Quantitative differences between subject territories are helpful in determining whether one petition is substantially different from another. Board of Educ. of Community Unit Sch. Dist. No. 337 v. Board of Educ. of Community Unit Sch. Dist. No. 338, 269 Ill. App. 3d 1020, 207 Ill. Dec. 526, 647 N.E.2d 1019 (3 Dist.), appeal denied, 163 Ill. 2d 549, 212 Ill. Dec. 415, 657 N.E.2d 616 (1995).

Technical Insufficiency

Where a petition for detachment and annexation of school property was dismissed by the board of school trustees, prior to the commencement of proceedings, due to a purely technical insufficiency, and nothing was done on the first petition except for the entry of an order dismissing the same, denial of the first petition did not prevent the filing of another petition within one year of

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the filing of the original petition. Board of Educ. v. County Bd. of Sch. Trustees, 60 Ill. App. 3d 415, 17 Ill. Dec. 725, 376 N.E.2d 1054 (2 Dist. 1978).

§ 105 ILCS 5/7-9. Effective date of change

Sec. 7-9. Effective date of change. In case a petition is filed for the creation of or the change of boundaries of or for an election to vote upon a proposition of creating or annexing territory to a school district after August 1, as provided in this Article, and the change is granted or the election carries, and no appeal is taken such change shall become effective after the time for appeal has run for the purpose of all elections; however, the change shall not affect the administration of the schools until July 1 following the date the petition is granted or upon which the election is held and the school boards of the districts as they existed prior to the change shall exercise the same power and authority over such territory until such date; however, new districts shall be permitted to organize and elect officers within the time prescribed by the general election law.

In the event that the granting of a petition has become final, either through failure to seek Administrative Review or by the final decision of a court on review, the change in boundaries shall become effective forthwith. However, if the granting of the petition becomes final between September 1 and June 30 of any year, the administration of and attendance at the schools shall not be affected until the following July 1, when the change in boundaries shall become effective for all purposes. After the granting of a petition has become final, the date when the change shall become effective for purposes of administration and attendance may be accelerated or postponed by stipulation of each of the school boards of each district affected and approved by the regional board of school trustees or by the board of a special charter district with which the original petition is required to be filed.

(Source: P.A. 81-1550; 90-459, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-9.

Effect of Amendments. The 1997 amendment by P.A. 90-459, effective August 17, 1997, in the first paragraph substituted "a proposition of creating or annexing territory to a school district after August 1, as provided in this Article" for "the proposition of creating any school district after August 1."

CASE NOTES

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Analysis
Intervention
Order Pending Appeal

Intervention

An enforceable right for non-resident students to attend out-of-district schools on a tuition-free or tuition-escrow basis was not found because the right sought to be protected by intervenors, the parents of detachment-area students, was not provided by law, but was part of the policy of the annexing district's school board, and they had no legal interest and no enforceable or recognizable right which could be prejudiced by any judgment or order in the action in which they had petitioned to intervene. Board of Educ. v. Board of Educ., 112 Ill. App. 3d 212, 68 Ill. Dec. 16, 445 N.E.2d 464 (1 Dist. 1983).

Order Pending Appeal

The trial court erred in entering an order which permitted children from the detachment area to attend school in the annexing district during the pendency of an appeal; the clear mandate of this section and 105 ILCS 5/7-7 prevented the court from altering the attendance of the schools, and this mandate took precedence over the general power of the circuit court to stay the decision of the administrative agency. Board of Educ. v. Regional Bd. of Sch. Trustees, 88 Ill. App. 3d 121, 43 Ill. Dec. 362, 410 N.E.2d 362 (1 Dist. 1980), aff'd, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

§ 105 ILCS 5/7-10. Map showing change - Filed

Sec. 7-10. Map showing change - Filed. Within thirty days after the boundaries of any school district have been changed or a new district created under any of the provisions of this Article the county superintendent of schools of any county involved shall make and file with the county clerk of his county a map of any districts involved in any change of boundaries or creation of a new district whereupon the county clerks shall extend taxes against the territory in accordance therewith: Provided that if an action to review such decision under Section 7-7 [105 ILCS 5/7-7] is taken, the County Superintendent of Schools shall not file the map with the county clerk until after he is served with a certified copy of the order of the final disposition of such review.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-10.

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CASE NOTES

County Clerk

- Duty

It was not incumbent upon county clerk under former Ill. Rev. Stat., ch. 122, para. 4B-9 (see now this section) to ascertain whether or not a map filed by a county superintendent of schools under the authority of that section was in compliance with the statute, but it was the county clerk's duty to accept and file said map and to act thereupon in the performance of his ministerial duties in connection with the extension of the taxes. Hiawatha Community Sch. v. Skinner, 32 Ill. App. 2d 187, 177 N.E.2d 15 (2 Dist. 1961).

§ 105 ILCS 5/7-11. Annexation of dissolved non-operating districts

Sec. 7-11. Annexation of dissolved non-operating districts. If any school district has become dissolved as provided in Section 5-32 [105 ILCS 5/5-32], or if a petition for dissolution is filed under subsection (b) of Section 7-2a [105 ILCS 5/7-2a], the regional board of school trustees shall attach the territory of such dissolved district to one or more districts and, if the territory is added to 2 or more districts, shall divide the property of the dissolved district among the districts to which its territory is added, in the manner provided for the division of property in case of the organization of a new district from a part of another district. The regional board of school trustees of the region in which the regional superintendent has supervision over the school district that is dissolved shall have all power necessary to annex the territory of the dissolved district as provided in this Section, including the power to attach the territory to a school district under the supervision of the regional superintendent of another educational service region and, in the case of Leepertown CCSD 175, the power to attach the territory to a non-contiguous school district if deemed in the best interests of the schools of the area and the educational welfare of the pupils involved. The annexation of the territory of a dissolved school district under this Section shall entitle the school districts involved in the annexation to payments from the State Board of Education in the same manner and to the same extent authorized in the case of other annexations under this Article. Other provisions of this Article 7 of The School Code [105 ILCS 5/7-01 et seq.] shall apply to and govern dissolutions and annexations under this Section and Section 7-2a, except that it is the intent of the General Assembly that in the case of conflict the provisions of this Section and Section 7-2a shall control over the other provisions of this Article.

The regional board of school trustees shall give notice of a hearing, to be held not less than 50 days nor more than 70 days after a school district is dissolved under Section 5-32 or a petition is filed under subsection (b) of Section 7-2a, on the disposition of the territory of such school district by publishing a notice thereof at least once each week for 2 successive weeks in at least one newspaper having a general circulation within the area of the territory involved. At such hearing, the regional board of school trustees shall hear evidence as to the school needs and conditions of the territory and of the area within and adjacent thereto, and shall take into consideration the educational welfare of the pupils of the territory and the normal high school attendance pattern of the children. In the case of

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an elementary school district, except for Leepertown CCSD 175, if all the eighth grade graduates of such district customarily attend high school in the same high school district, the regional board of school trustees shall, unless it be impossible because of the restrictions of a special charter district, annex the territory of the district to a contiguous elementary school district whose eighth grade graduates customarily attend that high school, and that has an elementary school building nearest to the center of the territory to be annexed, but if such eighth grade graduates customarily attend more than one high school the regional board of school trustees shall determine the attendance pattern of such graduates and divide the territory of the district among the contiguous elementary districts whose graduates attend the same respective high schools.

The decision of the regional board of school trustees in such matter shall be issued within 10 days after the conclusion of the hearing and deemed an "administrative decision" as defined in Section 3-101 of the Code of Civil Procedure [735 ILCS 5/3-101] and any resident who appears at the hearing or any petitioner may within 10 days after a copy of the decision sought to be reviewed was served by registered mail upon the party affected thereby file a complaint for the judicial review of such decision in accordance with the "Administrative Review Law" [735 ILCS 5/3-101 et seq.], and all amendments and modifications thereof and the rules adopted pursuant thereto. The commencement of any action for review shall operate as a stay of enforcement, and no further proceedings shall be had until final disposition of such review. The final decision of the regional board of school trustees or of any court upon judicial review shall become effective under Section 7-9 [105 ILCS 5/7-9] in the case of a petition for dissolution filed under subsection (b) of Section 7-2a, and a final decision shall become effective immediately following the date no further appeal is allowable in the case of a district dissolved under Section 5-32.

Notwithstanding the foregoing provisions of this Section or any other provision of law to the contrary, the school board of the Mt. Morris School District is authorized to donate to the City of Mount Morris, Illinois the school building and other real property used as a school site by the Mt. Morris School District at the time of its dissolution, by appropriate resolution adopted by the school board of the district prior to the dissolution of the district; and upon the adoption of a resolution by the school board donating the school building and school site to the City of Mount Morris, Illinois as authorized by this Section, the regional board of school trustees or other school officials holding legal title to the school building and school site so donated shall immediately convey the same to the City of Mt. Morris, Illinois.

(Source: P.A. 86-13; 88-386, § 15; 90-548, § 5-915; 94-1019, § 10; 97-656, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-11.

Section 90 of P.A. 94-1019 contains a savings provision, and section 95 contains a no acceleration or delay provision.

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Effect of Amendments. The 1993 amendment by P.A. 88-386, effective August 20, 1993 added the last paragraph.

The 1997 amendment by P.A. 90-548, effective January 1, 1998, in the first paragraph, in the third sentence, inserted "or subsection (I) of Section 18-8.05" and inserted "under".

The 2006 amendment by P.A. 94-1019, effective July 10, 2006, in the next-to-last sentence of the first paragraph deleted "under subsection (A)(5)(m) of Section 18-8 or subsection (I) of Section 18-8.05 and under Sections 18-8.2 and 18-8.3" before "in the same manner".

The 2012 amendment by P.A. 97-656, effective January 13, 2012, added "and, in the case of Leepertown CCSD 175, the power to attach the territory to a non-contiguous school district if deemed in the best interests of the schools of the area and the educational welfare of the pupils involved" to the end of the second sentence of the first paragraph; and inserted "except for Leepertown CCSD 175" in the third sentence of the second paragraph.

CASE NOTES

Analysis

Authority
- In General
Evidence Held Sufficient
Jurisdiction
- Attachment
- Certificate of Nonrecognition
- Factual Findings
Statement of Finding
Territorial Disposition
- Discretion
- Mandatory

Authority

- In General

The authority of a county board of school trustees to take the action specified in this section exists only if the district involved has failed for one year to maintain a recognized public school as required by law. Puckett v. County Bd. of Sch. Trustees, 36 Ill. App. 3d 535, 344 N.E.2d 487 (5 Dist. 1976).

Evidence Held Sufficient

County board considered those things which the legislature directed it to consider in this section of the Code, and its findings and orders were supported by the evidence and were not against the manifest weight of the evidence. Spaulding Elementary Sch. v. County Bd. of Sch. Trustees, 22 Ill. App. 3d 974, 317 N.E.2d 592 (2 Dist. 1974).

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Jurisdiction

- Attachment

Jurisdiction to annex one entire school district to another under this section because a district has failed for one year to maintain a public school as required by 105 ILCS 5/5-32 does not accrue to a county board of school trustees simply because the state official does not issue a certificate of recognition, nor should the taxpayers and all other parties interested in an existing school district lose an entity created by them through such an indefinite and negative process. Puckett v. County Bd. of Sch. Trustees, 36 Ill. App. 3d 535, 344 N.E.2d 487 (5 Dist. 1976).

- Certificate of Nonrecognition

The absence of a statement in this Code that the Superintendent of Public Instruction (now Board of Education) shall issue a certificate of nonrecognition following a finding that the school has not maintained prescribed standards does not mean that such a certificate is unnecessary or that failure to hear from the Superintendent that a district has been recognized then gives the County Board of School Trustees jurisdiction to act under this section. Puckett v. County Bd. of Sch. Trustees, 36 Ill. App. 3d 535, 344 N.E.2d 487 (5 Dist. 1976).

- Factual Findings

Jurisdiction of a county board of school trustees to attach a school district for failure to comply with this section or 105 ILCS 5/5-32 cannot be based on the opinion of the county board or on unsupported conclusions by the board which appear in the record; there must be tangible and sufficient proof emanating from the proper authority and introduced at a hearing to show that there is jurisdiction. Puckett v. County Bd. of Sch. Trustees, 36 Ill. App. 3d 535, 344 N.E.2d 487 (5 Dist. 1976).

Statement of Finding

Even though neither this section nor 105 ILCS 5/5-32 says, in so many words, that the Superintendent of Public Instruction (now Board of Education) shall issue a statement of any kind, the dissolution of any school district is of sufficient importance and grave consequence to warrant a statement of finding and a directive from the superintendent to the proper authorities stating that such a finding has been made, that the school is no longer recognized and that it is dissolved as of a specified date. Puckett v. County Bd. of Sch. Trustees, 36 Ill. App. 3d 535, 344 N.E.2d 487 (5 Dist. 1976).

Territorial Disposition

- Discretion

Regional school board of trustees properly exercised its discretion to determine the school district into which a school district dissolved pursuant to a petition under 105 ILCS 5/7-2a(b) was merged as the dissolved district's students normally attended the same high school as students from the district into which they were merged and the new school district had an elementary school closest to the center of the dissolved district. Puffer-Hefty Sch. Dist. No. 69 v. Du Page Reg'l Bd. of Sch. Trs., 339 Ill. App. 3d 194, 273 Ill. Dec. 626, 789 N.E.2d 800, 2003 Ill. App. LEXIS 528 (2 Dist. 2003), cert. denied, 540 U.S. 1219, 124 S. Ct. 1509, 158 L. Ed. 2d 155 (2004).

- Mandatory

As to the effect of the mandatory disposition of territory of a dissolved district on an underlying or overriding district whose legal status is unimpaired where the adjoining districts are not of like

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nature, see Community Unit Sch. v. Moore, 46 Ill. App. 2d 14, 195 N.E.2d 833 (2 Dist. 1964).

§ 105 ILCS 5/7-12. Termination of office

Sec. 7-12. Termination of office. Upon the close of the then current school year during which any school district is annexed to another school district under any of the provisions of this Article, the terms of office of the school directors or board of education members of the annexed school district shall be terminated and the school board of the annexing district shall perform all the duties and have all the powers of the school board of the annexed district. The annexing district as it is constituted on and after the time of such annexation shall receive all the assets and assume all the obligations and liabilities including the bonded indebtedness of the original annexing district and of the district annexed. The tax rate for such assumed bonded indebtedness shall be determined in the manner provided in Article 19 of this Act.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-12.

CASE NOTES

Application

This provision contemplates the annexation of an entire district and not partial annexation where all of the school facilities are located on the land annexed. Board of Educ. v. Board of Educ., 2 Ill. App. 3d 643, 276 N.E.2d 732 (3 Dist. 1971).

§ 105 ILCS 5/7-13. Election ordered by Regional Superintendent

Sec. 7-13. Election ordered by Regional Superintendent. Upon the creation of a new school district under any of the provisions of this Article the regional superintendent of schools shall order an election for the purpose of electing a school board for such district in the manner provided by the general election law and in Article 9 of this Act for the election of school boards.

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(Source: P.A. 81-1490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-13.

§ 105 ILCS 5/7-14. Bonded indebtedness-Tax rate

Sec. 7-14. Bonded indebtedness-Tax rate. (a) Except as provided in subsection (b), whenever the boundaries of any school district are changed by the annexation or detachment of territory, each such district as it exists on and after such action shall assume the bonded indebtedness, as well as financial obligations to the Capital Development Board pursuant to Section 35-15 (now repealed) of this Code [105 ILCS 5/35-15], of all the territory included therein after such change. The tax rate for bonded indebtedness shall be determined in the manner provided in Section 19-7 of this Act [105 ILCS 5/19-7], except the County Clerk shall annually extend taxes against all the taxable property situated in the county and contained in each such district as it exists after the action. Notwithstanding the provisions of this subsection, if the boundaries of a school district are changed by annexation or detachment of territory after June 30, 1987, and prior to September 15, 1987, and if the school district to which territory is being annexed has no outstanding bonded indebtedness on the date such annexation occurs, then the annexing school district shall not be liable for any bonded indebtedness of the district from which the territory is detached, and the school district from which the territory is detached shall remain liable for all of its bonded indebtedness.

(b) Whenever a school district with bonded indebtedness has become dissolved under this Article and its territory annexed to another district, the annexing district or districts shall not, except by action pursuant to resolution of the school board of the annexing district prior to the effective date of the annexation, assume the bonded indebtedness of the dissolved district; nor, except by action pursuant to resolution of the school board of the dissolving district, shall the territory of the dissolved district assume the bonded indebtedness of the annexing district or districts. If the annexing district or districts do not assume the bonded indebtedness of the dissolved district, a tax rate for the bonded indebtedness shall be determined in the manner provided in Section 19-7, and the county clerk or clerks shall annually extend taxes for each outstanding bond issue against all the taxable property that was situated within the boundaries of the district as the boundaries existed at the time of the issuance of each bond issue regardless of whether the property is still contained in that same district at the time of the extension of the taxes by the county clerk or clerks.

(c) Notwithstanding the provisions of Section 19-18 of this Code [105 ILCS 5/19-18], upon resolution of the school board, the county clerk must extend taxes to pay the principal of and interest on any bonds issued exclusively to refund any bonded indebtedness of the annexing school district against all of the taxable property that was

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situated within the boundaries of the annexing district as the boundaries existed at the time of the issuance of the bonded indebtedness being refunded and not against any of the taxable property in the dissolved school district, provided that (i) the net interest rate on the refunding bonds may not exceed the net interest rate on the refunded bonds, (ii) the final maturity date of the refunding bonds may not extend beyond the final maturity date of the refunded bonds, and (iii) the tax levy to pay the refunding bonds in any levy year may not exceed the tax levy that would have been required to pay the refunded bonds for that levy year. The provisions of this subsection (c) are applicable to school districts that were dissolved and their territory annexed to another school district pursuant to a referendum held in April of 2003. The provisions of this subsection (c), other than this sentence, are inoperative 2 years after the effective date of this amendatory Act of the 95th General Assembly [P.A. 95-1025].

(Source: P.A. 87-107; 87-1120, § 1; 87-1215, § 1; 88-45, § 2-31; 94-1105, § 20; 95-1025, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-14.

Section 105 ILCS 5/35-15, referred to in subsection (a), has been repealed.

Effect of Amendments. The 1992 amendment by P.A. 87-1120, effective September 16, 1992, in subsection (b), inserted "except by action pursuant to resolution of the school board of the annexing district prior to the effective date of the annexation" in the first sentence, and inserted "If the annexing district or districts do not assume the bonded indebtedness of the dissolved district" in the second sentence and inserted "the" preceding "bonded indebtedness" in the second sentence.

The 1992 amendment by P.A. 87-1215, effective November 23, 1992, deleted "or by the dissolution of a district and its annexation to another district under any of the provisions of this Act" following "detachment of territory" in the first sentence of subsection (a); substituted "this Article" for "Section 7-2a" in the first sentence of subsection (b); and added the language beginning with "nor, except by action pursuant to resolution" through the end of the first sentence of subsection (b).

The 1993 amendment by P.A. 88-45, effective July 6, 1993, combined the separate amendments of P.A. 87-1120 and P.A. 87-1215, and also made stylistic changes.

The 2007 amendment by P.A. 94-1105, effective June 1, 2007, in (a) substituted "(now repealed) of this" for "of the School".

The 2009 amendment by P.A. 95-1025, effective January 6, 2009, added (c).

CASE NOTES

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Analysis

Alleged Financial Injury
Application
- Non-High School Districts
Corporate Authority
- Existence
Creation of Indebtedness
- Election
Refunding Bonds
- Authority to Issue
- Tax Levy

Alleged Financial Injury

Where the only loss resulting from a detachment would be the property taxes which the detachment area pays, a mere .3% of the district's total receipts, the alleged financial injury was de minimus. Davis v. Regional Bd. of Sch. Trustees, 155 Ill. App. 3d 185, 108 Ill. Dec. 11, 507 N.E.2d 1352 (5 Dist. 1987).

Application

- Non-High School Districts

Former Ill. Rev. Stat., ch. 122, para. 4B-12 (see now this section) was to be construed as showing a legislative intent to exclude cases involving non-high school districts from its scope. People ex rel. Community High Sch. v. Hupe, 2 Ill. 2d 434, 118 N.E.2d 328 (1954).

Corporate Authority

- Existence

Where refunding bonds issued by board of education did not create an additional indebtedness, then the board of education was not acting as the corporate authority of the detached territory for the purpose of creating a new indebtedness; rather, said board was acting as an agency of the state, to take such steps as were necessary to refund the existing bonded debt and provide for its liquidation; hence, there was no constitutional right on the part of the plaintiff to vote for or against those who authorized the issuance of refunding bonds and who levied the tax for the payment of principal and interest of such bonds. Prohm v. Non-High Sch. Dist. No. 216, 7 Ill. 2d 421, 130 N.E.2d 917 (1955).

Creation of Indebtedness

- Election

Neither an election authorizing the issuing of bonds, nor the vote of the board of directors, after the election, to issue them, created a bonded indebtedness of the district; such indebtedness existed only when the bonds were actually issued, and, as the bonds were not issued until after appellants' property was detached from the district, it was not liable to pay the bonds. People ex rel. Carson v. Baxter, 328 Ill. 23, 159 N.E. 203 (1927).

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Refunding Bonds

- Authority to Issue

The corporate authority of any school district, without either authorization of the voters of the district by referendum vote, or right and opportunity in the voters to petition for an election to vote on such proposition, may authorize by resolution the issuance of refunding bonds to refund its outstanding bonded debt. Prohm v. Non-High Sch. Dist. No. 216, 7 Ill. 2d 421, 130 N.E.2d 917 (1955).

- Tax Levy

Where tax originally was for a corporate purpose of the detached territory, and had the bonds remained outstanding, plaintiff would have remained obligated to pay taxes for her share of bonded indebtedness despite the detachment of her property, cancellation and refunding of bonds did not vitiate that obligation; the tax levy for said refunding bonds served the purpose of discharging a valid and subsisting obligation of the property owners of the detached territory. Prohm v. Non-High Sch. Dist. No. 216, 7 Ill. 2d 421, 130 N.E.2d 917 (1955).

OPINIONS OF ATTORNEY GENERAL

Real Estate Taxes

- Illustrative Cases

Certain territory was detached from school district A and annexed to school district B; therefore, the county clerk, when he extended the real estate taxes for the year, should have included the property in the detached area in the general school levy for school district B. 1984 Op. Atty. Gen. 1

§ 105 ILCS 5/7-14A. Annexation Compensation

Sec. 7-14A. Annexation Compensation. There shall be no accounting made after a mere change in boundaries when no new district is created, except that those districts whose enrollment increases by 90% or more as a result of annexing territory detached from another district pursuant to this Article are eligible for supplementary State aid payments in accordance with Section 11E-135 of this Code [105 ILCS 5/11E-135]. Eligible annexing districts shall apply to the State Board of Education for supplementary State aid payments by submitting enrollment figures for the year immediately preceding and the year immediately following the effective date of the boundary change for both the district gaining territory and the district losing territory. Copies of any intergovernmental agreements between the district gaining territory and the district losing territory detailing any transfer of fund balances and staff must also be submitted. In all instances of changes in boundaries, the district losing territory shall not count the average daily attendance of pupils living in the territory during the year preceding the effective date of the boundary change in its claim for reimbursement under Section 18-8 [105 ILCS 5/18-8 (now

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repealed)] for the school year following the effective date of the change in boundaries and the district receiving the territory shall count the average daily attendance of pupils living in the territory during the year preceding the effective date of the boundary change in its claim for reimbursement under Section 18-8 for the school year following the effective date of the change in boundaries. The changes to this Section made by this amendatory Act of the 95th General Assembly [P.A. 95-707] are intended to be retroactive and applicable to any annexation taking effect on or after July 1, 2004.

(Source: P.A. 84-1250; 95-707, § 5-20.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-14A.

Section 105 ILCS 5/18-8, referred to in above, has been repealed. -

Effect of Amendments. The 2008 amendment by P.A. 95-707, effective January 11, 2008, rewrote the section.

§ 105 ILCS 5/7-27. Annexation of territory eliminated from non-high school district

Sec. 7-27. Annexation of territory eliminated from non-high school district. When any territory is eliminated from a non-high school district by the provisions of Section 12-24 of this Act [105 ILCS 5/12-24], the county board of school trustees of the county in which such territory lies shall within thirty days after such date hold one or more public hearings with respect to the attachment of such territory to one or more districts maintaining grades nine to twelve, each inclusive.

Notice of such hearing shall be given in writing by the county board of school trustees to each elementary school board in the territory to be considered at the hearing and to each school board of any district adjoining such territory maintaining grades nine to twelve, each inclusive. The notice shall be published once at least ten days before such hearing in a newspaper of general circulation in the territory and of general circulation in the districts adjoining such territory maintaining grades nine to twelve, each inclusive. The notice shall describe the territory to be annexed and shall give the time and place of the hearing.

The county board of school trustees shall hold a hearing and annex the territory to the district that they determine will best serve the interests of the pupils in the area and will best serve the educational welfare of the pupils in the area and to which the pupils of the underlying elementary school district normally attend high school where possible. The order annexing the territory shall be issued not more than ten days after the hearing and

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shall be effective immediately unless the order provides for the attachment of the eliminated non-high school territory to a district in an adjacent county or to a district whose school board is elected and has been given the powers of school trustees in which case a copy thereof, certified by the secretary of the county board of school trustees making such annexation, shall be given to the county board of school trustees in the adjacent county or to the school board in the district whose board is elected and has been given the powers of school trustees. Upon receipt of such order the county board of school trustees or school board, as the case may be, shall give 10 days notice of the hearing once in a newspaper of general circulation in the district and shall give a notice in writing by registered mail at least 10 days prior to the hearing to each school board which was given notice of the hearing conducted by the county board of school trustees of the county in which the territory is located. The notice shall describe the territory to be annexed and give the time and place of the hearing. The board conducting the hearing shall make its determination based upon the same factors as the county board of school trustees wherein the territory is located is required to consider and shall issue an order not more than ten days after such hearing either approving or rejecting the original order. The order rejecting or approving the annexation shall be effective immediately.

If the former non-high school territory is annexed to a district maintaining grades one to twelve, each inclusive, the elementary district, or parts thereof, underlying the territory which is annexed shall automatically be detached from such elementary district and become a part of the district to which the territory is annexed. Any order of the county board of school trustees concerning annexation of territory which was eliminated from the non-high school district from which an appeal is pending on June 30, 1955, shall be valid unless reversed by higher authority.

The action of the county board of school trustees and other elected boards having the power of school trustees shall be subject to review as provided in Section 7-7 of this Act [105 ILCS 5/7-7], and when a review is made of the action wherein two separate county boards of school trustees acted then such review shall be of the action of both boards, and shall be before the circuit court of the county in which the non-high school territory is located.

(Source: Laws 1967, p. 470.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-27.

§ 105 ILCS 5/7-28. Title to school sites and buildings

Sec. 7-28. Title to school sites and buildings. (a) On the effective date of this amendatory Act of 1993: (i) the legal title to all school buildings and school sites used or occupied for school purposes by a school district located in a Class I county school unit,

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or held for the use of any such school district by and in the name of the regional board of school trustees, shall vest in the school board of the school district, and the legal title to those school buildings and school sites shall be deemed transferred by operation of law to the school board of the school district, to be used for school purposes and held, sold, leased, exchanged, or otherwise transferred in accordance with law; and (ii) the legal title to all school buildings and school sites used or occupied for school purposes by a school district that is located in a Class II county school unit and that has withdrawn from the jurisdiction and authority of the trustees of schools of a township and the township treasurer under subsection (b) of Section 5-1 [105 ILCS 5/5-1], or held for the use of any such school district by and in the name of the regional board of school trustees at the time that regional board of school trustees was abolished by P.A. 87-969, shall vest in the school board of the school district, and the legal title to those school buildings and school sites shall be deemed transferred by operation of law to the school district, to be used for school purposes and held, sold, leased, exchanged or otherwise transferred in accordance with law.

(b) The school board of each school district to which subsection (a) of this Section is applicable may receive any gift, grant, donation or legacy made for the use of any school or for any school purpose within their jurisdiction, and shall succeed to any gift, grant, donation or legacy heretofore received by the regional board of school trustees, either from the township school trustees within their jurisdiction or from any other source, for the use of any school of the district served by the school board or for any other school purpose of that school district. All conveyances of real estate made to the school board of a school district under this Section shall be made to the school board in its corporate name and to its successors in office.

(c) All school districts and high school districts may take and convey title to real estate to be improved by buildings or other structures for vocational or other educational training as provided in Section 10-23.3 [105 ILCS 5/10-23.3].

(d) Nothing in this Section shall be deemed to apply to any common school lands or lands granted or exchanged therefor, or to the manner in which such lands are managed and controlled for the use and benefit of the school township and the schools of the township by the township land commissioners, the regional board of school trustees (acting as the township land commissioners), or the trustees of schools of the township, which hold legal title to those lands; and they may continue to receive gifts, grants, donations or legacies made for the use of the school township and for the schools of the township generally in the same manner as such gifts, grants, donations, or legacies were made prior to the effective date of this amendatory Act of 1993.

(Source: P.A. 86-1441; 87-473; 88-155, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-28.

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Effect of Amendments. The 1993 amendment by P.A. 88-155, effective January 1, 1994, rewrote the section.

CASE NOTES

Dissolution

- Special Charter School District

If the electors of a special charter school district vote to organize under the general school law pursuant to 105 ILCS 5/32-1, the special charter school district is dissolved; the county board of school trustees would cause a new school district, which would be governed under the general school laws, to be formed and established, and would call an election for the directors of such district, and as the successor school district to the special charter district, the new common school district would become liable for all of the financial obligations of the dissolved district. People ex rel. Killeen v. Kankakee Sch., 48 Ill. 2d 419, 270 N.E.2d 36 (1971).

OPINIONS OF ATTORNEY GENERAL

Sale of Property

A regional board of school trustees lacks the statutory authority necessary to sell property which has been conveyed to it directly for general school purposes. 1993 Op. Atty. Gen. (93-004).

Practice Guides and Treatises.

Ward on Title Examinations § 4.24 Sale of School Property (§ 46) (IICLE).

§ 105 ILCS 5/7-29. Limitation on contesting boundary change

Sec. 7-29. Limitation on contesting boundary change. Neither the People of the State of Illinois nor any person, corporation, private or public, nor any association of persons shall commence an action contesting either directly or indirectly the annexation of any territory to a school district or the creation of any new school district unless within 2 years after the order annexing the territory or creating the new district shall have become final or within 2 years after the date of the election creating the new school district if no proceedings to contest such election are duly instituted within the time permitted by law, or within two years after the final disposition of any proceedings which may be so instituted to contest such election; however where a limitation of a shorter period is prescribed by statute such shorter limitation shall apply, and the limitation set forth in this section shall not apply to any order where the judge, body or officer entering the order annexing the territory or creating the new district did not at the time of the entry of such

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order have jurisdiction of the subject matter.

(Source: P.A. 86-1334.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-29.

§ 105 ILCS 5/7-30. Distribution of accumulated funds

Sec. 7-30. Distribution of accumulated funds. Whenever there has been an accumulation of school funds in the possession of county collectors in counties in which, after a reorganization of school districts, there has been no distribution of such funds for a period of 3 years, such funds shall be distributed as follows:

Each district which lies in whole or in part within such county shall receive that proportion of the funds computed by dividing the number of students in such county enrolled in the common schools of that district by the total number of students in the county enrolled in all common schools.

Each such county collector shall obtain from the county superintendent of schools the necessary enrollment figures and shall thereupon distribute such funds as hereinabove provided for.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 7-30.

Article 7A.

Unit School District Conversion in

Districts With Not More Than

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250 Students in Grades

9 through 12

§§ 105 ILCS 5/7A-1 through 105 ILCS 5/7A-15: Repealed by P.A. 94-1019, § 10, effective July 10, 2006.

ARTICLE 7B.

[RESERVED]

Article 7C.

Transfer of High School District Territory

§ 105 ILCS 5/7C-1: Repealed by P.A. 94-1105, § 80, effective June 1, 2007.

ARTICLE 8.

Treasurers

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§ 105 ILCS 5/8-1. Treasurers

Sec. 8-1. Treasurers. (a) Except as otherwise provided in subsections (b) and (c), in Class II county school units the trustees of schools shall appoint a treasurer who shall be ex-officio clerk of the board. The term of the township treasurer shall be for a 2 year period beginning and ending on the first of July. The treasurer shall be a resident of the township, but not a trustee, or school board member. He shall attend all meetings and keep a record of the official proceedings of the trustees of schools. Such record shall be open to public inspection. All proceedings, when recorded, shall be signed by the president and the clerk. If the clerk is absent, or refuses to perform any of his duties, a clerk pro tempore may be appointed. For sufficient cause the treasurer may be removed from office by the trustees of schools. In case of a vacancy the trustees of schools shall elect a treasurer for the unexpired term.

(b) In Class I county school units, and in each school district which forms a part of a Class II county school unit but which has withdrawn from the jurisdiction and authority of the trustees of schools of the township in which such school district is located and from the jurisdiction and authority of the township treasurer in such Class II county school unit as provided in subsection (b) of Section 5-1 [105 ILCS 5/5-1], each school board shall either elect one of its members to serve as treasurer without salary for a period of one year or appoint someone, not a member of the school board, as its treasurer, and, except as provided in this Section the board shall fix his compensation. An appointed treasurer shall serve at the pleasure of the board. An appointed treasurer shall be at least 21 years of age, of approved integrity, but not a member of the county board of school trustees. The records of the treasurer shall be open to public inspection. Two or more such districts may appoint the same treasurer. In case of a vacancy caused by the death, resignation or the removal from office of the school treasurer the school board shall appoint a treasurer. The school board may determine the temporary incapacity of its treasurer occasioned by illness, absence from the district or any other cause which prevents the prompt performance of his duties and appoint an acting treasurer to serve until the board determines such temporary incapacity no longer exists.

(c) The school board of each elementary school, high school and unit school district that forms a part of a Class II county school unit and that was under the jurisdiction and authority of the township treasurer and trustees of schools of a township at the time those offices were abolished in that township as provided in subsection (c) of Section 5-1 shall appoint a person to serve as treasurer of the school board. The term of each school treasurer appointed under this subsection shall be for a 2 year period beginning and ending on the first day of July. A person appointed under this subsection to serve as treasurer of a school board shall not be the superintendent of schools of the school district. A person appointed and serving under this subsection as treasurer of a school board may concurrently serve as the treasurer of the regional board of school trustees, if

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selected to serve in that capacity by the regional board of school trustees, as provided in subsection (c) of Section 5-1. The school board shall fix the compensation of its school treasurer, and for sufficient cause may remove the school treasurer from office. However, if a member of the school board is also school treasurer, he or she shall perform his or her duties as school treasurer without compensation. In the case of a vacancy, the school board shall appoint a school treasurer for the unexpired term. The school board may determine the temporary incapacity of its treasurer due to illness, absence from the district, or other cause that prevents the prompt performance of his duties and may appoint an acting treasurer to serve until the school board determines that the temporary incapacity of its treasurer no longer exists.

(d) After October 1, 1977, each treasurer in a Class I county school unit appointed under this Section for his first term shall have a financial background or related experience or 12 semester hours of credit of college level accounting.

(e) After August 14, 1989, any treasurer appointed under this Section for his first term in Class II county school units, including any person appointed by a school board to serve as its treasurer as provided in subsection (c) of this Section, shall be a certified public accountant or a certified chief school business official as defined in part (3) of Section 21-7.3 of this Act. Experience as a township treasurer in a Class II county school unit prior to July 1, 1989 shall be deemed the equivalent of certification.

(f) Concurrently with the election or appointment of its own school treasurer by the school board of a school district which forms a part of a Class II county school unit but which no longer is subject to the jurisdiction and authority of a township treasurer or trustees of schools of a township because the district has withdrawn from the jurisdiction and authority of the township treasurer and trustees of schools of the township or because those offices have been abolished as provided in subsection (b) or (c) of Section 5-1, all funds, accounts, moneys, notes, bonds, mortgages and effects then held by such township treasurer on behalf or for the use and benefit of, or then credited by such township treasurer to any fund or account of such school district shall thereupon be transferred and paid over by such township treasurer to the school treasurer elected or appointed by the school board of such school district. In addition the school treasurer of such school district shall have the right, at all reasonable times, to inspect all cash books, loan books, district account books and journals kept by such township treasurer as provided in Section 8-5 [105 ILCS 5/8-5] and to copy or otherwise reproduce such portions thereof as such school treasurer deems necessary for the performance of his duties.

(g) Upon the abolition of the offices of the township treasurer and trustee of schools of a township as provided in subsection (c) of Section 5-1, and subject to the limitation of subsection (b) of Section 8-5 with respect to certain records to be surrendered to the regional board of school trustees, and except as otherwise provided in subsection (c) of Section 5-1 with respect to the common school lands and township loanable funds of that township and with respect to the records, books and accounts relating to those common school lands and township loanable funds, all school funds and accounts, moneys, notes, bonds, securities, district account books and other documents, records and effects then held by the former township treasurer on behalf or for the use and benefit of, or then credited by the former township treasurer to any fund or account of any school district

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that was under the jurisdiction and authority of the township treasurer at the time the office of that township treasurer was abolished shall thereupon be transferred and paid over by the former township treasurer to the appropriate school treasurer appointed by the school board of each such district under subsection (c) of this Section 8-1.

(h) If the school district of a school treasurer elected or appointed under this Section is receiving emergency State financial assistance under Article 1B [105 ILCS 5/1B-1 et seq.], that school treasurer is subject to the provisions of Article 1B.

(Source: P.A. 86-204; 86-954; 86-1028; 86-1051; 86-1441; 87-473; 89-618, § 30; 96-538, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-1.

Section 21-7.3, referred to above, is not a section found in this Act.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 110.125.

Effect of Amendments. The 1996 amendment by P.A. 89-618, effective August 9, 1996, in the third sentence of subsection (c) deleted "shall be a resident of the school district served by that school board and" following "a school board".

The 2009 amendment by P.A. 96-538, effective August 14, 2009, in (c), deleted "either a member of the school board or" preceding "the superintendent" in the third sentence and added the sixth sentence.

§ 105 ILCS 5/8-2. Bond of treasurer

Sec. 8-2. Bond of treasurer. Before entering upon his duties, each school treasurer shall execute a bond with 2 or more persons having an interest in real estate who are not trustees, or a surety company authorized to do business in this State, as sureties, payable to the township trustees of schools in Class II county school units and to the school board of each district for which he or she is treasurer or its successors in office in Class I county school units and conditioned upon the faithful discharge of his or her duties, except that the bond required of the school treasurer of a school district which is located in a Class II county school unit but which no longer is subject to the jurisdiction and authority of a township treasurer or trustees of schools of a township because the district has withdrawn from the jurisdiction and authority of the township treasurer and trustees of schools of the township or because those offices have been abolished as provided in subsection (b) or (c) of Section 5-1 [105 ILCS 5/5-1] shall be payable to the school board of each district for which he or she is treasurer or its successor in office and conditioned upon the faithful discharge of his or her duties. The penalty of the bond shall be 25% of the amount of all bonds, notes, mortgages, moneys and effects of which he is to have the custody, whether individuals act as sureties or whether the surety given is by a surety company authorized to do business in

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this State, and shall be increased or decreased from time to time, as the increase or decrease of the amount of notes, bonds, mortgages, moneys and effects may require, and whenever in the judgment of the regional superintendent of schools, or whenever in the judgment of the township trustees or the school board of the district by which the school treasurer was appointed or elected, the penalty of the bond should be increased or decreased; provided that the penalty of the bond shall not be increased to more than 25% of the amount of all bonds, notes, mortgages, moneys and effects of which the treasurer has custody at any time. The bond of the township treasurer shall be approved by at least a majority of the township trustees in Class II county school units; provided that in those school districts that are located in a Class II county school unit but are no longer subject to the jurisdiction and authority of a township treasurer and trustees of schools of a township (because the districts have withdrawn from the jurisdiction and authority of the township treasurer and trustees of schools of the township or because those offices have been abolished as provided in subsection (b) or (c) of Section 5-1 [105 ILCS 5/5-1]) and in Class I county school units, the bond shall be approved by at least a majority of the members of the school board; and in all cases the bond shall be filed with the regional superintendent of schools who shall file with the State Board of Education before September 1 in each year an affidavit showing which treasurers of school districts under his supervision and control are properly bonded. The bond shall be in the following form:

STATE OF ILLINOIS

..... COUNTY

We, AB, CD and EF, are obligated, jointly and severally, to the (School Board of District No ....., or trustees of township ..... range .....) in the above mentioned county or successors in office, in the penal sum of $ ....., for the payment of which we bind ourselves, our heirs, executors and administrators.

Dated (insert date).

The condition of this obligation is such that if AB, school treasurer in the above stated county, faithfully discharges the duties of his or her office, according to law, and delivers to his or her successor in office, after such successor has qualified by giving bond as provided by law, all moneys, books, papers, securities and control, which have come into his or her possession or control, as such school treasurer, from the date of his or her bond to the time that his or her successor has qualified as school treasurer, by giving such bond as required by law, then this obligation to be void; otherwise to remain in full force and effect.

Approved and accepted by:

A .... B .... (Signature)

C .... D .... (Signature)

E .... F .... (Signature)

G .... H .... (Signature)

I .... J .... (Signature)

K .... L .... (Signature)

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```
 (Board of Education or Board of Directors of District No ......
By ........
President[,] Secretary or Clerk
or ........
 ........ Township Trustees)
```

No part of the State or other school fund shall be paid to any school treasurer or other persons authorized to receive it unless such treasurer has filed his or her bond, or if reelected, has renewed his or her bond and filed it as required by law.

(Source: P.A. 86-1441; 87-473; 89-212, § 5; 91-357, § 101.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-2.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1995 amendment by P.A. 89-212, effective August 4, 1995, in the first paragraph, in the second sentence, substituted "25% of" for "at least twice", substituted "whether individuals" for "if individuals", deleted a comma after "sureties", substituted "whether the surety" for "in the amount only of such bonds, notes, mortgages, moneys and effects if the surety" and added at the end "provided that the penalty of the bond shall not be increased to more than 25% of the amount of all bonds, notes, mortgages, moneys and effects of which the treasurer has custody at any time".

The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "Dated (insert date)" for "Dated ..... 19.." near the beginning of the form.

§ 105 ILCS 5/8-3. Compensation

Sec. 8-3. Compensation. Each school treasurer shall receive in full, for his services, a compensation to be fixed, prior to his appointment, and such compensation shall not be decreased during his term of office.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-3.

§ 105 ILCS 5/8-4. High school districts to pay share of compensation and expenses

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Sec. 8-4. High school districts to pay share of compensation and expenses. Each elementary school district, community high school district and township high school district - excepting, however, any school district that no longer is subject to the jurisdiction and authority of a township treasurer or trustees of schools of a township because the district has withdrawn from the jurisdiction and authority of the township treasurer and trustees of schools of the township or because those offices have been abolished as provided in subsection (b) or (c) of Section 5-1 [105 ILCS 5/5-1] - shall pay a proportionate share of the compensation of the township treasurer serving such district or districts and a proportionate share of the expenses of the township treasurer's office, which compensation and expenses shall be determined by dividing the total amount of all school funds handled by the township treasurer by such amount of the funds as belongs to each such elementary school district or high school district.

(Source: P.A. 86-1441; 87-473.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-4.

§ 105 ILCS 5/8-5. Books and accounts

Sec. 8-5. Books and accounts. (a) The township treasurer shall be provided by the trustees of schools with a cash book, a loan book, a district account book, and a journal. In the cash book he shall enter in separate accounts all moneys received and paid out, with the amount, date, from whom, to whom and on what account received or paid out; or, if loaned, the date, to whom, and the amount. Moneys received shall be charged to debit account, and moneys paid out shall be credited as follows: First, to the principal of the township fund; second, to the interest of the township fund; third, to the common school fund and other funds; fourth, to the taxes received from the county or town collector, and for what districts received; fifth, donations; sixth, moneys coming from all other sources; in all cases entering the date when received, and when paid out.

In the loan book he shall enter a record of all school funds loaned, with the amount to whom, date, time, when due, and the rate of interest, the interest paid, and a description of the securities.

In the district account book he shall post from the cash book all receipts and expenditures on account of any district, with the amount, date, from or to whom, and from what sources and for what purposes.

In the journal he shall record at length the acts and proceedings of the trustees of schools, their orders, by-laws and resolutions.

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The township treasurer shall keep his accounts in the manner directed by the State Board of Education, the regional superintendent of schools or the trustees of schools; and they shall be subject at all times to the inspection of the trustees, the directors or school board members or other persons authorized by this Act or of any committee appointed by the voters of the township at the election of trustees to examine them.

(b) Concurrently with the abolition of the offices of township treasurer and trustee of schools of a township as provided in subsection (c) of Section 5-1 [105 ILCS 5/5-1], the former township treasurer whose office has been so abolished shall surrender to the school treasurer of each school district served by that township treasurer at the time that office is abolished the district account book theretofore maintained for that school district by the former township treasurer, and in addition shall surrender to the regional board of school trustees the cash books, loan books and journals referred to in subsection (a) of this Section 8-5 [105 ILCS 5/8-5]; provided that the school board and school treasurer of each such school district, the State Board of Education, the regional superintendent and such other persons as may be authorized by law shall have the right, at all reasonable times, to inspect, and to copy or otherwise reproduce any portions of the cash books, loan books and journals surrendered by the former township treasurer to the regional board of school trustees as required by this subsection.

(Source: P.A. 87-473.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-5.

§ 105 ILCS 5/8-6. Custody of school funds

Sec. 8-6. Custody of school funds. The school treasurer shall have custody of the school funds and shall keep in a cash book separate cash balances. In the cash book he shall enter in separate accounts the balance, total of all moneys received in each fund, and the total of the orders countersigned or checks signed with respect to each fund and extend the balances and the aggregate cash balance for all funds balance at least monthly. The treasurer shall reconcile such balances with the accounting or bookkeeping department of the district in conformity with a template provided by the State Board of Education monthly. School districts on the financial watch or warning list that are required to submit deficit reduction plans in accordance with Section 17-1 of this Code [105 ILCS 5/17-1] or that are certified in financial difficulty in accordance with Section 1A-8 of this Code [105 ILCS 5/1A-8] must transmit the cash balances as required pursuant to this Section 8-6 of this Code [105 ILCS 5/8-6] to the State Board of Education quarterly from the treasurer.

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(Source: Laws 1961, p. 31; P.A. 97-429, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-6.

The reference to "Section 1-A8 of this Code" appears above as enacted; however the publisher believes the reference was intended to be to "Section 1A-8 of this Code".

Effect of Amendments. The 2011 amendment by P.A. 97-429, effective August 16, 2011, inserted "cash" preceding "balances" in the first sentence; in the second sentence, inserted "with respect to each fund" and "balances and the aggregate cash balance for all funds"; in the third sentence, added "The treasurer" to the beginning and added "in conformity with a template provided by the State Board of Education monthly" to the end; added the last sentence; and made related and stylistic changes.

CASE NOTES

Liquidation

- Preferences

In bank liquidation proceeding, township treasurer, agent of involuntary quasi-public corporation, was not entitled to payment of funds preferred over general creditors on theory that money in the custody of the school treasurer belongs to the state. People ex rel. Russell v. Farmers State & Sav. Bank, 338 Ill. 134, 170 N.E. 236 (1930).

§ 105 ILCS 5/8-7. Only lawful custodian of funds - Depositaries

Sec. 8-7. Only lawful custodian of funds - Depositaries. Except as otherwise provided in subsection (f) of Section 8-1 [105 ILCS 5/8-1], subsection (c) of Section 5-1 [105 ILCS 5/5-1], and subsection (b) of Section 8-5 [105 ILCS 5/8-5], the township treasurer in Class II county school units, the school treasurer in Class I county school units, and the school treasurer in any school district that forms a part of a Class II county school unit but which no longer is subject to the jurisdiction and authority of a township treasurer and trustees of schools of a township (because the district has withdrawn from the jurisdiction and authority of the township treasurer and trustees of school of the township or because those offices have been abolished as provided in subsection (b) or (c) of Section 5-1 [105 ILCS 5/5-1]) shall be the only lawful custodian of all school funds and shall demand receipt for and safely keep, according to law, all bonds, mortgages, notes, moneys, effects, books and papers belonging to any school district or township, as the case may be, which he serves as treasurer. Trustees of schools in Class II county school units, school boards in Class I county school units, and those school boards in Class II county school units that have elected or appointed their own school treasurer pursuant to

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subsection (b) or (c) of Section 5-1 [105 ILCS 5/5-1] and subsection (b) or (c) of Section 8-1 [105 ILCS 5/8-1], shall designate one or more banks, savings and loan associations, situated in the State of Illinois, in which school funds and moneys in the custody of the township treasurer or of the school treasurer shall be kept. When a bank or savings and loan association has been designated as a depositary it shall continue as such until 10 days after a new depositary is designated and has qualified by furnishing statements of resources and liabilities as is required by this section. When a new depositary is designated, the trustees of schools in Class II county school units, school boards in Class I county school units, and those school boards in Class II county school units that have elected or appointed their own school treasurer pursuant to subsection (b) or (c) of Section 5-1 [105 ILCS 5/5-1] and subsection (b) or (c) of Section 8-1 [105 ILCS 5/8-1], shall notify the sureties of the township treasurer or of the school treasurer, as the case may be, of that fact, in writing at least 5 days before the transfer of funds. The township treasurer or the school treasurer shall be discharged from responsibility for such funds and moneys which he deposits in a depositary so designated while such funds and moneys are so deposited.

No bank or savings and loan association shall receive public funds as permitted by this Section, unless it has complied with the requirements established pursuant to Section 6 of the Public Funds Investment Act [30 ILCS 235/6].

Township and school treasurers are authorized to enter into agreements of any definite or indefinite term regarding the deposit, redeposit, investment, reinvestment or withdrawal of school funds, including, without limitation, agreements with other township and school treasurers, agreements with community college districts authorized by Section 3-47 of the Public Community College Act [110 ILCS 805/3-47] and agreements with educational service regions authorized by Section 3-9.1 [105 ILCS 5/3-9.1].

Each township and school treasurer is permitted to (i) combine moneys from more than one fund of a single school district for the purpose of investing such funds, and (ii) join with township and school treasurers, community college districts and educational service regions in investing school funds, community college funds and educational service region funds. Such joint investments shall be made only in investments authorized by law for the investment of school funds or, in the case of investments made jointly with community college districts and educational service regions, in investments authorized by law for the investment of school funds, community college funds and educational service region funds. When moneys of more than one fund of a single school district are combined for investment purposes or when moneys of a school district are combined with moneys of other school districts, community college districts or educational service regions, the moneys combined for such purposes shall be accounted for separately in all respects, and the earnings from such investment shall be separately and individually computed and recorded, and credited to the fund or school district, community college district or educational service region, as the case may be, for which the investment was acquired.

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(Source: P.A. 86-1051; 86-1441; 87-435; 87-473; 87-968, § 2.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-7.

Effect of Amendments. The 1992 amendment by P.A. 87-968, effective January 1, 1993, in the third paragraph, deleted "and" preceding "agreements with community" and added at the end of the paragraph "and agreements with educational service regions authorized by Section 3-9.1"; in the fourth paragraph, substituted "community college districts and educational service regions" for "and with community college districts" and substituted "community college funds and educational service region funds" for "and community college funds" in the first sentence; in the second sentence inserted "and educational service regions", deleted "both" preceding "school funds" and substituted "community college funds and educational service funds" for "and community college funds" and in the third sentence substituted "community college districts or educational service regions" for "or moneys of community college districts", deleted "or" following "fund or school district" and inserted "or educational service region" preceding "as the case may be".

CASE NOTES

Analysis

Final Judgment
Remedies
- Quo Warranto
Sureties
- Subrogation

Final Judgment

Where an effort to detach territory from one district and annex it to another was not to establish that the property was not within the district, but rather to prove that the taxable status of the property had already been established by a final judgment in a proceeding directly raising that issue, the county court was correct in giving effect to the judgment entered upon the appeal in the disconnection-annexation proceedings, and its judgment was affirmed. People ex rel. Davis v. Spence, 3 Ill. 2d 244, 120 N.E.2d 565 (1954).

Remedies

- Quo Warranto

Collection of taxes may be resisted upon the ground that a school district was illegally organized or that a particular territory was not legally a part of the district, and the method available for challenging the legality of a change of boundaries was not limited to quo warranto. People ex rel. Davis v. Spence, 3 Ill. 2d 244, 120 N.E.2d 565 (1954).

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Sureties

- Subrogation

A surety who was the moving spirit in securing state bank's deposit liability in excess of statutory limit on school bonds could not assert a claim for subrogation which would have been superior to the claims of the innocent depositors and creditors of the bank. People ex rel. Barrett v. Fon Du Lac State Bank, 295 Ill. App. 71, 14 N.E.2d 686 (1938).

§ 105 ILCS 5/8-8. Township fund - Loans - Investments

Sec. 8-8. Township fund - Loans - Investments. The township treasurer or township land commissioners, as the case may be, shall keep the principal of the township fund loaned at interest. The rate of interest, which shall not be less than four per cent per annum, payable annually, except in the case of investments in war bonds of the United States government, shall be determined by a majority of the trustees of schools at any regular or special meeting. No loan shall be made for less than one year nor more than 5 years but investments secured by mortgage, notes, or bonds, insured by the Federal Housing Administrator, or debentures issued by him, or in bonds or other obligations of National Mortgage Associations, may be for longer than 5 years. All loans shall be secured by mortgage on unencumbered realty situated in this State, worth at least 50% more than the amount loaned, with a condition that in case additional security shall be required at any time it shall be given to the satisfaction of the trustees of schools. In estimating the value of realty mortgaged to secure the payment of money loaned, the value of improvements liable to be destroyed may be included; but in such case the improvements shall be insured for their insurable value in a responsible insurance company or companies, and the policy or policies shall be transferred to the trustees of schools as additional security, and shall be kept so insured until the loan is paid. The township treasurer or township land commissioners, as the case may be, also may invest the principal of the township fund in:

1.Bonds issued by the State, the Sanitary District of Chicago, counties, townships and cities in this State, and by school directors pursuant to Section 19-2 [105 ILCS 5/19-2];

2.Bonds issued by any district in this State having authority to levy taxes upon all taxable property within the district;

3.Mortgage notes or bonds issued by the Federal Housing Administrator, or debentures issued by him;

4.Bonds or other obligations of National Mortgage Associations or the Home Owners' Loan Corporation;

5.United States Government, State of Illinois and municipal securities the payment of which is protected by the power to levy taxes (not including special assessments) therefor.

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He or they may exchange mortgages in default for bonds of the Home Owners' Loan Corporation.

He or they may invest moneys in the operations and maintenance fund of any school district in war bonds of the United States government that are redeemable at the owner's option, in cases where building projects cannot, by reason of material shortages or wartime priority restrictions, currently be undertaken or completed. School funds held by the treasurer of a district created by any special act shall be invested according to the provisions of this Section.

(Source: P.A. 86-970.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-8.

§ 105 ILCS 5/8-9. Mortgages - Form

Sec. 8-9. Mortgages - Form.

Mortgages to secure the payment of money loaned under the provisions of this Act may be in the following form: I, A B, of the county of ....., State of ....., do hereby grant, convey and transfer to the trustees of schools of township No. ....., Range No. ....., in the county of ....., and State of Illinois, for the use of the inhabitants of the township, the following described real estate: (Here insert premises), which real estate I declare to be in mortgage for the payment of $ ....., loaned to me and for the payment of all interest that may accrue thereon, to be computed at the rate of .... per cent per year until paid. I agree to pay the above sum of money in ..... years from the date hereof, and to pay the interest on the same annually, at the rate above stated. I further covenant that I have a good and valid title to the estate, and that the same is free from all incumbrance, and that I will pay all taxes and assessments which may be levied on the real estate, and that I will give any additional security that may at any time be required in writing by the board of trustees; and if the real estate is sold to pay the debt or any part thereof, or for any failure or refusal to comply with or perform the conditions or covenants herein contained, I will deliver immediate possession of the premises. It is further agreed by and between the parties that in the event a complaint is filed in any court to foreclose this mortgage for non-payment of either principal or interest, that the mortgagor will pay a reasonable attorney's fee, and the same shall be included in the judgment and be taxed as costs; and we, A B, and C, spouse of A B, hereby release all rights to the premises which we may have by virtue of any homestead laws of this State.

Dated (insert date).

A ..... B .....

C ..... D .....

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The mortgage shall be acknowledged and recorded as is required by law for other conveyances of real estate, the mortgagor paying the expenses of acknowledgment and recording.

(Source: P.A. 84-550; 91-357, § 101.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-9.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "Dated (insert date)" for "Dated 19" near the end of the form.

CASE NOTES

Analysis

Assessed Valuation
- Reduction
Minimum Building Rate
- Excessive

Assessed Valuation

- Reduction

Reducing assessed valuation of property in consolidated school district did not preclude the organization of that district. Boughton v. Shears, 29 Ill. App. 2d 216, 172 N.E.2d 497 (2 Dist. 1961).

Minimum Building Rate

- Excessive

Where a community unit school district which maintained grades one to twelve was organized by a referendum, and on the same date the voters also granted the district authority to levy taxes at a maximum rate of .25 percent for building purposes and the purchase of school grounds, the referendum establishing a maximum building rate could not serve as authority to extend a minimum annual building rate in excess of the saved rate of 16 cents. People ex rel. Penrod v. Chicago & N. W. Ry., 17 Ill. 2d 263, 161 N.E.2d 120 (1959).

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§ 105 ILCS 5/8-10. Interest in default - Actions

Sec. 8-10. Interest in default - Actions. If default is made in the interest due upon money loaned by any township treasurer, or in the payment of the principal, interest at the rate of 12 per cent per annum shall be charged upon the principal and interest from the day of default, which interest shall be included in the assessment of damages, or in the judgment in the suit or action brought upon the obligation to enforce payment thereof, and interest at the rate of 12 per cent per annum may be recovered in an action brought to recover interest only. The township treasurer may bring appropriate actions in the name of the trustees for the recovery of the interest when due and unpaid, without suing for the principal, in whatever form secured.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-10.

§ 105 ILCS 5/8-11. Suit when additional security not furnished

Sec. 8-11. Suit when additional security not furnished. If the trustees of schools require additional security for the payment of money loaned, and such security is not given, the township treasurer shall cause suit to be instituted for the recovery of the principal and accrued interest to the date of judgment. Proof shall be made of such requisitions.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-11.

§ 105 ILCS 5/8-12. Name in which securities taken - Actions

Sec. 8-12. Name in which securities taken - Actions. Bonds, mortgages, notes and other securities taken for money or other property due, or to become due, to the trustees of schools for the township, shall be made payable to them in their corporate name; and in such name, suits, actions and complaints, and every description of legal proceedings may be had for the recovery of money, breach of contracts and for every legal liability which

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may at any time arise or exist, or upon which a right of action shall accrue to the use of such corporation.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-12.

§ 105 ILCS 5/8-13. Statement of condition of funds

Sec. 8-13. Statement of condition of funds. On or before June 30, annually, the township treasurer shall deliver to the county superintendent of schools a statement verified by his affidavit, showing the exact condition of the township funds. Such statement shall contain a description of all bonds, mortgages, notes and other securities, held as principal of the township fund, giving names, dates, amounts, rates of interest, when due, and other data necessary to a full understanding of the condition of the funds.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-13.

§ 105 ILCS 5/8-14. Statements to trustees - Books, mortgages, etc., submitted for examination

Sec. 8-14. Statements to trustees - Books, mortgages, etc., submitted for examination. On the first Mondays in April and October of each year the township treasurer shall submit to the trustees of schools a statement showing the amounts of interest, rents, issues and profits on township lands and funds that have accrued since their last regular meeting, and also the amount of distributive funds on hand. He shall submit also to the trustees for their examination all books, mortgages, bonds, notes and other evidences of indebtedness held by him as treasurer of the township, and shall make such other statements as the trustees may require.

(Source: Laws 1961, p. 31.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-14.

§ 105 ILCS 5/8-15. Statement of district accounts

Sec. 8-15. Statement of district accounts. The school treasurer shall furnish to the school board of the district which he serves as treasurer a monthly reconciliation required by Section 8-6 [105 ILCS 5/8-6]. The treasurer shall comply with any lawful demand the trustees or school board, as the case may be, may make as to the verification of any balance reported.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-15.

§ 105 ILCS 5/8-16. School orders; Teacher's wages

Sec. 8-16. School orders; Teacher's wages. The school treasurer shall pay out funds of the school district only upon an order of the school board signed by the president and clerk or secretary or by a majority of the board, except payment of the obligations for Social Security taxes as required by the Social Security Enabling Act [40 ILCS 5/21-101 et seq.] and payment of recurring bills, such as utility bills, may be made upon a certification by the clerk or secretary of the board of the amount of the obligation only. When an order issued for the wages of a teacher is presented to the treasurer and is not paid for want of funds, the treasurer shall endorse it over his signature, "not paid for want of funds" with the date of presentation, and shall make and keep a record of the endorsement. The order shall thereafter bear interest at the rate, not exceeding the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, established by the school board of the district, until the treasurer shall notify the clerk or secretary in writing that he has funds to pay the order. Whenever the treasurer obtains sufficient funds to pay any such order he shall set them aside for such purpose and shall not use them to pay any other order until the order previously presented and not paid is paid or otherwise discharged. The treasurer shall make and keep a record of the notices and hold the funds necessary to pay such order until it is presented. The order shall draw no interest after notice is given to the clerk or secretary.

Nothing herein shall be construed to prevent the establishment of a voucher system of expenditures as provided in Section 10-23.5 of this Act [105 ILCS 5/10-23.5].

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With respect to instruments for the payment of money issued under this Section either before, on, or after June 6, 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts [5 ILCS 70/8] are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4; 86-715; 86-1028; 86-1161; 96-998, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-16.

Cross References.

As to Omnibus Bond Acts, see 5 ILCS 70/8.

Effect of Amendments. The 2010 amendment by P.A. 96-998, effective July 2, 2010, inserted "and payment of recurring bills, such as utility bills" following "Social Security Enabling Act" in the introductory paragraph.

§ 105 ILCS 5/8-17. Duties of treasurer

Sec. 8-17. Duties of treasurer. (a) It is also the duty of the township treasurer to:

1.Return to the county clerk, on or before the first Tuesday in October in each year, the certificate of tax levy made by each school board in his township.

2.Pay all lawful orders issued by the school board of any district in his township.

3.Collect from the township and county collectors the full amount of taxes levied by the school boards in his township.

4.Examine the official records of each district in the township on the first Mondays in April and October of each year.

5.Keep a record account between districts when pupils are transferred from one district to another.

6.Give notice of the election of trustees, and in case of the formation of a new school district, of the election of school directors or school board members.

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7.Give notice of any regular district election when the directors or school board members fail or refuse to do so.

8.Publish in some English language newspaper of his county an annual statement of the finances of the township.

9.Be responsible for receipts, disbursements and investments arising out of the operation of the school district under his supervision.

(b) The duties of the township treasurer set forth in subsection (a) shall not be deemed or construed to extend or apply with respect to any school district in his township which has withdrawn from the jurisdiction and authority of the township trustees and from the jurisdiction and authority of the township treasurer as provided in subsection (b) of Section 5-1 [105 ILCS 5/5-1], nor to the school business, tax levies, tax revenues, payment orders, records, elections, annual statements, receipts, disbursements, investments or other financial or business activities or affairs of any such school district or of the school board of any such district, other than the duty to account in accordance with law for any balance of the income from the permanent township fund required to be apportioned and distributed to any such district pursuant to Section 5-17 [105 ILCS 5/5-17] after payment of all valid claims as provided in that Section, and except as otherwise provided with respect to the distribution and apportionment of funds pursuant to Sections 15-31 and 19-28 [105 ILCS 5/15-31 and 105 ILCS 5/19-28].

(Source: P.A. 86-1441.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-17.

§ 105 ILCS 5/8-18. District in two or more townships - Taxes - Treasurer

Sec. 8-18. District in two or more townships - Taxes - Treasurer. When a district is composed of parts of two or more townships, any treasurer not authorized to receive the taxes of the district shall notify the school board of the amount of funds held by him to the credit of the district, and the school board shall thereupon give the proper treasurer an order for the funds.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-18.

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§ 105 ILCS 5/8-19. Delivery of money, books, mortgages, etc. to successor

Sec. 8-19. Delivery of money, books, mortgages, etc. to successor. At the expiration of his term of office, or upon his removal or resignation the school treasurer, or in case of his death, his representatives shall deliver to his successor, all moneys, books, mortgages, notes and securities, and all papers and documents in which the district has any lawful interest.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-19.

§ 105 ILCS 5/8-20. Failure or refusal to perform duties

Sec. 8-20. Failure or refusal to perform duties. The school treasurer who as such treasurer fails, neglects or refuses to perform the duties imposed upon him by this Act, within the time or in the manner prescribed, shall forfeit not less than ten dollars, nor more than twenty-five dollars, of his pay as treasurer, which forfeiture shall be enforced by the trustees or school board of the district as the case may be. For any failure or refusal to perform all the duties required of the treasurer by law, he shall be liable to the trustees of schools or school board or their successors in office as the case may be, upon his official bond, for all damages sustained, to be recovered by civil action by the trustees or school board or their successors in office as the case may be, for the use of the township or school district as the case may be, before any court having jurisdiction of the amount of damages claimed; but if the treasurer, in any failure or refusal, acted under and in conformity to a requisition or order of the trustees of schools or a school board as the case may be entered upon their minutes and subscribed by their president and secretary or clerk, then, and in that case, the trustees of schools or school board as the case may be or those voting for the requisition or order, and not the treasurer shall be liable, jointly and severally, to the inhabitants of the township or district as the case may be for such damages, to be recovered by a civil action in the official name of the county superintendent of schools, having supervision and control over the district for the use of the townships or districts as the case may be: provided that the school treasurer shall be liable for any part of the judgment obtained against the trustees of schools or school board or members thereof as the case may be which cannot be collected on account of their insolvency.

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(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 8-20.

Article 9.

Elections

§ 105 ILCS 5/9-1. Scope of article

Sec. 9-1. Scope of article. All school elections shall be governed by the general election law of the State.

(Source: P.A. 81-1490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 9-1.

CASE NOTES

Analysis

General Election Law
- Application
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General Election Law

- Application

In the absence of a requirement in this Code that in order for a voter to qualify to vote at a school election he must be a citizen of the United States and upwards of the age of 21, this requirement must be implied from the General Election Law (10 ILCS 5/1-1 et seq.). Scofield v. Board of Educ., 411 Ill. 11, 103 N.E.2d 640 (1952).

Election on bonds issued by school district for building purposes should not have been held under the General Election Law (10 ILCS 5/1-1 et seq.) instead of under this Code. People ex rel. Oller v. St. Louis S.W. Ry., 368 Ill. 199, 13 N.E.2d 267 (1938).

Military Personnel

The legislature has extended the voting franchise to persons residing on military reservations located within Illinois, and this general election franchise includes the right to vote on referenda or propositions to increase annual tax rates for school districts that are submitted to the voters pursuant to 105 ILCS 5/17-3. Ghini v. Highwood-Highland Park Elementary Sch., 129 Ill. App. 3d 671, 84 Ill. Dec. 795, 472 N.E.2d 1191 (2 Dist. 1984).

Military personnel and their dependents whose votes were challenged, if otherwise qualified to vote under Illinois law, were eligible voters in a referendum to increase an annual tax rate election. Ghini v. Highwood-Highland Park Elementary Sch., 129 Ill. App. 3d 671, 84 Ill. Dec. 795, 472 N.E.2d 1191 (2 Dist. 1984).

Notice

- Required

As failure to give notice goes to the root of the whole proceeding, an election could not be called where the time and place were not fixed by law without giving notice of the time and place, and thus such election was void and incapable of validation. People ex rel. Mark v. Hartquist, 311 Ill. 127, 142 N.E. 475 (1924).

Where election provided for was a special election and there was no general law providing for it and fixing the time when it should be held, if notice was not given as required for the length of time and by the number of notices required, the election would be void and an expression of the will of the voters thus obtained would confer no authority to issue bonds or expend money. Roberts v. Eyeman, 304 Ill. 413, 136 N.E. 736 (1922).

Purpose

By the enactment of former article 5A of the School Code (see now this section), it was intended to codify and place all of the provisions with respect to calling and holding elections pertaining to school districts in one article of this Code. Scofield v. Board of Educ., 411 Ill. 11, 103 N.E.2d 640 (1952).

Residence

- Legislative Intent

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The natural construction of language and manifest legislative intent of the election provision is that a petition for the organization of a community high school district designating territory should be signed not only by at least 50 legal voters thereof, but that such persons should actually reside or live in the territory sought to be organized. Frye v. Hunt, 365 Ill. 32, 5 N.E.2d 398 (1936).

§ 105 ILCS 5/9-1.1. Referenda

Sec. 9-1.1. Referenda. Whenever a proposition or public question is required to be submitted pursuant to this Act for approval or rejection by the electorate at an election, the time and manner of conducting such referendum shall be in accordance with the general election law of the State.

(Source: P.A. 81-1490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 9-1.1.

§ 105 ILCS 5/9-1.5. Advisory referenda

Sec. 9-1.5. Advisory referenda. By a vote of the majority of the members of the school board, the board may authorize an advisory question of public policy to be placed on the ballot at the next regularly scheduled election in the school district. The school board shall certify the question to the proper election authority, which must submit the question at an election in accordance with the Election Code [10 ILCS 5/1-1 et seq.], provided, however, that no such question may be submitted at a consolidated primary election.

(Source: P.A. 97-81, § 25.)

Effective Date. Section 99 of P.A. 97-81 made this section effective upon becoming law. The Act was approved July 5, 2011.

§ 105 ILCS 5/9-2. Election Definitions

Sec. 9-2. Election Definitions. As used in this Act in connection with elections of school officials and referenda:

(a) "Voter" or "Legal voter" or "elector" means a person qualified to vote under the general election law.

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(b) "Certify" and "certification", when used in connection with elections of officers or referenda, refers to the certification in accordance with the general election law of offices, candidates or propositions to county clerks and boards of election commissioners for inclusion on the ballot at an election.

(c) "Submit" and "submission" when used in connection with a referendum on a proposition or question refers to the submission to the voters in accordance with the general election law of the proposition or question by county clerks and boards of election commissioners.

(d) "Local election official" means the secretary of a board of education, the secretary or clerk of a board of school directors, the treasurer of a township board of school trustees, the secretary of township land commissioners and the regional superintendent of schools with respect to the various school officer elections and school referenda for which the regional superintendent is assigned election duties pursuant to this Code.

(Source: P.A. 84-1338.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 9-2.

CASE NOTES

Analysis

In General
General Election Law
- Application
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- Voters' Opinions

In General

This section does not purport to govern all elections involving school matters but only those expressly provided for under this section. McRell v. Jackson, 49 Ill. App. 3d 86, 7 Ill. Dec. 19, 363 N.E.2d 940 (3 Dist. 1977).

General Election Law

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- Application

Limitation of voting in annual school board election in the precinct of a voter's residence was a reasonable compliance with this Code since in the absence of any provision in this Code as to where the voter should vote, the harmonious and consistent requirements of the Election Code (10 ILCS 5/1-1 et seq.) could be inferred. Tremper v. Board of Educ., 3 Ill. App. 3d 264, 278 N.E.2d 451 (1 Dist. 1971).

Legal Voter

A "legal voter" of a place may actually reside or live in some other place; it does not follow that because he is a legal resident, for voting purposes, of the place where he is entitled to vote, he actually resides there. Frye v. Hunt, 365 Ill. 32, 5 N.E.2d 398 (1936).

Mandamus to Require Election

Where the plaintiffs put the trial court in a position of violating the statutory notice provisions for an election if it issued a writ of mandamus to require a school board to hold an election on whether to close two schools, the trial court properly exercised its discretion by denying the writ of mandamus. McRell v. Jackson, 49 Ill. App. 3d 86, 7 Ill. Dec. 19, 363 N.E.2d 940 (3 Dist. 1977).

Military Personnel

The legislature has extended the voting franchise to persons residing on military reservations located within Illinois, and this general election franchise includes the right to vote on referenda or propositions to increase annual tax rates for school districts that are submitted to the voters pursuant to 105 ILCS 5/17-3. Ghini v. Highwood-Highland Park Elementary Sch., 129 Ill. App. 3d 671, 84 Ill. Dec. 795, 472 N.E.2d 1191 (2 Dist. 1984).

Military personnel and their dependents whose votes were challenged, if otherwise qualified to vote under Illinois law, were eligible voters in a referendum to increase an annual tax rate. Ghini v. Highwood-Highland Park Elementary Sch., 129 Ill. App. 3d 671, 84 Ill. Dec. 795, 472 N.E.2d 1191 (2 Dist. 1984).

Purpose of Elections

- Voters' Opinions

Affidavits of a majority of the school board, stating that the results of a proposed election would not have affected their votes to close two schools as part of an overall economic austerity package, should not have controlled whether the election was held; the purpose for holding the election, to give the voters the chance to express their opinion on public policy, is accomplished merely by holding the election, regardless of whether an affirmative vote to keep the two schools open would have any effect on changing school board policy or membership. McRell v. Jackson, 49 Ill. App. 3d 86, 7 Ill. Dec. 19, 363 N.E.2d 940 (3 Dist. 1977).

§ 105 ILCS 5/9-5. Election dates and terms of offices

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Sec. 9-5. Election dates and terms of offices. The dates upon which school officer elections shall be held are as established in the general election law. Members of boards of education shall unless otherwise provided serve terms of 4 years.

If, at a regularly scheduled election, a proposition is submitted to the voters of a district, as provided by a resolution of the board, on the question of whether board members should serve for 6 year terms and the proposition receives the affirmative vote of those voting thereon, members of the board of education shall thereafter serve for terms of 6 years.

(Source: P.A. 82-1014.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 9-5.

§ 105 ILCS 5/9-10. Candidates for office - Nominating petitions

Sec. 9-10. Candidates for office - Nominating petitions. Candidates for the office of school director shall be nominated by petition signed by at least 25 voters or 5% of the voters, whichever is less, residing within the district and filed with the secretary of the board of school directors or with a person designated by the board to receive nominating petitions.

Nominations for members of boards of education, including non-high school boards of education shall be made by a petition signed by at least 50 voters or 10% of the voters, whichever is less, residing within the district and shall be filed with the secretary of the board of education or with a person designated by the board to receive nominating petitions. In addition to the requirements of the general election law, the form of such petitions shall be substantially as follows:

NOMINATING PETITIONS

(LEAVE OUT THE INAPPLICABLE PART.)

To the secretary of the board of education (or board of directors) of district number ..... in ..... County:

We the undersigned, being (..... or more) (or 10% or more) (or 5% or more) of the voters residing within said district, hereby petition that ..... who resides at ..... in the (city or village) of ..... in Township ..... (or who resides outside any city, village or incorporated town and in Township .....) in said district shall be a candidate for the office of ..... of the board of education (or board of directors) (full term) (vacancy) to be voted for at the

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election to be held on (insert date).

Name: ..... Address: .....

In the designation of the name of a candidate on a petition for nomination, the candidate's given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof may be used in addition to the candidate's surname. If a candidate has changed his or her name, whether by a statutory or common law procedure in Illinois or any other jurisdiction, within 3 years before the last day for filing the petition, then (i) the candidate's name on the petition must be followed by "formerly known as (list all prior names during the 3-year period) until name changed on (list date of each such name change)" and (ii) the petition must be accompanied by the candidate's affidavit stating the candidate's previous names during the period specified in clause (i) and the date or dates each of those names was changed; failure to meet these requirements shall be grounds for denying certification of the candidate's name for the ballot, but these requirements do not apply to name changes resulting from adoption to assume an adoptive parent's or parents' surname, marriage to assume a spouse's surname, or dissolution of marriage or declaration of invalidity of marriage to assume a former surname. No other designation, such as a political slogan, as defined by Section 7-17 of the Election Code [10 ILCS 5/7-17], title or degree, or nickname suggesting or implying possession of a title, degree or professional status, or similar information may be used in connection with the candidate's surname.

Nomination papers filed under this Section are not valid unless the candidate named therein files with the secretary of the board of education or a person designated by the board to receive nominating petitions a receipt from the county clerk showing that the candidate has filed a statement of economic interests as required by the Illinois Governmental Ethics Act [5 ILCS 420/1-101 et seq.]. Such receipt shall be so filed either previously during the calendar year in which his nomination papers were filed or within the period for the filing of nomination papers in accordance with the general election law.

All petitions for the nomination of members of a board of education shall be filed with the secretary of the board or a person designated by the board to receive nominating petitions within the time provided for by the general election law. The secretary shall receive and file only those petitions which include a statement of candidacy, the required number of voter signatures, the notarized signature of the petition circulator and a receipt from the County Clerk showing that the candidate has filed a statement of economic interest on or before the last day to file as required by the Illinois Governmental Ethics Act. The secretary may have petition forms available for issuance to potential candidates, and may give notice of the petition filing period by publication in a newspaper of general circulation within the school district not less than 10 days prior to the first day of filing. Said secretary shall make certification to the proper election authorities in accordance with the general election law. If the secretary is an incumbent school board member seeking re-election, a disinterested person must be a witness to the filing of his petition.

The secretary of the board of education shall notify the candidates for whom a petition for nomination is filed or the appropriate committee of the obligations under the Campaign Financing Act [10 ILCS 5/9-1 et seq.] as provided in the general election law.

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Such notice shall be given on a form prescribed by the State Board of Elections and in accordance with the requirements of the general election law. The secretary shall within 7 days of filing or on the last day for filing, whichever is earlier, acknowledge to the petitioner in writing his acceptance of the petition.

A candidate for membership on the board of education or for office as a school director, who has petitioned for nomination to fill a full term and to fill a vacant term to be voted upon at the same election, must withdraw his or her petition for nomination from either the full term or the vacant term by written declaration.

In all newly organized districts the petition for the nomination of candidates for members of the board of education at the first election shall be addressed to and filed with the regional superintendent of schools in the manner herein specified for the petitions for members of a board of education. For such election the regional superintendent shall fulfill all duties otherwise assigned to the secretary of the board of education.

(Source: P.A. 82-1014; 91-357, § 101; 95-141, § 3.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 9-10.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Cross References.

As to campaign financing, see 10 ILCS 5/9-1 et seq.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "on (insert date)" for "on the .... day of ...., 19.." near the end of the form.

The 2007 amendment by P.A. 95-141, effective August 13, 2007, added the third paragraph, which begins "In the designation".

§ 105 ILCS 5/9-11. Tax rate increase - notice of election - ballot

Sec. 9-11. Tax rate increase - notice of election - ballot. In addition to the notice requirements of the general election law, whenever a proposition to increase a school tax rate is submitted to be voted upon by the voters of any district the notice of such election shall include an estimate of the approximate amount of taxes extendible under the maximum rate then in force and an estimate of the approximate amount of taxes extendible under the proposed increased rate, such amounts being computed upon the last known full, fair cash value; provided that any error, miscalculation or inaccuracy in computing such amounts shall not invalidate or affect the validity of any rate so

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increased. The board of directors shall make such estimate and the secretary shall certify such amount to the election authority as part of the certification of the proposition as required by the general election law. Such estimate shall appear on the ballot on which the proposition is printed, but shall not appear as a part of the proposition.

(Source: P.A. 83-448.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 9-11.

CASE NOTES

Analysis

Contents of Notice
- Directory
Election Ballot
- Contents
- Defects
- Form
Purpose
Rescission

Contents of Notice

- Directory

Where there was no evidence that a school board purposefully omitted precinct boundaries or that its failure produced fraud or confusion, the requirement concerning delineation of the precinct boundaries in the notice, under former Ill.Stat.Rev., ch. 122, para. 9-7 (now repealed), was merely directory and failure to comply did not invalidate election. Menssen v. Eureka Unit, 70 Ill. App. 3d 9, 26 Ill. Dec. 649, 388 N.E.2d 273 (4 Dist. 1979).

Election Ballot

- Contents

Where an election notice contained the provision that bonds were to bear interest at a certain rate, absence of that provision in the form of the ballot used was not fatal to the election. Goedde v. Community Unit Sch., 21 Ill. App. 2d 79, 157 N.E.2d 266 (3 Dist. 1959).

Where ballot informed voters of the amount of the proposed bond issue, its purpose, the interest rates to be charged and the years in which the bonds would mature, it contained the substance of the public measure, and the result of the election was not affected in any way by a typographical

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omission from the ballot of the schedule of bond maturities; the official ballots used in the election were valid. Smith v. Calhoun Community Unit Sch. Dist. No. 40, 16 Ill. 2d 328, 157 N.E.2d 59 (1959).

- Defects

Although the exact legal description of the proposed building site was not set forth, where the election notice and ballot did describe the intended location in common language which could be readily understood by anyone in the school district, in this respect no defect occurred. Carstens v. Board of Educ., 27 Ill. 2d 88, 187 N.E.2d 682 (1963).

- Form

Not every deviation from the form of ballot prescribed by the applicable statutes will render an election void. Smith v. Calhoun Community Unit Sch. Dist. No. 40, 16 Ill. 2d 328, 157 N.E.2d 59 (1959).

Purpose

The purpose of this section is not to furnish the voters with every detail concerning the measure but to enable them to readily identify the proposition, to know its fundamental and general effect, and to indicate their individual choice, and where the information so set forth gives a fair portrayal of the chief features of the proposition in words of plain meaning, this requirement has been satisfied. Carstens v. Board of Educ., 27 Ill. 2d 88, 187 N.E.2d 682 (1963).

Rescission

The power to vote on a proposition to issue bonds implies the right to vote for or against the proposition but not the right to vote to rescind authority once granted. Goedde v. Community Unit Sch., 21 Ill. App. 2d 79, 157 N.E.2d 266 (3 Dist. 1959).

§ 105 ILCS 5/9-11.1. [Candidate lottery]

Sec. 9-11.1. The local election official shall conduct a lottery to determine the ballot order of candidates for full terms in the event of any simultaneous petition filings. Such candidate lottery shall be conducted as follows:

All petitions filed by persons waiting in line as of 8:00 a.m. on the first day for filing, or as of the normal opening hour of the office involved on such day, shall be deemed simultaneously filed as of 8:00 a.m. or the normal opening hour, as the case may be. Petitions filed by mail and received after midnight of the first day for filing and in the first mail delivery or pickup of that day shall be deemed simultaneously filed as of 8:00 a.m. of that day or as of the normal opening hour of such day, as the case may be. All petitions received thereafter shall be deemed filed in the order of actual receipt.

Where 2 or more petitions are received simultaneously for the same office as of 8:00 a.m. on the first day for petition filing, or as of the normal opening hour of the office of the local election official, the local election official with whom such petitions are filed shall break ties and determine the order of filing by means of a lottery or other fair and impartial method of random selection. Such lottery shall be conducted within 9 days

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following the last day for petition filing and shall be open to the public. Seven days written notice of the time and place of conducting such random selection shall be given by the local election official to all candidates who filed their petitions simultaneously and to each organization of citizens within the election jurisdiction which was entitled, under the general election law, at the next preceding election, to have pollwatchers present on the day of election. The local election official shall post in a conspicuous, open and public place, at the entrance of his or her office, notice of the time and place of such lottery.

All candidates shall be certified in the order in which their petitions have been filed and in the manner prescribed by Section 10-15 of the general election law [10 ILCS 5/10-15]. Where candidates have filed simultaneously, they shall be certified in the order prescribed by this Section and prior to candidates who filed for the same office at a later time.

Where elections are conducted for unexpired terms, a second lottery to determine ballot order shall be conducted for candidates who simultaneously file petitions for such unexpired terms. Such lottery shall be conducted in the same manner as prescribed by this Section for full term candidates.

(Source: P.A. 84-1338.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 9-11.1.

§ 105 ILCS 5/9-11.2. [Grouping of candidates by area of residence]

Sec. 9-11.2. For all school districts electing candidates to a board of education in a manner other than at large, candidates not elected at large who file nominating petitions for a full term shall be grouped together by area of residence as follows:

(1) by congressional townships, or

(2) according to incorporated or unincorporated areas.

For all school districts electing candidates to a board of education in a manner other than at large, candidates not elected at large who file nominating petitions for an unexpired term shall be grouped together by area of residence as follows:

(1) by congressional townships, or

(2) according to incorporated or unincorporated areas.

Candidate groupings by area of residence for unexpired terms shall precede the candidate groupings by area of residence for full terms on the ballot. In all instances, however, the

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ballot order of each candidate grouping shall be determined by the order of petition filing or lottery held pursuant to Section 9-11.1 [105 ILCS 5/9-11.1] in the following manner:

The area of residence of the candidate determined to be first by order of petition filing or by lottery shall be listed first among the candidate groupings on the ballot. All other candidates from the same area of residence will follow according to order of petition filing or the lottery. The area of residence of the candidate determined to be second by the order of petition filing or the lottery shall be listed second among the candidate groupings on the ballot. All other candidates from the same area of residence will follow according to the order of petition filing or the lottery. The ballot order of additional candidate groupings by area of residence shall be established in a like manner.

In any school district that elects its board members according to area of residence and that has one or more unexpired terms to be filled at an election, the winner or winners of the unexpired term or terms shall be determined first and independently of those running for full terms. The winners of the full terms shall then be determined taking into consideration the areas of residence of those elected to fill the unexpired term or terms.

"Area of Residence" means congressional township and incorporated and unincorporated territories.

"Affected school district" means either of the 2 entire elementary school districts that are formed into a combined school district.

(Source: P.A. 84-1338; 89-579, § 5; 90-59, § 1; 90-459, § 10; 90-655, § 77; 93-1079, § 5; 94-1019, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 9-11.2.

Section 90 of P.A. 94-1019 contains a savings provision, and section 95 contains a no acceleration or delay provision.

Effect of Amendments. The 1996 amendment by P.A. 89-579, effective July 30, 1996, in the third paragraph, in the first sentence, added at the beginning "Except in those instances when the ballot under Form 5 of Section 9-12 is required to be used" and in the second sentence added at the beginning "In all instances, however".

The 1997 amendment by P.A. 90-59, effective July 3, 1997, added the fourth (now fifth) paragraph.

The 1997 amendment by P.A. 90-459, effective August 17, 1997, in the introductory language of the first paragraph, inserted "not elected at large", in subsection (2) substituted "or" for a comma and added subsection (3); in the introductory language of the second paragraph, inserted "not elected at large", in subsection (2) substituted "or" for a comma and added subsection (3); in the fifth (now sixth) paragraph, added "and, if the form of ballot prescribed by Format 2a or 2b of Section 9-12 is required to be used in electing candidates to a board of education, affected school districts" at the end; and added the definition of "Affected school district".

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The 1998 amendment by P.A. 90-655, effective July 30, 1998, incorporated the amendments made by P.A. 90-59 and P.A. 90-459.

The 2005 amendment by P.A. 93-1079, effective January 21, 2005, rewrote the section.

The 2006 amendment by P.A. 94-1019, effective July 10, 2006, deleted "established as provided in subsection (a-5) of Section 11B-7" from the end of the last paragraph.

§ 105 ILCS 5/9-12. [Ballots for election of school officers]

Sec. 9-12. Ballots for the election of school officers shall be in one of the following forms:

(FORMAT 1

Ballot position for candidates shall be determined by the order of petition filing or lottery held pursuant to Section 9-11.1 [105 ILCS 5/9-11.1].

This format is used by Boards of School Directors. School Directors are elected at large.)

OFFICIAL BALLOT

FOR MEMBERS OF THE BOARD OF SCHOOL
DIRECTORS TO SERVE AN UNEXPIRED 2-YEAR TERM

VOTE FOR ....

( ) .....

( ) .....

( ) .....

FOR MEMBERS OF THE BOARD OF SCHOOL
DIRECTORS TO SERVE A FULL 4-YEAR TERM

VOTE FOR ....

( ) .....

( ) .....

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( ) .....

(FORMAT 2

Ballot position for candidates shall be determined by the order of petition filing or lottery held pursuant to Section 9-11.1.

This format is used when school board members are elected at large. Membership on the school board is not restricted by area of residence.

Types of school districts generally using this format are:

Common school districts;

Community unit and community consolidated school districts formed on or after January 1, 1975;

Community unit school districts formed prior to January 1, 1975 that elect board members at large and without restriction by area of residence within the district under subsection (c) of Section 11A-8 9 (now repealed);

Community unit, community consolidated and combined school districts in which more than 90% of the population is in one congressional township;

High school districts in which less than 15% of the taxable property is located in unincorporated territory; and unit districts (OLD TYPE);

Combined school districts formed on or after July 1, 1983;

Combined school districts formed before July 1, 1983 and community consolidated school districts that elect board members at large and without restriction by area of residence within the district under subsection (c) of Section 11B-7 (now repealed).)

OFFICIAL BALLOT

FOR MEMBERS OF THE BOARD OF

EDUCATION TO SERVE AN UNEXPIRED 2-YEAR TERM

VOTE FOR ....

( ) .....

( ) .....

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( ) .....

FOR MEMBERS OF THE BOARD OF

EDUCATION TO SERVE A FULL 4-YEAR TERM

VOTE FOR ....

( ) .....

( ) .....

( ) .....

(FORMAT 3

Ballot position for incorporated and unincorporated areas shall be determined by the order of petition filing or lottery held pursuant to Sections 9-11.1 and 9-11.2.

This format is used by community unit, community consolidated and combined school districts when the territory is less than 2 congressional townships, or 72 square miles, but consists of more than one congressional township, or 36 square miles, outside of the corporate limits of any city, village or incorporated town within the school district. The School Code requires that not more than 5 board members shall be selected from any city, village or incorporated town in the school district. At least two board members must reside in the unincorporated area of the school district.

Except for those community unit school districts formed before January 1, 1975 that elect board members at large and without restriction by area of residence within the district under subsection (c) of Section 11A-8 (now repealed) and except for combined school districts formed before July 1, 1983 and community consolidated school districts that elect board members at large and without restriction by area of residence within the district under subsection (c) of Section 11B-7 (now repealed), this format applies to community unit and community consolidated school districts formed prior to January 1, 1975 and combined school districts formed prior to July 1, 1983.)

OFFICIAL BALLOT

Instructions to voter: The board of education shall be composed of members from both the incorporated and the unincorporated area; not more than 5 board members shall be selected from any city, village or incorporated town.

ON THE BASIS OF EXISTING BOARD MEMBERSHIP, NOT MORE THAN .... MAY BE ELECTED FROM THE INCORPORATED AREAS.

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FOR MEMBERS OF THE BOARD OF EDUCATION

TO SERVE A UNEXPIRED 2-YEAR TERM

THE AREA OF RESIDENCE OF THOSE ELECTED TO FILL UNEXPIRED TERMS

IS TAKEN INTO CONSIDERATION IN DETERMINING THE WINNERS OF THE

FULL TERMS.

VOTE FOR A TOTAL OF ....

..... Area

( ) .....

( ) .....

..... Area

( ) .....

( ) .....

FOR MEMBERS OF THE BOARD OF EDUCATION

TO SERVE A FULL 4-YEAR TERM

VOTE FOR A TOTAL OF ....

..... Area

( ) .....

( ) .....

(FORMAT 4

Ballot position for township areas shall be determined by the order of petition filing or lottery held pursuant to Sections 9-11.1 and 9-11.2.

Except for those community unit school districts formed prior to January 1, 1975 that elect board members at large and without restriction by area of

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residence within the district under subsection (c) of Section 11A-8 (now repealed) and except for those combined school districts formed before July 1, 1983 and community consolidated school districts that elect board members at large and without restriction by area of residence within the district under subsection (c) of Section 11B-7 (now repealed), this format applies to community unit and community consolidated school districts formed prior to January 1, 1975 and combined school districts formed prior to July 1, 1983 when the territory of the school district is greater than 2 congressional townships, or 72 square miles. This format applies only when less than 75% of the population is in one congressional township. Congressional townships of less than 100 inhabitants shall not be considered for the purpose of such mandatory board representation. In this case, not more than 3 board members may be selected from any one congressional township.)

OFFICIAL BALLOT

Instructions to voter: Membership on the board of education is restricted to a maximum of 3 members from any congressional township. On the basis of existing board membership, members may be elected in the following numbers from each congressional township.

ON THE BASIS OF EXISTING BOARD MEMBERSHIP, MEMBERS MAY BE ELECTED IN THE FOLLOWING NUMBERS FROM EACH CONGRESSIONAL TOWNSHIP.

NOT MORE THAN ..... MAY BE ELECTED FROM TOWNSHIP ..... RANGE .....

NOT MORE THAN ..... MAY BE ELECTED FROM TOWNSHIP ..... RANGE .....

NOT MORE THAN ..... MAY BE ELECTED FROM TOWNSHIP ..... RANGE .....

(Include each remaining congressional township in district as needed)

FOR MEMBERS OF THE BOARD OF EDUCATION TO SERVE

AN UNEXPIRED 2-YEAR TERM

THE AREA OF RESIDENCE OF THOSE ELECTED TO FILL UNEXPIRED TERMS

IS TAKEN INTO CONSIDERATION IN DETERMINING THE WINNERS OF THE

FULL TERMS.

VOTE FOR A TOTAL OF ....

Township ..... Range .....

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( ) .....

( ) .....

FOR MEMBERS OF THE BOARD OF

EDUCATION TO SERVE A FULL 4-YEAR TERM

VOTE FOR A TOTAL OF ....

Township ..... Range .....

( ) .....

( ) .....

Township ..... Range .....

( ) .....

( ) .....

(FORMAT 5

Ballot position for township areas shall be determined by the order of petition filing or lottery held pursuant to Sections 9-11.1 and 9-11.2.

Except for those community unit school districts formed before January 1, 1975 that elect board members at large and without restriction by area of residence within the district under subsection (c) of Section 11A-8 (now repealed) and except for those combined school districts formed before July 1, 1983 and community consolidated school districts that elect board members at large and without restriction by area of residence within the district under subsection (c) of Section 11B-7 (now repealed), this format is used by community unit and community consolidated school districts formed prior to January 1, 1975, and combined school districts formed prior to July 1, 1983, when the territory of the school district is greater than 2 congressional townships, or 72 square miles and when at least 75%, but not more than 90%, of the population resides in one congressional township. In this case, 4 school board members shall be selected from that one congressional township and the 3 remaining board members shall be selected from the rest of the district. If a school district from which school board members are to be selected is located in a county under township organization and if the surveyed boundaries of a congressional township from which one or more of those school board members is to be selected, as described by township number and range, are coterminous with the boundaries of the township as identified by the township name assigned to it as a political subdivision of the State, then that township may be referred to on the ballot by both its township name and by township number and range.)

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OFFICIAL BALLOT

Instructions to voter: Membership on the board of education is to consist of 4 members from the congressional township that has at least 75% but not more than 90% of the population, and 3 board members from the remaining congressional townships in the school district.

ON THE BASIS OF EXISTING BOARD MEMBERSHIP, MEMBERS MAY BE ELECTED IN THE FOLLOWING NUMBERS FROM EACH CONGRESSIONAL TOWNSHIP.

FOR MEMBER OF THE BOARD OF EDUCATION

TO SERVE AN UNEXPIRED 2-YEAR TERM

FROM (name) ..... TOWNSHIP ..... RANGE .....

VOTE FOR ONE

( ) .....

( ) .....

FOR MEMBERS OF THE BOARD OF EDUCATION

TO SERVE A FULL 4-YEAR TERM

VOTE FOR ....

..... shall be elected from (name) ..... Township ..... Range .....

(name) ..... TOWNSHIP ..... RANGE .....

( ) .....

( ) .....

VOTE FOR .....

..... board members shall be elected from the remaining

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congressional townships.

The Remaining Congressional Townships

( ) .....

( ) .....

(FORMAT 6

Ballot position for candidates shall be determined by the order of petition filing or lottery held pursuant to Section 9-11.1.

This format is used by school districts in which voters have approved a referendum to elect school board members by school board district. The school district is then divided into 7 school board districts, each of which elects one member to the board of education.)

OFFICIAL BALLOT

DISTRICT ..... (1 through 7)

FOR MEMBERS OF THE BOARD OF EDUCATION TO SERVE

AN UNEXPIRED 2-YEAR TERM

VOTE FOR ONE

( ) .....

( ) .....

( ) .....

(-OR-)

OFFICIAL BALLOT

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DISTRICT ..... (1 through 7)

FOR MEMBERS OF THE BOARD OF EDUCATION TO SERVE

A FULL 4-YEAR TERM

VOTE FOR ONE

( ) .....

( ) .....

( ) .....

REVERSE SIDE:

OFFICIAL BALLOT

DISTRICT ..... (1 through 7)

(Precinct name or number)

School District No. ....., ... County, Illinois

Election Tuesday (insert date)

(facsimile signature of Election Authority)

(County)

(FORMAT 7

Ballot position for incorporated and unincorporated areas shall be determined by the order of petition filing or lottery held pursuant to Sections 9-11.1 and 9-11.2.

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This format is used by high school districts if more than 15% but less than 30% of the taxable property is located in the unincorporated territory of the school district. In this case, at least one board member shall be a resident of the unincorporated territory.)

OFFICIAL BALLOT

Instructions to voter: More than 15% but less than 30% of the taxable property of this high school district is located in the unincorporated territory of the district, therefore, at least one board member shall be a resident of the unincorporated areas.

ON THE BASIS OF EXISTING BOARD MEMBERSHIP, AT LEAST ONE MEMBER SHALL BE ELECTED FROM THE UNINCORPORATED AREA.

FOR MEMBERS OF THE BOARD OF EDUCATION TO SERVE

AN UNEXPIRED 2-YEAR TERM

THE AREA OF RESIDENCE OF THOSE ELECTED TO FILL UNEXPIRED TERMS

IS TAKEN INTO CONSIDERATION IN DETERMINING THE WINNERS OF THE

FULL TERMS.

VOTE FOR A TOTAL OF ....

..... Area

( ) .....

( ) .....

..... Area

( ) .....

( ) .....

FOR MEMBERS OF THE BOARD OF EDUCATION TO SERVE

A FULL 4-YEAR TERM

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VOTE FOR A TOTAL OF ....

..... Area

( ) .....

( ) .....

(FORMAT 7a

Ballot position for candidates shall be determined by the order of petition filing or lottery held pursuant to Sections 9-11.1 and 9-11.2.

This format is used by high school districts if more than 15% but less than 30% of the taxable property is located in the unincorporated territory of the school district and on the basis of existing board membership no board member is required to be elected from the unincorporated area.)

OFFICIAL BALLOT

Instruction to voter: More than 15% but less than 30% of the taxable property of this high school district is located in the unincorporated territory of the district, therefore, at least one board member shall be a resident of the unincorporated areas.

ON THE BASIS OF EXISTING BOARD MEMBERSHIP, MEMBERS MAY BE ELECTED FROM ANY AREA OR AREAS.

FOR MEMBERS OF THE BOARD OF EDUCATION TO SERVE

A UNEXPIRED 2-YEAR TERM

VOTE FOR ....

( ) .....

( ) .....

( ) .....

FOR MEMBERS OF THE BOARD OF EDUCATION TO SERVE

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A FULL 4-YEAR TERM

VOTE FOR ....

( ) .....

( ) .....

( ) .....

(FORMAT 8

Ballot position for incorporated and unincorporated areas shall be determined by the order of petition filing or lottery held pursuant to Sections 9-11.1 and 9-11.2.

This format is used by high school districts if more than 30% of the taxable property is located in the unincorporated territory of the school district. In this case, at least two board members shall be residents of the unincorporated territory.)

OFFICIAL BALLOT

Instructions to voters: Thirty percent (30%) or more of the taxable property of this high school district is located in the unincorporated territory of the district, therefore, at least two board members shall be residents of the unincorporated territory.

ON THE BASIS OF EXISTING BOARD MEMBERSHIP, AT LEAST 2 MEMBERS SHALL BE ELECTED FROM THE UNINCORPORATED AREA.

FOR MEMBERS OF THE BOARD OF EDUCATION TO SERVE

A UNEXPIRED 2-YEAR TERM

THE AREA OF RESIDENCE OF THOSE ELECTED TO FILL UNEXPIRED TERMS

IS TAKEN INTO CONSIDERATION IN DETERMINING THE WINNERS OF THE

FULL TERMS.

VOTE FOR A TOTAL OF ....

..... Area

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( ) .....

( ) .....

..... Area

( ) .....

( ) .....

FOR MEMBERS OF THE BOARD OF EDUCATION TO SERVE

A FULL 4-YEAR TERM

VOTE FOR A TOTAL OF ....

..... Area

( ) .....

( ) .....

..... Area

( ) .....

( ) .....

(FORMAT 8a

Ballot position for incorporated and unincorporated areas shall be determined by the order of petition filing or lottery held pursuant to Sections 9-11.1 and 9-11.2.

This format is used by high school districts if more than 30% of the taxable property is located in the unincorporated territory of the school district. In this case, at least two board members shall be residents of the unincorporated territory.)

OFFICIAL BALLOT

Instructions to voters: Thirty percent (30%) or more of the taxable property of this high school district is located in the unincorporated territory of the district, therefore, at least two board members shall be residents of the unincorporated territory.

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ON THE BASIS OF EXISTING BOARD MEMBERSHIP, AT LEAST ONE MEMBER SHALL BE ELECTED FROM THE UNINCORPORATED AREA.

FOR MEMBERS OF THE BOARD OF EDUCATION TO SERVE

AN UNEXPIRED 2-YEAR TERM

THE AREA OF RESIDENCE OF THOSE ELECTED TO FILL UNEXPIRED TERMS

IS TAKEN INTO CONSIDERATION IN DETERMINING THE WINNERS OF THE

FULL TERMS.

VOTE FOR A TOTAL OF ....

..... Area

( ) .....

( ) .....

..... Area

( ) .....

( ) .....

FOR MEMBERS OF THE BOARD OF EDUCATION TO SERVE

A FULL 4-YEAR TERM

VOTE FOR A TOTAL OF ....

..... Area

( ) .....

( ) .....

..... Area

( ) .....

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( ) .....

(FORMAT 8b

Ballot position for incorporated and unincorporated areas shall be determined by the order of petition filing or lottery held pursuant to Sections 9-11.1 and 9-11.2.

This format is used by high school districts if more than 30% of the taxable property is located in the unincorporated territory of the school district. In this case, at least two board members shall be residents of the unincorporated territory.)

OFFICIAL BALLOT

Instructions to voters: Thirty percent (30%) or more of the taxable property of this high school district is located in the unincorporated territory of the district, therefore, at least two board members shall be residents of the unincorporated territory.

ON THE BASIS OF EXISTING BOARD MEMBERSHIP, MEMBERS MAY BE ELECTED FROM ANY AREA OR AREAS.

FOR MEMBERS OF THE BOARD OF EDUCATION TO SERVE

A UNEXPIRED 2-YEAR TERM

VOTE FOR ....

( ) .....

( ) .....

( ) .....

( ) .....

FOR MEMBERS OF THE BOARD OF EDUCATION TO SERVE

A FULL 4-YEAR TERM

VOTE FOR ....

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( ) .....

( ) .....

( ) .....

( ) .....

( ) .....

(Source: P.A. 84-1338; 87-1139, § 1; 89-129, § 5; 89-416, § 75; 89-579, § 5; 90-14, § 3-70; 90-459, § 10; 91-357, § 101; 93-706, § 5; 93-1079, § 5; 94-1019, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 9-12.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Section 90 of P.A. 94-1019 contains a savings provision, and section 95 contains a no acceleration or delay provision.

Effect of Amendments. The 1992 amendment by P.A. 87-1139, effective September 17, 1992, in format 2, in the third paragraph inserted "Community unit school districts formed prior to January 1, 1975 that elect board members at large and without restriction by area of residence within the district under subsection (c) of Section 11A-8;"; and in format 4, at the beginning of the second paragraph added "Except for those community unit school districts formed prior to January 1, 1975 that elect board members at large and without restriction by area of residence within the district under subsection (c) of Section 11A-8,".

The 1995 amendment by P.A. 89-129, effective July 14, 1995, in Format 2, in the third paragraph inserted "on or" preceding "after January 1, 1975", inserted "on or" preceding "after July 1, 1983" and inserted "Combined school districts formed before July 1, 1983 that elect board members at large and without restriction by area of residence within the district under subsection (c) of Section 11B-7"; in Format 3, in the third paragraph, added at the beginning "Except for those community unit school districts formed before January 1, 1975 that elect board members at large and without restriction by area of residence within the district under subsection (c) of Section 11A-8 and except for combined school districts formed July 1, 1983 that elect board members at large and without restriction by area of residence within the district under subsection (c) of Section 11B-7"; in Format 4, in the second paragraph, in the first sentence, inserted "and except for those combined school districts formed before July 1, 1983 that elect board members at large and without restriction by area of residence within the district under subsection (c) of Section 11B-7"; and in Format 5, in the second paragraph, in the first sentence added at the beginning "Except for those community unit school districts formed before January 1, 1975 that elect board members at large and without restriction by area of residence within the district under subsection (c) of Section 11A-8 and except for combined school districts formed July 1, 1983 that elect board

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members at large and without restriction by area of residence within the district under subsection (c) of Section 11B-7".

The 1995 amendment by P.A. 89-416, effective November 22, 1995, incorporated amendments by P.A. 89-129; and inserted "and community consolidated school districts" in formats 2 through 5.

The 1996 amendment by P.A. 89-579, effective July 30, 1996, in Format 5, in the second paragraph, added the third sentence and rewrote the portion of the official ballot following the first paragraph.

The 1997 amendment by P.A. 90-14, effective July 1, 1997, made minor stylistic changes.

The 1997 amendment by P.A. 90-459, effective August 17, 1997, inserted the text for Formats 2a and 2b.

The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "Tuesday (insert date)" for "Tuesday ....., 19....." near the end of the last form in Format 6, and made stylistic changes.

The 2004 amendment by P.A. 93-706, effective July 9, 2004, revised the ballot forms.

The 2005 amendment by P.A. 93-1079, effective January 21, 2005, rewrote the section.

The 2006 amendment by P.A. 94-1019, effective July 10, 2006, added "(now repealed)" throughout the section.

§ 105 ILCS 5/9-12.1. [Reverse side of ballot; adjustments]

Sec. 9-12.1. (a) On the reverse side of each ballot contained in Section 9-12 [105 ILCS 5/9-12], except the ballot under Format 6, shall be printed the following:

OFFICIAL BALLOT

..... County, Illinois

School District No. ....., ... County, Illinois

Election Tuesday, (insert date)

(facsimile signature of the election authority)

(b) If 6-year terms have been adopted under Section 9-5 [105 ILCS 5/9-5], or if a ballot is to be used to elect a member or members of a board of school directors or board of education at the consolidated election held in April of 1999 or April of 2001 to a full term

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that is less than a 4-year term, appropriate adjustments should be made to each ballot in Section 9-12 [105 ILCS 5/9-12]. In the case of any unexpired term each ballot format must indicate whether it is a 4-year or a 2-year unexpired term.

(Source: P.A. 84-1338; 90-637, § 5; 91-357, § 101.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 9-12.1.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1998 amendment by P.A. 90-637, effective July 24, 1998, inserted the language beginning with "or if a ballot" and ending with "4-year term" in the first sentence of subsection (b).

The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "Tuesday, (insert date)" for "Tuesday, ..., 19..." near the end of the form in subsection (a).

§ 105 ILCS 5/9-13. Public measure - Ballot

Sec. 9-13. Public measure - Ballot. More than one public measure may be submitted upon the same ballot. The proposition of purchasing one or more schoolhouse sites, building one or more new schoolhouses, and issuing bonds for the purpose of borrowing money to purchase one or more schoolhouse sites and to build one or more new schoolhouses or make additions and improvements to existing school buildings, may be combined into one or more propositions on the ballot. No proposition under this Section which is substantially the same shall be submitted more than once every 2 months, except where the proposition is submitted as a consequence of a disaster, calamity or other Act of God.

(Source: P.A. 81-1489.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 9-13.

CASE NOTES

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Analysis

Constitutionality
- Free and Equal Clause
In General
Election Ballot
- Contents
- Defects
- Form
- Held Not Misleading
- Held Proper
Fund Rate Increase
- Held Valid
Purpose
Rescission
School Site
- Purchase

Constitutionality

- Free and Equal Clause

This section does not violate the free and equal clause contained in Ill. Const. (1970), Art. III, § 3. Roll v. Carrollton Community Unit School, 3 Ill. 2d 148, 121 N.E.2d 1 (1954).

In General

Provisions of this section are permissive in nature; nothing therein purports to prohibit the combination of other related questions into one or more propositions. Schoon v. Board of Educ., 11 Ill. 2d 91, 142 N.E.2d 41 (1957).

Election Ballot

- Contents

Where an election notice contained the provision that bonds were to bear interest at a certain rate, absence of that provision in the form of the ballot used was not fatal to the election. Goedde v. Community Unit Sch., 21 Ill. App. 2d 79, 157 N.E.2d 266 (3 Dist. 1959).

By revision in 1951, the legislature eliminated the requirement that the interest rate which bonds were to bear must be specified, and the notice of election was not required to state the interest rate that the bonds proposed to be issued should bear; if a definite interest rate was not required to be specified in the election notice, it reasonably follows that it was not required to be specified in the form of the ballot. Goedde v. Community Unit Sch., 21 Ill. App. 2d 79, 157 N.E.2d 266 (3 Dist. 1959).

Where ballot informed voters of the amount of the proposed bond issue, its purpose, the interest rates to be charged and the years in which the bonds would mature, it contained the substance of the public measure, and the result of the election was not affected in any way by a typographical omission from the ballot in the schedule of bond maturities; the official ballots used in the election

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were valid. Smith v. Calhoun Community Unit Sch. Dist. No. 40, 16 Ill. 2d 328, 157 N.E.2d 59 (1959).

- Defects

Although the exact legal description of proposed building site was not set forth, where the election notice and ballot did describe the intended location in common language which could be readily understood by anyone in the school district, in this respect no defect occurred. Carstens v. Board of Educ., 27 Ill. 2d 88, 187 N.E.2d 682 (1963).

- Form

Not every deviation from the form of ballot prescribed by the applicable statutes will render an election void. Smith v. Calhoun Community Unit Sch. Dist. No. 40, 16 Ill. 2d 328, 157 N.E.2d 59 (1959).

- Held Not Misleading

There was nothing misleading in propositions submitted at bond election, to "alter and repair existing school buildings," even though it did not state that board intended to convert a high school into a grade school. Schoon v. Board of Educ., 11 Ill. 2d 91, 142 N.E.2d 41 (1957).

- Held Proper

Ballot used in a referendum was proper and therefore plaintiff's complaints failed to state a cause of action. Carstens v. Board of Educ., 27 Ill. 2d 88, 187 N.E.2d 682 (1963).

Fund Rate Increase

- Held Valid

Where the substance of the proposed increase in school district fund rate did appear on the ballot, the fund rate was valid. People ex rel. Thompson v. Clark, 34 Ill. App. 3d 228, 338 N.E.2d 408 (2 Dist. 1975).

Purpose

The purpose of this section is not to furnish voters with every detail concerning the measure but to enable them to readily identify the proposition, to know its fundamental and general effect, and to indicate their individual choice, and where the information so set forth gives a fair portrayal of the chief features of the proposition in words of plain meaning, this requirement has been satisfied. Carstens v. Board of Educ., 27 Ill. 2d 88, 187 N.E.2d 682 (1963).

Rescission

The power to vote on a proposition to issue bonds implies the right to vote for or against the proposition but not the right to vote to rescind authority once granted. Goedde v. Community Unit Sch., 21 Ill. App. 2d 79, 157 N.E.2d 266 (3 Dist. 1959).

School Site

- Purchase

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The proposition to purchase a school site is separate and distinct from the proposition to select a site. Adams v. Board of Educ., 415 Ill. 227, 112 N.E.2d 473 (1953).

§ 105 ILCS 5/9-18: Repealed by P.A. 95-141, § 5, effective August 13, 2007.

§ 105 ILCS 5/9-22. School board districts; changing manner of election

Sec. 9-22. School board districts; changing manner of election. A school board may by resolution or shall, upon the petition of the lesser of 2,500 or 5% of the district's registered voters, order submitted to the district's voters at a regular school election or at the general election, the proposition for the election of board members by school board district, and the proposition shall thereupon be certified by the board's secretary for submission. If the proposition is approved by a majority of those voting on the proposition, the board shall divide the school district into 7 school board districts, each of which must be compact and contiguous and substantially equal in population to each other district. The terms of office of the board members incumbent at the time the proposition is adopted expire on the day of the next regular school election, at which time one member shall be elected from each school board district. In districts which have 4 year terms, those members first elected after adoption of such a proposition shall, by lot, determine 3 to serve for 2 years and 4 for 4 years; their successors shall serve for a 4 year term. In districts which have 6 year terms, those members first elected after adoption of such a proposition shall, by lot, determine 3 to serve for 2 years, 2 for 4 years and 2 for 6 years; their successors shall serve for a 6 year term. Vacancies shall be filled as provided in Section 10-10 [105 ILCS 5/10-10].

In the year following each decennial census, the school board shall reapportion the board districts to reflect the results of such census; provided, that no decennial reapportionment shall be required in any school district which elects its board members by school board district rather than at large if: (i) on the effective date of this amendatory Act of 1990, such school district last elected its board members by school board district at the nonpartisan election in 1989; (ii) the terms of the board members so elected were determined by lot after that election and prior to January 1, 1990; and (iii) the population of each existing school board district in that school district at the time of the decennial census is within 5% of what would be the population in the corresponding school board district that would result were the school board districts in that school district to be reapportioned following that decennial census as otherwise required by this paragraph. If reapportionment is required by this paragraph, the school board districts shall be compact, contiguous and substantially equal in population, and such reapportionment plan shall be completed and formally approved by a majority of the members of the board not less than 90 days before the last date established by law for the submission of nominating petitions for the next school board election. At the same board meeting, the board shall, publicly by lot, divide the board districts as equally as possible into 2 groups. In school districts which have 4 year terms, board members or their successors from one

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group shall be elected for successive terms of 2 years, 4 years and 4 years; and members or their successors from the second group shall be elected for successive terms of 4 years, 4 years and 2 years. In school districts which have 6 year terms, board members or their successors from one group shall be elected for successive terms of 4 years and 6 years; and members or their successors from the second group shall be elected for successive terms of 6 years and 4 years.

In any school district in which the members of the school board are elected by school board district rather than at large, the school board may by resolution or shall, upon the petition of the lesser of 2,500 or 5% of the school district's registered voters, order submitted to the school district's voters at a regular school election or at the general election, the proposition for the election of board members at large rather than by school board district; and the proposition shall thereupon be certified by the board's secretary for submission. If a majority of those voting at the election in each school board district vote in favor of the proposition: (i) the proposition to elect board members at large shall be deemed to have passed, (ii) new members of the board shall be elected at large at the next regular school election, and (iii) the terms of office of the board members incumbent at the time the proposition is adopted shall expire when the new board members that are elected at large have organized in accordance with Section 10-16 [105 ILCS 5/10-16]. In school districts that formerly elected their members by school board district to successive terms not exceeding 4 years, the members elected at large shall be elected for a term of 4 years, and in school districts that formerly elected their members by school board district to successive terms not exceeding 6 years, the members elected at large shall be elected for a term of 6 years; provided, that in each case the terms of the board members initially elected at large as provided in this paragraph shall be staggered and determined in accordance with the provisions of Sections 10-10 and 10-16 [105 ILCS 5/10-10 and 105 ILCS 5/10-16].

(Source: P.A. 86-214; 86-1441; 87-1139, § 1; 87-1210, § 90; 88-45, § 2-31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 9-22.

Effect of Amendments. The 1992 amendment by P.A. 87-1139, effective September 17, 1992, added "changing manner of election" at the end of the existing catchline; in the first sentence substituted "by resolution" for "on its own motion", substituted "district's registered voters" for "voters register in the district", substituted "district's voters" for "voters of the district", substituted "and the proposition" for "and such proposition" and substituted "board's secretary for submission" for "secretary of the board for submission"; and added the third paragraph.

The 1992 amendment by P.A. 87-1210, effective September 25, 1992, deleted "rather than add at large" following "board members by school board district" in the first sentence.

The 1993 amendment by P.A. 88-45, effective July 6, 1993, combined the separate amendments of P.A. 87-1139 and P.A. 87-1210.

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CASE NOTES

Analysis

Boundaries
- Separate Entity
Composition
- Corporate Boundaries

Boundaries

- Separate Entity

A school district with its territorial boundaries coterminous with the boundaries of a city is a corporate entity separate and distinct from the city. McCurdy v. Board of Educ., 359 Ill. 188, 194 N.E. 287 (1934).

Composition

- Corporate Boundaries

A legally constituted school district is composed of the territory included within its corporate boundaries. McCurdy v. Board of Educ., 359 Ill. 188, 194 N.E. 287 (1934).

Article 10.

School Boards

§ 105 ILCS 5/10-1. Board of school directors

Sec. 10-1. Board of school directors. (a) School districts having a population of fewer than 1000 inhabitants and not governed by any special act shall be governed by a board of school directors to consist of 3 members who shall be elected in the manner provided in Article 9 of this Act [105 ILCS 5/9-1 et seq.]. In consolidated districts and in districts in which the membership of the board of school directors is increased as provided in subsection (b), 7 members shall be so elected.

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(b) Upon presentment to the board of school directors of a school district having a population of fewer than 1,000 inhabitants of a petition signed by the lesser of 5% or 25 of the registered voters of the district to increase the membership of the district's board of school directors to 7 directors and to elect a new 7-member board of school directors to replace the district's existing board of 3 school directors, the clerk or secretary of the board of school directors shall certify the proposition to the proper election authorities for submission to the electors of the district at a regular scheduled election in accordance with the general election law. If the proposition is approved by a majority of those voting on the proposition, the members of the board of school directors of that district thereafter shall be elected in the manner provided by subsection (c) of Section 10-4 [105 ILCS 5/10-4].

(c) A board of school directors may appoint a student to the board to serve in an advisory capacity. The student member shall serve for a term as determined by the board. The board may not grant the student member any voting privileges, but shall consider the student member as an advisor. The student member may not participate in or attend any executive session of the board.

(Source: Laws 1961, p. 31; P.A. 90-757, § 5; 94-231, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-1.

Cross References.

Concerning the adoption of Article 10 by a special charter district, see 105 ILCS 5/10-23.7.

As to the passage requirements for a board of education elected for a new community unit school district, see 105 ILCS 5/11A-8.

As to the passage requirements for a board of education elected for a new combined school district, see 105 ILCS 5/11B-7.

As to the passage requirements for a board of education elected for a new high school or elementary school district, see 105 ILCS 5/11D-6.

Effect of Amendments. The 1998 amendment by P.A. 90-757, effective August 14, 1998, added the subsection (a) designation, inserted "and in districts in which the membership of the board of school directors is increased as provided in subsection (b)" in the second sentence, and added subsection (b).

The 2005 amendment by P.A. 94-231, effective July 14, 2005, added (c).

CASE NOTES

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Analysis

Arbitration
- Application of Arbitration Act
- Appropriateness
- Minor Disputes
Discretion
Strict Construction

Arbitration

- Application of Arbitration Act

The Illinois Arbitration Act (710 ILCS 5/1 et seq.) should apply and govern the resolution of minor disputes when the parties have chosen arbitration. Board of Educ. v. Johnson, 21 Ill. App. 3d 482, 315 N.E.2d 634 (1 Dist. 1974).

- Appropriateness

In the absence of a statute requiring arbitration, appellate court could not say that all disputes arising from the collective bargaining agreement were proper subjects for binding arbitration. Board of Educ. v. Johnson, 21 Ill. App. 3d 482, 315 N.E.2d 634 (1 Dist. 1974).

Certain matters are specifically reserved to the board by the School Code and cannot, until such time as the legislature acts, be the subject of binding arbitration; thus, only those terms in collective bargaining agreements which are not in contravention of the School Code are arbitrable. Board of Educ. v. Johnson, 21 Ill. App. 3d 482, 315 N.E.2d 634 (1 Dist. 1974).

Teachers' complaint that they were wrongfully required to write in the names of their students on monthly attendance cards was not regulated by 105 ILCS 5/24-18, and since the dispute was minor in nature it could have been submitted to arbitration pursuant to a collective bargaining agreement. Board of Educ. v. Johnson, 21 Ill. App. 3d 482, 315 N.E.2d 634 (1 Dist. 1974).

- Minor Disputes

Arbitration of certain minor disputes pursuant to a collective bargaining agreement does not constitute a delegation to an outside party by the board, and disputes should be submitted to binding arbitration in the event of impasse. Board of Educ. v. Johnson, 21 Ill. App. 3d 482, 315 N.E.2d 634 (1 Dist. 1974).

The decision of whether a dispute is arbitrable (i.e., minor in nature) should be left to the respective parties and the arbitrator. Board of Educ. v. Johnson, 21 Ill. App. 3d 482, 315 N.E.2d 634 (1 Dist. 1974).

Discretion

Under the Illinois School Code, 105 ILCS 5/10-1 et seq., the Board was permitted to create goals, identify specific criteria with which to determine whether those goals were being met, and make finding about whether those goals have in fact been satisfied by satisfied by a particular superintendent. Since the Board did all of that in regard to the fourth amendment to the superintendent's contract, the amendment was valid and enforceable under 105 ILCS 5/10-23.8, which meant that the superintendent who had met the identified goals was entitled to be

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compensated pursuant to the amended contract. Bd. of Educ. v. Jackson, 401 Ill. App. 3d 24, 339 Ill. Dec. 665, 927 N.E.2d 206, 2010 Ill. App. LEXIS 274 (1 Dist. 2010).

Strict Construction

Statutes conferring powers to a school board must be strictly construed, and should be construed not only as a grant of power but also as a limitation thereof. Board of Educ. v. Climatemp, Inc., 91 F.R.D. 245 (N.D. Ill. 1981).

OPINIONS OF ATTORNEY GENERAL

Compatible Offices

In the absence of express authorization for library districts and school districts to contract for services, there appear to be no circumstances in which the duties of the offices of public library trustee and school board member would necessarily conflict; therefore, since nothing would prevent a person who serves as both a school board member and a library trustee from faithfully fulfilling all of the duties of both offices, the two offices are not incompatible, and one person may, therefore, hold both offices simultaneously. 1993 Op. Atty. Gen. (93-012).

§ 105 ILCS 5/10-2. Corporate powers

Sec. 10-2. Corporate powers.

The directors of each district shall be a body politic and corporate, by the name of "school directors of district No. ....., county of ..... and State of Illinois," and by that name may sue and be sued in all courts and places where judicial proceedings are had.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-2.

CASE NOTES

Analysis

Declaratory Judgment
Intervention
- Zoning Cases

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Non-Delegable Duties
- Appointment of Teachers
Representation
- Antitrust Action
- Tax Action
Standing
- Consumer Fraud
Statute of Limitations

Declaratory Judgment

The grant of power to a school board as a body politic and corporate to sue and be sued in all courts and places where judicial proceedings are had was broad enough to encompass authorization to institute and pursue declaratory judgment attacking validity of special use of certain described real estate on the ground that a special meeting approving the special use was held only after the petitioners in the zoning matter agreed to pay the expenses of the meeting, which agreement was alleged to be contrary to public policy and the ordinance granting the special use under such circumstances was alleged to be void. Board of Educ. v. County of Woodford, 19 Ill. App. 3d 1078, 312 N.E.2d 724 (4 Dist. 1974).

Intervention

- Zoning Cases

Even if this section is a sufficiently broad grant of authority to give the school district standing to initiate or intervene in a zoning suit, there are not adequate grounds for such a suit where the real purpose of the suit is to undo an annexation agreement. Hinckley-Big Rock Sch. v. Village of Sugar Grove, 105 Ill. App. 3d 959, 61 Ill. Dec. 727, 435 N.E.2d 216 (2 Dist. 1982).

The possible necessity of building another school building and hiring an extra teacher or two does not seem sufficiently adverse, substantial and direct in its effect to overcome the village's right to annex and rezone contiguous rural land for residential use or to allow a neighboring school district to intervene in a court action concerning that rezoning. Hinckley-Big Rock Sch. v. Village of Sugar Grove, 105 Ill. App. 3d 959, 61 Ill. Dec. 727, 435 N.E.2d 216 (2 Dist. 1982).

The board of education of a school district adjacent to property which was the subject of zoning litigation should have been allowed to intervene in the zoning case; even though 735 ILCS 5/2-408 and 65 ILCS 5/11-13-20 did not allow such intervention, if the board had a right to sue in such a case, it also had the capacity to intervene. Adams v. County of Cook, 86 Ill. App. 3d 68, 41 Ill. Dec. 520, 407 N.E.2d 1018 (1 Dist. 1980).

School districts have no right to intervene as of right in zoning litigation. Dato v. Village of Vernon Hills, 62 Ill. App. 2d 274, 210 N.E.2d 626 (2 Dist. 1965).

Non-Delegable Duties

- Appointment of Teachers

The duty to appoint all teachers and to fix the amount of their salaries are among the powers and duties of a board that cannot be delegated or limited by contract. Board of Educ. v. Rockford Educ. Ass'n, 3 Ill. App. 3d 1090, 280 N.E.2d 286 (2 Dist. 1972).

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Representation

- Antitrust Action

Where school boards did not show any relation between their educational purpose and lawsuit on behalf of private purchasers of sheet metal construction, the school boards were not authorized to represent a class of public and private purchasers of sheet metal services and supplies in an antitrust action. Board of Educ. v. Climatemp, Inc., 91 F.R.D. 245 (N.D. Ill. 1981).

School boards have the capacity to bring an antitrust action on their own behalf. Board of Educ. v. Climatemp, Inc., 91 F.R.D. 245 (N.D. Ill. 1981).

- Tax Action

The fact that a board of education is authorized to sue does not mean that it is the proper party plaintiff to bring suit to recover unpaid taxes. Board of Educ. v. Home Real Estate Imp. Corp., 378 Ill. 298, 38 N.E.2d 17 (1941).

Standing

School District could not have brought a complaint for administrative review. The School Code, 105 ILCS 5/10-2, expressly authorized a board of education to sue and be sued in court proceedings, but a school district lacked the capacity to sue in its own behalf unless specifically authorized to do so in the context of a companion statute; the Unemployment Insurance Act, 820 ILCS 405/100 et seq., did not specifically authorize a school district to proceed in its own name. Bd. of Educ. of Bremen High Sch. Dist. No. 228 v. Mitchell, 387 Ill. App. 3d 117, 326 Ill. Dec. 509, 899 N.E.2d 1160, 2008 Ill. App. LEXIS 1212 (1 Dist. 2008).

- Consumer Fraud

School districts as corporations have standing for bringing actions against suppliers of asbestos products under the Consumer Fraud and Deceptive Practices Acts (815 ILCS 505/1 et seq.). Board of Educ. v. A, C & S, Inc., 171 Ill. App. 3d 737, 121 Ill. Dec. 643, 525 N.E.2d 950 (1 Dist. 1988), rev'd on other grounds, 131 Ill. 2d 428, 137 Ill. Dec. 635, 546 N.E.2d 580 (1989).

Statute of Limitations

The statute of limitations contained in 735 ILCS 5/13-214 applies to a school district because this section provides that the directors of each school district "shall be a body politic and corporate" of the State of Illinois and may sue and be sued in all courts of the state. People ex rel. Skinner v. Graham, 170 Ill. App. 3d 417, 120 Ill. Dec. 612, 524 N.E.2d 642 (4 Dist. 1988).

§ 105 ILCS 5/10-3. Eligibility of directors

Sec. 10-3. Eligibility of directors. Any person who, on the date of his or her election, is a citizen of the United States, of the age of 18 years or over, is a resident of the State and of the territory of the district for at least one year immediately preceding his or her election, is a registered voter as provided in the general election law, is not a school trustee or a school treasurer, and is not a child sex offender as defined in Section 11-9.3 of the Criminal Code of 1961 [720 ILCS 5/11-9.3] shall be eligible to the office of school

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director.

(Source: P.A. 81-1490; 93-309, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-3.

Effect of Amendments. The 2003 amendment by P.A. 93-309, effective January 1, 2004, inserted "or her" following "of his"; "is" preceding " a resident"; "or her" following "preceding his"; "is" preceding "a registered"; and "and is not a child sex offender as defined in Section 11-9.3 of the Criminal Code of 1961".

§ 105 ILCS 5/10-4. Election of directors

Sec. 10-4. Election of directors. (a) In all districts, directors shall be elected in each odd-numbered year, each for a term of 4 years.

(b) In consolidated districts where 5 directors are elected in 1981 pursuant to the extension of terms provided by law for transition to the consolidated election schedule under the general election law, those directors elected shall, by lot, determine 2 of their number to serve 2 years and 3 to serve 4 years; their successors shall serve for a 4 year term.

(c) If a proposition to increase the membership of a school district's board of school directors to 7 directors and to elect a new 7-member board of school directors to replace the district's existing board of 3 school directors is approved by the electors of the district at a regular scheduled election as provided in subsection (b) of Section 10-1 [105 ILCS 5/10-1], 7 members shall be elected at the next regular school election, in the manner provided by Article 9, to serve as the board of school directors of that district. The terms of office of the 3 members of the board of school directors serving at the time of the election of the initial 7-member board of school directors shall expire when the 7 newly elected members of the initial 7-member board of school directors assume office and are organized as provided in Section 10-5 [105 ILCS 5/10-5]. At their organizational meeting, the initial members of the 7-member board of school directors shall by lot determine 4 of their number to serve 4 year terms and 3 of their number to serve 2 year terms. Their successors shall serve for a 4 year term.

(d) In all other districts, one school director shall be elected in each district every other odd-numbered year, and two school directors shall be elected in the intervening odd-numbered years.

(e) When a vacancy occurs in the membership of any board of school directors the remaining members shall, within 30 days, fill the vacancy by appointment until the next regular school election, or, upon their failure so to do, the regional superintendent shall

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make such appointment within the next 30 days to fill the vacancy as herein provided. Upon the regional superintendent's failure to fill the vacancy, the vacancy shall be filled at the next regularly scheduled election.

(Source: P.A. 85-1046; 90-757, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-4.

Effect of Amendments. The 1998 amendment by P.A. 90-757, effective August 14, 1998, added subsections (a) and (c); inserted the subsection (b), (d), and (e) designations; and, in subsection (e), in the first sentence, substituted "in the membership of any board of school directors" for "on the board".

§ 105 ILCS 5/10-5. Organization of board - Report to treasurer and regional superintendent of schools

Sec. 10-5. Organization of board - Report to treasurer and regional superintendent of schools. Within 28 days after the regular election of directors, the directors shall meet and organize by appointing one of their number president and another as clerk, except that when directors are elected at the consolidated elections in April of 1999 and April of 2001, the directors shall meet and organize, in the manner provided by this Section, within 7 days after the first Tuesday after the first Monday of November in each of those 2 years. The clerk shall at once report to the treasurer and regional superintendent of schools the names of the president and clerk so appointed. Upon organizing itself as provided in this Section, the board of school directors shall enter upon the discharge of its duties. Terms of members are subject to Section 2A-54 of the Election Code [10 ILCS 5/2A-54], except as otherwise limited by subsection (c) of Section 10-4 [105-5/10-4].

(Source: P.A. 81-1490; 90-358, § 11; 90-637, § 5; 90-757, § 5; 91-357, § 101; 93-847, § 40.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-5.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Section 95 of P.A. 93-847 contains a severability provision.

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Effect of Amendments. The 1997 amendment by P.A. 90-358, effective January 1, 1998, added the third sentence.

The 1998 amendment by P.A. 90-637, effective July 24, 1998, added the exception to the end of the first sentence; and inserted the third sentence.

The 1998 amendment by P.A. 90-757, effective August 14, 1998, in the last sentence, inserted "except as otherwise limited by subsection (c) of Section 10-4".

The 1999 amendment by P.A. 91-357, effective July 29, 1999, incorporated the amendments by P.A. 90-358, P.A. 90-637, and P.A. 90-757.

The 2004 amendment by P.A. 93-847, effective July 30, 2004, substituted "28 days" for "7 days" in the first sentence.

§ 105 ILCS 5/10-6. Regular and special meetings

Sec. 10-6. Regular and special meetings. The directors shall hold regular meetings at such times as they may designate, and special meetings at the call of the president or of any 2 members. Public notice of meetings must be given as prescribed in Sections 2.02 and 2.03 of the Open Meetings Act [5 ILCS 120/2.02 and 5 ILCS 120/2.03]. No official business shall be transacted by the directors except at a regular or a special meeting. In consolidated districts and in districts electing a 7-member board of school directors under subsection (c) of Section 10-4 [105 ILCS 5/10-4], 4 directors shall constitute a quorum for the transaction of business. In all other districts 2 directors shall constitute a quorum for the transaction of business. If the president or clerk is absent from any meeting or refuses to perform his duties, a president or clerk pro tempore shall be appointed. At each regular and special meeting which is open to the public, members of the public and employees of the district shall be afforded time, subject to reasonable constraints, to comment to or ask questions of the board. When the president or district superintendent of schools receives a written correspondence from a resident within the school district's territory, requesting the consideration of a matter before the board, the author of the correspondence shall receive a formal written statement from an appointed official of the board stating the board's position on their request, no later than 60 days from the receipt of the correspondence by the president or district superintendent of schools. The formal written response from the board shall establish a meeting before the board or list the reasons for denying the request.

(Source: P.A. 83-787; 90-757, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-6.

Effect of Amendments. The 1998 amendment by P.A. 90-757, effective August 14, 1998, substituted "the Open Meetings Act" for " 'An Act in relation to meetings', approved July 11, 1957,

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as heretofore or hereafter amended" in the second sentence, and inserted "and in districts electing a 7-member board of school directors under subsection (c) of Section 10-4", and "for the transaction of business" in the fourth sentence.

CASE NOTES

Analysis

In General
Actions Not Invalid
- Special Meetings
Compliance
- Not Shown
Costs
- Awarded in Error
Legislative Intent
- Recovery of Funds
Proper Action
- Illustrative Cases
Public Relations Consultant
Transaction of Official Business
- Hiring

In General

Under former Ill. Rev. Stat., ch. 122, para. 119 (see now this section), powers conferred upon a board of education could be exercised only at regular or special meetings of the board. Pratt v. Board of Educ., 326 Ill. App. 610, 63 N.E.2d 275 (2 Dist. 1945).

Actions Not Invalid

Illinois Educational Labor Relations Board's order was affirmed as the Board's finding that representatives of a union and a school district orally entered into a collective bargaining agreement during negotiations, but that the school district failed to bargain in good faith by reneging on the oral agreement was not against the manifest weight of the evidence. Further, the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq., controlled any conflict in the laws pursuant to 115 ILCS 5/17 so that the school district directors did not have to approve of the agreement. Bd. of Educ. v. Sered, 366 Ill. App. 3d 330, 303 Ill. Dec. 16, 850 N.E.2d 821, 2006 Ill. App. LEXIS 103 (1 Dist. 2006).

- Special Meetings

Under a prior similar provision which provided that the board of school directors should hold regular meetings and that no official business be transacted by the board except at a regular or special meeting, official actions taken by the board at a meeting at which all directors were present were not invalid, although meeting was neither a regular one nor a special one called in the statutory manner; provision that no business should be transacted except at a regular or special meeting of the board did not have reference to the particular manner in which special

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meetings could be called, but was a prohibition upon doing business by the members of the board unless in meeting assembled. Lawrence v. Traner, 136 Ill. 474, 27 N.E. 197 (1891).

Compliance

- Not Shown

Where policy of workers' compensation insurance was not approved by a yea vote of the members of the school board at a meeting called for the purpose of transacting business or entered upon the records of the school board, the president and the secretary of the school board were without authority to execute the contract or approve the issuance of the contract of insurance. Bituminous Cas. Corp. v. Folkerts, 305 Ill. App. 443, 27 N.E.2d 670 (1 Dist. 1940).

Costs

- Awarded in Error

Trial court erred in assessing costs against plaintiff. Sebastian v. School Directors of School Dist. No. 103, Montgomery County, 317 Ill. App. 524, 47 N.E.2d 121 (3 Dist. 1943).

Legislative Intent

- Recovery of Funds

It was the intention of the legislature to encourage the recovery of school funds, even by litigation, where a reasonable ground for doing so existed; it could not have intended to discourage the recovery of an established indebtedness from school districts which unjustly refused to pay. Sebastian v. School Directors of School Dist. No. 103, Montgomery County, 317 Ill. App. 524, 47 N.E.2d 121 (3 Dist. 1943).

Proper Action

- Illustrative Cases

Trial court properly allowed two invoices of goods furnished the defendant by the plaintiff prior to adoption of resolution which revoked the authority of janitor to buy goods in behalf of the district. Sebastian v. School Directors of School Dist. No. 103, Montgomery County, 317 Ill. App. 524, 47 N.E.2d 121 (3 Dist. 1943).

Public Relations Consultant

A school district's power to hold regular and special meetings under this section implies the need to exchange information with the community; thus, a school district's contract with a public relations consultant was not ultra vires or void. Ryan v. Warren Tp. High Sch. Dist., 155 Ill. App. 3d 203, 109 Ill. Dec. 843, 510 N.E.2d 911 (2 Dist. 1987).

Transaction of Official Business

- Hiring

Where plaintiff saw one or more of the directors of a local school board and had a conversation with them about teaching at their school, and a conclusion was reached that plaintiff might teach

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for five months and that the board would enter into a written contract with plaintiff to that effect, it was extremely doubtful whether the evidence was sufficient to show a contract of employment with the plaintiff binding upon the school district. Tingley v. Vaughn, 17 Ill. App. 347 (4 Dist. 1885).

§ 105 ILCS 5/10-7. Secretary or clerk to record official acts - yeas and nays on expenditures

Sec. 10-7. Secretary or clerk to record official acts - yeas and nays on expenditures. The secretary or clerk shall keep in a punctual, orderly and reliable manner a record of the official acts of the board which shall be signed by the president and the secretary or clerk, and submitted to the treasurer having custody of the funds of the district for his inspection and approval at such times as the treasurer may require. On all questions involving the expenditure of money, the yeas and nays shall be taken and entered on the records of the proceedings of the board. The secretary or clerk shall keep the minutes and, if the district is not required to employ a superintendent, keep or cause to be kept the financial records of the school district.

(Source: P.A. 76-1339; 96-998, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-7.

Effect of Amendments. The 2010 amendment by P.A. 96-998, effective July 2, 2010, deleted "on the first Monday of April and October, and" following "inspection and approval", and "other" preceding "times as the treasurer may require".

CASE NOTES

Analysis

Amendment of Record
- Memories Prohibited
- Proper
Applicability
- Taxation
Contract Modifications
- Voting
Irregular Contract
- Ratification
Parol Evidence

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- Prohibited
Purpose
- Knowledge
Record
- Intent of Board
Tax Levy
- Record Required
- Voting
Verbal Vote
- Invalid

Amendment of Record

- Memories Prohibited

A record cannot be amended or supplied by the uncertain memories of witnesses, even of clerks or officers. People ex rel. Prindable v. New York Cent. R.R., 400 Ill. 507, 81 N.E.2d 201 (1948).

- Proper

Where the record as amended correctly set forth the proceedings of the meeting of the board of directors at which a levy was made as those proceedings were related in the testimony, there was no error in permitting the amendment to be made. People ex rel. Clark v. B & O S.W. Ry., 353 Ill. 492, 187 N.E. 463 (1933).

Applicability

Illinois Educational Labor Relations Board's order was affirmed as the Board's finding that representatives of a union and a school district orally entered into a collective bargaining agreement during negotiations, but that the school district failed to bargain in good faith by reneging on the oral agreement was not against the manifest weight of the evidence. Further, the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq., controlled any conflict in the laws pursuant to 115 ILCS 5/17 so that the school district directors did not have to approve of the agreement. Bd. of Educ. v. Sered, 366 Ill. App. 3d 330, 303 Ill. Dec. 16, 850 N.E.2d 821, 2006 Ill. App. LEXIS 103 (1 Dist. 2006).

- Taxation

This section, which requires the clerk to keep a record of the "official acts of the board," requires that a record be kept of the essential steps in levying a tax. People ex rel. Prindable v. New York Cent. R.R., 400 Ill. 507, 81 N.E.2d 201 (1948).

Contract Modifications

- Voting

Defendant school board could not assert that it was entitled to a number of credits which were to be adjudicated upon completion of construction job, but that it was not obligated for any of the extras to be adjudicated in the same manner because it did not vote by yeas and nays on the expenditures for these extras; the board had authorized the execution of the contract on which the construction was based and the contract specifically permitted, and contemplated, changes and modifications in the construction for which there would be extras charged and credits given;

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this was a valid contract and the extras for which the plaintiff sought compensation and the modifications and omissions for which the defendant requested a credit on its account were all based on the provisions of this contract. Stahelin v. Board of Educ., 87 Ill. App. 2d 28, 230 N.E.2d 465 (2 Dist. 1967).

Irregular Contract

- Ratification

Although a contract between a school district and a public relations consultant was irregularly entered into, the consultant was entitled to be reimbursed for his services where the school district ratified the contract by accepting the services and by making the partial payment. Ryan v. Warren Tp. High Sch. Dist., 155 Ill. App. 3d 203, 109 Ill. Dec. 843, 510 N.E.2d 911 (2 Dist. 1987).

Even if not previously authorized, a school superintendent's acts were ratified by the school district with regard to the hiring of lay supervisors when they allowed the supervisors to be paid for their services; similarly, ratification of a notice of dismissal was evidenced by the cessation of regular payments and the issuance of severance pay to the supervisors. Sitton v. Gibbs, 73 Ill. App. 3d 812, 29 Ill. Dec. 687, 392 N.E.2d 244 (1 Dist. 1979).

Parol Evidence

- Prohibited

Where public officials are required to keep a record of their proceedings, such record constitutes the only lawful evidence of action taken, and cannot be contradicted, added to or supplemented by parol. People ex rel. Prindable v. New York Cent. R.R., 400 Ill. 507, 81 N.E.2d 201 (1948).

Where officials are required to keep a record of the proceedings of their offices, the record constitutes the only lawful evidence of action taken and cannot be contradicted, added to, or supplemented by parol; a record cannot be changed to state that a certain action was taken which, in fact, was not taken, nor is it proper to amend the record where the parol testimony is uncertain. People ex rel. Toman v. Chicago Heights Term. Transf. R.R., 375 Ill. 590, 32 N.E.2d 161 (1941).

Purpose

- Knowledge

The purpose in requiring a yea and a nay vote and the recording of the same is to give the taxpayers an opportunity to know how each member voted. Ready v. Board of Educ., 297 Ill. App. 342, 17 N.E.2d 635 (4 Dist. 1938).

Record

- Intent of Board

It was not necessary for the inferred intent of a school board to accept a contract offer to have been spelled out in the board's minutes, because this section requires that a record be kept of a board's "official acts," but not necessarily the purposes intended to be accomplished by such acts. Board of Educ. v. Green Valley Bldrs, Inc., 40 Ill. App. 3d 812, 352 N.E.2d 306 (2 Dist. 1976).

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Tax Levy

- Record Required

Every essential proceeding in the course of a levy of taxes must appear in some written and permanent form in the records of the body authorized to act upon it. People ex rel. Prindable v. New York Cent. R.R., 400 Ill. 507, 81 N.E.2d 201 (1948).

- Voting

No provision of the school law requires school directors to take a yea and nay vote on the question of levying a tax; the requirement is made only as to questions involving the expenditure of money. People ex rel. Clark v. B & O S.W. Ry., 353 Ill. 492, 187 N.E. 463 (1933).

Verbal Vote

- Invalid

Under former Ill. Rev. Stat., ch. 122, para. 120 (see now this section), the verbal acceptance of employment of defendant school teacher by plaintiff appellee did not operate as a waiver of the requirements of recording votes for expenditure of money, for the requirements were enacted for the benefit of the taxpayers of the district and no liability could be created against the district except by a compliance therewith. Ready v. Board of Educ., 297 Ill. App. 342, 17 N.E.2d 635 (4 Dist. 1938).

§ 105 ILCS 5/10-8. Report by secretary or clerk to treasurer

Sec. 10-8. Report by secretary or clerk to treasurer. On or before July 7 annually, the secretary or clerk shall report to the treasurer having the custody of the funds of his district, such statistics and other information in relation to the schools of his district as the treasurer is required to include in his report to the regional superintendent of schools.

(Source: P.A. 80-279.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-8.

§ 105 ILCS 5/10-9. Interest of board member in contracts

Sec. 10-9. Interest of board member in contracts. (a) No school board member shall be interested, directly or indirectly, in his own name or in the name of any other person, association, trust or corporation, in any contract, work or business of the district or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid either from the treasury or by any assessment levied by any

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statute or ordinance. A school board member shall not be deemed interested if the board member is an employee of a business that is involved in the transaction of business with the school district, provided that the board member has no financial interests other than as an employee. No school board member shall be interested, directly or indirectly, in the purchase of any property which (1) belongs to the district, or (2) is sold for taxes or assessments, or (3) is sold by virtue of legal process at the suit of the district.

(b) However, any board member may provide materials, merchandise, property, services or labor, if:

A.the contract is with a person, firm, partnership, association, corporation or cooperative association in which the board member has less than a 7 1/2% share in the ownership; and

B.such interested board member publicly discloses the nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract; and

C.such interested board member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum; and

D.such contract is approved by a majority vote of those board members presently holding office; and

E.the contract is awarded after sealed bids to the lowest responsible bidder if the amount of the contract exceeds $1500, or awarded without bidding if the amount of the contract is less than $1500; and

F.the award of the contract would not cause the aggregate amount of all such contracts so awarded to the same person, firm, association, partnership, corporation or cooperative association in the same fiscal year to exceed $25,000.

(c) In addition to the above exemption, any board member may provide materials, merchandise, property, services or labor if:

A.the award of the contract is approved by a majority vote of the board provided that any such interested member shall abstain from voting; and

B.the amount of the contract does not exceed $1,000; and

C.the award of the contract would not cause the aggregate amount of all such contracts so awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed $2,000, except with respect to a board member of a school district in which the materials, merchandise, property, services, or labor to be provided under the contract are not available from any other person, firm, association, partnership, corporation, or cooperative association in the district, in which event the award of the contract shall not cause the aggregate amount of all contracts so awarded to that same person, firm, association, partnership, or cooperative association in the same fiscal year to exceed $5,000; and

D.such interested member publicly discloses the nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract; and

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E.such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum.

(d) In addition to exemptions otherwise authorized by this Section, any board member may purchase for use as the board member's primary place of residence a house constructed by the district's vocational education students on the same basis that any other person would be entitled to purchase the property. The sale of the house by the district must comply with the requirements set forth in Section 5-22 of The School Code [105 ILCS 5/5-22].

(e) A contract for the procurement of public utility services by a district with a public utility company is not barred by this Section by one or more members of the board being an officer or employee of the public utility company or holding an ownership interest of no more than 7 1/2% in the public utility company, or holding an ownership interest of any size if the school district has a population of less than 7,500 and the public utility's rates are approved by the Illinois Commerce Commission. An elected or appointed member of the board having such an interest shall be deemed not to have a prohibited interest under this Section.

(f) Nothing contained in this Section, including the restrictions set forth in subsections (b), (c), (d) and (e), shall preclude a contract of deposit of monies, loans or other financial services by a school district with a local bank or local savings and loan association, regardless of whether a member or members of the governing body of the school district are interested in such bank or savings and loan association as an officer or employee or as a holder of less than 7 1/2% of the total ownership interest. A member or members holding such an interest in such a contract shall not be deemed to be holding a prohibited interest for purposes of this Act. Such interested member or members of the governing body must publicly state the nature and extent of their interest during deliberations concerning the proposed award of such a contract, but shall not participate in any further deliberations concerning the proposed award. Such interested member or members shall not vote on such a proposed award. Any member or members abstaining from participation in deliberations and voting under this Section may be considered present for purposes of establishing a quorum. Award of such a contract shall require approval by a majority vote of those members presently holding office. Consideration and award of any such contract in which a member or members are interested may only be made at a regularly scheduled public meeting of the governing body of the school district.

(g) Any school board member who violates this Section is guilty of a Class 4 felony and in addition thereto any office held by such person so convicted shall become vacant and shall be so declared as part of the judgment of the court.

(Source: P.A. 86-197; 87-426; 89-244, § 5; 96-998, § 5.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 10-9.

Effect of Amendments. The 1995 amendment by P.A. 89-244, effective August 4, 1995, in subdivision (c)C inserted "except with respect to a board member of a school district in which the materials, merchandise, property, services, or labor to be provided under the contract are not available from any other person, firm, association, partnership, corporation, or cooperative association in the district, in which event the award of the contract shall not cause the aggregate amount of all contracts so awarded to that same person, firm, association, partnership, or cooperative association in the same fiscal year to exceed $5,000".

The 2010 amendment by P.A. 96-998, effective July 2, 2010, added the second to last sentence of (a).

CASE NOTES

Constitutionality

This section raised no arbitrary presumptions against plaintiffs' interest in local government participation so as to render the provision unconstitutional under U.S. Const., Amend. XIV. Shoresman v. Burgess, 412 F. Supp. 831 (E.D. Ill. 1976).

OPINIONS OF ATTORNEY GENERAL

Analysis

Conflict of Interest
- Not Shown
Incompatible Offices

Conflict of Interest

- Not Shown

A school board member was not in violation of a conflict of interest provision of this section where the school board was required by federal law to purchase gasoline from a company in which the school board member had an interest. 1980 Op. Atty. Gen. 117.

Incompatible Offices

Where the area grade school and high school districts are separate districts but a single facility houses both the grade school and the high school, one person serves as superintendent of both schools and one person serves as principal of both schools, a custodian employed by the grade school district, elected to the high school board and a high school teacher, elected to the grade school board may hold their respective positions of employment while serving on the boards of the affiliated districts; however they must abstain from voting or acting upon matters from which

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he or she may be personally benefitted as an employee of the other district, including those which directly relate to persons who serve as their administrative supervisors in their employment relationships. 1992 Op. Atty. Gen. (92-026).

§ 105 ILCS 5/10-10. Board of education; Term; Vacancy

Sec. 10-10. Board of education; Term; Vacancy. All school districts having a population of not fewer than 1,000 and not more than 500,000 inhabitants, as ascertained by any special or general census, and not governed by special Acts, shall be governed by a board of education consisting of 7 members, serving without compensation except as herein provided. Each member shall be elected for a term of 4 years for the initial members of the board of education of a combined school district to which that subsection applies. If 5 members are elected in 1983 pursuant to the extension of terms provided by law for transition to the consolidated election schedule under the general election law, 2 of those members shall be elected to serve terms of 2 years and 3 shall be elected to serve terms of 4 years; their successors shall serve for a 4 year term. When the voters of a district have voted to elect members of the board of education for 6 year terms, as provided in Section 9-5 [105 ILCS 5/9-5], the terms of office of members of the board of education of that district expire when their successors assume office but not later than 7 days after such election. If at the regular school election held in the first odd-numbered year after the determination to elect members for 6 year terms 2 members are elected, they shall serve for a 6 year term; and of the members elected at the next regular school election 3 shall serve for a term of 6 years and 2 shall serve a term of 2 years. Thereafter members elected in such districts shall be elected to a 6 year term. If at the regular school election held in the first odd-numbered year after the determination to elect members for year 6 terms 3 members are elected, they shall serve for a 6 year term; and of the members elected at the next regular school election 2 shall serve for a term of 2 years and 2 shall serve for a term of 6 years. Thereafter members elected in such districts shall be elected to a 6 year term. If at the regular school election held in the first odd-numbered year after the determination to elect members for 6 year terms 4 members are elected, 3 shall serve for a term of 6 years and one shall serve for a term of 2 years; and of the members elected at the next regular school election 2 shall serve for terms of 6 years and 2 shall serve for terms of 2 years. Thereafter members elected in such districts shall be elected to a 6 year term. If at the regular school election held in the first odd-numbered year after the determination to elect members for a 6 year term 5 members are elected, 3 shall serve for a term of 6 years and 2 shall serve for a term of 2 years; and of the members elected at the next regular school election 2 shall serve for terms of 6 years and 2 shall serve for terms of 2 years. Thereafter members elected in such districts shall be elected to a 6 year term. An election for board members shall not be held in school districts which by consolidation, annexation or otherwise shall cease to exist as a school district within 6 months after the election date, and the term of all board members which would otherwise terminate shall be continued until such district shall cease to exist. Each member, on the date of his or her election, shall be a citizen of the United States of the age of 18 years or over, shall be a resident of the State and the territory of the district for at least one year immediately preceding his or her election, shall be a registered voter as provided in the

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general election law, shall not be a school trustee, and shall not be a child sex offender as defined in Section 11-9.3 of the Criminal Code of 1961 [720 ILCS 5/11-9.3]. When the board of education is the successor of the school directors, all rights of property, and all rights regarding causes of action existing or vested in such directors, shall vest in it as fully as they were vested in the school directors. Terms of members are subject to Section 2A-54 of the Election Code [10 ILCS 5/2A-54].

Nomination papers filed under this Section are not valid unless the candidate named therein files with the secretary of the board of education or with a person designated by the board to receive nominating petitions a receipt from the county clerk showing that the candidate has filed a statement of economic interests as required by the Illinois Governmental Ethics Act [5 ILCS 420/1-101 et seq.]. Such receipt shall be so filed either previously during the calendar year in which his nomination papers were filed or within the period for the filing of nomination papers in accordance with the general election law.

Whenever a vacancy occurs, the remaining members shall notify the regional superintendent of that vacancy within 5 days after its occurrence and shall proceed to fill the vacancy until the next regular school election, at which election a successor shall be elected to serve the remainder of the unexpired term. However, if the vacancy occurs with less than 868 days remaining in the term, or if the vacancy occurs less than 88 days before the next regularly scheduled election for this office then the person so appointed shall serve the remainder of the unexpired term, and no election to fill the vacancy shall be held. Should they fail so to act, within 45 days after the vacancy occurs, the regional superintendent of schools under whose supervision and control the district is operating, as defined in Section 3-14.2 of this Act [105 ILCS 5/3-14.2], shall within 30 days after the remaining members have failed to fill the vacancy, fill the vacancy as provided for herein. Upon the regional superintendent's failure to fill the vacancy, the vacancy shall be filled at the next regularly scheduled election. Whether elected or appointed by the remaining members or regional superintendent, the successor shall be an inhabitant of the particular area from which his or her predecessor was elected if the residential requirements contained in Section 10-10.5 or 12-2 of this Act [105 ILCS 5/10-10.5 or 105 ILCS 5/12-2 (now repealed)] apply.

A board of education may appoint a student to the board to serve in an advisory capacity. The student member shall serve for a term as determined by the board. The board may not grant the student member any voting privileges, but shall consider the student member as an advisor. The student member may not participate in or attend any executive session of the board.

(Source: P.A. 86-820; 87-392; 87-745; 87-895; 89-129, § 5; 89-579, § 5; 90-358, § 11; 90-459, § 10; 90-655, § 77; 93-309, § 5; 94-231, § 5; 94-1019, § 10; 96-538, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-10.

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Section 105 ILCS 5/12-2, referred to above, has been repealed.

Section 90 of P.A. 94-1019 contains a savings provision, and section 95 contains a no acceleration or delay provision.

Effect of Amendments. The 1995 amendment by P.A. 89-129, effective July 14, 1995, in the third paragraph, in the second sentence, substituted "868 days" for "28 months".

The 1996 amendment by P.A. 89-579, effective July 30, 1996, in the third paragraph, deleted the former third sentence which read "The successor shall have the same residential qualifications as his predecessor", deleted the former fifth sentence which read "The successor shall have the same type of residential qualifications as his predecessor" and added the present fourth sentence.

The 1997 amendment by P.A. 90-358, effective January 1, 1998, in the first paragraph, added the sixteenth sentence.

The 1997 amendment by P.A. 90-459, effective August 17, 1997, in the second sentence of the first paragraph, added the exception.

The 1998 amendment by P.A. 90-655, effective July 30, 1998, incorporated the amendments made by P.A. 90-358 and P.A. 90-459; and made minor punctuation changes in the section heading; and in the first paragraph in the eleventh sentence substituted "6" for "six".

The 2003 amendment by P.A. 93-309, effective January 1, 2004, in the first paragraph, deleted "shall" preceding "on the date", inserted "or her" following "of his", inserted "shall" preceding "be a citizen", inserted "shall be" for "a resident", inserted "or her" following "preceding his", inserted "shall be" preceding "a registered", and inserted "and shall not be a child sex offender as defined in Section 11-9.3 of the Criminal Code of 1961".

The 2005 amendment by P.A. 94-231, effective July 14, 2005, added the last paragraph.

The 2006 amendment by P.A. 94-1019, effective July 10, 2006, in the first sentence of the first paragraph deleted "except as otherwise provided in subsection (a-5) of Section 11B-7" after "4 years"; and in the next-to-last paragraph substituted "Section 10-10.5 of this Code" for "Section 11B-7, or 12-2 of this Act".

The 2009 amendment by P.A. 96-538, effective August 14, 2009, deleted "or a school treasurer" following "school trustee" in the fourteenth sentence of the first paragraph.

CASE NOTES

Analysis

Age Minimum
- Constitutionality
Municipal Corporate Status
- Federal Courts
Vacancies
Zoning Cases

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Age Minimum

- Constitutionality

An age minimum for school board membership is not unreasonable or irrational in terms of the purpose it is designed to serve and is therefore constitutional. Blassman v. Markworth, 359 F. Supp. 1 (N.D. Ill. 1973).

Municipal Corporate Status

- Federal Courts

Federal courts maintain that boards organized pursuant to this section are not municipal corporations under Illinois law, despite a trend in Illinois state courts to interpret boards organized under this section to be municipal corporations. Newborn v. Morrison, 440 F. Supp. 623 (S.D. Ill. 1977).

Vacancies

Court rejected the claim of a regional superintendent of schools that when a school board member moved from the district and did not resign, under 105 ILCS 5/3-15.5, only he, not the school board, could remove her for failing to perform her duty to resign; neither statutory nor case law imposed such a duty. Brown v. Johnson, 362 Ill. App. 3d 413, 298 Ill. Dec. 311, 839 N.E.2d 634, 2005 Ill. App. LEXIS 1151 (1 Dist. 2005).

Language of the Illinois School Code, 105 ILCS 5/1-1 et seq., and the Illinois Election Code, 10 ILCS 5/1-1 et seq., unambiguously indicates that the legislature intended to empower a school board, the entity with the authority to fill a vacancy (105 ILCS 5/10-10), to determine whether or not the facts giving rise to a vacancy exist (10 ILCS 5/25-3(a)). The clear language of 10 ILCS 5/25-3(a), therefore, indicates that a school board is entitled to conduct a factual inquiry and reach a determination of whether a vacancy exists based on disputed facts. Brown v. Johnson, 362 Ill. App. 3d 413, 298 Ill. Dec. 311, 839 N.E.2d 634, 2005 Ill. App. LEXIS 1151 (1 Dist. 2005).

Zoning Cases

This Code's general grant of authority allows a board of education to sue or be sued in zoning cases. Adams v. County of Cook, 86 Ill. App. 3d 68, 41 Ill. Dec. 520, 407 N.E.2d 1018 (1 Dist. 1980).

§ 105 ILCS 5/10-10.5. Community unit school district or combined school district formation; school board election

Sec. 10-10.5. Community unit school district or combined school district formation; school board election. (a) Except as otherwise provided in subsection (b) of this Section, for community unit school districts formed before January 1, 1975 and for combined school districts formed before July 1, 1983, the following provisions apply:

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(1) if the territory of the district is greater than 2 congressional townships or 72 square miles, then not more than 3 board members may be selected from any one congressional township, except that congressional townships of less than 100 inhabitants shall not be considered for the purpose of this mandatory board representation;

(2) if in the community unit school district or combined school district at least 75% but not more than 90% of the population is in one congressional township, then 4 board members shall be selected from the congressional township and 3 board members shall be selected from the rest of the district, except that if in the community unit school district or combined school district more than 90% of the population is in one congressional township, then all board members may be selected from one or more congressional townships; and

(3) if the territory of any community unit school district or combined school district consists of not more than 2 congressional townships or 72 square miles, but consists of more than one congressional township or 36 square miles, outside of the corporate limits of any city, village, or incorporated town within the school district, then not more than 5 board members may be selected from any city, village, or incorporated town in the school district.

(b) (1) The provisions of subsection (a) of this Section for mandatory board representation shall no longer apply to a community unit school district formed before January 1, 1975, to a combined school district formed before July 1, 1983, or to community consolidated school districts, and the members of the board of education shall be elected at large from within the school district and without restriction by area of residence within the district if both of the following conditions are met with respect to that district:

(A) A proposition for the election of board members at large and without restriction by area of residence within the school district rather than in accordance with the provisions of subsection (a) of this Section for mandatory board representation is submitted to the school district's voters at a regular school election or at the general election as provided in this subsection (b).

(B) A majority of those voting at the election in each congressional township comprising the territory of the school district, including any congressional township of less than 100 inhabitants, vote in favor of the proposition.

(2) The school board may, by resolution, order submitted or, upon the petition of the lesser of 2,500 or 5% of the school district's registered voters, shall order submitted to the school district's voters, at a regular school election or at the general election, the proposition for the election of board members at large and without restriction by area of residence within the district rather than in accordance with the provisions of subsection (a) of this Section for mandatory board representation; and the proposition shall thereupon be certified by the board's secretary for submission.

(3) If a majority of those voting at the election in each congressional township comprising the territory of the school district, including any congressional township of less than 100 inhabitants, vote in favor of the proposition:

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(A) the proposition to elect board members at large and without restriction by area of residence within the district shall be deemed to have passed,

(B) new members of the board shall be elected at large and without restriction by area of residence within the district at the next regular school election, and

(C) the terms of office of the board members incumbent at the time the proposition is adopted shall expire when the new board members that are elected at large and without restriction by area of residence within the district have organized in accordance with Section 10-16 [105 ILCS 5/10-16].

(4) In a community unit school district, a combined school district, or a community consolidated school district that formerly elected its members under subsection (a) of this Section to successive terms not exceeding 4 years, the members elected at large and without restriction by area of residence within the district shall be elected for a term of 4 years, and in a community unit school district or combined school district that formerly elected its members under subsection (a) of this Section to successive terms not exceeding 6 years, the members elected at large and without restriction by area of residence within the district shall be elected for a term of 6 years; provided that in each case the terms of the board members initially elected at large and without restriction by area of residence within the district as provided in this subsection (b) shall be staggered and determined in accordance with the provisions of Sections 10-10 and 10-16 of this Code [105 ILCS 5/10-10 and 105 ILCS 5/10-16].

(Source: P.A. 94-1019, § 10.)

Note.

Section 90 of P.A. 94-1019 contains a savings provision, and section 95 contains a no acceleration or delay provision.

Effective Date. Section 99 of P.A. 94-1019 provides that the section is effective July 1, 2006, however the Act was approved July 10, 2006.

§ 105 ILCS 5/10-11. Vacancies

Sec. 10-11. Vacancies. Elective offices become vacant within the meaning of the Act, unless the context indicates otherwise, on the happening of any of the following events, before the expiration of the term of such office:

1.The death of the incumbent.

2.His or her resignation in writing filed with the Secretary or Clerk of the Board.

3.His or her becoming a person under legal disability.

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4.His or her ceasing to be an inhabitant of the district for which he or she was elected.

5.His or her conviction of an infamous crime, or of any offense involving a violation of official oath, of a violent crime against a child.

6.His or her removal from office.

7.The decision of a competent tribunal declaring his or her election void.

8.His ceasing to be an inhabitant of a particular area from which he was elected, if the residential requirements contained in Section 10-10.5, 11E-35, or 12-2 of this Code [105 ILCS 5/10-10.5, 105 ILCS 5/11E-35, or 105 ILCS 5/12-2] are violated.

No elective office except as herein otherwise provided becomes vacant until the successor of the incumbent of such office has been appointed or elected, as the case may be, and qualified. The successor shall have the same type of residential qualifications as his or her predecessor and, if the residential requirements contained in Section 10-10.5, 11E-35, or 12-2 of this Code [105 ILCS 5/10-10.5, 105 ILCS 5/11E-35, or 105 ILCS 5/12-2] apply, the successor, whether elected or appointed by the remaining members or a regional superintendent, shall be an inhabitant of the particular area from which his or her predecessor was elected.

(Source: P.A. 83-1362; 89-579, § 5; 91-376, § 5; 94-1019, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-11.

Section 105 ILCS 5/12-2, referred to above, has been repealed.

Section 90 of P.A. 94-1019 contains a savings provision, and section 95 contains a no acceleration or delay provision.

Effect of Amendments. The 1996 amendment by P.A. 89-579, effective July 30, 1996, in subsection 8 substituted "11A-8. 11B-7" for "11-4, 11-8"; and in the second paragraph, in the second sentence, added at the end "and, if the residential requirements contained in Section 11A-8, 11B-7, or 12-2 of this Act apply, the successor, whether elected or appointed by the remaining members or a regional superintendent, shall be an inhabitant of the particular area from which his or her predecessor was elected".

The 1999 amendment by P.A. 91-376, effective January 1, 2000, added "or of a violent crime against a child" and made a related change in item 5.

The 2006 amendment by P.A. 94-1019, effective July 10, 2006, twice substituted "Section 10-10.5, 11E-35, or 12-2 of this Code" for "Section 11A-8, 11B-7, or 12-2 of this Act".

§ 105 ILCS 5/10-12. Quorum

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Sec. 10-12. Quorum. A majority of the full membership of the board of education shall constitute a quorum. Unless otherwise provided, when a vote is taken upon any measure before the board, a quorum being present, a majority of the votes of the members voting on the measure shall determine the outcome thereof.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-12.

CASE NOTES

Analysis

Jurisdiction
- Established
Validity of Vote

Jurisdiction

- Established

Motion to annex school district was properly passed by the County Board of School Trustees, which had jurisdiction where a quorum was present. Bunsen v. County Bd. of Sch. Trustees, 48 Ill. App. 2d 291, 198 N.E.2d 735 (2 Dist. 1964).

Validity of Vote

Employee's contract with the school board was valid where four of the board's seven members were present when the contract was voted on and two of those four members voted to approve the contract; thus, a majority of the votes of the members voting determined the outcome. Bogacz v. Bd. of Educ., F. Supp. 2d , 2003 U.S. Dist. LEXIS 15381 (N.D. Ill. Aug. 28, 2003).

§ 105 ILCS 5/10-13. President of board of education

Sec. 10-13. President of board of education. The president of the board of education shall be elected by the members thereof from among their number and serve for 2 years, except that the board by resolution may establish a policy for the term of office to be one year.

He shall preside at all meetings and shall perform such duties as are imposed upon him by law or by action of the board of education. If he is absent from any meeting or refuses

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to perform his duties, a president pro tempore shall be appointed. The vice-president of the board, if the board elects such officer, shall be appointed the president pro tempore.

(Source: P.A. 84-497.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-13.

§ 105 ILCS 5/10-13.1. Vice-President of the board of education

Sec. 10-13.1. Vice-President of the board of education. A vice-president of the board of education shall be elected by the members thereof from among their number and serve for 2 years, except that the board by resolution may establish a policy for the term of office to be one year.

The vice-president shall perform the duties of the president if there is a vacancy in the office of president or in case of the president's absence or inability to act, and other duties imposed upon him by the rules of the board.

(Source: P.A. 85-839.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-13.1.

§ 105 ILCS 5/10-14. Secretary of board of education

Sec. 10-14. Secretary of board of education. The secretary of the board of education shall be elected by the board of education and may be a member thereof, who shall serve for 2 years, except that the board by resolution may establish a policy for the term of office to be one year. The secretary, if not a member of the board, may receive such compensation as shall be fixed by the board of education prior to the election of the secretary. If the secretary is a member of the board, he or she may receive such compensation not to exceed $500 per year as shall be fixed by the board and may vote on all questions coming before the board.

He shall perform the duties usually pertaining to his office, or to the clerk of a board of directors, and such as are imposed on him by law, or by action of the board of education. If he is absent from any meeting or refuses to perform his duties, a secretary pro tempore

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who may but need not be a member of the board shall be appointed.

(Source: P.A. 86-682.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-14.

§ 105 ILCS 5/10-16. Organization of Board

Sec. 10-16. Organization of Board. Within 28 days after the consolidated election, other than the consolidated elections in 1999 and 2001, the board shall organize by electing its officers and fixing a time and place for the regular meetings. However, when school board members are elected at the consolidated elections held in April of 1999 and April of 2001, the board shall organize within 7 days after the first Tuesday after the first Monday of November in each such year by electing officers and setting the time and place of the regular meetings. Upon organizing itself as provided in this paragraph, the board shall enter upon the discharge of its duties.

The regional superintendent of schools having supervision and control, as provided in Section 3-14.2 [105 ILCS 5/3-14.2], of a new school district that is governed by the School Code [105 ILCS 5/1-1 et seq.] and formed on or after the effective date of this amendatory Act of 1998 shall convene the newly elected board within 7 days after the election of the board of education of that district, whereupon the board shall proceed to organize by electing one of their number as president and electing a secretary, who may or may not be a member. At such meeting the length of term of each of the members shall be determined by lot so that 4 shall serve for 4 years, and 3 for 2 years from the commencement of their terms; provided, however, if such members were not elected at the consolidated election in an odd-numbered year, such initial terms shall be extended to the consolidated election for school board members immediately following the expiration of the initial 4 or 2 year terms. The provisions of this paragraph that relate to the determination of terms by lot shall not apply to the initial members of the board of education of a combined school district who are to be elected to unstaggered terms.

The terms of the officers of a board of education shall be for 2 years, except that the terms of the officers elected at the organization meeting in November, 2001 shall expire at the organization meeting in April, 2003; provided that the board by resolution may establish a policy for the terms of office to be one year, and provide for the election of officers.

Special meetings of the board of education may be called by the president or by any 3 members of the board by giving notice thereof in writing, stating the time, place and purpose of the meeting. Such notice may be served by mail 48 hours before such meeting or by personal service 24 hours before such meeting. Public notice of meetings must also

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be given as prescribed in Sections 2.02 and 2.03 of the Open Meetings Act, as now or hereafter amended [5 ILCS 120/2.02 and 5 ILCS 120/2.03].

At each regular and special meeting which is open to the public, members of the public and employees of the district shall be afforded time, subject to reasonable constraints, to comment to or ask questions of the board.

The president or district superintendent shall, at each regular board meeting, report any requests made of the district under provisions of The Freedom of Information Act [5 ILCS 140/1 et seq.] and shall report the status of the district's response.

(Source: P.A. 87-10; 90-459, § 10; 90-637, § 5; 93-847, § 40; 94-1019, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-16.

Section 95 of P.A. 93-847 contains a severability provision.

Section 90 of P.A. 94-1019 contains a savings provision, and section 95 contains a no acceleration or delay provision.

Effect of Amendments. The 1997 amendment by P.A. 90-459, effective August 17, 1997, in the second paragraph added the third sentence.

The 1998 amendment by P.A. 90-637, effective July 24, 1998, in the first paragraph, substituted "consolidated election, other than the consolidated elections in 1999 and 2001" for "election" in the first sentence, inserted the second sentence, and rewrote the last sentence; divided the former second paragraph into the present second and third paragraphs; in the present second paragraph, substituted "consolidated" for "nonpartisan" twice, and rewrote the first sentence; and in the present third paragraph, inserted "of a board of education", inserted a comma following "2 years", and inserted "the terms of the officers elected at the organizational meeting in November, 2001 shall expire at the organizational meeting in April, 2003; provided that".

The 2004 amendment by P.A. 93-847, effective July 30, 2004, substituted "28 days" for "7 days" in the first sentence of the first paragraph.

The 2006 amendment by P.A. 94-1019, effective July 10, 2006, in deleted "as provided in subsection (a-5) of Section 11B-7" from the end of the second paragraph.

§ 105 ILCS 5/10-16a. School board member's leadership training

Sec. 10-16a. School board member's leadership training. (a) This Section applies to all school board members serving pursuant to Section 10-10 of this Code [105 ILCS 5/10-10] who have been elected after the effective date of this amendatory Act of the 97th General Assembly [P.A. 97-8] or appointed to fill a vacancy of at least one year's duration after the effective date of this amendatory Act of the 97th General Assembly.

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(b) Every voting member of a school board of a school district elected or appointed for a term beginning after the effective date of this amendatory Act of the 97th General Assembly, within a year after the effective date of this amendatory Act of the 97th General Assembly or the first year of his or her first term, shall complete a minimum of 4 hours of professional development leadership training covering topics in education and labor law, financial oversight and accountability, and fiduciary responsibilities of a school board member. The school district shall maintain on its Internet website, if any, the names of all voting members of the school board who have successfully completed the training.

(c) The training on financial oversight, accountability, and fiduciary responsibilities may be provided by an association established under this Code for the purpose of training school board members or by other qualified providers approved by the State Board of Education, in consultation with an association so established.

(Source: P.A. 97-8, § 5.)

Effective Date. Section 99 of P.A. 97-8 made this section effective upon becoming law. The Act was approved June 13, 2011.

§ 105 ILCS 5/10-16.5. Oath of office

Sec. 10-16.5. Oath of office. Each school board member, before taking his or her seat on the board, shall take an oath of office, administered as determined by the board, in substantially the following form:

I, (name of member or successful candidate), do solemnly swear (or affirm) that I will faithfully discharge the duties of the office of member of the Board of Education (or Board of School Directors, as the case may be) of (name of school district), in accordance with the Constitution of the United States, the Constitution of the State of Illinois, and the laws of the State of Illinois, to the best of my ability.

I further swear (or affirm) that:

I shall respect taxpayer interests by serving as a faithful protector of the school district's assets;

I shall encourage and respect the free expression of opinion by my fellow board members and others who seek a hearing before the board, while respecting the privacy of students and employees;

I shall recognize that a board member has no legal authority as an individual and that decisions can be made only by a majority vote at a public board meeting; and

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I shall abide by majority decisions of the board, while retaining the right to seek changes in such decisions through ethical and constructive channels.

(Source: P.A. 94-881, § 5; 96-998, § 5.)

Effective Date. Section 99 of P.A. 94-881 made the section effective upon becoming law. The Act was approved June 20, 2006.

Effect of Amendments. The 2010 amendment by P.A. 96-998, effective July 2, 2010, inserted "administered as determined by the board" in the introductory language.

CASE NOTES

Private Right of Action

Nothing in the Illinois School Code suggests that by requiring school board members to swear an oath of office, the Illinois Legislature intended to create a right to sue individual board members for damages arising out of a job application, let alone to sue the board or a school district as public bodies. Therefore, in a case alleging a failure to hire, an applicant was unable to recover under 105 ILCS 5/10-16.5 because there was no implied private right of action; the purpose of the Illinois School Code was not to redress individual wrongs, but to provide for the education of public school students. Collins v. Bd. of Educ., 792 F. Supp. 2d 992, 2011 U.S. Dist. LEXIS 57890 (N.D. Ill. 2011).

§ 105 ILCS 5/10-16.7. School board duties with respect to superintendent

Sec. 10-16.7. School board duties with respect to superintendent. In addition to all other powers and duties enumerated in this Article, the school board shall make all employment decisions pertaining to the superintendent. The school board shall direct, through policy, the superintendent in his or her charge of the administration of the school district, including without limitation considering the recommendations of the superintendent concerning the budget, building plans, the locations of sites, the selection, retention, and dismissal of employees, and the selection of textbooks, instructional material, and courses of study. The school board shall evaluate the superintendent in his or her administration of school board policies and his or her stewardship of the assets of the district.

(Source: P.A. 94-881, § 5.)

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Effective Date. Section 99 of P.A. 94-881 made the section effective upon becoming law. The Act was approved June 20, 2006.

CASE NOTES

Employer

Under the explicit authority of the School Code, 105 ILCS 5/10-16.7 to 105 ILCS 5/10-21.4, and the Unemployment Insurance Act, 820 ILCS 405/204, the Board of Education was a school superintendent's employer. Bd. of Educ. of Bremen High Sch. Dist. No. 228 v. Mitchell, 387 Ill. App. 3d 117, 326 Ill. Dec. 509, 899 N.E.2d 1160, 2008 Ill. App. LEXIS 1212 (1 Dist. 2008).

§ 105 ILCS 5/10-16.9. Bank reconciliation reports

Sec. 10-16.9. Bank reconciliation reports. School districts on the financial watch or warning list that are required to submit deficit reduction plans pursuant to Section 17-1 of this Code [105 ILCS 5/17-1] or that are certified in financial difficulty must transmit the bank reconciliation reports from the school treasurer as required pursuant to Section 8-6 of this Code [105 ILCS 5/8-6] to the State Board of Education quarterly. The State Board of Education shall establish the dates by which the reconciliation reports must be submitted and provide a template for those districts to utilize.

(Source: P.A. 97-429, § 15.)

Effective Date. Section 99 of P.A. 97-429 made this section effective upon becoming law. The Act was approved August 16, 2011.

§ 105 ILCS 5/10-16.11. Payment of outstanding obligations of a Financial Oversight Panel

Sec. 10-16.11. Payment of outstanding obligations of a Financial Oversight Panel. The school board of a district subject to a Financial Oversight Panel pursuant to Article 1H of this Code [105 ILCS 5/1H-1 et seq.] that, except for the existence of outstanding financial obligations of the Financial Oversight Panel, would be able to seek abolition of the Panel pursuant to Section 1H-115 of this Code [105 ILCS 5/1H-115] may: (1) spend surplus district funds in an amount sufficient to liquidate the outstanding obligations of the Financial Oversight Panel or (2) issue funding bonds for such purpose as authorized by Sections 19-8 and 19-9 of this Code [105 ILCS 5/19-8 and 105 ILCS 5/19-9].

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(Source: P.A. 97-429, § 15.)

Effective Date. Section 99 of P.A. 97-429 made this section effective upon becoming law. The Act was approved August 16, 2011.

§ 105 ILCS 5/10-17. Statement of affairs

Sec. 10-17. Statement of affairs. (a) In Class I or Class II county school units the school board may use either a cash basis or accrual system of accounting; however, any board so electing to use the accrual system may not change to a cash basis without the permission of the State Board of Education.

School Boards using either a cash basis or accrual system of accounting shall maintain records showing the assets, liabilities and fund balances in such minimum forms as may be prescribed by the State Board of Education. Such boards shall make available to the public a statement of the affairs of the district prior to December 1 annually by submitting the statement of affairs in such form as may be prescribed by the State Board of Education for posting on the State Board of Education's Internet website, by having copies of the statement of affairs available in the main administrative office of the district, and by publishing in a newspaper of general circulation published in the school district an annual statement of affairs summary containing at a minimum all of the following information:

(1) A summary statement of operations for all funds of the district, as excerpted from the statement of affairs filed with the State Board of Education. The summary statement must include a listing of all moneys received by the district, indicating the total amounts, in the aggregate, each fund of the district received, with a general statement concerning the source of receipts.

(2) Except as provided in subdivision (3) of this subsection (a), a listing of all moneys paid out by the district where the total amount paid during the fiscal year exceeds $2,500 in the aggregate per person, giving the name of each person to whom moneys were paid and the total paid to each person.

(3) A listing of all personnel, by name, with an annual fiscal year gross payment in the categories set forth in subdivisions 1 and 2 of subsection (c) of this Section.

In this Section, "newspaper of general circulation" means a newspaper of general circulation published in the school district, or, if no newspaper is published in the school district, a newspaper published in the county where the school district is located or, if no newspaper is published in the county, a newspaper published in the educational service region where the regional superintendent of schools has supervision and control of the school district. The submission to the State Board of Education shall include an assurance that the statement of affairs has been made available in the main administrative office of

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the school district and that the required notice has been published in accordance with this Section.

After December 15 annually, upon 10 days prior written notice to the school district, the State Board of Education may discontinue the processing of payments to the State Comptroller's office on behalf of any school district that is not in compliance with the requirements imposed by this Section. The State Board of Education shall resume the processing of payments to the State Comptroller's Office on behalf of the school district once the district is in compliance with the requirements imposed by this Section.

The State Board of Education must post, on or before January 15, all statements of affairs timely received from school districts.

(b) When any school district is the administrative district for several school districts operating under a joint agreement as authorized by this Code, no receipts or disbursements accruing, received or paid out by that school district as such an administrative district shall be included in the statement of affairs of the district required by this Section. However, that district shall have prepared and made available to the public, in accordance with subsection (a) of this Section, in the same manner and subject to the same requirements as are provided in this Section for the statement of affairs of that district, a statement showing the cash receipts and disbursements by funds (or the revenue, expenses and financial position, if the accrual system of accounting is used) of the district as such administrative district, in the form prescribed by the State Board of Education. The costs of publishing the notice and summary of this separate statement prepared by such an administrative district shall be apportioned among and paid by the participating districts in the same manner as other costs and expenses accruing to those districts jointly.

School districts on a cash basis shall have prepared and made available to the public, in accordance with subsection (a) of this Section, a statement showing the cash receipts and disbursements by funds in the form prescribed by the State Board of Education.

School districts using the accrual system of accounting shall have prepared and made available to the public, in accordance with subsection (a) of this Section, a statement of revenue and expenses and a statement of financial position in the form prescribed by the State Board of Education.

In Class II county school units such statement shall be prepared and made available to the public, in accordance with subsection (a) of this Section, by the township treasurer of the unit within which such districts are located, except with respect to the school board of any school district that no longer is subject to the jurisdiction and authority of a township treasurer or trustees of schools of a township because the district has withdrawn from the jurisdiction and authority of the township treasurer and trustees of schools of the township or because those offices have been abolished as provided in subsection (b) or (c) of Section 5-1 [105ILCS 5/5-1], and as to each such school district the statement required by this Section shall be prepared and made available to the public, in accordance with subsection (a) of this Section, by the school board of such district in the same manner as required for school boards of school districts situated in Class I county school units.

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(c) The statement of affairs required pursuant to this Section shall contain such information as may be required by the State Board of Education, including:

1.Annual fiscal year gross payment for certificated personnel to be shown by name, listing each employee in one of the following categories:

(a) Under $25,000

(b) $25,000 to $39,999

(c) $40,000 to $59,999

(d) $60,000 to $89,999

(e) $90,000 and over

2.Annual fiscal year payment for non-certificated personnel to be shown by name, listing each employee in one of the following categories:

(a) Under $25,000

(b) $25,000 to $39,999

(c) $40,000 to $59,999

(d) $60,000 and over

3.In addition to wages and salaries all other moneys in the aggregate paid to recipients of $1,000 or more, giving the name of the person, firm or corporation and the total amount received by each.

4.Approximate size of school district in square miles.

5.Number of school attendance centers.

6.Numbers of employees as follows:

(a) Full-time certificated employees;

(b) Part-time certificated employees;

(c) Full-time non-certificated employees;

(d) Part-time non-certificated employees.

7.Numbers of pupils as follows:

(a) Enrolled by grades;

(b) Total enrolled;

(c) Average daily attendance.

8.Assessed valuation as follows:

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(a) Total of the district;

(b) Per pupil in average daily attendance.

9.Tax rate for each district fund.

10.District financial obligation at the close of the fiscal year as follows:

(a) Teachers' orders outstanding;

(b) Anticipation warrants outstanding for each fund.

11.Total bonded debt at the close of the fiscal year.

12.Percent of bonding power obligated currently.

13.Value of capital assets of the district including:

(a) Land;

(b) Buildings;

(c) Equipment.

14.Total amount of investments each fund.

15.Change in net cash position from the previous report period for each district fund.

In addition to the above report, a report of expenditures in the aggregate paid on behalf of recipients of $500 or more, giving the name of the person, firm or corporation and the total amount received by each shall be available in the school district office for public inspection. This listing shall include all wages, salaries and expenditures over $500 expended from any revolving fund maintained by the district. Any resident of the school district may receive a copy of this report, upon request, by paying a reasonable charge to defray the costs of preparing such copy.

This Section does not apply to cities having a population exceeding 500,000.

(Source: P.A. 86-96; 86-1441; 87-191; 87-473; 87-895; 94-875, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-17.

Cross References.

Concerning the applicability of the Public Funds Statement Publication Act to this section, see 30 ILCS 15/4a.

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Effect of Amendments. The 2006 amendment by P.A. 94-875, effective July 1, 2006, in rewrote the section.

CASE NOTES

Fiscal Management

A school board is charged not only with providing for the continuum of educational services, but with the fiscal management incidental thereto. Bond v. Board of Educ., 81 Ill. 2d 242, 42 Ill. Dec. 136, 408 N.E.2d 714 (1980).

§ 105 ILCS 5/10-17a. State, school district, and school report cards

Sec. 10-17a. State, school district, and school report cards. (1) By October 31, 2013 and October 31 of each subsequent school year, the State Board of Education, through the State Superintendent of Education, shall prepare a State report card, school district report cards, and school report cards, and shall by the most economic means provide to each school district in this State, including special charter districts and districts subject to the provisions of Article 34 [105 ILCS 5/34-1 et seq.], the report cards for the school district and each of its schools.

(2) In addition to any information required by federal law, the State Superintendent shall determine the indicators and presentation of the school report card, which must include, at a minimum, the most current data possessed by the State Board of Education related to the following:

(A) school characteristics and student demographics, including average class size, average teaching experience, student racial/ethnic breakdown, and the percentage of students classified as low-income; the percentage of students classified as limited English proficiency; the percentage of students who have individualized education plans or 504 plans that provide for special education services; the percentage of students who annually transferred in or out of the school district; the per-pupil operating expenditure of the school district; and the per-pupil State average operating expenditure for the district type (elementary, high school, or unit);

(B) curriculum information, including, where applicable, Advanced Placement, International Baccalaureate or equivalent courses, dual enrollment courses, foreign language classes, school personnel resources (including Career Technical Education teachers), before and after school programs, extracurricular activities, subjects in which elective classes are offered, health and wellness initiatives (including the average number of days of Physical Education per week per student), approved programs of study, awards received, community partnerships, and special programs such as programming for the gifted and talented, students with disabilities, and work-study students;

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(C) student outcomes, including, where applicable, the percentage of students meeting as well as exceeding State standards on assessments, the percentage of students in the eighth grade who pass Algebra, the percentage of students enrolled in post-secondary institutions (including colleges, universities, community colleges, trade/vocational schools, and training programs leading to career certification within 2 semesters of high school graduation), the percentage of students graduating from high school who are college ready, the percentage of students graduating from high school who are career ready, and the percentage of graduates enrolled in community colleges, colleges, and universities who are in one or more courses that the community college, college, or university identifies as a remedial course;

(D) student progress, including, where applicable, the percentage of students in the ninth grade who have earned 5 credits or more without failing more than one core class, a measure of students entering kindergarten ready to learn, a measure of growth, and the percentage of students who enter high school on track for college and career readiness; and

(E) the school environment, including, where applicable, the percentage of students with less than 10 absences in a school year, the percentage of teachers with less than 10 absences in a school year for reasons other than professional development, leaves taken pursuant to the federal Family Medical Leave Act of 1993 [29 U.S.C. § 2601 et seq.], long-term disability, or parental leaves, the 3-year average of the percentage of teachers returning to the school from the previous year, the number of different principals at the school in the last 6 years, 2 or more indicators from any school climate survey developed by the State and administered pursuant to Section 2-3.153 of this Code [105 ILCS 5/2-3.153], and the combined percentage of teachers rated as proficient or excellent in their most recent evaluation.

The school report card shall also provide information that allows for comparing the current outcome, progress, and environment data to the State average, to the school data from the past 5 years, and to the outcomes, progress, and environment of similar schools based on the type of school and enrollment of low-income, special education, and limited English proficiency students.

(3) At the discretion of the State Superintendent, the school district report card shall include a subset of the information identified in paragraphs (A) through (E) of subsection (2) of this Section, as well as information relating to the operating expense per pupil and other finances of the school district, and the State report card shall include a subset of the information identified in paragraphs (A) through (E) of subsections (2) of this Section.

(4) Notwithstanding anything to the contrary in this Section, in consultation with key education stakeholders, the State Superintendent shall at any time have the discretion to amend or update any and all metrics on the school, district, or State report card.

(5) Annually, no more than 30 calendar days after receipt of the school district and school report cards from the State Superintendent of Education, each school district, including special charter districts and districts subject to the provisions of Article 34, shall present such report cards at a regular school board meeting subject to applicable notice requirements, post the report cards on the school district's Internet web site, if the district

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maintains an Internet web site, make the report cards available to a newspaper of general circulation serving the district, and, upon request, send the report cards home to a parent (unless the district does not maintain an Internet web site, in which case the report card shall be sent home to parents without request). If the district posts the report card on its Internet web site, the district shall send a written notice home to parents stating (i) that the report card is available on the web site, (ii) the address of the web site, (iii) that a printed copy of the report card will be sent to parents upon request, and (iv) the telephone number that parents may call to request a printed copy of the report card.

(Source: P.A. 85-1422; 86-1250; 87-1077, § 1; 89-610, § 5; 92-604, § 5; 92-631, § 5; 95-331, § 540; 97-671, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-17a.

Effect of Amendments. The 1992 amendment by P.A. 87-1077, effective September 15, 1992, added "through the school improvement plan" at the end of subsection (1); substituted "areas for planned improvement" for "following year's target" preceding "for the school and school district" at the end of the second paragraph of subsection (2); in subdivision (3)(a) inserted a comma following "district", substituted "who exceed, meet, or do not meet standards established by the State Board of Education pursuant to Section 2-3.25a" for "placed in top and bottom quartiles of nationally normed achievement test", inserted "on nationally normed achievement tests" following "composite and subtest means", substituted "chronic truancy rate; dropout rate" for "count of chronic truancy", and deleted "percent of students not promoted to next grade" preceding "graduation rate"; in subdivision (3)(b) substituted "descriptions for the school" for "applicable indicators of" and made related changes, substituted "State" for "statewide school performance", deleted "percent of enrollments in courses in high school mathematics, science, English and social science" following "average class size", deleted "percent of enrollments in college preparatory, general education and vocational education programs" preceding "pupil-teacher ratio", deleted "per capita tuition charge" preceding "district expenditure", and deleted "in graphic display" following "district expenditure".

The 1996 amendment by P.A. 89-610, effective August 6, 1996, in subdivision (3)(b) inserted "number of students taking the Prairie State Achievement Examination under subsection (c) of Section 2-3.64, the number of those students who received a score of excellent, and the average score by school of students taking the examination".

The 2002 amendment by P.A. 92-604, effective July 1, 2002, in subsection (2) in the third sentence substituted "posted on the school district's Internet web site, if the district maintains an Internet web site" for "and such report cards shall be", substituted "upon request" for "shall be", substituted the language beginning "a parent" and ending "shall be sent home to parents without request" for "parents" at the end, and added the third sentence; and added "by the most efficient, economic, and appropriate means" at the end of subsection (d), and made stylistic changes.

The 2002 amendment by P.A. 92-631, effective July 11, 2002, inserted "financial resources and" in the first sentence of subsection (2); and added the last sentence of subsection (3)(b).

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, combined earlier multiple amendments to the section.

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The 2012 amendment by P.A. 97-671, effective January 24, 2012, rewrote the section heading, which formerly read: "Better schools accountability"; and rewrote the section.

CASE NOTES

Detachment and Annexation

- School Report Cards

In a detachment and annexation proceeding, where the petitioners placed into evidence certified copies of the 1988-89 Illinois school report cards for all three school districts involved, in light of the clear statutory mandate regarding school report cards, the reports were an exception to the hearsay rule and could have been considered by both the regional board and the trial court. Board of Educ. v. Regional Bd., 242 Ill. App. 3d 229, 184 Ill. Dec. 437, 613 N.E.2d 754, appeal denied, 151 Ill. 2d 561, 186 Ill. Dec. 378, 616 N.E.2d 331 (1993).

§ 105 ILCS 5/10-18. Orders

Sec. 10-18. Orders. Every order issued by the school board shall state for what purposes or on what account it is issued, and shall be in the following form:

$ ..... State of Illinois, (insert date)

THE TREASURER

(Insert name)

Of School District No. ..... in ..... County,

Pay to the order of .....

the sum of .....Dollars,

for .....

.....

.....

By order of the School Board of

District No. ....., in said County.

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Order No. .....

.....President

.....Clerk (or Secretary)

An order paid in full and properly endorsed shall be a sufficient receipt for the purposes of this Act. The school board shall issue no order, except for teachers' wages, unless at the time there are sufficient funds in the hands of the treasurer to pay it.

(Source: Laws 1961, p. 31; P.A. 91-357, § 101.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-18.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "Illinois, (insert date)" for "Illinois, ..., 19.." near the beginning of the form.

CASE NOTES

Analysis

Payment
- On Demand
Signing Orders
- In General
Statute of Limitations
- Illustrative Cases

Payment

- On Demand

Where school orders evidenced a debt that was due at the time the orders were issued and that in no way changed the due date of the indebtedness, since the school orders were not and could not be payable at a fixed date in the future, they were payable on demand. Berstein v. School Dirs., 319 Ill. App. 403, 49 N.E.2d 314 (4 Dist. 1943).

Signing Orders

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- In General

Under a similar prior provision, a school order could be signed by either a majority of the school board or its president and clerk, and an order which was legal on its face could be the subject of a fraudulent transfer by one not authorized to pass said order. Langdale v. People, 100 Ill. 263 (1881).

Statute of Limitations

- Illustrative Cases

The statute of limitations began to run against a school order from the date of the order, and an endorsement by the township treasurer on a school order indicating that it had been presented for payment and was not paid for want of funds was not a promise to pay by the school directors that would toll the statute of limitations in connection with a cause of action against the school directors. Berstein v. School Dirs., 319 Ill. App. 403, 49 N.E.2d 314 (4 Dist. 1943).

§ 105 ILCS 5/10-19. Length of school term - experimental programs

Sec. 10-19. Length of school term - experimental programs. Each school board shall annually prepare a calendar for the school term, specifying the opening and closing dates and providing a minimum term of at least 185 days to insure 176 days of actual pupil attendance, computable under Section 18-8.05 [105 ILCS 5/18-8.05], except that for the 1980-1981 school year only 175 days of actual pupil attendance shall be required because of the closing of schools pursuant to Section 24-2 [105 ILCS 5/24-2] on January 29, 1981 upon the appointment by the President of that day as a day of thanksgiving for the freedom of the Americans who had been held hostage in Iran. Any days allowed by law for teachers' institute but not used as such or used as parental institutes as provided in Section 10-22.18d [105 ILCS 5/10-22.18d] shall increase the minimum term by the school days not so used. Except as provided in Section 10-19.1 [105 ILCS 5/10-19.1], the board may not extend the school term beyond such closing date unless that extension of term is necessary to provide the minimum number of computable days. In case of such necessary extension school employees shall be paid for such additional time on the basis of their regular contracts. A school board may specify a closing date earlier than that set on the annual calendar when the schools of the district have provided the minimum number of computable days under this Section. Nothing in this Section prevents the board from employing superintendents of schools, principals and other nonteaching personnel for a period of 12 months, or in the case of superintendents for a period in accordance with Section 10-23.8 [105 ILCS 5/10-23.8], or prevents the board from employing other personnel before or after the regular school term with payment of salary proportionate to that received for comparable work during the school term.

A school board may make such changes in its calendar for the school term as may be required by any changes in the legal school holidays prescribed in Section 24-2 [105 ILCS 5/24-2]. A school board may make changes in its calendar for the school term as may be necessary to reflect the utilization of teachers' institute days as parental institute days as provided in Section 10-22.18d [105 ILCS 5/10-22.18d].

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The calendar for the school term and any changes must be submitted to and approved by the regional superintendent of schools before the calendar or changes may take effect.

With the prior approval of the State Board of Education and subject to review by the State Board of Education every 3 years, any school board may, by resolution of its board and in agreement with affected exclusive collective bargaining agents, establish experimental educational programs, including but not limited to programs for self-directed learning or outside of formal class periods, which programs when so approved shall be considered to comply with the requirements of this Section as respects numbers of days of actual pupil attendance and with the other requirements of this Act as respects courses of instruction.

(Source: P.A. 86-1250; 87-183; 91-96, § 10; 93-1036, § 90.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-19.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 1.420, 140.10.

Effect of Amendments. The 1999 amendment by P.A. 91-96, effective July 7, 1999, substituted "Section 18-8.05," for "Section 18-8," in the first sentence of the first paragraph.

The 2004 amendment by P.A. 93-1036, effective September 14, 2004, inserted the next-to-last paragraph.

CASE NOTES

Analysis

In General
Academic Term
Discretion
- Early Closing
Full Year School Basis
Minimum Term
- Defined
School Closing Date

In General

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Under this section, the school boards are empowered to establish an annual school calendar, and must ensure a minimum term of at least 185 days, of which 176 must constitute actual pupil attendance. Howard v. Board of Educ., 160 Ill. App. 3d 309, 112 Ill. Dec. 131, 513 N.E.2d 545 (2 Dist. 1987).

A school board is to prepare an annual calendar for the school term with a minimum term of 185 days required to insure 176 days of pupil attendance. Purn v. Board of Educ., 106 Ill. App. 3d 790, 62 Ill. Dec. 796, 437 N.E.2d 33 (2 Dist. 1982).

Academic Term

The academic term intended by the legislature was the regular term of 39 weeks designated by the school board in its school calendar; the only exceptions to the 39-week schedule were those 47-week schools specifically designated by the school board as such on the calendar. Doran v. Department of Labor, 116 Ill. App. 3d 471, 72 Ill. Dec. 186, 452 N.E.2d 118 (1 Dist. 1983).

Discretion

- Early Closing

A school board has the discretion to specify a closing date earlier than that set originally when the district schools have provided the minimum number of days. Purn v. Board of Educ., 106 Ill. App. 3d 790, 62 Ill. Dec. 796, 437 N.E.2d 33 (2 Dist. 1982).

Full Year School Basis

A full year school basis is the exception to the general requirement that school districts prepare a specific calendar under which they will operate; schools operating on a full year school basis differ significantly from those schools operating under this section. Morrison ex rel. Morrison v. Chicago Bd. of Educ., 188 Ill. App. 3d 588, 136 Ill. Dec. 324, 544 N.E.2d 1099 (1 Dist. 1989).

Minimum Term

- Defined

"Minimum term" refers to 180 days of actual pupil attendance, reducible to a minimum of 176 days if all teachers' institute days are so used. Miller v. School Dist. No. 189, 26 Ill. App. 3d 172, 325 N.E.2d 43 (5 Dist. 1975).

School Closing Date

A required 60-day notice of termination was not given where the notice of termination given to the teacher was given on March 31, but the school board resolution effectively changed the school closing date from May 31 to May 23. Koerner v. Joppa Community High Sch., 143 Ill. App. 3d 162, 97 Ill. Dec. 358, 492 N.E.2d 1017 (5 Dist. 1986).

§ 105 ILCS 5/10-19.1. Full year school plan

Sec. 10-19.1. Full year school plan. (a) Any school district may, by resolution of its board, operate one or more schools within the district on a full year school plan approved

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by the State Board of Education. Any board which operates under this subsection (a) shall devise a plan so that a student's required attendance in school shall be for a minimum term of 180 days of actual attendance, including not more than 4 institute days, during a 12 month period, but shall not exceed 185 days. Under such plan, no teacher shall be required to teach more than 185 days. A calendar of 180 days may be established with the approval of the State Board of Education.

(b) Any school board that operates one or more schools within the school district on a pilot full-year school plan under subsection (a-5) of Section 2-3.25f of this Code [105 ILCS 5/2-3.25f] shall devise a plan so that a student's required attendance in school shall be for a minimum term of 215 days of actual attendance, including not more than 4 institute days, during a 12-month period. A calendar of 215 days may be established with the approval of the State Board of Education.

(Source: P.A. 81-1508; 97-370, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-19.1.

Effect of Amendments. The 2011 amendment by P.A. 97-370, effective January 1, 2012, added the (a) designation; substituted "subsection (a)" for "Section" in the second sentence of (a); and added (b).

§ 105 ILCS 5/10-19.2. Full year feasibility study - grant - transitional expenditure reimbursement

Sec. 10-19.2. Full year feasibility study - grant - transitional expenditure reimbursement. Any school district, including special charter districts, may, by resolution of its board, file an application with the State Board of Education and, if approved, receive funds for the purpose of conducting a study of the feasibility of operating one or more schools within the district on a full year school plan pursuant to Section 10-19.1 [105 ILCS 5/10-19.1]. Such feasibility study shall include, but need not be limited to, the educational program, building and space needs, administrative and personnel costs, pupil distribution in the district, community attitudes and transportation costs. The Board of Education of any district which conducts a feasibility study pursuant to this Section shall submit a final report to the State Board of Education upon completion of the study or within one year after receipt of funds, whichever occurs first.

School districts seeking State financial support to conduct feasibility studies shall file applications with the State Board of Education on forms provided by the State Board. The State Board of Education may grant or deny applications, in whole or in part, and provide the funds necessary to implement approved applications, provided that the total

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amount of funds necessary to implement approved applications does not exceed the annual appropriation for that purpose.

If, based upon the results of a full year feasibility study, a school district determines that it will operate one or more schools within the district in accordance with Section 10-19.1 [105 ILCS 5/10-19.1], the State Board of Education may, pursuant to guidelines established by the State Board, reimburse such district for expenditures resulting from making such transition, provided that no expenditure shall be reimbursed which would have been incurred by a school district in the absence of a changeover to a full year school program.

In the event any funds appropriated for transition reimbursement during any fiscal year are insufficient for that purpose, payment shall be made in the proportion that the total amount of such expenditures bears to the total amount of money available for payment.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-19.2.

§ 105 ILCS 5/10-19.3. Advertisements for employees during strikes

Sec. 10-19.3. Advertisements for employees during strikes. No school board shall advertise seeking to hire employees to replace employees on strike without stating in such advertisement that a strike is in progress.

(Source: P.A. 84-468.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-19.3.

§ 105 ILCS 5/10-20. Powers of school board

Sec. 10-20. Powers of school board. The school board has the powers enumerated in the Sections of this Article following this Section. This enumeration of powers is not exclusive, but the board may exercise all other powers not inconsistent with this Act that may be requisite or proper for the maintenance, operation, and development of any school or schools under the jurisdiction of the board. This grant of powers does not

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release a school board from any duty imposed upon it by this Act or any other law.

(Source: P.A. 83-503; 88-670, § 3-54; 89-159, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.

Effect of Amendments. The 1994 amendment by P.A. 88-670, effective December 2, 1994, substituted "the Sections following this Section and preceding Section 10-21" for "Sections 10-20.1 through 10-20.27".

The 1995 amendment by P.A. 89-159, effective January 1, 1996, in the section catchline substituted "Powers" for "Duties"; in the first sentence substituted "powers" for "duties", inserted "of this Article" and deleted "and preceding Section 10-21" from the end; and added the second and third sentences.

CASE NOTES

Analysis

In General
Board's Discretion
- Filling Position
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Power to Close School
- In General
- Judicial Review
- Quasi-Legislative
Regional Board
- Local Power Not Usurped
Scope of Authority
- In General
- Collective Bargaining Agreement
- Lunch Program

In General

A broad spectrum of implied and incidental powers may be inferred from the express statutory grants of 105 ILCS 5/10-20.1 to 105 ILCS 5/10-20.27. Ambroiggio ex rel. Ambroiggio v. Board of Educ., 101 Ill. App. 3d 187, 56 Ill. Dec. 622, 427 N.E.2d 1027 (2 Dist. 1981).

A school board created to perform governmental functions in connection with the education of children in its respective school district has such powers as are expressly conferred or as may be

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necessary to carry into effect those granted by the General Assembly. Weary v. Board of Educ., 46 Ill. App. 3d 182, 4 Ill. Dec. 737, 360 N.E.2d 1112 (5 Dist. 1977).

Board's Discretion

- Filling Position

Where Board of Education created the position of director, defined the duties to be performed, and fixed the salary, the board maintained discretion to fill the position. Board of Educ. v. Rockford Educ. Ass'n, 3 Ill. App. 3d 1090, 280 N.E.2d 286 (2 Dist. 1972).

Budgetary Duties

The duties of a school board to fix the salaries of teachers and to prepare, adopt, and administer an annual budget, and the exercise of its discretion in performing these tasks, are basic to its purpose of administering and managing the conduct of the schools within its district. Weary v. Board of Educ., 46 Ill. App. 3d 182, 4 Ill. Dec. 737, 360 N.E.2d 1112 (5 Dist. 1977).

Power to Close School

- In General

The members of the board have broad discretion in the use of the board's powers. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

A board of education in the exercise of its discretionary powers may discontinue or abandon the use of a public school within the boundaries of its jurisdiction and assign the students thereof to other schools in the school system; the board must be able to act in a reasonable manner consistent with the public interest. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

- Judicial Review

No statutory judicial review of the board's exercise of its powers in closing a school is provided for; this Code does not require the board to make written findings or reasons in support of its decision in the exercise of such powers, and neither the Administrative Review Law (735 ILCS 5/3-101 et seq.) nor the Administrative Procedure Act (5 ILCS 100/1-1 et seq.) are made applicable to such duties. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

- Quasi-Legislative

The decision to close a school and to reassign the students to other attendance zones within the district is an exercise of the discretionary powers granted to the board to act as a policy-making body, tantamount to the quasi-legislative power to make prospective regulations and orders. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

Regional Board

- Local Power Not Usurped

The consideration by the regional board of a local school board's announced decision and plans to close one of its schools and to reduce staff size was not a usurpation of the local board's

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functions. Board of Educ. v. Regional Bd. of Sch. Trustees, 89 Ill. 2d 392, 60 Ill. Dec. 443, 433 N.E.2d 240 (1982).

Scope of Authority

- In General

The school board is charged with the responsibility of supervising the education of the children within the district, the raising of revenue by tax levy, hiring teachers and maintaining schools. Quality Educ. for All Children, Inc. v. School Bd., 385 F. Supp. 803 (N.D. Ill. 1974).

The school board is vested with the power to appoint and supervise teachers, to select and assure uniformity of textbooks, to establish attendance units, to control and supervise school buildings, and to establish the curriculum to be taught. Quality Educ. for All Children, Inc. v. School Bd., 385 F. Supp. 803 (N.D. Ill. 1974).

- Collective Bargaining Agreement

A board of education does not require legislative authority to enter into a collective bargaining agreement and such an agreement is not against public policy unless the agreement delegates to another party those matters of discretion that are vested in the board by statute. Board of Educ. v. Rockford Educ. Ass'n, 3 Ill. App. 3d 1090, 280 N.E.2d 286 (2 Dist. 1972).

- Lunch Program

As school board had the express power to operate a lunch program and to employ personnel to supervise it, it had an implied authority to impose a fee to help offset the costs of the program. Ambroiggio ex rel. Ambroiggio v. Board of Educ., 101 Ill. App. 3d 187, 56 Ill. Dec. 622, 427 N.E.2d 1027 (2 Dist. 1981).

§ 105 ILCS 5/10-20.1. Records to be retained

Sec. 10-20.1. Records to be retained. To maintain records to substantiate all district claims for State aid in accordance with regulations prescribed by the State Board of Education and to retain such records for a period of three years.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.1.

CASE NOTES

Amendments

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- Permitted

A school board under a prior similar provision had the right to amend the records of its action at any time so as to make them conform to the real facts, and records could be amended at any time after quo warranto, certiorari, or other proceedings had been instituted and decided or after the calling of an election, and when amended the record could not be contradicted by parol in the absence of any estoppel arising by judgment or otherwise. Phenicie v. Board of Educ., 326 Ill. 73, 157 N.E. 34 (1927).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Significant Developments in Education Law 2003-2004," see, See 29 S. Ill. U.L.J. 603 (2005).

§ 105 ILCS 5/10-20.2. Report of teachers employed

Sec. 10-20.2. Report of teachers employed. To report to the county superintendent within ten days after their employment the names of all teachers employed, with the dates of the beginning and end of their contracts.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.2.

§ 105 ILCS 5/10-20.2b: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/10-20.3. Revenue to be provided

Sec. 10-20.3. Revenue to be provided. To provide for the revenue necessary to maintain schools in their districts.

(Source: Laws 1961, p. 31.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.3.

§ 105 ILCS 5/10-20.4. District in two or more townships - Treasurer to receive taxes

Sec. 10-20.4. District in two or more townships - Treasurer to receive taxes. To determine, in case of a district which is situated in a Class II county school unit and which is subject to the jurisdiction and authority of the trustees of schools of a township but composed of parts of two or more townships, which treasurer is to receive the taxes of the district, and to notify the collectors in writing accordingly.

(Source: P.A. 86-1441.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.4.

§ 105 ILCS 5/10-20.5. Rules

Sec. 10-20.5. Rules. To adopt and enforce all necessary rules for the management and government of the public schools of their district. Rules adopted by the school board shall be filed for public inspection in the administrative office of the district.

(Source: P.A. 81-1003.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.5.

CASE NOTES

Analysis

In General
Absence of Rule
- Waiver
Cause of Action
- Reduction of Grades

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Criteria Governing School Closing
- Not a Rule
Disciplinary Suspensions
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- Due Process
- Hearing
- Held Constitutional
- Implied Power
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In General

A board of education is statutorily empowered to adopt and enforce all necessary rules for the management and government of the public schools of its district. Thomas v. Board of Educ., 117 Ill. App. 3d 374, 72 Ill. Dec. 845, 453 N.E.2d 150 (5 Dist. 1983).

Subject to the requirement that the rules and regulations be reasonable the power of the board of education to control and manage the schools and to adopt rules and regulations necessary for that purpose is ample and full. Thomas v. Board of Educ., 117 Ill. App. 3d 374, 72 Ill. Dec. 845, 453 N.E.2d 150 (5 Dist. 1983).

A broad spectrum of implied incidental powers is to be inferred from the general powers to adopt all necessary rules including the right to assign non-classroom duties to teachers. Thomas v. Board of Educ., 117 Ill. App. 3d 374, 72 Ill. Dec. 845, 453 N.E.2d 150 (5 Dist. 1983).

Absence of Rule

- Waiver

The absence of a rule was not a procedural matter subject to waiver, but a question of the power of the board to act, a jurisdictional matter which could not be waived. Inwang v. Community College Dist., 117 Ill. App. 3d 608, 73 Ill. Dec. 71, 453 N.E.2d 896 (1 Dist. 1983).

Cause of Action

- Reduction of Grades

Complaint filed by high school student which challenged the legal sufficiency of the grade reduction penalties imposed by the school on a wide range of statutory and constitutional grounds and sought to prevent defendant from enforcing that sanction against plaintiff stated a cause of

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action under former section 45 of the Civil Practice Act (see now 735 ILCS 5/2-615). Hamer ex rel. Hamer v. Board of Educ., 66 Ill. App. 3d 7, 22 Ill. Dec. 755, 383 N.E.2d 231 (2 Dist. 1978).

Criteria Governing School Closing

- Not a Rule

Plaintiffs' argument that a board's adoption of criteria to determine which school to close in its district was not an improper subordination of the board's powers, but rather, that the criteria became a rule by which the board was bound, was incorrect where the board did not intend to be bound or limited by the criteria as by a rule, but adopted them only as a standard or measuring device. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

Disciplinary Suspensions

110 ILCS 805/3-25 should be interpreted in the same manner as this section and it similarly empowers the board to promulgate rules for the imposition of disciplinary suspensions. Inwang v. Community College Dist., 117 Ill. App. 3d 608, 73 Ill. Dec. 71, 453 N.E.2d 896 (1 Dist. 1983).

Personal Choice

- Curtailment

The right of personal choice in the matters of hair length or style as in other areas of personal appearance is not unlimited; however, it can only be abridged or curtailed by a school board where the exercise of that right creates an actual disturbance of disruption to the orderly process of school functions. Laine v. Dittman, 125 Ill. App. 2d 136, 259 N.E.2d 824 (2 Dist. 1970).

Purchase of Materials

- Apportionment of Cost

A school board was authorized to purchase the necessary materials and supplies, apportion the cost among the pupils, and charge those parents who were financially able to pay. Beck v. Board of Educ., 63 Ill. 2d 10, 344 N.E.2d 440 (1976).

- Charging Parents

This section and 105 ILCS 5/10-20.8 respectively authorize school boards to adopt and enforce all necessary rules for the management and government of the school, and to direct what branches of study shall be taught and what apparatus shall be used; under these sections, a school board was authorized to require parents financially able to do so to provide their children with educational materials and supplies for use by them or on their behalf. Beck v. Board of Educ., 63 Ill. 2d 10, 344 N.E.2d 440 (1976).

A system of schools which permits all persons of school age residing in the district to attend classes and receive instruction in the subjects taught, without a tuition charge, provides free schools, and the fact that the parents of pupils financially able to do so are required to provide their children with textbooks, writing materials and other supplies required for the personal use of such pupils does not change the character of the school. Beck v. Board of Educ., 27 Ill. App. 3d 4, 325 N.E.2d 640 (2 Dist. 1975).

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Since a school board can require parents to send supplies with their children, can direct what "apparatus" shall be used, can make supplies available for a charge on a voluntary basis, and can exercise a rule-making power which is to be treated as "ample and full," a school board has an implied power to purchase supplies for the students and pass on the cost to parents on a mandatory basis. Beck v. Board of Educ., 27 Ill. App. 3d 4, 325 N.E.2d 640 (2 Dist. 1975).

School Officials

School employee did not state a claim from which the court could conclude that the defendant school officials were working in their official capacities and liable under 42 U.S.C. § 1983 for condoning, acquiescing and participating in a violation of the school employee's fourth amendment rights when they failed to investigate the circumstances surrounding the theft of his diary pages and to discipline coemployees for the theft. Duda v. Board of Educ. of Franklin Park Pub. Sch. Dist. No. 84, 133 F.3d 1054 (7th Cir. 1998).

Scope

A board of education has implied authority under this section to promulgate rules for the conduct of participants at its meetings. Nuding v. Board of Educ. of Cerro Gordo Community Unit Sch. Dist. No. 100, 313 Ill. App. 3d 344, 246 Ill. Dec. 416, 730 N.E.2d 96, 2000 Ill. App. LEXIS 369 (4 Dist. 2000), appeal denied, 191 Ill. 2d 535, 250 Ill. Dec. 459, 738 N.E.2d 928 (2000).

This provision only elaborates a school board's authority to adopt rules; it does not answer the question of whether the state or a given school board has delegated authority to individual deans to handle disciplinary matters as sensitive as searches of students. Cornfield ex rel. Lewis v. Consolidated High Sch. Dist. No. 230, 991 F.2d 1316 (7th Cir. 1993).

Strip Search

Nothing in the School Code allowed an inference that a disciplinary dean had been delegated policymaking authority to allow municipal liability for a strip search. Cornfield ex rel. Lewis v. Consolidated High Sch. Dist. No. 230, 991 F.2d 1316 (7th Cir. 1993).

Supplies

It has long been recognized that schools can require parents to provide supplies for their children. Beck v. Board of Educ., 27 Ill. App. 3d 4, 325 N.E.2d 640 (2 Dist. 1975).

Suspension of Teachers

- Due Process

Although tenured teachers who face suspension are not entitled to a hearing under 105 ILCS 5/24-12, they are nevertheless entitled to procedural due process. Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc., 118 Ill. 2d 389, 113 Ill. Dec. 915, 515 N.E.2d 1222 (1987).

- Hearing

School board was not required to afford a suspended, rather than dismissed, tenured teacher a hearing which satisfied the procedural requirements of 105 ILCS 5/24-12. Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc., 118 Ill. 2d 389, 113 Ill. Dec. 915, 515 N.E.2d 1222 (1987).

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- Held Constitutional

A school board's suspension policy which gave a teacher written notice of the basis for suspension and an opportunity to request a hearing where the teacher could be represented by an attorney, cross-examine witnesses, and present evidence on his own behalf satisfied the requirements of procedural due process. Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc., 118 Ill. 2d 389, 113 Ill. Dec. 915, 515 N.E.2d 1222 (1987).

- Implied Power

The power to suspend a tenured teacher is an implied power necessary to carry into effect the duty imposed upon the school board by this section to adopt and enforce all necessary rules for the management and government of the public schools of the district. Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc., 118 Ill. 2d 389, 113 Ill. Dec. 915, 515 N.E.2d 1222 (1987).

Truancy

Legislation giving school districts powers to make disciplinary rules empowers them to punish pupils for unexcused absences. Knight ex rel. Knight v. Board of Educ., 38 Ill. App. 3d 603, 348 N.E.2d 299 (4 Dist. 1976).

LEGAL PERIODICALS

For article, "Constitutional Law: 1987-88 Illinois Law Survey," see 20 Loy. U. Chi. L.J. 275 (1988-89).

For article, "Student Vandalism and Public Schools: The Scope of the Illinois Educators' Directive to Discipline," see 9 N. Ill. U.L. Rev. 87 (1988).

For note, "Public School Fees in Illinois: a Re-Examination of Constitutional and Policy Questions," see 1984 U. Ill. L. Rev. 99.

§ 105 ILCS 5/10-20.5a. Access to high school campus

Sec. 10-20.5a. Access to high school campus. (a) For school districts maintaining grades 10 through 12, to provide, on an equal basis, access to a high school campus and student directory information to the official recruiting representatives of the armed forces of Illinois and the United States for the purpose of informing students of the educational and career opportunities available in the military if the board has provided such access to persons or groups whose purpose is to acquaint students with educational or occupational opportunities available to them. The board is not required to give greater notice regarding the right of access to recruiting representatives than is given to other persons and groups. In this Section, "directory information" means a high school student's name, address, and telephone number.

(b) If a student or his or her parent or guardian submits a signed, written request to the high school before the end of the student's sophomore year (or if the student is a transfer

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student, by another time set by the high school) that indicates that the student or his or her parent or guardian does not want the student's directory information to be provided to official recruiting representatives under subsection (a) of this Section, the high school may not provide access to the student's directory information to these recruiting representatives. The high school shall notify its students and their parents or guardians of the provisions of this subsection (b).

(c) A high school may require official recruiting representatives of the armed forces of Illinois and the United States to pay a fee for copying and mailing a student's directory information in an amount that is not more than the actual costs incurred by the high school.

(d) Information received by an official recruiting representative under this Section may be used only to provide information to students concerning educational and career opportunities available in the military and may not be released to a person who is not involved in recruiting students for the armed forces of Illinois or the United States.

(Source: P.A. 82-161; 92-527, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.5a.

Effect of Amendments. The 2001 amendment by P.A. 92-527, effective June 1, 2002, revised the section heading; inserted the subsection (a) designation and subsections (b) through (d); and in subsection (a), in the first sentence inserted "For school districts maintaining grades 10 through 12", substituted "a high school" for "the school", inserted "and student directory information" and added the last sentence.

§ 105 ILCS 5/10-20.5b. Tobacco prohibition

Sec. 10-20.5b. Tobacco prohibition. Each school board shall prohibit the use of tobacco on school property by any school personnel, student, or other person when such property is being used for any school purposes. The school board may not authorize or permit any exception to or exemption from the prohibition at any place or at any time, including without limitation outside of school buildings or before or after the regular school day or on days when school is not in session. "School purposes" include but are not limited to all events or activities or other use of school property that the school board or school officials authorize or permit on school property, including without limitation all interscholastic or extracurricular athletic, academic, or other events sponsored by the school board or in which pupils of the district participate. For purposes of this Section "tobacco" shall mean cigarette, cigar, or tobacco in any other form, including smokeless tobacco which is any loose, cut, shredded, ground, powdered, compressed or leaf tobacco

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that is intended to be placed in the mouth without being smoked.

(Source: P.A. 86-821; 89-181, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.5b.

Effect of Amendments. The 1995 amendment by P.A. 89-181, effective July 19, 1995, in the first sentence inserted "by any school personnel, student, or other person"; in the second sentence substituted "not authorize or permit any exception to or exemption from the prohibition at any place or at any time, including without limitation outside of school buildings or before or after the regular school day or on days when school is not in session" for "designate the following exemptions: (1) outdoor spectator areas of school property during scheduled school interscholastic or extracurricular athletic activities; (2) a designated area within or outside the school building for use by spectators during indoor scheduled school interscholastic or extracurricular athletic activities; and (3) a designated area within the school building for use by school personnel. If the school board exempts a designated area for use by school personnel, the school board shall provide for school personnel an equivalent area where the tobacco use prohibition applies"; and in the third sentence inserted "all events or activities or other use of school property that the school board or school officials authorize or permit on school property, including without limitation" and inserted a comma after "academic".

§ 105 ILCS 5/10-20.6. Maintain schools

Sec. 10-20.6. Maintain schools. To maintain the public schools under their jurisdiction as the good of the schools may require and in conformance with the code authorized in Section 2-3.12 [105 ILCS 5/2-3.12].

(Source: Laws 1961, p. 31; P.A. 87-984, § 1; 96-998, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.6.

Effect of Amendments. The 1992 amendment by P.A. 87-984, effective January 1, 1993, deleted "and" after "to visit" inserted "and maintain" and "under their jurisdiction" and added "and in conformance with the code authorized in Section 2-3.12" to the end of the section.

The 2010 amendment by P.A. 96-998, effective July 2, 2010, rewrote the section heading; and deleted "visit, inspect, and" at the beginning.

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§ 105 ILCS 5/10-20.7. Appoint teachers and fix salaries

Sec. 10-20.7. Appoint teachers and fix salaries. To appoint all teachers and fix the amount of their salaries, subject to limitations set forth in this Act. In fixing salaries of certificated employees, school boards shall make no discrimination on account of sex and there shall be no loss in salary because of jury duty or because such employee, pursuant to subpoena issued by the clerk of a court and served on such employee, attends as a witness upon trial or to have his or her deposition taken in any school related matter pending in court, except that the board may make a deduction equal to the amount received for such jury duty or for per diem fees which the employee is entitled to receive for complying with such subpoena. Certified employees may be paid full salary by the board when in the active service of this State, under orders of the Commander-in-Chief, as members of the Illinois National Guard or Illinois Naval Militia, provided that the board may deduct from such salary any amounts received for such State service. A school board may at any time after January 1 employ teachers for the school year beginning on the following July 1.

(Source: P.A. 86-1366.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.7.

CASE NOTES

Analysis

Budgetary Duties
Delegation of Power
- In General
- Agents of Board
- Collective Bargaining Agreement
- Contract Renewal

Inarbitrable Issues
No-Strike Clause
- Constitutionality
- Purpose

Non-Delegable Duties
- In General

Scope of Powers
Temporary Restraining Order

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- Effect

Budgetary Duties

The duties of a school board to fix the salaries of teachers and to prepare, adopt, and administer an annual budget, and the exercise of its discretion in performing these tasks, are basic to its purpose of administering and managing the conduct of the schools within its district. Weary v. Board of Educ., 46 Ill. App. 3d 182, 4 Ill. Dec. 737, 360 N.E.2d 1112 (5 Dist. 1977).

Delegation of Power

- In General

Discretionary functions of school boards cannot be delegated but duties which are ministerial may be delegated. Daleanes v. Board of Educ., 120 Ill. App. 3d 505, 75 Ill. Dec. 823, 457 N.E.2d 1382 (2 Dist. 1983).

- Agents of Board

Complaint of plaintiff that board of education breached contract to rehire her after she took early retirement was not subject to dismissal on grounds that only board had hiring power, where plaintiff sufficiently alleged agency relationship between board and officials of board whom she alleged promised she would be retained as part-time employee following retirement. Kastel v. Winnetka Bd. of Educ., Dist. 36, 946 F. Supp. 1329 (N.D. Ill. 1996).

- Collective Bargaining Agreement

While a school board may enter into a collective bargaining agreement with an organization representing the employees thereof, the board cannot negotiate an agreement which involves the delegation of a statutory duty or the surrender of discretion vested in the board by statute. Weary v. Board of Educ., 46 Ill. App. 3d 182, 4 Ill. Dec. 737, 360 N.E.2d 1112 (5 Dist. 1977).

- Contract Renewal

The hiring and firing of teachers involve discretion and, therefore, are nondelegable powers, as does the determination not to renew a superintendent's contract under 105 ILCS 5/10-21.4. Daleanes v. Board of Educ., 120 Ill. App. 3d 505, 75 Ill. Dec. 823, 457 N.E.2d 1382 (2 Dist. 1983).

Inarbitrable Issues

A school board's action in docking an additional three days' pay following an abridgment of the school calendar gave rise to an arbitrable grievance and the trial court did not err in dismissing the board's complaint that sought to foreclose such arbitration; the class of inarbitrable issues should be limited to those areas specifically reserved to school boards under this Code, such as by this section and 105 ILCS 5/10-19 and 105 ILCS 5/10-22.4. Board of Educ. v. Ballweber, 105 Ill. App. 3d 412, 61 Ill. Dec. 295, 434 N.E.2d 448 (1 Dist. 1982), aff'd, 96 Ill. 2d 520, 71 Ill. Dec. 704, 451 N.E.2d 858 (1983).

The school board has the power to hire and discharge teachers, to determine their qualifications, and to set and allocate funds for their salaries; these functions must be exercised by the school board, which cannot abdicate its responsibility by referring these matters to such devices as arbitration and other contract solutions. Board of Educ. v. Cahokia Dist. Council No. 58, 93 Ill. App. 3d 376, 48 Ill. Dec. 749, 417 N.E.2d 151 (5 Dist. 1981).

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No-Strike Clause

- Constitutionality

A board's action in creating a salary distinction based on a no-strike clause that was imposed subsequent to the unconditional adoption of a new base salary was arbitrary, capricious and unreasonable. Bagley v. Board of Educ., 84 Ill. 2d 474, 50 Ill. Dec. 716, 419 N.E.2d 1165 (1981).

Where a no-strike clause was consideration for payment of a salary increase to only those teachers who signed contracts containing the clause, the clause was not arbitrary, capricious or unreasonable. Bond v. Board of Educ., 81 Ill. 2d 242, 42 Ill. Dec. 136, 408 N.E.2d 714 (1980).

Under the proper conditions, a board's decision to request teachers to agree to a no-strike clause in their contracts and to create a salary distinction between signing and non-signing teachers is not arbitrary or unreasonable. Bond v. Board of Educ., 81 Ill. 2d 242, 42 Ill. Dec. 136, 408 N.E.2d 714 (1980).

- Purpose

The public policy against strikes by state employees, as it relates to teachers, was intended to avoid disruptions of the educational process and to provide an element of stability, not only in the students' educational progress but also in the planning and budgetary considerations of the boards in the performance of their mandated duties. Bond v. Board of Educ., 81 Ill. 2d 242, 42 Ill. Dec. 136, 408 N.E.2d 714 (1980).

Non-Delegable Duties

- In General

The duty to appoint all teachers and fix the amount of their salaries are among the powers and duties of a board that cannot be delegated or limited by contract. Board of Educ. v. Rockford Educ. Ass'n, 3 Ill. App. 3d 1090, 280 N.E.2d 286 (2 Dist. 1972); Classroom Teachers Ass'n v. Board of Educ., 15 Ill. App. 3d 224, 304 N.E.2d 516 (3 Dist. 1973).

Scope of Powers

A school board created to perform governmental functions in connection with the education of children in its respective school district has such powers as are expressly conferred or such as may be necessary to carry into effect those granted by the General Assembly. Weary v. Board of Educ., 46 Ill. App. 3d 182, 4 Ill. Dec. 737, 360 N.E.2d 1112 (5 Dist. 1977).

Temporary Restraining Order

- Effect

The trial courts' granting of a temporary restraining order did not interfere with the Board of Education's statutory authority to fix teachers salaries. Board of Educ. v. Springfield Educ. Ass'n, 47 Ill. App. 3d 193, 5 Ill. Dec. 374, 361 N.E.2d 697 (4 Dist. 1977).

§ 105 ILCS 5/10-20.7a. Minority recruitment policy

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Sec. 10-20.7a. Minority recruitment policy. To develop and implement, by 1991, a policy of recruitment and hiring of minority teachers, other certificated employees and non-certificated employees, including custodians, lunch room staff and teacher aides.

(Source: P.A. 86-227.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.7a.

§ 105 ILCS 5/10-20.7b. Active military service

Sec. 10-20.7b. Active military service. Any certificated or non-certificated employee of a school board who is a member of any reserve component of the United States Armed Services, including the Illinois National Guard, and who is mobilized to active military duty on or after August 1, 1990, shall for each pay period beginning on or after August 1, 1990 continue to receive the same regular compensation that he receives or was receiving as an employee of the school board at the time he is or was so mobilized to active military duty, plus any health insurance and other benefits he is or was receiving or accruing at that time, minus the amount of his base pay for military service, for the duration of his active military service. Such active military duty shall not result in the loss or diminishment of any employment benefit, service credit, or status accrued at the time the duty commenced if the duty commenced on or after September 1, 2001.

In the event any provision of a collective bargaining agreement or any school board or district policy covering any employee so ordered to active duty is more generous than the provisions contained in this Section, the collective bargaining agreement or school board or district policy shall be controlling.

(Source: P.A. 87-631; 92-660, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.7b.

Effect of Amendments. The 2002 amendment by P.A. 92-660, effective July 16, 2002, in the first paragraph, deleted "as a result of an order of the President of the United States" in the first sentence, and added the last sentence.

§ 105 ILCS 5/10-20.8. Branches of study, textbooks and apparatus

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Sec. 10-20.8. Branches of study, textbooks and apparatus. To direct what branches of study shall be taught and what apparatus shall be used. Subject to Article 28 of this Act, to direct what textbooks shall be used and to enforce uniformity of textbooks in the public schools; but not to maintain grades above the eighth unless such grades were maintained during the school year ended June 30, 1959. Notwithstanding any other provision of this Section or the School Code, no school board may purchase any textbook for use in the public schools from any textbook publisher that fails to furnish any computer diskettes as required under Section 28-21 [105 ILCS 5/28-21].

(Source: Laws 1967, p. 30; P.A. 87-1071, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.8.

Effect of Amendments. The 1992 amendment by P.A. 87-1071, effective September 13, 1992, added the last sentence of this section.

CASE NOTES

Analysis

Purchase of Materials
- Charging Parents
Safety Equipment
Supplies
Trampoline Use

Purchase of Materials

- Charging Parents

A school board was authorized to purchase necessary materials and supplies, apportion the cost among the pupils, and charge those parents who were financially able to pay. Beck v. Board of Educ., 63 Ill. 2d 10, 344 N.E.2d 440 (1976).

This section and section 10-20.5 of the School Code (105 ILCS 5/10-20.5) respectively authorize a school board to adopt and enforce all necessary rules for the management and government of the school, and to direct what branches of study shall be taught and what apparatus shall be used; under these sections, a school board was authorized to require parents financially able to do so to provide their children with educational materials and supplies for use by them or on their behalf. Beck v. Board of Educ., 63 Ill. 2d 10, 344 N.E.2d 440 (1976).

Since a school board can require parents to send supplies with their children, can direct what "apparatus" shall be used, can make supplies available for a charge on a voluntary basis, and

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can exercise a rule-making power which is to be treated as "ample and full," a school board has an implied power to purchase supplies for the students and pass on the cost to parents on a mandatory basis. Beck v. Board of Educ., 27 Ill. App. 3d 4, 325 N.E.2d 640 (2 Dist. 1975).

A system of schools which permits all persons of school age residing in the district to attend classes and receive instruction in the subjects taught, without a tuition charge, provides free schools, and the fact that the parents of pupils financially able to do so are required to provide their children with textbooks, writing materials and other supplies required to the personal use of such pupils does not change the character of the school. Beck v. Board of Educ., 27 Ill. App. 3d 4, 325 N.E.2d 640 (2 Dist. 1975).

Safety Equipment

School district was immune from liability where a student alleged negligence in the school district's failure to provide necessary roller-blade safety equipment since such decision was a discretionary policy determination. Arteman v. Clinton Cmty. Unit Sch. Dist. No. 15, 198 Ill. 2d 475, 261 Ill. Dec. 507, 763 N.E.2d 756, 2002 Ill. LEXIS 5 (2002).

Supplies

It has long been recognized that schools can require parents to provide supplies for their children. Beck v. Board of Educ., 27 Ill. App. 3d 4, 325 N.E.2d 640 (2 Dist. 1975).

Trampoline Use

A school and school district were not negligent where a school girl was injured on a trampoline during physical education class because a trampoline was not an abnormally dangerous instrumentality. Fallon v. Indian Trial Sch., 148 Ill. App. 3d 931, 102 Ill. Dec. 479, 500 N.E.2d 101 (1986).

LEGAL PERIODICALS

For note, "Public School Fees in Illinois: a Re-Examination of Constitutional and Policy Questions," see, U. Ill. L. Rev. 99 (1984).

§ 105 ILCS 5/10-20.9: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/10-20.9a. Final Grade; Promotion

Sec. 10-20.9a. Final Grade; Promotion. (a) Teachers shall administer the approved marking system or other approved means of evaluating pupil progress. The teacher shall maintain the responsibility and right to determine grades and other evaluations of students within the grading policies of the district based upon his or her professional judgment of available criteria pertinent to any given subject area or activity for which he

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or she is responsible. District policy shall provide the procedure and reasons by and for which a grade may be changed; provided that no grade or evaluation shall be changed without notification to the teacher concerning the nature and reasons for such change. If such a change is made, the person making the change shall assume such responsibility for determining the grade or evaluation, and shall initial such change.

(b) School districts shall not promote students to the next higher grade level based upon age or any other social reasons not related to the academic performance of the students. On or before September 1, 1998, school boards shall adopt and enforce a policy on promotion as they deem necessary to ensure that students meet local goals and objectives and can perform at the expected grade level prior to promotion. Decisions to promote or retain students in any classes shall be based on successful completion of the curriculum, attendance, performance based on Illinois Goals and Assessment Program tests, the Iowa Test of Basic Skills, or other testing or any other criteria established by the school board. Students determined by the local district to not qualify for promotion to the next higher grade shall be provided remedial assistance, which may include, but shall not be limited to, a summer bridge program of no less than 90 hours, tutorial sessions, increased or concentrated instructional time, modifications to instructional materials, and retention in grade.

(Source: P.A. 86-721; 89-610, § 5; 90-548, § 5-915.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.9a.

Effect of Amendments. The 1996 amendment by P.A. 89-610, effective August 6, 1996, in the section catchline added "Promotion" at the end; added the subsection (a) designation; in subsection (a), in the second sentence, substituted "district" for "District" and in the third sentence substituted a period for "and"; and added subsection (b).

The 1997 amendment by P.A. 90-548, effective January 1, 1998, in subsection (b), in the first sentence, substituted "shall not promote" for "are discouraged from promoting", in the second sentence, added at the beginning "On or before September 1, 1998", substituted "shall" for "May" and substituted "a policy" for "such policies" and added the third and fourth sentences.

§ 105 ILCS 5/10-20.12. School year - School age

Sec. 10-20.12. School year - School age. To establish and keep in operation in each year during a school term of at least the minimum length required by Section 10-19 [105 ILCS 5/10-19], a sufficient number of free schools for the accommodation of all persons in the district who are 5 years of age or older but under 21 years of age, and to secure for all such persons the right and opportunity to an equal education in such schools; provided that (i) children who will attain the age of 5 years on or before September 1 of the year of the 1990-1991 school term and each school term thereafter may attend school upon the

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commencement of such term and (ii) based upon an assessment of the child's readiness, children who have attended a non-public preschool and continued their education at that school through kindergarten, were taught in kindergarten by an appropriately certified teacher, and will attain the age of 6 years on or before December 31 of the year of the 2009-2010 school term and each school term thereafter may attend first grade upon commencement of such term. Based upon an assessment of a child's readiness to attend school, a school district may permit a child to attend school prior to the dates contained in this Section. In any school district operating on a full year school basis children who will attain age 5 within 30 days after the commencement of a term may attend school upon the commencement of such term and, based upon an assessment of the child's readiness, children who have attended a non-public preschool and continued their education at that school through kindergarten, were taught in kindergarten by an appropriately certified teacher, and will attain age 6 within 4 months after the commencement of a term may attend first grade upon the commencement of such term. The school district may, by resolution of its board, allow for a full year school plan.

(Source: P.A. 87-359; 96-864, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.12.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 130.30, 235.20.

Effect of Amendments. The 2010 amendment by P.A. 96-864, effective January 21, 2010, added item (ii) at the end of the first sentence; added "and, based upon an assessment of the child's readiness, children who have attended a non-public preschool and continued their education at that school through kindergarten, were taught in kindergarten by an appropriately certified teacher, and will attain age 6 within 4 months after the commencement of a term may attend first grade upon the commencement of such term" at the end of the third sentence; and made related changes.

CASE NOTES

Analysis

Age Limit
- Not Affected by Term
Legislative Intent
Purpose
Readiness Assessment
- Equal Education

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- Mootness
- Not Mandatory

School Attendance

- Due Process Expectation
- Kindergarten

Age Limit

- Not Affected by Term

The legislature clearly granted school boards discretion in deciding when to commence classes, and the fact that a board elected to begin the term after September 1 did not in any way affect the age limitation that the legislature clearly and unambiguously enacted. Morrison ex rel. Morrison v. Chicago Bd. of Educ., 188 Ill. App. 3d 588, 136 Ill. Dec. 324, 544 N.E.2d 1099 (1 Dist. 1989).

Legislative Intent

The legislature intended to impose a strict age limitation on students eligible for kindergarten or first grade. Morrison ex rel. Morrison v. Chicago Bd. of Educ., 188 Ill. App. 3d 588, 136 Ill. Dec. 324, 544 N.E.2d 1099 (1 Dist. 1989).

Purpose

The general purpose of this section is to impose an age limit on students eligible to attend public schools; the legislature, in the debates involving this provision, stated that the imposition of an earlier cut-off date was due to studies that have shown that the older a child is upon entering kindergarten, the more successful the schooling experience. Morrison ex rel. Morrison v. Chicago Bd. of Educ., 188 Ill. App. 3d 588, 136 Ill. Dec. 324, 544 N.E.2d 1099 (1 Dist. 1989).

Readiness Assessment

- Equal Education

A school board did not violate the minor plaintiff's civil rights when it initially refused to enroll him or, alternatively, to assess his readiness to attend school. Morrison ex rel. Morrison v. Chicago Bd. of Educ., 188 Ill. App. 3d 588, 136 Ill. Dec. 324, 544 N.E.2d 1099 (1 Dist. 1989).

A school board did not violate plaintiff's right to an equal education where the equal education of children who would have attained the age of five and six by the legislatively-mandated September 1 cut-off date was provided for; nothing could have changed the fact that plaintiff could not have been five by September 1 of the 1988-89 school year, or six by September 1 of the 1989-90 school year. Morrison ex rel. Morrison v. Chicago Bd. of Educ., 188 Ill. App. 3d 588, 136 Ill. Dec. 324, 544 N.E.2d 1099 (1 Dist. 1989).

As the language of the statute relating to assessments is clearly permissive and there was nothing arbitrary, unreasonable or capricious about defendant's decision to adhere strictly to the school age cut-off date imposed by this Code and not to conduct readiness assessments, the court improperly substituted its judgment for that of defendant in ordering it to assess plaintiff's readiness to attend school. Morrison ex rel. Morrison v. Chicago Bd. of Educ., 188 Ill. App. 3d 588, 136 Ill. Dec. 324, 544 N.E.2d 1099 (1 Dist. 1989).

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Since children who attended a school system kindergarten were formerly required to pass "readiness test" to move to first grade, but seven year olds who moved into the system were automatically registered in first grade without being tested, the children in the district were being denied an opportunity for an equal education and equal protection of the law. Morgan ex rel. Morgan v. Board of Educ., 22 Ill. App. 3d 241, 317 N.E.2d 393 (5 Dist. 1974).

- Mootness

Where plaintiff would not have attained the age of five by the statutorily mandated cut-off date and the board refused to enroll him or to assess his readiness to attend school, but the board did in fact assess the readiness of plaintiff and enrolled him in kindergarten after the filing of an appeal, the case was not moot under the public interest exception. Morrison ex rel. Morrison v. Chicago Bd. of Educ., 188 Ill. App. 3d 588, 136 Ill. Dec. 324, 544 N.E.2d 1099 (1 Dist. 1989).

- Not Mandatory

Having imposed the September 1 cut-off, the legislature expressly granted school districts the discretion to permit children to attend prior to this date based on a structured assessment of their readiness to attend. This grant in no way mandated such testing. Morrison ex rel. Morrison v. Chicago Bd. of Educ., 188 Ill. App. 3d 588, 136 Ill. Dec. 324, 544 N.E.2d 1099 (1 Dist. 1989).

School Attendance

- Due Process Expectation

The actions of a community high school in allowing plaintiff to attend on a tuition-free basis during his freshman year and proceed to final registration for his sophomore year, which encompassed a time period during which his living conditions remained constant, fostered an objective expectancy in his continuation at the school on the same basis as before; plaintiff was entitled to due process protection of his interest in continuing to attend the school as a resident student. Kraut ex rel. Bartusiewicz v. Rachford, 51 Ill. App. 3d 206, 9 Ill. Dec. 240, 366 N.E.2d 497 (1 Dist. 1977).

- Kindergarten

Attendance at school is mandatory for a child younger than seven only if that child is enrolled in grades one through 12; therefore, although kindergarten must be established by the school board, it is not mandatory that children attend kindergarten. Morgan ex rel. Morgan v. Board of Educ., 22 Ill. App. 3d 241, 317 N.E.2d 393 (5 Dist. 1974).

§ 105 ILCS 5/10-20.12a. Tuition for non-resident pupils

Sec. 10-20.12a. Tuition for non-resident pupils. (a) To charge non-resident pupils who attend the schools of the district tuition in an amount not exceeding 110% of the per capita cost of maintaining the schools of the district for the preceding school year.

Such per capita cost shall be computed by dividing the total cost of conducting and maintaining the schools of the district by the average daily attendance, including tuition pupils. Depreciation on the buildings and equipment of the schools of the district, and the amount of annual depreciation on such buildings and equipment shall be dependent upon the useful life of such property.

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The tuition charged shall in no case exceed 110% of the per capita cost of conducting and maintaining the schools of the district attended, as determined with reference to the most recent audit prepared under Section 3-7 [105 ILCS 5/3-7] which is available at the commencement of the current school year. Non-resident pupils attending the schools of the district for less than the school term shall have their tuition apportioned, however pupils who become non-resident during a school term shall not be charged tuition for the remainder of the school term in which they became non-resident pupils.

(b) Unless otherwise agreed to by the parties involved and where the educational services are not otherwise provided for, educational services for an Illinois student under the age of 21 (and not eligible for services pursuant to Article 14 of this Code [105 ILCS 5/14-1.01 et seq.]) in any residential program shall be provided by the district in which the facility is located and financed as follows. The cost of educational services shall be paid by the district in which the student resides in an amount equal to the cost of providing educational services in the residential facility. Payments shall be made by the district of the student's residence and shall be made to the district wherein the facility is located no less than once per month unless otherwise agreed to by the parties.

The funding provision of this subsection (b) applies to all Illinois students under the age of 21 (and not eligible for services pursuant to Article 14 of this Code) receiving educational services in residential facilities, irrespective of whether the student was placed therein pursuant to this Code or the Juvenile Court Act of 1987 or by an Illinois public agency or a court. The changes to this subsection (b) made by this amendatory Act of the 95th General Assembly [P.A. 95-844] apply to all placements in effect on July 1, 2007 and all placements thereafter. For purposes of this subsection (b), a student's district of residence shall be determined in accordance with subsection (a) of Section 10-20.12b of this Code [105 ILCS 5/10-20.12b]. The placement of a student in a residential facility shall not affect the residency of the student. When a dispute arises over the determination of the district of residence under this subsection (b), any person or entity, including without limitation a school district or residential facility, may make a written request for a residency decision to the State Superintendent of Education, who, upon review of materials submitted and any other items or information he or she may request for submission, shall issue his or her decision in writing. The decision of the State Superintendent of Education is final.

(Source: P.A. 87-154; 89-397, § 5; 90-649, § 3; 95-844, § 5; 95-938, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.12a.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the fourth paragraph, in the fourth sentence, substituted "any disabled child" for "any handicapped child".

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The 1998 amendment by 90-649, effective July 24, 1998, deleted the former last sentence of the last paragraph, which read: "These provisions do not apply to any disabled child eligible for special education services under Article 14."

The 2008 amendment by P.A. 95-844, effective August 15, 2008, added the (a) and (b) designations; in (b) inserted "(and not eligible for services pursuant to Article 14 of this Code)", substituted "any residential program" for "a residential program designed to correct alcohol or other drug dependencies", and substituted "in the residential facility" for "in a treatment facility"; and added the second paragraph of (b).

The 2008 amendment by P.A. 95-938, effective August 29, 2008, deleted the second sentence in the second paragraph of (b), which read "Nothing in this Section shall be construed to relieve the district of the student's residence of financial responsibility based on the manner in which the student was placed at the facility."

This section was enacted by multiple Acts of the Illinois General Assembly. Although these enactments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

CASE NOTES

Analysis

Expelled Students
Interest
- Not Chargeable
Legislative Intent
- Sharing Costs
Reimbursement
Residence
- Parents and Child
- Purpose
School Attendance
- Due Process Expectation

Expelled Students

When a youth is expelled from one school district and, while being enrolled in a residential treatment facility, receives educational services from another district, that youth is not attending a public school but receiving educational services, therefore the second district was entitled to reimbursement for services from expelling school district. Carbondale Community High Sch. Dist. #165 v. Herrin Community Unit Sch. Dist. #4, 303 Ill. App. 3d 656, 237 Ill. Dec. 41, 708 N.E.2d 844 (5 Dist. 1999).

Interest

- Not Chargeable

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Interest could not be charged by school district against protectorate school district for interest on bonded indebtedness and depreciation on school buildings. People ex rel. Meyer v. Skinner, 38 Ill. 2d 379, 232 N.E.2d 297 (1967).

Legislative Intent

- Sharing Costs

Schools are to be open to all on an equal basis and all those who benefit from the system of public schools should share its cost on an equal basis. Board of Educ. ex rel. City of Rockford v. Community High Sch., 89 Ill. App. 2d 481, 232 N.E.2d 316 (2 Dist. 1967).

Reimbursement

School district was not entitled to reimbursement from a school board for the educational services provided to a minor in a treatment facility, because the minor's placement was accomplished exclusively pursuant to the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., not under the School Code, and the school board had no input in the minor's placement. Antioch Cmty. High Sch. Dist. 17 v. Bd. of Educ., 373 Ill. App. 3d 544, 311 Ill. Dec. 407, 868 N.E.2d 1068, 2007 Ill. App. LEXIS 474 (1 Dist. 2007).

Residence

The court did not err in concluding that, for tuition purposes, the student was a bona fide resident of a district other than that in which his parents lived and that his move to the district was not solely for educational purposes; the student lived on a full-time basis in the district with his aunt, who exercised complete control over him and was his legal guardian, and there was ample evidence of other non-educational factors being a part of the reason for the move. Joel R. ex rel. Salazar v. Board of Educ., 292 Ill. App. 3d 607, 226 Ill. Dec. 867, 686 N.E.2d 650 (1 Dist. 1997).

- Parents and Child

Generally the residence of the parents will be considered the residence of their minor child; a minor child, however, may have for school purposes a different residence from that of his parents. Turner v. Board of Educ., 54 Ill. 2d 68, 294 N.E.2d 264 (1973).

- Purpose

It is generally held that a minor child's dwelling in a school district solely for the purpose of attending a public school in the district will not be considered residency in the district for school purposes. Turner v. Board of Educ., 54 Ill. 2d 68, 294 N.E.2d 264 (1973).

School Attendance

- Due Process Expectation

The actions of a community high school in allowing plaintiff to attend on a tuition-free basis during his freshman year and to proceed to final registration for his sophomore year, which encompassed a time period during which his living conditions remained constant, fostered an objective expectancy in his continuation at the school on the same basis as before; plaintiff was entitled to due process protection of his interest in continuing to attend the school as a resident student. Kraut ex rel. Bartusiewicz v. Rachford, 51 Ill. App. 3d 206, 9 Ill. Dec. 240, 366 N.E.2d

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497 (1 Dist. 1977).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Education Law," see 25 S. Ill. U. L.J. 761 (2001).

§ 105 ILCS 5/10-20.12b. Residency; payment of tuition; hearing; criminal penalty

Sec. 10-20.12b. Residency; payment of tuition; hearing; criminal penalty. (a) For purposes of this Section:

(1) The residence of a person who has legal custody of a pupil is deemed to be the residence of the pupil.

(2) "Legal custody" means one of the following:

(i) Custody exercised by a natural or adoptive parent with whom the pupil resides.

(ii) Custody granted by order of a court of competent jurisdiction to a person with whom the pupil resides for reasons other than to have access to the educational programs of the district.

(iii) Custody exercised under a statutory short-term guardianship, provided that within 60 days of the pupil's enrollment a court order is entered that establishes a permanent guardianship and grants custody to a person with whom the pupil resides for reasons other than to have access to the educational programs of the district.

(iv) Custody exercised by an adult caretaker relative who is receiving aid under the Illinois Public Aid Code [305 ILCS 5/1-1 et seq.] for the pupil who resides with that adult caretaker relative for purposes other than to have access to the educational programs of the district.

(v) Custody exercised by an adult who demonstrates that, in fact, he or she has assumed and exercises legal responsibility for the pupil and provides the pupil with a regular fixed night-time abode for purposes other than to have access to the educational programs of the district.

(a-5) If a pupil's change of residence is due to the military service obligation of a person who has legal custody of the pupil, then, upon the written request of the person having legal custody of the pupil, the residence of the pupil is deemed for all purposes relating to enrollment (including tuition, fees, and costs), for the duration of the custodian's military service obligation, to be the same as the residence of the pupil immediately before the change of residence caused by the military service obligation. A school district is not responsible for providing transportation to or from school for a pupil whose residence is

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determined under this subsection (a-5). School districts shall facilitate re-enrollment when necessary to comply with this subsection (a-5).

(b) Except as otherwise provided under Section 10-22.5a [105 ILCS 5/10-22.5a], only resident pupils of a school district may attend the schools of the district without payment of the tuition required to be charged under Section 10-20.12a [105 ILCS 5/10-20.12a]. However, children for whom the Guardianship Administrator of the Department of Children and Family Services has been appointed temporary custodian or guardian of the person of a child shall not be charged tuition as a nonresident pupil if the child was placed by the Department of Children and Family Services with a foster parent or placed in another type of child care facility and the foster parent or child care facility is located in a school district other than the child's former school district and it is determined by the Department of Children and Family Services to be in the child's best interest to maintain attendance at his or her former school district.

(c) The provisions of this subsection do not apply in school districts having a population of 500,000 or more. If a school board in a school district with a population of less than 500,000 determines that a pupil who is attending school in the district on a tuition free basis is a nonresident of the district for whom tuition is required to be charged under Section 10-20.12a [105 ILCS 5/10-20.12a], the board shall notify the person who enrolled the pupil of the amount of the tuition charged under Section 10-20.12a [105 ILCS 5/10-20.12a] that is due to the district for the nonresident pupil's attendance in the district's schools. The notice shall be given by certified mail, return receipt requested. Within 10 days after receipt of the notice, the person who enrolled the pupil may request a hearing to review the determination of the school board. The request shall be sent by certified mail, return receipt requested, to the district superintendent. Within 10 days after receipt of the request, the board shall notify, by certified mail, return receipt requested, the person requesting the hearing of the time and place of the hearing, which shall be held not less than 10 nor more than 20 days after the notice of hearing is given. The board or a hearing officer designated by the board shall conduct the hearing. The board and the person who enrolled the pupil may be represented at the hearing by representatives of their choice. At the hearing, the person who enrolled the pupil shall have the burden of going forward with the evidence concerning the pupil's residency. If the hearing is conducted by a hearing officer, the hearing officer, within 5 days after the conclusion of the hearing, shall send a written report of his or her findings by certified mail, return receipt requested, to the school board and to the person who enrolled the pupil. The person who enrolled the pupil may, within 5 days after receiving the findings, file written objections to the findings with the school board by sending the objections by certified mail, return receipt requested, addressed to the district superintendent. Whether the hearing is conducted by the school board or a hearing officer, the school board shall, within 15 days after the conclusion of the hearing, decide whether or not the pupil is a resident of the district and the amount of any tuition required to be charged under Section 10-20.12a [105 ILCS 5/10-20.12a] as a result of the pupil's attendance in the schools of the district. The school board shall send a copy of its decision to the person who enrolled the pupil, and the decision of the school board shall be final.

(c-5) The provisions of this subsection apply only in school districts having a population of 500,000 or more. If the board of education of a school district with a population of

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500,000 or more determines that a pupil who is attending school in the district on a tuition free basis is a nonresident of the district for whom tuition is required to be charged under Section 10-20.12a [105 ILCS 5/10-20.12a], the board shall notify the person who enrolled the pupil of the amount of the tuition charged under Section 10-20.12a [105 ILCS 5/10-20.12a] that is due to the district for the nonresident pupil's attendance in the district's schools. The notice shall be given by certified mail, return receipt requested. Within 10 days after receipt of the notice, the person who enrolled the pupil may request a hearing to review the determination of the school board. The request shall be sent by certified mail, return receipt requested, to the district superintendent. Within 30 days after receipt of the request, the board shall notify, by certified mail, return receipt requested, the person requesting the hearing of the time and place of the hearing, which shall be held not less than 10 nor more than 30 days after the notice of hearing is given. The board or a hearing officer designated by the board shall conduct the hearing. The board and the person who enrolled the pupil may each be represented at the hearing by a representative of their choice. At the hearing, the person who enrolled the pupil shall have the burden of going forward with the evidence concerning the pupil's residency. If the hearing is conducted by a hearing officer, the hearing officer, within 20 days after the conclusion of the hearing, shall serve a written report of his or her findings by personal service or by certified mail, return receipt requested, to the school board and to the person who enrolled the pupil. The person who enrolled the pupil may, within 10 days after receiving the findings, file written objections to the findings with the board of education by sending the objections by certified mail, return receipt requested, addressed to the general superintendent of schools. If the hearing is conducted by the board of education, the board shall, within 45 days after the conclusion of the hearing, decide whether or not the pupil is a resident of the district and the amount of any tuition required to be charged under Section 10-20.12a [105 ILCS 5/10-20.12a] as a result of the pupil's attendance in the schools of the district. If the hearing is conducted by a hearing officer, the board of education shall, within 45 days after the receipt of the hearing officer's findings, decide whether or not the pupil is a resident of the district and the amount of any tuition required to be charged under Section 10-20.12a [105 ILCS 5/10-20.12a] as a result of the pupil's attendance in the schools of the district. The board of education shall send, by certified mail, return receipt requested, a copy of its decision to the person who enrolled the pupil, and the decision of the board shall be final.

(d) If a hearing is requested under subsection (c) or (c-5) to review the determination of the school board or board of education that a nonresident pupil is attending the schools of the district without payment of the tuition required to be charged under Section 10-20.12a [105 ILCS 5/10-20.12a], the pupil may, at the request of a person who enrolled the pupil, continue attendance at the schools of the district pending a final decision of the board following the hearing. However, attendance of that pupil in the schools of the district as authorized by this subsection (d) shall not relieve any person who enrolled the pupil of the obligation to pay the tuition charged for that attendance under Section 10-20.12a [105 ILCS 5/10-20.12a] if the final decision of the board is that the pupil is a nonresident of the district. If a pupil is determined to be a nonresident of the district for whom tuition is required to be charged pursuant to this Section, the board shall refuse to permit the pupil to continue attending the schools of the district unless the required tuition is paid for the pupil.

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(e) Except for a pupil referred to in subsection (b) of Section 10-22.5a [105 ILCS 5/10-22.5a], a pupil referred to in Section 10-20.12a [105 ILCS 5/10-20.12a], or a pupil referred to in subsection (b) of this Section, a person who knowingly enrolls or attempts to enroll in the schools of a school district on a tuition free basis a pupil known by that person to be a nonresident of the district shall be guilty of a Class C misdemeanor.

(f) A person who knowingly or wilfully presents to any school district any false information regarding the residency of a pupil for the purpose of enabling that pupil to attend any school in that district without the payment of a nonresident tuition charge shall be guilty of a Class C misdemeanor.

(g) The provisions of this Section are subject to the provisions of the Education for Homeless Children Act [105 ILCS 45/1-1 et seq.]. Nothing in this Section shall be construed to apply to or require the payment of tuition by a parent or guardian of a "homeless child" (as that term is defined in Section 1-5 of the Education for Homeless Children Act [105 ILCS 45/1-5]) in connection with or as a result of the homeless child's continued education or enrollment in a school that is chosen in accordance with any of the options provided in Section 1-10 of that Act [105 ILCS 45/1-10].

(Source: P.A. 89-480, § 5; 90-566, § 5; 94-309, § 5.)

Effective Date. This section became effective January 1, 1997, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 1997 amendment by P.A. 90-566, effective January 2, 1998, in subsection (c) added the first sentence and in the second sentence inserted "in a school district with a population of less than 500,000"; added subsection (c-5); and in subsection (d), in the first sentence, inserted "or (c-5)", inserted "determination of the", substituted "board or board of education" for "board's determination" and deleted "school" preceding "board following", in the second sentence deleted "school" preceding "board is" and in the third sentence deleted "school" preceding "board shall".

The 2005 amendment by P.A. 94-309, effective July 25, 2005, added (a-5).

CASE NOTES

Analysis

Burden of Proof
Reimbursement

Burden of Proof

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There was no clear error in a hearing officer's determination of a mixed question of fact and law as to whether a child qualified as a resident of a school district for purposes of free high school education; the fact that the family may have had an intent to move back into the district, at least while the child was in school, as soon as one of two houses they owned was habitable was insufficient to support residency where substantial evidence indicated that every decision made was for the sole purpose of qualifying for free student status. Mina v. Bd. of Educ., 348 Ill. App. 3d 264, 284 Ill. Dec. 46, 809 N.E.2d 168, 2004 Ill. App. LEXIS 407 (1 Dist. 2004).

Reimbursement

School district was not entitled to reimbursement from a school board for the educational services provided to a minor in a treatment facility, because the minor's placement was accomplished exclusively pursuant to the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., not under the School Code, and the school board had no input in the minor's placement. Antioch Cmty. High Sch. Dist. 17 v. Bd. of Educ., 373 Ill. App. 3d 544, 311 Ill. Dec. 407, 868 N.E.2d 1068, 2007 Ill. App. LEXIS 474 (1 Dist. 2007).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Criminal Law and Procedure," see 21 S. Ill. U.L.J. 759 (1997).

§ 105 ILCS 5/10-20.13. Textbooks for children of parents unable to buy them and other fees

Sec. 10-20.13. Textbooks for children of parents unable to buy them and other fees. (a) To purchase, at the expense of the district, a sufficient number of textbooks for children whose parents are unable to buy them, including but not limited to children living in households that meet the free lunch or breakfast eligibility guidelines established by the federal government pursuant to Section 1758 of the federal Richard B. Russell National School Lunch Act (42 U.S.C. 1758; 7 C.F.R. 245 et seq.), subject to verification as set forth in subsection (c) of this Section. Such textbooks shall be loaned only, and the directors shall require the teacher to see that they are properly cared for and returned at the end of each term of school.

(b) To waive all fees assessed by the district on children whose parents are unable to afford them, including but not limited to children living in households that meet the free lunch or breakfast eligibility guidelines established by the federal government pursuant to Section 1758 of the federal Richard B. Russell National School Lunch Act, subject to verification as set forth in subsection (c) of this Section. The school board shall adopt written policies and procedures for such waiver of fees in accordance with regulations promulgated by the State Board of Education.

(c) Any school board that participates in a federally funded, school-based child nutrition program and uses a student's application for, eligibility for, or participation in the federally funded, school-based child nutrition program as the basis for waiving fees

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assessed by the school district must follow the verification requirements of the federally funded, school-based child nutrition program (42 U.S.C. 1758; 7 C.F.R. 245.6a).

A school board that establishes a process for the determination of eligibility for waiver of fees assessed by the school district that is completely independent of a student's application for, eligibility for, or participation in a federally funded, school-based child nutrition program may provide for fee waiver verification no more often than every 60 calendar days. Information obtained during the independent, fee waiver verification process indicating that the student does not meet free lunch or breakfast eligibility guidelines may be used to deny the waiver of the student's fees, provided that any information obtained through this independent process for determining or verifying eligibility for fee waivers shall not be used to determine or verify eligibility for any federally funded, school-based child nutrition program.

(Source: P.A. 86-195; 96-360, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.13.

Effect of Amendments. The 2009 amendment by P.A. 96-360, effective September 1, 2009, substituted "living in households that meet the free lunch or breakfast eligibility guidelines established by the federal government pursuant to Section 1758 of the federal Richard B. Russell National School Lunch Act (42 U.S.C. 1758; 7 C.F.R. 245 et seq.), subject to verification as set forth in subsection (c) of this Section" for "eligible for free lunches or breakfasts under the Community School Lunch Program" in the first sentence of (a) and (b); added (c); and made a stylistic change.

CASE NOTES

Analysis

Ability to Pay
Standing

Ability to Pay

A complaint which did not allege that plaintiff could not afford to pay textbook rental or purchase textbooks did not bring plaintiff within the operation of this section and he was not adversely affected by it. Hamer v. Board of Educ., 47 Ill. 2d 480, 265 N.E.2d 616 (1970).

Standing

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Plaintiff may have standing as a resident and taxpayer to challenge the constitutionality of this section, even though he is not affected by the section except as a taxpayer, but must bring the action as a taxpayer. Hamer v. Board of Educ., 47 Ill. 2d 480, 265 N.E.2d 616 (1970).

§ 105 ILCS 5/10-20.14. Student discipline policies; Parent-teacher advisory committee

Sec. 10-20.14. Student discipline policies; Parent-teacher advisory committee. (a) To establish and maintain a parent-teacher advisory committee to develop with the school board policy guidelines on pupil discipline, including school searches, to furnish a copy of the policy to the parents or guardian of each pupil within 15 days after the beginning of the school year, or within 15 days after starting classes for a pupil who transfers into the district during the school year, and to require that each school informs its pupils of the contents of its policy. School boards, along with the parent-teacher advisory committee, are encouraged to annually review their pupil discipline policies, the implementation of those policies, and any other factors related to the safety of their schools, pupils, and staff.

(b) The parent-teacher advisory committee in cooperation with local law enforcement agencies shall develop, with the school board, policy guideline procedures to establish and maintain a reciprocal reporting system between the school district and local law enforcement agencies regarding criminal offenses committed by students.

(c) The parent-teacher advisory committee, in cooperation with school bus personnel, shall develop, with the school board, policy guideline procedures to establish and maintain school bus safety procedures. These procedures shall be incorporated into the district's pupil discipline policy.

(d) The school board, in consultation with the parent-teacher advisory committee and other community-based organizations, must include provisions in the student discipline policy to address students who have demonstrated behaviors that put them at risk for aggressive behavior, including without limitation bullying, as defined in the policy. These provisions must include procedures for notifying parents or legal guardians and early intervention procedures based upon available community-based and district resources.

(Source: P.A. 84-126; 88-376, § 5; 89-610, § 5; 91-272, § 5; 92-260, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.14.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 1.280, 1.285.

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Effect of Amendments. The 1993 amendment by P.A. 88-376, effective January 1, 1994, added the second sentence.

The 1996 amendment by P.A. 89-610, effective August 6, 1996, in the section catchline added "Student discipline policies" at the beginning; added the subsection (a) designation; in subsection (a), in the first sentence, inserted "including school searches" and added the second sentence; added the subsection (b) designation; and in subsection (b) substituted "The parent-teacher advisory" for "In addition, the" and inserted a comma after "develop".

The 1999 amendment by P.A. 91-272, effective January 1, 2000, added subsection (c).

The 2001 amendment by P.A. 92-260, effective January 1, 2002, added subsection (d).

CASE NOTES

Reciprocal Reporting

Once school officials received a report of a student's inebriation through a reciprocal reporting agreement with the police department, even though police violated student's right to confidentiality under 705 ILCS 405/1-7 by releasing the report, school officials were not precluded from commencing disciplinary action based on the report. Jordan v. O'Fallon Tp. High Sch. Dist. No. 203, 302 Ill. App. 3d 1070, 235 Ill. Dec. 877, 706 N.E.2d 137 (5 Dist. 1999).

Under a reciprocal reporting agreement between school and police department, a police report on a student's inebriation was improperly provided to school officials since this report did not pertain to specific offenses referred to in 705 ILCS 405/1-7(A)(8) and the police officers were compelled to guard its confidentiality. Jordan v. O'Fallon Tp. High Sch. Dist. No. 203, 302 Ill. App. 3d 1070, 235 Ill. Dec. 877, 706 N.E.2d 137 (5 Dist. 1999).

OPINIONS OF ATTORNEY GENERAL

Analysis

Reciprocal Reporting.
Suspected Criminal Activity.

Reciprocal Reporting.

A reciprocal reporting agreement may include the sharing of information regarding acts of students who have not been adjudicated delinquent. 1996 Op. Atty. Gen. (96-040).

This section contemplates the exchange of information concerning allegations of criminal offenses by students, and not merely those incidents which result in an adjudication of delinquency. 1996 Op. Atty. Gen. (96-040).

Suspected Criminal Activity.

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Because suspected criminal activity is not information falling within the scope of the Student Records Act merely because it may be recorded by school officials, however school officials may, in accordance with any agreement developed, report any alleged or suspected criminal acts to the police. 1996 Op. Atty. Gen. (96-040).

§ 105 ILCS 5/10-20.14a. Meal breaks for noncertificated employees

Sec. 10-20.14a. Meal breaks for noncertificated employees. To provide each noncertificated employee who works 71/2 continuous hours or longer with at least 30 minutes duty free for a meal break beginning no later than 5 hours after the start of the work period.

(Source: P.A. 84-1294.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.14a.

§ 105 ILCS 5/10-20.14b. Medications policy

Sec. 10-20.14b. Medications policy. To develop a policy for administration of medications in schools, to furnish a copy of the policy to the parents or guardians of each pupil within 15 days after the beginning of each school year, or within 15 days after starting classes for a pupil who transfers into the district, and to require that each school informs its pupils of the contents of its policy.

(Source: P.A. 86-1441; 90-789, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.14b.

Effect of Amendments. The 1998 amendment by P.A. 90-789, effective August 14, 1998, rewrote the section, which previously provided for the establishment of a parent-teacher advisory committee to develop guidelines for the administration of medications.

§ 105 ILCS 5/10-20.15. Payment of teachers

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Sec. 10-20.15. Payment of teachers. To pay no public money to any teacher unless the teacher at the time of his employment held a certificate of qualification obtained under the provisions of this Act, has kept and furnished schedules as required by this Act, and has satisfactorily accounted for books, apparatus and other property of the district that he may have taken in charge.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.15.

§ 105 ILCS 5/10-20.15a. Federal Social Security or Medicare withholdings

Sec. 10-20.15a. Federal Social Security or Medicare withholdings. To the extent that federal law allows such coverage, school districts shall make Social Security or Medicare withholdings, or both, for employees subject to Articles 16 and 17 of the "Illinois Pension Code" [40 ILCS 5/16-101 et seq. and 40 ILCS 5/17-101 et seq.] only upon the approval of a referendum under Section 21-105 of that Act [40 ILCS 5/21-105] applicable to such employees.

(Source: P.A. 84-1334.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.15a.

§ 105 ILCS 5/10-20.16: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/10-20.17. Water supply

Sec. 10-20.17. Water supply. To provide for the schools in their districts an adequate, clear, palatable, and safe supply of water for drinking purposes and for general school use in accordance with Sections 2 and 8.1 of the Department of Public Health Act [20 ILCS 2305/2 and 20 ILCS 2305/8.1].

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(Source: Laws 1961, p. 31; P.A. 87-984, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.17.

Effect of Amendments. The 1992 amendment by P.A. 87-984, effective January 1, 1993, added "in accordance with Sections 2 and 8.1 of the Department of Public Health Act".

§ 105 ILCS 5/10-20.17a. Hazardous materials training

Sec. 10-20.17a. Hazardous materials training. To enhance the safety of pupils and staff by providing in-service training programs on the safe handling and use of hazardous or toxic materials for personnel in the district who work with such materials on a regular basis. Such programs shall be approved by the State Board of Education in consultation with the Illinois Department of Public Health.

(Source: P.A. 84-1294.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.17a.

§ 105 ILCS 5/10-20.18: Repealed by P.A. 89-159, § 15, effective January 1, 1996.

§ 105 ILCS 5/10-20.19. Payment of orders

Sec. 10-20.19. Payment of orders. Subject to the provisions of Article 1B in the case of a school district receiving emergency State financial assistance, the school board shall pay all orders in accordance with Section 10-18 of this Act [105 ILCS 5/10-18], except as herein provided:

(1) It shall be lawful for the school board to submit to the treasurer a certified copy of those portions of the board minutes, properly signed by the secretary and president, or a majority of the board, showing all bills approved for payment by the board and clearly showing to whom, and for what purpose each payment is to be made by the treasurer, and to what budgetary item each payment shall be debited, and such certified copy shall serve as full authority to the treasurer to make the payments as thus approved; this shall not

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preclude the use of a voucher system, or any other system of sound accounting and business procedure, provided that such system reflects the facts, and that the same is in accordance with the regulations prescribed by or approved by the Superintendent of Public Instruction.

(2) It shall be lawful for the school board by resolution to establish revolving funds for school cafeterias, lunch rooms, athletics, petty cash or similar purposes, provided such funds are in the custody of an employee who shall be bonded as provided in Article 8 of this Act for bonding school treasurers and who shall be responsible to the board and to the treasurer, subject to regular annual audit by licensed public accountants and other such examinations as the school board shall deem advisable and kept in accordance with regulations prescribed by the Superintendent of Public Instruction. A monthly report and an annual summary of all receipts and expenditures of the fund shall be submitted to the school board and the treasurer. All funds advanced by the treasurer to operate such revolving funds shall be carried on the treasurer's books as cash obligations due to the district and all receipts of such revolving funds shall be deposited daily in a bank or savings and loan association to be approved by the treasurer, unless there is no bank or savings and loan association in the community, in which event receipts shall be deposited intact not less than once each week in the bank or savings and loan association approved by the treasurer. All reimbursements to any such revolving funds from the district funds shall be completely itemized as to whom paid, for what purpose, and against what budgetary item the expenditure is chargeable.

No bank or savings and loan association shall receive public funds as permitted by this Section, unless it has complied with the requirements established pursuant to Section 6 [30 ILCS 235/6] of "An Act relating to certain investments of public funds by public agencies", approved July 23, 1943, as now or hereafter amended.

(3) The school board shall establish rules and regulations governing conditions under which school classes, clubs, and associations may collect or acquire funds in the name of any school; and, under such regulations as the Superintendent of Public Instruction may prescribe, provide for the safeguarding of such funds for the educational, recreational, or cultural purposes they are designed to serve.

(4) It shall be lawful for the clerk or secretary of the board to certify to the school treasurer the amount of the obligation for Social Security taxes as required by the Social Security Enabling Act [40 ILCS 5/21-101 et seq.] and the amount of recurring bills, such as utility bills, showing the amount and to whom payment is to be made and what budgetary item or items the payment shall be debited from, and such certification shall serve as full authority to the treasurer to make such payment.

(Source: P.A. 86-954; 96-998, § 5.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.19.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 1.420, 110.125.

Effect of Amendments. The 2010 amendment by P.A. 96-998, effective July 2, 2010, inserted "and the amount of recurring bills, such as utility bills" following "Social Security Enabling Act" in (4); and made a stylistic change.

§ 105 ILCS 5/10-20.19a. Kindergartens

Sec. 10-20.19a. Kindergartens. After July 1, 1970, to establish and maintain kindergartens for the instruction of children in accordance with rules and regulations prescribed by the State Board of Education. Such kindergartens may provide for either a 1/2 day or a full day of attendance for pupils enrolled therein.

(Source: P.A. 84-18.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.19a.

§ 105 ILCS 5/10-20.19b. [Prompt payment]

Sec. 10-20.19b. Purchases made pursuant to this Act shall be made in compliance with the "Local Government Prompt Payment Act", approved by the Eighty-fourth General Assembly [50 ILCS 505/1 et seq.].

(Source: P.A. 84-731.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.19b.

§ 105 ILCS 5/10-20.19c. Recycled paper and paper products and solid waste management

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Sec. 10-20.19c. Recycled paper and paper products and solid waste management. (a) Definitions. As used in this Section, the following terms shall have the meanings indicated, unless the context otherwise requires:

"Deinked stock" means paper that has been processed to remove inks, clays, coatings, binders and other contaminants.

"High grade printing and writing papers" includes offset printing paper, duplicator paper, writing paper (stationery), tablet paper, office paper, note pads, xerographic paper, envelopes, form bond including computer paper and carbonless forms, book papers, bond papers, ledger paper, book stock and cotton fiber papers.

"Paper and paper products" means high grade printing and writing papers, tissue products, newsprint, unbleached packaging and recycled paperboard.

"Postconsumer material" means only those products generated by a business or consumer which have served their intended end uses, and which have been separated or diverted from solid waste; wastes generated during the production of an end product are excluded.

"Recovered paper material" means paper waste generated after the completion of the papermaking process, such as postconsumer materials, envelope cuttings, bindery trimmings, printing waste, cutting and other converting waste, butt rolls, and mill wrappers, obsolete inventories, and rejected unused stock. "Recovered paper material", however, does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls (mill broke), or fibrous byproducts of harvesting, extraction or woodcutting processes, or forest residues such as bark.

"Recycled paperboard" includes paperboard products, folding cartons and pad backings.

"Tissue products" includes toilet tissue, paper towels, paper napkins, facial tissue, paper doilies, industrial wipers, paper bags and brown papers. These products shall also be unscented and shall not be colored.

"Unbleached packaging" includes corrugated and fiber storage boxes.

(a-5) Each school district shall periodically review its procurement procedures and specifications related to the purchase of products and supplies. Those procedures and specifications must be modified as necessary to require the school district to seek out products and supplies that contain recycled materials and to ensure that purchased products and supplies are reusable, durable, or made from recycled materials, if economically and practically feasible. In selecting products and supplies that contain recycled material, preference must be given to products and supplies that contain the highest amount of recycled material and that are consistent with the effective use of the product or supply, if economically and practically feasible.

(b) Wherever economically and practically feasible, as determined by the school board, the school board, all public schools and attendance centers within a school district, and their school supply stores shall procure recycled paper and paper products as follows:

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(1) Beginning July 1, 2008, at least 10% of the total dollar value of paper and paper products purchased by school boards, public schools and attendance centers, and their school supply stores shall be recycled paper and paper products.

(2) Beginning July 1, 2011, at least 25% of the total dollar value of paper and paper products purchased by school boards, public schools and attendance centers, and their school supply stores shall be recycled paper and paper products.

(3) Beginning July 1, 2014, at least 50% of the total dollar value of paper and paper products purchased by school boards, public schools and attendance centers, and their school supply stores shall be recycled paper and paper products.

(4) Beginning July 1, 2020, at least 75% of the total dollar value of paper and paper products purchased by school boards, public schools and attendance centers, and their school supply stores shall be recycled paper and paper products.

(5) Beginning upon the effective date of this amendatory Act of 1992, all paper purchased by the board of education, public schools and attendance centers for publication of student newspapers shall be recycled newsprint. The amount purchased shall not be included in calculating the amounts specified in paragraphs (1) through (4).

(c) Paper and paper products purchased from private sector vendors pursuant to printing contracts are not considered paper and paper products for the purposes of subsection (b), unless purchased under contract for the printing of student newspapers.

(d)(1) Wherever economically and practically feasible, the recycled paper and paper products referred to in subsection (b) shall contain postconsumer or recovered paper materials as specified by paper category in this subsection:

(i) Recycled high grade printing and writing paper shall contain at least 50% recovered paper material. Such recovered paper material, until July 1, 2008, shall consist of at least 20% deinked stock or postconsumer material; and beginning July 1, 2008, shall consist of at least 25% deinked stock or postconsumer material; and beginning July 1, 2010, shall consist of at least 30% deinked stock or postconsumer material; and beginning July 1, 2012, shall consist of at least 40% deinked stock or postconsumer material; and beginning July 1, 2014, shall consist of at least 50% deinked stock or postconsumer material.

(ii) Recycled tissue products, until July 1, 1994, shall contain at least 25% postconsumer material; and beginning July 1, 1994, shall contain at least 30% postconsumer material; and beginning July 1, 1996, shall contain at least 35% postconsumer material; and beginning July 1, 1998, shall contain at least 40% postconsumer material; and beginning July 1, 2000, shall contain at least 45% postconsumer material.

(iii) Recycled newsprint, until July 1, 1994, shall contain at least 40% postconsumer material; and beginning July 1, 1994, shall contain at least 50% postconsumer material; and beginning July 1, 1996, shall contain at least 60% postconsumer material; and beginning July 1, 1998, shall contain at least 70% postconsumer material; and beginning July 1, 2000, shall contain at least 80% postconsumer material.

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(iv) Recycled unbleached packaging, until July 1, 1994, shall contain at least 35% postconsumer material; and beginning July 1, 1994, shall contain at least 40% postconsumer material; and beginning July 1, 1996, shall contain at least 45% postconsumer material; and beginning July 1, 1998, shall contain at least 50% postconsumer material; and beginning July 1, 2000, shall contain at least 55% postconsumer material.

(v) Recycled paperboard, until July 1, 1994, shall contain at least 80% postconsumer material; and beginning July 1, 1994, shall contain at least 85% postconsumer material; and beginning July 1, 1996, shall contain at least 90% postconsumer material; and beginning July 1, 1998, shall contain at least 95% postconsumer material.

(2) For the purposes of this Section, "postconsumer material" includes:

(i) paper, paperboard, and fibrous waste from retail stores, office buildings, homes and so forth, after the waste has passed through its end usage as a consumer item, including used corrugated boxes, old newspapers, mixed waste paper, tabulating cards, and used cordage; and

(ii) all paper, paperboard, and fibrous wastes that are diverted or separated from the municipal waste stream.

(3) For the purposes of this Section, "recovered paper material" includes:

(i) postconsumer material;

(ii) dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets), including envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming and other converting operations, or from bag, box and carton manufacturing, and butt rolls, mill wrappers, and rejected unused stock; and

(iii) finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters or others.

(e) Nothing in this Section shall be deemed to apply to art materials, nor to any newspapers, magazines, text books, library books or other copyrighted publications which are purchased or used by any school board or any public school or attendance center within a school district, or which are sold in any school supply store operated by or within any such school or attendance center, other than newspapers written, edited or produced by students enrolled in the school district, public school or attendance center.

(e-5) Each school district shall periodically review its procedures on solid waste reduction regarding the management of solid waste generated by academic, administrative, and other institutional functions. Those waste reduction procedures must be designed to, when economically and practically feasible, recycle the school district's waste stream, including without limitation landscape waste, computer paper, and white office paper. School districts are encouraged to have procedures that provide for the investigation of potential markets for other recyclable materials that are present in the

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school district's waste stream. The waste reduction procedures must be designed to achieve, before July 1, 2020, at least a 50% reduction in the amount of solid waste that is generated by the school district.

(f) The State Board of Education, in coordination with the Departments of Central Management Services and Commerce and Economic Opportunity, may adopt such rules and regulations as it deems necessary to assist districts in carrying out the provisions of this Section.

(Source: P.A. 87-626; 87-1082, § 1; 89-445, § 9H-4; 94-793, § 625; 95-741, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.19c.

Section 995 of P.A. 94-793 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 1992 amendment by P.A. 87-1082, effective January 1, 1993, added subdivision (b)(5); in subsection (c) added at the end of the sentence "unless purchased under contract for the printing of student newspapers."; and in subsection (e) added at the end of the paragraph "other than newspapers written, edited or produced by students enrolled in the school district, public school or attendance center."

The 1996 amendment by P.A. 89-445, effective February 7, 1996, in subsection (f) substituted "Commerce and Community Affairs" for "Energy and Natural Resources".

The 2006 amendment by revisory act P.A. 94-793, effective May 19, 2006, substituted references to "Governor's Office of Management and Budget" for references to "Bureau of the Budget", and substituted references to "Department of Commerce and Economic Opportunity" for references to "Department of Commerce and Community Affairs".

The 2008 amendment by P.A. 95-741, effective July 18, 2008, revised the section heading; added (a-5); revised the dates and percentages in (b)(1) through (b)(4); revised the dates in (d)(1)(i); added (e-5); and made related and stylistic changes.

§ 105 ILCS 5/10-20.20. Protection from suit

Sec. 10-20.20. Protection from suit. To indemnify and protect school districts, members of school boards, employees, volunteer personnel authorized in Sections 10-22.34, 10-22.34a and 10-22.34b of this Code [105 ILCS 5/10-22.34, 105 ILCS 5/10-22.34a and 105 ILCS 5/10-22.34b], mentors of certified staff as authorized in Article 21A and Sections 2-3.53a, 2-3.53b, and 34-18.33 of this Code [105 ILCS 5/21A and 105 ILCS 5/2-3.53a, 105 ILCS 5/2-3.53b, and 105 ILCS 5/34-18.33], and student teachers against civil rights damage claims and suits, constitutional rights damage claims and suits and death and bodily injury and property damage claims and suits, including defense thereof, when damages are sought for negligent or wrongful acts alleged to have been committed in the

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scope of employment or under the direction of the board or related to any mentoring services provided to certified staff of the school district. Such indemnification and protection shall extend to persons who were members of school boards, employees of school boards, authorized volunteer personnel, mentors of certified staff, or student teachers at the time of the incident from which a claim arises. No agent may be afforded indemnification or protection unless he was a member of a school board, an employee of a board, an authorized volunteer, a mentor of certified staff, or a student teacher at the time of the incident from which the claim arises.

(Source: P.A. 79-210; 96-62, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.20.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 56.50.

Effect of Amendments. The 2009 amendment by P.A. 96-62, effective July 23, 2009, in the first sentence, inserted "mentors of certified staff as authorized in Article 21A and Sections 2-3.53a, 2-3.53b, and 34-18.33 of this Code" and added "or related to any mentoring services provided to certified staff of the school district"; in the second and third sentences inserted "mentors of certified staff"; and made related changes.

CASE NOTES

Analysis

Constitutionality
Duty to Defend Employee
- Scope of Employment
Indemnification
Litigation Concerning Policy
- Analysis
Suit for Wrongful Discharge

Constitutionality

A school board has no authority to look behind the allegations of a civil rights complaint and make its own determination of whether its employee in fact was acting withing the scope of his employment before providing the employee with a defense. Deloney v. Board of Educ., 281 Ill. App. 3d 775, 217 Ill. Dec. 123, 666 N.E.2d 792 (1 Dist. 1996).

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Duty to Defend Employee

- Scope of Employment

School Board's duties to indemnify and defend its employees are triggered when "scope of employment" allegations are made in the damage claim or suit. Deloney v. Board of Educ., 281 Ill. App. 3d 775, 217 Ill. Dec. 123, 666 N.E.2d 792 (1 Dist. 1996).

Indemnification

School superintendent's motion for disqualification of co-defendant school district's counsel was denied where the school district and other co-defendants had never been directly adverse to the superintendent and the school district was statutorily bound to indemnify and hold harmless all its officers and employees for liability for acts committed within their official capacity within the scope of their employment. Rojicek v. River Trails Sch. Dist. 26, F. Supp. 2d , 2003 U.S. Dist. LEXIS 6324 (N.D. Ill. Apr. 16, 2003).

Although the statute imposes a duty on school districts to indemnify their employees for accidents arising within the scope of employment, the construction of an insurance policy issued to a school board to provide only excess coverage for an accident involving a teacher who was acting within the scope of her employment would not contravene the public policy expressed in the statute; thus, the determination of whether the school board's policy or the teacher's policy provided primary coverage for the accident was a strict contract dispute. Country Mut. Ins. Co. v. Teachers Ins. Co., 195 Ill. 2d 322, 253 Ill. Dec. 904, 746 N.E.2d 725, 2001 Ill. LEXIS 245 (2001).

Litigation Concerning Policy

- Analysis

Where an insurance policy was issued to a school district to comply with the mandate of this section, a questionable claim should have been analyzed both under this section and the applicable policy provisions. Board of Educ. v. Country Mut. Ins. Co., 121 Ill. App. 3d 124, 76 Ill. Dec. 636, 459 N.E.2d 273 (3 Dist 1984).

Suit for Wrongful Discharge

A lawsuit by a school principal who sued a school district for breach of his employment contract by wrongful discharge did not come within the coverage of a statutorily required insurance policy under which the district was insured because it was neither a claim described in this section nor a claim for compensatory damages. Board of Educ. v. Country Mut. Ins. Co., 121 Ill. App. 3d 124, 76 Ill. Dec. 636, 459 N.E.2d 273 (3 Dist 1984).

LEGAL PERIODICALS

For note on school law and torts, discussing Kobylanski v. Chicago Bd. of Ed., 63 Ill. 2d 165, 347 N.E.2d 705 (1976), see 65 Ill. B.J. 466 (1977).

§ 105 ILCS 5/10-20.21. Contracts

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Sec. 10-20.21. Contracts. (a) To award all contracts for purchase of supplies, materials or work or contracts with private carriers for transportation of pupils involving an expenditure in excess of $25,000 or a lower amount as required by board policy to the lowest responsible bidder, considering conformity with specifications, terms of delivery, quality and serviceability, after due advertisement, except the following: (i) contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part; (ii) contracts for the printing of finance committee reports and departmental reports; (iii) contracts for the printing or engraving of bonds, tax warrants and other evidences of indebtedness; (iv) contracts for the purchase of perishable foods and perishable beverages; (v) contracts for materials and work which have been awarded to the lowest responsible bidder after due advertisement, but due to unforeseen revisions, not the fault of the contractor for materials and work, must be revised causing expenditures not in excess of 10% of the contract price; (vi) contracts for the maintenance or servicing of, or provision of repair parts for, equipment which are made with the manufacturer or authorized service agent of that equipment where the provision of parts, maintenance, or servicing can best be performed by the manufacturer or authorized service agent; (vii) purchases and contracts for the use, purchase, delivery, movement, or installation of data processing equipment, software, or services and telecommunications and interconnect equipment, software, and services; (viii) contracts for duplicating machines and supplies; (ix) contracts for the purchase of natural gas when the cost is less than that offered by a public utility; (x) purchases of equipment previously owned by some entity other than the district itself; (xi) contracts for repair, maintenance, remodeling, renovation, or construction, or a single project involving an expenditure not to exceed $50,000 and not involving a change or increase in the size, type, or extent of an existing facility; (xii) contracts for goods or services procured from another governmental agency; (xiii) contracts for goods or services which are economically procurable from only one source, such as for the purchase of magazines, books, periodicals, pamphlets and reports, and for utility services such as water, light, heat, telephone or telegraph; (xiv) where funds are expended in an emergency and such emergency expenditure is approved by 3/4 of the members of the board; (xv) State master contracts authorized under Article 28A of this Code [105 ILCS 5/28A-5 et seq.]; and (xvi) contracts providing for the transportation of pupils with special needs or disabilities, which contracts must be advertised in the same manner as competitive bids and awarded by first considering the bidder or bidders most able to provide safety and comfort for the pupils with special needs or disabilities, stability of service, and any other factors set forth in the request for proposal regarding quality of service, and then price.

All competitive bids for contracts involving an expenditure in excess of $25,000 or a lower amount as required by board policy must be sealed by the bidder and must be opened by a member or employee of the school board at a public bid opening at which the contents of the bids must be announced. Each bidder must receive at least 3 days' notice of the time and place of the bid opening. For purposes of this Section due advertisement includes, but is not limited to, at least one public notice at least 10 days before the bid date in a newspaper published in the district, or if no newspaper is published in the district, in a newspaper of general circulation in the area of the district.

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State master contracts and certified education purchasing contracts, as defined in Article 28A of this Code, are not subject to the requirements of this paragraph.

Under this Section, the acceptance of bids sealed by a bidder and the opening of these bids at a public bid opening may be permitted by an electronic process for communicating, accepting, and opening competitive bids. However, bids for construction purposes are prohibited from being communicated, accepted, or opened electronically. An electronic bidding process must provide for, but is not limited to, the following safeguards:

(1) On the date and time certain of a bid opening, the primary person conducting the competitive, sealed, electronic bid process shall log onto a specified database using a unique username and password previously assigned to the bidder to allow access to the bidder's specific bid project number.

(2) The specified electronic database must be on a network that (i) is in a secure environment behind a firewall; (ii) has specific encryption tools; (iii) maintains specific intrusion detection systems; (iv) has redundant systems architecture with data storage back-up, whether by compact disc or tape; and (v) maintains a disaster recovery plan.

It is the legislative intent of Public Act 96-841 to maintain the integrity of the sealed bidding process provided for in this Section, to further limit any possibility of bid-rigging, to reduce administrative costs to school districts, and to effect efficiencies in communications with bidders.

(b) To require, as a condition of any contract for goods and services, that persons bidding for and awarded a contract and all affiliates of the person collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the provisions of the Illinois Use Tax Act [35 ILCS 105/1 et seq.] regardless of whether the person or affiliate is a "retailer maintaining a place of business within this State" as defined in Section 2 of the Use Tax Act [35 ILCS 105/2]. For purposes of this Section, the term "affiliate" means any entity that (1) directly, indirectly, or constructively controls another entity, (2) is directly, indirectly, or constructively controlled by another entity, or (3) is subject to the control of a common entity. For purposes of this subsection (b), an entity controls another entity if it owns, directly or individually, more than 10% of the voting securities of that entity. As used in this subsection (b), the term "voting security" means a security that (1) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (2) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.

To require that bids and contracts include a certification by the bidder or contractor that the bidder or contractor is not barred from bidding for or entering into a contract under this Section and that the bidder or contractor acknowledges that the school board may declare the contract void if the certification completed pursuant to this subsection (b) is false.

(b-5) To require all contracts and agreements that pertain to goods and services and that are intended to generate additional revenue and other remunerations for the school district

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in excess of $1,000, including without limitation vending machine contracts, sports and other attire, class rings, and photographic services, to be approved by the school board. The school board shall file as an attachment to its annual budget a report, in a form as determined by the State Board of Education, indicating for the prior year the name of the vendor, the product or service provided, and the actual net revenue and non-monetary remuneration from each of the contracts or agreements. In addition, the report shall indicate for what purpose the revenue was used and how and to whom the non-monetary remuneration was distributed.

(c) If the State education purchasing entity creates a master contract as defined in Article 28A of this Code, then the State education purchasing entity shall notify school districts of the existence of the master contract.

(d) In purchasing supplies, materials, equipment, or services that are not subject to subsection (c) of this Section, before a school district solicits bids or awards a contract, the district may review and consider as a bid under subsection (a) of this Section certified education purchasing contracts that are already available through the State education purchasing entity.

(Source: P.A. 86-411; 87-414; 93-25, § 30-30; 93-1036, § 90; 94-714, § 5; 95-990, § 5; 96-392, § 5; 96-841, § 5; 96-1000, § 260.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.21.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 525.160.

Effect of Amendments. The 2003 amendment by P.A. 93-25, effective June 20, 2003, added the subsection (a) designation and subsection (b).

The 2004 amendment by P.A. 93-1036, effective September 14, 2004, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2005 amendment by P.A. 94-714, effective July 1, 2006, added (b-5).

The 2008 amendment by P.A. 95-990, effective October 3, 2008, substituted "$25,000 or a lower amount as required by board policy" for "$10,000" twice, and substituted "$50,000" for "$20,000" in (a).

The 2009 amendment by P.A. 96-392, effective January 1, 2010, added item (xvi) at the end of the first paragraph of (a) and made a related change.

The 2009 amendment by P.A. 96-841, effective December 23, 2009, added the last two paragraphs of (a).

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The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, substituted "Public Act 96-841" for "this amendatory Act of the 96th General Assembly" in the last paragraph of (a).

CASE NOTES

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Competitive Bidding

In a bus corporation's suit against a competitor, the trial court erred by dismissing its breach of fiduciary duty claims against a certain former employee and an officer of the bus corporation who created the competitor as the trial court erred in determining that the Illinois Trade Secrets Act, 765 ILCS 1065/1 et seq., preempted those claims since the bus corporation's claim that the former employee and officer used trade secrets in preparing a bid for a public school transportation contract did not depend upon the misappropriation of a trade secret and, therefore, the Trade Secrets Act did not preempt the claim. The trial court properly dismissed the bus corporation's misappropriation claims since the pleadings did not meet the statutory definition of a trade secret in that the bus corporation failed to attach any evidence to the complaint with regard to a confidential investor memorandum and bank financing application's financial statements and

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failed to establish why they were unavailable to the competitor. Alpha Sch. Bus Co. v. Wagner, 391 Ill. App. 3d 722, 331 Ill. Dec. 378, 910 N.E.2d 1134, 2009 Ill. App. LEXIS 275 (1 Dist. 2009).

High school district's no-bid vendor contracts for the purchase of electricity and natural gas were specifically exempt from the competitive bidding provision of the School Code, 105 ILCS 5/10-20.21(a)(xiii), under the plain meaning of the language in the statute. Tarsitano v. Bd. of Educ., 385 Ill. App. 3d 868, 324 Ill. Dec. 573, 896 N.E.2d 359, 2008 Ill. App. LEXIS 954 (1 Dist. 2008).

Legislature intended that contracts for goods and services that were economically procurable from only one source and those for utility services were to be exempt from the competitive bidding provision of the School Code, 105 ILCS 5/10-20.21(a)(xiii). Following doctrine of the last antecedent, the phrase "such as for the purchase of magazines, books, periodicals, pamphlets and reports" modified the clause "contracts for goods or services which are economically procurable from only one source"; the word "and" joined the third clause "for utility services such as water, light, heat, telephone or telegraph" to the first clause, "contracts for goods or services which are economically procurable from only one source," indicating the latter was to be added to or taken along with the first. Tarsitano v. Bd. of Educ., 385 Ill. App. 3d 868, 324 Ill. Dec. 573, 896 N.E.2d 359, 2008 Ill. App. LEXIS 954 (1 Dist. 2008).

- HMO Contracts

Because the health maintenance organization (HMO) industry is highly competitive, contracts do not involve the type of professional skills which would render them not adapted to competitive bidding, and because the medical benefits contracts at issue were not awarded on the basis of the professional skills, program offerings or cost effectiveness of each HMO, but, rather on the number of enrollees in each of the HMO plans offered to school employees, there was no error in the trial court's ruling that HMO contracts are not exempt from the competitive bidding provision of the School Code. Compass Health Care Plans v. Board of Educ., 246 Ill. App. 3d 746, 186 Ill. Dec. 767, 617 N.E.2d 6 (1 Dist. 1992).

Construction

- Service Ability

The term "service ability" refers to the durability or usefulness and fitness of the supplies, materials or work on which bids are solicited; therefore, an argument that the term allows consideration of the response time of a bidder (when no such requirement is included in the bid specifications) must fail. Doyle Plumbing & Heating Co. v. Board of Educ., 291 Ill. App. 3d 221, 225 Ill. Dec. 362, 683 N.E.2d 530 (4 Dist. 1997), appeal denied, 174 Ill. 2d 558, 227 Ill. Dec. 4, 686 N.E.2d 1160 (1997).

Damages

- Suit by Unsuccessful Bidder

Action of public officials in failing to award the contract to the lowest bidder should not penalize the public by first requiring the unjustified additional expenditure of public funds on the awarded contract and then by allowing damages to the aggrieved low bidder. Premier Elec. Constr. Co. v. Board of Educ., 70 Ill. App. 3d 866, 27 Ill. Dec. 125, 388 N.E.2d 1088 (1 Dist. 1979).

Where no contract exists, Illinois law forecloses a private cause of action to an unsuccessful bidder for recovery of damages. Premier Elec. Constr. Co. v. Board of Educ., 70 Ill. App. 3d 866, 27 Ill. Dec. 125, 388 N.E.2d 1088 (1 Dist. 1979).

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Formation of Contract

- Not Shown

Where an unsuccessful bidder's evidence of lack of receipt was considered in contraposition to the Board of Education's lack of evidence showing that an amendment to the bid was actually mailed to anyone, formation of valid contract between the Board of Education and a successful bidder was not established. Willett Motor Coach Co. v. Board of Educ., 103 Ill. App. 3d 760, 59 Ill. Dec. 433, 431 N.E.2d 1190 (1 Dist. 1981), cert. denied, 459 U.S. 944, 103 S. Ct. 258, 74 L. Ed. 2d 202 (1982).

Lowest Responsible Bidder

- In General

The competitive bidding statute does not automatically compel the Board of Education to award a contract solely on the basis of the lowest cost. Compass Health Care Plans v. Board of Educ., 246 Ill. App. 3d 746, 186 Ill. Dec. 767, 617 N.E.2d 6 (1 Dist. 1992).

The concept of "lowest responsible bidder" involves considerably more than solely the monetary amount of a company's bid, but also encompasses considerations of the financial solvency of the carrier and its ability to perform the contract in a timely and responsible fashion. People ex rel. Willett Motor Coach Co. v. Board of Educ., 171 Ill. App. 3d 166, 121 Ill. Dec. 107, 524 N.E.2d 1155 (1 Dist.), appeal denied, 122 Ill. 2d 593, 125 Ill. Dec. 235, 530 N.E.2d 263 (1988).

- Affirmative Action Policies

Where plaintiff failed to submit an acceptable affirmative action program, since it failed to set specific goals and timetables designed to overcome the underutilization of minority workers on its work force, its bid failed to comply with the board of education's affirmative action program, and the trial court erroneously interfered by injunction with the discretion reposed by law in the board of education under this section. John N. Brunsfeld & Sons v. Board of Educ., 54 Ill. App. 3d 119, 11 Ill. Dec. 829, 369 N.E.2d 283 (1 Dist. 1977).

- Award to Local Business

If the sole reason for not awarding a contract to a bidder, when it was the lowest responsible bidder, was the school board's desire to keep the contract monies in the community, such action would indicate clear favoritism, without adequate and sufficient justification, and would constitute arbitrary and capricious action and a clear violation of the statutory mandate. Cardinal Glass Co. v. Board of Educ., 113 Ill. App. 3d 442, 69 Ill. Dec. 329, 447 N.E.2d 546 (3 Dist. 1983).

- Bus Service

The board is obligated to award all contracts to the "lowest responsible bidder;" however, under the express terms of a solicitation to provide buses, the regular school year and summer school passenger bus contracts should have been considered in the aggregate, and therefore, the summer contracts should have been awarded by type of vehicle and only to those carriers who had provided that vehicle type service during the regular school year, even though the carrier's bid for summer service was not the lowest rate per vehicle for the summer session. People ex rel. Willett Motor Coach Co. v. Board of Educ., 171 Ill. App. 3d 166, 121 Ill. Dec. 107, 524 N.E.2d 1155 (1 Dist.), appeal denied, 122 Ill. 2d 593, 125 Ill. Dec. 235, 530 N.E.2d 263 (1988).

- Discretion of Board

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While it is clear that under this section, a school board has discretion to determine who is the lowest responsible bidder and that it need not be the lowest bidder in terms of contract price, nevertheless the board has the duty to award the contract to the lowest responsible bidder and that bidder, having so established himself, has a right to be awarded the contract. Cardinal Glass Co. v. Board of Educ., 113 Ill. App. 3d 442, 69 Ill. Dec. 329, 447 N.E.2d 546 (3 Dist. 1983).

- Standing

Securing compliance with this section will, as a practical matter, best be served by granting standing to unsuccessful bidders. L.E. Zannini & Co. v. Board of Educ., 138 Ill. App. 3d 467, 93 Ill. Dec. 323, 486 N.E.2d 424 (2 Dist. 1985).

The lowest bidder on a contract had standing to establish a cause of action under this section. L.E. Zannini & Co. v. Board of Educ., 138 Ill. App. 3d 467, 93 Ill. Dec. 323, 486 N.E.2d 424 (2 Dist. 1985).

Unsuccessful lowest responsible bidders are within the zone of protection afforded by this section, and where a school board violates the section by awarding a contract to another bidder, an unsuccessful lowest responsible bidder has standing to challenge that action. Cardinal Glass Co. v. Board of Educ., 113 Ill. App. 3d 442, 69 Ill. Dec. 329, 447 N.E.2d 546 (3 Dist. 1983).

Maintenance Personnel

Although the school district is not directed by statute to employ painters or any other maintenance personnel, it is nonetheless empowered to repair and improve school houses and furnish them with the necessary fixtures, furniture, apparatus, libraries and fuel and to contract to have this work performed; the broad language of this Code gives rise to discretion in the school district to hire and fire maintenance personnel. Board of Educ. v. Cahokia Dist. Council No. 58, 93 Ill. App. 3d 376, 48 Ill. Dec. 749, 417 N.E.2d 151 (5 Dist. 1981).

Preferential Treatment

There is nothing in the School Code that allows a school board to give preferential treatment to local businesses; thus, a school board's rule that gave local businesses a 2% preference had no proper legislative authority and was an arbitrary and capricious delegation of power to a municipal unit which was unconstitutional. Best Bus Joint Venture v. Board of Educ., 288 Ill. App. 3d 770, 224 Ill. Dec. 255, 681 N.E.2d 570 (1 Dist. 1997).

Professional Skills

- Construction Contractor

School district's contract with a construction company for construction management services fell within the exception in 105 ILCS 5/10-20.21(i) for services involving professional skills to the general competitive bidding requirement. Shively v. Belleville Twp. High Sch. Dist. No. 201, 329 Ill. App. 3d 1156, 264 Ill. Dec. 225, 769 N.E.2d 1062, 2002 Ill. App. LEXIS 376 (5 Dist. 2002), appeal denied, 201 Ill. 2d 616, 271 Ill. Dec. 942, 786 N.E.2d 200 (2002).

- Health Maintenance Organization

A health maintenance organization (HMO) contract is not a contract for the direct furnishing of medical services, such as physical examinations of students, but is, instead, merely a contract for the administration of an employee health care program in which school employees select their own personal medical providers from a list of hospitals and doctors associated with the HMO.

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Compass Health Care Plans v. Board of Educ., 246 Ill. App. 3d 746, 186 Ill. Dec. 767, 617 N.E.2d 6 (1 Dist. 1992).

- Public Relations Consultant

This section contemplates the hiring of professionals and highly skilled individuals for their services and although a public relations consultant is not specifically listed, a school district's power to hold regular and special meetings implies the need to exchange information with the community. Ryan v. Warren Tp. High Sch. Dist., 155 Ill. App. 3d 203, 109 Ill. Dec. 843, 510 N.E.2d 911 (2 Dist. 1987).

Purpose

Although a principal purpose of this section is the protection of taxpayers residing within a school district, the section also establishes procedures benefiting and protecting the bidders themselves. Cardinal Glass Co. v. Board of Educ., 113 Ill. App. 3d 442, 69 Ill. Dec. 329, 447 N.E.2d 546 (3 Dist. 1983).

Solicitation of Bids

- Amendment

Mailing of notice to bidders containing an amendment to the board's original solicitation for bids on contracts to provide transportation for handicapped pupils constituted "other means" specified in the rules of the board for bids that would secure the greatest number of qualified proposals, and compliance with the rules regarding competitive bidding was a prerequisite to the formation of a valid contract between the board and a successful bidder. Willett Motor Coach Co. v. Board of Educ., 103 Ill. App. 3d 760, 59 Ill. Dec. 433, 431 N.E.2d 1190 (1 Dist. 1981), cert. denied, 459 U.S. 944, 103 S. Ct. 258, 74 L. Ed. 2d 202 (1982).

Standing

- Not Shown

Where the object of this section was to protect the public from financially irresponsible contractors, and not to protect the safety of laborers injured while working for a contractor, the plaintiff, a laborer injured while working pursuant to a school contract, was not one for whose benefit this section was enacted and the circuit court correctly dismissed the cause of action. Carlson v. Moline Bd. of Educ., 124 Ill. App. 3d 967, 80 Ill. Dec. 256, 464 N.E.2d 1239 (3 Dist. 1984).

Practice Guides and Treatises.

Construction Litigation § 1.55 Sealed bids (IICLE).

Construction Litigation § 1.51 Construction not to exceed a defined limit (IICLE).

§ 105 ILCS 5/10-20.21a. Contracts for charter bus services

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Sec. 10-20.21a. Contracts for charter bus services. To award contracts for providing charter bus services for the sole purpose of transporting students regularly enrolled in grade 12 or below to or from interscholastic athletic or interscholastic or school sponsored activities.

All contracts for providing charter bus services for the sole purpose of transporting students regularly enrolled in grade 12 or below to or from interscholastic athletic or interscholastic or school sponsored activities must contain clause (A) as set forth below, except that a contract with an out-of-state company may contain clause (B), as set forth below, or clause (A). The clause must be set forth in the body of the contract in typeface of at least 12 points and all upper case letters:

(A) "ALL OF THE CHARTER BUS DRIVERS WHO WILL BE PROVIDING SERVICES UNDER THIS CONTRACT HAVE, OR WILL HAVE BEFORE ANY SERVICES ARE PROVIDED:

(1) SUBMITTED THEIR FINGERPRINTS TO THE DEPARTMENT OF STATE POLICE IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT OF STATE POLICE. THESE FINGERPRINTS SHALL BE CHECKED AGAINST THE FINGERPRINT RECORDS NOW AND HEREAFTER FILED IN THE DEPARTMENT OF STATE POLICE AND FEDERAL BUREAU OF INVESTIGATION CRIMINAL HISTORY RECORDS DATABASES. THE FINGERPRINT CHECK HAS RESULTED IN A DETERMINATION THAT THEY HAVE NOT BEEN CONVICTED OF COMMITTING ANY OF THE OFFENSES SET FORTH IN SUBDIVISION (C-1)(4) OF SECTION 6-508 OF THE ILLINOIS VEHICLE CODE; AND

(2) DEMONSTRATED PHYSICAL FITNESS TO OPERATE SCHOOL BUSES BY SUBMITTING THE RESULTS OF A MEDICAL EXAMINATION, INCLUDING TESTS FOR DRUG USE, TO A STATE REGULATORY AGENCY."

(B) "NOT ALL OF THE CHARTER BUS DRIVERS WHO WILL BE PROVIDING SERVICES UNDER THIS CONTRACT HAVE, OR WILL HAVE BEFORE ANY SERVICES ARE PROVIDED:

(1) SUBMITTED THEIR FINGERPRINTS TO THE DEPARTMENT OF STATE POLICE IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT OF STATE POLICE. THESE FINGERPRINTS SHALL BE CHECKED AGAINST THE FINGERPRINT RECORDS NOW AND HEREAFTER FILED IN THE DEPARTMENT OF STATE POLICE AND FEDERAL BUREAU OF INVESTIGATION CRIMINAL HISTORY RECORDS DATABASES. THE FINGERPRINT CHECK HAS RESULTED IN A DETERMINATION THAT THEY HAVE NOT BEEN CONVICTED OF COMMITTING ANY OF THE OFFENSES SET FORTH IN SUBDIVISION (C-1)(4) OF SECTION 6-508 OF THE ILLINOIS VEHICLE CODE; AND

(2) DEMONSTRATED PHYSICAL FITNESS TO OPERATE SCHOOL BUSES BY SUBMITTING THE RESULTS OF A MEDICAL EXAMINATION, INCLUDING TESTS FOR DRUG USE, TO A STATE REGULATORY AGENCY."

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(Source: P.A. 93-476, § 5; 93-644, § 5; 95-331, § 540.)

Note.

P.A. 92-332 and P.A. 92-342 separately enacted identical versions of this section.

Effective Date. This section is effective January 1, 2004 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

This section is effective June 1, 2004, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/2.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, in the second sentence of both (A)(1) and (B)(1) deleted "A STATE PLICE AGENCY AND THE FEDERAL BUREAU OF INVESTIGATION FOR A CRIMINAL BACKGROUND CHECK, RESULTING" following "CHECK HAS RESULTED".

§§ 105 ILCS 5/10-20.22, 105 ILCS 5/10-20.23: Repealed by P.A. 94-600, § 910, effective August 16, 2005.

§ 105 ILCS 5/10-20.24. Part-time attendance

Sec. 10-20.24. Part-time attendance. To accept in part-time attendance in the regular education program of the district pupils enrolled in nonpublic schools if there is sufficient space in the public school desired to be attended. Request for attendance in the following school year must be submitted by the nonpublic school principal to the public school before May 1. Request may be made only to those public schools located in the district where the child attending the nonpublic school resides.

To accept, pursuant to the provisions of Section 14-6.01 [105 ILCS 5/14-6.01], in part-time attendance resident pupils of the types described in Sections 14-1.02 through 14-1.07 [105 ILCS 5/14-1.02 through 105 ILCS 5/14-1.07] who are enrolled in nonpublic schools.

(Source: P.A. 80-1509.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.24.

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CASE NOTES

Request Deadline

Public school district and superintendent were granted summary judgment on procedural due process and equal protection claims filed by a minor private school student and his father arising from the superintendent's refusal to allow the student's limited enrollment in an Algebra I course in the public school because the student did not file his limited enrollment request by May 1 as required under 105 ILCS 5-10/20.24. Hassberger v. Bd. of Educ., F. Supp. 2d , 2003 U.S. Dist. LEXIS 20477 (N.D. Ill. Nov. 13, 2003).

§ 105 ILCS 5/10-20.25: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/10-20.25a. Report of student statistics

Sec. 10-20.25a. Report of student statistics. To report to the State Board of Education the annual student dropout rate and number of students who graduate from, transfer from or otherwise leave bilingual programs.

(Source: P.A. 84-662.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.25a.

§ 105 ILCS 5/10-20.26. Report of teacher dismissals

Sec. 10-20.26. Report of teacher dismissals. To send an annual report, on or before October 15, to the State Board of Education which discloses the number of probationary teachers and the number of teachers in contractual continued service who have been dismissed or removed as a result of the board's decision to decrease the number of teachers employed or to discontinue any type of teaching service. The report will also list the number in each teacher category which were subsequently reemployed by the board.

(Source: P.A. 82-980; 96-734, § 5.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.26.

Effect of Amendments. The 2009 amendment by P.A. 96-734, effective August 25, 2009, substituted "October 15" for "September 15" in the first sentence.

§ 105 ILCS 5/10-20.27. [List of unfilled teaching positions]

Sec. 10-20.27. To file with the regional superintendent a list of all unfilled teaching positions in the district by August 1 of each year, and to report to the regional superintendent no less frequently than by the first day of every month other than August, all teaching positions which, subsequent to the filing of such list, become vacant or are filled.

(Source: P.A. 83-503.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.27.

§ 105 ILCS 5/10-20.28. Cellular radio telecommunication devices

Sec. 10-20.28. Cellular radio telecommunication devices. (a) The General Assembly finds and declares that the educational development of all persons to the limits of their capacities is a fundamental goal of the people of this State and that to achieve such goal it is essential to provide a safe and secure learning environment within the public schools. While recognizing that cellular radio telecommunication devices may be used for inappropriate activities during school hours and on school property and may, on occasion, cause disruption to the classroom environment, the General Assembly also recognizes that the use of cellular radio telecommunication devices can decrease the response time of officials to emergency situations. In addition, cellular radio telecommunication devices allow parents an additional and timely method of contacting their children should an emergency situation arise. Therefore, it is the purpose and intention of the General Assembly in enacting this legislation to (i) reduce the occurrence of inappropriate and disruptive activities during school hours and on school property occurring through the use of cellular radio telecommunication devices and (ii) increase the safety of students and school personnel during school hours and on school property.

(b) The school board may establish appropriate rules and disciplinary procedures governing the use or possession of cellular radio telecommunication devices by a student while in a school or on school property, during regular school hours, or at any other time.

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(Source: P.A. 86-1391; 92-793, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-20.28.

Effect of Amendments. The 2002 amendment by P.A. 92-793, effective August 9, 2002, substituted "devices" for "prohibition" in the section heading; and rewrote the section to the extent that a detailed comparison would be impracticable, in part by deleting the language concerning the use or possession of a cellular radio telecommunication device by a pupil during regular school hours, and adding subsections (a) and (b).

§ 105 ILCS 5/10-20.29: Repealed by P.A. 96-734, § 25, effective August 25, 2009.

§ 105 ILCS 5/10-20.30. No pass-no play policy

Sec. 10-20.30. No pass-no play policy. Beginning with the 1998-99 school year, the school board of each school district that maintains any of grades 9 through 12 shall establish, implement, and enforce a uniform and consistent policy under which a student in any of those grades who fails to maintain a specified minimum grade point average or a specified minimum grade in each course in which the student is enrolled or both is suspended from further participation in any school-sponsored or school-supported athletic or extracurricular activities for a specified period or until a specified minimum grade point average or minimum grade or both are earned by the student. Each school board shall adopt a policy as required by this Section not later than one year after the effective date of this amendatory Act of 1997 and shall concurrently file a copy of that policy with the State Board of Education. After the policy has been in effect for one year, the school board shall file a report with the State Board of Education setting forth the number and length of suspensions imposed under the policy during the period covered by the report. If the school board already has a policy that is consistent with the requirements of this Section in effect on the effective date of this amendatory Act of 1997, it shall file a copy of that policy with the State Board of Education within 90 days after the effective date of this amendatory Act and shall file the annual report required under this Section 12 months thereafter.

(Source: P.A. 90-548, § 5-915.)

Effective Date. Section 990-5 of P.A. 90-548 made this section effective January 1, 1998.

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§ 105 ILCS 5/10-20.31. Occupational standards

Sec. 10-20.31. Occupational standards. A school board shall not require a student to meet occupational standards for grade level promotion or graduation unless that student is voluntarily enrolled in a job training program.

(Source: P.A. 91-175, § 5; 92-16, § 49.)

Note.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Effective Date. This section became effective January 1, 2000, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2001 amendment by P.A. 92-16, effective June 28, 2001, made no changes to this section; renumbered the former version of this section enacted by P.A. 91-491, as 105 ILCS 5/10-20.32; and renumbered the former version of this section enacted by P.A. 91-600, as 105 ILCS 5/10-20.33.

§ 105 ILCS 5/10-20.32: Repealed by P.A. 94-600, § 910, effective August 16, 2005.

§ 105 ILCS 5/10-20.33. Time out and physical restraint

Sec. 10-20.33. Time out and physical restraint. Until rules are adopted under Section 2-3.130 of this Code [105 ILCS 5/2-3.130], the use of any of the following rooms or enclosures for time out purposes is prohibited:

(1) a locked room other than one with a locking mechanism that engages only when a key or handle is being held by a person;

(2) a confining space such as a closet or box;

(3) a room where the student cannot be continually observed; or

(4) any other room or enclosure or time out procedure that is contrary to current guidelines of the State Board of Education.

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The use of physical restraints is prohibited except when (i) the student poses a physical risk to himself, herself, or others, (ii) there is no medical contraindication to its use, and (iii) the staff applying the restraint have been trained in its safe application. For the purposes of this Section, "restraint" does not include momentary periods of physical restriction by direct person-to-person contact, without the aid of material or mechanical devices, accomplished with limited force and that are designed (i) to prevent a student from completing an act that would result in potential physical harm to himself, herself, or another or damage to property or (ii) to remove a disruptive student who is unwilling to voluntarily leave the area. The use of physical restraints that meet the requirements of this Section may be included in a student's individualized education plan where deemed appropriate by the student's individualized education plan team. Whenever physical restraints are used, school personnel shall fully document the incident, including the events leading up to the incident, the type of restraint used, the length of time the student is restrained, and the staff involved. The parents or guardian of a student shall be informed whenever physical restraints are used.

(Source: P.A. 91-600, § 5; 92-16, § 49.)

Note.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.285.

Effective Date. Section 99 of P.A. 91-600 made this section effective upon becoming law. The Act was approved August 14, 1999.

Effect of Amendments. The 2001 amendment by P.A. 92-16, effective June 28, 2001, renumbered this section, which was formerly 105 ILCS 5/10-20.31; and substituted "Section 2-3.130" for "Section 2-3.126" in the first sentence of the first paragraph.

§ 105 ILCS 5/10-20.34. Medicaid-eligible children; health care resources

Sec. 10-20.34. Medicaid-eligible children; health care resources. As authorized by federal law, a school district may access federally funded health care resources if the school district provides early periodic screening and diagnostic testing services, including screening and diagnostic services, health care and treatment, preventive health care, or any other measure, to correct or improve health impairments of Medicaid-eligible children.

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(Source: P.A. 91-842, § 5.)

Effective Date. Section 99 of P.A. 91-842 made this section effective upon becoming law. The Act was approved June 22, 2000.

Section 99 of P.A. 91-842 made this section effective upon becoming law. The Act was approved June 22, 2000.

§ 105 ILCS 5/10-20.35. Medical information form for bus drivers and emergency medical technicians

Sec. 10-20.35. Medical information form for bus drivers and emergency medical technicians. School districts are encouraged to create and use an emergency medical information form for bus drivers and emergency medical technicians for those students with special needs or medical conditions. The form may include without limitation information to be provided by the student's parent or legal guardian concerning the student's relevant medical conditions, medications that the student is taking, the student's communication skills, and how a bus driver or an emergency medical technician is to respond to certain behaviors of the student. If the form is used, the school district is encouraged to notify parents and legal guardians of the availability of the form. The parent or legal guardian of the student may fill out the form and submit it to the school that the student is attending. The school district is encouraged to keep one copy of the form on file at the school and another copy on the student's school bus in a secure location.

(Source: P.A. 92-580, § 5; 95-331, § 540.)

Note.

The former version of 105 ILCS 5/10-20.35 enacted by P.A. 92-663 was renumbered as 105 ILCS 5/10-20.36 by P.A. 95-331, effective August 21, 2007.

Effective Date. Section 99 of P.A. 92-580, made this section effective July 1, 2002.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, reenacted the section without changes.

§ 105 ILCS 5/10-20.36. Psychotropic or psychostimulant medication; disciplinary action

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Sec. 10-20.36. Psychotropic or psychostimulant medication; disciplinary action. (a) In this Section:

"Psychostimulant medication" means medication that produces increased levels of mental and physical energy and alertness and an elevated mood by stimulating the central nervous system.

"Psychotropic medication" means psychotropic medication as defined in Section 1-121.1 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-100 et seq.].

(b) Each school board must adopt and implement a policy that prohibits any disciplinary action that is based totally or in part on the refusal of a student's parent or guardian to administer or consent to the administration of psychotropic or psychostimulant medication to the student.

The policy must require that, at least once every 2 years, the in-service training of certified school personnel and administrators include training on current best practices regarding the identification and treatment of attention deficit disorder and attention deficit hyperactivity disorder, the application of non-aversive behavioral interventions in the school environment, and the use of psychotropic or psychostimulant medication for school-age children.

(c) This Section does not prohibit school medical staff, an individualized educational program team, or a professional worker (as defined in Section 14-1.10 of this Code [105 ILCS 5/14-1.10]) from recommending that a student be evaluated by an appropriate medical practitioner or prohibit school personnel from consulting with the practitioner with the consent of the student's parents or guardian.

(Source: P.A. 92-663, § 5; 95-331, § 540.)

Effective Date. This section is effective January 1, 2003, pursuant to Ill. Const. (1070) Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, renumbered the section, which was formerly a multiple version of 105 ILCS 5/10-20.35.

§ 105 ILCS 5/10-20.37. Summer kindergarten

Sec. 10-20.37. Summer kindergarten. A school board may establish, maintain, and operate, in connection with the kindergarten program of the school district, a summer kindergarten program that begins 2 months before the beginning of the regular school year and a summer kindergarten program for grade one readiness for those pupils making unsatisfactory progress during the regular kindergarten session that will continue for 2 months after the regular school year. The summer kindergarten program may be held

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within the school district or, pursuant to a contract that must be approved by the State Board of Education, may be operated by 2 or more adjacent school districts or by a public or private university or college. Transportation for students attending the summer kindergarten program shall be the responsibility of the school district. The expense of establishing, maintaining, and operating the summer kindergarten program may be paid from funds contributed or otherwise made available to the school district for that purpose by federal or State appropriation.

(Source: P.A. 93-472, § 5; 95-331, § 540.)

Note.

The former version of 105 ILCS 5/10-20.37 as enacted by P.A. 93-472 was renumbered as 105 ILCS 5/10-20.38 by P.A. 95-331, effective August 21, 2007.

Effective Date. Section 99 of P.A. 93-472 made this section effective upon becoming law. The Act was approved August 8, 2003.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, reenacted the section without changes.

§ 105 ILCS 5/10-20.38. Provision of student information prohibited

Sec. 10-20.38. Provision of student information prohibited. A school district, including its agents, employees, student or alumni associations, or any affiliates, may not provide a student's name, address, telephone number, social security number, e-mail address, or other personal identifying information to a business organization or financial institution that issues credit or debit cards.

(Source: P.A. 93-549, § 5; 95-331, § 540; 96-261, § 905.)

Effective Date. Section 99 of P.A. 93-549 made this section effective August 19, 2003.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, renumbered the section, which was formerly a multiple version of 105 ILCS 5/10-20.37.

The 2009 amendment by P.A. 96-261, effective January 1, 2010, inserted "including its agents, employees, student or alumni associations, or any affiliates"; and made related changes.

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§ 105 ILCS 5/10-20.39. Highly qualified teachers; No Child Left Behind Act funds

Sec. 10-20.39. Highly qualified teachers; No Child Left Behind Act funds. If a school district has an overall shortage of highly qualified teachers, as defined by the federal No Child Left Behind Act of 2001 (Public Law 107-110), or a shortage of highly qualified teachers in the subject area of mathematics, science, reading, or special education, then the school board must spend at least 40% of the money it receives from Title 2 grants under the Act on recruitment and retention initiatives to assist in recruiting and retaining highly qualified teachers (in a specific subject area if applicable) as specified in paragraphs (1)(B), (2)(A), (2)(B), (4)(A), (4)(B), and (4)(C) of subsection (a) of Section 2123 of the Act until there is no longer a shortage of highly qualified teachers (in a specific subject area if applicable). As the number of highly qualified teachers in the district increases, however, the school board may spend any surplus of the minimum 40% of funds dedicated to addressing the highly qualified teacher shortage in any manner the school board deems appropriate.

(Source: P.A. 93-997, § 5.)

Effective Date. Section 99 of P.A. 93-997 made this section effective upon becoming law. The Act was approved August 23, 2004.

§ 105 ILCS 5/10-20.40. Student biometric information

Sec. 10-20.40. Student biometric information. (a) For the purposes of this Section, "biometric information" means any information that is collected through an identification process for individuals based on their unique behavioral or physiological characteristics, including fingerprint, hand geometry, voice, or facial recognition or iris or retinal scans.

(b) School districts that collect biometric information from students shall adopt policies that require, at a minimum, all of the following:

(1) Written permission from the individual who has legal custody of the student, as defined in Section 10-20.12b of this Code [105 ILCS 5/10-20.12b], or from the student if he or she has reached the age of 18.

(2) The discontinuation of use of a student's biometric information under either of the following conditions:

(A) upon the student's graduation or withdrawal from the school district; or

(B) upon receipt in writing of a request for discontinuation by the individual having legal custody of the student or by the student if he or she has reached the age of 18.

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(3) The destruction of all of a student's biometric information within 30 days after the use of the biometric information is discontinued in accordance with item (2) of this subsection (b).

(4) The use of biometric information solely for identification or fraud prevention.

(5) A prohibition on the sale, lease, or other disclosure of biometric information to another person or entity, unless:

(A) the individual who has legal custody of the student or the student, if he or she has reached the age of 18, consents to the disclosure; or

(B) the disclosure is required by court order.

(6) The storage, transmittal, and protection of all biometric information from disclosure.

(c) Failure to provide written consent under item (1) of subsection (b) of this Section by the individual who has legal custody of the student or by the student, if he or she has reached the age of 18, must not be the basis for refusal of any services otherwise available to the student.

(d) Student biometric information may be destroyed without notification to or the approval of a local records commission under the Local Records Act [50 ILCS 205/1 et seq.] if destroyed within 30 days after the use of the biometric information is discontinued in accordance with item (2) of subsection (b) of this Section.

(Source: P.A. 95-232, § 5; 95-793, § 5; 95-876, § 175; 96-328, § 145.)

Note.

Former multiple versions of this section were renumbered by P.A. 95-805 and by P.A. 95-876, as 105 ILCS 5/10-20.41 to 105 ILCS 5/10-20.43.

The 2009 revisory amendment by P.A. 96-328, effective August 11, 2009, redesignated a former multiple version of 105 ILCS 5/10-20.40 as 105 ILCS 5/10-20.44.

Effective Date. Section 99 of P.A. 95-232 makes this section August 1, 2007. However, the Act was approved and is effective August 16, 2007.

Effect of Amendments. The 2008 amendment by P.A. 95-793, effective August 8, 2008, inserted "use of the" in (b)(3); and added (d).

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, reenacted the section and made no additional changes.

The 2009 revisory amendment by P.A. 96-328, effective August 11, 2009, reenacted the section without changes.

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§ 105 ILCS 5/10-20.41. Use of facilities by community organizations

Sec. 10-20.41. Use of facilities by community organizations. School boards are encouraged to allow community organizations to use school facilities during non-school hours. If a school board allows a community organization to use school facilities during non-school hours, the board must adopt a formal policy governing the use of school facilities by community organizations during non-school hours. The policy shall prohibit such use if it interferes with any school functions or the safety of students or school personnel or affects the property or liability of the school district.

(Source: P.A. 95-308, § 5; 95-876, § 175; 96-328, § 145.)

Note.

The 2009 revisory amendment by P.A. 96-328, effective August 11, 2009, redesignated a former multiple version of 105 ILCS 5/10-20.41 as 105 ILCS 5/10-20.45.

Effective Date. Section 99 of P.A. 95-308 made this section effective July 1, 2007; however, the Act was approved August 21, 2007.

Effect of Amendments. The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, renumbered this section, which was formerly a multiple version of 105 ILCS 5/10-20.40.

The 2009 revisory amendment by P.A. 96-328, effective August 11, 2009, reenacted the section without changes.

§ 105 ILCS 5/10-20.42. Wind and solar farms

Sec. 10-20.42. Wind and solar farms. A school district may own and operate a wind or solar generation turbine farm, either individually or jointly with a unit of local government, school district, or community college district that is authorized to own and operate a wind or solar generation turbine farm, that directly or indirectly reduces the energy or other operating costs of the school district. The school district may ask for the assistance of any State agency, including without limitation the State Board of Education, the Illinois Power Agency, or the Environmental Protection Agency, in obtaining financing options for a wind or solar generation turbine farm.

(Source: P.A. 95-390, § 5; 95-805, § 15; 95-876, § 175; 96-725, § 15.)

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Effective Date. Section 99 of P.A. 95-390 made this section effective August 23, 2007.

Effect of Amendments. The 2008 amendment by P.A. 95-805, effective August 12, 2008, renumbered the section, which was formerly 105 ILCS 5/10-20.40; inserted "with a unit of local government, school district, or community college district that is authorized to own and operate a wind generation turbine farm" and made a related change in the first sentence; and inserted "the Illinois Power Agency" and made a related change in the second sentence.

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, renumbered this section, which was formerly a version of 105 ILCS 5/10-20.40. This section as previous renumbered by P.A. 95-805 as 105 ILCS 5/10-20.42.

The 2009 amendment by P.A. 96-725, effective August 25, 2009, substituted "and solar farms" for "farm" in the section heading; and inserted "or solar" throughout.

§ 105 ILCS 5/10-20.43. School facility occupation tax fund

Sec. 10-20.43. School facility occupation tax fund. All proceeds received by a school district from a distribution under 3-14.31 [105 ILCS 5/3-14.31] must be maintained in a special fund known as the school facility occupation tax fund. The district may use moneys in that fund only for school facility purposes, as that term is defined under Section 5-1006.7 of the Counties Code [55 ILCS 5/5-1006.7].

(Source: P.A. 95-675, § 15; 95-876, § 175.)

Effective Date. Section 99 of P.A. 95-675 makes this section effective upon becoming law. The Act was approved October 11, 2007.

Effect of Amendments. The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, renumbered this section, which was formerly 105 ILCS 5/10-20.40.

§ 105 ILCS 5/10-20.44. Report on contracts

Sec. 10-20.44. Report on contracts. (a) This Section applies to all school districts, including a school district organized under Article 34 of this Code [105-5/34-1 et seq.].

(b) A school board must list on the district's Internet website, if any, all contracts over $25,000 and any contract that the school board enters into with an exclusive bargaining representative.

(c) Each year, in conjunction with the submission of the Statement of Affairs to the State Board of Education prior to December 1, provided for in Section 10-17 [105-5/10-17], each school district shall submit to the State Board of Education an annual report on all

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contracts over $25,000 awarded by the school district during the previous fiscal year. The report shall include at least the following:

(1) the total number of all contracts awarded by the school district;

(2) the total value of all contracts awarded;

(3) the number of contracts awarded to minority owned businesses, female owned businesses, and businesses owned by persons with disabilities, as defined in the Business Enterprise for Minorities, Females and Persons with Disabilities Act [30 ILCS 575/0.01 et seq.], and locally owned businesses; and

(4) the total value of contracts awarded to minority owned businesses, female owned businesses, and businesses owned by persons with disabilities, as defined in the Business Enterprise for Minorities, Females and Persons with Disabilities Act, and locally owned businesses.

The report shall be made available to the public, including publication on the school district's Internet website, if any.

(Source: P.A. 95-707, § 5-20; 96-328, § 145.)

Effective Date. Section 99 of P.A. 95-707 made this section effective upon becoming law. The Act was approved January 11, 2008.

Effect of Amendments. The 2009 revisory amendment by P.A. 96-328, effective August 11, 2009, renumbered the section, which was formerly a multiple version of 105 ILCS 5/10-20.40.

§ 105 ILCS 5/10-20.45. Pay for performance

Sec. 10-20.45. Pay for performance. (a) Beginning with all newly-negotiated collective bargaining agreements entered into after the effective date of this amendatory Act of the 95th General Assembly [P.A. 95-707], a school board and the exclusive bargaining representative, if any, may include a performance-based teacher compensation plan in the subject of its collective bargaining agreement. Nothing in this Section shall preclude the school board and the exclusive bargaining representative from agreeing to and implementing a new performance-based teacher compensation plan prior to the termination of the current collective bargaining agreement.

(b) The new teacher compensation plan bargained and agreed to by the school board and the exclusive bargaining representative under subsection (a) of this Section shall provide certificated personnel with base salaries and shall also provide that any increases in the compensation of individual teachers or groups of teachers beyond base salaries shall be pursuant, but not limited to, any of the following elements:

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(1) Superior teacher evaluations based on multiple evaluations of their classroom teaching.

(2) Evaluation of a teacher's student classroom-level achievement growth as measured using a value-added model. "Value-added" means the improvement gains in student achievement that are made each year based on pre-test and post-test outcomes.

(3) Evaluation of school-level achievement growth as measured using a value-added model. "Value-added" means the improvement gains in student achievement that are made each year based on pre-test and post-test outcomes.

(4) Demonstration of superior, outstanding performance by an individual teacher or groups of teachers through the meeting of unique and specific teaching practice objectives defined and agreed to in advance in any given school year.

(5) Preparation for meeting and contribution to the broader needs of the school organization (e.g., curriculum development, family liaison and community outreach, implementation of a professional development program for faculty, and participation in school management).

(c) A school board and exclusive bargaining representative that initiate their own performance-based teacher compensation program shall submit the new plan to the State Board of Education for review not later than 150 days before the plan is to become effective. If the plan does not conform to this Section, the State Board of Education shall return the plan to the school board and the exclusive bargaining representative for modification. The school board and the exclusive bargaining representative shall then have 30 days after the plan is returned to them to submit a modified plan.

(Source: P.A. 95-707, § 5-20; 96-328, § 145.)

Effective Date. Section 99 of P.A. 95-707 made this section effective upon becoming law. The Act was approved January 11, 2008.

Effect of Amendments. The 2009 revisory amendment by P.A. 96-328, effective August 11, 2009, renumbered the section, which was formerly a multiple version of 105 ILCS 5/10-20.41.

§ 105 ILCS 5/10-20.46. Veterans' Day; moment of silence

Sec. 10-20.46. Veterans' Day; moment of silence. If a school holds any type of event at the school on November 11, Veterans' Day, the school board shall require a moment of silence at that event to recognize Veterans' Day.

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(Source: P.A. 96-84, § 5; 96-1000, § 260; 97-333, § 185.)

Note.

There was another version of this section enacted by P.A. 96-266, § 5 and redesignated as 105 ILCS 5/10-20.47 by P.A 96-1000, § 260.

There was another version of this section enacted by P.A. 96-417, § 5 and redesignated as 105 ILCS 5/10-20.48 by P.A. 96-1000, § 260.

There was another version of this section enacted by P.A. 96-424, § 5 and redesignated as 105 ILCS 5/10-20.49 by P.A. 96-1000, § 260.

There was another version of this section enacted by P.A. 96-434, § 5 and redesignated as 105 ILCS 5/10-20.50 by P.A. 96-1000, § 260.

There was another version of this section enacted by P.A. 96-674, § 5 and redesignated as 105 ILCS 5/10-20.51 by P.A. 96-1000, § 260.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

"The 2011 revisory amendment, effective August 12, 2012, renumbered the version of 105 ILCS 5/10-20.46 as enacted by P.A. 96-843, as 105 ILCS 5/10-20.52."

Effective Date. Section 99 of P.A. 96-84 makes this section effective upon becoming law. The Act was approved July 27, 2009.

Effect of Amendments. The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, reenacted the section without changes.

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, reenacted the section without changes.

§ 105 ILCS 5/10-20.47. Administrator and teacher salary and benefits; report

Sec. 10-20.47. Administrator and teacher salary and benefits; report. Each school board shall report to the State Board of Education, on or before October 1 of each year, the base salary and benefits of the district superintendent and all administrators and teachers employed by the school district. For the purposes of this Section, "benefits" includes without limitation vacation days, sick days, bonuses, annuities, and retirement enhancements.

Prior to this annual reporting to the State Board of Education, the information must be presented at a regular school board meeting, subject to applicable notice requirements,

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and then posted on the Internet website of the school district, if any.

(Source: P.A. 96-266, § 5; 96-1000, § 260; 97-256, § 5.)

Note.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 105 ILCS 5/10-20.46 as 105 ILCS 5/10-20.47.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. This section is effective January 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2011 amendment by P.A. 97-256, effective January 1, 2012, substituted "October 1" for "July 1" in the first sentence of the first paragraph; and added the second paragraph.

§ 105 ILCS 5/10-20.48. Radon testing

Sec. 10-20.48. Radon testing. (a) It is recommended that every occupied school building of a school district be tested every 5 years for radon pursuant to rules established by the Illinois Emergency Management Agency (IEMA).

(b) It is recommended that new schools of a school district be built using radon resistant new construction techniques, as shown in the United States Environmental Protection Agency document, Radon Prevention in the Design and Construction of Schools and Other Large Buildings.

(c) Each school district may maintain, make available for review, and notify parents and faculty of test results under this Section. The district shall report radon test results to the State Board of Education, which shall prepare a report every 2 years of the results from all schools that have performed tests, to be submitted to the General Assembly and the Governor.

(d) If IEMA exempts an individual from being required to be a licensed radon professional, the individual does not need to be a licensed radon professional in order to perform screening tests under this Section. A school district may elect to have one or more employees from the district attend an IEMA-approved, Internet-based training course on school testing in order to receive an exemption to conduct testing in that school district. These school district employees must perform the measurements in accordance with procedures approved by IEMA. If an exemption from IEMA is not received, the school district must use a licensed radon professional to conduct measurements.

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(e) If the results of a radon screening test under this Section are found to be 4.0 pCi/L or above, the school district may hire a licensed radon professional to perform measurements before any mitigation decisions are made. If radon levels of 4.0 pCi/L or above are found, it is recommended that affected areas be mitigated by a licensed radon mitigation professional with respect to both design and installation. IEMA may provide the school district with a list of licensed radon mitigation professionals.

(f) A screening test under this Section may be done with a test kit found in a hardware store, department store, or home improvement store or with a kit ordered through the mail or over the Internet. However, the kit must be provided by a laboratory licensed in accordance with the Radon Industry Licensing Act [420 ILCS 44/1 et seq.].

(Source: P.A. 96-417, § 5; 96-1000, § 260.)

Note.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 105 ILCS 5/10-20.46 as 105 ILCS 5/10-20.48.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. This section is effective January 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 5/10-20.49. Compliance with Chemical Safety Acts

Sec. 10-20.49. Compliance with Chemical Safety Acts. Each school district must adopt a procedure to comply with the requirements of the Lawn Care Products Application and Notice Act [415 ILCS 65/1 et seq.]and the Structural Pest Control Act [225 ILCS 235/1 et seq.]. The school district must designate a staff person who is responsible for compliance with the requirements of these Acts.

(Source: P.A. 96-424, § 5; 96-1000, § 260.)

Note.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 105 ILCS 5/10-20.46 as 105 ILCS 5/10-20.49.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

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Effective Date. Section 99 of P.A. 96-424 makes this section effective upon becoming law. The Act was approved August 13, 2009.

§ 105 ILCS 5/10-20.50: Repealed by P.A. 97-256, § 10, effective January 1, 2012.

Note.

The repealed section related to a salary compensation report.

§ 105 ILCS 5/10-20.51. Press boxes; accessibility

Sec. 10-20.51. Press boxes; accessibility. A school board does not have to comply with the Illinois Accessibility Code (71 Ill. Adm. Code 400) with respect to accessibility to press boxes that are on school property if the press boxes are in bleachers that have points of entry at only one level, and the aggregate area of the press box is no more than 500 square feet.

(Source: P.A. 96-674, § 5; 96-1000, § 260; 97-355, § 3.)

Note.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 105 ILCS 5/10-20.46 as 105 ILCS 5/10-20.51, substituted "August 25, 2009 (the effective date of Public Act 96-674)" for "the effective date of this amendatory Act of the 96th General Assembly."

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 96-674 made this section effective July 1, 2009; however, P.A. 96-674 was approved and is effective August 25, 2009.

Effect of Amendments. The 2011 amendment by P.A. 97-355, effective January 1, 2012, substituted "are in bleachers that have points of entry at only one level, and the aggregate area of the press box is no more than 500 square feet" for "were constructed before August 25, 2009 (the effective date of Public Act 96-674)."

§ 105 ILCS 5/10-20.52. American Sign Language courses

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Sec. 10-20.52. American Sign Language courses. School boards are encouraged to implement American Sign Language courses into school foreign language curricula.

(Source: P.A. 96-843, § 5; 97-333, § 185.)

Note.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, redesignated a former multiple version of 105 ILCS 5/10-20.46 as 105 ILCS 5/10-20.52.

Effective Date. This section is effective June 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/2.

§ 105 ILCS 5/10-20.53. (As enacted by P.A. 97-88) Minimum reading instruction

Sec. 10-20.53. (As enacted by P.A. 97-88) Minimum reading instruction. Each school board shall promote 60 minutes of minimum reading opportunities daily for students in kindergarten through 3rd grade whose reading level is one grade level or lower than his or her current grade level according to current learning standards and the school district.

(Source: P.A. 97-88, § 5.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Effective Date. Section 99 of P.A. 97-88 made this section effective upon becoming law. The Act was approved July 8, 2011.

§ 105 ILCS 5/10-20.53. (As enacted by P.A. 97-204) Student athletes; concussions and head injuries

Sec. 10-20.53. (As enacted by P.A. 97-204) Student athletes; concussions and head injuries. (a) The General Assembly recognizes all of the following:

(1) Concussions are one of the most commonly reported injuries in children and adolescents who participate in sports and recreational activities. The Centers for Disease Control and Prevention estimates that as many as 3,900,000 sports-related and recreation-

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related concussions occur in the United States each year. A concussion is caused by a blow or motion to the head or body that causes the brain to move rapidly inside the skull. The risk of catastrophic injuries or death are significant when a concussion or head injury is not properly evaluated and managed.

(2) Concussions are a type of brain injury that can range from mild to severe and can disrupt the way the brain normally works. Concussions can occur in any organized or unorganized sport or recreational activity and can result from a fall or from players colliding with each other, the ground, or with obstacles. Concussions occur with or without loss of consciousness, but the vast majority of concussions occur without loss of consciousness.

(3) Continuing to play with a concussion or symptoms of a head injury leaves a young athlete especially vulnerable to greater injury and even death. The General Assembly recognizes that, despite having generally recognized return-to-play standards for concussions and head injuries, some affected youth athletes are prematurely returned to play, resulting in actual or potential physical injury or death to youth athletes in this State.

(b) Each school board shall adopt a policy regarding student athlete concussions and head injuries that is in compliance with the protocols, policies, and by-laws of the Illinois High School Association. Information on the school board's concussion and head injury policy must be a part of any agreement, contract, code, or other written instrument that a school district requires a student athlete and his or her parents or guardian to sign before participating in practice or interscholastic competition.

(c) The Illinois High School Association shall make available to all school districts, including elementary school districts, education materials, such as visual presentations and other written materials, that describe the nature and risk of concussions and head injuries. Each school district shall use education materials provided by the Illinois High School Association to educate coaches, student athletes, and parents and guardians of student athletes about the nature and risk of concussions and head injuries, including continuing play after a concussion or head injury.

(Source: P.A. 97-204, § 5.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Note.

P.A. 97-204 Section 1 provides: "This Act may be referred to as the Protecting Our Student Athletes Act."

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Effective Date. Section 99 of P.A. 97-204 purports to make this section effective July 1, 2011; however, P.A. 97-204 was approved July 28, 2011.

§ 105 ILCS 5/10-21. Additional duties of board

Sec. 10-21. Additional duties of board. Boards of education in addition to the duties enumerated above shall have the additional duties enumerated in Sections 10-21.1 through 10-21.11 [105 ILCS 5/10-21.1 through 105 ILCS 5/10-21.11].

(Source: P.A. 86-21; 86-890; 86-1028.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-21.

CASE NOTES

Analysis

Delegation
- Agents
Discretionary Powers
- In General
- Closing of Schools
- Judicial Review

Delegation

- Agents

As a corporate body, the board necessarily acts through its agents. Classroom Teachers Ass'n v. Board of Educ., 15 Ill. App. 3d 224, 304 N.E.2d 516 (3 Dist. 1973).

Discretionary Powers

- In General

This Code provides that the directors of each district shall be a body politic and corporate and that the board has the duties enumerated, including: to establish one or more attendance units within the district, to assign pupils to the several schools, to have control and supervision of all school houses in their district, and to decide when a site or building has become unnecessary, unsuitable or inconvenient for a school. Moreover, the members of the board have broad

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discretion in the use of those powers within the limits of the grant. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

- Closing of Schools

The decision to close a school and to reassign the students to other attendance zones within the district is an exercise of the discretionary powers granted to the board to act as a policy-making body, tantamount to the quasi-legislative power to make prospective regulations and orders. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

- Judicial Review

No statutory judicial review of the board's exercise of its powers in closing a school is provided for, as this Code does not require the board to make written findings or reasons in support of its decision in the exercise of its discretionary powers; nor does the Administrative Review Law (735 ILCS 5/3-101 et seq.) or the Administrative Procedure Act (5 ILCS 100/1-1 et seq.) apply. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

§ 105 ILCS 5/10-21.1. Employment of teachers

Sec. 10-21.1. Employment of teachers. To examine teachers by examinations supplemental to any other examinations and to employ teachers and fix the amount of their salaries subject to limitations set forth in this Act. Provided, that in fixing salaries of certificated employees school boards shall make no discrimination on account of sex; provided, further, that sabbatical leaves, with full or partial salary, may be granted in accordance with the rules of the board.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-21.1.

CASE NOTES

Analysis

Inarbitrable Issues
Powers
- Non-Delegable
Teacher Evaluations
- Mandatory Bargaining

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Inarbitrable Issues

The school board has the power to hire and discharge teachers, to determine their qualifications, and to set and allocate funds for their salaries; these functions must be exercised by the school board, which cannot abdicate its responsibility by referring these matters to such devices as arbitration and other contract solutions. Board of Educ. v. Cahokia Dist. Council No. 58, 93 Ill. App. 3d 376, 48 Ill. Dec. 749, 417 N.E.2d 151 (5 Dist. 1981).

Powers

- Non-Delegable

A board of education is granted the authority to employ and dismiss teachers; these powers have been held to be non-delegable powers which must be exercised by the school board itself. Haag v. Board of Educ., 655 F. Supp. 1267 (N.D. Ill. 1987).

Teacher Evaluations

- Mandatory Bargaining

The substantive criteria, weight, and areas evaluated, including the decision as to whether an instructor has successfully completed a remediation plan and his subsequent rating, are not subject to mandatory bargaining; however, the mechanical procedures involved in the evaluation process and the remediation plan are subject to mandatory bargaining. Board of Educ. v. Illinois Educ. Labor Relations Bd., 199 Ill. App. 3d 347, 145 Ill. Dec. 239, 556 N.E.2d 857 (4 Dist. 1990).

§ 105 ILCS 5/10-21.2. Schools of different grades

Sec. 10-21.2. Schools of different grades. To establish schools of different grades and to adopt regulations for the admission of pupils into them; however, in any district having less than 2,000 inhabitants no grades above the eighth shall be maintained unless they were maintained during the school year ended June 30, 1949.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-21.2.

CASE NOTES

Scope of Power

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- Promotion

It is generally held that school boards are empowered with the authority to establish and maintain standards for the promotion of pupils from one grade to another. Morgan ex rel. Morgan v. Board of Educ., 22 Ill. App. 3d 241, 317 N.E.2d 393 (5 Dist. 1974).

§ 105 ILCS 5/10-21.3. Attendance units

Sec. 10-21.3. Attendance units. To establish one or more attendance units within the district. As soon as practicable, and from time to time thereafter, the board shall change or revise existing units or create new units in a manner which will take into consideration the prevention of segregation and the elimination of separation of children in public schools because of color, race or nationality. All records pertaining to the creation, alteration or revision of attendance units shall be open to the public.

(Source: Laws 1963, p. 1107.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-21.3.

CASE NOTES

Analysis

Constitutionality
Applicability
- De Facto Segregation
Closing of Schools
- Discretionary Power
- Hearings
- Judicial Review
Desegregation
- Limitation in Other Section
Free Schools
Jurisdiction
- Held Proper
Legislative Intent
- Preventing Segregation
Power of Selection
- Board
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Scope of Education Board's Authority
- In General
- Formula Controlling Racial Composition
- Refusal of Federal Funds
Unreasonable and Arbitrary Rules

Constitutionality

Although this section did not designate when a school was to be considered racially segregated or imbalanced, that did not mean it lacked adequate specificity to be constitutional. Tometz v. Board of Educ., 39 Ill. 2d 593, 237 N.E.2d 498 (1968).

The fact that children other than African-American children might have been deprived of equal educational opportunities did not form a constitutional impediment to this section. Tometz v. Board of Educ., 39 Ill. 2d 593, 237 N.E.2d 498 (1968).

Applicability

- De Facto Segregation

This section was designed to apply to de facto school segregation, as Illinois has never been classified as a de jure segregation state. Tometz v. Board of Educ., 39 Ill. 2d 593, 237 N.E.2d 498 (1968).

Closing of Schools

- Discretionary Power

This Code provides that the directors of each district shall be a body politic and corporate and that the board has the duties enumerated, including: to establish one or more attendance units within the district, to assign pupils to the several schools; to have control and supervision of all school houses in their district; and to decide when a site or building has become unnecessary, unsuitable or inconvenient for a school. Moreover, the members of the board have broad discretion in the use of those powers within the limits of the grant. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

A board of education in the exercise of its discretionary powers may discontinue or abandon the use of a public school within the boundaries of its jurisdiction and assign the students thereof to other schools in the school system; the board must be able to act in a reasonable manner consistent with the public interest. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

The decision to close a school and to reassign the students to other attendance zones within the district is an exercise of the discretionary powers granted to the board to act as a policy-making body, tantamount to the quasi-legislative power to make prospective regulations and orders. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

Plaintiffs' contentions that a board acted capriciously and without cause by failing to strictly apply criteria prepared by several committees in an action to compel the board to reopen a specific school was without merit, as the legislature had vested discretionary control over school closings in the school board. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

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- Hearings

This Code does not require the taking of testimony or evidence or any public hearings as a condition or prerequisite to the board's exercise of the statutory powers to close specific schools or to transfer students. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

- Judicial Review

No statutory judicial review of the board's exercise of its powers to close a school is provided for, as this Code does not require the board to make written findings or reasons in support of its decision in the exercise of such powers. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

Desegregation

- Limitation in Other Section

The authority of the board of education to regulate desegregation is limited by 105 ILCS 5/22-19 rather than expanded. Aurora E. Pub. Sch. v. Cronin, 92 Ill. 2d 313, 66 Ill. Dec. 85, 442 N.E.2d 511 (1982).

Free Schools

In light of Ill. Const. (1970), Art. X, § 1, there was every reason to assume that the legislature intended the word "free" to mean financially free, and that the term was not meant to encompass racial equality; consequently, this section was not a law for establishing and maintaining free schools in the state. Aurora E. Pub. Sch. v. Cronin, 92 Ill. 2d 313, 66 Ill. Dec. 85, 442 N.E.2d 511 (1982).

Jurisdiction

- Held Proper

The circuit court had jurisdiction of the subject matter and of the parties to the litigation, and it could retain it until all the issues presented to it were disposed of. Aquelino v. City of Waukegan, 344 Ill. App. 204, 100 N.E.2d 820 (2 Dist. 1951).

Legislative Intent

- Preventing Segregation

The intent of this section was to direct school boards in forming or changing school units to take into consideration color, race and nationality so that segregation of children on such basis would be prevented and, where appropriate, eliminated. Tometz v. Board of Educ., 39 Ill. 2d 593, 237 N.E.2d 498 (1968).

Power of Selection

- Board

Board of education had the right to elect which site or sites, when more than one had been approved, they would purchase for the purpose of erecting a high school building. Jobson v. Northfield Tp. High Sch., 345 Ill. App. 439, 103 N.E.2d 371 (1 Dist. 1952).

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- Voters

Where the voters in an election properly called and held designated two sites upon which to construct new schools, the vote was an authorization under which the board of education could determine which site in their opinion would best serve the needs of the district. Jobson v. Northfield Tp. High Sch., 345 Ill. App. 439, 103 N.E.2d 371 (1 Dist. 1952).

Scope of Education Board's Authority

- In General

The State Board of Education has the authority to promulgate rules to prevent racial segregation of public schools. Aurora E. Pub. Sch. v. Cronin, 92 Ill. App. 3d 1010, 48 Ill. Dec. 88, 415 N.E.2d 1372 (2 Dist. 1981), aff'd, 92 Ill. 2d 313, 66 Ill. Dec. 85, 442 N.E.2d 511 (1982).

- Formula Controlling Racial Composition

Rules promulgated by the State Board of Education to eliminate racial segregation in schools, which provided that attendance centers or schools which were defined as racially segregated had to take affirmative steps to achieve racial balance within their districts and which defined schools as racially segregated and, thus, in non-conformance with the rules if the minority racial composition of the pupils in attendance failed to reflect, within fifteen percentage points, the minority racial composition of the pupils in the district as a whole, were invalid. Chicago Heights Pub. Sch. v. Illinois State Bd. of Educ., 97 Ill. App. 3d 246, 52 Ill. Dec. 689, 422 N.E.2d 898 (1 Dist. 1981), aff'd, 92 Ill. 2d 313, 66 Ill. Dec. 85, 442 N.E.2d 511 (1982).

The State Board of Education exceeded its authority by promulgating rules which made a 15% plus or minus formula (i.e., the existence of racial segregation as a condition in which the minority racial composition of the pupils in any attendance center failed to reflect, within 15 percentage points, the minority racial composition of the pupils in all attendance centers under a given school authority) the ultimate standard by which the State Board of Education determined a local board's compliance with the dictates of this section. Aurora E. Pub. Sch. v. Cronin, 92 Ill. App. 3d 1010, 48 Ill. Dec. 88, 415 N.E.2d 1372 (2 Dist. 1981), aff'd, 92 Ill. 2d 313, 66 Ill. Dec. 85, 442 N.E.2d 511 (1982).

- Refusal of Federal Funds

The State Board of Education exceeded its scope of statutory power in enforcing this section by promulgating a rule enabling it to decline acceptance of federal funds for noncompliance with rules to prevent racial segregation of public schools. Aurora E. Pub. Sch. v. Cronin, 92 Ill. App. 3d 1010, 48 Ill. Dec. 88, 415 N.E.2d 1372 (2 Dist. 1981), aff'd, 92 Ill. 2d 313, 66 Ill. Dec. 85, 442 N.E.2d 511 (1982).

Unreasonable and Arbitrary Rules

The State Board of Education's rules establishing requirements and procedures for the elimination and prevention of racial segregation in schools were unreasonable and arbitrary. Aurora E. Pub. Sch. v. Cronin, 92 Ill. App. 3d 1010, 48 Ill. Dec. 88, 415 N.E.2d 1372 (2 Dist. 1981), aff'd, 92 Ill. 2d 313, 66 Ill. Dec. 85, 442 N.E.2d 511 (1982).

§ 105 ILCS 5/10-21.3a. Transfer of students

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Sec. 10-21.3a. Transfer of students. (a) Each school board shall establish and implement a policy governing the transfer of a student from one attendance center to another within the school district upon the request of the student's parent or guardian. Any request by a parent or guardian to transfer his or her child from one attendance center to another within the school district pursuant to Section 1116 of the federal Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6316) must be made no later than 30 days after the parent or guardian receives notice of the right to transfer pursuant to that law. A student may not transfer to any of the following attendance centers, except by change in residence if the policy authorizes enrollment based on residence in an attendance area or unless approved by the board on an individual basis:

(1) An attendance center that exceeds or as a result of the transfer would exceed its attendance capacity.

(2) An attendance center for which the board has established academic criteria for enrollment if the student does not meet the criteria, provided that the transfer must be permitted if the attendance center is the only attendance center serving the student's grade that has not been identified for school improvement, corrective action, or restructuring under Section 1116 of the federal Elementary and Secondary Education Act of 1965.

(3) Any attendance center if the transfer would prevent the school district from meeting its obligations under a State or federal law, court order, or consent decree applicable to the school district.

(b) Each school board shall establish and implement a policy governing the transfer of students within a school district from a persistently dangerous school to another public school in that district that is not deemed to be persistently dangerous. In order to be considered a persistently dangerous school, the school must meet all of the following criteria for 2 consecutive years:

(1) Have greater than 3% of the students enrolled in the school expelled for violence-related conduct.

(2) Have one or more students expelled for bringing a firearm to school as defined in 18 U.S.C. 921.

(3) Have at least 3% of the students enrolled in the school exercise the individual option to transfer schools pursuant to subsection (c) of this Section.

(c) A student may transfer from one public school to another public school in that district if the student is a victim of a violent crime as defined in Section 3 of the Rights of Crime Victims and Witnesses Act [725 ILCS 120/3]. The violent crime must have occurred on school grounds during regular school hours or during a school-sponsored event.

(d) Transfers made pursuant to subsections (b) and (c) of this Section shall be made in compliance with the federal No Child Left Behind Act of 2001 (Public Law 107-110).

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(Source: P.A. 92-604, § 5; 93-633, § 5; 96-328, § 145.)

Effective Date. Section 99 of P.A. 92-604 made this section effective July 1, 2002.

Effect of Amendments. The 2003 amendment by P.A. 93-633, effective December 23, 2003, added the subsection (a) designation and added subsections (b) through (d).

The 2009 revisory amendment by P.A. 96-328, effective August 11, 2009, substituted "20 U.S.C. Sec. 6316" for "20 U.S.C. Sec. 6317" in the second sentence of the introductory language of (a) and in (a)(2).

§ 105 ILCS 5/10-21.4. Superintendent - Duties

Sec. 10-21.4. Superintendent - Duties. Except in districts in which there is only one school with less than four teachers, to employ a superintendent who shall have charge of the administration of the schools under the direction of the board of education. In addition to the administrative duties, the superintendent shall make recommendations to the board concerning the budget, building plans, the locations of sites, the selection, retention and dismissal of teachers and all other employees, the selection of textbooks, instructional material and courses of study. However, in districts under a Financial Oversight Panel pursuant to Section 1A-8 [105 ILCS 5/1A-8] for violating a financial plan, the duties and responsibilities of the superintendent in relation to the financial and business operations of the district shall be approved by the Panel. In the event the Board refuses or fails to follow a directive or comply with an information request of the Panel, the performance of those duties shall be subject to the direction of the Panel. The superintendent shall also notify the State Board of Education, the board and the chief administrative official, other than the alleged perpetrator himself, in the school where the alleged perpetrator serves, that any person who is employed in a school or otherwise comes into frequent contact with children in the school has been named as a perpetrator in an indicated report filed pursuant to the Abused and Neglected Child Reporting Act, approved June 26, 1975, as amended [325 ILCS 5/1 et seq.]. The superintendent shall keep or cause to be kept the records and accounts as directed and required by the board, aid in making reports required by the board, and perform such other duties as the board may delegate to him.

In addition, each year at a time designated by the State Superintendent of Education, each superintendent shall report to the State Board of Education the number of high school students in the district who are enrolled in accredited courses (for which high school credit will be awarded upon successful completion of the courses) at any community college, together with the name and number of the course or courses which each such student is taking.

The provisions of this section shall also apply to board of director districts.

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Notice of intent not to renew a contract must be given in writing stating the specific reason therefor by April 1 of the contract year unless the contract specifically provides otherwise. Failure to do so will automatically extend the contract for an additional year. Within 10 days after receipt of notice of intent not to renew a contract, the superintendent may request a closed session hearing on the dismissal. At the hearing the superintendent has the privilege of presenting evidence, witnesses and defenses on the grounds for dismissal. The provisions of this paragraph shall not apply to a district under a Financial Oversight Panel pursuant to Section 1A-8 for violating a financial plan.

(Source: P.A. 86-721; 89-572, § 5; 95-496, § 5; 97-256, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-21.4.

Section 95 of P.A. 95-496 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1996 amendment by P.A. 89-572, effective July 30, 1996, in the first paragraph added the third and fourth sentences; and in the fourth paragraph added the fifth sentence.

The 2007 amendment by P.A. 95-496, effective August 28, 2007, rewrote the second paragraph.

The 2011 amendment by P.A. 97-256, effective January 1, 2012, substituted "each year at a time designated by the State Superintendent of Education" for "in January of each year" in the second paragraph.

CASE NOTES

Analysis

In General
Agency
- Liability
Authority of Superintendent
- Employment Notices
Employer
Hiring and Firing
Nonrenewal of Contract
- Delegation of Power
- Due Process
- Notice
Official Capacity
Ratification of Superintendent's Actions
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- Held Privileged
Superintendent's Duty
- Recommendations
Termination of Superintendent
- In General

In General

This section limits the authority of the superintendent to certain duties therein set forth which are under the direction of the board of education. Elder v. Board of Educ., 60 Ill. App. 2d 56, 208 N.E.2d 423 (1 Dist. 1965).

Agency

- Liability

As superintendent of schools, defendant was an agent of the school district and could not be held personally liable to plaintiffs where he was acting within the scope of his authority and did not personally agree to assume liability with regard to plaintiffs' employment contracts. Sitton v. Gibbs, 73 Ill. App. 3d 812, 29 Ill. Dec. 687, 392 N.E.2d 244 (1 Dist. 1979).

Authority of Superintendent

- Employment Notices

Superintendent of schools did not exceed his authority where he notified plaintiffs of their hiring as well as of their dismissal. Sitton v. Gibbs, 73 Ill. App. 3d 812, 29 Ill. Dec. 687, 392 N.E.2d 244 (1 Dist. 1979).

Lay supervisors could not claim that they had no notice of a school superintendent's actual authority to notify them of their employment or dismissal where the supervisors entered into an employment contract with him. Sitton v. Gibbs, 73 Ill. App. 3d 812, 29 Ill. Dec. 687, 392 N.E.2d 244 (1 Dist. 1979).

Employer

Under the explicit authority of the School Code, 105 ILCS 5/10-16.7 to 105 ILCS 5/10-21.4, and the Unemployment Insurance Act, 820 ILCS 405/204, the Board of Education was a school superintendent's employer. Bd. of Educ. of Bremen High Sch. Dist. No. 228 v. Mitchell, 387 Ill. App. 3d 117, 326 Ill. Dec. 509, 899 N.E.2d 1160, 2008 Ill. App. LEXIS 1212 (1 Dist. 2008).

Hiring and Firing

The hiring and firing of teachers are discretionary, and therefore nondelegable, powers as is the determination not to renew a superintendent's contract under this section. Daleanes v. Board of Educ., 120 Ill. App. 3d 505, 75 Ill. Dec. 823, 457 N.E.2d 1382 (2 Dist. 1983).

While matters pertaining to hiring and firing of school personnel are discretionary functions which cannot be delegated, duties which are ministerial may be delegated; in notifying lay supervisors of their dismissal, a school superintendent was clearly performing a ministerial task, informing

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supervisors of the district's decision. Sitton v. Gibbs, 73 Ill. App. 3d 812, 29 Ill. Dec. 687, 392 N.E.2d 244 (1 Dist. 1979).

Nonrenewal of Contract

- Delegation of Power

A school board may not delegate the responsibilities to determine the existence of cause to discharge a superintendent and to determine that notice of the board's intent not to renew the superintendent's contract should be given; however, the functions of drafting the written notice and the reasons for nonrenewal and of delivering that notice are ministerial and, therefore, delegable. Daleanes v. Board of Educ., 120 Ill. App. 3d 505, 75 Ill. Dec. 823, 457 N.E.2d 1382 (2 Dist. 1983).

- Due Process

The mere fact that this section requires the giving of notice of nonrenewal does not create a sufficient property interest to bring the due process clause into play. Daleanes v. Board of Educ., 120 Ill. App. 3d 505, 75 Ill. Dec. 823, 457 N.E.2d 1382 (2 Dist. 1983).

- Notice

Where a superintendent received proper written notice that his contract would not be renewed, he failed to establish his due process claim. Crim v. Board of Educ., 147 F.3d 535 (7th Cir. 1998).

It was reasonable to infer that the reasons for nonrenewal of a superintendent's contract were those of the school board and that the board did not improperly delegate the discretionary function of determining that notice of nonrenewal should be given where a bill of particulars setting forth the board's reasons for not renewing the superintendent's contract was provided after the board's formal action in determining not to reemploy the superintendent, even though neither the minutes nor the board's resolution recited whether the board considered the grounds for dismissal, and where the letter of notice sent to the superintendent, a copy of which was part of the official record of the board, stated that the specific reasons for the nonrenewal of the contract were set out in an attached exhibit. Daleanes v. Board of Educ., 120 Ill. App. 3d 505, 75 Ill. Dec. 823, 457 N.E.2d 1382 (2 Dist. 1983).

The school board's use in a letter of notice given to a school superintendent whose contract was not going to be renewed of the words "decided" and "determines" instead of a form of the word "intent" was merely imprecise usage and not so qualitatively different as to fail to constitute notice of intent as required by this section. Daleanes v. Board of Educ., 120 Ill. App. 3d 505, 75 Ill. Dec. 823, 457 N.E.2d 1382 (2 Dist. 1983).

Since this section did not require any further action by the school board in order to terminate employment of superintendent, notice to him by the board of its "determination" not to rehire him caused no different legal result than a notice of "intent" not to rehire him. Daleanes v. Board of Educ., 120 Ill. App. 3d 505, 75 Ill. Dec. 823, 457 N.E.2d 1382 (2 Dist. 1983).

Official Capacity

School employee did not state a claim from which the court could conclude that the defendant school officials were working in their official capacities and liable under 42 U.S.C. § 1983 for condoning, acquiescing and participating in a violation of the school employee's fourth amendment rights when they failed to investigate the circumstances surrounding the theft of his diary pages and to discipline coemployees for the theft. Duda v. Board of Educ. of Franklin Park Pub. Sch. Dist. No. 84, 133 F.3d 1054 (7th Cir. 1998).

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Ratification of Superintendent's Actions

Even if they were not previously authorized, a school superintendent's acts were ratified by the school district with regard to the hiring of lay supervisors when it allowed supervisors to be paid for their services; similarly, ratification of the notice of dismissal was evidenced by the cessation of regular payment and the issuance of severance pay to the supervisors. Sitton v. Gibbs, 73 Ill. App. 3d 812, 29 Ill. Dec. 687, 392 N.E.2d 244 (1 Dist. 1979).

Statements

- Held Privileged

Statements made by defendant school superintendent to Board of Education concerning plaintiff's job qualifications were communications within the duty of the defendant as superintendent and were absolutely privileged. McLaughlin v. Tilendis, 115 Ill. App. 2d 148, 253 N.E.2d 85 (1 Dist. 1969).

Superintendent's Duty

- Recommendations

The superintendent's duty is merely to make recommendations to the school board concerning the selection of teachers; the board may act upon the superintendent's recommendation and institute or prosecute a judicial or administrative proceeding, but what weight is to be given to his recommendation is within the sound discretion of the board. McLaughlin v. Tilendis, 115 Ill. App. 2d 148, 253 N.E.2d 85 (1 Dist. 1969).

Termination of Superintendent

- In General

This section requires that in order to terminate a superintendent's employment, the district board must form an intent not to renew the superintendent's contract and then give him timely notice of that intent by a written document which sets forth the specific reasons for the board's action. Champaign County Bank & Trust Co. v. Brewer, 63 Ill. App. 3d 490, 20 Ill. Dec. 377, 380 N.E.2d 54 (4 Dist. 1978).

§ 105 ILCS 5/10-21.4a. Principals and assistant principals - Duties

Sec. 10-21.4a. Principals and assistant principals - Duties. To employ principals and assistant principals who hold valid supervisory or administrative certificates. The principal, with the assistance of any assistant principals, shall supervise the operation of attendance centers as the board shall determine necessary. In an attendance center having fewer than 4 teachers, a head teacher who does not qualify as a principal may be assigned in the place of a principal.

The principal, with the assistance of any assistant principals, shall assume administrative responsibilities and instructional leadership, under the supervision of the superintendent, and in accordance with reasonable rules and regulations of the board, for the planning,

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operation and evaluation of the educational program of the attendance area to which he or she is assigned. However, in districts under a Financial Oversight Panel pursuant to Section 1A-8 [105 ILCS 5/1A-8] for violating a financial plan, the duties and responsibilities of principals and assistant principals in relation to the financial and business operations of the district shall be approved by the Panel. In the event the Board refuses or fails to follow a directive or comply with an information request of the Panel, the performance of those duties shall be subject to the direction of the Panel.

School boards shall specify in their formal job description for principals that his or her primary responsibility is in the improvement of instruction. A majority of the time spent by a principal shall be spent on curriculum and staff development through both formal and informal activities, establishing clear lines of communication regarding school goals, accomplishments, practices and policies with parents and teachers.

Unless residency within a school district is made an express condition of a person's employment or continued employment as a principal or assistant principal of that school district at the time of the person's initial employment as a principal or assistant principal of that district, residency within that school district may not at any time thereafter be made a condition of that person's employment or continued employment as a principal or assistant principal of the district, without regard to whether the person's initial employment as a principal or assistant principal of the district began before or begins on or after the effective date of this amendatory Act of 1996 and without regard to whether that person's residency within or outside of the district began or was changed before or begins or changes on or after that effective date. In no event shall residency within a school district be considered in determining the compensation of a principal or assistant principal or the assignment or transfer of a principal or assistant principal to an attendance center of the district.

School boards shall ensure that their principals and assistant principals are evaluated on their instructional leadership ability and their ability to maintain a positive education and learning climate.

It shall also be the responsibility of the principal to utilize resources of proper law enforcement agencies when the safety and welfare of students and teachers are threatened by illegal use of drugs and alcohol.

The principal shall submit recommendations to the superintendent concerning the appointment, retention, promotion and assignment of all personnel assigned to the attendance center.

(Source: P.A. 84-126; 89-572, § 5; 89-622, § 5; 90-14, § 2-135; 97-217, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-21.4a.

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Effect of Amendments. The 1996 amendment by P.A. 89-572, effective July 30, 1996, in the second paragraph added the second and third sentences.

The 1996 amendment by P.A. 89-622, effective August 9, 1996, added the fourth paragraph.

The 1997 amendment by P.A. 90-14, effective July 1, 1997, combined the amendments by P.A. 89-572 and P.A. 89-622.

The 2011 amendment by P.A. 97-217, effective July 28, 2011, added "and assistant principals" in the section heading, in the first sentence of the first paragraph, in the second sentence of the second paragraph, and in the sixth paragraph; added "The principal, with the assistance of any assistant principals" to the beginning of the second sentence of the first paragraph; inserted "with the assistance of any assistant principals" in the first sentence of the second paragraph; inserted "or assistant principal" throughout the fourth paragraph; deleted the former last paragraph, which read: "If a principal is absent due to extended illness or leave of absence, an assistant principal may be assigned as acting principal for a period not to exceed 60 school days"; and made a stylistic change.

CASE NOTES

Analysis

Assistant Principal
- Duty
Official Capacity
Principal
- Duty
Scope of Power
- Discipline

Assistant Principal

- Duty

The assistant school principal, as a chief administrative officer within the school, has a daily responsibility of protecting to the extent possible the health, safety and welfare of the students within that attendance center, and this responsibility includes the prevention of violation of school board rules and other public wrongs within the school. M ex rel. R v. Board of Educ. Ball-Chatham Community Unit Sch. Dist. No. 5, 77 F.R.D. 463 (S.D. Ill. 1978).

Official Capacity

School employee did not state a claim from which the court could conclude that the defendant school officials were working in their official capacities and liable under 42 U.S.C. § 1983 for condoning, acquiescing and participating in a violation of the school employee's fourth amendment rights when they failed to investigate the circumstances surrounding the theft of his diary pages and to discipline coemployees for the theft. Duda v. Board of Educ. of Franklin Park Pub. Sch. Dist. No. 84, 133 F.3d 1054 (7th Cir. 1998).

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Principal

- Duty

The school principal assumes administrative responsibilities for operation of the attendance area in accordance with reasonable rules and regulations of the school board and under the supervision of the superintendent. M ex rel. R v. Board of Educ. Ball-Chatham Community Unit Sch. Dist. No. 5, 77 F.R.D. 463 (S.D. Ill. 1978).

Scope of Power

- Discipline

The school board can authorize the school principal to suspend pupils guilty of gross disobedience or misconduct. M ex rel. R v. Board of Educ. Ball-Chatham Community Unit Sch. Dist. No. 5, 77 F.R.D. 463 (S.D. Ill. 1978).

§ 105 ILCS 5/10-21.5. Establishment of high schools

Sec. 10-21.5. Establishment of high schools. The board of education of any community high school district, township high school district, consolidated high school district, or community unit district heretofore created shall within 4 years from the date of such creation establish within the district one or more high schools with a program of studies extending through the ninth to twelfth years, inclusive, and in such districts created hereafter the board of education shall within four years following the creation of the district establish such high schools.

Notwithstanding any other provision of this Act, any unit district that has a majority of its territory in the same county as a special charter district that, as authorized by Section 12-24 [105 ILCS 5/12-24], accepts tuition students in grades 9-12 from a neighboring unit district that does not maintain a high school may, by agreement between the school board of the unit district and the school board of the charter district, send its students in grades 9-12 to the charter district upon payment of such tuition and other terms as may be agreed by the boards.

Except as otherwise provided in Section 5-32 [105 ILCS 5/5-32], if the board of education fails to establish a high school as required by this section the district shall become automatically dissolved and the property and territory of such district shall be disposed of in the manner provided in this Act, provided that no community high school district shall be dissolved under this Act where an election has been held, a site selected, and bonds to construct a high school building have been sold prior to September 1, 1955.

(Source: Laws 1961, p. 31; P.A. 87-1022, § 1.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 10-21.5.

Effect of Amendments. The 1992 amendment by P.A. 87-1022, effective September 3, 1992, added the second paragraph.

CASE NOTES

Analysis

Constitutionality
Creation
- Illustrative Cases
Intention of Board
- Compliance
Quo Warranto
- In General
- Illustrative Cases
Validity of District
- Contingency

Constitutionality

The validating act excusing the requirement of establishing a high school was not invalid as special and local legislation. People ex rel. Lindsey v. Board of Educ., 3 Ill. 2d 159, 120 N.E.2d 887 (1954).

Creation

- Illustrative Cases

An election to create a township high school district was properly conducted. People ex rel. Medd v. Carter, 264 Ill. 42, 105 N.E. 698 (1914).

Under a similar prior provision, an election to create a township high school district was properly held. People v. Brown, 189 Ill. 619, 60 N.E. 46 (1901).

Intention of Board

- Compliance

An intention of the board not to comply with the requirements of this section did not affect the validity of the organization of the district or affect the power and authority of the members of the board to do the things in which they were and had been engaged. People ex rel. Lindsey v. Board of Educ., 3 Ill. 2d 159, 120 N.E.2d 887 (1954).

Quo Warranto

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- In General

Courts in all quo warranto proceedings should consider the circumstances of the case, and where it appears that harm rather than benefit will be done to the public welfare, the application of laches against the public is justified. People ex rel. Lindsey v. Board of Educ., 3 Ill. 2d 159, 120 N.E.2d 887 (1954).

- Illustrative Cases

Questions concerning the requirements of this section and the application of the validating act to this section could not be presented in a quo warranto proceeding. People ex rel. Lindsey v. Board of Educ., 3 Ill. 2d 159, 120 N.E.2d 887 (1954).

Validity of District

- Contingency

The court cannot invalidate the district for a contingency which may never occur. People ex rel. Lindsey v. Board of Educ., 3 Ill. 2d 159, 120 N.E.2d 887 (1954).

§ 105 ILCS 5/10-21.6: Repealed by P.A. 97-256, § 10, effective January 1, 2012.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-21.6.

CASE NOTES

Constitutionality

This section was not violative of Ill. Const. (1870), Art. IV, § 22 (see now Ill. Const. (1970), Art. IV, § 13). Treece v. Shawnee Community Unit Sch. Dist. No. 84, 39 Ill. 2d 136, 233 N.E.2d 549 (1968).

§ 105 ILCS 5/10-21.7. Attacks on school personnel

Sec. 10-21.7. Attacks on school personnel. (a) In the Section, "school" means any public or private elementary or secondary school.

(b) Upon receipt of a written complaint from any school personnel, the superintendent, or other appropriate administrative officer for a private school, shall report all incidents of battery committed against teachers, teacher personnel, administrative personnel or educational support personnel to the local law enforcement authorities immediately after the occurrence of the attack and to the Department of State Police's Illinois Uniform Crime Reporting Program no later than 3 days after the occurrence of the attack. The

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State Board of Education shall receive monthly as well as annual statistical compilations of attacks on school personnel from the Department of State Police through the Illinois Uniform Crime Reporting Program. The State Board of Education shall compile this information by school district and make it available to the public.

(Source: P.A. 85-1420; 91-491, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-21.7.

Effect of Amendments. The 1999 amendment by P.A. 91-491, effective August 13, 1999, added subsection (a) and designated the second paragraph as subsection (b); and in subsection (b), in the first sentence inserted "or other appropriate administrative officer for a private school" and substituted "immediately" for "no later than 24 hours", and added the last sentence.

§ 105 ILCS 5/10-21.8. Correspondence and Reports

Sec. 10-21.8. Correspondence and Reports. In the absence of any court order to the contrary to require that, upon the request of either parent of a pupil whose parents are divorced, copies of the following: reports or records which reflect the pupil's academic progress, reports of the pupil's emotional and physical health, notices of school-initiated parent-teacher conference, notices of major school-sponsored events, such as open houses, which involve pupil-parent interaction, and copies of the school calendar regarding the child which are furnished by the school district to one parent be furnished by mail to the other parent. Notwithstanding the foregoing provisions of this Section a school board shall not, under the authority of this Section, refuse to mail copies of reports, records, notices or other documents regarding a pupil to a parent of the pupil as provided by this Section, unless the school board first has been furnished with a certified copy of the court order prohibiting the release of such reports, records, notices or other documents to that parent. No such reports or records with respect to a pupil shall be provided to a parent who has been prohibited by an order of protection from inspecting or obtaining school records of that pupil pursuant to the Illinois Domestic Violence Act of 1986, as now or hereafter amended [750 ILCS 60/101 et seq.].

(Source: P.A. 86-966.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-21.8.

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§ 105 ILCS 5/10-21.9. Criminal history records checks and checks of the Statewide Sex Offender Database and Statewide Murderer and Violent Offender Against Youth Database

Sec. 10-21.9. Criminal history records checks and checks of the Statewide Sex Offender Database and Statewide Murderer and Violent Offender Against Youth Database. (a) Certified and noncertified applicants for employment with a school district, except school bus driver applicants, are required as a condition of employment to authorize a fingerprint-based criminal history records check to determine if such applicants have been convicted of any of the enumerated criminal or drug offenses in subsection (c) of this Section or have been convicted, within 7 years of the application for employment with the school district, of any other felony under the laws of this State or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in this State, would have been punishable as a felony under the laws of this State. Authorization for the check shall be furnished by the applicant to the school district, except that if the applicant is a substitute teacher seeking employment in more than one school district, a teacher seeking concurrent part-time employment positions with more than one school district (as a reading specialist, special education teacher or otherwise), or an educational support personnel employee seeking employment positions with more than one district, any such district may require the applicant to furnish authorization for the check to the regional superintendent of the educational service region in which are located the school districts in which the applicant is seeking employment as a substitute or concurrent part-time teacher or concurrent educational support personnel employee. Upon receipt of this authorization, the school district or the appropriate regional superintendent, as the case may be, shall submit the applicant's name, sex, race, date of birth, social security number, fingerprint images, and other identifiers, as prescribed by the Department of State Police, to the Department. The regional superintendent submitting the requisite information to the Department of State Police shall promptly notify the school districts in which the applicant is seeking employment as a substitute or concurrent part-time teacher or concurrent educational support personnel employee that the check of the applicant has been requested. The Department of State Police and the Federal Bureau of Investigation shall furnish, pursuant to a fingerprint-based criminal history records check, records of convictions, until expunged, to the president of the school board for the school district that requested the check, or to the regional superintendent who requested the check. The Department shall charge the school district or the appropriate regional superintendent a fee for conducting such check, which fee shall be deposited in the State Police Services Fund and shall not exceed the cost of the inquiry; and the applicant shall not be charged a fee for such check by the school district or by the regional superintendent, except that those applicants seeking employment as a substitute teacher with a school district may be charged a fee not to exceed the cost of the inquiry. Subject to appropriations for these purposes, the State Superintendent of Education shall reimburse school districts and regional superintendents for fees paid to obtain criminal history records checks under this Section.

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(a-5) The school district or regional superintendent shall further perform a check of the Statewide Sex Offender Database, as authorized by the Sex Offender Community Notification Law, for each applicant.

(a-6) The school district or regional superintendent shall further perform a check of the Statewide Murderer and Violent Offender Against Youth Database, as authorized by the Murderer and Violent Offender Against Youth Community Notification Law, for each applicant.

(b) Any information concerning the record of convictions obtained by the president of the school board or the regional superintendent shall be confidential and may only be transmitted to the superintendent of the school district or his designee, the appropriate regional superintendent if the check was requested by the school district, the presidents of the appropriate school boards if the check was requested from the Department of State Police by the regional superintendent, the State Superintendent of Education, the State Teacher Certification Board, any other person necessary to the decision of hiring the applicant for employment, or for clarification purposes the Department of State Police or Statewide Sex Offender Database, or both. A copy of the record of convictions obtained from the Department of State Police shall be provided to the applicant for employment. Upon the check of the Statewide Sex Offender Database, the school district or regional superintendent shall notify an applicant as to whether or not the applicant has been identified in the Database as a sex offender. If a check of an applicant for employment as a substitute or concurrent part-time teacher or concurrent educational support personnel employee in more than one school district was requested by the regional superintendent, and the Department of State Police upon a check ascertains that the applicant has not been convicted of any of the enumerated criminal or drug offenses in subsection (c) or has not been convicted, within 7 years of the application for employment with the school district, of any other felony under the laws of this State or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in this State, would have been punishable as a felony under the laws of this State and so notifies the regional superintendent and if the regional superintendent upon a check ascertains that the applicant has not been identified in the Sex Offender Database as a sex offender, then the regional superintendent shall issue to the applicant a certificate evidencing that as of the date specified by the Department of State Police the applicant has not been convicted of any of the enumerated criminal or drug offenses in subsection (c) or has not been convicted, within 7 years of the application for employment with the school district, of any other felony under the laws of this State or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in this State, would have been punishable as a felony under the laws of this State and evidencing that as of the date that the regional superintendent conducted a check of the Statewide Sex Offender Database, the applicant has not been identified in the Database as a sex offender. The school board of any school district may rely on the certificate issued by any regional superintendent to that substitute teacher, concurrent part-time teacher, or concurrent educational support personnel employee or may initiate its own criminal history records check of the applicant through the Department of State Police and its own check of the Statewide Sex Offender Database as provided in subsection (a). Any person who releases any confidential information

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concerning any criminal convictions of an applicant for employment shall be guilty of a Class A misdemeanor, unless the release of such information is authorized by this Section.

(c) No school board shall knowingly employ a person who has been convicted of any offense that would subject him or her to license suspension or revocation pursuant to Section 21B-80 of this Code [105 ILCS 5/21B-80]. Further, no school board shall knowingly employ a person who has been found to be the perpetrator of sexual or physical abuse of any minor under 18 years of age pursuant to proceedings under Article II of the Juvenile Court Act of 1987 [705 ILCS 405/2-1 et seq.].

(d) No school board shall knowingly employ a person for whom a criminal history records check and a Statewide Sex Offender Database check has not been initiated.

(e) Upon receipt of the record of a conviction of or a finding of child abuse by a holder of any certificate issued pursuant to Article 21 or Section 34-8.1 or 34-83 of the School Code [105 ILCS 5/21-0.01 et seq. or 105 ILCS 5/34-8.1 or 105 ILCS 5/34-83], the State Superintendent of Education may initiate certificate suspension and revocation proceedings as authorized by law.

(e-5) The superintendent of the employing school board shall, in writing, notify the State Superintendent of Education and the applicable regional superintendent of schools of any certificate holder whom he or she has reasonable cause to believe has committed an intentional act of abuse or neglect with the result of making a child an abused child or a neglected child, as defined in Section 3 of the Abused and Neglected Child Reporting Act [325 ILCS 5/3], and that act resulted in the certificate holder's dismissal or resignation from the school district. This notification must be submitted within 30 days after the dismissal or resignation. The certificate holder must also be contemporaneously sent a copy of the notice by the superintendent. All correspondence, documentation, and other information so received by the regional superintendent of schools, the State Superintendent of Education, the State Board of Education, or the State Teacher Certification Board under this subsection (e-5) is confidential and must not be disclosed to third parties, except (i) as necessary for the State Superintendent of Education or his or her designee to investigate and prosecute pursuant to Article 21 of this Code [105 ILCS 5/21 et seq.], (ii) pursuant to a court order, (iii) for disclosure to the certificate holder or his or her representative, or (iv) as otherwise provided in this Article and provided that any such information admitted into evidence in a hearing is exempt from this confidentiality and non-disclosure requirement. Except for an act of willful or wanton misconduct, any superintendent who provides notification as required in this subsection (e-5) shall have immunity from any liability, whether civil or criminal or that otherwise might result by reason of such action.

(f) After January 1, 1990 the provisions of this Section shall apply to all employees of persons or firms holding contracts with any school district including, but not limited to, food service workers, school bus drivers and other transportation employees, who have direct, daily contact with the pupils of any school in such district. For purposes of criminal history records checks and checks of the Statewide Sex Offender Database on employees of persons or firms holding contracts with more than one school district and

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assigned to more than one school district, the regional superintendent of the educational service region in which the contracting school districts are located may, at the request of any such school district, be responsible for receiving the authorization for a criminal history records check prepared by each such employee and submitting the same to the Department of State Police and for conducting a check of the Statewide Sex Offender Database for each employee. Any information concerning the record of conviction and identification as a sex offender of any such employee obtained by the regional superintendent shall be promptly reported to the president of the appropriate school board or school boards.

(g) In order to student teach in the public schools, a person is required to authorize a fingerprint-based criminal history records check and checks of the Statewide Sex Offender Database and Statewide Murderer and Violent Offender Against Youth Database prior to participating in any field experiences in the public schools. Authorization for and payment of the costs of the checks must be furnished by the student teacher. Results of the checks must be furnished to the higher education institution where the student teacher is enrolled and the superintendent of the school district where the student is assigned.

(h) Upon request of a school, school district, community college district, or private school, any information obtained by a school district pursuant to subsection (f) of this Section within the last year must be made available to that school, school district, community college district, or private school.

(Source: P.A. 86-411; 86-1243; 87-1124, § 1; 88-612, § 5; 89-428, § 225; 89-462, § 225; 89-610, § 5; 90-566, § 5; 91-885, § 20; 93-418, § 10; 93-909, § 10; 94-219, § 5; 94-556, § 950; 94-875, § 5; 94-945, § 1015; 95-331, § 540; 96-431, § 10; 96-1452, § 5; 96-1489, § 5; 97-154, § 10; 97-248, § 5; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-21.9.

P.A. 97-154 Section 1 provides: "This Act may be referred to as Andrea's Law."

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Cross References.

For duties of the Department of State Police pursuant to this section, see 20 ILCS 2605/2605-325.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 401.260.

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Effect of Amendments. The 1992 amendment by P.A. 87-1124, effective September 16, 1992, rewrote a proviso at the end of the last sentence of subsection (a) to form the present last sentence of that subsection.

The 1994 amendment by P.A. 88-612, effective July 1, 1995, in subsection (a), in the first sentence, inserted "except school bus driver applicants".

The 1995 amendment by P.A. 89-428, effective December 13, 1995 and the 1996 amendment by P.A. 89-462, effective May 29, 1996, made identical amendments: they each, in subdivision (c)(i) inserted "12-14.1".

The 1996 amendment by P.A. 89-610, effective August 6, 1996, in subsection (c) inserted "for committing attempted first degree murder or" and inserted "first degree murder or a Class X felony or".

The 1997 amendment by P.A. 90-566, effective January 2, 1998, combined the amendments by P.A. 89-462 and P.A. 89-610; in subsection (c) added the second sentence; and in subsection (e) inserted "or a finding of child abuse by".

The 2000 amendment by P.A. 91-885, effective July 6, 2000, twice in subsection (a) and twice in subsection (b) inserted the language referring to a felony conviction within 7 years of application for employment.

The 2003 amendment by P.A. 93-418, effective January 1, 2004, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2004 amendment by P.A. 93-909, effective August 12, 2004, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2005 amendment by P.A. 94-219, effective July 14, 2005, rewrote the section, adding references to the Statewide Sex Offender Database.

The 2005 amendment by P.A. 94-556, effective September 11, 2005, in (c) added item (iv) and redesignated former item (iv) as (v), and made related and stylistic changes.

The 2006 amendment by P.A. 94-875, effective July 1, 2006, in rewrote (b).

The 2006 amendment by P.A. 94-945, effective June 27, 2006, deleted "and Child Murderer" before "Community Notification Law" in (a-5); and added (a-6).

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, revised the section heading.

The 2009 amendment by P.A. 96-431, effective August 13, 2009, rewrote the first sentence of (c); deleted "appropriate regional superintendent of schools or the" preceding "State Superintendent" in (e); added (e-5); and made stylistic changes.

The 2010 amendment by P.A. 96-1452, effective August 20, 2010, added "or for clarification purposes the Department of State Police or Statewide Sex Offender Database, or both" to the end of the first sentence of (b); added (g); and made a related change.

The 2010 amendment by P.A. 96-1489, effective January 1, 2011, added the exception language to the second to last sentence in (a).

The 2011 amendment by P.A. 97-154, effective January 1, 2012, deleted "Child" preceding "Murderer" in the section heading, and wherever it appears in the first paragraph, in (a-6), and the first sentence of (g).

The 2011 amendment by P.A. 97-248, effective January 1, 2012, added (h).

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The 2011 amendment by P.A. 97-607, effective August 26, 2011, in the first sentence of (c), substituted "license" for "certification" and "Section 21B-80" for "Section 21-23a."

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

CASE NOTES

Analysis

Constitutionality
In General
Applicability

Constitutionality

The amendment to this section, which prohibits a school board from knowingly employing a person who has been found by a juvenile court to be the perpetrator of sexual or physical abuse of a minor, does not impair a teacher's rights under his employment contract. Panzella v. River Trails Sch. Dist. 26, 313 Ill. App. 3d 527, 246 Ill. Dec. 303, 729 N.E.2d 954, 2000 Ill. App. LEXIS 387 (1 Dist. 2000).

Public Act 89-428 was enacted in violation of the single subject rule of the state constitution and is therefore invalid in its entirety. Johnson v. Edgar, 176 Ill. 2d 499, 224 Ill. Dec. 1, 680 N.E.2d 1372 (1997).

In General

A finding of abuse serves as the predicate for either disciplinary measures or hiring practices without regard to the appellate process. Panzella v. River Trails Sch. Dist. 26, 313 Ill. App. 3d 527, 246 Ill. Dec. 303, 729 N.E.2d 954, 2000 Ill. App. LEXIS 387 (1 Dist. 2000).

Applicability

This section applies to a teacher who was on contractual continued service at the time it became effective, and such application does not impair such a teacher's vested rights. Panzella v. River Trails Sch. Dist. 26, 313 Ill. App. 3d 527, 246 Ill. Dec. 303, 729 N.E.2d 954, 2000 Ill. App. LEXIS 387 (1 Dist. 2000).

§ 105 ILCS 5/10-21.10. Electronic paging devices on school property

Sec. 10-21.10. Electronic paging devices on school property. (a) The General Assembly finds and declares that the educational development of all persons to the limits of their capacities is a fundamental goal of the people of this State, that to achieve such goal it is

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essential to provide a safe and secure learning environment within the public schools, and that the unrestricted and unregulated use by students of pocket pagers and similar electronic paging devices on school grounds or in school buildings which are owned, occupied or leased by a school board for school purposes and activities adversely affects the educational environment, welfare and safety of students enrolled in the public schools, in that pocket pagers and similar electronic paging devices are being regularly used for the conduct of unlawful activities during school hours and on school property, including activities directly related to the unlawful possession, sale, delivery or other trafficking in drugs or other substances which constitute a "controlled substance" as that term is defined in the Illinois Controlled Substances Act [720 ILCS 570/100 et seq.]. It is the purpose and intention of the General Assembly, in enacting this legislation, to reduce or eliminate the occurrence of such unlawful activities during school hours and on school property by restricting and regulating student use or possession of pocket pagers and similar electronic paging devices as provided in this Section, and by providing for the imposition of appropriate discipline and sanctions for any violation of the provisions of this Section.

(b) No student shall use or have in his or her possession any pocket pager or similar electronic paging device while in any school building or on any school property, during regular school hours or at any other time, unless the use or possession of such device by such student has first been expressly authorized by the school board acting in accordance with standards developed as provided in subsection (c) for the granting of approved exceptions to the general prohibition of this Section against such use or possession.

(c) The school board shall develop and promulgate written standards under which the board:

(1) may authorize the use or possession of a pocket pager or similar electronic paging device by a student while in a school building or on school property as an approved exception to the general prohibition of this Section against such use or possession; and

(2) may impose appropriate discipline or other sanctions against any student who violates any provision of this Section.

(Source: P.A. 86-791.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-21.10.

§ 105 ILCS 5/10-21.11. Infectious disease policies and rules

Sec. 10-21.11. Infectious disease policies and rules. To develop policies and adopt rules relating to the appropriate manner of managing children with chronic infectious diseases,

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not inconsistent with guidelines published by the State Board of Education and the Illinois Department of Public Health. Such policies and rules must include evaluation of students with a chronic infectious disease on an individual case-by-case basis, and may include different provisions for different age groups, classes of instruction, types of educational institution, and other reasonable classifications, as the school board may find appropriate.

This requirement applies to all school districts and public schools of this State, including special charter districts, Department of Corrections school districts, laboratory schools operated by the governing board of a public university, and alternative schools operated by a regional superintendent of schools.

(Source: P.A. 86-890; 86-1028.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-21.11.

RESEARCH REFERENCES

Aids infection as affecting right to attend public school. 60 ALR4th 15.

§ 105 ILCS 5/10-21.12. Transfer of teachers

Sec. 10-21.12. Transfer of teachers. The employment of a teacher transferred from one board or administrative agent to the control of a new or different board or administrative agent shall be considered continuous employment if such transfer of employment occurred by reason of any of the following events:

(1) a boundary change or the creation or reorganization of any school district pursuant to Article 7 or 11E [105 ILCS 5/7-1 et seq. or 105 ILCS 5/11E-1 et seq.]; or

(2) the deactivation or reactivation of any high school or elementary school pursuant to Section 10-22.22b [105 ILCS 5/10-22.22b]; or

(3) the creation, expansion, reduction or dissolution of a special education program pursuant to Section 10-22.31 [105 ILCS 5/10-22.31], or the creation, expansion, reduction or dissolution of a joint educational program established under Section 10-22.31a [105 ILCS 5/10-22.31a]; or

(4) the creation, expansion, reduction, termination or dissolution of any joint agreement program operated by a regional superintendent, governing board, or other administrative agent or any program operated pursuant to an Intergovernmental Joint Agreement. The

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changes made by this amendatory Act of 1990 are declaratory of existing law.

(Source: P.A. 86-1441; 94-213, § 5; 94-1019, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-21.12.

Section 90 of P.A. 94-1019 contains a savings provision, and section 95 contains a no acceleration or delay provision.

Effect of Amendments. The 2005 amendment by P.A. 94-213, effective July 14, 2005, added "or elementary school" in (2).

The 2006 amendment by P.A. 94-1019, effective July 10, 2006, in (1) substituted "Article 7 or 11E" for "Article 7 or 7A, 11A, or 11B".

OPINIONS OF ATTORNEY GENERAL

Continuous Employment

- Presumed

Teachers who are transferred from one board to another as the result of a reorganization (including consolidation or annexation) are to be considered, for purposes of Illinois law, as being continuously employed; therefore, teachers in a consolidated or annexed district should not be considered newly hired employees of the resulting entity for purposes of section 3121 of the Internal Revenue Code (26 U.S.C. 3121), but rather should be covered by the "continuing employment" exception to coverage. 1991 Op. Atty. Gen. (91-032).

§ 105 ILCS 5/10-22: Repealed by P.A. 89-159, § 15, effective January 1, 1996.

§ 105 ILCS 5/10-22.1. Book for records

Sec. 10-22.1. Book for records. To purchase a suitable book for their records.

(Source: Laws 1961, p. 31.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.1.

§ 105 ILCS 5/10-22.2. Compensation of clerk or secretary

Sec. 10-22.2. Compensation of clerk or secretary. To allow the clerk or secretary a reasonable compensation for services, payable out of money not otherwise appropriated.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.2.

§ 105 ILCS 5/10-22.3. Liability insurance for school board members, school board employees and student teachers

Sec. 10-22.3. Liability insurance for school board members, school board employees and student teachers. To insure against any loss or liability of the school district, members of school boards, employees, volunteer personnel authorized in Sections 10-22.34, 10-22.34a and 10-22.34b of this Code [105 ILCS 5/10-22.34, 105 ILCS 5/10-22.34a and 105 ILCS 5/10-22.34b] and student teachers by reason of civil rights damage claims and suits, constitutional rights damage claims and suits and death and bodily injury and property damage claims and suits, including defense thereof, when damages are sought for negligent or wrongful acts allegedly committed during the scope of employment or under the direction of the school board. Such insurance shall be carried in a company licensed to write such coverage in this State.

(Source: P.A. 79-210.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.3.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 375.30, 375.70, 56.50.

RESEARCH REFERENCES

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Validity, construction, and effect of provisions releasing school from liability for injuries to students caused by interscholastic and other extracurricular activities. 85 ALR4th 344.

Liability of school or school personnel for injury to student resulting from cheerleader activities. 25 ALR5th 784.

Tort liability of public schools and institutions of higher learning for accidents occurring in physical education classes. 66 ALR5th 1.

Tort liability of schools and institutions of higher learning for personal injury suffered during school field trip. 68 ALR5th 519.

Tort liability of public schools and institutions of higher learning for accidents occurring during school athletic events. 68 ALR5th 663.

Tort liability of public schools and institutions of higher learning for injury to student walking to or from school. 72 ALR5th 469.

§ 105 ILCS 5/10-22.3a. [Insurance protection for employees and dependents]

Sec. 10-22.3a. To provide for or to participate in provisions for insurance protection and benefits for its employees and their dependents including but not limited to retirement annuities, medical, surgical and hospitalization benefits in such types and amounts, if any, as shall be determined by the board, for the purpose of aiding in securing and retaining the services of competent employees. Where employee participation in such provisions is involved, the board, with the consent of the employee, may withhold deductions from the employee's salary necessary to defray the employee's share of such insurance costs. Such insurance or benefits may be contracted for only with an insurance company authorized to do business in this State. Such insurance may include provisions for employees and their dependents who rely on treatment by prayer or spiritual means alone for healing, in accordance with the tenets and practice of a recognized religious denomination.

For purposes of this Section, the term "dependent" means an employee's spouse and any unmarried child (1) under the age of 19 years including (a) an adopted child and (b) a step-child or recognized child who lives with the employee in a regular parent-child relationship, or (2) under the age of 23 who is enrolled as a full-time student in any accredited school, college or university. Nothing contained in this Code may preclude an elected school board member from participating in a group health insurance program provided to an employee of the school district that the board member serves if the board member is a dependent of that employee.

(Source: P.A. 76-26; 90-655, § 77; 94-410, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.3a.

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The Hospital Service Plan Act and the Medical Service Plan Act, referred to above, have been repealed.

Effect of Amendments. The 1998 amendment by P.A. 90-655, effective July 30, 1998, in the next-to-last sentence of the first paragraph, deleted "or any non-profit hospital service corporation organized under the non-profit Hospital Service Plan Act or incorporated under the Medical Service Plan Act" at the end.

The 2005 amendment by P.A. 94-410, effective August 2, 2005, added the second sentence in the second paragraph.

CASE NOTES

Analysis

Contracted
Discretion of Board
In Pari Materia
Non-Exclusive Means
Self-Funded Plan

Contracted

Use of the word "contracted" in this section indicates that the legislature meant only to limit the ways in which a board may contract for the provision of insurance. Bloese v. Board of Educ., 138 Ill. App. 3d 460, 93 Ill. Dec. 66, 485 N.E.2d 1276 (2 Dist. 1985).

Discretion of Board

The board has discretion about whether to provide health insurance coverage to its employees under this section, not a duty to do so; therefore, a writ of mandamus will not issue to compel a defendant board to act where it had discretion to act. Bloese v. Board of Educ., 138 Ill. App. 3d 460, 93 Ill. Dec. 66, 485 N.E.2d 1276 (2 Dist. 1985).

In Pari Materia

Former 105 ILCS 5/10-22 described this section as a power, not as a duty. Bloese v. Board of Educ., 138 Ill. App. 3d 460, 93 Ill. Dec. 66, 485 N.E.2d 1276 (2 Dist. 1985).

Non-Exclusive Means

This section does not provide the exclusive means by which a board can provide insurance to its employees. Bloese v. Board of Educ., 138 Ill. App. 3d 460, 93 Ill. Dec. 66, 485 N.E.2d 1276 (2 Dist. 1985).

Self-Funded Plan

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If a board opts to provide coverage for its employees, it may do so through self-insurance; the Insurance Code (215 ILCS 5/1 et seq.) governs a board's self-funded plan. Bloese v. Board of Educ., 138 Ill. App. 3d 460, 93 Ill. Dec. 66, 485 N.E.2d 1276 (2 Dist. 1985).

§ 105 ILCS 5/10-22.3b. Health insurance for retired teachers

Sec. 10-22.3b. Health insurance for retired teachers. To make health insurance premium payments to the Teachers' Retirement System of the State of Illinois for those costs of participating in the health benefit program established under Article 16 of the Illinois Pension Code [40 ILCS 5/16-101 et seq.] that are not paid by the System under Section 16-153.4 of the Illinois Pension Code [40 ILCS 5/16-153.4] and for the cost of premiums charged for participation in the health benefit program established under Section 6.5 of the State Employees Group Insurance Act of 1971 [5 ILCS 375/6.5], for eligible participants who retired from the school district.

(Source: P.A. 84-1028; 89-25, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.3b.

Effect of Amendments. The 1995 amendment by P.A. 89-25, effective June 21, 1995, inserted "of participating in the health benefit program established under Article 16 of the Illinois Pension Code that are" and inserted "and for the cost of premiums charged for participation in the health benefit program established under Section 6.5 of the State Employees Group Insurance Act of 1971".

§ 105 ILCS 5/10-22.3c. Orders of protection

Sec. 10-22.3c. Orders of protection. To prohibit the disclosure by any school employee to any person against whom the school district has received a certified copy of an order of protection the location or address of the petitioner for the order of protection or the identity of the schools in the district in which the petitioner's child or children are enrolled. The school district shall maintain the copy of the order of protection in the records of the child or children enrolled in the district whose parent is the petitioner of an order of protection.

(Source: P.A. 87-437.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.3c.

§ 105 ILCS 5/10-22.3d. Woman's health care provider

Sec. 10-22.3d. Woman's health care provider. Insurance protection and benefits for employees are subject to the provisions of Section 356r of the Illinois Insurance Code [215 ILCS 5/356r].

(Source: P.A. 89-514, § 25; 90-14, § 2-135.)

Note.

Another 105 ILCS 5/10-22.3d as enacted by P.A. 89-513 was renumbered as 105 ILCS 5/10-22.3e.

Effective Date. Section 99 of P.A. 89-514 made this section effective upon becoming law. The Act was approved July 17, 1996.

Effect of Amendments. The 1997 amendment by P.A. 90-14, effective July 1, 1997, appears to have made no changes.

§ 105 ILCS 5/10-22.3e. Post-parturition care

Sec. 10-22.3e. Post-parturition care. Insurance protection and benefits for employees shall provide the post-parturition care benefits required to be covered by a policy of accident and health insurance under Section 356s of the Illinois Insurance Code [215 ILCS 5/356s].

(Source: P.A. 89-513, § 25; 90-14, § 2-135.)

Effective Date. Section 99 of P.A. 89-513 made this section effective 60 days after becoming law or July 1, 1996, whichever was later. The Act was approved July 17, 1996. The Act was effective September 15, 1996.

Effect of Amendments. The 1997 amendment by P.A. 90-14, effective July 1, 1997, renumbered this section which was 105 ILCS 5/10-22.3d as enacted by P.A. 89-513; and substituted "356s" for "356r".

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§ 105 ILCS 5/10-22.3f. Required health benefits

Sec. 10-22.3f. Required health benefits. Insurance protection and benefits for employees shall provide the post-mastectomy care benefits required to be covered by a policy of accident and health insurance under Section 356t [215 ILCS 5/356t] and the coverage required under Sections 356g, 356g.5, 356g.5-1, 356u, 356w, 356x, 356z.6, 356z.8, 356z.9, 356z.10, 356z.11, 356z.12, 356z.13, 356z.14, and 356z.15 of the Illinois Insurance Code [215 ILCS 5/356g, 215 ILCS 5/356g.5, 215 ILCS 5/356g.5-1, 215 ILCS 5/356u, 215 ILCS 5/356w, 215 ILCS 5/356x, 215 ILCS 5/356z.6, 215 ILCS 5/356z.8, 215 ILCS 5/356z.9, 215 ILCS 5/356z.10, 215 ILCS 5/356z.11, 215 ILCS 5/356z.12, 215 ILCS 5/356z.13, 215 ILCS 5/356z.14, 215 ILCS 5/356z.15]. Insurance policies shall comply with Section 356z.19 of the Illinois Insurance Code [215 ILCS 5/356z.19]. The coverage shall comply with Section 155.22a of the Illinois Insurance Code [215 ILCS 5/155.22a].

Rulemaking authority to implement Public Act 95-1045, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.] and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized.

(Source: P.A. 90-7, § 25; 90-741, § 25; 93-853, § 20; 95-189, § 4; 95-422, § 25; 95-876, § 175; 95-958, § 20; 95-978, § 20; 95-1005, § 20; 95-1045, §§ 10-25, 15-25; 95-1049, § 20; 96-328, § 145; 96-139, § 20; 96-328, § 145; 96-1000, § 260; 97-282, § 20; 97-343, § 20.)

Note.

Section 90-95 of P.A. 95-1045 contains a "no acceleration or delay" provision.

Section 95 of P.A. 96-139 contains a "no acceleration or delay" provision.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 90-7 made this section effective upon becoming law. The Act was approved June 10, 1997.

Effect of Amendments. The 1998 amendment by P.A. 90-741, effective January 1, 1999, substituted "Sections 356u, 356w, and 356x" for "Section 356u".

The 2004 amendment by P.A. 93-853, effective January 1, 2005, inserted "and 356z.6" and made a related change.

The 2007 amendment by P.A. 95-189, effective August 16, 2007, inserted "356g.5".

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The 2007 amendment by P.A. 95-422, effective August 24, 2007, inserted "356z.9" in the first sentence; and made related changes.

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, combined earlier multiple amendments.

The 2008 amendment by P.A. 95-958, effective June 1, 2009, inserted "356z.11, and 356z.12" in the first sentence of the section.

The 2008 amendment by P.A. 95-978, effective January 1, 2009, added "356z.11".

The 2008 amendment by P.A. 95-1005, effective December 12, 2008, added "356z.14".

The 2009 amendment by P.A. 95-1045, effective March 27, 2009, inserted "356g.5-1", substituted "356z.13" for "356z.11" in the introductory paragraph; and added the last paragraph.

The 2009 amendment by P.A. 95-1045, effective March 27, 2009, inserted "356g", substituted "356z.13" for "356z.11" in the introductory paragraph; and added the last paragraph.

The 2009 amendment by P.A. 95-1049, effective January 10, 2010, inserted "and 356z.14" and made a related change.

The 2009 revisory amendment by 96-328, effective August 11, 2009, amending both versions of the section before and after the amendment by P.A. 95-958, added "and 356z.13" and made a related change.

The 2009 amendment by P.A. 96-139, effective January 1, 2010, added "356z.8" and "356z.13".

The 2009 revisory amendment by 96-328, effective August 11, 2009, amending both versions of the section before and after the amendment by P.A. 95-958, added "and 356z.13" and made a related change.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, inserted "356z.15" in the first paragraph; substituted "Public Act 95-1045" for "this amendatory Act of the 95th General Assembly" in the second paragraph; and made related changes.

The 2011 amendment by P.A. 97-282, effective August 9, 2011, added the second sentence to the first paragraph.

The 2011 amendment by P.A. 97-343, effective January 1, 2012, added the third sentence of the first paragraph.

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

§ 105 ILCS 5/10-22.4. Dismissal of teachers

Sec. 10-22.4. Dismissal of teachers. To dismiss a teacher for incompetency, cruelty, negligence, immorality or other sufficient cause, to dismiss any teacher on the basis of performance and to dismiss any teacher whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the schools require it, subject, however, to the provisions of Sections 24-10 to 24-16.5 [105 ILCS 5/24-10 to 105 ILCS 5/24-16.5], inclusive. Temporary mental or physical incapacity to perform teaching duties, as found by a medical examination, is not a cause for dismissal. Marriage is not a cause of

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removal.

(Source: P.A. 85-248; 97-8, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.4.

Effect of Amendments. The 2011 amendment by P.A. 97-8, effective June 13, 2011, in the first sentence, substituted "on the basis of performance" for "who fails to complete a 1-year remediation plan with a 'satisfactory' or better rating" and "Sections 24-10 to 24-16.5" for "Sections 24-10 to 24-15."

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- Standard
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- Lack of Expectancy
Vague Accusation
- Insufficient

Arbitration Award

- Not Enforceable

Arbitrator's award declaring that school district acted against teacher in issuing a "notice to remedy" without just cause was prohibited because it was inconsistent and conflicted with this section and 105 ILCS 5/24-12; therefore, the arbitration award was not binding and could not be enforced and, thus, the district could not have committed an unfair labor practice by failing to comply with it. Board of Educ. v. Illinois Educ. Labor Relations Bd., 165 Ill. 2d 80, 208 Ill. Dec. 313, 649 N.E.2d 369 (1995).

- Not Valid

Where an arbitrator ordered the reinstatement of a probationary teacher after the school board's decision not to renew her contract for cause, the arbitrator undermined authority specifically and exclusively reserved for the school board under this section; specifically, the authority to discharge a non-tenured teacher whenever, "in its opinion she is not qualified to teach, or whenever, in its opinion the interests of the schools require it." Midwest Cent. Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 277 Ill. App. 3d 440, 213 Ill. Dec. 894, 660 N.E.2d 151 (1 Dist. 1995), appeal denied, 167 Ill. 2d 556, 217 Ill. Dec. 665, 667 N.E.2d 1058 (1996).

Cause

- Defined

"Cause" for removal is some substantial shortcoming which renders continuance in employment detrimental to discipline and effectiveness of service, or something which the law and sound public opinion recognize as a good reason for the teacher to no longer occupy his position. Fadler v. State Bd. of Educ., 153 Ill. App. 3d 1024, 106 Ill. Dec. 840, 506 N.E.2d 640 (5 Dist. 1987).

- Effect of Disability

Neither this section nor 105 ILCS 5/24-13 prohibits dismissal of a teacher for any other cause set forth in this section, such as incompetency, cruelty or immorality, if such cause is unrelated to a disability. DeBernard v. Illinois State Bd. of Educ., 172 Ill. App. 3d 938, 123 Ill. Dec. 153, 527 N.E.2d 616 (2 Dist. 1988).

- Failure to File Tax Returns

A teacher's failure to file income tax returns and the surrounding circumstances, including publicity surrounding the teacher's criminal case and his behavior during its pendency, was sufficient cause to justify his dismissal. McCullough v. Illinois State Bd. of Educ., 204 Ill. App. 3d 1082, 150 Ill. Dec. 430, 562 N.E.2d 1233 (5 Dist. 1990).

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- Failure to Remedy

A teacher's failure to comply with the requirements of notices to remedy warranted dismissal. DeBernard v. Illinois State Bd. of Educ., 172 Ill. App. 3d 938, 123 Ill. Dec. 153, 527 N.E.2d 616 (2 Dist. 1988).

- Fondling Students

The fondling of a student constituted immorality and was sufficient cause for dismissal where the record revealed harm to the pupils, faculty or school itself. Fadler v. State Bd. of Educ., 153 Ill. App. 3d 1024, 106 Ill. Dec. 840, 506 N.E.2d 640 (5 Dist. 1987).

- Illegal Substances

A clear nexus was shown between a teacher's possession of marijuana and his fitness to teach and such constituted sufficient cause for the Board of Education to remove him from his position as a teacher. Chicago Bd. of Educ. v. Payne, 102 Ill. App. 3d 741, 58 Ill. Dec. 368, 430 N.E.2d 310 (1 Dist. 1981).

- Immorality

Immorality is sufficient cause for discharge of tenured teacher only where the record shows harm to pupils, faculty, or the school itself. Reinhardt v. Board of Educ., 19 Ill. App. 3d 481, 311 N.E.2d 710 (5 Dist. 1974), vacated on other grounds, 61 Ill. 2d 101, 329 N.E.2d 218 (1975).

- Insubordination

Dismissal was proper where the plaintiff's failure to complete tasks on remediation plan constituted a deliberate disregard of the express directions of her employer and the board of education in their notice to remedy; time after time, these directions, were clarified for plaintiff and deadlines were established for completing the tasks, or even a mere portion of a task, and for the most part, these deadlines were ignored even when plaintiff herself was allowed to choose the deadline date; and tasks which plaintiff did attempt to accomplish were considered inadequate, especially in light of the fact that specific procedural guidelines established for assisting the plaintiff in accomplishing the tasks were not followed. DeOliveira v. State Bd. of Educ., 158 Ill. App. 3d 111, 110 Ill. Dec. 337, 511 N.E.2d 172 (2 Dist. 1987).

- Lack of Discipline

Lack of classroom discipline and management of the curriculum have been held sufficient for dismissal for cause. Stamper v. Board of Educ., 141 Ill. App. 3d 884, 96 Ill. Dec. 222, 491 N.E.2d 36 (1 Dist. 1986).

The hearing officer's conclusion that plaintiff was unable to properly manage or discipline her home economics classroom, along with the unrebutted testimony of eleven witnesses, adequately supported plaintiff's dismissal. Stamper v. Board of Educ., 141 Ill. App. 3d 884, 96 Ill. Dec. 222, 491 N.E.2d 36 (1 Dist. 1986).

- Lack of Qualifications

If the school board seeks to dismiss a tenured teacher because of lack of qualifications, it has the discretion to do so under this section, provided that such a dismissal is accomplished by an administrative hearing as provided for in 105 ILCS 5/24-12. Walter v. Board of Educ., 93 Ill. 2d 101, 66 Ill. Dec. 309, 442 N.E.2d 870 (1982).

- Nexus to Fitness to Teach

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There must be a logical nexus between the actions alleged as cause for dismissal and the individual's fitness to perform as a teacher. Chicago Bd. of Educ. v. Payne, 102 Ill. App. 3d 741, 58 Ill. Dec. 368, 430 N.E.2d 310 (1 Dist. 1981).

- Not Shown

Except where aggravating circumstances are present, the proof of momentary lapses in discipline and order or of a single day's lesson gone awry is not sufficient to show cause for dismissal of a tenured teacher. Board of Educ. v. Ingels, 75 Ill. App. 3d 334, 31 Ill. Dec. 153, 394 N.E.2d 69 (3 Dist. 1979).

- Right to Determine

Illinois Educational Labor Relations Board's application of just cause provision of collective-bargaining agreement which in effect gave an arbitrator the power to determine whether a dismissal was warranted was inconsistent and conflicted with 105 ILCS 5/24-12 and this section, and thus clearly violated 115 ILCS 5/10, which prohibits the implementation of a provision in a collective bargaining agreement which would be inconsistent or in conflict with any Illinois statute. Board of Educ. v. Illinois Educ. Labor Relations Bd., 258 Ill. App. 3d 859, 196 Ill. Dec. 252, 629 N.E.2d 797 (4 Dist.), appeal granted, 156 Ill. 2d 556, 202 Ill. Dec. 919, 638 N.E.2d 1113 (1994), aff'd, 165 Ill. 2d 80, 208 Ill. Dec. 313, 649 N.E.2d 369 (1995).

The right to determine what constitutes sufficient cause lies in the first instance with the board of education with the best interests of the schools as the "guiding star." Chicago Bd. of Educ. v. Payne, 102 Ill. App. 3d 741, 58 Ill. Dec. 368, 430 N.E.2d 310 (1 Dist. 1981).

It is for the Board of Education to determine what in its opinion is cause for dismissal, but it may not make an arbitrary and unreasonable rule in this respect. Jepsen v. Board of Educ., 19 Ill. App. 2d 204, 153 N.E.2d 417 (2 Dist. 1958).

- Shown

Where physical education teacher's request to his superior to be absent so that he could attend two out-of-town meetings was denied because the meetings were not related to physical education and there was no substitute teacher in the system who could have take over his duties for the day, and notwithstanding this ruling, he left work and attended the first meeting, and as the result of his violation between 160 and 175 children were denied the benefits of his teaching that day, the misconduct on his part was sufficient to sustain his dismissal. Yuen v. Board of Educ., 77 Ill. App. 2d 353, 222 N.E.2d 570 (2 Dist. 1966).

Where, in the presence of a school principal and two other teachers, the plaintiff initiated a conversation about the eligibility of a football player on his school's team, and in the course of the conversation stated that both the football coach and the principal knew of the ineligibility and that players had been approached to keep the matter quiet, the decision of the board of education to dismiss the plaintiff on the grounds that the best interests of the school required it was not against the manifest weight of the evidence and should not have been set aside by the circuit court. Jepsen v. Board of Educ., 19 Ill. App. 2d 204, 153 N.E.2d 417 (2 Dist. 1958).

- Unjustified Corporal Punishment

The Board of Education was justified in finding plaintiff guilty of the charges set forth in the notice of dismissal, where the record demonstrated that, in at least three incidents, unreasonable and unjustified corporal punishment was inflicted. Fender v. School Dist. No. 25, 37 Ill. App. 3d 736, 347 N.E.2d 270 (1 Dist. 1976).

Construction

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Board of education's Fed. R. Civ. P. 12(b)(6) motion to dismiss a former employee's 42 U.S.C.S. § 1983 action alleging a procedural due process violation in the termination of her employment was denied because the employee alleged that her employment contract was under the terms and conditions of state law and 105 ILCS 5/10-22.4 and 105 ILCS 5/24-12 prohibited teachers in contractual continued service from being terminated without cause, which would create a property interest in employment through the end of the contract term that could not be terminated without due process. Carrizales v. Bd. of Educ., F. Supp. 2d , 2004 U.S. Dist. LEXIS 4400 (N.D. Ill. Mar. 19, 2004).

- Protection of Teachers

A tenured teacher is entitled to a construction of the tenure law which is consistent with the prime purpose of protecting teachers. Reinhardt v. Board of Educ., 19 Ill. App. 3d 481, 311 N.E.2d 710 (5 Dist. 1974), vacated on other grounds, 61 Ill. 2d 101, 329 N.E.2d 218 (1975).

Contract

- Damages

Where plaintiff teacher had a contract of employment for a definite time and stipulated salary, but was prevented from fulfilling it by act of the defendants, and was ready, willing, and able to complete it, she was entitled to recover the entire sum, or unpaid balance thereof, contracted to be paid. Compton v. School Dirs., 8 Ill. App. 2d 243, 131 N.E.2d 544 (2 Dist. 1955).

Defenses

- Incapacity Not Shown

Plaintiff's conduct while "incapacitated" undermined her defense that her temporary mental incapacity prevented her performance of the tasks set forth in her remediation plan where, during the time that plaintiff claimed that she was incapable of coping with the tasks required in the remediation plan, she was able to carry out personal obligations that arose in connection with family illnesses, assist her husband in opening a professional practice, and travel to Las Vegas to investigate schools and housing in anticipation of a family move and where, despite her contention that she was unable to work, she continued to apply herself to the remediation plan and to search for other employment. DeOliveira v. State Bd. of Educ., 158 Ill. App. 3d 111, 110 Ill. Dec. 337, 511 N.E.2d 172 (2 Dist. 1987).

Plaintiff failed to show that depression prevented her from performing the tasks required of her under her remediation plan where the duties plaintiff was ordered to perform under the plan were identical to those duties she had failed to discharge throughout the previous school year and prior to the beginning of her alleged depression; if plaintiff did suffer from depression, the illness apparently had little or no effect on her job performance since her performance prior to the onset of depression was similar. DeOliveira v. State Bd. of Educ., 158 Ill. App. 3d 111, 110 Ill. Dec. 337, 511 N.E.2d 172 (2 Dist. 1987).

Delegation of Power

Former employee of a school district who brought a First Amendment retaliation claim against the district under 42 U.S.C.S. § 1983 raised a fact issue as to whether a principal who made the allegedly retaliatory decision not to renew the employee's contract was a policy-maker for § 1983 purposes. Although 150 ILCS 5/10-22.4 vested the power to terminate teachers solely in the district, there was a question as to whether the district delegated its power to dismiss to the principal. However, the claim failed because the employee's speech did not involve a matter of

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public concern. Brennan v. Naperville Sch. Dist. 203, F. Supp. 2d , 2005 U.S. Dist. LEXIS 30963 (N.D. Ill. Nov. 29, 2005).

- In General

The school board has the power to hire and discharge teachers, to determine their qualifications, and to set and allocate funds for their salaries; these functions must be exercised by the school board, which cannot abdicate its responsibility by referring these matters to such devices as arbitration and other contract solutions. Board of Educ. v. Cahokia Dist. Council No. 58, 93 Ill. App. 3d 376, 48 Ill. Dec. 749, 417 N.E.2d 151 (5 Dist. 1981).

- Arbitration

An arbitrator could not award teaching contracts to nontenured junior college teachers whose contracts were not renewed without the prior, advisory faculty evaluation and recommendation called for by a collective bargaining agreement between the union and the Board of Trustees. Board of Trustees v. Cook County College Teachers Union, Local 1600, 62 Ill. 2d 470, 343 N.E.2d 473 (1976).

- Collective Bargaining Agreement

The ultimate decision whether to dismiss a teacher is a duty which rests upon the board of education and the board may not, by means of a collective bargaining agreement, delegate or limit the power to dismiss granted it by the General Assembly. Wesclin Educ. Ass'n v. Board of Educ., 30 Ill. App. 3d 67, 331 N.E.2d 335 (5 Dist. 1975); Board of Trustees v. Cook County College Teachers Union, 167 Ill. App. 3d 998, 118 Ill. Dec. 638, 522 N.E.2d 93 (1 Dist. 1987).

Just as a school board cannot abrogate the procedural safeguards accorded tenured teachers, neither can it, by means of a collective bargaining agreement, destroy the flexibility accorded it with respect to the dismissal of non-tenured teachers. Wesclin Educ. Ass'n v. Board of Educ., 30 Ill. App. 3d 67, 331 N.E.2d 335 (5 Dist. 1975).

Determination

- Subject to Review

The determination of the Board of Education that the causes of dismissal were not remediable and its final decision on the hearing were both subject to review. Keyes v. Board of Educ., 20 Ill. App. 2d 504, 156 N.E.2d 763 (3 Dist. 1959).

Discretion of Board

- Cause for Dismissal

Where the board of education, in the exercise of its discretionary power, determined that the charge specified in the notice constituted sufficient cause for a dismissal of teacher, appellate court was without power to override its judgment in that regard. Pearson v. Board of Educ., 12 Ill. App. 2d 44, 138 N.E.2d 326 (3 Dist. 1956).

A determination as to whether failure of a teacher to cooperate properly with the other teachers and students at the school as charged in the notice constituted a cause for dismissal was left to the discretion of the board. Pearson v. Board of Educ., 12 Ill. App. 2d 44, 138 N.E.2d 326 (3 Dist. 1956).

- Use of Hearing Officers

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Power to dismiss for just cause belongs to local boards of education by virtue of this section, and 105 ILCS 5/24-12 merely governs the procedure by which those dismissals are accomplished; these sections cannot be said to unconstitutionally infringe upon the power of local boards to dismiss because use of impartial hearing officers in the dismissal process is based upon a rational, logical purpose and is not inimical to the constitutional mandate of an efficient system of high quality education in this state. Board of Educ. v. File, 89 Ill. App. 3d 1132, 45 Ill. Dec. 448, 412 N.E.2d 1030 (3 Dist. 1980).

- Weight of Evidence

The discretionary power to determine whether the interests of the schools required plaintiff's dismissal is vested in the Board of Education, and the court is not authorized to interfere with the exercise of such power unless the determination upon which it rests is manifestly against the weight of the evidence. Keyes v. Board of Educ., 20 Ill. App. 2d 504, 156 N.E.2d 763 (3 Dist. 1959).

Dismissal

Board of education had broad statutory authority pursuant to 105 ILCS 5/1-1 and 105 ILCS 5/10-22.4 to dismiss a nontenured teacher during a probationary period and was not required to show just cause. Thus, that authority could not be limited by a collective bargaining agreement and since the dismissal of the three nontenured probationary teachers was not otherwise shown to be improper, whether they were properly dismissed was not arbitrable. Niles Twp. High Sch. Dist. 219 v. Ill. Educ. Labor Rels. Bd., 379 Ill. App. 3d 22, 318 Ill. Dec. 195, 883 N.E.2d 29, 2007 Ill. App. LEXIS 1291 (1 Dist. 2007).

- In General

The Board of Education is vested with power to dismiss a teacher for incompetency, cruelty, negligence, immorality or other sufficient cause and also whenever in its opinion a teacher is not qualified or whenever in its opinion the interest of the school require it. Hutchison v. Board of Educ., 32 Ill. App. 2d 247, 177 N.E.2d 420 (3 Dist. 1961).

A Board of Education, in exercising its power to dismiss a teacher, is not confined to situations where certain specified causes exist; in addition to the power to dismiss for incompetency, cruelty, negligence, immorality and lack of qualifications, a board may also dismiss a teacher for other sufficient cause whenever in its opinion the interests of the school require it. Pearson v. Board of Educ., 12 Ill. App. 2d 44, 138 N.E.2d 326 (3 Dist. 1956).

- Held Improper

Hearing officer's failure to uphold a teacher's discharge on the basis of insubordination for taking a leave during a previously scheduled winter break, which was canceled following a strike, was not erroneous; the parameters of policy and procedure for taking leaves during the previously scheduled break did not constitute a reasonable rule. Board of Educ. of Round Lake Area Sch. v. State Bd. of Educ., 292 Ill. App. 3d 101, 226 Ill. Dec. 309, 685 N.E.2d 412 (2 Dist. 1997).

- Held Proper

Plaintiff's failure to communicate with other staff and her superiors, her failure to document and record in her students' final speech and language reports the goals and objectives, testing, and progress of those students for the benefit of subsequent speech and language clinicians, her failure to develop and share short-term objectives with staff and to utilize the Brigance record books so that her students' classroom teachers could integrate and implement speech and language services in their classrooms, and her failure to keep scheduled meetings with teachers to share or evaluate objectives were evidence of plaintiff's incompetent, negligent, and deficient conduct; the evidence was sufficient to support the hearing officer's findings that plaintiff's

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dismissal resulted from her insubordinate, deficient, and neglectful performance of her duties and not from her incapacity. DeOliveira v. State Bd. of Educ., 158 Ill. App. 3d 111, 110 Ill. Dec. 337, 511 N.E.2d 172 (2 Dist. 1987).

Where the evidence in a school board hearing referred to plaintiff's position as a principal and not as a teacher and the board was vested with discretion to determine what the best interests of the school required, the evidence presented was both competent and sufficient to sustain plaintiff's dismissal as a teacher as well as his dismissal as principal. Morelli v. Board of Educ., 42 Ill. App. 3d 722, 1 Ill. Dec. 312, 356 N.E.2d 438 (3 Dist. 1976).

Sufficient evidence was presented to justify the action of the board of education, keeping in mind at all times the board's duty as governing body of the district to the public it serves and its power to dismiss teachers whenever, in its opinion, the interests of the schools require it, subject, of course, to procedural safeguards. Hagerstrom v. Clay City Community Unit, 36 Ill. App. 3d 1, 343 N.E.2d 249 (5 Dist. 1976).

Where plaintiff, as superintendent of the school district, (1) had been the subject of much controversy, conflict and dissension, resulting in a condition detrimental to the best interests of the students in the district's schools, (2) had actively participated in fomenting such controversy, conflict and dissension, (3) and had failed to properly cooperate with the Board of Education and his subordinate administrators and teachers, such dismissal was not against the weight of the evidence. Keyes v. Board of Educ., 20 Ill. App. 2d 504, 156 N.E.2d 763 (3 Dist. 1959).

The evidence furnished by appellees was sufficient to show grounds for dismissal. Muehle v. School Dist. No. 38, 344 Ill. App. 365, 100 N.E.2d 805 (2 Dist. 1951); Vance v. Board of Educ., 2 Ill. App. 3d 745, 277 N.E.2d 337 (3 Dist. 1971); Pittel v. Board of Educ., 20 Ill. App. 3d 580, 315 N.E.2d 179 (1 Dist. 1974).

- Non-Tenured Teachers

The only statutory requirements for the dismissal of a non-tenured (probationary) teacher are that dismissal be on the grounds enumerated in this section, and that teacher receive written notice from the employing board at least 60 days before the end of any school term whether or not he will be re-employed for the following school term. Wesclin Educ. Ass'n v. Board of Educ., 30 Ill. App. 3d 67, 331 N.E.2d 335 (5 Dist. 1975).

- Sufficient Cause Required

When defining sufficient cause for dismissal, evidence of injury to students, faculty or the school was required. Reinhardt v. Board of Educ., 19 Ill. App. 3d 481, 311 N.E.2d 710 (5 Dist. 1974), vacated on other grounds, 61 Ill. 2d 101, 329 N.E.2d 218 (1975).

Evidence

- Pre-Notice Conduct

It was not improper for the hearing officer to consider plaintiff's pre-notice conduct strictly for the purpose of determining whether plaintiff's purported depression bore any relationship to her failure to complete her assigned tasks during the formal remediation period. DeOliveira v. State Bd. of Educ., 158 Ill. App. 3d 111, 110 Ill. Dec. 337, 511 N.E.2d 172 (2 Dist. 1987).

Hearing

- Proper Parties

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School board was the proper party to conduct a hearing regarding a plaintiff teacher's dismissal, notwithstanding that the board had originally passed the resolution relieving him of his duties. Tetmeir v. Board of Educ., 5 Ill. App. 3d 982, 284 N.E.2d 380 (1 Dist. 1972).

Inarbitrable Issues

The class of inarbitrable issues should be limited to those areas specifically reserved to school boards by the School Code. Board of Educ. v. Ballweber, 105 Ill. App. 3d 412, 61 Ill. Dec. 295, 434 N.E.2d 448 (1 Dist. 1982), aff'd, 96 Ill. 2d 520, 71 Ill. Dec. 704, 451 N.E.2d 858 (1983).

Informing Teachers

- Remediable Causes

The right of a teacher to be informed about causes that are remediable and to have an opportunity to correct such causes is extremely important and one that goes to the heart of the tenure system. Waller v. Board of Educ., 13 Ill. App. 3d 1056, 302 N.E.2d 190 (5 Dist. 1973).

Irremediable Cause

- In General

A cause for teacher's dismissal is irremediable where damage has been done to the students, the faculty or the school itself and the damage could not have been corrected if warnings had been given by the teacher's superiors when they learned of the cause. Wells v. Board of Educ., 85 Ill. App. 2d 312, 230 N.E.2d 6 (1 Dist. 1967).

- Not Established

Hearing officer's finding that a teacher was not guilty of irremediable offense in taking a leave was not against the manifest weight of evidence; the school's policy regarding leave was never reduced to writing or disseminated, and there was apparently no significant damage to the school as a result of the teacher's actions. Board of Educ. of Round Lake Area Sch. v. State Bd. of Educ., 292 Ill. App. 3d 101, 226 Ill. Dec. 309, 685 N.E.2d 412 (2 Dist. 1997).

Although teacher's principal and her other superiors testified that they regarded her as a poor teacher and her classroom program as deficient, there was no evidence in the record that the plaintiff could not have corrected her teaching program and changed its orientation if her superiors had given her a firm program and demanded that she adopt it. Wells v. Board of Educ., 85 Ill. App. 2d 312, 230 N.E.2d 6 (1 Dist. 1967).

- Question of Fact

Whether or not the causes for teacher's dismissal are irremediable is a question of fact whose initial determination lies within the discretion of the board; but a court of review must determine whether the board's finding is against the manifest weight of the evidence. Wells v. Board of Educ., 85 Ill. App. 2d 312, 230 N.E.2d 6 (1 Dist. 1967).

Lack of Notice

- Remediable Deficiency

Where a remediable cause exists and notice is not given, the school board's failure to give such warning deprives a board of the authority to discharge the teacher for that cause. Morris v. Illinois State Bd. of Educ., 198 Ill. App. 3d 51, 144 Ill. Dec. 366, 555 N.E.2d 725 (3 Dist. 1990).

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Where a teacher was not notified of his course work deficiency, and the deficiency was remediable and the facts showed the teacher would have taken the steps necessary to complete the required course work, the district improperly dismissed him. Morris v. Illinois State Bd. of Educ., 198 Ill. App. 3d 51, 144 Ill. Dec. 366, 555 N.E.2d 725 (3 Dist. 1990).

Legislative Intent

- Limits on Power

This section was not intended to bestow upon board of education power to arbitrarily or without cause dismiss teachers from their employment, and the power to dismiss and remove any teacher whenever, in the opinion of the board of education, he is not qualified to teach, or whenever, in the opinion of the board of education, the interests of the schools may require it, is but the specification of another cause of removal. Hartmann v. Board of Educ., 356 Ill. 577, 191 N.E. 279 (1934).

Mental Incapacity

- Burden of Proof

If a plaintiff does not meet his burden of proof to establish a temporary mental incapacity or show that he was dismissed because of that incapacity, the exception in this section for temporary mental or physical incapacity does not apply. McCullough v. Illinois State Bd. of Educ., 204 Ill. App. 3d 1082, 150 Ill. Dec. 430, 562 N.E.2d 1233 (5 Dist. 1990).

- Not Established

Plaintiff failed to establish a temporary mental incapacity under this section where he submitted no report or testimony by a psychiatrist or other medical doctor to document his condition, but only the testimony of his treating psychologist, and both the psychologist and plaintiff himself testified that his condition allowed him to function normally at school, and where the board did not dismiss plaintiff for his mental condition but for his incompetency, immorality, other sufficient cause and the best interests of the school, based on his criminal conduct in failing to file tax returns, which plaintiff did not claim was excused by his mental condition. McCullough v. Illinois State Bd. of Educ., 204 Ill. App. 3d 1082, 150 Ill. Dec. 430, 562 N.E.2d 1233 (5 Dist. 1990).

The note from teacher's physician did not comply with this section as it contained nothing of a substantive nature to evidence a medical examination which conclusively established plaintiff's temporary mental incapacity to perform her teaching duties. DeOliveira v. State Bd. of Educ., 158 Ill. App. 3d 111, 110 Ill. Dec. 337, 511 N.E.2d 172 (2 Dist. 1987).

- Remediation Period

The manifest weight of the evidence did not establish that plaintiff suffered from a temporary mental incapacity during her remediation period; therefore, plaintiff had sufficient time in which to perform under the notice to remedy. DeOliveira v. State Bd. of Educ., 158 Ill. App. 3d 111, 110 Ill. Dec. 337, 511 N.E.2d 172 (2 Dist. 1987).

Notice and Hearing

- Tenured Teachers

If dismissal of a tenured teacher is sought for cause, such teacher is entitled to notice of the specific charges for dismissal and to a hearing before a disinterested hearing officer. Hansen v. Board of Educ., 150 Ill. App. 3d 979, 104 Ill. Dec. 204, 502 N.E.2d 467 (2 Dist. 1986).

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Remediability

- In General

The test for determining whether conduct is remediable is: (1) whether damage has been done to the students, faculty or school, and (2) whether the conduct resulting in that damage could have been corrected had the teacher been warned. Morris v. Illinois State Bd. of Educ., 198 Ill. App. 3d 51, 144 Ill. Dec. 366, 555 N.E.2d 725 (3 Dist. 1990).

- Fondling Students

A teacher's conduct in fondling a student caused irreparable damage to the students and the school itself and could not be remedied by a simple written warning; thus, the teacher was not entitled to such a warning prior to removal with cause on account of his conduct. Fadler v. State Bd. of Educ., 153 Ill. App. 3d 1024, 106 Ill. Dec. 840, 506 N.E.2d 640 (5 Dist. 1987).

- Warning

Where conduct which forms the basis of charges seeking dismissal is deemed remediable, the school district must give the teacher a written warning which informs him of the consequences of failing to take corrective measures. Morris v. Illinois State Bd. of Educ., 198 Ill. App. 3d 51, 144 Ill. Dec. 366, 555 N.E.2d 725 (3 Dist. 1990).

The test for determining whether conduct is irremediable is (1) whether damage has been done to the students, faculty or school, and (2) whether the conduct resulting in that damage could have been corrected had the teacher been warned; if conduct is remediable, a teacher is entitled to a written warning before being dismissed. Fadler v. State Bd. of Educ., 153 Ill. App. 3d 1024, 106 Ill. Dec. 840, 506 N.E.2d 640 (5 Dist. 1987).

Remediation Period

- Initiation

A formal remediation period is only initiated by official school board action, and unofficial notices (plans) given by school administrators are not controlling. DeOliveira v. State Bd. of Educ., 158 Ill. App. 3d 111, 110 Ill. Dec. 337, 511 N.E.2d 172 (2 Dist. 1987).

Right to Speak

- No Basis for Dismissal

Absent proof of false statements knowingly or recklessly made by him, a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment. Pickering v. Board of Educ., 391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968).

Review

- Scope

Boards of education are vested with discretionary power to make a determination of whether causes of dismissal are remediable, but such discretion may not be exercised arbitrarily and without cause, and on review the appellate court has the power to determine whether there has been an abuse of such power. Hutchison v. Board of Educ., 32 Ill. App. 2d 247, 177 N.E.2d 420 (3 Dist. 1961).

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The scope of review of the board of education is limited to determining whether such decision finds support in the evidence. Keyes v. Board of Educ., 20 Ill. App. 2d 504, 156 N.E.2d 763 (3 Dist. 1959).

- Standard

The administration of schools is within the domain of the school board and the courts will not interfere with the exercise of the board's power unless such exercise is shown to be capricious or arbitrary. Vance v. Board of Educ., 2 Ill. App. 3d 745, 277 N.E.2d 337 (3 Dist. 1971).

Suspension

- Procedure

Neither this section nor 105 ILCS 5/24-11 entitled a teacher, who was suspended for 3 1/2 days without pay, to the procedural requirements of 105 ILCS 5/24-12; if the legislature had intended suspensions to be treated the same as dismissals, it would have said so. Kearns v. Board of Educ., 73 Ill. App. 3d 907, 29 Ill. Dec. 591, 392 N.E.2d 148 (1 Dist. 1979).

Temporary Illness or Incapacity

Although 105 ILCS 5/24-13 allows a school board to define what is a temporary illness or incapacity, that board may not define it out of existence; this section provides that a school board may not discharge a teacher for temporary illness or incapacity. Board of Educ. v. Illinois State Bd. of Educ., 154 Ill. App. 3d 375, 107 Ill. Dec. 470, 507 N.E.2d 134 (1 Dist. 1987).

Tortious Interference with Business Relations

- Lack of Expectancy

Where plaintiff's contract provided that it was subject to applicable law which allowed the board of education full discretionary power to terminate the employment of any nontenured teacher by dismissal or nonrenewal of his probationary contract, although plaintiff might have entertained a hope that he would remain in his position as an instructor in future years, the mere hope of continued employment, without more, did not constitute a reasonable expectancy as must exist to state a cause of action for tortious interference with prospective business relations. Williams v. Weaver, 145 Ill. App. 3d 562, 99 Ill. Dec. 412, 495 N.E.2d 1147 (1 Dist. 1986).

Vague Accusation

- Insufficient

Vague accusation of failure to perform instructional duties was wholly insufficient to qualify as a specific charge. Hutchison v. Board of Educ., 32 Ill. App. 2d 247, 177 N.E.2d 420 (3 Dist. 1961).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Employment Law", see 22 S. Ill. U.L.J. 841 (1998).

For article, "Dismissal of Tenured Teachers in Illinois: Evolution of a Viable System," see 1990 U. Ill. L. Rev. 1.

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For article, "Labor Law: 1986-87 Illinois Law Survey," see 19 Loy. U. Chi. L.J. 591 (1987-88).

For comment, "Teacher Incompetency Dismissals in Illinois: The Need for Defined Standards," see 17 J. Marshall L. Rev. 849 (1984).

For article, "Tenured Teacher Dismissal in Illinois, 1975-1979," see 69 Ill. B.J. 422 (1981).

For comment, "A Question of Remediability: Standards of Conduct for Illinois Public School Teachers," see 29 De Paul L. Rev. 523 (1980).

§ 105 ILCS 5/10-22.4a. Arbitration of disputes

Sec. 10-22.4a. Arbitration of disputes. The school board may enter into agreements with employees or representatives of employees to resolve disputes and grievances by binding arbitration before disinterested third parties.

(Source: P.A. 82-107.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.4a.

LEGAL PERIODICALS

For Comment, "Collective Bargaining Rights of Illinois Public School Teachers," see 32 De Paul L. Rev. 351 (1983).

§ 105 ILCS 5/10-22.5. Assignment of pupils to schools - Non-resident pupils - Tuition - Race discrimination

Sec. 10-22.5. Assignment of pupils to schools - Non-resident pupils - Tuition - Race discrimination. To assign pupils to the several schools in the district; to admit non-resident pupils when it can be done without prejudice to the rights of resident pupils and provide them with any services of the school including transportation; to fix the rates of tuition in accordance with Section 10-20.12a [105 ILCS 5/10-20.12a], and to collect and pay the same to the treasurer for the use of the district; but no pupil shall be excluded from or segregated in any such school on account of his color, race, sex, or nationality. Nothing herein shall be construed to permit or empower the State Board of Education to order, mandate or require busing or other transportation of pupils for the purpose of achieving racial balance in any school.

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(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.5.

CASE NOTES

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Closing of School
- In General
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- Hearing
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Closing of School

- In General

This Code provides that the directors of each district shall be a body politic and corporate and that the board has the duties enumerated, including: to establish one or more attendance units within the district, to assign pupils to the several schools, to have control and supervision of all school houses in their district, and to decide when a site or building has become unnecessary, unsuitable or inconvenient for a school. Moreover, the members of the board have broad discretion in the use of those powers within the limits of the grant. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

- Discretionary Powers

Plaintiffs' contentions that a board acted capriciously and without cause by failing to strictly apply criteria prepared by several committees in an action to compel board to reopen a specific school was without merit as the legislature has vested discretionary control over school closings in the school board. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

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The decision to close a school and to reassign the students to other attendance zones within the district is an exercise of the discretionary powers granted to the board to act as a policy-making body, tantamount to the quasi-legislative power to make prospective regulations and orders. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

- Hearing

This Code does not require the taking of testimony, evidence or any public hearings as a condition or prerequisite to the board's exercise of its discretionary statutory powers to close specific schools or to transfer students. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

- Judicial Review

No statutory judicial review of the board's exercise of its powers in closing a school and reassigning students is provided for, as this Code does not require the board to make written findings or reasons in support of its decision in the exercise of such powers. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

- Public Interest

A board of education in the exercise of its discretionary powers may discontinue or abandon the use of a public school within the boundaries of its jurisdiction and assign the students thereof to other schools in the school system; the board must be able to act in a reasonable manner consistent with the public interest. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

Delegation of Power

The powers granted by this Code to the board are discretionary unto themselves and may not be delegated. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

Discretion of Board

- Non-Resident Attendance

Because the right to have students attend schools outside their district upon payment of non-resident tuition is discretionary with the individual school boards, within limitations, it is not an absolute right of non-resident students. Board of Educ. v. Board of Educ., 112 Ill. App. 3d 212, 68 Ill. Dec. 16, 445 N.E.2d 464 (1 Dist. 1983).

History

- Illustrative Cases

For a case discussing the refusal of a high school to admit children on the basis of the children's race, see People ex rel. Peair v. Board of Educ., 127 Ill. 613, 21 N.E. 187 (1889).

Pleadings

- Segregative Intent

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Where segregative intent is not pleaded and the facts pleaded do not make out segregative intent as a matter of law, the complaint does not give rise to a claim. Coates v. Illinois State Bd. of Educ., 559 F.2d 445 (7th Cir. 1977).

Segregation

- Limitation on Power

The authority of the Board of Education to promulgate rules to eliminate and prevent racial segregation has been limited by the General Assembly by this section. Aurora E. Pub. Sch. v. Cronin, 92 Ill. 2d 313, 66 Ill. Dec. 85, 442 N.E.2d 511 (1982).

§ 105 ILCS 5/10-22.5a. Attendance by dependents of United States military personnel, foreign exchange students, and certain nonresident pupils

Sec. 10-22.5a. Attendance by dependents of United States military personnel, foreign exchange students, and certain nonresident pupils. (a) To enter into written agreements with cultural exchange organizations, or with nationally recognized eleemosynary institutions that promote excellence in the arts, mathematics, or science. The written agreements may provide for tuition free attendance at the local district school by foreign exchange students, or by nonresident pupils of eleemosynary institutions. The local board of education, as part of the agreement, may require that the cultural exchange program or the eleemosynary institutions provide services to the district in exchange for the waiver of nonresident tuition.

To enter into written agreements with adjacent school districts to provide for tuition free attendance by a student of the adjacent district when requested for the student's health and safety by the student or parent and both districts determine that the student's health or safety will be served by such attendance. Districts shall not be required to enter into such agreements nor be required to alter existing transportation services due to the attendance of such non-resident pupils.

(a-5) If, at the time of enrollment, a dependent of United States military personnel is housed in temporary housing located outside of a school district, but will be living within the district within 60 days after the time of initial enrollment, the dependent must be allowed to enroll, subject to the requirements of this subsection (a-5), and must not be charged tuition. Any United States military personnel attempting to enroll a dependent under this subsection (a-5) shall provide proof that the dependent will be living within the district within 60 days after the time of initial enrollment. Proof of residency may include, but is not limited to, postmarked mail addressed to the military personnel and sent to an address located within the district, a lease agreement for occupancy of a residence located within the district, or proof of ownership of a residence located within the district.

(b) Nonresident pupils and foreign exchange students attending school on a tuition free basis under such agreements and nonresident dependents of United States military personnel attending school on a tuition free basis may be counted for the purposes of

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determining the apportionment of State aid provided under Section 18-8.05 of this Code [105 ILCS 5/18-8.05], provided that any cultural exchange organization or eleemosynary institutions wishing to participate in an agreement authorized under this Section must be approved in writing by the State Board of Education. The State Board of Education may establish reasonable rules to determine the eligibility of cultural exchange organizations or eleemosynary institutions wishing to participate in agreements authorized under this Section. No organization or institution participating in agreements authorized under this Section may exclude any individual for participation in its program on account of the person's race, color, sex, religion or nationality.

(Source: P.A. 82-597; 89-480, § 5; 89-622, § 5; 90-14, § 2-135; 93-740, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.5a.

Effect of Amendments. The 1996 amendment by P.A. 89-480, effective January 1, 1997, added the subsection designations.

The 1996 amendment by P.A. 89-622, effective August 9, 1996, added the second paragraph now of subsection (a).

The 1997 amendment by P.A. 90-14, effective July 1, 1997, combined the amendments by P.A. 89-480 and P.A. 89-622.

The 2004 amendment by P.A. 93-740, effective July 15, 2004, revised the section heading; inserted subsection (a-5); and in the first sentence of subsection (b) inserted the language beginning "and nonresident" and ending "free basis", and substituted "18-8.05 of this Code, provided" for "18-8 of this Act. Provided".

§ 105 ILCS 5/10-22.6. Suspension or expulsion of pupils; school searches

Sec. 10-22.6. Suspension or expulsion of pupils; school searches. (a) To expel pupils guilty of gross disobedience or misconduct, including gross disobedience or misconduct perpetuated by electronic means, and no action shall lie against them for such expulsion. Expulsion shall take place only after the parents have been requested to appear at a meeting of the board, or with a hearing officer appointed by it, to discuss their child's behavior. Such request shall be made by registered or certified mail and shall state the time, place and purpose of the meeting. The board, or a hearing officer appointed by it, at such meeting shall state the reasons for dismissal and the date on which the expulsion is to become effective. If a hearing officer is appointed by the board he shall report to the board a written summary of the evidence heard at the meeting and the board may take such action thereon as it finds appropriate. An expelled pupil may be immediately transferred to an alternative program in the manner provided in Article 13A or 13B of this Code [105 ILCS 5/13A-0.5 et seq. or 105 ILCS 5/13B-1 et seq.]. A pupil must not be

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denied transfer because of the expulsion, except in cases in which such transfer is deemed to cause a threat to the safety of students or staff in the alternative program.

(b) To suspend or by policy to authorize the superintendent of the district or the principal, assistant principal, or dean of students of any school to suspend pupils guilty of gross disobedience or misconduct, or to suspend pupils guilty of gross disobedience or misconduct on the school bus from riding the school bus, and no action shall lie against them for such suspension. The board may by policy authorize the superintendent of the district or the principal, assistant principal, or dean of students of any school to suspend pupils guilty of such acts for a period not to exceed 10 school days. If a pupil is suspended due to gross disobedience or misconduct on a school bus, the board may suspend the pupil in excess of 10 school days for safety reasons. Any suspension shall be reported immediately to the parents or guardian of such pupil along with a full statement of the reasons for such suspension and a notice of their right to a review. The school board must be given a summary of the notice, including the reason for the suspension and the suspension length. Upon request of the parents or guardian the school board or a hearing officer appointed by it shall review such action of the superintendent or principal, assistant principal, or dean of students. At such review the parents or guardian of the pupil may appear and discuss the suspension with the board or its hearing officer. If a hearing officer is appointed by the board he shall report to the board a written summary of the evidence heard at the meeting. After its hearing or upon receipt of the written report of its hearing officer, the board may take such action as it finds appropriate. A pupil who is suspended in excess of 20 school days may be immediately transferred to an alternative program in the manner provided in Article 13A or 13B of this Code. A pupil must not be denied transfer because of the suspension, except in cases in which such transfer is deemed to cause a threat to the safety of students or staff in the alternative program.

(c) The Department of Human Services shall be invited to send a representative to consult with the board at such meeting whenever there is evidence that mental illness may be the cause for expulsion or suspension.

(d) The board may expel a student for a definite period of time not to exceed 2 calendar years, as determined on a case by case basis. A student who is determined to have brought one of the following objects to school, any school-sponsored activity or event, or any activity or event that bears a reasonable relationship to school shall be expelled for a period of not less than one year:

(1) A firearm. For the purposes of this Section, "firearm" means any gun, rifle, shotgun, weapon as defined by Section 921 of Title 18 of the United States Code, firearm as defined in Section 1.1 of the Firearm Owners Identification Card Act [430 ILCS 65/1.1], or firearm as defined in Section 24-1 of the Criminal Code of 1961 [720 ILCS 5/24-1]. The expulsion period under this subdivision (1) may be modified by the superintendent, and the superintendent's determination may be modified by the board on a case-by-case basis.

(2) A knife, brass knuckles or other knuckle weapon regardless of its composition, a billy club, or any other object if used or attempted to be used to cause bodily harm, including

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"look alikes" of any firearm as defined in subdivision (1) of this subsection (d). The expulsion requirement under this subdivision (2) may be modified by the superintendent, and the superintendent's determination may be modified by the board on a case-by-case basis.

Expulsion or suspension shall be construed in a manner consistent with the Federal Individuals with Disabilities Education Act [20 U.S.C. § 1400 et seq.]. A student who is subject to suspension or expulsion as provided in this Section may be eligible for a transfer to an alternative school program in accordance with Article 13A of the School Code. The provisions of this subsection (d) apply in all school districts, including special charter districts and districts organized under Article 34 [105 ILCS 5/34-1 et seq.].

(d-5) The board may suspend or by regulation authorize the superintendent of the district or the principal, assistant principal, or dean of students of any school to suspend a student for a period not to exceed 10 school days or may expel a student for a definite period of time not to exceed 2 calendar years, as determined on a case by case basis, if (i) that student has been determined to have made an explicit threat on an Internet website against a school employee, a student, or any school-related personnel, (ii) the Internet website through which the threat was made is a site that was accessible within the school at the time the threat was made or was available to third parties who worked or studied within the school grounds at the time the threat was made, and (iii) the threat could be reasonably interpreted as threatening to the safety and security of the threatened individual because of his or her duties or employment status or status as a student inside the school. The provisions of this subsection (d-5) apply in all school districts, including special charter districts and districts organized under Article 34 of this Code.

(e) To maintain order and security in the schools, school authorities may inspect and search places and areas such as lockers, desks, parking lots, and other school property and equipment owned or controlled by the school, as well as personal effects left in those places and areas by students, without notice to or the consent of the student, and without a search warrant. As a matter of public policy, the General Assembly finds that students have no reasonable expectation of privacy in these places and areas or in their personal effects left in these places and areas. School authorities may request the assistance of law enforcement officials for the purpose of conducting inspections and searches of lockers, desks, parking lots, and other school property and equipment owned or controlled by the school for illegal drugs, weapons, or other illegal or dangerous substances or materials, including searches conducted through the use of specially trained dogs. If a search conducted in accordance with this Section produces evidence that the student has violated or is violating either the law, local ordinance, or the school's policies or rules, such evidence may be seized by school authorities, and disciplinary action may be taken. School authorities may also turn over such evidence to law enforcement authorities. The provisions of this subsection (e) apply in all school districts, including special charter districts and districts organized under Article 34.

(f) Suspension or expulsion may include suspension or expulsion from school and all school activities and a prohibition from being present on school grounds.

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(g) A school district may adopt a policy providing that if a student is suspended or expelled for any reason from any public or private school in this or any other state, the student must complete the entire term of the suspension or expulsion in an alternative school program under Article 13A of this Code or an alternative learning opportunities program under Article 13B of this Code before being admitted into the school district if there is no threat to the safety of students or staff in the alternative program. This subsection (g) applies to all school districts, including special charter districts and districts organized under Article 34 of this Code.

(Source: P.A. 82-610; 89-371, § 5; 89-507, § 90D-40; 89-610, § 5; 90-14, § 2-135; 90-548, § 5-915; 90-757, § 5; 92-64, § 5; 96-633, § 5; 96-998, § 5; 97-340, § 5; 97-495, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.6.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 226.400, 275.100.

Effect of Amendments. The 1995 amendment by P.A. 89-371, effective January 1, 1996, added subsection (d).

The 1996 amendment by P.A. 89-507, effective July 1, 1997, in subsection (c) substituted "Human Services" for "Mental Health and Developmental Disabilities".

The 1996 amendment by P.A. 89-610, effective August 6, 1996, in the section catchline added "school searches" at the end; in subsection (d), in the first sentence, substituted "calendar" for "school", in the second sentence, deleted "as defined by Section 921 of Title 18, United States Code" preceding "to school" and inserted "any school-sponsored activity or event, or any activity or event which bears a reasonable relationship to school", added the third and fourth sentences and added the sixth sentence; and added subsection (e).

The 1997 amendment by P.A. 90-14, effective July 1, 1997, combined the amendments by P.A. 89-507 and P.A. 89-610.

The 1997 amendment by P.A. 90-548, effective January 1, 1998, incorporated the amendments by P.A. 90-14; and added subsection (f).

The 1998 amendment by P.A. 90-757, effective August 14, 1998, in subsection (d), inserted "superintendent, and the superintendent's determination may be modified by the", substituted "(1) possession, use, control, or transfer of any gun, rifle, shotgun" for "object which may be used to cause bodily harm, including but not limited to", inserted "or" following "Firearm Owners Identification Act", inserted "a" preceding "weapon as defined in Section 24-1" inserted "(2) any other object if used or attempted to be used to cause bodily harm, including but not limited to", deleted "guns, firearms, rifles, shotguns" following "knives", inserted "or" preceding billy clubs, inserted "(3)", and substituted "of any weapon as defined in this Section" for "thereof. Such items as baseball bats, pipes, bottles, locks, sticks, pencils, and pens may be considered weapons if used or attempted to be used to cause bodily harm."

The 2001 amendment by P.A. 92-64, effective July 12, 2001, added subsection (g).

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The 2009 amendment by P.A. 96-633, effective August 24, 2009, rewrote (d).

The 2010 amendment by P.A. 96-998, effective July 2, 2010, in (b), substituted twice, "policy" for "regulation", deleted "a copy of which shall be given to the school board" at the end of the fourth sentence, and added the fifth sentence.

The 2011 amendment by P.A. 97-340, effective January 1, 2012, inserted "including gross disobedience or misconduct perpetuated by electronic means" in the first sentence of (a); and inserted (d-5).

The 2011 amendment by P.A. 97-495, effective January 1, 2012, added the last two sentences to (a) and (b); and in (g), in the first sentence, inserted "in an alternative school program under Article 13A of this Code or an alternative learning opportunities program under Article 13B of this Code" and added "if there is no threat to the safety of student or staff in the alternative program" to the end and deleted the former second sentence, which read: "This policy may allow placement of the student in an alternative school program established under Article 13A of this Code, if available, for the remainder of the suspension or expulsion."

CASE NOTES

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Purpose

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- Grant of Power
Suspension
- Constitutionality
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Transcript of Hearing

Constitutionality

Ill. Rev. Stat. ch. 122, § 10-22.6, authorizing school boards to expel students for gross misconduct, satisfied due process requirements because it required a hearing preceded by notice of time, place, and purpose, and the hearing did not need to take the form of a judicial or quasi-judicial trial. Linwood v. Board of Education, 463 F.2d 763, 1972 U.S. App. LEXIS 8940 (7th Cir. 1972).

In General

The school board can authorize the school principal to suspend pupils guilty of gross disobedience or misconduct. M ex rel. R v. Board of Educ. Ball-Chatham Community Unit Sch. Dist. No. 5, 77 F.R.D. 463 (S.D. Ill. 1978).

The school principal assumes administrative responsibilities for operation of the attendance area in accordance with reasonable rules and regulations of the school board and under the supervision of the superintendent. M ex rel. R v. Board of Educ. Ball-Chatham Community Unit Sch. Dist. No. 5, 77 F.R.D. 463 (S.D. Ill. 1978).

Application

- Held Unconstitutional

For a case illustrating the unconstitutional application of this section, see Scoville v. Board of Educ., 425 F.2d 10 (7th Cir.), cert. denied, 400 U.S. 826, 91 S. Ct. 51, 27 L. Ed. 2d 55 (1970).

Assistant Principal

- Duty

The assistant school principal, as a chief administrative officer within the school, has a daily responsibility of protecting to the extent possible the health, safety and welfare of the students within that attendance center, and this responsibility includes the prevention of violation of school board rules and other public wrongs within the school. M ex rel. R v. Board of Educ. Ball-Chatham Community Unit Sch. Dist. No. 5, 77 F.R.D. 463 (S.D. Ill. 1978).

Cross Examination

Where the outcome of a hearing was directly dependent on the credibility of witnesses, whose conflicting statements were received by the hearing officer, an opportunity for cross examination was imperative. Colquitt v. Rich Tp. High Sch. Dist. No 227, 298 Ill. App. 3d 856, 232 Ill. Dec. 924, 699 N.E.2d 1109 (1 Dist. 1998).

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Expulsion

Where a student had no fundamental right to a public education under U.S. Const. Amend. XIV and failed to show that a decision to expel the student for possession of a weapon in a car parked on a public street adjacent to a school (in violation of 105 ILCS 5/10-22.6(d)) was arbitrary or capricious, pursuant to Fed. R. Civ. P. 12(b)(6), the student failed to state a claim under 42 U.S.C.S. § 1983. Tassoni v. Paris, F. Supp. 2d , 2004 U.S. Dist. LEXIS 16839 (N.D. Ill. Aug. 23, 2004).

- Double Jeopardy

Respondent's expulsion for her alleged drug activity was remedial in nature and therefore a petition for adjudication of wardship based on the same activity did not violate the double jeopardy clause. In re K.B., 301 Ill. App. 3d 926, 235 Ill. Dec. 218, 704 N.E.2d 791 (1 Dist. 1998).

- Held Improper

Where there was no evidence that student exhibited, brandished or otherwise threatened others while possessing an ice pick and where her explanation for possessing the ice pick was that she was returning it to a friend who left it at her house the previous evening, student's misconduct in bringing an ice pick to school was not sufficient to warrant expulsion from school for a semester. Washington v. Smith, 248 Ill. App. 3d 534, 187 Ill. Dec. 970, 618 N.E.2d 561 (1 Dist. 1993).

Expulsion for the remainder of the school year (six months) for a random incident of violence off school property where no one was hurt is an abuse of discretion. Robinson ex rel. Robinson v. Oak Park & River Forest High Sch., 213 Ill. App. 3d 77, 156 Ill. Dec. 951, 571 N.E.2d 931 (1 Dist. 1991).

- Remedial in Nature

Considerations of the larger school community support the conclusion that the respondent's expulsion for her acknowledged drug activity was remedial in nature, rather than punishment, in that it removed a disruptive activity with potentially serious consequences to the overall educational setting. In re K.B., 301 Ill. App. 3d 926, 235 Ill. Dec. 218, 704 N.E.2d 791 (1 Dist. 1998).

Judicial Review

- In General

Although school officials have broad discretion in the area of student discipline and a strong interest in discouraging violence generated by packs of students or the organization of gangs, board of education's discretion has limits, and in reviewing the board's action to determine whether it has abused its discretion, the court must consider (1) the egregiousness of the student's conduct; (2) the history or record of the student's past conduct; (3) the likelihood that such conduct will affect the delivery of educational services to other children; (4) the severity of the punishment; and (5) the interest of the child. Robinson ex rel. Robinson v. Oak Park & River Forest High Sch., 213 Ill. App. 3d 77, 156 Ill. Dec. 951, 571 N.E.2d 931 (1 Dist. 1991).

- Certiorari

Although action taken under this section is not brought within the purview of the Illinois Administrative Review Law (735 ILCS 5/3-101 et seq.), it is reviewable by common-law certiorari. Linwood v. Board of Educ., 463 F.2d 763 (7th Cir.), cert. denied, 409 U.S. 1027, 93 S. Ct. 475, 34 L. Ed. 2d 320 (1972).

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- Standard of Review

In Illinois, a decision to suspend or expel a student will be reversed by the court of review only if it is arbitrary, unreasonable, capricious, or oppressive. Lusk ex rel. Lusk v. Triad Community Unit No. 2, 194 Ill. App. 3d 426, 141 Ill. Dec. 473, 551 N.E.2d 660 (5 Dist. 1990).

No Private Right of Action

Students who have been subjected to strip searches at school do not have a private right of action for violations of 105 ILCS 5/10-22.6(e) because the Illinois School Code did not explicitly provide for a private right of action and a private right of action cannot be implied with regard to 105 ILCS 5/10-22.6(e). 105 ILCS 5/10-22.6(e) is not designed to prevent strip searches of students at school but is intended, instead, to protect schools and students by allowing them to conduct searches of lockers, desks, parking lots, and other school property and by articulating the lack of expectation of privacy that students should have with regard to personal property left in public school areas. Carlson v. Bremen High Sch. Dist. 228, 423 F. Supp. 2d 823, 2006 U.S. Dist. LEXIS 14468 (N.D. Ill. 2006).

Court dismissed the claims that two high school students asserted pursuant to 105 ILCS 5/10-22.6(e) because the Illinois School Code did not provide a private right of action. Although the students could assert federal civil rights and common law tort claims, arising from an incident in which a high school dean forced them to submit to strip searches, the students could not assert private claims for the violation of 105 ILCS5/10-22.6(e). Carlson v. Bremen High Sch. Dist. 228, 423 F. Supp. 2d 823, 2006 U.S. Dist. LEXIS 14468 (N.D. Ill. 2006).

Notice and Hearing

- Actual Notice

Notice by means other than registered mail can be valid under Illinois law, and actual notice is deemed satisfactory. Stratton ex rel. Stratton v. Wenona Community Unit Dist. No. 1, 133 Ill. 2d 413, 141 Ill. Dec. 453, 551 N.E.2d 640 (1990).

- Formal Written Notice Not Required

At hearing, where the hearing officer provided student's parents with the option of beginning the expulsion process, this was not the equivalent of ordering an expulsion and formal written notice by certified mail was not required under Illinois law. Baxter v. Round Lake Area Schs., 856 F. Supp. 438 (N.D. Ill. 1994).

- Illustrative Case

Where plaintiff, a 16 year old high school sophomore, and her mother knew of the charges against her, received notice of conference, were well aware the meeting was arranged to deal with plaintiff's conduct in setting off false fire alarms in her high school, and was given a full chance to contest a transfer to a new school on and after the conference, failure to specifically advise the mother of the possible transfer did not deny plaintiff procedural due process. Betts v. Board of Educ., 466 F.2d 629 (7th Cir. 1972).

- Language Held Sufficient

Notice given to parents, indicating that the board would consider expelling their child "for gross misconduct, disobedience, and disrespect," substantially tracking the language of subsection (a) of this section, was sufficient. Stratton ex rel. Stratton v. Wenona Community Unit Dist. No. 1, 133 Ill. 2d 413, 141 Ill. Dec. 453, 551 N.E.2d 640 (1990).

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- Method of Delivery

Notice by "registered or certified mail" is not a jurisdictional prerequisite; notice which is hand delivered is sufficient to vest the board with jurisdiction to act. Stratton ex rel. Stratton v. Wenona Community Unit Dist. No. 1, 133 Ill. 2d 413, 141 Ill. Dec. 453, 551 N.E.2d 640 (1990).

- Who May Preside

Under this section, either a school district's Board of Education or a hearing officer appointed by the Board may preside over a pupil's expulsion hearing; if a hearing officer presides over the expulsion proceeding, the officer is then to prepare a written summary of the expulsion hearing and a recommendation for the School Board to consider in making the final decision regarding the student's expulsion. Baxter v. Round Lake Area Schs., 856 F. Supp. 438 (N.D. Ill. 1994).

Notice And Hearing: Illustrative Cases

Expelled high school student's motion for preliminary injunctive relief was denied in part because he could not show that he had a reasonable likelihood of succeeding on the merits of his due process challenges to his expulsion hearing. The student did not have a right to confront the witnesses against him, such confrontation was unnecessary given that he admitted to participating in a possibly gang-related confrontation at school, the student's parents had declined the offer of an interpreter and had actively participated in the hearing, and the hearing officer's six page report summarizing the hearing met 105 ILCS 5/10-22.6 requirements. Coronado v. Valleyview Pub. Sch. Dist., F. Supp. 2d , 2008 U.S. Dist. LEXIS 28384 (N.D. Ill. Apr. 3, 2008).

Possession of Firearm

Expulsion for possession of a firearm in a school building is not arbitrary, and is not unreasonable, capricious or oppressive. Lusk ex rel. Lusk v. Triad Community Unit No. 2, 194 Ill. App. 3d 426, 141 Ill. Dec. 473, 551 N.E.2d 660 (5 Dist. 1990).

Purpose

- Grant of Power

This section was not intended to be a self-executing regulation of student conduct, but a grant of power to local school boards; it does not purport to define or proscribe specific acts or omissions which may be penalized by suspension or expulsion, but it does furnish the local school authority with a general guideline or standard, namely, that student disobedience or misconduct must be "gross" to justify its being made a ground for suspension or expulsion. Linwood v. Board of Educ., 463 F.2d 763 (7th Cir.), cert. denied, 409 U.S. 1027, 93 S. Ct. 475, 34 L. Ed. 2d 320 (1972).

Suspension

- Constitutionality

A suspension for a short period for reasonably proscribed conduct is a minor disciplinary penalty which the legislature may elect to treat differently from expulsion or prolonged suspension without violating a constitutional right of the student. Linwood v. Board of Educ., 463 F.2d 763 (7th Cir.), cert. denied, 409 U.S. 1027, 93 S. Ct. 475, 34 L. Ed. 2d 320 (1972).

- Notice and Hearing

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Nowhere in this section is it stated that a principal, prior to suspending a student, is obligated to confront him with the disciplinary charges relating to the suspension and to allow him to respond. Davis v. Thompson, 79 Ill. App. 3d 613, 35 Ill. Dec. 361, 399 N.E.2d 195 (5 Dist. 1979).

Transcript of Hearing

Student's due process rights were not violated by the lack of a verbatim transcript of the hearing. Colquitt v. Rich Tp. High Sch. Dist. No 227, 298 Ill. App. 3d 856, 232 Ill. Dec. 924, 699 N.E.2d 1109 (1 Dist. 1998).

LEGAL PERIODICALS

McIntyre, Empowering Schools to Search: The Effect of Growing Drug and Violence Concerns on American Schools, 2000 U. Ill. L. Rev. 1025 (2000).

For comment, "The Chicago Public Schools and its violent students: How Can the Law Protect Teachers?", see 48 DePaul L. Rev. 907 (1999).

For article, "Survey of Illinois Law: Education Law," see 21 S. Ill. U.L.J. 815 (1997).

For article, "Survey of Illinois Law: Criminal Law and Procedure," see 21 S. Ill. U.L.J. 759 (1997).

For article, "Students' Rights to Confrontation and Cross-Examination at School Expulsion Hearings," see 85 Ill. B.J. 126 (1997).

For article, "Following the Rules," see 9 CBA Rec. 40 (1995).

For article, "Student Vandalism and Public Schools: The Scope of the Illinois Educators' Directive to Discipline," see 9 N. Ill. U.L. Rev. 87 (1988).

RESEARCH REFERENCES

Admissibility of hearsay evidence in student disciplinary proceedings. 30 ALR4th 935.

Practice Guides and Treatises.

Disability Law Today: An Accessible Guide for Illinois Practitioners § 6.40 Expulsion of Students with Disabilities (IICLE).

Disability Law Today: An Accessible Guide for Illinois Practitioners § 6.38 Suspension of Students with Disabilities (IICLE).

§ 105 ILCS 5/10-22.6a. [Instruction for pregnant pupils]

Sec. 10-22.6a. To provide by home instruction, correspondence courses or otherwise courses of instruction for pupils who are unable to attend school because of pregnancy. Such instruction shall be provided to the pupil (1) before the birth of the child when the

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pupil's physician has indicated to the district, in writing, that the pupil is medically unable to attend regular classroom instruction and (2) for up to 3 months following the birth of the child or a miscarriage. The instruction course shall be designed to offer educational experiences that are equivalent to those given to pupils at the same grade level in the district and that are designed to enable the pupil to return to the classroom.

(Source: P.A. 84-1430.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.6a.

§ 105 ILCS 5/10-22.6b. Non-disclosure of information

Sec. 10-22.6b. Non-disclosure of information. Except as otherwise provided in the "Abused and Neglected Child Reporting Act" [325 ILCS 5/1 et seq.] or other applicable State or federal law, to permit school officials to withhold, from any person, information on the whereabouts of any child removed from school premises when the child has been taken into protective custody as a victim of suspected child abuse. School officials shall direct such person to the Department of Children and Family Services, or to the local law enforcement agency if appropriate.

(Source: P.A. 85-238.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.6b.

§ 105 ILCS 5/10-22.7. Repairs and improvements

Sec. 10-22.7. Repairs and improvements. To repair and improve schoolhouses and furnish them with the necessary fixtures, furniture, apparatus, libraries, and fuel, to receive and review the reports of architects and professional engineers licensed in the State of Illinois prescribed in Section 2-3.12 [105 ILCS 5/2-3.12], to set priorities for the recommendations set forth in the report, and to ensure that those facilities used for student occupancy under their control will remain in compliance with the building code authorized in Section 2-3.12 [105 ILCS 5/2-3.12].

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(Source: P.A. 83-1362; 87-984, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.7.

Effect of Amendments. The 1992 amendment by P.A. 87-984, effective January 1, 1993, deleted "and" preceding "to receive", inserted "professional" before "engineers", inserted "licensed in the State of Illinois" after "engineers", substituted "Section 2-3.12, to" for "Section 2-3.12 of this Act and", added to the end the language beginning ", and to ensure" and ending "Section 2-3.12" and made stylistic changes throughout the section.

CASE NOTES

Maintenance Personnel

- Hiring and Firing

Although the school district is not directed by statute to employ painters, or any other maintenance personnel, it is nonetheless empowered to repair and improve school houses and furnish them with the necessary fixtures, furniture, apparatus, libraries and fuel and to contract to have this work performed; the broad language of these provisions gives rise to discretion in the school district to hire and fire maintenance personnel. Board of Educ. v. Cahokia Dist. Council No. 58, 93 Ill. App. 3d 376, 48 Ill. Dec. 749, 417 N.E.2d 151 (5 Dist. 1981).

§ 105 ILCS 5/10-22.8. Sale of personal property

Sec. 10-22.8. Sale of personal property. To sell at public or private sale any personal property belonging to the school district, and either not needed for school purposes or available through an arrangement under which such personal property may be leased by the district from the purchaser.

(Source: Laws 1961, p. 31; P.A. 90-789, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.8.

Effect of Amendments. The 1998 amendment by P.A. 90-789, effective August 14, 1998, inserted "either" and added at the end the language beginning "or available through an arrangement".

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§ 105 ILCS 5/10-22.9: Repealed by P.A. 89-159, § 15, effective January 1, 1996.

§ 105 ILCS 5/10-22.10. Control and supervision of school houses and school grounds

Sec. 10-22.10. Control and supervision of school houses and school grounds. To have the control and supervision of all public schoolhouses in their district, and to grant the temporary use of them, when not occupied by schools, for religious meetings and Sunday schools, for evening schools and literary societies, and for such other meetings as the board deems proper; to grant the use of assembly halls and class rooms when not otherwise needed, including light, heat and attendants, for public lectures, concerts, and other educational and social interests, under such provisions and control as they may see fit to impose; to grant the use of school grounds under such provisions and control as they may see fit to impose and to conduct, or provide for the conducting of recreational, social and civic activities in the school buildings or on the school grounds or both.

(Source: Laws 1967, p. 264.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.10.

CASE NOTES

Analysis

Delegation of Power
Discretionary Powers of Board
Meetings Permitted
- Fraternal Organizations
School Closings
- In General
- Discretion of Board
- Hearing
- Judicial Review
Use of Custodians
- Liability for Negligence

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Delegation of Power

The powers granted by this Code to the board are discretionary unto themselves and may not be delegated. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

Discretionary Powers of Board

This Code provides that the directors of each district shall be a body politic and corporate and that the board has the duties enumerated, including: to establish one or more attendance units within the district, to assign pupils to the several schools, to have control and supervision of all school houses in their district, and to decide when a site or building has become unnecessary, unsuitable or inconvenient for a school. Moreover, the members of the board have broad discretion in the use of those powers within the limits of the grant. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

The legislature has placed the administration of schools within the domain of the school board and courts will not interfere with the exercise of the board's powers unless such exercise is shown to be arbitrary or capricious. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

Meetings Permitted

- Fraternal Organizations

The board of school directors of a school district could permit fraternal organizations to hold meetings in one room of the school building in the district. Lagow v. Hill, 238 Ill. 428, 87 N.E. 369 (1909).

School Closings

- In General

A board of education in the exercise of its discretionary powers may discontinue or abandon the use of a public school within the boundaries of its jurisdiction and assign the students thereof to other schools in the school system; the board must be able to act in a reasonable manner consistent with the public interest. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

- Discretion of Board

Plaintiffs' contentions that board acted capriciously and without cause by failing to strictly apply criteria prepared by several committees in an action to compel a board to reopen a specific school was without merit as the legislature has vested discretionary control over school closing in the school board. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

The decision to close a school and to reassign the students to other attendance zones within the district is an exercise of the discretionary powers granted to the board to act as a policy-making body, tantamount to the quasi-legislative power to make prospective regulations and orders. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

- Hearing

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This Code does not require the taking of testimony or evidence or any public hearings as a condition or prerequisite to the board's exercise of the statutory powers to close specific schools or to transfer students. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

- Judicial Review

No statutory judicial review of the board's exercise of its powers to close a school is provided for, as this Code does not require the board to make written findings or reasons in support of its decision in the exercise of such powers. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

Use of Custodians

- Liability for Negligence

The use of custodians to protect a school building was not such control as would create liability in the board of education as a result of the duty owed to patrons of those procuring the use of the building under this section. Brand v. Sertoma Club, 39 Ill. App. 3d 330, 349 N.E.2d 502 (4 Dist. 1976).

RESEARCH REFERENCES

Liability of school or school personnel for injury to student resulting from cheerleader activities. 25 ALR5th 784.

§ 105 ILCS 5/10-22.10a. Inspection for drugs

Sec. 10-22.10a. Inspection for drugs. School boards are empowered to adopt a policy to authorize school officials to request the assistance of law enforcement officials for the purpose of conducting reasonable searches of school grounds and lockers for illegal drugs, including searches conducted through the use of specially trained dogs.

(Source: P.A. 86-850.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.10a.

LEGAL PERIODICALS

McIntyre, Empowering Schools to Search: The Effect of Growing Drug and Violence Concerns on American Schools, 2000 U. Ill. L. Rev. 1025 (2000).

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§ 105 ILCS 5/10-22.11. Lease of school property

Sec. 10-22.11. Lease of school property. (a) To lease school property to another school district, municipality or body politic and corporate for a term of not to exceed 25 years, except as otherwise provided in this Section, and upon such terms and conditions as may be agreed if in the opinion of the school board use of such property will not be needed by the district during the term of such lease; provided, the school board shall not make or renew any lease for a term longer than 10 years, nor alter the terms of any lease whose unexpired term may exceed 10 years without the vote of 2/3 of the full membership of the board.

(b) Whenever the school board considers such action advisable and in the best interests of the school district, to lease vacant school property for a period not exceeding 51 years to a private not for profit school organization for use in the care of the trainable and educable mentally disabled persons in the district or in the education of the gifted children in the district. Before leasing such property to a private not for profit school organization, the school board must adopt a resolution for the leasing of such property, fixing the period and price therefor, and order submitted to referendum at an election to be held in the district as provided in the general election law, the question of whether the lease should be entered into. Thereupon, the secretary shall certify to the proper election authorities the proposition for submission in accordance with the general election law. If the majority of the voters voting upon the proposition vote in favor of the leasing, the school board may proceed with the leasing. The proposition shall be in substantially the following form:

```
Shall School District No.  ......
of  .............. County, Illinois lease to
. . . . . .  (here name and
identify the                                   YES
lessee) the following described vacant
school property (here describe
the property) for a term of  .............      NO
years for the sum of  .............
Dollars?
```

This paragraph (b) shall not be construed in such a manner as to relieve the responsibility of the Board of Education as set out in Article 14 of the School Code.

(c) To lease school buildings and land to suitable lessees for educational purposes or for any other purpose which serves the interests of the community, for a term not to exceed 25 years and upon such terms and conditions as may be agreed upon by the parties, when such buildings and land are declared by the board to be unnecessary or unsuitable or inconvenient for a school or the uses of the district during the term of the lease and when, in the opinion of the board, the best interests of the residents of the school district will be enhanced by entering into such a lease. Such leases shall include provisions for adequate insurance for both liability and property damage or loss, and reasonable charges for

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maintenance and depreciation of such buildings and land.

(Source: P.A. 84-448; 89-397, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.11.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, in subsection (b), in the first sentence, substituted "disabled" for "handicapped".

CASE NOTES

Body Politic

- Historical Society

A lease between school district and a not-for-profit historical society was invalid because the lessee society was not a "body politic." Union County Regional Bd. of Sch. Trustees v. Union County Historical Soc'y, Inc., 52 Ill. App. 3d 458, 10 Ill. Dec. 153, 367 N.E.2d 541 (5 Dist. 1977).

§ 105 ILCS 5/10-22.12. Lease of property for school purposes

Sec. 10-22.12. Lease of property for school purposes. To lease, for a period not exceeding 99 years, any building, rooms, grounds and appurtenances to be used by the district for the use of schools or for school administration purposes; and to pay for the use of such leased property in accordance with the terms of the lease. The board shall not make or renew any lease for a term longer than 10 years, nor alter the terms of any lease whose unexpired term may exceed 10 years without the vote of 2/3 of the full membership of the board.

(Source: P.A. 80-1044.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.12.

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OPINIONS OF ATTORNEY GENERAL

Incompatible Offices

- Illustrative Cases

Because of the potential conflicts of duties present when one governmental unit is authorized to contract with another, an individual serving as both a township park board member and a school district board member would be unable to represent the units of both entities adequately, fully and faithfully; therefore, one person may not simultaneously hold the positions of school board member and township park board member. 1991 Op. Atty. Gen. (91-031).

§ 105 ILCS 5/10-22.13. Necessity, suitability or convenience of site or building

Sec. 10-22.13. Necessity, suitability or convenience of site or building. To decide when a site or building has become unnecessary, unsuitable or inconvenient for a school.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.13.

CASE NOTES

Analysis

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In General
Discretion of Board
- In General
- Delegation
- Due Process Standards
- Procedure
- Quasi-Legislative Function

Eminent Domain
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Judicial Review
Public Participation
- Lack of Provision

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Constitutionality

This section is not in contravention of Ill. Const. (1970), Art. X, § 1. People v. Board of Educ., 9 Ill. App. 3d 663, 292 N.E.2d 569 (2 Dist. 1973).

In General

While 105 ILCS 5/10-22.13 clearly vests a school board with the authority to decide when a site or building has become unnecessary, unsuitable, or inconvenient for a school, nothing in its language suggests that it was intended to divest a court of authority over disputes arising under 65 ILCS 5/11-61-2. Vill. of Woodridge v. Bd. of Educ. of Cmty. High Sch. Dist. 99, 403 Ill. App. 3d 559, 342 Ill. Dec. 806, 933 N.E.2d 392, 2010 Ill. App. LEXIS 753 (2 Dist. 2010).

A board of education in the exercise of its discretionary powers may discontinue or abandon the use of a public school within the boundaries of its jurisdiction and assign the students thereof to other schools in the school system; the board must be able to act in a reasonable manner consistent with the public interest. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

Discretion of Board

- In General

This Code provides that the directors of each district shall be a body politic and corporate and that the board has the duties enumerated, including: to establish one or more attendance units within the district, to assign pupils to the several schools, to have control and supervision of all school houses in their district, and to decide when a site or building has become unnecessary, unsuitable or inconvenient for a school; moreover, the members of the board have broad discretion in the use of those powers within the limits of the grant. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

- Delegation

The powers granted by this Code to the board are discretionary unto themselves and may not be delegated. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

- Due Process Standards

The legislature has placed the administration of schools within the domain of the school board and courts will not interfere with the exercise of the board's powers unless such exercise is shown to be arbitrary or capricious. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

- Procedure

Responsibility for determining when a school has become unnecessary is vested by statute in the school board and there are no statutory procedures which must be followed in the exercise of that power, which is discretionary and may not be delegated. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

- Quasi-Legislative Function

The decision to close a school and to reassign the students to other attendance zones within the district is an exercise of the discretionary powers granted to the board to act as a policy-making body, tantamount to the quasi-legislative power to make prospective regulations and orders.

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Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

Eminent Domain

In an eminent domain proceeding, a justiciable controversy existed because there was no political question to be decided; the use of the criteria set forth in 65 ILCS 5/11-61-2 would not have impermissibly intruded upon the realm of the legislature. Moreover, no deference was given to the legislative enactments of the two local government entities involved in this case, nothing in the language of 105 ILCS 5/10-22.13 suggested that it was intended to divest a court of authority over disputes arising under 65 ILCS 5/11-61-2, and nothing in 105 ILCS 5/5-24, an alternative mechanism, prevented a village from proceeding under 65 ILCS 5/11-61-2. Vill. of Woodridge v. Bd. of Educ. of Cmty. High Sch. Dist. 99, 403 Ill. App. 3d 559, 342 Ill. Dec. 806, 933 N.E.2d 392, 2010 Ill. App. LEXIS 753 (2 Dist. 2010).

Hearing Not Required

This Code does not require the taking of testimony or evidence or any public hearings as a condition or prerequisite to the board's exercise of the statutory powers to close specific schools or to transfer students. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

Judicial Review

It is not for the courts to determine whether or not the means ultimately adopted by the board are wise or expedient or to interfere with the exercise of the powers by the members of the board in matters confided to their discretion. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

No statutory judicial review of the board's exercise of its powers in closing a school is provided for, as this Code does not require the board to make written findings or reasons in support of its decision in the exercise of such powers. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

Public Participation

- Lack of Provision

Plaintiffs, two students, three resident taxpayers of school district, and a not-for-profit corporation formed to promote education in the surrounding area, had no statutory right to participate in the making of the board's decision to close a school; therefore, they suffered no loss by being precluded from such participation, and did not establish a substantial detriment or loss necessary to invoke the doctrine of equitable estoppel. Tyska ex rel. Tyska v. Board of Educ., 117 Ill. App. 3d 917, 73 Ill. Dec. 209, 453 N.E.2d 1344 (1 Dist. 1983).

§ 105 ILCS 5/10-22.13a. Zoning changes, variations, and special uses for school district property

Sec. 10-22.13a. Zoning changes, variations, and special uses for school district property. To seek zoning changes, variations, or special uses for property held or controlled by the

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school district.

(Source: P.A. 90-566, § 5.)

Effective Date. Section 99 of P.A. 90-566 made this section effective upon becoming law. The Act was approved January 2, 1998.

§ 105 ILCS 5/10-22.14. Borrowing money and issuing bonds

Sec. 10-22.14. Borrowing money and issuing bonds. To borrow money, and issue bonds for the purposes and in the manner provided by this Act.

When bond proceeds from the sale of bonds include a premium, or when the proceeds of bonds issued for fire prevention, safety, energy conservation, and school security purposes as specified in Section 17-2.11 [105 ILCS 5/17-2.11] are invested as authorized by law, the board shall determine by resolution whether the interest earned on the investment of bond proceeds authorized under Section 17-2.11 [105 ILCS 5/17-2.11] or the premium realized in the sale of bonds, as the case may be, is to be used for the purposes for which the bonds were issued or, instead, for payment of the principal indebtedness and interest on those bonds.

When bonds, other than bonds issued for fire prevention, safety, energy conservation, and school security purposes as specified in Section 17-2.11 [105 ILCS 5/17-2.11] are issued by any school district, and the purposes for which the bonds have been issued are accomplished and paid for in full, and there remain funds on hand from the proceeds of the bonds so issued, the board by resolution may transfer those excess funds to the operations and maintenance fund.

When bonds are issued by any school district for fire prevention, safety, energy conservation, and school security purposes as specified in Section 17-2.11 [105 ILCS 5/17-2.11], and the purposes for which the bonds have been issued are accomplished and paid in full, and there remain funds on hand from the proceeds of the bonds issued, the board by resolution shall use those excess funds (1) for other authorized fire prevention, safety, energy conservation, and school security purposes as specified in Section 17-2.11 [105 ILCS 5/17-2.11] or (2) for transfer to the Bond and Interest Fund for payment of principal and interest on those bonds. If any transfer is made to the Bond and Interest Fund, the secretary of the school board shall within 30 days notify the county clerk of the amount of that transfer and direct the clerk to abate the taxes to be extended for the purposes of principal and interest payments on the respective bonds issued under Section 17-2.11 [105 ILCS 5/17-2.11] by an amount equal to such transfer.

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(Source: P.A. 86-970; 87-984, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.14.

Effect of Amendments. The 1992 amendment by P.A. 87-984, effective January 1, 1993, in the second paragraph inserted the language beginning "or when the proceeds" and ending "authorized by law,", inserted "the interest earned on the investment of bond proceeds authorized under Section 17-2.11 or", and inserted ", as the case may be,", in the third paragraph inserted ", other than bonds issued for fire prevention, safety, energy conservation, and school security purposes as specified in Section 17-2.11" and substituted "those excess funds" for "such excess funds"; and added the fourth paragraph.

§ 105 ILCS 5/10-22.15. Flag and flag staff

Sec. 10-22.15. Flag and flag staff. To furnish each school with a flag and a staff as provided by law.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.15.

§ 105 ILCS 5/10-22.16: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/10-22.17: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/10-22.18. Kindergartens

Sec. 10-22.18. Kindergartens. To establish kindergartens for the instruction of children between the ages of 4 and 6 years, if in their judgment the public interest requires it, and to pay the necessary expenses thereof out of the school funds of the district. Upon petition of at least 50 parents or guardians of children between the ages of 4 and 6, residing within any school district and within one mile of the public school where such

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kindergarten is proposed to be established, the board of directors shall, if funds are available, establish a kindergarten in connection with the public school designated in the petition and maintain it as long as the annual average daily attendance therein is not less than 15. The board may establish a kindergarten with half-day attendance or with full-day attendance. If the board establishes full-day kindergarten, it shall also establish half-day kindergarten. No one shall be employed to teach in a kindergarten who does not hold a certificate as provided by law.

(Source: P.A. 84-1308.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.18.

CASE NOTES

Legislative Intent

- Age Group

This section manifests the intent of the Illinois legislature that kindergartens are for children between the ages of four and six years. Morgan ex rel. Morgan v. Board of Educ., 22 Ill. App. 3d 241, 317 N.E.2d 393 (5 Dist. 1974).

§ 105 ILCS 5/10-22.18a. Child care and training centers - Charges - Public aid payments for certain children

Sec. 10-22.18a. Child care and training centers - Charges - Public aid payments for certain children. To establish Child Care and Training Centers for children under the age of compulsory school attendance for the purpose of providing them (1) social and educational guidance and developmental aids supplemental to parental care and training designed to assist them in attaining their greatest potential during their school years and adult life and (2) care and services, in addition to the services specified in (1), required because of the absence from home for all or part of the day of their parents or other persons in charge of their care as a result of employment or other reason. The board may also make the facilities of the Centers available before and after as well as during regular school hours to school age and preschool age children who may benefit thereby, including children who require care and supervision pending the return of their parents or other persons in charge of their care from employment or other activity requiring absence from the home.

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In establishing standards for the Centers, the board shall take into account standards established by the Department of Children and Family Services for like facilities. The board shall pay the necessary expenses out of school funds of the district, subject to State payment for certain children as hereinafter provided, and may charge for care and training of children for whom the State does not assume responsibility. The charge shall not exceed the per capita cost of the Center and, to the extent feasible, shall be fixed at a level which will permit utilization of the Center by employed parents of low or moderate income.

The Department of Human Services shall pay to the district the cost of care and training provided in the Centers for any child who is a recipient of financial aid under "The Illinois Public Aid Code", approved April 11, 1967, as amended [305 ILCS 5/1-1 et seq.]. The Illinois Department shall submit to the board written notice designating each child for whom it assumes the cost of care and training. The board shall submit claims for payment at the end of each monthly period. If satisfied of their correctness, the Department shall approve the claims and provide for their payment out of funds appropriated to it for such purposes and from Federal funds available therefor.

The board may permit any other State or local governmental agency or private agency providing care for children to purchase care and training in the Centers for children under their charge.

After July 1, 1970 when the provisions of Section 10-20.20 [105 ILCS 5/10-20.20] became operative in a district, children in a Child Care and Training Center shall be transferred to the kindergarten established under that Section for such portion of the day as may be required for the kindergarten program, and only the pro-rated costs of care and training provided in the Center for the remaining period shall be charged to the Illinois Department or other persons or agencies paying for such care.

(Source: P.A. 81-257; 89-507, § 90L-43.)

Note.

This section was Ill.Rev.Stat., Ch. 122, para. 10-22.18a.

Effect of Amendments. The 1996 amendment by P.A. 89-507, effective July 1, 1997, in the third paragraph, in the first and second sentences, deleted "Illinois" preceding "Department" and in the first sentence substituted "Human Services" for "Public Aid".

§ 105 ILCS 5/10-22.18b. Before and after school programs

Sec. 10-22.18b. Before and after school programs. To develop and maintain before school and after school programs for students in kindergarten through the 6th grade. Such programs may include time for homework, physical exercise, afternoon nutritional snacks

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and educational offerings which are in addition to those offered during the regular school day. The chief administrator in each district shall be a certified teacher or a person who meets the requirements for supervising a day care center under the Child Care Act of 1969 [225 ILCS 10/1 et seq.]. Individual programs shall be coordinated by certified teachers or by persons who meet the requirements for supervising a day care center under the Child Care Act of 1969 [225 ILCS 10/1 et seq.]. Additional employees who are not so qualified may also be employed for such programs.

The schedule of these programs may follow the work calendar of the local community rather than the regular school calendar. Parents or guardians of the participating students shall be responsible for providing transportation for the students to and from the programs. The school board may charge parents of participating students a fee, not to exceed the actual cost of such before and after school programs.

(Source: P.A. 83-639.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.18b.

§ 105 ILCS 5/10-22.18c. Model day care services program

Sec. 10-22.18c. Model day care services program. Local school districts may establish, in cooperation with the State Board of Education, a model program for the provision of day care services in a school. The program shall be administered by the local school district and shall be funded from monies available from private and public sources. Student parents shall not be charged a fee for the day care services; school personnel also may utilize the services, but shall be charged a fee. The program shall be supervised by a trained child care professional who is qualified to teach students parenting skills. As part of the program, the school shall offer a course in child behavior in which students shall receive course credits for helping to care for the children in the program while learning parenting skills. The State Board of Education shall evaluate the programs' effectiveness in reducing school absenteeism and dropouts among teenage parents and shall report to the General Assembly concerning its findings after the program has been in operation for 2 years.

(Source: P.A. 85-769.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.18c.

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§ 105 ILCS 5/10-22.18d. Parental institutes

Sec. 10-22.18d. Parental institutes. A school district may utilize up to two days allowed by law for teachers' institutes to conduct parental institutes for the parents and guardians of children attending the district. No district may utilize teachers' institute days as parental institute days without the consent of the district's inservice advisory committee created under Section 3-11. If a district does not have an inservice advisory committee, parental institute days must be approved by the district's teaching staff.

Parental institutes shall be designed by the school district upon consultation with the district's teaching staff, administrators, and parents' organizations. The district may provide appropriate personnel, including district staff, to conduct, attend, or participate in all or any portion of the institutes.

Parental institutes shall provide information on such topics as the district shall deem necessary to achieve the following purposes:

(1) Enhance parental involvement in the education of the district's students;

(2) Improve parental communication and involvement with the district;

(3) Enhance parental knowledge of child development, district programs, school conditions, and societal problems threatening students; and

(4) Improve parental skill development.

Districts shall use every means available to inform parents and guardians about parental institutes and to encourage attendance at and active participation in such events.

Parental institutes may be held during that period of the day which is not part of the regular school day and may be held on Saturdays. Days scheduled for parental institutes may be scheduled separately for different grade levels and different attendance centers of the district.

Districts may establish reasonable fees, not to exceed the cost of holding parental institutes, for attendance and shall waive any fees so established for any parents or guardians who may be unable to afford such fees. Nothing shall preclude districts from applying for or accepting private funds to conduct parental institutes.

(Source: P.A. 86-1250.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.18d.

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§ 105 ILCS 5/10-22.19. Sidewalks, bridges, culverts and other approaches

Sec. 10-22.19. Sidewalks, bridges, culverts and other approaches. To appropriate school funds for the construction of such sidewalks, bridges, culverts and other approaches leading to the schoolhouse or school grounds as are necessary for the convenience and safety of pupils attending such school, but such approaches shall not exceed one-half mile in length.

(Source: Laws 1961, p. 3420.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.19.

CASE NOTES

Separation of Powers

Circuit court violated the doctrine of separation of powers when it ordered a board of education, based on public health and safety, to build sidewalks or walkways on a township road district's property near a school that was being built. Bd. of Educ. v. Miller, 349 Ill. App. 3d 806, 285 Ill. Dec. 868, 812 N.E.2d 688, 2004 Ill. App. LEXIS 819 (1 Dist. 2004).

§ 105 ILCS 5/10-22.19a: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/10-22.20. Classes for adults and youths whose schooling has been interrupted; conditions for State reimbursement; use of child care facilities

Sec. 10-22.20. Classes for adults and youths whose schooling has been interrupted; conditions for State reimbursement; use of child care facilities. (a) To establish special classes for the instruction (1) of persons of age 21 years or over, and (2) of persons less than age 21 and not otherwise in attendance in public school, for the purpose of providing adults in the community, and youths whose schooling has been interrupted, with such additional basic education, vocational skill training, and other instruction as may be necessary to increase their qualifications for employment or other means of self-support and their ability to meet their responsibilities as citizens including courses of instruction regularly accepted for graduation from elementary or high schools and for Americanization and General Educational Development Review classes.

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The board shall pay the necessary expenses of such classes out of school funds of the district, including costs of student transportation and such facilities or provision for child-care as may be necessary in the judgment of the board to permit maximum utilization of the courses by students with children, and other special needs of the students directly related to such instruction. The expenses thus incurred shall be subject to State reimbursement, as provided in this Section. The board may make a tuition charge for persons taking instruction who are not subject to State reimbursement, such tuition charge not to exceed the per capita cost of such classes.

The cost of such instruction, including the additional expenses herein authorized, incurred for recipients of financial aid under the Illinois Public Aid Code [305 ILCS 5/1-1 et seq.], or for persons for whom education and training aid has been authorized under Section 9-8 of that Code [305 ILCS 5/9-8], shall be assumed in its entirety from funds appropriated by the State to the Illinois Community College Board.

(b) The Illinois Community College Board shall establish the standards for the courses of instruction reimbursed under this Section. The Illinois Community College Board shall supervise the administration of the programs. The Illinois Community College Board shall determine the cost of instruction in accordance with standards established by the Illinois Community College Board, including therein other incidental costs as herein authorized, which shall serve as the basis of State reimbursement in accordance with the provisions of this Section. In the approval of programs and the determination of the cost of instruction, the Illinois Community College Board shall provide for the maximum utilization of federal funds for such programs. The Illinois Community College Board shall also provide for:

(1) the development of an index of need for program planning and for area funding allocations, as defined by the Illinois Community College Board;

(2) the method for calculating hours of instruction, as defined by the Illinois Community College Board, claimable for reimbursement and a method to phase in the calculation and for adjusting the calculations in cases where the services of a program are interrupted due to circumstances beyond the control of the program provider;

(3) a plan for the reallocation of funds to increase the amount allocated for grants based upon program performance as set forth in subsection (d) below; and

(4) the development of standards for determining grants based upon performance as set forth in subsection (d) below and a plan for the phased-in implementation of those standards.

For instruction provided by school districts and community college districts beginning July 1, 1996 and thereafter, reimbursement provided by the Illinois Community College Board for classes authorized by this Section shall be provided from funds appropriated for the reimbursement criteria set forth in subsection (c) below.

(c) Upon the annual approval of the Illinois Community College Board, reimbursement shall be first provided for transportation, child care services, and other special needs of the students directly related to instruction and then from the funds remaining an amount

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equal to the product of the total credit hours or units of instruction approved by the Illinois Community College Board, multiplied by the following:

(1) For adult basic education, the maximum reimbursement per credit hour or per unit of instruction shall be equal to the general state aid per pupil foundation level established in subsection (B) of Section 18-8.05 [105 ILCS 5/18-8.05], divided by 60;

(2) The maximum reimbursement per credit hour or per unit of instruction in subparagraph (1) above shall be weighted for students enrolled in classes defined as vocational skills and approved by the Illinois Community College Board by 1.25;

(3) The maximum reimbursement per credit hour or per unit of instruction in subparagraph (1) above shall be multiplied by .90 for students enrolled in classes defined as adult secondary education programs and approved by the Illinois Community College Board;

(4) (Blank); and

(5) Funding for program years after 1999-2000 shall be determined by the Illinois Community College Board.

(d) Upon its annual approval, the Illinois Community College Board shall provide grants to eligible programs for supplemental activities to improve or expand services under the Adult Education Act [105 ILCS 405/1-1 et seq.]. Eligible programs shall be determined based upon performance outcomes of students in the programs as set by the Illinois Community College Board.

(e) Reimbursement under this Section shall not exceed the actual costs of the approved program.

If the amount appropriated to the Illinois Community College Board for reimbursement under this Section is less than the amount required under this Act, the apportionment shall be proportionately reduced.

School districts and community college districts may assess students up to $3.00 per credit hour, for classes other than Adult Basic Education level programs, if needed to meet program costs.

(f) An education plan shall be established for each adult or youth whose schooling has been interrupted and who is participating in the instructional programs provided under this Section.

Each school board and community college shall keep an accurate and detailed account of the students assigned to and receiving instruction under this Section who are subject to State reimbursement and shall submit reports of services provided commencing with fiscal year 1997 as required by the Illinois Community College Board.

For classes authorized under this Section, a credit hour or unit of instruction is equal to 15 hours of direct instruction for students enrolled in approved adult education programs at midterm and making satisfactory progress, in accordance with standards established by the Illinois Community College Board.

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(g) Upon proof submitted to the Illinois Department of Human Services of the payment of all claims submitted under this Section, that Department shall apply for federal funds made available therefor and any federal funds so received shall be paid into the General Revenue Fund in the State Treasury.

School districts or community colleges providing classes under this Section shall submit applications to the Illinois Community College Board for preapproval in accordance with the standards established by the Illinois Community College Board. Payments shall be made by the Illinois Community College Board based upon approved programs. Interim expenditure reports may be required by the Illinois Community College Board. Final claims for the school year shall be submitted to the regional superintendents for transmittal to the Illinois Community College Board. Final adjusted payments shall be made by September 30.

If a school district or community college district fails to provide, or is providing unsatisfactory or insufficient classes under this Section, the Illinois Community College Board may enter into agreements with public or private educational or other agencies other than the public schools for the establishment of such classes.

(h) If a school district or community college district establishes child-care facilities for the children of participants in classes established under this Section, it may extend the use of these facilities to students who have obtained employment and to other persons in the community whose children require care and supervision while the parent or other person in charge of the children is employed or otherwise absent from the home during all or part of the day. It may make the facilities available before and after as well as during regular school hours to school age and preschool age children who may benefit thereby, including children who require care and supervision pending the return of their parent or other person in charge of their care from employment or other activity requiring absence from the home.

The Illinois Community College Board shall pay to the board the cost of care in the facilities for any child who is a recipient of financial aid under the Illinois Public Aid Code.

The board may charge for care of children for whom it cannot make claim under the provisions of this Section. The charge shall not exceed per capita cost, and to the extent feasible, shall be fixed at a level which will permit utilization by employed parents of low or moderate income. It may also permit any other State or local governmental agency or private agency providing care for children to purchase care.

After July 1, 1970 when the provisions of Section 10-20.20 [105 ILCS 5/10-20.20] become operative in the district, children in a child-care facility shall be transferred to the kindergarten established under that Section for such portion of the day as may be required for the kindergarten program, and only the prorated costs of care and training provided in the Center for the remaining period shall be charged to the Illinois Department of Human Services or other persons or agencies paying for such care.

(i) The provisions of this Section shall also apply to school districts having a population exceeding 500,000.

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(j) In addition to claiming reimbursement under this Section, a school district may claim general State aid under Section 18-8.05 for any student under age 21 who is enrolled in courses accepted for graduation from elementary or high school and who otherwise meets the requirements of Section 18-8.05.

(Source: P.A. 84-1308; 87-1018, § 2; 89-507, § 90L-43; 89-524, § 5; 90-14, § 2-135; 90-548, § 5-915; 90-802, § 5; 91-830, § 5; 93-21, § 10-5; 95-331, § 540.)

Note.

This section was Ill.Rev.Stat., Ch. 122, para. 10-22.20.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 120.10, 1501.307, 1501.505.

Effect of Amendments. The 2000 amendment by P.A. 91-830, effective July 1, 2001, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2003 amendment by P.A. 93-21, effective July 1, 2003, deleted the text from subsections (c)(4) and (5), which concerned reimbursement for community college districts, and programs receiving funds under formulas from various past program years.

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, made a typographical correction.

CASE NOTES

Analysis

Construction
Driver Education Class
Scope

Construction

This section should not be considered by itself; it must be construed together with and in the light of all the other provisions of the School Code. Acorn Auto Driving Sch., Inc. v. Board of Educ., 27 Ill. 2d 93, 187 N.E.2d 722 (1963).

Driver Education Class

This section permitted defendants to offer driver education classes for persons over the age of 21 who qualify for classes; however, defendants may not indiscriminately accept anyone or everyone

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over 21 who may desire to enroll. Acorn Auto Driving Sch., Inc. v. Board of Educ., 27 Ill. 2d 93, 187 N.E.2d 722 (1963).

Scope

This section does validly authorize furnishing instruction by the public schools to persons over 21 years of age in all subjects properly offered to persons under that age by such public schools. Acorn Auto Driving Sch., Inc. v. Board of Educ., 27 Ill. 2d 93, 187 N.E.2d 722 (1963).

This section standing alone cannot be said to prescribe a course of study for persons over 21 years of age, nor does it provide a formula for computing tuition charges, nor does it make the establishment of such classes mandatory, but it does grant the power to the board to establish such classes, pay for the expenses thereof, and determine what, if any tuition shall be charged to the pupil. Acorn Auto Driving Sch., Inc. v. Board of Educ., 27 Ill. 2d 93, 187 N.E.2d 722 (1963).

§ 105 ILCS 5/10-22.20a. Advanced vocational training program, and career education

Sec. 10-22.20a. Advanced vocational training program, and career education. To enter into joint agreements with community college districts and other school districts for the purpose of providing career education or advanced vocational training of students in the 11th and higher grades who desire preparation for a trade. Transportation for students to any facility covered by a joint agreement as described in this Section shall be provided by the participating school district, or by the participating school district in conjunction with other school districts. Joint agreements entered into under this Section may include provisions for joint authority to acquire and improve sites, construct and equip facilities thereon and lease and equip facilities deemed necessary by the parties to the joint agreement, to maintain programs and to provide for financing of the foregoing jointly by the respective parties, all in accordance with the terms of the joint agreement.

Nothing herein contained shall be construed to restrict or prohibit the rights of community college districts or school districts to enter into joint agreements under the provisions of the Intergovernmental Cooperation Act, as now or hereinafter amended [5 ILCS 220/1 et seq.].

The duration of the career education or advanced vocational training program shall be such period as the school district may approve but it may not exceed 2 years for any school district pupil. Participation in the program is accorded the same credit toward a high school diploma as time spent in other courses.

The participating community college shall bill each participating student's school district for an amount equal to the per capita cost of operating the community college attended or a charge for participation may be made in accordance with the joint agreement between the community college district and the student's school district. Such agreement shall not provide for payments in excess of the actual cost of operating the course or courses in which the student is enrolled. Participating high schools may use State aid monies to pay the charges.

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The community college instructors teaching in such programs need not be certified by the State Teacher Certification Board.

(Source: P.A. 79-76.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.20a.

CASE NOTES

Vocational Training

Provisions in School Code regarding vocational courses merely require the state to offer limited vocational courses as elective subjects adjunctive to the otherwise traditional course of academic study and does not require an intensive, extended and exclusive vocational training program. Chicago & N.E. Ill. Dist. Council of Carpenters Apprentice & Trainee Program v. Illinois Dep't of Revenue, 293 Ill. App. 3d 600, 228 Ill. Dec. 23, 688 N.E.2d 721 (1 Dist. 1997), appeal denied, 177 Ill. 2d 568, 232 Ill. Dec. 451, 698 N.E.2d 542 (1998).

§ 105 ILCS 5/10-22.20b. [Director of adult education]

Sec. 10-22.20b. To appoint a person, who meets the standards of qualification and certification established by the Illinois Community College Board, as director of adult education to be responsible for the development and general supervision of the adult education program described in Section 10-22.20 [105 ILCS 5/10-22.20] and the Adult Education Act [105 ILCS 405/1-1 et seq.].

(Source: P.A. 81-1508; 91-830, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, para. 10-22.20b.

Effect of Amendments. The 2000 amendment by P.A. 91-830, effective July 1, 2001, substituted "Illinois Community College Board" for "State Board of Education".

§ 105 ILCS 5/10-22.20c. Tutorial programs

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Sec. 10-22.20c. Tutorial programs. To establish and implement peer assistance, tutorial programs whereby qualified, able students assist less able students with their studies and course work, and to provide appropriate recognition for students furnishing such tutorial services. In addition, a school board is authorized to cooperate with institutions of higher education and may accept tutorial services provided by qualified students of such institutions under the Educational Partnership Act, as now or hereafter amended [110 ILCS 40/1 et seq.].

(Source: P.A. 84-712.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.20c.

§§ 105 ILCS 5/10-22.21, 105 ILCS 5/10-22.21a: Repealed by P.A. 89-159, § 15, effective January 1, 1996.

§ 105 ILCS 5/10-22.21b. Administering medication

Sec. 10-22.21b. Administering medication. To provide for the administration of medication to students. It shall be the policy of the State of Illinois that the administration of medication to students during regular school hours and during school-related activities should be discouraged unless absolutely necessary for the critical health and well-being of the student. Under no circumstances shall teachers or other non-administrative school employees, except certified school nurses and non-certificated registered professional nurses, be required to administer medication to students. This Section shall not prohibit a school district from adopting guidelines for self-administration of medication by students. This Section shall not prohibit any school employee from providing emergency assistance to students.

(Source: P.A. 87-790; 91-719, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.21b.

Effect of Amendments. The 2000 amendment by P.A. 91-719, effective June 2, 2000, inserted "and non-certificated registered professional nurses" in the second sentence.

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§ 105 ILCS 5/10-22.22. Transportation for pupils - Tuition

Sec. 10-22.22. Transportation for pupils - Tuition. To provide free transportation for pupils, and where in its judgment the interests of the district and of the pupils therein will be best subserved by so doing the school board may permit the pupils in the district or in any particular grade to attend the schools of other districts and may permit any pupil to attend an area secondary vocational school operated by a public school district or a public or non-public vocational school within the State of Illinois or adjacent states approved by the Board of Vocational Education, and may provide free transportation for such pupils and shall pay the tuition of such pupils in the schools attended; such tuition shall be based upon per capita cost computed in the following manner: The cost of conducting and maintaining any area secondary vocational school facility shall be first determined and shall include the following expenses applicable only to such educational facility under rules and regulations established by the Board of Vocational Education and Rehabilitation as follows:

a.Salaries of teachers, vocational counselors, and supporting professional workers, necessary non-certified workers, clerks, custodial employees, and any district taxes specifically for their pension and retirement benefits.

b.Equipment and supplies necessary for program operation.

c.Administrative costs.

d.Operation of physical plant, including heat, light, water, repairs, and maintenance.

e.Auxiliary service, not including any transportation cost.

From such total cost thus determined there shall be deducted the State reimbursement due on account of such educational facility for the same year, not including any State reimbursement for area secondary vocational school transportation. Such net cost shall be divided by the average number of pupils in average daily attendance in such area secondary vocational school facility for the school year in order to arrive at the net per capita tuition cost. Such costs shall be computed on pupils regularly enrolled in an area secondary vocational school on the basis of one-sixth day for every class hour attended pursuant to such enrollment. Provided, that the board subject to the approval of the county superintendent of schools may determine what schools outside of their district such pupils shall attend. This section does not require the board of directors or board of education of any district to admit pupils from another district.

(Source: P.A. 76-1522; 94-213, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.22.

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Effect of Amendments. The 2005 amendment by P.A. 94-213, effective July 14, 2005, deleted the former last sentence in the last paragraph, which read "Notwithstanding any provisions in this section every school board shall maintain an elementary school within the district."

CASE NOTES

Refusal to Provide Transportation

- Held Proper

Directors of school district did not act unreasonably, arbitrarily, or discriminatorily in refusing to provide transportation for certain pupils, and the trial court thus erred in interfering with the directors' authority. People ex rel. Ball v. Johnson, 341 Ill. App. 423, 94 N.E.2d 444 (2 Dist. 1950).

§ 105 ILCS 5/10-22.22a: Repealed by P.A. 95-793, § 11, effective August 8, 2008.

§ 105 ILCS 5/10-22.22b. [Deactivation of high school facilities]

Sec. 10-22.22b. (a) The provisions of this subsection shall not apply to the deactivation of a high school facility under subsection (c). Where in its judgment the interests of the district and of the students therein will be best served, to deactivate any high school facility or elementary school facility in the district and send the students of such high school in grades 9 through 12 or such elementary school in grades kindergarten through 8, as applicable, to schools in other districts. Such action may be taken only with the approval of the voters in the district and the approval, by proper resolution, of the school board of the receiving district. The board of the district contemplating deactivation shall, by proper resolution, cause the proposition to deactivate the school facility to be submitted to the voters of the district at a regularly scheduled election. Notice shall be published at least 10 days prior to the date of the election at least once in one or more newspapers published in the district or, if no newspaper is published in the district, in one or more newspapers with a general circulation within the district. The notice shall be substantially in the following form:

NOTICE OF REFERENDUM TO DEACTIVATE THE
..... SCHOOL FACILITY IN
SCHOOL DISTRICT NO. .....

Notice is hereby given that on (insert date), a referendum will be held in ..... County (Counties) for the purpose of voting for or against the proposition to deactivate the ..... School facility in School District No. ..... and to send pupils in ..... School to School District(s) No. .....

The polls will be opened at ..... o'clock .....m., and close at

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..... o'clock .....m. of the same day.

.....

Dated (insert date).

The proposition shall be in substantially the following form:

If the majority of those voting upon the proposition in the district contemplating deactivation vote in favor of the proposition, the board of that district, upon approval of the board of the receiving district, shall execute a contract with the receiving district providing for the reassignment of students to the receiving district. If the deactivating district seeks to send its students to more than one district, it shall execute a contract with each receiving district. The length of the contract shall be for 2 school years, but the districts may renew the contract for additional one year or 2 year periods. Contract renewals shall be executed by January 1 of the year in which the existing contract expires. If the majority of those voting upon the proposition do not vote in favor of the proposition, the school facility may not be deactivated.

The sending district shall pay to the receiving district an amount agreed upon by the 2 districts.

When the deactivation of school facilities becomes effective pursuant to this Section, the provisions of Section 24-12 [105 ILCS 5/24-12] relative to the contractual continued service status of teachers having contractual continued service whose positions are transferred from one board to the control of a different board shall apply, and the positions at the school facilities being deactivated held by teachers, as that term is defined in Section 24-11 [105 ILCS 5/24-11], having contractual continued service with the school district at the time of the deactivation shall be transferred to the control of the board or boards who shall be receiving the district's students on the following basis:

(1) positions of such teachers in contractual continued service that were full time positions shall be transferred to the control of whichever of such boards such teachers shall request with the teachers making such requests proceeding in the order of those with the greatest length of continuing service with the board to those with the shortest length of continuing service with the board, provided that the number selecting one board over another board or other boards shall not exceed that proportion of the school students going to such board or boards; and

(2) positions of such teachers in contractual continued service that were full time positions and as to which there is no selection left under subparagraph 1 hereof shall be transferred to the appropriate board.

The contractual continued service status of any teacher thereby transferred to another district is not lost and the receiving board is subject to the School Code with respect to such transferred teacher in the same manner as if such teacher was the district's employee during the time such teacher was actually employed by the board of the deactivating district from which the position was transferred.

When the deactivation of school facilities becomes effective pursuant to this Section, the provisions of subsection (b) of Section 10-23.5 of this Code [105 ILCS 5/10-23.5] relative to the transfer of educational support personnel employees shall apply, and the positions at the school facilities being deactivated that are held by educational support personnel employees at the time of the deactivation shall be transferred to the control of the board or

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boards that will be receiving the district's students on the following basis:

(A) positions of such educational support personnel employees that were full-time positions shall be transferred to the control of whichever of the boards the employees request, with the educational support personnel employees making these requests proceeding in the order of those with the greatest length of continuing service with the board to those with the shortest length of continuing service with the board, provided that the number selecting one board over another board or other boards must not exceed that proportion of students going to such board or boards; and

(B) positions of such educational support personnel employees that were full-time positions and as to which there is no selection left under subdivision (A) shall be transferred to the appropriate board.

The length of continuing service of any educational support personnel employee thereby transferred to another district is not lost and the receiving board is subject to this Code with respect to that transferred educational support personnel employee in the same manner as if the educational support personnel employee was the district's employee during the time the educational support personnel employee was actually employed by the board of the deactivating district from which the position was transferred.

(b) The provisions of this subsection shall not apply to the reactivation of a high school facility which is deactivated under subsection (c). The sending district may, with the approval of the voters in the district, reactivate the school facility which was deactivated. The board of the district seeking to reactivate the school facility shall, by proper resolution, cause the proposition to reactivate to be submitted to the voters of the district at a regularly scheduled election. Notice shall be published at least 10 days prior to the date of the election at least once in one or more newspapers published in the district or, if no newspaper is published in the district, in one or more newspapers with a general circulation within the district. The notice shall be substantially in the following form:

NOTICE OF REFERENDUM TO REACTIVATE THE

..... SCHOOL FACILITY IN

SCHOOL DISTRICT NO. .....

Notice is hereby given that on (insert date), a referendum will be held in ..... County (Counties) for the purpose of voting for or against the proposition to reactivate the ..... School facility in School District No. ..... and to discontinue sending pupils of School District No. ..... to School District(s) No. .....

The polls will be opened at ..... o'clock .....m., and closed at ..... o'clock .....m. of the same day.

.....

Dated (insert date).

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The proposition shall be in substantially the following form:

```
Shall the Board of Education of
School District No.  ..............,       YES
.............. County, Illinois,
be authorized to reactivate the
.............. School facility
and to discontinue sending pupils
of School District No.  ........           NO
to School District(s) No.  ........?
```

(c) The school board of any unit school district which experienced a strike by a majority of its certified employees that endured for over 6 months during the regular school term of the 1986-1987 school year, and which during the ensuing 1987-1988 school year had an enrollment in grades 9 through 12 of less than 125 students may, when in its judgment the interests of the district and of the students therein will be best served thereby, deactivate the high school facilities within the district for the regular term of the 1988-1989 school year and, for that school year only, send the students of such high school in grades 9 through 12 to schools in adjoining or adjacent districts. Such action may only be taken: (a) by proper resolution of the school board deactivating its high school facilities and the approval, by proper resolution, of the school board of the receiving district or districts, and (b) pursuant to a contract between the sending and each receiving district, which contract or contracts: (i) shall provide for the reassignment of all students of the deactivated high school in grades 9 through 12 to the receiving district or districts; (ii) shall apply only to the regular school term of the 1988-1989 school year; (iii) shall not be subject to renewal or extension; and (iv) shall require the sending district to pay to the receiving district the cost of educating each student who is reassigned to the receiving district, such costs to be an amount agreed upon by the sending and receiving district but not less than the per capita cost of maintaining the high school in the receiving district during the 1987-1988 school year. Any high school facility deactivated pursuant to this subsection for the regular school term of the 1988-1989 school year shall be reactivated by operation of law as of the end of the regular term of the 1988-1989 school year. The status as a unit school district of a district which deactivates its high school facilities pursuant to this subsection shall not be affected by reason of such deactivation of its high school facilities and such district shall continue to be deemed in law a school district maintaining grades kindergarten through 12 for all purposes relating to the levy, extension, collection and payment of the taxes of the district under Article 17 [105 ILCS 5/17-1 et seq.] for the 1988-1989 school year.

(d) Whenever a school facility is reactivated pursuant to the provisions of this Section, then all teachers in contractual continued service who were honorably dismissed or transferred as part of the deactivation process, in addition to other rights they may have under the School Code, shall be recalled or transferred back to the original district.

(Source: P.A. 86-128; 88-6, § 5; 91-357, § 101; 94-213, § 5; 95-110, § 5; 95-148, § 5; 95-876, § 175.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.22b.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1993 amendment by P.A. 88-6, effective June 8, 1993, in subsection (a) substituted "an amount agreed upon by the 2 districts" for "the cost of educating each student who is reassigned" in the first sentence of the second paragraph and deleted the former second sentence of that paragraph, which read "Such cost shall be an amount agreed upon by the two districts, except that such amount may not be less than the per capita cost of maintaining the high schools in the receiving district during the preceding school year."

The 1999 amendment by P.A. 91-357, effective July 29, 1999, in subsections (a) and (b) substituted "on (insert date)" for "on the .... day of ...., 19.." in the first sentence of the form and "Dated (insert date)" for "Dated this .... day of ....., 19.." near the end of the form.

The 2005 amendment by P.A. 94-213, effective July 14, 2005, deleted "high" prior to "school" throughout the section, and made a related change; and twice added references to "elementary school" in the first paragraph.

The 2007 amendment by P.A. 95-110 effective January 1 2008, deleted "Regional Superintendent of Schools" in the Notice of Referendum in (a) and (b); and made related changes.

The 2007 amendment by P.A. 95-148, effective August 14, 2007, added the last four paragraphs in (a).

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, combined earlier multiple amendments.

§ 105 ILCS 5/10-22.22c. [Joint operation of cooperative high school attendance centers]

Sec. 10-22.22c. (a) Subject to the following provisions of this Section two or more contiguous school districts each of which has an enrollment in grades 9 through 12 of less than 600 students may, when in their judgment the interest of the districts and of the students therein will be best served, jointly operate one or more cooperative high schools. Such action shall be taken for a minimum period of 20 school years, and may be taken only with the approval of the voters of each district. A district with 600 or more students enrolled in grades 9 through 12 may qualify for inclusion with one or more districts having less than 600 such students by receiving a size waiver from the State Board of Education based on a finding that such inclusion would significantly increase the educational opportunities of the district's students, and by meeting the other prerequisites of this Section. The board of each district contemplating such joint operation shall, by proper resolution, cause the proposition to enter into such joint operation to be submitted to the voters of the district at a regularly scheduled election. Notice shall be published at least 10 days prior to the date of the election at least once in one or more newspapers published in the district or, if no newspaper is published in the district, in one or more newspapers with a general circulation

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within the district. The notice shall be substantially in the following form:

```
 NOTICE OF REFERENDUM FOR SCHOOL DISTRICT NO.  ......
AND SCHOOL DISTRICT NO.  ...... TO JOINTLY
OPERATE (A) COOPERATIVE HIGH SCHOOL
(SCHOOLS)

  Notice is hereby given that on (insert date), a referendum will be held in
.............. County (Counties) for the purpose of voting for or against the
proposition for School District No.  ...... and School District No.  ...... to
jointly operate (a) cooperative high school (schools).

  The polls will be open at  ........ o'clock  .... m., and close at  ........
o'clock  .... m., of the same day.

  A  .....                                B  .....

  Dated (insert date).
```

Regional Superintendent of Schools

The proposition shall be in substantially the following form:

```
 Shall the Board of Education of
 School District No.  ......,  ........      YES
 County (Counties), Illinois be authorized
 to enter with into an agreement with
 School District No.  ......,
 ........ County (Counties), Illinois to
 jointly operate (a) cooperative high        NO
 school (schools)?
```

If the majority of those voting on the proposition in each district vote in favor of the proposition, the school boards of the participating districts may, if they agree on terms, execute a contract for such joint operation subject to the following provisions of this Section.

(b) The agreement for joint operation of any such cooperative high school shall include, but not be limited to, provisions for administration, staff, programs, financing, facilities, and transportation. Such agreements may be modified, extended, or terminated by approval of each of the participating districts, provided that a district may withdraw from the agreement during its initial 20-year term only if the district is reorganizing with one or more districts under other provisions of this Code. Even if 2 or more of the participating district boards approve an extension of the agreement, any other participating district shall, upon failure of its board to approve such extension, disengage from such participation at the end of the then current agreement term.

(c) A governing board, which shall govern the operation of any such cooperative high school, shall be composed of an equal number of board members from each of the participating districts, except that where all participating district boards concur, membership on the governing board may be apportioned to reflect the number of students

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in each respective district who attend the cooperative high school. The membership of the governing board shall be not less than 6 nor more than 10 and shall be set by the agreement entered into by the participating districts. The school board of each participating district shall select, from its membership, its representatives on the governing board. The governing board shall prepare and adopt a budget for the cooperative high school. The governing board shall administer the cooperative high school in accordance with the agreement of the districts and shall have the power to hire, supervise, and terminate staff; to enter into contracts; to adopt policies for the school; and to take all other actions necessary and proper for the operation of the school. However, the governing board may not levy taxes or incur any indebtedness except within the annual budget approved by the participating districts.

(d) (Blank).

(e) Each participating district shall pay its per capita cost of educating the students residing in its district and attending any such cooperative high school into the budget for the maintenance and operation of the cooperative high school.

The manner of determining per capita cost shall be set forth in the agreement. Each district shall pay the amount owed the governing board under the terms of the agreement from the fund that the district would have used if the district had incurred the costs directly and may levy taxes and issue bonds as otherwise authorized for these purposes in order to make payments to the governing board.

(f) Additional school districts having an enrollment in grades 9 through 12 of less than 600 students may be added to the agreement in accordance with the process described in subsection (a) of this Section. In the event additional districts are added, a new contract shall be executed in accordance with the provisions of this Section.

(g) Upon formation of the cooperative high school, the school board of each participating district shall:

(1) confer and coordinate with each other and the governing board, if the governing board is then in existence, as to staffing needs for the cooperative high school;

(2) in consultation with any exclusive employee representatives and the governing board, if the governing board is then in existence, establish a combined list of teachers in all participating districts, categorized by positions, showing the length of service and the contractual continued service status, if any, of each teacher in each participating district who is qualified to hold any such positions at the cooperative high school, and then distribute this list to the exclusive employee representatives on or before February 1 of the school year prior to the commencement of the operation of the cooperative high school or within 30 days after the date of the referendum election if the proposition receives a majority of those voting in each district, whichever occurs first. This list is in addition to and not a substitute for the list mandated by Section 24-12 of this Code [105 ILCS 5/24-12]; and

(3) transfer to the governing board of the cooperative high school the employment and the position of so many of the full-time or part-time high school teachers employed by a

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participating district as are jointly determined by the school boards of the participating districts and the governing board, if the governing board is then in existence, to be needed at the cooperative high school, provided that these teacher transfers shall be done:

(A) by categories listed on the seniority list mentioned in subdivision (2) of this subsection (g);

(B) in each category, by having teachers in contractual continued service being transferred before any teachers who are not in contractual continued service; and

(C) in order from greatest seniority first through lesser amounts of seniority.

A teacher who is not in contractual continued service shall not be transferred if there is a teacher in contractual continued service in the same category who is qualified to hold the position that is to be filled.

If there are more teachers who have entered upon contractual continued service than there are available positions at the cooperative high school or within other assignments in the district, a school board shall first remove or dismiss all teachers who have not entered upon contractual continued service before removing or dismissing any teacher who has entered upon contractual continued service and who is legally qualified (i) to hold a position at the cooperative high school planned to be held by a teacher who has not entered upon contractual continued service or (ii) to hold another position in the participating district. As between teachers who have entered upon contractual continued service, the teacher or teachers with the shorter length of continuing service in any of the participating districts shall be dismissed first. Any teacher dismissed as a result of such a decrease shall be paid all earned compensation on or before the third business day following the last day of pupil attendance in the regular school term. If the school board that has dismissed a teacher or the governing board has any vacancies for the following school term or within one calendar year from the beginning of the following school term, the positions thereby becoming available shall be tendered to the teachers so removed or dismissed so far as they are legally qualified to hold such positions. However, if the number of honorable dismissal notices in all participating districts exceeds 15% of full-time equivalent positions filled by certified employees (excluding principals and administrative personnel) during the preceding school year in all participating districts and if the school board that has dismissed a teacher or the governing board has any vacancies for the following school term or within 2 calendar years from the beginning of the following school term, the positions so becoming available shall be tendered to the teachers who were so notified, removed, or dismissed whenever these teachers are legally qualified to hold such positions.

The provisions of Section 24-12 of this Code [105 ILCS 5/24-12] concerning teachers whose positions are transferred from one board to the control of a different board shall apply to the teachers who are transferred. The contractual continued service of any transferred teacher is not lost and the governing board is subject to this Code with respect to the teacher in the same manner as if the teacher had been the governing board's employee during the time the teacher was actually employed by the board of the district from which the position and the teacher's employment were transferred. The time spent in employment with a participating district by any teacher who has not yet entered upon

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contractual continued service and who is transferred to the governing board is not lost when computing the time necessary for the teacher to enter upon contractual continued service, and the governing board is subject to this Code with respect to the teacher in the same manner as if the teacher had been the governing board's employee during the time the teacher was actually employed by the school board from which the position and the teacher's employment were transferred.

If the cooperative high school is dissolved, any teacher who was transferred from a participating district shall be transferred back to the district and Section 24-12 of this Code [105 ILCS 5/24-12] shall apply. In that case, a district is subject to this Code in the same manner as if the teacher transferred back had been continuously in the service of the receiving district.

(h) Upon formation of the cooperative high school, the school board of each participating district shall:

(1) confer and coordinate with each other and the governing board, if the governing board is then in existence, as to needs for educational support personnel for the cooperative high school;

(2) in consultation with any exclusive employee representative or bargaining agent and the governing board, if the governing board is then in existence, establish a combined list of educational support personnel in participating districts, categorized by positions, showing the length of continuing service of each full-time educational support personnel employee who is qualified to hold any such position at the cooperative high school, and then distribute this list to the exclusive employee representative or bargaining agent on or before February 1 of the school year prior to the commencement of the operation of the cooperative high school or within 30 days after the date of the referendum election if the proposition receives a majority of those voting in each district, whichever occurs first; and

(3) transfer to the governing board of the cooperative high school the employment and the positions of so many of the full-time educational support personnel employees employed by a participating district as are jointly determined by the school boards of the participating districts and the governing board, if the governing board is then in existence, to be needed at the cooperative high school, provided that the full-time educational personnel employee transfers shall be done by categories on the seniority list mentioned in subdivision (2) of this subsection (h) and done in order from greatest seniority first through lesser amounts of seniority.

If there are more full-time educational support personnel employees than there are available positions at the cooperative high school or in the participating district, a school board shall first remove or dismiss those educational support personnel employees with the shorter length of continuing service in any of the participating districts, within the respective category of position. The governing board is subject to this Code with respect to the educational support personnel employee as if the educational support personnel employee had been the governing board's employee during the time the educational support personnel employee was actually employed by the school board of the district from which the employment and position were transferred. Any educational support

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personnel employee dismissed as a result of such a decrease shall be paid all earned compensation on or before the third business day following his or her last day of employment. If the school board that has dismissed the educational support personnel employee or the governing board has any vacancies for the following school term or within one calendar year from the beginning of the following school term, the positions thereby becoming available within a specific category of position shall be tendered to the employees so removed or dismissed from that category of position so far as they are legally qualified to hold such positions. If the cooperative high school is dissolved, any educational support personnel employee who was transferred from a participating district shall be transferred back to the district and Section 10-23.5 of this Code [105 ILCS 5/10-23.5] shall apply. In that case, a district is subject to this Code in the same manner as if the educational support personnel employee transferred back had been continuously in the service of the receiving district.

(Source: P.A. 85-759; 85-1005; 91-63, § 5; 91-357, § 101.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.22c.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-63, effective January 1, 2000, rewrote this section to the extent that a detailed comparison would be impracticable.

The 1999 amendment by P.A. 91-357, effective July 29, 1999, in subsection (a) substituted "on (insert date)" for "on the ..... day of ....., 19...." in the first sentence of the form and "Dated (insert date)" for "Dated this ..... day of ....., 19....." near the end of the form, and made stylistic changes.

Although the amendments made to this section by P.A. 91-63, § 5 and P.A. 91-357, § 101 did not take into account the amendments made by the other, the amendments have been combined into a single version by the publisher.

§ 105 ILCS 5/10-22.22d. Pilot cooperative elementary school and pilot cooperative high school

Sec. 10-22.22d. Pilot cooperative elementary school and pilot cooperative high school. (a) Subject to the provisions of this Section, 2 contiguous school districts that are (i) located all or in part in Vermilion County; (ii) have an enrollment in grades 6-8 of less than 150 during the 2008-2009 school year and in grades 9-12 of less than 400 during the 2008-2009 school year; and (iii) have a Junior High School serving grades 6, 7, and 8 in one of the districts may, when in their judgment the interest of the districts and of the

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students will be best served, jointly pilot a cooperative elementary school or cooperative high school, or both.

The board of each district contemplating a joint operation shall, by proper resolution, cause the proposition to enter into such joint operation for a period not to exceed 3 years.

The school boards of the participating districts may, if they agree on terms, execute a contract for such joint operation subject to the provisions of this Section.

(b) The agreement for joint operation of any such cooperative elementary school or cooperative high school, or both, shall include, but not be limited to, provisions for administration, staff, programs, financing, facilities, and transportation. Agreements may be modified, by approval of each of the participating districts, provided that a district may withdraw from the agreement only if the district is reorganizing with one or more districts under other provisions of this Code.

(c) A governing board, which shall govern the operation of any such cooperative elementary school or cooperative high school, or both, shall be apportioned to reflect the number of students in each respective district who attend the cooperative elementary school or cooperative high school, or both. The membership of the governing board shall be 5 members. The school board of each participating district shall select, from its membership, its representatives on the governing board. The governing board shall prepare and adopt a budget for the cooperative elementary school or cooperative high school, or both. The governing board shall administer the cooperative elementary school or cooperative high school, or both, in accordance with the agreement of the districts and shall have the power to hire, supervise, and terminate staff; to enter into contracts; to adopt policies for the school or schools; and to take all other actions necessary and proper for the operation of the school or schools. The governing board may not levy taxes or incur any indebtedness except within the annual budget approved by the participating districts.

(d) Each participating district shall pay its per capita cost of educating the students residing in its district and attending any cooperative elementary school or cooperative high school into the budget for the maintenance and operation of the cooperative elementary school or cooperative high school, or both.

The manner of determining per capita cost shall be set forth in the agreement. Each district shall pay the amount owed the governing board under the terms of the agreement from the fund that the district would have used if the district had incurred the costs directly and may levy taxes and issue bonds as otherwise authorized for these purposes in order to make payments to the governing board.

(e) Upon formation of the cooperative elementary school or cooperative high school, or both, the school board of each participating district shall:

(1) confer and coordinate with each other and the governing board, if the governing board is then in existence, as to staffing needs for the cooperative elementary school or cooperative high school, or both;

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(2) in consultation with any exclusive employee representatives and the governing board, if the governing board is then in existence, establish a combined list of teachers in all participating districts, categorized by positions, showing the length of service and the contractual continued service status, if any, of each teacher in each participating district who is qualified to hold any positions at the cooperative elementary school or cooperative high school, or both, and then distribute this list to the exclusive employee representatives on or before February 1 of the school year prior to the commencement of the operation of the cooperative elementary school or cooperative high school, or both, or within 30 days after the date of the board resolutions, whichever occurs first; this list is in addition to and not a substitute for the list mandated by Section 24-12 of this Code [105 ILCS 5/24-12]; and

(3) transfer to the governing board of the cooperative elementary school or cooperative high school, or both, the employment and the position of so many of the full-time or part-time school teachers employed by a participating district as are jointly determined by the school boards of the participating districts and the governing board, if the governing board is then in existence, to be needed at the cooperative school or schools, provided that these teacher transfers shall be done:

(A) by categories listed on the seniority list mentioned in item (2) of this subsection (e);

(B) in each category, by having teachers in contractual continued service being transferred before any teachers who are not in contractual continued service; and

(C) in order from greatest seniority first through lesser amounts of seniority.

A teacher who is not in contractual continued service shall not be transferred if there is a teacher in contractual continued service in the same category who is qualified to hold the position that is to be filled.

If there are more teachers who have entered upon contractual continued service than there are available positions at the cooperative elementary school or cooperative high school, or both or within other assignments in the district, a school board shall first remove or dismiss all teachers who have not entered upon contractual continued service before removing or dismissing any teacher who has entered upon contractual continued service and who is legally qualified (i) to hold a position at the cooperative elementary school or cooperative high school, or both planned to be held by a teacher who has not entered upon contractual continued service or (ii) to hold another position in the participating district. As between teachers who have entered upon contractual continued service, the teacher or teachers with the shorter length of continuing service in any of the participating districts shall be dismissed first. Any teacher dismissed as a result of such a decrease shall be paid all earned compensation on or before the third business day following the last day of pupil attendance in the regular school term. If the school board that has dismissed a teacher or the governing board has any vacancies for the following school term or within one calendar year from the beginning of the following school term, then the positions thereby becoming available shall be tendered to the teachers so removed or dismissed so far as they are legally qualified to hold such positions. If the number of honorable dismissal notices in all participating districts exceeds 15% of full-time equivalent positions filled by certified employees (excluding principals and

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administrative personnel) during the preceding school year in all participating districts and if the school board that has dismissed a teacher or the governing board has any vacancies for the following school term or within 2 calendar years from the beginning of the following school term, the positions so becoming available shall be tendered to the teachers who were so notified, removed, or dismissed whenever these teachers are legally qualified to hold those positions.

The provisions of Section 24-12 of this Code concerning teachers whose positions are transferred from one board to the control of a different board shall apply to the teachers who are transferred. The contractual continued service of any transferred teacher is not lost and the governing board is subject to this Code with respect to the teacher in the same manner as if the teacher had been the governing board's employee during the time the teacher was actually employed by the board of the district from which the position and the teacher's employment were transferred. The time spent in employment with a participating district by any teacher who has not yet entered upon contractual continued service and who is transferred to the governing board is not lost when computing the time necessary for the teacher to enter upon contractual continued service, and the governing board is subject to this Code with respect to the teacher in the same manner as if the teacher had been the governing board's employee during the time the teacher was actually employed by the school board from which the position and the teacher's employment were transferred.

At the conclusion of the pilot program, any teacher who was transferred from a participating district shall be transferred back to the district and Section 24-12 of this Code shall apply. In that case, a district is subject to this Code in the same manner as if the teacher transferred back had been continuously in the service of the receiving district.

(f) Upon formation of the cooperative elementary school or cooperative high school, or both, the school board of each participating district shall:

(1) confer and coordinate with each other and the governing board, if the governing board is then in existence, as to needs for educational support personnel for the cooperative elementary school or cooperative high school, or both;

(2) in consultation with any exclusive employee representative or bargaining agent and the governing board, if the governing board is then in existence, establish a combined list of educational support personnel in participating districts, categorized by positions, showing the length of continuing service of each full-time educational support personnel employee who is qualified to hold any such position at the cooperative elementary school or cooperative high school, or both, and then distribute this list to the exclusive employee representative or bargaining agent on or before February 1 of the school year prior to the commencement of the operation of the cooperative elementary school or cooperative high school, or both or within 30 days after the date of the board resolutions, whichever occurs first; and

(3) transfer to the governing board of the cooperative elementary school or cooperative high school, or both the employment and the positions of so many of the full-time educational support personnel employees employed by a participating district as are jointly determined by the school boards of the participating districts and the governing

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board, if the governing board is then in existence, to be needed at the cooperative elementary school or cooperative high school, or both, provided that the full-time educational personnel employee transfers shall be done by categories on the seniority list mentioned in item (2) of this subsection (f) and done in order from greatest seniority first through lesser amounts of seniority.

If there are more full-time educational support personnel employees than there are available positions at the cooperative elementary school or cooperative high school, or both or in the participating district, then a school board shall first remove or dismiss those educational support personnel employees with the shorter length of continuing service in any of the participating districts, within the respective category of position. The governing board is subject to this Code with respect to the educational support personnel employee as if the educational support personnel employee had been the governing board's employee during the time the educational support personnel employee was actually employed by the school board of the district from which the employment and position were transferred. Any educational support personnel employee dismissed as a result of such a decrease shall be paid all earned compensation on or before the third business day following his or her last day of employment. If the school board that has dismissed the educational support personnel employee or the governing board has any vacancies for the following school term or within one calendar year from the beginning of the following school term, then the positions thereby becoming available within a specific category of position shall be tendered to the employees so removed or dismissed from that category of position so far as they are legally qualified to hold such positions. At the conclusion of the pilot, any educational support personnel employee who was transferred from a participating district shall be transferred back to the district and Section 10-23.5 of this Code [105 ILCS 5/10-23.5] shall apply. In that case, a district is subject to this Code in the same manner as if the educational support personnel employee transferred back had been continuously in the service of the receiving district.

(g) This Section repeals 3 years after the beginning date of operation of a pilot cooperative elementary school or a pilot cooperative high school.

(Source: P.A. 96-1328, § 5.)

Effective Date. Section 99 of P.A. 96-1328 purports to make this section effective July 1, 2010; however, P.A. 96-1328 was approved July 27, 2010.

§ 105 ILCS 5/10-22.22e. Science and mathematics partnership school

Sec. 10-22.22e. Science and mathematics partnership school. (a) Notwithstanding any other provision of law to the contrary and subject to the provisions of this Section, 4 or more contiguous school districts with all or portion of their territory located within the geographic boundaries of the same municipality may, when in their judgment the interest

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of the districts and of the students therein will be best served, jointly operate, through an institution of higher education located in the municipality, a science and mathematics partnership school for serving some or all of grades kindergarten through 8. The partnership school may (i) restrict attendance to pupils who reside within the geographic boundaries of the areas served by the school districts and (ii) select students for enrollment based on admission criteria that focuses on academic proficiency in science and mathematics established by the partnership school and approved by the districts' school boards; however, in no case may the partnership school discriminate on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, marital status, or need for special education services in the establishment of its attendance boundaries or in the selection of students for enrollment. The number of students enrolled from each school district shall be approximately equal in number. If there are more students eligible for enrollment in the partnership school from a school district than there are spaces available, eligible students must be selected by lottery.

(b) The school board of each school district shall, by proper resolution, enter into the joint operation of the partnership school. The school boards of the participating districts shall execute a partnership school contract with the institution of higher education for the joint operation, subject to the provisions of this Section. The agreement for joint operation of the partnership school shall include, but not be limited to, provisions for administration, staff, programs, financing, facilities, and transportation.

(c) Each participating school district shall pay its per capita cost of educating the students residing in the district and attending the partnership school for the maintenance and operation of the partnership school. The manner of determining per capita cost must be set forth in the agreement. Each district shall pay the amount owed under the terms of the agreement from the fund that the district would have used if the district had incurred the costs directly and may levy taxes and issue bonds as otherwise authorized for these purposes in order to make payments.

(d) The teachers and other non-administrative, certified employees who work in the partnership school must be selected according to criteria established by the partnership school and agreed to by the school districts' school boards. The number of such employees selected from each school district must be approximately equal in number. Their selection must be for a 2-year or 4-year period, upon the completion of which they must be assigned to a comparable position in the school from which they were selected. While working in the partnership school, these employees shall remain employees of and be paid by the school district from which they were selected, and their wages and benefits must be the same as if they were teaching or otherwise working in that district, provided that additional wages and benefits may be provided to these teachers and other staff if the participating school districts and the exclusive bargaining representatives of their teachers and other staff agree. The contractual continued service status of a teacher and the retirement benefits of those employees who accept work with the partnership school must not be affected. A school term worked in the partnership school must be considered a school term worked in the school district from which the employees were selected for contractual continued service attainment purposes. The time spent in employment with a participating district by any teacher who has not yet entered upon contractual continued service and accepts selection to work in the partnership school is not lost when

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computing the time necessary for the teacher to enter upon contractual continued service.

(Source: P.A. 97-97, § 5.)

Effective Date. This section is effective January 1, 2012 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 5/10-22.23. School Nurse

Sec. 10-22.23. School Nurse. To employ a registered professional nurse and define the duties of the school nurse within the guidelines of rules and regulations promulgated by the State Board of Education. Any school nurse first employed on or after July 1, 1976, whose duties require teaching or the exercise of instructional judgment or educational evaluation of pupils, must be certificated under Section 21-25 of this Act [105 ILCS 5/21-25]. School districts may employ non-certificated registered professional nurses to perform professional nursing services.

(Source: P.A. 81-1508; 90-548, § 5-915.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.23.

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, in the second sentence, inserted "school" and inserted "whose duties require teaching or the exercise of instructional judgment or educational evaluation of pupils"; and added the third sentence.

CASE NOTES

Analysis

Applicability
Certification
- Employment After 1976
Construction with Other Laws

Applicability

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This section does not apply only when a nurse is hired to perform instructional work in addition to nursing duties, and there is no separate provision in the School Code for R.N. health aides or anyone else who performs professional nursing services. Brady v. Board of Educ. Community Consol. Sch. Dist. 15, 284 Ill. App. 3d 803, 219 Ill. Dec. 957, 672 N.E.2d 810 (1 Dist. 1996), appeal denied, 171 Ill. 2d 562, 222 Ill. Dec. 429, 677 N.E.2d 963 (1997).

Certification

- Employment After 1976

As plaintiff did not become certified until she completed her bachelor's degree and applied for and received a school service personnel certificate, she could not have entered into contractual continued service or tenure prior to her certification. Verdeyen v. Board of Educ., 150 Ill. App. 3d 915, 103 Ill. Dec. 620, 501 N.E.2d 937 (2 Dist. 1986).

Since plaintiff did not possess her school service personnel certificate, she would not have been eligible to enter upon contractual continued service until two years later; accordingly, plaintiff did not automatically become certified by virtue of the 1975 amendment to this section and therefore did not enter into contractual continued service prior to completion of the two year period. Verdeyen v. Board of Educ., 150 Ill. App. 3d 915, 103 Ill. Dec. 620, 501 N.E.2d 937 (2 Dist. 1986).

Construction with Other Laws

Nothing in 105 ILCS 5/10-22.34 refers to nursing services or modifies the specific certification requirement of this section. Brady v. Board of Educ. Community Consol. Sch. Dist. 15, 284 Ill. App. 3d 803, 219 Ill. Dec. 957, 672 N.E.2d 810 (1 Dist. 1996), appeal denied, 171 Ill. 2d 562, 222 Ill. Dec. 429, 677 N.E.2d 963 (1997).

§ 105 ILCS 5/10-22.23a. Chief school business official

Sec. 10-22.23a. Chief school business official. To employ a chief school business official and define the duties of the chief school business official. Any chief school business official first employed on or after July 1, 1977 shall be certificated under Section 21-7.1 [105 ILCS 5/21-7.1]. For the purposes of this Section, experience as a school business official in an Illinois public school district prior to July 1, 1977 shall be deemed the equivalent of certification.

(Source: P.A. 82-387.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.23a.

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§ 105 ILCS 5/10-22.24: Repealed by P.A. 89-159, § 15, effective January 1, 1996.

§ 105 ILCS 5/10-22.24a. School counselor

Sec. 10-22.24a. School counselor. To employ school counselors. A school counselor is a qualified specialist who holds a School Service Personnel certificate endorsed in school counseling issued pursuant to Section 21-25 [105 ILCS 5/21-25] of this Code and who either (i) holds or is qualified for an elementary, secondary, special K-12, or special preschool-age 21 certificate issued pursuant to Section 21-2 or 21-4 of this Code [105 ILCS 5/21-2 or 105 ILCS 5/21-4] or (ii) in lieu of holding or qualifying for a teaching certificate, has fulfilled such other requirements as the State Board of Education and the State Teacher Certification Board may by rule establish. An individual who has completed an approved program in another state may apply for a School Service Personnel certificate endorsed in school counseling and shall receive such a certificate if a review of his or her credentials indicates that he or she meets the additional requirements of this Section.

(Source: P.A. 82-998; 91-70, § 5; 93-125, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.24a.

Effect of Amendments. The 1999 amendment by P.A. 91-70, effective July 9, 1999, added the section heading and rewrote the section to the extent that a detailed comparison would be impracticable.

The 2003 amendment by P.A. 93-125, effective July 10, 2003, rewrote the section to the extent that a detailed comparison would be impracticable.

§ 105 ILCS 5/10-22.24b. School counseling services

Sec. 10-22.24b. School counseling services. School counseling services in the public schools may be provided by school counselors as defined in Section 10-22.24a [105 ILCS 5/10-22.24a]. School counseling services include but are not limited to: (1) educational planning; (2) career development and counseling; (3) college counseling; (4) developing and facilitating anti-violence education or conflict resolution programs, or both; (5) providing crisis intervention programs within the school setting; (6) making appropriate referrals to outside agencies; (7) interpreting achievement, career, and vocational test information; (8) developing individual career plans for all students; (9) providing

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individual and small group counseling; (10) addressing the developmental needs of students by designing curricula for classroom counseling and guidance; (11) consulting and counseling with parents for the academic, career, and personal success of their children; (12) facilitating school to work transition programs; and (13) supervising school counseling interns enrolled in school counseling programs that meet the standards of the State Board of Education. Nothing in this Section prohibits other qualified professionals, including other certificated school personnel, from providing those services listed in this Section.

(Source: P.A. 91-70, § 5.)

Effective Date. Section 99 of P.A. 91-70 made this section effective upon becoming law. The Act was approved July 7, 1999.

§ 105 ILCS 5/10-22.25. Purchase and rent of textbooks

Sec. 10-22.25. Purchase and rent of textbooks. To purchase textbooks and rent them to the pupils.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.25.

CASE NOTES

Constitutionality

This section is not in contravention of Ill. Const. (1970), Art. X, § 1. People v. Board of Educ., 9 Ill. App. 3d 663, 292 N.E.2d 569 (2 Dist. 1973).

§ 105 ILCS 5/10-22.25a. [Lease or installment purchase of personal property]

Sec. 10-22.25a. To obtain personal property, when authorized by an affirmative vote of 2/3 of the members of the board, by lease, with or without an option to purchase, for a period not to exceed 5 years or by purchase under an installment contract extending over a period of not more than 5 years, with interest at a rate not to exceed the maximum rate

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authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract; provided that the term of guaranteed energy savings contracts as defined in Article 19b of the School Code may exceed 5 years. For the purpose of this Section, personal property shall include computer hardware and software and all equipment, fixtures, renovations, and improvements to existing facilities of the district necessary to accommodate computers.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-927; 87-1106, § 2; 90-97, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.25a.

Cross References.

As to Omnibus Bond Acts, see 5 ILCS 70/8.

Effect of Amendments. The 1992 amendment by P.A. 87-1106, effective January 1, 1993 added the language beginning "provided that the term" at the end of the first paragraph.

The 1997 amendment by P.A. 90-97, effective July 11, 1997, in the first paragraph, added the second sentence.

§ 105 ILCS 5/10-22.25b. School uniforms

Sec. 10-22.25b. School uniforms. The school board may adopt a school uniform or dress code policy that governs all or certain individual attendance centers and that is necessary to maintain the orderly process of a school function or prevent endangerment of student health or safety. A school uniform or dress code policy adopted by a school board: (i) shall not be applied in such manner as to discipline or deny attendance to a transfer student or any other student for noncompliance with that policy during such period of time as is reasonably necessary to enable the student to acquire a school uniform or otherwise comply with the dress code policy that is in effect at the attendance center or in

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the district into which the student's enrollment is transferred; and (ii) shall include criteria and procedures under which the school board will accommodate the needs of or otherwise provide appropriate resources to assist a student from an indigent family in complying with an applicable school uniform or dress code policy. A student whose parents or legal guardians object on religious grounds to the student's compliance with an applicable school uniform or dress code policy shall not be required to comply with that policy if the student's parents or legal guardians present to the school board a signed statement of objection detailing the grounds for the objection. This Section applies to school boards of all districts, including special charter districts and districts organized under Article 34.

(Source: P.A. 86-1422; 89-610, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.25b.

Effect of Amendments. The 1996 amendment by P.A. 89-610, effective August 6, 1996, in the first sentence deleted "If parents or officials of an individual attendance center request" from the beginning, substituted "may adopt" for "to initiate", deleted "at" preceding "that governs", inserted "governs all or certain individual" and substituted "centers and that is necessary to maintain the orderly process of a school function or prevent endangerment of student health or safety" for "center, the board may, but shall not be required to, initiate such a policy"; and added the second through fourth sentences.

§ 105 ILCS 5/10-22.26. School Lunch Program - Purchase of Equipment

Sec. 10-22.26. School Lunch Program - Purchase of Equipment. To maintain and operate a school lunch program in accordance with applicable regulations of the State Board of Education and agencies of the United States government. Equipment to be used in the school lunch program shall be paid for from the operations and maintenance fund of the district or from any surplus remaining in the school lunch account at the end of the school term.

(Source: P.A. 86-970.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.26.

§ 105 ILCS 5/10-22.27. Schools outside district for exceptional children

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Sec. 10-22.27. Schools outside district for exceptional children. To rent suitable facilities outside of the district and maintain classes therein for the instruction of children from any home for orphans, dependent, abandoned, or maladjusted children as provided in Section 18-3 of this Act [105 ILCS 5/18-3]; provided that written consent is secured from the school board of the district wherein such facilities and classes are located.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.27.

§ 105 ILCS 5/10-22.28. School safety patrol

Sec. 10-22.28. School safety patrol. To establish and maintain a school safety patrol and with the written consent of the parents of individual pupils to appoint such pupils to participate as members thereof for the purpose of influencing and encouraging the other pupils to refrain from crossing public streets and highways at points other than at regular crossings and for the purpose of directing pupils not to cross streets and highways at times when the presence of traffic would render such crossing unsafe.

The safety patrol shall function only under the direction and control of school authorities; however, upon request of the school board other agencies may cooperate to such extent as may be agreed upon.

No liability shall attach either to the school district or any individual, trustee, board member, superintendent, principal, teacher or other school employee by virtue of the organization, maintenance or operation of a school safety patrol organized, maintained and operated under authority of this section.

Nothing herein contained shall be construed to authorize or permit the use of any safety patrol member for the purpose of directing vehicular traffic.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.28.

CASE NOTES

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New Trial Denied

Where the trial court gave plaintiff full opportunity to introduce evidence concerning the presence of patrol boys at the scene of a school bus mishap, the motion of plaintiff for a new trial lacked merit and was denied. Corneiller ex rel. Corneiller v. School Dist. 152 1/2, 62 Ill. App. 3d 549, 19 Ill. Dec. 372, 378 N.E.2d 1247 (1 Dist. 1978).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 35:44 School crossings.

Illinois Jurisprudence, Personal Injury and Torts § 35:43 School safety patrol.

§ 105 ILCS 5/10-22.28a. [Traffic signals]

Sec. 10-22.28a. To acquire, install, operate and maintain traffic signals relative to school crossing protection and school crossing stop signals and to employ persons for the purpose of directing traffic upon school grounds and on or along streets and highways or portions thereof within a radius of one mile from such school grounds, or to share the cost of employing such persons with or accept the employment of such persons by any unit of local government. The school board may determine whether the crossing guard employment costs shall be paid from its educational, transportation or operations and maintenance fund. The powers in this Section are subject to the following:

1.The power to acquire, install, operate and maintain traffic signals may not be exercised in any city, village or incorporated town;

2.Prior approval must be obtained from the Department of Transportation with respect to highways for which it has maintenance jurisdiction, and any public body or official having jurisdiction over any street or highway affected;

3.All signs and signals to be erected shall conform to the Department of Transportation's Manual and Specifications and shall be justified by traffic warrants stated in the Manual, and all pertinent provisions of The Illinois Vehicle Code [625 ILCS 5/1-100 et seq.], not inconsistent with the provisions of this Section, shall apply.

(Source: P.A. 86-970.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.28a.

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CASE NOTES

Crossing Guards

Although this statutory provision grants school boards the power to use crossing guards, the statute does not impose any duty upon the school boards to exercise this power. Gilmore v. City of Zion, 237 Ill. App. 3d 744, 178 Ill. Dec. 671, 605 N.E.2d 110 (2 Dist. 1992).

§ 105 ILCS 5/10-22.29. Outdoor education

Sec. 10-22.29. Outdoor education. To offer, if deemed appropriate, outdoor education, and to use school funds for the expenses of the outdoor education program, within the State of Illinois, or adjacent States, whether within the school district or not, including the purchase or renting of facilities either individually or jointly with any other school district or districts.

(Source: Laws 1968, p. 414.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.29.

§ 105 ILCS 5/10-22.29a. [Investment clubs]

Sec. 10-22.29a. The State Board of Education may, however, promulgate reasonable standards regarding the establishment, organization and operation of investment clubs formed pursuant to this Section which standards must be complied with by all those concerned. The superintendent of schools shall, when the board has authorized the establishment of an investment club, designate a teacher in the high school where the club is organized to serve as sponsor of the club and as the fiduciary for members of the club in making the purchases and sales of securities on behalf of the members and shall also designate an investment dealer registered with the Secretary of State of Illinois as an investment dealer; to provide investment counseling and brokerage services for the members of the club. That investment dealer shall (a) reflect all transactions entered into on behalf of the investment club in an account in the name of the teacher as fiduciary, (b) submit monthly to the fiduciary a statement of account reflecting all transactions entered into on behalf of the club during the previous month including the prices paid on purchases and the proceeds received on sales of securities and the costs and fees incurred in each transaction and listing the accumulated holdings of the investment club by type of security, number of shares of stock, name of the issuer and any other information necessary to identify the composition of the accumulated security holdings of the club, and (c) handle transactions on behalf of the club, through the designated fiduciary as a

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street account rather than through issuance of certificates in the name of the fiduciary or of individual club members. Any investment club formed under this Section must sell all securities purchased through the club and distribute the proceeds of sales to its members by May 20th each year. All investment clubs are subject to the provisions of "The Illinois Securities Law of 1953", as amended [815 ILCS 5/1 et seq.].

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.29a.

§ 105 ILCS 5/10-22.29b. Educational tours

Sec. 10-22.29b. Educational tours. As a supplement to a particular course of instruction, to conduct educational tours, within or without the district, the State of Illinois or the United States, for the pupils or employees, or both, of any school or schools within the district. Nothing in this Section authorizes the use of any school funds for any expenditures incurred on such a tour such as meals, lodging and transportation costs nor does this Section apply to any outdoor education class, field trip or travel to and from a school sponsored event as permitted under Sections 10-22.29, 29-3.1 and 34-18, subsection (11) [105 ILCS 5/10-22.29, 105 ILCS 5/29-3.1 and 105 ILCS 5/34-18]. Nothing in this Section prohibits payment of the salaries of necessary personnel while on a tour or field trip if the personnel are performing in the ordinary course of their employment.

(Source: P.A. 85-1389.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.29b.

RESEARCH REFERENCES

Validity, construction, and effect of provisions releasing school from liability for injuries to students caused by interscholastic and other extracurricular activities. 85 ALR4th 344.

§ 105 ILCS 5/10-22.30. Television and radio programs

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Sec. 10-22.30. Television and radio programs. To enter into contracts, either alone or in cooperation with other school boards, for the purpose of participating in or the procuring of television or radio broadcasts or both, for use in the educational program of the schools; to provide television or radio studio facilities or both; to grant the use of such studio facilities to a licensed television or radio station located in the school district; to maintain and operate such school television or radio transmitting devices, or both, as are necessary to distribute adequate instructional television or radio programming with closed-circuit, fixed-circuit or standard broadcasting equipment; and to provide programs for educational purposes.

(Source: Laws 1965, p. 573.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.30.

§ 105 ILCS 5/10-22.31. Special education

Sec. 10-22.31. Special education. (a) To enter into joint agreements with other school boards to provide the needed special educational facilities and to employ a director and other professional workers as defined in Section 14-1.10 [105 ILCS 5/14-1.10] and to establish facilities as defined in Section 14-1.08 [105 ILCS 5/14-1.08] for the types of children described in Sections 14-1.02 and 14-1.03a [105 ILCS 5/14-1.02 and 105 ILCS 5/14-103a]. The director (who may be employed under a contract as provided in subsection (c) of this Section) and other professional workers may be employed by one district, which shall be reimbursed on a mutually agreed basis by other districts that are parties to the joint agreement. Such agreements may provide that one district may supply professional workers for a joint program conducted in another district. Such agreement shall provide that any full-time professional worker who is employed by a joint agreement program and spends over 50% of his or her time in one school district shall not be required to work a different teaching schedule than the other professional worker in that district. Such agreement shall include, but not be limited to, provisions for administration, staff, programs, financing, housing, transportation, an advisory body, and the method or methods to be employed for disposing of property upon the withdrawal of a school district or dissolution of the joint agreement and shall specify procedures for the withdrawal of districts from the joint agreement as long as these procedures are consistent with subsection (g) of this Section. Such agreement may be amended at any time as provided in the joint agreement or, if the joint agreement does not so provide, then such agreement may be amended at any time upon the adoption of concurring resolutions by the school boards of all member districts, provided that no later than 6 months after August 28, 2009 (the effective date of Public Act 96-783), all existing agreements shall be amended to be consistent with Public Act 96-783. Such an amendment may include the removal of a school district from or the addition of a school

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district to the joint agreement without a petition as otherwise required in this Section if all member districts adopt concurring resolutions to that effect. A fully executed copy of any such agreement or amendment entered into on or after January 1, 1989 shall be filed with the State Board of Education. Petitions for withdrawal shall be made to the regional board or boards of school trustees exercising oversight or governance over any of the districts in the joint agreement. Upon receipt of a petition for withdrawal, the regional board of school trustees shall publish notice of and conduct a hearing or, in instances in which more than one regional board of school trustees exercises oversight or governance over any of the districts in the joint agreement, a joint hearing, in accordance with rules adopted by the State Board of Education. In instances in which a single regional board of school trustees holds the hearing, approval of the petition must be by a two-thirds majority vote of the school trustees. In instances in which a joint hearing of 2 or more regional boards of school trustees is required, approval of the petition must be by a two-thirds majority of all those school trustees present and voting. Notwithstanding the provisions of Article 6 of this Code, in instances in which the competent regional board or boards of school trustees has been abolished, petitions for withdrawal shall be made to the school boards of those districts that fall under the oversight or governance of the abolished regional board of school trustees in accordance with rules adopted by the State Board of Education. If any petition is approved pursuant to this subsection (a), the withdrawal takes effect as provided in Section 7-9 of this Act [105 ILCS 5/7-9]. The changes to this Section made by Public Act 96-769 apply to all changes to special education joint agreement membership initiated after July 1, 2009.

(b) To either (1) designate an administrative district to act as fiscal and legal agent for the districts that are parties to the joint agreement, or (2) designate a governing board composed of one member of the school board of each cooperating district and designated by such boards to act in accordance with the joint agreement. No such governing board may levy taxes and no such governing board may incur any indebtedness except within an annual budget for the joint agreement approved by the governing board and by the boards of at least a majority of the cooperating school districts or a number of districts greater than a majority if required by the joint agreement. The governing board may appoint an executive board of at least 7 members to administer the joint agreement in accordance with its terms. However, if 7 or more school districts are parties to a joint agreement that does not have an administrative district: (i) at least a majority of the members appointed by the governing board to the executive board shall be members of the school boards of the cooperating districts; or (ii) if the governing board wishes to appoint members who are not school board members, they shall be superintendents from the cooperating districts.

(c) To employ a full-time director of special education of the joint agreement program under a one-year or multi-year contract. No such contract can be offered or accepted for less than one year. Such contract may be discontinued at any time by mutual agreement of the contracting parties, or may be extended for an additional one-year or multi-year period at the end of any year.

The contract year is July 1 through the following June 30th, unless the contract specifically provides otherwise. Notice of intent not to renew a contract when given by a controlling board or administrative district must be in writing stating the specific reason

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therefor. Notice of intent not to renew the contract must be given by the controlling board or the administrative district at least 90 days before the contract expires. Failure to do so will automatically extend the contract for one additional year.

By accepting the terms of the contract, the director of a special education joint agreement waives all rights granted under Sections 24-11 through 24-16 [105 ILCS 5/24-11 through 105 ILCS 5/24-16] for the duration of his or her employment as a director of a special education joint agreement.

(d) To designate a district that is a party to the joint agreement as the issuer of bonds or notes for the purposes and in the manner provided in this Section. It is not necessary for such district to also be the administrative district for the joint agreement, nor is it necessary for the same district to be designated as the issuer of all series of bonds or notes issued hereunder. Any district so designated may, from time to time, borrow money and, in evidence of its obligation to repay the borrowing, issue its negotiable bonds or notes for the purpose of acquiring, constructing, altering, repairing, enlarging and equipping any building or portion thereof, together with any land or interest therein, necessary to provide special educational facilities and services as defined in Section 14-1.08. Title in and to any such facilities shall be held in accordance with the joint agreement.

Any such bonds or notes shall be authorized by a resolution of the board of education of the issuing district. The resolution may contain such covenants as may be deemed necessary or advisable by the district to assure the payment of the bonds or notes. The resolution shall be effective immediately upon its adoption.

Prior to the issuance of such bonds or notes, each school district that is a party to the joint agreement shall agree, whether by amendment to the joint agreement or by resolution of the board of education, to be jointly and severally liable for the payment of the bonds and notes. The bonds or notes shall be payable solely and only from the payments made pursuant to such agreement.

Neither the bonds or notes nor the obligation to pay the bonds or notes under any joint agreement shall constitute an indebtedness of any district, including the issuing district, within the meaning of any constitutional or statutory limitation.

As long as any bonds or notes are outstanding and unpaid, the agreement by a district to pay the bonds and notes shall be irrevocable notwithstanding the district's withdrawal from membership in the joint special education program.

(e) If a district whose employees are on strike was, prior to the strike, sending students with disabilities to special educational facilities and services in another district or cooperative, the district affected by the strike shall continue to send such students during the strike and shall be eligible to receive appropriate State reimbursement.

(f) With respect to those joint agreements that have a governing board composed of one member of the school board of each cooperating district and designated by those boards to act in accordance with the joint agreement, the governing board shall have, in addition to its other powers under this Section, the authority to issue bonds or notes for the

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purposes and in the manner provided in this subsection. The governing board of the joint agreement may from time to time borrow money and, in evidence of its obligation to repay the borrowing, issue its negotiable bonds or notes for the purpose of acquiring, constructing, altering, repairing, enlarging and equipping any building or portion thereof, together with any land or interest therein, necessary to provide special educational facilities and services as defined in Section 14-1.08 [105 ILCS 5/14-1.08] and including also facilities for activities of administration and educational support personnel employees. Title in and to any such facilities shall be held in accordance with the joint agreement.

Any such bonds or notes shall be authorized by a resolution of the governing board. The resolution may contain such covenants as may be deemed necessary or advisable by the governing board to assure the payment of the bonds or notes and interest accruing thereon. The resolution shall be effective immediately upon its adoption.

Each school district that is a party to the joint agreement shall be automatically liable, by virtue of its membership in the joint agreement, for its proportionate share of the principal amount of the bonds and notes plus interest accruing thereon, as provided in the resolution. Subject to the joint and several liability hereinafter provided for, the resolution may provide for different payment schedules for different districts except that the aggregate amount of scheduled payments for each district shall be equal to its proportionate share of the debt service in the bonds or notes based upon the fraction that its equalized assessed valuation bears to the total equalized assessed valuation of all the district members of the joint agreement as adjusted in the manner hereinafter provided. In computing that fraction the most recent available equalized assessed valuation at the time of the issuance of the bonds and notes shall be used, and the equalized assessed valuation of any district maintaining grades K to 12 shall be doubled in both the numerator and denominator of the fraction used for all of the districts that are members of the joint agreement. In case of default in payment by any member, each school district that is a party to the joint agreement shall automatically be jointly and severally liable for the amount of any deficiency. The bonds or notes and interest thereon shall be payable solely and only from the funds made available pursuant to the procedures set forth in this subsection. No project authorized under this subsection may require an annual contribution for bond payments from any member district in excess of 0.15% of the value of taxable property as equalized or assessed by the Department of Revenue in the case of districts maintaining grades K-8 or 9-12 and 0.30% of the value of taxable property as equalized or assessed by the Department of Revenue in the case of districts maintaining grades K-12. This limitation on taxing authority is expressly applicable to taxing authority provided under Section 17-9 [105 ILCS 5/17-9] and other applicable Sections of this Act. Nothing contained in this subsection shall be construed as an exception to the property tax limitations contained in Section 17-2, 17-2.2a, 17-5 [105 ILCS 5/17-2, 105 ILCS 5/17-2.2a, 105 ILCS 5/17-5], or any other applicable Section of this Act.

Neither the bonds or notes nor the obligation to pay the bonds or notes under any joint agreement shall constitute an indebtedness of any district within the meaning of any constitutional or statutory limitation.

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As long as any bonds or notes are outstanding and unpaid, the obligation of a district to pay its proportionate share of the principal of and interest on the bonds and notes as required in this Section shall be a general obligation of the district payable from any and all sources of revenue designated for that purpose by the board of education of the district and shall be irrevocable notwithstanding the district's withdrawal from membership in the joint special education program.

(g) A member district wishing to withdraw from a joint agreement may obtain from its school board a written resolution approving the withdrawal. The withdrawing district must then present a written petition for withdrawal from the joint agreement to the other member districts within such timelines designated by the joint agreement. Upon approval by school board written resolution of all of the remaining member districts, the petitioning member district shall be withdrawn from the joint agreement effective the following July 1 and shall notify the State Board of Education of the approved withdrawal in writing.

(h) The changes to this Section made by Public Act 96-783 apply to withdrawals from or dissolutions of special education joint agreements initiated after August 28, 2009 (the effective date of Public Act 96-783).

(Source: P.A. 86-805; 86-1318; 88-125, § 5; 88-686, § 5; 89-397, § 5; 89-613, § 5; 89-626, § 3-17; 90-103, § 1; 90-515, § 5; 90-637, § 5; 90-655, § 77; 96-769, § 5; 96-783, § 5; 96-1000, § 260.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.31.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 120.10, 130.10, 130.10.

Effect of Amendments. The 1993 amendment by P.A. 88-125, effective January 1, 1994, added subsection (f).

The 1994 amendment by P.A. 88-686, effective January 24, 1995, in subsection (f), in the third paragraph, created the first sentence by adding the period at the end, in the second sentence added "Subject to the joint ... bonds or notes" at the beginning, deleted "determined for the year in which the bonds or notes were issued" preceding "bears to the", inserted "the" preceding "district members" and substituted "as adjusted in the manner hereinafter provided" for "for that year", added the third sentence, and in the fourth sentence substituted "each school district that is a party to the joint agreement shall automatically be jointly and severally liable for the amount of any deficiency" for "the governing board shall pay the amount then due and shall have a claim against the member district in the amount of such default plus interest thereon at the maximum rate specified in Section 2 of the Bond Authorization Act, beginning as of the date of default and

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continuing to the date of payment by the district, plus all collection costs, including attorneys' fees and court costs" and added the sixth through eighth sentences and in the fifth paragraph inserted "as required in this Section" and inserted "a general obligation of the district payable from any and all sources of revenue designated for that purpose by the board of education of the district and shall be".

The 1995 amendment by P.A. 89-397, effective August 20, 1995, in subsection (e), substituted "students with disabilities" for "handicapped students".

The 1996 amendment by P.A. 89-613, effective August 9, 1996, in subsection (a), in the second sentence, substituted an ending parenthetical for a comma and inserted a comma after "one district" and in the fifth sentence inserted "an" and inserted "shall"; in subsection (b), in the third sentence, inserted a comma after the first occurrence of "agreement", deleted "school board" preceding "members", deleted "from among the members serving on the governing board" preceding "to administer", deleted a comma after second occurrence of "agreement" and added the fourth and fifth sentences; in subsection (c), in the third paragraph, inserted "his or her"; and in subsection (f), in the third paragraph, in the eighth sentence, substituted "Section" for "Sections" twice and inserted "any".

The 1996 amendment by P.A. 89-626, effective August 9, 1996, in subsection (a), in the second sentence deleted a comma after "Section)" and "district", in the fifth sentence substituted "and an advisory body and shall" for "and advisory body and", in the seventh sentence deleted a comma after "1989" and in the tenth sentence added a comma after "considered"; in subsection (c), in the third paragraph inserted "his or her"; and in subsection (f), in the third paragraph, in the eighth sentence substituted "Section 17-2, 17-2.2a, 17-5, or any other applicable Section of this Act" for "Sections 17-2, 17-2.2a, 17-5, or other applicable sections of this Act".

The 1997 amendment by P.A. 90-103, effective July 11, 1997, combined the amendments by P.A. 89-613 and P.A. 89-626; and in subsection (a), in the fifth sentence, substituted a comma for "and" following "transportation", added a comma after "body" and deleted "shall provide" preceding "for the withdrawal" and in the sixth sentence added at the beginning "Except as otherwise provided in Section 10-22.31.1, the withdrawal of districts from the joint agreement shall be".

The 1997 amendment by P.A. 90-515, effective August 22, 1997, combined the amendments by P.A. 89-613 and P.A. 89-626; and in subsection (b), in the fourth sentence, added at the beginning "However, if 20 school districts, a majority of which are located wholly or partially in a county with a population in excess of 3,000,000 inhabitants, are parties to a joint agreement that does not have an administrative district: (i)", inserted "by the governing board" and substituted "and (ii)" for a period.

The 1998 amendment by P.A. 90-637, effective July 24, 1998, incorporated the amendments by P.A. 90-103 and P.A. 90-515; and, in subsection (b), deleted "If no more than 17 school districts are parties to the joint agreement" from the beginning of the third sentence, and rewrote the fourth sentence.

The 1998 amendment by P.A. 90-655, effective July 30, 1998, incorporated the amendments made by P.A. 90-103 and P.A. 90-515.

The 2009 amendment by P.A. 96-769, effective August 28, 2009, rewrote (a); in the first paragraph of (c), inserted "one-year or" in the first sentence and inserted "one year" in the second sentence; and deleted "multi-year" following "terms of the" in the last paragraph of (c).

The 2009 amendment by P.A. 96-783, effective August 28, 2009, substituted "Sections 14-1.02 and 14-1.03a" for "Sections 14-1.02 through 14-1.07" in the first sentence of (a); deleted "multi-year" preceding "contract" in the second sentence of (a) and the last paragraph of (c); substituted "professional worker" for "school psychologist" twice in the fourth sentence of (a); in the fifth sentence of (a), inserted "the method or methods to be employed for disposing of property upon

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the withdrawal of a school district or dissolution of the joint agreement and shall specify procedures for" and added "as long as these procedures are consistent with subsection (g) of this Section" to the end; deleted the former sixth sentence of (a), which read: "Except as otherwise provided in Section 10-22.31.1, the withdrawal of districts from the joint agreement shall be by petition to the regional board of school trustees"; added the language beginning with "provided that no later" through the end of the sixth sentence of (a); rewrote the first paragraph of (c); and added (g) and (h).

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, deleted "this Section and" from the beginning of the sixth sentence of (a); substituted "August 28, 2009 (the effective date of Public Act 96-783)" for "the effective date of this amendatory Act of the 96th General Assembly" in the sixth sentence of (a) and in (h); substituted "Public Act 96-783" for "this amendatory Act of the 96th General Assembly" at the end of the sixth sentence of (a); substituted "Public Act 96-769" for "this amendatory Act of the 96th General Assembly" in the last sentence of (a); and substituted "Public Act 96-783" for "this amendatory Act of the 96th General Assembly" following "made by" in (h).

CASE NOTES

Analysis

Employment
- Special Education District
Joint Agreement

Employment

- Special Education District

A trial court's finding that a school psychologist was not an employee of either a special education district or a community school administrative district was against the manifest weight of the evidence, where he was officially hired by the executive board of the special education district when it voted to employ him and the other special education teachers whose names were submitted to it, there was no dispute that the special education district benefited from his employment by receiving grant money and personnel reimbursements from other districts for his services, the special education district held itself out to be his employer, and many services provided by him benefited the entire district, not just the high school operating district; thus, he was an employee of the special education district, and the operating district had no authority to dismiss him. Evans v. Board of Educ., 85 Ill. App. 3d 436, 40 Ill. Dec. 652, 406 N.E.2d 855 (5 Dist. 1980).

Joint Agreement

Under the Illinois School Code, 105 ILCS 5/10-22.31(a), a school board has the power to enter into joint agreements with other school boards to provide special education services. Barrington Community Unit Sch. Dist. No. 220 v. Special Educ. Dist., 245 Ill. App. 3d 242, 186 Ill. Dec. 96, 615 N.E.2d 1153, 1993 Ill. App. LEXIS 644 (1 Dist. 1993).

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Analysis

Joint Agreement
- Advisory Board
- Governing Board
Off Campus Program
Regional Agencies

Joint Agreement

- Advisory Board

The parties to a joint agreement may designate an administrative district to act as agent for the agreement, and also create an advisory board consisting of one school board member representing each participating school district, which would make recommendations on policies and administrative acts to the governing board of the designated administrative district for its consideration or final action. 1987 Op. Atty. Gen. (87-001).

- Governing Board

A joint agreement under this section may not provide for a special education cooperative to be governed by a board composed solely of school superintendents or other school administrators representing the several cooperating school districts, where that board is authorized by the agreement to establish salaries, hire and discharge personnel, adopt a budget, set policy and otherwise act as the legal and fiscal agent for the joint agreement cooperative as the designation of such a board exceeds the powers of the cooperating school districts, and hence, is ultra vires. 1987 Op. Atty. Gen. (87-001).

Where the parties to a joint agreement designate an administrative district to administer the agreement, it is not permissible to create a board of directors, consisting of the superintendent of each cooperating district, and to empower that board to take final action on a variety of administrative matters, including the adoption of a budget, the employment of personnel and the approval of contracts, as the adoption of this form of governance for a joint agreement cooperative would be ultra vires. 1987 Op. Atty. Gen. (87-001).

Off Campus Program

A special education cooperative may not develop and operate an off-campus, "alternative regular education" program for non-special education students, including disruptive students who may otherwise be expelled for disciplinary reasons. 1987 Op. Atty. Gen. (87-001).

Regional Agencies

Special education "cooperatives," which consist of two or more school districts which have entered into a joint agreement to provide special education services and facilities, cannot combine with other special education cooperatives to form "regional" or "umbrella" special education agencies. 1984 Op. Atty. Gen. 57.

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LEGAL PERIODICALS

For article, "The Effect of Teachers' Part-Time Employment on the Aquisition and Retention of Tenure," see 69 Ill. B.J. 564 (1981).

§ 105 ILCS 5/10-22.31a. Joint educational programs

Sec. 10-22.31a. Joint educational programs. To enter into joint agreements with other school boards or public institutions of higher education to establish any type of educational program which any district may establish individually, to provide the needed educational facilities and to employ a director and other professional workers for such program. The director and other professional workers may be employed by one district which shall be reimbursed on a mutually agreed basis by other districts that are parties to the joint agreement. Such agreements may provide that one district may supply professional workers for a joint program conducted in another district. Such agreement shall be executed on forms provided by the State Board of Education and shall include, but not be limited to, provisions for administration, staff, programs, financing, housing, transportation and advisory body and provide for the withdrawal of districts from the joint agreement by petition to the regional board of school trustees. Such petitions for withdrawal shall be made to the regional board of school trustees of the region having supervision and control over the administrative district and shall be acted upon in the manner provided in Article 7 for the detachment of territory from a school district.

To designate an administrative district to act as fiscal and legal agent for the districts that are parties to such a joint agreement.

(Source: P.A. 86-198; 86-1318.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.31a.

§ 105 ILCS 5/10-22.31b. Joint building programs

Sec. 10-22.31b. Joint building programs. To enter into joint agreements either under this Act or under the Intergovernmental Cooperation Act [5 ILCS 220/1 et seq.] with other school boards to acquire, build, establish and maintain sites and buildings including residential facilities, that may be needed for area vocational education buildings or the education of one or more of the types of children with disabilities defined in Sections 14-1.02 through 14-1.07 of this Act [105 ILCS 5/14-1.02 through 105 ILCS 5/14-1.07], who are residents of such joint agreement area, upon the review and recommendation of the

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Advisory Council on Education of Children with Disabilities and approval of the State Superintendent. Proposals shall be submitted on forms promulgated by the State Advisory Council. The State Advisory Council shall have 45 days to review the proposal and make a recommendation. The State Superintendent shall then approve or deny the proposal. Any establishment of residential facilities under this Section for the education of children with disabilities shall consider and utilize whenever possible the existing residential service delivery systems including state operated and privately operated facilities. Residential facilities shall be maintained in accordance with applicable health, licensing and life safety requirements, including the applicable provisions of the building code authorized under Section 2-3.12 [105 ILCS 5/2-3.12]. Such sites may be acquired and buildings built at any place within the area embraced by such joint agreement or within 2 miles of the boundaries of any school district which is a party to the joint agreement. The title to any site or building so acquired shall be held in accordance with Section 16-2 of this Act [105 ILCS 5/16-2].

Any funds obtained from the participating governmental entities as a result of a joint agreement entered into under this Act or the Intergovernmental Cooperation Act [5 ILCS 220/1 et seq.] shall be accounted for in the same manner as provided for the majority of the participating governmental entities under the laws of this State.

(Source: P.A. 83-686; 87-984, § 1; 89-397, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.31b.

Effect of Amendments. The 1992 amendment by P.A. 87-984, effective January 1, 1993, at the beginning of the first paragraph deleted "as now or hereafter amended," after "Intergovernmental Cooperation Act", inserted in the next to last sentence of the first paragraph "including the applicable provisions of the building code authorized under Section 2-3.12" and added the second paragraph.

The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the first paragraph, in the first and fifth sentences, substituted "children with disabilities" for "handicapped children" and in the first sentence substituted "Children with Disabilities" for "Handicapped Children".

§ 105 ILCS 5/10-22.31c. Meetings; notice

Sec. 10-22.31c. Meetings; notice. The elected board members serving either as an administrative district or as a governing board under Section 10-22.31 or Section 10-22.31a [105 ILCS 5/10-22.31 or 105 ILCS 5/10-22.31a] shall fix a time and place for regular meetings. Special meetings may be called by any 2 such members by giving notice thereof in writing, stating the time, place and purpose of the meeting. Public notice of all meetings must be given as prescribed in Sections 2.02 and 2.03 of the Open Meetings Act, as now or hereafter amended [5 ILCS 120/2.02 and 5 ILCS 120/2.03].

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At each regular and special meeting which is open to the public, members of the public and employees of any of the districts which are parties to the joint agreement shall be afforded reasonable time to comment to or ask questions of the board members.

(Source: P.A. 84-1334.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.31c.

§ 105 ILCS 5/10-22.31.1: Repealed by P.A. 96-783, § 10, effective August 28, 2009.

§ 105 ILCS 5/10-22.32. [Advancement of expenses to school board members]

Sec. 10-22.32. To authorize the advancement to school board members the anticipated actual and necessary expenses incurred in attending the following meetings:

1.Meetings sponsored by the State Board of Education or by the regional superintendents of schools,

2.County or regional meetings and the annual meeting sponsored by any school board association complying with the provisions of Article 23 of this Act [105 ILCS 5/23-1 et seq.], and

3.Meetings sponsored by a national organization in the field of public school education.

The school board may advance to teachers and other certified employees the anticipated actual and necessary expenses incurred in attending meetings which are related to that employee's duties and will contribute to the professional development of that employee.

Such advanced actual and necessary expenses are those reasonably anticipated to be incurred on the days necessary for travel to and from and for attendance at such meetings.

After a meeting for which money was advanced to a school board member or teacher or other certified employee for actual and necessary expenses, such member or employee shall submit an itemized verified expense voucher showing the amount of his actual expenses. Receipts shall be attached where possible. If the actual and necessary expenses exceed the amount advanced, the member or employee shall be reimbursed for the amount not advanced. If the actual and necessary expenses are less than the amount advanced, the member or employee shall refund the excess amount.

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For purposes of this Section only, a person elected at the consolidated election held in April of 1999 or April of 2001 to serve as a school board member for a term commencing upon the termination of his or her predecessor's term of office shall be deemed to be a school board member for whom moneys of the school district may be advanced and expended under this Section in order to provide, or to arrange for a school board association that complies with Article 23 to provide, to that person, after he or she has been elected and before his or her term of office as a school board member commences, training in matters relating to the powers, duties, and responsibilities of school board membership.

Notwithstanding any other provisions of this Section 10-22.32 [105 ILCS 5/10-22.32], no money for expenses shall be advanced nor shall any member or employee be reimbursed, for any expenses incurred on behalf of any person other than such member, employee, or person deemed to be a school board member for purposes of this Section.

(Source: P.A. 85-389; 90-637, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.32.

Effect of Amendments. The 1998 amendment by P.A. 90-637, effective July 24, 1998, inserted the present fifth full paragraph; and substituted "employee, or person deemed to be a school board member for purposes of this Section" for "or employee" in the last paragraph.

§ 105 ILCS 5/10-22.33. Interfund loans

Sec. 10-22.33. Interfund loans. To authorize the treasurer to make interfund loans from (1) the operations and maintenance fund to the educational fund or fire prevention and safety fund, or (2) from the educational fund to the operations and maintenance fund or fire prevention and safety fund, or (3) from the operations and maintenance or educational fund to the transportation fund, or (4) from the transportation fund to the operations and maintenance, educational, or fire prevention and safety fund and to make the necessary transfers on his books, but such loans shall be repaid and retransferred to the proper fund within 3 years. In case such repayment is not made within 3 years the regional superintendent shall withhold further payments on claims authorized by Article 18 of this Act until repayment is made.

(Source: P.A. 86-970; 87-984, § 1; 89-3, § 5.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.33.

Effect of Amendments. The 1992 amendment by P.A. 87-984, effective January 1, 1993, inserted the designations "(1)" through "(4)", three times inserted "or fire prevention and safety fund" and twice substituted "one" for "1".

The 1995 amendment by P.A. 89-3, effective February 27, 1995, substituted "3 years" for "one year" in the first and second sentences.

CASE NOTES

Analysis

Applicability
Loans Not Allowed

Applicability

The trial court erred in holding that a transfer of funds was improper because it was not repaid within a year as required by this section where at the time of the transfer, this section extended only to transfers from the educational fund to the building fund or from the building to the educational fund and was not applicable to loans from the educational fund to the municipal retirement fund as in the instant case. People ex rel. Redfern v. Penn Cent. Co., 47 Ill. 2d 412, 266 N.E.2d 334 (1971).

Loans Not Allowed

The fact that this section does not authorize loans between the educational fund and the Illinois municipal retirement fund impliedly prohibits such transfers. People ex rel. Redfern v. Penn Cent. Co., 47 Ill. 2d 412, 266 N.E.2d 334 (1971).

§ 105 ILCS 5/10-22.33A. Summer school

Sec. 10-22.33A. Summer school. During that period of the calendar year not embraced within the regular school term to provide and conduct courses in subject matters normally embraced in the program of the schools during the regular school term, to fix and collect a charge for attendance at such courses in an amount not to exceed the per capita cost of the operation thereof, except that the board may waive all or part of such charges if it determines that the family of an individual pupil is indigent or that the educational needs of the pupil require his attendance at such courses, and to give regular school credit for satisfactory completion by the student of such courses as may be approved for credit by the State Board of Education.

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(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.33A.

§ 105 ILCS 5/10-22.33B. Summer school; required attendance

Sec. 10-22.33B. Summer school; required attendance. To conduct a high quality summer school program for those resident students identified by the school district as being academically at risk in such critical subject areas as language arts (reading and writing) and mathematics who will be entering any of the school district's grades for the next school term and to require attendance at such program by such students who have not been identified as disabled under Article 14, but who meet criteria established under this Section. Summer school programs established under this Section shall be designed to raise the level of achievement and improve opportunities for success in subsequent grade levels of those students required to attend. The parent or guardian of any student required to attend summer school shall be given written notice from the school district requiring attendance not later than the close of the school term which immediately precedes the required summer school program.

(Source: P.A. 89-610, § 5.)

Effective Date. Section 99 of P.A. 89-610 made this section effective upon becoming law. The Act was approved August 6, 1996.

§ 105 ILCS 5/10-22.34. Non-certificated personnel

Sec. 10-22.34. Non-certificated personnel. (a) School Boards may employ non-teaching personnel or utilize volunteer personnel for: (1) non-teaching duties not requiring instructional judgment or evaluation of pupils; and (2) supervising study halls, long distance teaching reception areas used incident to instructional programs transmitted by electronic media such as computers, video, and audio, and detention and discipline areas, and school-sponsored extracurricular activities.

(b) School boards may further utilize volunteer non-certificated personnel or employ non-certificated personnel to assist in the instruction of pupils under the immediate supervision of a teacher, holding a valid certificate, directly engaged in teaching subject matter or conducting activities. The teacher shall be continuously aware of the non-certificated persons' activities and shall be able to control or modify them. The State

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Board of Education, in consultation with the State Teacher Certification Board, shall determine qualifications of such personnel and shall prescribe rules for determining the duties and activities to be assigned to such personnel. In the determination of qualifications of such personnel, the State Board of Education shall accept coursework earned in a recognized institution or from an institution of higher learning accredited by the North Central Association or other comparable regional accrediting association and shall accept qualifications based on relevant life experiences as determined by the State Board of Education by rule.

(b-5) A school board may utilize volunteer personnel from a regional School Crisis Assistance Team (S.C.A.T.), created as part of the Safe to Learn Program established pursuant to Section 25 of the Illinois Violence Prevention Act of 1995 [20 ILCS 4027/25], to provide assistance to schools in times of violence or other traumatic incidents within a school community by providing crisis intervention services to lessen the effects of emotional trauma on individuals and the community. The School Crisis Assistance Team Steering Committee shall determine the qualifications for volunteers.

(c) School boards may also employ students holding a bachelor's degree from a recognized institution of higher learning as teaching interns when such students are enrolled in a college or university internship program, which has prior approval by the State Board of Education, in consultation with the State Teacher Certification Board, leading to a masters degree.

Regional offices of education have the authority to initiate and collaborate with institutions of higher learning to establish internship programs referenced in this subsection (c). The State Board of Education has 90 days from receiving a written proposal to establish the internship program to seek the State Teacher Certification Board's consultation on the internship program. If the State Board of Education does not consult the State Teacher Certification Board within 90 days, the regional office of education may seek the State Teacher Certification Board's consultation without the State Board of Education's approval.

(d) Nothing in this Section shall require constant supervision of a student teacher enrolled in a student teaching course at a college or university, provided such activity has the prior approval of the representative of the higher education institution and teaching plans have previously been discussed with and approved by the supervising teacher and further provided that such teaching is within guidelines established by the State Board of Education in consultation with the State Teacher Certification Board.

(Source: P.A. 82-585; 88-89, § 2-5; 89-159, § 5; 92-200, § 5; 92-724, § 5; 93-332, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.34.

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Effect of Amendments. The 1993 amendment by P.A. 88-89, effective July 14, 1993, added the subsection designations; and in subsection (a) added the subdivision (1) designation and added subdivision (2).

The 1995 amendment by P.A. 89-159, effective January 1, 1996, in subsection (a) added "and school-sponsored extracurricular activities" at the end; and deleted former subsection (e) which read "Nothing in this Section shall be applicable to municipalities having a population in excess of 500,000 inhabitants".

The 2001 amendment by P.A. 92-200, effective January 1, 2002, in subsection (c) deleted "part time" preceding "teaching interns" in the first paragraph; and added the second paragraph.

The 2002 amendment by P.A. 92-724, effective July 25, 2002, inserted subsection (b-5).

The 2003 amendment by P.A. 93-332, effective January 1, 2004, inserted "and shall accept qualifications based on relevant life experiences as determined by the State Board of Education by rule" at the end of subsection (b).

CASE NOTES

Analysis

Lay Supervisors
- Immunity of Superintendent
- Ratification of Hiring
School Nurses

Lay Supervisors

- Immunity of Superintendent

As superintendent of schools, defendant was an agent of the school district and could not be held personally liable to plaintiffs where he was acting within the scope of his authority and did not personally agree to assume liability with regard to plaintiffs' employment contracts. Sitton v. Gibbs, 73 Ill. App. 3d 812, 29 Ill. Dec. 687, 392 N.E.2d 244 (1 Dist. 1979).

- Ratification of Hiring

Even if not previously authorized, a school superintendent's acts were ratified by the school district with regard to the hiring of lay supervisors when they allowed the supervisors to be paid for their services; similarly, ratification of the notice of dismissal was evidenced by the cessation of regular payment and the issuance of severance pay to the supervisors. Sitton v. Gibbs, 73 Ill. App. 3d 812, 29 Ill. Dec. 687, 392 N.E.2d 244 (1 Dist. 1979).

School Nurses

Nothing in this section refers to nursing services or modifies the specific certification requirement of 105 ILCS 5/10-22.23. Brady v. Board of Educ. Community Consol. Sch. Dist. 15, 284 Ill. App. 3d 803, 219 Ill. Dec. 957, 672 N.E.2d 810 (1 Dist. 1996), appeal denied, 171 Ill. 2d 562, 222 Ill. Dec. 429, 677 N.E.2d 963 (1997).

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§ 105 ILCS 5/10-22.34a. Supervision of non-academic activities

Sec. 10-22.34a. Supervision of non-academic activities. To designate non-certificated persons of good character to serve as supervisors, chaperones or sponsors, either on a voluntary or on a compensated basis, for school activities not connected with the academic program of the schools.

(Source: Laws 1967, p. 1029.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.34a.

CASE NOTES

Use of Non-Certificated Persons

- Optional

The language of this section merely gives school administrators the option to use non-certificated personnel, if available, should they choose to do so on a particular occasion, but does not substitute such personnel for the regular teaching staff; both may be used if necessary, or the teachers alone or the non-certificated personnel may be used alone, in the appropriate situation. District 300 Educ. Ass'n v. Board of Educ., 31 Ill. App. 3d 550, 334 N.E.2d 165 (2 Dist. 1975).

§ 105 ILCS 5/10-22.34b. Utilization of noncertificated personnel

Sec. 10-22.34b. Utilization of noncertificated personnel. To utilize noncertificated persons, under the direction of a certificated teacher, for providing specialized instruction related to a course assigned to the certificated teacher on a regular basis, not otherwise readily available in the immediate school environment, in the fields for which they are particularly qualified by reason of their specialized knowledge or skills. The duration of the instruction shall be determined by the certificated teacher under whose direction the program is conducted in view of the educational need to be satisfied.

Before a noncertificated person may be utilized for such specialized instruction, the school board must secure the written approval of the regional superintendent of schools as to the qualifications of the particular noncertificated person, the particular instruction he is to provide, the specific functions to be served, the total number of hours he is to provide such instruction and any compensation to be paid that person. The State Board of Education shall prescribe, by rule, criteria for determining qualifications of such persons

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and the nature of specialized instruction for which, and the extent to which, such persons may be used.

Nothing in this Section shall prevent the utilization of a person with specialized knowledge or experiences as a guest lecturer or resource person in the classroom under the direct supervision of a certificated teacher assigned to the classroom on a regular basis, with prior approval of the school administration.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.34b.

§ 105 ILCS 5/10-22.34c. Third party non-instructional services

Sec. 10-22.34c. Third party non-instructional services. (a) A board of education may enter into a contract with a third party for non-instructional services currently performed by any employee or bargaining unit member or lay off those educational support personnel employees upon 90 days written notice to the affected employees, provided that:

(1) a contract must not be entered into and become effective during the term of a collective bargaining agreement, as that term is set forth in the agreement, covering any employees who perform the non-instructional services;

(2) a contract may only take effect upon the expiration of an existing collective bargaining agreement;

(3) any third party that submits a bid to perform the non-instructional services shall provide the following:

(A) evidence of liability insurance in scope and amount equivalent to the liability insurance provided by the school board pursuant to Section 10-22.3 of this Code [105 ILCS 5/10-22.3];

(B) a benefits package for the third party's employees who will perform the non-instructional services comparable to the benefits package provided to school board employees who perform those services;

(C) a list of the number of employees who will provide the non-instructional services, the job classifications of those employees, and the wages the third party will pay those employees;

(D) a minimum 3-year cost projection, using generally accepted accounting principles and which the third party is prohibited from increasing if the bid is accepted by the school

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board, for each and every expenditure category and account for performing the non-instructional services;

(E) composite information about the criminal and disciplinary records, including alcohol or other substance abuse, Department of Children and Family Services complaints and investigations, traffic violations, and license revocations or any other licensure problems, of any employees who may perform the non-instructional services, provided that the individual names and other identifying information of employees need not be provided with the submission of the bid, but must be made available upon request of the school board; and

(F) an affidavit, notarized by the president or chief executive officer of the third party, that each of its employees has completed a criminal background check as required by Section 10-21.9 of this Code [105 ILCS 5/10-21.9] within 3 months prior to submission of the bid, provided that the results of such background checks need not be provided with the submission of the bid, but must be made available upon request of the school board;

(4) a contract must not be entered into unless the school board provides a cost comparison, using generally accepted accounting principles, of each and every expenditure category and account that the school board projects it would incur over the term of the contract if it continued to perform the non-instructional services using its own employees with each and every expenditure category and account that is projected a third party would incur if a third party performed the non-instructional services;

(5) review and consideration of all bids by third parties to perform the non-instructional services shall take place in open session of a regularly scheduled school board meeting, unless the exclusive bargaining representative of the employees who perform the non-instructional services, if any such exclusive bargaining representative exists, agrees in writing that such review and consideration can take place in open session at a specially scheduled school board meeting;

(6) a minimum of one public hearing, conducted by the school board prior to a regularly scheduled school board meeting, to discuss the school board's proposal to contract with a third party to perform the non-instructional services must be held before the school board may enter into such a contract; the school board must provide notice to the public of the date, time, and location of the first public hearing on or before the initial date that bids to provide the non-instructional services are solicited or a minimum of 30 days prior to entering into such a contract, whichever provides a greater period of notice;

(7) a contract shall contain provisions requiring the contractor to offer available employee positions pursuant to the contract to qualified school district employees whose employment is terminated because of the contract; and

(8) a contract shall contain provisions requiring the contractor to comply with a policy of nondiscrimination and equal employment opportunity for all persons and to take affirmative steps to provide equal opportunity for all persons.

(b) Notwithstanding subsection (a) of this Section, a board of education may enter into a contract, of no longer than 3 months in duration, with a third party for non-instructional

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services currently performed by an employee or bargaining unit member for the purpose of augmenting the current workforce in an emergency situation that threatens the safety or health of the school district's students or staff, provided that the school board meets all of its obligations under the Illinois Educational Labor Relations Act [115 ILCS 5/1 et seq.].

(c) The changes to this Section made by this amendatory Act of the 95th General Assembly [P.A. 95-241] are not applicable to non-instructional services of a school district that on the effective date of this amendatory Act of the 95th General Assembly are performed for the school district by a third party.

(Source: P.A. 90-548, § 5-915; 95-241, § 5; 96-328, § 145.)

Effective Date. Section 990-5 of P.A. 90-548 made this section effective January 1, 1998.

Effect of Amendments. The 2007 amendment by P.A. 95-241, effective August 17, 2007, rewrote the section.

The 2009 revisory amendment by P.A. 96-328, effective August 11, 2009, made a stylistic change.

§ 105 ILCS 5/10-22.35. Civil defense shelters

Sec. 10-22.35. Civil defense shelters. A school board shall make school buildings available for use as civil defense shelters for all persons; cooperate with the Illinois Emergency Management Agency, local organizations for civil defense, disaster relief organizations, including the American Red Cross, and federal agencies concerned with civil defense relative thereto, including, but not limited to, making space available for the stocking of shelters with food and other provisions; cooperate with such agencies and organizations in the use of other resources, equipment, and facilities; and cooperate with such agencies and organizations in the construction of new buildings to the end that the buildings be so designed that shelter facilities may be provided.

(Source: P.A. 87-168; 93-390, § 5; 96-57, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.35.

Effect of Amendments. The 2003 amendment by P.A. 93-390, effective July 25, 2003, inserted "disaster relief organizations, including the American Red Cross".

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The 2009 amendment by P.A. 96- 57, effective July 23, 2009, substituted "A school board shall make" for "To make" at the beginning of the section; and made related changes throughout the section.

CASE NOTES

Amendment of Record

The board was correctly allowed to amend its record to speak the truth, and institute further proceedings to condemn land for a school site on the filing of a new petition for that purpose, where the records of the board as amended showed the finding by the board that gave it the right and power to call the election to locate, select, and purchase or condemn a school site. Phenicie v. Board of Educ., 326 Ill. 73, 157 N.E. 34 (1927).

§ 105 ILCS 5/10-22.35A. School sites and office facilities

Sec. 10-22.35A. School sites and office facilities. To buy sites for buildings for school purposes with necessary ground, including sites purchased under Section 10-22.31b [105 ILCS 5/10-22.31b], or to buy sites and facilities for school offices. The purchase of such sites or office facilities may be by contract for deed when the board deems such contract advantageous to the district, but any such contract or any transaction arising out of such contract may not exceed 10 years in length, and interest on the unpaid balance of such contract may at no time exceed 6% per annum.

To take and purchase the site for a building for school purposes either with or without the owner's consent by condemnation or otherwise. To pay the amount of any award made by a jury in a condemnation proceeding. To select and purchase all such sites and office facilities desired without the submission of the question at any referendum, and to enter into an option to purchase with respect to any such site or sites and facilities for school offices.

(Source: P.A. 80-1044.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.35A.

CASE NOTES

Analysis

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Condemnation
- Nature of Interest
- Res Judicata
- Voter Approval Unnecessary

Condemnation

- Nature of Interest

The trial court properly awarded property to school board in fee simple absolute with no reversionary interest in the bank as condemnee or as seller, where the order of the court put no limitation on the board's fee simple title to the property and the order made no reference to any reversionary interest in the bank. La Salle Nat'l Bank v. County Bd. of Sch. Trustees, 23 Ill. App. 3d 575, 319 N.E.2d 593 (2 Dist. 1974), aff'd, 61 Ill. 2d 524, 337 N.E.2d 19 (1975).

The issue of what quantum of estate a school board may take in a condemnation proceeding should be properly raised in the original condemnation proceeding. La Salle Nat'l Bank v. County Bd. of Sch. Trustees, 23 Ill. App. 3d 575, 319 N.E.2d 593 (2 Dist. 1974), aff'd, 61 Ill. 2d 524, 337 N.E.2d 19 (1975).

- Res Judicata

As there was no allegation of fraud, the trial court's determination in a condemnation hearing of awarding fee simple absolute title to the school board was conclusive as to the parties, and plaintiff could not relitigate the question in a subsequent proceeding for injunctive relief under the doctrine of res judicata. La Salle Nat'l Bank v. County Bd. of Sch. Trustees, 23 Ill. App. 3d 575, 319 N.E.2d 593 (2 Dist. 1974), aff'd, 61 Ill. 2d 524, 337 N.E.2d 19 (1975).

Where in eminent domain proceedings, judgments were entered that the school trustees who had instituted the actions were to take fee simple estates, where the jurisdiction of those courts was not disputed, and where the property owners had the opportunity to contend in the eminent domain action that the school authorities would take less than fee simple estates but did not do so and where no appeals were taken from those final judgments, the judgments were not subject to later collateral attack. La Salle Nat'l Bank v. County Bd. of Sch. Trustees, 61 Ill. 2d 524, 337 N.E.2d 19 (1975).

- Voter Approval Unnecessary

The right of a school board to condemn property for use as a school site is not dependent on the approval of the voters for the construction of the school. La Salle Nat'l Bank v. County Bd. of Sch. Trustees, 61 Ill. 2d 524, 337 N.E.2d 19 (1975).

§ 105 ILCS 5/10-22.36. Buildings for school purposes

Sec. 10-22.36. Buildings for school purposes. To build or purchase a building for school classroom or instructional purposes upon the approval of a majority of the voters upon the proposition at a referendum held for such purpose or in accordance with Section 17-2.11, 19-3.5, or 19-3.10 [105 ILCS 5/17-2.11, 105 ILCS 5/19-3.5, or 105 ILCS 5/19-3.10]. The board may initiate such referendum by resolution. The board shall certify the

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resolution and proposition to the proper election authority for submission in accordance with the general election law.

The questions of building one or more new buildings for school purposes or office facilities, and issuing bonds for the purpose of borrowing money to purchase one or more buildings or sites for such buildings or office sites, to build one or more new buildings for school purposes or office facilities or to make additions and improvements to existing school buildings, may be combined into one or more propositions on the ballot.

Before erecting, or purchasing or remodeling such a building the board shall submit the plans and specifications respecting heating, ventilating, lighting, seating, water supply, toilets and safety against fire to the regional superintendent of schools having supervision and control over the district, for approval in accordance with Section 2-3.12 [105 ILCS 5/2-3.12].

Notwithstanding any of the foregoing, no referendum shall be required if the purchase, construction, or building of any such building (1) occurs while the building is being leased by the school district or (2) is paid with (A) funds derived from the sale or disposition of other buildings, land, or structures of the school district or (B) funds received (i) as a grant under the School Construction Law [105 ILCS 230/5-1 et seq.] or (ii) as gifts or donations, provided that no funds to purchase, construct, or build such building, other than lease payments, are derived from the district's bonded indebtedness or the tax levy of the district.

Notwithstanding any of the foregoing, no referendum shall be required if the purchase, construction, or building of any such building is paid with funds received from the County School Facility Occupation Tax Law under Section 5-1006.7 of the Counties Code [55 ILCS 5/5-1006.7] or from the proceeds of bonds or other debt obligations secured by revenues obtained from that Law.

(Source: P.A. 86-686; 86-1010; 86-1040; 86-1331; 87-306; 87-984, § 1; 92-127, § 5; 95-675, § 15; 96-517, § 5; 97-542, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.36.

Effect of Amendments. The 1992 amendment by P.A. 87-984, effective January 1, 1993, in the first paragraph substituted "or in accordance with Section 17-2.11" for "in accordance with the general election law", at the end of the third paragraph deleted "his" before "approval" and added "in accordance with Section 2-3.12", and in the fourth paragraph deleted the last sentence.

The 2001 amendment by P.A. 92-127, effective January 1, 2002, revised the section heading; in the first sentence of the first paragraph substituted "To build or purchase" for "To build, purchase or move", and substituted "school classroom or instructional purposes" for "school purposes or office facilities"; and in the fourth paragraph substituted "construction or building" for "construction, building or moving", deleted "or office facility" following "of any such building", inserted "(1) while the building is being leased by the school district or (2)", inserted item

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designations (A), (B) and (B)(i), inserted "a grant under the School Construction Law or (ii) as", substituted "other than lease payments" for "or office facility", inserted "the district's", inserted "of the district" at the end of the sentence, and made related changes.

The 2007 amendment by P.A. 95-675, effective October 11, 2007, added clause (iii) at the end of the fourth paragraph, and made related changes.

The 2009 amendment by P.A. 96-517, effective August 14, 2009, added "19-3.5, or 19-3.10" in the first sentence of the first paragraph.

The 2011 amendment by P.A. 97-542, effective August 23, 2011, in the fourth paragraph, deleted "is completed" following "any such building," inserted "occurs" in item (1), substituted "is paid with" for "with the expenditure of" in item (2), substituted "purchase, construct, or build" for "complete" in item (2)(B)(ii), and deleted former item (2)(B)(iii), which read: "from the County School Facility Occupation Tax Law under Section 5-1006.7 of the Counties Code"; added the last paragraph; and made related changes.

§ 105 ILCS 5/10-22.36A. Access Roads

Sec. 10-22.36A. Access Roads. To lay out and construct any access road necessary to connect school grounds, on which a new school is being or is about to be constructed, with an improved road or highway. Such access road shall be considered a part of the general construction of the school and such construction shall be financed solely from funds derived from the sale of bonds.

(Source: P.A. 76-1499.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.36A.

§ 105 ILCS 5/10-22.37. Agreements with Teacher Training Institutions

Sec. 10-22.37. Agreements with Teacher Training Institutions. To enter into agreements with teacher training institutions to provide facilities for student teaching in the schools of the district.

(Source: P.A. 76-620.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.37.

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§ 105 ILCS 5/10-22.38. Preschool children with disabilities

Sec. 10-22.38. Preschool children with disabilities. Establish and maintain, or to cooperate with other educational, governmental, social and volunteer agencies in the establishment and carrying out of programs designed to identify and ameliorate mental, emotional, physical and social cultural disabilities in preschool age children below the age of 3 that would prevent such children from taking full advantage of regular school programs.

No school district is eligible for State reimbursement under Article 14 or Article 18 for programs provided to children with disabilities under this Section.

(Source: P.A. 80-1401; 89-397, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.38.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the section catchline, substituted "Preschool children with disabilities" for "Handicapped preschool children"; in the first paragraph, substituted "disabilities" for "handicaps"; and in the second paragraph substituted "children with disabilities" for "handicapped children".

§ 105 ILCS 5/10-22.38a: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/10-22.39. In-service training programs

Sec. 10-22.39. In-service training programs. (a) To conduct in-service training programs for teachers.

(b) In addition to other topics at in-service training programs, school guidance counselors, teachers, school social workers, and other school personnel who work with pupils in grades 7 through 12 shall be trained to identify the warning signs of suicidal behavior in adolescents and teens and shall be taught appropriate intervention and referral techniques.

(c) School guidance counselors, nurses, teachers and other school personnel who work with pupils may be trained to have a basic knowledge of matters relating to acquired immunodeficiency syndrome (AIDS), including the nature of the disease, its causes and effects, the means of detecting it and preventing its transmission, and the availability of appropriate sources of counseling and referral, and any other information that may be

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appropriate considering the age and grade level of such pupils. The School Board shall supervise such training. The State Board of Education and the Department of Public Health shall jointly develop standards for such training.

(d) In this subsection (d):

"Domestic violence" means abuse by a family or household member, as "abuse" and "family or household members" are defined in Section 103 of the Illinois Domestic Violence Act of 1986 [750 ILCS 60/103].

"Sexual violence" means sexual assault, abuse, or stalking of an adult or minor child proscribed in the Criminal Code of 1961 in Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-7.3, 12-7.4, 12-7.5, 12-12, 12-13, 12-14, 12-14.1, 12-15, and 12-16 [720 ILCS 5/11-1.20, 720 ILCS 5/11-1.30, 720 ILCS 5/11-1.40, 720 ILCS 5/11-1.50, 720 ILCS 5/11-1.60, 720 ILCS 5/12-7.3, 720 ILCS 5/12-7.4, 720 ILCS 5/12-7.5, 720 ILCS 5/12-12, 720 ILCS 5/12-13, 720 ILCS 5/12-14, 720 ILCS 5/12-14.1, 720 ILCS 5/12-15, and 720 ILCS 5/12-16], including sexual violence committed by perpetrators who are strangers to the victim and sexual violence committed by perpetrators who are known or related by blood or marriage to the victim.

At least once every 2 years, an in-service training program for school personnel who work with pupils, including, but not limited to, school and school district administrators, teachers, school guidance counselors, school social workers, school counselors, school psychologists, and school nurses, must be conducted by persons with expertise in domestic and sexual violence and the needs of expectant and parenting youth and shall include training concerning (i) communicating with and listening to youth victims of domestic or sexual violence and expectant and parenting youth, (ii) connecting youth victims of domestic or sexual violence and expectant and parenting youth to appropriate in-school services and other agencies, programs, and services as needed, and (iii) implementing the school district's policies, procedures, and protocols with regard to such youth, including confidentiality. At a minimum, school personnel must be trained to understand, provide information and referrals, and address issues pertaining to youth who are parents, expectant parents, or victims of domestic or sexual violence.

(e) At least every 2 years, an in-service training program for school personnel who work with pupils must be conducted by persons with expertise in anaphylactic reactions and management.

(f) At least once every 2 years, a school board shall conduct in-service training on educator ethics, teacher-student conduct, and school employee-student conduct for all personnel.

(Source: P.A. 86-900; 95-558, § 5; 96-349, § 5; 96-431, § 10; 96-951, § 5; 96-1000, § 260; 96-1551, § 965.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.39.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Section 9995 of P.A. 96-1551 contains a "no acceleration or delay" provision.

Effect of Amendments. The 2007 amendment by P.A. 95-558, effective August 30, 2007, added the (a), (b) and (c) designations; in (b), substituted "in-service training programs" for "such programs"; and added (d).

The 2009 amendment by P.A. 96-349, effective August 13, 2009, added (e).

The 2009 amendment by P.A. 96-431, effective August 13, 2009, added (e).

The 2010 amendment by P.A. 96-951, effective June 28, 2010, inserted "school social workers" in (b); and redesignated the former second version of subsection (e), enacted by P.A. 96-431, as subsection (f).

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated former duplicate subsection (e) as (f).

The 2011 amendment by P.A. 96-1551, effective July 1, 2011, inserted "11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60" to the section listing of the definition of Sexual violence in (d).

CASE NOTES

Not Mandated

This section does not mandate exercise of power to establish in service training programs, and the failure of a school district to develop such teacher training or to develop an adequate training program does not give rise to a cause of action against the district. Grant v. Board of Trustees of Valley View Sch. Dist. No. 365-U, 286 Ill. App. 3d 642, 221 Ill. Dec. 902, 676 N.E.2d 705 (3 Dist. 1997), appeal denied, 173 Ill. 2d 524, 226 Ill. Dec. 132, 684 N.E.2d 1335 (1997).

§ 105 ILCS 5/10-22.40. Membership dues

Sec. 10-22.40. Membership dues. To pay State and national association membership dues to school associations which benefit students by participation or accreditation. Any association subject to Article 23 of this Act must be in current compliance with the reporting requirements of Section 23-6 [105 ILCS 5/23-6] in order to qualify as a recipient of membership dues under this Section. No dues may be paid to any association which has as one of its purposes providing for athletic and other competition among schools and students unless that association:

A.permits a post audit by the Auditor General under the Illinois State Auditing Act [30 ILCS 5/1-1 et seq.].

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B.submits an annual report to the State Board of Education dealing with trends in female participation in athletic competition, including the numbers of female and male participants from each member school and details on programs by the association to increase female participation; and

C.is either subject to, or voluntarily complies with, the public access provisions set forth for State agencies in Sections 3 and 4 of The State Records Act [5 ILCS 160/3 and 5 ILCS 160/4].

(Source: P.A. 84-1308.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.40.

§ 105 ILCS 5/10-22.40a. [Proportionate share payments for collective bargaining]

Sec. 10-22.40a. Where a collective bargaining agreement is entered into with an employee representative organization, the school board may include in the agreement a provision requiring employees covered by the agreement who are not members of the representative organization to pay their proportionate share of the cost of the collective bargaining process and contract administration, measured by the amount of dues uniformly required by members. In such case, proportionate share payments shall be deducted by the board from the earnings of the non-member employees and paid to the representative organization.

(Source: P.A. 82-107.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.40a.

CASE NOTES

Analysis

Agency Shop Fees
- Limitations

Burden of Proof

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Escrow Account
- Non-Member Contributions
- Not Constitutionally Required
Objection Procedure
- Constitutional Minimum
- Inadequate
- Service Fees

Agency Shop Fees

- Limitations

The collective bargaining agreement and the statute limited agency shop fees to collective bargaining and representational expenses; however, the possible infringement on the "liberty" of non-members was not limited to the forced subsidization of political or ideological views, but also included the negative dimension of the freedom of association. Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292, 106 S. Ct. 1066, 89 L. Ed. 2d 232 (1986).

Burden of Proof

An advance reduction of dues was inadequate where it did not provide nonmembers with adequate information about the basis for the proportionate share even though the nonunion employees had the burden of raising an objection; since the unions possess the facts and records from which the proportion of political to total union expenditures can reasonably be calculated, basic considerations of fairness compel that they, not the individual employees, bear the burden of proving such proportion. Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292, 106 S. Ct. 1066, 89 L. Ed. 2d 232 (1986).

Escrow Account

- Non-Member Contributions

Although 100% escrow account eliminated the risk that nonunion employees' contributions could be temporarily used for impermissible purposes, the procedure remained flawed because it did not provide an adequate explanation for the advance reduction of dues, and did not provide a reasonably prompt decision by an impartial decisionmaker. Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292, 106 S. Ct. 1066, 89 L. Ed. 2d 232 (1986).

- Not Constitutionally Required

A 100% escrow account was not constitutionally required because such a remedy had the serious defect of depriving the employees union of access to some escrowed funds that it was unquestionably entitled to retain. Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292, 106 S. Ct. 1066, 89 L. Ed. 2d 232 (1986).

Objection Procedure

- Constitutional Minimum

The constitutional minimum of any procedure must include fair notice and a prompt administrative hearing before the Board of Education or some other state or local agency; the hearing must

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incorporate the usual safeguards for evidentiary hearings before administrative agencies and a right of judicial review of the agency's decision, because the combination of the internal union remedy and an arbitration procedure is unlikely to satisfy constitutional requirements. Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292, 106 S. Ct. 1066, 89 L. Ed. 2d 232 (1986).

The First Amendment requires that the procedure be carefully tailored to minimize the infringement on the nonunion employees' constitutional rights, and the nonunion employee must have a fair opportunity to identify the impact of the governmental action on his interests and to assert a meritorious First Amendment claim. Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292, 106 S. Ct. 1066, 89 L. Ed. 2d 232 (1986).

- Inadequate

A union procedure concerning collective bargaining was defective where it did not provide for a reasonably prompt decision by an impartial decisionmaker, in that a nonunion employee, whose First Amendment rights were affected and who bore the burden of objecting, was entitled to have his objections addressed in an expeditious, fair, and objective manner, and where the union's procedure from start to finish was entirely controlled by the union, which was an interested party, being the recipient of the agency fees paid by the dissenting employees, the procedure did not meet these requirements. Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292, 106 S. Ct. 1066, 89 L. Ed. 2d 232 (1986).

In a procedure where the initial consideration of an agency fee for collective bargaining was made by union officials, and the first two steps of the review procedure by the Union Executive Committee and Executive Board consisted of union officials, the third step, review by a union-selected arbitrator, was inadequate, because the selection represented the union's unrestricted choice from a state list. Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292, 106 S. Ct. 1066, 89 L. Ed. 2d 232 (1986).

- Service Fees

A remedy which merely offered dissenters the possibility of a rebate did not avoid the risk that dissenters' funds would be used temporarily for an improper purpose; the union should not be permitted to exact a service fee from nonmembers without first establishing a procedure which will avoid the risk that their funds will be used, even temporarily, to finance ideological activities unrelated to collective bargaining. Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292, 106 S. Ct. 1066, 89 L. Ed. 2d 232 (1986).

LEGAL PERIODICALS

For article, "Labor Law: Recent Developments in the Seventh Circuit," see 62 Chi.-Kent. L. Rev. 565 (1986).

§ 105 ILCS 5/10-22.41. Placement of eligible children into corrective curriculum

Sec. 10-22.41. Placement of eligible children into corrective curriculum. To place or by regulation to authorize the director of special education to place, pursuant to procedures required in Article 14 of this Act and rules and regulations promulgated by the State Board of Education, eligible children into special education programs designed to benefit the types of children defined in Sections 14-1.02 through 14-1.07 [105 ILCS 5/14-1.02

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through 105 ILCS 14/1.07]; provided that children with disabilities who are recommended to be placed into regular education classrooms are provided with supplementary services to assist the children with disabilities to benefit from the regular education classroom instruction and are included on the teacher's regular education class register.

(Source: P.A. 86-1002; 89-397, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.41.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, substituted "children with disabilities" for "handicapped children" twice.

§ 105 ILCS 5/10-22.42. [Regulation of traffic]

Sec. 10-22.42. To contract with the corporate authorities of any municipality or the county board of any county, as the case may be, to provide for the regulation of traffic in parking areas of property used for school purposes in such manner as is provided by Section 11-209 of The Illinois Vehicle Code [625 ILCS 5/11-209].

(Source: P.A. 77-1849.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.42.

§ 105 ILCS 5/10-22.43. Credit for Proficiency in Foreign Language

Sec. 10-22.43. Credit for Proficiency in Foreign Language. To grant one year of high school foreign language credit to any student who has graduated from an accredited elementary school and who can demonstrate proficiency in a language other than English. For purposes of this Section, proficiency in American Sign Language shall be deemed proficiency in a foreign language for which one year of high school foreign language credit may be granted. Proficiency shall be determined by academic criteria acceptable to local school boards.

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(Source: P.A. 86-623.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.43.

§ 105 ILCS 5/10-22.43a. Foreign language credit

Sec. 10-22.43a. Foreign language credit. To award or provide for the awarding of high school credit to high school students who have studied a foreign language in an approved ethnic school program. The amount of credit awarded shall be roughly equivalent to the amount of credit the student would have received if he or she had reached the same level of foreign language proficiency at a public high school as he or she achieved at the ethnic school. The school board may require a student seeking foreign language credit under this Section to successfully complete a foreign language proficiency examination.

(Source: P.A. 83-794.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.43a.

§ 105 ILCS 5/10-22.44. [Transfer of interest]

Sec. 10-22.44. To transfer the interest earned from any moneys of the district in the respective fund of the district that is most in need of such interest income, as determined by the board. This Section does not apply to any interest earned which has been earmarked or restricted by the board for a designated purpose. This Section does not apply to any interest earned on any funds for purposes of Illinois Municipal Retirement under the Pension Code [40 ILCS 5/1-101 et seq.], Tort Immunity under the Local Governmental and Governmental Employees Tort Immunity Act [745 ILCS 10/1-101 et seq.], Fire Prevention, Safety, Energy Conservation and School Security Purposes under Section 17-2.11 [105 ILCS 5/17-2.11], and Capital Improvements under Section 17-2.3 [105 ILCS 5/17-2.3]. Interest earned on these exempted funds shall be used only for the purposes authorized for the respective exempted funds from which the interest earnings were derived.

(Source: P.A. 82-156; 87-984, § 1.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.44.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 110.25.

Effect of Amendments. The 1992 amendment by P.A. 87-984, effective January 1, 1993, in the second sentence deleted "and Environmental and" before "Energy" and added "Conservation and School Security Purposes" after "Energy" and added the third sentence.

§ 105 ILCS 5/10-22.45. [Audit Committee]

Sec. 10-22.45. To establish an audit committee, and to appoint members of the board or other appropriate officers to the committee, to review audit reports and any other financial reports and documents, including management letters prepared by or on behalf of the board.

(Source: P.A. 82-644.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-22.45.

§ 105 ILCS 5/10-23. Additional powers of board

Sec. 10-23. Additional powers of board. Boards of education have the additional powers enumerated in Sections 10-23.1 through 10-23.12 [105 ILCS 5/10-23.1 through 105 ILCS 5/10-23.12]

(Source: P.A. 84-1308.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-23.

§ 105 ILCS 5/10-23.1. Residence for superintendent, principal or teachers

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Sec. 10-23.1. Residence for superintendent, principal or teachers. To purchase a site, with or without a building or buildings thereon, to build a house or houses on such site or to build a house or houses on the school site of the school district, for residential purposes of the superintendent, principal, or teachers of the school district, if authorized by a majority of all votes cast on the proposition or propositions at a regular scheduled election held for the purpose in pursuance of a petition signed by not fewer than 300 voters or by 1/5 of all the voters of the district, whichever is lesser. Such referendum shall be certified to the proper election authorities and submitted in accordance with the general election law. When any of such property is not needed for residential purposes by the superintendent, principal, or teachers, the board of education may rent it to some other person or persons.

(Source: P.A. 81-1489.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-23.1.

§ 105 ILCS 5/10-23.2. Nursery schools

Sec. 10-23.2. Nursery schools. In all districts maintaining grades 1 to 8 or 1 to 12, to establish nursery schools for the instruction of children between the ages of 2 and 6 years, if, in its judgment public interest requires them and sufficient funds obtained from local and federal sources other than local district taxes are available to pay the necessary expenses thereof; provided, that the school board shall at all times have complete jurisdiction and control over such schools, including the employment of teachers, attendants and any other employees, and shall have complete control of the expenditure of such funds in connection with the establishment and maintenance of such schools.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-23.2.

RESEARCH REFERENCES

Tort liability of private nursery school or day-care center, or employee thereof, for injury to child while attending facility. 58 ALR4th 240.

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§ 105 ILCS 5/10-23.3. Real estate for vocational and other training

Sec. 10-23.3. Real estate for vocational and other training. After provision has been made for the payment of all school expenses, to appropriate from the educational fund school funds or to borrow funds for the purchase of real estate and for the improvement by construction of buildings or other structures, or improved real estate in a deteriorated or uninhabitable condition, for vocational and other educational training of pupils, and as incident thereto and when authorized or requested by resolution adopted by the affirmative vote of two-thirds of the members of the school board, to acquire title to the real estate in the name of the school district and sell and convey it; provided: that no such property shall be so bought or used as a schoolhouse or for permanent use as school property; that such property so purchased and improved shall be sold or otherwise disposed of within 5 years from the date of its acquisition; that not more than one piece of real estate to be improved and one piece of improved real state in a deteriorated or uninhabitable condition may be so purchased for each secondary school or area vocational center which offers vocational training within the school district for any such purpose in any one calendar year, unless additional properties are examined and approved by the Superintendent of the Educational Service Region in the county in which the district is located, for larger training programs necessitating more property to accommodate larger student enrollments; and that no such real estate may be acquired for any such purpose by means of eminent domain proceedings. If the school board does not hold legal title to the school site or other school property that is to be used for any purpose authorized by this Section, then upon the adoption of the resolution by 2/3 of the board members of the district requesting the conveyance of a school site or other school property or a portion thereof the trustees of schools or other school official having legal title to such property shall convey such property to such school district as provided in Section 5-21 [105 ILCS 5/5-21].

(Source: P.A. 79-571; 79-1516; 88-155, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-23.3.

Effect of Amendments. The 1993 amendment by P.A. 88-155, effective January 1, 1994, in the first sentence inserted "and when authorized or requested by resolution adopted by the affirmative vote of two-thirds of the members of the school board", inserted "and" preceding "that no such real estate" and added the period at the end; in the second sentence substituted "If the school board does not hold legal title to the school site or other school property that is to be used for any purpose authorized by this Section, then" for "and then" and substituted "the resolution" for "a resolution".

Practice Guides and Treatises.

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§ 105 ILCS 5/10-23.3a. Conduct of business for vocational training

Sec. 10-23.3a. Conduct of business for vocational training. To independently operate or cooperate with existing companies in the operation of a business or businesses for the sole purpose of providing training for students in vocational education programs. Any proceeds from said operation shall be applied towards the costs of establishing and maintaining these businesses. Regarding businesses with which the school board cooperates in operating for vocational training purposes, the school board shall receive a semi-annual account from each cooperating company of all costs and proceeds attributable to the student business-training program. Should the proceeds ever exceed the establishment and maintenance costs, then that excess shall only be directed toward expanding business-operation training in vocational education programs.

(Source: P.A. 77-664.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-23.3a.

§ 105 ILCS 5/10-23.4. Purchase of school bus

Sec. 10-23.4. Purchase of school bus. To purchase, maintain, repair and operate school buses and by resolution of the board to enter into a contract for the purchase of buses to be paid for within three years of the date of the resolution or over such longer period of time as does not exceed the depreciable life of the vehicle.

(Source: P.A. 85-1389.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-23.4.

§ 105 ILCS 5/10-23.4a. [Lease of equipment and machinery]

Sec. 10-23.4a. To enter into a lease for a period of not to exceed 5 years for such equipment and machinery as may be required for corporate purposes when authorized by

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the affirmative vote of two-thirds of the members of the board of education.

(Source: Laws 1961, p. 2890.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-23.4a.

§ 105 ILCS 5/10-23.5. Educational support personnel employees

Sec. 10-23.5. Educational support personnel employees. (a) To employ such educational support personnel employees as it deems advisable and to define their employment duties; provided that residency within any school district shall not be considered in determining the employment or the compensation of any such employee, or whether to retain, promote, assign or transfer such employee. If an educational support personnel employee is removed or dismissed or the hours he or she works are reduced as a result of a decision of the school board (i) to decrease the number of educational support personnel employees employed by the board or (ii) to discontinue some particular type of educational support service, written notice shall be mailed to the employee and also given to the employee either by certified mail, return receipt requested, or personal delivery with receipt, at least 30 days before the employee is removed or dismissed or the hours he or she works are reduced, together with a statement of honorable dismissal and the reason therefor if applicable. However, if a reduction in hours is due to an unforeseen reduction in the student population, then the written notice must be mailed and given to the employee at least 5 days before the hours are reduced. The employee with the shorter length of continuing service with the district, within the respective category of position, shall be dismissed first unless an alternative method of determining the sequence of dismissal is established in a collective bargaining agreement or contract between the board and any exclusive bargaining agent and except that this provision shall not impair the operation of any affirmative action program in the district, regardless of whether it exists by operation of law or is conducted on a voluntary basis by the board. If the board has any vacancies for the following school term or within one calendar year from the beginning of the following school term, the positions thereby becoming available within a specific category of position shall be tendered to the employees so removed or dismissed from that category or any other category of position, so far as they are qualified to hold such positions. Each board shall, in consultation with any exclusive employee representative or bargaining agent, each year establish a list, categorized by positions, showing the length of continuing service of each full time educational support personnel employee who is qualified to hold any such positions, unless an alternative method of determining a sequence of dismissal is established as provided for in this Section, in which case a list shall be made in accordance with the alternative method. Copies of the list shall be distributed to the exclusive employee representative or bargaining agent on or before February 1 of each year. Where an educational support personnel employee is

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dismissed by the board as a result of a decrease in the number of employees or the discontinuance of the employee's job, the employee shall be paid all earned compensation on or before the next regular pay date following his or her last day of employment.

The provisions of this amendatory Act of 1986 relating to residency within any school district shall not apply to cities having a population exceeding 500,000 inhabitants.

(b) In the case of a new school district or districts formed in accordance with Article 11E of this Code [105 ILCS 5/11E-5 et seq.], a school district or districts that annex all of the territory of one or more entire other school districts in accordance with Article 7 of this Code [105 ILCS 5/7-01 et seq.], or a school district receiving students from a deactivated school facility in accordance with Section 10-22.22b of this Code [105 ILCS 5/10-22.22b], the employment of educational support personnel in the new, annexing, or receiving school district immediately following the reorganization shall be governed by this subsection (b). Lists of the educational support personnel employed in the individual districts for the school year immediately prior to the effective date of the new district or districts, annexation, or deactivation shall be combined for the districts forming the new district or districts, for the annexed and annexing districts, or for the deactivating and receiving districts, as the case may be. The combined list shall be categorized by positions, showing the length of continuing service of each full-time educational support personnel employee who is qualified to hold any such position. If there are more full-time educational support personnel employees on the combined list than there are available positions in the new, annexing, or receiving school district, then the employing school board shall first remove or dismiss those educational support personnel employees with the shorter length of continuing service within the respective category of position, following the procedures outlined in subsection (a) of this Section. The employment and position of each educational support personnel employee on the combined list not so removed or dismissed shall be transferred to the new, annexing, or receiving school board, and the new, annexing, or receiving school board is subject to this Code with respect to any educational support personnel employee so transferred as if the educational support personnel employee had been the new, annexing, or receiving board's employee during the time the educational support personnel employee was actually employed by the school board of the district from which the employment and position were transferred.

The changes made by Public Act 95-148 shall not apply to the formation of a new district or districts in accordance with Article 11E of this Code, the annexation of one or more entire districts in accordance with Article 7 of this Code, or the deactivation of a school facility in accordance with Section 10-22.22b of this Code effective on or before July 1, 2007.

(Source: P.A. 86-973; 89-618, § 25; 90-548, § 5-915; 95-148, § 5; 95-396, § 5; 95-876, § 175; 96-998, § 5.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 10-23.5.

Effect of Amendments. The 1996 amendment by P.A. 89-618, effective August 9, 1996, in the first paragraph, in the second sentence, inserted "mailed to the employee and also", inserted "either" and inserted "or personal delivery with receipt".

The 1997 amendment by P.A. 90-548, effective January 1, 1998, in the first paragraph, in the second sentence, substituted "30" for "60" and substituted "employee is removed or dismissed" for "end of the school term".

The 2007 amendment by P.A. 95-148, effective August 14, 2007, added the (a) designation and the item (i) and (ii) designations in (a); and added (b).

The 2007 amendment by P.A. 95-396, effective August 23, 2007, inserted "or the hours he or she works are reduced" twice, inserted "if applicable" at the end of the second sentence; inserted the third sentence; and inserted "or any other category" in the fifth sentence.

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, combined earlier multiple amendments.

The 2010 amendment by P.A. 96-998, effective July 2, 2010, substituted "next regular pay date" for "third business day" near the end of the introductory paragraph of (a).

CASE NOTES

Analysis

Contractual Continued Service
Custodian
Dissolution
- Notice to Employees
Reduction in Hours
- Applicability
- Notice
Temporary Employee
- Applicability
- Shown

Contractual Continued Service

The term "contractual continued service" applies only to employees covered by 105 ILCS 5/24-12 and not to those covered by this section. Buckellew v. Board of Educ., 215 Ill. App. 3d 506, 159 Ill. Dec. 58, 575 N.E.2d 556 (4 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 915, 584 N.E.2d 127 (1991).

Custodian

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A custodian falls within the designation of educational support personnel employee for purposes of this Code. Buckellew v. Board of Educ., 215 Ill. App. 3d 506, 159 Ill. Dec. 58, 575 N.E.2d 556 (4 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 915, 584 N.E.2d 127 (1991).

Dissolution

- Notice to Employees

Where a school district is dissolved, this section does not appear to create a duty to notify of nonrenewal or honorable dismissal of employees who would be transferred to the new district created. Spear v. Board of Educ., 291 Ill. App. 3d 117, 225 Ill. Dec. 274, 683 N.E.2d 218 (2 Dist. 1997), appeal denied, 175 Ill. 2d 555, 228 Ill. Dec. 726, 689 N.E.2d 1147 (1997).

Reduction in Hours

- Applicability

This section is clearly not ambiguous, applies only to the removal or dismissal of educational support personnel employees, and does not apply to the reduction of their hours. Buckellew v. Board of Educ., 215 Ill. App. 3d 506, 159 Ill. Dec. 58, 575 N.E.2d 556 (4 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 915, 584 N.E.2d 127 (1991).

- Notice

Hours of part-time, substitute, or temporary educational support personnel employees may be reduced without the statutory notice described in this section. Buckellew v. Board of Educ., 215 Ill. App. 3d 506, 159 Ill. Dec. 58, 575 N.E.2d 556 (4 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 915, 584 N.E.2d 127 (1991).

Temporary Employee

- Applicability

This section does not apply to an individual designated by the school board as temporary or substitute educational support personnel, irrespective of how many hours such an employee actually works. Buckellew v. Board of Educ., 215 Ill. App. 3d 506, 159 Ill. Dec. 58, 575 N.E.2d 556 (4 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 915, 584 N.E.2d 127 (1991).

- Shown

Where plaintiff worked an eight-hour day for several years, received no employment-related benefits, was under no contract, was paid on a different cycle than contract personnel, and appeared on the district's list of substitute custodians, the relationship that existed between the plaintiff and the district was classified as temporary and substitute. Buckellew v. Board of Educ., 215 Ill. App. 3d 506, 159 Ill. Dec. 58, 575 N.E.2d 556 (4 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 915, 584 N.E.2d 127 (1991).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Significant Developments in Education Law 2003- 2004," see 29 S. Ill. U.L.J. 603 (2005).

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§ 105 ILCS 5/10-23.6. Sites out of district

Sec. 10-23.6. Sites out of district. A school district, including any special charter school district, having 100,000 or more inhabitants and maintaining grades 1 through 12 may acquire a school site in any other school district which does not maintain a recognized public high school, provided that such site lies within two miles of the boundaries of such school district, and may build, operate and maintain a school maintaining grades 9 through 12 upon any site so acquired, and for these purposes may borrow money and issue bonds as otherwise provided by law and charge and receive tuition for students attending said school from any other school district, to the same effect as if said school had been constructed within the boundaries of said school district.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-23.6.

CASE NOTES

Taking

- Held Valid

A school district which was governed by former Ill. Rev. Stat., ch. 122, para. 7-17 (see now this section) was not prohibited from taking land by eminent domain within 40 rods of the owners' dwelling. Trustees of Sch. ex rel. Bd. of Educ. v. Schroeder, 25 Ill. 2d 289, 184 N.E.2d 872 (1962).

§ 105 ILCS 5/10-23.7. Special Charter district - Adoption of Article 10

Sec. 10-23.7. Special Charter district - Adoption of Article 10. This Article may be adopted by the electors of any special charter school district, in the following manner:

The board of such district may, and upon petition of 10% of the voters residing in such district, shall order submitted to the voters of such district the question whether Article 10 of the School Code shall be adopted at a regular scheduled election to be held in accordance with the general election law. The board shall certify the proposition to the proper election authorities for submission to the electors.

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If the vote is favorable to the adoption of this Article, the transitional provisions of Section 10 of this Article shall apply as though the effective date of this Act were the day of such referendum.

If the adoption of this Article is rejected, the proposition shall not be resubmitted within 22 months.

(Source: P.A. 81-1489.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-23.7.

§ 105 ILCS 5/10-23.8. Superintendent contracts

Sec. 10-23.8. Superintendent contracts. After the effective date of this amendatory Act of 1997 and the expiration of contracts in effect on the effective date of this amendatory Act, school districts may only employ a superintendent under either a contract for a period not exceeding one year or a performance-based contract for a period not exceeding 5 years.

Performance-based contracts shall be linked to student performance and academic improvement within the schools of the districts. No performance-based contract shall be extended or rolled-over prior to its scheduled expiration unless all the performance and improvement goals contained in the contract have been met. Each performance-based contract shall include the goals and indicators of student performance and academic improvement determined and used by the local school board to measure the performance and effectiveness of the superintendent and such other information as the local school board may determine.

By accepting the terms of a multi-year contract, the superintendent waives all rights granted him or her under Sections 24-11 through 24-16 of this Act [105 ILCS 5/24-11 through 105 ILCS 5/24-16] only for the term of the multi-year contract. Upon acceptance of a multi-year contract, the superintendent shall not lose any previously acquired tenure credit with the district.

(Source: P.A. 79-1062; 89-572, § 5; 90-548, § 5-915; 91-314, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-23.8.

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Effect of Amendments. The 1996 amendment by P.A. 89-572, effective July 30, 1996, in the second paragraph, added the fourth sentence; and in the third paragraph, added the fourth sentence.

The 1997 amendment by P.A. 90-548, effective January 1, 1998, rewrote this section.

The 1999 amendment by P.A. 91-314, effective January 1, 2000, substituted the language beginning "only for the term" and ending "with the district" for "for the duration of his or her employment as superintendent in the district" at the end of the last paragraph.

CASE NOTES

Analysis

Goals
Other employees

Goals

Under the Illinois School Code, 105 ILCS 5/10-1 et seq., the Board was permitted to create goals, identify specific criteria with which to determine whether those goals were being met, and make finding about whether those goals have in fact been satisfied by satisfied by a particular superintendent. Since the Board did all of that in regard to the fourth amendment to the superintendent's contract, the amendment was valid and enforceable under 105 ILCS 5/10-23.8, which meant that the superintendent who had met the identified goals was entitled to be compensated pursuant to the amended contract. Bd. of Educ. v. Jackson, 401 Ill. App. 3d 24, 339 Ill. Dec. 665, 927 N.E.2d 206, 2010 Ill. App. LEXIS 274 (1 Dist. 2010).

Other employees

Non-superintendent employee's argument that the Millikin rule did not apply to the employee's breach of contract action because the legislature had authorized school boards to employ superintendents and principals for up to five years, as indicated in 105 ILCS 5/10-23.8 and 105 ILCS 10-23.8a was meritless; the existence of the narrow exception to the general rule created by Millikin suggested a legislative intent to preclude other exceptions, meaning that the employee's four year contract was void, and the employee could not sustain an action against the school board for termination of the contract. Trombetta v. Bd. of Educ., F. Supp. 2d , 2003 U.S. Dist. LEXIS 3993 (N.D. Ill. Mar. 13, 2003).

§ 105 ILCS 5/10-23.8a. Principal, assistant principal, and other administrator contracts

Sec. 10-23.8a. Principal, assistant principal, and other administrator contracts. After the effective date of this amendatory Act of 1997 and the expiration of contracts in effect on the effective date of this amendatory Act, school districts may only employ principals, assistant principals, and other school administrators under either a contract for a period

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not to exceed one year or a performance-based contract for a period not to exceed 5 years, unless the provisions of Section 10-23.8b of this Code or subsection (e) of Section 24A-15 of this Code [105 ILCS 5/10-23.8b or 105 ILCS 5/10-24A-15] otherwise apply.

Performance-based contracts shall be linked to student performance and academic improvement attributable to the responsibilities and duties of the principal, assistant principal, or administrator. No performance-based contract shall be extended or rolled-over prior to its scheduled expiration unless all the performance and improvement goals contained in the contract have been met. Each performance-based contract shall include the goals and indicators of student performance and academic improvement determined and used by the local school board to measure the performance and effectiveness of the principal, assistant principal, or other administrator and such other information as the local school board may determine.

By accepting the terms of a multi-year contract, the principal, assistant principal, or administrator waives all rights granted him or her under Sections 24-11 through 24-16 of this Act [105 ILCS 5/24-11 through 105 ILCS 5/24-16] only for the term of the multi-year contract. Upon acceptance of a multi-year contract, the principal, assistant principal, or administrator shall not lose any previously acquired tenure credit with the district.

(Source: P.A. 78-369; 89-572, § 5; 90-548, § 5-915; 91-314, § 5; 94-1039, § 5; 97-217, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-23.8a.

Effect of Amendments. The 1996 amendment by P.A. 89-572, effective July 30, 1996, in the second paragraph, added the fifth sentence.

The 1997 amendment by P.A. 90-548, effective January 1, 1998, rewrote this section.

The 1999 amendment by P.A. 91-314, effective January 1, 2000, substituted the language beginning "only for the term" and ending "with the district" for "for the duration of his or her employment as a principal or an administrator in the district" in the last paragraph.

The 2006 amendment by P.A. 94-1039, effective July 20, 2006, added "unless the provisions of Section 10-23.8b of this Code or subsection (e) of Section 24A-15 of this Code otherwise apply" at the end of the first paragraph.

The 2011 amendment by P.A. 97-217, effective July 28, 2011, inserted "assistant principal" in the section heading and throughout the section.

CASE NOTES

Contract Term

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Contract which extended the principal's employment beyond the term of the then-current board of education was valid under 105 ILCS 5/10-23.8a since the contract period was only two years and, thus, did not exceed the five year limitation. Bogacz v. Bd. of Educ., F. Supp. 2d , 2003 U.S. Dist. LEXIS 15381 (N.D. Ill. Aug. 28, 2003).

§ 105 ILCS 5/10-23.8b. Reclassification of principals and assistant principals

Sec. 10-23.8b. Reclassification of principals and assistant principals. Upon non-renewal of a principal's or assistant principal's administrative contract, the principal or assistant principal shall be reclassified pursuant to this Section. No principal or assistant principal may be reclassified by demotion or reduction in rank from one position within a school district to another for which a lower salary is paid without written notice from the board of the proposed reclassification by April 1 of the year in which the contract expires.

Within 10 days of the principal's or assistant principal's receipt of this notice, the school board shall provide the principal or assistant principal with a written statement of the facts regarding reclassification, and the principal or assistant principal may request and receive a private hearing with the board to discuss the reasons for the reclassification. If the principal or assistant principal is not satisfied with the results of the private hearing, he or she may, within 5 days thereafter, request and receive a public hearing on the reclassification. Any principal or assistant principal may be represented by counsel at a private or public hearing conducted under this Section.

If the board decides to proceed with the reclassification, it shall give the principal or assistant principal written notice of its decision within 15 days of the private hearing or within 15 days of the public hearing held under this Section whichever is later. The decision of the board thereupon becomes final.

Nothing in this Section prohibits a board from ordering lateral transfers of principals or assistant principals to positions of similar rank and equal salary.

The changes made by Public Act 94-201 are declaratory of existing law.

(Source: P.A. 84-514; 94-201, § 5; 97-217, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-23.8b.

Effect of Amendments. The 2005 amendment by P.A. 94-201, effective January 1, 2006, added the first sentence in the first paragraph, and added the last paragraph.

The 2011 amendment by P.A. 97-217, effective July 28, 2011, added "and assistant principals" to the end of the section heading; inserted "or assistant principal" or variants throughout the section; deleted "who has completed 2 or more years of administrative service in the school district" preceding "may be reclassified" in the second sentence of the first paragraph; substituted "Public

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Act 94-201" for "this amendatory Act of the 94th General Assembly" in the last paragraph; and made a stylistic change.

CASE NOTES

Analysis

Applicability
Discretion of Board
Hearing
- Legislative Intent
- Public
Lateral Transfer
Legislative History
Property Right
- Not Found
Retaliation
Written Statement
- Contents

Applicability

This section was designed to include the precise factual situation where a principal with two or more years of administrative service in the school district is returned to a teaching position with a reduction in salary; such a former principal was entitled to a private hearing and a public hearing before the board, and a hearing before an impartial hearing officer was not required. Meadows v. School Dist. U-46, 141 Ill. App. 3d 335, 95 Ill. Dec. 667, 490 N.E.2d 140 (2 Dist. 1986).

Discretion of Board

Reclassification appears to be within the total discretion of the board provided the notice and hearing requirements are met. Ehorn v. Board of Educ., 248 Ill. App. 3d 695, 188 Ill. Dec. 579, 618 N.E.2d 1149 (5 Dist.), cert. denied, 153 Ill. 2d 558, 191 Ill. Dec. 617, 624 N.E.2d 805 (1993).

Hearing

- Legislative Intent

The legislative intent of this section is simply to provide school principals with notice and an opportunity to discuss the reasons for reclassification with the school board; the principal is not afforded the opportunity to contest the board's reasons. Meadows v. School Dist. U-46, 141 Ill. App. 3d 335, 95 Ill. Dec. 667, 490 N.E.2d 140 (2 Dist. 1986).

- Public

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The phrase "public hearing," as used in this section, regarding reclassification of principals, does not mean an evidentiary hearing or an adversary proceeding with a burden of proof to support the decision of the board. Swanson v. Board of Educ., 135 Ill. App. 3d 466, 90 Ill. Dec. 337, 481 N.E.2d 1248 (4 Dist. 1985).

Lateral Transfer

Because this section provides that principals may be transferred only to other positions of similar rank and equal salary, it did not give a school board the right to transfer a principal to a "paper shuffler" position in the central office. Bordelon v. Chicago Sch. Reform Bd. of Trustees, 8 F. Supp. 2d 779 (N.D. Ill. 1998).

While a principal is entitled to written notice before demotion, nothing in the School Code prohibits the Board of Education from ordering lateral transfers of a principal to positions of similar rank and equal salary. Stevens v. Tillman, 661 F. Supp. 702 (N.D. Ill. 1986), aff'd, 855 F.2d 394 (7th Cir. 1988).

Legislative History

The dominant impression conveyed by the legislature history of this section is that the draftsmen wanted to give a measure of procedural protection to school administrators who, lacking tenure protection, were exposed to having their pay reduced as the result of being demoted or returned to the ranks of classroom teachers. Lyznicki v. Board of Educ., 707 F.2d 949 (7th Cir. 1983).

Property Right

- Not Found

A mere right to notice and a hearing, which places no more constraint on the employer's freedom of action than is inherent in having to confront the employee in a public forum, does not change the essential character of the employment relationship as one of employment at will; it does not convert it into a form of tenure employment and thus create a property right. Lyznicki v. Board of Educ., 707 F.2d 949 (7th Cir. 1983).

Retaliation

Mere fact that a public school principal was reclassified as a teacher shortly after he requested accommodation under the Americans with Disabilities Act (ADA), 42 U.S.C.S. § 12101 et seq., due to his struggle with depression, was not sufficient, by itself, to establish a causal connection for purposes of establishing an ADA retaliation claim. The board of education, which was sued by the principal, explained that it reclassified the principal and several other administrators because of severe budget cuts and that the timing of the reclassification was prompted by Illinois school law, which required that reclassification decisions be made by April 1st. Cassimy v. Bd. of Educ., 461 F.3d 932, 2006 U.S. App. LEXIS 22566 (7th Cir. 2006).

Written Statement

- Contents

As this section does not specify the content of the statement nor does it require that the statement be a conclusive and comprehensive list of reasons for the board's decision, five letters which contained a reiteration of the stated reasons for reclassification, citing school district policy violations and the complaints regarding the uncleanliness of the school building, which were

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noted in the professional evaluation of the building, complied with the statutory requirements of this section. Ehorn v. Board of Educ., 248 Ill. App. 3d 695, 188 Ill. Dec. 579, 618 N.E.2d 1149 (5 Dist.), cert. denied, 153 Ill. 2d 558, 191 Ill. Dec. 617, 624 N.E.2d 805 (1993).

§ 105 ILCS 5/10-23.9: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/10-23.10. [Sale or marketing of computer program developed by employee]

Sec. 10-23.10. (a) To sell or market any computer program developed by an employee of the school district, provided that such employee developed the computer program as a direct result of his or her duties with the school district or through the utilization of the school district resources or facilities. The employee who developed the computer program shall be entitled to share in the proceeds of such sale or marketing of the computer program. The distribution of such proceeds between the employee and the school district shall be as agreed upon by the employee and the school district, except that neither the employee nor the school district may receive more than 90% of such proceeds. The negotiation for an employee who is represented by an exclusive bargaining representative under Section 3-14.24 may be conducted by such bargaining representative at the employee's request.

(b) For the purposes of this Section:

(1) "Computer" means an internally programmed, general purpose digital device capable of automatically accepting data, processing data and supplying the results of the operation.

(2) "Computer program" means a series of coded instructions or statements in a form acceptable to a computer, which causes the computer to process data in order to achieve a certain result.

(3) "Proceeds" means profits derived from marketing or sale of a product after deducting the expenses of developing and marketing such product.

(Source: P.A. 83-797.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-23.10.

Section 3-14.24 of this Act, referred to above, has been repealed.

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§ 105 ILCS 5/10-23.11. [Acceptance of credit card payments]

Sec. 10-23.11. To accept payment for student fees and expenses through the use of credit cards and to negotiate and execute such contracts as may be necessary to accept such credit card payments.

In this context, "credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate or any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit or in consideration of an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder.

(Source: P.A. 84-388.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-23.11.

§ 105 ILCS 5/10-23.12. [Staff development on child abuse and neglect]

Sec. 10-23.12. To provide staff development for local school site personnel who work with pupils in grades kindergarten through 8, in the detection, reporting and prevention of child abuse and neglect.

(Source: P.A. 84-1308.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 10-23.12.

RESEARCH REFERENCES

Tort liability of public authority for failure to remove parentally abused or neglected children from parents' custody. 60 ALR4th 942.

§ 105 ILCS 5/10-23.13. Policies addressing sexual abuse

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Sec. 10-23.13. Policies addressing sexual abuse. To adopt and implement a policy addressing sexual abuse of children that may include age-appropriate curriculum for students in pre-K through 5th grade; training for school personnel on child sexual abuse; educational information to parents or guardians provided in the school handbook on the warning signs of a child being abused, along with any needed assistance, referral, or resource information; available counseling and resources for students affected by sexual abuse; and emotional and educational support for a child of abuse to continue to be successful in school.

Any policy adopted may address without limitation:

(1) methods for increasing teacher, student, and parent awareness of issues regarding sexual abuse of children, including knowledge of likely warning signs indicating that a child may be a victim of sexual abuse;

(2) actions that a child who is a victim of sexual abuse should take to obtain assistance and intervention; and

(3) available counseling options for students affected by sexual abuse.

This Section may be referred to as Erin's Law.

(Source: P.A. 96-1524, § 5.)

Effective Date. Section 99 of P.A. 96-1524, made this section effective upon becoming law. The Act was approved February 14, 2011.

§ 105 ILCS 5/10-27.1A. Firearms in schools

Sec. 10-27.1A. Firearms in schools. (a) All school officials, including teachers, guidance counselors, and support staff, shall immediately notify the office of the principal in the event that they observe any person in possession of a firearm on school grounds; provided that taking such immediate action to notify the office of the principal would not immediately endanger the health, safety, or welfare of students who are under the direct supervision of the school official or the school official. If the health, safety, or welfare of students under the direct supervision of the school official or of the school official is immediately endangered, the school official shall notify the office of the principal as soon as the students under his or her supervision and he or she are no longer under immediate danger. A report is not required by this Section when the school official knows that the person in possession of the firearm is a law enforcement official engaged in the conduct of his or her official duties. Any school official acting in good faith who makes such a report under this Section shall have immunity from any civil or criminal liability that might otherwise be incurred as a result of making the report. The identity of the school official making such report shall not be disclosed except as expressly and specifically

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authorized by law. Knowingly and willfully failing to comply with this Section is a petty offense. A second or subsequent offense is a Class C misdemeanor.

(b) Upon receiving a report from any school official pursuant to this Section, or from any other person, the principal or his or her designee shall immediately notify a local law enforcement agency. If the person found to be in possession of a firearm on school grounds is a student, the principal or his or her designee shall also immediately notify that student's parent or guardian. Any principal or his or her designee acting in good faith who makes such reports under this Section shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed as a result of making the reports. Knowingly and willfully failing to comply with this Section is a petty offense. A second or subsequent offense is a Class C misdemeanor. If the person found to be in possession of the firearm on school grounds is a minor, the law enforcement agency shall detain that minor until such time as the agency makes a determination pursuant to clause (a) of subsection (1) of Section 5-401 of the Juvenile Court Act of 1987 [705 ILCS 405/5-401], as to whether the agency reasonably believes that the minor is delinquent. If the law enforcement agency determines that probable cause exists to believe that the minor committed a violation of item (4) of subsection (a) of Section 24-1 of the Criminal Code of 1961 [720 ILCS 5/24-1] while on school grounds, the agency shall detain the minor for processing pursuant to Section 5-407 of the Juvenile Court Act of 1987 [705 ILCS 405/5-407].

(c) On or after January 1, 1997, upon receipt of any written, electronic, or verbal report from any school personnel regarding a verified incident involving a firearm in a school or on school owned or leased property, including any conveyance owned, leased, or used by the school for the transport of students or school personnel, the superintendent or his or her designee shall report all such firearm-related incidents occurring in a school or on school property to the local law enforcement authorities immediately and to the Department of State Police in a form, manner, and frequency as prescribed by the Department of State Police.

The State Board of Education shall receive an annual statistical compilation and related data associated with incidents involving firearms in schools from the Department of State Police. The State Board of Education shall compile this information by school district and make it available to the public.

(d) As used in this Section, the term "firearm" shall have the meaning ascribed to it in Section 1.1 of the Firearm Owners Identification Card Act [430 ILCS 65/1.1].

As used in this Section, the term "school" means any public or private elementary or secondary school.

As used in this Section, the term "school grounds" includes the real property comprising any school, any conveyance owned, leased, or contracted by a school to transport students to or from school or a school-related activity, or any public way within 1,000 feet of the real property comprising any school.

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(Source: P.A. 89-498, § 5-110; 91-11, § 5; 91-491, § 5.)

Effective Date. Section 99-5 of P.A. 89-498 made this section effective upon becoming law. The Act was approved June 27, 1996.

Effect of Amendments. The 1999 amendment by P.A. 91-11, effective June 4, 1999, deleted "Reporting" from the beginning of the section heading; added subsections (a) and (b) and inserted the subsection (c) and (d) designations; substituted "immediately" for "no later than 24 hours after the occurence of the incident" in the first paragraph of subsection (c); and added the definitions of "school" and "school grounds" in subsection (d).

The 1999 amendment by P.A. 91-491, effective August 13, 1999, added subsections (a) and (b) and the (c) and (d) designations; in subsection (c), substituted "immediately" for "no later than 24 hours after the occurrence of the incident" in the middle of the first paragraph, and in the second paragraph, added the last sentence; and added the last two paragraphs in subsection (d).

Although the amendments made to this section by P.A. 91-11, § 5 and P.A. 91-491, § 5 did not take into account the amendments made by the other, the amendments have been combined into a single version by the publisher.

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Education Law," see 25 S. Ill. U. L.J. 761 (2001).

For article, "Survey of Illinois Law: Criminal Law and Procedure," see 21 S. Ill. U.L.J. 759 (1997).

§ 105 ILCS 5/10-27.1B. Reporting drug-related incidents in schools

Sec. 10-27.1B. Reporting drug-related incidents in schools. (a) In this Section:

"Drug" means "cannabis" as defined under subsection (a) of Section 3 of the Cannabis Control Act [720 ILCS 550/3], "narcotic drug" as defined under subsection (aa) of Section 102 of the Illinois Controlled Substances Act [720 ILCS 570/102], or "methamphetamine" as defined under Section 10 of the Methamphetamine Control and Community Protection Act [720 ILCS 646/10].

"School" means any public or private elementary or secondary school.

(b) Upon receipt of any written, electronic, or verbal report from any school personnel regarding a verified incident involving drugs in a school or on school owned or leased property, including any conveyance owned, leased, or used by the school for the transport of students or school personnel, the superintendent or his or her designee, or other appropriate administrative officer for a private school, shall report all such drug-related incidents occurring in a school or on school property to the local law enforcement authorities immediately and to the Department of State Police in a form, manner, and frequency as prescribed by the Department of State Police.

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(c) The State Board of Education shall receive an annual statistical compilation and related data associated with drug-related incidents in schools from the Department of State Police. The State Board of Education shall compile this information by school district and make it available to the public.

(Source: P.A. 91-491, § 5; 94-556, § 950.)

Effective Date. Section 99 of P.A. 91-491 made this section effective upon becoming law. The Act was approved August 13, 1999.

Effect of Amendments. The 2005 amendment by P.A. 94-556, effective September 11, 2005, in the first paragraph of (a) added the language from "or 'methamphetamine'" through the end of the paragraph.

§ 105 ILCS 5/10-28. Sharing information on school lunch applicants

Sec. 10-28. Sharing information on school lunch applicants. A school board shall, whenever requested by the Department of Healthcare and Family Services (formerly Department of Public Aid), agree in writing with the Department of Healthcare and Family Services (as the State agency that administers the State Medical Assistance Program as provided in Title XIX of the federal Social Security Act [42 U.S.C. § 1396 et seq.] and the State Children's Health Insurance Program as provided in Title XXI of the federal Social Security Act [42 U.S.C. § 1396 et seq. and § 1397aa et seq.]) to share with the Department of Healthcare and Family Services information on applicants for free or reduced-price lunches. A school board shall, whenever requested by the Department of Healthcare and Family Services (formerly Department of Public Aid), require each of its schools to agree in writing with the Department of Healthcare and Family Services to share with the Department of Healthcare and Family Services information on applicants for free or reduced-price lunches. This sharing of information shall be for the sole purpose of helping the Department of Healthcare and Family Services identify and enroll children in the State Medical Assistance Program or the State Children's Health Insurance Program or both as allowed under 42 U.S.C. Sec. 1758(b)(2)(C)(iii)(IV) and under the restrictions set forth in 42 U.S.C. Sec. 1758(b)(2)(C)(vi) and (vii).

(Source: P.A. 93-404, § 5; 95-331, § 540.)

Effective Date. Section 99 of P.A. 93-404 made this section effective August 1, 2003.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, substituted references to "Department of Healthcare and Family Services" for references to

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"Department of Public Aid" throughout the section, and made related changes.

§ 105 ILCS 5/10-29. Remote educational programs

Sec. 10-29. Remote educational programs. (a) For purposes of this Section, "remote educational program" means an educational program delivered to students in the home or other location outside of a school building that meets all of the following criteria:

(1) A student may participate in the program only after the school district, pursuant to adopted school board policy, and a person authorized to enroll the student under Section 10-20.12b of this Code [105 ILCS 5/10-20.12b] determine that a remote educational program will best serve the student's individual learning needs. The adopted school board policy shall include, but not be limited to, all of the following:

(A) Criteria for determining that a remote educational program will best serve a student's individual learning needs. The criteria must include consideration of, at a minimum, a student's prior attendance, disciplinary record, and academic history.

(B) Any limitations on the number of students or grade levels that may participate in a remote educational program.

(C) A description of the process that the school district will use to approve participation in the remote educational program. The process must include without limitation a requirement that, for any student who qualifies to receive services pursuant to the federal Individuals with Disabilities Education Improvement Act of 2004 (Public Law 108-446) [20 U.S.C. § 1400 et seq.], the student's participation in a remote educational program receive prior approval from the student's individualized education program team.

(D) A description of the process the school district will use to develop and approve a written remote educational plan that meets the requirements of subdivision (5) of this subsection (a).

(E) A description of the system the school district will establish to calculate the number of clock hours a student is participating in instruction in accordance with the remote educational program.

(F) A description of the process for renewing a remote educational program at the expiration of its term.

(G) Such other terms and provisions as the school district deems necessary to provide for the establishment and delivery of a remote educational program.

(2) The school district has determined that the remote educational program's curriculum is aligned to State learning standards and that the program offers instruction and educational experiences consistent with those given to students at the same grade level in the district.

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(3) The remote educational program is delivered by instructors that meet the following qualifications:

(A) they are certificated under Article 21 of this Code [105 ILCS 5/21-0.01 et seq.];

(B) they meet applicable highly qualified criteria under the federal No Child Left Behind Act of 2001 (Public Law 107-110); and

(C) they have responsibility for all of the following elements of the program: planning instruction, diagnosing learning needs, prescribing content delivery through class activities, assessing learning, reporting outcomes to administrators and parents and guardians, and evaluating the effects of instruction.

(4) During the period of time from and including the opening date to the closing date of the regular school term of the school district established pursuant to Section 10-19 of this Code [105 ILCS 5/10-19], participation in a remote educational program may be claimed for general State aid purposes under Section 18-8.05 of this Code [105 ILCS 5/18-8.05] on any calendar day, notwithstanding whether the day is a day of pupil attendance or institute day on the school district's calendar or any other provision of law restricting instruction on that day. If the district holds year-round classes in some buildings, the district shall classify each student's participation in a remote educational program as either on a year-round or a non-year-round schedule for purposes of claiming general State aid. Outside of the regular school term of the district, the remote educational program may be offered as part of any summer school program authorized by this Code.

(5) Each student participating in a remote educational program must have a written remote educational plan that has been approved by the school district and a person authorized to enroll the student under Section 10-20.12b of this Code. The school district and a person authorized to enroll the student under Section 10-20.12b of this Code must approve any amendment to a remote educational plan. The remote educational plan must include, but is not limited to, all of the following:

(A) Specific achievement goals for the student aligned to State learning standards.

(B) A description of all assessments that will be used to measure student progress, which description shall indicate the assessments that will be administered at an attendance center within the school district.

(C) A description of the progress reports that will be provided to the school district and the person or persons authorized to enroll the student under Section 10-20.12b of this Code.

(D) Expectations, processes, and schedules for interaction between a teacher and student.

(E) A description of the specific responsibilities of the student's family and the school district with respect to equipment, materials, phone and Internet service, and any other requirements applicable to the home or other location outside of a school building necessary for the delivery of the remote educational program.

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(F) If applicable, a description of how the remote educational program will be delivered in a manner consistent with the student's individualized education program required by Section 614(d) of the federal Individuals with Disabilities Education Improvement Act of 2004 [20 U.S.C. § 614] or plan to ensure compliance with Section 504 of the federal Rehabilitation Act of 1973 [29 U.S.C. § 504].

(G) A description of the procedures and opportunities for participation in academic and extra-curricular activities and programs within the school district.

(H) The identification of a parent, guardian, or other responsible adult who will provide direct supervision of the program. The plan must include an acknowledgment by the parent, guardian, or other responsible adult that he or she may engage only in non-teaching duties not requiring instructional judgment or the evaluation of a student. The plan shall designate the parent, guardian, or other responsible adult as non-teaching personnel or volunteer personnel under subsection (a) of Section 10-22.34 of this Code [105 ILCS 5/10-22.34].

(I) The identification of a school district administrator who will oversee the remote educational program on behalf of the school district and who may be contacted by the student's parents with respect to any issues or concerns with the program.

(J) The term of the student's participation in the remote educational program, which may not extend for longer than 12 months, unless the term is renewed by the district in accordance with subdivision (7) of this subsection (a).

(K) A description of the specific location or locations in which the program will be delivered. If the remote educational program is to be delivered to a student in any location other than the student's home, the plan must include a written determination by the school district that the location will provide a learning environment appropriate for the delivery of the program. The location or locations in which the program will be delivered shall be deemed a long distance teaching reception area under subsection (a) of Section 10-22.34 of this Code.

(L) Certification by the school district that the plan meets all other requirements of this Section.

(6) Students participating in a remote educational program must be enrolled in a school district attendance center pursuant to the school district's enrollment policy or policies. A student participating in a remote educational program must be tested as part of all assessments administered by the school district pursuant to Section 2-3.64 of this Code [105 ILCS 5/2-3.64] at the attendance center in which the student is enrolled and in accordance with the attendance center's assessment policies and schedule. The student must be included within all adequate yearly progress and other accountability determinations for the school district and attendance center under State and federal law.

(7) The term of a student's participation in a remote educational program may not extend for longer than 12 months, unless the term is renewed by the school district. The district may only renew a student's participation in a remote educational program following an evaluation of the student's progress in the program, a determination that the student's

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continuation in the program will best serve the student's individual learning needs, and an amendment to the student's written remote educational plan addressing any changes for the upcoming term of the program.

(b) A school district may, by resolution of its school board, establish a remote educational program.

(c) Clock hours of instruction by students in a remote educational program meeting the requirements of this Section may be claimed by the school district and shall be counted as school work for general State aid purposes in accordance with and subject to the limitations of Section 18-8.05 of this Code [105 ILCS 5/18-8.05].

(d) The impact of remote educational programs on wages, hours, and terms and conditions of employment of educational employees within the school district shall be subject to local collective bargaining agreements.

(e) The use of a home or other location outside of a school building for a remote educational program shall not cause the home or other location to be deemed a public school facility.

(f) A remote educational program may be used, but is not required, for instruction delivered to a student in the home or other location outside of a school building that is not claimed for general State aid purposes under Section 18-8.05 of this Code.

(g) School districts that, pursuant to this Section, adopt a policy for a remote educational program must submit to the State Board of Education a copy of the policy and any amendments thereto, as well as data on student participation in a format specified by the State Board of Education. The State Board of Education may perform or contract with an outside entity to perform an evaluation of remote educational programs in this State.

(h) The State Board of Education may adopt any rules necessary to ensure compliance by remote educational programs with the requirements of this Section and other applicable legal requirements.

(Source: P.A. 96-684, § 5; 97-339, § 5.)

Effective Date. Section 99 of P.A. 96-684 made this section effective upon becoming law. The Act was approved August 25, 2009.

Effect of Amendments. The 2011 amendment by P.A. 97-339, effective August 12, 2011, in (a)(4), in the first sentence, inserted "of time from and including the opening date to the closing date," deleted "calendar year included within the" preceding "regular school," inserted "established pursuant to Section 10-19 of this Code," and substituted "on any calendar day, notwithstanding whether the day is a day of pupil attendance or institute day on the school district's calendar or any other provision of law restricting instruction on that day" for "only on days of pupil attendance or institute days included within the school district's calendar established pursuant to Section 10-19 of this Code" and inserted the second sentence; and substituted "Clock

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hours of instruction" for "Days of attendance" in (c).

Article 11.

[Reserved]

Article 11A.

Unit School District Formation

§§ 105 ILCS 5/11A-1 through 105 ILCS 5/11A-17: Repealed by P.A. 94-1019, § 10, effective July 10, 2006.

Article 11B.

School District Combination

§§ 105 ILCS 5/11B-1 through 105 ILCS 5/11B-14: Repealed by P.A. 94-1019, § 10, effective July 10, 2006.

Article 11C.

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Accounting Procedures

§ 105 ILCS 5/11C-1. Appraisers

Sec. 11C-1. Appraisers. The regional superintendent shall appoint one or more appraisers to appraise all the tangible school property in the district from which territory has been taken and the tangible school property in such territory transferred. An appraiser or appraisers may be appointed to appraise all such school property or one or more appraisers may be appointed to appraise the different kinds of property as the regional superintendent may direct. No appraiser shall be a resident of any district which is a party to the accounting. The costs of the appraisal shall be borne by the districts in the ratio in which they share in the assets appraised.

(Source: P.A. 83-686.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 11C-1.

§ 105 ILCS 5/11C-2. Appraisal guide

Sec. 11C-2. Appraisal guide. In making such appraisal land shall be appraised at its fair market value; other property shall be appraised at its reproduction or replacement cost less depreciation and an allowance for obsolescence, if any, but in no event shall any property be appraised at more than its value for school purposes in the district in which it lies after the change in boundaries or its resale value whichever is the higher.

(Source: P.A. 83-686.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 11C-2.

§ 105 ILCS 5/11C-3. Time for filing appraisals - Contest - Administrative review

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Sec. 11C-3. Time for filing appraisals - Contest - Administrative review. Within 30 days after their appointment the appraisers shall file their appraisal or appraisals with the regional superintendent. Within 10 days thereafter the regional superintendent shall send copies of such appraisals by registered mail to the secretary or clerk of the board of each district which is a party to the accounting. If the board of any district desires to contest any appraisal it shall file a statement of its objections with the regional superintendent within 20 days after the receipt of a copy of such appraisal. The regional superintendent shall then fix a date for a hearing on such objections and give notice thereof to each district which is a party to the accounting. Each such district may offer evidence at the hearing and the appraisal shall be considered by the regional superintendent as evidence of the value of the property appraised. The regional superintendent shall then consider the evidence and enter an order determining the value of the property in question. Such order shall be deemed an "administrative decision" as defined in the "Administrative Review Law" [735 ILCS 5/3-101 et seq.] and any board which is a party to the accounting may apply for a review of such decision in accordance with the "Administrative Review Law" [735 ILCS 5/3-101 et seq.] and all amendments and modifications thereof and the rules adopted pursuant thereto.

(Source: P.A. 83-686.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 11C-3.

§ 105 ILCS 5/11C-4. Debited school property

Sec. 11C-4. Debited school property. Each district from which territory is taken shall be debited with the value of the school property remaining in such district as above determined and each district which is created so as to include a part of a district shall be debited with the value of the school property lying within such part of a district.

(Source: P.A. 83-686.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 11C-4.

§ 105 ILCS 5/11C-5. Debited school funds

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Sec. 11C-5. Debited school funds. Each district from which territory is taken shall be debited with all funds in the possession of its treasurer and of all other funds to which the district may be entitled, including taxes in process of collection.

(Source: P.A. 83-686.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 11C-5.

§ 105 ILCS 5/11C-6. Credited unfunded indebtedness

Sec. 11C-6. Credited unfunded indebtedness. Each district from which territory is taken shall be credited with all unfunded indebtedness of such district and with the estimated cost of operating the schools of the district for the balance of the school year if the district from which territory is taken continues to administer the schools until the succeeding July 1.

(Source: P.A. 83-686; 94-1019, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 11C-6.

Section 90 of P.A. 94-1019 contains a savings provision, and section 95 contains a no acceleration or delay provision.

Effect of Amendments. The 2006 amendment by P.A. 94-1019, effective July 10, 2006, deleted "as provided in Section 11A-10" from the end.

§ 105 ILCS 5/11C-7. Credited appraised value of property and funds

Sec. 11C-7. Credited appraised value of property and funds. Each district which is created so as to include a part of another district shall be credited with the appraised value of the property and of the funds described in Sections 11C-4 and 11C-5 of this Act [105 ILCS 5/11C-4 and 105 ILCS 5/11C-5], less the unfunded indebtedness described in Section 11C-6 of this Act [105 ILCS 5/11C-6], in the proportion which the number of children in average daily attendance for the last full school year preceding the filing of the petition from the part of the district so included bears to the total number of children in average daily attendance from such district for such period, and the balance shall be

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credited to the district from which territory is taken.

(Source: P.A. 83-686.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 11C-7.

§ 105 ILCS 5/11C-8. Reports

Sec. 11C-8. Reports. The regional superintendent is hereby given the power to require reports from the treasurer or any other officer of the district from which territory is taken to give it any information necessary for it to perform its functions hereunder and to require from time to time transfers of funds from one treasurer to another, or if the districts have a common treasurer from the funds held by such treasurer for one district to the funds held by such treasurer for the other district as may be necessary to give effect to the accounting herein provided for.

(Source: P.A. 83-686.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 11C-8.

§ 105 ILCS 5/11C-9. Accounting waived

Sec. 11C-9. Accounting waived. If the stipulation is refused by the regional superintendent the boards of the districts affected by the change in boundaries in the creation of a new district may waive accounting or stipulate as to the valuation of any kind or parcel of property or as to a basis for apportionment by concurrent resolution filed with the regional superintendent prior to or within 30 days after the election of the school board for the newly created district. Such resolution shall be subject to the approval of the regional superintendent and if approved, the accounting shall be dispensed with or modified as the resolution may provide.

(Source: P.A. 83-686; 94-1019, § 10.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 11C-9.

Section 90 of P.A. 94-1019 contains a savings provision, and section 95 contains a no acceleration or delay provision.

Effect of Amendments. The 2006 amendment by P.A. 94-1019, effective July 10, 2006, in the first sentence deleted "no stipulation is made as provided in Section 11A-3 of this Act or if" after "If", and deleted "other than that provided in Section 11C-7 of this Act" after "for apportionment".

Article 11D.

School District Conversion

§§ 105 ILCS 5/11D-1 through 105 ILCS 5/11D-13: Repealed by P.A. 94-1019, § 10, effective July 10, 2006.

Article 11E.

CONVERSION AND FORMATION OF SCHOOL DISTRICTS

§ 105 ILCS 5/11E-5. Purpose and applicability

Sec. 11E-5. Purpose and applicability. The purpose of this Article is to permit greater flexibility and efficiency in the reorganization and formation of school districts for the improvement of the administration and quality of educational services and for the best interests of pupils. This Article applies only to school districts with under 500,000 inhabitants.

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(Source: P.A. 94-1019, § 10.)

Note.

Section 90 of P.A. 94-1019 contains a savings provision, and section 95 contains a no acceleration or delay provision.

Effective Date. Section 99 of P.A. 94-1019, makes this Article effective July 1, 2006.

CASE NOTES

Constitutionality

Court concluded that the amendment to former School Code, Ill. Stat. Ch. 122, para. 11-6 (now 105 ILCS 5/11A-1), was not unconstitutional simply because it provided for administrative review only of orders by the superintendent denying petitions. Board of Education v. Ellis, 19 Ill. App. 3d 381, 311 N.E.2d 615, 1974 Ill. App. LEXIS 2626 (1 Dist. 1974).

Former Community Unit School District Act (see now this Article) was held constitutional. (Case decided under former 105 ILCS 5/11A-1) People ex rel. McLain v. Gardner, 408 Ill. 228, 96 N.E.2d 551 (1951).

§ 105 ILCS 5/11E-10. Definitions

Sec. 11E-10. Definitions. In this Article:

"Affected district" means any school district with territory included in a petition for reorganization under this Article that encompasses (i) 25% or more of the total land area of the district, (ii) more than 8% of the student enrollment of the district, or (iii) more than 8% of the equalized assessed valuation of the district.

"Combined high school - unit district" means a school district resulting from the combination of a high school district and a unit district.

"Combined school district" means any district resulting from the combination of 2 or more entire elementary districts, 2 or more entire high school districts, or 2 or more entire unit districts.

"Dual district" means a high school district and all of its feeder elementary districts collectively.

"Elementary district" means a school district organized and established for purposes of providing instruction up to and including grade 8. "Elementary district" includes common elementary school districts, consolidated elementary school districts, community

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consolidated school districts, combined elementary districts, and charter elementary districts.

"Elementary purposes" means the purposes of providing instruction up to and including grade 8.

"High school district" means a school district organized and established for purposes of providing instruction in grades 9 through 12. "High school district" includes charter high school districts, township high school districts, consolidated high school districts, community high school districts, and non-high school districts.

"High school purposes" means the purposes of providing instruction in grades nine through 12.

"High school - unit conversion" means a school district conversion authorized under subsection (a) of Section 11E-15 of this Code [105 ILCS 5/11E-15].

"K through 12 purposes" means the purposes of providing instruction up to and including grade 12.

"Multi-unit conversion" means the formation of a combined high school - unit district and one or more new elementary districts as authorized under subsection (b) of Section 11E-30 of this Code [105 ILCS 5/11E-30].

"Optional elementary unit district" means a unit district resulting from the combination of a high school district and the combination of any one or more elementary districts electing to organize as an optional elementary unit district.

"Partial elementary unit district" means either a combined high school - unit district or an optional elementary unit district.

"School board" means either a board of education or a board of school directors.

"School district conversion" means a high school - unit conversion or a unit to dual conversion.

"School needs" means the needs of the proposed school district and any districts in the area adjacent thereto in relation to, without limitation, providing a full range of high quality educational and extracurricular programs, maintaining a full complement of professional staff to deliver optimal educational services, meeting the program and staff needs of all students, including students with disabilities and students in career and technical education courses, maximizing community involvement in school governance, operating on an economically efficient basis, and maintaining a sufficient local tax base.

"Substantially coterminous" means that a high school district and one or more elementary districts share the same boundaries or share the same boundaries except for territory encompassing, for a particular district, (i) less than 25% of the land area of the district, (ii) less than 8% of the student enrollment of the district, and (iii) less than 8% of the equalized assessed valuation of the district.

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"Unit district" means a school district organized and established for purposes of providing instruction up to and including grade 12. "Unit district" includes charter (K through 12) districts, community unit districts, community consolidated unit districts, other districts that, prior to the adoption of the community consolidated unit district and community unit district, authorizing legislation had expanded to provide instruction through the 12th grade (commonly referred to as "Old Type" unit districts), and partial elementary unit districts organized pursuant to the provisions of this Article.

"Unit to dual conversion" means a school district conversion authorized under subsection (b) of Section 11E-15 of this Code [105 ILCS 5/11E-15].

(Source: P.A. 94-1019, § 10.)

CASE NOTES

Analysis

Relation to Reorganization Act
Successive Petitions

Relation to Reorganization Act

This section sets forth procedures for reorganization in addition to or alternatively to those set forth in the limited provisions of the Reorganization Act (105 ILCS 220/1 et seq.). (Case decided under former 105 ILCS 5/11B-1) Bromberek Sch. Dist. v. Sanders, 174 Ill. App. 3d 301, 124 Ill. Dec. 228, 528 N.E.2d 1336 (1 Dist. 1988).

The Reorganization Act (105 ILCS 220/1 et seq.) does not repeal this section expressly or by implication; there is no irreconcilable repugnancy between the statutes, and both statutes can stand. (Case decided under former 105 ILCS 5/11B-1) Bromberek Sch. Dist. v. Sanders, 174 Ill. App. 3d 301, 124 Ill. Dec. 228, 528 N.E.2d 1336 (1 Dist. 1988).

Successive Petitions

Under the common law principle of first in time as first in right, no proceedings can be commenced on any Article 11B consolidation petition which is filed subsequent to a pending, yet undefeated, Article 11B petition; therefore, a second petition once filed is to be held in abeyance by the regional superintendent pending the outcome of the approval process as to the prior petition. (Case decided under former 105 ILCS 5/11B-1) Kerwin v. Sanders, 174 Ill. App. 3d 872, 124 Ill. Dec. 236, 528 N.E.2d 1344 (2 Dist. 1988).

§ 105 ILCS 5/11E-15. School district conversion

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Sec. 11E-15. School district conversion. (a) One or more unit districts and one or more high school districts, all of which are contiguous, may, under the provisions of this Article, be converted into a dual district through the dissolution of the unit district or districts and the high school district or districts if the following apply:

(1) each elementary district to be created includes all of the territory within a unit district to be dissolved; and

(2) the high school district to be created includes all of the territory within the unit districts and high school districts to be dissolved.

(b) Two or more contiguous unit districts may, under the provisions of this Article, dissolve and form a single new high school district and new elementary districts that are based upon the boundaries of the dissolved unit districts.

(Source: P.A. 94-1019, § 10.)

§ 105 ILCS 5/11E-20. Combined school district formation

Sec. 11E-20. Combined school district formation. (a) The territory of 2 or more entire contiguous elementary districts may be organized into a combined elementary district under the provisions of this Article.

(2) Any 2 or more entire elementary districts that collectively are within or substantially coterminous with the boundaries of a high school district, regardless of whether the districts are compact and contiguous with each other, may be organized into a combined school district in accordance with this Article.

(b) Any 2 or more entire contiguous high school districts may be organized into a combined high school district under the provisions of this Article.

(c) Any 2 or more entire contiguous unit districts may be organized into a combined unit district under the provisions of this Article.

(Source: P.A. 94-1019, § 10.)

§ 105 ILCS 5/11E-25. Unit district formation

Sec. 11E-25. Unit district formation. (a) Any contiguous and compact territory, no part of which is included within any unit district, may be organized into a unit district as provided in this Article.

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(b) The territory of one or more entire unit districts that are contiguous to each other, plus any contiguous and compact territory no part of which is included within any unit district, and the territory of which taken as a whole is compact may be organized into a unit district as provided in this Article.

(Source: P.A. 94-1019, § 10.)

CASE NOTES

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Change in Boundaries
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- Accessibility
- Contiguous and Compact
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- Location
- Organization Upheld
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- Local Self-Government
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Constitutionality

Former Ill. Rev. Stat., ch. 122, para. 11-6 (see now this section), as amended by Public Act 77-604, effective July 1, 1971, which limited review of the superintendent's order concerning establishment of school unit districts to those instances where the order denied the petition and terminated the proceedings, did not unfairly discriminate as between objectors and petitioner; although Public Act 77-604 by its language gave only supporters of the petition the right to review under the Administrative Review Law (735 ILCS 5/3-101 et seq.), it did not follow that such a

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provision was unconstitutional. (Case decided under former 105 ILCS 5/11A-2) Board of Educ. v. Ellis, 60 Ill. 2d 413, 328 N.E.2d 294 (1975).

Change in Boundaries

The plain meaning of 105 ILCS 5/7-4(e) is that a prerequisite for approval of a change of boundaries, such as a petition for detachment of territory from an existing community unit school district, requires compliance with the minimum population and assessed valuation standards of this section. (Case decided under former 105 ILCS 5/11A-2) Board of Educ. v. Regional Bd. of Sch. Trustees, 266 Ill. App. 3d 461, 203 Ill. Dec. 748, 640 N.E.2d 668 (4 Dist. 1994), appeal denied, 159 Ill. 2d 563, 207 Ill. Dec. 513, 647 N.E.2d 1006 (1995).

Community Unit School District

- Accessibility

While school districts of rural character must afford to all of the children within their boundaries an opportunity to enjoy with a reasonable degree of comfort the benefits of the schools, it cannot be said that because a student may occasionally miss school on account of road conditions a school district does not therefore comply with the law. (Case decided under former 105 ILCS 5/11A-2) People ex rel. Gift v. Rote, 312 Ill. 99, 143 N.E. 492 (1924).

- Contiguous and Compact

If the territory included in the district is contiguous and compact, objections that the district could have been formed in a better and different manner are not open to consideration; a territory excluded which might have been included destroys neither the contiguity nor the compactness of the unit district. (Case decided under former 105 ILCS 5/11A-2) People ex rel. Warren v. Drummet, 415 Ill. 411, 114 N.E.2d 364 (1953).

The statutory command that the territory be contiguous and compact does not admit of an all-inclusive definition drawing hard and fast lines. (Case decided under former 105 ILCS 5/11A-2) People ex rel. Warren v. Drummet, 415 Ill. 411, 114 N.E.2d 364 (1953).

The territory of a school district is compact and contiguous when it is so closely united and so nearly adjacent to the school building that all the students residing in the district, their ages considered, may conveniently travel from their homes to the school building and return the same day in a reasonable time and with a reasonable degree of comfort. (Case decided under former 105 ILCS 5/11A-2) People ex rel. Warren v. Drummet, 415 Ill. 411, 114 N.E.2d 364 (1953).

The "contiguous and compact" requirement in the former Community Unit School District Act did not mandate that districts should confine their boundaries to township lines. (Case decided under former 105 ILCS 5/11A-2) People ex rel. McLain v. Gardner, 408 Ill. 228, 96 N.E.2d 551 (1951).

A school district would not be held invalid under former Ill. Rev. Stat., ch. 122, para. 11-1 for lack of contiguity or compactness unless it clearly appeared from the evidence that children of school age residing in the district could not reasonably avail themselves of the privileges of the school. (Case decided under former 105 ILCS 5/11A-2) People ex rel. McLain v. Gardner, 408 Ill. 228, 96 N.E.2d 551 (1951).

Under former School Code a school district located in the northern part of a county, eight miles east and west by 6 1/2 miles north and south was compact and contiguous within the meaning of those terms as used therein. (Case decided under former 105 ILCS 5/11A-2) People ex rel. Gift v. Rote, 312 Ill. 99, 143 N.E. 492 (1924).

- Final Denial

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Where no complaint for review was filed under the terms of the Administrative Review Law (735 ILCS 5/3-101 et seq.) as to the final denial of petition requesting an election for the purpose of establishing a community school district under former Ill. Rev. Stat., ch. 122, para. 11-6 (see now this section), such action was, therefore, final and could not be attacked on appeal. (Case decided under former 105 ILCS 5/11A-2) Allen v. Young, 3 Ill. App. 3d 528, 278 N.E.2d 103 (3 Dist. 1972).

- Location

Under former School Code a school district could not be organized so that the convenience of attending school would not be the same to every pupil. (Case decided under former 105 ILCS 5/11A-2) People ex rel. Gift v. Rote, 312 Ill. 99, 143 N.E. 492 (1924).

- Organization Upheld

A community high school district comprises but one community for school purposes, and where the school was located in the largest town in the district, which had always been regarded as a community center for school purposes, although adjacent to other towns outside of the district, used by many inhabitants of the district for business, religious, and social purposes, the trial court after seeing the witnesses, and hearing evidence upon the controverted questions of fact, properly found that the town chosen was the community center of the district for school purposes, and that the territory described in the petition was compact and contiguous. (Case decided under former 105 ILCS 5/11A-2) People ex rel. Bartlett v. Vass, 325 Ill. 64, 155 N.E. 854 (1927).

- Population Requirement

The statutory population requirement was a jurisdictional prerequisite for the formation of community unit school district under former Ill. Rev. Stat., ch. 122, para. 11-6 (see now this section). (Case decided under former 105 ILCS 5/11A-2) Owego Community Consol. Sch. v. Goodrich, 28 Ill. App. 2d 407, 171 N.E.2d 816 (2 Dist. 1960).

- Taxing Powers

A community unit school district under former Ill. Rev. Stat., ch. 122, para. 11-1 was a separate municipal organization for the conduct of a type of school within the territory created in a manner provided by statute, and with taxing powers similar to those of other school organizations. (Case decided under former 105 ILCS 5/11A-2) McLain v. Phelps, 409 Ill. 393, 100 N.E.2d 753 (1951).

- Voter Eligibility

Where elderly residents of a nursing home did not exhibit any intent to change their permanent residence from other than the school district in which they lived and were registered to vote, they could be included in a private census for the purpose of determining whether district had the minimum population required for a community unit school district under former Ill. Rev. Stat., ch. 122, para. 11-6 (see now this section). (Case decided under former 105 ILCS 5/11A-2) Owego Community Consol. Sch. v. Goodrich, 28 Ill. App. 2d 407, 171 N.E.2d 816 (2 Dist. 1960).

Where three individuals who worked full time at places outside of district were old enough to vote and were registered to vote in the district and evidenced no intention of changing their legal residence outside the district and where three other minors attended church within the district each Sunday and spent the weekends with their parents at their home address, all of these people had the same domicile as their parents who resided within the district for determining population of district under former Ill. Rev. Stat., ch. 122, para. 11-6 (see now this section). (Case decided under former 105 ILCS 5/11A-2) Owego Community Consol. Sch. v. Goodrich, 28 Ill. App. 2d 407, 171 N.E.2d 816 (2 Dist. 1960).

The trial court was correct in concluding that the nine persons away from the district in the military service were legal residents of the district and should have been counted for the purpose of

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determining population within the community unit school district, especially where all nine of these persons who were single admittedly maintained their permanent address in the district with their parents under former Ill. Rev. Stat., ch. 122, para. 11-6 (see now this section). (Case decided under former 105 ILCS 5/11A-2) Owego Community Consol. Sch. v. Goodrich, 28 Ill. App. 2d 407, 171 N.E.2d 816 (2 Dist. 1960).

Nine persons who were students in college or were taking nurses training were inhabitants of school district where their parents lived and maintained their permanent residence or domicile in the proposed unit school district under former Ill. Rev. Stat., ch. 122, para. 11-6 (see now this section). (Case decided under former 105 ILCS 5/11A-2) Owego Community Consol. Sch. v. Goodrich, 28 Ill. App. 2d 407, 171 N.E.2d 816 (2 Dist. 1960).

Criteria

- Mandatory or Directory Provision

Whether a statutory provision regarding the organization of a community unit school district is mandatory or directory depends upon the following criteria: (1) whether the statutory scheme expressly or impliedly provides that the failure to follow the provision shall render an election void; (2) whether the failure to follow the provision interfered in any way with the result of the election; (3) whether any person legally entitled to vote was not permitted to do so; (4) whether any person voted who was not a resident of the territory sought to be organized; (5) whether the polling place was chosen for any improper motive; and (6) whether any fraud occurred in or as a result of the selection of the polling place. (Case decided under former 105 ILCS 5/11A-2) Gann v. Harrisburg Community Unit Sch., 73 Ill. App. 2d 103, 218 N.E.2d 833 (5 Dist. 1966).

Detachment

- Old Type Unit

Enactment of this Code did not eliminate "old type units" created prior to its enactment; there is nothing in this Code or case law to support the claim that they must be treated for detachment purposes under the same standards applicable to "community unit districts." (Case decided under former 105 ILCS 5/11A-2) Davis v. Regional Bd. of Sch. Trustees, 155 Ill. App. 3d 185, 108 Ill. Dec. 11, 507 N.E.2d 1352 (5 Dist. 1987).

Election

- When Invalidated

Although failure to follow a mandatory provision will invalidate an otherwise valid election, the failure to follow a directory provision will not; this is not to say that a directory provision may or should be disregarded, but only that an entire election will not be invalidated for the failure to follow such a provision. (Case decided under former 105 ILCS 5/11A-2) Gann v. Harrisburg Community Unit Sch., 73 Ill. App. 2d 103, 218 N.E.2d 833 (5 Dist. 1966).

Legislative Intent

- Local Self-Government

The legislature has always adhered to the policy of never creating school districts by direct action; the policy has been to enact enabling legislation, whereby the resident voters of a defined area proposed for a school district of a certain type were given the responsibility of determining whether such district should be established. This policy is undoubtedly predicated upon the

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legislature's belief that persons primarily affected are the best judges of what type of school will best serve or not serve them, within the bounds of the proposed district. This is to be done against the background of local needs, desires and conditions, and caters to the concept of local self-government. (Case decided under former 105 ILCS 5/11A-2) People v. Deatherage, 401 Ill. 25, 81 N.E.2d 581 (1948).

- Overlapping Boundaries

The legislature intended that it be possible to form a community consolidated school district even in an area where district boundaries overlap. (Case decided under former 105 ILCS 5/11A-2) Joliet Tp. High Sch. v. Regional Bd. of Sch. Trustees, 72 Ill. App. 3d 430, 28 Ill. Dec. 948, 391 N.E.2d 147 (2 Dist. 1979).

- Denial Upheld

A superintendent's decision denying a petition for the organization of a community unit school district, as authorized by former Ill. Rev. Stat., ch. 122, para. 11-6 (see now this section), was not contrary to the manifest weight of the evidence. (Case decided under former 105 ILCS 5/11A-2) Gravelle v. Gates, 62 Ill. 2d 217, 342 N.E.2d 57 (1976).

- Not Pending

Under former Ill. Rev. Stat., ch. 122, para. 11-6 (see now this section), where no petition was on file when plaintiffs filed their petition, they were entitled to have the regional superintendent proceed with evaluating their petition. (Case decided under former 105 ILCS 5/11A-2) Johnson v. Mini, 62 Ill. App. 3d 945, 19 Ill. Dec. 954, 379 N.E.2d 826 (3 Dist. 1978).

Plaintiffs demonstrated a clear and undeniable right, under former Ill. Rev. Stat., ch. 122, para. 11-6 (see now this section), to the issuance of a writ of mandamus, directing a regional superintendent to issue a notice of hearing according to law where the regional superintendent ceased to take any action whatsoever on plaintiffs' new petition because of an erroneous interpretation of the law concerning whether a petition remained on file after conclusion of plaintiff's unsuccessful appeal concerning an earlier petition. (Case decided under former 105 ILCS 5/11A-2) Johnson v. Mini, 62 Ill. App. 3d 945, 19 Ill. Dec. 954, 379 N.E.2d 826 (3 Dist. 1978).

§ 105 ILCS 5/11E-30. Partial elementary unit district formation

Sec. 11E-30. Partial elementary unit district formation. (a) One or more entire high school districts and one or more entire unit districts, all of which are contiguous, may be organized into a combined high school - unit district as provided in this Article. The combined high school - unit district shall serve all residents of the district for high school purposes and those residents residing in the portion of the territory included within the boundaries of the dissolved unit district or districts for elementary purposes.

(b) One or more contiguous unit districts may, as provided in this Article, dissolve and form a single new combined high school - unit district and one or more new elementary districts. The boundaries of the new elementary district or districts shall be based upon the boundaries of the dissolved unit district or districts electing to join the combined high school - unit district only for high school purposes. Territory included within the boundaries of the new elementary district or districts shall be served by the new combined high school - unit district only for high school purposes. All other territory

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within the combined high school - unit district shall be served by the combined high school - unit district for both high school and elementary purposes.

(c) A high school district and 2 or more elementary districts that collectively are substantially coterminous may seek to organize into an optional elementary unit district as provided in this Article, provided that territory comprising at least 51% of the equalized assessed valuation of the high school district is subject to a combined high school and elementary maximum annual authorized tax rate for educational purposes of 4.0% or less. The optional elementary unit district shall serve all residents of the district for high school purposes. The optional elementary unit district shall serve residents of only those elementary districts electing to join the optional elementary unit district, as determined in accordance with subsection (b) of Section 11E-65 of this Code [105 ILCS 5/11E-65], for elementary purposes. The corporate existence of any elementary district electing not to join the optional elementary unit district in accordance with subsection (b) of Section 11E-65 of this Code [105 ILCS 5/11E-65] shall not be affected by the formation of an optional elementary unit district, and an elementary district electing not to join the optional elementary unit district shall continue to serve residents of the district for elementary purposes.

(d)(1) For 5 years following the formation of an optional elementary unit district, any elementary district that elected not to join an optional elementary unit district for elementary purposes may elect to dissolve and combine with the optional elementary unit district by filing a petition that requests the submission of the proposition at a regularly scheduled election for the purpose of voting for or against joining the optional elementary unit district and that complies with the other provisions of this Article.

(2) After an election in which an elementary district votes to join an optional elementary unit district in accordance with paragraph (1) of this subsection (d), but prior to the dissolution of the elementary district, the elementary district must first issue funding bonds pursuant to Sections 19-8 and 19-9 of this Code [105 ILCS 5/19-8 and 105 ILCS 5/19-9] to liquidate any operational deficit or debt incurred or accumulated since the date of the election in which the proposition to form the optional elementary unit district passed. The elementary district shall not be required to comply with the backdoor referenda provisions of Section 19-9 of this Code [105 ILCS 5/19-9] as a condition of issuing the funding bonds. If applicable, the tax levy to pay the debt service on the funding bonds shall not be included in the district's aggregate extension base under Section 18-210 of the Property Tax Code [35 ILCS 200/18-210]. Taxes levied to repay principal and interest on any long term debt incurred or accumulated between the date of the election in which the proposition to form the optional elementary unit district passed and the date of the elementary district's dissolution and joining the optional elementary unit district in accordance with paragraph (1) of this subsection (d) shall be levied and extended only against the territory of the elementary district as it existed prior to dissolution.

(3) If all eligible elementary districts elect to join an optional elementary unit district in accordance with this subsection (d), the optional elementary unit district shall thereafter be deemed a unit district for all purposes of this Code.

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(Source: P.A. 94-1019, § 10.)

§ 105 ILCS 5/11E-35. Petition filing

Sec. 11E-35. Petition filing. (a) A petition shall be filed with the regional superintendent of schools of the educational service region in which the territory described in the petition or that part of the territory with the greater percentage of equalized assessed valuation is situated. The petition must do the following:

(1) be signed by at least 50 legal resident voters or 10% of the legal resident voters, whichever is less, residing within each affected district; or

(2) be approved by the school board in each affected district.

(b) The petition shall contain all of the following:

(1) A request to submit the proposition at a regular scheduled election for the purpose of voting:

(A) for or against a high school - unit conversion;

(B) for or against a unit to dual conversion;

(C) for or against the establishment of a combined elementary district;

(D) for or against the establishment of a combined high school district;

(E) for or against the establishment of a combined unit district;

(F) for or against the establishment of a unit district from dual district territory exclusively;

(G) for or against the establishment of a unit district from both dual district and unit district territory;

(H) for or against the establishment of a combined high school - unit district from a combination of one or more high school districts and one or more unit districts;

(I) for or against the establishment of a combined high school - unit district and one or more new elementary districts through a multi-unit conversion;

(J) for or against the establishment of an optional elementary unit district from a combination of a substantially coterminous dual district; or

(K) for or against dissolving and becoming part of an optional elementary unit district.

(2) A description of the territory comprising the districts proposed to be dissolved and those to be created, which, for an entire district, may be a general reference to all of the territory included within that district.

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(3) A specification of the maximum tax rates for various purposes the proposed district or districts shall be authorized to levy for various purposes and, if applicable, the specifications related to the Property Tax Extension Limitation Law [35 ILCS 200/18-185 et seq.], in accordance with Section 11E-80 of this Code [105 ILCS 5/11E-80].

(4) A description of how supplementary State deficit difference payments made under subsection (c) of Section 11E-135 of this Code [105 ILCS 5/11E-135] will be allocated among the new districts proposed to be formed.

(5) Where applicable, a division of assets and liabilities to be allocated to the proposed new or annexing school district or districts in the manner provided in Section 11E-105 of this Code [105 ILCS 5/11E-105].

(6) If desired, a request that at that same election as the reorganization proposition a school board or boards be elected on a separate ballot or ballots to serve as the school board or boards of the proposed new district or districts. Any election of board members at the same election at which the proposition to create the district or districts to be served by the board or boards is submitted to the voters shall proceed under the supervision of the regional superintendent of schools as provided in Section 11E-55 of this Code [105 ILCS 5/11E-55].

(7) If desired, a request that the referendum at which the proposition is submitted for the purpose of voting for or against the establishment of a unit district (other than a partial elementary unit district) include as part of the proposition the election of board members by school board district rather than at large. Any petition requesting the election of board members by district shall divide the proposed school district into 7 school board districts, each of which must be compact and contiguous and substantially equal in population to each other school board district. Any election of board members by school board district shall proceed under the supervision of the regional superintendent of schools as provided in Section 11E-55 of this Code [105 ILCS 5/11E-55].

(8) If desired, a request that the referendum at which the proposition is submitted for the purpose of voting for or against the establishment of a unit to dual conversion include as part of the proposition the election of board members for the new high school district (i) on an at large basis, (ii) with board members representing each of the forming elementary school districts, or (iii) a combination of both. The format for the election of the new high school board must be defined in the petition. When 4 or more unit school districts and a combination of board members representing each of the forming elementary school districts are involved and at large formats are used, one member must be elected from each of the forming elementary school districts. The remaining members may be elected on an at large basis, provided that none of the underlying elementary school districts have a majority on the resulting high school board. When 3 unit school districts and a combination of board members representing each of the forming elementary school districts are involved and at large formats are used, 2 members must be elected from each of the forming elementary school districts. The remaining member must be elected at large.

(9) If desired, a request that the referendum at which the proposition shall be submitted include a proposition on a separate ballot authorizing the issuance of bonds by the district

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or districts when organized in accordance with this Article. However, if the petition is submitted for the purpose of voting for or against the establishment of an optional elementary unit district, the petition may request only that the referendum at which the proposition is submitted include a proposition on a separate ballot authorizing the issuance of bonds for high school purposes (and not elementary purposes) by the district when organized in accordance with this Article. The principal amount of the bonds and the purposes of issuance, including a specification of elementary or high school purposes if the proposed issuance is to be made by a combined high school - unit district, shall be stated in the petition and in all notices and propositions submitted thereunder. Only residents in the territory of the district proposing the bond issuance may vote on the bond issuance.

(10) A designation of a committee of ten of the petitioners as attorney in fact for all petitioners, any 7 of whom may at any time, prior to the final decision of the regional superintendent of schools, amend the petition in all respects (except that, for a unit district formation, there may not be an increase or decrease of more than 25% of the territory to be included in the proposed district) and make binding stipulations on behalf of all petitioners as to any question with respect to the petition, including the power to stipulate to accountings or the waiver thereof between school districts.

(c) The regional superintendent of schools shall not accept for filing under the authority of this Section any petition that includes any territory already included as part of the territory described in another pending petition filed under the authority of this Section.

(d)(1) Those designated as the Committee of Ten shall serve in that capacity until such time as the regional superintendent of schools determines that, because of death, resignation, transfer of residency from the territory, failure to qualify, or any other reason, the office of a particular member of the Committee of Ten is vacant. Upon determination by the regional superintendent of schools that these vacancies exist, he or she shall declare the vacancies and shall notify the remaining members to appoint a petitioner or petitioners, as the case may be, to fill the vacancies in the Committee of Ten so designated. An appointment by the Committee of Ten to fill a vacancy shall be made by a simple majority vote of the designated remaining members.

(2) Failure of a person designated as a member of the Committee of Ten to sign the petition shall not disqualify that person as a member of the Committee of Ten, and that person may sign the petition at any time prior to final disposition of the petition and the conclusion of the proceedings to form a new school district or districts, including all litigation pertaining to the petition or proceedings.

(3) Except as stated in item (10) of subsection (b) of this Section, the Committee of Ten shall act by majority vote of the membership.

(4) The regional superintendent of schools may accept a stipulation made by the Committee of Ten instead of evidence or proof of the matter stipulated or may refuse to accept the stipulation, provided that the regional superintendent sets forth the basis for the refusal.

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(5) The Committee of Ten may voluntarily dismiss its petition at any time before a final decision is issued by the State Superintendent of Education.

(Source: P.A. 94-1019, § 10; 95-903, § 5.)

Effect of Amendments. The 2008 amendment by P.A. 95-903, effective August 15, 2008, added the last sentence in (b)(9); and substituted "before a final decision is issued by the State Superintendent" for "before the petition is approved by either the regional superintendent of schools or State Superintendent" in (d)(5).

CASE NOTES

Analysis

Consolidated School Districts
- Contents of Petition
- Jurisdiction
- Language of Petition
- State Superintendent
Election
- Petition Granted
- Power to Call
Objections
- Regional Superintendent
Standing
- Pending Petition

Consolidated School Districts

- Contents of Petition

Under former section 8-1 of this Code (see now this section), where a petition showed upon its face compliance with the statutory requirement that it be signed by twenty percent, or 200, whichever was the fewer of the voters, and the superintendent could readily ascertain the fact of compliance with the statute by inspecting the petition and counting the signatures, the presence of the specified number of signatures on the petition satisfied the statutory requirements in this regard, and an allegation in the petition of the number signing was not essential. (Case decided under former 105 ILS 5/11A-3) People v. Birdsong, 398 Ill. 455, 76 N.E.2d 185 (1947).

- Jurisdiction

Under a similar prior provision, whether a school board had jurisdiction to hear and decide a petition to organize a new school district depended upon whether the requirements of the statute had been complied with, and not upon the board's decision on that question; failure to comply with any of the essential requirements of the statute in order to give the board jurisdiction would

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subject the board's decision to reversal upon appeal, if it was found by the county superintendent, upon investigation, that the board did not have jurisdiction. (Case decided under former 105 ILS 5/11A-3) Logue v. Batterton, 247 Ill. 605, 93 N.E. 354 (1910).

- Language of Petition

Under former section 8-1 of this Code (see now this section), the language "we, the undersigned voters and residents of the contiguous territory hereinafter described" in the petition carried the same connotation as if it had read "we, the undersigned voters residing in the contiguous territory hereinafter described." (Case decided under former 105 ILS 5/11A-3) People v. Birdsong, 398 Ill. 455, 76 N.E.2d 185 (1947).

- State Superintendent

By agreement, the State Board of Education has delegated to the State Superintendent of Education the requisite power and duty to approve or disapprove the organization of a community unit school district pursuant to the legislative provisions as contained in former subdivision (e)(1) of section 11-6 of this Code (see now this section). (Case decided under former 105 ILS 5/11A-3) Thompson v. Cronin, 48 Ill. App. 3d 752, 6 Ill. Dec. 646, 363 N.E.2d 175 (3 Dist. 1977).

Election

- Petition Granted

An order of the superintendent of educational service region granting a petition requesting an election to organize a community unit school district under former Ill. Rev. Stat., ch. 122, para. 11-6 (see now this section) was not contrary to or against the manifest weight of the evidence. (Case decided under former 105 ILS 5/11A-3) Barnett v. Brown, 3 Ill. App. 3d 715, 279 N.E.2d 61 (5 Dist. 1971).

- Power to Call

Under former Ill. Rev. Stat., ch. 122, para. 11-6 (see now this section), where a petition to organize a community unit school district was denied by the State Superintendent of Education, this Code provided that no election should be held. It was clear that in such a situation the regional superintendent not only did not have a duty but in fact lacked the authority to call an election, for nowhere else in this Code impliedly or otherwise was the power given or the duty imposed upon a Regional Superintendent to conduct an election on such a petition, and thus, the petition of the plaintiffs for a writ of mandamus was properly dismissed. (Case decided under former 105 ILS 5/11A-3) Thompson v. Cronin, 48 Ill. App. 3d 752, 6 Ill. Dec. 646, 363 N.E.2d 175 (3 Dist. 1977).

Objections

- Regional Superintendent

The regional superintendent is the proper party to rule on objections to a petition for a school consolidation election. (Case decided under former 105 ILS 5/11A-3) Adsit v. Sanders, 157 Ill. App. 3d 416, 109 Ill. Dec. 679, 510 N.E.2d 547 (4 Dist. 1987).

Standing

- Pending Petition

A school board acquired no standing in pending petition proceedings to change school boundaries by filing its own petition subsequent to an initially proposed and pending petition filed

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by two other school boards. (Case decided under former 105 ILCS 5/11B-3) Board of Educ. v. Sanders, 161 Ill. App. 3d 723, 113 Ill. Dec. 471, 515 N.E.2d 280 (1 Dist. 1987).

Where the petition provided the equalized assessed valuation for consolidation for the property involved, in addition to the tax rate percentages for the proposed district, the requirements of this section were met. (Case decided under former 105 ILCS 5/11B-3) Bromberek Sch. Dist. v. Sanders, 174 Ill. App. 3d 301, 124 Ill. Dec. 228, 528 N.E.2d 1336 (1 Dist. 1988).

§ 105 ILCS 5/11E-40. Notice and petition amendments

Sec. 11E-40. Notice and petition amendments. (a) Upon the filing of a petition with the regional superintendent of schools as provided in Section 11E-35 of this Code [105 ILCS 5/11E-35], the regional superintendent shall do all of the following:

(1) Cause a copy of the petition to be given to each school board of the affected districts and the regional superintendent of schools of any other educational service region in which territory described in the petition is situated.

(2) Cause a notice thereof to be published at least once each week for 3 successive weeks in at least one newspaper having general circulation within the area of all of the territory of the proposed district or districts. The expense of publishing the notice shall be borne by the petitioners and paid on behalf of the petitioners by the Committee of Ten.

(b) The notice shall state all of the following:

(1) When and to whom the petition was presented.

(2) The prayer of the petition.

(3) A description of the territory comprising the districts proposed to be dissolved and those to be created, which, for an entire district, may be a general reference to all of the territory included within that district.

(4) If applicable, the proposition to elect, by separate ballot, school board members at the same election, indicating whether the board members are to be elected at large or by school board district.

(5) If requested in the petition, the proposition to issue bonds, indicating the amount and purpose thereof.

(6) The day, time, and location on which the hearing on the action proposed in the petition shall be held.

(c) The requirements of subsection (g) of Section 28-2 of the Election Code [10 ILCS 5/28-2] do not apply to any petition filed under this Article. Notwithstanding any provision to the contrary contained in the Election Code, the regional superintendent of schools shall make all determinations regarding the validity of the petition, including without limitation signatures on the petition, subject to State Superintendent and

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administrative review in accordance with Section 11E-50 of this Code [105 ILCS 5/11E-50].

(d) Prior to the hearing described in Section 11E-45 of this Code [105 ILCS 5/11E-45], the regional superintendent of schools shall inform the Committee of Ten as to whether the petition, as amended or filed, is proper and in compliance with all applicable petition requirements set forth in the Election Code. If the regional superintendent determines that the petition is not in proper order or not in compliance with any applicable petition requirements set forth in the Election Code, the regional superintendent must identify the specific alleged defects in the petition and include specific recommendations to cure the alleged defects. The Committee of Ten may amend the petition to cure the alleged defects at any time prior to the receipt of the regional superintendent's written order made in accordance with subsection (a) of Section 11E-50 of this Code or may elect not to amend the petition, in which case the Committee of Ten may appeal a denial by the regional superintendent following the hearing in accordance with Section 11E-50 of this Code.

(Source: P.A. 94-1019, § 10; 95-903, § 5.)

Effect of Amendments. The 2008 amendment by P.A. 95-903, effective August 15, 2008, inserted "time, and location" and made a related change in (b)(6).

§ 105 ILCS 5/11E-45. Hearing

Sec. 11E-45. Hearing. (a) No more than 15 days after the last date on which the required notice under Section 11E-40 of this Code [105 ILCS 5/11E-40] is published, the regional superintendent of schools with whom the petition is required to be filed shall hold a hearing on the petition. Prior to the hearing, the Committee of Ten shall submit to the regional superintendent maps showing the districts involved and any other information deemed pertinent by the Committee of Ten to the proposed action. The regional superintendent of schools may adjourn the hearing from time to time or may continue the matter for want of sufficient notice or other good cause.

(b) At the hearing, the regional superintendent of schools shall allow public testimony on the action proposed in the petition. The Committee of Ten shall present, or arrange for the presentation of all of the following:

(1) Evidence as to the school needs and conditions in the territory described in the petition and the area adjacent thereto.

(2) Evidence with respect to the ability of the proposed district or districts to meet standards of recognition as prescribed by the State Board of Education.

(3) A consideration of the division of funds and assets that will occur if the petition is approved.

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(4) A description of the maximum tax rates the proposed district or districts is authorized to levy for various purposes and, if applicable, the specifications related to the Property Tax Extension Limitation Law [35 ILCS 200/18-185 et seq.], in accordance with Section 11E-80 of this Code [105 ILCS 5/11E-80].

(c) Any regional superintendent of schools entitled under the provisions of this Article to be given a copy of the petition and any resident or representative of a school district in which any territory described in the petition is situated may appear in person or by an attorney at law to provide oral or written testimony or both in relation to the action proposed in the petition.

(d) The regional superintendent of schools shall arrange for a written transcript of the hearing. The expense of the written transcript shall be borne by the petitioners and paid on behalf of the petitioners by the Committee of Ten.

(Source: P.A. 94-1019, § 10; 95-903, § 5.)

Effect of Amendments. The 2008 amendment by P.A. 95-903, effective August 15, 2008, substituted "Committee of Ten" for "regional superintendent" in the introductory paragraph of (b).

CASE NOTES

Analysis

Candidacy of Superintendent
Factors
Hearing
Intervention
- Proper Stage

Candidacy of Superintendent

The fact that the regional superintendent was a candidate for reelection in itself was not a sufficient ground for finding error. (Case decided under former 105 ILCS 5/11B-3) Bromberek Sch. Dist. v. Sanders, 174 Ill. App. 3d 301, 124 Ill. Dec. 228, 528 N.E.2d 1336 (1 Dist. 1988).

Where the evidence failed to indicate that a proposed consolidation of two elementary school districts would result in children attending schools outside their natural communities, the administrative decision granting the petition to consolidate was affirmed. Bromberek Sch. Dist. v. Sanders, 174 Ill. App. 3d 301, 124 Ill. Dec. 228, 528 N.E.2d 1336 (1 Dist. 1988).

Evidence was sufficient to support consolidation of two school districts where it was established that improved educational facility utilization, enhancement of junior high curriculum, utilization of school nurse and psychologist services, and enhancement of the music and band programs

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would occur. (Case decided under former 105 ILCS 5/11B-3) Bromberek Sch. Dist. v. Sanders, 174 Ill. App. 3d 301, 124 Ill. Dec. 228, 528 N.E.2d 1336 (1 Dist. 1988).

Factors

In determining whether to grant or deny a petition, the regional superintendent should consider the following factors: (1) whether the proposed district will have sufficient size (pupil enrollment) and financial resources (assessed valuation); (2) whether the proposed school district is in the best interests of schools of the area and the educational welfare of the pupils therein; and (3) whether the territory for the proposed school district is compact and contiguous. (Case decided under former 105 ILCS 5/11B-3) Bromberek Sch. Dist. v. Sanders, 174 Ill. App. 3d 301, 124 Ill. Dec. 228, 528 N.E.2d 1336 (1 Dist. 1988).

Hearing

Where the plaintiff failed to assert specifically in what manner a meeting for a hearing on school district consolidation was repugnant to orderly administration, the public interest, or the interests of the parties, failed to assert the violation within the period provided for in the statute, and failed on appeal to indicate with any specificity the detrimental effects of conducting the first day of hearing on a legal holiday, the meeting was not void. (Case decided under former 105 ILCS 5/11B-3) Bromberek Sch. Dist. v. Sanders, 174 Ill. App. 3d 301, 124 Ill. Dec. 228, 528 N.E.2d 1336 (1 Dist. 1988).

Intervention

- Proper Stage

The state superintendent is not authorized to hear evidence not previously presented to the regional superintendent; intervention is appropriate at the regional superintendent hearing stage, where an intervenor can present evidence in supplementation of the record to be reviewed by the state superintendent. (Case decided under former 105 ILCS 5/11B-3) Board of Educ. v. Sanders, 161 Ill. App. 3d 723, 113 Ill. Dec. 471, 515 N.E.2d 280 (1 Dist. 1987).

§ 105 ILCS 5/11E-50. Approval or denial of the petition; administrative review

Sec. 11E-50. Approval or denial of the petition; administrative review. (a) Within 14 days after the conclusion of the hearing under Section 11E-45 of this Code [105 ILCS 5/11E-45], the regional superintendent of schools shall take into consideration the school needs and conditions of the affected districts and in the area adjacent thereto, the division of funds and assets that will result from the action described in the petition, the best interests of the schools of the area, and the best interests and the educational welfare of the pupils residing therein and, through a written order, either approve or deny the petition. If the regional superintendent fails to act upon a petition within 14 days after the conclusion of the hearing, the regional superintendent shall be deemed to have denied the petition.

(b) Upon approving or denying the petition, the regional superintendent of schools shall submit the petition and all evidence to the State Superintendent of Education. The State Superintendent shall review the petition, the record of the hearing, and the written order

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of the regional superintendent, if any. Within 21 days after the receipt of the regional superintendent's decision, the State Superintendent shall take into consideration the school needs and conditions of the affected districts and in the area adjacent thereto, the division of funds and assets that will result from the action described in the petition, the best interests of the schools of the area, and the best interests and the educational welfare of the pupils residing therein and, through a written order, either approve or deny the petition. If the State Superintendent denies the petition, the State Superintendent shall set forth in writing the specific basis for the denial. The decision of the State Superintendent shall be deemed an administrative decision as defined in Section 3-101 of the Code of Civil Procedure [735 ILCS 5/3-101]. The State Superintendent shall provide a copy of the decision by certified mail, return receipt requested, to the Committee of Ten, any person appearing in support or opposition of the petition at the hearing, each school board of a district in which territory described in the petition is situated, the regional superintendent with whom the petition was filed, and the regional superintendent of schools of any other educational service region in which territory described in the petition is situated.

(c) Any resident of any territory described in the petition who appears in support of or opposition to the petition at the hearing or any petitioner or school board of any district in which territory described in the petition is situated may, within 35 days after a copy of the decision sought to be reviewed was served by certified mail, return receipt requested, upon the party affected thereby or upon the attorney of record for the party, apply for a review of an administrative decision of the State Superintendent of Education in accordance with the Administrative Review Law and any rules adopted pursuant to the Administrative Review Law. The commencement of any action for review shall operate as a supersedeas, and no further proceedings shall be had until final disposition of the review. The circuit court of the county in which the petition is filed with the regional superintendent of schools shall have sole jurisdiction to entertain a complaint for the review.

(Source: P.A. 94-1019, § 10; 95-903, § 5.)

Effect of Amendments. The 2008 amendment by P.A. 95-903, effective August 15, 2008, made a typographical correction in (c).

CASE NOTES

Analysis

Community Unit School District
- Appeal Decision
- Creation
- Right of Review

Relation to Reorganization Act

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Community Unit School District

- Appeal Decision

The decision of the regional superintendent of public instruction either denying or approving a petition to realign a school district is a final decision from which there is no review or appeal. (Case decided under former 105 ILCS 5/11A-4) Board of Educ. v. Gates, 22 Ill. App. 3d 16, 316 N.E.2d 525 (2 Dist. 1974).

- Creation

The approval of a petition pursuant to this Act does not create a unit school district; further proceedings or steps must be taken, and until such steps have been completed, the proceedings could reasonably be said to lack sufficient finality to make an appeal appropriate. The appeal might become unnecessary depending upon the election results, and other issues might arise from the conduct of proceedings which take place after the appeal is prosecuted. (Case decided under former 105 ILCS 5/11A-4) Board of Educ. v. Gates, 22 Ill. App. 3d 16, 316 N.E.2d 525 (2 Dist. 1974).

- Right of Review

The right to administrative review was not specifically conferred on plaintiffs boards of education, but only on those seeking to review a denial of a petition to realign school districts. (Case decided under former 105 ILCS 5/11A-4) Board of Educ. v. Gates, 22 Ill. App. 3d 16, 316 N.E.2d 525 (2 Dist. 1974).

Relation to Reorganization Act

This section sets forth procedures for reorganization in addition to or alternatively to those set forth in the limited provisions of the Reorganization Act (105 ILCS 220/1 et seq.). (Case decided under former 105 ILCS 5/11B-1) Bromberek Sch. Dist. v. Sanders, 174 Ill. App. 3d 301, 124 Ill. Dec. 228, 528 N.E.2d 1336 (1 Dist. 1988).

The Reorganization Act (105 ILCS 220/1 et seq.) does not repeal this section expressly or by implication; there is no irreconcilable repugnancy between the statutes, and both statutes can stand. (Case decided under former 105 ILCS 5/11B-1) Bromberek Sch. Dist. v. Sanders, 174 Ill. App. 3d 301, 124 Ill. Dec. 228, 528 N.E.2d 1336 (1 Dist. 1988).

Successive Petitions

Under the common law principle of first in time as first in right, no proceedings can be commenced on any Article 11B consolidation petition which is filed subsequent to a pending, yet undefeated, Article 11B petition; therefore, a second petition once filed is to be held in abeyance by the regional superintendent pending the outcome of the approval process as to the prior petition. (Case decided under former 105 ILCS 5/11B-1) Kerwin v. Sanders, 174 Ill. App. 3d 872, 124 Ill. Dec. 236, 528 N.E.2d 1344 (2 Dist. 1988).

Where no objection was made to a petition for detachment and annexation filed pursuant to former Ill. Rev. Stat., ch. 122, para. 4B-4 (see now this section), and no evidence was offered that the petition was not signed by two-thirds of the legal voters, appellant's contention that the petition was not signed by two-thirds of the legal voters could not stand, since review of administrative decisions shall be upon the record and no new or additional evidence could be

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heard by the court. (Case decided under form 105 ILCS 5/11B-3] Board of Educ. v. County Bd. of Sch. Trustees, 32 Ill. App. 2d 1, 176 N.E.2d 633 (2 Dist. 1961).

§ 105 ILCS 5/11E-55. Holding of elections

Sec. 11E-55. Holding of elections. (a) Elections provided by this Article shall be conducted in accordance with the general election law. The regional superintendent of schools shall perform the election duties assigned by law to the secretary of a school board for the election and shall certify the officers and candidates therefore pursuant to the general election law.

(b) Nomination papers filed under this Article are not valid unless the candidate named therein files with the regional superintendent of schools a receipt from the county clerk showing that the candidate has filed a statement of economic interests as required by the Illinois Governmental Ethics Act [5 ILCS 420/1-101 et seq.]. This receipt shall be so filed either previously during the calendar year in which his or her nomination papers were filed or within the period for the filing of nomination papers in accordance with the general election law.

(c)(1) If the petition requests the election of school board members of the school district proposed to be created at the same election at which the proposition to establish that district is to be submitted to voters or if the regional superintendent of schools finds it to be in the best interest of the districts involved to elect school board members of the school district proposed to be created at a consolidated election or general primary election, then that fact shall be included in the notice of referendum.

(2) If the members of the school board of the school district proposed to be created are not to be elected at the same election at which the proposition to establish that district is to be submitted to the voters, then the regional superintendent of schools shall order an election to be held on the next regularly scheduled election date for the purpose of electing a school board for that district.

(3) In either event, the school board elected for a new school district or districts created under this Article shall consist of 7 members who shall have the terms and the powers and duties of school boards as provided by statute.

(d) All notices regarding propositions for reorganization or creation of new school districts under this Article shall be given in accordance with the general election law in substantially the following form:

(1) Notice in high school - unit conversion or unit to dual conversion:

NOTICE OF REFERENDUM TO DISSOLVE

CERTAIN SCHOOL DISTRICTS AND

ESTABLISH CERTAIN NEW SCHOOL DISTRICTS

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NOTICE is hereby given that on (insert date), a referendum will be held in part(s) of .... county (counties) for the purpose of voting for or against the proposition to dissolve (here identify the school districts to be dissolved by name and number) and to establish new school districts for the following described territory: A new (here specify elementary, high school, or unit) district shall be formed from (here describe the territory, which, for territory currently included in an entire school district, may be a general reference to all of the territory included within that particular school district). (Here repeat the territory information for each new school district.)

The election is called and will be held pursuant to an order of the Regional Superintendent dated on (insert date), which order states that if a majority of the voters in each of the affected districts voting on the proposition at the referendum vote in favor thereof, the tax rates for various purposes of the new districts shall be as follows: For the new (here specify elementary, high school, or unit) district formed from the territory of (here describe territory, which, for territory currently included in an entire school district, may be a general reference to all of the territory included within that particular district), the tax rates for various purposes shall be (here specify the maximum tax rates for various purposes the proposed school district is authorized to levy and, if applicable, the specifications related to the Property Tax Extension Limitation Law, in accordance with Section 11E-80 of this Code [105 ILCS 5/11E-80]). (Here repeat the tax rate information for each new school district.)

Dated (insert date).

Regional Superintendent of Schools ....

(2) Notice for combined school district formation:

NOTICE OF REFERENDUM

TO ESTABLISH COMBINED SCHOOL DISTRICT

NOTICE is hereby given that on (insert date), a referendum will be held in part(s) of .... county (counties) for the purpose of voting for or against the proposition to establish a combined (here insert elementary, high school, or unit) school district for the following described territory: (here describe the territory, which, for territory currently included in an entire school district, may be a general reference to all of the territory included within that particular school district). The election is called and will be held pursuant to an order of the Regional Superintendent dated on (insert date), which order states that if a majority of the voters in each of the affected school districts voting on the proposition at the referendum vote in favor thereof, the tax rates for various purposes of the proposed combined school district shall be (here specify the maximum tax rates for various purposes the proposed combined school district is authorized to levy and, if applicable, the specifications related to the Property Tax Extension Limitation Law, in accordance with Section 11E-80 of this Code).

Dated (insert date).

Regional Superintendent of Schools ....

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(3) Notice for unit district formation (other than a partial elementary unit district):

NOTICE OF REFERENDUM TO ESTABLISH

A COMMUNITY UNIT DISTRICT

NOTICE is hereby given that on (insert date), a referendum will be held in part(s) of .... county (counties) for the purpose of voting for or against the proposition to establish a unit district for the following described territory: (here describe the territory, which, for territory currently included in an entire school district, may be a general reference to all of the territory included within that particular school district). The election is called and will be held pursuant to an order of the Regional Superintendent dated on (insert date), which order states that if a majority of the voters in each of the affected school districts voting on the proposition at the referendum vote in favor thereof, the tax rates for various purposes for the proposed unit district shall be (here specify the maximum tax rates for various purposes the proposed unit district shall be authorized to levy and, if applicable, the specifications related to the Property Tax Extension Limitation Law, in accordance with Section 11E-80 of this Code).

Dated (insert date).

Regional Superintendent of Schools ....

(4) Notice for combined high school - unit district formation:

NOTICE OF REFERENDUM

TO ESTABLISH COMBINED HIGH SCHOOL - UNIT DISTRICT

NOTICE is hereby given that on (insert date), a referendum will be held in part(s) of .... county (counties) for the purpose of voting for or against the proposition to establish a combined high school - unit district for the following described territory: (here describe the territory, which, for territory currently included in an entire school district, may be a general reference to all of the territory included within that particular school district). The following described territory shall be included in the combined high school - unit district for high school purposes only: (here describe the territory that will be included only for high school purposes, which, for territory currently included in an entire school district, may be a general reference to all of the territory included within that particular school district). The election is called and will be held pursuant to an order of the Regional Superintendent dated on (insert date), which order states that if a majority of the voters in each of the affected school districts voting on the proposition at the referendum vote in favor thereof, the tax rates for various purposes for the proposed combined high school - unit district shall be (here specify the maximum tax rates for various purposes the proposed combined high school - unit district shall be authorized to levy and, if applicable, the specifications related to the Property Tax Extension Limitation Law, in accordance with Sections 11E-80 and 11E-90 of this Code [105 ILCS 5/11E-80 and 105 ILCS 5/11E-90]).

Dated (insert date).

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Regional Superintendent of Schools ....

(5) Notice for multi-unit conversion:

NOTICE OF REFERENDUM TO DISSOLVE CERTAIN

UNIT SCHOOL DISTRICTS AND ESTABLISH CERTAIN

NEW SCHOOL DISTRICTS

NOTICE is hereby given that on (insert date), a referendum will be held in part(s) of _____ county (counties) for the purpose of voting for or against the proposition to dissolve (here identify the districts to be dissolved by name and number) and to establish new school districts for the following described territory: A new (here specify elementary or combined high school - unit) district shall be formed from (here describe the territory, which, for territory currently included in an entire school district, may be a general reference to all of the territory included within that particular school district). (Here repeat the territory information for each new school district.) The following described territory shall be included in the proposed combined high school - unit district only for high school purposes: (here describe the territory that will only be included for high school purposes, which, for territory currently included in an entire school district, may be a general reference to all of the territory included within that particular school district).

The election is called and will be held pursuant to an order of the Regional Superintendent dated on (insert date), which order states that if a majority of the voters in each of the affected districts voting on the proposition at the referendum vote in favor thereof, the tax rates for various purposes of the new districts shall be as follows: For the new elementary district formed from the territory of (here identify the unit district by name and number) the tax rates for various purposes shall be (here specify the maximum tax rates for various purposes the proposed elementary district is authorized to levy and, if applicable, the specifications related to the Property Tax Extension Limitation Law, in accordance with Section 11E-80 of this Code [105 ILCS 5/11E-80]). (Here repeat the tax rate and Property Tax Extension Limitation Law information for each new elementary district.) For the new combined high school -unit district, the tax rates for various purposes shall be (here specify the maximum tax rates for various purposes the proposed combined high school - unit district shall be authorized to levy and, if applicable, the specifications related to the Property Tax Extension Limitation Law, in accordance with Sections 11E-80 and 11E-90 of this Code [105 ILCS 5/11E-80 and 105 ILCS 5/11E-90]).

Dated (insert date).

Regional Superintendent of Schools _____ _____ ..

(6) Notice for optional elementary unit district formation:

NOTICE OF REFERENDUM TO ESTABLISH

AN OPTIONAL ELEMENTARY UNIT DISTRICT

NOTICE is hereby given that on (insert date), a referendum will be held in part(s) of _____ county (counties) for the purpose of voting for or against the proposition to

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establish an optional elementary unit district for the following described territory: (here describe the elementary and high school district territory by name and number). If a majority of the voters in one or more of the affected elementary districts and in the affected high school district voting on the proposition at the referendum vote in favor thereof, all of the territory included within the affected high school district shall be included in the optional elementary unit district for high school purposes. However, only the territory of elementary districts in which a majority of the voters voting in the proposition at the referendum vote in favor thereof shall be included in the optional elementary unit district for elementary purposes. The election is called and will be held pursuant to an order of the Regional Superintendent dated on (insert date), which order states that if a majority of the voters in one or more of the affected elementary districts and in the affected high school district voting on the proposition at the referendum vote in favor thereof, the tax rates for various purposes for the proposed optional elementary unit district shall be (here list the maximum tax rates for various purposes the proposed optional elementary unit district is authorized to levy and, if applicable, the specifications related to the Property Tax Extension Limitation Law, in accordance with Sections 11E-80 and 11E-95 of this Code [105 ILCS 5/11E-80 and 105 ILCS 5/11E-95]).

Dated (insert date).

Regional Superintendent of Schools _____ _____ ..

(7) Notice for an elementary district to opt into a partial elementary unit district:

NOTICE OF REFERENDUM TO JOIN

AN OPTIONAL ELEMENTARY UNIT DISTRICT

NOTICE is hereby given that on (insert date), a referendum will be held in part(s) of _____ county (counties) for the purpose of voting for or against the proposition to dissolve an elementary district and join an optional elementary unit district for kindergarten through 12 grade-level purposes for all of the territory included within (here identify the elementary district by name and number). The election is called and will be held pursuant to an order of the Regional Superintendent dated on (insert date), which order states that if a majority of the voters in the elementary school district voting on the proposition at the referendum vote in favor thereof, the tax rates for various purposes for the optional elementary unit district shall be (here list the maximum tax rates for various purposes the optional elementary unit district is authorized to levy and, if applicable, the specifications related to the Property Tax Extension Limitation Law, in accordance with Sections 11E-80 and 11E-95 of this Code [105 ILCS 5/11E-80 and 105 ILCS 5/11E-95]) and the elementary district, prior to dissolution, shall issue funding bonds pursuant to Sections 19-8 and 19-9 of the School Code [105 ILCS 5/19-8 and 105 ILCS 5/19-9] to liquidate any operational deficit or debt incurred or accumulated since the date of the election in which the proposition to form the optional elementary unit district passed.

Dated (insert date).

Regional Superintendent of Schools ....

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(Source: P.A. 94-1019, § 10.)

CASE NOTES

Analysis

Community Unit School District
- Challenging Election
- Defective Notice
- Election
- Voter Eligibility
Partial Annexation

Community Unit School District

- Challenging Election

Plaintiffs contesting an election organizing a community unit school district under former Ill. Rev. Stat., ch. 122, para. 11-6 were precluded by res judicata from asserting issues relating to proceedings prior to calling the election, where such issues were previously decided on administrative review. (Case decided under former 105 ILCS 5/11A-5) Easdale v. Sparta Community Sch. Dist., 29 Ill. 2d 554, 194 N.E.2d 306 (1963).

- Defective Notice

Where there was a material defect in the notice required by former Ill. Rev. Stat., ch. 122, para. 35 (see now this section), an election to create a community unit school district held pursuant to such notice was void. (Case decided under former 105 ILCS 5/11A-5) People ex rel. Bulpitt v. Buesinger, 324 Ill. 534, 155 N.E. 473 (1927).

- Election

An election to establish a community unit school district under former Ill. Rev. Stat., ch. 122, para. 11-6 had to be held at the time and in the place provided by law in order for it to be valid. (Case decided under former 105 ILCS 5/11A-5) Gann v. Harrisburg Community Unit Sch., 73 Ill. App. 2d 103, 218 N.E.2d 833 (5 Dist. 1966).

- Voter Eligibility

Under former School Code, the qualifications of the voters were determined as of the date on which the election was held rather than the day the district was organized. (Case decided under former 105 ILCS 5/11A-5) People v. Birdsong, 398 Ill. 455, 76 N.E.2d 185 (1947).

Partial Annexation

Plaintiffs' contention that former Ill. Rev. Stat., ch. 122, para. 11-3 (see now this section) authorized the annexation of part, but not all, of the territory of a community unit district was not persuasive. (Case decided under former 105 ILCS 5/11A-5) People ex rel. Bodecker v.

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Community Unit Sch. Dist., 409 Ill. 526, 100 N.E.2d 573 (1951).

§ 105 ILCS 5/11E-60. Ballots

Sec. 11E-60. Ballots. (a) Separate ballots shall be used for the election in each affected district. If the petition requests the submission of a proposition for the issuance of bonds, then that question shall be submitted to the voters at the referendum on a separate ballot.

(b) Ballots for all reorganization propositions submitted under the provisions of this Article must be in substantially the following form:

(1) Ballot for high school - unit conversion or unit to dual conversion:

OFFICIAL BALLOT

Shall (here identify the districts to be dissolved by name and number) be dissolved and new school districts be established as follows: a new (here specify elementary, high school, or unit) district formed from all of the territory included within (here identify the existing school district by name and number), with the authority to levy taxes for various purposes as follows: (here specify the maximum tax rates for various purposes the new school district is authorized to levy and, if applicable, the specifications related to the Property Tax Extension Limitation Law [35 ILCS 200/18-185 et seq.], in accordance with Section 11E-80 of this Code [105 ILCS 5/11E-80]), each upon all of the taxable property of the school district at the value thereof, as equalized or assessed by the Department of Revenue, and a new (here repeat the information for each new school district)?

The election authority must record the votes "Yes" or "No".

(2) Ballot for combined school district formation:

OFFICIAL BALLOT

Shall a combined (here insert elementary, high, or unit) school district, with the authority to levy taxes at the rate of (here specify the maximum tax rates for various purposes the new unit district is authorized to levy and, if applicable, the specifications related to the Property Tax Extension Limitation Law, in accordance with Section 11E-80 of this Code), each upon all of the taxable property of the district at the value thereof, as equalized or assessed by the Department of Revenue, be established?

The election authority must record the votes "Yes" or "No".

(3) Ballot for unit district formation (other than a partial elementary unit district formation):

OFFICIAL BALLOT

Shall a unit district, with the authority to levy taxes at the rate of (here specify the maximum tax rates for various purposes the new unit district is authorized to levy and, if

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applicable, the specifications related to the Property Tax Extension Limitation Law, in accordance with Section 11E-80 of this Code), each upon all of the taxable property of the district at the value thereof, as equalized or assessed by the Department of Revenue, be established?

The election authority must record the votes "Yes" or "No".

(4) Ballot for a combined high school - unit district formation:

OFFICIAL BALLOT

Shall a combined high school - unit district formed from all of the territory included within (here identify existing school districts by name and number), serving the territory included within (here identify existing school district by name and number) only for high school purposes, with the authority to levy taxes for various purposes as follows: (here specify the maximum tax rates for various purposes the new combined high school - unit district is authorized to levy and, if applicable, the specifications related to the Property Tax Extension Limitation Law, in accordance with Sections 11E-80 and 11E-90 of this Code [105 ILCS 5/11E-80 and 105 ILCS 5/11E-90]), each upon all of the taxable property of the district at the value thereof, as equalized or assessed by the Department of Revenue, be established?

The election authority must record the votes "Yes" or "No".

(5) Ballot for an optional elementary unit district formation:

OFFICIAL BALLOT

Shall an optional elementary unit district, with the authority to levy taxes at the rate of (here specify the maximum tax rates for various purposes the new optional elementary unit district is authorized to levy and, if applicable, the specifications related to the Property Tax Extension Limitation Law, in accordance with Sections 11E-80 and 11E-95 of this Code [105 ILCS 5/11E-80 and 105 ILCS 5/11E-95]), each upon all of the taxable property of the district at the value thereof, as equalized or assessed by the Department of Revenue, be established?

The election authority must record the votes "Yes" or "No".

(6) Ballot for multi-unit conversion:

OFFICIAL BALLOT

Shall (here identify the districts to be dissolved by name and number) be dissolved and new school districts established as follows: a new elementary district formed from all of the territory included within (here identify the existing school district by name and number), with the authority to levy taxes for various purposes as follows: (here specify the maximum tax rates for various purposes the new school district is authorized to levy and, if applicable, the specifications related to the Property Tax Extension Limitation Law, in accordance with Section 11E-80 of this Code), each upon all of the taxable property of the school district at the value thereof, as equalized or assessed by the Department of Revenue, (here repeat the information for each new elementary school

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district), and a new combined high school - unit district formed from all of the territory included within (here identify the existing school district by name and number), with the authority to levy taxes for various purposes as follows: (here specify the maximum tax rates for various purposes the new combined high school - unit district is authorized to levy and, if applicable, the specifications related to the Property Tax Extension Limitation Law, in accordance with Sections 11E-80 and 11E-90 of this Code), each upon all of the taxable property of the school district at the value thereof, as equalized or assessed by the Department of Revenue?

The election authority must record the votes "Yes" or "No".

(7) Ballot for an elementary school district to dissolve and join an optional elementary unit district:

OFFICIAL BALLOT

Shall (here identify the elementary district by name and number) be dissolved and join (here identify the optional elementary unit district by name and number), with the authority to levy taxes at the rate of (here specify the maximum tax rates for various purposes the optional elementary unit district is authorized to levy and, if applicable, the specifications related to the Property Tax Extension Limitation Law, in accordance with Sections 11E-80 and 11E-95 of this Code), each upon all of the taxable property of the district at the value thereof, as equalized or assessed by the Department of Revenue and shall (here identify the elementary district by name and number), prior to dissolution, issue funding bonds pursuant to Sections 19-8 and 19-9 of the School Code [105 ILCS 5/19-8 and 105 ILCS 5/19-9] to liquidate any operational deficit or debt incurred or accumulated since the date of the election in which the proposition to form (here identify the optional elementary unit district by name and number) passed?

The election authority must record the votes "Yes" or "No".

(Source: P.A. 94-1019, § 10; 95-903, § 5.)

Effect of Amendments. The 2008 amendment by P.A. 95-903, effective August 15, 2008, substituted "Sections 11E-80 and 11E-90" for "Sections 11E-80 and 11E-95" in ballot proposition (b)(4).

CASE NOTES

Community Unit School District

- Form of Ballot

Under former Ill. Rev. Stat., ch. 122, para. 8-2 (see now this section), ballots were not required to bear the name of the district or the designation of the polling place for which they were printed.

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(Case decided under former 105 ILCS 5/11A-6) People v. Birdsong, 398 Ill. 455, 76 N.E.2d 185 (1947).

Under former Ill. Rev. Stat., ch. 122, para. 8-2 (see now this section), a ballot in an election to form a community consolidated school district was not illegal because it lacked information as to the proposed territory or the name of the district. (Case decided under former 105 ILCS 5/11A-6) People v. Birdsong, 398 Ill. 455, 76 N.E.2d 185 (1947).

§ 105 ILCS 5/11E-65. Passage requirements

Sec. 11E-65. Passage requirements. (a) Except as otherwise provided in subsections (b) and (c) of this Section, if a majority of the electors voting at the election in each affected district vote in favor of the proposition submitted to them, then the proposition shall be deemed to have passed.

(b) In the case of an optional elementary unit district to be created as provided in subsection (c) of Section 11E-30 of this Code [105 ILCS 5/11E-30], if a majority of the electors voting in the high school district and a majority of the voters voting in at least one affected elementary district vote in favor of the proposition submitted to them, then the proposition shall be deemed to have passed and an optional elementary unit district shall be created for all of the territory included in the petition for high school purposes, and for the territory included in the affected elementary districts voting in favor of the proposition for elementary purposes.

(c) In the case of an elementary district electing to join an optional elementary unit district in accordance with subsection (d) of Section 11E-30 of this Code, a majority of the electors voting in that elementary district only must vote in favor of the proposition at a regularly scheduled election.

(d)(1) If a majority of the voters in at least 2 unit districts have voted in favor of a proposition to create a new unit district, but the proposition was not approved under the standards set forth in subsection (a) of this Section, then the members of the Committee of Ten shall submit an amended petition for consolidation to the school boards of those districts, as long as the territory involved is compact and contiguous. The petition submitted to the school boards shall be identical in form and substance to the petition previously approved by the regional superintendent of schools, with the sole exception that the territory comprising the proposed district shall be amended to include the compact and contiguous territory of those unit districts in which a majority of the voters voted in favor of the proposal.

(2) Each school board to which the petition is submitted shall meet and vote to approve or not approve the amended petition no more than 30 days after it has been filed with the school board. The regional superintendent of schools shall make available to each school board with which a petition has been filed all transcripts and records of the previous petition hearing. The school boards shall, by appropriate resolution, approve or disapprove the amended petition. No school board may approve an amended petition unless it first finds that the territory described in the petition is compact and contiguous.

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(3) If a majority of the members of each school board to whom a petition is submitted votes in favor of the amended petition, then the approved petition shall be transmitted by the secretary of each school board to the State Superintendent of Education, who shall, within 21 days after receipt, approve or deny the amended petition based on the criteria stated in subsection (b) of Section 11E-50 of this Code [105 ILCS 5/11E-50]. If approved by the State Superintendent of Education, the petition shall be placed on the ballot at the next regularly scheduled election.

(Source: P.A. 94-1019, § 10; 95-903, § 5.)

Effect of Amendments. The 2008 amendment by P.A. 95-903, effective August 15, 2008, substituted "within 21 days after receipt" for "within 30 days after receipt" in (d)(3).

CASE NOTES

Community Unit School District

- Election Fraud

Fact that seven persons voted at a polling place other than their own, affecting the vote of rural areas where there was a difference of only two votes, and that one of the election judges in a rural area was electioneering in the polling place for the proposition being voted upon constituted an insufficient basis for declaring the entire election void because of alleged irregularities and frauds under former Ill. Rev. Stat., ch. 122, para. 11-7. (Case decided under former 105 ILCS 5/11A-8) Thornton v. Gardner, 30 Ill. 2d 234, 195 N.E.2d 723 (1964).

§ 105 ILCS 5/11E-70. Effective date of change

Sec. 11E-70. Effective date of change. (a) If a petition is filed under the authority of this Article, the change is granted and approved at election, and no appeal is taken, the change shall become effective after the time for appeal has run for the purpose of all elections; however, the change shall not affect the administration of the schools until July 1 following the date that the school board election is held for the new district or districts and the school boards of the districts as they existed prior to the change shall exercise the same power and authority over the territory until that date.

(b) If any school district is dissolved in accordance with this Article, upon the close of the then current school year, the terms of office of the school board of the dissolved district shall terminate.

(c) New districts shall be permitted to organize and elect officers within the time prescribed by the general election law. Additionally, between the date of the organization and the election of officers and the date on which the new district takes effect for all

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purposes, the new district shall also be permitted, with the stipulation of the districts from which the new district is formed and the approval of the regional superintendent of schools, to take all action necessary or appropriate to do the following:

(1) Establish the tax levy for the new district, in lieu of the levies by the districts from which the new district is formed, within the time generally provided by law and in accordance with this Article. The funds produced by the levy shall be transferred to the new district as generally provided by law at such time as they are received by the county collector.

(2) Enter into agreements with depositories and direct the deposit and investment of any funds received from the county collector or any other source, all as generally provided by law.

(3) Conduct a search for the superintendent of the new district and enter into a contract with the person selected to serve as the superintendent of the new district in accordance with the provisions of this Code generally applicable to the employment of a superintendent.

(4) Conduct a search for other administrators and staff of the new district and enter into a contract with these persons in accordance with the provisions of this Code generally applicable to the employment of administrators and other staff.

(5) Engage the services of accountants, architects, attorneys, and other consultants, including but not limited to consultants to assist in the search for the superintendent.

(6) Plan for the transition from the administration of the schools by the districts from which the new district is formed.

(7) Bargain collectively, pursuant to the Illinois Educational Labor Relations Act, with the certified exclusive bargaining representative or certified exclusive bargaining representatives of the new district's employees.

(8) Expend the funds received from the levy and any funds received from the districts from which the new district is formed to meet payroll and other essential operating expenses or otherwise in the exercise of the foregoing powers until the new district takes effect for all purposes.

(9) Issue bonds authorized in the proposition to form the new district or bonds pursuant to and in accordance with all of the requirements of Section 17-2.11 of this Code [105 ILCS 5/17-2.11], levy taxes upon all of the taxable property within the new district to pay the principal of and interest on those bonds as provided by statute, expend the proceeds of the bonds and enter into any necessary contracts for the work financed therewith as authorized by statute, and avail itself of the provisions of other applicable law, including the Omnibus Bond Acts, in connection with the issuance of those bonds.

(d) After the granting of a petition has become final and approved at election, the date when the change becomes effective for purposes of administration and attendance may be accelerated or postponed by stipulation of the school board of each district affected and approval by the regional superintendent of schools with which the original petition is

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required to be filed.

(Source: P.A. 94-1019, § 10.)

CASE NOTES

- Legal Entity

Language of the Act assumes that a school district becomes a legal entity upon the vote of the inhabitants of such district in favor of the establishment of such district. (Case decided under former 105 ILCS 5/11A-10) People ex rel. Smail v. Board of Educ., 343 Ill. App. 362, 99 N.E.2d 385 (4 Dist. 1951).

Support Personnel

Although this section provides for the transfer of tenured teachers from a dissolved district to a new combination district, it is significant that the Code fails to provide similar protections for educational support personnel (or even nontenured teachers); strong intimation legislature did not intend to confer upon these persons a right to continued employment. (Case decided under former 105 ILCS 5/11B-9) Spear v. Board of Educ., 291 Ill. App. 3d 117, 225 Ill. Dec. 274, 683 N.E.2d 218 (2 Dist. 1997), appeal denied, 175 Ill. 2d 555, 228 Ill. Dec. 726, 689 N.E.2d 1147 (1997).

OPINIONS OF ATTORNEY GENERAL

- Presumed

eachers who are transferred from one board to another as the result of a reorganization (including consolidation or annexation) are to be considered, for purposes of Illinois law, as being continuously employed; therefore, teachers in a consolidated or annexed district should not be considered newly hired employees of the resulting entity, for purposes of section 3121 of the Internal Revenue Code, (26 U.S.C. § 3121), but rather, should be covered by the "continuing employment " exception to coverage. (Case decided under former 105 ILCS 5/11A-10), 1991 Op. Atty. Gen. (91-032).

- Presumed

Teachers who are transferred from one board to another as the result of a reorganization (including consolidation or annexation) are to be considered, for purposes of Illinois law, as being continuously employed; therefore, teachers in a consolidated or annexed district should not be considered newly hired employees of the resulting entity, for purposes of section 3121 of the Internal Revenue Code (26 U.S.C. § 3121), but rather, should be covered by the "continuing employment " exception to coverage. (Case decided under former 105 ILCS 5/11B-9), 1991 Op. Atty. Gen. (91-032).

§ 105 ILCS 5/11E-75. Map showing change

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Sec. 11E-75. Map showing change. Within 30 days after a new school district has been created or the boundaries of an existing district have been changed under the provisions of this Article, the regional superintendent of schools of any county involved shall make and file with the county clerk of his or her county a map of any districts changed by the action, whereupon the county clerk or county clerks, as the case may be, shall extend taxes against the territory in accordance therewith.

(Source: P.A. 94-1019, § 10.)

§ 105 ILCS 5/11E-80. Specification of taxing purposes and rates

Sec. 11E-80. Specification of taxing purposes and rates. Whenever taxing purposes and rates are required to be specified or described under this Article for petition, hearing, notice, or ballot requirements, the purposes and rates shall be specified or described in accordance with this Section and, where applicable, shall also include a specification of the aggregate extension base and debt service extension base in accordance with the Property Tax Extension Limitation Law.

(1) For the formation of a district not subject to the Property Tax Extension Limitation Law, other than a partial elementary unit district, all of the following must be done:

(A) List the maximum rate at which the district will be authorized to levy a tax for educational purposes, operations and maintenance purposes, and pupil transportation purposes (such as .... % for educational purposes, ... % for operations and maintenance purposes, and .... % for pupil transportation purposes), subject to the rate limitations specified in Sections 17-2 and 17-3 of this Code [105 ILCS 5/17-2 and 105 ILCS 5/17-3].

(B) If it is desired to secure authority to levy other taxes above the statutory permissive rate, then list the maximum rate at which the district will be authorized to levy a tax for each such purpose (such as .... % for special educational purposes, ... % for leasing educational facilities or computer technology purposes, ... % for capital improvement purposes, and .... % for fire prevention and safety purposes), subject to all applicable statutory rate limitations.

(2) For the formation of a district that is subject to the Property Tax Extension Limitation Law, other than a partial elementary unit district, all of the following must be done:

(A) List the purpose for each and every tax that the new district will be authorized to levy (such as educational purposes and operations and maintenance purposes).

(B) For each tax purpose listed, specify the maximum rate at which the district will be authorized to levy each tax (such as .... % for educational purposes and .... % for operations and maintenance purposes), subject to all applicable statutory rate limitations.

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(C) Specify the aggregate extension base the district will seek to establish in conformity with the provisions of Section 18-210 of the Property Tax Code 35 ILCS 200/18-210]. Notwithstanding any provision to the contrary contained in the Property Tax Extension Limitation Law, no notice and referendum requirements other than those set forth in this Article shall be required to establish an aggregate extension base for a new district formed in accordance with this Article.

(D) If desired, specify the debt service extension base the district will seek to establish in accordance with Section 18-212 of the Property Tax Code 35 ILCS 200/18-212]. Notwithstanding any provision to the contrary contained in the Property Tax Extension Limitation Law, no notice and referendum requirements other than those set forth in this Article shall be required to establish a debt service extension base for a new district formed in accordance with this Article.

(3) For the formation of a partial elementary unit district not subject to the Property Tax Extension Limitation Law, the purposes and tax rate information required by subsection (b) of Section 11E-90 or subsection (b) of Section 11E-95 of this Code [105 ILCS 5/11E-90 or 105 ILCS 5/11E-95], as applicable, must be specified.

(4) For the formation of a partial elementary unit district that is subject to the Property Tax Extension Limitation Law, all of the following must be done:

(A) List the purpose for each and every tax that the new district will be authorized to levy, including an indication of whether the tax is for grade K through 8 or grade 9 through 12 purposes, to the extent required by Section 11E-90 or 11E-95 of this Code [105 ILCS 5/11E-90 or 105 ILCS 5/11E-95].

(B) For each tax purpose listed, list the maximum rate at which the district will be authorized to levy each tax, subject to the rate limitations specified in subsection (b) of Section 11E-90 or subsection (b) of Section 11E-95 of this Code [105 ILCS 5/11E-90 or 105 ILCS 5/11E-95], as applicable, and elsewhere in statute.

(C) Specify the aggregate extension base the district will seek to establish in conformity with the provisions of Section 18-210 of the Property Tax Code 35 ILCS 200/18-210]. Notwithstanding any provision to the contrary contained in the Property Tax Extension Limitation Law, no notice and referendum requirements other than those set forth in this Article shall be required to establish an aggregate extension base for a new district formed in accordance with this Article.

(D) If desired, specify the debt service extension base the district will seek to establish in accordance with Section 18-212 of the Property Tax Code 35 ILCS 200/18-212]. Notwithstanding any provision to the contrary contained in the Property Tax Extension Limitation Law, no notice and referendum requirements other than those set forth in this Article shall be required to establish a debt service extension base for a new district formed in accordance with this Article.

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(Source: P.A. 94-1019, § 10.)

§ 105 ILCS 5/11E-85. Tax levy and borrowing authority, bonds, and working cash funds; districts other than partial elementary unit districts

Sec. 11E-85. Tax levy and borrowing authority, bonds, and working cash funds; districts other than partial elementary unit districts. The school board of any district involved in a school district conversion or the school board of any new district created under the provisions of this Article other than a partial elementary unit district may do any of the following:

(1) Levy for the purposes and at not exceeding the rates specified in the petition with respect to each district, which rates thereafter may be increased or decreased in accordance with Sections 17-2 through 17-7 of this Code [105 ILCS 5/17-2 through 105 ILCS 5/17-7], and further levy taxes for other purposes as generally permitted by law.

(2) Borrow money and issue bonds as authorized in Articles 10 and 19 of this Code and as otherwise permitted by law.

(3) Establish, maintain, or re-create a working cash fund as authorized by Article 20 of this Code.

(Source: P.A. 94-1019, § 10.)

CASE NOTES

Constitutionality

The timeliness of a case challenging the constitutionality of the tax rates of former Ill. Rev. Stat., ch. 122, para. 8-9 was debatable, where in 1957 the legislature combined sections of the School Code into one Act (see now this section) and omitted therefrom the prior repugnancy of the tax rates, rendering the constitutional question urged by plaintiffs moot. (Case decided under former 105 ILCS 5/11A-9) Leffler v. Browning, 14 Ill. 2d 225, 151 N.E.2d 342 (1958).

§ 105 ILCS 5/11E-90. Classification of property, taxes, bonds, and funds for combined high school - unit districts

Sec. 11E-90. Classification of property, taxes, bonds, and funds for combined high school - unit districts. (a) All real property included within the boundaries of a combined high school - unit district created in accordance with this Article shall be classified into

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either a high school only classification or elementary and high school classification as follows:

(1) Real property included within the high school only classification shall include all of the real property included within both the boundaries of the combined high school - unit district and the boundaries of a separate school district organized and established for purposes of providing instruction up to and including grade 8.

(2) Real property included within the elementary and high school classification shall include all of the real property of the combined high school - unit district not included in the high school only classification.

(b) The petition to establish a combined high school - unit district shall set forth the maximum annual authorized tax rates for the proposed district as follows:

(1) The petition to establish a combined high school - unit district must include a maximum annual authorized tax rate for both grade K through 8 educational purposes and grade 9 through 12 educational purposes. The rate for grade K through 8 educational purposes shall not exceed 3.5%. The rate for grade 9 through 12 educational purposes shall not exceed 3.5%. The combined rate for both grade K through 8 and grade 9 through 12 educational purposes shall not exceed 4.0%.

(2) The petition to establish a combined high school - unit district must include a maximum annual authorized tax rate for both grade K through 8 operations and maintenance purposes and grade 9 through 12 operations and maintenance purposes. The rate for grade K through 8 operations and maintenance purposes shall not exceed 0.55%. The rate for grade 9 through 12 operations and maintenance purposes shall not exceed 0.55%. The combined rate for both grade K through 8 and grade 9 through 12 operations and maintenance purposes shall not exceed 0.75%.

(3) The petition to establish a combined high school - unit district must include a maximum annual authorized tax rate for both grade K through 8 special education purposes and grade 9 through 12 special education purposes. The rate for grade K through 8 special education purposes shall not exceed 0.40%. The rate for grade 9 through 12 special education purposes shall not exceed 0.40%.

(4) The petition to establish a combined high school - unit district must include a maximum annual authorized tax rate for transportation purposes.

(5) If it is desired to secure authority to levy other taxes above the permissive rate applicable to unit districts as specified elsewhere in statute, the petition must include the maximum annual authorized tax rate at which the district will be authorized to levy a tax for each such purpose, not to exceed the maximum rate applicable to unit districts as specified elsewhere in statute.

(c) The school board of any new combined high school - unit district created under the provisions of this Article may levy a tax annually upon all of the taxable property of the district at the value as equalized or assessed by the Department of Revenue, as follows:

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(1) For all real property within the district, rates not to exceed the maximum annual authorized grade 9 through 12 educational purposes rate established in accordance with subdivision (1) of subsection (b) of this Section, the maximum annual authorized grade 9 through 12 operation and maintenance purposes rate established in accordance with subdivision (2) of subsection (b) of this Section, the maximum annual authorized grade 9 through 12 special education purposes rate established in accordance with subdivision (3) of subsection (b) of this Section, the maximum annual authorized transportation purposes rate established in accordance with subdivision (4) of subsection (b) of this Section, and for all other purposes, the statutory permissive rate for unit districts or the maximum annual authorized rate for that purpose established in accordance with subdivision (5) of subsection (b) of this Section.

(2) For all real property in the district included within the elementary and high school classification, in addition to the rates authorized by subdivision (1) of this subsection (c), rates not to exceed the maximum annual authorized grade K through 8 educational purposes rate established in accordance with subdivision (1) of subsection (b) of this Section, the maximum annual authorized grade K through 8 operation and maintenance purposes rate established in accordance with subdivision (2) of subsection (b) of this Section, and the maximum annual authorized grade K through 8 special education purposes rate established in accordance with subdivision (3) of subsection (b) of this Section.

(d) The school board may, subsequent to the formation of the district and in accordance with Sections 17-2 through 17-7 of this Code, seek to increase the maximum annual authorized tax rates for any statutorily authorized purpose up to the maximum rate set forth in subsection (b) of this Section or otherwise applicable to unit districts as specified elsewhere in statute, whichever is less, subject to the following approval requirements:

(1) The school board may increase the following rates only after submitting a proper resolution to the voters of the district at any regular scheduled election and obtaining approval by both a majority of voters living in the portion of the territory included within the high school only classification voting on the proposition and a majority of voters living in the portion of the territory included within the elementary and high school classification voting on the proposition:

(A) The maximum annual authorized grade 9 through 12 educational purposes rate established in accordance with subdivision (1) of subsection (b) of this Section, as may be increased thereafter in accordance with this subsection (d).

(B) The maximum annual authorized grade 9 through 12 operation and maintenance purposes rate established in accordance with subdivision (2) of subsection (b) of this Section, as may be increased thereafter in accordance with this subsection (d).

(C) The maximum annual authorized grade 9 through 12 special education purposes rate established in accordance with subdivision (3) of subsection (b) of this Section, as may be increased thereafter in accordance with this Section.

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(D) The maximum annual authorized transportation purposes rate established in accordance with subdivision (4) of subsection (b) of this Section, as may be increased thereafter in accordance with this subsection (d).

(E) For all other statutorily authorized purposes, any rate exceeding the statutory permissive rate for unit districts established in accordance with subdivision (5) of subsection (b) of this Section, as may be increased thereafter in accordance with this Section.

(2) The school board may increase the following rates only after submitting a proper resolution to the voters of the district living in the portion of the territory included within the elementary and high school classification at any regular scheduled election and obtaining approval by a majority of voters living in the portion of the territory included within the elementary and high school classification voting on the proposition:

(A) The maximum annual authorized grade K through 8 educational purposes rate established in accordance with subdivision (1) of subsection (b) of this Section, as may be increased thereafter in accordance with this subsection (d).

(B) The maximum annual authorized grade K through 8 operation and maintenance purposes rate established in accordance with subdivision (2) of subsection (b) of this Section, as may be increased thereafter in accordance with this subsection (d).

(C) The maximum annual authorized grade K through 8 special education purposes rate established in accordance with subdivision (3) of subsection (b) of this Section, as may be increased thereafter in accordance with this Section.

(e) The school board may, after submitting a proper resolution to the voters of the district at any regular scheduled election, seek to do either of the following:

(1) Increase or decrease the maximum authorized annual tax rate for grade K through 8 educational purposes with an equal corresponding increase or decrease of the maximum authorized annual tax rate for grade 9 through 12 educational purposes, such that there is no change in the total combined maximum authorized annual tax rate for both purposes.

(2) Increase or decrease the maximum authorized annual tax rate for grade K through 8 operations and maintenance purposes with an equal corresponding increase or decrease of the maximum authorized annual tax rate for grade 9 through 12 operations and maintenance purposes, such that there is no change in the total combined maximum authorized annual tax rate for both purposes.

Any modification to maximum authorized annual tax rates pursuant to this subsection (e) must be approved by both a majority of voters living in the portion of the territory included within the high school only classification voting on the proposition and a majority of voters living in the portion of the territory included within the elementary and high school classification voting on the proposition. No maximum tax rate secured hereunder may exceed the maximum tax rate for a particular purpose specified elsewhere in statute.

(f) The school board may seek to do either of the following:

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(1) Increase the maximum authorized annual tax rate for either grade K through 8 educational purposes or grade K through 8 operations and maintenance purposes with an equal corresponding decrease being effected to the maximum authorized tax rate for the other fund.

(2) Increase the maximum authorized annual tax rate for either grade 9 through 12 educational purposes or grade 9 through 12 operations and maintenance purposes with an equal corresponding decrease being effected to the maximum authorized tax rate for the other fund.

A proper resolution to increase and concurrently decrease the maximum authorized annual tax rates for grade K through 8 purposes in accordance with this subsection (f) shall be submitted to the voters of the district residing in the elementary and high school classification at any regular scheduled election and must be approved by a majority of voters living in the portion of the territory included within the elementary and high school classification voting on the proposition. A proper resolution to increase and concurrently decrease the maximum authorized annual tax rates for grade 9 through 12 purposes in accordance with this subsection (f) shall be submitted to all of the voters of the district at any regular scheduled election and must be approved by a majority of voters voting on the proposition. No maximum tax rate secured hereunder may exceed the maximum tax rate for a particular purpose specified elsewhere in statute. The terms and provisions of this subsection (f) shall apply instead of the terms and provisions of Section 17-6.1 of this Code to any concurrent equal increase and decrease in the maximum authorized rates for educational and operations and maintenance purposes by a combined high school - unit district.

(g) The school board may borrow money and issue bonds for elementary or high school purposes (but not K through 12 purposes) as authorized by Articles 10 and 19 and Section 17-2.11 of this Code and as otherwise permitted by law. All notices, resolutions, and ballots related to borrowing money and issuing bonds in accordance with this subsection (g) shall indicate whether the proposed action is for elementary or high school purposes. Taxes to pay the principal of, interest on, and premium, if any, on bonds issued for high school purposes shall be extended against the entire district, and taxes to pay the principal of, interest on, and premium, if any, on bonds issued for elementary purposes shall be extended only against property within the elementary and high school classification. The proposition to issue bonds for high school purposes must be submitted to and approved by a majority of voters of the district voting on the proposition. The proposition to issue bonds for elementary purposes must only be submitted to and approved by a majority of voters living in the portion of the territory proposed to be included or included within the elementary and high school classification voting on the proposition. Notwithstanding the terms and provisions of Section 19-4 of this Code, the board of a combined high school -unit district may not seek to designate any bonds issued for high school purposes as bonds issued for elementary purposes or designate any bonds issued for elementary purposes as bonds issued for high school purposes. Any petition filed in accordance with Section 19-9 of this Code requesting that the proposition to issue bonds for the payment of orders or claims for elementary purposes be submitted to the voters must be signed by 10% or more of the registered voters of the elementary and high school classification. If required pursuant to Section 19-9 of this Code, the proposition to

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issue bonds for the payment of orders or claims for elementary purposes must only be submitted to and approved by a majority of voters living in the portion of the territory included within the elementary and high school classification voting on the proposition. Taxes to pay the principal of, interest on, and premium, if any, on any refunding bonds issued in accordance with Article 19 of this Code to refund bonds, coupons, or other evidences of indebtedness for bonds issued by the combined high school - unit district for high school purposes or issued by a district that dissolved to form the combined high school - unit district shall be extended against the entire district. Taxes to pay the principal of, interest on, and premium, if any, on any refunding bonds issued in accordance with Article 19 of this Code to refund bonds, coupons, or other evidences of indebtedness for bonds issued by the combined high school - unit district for elementary purposes shall only be extended against the property within the elementary and high school classification.

(h) The school board may establish, maintain, or re-create a working cash fund for elementary or high school purposes (but not K through 12 purposes) as authorized by Article 20 of this Code. All notices, resolutions, and ballots related to the establishment of a working cash fund shall indicate whether the working cash fund shall be for elementary or high school purposes. For purposes of Section 20-2 of this Code, taxes to pay the principal of, interest on, and premium, if any, on bonds issued to create a working cash fund for high school purposes shall be extended against the entire district, and taxes to pay the principal of, interest on, and premium, if any, on bonds issued to create a working cash fund for elementary purposes shall be extended only against property within the elementary and high school classification. Any petition filed in accordance with Section 20-7 of this Code requesting that the proposition to issue bonds to establish a working cash fund for elementary purposes be submitted to the voters must be signed by 10% or more of the registered voters of the elementary and high school classification. If required pursuant to Section 20-7 of this Code, the proposition to issue bonds for a working cash fund for elementary purposes must only be submitted to and approved by a majority of voters living in the portion of the territory included within the elementary and high school classification voting on the proposition. Upon the abolishment of the working cash fund for elementary purposes in accordance with Section 20-8 of this Code, the balance shall be transferred to the fund established for the receipt of proceeds from levies specified for grade K through 8 educational purposes. Upon the abolishment of the working cash fund for high school purposes in accordance with Section 20-8 of this Code, the balance shall be transferred to the fund established for the receipt of proceeds from levies specified for grade 9 through 12 educational purposes.

(i) The school board shall establish separate funds for the receipt of tax proceeds from levies specified for grade K through 8 purposes and grade 9 through 12 purposes in accordance with subdivisions (1) through (3) of subsection (b) of this Section and the receipt of tax and other proceeds from bond issuances for grade K through 8 purposes and grade 9 through 12 purposes in accordance with subsection (g) of this Section. Proceeds received from any levy or bond issuance specified for grade K through 8 purposes shall not be used to pay for any staff, equipment, materials, facilities, buildings, land, or services solely related to instruction in grades 9 through 12. Proceeds received from any levy or bond issuance specified for grade 9 through 12 purposes shall not be

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used to pay for any staff, equipment, materials, facilities, buildings, land, or services solely related to instruction in grades K through 8. Expenses related to staff, equipment, materials, facilities, buildings, land, or services related to instruction in both grades K through 8 and grades 9 through 12 may be paid from proceeds received from a levy or bond issuance specified for either grade K through 8 purposes or grade 9 through 12 purposes.

(j) The school board of a combined high school - unit district may abate or abolish any fund in accordance with this Code, provided that no funds may be transferred from an abated or abolished fund specified for grade K through 8 purposes to a fund specified for grade 9 through 12 purposes, and no funds may be transferred from an abated or abolished fund specified for grade 9 through 12 purposes to a fund specified for grade K through 8 purposes.

(k) To the extent the specific requirements for borrowing money, levying taxes, issuing bonds, establishing, maintaining, or re-creating a working cash fund, and transferring funds by a combined high school - unit district set forth in this Section conflicts with any general requirements for school districts set forth in Article 10, 17, 19, or 20 of this Code, the requirements set forth in this Section shall control over any such general requirements.

(Source: P.A. 94-1019, § 10.)

§ 105 ILCS 5/11E-95. Classification of property, taxes, bonds, and funds for optional elementary unit districts

Sec. 11E-95. Classification of property, taxes, bonds, and funds for optional elementary unit districts. (a) All real property included within the boundaries of an optional elementary unit district created in accordance with this Article shall be classified into either a high school only classification or an elementary and high school classification as follows:

(1) Real property included within the high school only classification shall include all of the real property included within both the boundaries of the optional elementary unit district and the boundaries of a separate school district organized and established for purposes of providing instruction up to and including grade 8 that did not elect to join the optional elementary unit district in accordance with this Article.

(2) Real property included within the elementary and high school classification shall include all real property of the optional elementary unit district not included in the high school only classification.

(b) The petition to establish an optional elementary unit district shall set forth the maximum annual authorized tax rates for the proposed district as follows:

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(1) The petition must specify a maximum annual authorized tax rate for both grade K through 8 educational purposes and grade 9 through 12 educational purposes. The rate for grade K through 8 educational purposes shall not exceed 3.5%. The rate for grade 9 through 12 educational purposes shall not exceed 3.5%. The combined rate for both grade K through 8 and grade 9 through 12 educational purposes shall not exceed 4.0%.

(2) The petition must specify a maximum annual authorized tax rate for both grade K through 8 operations and maintenance purposes and grade 9 through 12 operations and maintenance purposes. The rate for grade K through 8 operations and maintenance purposes shall not exceed 0.55%. The rate for grade 9 through 12 operations and maintenance purposes shall not exceed 0.55%. The combined rate for both grade K through 8 and grade 9 through 12 operations and maintenance purposes shall not exceed 0.75%.

(3) The petition must specify a maximum annual authorized tax rate for both grade K through 8 special education purposes and grade 9 through 12 special education purposes. The rate for grade K through 8 special education purposes shall not exceed 0.40%. The rate for grade 9 through 12 special education purposes shall not exceed 0.40%.

(4) The petition must specify a maximum annual authorized tax rate for transportation purposes.

(5) If it is desired to secure authority to levy other taxes above the permissive rate applicable to unit districts as specified elsewhere in statute, the petition must specify the maximum annual authorized tax rate at which the district will be authorized to levy a tax for each such purpose, not to exceed the maximum annual authorized tax rate applicable to unit districts as specified elsewhere in statute.

(6) The aggregate of all rates specified in accordance with this subsection (b) shall not exceed the highest dual district rate, excluding rates for bond and interest levies, applicable to any territory within the high school district included in the petition in the year immediately preceding the creation of the new district.

(c) The school board of any new optional elementary unit district created under the provisions of this Article may levy a tax annually upon all of the taxable property of the district at the value as equalized or assessed by the Department of Revenue as follows:

(1) For all real property within the district, rates not to exceed the maximum annual authorized grade 9 through 12 educational purposes rate established in accordance with subdivision (1) of subsection (b) of this Section, the maximum annual authorized grade 9 through 12 operation and maintenance purposes rate established in accordance with subdivision (2) of subsection (b) of this Section, the maximum annual authorized grade 9 through 12 special education purposes rate established in accordance with subdivision (3) of subsection (b) of this Section, the maximum annual authorized transportation purposes rate established in accordance with subdivision (4) of subsection (b) of this Section, and, for all other purposes, the statutory permissive rate for unit districts or the maximum annual authorized rate for that purpose established in accordance with subdivision (5) of subsection (b) of this Section.

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(2) For all real property in the district included within the elementary and high school classification, in addition to the rates authorized by subdivision (1) of this subsection (c), rates not to exceed the maximum annual authorized grade K through 8 educational purposes rate established in accordance with subdivision (1) of subsection (b) of this Section, the maximum annual authorized grade K through 8 operation and maintenance purposes rate established in accordance with subdivision (2) of subsection (b) of this Section, and the maximum annual authorized grade K through 8 special education purposes rate established in accordance with subdivision (3) of subsection (b) of this Section.

(d) The school board may, subsequent to the formation of the district and in accordance with Sections 17-2 through 17-7 of this Code [105 ILCS 5/17-2 through 105 ILCS 5/17-7], seek to increase the maximum annual authorized tax rates for any statutorily authorized purpose up to the maximum rate set forth in subsection (b) of this Section or otherwise applicable to unit school districts as specified elsewhere in statute, whichever is less, subject to the following approval requirements:

(1) The school board may increase the following rates only after submitting a proper resolution to the voters of the district at any regular scheduled election and obtaining approval by both a majority of voters living in the portion of the territory included within the high school only classification voting on the proposition and a majority of voters living in the portion of the territory included within the elementary and high school classification voting on the proposition:

(A) The maximum annual authorized grade 9 through 12 educational purposes rate established in accordance with subdivision (1) of subsection (b) of this Section, as may be increased thereafter in accordance with this subsection (d).

(B) The maximum annual authorized grade 9 through 12 operation and maintenance purposes rate established in accordance with subdivision (2) of subsection (b) of this Section, as may be increased thereafter in accordance with this subsection (d).

(C) The maximum annual authorized grade 9 through 12 special education purposes rate established in accordance with subdivision (3) of subsection (b) of this Section, as may be increased thereafter in accordance with this subsection (d).

(D) The maximum annual authorized transportation purposes rate established in accordance with subdivision (4) of subsection (b) of this Section, as may be increased thereafter in accordance with this subsection (d).

(E) For all other statutorily authorized purposes, any rate exceeding the statutory permissive rate for unit districts established in accordance with subdivision (5) of subsection (b) of this Section, as may be increased thereafter in accordance with this subsection (d).

(2) The school board may increase the following rates only after submitting a proper resolution to the voters of the district living in the portion of the territory included within the elementary and high school classification at any regular scheduled election and

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obtaining approval by a majority of voters living in the portion of the territory included within the elementary and high school classification voting on the proposition:

(A) The maximum annual authorized grade K through 8 educational purposes rate established in accordance with subdivision (1) of subsection (b) of this Section, as may be increased thereafter in accordance with this subsection (d).

(B) The maximum annual authorized grade K through 8 operation and maintenance purposes rate established in accordance with subdivision (2) of subsection (b) of this Section, as may be increased thereafter in accordance with this subsection (d).

(C) The maximum annual authorized grade K through 8 special education purposes rate established in accordance with subdivision (3) of subsection (b) of this Section, as may be increased thereafter in accordance with this subsection (d).

(e) The school board may, after submitting a proper resolution to the voters of the district at any regular scheduled election, seek to do either of the following:

(1) Increase or decrease the maximum authorized annual tax rate for grade K through 8 educational purposes with an equal corresponding increase or decrease of the maximum authorized annual tax rate for grade 9 through 12 educational purposes, such that there is no change in the total combined maximum authorized annual tax rate for both purposes.

(2) Increase or decrease the maximum authorized annual tax rate for grade K through 8 operations and maintenance purposes with an equal corresponding increase or decrease of the maximum authorized annual tax rate for grade 9 through 12 operations and maintenance purposes, such that there is no change in the total combined maximum authorized annual tax rate for both purposes.

Any modification to maximum authorized annual tax rates pursuant to this subsection (e) must be approved by both a majority of voters living in the portion of the territory included within the high school only classification voting on the proposition and a majority of voters living in the portion of the territory included within the elementary and high school classification voting on the proposition. No maximum tax rate secured hereunder may exceed the maximum tax rate for a particular purpose specified elsewhere in statute.

(f) The school board may seek to do either of the following:

(1) Increase the maximum authorized annual tax rate for either grade K through 8 educational purposes or grade K through 8 operations and maintenance purposes with an equal corresponding decrease being effected to the maximum authorized tax rate for the other fund.

(2) Increase the maximum authorized annual tax rate for either grade 9 through 12 educational purposes or grade 9 through 12 operations and maintenance purposes with an equal corresponding decrease being effected to the maximum authorized tax rate for the other fund.

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A proper resolution to increase and concurrently decrease the maximum authorized annual tax rates for grade K through 8 purposes in accordance with this subsection (f) shall be submitted to the voters of the district residing in the elementary and high school classification at any regular scheduled election and must be approved by a majority of voters living in the portion of the territory included within the elementary and high school classification voting on the proposition. A proper resolution to increase and concurrently decrease the maximum authorized annual tax rates for grade 9 through 12 purposes in accordance with this subsection (f) shall be submitted to all of the voters of the district at any regular scheduled election and must be approved by a majority of voters voting on the proposition. No maximum tax rate secured hereunder may exceed the maximum tax rate for a particular purpose specified elsewhere in statute. The terms and provisions of this subsection (f) shall apply instead of the terms and provisions of Section 17-6.1 of this Code to any concurrent equal increase and decrease in the maximum authorized rates for educational and operations and maintenance purposes by an optional elementary unit district.

(g) The school board may borrow money and issue bonds for elementary or high school purposes (but not grade K through 12 purposes) as authorized by Articles 10 and 19 and Section 17-2.11 of this Code and as otherwise permitted by law. All notices, resolutions, and ballots related to borrowing money and issuing bonds in accordance with this subsection (g) shall indicate whether the proposed action is for elementary or high school purposes. Taxes to pay the principal of, interest on, and premium, if any, on bonds issued for high school purposes shall be extended against the entire district, and taxes to pay the principal of, interest on, and premium, if any, on bonds issued for elementary purposes shall be extended only against property within the elementary and high school classification. The proposition to issue bonds for high school purposes must be submitted to and approved by a majority of voters of the district voting on the proposition. The proposition to issue bonds for elementary purposes must only be submitted to and approved by a majority of voters living in the portion of the territory included within the elementary and high school classification voting on the proposition. Notwithstanding the terms and provisions of Section 19-4 of this Code, the board of an optional elementary unit district may not seek to designate any bonds issued for high school purposes as bonds issued for elementary purposes or designate any bonds issued for elementary purposes as bonds issued for high school purposes. Any petition filed in accordance with Section 19-9 of this Code requesting that the proposition to issue bonds for the payment of orders or claims for elementary purposes be submitted to the voters must be signed by 10% or more of the registered voters of the elementary and high school classification. If required pursuant to Section 19-9 of this Code, the proposition to issue bonds for the payment of orders or claims for elementary purposes must only be submitted to and approved by a majority of voters living in the portion of the territory included within the elementary and high school classification voting on the proposition. Taxes to pay the principal of, interest on, and premium, if any, on any refunding bonds issued in accordance with Article 19 of this Code to refund bonds, coupons, or other evidences of indebtedness for bonds issued by the optional elementary unit district for high school purposes or issued by a district that dissolved to form the optional elementary unit district shall be extended against the entire district. Taxes to pay the principal of, interest on, and premium, if any, on any refunding bonds issued in accordance with Article 19 of this

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Code to refund bonds, coupons, or other evidences of indebtedness for bonds issued by the optional elementary unit district for elementary purposes shall only be extended against the property within the elementary and high school classification.

(h) The school board may establish, maintain, or re-create a working cash fund for elementary or high school purposes (but not grade K through 12 purposes) as authorized by Article 20 of this Code. All notices, resolutions, and ballots related to the establishment of a working cash fund shall indicate whether the working cash fund shall be for elementary or high school purposes. For purposes of Section 20-2 of this Code, taxes to pay the principal of, interest on, and premium, if any, on bonds issued to create a working cash fund for high school purposes shall be extended against the entire district, and taxes to pay the principal of, interest on, and premium, if any, on bonds issued to create a working cash fund for elementary purposes shall be extended only against property within the elementary and high school classification. Any petition filed in accordance with Section 20-7 of this Code requesting that the proposition to issue bonds to establish a working cash fund for elementary purposes be submitted to the voters must be signed by 10% or more of the registered voters of the elementary and high school classification. If required pursuant to Section 20-7 of this Code, the proposition to issue bonds for a working cash fund for elementary purposes must only be submitted to and approved by a majority of voters living in the portion of the territory included within the elementary and high school classification voting on the proposition. Upon the abolishment of the working cash fund for elementary purposes in accordance with Section 20-8 of this Code, the balance shall be transferred to the fund established for the receipt of proceeds from levies specified for grade K through 8 educational purposes. Upon the abolishment of the working cash fund for high school purposes in accordance with Section 20-8 of this Code, the balance shall be transferred to the fund established for the receipt of proceeds from levies specified for grade 9 through 12 educational purposes.

(i) The school board shall establish separate funds for the receipt of tax proceeds from levies specified for grade K through 8 purposes and grade 9 through 12 purposes in accordance with subdivisions (1) through (3) of subsection (b) of this Section and the receipt of tax and other proceeds from bond issuances for grade K through 8 purposes and grade 9 through 12 purposes in accordance with subsection (g) of this Section. Proceeds received from any levy or bond issuance specified for grade K through 8 purposes shall not be used to pay for any staff, equipment, materials, facilities, buildings, land, or services solely related to instruction in grades 9 through 12. Proceeds received from any levy or bond issuance specified for grade 9 through 12 purposes shall not be used to pay for any staff, equipment, materials, facilities, buildings, land, or services solely related to instruction in grades K through 8. Expenses related to staff, equipment, materials, facilities, buildings, land, or services related to instruction in both grades K through 8 and grades 9 through 12 may be paid from proceeds received from a levy or bond issuance specified for either grade K through 8 purposes or grade 9 through 12 purposes.

(j) The school board of an optional elementary unit district may abate or abolish any fund in accordance with this Code, provided that no funds may be transferred from an abated or abolished fund specified for grade K through 8 purposes to a fund specified for grade 9 through 12 purposes, and no funds may be transferred from an abated or abolished fund

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specified for grade 9 through 12 purposes to a fund specified for grade K through 8 purposes.

(k) To the extent that the specific requirements for borrowing money, levying taxes, issuing bonds, establishing, maintaining, or re-creating a working cash fund, and transferring funds by an optional elementary unit district set forth in this Section conflicts with any general requirements for school districts set forth in Article 10, 17, 19, or 20 of this Code, the requirements set forth in this Section shall control over any such general requirements.

(Source: P.A. 94-1019, § 10.)

§ 105 ILCS 5/11E-100. Timing of extension of tax levies

Sec. 11E-100. Timing of extension of tax levies. (a) If the election of the school board of the new district occurs at a regular election and the board of education makes its initial levy or levies in that same year, the county clerk shall extend the levy or levies, notwithstanding any other law that requires the adoption of a budget before the clerk may extend the levy. In addition, the districts from which the new district is formed, by joint agreement and with the approval of the regional superintendent of schools, shall be permitted to amend outstanding levies in the same calendar year in which the creation of the new district is approved at the rates specified in the petition.

(b) If the election of the board of education of the new district does not occur in the same calendar year that the proposition to create the new district is approved, the districts from which the new district or districts are formed, by joint agreement and with the approval of the regional superintendent of schools, shall be permitted to levy in the same calendar year in which the creation of the new district is approved at the rates specified in the petition. The county clerks shall extend any such levy notwithstanding any law that requires adoption of a budget before extension of the levy.

(Source: P.A. 94-1019, § 10.)

§ 105 ILCS 5/11E-105. Assets, liabilities and bonded indebtedness; tax rate

Sec. 11E-105. Assets, liabilities and bonded indebtedness; tax rate. (a) Subject to the terms and provisions of subsections (b) and (c) of this Section, whenever a new district is created under any of the provisions of this Article, the outstanding bonded indebtedness shall be treated as provided in this subsection (a) and in Section 19-29 of this Code [105 ILCS 5/19-29]. The tax rate for bonded indebtedness shall be determined in the manner

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provided in Section 19-7 of this Code [105 ILCS 5/19-7], and, notwithstanding the creation of any such district, the county clerk or clerks shall annually extend taxes, for each outstanding bond issue against all of the taxable property that was situated within the boundaries of the district, as those boundaries existed at the time of the issuance of the bond issue, regardless of whether the property is still contained in that same district at the time of the extension of the taxes by the county clerk or clerks.

(b) For a unit district formation, whenever a part of a district is included within the boundaries of a newly created unit district, the regional superintendent of schools shall cause an accounting to be had between the districts affected by the change in boundaries as provided for in Article 11C of this Code. Whenever the entire territory of 2 or more school districts is organized into a unit district pursuant to a petition filed under this Article, the petition may provide that the entire territory of the new unit district shall assume the bonded indebtedness of the previously existing school districts. In that case, the tax rate for bonded indebtedness shall be determined in the manner provided in Section 19-7 of this Code [105 ILCS 5/19-7], except that the county clerk shall annually extend taxes for each outstanding bond issue against all the taxable property situated in the new unit district as it exists after the organization.

(c)(1) For a high school-unit conversion, unit to dual conversion, or multi-unit conversion, upon the effective date of the change as provided in Section 11E-70 of this Code [105 ILCS 5/11E-70] and subject to the provisions of paragraph (2) of this subsection (c), each newly created elementary district shall receive all of the assets and assume all of the liabilities and obligations of the dissolved unit district forming the boundary of the newly created elementary district.

(2) Notwithstanding the provisions of paragraph (1) of this subsection (c), upon the stipulation of the school board of the school district serving a newly created elementary district for high school purposes and either (i) the school board of the unit district prior to the effective date of its dissolution or (ii) thereafter the school board of the newly created elementary district and with the approval in either case of the regional superintendent of schools of the educational service region in which the territory described in the petition filed under this Article or the greater percentage of equalized assessed valuation of the territory is situated, the assets, liabilities, and obligations of the dissolved unit district may be divided and assumed between and by the newly created elementary district and the school district serving the newly created elementary district for high school purposes, in accordance with the terms and provisions of the stipulation and approval. In this event, the provisions of Section 19-29 [105 ILCS 5/19-29] shall be applied to determine the debt incurring power of the newly created elementary district and of the school district serving the newly created elementary district for high school purposes.

(3) Without regard to whether the receipt of assets and the assumption of liabilities and obligations of the dissolved unit district is determined pursuant to paragraph (1) or (2) of this subsection (c), the tax rate for bonded indebtedness shall be determined in the manner provided in Section 19-7 [105 ILCS 5/19-7], and, notwithstanding the creation of this new elementary district, the county clerk or clerks shall annually extend taxes for each outstanding bond issue against all of the taxable property that was situated within the boundaries of the dissolved unit district as those boundaries existed at the time of the

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issuance of the bond issue, regardless of whether the property was still contained in that unit district at the time of its dissolution and regardless of whether the property is contained in the newly created elementary district at the time of the extension of the taxes by the county clerk or clerks.

(Source: P.A. 94-1019, § 10.)

CASE NOTES

Continued Liability

- Presumed

Municipalities may have their boundaries modified, their names changed, or one may be merged in another, or they may be divided and portions of their territories annexed, but it will be presumed that the legislature intended that the liabilities as well as the rights of property of a corporation shall accompany it into the jurisdiction of the territory which annexes or incorporates it. (Case decided under former 105 ILCS 5/7A-11) Chalstran v. Board of Educ., 244 Ill. 470, 91 N.E. 712 (1910).

§ 105 ILCS 5/11E-110. Teachers in contractual continued service; educational support personnel employees

Sec. 11E-110. Teachers in contractual continued service; educational support personnel employees. (a) When a school district conversion or multi-unit conversion becomes effective for purposes of administration and attendance, as determined pursuant to Section 11E-70 of this Code [105 ILCS 5/11E-70], the provisions of Section 24-12 of this Code [105 ILCS 5/24-12] relative to the contractual continued service status of teachers having contractual continued service whose positions are transferred from one school board to the control of a new or different school board shall apply, and the positions held by teachers, as that term is defined in Section 24-11 of this Code [105 ILCS 5/24-11], having contractual continued service with the unit district at the time of its dissolution shall be transferred on the following basis:

(1) positions of teachers in contractual continued service that, during the 5 school years immediately preceding the effective date of the change, as determined under Section 11E-70 of this Code, were full-time positions in which all of the time required of the position was spent in one or more of grades 9 through 12 shall be transferred to the control of the school board of the new high school district or combined high school - unit district, as the case may be;

(2) positions of teachers in contractual continued service that, during the 5 school years immediately preceding the effective date of the change, as determined under Section

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11E-70 of this Code, were full-time positions in which all of the time required of the position was spent in one or more of grades kindergarten through 8 shall be transferred to the control of the school board of the newly created successor elementary district; and

(3) positions of teachers in contractual continued service that were full-time positions not required to be transferred to the control of the school board of the new high school district or combined high school - unit district, as the case may be, or the school board of the newly created successor elementary district under the provisions of subdivision (1) or (2) of this subsection (a) shall be transferred to the control of whichever of the boards the teacher shall request.

With respect to each position to be transferred under the provisions of this subsection (a), the amount of time required of each position to be spent in one or more of grades kindergarten through 8 and 9 through 12 shall be determined with reference to the applicable records of the unit district being dissolved pursuant to stipulation of the school board of the unit district prior to the effective date of its dissolution or thereafter of the school board of the newly created districts and with the approval in either case of the regional superintendent of schools of the educational service region in which the territory described in the petition filed under this Article or the greater percentage of equalized assessed evaluation of the territory is situated; however, if no such stipulation can be agreed upon, the regional superintendent of schools, after hearing any additional relevant and material evidence that any school board desires to submit, shall make the determination.

(a-5) When a school district conversion or multi-unit conversion becomes effective for purposes of administration and attendance, as determined pursuant to Section 11E-70 of this Code, the provisions of subsection (b) of Section 10-23.5 of this Code [105 ILCS 5/10-23.5] relative to the transfer of educational support personnel employees shall apply, and the positions held by educational support personnel employees shall be transferred on the following basis:

(1) positions of educational support personnel employees that, during the 5 school years immediately preceding the effective date of the change, as determined under Section 11E-70 of this Code, were full-time positions in which all of the time required of the position was spent in one or more of grades 9 through 12 shall be transferred to the control of the school board of the new high school district or combined high school - unit district, as the case may be;

(2) positions of educational support personnel employees that, during the 5 school years immediately preceding the effective date of the change, as determined under Section 11E-70 of this Code, were full-time positions in which all of the time required of the position was spent in one or more of grades kindergarten through 8 shall be transferred to the control of the school board of the newly created successor elementary district; and

(3) positions of educational support personnel employees that were full-time positions not required to be transferred to the control of the school board of the new high school district or combined high school - unit district, as the case may be, or the school board of the newly created successor elementary district under subdivision (1) or (2) of this

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subsection (a-5) shall be transferred to the control of whichever of the boards the educational support personnel employee requests.

With respect to each position to be transferred under this subsection (a-5), the amount of time required of each position to be spent in one or more of grades kindergarten through 8 and 9 through 12 shall be determined with reference to the applicable records of the unit district being dissolved pursuant to stipulation of the school board of the unit district prior to the effective date of its dissolution or thereafter of the school board of the newly created districts and with the approval in either case of the regional superintendent of schools of the educational service region in which the territory described in the petition filed under this Article or the greater percentage of equalized assessed evaluation of the territory is situated; however, if no such stipulation can be agreed upon, the regional superintendent of schools, after hearing any additional relevant and material evidence that any school board desires to submit, shall make the determination.

(b) When the creation of a unit district or a combined school district becomes effective for purposes of administration and attendance, as determined pursuant to Section 11E-70 of this Code, the positions of teachers in contractual continued service in the districts involved in the creation of the new district are transferred to the newly created district pursuant to the provisions of Section 24-12 of this Code relative to teachers having contractual continued service status whose positions are transferred from one board to the control of a different board, and those provisions of Section 24-12 shall apply to these transferred teachers. The contractual continued service status of any teacher thereby transferred to the newly created district is not lost and the new school board is subject to this Code with respect to the transferred teacher in the same manner as if the teacher was that district's employee and had been its employee during the time the teacher was actually employed by the school board of the district from which the position was transferred.

(c) When the creation of a unit district or a combined school district becomes effective for purposes of administration and attendance, as determined pursuant to Section 11E-70 of this Code, the positions of educational support personnel employees in the districts involved in the creation of the new district shall be transferred to the newly created district pursuant to subsection (b) of Section 10-23.5 of this Code [105 ILCS 5/10-23.5]. The length of continuing service of any educational support personnel employee thereby transferred to the newly created district is not lost and the new school board is subject to this Code with respect to the transferred educational support personnel employee in the same manner as if the educational support personnel employee had been that district's employee during the time the educational support personnel employee was actually employed by the school board of the district from which the position was transferred.

(Source: P.A. 94-1019, § 10; 95-148, § 5; 95-331, § 540.)

Effective Date. Section 99 of P.A. 94-1019 makes this section effective July 1, 2006.

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Effect of Amendments. The 2007 amendment by P.A. 95-148, effective August 14, 2007, revised the section heading; deleted the former (a)(4) designation; and added subsections (a-5) and (c).

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, deleted the subsection (a)(4) designation.

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

§ 105 ILCS 5/11E-115. Limitations on contesting boundary change

Sec. 11E-115. Limitations on contesting boundary change. Neither the People of the State of Illinois, any person or corporation, private or public, nor any association of persons shall commence an action contesting either directly or indirectly the dissolution, division, annexation, or creation of any new school district under the provisions of this Article, unless the action is commenced within one year after the date of the election provided for in this Article if no proceedings to contest the election are duly instituted within the time permitted by law, or within one year after the final disposition of any proceedings that may be so instituted to contest the election; however, where a limitation of a shorter period is prescribed by statute, the shorter limitation shall apply, and the limitation set forth in this Section shall not apply to any order where the judge, body, or officer entering the order being challenged did not at the time of the entry of the order have jurisdiction of the subject matter.

(Source: P.A. 94-1019, § 10.)

CASE NOTES

Community Unit School District

- Boundary Change

The Act regards a school district as in existence and as a legal entity even before it is permitted to commence the actual operation of the school system and the consolidation of the various component districts or parts thereof, and as a practical matter, the legislature undoubtedly deemed it preferable, if changes in its boundaries were to be made, that they be fixed and determined before actual operations by the new unit district began. (Case decided under former 105 ILCS 5/11A-14) People ex rel. Smail v. Board of Educ., 343 Ill. App. 362, 99 N.E.2d 385 (4 Dist. 1951).

§ 105 ILCS 5/11E-120. Limitation on successive petitions

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Sec. 11E-120. Limitation on successive petitions. (a) No affected district shall be again involved in proceedings under this Article for at least 2 years after a final non-procedural determination of the first proceeding, unless during that 2 year period a petition filed is substantially different than any other previously filed petition during the previous 2 years or if an affected district is placed on academic watch status or the financial watch list by the State Board of Education or is certified as being in financial difficulty during that 2 year period.

(b) Nothing contained in this Section shall be deemed to limit or restrict the ability of an elementary district to join an optional elementary unit district in accordance with the terms and provisions of subsection (d) of Section 11E-30 of this Code [105 ILCS 5/11E-30].

(Source: P.A. 94-1019, § 10.)

§ 105 ILCS 5/11E-125. Districts not penalized for nonrecognition

Sec. 11E-125. Districts not penalized for nonrecognition. Any school district included in a petition for reorganization as authorized under this Article shall not suffer loss of State aid as a result of being placed on nonrecognition status if the district continues to operate and the petition is granted.

(Source: P.A. 94-1019, § 10.)

§ 105 ILCS 5/11E-130. Unit district formation and joint agreement vocational education program

Sec. 11E-130. Unit district formation and joint agreement vocational education program. (a) If a unit district is established under the provisions of this Article and more than 50% of the territory of the unit district is territory that immediately prior to its inclusion in the unit district was included in a high school district or districts that were signatories under the same joint agreement vocational education program, pursuant to the provisions of this Code, then the unit district shall upon its establishment be deemed to be a member and signatory to the joint agreement and shall also have the right to continue to extend taxes under any previous authority to levy a tax under Section 17-2.4 of this Code [105 ILCS 5/17-2.4].

(b) In those instances, however, when more than 50% of the territory of any unit district was not, immediately prior to its establishment, included within the territory of a high school district that was a signatory to the same joint agreement vocational education

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program, then the unit district shall not be deemed upon its establishment to be a signatory to the joint agreement nor shall the unit district be deemed to have the special tax levy rights under Section 17-2.4 of this Code [105 ILCS 5/17-2.4].

(c) Nothing in this Section shall be deemed to forbid the unit district from subsequently joining a joint agreement vocational education program and to thereafter levy a tax under Section 17-2.4 of this Code [105 ILCS 5/17-2.4] by following the provisions of Section 17-2.4 [105 ILCS 5/17-2.4]. In the event that any such unit district should subsequently join any such joint agreement vocational education program, it shall be entitled to a fair credit, as computed by the State Board of Education, for any capital contributions previously made to the joint agreement vocational education program from taxes levied against the assessed valuation of property situated in any part of the territory included within the unit district.

(Source: P.A. 94-1019, § 10.)

§ 105 ILCS 5/11E-135. Incentives

Sec. 11E-135. Incentives. For districts reorganizing under this Article and for a district or districts that annex all of the territory of one or more entire other school districts in accordance with Article 7 of this Code [105 ILCS 5/7-1 et seq.], the following payments shall be made from appropriations made for these purposes:

(a)(1) For a combined school district, as defined in Section 11E-20 of this Code [105 ILCS 5/11E-20], or for a unit district, as defined in Section 11E-25 of this Code [105 ILCS 5/11E-25], for its first year of existence, the general State aid and supplemental general State aid calculated under Section 18-8.05 of this Code [105 ILCS 5/18-8.05] shall be computed for the new district and for the previously existing districts for which property is totally included within the new district. If the computation on the basis of the previously existing districts is greater, a supplementary payment equal to the difference shall be made for the first 4 years of existence of the new district.

(2) For a school district that annexes all of the territory of one or more entire other school districts as defined in Article 7 of this Code, for the first year during which the change of boundaries attributable to the annexation becomes effective for all purposes, as determined under Section 7-9 of this Code [105 ILCS 5/7-9], the general State aid and supplemental general State aid calculated under Section 18-8.05 of this Code shall be computed for the annexing district as constituted after the annexation and for the annexing and each annexed district as constituted prior to the annexation; and if the computation on the basis of the annexing and annexed districts as constituted prior to the annexation is greater, then a supplementary payment equal to the difference shall be made for the first 4 years of existence of the annexing school district as constituted upon the annexation.

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(3) For 2 or more school districts that annex all of the territory of one or more entire other school districts, as defined in Article 7 [105 ILCS 5/7-01 et seq.] of this Code, for the first year during which the change of boundaries attributable to the annexation becomes effective for all purposes, as determined under Section 7-9 of this Code [105 ILCS 5/7-9], the general State aid and supplemental general State aid calculated under Section 18-8.05 of this Code shall be computed for each annexing district as constituted after the annexation and for each annexing and annexed district as constituted prior to the annexation; and if the aggregate of the general State aid and supplemental general State aid as so computed for the annexing districts as constituted after the annexation is less than the aggregate of the general State aid and supplemental general State aid as so computed for the annexing and annexed districts, as constituted prior to the annexation, then a supplementary payment equal to the difference shall be made and allocated between or among the annexing districts, as constituted upon the annexation, for the first 4 years of their existence. The total difference payment shall be allocated between or among the annexing districts in the same ratio as the pupil enrollment from that portion of the annexed district or districts that is annexed to each annexing district bears to the total pupil enrollment from the entire annexed district or districts, as such pupil enrollment is determined for the school year last ending prior to the date when the change of boundaries attributable to the annexation becomes effective for all purposes. The amount of the total difference payment and the amount thereof to be allocated to the annexing districts shall be computed by the State Board of Education on the basis of pupil enrollment and other data that shall be certified to the State Board of Education, on forms that it shall provide for that purpose, by the regional superintendent of schools for each educational service region in which the annexing and annexed districts are located.

(4) For a school district conversion, as defined in Section 11E-15 of this Code [105 ILCS 5/11E-15], or a multi-unit conversion, as defined in subsection (b) of Section 11E-30 of this Code [105 ILCS 5/11E-30], if in their first year of existence the newly created elementary districts and the newly created high school district, from a school district conversion, or the newly created elementary district or districts and newly created combined high school - unit district, from a multi-unit conversion, qualify for less general State aid under Section 18-8.05 of this Code than would have been payable under Section 18-8.05 for that same year to the previously existing districts, then a supplementary payment equal to that difference shall be made for the first 4 years of existence of the newly created districts. The aggregate amount of each supplementary payment shall be allocated among the newly created districts in the proportion that the deemed pupil enrollment in each district during its first year of existence bears to the actual aggregate pupil enrollment in all of the districts during their first year of existence. For purposes of each allocation:

(A) the deemed pupil enrollment of the newly created high school district from a school district conversion shall be an amount equal to its actual pupil enrollment for its first year of existence multiplied by 1.25;

(B) the deemed pupil enrollment of each newly created elementary district from a school district conversion shall be an amount equal to its actual pupil enrollment for its first year of existence reduced by an amount equal to the product obtained when the amount by which the newly created high school district's deemed pupil enrollment exceeds its actual

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pupil enrollment for its first year of existence is multiplied by a fraction, the numerator of which is the actual pupil enrollment of the newly created elementary district for its first year of existence and the denominator of which is the actual aggregate pupil enrollment of all of the newly created elementary districts for their first year of existence;

(C) the deemed high school pupil enrollment of the newly created combined high school - unit district from a multi-unit conversion shall be an amount equal to its actual grades 9 through 12 pupil enrollment for its first year of existence multiplied by 1.25; and

(D) the deemed elementary pupil enrollment of each newly created district from a multi-unit conversion shall be an amount equal to each district's actual grade K through 8 pupil enrollment for its first year of existence, reduced by an amount equal to the product obtained when the amount by which the newly created combined high school - unit district's deemed high school pupil enrollment exceeds its actual grade 9 through 12 pupil enrollment for its first year of existence is multiplied by a fraction, the numerator of which is the actual grade K through 8 pupil enrollment of each newly created district for its first year of existence and the denominator of which is the actual aggregate grade K through 8 pupil enrollment of all such newly created districts for their first year of existence.

The aggregate amount of each supplementary payment under this subdivision (4) and the amount thereof to be allocated to the newly created districts shall be computed by the State Board of Education on the basis of pupil enrollment and other data, which shall be certified to the State Board of Education, on forms that it shall provide for that purpose, by the regional superintendent of schools for each educational service region in which the newly created districts are located.

(5) For a partial elementary unit district, as defined in subsection (a) or (c) of Section 11E-30 of this Code, if, in the first year of existence, the newly created partial elementary unit district qualifies for less general State aid and supplemental general State aid under Section 18-8.05 of this Code than would have been payable under that Section for that same year to the previously existing districts that formed the partial elementary unit district, then a supplementary payment equal to that difference shall be made to the partial elementary unit district for the first 4 years of existence of that newly created district.

(6) For an elementary opt-in, as described in subsection (d) of Section 11E-30 of this Code, the general State aid difference shall be computed in accordance with paragraph (5) of this subsection (a) as if the elementary opt-in was included in an optional elementary unit district at the optional elementary unit district's original effective date. If the calculation in this paragraph (6) is less than that calculated in paragraph (5) of this subsection (a) at the optional elementary unit district's original effective date, then no adjustments may be made. If the calculation in this paragraph (6) is more than that calculated in paragraph (5) of this subsection (a) at the optional elementary unit district's original effective date, then the excess must be paid as follows:

(A) If the effective date for the elementary opt-in is one year after the effective date for the optional elementary unit district, 100% of the calculated excess shall be paid to the

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optional elementary unit district in each of the first 4 years after the effective date of the elementary opt-in.

(B) If the effective date for the elementary opt-in is 2 years after the effective date for the optional elementary unit district, 75% of the calculated excess shall be paid to the optional elementary unit district in each of the first 4 years after the effective date of the elementary opt-in.

(C) If the effective date for the elementary opt-in is 3 years after the effective date for the optional elementary unit district, 50% of the calculated excess shall be paid to the optional elementary unit district in each of the first 4 years after the effective date of the elementary opt-in.

(D) If the effective date for the elementary opt-in is 4 years after the effective date for the optional elementary unit district, 25% of the calculated excess shall be paid to the optional elementary unit district in each of the first 4 years after the effective date of the elementary opt-in.

(E) If the effective date for the elementary opt-in is 5 years after the effective date for the optional elementary unit district, the optional elementary unit district is not eligible for any additional incentives due to the elementary opt-in.

(6.5) For a school district that annexes territory detached from another school district whereby the enrollment of the annexing district increases by 90% or more as a result of the annexation, for the first year during which the change of boundaries attributable to the annexation becomes effective for all purposes as determined under Section 7-9 of this Code, the general State aid and supplemental general State aid calculated under this Section shall be computed for the district gaining territory and the district losing territory as constituted after the annexation and for the same districts as constituted prior to the annexation; and if the aggregate of the general State aid and supplemental general State aid as so computed for the district gaining territory and the district losing territory as constituted after the annexation is less than the aggregate of the general State aid and supplemental general State aid as so computed for the district gaining territory and the district losing territory as constituted prior to the annexation, then a supplementary payment shall be made to the annexing district for the first 4 years of existence after the annexation, equal to the difference multiplied by the ratio of student enrollment in the territory detached to the total student enrollment in the district losing territory for the year prior to the effective date of the annexation. The amount of the total difference and the proportion paid to the annexing district shall be computed by the State Board of Education on the basis of pupil enrollment and other data that must be submitted to the State Board of Education in accordance with Section 7-14A of this Code [105 ILCS 5/7-14A]. The changes to this Section made by Public Act 95-707 are intended to be retroactive and applicable to any annexation taking effect on or after July 1, 2004. For annexations that are eligible for payments under this paragraph (6.5) and that are effective on or after July 1, 2004, but before January 11, 2008 (the effective date of Public Act 95-707), the first required yearly payment under this paragraph (6.5) shall be paid in the fiscal year of January 11, 2008 (the effective date of Public Act 95-707).

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Subsequent required yearly payments shall be paid in subsequent fiscal years until the payment obligation under this paragraph (6.5) is complete.

(7) Claims for financial assistance under this subsection (a) may not be recomputed except as expressly provided under Section 18-8.05 of this Code.

(8) Any supplementary payment made under this subsection (a) must be treated as separate from all other payments made pursuant to Section 18-8.05 of this Code.

(b)(1) After the formation of a combined school district, as defined in Section 11E-20 of this Code, or a unit district, as defined in Section 11E-25 of this Code, a computation shall be made to determine the difference between the salaries effective in each of the previously existing districts on June 30, prior to the creation of the new district. For the first 4 years after the formation of the new district, a supplementary State aid reimbursement shall be paid to the new district equal to the difference between the sum of the salaries earned by each of the certificated members of the new district, while employed in one of the previously existing districts during the year immediately preceding the formation of the new district, and the sum of the salaries those certificated members would have been paid during the year immediately prior to the formation of the new district if placed on the salary schedule of the previously existing district with the highest salary schedule.

(2) After the territory of one or more school districts is annexed by one or more other school districts as defined in Article 7 of this Code, a computation shall be made to determine the difference between the salaries effective in each annexed district and in the annexing district or districts as they were each constituted on June 30 preceding the date when the change of boundaries attributable to the annexation became effective for all purposes, as determined under Section 7-9 of this Code. For the first 4 years after the annexation, a supplementary State aid reimbursement shall be paid to each annexing district as constituted after the annexation equal to the difference between the sum of the salaries earned by each of the certificated members of the annexing district as constituted after the annexation, while employed in an annexed or annexing district during the year immediately preceding the annexation, and the sum of the salaries those certificated members would have been paid during the immediately preceding year if placed on the salary schedule of whichever of the annexing or annexed districts had the highest salary schedule during the immediately preceding year.

(3) For each new high school district formed under a school district conversion, as defined in Section 11E-15 of this Code, the State shall make a supplementary payment for 4 years equal to the difference between the sum of the salaries earned by each certified member of the new high school district, while employed in one of the previously existing districts, and the sum of the salaries those certified members would have been paid if placed on the salary schedule of the previously existing district with the highest salary schedule.

(4) For each newly created partial elementary unit district, the State shall make a supplementary payment for 4 years equal to the difference between the sum of the salaries earned by each certified member of the newly created partial elementary unit district, while employed in one of the previously existing districts that formed the partial

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elementary unit district, and the sum of the salaries those certified members would have been paid if placed on the salary schedule of the previously existing district with the highest salary schedule. The salary schedules used in the calculation shall be those in effect in the previously existing districts for the school year prior to the creation of the new partial elementary unit district.

(5) For an elementary district opt-in, as described in subsection (d) of Section 11E-30 of this Code, the salary difference incentive shall be computed in accordance with paragraph (4) of this subsection (b) as if the opted-in elementary district was included in the optional elementary unit district at the optional elementary unit district's original effective date. If the calculation in this paragraph (5) is less than that calculated in paragraph (4) of this subsection (b) at the optional elementary unit district's original effective date, then no adjustments may be made. If the calculation in this paragraph (5) is more than that calculated in paragraph (4) of this subsection (b) at the optional elementary unit district's original effective date, then the excess must be paid as follows:

(A) If the effective date for the elementary opt-in is one year after the effective date for the optional elementary unit district, 100% of the calculated excess shall be paid to the optional elementary unit district in each of the first 4 years after the effective date of the elementary opt-in.

(B) If the effective date for the elementary opt-in is 2 years after the effective date for the optional elementary unit district, 75% of the calculated excess shall be paid to the optional elementary unit district in each of the first 4 years after the effective date of the elementary opt-in.

(C) If the effective date for the elementary opt-in is 3 years after the effective date for the optional elementary unit district, 50% of the calculated excess shall be paid to the optional elementary unit district in each of the first 4 years after the effective date of the elementary opt-in.

(D) If the effective date for the elementary opt-in is 4 years after the effective date for the partial elementary unit district, 25% of the calculated excess shall be paid to the optional elementary unit district in each of the first 4 years after the effective date of the elementary opt-in.

(E) If the effective date for the elementary opt-in is 5 years after the effective date for the optional elementary unit district, the optional elementary unit district is not eligible for any additional incentives due to the elementary opt-in.

(5.5) After the formation of a cooperative high school by 2 or more school districts under Section 10-22.22c of this Code [105 ILCS 5/10-22.22c], a computation shall be made to determine the difference between the salaries effective in each of the previously existing high schools on June 30 prior to the formation of the cooperative high school. For the first 4 years after the formation of the cooperative high school, a supplementary State aid reimbursement shall be paid to the cooperative high school equal to the difference between the sum of the salaries earned by each of the certificated members of the cooperative high school while employed in one of the previously existing high schools during the year immediately preceding the formation of the cooperative high school and

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the sum of the salaries those certificated members would have been paid during the year immediately prior to the formation of the cooperative high school if placed on the salary schedule of the previously existing high school with the highest salary schedule.

(5.10) After the annexation of territory detached from another school district whereby the enrollment of the annexing district increases by 90% or more as a result of the annexation, a computation shall be made to determine the difference between the salaries effective in the district gaining territory and the district losing territory as they each were constituted on June 30 preceding the date when the change of boundaries attributable to the annexation became effective for all purposes as determined under Section 7-9 of this Code. For the first 4 years after the annexation, a supplementary State aid reimbursement shall be paid to the annexing district equal to the difference between the sum of the salaries earned by each of the certificated members of the annexing district as constituted after the annexation while employed in the district gaining territory or the district losing territory during the year immediately preceding the annexation and the sum of the salaries those certificated members would have been paid during such immediately preceding year if placed on the salary schedule of whichever of the district gaining territory or district losing territory had the highest salary schedule during the immediately preceding year. To be eligible for supplementary State aid reimbursement under this Section, the intergovernmental agreement to be submitted pursuant to Section 7-14A of this Code must show that staff members were transferred from the control of the district losing territory to the control of the district gaining territory in the annexation. The changes to this Section made by Public Act 95-707 are intended to be retroactive and applicable to any annexation taking effect on or after July 1, 2004. For annexations that are eligible for payments under this paragraph (5.10) and that are effective on or after July 1, 2004, but before January 11, 2008 (the effective date of Public Act 95-707), the first required yearly payment under this paragraph (5.10) shall be paid in the fiscal year of January 11, 2008 (the effective date of Public Act 95-707). Subsequent required yearly payments shall be paid in subsequent fiscal years until the payment obligation under this paragraph (5.10) is complete.

(5.15) After the deactivation of a school facility in accordance with Section 10-22.22b of this Code [105 ILCS 5/10-22.22b], a computation shall be made to determine the difference between the salaries effective in the sending school district and each receiving school district on June 30 prior to the deactivation of the school facility. For the lesser of the first 4 years after the deactivation of the school facility or the length of the deactivation agreement, including any renewals of the original deactivation agreement, a supplementary State aid reimbursement shall be paid to each receiving district equal to the difference between the sum of the salaries earned by each of the certificated members transferred to that receiving district as a result of the deactivation while employed in the sending district during the year immediately preceding the deactivation and the sum of the salaries those certificated members would have been paid during the year immediately preceding the deactivation if placed on the salary schedule of the sending or receiving district with the highest salary schedule.

(6) The supplementary State aid reimbursement under this subsection (b) shall be treated as separate from all other payments made pursuant to Section 18-8.05 of this Code. In the case of the formation of a new district or cooperative high school or a deactivation,

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reimbursement shall begin during the first year of operation of the new district or cooperative high school or the first year of the deactivation, and in the case of an annexation of the territory of one or more school districts by one or more other school districts or the annexation of territory detached from a school district whereby the enrollment of the annexing district increases by 90% or more as a result of the annexation, reimbursement shall begin during the first year when the change in boundaries attributable to the annexation becomes effective for all purposes as determined pursuant to Section 7-9 of this Code, except that for an annexation of territory detached from a school district that is effective on or after July 1, 2004, but before January 11, 2008 (the effective date of Public Act 95-707), whereby the enrollment of the annexing district increases by 90% or more as a result of the annexation, reimbursement shall begin during the fiscal year of January 11, 2008 (the effective date of Public Act 95-707). Each year that the new, annexing, or receiving district or cooperative high school, as the case may be, is entitled to receive reimbursement, the number of eligible certified members who are employed on October 1 in the district or cooperative high school shall be certified to the State Board of Education on prescribed forms by October 15 and payment shall be made on or before November 15 of that year.

(c)(1) For the first year after the formation of a combined school district, as defined in Section 11E-20 of this Code or a unit district, as defined in Section 11E-25 of this Code, a computation shall be made totaling each previously existing district's audited fund balances in the educational fund, working cash fund, operations and maintenance fund, and transportation fund for the year ending June 30 prior to the referendum for the creation of the new district. The new district shall be paid supplementary State aid equal to the sum of the differences between the deficit of the previously existing district with the smallest deficit and the deficits of each of the other previously existing districts.

(2) For the first year after the annexation of all of the territory of one or more entire school districts by another school district, as defined in Article 7 of this Code [105 ILCS 5/7-01 et seq], computations shall be made, for the year ending June 30 prior to the date that the change of boundaries attributable to the annexation is allowed by the affirmative decision issued by the regional board of school trustees under Section 7-6 of this Code [105 ILCS 5/7-6], notwithstanding any effort to seek administrative review of the decision, totaling the annexing district's and totaling each annexed district's audited fund balances in their respective educational, working cash, operations and maintenance, and transportation funds. The annexing district as constituted after the annexation shall be paid supplementary State aid equal to the sum of the differences between the deficit of whichever of the annexing or annexed districts as constituted prior to the annexation had the smallest deficit and the deficits of each of the other districts as constituted prior to the annexation.

(3) For the first year after the annexation of all of the territory of one or more entire school districts by 2 or more other school districts, as defined by Article 7 of this Code [105 ILCS 5/7-10 et seq.], computations shall be made, for the year ending June 30 prior to the date that the change of boundaries attributable to the annexation is allowed by the affirmative decision of the regional board of school trustees under Section 7-6 of this Code, notwithstanding any action for administrative review of the decision, totaling each annexing and annexed district's audited fund balances in their respective educational,

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working cash, operations and maintenance, and transportation funds. The annexing districts as constituted after the annexation shall be paid supplementary State aid, allocated as provided in this paragraph (3), in an aggregate amount equal to the sum of the differences between the deficit of whichever of the annexing or annexed districts as constituted prior to the annexation had the smallest deficit and the deficits of each of the other districts as constituted prior to the annexation. The aggregate amount of the supplementary State aid payable under this paragraph (3) shall be allocated between or among the annexing districts as follows:

(A) the regional superintendent of schools for each educational service region in which an annexed district is located prior to the annexation shall certify to the State Board of Education, on forms that it shall provide for that purpose, the value of all taxable property in each annexed district, as last equalized or assessed by the Department of Revenue prior to the annexation, and the equalized assessed value of each part of the annexed district that was annexed to or included as a part of an annexing district;

(B) using equalized assessed values as certified by the regional superintendent of schools under clause (A) of this paragraph (3), the combined audited fund balance deficit of each annexed district as determined under this Section shall be apportioned between or among the annexing districts in the same ratio as the equalized assessed value of that part of the annexed district that was annexed to or included as a part of an annexing district bears to the total equalized assessed value of the annexed district; and

(C) the aggregate supplementary State aid payment under this paragraph (3) shall be allocated between or among, and shall be paid to, the annexing districts in the same ratio as the sum of the combined audited fund balance deficit of each annexing district as constituted prior to the annexation, plus all combined audited fund balance deficit amounts apportioned to that annexing district under clause (B) of this subsection, bears to the aggregate of the combined audited fund balance deficits of all of the annexing and annexed districts as constituted prior to the annexation.

(4) For the new elementary districts and new high school district formed through a school district conversion, as defined in Section 11E-15 of this Code or the new elementary district or districts and new combined high school - unit district formed through a multi-unit conversion, as defined in subsection (b) of Section 11E-30 of this Code, a computation shall be made totaling each previously existing district's audited fund balances in the educational fund, working cash fund, operations and maintenance fund, and transportation fund for the year ending June 30 prior to the referendum establishing the new districts. In the first year of the new districts, the State shall make a one-time supplementary payment equal to the sum of the differences between the deficit of the previously existing district with the smallest deficit and the deficits of each of the other previously existing districts. A district with a combined balance among the 4 funds that is positive shall be considered to have a deficit of zero. The supplementary payment shall be allocated among the newly formed high school and elementary districts in the manner provided by the petition for the formation of the districts, in the form in which the petition is approved by the regional superintendent of schools or State Superintendent of Education under Section 11E-50 of this Code [105 ILCS 5/11E-50].

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(5) For each newly created partial elementary unit district, as defined in subsection (a) or (c) of Section 11E-30 of this Code, a computation shall be made totaling the audited fund balances of each previously existing district that formed the new partial elementary unit district in the educational fund, working cash fund, operations and maintenance fund, and transportation fund for the year ending June 30 prior to the referendum for the formation of the partial elementary unit district. In the first year of the new partial elementary unit district, the State shall make a one-time supplementary payment to the new district equal to the sum of the differences between the deficit of the previously existing district with the smallest deficit and the deficits of each of the other previously existing districts. A district with a combined balance among the 4 funds that is positive shall be considered to have a deficit of zero.

(6) For an elementary opt-in as defined in subsection (d) of Section 11E-30 of this Code, the deficit fund balance incentive shall be computed in accordance with paragraph (5) of this subsection (c) as if the opted-in elementary was included in the optional elementary unit district at the optional elementary unit district's original effective date. If the calculation in this paragraph (6) is less than that calculated in paragraph (5) of this subsection (c) at the optional elementary unit district's original effective date, then no adjustments may be made. If the calculation in this paragraph (6) is more than that calculated in paragraph (5) of this subsection (c) at the optional elementary unit district's original effective date, then the excess must be paid as follows:

(A) If the effective date for the elementary opt-in is one year after the effective date for the optional elementary unit district, 100% of the calculated excess shall be paid to the optional elementary unit district in the first year after the effective date of the elementary opt-in.

(B) If the effective date for the elementary opt-in is 2 years after the effective date for the optional elementary unit district, 75% of the calculated excess shall be paid to the optional elementary unit district in the first year after the effective date of the elementary opt-in.

(C) If the effective date for the elementary opt-in is 3 years after the effective date for the optional elementary unit district, 50% of the calculated excess shall be paid to the optional elementary unit district in the first year after the effective date of the elementary opt-in.

(D) If the effective date for the elementary opt-in is 4 years after the effective date for the optional elementary unit district, 25% of the calculated excess shall be paid to the optional elementary unit district in the first year after the effective date of the elementary opt-in.

(E) If the effective date for the elementary opt-in is 5 years after the effective date for the optional elementary unit district, the optional elementary unit district is not eligible for any additional incentives due to the elementary opt-in.

(6.5) For the first year after the annexation of territory detached from another school district whereby the enrollment of the annexing district increases by 90% or more as a result of the annexation, a computation shall be made totaling the audited fund balances

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of the district gaining territory and the audited fund balances of the district losing territory in the educational fund, working cash fund, operations and maintenance fund, and transportation fund for the year ending June 30 prior to the date that the change of boundaries attributable to the annexation is allowed by the affirmative decision of the regional board of school trustees under Section 7-6 of this Code, notwithstanding any action for administrative review of the decision. The annexing district as constituted after the annexation shall be paid supplementary State aid equal to the difference between the deficit of whichever district included in this calculation as constituted prior to the annexation had the smallest deficit and the deficit of each other district included in this calculation as constituted prior to the annexation, multiplied by the ratio of equalized assessed value of the territory detached to the total equalized assessed value of the district losing territory. The regional superintendent of schools for the educational service region in which a district losing territory is located prior to the annexation shall certify to the State Board of Education the value of all taxable property in the district losing territory and the value of all taxable property in the territory being detached, as last equalized or assessed by the Department of Revenue prior to the annexation. To be eligible for supplementary State aid reimbursement under this Section, the intergovernmental agreement to be submitted pursuant to Section 7-14A of this Code [105 ILCS 5/7-14A] must show that fund balances were transferred from the district losing territory to the district gaining territory in the annexation. The changes to this Section made by Public Act 95-707 are intended to be retroactive and applicable to any annexation taking effect on or after July 1, 2004. For annexations that are eligible for payments under this paragraph (6.5) and that are effective on or after July 1, 2004, but before January 11, 2008 (the effective date of Public Act 95-707), the required payment under this paragraph (6.5) shall be paid in the fiscal year of January 11, 2008 (the effective date of Public Act 95-707).

(7) For purposes of any calculation required under paragraph (1), (2), (3), (4), (5), (6), or (6.5) of this subsection (c), a district with a combined fund balance that is positive shall be considered to have a deficit of zero. For purposes of determining each district's audited fund balances in its educational fund, working cash fund, operations and maintenance fund, and transportation fund for the specified year ending June 30, as provided in paragraphs (1), (2), (3), (4), (5), (6), and (6.5) of this subsection (c), the balance of each fund shall be deemed decreased by an amount equal to the amount of the annual property tax theretofore levied in the fund by the district for collection and payment to the district during the calendar year in which the June 30 fell, but only to the extent that the tax so levied in the fund actually was received by the district on or before or comprised a part of the fund on such June 30. For purposes of determining each district's audited fund balances, a calculation shall be made for each fund to determine the average for the 3 years prior to the specified year ending June 30, as provided in paragraphs (1), (2), (3), (4), (5), (6), and (6.5) of this subsection (c), of the district's expenditures in the categories "purchased services", "supplies and materials", and "capital outlay", as those categories are defined in rules of the State Board of Education. If this 3-year average is less than the district's expenditures in these categories for the specified year ending June 30, as provided in paragraphs (1), (2), (3), (4), (5), (6), and (6.5) of this subsection (c), then the 3-year average shall be used in calculating the amounts payable under this Section in place of the amounts shown in these categories for the specified year ending June 30, as

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provided in paragraphs (1), (2), (3), (4), (5), (6), and (6.5) of this subsection (c). Any deficit because of State aid not yet received may not be considered in determining the June 30 deficits. The same basis of accounting shall be used by all previously existing districts and by all annexing or annexed districts, as constituted prior to the annexation, in making any computation required under paragraphs (1), (2), (3), (4), (5), (6), and (6.5) of this subsection (c).

(8) The supplementary State aid payments under this subsection (c) shall be treated as separate from all other payments made pursuant to Section 18-8.05 of this Code [105 ILCS 5/18-8.05].

(d)(1) Following the formation of a combined school district, as defined in Section 11E-20 of this Code, a new unit district, as defined in Section 11E-25 of this Code, a new elementary district or districts and a new high school district formed through a school district conversion, as defined in Section 11E-15 of this Code, a new partial elementary unit district, as defined in Section 11E-30 of this Code, or a new elementary district or districts formed through a multi-unit conversion, as defined in subsection (b) of Section 11E-30 of this Code, or the annexation of all of the territory of one or more entire school districts by one or more other school districts, as defined in Article 7 of this Code [105 ILCS 5/7-01 et seq.], a supplementary State aid reimbursement shall be paid for the number of school years determined under the following table to each new or annexing district equal to the sum of $4,000 for each certified employee who is employed by the district on a full-time basis for the regular term of the school year:

	1st Quintile	2nd Quintile	3rd, 4th, or 5th Quintile
1st Quintile	1 year	1 year	1 year
2nd Quintile	1 year	2 years	2 years
3rd Quintile	2 years	3 years	3 years
4th Quintile	2 years	3 years	3 years
5th Quintile	2 years	3 years	3 years

The State Board of Education shall make a one-time calculation of a reorganized district's quintile ranks. The average daily attendance used in this calculation shall be the best 3 months' average daily attendance for the district's first year. The equalized assessed value per pupil shall be the district's real property equalized assessed value used in calculating the district's first-year general State aid claim, under Section 18-8.05 of this Code [105 ILCS 5/18-8.05], divided by the best 3 months' average daily attendance.

No annexing or resulting school district shall be entitled to supplementary State aid under this subsection (d) unless the district acquires at least 30% of the average daily attendance of the district from which the territory is being detached or divided.

If a district results from multiple reorganizations that would otherwise qualify the district for multiple payments under this subsection (d) in any year, then the district shall receive a single payment only for that year based solely on the most recent reorganization.

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(2) For an elementary opt-in, as defined in subsection (d) of Section 11E-30 of this Code, the full-time certified staff incentive shall be computed in accordance with paragraph (1) of this subsection (d), equal to the sum of $4,000 for each certified employee of the elementary district that opts-in who is employed by the optional elementary unit district on a full-time basis for the regular term of the school year. The calculation from this paragraph (2) must be paid as follows:

(A) If the effective date for the elementary opt-in is one year after the effective date for the optional elementary unit district, 100% of the amount calculated in this paragraph (2) shall be paid to the optional elementary unit district for the number of years calculated in paragraph (1) of this subsection (d) at the optional elementary unit district's original effective date, starting in the second year after the effective date of the elementary opt-in.

(B) If the effective date for the elementary opt-in is 2 years after the effective date for the optional elementary unit district, 75% of the amount calculated in this paragraph (2) shall be paid to the optional elementary unit district for the number of years calculated in paragraph (1) of this subsection (d) at the optional elementary unit district's original effective date, starting in the second year after the effective date of the elementary opt-in.

(C) If the effective date for the elementary opt-in is 3 years after the effective date for the optional elementary unit district, 50% of the amount calculated in this paragraph (2) shall be paid to the optional elementary unit district for the number of years calculated in paragraph (1) of this subsection (d) at the optional elementary unit district's original effective date, starting in the second year after the effective date of the elementary opt-in.

(D) If the effective date for the elementary opt-in is 4 years after the effective date for the optional elementary unit district, 25% of the amount calculated in this paragraph (2) shall be paid to the optional elementary unit district for the number of years calculated in paragraph (1) of this subsection (d) at the optional elementary unit district's original effective date, starting in the second year after the effective date of the elementary opt-in.

(E) If the effective date for the elementary opt-in is 5 years after the effective date for the optional elementary unit district, the optional elementary unit district is not eligible for any additional incentives due to the elementary opt-in.

(2.5) Following the formation of a cooperative high school by 2 or more school districts under Section 10-22.22c of this Code, a supplementary State aid reimbursement shall be paid for 3 school years to the cooperative high school equal to the sum of $4,000 for each certified employee who is employed by the cooperative high school on a full-time basis for the regular term of any such school year. If a cooperative high school results from multiple agreements that would otherwise qualify the cooperative high school for multiple payments under this Section in any year, the cooperative high school shall receive a single payment for that year based solely on the most recent agreement.

(2.10) Following the annexation of territory detached from another school district whereby the enrollment of the annexing district increases 90% or more as a result of the annexation, a supplementary State aid reimbursement shall be paid to the annexing district equal to the sum of $4,000 for each certified employee who is employed by the annexing district on a full-time basis and shall be calculated in accordance with

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subsection (a) of this Section. To be eligible for supplementary State aid reimbursement under this Section, the intergovernmental agreement to be submitted pursuant to Section 7-14A of this Code [105 ILCS 5/7-14A] must show that certified staff members were transferred from the control of the district losing territory to the control of the district gaining territory in the annexation. The changes to this Section made by Public Act 95-707 are intended to be retroactive and applicable to any annexation taking effect on or after July 1, 2004. For annexations that are eligible for payments under this paragraph (2.10) and that are effective on or after July 1, 2004, but before January 11, 2008 (the effective date of Public Act 95-707), the first required yearly payment under this paragraph (2.10) shall be paid in the second fiscal year after January 11, 2008 (the effective date of Public Act 95-707). Any subsequent required yearly payments shall be paid in subsequent fiscal years until the payment obligation under this paragraph (2.10) is complete.

(2.15) Following the deactivation of a school facility in accordance with Section 10-22.22b of this Code, a supplementary State aid reimbursement shall be paid for the lesser of 3 school years or the length of the deactivation agreement, including any renewals of the original deactivation agreement, to each receiving school district equal to the sum of $4,000 for each certified employee who is employed by that receiving district on a full-time basis for the regular term of any such school year who was originally transferred to the control of that receiving district as a result of the deactivation. Receiving districts are eligible for payments under this paragraph (2.15) based on the certified employees transferred to that receiving district as a result of the deactivation and are not required to receive at least 30% of the deactivating district's average daily attendance as required under paragraph (1) of this subsection (d) to be eligible for payments.

(3) The supplementary State aid reimbursement payable under this subsection (d) shall be separate from and in addition to all other payments made to the district pursuant to any other Section of this Article.

(4) During May of each school year for which a supplementary State aid reimbursement is to be paid to a new, annexing, or receiving school district or cooperative high school pursuant to this subsection (d), the school board or governing board shall certify to the State Board of Education, on forms furnished to the school board or governing board by the State Board of Education for purposes of this subsection (d), the number of certified employees for which the district or cooperative high school is entitled to reimbursement under this Section, together with the names, certificate numbers, and positions held by the certified employees.

(5) Upon certification by the State Board of Education to the State Comptroller of the amount of the supplementary State aid reimbursement to which a school district or cooperative high school is entitled under this subsection (d), the State Comptroller shall draw his or her warrant upon the State Treasurer for the payment thereof to the school district or cooperative high school and shall promptly transmit the payment to the school district or cooperative high school through the appropriate school treasurer.

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(Source: P.A. 94-1019, § 10; 95-331, § 540; 95-707, § 5-20; 95-903, § 5; 96-328, § 145.)

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, revised the subsection designations.

The 2008 amendment by P.A. 95-707, effective January 11, 2008, rewrote the section.

The 2008 amendment by P.A. 95-903, effective August 15, 2008, added (b)(5.10); in (b)(6) inserted "or a deactivation" and inserted "or the first year of the deactivation", and deleted "or division" following "annexation" in the second sentence, and substituted "receiving district" for "resulting district" in the second sentence; deleted "subsection (b) of" preceding "Section 11E-15" in the first sentence of (c)(4); in (d)(1) inserted "a new unit district, as defined in Section 11E-25 of this Code" and deleted "subsection (b) of" preceding "Section 11E-15"; added (d)(2.10); inserted "or receiving" in (d)(4); and made related changes.

The 2009 revisory amendment by P.A. 96-328, effective August 11, 2009, substituted "Public Act 95-707" for "this amendatory Act of the 95th General Assembly" and "January 11, 2008 (the effective date of Public Act 95-707)" for "the effective date of this amendatory Act of the 95th General Assembly" throughout the section; redesignated former duplicate subsections (b)(5.10) and (d)(2.10) as (b)(5.15) and (d)(2.15); and substituted "paragraph (2.15)" for "paragraph (2.10)" in the second sentence of (d)(2.15).

§ 105 ILCS 5/11E-190. School District Realignment and Consolidation Commission.

Sec. 11E-190. School District Realignment and Consolidation Commission. (a) The School District Realignment and Consolidation Commission is established. The Commission shall consist of the following voting members:

(1) the Lieutenant Governor or his or her appointee, who shall serve as the Chairperson;

(2) one member appointed by the State Board of Education;

(3) a member of the General Assembly appointed by the Speaker of the House of Representatives;

(4) a member of the General Assembly appointed by the Minority Leader of the House of Representatives;

(5) a member of the General Assembly appointed by the President of the Senate;

(6) a member of the General Assembly appointed by the Minority Leader of the Senate;

(7) a representative of a statewide professional teachers' organization appointed by the head of that organization;

(8) a representative of a different statewide professional teachers' organization appointed by the head of that organization;

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(9) a representative of a statewide organization that represents school boards appointed by the head of that organization;

(10) a representative of a statewide organization representing principals appointed by the head of that organization;

(11) a representative of an organization representing professional teachers in a city having a population exceeding 500,000 appointed by the head of that organization;

(12) a representative of an association representing school business officials appointed by the head of that association;

(13) a representative of an association representing school administrators appointed by the head of that association;

(14) a representative from the Chicago Board of Education appointed by the Chicago Board of Education;

(15) a representative from an organization representing administrators of special education appointed by the head of that organization;

(16) a representative from a statewide parent organization appointed by the head of that organization;

(17) a representative from an organization representing high school districts appointed by the head of that organization;

(18) a representative from a rural school district appointed by the Governor;

(19) a representative from a suburban school district appointed by the Governor; and

(20) a representative of an association that represents regional superintendents of schools appointed by the head of that association.

Members shall serve without compensation, but shall be reimbursed for their reasonable and necessary expenses from funds appropriated for that purpose. Members shall be reimbursed for their travel expenses from appropriations to the State Board of Education available for that purpose and subject to the rules of the appropriate travel control board.

The Commission shall meet at the call of the chairperson, with the initial meeting of the Commission being held as soon as possible after the effective date of this amendatory Act of the 97th General Assembly [P.A. 97-503], and shall hold public hearings throughout this State.

The State Board of Education shall provide assistance and necessary staff support services to the Commission.

(b) The purpose of the Commission is to make recommendations to the Governor and General Assembly on the number of school districts in this State, the optimal amount of enrollment for a school district, and where consolidation and realignment would be beneficial. The Commission's recommendations must focus on all of the following areas:

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(1) Reducing the money spent on duplication of efforts.

(2) Improving the education of students by having less obstacles between qualified teachers and their students.

(3) Lowering the property tax burden.

(4) Providing recommendations as to what the net cost savings of realignment is to this State.

(5) Providing input to school districts on reorganization.

(c) On or before July 1, 2012, the Commission must vote on its recommendations and file a report with the Governor and the General Assembly. If the Commission adopts the report by an affirmative vote of at least 11 of its members, then the General Assembly must, within 14 days after the report is filed by the Commission, vote on whether to accept the report by the adoption of a resolution by a record vote of a majority of the members elected in each house. If the General Assembly is not in session on the day that the report is filed, then the General Assembly must vote on whether to accept the report within 14 days after the General Assembly convenes for the first time after the report is filed. The Commission is dissolved on the day after the report is filed with both the Governor and the General Assembly.

(d) This Section is repealed on January 31, 2013.

(Source: P.A. 97-503, § 5.)

Effective Date. Section 99 of P.A. 97-503 made this section effective upon becoming law. The Act was approved August 23, 2011.

Article 12.

High School Districts - Non-High School Districts - Community High School Districts

§§ 105 ILCS 5/12-1, 105 ILCS 5/12-2: Repealed by P.A. 89-159, § 15, effective January 1, 1996.

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§§ 105 ILCS 5/12-6 through 105 ILCS 5/12-8: Repealed by P.A. 89-159, § 15, effective January 1, 1996.

§ 105 ILCS 5/12-9. Application of laws of community high school district to other districts

Sec. 12-9. Application of laws of community high school district to other districts. All high school districts shall be governed by the provisions of this Act for the operation of a community high school district.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-9.

CASE NOTES

Voter Petition

- Not Allowed

Because no petition to establish a community high school district may be filed after July 1, 1965, and all high school districts must be governed by the laws which control the operation of a community high school district, no petition to establish any new high school district may be filed in Illinois after July 1, 1965. Board of Educ. v. Regional Board of Sch. Trustees, 121 Ill. App. 3d 848, 77 Ill. Dec. 241, 460 N.E.2d 100 (5 Dist. 1984).

This Code no longer allows voters to petition for the creation of a new high school district. Board of Educ. v. Regional Board of Sch. Trustees, 121 Ill. App. 3d 848, 77 Ill. Dec. 241, 460 N.E.2d 100 (5 Dist. 1984).

Non-High School Districts

§ 105 ILCS 5/12-10. Territory constituting -- Board of education

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Sec. 12-10. Territory constituting -- Board of education. All the territory of each county not included in a district maintaining a recognized four year high school is a non-high school district for the purpose of levying a tax to pay the tuition of all eighth grade graduates residing therein, including pupils attending a recognized two or three year high school conducted by a school district. The board of education for each non-high school district shall consist of the county superintendent of schools who shall be an ex-officio member of the board and secretary thereof but who shall have no vote, and 3 members each of whom shall serve for 4 years from the first Monday of the month following his election. At the first such election those elected shall, by lot, determine one to serve for 2 years and 2 for 4 years; thereafter all terms shall be for 4 years. When a vacancy occurs on the board, the remaining members shall, within 30 days, fill the vacancy by appointment until the next regular election for members of the board. Within 10 days after the commencement of their terms the members of the board shall meet and organize by electing one of their number president.

Notwithstanding any provision of Article 7 the non-high school board shall remain in existence after the elimination of all the non-high school territory of the county for which it was elected until it prepares for and delivers to the county clerk a final statement showing the amount of debts or obligations, other than bonded indebtedness, of the district, the date upon which such debts or obligations were incurred and to whom the obligations run, together with a map showing the extent of the territory on such dates.

This section does not prevent the organization of any territory of non-high school districts into community high school districts.

(Source: P.A. 80-1469.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-10.

CASE NOTES

Analysis

In General
Legal Existence
Non-High School Districts

In General

There is no requirement that the territory out of which a community high school district is to be organized shall constitute one community for any purpose other than for school purposes, or that

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the same shall have a community center. People ex rel. Stout v. Drennan, 307 Ill. 482, 139 N.E. 128 (1923).

Legal Existence

In view of the fact that 3121/2 acres in the county were not included in any school district maintaining a high school, the non-high school district was legally in existence; fact that the non-high school district was small and may have had no children of high school age residing within its boundaries had no effect upon the existence of the district, because a district of this character exists, both in fact and in law, for the purpose of paying its lawful debts and for the accommodation of eighth grade graduates who may reside within the district at a future date. Thus, contrary to the contention of defendant, the incorporation of most, but not all, of the former territory of the non-high school district into other school districts did not result in the automatic dissolution of the district and the transfer of all its assets and liabilities to other school districts. People ex rel. Bailey v. Illinois Cent. R.R., 407 Ill. 426, 95 N.E.2d 352 (1950).

Non-High School Districts

The words "The school board of each district" embrace the board of education of a non-high school district. People ex rel. Joseph v. Pennsylvania R.R., 18 Ill. 2d 61, 162 N.E.2d 350 (1959).

§ 105 ILCS 5/12-11. Duties of board of education

Sec. 12-11. Duties of board of education. The board of education of a non-high school district shall perform the duties prescribed in sections 12-11.1 through 12-11.5 [105 ILCS 5/12-11.1 through 105 ILCS 5/12-11.5].

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-11.

CASE NOTES

Strict Construction

The power of the board of education of a non-high school district to levy taxes is statutory; the language granting that power is to be strictly construed and will not be extended beyond the plain import of the words used. People ex rel. Smith v. Wabash Ry., 374 Ill. 165, 28 N.E.2d 119 (1940).

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§ 105 ILCS 5/12-11.1. Tax levy

Sec. 12-11.1. Tax levy. Levy a tax annually upon all the taxable property of the district not to exceed 1% of value as equalized or assessed by the Department of Revenue, for the purpose of paying the tuition of all eighth-grade graduates residing within the district attending any recognized high school. The board of education of such nonhigh school district may by proper resolution cause a proposition to increase the annual tax rate for such purpose to be submitted to the voters of such district at any regular scheduled election. The rate shall not be increased at any single referendum more than 0.21% upon the value as equalized or assessed by the Department of Revenue for such purpose, and the maximum rate for such purpose shall not exceed 1.60%. Such amount shall be certified and returned to the county clerk on or before the last Tuesday in September of each year. The certificate shall be signed by the president and the secretary of the board and may be in the following form:

CERTIFICATE OF TAX LEVY

We hereby certify that we require the sum of ..... dollars to be levied as a special tax to pay the tuition of graduates of the eighth grade residing in the nonhigh school district of ..... County, on the equalized assessed valuation of the taxable property of our nonhigh school district.

Signed on (insert date).

A ..... B ....., President

C ..... D ....., Secretary

A failure to certify and return the certificate of tax levy to the county clerk in the time required shall not vitiate the assessment.

(Source: P.A. 81-1489; 81-1509; 91-357, § 101.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-11.1.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "on (insert date)" for "on this.... day of...., 19.." near the end of the form, and made a stylistic change.

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CASE NOTES

Analysis

Strict Construction
Tax by Community Unit District

Strict Construction

The power of the board of education of a non-high school district to levy taxes is statutory; the language granting that power is to be strictly construed and will not be extended beyond the plain import of the words used. People ex rel. Smith v. Wabash Ry., 374 Ill. 165, 28 N.E.2d 119 (1940).

Tax by Community Unit District

A tax for transportation purposes is applicable to community unit districts and provides authority for the levy of such a tax by such districts. People ex rel. Young v. Chicago N. W. Ry., 20 Ill. 2d 462, 170 N.E.2d 614 (1960).

Practice Guides and Treatises.

Real Estate Taxation § 8.13 Certifying the Tax Levy (IICLE).

§ 105 ILCS 5/12-11.2. Orders for payment of tuition

Sec. 12-11.2. Orders for payment of tuition. Issue orders on the county treasurer for the payment of the tuition of eighth-grade graduates residing within the non-high school district attending a recognized high school, provided such attendance is certified to the board by the board of education of the high school attended. Such orders shall be payable out of any funds belonging to the district.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-11.2.

§ 105 ILCS 5/12-11.3. Reports

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Sec. 12-11.3. Reports. Make such reports as may be required by the State Board of Education and by the regional superintendent of schools.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-11.3.

§ 105 ILCS 5/12-11.5. Transportation of pupils

Sec. 12-11.5. Transportation of pupils. If in the discretion of the board of education sufficient moneys of the district are available after payment of the other expenses of the district, including tuition, may provide free transportation for the pupils of their district not living within one and one-half miles of a high school which they may lawfully attend to the most convenient high school which such pupils may lawfully attend under the provisions of this Act, or reimburse pupils living in a portion of such district which cannot be reached by bus or train for the reasonable cost of their transportation, or for the amount necessarily expended by them for transportation in attending a high school approved by such board.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-11.5.

CASE NOTES

Tax by Community Unit District

A tax for transportation purposes is applicable to community unit districts and provides authority for the levy of such a tax by such districts. People ex rel. Young v. Chicago N. W. Ry., 20 Ill. 2d 462, 170 N.E.2d 614 (1960).

§ 105 ILCS 5/12-12. Anticipation warrants

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Sec. 12-12. Anticipation warrants. When there is no money in the treasury of any non-high school district to defray the necessary expenses of the district, including amounts necessary to pay maturing principal and interest of bonds, the board of education may issue warrants or may provide a fund to meet the expenses by issuing and disposing of warrants drawn against and in anticipation of any taxes levied for the payment of such expenses, either for educational or building purposes or for the payment of maturing principal and interest of bonds, to the extent of 85% of the total amount of the tax so levied. The warrants shall show upon their faces that they are payable, in the numerical order of their issuance, solely from such taxes when collected, and shall be received by any collector of taxes in payment of the taxes against which they are issued, and such taxes shall be set apart and held for their payment.

Every warrant shall bear interest payable only out of the taxes against which it is drawn, at the rate of not more than the maximum rate authorized by the Bond Authorization Act [30 ILCS 305 /0.01 et seq.], as amended at the time of the making of the contract, for warrants issued before January 1, 1972 and not more than the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, for warrants issued after January 1, 1972, from the date of its issuance until paid or until notice is given by publication in a newspaper or otherwise that the money for its payment is available and that it will be paid on presentation, unless a lower rate of interest shall be specified therein, in which case the interest shall be computed and paid at the lower rate.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-12.

Cross References.

As to Omnibus Bond Acts, see 5 ILCS 70/8.

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§ 105 ILCS 5/12-13. Bond issue - Resolution - Election

Sec. 12-13. Bond issue - Resolution - Election. If there has been a delay in the extension and collection of taxes levied by the governing body of any nonhigh school district caused by a reassessment of real property therein, the district may issue bonds for the purpose of paying unpaid tuition claims or other claims against it.

Before any nonhigh school district issues any such bonds the board of education shall examine and consider the claims proposed to be paid, and if it appears that they were authorized and allowed for proper nonhigh school purposes, it shall adopt a resolution so declaring and set forth and describe in detail such claims. The adoption of the resolution shall establish the validity thereof. The resolution shall also declare the intention of the nonhigh school district to issue bonds for the purpose of paying such claims and direct that notice of such intention be published at least once in a newspaper published and having a general circulation in the district, if there be one, but if there is no newspaper published in such district then by publishing such notice in a newspaper having a general circulation in the district or if no newspaper is published in the district in one or more newspapers with a general circulation in the district. The notice shall include a statement of (1) the specific number of voters required to sign a petition requesting that the question of the adoption of the resolution be submitted to the electors of the district; (2) the time in which the petition must be filed; and (3) the date of the prospective referendum. The recording officer of the district shall provide a petition form to any individual requesting one. If within 30 days after the publication a petition is filed with the recording officer of the district, signed by voters of the district equal to 10% or more of the registered voters of the district, requesting that the proposition to issue the bonds be submitted to the voters thereof, then such district shall not be authorized to issue them until either the petition has been determined to be invalid or insufficient or the proposition has been submitted to and approved by a majority of the voters voting on the proposition at a regular scheduled election. The board shall certify the proposition to the proper election authorities for submission in accordance with the general election law. If no such petition is filed, or if any and all petitions filed are invalid, such district may issue the bonds. In addition to the requirements of the general election law the notice of the election shall set forth the intention of the district to issue bonds under the provisions of this Section. The ballot to be used at the election shall be in substantially the following form:

OFFICIAL BALLOT

```
Shall the Board of Education of
Nonhigh School District No.  ......,        YES
.............. County, Illinois, be
authorized to issue bonds as authorized
by Sec. 12-13 of the School                 NO
Code?
```

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(Source: P.A. 87-767.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-13.

§ 105 ILCS 5/12-14. Resolution authorizing issue - Interest - Maturity - Taxes - Sale or exchange

Sec. 12-14. Resolution authorizing issue - Interest - Maturity - Taxes - Sale or exchange. Any non-high school district which has complied with the provisions of Section 12-13 [105 ILCS 5/12-13] and which is authorized to issue bonds thereunder shall adopt a resolution authorizing the issue of bonds. The resolution shall set forth the date, denomination, rate of interest and maturities of the bonds, fix all the details with respect to the issue and execution thereof, and provide for the levy of a separate tax sufficient to pay both principal and interest of the bonds as they mature. The bonds shall bear interest at a rate not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, for bonds issued before January 1, 1972 and not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, for bonds issued after January 1, 1972, payable annually or semi-annually as the board of education may determine, and mature in not more than 20 years from the date thereof.

A certified copy of the resolution shall be filed with the county clerk of the county in which the non-high school district is situated. The county clerk shall annually extend taxes against all of the taxable property contained in the non-high school district in amounts sufficient to pay maturing principal and interest of the bonds without limitation as to rate and amount, and in addition to and in excess of any taxes authorized to be levied by the district.

The bonds may be exchanged par for par for unpaid tuition claims or other unpaid claims or both or may be sold and the proceeds used to pay such claims.

Purchasers of bonds shall not be obligated to inquire into the validity of the claims funded thereby but the determination of the board of education by resolution to issue such bonds for such purpose shall be conclusive evidence to such purchaser or owner as to the validity of the claims thereby funded.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are

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not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-14.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

§ 105 ILCS 5/12-15. Bonds to pay tuition or judgments - Resolution - Election

Sec. 12-15. Bonds to pay tuition or judgments - Resolution - Election. Any nonhigh school district may issue bonds for the purpose of paying unpaid tuition claims or judgments which have been obtained by any school district against the nonhigh school district on unpaid tuition claims, or for the purpose of paying other claims against the nonhigh school district.

Before any such district issues any such bonds the board of education thereof shall examine and consider the claims for unpaid tuition and other claims proposed to be paid including any judgments obtained against the district on unpaid tuition claims and if it appears that such claims and judgments were authorized and allowed for proper nonhigh school purposes, it shall adopt a resolution so declaring and set forth and describe in detail such claims and judgments and the adoption of the resolution shall establish the validity thereof. The intention of the district to issue bonds for the purpose of paying such claims and judgments shall be declared in the resolution and it shall be directed therein that notice of such intention be published in accordance with the general election law. The proposition to issue bonds shall be certified to the proper election authorities for submission to the voters of the district at a regular scheduled election, in accordance with the general election law and if approved by a majority of such voters voting thereon the district may issue the bonds. In addition to the requirements in the general election law notice of the election shall set forth the intention of the district to issue bonds under the provisions of this Section. The proposition shall be in substantially the following form:

OFFICIAL BALLOT

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```
Shall the Board of Education of
Nonhigh School District No.  ......,        YES
........ County, Illinois, be authorized
to issue bonds as authorized
by Section 12-15 of the School              NO
Code?
```

(Source: P.A. 81-1489.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-15.

CASE NOTES

Issuance of Bonds

- Inherent Authority

Bonds could not be issued by reason of any inherent authority existing in a non-high school district. People ex rel. Vaughan v. Thompson, 377 Ill. 244, 36 N.E.2d 351 (1941).

§ 105 ILCS 5/12-16. Resolution authorizing issue - interest - maturity - taxes - sale or exchange

Sec. 12-16. Resolution authorizing issue - interest - maturity - taxes - sale or exchange. Any non-high school district which has complied with Section 12-15 [105 ILCS 5/12-15] and which is authorized to issue bonds thereunder shall adopt a resolution authorizing their issuance. The resolution shall set forth the date, denomination, rate of interest and maturities of the bonds, fix all details with respect to the issue and execution thereof, and provide for the levy of a separate tax sufficient to pay both principal and interest of the bonds as they mature. The bonds shall bear interest at a rate not to exceed the maximum rate authorized by the Bond Authorization Act [301 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, payable annually or semi-annually as the board of education may determine, and mature in not more than 20 years from the date thereof.

A certified copy of the resolution authorizing the issue of the bonds shall be filed with the county clerk of the county in which the non-high school district is situated and the county clerk shall annually extend taxes against all of the taxable property in the non-high school district in amounts sufficient to pay maturing principal and interest of the bonds without limitation as to rate and amount, and in addition to and in excess of any taxes authorized to be levied by the district.

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The bonds may be exchanged par for par for unpaid tuition claims or such judgment or judgments or other unpaid claims or both, or may be sold and the proceeds used to pay such claims or judgments.

Purchasers of bonds shall not be obligated to inquire into the validity of the claims funded thereby but the determination of the board of education by resolution to issue them shall be conclusive evidence of the validity of the claims thereby funded.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, para. 12-16.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

§ 105 ILCS 5/12-17. Clerk to extend taxes

Sec. 12-17. Clerk to extend taxes. The County Clerk shall extend taxes to pay principal and interest of any outstanding bonds of a non-high school district issued to fund and pay unpaid tuition claims or judgments obtained by any school district against a non-high school district on unpaid tuition claims, as provided by each bond resolution on file in his office, against all the taxable property included within the said non-high school district as of the date of the said bonds, and the County Clerk shall extend taxes to pay principal and interest of any outstanding refunding bonds, as provided by each bond resolution on file in his office, against all of the taxable property included within said non-high school district as of the date of the bonds which were refunded thereby, and the County Clerk shall extend taxes for the payment of principal and interest of any refunding bonds hereafter issued, according to each such bond resolution on file in his office, against all the taxable property included within any non-high school district as of the date of the

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bonds of said District refunded thereby.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-17.

CASE NOTES

Analysis

Detachment
- Valid Tax Levy
Liquidating Bond Indebtedness
Refunding Bonds

Detachment

- Valid Tax Levy

Where the plaintiff was obligated to pay her share of the bonded indebtedness existing before the detachment of her property, this obligation was affected neither by subsequent detachment nor the refunding of the bonded indebtedness; the new levy for the refunding bonds merely continued, in a new form, the prior levy for the funding and refunding bonds which were still a subsisting debt upon the detached territory, and the constitutional prohibition against taxation of territory beyond the boundaries of a municipality was not pertinent. Prohm v. Non-High Sch. Dist. No. 216, 7 Ill. 2d 421, 130 N.E.2d 917 (1955).

Liquidating Bond Indebtedness

Where the refunding bonds issued by the board of education did not create an additional indebtedness, then the board of education was not acting as the corporate authority of the detached territory for the purpose of creating a new indebtedness; rather, said board was acting as an agency of the state, to take such steps as might be necessary to refund the existing bonded debt and provide for its liquidation. Hence, there was no constitutional right on the part of the plaintiff to vote for or against those who authorized the issuance of refunding bonds and levied the tax for the payment of principal and interest of such bonds. Prohm v. Non-High Sch. Dist. No. 216, 7 Ill. 2d 421, 130 N.E.2d 917 (1955).

Refunding Bonds

The corporate authority of any school district, without either authorization of the voters of the district by referendum vote, or right and opportunity in the voters to petition for an election to vote on such proposition, may authorize by resolution the issuance of refunding bonds to refund its

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outstanding bonded debt. Prohm v. Non-High Sch. Dist. No. 216, 7 Ill. 2d 421, 130 N.E.2d 917 (1955).

§ 105 ILCS 5/12-18. Winding up of affairs of Non-High School District

Sec. 12-18. Winding up of affairs of Non-High School District. Upon the elimination of any non-high school district, as provided by Section 12-24 of this Article [105 ILCS 5/12-24], the Regional Superintendent of Schools, the County Treasurer and the County Clerk shall constitute a Board of Education, ex-officio, for the purpose of winding up the affairs of the non-high school district and paying all outstanding obligations. The County Treasurer shall be Treasurer, ex-officio, of that Board to receive and collect all delinquent taxes and taxes in process of collection of the district at the time of its elimination, and the Board shall apply the taxes so collected to the payment of any outstanding obligations of the eliminated non-high school district. Such Board of Education shall meet annually by the second Tuesday in September of each year and ascertain the amount of outstanding bonds of the non-high school district, the amount of funds on hand from the tax levies for the payment of either principal or interest, or both, of such bond issues, and to ascertain the deficiencies in the collection of the taxes for the purpose of paying such principal and interest of such bonds, and to provide for and levy taxes annually in an amount sufficient to make up the deficiency in the levy and collection of such taxes for the purpose of paying in full the principal and interest of any outstanding bonds of such non-high school district. Such Board of Education shall file with the County Clerk by the second Monday of October in each year a certificate of the amounts necessary to be levied to make up any deficiency in the collection of taxes for payment of principal and interest of any outstanding bonds of the non-high school district over the signature of the Regional Superintendent of Schools and the County Treasurer, and the County Clerk shall extend the tax for the deficiency as so ascertained against all the taxable property of the non-high school district as it existed as of the date of the bonds for which the tax levy is made, and in accordance with the provisions of Section 12-17 of this Article [105 ILCS 5/12-17].

After payment of all outstanding bonds or after provision has been made for the payment of such bonds, any funds remaining in the bond principal and interest account shall be paid by the Board to high school districts organized since January 1, 1955 solely from the territory of an eliminated non-high school district. Payment to each high school district shall be made in the same ratio as the assessed valuation of each high school district bears to the total valuation of all high school districts to which payment is being made. In the event payment is made in more than one installment, second and succeeding installments shall be computed on the basis of the same percentages as were used for the first payment.

(Source: P.A. 86-1028.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-18.

§ 105 ILCS 5/12-19. Treasurer

Sec. 12-19. Treasurer. The county treasurer shall be the treasurer of the non-high school district of the county. He shall: (1) receive and hold all moneys belonging to the district and disburse them upon lawful orders issued by the board of education of the district; (2) report to the secretary of the board of education of the district on or before June 30, annually, the receipts and expenditures of funds belonging to the district and the balance on hand; (3) make annually a complete report to the county superintendent of schools, including therein whatever statistics may be required by the county superintendent; (4) perform such other duties in connection with the non-high school district as are performed by the township treasurers for school districts.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-19.

§ 105 ILCS 5/12-20. Attendance in other districts

Sec. 12-20. Attendance in other districts. If a recognized two or three year high school is conducted in a non-high school district, any eighth grade graduate residing in the district, upon the approval of the county superintendent of schools, may attend a recognized high school more convenient in some district other than the district in which he resides and his tuition shall be paid by the board of education of the non-high school district. If no recognized two or three year high school is conducted in a non-high school district, any eighth grade graduate residing in the district may attend any recognized two, three or four year high school, and his tuition shall be paid by the board of education of the non-high school district.

When non-high school territory is eliminated from the non-high school district the pupils residing in the former non-high school territory who have been attending a recognized public high school in another district as tuition pupils may continue to attend such school until their high school education is finished and the annexing board shall pay the tuition after the annexation of the former non-high school territory.

"Eighth grade graduate" in this section means any person of school age who gives satisfactory evidence of having completed the first eight grades of school work by presenting a certificate of promotion issued by the school board of the school attended by

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him, or by passing an examination given by the county superintendent of schools or by passing an examination given by the school attended.

"Recognized high school" in this section means any public high school providing a course of two or more years of work approved by the Superintendent of Public Instruction.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-20.

CASE NOTES

Analysis

Approval of County Superintendent
Discretion

Approval of County Superintendent

Where pupils transferred from first district to second district at the instance of the county superintendent of first district but did not have or receive the approval of the county superintendent of second district for such transfer, the order of the trial court dismissing the complaint of second district for tuition was proper. Board of Educ. v. Board of Education, 306 Ill. App. 261, 28 N.E.2d 325 (2 Dist. 1940).

Where two high school districts involved lie in more than one county, the pupil must have the approval of the county superintendents of all counties involved before he may attend a high school in a district other than the one in which he resides, at the expense of his district. Board of Educ. v. Board of Educ., 312 Ill. 31, 143 N.E. 444 (1924).

Discretion

The approval of the board of education of the district in which the pupil resided was not merely ministerial in character, but it clearly implied an independent exercise of judgment and discretion on the part of such board. Gustafson v. Wethersfield Tp., 319 Ill. App. 255, 49 N.E.2d 311 (2 Dist. 1943).

Since the determinative discretion has been placed with the county superintendent of schools, the appellate court would not compel a county superintendent of schools to allow petitioner's children to attend another school district based on convenience, where the superintendent's decision in refusing to approve said transfer was neither fraudulent, nor an oppressive or arbitrary abuse of his discretionary powers. Perkins v. Stephens, 288 Ill. App. 492, 6 N.E.2d 237 (3 Dist. 1937).

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§ 105 ILCS 5/12-21. Attendance in adjoining state

Sec. 12-21. Attendance in adjoining state. Upon a determination by the State Board of Education and of the regional superintendent of schools of the region in which a high school student or an eighth grade graduate resides that no high school of this State is readily accessible to the pupil or graduate, but that a high school in an adjoining state providing a course of two or more years of work approved by the State Board of Education of this State is readily accessible to him, the pupil or graduate may attend such high school in an adjoining state and the board of education of the high school district or of the non-high school district in which he resides shall pay his tuition.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-21.

§ 105 ILCS 5/12-22. Computation of tuition - audit of claims

Sec. 12-22. Computation of tuition - audit of claims. The tuition paid shall in no case exceed the per capita cost of maintaining the high school attended, which tuition shall be computed by dividing the total cost of conducting and maintaining the high school by the average number of pupils enrolled, including tuition pupils. Depreciation on the building and equipment of the high school attended shall be included as part of the cost of maintaining the high school attended, and the amount of annual depreciation on such building and equipment shall be dependent upon the useful life of such property. The board of education of any non-high school district may audit the claims of any school submitting a claim for tuition, and shall, after making request of the school board and the school treasurer, have access to the school records and financial records of the district for the purpose of making the audit.

The school board of the high school that the tuition pupils attend shall certify not later than August 1, of each year, to the non-high school board, the estimated amount of the tuition charges for the succeeding school year.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-22.

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CASE NOTES

Analysis

Apportionment
Computation of Tuition
- Building Not Included
Cost of Maintaining School
Depreciation
Interest Payments

Apportionment

Where a non-high school district was charged with only that proportion of the depreciation, including that part allocable to the grant, as represented that proportion of the total number of high school pupils, the burden of the remainder of the depreciation was upon the high school district. Board of Educ. ex rel. Sch. Dist. v. Board of Educ., 321 Ill. App. 131, 52 N.E.2d 274 (2 Dist. 1943).

Computation of Tuition

- Building Not Included

The maintenance of a high school building did not authorize a positive charge for the use of the building, in computing the tuition to be paid for the pupils attending the high school from a non-high school district; accordingly, as against the appellant, the sum of $1,750 for the use of the building should have been omitted from the cost of conducting and maintaining the high school of the appellee. Board of Educ. v. Board of Educ., 343 Ill. 464, 175 N.E. 810 (1931).

Cost of Maintaining School

Depreciation allocable to donated capital such as Public Works Administration grants was not improper where such depreciation entailed the factor of replacement, and was obviously a part of the "cost of maintaining the high school." Board of Educ. ex rel. Sch. Dist. v. Board of Educ., 321 Ill. App. 131, 52 N.E.2d 274 (2 Dist. 1943).

Depreciation

Where appellant sued appellee to recover the sum of $4,329.07, the balance on a claim against appellee for tuition, depreciation was a proper charge to be included in the "cost of maintaining the high school"; therefore, where there was no question of fraud or mistake in this record, appellee, after checking and auditing the claims, and approving and voluntarily paying the depreciation charged to it on account of the 55% allocable to the money furnished by the high school district, was not in a position to question that part of the claims. Board of Educ. ex rel. Sch. Dist. v. Board of Educ., 321 Ill. App. 131, 52 N.E.2d 274 (2 Dist. 1943).

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Interest Payments

Interest could not be charged by school district against protectorate school district for interest on bonded indebtedness and depreciation on school buildings. People ex rel. Meyer v. Skinner, 38 Ill. 2d 379, 232 N.E.2d 297 (1967).

§ 105 ILCS 5/12-23. Detachment of territory from non-high school district

Sec. 12-23. Detachment of territory from non-high school district. When all of the territory of the non-high school district is annexed to one or more districts, the funds remaining to the credit of the non-high school district and property of such district shall within 60 days be apportioned and paid by the county board of school trustees to the respective school districts to which non-high school territory has been annexed since May 1, 1945, on the basis of the assessed valuation of the non-high school territory annexed at the date of the annexation to the respective school districts.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-23.

CASE NOTES

Analysis

Burden of Proof
- Disqualification of Voter
Clear Language
Effect of Valid Election
Legal Voter
Residence
Signatures
- Court Additions
- Method of Signing
- Right of Withdrawal

Burden of Proof

- Disqualification of Voter

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On appeal from a judgment of the circuit court entered in a quo warranto action by plaintiffs on their own relation against defendant, high school district, to question the right of the defendant to exercise its franchise and corporate authority over sections of land which had been within a non-high school district and were detached from the non-high school district and annexed to the defendant district, in view of stipulation that signer to petition voted subsequent to conviction, the burden was upon plaintiffs to show that his disqualification had been removed. Messman v. Newman Tp. High Sch. Dist., 379 Ill. 32, 39 N.E.2d 332 (1942).

Clear Language

When a county superintendent of schools files with the county clerk of his county a map showing the new and added boundaries of community high school as requested in petition, from the filing of map in the office of the clerk, the territory so detached ceases to be a part of the non-high school district, but is a part and parcel of the community high school district; this is clear, definite and mandatory. Romine v. Black, 304 Ill. App. 1, 25 N.E.2d 404 (3 Dist. 1940).

Effect of Valid Election

Where proposition to organize certain particular territory into a community high school district was submitted and carried at an election, which election was legal and valid, annexation proceedings to detach disputed territory held one day before the election did not take precedence thereof. People ex rel. Mills v. Fairfield Community High Sch. Dist., 397 Ill. 233, 73 N.E.2d 292 (1947).

Legal Voter

In view of evidence that young man has made his home with his mother and younger brother in non-high school territory, that he had a room there in his mother's home where he kept his own bed and personal belongings, that he worked part time, but somewhere else, but was home most of the time each week, and that he voted in the territory and never voted elsewhere, the trial court was amply warranted in holding that this man was a legal voter residing within the territory. Romine v. Black, 304 Ill. App. 1, 25 N.E.2d 404 (3 Dist. 1940).

Residence

A residence, for voting purposes, is not lost by temporary removal with the intention to return. Messman v. Newman Tp. High Sch. Dist., 379 Ill. 32, 39 N.E.2d 332 (1942).

Where signatory to petition, which prayed for detachment of certain lands from high school district, had not been a resident in the territory for 30 days prior thereto, she was not a qualified voter on the date of the detachment election. Messman v. Newman Tp. High Sch. Dist., 379 Ill. 32, 39 N.E.2d 332 (1942).

Signatures

- Court Additions

Where it was stipulated that 240 persons had signed petition whose signatures were not questioned, and the court allowed twelve additional signatures, making a total of 252, which was more than a majority of the total voters of the disputed territory which was found to be 496, the petition was held to be valid. Messman v. Newman Tp. High Sch. Dist., 379 Ill. 32, 39 N.E.2d 332 (1942).

- Method of Signing

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In proceeding to contest the validity of signatures of petition to remove certain lands from high school district, where the names of four family members were written on the petition by a member of their family, and where the following morning, the petition was presented to them and each wrote their names by tracing the name previously written, it was evident that the signatories wished to sign the petition and were willing to adopt this method of having their names attached to the petition, and their signatures were valid. Messman v. Newman Tp. High Sch. Dist., 379 Ill. 32, 39 N.E.2d 332 (1942).

- Right of Withdrawal

Original signers of petition for annexation of non-high school territory had a right, after they had time to consider the question, to withdraw their names, and these withdrawals were not illegal. Romine v. Black, 304 Ill. App. 1, 25 N.E.2d 404 (3 Dist. 1940).

§ 105 ILCS 5/12-24. Elimination of non-high school district

Sec. 12-24. Elimination of non-high school district. The territory of the non-high school district or unit district not maintaining a high school in existence on January 1, 1950 of any county having a population of 500,000 or less shall be automatically eliminated from the non-high school district or unit district, unless (1) the non-high school territory is adjacent to a district created by a special Act whose boundaries are required by such Act to be coterminous with some city or village or to a district maintaining grades 1 through 12 and (2) has children in such territory who customarily attend the high school of such district and (3) has no school district operating grades 9 through 12 to which such territory could be annexed without impairing the educational opportunities of the children of such territory and in such case the territory shall remain non-high school territory.

Any such non-high school district including any unit district not maintaining a high school pursuant to the provisions of this Section shall pay tuition for high school students at a rate to be mutually agreed by the boards of education of each district affected.

When territory is eliminated from a non-high school district or unit district not maintaining a high school it shall be annexed by the county board of school trustees as provided in Section 7-27 of this Act [105 ILCS 5/7-27].

Any non-high school district affected by such elimination and annexation may continue to exercise all previously conferred and existing powers pending final administrative or judicial affirmance thereof.

(Source: P.A. 81-950.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-24.

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CASE NOTES

Constitutionality

This section was not so vague and uncertain that it violated due process. Hepner v. County Bd. of Sch. Trustees, 8 Ill. 2d 235, 133 N.E.2d 39 (1956).

§ 105 ILCS 5/12-25. Non-high territory surrounded by water or possessing an ancient grant

Sec. 12-25. Non-high territory surrounded by water or possessing an ancient grant. Notwithstanding any of the provisions of this Article for the elimination of non-high school territory and in addition to the exemptions provided in this Article for the elimination of non-high school territory, any non-high school territory that has no direct land connection with any school district to which it could be annexed or any school district whose inhabitants were entitled to the use and benefit of certain lands by virtue of an ancient grant prior to the admission of Illinois to the Union and which grant was recognized and confirmed by the government of the United States, may be permitted to remain non-high school territory, in whole or in part, or may be eliminated, in whole or in part, from the non-high school district of the county as part of an attachment, assignment, annexation, detachment, division, or dissolution action of the regional board of school trustees. In the event an elementary district is non-recognized by the State Board of Education, the elementary district and that portion of any non-high school district with coterminous boundaries with such elementary district shall be assigned, annexed, and attached to a unit district or to an elementary district and a high school district by the regional board of school trustees under the guidelines of Section 7-11 [105 ILCS 5/7-11].

(Source: P.A. 86-139.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-25.

§ 105 ILCS 5/12-26. Transferred territory liable for indebtedness - Levy of tax

Sec. 12-26. Transferred territory liable for indebtedness - Levy of tax. If any non-high school district or protectorate high school district has outstanding debts and obligations other than bonded indebtedness the territory constituting the district at the time the indebtedness is incurred shall remain liable for the indebtedness even though the district is dissolved or a part of the territory is detached from or ceases to be a part of such district.

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The board of education of the non-high school district or protectorate high school district at the time of making its annual tax levy or prior to the time it ceases to exist shall prepare and file with the county clerk a map of the district showing the territory embraced therein prior to any dissolution or change in the boundary thereof and shall also file with the county clerk a statement certified by the county superintendent of schools showing the amount of outstanding debts or obligations other than bonded indebtedness of the district remaining unpaid, the time when the indebtedness was created, the changes in the boundary of the district and the date of such changes.

The board of education shall determine and certify to the county clerk the amount of tax required for the purpose of paying the outstanding debts or obligations other than bonded indebtedness and the county clerk shall extend each year upon all the territory so liable a rate of tax necessary to raise the amount thereof at the maximum rate permissible at the time the territory ceased to be non-high school territory or protectorate high school territory until such outstanding debts or obligations other than bonded indebtedness have been paid.

When collected the tax shall be paid to the county superintendent of schools who shall pay the debts and obligations other than bonded indebtedness in the order that they were incurred.

(Source: P.A. 76-124.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 12-26.

CASE NOTES

Analysis
Non-High School District
Strict Construction

Non-High School District

In view of the fact that 3121/2 acres in the county were not included in any school district maintaining a high school, the non-high school district was legally in existence and where the non-high school district was small and may have no children of high school age residing within its boundaries had no effect upon the existence of the district, because a district of this character to exist, both in fact and in law, for the purpose of paying its lawful debts and for the accommodation of eighth grade graduates who may reside within the district at a future date, thus, contrary to the contention of defendant, the incorporation of most, but not all, of the former territory of the non-high school district into other school districts did not result in the automatic dissolution of the

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district and the transfer of all its assets and liabilities to other school districts. People ex rel. Bailey v. Illinois Cent. R.R., 407 Ill. 426, 95 N.E.2d 352 (1950).

Strict Construction

The power of the board of education of a non-high school district to levy taxes is statutory; the language granting that power is to be strictly construed and will not be extended beyond the plain import of the words used. People ex rel. Smith v. Wabash Ry., 374 Ill. 165, 28 N.E.2d 119 (1940).

Article 13.

Schools for Designated Purposes

Continuation Schools

§§ 105 ILCS 5/13-1 through 105 ILCS 5/13-9: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

Parental Schools

§ 105 ILCS 5/13-10: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

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Junior High Schools

§ 105 ILCS 5/13-11: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

Junior Colleges

§ 105 ILCS 5/13-12: Repealed by P.A. 89-159, § 15, effective January 1, 1996.

§§ 105 ILCS 5/13-16 through 105 ILCS 5/13-19.1: Repealed by P.A. 89-159, § 15, effective January 1, 1996.

County Normal Schools

§ 105 ILCS 5/13-36: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

Department of Juvenile Justice School District

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§ 105 ILCS 5/13-40. [Creation of Department of Juvenile Justice School District]

Sec. 13-40. To increase the effectiveness of the Department of Juvenile Justice and thereby to better serve the interests of the people of Illinois the following bill is presented.

Its purpose is to enhance the quality and scope of education for inmates and wards within the Department of Juvenile Justice so that they will be better motivated and better equipped to restore themselves to constructive and law abiding lives in the community. The specific measure sought is the creation of a school district within the Department so that its educational programs can meet the needs of persons committed and so the resources of public education at the state and federal levels are best used, all of the same being contemplated within the provisions of the Illinois State Constitution of 1970 which provides that "A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities." Therefore, on July 1, 2006, the Department of Corrections school district shall be transferred to the Department of Juvenile Justice. It shall be responsible for the education of youth within the Department of Juvenile Justice and inmates age 21 or under within the Department of Corrections who have not yet earned a high school diploma or a General Educational Development (GED) certificate and the said district may establish primary, secondary, vocational, adult, special and advanced educational schools as provided in this Act. The Department of Corrections retains authority as provided for in subsection (d) of Section 3-6-2 of the Unified Code of Corrections [730 ILCS 5/3-6-2]. The Board of Education for this district shall with the aid and advice of professional educational personnel of the Department of Juvenile Justice and the State Board of Education determine the needs and type of schools and the curriculum for each school within the school district and may proceed to establish the same through existing means within present and future appropriations, federal and state school funds, vocational rehabilitation grants and funds and all other funds, gifts and grants, private or public, including federal funds, but not exclusive to the said sources but inclusive of all funds which might be available for school purposes.

(Source: P.A. 81-1508; 94-696, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-40.

Effect of Amendments. The 2005 amendment by P.A. 94-696, effective June 1, 2006, rewrote the section.

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§ 105 ILCS 5/13-41. [Board of Education for Department of Juvenile Justice School District]

Sec. 13-41. The Board of Education for this school district shall be composed of the Director of the Department of Juvenile Justice, 2 members appointed by the Director of the Department of Juvenile Justice and 4 members appointed by the State Board of Education, at least one of whom shall have knowledge of, or experience in, vocational education and one of whom shall have knowledge of, or experience in, higher and continuing education. All members of the Board shall hold office for a period of 3 years, except that members shall continue to serve until their replacements are appointed. Vacancies shall be filled in like manner for the unexpired balance of the term. The members appointed shall be selected so far as is practicable on the basis of their knowledge of, or experience in, problems of education in correctional, vocational and general educational institutions. Members shall serve without compensation, but shall be reimbursed for reasonable expenses incurred in the performance of their duties.

(Source: P.A. 81-1508; 94-696, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-41.

Effect of Amendments. The 2005 amendment by P.A. 94-696, effective June 1, 2006, rewrote the section.

§ 105 ILCS 5/13-42. [Officers of Board of Education; meetings; records; employees]

Sec. 13-42. The Director of the Department of Juvenile Justice shall be the President of the Board of Education and the Secretary of said Board of Education shall be designated at the first regular meeting of said Board of Education. The Board shall hold regular meetings upon the call of the Chairman or any 3 members at such times as they may designate so long as they meet at least 6 times a year. Public notice of meetings must be given as prescribed in Sections 2.02 and 2.03 of "An Act in relation to meetings", approved July 11, 1957, as heretofore or hereafter amended [5 ILCS 120/2.02 and 5 ILCS 120/2.03]. No official business shall be transacted by the Board except at a regular or special meeting. A majority of said Board shall constitute a quorum.

The Board shall keep a record of the official acts of the Board and shall make reports as required by the State Board of Education and any reports required which shall be applicable to this type of school district and specifically shall maintain records to

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substantiate all district claims for State aid in accordance with regulations prescribed by the State Board of Education and to retain such records for a period of three years.

The Board shall be supplied such clerical employee or employees as are necessary for the efficient operation by the Department of Juvenile Justice.

(Source: P.A. 81-1508; 94-696, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-42.

Effect of Amendments. The 2005 amendment by P.A. 94-696, effective June 1, 2006, rewrote the section.

§ 105 ILCS 5/13-43. [Duties of Board of Education]

Sec. 13-43. The Board of Education shall have the duties set out in Sections 13-43.1 through 13-43.20 [105 ILCS 5/13-43.1 through 105 ILCS 5/13-43.20].

(Source: P.A. 86-1028.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.

§ 105 ILCS 5/13-43.1. [Report of names of teachers]

Sec. 13-43.1. To report to the County Superintendent within ten days after their employment the names of all teachers employed, with the dates of the beginning of their term of service.

(Source: P.A. 77-1779.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.1.

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§ 105 ILCS 5/13-43.2. [Rules for management]

Sec. 13-43.2. To adopt and enforce all necessary rules and for the management and government of the public schools of their district.

(Source: P.A. 77-1779.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.2.

§ 105 ILCS 5/13-43.3. [Inspection of schools]

Sec. 13-43.3. To visit and inspect the public schools as the good of the schools may require.

(Source: P.A. 77-1779.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.3.

§ 105 ILCS 5/13-43.4. [Closing during Teachers Institute]

Sec. 13-43.4. To close the schools during the holding of Teachers Institute.

(Source: P.A. 77-1779.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.4.

§ 105 ILCS 5/13-43.5. [Different grades, levels and types of schools]

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Sec. 13-43.5. To establish schools of different grades and levels and types as enumerated in Section 13-40 of this Act [105 ILCS 5/13-40], and to adopt regulations for the admission of pupils into them.

(Source: P.A. 77-1779.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.5.

§ 105 ILCS 5/13-43.6. [Superintendent]

Sec. 13-43.6. To employ a superintendent who shall have charge of the administration of the schools under the direction of the Board of Education. In addition to the administrative duties, the superintendent shall make recommendations to the Board concerning the budget, building plans, the location of sites, the selection of textbooks, instructional material and courses of study. The superintendent shall keep or cause to be kept the records and accounts as directed and required of the Board, aid in making reports required by the Board, and perform such other duties as the Board may delegate to him.

(Source: P.A. 77-1779.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.6.

§ 105 ILCS 5/13-43.7. [Supervisory personnel]

Sec. 13-43.7. To employ supervisory personnel who hold valid supervisory or administrative certificates who shall supervise the operation of attendance centers as the Board shall determine necessary. Such supervisory personnel shall assume administrative responsibilities and instructional leadership, under the supervision of the superintendent, and in accordance with reasonable rules and regulations of the Board, for the planning, operation and evaluation of the educational program of the attendance area to which he is assigned. Such supervisory personnel shall submit recommendations to the superintendent concerning the appointment, retention, promotion and assignment of all personnel assigned to the attendance center.

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(Source: P.A. 77-1779.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.7.

§ 105 ILCS 5/13-43.8. [Advanced vocational training]

Sec. 13-43.8. To enter agreements with school districts, private junior colleges and public community colleges, and public and private colleges and universities for the purpose of providing advanced vocational training of students who desire preparation for a trade. Such program would utilize private junior college and public community college facilities with transportation to and from those facilities provided by the participating school district, or by the participating school district in conjunction with other school districts. The duration of the advanced vocational training program shall be such period as the school district may approve, but it may not exceed 2 years. Participation in the program is accorded the same credit toward a high school diploma as time spent in other courses. If a student of this school district, because of his educational needs, attends a class or school in another school district or educational facility, the Department of Juvenile Justice School District where he resides shall be granted the proper permit, provide any necessary transportation, and pay to the school district or educational facility maintaining the educational facility the proportional per capita cost of educating such student.

(Source: P.A. 81-1508; 82-622; 94-696, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.8.

Effect of Amendments. The 2005 amendment by P.A. 94-696, effective June 1, 2006, substituted "Department of Juvenile Justice" for "Corrections school" in the last sentence.

§ 105 ILCS 5/13-43.9. [Special holidays]

Sec. 13-43.9. To grant special holidays, but no deduction shall be made from the time or compensation of a teacher on account of such days.

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(Source: P.A. 77-1779.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.9.

§ 105 ILCS 5/13-43.10. [Supervision of school houses]

Sec. 13-43.10. To have control and supervision of all schoolhouses in their district.

(Source: P.A. 77-1779.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.10.

§ 105 ILCS 5/13-43.11. [Assignment, expulsion and suspension of pupils; regular attendance; conferences]

Sec. 13-43.11. Subject to the rules and regulations of the Department of Juvenile Justice and the laws and statutes applicable, the Board shall have the power and the authority to assign to schools within the district and to expel or suspend pupils for disciplinary purposes or to assign or reassign them as the needs of the district or the pupil shall be determined best. Once a student commences a course of training he shall attend all sessions unless restricted by illness, a reasonable excuse or by direction of the Department of Juvenile Justice or the facility at which he is located. Conferences shall be held at regular periodic intervals with the ward or the inmate and the school district authorities and facility officials shall determine the extent the ward or inmate is benefiting from the particular program, and shall further determine whether the said ward or inmate shall continue in the program to which he is assigned or be dropped from the same or be transferred to another program more suited to his needs or the school district's needs.

(Source: P.A. 77-1779; 94-696, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.11.

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Effect of Amendments. The 2005 amendment by P.A. 94-696, effective June 1, 2006, twice substituted "Juvenile Justice" for "Corrections".

§ 105 ILCS 5/13-43.12. [Rules as to enrollment, attendance, etc.; non-discrimination]

Sec. 13-43.12. To make the necessary rules and regulations as to enrollment, attendance and all other matters regarding said school district and to determine the educability of each inmate. Rules shall be promulgated to prevent any discrimination as to race, creed, color, sex or nationality throughout the entire system.

(Source: P.A. 80-1155.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.12.

§ 105 ILCS 5/13-43.13. [Length of school year]

Sec. 13-43.13. The length of the school year shall be determined by the Board of Education, but must comply with minimum requirements as established by law.

(Source: P.A. 77-1779.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.13.

§ 105 ILCS 5/13-43.14. [Branches, courses and types of schools; agreements]

Sec. 13-43.14. The Board shall determine the branches and courses of study and the type of schools for each facility as well as to establish special schools at various facilities or facility within said district and to establish district wide schools at one or more locations for special purposes, and is empowered to enter into agreements with local school districts for the purpose of using their facilities or coordinating facilities for a more efficient use of funds, personnel, physical plants and other combined available resources. The Board shall also determine the type of textbooks and apparatus for said schools.

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(Source: P.A. 77-1779.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.14.

§ 105 ILCS 5/13-43.15. [Naming of schools]

Sec. 13-43.15. To name the various individual schools but said names need not be associated or identified with the institution or facility within which they are situated, the same may be named for distinguished American educators.

(Source: P.A. 77-1779.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.15.

§ 105 ILCS 5/13-43.16. [Compliance with state and federal provisions]

Sec. 13-43.16. The Board of Education shall comply with and require all facilities within the school district to comply with the rules, regulations, statutes, both state and federal which are applicable to the individual unit. This includes primary, secondary, vocational, adult educational, special educational and advanced educational schools.

(Source: P.A. 77-1779.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.16.

§ 105 ILCS 5/13-43.17. [Applicability of Personnel Code and Pension Code]

Sec. 13-43.17. To employ teacher personnel in accordance with the Personnel Code, of the State of Illinois, including Provisional Appointments, and such teacher personnel will be subject to Article 16 of the "Illinois Pension Code" [40 ILCS 5/16-101 et seq.] and shall not be subject to Article 14 of that Code [40 ILCS 14-101 et seq.]; and shall be

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subject to the "Personnel Code" [20 ILCS 415/1 et seq.]. The Board may also utilize personnel as set forth in Section 10-22.34 of this Act [105 ILCS 5/10-22.34] as well as vocational and occupational instructors.

(Source: P.A. 77-1779.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.17.

§ 105 ILCS 5/13-43.18. [Educational goals; evaluation; financial control system]

Sec. 13-43.18. To develop through consultation with the staff of the Department of Juvenile Justice and the staff of the State Board of Education educational goals and objectives for the correctional education programs planned for or conducted by the district, along with the methods for evaluating the extent to which the goals and objectives are or have been achieved and to develop by July 1, 1973, a complete financial control system for all educational funds and programs operated by the school district.

(Source: P.A. 81-1508; 94-696, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.18.

Effect of Amendments. The 2005 amendment by P.A. 94-696, effective June 1, 2006, substituted "Juvenile Justice" for "Corrections".

§ 105 ILCS 5/13-43.19. [Educational plan]

Sec. 13-43.19. To develop and annually revise an educational plan for achieving the goals and objectives called for in Section 13-43.18 [105 ILCS 5/13-43.18] for the Department of Juvenile Justice with specific recommendations for inmate educational assessment, curriculum, staffing and other necessary considerations.

(Source: P.A. 77-1779; 94-696, § 15.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.19.

Effect of Amendments. The 2005 amendment by P.A. 94-696, effective June 1, 2006, deleted "both the Adult and Juvenile Divisions of" before "The Department", substituted "Juvenile Justice" for "Corrections"; and made a stylistic change.

§ 105 ILCS 5/13-43.20. [Allocation of state funds]

Sec. 13-43.20. To develop a method or methods for allocating state funds to the Board for expenditure within the various divisions and/or for programs conducted by the Board, and to annually determine the average per capita cost of students in the Department of Juvenile Justice and the average per capita cost of students in the Department of Corrections for education classes and/or programs required to accomplish the educational goals and objectives and programs specified in Sections 13-43.18 and 13-43.19 [105 ILCS 5/13-43.18 and 105 ILCS 5/13-43.19] and recommend to the State Board of Education by July 15 of each year the per capita amount necessary to operate the Department of Juvenile Justice School District's educational program for the following fiscal year.

(Source: P.A. 81-1508; 94-696, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-43.20.

Effect of Amendments. The 2005 amendment by P.A. 94-696, effective June 1, 2006, rewrote the section.

§ 105 ILCS 5/13-44. [Other provisions]

Sec. 13-44. Other provisions, duties and conditions of the Department of Juvenile Justice School District are set out in Sections 13-44.1 through 13-44.5 [105 ILCS 5/13-44.1 through 105 ILCS 5/13-44.5].

(Source: P.A. 77-1779; 94-696, § 15.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 13-44.

Effect of Amendments. The 2005 amendment by P.A. 94-696, effective June 1, 2006, substituted "Juvenile Justice" for "Corrections".

§ 105 ILCS 5/13-44.1. [Acts in governmental capacity]

Sec. 13-44.1. All acts of school personnel, including the Board of Education, shall be acts in a governmental capacity, this includes personnel as set forth in Section 10-22.34 of this Act [105 ILCS 5/10-22.34] whose services the Board may utilize.

(Source: P.A. 77-1779.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-44.1.

§ 105 ILCS 5/13-44.2. [Age of students; benefits accorded to district]

Sec. 13-44.2. There shall be no restriction as to the age of students in this program, and regardless of the age of its students, the district shall have all the benefits, financial and otherwise, that are accorded to other school districts, including State and Federal grants and aid, Common School Funds, and Vocational Rehabilitation Funds. In calculating such benefits, those inmates or wards who have not completed grade or high school and those taking vocational courses and advanced courses shall be included.

(Source: P.A. 86-1028.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-44.2.

§ 105 ILCS 5/13-44.3. [Field trips; transfers; furlough; escape]

Sec. 13-44.3. In order to fully carry out the purpose of this Act, the School District through its Board or designated supervisory personnel, with the approval of the Director of the Department of Juvenile Justice, may authorize field trips outside of the particular institution or facility where a school is established and may remove students therefrom or

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may with the approval of the Director of the Department of Juvenile Justice transfer inmates and wards to other schools and other facilities where particular subject matter or facilities are more suited to or are needed to complete the inmates' or wards' education. The Director of the Department of Juvenile Justice may authorize an educational furlough for an inmate or ward to attend institutions of higher education, other schools, vocational or technical schools or enroll and attend classes in subjects not available within the School District, to be financed by the inmate or ward or any grant or scholarship which may be available, including school aid funds of any kind when approved by the Board and the Director of the Department.

The Department of Juvenile Justice may extend the limits of the place of confinement of an inmate or ward under the above conditions and for the above purposes, to leave for the aforesaid reasons, the confines of such place, accompanied or unaccompanied, in the discretion of the Director of such Department by a custodial agent or educational personnel.

The willful failure of an inmate or ward to remain within the extended limits of his or her confinement or to return within the time prescribed to the place of confinement designated by the Department of Corrections or the Department of Juvenile Justice in granting such extension or when ordered to return by the custodial personnel or the educational personnel or other departmental order shall be deemed an escape from the custody of such Department and punishable as provided in the Unified Code of Corrections [730 ILCS 5/1-1-1 et seq.] as to the Department of Corrections inmates, and the applicable provision of the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.] shall apply to wards of the Department of Juvenile Justice who might abscond.

(Source: P.A. 85-1209; 86-1475; 94-696, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-44.3.

Effect of Amendments. The 2005 amendment by P.A. 94-696, effective June 1, 2006, rewrote the section.

RESEARCH REFERENCES

Conviction for escape where prisoner fails to leave confines of prison or institution. 79 ALR4th 1060.

§ 105 ILCS 5/13-44.4. Department of Corrections Reimbursement and Education Fund; budget

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Sec. 13-44.4. Department of Corrections Reimbursement and Education Fund; budget. All moneys received from the Common School Fund, federal aid and grants, vocational and educational funds and grants, and gifts and grants by individuals, foundations and corporations for educational purposes shall be deposited into the Department of Corrections Reimbursement and Education Fund in the State Treasury. Moneys in the Department of Corrections Reimbursement and Education Fund may be used, subject to appropriation, to pay the expense of the schools and school district of the Department of Corrections together with and supplemental to regular appropriations to the Department for educational purposes, including, but not limited to, the cost of teacher salaries, supplies and materials, building upkeep and costs, transportation, scholarships, non-academic salaries, equipment and other school costs.

Beginning in 1972, the Board of Education shall, by November 15, adopt an annual budget for the use of education moneys for the next school year which it deems necessary to defray all necessary expenses and liabilities of the district, and in such annual budget shall specify the objects and purposes of each item and the amount needed for each object or purpose. The budget shall contain a statement of cash on hand at the beginning of the fiscal year, an estimate of the cash expected to be received during such fiscal year from all sources, an estimate of the expenditure contemplated for such fiscal year, and a statement of the estimated cash expected to be on hand at the end of such year. Prior to the adoption of the annual educational budget, this budget shall be submitted to the Department of Corrections and the State Board of Education for incorporation.

(Source: P.A. 86-1028; 90-9, § 25; 90-587, § 40.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-44.4.

Effect of Amendments. The 1997 amendment by P.A. 90-9, effective July 1, 1997, added the section catchline; in the first paragraph, in the first sentence, deleted "An Educational Fund shall be established wherein" from the beginning, inserted "for educational purposes" and added at the end "into the Department of Corrections Education Fund, which is hereby created as a special fund in the State Treasury" and in the second sentence substituted "The Department of Corrections Education Fund" for "The Educational Fund shall be kept separate from general funds and shall be held by the State Treasurer as ex officio custodian in a separate fund, and" and inserted "subject to appropriation"; and in the second paragraph, in the first sentence, deleted "Educational Fund" preceding "budget", inserted "for the use of education moneys" and deleted "to be assumed by the Fund" preceding "and in such annual" and in the third sentence substituted "this" for "the Educational Fund".

The 1998 amendment by P.A. 90-587, effective July 1, 1998, substituted "Department of Corrections Reimbursement and Education Fund" for "Department of Corrections Education Fund" in the section heading and twice in the first paragraph; deleted "which is hereby created as a special fund" following "Education Fund" in the first sentence of the first paragraph; and in the second sentence of the first paragraph, added "Moneys in", and substituted "may be used" for "shall be used".

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§ 105 ILCS 5/13-44.5. [Authority and approval for field trips, etc.]

Sec. 13-44.5. In all cases where an inmate or ward is to leave the institution or facility where he or she is confined for educational furloughs, vocational training, for field trips or for any other reason herein stated, authority must first be granted by the Department of Juvenile Justice and the said authority shall be discretionary with the Department of Juvenile Justice. The question of whether or not the said inmate or ward or group of inmates or wards shall be accompanied or not accompanied by security personnel, custodial agent or agents or only educational personnel shall be in the discretion of the Department of Juvenile Justice. All transfers must be approved by the Department of Juvenile Justice.

(Source: P.A. 77-1779; 94-696, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 13-44.5.

Effect of Amendments. The 2005 amendment by P.A. 94-696, effective June 1, 2006, substituted "Juvenile Justice" for "Corrections" throughout.

§ 105 ILCS 5/13-45. [Provisions inapplicable]

Sec. 13-45. Other provisions of this Code shall not apply to the Department of Juvenile Justice School District being all of the following Articles and Sections: Articles 7, 8, 9 [105 ILCS 5/7-1 et seq., 105 ILCS 5/8-1 et seq., 105 ILCS 5/9-1 et seq.], those sections of Article 10 in conflict with any provisions of Sections 13-40 through 13-45 [105 ILCS 5/13-40 through 105 ILCS 5/13-45], and Articles 11, 12, 15, 17, 18, 19, 19A, 20, 22, 24, 26, 31, 32, 33, and 34 [105 ILCS 5\11A-1 et seq., 105 ILCS 5/12-1 et seq., 105 ILCS 5/15-1 et seq. ILCS 5/17-1 et seq., 105 ILCS 5/18-1 et seq., 105 ILCS 5/19-1 et seq., 105 ILCS 5/19a-1 et seq., 105 ILCS 5/20-1 et seq., 105 ILCS 5/22-1 et seq., 105 ILCS 5/24-1 et seq., 105 ILCS 5/26-1 et seq., 105 ILCS 5/31-1 et seq., 105 ILCS 5/32-1 et seq., 105 ILCS 5/33-1 et seq., and 105 ILCS 5/34-1 et seq.]. Also Article 28 [105 ILCS 5/28-1 et seq.] shall not apply except that this School District may use any funds available from State, Federal and other funds for the purchase of textbooks, apparatus and equipment.

(Source: P.A. 77-1779; 94-696, § 15; 96-328, § 145.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 13-45.

Article 11, referred to above, has been repealed.

Effect of Amendments. The 2005 amendment by P.A. 94-696, effective June 1, 2006, substituted "Juvenile Justice" for "Corrections".

The 2009 revisory amendment by P.A. 96-328, effective August 11, 2009, substituted "33, and 34" for "33, 34, 35" in the first sentence.

§ 105 ILCS 5/13-50. Contract cancellation; Macon-Piatt Regional Office of Education

Sec. 13-50. Contract cancellation; Macon-Piatt Regional Office of Education. All contracts between the Illinois Department of Corrections or the Illinois Department of Juvenile Justice and the Macon-Piatt Regional Office of Education to provide educational services for the Department of Corrections or the Department of Juvenile Justice shall be canceled in accordance with the terms of those contracts. Upon cancellation, each employee of the Macon-Piatt Regional Office of Education who had been providing educational services for the Department of Corrections or the Department of Juvenile Justice shall be offered certified employment status under the Personnel Code with the State of Illinois. To the extent that it is reasonably practicable, unless otherwise agreed to by the Department of Central Management Services and the collective bargaining representative, the position offered to each of these persons shall be at the same facility and shall consist of the same duties and hours as previously existed under the canceled contract or contracts.

(Source: P.A. 95-1021, § 5.)

Effective Date. This section is effective June 1, 2009, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/2.

Article 13A.

Alternative Public Schools

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§ 105 ILCS 5/13A-0.5. [Short title]

Sec. 13A-0.5. This Article may be cited as the Safe Schools Law.

(Source: P.A. 89-383, § 10.)

Effective Date. Section 15 of P.A. 89-383 made this Article effective upon becoming law. The Act was approved August 18, 1995.

§ 105 ILCS 5/13A-1. Legislative Declaration

Sec. 13A-1. Legislative Declaration. The General Assembly finds and declares as follows:

(a) The children of this State constitute its most important resource, and in order to enable those children to reach their full potential, the State must provide them the quality public education that the Constitution of the State of Illinois mandates.

(b) The State cannot provide its children with the education they deserve and require unless the environment of the public schools is conducive to learning.

(c) That environment cannot be achieved unless an atmosphere of safety prevails, assuring that the person of each student, teacher, and staff member is respected, and that none of those people are subjected to violence, threats, harassment, intimidation, or otherwise confrontational or inappropriate behaviors that disrupt the educational atmosphere.

(d) In most schools, although the disruptive students who are the primary cause of inappropriate educational environments comprise a small percentage of the total student body, they nevertheless consume a substantial amount of the time and resources of teachers and school administrators who are required to address and contain that disruptive behavior.

(e) Disruptive students typically derive little benefit from traditional school programs and may benefit substantially by being transferred from their current school into an alternative public school program, where their particular needs may be more appropriately and individually addressed and where they may benefit from the opportunity for a fresh start in a new educational environment. At those alternative school programs, innovative academic and school-to-work programs, including but not limited to the techniques of work based learning and technology delivered learning, can be utilized to best help the students enrolled in those schools to become productive citizens.

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(f) Students need an appropriate, constructive classroom atmosphere in order to benefit from the teacher's presentations. Students cannot afford the classroom disruptions and often become frustrated and angry at the inability of their teachers and schools to control disruptive students. As a result, they drop out of school too often. Furthermore, even if these students stay in school and graduate, they have been deprived by their disruptive classmates of the attention to their educational needs that their teachers would otherwise have provided, thereby diminishing their receiving the education and skills necessary to secure good jobs and become productive members of an increasingly competitive economic environment.

(g) Parents of school children statewide have expressed their rising anger and concern at the failure of their local public schools to provide a safe and appropriate educational environment for their children and to deal appropriately with disruptive students, and the General Assembly deems their concerns to be understandable and justified.

(h) Every school district in the State shall do all it can to ensure a safe and appropriate educational environment for all of its students, and the first, but not the only, step school districts must take to achieve that goal is to administratively transfer disruptive students from the schools they currently attend to the alternative school programs created by this Article. Those administrative transfers will also provide optional educational programs to best fit the needs of the transferred students.

(i) Administrative transfers may prove more productive for dealing with disruptive students than out-of-school suspensions or expulsions, which have been the subject of much criticism.

(j) Because of the urgency of the problems described in this Section, as well as their statewide impact, the State of Illinois bears the responsibility to establish and fully fund alternative schools as soon as possible, thereby providing school districts with an option for dealing with disruptive students that they do not now possess.

(k) While school districts shall comply with all applicable federal laws and regulations, they should do so consistent with the goals and policies stated in this Article. Further, this Article is intended to be consistent with all applicable federal laws and regulations.

(l) An alternative school program established under this Article is subject to the other provisions of this Code that apply generally in the public schools of this State and to the rules and regulations promulgated thereunder, except as otherwise provided in this Article.

(m) The provisions of the Illinois Educational Labor Relations Act [115 ILCS 5/1 et seq.] apply to those alternative school programs that are created on or after the effective date of this amendatory Act of 1995.

(Source: P.A. 89-383, § 10; 89-629, § 5.)

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Effect of Amendments. The 1996 amendment by P.A. 89-629, effective August 9, 1996, in subsection (e), in the first sentence, inserted "program" and in the second sentence substituted "school programs" for "schools"; in subsection (h), in the first sentence, substituted "school programs" for "schools"; in subsection (l) inserted "program"; and in subsection (m) substituted "school programs" for "schools".

§ 105 ILCS 5/13A-2. Definitions

Sec. 13A-2. Definitions. In this Article words and phrases have the meanings set forth in the following Sections.

(Source: P.A. 89-383, § 10.)

§ 105 ILCS 5/13A-2.5. Disruptive student

Sec. 13A-2.5. Disruptive student. "Disruptive student" includes suspension or expulsion eligible students in any of grades 6 through 12. Suspension or expulsion eligible students are those students that have been found to be eligible for suspension or expulsion through the discipline process established by a school district.

(Source: P.A. 89-383, § 10.)

§ 105 ILCS 5/13A-2.10. Regional superintendent

Sec. 13A-2.10. Regional superintendent. "Regional superintendent" has the meaning ascribed to it in Section 3A-2 of this Code [105 ILCS 5/3A-2].

(Source: P.A. 89-383, § 10.)

§ 105 ILCS 5/13A-2.15: Repealed by P.A. 89-629, § 10, effective August 9, 1996.

§ 105 ILCS 5/13A-2.20. Educational service region

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Sec. 13A-2.20. Educational service region. "Educational service region" has the meaning ascribed to it in Article 3A of this Code.

(Source: P.A. 89-383, § 10.)

§ 105 ILCS 5/13A-2.25. State board

Sec. 13A-2.25. State board. "State board" means the State Board of Education, as defined in Section 1A-1 of this Code [105 ILCS 5/1A-1].

(Source: P.A. 89-383, § 10.)

§ 105 ILCS 5/13A-2.30. District superintendent

Sec. 13A-2.30. District superintendent. "District superintendent" has the meaning ascribed to it in Section 10-21.4 of this Code [105 ILCS 5/10-21.4].

(Source: P.A. 89-383, § 10.)

§ 105 ILCS 5/13A-3. Alternative schools

Sec. 13A-3. Alternative schools. (a) Except with respect to the Chicago public school system as provided in Section 13A-11 [105 ILCS 5/13A-11], beginning with the 1996-97 school year, there is hereby created in this State a system of alternative school education programs. At least one alternative school program may be located within each educational service region or established jointly by more than one regional office of education to serve more than one educational service region.

(b) Each regional superintendent shall hold a public hearing, by December 1 of the school year following the effective date of this amendatory Act of 1995, to determine the need for an alternative school. The hearing shall be held before the regional board. The regional superintendent, after consulting with the district superintendent of each school district located within the regional superintendent's educational service region and the regional board, shall determine the location and the need of the alternative school within that region. In making this determination, the regional superintendent shall consider the following:

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(1) the possible utilization of existing buildings, including but not limited to governmental buildings, that are, or could reasonably be made, usable as an alternative school;

(2) which available option would be least costly; and

(3) distances that administratively transferred students would need to travel and the costs of that travel.

(c) Upon determination of the need for establishment of an alternative school program, each school district located within the region shall provide the regional superintendent with a copy of the district's discipline policy and procedure for effecting the suspension or expulsion of the students of that district. Thereafter, the regional superintendent in cooperation with a representative from each school district in the region shall establish and each school district in the region shall adopt policies and procedures that shall guide each district in the identification and placement of students in the alternative school program.

(d) The regional superintendent shall locate the alternative school program so that it is as far away from any other school buildings or school grounds in that educational service region as circumstances permit.

(e) With the approval of the State board, additional alternative school programs may be established in an educational service region. If the regional superintendent determines that an additional alternative school is required in the regional superintendent's educational service region, he or she may petition the State board to authorize one or more additional alternative school programs in that region.

(f) In determining whether an additional alternative school program is necessary and appropriate for an educational service region requesting it, the State board shall consider, among other factors, the following:

(1) the geographic size of the educational service region and distances that students within that region must travel in order to attend the existing alternative school program;

(2) the student population of schools comprising the educational service region and the likely student population of all alternative school programs within that region if the petition is granted;

(3) any other logistical considerations; and

(4) the costs necessitated by establishing an additional alternative school in that educational service region.

(g) In the event the State board grants a petition for an additional alternative school program, then the State board, after consulting the regional superintendent, shall decide where the additional alternative school program shall be located within that region.

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(Source: P.A. 89-383, § 10; 89-629, § 5.)

Effect of Amendments. The 1996 amendment by P.A. 89-629, effective August 9, 1996, in subsection (a), in the first sentence, added "programs" at the end and in the second sentence inserted "program" and added "or established jointly by more than one regional office of education to serve more than one educational service region" at the end; in subsection (c), in the first sentence, inserted "program"; in subsection (d) inserted "program"; in subsection (e), in the first and second sentences, substituted "school programs" for "schools"; in subsection (f), in the introductory paragraph, inserted "program"; in subsection (f)(1) added "program" at the end; in subdivision (f)(2) substituted "school programs" for "schools"; and in subsection (g) inserted "program" twice.

§ 105 ILCS 5/13A-4. Administrative transfers

Sec. 13A-4. Administrative transfers. A student who is determined to be subject to suspension or expulsion in the manner provided by Section 10-22.6 [105 ILCS 5/10-22.6] (or, in the case of a student enrolled in the public schools of a school district organized under Article 34, in accordance with the uniform system of discipline established under Section 34-19 [105 ILCS 5/34-19]) may be immediately transferred to the alternative program. At the earliest time following that transfer appropriate personnel from the sending school district and appropriate personnel of the alternative program shall meet to develop an alternative education plan for the student. The student's parent or guardian shall be invited to this meeting. The student may be invited. The alternative educational plan shall include, but not be limited to all of the following:

(1) The duration of the plan, including a date after which the student may be returned to the regular educational program in the public schools of the transferring district. If the parent or guardian of a student who is scheduled to be returned to the regular education program in the public schools of the district files a written objection to the return with the principal of the alternative school, the matter shall be referred by the principal to the regional superintendent of the educational service region in which the alternative school program is located for a hearing. Notice of the hearing shall be given by the regional superintendent to the student's parent or guardian. After the hearing, the regional superintendent may take such action as he or she finds appropriate and in the best interests of the student. The determination of the regional superintendent shall be final.

(2) The specific academic and behavioral components of the plan.

(3) A method and time frame for reviewing the student's progress.

Notwithstanding any other provision of this Article, if a student for whom an individualized educational program has been developed under Article 14 is transferred to an alternative school program under this Article 13A, that individualized educational program shall continue to apply to that student following the transfer unless modified in accordance with the provisions of Article 14.

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(Source: P.A. 89-383, § 10; 89-629, § 5.)

Effect of Amendments. The 1996 amendment by P.A. 89-629, effective August 9, 1996, in subsection (1), in the second sentence and in the last sentence, inserted "program".

§ 105 ILCS 5/13A-5. Alternative school program curriculum

Sec. 13A-5. Alternative school program curriculum. (a) The regional superintendent shall implement, or contract with one or more school districts to implement, a multi-disciplinary curriculum, which may include work-based learning and community service work approved by the regional superintendent of schools in consultation with the State Board of Education for which academic credit is earned, for the alternative school program designed to address the individualized needs of the students of that program, with special emphasis toward making the educational experience of each student meaningful and worthwhile. In the design and implementation of that curriculum, the regional superintendent or school district shall give due consideration to the rules and regulations adopted by the State Board of Education for alternative schools and optional education programs. The regional superintendent or school district (i) may contract with third parties for any services otherwise performed by employees and (ii) may apply for waivers or modifications of mandates of this Code or of administrative rules as provided in Section 2-3.25g of this Code [105 ILCS 5/2-3.25g] and as are necessary for the alternative school program.

(b) An administratively transferred student who successfully completes the requirements for his or her high school graduation shall receive a diploma identifying the student as graduating from the transferring high school. In the event the student is administratively transferred before enrolling in a high school, then that student shall receive a diploma from the high school the student would have attended if the student had not attended an alternative school program.

(Source: P.A. 89-383, § 10; 89-629, § 5; 90-283, § 5; 91-318, § 5.)

Effect of Amendments. The 1996 amendment by P.A. 89-629, effective August 9, 1996, in the section catchline inserted "program"; in subsection (a), in the first sentence, substituted "regional superintendent" for "principal of an alternative school", inserted "or contract with one or more school districts to implement", inserted "for the alternative school program" and substituted "program" for "school" and in the second sentence, substituted "regional superintendent or school district" for "principal"; and in subsection (b), in the second sentence, added "program" at the end.

The 1997 amendment by P.A. 90-283, effective July 1, 1997, approved July 31, 1997, in subsection (a), in the first sentence, inserted "which may include work-based learning and community service work approved by the regional superintendent of schools in consultation with the State Board of Education for which academic credit is earned".

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The 1999 amendment by P.A. 91-318, effective July 29, 1999, added the last sentence to subsection (a).

§ 105 ILCS 5/13A-6. Administration; contracts; waivers

Sec. 13A-6. Administration; contracts; waivers. (a) The regional superintendent shall administer, or contract with one or more school districts to administer, alternative school programs located within the educational service region. The regional superintendent or school district (i) may contract with third parties for any services otherwise performed by employees and (ii) may apply for waivers or modifications of mandates of this Code or of administrative rules as provided in Section 2-3.25g of this Code [105 ILCS 5/2-3.25g] and as are necessary for the alternative school program.

(b) The regional superintendent is responsible for the administrative and fiscal structure for the program.

(Source: P.A. 89-383, § 10; 89-629, § 5; 91-318, § 5.)

Effect of Amendments. The 1996 amendment by P.A. 89-629, effective August 9, 1996, in subsection (a) substituted "superintendent shall administer, or contract with one or more school districts to administer" for "board constitutes the school board for all", substituted "school programs" for "schools" and substituted "the" for "that regional board's"; and in subsection (b) deleted "Within the confines of the budget set by the regional board" from the beginning, substituted "the" for "developing an" and deleted "that shall be approved by the regional board for the alternative schools in that region" from the end.

The 1999 amendment by P.A. 91-318, effective July 29, 1999, substituted "Administration; contracts; wavers" for "Staffing" in the section heading, and added the last sentence in subsection (a).

§ 105 ILCS 5/13A-7. Employees

Sec. 13A-7. Employees. In all school districts, including special charter districts and districts located in cities having a population exceeding 500,000, the local school board shall grant, for a period of up to 5 years, a leave of absence to those of its employees who accept employment with an alternative school, provided that the employee shall satisfy any leave of absence provisions that may exist under a collective bargaining agreement or, if such an agreement does not exist, a school board policy. At the end of the authorized leave of absence, the employee must return to the school district in a comparable position or resign. The contractual continued service status and retirement benefits of an employee of the district who is granted a leave of absence to accept employment with an alternative school shall not be affected by that leave of absence.

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(Source: P.A. 89-383, § 10.)

§ 105 ILCS 5/13A-8. Funding

Sec. 13A-8. Funding. (a) The State of Illinois shall provide funding for the alternative school programs within each educational service region and within the Chicago public school system by line item appropriation made to the State Board of Education for that purpose. This money, when appropriated, shall be provided to the regional superintendent and to the Chicago Board of Education, who shall establish a budget, including salaries, for their alternative school programs. Each program shall receive funding in the amount of $30,000 plus an amount based on the ratio of the region's or Chicago's best 3 months' average daily attendance in grades pre-kindergarten through 12 to the statewide totals of these amounts. For purposes of this calculation, the best 3 months' average daily attendance for each region or Chicago shall be calculated by adding to the best 3 months' average daily attendance the number of low-income students identified in the most recently available federal census multiplied by one-half times the percentage of the region's or Chicago's low-income students to the State's total low-income students. The State Board of Education shall retain up to 1.1% of the appropriation to be used to provide technical assistance, professional development, and evaluations for the programs.

(a-5) Notwithstanding any other provisions of this Section, for the 1998-1999 fiscal year, the total amount distributed under subsection (a) for an alternative school program shall be not less than the total amount that was distributed under that subsection for that alternative school program for the 1997-1998 fiscal year. If an alternative school program is to receive a total distribution under subsection (a) for the 1998-1999 fiscal year that is less than the total distribution that the program received under that subsection for the 1997-1998 fiscal year, that alternative school program shall also receive, from a separate appropriation made for purposes of this subsection (a-5), a supplementary payment equal to the amount by which its total distribution under subsection (a) for the 1997-1998 fiscal year exceeds the amount of the total distribution that the alternative school program receives under that subsection for the 1998-1999 fiscal year. If the amount appropriated for supplementary payments to alternative school programs under this subsection (a-5) is insufficient for that purpose, those supplementary payments shall be prorated among the alternative school programs entitled to receive those supplementary payments according to the aggregate amount of the appropriation made for purposes of this subsection (a-5).

(b) An alternative school program shall be entitled to receive general State aid as calculated in subsection (K) of Section 18-8.05 [105 ILCS 5/18-8.05] upon filing a claim as provided therein. Any time that a student who is enrolled in an alternative school program spends in work-based learning, community service, or a similar alternative educational setting shall be included in determining the student's minimum number of clock hours of daily school work that constitute a day of attendance for purposes of calculating general State aid.

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(c) An alternative school program may receive additional funding from its school districts in such amount as may be agreed upon by the parties and necessary to support the program. In addition, an alternative school program is authorized to accept and expend gifts, legacies, and grants, including but not limited to federal grants, from any source for purposes directly related to the conduct and operation of the program.

(Source: P.A. 89-383, § 10; 89-629, § 5; 89-636, § 5; 90-14, § 2-135; 90-283, § 5; 90-802, § 5.)

Effect of Amendments. The 1996 amendment by P.A. 89-629, effective August 9, 1996, in subsection (a), in the first sentence, substituted "school programs" for "schools" and in the second sentence substituted "superintendent, who" for "board, which"; and in subsection (b) substituted the first occurrence of "program" for "school" and added the second occurrence of "program" at the end.

The 1996 amendment by P.A. 89-636, effective August 9, 1996, in the first sentence of subsection (a) inserted "and within the Chicago public school system"; and in the second sentence inserted "and to the Chicago Board of Education".

The 1997 amendment by P.A. 90-14, effective July 1, 1997, combined the amendments by P.A. 89-629 and P.A. 89-636.

The 1997 amendment by P.A. 90-283, effective July 1, 1997, approved July 31, 1997, combined the amendments by P.A. 89-629 and P.A. 89-636; rewrote subsection (b) which read "The school district in which the program is located and from which a student is administratively transferred shall, as a result of an administrative transfer, have its average daily attendance funding with respect to that student transferred to the alternative school program"; and added subsection (c).

The 1998 amendment by P.A. 90-802, effective December 15, 1998, in subsection (a) substituted "their alternative school programs" for "all alternative schools in that region" in the second sentence and added the last three sentences; added subsection (a-5); and, in subsection (b), substituted "subsection (K)" for "Part B" and "18-8.05" for "18-8" in the first sentence.

§ 105 ILCS 5/13A-9. Transportation

Sec. 13A-9. Transportation. Subject to the requirements of Article 29 and except as otherwise agreed by the parents, school and regional superintendent, the school from which a student is administratively transferred shall provide for any transportation that the transfer necessitates, if transportation is required pursuant to Section 29-3 [105 ILCS 5/29-3]. The regional superintendent shall coordinate all transportation arrangements with transferring school districts. The regional superintendent may also arrange for cooperation between school districts in the regional superintendent's educational service region regarding the transportation needs of transferred students in order to reduce the costs of that transportation and to provide greater convenience for the students involved.

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(Source: P.A. 89-383, § 10; 89-629, § 5; 89-636, § 5; 90-14, § 2-135.)

Effect of Amendments. The 1996 amendment by P.A. 89-629, effective August 9, 1996, in the first sentence added "Subject to the requirements of Article 29 and except as otherwise agreed by the parents, school and regional superintendent" at the beginning and substituted "provide for any" for "pay all costs of".

The 1996 amendment by P.A. 89-636, effective August 9, 1996, in the first sentence inserted "provide for or" and added "if transportation is required pursuant to Section 29-3" at the end.

The 1997 amendment by P.A. 90-14, effective July 1, 1997, combined the amendments by P.A. 89-629 and P.A. 89-636.

§ 105 ILCS 5/13A-10. Alternative School Programs in Class II Counties

Sec. 13A-10. Alternative School Programs in Class II Counties. The executive director of educational service centers located in Class II counties outside a city of 500,000 or more inhabitants shall, for the educational service center area, perform the duties assigned by this Article to regional superintendents.

(Source: P.A. 89-383, § 10; 89-629, § 5.)

Effect of Amendments. The 1996 amendment by P.A. 89-629, effective August 9, 1996, substituted the present section catchline for "Suburban Cook County schools"; deleted subsection (a) which read "Solely for the purposes of this Article, each of the 3 educational service centers in suburban Cook County shall constitute an educational service region"; deleted former subsection (b) which read "The governing authority of each of the 3 suburban Cook County educational service centers shall perform the duties assigned by this Article to regional boards"; deleted a second subsection (b) designation preceding "The executive"; deleted "each of the 3 suburban Cook County" preceding the first occurrence of "educational"; inserted "located in Class II counties outside a city of 500,000 or more inhabitants"; and inserted "for the educational service center area".

§ 105 ILCS 5/13A-11. Chicago public schools

Sec. 13A-11. Chicago public schools. (a) The Chicago Board of Education may establish alternative schools within Chicago and may contract with third parties for services otherwise performed by employees, including those in a bargaining unit, in accordance with Sections 34-8.1, 34-18, and 34-49 [105 ILCS 5/34-8.1, 105 ILCS 5/34-18, and 105 ILCS 5/34-49].

(b) Alternative schools operated by third parties within Chicago shall be exempt from all provisions of the School Code, except provisions concerning:

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(1) Student civil rights;

(2) Staff civil rights;

(3) Health and safety;

(4) Performance and financial audits;

(5) The Illinois Goals Assessment Program;

(6) Chicago learning outcomes;

(7) Sections 2-3.25a through 2-3.25j of the School Code [105 ILCS 5/2-3.25a through 105 ILCS 5/2-3.25j];

(8) The Inspector General; and

(9) Section 34-2.4b of the School Code [105 ILCS 5/34-2.4b].

(Source: P.A. 89-383, § 10; 89-636, § 5.)

Effect of Amendments. The 1996 amendment by P.A. 89-636, effective August 9, 1996, rewrote the section.

Article 13B.

Alternative Learning Opportunities

§ 105 ILCS 5/13B-1. Short title

Sec. 13B-1. Short title. This Article may be cited as the Alternative Learning Opportunities Law.

(Source: P.A. 92-42, § 5.)

Effective Date. Section 99 of P.A. 92-42 made this Article effective January 1, 2002.

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§ 105 ILCS 5/13B-5. Legislative findings and declarations

Sec. 13B-5. Legislative findings and declarations. The General Assembly finds and declares the following:

(1) It is the responsibility of each school district to provide educational support for every student to meet Illinois Learning Standards.

(2) School districts need flexibility and financial support to assist local schools in their efforts to provide students with educational and other services needed for students to successfully master the curriculum.

(3) Alternative education in this State has traditionally provided student-centered curriculum, social services, and other support needed to help students succeed.

(4) Standards-based reform requires a comprehensive approach to alternative education to ensure that every student has the opportunity to meet the State's rigorous learning standards.

(5) While school districts operating alternative learning opportunities programs must comply with all applicable State and federal laws and rules, these districts should do so in a manner consistent with the goals and policies stated in this Article.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-10. Purpose

Sec. 13B-10. Purpose. The purpose of this Article is to specify the requirements for the operation of alternative learning opportunities programs, which are intended to provide students at risk of academic failure with the education and support services needed to meet Illinois Learning Standards and to complete their education in an orderly, safe, and secure learning environment. Services provided under this Article should be provided in a manner that addresses individual learning styles, career development, and social needs to enable students to successfully complete their education.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-15. Definitions

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Sec. 13B-15. Definitions. In this Article, words and phrases have the meanings set forth in the following Sections preceding Section 13B-20 of this Code [105 ILCS 5/13B-20].

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-15.5. State Board

Sec. 13B-15.5. State Board. "State Board" means the State Board of Education.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-15.10. Student at risk of academic failure

Sec. 13B-15.10. Student at risk of academic failure. "Student at risk of academic failure" means a student at risk of not meeting the Illinois Learning Standards or not graduating from elementary or high school and who demonstrates a need for educational support or social services beyond that provided by the regular school program. Such students are eligible for services up to the age of 21.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-15.15. Student Success Plan

Sec. 13B-15.15. Student Success Plan. "Student Success Plan" means a plan based on an assessment of a student's educational and social functioning and skills and that establishes goals and objectives for satisfactory performance in an alternative learning opportunities program. The Plan must (i) specify the curriculum and instructional methods to be used in improving the student's educational performance, (ii) outline the support services needed to remove barriers to learning, (iii) specify, when appropriate, the career development experiences the student will receive to enhance his or her career awareness, (iv) set objectives to ensure a successful transition back to the regular school program or to post-secondary educational options, and (v) outline the student's responsibilities under the Plan.

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(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-15.20. Support services

Sec. 13B-15.20. Support services. "Support services" include alcohol and drug rehabilitation; individual, group, and family counseling; mentoring; tutoring; school physicals; health and nutrition education; classroom aides; career counseling; child care; and any other social, health, or supplemental service approved as part of the Student Success Plan that is required by students for their academic success.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-20. Alternative learning opportunities program

Sec. 13B-20. Alternative learning opportunities program. An alternative learning opportunities program shall provide a flexible standards-based learning environment, innovative and varied instructional strategies, a student-centered curriculum, social programs, and supplemental social, health, and support services to improve the educational achievement of students at risk of academic failure.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-20.5. Eligible activities and services

Sec. 13B-20.5. Eligible activities and services. Alternative learning opportunities programs may include without limitation evening high school, in-school tutoring and mentoring programs, in-school suspension programs, high school completion programs to assist high school dropouts in completing their education, support services, parental involvement programs, and programs to develop, enhance, or extend the transition for students transferring back to the regular school program, an adult education program, or a post-secondary education program.

(Source: P.A. 92-42, § 5.)

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§ 105 ILCS 5/13B-20.10. Who may establish and operate programs

Sec. 13B-20.10. Who may establish and operate programs. School districts may establish alternative learning opportunities programs or may contract with regional offices of education, intermediate service centers, public community colleges, non-profit or for-profit education providers, youth service agencies, community-based organizations, or other appropriate entities to establish alternative learning opportunities programs within the public school system and provide a range of alternative learning opportunities for those students in the State who do not meet Illinois Learning Standards. Districts may individually operate alternative learning opportunities programs or may collaborate with 2 or more districts or one or more regional offices of education or both or with intermediate service centers to create and operate alternative learning opportunities programs.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-20.15. Other eligible providers of alternative learning opportunities

Sec. 13B-20.15. Other eligible providers of alternative learning opportunities. School districts may contract with health, mental health, or human service organizations, workforce development boards or agencies, juvenile court services, juvenile justice agencies, juvenile detention programs, programs operated by the Department of Juvenile Justice, or other appropriate agencies or organizations to serve students whose needs are not being met in the regular school program by providing alternative learning opportunities.

(Source: P.A. 92-42, § 5; 94-696, § 15.)

Effect of Amendments. The 2005 amendment by P.A. 94-696, effective June 1, 2006, substituted "Juvenile Justice" for "Corrections".

§ 105 ILCS 5/13B-20.20. Enrollment in other programs

Sec. 13B-20.20. Enrollment in other programs. General Educational Development preparation programs are not eligible for funding under this Article. A student may enroll in a program approved under Section 18-8.05 of this Code [105 ILCS 5/18-8.05], as appropriate, or attend both the alternative learning opportunities program and the regular

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school program to enhance student performance and facilitate on-time graduation.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-20.25. Eligible students

Sec. 13B-20.25. Eligible students. Students in grades 4 through 12 who meet enrollment criteria established by the school district and who meet the definition of "student at risk of academic failure" are eligible to participate in an alternative learning opportunities program funded under this Article. Notwithstanding any other provision of law to the contrary, enrollment in a charter alternative learning opportunities program shall be open to any pupil who has been expelled or suspended for more than 20 days under Section 10-22.6 or 34-19 of this Code [105 ILCS 5/10-22.6 or 105 ILCS 5/34-19]. All rights granted under this Article to a student's parent or guardian become exclusively those of the student upon the student's 18th birthday.

(Source: P.A. 92-42, § 5; 97-495, § 5.)

Effect of Amendments. The 2011 amendment by P.A. 97-495, effective January 1, 2012, inserted the second sentence.

§ 105 ILCS 5/13B-20.30. Location of program

Sec. 13B-20.30. Location of program. A school district must consider offering an alternative learning opportunities program on-site in the regular school. An alternative learning opportunities program may be provided at facilities separate from the regular school or in classrooms elsewhere on school premises.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-20.35. Transportation of students

Sec. 13B-20.35. Transportation of students. School districts that are required to provide transportation pursuant to Section 29-3 of this Code [105 ILCS 5/29-3] shall provide transportation for students enrolled in alternative learning opportunities programs. Other

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school districts shall provide transportation to the same extent that they provide transportation to other students. A school district may collaborate with the regional superintendent of schools to establish a cooperative transportation agreement among school districts in the region to reduce the costs of transportation and to provide for greater accessibility for students attending alternative learning opportunities programs.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-25. Eligibility for funding

Sec. 13B-25. Eligibility for funding. The criteria set forth in the following Sections preceding Section 13B-30 of this Code [105 ILCS 5/13B-30] shall determine the eligibility of an alternative learning opportunities program for funding.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-25.5. General standards for eligibility for funding

Sec. 13B-25.5. General standards for eligibility for funding. To be eligible for funding, an alternative learning opportunities program must provide evidence of an administrative structure, program activities, program staff, a budget, and a specific curriculum that is consistent with Illinois Learning Standards but may be different from the regular school program in terms of location, length of school day, program sequence, pace, instructional activities, or any combination of these.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-25.10. District policies, guidelines, and procedures; notification

Sec. 13B-25.10. District policies, guidelines, and procedures; notification. Before receiving State funds for an alternative learning opportunities program, a school district must adopt policies and guidelines for the admission and transfer of students to the program and for transitioning students as appropriate back to the regular school program in a manner consistent with guidelines provided by the State Board. A school district must adopt policies and procedures for the establishment of a new alternative learning

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opportunities program or for securing State approval for an existing program. Any district that plans to establish an alternative learning opportunities program must notify the State Superintendent of Education before enrolling students in the program.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-25.15. Planning process and district plan

Sec. 13B-25.15. Planning process and district plan. To apply for funding to establish or maintain an alternative learning opportunities program, a school district must initiate a planning process to specify the type of program needed by the district. Before submission of the district plan, the school district or consortium may apply for a one-year planning grant. The planning process may involve key education and community stakeholders, such as teachers, administrators, parents, interested members of the community, and other agencies or organizations as appropriate.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-25.20. Requirements for the district plan

Sec. 13B-25.20. Requirements for the district plan. The district plan must be consistent with the school district's overall mission and goals and aligned with the local school improvement plans of each participating school. The district plan must include all of the following:

(1) A description of the program, including the students at risk of academic failure to be served, evidence of need, program goals, objectives, and measurable outcomes.

(2) A staffing plan, including the experiences, competency, and qualifications of certified and non-certificated staff and emphasizing their individual and collective abilities to work with students at risk of academic failure.

(3) A description and schedule of support services that will be available to students as part of their instructional program, including procedures for accessing services required for students on an as-needed basis.

(4) How the district will use grant funds to improve the educational achievement of students at risk of academic failure.

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(5) A detailed program budget that includes sources of funding to be used in conjunction with alternative learning opportunities grant funds and a plan for allocating costs to those funds.

(6) A plan that outlines how funding for alternative learning opportunities will be coordinated with other State and federal funds to ensure the efficient and effective delivery of the program.

(7) A description of other sources of revenue the district will allocate to the program.

(8) An estimate of the total cost per student for the program and an estimate of any gap between existing revenue available for the program and the total cost of the program.

(9) A description of how parents and community members will be involved in the program.

(10) Policies and procedures used by the district to grant credit for student work satisfactorily completed in the program.

(11) How the district will assess students enrolled in the program, including how statewide testing for students in alternative learning opportunities settings will be addressed.

(12) How students will be admitted to the program and how students will make an effective transition back to the regular school program, as appropriate.

(13) All cooperative and intergovernmental agreements and subcontracts with eligible entities.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-25.25. Testing and assessment

Sec. 13B-25.25. Testing and assessment. A district plan for an alternative learning opportunities program operated through a cooperative or intergovernmental agreement must provide procedures for ensuring that students are included in the administration of statewide testing programs. Students enrolled in an alternative learning opportunities program shall participate in State assessments under Section 2-3.64 of this Code [105 ILCS 5/2-3.64].

(Source: P.A. 92-42, § 5.)

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§ 105 ILCS 5/13B-25.30. Annual update and submission of district plan

Sec. 13B-25.30. Annual update and submission of district plan. A district plan must be updated annually and submitted to the State Board.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-25.35. Regional plan

Sec. 13B-25.35. Regional plan. Based on district plans to provide alternative learning opportunities, the regional office of education must submit an annual plan summarizing the number, needs, and demographics of students at risk of academic failure expected to be served in its region. This plan must be updated annually and submitted to the State Board.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-30. Responsibilities of the State Board; rules

Sec. 13B-30. Responsibilities of the State Board; rules. The State Board has the responsibilities set forth in the following Sections preceding Section 13B-35 of this Code [105 ILCS 5/13B-35]. The State Board may adopt rules as necessary to implement this Article.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-30.5. Program assistance, evaluation, and monitoring

Sec. 13B-30.5. Program assistance, evaluation, and monitoring. Subject to the availability of State funds, the State Board is authorized to assist school districts in developing and implementing alternative learning opportunities programs to meet the educational needs of students at risk of academic failure. The State Board shall develop research-based guidelines for alternative learning opportunities programs, provide technical assistance to ensure the establishment of quality programs aligned with Illinois

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Learning Standards, and contract for services to conduct an annual statewide evaluation. The State Board shall conduct compliance visits of and monitor programs, as appropriate. The State Board may conduct other program-related research and planning projects, as appropriate, to enhance student outcomes.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-30.10. Compliance

Sec. 13B-30.10. Compliance. The State Board is responsible for ensuring that all alternative learning opportunities programs are in compliance with all applicable federal and State laws, unless otherwise specified in this Article.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-30.15. Statewide program evaluation of student outcomes

Sec. 13B-30.15. Statewide program evaluation of student outcomes. Alternative learning opportunities programs must be evaluated annually on a statewide basis. Indicators used to measure student outcomes for this evaluation may include program completion, elementary school graduation, high school graduation or passage of the General Educational Development test, attendance, the number of students involved in work-based learning activities, the number of students making an effective transition to the regular school program, further education or work, and improvement in the percentage of students enrolled in the sending school district or districts that meet State standards.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-30.20. Suspension or revocation of program approval

Sec. 13B-30.20. Suspension or revocation of program approval. The State Board may suspend or revoke approval of an alternative learning opportunities program under any one of the following conditions:

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(1) A failure to meet educational outcomes as enumerated in Section 13B-30.15 of this Code [105 ILCS 5/13B-30.15] and as specified in the alternative learning opportunities grant agreement for a period of 2 or more consecutive years.

(2) A failure to comply with all applicable laws as specified in this Code.

(3) A failure to comply with the terms and conditions of the alternative learning opportunities grant.

(4) A failure to maintain financial records according to generally accepted accounting procedures as specified by the State Board.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-30.25. Corrective action plan

Sec. 13B-30.25. Corrective action plan. For school districts whose alternative learning opportunities programs are not making progress in specified program outcomes, the State Board may require a school district to submit a corrective action plan.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-30.30. Technical assistance before suspension or revocation of funding

Sec. 13B-30.30. Technical assistance before suspension or revocation of funding. Funding of an alternative learning opportunities program may not be suspended or revoked unless the program has been provided with technical assistance and has had an opportunity to implement a corrective action plan.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-30.35. Recovery of grant funds

Sec. 13B-30.35. Recovery of grant funds. The State may recover grant funds from school districts that consistently fail to improve student performance or have failed to implement

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corrective actions to improve their alternative learning opportunities programs.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-30.40. Application for funding after suspension or revocation of program approval

Sec. 13B-30.40. Application for funding after suspension or revocation of program approval. Once approval to operate an alternative learning opportunities program is suspended or revoked, the school district or consortium must reapply for funding.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-30.45. Administrative support

Sec. 13B-30.45. Administrative support. The State Board shall use 1.5% of the State appropriation for the purposes of this Article to conduct activities related to the provision of technical assistance, professional development, evaluations, and compliance monitoring.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-35. Application to cooperative agreements

Sec. 13B-35. Application to cooperative agreements. The provisions set forth in the following Sections preceding Section 13B-40 of this Code [105 ILCS 5/13B-40] apply to cooperative agreements among alternative learning opportunities program providers.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-35.5. Local governance; cooperative agreements

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Sec. 13B-35.5. Local governance; cooperative agreements. For an alternative learning opportunities program operated jointly or offered under contract, the local governance of the program shall be established by each local school board through a cooperative or intergovernmental agreement with other school districts. Cooperative agreements may be established among regional offices of education, public community colleges, community-based organizations, health and human service agencies, youth service agencies, juvenile court services, the Department of Juvenile Justice, and other non-profit or for-profit education or support service providers as appropriate. Nothing contained in this Section shall prevent a school district, regional office of education, or intermediate service center from forming a cooperative for the purpose of delivering an alternative learning opportunities program.

(Source: P.A. 92-42, § 5; 94-696, § 15.)

Effect of Amendments. The 2005 amendment by P.A. 94-696, effective June 1, 2006, substituted "Juvenile Justice" for "Corrections".

§ 105 ILCS 5/13B-35.10. Committee of Cooperative Services

Sec. 13B-35.10. Committee of Cooperative Services. The State Superintendent of Education shall convene a State-level Committee of Cooperative Services. The Committee shall include representatives of the following agencies and organizations, selected by their respective heads: the Office of the Governor, the State Board of Education, the Illinois Association of Regional Superintendents of Schools, the Chicago Public Schools, the Intermediate Service Centers, the State Teacher Certification Board, the Illinois Community College Board, the Department of Human Services, the Department of Children and Family Services, the Illinois Principals Association, the Illinois Education Association, the Illinois Federation of Teachers, the Illinois Juvenile Justice Commission, the Office of the Attorney General, the Illinois Association of School Administrators, the Administrative Office of the Illinois Courts, the Department of Juvenile Justice, special education advocacy organizations, and non-profit and community-based organizations, as well as parent representatives and child advocates designated by the State Superintendent of Education.

(Source: P.A. 92-42, § 5; 94-696, § 15.)

Effect of Amendments. The 2005 amendment by P.A. 94-696, effective June 1, 2006, substituted "Juvenile Justice" for "Corrections".

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§ 105 ILCS 5/13B-35.15. Role of Committee of Cooperative Services

Sec. 13B-35.15. Role of Committee of Cooperative Services. The Committee of Cooperative Services shall advise the State Superintendent of Education on the statewide development, implementation, and coordination of alternative learning opportunities programs. The Committee shall make recommendations to the heads of the various State entities represented on the Committee to improve the educational outcomes of students at risk of academic failure through the coordinated provision of education, health, mental health, and human services.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-35.20. Operation of Committee of Cooperative Services

Sec. 13B-35.20. Operation of Committee of Cooperative Services. The Committee of Cooperative Services shall establish its by-laws and procedures, subject to approval of the State Superintendent of Education.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-40. Funding

Sec. 13B-40. Funding. The provisions set forth in the following Sections preceding Section 13B-45 of this Code [105 ILCS 5/13B-45] apply to the funding of alternative learning opportunities programs under this Article.

(Source: P.A. 92-42, § 5.)

§§ 105 ILCS 5/13B-40.5 through 105 ILCS 5/13B-40.30: Repealed by P.A. 95-793, § 11, effective August 8, 2008.

§ 105 ILCS 5/13B-40.35. Supplanting prohibited

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Sec. 13B-40.35. Supplanting prohibited. Alternative learning opportunities grants may not be used to supplant existing funds that the student would otherwise generate if in attendance in the regular school program.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-40.40. Cooperative and intergovernmental agreements funding

Sec. 13B-40.40. Cooperative and intergovernmental agreements funding. Alternative learning opportunities programs operating under a cooperative or intergovernmental agreement shall receive the total of funding that each individual program would be entitled to receive separately.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-40.45. Deobligated funds

Sec. 13B-40.45. Deobligated funds. Within any given grant year, deobligated funds shall be redistributed to existing alternative learning opportunities programs.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-40.50. Supplemental funding

Sec. 13B-40.50. Supplemental funding. An alternative learning opportunities program may receive federal, State, and local grants, gifts, and foundation grants to support the program.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-45. Days and hours of attendance

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Sec. 13B-45. Days and hours of attendance. An alternative learning opportunities program shall provide students with at least the minimum number of days of pupil attendance required under Section 10-19 of this Code [105 ILCS 5/10-19] and the minimum number of daily hours of school work required under Section 18-8.05 of this Code [105 ILCS 5/18-8.05], provided that the State Board may approve exceptions to these requirements if the program meets all of the following conditions:

(1) The district plan submitted under Section 13B-25.15 of this Code [105 ILCS 5/13B-25.15] establishes that a program providing the required minimum number of days of attendance or daily hours of school work would not serve the needs of the program's students.

(2) Each day of attendance shall provide no fewer than 3 clock hours of school work, as defined under paragraph (1) of subsection (F) of Section 18-8.05 of this Code [105 ILCS 5/18-8.05].

(3) Each day of attendance that provides fewer than 5 clock hours of school work shall also provide supplementary services, including without limitation work-based learning, student assistance programs, counseling, case management, health and fitness programs, or life-skills or conflict resolution training, in order to provide a total daily program to the student of 5 clock hours. A program may claim general State aid for up to 2 hours of the time each day that a student is receiving supplementary services.

(4) Each program shall provide no fewer than 174 days of actual pupil attendance during the school term; however, approved evening programs that meet the requirements of Section 13B-45 of this Code [105 ILCS 5/13B-45] may offer less than 174 days of actual pupil attendance during the school term.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-50. Eligibility to receive general State aid

Sec. 13B-50. Eligibility to receive general State aid. In order to receive general State aid, alternative learning opportunities programs must meet the requirements for claiming general State aid as specified in Section 18-8.05 of this Code [105 ILCS 5/18-8.05], with the exception of the length of the instructional day, which may be less than 5 hours of school work if the program meets the criteria set forth under Sections 13B-50.5 and 13B-50.10 of this Code [105 ILCS 5/13B-50.5 and 105 ILCS 5/13B-50.10] and if the program is approved by the State Board.

(Source: P.A. 92-42, § 5.)

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§ 105 ILCS 5/13B-50.5. Conditions of funding

Sec. 13B-50.5. Conditions of funding. If an alternative learning opportunities program provides less than 5 clock hours of school work daily, the program must meet guidelines established by the State Board and must provide supplementary services, including without limitation work-based learning, student assistance programs, counseling, case management, health and fitness programs, life skills, conflict resolution, or service learning, that are equal to the required attendance.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-50.10. Additional criteria for general State aid

Sec. 13B-50.10. Additional criteria for general State aid. In order to claim general State aid, an alternative learning opportunities program must meet the following criteria:

(1) Teacher professional development plans should include education in the instruction of at-risk students.

(2) Facilities must meet the health, life, and safety requirements in this Code.

(3) The program must comply with all other State and federal laws applicable to education providers.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-50.15. Level of funding

Sec. 13B-50.15. Level of funding. Approved alternative learning opportunities programs are entitled to claim general State aid, subject to Sections 13B-50, 13B-50.5, and 13B-50.10 of this Code [105 ILCS 5/13B-50, 105 ILCS 5/13B-50.5, and 105 ILCS 5/13B-50.10]. Approved programs operated by regional offices of education are entitled to receive general State aid at the foundation level of support. A school district or consortium must ensure that an approved program receives supplemental general State aid, transportation reimbursements, and special education resources, if appropriate, for students enrolled in the program.

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(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-55. Non-resident students

Sec. 13B-55. Non-resident students. If one school district can more efficiently serve students from multiple school districts, an approved alternative learning opportunities program may admit non-resident students pursuant to the terms of an intergovernmental agreement negotiated among participating districts. The tuition charge must not be less than 100% nor greater than 110% of the per capita tuition rate for the resident district.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-60. Enrollment in program

Sec. 13B-60. Enrollment in program. The provisions set forth in the following Sections preceding Section 13B-65 of this Code [105 ILCS 5/13B-65] govern enrollment in an alternative learning opportunities program.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-60.5. Request for enrollment

Sec. 13B-60.5. Request for enrollment. A school district that operates an alternative learning opportunities program shall ensure that parents and guardians are aware of the program and the services that the program offers. A student may be enrolled in the program only upon the request of the student or the student's parent or guardian and only after a conference under Section 13B-60.10 of this Code [105 ILCS 5/13B-60.10] has been held.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-60.10. Parent conference

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Sec. 13B-60.10. Parent conference. Before being enrolled in an alternative learning opportunities program, the student and each of his or her parents or guardians shall receive written notice to attend a conference to determine if the student would benefit from attending an alternative learning opportunities program. The conference must provide all of the information necessary for the student and parent or guardian to make an informed decision regarding enrollment in an alternative learning opportunities program. The conference shall include a discussion of the extent to which the student, if enrolled in the program, may participate in school activities. No student shall be enrolled in an alternative learning opportunities program without the consent of the student's parent or guardian.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-60.15. Review of student progress

Sec. 13B-60.15. Review of student progress. A school district must regularly review the progress of students enrolled in an alternative learning opportunities program to ensure that students may return to the regular school program as soon as appropriate. Upon request of the student's parent or guardian, the school district shall review the student's progress using procedures established by the district. A student shall remain in the program only with the consent of the student's parent or guardian and shall be promptly returned to the regular school program upon the request of the student's parent or guardian.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-60.20. Enrollment of special education students

Sec. 13B-60.20. Enrollment of special education students. Any enrollment of a special education student in an alternative learning opportunities program must be done only if included in the student's individualized education plan. The student's individualized education plan must be implemented in the program by appropriately certified personnel.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-60.25. Student Success Plan

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Sec. 13B-60.25. Student Success Plan. A Student Success Plan must be developed for each student enrolled in an alternative learning opportunities program. The student and his or her parent or guardian must be afforded an opportunity to participate in the development of this Plan.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-65. Teacher certification

Sec. 13B-65. Teacher certification. Teachers with a valid and active elementary, secondary, or special PK-12 Illinois teaching certificate may teach in an alternative learning opportunities program.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-65.5. Alternative learning credentials for teachers

Sec. 13B-65.5. Alternative learning credentials for teachers. Certificated teachers may receive an endorsement or approval in the area of alternative learning. The State Board shall establish teaching standards in alternative learning that lead to such an endorsement or approval.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-65.10. Continuing professional development for teachers

Sec. 13B-65.10. Continuing professional development for teachers. Teachers may receive continuing professional development units, subject to the provisions of Section 13B-65.5 of this Code [105 ILCS 5/13B-65.5], for professional development related to alternative learning.

(Source: P.A. 92-42, § 5; 95-793, § 5.)

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Effect of Amendments. The 2008 amendment by P.A. 95-793, effective August 8, 2008, deleted "continuing education units or" following "receive".

§ 105 ILCS 5/13B-70. Truancy and attendance problems

Sec. 13B-70. Truancy and attendance problems. If a student is a chronic or habitual truant as defined in Section 26-2a of this Code [105 ILCS 5/26-2a] or if a child has been ordered to attend school, the school district may consider the student for placement in an alternative learning opportunities program specifically designed to prevent truancy, supplement instruction for students with attendance problems, intervene to decrease chronic truancy, and provide alternatives to high school completion. A program operating pursuant to the truants' alternative and optional education program may contract with a school district or consortium to provide these services.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-75. Subcontracting

Sec. 13B-75. Subcontracting. A school district, regional office of education, or public community college may contract with a non-profit or for-profit educational entity for the delivery of services under this Article. All educational entities providing instructional services for eligible students must be recognized by the State Board.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-80. Student credit

Sec. 13B-80. Student credit. A school district must grant academic credit to a student in an alternative learning opportunities program for work completed at an education provider that is accredited by a regional accrediting body or recognized by the State Board if the student's performance meets district standards.

(Source: P.A. 92-42, § 5.)

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§ 105 ILCS 5/13B-85. Test of General Educational Development

Sec. 13B-85. Test of General Educational Development. A student 16 years of age or over who satisfactorily completes an alternative learning opportunities program in accordance with school district guidelines and the Student Success Plan may take the Test of General Educational Development.

(Source: P.A. 92-42, § 5.)

§ 105 ILCS 5/13B-99. Effective date

Sec. 13B-99. Effective date. This Act takes effect on January 1, 2002.

(Source: P.A. 92-42, § 99.)

Article 14.

Children with Disabilities

§ 105 ILCS 5/14-1.01. Meaning of terms

Sec. 14-1.01. Meaning of terms. Unless the context indicates otherwise, the terms used in this Article have the meanings ascribed to them in Sections 14-1.02 to 14-1.10 [105 ILCS 5/14-1.02 to 105 ILCS 5/14-1.10], each inclusive.

(Source: Laws 1965, p. 1948.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 14-1.01.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the Article head, deleted "Handicapped" from the beginning and added at the end "with Disabilities".

CASE NOTES

Analysis

District's Failure to Comply
Free Education
- General Assembly's Authority
- Private Special Educational Facilities

District's Failure to Comply

Plaintiffs could not recover the cost of placing their learning disabled child in a non-public school where the school district failed to provide an appropriate learning program and failed to inform the parents of their right to contest the district's proposed inappropriate placement where plaintiffs did not demonstrate that child's health would have been endangered had he not been placed in the learning disabled school, nor could bad faith be inferred merely from the school district's failure to inform parents of their procedural rights. Teplitz v. Mount Prospect Elementary Sch., 117 Ill. App. 3d 495, 73 Ill. Dec. 46, 453 N.E.2d 871 (1 Dist. 1983).

Free Education

- General Assembly's Authority

The Illinois Constitution establishes the right of handicapped persons to tuition-free education through the secondary level, entailing the prohibition of requiring parents and guardians to pay tuition for the education of their handicapped children, but it does not interfere with the constitutional authority of the General Assembly to allocate limited public funds. Elliot ex rel. Elliot v. Board of Educ., 64 Ill. App. 3d 229, 20 Ill. Dec. 928, 380 N.E.2d 1137 (1 Dist. 1978).

- Private Special Educational Facilities

This Article, as well as rules and regulations promulgated by the Illinois Office of Education (Rules and Regulations to Govern the Administration and Operation of Special Education (effective August 23, 1976)), acknowledge the role of the free public school system in providing for the educational development of all handicapped students enrolled by the school districts of the state. As a matter of legislative and administrative policy this role is exercised by meeting the educational needs of the handicapped student through programs incorporating the least restrictive curricula and facilities possible; only as a last resort are handicapped students to be removed from the public school environment and placed in private special educational facilities. Elliot ex rel. Elliot v. Board of Educ., 64 Ill. App. 3d 229, 20 Ill. Dec. 928, 380 N.E.2d 1137 (1 Dist. 1978).

This Code and a set of regulations promulgated by the State Superintendent of Education suggest that private special educational facilities providing instruction and training to handicapped

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students are but contracted extensions of existing public school systems. Elliot ex rel. Elliot v. Board of Educ., 64 Ill. App. 3d 229, 20 Ill. Dec. 928, 380 N.E.2d 1137 (1 Dist. 1978).

The education of handicapped students is part of the responsibility of the public school system, and the education of handicapped students in private special educational facilities is also a program established as part of the public school system, and thus must be free of tuition charges for Illinois residents through the secondary level. Elliot ex rel. Elliot v. Board of Educ., 64 Ill. App. 3d 229, 20 Ill. Dec. 928, 380 N.E.2d 1137 (1 Dist. 1978).

LEGAL PERIODICALS

For article, "The Education for All Handicapped Act: How Well Does It Accomplish Its Goal of Promoting the Least Restrictive Environment for Education?" see 28 De Paul L. Rev. 321 (1979).

For note, "Illinois' State Subsidy of Special Education of Private Institutions Act," see 28 De Paul L. Rev. 769 (1979).

For article, "Survey of Illinois Law: Significant Developments in Education Law 2003- 2004," see, See 29 S. Ill. U.L.J. 603 (2005).

RESEARCH REFERENCES

Requisite conditions and appropriate factors affecting educational placement of handicapped children. 23 ALR4th 740.

§ 105 ILCS 5/14-1.02. Children with disabilities

Sec. 14-1.02. Children with disabilities. "Children with disabilities" means children between the ages of 3 and 21 for whom it is determined, through definitions and procedures described in the Illinois Rules and Regulations to Govern the Organization and Administration of Special Education, that special education services are needed. An eligible student who requires continued public school educational experience to facilitate his or her successful transition and integration into adult life is eligible for such services through age 21, inclusive, which, for purposes of this Article, means the day before the student's 22nd birthday. An individualized education program must be written and agreed upon by appropriate school personnel and parents or their representatives for any child receiving special education.

(Source: P.A. 83-729; 89-397, § 5; 95-14, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-1.02.

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Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 130.10, 2700.20.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, substituted "Children with Disabilities" for "Handicapped children" in the section catchline and in the first sentence.

The 2007 amendment by P.A. 95-14, effective July 16, 2007, added the second sentence.

CASE NOTES

Analysis
Construction
Joining of Parties

Construction

School district was not entitled to reimbursement from a school board for the educational services provided to a minor in a treatment facility, because the minor's placement was accomplished exclusively pursuant to the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., not under the School Code, and the school board had no input in the minor's placement; a case involving an individualized education program guided the analysis. Antioch Cmty. High Sch. Dist. 17 v. Bd. of Educ., 373 Ill. App. 3d 544, 311 Ill. Dec. 407, 868 N.E.2d 1068, 2007 Ill. App. LEXIS 474 (1 Dist. 2007).

Joining of Parties

Where there was no basis for joining the Governor of Illinois for violations of statutory duties created by plaintiff's condition as a handicapped child, the court properly dismissed such claim. Hayward v. Thompson, 593 F. Supp. 57 (N.D. Ill. 1984).

LEGAL PERIODICALS

For comment, "Let's Get Off the Floor: The Call for Illinois to Adopt a Higher Substantive Standard for Special Education," see 24 Loy. U. Chi. L.J. 375 (1993).

For note, "Defining the Scope of Residential Placement and Related Services Under the EHA: Difficult Questions Left Unanswered in Illinois - In re Claudia K," see 32 De Paul L. Rev. 483 (1983).

§ 105 ILCS 5/14-1.03a. Children with Specific Learning Disabilities

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Sec. 14-1.03a. Children with Specific Learning Disabilities. "Children with Specific Learning Disabilities" means children between the ages of 3 and 21 years who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. Such disorders include such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing or motor disabilities, of an intellectual disability, emotional disturbance or environmental disadvantage.

(Source: P.A. 77-1318; 89-397, § 5; 97-227, § 60.)

Note.

Rule of construction. This Act shall be construed to make amendments to provisions of State law to substitute the term "intellectual disability" for "mental retardation", "intellectually disabled" for "mentally retarded", "ID/DD Community Care Act" for "MR/DD Community Care Act", "physically disabled" for "crippled", and "physical disability" or "physically disabling", as appropriate, for "crippling" without any intent to change the substantive rights, responsibilities, coverage, eligibility, or definitions referred to in the amended provisions represented in this Act.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-1.03a.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the second and third sentences substituted "disabilities" for "handicaps".

The 2011 amendment by P.A. 97-227, effective January 1, 2012, substituted "an intellectual disability" for "mental retardation" in the second sentence.

Practice Guides and Treatises.

Disability Law Today: An Accessible Guide for Illinois Practitioners § 6.11 Nature of Disabilities Served Under the IDEIA (IICLE).

§ 105 ILCS 5/14-1.08. Special educational facilities and services

Sec. 14-1.08. Special educational facilities and services. "Special educational facilities and services" includes special schools, special classes, special housing, including residential facilities, special instruction, special reader service, braillists and typists for children with visual disabilities, sign language interpreters, transportation, maintenance, instructional material, therapy, professional consultant services, medical services only for diagnostic and evaluation purposes provided by a physician licensed to practice medicine in all its branches to determine a child's need for special education and related services,

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psychological services, school social worker services, special administrative services, salaries of all required special personnel, and other special educational services, including special equipment for use in the classroom, required by the child because of his disability if such services or special equipment are approved by the State Superintendent of Education and the child is eligible therefor under this Article and the regulations of the State Board of Education.

(Source: P.A. 83-686; 89-397, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-1.08.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 130.10.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, substituted "children with visual disabilities" for "visually handicapped children".

CASE NOTES

Special Education

- Related Services

Special education is specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions; related services include transportation, and such developmental, corrective, and other supportive services including psychological services and medical and counseling services as may be required to assist a handicapped child to benefit from special education. In re Walker, 107 Ill. App. 3d 1053, 63 Ill. Dec. 651, 438 N.E.2d 582 (1 Dist. 1982).

§ 105 ILCS 5/14-1.09. School psychologist

Sec. 14-1.09. School psychologist. "School psychologist" means a psychologist who has graduated with a master's or higher degree in psychology or educational psychology from an institution of higher learning which maintains equipment, courses of study, and standards of scholarship approved by the State Board of Education, who has had at least one school year of full-time supervised experience in the delivery of school psychological services of a character approved by the State Superintendent of Education, who has such additional qualifications as may be required by the State Board of Education, and who

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holds a School Service Personnel Certificate endorsed for school psychology issued pursuant to Section 21-25 [105 ILCS 5/21-25]. Persons so certified may use the title "school psychologist" and may offer school psychological services which are limited to those services set forth in 23 Ill. Adm. Code 226, Special Education, pertaining to children between the ages of 3 to 21, promulgated by the State Board of Education. School psychologists may make evaluations, recommendations or interventions regarding the placement of children in educational programs or special education classes. However, a school psychologist shall not provide such services outside his or her employment to any student in the district or districts which employ such school psychologist.

(Source: P.A. 85-361.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-1.09.

CASE NOTES

Certification of Intern

- Estoppel

Estoppels against the public are little favored and should not be invoked except in rare and unusual circumstances, and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public; thus, improper certification of an intern will not estop the board from later denying that intern certification as a school psychologist. Ponton v. Illinois State Bd. of Educ., 62 Ill. App. 3d 907, 20 Ill. Dec. 209, 379 N.E.2d 1277 (1 Dist. 1978).

The State Board of Education, the State Teacher Certification Board, and the State Superintendent of Education were not estopped from finding that the plaintiff lacked the required qualifications for certification as a school psychologist because of a prior determination by the Superintendent of Public Instruction that plaintiff met the requirements for approval as a school psychologist intern, where the foreign degree upon which plaintiff relied for certification as an intern was later determined not to be the equivalent of a master's degree but the equivalent of a bachelor's degree. Ponton v. Illinois State Bd. of Educ., 62 Ill. App. 3d 907, 20 Ill. Dec. 209, 379 N.E.2d 1277 (1 Dist. 1978).

§ 105 ILCS 5/14-1.09.1. School psychological services

Sec. 14-1.09.1. School psychological services. In the public schools, school psychological services provided by qualified specialists who hold Type 73 School Service Personnel Certificates endorsed for school psychology issued by the State Teacher Certification Board may include, but are not limited to: (i) administration and

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interpretation of psychological and educational evaluations; (ii) developing school-based prevention programs, including violence prevention programs; (iii) counseling with students, parents, and teachers on educational and mental health issues; (iv) acting as liaisons between public schools and community agencies; (v) evaluating program effectiveness; (vi) providing crisis intervention within the school setting; (vii) helping teachers, parents, and others involved in the educational process to provide optimum teaching and learning conditions for all students; (viii) supervising school psychologist interns enrolled in school psychology programs that meet the standards established by the State Board of Education; and (ix) screening of school enrollments to identify children who should be referred for individual study. Nothing in this Section prohibits other qualified professionals from providing those services listed for which they are appropriately trained.

(Source: P.A. 89-339, § 5.)

Effective Date. Section 99 of P.A. 89-339 made this section effective upon becoming law. The Act was approved August 17, 1995.

§ 105 ILCS 5/14-1.09.2. School Social Work Services

Sec. 14-1.09.2. School Social Work Services. In the public schools, social work services may be provided by qualified specialists who hold Type 73 School Service Personnel Certificates endorsed for school social work issued by the State Teacher Certification Board.

School social work services may include, but are not limited to:

(1) Identifying students in need of special education services by conducting a social-developmental study in a case study evaluation;

(2) Developing and implementing comprehensive interventions with students, parents, and teachers that will enhance student adjustment to, and performance in, the school setting;

(3) Consulting and collaborating with teachers and other school personnel regarding behavior management and intervention plans and inclusion in support of special education students in regular classroom settings;

(4) Counseling with students, parents, and teachers in accordance with the rules and regulations governing provision of related services, provided that parent permission must be obtained in writing before a student participates in a group counseling session;

(5) Acting as a liaison between the public schools and community resources;

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(6) Developing and implementing school-based prevention programs including mediation and violence prevention;

(7) Providing crisis intervention within the school setting;

(8) Supervising school social work interns enrolled in school social work programs that meet the standards established by the State Board of Education;

(9) Providing parent education and counseling as appropriate in relation to the child's educational assessment; and

(10) Assisting in completing a functional behavioral assessment, as well as assisting in the development of nonaversive behavioral intervention strategies.

Nothing in this Section prohibits other certified professionals from providing any of the services listed in this Section for which they are appropriately trained.

(Source: P.A. 90-815, § 5; 92-362, § 5; 92-651, § 37.)

Note.

Section 997 of P.A. 92-651 is a no acceleration or delay provision, and Section 998 is a no revival or extension provision.

Effective Date. Section 99 of P.A. 90-815 made this section effective February 11, 1999.

Effect of Amendments. The 2001 amendment by P.A. 92-362, effective August 15, 2001, added subdivision (10); and inserted "for which they are appropriately trained" at the end of the last paragraph and made stylistic changes.

The 2002 amendment by P.A. 92-651, effective July 11, 2002 made a typographical correction.

§ 105 ILCS 5/14-1.09a. School social worker

Sec. 14-1.09a. School social worker. "School Social Worker" means a social worker who has graduated with a master's or higher degree in social work from an accredited graduate school of social work and who has such additional qualifications as may be required by the State Board of Education and who holds a School Service Personnel Certificate endorsed for school social work issued pursuant to Section 21-25 of this Code [105 ILCS 5/21-25]. Persons so certified may use the title "school social worker" and may offer school social work services which are limited to those services set forth in 23 Ill. Adm. Code 226, Special Education, pertaining to children between the ages of 3 to 21, promulgated by the State Board of Education. School social workers may make evaluations, recommendations or interventions regarding the placement of children in educational programs or special education classes. However, a school social worker shall

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not provide such services outside his or her employment to any student in the district or districts which employ such school social worker.

(Source: P.A. 86-303.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-1.09a.

§ 105 ILCS 5/14-1.09b. Speech-language pathologist

Sec. 14-1.09b. Speech-language pathologist. (a) For purposes of supervision of a speech-language pathology assistant, "speech-language pathologist" means a person who has received a license pursuant to the Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110/1 et seq.] to engage in the practice of speech-language pathology.

(b) The School Service Personnel Certificate with a speech-language endorsement shall be issued under Section 21-25 [105 ILCS 5/21-25] of this Code to a speech-language pathologist who meets all of the following requirements:

(1) (A) Holds a regular license as a speech-language pathologist pursuant to the Illinois Speech-Language Pathology and Audiology Practice Act, (B) holds a current Certificate of Clinical Competence in speech-language pathology from the American Speech-Language-Hearing Association and a regular license in speech-language pathology from another state or territory or the District of Columbia and has applied for a regular license as a speech-language pathologist pursuant to the Illinois Speech-Language Pathology and Audiology Practice Act, or (C) holds or has applied for a temporary license pursuant to Section 8.1 of the Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110/8.1].

(2) Holds a master's or doctoral degree with a major emphasis in speech-language pathology from an institution whose course of study was approved or program was accredited by the Council on Academic Accreditation in Audiology and Speech-Language Pathology of the American Speech-Language-Hearing Association or its predecessor.

(3) Either (i) has completed a program of study that meets the content area standards for speech-language pathologists approved by the State Board of Education, in consultation with the State Teachers Certification Board, (ii) has completed a program in another state, territory, or possession of the United States that is comparable to an approved program of study described in item (i), or (iii) holds a certificate issued by another state, territory, or possession of the United States that is comparable to the school service personnel certificate with a speech-language endorsement. If the requirements described

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in items (i), (ii), or (iii) of this paragraph (3) have not been met, a person must provide evidence that he or she has completed at least 150 clock hours of supervised experience in speech-language pathology with students with disabilities in a school setting, including experience required by federal law or federal court order; however, a person who lacks such experience may obtain interim certification as established by the Illinois State Board of Education, in consultation with the State Teacher Certification Board, and shall participate in school-based professional experience of at least 150 clock hours to meet this requirement.

(4) Has successfully completed the required Illinois certification tests.

(5) Has paid the application fee required for certification.

The provisions of this subsection (b) do not preclude the issuance of a teaching certificate to a speech-language pathologist who qualifies for such a certificate.

(Source: P.A. 92-510, § 5; 93-112, § 5; 93-1060, § 5.)

Effective Date. This section is effective June 1, 2002, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/2.

Effect of Amendments. The 2003 amendment by P.A. 93-112, effective January 1, 2004, added the subsection (a) designation and added subsection (b).

The 2004 amendment by P.A. 93-1060, effective December 23, 2004, in subsection (b)(1) substituted "(1)(A) Holds" for "(1) Holds (A)", and inserted "holds", "holds or has applied for", and "Section 8.1", and deleted "and has completed an approved program"; and rewrote subsection (b)(3).

§ 105 ILCS 5/14-1.09c. Speech-language pathology assistant

Sec. 14-1.09c. Speech-language pathology assistant. "Speech-language pathology assistant" means a person who has received a license to assist a speech-language pathologist pursuant to the Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110/1 et seq.].

(Source: P.A. 92-510, § 5.)

Effective Date. This section is effective June 1, 2002, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/2.

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§ 105 ILCS 5/14-1.09d. Behavior analyst

Sec. 14-1.09d. Behavior analyst. "Behavior analyst" means a person who is certified by the Behavior Analyst Certification Board.

(Source: P.A. 94-948, § 5.)

Effective Date. This section is effective January 1, 2007, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 5/14-1.10. Qualified worker

Sec. 14-1.10. Qualified worker. "Qualified worker" means a trained specialist and includes a behavior analyst, certificated school nurse, professional consultant, registered therapist, school nurse intern, school counselor, school counselor intern, school psychologist, school psychologist intern, school social worker, school social worker intern, special administrator or supervisor giving full time to special education, speech language pathologist, speech language pathologist intern, and teacher of students with IEPs who meets the requirements of this Article, who has the required special training in the understandings, techniques, and special instructional strategies for children with disabilities and who delivers services to students with IEPs, and any other trained specialist set forth by the State Board of Education in rules.

(Source: P.A. 94-948, § 5; 95-363, § 5; 96-257, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-1.10.

Effect of Amendments. The 2006 amendment by P.A. 94-948, effective January 1, 2007, added "behavior analyst".

The 2007 amendment by P.A. 95-363, effective August 23, 2007, inserted "school counselor" and "school counselor intern".

The 2009 amendment by P.A. 96-257, effective August 11, 2009, rewrote the section.

§ 105 ILCS 5/14-1.11. Resident district; parent; legal guardian

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Sec. 14-1.11. Resident district; parent; legal guardian. The resident district is the school district in which the parent or guardian, or both parent and guardian, of the student reside when:

(1) the parent has legal guardianship of the student and resides within Illinois; or

(2) an individual guardian has been appointed by the courts and resides within Illinois; or

(3) an Illinois public agency has legal guardianship and the student resides either in the home of the parent or within the same district as the parent; or

(4) an Illinois court orders a residential placement but the parents retain any legal rights or guardianship and have not been subject to a termination of parental rights order.

In cases of divorced or separated parents, when only one parent has legal guardianship or custody, the district in which the parent having legal guardianship or custody resides is the resident district. When both parents retain legal guardianship or custody, the resident district is the district in which either parent who provides the student's primary regular fixed night-time abode resides; provided, that the election of resident district may be made only one time per school year.

When the parent has legal guardianship and lives outside of the State of Illinois, or when the individual legal guardian other than the natural parent lives outside the State of Illinois, the parent, legal guardian, or other placing agent is responsible for making arrangements to pay the Illinois school district serving the child for the educational services provided. Those service costs shall be determined in accordance with Section 14-7.01 [105 ILCS 5/14-7.01].

(Source: P.A. 87-1117, § 1; 89-698, § 5; 95-844, § 5.)

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 226.770.

Effective Date. This section became effective January 1, 1993 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 1996 amendment by P.A. 89-698, effective January 14, 1997, in the second paragraph, in the second sentence, substituted "in which either parent who provides the student's primary regular fixed night-time abode resides; provided, that the election of resident district may be made only one time per school year" for "of the parent who claims the child as a dependent on his or her federal income tax return".

The 2008 amendment by P.A. 95-844, effective August 15, 2008, substituted "retain any legal rights or guardianship and have not been subject to a termination of parental rights order" for "retain legal guardianship" in (4).

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CASE NOTES

Analysis
Balancing Test
Special Education Expenses

Balancing Test

The adoption of an equitable balancing test to determine residence, parenthood, or guardianship would frustrate the legislature's intent in enacting this section and 105 ILCS 5/14-1.11a. Board of Educ. of Community Unit Sch. Dist. No. 428 v. Board of Educ. of High Sch. Dist. No. 214, 288 Ill. App. 3d 382, 223 Ill. Dec. 717, 680 N.E.2d 450 (2 Dist. 1997).

Special Education Expenses

To require district in which student lived with foster parents to pay student's special education expenses would ignore the plain legislative intent to make a special education student's district of residence the one in which his parent or guardian is known to reside, even if the student lives and attends school elsewhere. Board of Educ. of Community Unit Sch. Dist. No. 428 v. Board of Educ. of High Sch. Dist. No. 214, 288 Ill. App. 3d 382, 223 Ill. Dec. 717, 680 N.E.2d 450 (2 Dist. 1997).

§ 105 ILCS 5/14-1.11a. Resident district; student

Sec. 14-1.11a. Resident district; student. The resident district is the school district in which the student resides when:

(1) the parent has legal guardianship but the location of the parent is unknown; or

(2) an individual guardian has been appointed but the location of the guardian is unknown; or

(3) the student is 18 years of age or older and no legal guardian has been appointed; or

(4) the student is legally an emancipated minor; or

(5) an Illinois public agency has legal guardianship and such agency or any court in this State has placed the student residentially outside of the school district in which the parent lives.

In cases where an Illinois public agency has legal guardianship and has placed the student residentially outside of Illinois, the last school district that provided at least 45 days of educational service to the student shall continue to be the district of residence until the student is no longer under guardianship of an Illinois public agency or until the student is returned to Illinois.

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The resident district of a homeless student is the Illinois district in which the student enrolls for educational services. Homeless students include individuals as defined in the Stewart B. McKinney Homeless Assistance Act [42 U.S.C. § 11361 et seq.].

(Source: P.A. 87-1117, § 1; 88-134, § 5; 95-844, § 5.)

Effective Date. This section became effective January 1, 1993, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 1993 amendment by P.A. 88-134, effective July 27, 1993, in the second paragraph substituted "that provided at least 45 days of educational service to the student" for "of student residence".

The 2008 amendment by P.A. 95-844, effective August 15, 2008, inserted "such agency or any court in this State" in (5).

CASE NOTES

Analysis
Balancing Test
Special Education Expenses

Balancing Test

The adoption of an equitable balancing test to determine residence, parenthood, or guardianship would frustrate the legislature's intent in enacting this section and 105 ILCS 5/14-1.11. Board of Educ. of Community Unit Sch. Dist. No. 428 v. Board of Educ. of High Sch. Dist. No. 214, 288 Ill. App. 3d 382, 223 Ill. Dec. 717, 680 N.E.2d 450 (2 Dist. 1997).

Special Education Expenses

To require district in which student lived with foster parents to pay student's special education expenses would ignore the plain legislative intent to make a special education student's district of residence the one in which his parent or guardian is known to reside, even if the student lives and attends school elsewhere. Board of Educ. of Community Unit Sch. Dist. No. 428 v. Board of Educ. of High Sch. Dist. No. 214, 288 Ill. App. 3d 382, 223 Ill. Dec. 717, 680 N.E.2d 450 (2 Dist. 1997).

§ 105 ILCS 5/14-1.11b. Resident district; applicability

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Sec. 14-1.11b. Resident district; applicability. The provisions of Sections 14-1.11 and 14-1.11a [105 ILCS 5/14-1.11 and 105 ILCS 5/14-1.11a] shall be used to determine the resident district in all cases where special education services and facilities are provided pursuant to Article 14.

(Source: P.A. 87-1117, § 1.)

Effective Date. This section became effective January 1, 1993, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 5/14-2. Definition of general education classroom for special education students receiving services in the general education classroom

Sec. 14-2. Definition of general education classroom for special education students receiving services in the general education classroom. (a) With respect to any State statute or administrative rule that defines a general education classroom to be composed of a certain percentage of students with individualized education programs (IEPs), students with individualized education programs shall exclude students receiving only speech services outside of the general education classroom, provided that the instruction the students receive in the general education classroom does not require modification.

(b) In every instance, a school district must ensure that composition of the general education classroom does not interfere with the provision of a free and appropriate public education to any student.

(Source: P.A. 97-284, § 5.)

Effective Date. Section 99 of P.A. 97-284, makes this section effective upon becoming law. The Act was approved August 9, 2011.

§ 105 ILCS 5/14-3.01. Advisory Council

Sec. 14-3.01. Advisory Council. This amendatory Act of 1998, in compliance with the reauthorization of IDEA in 1997, makes changes in the membership and responsibilities of the Advisory Council on the Education of Children with Disabilities. The Council shall provide advice and policy guidance to the Governor, General Assembly, and the State Board of Education with respect to special education and related services for children with disabilities. The State Board of Education shall seek the advice of the Advisory Council regarding all rules and regulations related to the education of children with

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disabilities that are to be promulgated by the State Board of Education. The State Board of Education shall seek the advice of the Advisory Council on modifications or additions to comprehensive plans submitted under Section 14-4.01 [105 ILCS 5/14-4.01]. The Council shall consider any rule or regulation or plan submitted to it by the State Board of Education within 60 days after its receipt by the chairperson of the Council.

Additionally, the Advisory Council shall: (1) advise the General Assembly, the Governor, and the State Board of Education on unmet needs in the education of children with disabilities; (2) assist the State Board of Education in developing evaluations and reporting on data to the United States Secretary of Education; (3) advise the State Board of Education relative to qualifications for hearing officers and the rules and procedures for hearings conducted under Section 14-8.02 or 14-8.02a [105 ILCS 5/14-8.02 or 105 ILCS 5/14-8.02a]; (4) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities and the procedures for distribution of funds under this Act; (5) advise the State Board of Education in developing corrective action plans to address findings identified in federal monitoring reports pursuant to the Individuals with Disabilities Education Act [20 U.S.C. § 1401 et seq.]; (6) advise State and local education agencies regarding educational programs and materials that may be provided to children with disabilities to enable them to fully exercise their constitutional and legal rights and entitlements as citizens, including those afforded under the Federal Rehabilitation Act of 1973, as amended [29 U.S.C. § 701 et seq.], and the Illinois Human Rights Act [775 ILCS 5/1-101 et seq.]; and (7) advise the State Board of Education in developing and implementing policies relating to the coordination of services for children with disabilities.

The Council shall be composed of 27 members, including 23 voting members appointed by the Governor and 4 ex-officio voting members. Members shall be broadly representative of the State's population in regard to developmental, physical, and mental disabilities, race, ethnic background, gender, and geographic location. Nine members shall be parents of children with disabilities between the ages of 3 and 21 years currently receiving special education services at public expense. Five members shall be individuals with disabilities, including one student or former student who is at least 18 years of age and no older than 21 years of age at the time of his or her appointment to the Council and who is receiving special education services at public expense or received those services at the time his or her high school program terminated. Within 30 days after the effective date of this amendatory Act of 1998, the Governor or his designee shall invite statewide organizations, being as inclusive as possible and based upon a reasonable inquiry, and Parent Training and Information Centers representing parents of children with disabilities, individuals with disabilities or both, to convene for the purpose of recommending to the Governor twice the number of individuals required to be appointed as members from each of the categories described in this paragraph, from which the Governor may appoint the 14 members of the Council who are parents of children with disabilities and individuals with disabilities. The 9 members who are parents of children with disabilities between the ages of 3 and 21 years receiving special education services at public expense and the 5 members who are individuals with disabilities shall not be current full or part-time employees of school districts, special education cooperatives,

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regional service areas or centers, or any agency under the jurisdiction of any elected State official.

In addition, the Governor shall appoint one regional superintendent of schools, one representative of an institution of higher education that prepares special education and related services personnel, one teacher of students with disabilities, one superintendent of a public school district, one director of a special education cooperative or special education administrator from a school district of less than 500,000 population, one representative of a public charter school, one representative of a private school serving children with disabilities, one representative of a vocational, community, or business organization that provides transition services to children with disabilities, and one at-large member from the general public. In addition, the Secretary of Human Services or his or her designee, the Director of Children and Family Services or his or her designee, the Director of Corrections or his or her designee, and the Director of Special Education for the City of Chicago School District #299 or his or her designee shall serve as ex-officio voting members of the Council.

All Council members shall be legal residents of the State of Illinois and shall be selected, as far as practicable, on the basis of their knowledge of, or experience in, the education of children with disabilities.

The initial members to be appointed to the Council by the Governor under the provisions of this amendatory Act of 1998 shall be appointed within 60 days after the effective date of that amendatory Act; provided that those persons who are serving as Council members on that effective date and who, as determined by the Governor after consultation with the State Board of Education, meet the requirements established by this amendatory Act for appointment to membership on the Council shall continue to serve as Council members until the completion of the remainder of their current terms. The initial members of the Council who are not Council members on the effective date of this amendatory Act of 1998 and who are appointed by the Governor under this amendatory Act of 1998 shall by lot determine one-third of their number to serve for a term of 2 years (provided that person appointed as the student or former student member shall be included among those members who are to serve a term of 2 years), one-third of their number to serve for a term of 3 years, and one-third of their number to serve for a term of 4 years; provided, that if the total number of initial members so appointed by the Governor is not divisible into 3 whole numbers, all of the initial members so appointed shall by lot be assigned to 3 groups as follows: (i) the members assigned to the first group, who shall include the student or former student member and who shall be equal in number to the number of members who are assigned to the second group, shall serve for a term of 2 years; (ii) the members assigned to the second group, who shall be equal in number to the number of members who are assigned to the first group, shall serve for a term of 3 years; and (iii) the members assigned to the third group, who shall comprise the remainder of the initial members so appointed by the Governor and whose number shall be either one more or one less than the number of members assigned to either the first group or second group, shall serve for a term of 4 years. Upon expiration of the term of office of a member of the Council who is not an ex-officio member, his or her successor shall be appointed by the Governor to serve for a term of 4 years, except that a successor appointed as the student or former student member shall be appointed to serve for a term of 2 years. Each member

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of the Council who is not an ex-officio member and whose term of office expires shall nevertheless continue to serve as a Council member until his or her successor is appointed. Each of the 4 ex-officio members of the Council shall continue to serve as a Council member during the period in which he or she continues to hold the office by reason of which he or she became an ex-officio member of the Council. The initial members of the Council who are not ex-officio members shall not, upon completion of their respective initial terms, be appointed to serve more than one additional consecutive term of 4 years, nor shall any successor member of the Council be appointed to serve more than 2 full consecutive 4-year terms; provided, that a person appointed as the student or former student member shall serve only one two-year term and shall not be reappointed to serve for an additional term. Vacancies in Council memberships held by parents of children with disabilities or individuals with disabilities may be filled from the original list of such parents and individuals recommended to the Governor. The Governor shall reconvene the group of organizations that provided the original list of parents of children with disabilities and individuals with disabilities when additional recommendations for those Council memberships are needed, but at a minimum the group shall be convened every 2 years for the purpose of updating the list of recommended parents or individuals. A vacancy in an appointed membership on the Council shall be filled for the unexpired balance of the term of that membership in the same manner that the original appointment for that membership was made.

The terms of all persons serving as Advisory Council members on the effective date of this amendatory Act of 1998 who are not determined by the Governor, after consultation with the State Board of Education, to meet the requirements established by this amendatory Act for appointment to initial membership on the Council shall terminate on the date that the Governor completes his appointments of the initial members of the Council under this amendatory Act, and the members of the Council as constituted under this amendatory Act shall take office and assume their powers and duties on that date.

The Council as constituted under this amendatory Act of 1998 shall organize with a chairperson selected by the Council members and shall meet at the call of the chairperson upon 10 days written notice but not less than 4 times a year. The Council shall establish such committees and procedures as it deems appropriate to carry out its responsibilities under this Act and the federal Individuals with Disabilities Education Act [20 U.S.C. § 1401 et seq.].

The State Board of Education shall designate an employee to act as executive secretary of the Council and shall furnish all professional and clerical assistance necessary for the performance of its duties.

Members of the Council shall serve without compensation but shall be reimbursed for the necessary expenses incurred in the performance of their duties in accordance with the State Board of Education's Travel Control Policy.

(Source: P.A. 84-567; 87-995, § 1; 89-397, § 5; 89-507, § 90D-40; 90-644, § 5.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-3.01.

Effect of Amendments. The 1992 amendment by P.A. 87-995, effective September 1, 1992, inserted the second sentence in the next to the last paragraph.

The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the first sentence of the first paragraph substituted "Children with Disabilities" for "Handicapped Children", in the third sentence substituted "an adult with disabilities" for "a handicapped adult", substituted "children with disabilities", for "handicapped children", substituted "disabled" for "handicapped" and added the fourth sentence; in the third paragraph substituted "children with disabilities" for "handicapped children"; and throughout the fourth paragraph substituted "children with disabilities" for "handicapped children".

The 1996 amendment by P.A. 89-507, effective July 1, 1997, in the second paragraph, in the first sentence, inserted "and" following the first occurrence of "Family Services", substituted "Human" for "Mental Health and Developmental Disabilities and the Department of Rehabilitation" and substituted "Secretary of Human" for "Director of the Department of Mental Health and Developmental Disabilities and the Director of the Department of Rehabilitation"; and in the second sentence substituted "2 other persons representing the Department of Human Services shall serve on the Council, one as a voting member and one as a" for "The Director of Alcoholism and Substance Abuse shall be an ex officio".

The 1998 amendment by P.A. 90-644, effective July 24, 1998, rewrote this section.

§ 105 ILCS 5/14-3.02: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/14-3.03: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/14-4.01. Special educational facilities for children with disabilities

Sec. 14-4.01. Special educational facilities for children with disabilities. School boards of any school districts that maintain a recognized school, whether operating under the general law or under a special charter, subject to any limitations hereinafter specified, shall establish and maintain such special educational facilities as may be needed for children with disabilities as defined in Section 14-1.02 of this Article [105 ILCS 5/14-1.02] who are residents of their school district, and such children, residents of other school districts as may be authorized by this Article.

All such school boards shall place or by regulation may authorize the director of special education to place, pursuant to procedures required by this Act and rules and regulations promulgated by the State Board of Education, eligible children into special education programs designed to benefit children with disabilities defined in Sections 14-1.02 through 14-1.07 of this Act [105 ILCS 5/14-1.02 through 105 ILCS 5/14-1.07].

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All school districts, administrative districts or governing boards responsible for providing special education services shall submit to the appropriate regional superintendent comprehensive plans or modifications thereto for the provision of special education services in accordance with rules promulgated by the State Board of Education. Copies of comprehensive plans or modifications thereto shall be forwarded by the regional superintendent to the State Board of Education. Regional superintendents who provide special education services shall submit comprehensive plans or modifications thereto directly to the State Board of Education. Comprehensive plans or modifications thereto shall be made available by regional superintendents for public inspection during regular business hours.

The State Board of Education shall provide for the submission of comprehensive plans not more frequently than once every 3 years but may require the submission of such modifications as it deems necessary to achieve the purposes of this Act and applicable federal law.

(Source: P.A. 82-362; 89-397, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-4.01.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 226.330, 401.110.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, substituted "children with disabilities" for "handicapped children" in the section catchline and in the first and second paragraphs.

CASE NOTES

Analysis

Constitutionality
In General
Administrative Remedies
- Exhaustion
Compliance by Board
- Impossibility Claim
Consultation Required
Eligibility
- In General
Residential School

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- Reimbursement
- Temporary and Group Homes

Constitutionality

The establishment and maintenance of special education facilities involve state action and, therefore, the requirements of U.S. Const., Amend. XIV must be met. Nickerson v. Thomson, 504 F.2d 813 (7th Cir. 1974).

In General

This section clearly imposes a mandatory duty on district to establish and maintain needed special educational facilities. Nickerson v. Thomson, 504 F.2d 813 (7th Cir. 1974).

Administrative Remedies

- Exhaustion

Where a complaint did not allege compliance with the administrative procedures established for review of a school board's failure or refusal to admit the plaintiff/student to special education classes, plaintiff had not exhausted the administrative remedies, and the complaint failed to state cause of action against the board. Pierce v. Board of Educ., 69 Ill. 2d 89, 12 Ill. Dec. 731, 370 N.E.2d 535 (1977).

Compliance by Board

- Impossibility Claim

A plaintiff school board failed to present a justiciable question where it claimed that special education provisions of this Code were incapable of being performed. Board of Educ. v. Cronin, 51 Ill. App. 3d 838, 10 Ill. Dec. 113, 367 N.E.2d 501 (3 Dist. 1977).

Consultation Required

Parents should consult with the proper school officials, have a determination made that the child is physically handicapped, and have the school officials make mutually satisfactory arrangements for attendance at, and transportation to and from, a proper school where special facilities are available; when this is done the school district is in a position to obtain the approval of the Superintendent of Public Instruction to obtain state aid and include in the annual budget and tax levy of the district an amount equal to such cost. Christman v. Board of Educ., 347 Ill. App. 324, 106 N.E.2d 846 (3 Dist. 1952).

Eligibility

- In General

The ultimate responsibility for determining whether a pupil is eligible for special education rests with the state board of education and not with the board of education at the local district. Pierce v. Board of Educ., 69 Ill. 2d 89, 12 Ill. Dec. 731, 370 N.E.2d 535 (1977).

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Residential School

- Reimbursement

To provide that a school district should have to pay for day students who attend a class or school in another district but not reimburse other districts educating that district's residents as residential students is inconsistent with the policy decision of the legislature to require local school district financing of special education under this section. William C. v. Board of Educ., 71 Ill. App. 3d 793, 28 Ill. Dec. 312, 390 N.E.2d 479 (1 Dist. 1979).

- Temporary and Group Homes

The legislature, in this section, has seen fit to require individual school districts to finance the special education of their residents. While this general scheme is "subject to any limitations hereinafter specified," that does not warrant the conclusion that the state has decided to pay for children who have responsible school districts to finance their education simply because they happen to live in orphanages, foster homes, children's homes, or state agencies. William C. v. Board of Educ., 71 Ill. App. 3d 793, 28 Ill. Dec. 312, 390 N.E.2d 479 (1 Dist. 1979).

§ 105 ILCS 5/14-5.01. Application of Article

Sec. 14-5.01. Application of Article. This Article applies to school boards of all types and sizes of school districts, including but not limited to special charter districts, community consolidated school districts, community unit school districts, consolidated school districts, high school districts, non-high school districts, community high school districts, and districts exceeding 500,000 inhabitants.

(Source: Laws 1965, p. 1948.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-5.01.

§ 105 ILCS 5/14-6.01. Powers and duties of school boards

Sec. 14-6.01. Powers and duties of school boards. School boards of one or more school districts establishing and maintaining any of the educational facilities described in this Article shall, in connection therewith, exercise similar powers and duties as are prescribed by law for the establishment, maintenance and management of other recognized educational facilities. Such school boards shall include only eligible children in the program and shall comply with all the requirements of this Article and all rules and regulations established by the State Board of Education. Such school boards shall accept in part-time attendance children with disabilities of the types described in Sections 14-1.02 through 14-1.07 [105 ILCS 5/14-1.02 through 105 ILCS 5/14-1.07] who are enrolled

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in nonpublic schools. A request for part-time attendance must be submitted by a parent or guardian of the disabled child and may be made only to those public schools located in the district where the child attending the nonpublic school resides; however, nothing in this Section shall be construed as prohibiting an agreement between the district where the child resides and another public school district to provide special educational services if such an arrangement is deemed more convenient and economical. Special educational services shall be provided to such students as soon as possible after the identification, evaluation and placement procedures provided in Section 14-8.02 [105 ILCS 5/14-8.02], but no later than the beginning of the next school semester following the completion of such procedures. Transportation for students in part time attendance shall be provided only if required in the child's individualized educational program on the basis of the child's disabling condition or as the special education program location may require.

A school board shall publish a public notice in its newsletter of general circulation or in the newsletter of another governmental entity of general circulation in the district or if neither is available in the district, then in a newspaper of general circulation in the district, the right of all children with disabilities to a free appropriate public education as provided under this Code. Such notice shall identify the location and phone number of the office or agent of the school district to whom inquiries should be directed regarding the identification, assessment and placement of such children.

School boards shall immediately provide upon request by any person written materials and other information that indicates the specific policies, procedures, rules and regulations regarding the identification, evaluation or educational placement of children with disabilities under Section 14-8.02 of the School Code [105 ILCS 5/14-8.02]. Such information shall include information regarding all rights and entitlements of such children under this Code, and of the opportunity to present complaints with respect to any matter relating to educational placement of the student, or the provision of a free appropriate public education and to have an impartial due process hearing on the complaint. The notice shall inform the parents or guardian in the parents' or guardian's native language, unless it is clearly not feasible to do so, of their rights and all procedures available pursuant to this Act and federal Public Law 94-142 [20 U.S.C. § 1400 et seq.]; it shall be the responsibility of the State Superintendent to develop uniform notices setting forth the procedures available under this Act and federal Public Law 94-142 [20 U.S.C. § 1400 et seq.], as amended, to be used by all school boards. The notice shall also inform the parents or guardian of the availability upon request of a list of free or low-cost legal and other relevant services available locally to assist parents or guardians in exercising rights or entitlements under this Code.

Any parent or guardian who is deaf, or does not normally communicate using spoken English, who participates in a meeting with a representative of a local educational agency for the purposes of developing an individualized educational program shall be entitled to the services of an interpreter.

No disabled student may be denied promotion, graduation or a general diploma on the basis of failing a minimal competency test when such failure can be directly related to the disabling condition of the student. For the purpose of this Act, "minimal competency

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testing" is defined as tests which are constructed to measure the acquisition of skills to or beyond a certain defined standard.

Effective July 1, 1966, high school districts are financially responsible for the education of pupils with disabilities who are residents in their districts when such pupils have reached age 15 but may admit children with disabilities into special educational facilities without regard to graduation from the eighth grade after such pupils have reached the age of 14 1/2 years. Upon a disabled pupil's attaining the age of 14 1/2 years, it shall be the duty of the elementary school district in which the pupil resides to notify the high school district in which the pupil resides of the pupil's current eligibility for special education services, of the pupil's current program, and of all evaluation data upon which the current program is based. After an examination of that information the high school district may accept the current placement and all subsequent timelines shall be governed by the current individualized educational program; or the high school district may elect to conduct its own evaluation and multidisciplinary staff conference and formulate its own individualized educational program, in which case the procedures and timelines contained in Section 14-8.02 [105 ILCS 5/14-8.02] shall apply.

(Source: P.A. 87-219; 89-397, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-6.01.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, substituted "children with disabilities" for "handicapped children", "disabled" for "handicapped", "disabling" for "handicapping" throughout the section; in the fifth paragraph substituted "disabling condition of the student" for "student's handicapping condition"; and in the sixth paragraph, in the first sentence, substituted "pupils with disabilities who are residents" for "handicapped pupils resident".

CASE NOTES

Analysis

Retroactivity
Special Education
- Financial Responsibility
Special Education Expenses

Retroactivity

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105 ILCS 5/14-6.01 is not to be given retroactive effect. Loch v. Bd. of Educ., F. Supp. 2d , 2007 U.S. Dist. LEXIS 75589 (S.D. Ill. Oct. 11, 2007).

Special Education

- Financial Responsibility

Because this section makes each district "financially responsible" for the education of handicapped children through special education facilities, and requires school boards to comply with all rules and regulations established by the Superintendent of Public Instructions, school boards must provide a comprehensive program of special education for exceptional children, even though 105 ILCS 5/17-1 seemingly insulates boards by giving them the power to adopt an appropriate budget. Nickerson v. Thomson, 504 F.2d 813 (7th Cir. 1974).

Special Education Expenses

To require district in which student lived with foster parents to pay student's special education expenses would ignore the plain legislative intent to make a special education student's district of residence the one in which his parent or guardian is known to reside, even if the student lives and attends school elsewhere. Board of Educ. of Community Unit Sch. Dist. No. 428 v. Board of Educ. of High Sch. Dist. No. 214, 288 Ill. App. 3d 382, 223 Ill. Dec. 717, 680 N.E.2d 450 (2 Dist. 1997).

§ 105 ILCS 5/14-6.02. Service animals

Sec. 14-6.02. Service animals. Service animals such as guide dogs, signal dogs or any other animal individually trained to perform tasks for the benefit of a student with a disability shall be permitted to accompany that student at all school functions, whether in or outside the classroom.

(Source: P.A. 87-228.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-6.02.

CASE NOTES

Preliminary Injunction

Trial court properly issued an injunction requiring a school district to permit a six-year-old student with autism to be accompanied by his service dog at school functions because the school district violated 105 ILCS 5/14-6.02 by prohibiting a service dog from accompanying the student. The dog was a service animal under the statute because he had been individually trained to perform

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tasks for the student's benefit. K.D. v. Villa Grove Cmty. Unit Sch. Dist. No. 302 Bd. of Educ., 403 Ill. App. 3d 1062, 344 Ill. Dec. 161, 936 N.E.2d 690, 2010 Ill. App. LEXIS 914 (4 Dist. 2010).

Student was entitled to the granting of a preliminary injunction in the student's favor regarding the student's right to bring the student's service dog with the student to the student's elementary school. The student was so entitled because the student demonstrated the existence of a fair question that the student, a five-year-old with autism, had a right under 105 ILCS 5/14-6.02, the service animal statute, to have the student's trained dog accompany and assist the student at the student's school. Kalbfleisch v. Columbia Cmty. Unit Sch. Dist. Unit No. 4, 396 Ill. App. 3d 1105, 336 Ill. Dec. 442, 920 N.E.2d 651, 2009 Ill. App. LEXIS 1235 (5 Dist. 2009).

§ 105 ILCS 5/14-6.03. Speech-language pathology assistants

Sec. 14-6.03. Speech-language pathology assistants. (a) Except as otherwise provided in this subsection, on or after January 1, 2002, no person shall perform the duties of a speech-language pathology assistant without first applying for and receiving a license for that purpose from the Department of Professional Regulation. A person employed as a speech-language pathology assistant in any class, service, or program authorized by this Article may perform only those duties authorized by this Section under the supervision of a speech-language pathologist as provided in this Section. This Section does not apply to speech-language pathology paraprofessionals approved by the State Board of Education.

(b) A speech-language pathology assistant may not be assigned his or her own student caseload. The student caseload limit of a speech-language pathologist who supervises any speech-language pathology assistants shall be determined by the severity of the needs of the students served by the speech-language pathologist. A full-time speech-language pathologist's caseload limit may not exceed 80 students (60 students on or after September 1, 2003) at any time. The caseload limit of a part-time speech-language pathologist shall be determined by multiplying the caseload limit of a full-time speech-language pathologist by a percentage that equals the number of hours worked by the part-time speech-language pathologist divided by the number of hours worked by a full-time speech-language pathologist in that school district. Employment of a speech-language pathology assistant may not increase or decrease the caseload of the supervising speech-language pathologist.

(c) A school district that intends to utilize the services of a speech-language pathology assistant must provide written notification to the parent or guardian of each student who will be served by a speech-language pathology assistant.

(d) The scope of responsibility of a speech-language pathology assistant shall be limited to supplementing the role of the speech-language pathologist in implementing the treatment program established by a speech-language pathologist. The functions and duties of a speech-language pathology assistant shall be limited to the following:

(1) Conducting speech-language screening, without interpretation, and using screening protocols selected by the supervising speech-language pathologist.

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(2) Providing direct treatment assistance to students under the supervision of a speech-language pathologist.

(3) Following and implementing documented treatment plans or protocols developed by a supervising speech-language pathologist.

(4) Documenting student progress toward meeting established objectives, and reporting the information to a supervising speech-language pathologist.

(5) Assisting a speech-language pathologist during assessments, including, but not limited to, assisting with formal documentation, preparing materials, and performing clerical duties for a supervising speech-language pathologist.

(6) Acting as an interpreter for non-English speaking students and their family members when competent to do so.

(7) Scheduling activities and preparing charts, records, graphs, and data.

(8) Performing checks and maintenance of equipment, including, but not limited to, augmentative communication devices.

(9) Assisting with speech-language pathology research projects, in-service training, and family or community education.

(e) A speech-language pathology assistant may not:

(1) perform standardized or nonstandardized diagnostic tests or formal or informal evaluations or interpret test results;

(2) screen or diagnose students for feeding or swallowing disorders;

(3) participate in parent conferences, case conferences, or any interdisciplinary team without the presence of the supervising speech-language pathologist;

(4) provide student or family counseling;

(5) write, develop, or modify a student's individualized treatment plan;

(6) assist with students without following the individualized treatment plan prepared by the supervising speech-language pathologist;

(7) sign any formal documents, such as treatment plans, reimbursement forms, or reports;

(8) select students for services;

(9) discharge a student from services;

(10) disclose clinical or confidential information, either orally or in writing, to anyone other than the supervising speech-language pathologist;

(11) make referrals for additional services;

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(12) counsel or consult with the student, family, or others regarding the student's status or service;

(13) represent himself or herself to be a speech-language pathologist or a speech therapist;

(14) use a checklist or tabulate results of feeding or swallowing evaluations; or

(15) demonstrate swallowing strategies or precautions to students, family, or staff.

(f) A speech-language pathology assistant shall practice only under the supervision of a speech-language pathologist who has at least 2 years experience in addition to the supervised professional experience required under subsection (f) of Section 8 of the Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110/8(f)]. A speech-language pathologist who supervises a speech-language pathology assistant must have completed at least 10 clock hours of training in the supervision of speech-language pathology assistants. The State Board of Education shall promulgate rules describing the supervision training requirements. The rules may allow a speech-language pathologist to apply to the State Board of Education for an exemption from this training requirement based upon prior supervisory experience.

(g) A speech-language pathology assistant must be under the direct supervision of a speech-language pathologist at least 30% of the speech-language pathology assistant's actual student contact time per student for the first 90 days of initial employment as a speech-language pathology assistant. Thereafter, the speech-language pathology assistant must be under the direct supervision of a speech-language pathologist at least 20% of the speech-language pathology assistant's actual student contact time per student. Supervision of a speech-language pathology assistant beyond the minimum requirements of this subsection may be imposed at the discretion of the supervising speech-language pathologist. A supervising speech-language pathologist must be available to communicate with a speech-language pathology assistant whenever the assistant is in contact with a student.

(h) A speech-language pathologist that supervises a speech-language pathology assistant must document direct supervision activities. At a minimum, supervision documentation must provide (i) information regarding the quality of the speech-language pathology assistant's performance of assigned duties and (ii) verification that clinical activity is limited to duties specified in this Section.

(i) A full-time speech-language pathologist may supervise no more than 2 speech-language pathology assistants. A speech-language pathologist that does not work full-time may supervise no more than one speech-language pathology assistant.

(Source: P.A. 92-510, § 5.)

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Effective Date. This section is effective June 1, 2002, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/2.

§ 105 ILCS 5/14-6.04. Contracting for speech-language pathology services

Sec. 14-6.04. Contracting for speech-language pathology services. (a) For purposes of this Section:

"Reasonable efforts" means performing all of the following:

(1) placing at least 3 employment advertisements for a speech-language pathologist published in the newspaper of widest distribution within the school district or cooperative;

(2) placing one employment listing in the placement bulletin of a college or university that has a speech-language pathology curriculum that is located in the geographic area of the school district or cooperative, if any; and

(3) posting the position for speech-language pathologist on the Illinois Association of School Administrators' job placement service for at least 30 days.

"Speech-language pathologist" means a person who:

(1) holds a master's or doctoral degree with a major emphasis in speech-language pathology from an institution whose course of study was approved or program was accredited by the Council on Academic Accreditation in Audiology and Speech-Language Pathology of the American Speech-Language-Hearing Association or its predecessor; and

(2) either (i) has completed a program of study that meets the content-area standards for speech-language pathologists approved by the State Board of Education, in consultation with the State Teacher Certification Board, (ii) has completed a program in another state, territory, or possession of the United States that is comparable to an approved program of study described in item (i), or (iii) holds a certificate issued by another state, territory, or possession of the United States that is comparable to the school service personnel certificate with a speech-language endorsement. If the requirements described in items (i), (ii), or (iii) of this paragraph (2) have not been met, a person must provide evidence that he or she has completed at least 150 clock hours of supervised experience in speech-language pathology with students with disabilities in a school setting, including experience required by federal law or federal court order; however, a person who lacks such experience may obtain interim certification as established by the Illinois State Board of Education, in consultation with the State Teacher Certification Board, and shall participate in school-based professional experience of at least 150 clock hours to meet this requirement.

"Speech-language pathology services" means the application of methods and procedures for identifying, measuring, testing, appraising, predicting, and modifying communication development and disorders or disabilities of speech, language, voice, swallowing, and

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other speech, language, and voice-related disorders for the purpose of counseling, consulting, and rendering services or participating in the planning, directing, or conducting of programs that are designed to modify communicative disorders and conditions in individuals or groups of individuals involving speech, language, voice, and swallowing functions.

(b) A school district or a cooperative must make reasonable efforts to employ a speech-language pathologist. While making those reasonable efforts or after unsuccessful reasonable efforts have been made, or both, a school district or cooperative may contract for speech-language pathology services with a speech-language pathologist or an entity that employs speech-language pathologists. A speech-language pathologist who provides speech-language pathology services pursuant to a contract must:

(1) hold a speech-language pathology license under the Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110/1 et seq.] or hold or have applied for a temporary license issued under Section 8.1 of that Act [225 ILCS 110/8.1]; and

(2) hold a certificate under this Code with an endorsement in speech-language pathology.

(Source: P.A. 93-110, § 5; 93-1060, § 5.)

Effective Date. Section 99 of P.A. 93-110 made this act effective upon becoming law. The Act was approved July 8, 2003.

Effect of Amendments. The 2004 amendment by P.A. 93-1060, effective December 23, 2004, rewrote the section to the extent that a detailed comparison would be impracticable.

§ 105 ILCS 5/14-6.10. Transfer of parental rights at the age of majority

Sec. 14-6.10. Transfer of parental rights at the age of majority. (a) When a student who is eligible for special education under this Article reaches the majority age of 18 years, all rights accorded to the student's parents under this Article transfer to the student, except as provided in this Section. This transfer of rights also applies to students who are incarcerated in an adult or juvenile State or local correctional institution. Nothing in this Section shall be construed to deny a student with a disability who has reached majority age the right to have an adult of his or her choice, including, but not limited to, the student's parent, assist the student in making decisions regarding the student's individualized education program.

(b) The school district must notify the student and the student's parents of the transfer of rights in writing at a meeting convened to review the student's individualized education program during the school year in which the student turns 17 years of age. At that time, the school district must provide the student with a copy of the Delegation of Rights form described in this Section. The school district must mail the notice and a copy of the

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Delegation of Rights form to the student and to the student's parents, addressed to their last known address, if they do not attend the meeting.

(c) Rights shall not transfer from the parents to the student under this Section if either of the following apply:

(1) The student with a disability who has reached the age of majority has been adjudged incompetent under State law.

(2) The student has not been adjudged incompetent under State law, but the student has executed a Delegation of Rights to make educational decisions pursuant to this Section for the purpose of appointing the student's parent or other adult to represent the educational interests of the student.

A student may terminate the Delegation of Rights at any time and assume the right to make decisions regarding his or her education. The Delegation of Rights shall meet all of the following requirements:

(A) It shall remain in effect for one year after the date of execution, but may be renewed annually with the written or other formal authorization of the student and the person the student delegates to represent the educational interests of the student.

(B) It shall be signed by the student or verified by other means, such as audio or video or other alternative format compatible with the student's disability showing that the student has agreed to the terms of the delegation.

(C) It shall be signed or otherwise manifest verification that the designee accepts the delegation.

(D) It shall include declarations that the student (i) is 18 years of age or older, (ii) intends to delegate his or her educational rights under federal and State law to a specified individual who is at least 18 years of age, (iii) has not been adjudged incompetent under State law, (iv) is entitled to be present during the development of the student's individualized education program and to raise issues or concerns about the student's individualized education program, (v) will be permitted to terminate the Delegation of Rights at any time, and (vi) will notify the school district immediately if the student terminates the Delegation of Rights.

(E) It shall be identical or substantially the same as the following form:

DELEGATION OF RIGHTS TO MAKE EDUCATIONAL DECISION

I, (insert name), am 18 years of age or older and a student who has the right to make educational decisions for myself under State and federal law. I have not been adjudged incompetent and, as of the date of the execution of this document, I hereby delegate my right to give consent and make decisions concerning my education to (insert name), who will be considered my "parent" for purposes of the Individuals with Disabilities Education Improvement Act of 2004 (Public Law 108-446) [20 U.S.C. § 1400 et seq.] and Article 14 of the School Code [105 ILCS 5/14-1.01 et seq.] and will exercise all of

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the rights and responsibilities concerning my education that are conferred on a parent under those laws. I understand and give my consent for (insert name) to make all decisions relating to my education on my behalf. I understand that I have the right to be present at meetings held to develop my individualized education program and that I have the right to raise any issues or concerns I may have and that the school district must consider them.

This delegation will be in effect for one year from the date of execution below and may be renewed by my written or other formal authorization. I also understand that I have the right to terminate this Delegation of Rights at any time and assume the right to make my own decisions regarding my education. I understand that I must notify the school district immediately if I revoke this Delegation of Rights prior to its expiration.

(insert name)

Student

DATE: (insert date)

Accepted by: (insert name)

Designated Representative

(Source: P.A. 95-372, § 5.)

Effective Date. Section 99 of P.A. 95-372 made this section effective upon becoming law. The Act was approved August 23, 2007.

§ 105 ILCS 5/14-7.01. Children attending classes in another district

Sec. 14-7.01. Children attending classes in another district. If a child, resident of one school district, because of his disability, attends a class or school for any of such types of children in another school district, the school district in which he resides shall grant the proper permit, provide any necessary transportation, and pay to the school district maintaining the special educational facilities the per capita cost of educating such children.

Such per capita cost shall be computed in the following manner. The cost of conducting and maintaining any special educational facility shall be first determined and shall include the following expenses applicable only to such educational facility under rules and regulations established by the State Board of Education as follows:

(a) Salaries of teachers, professional workers, necessary non-certified workers, clerks, librarians, custodial employees, readers, and any district taxes specifically for their pension and retirement benefits.

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(b) Educational supplies and equipment including textbooks.

(c) Administrative costs and communication.

(d) Operation of physical plant including heat, light, water, repairs, and maintenance.

(e) Auxiliary service, including up to 20% of transportation cost.

(f) Depreciation of physical facilities at a rate of $200 per pupil, or the actual rental paid for the physical facilities calculated on a per pupil basis. From such total cost thus determined there shall be deducted the State reimbursement due on account of such educational program for the same year, not including any State reimbursement for special education transportation and offsetting federal revenue for the program, except federally funded health care reimbursement need not be deducted. Such net cost shall be divided by the average number of pupils in average daily enrollment in such special education facility for the school year in order to arrive at the net per capita tuition cost.

If the child, resident of any school district, because of his disability, attends a class or school for any of such types of children maintained in a teacher training center supported by public funds or State institution of higher learning, the resident district shall provide any necessary transportation and shall be eligible to the transportation reimbursement provided in Section 14-13.01 [105 ILCS 5/14-13.01].

A resident district may, upon request, provide transportation for residents of the district who meet the requirements, other than the specified age, of children with disabilities as defined in Section 14-1.02 [105 ILCS 5/14-1.02], who attend classes in another district, and shall make a charge for any such transportation in an amount equal to the cost thereof, including a reasonable allowance for depreciation of the vehicles used.

(Source: P.A. 86-476; 89-397, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-7.01.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 130.30.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the first paragraph substituted "disability" for "handicap"; in the second paragraph substituted "disability" for "handicap"; and in the third paragraph substituted "children with disabilities" for "handicapped children".

CASE NOTES

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Analysis

Presumption
- In General
- Not Rebutted
Reimbursement
Residence
- In General

Presumption

- In General

A child is presumptively a resident of the school district wherein his parents reside. Such presumption may be rebutted if the school district challenging it can adduce compelling evidence to the contrary, and the presumption is, necessarily, a strong one. Herscher Community Unit Sch. v. Kankakee Sch. Dist., 97 Ill. App. 3d 36, 52 Ill. Dec. 592, 422 N.E.2d 273 (3 Dist. 1981).

While the presumption that the child's residence is that of the parent is not insurmountable, it is not overcome merely by showing that the child stays someplace else. Herscher Community Unit Sch. v. Kankakee Sch. Dist., 97 Ill. App. 3d 36, 52 Ill. Dec. 592, 422 N.E.2d 273 (3 Dist. 1981).

- Not Rebutted

Where a handicapped child lived with his sister and her family, but was supported by his father, who also visited him every week, claimed him as a dependent for federal income tax purposes, and retained legal custody over him, and where the father had no intention of relinquishing parental custody or control of the child when the child moved to his sister's home, the presumption that the child was a resident of the school district in which his father resided was not overcome. Herscher Community Unit Sch. v. Kankakee Sch. Dist., 97 Ill. App. 3d 36, 52 Ill. Dec. 592, 422 N.E.2d 273 (3 Dist. 1981).

Where the Board of Education did not state any facts which indicated that the parents did not have custody or control over their children, where neither child was a ward of the court or involuntarily committed to a developmental center, which would indicate that each parent did retain custody and control over their child after he was placed at the center, and where the parents of both children took great pains and displayed a great deal of persistence in obtaining placements for their children which further indicated their custody, the presumption that the children were residents of their parents' school district was not rebutted. William C. v. Board of Educ., 71 Ill. App. 3d 793, 28 Ill. Dec. 312, 390 N.E.2d 479 (1 Dist. 1979).

Reimbursement

School district was not entitled to reimbursement from a school board for the educational services provided to a minor in a treatment facility, because the minor's placement was accomplished exclusively pursuant to the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., not under the School Code, and the school board had no input in the minor's placement; a case involving an individualized education program guided the analysis. Antioch Cmty. High Sch. Dist. 17 v. Bd. of Educ., 373 Ill. App. 3d 544, 311 Ill. Dec. 407, 868 N.E.2d 1068, 2007 Ill. App. LEXIS 474 (1 Dist. 2007).

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Where the responsible school district is unable or unwilling to provide a child with his necessary educational services, but the school district in which the child's residential school is located could provide him with an educational program, it must do so. The provider school district would thereafter be reimbursed for its costs by the responsible school district. William C. v. Board of Educ., 71 Ill. App. 3d 793, 28 Ill. Dec. 312, 390 N.E.2d 479 (1 Dist. 1979).

This section is not limited to day students who receive education outside their own school districts; rather, the legislature in enacting this section probably recognized that some school districts because of size cannot afford to provide special education facilities for every type of handicap and therefore must frequently send their residents elsewhere to obtain an education. To provide that a school district should have to pay for day students who attend a class or school in another district but should not have to not reimburse districts educating their residents as residential students is inconsistent with the policy decision of the legislature to require local school district financing of special education (105 ILCS 5/14-4.01). William C. v. Board of Educ., 71 Ill. App. 3d 793, 28 Ill. Dec. 312, 390 N.E.2d 479 (1 Dist. 1979).

Residence

- In General

Legal residence and not mere presence is the key to affixing financial responsibility under the School Code. William C. v. Board of Educ., 71 Ill. App. 3d 793, 28 Ill. Dec. 312, 390 N.E.2d 479 (1 Dist. 1979).

A handicapped child, like any child, is a legal resident of his parent's school district and this school district should provide his education. William C. v. Board of Educ., 71 Ill. App. 3d 793, 28 Ill. Dec. 312, 390 N.E.2d 479 (1 Dist. 1979).

The general rule is that children, presumptively, are residents of the school district wherein their parents reside; however, for school purposes this presumption may be rebutted. William C. v. Board of Educ., 71 Ill. App. 3d 793, 28 Ill. Dec. 312, 390 N.E.2d 479 (1 Dist. 1979).

§ 105 ILCS 5/14-7.02. Children attending private schools, public out-of-state schools, public school residential facilities or private special education facilities

Sec. 14-7.02. Children attending private schools, public out-of-state schools, public school residential facilities or private special education facilities. The General Assembly recognizes that non-public schools or special education facilities provide an important service in the educational system in Illinois.

If because of his or her disability the special education program of a district is unable to meet the needs of a child and the child attends a non-public school or special education facility, a public out-of-state school or a special education facility owned and operated by a county government unit that provides special educational services required by the child and is in compliance with the appropriate rules and regulations of the State Superintendent of Education, the school district in which the child is a resident shall pay the actual cost of tuition for special education and related services provided during the regular school term and during the summer school term if the child's educational needs so require, excluding room, board and transportation costs charged the child by that non-public school or special education facility, public out-of-state school or county special

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education facility, or $4,500 per year, whichever is less, and shall provide him any necessary transportation. "Nonpublic special education facility" shall include a residential facility, within or without the State of Illinois, which provides special education and related services to meet the needs of the child by utilizing private schools or public schools, whether located on the site or off the site of the residential facility.

The State Board of Education shall promulgate rules and regulations for determining when placement in a private special education facility is appropriate. Such rules and regulations shall take into account the various types of services needed by a child and the availability of such services to the particular child in the public school. In developing these rules and regulations the State Board of Education shall consult with the Advisory Council on Education of Children with Disabilities and hold public hearings to secure recommendations from parents, school personnel, and others concerned about this matter.

The State Board of Education shall also promulgate rules and regulations for transportation to and from a residential school. Transportation to and from home to a residential school more than once each school term shall be subject to prior approval by the State Superintendent in accordance with the rules and regulations of the State Board.

A school district making tuition payments pursuant to this Section is eligible for reimbursement from the State for the amount of such payments actually made in excess of the district per capita tuition charge for students not receiving special education services. Such reimbursement shall be approved in accordance with Section 14-12.01 [105 ILCS 5/14-12.01] and each district shall file its claims, computed in accordance with rules prescribed by the State Board of Education, on forms prescribed by the State Superintendent of Education. Data used as a basis of reimbursement claims shall be for the preceding regular school term and summer school term. Each school district shall transmit its claims to the State Board of Education on or before August 15. The State Board of Education, before approving any such claims, shall determine their accuracy and whether they are based upon services and facilities provided under approved programs. Upon approval the State Board shall cause vouchers to be prepared showing the amount due for payment of reimbursement claims to school districts, for transmittal to the State Comptroller on the 30th day of September, December, and March, respectively, and the final voucher, no later than June 20. If the money appropriated by the General Assembly for such purpose for any year is insufficient, it shall be apportioned on the basis of the claims approved.

No child shall be placed in a special education program pursuant to this Section if the tuition cost for special education and related services increases more than 10 percent over the tuition cost for the previous school year or exceeds $4,500 per year unless such costs have been approved by the Illinois Purchased Care Review Board. The Illinois Purchased Care Review Board shall consist of the following persons, or their designees: the Directors of Children and Family Services, Public Health, Public Aid, and the Governor's Office of Management and Budget; the Secretary of Human Services; the State Superintendent of Education; and such other persons as the Governor may designate. The Review Board shall establish rules and regulations for its determination of allowable costs and payments made by local school districts for special education, room and board,

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and other related services provided by non-public schools or special education facilities and shall establish uniform standards and criteria which it shall follow.

The Review Board shall establish uniform definitions and criteria for accounting separately by special education, room and board and other related services costs. The Board shall also establish guidelines for the coordination of services and financial assistance provided by all State agencies to assure that no otherwise qualified disabled child receiving services under Article 14 [105 ILCS 5/14-1.01 et seq.] shall be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity provided by any State agency.

The Review Board shall review the costs for special education and related services provided by non-public schools or special education facilities and shall approve or disapprove such facilities in accordance with the rules and regulations established by it with respect to allowable costs.

The State Board of Education shall provide administrative and staff support for the Review Board as deemed reasonable by the State Superintendent of Education. This support shall not include travel expenses or other compensation for any Review Board member other than the State Superintendent of Education.

The Review Board shall seek the advice of the Advisory Council on Education of Children with Disabilities on the rules and regulations to be promulgated by it relative to providing special education services.

If a child has been placed in a program in which the actual per pupil costs of tuition for special education and related services based on program enrollment, excluding room, board and transportation costs, exceed $4,500 and such costs have been approved by the Review Board, the district shall pay such total costs which exceed $4,500. A district making such tuition payments in excess of $4,500 pursuant to this Section shall be responsible for an amount in excess of $4,500 equal to the district per capita tuition charge and shall be eligible for reimbursement from the State for the amount of such payments actually made in excess of the districts per capita tuition charge for students not receiving special education services.

If a child has been placed in an approved individual program and the tuition costs including room and board costs have been approved by the Review Board, then such room and board costs shall be paid by the appropriate State agency subject to the provisions of Section 14-8.01 of this Act [105 ILCS 5/14-8.01]. Room and board costs not provided by a State agency other than the State Board of Education shall be provided by the State Board of Education on a current basis. In no event, however, shall the State's liability for funding of these tuition costs begin until after the legal obligations of third party payors have been subtracted from such costs. If the money appropriated by the General Assembly for such purpose for any year is insufficient, it shall be apportioned on the basis of the claims approved. Each district shall submit estimated claims to the State Superintendent of Education. Upon approval of such claims, the State Superintendent of Education shall direct the State Comptroller to make payments on a monthly basis. The frequency for submitting estimated claims and the method of determining payment shall be prescribed in rules and regulations adopted by the State Board of Education. Such

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current state reimbursement shall be reduced by an amount equal to the proceeds which the child or child's parents are eligible to receive under any public or private insurance or assistance program. Nothing in this Section shall be construed as relieving an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a disabled child.

If it otherwise qualifies, a school district is eligible for the transportation reimbursement under Section 14-13.01 [105 ILCS 5/14-13.01] and for the reimbursement of tuition payments under this Section whether the non-public school or special education facility, public out-of-state school or county special education facility, attended by a child who resides in that district and requires special educational services, is within or outside of the State of Illinois. However, a district is not eligible to claim transportation reimbursement under this Section unless the district certifies to the State Superintendent of Education that the district is unable to provide special educational services required by the child for the current school year.

Nothing in this Section authorizes the reimbursement of a school district for the amount paid for tuition of a child attending a non-public school or special education facility, public out-of-state school or county special education facility unless the school district certifies to the State Superintendent of Education that the special education program of that district is unable to meet the needs of that child because of his disability and the State Superintendent of Education finds that the school district is in substantial compliance with Section 14-4.01 [105 ILCS 5/14-4.01]. However, if a child is unilaterally placed by a State agency or any court in a non-public school or special education facility, public out-of-state school, or county special education facility, a school district shall not be required to certify to the State Superintendent of Education, for the purpose of tuition reimbursement, that the special education program of that district is unable to meet the needs of a child because of his or her disability.

Any educational or related services provided, pursuant to this Section in a non-public school or special education facility or a special education facility owned and operated by a county government unit shall be at no cost to the parent or guardian of the child. However, current law and practices relative to contributions by parents or guardians for costs other than educational or related services are not affected by this amendatory Act of 1978.

Reimbursement for children attending public school residential facilities shall be made in accordance with the provisions of this Section.

Notwithstanding any other provision of law, any school district receiving a payment under this Section or under Section 14-7.02b, 14-13.01, or 29-5 of this Code [105 ILCS 5/14-7.02b, 105 ILCS 5/14-13.01, or 105 ILCS 5/29-5] may classify all or a portion of the funds that it receives in a particular fiscal year or from general State aid pursuant to Section 18-8.05 of this Code [105 ILCS 5/18-8.05] as funds received in connection with any funding program for which it is entitled to receive funds from the State in that fiscal year (including, without limitation, any funding program referenced in this Section), regardless of the source or timing of the receipt. The district may not classify more funds as funds received in connection with the funding program than the district is entitled to

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receive in that fiscal year for that program. Any classification by a district must be made by a resolution of its board of education. The resolution must identify the amount of any payments or general State aid to be classified under this paragraph and must specify the funding program to which the funds are to be treated as received in connection therewith. This resolution is controlling as to the classification of funds referenced therein. A certified copy of the resolution must be sent to the State Superintendent of Education. The resolution shall still take effect even though a copy of the resolution has not been sent to the State Superintendent of Education in a timely manner. No classification under this paragraph by a district shall affect the total amount or timing of money the district is entitled to receive under this Code. No classification under this paragraph by a district shall in any way relieve the district from or affect any requirements that otherwise would apply with respect to that funding program, including any accounting of funds by source, reporting expenditures by original source and purpose, reporting requirements, or requirements of providing services.

(Source: P.A. 86-1028; 88-555, § 10; 88-641, § 10; 89-21, § 5-50; 89-235, § 2-90; 89-397, § 5; 89-507, § 90D-40; 89-626, § 2-34; 91-764, § 5; 92-568, § 5; 93-1022, § 5; 94-177, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-7.02.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 120.30, 130.40, 226.330, 401.10.

Effect of Amendments. The 1994 amendment by P.A. 88-555, effective July 27, 1994, in the sixth paragraph, in the last sentence substituted "determination of allowable costs and payments made by local school districts for special education, room and board, and other related services provided by non-public schools or special education facilities" for "operations"; and in the eleventh paragraph, in the first sentence inserted "per pupil" and inserted "based on program enrollment".

The 1994 amendment by P.A. 88-641, effective September 9, 1994, in the fifth paragraph, in the sixth sentence, deleted "the respective regional superintendents," preceding "for payment of", deleted "in their regions" preceding "for transmittal" and deleted the seventh sentence, which read, "Payment of such claims shall be transmitted to each district through the respective regional superintendent"; and in the twelfth paragraph, in the sixth sentence, substituted "make payments" for "draw his warrants for payment" and deleted the seventh sentence, which read, "Such payments shall be transmitted to the regional superintendent for the region in which each such district is located and the appropriate school treasurer".

The 1995 amendment by P.A. 89-21, effective July 1, 1995, combined the amendments by P.A. 88-555 and P.A. 88-641; in the sixth paragraph, in the first and second sentences, substituted "Illinois" for "Governor's"; substituted the present ninth paragraph for the former ninth paragraph which read "The Review Board may employ staff and contract with independent auditors for such services as may be needed to verify that all fees, tuitions and charges are fair and justified".

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The 1995 amendment by P.A. 89-235, effective August 4, 1995, combined the amendments by P.A. 88-555, § 10 and P.A. 88-641, § 10.

The 1995 amendment by P.A. 89-397, effective August 20, 1995, combined the amendments by P.A. 88-555 and P.A. 88-641; in the second paragraph, in the first sentence, substituted "disability" for "handicap"; in the third paragraph, in the third sentence, substituted "Children with Disabilities" for "Handicapped Children", in the seventh paragraph, in the second sentence, substituted "disabled" for handicapped; in the tenth paragraph substituted "Children with Disabilities" for "Handicapped Children"; in the twelfth paragraph, in the ninth sentence, substituted "disabled" for "handicapped"; and in the fourteenth paragraph substituted "disability" for "handicap".

The 1996 amendment by P.A. 89-507, effective July 1, 1997, in the sixth paragraph, in the second sentence, deleted "Mental Health and Developmental Disabilities" preceding "Public Health", deleted "Rehabilitation Services" following "Public Aid" and inserted "the Secretary of Human Services".

The 1996 amendment by P.A. 89-626, effective August 9, 1996, combined the amendments of this section by P.A. 89-21, P.A. 89-235 and P.A. 89-397.

The 2000 amendment by P.A. 91-764, effective June 9, 2000, in the fifth paragraph deleted "with the regional superintendent of schools on or before August 1, for approval" following "Board of Education" in the second sentence, and in the third sentence substituted "Each school district shall" for "The regional superintendent of schools shall approve the claims as to form and" and made a related change; and deleted "to the regional superintendent of schools for transmittal" following "submit estimated claims" in the fourth sentence of the twelfth paragraph.

The 2002 amendment by P.A. 92-568, effective June 26, 2002, added the last paragraph.

The 2004 amendment by P.A. 93-1022, effective August 24, 2004, in the sixth paragraph substituted "Governor's Office of Management and Budget" for "Bureau of the Budget"; and substituted "14-7.02b" for "14-7.02a" in the first sentence of the last paragraph.

The 2005 amendment by P.A. 94-177, effective July 12, 2005, added the last sentence in the fourth paragraph from the end.

CASE NOTES

Analysis

Constitutionality
Construction
Non-Approved Facility
- In General
- Contracts
- Placement by Parents
- Placement by Special Education District

Private Facilities

Constitutionality

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The Illinois Constitution establishes the right of handicapped persons to tuition-free education through the secondary level entailing the prohibition of requiring parents and guardians to pay tuition for the education of their handicapped children, but does not interfere with the constitutional authority of the General Assembly to allocate limited public funds. Elliot ex rel. Elliot v. Board of Educ., 64 Ill. App. 3d 229, 20 Ill. Dec. 928, 380 N.E.2d 1137 (1 Dist. 1978).

A former version of this section violated the Education Article of the Illinois Constitution, Ill. Const. (1970), Art. XI, § 1, in that it deprived a handicapped child of a tuition free education through the secondary level and required his mother to pay tuition for the education of her handicapped son through the secondary level. Elliot ex rel. Elliot v. Board of Educ., 64 Ill. App. 3d 229, 20 Ill. Dec. 928, 380 N.E.2d 1137 (1 Dist. 1978).

A former version of this section which limited the amount of tuition which the state, through its school districts, would pay for the special education of handicapped students who had been excluded from the public schools and who attended a non-public school or special education facility was unconstitutional. Elliot ex rel. Elliot v. Board of Educ., 64 Ill. App. 3d 229, 20 Ill. Dec. 928, 380 N.E.2d 1137 (1 Dist. 1978).

The education of handicapped students, including education in private special education facilities, is the legal responsibility of the public school system and must be provided free of charge to the student through the secondary level. In re Walker, 107 Ill. App. 3d 1053, 63 Ill. Dec. 651, 438 N.E.2d 582 (1 Dist. 1982).

Construction

School district was not entitled to reimbursement from a school board for the educational services provided to a minor in a treatment facility, because the minor's placement was accomplished exclusively pursuant to the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., not under the School Code, and the school board had no input in the minor's placement; a case involving an individualized education program guided the analysis. Antioch Cmty. High Sch. Dist. 17 v. Bd. of Educ., 373 Ill. App. 3d 544, 311 Ill. Dec. 407, 868 N.E.2d 1068, 2007 Ill. App. LEXIS 474 (1 Dist. 2007).

Non-Approved Facility

- In General

This section prohibits a board of education from placing students with a special education facility prior to approval of the facility by the Governor's Purchased Care Review Board. Academy v. Chicago Bd. of Educ., 122 Ill. App. 3d 553, 78 Ill. Dec. 13, 461 N.E.2d 597 (1 Dist. 1984).

- Contracts

The trial court properly ruled that a contract between a school district and a private special education facility which had not been approved by the Governor's Purchased Care Review Board was void ab initio, and the evidence further supported a finding that there was no contract implied in fact. Academy v. Chicago Bd. of Educ., 122 Ill. App. 3d 553, 78 Ill. Dec. 13, 461 N.E.2d 597 (1 Dist. 1984).

- Placement by Parents

Since a school district has no authority to place students in nonapproved facilities, it is not responsible for reimbursement for such placements when made by the parents. Taglianetti v. Cronin, 143 Ill. App. 3d 459, 97 Ill. Dec. 547, 493 N.E.2d 29 (1 Dist. 1986).

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Because the parents' placement of the child was in a nonapproved private facility which the school district had no authority to provide, they were not entitled to damages or reimbursement under the Education for All Handicapped Children Act (20 U.S.C. § 1400 et seq.), notwithstanding the fact that their placement may have been the appropriate one. Taglianetti v. Cronin, 143 Ill. App. 3d 459, 97 Ill. Dec. 547, 493 N.E.2d 29 (1 Dist. 1986).

- Placement by Special Education District

The Special Education District had no authority to place a delinquent minor in a care facility which was unapproved, or a second facility where, even if it was approved by the Purchased Care Review Board, the minor had been denied placement by the Illinois State Board of Education. In re Claudia K., 91 Ill. 2d 469, 64 Ill. Dec. 526, 440 N.E.2d 78 (1982).

Private Facilities

School district, wherein a delinquent minor was a special education student, was not financially responsible for the delinquent minor's residential placement at an out-of-state residential facility under the Juvenile Court Act; a school district has financial responsiblity for an out-of-district special education program only when it is unable to meet the needs of the student in its own district. People v. D.D. (In re D.D.), 212 Ill. 2d 410, 289 Ill. Dec. 143, 819 N.E.2d 300, 2004 Ill. LEXIS 1023 (2004).

Private school that served troubled children upon referral from the public school district, receiving payment in many cases out of public funds, was not so intertwined with public business as to be entitled to immunity from tort liability as a local governmental entity. Brugger v. Joseph Acad., Inc., 202 Ill. 2d 435, 269 Ill. Dec. 472, 781 N.E.2d 269, 2002 Ill. LEXIS 960 (2002).

Where a juvenile court determined that providing for a delinquent's special needs was an important part of its disposition, it had jurisdiction to order him sent to a private out-of-state school, but since the Illinois statutory scheme never imposed the tuition costs on the juvenile's home school district in those circumstances, providing only for imposition on the parents or on the county, the juvenile court lacked the authority to order the school district to pay those costs. People v. D.D. (In re D.D.), 337 Ill. App. 3d 998, 272 Ill. Dec. 706, 788 N.E.2d 10, 2002 Ill. App. LEXIS 910 (1 Dist. 2002), aff'd, 212 Ill. 2d 410, 289 Ill. Dec. 143, 819 N.E.2d 300 (2004).

Article XIV of this Code, as well as rules and regulations promulgated by the Illinois Office of Education, acknowledge the role of the free public school system in providing for the educational development of all handicapped students enrolled by the school districts of the state. As a matter of legislative and administrative policy this role is exercised by meeting the educational needs of the handicapped student through programs incorporating the least restrictive curricula and facilities possible; only as a last resort are handicapped students to be removed from the public school environment and placed in private special educational facilities. Elliot ex rel. Elliot v. Board of Educ., 64 Ill. App. 3d 229, 20 Ill. Dec. 928, 380 N.E.2d 1137 (1 Dist. 1978).

Article XIV of this Code and regulations promulgated by the State Superintendent of Education under this section suggest that private special educational facilities providing instruction and training to handicapped students pursuant to this section are but contracted extensions of existing public school systems. Elliot ex rel. Elliot v. Board of Educ., 64 Ill. App. 3d 229, 20 Ill. Dec. 928, 380 N.E.2d 1137 (1 Dist. 1978).

The education of handicapped students is part of the responsibility of the public school system, and the education of handicapped students in private special educational facilities pursuant to section this section is also a program established as part of the public school system, and thus must be free of tuition charges for Illinois residents through the secondary level. Elliot ex rel. Elliot v. Board of Educ., 64 Ill. App. 3d 229, 20 Ill. Dec. 928, 380 N.E.2d 1137 (1 Dist. 1978).

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LEGAL PERIODICALS

For note, "Defining the Scope of Residential Placement and Related Services Under the EHA: Difficult Questions Left Unanswered in Illinois - In re Claudia K," see 32 De Paul L. Rev. 483 (1983).

For note, "Illinois' State Subsidy of Special Education of Private Institutions Act," see 28 De Paul L. Rev. 769 (1979).

§ 105 ILCS 5/14-7.02a: Repealed by P.A. 93-1022, § 5, effective August 24, 2004.

§ 105 ILCS 5/14-7.02b. Funding for children requiring special education services

Sec. 14-7.02b. Funding for children requiring special education services. Payments to school districts for children requiring special education services documented in their individualized education program regardless of the program from which these services are received, excluding children claimed under Sections 14-7.02 and 14-7.03 of this Code [105 ILCS 5/14-7.02 and 105 ILCS 5/14-7.03], shall be made in accordance with this Section. Funds received under this Section may be used only for the provision of special educational facilities and services as defined in Section 14-1.08 of this Code [105 ILCS 5/14-1.08].

The appropriation for fiscal year 2005 and thereafter shall be based upon the IDEA child count of all students in the State, excluding students claimed under Sections 14-7.02 and 14-7.03 of this Code, on December 1 of the fiscal year 2 years preceding, multiplied by 17.5% of the general State aid foundation level of support established for that fiscal year under Section 18-8.05 of this Code [105 ILCS 5/18-8.05].

Beginning with fiscal year 2005 and through fiscal year 2007, individual school districts shall not receive payments under this Section totaling less than they received under the funding authorized under Section 14-7.02a of this Code [105 ILCS 5/14-7.02a] during fiscal year 2004, pursuant to the provisions of Section 14-7.02a as they were in effect before the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-1022]. This base level funding shall be computed first.

Beginning with fiscal year 2008 and each fiscal year thereafter, individual school districts must not receive payments under this Section totaling less than they received in fiscal year 2007. This funding shall be computed last and shall be a separate calculation from any other calculation set forth in this Section. This amount is exempt from the requirements of Section 1D-1 of this Code [105 ILCS 5/1D-1].

An amount equal to 85% of the funds remaining in the appropriation shall be allocated to school districts based upon the district's average daily attendance reported for purposes of Section 18-8.05 of this Code for the preceding school year. Fifteen percent of the funds

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remaining in the appropriation shall be allocated to school districts based upon the district's low income eligible pupil count used in the calculation of general State aid under Section 18-8.05 of this Code for the same fiscal year. One hundred percent of the funds computed and allocated to districts under this Section shall be distributed and paid to school districts.

For individual students with disabilities whose program costs exceed 4 times the district's per capita tuition rate as calculated under Section 10-20.12a of this Code [105 ILCS 5/10-20.12a], the costs in excess of 4 times the district's per capita tuition rate shall be paid by the State Board of Education from unexpended IDEA discretionary funds originally designated for room and board reimbursement pursuant to Section 14-8.01 of this Code [105 ILCS 5/14-8.01]. The amount of tuition for these children shall be determined by the actual cost of maintaining classes for these children, using the per capita cost formula set forth in Section 14-7.01 of this Code [105 ILCS 5/14-7.01], with the program and cost being pre-approved by the State Superintendent of Education. Reimbursement for individual students with disabilities whose program costs exceed 4 times the district's per capita tuition rate shall be claimed beginning with costs encumbered for the 2004-2005 school year and thereafter.

The State Board of Education shall prepare vouchers equal to one-fourth the amount allocated to districts, for transmittal to the State Comptroller on the 30th day of September, December, and March, respectively, and the final voucher, no later than June 20. The Comptroller shall make payments pursuant to this Section to school districts as soon as possible after receipt of vouchers. If the money appropriated from the General Assembly for such purposes for any year is insufficient, it shall be apportioned on the basis of the payments due to school districts.

Nothing in this Section shall be construed to decrease or increase the percentage of all special education funds that are allocated annually under Article 1D of this Code [105 ILCS 5/1D-1 et seq.] or to alter the requirement that a school district provide special education services.

Nothing in this amendatory Act of the 93rd General Assembly [P.A. 93-1022] shall eliminate any reimbursement obligation owed as of the effective date of this amendatory Act of the 93rd General Assembly to a school district with in excess of 500,000 inhabitants.

(Source: P.A. 93-1022, § 5; 95-705, § 5.)

Effective Date. Section 99 of P.A. 93-1022 made this section effective upon becoming law. The Act was approved August 24, 2004.

Effect of Amendments. The 2008 amendment by P.A. 95-705, effective January 8, 2008, added the fourth paragraph; in the fifth paragraph, deleted "after subtracting any base level funding for that fiscal year" following "appropriation" in the first and second sentences; and made related

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changes.

§ 105 ILCS 5/14-7.03. Special Education Classes for Children from Orphanages, Foster Family Homes, Children's Homes, or in State Housing Units

Sec. 14-7.03. Special Education Classes for Children from Orphanages, Foster Family Homes, Children's Homes, or in State Housing Units. If a school district maintains special education classes on the site of orphanages and children's homes, or if children from the orphanages, children's homes, foster family homes, other State agencies, or State residential units for children attend classes for children with disabilities in which the school district is a participating member of a joint agreement, or if the children from the orphanages, children's homes, foster family homes, other State agencies, or State residential units attend classes for the children with disabilities maintained by the school district, then reimbursement shall be paid to eligible districts in accordance with the provisions of this Section by the Comptroller as directed by the State Superintendent of Education.

The amount of tuition for such children shall be determined by the actual cost of maintaining such classes, using the per capita cost formula set forth in Section 14-7.01 [105 ILCS 5/14-7.01], such program and cost to be pre-approved by the State Superintendent of Education.

On forms prepared by the State Superintendent of Education, the district shall certify to the regional superintendent the following:

(1) The name of the home or State residential unit with the name of the owner or proprietor and address of those maintaining it;

(2) That no service charges or other payments authorized by law were collected in lieu of taxes therefrom or on account thereof during either of the calendar years included in the school year for which claim is being made;

(3) The number of children qualifying under this Act in special education classes for instruction on the site of the orphanages and children's homes;

(4) The number of children attending special education classes for children with disabilities in which the district is a participating member of a special education joint agreement;

(5) The number of children attending special education classes for children with disabilities maintained by the district;

(6) The computed amount of tuition payment claimed as due, as approved by the State Superintendent of Education, for maintaining these classes.

If a school district makes a claim for reimbursement under Section 18-3 or 18-4 of this Act [105 ILCS 5/18-3 or 105 ILCS 5/18-4] it shall not include in any claim filed under this Section a claim for such children. Payments authorized by law, including State or

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federal grants for education of children included in this Section, shall be deducted in determining the tuition amount.

Nothing in this Act shall be construed so as to prohibit reimbursement for the tuition of children placed in for profit facilities. Private facilities shall provide adequate space at the facility for special education classes provided by a school district or joint agreement for children with disabilities who are residents of the facility at no cost to the school district or joint agreement upon request of the school district or joint agreement. If such a private facility provides space at no cost to the district or joint agreement for special education classes provided to children with disabilities who are residents of the facility, the district or joint agreement shall not include any costs for the use of those facilities in its claim for reimbursement.

Reimbursement for tuition may include the cost of providing summer school programs for children with severe and profound disabilities served under this Section. Claims for that reimbursement shall be filed by November 1 and shall be paid on or before December 15 from appropriations made for the purposes of this Section.

The State Board of Education shall establish such rules and regulations as may be necessary to implement the provisions of this Section.

Claims filed on behalf of programs operated under this Section housed in a jail, detention center, or county-owned shelter care facility shall be on an individual student basis only for eligible students with disabilities. These claims shall be in accordance with applicable rules.

Each district claiming reimbursement for a program operated as a group program shall have an approved budget on file with the State Board of Education prior to the initiation of the program's operation. On September 30, December 31, and March 31, the State Board of Education shall voucher payments to group programs based upon the approved budget during the year of operation. Final claims for group payments shall be filed on or before July 15. Final claims for group programs received at the State Board of Education on or before June 15 shall be vouchered by June 30. Final claims received at the State Board of Education between June 16 and July 15 shall be vouchered by August 30. Claims for group programs received after July 15 shall not be honored.

Each district claiming reimbursement for individual students shall have the eligibility of those students verified by the State Board of Education. On September 30, December 31, and March 31, the State Board of Education shall voucher payments for individual students based upon an estimated cost calculated from the prior year's claim. Final claims for individual students for the regular school term must be received at the State Board of Education by July 15. Claims for individual students received after July 15 shall not be honored. Final claims for individual students shall be vouchered by August 30.

Reimbursement shall be made based upon approved group programs or individual students. The State Superintendent of Education shall direct the Comptroller to pay a specified amount to the district by the 30th day of September, December, March, June, or August, respectively. However, notwithstanding any other provisions of this Section or the School Code, beginning with fiscal year 1994 and each fiscal year thereafter, if the

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amount appropriated for any fiscal year is less than the amount required for purposes of this Section, the amount required to eliminate any insufficient reimbursement for each district claim under this Section shall be reimbursed on August 30 of the next fiscal year. Payments required to eliminate any insufficiency for prior fiscal year claims shall be made before any claims are paid for the current fiscal year.

The claim of a school district otherwise eligible to be reimbursed in accordance with Section 14-12.01 [105 ILCS 5/14-12.01] for the 1976-77 school year but for this amendatory Act of 1977 shall not be paid unless the district ceases to maintain such classes for one entire school year.

If a school district's current reimbursement payment for the 1977-78 school year only is less than the prior year's reimbursement payment owed, the district shall be paid the amount of the difference between the payments in addition to the current reimbursement payment, and the amount so paid shall be subtracted from the amount of prior year's reimbursement payment owed to the district.

Regional superintendents may operate special education classes for children from orphanages, foster family homes, children's homes or State housing units located within the educational services region upon consent of the school board otherwise so obligated. In electing to assume the powers and duties of a school district in providing and maintaining such a special education program, the regional superintendent may enter into joint agreements with other districts and may contract with public or private schools or the orphanage, foster family home, children's home or State housing unit for provision of the special education program. The regional superintendent exercising the powers granted under this Section shall claim the reimbursement authorized by this Section directly from the State Board of Education.

Any child who is not a resident of Illinois who is placed in a child welfare institution, private facility, foster family home, State operated program, orphanage or children's home shall have the payment for his educational tuition and any related services assured by the placing agent.

For each disabled student who is placed in a residential facility by an Illinois public agency or by any court in this State, the costs for educating the student are eligible for reimbursement under this Section.

The district of residence of the disabled student as defined in Section 14-1.11a [105 ILCS 5/14-1.11a] is responsible for the actual costs of the student's special education program and is eligible for reimbursement under this Section when placement is made by a State agency or the courts.

When a dispute arises over the determination of the district of residence under this Section, the district or districts may appeal the decision in writing to the State Superintendent of Education, who, upon review of materials submitted and any other items or information he or she may request for submission, shall issue a written decision on the matter. The decision of the State Superintendent of Education shall be final.

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In the event a district does not make a tuition payment to another district that is providing the special education program and services, the State Board of Education shall immediately withhold 125% of the then remaining annual tuition cost from the State aid or categorical aid payment due to the school district that is determined to be the resident school district. All funds withheld by the State Board of Education shall immediately be forwarded to the school district where the student is being served.

When a child eligible for services under this Section 14-7.03 must be placed in a nonpublic facility, that facility shall meet the programmatic requirements of Section 14-7.02 [105 ILCS 5/14-7.02] and its regulations, and the educational services shall be funded only in accordance with this Section 14-7.03 [105 ILCS 5/14-7.03].

(Source: P.A. 87-221; 87-1117, § 1; 88-9, § 5; 88-491, § 3; 88-575, § 5; 88-641, § 10; 88-670, § 2-34; 89-235, § 2-90; 89-397, § 5; 89-698, § 5; 90-463, § 10; 90-644, § 5; 92-597, § 45; 92-877, § 5; 93-609, § 5; 95-313, § 5; 95-844, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-7.03.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 130.30, 401.10.

Effect of Amendments. The 1992 amendment by P.A. 87-117, effective January 1, 1993 added the fifth and sixth paragraphs following subsection (6); in the present seventh paragraph following subsection (6) deleted the former first sentence regarding reimbursement on a current basis, and in the present first sentence deleted "quarterly" after "shall be made", inserted "group" before "programs" and inserted "individuals" before "students", and in the second sentence substituted "30th" for "15th", deleted "or" before "March", deleted "or the 30th day of" before "June" and inserted "or September" before "respectively", and added the last four paragraphs.

The 1993 amendment by P.A. 88-9, effective June 30, 1993, in the sixth full paragraph, in the second sentence, substituted "November" for "October" and substituted "December 15th" for "December 1".

The 1993 amendment by P.A. 88-491, effective September 10, 1993, inserted the eighth full paragraph, beginning "Claims filed on behalf of programs operated under this Section" and ending "These claims shall be in accordance with applicable rules".

The 1994 amendment by P.A. 88-575, effective August 12, 1994, in the sixth paragraph, in the second sentence, substituted "15" for "15th"; and in the eleventh paragraph substituted the present third and fourth sentences for "If the amount appropriated for any fiscal year is less than the amount required for the purposes of this Section, the amount due each district entitled to reimbursement under this Section shall be proportionately reduced".

The 1994 amendment by P.A. 88-641, effective September 9, 1994, at the end of the first paragraph, substituted "by the Comptroller as directed by the State Superintendent of Education" for "through the regional superintendent on the warrant of the Comptroller"; and in the sixth paragraph, in the second sentence substituted "December 15" for "December 15th".

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The 1994 amendment by P.A. 88-670, effective December 2, 1994, combined the amendments by P.A. 88-9 and P.A. 88-491; and in the sixth paragraph substituted "15" for "15th".

The 1995 amendment by P.A. 89-235, effective August 4, 1995, combined the amendments by P.A. 88-575, § 5, P.A. 88-641, § 10 and P.A. 88-670, § 2-34.

The 1995 amendment by P.A. 89-397, effective August 20, 1995, combined the amendments by P.A. 88-575, P.A. 88-641 and P.A. 88-670; substituted "children with disabilities" for "handicapped children" throughout the section, in sixth paragraph substituted "children with severe and profound disabilities" for "severely and profoundly handicapped children".

The 1996 amendment by P.A. 89-698, effective January 14, 1997, combined the amendments by P.A. 89-235 and P.A. 89-397; in the seventeenth paragraph added the second sentence; and in the nineteenth paragraph, in the first sentence, substituted "does not make a" for "refuses to pay", substituted "payment" for "(by June 30th of the school year)", inserted "immediately", substituted "125%" for "110%" and inserted "then remaining annual" and in the second sentence inserted "immediately".

The 1997 amendment by P.A. 90-463, effective August 17, 1997, substituted "July 15" for "August 15" throughout; substituted "August 30" for "September 30" throughout; and in the eleventh paragraph, in the first and second sentences substituted "August" for "September."

The 1998 amendment by P.A. 90-644, effective July 24, 1998, added the last paragraph.

The 2002 amendment, by P.A. 92-597, effective July 1, 2002, in the eleventh paragraph, inserted "through fiscal year 2002" and "and the" in the third sentence, and added the last sentence.

The 2002 amendment by P.A. 92-877, effective January 7, 2003, inserted "or county-owned shelter care facility" in the first sentence of the eighth paragraph, which begins "Claims filed", and made a related change.

The 2003 amendment by P.A. 93-609, effective November 20, 2003, in the paragraph beginning "Reimbursement shall be made based upon", deleted "through fiscal year 2002" in the third sentence, and deleted the last sentence regarding the limitation of the amount appropriated for total reimbursement under this Section beginning with fiscal year 2003, and made stylistic changes.

The 2007 amendment by P.A. 95-313, effective August 20, 2007, added the last two sentences in the paragraph which begins "Commencing July 1, 1992".

The 2008 amendment by P.A. 95-844, effective August 15, 2008, rewrote the fifth, fourth and third paragraphs from the end of the section.

CASE NOTES

Analysis

Residence of Child
- Determination
- Mental Health Facility
Responsible Custodial Parent
Responsible School Districts

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Residence of Child

- Determination

Handicapped minor's residence, for school purposes, was not the district in which a center with special educational services was located since the general rule was that children, presumptively, were residents of the school district wherein their parents reside. School Dist. v. School Dist., 54 Ill. App. 3d 587, 12 Ill. Dec. 399, 370 N.E.2d 22 (1 Dist. 1977).

- Mental Health Facility

This section does not automatically make a child who is residing in a Department of Mental Health facility a resident of the school district in which the facility is located. School Dist. v. School Dist., 54 Ill. App. 3d 587, 12 Ill. Dec. 399, 370 N.E.2d 22 (1 Dist. 1977).

Responsible Custodial Parent

This section is primarily a reimbursement provision, addressing itself to the special education of children residing in orphanages, foster homes, children's homes or state agencies and is not applicable to a handicapped minor who had a responsible parent who continued to exercise custody and control over her. School Dist. v. School Dist., 54 Ill. App. 3d 587, 12 Ill. Dec. 399, 370 N.E.2d 22 (1 Dist. 1977).

Responsible School Districts

The legislature, in 105 ILCS 5/14-4.01, has seen fit to require individual school districts to finance the special education of their residents. While this general scheme is subject to any limitations hereinafter specified, that limitation does not warrant the conclusion that the state has decided to pay for children who have responsible school districts to finance their education simply because they happen to live in orphanages, foster homes, children's homes, or state agencies. William C. v. Board of Educ., 71 Ill. App. 3d 793, 28 Ill. Dec. 312, 390 N.E.2d 479 (1 Dist. 1979).

§ 105 ILCS 5/14-7.03a: Repealed by P.A. 90-644, § 10, effective July 24, 1998.

§ 105 ILCS 5/14-7.04. Health care reimbursement

Sec. 14-7.04. Health care reimbursement. (a) Local educational agencies may utilize federally funded health care programs to share in the costs of services which are provided to children requiring special education and related services and which are either listed on an individualized education program established pursuant to the federal Education for All Handicapped Children Act of 1975, Public Law No. 94-142 [20 U.S.C. § 1400 et seq.] or are provided under an individualized family service plan established pursuant to the federal Education of the Handicapped Act Amendments of 1986, Public Law No. 99-457. Those federally funded health care programs shall also share in the cost of all screenings and diagnostic evaluations for children suspected of having or known to have a disability. However, all such services shall continue to be initially funded by the local educational

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agency and shall be provided regardless of subsequent cost sharing with other funding sources. Federally funded health care reimbursement funds are supplemental and shall not be used to reduce any other Federal payments, private payments or State Board of Education funds for special education as provided in Article 14 of the School Code [105 ILCS 5/14-1.01 et seq.] for which the local education agency is eligible.

Local educational agencies providing early periodic screening and diagnostic testing services on or after August 1, 1991, including screening and diagnostic services, health care and treatment, preventive health care, and any other measure to correct or improve health impairments of Medicaid-eligible children, may also access federally funded health care resources.

The State Board of Education and the Department of Healthcare and Family Services may enter into an intergovernmental agreement whereby school districts or their agents may claim medicaid matching funds for medicaid eligible special education children as authorized by Section 1903 of the Social Security Act [42 U.S.C. § 1396b]. Under that intergovernmental agreement, school districts or their agents may also claim federal funds for the services provided to special education students enrolled in the Children's Health Insurance Program.

(b) No employee or officer of a school district, special education joint agreement, office of a regional superintendent of schools or the State Board of Education may have a direct or indirect financial interest in any agreement between the entity of which the person is an employee or officer and any corporation, organization or other entity that collects or participates in the collection of payments from private health care benefit plans or federally funded health care programs authorized under this Section.

(Source: P.A. 86-476; 87-468; 87-641; 87-895; 87-1168, § 1; 91-24, § 15; 95-331, § 540.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-7.04.

Effect of Amendments. The 1992 amendment by P.A. 87-1168, effective September 18, 1992, inserted the present second sentence of the first paragraph and the present second paragraph of subsection (a) and deleted "as amended" following "Social Security Act" in the last sentence of subsection (a).

The 1999 amendment by P.A. 91-24, effective July 1, 1999, added the last sentence of the third paragraph in subsection (a).

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, substituted "Department of Healthcare and Family Services" for "Department of Public Aid" in the last paragraph of (a).

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§ 105 ILCS 5/14-7.05. Placement in residential facility; payment of educational costs

Sec. 14-7.05. Placement in residential facility; payment of educational costs. For any student with a disability in a residential facility placement made or paid for by an Illinois public State agency or made by any court in this State, the school district of residence as determined pursuant to this Article is responsible for the costs of educating the child and shall be reimbursed for those costs in accordance with this Code. Subject to this Section and relevant State appropriation, the resident district's financial responsibility and reimbursement must be calculated in accordance with the provisions of Section 14-7.02 of this Code [105 ILCS 5/14-7.02]. In those instances in which a district receives a block grant pursuant to Article 1D of this Code [105 ILCS 5/1D-1 et seq.], the district's financial responsibility is limited to the actual educational costs of the placement, which must be paid by the district from its block grant appropriation. Resident district financial responsibility and reimbursement applies for both residential facilities that are approved by the State Board of Education and non-approved facilities, subject to the requirements of this Section. The Illinois placing agency or court remains responsible for funding the residential portion of the placement and for notifying the resident district prior to the placement, except in emergency situations. The residential facility in which the student is placed shall notify the resident district of the student's enrollment as soon as practicable after the placement. Failure of the placing agency or court to notify the resident district prior to the placement does not absolve the resident district of financial responsibility for the educational costs of the placement; however, the resident district shall not become financially responsible unless and until it receives written notice of the placement by either the placing agency, court, or residential facility. The placing agency or parent shall request an individualized education program (IEP) meeting from the resident district if the placement would entail additional educational services beyond the student's current IEP. The district of residence shall retain control of the IEP process, and any changes to the IEP must be done in compliance with the federal Individuals with Disabilities Education Act [20 U.S.C. § 1400 et seq.].

Payments shall be made by the resident district to the entity providing the educational services, whether the entity is the residential facility or the school district wherein the facility is located, no less than once per quarter unless otherwise agreed to in writing by the parties.

A residential facility providing educational services within the facility, but not approved by the State Board of Education, is required to demonstrate proof to the State Board of (i) appropriate certification of teachers for the student population, (ii) age-appropriate curriculum, (iii) enrollment and attendance data, and (iv) the ability to implement the child's IEP. A school district is under no obligation to pay such a residential facility unless and until such proof is provided to the State Board's satisfaction.

When a dispute arises over the determination of the district of residence under this Section, any person or entity, including without limitation a school district or residential facility, may make a written request for a residency decision to the State Superintendent

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of Education, who, upon review of materials submitted and any other items of information he or she may request for submission, shall issue his or her decision in writing. The decision of the State Superintendent of Education is final.

(Source: P.A. 95-844, § 5; 95-938, § 10.)

Effective Date. Section 99 of P.A. 95-844 made this section effective upon becoming law. The Act was approved August 25, 2008.

Effect of Amendments. The 2008 amendment by P.A. 95-938, effective August 29, 2008, added the second through last sentences in the first paragraph; and added the third paragraph.

§ 105 ILCS 5/14-8.01. Supervision of special education buildings and facilities

Sec. 14-8.01. Supervision of special education buildings and facilities. All special educational facilities, building programs, housing, and all educational programs for the types of disabled children defined in Section 14-1.02 [105 ILCS 5/14-1.02] shall be under the supervision of and subject to the approval of the State Board of Education.

All special education facilities, building programs, and housing shall comply with the building code authorized by Section 2-3.12 [105 ILCS 5/2-3.12].

All educational programs for children with disabilities as defined in Section 14-1.02 [105 ILCS 5/14-1.02] administered by any State agency shall be under the general supervision of the State Board of Education. Such supervision shall be limited to insuring that such educational programs meet standards jointly developed and agreed to by both the State Board of Education and the operating State agency, including standards for educational personnel.

Any State agency providing special educational programs for children with disabilities as defined in Section 14-1.02 [105 ILCS 5/14-1.02] shall promulgate rules and regulations, in consultation with the State Board of Education and pursuant to the Illinois Administrative Procedure Act as now or hereafter amended, to insure that all such programs comply with this Section and Section 14-8.02 [105 ILCS 5/14-8.02].

No otherwise qualified disabled child receiving special education and related services under Article 14 [105 ILCS 5/14-1.01 et seq.] shall solely by reason of his or her disability be excluded from the participation in or be denied the benefits of or be subjected to discrimination under any program or activity provided by a State agency.

State agencies providing special education and related services, including room and board, either directly or through grants or purchases of services shall continue to provide these services according to current law and practice. Room and board costs not provided by a State agency other than the State Board of Education shall be provided by the State

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Board of Education to the extent of available funds. An amount equal to one-half of the State education agency's share of IDEA PART B federal monies, or so much thereof as may actually be needed, shall annually be appropriated to pay for the additional costs of providing for room and board for those children placed pursuant to Section 14-7.02 [105 ILCS 5/14-7.02] of this Code and, after all such room and board costs are paid, for similar expenditures for children served pursuant to Section 14-7.02 [105 ILCS 5/14-7.02] or 14-7.02b [105 ILCS 5/14-7.02b] of this Code. Any such excess room and board funds must first be directed to those school districts with students costing in excess of 4 times the district's per capita tuition charge and then to community based programs that serve as alternatives to residential placements.

Beginning with Fiscal Year 1997 and continuing through Fiscal Year 2000, 100% of the former Chapter I, Section 89-313 federal funds shall be allocated by the State Board of Education in the same manner as IDEA, PART B "flow through" funding to local school districts, joint agreements, and special education cooperatives for the maintenance of instructional and related support services to students with disabilities. However, beginning with Fiscal Year 1998, the total IDEA Part B discretionary funds available to the State Board of Education shall not exceed the maximum permissible under federal law or 20% of the total federal funds available to the State, whichever is less. After all room and board payments and similar expenditures are made by the State Board of Education as required by this Section, the State Board of Education may use the remaining funds for administration and for providing discretionary activities. However, the State Board of Education may use no more than 25% of its available IDEA Part B discretionary funds for administrative services.

Special education and related services included in the child's individualized educational program which are not provided by another State agency shall be included in the special education and related services provided by the State Board of Education and the local school district.

The State Board of Education with the advice of the Advisory Council shall prescribe the standards and make the necessary rules and regulations for special education programs administered by local school boards, including but not limited to establishment of classes, training requirements of teachers and other professional personnel, eligibility and admission of pupils, the curriculum, class size limitation, building programs, housing, transportation, special equipment and instructional supplies, and the applications for claims for reimbursement. The State Board of Education shall promulgate rules and regulations for annual evaluations of the effectiveness of all special education programs and annual evaluation by the local school district of the individualized educational program for each child for whom it provides special education services.

A school district is responsible for the provision of educational services for all school age children residing within its boundaries excluding any student placed under the provisions of Section 14-7.02 [105 ILCS 5/14-7.02] or any disabled student whose parent or guardian lives outside of the State of Illinois as described in Section 14-1.11 [105 ILCS 5/14-1.11].

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(Source: P.A. 83-729; 87-984, § 1; 87-1117, § 1; 88-16, § 5; 88-45, § 2-31; 89-397, § 5; 89-622, § 5; 90-547, § 5; 93-1022, § 5; 94-69, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-8.01.

Effect of Amendments. The 1992 amendment by P.A. 87-984, effective January 1, 1993, added the second paragraph.

The 1992 amendment by P.A. 87-1117, effective January 1, 1993, added the last paragraph.

The 1993 amendment by P.A. 88-16, effective June 30, 1993, in the sixth paragraph, added "to the extent of available funds" at the end of the second sentence, substituted "IDEA PART B" for "PL 94-142" in the third sentence and added "and, after all such room and board costs are paid, for similar expenditures for children served pursuant to Section 14-7.02 or 14-7.02a of this Act, based in community based programs that serve as alternatives to residential placements" at the end of the third sentence.

The 1993 amendment by P.A. 88-45, effective July 6, 1993 combined the separate amendments of P.A. 87-984 and P.A. 87-1117.

The 1995 amendment by P.A. 89-397, effective August 20, 1995, combined the amendments by P.A. 88-16 and P.A. 88-45; in the first paragraph substituted "disabled" for "handicapped"; in the third and fourth paragraphs substituted "children with disabilities as" for "the types of handicapped children"; and in the fifth paragraph substituted "disabled" for "handicapped" and substituted "disability" for "handicap".

The 1996 amendment by P.A. 89-622, effective August 9, 1996, added the seventh paragraph.

The 1997 amendment by P.A. 90-547, effective December 1, 1997, in the seventh paragraph added the second through fourth sentences.

The 2004 amendment by P.A. 93-1022, effective August 24, 2004, in the sixth paragraph in the next-to-last sentence substituted "Code" for "Act", substituted "14-7.02b" for "14-7.02a", and inserted "Code" at the end, and in the last sentence substituted the language from the beginning of the sentence through "charge and then to" for "Act, based in".

The 2005 amendment by P.A. 94-69, effective July 1, 2005, in the seventh paragraph deleted the former third sentence, which concerned aggregate IDEA Part B discretionary funds in years 1997 and 1998.

LEGAL PERIODICALS

For note, "Defining the Scope of Residential Placement and Related Services Under the EHA: Difficult Questions Left Unanswered in Illinois - In re Claudia K," see 32 De Paul L. Rev. 483 (1983).

§ 105 ILCS 5/14-8.02. Identification, Evaluation and Placement of Children

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Sec. 14-8.02. Identification, Evaluation and Placement of Children. (a) The State Board of Education shall make rules under which local school boards shall determine the eligibility of children to receive special education. Such rules shall ensure that a free appropriate public education be available to all children with disabilities as defined in Section 14-1.02 [105 ILCS 5/14-1.02]. The State Board of Education shall require local school districts to administer non-discriminatory procedures or tests to limited English proficiency students coming from homes in which a language other than English is used to determine their eligibility to receive special education. The placement of low English proficiency students in special education programs and facilities shall be made in accordance with the test results reflecting the student's linguistic, cultural and special education needs. For purposes of determining the eligibility of children the State Board of Education shall include in the rules definitions of "case study", "staff conference", "individualized educational program", and "qualified specialist" appropriate to each category of children with disabilities as defined in this Article. For purposes of determining the eligibility of children from homes in which a language other than English is used, the State Board of Education shall include in the rules definitions for "qualified bilingual specialists" and "linguistically and culturally appropriate individualized educational programs". For purposes of this Section, as well as Sections 14-8.02a, 14-8.02b, and 14-8.02c of this Code [105 ILCS 5/14-8.02a, 105 ILCS 5/14-8.02b, and 105 ILCS 5/14-8.02c], "parent" means a parent as defined in the federal Individuals with Disabilities Education Act (20 U.S.C. 1401(23)).

(b) No child shall be eligible for special education facilities except with a carefully completed case study fully reviewed by professional personnel in a multidisciplinary staff conference and only upon the recommendation of qualified specialists or a qualified bilingual specialist, if available. At the conclusion of the multidisciplinary staff conference, the parent of the child shall be given a copy of the multidisciplinary conference summary report and recommendations, which includes options considered, and be informed of their right to obtain an independent educational evaluation if they disagree with the evaluation findings conducted or obtained by the school district. If the school district's evaluation is shown to be inappropriate, the school district shall reimburse the parent for the cost of the independent evaluation. The State Board of Education shall, with advice from the State Advisory Council on Education of Children with Disabilities on the inclusion of specific independent educational evaluators, prepare a list of suggested independent educational evaluators. The State Board of Education shall include on the list clinical psychologists licensed pursuant to the Clinical Psychologist Licensing Act [225 ILCS 15/1 et seq.]. Such psychologists shall not be paid fees in excess of the amount that would be received by a school psychologist for performing the same services. The State Board of Education shall supply school districts with such list and make the list available to parents at their request. School districts shall make the list available to parents at the time they are informed of their right to obtain an independent educational evaluation. However, the school district may initiate an impartial due process hearing under this Section within 5 days of any written parent request for an independent educational evaluation to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has a right to an independent educational evaluation, but not at public expense. An independent educational evaluation at public expense must be completed within 30 days of a parent written request unless the

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school district initiates an impartial due process hearing or the parent or school district offers reasonable grounds to show that such 30 day time period should be extended. If the due process hearing decision indicates that the parent is entitled to an independent educational evaluation, it must be completed within 30 days of the decision unless the parent or the school district offers reasonable grounds to show that such 30 day period should be extended. If a parent disagrees with the summary report or recommendations of the multidisciplinary conference or the findings of any educational evaluation which results therefrom, the school district shall not proceed with a placement based upon such evaluation and the child shall remain in his or her regular classroom setting. No child shall be eligible for admission to a special class for the educable mentally disabled or for the trainable mentally disabled except with a psychological evaluation and recommendation by a school psychologist. Consent shall be obtained from the parent of a child before any evaluation is conducted. If consent is not given by the parent or if the parent disagrees with the findings of the evaluation, then the school district may initiate an impartial due process hearing under this Section. The school district may evaluate the child if that is the decision resulting from the impartial due process hearing and the decision is not appealed or if the decision is affirmed on appeal. The determination of eligibility shall be made and the IEP meeting shall be completed within 60 school days from the date of written parental consent. In those instances when written parental consent is obtained with fewer than 60 pupil attendance days left in the school year, the eligibility determination shall be made and the IEP meeting shall be completed prior to the first day of the following school year. After a child has been determined to be eligible for a special education class, such child must be placed in the appropriate program pursuant to the individualized educational program by or no later than the beginning of the next school semester. The appropriate program pursuant to the individualized educational program of students whose native tongue is a language other than English shall reflect the special education, cultural and linguistic needs. No later than September 1, 1993, the State Board of Education shall establish standards for the development, implementation and monitoring of appropriate bilingual special individualized educational programs. The State Board of Education shall further incorporate appropriate monitoring procedures to verify implementation of these standards. The district shall indicate to the parent and the State Board of Education the nature of the services the child will receive for the regular school term while waiting placement in the appropriate special education class.

If the child is deaf, hard of hearing, blind, or visually impaired and he or she might be eligible to receive services from the Illinois School for the Deaf or the Illinois School for the Visually Impaired, the school district shall notify the parents, in writing, of the existence of these schools and the services they provide and shall make a reasonable effort to inform the parents of the existence of other, local schools that provide similar services and the services that these other schools provide. This notification shall include without limitation information on school services, school admissions criteria, and school contact information.

In the development of the individualized education program for a student who has a disability on the autism spectrum (which includes autistic disorder, Asperger's disorder, pervasive developmental disorder not otherwise specified, childhood disintegrative

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disorder, and Rett Syndrome, as defined in the Diagnostic and Statistical Manual of Mental Disorders, fourth edition (DSM-IV, 2000)), the IEP team shall consider all of the following factors:

(1) The verbal and nonverbal communication needs of the child.

(2) The need to develop social interaction skills and proficiencies.

(3) The needs resulting from the child's unusual responses to sensory experiences.

(4) The needs resulting from resistance to environmental change or change in daily routines.

(5) The needs resulting from engagement in repetitive activities and stereotyped movements.

(6) The need for any positive behavioral interventions, strategies, and supports to address any behavioral difficulties resulting from autism spectrum disorder.

(7) Other needs resulting from the child's disability that impact progress in the general curriculum, including social and emotional development.

Public Act 95-257 does not create any new entitlement to a service, program, or benefit, but must not affect any entitlement to a service, program, or benefit created by any other law.

If the student may be eligible to participate in the Home-Based Support Services Program for Mentally Disabled Adults authorized under the Developmental Disability and Mental Disability Services Act [405 ILCS 80/0.01 et seq.] upon becoming an adult, the student's individualized education program shall include plans for (i) determining the student's eligibility for those home-based services, (ii) enrolling the student in the program of home-based services, and (iii) developing a plan for the student's most effective use of the home-based services after the student becomes an adult and no longer receives special educational services under this Article. The plans developed under this paragraph shall include specific actions to be taken by specified individuals, agencies, or officials.

(c) In the development of the individualized education program for a student who is functionally blind, it shall be presumed that proficiency in Braille reading and writing is essential for the student's satisfactory educational progress. For purposes of this subsection, the State Board of Education shall determine the criteria for a student to be classified as functionally blind. Students who are not currently identified as functionally blind who are also entitled to Braille instruction include: (i) those whose vision loss is so severe that they are unable to read and write at a level comparable to their peers solely through the use of vision, and (ii) those who show evidence of progressive vision loss that may result in functional blindness. Each student who is functionally blind shall be entitled to Braille reading and writing instruction that is sufficient to enable the student to communicate with the same level of proficiency as other students of comparable ability. Instruction should be provided to the extent that the student is physically and cognitively able to use Braille. Braille instruction may be used in combination with other special education services appropriate to the student's educational needs. The assessment of each

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student who is functionally blind for the purpose of developing the student's individualized education program shall include documentation of the student's strengths and weaknesses in Braille skills. Each person assisting in the development of the individualized education program for a student who is functionally blind shall receive information describing the benefits of Braille instruction. The individualized education program for each student who is functionally blind shall specify the appropriate learning medium or media based on the assessment report.

(d) To the maximum extent appropriate, the placement shall provide the child with the opportunity to be educated with children who are not disabled; provided that children with disabilities who are recommended to be placed into regular education classrooms are provided with supplementary services to assist the children with disabilities to benefit from the regular classroom instruction and are included on the teacher's regular education class register. Subject to the limitation of the preceding sentence, placement in special classes, separate schools or other removal of the disabled child from the regular educational environment shall occur only when the nature of the severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. The placement of limited English proficiency students with disabilities shall be in non-restrictive environments which provide for integration with non-disabled peers in bilingual classrooms. Annually, each January, school districts shall report data on students from non-English speaking backgrounds receiving special education and related services in public and private facilities as prescribed in Section 2-3.30 [105 ILCS 5/2-3.30]. If there is a disagreement between parties involved regarding the special education placement of any child, either in-state or out-of-state, the placement is subject to impartial due process procedures described in Article 10 of the Rules and Regulations to Govern the Administration and Operation of Special Education.

(e) No child who comes from a home in which a language other than English is the principal language used may be assigned to any class or program under this Article until he has been given, in the principal language used by the child and used in his home, tests reasonably related to his cultural environment. All testing and evaluation materials and procedures utilized for evaluation and placement shall not be linguistically, racially or culturally discriminatory.

(f) Nothing in this Article shall be construed to require any child to undergo any physical examination or medical treatment whose parents object thereto on the grounds that such examination or treatment conflicts with his religious beliefs.

(g) School boards or their designee shall provide to the parents of a child prior written notice of any decision (a) proposing to initiate or change, or (b) refusing to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to their child, and the reasons therefor. Such written notification shall also inform the parent of the opportunity to present complaints with respect to any matter relating to the educational placement of the student, or the provision of a free appropriate public education and to have an impartial due process hearing on the complaint. The notice shall inform the parents in the parents' native language, unless it is clearly not feasible to do so, of their rights and all procedures

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available pursuant to this Act and the federal Individuals with Disabilities Education Improvement Act of 2004 (Public Law 108-446) [20 U.S.C. § 1400 et seq.]; it shall be the responsibility of the State Superintendent to develop uniform notices setting forth the procedures available under this Act and the federal Individuals with Disabilities Education Improvement Act of 2004 (Public Law 108-446) to be used by all school boards. The notice shall also inform the parents of the availability upon request of a list of free or low-cost legal and other relevant services available locally to assist parents in initiating an impartial due process hearing. Any parent who is deaf, or does not normally communicate using spoken English, who participates in a meeting with a representative of a local educational agency for the purposes of developing an individualized educational program shall be entitled to the services of an interpreter.

(g-5) For purposes of this subsection (g-5), "qualified professional" means an individual who holds credentials to evaluate the child in the domain or domains for which an evaluation is sought or an intern working under the direct supervision of a qualified professional, including a master's or doctoral degree candidate.

To ensure that a parent can participate fully and effectively with school personnel in the development of appropriate educational and related services for his or her child, the parent, an independent educational evaluator, or a qualified professional retained by or on behalf of a parent or child must be afforded reasonable access to educational facilities, personnel, classrooms, and buildings and to the child as provided in this subsection (g-5). The requirements of this subsection (g-5) apply to any public school facility, building, or program and to any facility, building, or program supported in whole or in part by public funds. Prior to visiting a school, school building, or school facility, the parent, independent educational evaluator, or qualified professional may be required by the school district to inform the building principal or supervisor in writing of the proposed visit, the purpose of the visit, and the approximate duration of the visit. The visitor and the school district shall arrange the visit or visits at times that are mutually agreeable. Visitors shall comply with school safety, security, and visitation policies at all times. School district visitation policies must not conflict with this subsection (g-5). Visitors shall be required to comply with the requirements of applicable privacy laws, including those laws protecting the confidentiality of education records such as the federal Family Educational Rights and Privacy Act [(20 U.S.C. 1232g)] and the Illinois School Student Records Act [105 ILCS 10/1 et seq.]. The visitor shall not disrupt the educational process.

(1) A parent must be afforded reasonable access of sufficient duration and scope for the purpose of observing his or her child in the child's current educational placement, services, or program or for the purpose of visiting an educational placement or program proposed for the child.

(2) An independent educational evaluator or a qualified professional retained by or on behalf of a parent or child must be afforded reasonable access of sufficient duration and scope for the purpose of conducting an evaluation of the child, the child's performance, the child's current educational program, placement, services, or environment, or any educational program, placement, services, or environment proposed for the child, including interviews of educational personnel, child observations, assessments, tests or

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assessments of the child's educational program, services, or placement or of any proposed educational program, services, or placement. If one or more interviews of school personnel are part of the evaluation, the interviews must be conducted at a mutually agreed upon time, date, and place that do not interfere with the school employee's school duties. The school district may limit interviews to personnel having information relevant to the child's current educational services, program, or placement or to a proposed educational service, program, or placement.

(h) (Blank).

(i) (Blank).

(j) (Blank).

(k) (Blank).

(l) (Blank).

(m) (Blank).

(n) (Blank).

(o) (Blank).

(Source: P.A. 86-1002; 87-995, § 1; 87-1071, § 1; 88-45, § 2-31; 89-397, § 5; 89-425, § 10; 89-626, § 2-34; 91-784, § 5; 93-282, § 5; 94-376, § 5; 94-1100, § 5; 95-257, § 5; 95-876, § 175; 96-657, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-8.02.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 226.110, 226.625, 226.630, 226.635.

Effect of Amendments. The 1992 amendment by P.A. 87-995, effective September 13, 1992, in subsection (a), in the third sentence substituted "procedures/tests to limited English proficiency students" for "assessment tests for Hispanic students" and inserted "coming from homes in which a language other than English is used", in the fourth sentence substituted "low English proficiency students" for "Hispanic students" and added "reflecting the student's linguistic, cultural and special education needs", deleted the former fifth sentence defining "Hispanic" and added the last sentence; in the first sentence of subsection (d) added "or qualified bilingual specialist, if available" at the end and added the twenty-first through twenty-third sentences; in present subsection (d) added the third and fourth sentences; and in present subsection (e) in the first sentence inserted "used by the child and" and inserted "linguistically" in the last sentence.

The 1992 amendment by P.A. 87-1071, effective September 13, 1992, added present subsection (c) and redesignated former subsections (d) through (n) as present subsections (e) through (o).

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The 1993 amendment by P.A. 88-45, effective July 6, 1993, combined the separate amendments of P.A. 87-995 and P.A. 87-1071, and in the third sentence of subsection (a) substituted "procedures or tests" for "procedures/tests"; in the first sentence of subsection (b) inserted "a" preceding "qualified bilingual specialist"; and in the third sentence of subsection (d) substituted "proficiency students" for "proficient student".

The 1995 amendment by P.A. 89-397, effective August 20, 1995, substituted "children with disabilities" for "handicapped children" and "disabled" for "handicapped" throughout the section; in subsection (d), in the second sentence substituted "disability" for "handicap" following "severity of the".

The 1995 amendment by P.A. 89-425, effective June 1, 1996, in subsection (b), added the second paragraph.

The 1996 amendment by P.A. 89-626, effective August 9, 1996, combined the amendments by P.A. 89-397 and P.A. 89-425.

The 2000 amendment by P.A. 91-784, effective June 9, 2000, inserted the last sentence in subsection (a); and rewrote subsection (m) to the extent that a detailed comparison would be impracticable.

The 2003 amendment by P.A. 93-282, effective July 22, 2003, added the second paragraph of subsection (b).

The 2005 amendment by P.A. 94-376, effective July 29, 2005, added "and shall make a reasonable effort to inform the parents or guardian of the existence of other, local schools that provide similar services and the services that these other schools provide" in the first sentence of the second paragraph in (b).

The 2007 amendment by P.A. 94-1100, effective February 2, 2007, rewrote the section.

The 2007 amendment by P.A. 95-257, effective January 1, 2008, added the third and fourth paragraphs in (b), including items (1) through (7).

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, combined earlier multiple amendments.

The 2009 amendment by P.A. 96-657, effective August 25, 2009, inserted (g-5).

CASE NOTES

Analysis

Attorney Fees
Constitutionally Protected Entitlement
Consultation Required
Damages
Directory Language
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Free Appropriate Public Education
Legislative Intent
Limitation of Actions
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Placement Held Proper
Review
- Timeliness
State Board of Education
- Not Liable

Attorney Fees

The applicable limitations period for the determination of attorney fees under the Individuals with Disabilities Educational Act (20 U.S.C. § 1400 et seq.) is the 120 day limitation found in this section. Dell ex rel. Dell v. Board of Educ., 32 F.3d 1053 (7th Cir. 1994).

Because this section requires the award of attorneys' fees in a particular situation, i.e., when the district's harmful conduct is wilful, it does not prohibit it in all other situations; that is, it does not divest the district court of its discretion to award fees, except in those instances in which the school district's conduct has been wilful, and the court had "discretion" to award attorneys' fees where there was no evidence that the district's conduct was wilful. Reid v. Board of Educ., 765 F. Supp. 965 (N.D. Ill. 1991).

Constitutionally Protected Entitlement

Handicapped children are entitled to a "free appropriate public education," and this entitlement is protected by U.S. Const., Amend. XIV. Mark R. v. Board of Educ., 546 F. Supp. 1027 (N.D. Ill. 1982), aff'd, 705 F.2d 462 (7th Cir. 1983).

Consultation Required

Parents should consult with the proper school officials, have a determination made that the child is physically handicapped, and have the school officials make mutually satisfactory arrangements for attendance at, and transportation to and from, a proper school where special facilities are available; when this is done the school district is in a position to obtain the approval of the Superintendent of Public Instruction, obtain state aid, and include in the annual budget and tax levy of the district an amount equal to such cost. Christman v. Board of Educ., 347 Ill. App. 324, 106 N.E.2d 846 (3 Dist. 1952).

Damages

The mother of a handicapped child was not barred automatically from recovering damages for placing her handicapped child in a private school before such placement was approved. In re Walker, 107 Ill. App. 3d 1053, 63 Ill. Dec. 651, 438 N.E.2d 582 (1 Dist. 1982).

Directory Language

In light of the fact that every child is legally entitled to "a free appropriate public education," the statement in subsection (k) that "the child shall remain in the then current educational placement of such child" must be regarded as directory. In re Walker, 107 Ill. App. 3d 1053, 63 Ill. Dec. 651, 438 N.E.2d 582 (1 Dist. 1982).

Duty of Good Faith

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Because disagreement between parents and schools about what is appropriate is inevitable in some cases, this section provides procedures for resolving such disagreements, including a due process hearing that is available at the request of a dissatisfied parent; resolution of such disagreements is a secondary goal that supports the overriding objective of providing an appropriate education for each child in light of his individual needs and a duty to seek such resolution in good faith is clearly implicit in the statute. In re Walker, 107 Ill. App. 3d 1053, 63 Ill. Dec. 651, 438 N.E.2d 582 (1 Dist. 1982).

Free Appropriate Public Education

To meet the requirements of the Individual with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et seq.) and the parallel provisions of the Illinois School Code, a school district must provide each disabled student with a free appropriate public education tailored to his or her individual needs; a free appropriate public education is one specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction. Board of Educ. of Murphysboro Community Unit Sch. Dist. No. 186 v. Illinois State Bd. of Educ., 41 F.3d 1162 (7th Cir. 1994).

Legislative Intent

The legislature in enacting this section intended to permit school districts to reveal to attorneys representing the district at special education placement hearings information from school records concerning the student who is the subject of the hearing. Aufox v. Board of Educ., 225 Ill. App. 3d 444, 167 Ill. Dec. 675, 588 N.E.2d 316 (2 Dist.), appeal denied, 146 Ill. 2d 621, 176 Ill. Dec. 791, 602 N.E.2d 445 (1992).

Limitation of Actions

- Federal Acts

Where, 149 days after withdrawing Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et seq.) charge, plaintiff filed an IDEA suit in federal district court for attorneys' fees and costs, the district court ruled that her claim was time-barred, and dismissed it; noting that the IDEA did not specify a limitations period for attorneys' fees actions, it determined that Illinois' 120-day limitations period for suits seeking review of actions by school authorities was the most analogous state limitations period. Reed v. Mokena Sch. Dist. No. 159, 41 F.3d 1153 (7th Cir. 1994).

Because under the Individuals With Disabilities Education Act, 20 U.S.C. § 1400 et seq., a claim is analogous to the review of a state administrative decision regarding educational placement, it is appropriate that the same limitations period is applied to a federal court appeal of a decision under that act and this as is applied to a similar state court appeal. Board of Educ. v. Wolinsky, 842 F. Supp. 1080 (N.D. Ill. 1993).

Placement Held Proper

Evidence was held sufficient to support the right of "mainstream" school placement for a trainable mentally handicapped child with Downs syndrome who was also a carrier of infectious Hepatitis Type B. Community High Sch. v. Denz ex rel. Veronico, 124 Ill. App. 3d 129, 79 Ill. Dec. 444, 463 N.E.2d 998 (2 Dist. 1984).

Review

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- Timeliness

Defendants had time to decide if they wanted to file a counterclaim after plaintiffs filed a complaint under the Individuals With Disabilities Education Act, 20 U.S.C. § 1400 et seq., seeking judicial review of state administrative decision pursuant to this section, and their counterclaim was timely, though not within the limits of Rule 4(a)(2), F.R.Civ.P., because plaintiffs were not prejudiced by the extra time defendants took to file the counterclaim, and because the extra time did not appreciably delay review of the administrative decision. Board of Educ. v. Wolinsky, 842 F. Supp. 1080 (N.D. Ill. 1993).

State Board of Education

- Not Liable

Parents of handicapped child failed to state a cause of action against Illinois State Board of Education where parents claimed local school district failed to comply with administrative order concerning education of handicapped child, since Illinois State Board of Education was not a party to the administrative proceedings. Reid v. Board of Educ., 765 F. Supp. 965 (N.D. Ill. 1991).

OPINIONS OF ATTORNEY GENERAL

Analysis

Advisory Council
- Powers
Hearing Officers
- Federal Violation Shown

Advisory Council

- Powers

The Illinois State Advisory Council on the education of handicapped children is authorized to approve or disapprove proposed rules and regulations of the state board of education governing the qualifications of hearing officers and rules and procedures for due process hearings. 1984 Op. Atty. Gen. 45.

Hearing Officers

- Federal Violation Shown

The State Board of Education's rules (23 Ill. Admin. Code 226.685 to 226.695) allowing the use of employees of the Board as hearing officers in state level review proceedings contravene section 615 of the Education for All Handicapped Children Act (20 U.S.C. § 1415), and thus violate the substantive rights created by that statute. 1985 Op. Atty. Gen. (85-005).

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LEGAL PERIODICALS

For article, "Survey of Illinois Law: Education Law," see 21 S. Ill. U.L.J. 815 (1997).

For note, "Defining the Scope of Residential Placement and Related Services Under the EHA: Difficult Questions Left Unanswered in Illinois - In re Claudia K," see 32 De Paul L. Rev. 483 (1983).

RESEARCH REFERENCES

Tort liability of public school or government agency for misclassification or wrongful placement of student in special education program. 33 ALR4th 1166.

§ 105 ILCS 5/14-8.02a. Impartial due process hearing; civil action

Sec. 14-8.02a. Impartial due process hearing; civil action. (a) This Section shall apply to all impartial due process hearings requested on or after July 1, 2005. Impartial due process hearings requested before July 1, 2005 shall be governed by the rules described in Public Act 89-652.

(a-5) For purposes of this Section and Section 14-8.02b of this Code, days shall be computed in accordance with Section 1.11 of the Statute on Statutes.

(b) The State Board of Education shall establish an impartial due process hearing system in accordance with this Section and may, with the advice and approval of the Advisory Council on Education of Children with Disabilities, promulgate rules and regulations consistent with this Section to establish the rules and procedures for due process hearings.

(c) (Blank).

(d) (Blank).

(e) (Blank).

(f) An impartial due process hearing shall be convened upon the request of a parent, student if at least 18 years of age or emancipated, or a school district. A school district shall make a request in writing to the State Board of Education and promptly mail a copy of the request to the parents or student (if at least 18 years of age or emancipated) at the parent's or student's last known address. A request made by the parent or student shall be made in writing to the superintendent of the school district where the student resides. The superintendent shall forward the request to the State Board of Education within 5 days after receipt of the request. The request shall be filed no more than 2 years following the date the person or school district knew or should have known of the event or events forming the basis for the request. The request shall, at a minimum, contain all of the following:

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(1) The name of the student, the address of the student's residence, and the name of the school the student is attending.

(2) In the case of homeless children (as defined under the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the student and the name of the school the student is attending.

(3) A description of the nature of the problem relating to the actual or proposed placement, identification, services, or evaluation of the student, including facts relating to the problem.

(4) A proposed resolution of the problem to the extent known and available to the party at the time.

(f-5) Within 3 days after receipt of the hearing request, the State Board of Education shall appoint a due process hearing officer using a rotating appointment system and shall notify the hearing officer of his or her appointment.

For a school district other than a school district located in a municipality having a population exceeding 500,000, a hearing officer who is a current resident of the school district, special education cooperative, or other public entity involved in the hearing shall recuse himself or herself. A hearing officer who is a former employee of the school district, special education cooperative, or other public entity involved in the hearing shall immediately disclose the former employment to the parties and shall recuse himself or herself, unless the parties otherwise agree in writing. A hearing officer having a personal or professional interest that may conflict with his or her objectivity in the hearing shall disclose the conflict to the parties and shall recuse himself or herself unless the parties otherwise agree in writing. For purposes of this subsection an assigned hearing officer shall be considered to have a conflict of interest if, at any time prior to the issuance of his or her written decision, he or she knows or should know that he or she may receive remuneration from a party to the hearing within 3 years following the conclusion of the due process hearing.

A party to a due process hearing shall be permitted one substitution of hearing officer as a matter of right, in accordance with procedures established by the rules adopted by the State Board of Education under this Section. The State Board of Education shall randomly select and appoint another hearing officer within 3 days after receiving notice that the appointed hearing officer is ineligible to serve or upon receiving a proper request for substitution of hearing officer. If a party withdraws its request for a due process hearing after a hearing officer has been appointed, that hearing officer shall retain jurisdiction over a subsequent hearing that involves the same parties and is requested within one year from the date of withdrawal of the previous request, unless that hearing officer is unavailable.

Any party may raise facts that constitute a conflict of interest for the hearing officer at any time before or during the hearing and may move for recusal.

(g) Impartial due process hearings shall be conducted pursuant to this Section and any rules and regulations promulgated by the State Board of Education consistent with this

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Section and other governing laws and regulations. The hearing shall address only those issues properly raised in the hearing request under subsection (f) of this Section or, if applicable, in the amended hearing request under subsection (g-15) of this Section. The hearing shall be closed to the public unless the parents request that the hearing be open to the public. The parents involved in the hearing shall have the right to have the student who is the subject of the hearing present. The hearing shall be held at a time and place which are reasonably convenient to the parties involved. Upon the request of a party, the hearing officer shall hold the hearing at a location neutral to the parties if the hearing officer determines that there is no cost for securing the use of the neutral location. Once appointed, the impartial due process hearing officer shall not communicate with the State Board of Education or its employees concerning the hearing, except that, where circumstances require, communications for administrative purposes that do not deal with substantive or procedural matters or issues on the merits are authorized, provided that the hearing officer promptly notifies all parties of the substance of the communication as a matter of record.

(g-5) Unless the school district has previously provided prior written notice to the parent or student (if at least 18 years of age or emancipated) regarding the subject matter of the hearing request, the school district shall, within 10 days after receiving a hearing request initiated by a parent or student (if at least 18 years of age or emancipated), provide a written response to the request that shall include all of the following:

(1) An explanation of why the school district proposed or refused to take the action or actions described in the hearing request.

(2) A description of other options the IEP team considered and the reasons why those options were rejected.

(3) A description of each evaluation procedure, assessment, record, report, or other evidence the school district used as the basis for the proposed or refused action or actions.

(4) A description of the factors that are or were relevant to the school district's proposed or refused action or actions.

(g-10) When the hearing request has been initiated by a school district, within 10 days after receiving the request, the parent or student (if at least 18 years of age or emancipated) shall provide the school district with a response that specifically addresses the issues raised in the school district's hearing request. The parent's or student's response shall be provided in writing, unless he or she is illiterate or has a disability that prevents him or her from providing a written response. The parent's or student's response may be provided in his or her native language, if other than English. In the event that illiteracy or another disabling condition prevents the parent or student from providing a written response, the school district shall assist the parent or student in providing the written response.

(g-15) Within 15 days after receiving notice of the hearing request, the non-requesting party may challenge the sufficiency of the request by submitting its challenge in writing to the hearing officer. Within 5 days after receiving the challenge to the sufficiency of the request, the hearing officer shall issue a determination of the challenge in writing to the

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parties. In the event that the hearing officer upholds the challenge, the party who requested the hearing may, with the consent of the non-requesting party or hearing officer, file an amended request. Amendments are permissible for the purpose of raising issues beyond those in the initial hearing request. In addition, the party who requested the hearing may amend the request once as a matter of right by filing the amended request within 5 days after filing the initial request. An amended request, other than an amended request as a matter of right, shall be filed by the date determined by the hearing officer, but in no event any later than 5 days prior to the date of the hearing. If an amended request, other than an amended request as a matter of right, raises issues that were not part of the initial request, the applicable timeline for a hearing, including the timeline under subsection (g-20) of this Section, shall recommence.

(g-20) Within 15 days after receiving a request for a hearing from a parent or student (if at least 18 years of age or emancipated) or, in the event that the school district requests a hearing, within 15 days after initiating the request, the school district shall convene a resolution meeting with the parent and relevant members of the IEP team who have specific knowledge of the facts contained in the request for the purpose of resolving the problem that resulted in the request. The resolution meeting shall include a representative of the school district who has decision-making authority on behalf of the school district. Unless the parent is accompanied by an attorney at the resolution meeting, the school district may not include an attorney representing the school district.

The resolution meeting may not be waived unless agreed to in writing by the school district and the parent or student (if at least 18 years of age or emancipated) or the parent or student (if at least 18 years of age or emancipated) and the school district agree in writing to utilize mediation in place of the resolution meeting. If either party fails to cooperate in the scheduling or convening of the resolution meeting, the hearing officer may order an extension of the timeline for completion of the resolution meeting or, upon the motion of a party and at least 7 days after ordering the non-cooperating party to cooperate, order the dismissal of the hearing request or the granting of all relief set forth in the request, as appropriate.

In the event that the school district and the parent or student (if at least 18 years of age or emancipated) agree to a resolution of the problem that resulted in the hearing request, the terms of the resolution shall be committed to writing and signed by the parent or student (if at least 18 years of age or emancipated) and the representative of the school district with decision-making authority. The agreement shall be legally binding and shall be enforceable in any State or federal court of competent jurisdiction. In the event that the parties utilize the resolution meeting process, the process shall continue until no later than the 30th day following the receipt of the hearing request by the non-requesting party (or as properly extended by order of the hearing officer) to resolve the issues underlying the request, at which time the timeline for completion of the impartial due process hearing shall commence. The State Board of Education may, by rule, establish additional procedures for the conduct of resolution meetings.

(g-25) If mutually agreed to in writing, the parties to a hearing request may request State-sponsored mediation as a substitute for the resolution process described in subsection (g-20) of this Section or may utilize mediation at the close of the resolution process if all

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issues underlying the hearing request have not been resolved through the resolution process.

(g-30) If mutually agreed to in writing, the parties to a hearing request may waive the resolution process described in subsection (g-20) of this Section. Upon signing a written agreement to waive the resolution process, the parties shall be required to forward the written waiver to the hearing officer appointed to the case within 2 business days following the signing of the waiver by the parties. The timeline for the impartial due process hearing shall commence on the date of the signing of the waiver by the parties.

(g-35) The timeline for completing the impartial due process hearing, as set forth in subsection (h) of this Section, shall be initiated upon the occurrence of any one of the following events:

(1) The unsuccessful completion of the resolution process as described in subsection (g-20) of this Section.

(2) The mutual agreement of the parties to waive the resolution process as described in subsection (g-25) or (g-30) of this Section.

(g-40) The hearing officer shall convene a prehearing conference no later than 14 days before the scheduled date for the due process hearing for the general purpose of aiding in the fair, orderly, and expeditious conduct of the hearing. The hearing officer shall provide the parties with written notice of the prehearing conference at least 7 days in advance of the conference. The written notice shall require the parties to notify the hearing officer by a date certain whether they intend to participate in the prehearing conference. The hearing officer may conduct the prehearing conference in person or by telephone. Each party shall at the prehearing conference (1) disclose whether it is represented by legal counsel or intends to retain legal counsel; (2) clarify matters it believes to be in dispute in the case and the specific relief being sought; (3) disclose whether there are any additional evaluations for the student that it intends to introduce into the hearing record that have not been previously disclosed to the other parties; (4) disclose a list of all documents it intends to introduce into the hearing record, including the date and a brief description of each document; and (5) disclose the names of all witnesses it intends to call to testify at the hearing. The hearing officer shall specify the order of presentation to be used at the hearing. If the prehearing conference is held by telephone, the parties shall transmit the information required in this paragraph in such a manner that it is available to all parties at the time of the prehearing conference. The State Board of Education may, by rule, establish additional procedures for the conduct of prehearing conferences.

(g-45) The impartial due process hearing officer shall not initiate or participate in any ex parte communications with the parties, except to arrange the date, time, and location of the prehearing conference, due process hearing, or other status conferences convened at the discretion of the hearing officer and to receive confirmation of whether a party intends to participate in the prehearing conference.

(g-50) The parties shall disclose and provide to each other any evidence which they intend to submit into the hearing record no later than 5 days before the hearing. Any party to a hearing has the right to prohibit the introduction of any evidence at the hearing that

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has not been disclosed to that party at least 5 days before the hearing. The party requesting a hearing shall not be permitted at the hearing to raise issues that were not raised in the party's initial or amended request, unless otherwise permitted in this Section.

(g-55) All reasonable efforts must be made by the parties to present their respective cases at the hearing within a cumulative period of 7 days. When scheduling hearing dates, the hearing officer shall schedule the final day of the hearing no more than 30 calendar days after the first day of the hearing unless good cause is shown. This subsection (g-55) shall not be applied in a manner that (i) denies any party to the hearing a fair and reasonable allocation of time and opportunity to present its case in its entirety or (ii) deprives any party to the hearing of the safeguards accorded under the federal Individuals with Disabilities Education Improvement Act of 2004 (Public Law 108-446), regulations promulgated under the Individuals with Disabilities Education Improvement Act of 2004, or any other applicable law. The school district shall present evidence that the special education needs of the child have been appropriately identified and that the special education program and related services proposed to meet the needs of the child are adequate, appropriate, and available. Any party to the hearing shall have the right to (1) be represented by counsel and be accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities, at the party's own expense; (2) present evidence and confront and cross-examine witnesses; (3) move for the exclusion of witnesses from the hearing until they are called to testify, provided, however, that this provision may not be invoked to exclude the individual designated by a party to assist that party or its representative in the presentation of the case; (4) obtain a written or electronic verbatim record of the proceedings within 30 days of receipt of a written request from the parents by the school district; and (5) obtain a written decision, including findings of fact and conclusions of law, within 10 days after the conclusion of the hearing. If at issue, the school district shall present evidence that it has properly identified and evaluated the nature and severity of the student's suspected or identified disability and that, if the student has been or should have been determined eligible for special education and related services, that it is providing or has offered a free appropriate public education to the student in the least restrictive environment, consistent with procedural safeguards and in accordance with an individualized educational program. At any time prior to the conclusion of the hearing, the impartial due process hearing officer shall have the authority to require additional information and order independent evaluations for the student at the expense of the school district. The State Board of Education and the school district shall share equally the costs of providing a written or electronic verbatim record of the proceedings. Any party may request that the due process hearing officer issue a subpoena to compel the testimony of witnesses or the production of documents relevant to the resolution of the hearing. Whenever a person refuses to comply with any subpoena issued under this Section, the circuit court of the county in which that hearing is pending, on application of the impartial hearing officer or the party requesting the issuance of the subpoena, may compel compliance through the contempt powers of the court in the same manner as if the requirements of a subpoena issued by the court had been disobeyed.

(h) The impartial hearing officer shall issue a written decision, including findings of fact and conclusions of law, within 10 days after the conclusion of the hearing and send by

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certified mail a copy of the decision to the parents or student (if the student requests the hearing), the school district, the director of special education, legal representatives of the parties, and the State Board of Education. Unless the hearing officer has granted specific extensions of time at the request of a party, a final decision, including the clarification of a decision requested under this subsection, shall be reached and mailed to the parties named above not later than 45 days after the initiation of the timeline for conducting the hearing, as described in subsection (g-35) of this Section. The decision shall specify the educational and related services that shall be provided to the student in accordance with the student's needs and the timeline for which the school district shall submit evidence to the State Board of Education to demonstrate compliance with the hearing officer's decision in the event that the decision orders the school district to undertake corrective action. The hearing officer shall retain jurisdiction for the sole purpose of considering a request for clarification of the final decision submitted in writing by a party to the impartial hearing officer within 5 days after receipt of the decision. A copy of the request for clarification shall specify the portions of the decision for which clarification is sought and shall be mailed to all parties of record and to the State Board of Education. The request shall operate to stay implementation of those portions of the decision for which clarification is sought, pending action on the request by the hearing officer, unless the parties otherwise agree. The hearing officer shall issue a clarification of the specified portion of the decision or issue a partial or full denial of the request in writing within 10 days of receipt of the request and mail copies to all parties to whom the decision was mailed. This subsection does not permit a party to request, or authorize a hearing officer to entertain, reconsideration of the decision itself. The statute of limitations for seeking review of the decision shall be tolled from the date the request is submitted until the date the hearing officer acts upon the request. The hearing officer's decision shall be binding upon the school district and the parents unless a civil action is commenced.

(i) Any party to an impartial due process hearing aggrieved by the final written decision of the impartial due process hearing officer shall have the right to commence a civil action with respect to the issues presented in the impartial due process hearing. That civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of the decision of the impartial due process hearing officer is mailed to the party as provided in subsection (h). The civil action authorized by this subsection shall not be exclusive of any rights or causes of action otherwise available. The commencement of a civil action under this subsection shall operate as a supersedeas. In any action brought under this subsection the Court shall receive the records of the impartial due process hearing, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate. In any instance where a school district willfully disregards applicable regulations or statutes regarding a child covered by this Article, and which disregard has been detrimental to the child, the school district shall be liable for any reasonable attorney's fees incurred by the parent in connection with proceedings under this Section.

(j) During the pendency of any administrative or judicial proceeding conducted pursuant to this Section, unless the school district and the parents or student (if at least 18 years of age or emancipated) otherwise agree, the student shall remain in his or her present educational placement and continue in his or her present eligibility status and special

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education and related services, if any. If the hearing officer orders a change in the eligibility status, educational placement, or special education and related services of the student, that change shall not be implemented until 30 days have elapsed following the date the hearing officer's decision is mailed to the parties in order to allow any party aggrieved by the decision to commence a civil action to stay implementation of the decision. If applying for initial admission to the school district, the student shall, with the consent of the parents (if the student is not at least 18 years of age or emancipated), be placed in the school district program until all such proceedings have been completed. The costs for any special education and related services or placement incurred following 60 school days after the initial request for evaluation shall be borne by the school district if the services or placement is in accordance with the final determination as to the special education and related services or placement that must be provided to the child, provided that during that 60 day period there have been no delays caused by the child's parent.

(k) Whenever the parents of a child of the type described in Section 14-1.02 [105 ILCS 5/14-1.02] are not known, are unavailable, or the child is a ward of the State, a person shall be assigned to serve as surrogate parent for the child in matters relating to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child. Persons shall be assigned as surrogate parents by the State Superintendent of Education. The State Board of Education shall promulgate rules and regulations establishing qualifications of those persons and their responsibilities and the procedures to be followed in making assignments of persons as surrogate parents. Surrogate parents shall not be employees of the school district, an agency created by joint agreement under Section 10-22.31 [105 ILCS 5/10-22.31], an agency involved in the education or care of the student, or the State Board of Education. Services of any person assigned as surrogate parent shall terminate if the parent becomes available unless otherwise requested by the parents. The assignment of a person as surrogate parent at no time supersedes, terminates, or suspends the parents' legal authority relative to the child. Any person participating in good faith as surrogate parent on behalf of the child before school officials or a hearing officer shall have immunity from civil or criminal liability that otherwise might result by reason of that participation, except in cases of willful and wanton misconduct.

(l) At all stages of the hearing the hearing officer shall require that interpreters be made available by the school district for persons who are deaf or for persons whose normally spoken language is other than English.

(m) If any provision of this Section or its application to any person or circumstance is held invalid, the invalidity of that provision or application does not affect other provisions or applications of the Section that can be given effect without the invalid application or provision, and to this end the provisions of this Section are severable, unless otherwise provided by this Section.

(Source: P.A. 89-652, § 5; 94-1100, § 5.)

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Effective Date. Section 5 of P.A. 89-652 made this section effective upon becoming law. The Act was approved August 14, 1996.

Effect of Amendments. The 2007 amendment by P.A. 94-1100, effective February 2, 2007, rewrote the section.

CASE NOTES

Analysis

Attorney Fees
Judicial Review

Attorney Fees

Plain reading of 105 ILCS 5/14-8.02a(i) mandated that before attorney fees could be awarded against a school district in cases involving a disabled child, a trial court had to make a finding that the school district "willfully" disregarded educational regulations or statues regarding the child to the child's detriment and that the attorney fees were reasonable. Cohen v. Bd. of Educ. (In re Dontrell H.), 382 Ill. App. 3d 612, 321 Ill. Dec. 108, 888 N.E.2d 627, 2008 Ill. App. LEXIS 402 (1 Dist. 2008), appeal denied, 229 Ill. 2d 623, 325 Ill. Dec. 4, 897 N.E.2d 252, 2008 Ill. LEXIS 1338 (2008).

When, in a delinquency case, a child was placed on supervision and required to attend school, and the child's mother hired an attorney in an attempt to require the child's school to provide the child with a recommended educational setting, the trial court, in considering the attorney's petition for an award of attorney fees against the school board (board), under 105 ILCS 5/14-8.02a(i), had to find that the board willfully violated educational statutes or regulations regarding the child and that the amount of fees sought was reasonable before the court could grant the attorney's petition. Cohen v. Bd. of Educ. (In re Dontrell H.), 382 Ill. App. 3d 612, 321 Ill. Dec. 108, 888 N.E.2d 627, 2008 Ill. App. LEXIS 402 (1 Dist. 2008), appeal denied, 229 Ill. 2d 623, 325 Ill. Dec. 4, 897 N.E.2d 252, 2008 Ill. LEXIS 1338 (2008).

Judicial Review

A parent is required to bring an action to challenge a change in educational placement within 120, rather than 30 days after the final written decision of the impartial due process hearing officer. Beth B. v. Van Clay, 126 F. Supp. 2d 532, 2000 U.S. Dist. LEXIS 12641 (N.D. Ill. 2000).

Practice Guides and Treatises.

Disability Law Today: An Accessible Guide for Illinois Practitioners § 6.60 Timelines for Filing (IICLE).

Disability Law Today: An Accessible Guide for Illinois Practitioners § 6.59 Appeals to State and Federal Court (IICLE).

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§ 105 ILCS 5/14-8.02b. Expedited Hearings

Sec. 14-8.02b. Expedited Hearings. (a) The changes made to this Section by this amendatory Act of the 94th General Assembly [P.A. 94-1100] shall apply to all expedited hearings requested on or after the effective date of this amendatory Act of the 94th General Assembly [P.A. 94-1100].

(b) Unless otherwise provided by this Section, the provisions of Section 14-8.02a [105 ILCS 5/14-8.02a] are applicable to this Section. The State Board of Education shall provide for the conduct of expedited hearings in accordance with the Individuals with Disabilities Education Act, Public Law 108-446, 20 USC Sections 1400 et seq. (hereafter IDEA).

(c) An expedited hearing may be requested by:

(i) a parent or student if the student is at least 18 years of age or emancipated, if there is a disagreement with regard to a determination that the student's behavior was not a manifestation of the student's disability, or if there is a disagreement regarding the district's decision to move the student to an interim alternative educational setting for behavior at school, on school premises, or at a school function involving a weapon or drug or for behavior at school, on school premises, or at a school function involving the infliction of serious bodily injury by the student, as defined by IDEA pursuant to Section 615(k)(1)(G) [20 U.S.C. § 1415]; and

(ii) a school district, if school personnel believe that maintaining the current placement of the student is substantially likely to result in injury to the student or others pursuant to Section 615(k)(3)(A) of IDEA [20 U.S.C. § 1415].

(d) A school district shall make a request in writing to the State Board of Education and promptly mail a copy of the request to the parents or student (if at least 18 years of age or emancipated) at the parents' or student's last known address. A request made by the parent or student (if at least 18 years of age or emancipated) shall be made in writing to the superintendent of the school district in which the student resides, who shall forward the request to the State Board of Education within one business day of receipt of the request. Upon receipt of the request, the State Board of Education shall appoint a due process hearing officer using a rotating appointment system and shall notify the hearing officer of his or her appointment.

(e) A request for an expedited hearing initiated by a district for the sole purpose of moving a student from his or her current placement to an interim alternative educational setting because of dangerous misconduct must be accompanied by all documentation that substantiates the district's position that maintaining the student in his or her current placement is substantially likely to result in injury to the student or to others. Also, the documentation shall include written statements of (1) whether the district is represented by legal counsel or intends to retain legal counsel; (2) the matters the district believes to be in dispute in the case and the specific relief being sought; and (3) the names of all witnesses the district intends to call to testify at the hearing.

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(f) An expedited hearing requested by the parent or student (if at least 18 years of age or emancipated) to challenge the removal of the student from his or her current placement to an interim alternative educational setting or a manifestation determination made by the district as described in IDEA shall include a written statement as to the reason the parent believes that the action taken by the district is not supported by substantial evidence and all relevant documentation in the parent's possession. Also, the documentation shall include written statements of (1) whether the parent is represented by legal counsel or intends to retain legal counsel; (2) the matters the parent believes to be in dispute in the case and the specific relief being sought; and (3) the names of all witnesses the parent intends to call to testify at the hearing.

(g) Except as otherwise described in this subsection (g), the school district shall be required to convene the resolution meeting described in subsection (g-20) of Section 14-8.02a of this Code unless the parties choose to utilize mediation in place of the resolution meeting or waive the resolution meeting in accordance with procedures described in subsection (g-30) of Section 14-8.02a of this Code. The resolution meeting shall be convened within 7 days after the date that the expedited hearing request is received by the district.

(h) The hearing officer shall not initiate or participate in any ex parte communications with the parties, except to arrange the date, time, and location of the expedited hearing. The hearing officer shall contact the parties within 5 days after appointment and set a hearing date which shall be no earlier than 15 calendar days following the school district's receipt of the expedited hearing request or upon completion of the resolution meeting, if earlier, and no later than 20 school days after receipt of the expedited hearing request. The hearing officer shall set a date no less than 2 business days prior to the date of the expedited hearing for the parties to exchange documentation and a list of witnesses. The non-requesting party shall not be required to submit a written response to the expedited hearing request. The parties may request mediation. The mediation shall not delay the timeline set by the hearing officer for conducting the expedited hearing. The length of the hearing shall not exceed 2 days unless good cause is shown. Good cause shall be determined by the hearing officer in his or her sole discretion and may include the unavailability of a party or witness to attend the scheduled hearing.

(i) Any party to the hearing shall have the right to (1) be represented by counsel and be accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities, at the party's own expense; (2) present evidence and confront and cross-examine witnesses; (3) move for the exclusion of witnesses from the hearing until they are called to testify, provided, however, that this provision may not be invoked to exclude the individual designated by a party to assist that party or its representative in the presentation of the case; (4) in accord with the provisions of subsection (g-55) of Section 14-8.02a [105 ILCS 5/14-8.02a], obtain a written or electronic verbatim record of the proceedings; and (5) obtain a written decision, including findings of fact and conclusions of law, within 10 school days after the conclusion of the hearing.

(j) The State Board of Education and the school district shall share equally the costs of providing a written or electronic verbatim record of the proceedings. Any party may

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request that the hearing officer issue a subpoena to compel the testimony of witnesses or the production of documents relevant to the resolution of the hearing. Whenever a person refuses to comply with any subpoena issued under this Section, the circuit court of the county in which that hearing is pending, on application of the impartial hearing officer or the party requesting the issuance of the subpoena, may compel compliance through the contempt powers of the court in the same manner as if the requirements of a subpoena issued by the court had been disobeyed.

(k) The impartial hearing officer shall issue a final written decision, including findings of fact and conclusions of law, within 10 school days after the conclusion of the hearing and mail a copy of the decision to the parents or student (if the student requests the hearing), the school district, the director of special education, legal representatives of the parties, and the State Board of Education.

(l) The hearing officer presiding over the expedited hearing shall hear only that issue or issues identified by IDEA as proper for expedited hearings, leaving all other issues to be heard under a separate request to be initiated and processed in accordance with the hearing procedures provided for in this Article and in accordance with the implementing regulations.

(Source: P.A. 90-566, § 5; 94-1100, § 5.)

Effective Date. Section 99 of P.A. 90-566 made this section effective upon becoming law. The Act was approved January 2, 1998.

Effect of Amendments. The 2007 amendment by P.A. 94-1100, effective February 2, 2007, rewrote the section.

§ 105 ILCS 5/14-8.02c. Due process hearing officers

Sec. 14-8.02c. Due process hearing officers. (a) The State Board of Education shall establish a corps of hearing officers in accordance with this Section and may, with the advice and approval of the Advisory Council on Education of Children with Disabilities, adopt rules consistent with this Section to establish the qualifications of and application process for hearing officers.

(b) Hearing officers must, at a minimum, (i) possess a master's or doctor's degree in education or another field related to disability issues or a juris doctor degree; (ii) have knowledge of and the ability to understand the requirements of the federal Individuals with Disabilities Education Act, Article 14 of this Code, the implementation of rules or regulations of these federal and State statutes, and the legal interpretation of the statutes, rules, and regulations by federal and State courts; (iii) have the knowledge and ability to conduct hearings in accordance with appropriate, standard, legal practice; and (iv) have the knowledge and ability to render and write decisions in accordance with appropriate,

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standard, legal practice. Current employees of the State Board of Education, school districts, special education cooperatives, regional service areas or centers, regional educational cooperatives, State-operated elementary and secondary schools, or private providers of special education facilities or programs may not serve as hearing officers.

(c) If, at any time, the State Board of Education determines that additional hearing officers are needed, the State Board of Education shall recruit hearing officer candidates who meet the criteria set forth in subsection (b) of this Section.

(d) Candidates shall be screened by a 7-member Screening Committee consisting of the following: the Attorney General or his or her designee; the State Superintendent of Education or his or her designee; 3 members appointed by the State Superintendent of Education, one of whom shall be a parent of an individual who is or at one time was eligible to receive special education and related services in an Illinois school district, another of whom shall be a director of special education for an Illinois school district or special education joint agreement, and the other of whom shall be an adult with a disability; and 2 members appointed by the Attorney General, one of whom shall be a parent of an individual who is or at one time was eligible to receive special education and related services in an Illinois school district and the other of whom shall be an experienced special education hearing officer who is not a candidate for appointment under this Section. The chairperson of the Advisory Council on Education of Children with Disabilities or his or her designee shall serve on the Screening Committee as an ex-officio, non-voting member. Appointments and reappointments to the Screening Committee shall be for terms of 3 years. In the event that a member vacates a seat on the Screening Committee prior to the expiration of his or her term, a new member shall be appointed, shall serve the balance of the vacating member's term, and shall be eligible for subsequent reappointment. The Screening Committee shall elect a chairperson from among its voting members. Members of the Screening Committee shall serve without compensation but shall be reimbursed by the State Board of Education for their reasonable expenses. The Screening Committee shall review hearing officer applications and supporting information, interview candidates, and recommend candidates to the Advisory Council on Education of Children with Disabilities based upon objective criteria the Screening Committee develops and makes available to the public. All discussions and deliberations of the Screening Committee and Advisory Council referenced anywhere in this Section pertaining to the review of applications of hearing officer candidates, the interviewing of hearing officer candidates, the recommendation of hearing officer candidates for appointment, and the recommendation of hearing officers for reappointment are excepted from the requirements of the Open Meetings Act, pursuant to item (15) of subsection (c) of Section 2 of the Open Meetings Act [5 ILCS 120/2(c)].

(e) All hearing officer candidates recommended to the Advisory Council on Education of Children with Disabilities shall successfully complete initial training, as established by the contract between the State Board of Education and the training entity, as described in subsection (f), in order to be eligible to serve as an impartial due process hearing officer. The training shall include, at a minimum, instruction in federal and State law, rules, and regulations, federal regulatory interpretations and State and federal court decisions regarding special education and relevant general educational issues, diagnostic

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procedures, information about disabilities, instruction on conducting effective and impartial hearings in accordance with appropriate, standard, legal practice (including without limitation the handling of amended requests), and instruction in rendering and writing hearing decisions in accordance with appropriate, standard, legal practice. The training must be conducted in an unbiased manner by educational and legal experts, including qualified individuals from outside the public educational system. Upon the completion of the initial training, the Advisory Council on Education of Children with Disabilities, applying objective selection criteria it has developed and made available to the public, shall go into executive session and select the number of hearing officers deemed necessary by the State Board of Education from those candidates who have successfully completed the initial training. Upon selecting the candidates, the Advisory Council shall forward its recommendations to the State Superintendent of Education for final selection. The hearing officers appointed by the State Superintendent of Education shall serve an initial term of one year, subject to any earlier permissible termination by the State Board of Education.

(f) The State Board of Education shall, through a competitive application process, enter into a contract with an outside entity to establish and conduct mandatory training programs for hearing officers. The State Board of Education shall also, through a competitive application process, enter into a contract with an outside entity, other than the entity providing mandatory training, to conduct an annual evaluation of each hearing officer and to investigate complaints against hearing officers, in accordance with procedures established by the State Board of Education in consultation with the Screening Committee. The invitation for applications shall set forth minimum qualifications for eligible applicants. Each contract under this subsection (f) may be renewed on an annual basis, subject to appropriation. The State Board of Education shall conduct a new competitive application process at least once every 3 years after the initial contract is granted. The Screening Committee shall review the training proposals and evaluation and investigation proposals and forward them, with recommendations in rank order, to the State Board of Education.

(g) The evaluation and investigation entity described in subsection (f) of this Section shall conduct an annual written evaluation of each hearing officer and provide the evaluation to the Screening Committee for its consideration in the reappointment process. The evaluation shall include a review of written decisions and any communications regarding a hearing officer's conduct and performance by participants in impartial due process hearings and their representatives. Each hearing officer shall be provided with a copy of his or her written evaluation report and shall have an opportunity, within 30 days after receipt, to review the evaluation with the evaluation and investigation entity and submit written comments. The annual evaluation of each hearing officer, along with the hearing officer's written comments, if any, shall be submitted to the Screening Committee for consideration no later than April 1 of each calendar year. The Screening Committee, based on objective criteria and any evaluation reports prepared by the training entity, shall, on an annual basis, recommend whether the hearing officer should be reappointed for a one-year term and shall forward its recommendations to the Advisory Council on Education of Children with Disabilities. The Advisory Council shall go into executive session and shall review the recommendations of the Screening Committee for the

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purpose of either ratifying or rejecting the recommendations of the Screening Committee. The Advisory Council shall then forward its list of ratified and rejected appointees to the State Superintendent of Education, who shall determine the final selection of hearing officers for reappointment. Each reappointed hearing officer shall serve a term of one year, subject to any earlier permissible termination by the State Board of Education.

(h) Hearing officers shall receive a base annual stipend and per diem allowance for each hearing at a rate established by the State Board of Education. The State Board of Education shall provide hearing officers with access to relevant court decisions, impartial hearing officer decisions with child-specific identifying information deleted, statutory and regulatory changes, and federal regulatory interpretations. The State Board of Education shall index and maintain a reporting system of impartial due process hearing decisions and shall make these decisions available for review by the public after deleting child-specific identifying information.

(i) A hearing officer may be terminated by the State Board of Education for just cause if, after written notice is provided to the hearing officer, appropriate timely corrective action is not taken. For purposes of this subsection (i), just cause shall be (1) the failure or refusal to accept assigned cases without good cause; (2) the failure or refusal to fulfill his or her duties as a hearing officer in a timely manner; (3) consistent disregard for applicable laws and rules in the conduct of hearings; (4) consistent failure to conduct himself or herself in a patient, dignified, and courteous manner to parties, witnesses, counsel, and other participants in hearings; (5) the failure to accord parties or their representatives a full and fair opportunity to be heard in matters coming before him or her; (6) violating applicable laws regarding privacy and confidentiality of records or information; (7) manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, disability, or national origin; (8) failure to recuse himself or herself from a hearing in which he or she has a personal, professional, or financial conflict of interest that he or she knew or should have known existed at any time prior to or during the hearing; (9) conviction in any jurisdiction of any felony or of a misdemeanor involving moral turpitude; or (10) falsification of a material fact on his or her application to serve as a hearing officer. In addition, a hearing officer who, as a result of events occurring after appointment, no longer meets the minimum requirements set forth in this Section, shall be disqualified to complete the balance of his or her term.

(Source: P.A. 94-1100, § 5.)

Effective Date. Section 99 of P.A. 94-1100 purported to make this section effective July 1, 2006, however P.A. 94-1100 was approved February 2, 2007.

§ 105 ILCS 5/14-8.02d. Evaluation of due process hearing system

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Sec. 14-8.02d. Evaluation of due process hearing system. The State Board of Education shall monitor, review, and evaluate the impartial due process hearing system on a regular basis by a process that includes a review of written decisions and evaluations by participants in impartial due process hearings and their representatives. In conjunction with the Annual State Report on Special Education Performance, the State Board of Education shall submit data on the performance of the due process hearing system, including data on timeliness of hearings and an analysis of the issues and disability categories underlying hearing requests during the period covered by the Annual State Report. The data provided for the Annual State Report must be submitted to the members of the State Board of Education, the State Superintendent of Education, the Advisory Council on Education of Children with Disabilities, and the Screening Committee established under Section 14-8.02c of this Code [105 ILCS 5/14-8.02c] and must be made available to the public.

(Source: P.A. 94-1100, § 5.)

Effective Date. Section 99 of P.A. 94-1100 purported to make this section effective July 1, 2006, however P.A. 94-1100 was approved February 2, 2007.

§ 105 ILCS 5/14-8.03. Transition services

Sec. 14-8.03. Transition services. (a) For purposes of this Section, "transition services" means a coordinated set of activities for a child with a disability that (i) is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (ii) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and (iii) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills, benefits planning, work incentives education, and the provision of a functional vocational evaluation. Transition services for a child with a disability may be special education, if provided as specially designed instruction, or a related service if required to assist a child with a disability to benefit from special education.

(a-5) Beginning no later than the first individualized education plan (IEP) in effect when the student turns age 14 1/2 (or younger if determined appropriate by the IEP Team) and updated annually thereafter, the IEP must include (i) measurable post-secondary goals based upon age-appropriate transition assessments and other information available regarding the student that are related to training, education, employment, and, where

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appropriate, independent living skills and (ii) the transition services needed to assist the student in reaching those goals, including courses of study.

(b) Transition planning must be conducted as part of the IEP process and must be governed by the procedures applicable to the development, review, and revision of the IEP, including notices to the parents and student, parent and student participation, and annual review. To appropriately assess and develop IEP transition goals and transition services for a child with a disability, additional participants may be necessary and may be invited by the school district, parent, or student to participate in the transition planning process. Additional participants may include without limitation a representative from the Department of Human Services or another State agency, a case coordinator, or persons representing other public or community agencies or services, such as adult service providers or public community colleges. The IEP shall identify each person responsible for coordinating and delivering transition services. If the IEP team determines that the student requires transition services from a public or private entity outside of the school district, the IEP team shall identify potential outside resources, assign one or more IEP team members to contact the appropriate outside entities, make the necessary referrals, provide any information and documents necessary to complete the referral, follow up with the entity to ensure that the student has been successfully linked to the entity, and monitor the student's progress to determine if the student's IEP transition goals and benchmarks are being met. The student's IEP shall indicate one or more specific time periods during the school year when the IEP team shall review the services provided by the outside entity and the student's progress in such activities. The public school's responsibility for delivering educational services does not extend beyond the time the student leaves school or when the student's eligibility ends due to age under this Article.

(c) A school district shall submit annually a summary of each eligible student's IEP transition goals and transition services resulting from the IEP Team meeting to the appropriate local Transition Planning Committee. If students with disabilities who are ineligible for special education services request transition services, local public school districts shall assist those students by identifying post-secondary school goals, delivering appropriate education services, and coordinating with other agencies and services for assistance.

(Source: P.A. 86-1218; 87-909, § 1; 89-397, § 5; 89-507, § 90E-20; 92-452, § 10; 95-793, § 5; 96-187, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-8.03.

Effect of Amendments. The 1992 amendment by P.A. 87-909, effective August 14, 1992, added "Transition goals, supports, and services" as the section heading; inserted ", and develop when needed," in the first sentence of subsection (a) after "consider"; substituted "and supports for" for "of" following "goals" in the first sentence of subsection (a); substituted "individualized education program meeting and provide services as identified on the individualized education program" for

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"district's multidisciplinary conference and use this information when appropriate for the development of an individualized education program" in the first sentence of subsection (a); substituted "supports" for "transition services" in the first sentence of subsection (b); substituted "the multidisciplinary" for "a multidisciplinary" in the first sentence of subsection (b); and substituted "meeting" for "documentation" in the first sentence of subsection (b).

The 1995 amendment by P.A. 89-397, effective August 20, 1995, in subsection (a), in the first sentence, substituted "students with disabilities" for "handicapped students"; and in subsection (c), in the second sentence substituted "special education" for "handicapped"

The 1996 amendment by P.A. 89-507, effective July 1, 1997, in subsection (b), in the second sentence, substituted "Human Services" for "Rehabilitation Services".

The 2001 amendment by P.A. 92-452, effective August 21, 2001, in subsection (a), substituted "not later than" for "by", "plan" for "program", and inserted "student's" in the first sentence, inserted text beginning with "be based on" and ending with "outcome-oriented, and" in the second sentence; substituted "plan team" for "program" throughout subsections (b) and (c); in subsection (b), in the third sentence substituted "each person" for "who is" and inserted "coordinating and"; and in subsection (c) deleted "multidisciplinary staff conference and" following "resulting from the" in the first sentence.

The 2008 amendment by P.A. 95-793, effective August 8, 2008, in the last sentence of (b) added "inclusive, which for purposes of this Article means the day before the student's 22nd birthday".

The 2009 amendment by P.A. 96-187, effective August 10, 2009, rewrote the section.

CASE NOTES

Construction

School district was not entitled to reimbursement from a school board for the educational services provided to a minor in a treatment facility, because the minor's placement was accomplished exclusively pursuant to the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., not under the School Code, and the school board had no input in the minor's placement; a case involving an individualized education program guided the analysis. Antioch Cmty. High Sch. Dist. 17 v. Bd. of Educ., 373 Ill. App. 3d 544, 311 Ill. Dec. 407, 868 N.E.2d 1068, 2007 Ill. App. LEXIS 474 (1 Dist. 2007).

§ 105 ILCS 5/14-8.04. Supported employment

Sec. 14-8.04. Supported employment. The school board that is the governing body of any secondary school in this State that provides special education services and facilities for children with disabilities shall include, as part of preparing the transition planning for disabled children who are 16 years of age or more, consideration of a supported employment component with experiences in integrated community settings for those eligible children with disabilities who have been determined at an IEP meeting to be in need of participation in the supported employment services offered pursuant to this Section.

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Supported employment services made available as part of transition planning under this Section shall be designed and developed for school boards by the State Board of Education, in consultation with programs such as Project CHOICES (Children Have Opportunities In Integrated Community Environments), parents and advocates of children with disabilities, and the Departments of Central Management Services and Human Services, and shall be maintained and operated in such manner as to coordinate with supported employee programs administered under the Supported Employees Act [5 ILCS 390/1 et seq.].

(Source: P.A. 87-684; 89-397, § 5; 89-507, § 90E-20.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-8.04.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the first paragraph substituted "children with disabilities" for "handicapped children" twice.

The 1996 amendment by P.A. 89-507, effective July 1, 1997, in the second paragraph substituted "Human Services" for "Rehabilitation Services".

§ 105 ILCS 5/14-8.05. Behavioral intervention

Sec. 14-8.05. Behavioral intervention. (a) The General Assembly finds and declares that principals and teachers of students with disabilities require training and guidance that provide ways for working successfully with children who have difficulties conforming to acceptable behavioral patterns in order to provide an environment in which learning can occur. It is the intent of the General Assembly:

(1) That when behavioral interventions are used, they be used in consideration of the pupil's physical freedom and social interaction, and be administered in a manner that respects human dignity and personal privacy and that ensures a pupil's right to placement in the least restrictive educational environment.

(2) That behavioral management plans be developed and used, to the extent possible, in a consistent manner when a local educational agency has placed the pupil in a day or residential setting for education purposes.

(3) That a statewide study be conducted of the use of behavioral interventions with students with disabilities receiving special education and related services.

(4) That training programs be developed and implemented in institutions of higher education that train teachers, and that in-service training programs be made available as necessary in school districts, in educational service centers, and by regional

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superintendents of schools to assure that adequately trained staff are available to work effectively with the behavioral intervention needs of students with disabilities.

(b) On or before September 30, 1993, the State Superintendent of Education shall conduct a statewide study of the use of behavioral interventions with students with disabilities receiving special education and related services. The study shall include, but not necessarily be limited to identification of the frequency in the use of behavioral interventions; the number of districts with policies in place for working with children exhibiting continuous serious behavioral problems; how policies, rules, or regulations within districts differ between emergency and routine behavioral interventions commonly practiced; the nature and extent of costs for training provided to personnel for implementing a program of nonaversive behavioral interventions; and the nature and extent of costs for training provided to parents of students with disabilities who would be receiving behavioral interventions. The scope of the study shall be developed by the State Board of Education, in consultation with individuals and groups representing parents, teachers, administrators, and advocates. On or before June 30, 1994, the State Board of Education shall issue guidelines based on the study's findings. The guidelines shall address, but not be limited to, the following: (i) appropriate behavioral interventions, and (ii) how to properly document the need for and use of behavioral interventions in the process of developing individualized education plans for students with disabilities. The guidelines shall be used as a reference to assist school boards in developing local policies and procedures in accordance with this Section. The State Board of Education, with the advice of parents of students with disabilities and other parents, teachers, administrators, advocates for persons with disabilities, and individuals with knowledge or expertise in the development and implementation of behavioral interventions for persons with disabilities, shall review its behavioral intervention guidelines at least once every 3 years to determine their continuing appropriateness and effectiveness and shall make such modifications in the guidelines as it deems necessary.

(c) Each school board must establish and maintain a committee to develop policies and procedures on the use of behavioral interventions for students with disabilities who require behavioral intervention. The policies and procedures shall be adopted and implemented by school boards by January 1, 1996, shall be amended as necessary to comply with the rules established by the State Board of Education under Section 2-3.130 of this Code [105 ILCS 5/2-3.130] not later than one month after commencement of the school year after the State Board of Education's rules are adopted, and shall: (i) be developed with the advice of parents with students with disabilities and other parents, teachers, administrators, advocates for persons with disabilities, and individuals with knowledge or expertise in the development and implementation of behavioral interventions for persons with disabilities; (ii) emphasize positive interventions that are designed to develop and strengthen desirable behaviors; (iii) incorporate procedures and methods consistent with generally accepted practice in the field of behavioral intervention; (iv) include criteria for determining when a student with disabilities may require a behavioral intervention plan; (v) reflect that the guidelines of the State Board of Education have been reviewed and considered and provide the address of the State Board of Education so that copies of the State Board of Education behavioral guidelines may be requested; and (vi) include procedures for monitoring the use of restrictive behavioral

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interventions. Each school board shall (i) furnish a copy of its local policies and procedures to parents and guardians of all students with individualized education plans within 15 days after the policies and procedures have been adopted by the school board, or within 15 days after the school board has amended its policies and procedures, or at the time an individualized education plan is first implemented for the student, and (ii) require that each school inform its students of the existence of the policies and procedures annually. Provided, at the annual individualized education plan review, the school board shall (1) explain the local policies and procedures, (2) furnish a copy of the local policies to parents and guardians, and (3) make available, upon request of any parents and guardians, a copy of local procedures.

(d) The State Superintendent of Education shall consult with representatives of institutions of higher education and the State Teacher Certification Board in regard to the current training requirements for teachers to ensure that sufficient training is available in appropriate behavioral interventions consistent with professionally accepted practices and standards for people entering the field of education.

(Source: P.A. 87-1103, § 1; 89-191, § 5; 90-63, § 5; 91-600, § 5; 92-16, § 49.)

Note.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.280.

Effective Date. Section 2 of P.A. 87-1103 made this section effective upon becoming law. The Act was approved September 15, 1992.

Effect of Amendments. The 1995 amendment by P.A. 89-191, effective July 21, 1995, in subsection (b), in the fifth sentence, deleted "individualized education program" preceding "process" and added "of developing individualized education plans for students with disabilities" at the end and added the sixth and seventh sentences; in subsection (c), in the first sentence, deleted "During the 1994-1995 school year" from the beginning, deleted "(i)" preceding "establish", deleted "parent-teacher advisory" preceding "committee", deleted "that conform to the specifications of the State Board of Education guidelines" preceding "on the use", substituted "for" for "with" and added "who require behavioral intervention" at the end, added the second sentence, in the third sentence added at the beginning "Each school board shall (i)", substituted "its" for "those", deleted "all parents or guardians or both" preceding "parents and guardians", inserted "of all students with individualized education plans", substituted "policies and procedures have been adopted by the school board or at the time an individualized education plan is first implemented for the student" for "beginning of the 1995-1996 school year", inserted "at the beginning of", substituted "(ii)" for "(iii)", substituted "existence" for "contents" and substituted "policies and procedures" for "policy"; and in subsection (d) substituted "consult" for "explore", inserted "in regard to" and inserted "consistent with professionally accepted practices and standards".

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The 1997 amendment by P.A. 90-63, effective July 3, 1997, in subsection (c), in the third sentence, inserted "or within 15 days after the school board has amended its policies and procedures" and deleted "and at the beginning of each school year thereafter" preceding "and (ii)" and added the fourth sentence.

The 1999 amendment by P.A. 91-600, effective August 14, 1999, inserted the language beginning "shall be amended" and ending "adopted" in the second sentence of subsection (c).

The 2001 amendment by P.A. 92-16, effective June 28, 2001, substituted "Section 2-3.130" for "Section 2-3.126" in the second sentence of subsection (c).

§ 105 ILCS 5/14-9.01. Qualifications of teachers, other professional personnel and necessary workers

Sec. 14-9.01. Qualifications of teachers, other professional personnel and necessary workers. No person shall be employed to teach any class or program authorized by this Article who does not hold a valid teacher's certificate as provided by law and unless he has had such special training as the State Board of Education may require. No special certificate or endorsement to a special certificate issued under Section 21-4 [105 ILCS 5/21-4] on or after July 1, 1994, shall be valid for teaching students with visual disabilities unless the person to whom the certificate or endorsement is issued has attained satisfactory performance on an examination that is designed to assess competency in Braille reading and writing skills according to standards that the State Board of Education may adopt. Evidence of successfully completing the examination of Braille reading and writing skills must be submitted to the State Board of Education prior to an applicant's examination of the subject matter knowledge test required under Section 21-1a [105 ILCS 5/21-1a]. Beginning July 1, 1995, in addition to other requirements, a candidate for a teaching certification in the area of the deaf and hard of hearing granted by the Illinois State Board of Education for teaching deaf and hard of hearing students in grades pre-school through grade 12 must demonstrate a minimum proficiency in sign language as determined by the Illinois State Board of Education. All other professional personnel employed in any class, service, or program authorized by this Article shall hold such certificates and shall have had such special training as the State Board of Education may require; provided that in a school district organized under Article 34 [105 ILCS 5/34-1 et seq.], the school district may employ speech and language pathologists who are licensed under the Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110/1 et seq.] but who do not hold a certificate issued under the School Code [105 ILCS 5/1-1 et seq.] if the district certifies that a chronic shortage of certified personnel exists. Nothing contained in this Act prohibits the school board from employing necessary workers to assist the teacher with the special educational facilities, except that all such necessary workers must have had such training as the State Board of Education may require.

No later than January 1, 1993, the State Board of Education shall develop, in consultation with the Advisory Council on the Education of Children with Disabilities and the Advisory Council on Bilingual Education, rules governing the qualifications for

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certification of teachers and school service personnel providing services to limited English proficient students receiving special education and related services.

The employment of any teacher in a special education program provided for in Sections 14-1.01 to 14-14.01 [105 ILCS 5/14-1.01 to 105 ILCS 5/14-14.01], inclusive, shall be subject to the provisions of Sections 24-11 to 24-16 [105 ILCS 5/24-11 to 105 ILCS 5/24-16], inclusive. Any teacher employed in a special education program, prior to the effective date of this amendatory Act of 1987, in which 2 or more districts participate shall enter upon contractual continued service in each of the participating districts subject to the provisions of Sections 24-11 to 24-16 [105 ILCS 5/24-11 to 105 ILCS 5/24-16], inclusive.

(Source: P.A. 85-760; 87-995, § 1; 87-1071, § 1; 88-45, § 2-31; 88-49, § 1; 88-670, § 2-34; 89-397, § 5; 89-636, § 5; 89-698, § 5; 92-651, § 37.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-9.01.

The reference to "Section 21.4" above, appears to be referring to 105 ILCS 5/21-4, which deals with special certificates.

Section 997 of P.A. 92-651 is a no acceleration or delay provision, and Section 998 is a no revival or extension provision.

Effect of Amendments. The 1992 amendment by P.A. 87-995, effective September 1, 1992, inserted the second paragraph.

The 1992 amendment by P.A. 87-1071, effective September 13, 1992, added the second and third sentences in the first paragraph.

The 1993 amendment by P.A. 88-45, effective July 6, 1993 combined the separate amendments of P.A. 87-995 and P.A. 87-1071.

The 1993 amendment by P.A. 88-49, effective July 1, 1995, inserted the fourth sentence of the first paragraph.

The 1994 amendment by P.A. 88-670, effective December 2, 1994, combined the amendments by P.A. 88-45 and P.A. 88-49; and in the first paragraph, in the fourth sentence added "Beginning July 1, 1995" at the beginning.

The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the first paragraph, in the first sentence, substituted "disabilities" for "handicaps"; and in the second paragraph substituted "Children with Disabilities" for "Handicapped Children".

The 1996 amendment by P.A. 89-636, effective August 9, 1996, in the first paragraph, added at the end "provided that in a school district organized under Article 34, the school district may employ speech and language pathologists who possess a masters degree but who do not hold a certificate issued under the School Code if the district certifies that a chronic shortage of certified personnel exists".

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The 1996 amendment by P.A. 89-698, effective January 14, 1997, incorporated the amendments by P.A. 89-636; and in the first paragraph, in the fifth sentence substituted "are licensed under the Illinois Speech-Language Pathology and Audiology Practice Act" for "possess a masters degree".

The 2002 amendment by P.A. 92-651, effective July 11, 2002, substituted "Section 21-4" for "Section 21.4" in the second sentence of the first paragraph.

§ 105 ILCS 5/14-10.01: Repealed by P.A. 88-228, § 15, effective July 1, 1994.

§ 105 ILCS 5/14-11.01. Educational materials coordinating unit

Sec. 14-11.01. Educational materials coordinating unit. The State Board of Education shall maintain or contract for an educational materials coordinating unit for children with disabilities to provide:

(1) Staff and resources for the coordination, cataloging, standardizing, production, procurement, storage, and distribution of educational materials needed by visually disabled children and adults with disabilities.

(2) Staff and resources of an instructional materials center to include library, audio-visual, programmed, and other types of instructional materials peculiarly adapted to the instruction of pupils with disabilities.

The educational materials coordinating unit shall have as its major purpose the improvement of instructional programs for children with disabilities and the in-service training of all professional personnel associated with programs of special education and to these ends is authorized to operate under rules and regulations of the State Board of Education with the advice of the Advisory Council.

(Source: P.A. 86-1028; 89-397, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-11.01.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the introductory paragraph substituted "children with disabilities" for "handicapped children"; in subsection (1) substituted "disabled" for "handicapped"; and added "with disabilities" at the end; in subsection (2) substituted "pupils with disabilities" for "handicapped pupils"; in the second paragraph substituted "children with disabilities" for "handicapped children".

§ 105 ILCS 5/14-11.02. [Service center for deaf-blind persons]

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Sec. 14-11.02. Notwithstanding any other Sections of this Article, the State Board of Education shall develop and operate or contract for the operation of a service center for persons who are deaf-blind. For the purpose of this Section, persons with deaf-blindness are persons who have both auditory and visual impairments, the combination of which causes such severe communication and other developmental, educational, vocational and rehabilitation problems that such persons cannot be properly accommodated in special education or vocational rehabilitation programs solely for persons with both hearing and visual disabilities.

To be eligible for deaf-blind services, a person must have (i) a visual impairment and an auditory impairment, or (ii) a condition in which there is a progressive loss of hearing or vision or both that results in concomitant vision and hearing impairments and that adversely affects educational performance as determined by the multidisciplinary conference. For purposes of this paragraph and Section:

(A) A visual impairment is defined to mean one or more of the following: (i) corrected visual acuity poorer than 20/70 in the better eye; (ii) restricted visual field of 20 degrees or less in the better eye; (iii) cortical blindness; (iv) does not appear to respond to visual stimulation, which adversely affects educational performance as determined by the multidisciplinary conference.

(B) An auditory impairment is defined to mean one or more of the following: (i) a sensorineural or ongoing or chronic conductive hearing loss with aided sensitivity of 30dB HL or poorer; (ii) functional auditory behavior that is significantly discrepant from the person's present cognitive and/or developmental levels, which adversely affects educational performance as determined by the multidisciplinary conference.

The State Board of Education is empowered to establish, maintain and operate or contract for the operation of a permanent state-wide service center known as the Philip J. Rock Center and School. The School serves eligible children between the ages of 3 and 21; the Center serves eligible persons of all ages. Services provided by the Center include, but are not limited to:

(1) Identifying and case management of persons who are auditorily and visually impaired;

(2) Providing families with appropriate counseling;

(3) Referring persons who are deaf-blind to appropriate agencies for medical and diagnostic services;

(4) Referring persons who are deaf-blind to appropriate agencies for educational, training and care services;

(5) Developing and expanding services throughout the State to persons who are deaf-blind. This will include ancillary services, such as transportation so that the individuals can take advantage of the expanded services;

(6) Maintaining a residential-educational training facility in the Chicago metropolitan area located in an area accessible to public transportation;

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(7) Receiving, dispensing, and monitoring State and Federal funds to the School and Center designated for services to persons who are deaf-blind;

(8) Coordinating services to persons who are deaf-blind through all appropriate agencies, including the Department of Children and Family Services and the Department of Human Services;

(9) Entering into contracts with other agencies to provide services to persons who are deaf-blind;

(10) Operating on a no-reject basis. Any individual referred to the Center for service and diagnosed as deaf-blind, as defined in this Act, shall qualify for available services;

(11) Serving as the referral clearinghouse for all persons who are deaf-blind, age 21 and older; and

(12) Providing transition services for students of Philip J. Rock School who are deaf-blind and between the ages of 141/2 and 21.

The Advisory Board for Services for Persons who are Deaf-Blind shall provide advice to the State Superintendent of Education, the Governor, and the General Assembly on all matters pertaining to policy concerning persons who are deaf-blind, including the implementation of legislation enacted on their behalf.

Regarding the maintenance, operation and education functions of the Philip J. Rock Center and School, the Advisory Board shall also make recommendations pertaining to but not limited to the following matters:

(1) Existing and proposed programs of all State agencies that provide services for persons who are deaf-blind;

(2) The State program and financial plan for deaf-blind services and the system of priorities to be developed by the State Board of Education;

(3) Standards for services in facilities serving persons who are deaf-blind;

(4) Standards and rates for State payments for any services purchased for persons who are deaf-blind;

(5) Services and research activities in the field of deaf-blindness, including evaluation of services; and

(6) Planning for personnel/preparation, both preservice and inservice.

The Advisory Board shall consist of 3 persons appointed by the Governor; 2 persons appointed by the State Superintendent of Education; 4 persons appointed by the Secretary of Human Services; and 2 persons appointed by the Director of Children and Family Services. The 3 appointments of the Governor shall consist of a senior citizen 60 years of age or older, a consumer who is deaf-blind, and a parent of a person who is deaf-blind; provided that if any gubernatorial appointee serving on the Advisory Board on the effective date of this amendatory Act of 1991 is not either a senior citizen 60 years of age

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or older or a consumer who is deaf-blind or a parent of a person who is deaf-blind, then whenever that appointee's term of office expires or a vacancy in that appointee's office sooner occurs, the Governor shall make the appointment to fill that office or vacancy in a manner that will result, at the earliest possible time, in the Governor's appointments to the Advisory Board being comprised of one senior citizen 60 years of age or older, one consumer who is deaf-blind, and one parent of a person who is deaf-blind. One person designated by each agency other than the Department of Human Services may be an employee of that agency. Two persons appointed by the Secretary of Human Services may be employees of the Department of Human Services. The appointments of each appointing authority other than the Governor shall include at least one parent of an individual who is deaf-blind or a person who is deaf-blind.

Vacancies in terms shall be filled by the original appointing authority. After the original terms, all terms shall be for 3 years.

Except for those members of the Advisory Board who are compensated for State service on a full-time basis, members shall be reimbursed for all actual expenses incurred in the performance of their duties. Each member who is not compensated for State service on a full-time basis shall be compensated at a rate of $50 per day which he spends on Advisory Board duties. The Advisory Board shall meet at least 4 times per year and not more than 12 times per year.

The Advisory Board shall provide for its own organization.

Six members of the Advisory Board shall constitute a quorum. The affirmative vote of a majority of all members of the Advisory Board shall be necessary for any action taken by the Advisory Board.

(Source: P.A. 87-221; 88-670, § 3-54; 89-397, § 5; 89-507, § 90D-40.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-11.02.

Effect of Amendments. The 1994 amendment by P.A. 88-670, effective December 2, 1994, in subdivision (A)(i) substituted "acuity" for "accuity".

The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the first paragraph, in the second sentence, substituted "with both hearing and visual disabilities" for "who are hearing impaired or visually handicapped".

The 1996 amendment by P.A. 89-507, effective July 1, 1997, in the third paragraph, in subsection (8), substituted "and" for a comma following "Department of Children and Family Services" and substituted "Human Services" for "Mental Health and Developmental Disabilities, and the Department of Rehabilitation Services" and in the sixth paragraph, in the first sentence, inserted "4 persons appointed by the Secretary of Human Services", substituted "Director" for "Directors of the Departments" and deleted "Mental Health and Developmental Disabilities, and Rehabilitation Services" from the end, in the third sentence inserted "other than the Department of Human

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Services" and added the fourth sentence.

§ 105 ILCS 5/14-11.03. Illinois Service Resource Center

Sec. 14-11.03. Illinois Service Resource Center. The State Board of Education shall maintain, subject to appropriations for such purpose, the Service Resource Center for children and adolescents through the age of 21 who are deaf or hard-of-hearing and have an emotional or behavioral disorder. For the purpose of this Section, "children and adolescents who are deaf or hard-of-hearing and have an emotional or behavioral disorder" have an auditory impairment that is serious enough to warrant an array of special services and special education programs in order to assist both educationally and socially and the behavior is seriously disruptive and unacceptable to peers, educational staff, and persons in the community, or presents a danger to self or others.

The State Board shall operate or contract for the operation of the Illinois Service Resource Center for children and adolescents through the age of 21 who are deaf or hard-of-hearing and have an emotional or behavioral disorder. The Illinois Service Resource Center shall function as the initial point of contact for students, parents, and professionals. All existing and future services shall be coordinated through the Center.

The Illinois Service Resource Center shall:

(a) Develop and maintain a directory of public and private resources, including crisis intervention.

(b) Establish and maintain a Statewide identification and tracking system.

(c) Develop, obtain, and assure the consistency of screening instruments.

(d) Perform case coordination, referral, and consultation services.

(e) Provide technical assistance and training for existing programs and providers.

(f) Track the allocation and expenditure of State and federal funds.

(g) Monitor, evaluate, and assess Statewide resources, identification of services gaps, and the development and delivery of services.

(h) Identify by geographical areas the need for establishing evaluation and crisis intervention services and establish a pilot in downstate Illinois. The Service Resource Center shall provide for the coordination of services for children who are deaf or hard-of-hearing and have an emotional or behavioral disorder throughout the State and shall pilot a service delivery model to identify the capacity and need for comprehensive evaluation, crisis management, stabilization, referral, transition, family intervention, and follow-up services.

(i) Integrate the recommendations of the Interagency Board for Children who are Deaf or Hard-of-Hearing and have an Emotional or Behavioral Disorder regarding policies

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affecting children who are deaf or hard-of-hearing and have an emotional or behavioral disorder.

(j) Provide limited direct services as required.

The Center, if established, shall operate on a no-reject basis. Any child or adolescent diagnosed as deaf or hard-of-hearing and having an emotional or behavioral disorder under this Act who is referred to the Center for services shall qualify for services of the Center. The requirement of the no-reject basis shall be paramount in negotiating contracts and in supporting other agency services.

(Source: P.A. 87-1127, § 2; 88-663, § 5; 89-680, § 910.)

Effective Date. Section 3 of P.A. 87-1127 made this section effective upon becoming law. The Act was approved September 16, 1992.

Effect of Amendments. The 1994 amendment by P.A. 88-663, effective September 16, 1994, added present subsection (h); and redesignated former subsections (h) and (i) as present subsections (i) and (j).

The 1996 amendment by P.A. 89-680, effective January 1, 1997, in the section catchline added "Illinois" at the beginning; in the first paragraph, in the first sentence, substituted "shall maintain" for "may establish", substituted "the Service" for "a Service" and substituted "deaf or hard-of-hearing and have an emotional or behavioral disorder" for "hearing impaired and behavior disordered" and in the second sentence substituted "deaf or hard-of-hearing and have an emotional or behavioral disorder" for "hearing impaired and behavior disordered"; in the second paragraph, in the first sentence, substituted "shall" for "may maintain and", deleted a comma after "operate", deleted a comma after "operation of", substituted "Illinois" for "permanent" and added at the end "for children and adolescents through the age of 21 who are deaf or hard-of-hearing and have an emotional or behavioral disorder", in the second sentence inserted "Illinois Service Resource", deleted "if established" preceding "shall function" and in the third sentence deleted "once established" from the end; in the third paragraph, in the introductory language, deleted "If established" from the beginning and inserted "Illinois" and in subsection (b) substituted "tracking" for "tracing"; in subsection (h), in the second sentence, substituted "who are deaf or hard-of-hearing and have an emotional or behavioral disorder" for "with hearing impairments and behavior disorders"; in subsection (i) deleted "Hearing Impaired/Behavior Disordered" preceding "Children", inserted "who are Deaf or Hard-of-Hearing and have an emotional or Behavioral Disorder" and substituted "deaf or hard-of-hearing and have an emotional or behavioral disorder" for "hearing impaired/behavior disordered"; and in the fourth paragraph, in the second sentence, substituted "deaf or hard-of-hearing and having an emotional or behavioral disorder" for "hearing impaired and behavior disordered".

§ 105 ILCS 5/14-12.01. Account of expenditures - Cost report - Reimbursement

Sec. 14-12.01. Account of expenditures - Cost report - Reimbursement. Each school board shall keep an accurate, detailed and separate account of all monies paid out by it for the maintenance of each of the types of facilities, classes and schools authorized by

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this Article for the instruction and care of pupils attending them and for the cost of their transportation, and shall annually report thereon indicating the cost of each such elementary or high school pupil for the school year ending June 30.

Applications for preapproval for reimbursement for costs of special education must be first submitted through the office of the regional superintendent of schools to the State Superintendent of Education on or before 30 days after a special class or service is started. Applications shall set forth a plan for special education established and maintained in accordance with this Article. Such applications shall be limited to the cost of construction and maintenance of special education facilities designed and utilized to house instructional programs, diagnostic services, other special education services for children with disabilities and reimbursement as provided in Section 14-13.01 [105 ILCS 5/14-13.01]. Such application shall not include the cost of construction or maintenance of any administrative facility separated from special education facilities designed and utilized to house instructional programs, diagnostic services, and other special education services for children with disabilities. Reimbursement claims for special education shall be made as follows:

Each district shall file its claim computed in accordance with rules prescribed by the State Board of Education for approval on forms prescribed by the State Superintendent of Education. Data used as a basis of reimbursement claims shall be for the school year ended on June 30 preceding. Each school district shall transmit to the State Superintendent of Education its claims on or before August 15. The State Superintendent of Education before approving any such claims shall determine their accuracy and whether they are based upon services and facilities provided under approved programs. Upon approval, vouchers for the amounts due the respective districts shall be prepared and submitted during each fiscal year as follows: the first 3 vouchers shall be prepared by the State Superintendent of Education and transmitted to the Comptroller on the 30th day of September, December and March, respectively, and the final voucher, no later than June 20. If, after preparation and transmittal of the September 30 vouchers, any claim has been redetermined by the State Superintendent of Education, subsequent vouchers shall be adjusted in amount to compensate for any overpayment or underpayment previously made. If the money appropriated by the General Assembly for such purpose for any year is insufficient, it shall be apportioned on the basis of the claims approved.

Claims received at the State Board of Education after August 15 shall not be honored.

(Source: P.A. 87-179; 87-1117, § 1; 88-641, § 10; 89-397, § 5; 91-764, § 5; 94-1100, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-12.01.

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Effect of Amendments. The 1992 amendment by P.A. 87-1117, effective January 1, 1993, substituted the present last paragraph for the former last paragraph regarding failure to file reports of claims on or before August 1 of any year.

The 1994 amendment by P.A. 88-641, effective September 9, 1994, in the third paragraph, in the fifth sentence, substituted "districts" for "educational service regions for their district reimbursement claims".

The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the second paragraph, in the third and fourth sentences substituted "children with disabilities" for "handicapped children".

The 2000 amendment by P.A. 91-764, effective June 9, 2000, in the third paragraph deleted "with the regional superintendent of schools, in triplicate, on or before August 1" following "Board of Education" in the first sentence, and in the third sentence substituted "Each school district shall transmit to the State Superintendent of Education its" for "The regional superintendent of schools shall check and upon approval provide the State Superintendent of Education with the original and one copy of the".

The 2007 amendment by P.A. 94-1100, effective February 2, 2007, deleted the former last sentence from the last paragraph, which read "Claims received by August 15 may be amended until November 30."

§ 105 ILCS 5/14-12.02: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/14-13.01. Reimbursement payable by State; amounts for personnel and transportation

Sec. 14-13.01. Reimbursement payable by State; amounts for personnel and transportation. (a) For staff working on behalf of children who have not been identified as eligible for special education and for eligible children with physical disabilities, including all eligible children whose placement has been determined under Section 14-8.02 [105 ILCS 5/14-8.02] in hospital or home instruction, 1/2 of the teacher's salary but not more than $1,000 annually per child or $9,000 per teacher, whichever is less. A child qualifies for home or hospital instruction if it is anticipated that, due to a medical condition, the child will be unable to attend school, and instead must be instructed at home or in the hospital, for a period of 2 or more consecutive weeks or on an ongoing intermittent basis. For purposes of this Section, "ongoing intermittent basis" means that the child's medical condition is of such a nature or severity that it is anticipated that the child will be absent from school due to the medical condition for periods of at least 2 days at a time multiple times during the school year totaling at least 10 days or more of absences. There shall be no requirement that a child be absent from school a minimum number of days before the child qualifies for home or hospital instruction. In order to establish eligibility for home or hospital services, a student's parent or guardian must submit to the child's school district of residence a written statement from a physician licensed to practice medicine in all of its branches stating the existence of such medical condition, the impact on the child's ability to participate in education, and the anticipated duration or nature of the child's absence from school. Home or hospital instruction may

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commence upon receipt of a written physician's statement in accordance with this Section, but instruction shall commence not later than 5 school days after the school district receives the physician's statement. Special education and related services required by the child's IEP or services and accommodations required by the child's federal Section 504 [105 ILCS 5/504] plan must be implemented as part of the child's home or hospital instruction, unless the IEP team or federal Section 504 plan team determines that modifications are necessary during the home or hospital instruction due to the child's condition. Eligible children to be included in any reimbursement under this paragraph must regularly receive a minimum of one hour of instruction each school day, or in lieu thereof of a minimum of 5 hours of instruction in each school week in order to qualify for full reimbursement under this Section. If the attending physician for such a child has certified that the child should not receive as many as 5 hours of instruction in a school week, however, reimbursement under this paragraph on account of that child shall be computed proportionate to the actual hours of instruction per week for that child divided by 5. The State Board of Education shall establish rules governing the required qualifications of staff providing home or hospital instruction.

(b) For children described in Section 14-1.02 [105 ILCS 5/14-1.02], 80% of the cost of transportation approved as a related service in the Individualized Education Program for each student in order to take advantage of special educational facilities. Transportation costs shall be determined in the same fashion as provided in Section 29-5 [105 ILCS 5/29-5]. For purposes of this subsection (b), the dates for processing claims specified in Section 29-5 shall apply.

(c) For each qualified worker, the annual sum of $9,000.

(d) For one full time qualified director of the special education program of each school district which maintains a fully approved program of special education the annual sum of $9,000. Districts participating in a joint agreement special education program shall not receive such reimbursement if reimbursement is made for a director of the joint agreement program.

(e) (Blank).

(f) (Blank).

(g) For readers, working with blind or partially seeing children 1/2 of their salary but not more than $400 annually per child. Readers may be employed to assist such children and shall not be required to be certified but prior to employment shall meet standards set up by the State Board of Education.

(h) For non-certified employees, as defined by rules promulgated by the State Board of Education, who deliver services to students with IEPs, 1/2 of the salary paid or $3,500 per employee, whichever is less.

The State Board of Education shall set standards and prescribe rules for determining the allocation of reimbursement under this section on less than a full time basis and for less than a school year.

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When any school district eligible for reimbursement under this Section operates a school or program approved by the State Superintendent of Education for a number of days in excess of the adopted school calendar but not to exceed 235 school days, such reimbursement shall be increased by 1/180 of the amount or rate paid hereunder for each day such school is operated in excess of 180 days per calendar year.

Notwithstanding any other provision of law, any school district receiving a payment under this Section or under Section 14-7.02, 14-7.02b, or 29-5 of this Code [105 ILCS 5/14-7.02, 105 ILCS 5/14-7.02b, or 105 ILCS 5/29-5] may classify all or a portion of the funds that it receives in a particular fiscal year or from general State aid pursuant to Section 18-8.05 of this Code [105 ILCS 5/18-8.05] as funds received in connection with any funding program for which it is entitled to receive funds from the State in that fiscal year (including, without limitation, any funding program referenced in this Section), regardless of the source or timing of the receipt. The district may not classify more funds as funds received in connection with the funding program than the district is entitled to receive in that fiscal year for that program. Any classification by a district must be made by a resolution of its board of education. The resolution must identify the amount of any payments or general State aid to be classified under this paragraph and must specify the funding program to which the funds are to be treated as received in connection therewith. This resolution is controlling as to the classification of funds referenced therein. A certified copy of the resolution must be sent to the State Superintendent of Education. The resolution shall still take effect even though a copy of the resolution has not been sent to the State Superintendent of Education in a timely manner. No classification under this paragraph by a district shall affect the total amount or timing of money the district is entitled to receive under this Code. No classification under this paragraph by a district shall in any way relieve the district from or affect any requirements that otherwise would apply with respect to that funding program, including any accounting of funds by source, reporting expenditures by original source and purpose, reporting requirements, or requirements of providing services.

(Source: P.A. 84-126; 88-555, § 10; 88-641, § 10; 89-235, § 2-90; 89-397, § 5; 92-568, § 5; 93-1022, § 5; 95-415, § 5; 95-707, § 5-20; 96-257, § 5; 97-123, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-13.01.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 120.100, 130.30.

Effect of Amendments. The 1994 amendment by P.A. 88-555, effective July 27, 1994, in subsection (a), in the first sentence, inserted "children who have not been identified as eligible for special education and for"; substituted "including" for "and" and added the comma after "home instruction".

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The 1994 amendment by P.A. 88-641, effective September 9, 1994, added a semi-colon in the section catchline; in the first paragraph, inserted "to the school districts", substituted "by the State Comptroller" for "to the school boards, through the regional superintendent, on the warrant of the State Comptroller" and substituted "by the State Board of Education" for "as prescribed in this section."

The 1995 amendment by P.A. 89-235, effective August 4, 1995, combined the amendments by P.A. 88-555, § 10 and P.A. 88-641, § 10.

The 1995 amendment by P.A. 89-397, effective August 20, 1995, combined the amendments by P.A. 88-555 and P.A. 88-641; in second paragraph, in the first and second sentences substituted "children with disabilities" for "handicapped children"; and in subsection (a), in the first sentence, substituted "children with physical disabilities" for "physically handicapped children".

The 2002 amendment by P.A. 92-568, effective June 26, 2002, added the last paragraph in subparagraph (h).

The 2004 amendment by P.A. 93-1022, effective August 24, 2004, in the third undesignated paragraph following subdivision (h) substituted "14-7.02b" for "14-7.02a" in the first sentence.

The 2007 amendment by P.A. 95-415, effective July 1, 2007, substituted "1/180" for "1/185" and "180" for "185" in the third paragraph of (h).

The 2008 amendment by P.A. 95-707, effective January 11, 2008, in (a), (c), (d), (e), (f) and (h), added reimbursement amounts for the 2005-2006 and 2006-2007 school years and for each school year thereafter.

The 2009 amendment by P.A. 96-257, effective August 11, 2009, rewrote the section.

The 2011 amendment by P.A. 97-123, effective July 14, 2011, in (a), substituted "A child qualifies for home or hospital instruction if it is anticipated that, due to a medical condition, the child will" for "To qualify for home or hospital instruction, a child must, due to a medical condition" in the second sentence and inserted the third, fourth, sixth, and seventh sentences.

§ 105 ILCS 5/14-14.01. Warrants for reimbursement

Sec. 14-14.01. Warrants for reimbursement. The State Comptroller shall draw his warrants on the State Treasurer on or before September 30 of each year for the respective sums for reimbursement for special education reported to him on presentation of vouchers approved by the State Superintendent of Education.

(Source: P.A. 83-729.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-14.01.

§ 105 ILCS 5/14-15.01. Community and Residential Services Authority

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Sec. 14-15.01. Community and Residential Services Authority. (a)(1) The Community and Residential Services Authority is hereby created and shall consist of the following members:

A representative of the State Board of Education;

Four representatives of the Department of Human Services appointed by the Secretary of Human Services, with one member from the Division of Community Health and Prevention, one member from the Division of Developmental Disabilities, one member from the Division of Mental Health, and one member from the Division of Rehabilitation Services;

A representative of the Department of Children and Family Services;

A representative of the Department of Juvenile Justice;

A representative of the Department of Healthcare and Family Services;

A representative of the Attorney General's Disability Rights Advocacy Division;

The Chairperson and Minority Spokesperson of the House and Senate Committees on Elementary and Secondary Education or their designees; and

Six persons appointed by the Governor. Five of such appointees shall be experienced or knowledgeable relative to provision of services for individuals with a behavior disorder or a severe emotional disturbance and shall include representatives of both the private and public sectors, except that no more than 2 of those 5 appointees may be from the public sector and at least 2 must be or have been directly involved in provision of services to such individuals. The remaining member appointed by the Governor shall be or shall have been a parent of an individual with a behavior disorder or a severe emotional disturbance, and that appointee may be from either the private or the public sector.

(2) Members appointed by the Governor shall be appointed for terms of 4 years and shall continue to serve until their respective successors are appointed; provided that the terms of the original appointees shall expire on August 1, 1990. Any vacancy in the office of a member appointed by the Governor shall be filled by appointment of the Governor for the remainder of the term.

A vacancy in the office of a member appointed by the Governor exists when one or more of the following events occur:

(i) An appointee dies;

(ii) An appointee files a written resignation with the Governor;

(iii) An appointee ceases to be a legal resident of the State of Illinois; or

(iv) An appointee fails to attend a majority of regularly scheduled Authority meetings in a fiscal year.

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Members who are representatives of an agency shall serve at the will of the agency head. Membership on the Authority shall cease immediately upon cessation of their affiliation with the agency. If such a vacancy occurs, the appropriate agency head shall appoint another person to represent the agency.

If a legislative member of the Authority ceases to be Chairperson or Minority Spokesperson of the designated Committees, they shall automatically be replaced on the Authority by the person who assumes the position of Chairperson or Minority Spokesperson.

(b) The Community and Residential Services Authority shall have the following powers and duties:

(1) To conduct surveys to determine the extent of need, the degree to which documented need is currently being met and feasible alternatives for matching need with resources.

(2) To develop policy statements for interagency cooperation to cover all aspects of service delivery, including laws, regulations and procedures, and clear guidelines for determining responsibility at all times.

(3) To recommend policy statements and provide information regarding effective programs for delivery of services to all individuals under 22 years of age with a behavior disorder or a severe emotional disturbance in public or private situations.

(4) To review the criteria for service eligibility, provision and availability established by the governmental agencies represented on this Authority, and to recommend changes, additions or deletions to such criteria.

(5) To develop and submit to the Governor, the General Assembly, the Directors of the agencies represented on the Authority, and the State Board of Education a master plan for individuals under 22 years of age with a behavior disorder or a severe emotional disturbance, including detailed plans of service ranging from the least to the most restrictive options; and to assist local communities, upon request, in developing or strengthening collaborative interagency networks.

(6) To develop a process for making determinations in situations where there is a dispute relative to a plan of service for individuals or funding for a plan of service.

(7) To provide technical assistance to parents, service consumers, providers, and member agency personnel regarding statutory responsibilities of human service and educational agencies, and to provide such assistance as deemed necessary to appropriately access needed services.

(c)(1) The members of the Authority shall receive no compensation for their services but shall be entitled to reimbursement of reasonable expenses incurred while performing their duties.

(2) The Authority may appoint special study groups to operate under the direction of the Authority and persons appointed to such groups shall receive only reimbursement of reasonable expenses incurred in the performance of their duties.

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(3) The Authority shall elect from its membership a chairperson, vice-chairperson and secretary.

(4) The Authority may employ and fix the compensation of such employees and technical assistants as it deems necessary to carry out its powers and duties under this Act. Staff assistance for the Authority shall be provided by the State Board of Education.

(5) Funds for the ordinary and contingent expenses of the Authority shall be appropriated to the State Board of Education in a separate line item.

(d)(1) The Authority shall have power to promulgate rules and regulations to carry out its powers and duties under this Act.

(2) The Authority may accept monetary gifts or grants from the federal government or any agency thereof, from any charitable foundation or professional association or from any other reputable source for implementation of any program necessary or desirable to the carrying out of the general purposes of the Authority. Such gifts and grants may be held in trust by the Authority and expended in the exercise of its powers and performance of its duties as prescribed by law.

(3) The Authority shall submit an annual report of its activities and expenditures to the Governor, the General Assembly, the directors of agencies represented on the Authority, and the State Superintendent of Education.

(Source: P.A. 86-695; 87-216; 87-1045, § 1; 88-386, § 15; 89-21, § 5-50; 89-507, § 90D-40; 90-566, § 5; 92-632, § 5; 95-331, § 540; 95-793, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14-15.01.

Effect of Amendments. The 1992 amendment by P.A. 87-1045, effective January 1, 1993, in the last paragraph of subdivision (a)(1) substituted "six persons" for "five persons" and deleted "for terms of four years" from the end of the first sentence, in the second sentence substituted "five of such appointees" for "such persons", inserted "except that" following "public sectors" and substituted "2 of those 5 appointees may" for "2 of the appointees can" and added the last sentence; in the first sentence of subdivision (a)(2) inserted "be appointed for terms of 4 years and shall", inserted "provided that" and added the language beginning "and the term of the additional member" to the end of the sentence and added the last sentence; to the end of subdivision (b)(5) added "and to assist local communities, upon request, in developing or strengthening collaborative interagency networks"; in subdivision (b)(6) deleted "no later than April 1, 1987" following "To develop"; and in subdivision (d)(3) added "the directors of agencies represented on the Authority, and the State Superintendent of Education".

The 1993 amendment by P.A. 88-386, effective August 20, 1993, in subdivision (a)(1), in the first paragraph, substituted "Emotionally Disturbed Individuals" for "Emotionally Disturbed Student," and substituted "Disability Rights Advocacy Division" for "Division of the Handicapped" in the eighth representative listed, in the third paragraph, in the second sentence, substituted "experienced or knowledgeable" for "experienced and knowledgeable," substituted "relative to

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provision of services" for "in the operation of day schools or residential schools," inserted "individuals who are," and added language beginning "and at least 2 must be"; in subsection (b), subdivision (3) substituted "recommend policy statements" for "develop policy and best practice statements," inserted "and provide information regarding effective programs," inserted "individuals who are," and deleted "students" following "emotionally disturbed," and in subdivision (5) inserted "individuals who are," and deleted "students" following "emotionally disturbed."

The 1995 amendment by P.A. 89-21, effective July 1, 1995, in subdivision (a)(1) deleted "A representative of the Governor's Purchased Care Review Board" preceding "A representative of the Department of Alcoholism and Substance Abuse".

The 1996 amendment by P.A. 89-507, effective July 1, 1997, in subdivision (a)(1) inserted "Three representatives of the Department of Human Services", deleted "A representative of the Department of Mental Health and Developmental Disabilities", deleted "A representative of the Department of Rehabilitation Services" and deleted "A representative of the Department of Alcoholism and Substance Abuse".

The 1997 amendment by P.A. 90-566, effective January 2, 1998, in subdivision (a)(1), in the first paragraph, in the introductory language, deleted "for Behavior Disturbed and Severed Emotionally Disturbed individuals" preceding "is hereby" and in the second paragraph, in the first sentence, substituted "with a" for "who are", substituted "disorder" for "disturbed", inserted "a" preceding "severe" and substituted "emotional disturbance" for "emotionally disturbed students" and in the second sentence inserted "an individual with", substituted "disorder" for "disturbed", inserted "a" preceding "severe" and substituted "emotional disturbance" for "emotionally disturbed child or adolescent"; in subdivision (a)(2) added the second paragraph; in subdivision (b)(3) substituted "with a" for "who are", substituted "disorder or a" for "disturbed and" and substituted "emotional disturbance" for "emotionally disturbed of all ages"; in subdivision (b)(5) substituted "with a" for "who are", substituted "disorder or a" for "disturbed and" and substituted "emotional disturbance" for "emotionally disturbed of all ages"; in subdivision (b)(5) substituted "with a" for "who are", substituted "disorder or a" for "disturbed and", substituted "emotional disturbance" for "emotionally disturbed", substituted "of service" for "for day schools and residential schools" and deleted "placement" preceding "options"; in subdivision (b)(6) substituted "a plan of service for" for "placements of" and substituted "for a plan of service" for "of services for individual placements"; and in subdivision (b)(7) substituted a comma for "and" preceding "providers".

The 2002 amendment by P.A. 92-632, effective January 1, 2003, in subsection (a)(1) substituted "Four" for "Three", inserted the language beginning "with one member from the Division of Community" through the end of the third paragraph, and deleted "A representative of the Department of Public Health" from the list of members; and added "under 22 years of age" in subsections (b)(3) and (b)(5).

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, substituted "Department of Healthcare and Family Services" for "Department of Public Aid" in (a).

The 2008 amendment by P.A. 95-793, effective August 8, 2008, rewrote the third paragraph of (a)(1); substituted "Department of Juvenile Justice" for "Department of Corrections" in the fifth paragraph of (a)(1); and deleted "and the term of the additional member appointed under this amendatory Act of 1992 shall commence upon the appointment and expire August 1, 1994" following "1990" in the first sentence of (a)(2).

§ 105 ILCS 5/14-16. Participation in graduation ceremony

Sec. 14-16. Participation in graduation ceremony. (a) This Section may be referred to as Brittany's Law. The General Assembly finds the following:

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(1) Each year, school districts across this State celebrate their students' accomplishments through graduation ceremonies at which high school diplomas are bestowed upon students who have completed their high school requirements.

(2) There are children with disabilities in this State who have finished 4 years of high school, but whose individualized education programs prescribe the continuation of special education, transition planning, transition services, or related services beyond the completion of 4 years of high school.

(3) It is well-established that the awarding of a high school diploma to and the high school graduation of a child with a disability is tantamount to the termination of eligibility for special education and related services for the student under applicable federal law.

(4) Many children with disabilities who will continue their public education in accordance with their individualized education programs after finishing 4 years of high school wish to celebrate their accomplishments by participating in a graduation ceremony with their classmates.

(5) The opportunity for classmates with disabilities and those without disabilities to celebrate their accomplishments together only occurs once, and the opportunity to celebrate the receipt of a diploma several years after one's classmates have graduated diminishes the experience for students whose age peers have left high school several years earlier.

(b) Beginning March 1, 2005, each school district that operates a high school must have a policy and procedures that allow a child with a disability who will have completed 4 years of high school at the end of a school year to participate in the graduation ceremony of the student's high school graduating class and receive a certificate of completion if the student's individualized education program prescribes special education, transition planning, transition services, or related services beyond the student's 4 years of high school. The policy and procedures must require timely and meaningful written notice to children with disabilities and their parents or guardians about the school district's policy and procedures adopted in accordance with this Section.

(c) The State Board of Education shall monitor and enforce compliance with the provisions of this Section and is authorized to adopt rules for that purpose.

(Source: P.A. 93-1079, § 5.)

Effective Date. Section 99 of P.A. 93-1079 made this section effective upon becoming law. The Act was approved January 21, 2005.

ARTICLE 14A.

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Gifted and Talented Children

§ 105 ILCS 5/14A-5. Applicability

Sec. 14A-5. Applicability. This Article applies beginning with the 2006-2007 school year.

(Source: P.A. 94-151, § 5; 94-410, § 5.)

Note.

A prior version of Article 14A was repealed by P.A. 93-21, effective July 1, 2003.

This section was enacted by multiple Acts of the Illinois General Assembly. Although these enactments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

Effective Date. Section 99 of P.A. 94-151 made this Article effective upon becoming law. The Act was approved July 8, 2005.

Section 99 of P.A. 94-410 made this Article effective upon becoming law. The Act was approved August 2, 2005.

§ 105 ILCS 5/14A-10. Legislative findings

Sec. 14A-10. Legislative findings. The General Assembly finds the following:

(1) that gifted and talented children (i) exhibit high performance capabilities in intellectual, creative, and artistic areas, (ii) possess an exceptional leadership potential, (iii) excel in specific academic fields, and (iv) have the potential to be influential in business, government, health care, the arts, and other critical sectors of our economic and cultural environment;

(2) that gifted and talented children require services and activities that are not ordinarily provided by schools; and

(3) that outstanding talents are present in children and youth from all cultural groups, across all economic strata, and in all areas of human endeavor.

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(Source: P.A. 94-151, § 5; 94-410, § 5.)

Note.

This section was enacted by multiple Acts of the Illinois General Assembly. Although these enactments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

§ 105 ILCS 5/14A-15. Purpose

Sec. 14A-15. Purpose. The purpose of this Article is to provide encouragement, assistance, and guidance to school districts in the development and improvement of educational programs for gifted and talented children as defined in Section 14A-20 of this Code [105 ILCS 5/14A-20]. School districts shall continue to have the authority and flexibility to design education programs for gifted and talented children in response to community needs, but these programs must comply with the requirements established in Section 14A-30 of this Code [105 ILCS 5/14A-30] by no later than September 1, 2006 in order to merit approval by the State Board of Education in order to qualify for State funding for the education of gifted and talented children, should such funding become available.

(Source: P.A. 94-151, § 5; 94-410, § 5.)

Note.

This section was enacted by multiple Acts of the Illinois General Assembly. Although these enactments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

§ 105 ILCS 5/14A-20. Gifted and talented children

Sec. 14A-20. Gifted and talented children. For purposes of this Article, "gifted and talented children" means children and youth with outstanding talent who perform or show the potential for performing at remarkably high levels of accomplishment when compared with other children and youth of their age, experience, and environment. A child shall be considered gifted and talented in any area of aptitude, and, specifically, in language arts and mathematics, by scoring in the top 5% locally in that area of aptitude.

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(Source: P.A. 94-151, § 5; 94-410, § 5.)

Note.

This section was enacted by multiple Acts of the Illinois General Assembly. Although these enactments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

§ 105 ILCS 5/14A-25. Non-discrimination

Sec. 14A-25. Non-discrimination. Eligibility for participation in programs established pursuant to this Article shall be determined solely through identification of a child as gifted or talented. No program shall condition participation upon race, religion, sex, disability, or any factor other than the identification of the child as gifted or talented.

(Source: P.A. 94-151, § 5; 94-410, § 5.)

Note.

This section was enacted by multiple Acts of the Illinois General Assembly. Although these enactments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

§ 105 ILCS 5/14A-30. Funding of local gifted education programs

Sec. 14A-30. Funding of local gifted education programs. A local program for the education of gifted and talented children may be approved for funding by the State Board of Education, pursuant to a request for proposals process, if funds for that purpose are available and, beginning with the beginning of the 2010-2011 academic year, if the local program submits an application for funds that includes a comprehensive plan (i) showing that the applicant is capable of meeting a portion of the following requirements, (ii) showing the program elements currently in place and a timeline for implementation of other elements, and (iii) demonstrating to the satisfaction of the State Board of Education that the applicant is capable of implementing a program of gifted education consistent with this Article:

(1) The use of a minimum of 3 assessment measures used to identify gifted and talented children in each area in which a program for gifted and talented children is established, which may include without limitation scores on standardized achievement tests, observation checklists, portfolios, and currently-used district assessments.

(2) A priority emphasis on language arts and mathematics.

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(3) An identification method that uses the definition of gifted and talented children as defined in Section 14A-20 of this Code [105 ILCS 5/14A-20].

(4) Assessment instruments sensitive to the inclusion of underrepresented groups, including low-income students, minority students, and English language learners.

(5) A process of identification of gifted and talented children that is of equal rigor in each area of aptitude addressed by the program.

(6) The use of identification procedures that appropriately correspond with the planned programs, curricula, and services.

(7) A fair and equitable decision-making process.

(8) The availability of a fair and impartial appeal process within the school, school district, or cooperative of school districts operating a program for parents or guardians whose children are aggrieved by a decision of the school, school district, or cooperative of school districts regarding eligibility for participation in a program.

(9) Procedures for annually informing the community at-large, including parents, about the program and the methods used for the identification of gifted and talented children.

(10) Procedures for notifying parents or guardians of a child of a decision affecting that child's participation in a program.

(11) A description of how gifted and talented children will be grouped and instructed in order to maximize the educational benefits the children derive from participation in the program, including curriculum modifications and options that accelerate and add depth and complexity to the curriculum content.

(12) An explanation of how the program emphasizes higher-level skills attainment, including problem-solving, critical thinking, creative thinking, and research skills, as embedded within relevant content areas.

(13) A methodology for measuring academic growth for gifted and talented children and a procedure for communicating a child's progress to his or her parents or guardian, including, but not limited to, a report card.

(14) The collection of data on growth in learning for children in a program for gifted and talented children and the reporting of the data to the State Board of Education.

(15) The designation of a supervisor responsible for overseeing the educational program for gifted and talented children.

(16) A showing that the certified teachers who are assigned to teach gifted and talented children understand the characteristics and educational needs of children and are able to differentiate the curriculum and apply instructional methods to meet the needs of the children.

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(17) Plans for the continuation of professional development for staff assigned to the program serving gifted and talented children.

(Source: P.A. 94-151, § 5; 94-410, § 5; 95-331, § 540; 96-1152, § 5.)

Note.

This section was enacted by multiple Acts of the Illinois General Assembly. Although these enactments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, combined earlier multiple amendments to the section.

The 2010 amendment by P.A. 96-1152, effective July 21, 2010, rewrote the section heading and the introductory language.

§ 105 ILCS 5/14A-35. Administrative functions of the State Board of Education

Sec. 14A-35. Administrative functions of the State Board of Education. (a) The State Board of Education must designate a staff person who shall be in charge of educational programs for gifted and talented children. This staff person shall, at a minimum, (i) be responsible for developing an approval process for educational programs for gifted and talented children by no later than September 1, 2006, (ii) receive and maintain the written descriptions of all programs for gifted and talented children in the State, (iii) collect and maintain the annual growth in learning data submitted by a school, school district, or cooperative of school districts, (iv) identify potential funding sources for the education of gifted and talented children, and (v) serve as the main contact person at the State Board of Education for program supervisors and other school officials, parents, and other stakeholders regarding the education of gifted and talented children.

(b) Subject to the availability of funds for these purposes, the State Board of Education may perform a variety of additional administrative functions with respect to the education of gifted and talented children, including, but not limited to, supervision, quality assurance, compliance monitoring, and oversight of local programs, analysis of performance outcome data submitted by local educational agencies, the establishment of personnel standards, and a program of personnel development for teachers and administrative personnel in the education of gifted and talented children.

(Source: P.A. 94-151, § 5; 94-410, § 5.)

Note.

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This section was enacted by multiple Acts of the Illinois General Assembly. Although these enactments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

§ 105 ILCS 5/14A-40. Advisory Council

Sec. 14A-40. Advisory Council. There is hereby created an Advisory Council on the Education of Gifted and Talented Children to consist of 7 members appointed by the State Superintendent of Education. Upon initial appointment, 4 members of the Advisory Council shall serve terms through January 1, 2007 and 3 members shall serve terms through January 1, 2009. Thereafter, members shall serve 4-year terms. Upon the expiration of the term of a member, that member shall continue to serve until a replacement is appointed. The Council shall meet at least 3 times each year. The Council shall organize with a chairperson selected by the State Superintendent of Education. Members of the Council shall serve without compensation, but shall be reimbursed for their travel to and from meetings and other reasonable expenses in connection with meetings if approved by the State Board of Education.

The State Board of Education shall consider recommendations for membership on the Council from organizations of educators and parents of gifted and talented children and other groups with an interest in the education of gifted and talented children. The members appointed shall be residents of the State and be selected on the basis of their knowledge of, or experience in, programs and problems of the education of gifted and talented children.

The State Superintendent of Education shall seek the advice of the Council regarding all rules and policies to be adopted by the State Board relating to the education of gifted and talented children. The staff person designated pursuant to subsection (a) of Section 14A-35 of this Code [105 ILCS 5/14A-35(a)] shall serve as the State Board of Education's liaison to the Council. The State Board of Education shall provide necessary clerical support and assistance in order to facilitate meetings of the Council.

(Source: P.A. 94-151, § 5; 94-410, § 5.)

Note.

This section was enacted by multiple Acts of the Illinois General Assembly. Although these enactments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

§ 105 ILCS 5/14A-45. Grants for services and materials

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Sec. 14A-45. Grants for services and materials. Subject to the availability of categorical grant funding or other funding appropriated for such purposes, the State Board of Education shall make grants available to fund educational programs for gifted and talented children. A request-for-proposal process shall be used in awarding grants for services and materials, with carry over to the next fiscal year, under this Section. A proposal may be submitted to the State Board of Education by a school district, 2 or more cooperating school districts, a county, 2 or more cooperating counties, an established professional organization in gifted education, or a regional office of education. The proposals shall include a statement of the qualifications and duties of the personnel required in the field of diagnostic, counseling, and consultative services and the educational materials necessary. Upon receipt, the State Board of Education shall evaluate the proposals in accordance with criteria developed by the State Board of Education that is consistent with this Article and shall award grants to the extent funding is available. Educational programs for gifted and talented children may be offered during the regular school term and may include optional summer programs. As a condition for State funding, a grantee must comply with the requirements of this Article.

(Source: P.A. 94-151, § 5; 94-410, § 5; 96-1152, § 5.)

Note.

This section was enacted by multiple Acts of the Illinois General Assembly. Although these enactments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

Effect of Amendments. The 2010 amendment by P.A. 96-1152, effective July 21, 2010, inserted "an established professional organization in gifted education" in the third sentence.

§ 105 ILCS 5/14A-50. Contracts for experimental projects and institutes

Sec. 14A-50. Contracts for experimental projects and institutes. Subject to the availability of funds, the State Board of Education shall have the authority to enter into and monitor contracts with school districts, regional offices of education, colleges, universities, and professional organizations for the conduct of experimental projects and institutes, including summer institutes, in the field of education of gifted and talented children as defined in Section 14A-20 of this Code [105 ILCS 5/14A-20]. These projects and institutes shall be established in accordance with rules adopted by the State Board of Education. Prior to entering into a contract, the State Board of Education shall evaluate the proposal as to the soundness of the design of the project or institute, the probability of obtaining productive outcomes, the adequacy of resources to conduct the proposed project or institute, and the relationship of the project or institute to other projects and institutes already completed or in progress. The contents of these projects and institutes must be designed based on standards adopted by professional organizations for gifted and

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talented children.

(Source: P.A. 94-151, § 5; 94-410, § 5.)

Note.

This section was enacted by multiple Acts of the Illinois General Assembly. Although these enactments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

§ 105 ILCS 5/14A-55. Rulemaking

Sec. 14A-55. Rulemaking. The State Board of Education shall have the authority to adopt all rules necessary to implement and regulate the provisions of this Article.

(Source: P.A. 94-151, § 5; 94-410, § 5; 95-331, § 540.)

Note.

This section was enacted by multiple Acts of the Illinois General Assembly. Although these enactments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

Effective Date. Section 99 of P.A. 94-151 made this Article effective upon becoming law. The Act was approved July 8, 2005.

Section 99 of P.A. 94-410 made this Article effective upon becoming law. The Act was approved August 2, 2005.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, made a typographical correction.

Article 14B.

Educationally Disadvantaged Children

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§§ 105 ILCS 5/14B-1 through 105 ILCS 5/14B-8: Repealed by P.A. 96-734, § 25, effective August 25, 2009.

Article 14C.

Transitional Bilingual Education

§ 105 ILCS 5/14C-1. [Legislative finding and declaration]

Sec. 14C-1. The General Assembly finds that there are large numbers of children in this State who come from environments where the primary language is other than English. Experience has shown that public school classes in which instruction is given only in English are often inadequate for the education of children whose native tongue is another language. The General Assembly believes that a program of transitional bilingual education can meet the needs of these children and facilitate their integration into the regular public school curriculum. Therefore, pursuant to the policy of this State to insure equal educational opportunity to every child, and in recognition of the educational needs of children of limited English-speaking ability, it is the purpose of this Act to provide for the establishment of transitional bilingual education programs in the public schools, to provide supplemental financial assistance to help local school districts meet the extra costs of such programs, and to allow this State to directly or indirectly provide technical assistance and professional development to support transitional bilingual education programs statewide.

(Source: P.A. 78-727; 94-1105, § 20; 96-1423, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14C-1.

Effect of Amendments. The 2010 amendment by P.A. 96-1423, effective August 3, 2010, added "and to allow this State to directly or indirectly provide technical assistance and professional development to support transitional bilingual education programs statewide" to the end of the last sentence; and made a related change.

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§ 105 ILCS 5/14C-2. Definitions

Sec. 14C-2. Definitions. Unless the context indicates otherwise, the terms used in this Article have the following meanings:

(a) "State Board" means the State Board of Education.

(b) "Certification Board" means the State Teacher Certification Board.

(c) "School District" means any school district established under this Code.

(d) "Children of limited English-speaking ability" means (1) all children in grades pre-K through 12 who were not born in the United States, whose native tongue is a language other than English, and who are incapable of performing ordinary classwork in English; and (2) all children in grades pre-K through 12 who were born in the United States of parents possessing no or limited English-speaking ability and who are incapable of performing ordinary classwork in English.

(e) "Teacher of transitional bilingual education" means a teacher with a speaking and reading ability in a language other than English in which transitional bilingual education is offered and with communicative skills in English.

(f) "Program in transitional bilingual education" means a full-time program of instruction (1) in all those courses or subjects which a child is required by law to receive and which are required by the child's school district which shall be given in the native language of the children of limited English-speaking ability who are enrolled in the program and also in English, (2) in the reading and writing of the native language of the children of limited English-speaking ability who are enrolled in the program and in the oral comprehension, speaking, reading and writing of English, and (3) in the history and culture of the country, territory or geographic area which is the native land of the parents of children of limited English-speaking ability who are enrolled in the program and in the history and culture of the United States; or a part-time program of instruction based on the educational needs of those children of limited English-speaking ability who do not need a full-time program of instruction.

(Source: P.A. 86-1028; 95-793, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14C-2.

Effect of Amendments. The 2008 amendment by P.A. 95-793, effective August 8, 2008, in (d) twice substituted "all children in grades pre-K through 12 who" for "children who"; and made stylistic changes.

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§ 105 ILCS 5/14C-2.1: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/14C-3. Language classification of children; establishment of program; period of participation; examination

Sec. 14C-3. Language classification of children; establishment of program; period of participation; examination. Each school district shall ascertain, not later than the first day of March, under regulations prescribed by the State Board, the number of children of limited English-speaking ability within the school district, and shall classify them according to the language of which they possess a primary speaking ability, and their grade level, age or achievement level.

When, at the beginning of any school year, there is within an attendance center of a school district not including children who are enrolled in existing private school systems, 20 or more children of limited English-speaking ability in any such language classification, the school district shall establish, for each classification, a program in transitional bilingual education for the children therein. A school district may establish a program in transitional bilingual education with respect to any classification with less than 20 children therein, but should a school district decide not to establish such a program, the school district shall provide a locally determined transitional program of instruction which, based upon an individual student language assessment, provides content area instruction in a language other than English to the extent necessary to ensure that each student can benefit from educational instruction and achieve an early and effective transition into the regular school curriculum.

Every school-age child of limited English-speaking ability not enrolled in existing private school systems shall be enrolled and participate in the program in transitional bilingual education established for the classification to which he belongs by the school district in which he resides for a period of 3 years or until such time as he achieves a level of English language skills which will enable him to perform successfully in classes in which instruction is given only in English, whichever shall first occur.

A child of limited English-speaking ability enrolled in a program in transitional bilingual education may, in the discretion of the school district and subject to the approval of the child's parent or legal guardian, continue in that program for a period longer than 3 years.

An examination in the oral comprehension, speaking, reading and writing of English, as prescribed by the State Board, shall be administered annually to all children of limited English-speaking ability enrolled and participating in a program in transitional bilingual education. No school district shall transfer a child of limited English-speaking ability out of a program in transitional bilingual education prior to his third year of enrollment therein unless the parents of the child approve the transfer in writing, and unless the child has received a score on said examination which, in the determination of the State Board, reflects a level of English language skills appropriate to his or her grade level.

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If later evidence suggests that a child so transferred is still disabled by an inadequate command of English, he may be re-enrolled in the program for a length of time equal to that which remained at the time he was transferred.

(Source: P.A. 84-126; 89-397, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14C-3.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the sixth paragraph substituted "disabled" for "handicapped".

CASE NOTES

Equal Educational Opportunity

- Action Not Moot

In action brought by Spanish-speaking students challenging adequacy of implementation of programs providing limited English proficiency (LEP) students with equal educational opportunities as required by the Equal Educational Opportunities Act of 1974, 20 U.S.C. 1703(f), the 1985 amendment to this section, which added that should a school district decide not to establish a program in transitional bilingual education, the school district shall provide a locally determined transitional program of instruction, did not moot the plaintiffs' claim relating to those attendance centers with less than 20 LEP children. Gomez v. Illinois State Bd. of Educ., 811 F.2d 1030 (7th Cir. 1987).

§ 105 ILCS 5/14C-4. Notice of enrollment; content; rights of parents

Sec. 14C-4. Notice of enrollment; content; rights of parents. No later than 30 days after the beginning of the school year or 14 days after the enrollment of any child in a program in transitional bilingual education during the middle of a school year, the school district in which the child resides shall notify by mail the parents or legal guardian of the child of the fact that their child has been enrolled in a program in transitional bilingual education. The notice shall contain all of the following information in simple, nontechnical language:

(1) The reasons why the child has been placed in and needs the services of the program.

(2) The child's level of English proficiency, how this level was assessed, and the child's current level of academic achievement.

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(3) The method of instruction used in the program and in other available offerings of the district, including how the program differs from those other offerings in content, instructional goals, and the use of English and native language instruction.

(4) How the program will meet the educational strengths and needs of the child.

(5) How the program will specifically help the child to learn English and to meet academic achievement standards for grade promotion and graduation.

(6) The specific exit requirements for the program, the expected rate of transition from the program into the regular curriculum, and the expected graduation rate for children in the program if the program is offered at the secondary level.

(7) How the program meets the objectives of the child's individual educational program (IEP), if applicable.

(8) The right of the parents to decline to enroll the child in the program or to choose another program or method of instruction, if available.

(9) The right of the parents to have the child immediately removed from the program upon request.

(10) The right of the parents to visit transitional bilingual education classes in which their child is enrolled and to come to the school for a conference to explain the nature of transitional bilingual education.

The notice shall be in writing in English and in the language of which the child of the parents so notified possesses a primary speaking ability.

Any parent whose child has been enrolled in a program in transitional bilingual education shall have the absolute right to immediately withdraw his child from said program by providing written notice of such desire to the school authorities of the school in which his child is enrolled or to the school district in which his child resides.

(Source: P.A. 78-727; 92-604, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14C-4.

Effect of Amendments. The 2002 amendment by P.A. 92-604, effective July 1, 2002, rewrote the section to the extent that a detailed comparison would be impracticable.

§ 105 ILCS 5/14C-5. Nonresident children; enrollment and tuition; joint programs

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Sec. 14C-5. Nonresident children; enrollment and tuition; joint programs. A school district may allow a nonresident child of limited English-speaking ability to enroll in or attend its program in transitional bilingual education and the tuition for such a child shall be paid by the district in which he resides.

Any school district may join with any other school district or districts to provide the programs in transitional bilingual education required or permitted by this Article.

(Source: P.A. 78-727.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14C-5.

§ 105 ILCS 5/14C-6. Placement of children

Sec. 14C-6. Placement of children. Children enrolled in a program of transitional bilingual education whenever possible shall be placed in classes with children of approximately the same age and level of educational attainment. If children of different age groups or educational levels are combined, the school district so combining shall ensure that the instruction given each child is appropriate to his or her level of educational attainment and the school districts shall keep adequate records of the educational level and progress of each child enrolled in a program. The maximum student-teacher ratio shall be set by the State Board and shall reflect the special educational needs of children enrolled in programs in transitional bilingual education. Programs in transitional bilingual education shall, whenever feasible, be located in the regular public schools of the district rather than separate facilities.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14C-6.

§ 105 ILCS 5/14C-7. Participation in extracurricular activities of public schools

Sec. 14C-7. Participation in extracurricular activities of public schools. Instruction in courses of subjects included in a program of transitional bilingual education which are not mandatory may be given in a language other than English. In those courses or subjects in which verbalization is not essential to an understanding of the subject matter,

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including but not necessarily limited to art, music and physical education, children of limited English-speaking ability shall participate fully with their English-speaking contemporaries in the regular public school classes provided for said subjects. Each school district shall ensure to children enrolled in a program in transitional bilingual education practical and meaningful opportunity to participate fully in the extracurricular activities of the regular public schools in the district.

(Source: P.A. 78-727.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14C-7.

§ 105 ILCS 5/14C-8. Teacher certification - Qualifications - Issuance of certificates

Sec. 14C-8. Teacher certification - Qualifications - Issuance of certificates. No person shall be eligible for employment by a school district as a teacher of transitional bilingual education without either (a) holding a valid teaching certificate issued pursuant to Article 21 of this Code [105 ILCS 5/21-0.01 et seq.] and meeting such additional language and course requirements as prescribed by the State Board of Education or (b) meeting the requirements set forth in this Section. The Certification Board shall issue certificates valid for teaching in all grades of the common school in transitional bilingual education programs to any person who presents it with satisfactory evidence that he possesses an adequate speaking and reading ability in a language other than English in which transitional bilingual education is offered and communicative skills in English, and possessed within 5 years previous to his or her applying for a certificate under this Section a valid teaching certificate issued by a foreign country, or by a State or possession or territory of the United States, or other evidence of teaching preparation as may be determined to be sufficient by the Certification Board, or holds a degree from an institution of higher learning in a foreign country which the Certification Board determines to be the equivalent of a bachelor's degree from a recognized institution of higher learning in the United States; provided that any person seeking a certificate under this Section must meet the following additional requirements:

(1) Such persons must be in good health;

(2) Such persons must be of sound moral character;

(3) Such persons must be legally present in the United States and possess legal authorization for employment;

(4) Such persons must not be employed to replace any presently employed teacher who otherwise would not be replaced for any reason.

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Certificates issuable pursuant to this Section shall be issuable only during the 5 years immediately following the effective date of this Act and thereafter for additional periods of one year only upon a determination by the State Board of Education that a school district lacks the number of teachers necessary to comply with the mandatory requirements of Section 14C-3 of this Article [105 ILCS 5/14C-3] for the establishment and maintenance of programs of transitional bilingual education and said certificates issued by the Certification Board shall be valid for a period of 6 years following their date of issuance and shall not be renewed, except that one renewal for a period of two years may be granted if necessary to permit the holder of a certificate issued under this Section to acquire a teaching certificate pursuant to Article 21 of this Code. Such certificates and the persons to whom they are issued shall be exempt from the provisions of Article 21 or Article 21B of this Code, except that Sections 21-16, 21-22, 21B-75, 21B-90, and 21B-105 of this Code [105 ILCS 5/21-16, 105 ILCS 5/21-22,105 ILCS 21B-75, 105 ILCS 21B-90 and 105 ILCS 21B-105] shall continue to be applicable to all such certificates or licenses.

After the effective date of this amendatory Act of 1984, an additional renewal for a period to expire August 31, 1985, may be granted. The State Board of Education shall report to the General Assembly on or before January 31, 1985 its recommendations for the qualification of teachers of bilingual education and for the qualification of teachers of English as a second language. Said qualification program shall take effect no later than August 31, 1985.

Beginning July 1, 2001, the State Board of Education shall implement a test or tests to assess the speaking, reading, writing, and grammar skills of applicants for a certificate issued under this Section in the English language and in the language of the transitional bilingual education program requested by the applicant and shall establish appropriate fees for these tests. The State Board of Education, in consultation with the Certification Board, shall promulgate rules to implement the required tests, including specific provisions to govern test selection, test validation, determination of a passing score, administration of the test or tests, frequency of administration, applicant fees, identification requirements for test takers, frequency of applicants taking the tests, the years for which a score is valid, waiving tests for individuals who have satisfactorily passed other tests, and the consequences of dishonest conduct in the application for or taking of the tests.

If the qualifications of an applicant for a certificate valid for teaching in transitional bilingual education programs in all grades of the common schools do not meet the requirements established for the issuance of that certificate, the Certification Board nevertheless shall issue the applicant a substitute teacher's certificate under Section 21-9 [105 ILCS 5/21-9] whenever it appears from the face of the application submitted for certification as a teacher of transitional bilingual education and the evidence presented in support thereof that the applicant's qualifications meet the requirements established for the issuance of a certificate under Section 21-9; provided, that if it does not appear from the face of such application and supporting evidence that the applicant is qualified for issuance of a certificate under Section 21-9 the Certification Board shall evaluate the application with reference to the requirements for issuance of certificates under Section 21-9 and shall inform the applicant, at the time it denies the application submitted for

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certification as a teacher of transitional bilingual education, of the additional qualifications which the applicant must possess in order to meet the requirements established for issuance of (i) a certificate valid for teaching in transitional bilingual education programs in all grades of the common schools and (ii) a substitute teacher's certificate under Section 21-9.

This Section is repealed on June 30, 2013.

(Source: P.A. 86-1002; 91-370, § 5; 94-1105, § 20; 95-496, § 5; 95-876, § 175; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14C-8.

Section 95 of P.A. 95-496 contains a "no acceleration or delay" provision.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-370, effective July 30, 1999, inserted the next-to-last paragraph, and made a gender-neutralizing change.

The 2007 amendment by P.A. 94-1105, effective June 1, 2007, in the paragraph following (4) deleted "14C-2.1 and" before "14C-3" and made a related change.

The 2007 amendment by P.A. 95-496, effective August 28, 2007, deleted "21-19" from the second paragraph list of sections.

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, combined earlier multiple amendments.

The 2011 amendment by P.A. 97-607, effective August 26, 2011, in the second sentence of the second paragraph, inserted "or Article 21B" and substituted "except that Sections 21-16, 21-22, 21B-75, 21B-90, and 21B-105 of this Code shall continue to be applicable to all such certificates or licenses" for "except that Sections 21-12, 21-13, 21-16, 21-17, 21-21, 21-22, 21-23 and 21-24 shall continue to be applicable to all such certificates"; and added the last paragraph.

§ 105 ILCS 5/14C-9. Tenure; minimum salaries

Sec. 14C-9. Tenure; minimum salaries. Any person employed as a teacher of transitional bilingual education whose teaching certificate was issued pursuant to Section 14C-8 of this Article [105 ILCS 5/14C-8], shall have such employment credited to him for the purposes of determining under the provisions of this Code eligibility to enter upon contractual continued service; provided that such employment immediately precedes and is consecutive with the year in which such person becomes certified under Article 21 of this Code.

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For the purposes of determining the minimum salaries payable to persons certified under Section 14C-8 of this Article [105 ILCS 5/14C-8] such persons shall be deemed to have been trained at a recognized institution of higher learning.

(Source: P.A. 82-597.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14C-9.

§ 105 ILCS 5/14C-10. Parent and community participation

Sec. 14C-10. Parent and community participation. School districts shall provide for the maximum practical involvement of parents of children in transitional bilingual education programs. Each school district shall, accordingly, establish a parent advisory committee which affords parents the opportunity effectively to express their views and which ensures that such programs are planned, operated, and evaluated with the involvement of, and in consultation with, parents of children served by the programs. Such committees shall be composed of parents of children enrolled in transitional bilingual education programs, transitional bilingual education teachers, counselors, and representatives from community groups; provided, however, that a majority of each committee shall be parents of children enrolled in the transitional bilingual education program.

(Source: P.A. 78-727.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14C-10.

§ 105 ILCS 5/14C-11. Preschool or summer school programs

Sec. 14C-11. Preschool or summer school programs. A school district may establish on a full or part-time basis preschool or summer school programs in transitional bilingual education for children of limited English-speaking ability or join with the other school districts in establishing such preschool or summer programs. Preschool or summer programs in transitional bilingual education shall not substitute for programs in transitional bilingual education required to be provided during the regular school year.

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(Source: P.A. 78-727.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14C-11.

§ 105 ILCS 5/14C-12. Account of expenditures; Cost report; Reimbursement

Sec. 14C-12. Account of expenditures; Cost report; Reimbursement. Each school district shall keep an accurate, detailed and separate account of all monies paid out by it for the programs in transitional bilingual education required or permitted by this Article, including transportation costs, and shall annually report thereon for the school year ending June 30 indicating the average per pupil expenditure. Each school district shall be reimbursed for the amount by which such costs exceed the average per pupil expenditure by such school district for the education of children of comparable age who are not in any special education program. At least 60% of transitional bilingual education funding received from the State must be used for the instructional costs of transitional bilingual education.

Applications for preapproval for reimbursement for costs of transitional bilingual education programs must be submitted to the State Superintendent of Education at least 60 days before a transitional bilingual education program is started, unless a justifiable exception is granted by the State Superintendent of Education. Applications shall set forth a plan for transitional bilingual education established and maintained in accordance with this Article.

Reimbursement claims for transitional bilingual education programs shall be made as follows:

Each school district shall claim reimbursement on a current basis for the first 3 quarters of the fiscal year and file a final adjusted claim for the school year ended June 30 preceding computed in accordance with rules prescribed by the State Superintendent's Office. The State Superintendent of Education before approving any such claims shall determine their accuracy and whether they are based upon services and facilities provided under approved programs. Upon approval he shall transmit to the Comptroller the vouchers showing the amounts due for school district reimbursement claims. Upon receipt of the final adjusted claims the State Superintendent of Education shall make a final determination of the accuracy of such claims. If the money appropriated by the General Assembly for such purpose for any year is insufficient, it shall be apportioned on the basis of the claims approved.

Failure on the part of the school district to prepare and certify the final adjusted claims due under this Section may constitute a forfeiture by the school district of its right to be reimbursed by the State under this Section.

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(Source: P.A. 79-1417; 88-641, § 10; 90-463, § 10; 91-764, § 5; 94-441, § 5; 96-1170, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14C-12.

Effect of Amendments. The 1994 amendment by P.A. 88-641, effective September 9, 1994, substituted "Superintendent of Education" for "Superintendent's Office" throughout the section; in the second paragraph, in the first sentence, added "of Education" at the end; in the third paragraph, in the first sentence, substituted "3" for "three", in the sixth sentence, deleted "the state report of claims" preceding "to the Comptroller, deleted "and prepare" preceding "the vouchers", deleted "the respective regions" preceding "for school", substituted "school district's" for "their school district" and in the seventh sentence, inserted "of Education"; in the fourth paragraph, substituted "August 20" for "August 10"; and made minor punctuation changes.

The 1997 amendment by P.A. 90-463, effective August 17, 1997, substituted "July" for "August," and substituted "August" for "September" throughout.

The 2000 amendment by P.A. 91-764, effective June 9, 2000, rewrote the fourth paragraph, deleting references to the regional superintendent of schools.

The 2005 amendment by P.A. 94-441, effective August 4, 2005, rewrote the last two paragraphs, deleting provisions concerning filing estimated claims, and dates for filings vouchers, and reports.

The 2010 amendment by P.A. 96-1170, effective January 1, 2011, added the last sentence to the end of the first paragraph.

§ 105 ILCS 5/14C-13. Advisory Council

Sec. 14C-13. Advisory Council. There is created an Advisory Council on Bilingual Education, consisting of 17 members appointed by the State Superintendent of Education and selected, as nearly as possible, on the basis of experience in or knowledge of the various programs of bilingual education. The Council shall advise the State Superintendent on policy and rules pertaining to bilingual education. The Council shall establish such sub-committees as it deems appropriate to review bilingual education issues including but not limited to certification, finance and special education.

Initial appointees shall serve terms determined by lot as follows: 6 for one year, 6 for 2 years and 5 for 3 years. Successors shall serve 3-year terms. Members annually shall select a chairman from among their number. Members shall receive no compensation but may be reimbursed for necessary expenses incurred in the performance of their duties.

By no later than December 1, 2011, the Council shall submit a report to the State Superintendent of Education, the Governor, and the General Assembly addressing, at a minimum, the following questions:

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(1) whether and how the 20 child per attendance center minimum in Section 14C-3 of this Code [105 ILCS 5/14C-3] should be modified;

(2) whether and how educator certification requirements in this Article 14C and applicable State Board of Education rules should be modified;

(3) whether and how bilingual education requirements in this Article 14C and applicable State Board of Education rules should be modified to address differences between elementary and secondary schools; and

(4) whether and how to allow school districts to administer alternative bilingual education programs instead of transitional bilingual education programs.

(Source: P.A. 84-710; 87-995, § 1; 97-305, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 14C-13.

Effect of Amendments. The 1992 amendment by P.A. 87-995, effective September 1, 1992, added the last sentence of the first paragraph.

The 2011 amendment by P.A. 97-305, effective January 1, 2012, added the last paragraph.

Article 15.

Common School Lands

§ 105 ILCS 5/15-1. Lands constituting

Sec. 15-1. Lands constituting. Section 16 in every township, the sections and parts of sections granted in lieu of all or part of such section, shall be held as common school lands.

(Source: Laws 1961, p. 31.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-1.

CASE NOTES

Analysis

Adverse Possession
Lease
- Amount of Rent

Adverse Possession

In case where land allegedly granted to a school was on the tax books, for 78 years, was the exclusive possession of defendant under claim of ownership for 80 years, who conducted the fencing, cultivation and use of the land, and the prevailing reputation as to title in the neighborhood, together with the assessment and payment of taxes for 78 years, the trial court properly established ownership by the defendant. Trustees of Schs. v. Lilly, 373 Ill. 431, 26 N.E.2d 489 (1940).

Lease

- Amount of Rent

Where a board of education had legislative authority to enter into a lease of certain land, the record showed it acted in good faith after considering the lease with a view toward maximizing long range benefits and with knowledge of the mutually beneficial pattern of cooperation which existed with the city, and as there were no allegations of fraud or corruption, the judgment that the board acted properly regarding the amount and payment of rent was not contrary to the manifest weight of the evidence. Hall v. Board of Educ., 48 Ill. App. 3d 834, 6 Ill. Dec. 587, 363 N.E.2d 116 (1 Dist. 1977).

§ 105 ILCS 5/15-2. Place of transacting business

Sec. 15-2. Place of transacting business. All the business of a township relating to common school lands shall be transacted in the county which contains all or the greater portion of such lands.

(Source: Laws 1961, p. 31.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 15-2.

§ 105 ILCS 5/15-3. Leases - Pooling agreements - Railroad rights of way and depot grounds

Sec. 15-3. Leases - Pooling agreements - Railroad rights of way and depot grounds. The township land commissioners or trustees of schools in townships in which Section 16, or lands granted in lieu thereof, remain unsold, or which have title to any other school lands or real estate, may lease them for an annual cash rent or for an annual grain rent or a combination of cash and grain rent, or may lease them for drilling for oil and gas upon a royalty basis. The lease shall be made by the president and the clerk, under the direction of the township land commissioners or trustees of schools, with the lessee or lessees, shall be in writing, shall be filed with the records of the board, and a copy shall be transmitted to the county superintendent. In case of default in the payment of rent the township land commissioners or trustees shall at once proceed to collect it as may be provided by law for the collection of rents by landlords. No lease under the provisions of this Act shall be for a longer period than 5 years except when lands are leased for the purpose of having permanent improvements made thereon, as in cities and villages, and except when leased for oil and gas development and drilling. The township land commissioners or trustees of schools which have title to any school real estate or lands, whether the lands or real estate are being used by any school district for school purposes or not, may lease such real estate or lands, or any part thereof, for drilling for oil and gas upon such terms as may be agreed upon. Where such a lease is made for drilling for oil and gas, the township land commissioners or trustees of schools may also enter into pooling agreements with the owners of adjacent lands so that the township land commissioners or trustees of schools will participate in royalties in proportion to their acreage ownership as to all oil produced from any of the lands in the pooling agreements. This section does not apply to cities having a population of over one hundred thousand inhabitants.

The township land commissioners or trustees of schools of any township may sell and convey to any railroad company a right of way across any school lands of the township, and necessary depot grounds.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-3.

§ 105 ILCS 5/15-4: Repealed by P.A. 89-159, § 15, effective January 1, 1996.

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§ 105 ILCS 5/15-5. Penalty for trespass

Sec. 15-5. Penalty for trespass. Every trespasser upon common school lands is guilty of a petty offense and shall be fined 3 times the amount of the injury occasioned by the trespass.

(Source: P.A. 77-2267.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-5.

§ 105 ILCS 5/15-6. Disposition of penalties and fines

Sec. 15-6. Disposition of penalties and fines. All penalties and fines collected under the provisions of Sections 15-4 and 15-5 [105 ILCS 5/15-4 and 5/15-5] shall be paid to the school treasurer and added to the principal of the township fund.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-6.

Section 15-4, referred to above, has been repealed.

CASE NOTES

Liability of Costs

A judgment was properly entered against a non-high school district for costs in an action where a high school district obtained a judgment against the non-high school district for the balance of tuition for students attending high school since the statutory exemption from liability for costs is applicable only to unsuccessful plaintiff school corporations or school officers. Downers Grove Community High Sch. Dist. v. Board of Educ., 329 Ill. App. 208, 67 N.E.2d 605 (2 Dist. 1946).

§ 105 ILCS 5/15-7. Sale of common school lands - Petition - Referendum

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Sec. 15-7. Sale of common school lands - Petition - Referendum. When the inhabitants of any township desire the sale of the common school lands thereof they shall present to the county superintendent of the county in which the school lands of the township, or the greater part thereof lie, a petition for their sale. The petition shall be signed by at least two-thirds of the voters of the township in the presence of at least 2 adult citizens of the township, after the meaning and purpose thereof have been explained, and an affidavit must be affixed thereto by the citizens witnessing the signing, which affidavit shall state the number of inhabitants of the township 18 years of age and over, and the petition so verified shall be delivered to the regional superintendent for his action thereon. In townships having a population of more than 10,000 inhabitants, the petition shall be signed by at least 1/10 of the voters thereof and be delivered to the regional superintendent. Upon the filing of any such petition with the regional superintendent he shall treat the petition in the manner provided by the general election law, and shall certify the proposition to the proper election authorities for submission to the voters of the township at a regular scheduled election the proposition to sell common school lands of the township. In addition to the requirements of the general election law the notice may be in the following form:

REFERENDUM FOR SALE OF COMMON SCHOOL LANDS

Notice is hereby given that on ..... the ..... day of ....., 1 ....., a referendum will be held at ..... for the purpose of voting "for" or "against" the proposition to sell common school lands of the township, to-wit: (here insert description of the lands). The polls will be opened at ..... and closed at ..... o'clock, ... M.

Regional Superintendent

If two-thirds of the votes upon the proposition are in favor of the sale, the county superintendent shall act thereon. No section shall be sold in any township containing fewer than 200 inhabitants. Common school lands in fractional townships may be sold when the number of acres are in, or above, a ratio of 200 to 640 but not before, provided, that where the lands sought to be sold are swamp or overflow lands, and are located in a township containing less than 200 inhabitants, a petition signed by at least two-thirds of the voters in the township shall be sufficient to cause the regional superintendent to act thereon. All other proceedings shall be the same as provided in this section. This section does not prohibit the transfer of school land belonging to a city in trust for the use of schools under the provisions of "An Act in relation to the transfer of real estate owned by municipalities", approved July 2, 1925, as amended [50 ILCS 605/0.01 et seq.], when the board of education of a city having a population exceeding 100,000 inhabitants desires to convey such land to the city comprising the school district of such board of education; and in case of such transfer the limitations as to the size of the lot or tract of land that may be conveyed contained in Sections 15-9 through 15-12 [105 ILCS 5/15-9 through 105 ILCS 5/15-12], shall not apply.

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(Source: P.A. 81-1489.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-7.

§ 105 ILCS 5/15-8. Fractional townships united to adjacent township

Sec. 15-8. Fractional townships united to adjacent township. Any fractional township not having the requisite number of inhabitants to petition for the sale of school lands, which has not heretofore been united with any township for school purposes, and which does not contain a sufficient number of inhabitants to maintain a free school, is hereby attached for school purposes to the adjacent congressional township having the longest territorial line bordering on such fractional township, and all the provisions of this Article shall apply to such united townships the same as though they were 1 township.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-8.

§ 105 ILCS 5/15-9. Notice to trustees - Subdivision of land - Plat, roads, streets and alleys

Sec. 15-9. Notice to trustees - Subdivision of land - Plat, roads, streets and alleys. When the petition and affidavits are delivered to the county superintendent, and the requisite number of votes are in favor of a sale, he shall notify the trustees of the township or township land commissioners, who shall immediately divide the land into tracts or lots of such form and quantity as will produce the largest sum of money, and cause a plat thereof to be made with each lot numbered and defined so that its boundaries may be forever ascertained.

In subdividing common school lands, no lot shall contain more than 80 acres and the division may be into town or village lots, with roads, streets or alleys between and through them. All such divisions are hereby declared legal and all such roads, streets and alleys are declared to be public highways.

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(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-9.

§ 105 ILCS 5/15-10. Value fixed - Certification of plat - Plat and certificate to govern

Sec. 15-10. Value fixed - Certification of plat - Plat and certificate to govern. After the school lands have been subdivided and platted, the trustees of schools or township land commissioners shall fix the value of each lot and certify to the correctness of the plat, stating in the certificate the value of each lot and describing it so that it may be identified. The plat and certificate shall be delivered to the county superintendent and shall govern him in advertising and selling such lands.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-10.

§ 105 ILCS 5/15-11. Notice of sale

Sec. 15-11. Notice of sale. Upon receipt of the plat and certificate of valuation the county superintendent shall advertise the sale of such land in lots, as divided and platted, by publishing notice thereof once each week for 3 successive weeks prior to the date of the sale in a newspaper published in the county describing the land and stating the time, place and terms of the sale, and shall be in the following form:

NOTICE OF SALE

Notice is hereby given that on the ..... day of ..... 1 ....., between the hours of 10:00 A.M. and 6:00 P.M., the undersigned superintendent of schools of ..... county, will sell at public sale to the highest bidder, at the ..... door of the court house in ..... (or on the premises), the following described real estate, the same being school lands of township No. ..... range No. ....., as divided, and platted by the (township land commissioners) (trustees of schools of said township), to-wit: (here insert full and complete description of said premises). Said lands will be sold for cash in hand, with the privilege to any purchaser of borrowing from the undersigned the whole or part of the payment of his bid, for not less than 1

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nor more than 5 years, upon his paying interest and giving security as required in case of a loan obtained from the township fund.

Dated this ..... day of ..... 1 .....

A ..... B .....

County Superintendent

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-11.

§ 105 ILCS 5/15-12. Conduct of sale

Sec. 15-12. Conduct of sale. Upon the day of sale, the county superintendent shall make sales by beginning at the lowest numbered lot and proceeding regularly to the highest numbered until they are all sold or offered. No lot shall be sold for less than its valuation. The sale may continue from day to day. Each lot shall be sold separately and offered long enough to enable any person present to bid who so desires.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-12.

§ 105 ILCS 5/15-13. Payment of purchase price

Sec. 15-13. Payment of purchase price. At the close of each day's sale the purchasers shall pay or secure the payment of the purchase money. In case of a failure to do so by 10 a. m. the succeeding day, the lot purchased shall again be offered at public sale, on the terms as before. Regardless of whether or not the sale is made the former purchaser shall be required to pay the difference between his bid and the valuation of the lot, and if he fails to make such payment, the county superintendent may forthwith institute a civil action in his name, as superintendent, for the use of the inhabitants of the township where the land lies, for the required sum; and upon making proof, shall be entitled to judgment, with costs of suit which, when collected, shall be added to the principal of the township

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fund.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-13.

§ 105 ILCS 5/15-14. Unsold lands subject to sale thereafter

Sec. 15-14. Unsold lands subject to sale thereafter. All lands not sold at public sale, as herein provided for, shall be subject to sale at any time hereafter, at the valuation as provided in Section 15-10 [105 ILCS 5/15-10] and the county superintendents shall, if possible, sell all such lands at private sale, upon the terms at which they were offered at public sale.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-14.

§ 105 ILCS 5/15-15. Valuation of unsold land

Sec. 15-15. Valuation of unsold land. Where common school lands have been valued under Section 15-10 [105 ILCS 5/15-10] and have remained unsold for 2 years after having been offered for sale in conformity to this Article, the trustees of schools or township land commissioners where the lands are situated may, without any petition having been filed, vacate the valuation thereof by an order entered in Book A of the county superintendent, and make a new valuation. They shall make a new valuation in the same manner as the former, and shall deliver to the county superintendent a plat of the land at such new valuation with the order of vacation, whereupon the county superintendent shall offer the land for sale as if no former valuation has been made.

(Source: Laws 1961, p. 31.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 15-15.

§ 105 ILCS 5/15-16. Certificate of purchase

Sec. 15-16. Certificate of purchase. Upon the completion of every sale the county superintendent shall deliver to the purchaser a certificate of purchase including the name and residence of the purchaser and the price and description of the land.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-16.

§ 105 ILCS 5/15-17. Patents

Sec. 15-17. Patents. Every purchaser of common school lands shall be entitled to a patent from the State, conveying and assuring the title. Patents shall be issued by the Secretary of State from returns made to him by the county superintendent, township land commissioners or county board of school trustees as the case may be. They shall contain a description of the land granted and shall be in the name of and signed by the Governor, with the great seal of State affixed thereto by the Secretary of State, and shall operate to vest in the purchaser a title in fee simple. When patents are so executed the Secretary of State shall note on the list of sales the date of each patent in such manner as to perpetuate the evidence of its date and delivery and thereupon transmit it to the county superintendent of the proper county, to be by him delivered to the patentee, his heirs, or assigns, upon the return of the original certificate of purchase, which certificate, when returned, shall be filed and preserved by the county superintendent. All such patents for school lands, or certified copies thereof from any record legally made, shall, after 10 years from the date of the patent, and such sale having been acquiesced in for 10 years by the inhabitants of the township in which the land so conveyed is situated, be conclusive evidence as to the legality of the sale, and that the title to such land was, at the date of patent, legally vested in the patentee.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-17.

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§ 105 ILCS 5/15-18. Copies of lost certificates or patents

Sec. 15-18. Copies of lost certificates or patents. Purchasers of common school lands, and their heirs or assigns, may obtain certified copies or certificates of purchase and patents upon filing an affidavit with the county superintendent in respect to certificates and with the Secretary of State in respect to patents, proving the loss or destruction of the originals, which copies shall have the effect of originals.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-18.

§ 105 ILCS 5/15-19. Dedication of streets and highways

Sec. 15-19. Dedication of streets and highways. The trustees of schools or township land commissioners may dedicate to public use for street and highway purposes as much of the unimproved common school lands as may be necessary to open or extend any street or highway which may be ordered by the municipal authorities to be opened or extended, if they are of the opinion that the benefit to accrue from the opening or extending of such street or highway will compensate for the strip so dedicated. It is unlawful for any street or other railroad company to lay tracks on any strip of the common school lands so dedicated, or use them or any part thereof for railroad or street railroad purposes, except upon the purchase or lease thereof from the proper authorities or upon payment to the school fund of the township of the value of such use or land the same as if no street or highway had been laid out thereon, to be determined by condemnation proceedings. This section does not affect existing leases or contracts for the lease or purchase of common school lands.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-19.

Practice Guides and Treatises.

Illinois Jurisprudence, Property § 14:22 Authority to dedicate highways.

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§ 105 ILCS 5/15-20. Books to be kept

Sec. 15-20. Books to be kept. The county superintendent shall keep 3 books, to be known and designated by the letters A, B, and C. In book A he shall record at length all petitions presented to him for the sale of common school lands, the plats and certificates of valuation made by or under the direction of the trustees of schools, or the township land commissioners, and the affidavits in relation to the same. In book B he shall keep an account of all sales of common school lands, including the date of sale, name of purchaser, description of land sold and the selling price. In book C he shall keep a regular account of all moneys received or paid out; from whom received, on what account, showing whether it is principal or interest, the rate of interest, and a description of the real estate taken as security; if paid out, to whom, when, and on what account, the amount of the sales and the account of each township fund to be kept separate.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-20.

§ 105 ILCS 5/15-21. Statements to be presented

Sec. 15-21. Statements to be presented. At the regular meeting of the county board in each year the county superintendent shall present, first, a statement showing the sales of school lands made subsequent to the first regular term of the previous year, which shall be a copy of the sale book (book B); second, a statement of the amount of money received, paid, and in hand, belonging to each township or fund under his control, the statement of each fund to be separate; third, a statement copied from his loan book (book C), showing all the facts in regard to loans which are required to be stated in the loan book.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-21.

§ 105 ILCS 5/15-22. Record of report and statement

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Sec. 15-22. Record of report and statement. The county clerk shall record and preserve the report of the county superintendent made to the county board at its first regular meeting in each year relating to the sale of school lands, the amount of money received, paid, loaned out and on hand, belonging to each township fund in his control, and the statement copied from the loan book of such county superintendent, showing all the facts in regard to loans which are required to be stated in the loan book.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-22.

§ 105 ILCS 5/15-23. Common school lands

Sec. 15-23. Common school lands. The provisions of Sections 15-1 through 15-19, of this Article [105 ILCS 5/15-1 through 105 ILCS 5/15-19] shall have no application to the sale of any of the common school lands of any township to a school district located within the township for use as a schoolhouse site, and the trustees of schools or township land commissioners in any township in which Section 16 or land granted in lieu thereof remains unsold may sell to the governing body of any such school district any tract of said common school lands where such tract has been legally selected as a schoolhouse site for said district.

Where any tract of the common school lands of the township has been legally selected as a schoolhouse site by the voters of any school district within the township, the governing body of such school district may adopt a resolution reciting the fact that the voters have legally selected such tract as a schoolhouse site, describing it, setting forth the date of the election and the fact that a majority of the voters voting at the election selected the said tract as a schoolhouse site, and requesting the trustees of schools, or township land commissioners upon payment to them of not to exceed the sum authorized by the voters to be paid for any such tract, to execute an instrument indicating that said trustees of schools or township land commissioners of the township hold title to said tract for the use and benefit of such school district. A certified copy of such resolution shall be filed with the Clerk of the trustees of schools or township land commissioners, and it shall be the duty of said trustees of schools or township land commissioners of such township upon the filing of a certified copy of such resolution with the Clerk of the trustees of schools, or township land commissioners to execute an instrument of conveyance or an instrument of declaration, indicating that they hold title to such property for the use and benefit of said school district, which shall be filed of record in the office of the recorder. Notwithstanding the foregoing provisions of this Section, if the school district is a school district located in a Class I county school unit, or if the school district is a school district that has withdrawn from the jurisdiction and authority of the trustees of schools of a

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township and the township treasurer under subsection (b) of Section 5-1 [105 ILCS 5/5-1], the resolution of the school board shall request the trustees of schools, township land commissioners, regional board of school trustees, or other school officials having title to the property, upon payment to them of not to exceed the sum authorized by the voters, to deliver to the school board a deed, executed by their president and their clerk or secretary, conveying good legal title to the property selected as a schoolhouse site to the school board of the school district.

(Source: P.A. 83-358; 88-155, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-23.

Effect of Amendments. The 1993 amendment by P.A. 88-155, effective January 1, 1994, added the last sentence of the second paragraph.

§ 105 ILCS 5/15-24. Management of permanent funds

Sec. 15-24. Management of permanent funds. The common school lands and township loanable funds in Class I counties shall be managed and operated by township land commissioners who shall receive no salary. In counties of fewer than 220,000 inhabitants, there shall be 3 land commissioners, who shall be elected in the same manner as provided for the election of school directors, who shall serve the same terms as school directors and shall be organized in the same manner as school directors. In counties having 220,000 inhabitants or more but fewer than 2,000,000 inhabitants, the members of the regional board of school trustees shall be the township land commissioners, except that township land commissioners elected in any such county prior to the effective date of this amendatory Act of 1963 shall continue to serve until the end of the term for which they were elected. The township land commissioners shall hold title to, manage and operate all common school lands and township loanable funds of such township and receive the rents, issues and profits therefrom. Elections shall be conducted in accordance with the general election law. The land commissioners shall appoint a treasurer for a term of 2 years and fix his salary which shall not be changed during such term. The proceeds of the rents, issues and profits from such land and fund shall be promptly deposited with him upon its receipt by the land commissioners. After the payment of the necessary expenses incidental to the operation of such land and fund by orders drawn on the treasurer and signed by the president and secretary of the land commissioners, including actual expenses of the land commissioners, the net income from such land and fund including accumulated income undistributed at the effective date of this Act shall, upon an order drawn by such treasurer and signed by the president and secretary of such township land commissioners be distributed annually on or before February 1 as provided

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in this Act.

(Source: P.A. 86-225.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-24.

§ 105 ILCS 5/15-25. Reports of treasurer

Sec. 15-25. Reports of treasurer. The treasurer of the township land commissioners shall with respect to the common school lands and township loanable fund held by them make the reports to them required to be made by township treasurers to township school trustees, give bond as required of township treasurers, and perform the duties and exercise the powers of township treasurers.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-25.

§ 105 ILCS 5/15-26. Liquidation of permanent fund

Sec. 15-26. Liquidation of permanent fund. Upon a petition signed by at least one hundred voters of any school township filed with the regional superintendent of schools asking that the permanent funds of such township be liquidated and distributed to the schools of said township, said regional superintendent of schools shall certify the proposition to the proper election authorities for submission to the electorate at a regular scheduled election in said township the proposition to liquidate such permanent funds and distribute the proceeds thereof to the schools of the said school township. Such funds may be deposited by the district either in the educational or operations and maintenance fund, or in both in such proportion as the school board shall determine. If the said proposition receives a majority of the votes cast upon such proposition the township land commissioners shall proceed to sell the lands included in the assets of the permanent fund and liquidate the permanent funds of said school township and distribute same in the manner provided in this Article; if the average income from the permanent funds of any school township for a period of three years amounts to less than $2500 the regional board of school trustees or the township land commissioners shall proceed forthwith to liquidate

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such funds and sell the lands included in the assets of the permanent fund without any petition or election.

The expenses of liquidation shall be paid out of the moneys obtained from the liquidation. Upon completion of every sale of lands the township land commissioners or the regional board of school trustees, as the case may be, shall deliver to the purchaser a certificate of purchase including the name and residence of the purchaser and the price and description of the land.

(Source: P.A. 86-970.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-26.

§ 105 ILCS 5/15-27. Audit

Sec. 15-27. Audit. In the month of July of each year and at such other times as they may think necessary the township land commissioners shall cause an audit to be made by a public accountant of all funds under their jurisdiction. A certified copy of such annual audit shall be filed with the regional superintendent of schools and the State Board of Education by October 15 each year.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-27.

§ 105 ILCS 5/15-28. Township land commissioners successors to trustees of schools

Sec. 15-28. Township land commissioners successors to trustees of schools. The township land commissioners elected under the provisions of this Article shall be the successors to the trustees of schools elected under "An Act in relation to the establishment, operation and maintenance of public schools, providing for the transportation of and scholarships in institutions of higher learning for students of all schools, and to repeal certain acts herein named", approved March 18, 1961, as amended with respect to the common school lands and township loanable fund of the township. All rights of property of the common school lands and causes of action existing or vested in

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the trustees of schools elected under such Act as amended shall vest in the township land commissioners as successors in as complete a manner as they were vested in the trustees of schools elected under such Act as amended. All records, moneys, securities and other assets of the common school lands of the several school townships in the county and any obligations owing to such school townships shall be transferred by the several boards of township trustees to the township land commissioners. Such township land commissioners are empowered to receive such records and assets. All assets so received shall be credited to the respective school township from which they were received.

The township land commissioners shall designate a depositary for their treasurer in the manner provided in Section 8-7 [105 ILCS 5/8-7] of this Act insofar as applicable.

(Source: Laws 1967, p. 509.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-28.

§ 105 ILCS 5/15-29. Bond

Sec. 15-29. Bond. It shall be the duty of the township land commissioners to examine the bond of its treasurer and if found to be in proper form in the proper amount with good and sufficient securities to approve same. If at any time the said township land commissioners deem it necessary it shall require its treasurer to execute a new bond but the execution of such new bond shall not affect the old bond or the liabilities of the sureties thereon.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-29.

§ 105 ILCS 5/15-30. Liability of township land commissioners

Sec. 15-30. Liability of township land commissioners. If the township land commissioners fail to observe the provisions of this Act in reference to the distribution of funds and property, they shall be individually and jointly liable to the district interested in a civil action to the full amount of the damages sustained by the district aggrieved.

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(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-30.

§ 105 ILCS 5/15-31. Disposition of funds upon liquidation of permanent funds

Sec. 15-31. Disposition of funds upon liquidation of permanent funds. Any funds received as the result of the liquidation of the permanent funds belonging to any school township shall after the payment of the necessary expenses connected therewith be apportioned and distributed to the school districts or parts of districts of such township - including, in the case of the liquidation of the permanent funds belonging to any school township in a Class II county school unit, any school district located in such township which theretofore withdrew from the jurisdiction and authority of the trustees of schools of that township and from the jurisdiction and authority of the township treasurer as provided in subsection (b) of Section 5-1 [105 ILCS 5/5-1] - in which schools have been kept as required by law during the preceding year ending June 30 according to the number of pupils in average daily attendance in grades one to eight, each inclusive, and upon the completion of such liquidation and distribution and the submission of all reports required by law the office of township land commissioners and their treasurer in such township shall terminate.

(Source: P.A. 86-1441; 94-1105, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 15-31.

Effect of Amendments. The 2007 amendment by P.A. 94-1105, effective June 1, 2007, deleted "as reported in schedules prepared under Section 24-19" after "grades one to eight inclusive" near the end of the section.

CASE NOTES

Qualifying Districts

The provisions in this section requiring distribution of funds received from the liquidation of permanent funds belonging to a school township to the school districts according to the number of pupils in average daily attendance in grades one to eight, is limited to the schools of such class, and appellant high school district comprised of any grades 9 to 12 did not qualify for

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distribution of such funds. People ex rel. Board of Educ. v. Davis, 13 Ill. App. 2d 419, 142 N.E.2d 749 (2 Dist. 1957).

Article 16.

Gifts - Use of Sites - Playgrounds

§ 105 ILCS 5/16-1. Gifts - Vested in school board

Sec. 16-1. Gifts - Vested in school board. Whenever any grant, gift, donation or legacy of real or personal property has been or shall be, directly or indirectly, made to or for the use of any public school district or attendance center and the deed, will or other instrument by which such grant, gift, donation, or legacy is made declares in terms or in substance that such property shall be held, managed, improved and invested or otherwise disposed of for the use and benefit of the public schools in such district or an individual attendance center, the title to such property shall be vested in the school board of such district for use in whatever manner the board shall choose and shall be held, managed, improved, invested or disposed of by such board in such manner as the board, in its discretion, sees fit; provided, however, when the person making such a grant, gift, donation, or legacy expresses in the instrument by which it was made an intention that it shall be used for a certain purpose, the school board shall promote and carry into effect such intention until the board determines in its discretion that it is no longer possible, practical or prudent to do so.

This Section does not apply in any case where the deed, will or other instrument effectively vests the title and control of such property in a trustee or grantee named in such instrument unless the trustee or grantee is incapable of taking or administering the trust, or refuses or fails to accept the trust, in which case the title and control thereof shall vest as provided in the preceding paragraph.

This Section does not validate any legacy which but for this enactment would have been invalid.

(Source: P.A. 86-171.)

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This section was Ill.Rev.Stat., Ch. 122, Para. 16-1.

CASE NOTES

Analysis

Gift Trust Upheld
Intent of Donor
- Change in Use

Gift Trust Upheld

Where evidence showed that after the creation of a new school district that included old school district that had been benefited by testator's trust, it afforded the inhabitants of the old district the same educational advantages they had enjoyed in the past and served substantially the same people and became the lawful owner of all the property and of any interest therein formerly owned by the former district, including the vested interest in the trust under the will of testator. Community Unit Sch. Dist. No. 4 v. Booth, 1 Ill. 2d 545, 116 N.E.2d 161 (1953).

Intent of Donor

- Change in Use

The discontinuance of regular classroom instruction at a school and the proposed use of the school for other public school purposes did not violate this section, because such use promoted the intention of the donor of school property. Wauconda Community Unit Sch. Dist. v. LaSalle Nat'l Bank, 143 Ill. App. 3d 52, 97 Ill. Dec. 336, 492 N.E.2d 995 (2 Dist. 1986).

§ 105 ILCS 5/16-2. Joint use of site and building

Sec. 16-2. Joint use of site and building. Whenever the school boards of two or more school districts have agreed upon the joint use of any school site and compensation to be paid therefor, and any such site has been selected in the manner required by law, it is lawful for such districts to use the same school site and after payment of the compensation, the trustees of schools of the township or regional board of school trustees, as the case may be, by proper instrument in writing shall declare that title to such site is held for the joint use of such districts according to the terms of such agreement, and such districts shall be further authorized to construct, maintain and use a building jointly for the benefit of the inhabitants thereof. Notwithstanding any other provisions of this Section:

(1) If legal title to the selected site is held in the name of the school board of a school district that has agreed to the joint use of the site with any other school districts, and if those other school districts are also districts whose school boards, under subsection (a) of

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Section 7-28 [105 ILCS 5/7-28], are to hold legal title to school buildings and school sites of the district, then upon the execution of the agreement and payment of the compensation in accordance with the terms of the agreement the school boards of the districts shall be deemed to hold legal title to the site as tenants in common, and the required deed or deeds of conveyance shall be executed and delivered by the president and secretary or clerk of the school boards to reflect that legal title to the selected site is held in that manner.

(2) If one more but not all of the school boards that are party to the agreement are school boards that, under subsection (a) of Section 7-28 [105 ILCS 5/7-28], are to hold legal title to the school buildings and school sites of the district, the interest in the selected site of each school board that is to hold legal title to the school buildings and school sites of the district shall be that of a tenant in common; and the required deed or deeds of conveyance shall be executed and delivered by the president and secretary or clerk of the trustees of schools of the township, regional board of school trustees, township land commissioners, or school boards, as the case may be, to reflect that tenancy in common interest of the appropriate school board or school boards with the trustees of schools of the township, regional board of school trustees or township land commissioners, as the case may be, in the legal title to the selected site.

(Source: P.A. 82-20; 88-155, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 16-2.

Effect of Amendments. The 1993 amendment by P.A. 88-155, effective January 1, 1994, added the last line of the introductory paragraph and subsections (1) and (2).

§ 105 ILCS 5/16-3. Transfer of site to purchasing district

Sec. 16-3. Transfer of site to purchasing district. Whenever the school board of any school district determines that any schoolhouse site with or without a building thereon is of no further use to the district and agrees with the school board of any other school district, within or adjacent to the boundaries of which the site is situated, upon the sale thereof to such district and the price to be paid therefor, and such sites are selected by the purchasing district in the manner prescribed by law, after the payment of the compensation the trustees of schools of the township, regional board of school trustees, township land commissioners, or school board having legal title to the site shall, by proper deed of conveyance or instrument in writing, convey legal title to, or transfer the use of the site to, the purchasing district in accordance with applicable provisions of this Code.

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(Source: P.A. 81-1541; 88-155, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 16-3.

Effect of Amendments. The 1993 amendment by P.A. 88-155, effective January 1, 1994, substituted "regional board" for "county board", deleted "or" preceding "township land commissioners", substituted "or school board having legal title to the site" for "as the case may be", inserted "deed of conveyance or", inserted "convey legal title to, or", added at the end "in accordance with applicable provisions of this Code" and made other stylistic changes.

§ 105 ILCS 5/16-4. Building jointly used - Sale of interest - Additions and enlargements

Sec. 16-4. Building jointly used - Sale of interest - Additions and enlargements. Whenever two school districts situated adjacent to one another or comprising the same or partly the same territory have a school site with buildings thereon, owned by one of the districts but used under agreement by both, the district owning the site and buildings may sell to the other, and the other district has the right to purchase, an equal or any other interest in the site and buildings under an agreement between the two; and upon the execution of the agreement and the acquiring the title to the interest by the purchasing district, the two districts shall be deemed to hold title to the premises as tenants in common; and thereafter the school districts, or either of them, may, under appropriate terms in the first agreement, or under a new agreement entered into by them, add to and enlarge any parts of the buildings, if deemed necessary for the uses of the districts or either of them, and by such sole or mutual expenditure of funds as may be nominated by the terms of the agreement between the districts, and the expenditures shall in no way change the individual interests of the districts in the premises unless otherwise expressly so provided by the terms of the agreement.

(Source: P.A. 81-1541.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 16-4.

§ 105 ILCS 5/16-5. Agreement for joint use of property

Sec. 16-5. Agreement for joint use of property. Prior to the third Saturday of August of any year the school board of any district which does not by itself maintain a high school

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may enter into an agreement with any township high school board of education or the school board of any other high school district, by which agreement grade school or high school property, real or personal, owned by or held for the use of either district within territory included in both districts may be used jointly for school purposes by both such districts in the manner provided in the agreement. If such school district has a population of 1000 or more, and if legal title to any real property affected by the agreement is not held by the school board of a school district that is party to the agreement, the agreement shall be invalid unless prior to such third Saturday of August the written consent of the trustees of schools of the township or townships, regional board of school trustees, or township land commissioners holding legal title to the property affected by the agreement is first obtained.

(Source: Laws 1961, p. 31; P.A. 88-155, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 16-5.

Effect of Amendments. The 1993 amendment by P.A. 88-155, effective January 1, 1994, in the first sentence inserted "or held for the use of"; and in the second sentence inserted "and if legal title to any real property affected by the agreement is not held by the school board of a school district that is party to the agreement", substituted "regional board" for "or county board", substituted "holding legal title to the" for "as the case may be, wherein such" and deleted "is located" preceding "is first obtained".

§ 105 ILCS 5/16-6. Compensation determined under eminent domain

Sec. 16-6. Compensation determined under eminent domain. Whenever any lot or parcel of land is needed by any university, college, township high school or other educational institution established and supported by this State or by a township therein, or by a school district, as a site for a building or for any educational purpose, including sites purchased under authority of Section 10-22.31b [105 ILCS 5/10-22.31b], and compensation for the lot or parcel of land cannot be agreed upon between the owners thereof and the trustees, board of education, or other corporate authority of the educational institution, or school district, the corporate authority of the educational institution or school district may have the compensation determined in the manner provided by law for the exercise of the right of eminent domain. In Class I counties and in any school district which is situated in a Class II county school unit but which no longer is subject to the jurisdiction and authority of a township treasurer or trustees of schools of a township because the district has withdrawn from the jurisdiction and authority of the township treasurer and trustees of schools of the township or because those offices have been abolished as provided in subsection (b) or (c) of Section 5-1 [105 ILCS 5/5-1], the school board shall engage counsel, pay all expenses and institute suit without any authorization by the regional board of school trustees; and the proceedings shall be in the name of the school board for

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the use of the school district. But no tract of land outside the limits of any incorporated city or village and within 40 rods of the dwelling of the owner of the land shall be taken by the board of directors created in Section 10-1 of this Act [105 ILCS 5/10-1] without the owner's consent: provided, however, that a tract of land outside the limits of any incorporated city or village lying not less than 200 feet from the dwelling of the owner of the land which adjoins and is adjacent to a school site being used for school purposes may be taken by the board in the manner provided by law for the exercise of the right of eminent domain for the purpose of enlarging such school site for educational and recreational purposes.

(Source: P.A. 86-1441; 87-473; 88-155, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 16-6.

Effect of Amendments. The 1993 amendment by P.A. 88-155, effective January 1, 1994, in the second sentence substituted "school board" for "regional board of school trustees".

CASE NOTES

Analysis

Contract for Sale
Exclusion
Necessary
- Construction
- Determination
Power to Purchase
Restriction
- Application
Right to Condemnation
Townships

Contract for Sale

Petition for condemnation filed by school district was properly dismissed by trial court where there was a valid, existing and subsisting agreement for purchase at the time the suit was filed. Trustees of Schs. v. Clippinger, 404 Ill. 202, 88 N.E.2d 451 (1949).

Exclusion

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Evidence of the condemnor's offer to buy was properly excluded. City of Waukegan v. Stanczak, 6 Ill. 2d 594, 129 N.E.2d 751 (1955).

Necessary

- Construction

The word "necessary," is construed to mean expedient, reasonably convenient, or useful to the public, and does not mean indispensable or an absolute necessity. County Bd. of Sch. Trustees v. Batchelder, 7 Ill. 2d 178, 130 N.E.2d 175 (1955).

- Determination

A determination of the question of necessity is left largely to the corporation or municipality, and its determination will be rejected only for an abuse of the power. County Bd. of Sch. Trustees v. Batchelder, 7 Ill. 2d 178, 130 N.E.2d 175 (1955).

Power to Purchase

District was operating under its special charter power to purchase buildings and buy sites, exempt from the site-selection-referendum provisions, and empowered to secure a selected site by condemnation. City of Waukegan v. Stanczak, 6 Ill. 2d 594, 129 N.E.2d 751 (1955).

Restriction

- Application

The restriction upon the power of eminent domain has not been made applicable to school districts with a population of more than 1000. Trustees of Schs. v. Sons, 27 Ill. 2d 63, 187 N.E.2d 673 (1963).

Right to Condemnation

As a preliminary to submitting to the jury the question of compensation, the court must determine whether the right of condemnation exists in the particular case. County Bd. of Sch. Trustees v. Batchelder, 7 Ill. 2d 178, 130 N.E.2d 175 (1955).

Townships

The fact of a school district being in two townships did not create a joint ownership, as between the trustees of the two townships, of the school property of the district. The legal title was in that board of trustees of the township within which the property was located, and where the school site was entirely within one township, when acquired, the title would vest in the trustees of that township for the benefit of the school district to which the property belonged, and the trustees of another township in the district had no interest in the proceeding. Trustees of Schs. v. Griffith, 263 Ill. 550, 105 N.E. 760 (1914).

Practice Guides and Treatises.

Eminent Domain Practice (Illinois) § 2.44 Name in Which the Action Is Brought (IICLE).

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§ 105 ILCS 5/16-7. Playgrounds, recreation grounds and athletic fields

Sec. 16-7. Playgrounds, recreation grounds and athletic fields. Any school district organized and existing under the general law or by special charter having a population of not more than 500,000 inhabitants may acquire real estate by gift, donation, legacy, purchase or otherwise and hold it for the purpose of establishing playgrounds, recreation grounds and athletic fields, and may equip, operate and maintain such playgrounds, recreation grounds and athletic fields, the cost of such acquiring and equipping to be paid either from the proceeds of bonds issued for that purpose or out of the operations and maintenance fund, and the cost of such maintaining and operating to be paid from the educational fund, of the district. Such real estate need not be contiguous to any other school property or real estate owned by the school district.

(Source: P.A. 86-970.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 16-7.

CASE NOTES

Construction of Stadium

Acquisition and equipment of property for playgrounds, recreation grounds and athletic fields are to be financed out of the building funds of school districts, and the subsequent cost of maintenance out of educational funds and the issuance of bonds to pay for the construction of an athletic field is not prohibited since bonds may be issued for the purpose of purchasing or improving school sites, and adequate authority exists for the issuance and sale of bonds to improve a school site by the construction of athletic facilities and in particular, a stadium. Moyer v. Board of Educ., 391 Ill. 156, 62 N.E.2d 802 (1945).

§ 105 ILCS 5/16-8. Supervision - Personnel - Police control

Sec. 16-8. Supervision - Personnel - Police control. The school board of any such school district acquiring real estate and equipping, operating and maintaining it for the purposes provided in Section 16-7 [105 ILCS 5/16-7] shall have supervision over such playgrounds, recreation grounds or athletic fields, may employ play leaders, playground directors, supervisors, recreation superintendents or athletic directors therefor, and may take such steps to provide for the protection, sanitation, care and management thereof as it deems appropriate.

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If real estate and improvements thereon, including buildings, parking lots, other improvements and equipment so acquired lies partly or wholly outside and within 1 mile of the corporate limits of any city, village or incorporated town situated in such district, such city, village or incorporated town may exercise police control and protection over such real estate and improvements thereon, including buildings, parking lots, other improvements and equipment in the same manner and to the same extent that such city, village or incorporated town would exercise police control and protection thereover if such real estate and improvements thereon, including buildings, parking lots, other improvements and equipment were situated within the corporate limits thereof.

(Source: P.A. 86-1304.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 16-8.

CASE NOTES

Jury Instruction

- Held Proper

A trial court did not err in giving an instruction which included this section in the instruction. Lynch ex rel. Lynch v. Board of Educ., 72 Ill. App. 3d 317, 28 Ill. Dec. 359, 390 N.E.2d 526 (5 Dist. 1979), aff'd, 82 Ill. 2d 415, 45 Ill. Dec. 96, 412 N.E.2d 447 (1980).

OPINIONS OF ATTORNEY GENERAL

Analysis

Jurisdiction
- Sheriff
Police Protection
- Municipality Liability
- Provision

Jurisdiction

- Sheriff

Under this section both the sheriff and a municipality situated within the school district have jurisdiction over school district property located within one mile of the corporate limits of the

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municipality, and because the sheriff has jurisdiction over such property, he may exercise his powers as conservator of the peace to enforce the law and prevent and suppress breaches of the peace occurring on the property. 1985 Op. Atty. Gen. (85-021).

Police Protection

- Municipality Liability

A municipality, in providing police protection to school district property located within one mile of its corporate limits, is liable for the acts or omissions of members of its police force only to the extent it would be liable if the property were located within the municipality. 1985 Op. Atty. Gen. (85-021).

- Provision

Assuming that certain school district property lies outside of, but within one mile of the corporate limits of two municipalities situated within the school district, this section does not excuse either municipality from providing police protection to the property. 1985 Op. Atty. Gen. (85-021).

§ 105 ILCS 5/16-9. Transfers to municipal corporations

Sec. 16-9. Transfers to municipal corporations. School districts and boards of education may also transfer real estate in accordance with the provisions of "An Act in relation to the transfer of real estate owned by municipalities", approved July 2, 1925, as amended, title approved May 8, 1947 [50 ILCS 605/0.01 et seq.].

(Source: Laws 1967, p. 506.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 16-9.

§ 105 ILCS 5/16-10. Fire protection

Sec. 16-10. Fire protection. If the location of any public school building is not within any municipality or fire protection district, fire protection service for such building shall be provided by that municipality or fire protection district which maintains the facility for fire fighting equipment which lies closest to such building. The school district shall pay to the municipality or fire protection district, as the case may be, the reasonable cost of such service. If the respective corporate authorities of the school district and of the municipality or fire protection district are unable to agree on the cost of such service, the cost shall be determined by a civil action in the circuit court of the circuit in which the school building is located.

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(Source: P.A. 76-1790.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 16-10.

Cross References.

As to fire protection service for public school buildings situated outside a municipality, see 65 ILCS 5/11-6-2.

As to fire protection service for public school buildings situated outside a district, see 70 ILCS 705/11c.

Article 17.

Budgets - Tax Rates - Tax Warrants

§ 105 ILCS 5/17-1. Annual Budget

Sec. 17-1. Annual Budget. The board of education of each school district under 500,000 inhabitants shall, within or before the first quarter of each fiscal year, adopt and file with the State Board of Education an annual balanced budget which it deems necessary to defray all necessary expenses and liabilities of the district, and in such annual budget shall specify the objects and purposes of each item and amount needed for each object or purpose.

The budget shall be entered upon a School District Budget form prepared and provided by the State Board of Education and therein shall contain a statement of the cash on hand at the beginning of the fiscal year, an estimate of the cash expected to be received during such fiscal year from all sources, an estimate of the expenditures contemplated for such fiscal year, and a statement of the estimated cash expected to be on hand at the end of such year. The estimate of taxes to be received may be based upon the amount of actual cash receipts that may reasonably be expected by the district during such fiscal year, estimated from the experience of the district in prior years and with due regard for other circumstances that may substantially affect such receipts. Nothing in this Section shall be construed as requiring any district to change or preventing any district from changing from a cash basis of financing to a surplus or deficit basis of financing; or as requiring any district to change or preventing any district from changing its system of accounting.

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To the extent that a school district's budget is not balanced, the district shall also adopt and file with the State Board of Education a deficit reduction plan to balance the district's budget within 3 years. The deficit reduction plan must be filed at the same time as the budget, but the State Superintendent of Education may extend this deadline if the situation warrants.

If, as the result of an audit performed in compliance with Section 3-7 of this Code [105 ILCS 5/3-7], the resulting Annual Financial Report required to be submitted pursuant to Section 3-15.1 of this Code [105 ILCS 5/3-15.1] reflects a deficit as defined for purposes of the preceding paragraph, then the district shall, within 30 days after acceptance of such audit report, submit a deficit reduction plan.

The board of education of each district shall fix a fiscal year therefor. If the beginning of the fiscal year of a district is subsequent to the time that the tax levy due to be made in such fiscal year shall be made, then such annual budget shall be adopted prior to the time such tax levy shall be made. The failure by a board of education of any district to adopt an annual budget, or to comply in any respect with the provisions of this Section, shall not affect the validity of any tax levy of the district otherwise in conformity with the law. With respect to taxes levied either before, on, or after the effective date of this amendatory Act of the 91st General Assembly [P.A. 91-75], (i) a tax levy is made for the fiscal year in which the levy is due to be made regardless of which fiscal year the proceeds of the levy are expended or are intended to be expended, and (ii) except as otherwise provided by law, a board of education's adoption of an annual budget in conformity with this Section is not a prerequisite to the adoption of a valid tax levy and is not a limit on the amount of the levy.

Such budget shall be prepared in tentative form by some person or persons designated by the board, and in such tentative form shall be made conveniently available to public inspection for at least 30 days prior to final action thereon. At least 1 public hearing shall be held as to such budget prior to final action thereon. Notice of availability for public inspection and of such public hearing shall be given by publication in a newspaper published in such district, at least 30 days prior to the time of such hearing. If there is no newspaper published in such district, notice of such public hearing shall be given by posting notices thereof in 5 of the most public places in such district. It shall be the duty of the secretary of such board to make such tentative budget available to public inspection, and to arrange for such public hearing. The board may from time to time make transfers between the various items in any fund not exceeding in the aggregate 10% of the total of such fund as set forth in the budget. The board may from time to time amend such budget by the same procedure as is herein provided for its original adoption.

Beginning July 1, 1976, the board of education, or regional superintendent, or governing board responsible for the administration of a joint agreement shall, by September 1 of each fiscal year thereafter, adopt an annual budget for the joint agreement in the same manner and subject to the same requirements as are provided in this Section.

The State Board of Education shall exercise powers and duties relating to budgets as provided in Section 2-3.27 of this Code [105 ILCS 5/2-3.27] and shall require school districts to submit their annual budgets, deficit reduction plans, and other financial

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information, including revenue and expenditure reports and borrowing and interfund transfer plans, in such form and within the timelines designated by the State Board of Education.

By fiscal year 1982 all school districts shall use the Program Budget Accounting System.

In the case of a school district receiving emergency State financial assistance under Article 1B [105 ILCS 5/1B-1 et seq.], the school board shall also be subject to the requirements established under Article 1B with respect to the annual budget.

(Source: P.A. 86-954; 91-75, § 5; 94-234, § 5; 97-429, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-1.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 110.90, 575.700.

Effect of Amendments. The 1999 amendment by P.A. 91-75, effective July 9, 1999, in the third paragraph substituted "due to be made in" for "for" in the second sentence, and inserted the third and fourth sentences.

The 2005 amendment by P.A. 94-234, effective July 1, 2006, rewrote the section.

The 2011 amendment by P.A. 97-429, effective August 16, 2011, inserted the fourth paragraph.

CASE NOTES

Analysis

Applicability
Cash on Hand
Condition to Adoption
Delegation of Duties
- Collective Bargaining
Duty of School Board
Educational Fund
- Working Cash
Rate Void
Scope of Powers
Special Education
- Financial Responsibility
Tax Levies

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- Fiscal Year
Time to Levy
Timeliness
Validity of Levy

Applicability

The provisions of this section were controlling in the matter of the levying of the school taxes and the filing of the certificate with the county clerk. People ex rel. Carrithers v. Chicago & A. R.R., 306 Ill. 525, 138 N.E. 105 (1923).

Cash on Hand

The language used in this section explicitly permits cash to be on hand at the end of a fiscal year and, as a logical extension, for cash to be on hand at the beginning of the next year. People ex rel. Weber v. Commonwealth Edison Co., 287 Ill. App. 3d 784, 223 Ill. Dec. 159, 679 N.E.2d 103 (3 Dist. 1997).

Condition to Adoption

This section does not require a separate ordinance be passed as a condition to adopting a budget. People ex rel. Bonefeste v. B.D.H. Rentals, 277 Ill. App. 3d 614, 214 Ill. Dec. 305, 660 N.E.2d 1012 (1 Dist. 1996), appeal denied, 167 Ill. 2d 568, 217 Ill. Dec. 669, 667 N.E.2d 1062 (1996).

Delegation of Duties

- Collective Bargaining

While a school board may enter into a collective bargaining agreement with an organization representing the employees thereof, the board cannot negotiate an agreement which involves the delegation of a statutory duty or the surrender of discretion vested in the board by statute. Weary v. Board of Educ., 46 Ill. App. 3d 182, 4 Ill. Dec. 737, 360 N.E.2d 1112 (5 Dist. 1977).

Duty of School Board

The duty of a school board to fix the salaries of teachers and to prepare, adopt, and administer an annual budget, and the exercise of its discretion in performing these tasks, are basic to its purpose of administering and managing the conduct of the schools within its district. Weary v. Board of Educ., 46 Ill. App. 3d 182, 4 Ill. Dec. 737, 360 N.E.2d 1112 (5 Dist. 1977).

Educational Fund

- Working Cash

Where 105 ILCS 5/20-8 merely permits any school district to abolish its working cash fund and transfer any balance in the fund to the educational fund of the district, and provides that thereafter any outstanding taxes levied under 105 ILCS 5/20-3 should be collected and paid into the educational fund, and where it does not make any change and does not purport to make any change in the maximum tax rates or any change in the manner in which the working cash fund is

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created, maintained or administered, there was nothing inconsistent between 105 ILCS 5/20-8 and the other sections of this Code which provide for the creation, maintenance and administration of a working cash fund. Bell v. School Dist. No. 84, 407 Ill. 406, 95 N.E.2d 496 (1950).

Rate Void

As it was necessary for the school authorities to go through several steps before they were justified in levying the rate, rate submitted by the election was void and of no effect whatsoever, because the election was void. People ex rel. Ruchty v. Chicago, M., St. P. & Pac. R.R., 408 Ill. 480, 97 N.E.2d 463 (1951).

Scope of Powers

A school board created to perform governmental functions in connection with the education of children in its respective school district has such powers as are expressly conferred or such as may be necessary to carry into effect those granted by the General Assembly. Weary v. Board of Educ., 46 Ill. App. 3d 182, 4 Ill. Dec. 737, 360 N.E.2d 1112 (5 Dist. 1977).

Special Education

- Financial Responsibility

Because 105 ILCS 5/14-6.01 makes each district "financially responsible" for the education of handicapped children through special education facilities and requires school boards to comply with all rules and regulations established by the Superintendent of Public Instructions, school boards must provide a comprehensive program of special education for exceptional children, even though this section seemingly insulates boards by giving them the power to adopt an appropriate budget. Nickerson v. Thomson, 504 F.2d 813 (7th Cir. 1974).

Tax Levies

School district was not limited in its tax levy to the amount of its budget less sums to be available from sources other than taxation. People ex rel. Stanfield v. Pennsylvania R.R., 3 Ill. 2d 524, 121 N.E.2d 748 (1954).

- Fiscal Year

A tax levy filed by a cash-basis school district before the December deadline is a tax levy for the fiscal year in which it is filed, regardless of when the school district intends to spend the money resulting from the levy; thus, such a school district is not required to draft a budget for a subsequent fiscal year before making a tax levy that would produce revenue that would be used in the later fiscal year. County Collector of Du Page County v. ATI Carriage House, Inc., 187 Ill. 2d 326, 240 Ill. Dec. 683, 718 N.E.2d 164 (1999).

A tax levy filed by a cash-basis school district before the December deadline was a levy for that fiscal year, regardless of when the levy was intended to be spent, and, a budget having been previously adopted that year, the levy was not in violation of this section. In re Du Page County Collector, 294 Ill. App. 3d 868, 229 Ill. Dec. 295, 691 N.E.2d 405 (2 Dist. 1998), aff'd, sub nom. Du Page County Collector v. ATI Carriage House (In re Du Page County Collector), 187 Ill. 2d 326, 240 Ill. Dec. 683, 718 N.E.2d 164 (1999).

Time to Levy

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It is not necessary for taxing authorities to wait until the money is actually needed for paying outstanding obligations before taxes may be levied, but they have a right to, and should anticipate, as nearly as they can, the amount of moneys that should be raised to meet obligations when they become due. People ex rel. Weber v. Commonwealth Edison Co., 287 Ill. App. 3d 784, 223 Ill. Dec. 159, 679 N.E.2d 103 (3 Dist. 1997).

Timeliness

The township treasurer's late return of the certificate of levy to the county clerk did not in any way render void the taxes. People ex rel. Carrithers v. Chicago & A. R.R., 306 Ill. 525, 138 N.E. 105 (1923).

Validity of Levy

The validity of a levy is to be determined as of the time it is made. People ex rel. Weber v. Commonwealth Edison Co., 287 Ill. App. 3d 784, 223 Ill. Dec. 159, 679 N.E.2d 103 (3 Dist. 1997).

Practice Guides and Treatises.

Real Estate Taxation § 9.9 Budget or Levy Not Made at Time and in Manner Required by Law (IICLE).

§ 105 ILCS 5/17-1.1. Shared service reporting and fiscal efficiency

Sec. 17-1.1. Shared service reporting and fiscal efficiency. (a) Annually, each school district shall complete a report developed by the State Board of Education, to accompany the annual financial report and to be published on the State Board of Education's Internet website, that summarizes district attempts to improve fiscal efficiency through shared services or outsourcing in the prior fiscal year. The report must be primarily in checklist form and approximately one page in length. It shall include, but shall not be limited to, the incidence of the following shared service options: insurance; employee benefits; transportation; personnel recruitment; shared personnel; technology services; energy purchasing; supply and equipment purchasing; food services; legal services; investment pools; special education cooperatives, vocational cooperatives, and other shared educational programs; curriculum planning; professional development; custodial services; maintenance services; grounds maintenance services; food services; grant writing; and science, technology, engineering, and mathematics (STEM) program offerings. The report shall also include a list of potential shared services or outsourcing the district may consider or investigate for the next fiscal year and any anticipated barriers to implementation. This report must be approved by the school board and published on the Internet website of the school district, if any.

(b) Based on data supplied by school districts through the annual financial report, regional superintendents of schools shall publish annually a regional report summarizing district attempts to improve fiscal efficiency through shared services or outsourcing

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within the educational service region. This report shall include a list of all joint purchasing initiatives, joint agreements between districts, attempts to reduce or eliminate duplication of services and duplicative expenditures, and identification of any overlapping regional service delivery systems.

(c) For school districts required to develop and submit to the State Board of Education a deficit reduction plan under Section 17-1 of this Code [105 ILCS 5/17-1], the regional superintendent of schools and the school district shall jointly prepare a shared services and outsourcing plan that considers actions that may improve the district's fiscal efficiency and how future savings associated with shared services or outsourcing are to be utilized.

(Source: P.A. 97-357, § 5.)

Effective Date. This section became effective January 1, 2012 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 5/17-1.2. Post annual budget on web site

Sec. 17-1.2. Post annual budget on web site. If a school district has an Internet web site, the school district shall post its current annual budget, itemized by receipts and expenditures, on the district's Internet web site. The school district shall notify the parents or guardians of its students that the budget has been posted on the district's web site and what the web site's address is.

(Source: P.A. 92-438, § 5.)

Effective Date. This section is effective January 1, 2002, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 5/17-1.5. Limitation of administrative costs

Sec. 17-1.5. Limitation of administrative costs. (a) It is the purpose of this Section to establish limitations on the growth of administrative expenditures in order to maximize the proportion of school district resources available for the instructional program, building maintenance, and safety services for the students of each district.

(b) Definitions. For the purposes of this Section:

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"Administrative expenditures" mean the annual expenditures of school districts properly attributable to expenditure functions defined by the rules of the State Board of Education as: 2320 (Executive Administration Services); 2330 (Special Area Administration Services); 2490 (Other Support Services - School Administration); 2510 (Direction of Business Support Services); 2570 (Internal Services); and 2610 (Direction of Central Support Services); provided, however, that "administrative expenditures" shall not include early retirement or other pension system obligations required by State law.

"School district" means all school districts having a population of less than 500,000.

(c) For the 1998-99 school year and each school year thereafter, each school district shall undertake budgetary and expenditure control actions so that the increase in administrative expenditures for that school year over the prior school year does not exceed 5%. School districts with administrative expenditures per pupil in the 25th percentile and below for all districts of the same type, as defined by the State Board of Education, may waive the limitation imposed under this Section for any year following a public hearing and with the affirmative vote of at least two-thirds of the members of the school board of the district. Any district waiving the limitation shall notify the State Board within 45 days of such action.

(d) School districts shall file with the State Board of Education by November 15, 1998 and by each November 15th thereafter a one-page report that lists (i) the actual administrative expenditures for the prior year from the district's audited Annual Financial Report, and (ii) the projected administrative expenditures for the current year from the budget adopted by the school board pursuant to Section 17-1 of this Code [105 ILCS 5/17-1].

If a school district that is ineligible to waive the limitation imposed by subsection (c) of this Section by board action exceeds the limitation solely because of circumstances beyond the control of the district and the district has exhausted all available and reasonable remedies to comply with the limitation, the district may request a waiver pursuant to Section 2-3.25g [105 ILCS 5/2-3.25g]. The waiver application shall specify the amount, nature, and reason for the relief requested, as well as all remedies the district has exhausted to comply with the limitation. Any emergency relief so requested shall apply only to the specific school year for which the request is made. The State Board of Education shall analyze all such waivers submitted and shall recommend that the General Assembly disapprove any such waiver requested that is not due solely to circumstances beyond the control of the district and for which the district has not exhausted all available and reasonable remedies to comply with the limitation. The State Superintendent shall have no authority to impose any sanctions pursuant to this Section for any expenditures for which a waiver has been requested until such waiver has been reviewed by the General Assembly.

If the report and information required under this subsection (d) are not provided by the school district in a timely manner, or are subsequently determined by the State Superintendent of Education to be incomplete or inaccurate, the State Superintendent shall notify the district in writing of reporting deficiencies. The school district shall, within 60 days of the notice, address the reporting deficiencies identified.

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(e) If the State Superintendent determines that a school district has failed to comply with the administrative expenditure limitation imposed in subsection (c) of this Section, the State Superintendent shall notify the district of the violation and direct the district to undertake corrective action to bring the district's budget into compliance with the administrative expenditure limitation. The district shall, within 60 days of the notice, provide adequate assurance to the State Superintendent that appropriate corrective actions have been or will be taken. If the district fails to provide adequate assurance or fails to undertake the necessary corrective actions, the State Superintendent may impose progressive sanctions against the district that may culminate in withholding all subsequent payments of general State aid due the district under Section 18-8.05 of this Code [105 ILCS 5/18-8.05] until the assurance is provided or the corrective actions taken.

(f) The State Superintendent shall publish a list each year of the school districts that violate the limitation imposed by subsection (c) of this Section and a list of the districts that waive the limitation by board action as provided in subsection (c) of this Section.

(Source: P.A. 90-548, § 5-915; 90-653, § 10.)

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.100.

Effective Date. Section 990-5 of P.A. 90-548 made this section effective January 1, 1998.

Effect of Amendments. The 1998 amendment by P.A. 90-653, effective July 29, 1998, rewrote this section.

§ 105 ILCS 5/17-2. Tax levies; purposes; rates

Sec. 17-2. Tax levies; purposes; rates. Except as otherwise provided in Articles 12 and 13 of this Act, the following maximum rates shall apply to all taxes levied after August 10, 1965, in districts having a population of less than 500,000 inhabitants, including those districts organized under Article 11 of the School Code. The school board of any district having a population of less than 500,000 inhabitants may levy a tax annually, at not to exceed the maximum rates and for the specified purposes, upon all the taxable property of the district at the value, as equalized or assessed by the Department of Revenue as follows:

(1) districts maintaining only grades 1 through 8, .92% for educational purposes and .25% for operations and maintenance purposes;

(2) districts maintaining only grades 9 through 12, .92% for educational purposes and .25% for operations and maintenance purposes;

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(3) districts maintaining grades 1 through 12, 1.63% for the 1985-86 school year, 1.68% for the 1986-87 school year, 1.75% for the 1987-88 school year and 1.84% for the 1988-89 school year and thereafter for educational purposes and .405% for the 1989-90 school year, .435% for the 1990-91 school year, .465% for the 1991-92 school year, and .50% for the 1992-93 school year and thereafter for operations and maintenance purposes;

(4) all districts, 0.75% for capital improvement purposes (which is in addition to the levy for operations and maintenance purposes), which tax is to be levied, accumulated for not more than 6 years, and spent for capital improvement purposes (including but not limited to the construction of a new school building or buildings or the purchase of school grounds on which any new school building is to be constructed or located, or both) only in accordance with Section 17-2.3 of this Act [105 ILCS 5/17-2.3];

(5) districts maintaining only grades 1 through 8, .12% for transportation purposes, provided that districts maintaining only grades kindergarten through 8 which have an enrollment of at least 2600 students may levy, subject to Section 17-2.2 [105 ILCS 5/17-2.2], at not to exceed a maximum rate of .20% for transportation purposes for any school year in which the number of students requiring transportation in the district exceeds by at least 2% the number of students requiring transportation in the district during the preceding school year, as verified in the district's claim for pupil transportation and reimbursement and as certified by the State Board of Education to the county clerk of the county in which such district is located not later than November 15 following the submission of such claim; districts maintaining only grades 9 through 12, .12% for transportation purposes; and districts maintaining grades 1 through 12, .14% for the 1985-86 school year, .16% for the 1986-87 school year, .18% for the 1987-88 school year and .20% for the 1988-89 school year and thereafter, for transportation purposes;

(6) districts providing summer classes, .15% for educational purposes, subject to Section 17-2.1 of this Act [105 ILCS 5/17-2.1].

Whenever any special charter school district operating grades 1 through 12, has organized or shall organize under the general school law, the district so organized may continue to levy taxes at not to exceed the rate at which taxes were last actually extended by the special charter district, except that if such rate at which taxes were last actually extended by such special charter district was less than the maximum rate for districts maintaining grades 1 through 12 authorized under this Section, such special charter district nevertheless may levy taxes at a rate not to exceed the maximum rate for districts maintaining grades 1 through 12 authorized under this Section, and except that if any such district maintains only grades 1 through 8, the board may levy, for educational purposes, at a rate not to exceed the maximum rate for elementary districts authorized under this Section.

Maximum rates before or after established in excess of those prescribed shall not be affected by the amendatory Act of 1965.

(Source: P.A. 86-128; 86-134; 86-1028; 86-1334; 87-984, § 1; 87-1023, § 1; 88-45, § 2-31.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-2.

Article 11 of the School Code, referred to in the first paragraph above, has been repealed.

Effect of Amendments. The 1992 amendment by P.A. 87-984, effective January 1, 1993, substituted "improvement purposes" for "improvements fund" and substituted "tax" for "fund" in subsection (4).

The 1992 amendment by P.A. 87-1023, effective September 4, 1992 added semicolons in the section catchline, and in subsection (4), substituted ".75% " for ".06%", substituted "which fund" for "and such fund", and inserted "for not more than six years" and "for capital improvement purposes (including but not limited to the construction of a new school building or buildings or the purchase of school grounds on which any new school building is to be constructed or located, or both)".

The 1993 amendment by P.A. 88-45, effective July 6, 1993, combined the separate amendments of P.A. 87-984 and P.A. 87-1023.

CASE NOTES

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- Equal Protection
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- Not Required
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Constitutionality

- Equal Protection

General structure of state's system of funding public schools through state and local resources, and the amounts allocated for distribution, represent legislative efforts to strike a balance between competing considerations of educational equality and local control, and state's system of funding is rationally related to legitimate goal of promoting local control. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

Education is not a fundamental individual right for equal protection purposes, and whether disparities in funding violate Ill. Const. (1970), Art. I, § 2, is not subject to the strict scrutiny test, but the appropriate standard of review is the rational basis test. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

- Funding Disparities

Disparities in educational funding resulting from differences in local property wealth do not offend efficiency requirement in Ill. Const. (1970), Art. X, § 1. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

Acts Construed In Pari Materia

This section and 105 ILCS 5/19-7, being in pari materia, should be construed together to determine the intent of the legislature. People ex rel. Krapf v. Hayes, 13 Ill. 2d 143, 148 N.E.2d 428 (1958).

Additional Expenditures

Where a resolution of the board of education set forth the reason for an additional levy of taxes which was to continue to maintain grades 9, 10, 11, and 12 in addition to the common school grades, and the purpose was also stated in the election notices posted by the clerk and was set forth on the ballot, no election was necessary to obtain authority to levy an additional tax unless the 4% tax previously authorized in the district for school purposes was insufficient. People ex rel. Herrin v. Madison, Ill. & St. L. Ry., 344 Ill. 325, 176 N.E. 329 (1931).

The purpose of this section was to allow a larger rate of taxes in a district where a high school was maintained, by reason of additional expenditures, but the taxes were nevertheless taxes for educational purposes or building purposes of the school district. People ex rel. Goble v. New York C. & St. L. R.R., 334 Ill. 438, 166 N.E. 94 (1929).

Assessment Procedure

The provision authorizing a taxpayer to petition for a referendum was not invalid for requiring a taxpayer to act before the assessment procedure was completed. People ex rel. Garwood v. New York Cent. R.R., 21 Ill. 2d 315, 172 N.E.2d 357 (1961).

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Back Door Referendum

A "back door" referendum is permitted in any year, after a levy is made at a rate greater than the last valid rate, but not in excess of the maximum permissible under this section. People ex rel. Blunt v. Pennsylvania N.Y. Cent. Transp. Co., 42 Ill. 2d 279, 246 N.E.2d 252 (1969).

When no "back door" referendum was requested in reference to the levy during the year, that rate became authorized, and the following year, the school district was free to increase its then maximum rate to a rate not in excess of 1.60% so that appellant was required to initiate a "back door" referendum if it desired to contest such increase. As no referendum was requested, the increased rate was proper. People ex rel. Blunt v. Pennsylvania N.Y. Cent. Transp. Co., 42 Ill. 2d 279, 246 N.E.2d 252 (1969).

Educational Fund

- Amount

This section does not specify a maximum amount that an educational fund may contain. In re 1981 Delinquent Taxes, 190 Ill. App. 3d 908, 137 Ill. Dec. 939, 546 N.E.2d 1052 (3 Dist. 1989).

- Tax Rate

Proposition establishing maximum tax rate for educational fund voted upon properly stated the maximum tax rate permissible for the educational fund under the provisions of this section as the rate limit created by the restrictions imposed by former 35 ILCS 205/162a (see now 35 ILCS 200/18-120 through 35 ILCS 200/18-130). People ex rel. Kramer v. Chicago, B. & Q.R.R., 8 Ill. 2d 382, 134 N.E.2d 335 (1956).

- Working Cash

A school district acted within the statutory framework when it aggrandized its educational fund when it abolished its working cash fund. In re 1981 Delinquent Taxes, 190 Ill. App. 3d 908, 137 Ill. Dec. 939, 546 N.E.2d 1052 (3 Dist. 1989).

Excessive Minimum Building Rate

Where a community unit school district which maintained grades one to 12 was organized by a referendum, and on the same date the voters also granted the district authority to levy taxes at a maximum rate of .25 percent for building purposes and the purchase of school grounds, the referendum establishing a maximum building rate could not serve as authority to extend a minimum annual building rate in excess of the saved rate of 16 cents. People ex rel. Penrod v. Chicago & N. W. Ry., 17 Ill. 2d 263, 161 N.E.2d 120 (1959).

Illegal Tax Rate

An educational tax rate of 76 cents on each $100 of assessed valuation of objectors' property approved by election was null and void for the reason the district failed to follow the statutory requirements in that no election was held to first increase the established 45.1 cent tax rate to 50 cents and no election held to increase that rate to 75 cents before the authorization of the 76 cent rate. People ex rel. Harding v. Chicago & N.W. Ry., 413 Ill. 93, 108 N.E.2d 22 (1952).

Invalid Election

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When the election was held, school district was entitled to levy only .584% instead of .75%, the rate which was prerequisite to the holding of a referendum to obtain authority to levy .90% under 105 ILCS 5/17-5, such that election purporting to authorize a maximum rate of .90% was invalid, and that the maximum extendible rate immediately before and after the election was .584%; therefore, the rate of .864% extended was excessive to the extent of .280%. People ex rel. Ross v. Chicago, B. & Q. R.R., 411 Ill. 60, 103 N.E.2d 79 (1951).

Legislative Intent

The entire sweep of House Bill 345 shows a legislative intent and purpose of creating a transportation fund for school districts, to be levied for, administered and maintained separate and apart from educational and building funds. Such a purpose necessarily required the amendment of this section to include authority to levy a transportation tax. The singleness of purpose is demonstrated not only by the content of the other amendments to this Code embodied in the bill, but also by the fact that, in compliance with the constitutional mandate, the provisions of this section remaining unchanged were repeated precisely as they existed. People ex rel. Dickey v. Southern Ry., 17 Ill. 2d 550, 162 N.E.2d 417 (1959).

The patent purpose of House Bill 706, as well as the amendment to this section it effected, was to adjust educational and building rates for certain districts, a purpose in no way antagonistic or repugnant to the previous purpose of granting authority to levy a tax for transportation purposes. People ex rel. Dickey v. Southern Ry., 17 Ill. 2d 550, 162 N.E.2d 417 (1959).

Under a former similar law, it was the intention of the section that all of the current ordinary expenses of the schools, including ordinary repairs, were to be covered by the taxes to be levied within the 2% for educational purposes, and that the additional taxes to be levied within the additional 3% for building purposes were intended only to provide the means necessary to meet the special occasion of the building of a school house; the proper construction of the statute was that the words "for building purposes" were special, and applied solely to the building of school houses, and matters incident thereto, while the words "for educational purposes" were general, and applied to all matters for which a board of directors could levy school taxes. O'Day v. People ex rel. Kinsey, 171 Ill. 293, 49 N.E. 504 (1898).

Maximum Tax Rate

An amendment to this section enacted by the legislature was not designed to permit any school district maintaining grades 1 through 12, including community unit districts, to increase the maximum rate for educational purposes to 1.25%. People ex rel. Myers v. Pennsylvania R.R., 19 Ill. 2d 122, 166 N.E.2d 86 (1960).

Notices

- Held Sufficient

Where notices of election were posted by the secretary and clerk of the board of education, certificate was filed thereof and spread the certificate, which contained a copy of the notice of election, upon the minutes or record of the board, the certificate and record recited where within the school district the notices were posted, notices were sufficient. People ex rel. Herrin v. Madison, Ill. & St. L. Ry., 344 Ill. 325, 176 N.E. 329 (1931).

Objections to Expenses

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Whether defendant's objections to expenses should be sustained did not depend on what the school district could do with funds collected but not needed for building purposes but whether the appropriation items for building purposes and the resultant levy was proper in the first instance. People ex rel. Prindable v. New York Cent. R.R., 397 Ill. 50, 72 N.E.2d 821 (1947).

Power of General Assembly

The power of the General Assembly to authorize school districts to levy increased rates without any referendum whatsoever is allowed. People ex rel. Garwood v. New York Cent. R.R., 21 Ill. 2d 315, 172 N.E.2d 357 (1961).

Precise Notice

- Not Required

The due process clause of the U.S. Constitution does not require precise notice of adoption of levy pursuant to provision of school code authorizing taxpayers to petition for referendum on increased taxation. People ex rel. Garwood v. New York Cent. R.R., 21 Ill. 2d 315, 172 N.E.2d 357 (1961).

Proceedings

Where minutes of the board of education showed that a canvass of the votes on the proposition of levying an additional tax for educational purposes was made and that the board declared the proposition was carried, and its secretary was ordered to file a full transcript of the board's proceedings with the county clerk as the board's authority to levy the additional annual school tax, and where the transcript was filed in the county clerk's office, and a certificate of levy signed by the president and secretary of the school district was filed in the same office a few days later, whereby the county clerk was authorized to extend the tax, the proceedings of the board of education were complete and showed its good faith in submitting to the voters of the district the proposition for authority to levy an additional tax to maintain its high school grades in addition to its common school grades. People ex rel. Herrin v. Madison, Ill. & St. L. Ry., 344 Ill. 325, 176 N.E. 329 (1931).

School Bonds

The constitutional requirement that a school district shall, when issuing bonds, provide for the levy of a tax sufficient to pay maturing principal and interest is mandatory and self-executing. People ex rel. Henry v. New York Cent. R.R., 381 Ill. 490, 45 N.E.2d 860 (1942).

In the absence of proof, it could not be assumed that the school authorities violated the law and did not provide for the levy of a tax for the payment of the bonds when the same were issued. People ex rel. Henry v. New York Cent. R.R., 381 Ill. 490, 45 N.E.2d 860 (1942).

Use of Taxes

Taxpayers failed to state a claim that the Intergovernmental Agreement was invalid because the school district exceeded its authority in imposing (directly or indirectly) a transfer tax and agreeing to receive transfer tax revenues because 105 ILCS 5/17-2 specifically permitted school boards to impose ad valorem taxes on real property. In addition, the city and not the school district enacted the transfer tax and none of the School Code provisions prohibited a school district from receiving

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transfer tax revenues. Rajterowski v. City of Sycamore, 405 Ill. App. 3d 1086, 346 Ill. Dec. 313, 940 N.E.2d 682, 2010 Ill. App. LEXIS 1171 (2 Dist. 2010).

The additional taxes authorized by this section for districts maintaining high schools were for school purposes and not alone for high school purposes. People ex rel. Goble v. New York C. & St. L. R.R., 334 Ill. 438, 166 N.E. 94 (1929).

§ 105 ILCS 5/17-2.1. Tax for summer school purposes

Sec. 17-2.1. Tax for summer school purposes. The school board in any district having a population of less than 500,000 inhabitants may, by proper resolution, cause a proposition to authorize an annual tax, as prescribed in Section 17-2 [105 ILCS 5/17-2], for summer school educational purposes to be submitted to the voters of such district at a regular scheduled election.

If a majority of the votes cast on the proposition is in favor thereof, the school board may thereafter levy the tax as authorized.

(Source: P.A. 81-1489.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-2.1.

CASE NOTES

Fiscal Year

If levy is made before the start of the fiscal year, it must follow the adoption of the budget, and public notice and a hearing on the proposed budget are required but if it is made after the start of the fiscal year, it must be made after July 1 and before the last Tuesday in September. People ex rel. Garwood v. New York Cent. R.R., 21 Ill. 2d 315, 172 N.E.2d 357 (1961).

§ 105 ILCS 5/17-2.2. Back door referendum

Sec. 17-2.2. Back door referendum. Whenever any school district first levies a tax at a rate within the limit prescribed by paragraph (3) of Section 17-2 [105 ILCS 5/17-2] but in excess of the maximum permissible on July 9, 1957, or within the limit prescribed by paragraph (1) or (2) of Section 17-2 [105 ILCS 5/17-2] but in excess of the maximum permissible on June 30, 1965, or whenever after August 3, 1989 any school district maintaining only grades kindergarten through 8 first levies a tax for transportation purposes for any school year which is within the limit prescribed for that school year by paragraph (5) of Section 17-2 [105 ILCS 5/17-2] but in excess of the maximum authorized to be levied for such purposes for the 1988-89 school year, or

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whenever after August 3, 1989 any school district first levies a tax for operations and maintenance purposes for any school year which is within the limit prescribed for that school year by paragraph (3) of Section 17-2 [105 ILCS 5/17-2] but in excess of the maximum authorized to be levied for such purposes for the immediately preceding school year, the district shall cause to be published such resolution in at least one or more newspapers published in the district, within 10 days after such levy is made. The publication of the resolution shall include a notice of (1) the specific number of voters required to sign a petition requesting that the question of the adoption of the tax levy be submitted to the voters of the district; (2) the time in which the petition must be filed; and (3) the date of the prospective referendum. The district Secretary shall provide a petition form to any individual requesting one. Any taxpayer in such district may, within 30 days after such levy is made, file with the Secretary of the board of education a petition signed by the voters of the district equal to 10% or more of the registered voters of the district requesting the submission to a referendum of the following proposition:

"Shall school district No. ..... be authorized to levy a tax for (state purposes) in excess of ..... but not to exceed ..... as authorized in Section 17-2 of the School Code?" The secretary of the board of education shall certify the proposition to the proper election authorities for submission to the electorate at a regular scheduled election in accordance with the general election law.

If a majority of the voters voting on the proposition vote in favor thereof, such increased tax shall thereafter be authorized; if a majority of the vote is against such proposition, the previous maximum rate authorized shall remain in effect until changed by law.

(Source: P.A. 86-128; 86-134; 86-1028; 86-1334; 87-767.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-2.2.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 145.20.

CASE NOTES

Amendments to Proceedings

Where the record showed that the board of education voted favorably in 1921 upon a motion to submit to the voters the privilege of increasing the levy to the additional two-thirds of 1%, but the resolution then adopted, if any, was not included and, the form of ballot used at the election was not and could not be shown, amendments to the 1921 proceedings made more than 19 years afterwards did not constitute the keeping of a punctual, orderly and reliable record of the board's actions in 1921 and there was nothing of record on which to base the amendments and they rested wholly on testimony dehors the record; therefore, the amendments made in 1940 by an

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entirely different board of officials, based upon the uncertainty of the individual memories of a few of the participants in the earlier proceedings, were without a legal basis. People ex rel. Toman v. Chicago Heights Term. Transf. R.R., 375 Ill. 590, 32 N.E.2d 161 (1941).

§ 105 ILCS 5/17-2.2a. [Tax for special education programs]

Sec. 17-2.2a. (a) Tax for special education programs. The school board of any district having a population of less than 500,000 inhabitants may, by proper resolution, levy an annual tax upon the value as equalized or assessed by the Department of Revenue, for special education purposes, including the purposes authorized by Section 10-22.31b [105 ILCS 5/10-22.31b] as follows:

(1) districts maintaining only grades kindergarten through 8, and prior to July 1, 1970, districts maintaining only grades 1 through 8, .02%;

(2) districts maintaining only grades 9 through 12, .02%;

(3) districts maintaining only grades kindergarten through 12, and prior to July 1, 1970, districts maintaining only grades 1 through 12, .04%.

The revenue raised by such tax shall be used only for special education purposes, including the construction and maintenance of special education facilities.

Upon proper resolution of the school board, the school district may accumulate such funds for special education building purposes for a period of 8 years.

Buildings constructed under the provisions of this Section shall comply with the building code authorized under Section 2-3.12 [105 ILCS 5/2-3.12].

If it is no longer feasible or economical to utilize classroom facilities constructed with revenues raised and accumulated by the tax for special education building purposes, the district, or cooperative district by unanimous consent, may with the approval of the regional superintendent of schools and the State Superintendent of Education use such facilities for regular school purposes. The district or cooperative of districts shall make comparable facilities available for special education purposes at another attendance center which is in a more practical location due to the proximity of the students served.

(b) If the school board of any district that has levied the tax authorized by this Section determines that the accumulated funds from such tax and from the $1,000 State reimbursement per professional worker received under Section 14-13.02 [105 ILCS 5/14-13.02] are no longer required for special education building purposes, the board may by proper resolution transfer such funds to any other fund to be used for any special education purposes authorized by Article 14 [105 ILCS 5/14-1.01 et seq.]. Such transfer shall not be made until after the regional superintendent has certified to the State Superintendent of Education that adequate housing provisions have been made for all children with disabilities residing in the school district.

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(c) The tax rate limits specified in this Section may be increased to .40% by districts maintaining only grades kindergarten through 8 or only grades 9 through 12, and to .80% by districts maintaining grades kindergarten through 12, upon the approval of a proposition to effect such increase by a majority of the electors voting on such proposition at a regular scheduled election. The proposition may be initiated by resolution of the school board and shall be certified by the secretary to the proper election authorities for submission in accordance with the general election law. If at such election a majority of the votes cast on the proposition is in favor thereof, the school board may thereafter until such authority is revoked in like manner levy annually the tax so authorized.

(Source: P.A. 86-357; 87-984, § 1; 89-397, § 5; 90-757, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-2.2a.

Effect of Amendments. The 1992 amendment by P.A. 87-984, effective January 1, 1993, added the third paragraph following subdivision (a)(3).

The 1995 amendment by P.A. 89-397, effective August 20, 1995, in subsection (b), in the second sentence substituted "children with disabilities" for "the handicapped students".

The 1998 amendment by P.A. 90-757, effective August 14, 1998, in the first sentence of subsection (c), substituted ".40%" for ".125%" and ".80%" for ".25%".

CASE NOTES

Ripeness of Objection

Where no election had been held for the building of a new schoolhouse, the objection to the school tax was overruled. People ex rel. Parmenter v. Chicago, B. & Q. R.R., 256 Ill. 476, 100 N.E. 266 (1912).

§ 105 ILCS 5/17-2.2b: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/17-2.2c. Tax for leasing educational facilities or computer technology or both, and for temporary relocation expense purposes

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Sec. 17-2.2c. Tax for leasing educational facilities or computer technology or both, and for temporary relocation expense purposes. The school board of any district, by proper resolution, may levy an annual tax, in addition to any other taxes and not subject to the limitations specified elsewhere in this Article, not to exceed .05% upon the value of the taxable property as equalized or assessed by the Department of Revenue, for the purpose of leasing educational facilities or computer technology or both, and, in order to repay the State all moneys distributed to it for temporary relocation expenses of the district, may levy an annual tax not to exceed .05% upon the value of the taxable property as equalized or assessed by the Department of Revenue for a period not to exceed 7 years for the purpose of providing for the repayment of moneys distributed for temporary relocation expenses of the school district pursuant to Section 2-3.77 [105 ILCS 5/2-3.77].

The tax rate limit specified by this Section with respect to an annual tax levied for the purpose of leasing educational facilities or computer technology or both may be increased to .10% upon the approval of a proposition to effect such increase by a majority of the electors voting on that proposition at a regular scheduled election. Such proposition may be initiated by resolution of the school board and shall be certified by the secretary to the proper election authorities for submission in accordance with the general election law.

The district is authorized to pledge any tax levied pursuant to this Section for the purpose of leasing educational facilities or computer technology or both to secure the payment of any lease, lease-purchase agreement, or installment purchase agreement entered into by the district for such purpose.

For the purposes of this Section, "leasing of educational facilities or computer technology or both" includes any payment with respect to a lease, lease-purchase agreement, or installment purchase agreement to acquire or use buildings, rooms, grounds, and appurtenances to be used by the district for the use of schools or for school administration purposes and all equipment, fixtures, renovations, and improvements to existing facilities of the district necessary to accommodate computers, as well as computer hardware and software.

Any school district may abolish or abate its fund for leasing educational facilities or computer technology or both and for temporary relocation expense purposes upon the adoption of a resolution so providing and upon a determination by the school board that the moneys in the fund are no longer needed for leasing educational facilities or computer technology or both or for temporary relocation expense purposes. The resolution shall direct the transfer of any balance in the fund to another school district fund or funds immediately upon the resolution taking effect. Thereafter, any outstanding taxes of the school district levied pursuant to this Section shall be collected and paid into the fund or funds as directed by the school board. Nothing in this Section shall prevent a school district that has abolished or abated the fund from again creating a fund for leasing educational facilities and for temporary relocation expense purposes in the manner provided in this Section.

(Source: P.A. 87-188; 87-1023, § 1; 89-106, § 10; 90-97, § 5; 90-464, § 10; 90-655, § 77.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-2.2c.

Effect of Amendments. The 1992 amendment by P.A. 87-1023, effective September 4, 1992, added the last paragraph.

The 1995 amendment by P.A. 89-106, effective July 1, 1995 and approved July 7, 1995, added the fourth paragraph.

The 1997 amendment by P.A. 90-97, effective July 11, 1997, inserted "or computer technology or both" in the section catchline and throughout the section; added the third paragraph; and in the fourth paragraph inserted "leasing of", inserted "payment with respect to a lease, lease-purchase agreement, or installment purchase agreement to acquire or use" and added at the end "and all equipment, fixtures, renovations, and improvements to existing facilities of the district necessary to accommodate computers, as well as computer hardware and software".

The 1997 amendment by P.A. 90-464, effective August 17, 1997, in the first paragraph deleted "except for school boards of districts in municipalities of 500,000 or more" preceding "may", and substituted "in order" for "until the school district has repaid", inserted "repay" and inserted "for a period not to exceed 7 years".

The 1998 amendment by P.A. 90-655, effective July 30, 1998, incorporated the amendments made by P.A. 90-97 and P.A. 90-464; and substituted "district, by proper resolution, may" for "district may, by proper resolution" in the first sentence of the first paragraph.

§ 105 ILCS 5/17-2.2d. Special taxing and bonding for temporary relocation expense and emergency replacement purposes

Sec. 17-2.2d. Special taxing and bonding for temporary relocation expense and emergency replacement purposes. (a) In addition to any other taxes and notwithstanding any limitation imposed by the Property Tax Extension Limitation Law or any other limitations specified in this Code or any other law, the school board of any district subject to this Code that meets the criteria specified in subsection (c) of this Section, may, by proper resolution, levy an annual tax not to exceed 0.05% upon the value of the taxable property as equalized or assessed by the Department of Revenue for a period not to exceed 7 years for the purpose of providing for the repayment of moneys paid to the district for temporary relocation expenses of the district pursuant to Section 2-3.77 of this Code [105 ILCS 5/2-3.77].

(b) The school board of any district that meets the criteria specified in subsection (c) of this Section may repair, reconstruct, or replace a condemned building without seeking referendum approval for the repair, reconstruction, or replacement.

(c) In order for this Section to apply, the school district must (i) be located in a county subject to the Property Tax Extension Limitation Law and (ii) have had a school building condemned within 10 years after the building's initial occupancy.

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(d) Notwithstanding any limitation imposed by the Property Tax Extension Limitation Law or any other limitations specified in this Code or any other law, the school board of any district that meets the criteria specified in subsection (c) of this Section, may, by proper resolution, issue bonds, without referendum, in an amount sufficient to finance the total cost of repair, reconstruction, or replacement of the condemned building, including the costs of providing for the payment of any obligations heretofore or hereafter entered into for such purposes. Any premium and all interest earnings on the proceeds of the bonds so issued shall be used for the purposes for which the bonds were issued. The proceeds of any bonds issued under this Section shall be deposited and accounted for separately within the district's site and construction/capital improvements fund. The recording officer of the board shall file in the office of the county clerk of each county in which a portion of the district is situated a certified copy of the resolution providing for the issuance of the bonds and levy of a tax without limit as to rate or amount to pay the bonds. Bonds issued under this Section and any bonds issued to refund those bonds are not subject to any debt limitation imposed by this Code or any other law.

(e) The school board, as an express condition to receiving a temporary relocation loan under Section 2-3.77 of this Code [105 ILCS 5/2-3.77], must agree to levy the tax provided in this Section at the maximum rate permitted and to pay to the State of Illinois for deposit into the Temporary Relocation Expenses Revolving Grant Fund (i) all proceeds of the tax attributable to the first year and succeeding years for which the tax is levied after moneys appropriated for purposes of Section 2-3.77 [105 ILCS 5/2-3.77] have been distributed to the school district and (ii) all insurance proceeds that become payable to the district under those provisions of any contract or policy of insurance that provide reimbursement for or other coverage against loss with respect to any temporary relocation expenses of the district or proceeds of any legal judgment or settlement regarding the temporary relocation expenses incurred by the district, provided that the aggregate of any tax and insurance or other proceeds paid by the district to the State pursuant to this subsection (e) shall not exceed in amount the moneys distributed to the district pursuant to Section 2-3.77 [105 ILCS 5/2-3.77] as a loan or grant.

(f) If bonds under this Section have been issued by the school district and the purposes for which the bonds have been issued are accomplished and paid for in full and there remain funds on hand from the proceeds of the bonds or interest earnings or premiums, then the school board, by resolution, shall transfer those excess funds to the district's bond and interest fund for the purpose of abating taxes to pay debt service on the bonds or for defeasance of the debt or both.

(g) If the school district receives a construction grant under the School Construction Law or any other law and the purposes for which the grant was issued are accomplished and paid for in full and there remains funds on hand from the grant or interest earnings thereon, then the excess funds shall be paid to the State of Illinois for deposit into the School Construction Fund or other State fund from which the construction grant was paid.

(h) All insurance proceeds that become payable to the school district under those provisions of a contract or policy of insurance that provide reimbursement for or other coverage against losses other than with respect to any temporary relocation expenses of

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the district or proceeds of any legal judgment or settlement regarding the repair, reconstruction, or replacement of the condemned building shall be applied to the repair, reconstruction, or replacement. If the project is completed and, therefore, all costs have been paid for in full and there remain funds on hand, including any interest earnings thereon, from the insurance coverage, legal judgment, or settlement, then a portion of those excess funds equal to the State's share of the construction cost of the project shall be paid to the State of Illinois for deposit into the School Construction Fund or other State fund from which the construction grant was paid, and the remainder of the excess funds shall be transferred to the district's bond and interest fund for the purpose of abating taxes to pay debt service on the bonds or for defeasance of the debt or both. If no debt service remains to be paid, then the excess may be transferred to whichever fund that, as determined by the school board, is most in need of the funds.

(Source: P.A. 93-690, § 10; 94-690, § 5.)

Effective Date. Section 99 of P.A. 93-690 made this section effective upon becoming law. The Act was approved July 1, 2004.

Effect of Amendments. The 2005 amendment by P.A. 94-690, effective November 2, 2005, rewrote the section.

§ 105 ILCS 5/17-2.3. Capital improvement purposes; referendum

Sec. 17-2.3. Capital improvement purposes; referendum. The school board of any district desiring to levy and accumulate for not more than 6 years the capital improvements purposes tax provided for in paragraph (4) of Section 17-2 of this Act [105 ILCS 5/17-2] shall pass a resolution for the levy of said tax, and in such resolution shall describe the capital improvements for which the tax is to be levied and the funds derived therefrom are to be spent. As used in this Section and in paragraph (4) of Section 17-2 [105 ILCS 5/17-2], capital improvements include but are not limited to the construction of a new school building or buildings or the purchase of school grounds on which any new school building is to be constructed or located, or both. The resolution shall cause the proposition for the levy of the tax provided for in paragraph (4) of Section 17-2 of this Act [105 ILCS 5/17-2] to be certified to the proper election authorities for submission to the electors of the district at a regular scheduled election in accordance with the general election law. The proposition shall generally describe the capital improvements for which the tax is to be levied and the funds derived therefrom are to be spent.

If the proposition is approved by a majority of the electors voting thereon, the school district may thereafter levy such capital improvement purposes tax and accumulate funds for not more than 6 years for the capital improvements described in the resolution and on the ballot. Such school district shall also invest such accumulated funds until spent for the

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capital improvements described in the resolution and on the ballot in accordance with the provisions of the Public Funds Investment Act [30 ILCS 235/0.01 et seq.].

Any proceeds derived from a capital improvements tax or the accumulation of monies for capital improvements described in the resolution and on the ballot shall be accounted for separately within the Site and Construction/Capital Improvement Fund.

(Source: P.A. 81-1489; 87-984, § 1; 87-1023, § 1; 88-45, § 2-31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-2.3.

Effect of Amendments. The 1992 amendment by P.A. 87-984, effective January 1, 1993, in the section catchline, twice in the first paragraph and in the second paragraph substituted "improvement purposes" for "improvements fund"; in the second paragraph and substituted "the Public Funds Investment Act" for "An Act relating to certain investments of public funds by public agencies approved July 23, 1993, as amended"; and added the third paragraph.

The 1992 amendment by P.A. 87-1023, effective September 4, 1992, added a semicolon in the section catchline; inserted "and accumulate for not more than six years" in the first sentence of the first paragraph; inserted the present second sentence in the first paragraph; inserted "for not more than six years" in the first sentence of the second paragraph; and substituted "the Public Funds Investment Act" for "An Act relating to certain investments of public funds by public agencies", approved July 23, 1943, as amended" in the second sentence of the second paragraph.

The 1993 amendment by P.A. 88-45, effective July 6, 1993 combined the separate amendments of P.A. 87-984 and P.A. 87-1023.

§ 105 ILCS 5/17-2.4. Tax for area vocational education building programs

Sec. 17-2.4. Tax for area vocational education building programs. The school board of any district having a population of less than 500,000 inhabitants may, by proper resolution, levy an annual tax of not more than .05% upon the value as equalized or assessed by the Department of Revenue for such purpose, and may accumulate such tax for not more than 5 years, for area vocational education building purposes, including the purposes authorized by Section 10-22.31b of this Act [105 ILCS 5/10-22.31b], upon condition that there are not sufficient funds available in the operations and maintenance fund of the district to pay the cost thereof. Such tax shall not be levied without prior approval of the State Superintendent of Education and prior approval by a majority of the electors voting upon the proposition at an election, the proposition having been certified by the secretary of the school board to the proper election authorities for submission to the electorate in accordance with the general election law.

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When the school boards of two or more districts enter into a joint agreement for an area vocational education building program under Section 10-22.31b [105 ILCS 5/10-22.31b] their agreement may provide, or may be amended to provide, that the question of the levy of the tax authorized by this Section shall be certified to the proper election authorities, for submission to the voters of all of the participating districts in accordance with the general election law, in the same election and that the approval of that levy by a majority of the electors voting upon the proposition in the area comprised of the participating districts, considered as a whole, shall be deemed to authorize that levy in each participating district without regard to the passage or failure of the proposition in any district considered separately. However, the school board of any district may withdraw from the joint agreement by reason of the failure of the electors of that district to approve the proposed levy.

(Source: P.A. 86-970.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-2.4.

CASE NOTES

Objections Proper

County court erred in overruling appellant's objections to the portions of the taxes levied and extended against its properties in the respective school districts for building purposes. People ex rel. Hutchcraft v. Louisville & N. R.R., 396 Ill. 502, 72 N.E.2d 194 (1947).

§ 105 ILCS 5/17-2.5. Tax for tort immunity

Sec. 17-2.5. Tax for tort immunity. The school board of any district may by proper resolution levy an annual tax upon the value of the taxable property within its territory as equalized or assessed by the Department of Revenue at a rate that will produce a sum sufficient (i) to pay the cost of settlements or judgments under Section 9-102 of the Local Governmental and Governmental Employees Tort Immunity Act [745 ILCS 10/9-102], (ii) to pay the cost of settlements or judgments under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. § 9601 et seq.] and the Environmental Protection Act [415 ILCS 5/1 et seq.], but only until December 31, 2010, (iii) to pay the costs of protecting itself or its employees against liability, property damage or loss, including all costs and reserves of being a member of an insurance pool, under Section 9-103 of the Local Governmental and Governmental Employees Tort Immunity Act [745 ILCS 10/9-103], (iv) to pay the costs of and principal

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and interest on bonds issued under Section 9-105 of the Local Governmental and Governmental Employees Tort Immunity Act [745 ILCS 10/9-105], (v) to pay tort judgments or settlements under Section 9-104 of the Local Governmental and Governmental Employees Tort Immunity Act [745 ILCS 10/9-104] to the extent necessary to discharge such obligations, and (vi) to pay the cost of risk care management programs in accordance with Section 9-107 of the Local Governmental and Governmental Employees Tort Immunity Act [745 ILCS 10/9-107].

(Source: P.A. 86-668; 95-244, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-2.5.

Effect of Amendments. The 2007 amendment by P.A. 95-244, effective August 17, 2007, rewrote the section.

§ 105 ILCS 5/17-2.6: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/17-2.11. School board power to levy a tax or to borrow money and issue bonds for fire prevention, safety, energy conservation, disabled accessibility, school security, and specified repair purposes

Sec. 17-2.11. School board power to levy a tax or to borrow money and issue bonds for fire prevention, safety, energy conservation, disabled accessibility, school security, and specified repair purposes. (a) Whenever, as a result of any lawful order of any agency, other than a school board, having authority to enforce any school building code applicable to any facility that houses students, or any law or regulation for the protection and safety of the environment, pursuant to the Environmental Protection Act [415 ILCS 5/1 et seq.], any school district having a population of less than 500,000 inhabitants is required to alter or reconstruct any school building or permanent, fixed equipment; the district may, by proper resolution, levy a tax for the purpose of making such alteration or reconstruction, based on a survey report by an architect or engineer licensed in this State, upon all of the taxable property of the district at the value as assessed by the Department of Revenue and at a rate not to exceed 0.05% per year for a period sufficient to finance such alteration or reconstruction, upon the following conditions:

(1) When there are not sufficient funds available in the operations and maintenance fund of the school district, the school facility occupation tax fund of the district, or the fire prevention and safety fund of the district, as determined by the district on the basis of rules adopted by the State Board of Education, to make such alteration or reconstruction

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or to purchase and install such permanent, fixed equipment so ordered or determined as necessary. Appropriate school district records must be made available to the State Superintendent of Education, upon request, to confirm this insufficiency.

(2) When a certified estimate of an architect or engineer licensed in this State stating the estimated amount necessary to make the alteration or reconstruction or to purchase and install the equipment so ordered has been secured by the school district, and the estimate has been approved by the regional superintendent of schools having jurisdiction over the district and the State Superintendent of Education. Approval must not be granted for any work that has already started without the prior express authorization of the State Superintendent of Education. If the estimate is not approved or is denied approval by the regional superintendent of schools within 3 months after the date on which it is submitted to him or her, the school board of the district may submit the estimate directly to the State Superintendent of Education for approval or denial.

In the case of an emergency situation, where the estimated cost to effectuate emergency repairs is less than the amount specified in Section 10-20.21 of this Code [105 ILCS 5/10-20.21], the school district may proceed with such repairs prior to approval by the State Superintendent of Education, but shall comply with the provisions of subdivision (2) of this subsection (a) as soon thereafter as may be as well as Section 10-20.21 of this Code. If the estimated cost to effectuate emergency repairs is greater than the amount specified in Section 10-20.21 of this Code, then the school district shall proceed in conformity with Section 10-20.21 of this Code and with rules established by the State Board of Education to address such situations. The rules adopted by the State Board of Education to deal with these situations shall stipulate that emergency situations must be expedited and given priority consideration. For purposes of this paragraph, an emergency is a situation that presents an imminent and continuing threat to the health and safety of students or other occupants of a facility, requires complete or partial evacuation of a building or part of a building, or consumes one or more of the 5 emergency days built into the adopted calendar of the school or schools or would otherwise be expected to cause such school or schools to fall short of the minimum school calendar requirements.

(b) Whenever any such district determines that it is necessary for energy conservation purposes that any school building or permanent, fixed equipment should be altered or reconstructed and that such alterations or reconstruction will be made with funds not necessary for the completion of approved and recommended projects contained in any safety survey report or amendments thereto authorized by Section 2-3.12 of this Act [105 ILCS 5/2-3.12]; the district may levy a tax or issue bonds as provided in subsection (a) of this Section.

(c) Whenever any such district determines that it is necessary for disabled accessibility purposes and to comply with the school building code that any school building or equipment should be altered or reconstructed and that such alterations or reconstruction will be made with funds not necessary for the completion of approved and recommended projects contained in any safety survey report or amendments thereto authorized under Section 2-3.12 of this Act, the district may levy a tax or issue bonds as provided in subsection (a) of this Section.

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(d) Whenever any such district determines that it is necessary for school security purposes and the related protection and safety of pupils and school personnel that any school building or property should be altered or reconstructed or that security systems and equipment (including but not limited to intercom, early detection and warning, access control and television monitoring systems) should be purchased and installed, and that such alterations, reconstruction or purchase and installation of equipment will be made with funds not necessary for the completion of approved and recommended projects contained in any safety survey report or amendment thereto authorized by Section 2-3.12 of this Act and will deter and prevent unauthorized entry or activities upon school property by unknown or dangerous persons, assure early detection and advance warning of any such actual or attempted unauthorized entry or activities and help assure the continued safety of pupils and school staff if any such unauthorized entry or activity is attempted or occurs; the district may levy a tax or issue bonds as provided in subsection (a) of this Section.

(e) If a school district does not need funds for other fire prevention and safety projects, including the completion of approved and recommended projects contained in any safety survey report or amendments thereto authorized by Section 2-3.12 of this Act, and it is determined after a public hearing (which is preceded by at least one published notice (i) occurring at least 7 days prior to the hearing in a newspaper of general circulation within the school district and (ii) setting forth the time, date, place, and general subject matter of the hearing) that there is a substantial, immediate, and otherwise unavoidable threat to the health, safety, or welfare of pupils due to disrepair of school sidewalks, playgrounds, parking lots, or school bus turnarounds and repairs must be made; then the district may levy a tax or issue bonds as provided in subsection (a) of this Section.

(f) For purposes of this Section a school district may replace a school building or build additions to replace portions of a building when it is determined that the effectuation of the recommendations for the existing building will cost more than the replacement costs. Such determination shall be based on a comparison of estimated costs made by an architect or engineer licensed in the State of Illinois. The new building or addition shall be equivalent in area (square feet) and comparable in purpose and grades served and may be on the same site or another site. Such replacement may only be done upon order of the regional superintendent of schools and the approval of the State Superintendent of Education.

(g) The filing of a certified copy of the resolution levying the tax when accompanied by the certificates of the regional superintendent of schools and State Superintendent of Education shall be the authority of the county clerk to extend such tax.

(h) The county clerk of the county in which any school district levying a tax under the authority of this Section is located, in reducing raised levies, shall not consider any such tax as a part of the general levy for school purposes and shall not include the same in the limitation of any other tax rate which may be extended.

Such tax shall be levied and collected in like manner as all other taxes of school districts, subject to the provisions contained in this Section.

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(i) The tax rate limit specified in this Section may be increased to .10% upon the approval of a proposition to effect such increase by a majority of the electors voting on that proposition at a regular scheduled election. Such proposition may be initiated by resolution of the school board and shall be certified by the secretary to the proper election authorities for submission in accordance with the general election law.

(j) When taxes are levied by any school district for fire prevention, safety, energy conservation, and school security purposes as specified in this Section, and the purposes for which the taxes have been levied are accomplished and paid in full, and there remain funds on hand in the Fire Prevention and Safety Fund from the proceeds of the taxes levied, including interest earnings thereon, the school board by resolution shall use such excess and other board restricted funds, excluding bond proceeds and earnings from such proceeds, as follows:

(1) for other authorized fire prevention, safety, energy conservation, and school security purposes; or

(2) for transfer to the Operations and Maintenance Fund for the purpose of abating an equal amount of operations and maintenance purposes taxes.

Notwithstanding subdivision (2) of this subsection (j), through June 30, 2013, the school board may, by proper resolution following a public hearing set by the school board or the president of the school board (that is preceded (i) by at least one published notice over the name of the clerk or secretary of the board, occurring at least 7 days and not more than 30 days prior to the hearing, in a newspaper of general circulation within the school district and (ii) by posted notice over the name of the clerk or secretary of the board, at least 48 hours before the hearing, at the principal office of the school board or at the building where the hearing is to be held if a principal office does not exist, with both notices setting forth the time, date, place, and subject matter of the hearing), transfer surplus life safety taxes and interest earnings thereon to the Operations and Maintenance Fund for building repair work.

(k) If any transfer is made to the Operation and Maintenance Fund, the secretary of the school board shall within 30 days notify the county clerk of the amount of that transfer and direct the clerk to abate the taxes to be extended for the purposes of operations and maintenance authorized under Section 17-2 of this Act [105 ILCS 5/17-2] by an amount equal to such transfer.

(l) If the proceeds from the tax levy authorized by this Section are insufficient to complete the work approved under this Section, the school board is authorized to sell bonds without referendum under the provisions of this Section in an amount that, when added to the proceeds of the tax levy authorized by this Section, will allow completion of the approved work.

(m) Any bonds issued pursuant to this Section shall bear interest at a rate not to exceed the maximum rate authorized by law at the time of the making of the contract, shall mature within 20 years from date, and shall be signed by the president of the school board and the treasurer of the school district.

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(n) In order to authorize and issue such bonds, the school board shall adopt a resolution fixing the amount of bonds, the date thereof, the maturities thereof, rates of interest thereof, place of payment and denomination, which shall be in denominations of not less than $100 and not more than $5,000, and provide for the levy and collection of a direct annual tax upon all the taxable property in the school district sufficient to pay the principal and interest on such bonds to maturity. Upon the filing in the office of the county clerk of the county in which the school district is located of a certified copy of the resolution, it is the duty of the county clerk to extend the tax therefor in addition to and in excess of all other taxes heretofore or hereafter authorized to be levied by such school district.

(o) After the time such bonds are issued as provided for by this Section, if additional alterations or reconstructions are required to be made because of surveys conducted by an architect or engineer licensed in the State of Illinois, the district may levy a tax at a rate not to exceed .05% per year upon all the taxable property of the district or issue additional bonds, whichever action shall be the most feasible.

(p) This Section is cumulative and constitutes complete authority for the issuance of bonds as provided in this Section notwithstanding any other statute or law to the contrary.

(q) With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of Public Act 86-004 (June 6, 1989), it is, and always has been, the intention of the General Assembly (i) that the Omnibus Bond Acts are, and always have been, supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(r) When the purposes for which the bonds are issued have been accomplished and paid for in full and there remain funds on hand from the proceeds of the bond sale and interest earnings therefrom, the board shall, by resolution, use such excess funds in accordance with the provisions of Section 10-22.14 of this Act [105 ILCS 5/10-22.14].

(s) Whenever any tax is levied or bonds issued for fire prevention, safety, energy conservation, and school security purposes, such proceeds shall be deposited and accounted for separately within the Fire Prevention and Safety Fund.

(Source: P.A. 86-728; 86-970; 86-1028; 86-1312; 87-195; 87-984, § 1; 88-251, § 1; 88-508, § 1; 88-628, § 5; 88-670, § 2-34; 89-235, § 2-90; 89-397, § 5; 95-675, § 15; 95-793, § 5; 96-252, § 5; 96-1474, § 5.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 17-2.11.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

Effect of Amendments. The 1992 amendment by P.A. 87-984, effective January 1, 1993, rewrote this section to the extent that a detailed comparison would be impracticable.

The 1993 amendment by P.A. 88-251, effective January 1, 1994, in the section catchline deleted "and" preceding "school security" and inserted "and specified repair"; in the first sentence of the introductory language inserted the language beginning "or if a school district does not need funds for other fire prevention and safety projects" and concluding "or school bus turnarounds and repairs must be made" and inserted "repairs" preceding "or reconstruction, upon the following conditions"; and in the first sentence of subsection (a) inserted "repairs".

The 1993 amendment by P.A. 88-508, effective January 1, 1994, in the section catchline inserted "handicapped accessibility" and in the first sentence of the introductory language inserted the language beginning "or whenever any such district determines that it is necessary for handicapped" and concluding "Section 2-3.12 of this Act;".

The 1994 amendment by P.A. 88-628, effective September 9, 1994, in the introductory language inserted "(which is preceded by at least one published notice (i) occurring at least 7 days prior to the hearing in a newspaper of general circulation within the school district and (ii) setting forth the time, date, place, and general subject matter of the hearing)" and made minor punctuation changes throughout. The 1994 amendment by P.A. 88-670, effective December 2, 1994, combined the amendments by P.A. 88-251 and P.A. 88-508.

The 1994 amendment by P.A. 88-670, effective December 2, 1994, combined the amendments by P.A. 88-251 and P.A. 88-508.

The 1995 amendment by P.A. 89-235, effective August 4, 1995, combined the amendments by P.A. 88-628, § 5 and P.A. 88-670, § 2-34.

The 1995 amendment by P.A. 89-397, effective August 20, 1995, combined the amendments by P.A. 88-628 and P.A. 88-670; in the introductory paragraph, in the first and second sentences substituted "disabled" for "handicapped".

The 2007 amendment by P.A. 95-675, effective October 11, 2007, in the first sentence of (a), deleted "either" following "available in"; inserted "the school facility occupation tax fund of the district"; and made related changes.

The 2008 amendment by P.A. 95-793, effective August 8, 2008, redesignated the existing paragraphs as (a) through (s) and made related changes; at the end of (a) added "the district may . . . upon the following conditions"; added (a)(1) and (a)(2); at the end of (b), (c), and (d) added "the district may levy a tax or issue bonds as provided in subsection (a) of this Section"; at the end of (e) substituted "then the district may levy a tax or issue bonds as provided in subsection (a) of this Section" for "then in any such event . . . upon the following conditions"; deleted (a) and (b) relating to insufficiency of funds for alterations or repairs; at the end of (j) added "as follows" and made a related change; and at the beginning of (m) substituted "Any bonds issued pursuant to this Section" for "Such bonds".

The 2009 amendment by P.A. 96-252, effective August 11, 2009, added the last paragraph of (a).

The 2010 amendment by P.A. 96-1474, effective August 23, 2010, added the last paragraph of (j).

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CASE NOTES

Analysis

Constitutionality
- Amendment
Fire Protection and Safety
Safety Purposes

Constitutionality

- Amendment

The legislature's declaration in Public Act 86-4 § 71, amending former section 105 ILCS 5/17-2.11a, that it had always intended that bonds issued under this section be subject to the provisions of the omnibus bond acts is in direct conflict with the appellate court's construction of that section and is therefore a contravention of the principle of separation of powers. Bates v. Board of Educ., 136 Ill. 2d 260, 144 Ill. Dec. 104, 555 N.E.2d 1 (1990).

Fire Protection and Safety

A local county tax board did not violate this section by levying a total tax in excess of 0.05% for fire protection and safety purposes. People ex rel. Bonefeste v. B.D.H. Rentals, 277 Ill. App. 3d 614, 214 Ill. Dec. 305, 660 N.E.2d 1012 (1 Dist. 1996), appeal denied, 167 Ill. 2d 568, 217 Ill. Dec. 669, 667 N.E.2d 1062 (1996).

Safety Purposes

A strict limitation of either 0.05% (or 0.10% by referendum) on the tax a school district may levy for safety purposes would jeopardize the safety of school children. People ex rel. Bonefeste v. B.D.H. Rentals, 277 Ill. App. 3d 614, 214 Ill. Dec. 305, 660 N.E.2d 1012 (1 Dist. 1996), appeal denied, 167 Ill. 2d 568, 217 Ill. Dec. 669, 667 N.E.2d 1062 (1996).

§ 105 ILCS 5/17-2.11a: Repealed by P.A. 87-984, § 3, effective January 1, 1993.

Cross References.

As to tax for fire prevention and safety, see now 105 ILCS 5/20-3.

§ 105 ILCS 5/17-2.11b: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

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§ 105 ILCS 5/17-2.11c. Validation; St. Joseph Ogden Community High School District 305

Sec. 17-2.11c. Validation; St. Joseph Ogden Community High School District 305. If, prior to the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-258], St. Joseph Ogden Community High School District 305 has levied and the county clerk has extended taxes for the purposes described in Section 17-2.11 of this Code [105 ILCS 5/17-2.11] without the certificates of the regional superintendent of schools and the State Superintendent of Education required by Section 17-2.11, then the tax levies and extensions and the expenditures by the school district of the extended amounts are hereby validated for all purposes to the same extent as if the district had received and filed the necessary certifications prior to the tax levies and extensions and had expended the funds in full compliance with Section 17-2.11.

(Source: P.A. 96-258, § 5.)

Effective Date. Section 99 of P.A. 96-258 makes this section effective upon becoming law. The Act was approved August 11, 2009.

§ 105 ILCS 5/17-2A. Interfund Transfers

Sec. 17-2A. Interfund Transfers. The school board of any district having a population of less than 500,000 inhabitants may, by proper resolution following a public hearing set by the school board or the president of the school board (that is preceded (i) by at least one published notice over the name of the clerk or secretary of the board, occurring at least 7 days and not more than 30 days prior to the hearing, in a newspaper of general circulation within the school district and (ii) by posted notice over the name of the clerk or secretary of the board, at least 48 hours before the hearing, at the principal office of the school board or at the building where the hearing is to be held if a principal office does not exist, with both notices setting forth the time, date, place, and subject matter of the hearing), transfer money from (1) the Educational Fund to the Operations and Maintenance Fund or the Transportation Fund, (2) the Operations and Maintenance Fund to the Educational Fund or the Transportation Fund, or (3) the Transportation Fund to the Educational Fund or the Operations and Maintenance Fund of said district, provided that, except during the period from July 1, 2003 through June 30, 2013, such transfer is made solely for the purpose of meeting one-time, non-recurring expenses. Except during the period from July 1, 2003 through June 30, 2013, any other permanent interfund transfers authorized by any provision or judicial interpretation of this Code for which the transferee fund is not precisely and specifically set forth in the provision of this Code authorizing such transfer shall be made to the fund of the school district most in need of the funds being

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transferred, as determined by resolution of the school board.

(Source: P.A. 86-970; 89-3, § 5; 92-127, § 5; 92-722, § 5; 93-393, § 5; 94-176, § 5; 95-53, § 5; 96-1201, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-2A.

Effect of Amendments. The 1995 amendment by P.A. 89-3, effective February 27, 1995, rewrote the section.

The 2001 amendment by P.A. 92-127, effective January 1, 2002, inserted "set by the school board or the president of the school board", in the parenthetical phrase, inserted designation (i), inserted "over the name of the clerk or secretary of the board", "and not more than 30 days" and "(ii) by posted notice over the name of the clerk or secretary of the board, at least 48 hours before the hearing, at the principal office of the school board or at the building where the hearing is to be held if a principal office does not exist, with both notices", added the last sentence, and made related changes.

The 2002 amendment by P.A. 92-722, effective July 25, 2002, in item (ii) of the first sentence, substituted "transfer money from" for "transfer from" and deleted "an amount of money not to exceed 20% of the tax actually received in the transferor Fund for the year previous to the transfer" preceding the proviso at the end of the sentence.

The 2003 amendment by P.A. 93-393, effective July 28, 2003, inserted the exception language near the end of the first sentence and at the beginning of the second sentence.

The 2005 amendment by P.A. 94-176, effective July 12, 2005, twice substituted "2007" for "2005".

The 2007 amendment by P.A. 95-53, effective August 10, 2007, twice substituted "2010" for "2007".

The 2010 amendment by P.A. 96-1201, effective July 22, 2010, substituted "June 30, 2013" for "June 30, 2010" in the first and second sentences.

§ 105 ILCS 5/17-2B. Transfer from operations and maintenance fund to educational fund

Sec. 17-2B. Transfer from operations and maintenance fund to educational fund. In counties having a population in excess of 600,000 and less than 2,000,000 inhabitants, the school board of an elementary school district maintaining only grades kindergarten through 8 and having an enrollment of less than 800 students may, by proper resolution, cause a proposition to transfer moneys accumulated in its operations and maintenance fund to its educational fund to be submitted to the voters of the school district at a regular scheduled election held in accordance with Article 9 and the general election law of the State; provided, however, that no such resolution, referendum or transfer shall be

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adopted, held or approved pursuant to this Section unless at the time such resolution is adopted by the school board: (i) the school district has no bonded indebtedness outstanding, has in excess of $1,000,000 accumulated in its operations and maintenance fund and has in each of the 16 years preceding adoption of the resolution levied taxes for both educational purposes and for operations and maintenance purposes at the maximum rates from time to time permitted by law to be levied by such district; and (ii) the voters of the district have not at any time previously by referendum approved or refused to approve the transfer of any moneys from the operations and maintenance fund to the educational purposes fund.

If a majority of the votes cast on the proposition at a referendum authorized by this Section is in favor of the proposition, the school board may thereafter transfer the moneys from the operations and maintenance fund to the educational fund as approved by the voters of the school district.

(Source: P.A. 86-225; 86-970; 86-1028; 86-1334.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-2B.

§ 105 ILCS 5/17-2C: Repealed effective July 1, 2006.

Note.

This section was repealed by its own terms, which read, in part, "This Section is repealed on July 1, 2006.

§ 105 ILCS 5/17-3. Additional levies - Submission to voters

Sec. 17-3. Additional levies - Submission to voters. The school board in any district having a population of less than 500,000 inhabitants may, by proper resolution, cause a proposition to increase, for a limited period of not less than 3 nor more than 10 years or for an unlimited period, the annual tax rate for educational purposes to be submitted to the voters of such district at a regular scheduled election as follows:

(1) in districts maintaining grades 1 through 8, or grades 9 through 12, the maximum rate for educational purposes shall not exceed 3.5% of the value as equalized or assessed by the Department of Revenue;

(2) in districts maintaining grades 1 through 12 the maximum rate for educational purposes shall not exceed 4.00% of the value as equalized or assessed by the Department

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of Revenue except that if a single elementary district and a secondary district having boundaries that are coterminous form a community unit district on or after the effective date of this amendatory Act of the 94th General Assembly [P.A. 94-52] and the actual combined rate of the elementary district and secondary district prior to the formation of the community unit district is greater than 4.00%, then the maximum rate for educational purposes for such district shall be the following:

(A) For 2 years following the formation of the community unit district, the maximum rate shall equal the actual combined rate of the previous elementary district and secondary district.

(B) In each subsequent year, the maximum rate shall be reduced by 0.10% or reduced to 4.00%, whichever reduction is less. The school board may, by proper resolution, cause a proposition to increase the reduced rate, not to exceed the maximum rate in clause (A), to be submitted to the voters of the district at a regular scheduled election as provided under this Section. Nothing in this Section shall require that the maximum rate for educational purpose for a district maintaining grades one through 12 be reduced below 4.00%.

If the resolution of the school board seeks to increase the annual tax rate for educational purposes for a limited period of not less than 3 nor more than 10 years, the proposition shall so state and shall identify the years for which the tax increase is sought.

If a majority of the votes cast on the proposition is in favor thereof at an election for which the election authorities have given notice either (i) in accordance with Section 12-5 of the Election Code [10 ILCS 5/12-5] or (ii) by publication of a true and legible copy of the specimen ballot label containing the proposition in the form in which it appeared or will appear on the official ballot label on the day of the election at least 5 days before the day of the election in at least one newspaper published in and having a general circulation in the district, the school board may thereafter, until such authority is revoked in like manner, levy annually the tax so authorized; provided that if the proposition as approved limits the increase in the annual tax rate of the district for educational purposes to a period of not less than 3 nor more than 10 years, the district may, unless such authority is sooner revoked in like manner, levy annually the tax so authorized for the limited number of years approved by a majority of the votes cast on the proposition. Upon expiration of that limited period, the rate at which the district may annually levy its tax for educational purposes shall be the rate provided under Section 17-2 [105 ILCS 5/17-2], or the rate at which the district last levied its tax for educational purposes prior to approval of the proposition authorizing the levy of that tax at an increased rate, whichever is greater.

The school board shall certify the proposition to the proper election authorities in accordance with the general election law.

The provisions of this Section concerning notice of the tax rate increase referendum apply only to consolidated primary elections held prior to January 1, 2002 at which not less than 55% of the voters voting on the tax rate increase proposition voted in favor of the tax rate increase proposition.

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(Source: P.A. 81-1550; 88-376, § 5; 92-6, § 15; 94-52, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-3.

Effect of Amendments. The 1993 amendment by P.A. 88-376, effective January 1, 1994, in the introductory language of the first paragraph, inserted "for a limited period of not less than 3 nor more than 10 years or for an unlimited period"; added the second paragraph; and in the third paragraph added the proviso at the end.

The 2001 amendment by P.A. 92-6, effective June 7, 2001, inserted the language beginning "at an election" and ending "circulation in the district" near the beginning of the third paragraph, and added the last paragraph.

The 2005 amendment by P.A. 94-52, effective June 17, 2005, rewrote (2).

CASE NOTES

Analysis

Form of Ballot
Maximum Tax Rate
Military Personnel
- Voting Eligibility

Form of Ballot

It is a matter of substance whether the ballot requires the voter to vote for or against the proposition or whether the proposition is submitted to a "yes" or "no" vote, and deviation from statutory form will invalidate election. People ex rel. Rhodes v. Miller, 392 Ill. 445, 64 N.E.2d 869 (1946).

Maximum Tax Rate

An amendment to 105 ILCS 5/17-2, enacted by the legislature in 1957, was not designed to permit any school district maintaining grades 1 through 12, including community unit districts, to increase the maximum rate for educational purposes to 1.25%. People ex rel. Myers v. Pennsylvania R.R., 19 Ill. 2d 122, 166 N.E.2d 86 (1960).

Military Personnel

- Voting Eligibility

The legislature has extended the voting franchise to persons residing on military reservations located within Illinois, and this general election franchise includes the right to vote on referenda or

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propositions to increase the annual tax rate for the school district that are submitted to the voters pursuant to this section. Ghini v. Highwood-Highland Park Elementary Sch., 129 Ill. App. 3d 671, 84 Ill. Dec. 795, 472 N.E.2d 1191 (2 Dist. 1984).

The military personnel and their dependents whose votes were challenged, if otherwise qualified to vote under Illinois law, were eligible voters in a referendum. Ghini v. Highwood-Highland Park Elementary Sch., 129 Ill. App. 3d 671, 84 Ill. Dec. 795, 472 N.E.2d 1191 (2 Dist. 1984).

§ 105 ILCS 5/17-3.1: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/17-3.2. Additional or supplemental budget

Sec. 17-3.2. Additional or supplemental budget. Whenever the voters of a school district have voted in favor of an increase in the annual tax rate for educational or operations and maintenance purposes or both at an election held after the adoption of the annual school budget for any fiscal year, the board may adopt or pass during that fiscal year an additional or supplemental budget under the sole authority of this Section by a vote of a majority of the full membership of the board, any other provision of this Article to the contrary notwithstanding, in and by which such additional or supplemental budget the board shall appropriate such additional sums of money as it may find necessary to defray expenses and liabilities of that district to be incurred for educational or operations and maintenance purposes or both of the district during that fiscal year, but not in excess of the additional funds estimated to be available by virtue of such voted increase in the annual tax rate for educational or operations and maintenance purposes or both. Such additional or supplemental budget shall be regarded as an amendment of the annual school budget for the fiscal year in which it is adopted, and the board may levy the additional tax for educational or operations and maintenance purposes or both to equal the amount of the additional sums of money appropriated in that additional or supplemental budget, immediately.

(Source: P.A. 86-1334.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-3.2.

CASE NOTES

Analysis

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Extension of Taxes
Time of Levy
- Alteration
- Tax Bills
Truth in Taxation Act

Extension of Taxes

As a method by which a school district may raise additional budgetary funding during a given fiscal year, this section authorizes the extension of additional taxes for educational purposes at any time during a given fiscal year. Verdung v. Palatine Nat'l Bank, 181 Ill. App. 3d 345, 130 Ill. Dec. 77, 536 N.E.2d 1288 (2 Dist. 1989).

Time of Levy

- Alteration

The date upon which a levy must be made may be altered in cases where a school district needs to raise additional funds for a supplemental budget. Verdung v. Palatine Nat'l Bank, 181 Ill. App. 3d 345, 130 Ill. Dec. 77, 536 N.E.2d 1288 (2 Dist. 1989).

- Tax Bills

The supplemental levy under this section must be filed at a time the county collector can, without delay, incorporate the levy into the tax bills. Verdung v. Palatine Nat'l Bank, 181 Ill. App. 3d 345, 130 Ill. Dec. 77, 536 N.E.2d 1288 (2 Dist. 1989).

Truth in Taxation Act

Adoption of a supplemental budget under this section can only be accomplished through voter approval and therefore meets the requirements of the Truth in Taxation Act (see now 35 ILCS 200/18-55). Verdung v. Palatine Nat'l Bank, 181 Ill. App. 3d 345, 130 Ill. Dec. 77, 536 N.E.2d 1288 (2 Dist. 1989).

§ 105 ILCS 5/17-3.3: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/17-3.4. Form of ballot and notice

Sec. 17-3.4. Form of ballot and notice. Except as otherwise provided under subsection (d) of Section 17-6.1 [105 ILCS 5/17-6.1], whenever any proposition to authorize or to levy an annual tax, or to increase the annual rate of tax levied by any school district, for any school purpose is submitted to the voters of such district at any election, each required notice or other publication of the election or referendum and the form of ballot shall contain, in addition to any other matters required by law:

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(a) the geographic or other common name of the school district by which that district is commonly known and referred to, as well as the number of the district;

(b) the maximum rate at which such tax may be levied if the proposition is approved;

(c) the total dollar amount of the most recently approved annual budget of the school district, what the total dollar amount of that annual budget would be if increased by the amount of additional tax which may be levied if the proposition is approved, and what would be the percentage of increase in the total dollar amount of the most recently approved annual budget of the school district if such total dollar amount were increased by the amount of additional tax which may be levied if the proposition is approved; and

(d) if the proposition is to increase the annual rate of an existing tax levied by the school district, then in addition to the matters set forth in (a), (b) and (c) above, the annual rate at which such existing tax currently is levied and the percentage of increase between the maximum rate at which such tax may be levied if the proposition is approved and the annual rate at which such tax currently is levied.

(Source: P.A. 86-579; 86-1318.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-3.4.

CASE NOTES

Analysis

Parol Evidence
Proper Certificate
School District Referendum

Parol Evidence

Where the record of the board of education did not show that the notices of the election at which the district voted to build a schoolhouse in the district were properly posted, but it was clearly established by parol that the notice introduced in evidence was a true copy of the notices, which was duly certified by the clerk of the board to have been posted, and was at one time on file in the clerk's office, but which had been removed to be used in evidence in cases relating to the establishment of the school district, and had not been returned to the files in the clerk's office, but had been lost, the evidence was ample to establish the fact that due notice was given of the election at which the district voted to build a schoolhouse. People ex rel. Brockamp v. Lemmon, 256 Ill. 631, 100 N.E. 200 (1912).

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Proper Certificate

A county court did not err in overruling the objection that a tax levy certificate was not sufficient to authorize the extension of a high school tax against the property of appellant where the tax levy was made by the board of education and was properly certified under the statute by the president and secretary of the board of education. People ex rel. Brockamp v. Lemmon, 256 Ill. 631, 100 N.E. 200 (1912).

Where a certificate of levy was signed by the parties designated by the statute, it furnished ample authority to the county clerk to extend school tax for the high school district covered by the certificate. People ex rel. Brockamp v. Lemmon, 256 Ill. 631, 100 N.E. 200 (1912).

School District Referendum

105 ILCS 5/17-3.4, regarding the form of a ballot, does not require a reading of 35 ILCS 200/18-230, regarding an increase by referendum in a school district's tax rate, that "rate increase approved" should be measured from the currently levied rate. Bd. of Educ. v. Cunningham, 346 Ill. App. 3d 1027, 282 Ill. Dec. 631, 806 N.E.2d 1219, 2004 Ill. App. LEXIS 318 (2 Dist. 2004), appeal denied, 211 Ill. 2d 571, Ill. Dec. , 823 N.E.2d 963 (2004).

§ 105 ILCS 5/17-3.5. Maximum-authorized district educational purposes tax rate

Sec. 17-3.5. Maximum-authorized district educational purposes tax rate. If, at any election held prior to March 19, 2004, the voters of a school district having a population of less than 500,000 inhabitants approved the proposition to increase the educational purposes tax rate of the district and the proposition to increase the rate set forth as the existing maximum-authorized educational purposes tax rate of the district the tax rate most recently extended for educational purposes, then, for the purposes of this Code and the Property Tax Code, the maximum-authorized educational purposes tax rate of the district shall be calculated as follows:

(1) for the first tax year affected by the results of the referendum, the district's tax rates shall be calculated based upon the rates set forth in the proposition; and

(2) for each tax year thereafter, the district's maximum-authorized educational purposes tax rate approved at the referendum shall be equal to the sum of the district's maximum-authorized educational purposes tax rate immediately preceding the referendum plus the difference between the rates set forth in the proposition submitted to the voters of the district at the referendum.

Within 10 days after the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-1059], the school board of any school district affected by this subsection (a) may, notwithstanding the requirements of any other law to the contrary, amend its certificate of tax levy for any year for which its equalized assessed valuation has not yet been certified by the county clerk. The amended certificate of tax levy shall be filed with the county clerk within the 10-day period after the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-1059].

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(Source: P.A. 93-1059, § 5.)

Effective Date. Section 99 of P.A. 93-1059 made this section, effective upon becoming law. The Act was approved December 8, 2004.

§ 105 ILCS 5/17-3A. Apportionment; tax objections; court decisions; adjustments of levies and refunds to tax objectors

Sec. 17-3A. Apportionment; tax objections; court decisions; adjustments of levies and refunds to tax objectors. Notwithstanding any other provision of this Code, if a court, in any tax objection based on the apportionment of an overlapping taxing district under Section 18-155 of the Property Tax Code [35 ILCS 200/18-155], for any year prior to the year of the effective date of this amendatory Act of the 92nd General Assembly [P.A. 92-377], enters a final judgment that there was an over extension or under extension of taxes for an overlapping taxing district based on the apportionment under Section 18-155 of the Property Tax Code [35 ILCS 200/18-155] for the year for which the objection was filed, the county clerks of each county in which there was an under extension of a levy of a school district shall proportionately increase the levy of that school district by an amount specified in the court order in that county in the subsequent year or in any subsequent year following the final judgment of the court. The increase in the levy of the school district, when extended, shall be set forth as a separate item on the tax bills of affected taxpayers. Notwithstanding any other provision of law, the increase in the levy and the extension thereof shall not be subject to any limitations on levies or extensions imposed by this Code or the Property Tax Code [35 ILCS 200/1-1 et seq.]. The funds collected pursuant to a levy increase authorized by this Section and Section 18-155 of the Property Tax Code [35 ILCS 200/18-155] shall be delivered to the county collector of each county in which there was an over extension for distribution to the tax objectors in accordance with the court order.

(Source: P.A. 92-377, § 10.)

Effective Date. Section 99 of P.A. 92-2001 made this section effective upon becoming law. The Act was approved August 16, 2001.

§ 105 ILCS 5/17-4. Increase tax rate for transportation

Sec. 17-4. Increase tax rate for transportation. The school board of any district having a population of less than 500,000 inhabitants may, by proper resolution, cause a proposition to increase the annual tax rate for transportation purposes to be submitted to the voters of such district at a regular scheduled election. The board shall certify the

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proposition to the proper election authority for submission in accordance with the general election law. If at such election a majority of the votes cast on the proposition is in favor thereof the school board may thereafter until such authority is revoked in like manner levy annually the tax so authorized.

(Source: P.A. 82-461.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-4.

CASE NOTES

Referendum

- Valid

Under 105 ILCS 5/17-5.1, the authorized tax rate of 1.775% for educational purposes remained in force and effect, notwithstanding the later passage of this section; thus referendum was valid and was sufficient to authorize a rate of 1.775% and the county court properly overruled the objection to this rate. People ex rel. Young v. Chicago N. W. Ry., 20 Ill. 2d 462, 170 N.E.2d 614 (1960).

§ 105 ILCS 5/17-5. Increase tax rates for operations and maintenance purposes - Maximum

Sec. 17-5. Increase tax rates for operations and maintenance purposes - Maximum. The school board in any district having a population of less than 500,000 inhabitants may, by proper resolution, cause a proposition to increase the annual tax rate for operations and maintenance purposes to be submitted to the voters of the district at a regular scheduled election. The board shall certify the proposition to the proper election authority for submission to the elector in accordance with the general election law. In districts maintaining grades 1 through 8, or grades 9 through 12, the maximum rate for operations and maintenance purposes shall not exceed .55%; and in districts maintaining grades 1 through 12, the maximum rates for operations and maintenance purposes shall not exceed .75%, except that if a single elementary district and a secondary district having boundaries that are coterminous on the effective date of this amendatory Act form a community unit district as authorized under Section 11-6 [105 ILCS 5/11-6], the maximum rate for operation and maintenance purposes for such district shall not exceed 1.10% of the value as equalized or assessed by the Department of Revenue; and in such district maintaining grades 1 through 12, funds may, subject to the provisions of Section 17-5.1 [105 ILCS 5/17-5.1] accumulate to not more than 5% of the equalized assessed valuation of the district. No such accumulation shall ever be transferred or used for any

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other purpose. If a majority of the votes cast on the proposition is in favor thereof, the school board may thereafter, until such authority is revoked in like manner, levy annually a tax as authorized.

(Source: P.A. 86-1334.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-5.

CASE NOTES

Analysis

Maximum Tax Rate
Refusal to Pay

Maximum Tax Rate

An amendment to 105 ILCS 5/17-2, enacted by the legislature in 1957, was not designed to permit any school district maintaining grades 1 through 12, including community unit districts, to increase the maximum rate for educational purposes to 1.25%. People ex rel. Myers v. Pennsylvania R.R., 19 Ill. 2d 122, 166 N.E.2d 86 (1960).

Where the amount levied was well within the limit fixed under the former School Law, the levy was therefore a legal levy. People ex rel. Gleghorn v. Chicago & A. R.R., 257 Ill. 208, 100 N.E. 502 (1912).

Refusal to Pay

Where a list of a tax levy included items such as janitor's salary, rent, books and bookcases, merchandise, report cards, etc., which under appellant's contention could not properly be paid out of a tax levied for building purposes, under the former School Law conceding appellant's contention, it only showed that the amount levied for building purposes was somewhat in excess of the amount of the expenses which were properly payable out of that fund; it was not a sufficient reason why appellant refused to pay its taxes. People ex rel. Gleghorn v. Chicago & A. R.R., 257 Ill. 208, 100 N.E. 502 (1912).

The mere circumstance that in estimating in advance the amount that may be necessary and a larger amount is levied than that actually required is no reason why a taxpayer should refuse to pay his taxes, unless the amount levied is so grossly excessive as to show a fraudulent purpose in making the levy. People ex rel. Gleghorn v. Chicago & A. R.R., 257 Ill. 208, 100 N.E. 502 (1912).

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§ 105 ILCS 5/17-5.1. Referendum for accumulation of operations and maintenance funds

Sec. 17-5.1. Referendum for accumulation of operations and maintenance funds. No tax for operations and maintenance purposes and the purchase of school grounds as provided in Section 11-9 [105 ILCS 5/11-9] and no tax for operations and maintenance purposes as provided in Section 17-5 [105 ILCS 5/17-5] shall be levied at a rate sufficient to accumulate funds nor shall funds for such purposes be accumulated as authorized in said sections until the board of education or school board has by resolution ordered the submission of the proposition of accumulating funds for such purpose to the electors of the district at a regular scheduled election and the proposition has been approved by a majority of the electors voting thereon. The board shall certify the proposition to the proper election authorities for submission in accordance with the general election law.

If a majority of the electors voting upon the proposition vote in favor thereof, the board of education or school board may accumulate funds for operations and maintenance purposes and the purchase of school grounds or for operations and maintenance purposes and may annually levy a tax for such purposes in excess of current requirements but subject to the tax rate limitations for such purposes provided by law.

(Source: P.A. 86-970; 86-1334.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-5.1.

CASE NOTES

Tax Rates

This section, authorizing a tax rate of 1.775% for educational purposes, remained in force and effect, notwithstanding the later passage of amended 105 ILCS 5/17-4; thus referendum was valid and was sufficient to authorize a rate of 1.775% and the county court properly overruled the objection to this rate. People ex rel. Young v. Chicago N. W. Ry., 20 Ill. 2d 462, 170 N.E.2d 614 (1960).

§ 105 ILCS 5/17-6.1. Educational purposes and operations, building and maintenance purposes concurrent equal increase and decrease in maximum authorized tax rate

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Sec. 17-6.1. Educational purposes and operations, building and maintenance purposes concurrent equal increase and decrease in maximum authorized tax rate. (a) The school board of any school district having a population of less than 500,000 inhabitants may, by proper resolution, cause to be submitted to the voters of the school district at a regular scheduled election the proposition of whether the maximum authorized annual tax rate for either educational purposes or operations, building and maintenance purposes may be increased with an equal corresponding tax rate decrease being effected in the maximum authorized tax rate for the other fund.

(b) The proposition shall be in substantially the following form:

Shall the maximum authorized annual tax rate for ..... purposes of School District Number ....., ... County, Illinois (commonly known as .....) be increased from ....% to ....% and the maximum authorized annual tax rate for ..... purposes be decreased concurrently from ....% to ....%?

(c) The rate amount of the proposed tax rate decrease must be the same as the rate amount of the proposed tax rate increase. No maximum tax rate secured hereunder may exceed the maximum rate specified for the particular fund in Section 17-3 and 17-5 [105 ILCS 5/17-3 and 105 ILCS 5/17-5].

(d) The requirements of Section 17-3.4 [105 ILCS 5/17-3.4] shall not apply to the proposition provided for in this Section.

(e) If at the election a majority of the votes cast on the proposition is in favor thereof, the school board may thereafter annually levy the taxes as authorized.

(Source: P.A. 86-1318.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-6.1.

CASE NOTES

Analysis

Objections Proper
Rate

Objections Proper

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County court erred in overruling appellant's objections to the portions of the taxes levied and extended against its properties under former similar provision (see now this section) in the respective school districts for building purposes. People ex rel. Hutchcraft v. Louisville & N. R.R., 396 Ill. 502, 72 N.E.2d 194 (1947).

Rate

If the bonded indebtedness of a school district has been incurred for educational purposes, the tax to meet it must be levied as an educational tax, and, if such indebtedness has been incurred for building purposes, then that tax to meet must be levied for building purposes, and the tax levied for either purpose, whether or not it includes any sum to be applied upon bonded indebtedness, could not exceed the rate fixed for such purpose. People ex rel. Carnine v. Illinois Cent. R.R., 337 Ill. 276, 169 N.E. 178 (1929).

§ 105 ILCS 5/17-7. Payments from tax levied

Sec. 17-7. Payments from tax levied. Any sum expended or obligations incurred for the improvement, maintenance, repair or benefit of school buildings and property, including the cost of interior decorating and the installation, improvement, repair, replacement and maintenance of building fixtures, for the rental of buildings and property for school purposes, or for the payment of all premiums for insurance upon school buildings and school building fixtures or for the purchase or equipment to be used in the school lunch program shall be paid from the tax levied for operations and maintenance purposes and the purchase of school grounds. The board may provide by resolution that the payment of all salaries of janitors, engineers or other custodial employees and all costs of fuel, lights, gas, water, telephone service, and custodial supplies and equipment or the cost of a professional survey of the conditions of school buildings as provided in Section 2-3.12 [105 ILCS 5/2-3.12], or any one or more of the preceding items shall be paid from the tax levied for operations and maintenance purposes and the purchase of school grounds in which event such salaries or specified costs, or both, shall be so paid until the next fiscal year after the repeal of such resolution. Expenditures for all purposes not specified in Sections 17-7 or 17-8 [105 ILCS 5/17-7 or 105 ILCS 5/17-8] or other provisions of this Act shall be made from the educational fund.

(Source: P.A. 86-1334; 87-984, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-7.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 120.10.

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Effect of Amendments. The 1992 amendment by P.A. 87-984, effective January 1, 1993, inserted "or other provisions of this Act" in the last sentence.

CASE NOTES

Analysis

Excessive Minimum Building Rate
Reserved Amount
Taxes
- Exclusive Levy
Validity

Excessive Minimum Building Rate

Where a community unit school district which maintained grades one to 12 was organized by a referendum, and on the same date the voters also granted the district authority to levy taxes at a maximum rate of .25% for building purposes and the purchase of school grounds, the referendum establishing a maximum building rate could not serve as authority to extend a minimum annual building rate in excess of the saved rate of 16 cents. People ex rel. Penrod v. Chicago & N. W. Ry., 17 Ill. 2d 263, 161 N.E.2d 120 (1959).

Reserved Amount

Prior to 1941 amendment to former Ill. Rev. Stat., ch. 122, para. 212 (see now this section), there arose the real possibility that no building rate could be extended for a particular district if its building and educational bond requirements exceeded the maximum building rate. Desiring to remedy that situation, the legislature amended the former statute in order that at least 121/2 cents might be saved for building purposes. People ex rel. Oller v. Missouri Pac. R.R., 388 Ill. 271, 58 N.E.2d 47 (1944).

Taxes

- Exclusive Levy

Prior to the 1935 amendment of former Ill. Rev. Stat., ch. 122, para. 212 (see now this section), a school district could levy taxes for educational and building purposes only, and a bonded indebtedness incurred for building purposes was to be paid out of the tax levied for building purposes, and if a bonded indebtedness was incurred for educational purposes the tax to meet it was to be levied for educational purposes. People ex rel. Oller v. Missouri Pac. R.R., 388 Ill. 271, 58 N.E.2d 47 (1944).

Validity

The fact that some school districts must charge fuel to the educational fund while school districts having a population of more than 500,000 inhabitants must charge fuel to the building fund did not create any special privilege; it is clearly for the legislative branch to determine the method by which any school district must appropriate and account for such expenditure items. People ex rel.

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Korzen v. Englemann, 32 Ill. 2d 196, 204 N.E.2d 760 (1965).

§ 105 ILCS 5/17-8. Transportation costs paid from transportation fund

Sec. 17-8. Transportation costs paid from transportation fund. Any transportation operating costs incurred for transporting pupils to and from school and school sponsored activities and the costs of acquiring equipment shall be paid from a transportation fund to consist of moneys received from any tax levy for such purpose, state reimbursement for transportation, except as provided in Section 29-5 [105 ILCS 5/29-5], all funds received from other districts for transporting pupils and any charges for transportation services rendered to individuals or auxiliary enterprises of the school.

For the purpose of this Act "transportation operating cost" shall include all costs of transportation except interest and rental of building facilities.

(Source: P.A. 85-581.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-8.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 120.10.

§ 105 ILCS 5/17-8.01: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/17-9. Extension of taxes by county clerk - Separate tax for payment of bonds

Sec. 17-9. Extension of taxes by county clerk - Separate tax for payment of bonds. When the county clerk determines the amount of taxes to be extended upon all the taxable property in any school district having a population of less than 500,000 inhabitants, he shall determine from the certified copies of bond resolutions filed in his office the amount necessary to pay the maturing principal of and interest on any bonds of the district and shall extend a separate tax sufficient to pay all principal and interest thereon which matures prior to the first delinquent date of taxes to be realized from the next succeeding tax extension or all interest and sinking fund requirements for the payment of principal which must be extended prior to said date. The separate tax shall be extended without limitation as to rate or amount. No deduction shall be made in the rate which may be

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extended for educational or operations, building and maintenance purposes by reason of any rate extended for payment of principal or interest of bonds, except as provided in this section, nor by reason of any tax required to be extended pursuant to the exercise of the power conferred in Section 10-22.12 [105 ILCS 5/10-22.12].

(Source: P.A. 77-2744.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-9.

CASE NOTES

Analysis

Fiscal Year
Propriety
Tax Levy
- When Made

Fiscal Year

If levy is made before the start of the fiscal year, it must follow the adoption of the budget, and public notice and a hearing on the proposed budget are required but if it is made after the start of the fiscal year, it must be made after July 1 and before the last Tuesday in September. People ex rel. Garwood v. New York Cent. R.R., 21 Ill. 2d 315, 172 N.E.2d 357 (1961).

Propriety

The ballot used in a referendum was proper and plaintiff's complaints failed to state a cause of action. Carstens v. Board of Educ., 27 Ill. 2d 88, 187 N.E.2d 682 (1963).

Tax Levy

- When Made

The legal effect of the provisions of the school law with reference to certifying and returning the tax levy to the county clerk required that the levy be made on or before the date specified. People ex rel. Joseph v. Pennsylvania R.R., 18 Ill. 2d 61, 162 N.E.2d 350 (1959).

§ 105 ILCS 5/17-9.01: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

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§ 105 ILCS 5/17-9.02. Supplemental tax levy for Ford Heights School District 169

Sec. 17-9.02. Supplemental tax levy for Ford Heights School District 169. (a) Notwithstanding any other provisions of this Article and in addition to the methods provided by other Sections of this Article for increasing the rate of tax levied for any school purpose, Ford Heights School District 169 may levy a supplemental tax for the 2006, 2007, and 2008 taxable years.

(b) The supplemental tax authorized by this Section is levied upon all the taxable property of the school district at its value as equalized or assessed by the Department of Revenue for each of the years in which the levy is made. The supplemental tax is in addition to all other taxes that the district may levy for any school purpose for the years in which the levy is made.

(c) For each year that it is levied, the supplemental tax must be levied at a rate not exceeding that which, when applied to the equalized assessed value of all taxable property in the district for that year in which the levy is made, is sufficient to yield that amount of tax revenue that is equal to $1,067,000 for a total of $3,201,000 for all taxable years that the tax is levied.

(d) The supplemental tax authorized by this Section must be levied by proper resolution of the school board and without referendum. A certified copy of the resolution levying the supplemental tax, signed by the president and clerk or secretary of the school board, must be filed in the office of the county clerk, and it is, then, the duty of the county clerk to extend the supplemental tax. The supplemental tax must be extended and collected in like manner as all other taxes of the school district, but the supplemental tax must be separately identified by the collectors.

(e) Ford Heights School District 169 may use the proceeds from the supplemental tax for any purpose for which the district is authorized to make expenditures.

(Source: P.A. 94-1078, § 15.)

Effective Date. Section 99 of P.A. 94-1077 made the section effective upon becoming law. The Act was approved January 9, 2007.

§ 105 ILCS 5/17-10. Certificate of last ascertained equalized value - Tax books - Notice to school treasurers

Sec. 17-10. Certificate of last ascertained equalized value - Tax books - Notice to school treasurers. The county clerk shall furnish the school board of any school district, upon

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request, a certificate showing the last ascertained full, fair cash value of the taxable property of the district.

When a school district lies partly in two or more counties, the county clerk of each county in which any part of such district lies shall furnish, upon request, to the school board of the district, a certificate showing the last ascertained full, fair cash value of the taxable property in that part of the district lying in such county.

When making out the tax books for the collector, the county clerk shall compute each taxable person's tax in each school district upon the total amount of taxable property for that year, located in such district, whether belonging to residents or non-residents, upon the valuation produced by the equalization and assessment of property by the county board of review, and all property originally assessed by the Department of Revenue. Such computation shall be made so as to realize the amount of money required to be raised in such district, as shown in the certificate of tax levy, made out by the governing body of such district, and filed with the county clerk as required by this Act. The county clerk shall cause each person's tax, so computed, to be set upon the tax book to be delivered to the collector for that year, in a separate column against each taxpayer's name, or parcel of taxable property, as it appears in the collector's books, to be collected in the same manner, and at the same time, and by the same person, as State and county taxes are collected. He shall number the school districts on the maps in his office to correspond with the numbers of districts as returned to him by the county superintendent of schools, and in making up the tax books to be delivered to the collector of taxes, the county clerk shall copy therein the number of the school districts set opposite each person's assessment of personal property by the assessor making the assessment of such person, and shall extend the school tax on each person's assessment of personal property. The computation of each person's tax and the extension made by the clerk shall be final and conclusive. The rate shall be uniform, and shall not exceed that required by the amount certified by the school board. The county clerk, before delivering the tax book to the collector, shall make and send by mail to each school treasurer of the county a certificate of the amount due his district or districts from the tax so extended and placed on the tax books.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-10.

CASE NOTES

Failure to Extend

- Remedy

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Former 35 ILCS 205/222 (see now 35 ILCS 200/14-40) constituted the Board of Education's sole and exclusive remedy in its action to require a county clerk to extend the taxes properly levied by the school district that were prevented from being collected; this section and the provisions of the former Revenue Act of 1939 (see now 35 ILCS 200/1-1 et seq.) dealing with property taxation pertain to the same subject matter and, as such, they are in pari materia and should be construed together. Board of Educ. v. Hess, 140 Ill. App. 3d 653, 95 Ill. Dec. 15, 488 N.E.2d 1358 (2 Dist. 1986).

§ 105 ILCS 5/17-11. Certificate of tax levy

Sec. 17-11. Certificate of tax levy. (a) The school board of each district, other than a school district subject to the authority of a Financial Oversight Panel pursuant to Article 1H of this Code [105 ILCS 5/1H et seq.], shall ascertain, as near as practicable, annually, how much money must be raised by special tax for transportation purposes if any and for educational and for operations and maintenance purposes for the next ensuing year. In school districts with a population of less than 500,000, these amounts shall be certified and returned to each county clerk on or before the last Tuesday in December, annually. The certificate shall be signed by the president and clerk or secretary, and may be in the following form:

CERTIFICATE OF TAX LEVY

We hereby certify that we require the sum of ..... dollars, to be levied as a special tax for transportation purposes and the sum of ..... dollars to be levied as a special tax for educational purposes, and the sum ..... dollars to be levied as a special tax for operations and maintenance purposes, and the sum of ..... to be levied as a special tax for a working cash fund, on the equalized assessed value of the taxable property of our district, for the year (insert year).

Signed on (insert date).

A ..... B ....., President

C ..... D ....., Clerk (Secretary)

Dist. No. ....., ... County

(b) A failure by the school board to file the certificate with the county clerk in the time required shall not vitiate the assessment.

(c) A school district subject to the authority of a Financial Oversight Panel pursuant to Article 1H of this Code shall file a certificate of tax levy as otherwise provided by this Section, except that such certificate shall be certified and returned to each county clerk on or before the first Tuesday in November annually. If, for whatever reason, the district fails to certify and return the certificate of tax levy to each county clerk on or before the first Tuesday in November annually, then the Financial Oversight Panel for such school district shall proceed to adopt, certify, and return a certificate of tax levy for such school district to each county clerk on or before the last Tuesday in December annually.

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(Source: P.A. 86-13; 86-1334; 87-17; 91-357, § 101; 97-429, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-11.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "the year (insert year)" for "the year 19...." and "on (insert date)" for "on this ..... day of ....., 19..." near the end of the form.

The 2011 amendment by P.A. 97-429, effective August 16, 2011, added the (a) and (b) designations; inserted "other than a school district subject to the authority of a Financial Oversight Panel pursuant to Article 1H of this Code" in the first sentence of the introductory language of (a); and added (c).

CASE NOTES

Analysis

Additional or Amended Levy
- Timeliness
Burden of Proof
Certificates
Condition Precedent
Construction
Correction
County Clerk
Date
Errors of Form
Evidence Held Insufficient
Filing Certificate of Levy
Presumption of Validity
Record of the Board
Taxation Power
Timeliness
- In General
- Supplemental Budget
Working Cash Fund
- Legislative Intent
- No Separate Resolution

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Additional or Amended Levy

- Timeliness

Where a school district failed to meet the deadline in this section for filing the certificate, and the purpose of an additional levy was not to correct errors in an earlier certificate which failed to accurately reflect the action of the board, the supplemental debt-service levy was of no effect. In re 1981 Delinquent Taxes, 190 Ill. App. 3d 908, 137 Ill. Dec. 939, 546 N.E.2d 1052 (3 Dist. 1989).

An additional or amended levy, the certificate for which is filed after the deadline set forth in this section, will be effective only where its purpose is to correct errors in an earlier certificate which did not accurately reflect the action of the school board. In re 1981 Delinquent Taxes, 190 Ill. App. 3d 908, 137 Ill. Dec. 939, 546 N.E.2d 1052 (3 Dist. 1989).

An additional levy or an amended levy, adopted subsequent to the last Tuesday in September, is of no effect unless its purpose is to correct errors in an earlier certificate which did not accurately reflect the action of the school boards, and cannot be given effect. Board of Educ. v. Barrett, 67 Ill. 2d 11, 7 Ill. Dec. 102, 364 N.E.2d 89 (1977).

Burden of Proof

The requirement that a certificate be filed with the county clerk is to enable him to extend the taxes at the proper rate; when he has a certificate that the rate has been increased over the minimum fixed by the statute he has a right to extend the rate, and to assume the officials have complied with the law; the burden of establishing the invalidity of a tax rests upon the objector, and in the absence of proof to the contrary it is presumed just and that the officers levying it have properly discharged their duties. People ex rel. Prindable v. New York Cent. R.R., 400 Ill. 507, 81 N.E.2d 201 (1948).

Certificates

Under a similar prior provision, a county clerk could not, in a succeeding year, go back and extend a school tax on the violation of property for previous years, and then bring it forward and attach it to the taxes of the current year as back taxes due on the property. Weber v. Ohio & Miss. Ry., 108 Ill. 451 (1884).

Condition Precedent

Where appellant objected to a tax levy on the ground that no certificate of tax levy had been filed, where the resolution was made subject to the approval and authorization of a majority of the votes cast at an election to be held in the district pursuant to law, the certificate to set forth that it was adopted by the directors of the district, and approved and authorized by a majority of the voters of the district, the holding of a valid election and a favorable result were conditions precedent to the complete levy of the tax. People ex rel. Stewart v. Chicago M. & St. P. Ry., 326 Ill. 179, 157 N.E. 200 (1927).

Construction

The power of the school board, as well as its duty as set forth in this section, being only in each year to ascertain, as near as practicable, how much money must be raised by special tax for the purposes stated for the next ensuing year, when it has made the levy and has filed the certificate

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of the amounts required for the year, it can refer to no other year than that to which its power and duty extends, that is, for the year ensuing the making of the levy. People v. Miller, 339 Ill. 573, 171 N.E. 672 (1930).

Under former Ill. Rev. Stat., ch. 122, para. 213 (see now this section), the year was not expressly defined, but the time when the amounts to be raised must be ascertained and certified to the first Tuesday in August (now December), and the year was necessarily fixed by the declaration that it was the year ensuing the levy of the tax. People v. Miller, 339 Ill. 573, 171 N.E. 672 (1930).

Correction

It is not permissible to change the record to show that certain action was taken when in fact that action was not taken, nor is it proper to amend the record where the parol testimony is uncertain and contradictory. People ex rel. Stewart v. Chicago M. & St. P. Ry., 326 Ill. 179, 157 N.E. 200 (1927).

Where the default of the clerk of which complaint is made does not affect the substantial justice of the tax and the evidence shows clearly that the tax was regularly levied, then no just reason appears why the record should not be made to speak the truth. People ex rel. Stewart v. Chicago M. & St. P. Ry., 326 Ill. 179, 157 N.E. 200 (1927).

County Clerk

Under former section 191 of the School Law (see now this section), the action of the school board in ascertaining the amount of money that was to be raised by special tax for educational and building purposes was the act that levied the tax and that the certificate required by the statute to be signed by the president and clerk and filed with the town treasurer and county clerk was merely evidence of the levy. People ex rel. Chamberlain v. Chicago, B. & Q. R.R., 383 Ill. 212, 49 N.E.2d 19 (1943).

Date

It was not necessary that a certificate of a levy be signed on the day the levy was made, and the fact that the certificate was dated did not show that the levy was made on that day. People ex rel. Stewart v. Chicago M. & St. P. Ry., 326 Ill. 179, 157 N.E. 200 (1927).

The certificate of the levy need not be signed on the day the levy is made, but the provisions of the statute concerning the time of making the levy are mandatory. People ex rel. Stewart v. Chicago M. & St. P. Ry., 326 Ill. 179, 157 N.E. 200 (1927).

Errors of Form

Where objections made to tax levy certificates were mere irregularities or informalities in the proceedings which did not affect the substantial justice of the tax, objections could not vitiate or in any manner affect the tax or the assessment thereof. People v. Miller, 339 Ill. 573, 171 N.E. 672 (1930).

Evidence Held Insufficient

Where there was nothing to show that any resolution was originally adopted at a meeting held on or before the first Tuesday in August, as required, there was no direct evidence that the tax levy was regularly made as stated in the record supplied, and the testimony upon which the county judge acted did not meet the test of certainty required, it was not clear that the tax levy was made

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on or before the first Tuesday in August. People ex rel. Stewart v. Chicago M. & St. P. Ry., 326 Ill. 179, 157 N.E. 200 (1927).

Filing Certificate of Levy

Trial court properly dismissed an objection alleging that the levy adopted by the school district before the December deadline for funds that would be set aside and used for the following fiscal year was violative of 105 ILCS 5/17-11 because the tax levy was filed after the school budget was adopted and the district complied with the principles of § 5/17-1 and People ex rel. Stanfield v. Pennsylvania Ry. Co., 121 N.E.2d 748 (1954). Novak v. ATI Carriage House (In re Du Page County Collector), 294 Ill. App. 3d 868, 229 Ill. Dec. 295, 691 N.E.2d 405, 1998 Ill. App. LEXIS 94 (1 Dist. 1998).

Tax levy filed during a fiscal year and before the December deadline is a tax levy for that fiscal year, regardless of when the school district intends to spend the levy; 105 ILCS 5/17-11 and People ex rel. Stanfield v. Pennsylvania Ry. Co., 121 N.E.2d 748 (1954), both require a school district to have adopted a budget prior to making a tax levy if the beginning of the fiscal year is subsequent to the making of the levy, however, this is only applicable when such a levy is truly for a fiscal year because it is filed after the deadline for the fiscal year in which it is file and prior to the beginning of the fiscal year in which it could be used. Novak v. ATI Carriage House (In re Du Page County Collector), 294 Ill. App. 3d 868, 229 Ill. Dec. 295, 691 N.E.2d 405, 1998 Ill. App. LEXIS 94 (1 Dist. 1998).

A certificate filed months after the tax was extended could not be considered as meeting the statutory requirement that there must have been a certificate filed with the court clerk before he was authorized to extend a tax. People ex rel. Chamberlain v. Chicago, B. & Q. R.R., 383 Ill. 212, 49 N.E.2d 19 (1943).

Although any action of a board including a curative act, in levying tax must be taken before the time fixed by statute runs, otherwise, there can be no tax legally levied, failure to file the certificate of levy within the time prescribed by the statute will not affect the validity of the tax. People ex rel. Eastman v. Chicago, B & Q R.R., 310 Ill. 495, 142 N.E. 176 (1923).

Presumption of Validity

The presumption always is that the tax is just and that officers levying it have properly discharged their duties. People ex rel. Prindable v. New York Cent. R.R., 400 Ill. 507, 81 N.E.2d 201 (1948).

Record of the Board

The validity of any tax does not rest upon the record of the board, and is not affected by the want of such record because the only act necessary for the levy of the tax is the making and filing of the certificate. St. Louis, R.I. & C. R.R. v. People ex rel. Kinzie, 177 Ill. 78, 52 N.E. 364 (1898).

Taxation Power

The boards of education of the township high schools have the right to make an annual tax levy for educational purposes up to $1.50 on the $100 of the assessed property in the township, regardless of the amount of the tax levies of the several school districts of the township. People ex rel. Brockamp v. Chicago & Ill. Midland Ry., 256 Ill. 488, 100 N.E. 174 (1912).

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Timeliness

- In General

Failing to meet the deadline in this section renders a levy void. In re 1981 Delinquent Taxes, 190 Ill. App. 3d 908, 137 Ill. Dec. 939, 546 N.E.2d 1052 (3 Dist. 1989).

A statute regulating the time for making a tax levy is mandatory and any levy made after the date fixed by statute is void. Verdung v. Palatine Nat'l Bank, 181 Ill. App. 3d 345, 130 Ill. Dec. 77, 536 N.E.2d 1288 (2 Dist. 1989).

- Supplemental Budget

The date upon which a levy must be made may be altered where a school district needs to raise additional funds for a supplemental budget. Verdung v. Palatine Nat'l Bank, 181 Ill. App. 3d 345, 130 Ill. Dec. 77, 536 N.E.2d 1288 (2 Dist. 1989).

Working Cash Fund

- Legislative Intent

The 1977 amendments to this section and 105 ILCS 5/20-3 provide expressly for the working cash fund to be levied by a separate resolution or by inclusion in the certificate of levy for other school district taxes pursuant to this section; the legislative changes in both sections are consistent with the clear and popularly understood meaning given to the words used in the previous version of the statute, and the fact that a statute is made more specific does not require a court of law to construe the meaning of the amendment of the statute to indicate a change of legislative intent where such is not evidenced by the plainly understood meaning of the statute both before and after the amendment. People ex rel. Condon v. Commonwealth Edison Co., 64 Ill. App. 3d 165, 21 Ill. Dec. 39, 380 N.E.2d 1215 (3 Dist. 1978).

- No Separate Resolution

By including the levy for the working cash fund together with the regular school tax levy which was filed pursuant to this section rather than by a separate resolution as allowed by the use of the permissive "may" in 105 ILCS 5/20-3, 105 ILCS 5/20-3 was fully complied with. People ex rel. Condon v. Commonwealth Edison Co., 64 Ill. App. 3d 165, 21 Ill. Dec. 39, 380 N.E.2d 1215 (3 Dist. 1978).

The tax levy for a working cash fund, as provided for in 105 ILCS 5/20-3, need not be levied by a separate resolution and can be levied along with the educational and building taxes under this section. People ex rel. Condon v. Commonwealth Edison Co., 64 Ill. App. 3d 165, 21 Ill. Dec. 39, 380 N.E.2d 1215 (3 Dist. 1978).

OPINIONS OF ATTORNEY GENERAL

Analysis

Levy Increase
- Permitted
Supplemental Tax Levies

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- Held Invalid

Levy Increase

- Permitted

A school district may increase its levy within the limits allowed by law and file a certificate of tax levy reflecting such increase as long as the increase is made prior to the last Tuesday in December which is the deadline for filing certificates of tax levy. 1977 Op. Atty. Gen. 201.

Supplemental Tax Levies

- Held Invalid

Where a board of education of a school district certifies and files a supplemental tax levy under this section with a county clerk after the last Tuesday in September, and where such supplemental levy is not an amendment to reflect the true acts of the board prior to such date, the supplemental levy is invalid and the county clerk cannot validly extend taxes based upon a void supplementary levy. 1977 Op. Atty. Gen. 25.

§ 105 ILCS 5/17-11.1. Amended Tax Certificate

Sec. 17-11.1. Amended Tax Certificate. When a school board has authority to levy taxes at the maximum permissive tax rate allowed by law or the maximum tax rate allowed by voter approved referendum and, after the certificate of tax levy has been filed, a change in the assessed valuation resulting from the application of the equalization multiplier by the Department of Revenue causes the school district's tax extensions to be less than the maximum permissive tax rate allowed by law or the maximum tax rate allowed by voter approved referendum, the school board may, within 20 days of such change, amend the certificate of tax levy to provide for the maximum amount of tax extensions provided by the permissive tax rate or by the voter approved referendum, as limited by the Property Tax Extension Limitation Law [35 ILCS 200/18-185 et seq.].

(Source: P.A. 83-228; 91-850, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-11.1.

Effect of Amendments. The 2000 amendment by P.A. 91-850, effective June 22, 2000, rewrote the section to the extent that a detailed comparison would be impracticable.

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§ 105 ILCS 5/17-11.2. [Levy adopted by a School Finance Authority]

Sec. 17-11.2. Notwithstanding any other law to the contrary, any levy adopted by a School Finance Authority created under Article 1F of this Code [105 ILCS 5/1F-1 et seq.] is valid and shall be extended by the county clerk if it is certified to the county clerk by the Authority in sufficient time to allow the county clerk to include the levy in the extension for the taxable year.

(Source: P.A. 92-855, § 10.)

Effective Date. Section 99 of P.A. 92-855, made this section effective upon becoming law. The Act was approved December 6, 2002.

§ 105 ILCS 5/17-12. Districts in two or more counties

Sec. 17-12. Districts in two or more counties. When a district lies partly in two or more counties the school board shall ascertain, as near as practicable, the amount to be raised by special tax for educational and operations and maintenance purposes and shall prepare a certificate for each county in which the district lies and shall deliver one of such certificates to each of the county clerks of the counties in which a part of the district is situated. On the first Monday following the delivery of the certificate, or as soon thereafter as may be practicable, each county clerk shall ascertain the total equalized valuation of all the taxable property in that part of the district as lies in his county, and certify the amount thereof to the county clerk of each of the other counties in which any part of the district lies. From the aggregate of such equalized valuation and from the certificate of the amount so required to be levied, such clerk shall ascertain the rate per cent required to produce in the district the amount of such levy, and at that rate shall extend the special tax to be levied for educational and operations and maintenance purposes in that part of the district lying in his respective county.

(Source: P.A. 86-1334.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-12.

§ 105 ILCS 5/17-13: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

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§ 105 ILCS 5/17-14. Payments by collector to treasurer - Statement of uncollected taxes

Sec. 17-14. Payments by collector to treasurer - Statement of uncollected taxes. Within 30 days after the delinquent date for the payment of any tax or installment thereof and after the delivery of the tax books containing the computation and levy of the taxes, or as soon thereafter as the school treasurer shall present the certificate of the amount of the tax and make a demand therefor, the collector shall pay to the treasurer the full amount of the tax certified by the county clerk, or if any part remains uncollected, the collector shall, in addition to the amount collected, deliver to the treasurer a statement of the amount of uncollected taxes for his district or districts, taking his receipt therefor, which receipt shall be evidence in favor of the collector as against the treasurer.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-14.

§ 105 ILCS 5/17-15. Failure of collector to pay

Sec. 17-15. Failure of collector to pay. If any collector fails to pay the taxes or any part thereof, the school treasurer or other authorized person may proceed against him and his sureties in a civil action upon his official bond in any court of competent jurisdiction. The collector so in default shall pay 12% of the amount due to be assessed as damages, which shall be included in the judgment rendered against him. If he can show that any part of the taxes could not be collected by law, he shall not be liable for such taxes until he has collected, or may be able to collect them.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-15.

§ 105 ILCS 5/17-16. Tax anticipation warrants

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Sec. 17-16. Tax anticipation warrants. When there is no money in the treasury of any school district having a population of 500,000 or less inhabitants, whether governed by either or both the general school laws or any special charter, to defray the necessary expenses of the district, including amounts necessary to pay maturing principal and interest of bonds, the school board may issue warrants, or may provide a fund to meet the expenses by issuing and disposing of warrants, drawn against and in anticipation of any taxes levied for the payment of the necessary expenses of the district, either for transportation, educational or for all operations and maintenance purposes, or for payments to the Illinois Municipal Retirement Fund, or for the payment of maturing principal and interest of bonds, or for fire prevention, safety, energy conservation and school security purposes, as the case may be, to the extent of 85% of the total amount of the tax so levied. The warrants shall show upon their face that they are payable in the numerical order of their issuance solely from such taxes when collected, and shall be received by any collector of taxes in payment of the taxes against which they are issued, and such taxes shall be set apart and held for their payment.

Every warrant shall bear interest, payable only out of the taxes against which it is drawn, at a rate not exceeding the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, if issued before July 1, 1971 and if issued thereafter at the rate of not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, from the date of its issuance until paid or until notice shall be given by publication in a newspaper or otherwise that the money for its payment is available and that it will be paid on presentation, unless a lower rate of interest is specified therein, in which case the interest shall be computed and paid at the lower rate.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4; 86-1334; 87-984, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 17-16.

Cross References.

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As to Omnibus Bond Acts, see 5 ILCS 70/8.

Effect of Amendments. The 1992 amendment, effective January 1, 1993, inserted "or for fire prevention, safety, energy conservation and school security purposes," near the end of the first sentence of the first paragraph.

CASE NOTES

Analysis

In General
Liability of Treasurer
Obligation of Board
Power to Issue
Promise of Payment
Statute of Limitations
Void Warrants

In General

An anticipation warrant was simply an assignment of tax money which directed the treasurer to pay the holder; no debt was created thereby, and after delivery, there was no obligation upon it, either absolute or contingent, to pay out of anything except the levy anticipated, when collected. Pratt v. Board of Educ., 326 Ill. App. 610, 63 N.E.2d 275 (2 Dist. 1945).

Liability of Treasurer

Estate of treasurer who paid amounts due on tax anticipation warrants found to be invalid was not personally liable for the diversion of amounts paid. In re Estate of Stevenson, 318 Ill. App. 233, 47 N.E.2d 531 (1 Dist. 1943).

Obligation of Board

This section gives the school board the broad authority to issue tax anticipation warrants when there is no money in the treasury to defray the necessary expenses of the district; this type of obligation is particularly limited so that it is not a direct obligation of the district and is payable only out of the taxes against which it is drawn and at a maximum rate of interest. People ex rel. Hamer v. Board of Educ., 132 Ill. App. 2d 46, 267 N.E.2d 1 (2 Dist. 1971).

Power to Issue

The power of a school district to issue anticipation warrants is purely statutory and limited to the purposes named in the statute, such as necessary expenses and payment of interest on bonds, and are payable solely from the taxes collected from the levy against which they are issued. In re Estate of Stevenson, 318 Ill. App. 233, 47 N.E.2d 531 (1 Dist. 1943); Pratt v. Board of Educ., 326 Ill. App. 610, 63 N.E.2d 275 (2 Dist. 1945).

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Promise of Payment

Tax anticipation warrants do not constitute, and cannot be construed as constituting, any promise of payment, either express or implied, on the part of the taxing body issuing them, but the holder thereof must rely solely upon the ability and fidelity of the revenue officers in the collection and payment of the money mentioned in the warrants. People v. Hayes, 365 Ill. 318, 6 N.E.2d 645 (1937).

Statute of Limitations

The ten year statute of limitation (see now 735 ILCS 5/13-206) was applicable to school orders, and the statute started to run from the date of the orders. Berstein v. School Dirs., 319 Ill. App. 403, 49 N.E.2d 314 (4 Dist. 1943).

The statute of limitations began to run against a school order from the date of the order, and an endorsement by the township treasurer on a school order indicating that it had been presented for payment and was not paid for want of funds, was not a promise to pay by the school directors that would toll the statute of limitations in connection with a cause of action against the school directors. Berstein v. School Dirs., 319 Ill. App. 403, 49 N.E.2d 314 (4 Dist. 1943).

Void Warrants

When a school board undertakes to issue warrants payable out of taxes of a subsequent year and deliver them in exchange for and in payment of warrants payable out of taxes of a prior year, it is issuing such warrants without statutory authority and such warrants are void. In re Estate of Stevenson, 318 Ill. App. 233, 47 N.E.2d 531 (1 Dist. 1943).

§ 105 ILCS 5/17-17. School board establishment of lines of credit

Sec. 17-17. School board establishment of lines of credit. (a) In lieu of issuing tax anticipation warrants in accordance with Section 17-16 of this Code [105 ILCS 5/17-16], the school board of a school district having a population of 500,000 or less inhabitants may issue notes, bonds, or other obligations (and in connection with that issuance, establish a line of credit with a bank or other financial institution) in an amount not to exceed 85% of the amount of property taxes most recently levied for educational, operations and maintenance, transportation, or other tax levy purposes or any combination thereof. Moneys thus borrowed shall be applied to the purposes for which the tax or any combination of the taxes may be levied and no other purpose. All moneys so borrowed shall be repaid exclusively from property tax revenues within 60 days after the property tax revenues have been received by the board.

(a-5) In lieu of issuing notes or certificates in accordance with the provisions of the Revenue Anticipation Act [50 ILCS 425/0.01 et seq.] or Section 18-18 of this Code [105 ILCS 5/18-18], the school board of a school district having a population of 500,000 or less inhabitants may anticipate revenues due in the current fiscal year or expected to be due in the next subsequent fiscal year and issue notes, bonds, or other obligations (and in

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connection with that issuance, establish a line of credit with a bank or other financial institution) in an amount not to exceed the following:

(1) if anticipating revenues due in the current fiscal year, 85% of the amount or amounts of the revenues due in the current fiscal year as certified by the State Superintendent of Education or other official in a position to provide assurances as to the amounts; and

(2) if anticipating revenues expected to be due in the next subsequent fiscal year, 50% of the amount or amounts of the revenues due in the current fiscal year as certified by the State Superintendent of Education or other official in a position to provide assurances as to the amounts.

All moneys so borrowed shall be repaid exclusively from the anticipated revenues within 60 days after the revenues have been received.

(b) Borrowing authorized under subsections (a) and (a-5) of this Section shall bear interest at a rate not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], from the date of issuance until paid.

(c) Prior to borrowing or establishing a line of credit under this Section, the board shall authorize, by resolution, the borrowing or line of credit. The resolution shall set forth facts demonstrating the need for the borrowing or line of credit, state the amount to be borrowed, establish a maximum interest rate limit not to exceed that set forth in subsection (b) of this Section, and provide a date by which the borrowed funds shall be repaid. The resolution shall direct the relevant officials to make arrangements to set apart and hold the taxes or other revenue, as received, that will be used to repay the borrowing. In addition, the resolution may authorize the relevant officials to make partial repayments of the borrowing as the taxes or other revenues become available and may contain any other terms, restrictions, or limitations not inconsistent with the provisions of this Section.

(Source: P.A. 92-620, § 5; 96-19, § 5.)

Effective Date. Section 99 of P.A. 92-620 made this section effective upon becoming law. The Act was approved July 11, 2002.

Effect of Amendments. The 2009 amendment by P.A. 96-19, effective June 26, 2009, rewrote the section.

§ 105 ILCS 5/17-18. Establishment of lines of credit by other educational entities

Sec. 17-18. Establishment of lines of credit by other educational entities. (a) In lieu of borrowing in accordance with the provisions of Section 18-20 of this Code [105 ILCS 5/18-20], an entity, such as a special education cooperative or other such joint agreement

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or an intergovernmental agreement, may anticipate revenues due in the current fiscal year or expected to be due in the next subsequent fiscal year and issue notes or other obligations (and in connection with that issuance, establish a line of credit with a bank or other financial institution) in an amount not to exceed the following:

(1) if anticipating revenues due in the current fiscal year, 85% of the amount or amounts of State categorical or grant payments due in the current fiscal year as certified by the State Superintendent of Education or other official in a position to provide assurances as to the amounts; and

(2) if anticipating revenues expected to be due in the next subsequent fiscal year, 50% of the amount or amounts of State categorical or grant payments due in the current fiscal year as certified by the State Superintendent of Education or other official in a position to provide assurances as to the amounts.

All moneys so borrowed shall be repaid exclusively from such anticipated revenues within 60 days after the revenues have been received.

(b) Borrowing authorized under subsection (a) of this Section shall bear interest at a rate not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], from the date of issuance until paid.

(c) Prior to borrowing or establishing a line of credit under this Section, the regional superintendent of schools or governing board, as the case may be, shall authorize, by executive order or resolution, the borrowing or line of credit. The executive order or resolution shall set forth facts demonstrating the need for the borrowing or line of credit, state the amount to be borrowed, establish a maximum interest rate limit not to exceed that set forth in subsection (b) of this Section, and provide a date by which the borrowed funds shall be repaid. The executive order or resolution shall direct the relevant officials to make arrangements to set apart and hold the revenue, as received, that will be used to repay the borrowing. In addition, the executive order or resolution may authorize the relevant officials to make partial repayments of the borrowing as the revenues become available and may contain any other terms, restrictions, or limitations not inconsistent with the provisions of this Section.

(Source: P.A. 96-19, § 5.)

Effective Date. Section 99 of P.A. 96-19 made the section effective upon becoming law. The Act was approved June 26, 2009.

§ 105 ILCS 5/17-19. Establishment of lines of credit by regional superintendents

Sec. 17-19. Establishment of lines of credit by regional superintendents. (a) In lieu of borrowing in accordance with the provisions of Section 18-20 of this Code [105 ILCS

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5/18-20], a regional superintendent of schools, in his or her official capacity as regional superintendent of schools, may anticipate revenues due in the current fiscal year or expected to be due in the next subsequent fiscal year and issue notes or other obligations (and in connection with that issuance, establish a line of credit with a bank or other financial institution) in an amount not to exceed the following:

(1) if anticipating revenues due in the current fiscal year, 85% of the amount or amounts of State categorical or grant payments due in the current fiscal year as certified by the State Superintendent of Education or other official in a position to provide assurances as to the amounts; and

(2) if anticipating revenues expected to be due in the next subsequent fiscal year, 50% of the amount or amounts of State categorical or grant payments due in the current fiscal year as certified by the State Superintendent of Education or other official in a position to provide assurances as to the amounts.

All moneys so borrowed shall be repaid exclusively from such anticipated revenues within 60 days after the revenues have been received.

(b) Borrowing authorized under subsection (a) of this Section shall bear interest at a rate not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], from the date of issuance until paid.

(c) Prior to borrowing or establishing a line of credit under this Section, the regional superintendent of schools, in his or her official capacity as regional superintendent of schools, shall authorize, by executive order or resolution, the borrowing or line of credit. The executive order or resolution shall set forth facts demonstrating the need for the borrowing or line of credit, state the amount to be borrowed, establish a maximum interest rate limit not to exceed that set forth in subsection (b) of this Section, and provide a date by which the borrowed funds shall be repaid. The executive order or resolution shall direct the relevant officials to make arrangements to set apart and hold the revenue, as received, that will be used to repay the borrowing. In addition, the executive order or resolution may authorize the relevant officials to make partial repayments of the borrowing as the revenues become available and may contain any other terms, restrictions, or limitations not inconsistent with the provisions of this Section.

(Source: P.A. 96-19, § 5.)

Effective Date. Section 99 of P.A. 96-19 made the section effective upon becoming law. The Act was approved June 26, 2009.

Article 18.

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Common School Fund

§ 105 ILCS 5/18-1. Moneys constituting fund

Sec. 18-1. Moneys constituting fund. The common school fund of the state shall consist of any sums accredited thereto in pursuance of law, of the interest on the school fund proper, which fund is 3% upon the proceeds of the sales of public lands in the State, 1/6 part excepted; and the interest on the surplus revenue distributed by Act of Congress and made part of the common school fund by Act of the legislature, March 4, 1837. The interest on the school fund proper and the surplus revenue shall be paid by the State annually at the rate of 6%, and shall be distributed as provided by law.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 18-1.

CASE NOTES

Analysis

Constitutionality
- Equal Protection
Purpose

Constitutionality

- Equal Protection

Parents of school-aged children who reside in poor school districts were not denied equal protection of the laws by Illinois' method of financing public education in 1971 and 1972. People ex rel. Jones v. Adams, 40 Ill. App. 3d 189, 350 N.E.2d 767 (5 Dist. 1976).

Purpose

To ameliorate the differences in equalized assessed valuations of real estate located in school districts, which resulted in large disparities in school districts' abilities to raise taxes, Illinois, in 1971 and 1972, distributed revenue from its common school fund to its various school districts.

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People ex rel. Jones v. Adams, 40 Ill. App. 3d 189, 350 N.E.2d 767 (5 Dist. 1976).

LEGAL PERIODICALS

For comment, "Public School Finance Reform: Is Illinois 'Playing Hooky'?" see 41 De Paul L. Rev. 195 (1991).

§ 105 ILCS 5/18-3. Tuition of children from orphanages and children's homes

Sec. 18-3. Tuition of children from orphanages and children's homes. When the children from any home for orphans, dependent, abandoned or maladjusted children maintained by any organization or association admitting to such home children from the State in general or when children residing in a school district wherein the State of Illinois maintains and operates any welfare or penal institution on property owned by the State of Illinois, which contains houses, housing units or housing accommodations within a school district, attend grades kindergarten through 12 of the public schools maintained by that school district, the State Superintendent of Education shall direct the State Comptroller to pay a specified amount sufficient to pay the annual tuition cost of such children who attended such public schools during the regular school year ending on June 30. The Comptroller shall pay the amount after receipt of a voucher submitted by the State Superintendent of Education.

The amount of the tuition for such children attending the public schools of the district shall be determined by the State Superintendent of Education by multiplying the number of such children in average daily attendance in such schools by 1.2 times the total annual per capita cost of administering the schools of the district. Such total annual per capita cost shall be determined by totaling all expenses of the school district in the educational, operations and maintenance, bond and interest, transportation, Illinois municipal retirement, and rent funds for the school year preceding the filing of such tuition claims less expenditures not applicable to the regular K-12 program, less offsetting revenues from State sources except those from the common school fund, less offsetting revenues from federal sources except those from federal impaction aid, less student and community service revenues, plus a depreciation allowance; and dividing such total by the average daily attendance for the year.

Annually on or before July 15 the superintendent of the district shall certify to the State Superintendent of Education the following:

1.The name of the home and of the organization or association maintaining it; or the legal description of the real estate upon which the house, housing units, or housing accommodations are located and that no taxes or service charges or other payments authorized by law to be made in lieu of taxes were collected therefrom or on account thereof during either of the calendar years included in the school year for which claim is being made;

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2.The number of children from the home or living in such houses, housing units or housing accommodations and attending the schools of the district;

3.The total number of children attending the schools of the district;

4.The per capita tuition charge of the district; and

5.The computed amount of the tuition payment claimed as due.

Whenever the persons in charge of such home for orphans, dependent, abandoned or maladjusted children have received from the parent or guardian of any such child or by virtue of an order of court a specific allowance for educating such child, such persons shall pay to the school board in the district where the child attends school such amount of the allowance as is necessary to pay the tuition required by such district for the education of the child. If the allowance is insufficient to pay the tuition in full the State Superintendent of Education shall direct the Comptroller to pay to the district the difference between the total tuition charged and the amount of the allowance.

Whenever the facilities of a school district in which such house, housing units or housing accommodations are located, are limited, pupils may be assigned by that district to the schools of any adjacent district to the limit of the facilities of the adjacent district to properly educate such pupils as shall be determined by the school board of the adjacent district, and the State Superintendent of Education shall direct the Comptroller to pay a specified amount sufficient to pay the annual tuition of the children so assigned to and attending public schools in the adjacent districts and the Comptroller shall draw his warrant upon the State Treasurer for the payment of such amount for the benefit of the adjacent school districts in the same manner as for districts in which the houses, housing units or housing accommodations are located.

The school district shall certify to the State Superintendent of Education the report of claims due for such tuition payments on or before July 15. The State Superintendent of Education shall direct the Comptroller to pay to the district, on or before August 15, the amount due the district for the school year in accordance with the calculation of the claim as set forth in this Section.

Summer session costs shall be reimbursed based on the actual expenditures for providing these services. On or before November 1 of each year, the superintendent of each eligible school district shall certify to the State Superintendent of Education the claim of the district for the summer session following the regular school year just ended. The State Superintendent of Education shall transmit to the Comptroller no later than December 15th of each year vouchers for payment of amounts due to school districts for summer session.

Claims for tuition for children from any home for orphans or dependent, abandoned, or maladjusted children beginning with the 1993-1994 school year shall be paid on a current year basis. On September 30, December 31, and March 31, the State Board of Education shall voucher payments for districts with those students based on an estimated cost calculated from the prior year's claim. Final claims for those students for the regular school term must be received at the State Board of Education by July 15 following the

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end of the regular school year. Final claims for those students shall be vouchered by August 30. During fiscal year 1994 both the 1992-1993 school year and the 1993-1994 school year shall be paid in order to change the cycle of payment from a reimbursement basis to a current year funding basis of payment. However, notwithstanding any other provisions of this Section or the School Code, beginning with fiscal year 1994 and each fiscal year thereafter, if the amount appropriated for any fiscal year is less than the amount required for purposes of this Section, the amount required to eliminate any insufficient reimbursement for each district claim under this Section shall be reimbursed on August 30 of the next fiscal year. Payments required to eliminate any insufficiency for prior fiscal year claims shall be made before any claims are paid for the current fiscal year.

If a school district makes a claim for reimbursement under Section 14-7.03 [105 ILCS 5/14-7.03] it shall not include in any claim filed under this Section children residing on the property of State institutions included in its claim under Section 14-7.03.

Any child who is not a resident of Illinois who is placed in a child welfare institution, private facility, State operated program, orphanage or children's home shall have the payment for his educational tuition and any related services assured by the placing agent.

In order to provide services appropriate to allow a student under the legal guardianship or custodianship of the State to participate in local school district educational programs, costs may be incurred in appropriate cases by the district that are in excess of 1.2 times the district per capita tuition charge allowed under the provisions of this Section. In the event such excess costs are incurred, they must be documented in accordance with cost rules established under the authority of this Section and may then be claimed for reimbursement under this Section.

Planned services for students eligible for this funding must be a collaborative effort between the appropriate State agency or the student's group home or institution and the local school district.

(Source: P.A. 86-970; 88-9, § 5; 88-491, § 3; 88-575, § 5; 88-641, § 10; 88-670, § 2-34; 89-235, § 2-90; 90-463, § 10; 90-644, § 5; 91-764, § 5; 92-94, § 5; 92-597, § 45; 93-609, § 5; 95-793, § 5; 96-734, § 5; 97-256, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 18-3.

Cross References.

As to the transfer by the State Comptroller and State Treasurer from the General Revenue Fund to the Common School Fund such amounts as may be required to honor the vouchers presented by the State Board of Education pursuant to this Act, see 30 ILCS 105/8a.

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Illinois Administrative Code.

See 23 Illinois Administrative Code, § 140.10.

Effect of Amendments. The 1993 amendment by P.A. 88-9, effective June 30, 1993, deleted "or in State housing units" from the section catchline"; substituted "State Superintendent" for "Superintendent of Public Instruction" throughout the section; in the first sentence of the first paragraph, substituted "any welfare or penal institution" for "any welfare, penal or educational institution"; and in the third paragraph substituted "superintendent" for "president and the clerk or the secretary".

The 1993 amendment by P.A. 88-491, effective September 10, 1993, substituted "State Superintendent of Education" for "Superintendent of Public Instruction" throughout the section; deleted "in the calendar year preceding the apportionment" following "year ending on June 30" in the first paragraph; substituted "June 30" for "December 1" in the third and fifth paragraph; also in the fifth paragraph, substituted "July 31" for "December 15", substituted "direct the Comptroller to pay to the district, on or before September 15, the amount due the district for the school year in accordance with the calculation of the claim as set forth in this Section." for "prepare and certify to the Comptroller not later than January 15 of each year the state report of claims due the several school districts for such tuition", and deleted the last sentence of that paragraph; and substituted the present sixth paragraph for the former sixth paragraph.

The 1994 amendment by P.A. 88-575, effective August 12, 1994, substituted "State Superintendent of Education" for "State Superintendent Education" throughout; and in the sixth paragraph added the last two sentences.

The 1994 amendment by P.A. 88-641, effective September 9, 1994, inserted "of" following "Superintendent" throughout the section; in the first paragraph substituted "pay the amount after receipt of a voucher submitted by the State Superintendent of Education" for "draw his warrant upon the State Treasurer for the payment thereof to the regional superintendent of schools of the educational service region in which any such school district is located" and deleted the former second sentence which read "The regional superintendent straightway shall transmit the payment to the respective school district through the proper school treasurer"; and in the sixth paragraph, deleted the former fourth sentence which read "Each regional superintendent shall forthwith transmit to the appropriate school districts the amount to which each is entitled under this Section".

The 1994 amendment by P.A. 88-670, effective December 2, 1994, combined the amendments by P.A. 88-9 and P.A. 88-491.

The 1995 amendment by P.A. 89-235, effective August 4, 1995, combined the amendments by P.A. 88-575, § 5, P.A. 88-641, § 10 and P.A. 88-670, § 2-34.

The 1997 amendment by P.A. 90-463, effective August 17, 1997, substituted "August" for "September" in the sixth and seventh paragraphs; and substituted "July 15" for "July 31" in the sixth paragraph.

The 1998 amendment by 90-644, effective July 24, 1998, inserted "1.2 times" in the first sentence of the second paragraph; and added the last two paragraphs.

The 2000 amendment by P.A. 91-764, effective June 9, 2000, rewrote the sixth paragraph to the extent that a detailed comparison would be impracticable.

The 2001 amendment by P.A. 92-94, effective January 1, 2002, inserted "regular", "school year" and "or the summer term for that school year" near the end of the first paragraph; deleted "just ended" at the end of the second sentence in the sixth paragraph, which begins "The school

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district shall certify"; and inserted "and summer term" and "regular" preceding "school year" in the third sentence of the seventh paragraph, which begins "Claims for tuition".

The 2002 amendment by P.A. 92-597, effective July 1, 2002, in the seventh paragraph, inserted "through fiscal year 2002" following "each fiscal year thereafter" and "and the" preceding "payments required" in the sixth sentence; and added the last sentence.

The 2003 amendment by P.A. 93-609, effective November 20, 2003, in the paragraph beginning "Claims for tuition for children", deleted "through fiscal year 2002" in the sixth sentence, and deleted the last sentence regarding the limitation of the amount appropriated for total reimbursement under this Section beginning with fiscal year 2003, and made stylistic changes.

The 2008 amendment by P.A. 95-793, effective August 8, 2008, divided the first paragraph into two sentences, substituting "June 30. The Comptroller" for "June 30 or the summer term for that school year, and the Comptroller"; in the third paragraph substituted "July 15" for "June 30", substituted "shall certify to" for "upon forms prepared by", and deleted "shall certify to the regional superintendent" following "Education"; in the sixth paragraph substituted "July 15" for "July 31", and deleted the second sentence, which read "Failure on the part of the school board to certify its claim on July 31 shall constitute a forfeiture by the district of its right to the payment of any such tuition claim for the school year"; added the seventh paragraph; and in the second sentence of the eighth paragraph deleted "and summer term" following "school term" and substituted "July 15" for "July 31".

The 2009 amendment by P.A. 96-734, effective August 25, 2009, substituted "Section 14-7.03" for "Section 18-4 or 14-7.03" twice in the ninth paragraph.

The 2011 amendment by P.A. 97-256, effective January 1, 2012, substituted "August 30" for "August 15" in the fourth sentence of the eighth paragraph.

CASE NOTES

Analysis

In General
Legislative Intent
Maladjusted Children
- Chemical Addiction
Restitution by District
- Unjust Enrichment

In General

Under this section, the state is required to pay for the public education of children residing at homes for treatment of substance abuse and attending public schools within the local school district. Doe v. Sanders, 189 Ill. App. 3d 572, 136 Ill. Dec. 930, 545 N.E.2d 454 (1 Dist. 1989).

Legislative Intent

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The plain language of this section compels the conclusion that the legislature intended the state to pay for the public education of children residing in homes for treatment of substance abuse. Doe v. Sanders, 189 Ill. App. 3d 572, 136 Ill. Dec. 930, 545 N.E.2d 454 (1 Dist. 1989).

Maladjusted Children

- Chemical Addiction

The term, "maladjusted children," is not defined in this section, but "maladjusted" is commonly defined as poorly or inadequately adjusted or lacking harmony with one's environment from failure to reach a satisfactory adjustment between one's desires and the conditions of one's life; under this common and popularly understood meaning, children recovering from chemical addiction and requiring special services of an extended-care residential treatment center are "maladjusted". Doe v. Sanders, 189 Ill. App. 3d 572, 136 Ill. Dec. 930, 545 N.E.2d 454 (1 Dist. 1989).

Restitution by District

- Unjust Enrichment

Where local school district received funds to which it was not entitled the school district would be unjustly enriched if it were not required to make restitution, notwithstanding the fact that the school district may have acted pursuant to policies enacted by the state board. Doe v. Sanders, 189 Ill. App. 3d 572, 136 Ill. Dec. 930, 545 N.E.2d 454 (1 Dist. 1989).

§ 105 ILCS 5/18-4.2: Repealed by P.A. 91-96, § 15, effective July 9, 1999.

§ 105 ILCS 5/18-4.3. Summer school grants

Sec. 18-4.3. Summer school grants. Grants shall be determined for pupil attendance in summer schools conducted under Sections 10-22.33A and 34-18 [105 ILCS 5/10-22.33A and 105 ILCS 5/34-18] and approved under Section 2-3.25 [105 ILCS 5/2-3.25] in the following manner.

The amount of grant for each accredited summer school attendance pupil shall be obtained by dividing the total amount of apportionments determined under Section 18-8.05 [105 ILCS 5/18-8.05] by the actual number of pupils in average daily attendance used for such apportionments. The number of credited summer school attendance pupils shall be determined (a) by counting clock hours of class instruction by pupils enrolled in grades 1 through 12 in approved courses conducted at least 60 clock hours in summer sessions; (b) by dividing such total of clock hours of class instruction by 4 to produce days of credited pupil attendance; (c) by dividing such days of credited pupil attendance by the actual number of days in the regular term as used in computation in the general apportionment in Section 18-8.05 [105 ILCS 5/18-8.05]; and (d) by multiplying by 1.25.

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The amount of the grant for a summer school program approved by the State Superintendent of Education for children with disabilities, as defined in Sections 14-1.02 through 14-1.07 [105 ILCS 5/14-1.02 through 105 ILCS 5/14-1.07], shall be determined in the manner contained above except that average daily membership shall be utilized in lieu of average daily attendance.

In the case of an apportionment based on summer school attendance or membership pupils, the claim therefor shall be presented as a separate claim for the particular school year in which such summer school session ends. On or before November 1 of each year the superintendent of each eligible school district shall certify to the State Superintendent of Education the claim of the district for the summer session just ended. Failure on the part of the school board to so certify shall constitute a forfeiture of its right to such payment. The State Superintendent of Education shall transmit to the Comptroller no later than December 15th of each year vouchers for payment of amounts due school districts for summer school. The State Superintendent of Education shall direct the Comptroller to draw his warrants for payments thereof by the 30th day of December. If the money appropriated by the General Assembly for such purpose for any year is insufficient, it shall be apportioned on the basis of claims approved.

However, notwithstanding the foregoing provisions, for each fiscal year the money appropriated by the General Assembly for the purposes of this Section shall only be used for grants for approved summer school programs for those children with disabilities served pursuant to Section 14-7.02 or 14-7.02b of this Code [105 ILCS 5/14-7.02 or 105 ILCS 5/14-7.02b].

(Source: P.A. 83-479; 88-9, § 5; 88-641, § 10; 89-397, § 5; 90-548, § 5-915; 91-764, § 5; 93-1022, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 18-4.3.

Effect of Amendments. The 1993 amendment by P.A. 88-9, effective June 30, 1993, in the second sentence of the fourth paragraph, substituted "October" for "September" and substituted "superintendent" for "president and the clerk or secretary"; in the fourth sentence of the fourth paragraph substituted "November" for "October"; in the fifth sentence of the fourth paragraph substituted "December 15th" for "December 1"; and in the sixth sentence of the fourth paragraph substituted "30th day" for "15th day".

The 1994 amendment by P.A. 88-641, effective September 9, 1994, in the fourth paragraph, in the fifth sentence, substituted "transmit" for "prepare and certify", substituted "vouchers for payment of amounts" for "the State report of claims", and deleted "the several regions" preceding "school districts" and deleted the former seventh sentence, which read, "Such payments shall be transmitted to the regional superintendent for the region in which each such district is located and the regional superintendent shall henceforth transmit such payments to the appropriate school treasurer".

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The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the third and fifth paragraphs substituted "children with disabilities" for "handicapped children".

The 1997 amendment by P.A. 90-548, effective January 1, 1998, in the second paragraph, in the first sentence, deleted "subsections (1) and (2) of" preceding "Section" and inserted "or Section 18-8.05".

The 2000 amendment by P.A. 91-764, effective June 9, 2000, in the second paragraph substituted "18-8.05" for "18-8" in the first sentence and near the end; and in the fourth paragraph substituted "November 1" for "October 15" and "State Superintendent of Education" for "regional superintendent" in the second sentence and deleted the former fourth sentence concerning certification of the regional report of summer school claims.

The 2004 amendment by P.A. 93-1022, effective August 24, 2004, in the last paragraph substituted "Section 14-7.02 or 14-7.02b of this Code" for "Sections 14-7.02 and 14-7.02a of the School Code".

§ 105 ILCS 5/18-4.4. Tax Equivalent Grants

Sec. 18-4.4. Tax Equivalent Grants. When any State institution is located in a school district in which the State owns 45% or more of the total land area of the district, the State Superintendent of Education shall annually direct the State Comptroller to pay the amount of the tax-equivalent grants provided in this Section, and the State Comptroller shall draw his warrant upon the State Treasurer for the payment of the grants. For fiscal year 1995 and each fiscal year thereafter, the grant shall equal 0.5% of the equalized assessed valuation of the land owned by the State (computing that equalized assessed valuation by multiplying the average value per taxable acre of the school district by the total number of acres of land owned by the State). Annually on or before September 15, 1994 and July 1, thereafter, the district superintendent shall certify to the State Board of Education the following matters:

1.The name of the State institution.

2.The total land area of the district in acres.

3.The total ownership of the land of the State in acres.

4.The total equalized assessed value of all the land in the district.

5.The rate of school tax payable in the year.

6.The computed amount of the tax-equivalent grant claimed.

Failure of any district superintendent to certify the claim for the tax-equivalent grant on or before September 15, 1994 or July 1 of a subsequent year shall constitute a forfeiture by the district of its right to such grant for the school year.

(Source: P.A. 84-629; 88-555, § 10; 88-641, § 10; 89-235, § 2-90; 89-698, § 5; 91-723, § 5.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 18-4.4.

Effect of Amendments. The 1994 amendment by P.A. 88-555, effective July 27, 1994, in the first paragraph, in the first sentence inserted "annually", deleted "semi-annually" preceding "to pay", substituted "the amount" for "a specified amount sufficient to pay 1/2" and deleted "regional superintendent of schools of an educational service region wherein is located any such" preceding "school district" at the end; rewrote the second sentence; in the third sentence inserted "1994 and July 1, thereafter", deleted "president and the clerk or the secretary of the school board of the" preceding "district", inserted "superintendent" following "district" and substituted "State Board of Education" for "regional superintendent of schools"; in the second paragraph substituted "district superintendent" for "school board" and inserted "1994 or July 1 of a subsequent year"; deleted the former last paragraph regarding the submission of reports by the regional superintendent and the state superintendent; added the present last paragraph and made minor punctuation and stylistic changes.

The 1994 amendment by P.A. 88-641, effective September 9, 1994, in the first paragraph, in the first sentence, deleted "to the regional superintendent of schools of an educational service region wherein is located any such school district" from the end and deleted the former second sentence which read "The regional superintendent shall promptly transmit the payment to the respective district through the proper school treasurer" and in the fourth sentence, deleted "upon forms prepared by the State Superintendent of Education" preceding "shall certify" and substituted "State Board of Education" for "regional superintendent of schools".

The 1995 amendment by P.A. 89-235, effective August 4, 1995, combined the amendments by P.A. 88-555, § 10 and P.A. 88-641, § 10.

The 1996 amendment by P.A. 89-698, effective January 14, 1997, in the first paragraph, in the second sentence, substituted "2001" for "1997" and deleted "and for fiscal year 1998 the grant shall equal 0.3%,"; and in the third paragraph, substituted "2001" for "1998".

The 2000 amendment by P.A. 91-723, effective June 2, 2000, substituted "1995 and each fiscal year thereafter" for "1995 through fiscal year 2001" in the second sentence of the introductory paragraph and deleted the former last paragraph which read "This Section is repealed July 1, 2001".

§ 105 ILCS 5/18-4.5. Home Hospital Grants

Sec. 18-4.5. Home Hospital Grants. Except for those children qualifying under Article 14, school districts shall be eligible to receive reimbursement for all children requiring home or hospital instruction at not more than $1,000 annually per child or $8,000 per teacher, whichever is less.

(Source: P.A. 88-386, § 15.)

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Effective Date. Section 18-4.5 of P.A. 88-386 made this section effective upon becoming law. The Act was approved August 20, 1993.

§ 105 ILCS 5/18-5. Compensation of regional superintendents and assistants

Sec. 18-5. Compensation of regional superintendents and assistants. The State Board of Education shall request an appropriation payable from the Personal Property Tax Replacement Fund for fiscal year 2012 only, and the common school fund for fiscal year 2013 and beyond as and for compensation for regional superintendents of schools and the assistant regional superintendents of schools authorized by Section 3-15.10 of this Act [105 ILCS 5/3-15.10], and as provided in "An Act concerning fees and salaries and to classify the several counties of this State with reference thereto", approved March 29, 1872 as amended [5 ILCS 290/0.1 et seq.], and shall present vouchers to the Comptroller monthly for the payment to the several regional superintendents and such assistant regional superintendents of their compensation as fixed by law. Such payments shall be made either (1) monthly, at the close of the month, or (2) semimonthly on or around the 15th of the month and at the close of the month, at the option of the regional superintendent or assistant regional superintendent.

(Source: P.A. 83-686; 97-619, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 18-5.

Effect of Amendments. The 2011 amendment by P.A. 97-619, effective November 14, 2011, in the first sentence, inserted "Personal Property Tax Replacement Fund for fiscal year 2012 only, and the" and "for fiscal year 2013 and beyond."

§ 105 ILCS 5/18-6. Supervisory expenses

Sec. 18-6. Supervisory expenses. The State Board of Education shall annually request an appropriation from the common school fund for regional office of education expenses, aggregating $1,000 per county per year for each educational service region. The State Board of Education shall present vouchers to the Comptroller as soon as may be after the first day of August each year for each regional office of education. Each regional office of education may draw upon this fund for the expenses necessarily incurred in providing for supervisory services in the region.

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(Source: P.A. 83-686; 88-9, § 5; 89-397, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 18-6.

Effect of Amendments. The 1993 amendment by P.A. 88-9, effective June 30, 1993, deleted the last sentence which read "The regional superintendents of schools shall submit a certified statement of the expenditures made from this expense fund within the report to the State Board of Education required by Section 3-15.8".

The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the section catchline substituted "expenses" for "expense fund"; in the first sentence substituted "for regional office of education expenses" for "as a regional supervisory expense fund" and added at the end "for each additional service region"; in the second sentence substituted "day of August of each year for each regional office of education" for "of each month beginning in August, payable to the regional superintendent of schools in each region"; deleted the former third sentence which read "Such payment shall equal 1/6 of the aggregate of $1,000 per county in August, and 1/12 of the aggregate each month thereafter"; and in the present third sentence substituted "office of education" for "superintendent of schools" and substituted "services in the region" for "service in his region".

§ 105 ILCS 5/18-7. Payments for benefit of teacher retirement systems

Sec. 18-7. Payments for benefit of teacher retirement systems. (a) In each fiscal year through fiscal year 1998, the State Board of Education shall distribute to the Public School Teachers' Pension and Retirement Fund of Chicago the sum, if any, appropriated for that fiscal year from the Common School Fund for the benefit of the Retirement Fund, in the manner provided in this Section, the Illinois Pension Code, the State Finance Act, and other applicable provisions of law. In making this distribution, the State Board of Education shall present vouchers to the State Comptroller on the 10th and 20th days of each month beginning in August. Each payment shall equal 1/24 of the annual amount appropriated in the months of August through May and 1/12 of the annual amount appropriated in June.

Beginning in fiscal year 1999, the State contributions to the Public School Teachers' Pension and Retirement Fund of Chicago shall be appropriated directly to the Fund and paid in vouchers submitted by the board of trustees of the Fund. Vouchers submitted under this subsection shall be paid by the State Comptroller and Treasurer by warrants drawn on funds appropriated to the Public School Teachers' Pension and Retirement Fund of Chicago.

(b) The State Board of Education shall, in State fiscal year 1995, pay to the Teachers' Retirement System of the State of Illinois the amount appropriated for the required State contribution to the System for that fiscal year. The State Board of Education shall present vouchers to the State Comptroller for this purpose on the 10th and 20th days of each month of the fiscal year, other than the month of July. Each payment in the months of

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August through May shall equal 1/24 of the amount appropriated for that fiscal year; each payment in the month of June shall equal 1/12 of the amount appropriated for that fiscal year.

Vouchers submitted under this subsection shall be paid by the State Comptroller and Treasurer by warrants drawn on funds appropriated to the State Board of Education for that purpose.

(c) Beginning in State fiscal year 1996, the required State contributions to the Teachers' Retirement System of the State of Illinois shall be appropriated directly to the System and paid on vouchers submitted by the board of trustees of the retirement system, as provided in Section 16-158 of the Illinois Pension Code [40 ILCS 5/16-158]. These vouchers shall be paid by the State Comptroller and Treasurer by warrants drawn on funds appropriated to the retirement system for that purpose.

(Source: P.A. 83-1068; 88-593, § 30; 90-548, § 5-915.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 18-7.

Cross References.

As to the transfer by the State Comptroller and State Treasurer from the General Revenue Fund to the Common School Fund such amounts as may be required to honor the vouchers presented by the State Board of Education pursuant to this Act, see 30 ILCS 105/8a.

As to contributions paid by the state and other employing units in accordance with this section, see 40 ILCS 5/16-158.

Effect of Amendments. The 1994 amendment by P.A. 88-593, effective August 22, 1994, added the subsection (a) designation; in subsection (a), in the first paragraph, in the first sentence, substituted "In each fiscal year" for "pursuant to computations of the State Board of Education", substituted "distribute to" for "pay for the benefit of the Teachers' Retirement System of the State of Illinois and", substituted "if any, appropriated for that fiscal year" for "to be paid", substituted "Retirement Fund, in the manner" for "systems as" and substituted "this Section, the Illinois Pension Code, the State Finance Act, and other applicable provisions of law" for "the 'Illinois Pension Code' as the same may be from time to time be amended" and in the second sentence added "In making this distribution" at the beginning and added the second paragraph; and added subsections (b) and (c).

The 1997 amendment by P.A. 90-548, effective December 4, 1997, in subsection (a), in the first paragraph, in the first sentence, inserted "through fiscal year 1998" and in the second paragraph, added the first sentence and in the second sentence, substituted "Public School Teachers' Pension and Retirement Fund of Chicago" for "State Board of Education for that purpose".

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§ 105 ILCS 5/18-8: Repealed by P.A. 90-548, § 5-915, effective July 1, 1998.

Note.

This section was amended by P.A. 90-655, effective July 30, 1998. However, this section has not been set out due to the repeal by P.A. 90-548.

§ 105 ILCS 5/18-8.05. Basis for apportionment of general State financial aid and supplemental general State aid to the common schools for the 1998-1999 and subsequent school years

Sec. 18-8.05. Basis for apportionment of general State financial aid and supplemental general State aid to the common schools for the 1998-1999 and subsequent school years. (A) General Provisions.

(1) The provisions of this Section apply to the 1998-1999 and subsequent school years. The system of general State financial aid provided for in this Section is designed to assure that, through a combination of State financial aid and required local resources, the financial support provided each pupil in Average Daily Attendance equals or exceeds a prescribed per pupil Foundation Level. This formula approach imputes a level of per pupil Available Local Resources and provides for the basis to calculate a per pupil level of general State financial aid that, when added to Available Local Resources, equals or exceeds the Foundation Level. The amount of per pupil general State financial aid for school districts, in general, varies in inverse relation to Available Local Resources. Per pupil amounts are based upon each school district's Average Daily Attendance as that term is defined in this Section.

(2) In addition to general State financial aid, school districts with specified levels or concentrations of pupils from low income households are eligible to receive supplemental general State financial aid grants as provided pursuant to subsection (H). The supplemental State aid grants provided for school districts under subsection (H) shall be appropriated for distribution to school districts as part of the same line item in which the general State financial aid of school districts is appropriated under this Section.

(3) To receive financial assistance under this Section, school districts are required to file claims with the State Board of Education, subject to the following requirements:

(a) Any school district which fails for any given school year to maintain school as required by law, or to maintain a recognized school is not eligible to file for such school year any claim upon the Common School Fund. In case of nonrecognition of one or more attendance centers in a school district otherwise operating recognized schools, the claim of the district shall be reduced in the proportion which the Average Daily Attendance in the attendance center or centers bear to the Average Daily Attendance in the school district. A "recognized school" means any public school which meets the standards as established for recognition by the State Board of Education. A school district or

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attendance center not having recognition status at the end of a school term is entitled to receive State aid payments due upon a legal claim which was filed while it was recognized.

(b) School district claims filed under this Section are subject to Sections 18-9 and 18-12 [105 ILCS 5/18-9 and 105 ILCS 5/18-12], except as otherwise provided in this Section.

(c) If a school district operates a full year school under Section 10-19.1 [105 ILCS 5/10-19.1], the general State aid to the school district shall be determined by the State Board of Education in accordance with this Section as near as may be applicable.

(d) (Blank).

(4) Except as provided in subsections (H) and (L), the board of any district receiving any of the grants provided for in this Section may apply those funds to any fund so received for which that board is authorized to make expenditures by law.

School districts are not required to exert a minimum Operating Tax Rate in order to qualify for assistance under this Section.

(5) As used in this Section the following terms, when capitalized, shall have the meaning ascribed herein:

(a) "Average Daily Attendance": A count of pupil attendance in school, averaged as provided for in subsection (C) and utilized in deriving per pupil financial support levels.

(b) "Available Local Resources": A computation of local financial support, calculated on the basis of Average Daily Attendance and derived as provided pursuant to subsection (D).

(c) "Corporate Personal Property Replacement Taxes": Funds paid to local school districts pursuant to "An Act in relation to the abolition of ad valorem personal property tax and the replacement of revenues lost thereby, and amending and repealing certain Acts and parts of Acts in connection therewith", certified August 14, 1979, as amended (Public Act 81-1st S.S.-1).

(d) "Foundation Level": A prescribed level of per pupil financial support as provided for in subsection (B).

(e) "Operating Tax Rate": All school district property taxes extended for all purposes, except Bond and Interest, Summer School, Rent, Capital Improvement, and Vocational Education Building purposes.

(B) Foundation Level.

(1) The Foundation Level is a figure established by the State representing the minimum level of per pupil financial support that should be available to provide for the basic education of each pupil in Average Daily Attendance. As set forth in this Section, each school district is assumed to exert a sufficient local taxing effort such that, in combination with the aggregate of general State financial aid provided the district, an

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aggregate of State and local resources are available to meet the basic education needs of pupils in the district.

(2) For the 1998-1999 school year, the Foundation Level of support is $4,225. For the 1999-2000 school year, the Foundation Level of support is $4,325. For the 2000-2001 school year, the Foundation Level of support is $4,425. For the 2001-2002 school year and 2002-2003 school year, the Foundation Level of support is $4,560. For the 2003-2004 school year, the Foundation Level of support is $4,810. For the 2004-2005 school year, the Foundation Level of support is $4,964. For the 2005-2006 school year, the Foundation Level of support is $5,164. For the 2006-2007 school year, the Foundation Level of support is $5,334. For the 2007-2008 school year, the Foundation Level of support is $5,734. For the 2008-2009 school year, the Foundation Level of support is $5,959.

(3) For the 2009-2010 school year and each school year thereafter, the Foundation Level of support is $6,119 or such greater amount as may be established by law by the General Assembly.

(C) Average Daily Attendance.

(1) For purposes of calculating general State aid pursuant to subsection (E), an Average Daily Attendance figure shall be utilized. The Average Daily Attendance figure for formula calculation purposes shall be the monthly average of the actual number of pupils in attendance of each school district, as further averaged for the best 3 months of pupil attendance for each school district. In compiling the figures for the number of pupils in attendance, school districts and the State Board of Education shall, for purposes of general State aid funding, conform attendance figures to the requirements of subsection (F).

(2) The Average Daily Attendance figures utilized in subsection (E) shall be the requisite attendance data for the school year immediately preceding the school year for which general State aid is being calculated or the average of the attendance data for the 3 preceding school years, whichever is greater. The Average Daily Attendance figures utilized in subsection (H) shall be the requisite attendance data for the school year immediately preceding the school year for which general State aid is being calculated.

(D) Available Local Resources.

(1) For purposes of calculating general State aid pursuant to subsection (E), a representation of Available Local Resources per pupil, as that term is defined and determined in this subsection, shall be utilized. Available Local Resources per pupil shall include a calculated dollar amount representing local school district revenues from local property taxes and from Corporate Personal Property Replacement Taxes, expressed on the basis of pupils in Average Daily Attendance. Calculation of Available Local Resources shall exclude any tax amnesty funds received as a result of Public Act 93-26.

(2) In determining a school district's revenue from local property taxes, the State Board of Education shall utilize the equalized assessed valuation of all taxable property of each

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school district as of September 30 of the previous year. The equalized assessed valuation utilized shall be obtained and determined as provided in subsection (G).

(3) For school districts maintaining grades kindergarten through 12, local property tax revenues per pupil shall be calculated as the product of the applicable equalized assessed valuation for the district multiplied by 3.00%, and divided by the district's Average Daily Attendance figure. For school districts maintaining grades kindergarten through 8, local property tax revenues per pupil shall be calculated as the product of the applicable equalized assessed valuation for the district multiplied by 2.30%, and divided by the district's Average Daily Attendance figure. For school districts maintaining grades 9 through 12, local property tax revenues per pupil shall be the applicable equalized assessed valuation of the district multiplied by 1.05%, and divided by the district's Average Daily Attendance figure.

For partial elementary unit districts created pursuant to Article 11E of this Code [105 ILCS 5/11E-5 et seq.], local property tax revenues per pupil shall be calculated as the product of the equalized assessed valuation for property within the partial elementary unit district for elementary purposes, as defined in Article 11E of this Code, multiplied by 2.06% and divided by the district's Average Daily Attendance figure, plus the product of the equalized assessed valuation for property within the partial elementary unit district for high school purposes, as defined in Article 11E of this Code, multiplied by 0.94% and divided by the district's Average Daily Attendance figure.

(4) The Corporate Personal Property Replacement Taxes paid to each school district during the calendar year one year before the calendar year in which a school year begins, divided by the Average Daily Attendance figure for that district, shall be added to the local property tax revenues per pupil as derived by the application of the immediately preceding paragraph (3). The sum of these per pupil figures for each school district shall constitute Available Local Resources as that term is utilized in subsection (E) in the calculation of general State aid.

(E) Computation of General State Aid.

(1) For each school year, the amount of general State aid allotted to a school district shall be computed by the State Board of Education as provided in this subsection.

(2) For any school district for which Available Local Resources per pupil is less than the product of 0.93 times the Foundation Level, general State aid for that district shall be calculated as an amount equal to the Foundation Level minus Available Local Resources, multiplied by the Average Daily Attendance of the school district.

(3) For any school district for which Available Local Resources per pupil is equal to or greater than the product of 0.93 times the Foundation Level and less than the product of 1.75 times the Foundation Level, the general State aid per pupil shall be a decimal proportion of the Foundation Level derived using a linear algorithm. Under this linear algorithm, the calculated general State aid per pupil shall decline in direct linear fashion from 0.07 times the Foundation Level for a school district with Available Local Resources equal to the product of 0.93 times the Foundation Level, to 0.05 times the Foundation Level for a school district with Available Local Resources equal to the

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product of 1.75 times the Foundation Level. The allocation of general State aid for school districts subject to this paragraph 3 shall be the calculated general State aid per pupil figure multiplied by the Average Daily Attendance of the school district.

(4) For any school district for which Available Local Resources per pupil equals or exceeds the product of 1.75 times the Foundation Level, the general State aid for the school district shall be calculated as the product of $218 multiplied by the Average Daily Attendance of the school district.

(5) The amount of general State aid allocated to a school district for the 1999-2000 school year meeting the requirements set forth in paragraph (4) of subsection (G) shall be increased by an amount equal to the general State aid that would have been received by the district for the 1998-1999 school year by utilizing the Extension Limitation Equalized Assessed Valuation as calculated in paragraph (4) of subsection (G) less the general State aid allotted for the 1998-1999 school year. This amount shall be deemed a one time increase, and shall not affect any future general State aid allocations.

(F) Compilation of Average Daily Attendance.

(1) Each school district shall, by July 1 of each year, submit to the State Board of Education, on forms prescribed by the State Board of Education, attendance figures for the school year that began in the preceding calendar year. The attendance information so transmitted shall identify the average daily attendance figures for each month of the school year. Beginning with the general State aid claim form for the 2002-2003 school year, districts shall calculate Average Daily Attendance as provided in subdivisions (a), (b), and (c) of this paragraph (1).

(a) In districts that do not hold year-round classes, days of attendance in August shall be added to the month of September and any days of attendance in June shall be added to the month of May.

(b) In districts in which all buildings hold year-round classes, days of attendance in July and August shall be added to the month of September and any days of attendance in June shall be added to the month of May.

(c) In districts in which some buildings, but not all, hold year-round classes, for the non-year-round buildings, days of attendance in August shall be added to the month of September and any days of attendance in June shall be added to the month of May. The average daily attendance for the year-round buildings shall be computed as provided in subdivision (b) of this paragraph (1). To calculate the Average Daily Attendance for the district, the average daily attendance for the year-round buildings shall be multiplied by the days in session for the non-year-round buildings for each month and added to the monthly attendance of the non-year-round buildings.

Except as otherwise provided in this Section, days of attendance by pupils shall be counted only for sessions of not less than 5 clock hours of school work per day under direct supervision of: (i) teachers, or (ii) non-teaching personnel or volunteer personnel when engaging in non-teaching duties and supervising in those instances specified in subsection (a) of Section 10-22.34 and paragraph 10 of Section 34-18 [105 ILCS 5/10-

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22.34 and 105 ILCS 5/34-18], with pupils of legal school age and in kindergarten and grades 1 through 12.

Days of attendance by tuition pupils shall be accredited only to the districts that pay the tuition to a recognized school.

(2) Days of attendance by pupils of less than 5 clock hours of school shall be subject to the following provisions in the compilation of Average Daily Attendance.

(a) Pupils regularly enrolled in a public school for only a part of the school day may be counted on the basis of 1/6 day for every class hour of instruction of 40 minutes or more attended pursuant to such enrollment, unless a pupil is enrolled in a block-schedule format of 80 minutes or more of instruction, in which case the pupil may be counted on the basis of the proportion of minutes of school work completed each day to the minimum number of minutes that school work is required to be held that day.

(b) Days of attendance may be less than 5 clock hours on the opening and closing of the school term, and upon the first day of pupil attendance, if preceded by a day or days utilized as an institute or teachers' workshop.

(c) A session of 4 or more clock hours may be counted as a day of attendance upon certification by the regional superintendent, and approved by the State Superintendent of Education to the extent that the district has been forced to use daily multiple sessions.

(d) A session of 3 or more clock hours may be counted as a day of attendance (1) when the remainder of the school day or at least 2 hours in the evening of that day is utilized for an in-service training program for teachers, up to a maximum of 5 days per school year, provided a district conducts an in-service training program for teachers in accordance with Section 10-22.39 of this Code [105 ILCS 5/10-22.39]; or, in lieu of 4 such days, 2 full days may be used, in which event each such day may be counted as a day required for a legal school calendar pursuant to Section 10-19 of this Code; (1.5) when, of the 5 days allowed under item (1), a maximum of 4 days are used for parent-teacher conferences, or, in lieu of 4 such days, 2 full days are used, in which case each such day may be counted as a calendar day required under Section 10-19 of this Code, provided that the full-day, parent-teacher conference consists of (i) a minimum of 5 clock hours of parent-teacher conferences, (ii) both a minimum of 2 clock hours of parent-teacher conferences held in the evening following a full day of student attendance, as specified in subsection (F)(1)(c), and a minimum of 3 clock hours of parent-teacher conferences held on the day immediately following evening parent-teacher conferences, or (iii) multiple parent-teacher conferences held in the evenings following full days of student attendance, as specified in subsection (F)(1)(c), in which the time used for the parent-teacher conferences is equivalent to a minimum of 5 clock hours; and (2) when days in addition to those provided in items (1) and (1.5) are scheduled by a school pursuant to its school improvement plan adopted under Article 34 or its revised or amended school improvement plan adopted under Article 2, provided that (i) such sessions of 3 or more clock hours are scheduled to occur at regular intervals, (ii) the remainder of the school days in which such sessions occur are utilized for in-service training programs or other staff development activities for teachers, and (iii) a sufficient number of minutes of school work under the direct supervision of teachers are added to

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the school days between such regularly scheduled sessions to accumulate not less than the number of minutes by which such sessions of 3 or more clock hours fall short of 5 clock hours. Any full days used for the purposes of this paragraph shall not be considered for computing average daily attendance. Days scheduled for in-service training programs, staff development activities, or parent-teacher conferences may be scheduled separately for different grade levels and different attendance centers of the district.

(e) A session of not less than one clock hour of teaching hospitalized or homebound pupils on-site or by telephone to the classroom may be counted as 1/2 day of attendance, however these pupils must receive 4 or more clock hours of instruction to be counted for a full day of attendance.

(f) A session of at least 4 clock hours may be counted as a day of attendance for first grade pupils, and pupils in full day kindergartens, and a session of 2 or more hours may be counted as 1/2 day of attendance by pupils in kindergartens which provide only 1/2 day of attendance.

(g) For children with disabilities who are below the age of 6 years and who cannot attend 2 or more clock hours because of their disability or immaturity, a session of not less than one clock hour may be counted as 1/2 day of attendance; however for such children whose educational needs so require a session of 4 or more clock hours may be counted as a full day of attendance.

(h) A recognized kindergarten which provides for only 1/2 day of attendance by each pupil shall not have more than 1/2 day of attendance counted in any one day. However, kindergartens may count 2 1/2 days of attendance in any 5 consecutive school days. When a pupil attends such a kindergarten for 2 half days on any one school day, the pupil shall have the following day as a day absent from school, unless the school district obtains permission in writing from the State Superintendent of Education. Attendance at kindergartens which provide for a full day of attendance by each pupil shall be counted the same as attendance by first grade pupils. Only the first year of attendance in one kindergarten shall be counted, except in case of children who entered the kindergarten in their fifth year whose educational development requires a second year of kindergarten as determined under the rules and regulations of the State Board of Education.

(i) On the days when the Prairie State Achievement Examination is administered under subsection (c) of Section 2-3.64 of this Code [105 ILCS 5/2-3.64], the day of attendance for a pupil whose school day must be shortened to accommodate required testing procedures may be less than 5 clock hours and shall be counted towards the 176 days of actual pupil attendance required under Section 10-19 of this Code [105 ILCS 5/10-19], provided that a sufficient number of minutes of school work in excess of 5 clock hours are first completed on other school days to compensate for the loss of school work on the examination days.

(j) Pupils enrolled in a remote educational program established under Section 10-29 of this Code [105 ILCS 5/10-29] may be counted on the basis of one-fifth day of attendance for every clock hour of instruction attended in the remote educational program, provided that, in any month, the school district may not claim for a student enrolled in a remote educational program more days of attendance than the maximum number of days of

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attendance the district can claim (i) for students enrolled in a building holding year-round classes if the student is classified as participating in the remote educational program on a year-round schedule or (ii) for students enrolled in a building not holding year-round classes if the student is not classified as participating in the remote educational program on a year-round schedule.

(G) Equalized Assessed Valuation Data.

(1) For purposes of the calculation of Available Local Resources required pursuant to subsection (D), the State Board of Education shall secure from the Department of Revenue the value as equalized or assessed by the Department of Revenue of all taxable property of every school district, together with (i) the applicable tax rate used in extending taxes for the funds of the district as of September 30 of the previous year and (ii) the limiting rate for all school districts subject to property tax extension limitations as imposed under the Property Tax Extension Limitation Law [35 ILCS 200/18-185 et seq.].

The Department of Revenue shall add to the equalized assessed value of all taxable property of each school district situated entirely or partially within a county that is or was subject to the provisions of Section 15-176 or 15-177 of the Property Tax Code [35 ILCS 200/15-176 or 35 ILCS 200/15-177] (a) an amount equal to the total amount by which the homestead exemption allowed under Section 15-176 or 15-177 of the Property Tax Code for real property situated in that school district exceeds the total amount that would have been allowed in that school district if the maximum reduction under Section 15-176 was (i) $4,500 in Cook County or $3,500 in all other counties in tax year 2003 or (ii) $5,000 in all counties in tax year 2004 and thereafter and (b) an amount equal to the aggregate amount for the taxable year of all additional exemptions under Section 15-175 of the Property Tax Code [35 ILCS 200/15-175] for owners with a household income of $30,000 or less. The county clerk of any county that is or was subject to the provisions of Section 15-176 or 15-177 of the Property Tax Code shall annually calculate and certify to the Department of Revenue for each school district all homestead exemption amounts under Section 15-176 or 15-177 of the Property Tax Code and all amounts of additional exemptions under Section 15-175 of the Property Tax Code for owners with a household income of $30,000 or less. It is the intent of this paragraph that if the general homestead exemption for a parcel of property is determined under Section 15-176 or 15-177 of the Property Tax Code rather than Section 15-175, then the calculation of Available Local Resources shall not be affected by the difference, if any, between the amount of the general homestead exemption allowed for that parcel of property under Section 15-176 or 15-177 of the Property Tax Code and the amount that would have been allowed had the general homestead exemption for that parcel of property been determined under Section 15-175 of the Property Tax Code. It is further the intent of this paragraph that if additional exemptions are allowed under Section 15-175 of the Property Tax Code for owners with a household income of less than $30,000, then the calculation of Available Local Resources shall not be affected by the difference, if any, because of those additional exemptions.

This equalized assessed valuation, as adjusted further by the requirements of this subsection, shall be utilized in the calculation of Available Local Resources.

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(2) The equalized assessed valuation in paragraph (1) shall be adjusted, as applicable, in the following manner:

(a) For the purposes of calculating State aid under this Section, with respect to any part of a school district within a redevelopment project area in respect to which a municipality has adopted tax increment allocation financing pursuant to the Tax Increment Allocation Redevelopment Act [65 ILCS 5/11-74.4-1 et seq.], Sections 11-74.4-1 through 11-74.4-11 of the Illinois Municipal Code [65 ILCS 5/11-74.4-1 through 65 ILCS 5/11-74.4-11] or the Industrial Jobs Recovery Law [65 ILCS 5/11-74.6-1 et seq.], Sections 11-74.6-1 through 11-74.6-50 of the Illinois Municipal Code [65 ILCS 5/11-74.6-1 through 65 ILCS 5/11-74.6-50], no part of the current equalized assessed valuation of real property located in any such project area which is attributable to an increase above the total initial equalized assessed valuation of such property shall be used as part of the equalized assessed valuation of the district, until such time as all redevelopment project costs have been paid, as provided in Section 11-74.4-8 of the Tax Increment Allocation Redevelopment Act [65 ILCS 5/11-74.4-8] or in Section 11-74.6-35 of the Industrial Jobs Recovery Law [65 ILCS 5/11-74.6-35]. For the purpose of the equalized assessed valuation of the district, the total initial equalized assessed valuation or the current equalized assessed valuation, whichever is lower, shall be used until such time as all redevelopment project costs have been paid.

(b) The real property equalized assessed valuation for a school district shall be adjusted by subtracting from the real property value as equalized or assessed by the Department of Revenue for the district an amount computed by dividing the amount of any abatement of taxes under Section 18-170 of the Property Tax Code [35 ILCS 200/18-170] by 3.00% for a district maintaining grades kindergarten through 12, by 2.30% for a district maintaining grades kindergarten through 8, or by 1.05% for a district maintaining grades 9 through 12 and adjusted by an amount computed by dividing the amount of any abatement of taxes under subsection (a) of Section 18-165 of the Property Tax Code [35 ILCS 200/18-165] by the same percentage rates for district type as specified in this subparagraph (b).

(3) For the 1999-2000 school year and each school year thereafter, if a school district meets all of the criteria of this subsection (G)(3), the school district's Available Local Resources shall be calculated under subsection (D) using the district's Extension Limitation Equalized Assessed Valuation as calculated under this subsection (G)(3).

For purposes of this subsection (G)(3) the following terms shall have the following meanings:

"Budget Year": The school year for which general State aid is calculated and awarded under subsection (E).

"Base Tax Year": The property tax levy year used to calculate the Budget Year allocation of general State aid.

"Preceding Tax Year": The property tax levy year immediately preceding the Base Tax Year.

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"Base Tax Year's Tax Extension": The product of the equalized assessed valuation utilized by the County Clerk in the Base Tax Year multiplied by the limiting rate as calculated by the County Clerk and defined in the Property Tax Extension Limitation Law [35 ILCS 200/18-185 et seq.].

"Preceding Tax Year's Tax Extension": The product of the equalized assessed valuation utilized by the County Clerk in the Preceding Tax Year multiplied by the Operating Tax Rate as defined in subsection (A).

"Extension Limitation Ratio": A numerical ratio, certified by the County Clerk, in which the numerator is the Base Tax Year's Tax Extension and the denominator is the Preceding Tax Year's Tax Extension.

"Operating Tax Rate": The operating tax rate as defined in subsection (A).

If a school district is subject to property tax extension limitations as imposed under the Property Tax Extension Limitation Law, the State Board of Education shall calculate the Extension Limitation Equalized Assessed Valuation of that district. For the 1999-2000 school year, the Extension Limitation Equalized Assessed Valuation of a school district as calculated by the State Board of Education shall be equal to the product of the district's 1996 Equalized Assessed Valuation and the district's Extension Limitation Ratio. Except as otherwise provided in this paragraph for a school district that has approved or does approve an increase in its limiting rate, for the 2000-2001 school year and each school year thereafter, the Extension Limitation Equalized Assessed Valuation of a school district as calculated by the State Board of Education shall be equal to the product of the Equalized Assessed Valuation last used in the calculation of general State aid and the district's Extension Limitation Ratio. If the Extension Limitation Equalized Assessed Valuation of a school district as calculated under this subsection (G)(3) is less than the district's equalized assessed valuation as calculated pursuant to subsections (G)(1) and (G)(2), then for purposes of calculating the district's general State aid for the Budget Year pursuant to subsection (E), that Extension Limitation Equalized Assessed Valuation shall be utilized to calculate the district's Available Local Resources under subsection (D). For the 2009-2010 school year and each school year thereafter, if a school district has approved or does approve an increase in its limiting rate, pursuant to Section 18-190 of the Property Tax Code [35 ILCS 200/18-190], affecting the Base Tax Year, the Extension Limitation Equalized Assessed Valuation of the school district, as calculated by the State Board of Education, shall be equal to the product of the Equalized Assessed Valuation last used in the calculation of general State aid times an amount equal to one plus the percentage increase, if any, in the Consumer Price Index for all Urban Consumers for all items published by the United States Department of Labor for the 12-month calendar year preceding the Base Tax Year, plus the Equalized Assessed Valuation of new property, annexed property, and recovered tax increment value and minus the Equalized Assessed Valuation of disconnected property. New property and recovered tax increment value shall have the meanings set forth in the Property Tax Extension Limitation Law.

Partial elementary unit districts created in accordance with Article 11E of this Code shall not be eligible for the adjustment in this subsection (G)(3) until the fifth year following the effective date of the reorganization.

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(3.5) For the 2010-2011 school year and each school year thereafter, if a school district's boundaries span multiple counties, then the Department of Revenue shall send to the State Board of Education, for the purpose of calculating general State aid, the limiting rate and individual rates by purpose for the county that contains the majority of the school district's Equalized Assessed Valuation.

(4) For the purposes of calculating general State aid for the 1999-2000 school year only, if a school district experienced a triennial reassessment on the equalized assessed valuation used in calculating its general State financial aid apportionment for the 1998-1999 school year, the State Board of Education shall calculate the Extension Limitation Equalized Assessed Valuation that would have been used to calculate the district's 1998-1999 general State aid. This amount shall equal the product of the equalized assessed valuation used to calculate general State aid for the 1997-1998 school year and the district's Extension Limitation Ratio. If the Extension Limitation Equalized Assessed Valuation of the school district as calculated under this paragraph (4) is less than the district's equalized assessed valuation utilized in calculating the district's 1998-1999 general State aid allocation, then for purposes of calculating the district's general State aid pursuant to paragraph (5) of subsection (E), that Extension Limitation Equalized Assessed Valuation shall be utilized to calculate the district's Available Local Resources.

(5) For school districts having a majority of their equalized assessed valuation in any county except Cook, DuPage, Kane, Lake, McHenry, or Will, if the amount of general State aid allocated to the school district for the 1999-2000 school year under the provisions of subsection (E), (H), and (J) of this Section is less than the amount of general State aid allocated to the district for the 1998-1999 school year under these subsections, then the general State aid of the district for the 1999-2000 school year only shall be increased by the difference between these amounts. The total payments made under this paragraph (5) shall not exceed $14,000,000. Claims shall be prorated if they exceed $14,000,000.

(H) Supplemental General State Aid.

(1) In addition to the general State aid a school district is allotted pursuant to subsection (E), qualifying school districts shall receive a grant, paid in conjunction with a district's payments of general State aid, for supplemental general State aid based upon the concentration level of children from low-income households within the school district. Supplemental State aid grants provided for school districts under this subsection shall be appropriated for distribution to school districts as part of the same line item in which the general State financial aid of school districts is appropriated under this Section.

(1.5) This paragraph (1.5) applies only to those school years preceding the 2003-2004 school year. For purposes of this subsection (H), the term "Low-Income Concentration Level" shall be the low-income eligible pupil count from the most recently available federal census divided by the Average Daily Attendance of the school district. If, however, (i) the percentage decrease from the 2 most recent federal censuses in the low-income eligible pupil count of a high school district with fewer than 400 students exceeds by 75% or more the percentage change in the total low-income eligible pupil count of contiguous elementary school districts, whose boundaries are coterminous with the high

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school district, or (ii) a high school district within 2 counties and serving 5 elementary school districts, whose boundaries are coterminous with the high school district, has a percentage decrease from the 2 most recent federal censuses in the low-income eligible pupil count and there is a percentage increase in the total low-income eligible pupil count of a majority of the elementary school districts in excess of 50% from the 2 most recent federal censuses, then the high school district's low-income eligible pupil count from the earlier federal census shall be the number used as the low-income eligible pupil count for the high school district, for purposes of this subsection (H). The changes made to this paragraph (1) by Public Act 92-28 shall apply to supplemental general State aid grants for school years preceding the 2003-2004 school year that are paid in fiscal year 1999 or thereafter and to any State aid payments made in fiscal year 1994 through fiscal year 1998 pursuant to subsection 1(n) of Section 18-8 of this Code (which was repealed on July 1, 1998), and any high school district that is affected by Public Act 92-28 is entitled to a recomputation of its supplemental general State aid grant or State aid paid in any of those fiscal years. This recomputation shall not be affected by any other funding.

(1.10) This paragraph (1.10) applies to the 2003-2004 school year and each school year thereafter. For purposes of this subsection (H), the term "Low-Income Concentration Level" shall, for each fiscal year, be the low-income eligible pupil count as of July 1 of the immediately preceding fiscal year (as determined by the Department of Human Services based on the number of pupils who are eligible for at least one of the following low income programs: Medicaid, the Children's Health Insurance Program, TANF, or Food Stamps, excluding pupils who are eligible for services provided by the Department of Children and Family Services, averaged over the 2 immediately preceding fiscal years for fiscal year 2004 and over the 3 immediately preceding fiscal years for each fiscal year thereafter) divided by the Average Daily Attendance of the school district.

(2) Supplemental general State aid pursuant to this subsection (H) shall be provided as follows for the 1998-1999, 1999-2000, and 2000-2001 school years only:

(a) For any school district with a Low Income Concentration Level of at least 20% and less than 35%, the grant for any school year shall be $800 multiplied by the low income eligible pupil count.

(b) For any school district with a Low Income Concentration Level of at least 35% and less than 50%, the grant for the 1998-1999 school year shall be $1,100 multiplied by the low income eligible pupil count.

(c) For any school district with a Low Income Concentration Level of at least 50% and less than 60%, the grant for the 1998-99 school year shall be $1,500 multiplied by the low income eligible pupil count.

(d) For any school district with a Low Income Concentration Level of 60% or more, the grant for the 1998-99 school year shall be $1,900 multiplied by the low income eligible pupil count.

(e) For the 1999-2000 school year, the per pupil amount specified in subparagraphs (b), (c), and (d) immediately above shall be increased to $1,243, $1,600, and $2,000, respectively.

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(f) For the 2000-2001 school year, the per pupil amounts specified in subparagraphs (b), (c), and (d) immediately above shall be $1,273, $1,640, and $2,050, respectively.

(2.5) Supplemental general State aid pursuant to this subsection (H) shall be provided as follows for the 2002-2003 school year:

(a) For any school district with a Low Income Concentration Level of less than 10%, the grant for each school year shall be $355 multiplied by the low income eligible pupil count.

(b) For any school district with a Low Income Concentration Level of at least 10% and less than 20%, the grant for each school year shall be $675 multiplied by the low income eligible pupil count.

(c) For any school district with a Low Income Concentration Level of at least 20% and less than 35%, the grant for each school year shall be $1,330 multiplied by the low income eligible pupil count.

(d) For any school district with a Low Income Concentration Level of at least 35% and less than 50%, the grant for each school year shall be $1,362 multiplied by the low income eligible pupil count.

(e) For any school district with a Low Income Concentration Level of at least 50% and less than 60%, the grant for each school year shall be $1,680 multiplied by the low income eligible pupil count.

(f) For any school district with a Low Income Concentration Level of 60% or more, the grant for each school year shall be $2,080 multiplied by the low income eligible pupil count.

(2.10) Except as otherwise provided, supplemental general State aid pursuant to this subsection (H) shall be provided as follows for the 2003-2004 school year and each school year thereafter:

(a) For any school district with a Low Income Concentration Level of at least 20% and less than 35%, the grant for any school year shall be $800 multiplied by the low income eligible pupil count.

(b) For any school district with a Low Income Concentration Level greater than 15%, the grant for each school year shall be $294.25 added to the product of $2,700 and the square of the Low Income Concentration Level, all multiplied by the low income eligible pupil count.

For the 2003-2004 school year and each school year thereafter through the 2008-2009 school year only, the grant shall be no less than the grant for the 2002-2003 school year. For the 2009-2010 school year only, the grant shall be no less than the grant for the 2002-2003 school year multiplied by 0.66. For the 2010-2011 school year only, the grant shall be no less than the grant for the 2002-2003 school year multiplied by 0.33. Notwithstanding the provisions of this paragraph to the contrary, if for any school year

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supplemental general State aid grants are prorated as provided in paragraph (1) of this subsection (H), then the grants under this paragraph shall be prorated.

For the 2003-2004 school year only, the grant shall be no greater than the grant received during the 2002-2003 school year added to the product of 0.25 multiplied by the difference between the grant amount calculated under subsection (a) or (b) of this paragraph (2.10), whichever is applicable, and the grant received during the 2002-2003 school year. For the 2004-2005 school year only, the grant shall be no greater than the grant received during the 2002-2003 school year added to the product of 0.50 multiplied by the difference between the grant amount calculated under subsection (a) or (b) of this paragraph (2.10), whichever is applicable, and the grant received during the 2002-2003 school year. For the 2005-2006 school year only, the grant shall be no greater than the grant received during the 2002-2003 school year added to the product of 0.75 multiplied by the difference between the grant amount calculated under subsection (a) or (b) of this paragraph (2.10), whichever is applicable, and the grant received during the 2002-2003 school year.

(3) School districts with an Average Daily Attendance of more than 1,000 and less than 50,000 that qualify for supplemental general State aid pursuant to this subsection shall submit a plan to the State Board of Education prior to October 30 of each year for the use of the funds resulting from this grant of supplemental general State aid for the improvement of instruction in which priority is given to meeting the education needs of disadvantaged children. Such plan shall be submitted in accordance with rules and regulations promulgated by the State Board of Education.

(4) School districts with an Average Daily Attendance of 50,000 or more that qualify for supplemental general State aid pursuant to this subsection shall be required to distribute from funds available pursuant to this Section, no less than $261,000,000 in accordance with the following requirements:

(a) The required amounts shall be distributed to the attendance centers within the district in proportion to the number of pupils enrolled at each attendance center who are eligible to receive free or reduced-price lunches or breakfasts under the federal Child Nutrition Act of 1966 [42 U.S.C. § 1771 et seq.] and under the National School Lunch Act [42 U.S.C. § 1751] during the immediately preceding school year.

(b) The distribution of these portions of supplemental and general State aid among attendance centers according to these requirements shall not be compensated for or contravened by adjustments of the total of other funds appropriated to any attendance centers, and the Board of Education shall utilize funding from one or several sources in order to fully implement this provision annually prior to the opening of school.

(c) Each attendance center shall be provided by the school district a distribution of noncategorical funds and other categorical funds to which an attendance center is entitled under law in order that the general State aid and supplemental general State aid provided by application of this subsection supplements rather than supplants the noncategorical funds and other categorical funds provided by the school district to the attendance centers.

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(d) Any funds made available under this subsection that by reason of the provisions of this subsection are not required to be allocated and provided to attendance centers may be used and appropriated by the board of the district for any lawful school purpose.

(e) Funds received by an attendance center pursuant to this subsection shall be used by the attendance center at the discretion of the principal and local school council for programs to improve educational opportunities at qualifying schools through the following programs and services: early childhood education, reduced class size or improved adult to student classroom ratio, enrichment programs, remedial assistance, attendance improvement, and other educationally beneficial expenditures which supplement the regular and basic programs as determined by the State Board of Education. Funds provided shall not be expended for any political or lobbying purposes as defined by board rule.

(f) Each district subject to the provisions of this subdivision (H)(4) shall submit an acceptable plan to meet the educational needs of disadvantaged children, in compliance with the requirements of this paragraph, to the State Board of Education prior to July 15 of each year. This plan shall be consistent with the decisions of local school councils concerning the school expenditure plans developed in accordance with part 4 of Section 34-2.3 [105 ILCS 5/34-2.3]. The State Board shall approve or reject the plan within 60 days after its submission. If the plan is rejected, the district shall give written notice of intent to modify the plan within 15 days of the notification of rejection and then submit a modified plan within 30 days after the date of the written notice of intent to modify. Districts may amend approved plans pursuant to rules promulgated by the State Board of Education.

Upon notification by the State Board of Education that the district has not submitted a plan prior to July 15 or a modified plan within the time period specified herein, the State aid funds affected by that plan or modified plan shall be withheld by the State Board of Education until a plan or modified plan is submitted.

If the district fails to distribute State aid to attendance centers in accordance with an approved plan, the plan for the following year shall allocate funds, in addition to the funds otherwise required by this subsection, to those attendance centers which were underfunded during the previous year in amounts equal to such underfunding.

For purposes of determining compliance with this subsection in relation to the requirements of attendance center funding, each district subject to the provisions of this subsection shall submit as a separate document by December 1 of each year a report of expenditure data for the prior year in addition to any modification of its current plan. If it is determined that there has been a failure to comply with the expenditure provisions of this subsection regarding contravention or supplanting, the State Superintendent of Education shall, within 60 days of receipt of the report, notify the district and any affected local school council. The district shall within 45 days of receipt of that notification inform the State Superintendent of Education of the remedial or corrective action to be taken, whether by amendment of the current plan, if feasible, or by adjustment in the plan for the following year. Failure to provide the expenditure report or

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the notification of remedial or corrective action in a timely manner shall result in a withholding of the affected funds.

The State Board of Education shall promulgate rules and regulations to implement the provisions of this subsection. No funds shall be released under this subdivision (H)(4) to any district that has not submitted a plan that has been approved by the State Board of Education.

(I) (Blank).

(J) (Blank).

(K) Grants to Laboratory and Alternative Schools.

In calculating the amount to be paid to the governing board of a public university that operates a laboratory school under this Section or to any alternative school that is operated by a regional superintendent of schools, the State Board of Education shall require by rule such reporting requirements as it deems necessary.

As used in this Section, "laboratory school" means a public school which is created and operated by a public university and approved by the State Board of Education. The governing board of a public university which receives funds from the State Board under this subsection (K) may not increase the number of students enrolled in its laboratory school from a single district, if that district is already sending 50 or more students, except under a mutual agreement between the school board of a student's district of residence and the university which operates the laboratory school. A laboratory school may not have more than 1,000 students, excluding students with disabilities in a special education program.

As used in this Section, "alternative school" means a public school which is created and operated by a Regional Superintendent of Schools and approved by the State Board of Education. Such alternative schools may offer courses of instruction for which credit is given in regular school programs, courses to prepare students for the high school equivalency testing program or vocational and occupational training. A regional superintendent of schools may contract with a school district or a public community college district to operate an alternative school. An alternative school serving more than one educational service region may be established by the regional superintendents of schools of the affected educational service regions. An alternative school serving more than one educational service region may be operated under such terms as the regional superintendents of schools of those educational service regions may agree.

Each laboratory and alternative school shall file, on forms provided by the State Superintendent of Education, an annual State aid claim which states the Average Daily Attendance of the school's students by month. The best 3 months' Average Daily Attendance shall be computed for each school. The general State aid entitlement shall be computed by multiplying the applicable Average Daily Attendance by the Foundation Level as determined under this Section.

(L) Payments, Additional Grants in Aid and Other Requirements.

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(1) For a school district operating under the financial supervision of an Authority created under Article 34A [105 ILCS 5/34A-101 et seq.], the general State aid otherwise payable to that district under this Section, but not the supplemental general State aid, shall be reduced by an amount equal to the budget for the operations of the Authority as certified by the Authority to the State Board of Education, and an amount equal to such reduction shall be paid to the Authority created for such district for its operating expenses in the manner provided in Section 18-11 [105 ILCS 5/18-11]. The remainder of general State school aid for any such district shall be paid in accordance with Article 34A when that Article provides for a disposition other than that provided by this Article.

(2) (Blank).

(3) Summer school. Summer school payments shall be made as provided in Section 18-4.3 [105 ILCS 5/18-4.3].

(M) Education Funding Advisory Board.

The Education Funding Advisory Board, hereinafter in this subsection (M) referred to as the "Board", is hereby created. The Board shall consist of 5 members who are appointed by the Governor, by and with the advice and consent of the Senate. The members appointed shall include representatives of education, business, and the general public. One of the members so appointed shall be designated by the Governor at the time the appointment is made as the chairperson of the Board. The initial members of the Board may be appointed any time after the effective date of this amendatory Act of 1997. The regular term of each member of the Board shall be for 4 years from the third Monday of January of the year in which the term of the member's appointment is to commence, except that of the 5 initial members appointed to serve on the Board, the member who is appointed as the chairperson shall serve for a term that commences on the date of his or her appointment and expires on the third Monday of January, 2002, and the remaining 4 members, by lots drawn at the first meeting of the Board that is held after all 5 members are appointed, shall determine 2 of their number to serve for terms that commence on the date of their respective appointments and expire on the third Monday of January, 2001, and 2 of their number to serve for terms that commence on the date of their respective appointments and expire on the third Monday of January, 2000. All members appointed to serve on the Board shall serve until their respective successors are appointed and confirmed. Vacancies shall be filled in the same manner as original appointments. If a vacancy in membership occurs at a time when the Senate is not in session, the Governor shall make a temporary appointment until the next meeting of the Senate, when he or she shall appoint, by and with the advice and consent of the Senate, a person to fill that membership for the unexpired term. If the Senate is not in session when the initial appointments are made, those appointments shall be made as in the case of vacancies.

The Education Funding Advisory Board shall be deemed established, and the initial members appointed by the Governor to serve as members of the Board shall take office, on the date that the Governor makes his or her appointment of the fifth initial member of the Board, whether those initial members are then serving pursuant to appointment and confirmation or pursuant to temporary appointments that are made by the Governor as in the case of vacancies.

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The State Board of Education shall provide such staff assistance to the Education Funding Advisory Board as is reasonably required for the proper performance by the Board of its responsibilities.

For school years after the 2000-2001 school year, the Education Funding Advisory Board, in consultation with the State Board of Education, shall make recommendations as provided in this subsection (M) to the General Assembly for the foundation level under subdivision (B)(3) of this Section and for the supplemental general State aid grant level under subsection (H) of this Section for districts with high concentrations of children from poverty. The recommended foundation level shall be determined based on a methodology which incorporates the basic education expenditures of low-spending schools exhibiting high academic performance. The Education Funding Advisory Board shall make such recommendations to the General Assembly on January 1 of odd numbered years, beginning January 1, 2001.

(N) (Blank).

(O) References.

(1) References in other laws to the various subdivisions of Section 18-8 as that Section existed before its repeal and replacement by this Section 18-8.05 [105 ILCS 5/18-8.05] shall be deemed to refer to the corresponding provisions of this Section 18-8.05, to the extent that those references remain applicable.

(2) References in other laws to State Chapter 1 funds shall be deemed to refer to the supplemental general State aid provided under subsection (H) of this Section.

(P) Public Act 93-838 [P.A. 93-838] and Public Act 93-808 [P.A. 93-808] make inconsistent changes to this Section. Under Section 6 of the Statute on Statutes there is an reconcilable conflict between Public Act 93-808 and Public Act 93-838. Public Act 93-838, being the last acted upon, is controlling. The text of Public Act 93-838 is the law regardless of the text of Public Act 93-808.

(Source: P.A. 90-548, § 5-915; 90-653, § 10; 90-654, § 5; 90-655, § 77; 90-802, § 5; 90-815, § 5; 91-24, § 15; 91-93, § 5; 91-96, § 10; 91-111, § 5; 91-357, § 101; 91-533, § 30; 92-7, § 5; 92-16, § 49; 92-28, § 5; 92-29, § 5; 92-269, § 5; 92-604, § 5; 92-636, § 5; 92-651, § 37; 93-21, § 5-5; 93-715, § 35; 93-808, § 5; 93-838, § 15; 93-875, § 5; 94-69, § 15; 94-438, § 5; 94-835, § 90-10; 94-1019, § 10; 94-1105, § 20; 95-331, § 540; 95-644, § 30; 95-707, § 5-20; 95-744, § 50; 95-903, § 5; 96-45, § 5-51; 96-152, § 5; 96-300, § 5; 96-328, § 145; 96-640, § 5; 96-959, § 5-47; 96-1000, § 260; 96-1480, § 5; 97-339, § 5; 97-351, § 5.)

Note.

P.A. 91-533 § 990 contains a "no acceleration or delay" provision, and P.A. 91-533 § 995 contains a "no revival or extension" provision.

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Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Section 997 of P.A. 92-651 is a no acceleration or delay provision, and Section 998 is a no revival or extension provision.

Section 90 of P.A. 94-1019 contains a savings provision, and section 95 contains a no acceleration or delay provision.

Section 95-95 of P.A. 96-959 contains a severability provision.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Cross References.

As to how the Governor may notify the State Treasurer and the State Comptroller to transfer, at a time designated by the Governor, such additional amount as may be necessary to effect advance distribution to school districts of amounts that otherwise would be payable in the next month pursuant to this Act, see 30 ILCS 105/8a.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 151.100, 205.30, 220.20, 225.20, 235.110, 235.20, 245.30, 452.5, 575.10.

Effective Date. Section 990-5 of P.A. 90-548 made this section effective June 1, 1998.

Effect of Amendments. The 1998 amendment by P.A. 90-653, effective July 29, 1998, deleted former subdivision (A)(3)(d), which read "Claims for financial assistance under this Section shall not be recomputed except as expressly provided under this Section"; and deleted "community college educational purposes for the payment of tuition under Section 6-1 of the Public Community College Act" following "except" in subdivision (A)(3)(e); inserted subdivision (I)(3.5); in subdivision (J)(1), deleted "for the 1998-1999 school year" following "eligible" in the first sentence and following "subsection (J)" in the second sentence, and deleted "subsequent to the 1998-1999 school year" preceding "shall be no less" in the second sentence; deleted "for the 1998-1999 school year, or" following "Section" in subdivision (J)(2); deleted subdivision (J)(3), concerning appropriations; added the last two sentences in the third paragraph of subsection (K); in subdivision (N)(1), deleted the definition for "Operating Tax Rate" and added the definitions for "Limiting Rate" and "Preliminary Tax Rate"; and rewrote subdivisions (N)(2), (3), and (4)(b).

The 1998 amendment by P.A. 90-654, effective July 29, 1998, deleted subdivision (J)(3), concerning appropriations.

The 1998 amendment by P.A. 90-655, effective July 30, 1998, in subsection (K), in the first paragraph inserted "of schools" following "regional superintendent", and in the third paragraph added the last two sentences.

The 1998 amendment by P.A. 90-802, effective December 15, 1998, in subsection (K), added the last two sentences of the third paragraph.

The 1998 amendment by P.A. 90-815, effective February 11, 1999 in subsection (H)(1) added the last sentence.

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The 1999 amendment by P.A. 91-24, effective July 1, 1999, incorporated the amendments by P.A. 90-653, P.A. 90-654, P.A. 90-655, P.A. 90-802 and P.A. 90-815; substituted "to $1,243" for "by $100 to $1,200" in subdivision (H)(2)(e); substituted "$1,273" for "increased to $1,230" in subdivision (H)(2)(f); and deleted "those" preceding "the affected educational service regions" in the fourth sentence of the third paragraph of subsection (K).

The 1999 amendment by P.A. 91-93, effective July 9, 1999, inserted "of" after "on the basis" in subparagraph (A)(5)(b); substituted "1.05%" for "1.20%" in the last sentence in subparagraph (D)(3); substituted "one" for "1" in the first sentence of subparagraph (F)(2)(h); and in subparagraph (G)(2)(b) substituted "kindergarten through 12, by" for "kindergarten through 12 or by" and "1.05%" for "1.20%" near the middle, and substituted "subparagraph (b)" for "subparagraph (c)" at the end.

The 1999 amendment by P.A. 91-96, effective July 7, 1999, in subdivision (G)(2)(b) substituted a comma for "or" following "kindergarten through 12" near the middle, and substituted "subparagraph (b)" for "subparagraph (c)" at the end; deleted subdivision (L)(2) concerning impaction payments; and made a minor stylistic change.

The 1999 amendment by P.A. 91-111, effective July 14, 1999, rewrote this section to the extent that a detailed comparison would be impracticable.

The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "subparagraph (b)" for "subparagraph (c)" at the end of subsection (G)(2)(b), and made stylistic changes.

The 1999 amendment by P.A. 91-533, effective August 13, 1999, deleted "those" following "schools of" in the third paragraph of subdivision (K).

The 2001 amendment by P.A. 92-7, effective June 29, 2001, in paragraph (C)(2), inserted "or the average of the attendance data for the 3 preceding school years, whichever is greater"; added the last sentence; in paragraph (H)(2), inserted "(H)"; added "for the 1998-1999, 1999-2000, and 2000-2001 school years only"; and inserted paragraph (2.5) and items (2.5)(a) through (2.5)(f).

The 2001 amendment by P.A. 92-16, effective June 28, 2001, combined the amendments by P.A. 91-24, P.A. 91-93, P.A. 91-96, P.A. 91-111, P.A. 91-357, and P.A. 91-533.

The 2001 amendment by P.A. 92-28, effective July 1, 2001, in paragraph (H)(1): inserted the language beginning "or (ii) a high school district within 2 counties" and ending "from the 2 most recent federal censuses, then", and added the last two sentences; and made a change in punctuation.

The 2001 amendment by P.A. 92-29, effective July 1, 2001, in paragraph (F)(2)(a), inserted the language beginning "unless a pupil" to the end of the subsection.

The 2001 amendment by P.A. 92-269, effective August 7, 2001, in the last paragraph of subsection (G)(3), in the first sentence deleted "and if the Available Local Resources of that school district as calculated pursuant to subsection (D) using the Base Tax Year are less than the product of 1.75 times the Foundation Level for the Budget Year" preceding "the State Board of Education shall", and in the third sentence of that paragraph, substituted "Equalized Assessed Valuation last used in the calculation of general State aid" for "last calculated Extension Limitation Equalized Assessed Valuation".

The 2002 amendment by P.A. 92-604, effective July 1, 2002, in subsection (H)(1) substituted "Public Act 92-28" for "this amendatory Act of the 92nd General Assembly" in two places; substituted "2002-2003" for "2001-2002" in subsection (H)(2.5); substituted "$1,330" for "$1,190" in subsection (H)(2.5)(c); and substituted "$1,362" for "$1,333" in subsection (H)(2.5)(d).

The 2002 amendment by P.A. 92-636, effective July 11, 2002, added the last sentence in subsection (F)(1); substituted "In districts that do not hold year-round classes" for "except that

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any" in subsection (F)(1)(a); added subsections (F)(1)(b) and (F)(1)(c), and substituted "Public Act 92-28" for "this amendatory Act of the 92nd General Assembly" twice in the fifth sentence of subsection (H)(1).

The 2002 amendment by P.A. 92-651, effective July 11, 2002, combined the amendments by P.A. 92-7, P.A. 92-16, P.A. 92-28, P.A. 92-29 and P.A. 92-269; and made stylistic changes.

The 2003 amendment by P.A. 93-21, effective July 1, 2003, in subsection (B)(3), substituted "2002-2003 school year, the Foundation Level of support is $4,560" for "each school year thereafter, the Foundation Level of support is $4,560 or such greater amount as may be established by law by the General Assembly"; added subsection (B)(4); added the last sentence to subsection (H)(1); in subsection (H)(1.5) added the (1.5) designation and the first sentence, inserted "(H)" in the second sentence, and in the next-to-last sentence substituted "for school years preceding the 2003-2004 school year that are paid in fiscal year 1999 or" for "paid in fiscal year 1999 and in each fiscal year"; inserted subsections (H)(1.10) and (H)(2.10); and deleted "and each school year thereafter" from the end of the introductory paragraph of subsection (H)(2.5).

The 2004 amendment by P.A. 93-715, effective July 12, 2004, inserted the second paragraph in subsection (G)(1).

The 2004 amendment by P.A. 93-808, effective July 26, 2004, added the last sentence in subsection B(2); deleted the former subsection B(3) designation, and substituted the present subsection B(3) designation for the former subsection B(4) designation; and in present subsection B(3) substituted "2004-2005" for "2003-2004" and "$5,060" for "$4,810".

The 2004 amendment by P.A. 93-838, effective July 30, 2004, in subsection (B) added the last sentence in subsection (B)(2), deleted the former subsection (B)(3) designation and in subsection (B)(4) substituted "2004-2005" for "2003-2004" and "$4,964" for "$4,810"; in the second paragraph of subsection (H)(2.10)(b) inserted "and 2004-2005 school year" in the first sentence, substituted "2005-2006" for "2004-2005" in the second sentence, and substituted "2006-2007" for "2005-2006" in the third sentence; and added subsection (P).

The 2004 amendment by P.A. 93-875, effective August 6, 2004, added the last sentence in subsection (D)(1).

The 2005 amendment by P.A. 94-69, effective July 1, 2005, rewrote (B)(2), (B)(3), (H)(2.10), and (P), in part by adding references 2004-2005 through 2007-2008 school years.

The 2005 amendment by P.A. 94-438, effecitve August 4, 2005, added F(2)(h)(i); and made stylistic changes in each of the second paragraph of G(1) in (P).

The 2006 amendment by P.A. 94-835, effective June 6, 2006, added the last sentence in (B)(2); substituted "2006-2007" for "2005-2006" and "$5,334" for "5,164" in (B)(3); and in the paragraph following (H)(2.10)(b) added "and 2006-2007 school year" and substituted "2007-2008" for "2006-2007" and "2008-2009" for "2007-2008".

The 2006 amendment by P.A. 94-1019, effective July 10, 2006, added the last paragraph in each of (D)(3) and (G)(3); and deleted the text from (I), which concerned aid for newly configured school districts.

The 2007 amendment by P.A. 94-1105, effective June 1, 2007, rewrote (P).

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, combined earlier multiple amendments to the section.

The 2007 amendment by P.A. 95-644, effective October 12, 2007, rewrote the second paragraph in (G)(1).

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The 2008 amendment by P.A. 95-707, effective January 11, 2008, added the last sentence in (B)(2); in (B)(3) substituted "2007-2008" for "2006-2007" and "$5,734" for "$5,334"; and rewrote the next-to-last paragraph in (H)(2.10).

The 2008 amendment by P.A. 95-744, effective July 18, 2008, added the last sentence in (B)(2); in (B)(3) substituted "2008-2009" for "2007-2008" and "$5,959" for "$5,734"; and in the next-to-last paragraph of (H)(2.10) added "thereafter" and subsituted "2008-2009" for "2007-2008", "2009-2010" for "2008-2009", and "2010-2011" for '2009-2010".

The 2008 amendment by P.A. 95-903, effective August 15, 2008, rewrote the second paragraph of (D)(3).

The 2009 amendment by P.A. 96-45, effective July 15, 2009, added the last sentence in (B)(2); in (B)(3) substituted "the 2009-2010 school year" for "the 2008-2009 school year", and substituted "$6,119" for "$5,959"; and substituted "the Children's Health Insurance Program" for "KidCare" in the second sentence of (H)(1.10).

The 2009 amendment by P.A. 96-152, effective August 7, 2009, in the next-to-last paragraph of (G)(3) added the exception language at the beginning of the third sentence and made a related change, and added the fifth and sixth sentences.

The 2009 amendment by P.A. 96-300, effective August 11, 2009, substituted "one year" for "2 years" in the first sentence of (D)(4).

The 2009 revisory amendment by P.A. 96-328, effective August 11, 2009, combined earlier multiple amendments to the section.

The 2009 amendment by P.A. 96-640, effective July 1, 2009, rewrote the first sentence of (F)(2)(d).

The 2010 amendment by P.A. 96-959, effective July 1, 2010, deleted the last sentence in (H)(1), which read: "If the appropriation in any fiscal year for general State aid and supplemental general State aid is insufficient to pay the amounts required under the general State aid and supplemental general State aid calculations, then the State Board of Education shall ensure that each school district receives the full amount due for general State aid and the remainder of the appropriation shall be used for supplemental general State aid, which the State Board of Education shall calculate and pay to eligible districts on a prorated basis".

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, combined earlier multiple amendments to the section.

The 2010 amendment by P.A. 96-1480, effective November 18, 2010, add (G)(3.5).

The 2011 amendment by P.A. 97-339, effective August 12, 2011, added (F)(2)(j).

The 2011 amendment by P.A. 97-351, effective August 12, 2011, deleted the text of subsection (J).

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

CASE NOTES

Analysis

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Constitutionality
Computation
Legislative Intent

Constitutionality

Because the taxpayers did not allege an actual or threatened injury, and because their claim of higher tax rates could not be fairly traceable to the action of the education superintendent, board of education, and governor, the taxpayers lacked standing to challenge the constitutionality of 105 ILCS 5/18-8.05. Carr v. Koch, Ill. App. 3d , 355 Ill. Dec. 758, 960 N.E.2d 640, 2011 Ill. App. LEXIS 1121 (4 Dist. 2011).

General structure of state's system of funding public schools through state and local resources, and the amounts allocated for distribution, represent legislative efforts to strike a balance between competing considerations of educational equality and local control, and state's system of funding was rationally related to legitimate goal of promoting local control. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

Education is not a fundamental individual right for equal protection purposes, and whether disparities in funding violate Ill. Const. (1970), Art. I, § 2, is not subject to the strict scrutiny test, but the appropriate standard of review is the rational basis test. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

Parents of school-aged children who reside in poor school districts were not denied equal protection of the laws by Illinois' method of financing public education in 1971 and 1972. People ex rel. Jones v. Adams, 40 Ill. App. 3d 189, 350 N.E.2d 767 (5 Dist. 1976).

Farmers, as a class, were not denied equal protection of the laws by the levying of burdensome real estate taxes upon their farms under the 1971 version of this section. People ex rel. Jones v. Adams, 40 Ill. App. 3d 189, 350 N.E.2d 767 (5 Dist. 1976).

Disparities in educational funding resulting from differences in local property wealth do not offend efficiency requirement in Ill. Const. (1970), Art. X, § 1. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

Allowing plaintiffs, parents of economically disadvantaged Chicago school students and a community advocacy group whose members included the parents of such students, to proceed with their action to compel the state board of education to comply with former 705 ILCS 5/18-8 would not interfere with the board's exercise of discretion and impede the operation of public schools; compliance with the section was not optional, and the responsibilities vested in the board did not include the right to sanction expenditures of Chapter 1 funds contrary to the dictates of the statute. Noyola v. Board of Educ., 179 Ill. 2d 121, 227 Ill. Dec. 744, 688 N.E.2d 81 (1997).

Private right of action existed where: 1) plaintiffs were parents of qualifying students; 2) implied cause of action was consistent with the underlying purpose of the prior similar legislation; 3) the legislation was designed to prevent the particular injury alleged; and 4) where all the state and local entities charged with implementing the General Assembly's mandate had been alleged to have been derelict in doing so. Noyola v. Board of Educ., 284 Ill. App. 3d 128, 219 Ill. Dec. 635, 671 N.E.2d 802 (1 Dist. 1996), aff'd, 179 Ill. 2d 121, 227 Ill. Dec. 744, 688 N.E.2d 81 (1997).

Plaintiffs had standing to challenge the use of Chapter I funds under former 105 ILCS 5/18-8A.5.(i) (see now subdivision (O)(2) of this section). Noyola v. Board of Educ., 227 Ill. App. 3d 429, 169 Ill. Dec. 678, 592 N.E.2d 165 (1 Dist.), appeal denied, 146 Ill. 2d 632, 176 Ill. Dec. 804, 602 N.E.2d 458 (1992).

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Computation

The Department of Local Government Affairs was not justified in disregarding the statutory mandate, under a former version of Ill. Rev. Stat., ch. 120, para. 482 (see now this section), to equalize assessments in all counties at 50% of fair cash value. Harte v. Lehnhausen, 60 Ill. 2d 542, 328 N.E.2d 543 (1975).

A preliminary injunction to compel recall and recomputation of tax multiplier was properly denied. Harte v. Lehnhausen, 60 Ill. 2d 542, 328 N.E.2d 543 (1975).

Legislative Intent

Under the 1973 version of this section, it was the manifest intent of the General Assembly to use 1971-1973 statistics in the base year computations for "Resource Equalizer " aid. Those statistics included using the 1971-1972 total claim for state impaction aid. Board of Educ. v. Cronin, 69 Ill. App. 3d 652, 25 Ill. Dec. 948, 387 N.E.2d 824 (1 Dist. 1979).

A preliminary injunction to compel recall and recomputation of tax multiplier was properly denied. Harte v. Lehnhausen, 60 Ill. 2d 542, 328 N.E.2d 543 (1975).

Plaintiffs had standing to challenge the use of Chapter I funds under former 105 ILCS 5/18-8A.5.(i) (see now subdivision (O)(2) of this section). Noyola v. Board of Educ., 227 Ill. App. 3d 429, 169 Ill. Dec. 678, 592 N.E.2d 165 (1 Dist.), appeal denied, 146 Ill. 2d 632, 176 Ill. Dec. 804, 602 N.E.2d 458 (1992).

LEGAL PERIODICALS

For comment, "Public School Finance Reform: Is Illinois 'Playing Hooky'? " see 41 De Paul L. Rev. 195 (1991).

§ 105 ILCS 5/18-8.1. Basis for apportionment to co-terminous districts

Sec. 18-8.1. Basis for apportionment to co-terminous districts. In the event that a single elementary school district is co-terminous with a high school district and the two districts employ a common superintendent, the state equalization aid to the two districts shall be computed, first, as though they constituted a unit district and, second, as for separate districts, and the state equalization aid to be allowed shall be one-half of the sum of the two state equalization aids so computed. The excess of the equalization aid so determined over the amount which would have been allowed to the two districts as separate districts, shall be allocated between the two districts in proportion to the average daily attendance of each.

(Source: Laws 1961, p. 3759.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 18-8.1.

§ 105 ILCS 5/18-8.2: Repealed by P.A. 94-1019, § 15, Effective July 10, 2006.

Note.

Section 90 of P.A. 94-1019 contains a savings provision, and section 95 contains a no acceleration or delay provision.

§ 105 ILCS 5/18-8.3: Repealed by P.A. 94-1019, § 15, effective July 10, 2006.

§ 105 ILCS 5/18-8.4: Repealed by P.A. 95-793, § 11, effective August 8, 2008.

§ 105 ILCS 5/18-8.5: Repealed by P.A. 94-1019, § 15, effective July 10, 2006.

§ 105 ILCS 5/18-8.7: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/18-8.10. Fast growth grants

Sec. 18-8.10. Fast growth grants. (a) If there has been an increase in a school district's student population over the most recent 2 school years of (i) over 1.5% in a district with over 10,000 pupils in average daily attendance (as defined in Section 18-8.05 of this Code [105 ILCS 5/18-8.05]) or (ii) over 7.5% in any other district, then the district is eligible for a grant under this Section, subject to appropriation.

(b) The State Board of Education shall determine a per pupil grant amount for each school district. The total grant amount for a district for any given school year shall equal the per pupil grant amount multiplied by the difference between the number of pupils in average daily attendance for the 2 most recent school years.

(c) Funds for grants under this Section must be appropriated to the State Board of Education in a separate line item for this purpose. If the amount appropriated in any fiscal year is insufficient to pay all grants for a school year, then the amount appropriated shall

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be prorated among eligible districts. As soon as possible after funds have been appropriated to the State Board of Education, the State Board of Education shall distribute the grants to eligible districts.

(d) If a school district intentionally reports incorrect average daily attendance numbers to receive a grant under this Section, then the district shall be denied State aid in the same manner as State aid is denied for intentional incorrect reporting of average daily attendance numbers under Section 18-8.05 of this Code [105 ILCS 5/18-8.05].

(Source: P.A. 93-1042, § 5.)

Effective Date. Section 99 of P.A. 93-1042 made this section effective upon becoming law. The Act was approved October 8, 2004.

§ 105 ILCS 5/18-9. Requirement for special equalization and supplementary State aid

Sec. 18-9. Requirement for special equalization and supplementary State aid. If property comprising an aggregate assessed valuation equal to 6% or more of the total assessed valuation of all taxable property in a school district is owned by a person or corporation that is the subject of bankruptcy proceedings or that has been adjudged bankrupt and, as a result thereof, has not paid taxes on the property, then the district may amend its general State aid claim (i) back to the inception of the bankruptcy, not to exceed 6 years, in which time those taxes were not paid and (ii) for each succeeding year that those taxes remain unpaid, by adding to the claim an amount determined by multiplying the assessed valuation of the property on which taxes have not been paid due to the bankruptcy by the lesser of the total tax rate for the district for the tax year for which the taxes are unpaid or the applicable rate used in calculating the district's general State aid under paragraph (3) of subsection (D) of Section 18-8.05 of this Code [105 ILCS 5/18-8.05]. If at any time a district that receives additional State aid under this Section receives tax revenue from the property for the years that taxes were not paid, the district's next claim for State aid shall be reduced in an amount equal to the taxes paid on the property, not to exceed the additional State aid received under this Section. Claims under this Section shall be filed on forms prescribed by the State Superintendent of Education, and the State Superintendent of Education, upon receipt of a claim, shall adjust the claim in accordance with the provisions of this Section. Supplementary State aid for each succeeding year under this Section shall be paid beginning with the first general State aid claim paid after the district has filed a completed claim in accordance with this Section.

(Source: P.A. 81-1509; 92-661, § 5; 95-496, § 5.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 18-9.

Section 95 of P.A. 95-496 contains a "no acceleration or delay" provision.

Effect of Amendments. The 2002 amendment by P.A. 92-661, effective July 16, 2002, added the subsection (c) designation; substituted "subsection (c)" for "paragraph" in the second and third sentences of subsection (c); and added subsection (d).

The 2007 amendment by P.A. 95-496, effective August 28, 2007, rewrote the section.

CASE NOTES

Jurisdiction

- Constitutional Challenges

The federal courts had jurisdiction over the subject matter of a controversy concerning the constitutionality of this section with regard to equality of funding. McInnis v. Shapiro, 293 F. Supp. 327 (N.D. Ill. 1968), aff'd, 394 U.S. 322, 89 S. Ct. 1197, 22 L. Ed. 2d 308 (1969).

The equality of school funding statute was neither arbitrary, nor did it constitute an invidious discrimination. McInnis v. Shapiro, 293 F. Supp. 327 (N.D. Ill. 1968), aff'd, 394 U.S. 322, 89 S. Ct. 1197, 22 L. Ed. 2d 308 (1969).

§ 105 ILCS 5/18-10: Repealed by P.A. 94-1105, effective June 1, 2007.

§ 105 ILCS 5/18-11. Payment of claims

Sec. 18-11. Payment of claims. (a) With respect to payments for each fiscal year before fiscal year 2009, except payments for the period of June 1982 through July 1983 and payments for fiscal year 1994, as soon as may be after the 10th and 20th days of each of the months of August through the following July, if moneys are available in the common school fund in the State treasury for payments under Sections 18-8.05 through 18-9 [105 ILCS 5/18-8.05 through 105 ILCS 5/18-9], the State Comptroller shall draw his warrants upon the State Treasurer as directed by the State Board of Education pursuant to Section 2-3.17b [105 ILCS 5/2-17b] and in accordance with the transfers from the General Revenue Fund to the Common School Fund as specified in Section 8a of the State Finance Act [30 ILCS 105/8a].

Each such semimonthly warrant shall be in an amount equal to 1/24 of the total amount to be distributed to school districts for the fiscal year. The amount of payments made in July of each year shall be considered as payments for claims covering the school year that

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commenced during the immediately preceding calendar year. If the payments provided for under Sections 18-8.05 through 18-9 [105 ILCS 5/18-8.05 through 105 ILCS 5/18-9] have been assigned as security for State aid anticipation certificates pursuant to Section 18-18 [105 ILCS 5/18-18], the State Board of Education shall pay the appropriate amount of the payment, as specified in the notification required by Section 18-18, directly to the assignee.

(a-5) With respect to payments made under Sections 18-8.05 through 18-10 of this Code [105 ILCS 5/18-8.05 through 105 ILCS 5/18-10] for fiscal year 2009 and each fiscal year thereafter, as soon as may be after the 10th and 20th days of each of the months of August through the following June, if moneys are available in the Common School Fund in the State treasury for payments under Sections 18-8.05 through 18-10 of this Code, the State Comptroller shall draw his or her warrants upon the State Treasurer as directed by the State Board of Education pursuant to Section 2-3.17b of this Code [105 ILCS 5/2-3.17b] and in accordance with the transfers from the General Revenue Fund to the Common School Fund as specified in Section 8a of the State Finance Act [30 ILCS 105/8a].

Each such semimonthly warrant shall be in an amount equal to 1/22 of the total amount to be distributed to school districts for the fiscal year. If the payments provided for under Sections 18-8.05 through 18-10 of this Code have been assigned as security for State aid anticipation certificates pursuant to Section 18-18 of this Code, then the State Board of Education shall pay the appropriate amount of the payment, as specified in the notification required by Section 18-18 of this Code, directly to the assignee.

(b) (Blank).

(c) (Blank).

(Source: P.A. 87-14; 87-887; 87-895; 88-45, § 2-31; 88-89, § 4-15; 88-641, § 10; 94-1105, § 20; 95-496, § 5; 95-835, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 18-11.

The amendments made by P.A. 88-641 were made to the version of this section as it existed prior to the amendments by P.A. 88-45 or P.A. 88-89.

Section 95 of P.A. 95-496 contains a "no acceleration or delay' provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 452.30.

Effect of Amendments. The 1993 amendment by P.A. 88-45, effective July 6, 1993, combined the separate amendments of P.A. 87-887 and P.A. 87-895.

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The 1993 amendment by P.A. 88-89, effective July 14, 1993, in the first sentence of the first paragraph of subsection (a) inserted "and except as provided in subsection (c) of this Section with respect to payments made under Sections 18-8 through 18-10 for fiscal year 1994 only" and added subsection (c).

The 1994 amendment by P.A. 88-641, effective September 9, 1994, in subsection (a), in the first paragraph, substituted "as directed by the State Board of Education pursuant to Section 2-3.17b and" for "proportionate for the various counties payable to the regional superintendent of schools" and in the second paragraph, in the first sentence, deleted "by the regional superintendent" preceding "for the fiscal year" added the present last sentence of the paragraph, deleted the former last two sentences regarding payments by the regional superintendent and assignments and deleted the former second paragraph which read "If a school district lies in more than one county the total amount of funds to be apportioned for its benefit shall be apportioned to the county in which the regional superintendent of schools exercises supervision and control under Section 3-14.2."; and in subsection (c), in the first sentence, substituted "as directed by the State Board of Education" for "proportionate for the various counties payable to the regional superintendent of schools" and in the second sentence, deleted "by the regional superintendent" preceding "for fiscal year 1994" and deleted the former fourth and fifth sentences regarding payments by the regional superintendent and assignments and deleted the former last sentence which read the same as the deleted paragraph in subsection (a).

The 2007 amendment by P.A. 94-1105, effective June 1, 2007, twice substituted "18-8.05 through 18-9" for "18-18-8 through 18-10" in (a).

The 2007 amendment by P.A. 95-496, effective August 28, 2007, rewrote the section.

The 2008 amendment by P.A. 95-835, effective July 1, 2008, added "With respect to payments for each fiscal year before fiscal year 2009, except payments for the period of June 1982 through July 1983 and payments for fiscal year 1994" at the beginning of (a) and made related changes; and added (a-5).

CASE NOTES

Analysis

Apportionment of Fund
- District Recognition
- Procedure

Apportionment of Fund

- District Recognition

The words "probationary" or "conditional" appearing upon the certificates of recognition were adopted by the Superintendent of Public Instruction as graduations or guideposts to indicate to the districts, the boards of education, and to himself the degree in which a district had met the established standards; these defining, guiding, or warning words did not detract from the fact of recognition, and the district was not deprived of any part of its apportioned share of the common-school fund for which it filed a claim. Games v. County Bd., 13 Ill. 2d 78, 147 N.E.2d 306 (1958).

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- Procedure

Where school funds available from the state for the benefit of school districts were insufficient to pay claims in full, and this statute required that payments to school be reduced proportionally, general grants/equalization quotas were combined as one apportionment and were paid to counties uniformly where apportionment on basis of equalization quota would leave some available funds unused. People ex rel. Carruthers v. Cooper, 404 Ill. 395, 89 N.E.2d 40 (1949).

A prior similar statute contemplated a single apportionment consisting of two parts: general grants and equalization quotas; the difference between the two types were of significance only in ascertaining the amount to be apportioned to a particular county and the allocation of that apportionment among its school districts. People ex rel. Carruthers v. Cooper, 404 Ill. 395, 89 N.E.2d 40 (1949).

§ 105 ILCS 5/18-12. Dates for filing State aid claims

Sec. 18-12. Dates for filing State aid claims. The school board of each school district shall require teachers, principals, or superintendents to furnish from records kept by them such data as it needs in preparing and certifying to the regional superintendent its school district report of claims provided in Sections 18-8.05 through 18-9 [105 ILCS 5/18-8.05 through 105 ILCS 5/18-9] as required by the State Superintendent of Education. The district claim shall be based on the latest available equalized assessed valuation and tax rates, as provided in Section 18-8.05 and shall use the average daily attendance as determined by the method outlined in Section 18-8.05 and shall be certified and filed with the regional superintendent by June 21 for districts with an official school calendar end date before June 15 or within 2 weeks following the official school calendar end date for districts with a school year end date of June 15 or later. The regional superintendent shall certify and file with the State Superintendent of Education district State aid claims by July 1 for districts with an official school calendar end date before June 15 or no later than July 15 for districts with an official school calendar end date of June 15 or later. Failure to so file by these deadlines constitutes a forfeiture of the right to receive payment by the State until such claim is filed and vouchered for payment. The regional superintendent of schools shall certify the county report of claims by July 15; and the State Superintendent of Education shall voucher for payment those claims to the State Comptroller as provided in Section 18-11 [105 ILCS 5/18-11].

Except as otherwise provided in this Section, if any school district fails to provide the minimum school term specified in Section 10-19 [105 ILCS 5/10-19], the State aid claim for that year shall be reduced by the State Superintendent of Education in an amount equivalent to 1/176 or .56818% for each day less than the number of days required by this Code.

If the State Superintendent of Education determines that the failure to provide the minimum school term was occasioned by an act or acts of God, or was occasioned by conditions beyond the control of the school district which posed a hazardous threat to the health and safety of pupils, the State aid claim need not be reduced.

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If a school district is precluded from providing the minimum hours of instruction required for a full day of attendance due to an adverse weather condition or a condition beyond the control of the school district that poses a hazardous threat to the health and safety of students, then the partial day of attendance may be counted if (i) the school district has provided at least one hour of instruction prior to the closure of the school district, (ii) a school building has provided at least one hour of instruction prior to the closure of the school building, or (iii) the normal start time of the school district is delayed.

If, prior to providing any instruction, a school district must close one or more but not all school buildings after consultation with a local emergency response agency or due to a condition beyond the control of the school district, then the school district may claim attendance for up to 2 school days based on the average attendance of the 3 school days immediately preceding the closure of the affected school building. The partial or no day of attendance described in this Section and the reasons therefore shall be certified within a month of the closing or delayed start by the school district superintendent to the regional superintendent of schools for forwarding to the State Superintendent of Education for approval.

No exception to the requirement of providing a minimum school term may be approved by the State Superintendent of Education pursuant to this Section unless a school district has first used all emergency days provided for in its regular calendar.

If the State Superintendent of Education declares that an energy shortage exists during any part of the school year for the State or a designated portion of the State, a district may operate the school attendance centers within the district 4 days of the week during the time of the shortage by extending each existing school day by one clock hour of school work, and the State aid claim shall not be reduced, nor shall the employees of that district suffer any reduction in salary or benefits as a result thereof. A district may operate all attendance centers on this revised schedule, or may apply the schedule to selected attendance centers, taking into consideration such factors as pupil transportation schedules and patterns and sources of energy for individual attendance centers.

Electronically submitted State aid claims shall be submitted by duly authorized district or regional individuals over a secure network that is password protected. The electronic submission of a State aid claim must be accompanied with an affirmation that all of the provisions of Sections 18-8.05 through 18-9, 10-22.5, and 24-4 of this Code [105 ILCS 5/18-8.05 through 105 ILCS 5/18-9, 105 ILCS 5/10-22.5, and 105 ILCS 5/24-4] are met in all respects.

(Source: P.A. 86-183; 88-9, § 5; 90-98, § 5; 92-661, § 5; 93-54, § 5; 94-1105, § 20; 95-152, § 5; 95-811, § 5; 95-876, § 175; 96-734, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 18-12.

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Section 99 of P.A. 95-152, which amended this section, purports to make the Act effective July 1, 2007; however, the Act was approved August 14, 2007.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 452.30.

Effect of Amendments. The 1993 amendment by P.A. 88-9, effective June 30, 1993, deleted the second through fourth sentences of the first paragraph regarding the filings of pre-claims and in the present second sentence deleted "final" preceding "district claim".

The 1997 amendment by P.A. 90-98, effective July 11, 1997, in the third paragraph, in the first sentence, inserted "(i)" and inserted "or (ii) the school district must delay the start of the school day due to adverse weather conditions and this delay prevents the district from providing the minimum hours of instruction required for a full day of attendance" and in the second sentence substituted "The partial day of attendance" for "Such closing", substituted "therefor" for "therefore" and inserted "or delayed start".

The 2002 amendment by P.A. 92-661, effective July 16, 2002, substituted "Section 18-8.05" for "Section 18-8" twice in the second sentence of the first paragraph; inserted "Except as otherwise provided in this Section" at the beginning of the second paragraph; substituted "Code" for "Act" and deleted "However" thereafter at the end of the second paragraph; substituted "the" for "such" in the third paragraph; added the fourth paragraph; inserted the language beginning "or due to a condition" and ending "safety of pupils" in the first sentence of the fifth paragraph; and added the sixth paragraph.

The 2003 amendment by P.A. 93-54, effective July 1, 2003 in the first paragraph, deleted "under oath or affirmation following "certify" and substituted "Sections 18-8.05 through 18-10 as required" for "Sections 18-8 through 18-10 on blanks to be provided" in the first sentence and substituted the ending of the second sentence beginning "June 21" for "July 1" and substituted "these deadlines" for "July" in the third sentence; in the second-to-last and next-to-last paragraphs substituted "district superintendent" for "clerk or secretary of the school board" twice, "in the method" for "on forms" twice and "certification" for "a sworn statement"; and added the last paragraph.

The 2007 amendment by P.A. 94-1105, effective June 1, 2007, twice substituted "18-9" for "18-10".

The 2007 amendment by P.A. 95-152, effective August 14, 2007, added "or (iii) a school district has provided at least one clock hour of instruction but must dismiss students from one or more recognized school buildings due to a condition beyond the control of the school district" to the fifth paragraph, and made related changes.

The 2008 amendment by P.A. 95-811, effective August 13, 2008, in the fifth paragraph added the second sentence, and inserted "or no" near the beginning of the present third sentence.

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, combined earlier multiple amendments.

The 2009 amendment by P.A. 96-734, effective August 25, 2009, inserted "1/176 or" in the second paragraph; inserted the fourth and fifth paragraphs; deleted the former fourth through sixth paragraphs relating to the conditions when State aid claim shall not be reduced at the time when school building is closed due to adverse weather, condition beyond the control, or condition that poses hazardous threat to the health and safety of pupils; and deleted the former ninth and tenth paragraphs relating to the requirements for the filing of State aid claim.

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CASE NOTES

Analysis

Constitutionality
- Due Process
- Standing
Act of God
- Labor Strike
Apportionment of Claims
- One Claim Per District

Constitutionality

- Due Process

The reduction of aid to school districts required by this Code is not an unlawful penalty taking away funds which in any way belong to a school board, but is simply the recovery of state aid which it paid in advance but to which a board is not entitled if it fails to comply with the minimum school year requirement of 176 days. Cronin v. Lindberg, 66 Ill. 2d 47, 4 Ill. Dec. 424, 360 N.E.2d 360 (1976).

- Standing

Neither the school board nor the superintendent had standing to question, on due process grounds, the validity of a reduction of aid to school districts which did not comply with the mandatory number of school days. Cronin v. Lindberg, 66 Ill. 2d 47, 4 Ill. Dec. 424, 360 N.E.2d 360 (1976).

Act of God

- Labor Strike

To hold that a labor strike was an act of God would have been an unwarranted expansion of the settled definition of act of God to one including human conduct; moreover, it was undisputed that seven of the lost strike days were later added to the calendar, and no reduction in state aid would have occurred had it not been for the subsequent decision to close the schools earlier because of a lack of funds; therefore, school district was not entitled to an act of God exception. Cronin v. Lindberg, 66 Ill. 2d 47, 4 Ill. Dec. 424, 360 N.E.2d 360 (1976).

Apportionment of Claims

- One Claim Per District

The amount due under this Code for the benefit of any particular school district consists of one claim only, not two claims, one of which is a general grant and the other an equalization grant. People ex rel. Carruthers v. Cooper, 404 Ill. 395, 89 N.E.2d 40 (1949).

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§ 105 ILCS 5/18-12.5. State aid claims during health emergencies

Sec. 18-12.5. State aid claims during health emergencies. After consultation with a local health department, if a school district closes one or more recognized school buildings, but not all buildings, during a public health emergency, as determined by the State Board of Education in consultation with the Illinois Department of Public Health, the district may claim a full day of attendance for those days based on the average of the 3 school days of attendance immediately preceding the closure of the school building. Attendance for those days may be claimed only if the school building was scheduled to be in operation on those days. The partial or no day of attendance and the reasons thereof shall be certified, as prescribed by the State Board of Education, within a month after the closing by the school district superintendent to the regional superintendent of schools for forwarding to the State Superintendent of Education for approval.

This Section is applicable beginning April 1, 2009 and only if a school district closes a building or buildings, but not the entire district, which must be done in accordance with Section 18-12 of this Code [105 ILCS 5/18-12].

(Source: P.A. 96-689, § 5.)

Effective Date. Section 99 of P.A. 96-689 made this section effective July 1, 2009.

§ 105 ILCS 5/18-13. Notice to school officers of amount in treasurer's hands

Sec. 18-13. Notice to school officers of amount in treasurer's hands. On or before September 30 of each year the county collectors, county superintendents of schools, township collectors, and all other persons paying money into the hands of school treasurers for school purposes, shall notify in writing the presidents of school trustees and clerks or secretaries of school boards of the amount paid into the treasurer's hands and the date of payment.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 18-13.

§ 105 ILCS 5/18-14. Apportionment of county fund

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Sec. 18-14. Apportionment of county fund. The regional superintendent of schools shall apportion and distribute under rules prescribed by the State Board of Education, the principal of the county fund to the townships and parts of townships in his region in the manner prescribed for distribution of the State school fund among the counties by Sections 18-8 to 18-9 [105 ILCS 5/18-8 to 105 ILCS 5/18-9]. The principal of the county fund so distributed shall be added to the principal of the township fund of the townships and parts of townships in his region. The interest, rents, issues and profits arising and accruing from the principal of the county fund shall be distributed to the townships and parts of townships in his region as required by the provisions of this Act.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 18-14.

CASE NOTES

Analysis

Jurisdiction
- Constitutional Challenges
Deposit of County Funds
- Insolvent Bank

Jurisdiction

- Constitutional Challenges

The federal courts had jurisdiction over the subject matter of a controversy concerning the constitutionality of this section with regard to equality of funding. McInnis v. Shapiro, 293 F. Supp. 327 (N.D. Ill. 1968), aff'd, 394 U.S. 322, 89 S. Ct. 1197, 22 L. Ed. 2d 308 (1969).

Deposit of County Funds

- Insolvent Bank

A county superintendent of schools is not entitled to priority of payment as to state funds deposited by him in a general deposit in a state bank which had become insolvent. People v. Ohle, 345 Ill. 405, 178 N.E. 163 (1931).

§ 105 ILCS 5/18-15. Township loanable fund - Distribution of income

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Sec. 18-15. Township loanable fund - Distribution of income. All bonds, notes, mortgages, moneys and effects which have accrued or may accrue from the sale of Section 16 of the common school lands of any township, or from the sale of any real estate or other property taken on any judgment or for any debt due to the principal of any township fund, and all other funds which have been or may be carried to and made part of the principal of any township fund, shall constitute the principal of the township fund; and no part thereof shall be distributed or expended for any purpose, except upon liquidation of the fund but shall be loaned and held to use, rent or profit, as provided by law. The interest, rents, issues and profits arising and accruing from the principal of any township fund shall be used in the manner and at the times provided by this Act.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 18-15.

§ 105 ILCS 5/18-17: Repealed by P.A. 97-570, § 10, effective August 25, 2011.

§ 105 ILCS 5/18-18. [Loan agreements; State aid anticipation certificates]

Sec. 18-18. The board of education of any school district may borrow money by contracting or entering into loan agreements and may evidence such borrowings by the issuance of State aid anticipation certificates. Such certificates may be issued without submission to the electors of the school district or city for approval of the question of the issuance of such certificates. Such certificates shall bear interest or discount to maturity at a rate not to exceed the rate permissible for such board's full faith and credit general obligation notes and shall mature in such a manner so that no such certificates shall be outstanding for more than 13 months. State aid anticipation certificates shall be payable solely from payments to be made at any time, whether made before or after August 1, of any year, pursuant to this Article 18 and may be secured by assignment of such payments with the assignee receiving such payments directly from the State Superintendent of Education. Prior to the issuance of any such certificates the State Superintendent of Education shall certify the appropriated amount of State aid to be paid the district in the current fiscal year. The amount of certificates to be issued shall not exceed 75% of the amounts of State aid certified by the State Superintendent of Education after subtracting the amount of funds available for transfer from the district's working cash fund in anticipation of State aid to be paid such district pursuant to this Article 18. The amount of State aid anticipation certificates shall not be counted as indebtedness of the district for purposes of any debt limits nor are such certificates full faith and credit general obligation notes or tax anticipation warrants; provided, however, that the total amount of

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State aid anticipation certificates, general obligation notes and tax anticipation warrants outstanding for any fiscal year may not exceed 85% of the taxes levied by the district for that year.

Any school district may borrow up to 100% of the amount of State aid to be received in July, as certified by the State Superintendent of Education. Such anticipation certificates shall be repaid not later than August 1 from State aid payments received in July.

Whenever the board of a district desires to issue such State aid anticipation certificates as herein authorized, it shall adopt a resolution designating the purposes for which the proceeds of the certificates are to be expended and fixing the amount of the certificates proposed to be issued, the maturity thereof, and optional provisions, if any, and the rate of interest or discount to maturity thereon. Such resolution may provide for the appointment of a trustee, which may be any trust company or bank having the power of a trust company within the State, and for the establishment of such funds or accounts to be maintained by such trustee as the school district shall deem necessary to provide for the security and payment of the certificates. If such resolution provides for the appointment of a trustee, such trustee shall be considered the assignee of any payments assigned by the school district pursuant to such resolution and this Section. Any amounts paid by the State Superintendent of Education to such trustee as assignee pursuant to Section 18-11 [105 ILCS 5/18-11] shall be deposited in the funds or accounts established pursuant to such resolution, and shall be held by such trustee in trust for the benefit of the holders of the certificates, and such holders shall have a lien on and a security interest in such funds or accounts so long as the certificates remain outstanding and unpaid. Except as provided otherwise in this Section, such amounts shall be used solely for the payment of certificates at maturity and shall not be used for any other purpose so long as the certificates remain outstanding and unpaid. Pending such application such amounts shall be invested by such trustee in investments of the kind specified in the Public Funds Investment Act [30 ILCS 235/0.01 et seq.]. Upon payment in full of the certificates, any amounts held by such trustee, including earnings on investments not used for payment of the certificates, shall be paid to such district.

Said certificates shall be issued in the corporate name of the school district. They shall be signed by the president and secretary of said board. They shall be sold by the board upon such terms as may be approved by the board, and the proceeds thereof shall be received by the treasurer and expended by the board for the purposes provided in the resolution authorizing any such certificates.

Upon the issuance of said certificates, the board shall give written notification to the appropriate regional superintendent and the State Superintendent of Education of the issuance of the certificates and the terms thereof, including, but not limited to, any assignment of State aid payments made pursuant to this Section, the name and address of each assignee, the amounts and dates of the payments to be made by the State Superintendent of Education directly to each assignee under Section 18-11 [105 ILCS 5/18-11], the amount of the certificates held by each assignee and the maturity date of the certificates.

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(Source: P.A. 87-839; 87-1215, § 1; 88-641, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 18-18.

Effect of Amendments. The 1992 amendment by P.A. 87-1215, effective November 23, 1992, substituted "for more than 13 months" for "as of August 1 in any year" at the end of the third sentence of the first paragraph, and substituted "Any school district may" for "If any school district has reached its maximum short-term indebtedness limitation, as defined above, it may" in the first sentence of the second paragraph.

The 1994 amendment by P.A. 88-641, effective September 9, 1994, substituted "State Superintendent of Education" for "regional superintendent" throughout the section; and in the first paragraph, in the fifth sentence, deleted "and the appropriate regional superintendent of schools" preceding "shall certify".

OPINIONS OF ATTORNEY GENERAL

State Funds

- Investment

Upon obtaining the prior approval of the Governor, the State Treasurer is authorized to invest state funds in state aid anticipation certificates issued pursuant to authority granted in this section. 1979 Op. Atty. Gen. 146.

§ 105 ILCS 5/18-19. [Distributions of monies]

Sec. 18-19. The State Board of Education may make distributions of monies from the Education Assistance Fund, pursuant to appropriation, in addition to such sums as may have been otherwise appropriated for the same purpose, for any of the purposes set forth in this Article, subject to the same terms and conditions that apply to distributions under the several sections of this Article, respectively.

(Source: P.A. 86-18.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 18-19.

Cross References.

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As to the appropriation of monies deposited into the Educational Assistance Fund under this Act, see 30 ILCS 105/6z-21.

§ 105 ILCS 5/18-20. Borrowing authority

Sec. 18-20. Borrowing authority. When an educational program is operated by a regional superintendent or an entity such as an educational service center, special education cooperative, joint agreement, or intergovernmental agreement, and the program receives State categorical or grant payments from the State Comptroller and a financial hardship exists, then the entity may borrow an amount up to 50% of the State payments that are due and payable, as certified by the State Superintendent, provided the terms of the loan shall not include interest in excess of that provided for by the Bond Authorization Act [30 ILCS 305/0.01 et seq.] and further provided that the principal and interest of a loan shall be repaid from the categorical or grant payments immediately upon receipt of those payments.

(Source: P.A. 86-1487; 87-1168, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 18-20.

Effect of Amendments. The 1992 amendment by P.A. 87-1168, effective September 18, 1992, inserted "a regional superintendent or" preceding "an entity" and "or" preceding "intergovernmental agreement", deleted "or a regional superintendent" following "intergovernmental agreement" and language relating to overdue payments and the lack of authority of an entity to borrow money, substituted "50%" for "85%" and "due and payable" for "overdue" and deleted "regional superintendent or" preceding "State Superintendent" and "where appropriate" following "State Superintendent".

Article 19.

Debt Limitation - Bonds - Territory Liable - Refunding Bonds

Debt Limitation

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§ 105 ILCS 5/19-1. Debt limitations of school districts

Sec. 19-1. Debt limitations of school districts. (a) School districts shall not be subject to the provisions limiting their indebtedness prescribed in "An Act to limit the indebtedness of counties having a population of less than 500,000 and townships, school districts and other municipal corporations having a population of less than 300,000", approved February 15, 1928, as amended [50 ILCS 405/0.1 et seq.].

No school districts maintaining grades K through 8 or 9 through 12 shall become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding 6.9% on the value of the taxable property therein to be ascertained by the last assessment for State and county taxes or, until January 1, 1983, if greater, the sum that is produced by multiplying the school district's 1978 equalized assessed valuation by the debt limitation percentage in effect on January 1, 1979, previous to the incurring of such indebtedness.

No school districts maintaining grades K through 12 shall become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding 13.8% on the value of the taxable property therein to be ascertained by the last assessment for State and county taxes or, until January 1, 1983, if greater, the sum that is produced by multiplying the school district's 1978 equalized assessed valuation by the debt limitation percentage in effect on January 1, 1979, previous to the incurring of such indebtedness.

No partial elementary unit district, as defined in Article 11E of this Code [105 ILCS 5/11E-5 et seq.], shall become indebted in any manner or for any purpose in an amount, including existing indebtedness, in the aggregate exceeding 6.9% of the value of the taxable property of the entire district, to be ascertained by the last assessment for State and county taxes, plus an amount, including existing indebtedness, in the aggregate exceeding 6.9% of the value of the taxable property of that portion of the district included in the elementary and high school classification, to be ascertained by the last assessment for State and county taxes. Moreover, no partial elementary unit district, as defined in Article 11E of this Code, shall become indebted on account of bonds issued by the district for high school purposes in the aggregate exceeding 6.9% of the value of the taxable property of the entire district, to be ascertained by the last assessment for State and county taxes, nor shall the district become indebted on account of bonds issued by the district for elementary purposes in the aggregate exceeding 6.9% of the value of the taxable property for that portion of the district included in the elementary and high school classification, to be ascertained by the last assessment for State and county taxes.

Notwithstanding the provisions of any other law to the contrary, in any case in which the voters of a school district have approved a proposition for the issuance of bonds of such school district at an election held prior to January 1, 1979, and all of the bonds approved at such election have not been issued, the debt limitation applicable to such school district

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during the calendar year 1979 shall be computed by multiplying the value of taxable property therein, including personal property, as ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness, by the percentage limitation applicable to such school district under the provisions of this subsection (a).

(b) Notwithstanding the debt limitation prescribed in subsection (a) of this Section, additional indebtedness may be incurred in an amount not to exceed the estimated cost of acquiring or improving school sites or constructing and equipping additional building facilities under the following conditions:

(1) Whenever the enrollment of students for the next school year is estimated by the board of education to increase over the actual present enrollment by not less than 35% or by not less than 200 students or the actual present enrollment of students has increased over the previous school year by not less than 35% or by not less than 200 students and the board of education determines that additional school sites or building facilities are required as a result of such increase in enrollment; and

(2) When the Regional Superintendent of Schools having jurisdiction over the school district and the State Superintendent of Education concur in such enrollment projection or increase and approve the need for such additional school sites or building facilities and the estimated cost thereof; and

(3) When the voters in the school district approve a proposition for the issuance of bonds for the purpose of acquiring or improving such needed school sites or constructing and equipping such needed additional building facilities at an election called and held for that purpose. Notice of such an election shall state that the amount of indebtedness proposed to be incurred would exceed the debt limitation otherwise applicable to the school district. The ballot for such proposition shall state what percentage of the equalized assessed valuation will be outstanding in bonds if the proposed issuance of bonds is approved by the voters; or

(4) Notwithstanding the provisions of paragraphs (1) through (3) of this subsection (b), if the school board determines that additional facilities are needed to provide a quality educational program and not less than 2/3 of those voting in an election called by the school board on the question approve the issuance of bonds for the construction of such facilities, the school district may issue bonds for this purpose; or

(5) Notwithstanding the provisions of paragraphs (1) through (3) of this subsection (b), if (i) the school district has previously availed itself of the provisions of paragraph (4) of this subsection (b) to enable it to issue bonds, (ii) the voters of the school district have not defeated a proposition for the issuance of bonds since the referendum described in paragraph (4) of this subsection (b) was held, (iii) the school board determines that additional facilities are needed to provide a quality educational program, and (iv) a majority of those voting in an election called by the school board on the question approve the issuance of bonds for the construction of such facilities, the school district may issue bonds for this purpose.

In no event shall the indebtedness incurred pursuant to this subsection (b) and the existing indebtedness of the school district exceed 15% of the value of the taxable property

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therein to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness or, until January 1, 1983, if greater, the sum that is produced by multiplying the school district's 1978 equalized assessed valuation by the debt limitation percentage in effect on January 1, 1979.

The indebtedness provided for by this subsection (b) shall be in addition to and in excess of any other debt limitation.

(c) Notwithstanding the debt limitation prescribed in subsection (a) of this Section, in any case in which a public question for the issuance of bonds of a proposed school district maintaining grades kindergarten through 12 received at least 60% of the valid ballots cast on the question at an election held on or prior to November 8, 1994, and in which the bonds approved at such election have not been issued, the school district pursuant to the requirements of Section 11A-10 [105 ILCS 5/11A-10] (now repealed) may issue the total amount of bonds approved at such election for the purpose stated in the question.

(d) Notwithstanding the debt limitation prescribed in subsection (a) of this Section, a school district that meets all the criteria set forth in paragraphs (1) and (2) of this subsection (d) may incur an additional indebtedness in an amount not to exceed $4,500,000, even though the amount of the additional indebtedness authorized by this subsection (d), when incurred and added to the aggregate amount of indebtedness of the district existing immediately prior to the district incurring the additional indebtedness authorized by this subsection (d), causes the aggregate indebtedness of the district to exceed the debt limitation otherwise applicable to that district under subsection (a):

(1) The additional indebtedness authorized by this subsection (d) is incurred by the school district through the issuance of bonds under and in accordance with Section 17-2.11a [105 ILCS 5/17-2.11a] for the purpose of replacing a school building which, because of mine subsidence damage, has been closed as provided in paragraph (2) of this subsection (d) or through the issuance of bonds under and in accordance with Section 19-3 [105 ILCS 5/19-3] for the purpose of increasing the size of, or providing for additional functions in, such replacement school buildings, or both such purposes.

(2) The bonds issued by the school district as provided in paragraph (1) above are issued for the purposes of construction by the school district of a new school building pursuant to Section 17-2.11 [105 ILCS 5/17-2.11], to replace an existing school building that, because of mine subsidence damage, is closed as of the end of the 1992-93 school year pursuant to action of the regional superintendent of schools of the educational service region in which the district is located under Section 3-14.22 [105 ILCS 5/3-14.22] or are issued for the purpose of increasing the size of, or providing for additional functions in, the new school building being constructed to replace a school building closed as the result of mine subsidence damage, or both such purposes.

(e) (Blank).

(f) Notwithstanding the provisions of subsection (a) of this Section or of any other law, bonds in not to exceed the aggregate amount of $5,500,000 and issued by a school district meeting the following criteria shall not be considered indebtedness for purposes of any statutory limitation and may be issued in an amount or amounts, including existing

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indebtedness, in excess of any heretofore or hereafter imposed statutory limitation as to indebtedness:

(1) At the time of the sale of such bonds, the board of education of the district shall have determined by resolution that the enrollment of students in the district is projected to increase by not less than 7% during each of the next succeeding 2 school years.

(2) The board of education shall also determine by resolution that the improvements to be financed with the proceeds of the bonds are needed because of the projected enrollment increases.

(3) The board of education shall also determine by resolution that the projected increases in enrollment are the result of improvements made or expected to be made to passenger rail facilities located in the school district.

Notwithstanding the provisions of subsection (a) of this Section or of any other law, a school district that has availed itself of the provisions of this subsection (f) prior to July 22, 2004 (the effective date of Public Act 93-799 [P.A. 93-799]) may also issue bonds approved by referendum up to an amount, including existing indebtedness, not exceeding 25% of the equalized assessed value of the taxable property in the district if all of the conditions set forth in items (1), (2), and (3) of this subsection (f) are met.

(g) Notwithstanding the provisions of subsection (a) of this Section or any other law, bonds in not to exceed an aggregate amount of 25% of the equalized assessed value of the taxable property of a school district and issued by a school district meeting the criteria in paragraphs (i) through (iv) of this subsection shall not be considered indebtedness for purposes of any statutory limitation and may be issued pursuant to resolution of the school board in an amount or amounts, including existing indebtedness, in excess of any statutory limitation of indebtedness heretofore or hereafter imposed:

(i) The bonds are issued for the purpose of constructing a new high school building to replace two adjacent existing buildings which together house a single high school, each of which is more than 65 years old, and which together are located on more than 10 acres and less than 11 acres of property.

(ii) At the time the resolution authorizing the issuance of the bonds is adopted, the cost of constructing a new school building to replace the existing school building is less than 60% of the cost of repairing the existing school building.

(iii) The sale of the bonds occurs before July 1, 1997.

(iv) The school district issuing the bonds is a unit school district located in a county of less than 70,000 and more than 50,000 inhabitants, which has an average daily attendance of less than 1,500 and an equalized assessed valuation of less than $29,000,000.

(h) Notwithstanding any other provisions of this Section or the provisions of any other law, until January 1, 1998, a community unit school district maintaining grades K through 12 may issue bonds up to an amount, including existing indebtedness, not exceeding 27.6% of the equalized assessed value of the taxable property in the district, if all of the following conditions are met:

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(i) The school district has an equalized assessed valuation for calendar year 1995 of less than $24,000,000;

(ii) The bonds are issued for the capital improvement, renovation, rehabilitation, or replacement of existing school buildings of the district, all of which buildings were originally constructed not less than 40 years ago;

(iii) The voters of the district approve a proposition for the issuance of the bonds at a referendum held after March 19, 1996; and

(iv) The bonds are issued pursuant to Sections 19-2 through 19-7 of this Code.

(i) Notwithstanding any other provisions of this Section or the provisions of any other law, until January 1, 1998, a community unit school district maintaining grades K through 12 may issue bonds up to an amount, including existing indebtedness, not exceeding 27% of the equalized assessed value of the taxable property in the district, if all of the following conditions are met:

(i) The school district has an equalized assessed valuation for calendar year 1995 of less than $44,600,000;

(ii) The bonds are issued for the capital improvement, renovation, rehabilitation, or replacement of existing school buildings of the district, all of which existing buildings were originally constructed not less than 80 years ago;

(iii) The voters of the district approve a proposition for the issuance of the bonds at a referendum held after December 31, 1996; and

(iv) The bonds are issued pursuant to Sections 19-2 through 19-7 of this Code [105 ILCS 5/19-2 through 105 ILCS 5/19-7].

(j) Notwithstanding any other provisions of this Section or the provisions of any other law, until January 1, 1999, a community unit school district maintaining grades K through 12 may issue bonds up to an amount, including existing indebtedness, not exceeding 27% of the equalized assessed value of the taxable property in the district if all of the following conditions are met:

(i) The school district has an equalized assessed valuation for calendar year 1995 of less than $140,000,000 and a best 3 months average daily attendance for the 1995-96 school year of at least 2,800;

(ii) The bonds are issued to purchase a site and build and equip a new high school, and the school district's existing high school was originally constructed not less than 35 years prior to the sale of the bonds;

(iii) At the time of the sale of the bonds, the board of education determines by resolution that a new high school is needed because of projected enrollment increases;

(iv) At least 60% of those voting in an election held after December 31, 1996 approve a proposition for the issuance of the bonds; and

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(v) The bonds are issued pursuant to Sections 19-2 through 19-7 of this Code.

(k) Notwithstanding the debt limitation prescribed in subsection (a) of this Section, a school district that meets all the criteria set forth in paragraphs (1) through (4) of this subsection (k) may issue bonds to incur an additional indebtedness in an amount not to exceed $4,000,000 even though the amount of the additional indebtedness authorized by this subsection (k), when incurred and added to the aggregate amount of indebtedness of the school district existing immediately prior to the school district incurring such additional indebtedness, causes the aggregate indebtedness of the school district to exceed or increases the amount by which the aggregate indebtedness of the district already exceeds the debt limitation otherwise applicable to that school district under subsection (a):

(1) the school district is located in 2 counties, and a referendum to authorize the additional indebtedness was approved by a majority of the voters of the school district voting on the proposition to authorize that indebtedness;

(2) the additional indebtedness is for the purpose of financing a multi-purpose room addition to the existing high school;

(3) the additional indebtedness, together with the existing indebtedness of the school district, shall not exceed 17.4% of the value of the taxable property in the school district, to be ascertained by the last assessment for State and county taxes; and

(4) the bonds evidencing the additional indebtedness are issued, if at all, within 120 days of the effective date of this amendatory Act of 1998.

(l) Notwithstanding any other provisions of this Section or the provisions of any other law, until January 1, 2000, a school district maintaining grades kindergarten through 8 may issue bonds up to an amount, including existing indebtedness, not exceeding 15% of the equalized assessed value of the taxable property in the district if all of the following conditions are met:

(i) the district has an equalized assessed valuation for calendar year 1996 of less than $10,000,000;

(ii) the bonds are issued for capital improvement, renovation, rehabilitation, or replacement of one or more school buildings of the district, which buildings were originally constructed not less than 70 years ago;

(iii) the voters of the district approve a proposition for the issuance of the bonds at a referendum held on or after March 17, 1998; and

(iv) the bonds are issued pursuant to Sections 19-2 through 19-7 of this Code.

(m) Notwithstanding any other provisions of this Section or the provisions of any other law, until January 1, 1999, an elementary school district maintaining grades K through 8 may issue bonds up to an amount, excluding existing indebtedness, not exceeding 18% of the equalized assessed value of the taxable property in the district, if all of the following conditions are met:

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(i) The school district has an equalized assessed valuation for calendar year 1995 or less than $7,700,000;

(ii) The school district operates 2 elementary attendance centers that until 1976 were operated as the attendance centers of 2 separate and distinct school districts;

(iii) The bonds are issued for the construction of a new elementary school building to replace an existing multi-level elementary school building of the school district that is not handicapped accessible at all levels and parts of which were constructed more than 75 years ago;

(iv) The voters of the school district approve a proposition for the issuance of the bonds at a referendum held after July 1, 1998; and

(v) The bonds are issued pursuant to Sections 19-2 through 19-7 of this Code.

(n) Notwithstanding the debt limitation prescribed in subsection (a) of this Section or any other provisions of this Section or of any other law, a school district that meets all of the criteria set forth in paragraphs (i) through (vi) of this subsection (n) may incur additional indebtedness by the issuance of bonds in an amount not exceeding the amount certified by the Capital Development Board to the school district as provided in paragraph (iii) of this subsection (n), even though the amount of the additional indebtedness so authorized, when incurred and added to the aggregate amount of indebtedness of the district existing immediately prior to the district incurring the additional indebtedness authorized by this subsection (n), causes the aggregate indebtedness of the district to exceed the debt limitation otherwise applicable by law to that district:

(i) The school district applies to the State Board of Education for a school construction project grant and submits a district facilities plan in support of its application pursuant to Section 5-20 of the School Construction Law [105 ILCS 230/5-20].

(ii) The school district's application and facilities plan are approved by, and the district receives a grant entitlement for a school construction project issued by, the State Board of Education under the School Construction Law [105 ILCS 230/5-1 et seq.].

(iii) The school district has exhausted its bonding capacity or the unused bonding capacity of the district is less than the amount certified by the Capital Development Board to the district under Section 5-15 of the School Construction Law [105 ILCS 230/5-15] as the dollar amount of the school construction project's cost that the district will be required to finance with non-grant funds in order to receive a school construction project grant under the School Construction Law.

(iv) The bonds are issued for a "school construction project", as that term is defined in Section 5-5 of the School Construction Law [105 ILCS 230/5-5], in an amount that does not exceed the dollar amount certified, as provided in paragraph (iii) of this subsection (n), by the Capital Development Board to the school district under Section 5-15 of the School Construction Law.

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(v) The voters of the district approve a proposition for the issuance of the bonds at a referendum held after the criteria specified in paragraphs (i) and (iii) of this subsection (n) are met.

(vi) The bonds are issued pursuant to Sections 19-2 through 19-7 of the School Code.

(o) Notwithstanding any other provisions of this Section or the provisions of any other law, until November 1, 2007, a community unit school district maintaining grades K through 12 may issue bonds up to an amount, including existing indebtedness, not exceeding 20% of the equalized assessed value of the taxable property in the district if all of the following conditions are met:

(i) the school district has an equalized assessed valuation for calendar year 2001 of at least $737,000,000 and an enrollment for the 2002-2003 school year of at least 8,500;

(ii) the bonds are issued to purchase school sites, build and equip a new high school, build and equip a new junior high school, build and equip 5 new elementary schools, and make technology and other improvements and additions to existing schools;

(iii) at the time of the sale of the bonds, the board of education determines by resolution that the sites and new or improved facilities are needed because of projected enrollment increases;

(iv) at least 57% of those voting in a general election held prior to January 1, 2003 approved a proposition for the issuance of the bonds; and

(v) the bonds are issued pursuant to Sections 19-2 through 19-7 of this Code.

(p) Notwithstanding any other provisions of this Section or the provisions of any other law, a community unit school district maintaining grades K through 12 may issue bonds up to an amount, including indebtedness, not exceeding 27% of the equalized assessed value of the taxable property in the district if all of the following conditions are met:

(i) The school district has an equalized assessed valuation for calendar year 2001 of at least $295,741,187 and a best 3 months' average daily attendance for the 2002-2003 school year of at least 2,394.

(ii) The bonds are issued to build and equip 3 elementary school buildings; build and equip one middle school building; and alter, repair, improve, and equip all existing school buildings in the district.

(iii) At the time of the sale of the bonds, the board of education determines by resolution that the project is needed because of expanding growth in the school district and a projected enrollment increase.

(iv) The bonds are issued pursuant to Sections 19-2 through 19-7 of this Code.

(p-5) Notwithstanding any other provisions of this Section or the provisions of any other law, bonds issued by a community unit school district maintaining grades K through 12 shall not be considered indebtedness for purposes of any statutory limitation and may be issued in an amount or amounts, including existing indebtedness, in excess of any

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heretofore or hereafter imposed statutory limitation as to indebtedness, if all of the following conditions are met:

(i) For each of the 4 most recent years, residential property comprises more than 80% of the equalized assessed valuation of the district.

(ii) At least 2 school buildings that were constructed 40 or more years prior to the issuance of the bonds will be demolished and will be replaced by new buildings or additions to one or more existing buildings.

(iii) Voters of the district approve a proposition for the issuance of the bonds at a regularly scheduled election.

(iv) At the time of the sale of the bonds, the school board determines by resolution that the new buildings or building additions are needed because of an increase in enrollment projected by the school board.

(v) The principal amount of the bonds, including existing indebtedness, does not exceed 25% of the equalized assessed value of the taxable property in the district.

(vi) The bonds are issued prior to January 1, 2007, pursuant to Sections 19-2 through 19-7 of this Code.

(p-10) Notwithstanding any other provisions of this Section or the provisions of any other law, bonds issued by a community consolidated school district maintaining grades K through 8 shall not be considered indebtedness for purposes of any statutory limitation and may be issued in an amount or amounts, including existing indebtedness, in excess of any heretofore or hereafter imposed statutory limitation as to indebtedness, if all of the following conditions are met:

(i) For each of the 4 most recent years, residential and farm property comprises more than 80% of the equalized assessed valuation of the district.

(ii) The bond proceeds are to be used to acquire and improve school sites and build and equip a school building.

(iii) Voters of the district approve a proposition for the issuance of the bonds at a regularly scheduled election.

(iv) At the time of the sale of the bonds, the school board determines by resolution that the school sites and building additions are needed because of an increase in enrollment projected by the school board.

(v) The principal amount of the bonds, including existing indebtedness, does not exceed 20% of the equalized assessed value of the taxable property in the district.

(vi) The bonds are issued prior to January 1, 2007, pursuant to Sections 19-2 through 19-7 of this Code.

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(p-15) In addition to all other authority to issue bonds, the Oswego Community Unit School District Number 308 may issue bonds with an aggregate principal amount not to exceed $450,000,000, but only if all of the following conditions are met:

(i) The voters of the district have approved a proposition for the bond issue at the general election held on November 7, 2006.

(ii) At the time of the sale of the bonds, the school board determines, by resolution, that: (A) the building and equipping of the new high school building, new junior high school buildings, new elementary school buildings, early childhood building, maintenance building, transportation facility, and additions to existing school buildings, the altering, repairing, equipping, and provision of technology improvements to existing school buildings, and the acquisition and improvement of school sites, as the case may be, are required as a result of a projected increase in the enrollment of students in the district; and (B) the sale of bonds for these purposes is authorized by legislation that exempts the debt incurred on the bonds from the district's statutory debt limitation.

(iii) The bonds are issued, in one or more bond issues, on or before November 7, 2011, but the aggregate principal amount issued in all such bond issues combined must not exceed $450,000,000.

(iv) The bonds are issued in accordance with this Article 19.

(v) The proceeds of the bonds are used only to accomplish those projects approved by the voters at the general election held on November 7, 2006.

The debt incurred on any bonds issued under this subsection (p-15) shall not be considered indebtedness for purposes of any statutory debt limitation.

(p-20) In addition to all other authority to issue bonds, the Lincoln-Way Community High School District Number 210 may issue bonds with an aggregate principal amount not to exceed $225,000,000, but only if all of the following conditions are met:

(i) The voters of the district have approved a proposition for the bond issue at the general primary election held on March 21, 2006.

(ii) At the time of the sale of the bonds, the school board determines, by resolution, that: (A) the building and equipping of the new high school buildings, the altering, repairing, and equipping of existing school buildings, and the improvement of school sites, as the case may be, are required as a result of a projected increase in the enrollment of students in the district; and (B) the sale of bonds for these purposes is authorized by legislation that exempts the debt incurred on the bonds from the district's statutory debt limitation.

(iii) The bonds are issued, in one or more bond issues, on or before March 21, 2011, but the aggregate principal amount issued in all such bond issues combined must not exceed $225,000,000.

(iv) The bonds are issued in accordance with this Article 19.

(v) The proceeds of the bonds are used only to accomplish those projects approved by the voters at the primary election held on March 21, 2006. The debt incurred on any bonds

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issued under this subsection (p-20) shall not be considered indebtedness for purposes of any statutory debt limitation.

(p-25) In addition to all other authority to issue bonds, Rochester Community Unit School District 3A may issue bonds with an aggregate principal amount not to exceed $18,500,000, but only if all of the following conditions are met:

(i) The voters of the district approve a proposition for the bond issuance at the general primary election held in 2008.

(ii) At the time of the sale of the bonds, the school board determines, by resolution, that: (A) the building and equipping of a new high school building; the addition of classrooms and support facilities at the high school, middle school, and elementary school; the altering, repairing, and equipping of existing school buildings; and the improvement of school sites, as the case may be, are required as a result of a projected increase in the enrollment of students in the district; and (B) the sale of bonds for these purposes is authorized by a law that exempts the debt incurred on the bonds from the district's statutory debt limitation.

(iii) The bonds are issued, in one or more bond issues, on or before December 31, 2012, but the aggregate principal amount issued in all such bond issues combined must not exceed $18,500,000.

(iv) The bonds are issued in accordance with this Article 19.

(v) The proceeds of the bonds are used to accomplish only those projects approved by the voters at the primary election held in 2008.

The debt incurred on any bonds issued under this subsection (p-25) shall not be considered indebtedness for purposes of any statutory debt limitation.

(p-30) In addition to all other authority to issue bonds, Prairie Grove Consolidated School District 46 may issue bonds with an aggregate principal amount not to exceed $30,000,000, but only if all of the following conditions are met:

(i) The voters of the district approve a proposition for the bond issuance at an election held in 2008.

(ii) At the time of the sale of the bonds, the school board determines, by resolution, that (A) the building and equipping of a new school building and additions to existing school buildings are required as a result of a projected increase in the enrollment of students in the district and (B) the altering, repairing, and equipping of existing school buildings are required because of the age of the existing school buildings.

(iii) The bonds are issued, in one or more bond issuances, on or before December 31, 2012; however, the aggregate principal amount issued in all such bond issuances combined must not exceed $30,000,000.

(iv) The bonds are issued in accordance with this Article.

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(v) The proceeds of the bonds are used to accomplish only those projects approved by the voters at an election held in 2008.

The debt incurred on any bonds issued under this subsection (p-30) shall not be considered indebtedness for purposes of any statutory debt limitation.

(p-35) In addition to all other authority to issue bonds, Prairie Hill Community Consolidated School District 133 may issue bonds with an aggregate principal amount not to exceed $13,900,000, but only if all of the following conditions are met:

(i) The voters of the district approved a proposition for the bond issuance at an election held on April 17, 2007.

(ii) At the time of the sale of the bonds, the school board determines, by resolution, that (A) the improvement of the site of and the building and equipping of a school building are required as a result of a projected increase in the enrollment of students in the district and (B) the repairing and equipping of the Prairie Hill Elementary School building is required because of the age of that school building.

(iii) The bonds are issued, in one or more bond issuances, on or before December 31, 2011, but the aggregate principal amount issued in all such bond issuances combined must not exceed $13,900,000.

(iv) The bonds are issued in accordance with this Article.

(v) The proceeds of the bonds are used to accomplish only those projects approved by the voters at an election held on April 17, 2007.

The debt incurred on any bonds issued under this subsection (p-35) shall not be considered indebtedness for purposes of any statutory debt limitation.

(p-40) In addition to all other authority to issue bonds, Mascoutah Community Unit District 19 may issue bonds with an aggregate principal amount not to exceed $55,000,000, but only if all of the following conditions are met:

(1) The voters of the district approve a proposition for the bond issuance at a regular election held on or after November 4, 2008.

(2) At the time of the sale of the bonds, the school board determines, by resolution, that (i) the building and equipping of a new high school building is required as a result of a projected increase in the enrollment of students in the district and the age and condition of the existing high school building, (ii) the existing high school building will be demolished, and (iii) the sale of bonds is authorized by statute that exempts the debt incurred on the bonds from the district's statutory debt limitation.

(3) The bonds are issued, in one or more bond issuances, on or before December 31, 2011, but the aggregate principal amount issued in all such bond issuances combined must not exceed $55,000,000.

(4) The bonds are issued in accordance with this Article.

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(5) The proceeds of the bonds are used to accomplish only those projects approved by the voters at a regular election held on or after November 4, 2008.

The debt incurred on any bonds issued under this subsection (p-40) shall not be considered indebtedness for purposes of any statutory debt limitation.

(p-45) Notwithstanding the provisions of subsection (a) of this Section or of any other law, bonds issued pursuant to Section 19-3.5 of this Code [105 ILCS 5/19-3.5] shall not be considered indebtedness for purposes of any statutory limitation if the bonds are issued in an amount or amounts, including existing indebtedness of the school district, not in excess of 18.5% of the value of the taxable property in the district to be ascertained by the last assessment for State and county taxes.

(p-50) Notwithstanding the provisions of subsection (a) of this Section or of any other law, bonds issued pursuant to Section 19-3.10 of this Code [105 ILCS 5/19-3.10] shall not be considered indebtedness for purposes of any statutory limitation if the bonds are issued in an amount or amounts, including existing indebtedness of the school district, not in excess of 43% of the value of the taxable property in the district to be ascertained by the last assessment for State and county taxes.

(p-55) In addition to all other authority to issue bonds, Belle Valley School District 119 may issue bonds with an aggregate principal amount not to exceed $47,500,000, but only if all of the following conditions are met:

(1) The voters of the district approve a proposition for the bond issuance at an election held on or after April 7, 2009.

(2) Prior to the issuance of the bonds, the school board determines, by resolution, that (i) the building and equipping of a new school building is required as a result of mine subsidence in an existing school building and because of the age and condition of another existing school building and (ii) the issuance of bonds is authorized by statute that exempts the debt incurred on the bonds from the district's statutory debt limitation.

(3) The bonds are issued, in one or more bond issuances, on or before March 31, 2014, but the aggregate principal amount issued in all such bond issuances combined must not exceed $47,500,000.

(4) The bonds are issued in accordance with this Article.

(5) The proceeds of the bonds are used to accomplish only those projects approved by the voters at an election held on or after April 7, 2009.

The debt incurred on any bonds issued under this subsection (p-55) shall not be considered indebtedness for purposes of any statutory debt limitation. Bonds issued under this subsection (p-55) must mature within not to exceed 30 years from their date, notwithstanding any other law to the contrary.

(p-60) In addition to all other authority to issue bonds, Wilmington Community Unit School District Number 209-U may issue bonds with an aggregate principal amount not to exceed $2,285,000, but only if all of the following conditions are met:

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(1) The proceeds of the bonds are used to accomplish only those projects approved by the voters at the general primary election held on March 21, 2006.

(2) Prior to the issuance of the bonds, the school board determines, by resolution, that (i) the projects approved by the voters were and are required because of the age and condition of the school district's prior and existing school buildings and (ii) the issuance of the bonds is authorized by legislation that exempts the debt incurred on the bonds from the district's statutory debt limitation.

(3) The bonds are issued in one or more bond issuances on or before March 1, 2011, but the aggregate principal amount issued in all those bond issuances combined must not exceed $2,285,000.

(4) The bonds are issued in accordance with this Article.

The debt incurred on any bonds issued under this subsection (p-60) shall not be considered indebtedness for purposes of any statutory debt limitation.

(p-65) In addition to all other authority to issue bonds, West Washington County Community Unit School District 10 may issue bonds with an aggregate principal amount not to exceed $32,200,000 and maturing over a period not exceeding 25 years, but only if all of the following conditions are met:

(1) The voters of the district approve a proposition for the bond issuance at an election held on or after February 2, 2010.

(2) Prior to the issuance of the bonds, the school board determines, by resolution, that (A) all or a portion of the existing Okawville Junior/Senior High School Building will be demolished; (B) the building and equipping of a new school building to be attached to and the alteration, repair, and equipping of the remaining portion of the Okawville Junior/Senior High School Building is required because of the age and current condition of that school building; and (C) the issuance of bonds is authorized by a statute that exempts the debt incurred on the bonds from the district's statutory debt limitation.

(3) The bonds are issued, in one or more bond issuances, on or before March 31, 2014, but the aggregate principal amount issued in all such bond issuances combined must not exceed $32,200,000.

(4) The bonds are issued in accordance with this Article.

(5) The proceeds of the bonds are used to accomplish only those projects approved by the voters at an election held on or after February 2, 2010.

The debt incurred on any bonds issued under this subsection (p-65) shall not be considered indebtedness for purposes of any statutory debt limitation.

(p-70) In addition to all other authority to issue bonds, Cahokia Community Unit School District 187 may issue bonds with an aggregate principal amount not to exceed $50,000,000, but only if all the following conditions are met:

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(1) The voters of the district approve a proposition for the bond issuance at an election held on or after November 2, 2010.

(2) Prior to the issuance of the bonds, the school board determines, by resolution, that (i) the building and equipping of a new school building is required as a result of the age and condition of an existing school building and (ii) the issuance of bonds is authorized by a statute that exempts the debt incurred on the bonds from the district's statutory debt limitation.

(3) The bonds are issued, in one or more issuances, on or before July 1, 2016, but the aggregate principal amount issued in all such bond issuances combined must not exceed $50,000,000.

(4) The bonds are issued in accordance with this Article.

(5) The proceeds of the bonds are used to accomplish only those projects approved by the voters at an election held on or after November 2, 2010.

The debt incurred on any bonds issued under this subsection (p-60) shall not be considered indebtedness for purposes of any statutory debt limitation. Bonds issued under this subsection (p-70) must mature within not to exceed 25 years from their date, notwithstanding any other law, including Section 19-3 of this Code [105 ILCS 5/19-3], to the contrary.

(p-75) Notwithstanding the debt limitation prescribed in subsection (a) of this Section or any other provisions of this Section or of any other law, the execution of leases on or after January 1, 2007 and before July 1, 2011 by the Board of Education of Peoria School District 150 with a public building commission for leases entered into pursuant to the Public Building Commission Act shall not be considered indebtedness for purposes of any statutory debt limitation.

This subsection (p-75) applies only if the State Board of Education or the Capital Development Board makes one or more grants to Peoria School District 150 pursuant to the School Construction Law. The amount exempted from the debt limitation as prescribed in this subsection (p-75) shall be no greater than the amount of one or more grants awarded to Peoria School District 150 by the State Board of Education or the Capital Development Board.

(q) A school district must notify the State Board of Education prior to issuing any form of long-term or short-term debt that will result in outstanding debt that exceeds 75% of the debt limit specified in this Section or any other provision of law.

(Source: P.A. 85-648; 87-997, § 310; 88-376, § 5; 88-641, § 10; 88-686, § 5; 89-47, § 5; 89-661, § 5; 89-698, § 5; 90-570, § 5; 90-757, § 5; 91-55, § 5; 93-13, § 5; 93-799, § 5; 93-1045, § 5; 94-234, § 5; 94-721, § 5; 94-952, § 5; 94-1019, § 10; 94-1078, § 15; 95-331, § 540; 95-594, § 5; 95-792, § 5; 96-63, § 5; 96-273, § 5; 96-517, § 5; 96-947, § 5; 96-950, § 5; 96-1000, § 260; 96-1438, § 5; 96-1467, § 5; 97-333, § 185.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-1.

Section 95 of P.A. 94-721, which amended this section, contains a "no acceleration or delay" provision.

Section 90 of P.A. 94-1019 contains a savings provision, and section 95 contains a no acceleration or delay provision.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 1992 amendment, effective September 3, 1992, added subsection (d).

The 1993 amendment by P.A. 88-376, effective January 1, 1994, in the introductory language of the first paragraph of subsection (b), and in subsection (c), substituted "subsection (a)" for "paragraph (a)"; in the second and third paragraph of subsection (b) substituted "subsection (b)" for "paragraph (b)"; and rewrote subsection (d).

The 1994 amendment by P.A. 88-641, effective September 9, 1994, added subsection (e).

The 1994 amendment by P.A. 88-686, effective January 24, 1995, incorporated the amendments by P.A. 88-641 and in subsection (c) inserted "proposed", substituted "12" for "8", inserted "on or", substituted "November 8, 1994" for "April 1, 1986", deleted "all of" preceding "the bonds approved" and inserted "pursuant to the requirements of Section 11A-10"; in subdivision (e)(4), in the first sentence, substituted "preceding" for "preceeding"; and added subsection (f).

The 1995 amendment by P.A. 89-47, effective July 1, 1995, added subsection (g).

The 1996 amendment by P.A. 89-661, effective January 1, 1997, added subsection (h).

The 1996 amendment by P.A. 89-698, effective January 14, 1997, incorporated the amendments by P.A. 89-661; and added subsections (i) and (j).

The 1997 amendment by P.A. 90-570, effective January 28, 1998, in subsection (j), in the introductory language, deleted "located in a county of more than 240,000 but less than 260,000 inhabitants" preceding "may issue"; in subdivision (j)(1) substituted "$140,000,000" for "$137,400,000, substituted "1995-96" for "1994-95" and deleted from the end "but less than 3,000"; in subdivision (j)(ii) substituted "to purchase a site and build and equip a new high school, and the school district's" for "for the capital improvement, renovation, rehabilitation, or replacement of existing school buildings of the district, all of which", substituted "high school was" for "buildings were", substituted "35" for "80" and substituted "prior to the sale of the bonds" for "ago, or for the construction of new school facilities"; added subdivision (j)(iii); redesignated subdivisions (j)(iii) and (j)(iv) as present subdivisions (j)(iv) and (j)(v); and in subdivision (j)(iv) substituted "At least 60% of those voting in an election held after December 31, 1996" for "The voters of the district" and deleted "at a referendum held after December 31, 1996".

The 1998 amendment by P.A. 90-757, effective August 14, 1998, added subsection (b)(5) and added subsections (k) through (m).

The 1999 amendment by P.A. 91-55, effective June 30, 1999, added subsection (n).

The 2003 amendment by P.A. 93-13, effective June 9, 2003, added subsection (o).

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The 2004 amendment by P.A. 93-799, effective July 22, 2004, added the last paragraph in subsection (f).

The 2004 amendment by P.A. 93-1045, effective October 15, 2004, added subsection (p).

The 2005 amendment by P.A. 94-234, effective July 1, 2006, deleted the text from (e), which concerned additional indebtedness incurred by financially distressed school districts; made a stylistic change in (f); and added (q).

The 2005 amendment by P.A. 94-721, effective January 6, 2006, made a stylistic change in (f)(3); and added (p-5).

The 2006 amendment by P.A. 94-952, effective June 27, 2006, added (p-10).

The 2006 amendment by P.A. 94-1019, effective July 10, 2006, added the next-to-last paragraph in (a); and added "(now repealed)" in (c).

The 2006 amendment by P.A. 94-1078, effective January 9, 2007, added (p-15) and (p-20).

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, combined earlier multiple amendments to the section.

The 2007 amendment by P.A. 95-594, effective September 10, 2007, inserted (p-25), (p-30), and (p-35).

The 2008 amendment by P.A. 95-792, effective January 1, 2009, added (p-40).

The 2009 amendment by P.A. 96-63, effective July 23, 2009, added (p-45).

The 2009 amendment by P.A. 96-273, effective August 11, 2009, substituted "$18,500,000" for "$15,000,000" in (p-25) and in (p-25)(iii).

The 2009 amendment by P.A. 96-517, effective August 14, 2009, added (p-45) and (p-50).

The 2010 amendment by P.A. 96-947, effective June 25, 2010, redesignated the former second version of subsection (p-45), as enacted by P.A. 96-517, as subsection (p-55); substituted "(p-55)" for "(p-45)" twice in the last paragraph of (p-55); and added (p-60).

The 2010 amendment by P.A. 96-950, effective June 25, 2010, redesignated the former second version of subsection (p-45), as enacted by P.A. 96-517, as subsection (p-55); substituted "(p-55)" for "(p-45)" twice in the last paragraph of (p-55); and added (p-60).

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated former duplicate subsection (p-45) as (p-55); and made related changes.

The 2010 amendment by P.A. 96-1438, effective August 20, 2010, redesignated former duplicate subsection (p-45) as (p-55); inserted (p-60); and made related changes.

The 2010 amendment by P.A. 96-1467, effective August 20, 2010, redesignated former duplicate subsection (p-45) as (p-55); inserted (p-60); and made related changes.

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, redesignated former duplicates of (p-60) as (p-65), (p-70), and (p-75); updated the internal references; and made a stylistic change.

CASE NOTES

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Applicability

The practical effect of 105 ILCS 5/17-2.11 and 105 ILCS 5/17-2.11a is to allow a school district either to levy a constant tax of up to 0.05% (or 0.10% by referendum) per year under 105 ILCS 5/17-2.11, or to compress multiple years of this tax rate into a higher rate for fewer years pursuant to 105 ILCS 5/17-2.11a. If a school district chooses the latter option, then the district cannot levy the 105 ILCS 5/17-2.11 tax again until such time as the 105 ILCS 5/17-2.11a taxes, if they had been spread out over multiple years at the lesser 105 ILCS 5/17-2.11 rate, would have equaled the 105 ILCS 5/17-2.11a taxes received to date. A school district may issue bonds and pay for that debt by a tax levy under 105 ILCS 5/17-2.11a up to the amount necessary to pay the cost of needed school improvements, so long as the school district does not exceed the overall debt ceiling placed on school districts. People ex rel. Bonefeste v. B.D.H. Rentals, 277 Ill. App. 3d 614, 214 Ill. Dec. 305, 660 N.E.2d 1012 (1 Dist. 1996), appeal denied, 167 Ill. 2d 568, 217 Ill. Dec. 669, 667 N.E.2d 1062 (1996).

§ 105 ILCS 5/19-1.5: Repealed effective July 1, 2006.

Note.

This section was repealed by its own terms, which read, in part, "This Section is repealed on July 1, 2006.

Bonds

§ 105 ILCS 5/19-2. School directors - Power to borrow money and issue bonds

Sec. 19-2. School directors - Power to borrow money and issue bonds. For the purpose of building or repairing schoolhouses or purchasing or improving school sites, the directors of any school district, when authorized by a majority of the votes cast on such proposition conducted in accordance with the general election law, may borrow money; and, as evidence of such indebtedness, may issue bonds signed by the president and clerk of the board, in denominations of not less than $100, and bearing interest at a rate not exceeding the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts [5 ILCS 70/8] are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts [5 ILCS 70/8], regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted

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by the Omnibus Bond Acts [5 ILCS 70/8], and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts [5 ILCS 70/8] are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

The proceeds of any bonds issued under authorization of this Section shall be deposited and accounted for separately within the Site and Construction/Capital Improvements Fund.

(Source: P.A. 86-4; 87-984, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-2.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

Effect of Amendments. The 1992 amendment, effective January 1, 1993, added the third paragraph.

CASE NOTES

Excessive Debt Incurred

- Illegal Contracts

Where the indebtedness incurred was far beyond the 21/2 percent limit prescribed by a similar prior provision, whatever amount contractual claims exceeded that limit were illegal. People ex rel. Morse v. Orvis, 358 Ill. 408, 193 N.E. 213 (1934).

§ 105 ILCS 5/19-3. Boards of education

Sec. 19-3. Boards of education. Any school district governed by a board of education and having a population of not more than 500,000 inhabitants, and not governed by a special Act may borrow money for the purpose of building, equipping, altering or repairing school buildings or purchasing or improving school sites, or acquiring and equipping playgrounds, recreation grounds, athletic fields, and other buildings or land used or useful for school purposes or for the purpose of purchasing a site, with or without a building or buildings thereon, or for the building of a house or houses on such site, or for the building of a house or houses on the school site of the school district, for residential purposes of

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the superintendent, principal, or teachers of the school district, and issue its negotiable coupon bonds therefor signed by the president and secretary of the board, in denominations of not less than $100 nor more than $5,000, payable at such place and at such time or times, not exceeding 20 years, with the exception of Lockport High School not exceeding 25 years, from date of issuance, as the board of education may prescribe, and bearing interest at a rate not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, payable annually, semiannually or quarterly, but no such bonds shall be issued unless the proposition to issue them is submitted to the voters of the district at a referendum held at a regularly scheduled election after the board has certified the proposition to the proper election authorities in accordance with the general election law, a majority of all the votes cast on the proposition is in favor of the proposition, and notice of such bond referendum has been given either (i) in accordance with the second paragraph of Section 12-1 of the Election Code [10 ILCS 5/12-1] irrespective of whether such notice included any reference to the public question as it appeared on the ballot, or (ii) for an election held on or after November 1, 1998, in accordance with Section 12-5 of the Election Code [10 ILCS 5/12-5], or (iii) by publication of a true and legible copy of the specimen ballot label containing the proposition in the form in which it appeared or will appear on the official ballot label on the day of the election at least 5 days before the day of the election in at least one newspaper published in and having a general circulation in the district, irrespective of any other requirements of Article 12 or Section 24A-18 of the Election Code [10 ILCS 5/12-1 et seq. or 10 ILCS 5/24A-18], nor shall any residential site be acquired unless such proposition to acquire a site is submitted to the voters of the district at a referendum held at a regularly scheduled election after the board has certified the proposition to the proper election authorities in accordance with the general election law and a majority of all the votes cast on the proposition is in favor of the proposition. Nothing in this Act or in any other law shall be construed to require the notice of the bond referendum to be published over the name or title of the election authority or the listing of maturity dates of any bonds either in the notice of bond election or ballot used in the bond election. The provisions of this Section concerning notice of the bond referendum apply only to (i) consolidated primary elections held prior to January 1, 2002 and the consolidated election held on April 17, 2007 at which not less than 60% of the voters voting on the bond proposition voted in favor of the bond proposition, and (ii) other elections held before July 1, 1999; otherwise, notices required in connection with the submission of public questions shall be as set forth in Section 12-5 of the Election Code [10 ILCS 5/12-5]. Such proposition may be initiated by resolution of the school board.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts [5 ILCS 70/8] are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary

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authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

The proceeds of any bonds issued under authority of this Section shall be deposited and accounted for separately within the Site and Construction/Capital Improvements Fund.

(Source: P.A. 86-4; 87-984, § 1; 89-698, § 5; 90-811, § 5; 90-812, § 30; 91-57, § 40; 92-6, § 15; 95-30, § 5; 96-787, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-3.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

Effect of Amendments. The 1992 amendment, effective January 1, 1993, added the last paragraph.

The 1996 amendment by P.A. 89-698, effective January 14, 1997, in the first paragraph, in the first sentence, deleted "in such district and" following "general election law", and inserted "notice of such bond referendum (if heretofore or hereafter held at any general election) has been given in accordance with the second paragraph of Section 12-1 of the Election Code irrespective of any other requirements of the Election Code and irrespective of whether such notice included the public question as it appeared on the ballot, and a true and legible copy of the specimen ballot label containing the proposition (if heretofore or hereafter submitted to the voters of the district at any general election) in the form in which it appeared or will appear on the official ballot label on the day of the election has been published at least 5 days before the day of the election in at least one newspaper published in and having a general circulation in each county in which the district is located irrespective of any other requirements of Section 24A-18 of the Election Code".

The 1998 amendment by P.A. 90-811, effective January 26, 1999, rewrote the first paragraph.

The 1998 amendment by P.A. 90-812, effective January 26, 1999, rewrote the first paragraph.

The 1999 amendment by P.A. 91-57, effective June 30, 1999, in the first paragraph inserted "or consolidated" preceding "election)" in the first sentence and inserted the third sentence.

The 2001 amendment by P.A. 92-6, effective June 7, 2001, in the first paragraph, deleted "(if heretofore or hereafter held at any general or consolidated election)" following "such bond referendum", substituted "in the district" for "in each county in which the district is located" following "general circulation", inserted the language beginning "(i) consolidated" and ending "(ii) other", and substituted "otherwise" for "thereafter" preceding "notices required".

The 2007 amendment by P.A. 95-30, effective August 7, 2007, added "and the consolidated election held on April 17, 2007" to the next-to-last sentence in the first paragraph.

The 2009 amendment by P.A. 96-787, effective August 28, 2009, inserted "with the exception of Lockport High School not exceeding 25 years" in the first sentence of the first paragraph.

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CASE NOTES

Analysis

Building Construction
- Annual Tax Levies
- Bonds
Referendum
- Proper

Building Construction

- Annual Tax Levies

The Board of Education was not required to submit to the voters the cost of the building to be erected; if in its judgment the amount of the bonds authorized to be issued was not sufficient to meet the cost of the building required, the Board had the power to levy taxes within the statutory limit for building purposes to make up the difference. People ex rel. Morse v. Orvis, 358 Ill. 408, 193 N.E. 213 (1934).

A school board may complete an unfinished school building by means of annual tax levies within the statutory limitation from year to year until the building is completed. People ex rel. Morse v. Orvis, 358 Ill. 408, 193 N.E. 213 (1934).

- Bonds

Acquisition and equipment of property for playgrounds, recreation grounds and athletic fields are to be financed out of the building funds of school districts, with the subsequent cost of maintenance to be provided for from educational funds; the issuance of bonds to pay for the construction of an athletic field is not prohibited since bonds may be issued for the purpose of purchasing or improving school sites. Moyer v. Board of Educ., 391 Ill. 156, 62 N.E.2d 802 (1945).

Referendum

- Proper

The ballot used in a referendum was proper and plaintiff's complaints failed to state a cause of action. Carstens v. Board of Educ., 27 Ill. 2d 88, 187 N.E.2d 682 (1963).

§ 105 ILCS 5/19-3.5. Flood-damaged building

Sec. 19-3.5. Flood-damaged building. Martinsville Community Unit School District 3C is authorized to issue bonds in not to exceed the amount of $4,000,000 for the purpose of paying the cost of acquiring and improving a school site and building and equipping a new school building on the site to replace all or a portion of a school building closed by the regional superintendent of schools pursuant to Section 3-14.22 of this Code [105 ILCS 5/3-14.22] because of flood damage. The replacement building may be larger than

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the size of and offer more functions than the school building being replaced. Bonds issued pursuant to this Section may be issued without referendum and shall mature not more than 25 years from the date of issuance.

(Source: P.A. 96-517, § 5.)

Effective Date. Section 99 of P.A. 96-517 makes this section effective upon becoming law. The Act was approved August 14, 2009.

§ 105 ILCS 5/19-3.10. Mine subsidence damaged building

Sec. 19-3.10. Mine subsidence damaged building. Gillespie Community Unit School District 7 is authorized to issue bonds in not to exceed the amount of $22,000,000 for the purpose of paying the cost of acquiring and improving a school site and building and equipping a new school building on the site to replace all or a portion of a school building closed by the regional superintendent of schools pursuant to Section 3-14.22 of this Code [105 ILCS 5/3-14.22] because of mine subsidence damage. The replacement building may be larger than the size of and offer more functions than the school building being replaced. Bonds issued pursuant to this Section may be issued without referendum and shall mature not more than 25 years from the date of issuance.

(Source: P.A. 96-517, § 5.)

Effective Date. Section 99 of P.A. 96-517 makes this section effective upon becoming law. The Act was approved August 14, 2009.

§ 105 ILCS 5/19-4. Bonds issued - Boundaries changed

Sec. 19-4. Bonds issued - Boundaries changed. Where bonds are issued by any school district under the provisions of Section 19-2 through Section 19-6 [105 ILCS 5/19-2 through 105 ILCS 5/19-6], and before any contract is let for the construction of buildings or improvements in accordance therewith the district boundaries are changed by the formation of a new district including all or a part of said district, or by the annexation of a district in its entirety to another district, then upon the adoption of a resolution by the board of education of the new district or the district to which the territory has been annexed, that the building or improvements are no longer feasible, the board shall by resolution order submitted to the electors the proposition of authorizing the board to use the proceeds of said bonds or the portion thereof allotted to the new district or district to which said territory is annexed for a specific new building or improvement in some

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locality of the district other than the one specified at the previous election, or for a different improvement, or for a part of the original improvements. In case a new district has been formed, no such referendum shall be held unless the new district embraces territory having as much or more assessed valuation as the territory embraced in the district at the first election. The board shall certify the resolution and the proposition to the proper election authorities for submission in accordance with the general election law.

Where bonds are issued by any school district under the provisions of Section 19-2 through Section 19-6 [105 ILCS 5/19-2 through 105 ILCS 5/19-6], and it is determined by the board of education by resolution that it is in the interests of the school district that part or all of the proceeds of said bonds be used for different purposes than authorized but for purposes for which bonds may be issued under the provisions of Section 19-2 through Section 19-6 [105 ILCS 5/19-2 through 105 ILCS 5/19-6], the board shall by resolution order submitted to the electors the proposition of authorizing the board to use the proceeds of said bonds or a part thereof for the purposes set forth in said resolution and if a majority of all the votes cast on said proposition is in favor thereof the board shall have such authority. The board shall certify the resolution and the proposition to the proper election authorities for submission in accordance with the general election law.

(Source: P.A. 84-1334.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-4.

§ 105 ILCS 5/19-5. Registration, numbering and countersigning

Sec. 19-5. Registration, numbering and countersigning. All bonds issued under this Act, except bonds issued by school districts having a population of more than 500,000 inhabitants, before being issued, negotiated and sold, shall be registered, numbered and countersigned by the treasurer who receives the taxes of the district. The registration shall be made in a book in which shall be entered the record of the election authorizing the directors or the board of education to borrow money and a description of the bonds issued, including the number, date, to whom issued, amount, rate of interest and when due.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-5.

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§ 105 ILCS 5/19-6. Bond money to school treasurer - Delivery of bonds - Record - Payment

Sec. 19-6. Bond money to school treasurer - Delivery of bonds - Record - Payment.

All moneys borrowed under the authority of this Act, except money borrowed by school districts having a population of more than 500,000 inhabitants, shall be paid to the school treasurer of the district. The treasurer shall, before receiving any of the money, execute a bond with two or more persons having an interest in real estate, who shall not be trustees, or a surety company authorized to do business in this State, as surety, payable to the school board of the district in Class I county school units or township trustees in Class II county school units and conditioned upon the faithful discharge of his duties, except that the bond required of the school treasurer of a school district which is located in a Class II county school unit but which no longer is subject to the jurisdiction and authority of a township treasurer or trustees of schools of a township because the district has withdrawn from the jurisdiction and authority of the township treasurer and trustees of schools of the township or because those offices have been abolished as provided in subsection (b) or (c) of Section 5-1 [105 ILCS 5/5-1] shall be payable to the school board of such district and conditioned upon the faithful discharge of his duties. The bond shall be submitted for approval or rejection to the school board of the district or to the township trustees to which such bond is payable. The penalty of the bond or bonds shall be 25% of the amount of such bond issue, whether individuals act as surety or whether the surety is given by a surety company authorized to transact business in this State. The bond shall be in substantially the same form as that required by Section 8-2 of this Act [105 ILCS 5/8-2] and when so given shall fully describe the bond issue which it specifically covers and shall remain in force until the funds of the bond issue are fully disbursed in accordance with the law. Upon receiving such moneys the treasurer shall deliver the bonds issued therefor to the persons entitled to receive them, and shall credit the funds received to the district issuing the bonds. The treasurer shall record the amount received for each bond issued. When any bonds are paid the treasurer shall cancel them and shall enter, against the record of the bonds, the words, "paid and cancelled the ..... day of ....., 1 ....." filling the blanks with the day, month, and year corresponding to the date of payment.

(Source: P.A. 86-1441; 87-473; 89-212, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-6.

Effect of Amendments. The 1995 amendment by P.A. 89-212, effective August 4, 1995, in the fourth sentence, substituted "25% of" for "at least twice", substituted "whether individuals" for "if individuals", deleted a comma after "surety" and substituted "whether the surety" for "only in the amount of such bond issue if the surety".

§ 105 ILCS 5/19-7. Certified copy of resolution filed with county clerk - Registry of bonds - Extension of tax

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Sec. 19-7. Certified copy of resolution filed with county clerk - Registry of bonds - Extension of tax. Whenever any school district having a population of less than 500,000 inhabitants is authorized to issue bonds, the recording officer thereof shall file in the office of the county clerk of each county in which any portion of the district is situated a certified copy of the resolution providing for their issuance and levying a tax to pay them. The county clerk shall prepare and keep in his office a registry of all such bonds which shall show the name of the issuing body and the date, amount, purpose, rate of interest and maturity of the bonds to be issued, and the county clerk, subject to the provisions of Section 7-14 of this Act [105 ILCS 5/7-14], annually shall extend taxes against all the taxable property situated in the county and contained in the district in amounts sufficient to pay maturing principal and interest, and such taxes shall be computed, extended and collected in the same manner as is now or may hereafter be provided for the computation, extension and collection of taxes for general corporate purposes for the issuing district. If no such certified copy of resolution has been filed with reference to any bonds heretofore authorized one shall promptly be filed.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-7.

§ 105 ILCS 5/19-8. Bonds to pay claims

Sec. 19-8. Bonds to pay claims. Any school district or non-high district operating under general law or special charter having a population of 500,000 or less is authorized to issue bonds for the purpose of paying orders issued for the wages of teachers, for the payment of claims against any such district, or for providing funds to effect liquidation or defeasance of the obligations of a Financial Oversight Panel pursuant to the provisions of Section 1H-115 of this Code [105 ILCS 5/1H-115].

Such bonds may be issued in an amount, including existing indebtedness, in excess of any statutory limitation as to debt.

(Source: Laws 1961, p. 31; P.A. 88-641, § 10; 94-234, § 5; 97-429, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-8.

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Effect of Amendments. The 1994 amendment by P.A. 88-641, effective September 9, 1994, in the second paragraph, deleted "but subject to the 5% constitutional limit" at the end; and added the third paragraph.

The 2005 amendment by P.A. 94-234, effective July 1, 2006, deleted the former last paragraph concerning debt for financially distressed school districts.

The 2011 amendment by P.A. 97-429, effective August 16, 2011, added "or for providing funds to effect liquidation or defeasance of the obligations of a Financial Oversight Panel pursuant to the provisions of Section 1H-115 of this Code" to the end of the first paragraph; and made a related change.

CASE NOTES

Analysis

Authority to Issue Bonds
- Dissolution of Issuing Body
- Statutory

Authority to Issue Bonds

- Dissolution of Issuing Body

A plaintiff's proposition that the defendant-Board of Education was not authorized to issue bonds which would not mature until after the extinction of the body politic for which the defendant acted, when the defendant had knowledge that the body politic was inevitably to be dissolved as of a date certain, and knowledge that no other municipal corporation was to be substituted therefor, was without merit. Mann v. Board of Educ., 406 Ill. 224, 92 N.E.2d 743 (1950).

- Statutory

Bonds could not be issued by reason of any inherent authority existing in a non-high school district; a local governmental body has no inherent power to issue bonds in the absence of statutory authority. People ex rel. Vaughan v. Thompson, 377 Ill. 244, 36 N.E.2d 351 (1941).

§ 105 ILCS 5/19-9. Resolution to issue bonds - Submission to voters

Sec. 19-9. Resolution to issue bonds - Submission to voters. Before any district as described in Section 19-8 [105 ILCS 5/19-8] shall avail itself of the provisions of that section the governing body thereof shall examine and consider the several teachers' orders or claims or liabilities of a Financial Oversight Panel established pursuant to Article 1H of this Code [105 ILCS 5/1H-5 et seq.], or any or all of these, proposed to be paid and if it appears that they were authorized and allowed for proper school purposes it shall adopt a resolution so declaring and set forth and describe in detail such teachers' orders and claims and liabilities of a Financial Oversight Panel established pursuant to Article 1H of this Code and the adoption of the resolution shall establish the validity

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thereof, notwithstanding the amount of such orders and claims and liabilities of a Financial Oversight Panel established pursuant to Article 1H of this Code may exceed in whole or in part any applicable statutory debt limit in force at the time the indebtedness evidenced by such orders and claims and liabilities of a Financial Oversight Panel established pursuant to Article 1H of this Code was incurred. The resolution shall also declare the intention of the district to issue bonds for the purpose of paying such teachers' orders or claims or liabilities of a Financial Oversight Panel established pursuant to Article 1H of this Code, and direct that notice of such intention be published at least once in a newspaper published within the district and if there be no newspaper published within the district then notice shall be published in a newspaper having general circulation within the district. The notice shall set forth (1) the time within which a petition may be filed requesting the submission of the proposition to issue the bonds as hereinafter in this Section provided; (2) the specific number of voters required to sign the petition; and [(3)] the date of the prospective referendum. The recording officer of the district shall provide a petition form to any individual requesting one. If within 30 days after such publication of such notice a petition is filed with the recording officer of the district, signed by the voters of the district equal to 10% or more of the registered voters of the district requesting that the proposition to issue bonds as authorized by Section 19-8 be submitted to the voters thereof, then the district shall not be authorized to issue bonds as provided by Section 19-8 until the proposition has been submitted to and approved by a majority of the voters voting on the proposition at a regular scheduled election. The board shall certify the proposition to the proper election authorities for submission in accordance with the general election law. If no such petition with the requisite number of signatures is filed within said 30 days, or if any and all petitions filed are invalid, then the district shall thereafter be authorized to issue bonds for the purposes and as provided in Section 19-8.

(Source: P.A. 87-767; 97-429, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-9.

Effect of Amendments. The 2011 amendment by P.A. 97-429, effective August 16, 2011, in the first sentence, substituted "or liabilities of a Financial Oversight Panel established pursuant to Article 1H of this Code, or any or all of these" for "or both" preceding "proposed to be" and inserted "and liabilities of a Financial Oversight Panel established pursuant to Article 1H of this Code" following "and claims" wherever it appears; and substituted "or liabilities of a Financial Oversight Panel established pursuant to Article 1H of this Code" for "or both" in the second sentence.

CASE NOTES

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Election Procedure

- Absentee Voters

The error of an election judge in signing the absentee voters' names to the affidavit of voters, rather than in the poll book, did not affect the honesty or integrity of the election regarding a school tax increase. Goble v. Board of Educ., 83 Ill. App. 3d 284, 38 Ill. Dec. 919, 404 N.E.2d 343 (5 Dist. 1980).

§ 105 ILCS 5/19-10. Payment of liabilities resulting from division of assets

Sec. 19-10. Payment of liabilities resulting from division of assets. Any school district having a population of 500,000 or less is authorized to issue bonds for the purpose of the payment of any liabilities or obligations imposed on such district resulting from the division of assets as provided by Article 7 of this Act [105 ILCS 5/7-01 et seq.] or Article 5 of this Act [105 ILCS 5/5-1 et seq.] as it existed prior to July 1, 1952.

Within 90 days after the final order of the county board of school trustees dividing assets as a result of creating a new district the school board of such newly created district or the school board of a district a portion of whose territory is included within the newly created district shall pay any amounts due.

The school board of a district obligated or liable under the provisions of this Section shall issue bonds to the extent necessary to enable the district to discharge its obligations unless funds can otherwise be made available for such purpose, and such bonds may be issued in an amount, including existing indebtedness, in excess of any statutory limitation as to debt but subject to the 5% constitutional limit.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-10.

§ 105 ILCS 5/19-11. Amount of indebtedness - Interest and maturity

Sec. 19-11. Amount of indebtedness - Interest and maturity. Any district which has complied with Section 19-9 [105 ILCS 5/19-9] and which is authorized to issue bonds under Sections 19-8, 19-9 and 19-10 [105 ILCS 5/19-8, 105 ILCS 5/19-9 and 105 ILCS 5/19-10] shall adopt a resolution specifying the amount of indebtedness to be funded, whether for the purpose of paying claims, or for paying teachers' orders, or for paying liabilities or obligations imposed on any district resulting from the division of assets as provided by Article 7 of this Act [105 ILCS 5/7-01 et seq.] or Article 5 of this Act [105

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ILCS 5/5-1 et seq.] as it existed prior to July 1, 1952. The resolution shall set forth the date, denomination, rate of interest and maturities of the bonds, fix all details with respect to the issue and execution thereof, and provide for the levy of a tax sufficient to pay both principal and interest of the bonds as they mature. The bonds shall bear interest at a rate not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, payable annually or semi-annually, as the governing body may determine, and mature in not more than 20 years from date thereof.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-11.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

§ 105 ILCS 5/19-12. Filing copy of resolution - Extension of taxes

Sec. 19-12. Filing copy of resolution - Extension of taxes. A certified copy of the resolution authorizing the issue of bonds under Sections 19-8 through 19-11 [105 ILCS 5/19-8 through 105 ILCS 5/19-11] shall be filed with the county clerk of each county in which any portion of any such district is situated and the county clerk shall annually extend taxes against all of the taxable property situated in the county and contained in such district in amounts sufficient to pay maturing principal and interest of such bonds without limitation as to rate or amount and in addition to and in excess of any taxes that may now or hereafter be authorized to be levied by Sections 12-11 and 12-11.1 [105 ILCS 5/12-11 and 105 ILCS 5/12-11.1] or 17-2 through 17-9 [105 ILCS 5/17-2 through 105 ILCS 5/17-9].

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(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-12.

§ 105 ILCS 5/19-13. Sale or exchange of bonds

Sec. 19-13. Sale or exchange of bonds. Any bonds issued under Sections 19-8 to 19-11 [105 ILCS 5/19-8 to 105 ILCS 5/19-11], inclusive, may be exchanged par for par for claims or unpaid orders for wages of teachers, or both, or may be sold and the proceeds received used to pay such claims or orders.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-13.

§ 105 ILCS 5/19-14. Validity of indebtedness - Validity of bonds

Sec. 19-14. Validity of indebtedness - Validity of bonds. Purchasers of such bonds shall not be obligated to inquire into the validity of the indebtedness funded, and bonds issued under Sections 19-8 through 19-11 [105 ILCS 5/19-8 through 105 ILCS 5/19-11] shall be the valid and binding obligations of the school district, notwithstanding the fact that the bonds, together with existing indebtedness, either in whole or in part, exceed any statutory debt limitation in force at the time the bonds are issued.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-14.

Refunding Bonds

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§ 105 ILCS 5/19-15. Authority to refund bonds

Sec. 19-15. Authority to refund bonds. When a school district has issued bonds or other evidence of indebtedness for any purposes which are binding and subsisting legal obligations and remaining outstanding, the school board of the district may, upon the surrender of the bonds or other evidences of indebtedness, issue in lieu thereof to the holders or owners thereof or to other persons for money with which to pay them, new bonds or other evidences of indebtedness, according to the subsequent provisions of this Article.

For the purposes of Sections 19-15 through 19-26 [105 ILCS 5/19-15 through 105 ILCS 5/19-26] "school district" includes any non-high school district.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-15.

CASE NOTES

Legislative Intent

- Building Tax

The legislature intended that the county clerk should extend a tax sufficient to pay maturing obligations of the refunding bonds, and never intended that the building tax of school districts should be reduced to meet such refunding obligations. York Community High Sch. Dist. v. Wagemann, 375 Ill. 193, 30 N.E.2d 675 (1940).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Education Law," see 21 S. Ill. U.L.J. 815 (1997).

§ 105 ILCS 5/19-16. Resolution for issuance

Sec. 19-16. Resolution for issuance. The corporate authorities of any school district, without submitting the question to the electors thereof for approval, may authorize by resolution the issuance of refunding bonds (1) to refund its bonds prior to their maturity; (2) to refund its unpaid matured bonds; (3) to refund matured coupons evidencing interest

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upon its unpaid bonds; (4) to refund interest at the coupon rate upon its unpaid matured bonds that has accrued since the maturity of those bonds; (5) to refund its bonds which by their terms are subject to redemption before maturity; and (6) to refund other valid and subsisting evidences of indebtedness that are due and payable. The refunding bonds and the procedure for issuing them shall comply with Sections 19-5 through 19-7 [105 ILCS 5/19-5 through 105 ILCS 5/19-7].

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-16.

CASE NOTES

Analysis

Authority to Issue Bonds
- On Outstanding Debt
- Scope
Debts of Predecessor Districts
Repayment of Debts

Authority to Issue Bonds

- On Outstanding Debt

The corporate authority of any school district, without either authorization of the voters of the district by referendum vote, or right and opportunity in the voters to petition for an election to vote on such proposition, may authorize by resolution the issuance of refunding bonds to refund its outstanding bonded debt. Prohm v. Non-High Sch. Dist. No. 216, 7 Ill. 2d 421, 130 N.E.2d 917 (1955).

- Scope

Where the refunding bonds issued by the Board of Education did not create an additional indebtedness, then the Board was not acting as the corporate authority of the detached territory for the purpose of creating a new indebtedness; rather, said board was acting as an agency of the state, to take such steps as may be necessary to refund the existing bonded debt and provide for its liquidation. Prohm v. Non-High Sch. Dist. No. 216, 7 Ill. 2d 421, 130 N.E.2d 917 (1955).

Debts of Predecessor Districts

Because consolidated district had the power under this section to issue refunding bonds to repay its debts and the bonds of the prior districts became debts of the consolidated district, the district

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formed by annexation or consolidation retained the power to issue refunding bonds to cover the bonded debts incurred by its predecessor districts. Lemont-Bromberek Combined Sch. Dist. No. 113(A) v. Walter, 279 Ill. App. 3d 847, 216 Ill. Dec. 488, 665 N.E.2d 548 (1 Dist. 1996), appeal denied, 168 Ill. 2d 595, 219 Ill. Dec. 566, 671 N.E.2d 733 (1996).

Repayment of Debts

The School Code does not preclude a combined district from issuing refunding bonds to repay the debts of one of the districts that formed the combined district. Lemont-Bromberek Combined Sch. Dist. No. 113(A) v. Walter, 279 Ill. App. 3d 847, 216 Ill. Dec. 488, 665 N.E.2d 548 (1 Dist. 1996), appeal denied, 168 Ill. 2d 595, 219 Ill. Dec. 566, 671 N.E.2d 733 (1996).

§ 105 ILCS 5/19-17. Registrability - Interest - Time and place of payment

Sec. 19-17. Registrability - Interest - Time and place of payment. The refunding bonds may be made registerable as to principal and may bear interest at a rate not to exceed the maximum rate authorized by the Bond Authorization Act, as amended at the time of the making of the contract, if issued before January 1, 1972 and not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, if issued after January 1, 1972, payable at such time and place as may be provided in the bond resolution. They shall remain valid even though one or more of the officers executing the bonds ceases to hold his or their offices before the bonds are delivered.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-17.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

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§ 105 ILCS 5/19-18. Details prescribed - Levy and collection of tax

Sec. 19-18. Details prescribed - Levy and collection of tax. The resolution authorizing refunding bonds shall prescribe all details thereof and shall provide for the levy and collection of a direct annual tax upon all the taxable property within the school district sufficient to pay the principal thereof and interest thereon as it matures. The tax shall be levied and collected in like manner as the general taxes for the school district and shall not be included within any limitation of rate for general purposes as now or hereafter provided by law but shall be excluded therefrom and be in addition thereto and in excess thereof.

A certified copy of the bond resolution shall be filed with the county clerk of the county in which the school district or any portion thereof is situated, and shall constitute the authority for the extension and collection of refunding bond and interest taxes as required by the constitution.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-18.

CASE NOTES

Analysis

Detachment
- Effect on Tax Liability
Refunding Bonds
Tax Levy
- Mandatory

Detachment

- Effect on Tax Liability

Where the plaintiff was obligated to pay her share of the bonded indebtedness existing before the detachment of her property, this obligation was affected neither by subsequent detachment nor the refunding of the bonded indebtedness; the new levy for the refunding bonds merely continued, in a new form, the prior levy for the funding and refunding bonds which were still a subsisting debt upon the detached territory, and the constitutional prohibition against taxation of territory beyond the boundaries of a municipality was not pertinent (see Ill.Const., 1970, Art. IX, § 7). Prohm v. Non-High Sch. Dist. No. 216, 7 Ill. 2d 421, 130 N.E.2d 917 (1955).

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Refunding Bonds

This section permitted the board of consolidated district to spread the obligation to repay refunding bonds to all taxpayers in the newly formed district. Lemont-Bromberek Combined Sch. Dist. No. 113(A) v. Walter, 279 Ill. App. 3d 847, 216 Ill. Dec. 488, 665 N.E.2d 548 (1 Dist. 1996), appeal denied, 168 Ill. 2d 595, 219 Ill. Dec. 566, 671 N.E.2d 733 (1996).

The School Code does not preclude a combined district from issuing refunding bonds to repay the debts of one of the districts that formed the combined district. Lemont-Bromberek Combined Sch. Dist. No. 113(A) v. Walter, 279 Ill. App. 3d 847, 216 Ill. Dec. 488, 665 N.E.2d 548 (1 Dist. 1996), appeal denied, 168 Ill. 2d 595, 219 Ill. Dec. 566, 671 N.E.2d 733 (1996).

Tax Levy

- Mandatory

After the issuance of funding or refunding bonds, the levy of the tax and collection of funds with which to discharge the obligation is mandatory. Prohm v. Non-High Sch. Dist. No. 216, 7 Ill. 2d 421, 130 N.E.2d 917 (1955).

§ 105 ILCS 5/19-19. Sale or exchange - Use of proceeds - Cancellation

Sec. 19-19. Sale or exchange - Use of proceeds - Cancellation. The refunding bonds may be exchanged for the bonds to be refunded on the basis of dollar for dollar for the par value of the bonds, interest coupons, and interest not represented by coupons, if any, or they may be sold at not less than their par value and accrued interest. The proceeds received from their sale shall be used to pay the bonds, interest coupons, and interest not represented by coupons, if any, without any prior appropriation therefor under any budget law.

Bonds and interest coupons which have been received in exchange or paid shall be cancelled and the obligation for interest, not represented by coupons, which has been discharged, shall be evidenced by a written acknowledgment of the exchange or payment thereof.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-19.

§ 105 ILCS 5/19-20. Execution - Maturity - Callable

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Sec. 19-20. Execution - Maturity - Callable. The refunding bonds shall be of such form and denomination, payable at such place, bear such date, and be executed by such officials as may be provided by the corporate authorities of the school district in the bond resolution. They shall mature within not to exceed 20 years from their date, and may be made callable on any interest payment date at par and accrued interest after notice has been given at the time and in the manner provided in the bond resolution; however, the limitation shall be 25 years for bonds issued by Valley View Community Unit School District 365U that refund (i) bonds authorized under Section 19-3 of this Code [105 ILCS 5/19-3] or (ii) bonds refunding or continuing to refund bonds authorized under Section 19-3 of this Code.

(Source: Laws 1961, p. 31; P.A. 96-1546, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-20.

Effect of Amendments. The 2011 amendment by P.A. 96-1546, effective March 10, 2011, added the language beginning with "however, the limitation" through the end of the second sentence.

§ 105 ILCS 5/19-21. Redemption of bonds

Sec. 19-21. Redemption of bonds. If there is no default in payment of the principal of or interest upon the refunding bonds, and a sum of money equal to the amount of interest that will accrue on the refunding bonds and a sum of money equal to the amount of principal that will become due thereon within the next 6 months period has been set aside, the treasurer of the school district shall use the money available from the proceeds of taxes levied for the payment of the refunding bonds in calling them for payment, if, by their terms, they are subject to redemption. However, a school district may provide in the bond resolution that whenever the school district is not in default in payment of the principal of or interest upon the refunding bonds and has set aside the sums of money provided in this section for interest accruing and principal maturing within the next 6 months period, the money available from the proceeds of taxes levied for the payment of refunding bonds shall be used, first, in the purchase of the refunding bonds at the lowest price obtainable, but not to exceed their par value and accrued interest, after sealed tenders for their purchase have been advertised for as may be directed by the corporate authorities thereof.

Refunding bonds called for payment and paid or purchased under this section shall be marked paid and cancelled.

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(Source: Laws 1963, p. 3062.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-21.

CASE NOTES

Taxation

- Multiple Districts

To require taxpayers to pay taxes for the redemption of the bonded indebtedness of two separate and distinct school districts was without the bounds of the limitations set forth in a prior similar provision. Spence v. Selcke, 404 Ill. 98, 88 N.E.2d 41 (1949).

§ 105 ILCS 5/19-22. Reduction of tax levy - Bonds purchased and cancelled

Sec. 19-22. Reduction of tax levy - Bonds purchased and cancelled. Whenever refunding bonds are purchased and cancelled as provided in Section 19-21 [105 ILCS 5/19-21], the taxes thereafter to be extended for payment of the principal of and the interest on the remainder of the issue shall be reduced in an amount equal to the principal of and the interest that would have thereafter accrued upon the refunding bonds so cancelled. A resolution shall be adopted by the corporate authorities of the school district finding these facts. A certified copy of this resolution shall be filed with the county clerk specified in Section 19-18 [105 ILCS 5/19-18], whereupon he shall reduce and extend such tax levies in accordance therewith.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-22.

§ 105 ILCS 5/19-23. Reduction of tax for payment of bonds refunded - Use of tax receipts

Sec. 19-23. Reduction of tax for payment of bonds refunded - Use of tax receipts. Whenever refunding bonds are issued, proper reduction of taxes theretofore levied for the

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payment of the bonds refunded and next to be extended for collection shall be made by the county clerk upon receipt of a certificate signed by the treasurer of the school district, or by the president and clerk or other corresponding officers of the school district, showing the bonds refunded and the tax to be abated.

Money which becomes available from taxes that were levied for prior years for payment of bonds or interest coupons that were paid or refunded before those taxes were collected, after payment of all warrants that may have been issued in anticipation of these taxes, shall be placed in the sinking fund account provided in Section 19-24 [105 ILCS 5/19-24]. It shall be used to purchase, call for payment, or to pay at maturity refunding bonds and interest thereon as herein provided.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-23.

CASE NOTES

Refunding Bonds

- Separate Tax

As this section provides that whenever refunding bonds are issued, proper reduction of taxes levied for the payment of the bonds refunded and next to be extended for collection shall be made by the county clerk upon receipt of a signed certificate, showing the bonds refunded and the tax to be abated, the legislature made plain its intention that refunding bonds were to be retired by a tax separate and distinct from the levies provided for by 105 ILCS 5/17-7. People ex rel. Oller v. Missouri Pac. R.R., 388 Ill. 271, 58 N.E.2d 47 (1944).

§ 105 ILCS 5/19-24. Proceeds of taxes - Special fund - Use - Investment

Sec. 19-24. Proceeds of taxes - Special fund - Use - Investment.

Money received from the proceeds of taxes levied for payment of the principal of and interest upon refunding bonds shall be deposited in a special fund of the school district, designated as the "Refunding Bond and Interest Sinking Fund Account of .....". This fund shall be applied to the purchase or payment of refunding bonds and the interest thereon as provided in Sections 19-16 through 19-26 [105 ILCS 5/19-16 through 105 ILCS 5/19-26].

If the money in this fund is not immediately necessary for the payment of refunding bonds or if refunding bonds can not be purchased before maturity, then, under the direction of the corporate authorities of the school district, the money may be invested by

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the treasurer of the school district in bonds or other interest bearing obligations of the United States or in bonds of the State of Illinois.

The maturity date of the securities in which this money is invested shall be prior to the due date of any issue of refunding bonds of the investing school district. The corporate authorities may sell these securities whenever necessary to obtain cash to meet bond and interest payments.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-24.

§ 105 ILCS 5/19-25. Information to owners of bonds - Refunding agreements

Sec. 19-25. Information to owners of bonds - Refunding agreements. The corporate authorities of a school district may take any action that may be necessary to inform the owners of unpaid bonds regarding the financial condition of the school district, the necessity of refunding its unpaid bonds and readjusting the maturities thereof in order that sufficient taxes may be collected to take care of these bonds, and thus re-establish the credit of the school district. The corporate authorities may enter into any agreement required to prepare and carry out any refunding plan and, without any previous appropriation therefor under any budget law, may incur and pay expenditures that may be necessary in order to accomplish the refunding of the bonds of the school district.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-25.

§ 105 ILCS 5/19-26. Construction and application of provisions

Sec. 19-26. Construction and application of provisions. Sections 19-16 through 19-25 [105 ILCS 5/19-16 through 105 ILCS 5/19-25] apply to any school district, regardless of the population of said school district and of the law under which it is organized and operating, and constitute complete authority for issuing refunding bonds as therein provided without reference to other laws. Those sections shall be construed as conferring powers in addition to, but not as limiting powers granted under, other laws or other

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provisions of this Act.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-26.

CASE NOTES

Bond Issuance

The School Code does not preclude a combined district from issuing refunding bonds to repay the debts of one of the districts that formed the combined district. Lemont-Bromberek Combined Sch. Dist. No. 113(A) v. Walter, 279 Ill. App. 3d 847, 216 Ill. Dec. 488, 665 N.E.2d 548 (1 Dist. 1996), appeal denied, 168 Ill. 2d 595, 219 Ill. Dec. 566, 671 N.E.2d 733 (1996).

Refunding Surplus After Bonds Paid

§ 105 ILCS 5/19-27. Payment to treasurer

Sec. 19-27. Payment to treasurer. Whenever all the bonds of any school district have been paid and cancelled upon the records of the school treasurer and there remains in the hands of the county collector or any ex-county collector, the county treasurer, or ex-county treasurer, any balance to the credit of the bond fund of the school township, the county collector or ex-county collector, county treasurer or ex-county treasurer shall pay to the school treasurer the balance of such funds in his hands and the school treasurer shall give his receipt therefor.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-27.

§ 105 ILCS 5/19-28. Distribution and apportionment

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Sec. 19-28. Distribution and apportionment. At the first regular semi-annual meeting of the trustees of the township after the receipt of the funds mentioned in Section 19-27 [105 ILCS 5/19-27], they shall distribute and apportion the funds among the districts or fractions of districts of the township whose treasurer is the township treasurer, and among the school boards or board of incorporated cities, towns or school districts in such township having a treasurer other than the township treasurer, in proportion to the number of children under 21 years of age in each. The funds thus apportioned shall be placed on the books of the treasurer to the credit of the respective districts and the same shall be paid out by the treasurer on the legal orders of the school boards of the proper districts, except such part of the fund as may be payable to the boards of education of incorporated cities, towns or school districts having a treasurer other than the township treasurer, which portion of the fund shall be paid by the township treasurer to the treasurer of the board of education.

(Source: P.A. 86-1441.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-28.

§ 105 ILCS 5/19-29. Computation of debt incurring power

Sec. 19-29. Computation of debt incurring power. In computing the debt incurring power of any school district where there has been included in any such school district only a part of any former school district which at the time of such inclusion has outstanding bonded indebtedness, a proportionate amount of such bonded indebtedness shall be chargeable to such school district based upon the ratio that the assessed valuation of taxable property as equalized and determined by the Department of Revenue in that part of the territory of such former school district that has been included in any such school district bears to the total assessed valuation of the former school district as equalized and determined by the Department of Revenue for the year in which the change occurred, and the proportionate amount of such bonded indebtedness shall be chargeable against such school district in determining its debt incurring power.

(Source: P.A. 81-1509.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-29.

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CASE NOTES

New District

- Determining New Debt Limit

To give consistency and harmony to the end that a school reorganization program may continue rapidly and successfully, there must be read into former Ill. Rev. Stat., ch. 122, para. 19-33 (see now this section) the intention to exclude situations involving the creation of new districts out of non-high school territory. People ex rel. Community High Sch. v. Hupe, 2 Ill. 2d 434, 118 N.E.2d 328 (1954).

In cases of partial inclusion, the outstanding bonds of the underlying districts were to be taken into account in determining the debt limit of the new district. People ex rel. Ashwill v. Illinois Cent. R.R., 1 Ill. 2d 392, 115 N.E.2d 755 (1953).

OPINIONS OF ATTORNEY GENERAL

Real Estate Taxes

- Illustrative Cases

Certain territory was detached from school district A and annexed to school district B, the county clerk should extend real estate taxes to the property of each district, as it exists on and after the annexation, a proportionate amount of the bonded indebtedness of school district A to be determined according to this section. 1984 Op. Atty. Gen. 1

Certain territory was detached from school district A and annexed to school district B, the county clerk, when he extends the real estate taxes for the year should include the property in the detached area in the general school levy for school district B. 1984 Op. Atty. Gen. 1

§ 105 ILCS 5/19-30. [Joint agreement; bonds]

Sec. 19-30. Any school district which, pursuant to Section 10-22.31b of this Act [105 ILCS 5/10-22.31b], has entered into a joint agreement with one or more school districts to acquire, build, establish and maintain sites and buildings for area vocational purposes may by proper resolution borrow money for the purpose of acquiring sites and buildings and building, equipping, improving and remodeling buildings and sites for vocational education purposes and as evidence of such indebtedness issue bonds without referendum, provided that the project which is the subject of such joint agreement has been designated by the State Board of Vocational Education and Rehabilitation as an Area Secondary Vocational Center, and further provided (a) that such district has been authorized by referendum to impose the tax under Section 17-2.4 of this Act [105 ILCS 5/17-2.4], or (b) that such district, not having been so authorized by such referendum, by resolution has authorized the payment of its proportionate share of the cost of the area vocational center under such agreement from funds raised by building tax levies. The proceeds of the sale of such bonds may, in the discretion of the school board of the

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district issuing such bonds, be transferred to the Capital Development Board, any other school district which is a party to such joint agreement or the State or any of its agencies provided, however, that such board first determines that such transfer is necessary in order to accomplish the purposes for which such bonds are issued. The amount of the bonds issued by any such participating school district shall not exceed the district's estimated proportionate share of the cost of the area vocational center as budgeted under such agreement and as certified by the State Board of Vocational Education and Rehabilitation, and provided that (a) any such participating district which has been authorized by referendum to impose the tax under Section 17-2.4 of this Act [105 ILCS 5/17-2.4], shall thereafter reduce the maximum statutory amount which may be raised by such levy under Section 17-2.4 [105 ILCS 5/17-2.4] to the extent of the total amount to be yielded by the imposition of the tax authorized by this Section, and (b) any such participating district, not having been so authorized by such referendum, but having by resolution authorized the payment of its proportionate share of the cost of the area vocational center under such joint agreement from funds raised by building tax levies, shall thereafter, annually reduce the maximum statutory amount which may be raised by such building tax levies to the extent of the amount to be yielded annually by the imposition of the tax authorized by this Section. Such bonds shall bear interest at a rate of not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, and shall mature within 20 years from date.

The failure on the part of a school district to abate or reduce such taxes as described in (a) and (b) shall not constitute a forfeiture by the district of its right to levy the direct annual tax authorized by this Section.

In order to authorize and issue such bonds, the school board shall adopt a resolution fixing the amount of the bonds, the date thereof, maturities thereof, rates of interest thereof, place of payment and denomination, which shall be in denominations of not less than $100 and not more than $5,000 and provide for the levy and collection of a direct annual tax upon all the taxable property in the school district sufficient to pay the principal of and interest on such bonds to maturity. Upon the filing in the office of the County Clerk or Clerks of the County or Counties in which the school district is located of a certified copy of such resolution it shall be the duty of such County Clerk or Clerks to extend the tax therefor, in addition to and in excess of all other taxes heretofore or hereafter authorized to be levied by such school district.

This Section shall be cumulative and it shall constitute complete authority for site acquisitions and building programs and for the issuance of bonds as provided for hereunder, notwithstanding any other statute or law to the contrary.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and

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(iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-30.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

§ 105 ILCS 5/19-31. [Education of children with disabilities; joint agreement; bonds]

Sec. 19-31. Any school district which, pursuant to Section 10-22.31b of this Act [105 ILCS 5/10-22.31b], or under the provisions of the "Intergovernmental Cooperation Act" [5 ILCS 220/1 et seq.], has entered into a joint agreement or contract with one or more school districts to acquire, build, establish and maintain sites and buildings for the education of one or more of the types of children with disabilities as defined in Sections 14-1.02 through 14-1.07 of this Act [105 ILCS 5/14-1.02 through 105 ILCS 5/14-1.07], may by proper resolution of the board borrow money for the purpose of acquiring sites and buildings and building, equipping, improving and remodeling buildings and sites for such special education purposes, and as evidence of such indebtedness issue bonds, provided that the project which is the subject of such joint agreement has been approved by the State Board of Education. The proceeds of the sale of such bonds may, in the discretion of the school board of the district issuing such bonds, be transferred to the Capital Development Board, any other school district which is a party to such joint agreement, or the State or any of its agencies provided, however, that such board first determines that such transfer is necessary in order to accomplish the purposes for which such bonds are issued. The amount of the bonds issued by any such participating school district shall not exceed the district's estimated proportionate share of the cost of such special education purposes as budgeted under such joint agreement or contract, and shall be amortized over a period not exceeding the number of years of levy remaining available to such participating school district under Section 17-2.2a of this Act [105 ILCS 5/17-2.2a], and provided further that any such participating district shall thereafter reduce the maximum statutory amount which may be raised by the tax levy authorized under Section 17-2.2a of this Act [105 ILCS 5/17-2.2a] to the extent of the total amount to be yielded by the imposition of the tax authorized by this Section. The failure on the part of a school district to abate or reduce such taxes shall not however constitute a forfeiture by the district of its right to levy the direct annual tax authorized by this Section.

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Such bonds shall bear interest at a rate of not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, and shall mature within 8 years from the date of issuance. In order to authorize and issue such bonds, the school board shall adopt a resolution fixing the amount of the bonds, the date thereof, maturities thereof, rates of interest thereof, place of payment and denomination, which shall be in denominations of not less than $100 and not more than $5,000 and provide for the levy and collection of a direct annual tax upon all the taxable property in the school district sufficient to pay the principal of and interest on such bonds to maturity, but not to exceed the levy authorized under Section 17-2.2a [105 ILCS 5/17-2.2a]. Upon the filing in the office of the County Clerk or Clerks of the County or Counties in which the school district is located of a certified copy of such resolution it shall be the duty of such County Clerk or Clerks to extend the tax therefor, in addition to and in excess of all other taxes heretofore or hereafter authorized to be levied by such school district.

This Section shall be cumulative and it shall constitute complete authority for site acquisitions and building programs and for the issuance of bonds as provided for hereunder, notwithstanding any other statute or law to the contrary.

Notwithstanding the other provisions of this Section, any school district qualifying for a special education construction grant pursuant to the Capital Development Board Act may finance the construction project by levying the tax authorized by Section 17-2.2a [105 ILCS 5/17-2.2a] and issuing bonds in the manner provided for in this Section at a rate not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, with a maturity date not more than 20 years from the date of issuance.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts [5 ILCS 70/8] are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts [5 ILCS 70/8], regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts [5 ILCS 70/8], and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts [5 ILCS 70/8] are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4; 89-397, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19-31.

Cross References.

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As to the Onmibus Bond Acts, see 5 ILCS 70/8.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the first paragraph, in the first sentence, substituted "children with disabilities as" for "handicapped children" in the first paragraph.

ARTICLE 19a.

REVENUE BONDS FOR EXHIBITION FACILITIES

§ 105 ILCS 5/19a-1. [Exhibition facility defined]

Sec. 19a-1. In this Article, "exhibition facility" means a building or stadium constructed to be used primarily for athletic spectator sports and not facilities built primarily for physical education instruction.

(Source: Laws 1967, p. 2778.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19a-1.

§ 105 ILCS 5/19a-2. Revenue bonds for exhibition facilities

Sec. 19a-2. Revenue bonds for exhibition facilities. Any school board is authorized to:

a.Acquire by purchase, construct, enlarge, improve, equip, complete, operate, control and manage an exhibition facility.

b.Charge for the use of such a facility.

c.Hold in its treasury all funds derived from the operation of the facility and apply them toward the retirement of any revenue bonds issued in connection with the facility.

d.Enter into contracts touching in any manner any matter within the objects and purposes of this Article.

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e.Pledge the revenues raised from such a facility for the payment of any bonds issued to pay for the facility as provided in this Article.

f.Borrow money and issue and sell bonds at such price as the school board may determine to finance and to refund or refinance any and all bonds issued and sold by the board pursuant to this Article. No bonds issued under this Article, however, may bear interest in excess of the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, computed to the maturity of the bonds.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19a-2.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

§ 105 ILCS 5/19a-3. [Charges and fees]

Sec. 19a-3. Whenever bonds are issued pursuant to this Article, the school board must establish charges or fees for the use of the exhibition facility to pay the principal and interest on the bonds.

(Source: Laws 1967, p. 2778.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 19a-3.

§ 105 ILCS 5/19a-4. [General obligation bonds]

Sec. 19a-4. If the school board determines subsequent to the original issue of bonds under this Article that the income from the facility is insufficient to pay the principal and interest on those bonds, the board, after submitting the question to referendum in accordance with the general election law, may pay the deficit by issuing general obligation bonds in the manner prescribed by Article 19 of this Act [105 ILCS 5/19-1 et seq.].

(Source: P.A. 81-1489.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19a-4.

§ 105 ILCS 5/19a-5. [No personal liability]

Sec. 19a-5. Members of a school board issuing bonds pursuant to this Article incur no personal liability thereby.

(Source: Laws 1967, p. 2778.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 19a-5.

Article 19b.

School Energy Conservation and Saving Measures

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§ 105 ILCS 5/19b-1. Definitions

Sec. 19b-1. Definitions. In this Article words and phrases have the meanings set forth in the following Sections preceding Section 19b-2 [105 ILCS 5/19b-2].

(Source: P.A. 87-1106, § 2.)

Effective Date. This Article became effective January 1, 1993, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 5/19b-1.05. Area vocational center

Sec. 19b-1.05. Area vocational center. "Area vocational center" means an area vocational center created by joint agreement between school districts.

(Source: P.A. 92-767, § 5.)

Effective Date. Section 99 of P.A. 92-767 made this section effective upon becoming law. The Act was approved August 6, 2002.

§ 105 ILCS 5/19b-1.1. Energy conservation measure

Sec. 19b-1.1. Energy conservation measure. "Energy conservation measure" means any improvement, repair, alteration, or betterment of any building or facility owned or operated by a school district or area vocational center or any equipment, fixture, or furnishing to be added to or used in any such building or facility, subject to the building code authorized in Section 2-3.12 of this Code [105-5/2-3.12], that is designed to reduce energy consumption or operating costs, and may include, without limitation, one or more of the following:

(1) Insulation of the building structure or systems within the building.

(2) Storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption.

(3) Automated or computerized energy control systems.

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(4) Heating, ventilating, or air conditioning system modifications or replacements.

(5) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code for the lighting system after the proposed modifications are made.

(6) Energy recovery systems.

(7) Energy conservation measures that provide long-term operating cost reductions.

(Source: P.A. 87-1106, § 2; 92-767, § 5; 95-612, § 5.)

Effect of Amendments. The 2002 amendment by P.A. 92-767, effective August 6, 2002, inserted "or area vocational center" in the introductory paragraph of this section.

The 2007 amendment by P.A. 95-612, effective September 11, 2007, in the introductory paragraph, inserted "subject to the building code authorized in Section 2-3.12 of this Code"; and made related changes.

§ 105 ILCS 5/19b-1.2. Guaranteed energy savings contract

Sec. 19b-1.2. Guaranteed energy savings contract. "Guaranteed energy savings contract" means a contract for: (i) the implementation of an energy audit, data collection, and other related analyses preliminary to the undertaking of energy conservation measures; (ii) the evaluation and recommendation of energy conservation measures; (iii) the implementation of one or more energy conservation measures; and (iv) the implementation of project monitoring and data collection to verify post-installation energy consumption and energy-related operating costs. The contract shall provide that all payments, except obligations on termination of the contract before its expiration, are to be made over time and that the savings are guaranteed to the extent necessary to pay the costs of the energy conservation measures. Energy saving may include energy reduction and offsetting sources of renewable energy funds including renewable energy credits and carbon credits.

(Source: P.A. 87-1106, § 2; 96-1197, § 10.)

Effect of Amendments. The 2010 amendment by P.A. 96-1197, effective July 22, 2010, added the last sentence.

§ 105 ILCS 5/19b-1.3. Qualified provider

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Sec. 19b-1.3. Qualified provider. "Qualified provider" means a person or business whose employees are experienced and trained in the design, implementation, or installation of energy conservation measures. The minimum training required for any person or employee under this Section shall be the satisfactory completion of at least 40 hours of course instruction dealing with energy conservation measures. A qualified provider to whom the contract is awarded shall give a sufficient bond to the school district or area vocational center for its faithful performance.

(Source: P.A. 87-1106, § 2; 92-767, § 5.)

Effect of Amendments. The 2002 amendment by P.A. 92-767, effective August 6, 2002, inserted "or area vocational center" in the last sentence of this section.

§ 105 ILCS 5/19b-1.4. Request for proposals

Sec. 19b-1.4. Request for proposals. "Request for proposals" means a competitive selection achieved by negotiated procurement. The request for proposals shall be submitted to the administrators of the Capital Development Board Procurement Bulletin for publication and through at least one public notice, at least 30 days before the request date in a newspaper published in the district or vocational center area, or if no newspaper is published in the district or vocational center area, in a newspaper of general circulation in the area of the district or vocational center, from a school district or area vocational center that will administer the program, requesting innovative solutions and proposals for energy conservation measures. Proposals submitted shall be sealed. The request for proposals shall include all of the following:

(1) The name and address of the school district or area vocation center.

(2) The name, address, title, and phone number of a contact person.

(3) Notice indicating that the school district or area vocational center is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.

(4) The date, time, and place where proposals must be received.

(5) The evaluation criteria for assessing the proposals.

(6) Any other stipulations and clarifications the school district or area vocational center may require.

(Source: P.A. 87-1106, § 2; 92-767, § 5; 95-612, § 5; 96-1197, § 10.)

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Effect of Amendments. The 2002 amendment by P.A 92-767, effective August 6, 2002, inserted "or vocational center area" twice and inserted "or vocational center" in five places throughout this section.

The 2007 amendment by P.A. 95-612, effective September 11, 2007, in the introductory paragraph, in the first sentence inserted "competitive selection achieved by"; and in the second sentence, inserted "in the Illinois Procurement Bulletin and", and substituted "14 days" for "10 days".

The 2010 amendment by P.A. 96-1197, effective July 22, 2010, in the second sentence of the introductory language, substituted "submitted to the administrators of the Capital Development Board Procurement Bulletin for publication" for "announced in the Illinois Procurement Bulletin" and "30 days" for "14 days."

§ 105 ILCS 5/19b-2. Evaluation of proposal

Sec. 19b-2. Evaluation of proposal. Before entering into a guaranteed energy savings contract under Section 19b-3 [105 ILCS 5/19b-3], a school district or area vocational center shall submit a request for proposals. The school district or area vocational center shall evaluate any sealed proposal from a qualified provider. The evaluation shall analyze the estimates of all costs of installations, modifications or remodeling, including, without limitation, costs of a pre-installation energy audit or analysis, design, engineering, installation, maintenance, repairs, debt service, conversions to a different energy or fuel source, or post-installation project monitoring, data collection, and reporting. The evaluation shall include a detailed analysis of whether either the energy consumed or the operating costs, or both, will be reduced. If technical assistance is not available by a licensed architect or registered professional engineer on the school district or area vocational center staff, then the evaluation of the proposal shall be done by a registered professional engineer or architect, who is retained by the school district or area vocational center. A licensed architect or registered professional engineer evaluating a proposal under this Section must not have any financial or contractual relationship with a qualified provider or other source that would constitute a conflict of interest. The school district or area vocational center may pay a reasonable fee for evaluation of the proposal or include the fee as part of the payments made under Section 19b-4 [105 ILCS 5/19b-4].

(Source: P.A. 87-1106, § 2; 92-767, § 5; 95-612, § 5.)

Effect of Amendments. The 2002 amendment by P.A 92-767, effective August 6, 2002, inserted "or area vocational center" in five places throughout this section.

The 2007 amendment by P.A. 95-612, effective September 11, 2007, added the sixth sentence.

§ 105 ILCS 5/19b-3. Award of guaranteed energy savings contract

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Sec. 19b-3. Award of guaranteed energy savings contract. Sealed proposals must be opened by a member or employee of the school board or governing board of the area vocational center, whichever is applicable, at a public opening at which the contents of the proposals must be announced. Each person or entity submitting a sealed proposal must receive at least 13 days notice of the time and place of the opening. The school district or area vocational center shall select the qualified provider that best meets the needs of the district or area vocational center. The school district or area vocational center shall provide public notice of the meeting at which it proposes to award a guaranteed energy savings contract of the names of the parties to the proposed contract and of the purpose of the contract. The public notice shall be made at least 10 days prior to the meeting. After evaluating the proposals under Section 19b-2 [105 ILCS 5/19b-2], a school district or area vocational center may enter into a guaranteed energy savings contract with a qualified provider if it finds that the amount it would spend on the energy conservation measures recommended in the proposal would not exceed the amount to be saved in either energy or operational costs, or both, within a 20-year period from the date of installation, if the recommendations in the proposal are followed. Contracts let or awarded must be submitted to the administrators of the Capital Development Board Procurement Bulletin for publication.

(Source: P.A. 87-1106, § 2; 92-767, § 5; 95-612, § 5; 96-1197, § 10.)

Effect of Amendments. The 2002 amendment by P.A 92-767, effective August 6, 2002, inserted "or area vocational center" in four places throughout, inserted "or governing board of the area vocational center, whichever is applicable," in the first sentence and substituted "20-year period" for "10-year period" in the last sentence of this section.

The 2007 amendment by P.A. 95-612, effective September 11, 2007, added the sixth sentence.

The 2010 amendment by P.A. 96-1197, effective July 22, 2010, substituted "submitted to the administrators of the Capital Development Board Procurement Bulletin for publication" for "published in the next available subsequent Illinois Procurement Bulletin" in the last sentence.

§ 105 ILCS 5/19b-4. Guarantee

Sec. 19b-4. Guarantee. The guaranteed energy savings contract shall include a written guarantee of the qualified provider that either the energy or operational cost savings, or both, will meet or exceed within 20 years the costs of the energy conservation measures. The qualified provider shall reimburse the school district or area vocational center for any shortfall of guaranteed energy savings projected in the contract. A qualified provider shall provide a sufficient bond to the school district or area vocational center for the installation and the faithful performance of all the measures included in the contract. The guaranteed energy savings contract may provide for payments over a period of time, not to exceed 20 years from the date of final installation of the measures.

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(Source: P.A. 87-1106, § 2; 88-615, § 13; 92-767, § 5.)

Effect of Amendments. The 1994 amendment by P.A. 88-615, effective September 9, 1994, in the last sentence, added at the end "from the date of final installation of the measures".

The 2002 amendment by P.A 92-767, effective August 6, 2002, substituted "20 years" for "10 years" in the first and last sentences and inserted "or area vocational center" in the second and third sentences of this section.

§ 105 ILCS 5/19b-5. Installment payment contract; lease purchase agreement

Sec. 19b-5. Installment payment contract; lease purchase agreement. A school district or school districts in combination or an area vocational center may enter into an installment payment contract or lease purchase agreement with a qualified provider or with a third party, as authorized by law, for the funding or financing of the purchase and installation of energy conservation measures by a qualified provider. Every school district or area vocational center may issue certificates evidencing the indebtedness incurred pursuant to the contracts or agreements. Any such contract or agreement shall be valid whether or not an appropriation with respect thereto is first included in any annual or supplemental budget adopted by the school district or area vocational center. Each contract or agreement entered into by a school district or area vocational center pursuant to this Section shall be authorized by official action of the school board or governing board of the area vocational center, whichever is applicable. The authority granted in this Section is in addition to any other authority granted by law.

If an energy audit is performed by an energy services contractor for a school district within the 3 years immediately preceding the solicitation, then the school district must publish as a reference document in the solicitation for energy conservation measures the following:

(1) an executive summary of the energy audit provided that the school district may exclude any proprietary or trademarked information or practices; or

(2) the energy audit provided that the school district may redact any proprietary or trademarked information or practices.

A school district may not withhold the disclosure of information related to (i) the school district's consumption of energy, (ii) the physical condition of the school district's facilities, and (iii) any limitations prescribed by the school district.

The solicitation must include a written disclosure that identifies any energy services contractor that participated in the preparation of the specifications issued by the school district. If no energy services contractor participated in the preparation of the specifications issued by the school district, then the solicitation must include a written disclosure that no energy services contractor participated in the preparation of the specifications for the school district. The written disclosure shall be published in the

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Capital Development Board Procurement Bulletin with the Request for Proposal.

(Source: P.A. 87-1106, § 2; 92-767, § 5; 95-612, § 5; 96-1197, § 10; 97-333, § 185.)

Note.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 2002 amendment by P.A 92-767, effective August 6, 2002, inserted "or area vocational center" in three places throughout, inserted "or an area vocational center" in the first sentence, and added "or governing board of the area vocational center, whichever is applicable" at the end of this section.

The 2007 amendment by P.A. 95-612, effective September 11, 2007, in the first sentence, inserted "or with a third-party lender, as authorized by law", and added "by a qualified provider".

The 2010 amendment by P.A. 96-1197, effective July 22, 2010, in the section heading, inserted "contract" and added "agreement" to the end; in the first sentence of the first paragraph, deleted "lender" following "third-party" and inserted "funding or financing of the"; substituted "official action" for "resolution" in the next to last sentence of the first paragraph; added the last sentence to the end of the first paragraph; and added the last two paragraphs.

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, made a stylistic change.

§ 105 ILCS 5/19b-6. Term; budget and appropriations

Sec. 19b-6. Term; budget and appropriations. Guaranteed energy savings contracts may extend beyond the fiscal year in which they become effective. The school district or area vocational center shall include in its annual budget and appropriations measures for each subsequent fiscal year any amounts payable under guaranteed energy savings contracts during that fiscal year. Sections 2-3.12, 3-14.20, and 10-22.36 of the School Code [105 ILCS 5/2-3.12, 105 ILCS 5/3-14.20, and 105 ILCS 5/10-22.36] shall apply to this Article 19b [105 ILCS 19b-1 et seq.].

(Source: P.A. 87-1106, § 2; 92-767, § 5.)

Effect of Amendments. The 2002 amendment by P.A 92-767, effective August 6, 2002, in the second sentence, inserted "or area vocational center" and substituted "annual budget" for "annual school budget".

§ 105 ILCS 5/19b-7. Operational and energy cost savings

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Sec. 19b-7. Operational and energy cost savings. The school district or area vocational center shall document the operational and energy cost savings specified in the guaranteed energy savings contract and designate and appropriate that amount for an annual payment of the contract. If the annual energy savings are less than projected under the guaranteed energy savings contract the qualified provider shall pay the difference as provided in Section 19b-4 [105 ILCS 5/19b-4].

(Source: P.A. 87-1106, § 2; 92-767, § 5.)

Effect of Amendments. The 2002 amendment by P.A 92-767, effective August 6, 2002, inserted "or area vocational center" in the second sentence.

§ 105 ILCS 5/19b-8. Available funds

Sec. 19b-8. Available funds. A school district or area vocational center may use funds designated for operating or capital expenditures for any guaranteed energy savings contract including purchases using installment payment contracts or lease purchase agreements. A school district or area vocational center that enters into such a contract or agreement may covenant in such contract or agreement that payments made thereunder shall be payable from the first funds legally available in each fiscal year.

(Source: P.A. 87-1106, § 2; 88-45, § 3-38; 92-767, § 5.)

Effect of Amendments. The 1993 amendment by P.A. 88-45, effective July 6, 1993, in the second sentence substituted "covenant" for "convenant".

The 2002 amendment by P.A 92-767, effective August 6, 2002, inserted "or area vocational center" in the first and last sentences of this section.

§ 105 ILCS 5/19b-9. Funding

Sec. 19b-9. Funding. State aid and other amounts appropriated for distribution to or reimbursement of a school district or area vocational center shall not be reduced as a result of energy savings realized from a guaranteed energy savings contract or a lease purchase agreement for the purchase and installation of energy conservation measures.

(Source: P.A. 87-1106, § 2; 92-767, § 5.)

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Effect of Amendments. The 2002 amendment by P.A 92-767, effective August 6, 2002, inserted "or area vocational center" near the middle of this section.

§ 105 ILCS 5/19b-10: Repealed by P.A. 92-767, § 10, effective August 6, 2002.

§ 105 ILCS 5/19b-15. Applicable laws

Sec. 19b-15. Applicable laws. Other State laws and related administrative requirements apply to this Article, including, but not limited to, the following laws and related administrative requirements: the Illinois Human Rights Act [775 ILCS 5/1-101 et seq.], the Prevailing Wage Act [820 ILCS 130/0.01 et seq.], the Public Construction Bond Act [30 ILCS 550/0.01 et seq.], the Public Works Preference Act [30 ILCS 560/0.01 et seq.] (repealed on June 16, 2010 by Public Act 96-929), the Employment of Illinois Workers on Public Works Act [30 ILCS 570/0.01 et seq.], the Freedom of Information Act [5 ILCS 140/1 et seq.], the Open Meetings Act [5 ILCS 120/1 et seq.], the Illinois Architecture Practice Act of 1989, the Professional Engineering Practice Act of 1989 [225 ILCS 305/1 et seq.], the Structural Engineering Practice Act of 1989 [225 ILCS 340/1 et seq.], the Local Government Professional Services Selection Act [50 ILCS 510/0.01 et seq.], and the Contractor Unified License and Permit Bond Act [50 ILCS 830/1 et seq.].

(Source: P.A. 95-612, § 5; 97-333, § 185.)

Note.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 95-612 makes this section effective upon becoming law. The Act was approved September 11, 2007.

Effect of Amendments. The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, inserted "(repealed on June 16, 2010 by Public Act 96-929)."

§ 105 ILCS 5/19b-20. Historic preservation

Sec. 19b-20. Historic preservation. In order to protect the integrity of historic buildings, no provision of this Article shall be interpreted to require the implementation of energy conservation measures that conflict with respect to any property eligible for, nominated

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to, or entered on the National Register of Historic Places, pursuant to the National Historic Preservation Act of 1966 [16 U.S.C. § 470 et seq.], or the Illinois Register of Historic Places, pursuant to the Illinois Historic Preservation Act [20 ILCS 3410/1 et seq.].

(Source: P.A. 95-612, § 5.)

Effective Date. Section 99 of P.A. 95-612 makes this section effective upon becoming law. The Act was approved September 11, 2007.

Article 20.

Working Cash Fund

§ 105 ILCS 5/20-1. Authority to create working cash fund

Sec. 20-1. Authority to create working cash fund. Authority to create working cash fund. In each school district, whether organized under general law or special charter, having a population of less than 500,000 inhabitants, a fund to be known as a "Working Cash Fund" may be created and maintained consistent with the limitations of this Article, for the purpose of enabling the district to have in its treasury at all time sufficient money to meet demands thereon for expenditures for corporate purposes.

(Source: P.A. 80-272; 96-1277, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 20-1.

Effect of Amendments. The 2010 amendment by P.A. 96-1277, effective July 26, 2010, substituted "consistent with the limitations of" for "and administered in the manner prescribed in"; deleted "ordinary and necessary" following "thereon for"; and made a related change.

CASE NOTES

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Analysis

Constitutionality
Future Misuse
Legislative Intent
Purpose
Replenishment of Funds
- Bond Issues

Constitutionality

This Article, which provides for the creating maintenance and administration of a working cash fund, is not ambiguous or obscure; there is no uncertainty or conflict as to the meaning of any of its provisions. Bell v. School Dist. No. 84, 407 Ill. 406, 95 N.E.2d 496 (1950).

Future Misuse

An objectors' contention that this section was capable of future misuse was insufficient to call its validity into question. In re Walgenbach, 166 Ill. App. 3d 629, 117 Ill. Dec. 88, 520 N.E.2d 78 (2 Dist. 1988).

Legislative Intent

The legislature's intent under this section is to stabilize school finances by authorizing a school board to establish an internal source whereby a school may borrow money to pay for its ordinary and necessary expenditures. School Dist. No. 158 v. Palatine Nat'l Bank, 117 Ill. App. 3d 14, 72 Ill. Dec. 507, 452 N.E.2d 760 (2 Dist. 1983), rev'd on other grounds, 104 Ill. 2d 121, 83 Ill. Dec. 595, 470 N.E.2d 1015 (1984).

Purpose

The purpose of the working cash fund is to provide a reserve upon which school districts may draw in anticipation of tax collections. In re Walgenbach, 104 Ill. 2d 121, 83 Ill. Dec. 595, 470 N.E.2d 1015 (1984).

A working cash fund could be created under this section and abolished under 105 ILCS 5/20-8 annually, thus supplementing the educational fund annually. Bell v. School Dist. No. 84, 407 Ill. 406, 95 N.E.2d 496 (1950).

Replenishment of Funds

- Bond Issues

Where school districts had previously created working cash funds, they had authority to issue bonds to replenish those funds, and the taxes levied to pay principal and interest on the bonds were valid. In re Walgenbach, 104 Ill. 2d 121, 83 Ill. Dec. 595, 470 N.E.2d 1015 (1984).

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§ 105 ILCS 5/20-2. Indebtedness and bonds

Sec. 20-2. Indebtedness and bonds. For the purpose of creating, re-creating, or increasing a working cash fund, the school board of any such district may incur an indebtedness and issue bonds as evidence thereof in an amount or amounts not exceeding in the aggregate 85% of the taxes permitted to be levied for educational purposes for the then current year to be determined by multiplying the maximum educational tax rate or rates applicable to such school district by the last assessed valuation or assessed valuations as determined at the time of the issue of said bonds plus 85% of the last known entitlement of such district to taxes as by law now or hereafter enacted or amended, imposed by the General Assembly of the State of Illinois to replace revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes, pursuant to Article IX, Section 5, paragraph (c) of the Constitution of the State of Illinois [Illinois Const., Art. IX, § 5]. The bonds shall bear interest at not more than the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, if issued before January 1, 1972 and not more than the maximum rate authorized by law and shall mature within 20 years from the date thereof. Subject to the foregoing limitations as to amount, the bonds may be issued in an amount including existing indebtedness which will not exceed the constitutional limitation as to debt, notwithstanding any statutory debt limitation to the contrary. The school board shall before or at the time of issuing the bonds provide for the collection of a direct annual tax upon all the taxable property within the district sufficient to pay the principal thereof at maturity and to pay the interest thereon as it falls due, which tax shall be in addition to the maximum amount of all other taxes, either educational; transportation; operations and maintenance; or fire prevention and safety fund taxes, now or hereafter authorized and in addition to any limitations upon the levy of taxes as provided by Sections 17-2 through 17-9 [105 ILCS 5/17-2 through 105 ILCS 5/17-9].

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts [5 ILCS 70/8] are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4; 86-970; 86-1028; 87-984, § 1; 88-641, § 10; 94-234, § 5; 94-1019, § 10; 96-1277, § 5.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 20-2.

Section 90 of P.A. 94-1019 contains a savings provision, and section 95 contains a no acceleration or delay provision.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

Effect of Amendments. The 1992 amendment, effective January 1, 1993, added "or fire prevention and safety" to the end of the next to last sentence in the first paragraph.

The 1994 amendment by P.A. 88-641, effective September 9, 1994, in the first paragraph, in the first sentence, added the language at the end beginning "except that"; and added the fourth sentence.

The 2005 amendment by P.A. 94-234, effective July 1, 2006, rewrote the section, deleting provisions concerning financially distressed school districts.

The 2006 amendment by P.A. 94-1019, effective July 10, 2006, in the first paragraph added "or rates" and "or assessed valuations" in the first sentence.

The 2010 amendment by P.A. 96-1277, effective July 26, 2010, in the first paragraph, inserted "re-creating, or increasing" in the first sentence, substituted "law" for "the Bond Authorization Act, as amended at the time of the making of the contract, if issued before January 1, 1972 and not more than the maximum rate authorized by the Bond Authorization Act, as amended at the time of the making of the contract, if issued after January 1, 1972" in the second sentence, and deleted the former last sentence, which read: "The bonds may be issued redeemable at the option of the school board of the district issuing them on any interest payment date on or after 5 years from date of issue."

CASE NOTES

Analysis

Compliance
- Circumvention of Limits
Debt Limitation
Future Misuse
Legislative Intent
- In General
- Availability of Funds

Compliance

- Circumvention of Limits

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The procedure followed by school district did not permit it to circumvent the statutory tax limits or to levy an illegal tax against the objectors. In re Walgenbach, 166 Ill. App. 3d 629, 117 Ill. Dec. 88, 520 N.E.2d 78 (2 Dist. 1988).

Debt Limitation

School district did not exceed the debt limitation in this section by its working cash fund bond issue. In re 1981 Delinquent Taxes, 190 Ill. App. 3d 908, 137 Ill. Dec. 939, 546 N.E.2d 1052 (3 Dist. 1989).

Future Misuse

Objectors' contention that this section was capable of future misuse was insufficient to call its validity into question. In re Walgenbach, 166 Ill. App. 3d 629, 117 Ill. Dec. 88, 520 N.E.2d 78 (2 Dist. 1988).

Legislative Intent

- In General

The legislative intent of this section is to authorize the issuance of bonds to obtain funds for an existing working cash fund. In re Walgenbach, 104 Ill. 2d 121, 83 Ill. Dec. 595, 470 N.E.2d 1015 (1984).

- Availability of Funds

The intent of this section is to provide funds which may be available for transfer to the operating funds of the district, such as its educational, operations, building or maintenance funds. In re Walgenbach, 104 Ill. 2d 121, 83 Ill. Dec. 595, 470 N.E.2d 1015 (1984).

§ 105 ILCS 5/20-3. Tax levy

Sec. 20-3. Tax levy. For the purpose of providing moneys for a working cash fund, the school board of any such school district may also levy annually upon all the taxable property of their district a tax, known as the "working cash fund tax," not to exceed 0.05% of value, as equalized or assessed by the Department of Revenue; provided that no such tax shall be levied if bonds are issued in amount or amounts equal in the aggregate to the limitation set forth in Section 20-2 [105 ILCS 5/20-2] for the creation, re-creation, or increase of a working cash fund. The collection of the tax shall not be anticipated by the issuance of any warrants drawn against it. The tax shall be levied and collected, except as otherwise provided in this Section, in like manner as the general taxes of the district, and shall be in addition to the maximum of all other taxes, either educational; transportation; operations and maintenance; or fire prevention and safety fund taxes, now or hereafter to be levied for school purposes. It may be levied by separate resolution by the last Tuesday in December in each year or it may be included in the certificate of tax levy filed under Section 17-11 [105 ILCS 5/17-11].

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(Source: P.A. 86-970; 87-984, § 1; 88-641, § 10; 94-234, § 5; 96-1277, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 20-3.

Effect of Amendments. The 1992 amendment, effective January 1, 1993, added "or fire prevention and safety" to the end of the next to the last sentence.

The 1994 amendment by P.A. 88-641, effective September 9, 1994, in the first paragraph, in the first sentence, substituted "0.05%" for ".05%", in the second sentence, inserted "by a school district that is not certified as a financially distressed district under Section 19-1.5" and added the language at the end beginning "and (3)".

The 2005 amendment by P.A. 94-234, effective July 1, 2006, rewrote the section, deleting provisions concerning debt for financially distressed school districts.

The 2010 amendment by P.A. 96-1277, effective July 26, 2010, inserted "re-creation, or increase" in the first sentence; and substituted "December" for "September" in the last sentence.

CASE NOTES

Analysis

Compliance
- Circumvention of Limits
Construction
Purpose
Rate Not Excessive
Separate Resolution
- Educational Taxes
- Not Exclusive
- Permissive
- Timeliness

Compliance

- Circumvention of Limits

The procedure followed by school district did not permit it to circumvent the statutory tax limits or to levy an illegal tax against the objectors. In re Walgenbach, 166 Ill. App. 3d 629, 117 Ill. Dec. 88, 520 N.E.2d 78 (2 Dist. 1988).

Construction

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The use of the permissive "may" in the last sentence, when read in the context of the whole of this section, clearly mandates its ordinary meaning throughout. People ex rel. Condon v. Commonwealth Edison Co., 64 Ill. App. 3d 165, 21 Ill. Dec. 39, 380 N.E.2d 1215 (3 Dist. 1978).

Purpose

The clear import of this section is and has been a grant of power by the legislature to the various school districts to levy an additional tax for a working cash fund if they so desire. People ex rel. Condon v. Commonwealth Edison Co., 64 Ill. App. 3d 165, 21 Ill. Dec. 39, 380 N.E.2d 1215 (3 Dist. 1978).

Rate Not Excessive

A school district did not exceed the tax rate limitation in this section when levying a working cash fund tax. In re 1981 Delinquent Taxes, 190 Ill. App. 3d 908, 137 Ill. Dec. 939, 546 N.E.2d 1052 (3 Dist. 1989).

Separate Resolution

- Educational Taxes

The tax levy for a working cash fund, as provided for in this section need not be levied by a separate resolution and can be levied along with the educational and building taxes under 105 ILCS 5/17-11. People ex rel. Condon v. Commonwealth Edison Co., 64 Ill. App. 3d 165, 21 Ill. Dec. 39, 380 N.E.2d 1215 (3 Dist. 1978).

- Not Exclusive

No useful purpose could be effectuated by requiring a tax for a working cash fund to be levied exclusively by a resolution separate from a resolution under 105 ILCS 5/17-11. People ex rel. Condon v. Commonwealth Edison Co., 64 Ill. App. 3d 165, 21 Ill. Dec. 39, 380 N.E.2d 1215 (3 Dist. 1978).

The 1977 amendments to this section and 105 ILCS 5/17-11 provide expressly for the working cash fund to be levied by a separate resolution or by inclusion in the certificate of levy for other school district taxes pursuant to 105 ILCS 5/17-11; the legislative changes in both sections are consistent with the clear and popularly understood meaning given to the words used in the previous version of the statute, and the fact that a statute is made more specific does not require a court of law to construe the meaning of the amendment of the statute to indicate a change of legislative intent where such is not evidenced by the plainly understood meaning of the statute both before and after the amendment. People ex rel. Condon v. Commonwealth Edison Co., 64 Ill. App. 3d 165, 21 Ill. Dec. 39, 380 N.E.2d 1215 (3 Dist. 1978).

- Permissive

This section was fully complied with by including the levy for the working cash fund together with the regular school tax levy which was filed pursuant to 105 ILCS 5/17-11 rather than by a separate resolution as allowed by the use of the permissive "may" in this section. People ex rel. Condon v. Commonwealth Edison Co., 64 Ill. App. 3d 165, 21 Ill. Dec. 39, 380 N.E.2d 1215 (3 Dist. 1978).

- Timeliness

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If a school district elects to tax for a working cash fund, it may do so in a separate resolution provided it is made by the last Tuesday in September. People ex rel. Condon v. Commonwealth Edison Co., 64 Ill. App. 3d 165, 21 Ill. Dec. 39, 380 N.E.2d 1215 (3 Dist. 1978).

§ 105 ILCS 5/20-4. Use and reimbursement of fund

Sec. 20-4. Use and reimbursement of fund. This Section shall not apply in any school district which does not operate a working cash fund.

Moneys derived from the issuance of bonds as authorized by Section 20-2 [105 ILCS 5/20-2], or from any tax levied pursuant to Section 20-3 [105 ILCS 5/20-3], shall be used only for the purposes and in the manner provided in this Article. Moneys in the fund shall not be regarded as current assets available for school purposes. The school board may appropriate moneys to the working cash fund up to the maximum amount allowable in the fund, and the working cash fund may receive such appropriations and any other contributions. Moneys in the fund may be used by the school board for any and all school purposes and may be transferred in whole or in part to the general funds or both of the school district and disbursed therefrom in anticipation of the collection of taxes lawfully levied for any or all purposes, or in anticipation of such taxes as by law now or hereafter enacted or amended are imposed by the General Assembly of the State of Illinois to replace revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes, pursuant to Article IX, Section 5(c) of the Constitution of the State of Illinois [Illinois Const., Art. IX, § 5]. Moneys so transferred to any other fund shall be deemed to be transferred in anticipation of the collection of that part of the taxes so levied or to be received which is in excess of the amount thereof required to pay any warrants or notes and the interest thereon theretofore and thereafter issued in anticipation of the collection thereof and such taxes when collected shall be applied to the payment of any such warrants and the interest thereon, the amount estimated to be required to satisfy debt service and pension or retirement obligations, as set forth in Section 12 of the State Revenue Sharing Act [30 ILCS 115/12] and then to the reimbursement of such working cash fund as hereinafter provided.

Upon receipt by the school district of any taxes in anticipation of the collection whereof moneys of the working cash fund have been so transferred for disbursement, the fund shall immediately be reimbursed therefrom until the full amount so transferred has been retransferred to the fund. Unless the taxes so received and applied to the reimbursement of the working cash fund prior to the first day of the eighth month following the month in which due and unpaid real property taxes begin to bear interest are sufficient to effect a complete reimbursement of such fund for any moneys transferred therefrom in anticipation of the collection of such taxes, the working cash fund shall be reimbursed for the amount of the deficiency therein from any other revenues accruing to the educational fund, and the school board shall make provisions for the immediate reimbursement of the amount of any such deficiency in its next annual tax levy.

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(Source: P.A. 86-970; 87-984, § 1; 87-1168, § 1; 88-45, § 2-31; 96-1277, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 20-4.

Effect of Amendments. The 1992 amendment by P.A. 87-1168, effective September 18, 1992, substituted "any" for "educational, transportation or operations, building and maintenance purposes" in the fourth sentence of the second paragraph, substituted "any other" for "the educational, transportation or operation and maintenance" in the fifth sentence of the second paragraph, substituted "the State Revenue Sharing Act" for the longer title of the same act and made related stylistic changes.

The 1992 amendment by P.A. 87-984, effective January 1, 1993, in the middle of the fourth sentence of the second paragraph inserted "or fire prevention, safety, energy conservation, and school security"; inserted in the fifth sentence "or fire prevention and safety" following "operations and maintenance" and at the end of that paragraph substituted "the State Revenue Sharing Act" for "An Act in relation to State Revenue Sharing with local government entities, approved July 31, 1969, as amended".

The 1993 amendment by P.A. 88-45, effective July 6, 1993 combined the separate amendments of P.A. 87-984 and P.A. 87-1168.

The 2010 amendment by P.A. 96-1277, effective July 26, 2010, substituted "provided in this Article" for "hereinafter provided" in the first sentence of the second paragraph; and in the fourth sentence of the second paragraph, substituted "may" for "shall not" following "the fund" and "for any and all" for "in any manner other than to provide moneys with which to meet ordinary and necessary disbursements for salaries and other" following "school board."

CASE NOTES

Analysis

In General
Facts Showing Compliance
Future Misuse
Legislative Intent
- Availability of Funds
Net Worth Calculations

In General

This section is unambiguous; it directs and limits the use of the working cash fund by establishing a reimbursement procedure whereby money borrowed from the fund to pay necessary and ordinary expenditures is replaced with money that is collected by taxes or otherwise. School Dist. No. 158 v. Palatine Nat'l Bank, 117 Ill. App. 3d 14, 72 Ill. Dec. 507, 452 N.E.2d 760 (2 Dist. 1983), rev'd on other grounds, 104 Ill. 2d 121, 83 Ill. Dec. 595, 470 N.E.2d 1015 (1984).

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Facts Showing Compliance

The procedure followed by school district did not permit it to circumvent the statutory tax limits or to levy an illegal tax against the objectors. In re Walgenbach, 166 Ill. App. 3d 629, 117 Ill. Dec. 88, 520 N.E.2d 78 (2 Dist. 1988).

Future Misuse

Objectors' contention that this section was capable of future misuse was insufficient to call its validity into question. In re Walgenbach, 166 Ill. App. 3d 629, 117 Ill. Dec. 88, 520 N.E.2d 78 (2 Dist. 1988).

Legislative Intent

- Availability of Funds

The intent of the statute is to provide funds which may be available for transfer to the operating funds of the district, such as its educational, operations, building or maintenance funds. In re Walgenbach, 104 Ill. 2d 121, 83 Ill. Dec. 595, 470 N.E.2d 1015 (1984).

Net Worth Calculations

School districts 105 ILCS 5/20-4 working cash fund was properly included in a calculation of the district's net worth for purposes of 215 ILCS 5/534.3(b)(iv) because the payment of workers' compensation claims was precisely the type of expense for which the working cash fund could be used; thus, while the fund was not to be considered an asset "for school purposes," nothing prevented it from being considered an asset for net worth purposes under 215 ILCS 5/534.3. Cmty. Unit Sch. Dist. 200 v. Ill. Ins. Guar. Fund, 358 Ill. App. 3d 1056, 295 Ill. Dec. 321, 832 N.E.2d 472, 2005 Ill. App. LEXIS 681 (2 Dist. 2005).

§ 105 ILCS 5/20-5. Transfer to other fund

Sec. 20-5. Transfer to other fund. This Section shall not apply in any school district which does not operate a working cash fund.

Moneys in the working cash fund shall be transferred from the working cash fund to another fund of the district only upon the authority of the school board which shall from time to time by separate resolution direct the school treasurer to make transfers of such sums as may be required for the purposes herein authorized.

The resolution shall set forth (a) the taxes in anticipation of which such transfer is to be made and from which the working cash fund is to be reimbursed; (b) the entire amount of taxes extended, or which the school board estimates will be extended or received, for any year in anticipation of the collection of all or part of which such transfer is to be made; (c) the aggregate amount of warrants or notes theretofore issued in anticipation of the collection of such taxes together with the amount of interest accrued and which the school board estimates will accrue thereon; (d) the aggregate amount of receipts from taxes imposed to replace revenue lost by units of local government and school districts as

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a result of the abolition of ad valorem personal property taxes, pursuant to Article IX, Section 5(c) of the Constitution of the State of Illinois [Illinois Const., Art. IX, § 5], which the corporate authorities estimate will be set aside for the payment of the proportionate amount of debt service and pension or retirement obligations, as required by Section 12 of the State Revenue Sharing Act [30 ILCS 115/12]; and (e) the aggregate amount of money theretofore transferred from the working cash fund to the other fund in anticipation of the collection of such taxes. The amount which any such resolution shall direct the treasurer so to transfer, in anticipation of the collection of taxes levied or to be received for any year, together with the aggregate amount of such anticipation tax warrants or notes theretofore drawn against such taxes and the amount of interest accrued and estimated to accrue thereon and the aggregate amount of such transfers to be made in anticipation of the collection of such taxes and the amount estimated to be required to satisfy debt service and pension or retirement obligations, as set forth in Section 12 of the State Revenue Sharing Act, shall not exceed 85% of the actual or estimated amount of such taxes extended or to be extended or to be received as set forth in such resolution. At any time moneys are available in the working cash fund they shall be transferred to such other funds of the district and used for any and all school purposes so as to avoid, whenever possible, the issuance of anticipation tax warrants or notes.

Moneys earned as interest from the investment of the working cash fund, or any portion thereof, may be transferred from the working cash fund to another fund of the district that is most in need of the interest without any requirement of repayment to the working cash fund, upon the authority of the school board by separate resolution directing the school treasurer to make such transfer and stating the purpose in accordance with subsection (c) of Section 9 of the Local Government Debt Reform Act [30 ILCS 350/9].

(Source: P.A. 86-970; 87-984, § 1; 87-1168, § 1; 88-9, § 5; 88-45, § 2-31; 88-641, § 10; 94-234, § 5; 96-1277, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 20-5.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 110.25.

Effect of Amendments. The 1992 amendment by P.A. 87-1168, effective September 18, 1992, substituted "other" for "operations and maintenance, transportation or educational" in the section catchline and in clause (e) of the third paragraph; substituted "another" for "the educational, transportation or operations and maintenance" in the second paragraph and in the final paragraph following "working cash fund to"; deleted the same phrase in clause (a) of the third paragraph; and substituted "State Revenue Sharing Act" for the longer title of that act throughout this section.

The 1992 amendment by P.A. 87-984, effective January 1, 1993, inserted "or fire prevention and safety" in the section catchline following "educational" and in the first paragraph following

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"operations and maintenance"; at the beginning of the third paragraph inserted "or fire prevention, safety, energy conservation and school security" following "operations and maintenance"; in the middle and at the end of the third paragraph substituted "the State Revenue Sharing Act" for "An Act in relation to State Revenue Sharing with local government entities, approved July 31, 1969, as amended" in two places; in clause (e) of the third paragraph inserted "in fire prevention and safety" following "operations and maintenance"; and in the fourth paragraph inserted "or fire prevention and safety fund" following "operations and maintenance".

The 1993 amendment by P.A. 88-9, effective June 30, 1993, combined the amendments made by P.A. 87-984 and P.A. 87-1168, deleted "or fire prevention and safety" following "transfer to other" in the section catchline and throughout the section; and in the second paragraph, in the second sentence, substituted "including interest" for "except interest" and in the last paragraph substituted "may be transferred" for "shall be transferred".

The 1993 amendment by P.A. 88-45, effective July 6, 1993 combined the separate amendments of P.A. 87-984 and P.A. 87-1168.

The 1994 amendment by P.A. 88-641, effective September 9, 1994, in the third paragraph, in the second sentence, added the language at the end of the sentence beginning "in the case of".

The 2005 amendment by P.A. 94-234, effective July 1, 2006, rewrote the section, deleting provisions concerning debt for financially distressed school districts.

The 2010 amendment by P.A. 96-1277, effective July 26, 2010, in the second paragraph, substituted "in" for "including interest earned from investment of" following "Moneys" and deleted "as in this Section provided" preceding "shall be transferred"; substituted "such other funds of the district and used for any and all school purposes" for "the educational fund and disbursed for the payment of salaries and other school expenses" in the last sentence of the third paragraph; and in the last paragraph, inserted "that is most in need of the interest" and substituted "in accordance with subsection (c) of Section 9 of the Local Government Debt Reform Act" for "therefore as one herein authorized."

CASE NOTES

Transfer of Funds

- Invalid

School district could not properly permanently transfer the net proceeds of a bond issue from the district's working cash fund to its operations and maintenance; thus, repayment was required. Thereafter, with either an abolishment or an abatement, the amount of the abolishment or the abatement should have been permanently transferred from the working cash fund to the educational fund. G.I.S. Venture v. Novak, 388 Ill. App. 3d 184, 327 Ill. Dec. 623, 902 N.E.2d 744, 2009 Ill. App. LEXIS 39 (2 Dist. 2009).

§ 105 ILCS 5/20-6. Willful violation of law

Sec. 20-6. Willful violation of law. Any member of the school board of any school district to which this Article is applicable, or any other person holding any office, trust, or employment under such school district who wilfully violates any of the provisions of this

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Article shall be guilty of a business offense and fined not exceeding $10,000, and shall forfeit his right to his office, trust or employment and shall be removed therefrom. Any such member or other person shall be liable for any sum that may be unlawfully diverted from the working cash fund or otherwise used, to be recovered by such school district or by any taxpayer in the name and for the benefit of such school district in an appropriate civil action; provided that the taxpayer shall file a bond for all costs and be liable for all costs taxed against the school district in such suit, and judgment shall be rendered accordingly. Nothing herein shall bar any other remedies.

(Source: P.A. 79-1366.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 20-6.

§ 105 ILCS 5/20-7. Resolution for issuance of bonds - Submission to voters - Ballot

Sec. 20-7. Resolution for issuance of bonds - Submission to voters - Ballot. No school district may issue bonds under this Article unless it adopts a resolution declaring its intention to issue bonds for the purpose therein provided and directs that notice of such intention be published at least once in a newspaper published and having a general circulation in the district, if there be one, but if there is no newspaper published in such district then by publishing such notice in a newspaper having a general circulation in the district. The notice shall set forth (1) the intention of the district to issue bonds in accordance with this Article; (2) the time within which a petition may be filed requesting the submission of the proposition to issue the bonds; (3) the specific number of voters required to sign the petition; and (4) the date of the prospective referendum. At the time of publication of the notice and for 30 days thereafter, the recording officer of the district shall provide a petition form to any individual requesting one. If within 30 days after the publication a petition is filed with the recording officer of the district, signed by the voters of the district equal to 10% or more of the registered voters of the district requesting that the proposition to issue bonds as authorized by this Article be submitted to the voters thereof, then the district shall not be authorized to issue such bonds until the proposition has been certified to the proper election authorities and has been submitted to and approved by a majority of the voters voting on the proposition at a regular scheduled election in accordance with the general election law. If no such petition is so filed, or if any and all petitions filed are invalid, the district may issue the bonds. In addition to the requirements of the general election law the notice of the election shall set forth the intention of the district to issue bonds under this Article. The proposition shall be in substantially the following form:

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OFFICIAL BALLOT

Shall the Board of ..... of	
School District number	YES
County, Illinois, be authorized to	
issue bonds for a working cash	
fund as provided for by Article 20	NO
of the School Code?	

(Source: P.A. 87-767; 96-1277, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 20-7.

Effect of Amendments. The 2010 amendment by P.A. 96-1277, effective July 26, 2010, made stylistic changes.

CASE NOTES

Petition

- Insufficient Proof

The appellant having offered no proof to sustain his claim that the petition was signed by twenty percent of the legal voters of the district, the court did not err in refusing to hold that the board of education and its members and officials were acting in violation of this section in proceeding to issue district bonds for the purpose of rerating a working cash fund without first submitting the proposition of issuing said bonds to the voters of the district. Bell v. School Dist. No. 84, 407 Ill. 406, 95 N.E.2d 496 (1950).

§ 105 ILCS 5/20-8. Abolishment of working cash fund

Sec. 20-8. Abolishment of working cash fund. Any school district may abolish its working cash fund, upon the adoption of a resolution so providing, and direct the transfer of any balance in such fund to the educational fund at the close of the then current school year. Any outstanding loans to other funds of the district shall be paid or become payable to the educational fund at the close of the then current school year. Thereafter, all outstanding taxes of such school district levied pursuant to Section 20-3 [105 ILCS 5/20-3] shall be collected and paid into the educational fund.

Any balance in any working cash fund that is created in any school district on or after the effective date of this amendatory Act of 1991 (including all outstanding loans from any

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such working cash fund to other funds of the district and all outstanding taxes levied by the district under Section 20-3 to provide moneys for any such working cash fund) may, when such working cash fund is abolished, be used and applied for the purpose of reducing, by the balance in that working cash fund at the close of the school year in which the fund so created is abolished, the amount of the taxes that the school board of the school district otherwise would be authorized or required to levy for educational purposes for the immediately succeeding school year.

Any obligation incurred by any school district pursuant to Section 20-2 [105 ILCS 5/20-2] shall be discharged as therein provided.

(Source: P.A. 86-970; 87-643; 87-984, § 1; 96-1277, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 20-8.

Effect of Amendments. The 1992 amendment, effective January 1, 1993, inserted in the middle of the first paragraph "; or fire prevention and safety" and "or become payable" and in the middle of the second paragraph substituted "educational," for "education" and inserted ", or fire prevention and safety" following "operations and maintenance".

The 2010 amendment by P.A. 96-1277, effective July 26, 2010, substituted "other funds of the district" for "the transportation; operations and maintenance; or fire prevention and safety fund" in the second sentence of the first paragraph; and substituted "other funds" for "the educational, transportation, operations and maintenance, or fire prevention and safety fund" in the second paragraph.

CASE NOTES

Analysis

In General
Compliance
Compliance Not Found
Construed
- Not Inconsistent
Legislative Intent
- Replenishment of Funds

In General

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A school district acted within the statutory framework by aggrandizing its educational fund when it abolished its working cash fund. In re 1981 Delinquent Taxes, 190 Ill. App. 3d 908, 137 Ill. Dec. 939, 546 N.E.2d 1052 (3 Dist. 1989).

Compliance

The procedure followed by school district did not permit it to circumvent the statutory tax limits or to levy an illegal tax against the objectors. In re Walgenbach, 166 Ill. App. 3d 629, 117 Ill. Dec. 88, 520 N.E.2d 78 (2 Dist. 1988).

Compliance Not Found

School district could not properly permanently transfer the net proceeds of a bond issue from the district's working cash fund to its operations and maintenance; thus, repayment was required. Thereafter, with either an abolishment or an abatement, the amount of the abolishment or the abatement should have been permanently transferred from the working cash fund to the educational fund. G.I.S. Venture v. Novak, 388 Ill. App. 3d 184, 327 Ill. Dec. 623, 902 N.E.2d 744, 2009 Ill. App. LEXIS 39 (2 Dist. 2009).

Construed

- Not Inconsistent

As this section merely permits any school district to abolish its working class fund and transfer any balance in the fund to the educational fund of the district, and provides that thereafter any outstanding taxes levied under 105 ILCS 5/20-3 should be collected and paid into the educational fund, and as it does not make any change and does not purport to make any change in the maximum tax rates or any change in the manner in which the working cash fund is created, maintained or administered, there was nothing inconsistent between this section and the other sections of Article 20 which provide for the creation, maintenance and administration of a working cash fund. Bell v. School Dist. No. 84, 407 Ill. 406, 95 N.E.2d 496 (1950).

Legislative Intent

- Replenishment of Funds

The intent of this Article is to provide funds which may be available for transfer to the operating funds of the district, such as its educational, operations, building or maintenance funds, and repaid to the working cash fund upon collection of the anticipated taxes; to require that in order to have authority to issue bonds a school district must abolish its working cash fund, thus effecting a transfer of funds into its educational fund, is repugnant to the explicit statutory requirement that funds transferred from the working cash fund be repaid. In re Walgenbach, 104 Ill. 2d 121, 83 Ill. Dec. 595, 470 N.E.2d 1015 (1984).

§ 105 ILCS 5/20-9. [Recreation of working cash fund]

Sec. 20-9. A school district which has abolished or abated its working cash fund has the authority to again create a working cash fund at any time in the manner provided in this Article.

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(Source: Laws 1967, p. 642; P.A. 96-1277, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 20-9.

Effect of Amendments. The 2010 amendment by P.A. 96-1277, effective July 26, 2010, deleted "Nothing in this Article prevents" from the beginning; substituted "has the authority to again create" for "from again creating"; inserted "at any time"; and made a related change.

CASE NOTES

Analysis
Abatement of Fund
Compliance Shown

Abatement of Fund

School district could not properly permanently transfer the net proceeds of a bond issue from the district's working cash fund to its operations and maintenance; thus, repayment was required. Thereafter, with either an abolishment or an abatement, the amount of the abolishment or the abatement should have been permanently transferred from the working cash fund to the educational fund. G.I.S. Venture v. Novak, 388 Ill. App. 3d 184, 327 Ill. Dec. 623, 902 N.E.2d 744, 2009 Ill. App. LEXIS 39 (2 Dist. 2009).

Although not specifically provided in this statute, implicit in the provisions of this section is the authority to abate a working cash fund. In re Walgenbach, 104 Ill. 2d 121, 83 Ill. Dec. 595, 470 N.E.2d 1015 (1984).

Compliance Shown

The procedure followed by school district did not permit it to circumvent the statutory tax limits or to levy an illegal tax against the objectors. In re Walgenbach, 166 Ill. App. 3d 629, 117 Ill. Dec. 88, 520 N.E.2d 78 (2 Dist. 1988).

§ 105 ILCS 5/20-10. Abatement of working cash fund

Sec. 20-10. Abatement of working cash fund. Any school district may abate its working cash fund at any time, upon the adoption of a resolution so providing, and direct the transfer at any time of moneys in that fund to any fund or funds of the district most in need of the money, provided that the district maintains an amount to the credit of the working cash fund, including taxes levied pursuant to Section 20-3 [105 ILCS 5/20-3]

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and not yet collected and amounts transferred pursuant to Section 20-4 [105 ILCS 5/20-4] and to be reimbursed to the working cash fund, at least equal to 0.05% of the then current value, as equalized or assessed by the Department of Revenue, of the taxable property in the district. If necessary to effectuate the abatement, any outstanding loans to other funds of the district may be paid or become payable to the fund or funds to which the abatement is made. Any abatement of a school district's working cash fund prior to the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-1277] that would have complied with the provisions of this Section is hereby validated.

(Source: P.A. 96-1277, § 5.)

Effective Date. Section 99 of P.A. 96-1277 made this section effective upon becoming law. The Act was approved July 26, 2010.

Article 21.

Certification of Teachers

§§ 105 ILCS 5/21-0.01 through 105 ILCS 5/21-1: Repealed by P.A. 97-607, § 25, effective August 26, 2011.

§ 105 ILCS 5/21-1a. Tests required for certification and teacher preparation

Sec. 21-1a. Tests required for certification and teacher preparation. (a) After July 1, 1988, in addition to all other requirements, early childhood, elementary, special, high school, school service personnel, or, except as provided in Section 34-6 [105 ILCS 5/34-6], administrative certificates shall be issued to persons who have satisfactorily passed a test of basic skills, an assessment of professional teaching, and a test of subject matter knowledge, provided that a person who passed another state's test of basic skills as a condition of certification or of admission to a teacher preparation program shall not be required to pass this State's test of basic skills. The tests of basic skills and subject matter knowledge shall be the tests which from time to time are designated by the State Board of Education in consultation with the State Teacher Certification Board and may be tests prepared by an educational testing organization or tests designed by the State Board of

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Education in consultation with the State Teacher Certification Board. The areas to be covered by the test of basic skills shall include the basic skills of reading, writing, grammar and mathematics. The test of subject matter knowledge shall assess content knowledge in the specific subject field. The tests shall be designed to be racially neutral to assure that no person in taking the tests is thereby discriminated against on the basis of race, color, national origin or other factors unrelated to the person's ability to perform as a certificated employee. The score required to pass the tests of basic skills and subject matter knowledge shall be fixed by the State Board of Education in consultation with the State Teacher Certification Board. The tests shall be held not fewer than 3 times a year at such time and place as may be designated by the State Board of Education in consultation with the State Teacher Certification Board.

(b) (Blank).

(c) (Blank).

(d) The State Board of Education in consultation with the State Teacher Certification Board shall conduct a pilot administration of the tests by administering the test to students completing teacher education programs in the 1986-87 school year for the purpose of determining the effect and impact of testing candidates for certification.

Beginning with the 2002-2003 academic year, a student may not enroll in a teacher preparation program at a recognized teacher training institution until he or she has passed the basic skills test.

Beginning on the effective date of this amendatory Act of the 94th General Assembly [P.A. 94-208], prior to completing an approved teacher preparation program, a preservice education candidate must satisfactorily pass the test of subject matter knowledge in the discipline in which he or she will be certified to teach. The teacher preparation program may require passage of the test of subject matter knowledge at any time during the program, including prior to student teaching.

(e) The rules and regulations developed to implement the required test of basic skills and subject matter knowledge shall include the requirements of subsections (a), (b), and (c) and shall include specific regulations to govern test selection; test validation and determination of a passing score; administration of the tests; frequency of administration; applicant fees; frequency of applicants' taking the tests; the years for which a score is valid; and, waiving certain additional tests for additional certificates to individuals who have satisfactorily passed the test of basic skills and subject matter knowledge as required in subsection (a). The State Board of Education shall provide, by rule, specific policies that assure uniformity in the difficulty level of each form of the basic skills test and each subject matter knowledge test from test-to-test and year-to-year. The State Board of Education shall also set a passing score for the tests.

(f) (Blank).

(g) (Blank).

(h) (Blank).

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(i) This Section is repealed on June 30, 2012.

(Source: P.A. 86-361; 86-734; 86-1028; 86-1471; 86-1488; 87-242; 90-548, § 5-915; 90-811, § 5; 91-102, § 5; 92-734, § 5; 93-679, § 15; 94-208, § 5; 96-689, § 5; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 21-1a.

Section 95 of P.A. 97-607 contains a "No Acceleration or delay" provision.

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, added subsections (g) and (h).

The 1998 amendment by P.A. 90-811, effective January 26, 1999, changed "January" to "July" once in paragraph (g) and twice in paragraph (h).

The 1999 amendment by P.A. 91-102, effective July 12, 1999, in subsection (g) substituted "February 15, 2000" for "July 1, 1999" in the first sentence, and inserted "and State" following "indicators shall be based on national" in the third sentence.

The 2002 amendment by 92-734, effective July 25, 2002, amended the section heading and added the second and third paragraphs in subsection (d).

The 2004 amendment by P.A. 93-679, effective June 30, 2004, inserted the second sentence in subsection (a).

The 2005 amendment by P.A. 94-208, effective July 14, 2005, rewrote the last paragraph in (d), which formerly read "Beginning with the 2004-2005 academic year, a preservice education teacher may not student teach until he or she has passed the subject matter test in the discipline in which he or she will student teach."

The 2009 amendment by P.A. 96-689, effective July 1, 2009, in (a), substituted "an assessment of professional teaching, and a test of subject matter knowledge, provided that a person who passed another state's test of basic skills as a condition of certification or of admission to a teacher preparation program shall not be required to pass this State's test of basic skills" for "and subject matter knowledge" in the first sentence and deleted the former second sentence.

The 2011 amendment by P.A. 97-607, effective August 26, 2011, deleted the text of subsections (b), (c), and (f) through (h); and added (i).

RESEARCH REFERENCES

Validity and construction of statutes, ordinances, or regulations requiring competency tests of school teachers. 64 ALR4th 642.

§ 105 ILCS 5/21-1b. Subject endorsement on certificates

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Sec. 21-1b. Subject endorsement on certificates. (a) All certificates initially issued under this Article after June 30, 1986, shall be specifically endorsed by the State Board of Education for each subject the holder of the certificate is legally qualified to teach, such endorsements to be made in accordance with standards promulgated by the State Board of Education in consultation with the State Teacher Certification Board. The regional superintendent of schools, however, has the duty, after appropriate training, to accept and review all transcripts for new initial certificate applications and ensure that each applicant has met all of the criteria established by the State Board of Education in consultation with the State Teacher Certification Board. All certificates which are issued under this Article prior to July 1, 1986 may, by application to the State Board of Education, be specifically endorsed for each subject the holder is legally qualified to teach. Endorsements issued under this Section shall not apply to substitute teacher's certificates issued under Section 21-9 of this Code [105 ILCS 5/21-9].

(b) Until December 31, 2011, each application for endorsement of an existing teaching certificate shall be accompanied by a $30 nonrefundable fee.

(c) Beginning on January 1, 2012, each application for endorsement of an existing teaching certificate must be accompanied by a $50 nonrefundable fee.

(d) There is hereby created a Teacher Certificate Fee Revolving Fund as a special fund within the State Treasury. The proceeds of each endorsement fee shall be paid into the Teacher Certificate Fee Revolving Fund; and the moneys in that Fund shall be appropriated and used to provide the technology and other resources necessary for the timely and efficient processing of certification requests. The Teacher Certificate Fee Revolving Fund is not subject to administrative charge transfers authorized under Section 8h of the State Finance Act [30 ILCS 105/8h] from the Teacher Certificate Fee Revolving Fund into any other fund of this State.

(e) The State Board of Education and each regional office of education are authorized to charge a service or convenience fee for the use of credit cards for the payment of certification fees. This service or convenience fee may not exceed the amount required by the credit card processing company or vendor that has entered into a contract with the State Board or regional office of education for this purpose, and the fee must be paid to that company or vendor.

(f) This Section is repealed on June 30, 2013.

(Source: P.A. 85-416; 88-224, § 10; 91-102, § 5; 93-679, § 15; 93-1036, § 90; 95-331, § 540; 96-403, § 5; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 21-1b.

Section 95 of P.A. 97-607 contains a "No Acceleration or delay" provision.

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Effect of Amendments. The 1993 amendment by P.A. 88-224, effective August 6, 1993, added the second paragraph.

The 1999 amendment by P.A. 91-102, effective July 12, 1999, rewrote the last sentence of the first paragraph, which formerly provided: "Each application for endorsement of an existing teaching certificate shall be accompanied by a $20 nonrefundable fee"; and in the second paragraph rewrote the first sentence, which formerly provided: "Commencing January 1, 1994, an additional $10 shall be charged for each application for endorsement" and substituted "each $30" for "the additional $10" in the third sentence.

The 2004 amendment by P.A. 93-679, effective June 30, 2004, added the last paragraph.

The 2004 amendment by P.A. 93-1036, effective September 14, 2004, inserted the second sentence in the first paragraph.

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, combined earlier multiple amendments to the section.

The 2009 amendment by P.A. 96-403, effective August 13, 2009, added the last sentence of the second paragraph.

The 2011 amendment by P.A. 97-607, effective August 26, 2011, added the (a), (b), (d), and (e) designations; substituted "Until December 31, 2011" for "Commencing July 1, 1999" in (b); inserted (c); substituted "endorsement" for "$30" in the second sentence of (d); and added (f).

CASE NOTES

Subject Endorsement

Human Rights Commission erred in finding that a board of education had discriminated against complainant, a white male, in violation of 775 ILCS 5/2-102. When a placement office secretary testified that she had mistakenly written that applicants for a music teaching position had to be minorities instead of that minorities were encouraged to apply, the record did not support an ALJ's finding of a discriminatory motive, and the board had established that it would not have hired the complainant because he lacked a subject endorsement to teach music under 105 ILCS 5/21-1 and 5/21-1b and thus was unqualified. Bd. of Educ. v. Cady, 369 Ill. App. 3d 486, 307 Ill. Dec. 872, 860 N.E.2d 526, 2006 Ill. App. LEXIS 1147 (1 Dist. 2006), cert. denied, 2008 U.S. LEXIS 1049 (U.S. 2008).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Education Law," see 21 S. Ill. U.L.J. 815 (1997).

§ 105 ILCS 5/21-1c: Repealed by P.A. 97-607, § 25, effective August 26, 2011.

§ 105 ILCS 5/21-2. Grades of certificates

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Sec. 21-2. Grades of certificates. (a) All certificates issued under this Article shall be State certificates valid in every school district coming under the provisions of this Act and shall be limited in time and designated as follows: Provisional vocational certificate, temporary provisional vocational certificate, early childhood certificate, elementary school certificate, special certificate, secondary certificate, school service personnel certificate, administrative certificate, provisional certificate, and substitute certificate. The requirement of student teaching under close and competent supervision for obtaining a teaching certificate may be waived by the State Teacher Certification Board upon presentation to the Board by the teacher of evidence of one year or more of successful teaching experience on a valid certificate and graduation from a recognized institution of higher learning with a bachelor's degree or higher.

(b) Initial Teaching Certificate. Persons who (1) have completed an approved teacher preparation program, (2) are recommended by an approved teacher preparation program, (3) have successfully completed the Initial Teaching Certification examinations required by the State Board of Education, and (4) have met all other criteria established by the State Board of Education in consultation with the State Teacher Certification Board, shall be issued an Initial Teaching Certificate valid for 4 years of teaching, as defined in Section 21-14 of this Code [105 ILCS 5/21-14]. Initial Teaching Certificates shall be issued for categories corresponding to Early Childhood, Elementary, Secondary, and Special K-12, with special certification designations for Special Education, Bilingual Education, fundamental learning areas (including Language Arts, Reading, Mathematics, Science, Social Science, Physical Development and Health, Fine Arts, and Foreign Language), and other areas designated by the State Board of Education, in consultation with the State Teacher Certification Board. Notwithstanding any other provision of this Article, an Initial Teaching Certificate shall be automatically extended for one year for all persons who (i) have been issued an Initial Teaching Certificate that expires on June 30, 2004 and (ii) have not met, prior to July 1, 2004, the Standard Certificate requirements under paragraph (c) of this Section. An application and fee shall not be required for this extension.

(b-5) A person who holds an out-of-state certificate and who is otherwise eligible for a comparable Illinois certificate may be issued an Initial Certificate if that person has not completed 4 years of teaching. Upon completion of 4 years of teaching, the person is eligible for a Standard Certificate. Beginning July 1, 2004, an out-of-state candidate who has already earned a second-tier certificate in another state is not subject to any Standard Certificate eligibility requirements stated in paragraph (2) of subsection (c) of this Section other than completion of the 4 years of teaching. An out-of-state candidate who has completed less than 4 years of teaching and does not hold a second-tier certificate from another state must meet the requirements stated in paragraph (2) of subsection (c) of this Section, proportionately reduced by the amount of time remaining to complete the 4 years of teaching.

(c) Standard Certificate.

(1) Persons who (i) have completed 4 years of teaching, as defined in Section 21-14 of this Code, with an Initial Certificate or an Initial Alternative Teaching Certificate and have met all other criteria established by the State Board of Education in consultation

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with the State Teacher Certification Board, (ii) have completed 4 years of teaching on a valid equivalent certificate in another State or territory of the United States, or have completed 4 years of teaching in a nonpublic Illinois elementary or secondary school with an Initial Certificate or an Initial Alternative Teaching Certificate, and have met all other criteria established by the State Board of Education, in consultation with the State Teacher Certification Board, or (iii) were issued teaching certificates prior to February 15, 2000 and are renewing those certificates after February 15, 2000, shall be issued a Standard Certificate valid for 5 years, which may be renewed thereafter every 5 years by the State Teacher Certification Board based on proof of continuing education or professional development. Beginning July 1, 2003, persons who have completed 4 years of teaching, as described in clauses (i) and (ii) of this paragraph (1), have successfully completed the requirements of paragraphs (2) through (4) of this subsection (c), and have met all other criteria established by the State Board of Education, in consultation with the State Teacher Certification Board, shall be issued Standard Certificates. Notwithstanding any other provisions of this Section, beginning July 1, 2004, persons who hold valid out-of-state certificates and have completed 4 years of teaching on a valid equivalent certificate in another State or territory of the United States shall be issued comparable Standard Certificates. Beginning July 1, 2004, persons who hold valid out-of-state certificates as described in subsection (b-5) of this Section are subject to the requirements of paragraphs (2) through (4) of this subsection (c), as required in subsection (b-5) of this Section, in order to receive a Standard Certificate. Standard Certificates shall be issued for categories corresponding to Early Childhood, Elementary, Secondary, and Special K-12, with special certification designations for Special Education, Bilingual Education, fundamental learning areas (including Language Arts, Reading, Mathematics, Science, Social Science, Physical Development and Health, Fine Arts, and Foreign Language), and other areas designated by the State Board of Education, in consultation with the State Teacher Certification Board.

(2) This paragraph (2) applies only to those persons required to successfully complete the requirements of this paragraph under paragraph (1) of this subsection (c). In order to receive a Standard Teaching Certificate, a person must satisfy one of the following requirements:

(A) Completion of a program of induction and mentoring for new teachers that is based upon a specific plan approved by the State Board of Education, in consultation with the State Teacher Certification Board. Nothing in this Section, however, prohibits an induction or mentoring program from operating prior to approval. Holders of Initial Certificates issued before September 1, 2007 must complete, at a minimum, an approved one-year induction and mentoring program. Holders of Initial Certificates issued on or after September 1, 2007 must complete an approved 2-year induction and mentoring program. The plan must describe the role of mentor teachers, the criteria and process for their selection, and how all the following components are to be provided:

(i) Assignment of a formally trained mentor teacher to each new teacher for a specified period of time, which shall be established by the employing school or school district, provided that a mentor teacher may not directly or indirectly participate in the evaluation of a new teacher pursuant to Article 24A of this Code [105 ILCS 5/24A-1 et seq.] or the evaluation procedure of the school.

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(ii) Formal mentoring for each new teacher.

(iii) Support for each new teacher in relation to the Illinois Professional Teaching Standards, the content-area standards applicable to the new teacher's area of certification, and any applicable local school improvement and professional development plans.

(iv) Professional development specifically designed to foster the growth of each new teacher's knowledge and skills.

(v) Formative assessment that is based on the Illinois Professional Teaching Standards and designed to provide feedback to the new teacher and opportunities for reflection on his or her performance, which must not be used directly or indirectly in any evaluation of a new teacher pursuant to Article 24A of this Code or the evaluation procedure of the school and which must include the activities specified in clauses (B)(i), (B)(ii), and (B)(iii) of this paragraph (2).

(vi) Assignment of responsibility for coordination of the induction and mentoring program within each school district participating in the program.

(B) Successful completion of 4 semester hours of graduate-level coursework on the assessment of one's own performance in relation to the Illinois Professional Teaching Standards. The coursework must be approved by the State Board of Education, in consultation with the State Teacher Certification Board; must be offered either by an institution of higher education, by such an institution in partnership with a teachers' association or union or with a regional office of education, or by another entity authorized to issue college credit; and must include demonstration of performance through all of the following activities for each of the Illinois Professional Teaching Standards:

(i) Observation, by the course instructor or another experienced teacher, of the new teacher's classroom practice (the observation may be recorded for later viewing) for the purpose of identifying and describing how the new teacher made content meaningful for students; how the teacher motivated individuals and the group and created an environment conducive to positive social interactions, active learning, and self-motivation; what instructional strategies the teacher used to encourage students' development of critical thinking, problem solving, and performance; how the teacher communicated using written, verbal, nonverbal, and visual communication techniques; and how the teacher maintained standards of professional conduct and provided leadership to improve students' learning.

(ii) Review and analysis, by the course instructor or another experienced teacher, of written documentation (i.e., lesson plans, assignments, assessment instruments, and samples of students' work) prepared by the new teacher for at least 2 lessons. The documentation must provide evidence of classroom performance related to Illinois Professional Teaching Standards 1 through 9, with an emphasis on how the teacher used his or her understanding of students, assessment data, and subject matter to decide on learning goals; how the teacher designed or selected activities and instructional materials and aligned instruction to the relevant Illinois Learning Standards; how the teacher

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adapted or modified curriculum to meet individual students' needs; and how the teacher sequenced instruction and designed or selected student assessment strategies.

(iii) Demonstration of professional expertise on the part of the new teacher in reflecting on his or her practice, which was observed under clause (B)(i) of this paragraph (2) and documented under clause (B)(ii) of this paragraph (2), in terms of teaching strengths, weaknesses, and implications for improvement according to the Illinois Professional Teaching Standards.

(C) Successful completion of a minimum of 4 semester hours of graduate-level coursework addressing preparation to meet the requirements for certification by the National Board for Professional Teaching Standards (NBPTS). The coursework must be approved by the State Board of Education, in consultation with the State Teacher Certification Board, and must be offered either by an institution of higher education, by such an institution in partnership with a teachers' association or union or with a regional office of education, or by another entity authorized to issue college credit. The course must address the 5 NBPTS Core Propositions and relevant standards through such means as the following:

(i) Observation, by the course instructor or another experienced teacher, of the new teacher's classroom practice (the observation may be recorded for later viewing) for the purpose of identifying and describing how the new teacher made content meaningful for students; how the teacher motivated individuals and the group and created an environment conducive to positive social interactions, active learning, and self-motivation; what instructional strategies the teacher used to encourage students' development of critical thinking, problem solving, and performance; how the teacher communicated using written, verbal, nonverbal, and visual communication techniques; and how the teacher maintained standards of professional conduct and provided leadership to improve students' learning.

(ii) Review and analysis, by the course instructor or another experienced teacher, of written documentation (i.e., lesson plans, assignments, assessment instruments, and samples of students' work) prepared by the new teacher for at least 2 lessons. The documentation must provide evidence of classroom performance, including how the teacher used his or her understanding of students, assessment data, and subject matter to decide on learning goals; how the teacher designed or selected activities and instructional materials and aligned instruction to the relevant Illinois Learning Standards; how the teacher adapted or modified curriculum to meet individual students' needs; and how the teacher sequenced instruction and designed or selected student assessment strategies.

(iii) Demonstration of professional expertise on the part of the new teacher in reflecting on his or her practice, which was observed under clause (C)(i) of this paragraph (2) and documented under clause (C)(ii) of this paragraph (2), in terms of teaching strengths, weaknesses, and implications for improvement.

(C-5) Satisfactory completion of a minimum of 12 semester hours of graduate credit towards an advanced degree in an education-related field from an accredited institution of higher education.

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(D) Receipt of an advanced degree from an accredited institution of higher education in an education-related field that is earned by a person either while he or she holds an Initial Teaching Certificate or prior to his or her receipt of that certificate.

(E) Accumulation of 60 continuing professional development units (CPDUs), earned by completing selected activities that comply with paragraphs (3) and (4) of this subsection (c). However, for an individual who holds an Initial Teaching Certificate on the effective date of this amendatory Act of the 92nd General Assembly [P.A. 92-796], the number of CPDUs shall be reduced to reflect the teaching time remaining on the Initial Teaching Certificate.

(F) Completion of a nationally normed, performance-based assessment, if made available by the State Board of Education in consultation with the State Teacher Certification Board, provided that the cost to the person shall not exceed the cost of the coursework described in clause (B) of this paragraph (2).

(G) Completion of requirements for meeting the Illinois criteria for becoming "highly qualified" (for purposes of the No Child Left Behind Act of 2001, Public Law 107-110) in an additional teaching area.

(H) Receipt of a minimum 12-hour, post-baccalaureate, education-related professional development certificate issued by an Illinois institution of higher education and developed in accordance with rules adopted by the State Board of Education in consultation with the State Teacher Certification Board.

(I) Completion of the National Board for Professional Teaching Standards (NBPTS) process.

(J) Receipt of a subsequent Illinois certificate or endorsement pursuant to Article 21 of this Code [105 ILCS 5/21-1 et seq.].

(3) This paragraph (3) applies only to those persons required to successfully complete the requirements of this paragraph under paragraph (1) of this subsection (c). Persons who seek to satisfy the requirements of clause (E) of paragraph (2) of this subsection (c) through accumulation of CPDUs may earn credit through completion of coursework, workshops, seminars, conferences, and other similar training events that are pre-approved by the State Board of Education, in consultation with the State Teacher Certification Board, for the purpose of reflection on teaching practices in order to address all of the Illinois Professional Teaching Standards necessary to obtain a Standard Teaching Certificate. These activities must meet all of the following requirements:

(A) Each activity must be designed to advance a person's knowledge and skills in relation to one or more of the Illinois Professional Teaching Standards or in relation to the content-area standards applicable to the teacher's field of certification.

(B) Taken together, the activities completed must address each of the Illinois Professional Teaching Standards as provided in clauses (B)(i), (B)(ii), and (B)(iii) of paragraph (2) of this subsection (c).

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(C) Each activity must be provided by an entity approved by the State Board of Education, in consultation with the State Teacher Certification Board, for this purpose.

(D) Each activity, integral to its successful completion, must require participants to demonstrate the degree to which they have acquired new knowledge or skills, such as through performance, through preparation of a written product, through assembling samples of students' or teachers' work, or by some other means that is appropriate to the subject matter of the activity.

(E) One CPDU shall be available for each hour of direct participation by a holder of an Initial Teaching Certificate in a qualifying activity. An activity may be attributed to more than one of the Illinois Professional Teaching Standards, but credit for any activity shall be counted only once.

(4) This paragraph (4) applies only to those persons required to successfully complete the requirements of this paragraph under paragraph (1) of this subsection (c). Persons who seek to satisfy the requirements of clause (E) of paragraph (2) of this subsection (c) through accumulation of CPDUs may earn credit from the following, provided that each activity is designed to advance a person's knowledge and skills in relation to one or more of the Illinois Professional Teaching Standards or in relation to the content-area standards applicable to the person's field or fields of certification:

(A) Collaboration and partnership activities related to improving a person's knowledge and skills as a teacher, including all of the following:

(i) Peer review and coaching.

(ii) Mentoring in a formal mentoring program, including service as a consulting teacher participating in a remediation process formulated under Section 24A-5 of this Code [105 ILCS 5/24A-5].

(iii) Facilitating parent education programs directly related to student achievement for a school, school district, or regional office of education.

(iv) Participating in business, school, or community partnerships directly related to student achievement.

(B) Teaching college or university courses in areas relevant to a teacher's field of certification, provided that the teaching may only be counted once during the course of 4 years.

(C) Conferences, workshops, institutes, seminars, and symposiums related to improving a person's knowledge and skills as a teacher, including all of the following:

(i) Completing non-university credit directly related to student achievement, the Illinois Professional Teaching Standards, or content-area standards.

(ii) Participating in or presenting at workshops, seminars, conferences, institutes, and symposiums.

(iii) (Blank).

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(iv) Training as reviewers of university teacher preparation programs.

An activity listed in this clause (C) is creditable only if its provider is approved for this purpose by the State Board of Education, in consultation with the State Teacher Certification Board.

(D) Other educational experiences related to improving a person's knowledge and skills as a teacher, including all of the following:

(i) Participating in action research and inquiry projects.

(ii) Observing programs or teaching in schools, related businesses, or industry that is systematic, purposeful, and relevant to a teacher's field of certification.

(iii) Participating in study groups related to student achievement, the Illinois Professional Teaching Standards, or content-area standards.

(iv) Participating in work/learn programs or internships.

(v) Developing a portfolio of students' and teacher's work.

(E) Professional leadership experiences related to improving a person's knowledge and skills as a teacher, including all of the following:

(i) Participating in curriculum development or assessment activities at the school, school district, regional office of education, State, or national level.

(ii) Participating in team or department leadership in a school or school district.

(iii) (Blank).

(iv) Publishing educational articles, columns, or books relevant to a teacher's field of certification.

(v) Participating in non-strike related activities of a professional association or labor organization that are related to professional development.

(5) A person must complete the requirements of this subsection (c) before the expiration of his or her Initial Teaching Certificate and must submit assurance of having done so to the regional superintendent of schools or a local professional development committee authorized by the regional superintendent to submit recommendations to him or her for this purpose.

Within 30 days after receipt, the regional superintendent of schools shall review the assurance of completion submitted by a person and, based upon compliance with all of the requirements for receipt of a Standard Teaching Certificate, shall forward to the State Board of Education a recommendation for issuance of the Standard Certificate or non-issuance. The regional superintendent of schools shall notify the affected person if the recommendation is for non-issuance of the Standard Certificate. A person who is considered not to be eligible for a Standard Certificate and who has received the notice of non-issuance may appeal this determination to the Regional Professional Development Review Committee (RPDRC). The recommendation of the regional superintendent and

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the RPDRC, along with all supporting materials, must then be forwarded to the State Board of Education for a final determination.

Upon review of a regional superintendent of school's recommendations, the State Board of Education shall issue Standard Teaching Certificates to those who qualify and shall notify a person, in writing, of a decision denying a Standard Teaching Certificate. Any decision denying issuance of a Standard Teaching Certificate to a person may be appealed to the State Teacher Certification Board.

(6) The State Board of Education, in consultation with the State Teacher Certification Board, may adopt rules to implement this subsection (c) and may periodically evaluate any of the methods of qualifying for a Standard Teaching Certificate described in this subsection (c).

(7) The changes made to paragraphs (1) through (5) of this subsection (c) by this amendatory Act of the 93rd General Assembly [P.A. 93-679] shall apply to those persons who hold or are eligible to hold an Initial Certificate on or after the effective date of this amendatory Act of the 93rd General Assembly and shall be given effect upon their application for a Standard Certificate.

(8) Beginning July 1, 2004, persons who hold a Standard Certificate and have acquired one master's degree in an education-related field are eligible for certificate renewal upon completion of two-thirds of the continuing professional development units specified in subdivision (E) of paragraph (3) of subsection (e) of Section 21-14 of this Code. Persons who hold a Standard Certificate and have acquired a second master's degree, an education specialist, or a doctorate in an education-related field or hold a Master Certificate are eligible for certificate renewal upon completion of one-third of the continuing professional development units specified in subdivision (E) of paragraph (3) of subsection (e) of Section 21-14 of this Code.

(d) Master Certificate. Persons who have successfully achieved National Board certification through the National Board for Professional Teaching Standards shall be issued a Master Certificate, valid for 10 years and renewable thereafter every 10 years through compliance with requirements set forth by the State Board of Education, in consultation with the State Teacher Certification Board. Beginning on July 1, 2012, individuals holding a Master's Certificate in specific areas may work only in an area in which they have a comparable Illinois endorsement or only if the individual has an Illinois National Board for Professional Teaching Standards endorsement issued prior to June 30, 2012. A holder of a Master Certificate in an area of science or social science is eligible to teach in any of the subject areas within those fields, including those taught at the advanced level, as defined by the State Board of Education in consultation with the State Teacher Certification Board. A teacher who holds a Master Certificate shall be deemed to meet State certification renewal requirements in the area or areas for which he or she holds a Master Certificate for the 10-year term of the teacher's Master Certificate.

(e) This Section is repealed on June 30, 2013.

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(Source: P.A. 85-1151; 88-92, § 5; 90-548, § 5-915; 90-653, § 10; 90-811, § 5; 91-102, § 5; 91-606, § 5; 91-609, § 10; 92-16, § 49; 92-796, § 5; 93-679, § 15; 95-793, § 5; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 21-2.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Section 95 of P.A. 92-796 contains a no acceleration or delay provision.

Section 95 of P.A. 97-607 contains a "No Acceleration or delay" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 25.11, 25.800.

Effect of Amendments. The 1993 amendment by P.A. 88-92, effective January 1, 1994, in the second sentence deleted "prior to July 1, 1988" preceding "and graduation from a recognized institution".

The 1997 amendment by P.A. 90-548, effective January 1, 1998, in subsection (a), in the first sentence, added at the beginning "Until January 1, 1999"; and added subsections (b) through (d).

The 1998 amendment by P.A. 90-653, effective July 29, 1998, added "of teaching" in the first sentence of subsection (b); and substituted "Early Childhood, Elementary, Secondary, and Special K-12" for "Early Childhood Education, Elementary Education, and Secondary Education" in the second sentence of subsection (b) and in subsection (c).

The 1998 amendment by P.A. 90-811, effective January 26, 1999, substituted "July" for "January" throughout the section.

The 1999 amendment by P.A. 91-102, effective July 12, 1999, substituted "February 15, 2000" for "July 1, 1999" throughout the section; inserted ", as defined in Section 21-14 of this Code" at the end of the first sentence in subsection (b) and in the first sentence of subsection (c); also in the first sentence of subsection (c), deleted ", have successfully completed the Standard Teaching Certificate examinations" following "Initial Certificate" and added the language beginning "have completed 4 years" and ending "Certification Board, or (3)"; added the second sentence in subsection (c); and in subsection (d) twice substituted "10 years" for "7 years" and added "in consultation with the State Teacher Certification Board" at the end.

The 1999 amendment by P.A. 91-606, effective August 16, 1999, in subsection (d) substituted "10 years" for "7 years" throughout the subsection, and inserted the second and third sentences.

The 1999 amendment by P.A. 91-609, effective January 1, 2000, inserted "or an Initial Alternative Teaching Certificate" throughout subsection (c).

The 2001 amendment by P.A. 92-16, effective June 28, 2001, combined the amendments by P.A. 91-102, P.A. 91-606 and P.A. 91-609.

The 2002 amendment by P.A. 92-796, effective August 10, 2002, in subsection (a) deleted "Until February 15, 2000" at the beginning, in the second sentence substituted "secondary" for "high

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school", and deleted "with not less than 120 semester hours and a minimum of 16 semester hours in professional education" following "higher learning with a bachelor's degree" at the end; in subsections (b), (c) and (d) near the beginning deleted "Beginning February 15, 2000"; in subsection (c) added the paragraph (1) designation and redesignated former clauses (1) through (3) as (i) through (iii), in the second sentence of paragraph (c) clause (1) substituted "paragraph (1)" for "subsection (c)", and substituted "requirements of paragraphs (2) through (4) of this subsection (c)" for "Standard Teaching Certificate Examinations"; and added paragraphs (c)(2) through (c)(6).

The 2004 amendment by P.A. 93-679, effective June 30, 2004, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2008 amendment by P.A. 95-793, effective August 8, 2008, in (c)(8) twice deleted "continuing education units specified in subdivision (C) of paragraph (3) of subsection (e) of Section 21-14 of this Code or of the" following "two-thirds of the" and "one-third of the".

The 2011 amendment by P.A. 97-607, effective August 26, 2011, in (a), deleted "except as limited in Section 21-1" following "certificates valid" in the first sentence and in the second sentence, substituted "one year or more of" for "5 years" and added "or higher" to the end; rewrote the second sentence of (d), which formerly read: "However, each teacher who holds a Master Certificate shall be eligible for a teaching position in this State in the areas for which he or she holds a Master Certificate without satisfying any other requirements of this Code, except for those requirements pertaining to criminal background checks"; and added (e).

CASE NOTES

Athletic Coaches

Athletic coaches are not required by law to be certified as coaches. School Dirs. v. Kossoff, 95 Ill. App. 3d 26, 50 Ill. Dec. 550, 419 N.E.2d 658 (2 Dist. 1981).

§ 105 ILCS 5/21-2.1. Early childhood certificate

Sec. 21-2.1. Early childhood certificate. (a) An early childhood certificate shall be valid for 4 years for teaching children up to 6 years of age, exclusive of children enrolled in kindergarten, in facilities approved by the State Superintendent of Education. Beginning July 1, 1988, such certificate shall be valid for 4 years for Teaching children through grade 3 in facilities approved by the State Superintendent of Education. Subject to the provisions of Section 21-1a [105 ILCS 5/21-1a], it shall be issued to persons who have graduated from a recognized institution of higher learning with a bachelor's degree and with not fewer than 120 semester hours including professional education or human development or, until July 1, 1992, to persons who have early childhood education instruction and practical experience involving supervised work with children under 6 years of age or with children through grade 3. Such persons shall be recommended for the early childhood certificate by a recognized institution as having completed an approved program of preparation which includes the requisite hours and academic and professional courses and practical experience approved by the State Superintendent of Education in

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consultation with the State Teacher Certification Board. The student teaching portion of such practical experience may be satisfied through placement in any of grades pre-kindergarten (which consists of children from 3 years through 5 years of age) through 3, provided that the student is under the active supervision of a cooperating teacher who is certified and qualified (i) in early childhood education or (ii) in self-contained, general elementary education. Candidates for the early childhood certificate (including paraprofessionals) with at least one year of experience in a school or community-based early childhood setting who are enrolled in early-childhood teacher preparation programs may be paid and receive credit while student teaching with their current employer, provided that their student teaching experience meets the requirements of their early-childhood teacher preparation program.

(b) Beginning February 15, 2000, Initial and Standard Early Childhood Education Certificates shall be issued to persons who meet the criteria established by the State Board of Education.

(c) This Section is repealed on June 30, 2013.

(Source: P.A. 85-1389; 90-548, § 5-915; 90-811, § 5; 91-102, § 5; 94-1034, § 5; 94-1110, § 5; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 21-2.1.

Section 95 of P.A. 97-607 contains a "No Acceleration or delay" provision.

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, added the subsection (a) designation; and added subsection (b).

The 1998 amendment by P.A. 90-811, effective January 26, 1999, changed "January" to "July" in subsection (b).

The 1999 amendment by P.A. 91-102, effective July 12, 1999, substituted "February 15, 2000" for "July 1, 1999" in subsection (b).

The 2006 amendment by P.A. 94-1034, effective January 1, 2007, added the last two sentences in (a).

The 2007 amendment by P.A. 94-1110, effective February 23, 2007, in (a) substituted "(i) in early childhood education or (ii) in self-contained, general elementary education. Candidates for the early childhood certificate (including paraprofessionals)" for "in early childhood education. Paraprofessionals".

The 2011 amendment by P.A. 97-607, effective August 26, 2011, added (c).

§ 105 ILCS 5/21-2a. Required instruction for all teachers

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Sec. 21-2a. Required instruction for all teachers. After January 1, 1999, the State Board of Education shall ensure that the curriculum for all approved teacher preparation programs includes, and that all prospective teachers pursuing Early Childhood, Elementary, Secondary, or Special certificates receive, instruction on the psychology of, the identification of, and the methods of instruction for the exceptional child, including without limitation the learning disabled. This instruction on exceptional children may be provided in one concentrated course or may be integrated among other courses within the teacher preparation program as shall be determined by the State Board of Education.

This Section is repealed on June 30, 2013.

(Source: P.A. 81-1082; 90-548, § 5-915; 90-653, § 10; 91-102, § 5; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 21-2a.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, inserted "and until January 1, 1999"; and substituted a colon for a semicolon after "certificates".

The 1998 amendment by P.A. 90-653, effective July 29, 1998, substituted "instruction" for "curriculum" in the section heading; and added the second paragraph.

The 1999 amendment by P.A. 91-102, effective July 12, 1999, deleted "K-12" following "Secondary, or Special" in the first sentence of the second paragraph.

The 2011 amendment by P.A. 97-607, effective August 26, 2011, deleted the former first sentence of the first paragraph, which read: "After September 1, 1981 and until January 1, 1999, in addition to all other requirements, the successful completion of course work which includes instruction on the psychology of the exceptional child, the identification of the exceptional child, including, but not limited to the learning disabled and methods of instruction for the exceptional child, including, but not limited to the learning disabled shall be a prerequisite to a person receiving any of the following certificates: early childhood, elementary, special and high school"; and added the second paragraph.

§ 105 ILCS 5/21-2b: Repealed by P.A. 97-607, § 25, effective August 26, 2011.

§ 105 ILCS 5/21-3. Elementary certificate

Sec. 21-3. Elementary certificate. (a) An elementary school certificate shall be valid for 4 years for teaching in the kindergarten and lower 9 grades of the common schools. Subject to the provisions of Section 21-1a [105 ILCS 5/21-1a], it shall be issued to

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persons who have graduated from a recognized institution of higher learning with a bachelor's degree and with not fewer than 120 semester hours and with a minimum of 16 semester hours in professional education, including 5 semester hours in student teaching under competent and close supervision. Such persons shall be recommended for the elementary certificate by a recognized institution as having completed an approved program of preparation which includes intensive preservice training in the humanities, natural sciences, mathematics and the academic and professional courses approved by the State Superintendent of Education in consultation with the State Teacher Certification Board.

(b) Beginning February 15, 2000, Initial and Standard Elementary Certificates shall be issued to persons who meet all of the criteria established by the State Board of Education for elementary education.

(c) This Section is repealed on June 30, 2013.

(Source: P.A. 84-126; 90-548, § 5-915; 90-811, § 5; 91-102, § 5; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 21-3.

Section 95 of P.A. 97-607 contains a "No Acceleration or delay" provision.

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, added the subsection (a) designation; and added subsection (b).

The 1998 amendment by P.A. 90-811, effective January 26, 1999, changed "January" to "July" in subsection (b).

The 1999 amendment by P.A. 91-102, effective July 12, 1999, substituted "February 15, 2000" for "July 1, 1999" in subsection (b).

The 2011 amendment by P.A. 97-607, effective August 26, 2011, added (c).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Education Law," see 25 S. Ill. U. L.J. 761 (2001).

§ 105 ILCS 5/21-4. Special certificate

Sec. 21-4. Special certificate. (a) A special certificate shall be valid for 4 years for teaching the special subjects named therein in all grades of the common schools. Subject to the provisions of Section 21-1a [105 ILCS 5/21-1a], it shall be issued to persons who have graduated from a recognized institution of higher learning with a bachelor's degree

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and with not fewer than 120 semester hours including a minimum of 16 semester hours in professional education, 5 of which shall be in student teaching under competent and close supervision. When the holder of such certificate has earned a master's degree, including eight semester hours of graduate professional education from a recognized institution of higher learning and with two years' teaching experience, it may be endorsed for supervision.

Such persons shall be recommended for the special certificate by a recognized institution as having completed an approved program of preparation which includes academic and professional courses approved by the State Superintendent of Education in consultation with the State Teacher Certification Board.

(b) Those persons holding special certificates on February 15, 2000 shall be eligible for one of the following:

(1) The issuance of Standard Elementary and Standard Secondary Certificates with appropriate special certification designations as determined by the State Board of Education, in consultation with the State Teacher Certification Board, and consistent with rules adopted by the State Board of Education. These certificates shall be renewed as provided in subsection (c) of Section 21-2 [105 ILCS 5/21-2].

(2) The issuance of Standard Special K-12 Certificates with appropriate special certification designations, which shall be renewed as provided in subsection (c) of Section 21-2. These certificates shall not be eligible for additional certification designations except as approved by the State Board of Education, in consultation with the State Teacher Certification Board.

(c) Those persons eligible to receive K-12 certification after February 15, 2000 shall be issued Initial Elementary and Initial Secondary Certificates with appropriate special certification designations pursuant to this Section or Initial Special K-12 Certificates with appropriate special certification designations pursuant to this Section. These Initial K-12 Special Certificates shall not be eligible for additional certification designations except as approved by the State Board of Education, in consultation with the State Teacher Certification Board.

(d) All persons holding a special certificate with a special education endorsement are exempt from the provisions of Section 2-3.71 of this Code [105 ILCS 5/2-3.71], provided they meet all the other requirements for teaching as established by the State Board of Education, in consultation with the State Teacher Certification Board.

Beginning February 15, 2000, all persons exchanging a special certificate pursuant to subsection (b) of this Section with a special education endorsement or receiving a special education designation on either a special certificate or an elementary certificate issued pursuant to subsection (c) of this Section are exempt from the provisions of Section 2-3.71 of this Code, provided they meet all the other requirements for teaching as established by the State Board of Education, in consultation with the State Teacher Certification Board.

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Certificates exchanged or issued pursuant to this subsection (d) shall be valid for teaching children with disabilities, as defined in Section 14-1.02 of this Code [105 ILCS 5/14-1.02], and these special certificates shall be called Initial or Standard Special Preschool - Age 21 Certificates. Nothing in this subsection (d) shall be construed to adversely affect the rights of any person presently certificated, any person whose certification is currently pending, or any person who is currently enrolled or enrolls prior to February 15, 2000 in an approved Special K-12 certification program.

(e) This Section is repealed on June 30, 2013.

(Source: P.A. 84-126; 90-548, § 5-915; 90-653, § 10; 90-811, § 5; 91-102, § 5; 91-765, § 5; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 21-4.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 1.710, 25.99, 25.99.

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, added the subsection (a) designation; and added subsection (b).

The 1998 amendment by P.A. 90-653, effective July 29, 1998, rewrote subsection (b); and added subsection (c).

The 1998 amendment by P.A. 90-811, effective January 26, 1999, substituted "July" for "January" in subsections (b) and (c).

The 1999 amendment by P.A. 91-102, effective July 12, 1999, substituted "February 15, 2000" for "July 1, 1999" in the first sentence of subsections (b) and (c); and added subsection (d).

The 2000 amendment by P.A. 91-765, effective June 9, 2000, in subsection (d) substituted "All persons holding a special certificate with a special education endorsement" for "Beginning February 15, 2000, all persons exchanging a special certificate" in the first sentence, and in the second sentence inserted "exchanging a special certificate pursuant to subsection (b) of this Section with a special education endorsement or".

The 2011 amendment by P.A. 97-607, effective August 26, 2011, added (e).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Education Law," see 25 S. Ill. U. L.J. 761 (2001).

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§ 105 ILCS 5/21-5. High school certificate

Sec. 21-5. High school certificate. (a) A high school certificate shall be valid for 4 years for teaching in grades 6 to 12 inclusive of the common schools. Subject to the provisions of Section 21-1a [105 ILCS 5/21-1a], it shall be issued to persons who have graduated from a recognized institution of higher learning with a bachelor's degree and with not fewer than 120 semester hours including 16 semester hours in professional education, 5 of which shall be in student teaching under competent and close supervision and with one or more teaching fields. Such persons shall be recommended for the high school certificate by a recognized institution as having completed an approved program of preparation which includes the academic and professional courses approved by the State Superintendent of Education in consultation with the State Teacher Certification Board.

(b) Beginning February 15, 2000, Initial and Standard Secondary Certificates shall be issued to persons who meet all of the criteria established by the State Board of Education for secondary education.

(c) This Section is repealed on June 30, 2013.

(Source: P.A. 84-126; 90-548, § 5-915; 90-811, § 5; 91-102, § 5; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 21-5.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 25.145, 25.311, 25.313, 25.65, 25.67.

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, added the subsection (a) designation; and added subsection (b).

The 1998 amendment by P.A. 90-811, effective January 26, 1999, changed "January" to "July" in subsection (b).

The 1999 amendment by P.A. 91-102, effective July 12, 1999, substituted "February 15, 2000" for "July 1, 1999" in subsection (b).

The 2011 amendment by P.A. 97-607, effective August 26, 2011, added (c).

CASE NOTES

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Pleading

- Issue of Material Fact

Where a teacher sought reinstatement to a teaching position in home economics at a level and in a program to which predetermined subject matter requirements applied, but there was also a position available to her as a reading teacher, the teachers' allegations stood in direct conflict with statements contained in respondent's affidavits that alleged the teacher was not qualified under those predetermined requirements to teach in any of the available positions and the conflict presented a genuine issue of material fact requiring remand. Relph v. Board of Educ., 84 Ill. 2d 436, 50 Ill. Dec. 830, 420 N.E.2d 147 (1981).

Where there was an indication that plaintiff did not possess predetermined required semester hours for classes she wished to teach, but there was nothing in the record to indicate that she sought a position at a grade level to which those requirements applied, the cause was remanded for further proceedings. Relph v. Board of Educ., 84 Ill. 2d 436, 50 Ill. Dec. 830, 420 N.E.2d 147 (1981).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Education Law," see 25 S. Ill. U. L.J. 761 (2001).

§ 105 ILCS 5/21-5a: Repealed by P.A. 97-607, § 25, effective August 26, 2011.

§ 105 ILCS 5/21-5b. Alternative certification

Sec. 21-5b. Alternative certification. The State Board of Education, in consultation with the State Teacher Certification Board, shall establish and implement an alternative certification program under which persons who meet the requirements of and successfully complete the program established by this Section shall be issued an alternative teaching certificate for teaching in the schools. The program shall be limited to not more than 260 new participants during each year that the program is in effect. The State Board of Education, in cooperation with one or more not-for-profit organizations in the State that support excellence in teaching, which may be in partnership with a university that offers 4-year baccalaureate and masters degree programs and that is a recognized institution as defined in Section 21B-105 of this Code [105 ILCS 5/21B-105], may within 30 days after submission by the program sponsor approve a course of study developed by the program sponsor that persons in the program must successfully complete in order to satisfy one criterion for issuance of an alternative certificate under this Section. The Alternative Teacher Certification program course of study must include content and skills which have been approved by the State Board of Education, in consultation with the State Teacher Certification Board, as meeting the requirement for State teacher certification.

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The alternative certification program established under this Section shall be known as the Alternative Teacher Certification program. The Alternative Teacher Certification Program shall be offered by the submitting partnership, and such partnership may be offered by one or more not-for-profit organizations in the State which support excellence in teaching. The program shall be comprised of the following 3 phases: (a) the first phase is the course of study offered on an intensive basis in education theory, instructional methods, and practice teaching; (b) the second phase is the person's assignment to a full-time teaching position for one school year; and (c) the third phase is a comprehensive assessment of the person's teaching performance by school officials and the partnership participants and a recommendation by the program sponsor to the State Board of Education that the person be issued a standard alternative teaching certificate. Successful completion of the Alternative Teacher Certification program shall be deemed to satisfy any other practice or student teaching and subject matter requirements established by law.

A provisional alternative teaching certificate, valid for one year of teaching in the common schools and not renewable, shall be issued under this Section 21-5b to persons who at the time of applying for the provisional alternative teaching certificate under this Section:

(1) have graduated from an accredited college or university with a bachelor's degree;

(2) have successfully completed the first phase of the Alternative Teacher Certification program as provided in this Section;

(3) have passed the tests of basic skills and subject matter knowledge required by Section 21-1a [105 ILCS 5/21-1a]; and

(4) have been employed for a period of at least 5 years in an area requiring application of the individual's education or (ii) have attained at least a cumulative grade average of a "B" if the individual is assigned either to a school district that has not met the annual measurable objective for highly qualified teachers required by the Illinois Revised Highly Qualified Teachers (HQT) Plan or to a school district whose data filed with the State Board of Education indicates that the district's poor and minority students are taught by teachers who are not highly qualified at a higher rate than other students; however, this item (4) does not apply with respect to a provisional alternative teaching certificate for teaching in schools situated in a school district that is located in a city having a population in excess of 500,000 inhabitants. Assignment may be made under clause (ii) of this item (4) only if the district superintendent and the exclusive bargaining representative of the district's teachers, if any, jointly agree to permit the assignment.

A person possessing a provisional alternative certificate under this Section shall be treated as a regularly certified teacher for purposes of compensation, benefits, and other terms and conditions of employment afforded teachers in the school who are members of a bargaining unit represented by an exclusive bargaining representative, if any.

Until February 15, 2000, a standard alternative teaching certificate, valid for 4 years for teaching in the schools and renewable as provided in Section 21-14 [105 ILCS 5/21-14], shall be issued under this Section 21-5b [105 ILCS 5/21-5b] to persons who first complete the requirements for the provisional alternative teaching certificate and who at

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the time of applying for a standard alternative teaching certificate under this Section have successfully completed the second and third phases of the Alternative Teacher Certification program as provided in this Section. Alternatively, beginning February 15, 2000, at the end of the 4-year validity period, persons who were issued a standard alternative teaching certificate shall be eligible, on the same basis as holders of an Initial Teaching Certificate issued under subsection (b) of Section 21-2 of this Code [105 ILCS 5/21-2], to apply for a Standard Teaching Certificate, provided they meet the requirements of subsection (c) of Section 21-2 of this Code and further provided that a person who does not apply for and receive a Standard Teaching Certificate shall be able to teach only in schools situated in a school district that is located in a city having a population in excess of 500,000 inhabitants.

Beginning February 15, 2000, persons who have completed the requirements for a standard alternative teaching certificate under this Section shall be issued an Initial Alternative Teaching Certificate valid for 4 years of teaching and not renewable. At the end of the 4-year validity period, these persons shall be eligible, on the same basis as holders of an Initial Teaching Certificate issued under subsection (b) of Section 21-2 of this Code, to apply for a Standard Teaching Certificate, provided they meet the requirements of subsection (c) of Section 21-2.

Such alternative certification program shall be implemented so that the first provisional alternative teaching certificates issued under this Section are effective upon the commencement of the 1997-1998 academic year and the first standard alternative teaching certificates issued under this Section are effective upon the commencement of the 1998-1999 academic year.

The State Board of Education, in cooperation with the partnership or partnerships establishing such Alternative Teacher Certification programs, shall adopt rules and regulations that are consistent with this Section and that the State Board of Education deems necessary to establish and implement the program.

No one may be admitted to an alternative certification program under this Section after September 1, 2012, and those candidates who are admitted on or before September 1, 2012 must complete the program before September 1, 2013.

This Section is repealed on September 1, 2013.

(Source: P.A. 89-708, § 5; 91-609, § 5; 95-270, § 5; 96-862, § 5; 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 89-708 made this section effective upon becoming law. The Act was approved February 14, 1997.

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Effect of Amendments. The 1999 amendment by P.A. 91-609, effective January 1, 2000, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2007 amendment by P.A. 95-270, effective August 17, 2007, rewrote (4).

The 2010 amendment by P.A. 96-862, effective January 2010, rewrote the last two sentences of the introductory paragraph; in the second paragraph, inserted "such partnership", substituted "offered by" for "offered in conjunction with" and "program sponsor" for "partner institution of higher education"; substituted "Such" for "This" at the beginning of the seventh paragraph; in the eighth paragraph, inserted "or partnerships", and substituted "such Alternative" for "the Alternative"; and made a stylistic change.

The 2011 amendment by P.A. 97-607, effective August 26, 2011, substituted "Section 21B-105 of this Code" for "Section 21-21" in the second sentence of the first paragraph; and added the last two paragraphs.

§ 105 ILCS 5/21-5c. Alternative route to teacher certification

Sec. 21-5c. Alternative route to teacher certification. The State Board of Education, in consultation with the State Teacher Certification Board, shall establish and implement one or more alternative route to teacher certification programs under which persons who meet the requirements of and successfully complete the programs established by this Section shall be issued an initial teaching certificate for teaching in schools in this State. The State Board of Education may approve a course of study that persons in such programs must successfully complete in order to satisfy one criterion for issuance of a certificate under this Section. The Alternative Route to Teacher Certification programs course of study must include content and skills which have been approved by the State Board of Education, in consultation with the State Teacher Certification Board, as meeting the requirement for State teacher certification.

Programs established under this Section shall be known as Alternative Route to Teacher Certification programs. The programs may be offered by a university that offers 4-year baccalaureate and masters degree programs and that is a recognized institution as defined in Section 21B-105 of this Code [105 ILCS 5/21B-105], by one or more not-for-profit organizations in the State, or a combination thereof. The programs shall be comprised of the following 3 phases: (a) a course of study offered on an intensive basis in education theory, instructional methods, and practice teaching; (b) the person's assignment to a full-time teaching position for one school year, including the designation of a mentor teacher to advise and assist the person with that teaching assignment; and (c) a comprehensive assessment of the person's teaching performance by school officials and program participants and a recommendation by the program sponsor to the State Board of Education that the person be issued an initial teaching certificate. Successful completion of Alternative Route to Teacher Certification programs shall be deemed to satisfy any other practice or student teaching and subject matter requirements established by law.

A provisional alternative teaching certificate, valid for one year of teaching in the common schools and not renewable, shall be issued under this Section 21-5c [105 ILCS

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5/21-5c] to persons who at the time of applying for the provisional alternative teaching certificate under this Section:

(1) have graduated from an accredited college or university with a bachelor's degree;

(2) have been employed for a period of at least 5 years in an area requiring application of the individual's education;

(3) have successfully completed the first phase of the Alternative Teacher Certification program as provided in this Section; and

(4) have passed the tests of basic skills and subject matter knowledge required by Section 21-1a [105 ILCS 5/21-1a].

An initial teaching certificate, valid for teaching in the common schools, shall be issued under Section 21-3 or 21-5 [105 ILCS 5/21-3 or 105 ILCS 5/21-5] to persons who first complete the requirements for the provisional alternative teaching certificate and who at the time of applying for an initial teaching certificate have successfully completed the second and third phases of the Alternative Route to Teacher Certification program as provided in this Section.

A person possessing a provisional alternative certificate or an initial teaching certificate earned under this Section shall be treated as a regularly certified teacher for purposes of compensation, benefits, and other terms and conditions of employment afforded teachers in the school who are members of a bargaining unit represented by an exclusive bargaining representative, if any.

The State Board of Education may adopt rules and regulations that are consistent with this Section and that the State Board deems necessary to establish and implement the program.

No one may be admitted to an alternative certification program under this Section after September 1, 2012, and those candidates who are admitted on or before September 1, 2012 must complete the program before September 1, 2013.

This Section is repealed on September 1, 2013.

(Source: P.A. 90-548, § 5-915; 96-862, § 5; 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 990-5 of P.A. 90-548 made this section effective January 1, 1998.

Effect of Amendments. The 2010 amendment by P.A. 96-862, effective January 2010, rewrote the first and second paragraphs.

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The 2011 amendment by P.A. 97-607, effective August 26, 2011, substituted "Section 21B-105 of this Code" for "Section 21-21" in the second sentence of the second paragraph; and added the last two paragraphs.

§ 105 ILCS 5/21-5d. Alternative route to administrative certification

Sec. 21-5d. Alternative route to administrative certification. The State Board of Education, in consultation with the State Teacher Certification Board and an advisory panel consisting of no less than 7 administrators appointed by the State Superintendent of Education, shall establish and implement one or more alternative route to administrative certification program under which persons who meet the requirements of and successfully complete the program established by this Section shall be issued a standard administrative certificate for serving as an administrator in schools in this State. For the purposes of this Section only, "administrator" means a person holding any administrative position for which a standard administrative certificate with a general administrative endorsement, chief school business official endorsement, or superintendent endorsement is required, except a principal or an assistant principal. The State Board of Education may approve a course of study that persons in the program must successfully complete in order to satisfy one criterion for issuance of a certificate under this Section. The Alternative Route to Administrative Certification program course of study must include content and skills which have been approved by the State Board of Education, in consultation with the State Teacher Certification Board, as meeting the requirement for administrative certification.

Programs established under this Section shall be known as the Alternative Route to Administrative Certification programs. The programs shall be comprised of the following 3 phases: (a) a course of study offered on an intensive basis in education management, governance, organization, and planning; (b) the person's assignment to a full-time position for one school year as an administrator; and (c) a comprehensive assessment of the person's performance by school officials and a recommendation to the State Board of Education that the person be issued a standard administrative certificate. Successful completion of an Alternative Route to Administrative Certification program shall be deemed to satisfy any other supervisory, administrative, or management experience requirements established by law.

A provisional alternative administrative certificate, valid for one year of serving as an administrator in the common schools and not renewable, shall be issued under this Section 21-5d [105 ILCS 5/21-5d] to persons who at the time of applying for the provisional alternative administrative certificate under this Section:

(1) have graduated from an accredited college or university with a master's degree in a management field or with a bachelor's degree and the life experience equivalent of a master's degree in a management field as determined by the State Board of Education;

(2) have been employed for a period of at least 5 years in a management level position;

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(3) have successfully completed the first phase of the Alternative Route to Administrative Certification program as provided in this Section; and

(4) have passed any examination required by the State Board of Education.

A standard administrative certificate with a general administrative endorsement, chief school business official endorsement, or superintendent endorsement, renewable as provided in Section 21-14 [105 ILCS 5/21-14], shall be issued under Section 21-7.1 [105 ILCS 5/21-7.1] to persons who first complete the requirements for the provisional alternative administrative certificate and who at the time of applying for a standard administrative certificate have successfully completed the second and third phases of an Alternative Route to Administrative Certification program as provided in this Section.

The State Board of Education may adopt rules and regulations that are consistent with this Section and that the State Board deems necessary to establish and implement those programs.

No one may be admitted to an alternative certification program under this Section after September 1, 2012, and those candidates must complete the program before September 1, 2013.

This Section is repealed on September 1, 2013.

(Source: P.A. 90-548, § 5-915; 96-862, § 5; 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 990-5 of P.A. 90-548 made this section effective January 1, 1998.

Effect of Amendments. The 2010 amendment by P.A. 96-862, effective January 2010, in the introductory paragraph, substituted "one or more alternative route" for "an alternative route", substituted "may" for "shall" following "State Board of Education", deleted "contained in a university's current courses for State certification" following "course of study must include", and inserted "meeting" at end of the last sentence; in the second paragraph, substituted "programs" for "program" three times; substituted "an Alternative" for "the Alternative" in the fourth paragraph; and substituted "those programs" for "the program" at the end of the last paragraph.

The 2011 amendment by P.A. 97-607, effective August 26, 2011, added the last two paragraphs.

§ 105 ILCS 5/21-5e. Alternative Route to Administrative Certification for National Board Certified Teachers

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Sec. 21-5e. Alternative Route to Administrative Certification for National Board Certified Teachers. (a) It shall be the policy of the State of Illinois to improve the recruitment and preparation of instructional leaders.

(b) On or before July 1, 2007, the State Board of Education, in consultation with the State Teacher Certification Board, may establish and implement one or more alternative route to administrative certification for teacher leaders, to be known as the Alternative Route to an Administrative Certificate for National Board Certified Teachers. "Teacher leader" means a certified teacher who has already received National Board certification through the National Board for Professional Teaching Standards and who has a teacher leader endorsement under Section 21-7.5 of this Code [105 ILCS 5/21-7.5]. Persons who meet the requirements of and successfully complete a program established by this Section shall be issued a standard administrative certificate for serving in schools in this State. The State Board may approve a course of study that persons must successfully complete in order to satisfy one criterion for issuance of the administrative certificate under this Section. The Alternative Route to an Administrative Certificate for National Board Certified Teachers must include content and skills contained in the Illinois Professional School Leader Standards for State certification, with the exception of content and skills that a candidate has already demonstrated meeting through National Board certification or through a teacher leadership master's degree program.

(c) The Alternative Route to an Administrative Certificate for National Board Certified Teachers shall be comprised of the following 4 phases:

(1) National Board certification and an endorsement in teacher leadership in accordance with Section 21-7.5 of this Code;

(2) a master's degree in a teacher leader program;

(3) 15 hours of coursework in which the candidate must show evidence of meeting competencies for organizational management and development, finance, supervision and evaluation, policy and legal issues, and leadership, as stated in the Illinois Professional School Leader Standards for principals; and

(4) a passing score on the Illinois Administrator Assessment.

(d) Successful completion of the Alternative Route to an Administrative Certificate for National Board Certified Teachers shall be deemed to satisfy all requirements to receive an administrative certificate established by law. The State Board shall adopt rules that are consistent with this Section and that the State Board deems necessary for the establishment and implementation of the program.

(Source: P.A. 94-1039, § 5; 96-862, § 5.)

Effective Date. Section 99 of P.A. 94-1039 made the section effective upon becoming law. The Act was approved July 20, 2006.

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Effect of Amendments. The 2010 amendment by P.A. 96-862, effective January 2010, in subsection (b), substituted "may" for "shall" twice, substituted "one or more alternative route" for "an alternative route", and rewrote the last sentence; and made a stylistic change.

§ 105 ILCS 5/21-7.1. Administrative certificate

Sec. 21-7.1. Administrative certificate. (a) After July 1, 1999, an administrative certificate valid for 5 years of supervising and administering in the public common schools (unless changed under subsection (a-5) of this Section) may be issued to persons who have graduated from a regionally accredited institution of higher learning with a master's degree or its equivalent and who have been recommended by a recognized institution of higher learning, a not-for-profit entity, or a combination thereof, as having completed a program of preparation for one or more of these endorsements. Such programs of academic and professional preparation required for endorsement shall be administered by an institution or not-for-profit entity approved to offer such programs by the State Board of Education, in consultation with the State Teacher Certification Board, and shall be operated in accordance with this Article and the standards set forth by the State Superintendent of Education in consultation with the State Teacher Certification Board. Any program offered in whole or in part by a not-for-profit entity must also be approved by the Board of Higher Education.

(a-5) Beginning July 1, 2003, if an administrative certificate holder holds a Standard Teaching Certificate, the validity period of the administrative certificate shall be changed, if necessary, so that the validity period of the administrative certificate coincides with the validity period of the Standard Teaching Certificate. Beginning July 1, 2003, if an administrative certificate holder holds a Master Teaching Certificate, the validity period of the administrative certificate shall be changed so that the validity period of the administrative certificate coincides with the validity period of the Master Teaching Certificate.

(b) No administrative certificate shall be issued for the first time after June 30, 1987 and no endorsement provided for by this Section shall be made or affixed to an administrative certificate for the first time after June 30, 1987 unless the person to whom such administrative certificate is to be issued or to whose administrative certificate such endorsement is to be affixed has been required to demonstrate as a part of a program of academic or professional preparation for such certification or endorsement: (i) an understanding of the knowledge called for in establishing productive parent-school relationships and of the procedures fostering the involvement which such relationships demand; and (ii) an understanding of the knowledge required for establishing a high quality school climate and promoting good classroom organization and management, including rules of conduct and instructional procedures appropriate to accomplishing the tasks of schooling; and (iii) a demonstration of the knowledge and skills called for in providing instructional leadership. The standards for demonstrating an understanding of such knowledge shall be set forth by the State Board of Education in consultation with the State Teacher Certification Board, and shall be administered by the recognized institutions of higher learning as part of the programs of academic and professional

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preparation required for certification and endorsement under this Section. As used in this subsection: "establishing productive parent-school relationships" means the ability to maintain effective communication between parents and school personnel, to encourage parental involvement in schooling, and to motivate school personnel to engage parents in encouraging student achievement, including the development of programs and policies which serve to accomplish this purpose; and "establishing a high quality school climate" means the ability to promote academic achievement, to maintain discipline, to recognize substance abuse problems among students and utilize appropriate law enforcement and other community resources to address these problems, to support teachers and students in their education endeavors, to establish learning objectives and to provide instructional leadership, including the development of policies and programs which serve to accomplish this purpose; and "providing instructional leadership" means the ability to effectively evaluate school personnel, to possess general communication and interpersonal skills, and to establish and maintain appropriate classroom learning environments. The provisions of this subsection shall not apply to or affect the initial issuance or making on or before June 30, 1987 of any administrative certificate or endorsement provided for under this Section, nor shall such provisions apply to or affect the renewal after June 30, 1987 of any such certificate or endorsement initially issued or made on or before June 30, 1987.

(c) Administrative certificates shall be renewed every 5 years with the first renewal being 5 years following the initial receipt of an administrative certificate, unless the validity period for the administrative certificate has been changed under subsection (a-5) of this Section, in which case the certificate shall be renewed at the same time that the Standard or Master Teaching Certificate is renewed.

(c-5) (Blank).

(c-10) Except as otherwise provided in subsection (c-15) of this Section, persons holding administrative certificates must follow the certificate renewal procedure set forth in this subsection (c-10), provided that those persons holding administrative certificates on June 30, 2003 who are renewing those certificates on or after July 1, 2003 shall be issued new administrative certificates valid for 5 years (unless changed under subsection (a-5) of this Section), which may be renewed thereafter as set forth in this subsection (c-10).

A person holding an administrative certificate and employed in a position requiring administrative certification, including a regional superintendent of schools, must satisfy the continuing professional development requirements of this Section to renew his or her administrative certificate. The continuing professional development must include without limitation the following continuing professional development purposes:

(1) To improve the administrator's knowledge of instructional practices and administrative procedures in accordance with the Illinois Professional School Leader Standards.

(2) To maintain the basic level of competence required for initial certification.

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(3) To improve the administrator's mastery of skills and knowledge regarding the improvement of teaching performance in clinical settings and assessment of the levels of student performance in the schools.

The continuing professional development must include the following in order for the certificate to be renewed:

(A) Participation in continuing professional development activities, which must total a minimum of 100 hours of continuing professional development. The participation must consist of a minimum of 5 activities per validity period of the certificate, and the certificate holder must maintain documentation of completion of each activity.

(B) Participation every year in an Illinois Administrators' Academy course, which participation must total a minimum of 30 continuing professional development hours during the period of the certificate's validity and which must include completion of applicable required coursework, including completion of a communication, dissemination, or application component, as defined by the State Board of Education.

The certificate holder must complete a verification form developed by the State Board of Education and certify that 100 hours of continuing professional development activities and 5 Administrators' Academy courses have been completed. The regional superintendent of schools shall review and validate the verification form for a certificate holder. Based on compliance with all of the requirements for renewal, the regional superintendent of schools shall forward a recommendation for renewal or non-renewal to the State Superintendent of Education and shall notify the certificate holder of the recommendation. The State Superintendent of Education shall review the recommendation to renew or non-renew and shall notify, in writing, the certificate holder of a decision denying renewal of his or her certificate. Any decision regarding non-renewal of an administrative certificate may be appealed to the State Teacher Certification Board.

The State Board of Education, in consultation with the State Teacher Certification Board, shall adopt rules to implement this subsection (c-10).

The regional superintendent of schools shall monitor the process for renewal of administrative certificates established in this subsection (c-10).

(c-15) This subsection (c-15) applies to the first period of an administrative certificate's validity during which the holder becomes subject to the requirements of subsection (c-10) of this Section if the certificate has less than 5 years' validity or has less than 5 years' validity remaining when the certificate holder becomes subject to the requirements of subsection (c-10) of this Section. With respect to this period, the 100 hours of continuing professional development and 5 activities per validity period specified in clause (A) of subsection (c-10) of this Section shall instead be deemed to mean 20 hours of continuing professional development and one activity per year of the certificate's validity or remaining validity and the 30 continuing professional development hours specified in clause (B) of subsection (c-10) of this Section shall instead be deemed to mean completion of at least one course per year of the certificate's validity or remaining

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validity. Certificate holders who evaluate certified staff must complete a 2-day teacher evaluation course, in addition to the 30 continuing professional development hours.

(c-20) The State Board of Education, in consultation with the State Teacher Certification Board, shall develop procedures for implementing this Section and shall administer the renewal of administrative certificates. Failure to submit satisfactory evidence of continuing professional education which contributes to promoting the goals of this Section shall result in a loss of administrative certification.

(d) Any limited or life supervisory certificate issued prior to July 1, 1968 shall continue to be valid for all administrative and supervisory positions in the public schools for which it is valid as of that date as long as its holder meets the requirements for registration or renewal as set forth in the statutes or until revoked according to law.

(e) The administrative or supervisory positions for which the certificate shall be valid shall be determined by one or more of the following endorsements: general supervisory, general administrative, principal, chief school business official, and superintendent.

Subject to the provisions of Section 21-1a [105 ILCS 5/21-1a], endorsements shall be made under conditions set forth in this Section. The State Board of Education shall, in consultation with the State Teacher Certification Board, adopt rules pursuant to the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.], establishing requirements for obtaining administrative certificates where the minimum administrative or supervisory requirements surpass those set forth in this Section.

The State Teacher Certification Board shall file with the State Board of Education a written recommendation when considering additional administrative or supervisory requirements. All additional requirements shall be based upon the requisite knowledge necessary to perform those tasks required by the certificate. The State Board of Education shall in consultation with the State Teacher Certification Board, establish standards within its rules which shall include the academic and professional requirements necessary for certification. These standards shall at a minimum contain, but not be limited to, those used by the State Board of Education in determining whether additional knowledge will be required. Additionally, the State Board of Education shall in consultation with the State Teacher Certification Board, establish provisions within its rules whereby any member of the educational community or the public may file a formal written recommendation or inquiry regarding requirements.

(1) Until July 1, 2003, the general supervisory endorsement shall be affixed to the administrative certificate of any holder who has at least 16 semester hours of graduate credit in professional education including 8 semester hours of graduate credit in curriculum and research and who has at least 2 years of full-time teaching experience or school service personnel experience in public schools, schools under the supervision of the Department of Corrections, schools under the administration of the Department of Rehabilitation Services, or nonpublic schools meeting the standards established by the State Superintendent of Education or comparable out-of-state recognition standards approved by the State Superintendent of Education.

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Such endorsement shall be required for supervisors, curriculum directors and for such similar and related positions as determined by the State Superintendent of Education in consultation with the State Teacher Certification Board.

(2) Until August 31, 2014, the general administrative endorsement shall be affixed to the administrative certificate of any holder who has at least 20 semester hours of graduate credit in educational administration and supervision and who has at least 2 years of full-time teaching experience or school service personnel experience in public schools, schools under the supervision of the Department of Corrections, schools under the administration of the Department of Rehabilitation Services, or nonpublic schools meeting the standards established by the State Superintendent of Education or comparable out-of-state recognition standards approved by the State Superintendent of Education.

Such endorsement or a principal endorsement shall be required for principal, assistant principal, assistant or associate superintendent, and junior college dean and for related or similar positions as determined by the State Superintendent of Education in consultation with the State Teacher Certification Board.

(2.5) The principal endorsement shall be affixed to the administrative certificate of any holder who qualifies by:

(A) successfully completing a principal preparation program approved in accordance with Section 21-7.6 of this Code and any applicable rules;

(B) having 4 years of teaching experience; however, the State Board of Education shall allow, by rules, for fewer than 4 years of experience based on meeting standards set forth in such rules, including without limitation a review of performance evaluations or other evidence of demonstrated qualifications; and

(C) having a master's degree.

(3) The chief school business official endorsement shall be affixed to the administrative certificate of any holder who qualifies by having a Master's degree, 2 years of administrative experience in school business management or 2 years of university-approved practical experience, and a minimum of 20 semester hours of graduate credit in a program established by the State Superintendent of Education in consultation with the State Teacher Certification Board for the preparation of school business administrators. Such endorsement shall also be affixed to the administrative certificate of any holder who qualifies by having a Master's Degree in Public Administration, Business Administration, Finance, or Accounting and 6 semester hours of internship in school business management from a regionally accredited institution of higher education.

After June 30, 1977, such endorsement shall be required for any individual first employed as a chief school business official.

(4) The superintendent endorsement shall be affixed to the administrative certificate of any holder who has completed 30 semester hours of graduate credit beyond the master's degree in a program for the preparation of superintendents of schools including 16 semester hours of graduate credit in professional education and who has at least 2 years

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experience as an administrator or supervisor in the public schools or the State Board of Education or education service regions or in nonpublic schools meeting the standards established by the State Superintendent of Education or comparable out-of-state recognition standards approved by the State Superintendent of Education and holds general supervisory or general administrative endorsement, or who has had 2 years of experience as a supervisor, chief school business official, or administrator while holding an all-grade supervisory certificate or a certificate comparable in validity and educational and experience requirements.

After June 30, 1968, such endorsement shall be required for a superintendent of schools, except as provided in the second paragraph of this Section and in Section 34-6 [105 ILCS 5/34-6].

Any person appointed to the position of superintendent between the effective date of this Act and June 30, 1993 in a school district organized pursuant to Article 32 with an enrollment of at least 20,000 pupils shall be exempt from the provisions of this paragraph (4) until June 30, 1996.

(f) All official interpretations or acts of issuing or denying administrative certificates or endorsements by the State Teacher's Certification Board, State Board of Education or the State Superintendent of Education, from the passage of P.A. 81-1208 on November 8, 1979 through September 24, 1981 are hereby declared valid and legal acts in all respects and further that the purported repeal of the provisions of this Section by P.A. 81-1208 and P.A. 81-1509 is declared null and void.

(g) This Section is repealed on June 30, 2013.

(Source: P.A. 86-363; 86-1045; 86-1471; 86-1488; 87-435; 87-1262, § 1; 89-626, § 3-17; 91-102, § 5; 92-796, § 3; 93-679, § 15; 96-56, § 5; 96-903, § 5; 96-982, § 5; 96-1423, § 5; 97-255, § 5; 97-333, § 185; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 21-7.1.

Section 95 of P.A. 92-796 contains a no acceleration or delay provision.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 25.322.

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Effect of Amendments. The 1992 amendment, effective January 7, 1993, added the last sentence in the first paragraph of subdivision (e)(3); and added the last paragraph in subdivision (e)(4).

The 1996 amendment by P.A. 89-626, effective August 9, 1996, substituted "the Department of Rehabilitation Services, or nonpublic" for "Vocational Rehabilitation or in nonpublic" in the first paragraph of subdivisions (e)(1) and (e)(2).

The 1999 amendment by P.A. 91-102, effective July 12, 1999, in the first sentence of subsection (a) substituted "July 1, 1999" for "January 1, 1986", "regionally accredited" for "recognized" following "graduated from a", and "recommended by a recognized institution" for "certified by these institutions"; and added "Until July 1, 2003" in the first sentence of subdivision (e)(1) at the beginning.

The 2002 amendment by P.A. 92-796, effective August 10, 2002, inserted "(unless changed under subsection (a-5) of this Section) in subsection (a); inserted subsection (a-5); in subsection (c) inserted "unless the validity period for the administrative certificate has been changed under subsection(a-5) of this Section, in which case the certificate shall be renewed at the same time that the Standard or Master Teaching Certificate is renewed", and made stylistic changes; added "Before July 1, 2003" at the beginning of subsection (c-5); inserted subsections (c-10) and (c-15); added the subsection (c-20) designation; substituted "paragraph" for "Subsection" in the last sentence of subsection (e) paragraph (4).

The 2004 amendment by P.A. 93-679, effective June 30, 2004, rewrote subsections (c-10) and (c-15).

The 2009 amendment by P.A. 96-56, effective January 1, 2010, in the first sentence of (e)(3) inserted "or 2 years of university-approved practical experience", and made a stylistic change.

The 2010 amendment by P.A. 96-903, effective July 1, 2010, in (a), inserted "a not-for-profit entity, or a combination thereof", "or not-for-profit entity approved to offer such programs by the State Board of Education, in consultation with the State Teacher Certification Board, and shall be operated", "this Article and the", and added the last sentence; deleted the text from (c-5), concerning the renewal requirements for administrators whose positions require certification; deleted "Beginning July 1, 2003" from the beginning of the introductory paragraph of (c-10); in the introductory paragraph of (e), subsituted "the following endoresements" for "3 endorsements", and inserted "principal, chief school business official"; added "Until June 20, 2014" at the beginning of the introductory paragraph of (e)(2); in the second paragraph of (e)(2), inserted "or a principal endorsement" at the beginning, inserted "and" preceding "junior college", deleted the text of the third paragraph of (e)(2); and added (e)(2.5).

The 2010 amendment by P.A. 96-982, effective January 1, 2011, inserted "and 6 semester hours of internship in school business management" near the end of the last sentence of (e)(3); and inserted "chief school business official" near the end of (e)(4).

The 2010 amendment by P.A. 96-1423, effective August 3, 2010, inserted "or its equivalent" in the first sentence of (a).

The 2011 amendment by P.A. 97-255, effective August 4, 2011, inserted "Public Administration" in the second sentence of the first paragraph of (e)(3); and made a related change.

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, combined earlier multiple amendments to the section.

The 2011 amendment by P.A. 97-607, effective August 26, 2011, substituted "August 31, 2014" for "June 30, 2014" in (e)(2); and added (g).

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This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

CASE NOTES

Ouster of Superintendent

The judgment to oust a county superintendent of schools from office was properly entered, where his answer to the quo warranto proceeding failed to show that he had a valid state limited supervisory certificate. People ex rel. Phelps v. Kerstein, 413 Ill. 333, 108 N.E.2d 915 (1952).

§ 105 ILCS 5/21-7.5. Teacher leader endorsement

Sec. 21-7.5. Teacher leader endorsement. It shall be the policy of the State of Illinois to improve the quality of instructional leaders by providing a career pathway for teachers interested in serving in leadership roles. Beginning on July 1, 2007, the State Board, in consultation with the State Teacher Certification Board, shall establish and implement a teacher leader endorsement, to be known as a teacher leader endorsement. Persons who meet the requirements of and successfully complete the requirements of the endorsement established under this Section on or before August 31, 2012 shall be issued a teacher leader endorsement for serving in schools in this State. No teacher leader endorsement under this Section shall be issued after December 31, 2012. The endorsement shall be a career path endorsement but not a restrictive endorsement available to: (i) teachers who are certified through the National Board for Professional Teaching Standards and complete a specially designed strand of teacher leadership courses; (ii) teachers who have completed a master's degree program in teacher leadership; and (iii) proven teacher leaders with a master's degree who complete a specially designed strand of teacher leadership courses. Colleges and universities shall have the authority to qualify the proficiency of proven teacher leaders under clause (iii) of this Section. A teacher who meets any of clauses (i) through (iii) of this Section shall be deemed to satisfy the requirements for the teacher leader endorsement. The State Board may adopt rules that are consistent with this Section and that the State Board deems necessary to establish and implement this teacher leadership endorsement program.

This Section is repealed on January 1, 2013.

(Source: P.A. 94-1039, § 5; 97-607, § 15.)

Note.

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Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 94-1039 made the section effective upon becoming law. The Act was approved July 20, 2006.

Effect of Amendments. The 2011 amendment by P.A. 97-607, effective August 26, 2011, in the first paragraph, inserted "on or before August 31, 2012" in the third sentence and inserted the fourth sentence; and added the second paragraph.

§ 105 ILCS 5/21-7.6. Principal preparation programs

Sec. 21-7.6. Principal preparation programs. (a) It is the policy of this State that an essential element of improving student learning is supporting and employing highly effective school principals in leadership roles who improve teaching and learning and increase academic achievement and the development of all students.

(b) No later than September 1, 2014, all institutions of higher education and not-for-profit entities approved by the State Board of Education, in consultation with the State Teacher Certification Board, to offer principal preparation programs must do all of the following:

(1) Meet the standards and requirements for such programs in accordance with this Section and any rules adopted by the State Board of Education.

(2) Prepare candidates to meet approved standards for principal skills, knowledge, and responsibilities, which shall include a focus on instruction and student learning and which must be used for principal professional development, mentoring, and evaluation.

(3) Include specific requirements for (i) the selection and assessment of candidates, (ii) training in the evaluation of staff, (iii) an internship, and (iv) a partnership with one or more school districts or State-recognized, non-public schools where the chief administrator is required to have the certification necessary to be a principal in an Illinois public school and where a majority of the instructors are required to have the certification necessary to be instructors in an Illinois public school.

In accordance with subsection (a) of Section 21-7.1 of this Code [105 ILCS 5/21-7.1], any principal preparation program offered in whole or in part by a not-for-profit entity must also be approved by the Board of Higher Education.

(c) No candidates may be admitted to an approved general administrative preparation program after September 1, 2012. Institutions of higher education currently offering general administrative preparation programs may no longer entitle principals with a general administrative endorsement after August 31, 2014.

(d) Candidates successfully completing a principal preparation program established pursuant to this Section shall obtain a principal endorsement on an administrative certificate and are eligible to work in, at a minimum, those capacities set forth in paragraph (2) of subsection (e) of Section 21-7.1 of this Code. Beginning on August 31,

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2014, the general administrative endorsement shall no longer be issued. Individuals who hold a valid and registered administrative certificate with a general administrative endorsement prior to July 1, 2014 and who have served for at least one full year during the 5 years prior in a position requiring a general administrative endorsement shall, upon request to the State Board of Education and through July 1, 2015, have their respective general administrative endorsement converted to a principal endorsement. All other individuals holding a valid and registered administrative certificate with a general administrative endorsement prior to August 31, 2014 shall have such general administrative endorsement converted to a principal endorsement upon request to the State Board of Education and by completing one of the following pathways:

(1) Take and pass a State principal assessment developed by the State Board of Education.

(2) Through July 1, 2019, complete an Illinois Administrators' Academy course designated by the State Superintendent of Education.

(3) Complete a principal preparation program established and approved pursuant to this Section and applicable rules.

Nothing in this amendatory Act of the 96th General Assembly [P.A. 96-903] shall prevent an individual having a general administrative endorsement from serving at any time in any position identified in paragraph (2) of subsection (e) of Section 21-7.1 of this Code.

(e) The State Board of Education may adopt rules necessary to implement and administer principal preparation programs under this Section.

(f) This Section is repealed on June 30, 2013.

(Source: P.A. 96-903, § 5; 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 96-903 made this section effective July 1, 2010.

Effect of Amendments. The 2011 amendment by P.A. 97-607, effective August 26, 2011, substituted "September 1, 2014" for "July 1, 2014" in the introductory language of (b); substituted "August 31, 2014" for "June 30, 2014" in (c); substituted "August 31, 2014" for "July 1, 2014" in the first and last sentences of the introductory language of (d); and added (f).

§ 105 ILCS 5/21-7.10: Repealed by P.A. 97-607, § 25, effective August 26, 2011.

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§ 105 ILCS 5/21-7.15: Repealed internally by P.A. 94-1039, § 5, effective July 2, 2007.

§ 105 ILCS 5/21-9. Substitute certificates and substitute teaching

Sec. 21-9. Substitute certificates and substitute teaching. (a) A substitute teacher's certificate may be issued for teaching in all grades of the common schools. Such certificate may be issued upon request of the regional superintendent of schools of any region in which the teacher is to teach. A substitute teacher's certificate is valid for teaching in the public schools of any county. Such certificate may be issued to persons who either (a) hold a certificate valid for teaching in the common schools as shown on the face of the certificate, (b) hold a bachelor's degree or higher from an institution of higher learning accredited by the North Central Association or other comparable regional accrediting association or have been graduated from a recognized institution of higher learning with a bachelor's degree or higher, or (c) (blank). Such certificate shall expire on June 30 in the fourth year from date of issue. Substitute teacher's certificates are not subject to endorsement as described in Section 21-1b of this Code [105 ILCS 5/21-1b].

(b) A teacher holding a substitute teacher's certificate may teach only in the place of a certified teacher who is under contract with the employing board. If, however, there is no certified teacher under contract because of an emergency situation, then a school district may employ a substitute teacher for no longer than 30 calendar days per each vacant position in the district if the district notifies the appropriate regional office of education within 5 business days after the employment of the substitute teacher in the emergency situation. An emergency situation is one in which an unforeseen vacancy has occurred and (i) a teacher is unable to fulfill his or her contractual duties or (ii) teacher capacity needs of the district exceed previous indications, and the district is actively engaged in advertising to hire a fully certified teacher for the vacant position.

There is no limit on the number of days that a substitute teacher may teach in a single school district, provided that no substitute teacher may teach for longer than 90 school days for any one certified teacher under contract in the same school year.

A teacher holding an early childhood certificate, an elementary certificate, a high school certificate, or a special certificate may also substitute teach in grades K-12, but only in the place of a certified teacher who is under contract with the employing board, and may not teach for longer than 120 days for any one certified teacher under contract in the same school year. The teaching limitations imposed by this subsection upon teachers holding substitute certificates shall not apply in any school district operating under Article 34 [105 ILCS 5/34-1 et seq.].

(c) (Blank).

(d) This Section is repealed on June 30, 2013.

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(Source: P.A. 84-126; 89-212, § 5; 91-102, § 5; 92-184, § 5; 93-679, § 15; 96-1489, § 5; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 21-9.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 1.790, 25.400, 25.455.

Effect of Amendments. The 1995 amendment by P.A. 89-212, effective August 4, 1995, in subsection (b) added the second sentence.

The 1999 amendment by P.A. 91-102, effective July 12, 1999, added "and substitute teaching" in the section heading; and added the last sentence in subsection (a).

The 2001 amendment by P.A. 92-183, effective July 27, 2001, in subsection (b) inserted the fourth sentence.

The 2004 amendment by P.A. 93-679, effective June 30, 2004, deleted "for the 2001-2002, 2002-2003, and 2003-2004 school years" following "However" in the fourth sentence of subsection (b).

The 2010 amendment by P.A. 1489, effective January, 1, 2011, added (c).

The 2011 amendment by P.A. 97-607, effective August 26, 2011, in the third sentence of (a), in item (b), substituted "bachelor's degree or higher" for "bachelor of arts degree" and added "or higher" to the end and deleted the text of item (c); in (b), deleted "and may teach only when no appropriate fully certified teacher is available to teach in a substitute capacity" from the end of the first sentence and added the last two sentences, inserted the second paragraph, and in the last paragraph, added "and may not teach for longer than 120 days for any one certified teacher under contract in the same school year" to the end of the first sentence and deleted the former second through fourth sentences, pertaining to the role of an substitute teacher; deleted the text of subsection (c); added (d); and made a related change.

CASE NOTES

Analysis

Applicability
Damages
- Lack of Certification
- No Implied Action
Protected Teachers
- Time Limits
Purpose

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Applicability

Since the 1985 amendment referred explicitly to the limitations on teachers "holding substitute certificates," it appears that the limitations were intended to apply only to teachers holding such certificates. Woods v. East St. Louis Sch. Dist., 147 Ill. App. 3d 776, 101 Ill. Dec. 477, 498 N.E.2d 801 (5 Dist. 1986).

Damages

- Lack of Certification

Teaching limitations that a substitute teacher may teach only for a period not to exceed 90 paid school days or 450 paid school hours in any one school district in any one term were not applicable to a teacher who never held a substitute certificate; thus, she could not invoke the provisions of this section in an action for damages. Woods v. East St. Louis Sch. Dist., 147 Ill. App. 3d 776, 101 Ill. Dec. 477, 498 N.E.2d 801 (5 Dist. 1986).

- No Implied Action

No private right of action for damages should be implied for violation of this section. Woods v. East St. Louis Sch. Dist., 147 Ill. App. 3d 776, 101 Ill. Dec. 477, 498 N.E.2d 801 (5 Dist. 1986).

Protected Teachers

- Time Limits

A substitute teacher not entitled to the protection afforded probationary and full-time teachers under tenure law since the statute was designed to protect not substitute teachers, those employed on a temporary basis as replacements for regular teachers but, rather, full-time teachers who would be harmed by an excessive use of substitute teachers, so as to justify implying private action on behalf of substitute teachers who taught in excess of the days stated. Woods v. East St. Louis Sch. Dist., 147 Ill. App. 3d 776, 101 Ill. Dec. 477, 498 N.E.2d 801 (5 Dist. 1986).

Purpose

The purpose of this section, when read as a whole, appears to be to provide for those persons seeking or holding a substitute teacher's certificate. Woods v. East St. Louis Sch. Dist., 147 Ill. App. 3d 776, 101 Ill. Dec. 477, 498 N.E.2d 801 (5 Dist. 1986).

Service Exceeding Time Limit

A former version of this statute that explicitly referred to a "teacher holding a substitute teacher's certificate" in limiting the number of days to be taught by a teacher was not applicable to a teacher who taught as a substitute teacher with a full-time teacher's certificate. Woods v. East St. Louis Sch. Dist., 147 Ill. App. 3d 776, 101 Ill. Dec. 477, 498 N.E.2d 801 (5 Dist. 1986).

Where the plaintiff was not employed on a "full-time" basis so as to be entitled to full-time pay and benefits as a matter of public policy but, rather, taught merely as a substitute teacher on a

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temporary, day-by-day basis, she was not entitled to full-time pay and benefits as a matter of public policy or based on the statute limiting the period of time that a substitute teacher could be employed, even though she taught in excess of the statutory period. Woods v. East St. Louis Sch. Dist., 147 Ill. App. 3d 776, 101 Ill. Dec. 477, 498 N.E.2d 801 (5 Dist. 1986).

§ 105 ILCS 5/21-10. Provisional certificate

Sec. 21-10. Provisional certificate. (A) (Blank).

(B) After July 1, 1972, the State Teacher Certification Board may issue a provisional certificate valid for teaching in early childhood, elementary, high school or special subject fields, or for providing service as school service personnel or for administering schools subject to the following conditions: A provisional certificate may be issued to a person who meets the requirements for a regular teaching, school service personnel or administrative certificate in another State and who presents certified evidence of having earned a bachelor's degree from a recognized institution of higher learning. The academic and professional courses offered as a basis of the provisional certificate shall be courses approved by the State Board of Education in consultation with the State Teacher Certification Board. A certificate earned under this plan is valid for a period of 2 years and shall not be renewed.

(C) The State Teacher Certification Board may also issue a provisional vocational certificate and a temporary provisional vocational certificate.

(1) The requirements for a provisional vocational certificate shall be determined by the State Board of Education in consultation with the State Teacher Certification Board; provided, the following minimum requirements are met: (a) after July 1, 1972, at least 30 semester hours of credit from a recognized institution of higher learning; and (b) after July 1, 1974, at least 60 semester hours of credit from a recognized institution of higher learning.

(2) The requirements for a temporary provisional vocational certificate shall be determined by the State Board of Education in consultation with the State Teacher Certification Board; provided, the following minimum requirements are met: (a) after July 1, 1973, at least 4,000 hours of work experience in the skill to be certified for teaching; and (b) after July 1, 1975, at least 8,000 hours of work experience in the skill to be certified for teaching. Any certificate issued under the provisions of this paragraph shall expire on June 30 following the date of issue. Renewals may be granted on a yearly basis, but shall not be granted to any person who does not file with the State Teacher Certification Board a transcript showing at least 3 semester hours of credit earned during the previous year in a recognized institution of learning. No such certificate shall be issued except upon certification by the employing board, subject to the approval of the regional superintendent of schools, that no qualified teacher holding a regular certificate or a provisional vocational certificate is available and that actual circumstances and need require such issuance.

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The courses or work experience offered as a basis for the issuance of the provisional vocational certificate or the temporary provisional vocational certificate shall be approved by the State Board of Education in consultation with the State Teacher Certification Board.

(D) (Blank).

(E) Notwithstanding anything in this Act to the contrary, the State Teacher Certification Board shall issue part-time provisional certificates to eligible individuals who are professionals and craftsmen.

The requirements for a part-time provisional teachers certificate shall be determined by the State Board of Education in consultation with the State Teacher Certification Board, provided the following minimum requirements are met: 60 semester hours of credit from a recognized institution of higher learning or 4000 hours of work experience in the skill to be certified for teaching.

A part-time provisional certificate may be issued for teaching no more than 2 courses of study for grades 6 through 12.

A part-time provisional teachers certificate shall be valid for 2 years and may be renewed at the end of each 2 year period.

(F) This Section is repealed on June 30, 2013.

(Source: P.A. 86-10; 88-204, § 5; 90-548, § 5-915; 91-357, § 101; 96-689, § 5; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 21-10.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 25.11, 25.75.

Effect of Amendments. The 1993 amendment by P.A. 88-204, effective January 1, 1994, added subsection (E).

The 1997 amendment by P.A. 90-548, effective January 1, 1998, in subsection (B), in the third sentence, substituted "examinations set forth by the State Board of Education" for "basic skills test and subject matter knowledge test or tests".

The 1999 amendment by P.A. 91-357, effective July 29, 1999, inserted "Certification" preceding "Board" in subsection (C)(1).

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The 2009 amendment by P.A. 96-689, effective July 1, 2009, in (B), deleted "however, the individual to whom this certificate is issued shall have passed or shall pass the examinations set forth by the State Board of Education within 9 months of the date of issuance of the provisional certificate" from the end of the last sentence and deleted the former last sentence, which read: "Failure to pass the tests, required in Section 21-1a, shall result in the cancellation of the provisional certificate."

The 2011 amendment by P.A. 97-607, effective August 26, 2011, deleted the text of subsections (A) and (D); and added (F).

RESEARCH REFERENCES

Validity and construction of statutes, ordinances, or regulations requiring competency tests of school teachers. 64 ALR4th 642.

§ 105 ILCS 5/21-11: Repealed by P.A. 91-102, § 10, effective July 12, 1999.

§ 105 ILCS 5/21-11.1. Certificates for equivalent qualifications

Sec. 21-11.1. Certificates for equivalent qualifications. An applicant who holds or is eligible to hold a teacher's certificate or license under the laws of another state or territory of the United States may be granted a corresponding teacher's certificate in Illinois on the written authorization of the State Board of Education and the State Teacher Certification Board upon the following conditions:

(1) That the applicant is at least 19 years of age, is of good character, of good health, and a citizen of the United States or legally present and authorized for employment; and

(2) That the requirements for a similar teacher's certificate in the particular state or territory were, at the date of issuance of the certificate, substantially equal to the requirements in force at the time the application is made for the certificate in this State.

After January 1, 1988, in addition to satisfying the foregoing conditions and requirements, an applicant for a corresponding teaching certificate in Illinois also shall be required to pass the examinations required under the provisions of Section 21-1a [105 ILCS 5/21-1a] as directed by the State Board of Education.

In determining good character under this Section, any felony conviction of the applicant may be taken into consideration, but the conviction shall not operate as a bar to registration.

The State Board of Education in consultation with the State Teacher Certification Board shall prescribe rules and regulations establishing the similarity of certificates in other states and the standards for determining the equivalence of requirements.

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This Section is repealed on June 30, 2013.

(Source: P.A. 87-242; 90-548, § 5-915; 93-572, § 5; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 21-11.1.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, in the second paragraph substituted "examination" for "test of basic skills and subject matter knowledge" and added at the end "as directed by the State Board of Education".

The 2003 amendment by P.A. 93-572, effective January 1, 2004, in subdivision (1) inserted "or legally present and authorized for employment" and made a stylistic change.

The 2011 amendment by P.A. 97-607, effective August 26, 2011, added the last paragraph.

§ 105 ILCS 5/21-11.2. Additional certificates - Experienced Employed Teachers

Sec. 21-11.2. Additional certificates - Experienced Employed Teachers. Experienced certified teachers employed in Illinois public or private elementary and secondary schools seeking additional teaching certificates as provided in Sections 21-2.1, 21-3, 21-4 and 21-5 [105 ILCS 5/21-2.1, 105 ILCS 5/21-3, 105 ILCS 5/21-4, and 105 ILCS 5/21-5] may submit an application for evaluation of credentials to the State Teacher Certification Board. Individuals obtaining a certificate by transcript evaluation shall meet the minimum requirements for the certificate as approved by the State Superintendent of Education in consultation with the State Teacher Certification Board.

This Section is repealed on June 30, 2013.

(Source: P.A. 82-911; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 21-11.2.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effect of Amendments. The 2011 amendment by P.A. 97-607, effective August 26, 2011, added the second paragraph.

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§ 105 ILCS 5/21-11.3. Resident teacher certificate

Sec. 21-11.3. Resident teacher certificate. A resident teacher certificate shall be valid for 4 years for employment as a resident teacher in a public school. It shall be issued only to persons who have graduated from a regionally accredited institution of higher education with a bachelor's degree, who are enrolled in a program of preparation approved by the State Superintendent of Education in consultation with the State Teacher Certification Board, and who have passed the appropriate tests as required in Section 21-1a [105 ILCS 5/21-1a] and as determined by the State Board of Education. A resident teacher certificate may be issued for teaching children through grade 3 or for grades K-9, 6-12, or K-12 in a special subject area and may not be renewed. A resident teacher may teach only under the direction of a certified teacher as the resident teacher's mentor and shall not teach in place of a certified teacher. The holder of a resident teacher certificate shall be deemed to have satisfied the requirements for the issuance of a Standard Teaching Certificate if he or she has completed 4 years of successful teaching, has passed all appropriate tests, and has earned a master's degree in education.

No one may be admitted to a resident teacher program after July 1, 2012.

This Section is repealed on June 30, 2013.

(Source: P.A. 87-222; 90-548, § 5-915; 91-102, § 5; 92-560, § 5; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 21-11.3.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 25.442.

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, in the second sentence substituted "appropriate tests as required in" for "test of basic skills required by" and added at the end "and as determined by the State Board of Education".

The 1999 amendment by P.A. 91-102, effective July 12, 1999, substituted "regionally accredited" for "recognized" in the second sentence.

The 2002 amendment by P.A. 92-560, effective June 24, 2002, substituted "4 years" for "2 years" in the first sentence; in the fourth sentence deleted "in conjunction with and" after "teach only", and inserted "as the resident teacher's mentor"; and added the last sentence.

The 2011 amendment by P.A. 97-607, effective August 26, 2011, added the last two paragraphs.

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RESEARCH REFERENCES

Validity, construction, and effect of municipal residency requirements for teachers, principals, and other school employees. 75 ALR4th 272.

§ 105 ILCS 5/21-11.4. Illinois Teacher Corps

Sec. 21-11.4. Illinois Teacher Corps. (a) The General Assembly finds and determines that (i) it is important to encourage the entry of qualified professionals into elementary and secondary teaching as a second career; and (ii) there are a number of individuals who have bachelors' degrees, experience in the work force, and an interest in serving youth that creates a special talent pool with great potential for enriching the lives of Illinois children as teachers. To provide this talent pool with the opportunity to serve children as teachers, school districts, colleges, and universities are encouraged, as part of the public policy of this State, to enter into collaborative programs to educate and induct these non-traditional candidates into the teaching profession. To facilitate the certification of such candidates, the State Board of Education, in consultation with the State Teacher Certification Board, shall assist institutions of higher education and school districts with the implementation of the Illinois Teacher Corps.

(b) Individuals who wish to become candidates for the Illinois Teacher Corps program must earn a resident teacher certificate as defined in Section 21-11.3 [105 ILCS 5/21-11.3], including:

(1) graduation from a regionally accredited institution of higher education with a bachelor's degree and at least a 3.00 out of a 4.00 grade point average;

(2) a minimum of 5 years of professional experience in the area the candidate wishes to teach;

(3) passing the examinations required by the State Board of Education;

(4) enrollment in a Masters of Education Degree program approved by the State Superintendent of Education in consultation with the State Teacher Certification Board; and

(5) completion of a 6 week summer intensive teacher preparation course which is the first component of the Masters Degree program.

(c) School districts may hire an Illinois Teacher Corps candidate after the candidate has received his or her resident teacher certificate. The school district has the responsibility of ensuring that the candidates receive the supports necessary to become qualified, competent and productive teachers. To be eligible to participate in the Illinois Teacher Corps program, school districts must provide a minimum of the following supports to the candidates:

(1) a salary and benefits package as negotiated through the teacher contracts;

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(2) a mentor certified teacher who will provide guidance to one or more candidates under a program developed collaboratively by the school district and university;

(3) at least quarterly evaluations performed of each candidate jointly by the mentor teacher and the principal of the school or the principal's designee; and

(4) a written and signed document from the school district outlining the support the district intends to provide to the candidates, for approval by the State Teacher Certification Board.

(d) Illinois institutions of higher education shall work collaboratively with school districts and the State Teacher Certification Board to academically prepare the candidates for the teaching profession. To be eligible to participate, the College or School of Education of a participating Illinois institution of higher education must develop a curriculum that provides, upon completion, a Masters Degree in Education for the candidates. The Masters Degree program must:

(1) receive approval from the State Teacher Certification Board; and

(2) take no longer than 3 summers and 2 academic years to complete, and balance the needs and time constraints of the candidates.

(e) Upon successful completion of the Masters Degree program, the candidate receives an Initial Teaching Certificate in the State of Illinois.

(f) If an individual wishes to become a candidate in the Illinois Teacher Corps program, but does not possess 5 years of professional experience, the individual may qualify for the program by participating in a one year internship teacher preparation program with a school district. The one year internship shall be developed collaboratively by the school district and the Illinois institution of higher education, and shall be approved by the State Teacher Certification Board.

(g) The State Board of Education is authorized to award grants to school districts that seek to prepare candidates for the teaching profession who have bachelors' degrees and professional work experience in subjects relevant to teaching fields, but who do not have formal preparation for teaching. Grants may be made to school districts for up to $3,000 per candidate when the school district, in cooperation with a public or private university and the school district's teacher bargaining unit, develop a program designed to prepare teachers pursuant to the Illinois Teacher Corps program under this Section.

(h) Beginning September 1, 2011, individuals may no longer be admitted to Illinois Teacher Corps programs.

(i) This Section is repealed on September 1, 2013.

(Source: P.A. 88-204, § 5; 90-548, § 5-915; 91-102, § 5; 97-607, § 15.)

Note.

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Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 25.442.

Effective Date. This section became effective January 1, 1994, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, in subdivision (b)(3) substituted "examinations required by the State Board of Education" for "test of basic skills and subject matter required by Section 21-1a"; and in subsection (e) substituted "receives an Initial Teaching Certificate" for "becomes a fully certified teacher" and deleted from the end "and all other general education academic coursework deficiencies are waived".

The 1999 amendment by P.A. 91-102, effective July 12, 1999, substituted "regionally accredited" for "recognized" in subdivision (b)(1).

The 2011 amendment by P.A. 97-607, effective August 26, 2011, added (h) and (i).

§ 105 ILCS 5/21-12. Printing; Seal; Signature; Credentials

Sec. 21-12. Printing; Seal; Signature; Credentials. (a) All certificates shall be printed by and bear the signatures of the chairman and of the secretary of the State Teacher Certification Board. Each certificate shall show the integrally printed seal of the State Teacher Certification Board. All college credentials offered as the basis of a certificate shall be presented to the secretary of the State Teacher Certification Board for inspection and approval.

(b) Until December 31, 2011, each application for a certificate or evaluation of credentials shall be accompanied by an evaluation fee of $30 payable to the State Superintendent of Education, which is not refundable, except that no application or evaluation fee shall be required for a Master Certificate issued pursuant to subsection (d) of Section 21-2 of this Code [105 ILCS 5/21-2].

(c) Beginning on January 1, 2012, each application for a certificate or evaluation of credentials must be accompanied by an evaluation fee of $75 payable to the State Superintendent of Education, which is non-refundable.

(d) The proceeds of each fee shall be paid into the Teacher Certificate Fee Revolving Fund, and the moneys in that Fund shall be appropriated and used to provide the technology and other resources necessary for the timely and efficient processing of certification requests.

(e) The State Board of Education and each regional office of education are authorized to charge a service or convenience fee for the use of credit cards for the payment of certification fees. This service or convenience fee may not exceed the amount required by the credit card processing company or vendor that has entered into a contract with the

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State Board or regional office of education for this purpose, and the fee must be paid to that company or vendor.

(f) The applicant shall be notified of any deficiencies.

(g) This Section is repealed on June 30, 2013.

(Source: P.A. 81-940; 88-224, § 10; 91-102, § 5; 91-357, § 101; 93-679, § 15; 93-1036, § 90; 95-331, § 540; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 21-12.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 25.99.

Effect of Amendments. The 1993 amendment by P.A. 88-224, effective August 6, 1993, added the second paragraph.

The 1999 amendment by P.A. 91-102, effective July 12, 1999, rewrote the section to the extent that a detailed comparison would be impracticable.

The 1999 amendment by P.A. 91-357, effective July 29, 1999, made stylistic changes.

The 2004 amendment by P.A. 93-679, effective June 30, 2004, inserted the third paragraph.

The 2004 amendment by P.A. 93-1036, effective September 14, 2004, inserted the last sentence in the first paragraph.

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, combined earlier multiple amendments to the section.

The 2011 amendment by P.A. 97-607, effective August 26, 2011, added the (a), (b), (d), (e), and (f) designations; deleted the former last sentence of (a), which read: "The regional superintendent of schools, however, has the duty, after appropriate training, to accept and review all transcripts for new initial certificate applications and ensure that each applicant has met all of the criteria established by the State Board of Education in consultation with the State Teacher Certification Board"; substituted "Until December 31, 2011" for "Commencing July 1, 1999" in (b); inserted (c); in (d), deleted "$30" following "proceeds of each" and "created under Section 21-1b of this Code" following "Revolving Fund"; deleted the former second paragraph of (e), which read: "When evaluation verifies the requirements for a valid certificate, the applicant shall be issued an entitlement card that may be presented to a regional superintendent of schools for issuance of a certificate"; and added (g).

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§ 105 ILCS 5/21-13: Repealed by P.A. 97-607, § 25, effective August 26, 2011.

§ 105 ILCS 5/21-14. Registration and renewal of certificates

Sec. 21-14. Registration and renewal of certificates. (a) A limited four-year certificate or a certificate issued after July 1, 1955, shall be renewable at its expiration or within 60 days thereafter by the county superintendent of schools having supervision and control over the school where the teacher is teaching upon certified evidence of meeting the requirements for renewal as required by this Act and prescribed by the State Board of Education in consultation with the State Teacher Certification Board. An elementary supervisory certificate shall not be renewed at the end of the first four-year period covered by the certificate unless the holder thereof has filed certified evidence with the State Teacher Certification Board that he has a master's degree or that he has earned 8 semester hours of credit in the field of educational administration and supervision in a recognized institution of higher learning. The holder shall continue to earn 8 semester hours of credit each four-year period until such time as he has earned a master's degree.

All certificates not renewed as provided in this Section or registered in accordance with this Code shall lapse after a period of 6 months from the expiration of the last year of registration. The certificate may be reinstated once the applicant has demonstrated proficiency by completing 9 semester hours of coursework from a regionally accredited institution of higher education in the content area that most aligns with the educator's endorsement area or areas. Before the certificate may be reinstated, the applicant shall pay all back fees owed from the time of expiration of the certificate until the date of reinstatement. Any certificate may be voluntarily surrendered by the certificate holder. A voluntarily surrendered certificate shall be treated as a revoked certificate.

(b) When those teaching certificates issued before February 15, 2000 are renewed for the first time after February 15, 2000, all such teaching certificates shall be exchanged for Standard Teaching Certificates as provided in subsection (c) of Section 21-2 [105 ILCS 5/21-2]. All Initial and Standard Teaching Certificates, including those issued to persons who previously held teaching certificates issued before February 15, 2000, shall be renewable under the conditions set forth in this subsection (b).

Initial Teaching Certificates are valid for 4 years of teaching, as provided in subsection (b) of Section 21-2 of this Code, and are renewable every 4 years until the person completes 4 years of teaching. If the holder of an Initial Certificate has completed 4 years of teaching but has not completed the requirements set forth in paragraph (2) of subsection (c) of Section 21-2 of this Code, then the Initial Certificate may be reinstated for one year, during which the requirements must be met. A holder of an Initial Certificate who has not completed 4 years of teaching may continuously register the certificate for additional 4-year periods without penalty. Initial Certificates that are not registered shall lapse consistent with subsection (a) of this Section and may be reinstated only in accordance with subsection (a). Standard Teaching Certificates are renewable

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every 5 years as provided in subsection (c) of Section 21-2 and subsection (c) of this Section. For purposes of this Section, "teaching" is defined as employment and performance of services in an Illinois public or State-operated elementary school, secondary school, or cooperative or joint agreement with a governing body or board of control, in a certificated teaching position, or a charter school operating in compliance with the Charter Schools Law [105 ILCS 5/27A-1 et seq.].

(c) In compliance with subsection (c) of Section 21-2 of this Code, which provides that a Standard Teaching Certificate may be renewed by the State Teacher Certification Board based upon proof of continuing professional development, the State Board of Education and the State Teacher Certification Board shall jointly:

(1) establish a procedure for renewing Standard Teaching Certificates, which shall include but not be limited to annual timelines for the renewal process and the components set forth in subsections (d) through (k) of this Section;

(2) establish the standards for certificate renewal;

(3) approve or disapprove the providers of continuing professional development activities;

(4) determine the maximum credit for each category of continuing professional development activities, based upon recommendations submitted by a continuing professional development activity task force, which shall consist of 6 staff members from the State Board of Education, appointed by the State Superintendent of Education, and 6 teacher representatives, 3 of whom are selected by the Illinois Education Association and 3 of whom are selected by the Illinois Federation of Teachers;

(5) designate the type and amount of documentation required to show that continuing professional development activities have been completed; and

(6) provide, on a timely basis to all Illinois teachers, certificate holders, regional superintendents of schools, school districts, and others with an interest in continuing professional development, information about the standards and requirements established pursuant to this subsection (c).

(d) Any Standard Teaching Certificate held by an individual employed and performing services in an Illinois public or State-operated elementary school, secondary school, or cooperative or joint agreement with a governing body or board of control in a certificated teaching position or a charter school in compliance with the Charter Schools Law must be maintained Valid and Active through certificate renewal activities specified in the certificate renewal procedure established pursuant to subsection (c) of this Section, provided that a holder of a Valid and Active certificate who is only employed on either a part-time basis or day-to-day basis as a substitute teacher shall pay only the required registration fee to renew his or her certificate and maintain it as Valid and Active. All other Standard Teaching Certificates held may be maintained as Valid and Exempt through the registration process provided for in the certificate renewal procedure established pursuant to subsection (c) of this Section. A Valid and Exempt certificate must be immediately activated, through procedures developed jointly by the State Board

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of Education and the State Teacher Certification Board, upon the certificate holder becoming employed and performing services in an Illinois public or State-operated elementary school, secondary school, or cooperative or joint agreement with a governing body or board of control in a certificated teaching position or a charter school operating in compliance with the Charter Schools Law. A holder of a Valid and Exempt certificate may activate his or her certificate through procedures provided for in the certificate renewal procedure established pursuant to subsection (c) of this Section.

(e)(1) A Standard Teaching Certificate that has been maintained as Valid and Active for the 5 years of the certificate's validity shall be renewed as Valid and Active upon the certificate holder: (i) completing an advanced degree from an approved institution in an education-related field; (ii) completing at least 8 semester hours of coursework as described in subdivision (B) of paragraph (3) of this subsection (e); (iii) (blank); (iv) completing the National Board for Professional Teaching Standards process as described in subdivision (D) of paragraph (3) of this subsection (e); or (v) earning 120 continuing professional development units ("CPDU") as described in subdivision (E) of paragraph (3) of this subsection (e). The maximum continuing professional development units for each continuing professional development activity identified in subdivisions (F) through (J) of paragraph (3) of this subsection (e) shall be jointly determined by the State Board of Education and the State Teacher Certification Board. If, however, the certificate holder has maintained the certificate as Valid and Exempt for a portion of the 5-year period of validity, the number of continuing professional development units needed to renew the certificate as Valid and Active shall be proportionately reduced by the amount of time the certificate was Valid and Exempt. Furthermore, if a certificate holder is employed and performs teaching services on a part-time basis for all or a portion of the certificate's 5-year period of validity, the number of continuing professional development units needed to renew the certificate as Valid and Active shall be reduced by 50% for the amount of time the certificate holder has been employed and performed teaching services on a part-time basis. Part-time shall be defined as less than 50% of the school day or school term.

Notwithstanding any other requirements to the contrary, if a Standard Teaching Certificate has been maintained as Valid and Active for the 5 years of the certificate's validity and the certificate holder has completed his or her certificate renewal plan before July 1, 2002, the certificate shall be renewed as Valid and Active.

(2) Beginning July 1, 2004, in order to satisfy the requirements for continuing professional development provided for in subsection (c) of Section 21-2 of this Code, each Valid and Active Standard Teaching Certificate holder shall complete professional development activities that address the certificate or those certificates that are required of his or her certificated teaching position, if the certificate holder is employed and performing services in an Illinois public or State-operated elementary school, secondary school, or cooperative or joint agreement with a governing body or board of control, or that certificate or those certificates most closely related to his or her teaching position, if the certificate holder is employed in a charter school. Except as otherwise provided in this subsection (e), the certificate holder's activities must address purposes (A), (B), (C), or (D) and must reflect purpose (E) of the following continuing professional development purposes:

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(A) Advance both the certificate holder's knowledge and skills as a teacher consistent with the Illinois Professional Teaching Standards and the Illinois Content Area Standards in the certificate holder's areas of certification, endorsement, or teaching assignment in order to keep the certificate holder current in those areas.

(B) Develop the certificate holder's knowledge and skills in areas determined to be critical for all Illinois teachers, as defined by the State Board of Education, known as "State priorities".

(C) Address the knowledge, skills, and goals of the certificate holder's local school improvement plan, if the teacher is employed in an Illinois public or State-operated elementary school, secondary school, or cooperative or joint agreement with a governing body or board of control.

(D) Expand the certificate holder's knowledge and skills in an additional teaching field or toward the acquisition of another teaching certificate, endorsement, or relevant education degree.

(E) Address the needs of serving students with disabilities, including adapting and modifying the general curriculum related to the Illinois Learning Standards to meet the needs of students with disabilities and serving such students in the least restrictive environment. Teachers who hold certificates endorsed for special education must devote at least 50% of their continuing professional development activities to this purpose. Teachers holding other certificates must devote at least 20% of their activities to this purpose.

A speech-language pathologist or audiologist who is licensed under the Illinois Speech-Language Pathology and Audiology Practice Act and who has met the continuing education requirements of that Act and the rules promulgated under that Act shall be deemed to have satisfied the continuing professional development requirements established by the State Board of Education and the Teacher Certification Board to renew a Standard Certificate.

(3) Continuing professional development activities may include, but are not limited to, the following activities:

(A) completion of an advanced degree from an approved institution in an education-related field;

(B) at least 8 semester hours of coursework in an approved education-related program, of which at least 2 semester hours relate to the continuing professional development purpose set forth in purpose (A) of paragraph (2) of this subsection (e), completion of which means no other continuing professional development activities are required;

(C) (Blank);

(D) completion of the National Board for Professional Teaching Standards ("NBPTS") process for certification or recertification, completion of which means no other continuing professional development activities are required;

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(E) completion of 120 continuing professional development units that satisfy the continuing professional development purposes set forth in paragraph (2) of this subsection (e) and may include without limitation the activities identified in subdivisions (F) through (J) of this paragraph (3);

(F) collaboration and partnership activities related to improving the teacher's knowledge and skills as a teacher, including the following:

(i) participating on collaborative planning and professional improvement teams and committees;

(ii) peer review and coaching;

(iii) mentoring in a formal mentoring program, including service as a consulting teacher participating in a remediation process formulated under Section 24A-5 of this Code [105 ILCS 5/24A-5];

(iv) participating in site-based management or decision making teams, relevant committees, boards, or task forces directly related to school improvement plans;

(v) coordinating community resources in schools, if the project is a specific goal of the school improvement plan;

(vi) facilitating parent education programs for a school, school district, or regional office of education directly related to student achievement or school improvement plans;

(vii) participating in business, school, or community partnerships directly related to student achievement or school improvement plans; or

(viii) supervising a student teacher or teacher education candidate in clinical supervision, provided that the supervision may only be counted once during the course of 5 years;

(G) college or university coursework related to improving the teacher's knowledge and skills as a teacher as follows:

(i) completing undergraduate or graduate credit earned from a regionally accredited institution in coursework relevant to the certificate area being renewed, including coursework that incorporates induction activities and development of a portfolio of both student and teacher work that provides experience in reflective practices, provided the coursework meets Illinois Professional Teaching Standards or Illinois Content Area Standards and supports the essential characteristics of quality professional development; or

(ii) teaching college or university courses in areas relevant to the certificate area being renewed, provided that the teaching may only be counted once during the course of 5 years;

(H) conferences, workshops, institutes, seminars, and symposiums related to improving the teacher's knowledge and skills as a teacher, subject to disapproval of the activity or event by the State Teacher Certification Board acting jointly with the State Board of Education, including the following:

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(i) completing non-university credit directly related to student achievement, school improvement plans, or State priorities;

(ii) participating in or presenting at workshops, seminars, conferences, institutes, and symposiums;

(iii) training as external reviewers for Quality Assurance;

(iv) training as reviewers of university teacher preparation programs; or

(v) participating in or presenting at in-service training programs on suicide prevention.

A teacher, however, may not receive credit for conferences, workshops, institutes, seminars, or symposiums that are designed for entertainment, promotional, or commercial purposes or that are solely inspirational or motivational. The State Superintendent of Education and regional superintendents of schools are authorized to review the activities and events provided or to be provided under this subdivision (H) and to investigate complaints regarding those activities and events, and either the State Superintendent of Education or a regional superintendent of schools may recommend that the State Teacher Certification Board and the State Board of Education jointly disapprove those activities and events considered to be inconsistent with this subdivision (H);

(I) other educational experiences related to improving the teacher's knowledge and skills as a teacher, including the following:

(i) participating in action research and inquiry projects;

(ii) observing programs or teaching in schools, related businesses, or industry that is systematic, purposeful, and relevant to certificate renewal;

(iii) traveling related to one's teaching assignment, directly related to student achievement or school improvement plans and approved by the regional superintendent of schools or his or her designee at least 30 days prior to the travel experience, provided that the traveling shall not include time spent commuting to destinations where the learning experience will occur;

(iv) participating in study groups related to student achievement or school improvement plans;

(v) serving on a statewide education-related committee, including but not limited to the State Teacher Certification Board, State Board of Education strategic agenda teams, or the State Advisory Council on Education of Children with Disabilities;

(vi) participating in work/learn programs or internships; or

(vii) developing a portfolio of student and teacher work;

(J) professional leadership experiences related to improving the teacher's knowledge and skills as a teacher, including the following:

(i) participating in curriculum development or assessment activities at the school, school district, regional office of education, State, or national level;

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(ii) participating in team or department leadership in a school or school district;

(iii) participating on external or internal school or school district review teams;

(iv) publishing educational articles, columns, or books relevant to the certificate area being renewed; or

(v) participating in non-strike related professional association or labor organization service or activities related to professional development;

(K) receipt of a subsequent Illinois certificate or endorsement pursuant to this Article;

(L) completion of requirements for meeting the Illinois criteria for becoming "highly qualified" (for purposes of the No Child Left Behind Act of 2001, Public Law 107-110) in an additional teaching area;

(M) successful completion of 4 semester hours of graduate-level coursework on the assessment of one's own performance in relation to the Illinois Teaching Standards, as described in clause (B) of paragraph (2) of subsection (c) of Section 21-2 of this Code; or

(N) successful completion of a minimum of 4 semester hours of graduate-level coursework addressing preparation to meet the requirements for certification by the National Board for Professional Teaching Standards, as described in clause (C) of paragraph (2) of subsection (c) of Section 21-2 of this Code.

(4) A person must complete the requirements of this subsection (e) before the expiration of his or her Standard Teaching Certificate and must submit assurance to the regional superintendent of schools or, if applicable, a local professional development committee authorized by the regional superintendent to submit recommendations to him or her for this purpose. The statement of assurance shall contain a list of the activities completed, the provider offering each activity, the number of credits earned for each activity, and the purposes to which each activity is attributed. The certificate holder shall maintain the evidence of completion of each activity for at least one certificate renewal cycle. The certificate holder shall affirm under penalty of perjury that he or she has completed the activities listed and will maintain the required evidence of completion. The State Board of Education or the regional superintendent of schools for each region shall conduct random audits of assurance statements and supporting documentation.

(5) (Blank).

(6) (Blank).

(f) Notwithstanding any other provisions of this Code, a school district is authorized to enter into an agreement with the exclusive bargaining representative, if any, to form a local professional development committee (LPDC). The membership and terms of members of the LPDC may be determined by the agreement. Provisions regarding LPDCs contained in a collective bargaining agreement in existence on the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-679] between a school district and the exclusive bargaining representative shall remain in full force and effect for the term of the agreement, unless terminated by mutual agreement. The LPDC shall

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make recommendations to the regional superintendent of schools on renewal of teaching certificates. The regional superintendent of schools for each region shall perform the following functions:

(1) review recommendations for certificate renewal, if any, received from LPDCs;

(2) (blank);

(3) (blank);

(4) (blank);

(5) determine whether certificate holders have met the requirements for certificate renewal and notify certificate holders if the decision is not to renew the certificate;

(6) provide a certificate holder with the opportunity to appeal a recommendation made by a LPDC, if any, not to renew the certificate to the regional professional development review committee;

(7) issue and forward recommendations for renewal or nonrenewal of certificate holders' Standard Teaching Certificates to the State Teacher Certification Board; and

(8) (blank).

(g)(1) Each regional superintendent of schools shall review and concur or nonconcur with each recommendation for renewal or nonrenewal of a Standard Teaching Certificate he or she receives from a local professional development committee, if any, or, if a certificate holder appeals the recommendation to the regional professional development review committee, the recommendation for renewal or nonrenewal he or she receives from a regional professional development review committee and, within 14 days of receipt of the recommendation, shall provide the State Teacher Certification Board with verification of the following, if applicable:

(A) the certificate holder has satisfactorily completed professional development and continuing education activities set forth in paragraph (3) of subsection (e) of this Section;

(B) the certificate holder has submitted the statement of assurance required under paragraph (4) of subsection (e) of this Section, and this statement has been attached to the application for renewal;

(C) the local professional development committee, if any, has recommended the renewal of the certificate holder's Standard Teaching Certificate and forwarded the recommendation to the regional superintendent of schools;

(D) the certificate holder has appealed his or her local professional development committee's recommendation of nonrenewal, if any, to the regional professional development review committee and the result of that appeal;

(E) the regional superintendent of schools has concurred or nonconcurred with the local professional development committee's or regional professional development review

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committee's recommendation, if any, to renew or nonrenew the certificate holder's Standard Teaching Certificate and made a recommendation to that effect; and

(F) the established registration fee for the Standard Teaching Certificate has been paid.

If the notice required by this subsection (g) includes a recommendation of certificate nonrenewal, then, at the same time the regional superintendent of schools provides the State Teacher Certification Board with the notice, he or she shall also notify the certificate holder in writing, by certified mail, return receipt requested, that this notice has been provided to the State Teacher Certification Board.

(2) Each certificate holder shall have the right to appeal his or her local professional development committee's recommendation of nonrenewal, if any, to the regional professional development review committee, within 14 days of receipt of notice that the recommendation has been sent to the regional superintendent of schools. Each regional superintendent of schools shall establish a regional professional development review committee or committees for the purpose of advising the regional superintendent of schools, upon request, and handling certificate holder appeals. This committee shall consist of at least 4 classroom teachers, one non-administrative certificated educational employee, 2 administrators, and one at-large member who shall be either (i) a parent, (ii) a member of the business community, (iii) a community member, or (iv) an administrator, with preference given to an individual chosen from among those persons listed in items (i), (ii), and (iii) in order to secure representation of an interest not already represented on the committee. The teacher and non-administrative certificated educational employee members of the review committee shall be selected by their exclusive representative, if any, and the administrators and at-large member shall be selected by the regional superintendent of schools. A regional superintendent of schools may add additional members to the committee, provided that the same proportion of teachers to administrators and at-large members on the committee is maintained. Any additional teacher and non-administrative certificated educational employee members shall be selected by their exclusive representative, if any. Vacancies in positions on a regional professional development review committee shall be filled in the same manner as the original selections. Committee members shall serve staggered 3-year terms. All individuals selected to serve on regional professional development review committees must be known to demonstrate the best practices in teaching or their respective field of practice.

(h)(1) The State Teacher Certification Board shall review the regional superintendent of schools' recommendations to renew or nonrenew Standard Teaching Certificates and notify certificate holders in writing whether their certificates have been renewed or nonrenewed within 90 days of receipt of the recommendations, unless a certificate holder has appealed a regional superintendent of schools' recommendation of nonrenewal, as provided in paragraph (2) of this subsection (h). The State Teacher Certification Board shall verify that the certificate holder has met the renewal criteria set forth in paragraph (1) of subsection (g) of this Section.

(2) Each certificate holder shall have the right to appeal a regional superintendent of school's recommendation to nonrenew his or her Standard Teaching Certificate to the

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State Teacher Certification Board, within 14 days of receipt of notice that the decision has been sent to the State Teacher Certification Board, which shall hold an appeal hearing within 60 days of receipt of the appeal. When such an appeal is taken, the certificate holder's Standard Teaching Certificate shall continue to be valid until the appeal is finally determined. The State Teacher Certification Board shall review the regional superintendent of school's recommendation, the regional professional development review committee's recommendation, if any, and the local professional development committee's recommendation, if any, and all relevant documentation to verify whether the certificate holder has met the renewal criteria set forth in paragraph (1) of subsection (g) of this Section. The State Teacher Certification Board may request that the certificate holder appear before it. All actions taken by the State Teacher Certification Board shall require a quorum and be by a simple majority of those present and voting. A record of all votes shall be maintained. The State Teacher Certification Board shall notify the certificate holder in writing, within 7 days of completing the review, whether his or her Standard Teaching Certificate has been renewed or nonrenewed, provided that if the State Teacher Certification Board determines to nonrenew a certificate, the written notice provided to the certificate holder shall be by certified mail, return receipt requested. All certificate renewal or nonrenewal decisions of the State Teacher Certification Board are final and subject to administrative review.

(i) Holders of Master Teaching Certificates shall meet the same requirements and follow the same procedures as holders of Standard Teaching Certificates, except that their renewal cycle shall be as set forth in subsection (d) of Section 21-2 of this Code and their renewal requirements shall be subject to paragraph (8) of subsection (c) of Section 21-2 of this Code.

A holder of a teaching certificate endorsed as a speech-language pathologist who has been granted the Certificate of Clinical Competence by the American Speech-Language Hearing Association may renew his or her Standard Teaching Certificate pursuant to the 10-year renewal cycle set forth in subsection (d) of Section 21-2 of this Code.

(j) Holders of Valid and Exempt Standard and Master Teaching Certificates who are not employed and performing services in an Illinois public or State-operated elementary school, secondary school, or cooperative or joint agreement with a governing body or board of control, in a certificated teaching position, may voluntarily activate their certificates through the regional superintendent of schools of the regional office of education for the geographic area where their teaching is done. These certificate holders shall follow the same renewal criteria and procedures as all other Standard and Master Teaching Certificate holders, except that their continuing professional development activities need not reflect or address the knowledge, skills, and goals of a local school improvement plan.

(k) (Blank).

(l) (Blank).

(m) The changes made to this Section by this amendatory Act of the 93rd General Assembly [P.A. 93-679] that affect renewal of Standard and Master Certificates shall apply to those persons who hold Standard or Master Certificates on or after the effective

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date of this amendatory Act of the 93rd General Assembly and shall be given effect upon renewal of those certificates.

(Source: P.A. 86-400; 90-548, § 5-915; 90-653, § 10; 90-811, § 5; 91-102, § 5; 92-510, § 5; 92-796, § 5; 93-81, § 5; 93-679, § 15; 95-331, § 540; 95-793, § 5; 96-951, § 5; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 21-14.

Section 95 of P.A. 92-796 contains a no acceleration or delay provision.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 25.800, 25.805, 25.815, 25.825, 25.835, 25.835, 25.840, 25.875, 25.880, 25.885.

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, added the subsection (a) designation; and added subsection (b).

The 1998 amendment by P.A. 90-653, effective July 29, 1998, substituted "are nonrenewable and are valid for 4 years of teaching" for "are valid for 4 years and are nonrenewable" in the second paragraph of subsection (b).

The 1998 amendment by P.A. 90-811, effective January 26, 1999 substituted "July" for "January" throughout subsection (b).

The 1999 amendment by P.A. 91-102, effective July 12, 1999, substituted "5 years" for "4 years" in the first sentence of the second paragraph of subsection (a); in subsection (b) substituted "February 15, 2000" for "July 1, 1999" three times in the first paragraph, and in the second paragraph added "and subsection (c) of this Section" in the second sentence, and the added last sentence; and added subsections (c) through (l).

The 2001 amendment by P.A. 92-510, effective June 1, 2002, added the last undesignated paragraph in subsection (e)(2), which begins: "A speech-language pathologist"; and in subsection (i) added the second sentence.

The 2002 amendment by P.A. 92-796, effective August 10, 2002, amended the version of this section before and after amendment by P.A. 92-510, by inserting in subsection (e)(1) item (i) "completing an advanced degree from an approved institution in an education-related field", inserting the item designation (ii) and making related changes, redesignating subdivisions (A) through (I) as (B) through (J); inserting "the certificate holder's" in subdivision (e)(2)(D); added subdivision (e)(3)(A) and redesignating former subdivisions respectively; substituted "(F)" for "(E)" and "(J)" for "(I)" in present subdivision (e)(3)(E); inserting language beginning "including coursework that incorporates induction activities" and ending "experience in reflective practices" in present subdivision (e)(3)(G) item (i); adding item (vii) to present subdivision (e)(3)(I); inserting the language beginning "provided that a local professional development committee" and ending "committee has reviewed the materials and the credits have been awarded" at the end of paragraph (3) of subsection (f); in the second paragraph of subsection (f) inserting the second

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and fourth sentences; inserting "as determined in consultation with the committee" in subsection (k); and making stylistic changes.

The 2003 amendment by P.A. 93-81, effective July 2, 2003, added the paragraph following subsection (e)(1).

The 2004 amendment by P.A. 93-679, effective June 30, 2004, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, combined earlier multiple amendments to the section; and made stylistic changes in (e)(3).

The 2008 amendment by P.A. 95-793, effective August 8, 2008, in (e)(1) deleted the text from item (iii) relating to continuing education units; and deleted the text from (e)(3)(C) relating to continuing education units.

The 2010 amendment by P.A. 96-951, effective June 28, 2010, added (e)(3)(H)(v); and made related changes.

The 2011 amendment by P.A. 97-607, effective August 26, 2011, rewrote the second paragraph of (a), which formerly read: "All certificates not renewed or registered as herein provided shall lapse after a period of 5 years from the expiration of the last year of registration. Such certificates may be reinstated for a one year period upon payment of all accumulated registration fees. Such reinstated certificates shall only be renewed: (1) by earning 5 semester hours of credit in a recognized institution of higher learning in the field of professional education or in courses related to the holder's contractual teaching duties; or (2) by presenting evidence of holding a valid regular certificate of some other type. Any certificate may be voluntarily surrendered by the certificate holder. A voluntarily surrendered certificate shall be treated as a revoked certificate"; and deleted "as set forth in Section 21-24 of this Code" from the end of the last sentence of (h)(2).

CASE NOTES

Analysis

Lack of Prior Registration
Mandatory Subject of Collective Bargaining
Process

Lack of Prior Registration

Where a plaintiff sought a writ of mandamus for reinstatement as a tenured teacher, the lack of prior registration meant that plaintiff could show no clear and undoubted right to reinstatement. Brubaker v. Community Unit Sch., 46 Ill. App. 3d 588, 4 Ill. Dec. 853, 360 N.E.2d 1228 (4 Dist. 1977).

Plaintiff was required to possess a currently registered certificate of qualification before a writ of mandamus reinstating him as a tenured teacher could be issued. Brubaker v. Community Unit Sch., 46 Ill. App. 3d 588, 4 Ill. Dec. 853, 360 N.E.2d 1228 (4 Dist. 1977).

Where plaintiff had not registered his certificate to teach for the 1957-58 school year by the first day of school, he could not have tendered his services to teach; since the plaintiff did not comply with the law of this state as incorporated into his teaching contract, he therefore was precluded

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from recovery under that contract. Riley v. School Dist. 124, 75 Ill. App. 2d 35, 221 N.E.2d 424 (1 Dist. 1966).

Mandatory Subject of Collective Bargaining

Mileage, release time, and stipends for teachers appointed to serve on Local Professional Development Committees, under 105 ILCS 21-14(f), to review and approve teachers' certificate renewal plans, concerned wages, hours and terms and conditions of employment and were mandatory subjects of bargaining under 115 ILCS 5/10(a). Governing Bd. of the Special Educ. Dist. v. Sedol Teachers' Union, Local 504, 332 Ill. App. 3d 144, 265 Ill. Dec. 476, 772 N.E.2d 847, 2002 Ill. App. LEXIS 517 (1 Dist. 2002), appeal denied sub nom., 201 Ill. 2d 566, 271 Ill. Dec. 925, 786 N.E.2d 183 (2002).

Process

Under a similar prior provision, mandamus would not issue requiring a county superintendent to give a certificate that the applicant possesses the necessary qualifications to teach because such an act would have been an attempt to control his judicial judgment; but, after the country superintendent had decided that the teacher possessed the necessary qualifications, the issuing of the certificate and the proper dating of the certificate were merely ministerial acts, which he could be required to perform by the writ of mandamus. Vandorn v. Anderson, 219 Ill. 32, 76 N.E. 53 (1905).

§ 105 ILCS 5/21-15: Repealed by P.A. 97-607, § 25, effective August 26, 2011.

§ 105 ILCS 5/21-16. Fees - Requirement for registration

Sec. 21-16. Fees - Requirement for registration. (a) (Blank).

(b) Until December 31, 2011, all persons who are issued Standard Teaching Certificates pursuant to clause (ii) of paragraph (1) of subsection (c) of Section 21-2 [105 ILCS 5/21-2] and all persons who renew Standard Teaching Certificates shall pay a $25 fee for registration of all certificates held. All persons who are issued Standard Teaching Certificates under clause (i) of paragraph (1) of subsection (c) of Section 21-2 [105 ILCS 5/21-2] and all other applicants for Standard Teaching Certificates shall pay an original application fee, pursuant to Section 21-12 [105 ILCS 5/21-12], and a $25 fee for registration of all certificates held. These certificates shall be registered and the registration fee paid once every 5 years. Standard Teaching Certificate applicants and holders shall not be required to pay any other registration fees for issuance or renewal of their certificates, except as provided in Section 21-17 of this Code [105 ILCS 5/21-17 (now repealed)]. Beginning February 15, 2000, Master Teaching Certificates shall be issued and renewed upon payment by the applicant or certificate holder of a $50 fee for registration of all certificates held. These certificates shall be registered and the fee paid once every 10 years. Master Teaching Certificate applicants and holders shall not be required to pay any other application or registration fees for issuance or renewal of their

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certificates, except as provided in Section 21-17 of this Code. All other certificates issued under the provisions of this Code shall be registered for the validity period of the certificate at the rate of $5 per year for the total number of years for which the certificate is valid for registration of all certificates held, or for a maximum of 5 years for life certificates. The regional superintendent of schools having supervision and control over the school where the teaching is done shall register the certificate before the holder begins to teach, otherwise it shall be registered in any county in the State of Illinois. Each holder shall pay the appropriate registration fee to the regional superintendent of schools. The regional superintendent of schools shall deposit the registration fees into the institute fund. Any certificate holder who teaches in more than one educational service region shall register the certificate or certificates in all regions where the teaching is done, but shall be required to pay one registration fee for all certificates held.

A duplicate certificate may be issued to the holder of a valid life certificate or valid certificate limited in time by the State Superintendent of Education; however, it shall only be issued upon request of a regional superintendent of schools and upon payment to the regional superintendent of schools who requests the duplicate a fee of $4, which shall be deposited into the institute fund.

(c) Beginning on January 1, 2012, all certificate holders are required to pay a $10 per year registration fee for the course of the validity cycle to register the certificate, which must be paid to the regional office of education having supervision and control over the school in which the individual holding the certificate is to be employed. If the individual holding the certificate is not yet employed, then the certificate may be registered in any county in this State. The registration fee must be paid in its entirety the first time the individual registers the certificate for a particular validity period in a single region. No additional fee may be charged for that validity period should the individual subsequently register the certificate in additional regions. Individuals must register the certificate (i) immediately after initial issuance of the license and (ii) at the beginning of each renewal cycle if the individual has satisfied the renewal requirements required under this Code.

The regional superintendent of schools shall deposit the registration fees paid pursuant to this subsection (c) into the institute fund established pursuant to Section 3-11 of this Code [105 ILCS 5/3-11].

(d) The State Board of Education and each regional office of education are authorized to charge a service or convenience fee for the use of credit cards for the payment of certification fees. This service or convenience fee may not exceed the amount required by the credit card processing company or vendor that has entered into a contract with the State Board or regional office of education for this purpose, and the fee must be paid to that company or vendor.

(e) This Section is repealed on June 30, 2013.

(Source: P.A. 87-745; 91-102, § 5; 92-796, § 5; 93-679, § 15; 97-607, § 15.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 21-16.

Section 95 of P.A. 92-796 contains a no acceleration or delay provision.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 25.400.

Effect of Amendments. The 1999 amendment by P.A. 91-102, effective July 12, 1999, substituted "February 15, 2000" for "July 1, 1999" twice in subsection (a); and added subsection (b).

The 2002 amendment by P.A. 92-796, effective August 10, 2002, in subsection (b) in the first sentence substituted "(ii) of paragraph (1)" for "(2)", and inserted "(i) of paragraph" in the second sentence.

The 2004 amendment by P.A. 93-679, effective June 30, 2004, added the last paragraph in subsection (b).

The 2011 amendment by P.A. 97-607, effective August 26, 2011, deleted the text of subsection (a); in the first paragraph of (b), substituted "Until December 31, 2011" for "Beginning February 15, 2000" in the first sentence and deleted "provided holders of certificates issued pursuant to Section 21-9 of this Code shall be required to pay one registration fee, in each educational service region in which his or her certificate or certificates are registered, for all certificates held" from the end of the last sentence; inserted (c); added the (d) designation; and added (e).

CASE NOTES

Lack of Prior Registration

Where a plaintiff sought a writ of mandamus for reinstatement as a tenured teacher, the lack of prior registration meant that plaintiff could show no clear and undoubted right to reinstatement. Brubaker v. Community Unit Sch., 46 Ill. App. 3d 588, 4 Ill. Dec. 853, 360 N.E.2d 1228 (4 Dist. 1977).

§ 105 ILCS 5/21-17: Repealed by P.A. 97-607, § 25, effective August 26, 2011.

§ 105 ILCS 5/21-18: Repealed by P.A. 95-793, § 11, effective August 8, 2008.

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§ 105 ILCS 5/21-19: Repealed by P.A. 95-496, § 10, effective August 28, 2007.

§§ 105 ILCS 5/21-21 through 105 ILCS 5/21-21.1: Repealed by P.A. 97-607, § 25, effective August 26, 2011.

§ 105 ILCS 5/21-22. Expiration of first year

Sec. 21-22. Expiration of first year. The first year of all certificates ends on June 30 following one full year of the certificate being issued.

This Section is repealed on June 30, 2013.

(Source: Laws 1961, p. 31; P.A. 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 21-22.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effect of Amendments. The 2011 amendment by P.A. 97-607, effective August 26, 2011, substituted "ends on June 30 following one full year of the certificate being issued" for "shall expire on June 30 following the date of issue" in the first paragraph; and added the second paragraph.

§§ 105 ILCS 5/21-23 through 105 ILCS 5/21-24: Repealed by P.A. 97-607, § 25, effective August 26, 2011.

§ 105 ILCS 5/21-25. School service personnel certificate

Sec. 21-25. School service personnel certificate. (a) For purposes of this Section, "school service personnel" means persons employed and performing appropriate services in an Illinois public or State-operated elementary school, secondary school, or cooperative or joint agreement with a governing body or board of control or a charter school operating in compliance with the Charter Schools Law in a position requiring a school service personnel certificate.

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Subject to the provisions of Section 21-1a [105 ILCS 5/21-1a], a school service personnel certificate shall be issued to those applicants of good character, good health, a citizen of the United States and at least 19 years of age who have a Bachelor's degree with not fewer than 120 semester hours from a regionally accredited institution of higher learning and who meets the requirements established by the State Superintendent of Education in consultation with the State Teacher Certification Board. A school service personnel certificate with a school nurse endorsement may be issued to a person who holds a bachelor of science degree from an institution of higher learning accredited by the North Central Association or other comparable regional accrediting association. Persons seeking any other endorsement on the school service personnel certificate shall be recommended for the endorsement by a recognized teacher education institution as having completed a program of preparation approved by the State Superintendent of Education in consultation with the State Teacher Certification Board.

(b) Until August 30, 2002, a school service personnel certificate endorsed for school social work may be issued to a student who has completed a school social work program that has not been approved by the State Superintendent of Education, provided that each of the following conditions is met:

(1) The program was offered by a recognized, public teacher education institution that first enrolled students in its master's degree program in social work in 1998;

(2) The student applying for the school service personnel certificate was enrolled in the institution's master's degree program in social work on or after May 11, 1998;

(3) The State Superintendent verifies that the student has completed coursework that is substantially similar to that required in approved school social work programs, including (i) not fewer than 600 clock hours of a supervised internship in a school setting or (ii) if the student has completed part of a supervised internship in a school setting prior to the effective date of this amendatory Act of the 92nd General Assembly [P.A. 92-254] and receives the prior approval of the State Superintendent, not fewer than 300 additional clock hours of supervised work in a public school setting under the supervision of a certified school social worker who certifies that the supervised work was completed in a satisfactory manner; and

(4) The student has passed a test of basic skills and the test of subject matter knowledge required by Section 21-1a [105 ILCS 5/21-1a].

This subsection (b) does not apply after August 29, 2002.

(c) A school service personnel certificate shall be endorsed with the area of Service as determined by the State Superintendent of Education in consultation with the State Teacher Certification Board.

The holder of such certificate shall be entitled to all of the rights and privileges granted holders of a valid teaching certificate, including teacher benefits, compensation and working conditions.

When the holder of such certificate has earned a master's degree, including 8 semester hours of graduate professional education from a recognized institution of higher learning,

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and has at least 2 years of successful school experience while holding such certificate, the certificate may be endorsed for supervision.

(d) Persons who have successfully achieved National Board certification through the National Board for Professional Teaching Standards shall be issued a Master School Service Personnel Certificate, valid for 10 years and renewable thereafter every 10 years through compliance with requirements set forth by the State Board of Education, in consultation with the State Teacher Certification Board. However, each holder of a Master School Service Personnel Certificate shall be eligible for a corresponding position in this State in the areas for which he or she holds a Master Certificate without satisfying any other requirements of this Code, except for those requirements pertaining to criminal background checks.

(e) School service personnel certificates are renewable every 5 years and may be renewed as provided in this Section. Requests for renewals must be submitted, in a format prescribed by the State Board of Education, to the regional office of education responsible for the school where the holder is employed.

Upon completion of at least 80 hours of continuing professional development as provided in this subsection (e), a person who holds a valid school service personnel certificate shall have his or her certificate renewed for a period of 5 years. A person who (i) holds an active license issued by the State as a clinical professional counselor, a professional counselor, a clinical social worker, a social worker, or a speech-language pathologist; (ii) holds national certification as a Nationally Certified School Psychologist from the National School Psychology Certification Board; (iii) is nationally certified as a National Certified School Nurse from the National Board for Certification of School Nurses; (iv) is nationally certified as a National Certified Counselor or National Certified School Counselor from the National Board for Certified Counselors; or (v) holds a Certificate of Clinical Competence from the American Speech-Language-Hearing Association shall be deemed to have satisfied the continuing professional development requirements established by the State Board of Education and the State Teacher Certification Board to renew a school service personnel certificate.

School service personnel certificates may be renewed by the State Teacher Certification Board based upon proof of continuing professional development. The State Board of Education shall (i) establish a procedure for renewing school service personnel certificates, which shall include without limitation annual timelines for the renewal process and the components set forth in this Section; (ii) approve or disapprove the providers of continuing professional development activities; and (iii) provide, on a timely basis to all school service personnel certificate holders, regional superintendents of schools, school districts, and others with an interest in continuing professional development, information about the standards and requirements established pursuant to this subsection (e).

Any school service personnel certificate held by an individual employed and performing services in an Illinois public or State-operated elementary school, secondary school, or cooperative or joint agreement with a governing body or board of control in a certificated school service personnel position or in a charter school in compliance with the Charter

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Schools Law must be maintained Valid and Active through certificate renewal activities specified in the certificate renewal procedure established pursuant to this Section, provided that a holder of a Valid and Active certificate who is only employed on either a part-time basis or day-to-day basis as a substitute shall pay only the required registration fee to renew his or her certificate and maintain it as Valid and Active. All other school service personnel certificates held may be maintained as Valid and Exempt through the registration process provided for in the certificate renewal procedure established pursuant to Section 21-14 of this Code [105 ILCS 5/21-14]. A Valid and Exempt certificate must be immediately activated, through procedures developed by the State Board of Education upon the certificate holder becoming employed and performing services in an Illinois public or State-operated elementary school, secondary school, or cooperative or joint agreement with a governing body or board of control in a certificated school service personnel position or in a charter school operating in compliance with the Charter Schools Law. A holder of a Valid and Exempt certificate may activate his or her certificate through procedures provided for in the certificate renewal procedure established pursuant to this Section.

A school service personnel certificate that has been maintained as Valid and Active for the 5 years of the certificate's validity shall be renewed as Valid and Active upon the certificate holder (i) completing the National Board for Professional Teaching Standards process in an area of concentration comparable to the holder's school service personnel certificate of endorsement or (ii) earning 80 continuing professional development units as described in this Section. If, however, the certificate holder has maintained the certificate as Valid and Exempt for a portion of the 5-year period of validity, the number of continuing professional development units needed to renew the certificate as Valid and Active must be proportionately reduced by the amount of time the certificate was Valid and Exempt. If a certificate holder is employed and performs services requiring the holder's school service personnel certificate on a part-time basis for all or a portion of the certificate's 5-year period of validity, the number of continuing professional development units needed to renew the certificate as Valid and Active shall be reduced by 50% for the amount of time the certificate holder has been employed and performing such services on a part-time basis. "Part-time" means less than 50% of the school day or school term.

Beginning July 1, 2008, in order to satisfy the requirements for continuing professional development provided for in this Section, each Valid and Active school service personnel certificate holder shall complete professional development activities that address the certificate or those certificates that are required of his or her certificated position, if the certificate holder is employed and performing services in an Illinois public or State operated elementary school, secondary school, or cooperative or joint agreement with a governing body or board of control, or that certificate or those certificates most closely related to his or her teaching position, if the certificate holder is employed in a charter school. Except as otherwise provided in this subsection (e), the certificate holder's activities must address and must reflect the following continuing professional development purposes:

(1) Advance both the certificate holder's knowledge and skills consistent with the Illinois Standards for the service area in which the certificate is endorsed in order to keep the certificate holder current in that area.

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(2) Develop the certificate holder's knowledge and skills in areas determined by the State Board of Education to be critical for all school service personnel.

(3) Address the knowledge, skills, and goals of the certificate holder's local school improvement plan, if the certificate holder is employed in an Illinois public or State-operated elementary school, secondary school, or cooperative or joint agreement with a governing body or board of control.

(4) Address the needs of serving students with disabilities, including adapting and modifying clinical or professional practices to meet the needs of students with disabilities and serving such students in the least restrictive environment.

(5) Address the needs of serving students who are the children of immigrants, including, if the certificate holder is employed as a counselor in an Illinois public or State-operated secondary school, opportunities for higher education for students who are undocumented immigrants.

The coursework or continuing professional development units ("CPDU") required under this subsection (e) must total 80 CPDUs or the equivalent and must address 4 of the 5 purposes described in items (1) through (5) of this subsection (e). Holders of school service personnel certificates may fulfill this obligation with any combination of semester hours or CPDUs as follows:

(A) Collaboration and partnership activities related to improving the school service personnel certificate holder's knowledge and skills, including (i) participating on collaborative planning and professional improvement teams and committees; (ii) peer review and coaching; (iii) mentoring in a formal mentoring program, including service as a consulting teacher participating in a remediation process formulated under Section 24A-5 [105 IlCS 5/24A-5] of this Code; (iv) participating in site-based management or decision-making teams, relevant committees, boards, or task forces directly related to school improvement plans; (v) coordinating community resources in schools, if the project is a specific goal of the school improvement plan; (vi) facilitating parent education programs for a school, school district, or regional office of education directly related to student achievement or school improvement plans; (vii) participating in business, school, or community partnerships directly related to student achievement or school improvement plans; or (viii) supervising a student teacher (student services personnel) or teacher education candidate in clinical supervision, provided that the supervision may be counted only once during the course of 5 years.

(B) Coursework from a regionally accredited institution of higher learning related to one of the purposes listed in items (1) through (4) of this subsection (e), which shall apply at the rate of 15 continuing professional development units per semester hour of credit earned during the previous 5-year period when the status of the holder's school service personnel certificate was Valid and Active. Proportionate reductions shall apply when the holder's status was Valid and Active for less than the 5-year period preceding the renewal.

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(C) Teaching college or university courses in areas relevant to the certificate area being renewed, provided that the teaching may be counted only once during the course of 5 years.

(D) Conferences, workshops, institutes, seminars, or symposiums designed to improve the certificate holder's knowledge and skills in the service area and applicable to the purposes listed in items (1) through (5) of this subsection (e). One CPDU shall be awarded for each hour of attendance. No one shall receive credit for conferences, workshops, institutes, seminars, or symposiums that are designed for entertainment, promotional, or commercial purposes or that are solely inspirational or motivational. The State Superintendent of Education and regional superintendents of schools are authorized to review the activities and events provided or to be provided under this subdivision (D) and to investigate complaints regarding those activities and events. Either the State Superintendent of Education or a regional superintendent of schools may recommend that the State Board of Education disapprove those activities and events considered to be inconsistent with this subdivision (D).

(E) Completing non-university credit directly related to student achievement, school improvement plans, or State priorities.

(F) Participating in or presenting at workshops, seminars, conferences, institutes, or symposiums.

(G) Training as external reviewers for quality assurance.

(H) Training as reviewers of university teacher preparation programs.

(I) Other educational experiences related to improving the school service personnel's knowledge and skills as a teacher, including (i) participating in action research and inquiry projects; (ii) traveling related to one's assignment and directly related to school service personnel achievement or school improvement plans and approved by the regional superintendent of schools or his or her designee at least 30 days prior to the travel experience, provided that the traveling shall not include time spent commuting to destinations where the learning experience will occur; (iii) participating in study groups related to student achievement or school improvement plans; (iv) serving on a statewide education-related committee, including without limitation the State Teacher Certification Board, State Board of Education strategic agenda teams, or the State Advisory Council on Education of Children with Disabilities; (v) participating in work/learn programs or internships; or (vi) developing a portfolio of student and teacher work.

(J) Professional leadership experiences related to improving the teacher's knowledge and skills as a teacher, including (i) participating in curriculum development or assessment activities at the school, school district, regional office of education, State, or national level; (ii) participating in team or department leadership in a school or school district; (iii) participating on external or internal school or school district review teams; (iv) publishing educational articles, columns, or books relevant to the certificate area being renewed; or (v) participating in non-strike-related professional association or labor organization service or activities related to professional development.

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(f) This Section is repealed on June 30, 2013.

(Source: P.A. 84-126; 88-386, § 15; 91-102, § 5; 92-254, § 5; 94-105, § 5; 95-592, § 5; 97-233, § 3; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 21-25.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1993 amendment by P.A. 88-386, effective August 20, 1993, added the second sentence in the first paragraph.

The 1999 amendment by P.A. 91-102, effective July 12, 1999, in the first paragraph substituted "regionally accredited" for "recognized" preceding "institution of higher learning" in the first sentence, and added the last sentence in the paragraph.

The 2001 amendment by P.A. 92-254, effective January 1, 2002, added subsection designations (a) through (c), inserted subsection (b), and in subsection (c) substituted "A school service personnel" for "Such" in the first paragraph.

The 2005 amendment by P.A. 94-105, effective July 1, 2005, added (d).

The 2007 amendment by P.A. 95-592, effective July 1, 2008, added the first paragraph in (a); and added (e).

The 2011 amendment by P.A. 97-233, effective August 1, 2011, added (e)(5); substituted "4 of the 5" for "3 of the 4" in the first sentence of the introductory language of (e)(5); and updated the internal references.

The 2011 amendment by P.A. 97-607, effective August 26, 2011, added (f).

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

CASE NOTES

Analysis

Compensation
Contractual Agreements
Rights of Holder
- Equal Pay
School Nurses

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Compensation

Beyond the statutory minimum, classifications of salary schedules according to educational background and experience may be determined by the board of education at its discretion. Winters v. Board of Educ., 66 Ill. App. 3d 918, 23 Ill. Dec. 725, 384 N.E.2d 519 (4 Dist. 1978).

Contractual Agreements

This section affords the holder of a school service personnel certificate the statutory rights and privileges of certified teachers; the statute does not extend to contractual agreements entered into between a board of education and its certified teachers. Winters v. Board of Educ., 66 Ill. App. 3d 918, 23 Ill. Dec. 725, 384 N.E.2d 519 (4 Dist. 1978).

Rights of Holder

- Equal Pay

Because the legislature has recognized certain differences between teachers and holders of a school service personnel certificate, and there are certain rights and privileges which teachers alone possess, plaintiff school nurse was not entitled, because she held a school service personnel certificate, to placement on the teachers' salary scale. Kaveney v. Board of Educ., 68 Ill. App. 3d 216, 24 Ill. Dec. 825, 385 N.E.2d 1115 (2 Dist. 1979).

School Nurses

Section 10-22.23 (105 ILCS 5/10-22.23) does not apply only when a nurse is hired to perform instructional work in addition to nursing duties, and there is no separate provision in the School Code for R.N. health aides or anyone else who performs professional nursing services. Brady v. Board of Educ. Community Consol. Sch. Dist. 15, 284 Ill. App. 3d 803, 219 Ill. Dec. 957, 672 N.E.2d 810 (1 Dist. 1996), appeal denied, 171 Ill. 2d 562, 222 Ill. Dec. 429, 677 N.E.2d 963 (1997).

§ 105 ILCS 5/21-26: Repealed by P.A. 95-793, § 11, effective August 8, 2008.

§ 105 ILCS 5/21-27. The Illinois Teaching Excellence Program

Sec. 21-27. The Illinois Teaching Excellence Program. (a) The Illinois Teaching Excellence Program is hereby established. As used in this Section:

"Poverty or low-performing school" means a school in academic early warning status or academic watch status or a school in which 50% or more of its students are eligible for free or reduced-price school lunches.

"Qualified educator" means a teacher or school counselor currently employed in a school district who is in the process of obtaining certification through the National Board for

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Professional Teaching Standards or who has completed certification and holds a Master Certificate or a retired teacher or school counselor who holds a Master Certificate.

(b) Beginning on July 1, 2011, any funds appropriated for the Illinois Teaching Excellence Program must be used to provide monetary assistance and incentives for qualified educators who are employed by school districts and who have or are in the process of obtaining licensure through the National Board for Professional Teaching Standards. The goal of the program is to improve instruction and student performance.

The State Board of Education shall allocate an amount as annually appropriated by the General Assembly for the Illinois Teaching Excellence Program for (i) application fees for each qualified educator seeking to complete certification through the National Board for Professional Teaching Standards, to be paid directly to the National Board for Professional Teaching Standards, and (ii) incentives for each qualified educator to be distributed to the respective school district. The school district shall distribute this payment to each eligible teacher or school counselor as a single payment.

The State Board of Education's annual budget must set out by separate line item the appropriation for the program. Unless otherwise provided by appropriation, qualified educators are eligible for monetary assistance and incentives based on the priorities outlined in subsection (c) of this Section.

(c) When there are adequate funds available, priorities (1), (2), (3), (4), and (5), as outlined in this subsection (c), must be funded. If full funding to meet all priorities as outlined in this subsection (c) is not available, funding must be distributed in the order of the priorities listed in this subsection (c). If funding is insufficient to fund a priority in full, then funding for that priority must be prorated and no further priorities shall be funded.

Priorities for monetary assistance and incentives shall be as follows:

(1) Priority 1: A maximum of $2,000 towards the application fee for up to 750 teachers or school counselors in a poverty or low-performing school who apply on a first-come, first-serve basis for National Board certification.

(2) Priority 2: A maximum of $2,000 towards the application fee for up to 250 teachers or school counselors in a school other than a poverty or low-performing school who apply on a first-come, first-serve basis for National Board certification. However, if there were fewer than 750 individuals supported in priority (1), then the number supported in priority (2) may be increased as such that the combination of priority (1) and priority (2) shall equal 1,000 applicants.

(3) Priority 3: The fee for the National Board for Professional Teaching Standards' Take One! (the test for National Board certification) for up to 500 qualified educators who apply on a first-come, first-serve basis.

(4) Priority 4: An annual incentive equal to $1,500, which shall be paid to each qualified educator who holds both a Master Certificate and a current corresponding certificate issued by the National Board for Professional Teaching Standards, who is employed in a school district, and who agrees, in writing, to provide 30 hours of mentoring or National

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Board for Professional Teaching Standards professional development or both during the school year to teachers or school counselors in a poverty or low-performing school, as applicable.

(5) Priority 5: An annual incentive equal to $1,500, which shall be paid to each qualified educator currently employed in a school district who holds both a Master Certificate and a current corresponding certificate issued by the National Board for Professional Teaching Standards and who agrees, in writing, to provide at least 30 hours of mentoring or National Board for Professional Teaching Standards professional development or both during the school year to classroom teachers or school counselors, as applicable.

Mentoring for all priorities shall include, either singly or in combination, mentoring of the following:

(A) National Board for Professional Teaching Standards certification candidates.

(B) National Board for Professional Teaching Standards re-take candidates.

(C) National Board for Professional Teaching Standards renewal candidates.

(D) National Board for Professional Teaching Standards Take One! participants.

(d) This Section is repealed on June 30, 2013.

(Source: P.A. 91-606, § 5; 92-796, § 3; 93-470, § 5; 94-105, § 5; 94-901, § 5; 95-996, § 5; 97-607, § 15.)

Note.

Section 95 of P.A. 92-796 contains a no acceleration or delay provision.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 91-605 made this section effective upon becoming law. The Act was approved August 16, 1999.

Effect of Amendments. The 2002 amendment by P.A. 92-796, effective August 10, 2002, inserted "from federal funds" in the second sentence; added "An annual" at the beginning of subsection (1); and inserted "as a teacher" in the first sentence of subsections (1), (2) and (3).

The 2003 amendment by P.A. 93-470, effective August 8, 2003, substituted "academic early warning status" for "the academic early warning List" in subdivision (3).

The 2005 amendment by P.A. 94-105, effective July 1, 2005, added "and school counselor" twice, and in (1) added the item (A) designation and added (B).

The 2006 amendment by P.A. 94-901, effective July 1, 2006, added the next-to-last sentence in the first paragraph.

The 2008 amendment by P.A. 95-990, effective October 3, 2008, rewrote the section.

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The 2011 amendment by P.A. 97-607, effective August 26, 2011, rewrote the section.

§ 105 ILCS 5/21-28. (As amended by P.A. 97-227) Special education teachers; categorical certification

Sec. 21-28. (As amended by P.A. 97-227) Special education teachers; categorical certification. The State Teacher Certification Board shall categorically certify a special education teacher in one or more of the following specialized categories of disability if the special education teacher applies and qualifies for such certification:

(1) Serious emotional disturbance.

(2) Learning disabilities.

(3) Autism.

(4) Intellectual disabilities.

(5) Orthopedic (physical) impairment.

(6) Traumatic brain injury.

(7) Other health impairment.

(Source: P.A. 92-709, § 5; 97-227, § 60.)

Section set out twice. Multiple versions of this section have been created by the editor to reﬂect conﬂicting or postponed legislation.

Note.

Rule of construction. This Act shall be construed to make amendments to provisions of State law to substitute the term "intellectual disability" for "mental retardation", "intellectually disabled" for "mentally retarded", "ID/DD Community Care Act" for "MR/DD Community Care Act", "physically disabled" for "crippled", and "physical disability" or "physically disabling", as appropriate, for "crippling" without any intent to change the substantive rights, responsibilities, coverage, eligibility, or definitions referred to in the amended provisions represented in this Act.

Effective Date. Section 99 of P.A. 92-709 made this section effective upon becoming law. The Act was approved July 19, 2002.

Effect of Amendments. The 2011 amendment by P.A. 97-227, effective January 1, 2012, substituted "Intellectual disabilities" for "Mental retardation" in (4).

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§ 105 ILCS 5/21-28. (As amended by P.A. 97-461) Special education teachers; certification

Sec. 21-28. (As amended by P.A. 97-461) Special education teachers; certification. (a) In order to create a special education workforce with the broad-based knowledge necessary to educate students with a variety of disabilities, the State Board of Education and State Teacher Certification Board shall certify a special education teacher under one of the following:

(1) Learning behavior specialist I.

(2) Learning behavior specialist II.

(3) Teacher of students who are blind or visually impaired.

(4) Teacher of students who are deaf or hard of hearing.

(5) Speech-language pathologist.

(6) Early childhood special education teacher.

(b) The State Board of Education is authorized to provide for the assignment of individuals to special education positions by short-term, emergency certification. Short-term, emergency certification shall not be renewed.

(c) The State Board of Education is authorized to use peremptory rulemaking, in accordance with Section 5-50 of the Illinois Administrative Procedure Act, to place into the Illinois Administrative Code the certification policies and standards related to special education, as authorized under this Section, that the State Board has been required to implement pursuant to federal court orders dated February 27, 2001, August 15, 2001, and September 11, 2002 in the matter of Corey H., et al. v. Board of Education of the City of Chicago, et al.

(Source: 92-709, § 5; 97-461, § 5.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Effect of Amendments. The 2011 amendment by P.A. 97-461, effective August 19, 2011, deleted "categorical" following "teachers" in the section heading; and rewrote the section, which formerly read: "The State Teacher Certification Board shall categorically certify a special education teacher in one or more of the following specialized categories of disability if the special education teacher applies and qualifies for such certification: (1) Serious emotional disturbance. (2) Learning disabilities. (3) Autism. (4) Mental retardation. (5) Orthopedic (physical) impairment. (6) Traumatic brain injury. (7) Other health impairment."

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§ 105 ILCS 5/21-29: Repealed by P.A. 97-607, § 25, effective August 26, 2011.

Article 21A.

New Teacher Induction and Mentoring

§ 105 ILCS 5/21A-5. Definitions

Sec. 21A-5. Definitions. In this Article:

"New teacher" means the holder of an Initial Teaching Certificate, as set forth in Section 21-2 of this Code [105 ILCS 5/21-2], who is employed by a public school and who has not previously participated in a new teacher induction and mentoring program required by this Article, except as provided in Section 21A-25 of this Code [105 ILCS 5/21A-25].

"Public school" means any school operating pursuant to the authority of this Code, including without limitation a school district, a charter school, a cooperative or joint agreement with a governing body or board of control, and a school operated by a regional office of education or State agency.

(Source: P.A. 93-355, § 5.)

Effective Date. This Article is effective January 1, 2004, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 5/21A-10. Development of program required

Sec. 21A-10. Development of program required. During the 2003-2004 school year, each public school or 2 or more public schools acting jointly shall develop, in conjunction with its exclusive representative or their exclusive representatives, if any, a new teacher induction and mentoring program that meets the requirements set forth in Section 21A-20 of this Code [105 ILCS 5/21A-20] to assist new teachers in developing the skills and strategies necessary for instructional excellence, provided that funding is made available by the State Board of Education from an appropriation made for this purpose. A public

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school that has an existing induction and mentoring program that does not meet the requirements set forth in Section 21A-20 of this Code [105 ILCS 5/21A-20] may have school years 2003-2004 and 2004-2005 to develop a program that does meet those requirements and may receive funding as described in Section 21A-25 of this Code [105 ILCS 5/21A-25], provided that the funding is made available by the State Board of Education from an appropriation made for this purpose. A public school with such an existing induction and mentoring program may receive funding for the 2005-2006 school year for each new teacher in the second year of a 2-year program that does not meet the requirements set forth in Section 21A-20 [105 ILCS 5/21A-20], as long as the public school has established the required new program by the beginning of that school year as described in Section 21A-15 [105 ILCS 5/21A-15] and provided that funding is made available by the State Board of Education from an appropriation made for this purpose as described in Section 21A-25 [105 ILCS 5/21A-25].

(Source: P.A. 93-355, § 5.)

§ 105 ILCS 5/21A-15. When program is to be established and implemented

Sec. 21A-15. When program is to be established and implemented. Notwithstanding any other provisions of this Code, by the beginning of the 2004-2005 school year (or by the beginning of the 2005-2006 school year for a public school that has been given an extension of time to develop a program under Section 21A-10 of this Code [105 ILCS 5/21A-10]), each public school or 2 or more public schools acting jointly shall establish and implement, in conjunction with its exclusive representative or their exclusive representatives, if any, the new teacher induction and mentoring program required to be developed under Section 21A-10 of this Code [105 ILCS 5/21A-10], provided that funding is made available by the State Board of Education, from an appropriation made for this purpose, as described in Section 21A-25 of this Code [105 ILCS 5/21A-25]. A public school may contract with an institution of higher education or other independent party to assist in implementing the program.

(Source: P.A. 93-355, § 5.)

§ 105 ILCS 5/21A-20. Program requirements

Sec. 21A-20. Program requirements. Each new teacher induction and mentoring program must be based on a plan that at least does all of the following:

(1) Assigns a mentor teacher to each new teacher for a period of at least 2 school years.

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(2) Aligns with the Illinois Professional Teaching Standards, content area standards, and applicable local school improvement and professional development plans, if any.

(3) Addresses all of the following elements and how they will be provided:

(A) Mentoring and support of the new teacher.

(B) Professional development specifically designed to ensure the growth of the new teacher's knowledge and skills.

(C) Formative assessment designed to ensure feedback and reflection, which must not be used in any evaluation of the new teacher.

(4) Describes the role of mentor teachers, the criteria and process for their selection, and how they will be trained, provided that each mentor teacher shall demonstrate the best practices in teaching his or her respective field of practice. A mentor teacher may not directly or indirectly participate in the evaluation of a new teacher pursuant to Article 24A of this Code [105 ILCS 5/24A-1 et seq.] or the evaluation procedure of the public school.

(Source: P.A. 93-355, § 5.)

§ 105 ILCS 5/21A-25. Funding

Sec. 21A-25. Funding. From a separate appropriation made for the purposes of this Article, for each new teacher participating in a new teacher induction and mentoring program that meets the requirements set forth in Section 21A-20 [105 ILCS 5/21A-20] of this Code or in an existing program that is in the process of transition to a program that meets those requirements, the State Board of Education shall pay the public school $1,200 annually for each of 2 school years for the purpose of providing one or more of the following:

(1) Mentor teacher compensation.

(2) Mentor teacher training or new teacher training or both.

(3) Release time.

However, if a new teacher, after participating in the new teacher induction and mentoring program for one school year, becomes employed by another public school, the State Board of Education shall pay the teacher's new school $1,200 for the second school year and the teacher shall continue to be a new teacher as defined in this Article. Each public school shall determine, in conjunction with its exclusive representative, if any, how the $1,200 per school year for each new teacher shall be used, provided that if a mentor teacher receives additional release time to support a new teacher, the total workload of other teachers regularly employed by the public school shall not increase in any

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substantial manner. If the appropriation is insufficient to cover the $1,200 per school year for each new teacher, public schools are not required to develop or implement the program established by this Article. In the event of an insufficient appropriation, a public school or 2 or more schools acting jointly may submit an application for a grant administered by the State Board of Education and awarded on a competitive basis to establish a new teacher induction and mentoring program that meets the criteria set forth in Section 21A-20 of this Code [105 ILCS 5/21A-20]. The State Board of Education may retain up to $1,000,000 of the appropriation for new teacher induction and mentoring programs to train mentor teachers, administrators, and other personnel, to provide best practices information, and to conduct an evaluation of these programs' impact and effectiveness.

(Source: P.A. 93-355, § 5.)

§ 105 ILCS 5/21A-30. Evaluation of programs

Sec. 21A-30. Evaluation of programs. The State Board of Education and the State Teacher Certification Board shall jointly contract with an independent party to conduct a comprehensive evaluation of new teacher induction and mentoring programs established pursuant to this Article. The first report of this evaluation shall be presented to the General Assembly on or before January 1, 2009. Subsequent evaluations shall be conducted and reports presented to the General Assembly on or before January 1 of every third year thereafter.

(Source: P.A. 93-355, § 5.)

§ 105 ILCS 5/21A-35. Rules

Sec. 21A-35. Rules. The State Board of Education, in consultation with the State Teacher Certification Board, shall adopt rules for the implementation of this Article.

(Source: P.A. 93-355, § 5.)

Effective Date. This Article is effective January 1, 2004, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

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Article 21B.

Educator Licensure

§ 105 ILCS 5/21B-5. Licensure powers of the State Board of Education

Sec. 21B-5. Licensure powers of the State Board of Education. (a) Recognizing that the education of our citizens is the single most important influence on the prosperity and success of this State and recognizing that new developments in education require a flexible approach to our educational system, the State Board of Education, in consultation with the State Educator Preparation and Licensure Board, shall have the power and authority to do all of the following:

(1) Set standards for teaching, supervising, or otherwise holding licensed employment in the public schools of this State and administer the licensure process as provided in this Article.

(2) Approve, evaluate, and sanction educator preparation programs.

(3) Enter into agreements with other states relative to reciprocal approval of educator preparation programs.

(4) Establish standards for the issuance of new types of educator licenses.

(5) Establish a code of ethics for all educators.

(6) Maintain a system of licensure examination aligned with standards determined by the State Board of Education.

(7) Take such other action relating to the improvement of instruction in the public schools as is appropriate and consistent with applicable laws.

(b) Only the State Superintendent of Education, acting in accordance with the applicable provisions of this Article and rules, shall have the authority to issue or endorse any license required for teaching, supervising, or otherwise holding licensed employment in the public schools; and no other State agency shall have any power or authority (i) to establish or prescribe any qualifications or other requirements applicable to the issuance or endorsement of any such license or (ii) to establish or prescribe any licensure or equivalent requirement that must be satisfied in order to teach, supervise, or hold licensed employment in the public schools.

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(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

§ 105 ILCS 5/21B-10. State Educator Preparation and Licensure Board

Sec. 21B-10. State Educator Preparation and Licensure Board. (a) The State Teacher Certification Board, which had been established under Section 21-13 of the School Code [Repealed] prior to this amendatory Act of the 97th General Assembly [P.A. 97-607], shall be renamed the State Educator Preparation and Licensure Board. References in law to the State Teacher Certification Board shall mean the State Educator Preparation and Licensure Board. The State Educator Preparation and Licensure Board shall consist of the State Superintendent of Education or a representative appointed by him or her, who shall be ex-officio chairperson, 5 administrative or faculty members of public or private colleges or universities located in this State, 3 administrators and 10 classroom teachers employed in the public schools (5 of whom must be members of and nominated by a statewide professional teachers' organization and 5 of whom must be members of and nominated by a different statewide professional teachers' organization), and one regional superintendent of schools, all of whom shall be appointed by the State Board of Education; provided that at least one of the administrators and at least 3 of the classroom teachers so appointed must be employees of a school district that is subject to the provisions of Article 34 of this Code. A statewide professional teachers' organization and a different statewide professional teachers' organization shall submit to the State Board of Education for consideration at least 3 names of accomplished teachers for every one vacancy or expiring term in a classroom teacher position. The nominations submitted to the State Board of Education under this Section to fill a vacancy or an expiring term shall be advisory. Nomination for State Educator Preparation and Licensure Board members must be submitted to the State Board of Education within 30 days after the vacancy or vacancies occur. Nominations to fill an expiring term must be submitted to the State Board of Education at least 30 days before the expiration of that term. Notwithstanding any other provisions of this Section, if a sufficient number of nominations are not received by the State Board of Education for a vacancy or expiring term within the 30-day period, then the State Board of Education may appoint any qualified person, in the same manner as the original appointment, to fill the vacancy or expiring term. The regular term of each member is 3 years, and an individual may be appointed for no more than 2 consecutive terms. The term of an appointed member of the State Educator Preparation and Licensure Board shall expire on June 30 of his or her final year.

(b) The State Board of Education shall appoint a secretary of the State Educator Preparation and Licensure Board.

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(c) The State Educator Preparation and Licensure Board shall hold regular meetings at least quarterly and such other special meetings as may be necessary.

(d) The necessary expenses of the State Educator Preparation and Licensure Board shall be provided through the State Board of Education. The State Board of Education, in consultation with the State Educator Preparation and Licensure Board, may adopt such rules as may be necessary for the administration of this Article.

(e) Individuals serving on the State Teacher Certification Board on June 30, 2011 under Section 21-13 of this Code [105 ILCS 5/21-13] shall continue to serve on the State Educator Preparation and Licensure Board until the scheduled expiration of their respective terms.

(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

§ 105 ILCS 5/21B-15. Qualifications of educators

Sec. 21B-15. Qualifications of educators. (a) No one may be licensed to teach or supervise or be otherwise employed in the public schools of this State who is not of good character and at least 20 years of age.

In determining good character under this Section, the State Superintendent of Education shall take into consideration the disciplinary actions of other states or national entities against certificates or licenses issued by those states and held by individuals from those states. In addition, any felony conviction of the applicant may be taken into consideration; however, no one may be licensed to teach or supervise in the public schools of this State who has been convicted of an offense set forth in Section 21B-80 of this Code [105 ILCS 5/21B-80]. Unless the conviction is for an offense set forth in Section 21B-80 of this Code, an applicant must be permitted to submit character references or other written material before such a conviction or other information regarding the applicant's character may be used by the State Superintendent of Education as a basis for denying the application.

(b) No person otherwise qualified shall be denied the right to be licensed or to receive training for the purpose of becoming an educator because of a physical disability, including, but not limited to, visual and hearing disabilities; nor shall any school district refuse to employ a teacher on such grounds, provided that the person is able to carry out the duties of the position for which he or she applies.

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(c) No person may be granted or continue to hold an educator license who has knowingly altered or misrepresented his or her qualifications, in this State or any other state, in order to acquire or renew the license. Any other license issued under this Article held by the person may be suspended or revoked by the State Educator Preparation and Licensure Board, depending upon the severity of the alteration or misrepresentation.

(d) No one may teach or supervise in the public schools nor receive for teaching or supervising any part of any public school fund who does not hold an educator license granted by the State Superintendent of Education as provided in this Article. However, the provisions of this Article do not apply to a member of the armed forces who is employed as a teacher of subjects in the Reserve Officers' Training Corps of any school, nor to an individual teaching a dual credit course as provided for in the Dual Credit Quality Act [110 ILCS 27/1 et seq.].

(e) Notwithstanding any other provision of this Code, the school board of a school district may grant to a teacher of the district a leave of absence with full pay for a period of not more than one year to permit the teacher to teach in a foreign state under the provisions of the Exchange Teacher Program established under Public Law 584, 79th Congress, and Public Law 402, 80th Congress, as amended. The school board granting the leave of absence may employ, with or without pay, a national of the foreign state wherein the teacher on the leave of absence is to teach if the national is qualified to teach in that foreign state and if that national is to teach in a grade level similar to the one that was taught in the foreign state. The State Board of Education, in consultation with the State Educator Preparation and Licensure Board, may adopt rules as may be necessary to implement this subsection (e).

(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

§ 105 ILCS 5/21B-20. Types of licenses

Sec. 21B-20. Types of licenses. Before July 1, 2013, the State Board of Education shall implement a system of educator licensure, whereby individuals employed in school districts who are required to be licensed must have one of the following licenses: (i) a professional educator license; (ii) a professional educator license with stipulations; or (iii) a substitute teaching license. References in law regarding individuals certified or certificated or required to be certified or certificated under Article 21 of this Code shall

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also include individuals licensed or required to be licensed under this Article. The first year of all licenses ends on June 30 following one full year of the license being issued.

The State Board of Education, in consultation with the State Educator Preparation and Licensure Board, may adopt such rules as may be necessary to govern the requirements for licenses and endorsements under this Section.

(1) Professional Educator License. Persons who (i) have successfully completed an approved educator preparation program and are recommended for licensure by the Illinois institution offering the educator preparation program, (ii) have successfully completed the required testing under Section 21B-30 of this Code [105 ILCS 5/21B-30], (iii) have successfully completed coursework on the psychology of, the identification of, and the methods of instruction for the exceptional child, including without limitation the learning disabled, (iv) have successfully completed coursework in methods of reading and reading in the content area, and (v) have met all other criteria established by rule of the State Board of Education shall be issued a Professional Educator License. All Professional Educator Licenses are valid until June 30 immediately following 5 years of the license being issued. The Professional Educator License shall be endorsed with specific areas and grade levels in which the individual is eligible to practice.

Individuals can receive subsequent endorsements on the Professional Educator License. Subsequent endorsements shall require a minimum of 24 semester hours of coursework in the endorsement area, unless otherwise specified by rule, and passage of the applicable content area test.

(2) Educator License with Stipulations. An Educator License with Stipulations shall be issued an endorsement that (i) is non-renewable, (ii) limits the license holder to one particular position, or (iii) does not require completion of an approved educator program or any combination of items (i) through (iii) of this paragraph (2).

An individual with an Educator License with Stipulations must not be employed by a school district or any other entity to replace any presently employed teacher who otherwise would not be replaced for any reason.

An Educator License with Stipulations may be issued with the following endorsements:

(A) Provisional educator. A provisional educator endorsement in a specific content area or areas on an Educator License with Stipulations may be issued to an applicant who holds an educator license with a minimum of 15 semester hours in content coursework from another state, U.S. territory, or foreign country and who, at the time of applying for an Illinois license, does not meet the minimum requirements under Section 21B-35 of this Code, but does, at a minimum, meet both of the following requirements:

(i) Holds the equivalent of a minimum of a bachelor's degree, unless a master's degree is required for the endorsement, from a regionally accredited college or university or, for individuals educated in a country other than the United States, the equivalent of a minimum of a bachelor's degree issued in the United States, unless a master's degree is required for the endorsement.

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(ii) Has passed a test of basic skills and content area test, as required by Section 21B-30 of this Code.

However, a provisional educator endorsement for principals may not be issued, nor may any person with a provisional educator endorsement serve as a principal in a public school in this State. In addition, out-of-state applicants shall not receive a provisional educator endorsement if the person completed an alternative licensure program in another state, unless the program has been determined to be equivalent to Illinois program requirements.

A provisional educator endorsement is valid until June 30 immediately following 2 years of the license being issued, during which time any remaining testing and coursework deficiencies must be met. Failure to satisfy all stated deficiencies shall mean the individual is ineligible to receive a Professional Educator License at that time. A provisional educator endorsement on an Educator License with Stipulations shall not be renewed.

(B) Alternative provisional educator. An alternative provisional educator endorsement on an Educator License with Stipulations may be issued to an applicant who, at the time of applying for the endorsement, has done all of the following:

(i) Graduated from a regionally accredited college or university with a minimum of a bachelor's degree.

(ii) Successfully completed the first phase of the Alternative Educator Licensure Program for Teachers, as described in Section 21B-50 of this Code [105 ILCS 5/21B-50].

(iii) Passed a test of basic skills and content area test, as required under Section 21B-30 of this Code.

The alternative provisional educator endorsement is valid for 2 years of teaching and may be renewed for a third year by an individual meeting the requirements set forth in Section 21B-50 of this Code.

(C) Alternative provisional superintendent. An alternative provisional superintendent endorsement on an Educator License with Stipulations entitles the holder to serve only as a superintendent or assistant superintendent in a school district's central office. This endorsement may only be issued to an applicant who, at the time of applying for the endorsement, has done all of the following:

(i) Graduated from a regionally accredited college or university with a minimum of a master's degree in a management field other than education.

(ii) Been employed for a period of at least 5 years in a management level position in a field other than education.

(iii) Successfully completed the first phase of an alternative route to superintendent endorsement program, as provided in Section 21B-55 of this Code.

(iv) Passed a test of basic skills and content area tests required under Section 21B-30 of this Code.

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The endorsement may be registered for 2 fiscal years in order to complete one full year of serving as a superintendent or assistant superintendent.

(D) Resident teacher endorsement. A resident teacher endorsement on an Educator License with Stipulations may be issued to an applicant who, at the time of applying for the endorsement, has done all of the following:

(i) Graduated from a regionally accredited institution of higher education with a minimum of a bachelor's degree.

(ii) Enrolled in an approved Illinois educator preparation program.

(iii) Passed a test of basic skills and content area test, as required under Section 21B-30 of this Code.

The resident teacher endorsement on an Educator License with Stipulations is valid for 4 years of teaching and shall not be renewed.

A resident teacher may teach only under the direction of a licensed teacher, who shall act as the resident mentor teacher, and may not teach in place of a licensed teacher. A resident teacher endorsement on an Educator License with Stipulations shall no longer be valid after June 30, 2017.

(E) Career and technical educator. A career and technical educator endorsement on an Educator License with Stipulations may be issued to an applicant who has a minimum of 60 semester hours of coursework from a regionally accredited institution of higher education, has passed a test of basic skills required under Section 21B-30 of this Code, and has a minimum of 2,000 hours of experience in the last 10 years outside of education in each area to be taught.

The career and technical educator endorsement on an Educator License with Stipulations is valid until June 30 immediately following 5 years of the endorsement being issued.

(F) Provisional career and technical educator. A Provisional career and technical educator endorsement on an Educator License with Stipulations may be issued to an applicant who has a minimum of 8,000 hours of work experience in the skill for which the applicant is seeking the endorsement. It is the responsibility of each employing school board and regional office of education to provide verification, in writing, to the State Superintendent of Education at the time the application is submitted that no qualified teacher holding a Professional Educator License or an Educator License with Stipulations with a career and technical educator endorsement is available and that actual circumstances require such issuance.

The provisional career and technical educator endorsement on an Educator License with Stipulations is valid until June 30 immediately following 5 years of the endorsement being issued and may be renewed only one time for 5 years if the individual passes a test of basic skills, as required under Section 21B-30 of this Code, and has completed a minimum of 20 semester hours from a regionally accredited institution.

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(G) Transitional bilingual educator. A transitional bilingual educator endorsement on an Educator License with Stipulations may be issued for the purpose of providing instruction in accordance with Article 14C of this Code [105 ILCS 5/14C-1et seq.] to an applicant who provides satisfactory evidence that he or she meets all of the following requirements:

(i) Possesses adequate speaking, reading, and writing ability in the language other than English in which transitional bilingual education is offered.

(ii) Has the ability to successfully communicate in English.

(iii) Either possessed, within 5 years previous to his or her applying for a transitional bilingual educator endorsement, a valid and comparable teaching certificate or comparable authorization issued by a foreign country or holds a degree from an institution of higher learning in a foreign country that the State Educator Preparation and Licensure Board determines to be the equivalent of a bachelor's degree from a regionally accredited institution of higher learning in the United States.

A transitional bilingual educator endorsement shall be valid for prekindergarten through grade 12, is valid until June 30 immediately following 5 years of the endorsement being issued, and shall not be renewed.

Persons holding a transitional bilingual educator endorsement shall not be employed to replace any presently employed teacher who otherwise would not be replaced for any reason.

(H) Language endorsement. In an effort to alleviate the shortage of teachers speaking a language other than English in the public schools, an individual who holds an Educator License with Stipulations may also apply for a language endorsement, provided that the applicant provides satisfactory evidence that he or she meets all of the following requirements:

(i) Holds a transitional bilingual endorsement.

(ii) Has demonstrated proficiency in the language for which the endorsement is to be issued by passing the applicable language content test required by the State Board of Education.

(iii) Holds a bachelor's degree or higher from a regionally accredited institution of higher education or, for individuals educated in a country other than the United States, holds a degree from an institution of higher learning in a foreign country that the State Educator Preparation and Licensure Board determines to be the equivalent of a bachelor's degree from a regionally accredited institution of higher learning in the United States.

(iv) Has passed a test of basic skills, as required under Section 21B-30 of this Code.

A language endorsement on an Educator License with Stipulations is valid for prekindergarten through grade 12 for the same validity period as the individual's transitional bilingual educator endorsement on the Educator License with Stipulations and shall not be renewed.

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(I) Visiting international educator. A visiting international educator endorsement on an Educator License with Stipulations may be issued to an individual who is being recruited by a particular school district that conducts formal recruitment programs outside of the United States to secure the services of qualified teachers and who meets all of the following requirements:

(i) Holds the equivalent of a minimum of a bachelor's degree issued in the United States.

(ii) Has been prepared as a teacher at the grade level for which he or she will be employed.

(iii) Has adequate content knowledge in the subject to be taught.

(iv) Has an adequate command of the English language.

A holder of a visiting international educator endorsement on an Educator License with Stipulations shall be permitted to teach in bilingual education programs in the language that was the medium of instruction in his or her teacher preparation program, provided that he or she passes the English Language Proficiency Examination or another test of writing skills in English identified by the State Board of Education, in consultation with the State Educator Preparation and Licensure Board.

A visiting international educator endorsement on an Educator License with Stipulations is valid for 3 years and shall not be renewed.

(J) Paraprofessional educator. A paraprofessional educator endorsement on an Educator License with Stipulations may be issued to an applicant who holds a high school diploma or its recognized equivalent and either holds an associate's degree or a minimum of 60 semester hours of credit from a regionally accredited institution of higher education or has passed a test of basic skills required under Section 21B-30 of this Code. The paraprofessional educator endorsement is valid until June 30 immediately following 5 years of the endorsement being issued and may be renewed through application and payment of the appropriate fee, as required under Section 21B-40 of this Code [105 ILCS 5/21B-40]. An individual who holds only a paraprofessional educator endorsement is not subject to additional requirements in order to renew the endorsement.

(3) Substitute Teaching License. A Substitute Teaching License may be issued to qualified applicants for substitute teaching in all grades of the public schools, prekindergarten through grade 12. Substitute Teaching Licenses are not eligible for endorsements. Applicants for a Substitute Teaching License must hold a bachelor's degree or higher from a regionally accredited institution of higher education.

Substitute Teaching Licenses are valid for 5 years and may be renewed if the individual has passed a test of basic skills, as authorized under Section 21B-30 of this Code. An individual who has passed a test of basic skills for the first licensure renewal is not required to retake the test again for further renewals.

Substitute Teaching Licenses are valid for substitute teaching in every county of this State. If an individual has had his or her Professional Educator License or Educator

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License with Stipulations suspended or revoked or has not met the renewal requirements for licensure, then that individual is not eligible to obtain a Substitute Teaching License.

A substitute teacher may only teach in the place of a licensed teacher who is under contract with the employing board. If, however, there is no licensed teacher under contract because of an emergency situation, then a district may employ a substitute teacher for no longer than 30 calendar days per each vacant position in the district if the district notifies the appropriate regional office of education within 5 business days after the employment of the substitute teacher in the emergency situation. An emergency situation is one in which an unforeseen vacancy has occurred and (i) a teacher is unable to fulfill his or her contractual duties or (ii) teacher capacity needs of the district exceed previous indications, and the district is actively engaged in advertising to hire a fully licensed teacher for the vacant position.

There is no limit on the number of days that a substitute teacher may teach in a single school district, provided that no substitute teacher may teach for longer than 90 school days for any one licensed teacher under contract in the same school year. A substitute teacher who holds a Professional Educator License or Educator License with Stipulations shall not teach for more than 120 school days for any one licensed teacher under contract in the same school year. The limitations in this paragraph (3) on the number of days a substitute teacher may be employed do not apply to any school district operating under Article 34 of this Code.

(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

Note.

Article 21 of this code, referred to in above, has been repealed.

§ 105 ILCS 5/21B-25. Endorsement on licenses

Sec. 21B-25. Endorsement on licenses. All licenses issued under paragraph (1) of Section 21B-20 of this Code [105 ILCS 5/21B-20] shall be specifically endorsed by the State Board of Education for each content area, school support area, and administrative area for which the holder of the license is qualified. Recognized institutions approved to offer educator preparation programs shall be trained to add endorsements to licenses issued to applicants who meet all of the requirements for the endorsement or endorsements, including passing any required tests. The State Superintendent of Education shall

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randomly audit institutions to ensure that all rules and standards are being followed for entitlement or when endorsements are being recommended.

(1) The State Board of Education, in consultation with the State Educator Preparation and Licensure Board, shall establish, by rule, the grade level and subject area endorsements to be added to the Professional Educator License. These rules shall outline the requirements for obtaining each endorsement.

(2) In addition to any and all grade level and content area endorsements developed by rule, the State Board of Education, in consultation with the State Educator Preparation and Licensure Board, shall develop the requirements for the following endorsements:

(A) General administrative endorsement. A general administrative endorsement shall be added to a Professional Educator License, provided that an approved program has been completed. An individual holding a general administrative endorsement may work only as a principal or assistant principal or in a related or similar position, as determined by the State Superintendent of Education, in consultation with the State Educator Preparation and Licensure Board.

Beginning on September 1, 2014, the general administrative endorsement shall no longer be issued. Individuals who hold a valid and registered administrative certificate with a general administrative endorsement issued under Section 21-7.1 of this Code [105 ILCS 5/21-7.1] or a Professional Educator License with a general administrative endorsement issued prior to September 1, 2014 and who have served for at least one full year during the 5 years prior in a position requiring a general administrative endorsement shall, upon request to the State Board of Education and through July 1, 2015, have their respective general administrative endorsement converted to a principal endorsement on the Professional Educator License. Candidates shall not be admitted to an approved general administrative preparation program after September 1, 2012.

All other individuals holding a valid and registered administrative certificate with a general administrative endorsement issued pursuant to Section 21-7.1 of this Code or a general administrative endorsement on a Professional Educator License issued prior to September 1, 2014 shall have the general administrative endorsement converted to a principal endorsement on a Professional Educator License upon request to the State Board of Education and by completing one of the following pathways:

(i) Passage of the State principal assessment developed by the State Board of Education.

(ii) Through July 1, 2019, completion of an Illinois Educators' Academy course designated by the State Superintendent of Education.

(iii) Completion of a principal preparation program established and approved pursuant to Section 21B-60 of this Code [105 ILCS 5/21B-60] and applicable rules.

Individuals who do not choose to convert the general administrative endorsement on the administrative certificate issued pursuant to Section 21-7.1 of this Code or on the Professional Educator License shall continue to be able to serve in any position previously allowed under paragraph (2) of subsection (e) of Section 21-7.1 of this Code.

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The general administrative endorsement on the Professional Educator License is available only to individuals who, prior to September 1, 2014, had such an endorsement on the administrative certificate issued pursuant to Section 21-7.1 of this Code or who already have a Professional Educator License and have completed a general administrative program and who do not choose to convert the general administrative endorsement to a principal endorsement pursuant to the options in this Section.

(B) Principal endorsement. A principal endorsement shall be affixed to a Professional Educator License of any holder who qualifies by having all of the following:

(i) Successful completion of a principal preparation program approved in accordance with Section 21B-60 of this Code and any applicable rules.

(ii) Four years of teaching in a public school or nonpublic school recognized by the State Board of Education; however, the State Board of Education, in consultation with the State Educator Preparation and Licensure Board, shall allow, by rules, for fewer than 4 years of experience based on meeting standards set forth in such rules, including without limitation a review of performance evaluations or other evidence of demonstrated qualifications.

(iii) A master's degree or higher from a regionally accredited college or university.

(C) Chief school business official endorsement. A chief school business official endorsement shall be affixed to the Professional Educator License of any holder who qualifies by having a master's degree or higher, 2 years of full-time administrative experience in school business management or 2 years of university-approved practical experience, and a minimum of 24 semester hours of graduate credit in a program approved by the State Board of Education for the preparation of school business administrators and by passage of the applicable State tests. The chief school business official endorsement may also be affixed to the Professional Educator License of any holder who qualifies by having a master's degree in business administration, finance, or accounting and who completes an additional 6 semester hours of internship in school business management from a regionally accredited institution of higher education and passes the applicable State tests. This endorsement shall be required for any individual employed as a chief school business official.

(D) Superintendent endorsement. A superintendent endorsement shall be affixed to the Professional Educator License of any holder who has completed a program approved by the State Board of Education for the preparation of superintendents of schools, has had at least 2 years of experience employed as a full-time principal, director of special education, or chief school business official in the public schools or in a State-recognized nonpublic school in which the chief administrator is required to have the licensure necessary to be a principal in a public school in this State and where a majority of the teachers are required to have the licensure necessary to be instructors in a public school in this State, and has passed the required State tests; or of any holder who has completed a program from out-of-state that has a program with recognition standards comparable to those approved by the State Superintendent of Education and holds the general administrative, principal, or chief school business official endorsement and who has had 2 years of experience as a principal, director of special education, or chief school

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business official while holding a valid educator license or certificate comparable in validity and educational and experience requirements and has passed the appropriate State tests, as provided in Section 21B-30 of this Code. The superintendent endorsement shall allow individuals to serve only as a superintendent or assistant superintendent.

(E) Teacher leader endorsement. It shall be the policy of this State to improve the quality of instructional leaders by providing a career pathway for teachers interested in serving in leadership roles, but not as principals. The State Board of Education, in consultation with the State Educator Preparation and Licensure Board, may issue a teacher leader endorsement under this subdivision (E). Persons who meet and successfully complete the requirements of the endorsement shall be issued a teacher leader endorsement on the Professional Educator License for serving in schools in this State. Teacher leaders may qualify to serve in such positions as department chairs, coaches, mentors, curriculum and instruction leaders, or other leadership positions as defined by the district. The endorsement shall be available to those teachers who (i) hold a Professional Educator License, (ii) hold a master's degree or higher from a regionally accredited institution, (iii) have completed a program of study that has been approved by the State Board of Education, in consultation with the State Educator Preparation and Licensure Board, and (iv) have taken coursework in all of the following areas:

(I) Leadership.

(II) Designing professional development to meet teaching and learning needs.

(III) Building school culture that focuses on student learning.

(IV) Using assessments to improve student learning and foster school improvement.

(V) Building collaboration with teachers and stakeholders.

A teacher who meets the requirements set forth in this Section and holds a teacher leader endorsement may evaluate teachers pursuant to Section 24A-5 of this Code [105 ILCS 5/24A-5], provided that the individual has completed the evaluation component required by Section 24A-3 of this Code and a teacher leader is allowed to evaluate personnel under the respective school district's collective bargaining agreement.

The State Board of Education, in consultation with the State Educator Preparation and Licensure Board, may adopt such rules as may be necessary to establish and implement the teacher leader endorsement program and to specify the positions for which this endorsement shall be required.

(F) Special education endorsement. A special education endorsement in one or more areas shall be affixed to a Professional Educator License for any individual that meets those requirements established by the State Board of Education in rules. Special education endorsement areas shall include without limitation the following:

(i) Learning Behavior Specialist I;

(ii) Learning Behavior Specialist II;

(iii) Speech Language Pathologist;

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(iv) Blind or Visually Impaired;

(v) Deaf-Hard of Hearing; and

(vi) Early Childhood Special Education.

Notwithstanding anything in this Code to the contrary, the State Board of Education, in consultation with the State Educator Preparation and Licensure Board, may add additional areas of special education by rule.

(G) School support personnel endorsement. School support personnel endorsement areas shall include, but are not limited to, school counselor, school psychologist, school speech and language pathologist, school nurse, and school social worker. This endorsement is for individuals who are not teachers or administrators, but still require licensure to work in an instructional support position in a public or State-operated elementary school, secondary school, or cooperative or joint agreement with a governing body or board of control or a charter school operating in compliance with the Charter Schools Law [105 ILCS 5/27A-1 et seq.]. The school support personnel endorsement shall be affixed to the Professional Educator License and shall meet all of the requirements established in any rules adopted to implement this subdivision (G). The holder of such an endorsement is entitled to all of the rights and privileges granted holders of any other Professional Educator License, including teacher benefits, compensation, and working conditions.

(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

§ 105 ILCS 5/21B-30. Educator testing

Sec. 21B-30. Educator testing. (a) This Section applies beginning on July 1, 2012.

(b) The State Board of Education, in consultation with the State Educator Preparation and Licensure Board, shall design and implement a system of examinations, which shall be required prior to the issuance of educator licenses. These examinations and indicators must be based on national and State professional teaching standards, as determined by the State Board of Education, in consultation with the State Educator Preparation and Licensure Board. The State Board of Education may adopt such rules as may be necessary to implement and administer this Section. No score on a test required under this Section, other than a test of basic skills, shall be more than 5 years old at the time that an individual makes application for an educator license or endorsement.

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(c) Applicants seeking a Professional Educator License or an Educator License with Stipulations shall be required to pass a test of basic skills, unless the endorsement the individual is seeking does not require passage of the test.

No candidate may be fully admitted into an educator preparation program at a recognized Illinois institution until he or she has passed a test of basic skills. An individual who passes a test of basic skills does not need to do so again for subsequent endorsements or other educator licenses.

(d) All applicants seeking a State license shall be required to pass a test of content area knowledge for each area of endorsement for which there is an applicable test. There shall be no exception to this requirement. No candidate shall be allowed to student teach, serve as the teacher of record, or begin an internship or residency required for licensure until he or she has passed the applicable content area test.

(e) All applicants seeking a State license endorsed in a teaching field shall pass the assessment of professional teaching (APT). Passage of the APT is required for completion of an approved Illinois educator preparation program.

(f) Beginning on September 1, 2015, all candidates completing teacher preparation programs in this State are required to pass an evidence-based assessment of teacher effectiveness approved by the State Board of Education, in consultation with the State Educator Preparation and Licensure Board. All recognized institutions offering approved teacher preparation programs must begin phasing in the approved teacher performance assessment no later than July 1, 2013.

(g) Tests of basic skills and content area knowledge and the assessment of professional teaching shall be the tests that from time to time are designated by the State Board of Education, in consultation with the State Educator Preparation and Licensure Board, and may be tests prepared by an educational testing organization or tests designed by the State Board of Education, in consultation with the State Educator Preparation and Licensure Board. The areas to be covered by a test of basic skills shall include reading, language arts, and mathematics. The test of content area knowledge shall assess content knowledge in a specific subject field. The tests must be designed to be racially neutral to ensure that no person taking the tests is discriminated against on the basis of race, color, national origin, or other factors unrelated to the person's ability to perform as a licensed employee. The score required to pass the tests shall be fixed by the State Board of Education, in consultation with the State Educator Preparation and Licensure Board. The tests shall be administered not fewer than 3 times a year at such time and place as may be designated by the State Board of Education, in consultation with the State Educator Preparation and Licensure Board.

The State Board shall implement a test or tests to assess the speaking, reading, writing, and grammar skills of applicants for an endorsement or a license issued under subdivision (G) of paragraph (2) of Section 21B-20 of this Code [105 ILCS 5/21B-20] in the English language and in the language of the transitional bilingual education program requested by the applicant.

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(h) Except as provided in Section 34-6 of this Code [105 ILCS 5/34-6], the provisions of this Section shall apply equally in any school district subject to Article 34 of this Code.

(i) The rules developed to implement and enforce the testing requirements under this Section shall include provisions governing test selection, test validation and determination of a passing score, administration of the tests, frequency of administration, applicant fees, frequency of applicants taking the tests, the years for which a score is valid, and appropriate special accommodations. The State Board of Education shall develop such rules as may be needed to ensure uniformity from year to year in the level of difficulty for each form of an assessment.

(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

§ 105 ILCS 5/21B-35. Minimum requirements for educators trained in other states or countries

Sec. 21B-35. Minimum requirements for educators trained in other states or countries. (a) All out-of-state applicants applying for a Professional Educator License must meet all of the following requirements:

(1) Have completed a comparable state-approved education program, as defined by the State Superintendent of Education.

(2) Have a degree from a regionally accredited institution of higher education and the degreed major or a constructed major must directly correspond to the license or endorsement sought.

(3) Have completed a minimum of one course in the methods of instruction of the exceptional child.

(4) Have completed a minimum of 6 semester hours of coursework in methods of reading and reading in the content area.

(5) Have completed a minimum of one course in instructional strategies for English language learners.

(6) Have successfully met all Illinois examination requirements.

(7) Have completed student teaching or an equivalent experience.

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If one or more of the criteria in subsection (a) of this Section are not met, then out-of-state applicants who hold a valid, comparable certificate from another state and have passed a test of basic skills and content area test, as required by Section 21B-20 of this Code [105 ILCS 5/21B-20], may qualify for a provisional educator endorsement on an Educator License with Stipulations, in accordance with Section 21B-20 of this Code, with the exception that an individual shall not serve as a principal or assistant principal while holding the provisional educator endorsement.

(b) In order to receive a Professional Educator License, applicants trained in another country must meet all of the following requirements:

(1) Have completed a comparable education program in another country.

(2) Have had transcripts evaluated by an evaluation service approved by the State Superintendent of Education.

(3) Hold a degreed major that must directly correspond to the license or endorsement sought.

(4) Have completed a minimum of one course in the methods of instruction of the exceptional child.

(5) Have completed a minimum of 6 semester hours of coursework in methods of reading and reading in the content area.

(6) Have completed a minimum of one course in instructional strategies for English language learners.

(7) Have successfully met all State licensure examination requirements.

(8) Have completed student teaching or an equivalent experience.

If one or more of these criteria are not met, then an applicant trained in another country who has passed a test of basic skills and content area test, as required by Section 21B-20 of this Code, may qualify for a provisional educator endorsement on an Educator License with Stipulations, with the exception that an individual shall not serve as a principal or assistant principal while holding the provisional educator endorsement.

(c) The State Board of Education, in consultation with the State Educator Preparation and Licensure Board, may adopt such rules as may be necessary to implement this Section.

(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

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§ 105 ILCS 5/21B-40. Fees

Sec. 21B-40. Fees. (a) Beginning with the start of the new licensure system established pursuant to this Article, the following fees shall be charged to applicants:

(1) A $75 application fee for a Professional Educator License or an Educator License with Stipulations and for individuals seeking a Substitute Teaching License. However, beginning on January 1, 2015, the application fee for a Professional Educator License, Educator License with Stipulations, or Substitute Teaching License shall be $100.

(2) A $150 application fee for individuals who have completed an approved educator preparation program outside of this State or who hold a valid, comparable credential from another state or country and are seeking any of the licenses set forth in subdivision (1) of this subsection (a).

(3) A $50 application fee for each endorsement or approval an individual holding a license wishes to add to that license.

(4) A $10 per year registration fee for the course of the validity cycle to register the license, which shall be paid to the regional office of education having supervision and control over the school in which the individual holding the license is to be employed. If the individual holding the license is not yet employed, then the license may be registered in any county in this State. The registration fee must be paid in its entirety the first time the individual registers the license for a particular validity period in a single region. No additional fee may be charged for that validity period should the individual subsequently register the license in additional regions. An individual must register the license (i) immediately after initial issuance of the license and (ii) at the beginning of each renewal cycle if the individual has satisfied the renewal requirements required under this Code.

(b) All application fees paid pursuant to subdivisions (1) through (3) of subsection (a) of this Section shall be deposited into the Teacher Certificate Fee Revolving Fund and shall be used, subject to appropriation, by the State Board of Education to provide the technology and human resources necessary for the timely and efficient processing of applications. The Teacher Certificate Fee Revolving Fund is not subject to administrative charge transfers, authorized under Section 8h of the State Finance Act [30 ILCS 105/8h], from the Teacher Certificate Fee Revolving Fund into any other fund of this State, and moneys in the Teacher Certificate Fee Revolving Fund shall not revert back to the General Revenue Fund at any time.

The regional superintendent of schools shall deposit the registration fees paid pursuant to subdivision (4) of subsection (a) of this Section into the institute fund established pursuant to Section 3-11 of this Code [105 ILCS 5/3-11].

(c) The State Board of Education and each regional office of education are authorized to charge a service or convenience fee for the use of credit cards for the payment of license fees. This service or convenience fee shall not exceed the amount required by the credit card processing company or vendor that has entered into a contract with the State Board

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or regional office of education for this purpose, and the fee must be paid to that company or vendor.

(d) If, at the time a certificate issued under Article 21 of this Code is exchanged for a license issued under this Article, a person has paid registration fees for any years of the validity period of the certificate and these years have not expired when the certificate is exchanged, then those fees must be applied to the registration of the new license.

(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

§ 105 ILCS 5/21B-45. Licensure renewal

Sec. 21B-45. Licensure renewal. All licenses with endorsements are required to complete the licensure renewal requirements as specified in this Section, unless otherwise provided in this Code.

Individuals holding a Professional Educator License endorsed in a teaching field shall meet the renewal requirements set forth in subsection (e) of Section 21-14 of this Code [105 ILCS 5/21-14]. An individual holding a Professional Educator License with a general administrative, principal, chief school business official, or superintendent endorsement issued under this Article who is also working in a position using or requiring that endorsement is subject to the renewal requirements in subsection (c-10) of Section 21-7.1 of this Code [105 ILCS 5/21-7.1]. An individual holding a Professional Educator License with a school personnel support endorsement and working in a position for which that endorsement is required must complete the licensure renewal requirements under Section 21-25 of this Code [105 ILCS 5/21-25]. If an individual holds licensure in more than one area that has different renewal requirements, that individual shall follow the renewal requirements for the position for which he or she spends the majority of his or her time working.

All licenses not renewed as provided in this Section or registered in accordance with Section 21B-40 of this Code [105 ILCS 5/21B-40] shall lapse after a period of 6 months from the expiration of the last year of registration. The license may be reinstated once the applicant has demonstrated proficiency by completing 9 semester hours of coursework from a regionally accredited institution of higher education in the content area that most aligns with the educator's endorsement area or areas. Before the license may be reinstated, the applicant shall pay all back fees owed from the time of expiration of the license until the date of reinstatement. Any license may be voluntarily surrendered by the

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license holder. A voluntarily surrendered license shall be treated as a revoked license.

(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

§ 105 ILCS 5/21B-50. Alternative educator licensure program

Sec. 21B-50. Alternative educator licensure program. (a) There is established an alternative educator licensure program, to be known as the Alternative Educator Licensure Program for Teachers.

(b) Beginning on January 1, 2013, the Alternative Educator Licensure Program for Teachers may be offered by a recognized institution approved to offer educator preparation programs by the State Board of Education, in consultation with the State Educator Preparation and Licensure Board. Any program offered by a not-for-profit entity also must be approved by the Board of Higher Education.

The program shall be comprised of 4 phases:

(1) A course of study that at a minimum includes instructional planning; instructional strategies, including special education, reading, and English language learning; classroom management; and the assessment of students and use of data to drive instruction.

(2) A year of residency, which is a candidate's assignment to a full-time teaching position or as a co-teacher for one full school year. An individual must hold an Educator License with Stipulations with an alternative provisional educator endorsement in order to enter the residency and must complete additional program requirements that address required State and national standards, pass the assessment of professional teaching before entering the second residency year, as required under phase (3) of this subsection (b), and be recommended by the principal and program coordinator to continue with the second year of the residency.

(3) A second year of residency, which shall include the candidate's assignment to a full-time teaching position for one school year. The candidate must be assigned an experienced teacher to act as a mentor and coach the candidate through the second year of residency.

(4) A comprehensive assessment of the candidate's teaching effectiveness, as evaluated by the principal and the program coordinator, at the end of the second year of residency. If there is disagreement between the 2 evaluators about the candidate's teaching

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effectiveness, the candidate may complete one additional year of residency teaching under a professional development plan developed by the principal and preparation program. At the completion of the third year, a candidate must have positive evaluations and a recommendation for full licensure from both the principal and the program coordinator or no Professional Educator License shall be issued.

Successful completion of the program shall be deemed to satisfy any other practice or student teaching and content matter requirements established by law.

(c) An alternative provisional educator endorsement on a Educator License with Stipulations is valid for 2 years of teaching in the public schools or in a State-recognized nonpublic school in which the chief administrator is required to have the licensure necessary to be a principal in a public school in this State and in which a majority of the teachers are required to have the licensure necessary to be instructors in a public school in this State, but may be renewed for a third year if needed to complete the Alternative Educator Licensure Program for Teachers. The endorsement shall be issued only once to an individual who meets all of the following requirements:

(1) Has graduated from a regionally accredited college or university with a bachelor's degree or higher.

(2) Has a cumulative grade point average of 3.0 or greater on a 4.0 scale or its equivalent on another scale.

(3) Has completed a major in the content area if seeking a middle or secondary level endorsement or, if seeking an early childhood, elementary, or special education endorsement, has completed a major in the content area of reading, English/language arts, mathematics, or one of the sciences. If the individual does not have a major in a content area for any level of teaching, he or she must submit transcripts to the State Superintendent of Education to be reviewed for equivalency.

(4) Has successfully completed phase (1) of subsection (b) of this Section.

(5) Has passed a test of basic skills and content area test required for the specific endorsement for admission into the program, as required under Section 21B-30 of this Code [105 ILCS 5/21B-30].

A candidate possessing the alternative provisional educator endorsement may receive a salary, benefits, and any other terms of employment offered to teachers in the school who are members of an exclusive bargaining representative, if any, but a school is not required to provide these benefits during the years of residency if the candidate is serving only as a co-teacher. If the candidate is serving as the teacher of record, the candidate must receive a salary, benefits, and any other terms of employment. Residency experiences must not be counted towards tenure.

(d) The recognized institution offering the Alternative Educator Licensure Program for Teachers must partner with a school district or a State-recognized, nonpublic school in this State in which the chief administrator is required to have the licensure necessary to be a principal in a public school in this State and in which a majority of the teachers are required to have the licensure necessary to be instructors in a public school in this State.

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The program presented for approval by the State Board of Education must demonstrate the supports that are to be provided to assist the provisional teacher during the 2-year residency period. These supports must provide additional contact hours with mentors during the first year of residency.

(e) Upon completion of the 4 phases outlined in subsection (b) of this Section and all assessments required under Section 21B-30 of this Code, an individual shall receive a Professional Educator License.

(f) The State Board of Education, in consultation with the State Educator Preparation and Licensure Board, may adopt such rules as may be necessary to establish and implement the Alternative Educator Licensure Program for Teachers.

(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

§ 105 ILCS 5/21B-55. Alternative route to superintendent endorsement

Sec. 21B-55. Alternative route to superintendent endorsement. (a) The State Board of Education, in consultation with the State Educator Preparation and Licensure Board, may approve programs designed to provide an alternative route to superintendent endorsement on a Professional Educator License.

(b) Entities offering an alternative route to superintendent endorsement program must have the program approved by the State Board of Education, in consultation with the State Educator Preparation and Licensure Board.

(c) All programs approved under this Section shall be comprised of the following 3 phases:

(1) A course of study offered on an intensive basis in education management, governance, organization, and instructional and district planning.

(2) The person's assignment to a full-time position for one school year as a superintendent.

(3) A comprehensive assessment of the person's performance by school officials and a recommendation to the State Superintendent of Education that the person be issued a superintendent endorsement on a Professional Educator License.

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(d) In order to be admitted to an alternative route to superintendent endorsement program, a candidate shall pass a test of basic skills, as required under Section 21B-30 of this Code [105 ILCS 5/21B-30]. In order to serve as a superintendent under phase (2) of subsection (c) of this Section, an individual must be issued an alternative provisional superintendent endorsement on an Educator License with Stipulations, to be valid for only one year of serving as a superintendent. In order to receive the provisional alternative superintendent endorsement under this Section, an individual must meet all of the following requirements:

(1) Have graduated from a regionally accredited college or university with a minimum of a master's degree in a management field other than education.

(2) Have been employed for a period of at least 5 years in a management level position other than education.

(3) Have successfully completed phase (1) of subsection (c) of this Section.

(4) Have passed examinations required by Section 21B-30 of this Code.

(e) Successful completion of an alternative route to superintendent endorsement program shall be deemed to satisfy any other supervisory, administrative, or management experience requirements established by law, and, once completed, an individual shall be eligible for a superintendent endorsement on a Professional Educator License.

(f) The State Board of Education, in consultation with the State Educator Preparation and Licensure Board, may adopt such rules as may be needed to establish and implement these alternative route to superintendent endorsement programs.

(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

§ 105 ILCS 5/21B-60. Principal preparation programs

Sec. 21B-60. Principal preparation programs. (a) It is the policy of this State that an essential element of improving student learning is supporting and employing highly effective school principals in leadership roles who improve teaching and learning and increase academic achievement and the development of all students.

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(b) No later than September 1, 2014, recognized institutions approved by the State Board of Education, in consultation with the State Educator Preparation and Licensure Board, to offer principal preparation programs must do all of the following:

(1) Meet the standards and requirements for such programs in accordance with this Section and any rules adopted by the State Board of Education, in consultation with the State Educator Preparation and Licensure Board.

(2) Prepare candidates to meet required standards for principal skills, knowledge, and responsibilities, which shall include a focus on instruction and student learning and which must be used for principal professional development, mentoring, and evaluation.

(3) Include specific requirements for (i) the selection and assessment of candidates, (ii) training in the evaluation of staff, (iii) an internship, and (iv) a partnership with one or more school districts or State-recognized, nonpublic schools in which the chief administrator is required to have the licensure necessary to be a principal in a public school in this State and in which a majority of the teachers are required to have the licensure necessary to be instructors in a public school in this State.

Any principal preparation program offered in whole or in part by a not-for-profit entity must also be approved by the Board of Higher Education.

(c) Candidates successfully completing a principal preparation program established pursuant to this Section shall obtain a principal endorsement on a Professional Educator License and are eligible to work as a principal or an assistant principal or in related or similar positions, as determined by the State Superintendent of Education, in consultation with the State Educator Preparation and Licensure Board.

(d) The State Board of Education, in consultation with the State Educator Preparation and Licensure Board, may adopt such rules as may be necessary to implement and administer principal preparation programs under this Section.

(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

§ 105 ILCS 5/21B-65. National Board for Professional Teaching Standards

Sec. 21B-65. National Board for Professional Teaching Standards. Individuals holding certification issued by the National Board for Professional Teaching Standards shall be issued a National Board for Professional Teaching Standards designation on an existing

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Professional Educator License. The designation shall be issued automatically and added to an individual's Professional Educator License, and individuals need not submit an application.

The National Board for Professional Teaching Standards designation must be issued only for the same validity period as the National Board for Professional Teaching Standards certification, and the designation must be removed from the Professional Educator License when the educator no longer holds the certification from the National Board for Professional Teaching Standards.

Beginning on July 1, 2013, individuals holding an Illinois National Board for Professional Teaching Standards endorsement issued pursuant to the requirements of Section 21-2 of this Code [105 ILCS 5/21-2] must have a current certificate issued by the National Board for Professional Teaching Standards in order to maintain the Illinois National Board for Professional Teaching Standards endorsement.

Any individual who, on or after July 1, 2012, has been issued a Master Certificate pursuant to Section 21-2 of this Code or a National Board for Professional Teaching Standards designation on a Professional Educator License pursuant to this Section may work as a teacher only in an area for which he or she holds the required Illinois endorsement. Any individual who, prior to June 30, 2012, has been issued an endorsement for a particular area on a Master Certificate may work as a teacher in that area even without having been issued the required Illinois endorsement.

(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

§ 105 ILCS 5/21B-70. Illinois Teaching Excellence Program

Sec. 21B-70. Illinois Teaching Excellence Program. (a) As used in this Section:

"Poverty or low-performing school" means a school in academic early warning status or academic watch status or a school in which 50% or more of its students are eligible for free or reduced-price school lunches.

"Qualified educator" means a teacher or school counselor currently employed in a school district who is in the process of obtaining certification through the National Board for Professional Teaching Standards or who has completed certification and holds a current Professional Educator License with a National Board for Professional Teaching

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Standards designation or a retired teacher or school counselor who holds a Professional Educator License with a National Board for Professional Teaching Standards designation.

(b) Beginning on July 1, 2011, any funds appropriated for the Illinois Teaching Excellence Program must be used to provide monetary assistance and incentives for qualified educators who are employed by school districts and who have or are in the process of obtaining licensure through the National Board for Professional Teaching Standards. The goal of the program is to improve instruction and student performance.

The State Board of Education shall allocate an amount as annually appropriated by the General Assembly for the Illinois Teaching Excellence Program for (i) application fees for each qualified educator seeking to complete certification through the National Board for Professional Teaching Standards, to be paid directly to the National Board for Professional Teaching Standards, and (ii) incentives for each qualified educator to be distributed to the respective school district. The school district shall distribute this payment to each eligible teacher or school counselor as a single payment.

The State Board of Education's annual budget must set out by separate line item the appropriation for the program. Unless otherwise provided by appropriation, qualified educators are eligible for monetary assistance and incentives based on the priorities outlined in subsection (c) of this Section.

(c) When there are adequate funds available, priorities (1), (2), (3), (4), and (5), as outlined in this subsection (c), must be funded. If full funding to meet all priorities as outlined in this subsection (c) is not available, funding must be distributed in the order of the priorities listed in this subsection (c). If funding is insufficient to fund a priority in full, then funding for that priority must be prorated and no further priorities shall be funded.

Priorities for monetary assistance and incentives shall be as follows:

(1) Priority 1: A maximum of $2,000 towards the application fee for up to 750 teachers or school counselors in a poverty or low-performing school who apply on a first-come, first-serve basis for National Board certification.

(2) Priority 2: A maximum of $2,000 towards the application fee for up to 250 teachers or school counselors in a school other than a poverty or low-performing school who apply on a first-come, first-serve basis for National Board certification. However, if there were fewer than 750 individuals supported in priority (1), then the number supported in priority (2) may be increased as such that the combination of priority (1) and priority (2) shall equal 1,000 applicants.

(3) Priority 3: The fee for the National Board for Professional Teaching Standards' Take One! (the test for National Board certification) for up to 500 qualified educators who apply on a first-come, first-serve basis.

(4) Priority 4: An annual incentive equal to $1,500, which shall be paid to each qualified educator who holds both a National Board for Professional Teaching Standards designation and a current corresponding certificate issued by the National Board for Professional Teaching Standards, who is employed in a school district, and who agrees,

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in writing, to provide 30 hours of mentoring or National Board for Professional Teaching Standards professional development or both during the school year to teachers or school counselors in a poverty or low-performing school, as applicable.

(5) Priority 5: An annual incentive equal to $1,500, which shall be paid to each qualified educator currently employed in a school district who holds both a National Board for Professional Teaching Standards designation and a current corresponding certificate issued by the National Board for Professional Teaching Standards and who agrees, in writing, to provide at least 30 hours of mentoring or National Board for Professional Teaching Standards professional development or both during the school year to classroom teachers or school counselors, as applicable.

Mentoring for all priorities shall include, either singly or in combination, mentoring of the following:

(A) National Board for Professional Teaching Standards certification candidates.

(B) National Board for Professional Teaching Standards re-take candidates.

(C) National Board for Professional Teaching Standards renewal candidates.

(D) National Board for Professional Teaching Standards Take One! participants.

(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

§ 105 ILCS 5/21B-75. Suspension or revocation of license

Sec. 21B-75. Suspension or revocation of license. (a) As used in this Section, "teacher" means any school district employee regularly required to be licensed, as provided in this Article, in order to teach or supervise in the public schools.

(b) The State Superintendent of Education has the exclusive authority, in accordance with this Section and any rules adopted by the State Board of Education, in consultation with the State Educator Preparation and Licensure Board, to initiate the suspension of up to 5 calendar years or revocation of any license issued pursuant to this Article for abuse or neglect of a child, immorality, a condition of health detrimental to the welfare of pupils, incompetency, unprofessional conduct (which includes the failure to disclose on an employment application any previous conviction for a sex offense, as defined in Section 21B-80 of this Code [105 ILCS 5/21B-80], or any other offense committed in any other

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state or against the laws of the United States that, if committed in this State, would be punishable as a sex offense, as defined in Section 21B-80 of this Code), the neglect of any professional duty, willful failure to report an instance of suspected child abuse or neglect as required by the Abused and Neglected Child Reporting Act [325 ILCS 5/1 et seq.], failure to establish satisfactory repayment on an educational loan guaranteed by the Illinois Student Assistance Commission, or other just cause. Unprofessional conduct shall include the refusal to attend or participate in institutes, teachers' meetings, or professional readings or to meet other reasonable requirements of the regional superintendent of schools or State Superintendent of Education. Unprofessional conduct also includes conduct that violates the standards, ethics, or rules applicable to the security, administration, monitoring, or scoring of or the reporting of scores from any assessment test or examination administered under Section 2-3.64 of this Code [105 ILCS 5/2-3.64] or that is known or intended to produce or report manipulated or artificial, rather than actual, assessment or achievement results or gains from the administration of those tests or examinations. Unprofessional conduct shall also include neglect or unnecessary delay in the making of statistical and other reports required by school officers.

(c) The State Superintendent of Education shall, upon receipt of evidence of abuse or neglect of a child, immorality, a condition of health detrimental to the welfare of pupils, incompetency, unprofessional conduct, the neglect of any professional duty, or other just cause, further investigate and, if and as appropriate, serve written notice to the individual and afford the individual opportunity for a hearing prior to suspension or revocation; provided that the State Superintendent is under no obligation to initiate such an investigation if the Department of Children and Family Services is investigating the same or substantially similar allegations and its child protective service unit has not made its determination, as required under Section 7.12 of the Abused and Neglected Child Reporting Act [325 ILCS 5/7.12]. If the State Superintendent of Education does not receive from an individual a request for a hearing within 10 days after the individual receives notice, the suspension or revocation shall immediately take effect in accordance with the notice. If a hearing is requested within 10 days after notice of an opportunity for hearing, it shall act as a stay of proceedings until the State Educator Preparation and Licensure Board issues a decision. Any hearing shall take place in the educational service region where the educator is or was last employed and in accordance with rules adopted by the State Board of Education, in consultation with the State Educator Preparation and Licensure Board, and such rules shall include without limitation provisions for discovery and the sharing of information between parties prior to the hearing. The standard of proof for any administrative hearing held pursuant to this Section shall be by the preponderance of the evidence. The decision of the State Educator Preparation and Licensure Board is a final administrative decision and is subject to judicial review by appeal of either party.

The State Board of Education may refuse to issue or may suspend the license of any person who fails to file a return or to pay the tax, penalty, or interest shown in a filed return or to pay any final assessment of tax, penalty, or interest, as required by any tax Act administered by the Department of Revenue, until such time as the requirements of any such tax Act are satisfied.

The exclusive authority of the State Superintendent of Education to initiate suspension or revocation of a license pursuant to this Section does not preclude a regional

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superintendent of schools from cooperating with the State Superintendent or a State's Attorney with respect to an investigation of alleged misconduct.

(d) The State Superintendent of Education or his or her designee may initiate and conduct such investigations as may be reasonably necessary to establish the existence of any alleged misconduct. At any stage of the investigation, the State Superintendent may issue a subpoena requiring the attendance and testimony of a witness, including the license holder, and the production of any evidence, including files, records, correspondence, or documents, relating to any matter in question in the investigation. The subpoena shall require a witness to appear at the State Board of Education at a specified date and time and shall specify any evidence to be produced. The license holder is not entitled to be present, but the State Superintendent shall provide the license holder with a copy of any recorded testimony prior to a hearing under this Section. Such recorded testimony must not be used as evidence at a hearing, unless the license holder has adequate notice of the testimony and the opportunity to cross-examine the witness. Failure of a license holder to comply with a duly issued, investigatory subpoena may be grounds for revocation, suspension, or denial of a license.

(e) All correspondence, documentation, and other information so received by the regional superintendent of schools, the State Superintendent of Education, the State Board of Education, or the State Educator Preparation and Licensure Board under this Section is confidential and must not be disclosed to third parties, except (i) as necessary for the State Superintendent of Education or his or her designee to investigate and prosecute pursuant to this Article, (ii) pursuant to a court order, (iii) for disclosure to the license holder or his or her representative, or (iv) as otherwise required in this Article and provided that any such information admitted into evidence in a hearing is exempt from this confidentiality and non-disclosure requirement.

(f) The State Superintendent of Education or a person designated by him or her shall have the power to administer oaths to witnesses at any hearing conducted before the State Educator Preparation and Licensure Board pursuant to this Section. The State Superintendent of Education or a person designated by him or her is authorized to subpoena and bring before the State Educator Preparation and Licensure Board any person in this State and to take testimony either orally or by deposition or by exhibit, with the same fees and mileage and in the same manner as prescribed by law in judicial proceedings in civil cases in circuit courts of this State.

(g) Any circuit court, upon the application of the State Superintendent of Education or the license holder, may, by order duly entered, require the attendance of witnesses and the production of relevant books and papers as part of any investigation or at any hearing the State Educator Preparation and Licensure Board is authorized to conduct pursuant to this Section, and the court may compel obedience to its orders by proceedings for contempt.

(h) The State Board of Education shall receive an annual line item appropriation to cover fees associated with the investigation and prosecution of alleged educator misconduct and hearings related thereto.

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(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

§ 105 ILCS 5/21B-80. Conviction of certain offenses as grounds for revocation of license

Sec. 21B-80. Conviction of certain offenses as grounds for revocation of license. (a) As used in this Section:

"Narcotics offense" means any one or more of the following offenses:

(1) Any offense defined in the Cannabis Control Act [720 ILCS 550/1 et seq.], except those defined in subdivisions (a) and (b) of Section 4 and subdivision (a) of Section 5 of the Cannabis Control Act [720 ILCS 550/5] and any offense for which the holder of a license is placed on probation under the provisions of Section 10 of the Cannabis Control Act, provided that if the terms and conditions of probation required by the court are not fulfilled, the offense is not eligible for this exception.

(2) Any offense defined in the Illinois Controlled Substances Act [720 ILCS 570/100 et seq.], except any offense for which the holder of a license is placed on probation under the provisions of Section 410 of the Illinois Controlled Substances Act [720 ILCS 570/410], provided that if the terms and conditions of probation required by the court are not fulfilled, the offense is not eligible for this exception.

(3) Any offense defined in the Methamphetamine Control and Community Protection Act [720 ILCS 646/1 et seq.], except any offense for which the holder of a license is placed on probation under the provision of Section 70 of that Act [105 ILCS 5/70], provided that if the terms and conditions of probation required by the court are not fulfilled, the offense is not eligible for this exception.

(4) Any attempt to commit any of the offenses listed in items (1) through (3) of this definition.

(5) Any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in this State, would have been punishable as one or more of the offenses listed in items (1) through (4) of this definition.The changes made by Public Act 96-431 to the definition of "narcotics offense" are declaratory of existing law.

"Sex offense" means any one or more of the following offenses:

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(A) Any offense defined in Sections 11-6 and 11-9 through 11-9.5, inclusive, of the Criminal Code of 1961 [720 ILCS 5/11-6 and 720 ILCS 5/11-9 through 720 ILCS 5/11-9.5]; Sections 11-14 through 11-21, inclusive, of the Criminal Code of 1961 [720 ILCS 5/11-14 through 720 ILCS 5/11-21]; Sections 11-23 (if punished as a Class 3 felony), 11-24, 11-25, and 11-26 of the Criminal Code of 1961 [720 ILCS 5/11-24, 720 ILCS 5/11-25, and 720 ILCS 5/11-26]; and Sections 12-4.9, 12-13, 12-14, 12-14.1, 12-15, 12-16, 12-32, and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-4.9, 720 ILCS 5/12-13, 720 ILCS 5/12-14, 720 ILCS 5/12-14.1, 720 ILCS 5/12-15, 720 ILCS 5/12-16, 720 ILCS 5/12-32, and 720 ILCS 5/12-33].

(B) Any attempt to commit any of the offenses listed in item (A) of this definition.

(C) Any offense committed or attempted in any other state that, if committed or attempted in this State, would have been punishable as one or more of the offenses listed in items (A) and (B) of this definition.

(b) Whenever the holder of any license issued pursuant to this Article has been convicted of any sex offense or narcotics offense, the State Superintendent of Education shall forthwith suspend the license. If the conviction is reversed and the holder is acquitted of the offense in a new trial or the charges against him or her are dismissed, the State Superintendent of Education shall forthwith terminate the suspension of the license. When the conviction becomes final, the State Superintendent of Education shall forthwith revoke the license.

(c) Whenever the holder of a license issued pursuant to this Article has been convicted of attempting to commit, conspiring to commit, soliciting, or committing first degree murder or a Class X felony or any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in this State, would have been punishable as one or more of the foregoing offenses, the State Superintendent of Education shall forthwith suspend the license. If the conviction is reversed and the holder is acquitted of that offense in a new trial or the charges that he or she committed that offense are dismissed, the State Superintendent of Education shall forthwith terminate the suspension of the license. When the conviction becomes final, the State Superintendent of Education shall forthwith revoke the license.

(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

§ 105 ILCS 5/21B-85. Conviction of felony

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Sec. 21B-85. Conviction of felony. (a) Whenever the holder of any license issued under this Article is employed by the school board of a school district, including a special charter district or a school district organized under Article 34 of this Code, and is convicted, either after a bench trial, trial by jury, or plea of guilty, of any offense for which a sentence to death or a term of imprisonment in a penitentiary for one year or more is provided, the school board shall promptly notify the State Superintendent of Education, in writing, of the name of the license holder, the fact of the conviction, and the name and location of the court in which the conviction occurred.

(b) Whenever the State Superintendent of Education receives notice of a conviction under subsection (a) of this Section or otherwise learns that any person who is a teacher, as that term is defined in Section 16-106 of the Illinois Pension Code [40 ILCS 5/16-106], has been convicted, either after a bench trial, trial by jury, or plea of guilty, of any offense for which a sentence to death or a term of imprisonment in a penitentiary for one year or more is provided, the State Superintendent of Education shall promptly notify, in writing, the board of trustees of the Teachers' Retirement System of the State of Illinois and the board of trustees of the Public School Teachers' Pension and Retirement Fund of the City of Chicago of the name of the license holder, the fact of the conviction, the name and location of the court in which the conviction occurred, and the number assigned in that court to the case in which the conviction occurred.

(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

§ 105 ILCS 5/21B-90. Administrative Review Law

Sec. 21B-90. Administrative Review Law. In this Section, "administrative decision" has the meaning ascribed to that term in Section 3-101 of the Code of Civil Procedure [735 ILCS 5/3-101].

The provisions of the Administrative Review Law and the rules adopted pursuant to the Administrative Review Law shall apply to and govern all proceedings instituted for the judicial review of final administrative decisions of the State Board of Education, the State Educator Preparation and Licensure Board, and the regional superintendent of schools under this Article. The commencement of any action for review shall operate as a stay of enforcement, and no action based on any decision of the State Board of Education, the State Educator Preparation and Licensure Board, or the regional superintendent of

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schools shall be taken pending final disposition of the review.

(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

§ 105 ILCS 5/21B-95. Denial of recommendation for licensure

Sec. 21B-95. Denial of recommendation for licensure. Each college or university providing an educator preparation program approved and recognized pursuant to the provisions of this Article shall establish procedures and standards to ensure that no student is denied the opportunity to receive an institutional recommendation for licensure or entitlement for reasons that are not directly related to the candidate's anticipated performance as a licensed educator. These standards and procedures shall include the specific criteria used by the institution for admission, retention, and recommendation or entitlement for licensure; periodic evaluations of the candidate's progress towards an institutional recommendation; counseling and other supportive services to correct any deficiencies that are considered remedial; and provisions to ensure that no person is discriminated against on the basis of race, color, national origin, or a disability unrelated to the person's ability to perform as a licensed educator. Each institution shall also establish a grievance procedure for those candidates who are denied the institutional recommendation or entitlement for licensure. Within 10 days after notification of such a denial, the college or university shall notify the candidate, in writing, of the reasons for the denial of recommendation for licensure. Within 30 days after notification of the denial, the candidate may request the college or university to review the denial.

(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

§ 105 ILCS 5/21B-100. Licensure officers at higher education institutions

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Sec. 21B-100. Licensure officers at higher education institutions. Licensure officers at higher education institutions shall adhere to this Code and any administrative rules adopted to implement this Code when entitling candidates for licensure or when adding endorsements. Violations of this Code or implementing rules regarding the entitlement of candidates by a licensure officer shall place the employing institution's educator preparation program in jeopardy, specifically regarding the institution's right to offer programs and recommend or entitle candidates for licensure.

Licensure officers are required to attend training conducted by the State Superintendent of Education and review new legislation and administrative rules as such become available. The State Superintendent of Education shall communicate any policy changes to licensure officers when such changes occur.

(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

§ 105 ILCS 5/21B-105. Granting of recognition; regional accreditation; definitions

Sec. 21B-105. Granting of recognition; regional accreditation; definitions. (a) "Recognized", as used in this Article in connection with the word "school" or "institution", means such college, university, or not-for-profit entity that meets requirements set by the State Board of Education, in consultation with the State Educator Preparation and Licensure Board. Application for recognition of the school or institution as an educator preparation institution must be made to the State Board of Education. The State Board of Education, in consultation with the State Educator Preparation and Licensure Board, shall set the criteria by which the school or institution is to be judged and, through the secretary of the State Board, arrange for an official inspection and shall grant recognition of such school or institution as may meet the required standards. If the standards include requirements with regard to education in acquiring skills in working with culturally distinctive students, as defined by the State Board of Education, then the rules of the State Board of Education shall include the criteria used to evaluate compliance with this requirement. No school or institution may make assignments of student teachers or teachers for practice teaching so as to promote segregation on the basis of race, creed, color, religion, sex, or national origin.

Any not-for-profit entity must also be approved by the Board of Higher Education.

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All recommendations or entitlements for educator licensure shall be made by a recognized institution operating a program of preparation for the license that is approved by the State Superintendent of Education, in consultation with the State Educator Preparation and Licensure Board. The State Board of Education, in consultation with the State Educator Preparation and Licensure Board, shall have the power to define a major or minor when used as a basis for recognition and licensure purposes.

(b) "Regionally accredited", or "accredited", as used in this Article in connection with a university or institution, means an institution of higher education accredited by the North Central Association or other comparable regional accrediting association.

(Source: P.A. 97-607, § 15.)

Note.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 97-607 made this section effective July 1, 2011.

Article 22.

General Provisions - Penalties - Liabilities

§ 105 ILCS 5/22-1. Trustees and similar officers - No pecuniary compensation

Sec. 22-1. Trustees and similar officers - No pecuniary compensation. Trustees of schools, school directors or other school officers performing like duties shall receive no pecuniary compensation.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-1.

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§ 105 ILCS 5/22-2. Cost of official bonds

Sec. 22-2. Cost of official bonds. Every school district shall be subject to the provisions of "An Act relating to the payment of the cost of corporate suretyship and indemnity upon official bonds", approved June 7, 1897, as amended [5 ILCS 270/0.01 et seq.].

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-2.

§ 105 ILCS 5/22-3. Enforcement of judgments - Service of process - Costs

Sec. 22-3. Enforcement of judgments - Service of process - Costs. If judgment is obtained against any county board of school trustees, trustees of schools or school board, the party entitled to the benefit of the judgment may have enforcement thereof as follows: the court in which the judgment is entered or to which it may be removed by transcript from the circuit court shall enter an order commanding the directors, trustees and school treasurer to cause the amount thereof with interest and costs to be paid to the party entitled to the benefit of the judgment, out of any moneys of the township or district unappropriated, or if there are no such moneys, out of the first moneys applicable to the payment of the kind of services or indebtedness for which the judgment is entered which shall be received for the use of the township or district. The court may enforce obedience to such order by body attachment or by mandamus, requiring such board to levy a tax for the payment of the judgment. All judicial processes to enforce payment, shall be served either on the president or the clerk of the board.

No official shall charge any costs in any action in which any school officer, school corporation or any agent of any school fund, suing for the recovery thereof, or any interest due thereon, is plaintiff, and is unsuccessful in the action; nor in case the costs cannot be recovered from the defendant by reason of his or her insolvency.

(Source: P.A. 83-346.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-3.

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Analysis

Assessable Costs
Award Modified
Monetary Liability

Assessable Costs

Costs in an action against a school board were not recoverable against the defendant school board individually and were recoverable only from funds of the corporate entity. People ex rel. Schuldt v. Schimanski, 130 Ill. App. 2d 780, 266 N.E.2d 409 (4 Dist. 1971).

Costs were not assessable against school officers where appellant sued appellee to recover the balance on a claim against the appellee for tuition. Board of Educ. ex rel. Sch. Dist. v. Board of Educ., 321 Ill. App. 131, 52 N.E.2d 274 (2 Dist. 1943).

Award Modified

A trial court properly issued a writ of mandamus ordering board of education to levy a tax to satisfy the judgment of plaintiff school board, with interest thereon; however, that part of the order providing for a levy in addition to the maximum rate provided under the statutes applicable to respondent school district could not stand and the appellate court modified the judgment to provide that the board of education of the respondent district satisfy such judgment and interest out of any unappropriated money on hand or that should come into the hands of said parties. People ex rel. Cahokia Unit Sch. Dist. v. East St. Louis Sch. Dist., 6 Ill. App. 3d 511, 285 N.E.2d 487 (5 Dist. 1972).

Monetary Liability

Although the school district and the Authority suggested that the school district did not have sufficient funds to pay for early cancellation penalties in leases with the lessor that the Authority prematurely cancelled, it had a remedy it could invoke to enforce payment of any judgment that the lessor might obtain against the school district. Under 105 ILCS 5/22-3, a court could enforce obedience to such a judgment by body attachment or by mandamus requiring a school board to levy a tax for the payment of a judgment. Innovative Modular Solutions v. Hazel Crest Sch. Dist. 152.5, Ill. 2d , Ill. Dec. , N.E.2d , 2012 Ill. LEXIS 307 (Feb. 2, 2012).

§ 105 ILCS 5/22-4: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/22-5. Interest of officers or teachers in books, apparatus or furniture

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Sec. 22-5. Interest of officers or teachers in books, apparatus or furniture. No State, county, township, or district school officer or teacher shall be interested in the sale, proceeds or profits of any book, apparatus or furniture used or to be used in any school with which such officer or teacher may be connected, except when the interest of the teacher is based upon authorship or development of instructional materials listed with the State Board of Education in compliance with the provisions of Article 28 of this Act [105 ILCS 5/28-1 et seq.] and adopted for use by a school board subject to Section 10-20.8 of this Act [105 ILCS 5/10-20.8]. Each teacher having an interest in instructional materials shall file an annual statement so certifying with the secretary of the board of the school district which employs him. Any such officer or teacher who violates the provisions of this Section shall be guilty of a Class A misdemeanor.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-5.

§ 105 ILCS 5/22-6. Conversion of funds by officers

Sec. 22-6. Conversion of funds by officers. If any county superintendent, trustee of schools, township treasurer, director or other person entrusted with the care, control, management or disposition of any school, college, seminary or township fund for the use of any county, township, district or school converts such funds, or any part thereof, to his own use he shall be guilty of a Class A misdemeanor.

(Source: P.A. 77-2267.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-6.

§ 105 ILCS 5/22-6.5. False statement or material omission; Class A misdemeanor

Sec. 22-6.5. False statement or material omission; Class A misdemeanor. Any person who applies for employment as a teacher, principal, superintendent, or other certificated employee of a school board of any school district, including a special charter district and a district organized under Article 34 of the School Code [105 ILCS 5/34-1 et seq.] who willfully makes a false statement on his or her application for employment, material to

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his or her qualifications for employment, which he or she does not believe to be true, shall be guilty of a Class A misdemeanor.

If a person's employment history or current or prior employers are required to be furnished on an application for employment, a person who makes a statement which he or she does not believe to be true or who knowingly omits or fails to include any employment history or employer required to be furnished on the application which is material to his or her qualifications for employment shall be deemed to have made a false statement on his or her application within the meaning of this Section.

Each application for employment for a certificated position used by a school district shall state that failure to provide requested employment or employer history which is material to the applicant's qualifications for employment or the provision of statements which the applicant does not believe to be true may be a Class A misdemeanor.

(Source: P.A. 88-102, § 5.)

Effective Date. This Act became effective January 1, 1994, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 5/22-7. Liability for loss of funds

Sec. 22-7. Liability for loss of funds. County superintendents, trustees of schools, township treasurers and directors, or either of them, or any other officer having charge of school funds or property, shall be pecuniarily responsible for all losses sustained by any county or township fund by reason of any failure on his or their part to perform the duties required of him or them by this Act or by any rule authorized to be made by this Act, and each of such officers shall be liable for any such loss sustained, the amount of which may be recovered in a civil action brought in the circuit court, at the suit of the State of Illinois, for the use of the county, township or fund injured. The amount of the judgment obtained in such suit shall, when collected, be paid to the proper officer for the benefit of the county, township or fund injured.

(Source: P.A. 79-1366.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-7.

§ 105 ILCS 5/22-8. Failure of officers to discharge duties

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Sec. 22-8. Failure of officers to discharge duties. If any county superintendent, trustee, director, or other officer negligently or wilfully fails or refuses to make, furnish or communicate statistics and information, or fails to discharge any other duties enjoined upon him, at the time and in the manner required by this Act, he shall be guilty of a petty offense and shall be liable to a fine of not less than $25, to be recovered before any circuit court at the suit of any person on complaint in the name of the People of the State of Illinois, and when collected the fine shall be paid to the county superintendent of schools.

(Source: P.A. 77-2267.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-8.

§ 105 ILCS 5/22-9: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/22-10. Payments and grants in aid of church or sectarian purpose

Sec. 22-10. Payments and grants in aid of church or sectarian purpose. No county, city, town, township, school district or other public corporation shall make any appropriation, or pay from any school fund anything in aid of any church or sectarian purpose or to support or sustain any school, academy, seminary, college, university or other literary or scientific institution controlled by any church or sectarian denomination; nor shall any grant or donation of money or other personal property be made by any such corporation to any church or for any sectarian purpose. Any officer or other person having under his charge or direction school funds or property who perverts the same in the manner forbidden in this section shall be guilty of a Class A misdemeanor.

(Source: P.A. 77-2267.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-10.

§ 105 ILCS 5/22-11. Exclusion of children on account of color

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Sec. 22-11. Exclusion of children on account of color. Any school officer or other person who excludes or aids in excluding from the public schools, on account of color, any child who is entitled to the benefits of such school shall be guilty of a petty offense and shall be fined not less than $5 nor more than $100.

(Source: P.A. 77-2267.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-11.

§ 105 ILCS 5/22-12. Preventing or interfering with a child's attendance at school

Sec. 22-12. Preventing or interfering with a child's attendance at school. Whoever by threat, menace, or intimidation prevents any child entitled to attend a public or nonpublic school in this State from attending such school or interferes with any such child's attendance at that school shall be guilty of a Class A misdemeanor.

(Source: P.A. 81-950; 89-610, § 5; 92-96, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-12.

Effect of Amendments. The 1996 amendment by P.A. 89-610, effective August 6, 1996, in the section catchline substituted "or interfering with a child's attendance at" for "child from attending"; and in the section inserted a comma after "menace", inserted "or interferes with any such child's attendance at that school" and substituted "Class A" for "Class C".

The 2001 amendment by P.A. 92-96, effective July 18, 2001, inserted "or nonpublic".

§ 105 ILCS 5/22-13. Use of Illinois mined coal

Sec. 22-13. Use of Illinois mined coal. School boards shall comply with the provisions of "An Act concerning the use of Illinois mined coal in certain plants and institutions", filed July 13, 1937, as amended [30 ILCS 555/0.01 et seq.].

(Source: Laws 1961, p. 31.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-13.

§ 105 ILCS 5/22-14. Scholastic records of discontinued districts

Sec. 22-14. Scholastic records of discontinued districts. If any school district is discontinued under this Act and is not made a distinct part of another school district that makes arrangements to safely keep all scholastic records of the former pupils of the discontinued district, the last governing authorities of the discontinued district shall turn over all scholastic records of its former pupils to the county superintendent of schools of the county in which the school building of the district is located; and such county superintendent of schools shall take possession of and arrange for the safekeeping of such records for the purpose of reference by said former pupils.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-14.

§ 105 ILCS 5/22-15. Insurance on athletes

Sec. 22-15. Insurance on athletes. The school board of any school district may, in its discretion, provide medical or hospital service, or both, through accident and health insurance on a group or individual basis, or through non-profit hospital service corporations or medical service plan corporations or both, for pupils of the district injured while participating in any athletic activity under the jurisdiction of or sponsored or controlled by the district or the authorities of any school thereof. The cost of such insurance or of subscriptions to such non-profit corporations, when paid from the funds of the district, shall, to the extent such moneys are sufficient, be paid from moneys derived from athletic activities. To the extent that moneys derived from athletic activities are insufficient, such cost may be paid from the educational fund of the district.

Such insurance may be purchased from or such subscriptions may be taken in only such companies or corporations as are authorized to do business in Illinois.

(Source: P.A. 77-1554.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 22-15.

CASE NOTES

Analysis

Duty of Board
Exemption

Duty of Board

The Board of Education, having undertaken to procure insurance on behalf of plaintiff, did not assume the duty of furnishing "adequate" insurance, and the Board did not fail in its duty to do so by providing only hospital and medical coverage, and not insurance in the nature of compensation for disability. Friederich v. Board of Educ., 59 Ill. App. 3d 79, 16 Ill. Dec. 510, 375 N.E.2d 141 (2 Dist. 1978).

There was no duty on school authorities to explain to each individual student that disability coverage was not provided. Friederich v. Board of Educ., 59 Ill. App. 3d 79, 16 Ill. Dec. 510, 375 N.E.2d 141 (2 Dist. 1978).

The Board of Education did not have a duty to provide against the possibility of a football injury permanently affecting plaintiff's chances for gainful employment. Friederich v. Board of Educ., 59 Ill. App. 3d 79, 16 Ill. Dec. 510, 375 N.E.2d 141 (2 Dist. 1978).

Exemption

Because this section, granting to the Board of Education the power to provide medical and hospital service, through insurance, to its students participating in athletic contests, recites that it is within the discretion of the Board of Education whether to provide such insurance, it would appear to be an act exempted from tort liability of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 et seq.). Friederich v. Board of Educ., 59 Ill. App. 3d 79, 16 Ill. Dec. 510, 375 N.E.2d 141 (2 Dist. 1978).

RESEARCH REFERENCES

Validity, construction, and effect of provisions releasing school from liability for injuries to students caused by interscholastic and other extracurricular activities. 85 ALR4th 344.

Tort liability of public schools and institutions of higher learning for accidents occurring in physical education classes. 66 ALR5th 1.

Tort liability of schools and institutions of higher learning for personal injury suffered during school field trip. 68 ALR5th 519.

Tort liability of public schools and institutions of higher learning for accidents occurring during school athletic events. 68 ALR5th 663.

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Tort liability of public schools and institutions of higher learning for injury to student walking to or from school. 72 ALR5th 469.

§ 105 ILCS 5/22-16. Acquisition of land outside school district

Sec. 22-16. Acquisition of land outside school district. Whenever, in the opinion of the corporate authority of any school district, a lot or parcel of land situated not more than 2 miles outside of said school district or in the case of a building project under authority of Section 10-22.31b of this Act [105 ILCS 5/10-22.31b], within the boundaries of the joint agreement area or within 2 miles of the boundaries of any school district which is a party to the joint agreement, may be required for such school purposes, title to such lot or parcel of land may be acquired by such school district by purchase or in the manner provided by law for the exercise of the right of eminent domain.

(Source: P.A. 80-270.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-16.

§ 105 ILCS 5/22-17. Leasing property from building commission

Sec. 22-17. Leasing property from building commission. In addition to other powers and authority now possessed by it, the corporate authority of any school district, including any special charter district, shall have power:

(1) To lease from any public building commission created pursuant to the provisions of the Public Building Commission Act, approved July 5, 1955, and as amended from time to time [50 ILCS 20/1 et seq.], any real or personal property for the purpose of securing office or other space for its administrative or educational functions for a period of time not exceeding 40 years;

(2) To pay for the use of this leased property in accordance with the terms of the lease; and

(3) To enter into such lease without making a previous appropriation or provision in the budget for the expense thereby incurred.

(Source: P.A. 77-1351.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-17.

CASE NOTES

Analysis
Authorized Leases
Diversion of Land

Authorized Leases

A city board of education is authorized to lease schoolhouse space from the Building Commission. Paepcke v. Public Bldg. Comm'n, 46 Ill. 2d 330, 263 N.E.2d 11 (1970).

A city park district can lease land from the Building Commission for purposes other than those related to its administrative functions. Paepcke v. Public Bldg. Comm'n, 46 Ill. 2d 330, 263 N.E.2d 11 (1970).

It was lawful under the Public Building Commission Act (50 ILCS 20/1 et seq.) for the Board of Education to lease a schoolhouse from the Commission, that school property be donated to the Commission, and for the city council to levy a tax to cover the costs of operation under such a lease. People ex rel. Stamos v. Public Bldg. Comm'n, 40 Ill. 2d 164, 238 N.E.2d 390 (1968).

Diversion of Land

Statutes, including the Public Building Commission Act (50 ILCS 20/1 et seq.), authorize the diversion of land dedicated for park purposes for use in school construction. Paepcke v. Public Bldg. Comm'n, 46 Ill. 2d 330, 263 N.E.2d 11 (1970).

§ 105 ILCS 5/22-18. Apportionment of assets in district without property

Sec. 22-18. Apportionment of assets in district without property. Whenever there is no property within a school district subject to taxation for ordinary operating purposes, the county clerk shall so notify the trustees of the township or townships or county board of school trustees wherein the school district is located who shall apportion the assets of such district among the remaining school districts of such township or townships in proportion to the last preceding apportionment from the common school fund to such townships and shall notify the school treasurer to note such apportionment in the proper account of each district.

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(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-18.

§ 105 ILCS 5/22-19. [Hearing on charge of discrimination]

Sec. 22-19. Upon the filing of a complaint with the State Board of Education, executed in duplicate and subscribed with the names and addresses of at least 50 residents of a school district or 10% of the residents, whichever is less, alleging that any pupil has been excluded from or segregated in any school on account of his or her color, race, nationality, sex, religion or religious affiliation, or that any employee of or applicant for employment or assignment with any such school district has been questioned concerning his or her color, race, nationality, sex, religion or religious affiliation or subjected to discrimination by reason thereof, by or on behalf of the school board of such district, the State Board of Education shall promptly mail a copy of such complaint to the secretary or clerk of such school board.

The State Board of Education shall fix a date, not less than 20 nor more than 30 days from the date of the filing of such complaint, for a hearing upon the allegations therein. The State Board of Education may also fix a date for a hearing whenever it has reason to believe that such discrimination may exist in any school district. Reasonable notice of the time and place of such hearing shall be mailed to the secretary or clerk of the school board and to the first signatory to such complaint.

The State Board of Education may designate an assistant to conduct such hearing and receive testimony concerning the situation complained of. The complainants may be represented at such hearing by one of their number or by counsel. Each party shall have the privilege of cross examining witnesses. The State Board of Education or the hearing officer appointed by it shall have the power to subpoena witnesses, compel their attendance, and require the production of evidence relating to any relevant matter under this Act. Any circuit court of this State, upon the application of the State Board of Education or the hearing officer appointed by it, may, in its or his or her discretion, compel the attendance of witnesses, the production of books, papers, records or memoranda and the giving of testimony before the State Board of Education or the hearing officer appointed by it conducting an investigation or holding a hearing authorized by this Act, by an attachment for contempt, or otherwise, in the same manner as production of evidence may be compelled before the court. The State Board of Education or the hearing officer appointed by it may cause the depositions of witnesses within the State to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State, and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda. All testimony shall be taken under oath administered by the hearing officer, but the formal rules pertaining to evidence in

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judicial proceedings shall not apply. The State Board of Education shall provide a competent reporter to record all testimony. Either party desiring a transcript of the hearing shall pay for the cost of such transcript. A continuance may be granted provided both parties agree. The hearing officer shall report a summary of the testimony within 60 days after the hearing commences, unless a continuance is granted, to the State Board of Education who shall determine whether the allegations of the complaint are substantially correct. If a continuance is granted, the summary of testimony shall be reported to the State Board of Education within 60 days after the hearing recommences. The State Board of Education shall notify both parties of its decision within 30 days after it receives a summary of the testimony from the hearing officer. If the State Board of Education determines that a violation exists, it shall request the Attorney General to apply to the appropriate circuit court for such injunctive or other relief as may be necessary to rectify the practice complained of.

The provisions of the Administrative Review Law [735 ILCS 5/3-101 et seq.], and all amendments and modifications thereof and the rules adopted pursuant thereto shall apply to and govern all proceedings for the judicial review of any final decision rendered by the State Board of Education pursuant to this Section.

(Source: P.A. 84-126.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-19.

CASE NOTES

Analysis

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- Remedy
Exhaustion of State Remedies
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Enforcement

- Remedy

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This section does not provide the exclusive remedy which must be pursued prior to any action in the courts of Illinois. Rajala ex rel. Rajala v. Joliet Grade Sch., 107 Ill. App. 2d 410, 246 N.E.2d 74 (3 Dist. 1969).

Exhaustion of State Remedies

The superintendent of a school district apparently has no power to order corrective action, in a civil rights complaint, his only function is to investigate, recommend and report; therefore, this section does not foreclose suit in the federal courts, as when rights are subject to such tenuous protection, prior resort to a state proceeding is not necessary. McNeese v. Board of Educ., 373 U.S. 668, 83 S. Ct. 1433, 10 L. Ed. 2d 622 (1963).

Limitation of Power

This section limits rather than expands, the authority of the Board of Education to regulate desegregation, and does not authorize it to promulgate its own rules and sanctions for enforcing the Armstrong Act contained in 105 ILCS 5/10-21.3. Aurora E. Pub. Sch. v. Cronin, 92 Ill. 2d 313, 66 Ill. Dec. 85, 442 N.E.2d 511 (1982).

Right of Action

A school board lacks standing to protest alleged racial discrimination, since it is not a member of the protected class of pupils. Aurora E. Pub. Sch. v. Cronin, 92 Ill. 2d 313, 66 Ill. Dec. 85, 442 N.E.2d 511 (1982).

Role of Board

The procedure established in this section insures that the Board of Education will not assume the role of prosecutor, judge, and enforcer of its own sanctions; consequently, the proper course is for Board of Education to conduct a hearing and refer any findings of discrimination to the Attorney General whose duty it is to file suit when a district engages in discriminatory practices. Aurora E. Pub. Sch. v. Cronin, 92 Ill. 2d 313, 66 Ill. Dec. 85, 442 N.E.2d 511 (1982).

Standing

State Board of Education was not a proper party plaintiff in action against local school district for alleged discrimination in educational program. Board of Educ. v. Illinois State Bd. of Educ., 810 F.2d 707 (7th Cir.), cert. denied, 484 U.S. 829, 108 S. Ct. 99, 98 L. Ed. 2d 60 (1987).

State School Board

The general supervisory power established by former 105 ILCS 5/14A-3 did not provide authority for the state school board and its superintendent to unilaterally determine that a school district was engaging in intentional racial segregation and to withhold funds based on this determination. Board of Educ. v. Sanders, 150 Ill. App. 3d 755, 104 Ill. Dec. 233, 502 N.E.2d 730 (3 Dist. 1986), cert. denied, 484 U.S. 926, 108 S. Ct. 290, 98 L. Ed. 2d 250 (1987).

§ 105 ILCS 5/22-20. [Report by law enforcement agencies]

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Sec. 22-20. All courts and law enforcement agencies of the State of Illinois and its political subdivisions shall report to the principal of any public school in this State whenever a child enrolled therein is detained for proceedings under the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.], as heretofore and hereafter amended, or for any criminal offense or any violation of a municipal or county ordinance. The report shall include the basis for detaining the child, circumstances surrounding the events which led to the child's detention, and status of proceedings. The report shall be updated as appropriate to notify the principal of developments and the disposition of the matter.

The information derived thereby shall be kept separate from and shall not become a part of the official school record of such child and shall not be a public record. Such information shall be used solely by the principal, counselors and teachers of the school to aid in the proper rehabilitation of the child and to protect the safety of students and employees in the school.

(Source: P.A. 85-1209; 89-610, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-20.

Effect of Amendments. The 1996 amendment by P.A. 89-610, effective August 6, 1996, in the first paragraph, added the second and third sentences; and in the second paragraph, in the second sentence, added at the end "and to protect the safety of students and employees in the school".

OPINIONS OF ATTORNEY GENERAL

Legislative Intent

Clearly, the intent of this section is merely to require notification of the principal of a school of the fact that a child enrolled as a student therein is being detained for juvenile court or other judicial proceedings; this section does not otherwise abrogate the policy of confidentiality contained in the Juvenile Court Act nor supersede the specific judicial order requirements of 705 ILCS 405/1-7 and 705 ILCS 405/1-10. 1981 Op. Atty. Gen. 38.

§ 105 ILCS 5/22-21. Elections - Use of school buildings

Sec. 22-21. Elections - Use of school buildings. (a) Every school board shall offer to the appropriate officer or board having responsibility for providing polling places for elections the use of any and all buildings under its jurisdiction for any and all elections to be held, if so requested by such appropriate officer or board.

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(b) Election officers shall place 2 or more cones, small United States national flags, or some other marker a distance of 100 horizontal feet from each entrance to the room used by voters to engage in voting, which shall be known as the polling room. If the polling room is located within a building that is a public or private school and the distance of 100 horizontal feet ends within the interior of the building, then the markers shall be placed outside of the building at each entrance used by voters to enter that building on the grounds adjacent to the thoroughfare or walkway. If the polling room is located within a public or private school building with 2 or more floors and the polling room is located on the ground floor, then the markers shall be placed 100 horizontal feet from each entrance to the polling room used by voters to engage in voting. If the polling room is located in a public or private school building with 2 or more floors and the polling room is located on a floor above or below the ground floor, then the markers shall be placed a distance of 100 feet from the nearest elevator or staircase used by voters on the ground floor to access the floor where the polling room is located. The area within where the markers are placed shall be known as a campaign free zone, and electioneering is prohibited pursuant to this subsection.

Notwithstanding any other provision of this Code, the area on polling place property beyond the campaign free zone, whether publicly or privately owned, is a public forum for the time that the polls are open on an election day. At the request of election officers any publicly owned building must be made available for use as a polling place. A person shall have the right to congregate and engage in electioneering on any polling place property while the polls are open beyond the campaign free zone, including but not limited to, the placement of temporary signs. This subsection shall be construed liberally in favor of persons engaging in electioneering on all polling place property beyond the campaign free zone for the time that the polls are open on an election day.

(Source: Laws 1965, p. 2477; P.A. 93-574, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-21.

Section 97 of P.A. 93-574 contains a severability provision.

Effect of Amendments. The 2003 amendment by P.A. 93-574, effective August 21, 2003, added the subsection (a) designation and subsection (b).

§ 105 ILCS 5/22-22. Secondary Education

Sec. 22-22. Secondary Education. The term "secondary education" means the curriculum offered by a school district or an attendance center or centers serving grades 9 through 12 or grades 10 through 12.

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(Source: P.A. 84-814.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-22.

§ 105 ILCS 5/22-23. Sprinkler systems

Sec. 22-23. Sprinkler systems. (a) The provisions of this Section apply to the school board, board of education, board of school directors, board of school inspectors or other governing body of each school district in this State, including special charter districts and districts organized under Article 34.

(b) As used in this Section, the term "school construction" means (1) the construction of a new school building, or addition to an existing building, within any period of 30 months, having 7,200 or more square feet, and (2) any alteration, as defined in 71 Illinois Administrative Code, Section 400.210, within any period of 30 months, affecting one or more areas of a school building which cumulatively are equal to 50% or more of the square footage of the school building.

(c) New areas or uses of buildings not required to be sprinklered under this Section shall be protected with the installation of an automatic fire detection system.

(d) Notwithstanding any other provisions of this Act, no school construction shall be commenced in any school district on or after the effective date of this amendatory Act of 1991 unless sprinkler systems are required by, and are installed in accordance with approved plans and specifications in the school building, addition or project areas which constitute school construction as defined in subsection (b). Plans and specifications shall comply with rules and regulations established by the State Board of Education, and such rules and regulations shall be consistent so far as practicable with nationally recognized standards such as those established by the National Fire Protection Association.

(Source: P.A. 87-652; 90-566, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-23.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 180.10.

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Effect of Amendments. The 1997 amendment by P.A. 90-566, effective January 2, 1998, in subsection (b) inserted "(1)", substituted "or addition to an existing building, within any period of 30 months, having 7,200 or more square feet" for "the construction of an addition to a school building", inserted "(2)" and substituted "as defined in 71 Illinois Administrative Code, Section 400.210, within any period of 30 months" for "remodeling, renovation or reconstruction project"; added subsection (c); redesignated former subsection (c) as present subsection (d); and deleted subsection (d) regarding submission of plans for sprinkler systems.

RESEARCH REFERENCES

Validity and construction of statute or ordinance requiring installation of automatic sprinklers. 63 ALR5th 517.

§ 105 ILCS 5/22-24. IHSA Liaison

Sec. 22-24. IHSA Liaison. To facilitate communication and coordination between the General Assembly and the Illinois High School Association on matters relative to the continuing development of interscholastic athletic and activity participation among secondary school students in Illinois, the Governor shall appoint, from the membership of the General Assembly, liaison representatives to meet with the Board of Directors of the Illinois High School Association at regular meetings of that Board. The Governor shall appoint one member from each chamber of the General Assembly to serve as a liaison representative and one member from each chamber to serve as the liaison representative's alternate. The 2 liaison representatives shall not be members of the same political party, nor shall a liaison representative's alternate be a member of the same political party as the liaison representative for whom he or she is an alternate. The terms of the liaison representatives and alternate liaison representatives appointed by the Governor shall be 2 years, commencing on the second Wednesday of January in odd numbered years, except that the terms of the liaison representatives and alternate liaison representatives initially appointed by the Governor under this Section shall commence on the date of their appointment and expire on the second Wednesday of January, 1993. Vacancies shall be filled by appointment of the Governor for the unexpired term, and the person appointed to fill a vacancy shall be a member of the same chamber of the General Assembly and the same political party as his or her predecessor in office. The liaison representatives, or their alternates who meet with the Board of Directors of the Illinois High School Association at any meetings of that Board which the liaison representatives are unable to attend, shall communicate to the members of the General Assembly information of importance to the cooperative relationship between the Illinois High School Association and the General Assembly. It shall be the responsibility of the Illinois High School Association to timely supply to both liaison representatives and both alternates all agenda materials and information that are customarily supplied by that Association to the members of its Board of Directors for use in connection with the meetings of that Board.

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(Source: P.A. 87-239; 87-895.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 22-24.

§ 105 ILCS 5/22-25. High School Quality Guarantees

Sec. 22-25. High School Quality Guarantees. The school board of any district that maintains grades 9-12, including special charter districts and any district organized under Article 34 [105 ILCS 5/34-1 et seq.], may enter into agreements that guarantee the academic skills and performance of graduates of their high schools in the workforce or in higher education. Any quality guarantee agreements established shall be subject to such qualifications and restrictions as the school board may determine.

(Source: P.A. 89-610, § 5.)

Effective Date. Section 99 of P.A. 89-610 made this section effective upon becoming law. The Act was approved August 6, 1996.

§ 105 ILCS 5/22-26: P.A. 91-491, effective August 13, 1999. Repealed internally, effective January 2, 2000 and by P.A. 94-1105, effective June 1, 2007.

§ 105 ILCS 5/22-27. World War II, Korean Conflict, and Vietnam Conflict veterans; diplomas

Sec. 22-27. World War II, Korean Conflict, and Vietnam Conflict veterans; diplomas. (a) Upon request, the school board of any district that maintains grades 10 through 12 may award a diploma to any honorably discharged veteran who:

(1) served in the armed forces of the United States during World War II, the Korean Conflict, or the Vietnam Conflict;

(2) resided within an area currently within the district;

(3) left high school before graduating in order to serve in the armed forces of the United States; and

(4) has not received a high school diploma.

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(b) The State Board of Education and the Department of Veterans' Affairs may issue rules consistent with the provisions of this Section that are necessary to implement this Section.

(Source: P.A. 92-446, § 5; 92-651, § 37; 96-88, § 5.)

Note.

Section 997 of P.A. 92-651 is a no acceleration or delay provision, and Section 998 is a no revival or extension provision.

Effective Date. This section is effective January 1, 2002, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2002 amendment by P.A. 92-651, effective July 11, 2002, made a grammatical correction.

The 2009 amendment by P.A. 96-88, effective July 27, 2009, added references to the Vietnam Conflict to (a)(1) and to the section heading, and made related changes.

§ 105 ILCS 5/22-30. Self-administration of medication and school nurse administration

Sec. 22-30. Self-administration of medication and school nurse administration. (a) In this Section:

"Asthma inhaler" means a quick reliever asthma inhaler.

"Epinephrine auto-injector" means a medical device for immediate self-administration by a person at risk of anaphylaxis.

"Medication" means a medicine, prescribed by (i) a physician licensed to practice medicine in all its branches, (ii) a physician assistant who has been delegated the authority to prescribe asthma medications by his or her supervising physician, or (iii) an advanced practice registered nurse who has a written collaborative agreement with a collaborating physician that delegates the authority to prescribe asthma medications, for a pupil that pertains to the pupil's asthma and that has an individual prescription label.

"Self-administration" means a pupil's discretionary use of and ability to carry his or her prescribed asthma medication.

(b) A school, whether public or nonpublic, must permit the self-administration of medication by a pupil with asthma or the use of an epinephrine auto-injector by a pupil, provided that:

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(1) the parents or guardians of the pupil provide to the school (i) written authorization from the parents or guardians for the self-administration of medication or (ii) for use of an epinephrine auto-injector, written authorization from the pupil's physician, physician assistant, or advanced practice registered nurse; and

(2) the parents or guardians of the pupil provide to the school (i) the prescription label, which must contain the name of the medication, the prescribed dosage, and the time at which or circumstances under which the medication is to be administered, or (ii) for use of an epinephrine auto-injector, a written statement from the pupil's physician, physician assistant, or advanced practice registered nurse containing the following information:

(A) the name and purpose of the epinephrine auto-injector;

(B) the prescribed dosage; and

(C) the time or times at which or the special circumstances under which the epinephrine auto-injector is to be administered.

The information provided shall be kept on file in the office of the school nurse or, in the absence of a school nurse, the school's administrator.

(b-5) A school district or nonpublic school may authorize the provision of an epinephrine auto-injector to a student or any personnel authorized under a student's Individual Health Care Action Plan, Illinois Food Allergy Emergency Action Plan and Treatment Authorization Form, or plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 [29 U.S.C. § 504] to administer an epinephrine auto-injector to the student, that meets the prescription on file.

(b-10) The school district or nonpublic school may authorize a school nurse do the following: (i) provide an epinephrine auto-injector to a student or any personnel authorized under a student's Individual Health Care Action Plan, Illinois Food Allergy Emergency Action Plan and Treatment Authorization Form, or plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 to administer an epinephrine auto-injector to the student, that meets the prescription on file; (ii) administer an epinephrine auto-injector that meets the prescription on file to any student who has an Individual Health Care Action Plan, Illinois Food Allergy Emergency Action Plan and Treatment Authorization Form, or plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 that authorizes the use of an Epinephrine auto-injector; and (iii) administer an epinephrine auto-injector to any student that the school nurse in good faith professionally believes is having an anaphylactic reaction.

(c) The school district or nonpublic school must inform the parents or guardians of the pupil, in writing, that the school district or nonpublic school and its employees and agents, including a physician providing standing protocol or prescription for school epinephrine auto-injectors, are to incur no liability, except for willful and wanton conduct, as a result of any injury arising from the self-administration of medication or use of an epinephrine auto-injector regardless of whether authorization was given by the pupil's parents or guardians or by the pupil's physician, physician's assistant, or advanced practice registered nurse. The parents or guardians of the pupil must sign a statement

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acknowledging that the school district or nonpublic school and its employees and agents are to incur no liability, except for willful and wanton conduct, as a result of any injury arising from the self-administration of medication or use of an epinephrine auto-injector regardless of whether authorization was given by the pupil's parents or guardians or by the pupil's physician, physician's assistant, or advanced practice registered nurse and that the parents or guardians must indemnify and hold harmless the school district or nonpublic school and its employees and agents against any claims, except a claim based on willful and wanton conduct, arising out of the self-administration of medication or use of an epinephrine auto-injector regardless of whether authorization was given by the pupil's parents or guardians or by the pupil's physician, physician's assistant, or advanced practice registered nurse. When a school nurse administers an epinephrine auto-injector to a student whom the school nurse in good faith professionally believes is having an anaphylactic reaction, notwithstanding the lack of notice to the parents or guardians of the pupil or the absence of the parents or guardians signed statement acknowledging no liability, except for willful and wanton conduct, the school district or nonpublic school and its employees and agents, including a physician providing standing protocol or prescription for school epinephrine auto-injectors, are to incur no liability, except for willful and wanton conduct, as a result of any injury arising from the use of an epinephrine auto-injector regardless of whether authorization was given by the pupil's parents or guardians or by the pupil's physician, physician's assistant, or advanced practice registered nurse.

(d) The permission for self-administration of medication or use of an epinephrine auto-injector is effective for the school year for which it is granted and shall be renewed each subsequent school year upon fulfillment of the requirements of this Section.

(e) Provided that the requirements of this Section are fulfilled, a pupil with asthma may possess and use his or her medication or a pupil may possess and use an epinephrine auto-injector (i) while in school, (ii) while at a school-sponsored activity, (iii) while under the supervision of school personnel, or (iv) before or after normal school activities, such as while in before-school or after-school care on school-operated property.

(f) The school district or nonpublic school may maintain at a school in a locked, secure location a supply of epinephrine auto-injectors. A physician may prescribe epinephrine auto-injectors in the name of the school district or nonpublic school to be maintained for use when necessary. The school district or nonpublic school supply of epinephrine auto-injectors may be provided to and utilized by any student authorized to self-administer that meets the prescription on file or by any personnel authorized under a student's Individual Health Care Action Plan, Illinois Food Allergy Emergency Action Plan and Treatment Authorization Form, or plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 to administer an epinephrine auto-injector to the student, that meets the prescription on file. When a student does not have an epinephrine auto-injector or a prescription for an epinephrine auto-injector on file, the school nurse may utilize the school district or nonpublic school supply of epinephrine auto-injectors to respond to anaphylactic reaction, under a standing protocol from a physician licensed to practice medicine in all its branches and the requirements of this Section.

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(Source: P.A. 92-402, § 5; 94-792, § 5; 96-1460, § 5; 97-361, § 5.)

Effective Date. Section 99 of P.A. 92-402 made this section effective upon becoming law. The Act was approved August 16, 2001.

Effect of Amendments. The 2006 amendment by P.A. 94-792, effective May 19, 2006, revised the section heading; throughout the section, added references to the possession and use of an "epinephrine auto-injector"; and in (a), added the definition for ""Epinephrine auto-injector"".

The 2010 amendment by P.A. 96-1460, effective August 20, 2010, in (a), added the definition of Asthma inhaler and inserted "and ability to carry" in the definition of Self-administration; in (b)(1), added the item (i) and (ii) designations, inserted "from the parents or guardians" in item (i), and added "written authorization from the pupil's physician, physician assistant, or advanced practice registered nurse" to the end of item (ii); in the introductory language of (b)(2), added item (i), added the item (ii) designation, and added "for use of an epinephrine auto-injector" to the beginning of item (ii); deleted "medication or" preceding "epinephrine" in (b)(2)(A) and (b)(2)(C); added "regardless of whether authorization was given by the pupil's parents or guardians or by the pupil's physician, physician's assistant, or advanced practice registered nurse" wherever it appears in (c); and made a stylistic change.

The 2011 amendment by P.A. 97-361, effective August 15, 2011, added "and school nurse administration" to the end of the section heading; inserted (b-5) and (b-10); in (c), inserted "including a physician providing standing protocol or prescription for school epinephrine auto-injectors" in the first sentence, deleted "by the pupil" following "auto-injector" wherever it appears in the first and second sentences, substituted "and its employees and agents are" for "is" preceding "to incur" in the second sentence, and added the last sentence; and added (f).

§ 105 ILCS 5/22-35. Sharing information on school lunch applicants; consent

Sec. 22-35. Sharing information on school lunch applicants; consent. Before an entity shares with the Department of Healthcare and Family Services information on an applicant for free or reduced-price lunches under Section 2-3.131, 3-14.29, 10-28, or 34-18.26 of this Code [105 ILCS 5/2-3.131, 105 ILCS 5/3-14.29, 105 ILCS 5/10-28, or 105 ILCS 5/34-18.26] or Section 10 of the School Breakfast and Lunch Program Act [105 ILCS 125/10], that entity must obtain, in writing, the consent of the applicant's parent or legal guardian. The Department of Healthcare and Family Services may not seek any punitive action against or withhold any benefit or subsidy from an applicant for a free or reduced-price lunch due to the applicant's parent or legal guardian withholding consent.

(Source: P.A. 93-404, § 5; 95-331, § 540.)

Effective Date. Section 99 of P.A. 93-404 makes this section effective August 1, 2003.

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Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, twice substituted "Department of Healthcare and Family Services" for "Department of Public Aid".

§ 105 ILCS 5/22-40. Eminent domain

Sec. 22-40. Eminent domain. Notwithstanding any other provision of this Code, any power granted under this Code to acquire property by condemnation or eminent domain is subject to, and shall be exercised in accordance with, the Eminent Domain Act [735 ILCS 30/1-1-1 et seq.].

(Source: P.A. 94-1055, § 95-5-440.)

Effective Date. Section 99-5-5 of P.A. 94-1055 makes this section effective January 1, 2007.

§ 105 ILCS 5/22-45. Illinois P-20 Council

Sec. 22-45. Illinois P-20 Council. (a) The General Assembly finds that preparing Illinoisans for success in school and the workplace requires a continuum of quality education from preschool through graduate school. This State needs a framework to guide education policy and integrate education at every level. A statewide coordinating council to study and make recommendations concerning education at all levels can avoid fragmentation of policies, promote improved teaching and learning, and continue to cultivate and demonstrate strong accountability and efficiency. Establishing an Illinois P-20 Council will develop a statewide agenda that will move the State towards the common goals of improving academic achievement, increasing college access and success, improving use of existing data and measurements, developing improved accountability, fostering innovative approaches to education, promoting lifelong learning, easing the transition to college, and reducing remediation. A pre-kindergarten through grade 20 agenda will strengthen this State's economic competitiveness by producing a highly-skilled workforce. In addition, lifelong learning plans will enhance this State's ability to leverage funding.

(b) There is created the Illinois P-20 Council. The Illinois P-20 Council shall include all of the following members:

(1) The Governor or his or designee, to serve as chairperson.

(2) Four members of the General Assembly, one appointed by the Speaker of the House of Representatives, one appointed by the Minority Leader of the House of Representatives, one appointed by the President of the Senate, and one appointed by the Minority Leader of the Senate.

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(3) Six at-large members appointed by the Governor as follows, with 2 members being from the City of Chicago, 2 members being from Lake County, McHenry County, Kane County, DuPage County, Will County, or that part of Cook County outside of the City of Chicago, and 2 members being from the remainder of the State:

(A) one representative of civic leaders;

(B) one representative of local government;

(C) one representative of trade unions;

(D) one representative of nonprofit organizations or foundations;

(E) one representative of parents' organizations; and

(F) one education research expert.

(4) Five members appointed by statewide business organizations and business trade associations.

(5) Six members appointed by statewide professional organizations and associations representing pre-kindergarten through grade 20 teachers, community college faculty, and public university faculty.

(6) Two members appointed by associations representing local school administrators and school board members. One of these members must be a special education administrator.

(7) One member representing community colleges, appointed by the Illinois Council of Community College Presidents.

(8) One member representing 4-year independent colleges and universities, appointed by a statewide organization representing private institutions of higher learning.

(9) One member representing public 4-year universities, appointed jointly by the university presidents and chancellors.

(10) Ex-officio members as follows:

(A) The State Superintendent of Education or his or her designee.

(B) The Executive Director of the Board of Higher Education or his or her designee.

(C) The President and Chief Executive Officer of the Illinois Community College Board or his or her designee.

(D) The Executive Director of the Illinois Student Assistance Commission or his or her designee.

(E) The Co-chairpersons of the Illinois Workforce Investment Board or their designee.

(F) The Director of Commerce and Economic Opportunity or his or her designee.

(G) The Chairperson of the Illinois Early Learning Council or his or her designee.

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(H) The President of the Illinois Mathematics and Science Academy or his or her designee.

(I) The president of an association representing educators of adult learners or his or her designee.

Ex-officio members shall have no vote on the Illinois P-20 Council.

Appointed members shall serve for staggered terms expiring on July 1 of the first, second, or third calendar year following their appointments or until their successors are appointed and have qualified. Staggered terms shall be determined by lot at the organizing meeting of the Illinois P-20 Council.

Vacancies shall be filled in the same manner as original appointments, and any member so appointed shall serve during the remainder of the term for which the vacancy occurred.

(c) The Illinois P-20 Council shall be funded through State appropriations to support staff activities, research, data-collection, and dissemination. The Illinois P-20 Council shall be staffed by the Office of the Governor, in coordination with relevant State agencies, boards, and commissions. The Illinois Education Research Council shall provide research and coordinate research collection activities for the Illinois P-20 Council.

(d) The Illinois P-20 Council shall have all of the following duties:

(1) To make recommendations to do all of the following:

(A) Coordinate pre-kindergarten through grade 20 (graduate school) education in this State through working at the intersections of educational systems to promote collaborative infrastructure.

(B) Coordinate and leverage strategies, actions, legislation, policies, and resources of all stakeholders to support fundamental and lasting improvement in this State's public schools, community colleges, and universities.

(C) Better align the high school curriculum with postsecondary expectations.

(D) Better align assessments across all levels of education.

(E) Reduce the need for students entering institutions of higher education to take remedial courses.

(F) Smooth the transition from high school to college.

(G) Improve high school and college graduation rates.

(H) Improve the rigor and relevance of academic standards for college and workforce readiness.

(I) Better align college and university teaching programs with the needs of Illinois schools.

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(2) To advise the Governor, the General Assembly, the State's education and higher education agencies, and the State's workforce and economic development boards and agencies on policies related to lifelong learning for Illinois students and families.

(3) To articulate a framework for systemic educational improvement and innovation that will enable every student to meet or exceed Illinois learning standards and be well-prepared to succeed in the workforce and community.

(4) To provide an estimated fiscal impact for implementation of all Council recommendations.

(e) The chairperson of the Illinois P-20 Council may authorize the creation of working groups focusing on areas of interest to Illinois educational and workforce development, including without limitation the following areas:

(1) Preparation, recruitment, and certification of highly qualified teachers.

(2) Mentoring and induction of highly qualified teachers.

(3) The diversity of highly qualified teachers.

(4) Funding for highly qualified teachers, including developing a strategic and collaborative plan to seek federal and private grants to support initiatives targeting teacher preparation and its impact on student achievement.

(5) Highly effective administrators.

(6) Illinois birth through age 3 education, pre-kindergarten, and early childhood education.

(7) The assessment, alignment, outreach, and network of college and workforce readiness efforts.

(8) Alternative routes to college access.

(9) Research data and accountability.

(10) Community schools, community participation, and other innovative approaches to education that foster community partnerships.

The chairperson of the Illinois P-20 Council may designate Council members to serve as working group chairpersons. Working groups may invite organizations and individuals representing pre-kindergarten through grade 20 interests to participate in discussions, data collection, and dissemination.

(Source: P.A. 95-626, § 5; 95-996, § 5; 96-746, § 5.)

Effective Date. This section is effective June 1, 2008, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/2.

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Effect of Amendments. The 2008 amendment by P.A. 95-996, effective June 1, 2009, rewrote (b).

The 2009 amendment by P.A. 96-746, effective August 25, 2009, inserted "fostering innovative approaches to education" in the fourth sentence of (a); inserted "and innovation" in (d)(3); and added (e)(10).

§ 105 ILCS 5/22-50. Twice-exceptional children; recommendations

Sec. 22-50. Twice-exceptional children; recommendations. The State Advisory Council on the Education of Children with Disabilities and the Advisory Council on the Education of Gifted and Talented Children shall research and discuss best practices for addressing the needs of "twice-exceptional" children, those who are gifted and talented and have a disability. The Councils shall then jointly make recommendations to the State Board of Education with respect to the State Board of Education providing guidance and technical assistance to school districts in furthering improved educational outcomes for gifted and twice-exceptional children. Recommendations shall include strategies to (i) educate teachers and other providers about the unique needs of this population, (ii) train teachers in target, research-based, identification and pedagogical methods, and (iii) establish guidelines for unique programming for twice-exceptional students.

(Source: P.A. 96-382, § 5; 96-1000, § 260.)

Note.

A former multiple version of 105 ILCS 5/22-50 as enacted by P.A. 96-674, § 5 was redesignated as 105 ILCS 5/22-55 by P.A. 96-1000, § 260, effective July 2, 2010.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 96-382 makes this section effective upon becoming law. The Act was approved August 13, 2009.

Effect of Amendments. The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, reenacted the section without changes.

§ 105 ILCS 5/22-55: Repealed by P.A.97-355, § 5, effective January 1, 2012.

§ 105 ILCS 5/22-60. Unfunded mandates prohibited

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Sec. 22-60. Unfunded mandates prohibited. (a) No public school district or private school is obligated to comply with the following types of mandates unless a separate appropriation has been enacted into law providing full funding for the mandate for the school year during which the mandate is required:

(1) Any mandate in this Code enacted after the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-1441].

(2) Any regulatory mandate promulgated by the State Board of Education and adopted by rule after the effective date of this amendatory Act of the 96th General Assembly other than those promulgated with respect to this Section or statutes already enacted on or before the effective date of this amendatory Act of the 96th General Assembly.

(b) If the amount appropriated to fund a mandate described in subsection (a) of this Section does not fully fund the mandated activity, then the school district or private school may choose to discontinue or modify the mandated activity to ensure that the costs of compliance do not exceed the funding received.

Before discontinuing or modifying the mandate, the school district shall petition its regional superintendent of schools on or before February 15 of each year to request to be exempt from implementing the mandate in a school or schools in the next school year. The petition shall include all legitimate costs associated with implementing and operating the mandate, the estimated reimbursement from State and federal sources, and any unique circumstances the school district can verify that exist that would cause the implementation and operation of such a mandate to be cost prohibitive.

The regional superintendent of schools shall review the petition. In accordance with the Open Meetings Act [5 ILCS 120/1 et seq.], he or she shall convene a public hearing to hear testimony from the school district and interested community members. The regional superintendent shall, on or before March 15 of each year, inform the school district of his or her decision, along with the reasons why the exemption was granted or denied, in writing. The regional superintendent must also send notification to the State Board of Education detailing which school districts requested an exemption and the results.

If the regional superintendent grants an exemption to the school district, then the school district is relieved from the requirement to establish and implement the mandate in the school or schools granted an exemption for the next school year. If the regional superintendent of schools does not grant an exemption, then the school district shall implement the mandate in accordance with the applicable law or rule by the first student attendance day of the next school year. However, the school district or a resident of the school district may on or before April 15 appeal the decision of the regional superintendent to the State Superintendent of Education. The State Superintendent shall hear appeals on the decisions of regional superintendents of schools no later than May 15 of each year. The State Superintendent shall make a final decision at the conclusion of the hearing on the school district's request for an exemption from the mandate. If the State Superintendent grants an exemption, then the school district is relieved from the requirement to implement a mandate in the school or schools granted an exemption for the next school year. If the State Superintendent does not grant an exemption, then the

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school district shall implement the mandate in accordance with the applicable law or rule by the first student attendance day of the next school year.

If a school district or private school discontinues or modifies a mandated activity due to lack of full funding from the State, then the school district or private school shall annually maintain and update a list of discontinued or modified mandated activities. The list shall be provided to the State Board of Education upon request.

(c) This Section does not apply to (i) any new statutory or regulatory mandates related to revised learning standards developed through the Common Core State Standards Initiative and assessments developed to align with those standards or actions specified in this State's Phase 2 Race to the Top Grant application if the application is approved by the United States Department of Education or (ii) new statutory or regulatory mandates from the Race to the Top Grant through the federal American Recovery and Reinvestment Act of 2009 [Public Law 111-5] imposed on school districts designated as being in the lowest performing 5% of schools within the Race to the Top Grant application.

(d) In any instances in which this Section conflicts with the State Mandates Act [30 ILCS 805/1 et seq.], the State Mandates Act shall prevail.

(Source: P.A. 96-1441, § 5.)

Effective Date. Section 99 of P.A. 96-1441 made this section effective upon becoming law. The Act was approved August 20, 2010.

§ 105 ILCS 5/22-65. (As enacted by P.A. 96-1524) The Task Force on the Prevention of Sexual Abuse of Children

Sec. 22-65. (As enacted by P.A. 96-1524) The Task Force on the Prevention of Sexual Abuse of Children. The Task Force on the Prevention of Sexual Abuse of Children is created within the Department of Children and Family Services. The Task Force shall consist of all of the following members:

(1) One member of the General Assembly and one member of the public, appointed by the President of the Senate.

(2) One member of the General Assembly and one member of the public, appointed by the Minority Leader of the Senate.

(3) One member of the General Assembly and one member of the public, appointed by the Speaker of the House of Representatives.

(4) One member of the General Assembly and one member of the public, appointed by the Minority Leader of the House of Representatives.

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(5) The Director of Children and Family Services or his or her designee.

(6) The State Superintendent of Education or his or her designee.

(7) The Director of Public Health or his or her designee.

(8) The Executive Director of the Illinois Violence Prevention Authority or his or her designee.

(9) A representative of an agency that leads the collaboration of the investigation, prosecution, and treatment of child sexual and physical abuse cases, appointed by the Director of Children and Family Services.

(10) A representative of an organization representing law enforcement, appointed by the Director of State Police.

(11) A representative of a statewide professional teachers' organization, appointed by the head of that organization.

(12) A representative of a different statewide professional teachers' organization, appointed by the head of that organization.

(13) A representative of an organization involved in the prevention of child abuse in this State, appointed by the Director of Children and Family Services.

(14) A representative of an organization representing school management in this State, appointed by the State Superintendent of Education.

(15) Erin Merryn, for whom Section 10-23.13 of this Code [105 ILCS 5/10-23.13] is named.

Members of the Task Force must be individuals who are actively involved in the fields of the prevention of child abuse and neglect and child welfare. The appointment of members must reflect the geographic diversity of the State.

The Task Force shall elect a presiding officer by a majority vote of the membership of the Task Force. The Task Force shall meet at the call of the presiding officer.

The Task Force shall make recommendations for reducing child sexual abuse in Illinois. In making those recommendations, the Task Force shall:

(1) gather information concerning child sexual abuse throughout the State;

(2) receive reports and testimony from individuals, State and local agencies, community-based organizations, and other public and private organizations;

(3) create goals for State policy that would prevent child sexual abuse; and

(4) submit a final report with its recommendations to the Office of the Governor and the General Assembly by January 1, 2012.

The recommendations may include proposals for specific statutory changes and methods to foster cooperation among State agencies and between the State and local government.

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The Task Force shall consult with employees of the Department of Children and Family Services, the Criminal Justice Information Agency, the Department of State Police, the Illinois State Board of Education, and any other State agency or department as necessary to accomplish the Task Force's responsibilities under this Section.

The members of the Task Force shall serve without compensation and shall not be reimbursed for their expenses.

The Task Force shall be abolished upon submission of the final report to the Office of the Governor and the General Assembly.

(Source: P.A. 96-1524, § 5.)

Section set out twice. Multiple versions of this section have been created by the editor to reﬂect conﬂicting or postponed legislation.

Effective Date. Section 99 of P.A. 96-1524, made this section effective upon becoming law. The Act was approved February 14, 2011.

§ 105 ILCS 5/22-65. (As enacted by P.A. 97-505) Enrollment information; children of military personnel

Sec. 22-65. (As enacted by P.A. 97-505) Enrollment information; children of military personnel. At the time of annual enrollment or at any time during the school year, a school district or a recognized non-public school, except for sectarian non-public schools, serving any of grades kindergarten through 12 shall provide, either on its standard enrollment form or on a separate form, the opportunity for the individual enrolling the student to voluntarily state whether the student has a parent or guardian who is a member of a branch of the armed forces of the United States and who is either deployed to active duty or expects to be deployed to active duty during the school year. Each school district and recognized non-public school shall report this enrollment information as aggregate data to the State Board of Education.

(Source: P.A. 97-505, § 5.)

Section set out twice. Multiple versions of this section have been created by the editor to reﬂect conﬂicting or postponed legislation.

Article 23.

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School Board Associations

§ 105 ILCS 5/23-1. Purpose of article

Sec. 23-1. Purpose of article. This Article has for its purpose the education of school board members as to their duties and responsibilities so as to improve the management of the public schools, through associations of school boards. The activities of any association which complies with this Article are hereby declared to constitute a public purpose.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 23-1.

§ 105 ILCS 5/23-2. Boards may form or join associations

Sec. 23-2. Boards may form or join associations. School boards are authorized to form, join and provide for the expenses of associations of Illinois school boards formed for the purpose of conducting county or regional school board institutes and otherwise disseminating and interchanging information regarding school board problems, duties and responsibilities, provided such associations comply with the requirements of this Article.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 23-2.

§ 105 ILCS 5/23-3. Filing copy of constitution, by-laws and amendments

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Sec. 23-3. Filing copy of constitution, by-laws and amendments. Within 30 days after the adoption by any such association of its constitution or by-laws or any amendment thereto, it shall file a copy thereof, certified by its president and executive director, with the Governor, the Superintendent of Public Instruction and the county superintendent of schools of each county in which it has any membership.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 23-3.

§ 105 ILCS 5/23-4. Election of officers and governing body

Sec. 23-4. Election of officers and governing body. The constitution or by-laws of any such association shall provide for the election of its officers and governing body at an annual meeting of the association, or in some other manner which will insure that all member boards have an equal opportunity to participate in the election.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 23-4.

§ 105 ILCS 5/23-5. Membership

Sec. 23-5. Membership. Any such association shall admit to its membership any school board whose district lies wholly or in part within the area covered by the association.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 23-5.

§ 105 ILCS 5/23-6. Annual report

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Sec. 23-6. Annual report. Each association shall make an annual report within 60 days after the close of its fiscal year to the Governor, the State Board of Education and the regional superintendent of schools of each region in which it has members, setting forth the activities of the association for the preceding fiscal year, the institutes held, the subjects discussed, and the attendance, and shall furnish the Governor, the State Board of Education and such regional superintendents with copies of all publications sent to its members.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 23-6.

§ 105 ILCS 5/23-7. Compensation and expenses

Sec. 23-7. Compensation and expenses. No school board member shall receive any compensation for service rendered to any such association, whether as an officer or otherwise, but shall be entitled to reimbursement for expenses actually incurred in the work of such association.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 23-7.

§ 105 ILCS 5/23-8. Powers and duties

Sec. 23-8. Powers and duties. Each association shall perform such duties and exercise such powers as if it were a state institution for the purposes of Article 16 of the "Illinois Pension Code", approved March 18, 1963, as amended [40 ILCS 5/16-101 et seq.].

(Source: Laws 1965, p. 3746.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 23-8.

Article 24.

Employment of Teachers - Tenure - Duties of Teachers

§ 105 ILCS 5/24-1. Appointment - Salaries - Payment - School month - School term

Sec. 24-1. Appointment - Salaries - Payment - School month - School term. School boards shall appoint all teachers, determine qualifications of employment and fix the amount of their salaries subject to limitation set forth in this Act. They shall pay the wages of teachers monthly, subject, however, to the provisions of Section 24-21 [105 ILCS 5/24-21]. The school month shall be the same as the calendar month but by resolution the school board may adopt for its use a month of 20 days, including holidays. The school term shall consist of at least the minimum number of pupil attendance days required by Section 10-19 [105 ILCS 5/10-19], any additional legal school holidays, days of teachers' institutes, or equivalent professional educational experiences, and one or two days at the beginning of the school term when used as a teachers' workshop.

(Source: P.A. 80-249.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-1.

CASE NOTES

Analysis

Appointment
- Legally Qualified
- Limitations

Assignment
- Teachers

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Appointment

- Legally Qualified

Local school boards must be given discretion to determine whether a teacher is "legally qualified" to assume a position held by another teacher; therefore, the definition of "legally qualified" is expanded to encompass reasonable requirements set forth by local school boards. Zink v. Board of Educ., 146 Ill. App. 3d 1016, 100 Ill. Dec. 657, 497 N.E.2d 835 (4 Dist. 1986).

To be "legally qualified" to assume the position held by another teacher, a teacher must be able to fulfil the responsibilities of the less, senior teacher as determined by the local school board. Zink v. Board of Educ., 146 Ill. App. 3d 1016, 100 Ill. Dec. 657, 497 N.E.2d 835 (4 Dist. 1986).

- Limitations

Although local school boards have discretion in determining qualifications of teachers, that discretion must be exercised with extreme caution and circumspection in order not to subvert another fundamental purpose of this Act, that being the protection of teachers from political, partisan, capricious, fickle, and irregular decision making. Zink v. Board of Educ., 146 Ill. App. 3d 1016, 100 Ill. Dec. 657, 497 N.E.2d 835 (4 Dist. 1986).

Assignment

- Teachers

This tenure law permits the board to assign a teacher to a position the teacher is qualified to fill. Lester v. Board of Educ., 87 Ill. App. 2d 269, 230 N.E.2d 893 (2 Dist. 1967).

Delegation of Power

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- Collective Bargaining Agreement

While a school board may enter into a collective bargaining agreement with an organization representing the employees thereof, the board cannot negotiate an agreement which involves the delegation of a statutory duty or the surrender of discretion vested in the board by statute. Weary v. Board of Educ., 46 Ill. App. 3d 182, 4 Ill. Dec. 737, 360 N.E.2d 1112 (5 Dist. 1977).

Descriptive Terms

The term "teacher" means any and all district employees regularly required to be certified under the laws relating to the certification of teachers; thus, the term "teacher" includes superintendents, principals, supervisors, and teachers, as well as certain other certificated school employees. Lester v. Board of Educ., 87 Ill. App. 2d 269, 230 N.E.2d 893 (2 Dist. 1967).

Judicial Review

When the legislature has empowered a School Board to perform certain acts, courts will not interfere with the exercise of such powers, or substitute their discretion for that of the School Board, unless its action is palpably arbitrary, unreasonable, or capricious, and such action will not be disturbed unless it is against the manifest weight of the evidence. Cohn v. Board of Educ., 118 Ill. App. 2d 453, 254 N.E.2d 803 (2 Dist. 1970).

Legislative Intent

If the legislature had meant to limit boards' discretion as to who they can employ by requiring them to show preference to "certificated" teachers on tenure over probationary teachers, when eliminating the tenured teacher's job, it could have clearly indicated such by using the term "certificated" but it chose to use the broader term "legally qualified." Lenard v. Board of Educ., 57 Ill. App. 3d 853, 15 Ill. Dec. 131, 373 N.E.2d 477 (5 Dist. 1978), aff'd, 74 Ill. 2d 260, 24 Ill. Dec. 163, 384 N.E.2d 1321 (1979).

This Act created a liability where none would otherwise exist and must, therefore, be strictly construed. Lenard v. Board of Educ., 57 Ill. App. 3d 853, 15 Ill. Dec. 131, 373 N.E.2d 477 (5 Dist. 1978), aff'd, 74 Ill. 2d 260, 24 Ill. Dec. 163, 384 N.E.2d 1321 (1979).

Powers of Board

While statutes granting powers to school boards must be strictly construed, a school board has those powers expressly conferred and such powers as may be necessary to carry into effect those expressly granted. Craddock v. Board of Educ., 76 Ill. App. 3d 43, 29 Ill. Dec. 376, 391 N.E.2d 1059 (3 Dist. 1979), aff'd, 81 Ill. 2d 28, 39 Ill. Dec. 815, 405 N.E.2d 794 (1980).

The Board of Education for a school district had power to enter into a multi-year contract. Libertyville Educ. Ass'n v. Board of Educ., 56 Ill. App. 3d 503, 13 Ill. Dec. 741, 371 N.E.2d 676 (2 Dist. 1977).

There is no provision in this Article prohibiting a local board from fixing the amount of the teachers' salaries by entering into a multi-year agreement. Libertyville Educ. Ass'n v. Board of Educ., 56 Ill. App. 3d 503, 13 Ill. Dec. 741, 371 N.E.2d 676 (2 Dist. 1977).

A school board created to perform governmental functions in connection with the education of children in its respective school district has such powers as are expressly conferred or such as may be necessary to carry into effect those granted by the General Assembly. Weary v. Board of Educ., 46 Ill. App. 3d 182, 4 Ill. Dec. 737, 360 N.E.2d 1112 (5 Dist. 1977).

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Professional Growth

- Program Required

Boards of education may require continued professional growth of its teachers as a condition of continued tenure so long as the requirement is reasonable in the light of the object to be obtained; a requirement that a teacher having less than a bachelor's degree participate in a program of professional growth is neither arbitrary nor unreasonable. Last v. Board of Educ. of Community Unit Sch., 37 Ill. App. 2d 159, 185 N.E.2d 282 (2 Dist. 1962).

Purpose

The purpose of this Act is to assure continuous service on the part of teachers of ability and experience, and to that end, its provisions should be strictly construed. Stamper v. Board of Educ., 141 Ill. App. 3d 884, 96 Ill. Dec. 222, 491 N.E.2d 36 (1 Dist. 1986).

A fundamental purpose of this Act is the protection of teachers from political, partisan, capricious, fickle and irregular decision making. Newman v. Board of Educ., 98 Ill. App. 3d 976, 54 Ill. Dec. 428, 424 N.E.2d 1331 (4 Dist. 1981).

The whole purpose of tenure provisions is to assure teachers of experience and ability a continuous service and rehiring based upon merit, rather than to allow teachers to not be rehired for reasons that are political, partisan, or capricious. Herbach v. Board of Educ., 94 Ill. App. 3d 889, 50 Ill. Dec. 348, 419 N.E.2d 456 (1 Dist. 1981).

The purpose of this Act is to afford tenured teachers procedural safeguards when their livelihood or tenured status is threatened and to avoid insecurity of employment based on political, partisan or capricious considerations. Craddock v. Board of Educ., 76 Ill. App. 3d 43, 29 Ill. Dec. 376, 391 N.E.2d 1059 (3 Dist. 1979), aff'd, 81 Ill. 2d 28, 39 Ill. Dec. 815, 405 N.E.2d 794 (1980).

Salaries

- In General

The duty of a school board to fix the salaries of teachers and to prepare, adopt, and administer an annual budget, and the exercise of its discretion in performing these tasks, is basic to its purpose of administering and managing the conduct of the schools within its district. Weary v. Board of Educ., 46 Ill. App. 3d 182, 4 Ill. Dec. 737, 360 N.E.2d 1112 (5 Dist. 1977).

- Adoption of Scale

A Board of Education performed its duty to fix teachers' salaries by agreeing that the teachers would receive a certain specific base pay, with annual adjustments approximately reflective of the cost of living, as indicated by the Consumer Price Index. Libertyville Educ. Ass'n v. Board of Educ., 56 Ill. App. 3d 503, 13 Ill. Dec. 741, 371 N.E.2d 676 (2 Dist. 1977).

- Discretion

Beyond the statutory minimum, classifications of salary schedules according to educational background and experience may be determined by the Board of Education at its discretion. Winters v. Board of Educ., 66 Ill. App. 3d 918, 23 Ill. Dec. 725, 384 N.E.2d 519 (4 Dist. 1978).

No action of the Board of Education was so arbitrary or unreasonable as to authorize the court to set aside the Board's determination to deny plaintiff credit for prior teaching experience where the defendant Board had adopted a written salary policy which provided that full credit might be allowed on the salary schedule for the first ten years of prior teaching experience comparable to

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that in the defendant's school district for interrelated professional, industrial and military experience. Cohn v. Board of Educ., 118 Ill. App. 2d 453, 254 N.E.2d 803 (2 Dist. 1970).

The Board of Education is not precluded from transferring a teacher to a position the teacher is qualified to fill, or prohibited from making such salary adjustments as it deems desirable, so long as such reductions are uniform or are based upon some reasonable classification. Lester v. Board of Educ., 87 Ill. App. 2d 269, 230 N.E.2d 893 (2 Dist. 1967).

- Multi-Year Contracts

A collective bargaining agreement was not void or invalid merely because it was for a term extending beyond the terms of office of the individual members of the Board of Education for a school district. Libertyville Educ. Ass'n v. Board of Educ., 56 Ill. App. 3d 503, 13 Ill. Dec. 741, 371 N.E.2d 676 (2 Dist. 1977).

Multi-year teacher contracts may only be for a reasonable term beyond the end of the current school year; they must be entered into in good faith, and may not be used for wholly thwarting the will of the voters at the annual election. Libertyville Educ. Ass'n v. Board of Educ., 56 Ill. App. 3d 503, 13 Ill. Dec. 741, 371 N.E.2d 676 (2 Dist. 1977).

Where there was no allegation of bad faith, and the five year term of a collective bargaining agreement was reasonable, particularly since the agreement did not bind the Board of Education for a school district to arbitrary salary increments for the teachers, but was instead obviously an effort to enable the teachers to stabilize their economic status through the means of salary adjustments approximately congruent with increases or decreases in the cost of living, the fact that the collective bargaining agreement was for a term of five years, could not have, by itself, provided grounds for the trial court's granting of the Board's motion for summary judgment. Libertyville Educ. Ass'n v. Board of Educ., 56 Ill. App. 3d 503, 13 Ill. Dec. 741, 371 N.E.2d 676 (2 Dist. 1977).

- Reliance on Formulas

There was not an unlawful delegation of a Board of Education's duty to fix the salaries of teachers where no third party was to determine the salary of the teachers; that salary was to be determined, instead, by resort to a formula to which the Board had freely agreed. Libertyville Educ. Ass'n v. Board of Educ., 56 Ill. App. 3d 503, 13 Ill. Dec. 741, 371 N.E.2d 676 (2 Dist. 1977).

School Term

- Institute Days

Under this section, the school term includes institute days. Howard v. Board of Educ., 160 Ill. App. 3d 309, 112 Ill. Dec. 131, 513 N.E.2d 545 (2 Dist. 1987).

Tenure

- Teachers and Administrators

A superintendent in the public schools does not acquire tenure in the position of superintendent, but rather acquires tenure as a certified employee of the school district; a person serving as superintendent, principal and teacher, or in any two of such positions, may be assigned by the board to any one of the positions he is qualified to fill, provided such action by the board is bona fide and not in the nature of chicanery or subterfuge designed to subvert the provisions of this section. Lester v. Board of Educ., 87 Ill. App. 2d 269, 230 N.E.2d 893 (2 Dist. 1967).

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RESEARCH REFERENCES

Termination of teacher's tenure status by resignation. 9 ALR4th 729.

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:17 School teachers and nurses.

§ 105 ILCS 5/24-1.1. Employment of public school employees by nonpublic schools

Sec. 24-1.1. Employment of public school employees by nonpublic schools. Employees of public schools may be employed on a part-time or temporary basis by private or parochial schools, providing that such employment is in no way connected with or subsidized by their public school employment, and provided further that such private or parochial employment does not conflict or interfere with an employee's public school duties.

(Source: P.A. 80-287.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-1.1.

§ 105 ILCS 5/24-1.5. New or vacant teaching positions

Sec. 24-1.5. New or vacant teaching positions. A school district's selection of a candidate for a new or vacant teaching position not otherwise required to be filled pursuant to Section 24-12 of this Code [105 ILCS 5/24-12] must be based upon the consideration of factors that include without limitation certifications, qualifications, merit and ability (including performance evaluations, if available), and relevant experience, provided that the length of continuing service with the school district must not be considered as a factor, unless all other factors are determined by the school district to be equal. A school district's decision to select a particular candidate to fill a new or vacant position is not subject to review under grievance resolution procedures adopted pursuant to subsection (c) of Section 10 of the Illinois Educational Labor Relations Act [115 ILCS 5/10], provided that, in making such a decision, the district does not fail to adhere to procedural requirements in a collective bargaining agreement relating to the filling of new or vacant teaching positions. Provisions regarding the filling of new and vacant positions in a collective bargaining agreement between a school district and the exclusive bargaining

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representative of its teachers in existence on the effective date of this amendatory Act of the 97th General Assembly [P.A. 97-8] shall remain in full force and effect for the term of the agreement, unless terminated by mutual agreement.

Nothing in this amendatory Act of the 97th General Assembly (i) limits or otherwise impacts school districts' management right to hire new employees, (ii) affects what currently is or may be a mandatory subject of bargaining under the Illinois Educational Labor Relations Act [115 ILCS 5/1 et seq.], or (iii) creates a statutory cause of action for a candidate or a candidate's representative to challenge a school district's selection decision based on the school district's failure to adhere to the requirements of this Section.

(Source: P.A. 97-8, § 5.)

Effective Date. Section 99 of P.A. 97-8 made this section effective upon becoming law. The Act was approved June 13, 2011.

§ 105 ILCS 5/24-2. Holidays

Sec. 24-2. Holidays. (a) Teachers shall not be required to teach on Saturdays, nor, except as provided in subsection (b) of this Section, shall teachers or other school employees, other than noncertificated school employees whose presence is necessary because of an emergency or for the continued operation and maintenance of school facilities or property, be required to work on legal school holidays, which are January 1, New Year's Day; the third Monday in January, the Birthday of Dr. Martin Luther King, Jr.; February 12, the Birthday of President Abraham Lincoln; the first Monday in March (to be known as Casimir Pulaski's birthday); Good Friday; the day designated as Memorial Day by federal law; July 4, Independence Day; the first Monday in September, Labor Day; the second Monday in October, Columbus Day; November 11, Veterans' Day; the Thursday in November commonly called Thanksgiving Day; and December 25, Christmas Day. School boards may grant special holidays whenever in their judgment such action is advisable. No deduction shall be made from the time or compensation of a school employee on account of any legal or special holiday.

(b) A school board or other entity eligible to apply for waivers and modifications under Section 2-3.25g of this Code [105 ILCS 5/2-3.25g] is authorized to hold school or schedule teachers' institutes, parent-teacher conferences, or staff development on the third Monday in January (the Birthday of Dr. Martin Luther King, Jr.); February 12 (the Birthday of President Abraham Lincoln); the first Monday in March (known as Casimir Pulaski's birthday); the second Monday in October (Columbus Day); and November 11 (Veterans' Day), provided that:

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(1) the person or persons honored by the holiday are recognized through instructional activities conducted on that day or, if the day is not used for student attendance, on the first school day preceding or following that day; and

(2) the entity that chooses to exercise this authority first holds a public hearing about the proposal. The entity shall provide notice preceding the public hearing to both educators and parents. The notice shall set forth the time, date, and place of the hearing, describe the proposal, and indicate that the entity will take testimony from educators and parents about the proposal.

(c) Commemorative holidays, which recognize specified patriotic, civic, cultural or historical persons, activities, or events, are regular school days. Commemorative holidays are: January 28 (to be known as Christa McAuliffe Day and observed as a commemoration of space exploration), February 15 (the birthday of Susan B. Anthony), March 29 (Viet Nam War Veterans' Day), September 11 (September 11th Day of Remembrance), the school day immediately preceding Veterans' Day (Korean War Veterans' Day), October 1 (Recycling Day), December 7 (Pearl Harbor Veterans' Day) and any day so appointed by the President or Governor. School boards may establish commemorative holidays whenever in their judgment such action is advisable. School boards shall include instruction relative to commemorated persons, activities, or events on the commemorative holiday or at any other time during the school year and at any point in the curriculum when such instruction may be deemed appropriate. The State Board of Education shall prepare and make available to school boards instructional materials relative to commemorated persons, activities, or events which may be used by school boards in conjunction with any instruction provided pursuant to this paragraph.

(d) City of Chicago School District 299 shall observe March 4 of each year as a commemorative holiday. This holiday shall be known as Mayors' Day which shall be a day to commemorate and be reminded of the past Chief Executive Officers of the City of Chicago, and in particular the late Mayor Richard J. Daley and the late Mayor Harold Washington. If March 4 falls on a Saturday or Sunday, Mayors' Day shall be observed on the following Monday.

(Source: P.A. 86-161; 86-249; 86-742; 86-1028; 89-610, § 5; 89-622, § 5; 90-14, § 2-135; 92-704, § 15; 95-699, § 25; 96-640, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-2.

Section 97 of P.A. 95-699 contains a severability provision.

Effect of Amendments. The 1996 amendment by P.A. 89-610, effective August 6, 1996, in the first paragraph, in the second sentence, added at the end "except that no school board or board of education may designate or observe as a special holiday on which teachers or other school employees are not required to work the days on which general elections for members of the Illinois House of Representatives are held".

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The 1996 amendment by P.A. 89-622, effective August 9, 1996, in the first paragraph, in the second sentence, added at the end "except that in a school district having a population exceeding 500,000 the board of education may not designate or observe as a legal or special holiday the days on which general elections for members of the Illinois House of Representatives are held".

The 1997 amendment by P.A. 90-14, effective July 1, 1997, combined the amendments by P.A. 89-610 and P.A. 89-622; and in the first paragraph, in the first sentence, deleted "in a school district having a population exceeding 500,000 the board of education" preceding "may designate", deleted "not" preceding "designate or observe" and deleted "legal or" preceding "special holiday".

The 2002 amendment by P.A. 92-704, effective July 19, 2002, inserted "September 11 (September 11th Day of Remembrance)" in the second sentence of the second paragraph.

The 2007 amendment by P.A. 95-699, effective November 9, 2007, in the first paragraph deleted "except that no school board or board of education may designate or observe as a special holiday on which teachers or other school employees are not required to work the days on which general elections for members of the Illinois House of Representatives are held" from the end of the second sentence.

The 2009 amendment by P.A. 96-640, effective July 1, 2009, added the (a), (c), and (d) designations; added "except as provided in subsection (b) of this Section" in (a); added (b); and made stylistic changes.

CASE NOTES

Analysis

Constitutionality
- Good Friday
Application
Challenge
- Action Against Governor
Compensation

Constitutionality

- Good Friday

Given the unambiguously sectarian character of Good Friday, this section promotes one religion over others, and violates the establishment clause unless it has a secular justification; however, the State of Illinois failed to show that its law closing the public schools throughout the state on Good Friday was necessary to prevent a wasteful expenditure of educational resources. Metzl v. Leininger, 57 F.3d 618 (7th Cir. 1995).

Finding that Illinois' designation of Good Friday as a legal school holiday was primarily motivated by a desire to endorse the Christian faith and conveys the impermissible message that Christianity is a favored religion within the state of Illinois, the United States District Court declared the challenged portion of this section to be unconstitutional and entered a permanent injunction prohibiting its enforcement. Metzl v. Leininger, 850 F. Supp. 740 (N.D. Ill. 1994), aff'd, 57 F.3d 618 (7th Cir. 1995).

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Application

This section refers only to teaching and is not concerned with supervisory or chaperoning duties. District 300 Educ. Ass'n v. Board of Educ., 31 Ill. App. 3d 550, 334 N.E.2d 165 (2 Dist. 1975).

Challenge

- Action Against Governor

The Governor did not bear a sufficient connection with the enforcement of this section and, therefore, dismissal of constitutional challenge to section was granted. Weinstein v. Edgar, 826 F. Supp. 1165 (N.D. Ill. 1993).

Compensation

Although a school board has substantial discretion over the days its employees will be required to work, where a holiday designated by the President of the United States reduced the minimum number of pupil attendance days by one, the board exceeded its authority when it required teachers to work an additional day without pay. Purn v. Board of Educ., 106 Ill. App. 3d 790, 62 Ill. Dec. 796, 437 N.E.2d 33 (2 Dist. 1982).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Education Law," see 21 S. Ill. U.L.J. 815 (1997).

For note, "What's in a Name? Nothing Good if it's Friday: The Seventh Circuit Invalidates Good Friday Public School Holiday," see 29 J. Marshall L. Rev. 1031 (1996).

For article, "Teacher Contract Disputes and Contractual Continued Service," see 70 Ill. B.J. 250 (1981).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:75 Teacher days, hours, and holidays.

§ 105 ILCS 5/24-3. Attendance at teachers' institute

Sec. 24-3. Attendance at teachers' institute. The days in any school year spent by a teacher or educational support personnel during the term time spent in attendance upon a teachers' institute or equivalent professional educational experiences held under the direction of the county superintendent of schools shall be considered time expended in the service of the district and no deduction of wages shall be made for such attendance. The board may make a pro-rata deduction from the salary of any teacher or educational support personnel who fail or refuse to attend such institute, unless, in the case of educational support personnel, they are exempt from attending. The boards shall close the

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schools for county institute.

(Source: P.A. 85-697; 97-525, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-3.

Effect of Amendments. The 2011 amendment by P.A. 97-525, effective January 1, 2012, inserted "or educational support personnel" in the first and second sentences; added "unless, in the case of educational support personnel, they are exempt from attending" to the end of the second sentence; and made stylistic changes.

CASE NOTES

Analysis
Scheduling Teachers' Days
Warning
- Not Given

Scheduling Teachers' Days

A school district may use one of its four teachers' days on the last day of the school term (see also 105 ILCS 5/3-11). Howard v. Board of Educ., 160 Ill. App. 3d 309, 112 Ill. Dec. 131, 513 N.E.2d 545 (2 Dist. 1987).

Warning

- Not Given

The trial court was justified in deciding that the school board's order dismissing a teacher protected by the Teacher Tenure Law (see 105 ILCS 5/24-1) was not supported by substantial evidence and was against the manifest weight of evidence; therefore, the plaintiff was entitled to "reasonable warnings in writing" and was illegally discharged where he did not receive those warnings. Hauswald v. Board of Educ., 20 Ill. App. 2d 49, 155 N.E.2d 319 (1 Dist. 1958).

§ 105 ILCS 5/24-4. [Discrimination prohibited; violation; penalty]

Sec. 24-4. The color, race, sex, nationality, religion or religious affiliation of any applicant seeking employment either as a superintendent, principal, teacher or otherwise in the public elementary or high schools, shall not be considered either a qualification or

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disqualification for any such employment. Nor shall color, race, sex, nationality, religion or religious affiliation be considered in assigning any person to an office or position or to any school in the school system. If any member of a school board, superintendent, principal or other school officer violates the foregoing provision or directly or indirectly requires, asks or seeks information concerning the color, race, sex, nationality, religion or religious affiliation of any person in connection with his employment or assignment, or if any person, agency, bureau, corporation or association employed or maintained to obtain or aid in obtaining employment of the kind described, directly or indirectly requires, asks, seeks, indicates or transmits orally or in writing information concerning the color, race, sex, nationality, religion or religious affiliation of an applicant for such employment, with the intent to influence such appointment, he shall be liable to a penalty of not less than $100 nor more than $500, to be recovered by the person aggrieved thereby in any court of competent jurisdiction, and he shall be guilty of a Class B misdemeanor.

(Source: P.A. 81-1509.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-4.

CASE NOTES

Purpose

It is the purpose of the School Code (105 ILCS 5/1-1 et seq.) and the pertinent decisions of the court, to preclude any discrimination by a school board against any teacher who has once lawfully been placed in a given salary classification. Cohn v. Board of Educ., 118 Ill. App. 2d 453, 254 N.E.2d 803 (2 Dist. 1970).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 4:68 Public school employees.

§ 105 ILCS 5/24-4.1. Residence requirements

Sec. 24-4.1. Residence requirements. Residency within any school district shall not be considered in determining the employment or the compensation of a teacher or whether to retain, promote, assign or transfer that teacher.

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(Source: P.A. 82-381.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-4.1.

CASE NOTES

Analysis
Construction
- Teacher
Legislative Intent

Construction

- Teacher

Because the statutory ban on residency requirements for teachers under this section precedes 105 ILCS 5/24-11, the definition of "teacher" in 105 ILCS 5/24-11 does not apply to this section. Owen v. Board of Educ., 261 Ill. App. 3d 298, 198 Ill. Dec. 462, 632 N.E.2d 1073 (3 Dist. 1994).

Legislative Intent

The restrictive scope of this section indicates that the legislature intended the prohibition on residency requirements to be applied exclusively to teachers. Owen v. Board of Educ., 261 Ill. App. 3d 298, 198 Ill. Dec. 462, 632 N.E.2d 1073 (3 Dist. 1994).

§ 105 ILCS 5/24-5. Physical fitness and professional growth

Sec. 24-5. Physical fitness and professional growth. School boards shall require of new employees evidence of physical fitness to perform duties assigned and freedom from communicable disease, including tuberculosis. Such evidence shall consist of a physical examination and a tuberculin skin test and, if appropriate, an x-ray, made by a physician licensed in Illinois or any other state to practice medicine and surgery in all its branches, an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, or a physician assistant who has been delegated the authority to perform health examinations by his or her supervising physician not more than 90 days preceding time of presentation to the board and cost of such examination shall rest with the employee. The board may from time to time require an examination of any employee by

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a physician licensed in Illinois to practice medicine and surgery in all its branches, an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, or a physician assistant who has been delegated the authority to perform health examinations by his or her supervising physician and shall pay the expenses thereof from school funds. School boards may require teachers in their employ to furnish from time to time evidence of continued professional growth.

(Source: P.A. 78-344; 94-350, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-5.

Effect of Amendments. The 2005 amendment by P.A. 94-350, effective July 28, 2005, twice added language beginning "an advanced practice nurse" and ending "her supervising physician".

CASE NOTES

Analysis

Professional Growth
- Reasonableness
Psychiatric Examinations

Professional Growth

- Reasonableness

Boards of education may require continued professional growth of its teachers as a condition of continued tenure, so long as the requirement is reasonable in the light of the object to be obtained; requirement that a teacher having less than a bachelor's degree participate in a program of professional growth is neither arbitrary nor unreasonable. Last v. Board of Educ. of Community Unit Sch., 37 Ill. App. 2d 159, 185 N.E.2d 282 (2 Dist. 1962).

It is not unreasonable that the school authorities should require their employees to continue their training in order to keep abreast with the most modern and advanced methods; nor is is unreasonable that those who neglect further training should receive less compensation than those who seek to improve their efficiency and increase their value to the school corporation. Richards v. Board of Educ., 21 Ill. 2d 104, 171 N.E.2d 37 (1960).

Psychiatric Examinations

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A school district and a principal could do no less than require a medical/psychiatric examination of an elementary school custodian after receiving reports of paranoid and agitated behavior. Miller v. Champaign Community Unit Sch. Dist., No. 4, 983 F. Supp. 1201 (C.D. Ill. 1997).

Teacher had no state law property right to employment free of required psychiatric examinations, as the Illinois School Board of Education may require such examinations of its teachers. Sweeney v. Board of Educ., 746 F. Supp. 758 (N.D. Ill. 1990).

As long as the selection of a competent psychiatrist by the board is done in an unbiased way, the teacher has an obligation to submit to a psychiatric examination; the absence of a reference to a psychiatric examination in this section does not preclude a school board from exercising its authority to order a teacher to undergo such an examination. Tetmeir v. Board of Educ., 5 Ill. App. 3d 982, 284 N.E.2d 380 (1 Dist. 1972).

§ 105 ILCS 5/24-6. Sick leave

Sec. 24-6. Sick leave. The school boards of all school districts, including special charter districts, but not including school districts in municipalities of 500,000 or more, shall grant their full-time teachers, and also shall grant such of their other employees as are eligible to participate in the Illinois Municipal Retirement Fund under the "600-Hour Standard" established, or under such other eligibility participation standard as may from time to time be established, by rules and regulations now or hereafter promulgated by the Board of that Fund under Section 7-198 of the Illinois Pension Code, as now or hereafter amended [40 ILCS 5/7-198], sick leave provisions not less in amount than 10 days at full pay in each school year. If any such teacher or employee does not use the full amount of annual leave thus allowed, the unused amount shall be allowed to accumulate to a minimum available leave of 180 days at full pay, including the leave of the current year. Sick leave shall be interpreted to mean personal illness, quarantine at home, serious illness or death in the immediate family or household, or birth, adoption, or placement for adoption. The school board may require a certificate from a physician licensed in Illinois to practice medicine and surgery in all its branches, a chiropractic physician licensed under the Medical Practice Act of 1987 [225 ILCS 60/1 et seq.], an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, a physician assistant who has been delegated the authority to perform health examinations by his or her supervising physician, or, if the treatment is by prayer or spiritual means, a spiritual adviser or practitioner of the teacher's or employee's faith as a basis for pay during leave after an absence of 3 days for personal illness or 30 days for birth or as the school board may deem necessary in other cases. If the school board does require a certificate as a basis for pay during leave of less than 3 days for personal illness, the school board shall pay, from school funds, the expenses incurred by the teachers or other employees in obtaining the certificate. For paid leave for adoption or placement for adoption, the school board may require that the teacher or other employee provide evidence that the formal adoption process is underway, and such leave is limited to 30 days unless a longer leave has been negotiated with the exclusive bargaining representative.

If, by reason of any change in the boundaries of school districts, or by reason of the creation of a new school district, the employment of a teacher is transferred to a new or

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different board, the accumulated sick leave of such teacher is not thereby lost, but is transferred to such new or different district.

For purposes of this Section, "immediate family" shall include parents, spouse, brothers, sisters, children, grandparents, grandchildren, parents-in-law, brothers-in-law, sisters-in-law, and legal guardians.

(Source: P.A. 86-838; 94-350, § 5; 95-151, § 5; 96-51, § 5; 96-367, § 5; 96-1000, § 260.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-6.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 110.110.

Effect of Amendments. The 2005 amendment by P.A. 94-350, effective July 28, 2005, rewrote the first paragraph, adding language beginning "from a physician" and ending "her supervising physician", and deleting reference to "a spiritual healer".

The 2007 amendment by P.A. 95-151, effective August 14, 2007, added "or birth, adoption, or placement for adoption" in the third sentence of the first paragraph and made related changes.

The 2009 amendment by P.A. 96-51, effective July 23, 2009, in the first paragraph: in the third sentence substituted "the teacher's or employee's: for "such person's", inserted "or thirty days for birth", substituted "the school board" for "it", and made related changes; inserted "for personal illness" in the fourth sentence; and added the last sentence.

The 2009 amendment by P.A. 96-367, effective August 13, 2009, added "a chiropractic physician licensed under the Medical Practice Act of 1987" in the fourth sentence of the first paragraph.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, combined earlier multiple amendments to the section.

CASE NOTES

Analysis

Accumulation of Leave
Application
- Bargaining Agreement
- Pregnancy
Certificate

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- Requirement
Condition Precedent
Refutation of Illness

Accumulation of Leave

There is no public policy against accumulating 198.5 days of unused sick leave. Grant v. Board of Educ., 282 Ill. App. 3d 1011, 218 Ill. Dec. 356, 668 N.E.2d 1188 (1 Dist. 1996), appeal denied, 169 Ill. 2d 566, 221 Ill. Dec. 437, 675 N.E.2d 632 (1996).

Application

- Bargaining Agreement

The sick leave provisions in a collective bargaining agreement clearly fell within this section, as the agreement defined sick leave in a manner compatible with this Act, and stated that any such illness must be of such a nature as to prevent a teacher performing his duties. Deizman v. Board of Educ., 53 Ill. App. 3d 1050, 11 Ill. Dec. 803, 369 N.E.2d 257 (1 Dist. 1977).

- Pregnancy

General Assembly did not intend to include normal pregnancy and childbirth within sick pay coverage; however, certain complications during pregnancy and childbirth which are variations from normal limits, as medically established, may fall within the sick leave provisions. Winks v. Board of Educ. of Normal Community Unit Sch. Dist., 78 Ill. 2d 128, 34 Ill. Dec. 832, 398 N.E.2d 823 (1979).

Although school district offered sick leave to a teacher who had a Caesarean section and to a teacher who was hospitalized when she started to hemorrhage during pregnancy, these cases did not demonstrate an inconsistent application of sick leave policy where the district did not unilaterally grant sick leave for pregnancy. Winks v. Board of Educ. of Normal Community Unit Sch. Dist., 78 Ill. 2d 128, 34 Ill. Dec. 832, 398 N.E.2d 823 (1979).

Certificate

- Requirement

This section gives the Board of Education the discretion to adopt a sick leave policy requiring medical or spiritual certification after an absence of three days. Board of Educ. v. Ballweber, 96 Ill. 2d 520, 71 Ill. Dec. 704, 451 N.E.2d 858 (1983).

Condition Precedent

This section requires as a "condition precedent" for obtaining sick leave benefits that a teacher be otherwise available for duty, but for his illness. Deizman v. Board of Educ., 53 Ill. App. 3d 1050, 11 Ill. Dec. 803, 369 N.E.2d 257 (1 Dist. 1977).

Refutation of Illness

While the Board of Education apparently contested the fact that plaintiff was ill during his incarceration, there was no reason in the record to question his illness; the mere denial of

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plaintiff's illness in the Board's pleadings was not sufficient to raise it as a genuine issue of material fact. Deizman v. Board of Educ., 53 Ill. App. 3d 1050, 11 Ill. Dec. 803, 369 N.E.2d 257 (1 Dist. 1977).

LEGAL PERIODICALS

For article, "The Effect of Teachers' Part-Time Employment on the Aquisition and Retention of Tenure," see 69 Ill. B.J. 564 (1981).

For article, "Teacher Contract Disputes and Contractual Continued Service," see 70 Ill. B.J. 250 (1981).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:75 Teacher days, hours, and holidays.

§ 105 ILCS 5/24-6.1. Sabbatical leave

Sec. 24-6.1. Sabbatical leave. Every school board may grant a sabbatical leave of absence to a teacher, principal or superintendent performing contractual continued service, for a period of at least 4 school months but not in excess of one school term, for resident study, research, travel or other purposes designed to improve the school system. The grant of a sabbatical leave by a school board shall constitute a finding that the leave is deemed to benefit the school system by improving the quality and level of experience of the teaching force.

This leave may be granted after completion of at least 6 years of satisfactory service as a full time teacher, principal or superintendent and may again be granted after completion of a subsequent period of 6 years of such service. However, 2 sabbatical leaves, each consisting of at least 4 months but totaling no more than the equivalent of one school year, may be granted within a 6 year period. A leave granted for a period of one school year or less shall bar a further sabbatical leave until completion of 6 years additional satisfactory service, except that 2 leaves which total no more than the equivalent of one school year shall bar a further sabbatical leave only until the completion of 6 years additional satisfactory service following the completion of the first such leave. The leave shall be conditional upon a plan for resident study, research, travel or other activities proposed by the applicant and deemed by the board to benefit the school system, which plan shall be approved by the board and not thereafter modified without the approval of the board.

Before a leave is granted pursuant to this Section, the applicant shall agree in writing that if at the expiration of such leave he does not return to and perform contractual continued service in the district for at least one school year after his return, all sums of money received from the board during his sabbatical leave will be refunded to the board unless such return and performance is prevented by illness or incapacity.

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During absence pursuant to such leave, such teacher, principal or superintendent shall receive the same basic salary as if in actual service, except that there may be deducted therefrom an amount equivalent to the amount payable for substitute service. However, such salary after deduction for substitute service shall in no case be less than the minimum provided by Section 24-8 of this Act [105 ILCS 5/24-8] or 1/2 of the basic salary, whichever is greater. The person on leave shall not engage in any activity for which salary or compensation is paid unless the activity is directly related to the purpose for which the leave is granted and is approved by the board. A sabbatical leave may be granted to enable the applicant, if otherwise eligible, to accept scholarships for study or research. Unless justified by illness or incapacity, failure of any person granted a leave under this Section to devote the entire period to the purposes for which the leave was granted shall constitute a cause for removal from teaching service.

Upon expiration of a leave granted pursuant to this Section, and upon presentation of evidence satisfactory to the board showing compliance with the conditions of the leave, the teacher, principal or superintendent shall be returned to a position equivalent to that formerly occupied. The contractual continued service status of the person on sabbatical leave shall not be affected.

Absence during a leave granted pursuant to this Section shall not be construed as a discontinuance of service for any purpose, including progression on the salary schedule if one is in effect in the district. The board shall pay the contribution to the Teachers' Retirement System required of the person on leave computed on the annual full-time salary rate under which the member last received earnings immediately prior to the leave or a proportionate part of such rate for a partial year of sabbatical leave credit.

This Section in no way limits the power of the board to grant leaves for other purposes.

(Source: P.A. 83-186.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-6.1.

CASE NOTES

Analysis

Abuse of Leave
Construction
Discretion of Board
Limitation on Board
Return to Position

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Abuse of Leave

School board's decision to dismiss plaintiff was not contrary to the manifest weight of the evidence as plaintiff submitted plan of study which was approved by the board listing ten courses leading to a Master's Degree in Education, yet, plaintiff enrolled in only two of the ten courses which the board approved and did not advise her superiors of the change in her plans or the reduced number of courses that she was taking; evidence that plaintiff enrolled in only two approved courses and stopped taking these 56 days prior to the end of the school term, although her salary continued during this period, was sufficient to support the board's finding that her conduct was irremediable. Pittel v. Board of Educ., 20 Ill. App. 3d 580, 315 N.E.2d 179 (1 Dist. 1974).

Construction

Teacher tenure provisions are in derogation of the common law and, therefore, are required to be strictly construed in favor of the school district. Thrash v. Board of Educ., 106 Ill. App. 3d 182, 62 Ill. Dec. 68, 435 N.E.2d 866 (5 Dist. 1982).

Discretion of Board

A provision of a collective bargaining agreement between a school board and a teacher's union, whereby the board promised to grant a minimum number of sabbatical leaves, was not enforceable in the face of this section, which granted the board the discretionary power to award a sabbatical leave only upon a finding by the board that the leave would benefit the school district. Board of Educ. v. Murphy, 56 Ill. App. 3d 981, 14 Ill. Dec. 620, 372 N.E.2d 899 (1 Dist. 1978).

Limitation on Board

In the general conduct of its affairs, the school board has authority to reassign certified personnel to lesser positions, including lower paying positions, for bona fide reasons other than subterfuge designed to subvert the provisions of the teacher tenure law; however, this section operates to divest the school board of this authority where an employee has been granted and has successfully completed a sabbatical leave. Thrash v. Board of Educ., 106 Ill. App. 3d 182, 62 Ill. Dec. 68, 435 N.E.2d 866 (5 Dist. 1982).

Return to Position

Plaintiff failed to demonstrate his entitlement to reinstatement as an administrative aide under this section. Thrash v. Board of Educ., 106 Ill. App. 3d 182, 62 Ill. Dec. 68, 435 N.E.2d 866 (5 Dist. 1982).

This section appears to require, at a minimum, that teachers be returned as teachers, principals as principals, and superintendents as superintendents. Thrash v. Board of Educ., 106 Ill. App. 3d 182, 62 Ill. Dec. 68, 435 N.E.2d 866 (5 Dist. 1982).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:76 Teacher leaves and sabbaticals.

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§ 105 ILCS 5/24-6.2. Association president leave

Sec. 24-6.2. Association president leave. Each school board shall grant paid leaves of absence to the local association president of a state teacher association that is an exclusive bargaining agent in the district, or his or her teacher designee, for the purpose of attending meetings, workshops or seminars designated by the State Board of Education, the regional superintendent of schools, the general superintendent of schools in a school district subject to the provisions of Article 34 [105 ILCS 5/34-1 et seq.], or the superintendent of schools in any school district having a population of less than 500,000 inhabitants to deal with issues arising from the education reform legislation of the 84th General Assembly.

(Source: P.A. 84-1401.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-6.2.

§ 105 ILCS 5/24-6.3. Retirement trustee leave

Sec. 24-6.3. Retirement trustee leave. (a) Each school board employing a teacher who is an elected trustee of the Teachers' Retirement System of the State of Illinois shall make available to the elected trustee at least 20 days of paid leave of absence per year for the purpose of attending meetings of the System's Board of Trustees, committee meetings of such Board, and seminars regarding issues for which such Board is responsible. The Teachers' Retirement System of the State of Illinois shall reimburse affected school districts for the actual cost of hiring a substitute teacher during such leaves of absence.

(b) Each school board employing an employee who is an elected trustee of the Illinois Municipal Retirement Fund shall make available to the elected trustee at least 20 days of paid leave of absence per year for the purpose of attending meetings of the Fund's Board of Trustees, committee meetings of the Board of Trustees, and seminars regarding issues for which the Board of Trustees is responsible. The Illinois Municipal Retirement Fund may reimburse affected school districts for the actual cost of hiring a substitute employee during such leaves of absence.

(Source: P.A. 87-646; 96-357, § 5.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 24-6.3.

Effect of Amendments. The 2009 amendment by P.A. 96-357, effective August 13, 2009, substituted "Retirement" for "Teacher retirement" in the section heading; added the (a) designation; and added (b).

§ 105 ILCS 5/24-7. Discrimination on account of sex

Sec. 24-7. Discrimination on account of sex. In fixing salaries of certificated employees school boards shall make no discrimination on account of sex.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-7.

CASE NOTES

Construction With Other Laws

A charge of unlawful discrimination in the employment of school teachers must be brought under the Human Rights Act (775 ILCS 5/1-101 et seq.), as well as under the School Code (105 ILCS 5/1-1 et seq.), because the Human Rights Act contains public policy objectives that are not expressed in the School Code and that are applicable to all cases of employment discrimination. Danielson v. DuPage Area Vocational Educ. Auth., 595 F. Supp. 27 (N.D. Ill. 1984).

§ 105 ILCS 5/24-8. Minimum salary

Sec. 24-8. Minimum salary. In fixing the salaries of teachers, school boards shall pay those who serve on a full-time basis not less than a rate for the school year that is based upon training completed in a recognized institution of higher learning, as follows: for the school year beginning July 1, 1980 and thereafter, less than a bachelor's degree, $9,000; 120 semester hours or more and a bachelor's degree, $10,000; 150 semester hours or more and a master's degree, $11,000.

Based upon previous public school experience in this State or any other State, territory, dependency or possession of the United States, or in schools operated by or under the auspices of the United States, teachers who serve on a full-time basis shall have their salaries increased to at least the following amounts above the starting salary for a teacher in such district in the same classification: with less than a bachelor's degree, $750 after 5

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years; with 120 semester hours or more and a bachelor's degree, $1,000 after 5 years and $1,600 after 8 years; with 150 semester hours or more and a master's degree, $1,250 after 5 years, $2,000 after 8 years and $2,750 after 13 years.

For the purpose of this Section a teacher's salary shall include any amount paid by the school district on behalf of the teacher, as teacher contributions, to the Teachers' Retirement System of the State of Illinois.

If a school board establishes a schedule for teachers' salaries based on education and experience, not inconsistent with this Section, all certificated nurses employed by that board shall be paid in accordance with the provisions of such schedule.

For purposes of this Section, a teacher who submits a certificate of completion to the school office prior to the first day of the school term shall be considered to have the degree stated in such certificate.

(Source: P.A. 83-913.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-8.

CASE NOTES

Analysis

Accreditation Recognized
Discretion of Board
Legislative Intent
Previous Teaching Experience
- Graduate Assistantships
- Lack of Certification
- Other Districts
Purpose
Qualifications
- Anticipatory Classification
- Lacking

Accreditation Recognized

Any institution of higher education which is "recognized" under 105 ILCS 5/21-21 would clearly meet the requirement of a recognized institution for purposes of this section; however, this section precludes a school board from recognizing an advanced degree from some other institution. Thus, a school board may choose to adopt a policy recognizing accreditation by one of

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the regional associations, to meet the requirements of their own salary schedule but that choice is not imposed upon school boards by this section. Loyd v. Board of Educ., 49 Ill. App. 3d 996, 7 Ill. Dec. 686, 364 N.E.2d 977 (2 Dist. 1977).

Discretion of Board

Beyond the statutory minimum, classification of salaries according to a teacher's education, ability and experience at a certain position is left to the discretion of the Board of Education. Winters v. Board of Educ., 66 Ill. App. 3d 918, 23 Ill. Dec. 725, 384 N.E.2d 519 (4 Dist. 1978); Hansen v. Board of Educ., 150 Ill. App. 3d 979, 104 Ill. Dec. 204, 502 N.E.2d 467 (2 Dist. 1986).

The school board's discretion in determining salary schedules is not limited to drawing distinctions between advanced degrees, but must necessarily include distinctions based on experience subject always to the requirement that the school board act consistently with its own rules. Cook v. Board of Educ., 126 Ill. App. 3d 1013, 81 Ill. Dec. 605, 467 N.E.2d 305 (5 Dist. 1984).

Legislative Intent

All sections of this Code (105 ILCS 5/1-1 et seq.) should be read together to arrive at the legislative intent. Loyd v. Board of Educ., 49 Ill. App. 3d 996, 7 Ill. Dec. 686, 364 N.E.2d 977 (2 Dist. 1977).

Previous Teaching Experience

- Graduate Assistantships

It is not unreasonable that the school board would adopt a strict policy of denying credit to graduate assistantships, where there are inherent problems of determining which are equivalent to "past public school teaching experience" for which the board must give credit. Cook v. Board of Educ., 126 Ill. App. 3d 1013, 81 Ill. Dec. 605, 467 N.E.2d 305 (5 Dist. 1984).

- Lack of Certification

A teacher who could point to teaching experience in a public school district prior to his employment by the school board, even though he lacked certification and was an intern, clearly should have been given credit for such teaching when the school board liberally interpreted its rule for other teachers. Cook v. Board of Educ., 126 Ill. App. 3d 1013, 81 Ill. Dec. 605, 467 N.E.2d 305 (5 Dist. 1984).

- Other Districts

The Board of Education did not comply with the provisions of this section by refusing to allow credit for teaching experience acquired outside of its district. Hardway v. Board of Educ., 1 Ill. App. 3d 298, 274 N.E.2d 213 (5 Dist. 1971).

Purpose

Primary purpose of this section is to require that teachers with more than five years teaching experience, even though they have no degree, should be paid more than nondegree teachers having less than five years experience. Currier v. Board of Educ., 45 Ill. App. 3d 49, 3 Ill. Dec. 808, 359 N.E.2d 218 (3 Dist. 1977).

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This section classifies teachers on the basis of professional growth and stands for the proposition that teachers who have a greater amount and a higher degree of schooling are entitled to higher compensation. Richards v. Board of Educ., 21 Ill. 2d 104, 171 N.E.2d 37 (1960).

Qualifications

- Anticipatory Classification

A teacher must actually complete course work and possess the qualifications as a prerequisite for receiving the minimum salary commensurate with the qualifications. Board of Educ. v. Schmidt, 64 Ill. App. 3d 513, 21 Ill. Dec. 291, 381 N.E.2d 400 (3 Dist. 1978).

This section cannot be construed as authorizing a school board to elevate a teacher to a higher salaried classification in anticipation that the teacher will acquire higher qualifications by completing additional course work at some later date. Board of Educ. v. Schmidt, 64 Ill. App. 3d 513, 21 Ill. Dec. 291, 381 N.E.2d 400 (3 Dist. 1978).

- Lacking

A board of education had no authority to pay a teacher for qualifications she did not possess, hence issue was not a matter for arbitration since an arbitrator could not compel a school board to perform an act which was unlawful. Board of Educ. v. Schmidt, 64 Ill. App. 3d 513, 21 Ill. Dec. 291, 381 N.E.2d 400 (3 Dist. 1978).

LEGAL PERIODICALS

For article, "Teacher Contract Disputes and Contractual Continued Service," see 70 Ill. B.J. 250 (1981).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:17 School teachers and nurses.

§ 105 ILCS 5/24-9. Teachers duty free lunch period

Sec. 24-9. Teachers duty free lunch period. Every teacher in any school house where 2 or more teachers are employed whose duties require attendance at the school for 4 or more clock hours in any school day shall be entitled to and be allowed a duty free lunch period equal to the regular local school lunch period but not less than 30 minutes in each school day.

(Source: Laws 1961, p. 31.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 24-9.

CASE NOTES

Analysis

Equal to Student Lunch Period
Jurisdiction
Waiver of Period

Equal to Student Lunch Period

This section held controlling where the student lunch time was 45 minutes and the school board passed a resolution limiting the teachers to 30 minutes for lunch; therefore, the teachers were entitled to the same 45 minutes of lunch enjoyed by the students. Semmens v. Board of Educ., 215 Ill. App. 3d 407, 158 Ill. Dec. 948, 574 N.E.2d 1341 (4 Dist.), cert. denied, 141 Ill. 2d 560, 162 Ill. Dec. 509, 580 N.E.2d 135 (1991).

Jurisdiction

Jurisdiction in cases involving disputes between teachers and the school board was not exclusively within the Illinois Educational Labor Relations Board where no collective bargaining agreement existed. Semmens v. Board of Educ., 215 Ill. App. 3d 407, 158 Ill. Dec. 948, 574 N.E.2d 1341 (4 Dist.), cert. denied, 141 Ill. 2d 560, 162 Ill. Dec. 509, 580 N.E.2d 135 (1991).

Where a complaint merely alleged the existence of an educational employer and educational employees and the failure of the employer to comply with this section, and no mention was made of a collective bargaining agreement requiring arbitration or providing for a grievance procedure, and exclusive jurisdiction of the Illinois Educational Labor Relations Board under the terms of the Educational Labor Relations Act (115 ILCS 5/1 et seq.) was not shown on the face of the complaint, therefore, the circuit court had subject matter jurisdiction pursuant to the Code of Civil Procedure (735 ILCS 5/2-619(a)(1)). Semmens v. Board of Educ., 190 Ill. App. 3d 174, 137 Ill. Dec. 801, 546 N.E.2d 746 (4 Dist. 1989).

Waiver of Period

Where the question of a free lunch period was not covered by a collective bargaining agreement, no question of improper refusal to bargain was possible, because no collective bargaining agreement could provide for a lunch period violating this section; therefore, the circuit court had jurisdiction to proceed with plaintiffs' complaint alleging violations of this section. Semmens v. Board of Educ., 190 Ill. App. 3d 174, 137 Ill. Dec. 801, 546 N.E.2d 746 (4 Dist. 1989).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:75 Teacher days, hours, and holidays.

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§ 105 ILCS 5/24-11. Boards of Education - Boards of School Inspectors - Contractual continued service

Sec. 24-11. Boards of Education - Boards of School Inspectors - Contractual continued service. (a) As used in this and the succeeding Sections of this Article:

"Teacher" means any or all school district employees regularly required to be certified under laws relating to the certification of teachers.

"Board" means board of directors, board of education, or board of school inspectors, as the case may be.

"School term" means that portion of the school year, July 1 to the following June 30, when school is in actual session.

"Program" means a program of a special education joint agreement.

"Program of a special education joint agreement" means instructional, consultative, supervisory, administrative, diagnostic, and related services that are managed by a special educational joint agreement designed to service 2 or more school districts that are members of the joint agreement.

"PERA implementation date" means the implementation date of an evaluation system for teachers as specified by Section 24A-2.5 of this Code [105 ILCS 5/24A-2.5] for all schools within a school district or all programs of a special education joint agreement.

(b) This Section and Sections 24-12 through 24-16 of this Article [105 ILCS 5/24-12 through 105 ILCS 5/24-16] apply only to school districts having less than 500,000 inhabitants.

(c) Any teacher who is first employed as a full-time teacher in a school district or program prior to the PERA implementation date and who is employed in that district or program for a probationary period of 4 consecutive school terms shall enter upon contractual continued service in the district or in all of the programs that the teacher is legally qualified to hold, unless the teacher is given written notice of dismissal by certified mail, return receipt requested, by the employing board at least 45 days before the end of any school term within such period.

(d) For any teacher who is first employed as a full-time teacher in a school district or program on or after the PERA implementation date, the probationary period shall be one of the following periods, based upon the teacher's school terms of service and performance, before the teacher shall enter upon contractual continued service in the district or in all of the programs that the teacher is legally qualified to hold, unless the teacher is given written notice of dismissal by certified mail, return receipt requested, by the employing board at least 45 days before the end of any school term within such period:

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(1) 4 consecutive school terms of service in which the teacher receives overall annual evaluation ratings of at least "Proficient" in the last school term and at least "Proficient" in either the second or third school term;

(2) 3 consecutive school terms of service in which the teacher receives 3 overall annual evaluations of "Excellent"; or

(3) 2 consecutive school terms of service in which the teacher receives 2 overall annual evaluations of "Excellent" service, but only if the teacher (i) previously attained contractual continued service in a different school district or program in this State, (ii) voluntarily departed or was honorably dismissed from that school district or program in the school term immediately prior to the teacher's first school term of service applicable to the attainment of contractual continued service under this subdivision (3), and (iii) received, in his or her 2 most recent overall annual or biannual evaluations from the prior school district or program, ratings of "Proficient", with both such ratings occurring after the school district's or program's PERA implementation date.

If the teacher does not receive overall annual evaluations of "Excellent" in the school terms necessary for eligibility to achieve accelerated contractual continued service in subdivisions (2) and (3) of this subsection (d), the teacher shall be eligible for contractual continued service pursuant to subdivision (1) of this subsection (d). If, at the conclusion of 4 consecutive school terms of service that count toward attainment of contractual continued service, the teacher's performance does not qualify the teacher for contractual continued service under subdivision (1) of this subsection (d), then the teacher shall not enter upon contractual continued service and shall be dismissed. If a performance evaluation is not conducted for any school term when such evaluation is required to be conducted under Section 24A-5 [105 ILCS 5/24A-5] of this Code, then the teacher's performance evaluation rating for such school term for purposes of determining the attainment of contractual continued service shall be deemed "Proficient".

(e) For the purposes of determining contractual continued service, a school term shall be counted only toward attainment of contractual continued service if the teacher actually teaches or is otherwise present and participating in the district's or program's educational program for 120 days or more, provided that the days of leave under the federal Family Medical Leave Act that the teacher is required to take until the end of the school term shall be considered days of teaching or participation in the district's or program's educational program. A school term that is not counted toward attainment of contractual continued service shall not be considered a break in service for purposes of determining whether a teacher has been employed for 4 consecutive school terms, provided that the teacher actually teaches or is otherwise present and participating in the district's or program's educational program in the following school term.

(f) If the employing board determines to dismiss the teacher in the last year of the probationary period as provided in subsection (c) of this Section or subdivision (1) or (2) of subsection (d) of this Section, but not subdivision (3) of subsection (d) of this Section, the written notice of dismissal provided by the employing board must contain specific reasons for dismissal. Any full-time teacher who does not receive written notice from the employing board at least 45 days before the end of any school term as provided in this

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Section and whose performance does not require dismissal after the fourth probationary year pursuant to subsection (d) of this Section shall be re-employed for the following school term.

(g) Contractual continued service shall continue in effect the terms and provisions of the contract with the teacher during the last school term of the probationary period, subject to this Act and the lawful regulations of the employing board. This Section and succeeding Sections do not modify any existing power of the board except with respect to the procedure of the discharge of a teacher and reductions in salary as hereinafter provided. Contractual continued service status shall not restrict the power of the board to transfer a teacher to a position which the teacher is qualified to fill or to make such salary adjustments as it deems desirable, but unless reductions in salary are uniform or based upon some reasonable classification, any teacher whose salary is reduced shall be entitled to a notice and a hearing as hereinafter provided in the case of certain dismissals or removals.

(h) If, by reason of any change in the boundaries of school districts or by reason of the creation of a new school district, the position held by any teacher having a contractual continued service status is transferred from one board to the control of a new or different board, then the contractual continued service status of the teacher is not thereby lost, and such new or different board is subject to this Code with respect to the teacher in the same manner as if the teacher were its employee and had been its employee during the time the teacher was actually employed by the board from whose control the position was transferred.

(i) The employment of any teacher in a program of a special education joint agreement established under Section 3-15.14, 10-22.31 or 10-22.31a [105 ILCS 5/3-15.14, 105 ILCS 5/10-22.31 or 105 ILCS 5/10-22.31a] shall be governed by this and succeeding Sections of this Article. For purposes of attaining and maintaining contractual continued service and computing length of continuing service as referred to in this Section and Section 24-12, employment in a special educational joint program shall be deemed a continuation of all previous certificated employment of such teacher for such joint agreement whether the employer of the teacher was the joint agreement, the regional superintendent, or one of the participating districts in the joint agreement.

(j) For any teacher employed after July 1, 1987 as a full-time teacher in a program of a special education joint agreement, whether the program is operated by the joint agreement or a member district on behalf of the joint agreement, in the event of a reduction in the number of programs or positions in the joint agreement in which the notice of dismissal is provided on or before the end of the 2010-2011 school term, the teacher in contractual continued service is eligible for employment in the joint agreement programs for which the teacher is legally qualified in order of greater length of continuing service in the joint agreement, unless an alternative method of determining the sequence of dismissal is established in a collective bargaining agreement. For any teacher employed after July 1, 1987 as a full-time teacher in a program of a special education joint agreement, whether the program is operated by the joint agreement or a member district on behalf of the joint agreement, in the event of a reduction in the number of programs or positions in the joint agreement in which the notice of dismissal is provided

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during the 2011-2012 school term or a subsequent school term, the teacher shall be included on the honorable dismissal lists of all joint agreement programs for positions for which the teacher is qualified and is eligible for employment in such programs in accordance with subsections (b) and (c) of Section 24-12 of this Code and the applicable honorable dismissal policies of the joint agreement.

(k) For any teacher employed after July 1, 1987 as a full-time teacher in a program of a special education joint agreement, whether the program is operated by the joint agreement or a member district on behalf of the joint agreement, in the event of the dissolution of a joint agreement, in which the notice to teachers of the dissolution is provided during the 2010-2011 school term, the teacher in contractual continued service who is legally qualified shall be assigned to any comparable position in a member district currently held by a teacher who has not entered upon contractual continued service or held by a teacher who has entered upon contractual continued service with a shorter length of contractual continued service. Any teacher employed after July 1, 1987 as a full-time teacher in a program of a special education joint agreement, whether the program is operated by the joint agreement or a member district on behalf of the joint agreement, in the event of the dissolution of a joint agreement in which the notice to teachers of the dissolution is provided during the 2011-2012 school term or a subsequent school term, the teacher who is qualified shall be included on the order of honorable dismissal lists of each member district and shall be assigned to any comparable position in any such district in accordance with subsections (b) and (c) of Section 24-12 of this Code and the applicable honorable dismissal policies of each member district.

(l) The governing board of the joint agreement, or the administrative district, if so authorized by the articles of agreement of the joint agreement, rather than the board of education of a school district, may carry out employment and termination actions including dismissals under this Section and Section 24-12.

(m) The employment of any teacher in a special education program authorized by Section 14-1.01 through 14-14.01 [105 ILCS 5/14-1.01 through 105 ILCS 5/14-14.01], or a joint educational program established under Section 10-22.31a [105 ILCS 5/10-22.31a], shall be under this and the succeeding Sections of this Article, and such employment shall be deemed a continuation of the previous employment of such teacher in any of the participating districts, regardless of the participation of other districts in the program.

(n) Any teacher employed as a full-time teacher in a special education program prior to September 23, 1987 in which 2 or more school districts participate for a probationary period of 2 consecutive years shall enter upon contractual continued service in each of the participating districts, subject to this and the succeeding Sections of this Article, and, notwithstanding Section 24-1.5 of this Code [105 ILCS 5/24-1.5], in the event of the termination of the program shall be eligible for any vacant position in any of such districts for which such teacher is qualified.

(Source: P.A. 85-1163; 85-1209; 85-1440; 90-548, § 5-915; 90-653, § 10; 97-8, § 5.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-11.

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, in the introductory language substituted a colon for a comma; in the third paragraph, in the first sentence, substituted "45" for "60" and added the exception at the end and deleted the third and fourth sentences regarding extension of probationary period; in the fourth paragraph, in the first sentence, inserted "not" preceding "completing", substituted "last year" for "first year" and substituted "45" for "60"; and in the seventh paragraph, in the first sentence, added the exception at the end.

The 1998 amendment by P.A. 90-653, effective July 29, 1998, in the third full paragraph, inserted "as a full-time teacher" in the first sentence, and added the last two sentences.

The 2011 amendment by P.A. 97-8, effective June 13, 2011, rewrote the section.

CASE NOTES

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Constitutionality

Former Teacher Tenure Act (see now this section), was found constitutional. Anderson v. Board of Educ., 390 Ill. 412, 61 N.E.2d 562 (1945).

In General

This section and 105 ILCS 5/24-12 deal with the procedural rights of teachers in contractual continued service (tenure). Champaign County Bank & Trust Co. v. Brewer, 63 Ill. App. 3d 490, 20 Ill. Dec. 377, 380 N.E.2d 54 (4 Dist. 1978).

Attorney Fees

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Trial court erred in awarding attorney fees to an employee who was not given the requisite notice of not being rehired, pursuant to Illinois School Code, 105 ILCS 5/24-11, as fees under the Attorneys Fees in Wage Actions Act, at 705 ILCS 225/1, were not applicable to claims for back pay in wrongful discharge actions; rather, such fees were only awarded for wages that were earned and due and owing. Bill v. Bd. of Educ., 351 Ill. App. 3d 47, 285 Ill. Dec. 784, 812 N.E.2d 604, 2004 Ill. App. LEXIS 784 (1 Dist. 2004), appeal denied, 211 Ill. 2d 571, Ill. Dec. , 823 N.E.2d 962 (2004).

Teacher may recover attorney fees although there is no statutory authority for the award of attorney fees to wrongfully discharged probationary teacher. Bessler v. Board of Educ., 69 Ill. 2d 191, 13 Ill. Dec. 23, 370 N.E.2d 1050 (1977).

Collective Bargaining Agreement

The termination of a probationary teacher's services, effected in compliance with this section, was not rendered invalid by reason of a school board's failure to comply with the provisions of a collective bargaining agreement, because neither the powers conferred nor the rights granted by this section were restricted or expanded by the provisions of the collective bargaining agreement. Illinois Educ. Ass'n v. Board of Educ., 62 Ill. 2d 127, 340 N.E.2d 7 (1975).

Arbitrator did not have authority to remedy violation of collective bargaining agreement by ordering reinstatement of aggrieved teachers. Board of Educ. v. Bremen Dist. 228 Joint Faculty Ass'n, 101 Ill. 2d 115, 77 Ill. Dec. 783, 461 N.E.2d 406 (1984).

Consecutive Terms

Although plaintiff was employed as a probationary teacher for more than two years chronologically, under the plain wording of this section she did not complete two consecutive school terms, did not gain contractual continued service status, and was not entitled to a hearing prior to dismissal. Strejcek v. Board of Educ., 78 Ill. App. 3d 400, 33 Ill. Dec. 942, 397 N.E.2d 448 (1 Dist. 1979).

Construction

Because the statutory ban on residency requirements for teachers under 105 ILCS 5/24-4.1 precedes this section the definition of "teacher" in this section does not apply to 105 ILCS 5/24-4.1. Owen v. Board of Educ., 261 Ill. App. 3d 298, 198 Ill. Dec. 462, 632 N.E.2d 1073 (3 Dist. 1994).

While this section affords teachers protection against arbitrary and capricious action on the part of a school board, it must be strictly interpreted so as to allow local school boards to operate with some flexibility. Booker v. Hutsonville Sch., 107 Ill. App. 3d 357, 63 Ill. Dec. 288, 437 N.E.2d 937 (5 Dist. 1982).

This Act must be strictly construed in order not to unduly interfere with the responsibility of local boards to efficiently operate their educational systems. Johnson v. Board of Educ., 85 Ill. 2d 338, 53 Ill. Dec. 234, 423 N.E.2d 903 (1981).

The mode of dismissing or removing teachers from their positions is a matter expressly regulated by this section, which must be substantially followed if a dismissal is to be valid and effective. People ex rel. Head v. Board of Educ., 95 Ill. App. 3d 78, 50 Ill. Dec. 397, 419 N.E.2d 505 (1 Dist. 1981).

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This teacher tenure law must be construed consistently with its prime purpose of protecting teachers who have qualified for its protection, and not strictly construed in favor of defendant school boards. Graham v. Board of Educ., 15 Ill. App. 3d 1092, 305 N.E.2d 310 (5 Dist. 1973).

This section created a new liability and should be strictly construed in favor of persons sought to be subjected to its operation. Biehn v. Tess, 340 Ill. App. 140, 91 N.E.2d 160 (1 Dist. 1950); Eveland v. Board of Educ., 340 Ill. App. 308, 92 N.E.2d 182 (3 Dist. 1950); Meredith v. Board of Educ., 7 Ill. App. 2d 477, 130 N.E.2d 5 (3 Dist. 1955); Hauswald v. Board of Educ., 20 Ill. App. 2d 49, 155 N.E.2d 319 (1 Dist. 1958).

Contractual Continued Service

- Abandonment

Abandonment of a teacher's contract requires much more than a letter expressing a desire to teach half-time, or asking the board to use its judgment in determining what is best for the school; abandonment usually involves a clear manifestation of unwillingness to teach. Brown v. Board of Educ., 38 Ill. App. 3d 403, 347 N.E.2d 791 (5 Dist. 1976).

- Acceptance of Offer

It was not established that a tenured teacher accepted a school board's offer of a new contract; the record did not show that the teacher cashed or even received a paycheck during the period between the time the offer was received and became effective and when the teacher resigned. Arduini v. Board of Educ., 92 Ill. 2d 197, 65 Ill. Dec. 281, 441 N.E.2d 73 (1982).

Tenured teacher was not considered to have accepted an offer of a new contract by merely continuing his teaching duties; teacher was already in the course of the school year when he received the offer, and he had the right to continue to teach under the terms of his prior contract without entering into a new contract. Arduini v. Board of Educ., 92 Ill. 2d 197, 65 Ill. Dec. 281, 441 N.E.2d 73 (1982).

A salary distinction, based upon the teachers' signing or refusing to sign a new contract, was not arbitrary, capricious or unreasonable; however, teachers who did not sign new contracts were entitled to the salary increment effective under the old contract for an additional year's experience. Davis v. Board of Educ., 19 Ill. App. 3d 644, 312 N.E.2d 335 (2 Dist. 1974).

The provisions with respect to tenure created an automatic contract by operation of law between the school board and the tenured teacher. Allen v. Maurer, 6 Ill. App. 3d 633, 286 N.E.2d 135 (4 Dist. 1972).

If an offer of the Board of Education was properly made and unconditionally accepted, it would be in force according to its terms; but if not accepted or conditionally accepted, then the provisions of this section would apply, and the teacher's employment would continue under terms and provisions of the contract with the teacher during the last school term of the probationary period. Donahoo v. Board of Educ., 413 Ill. 422, 109 N.E.2d 787 (1952).

- Breach

Where school district failed to give teacher timely statutory notice that she would not be reemployed for the school term and teacher had a one-year contract, school district's refusal to permit her to perform her part of the contract constituted a breach of contract and effected its termination. Bessler v. Board of Educ., 69 Ill. 2d 191, 13 Ill. Dec. 23, 370 N.E.2d 1050 (1977).

The measure of damages for a breach of a teacher's employment contract is the salary provided in the contract reduced by such sums as the wrongfully discharged teacher had earned by reasonable diligence or could have earned in other employment subsequent to the discharge; the

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employer has the burden of showing that the employee could or did have other earnings subsequent to the wrongful discharge and that those earnings stemmed from employment incompatible with the employment from which he was wrongfully discharged. Bessler v. Board of Educ., 69 Ill. 2d 191, 13 Ill. Dec. 23, 370 N.E.2d 1050 (1977).

- Contract Enforcement

Where plaintiff, at the time when one school district was absorbed by another district, had a valid contract with first district to teach school for the year on the same terms as provided for in her contract for the preceding year, the second district became liable on the contract. Lippincott v. Board of Educ., 342 Ill. App. 642, 97 N.E.2d 566 (3 Dist. 1951).

- Damages

Teacher was entitled to the amount she would have earned for the school term as damages for breach of contract, and costs. Bessler v. Board of Educ., 69 Ill. 2d 191, 13 Ill. Dec. 23, 370 N.E.2d 1050 (1977).

- Eligibility

In order to attain contractual continued service, plaintiff was required to be employed full-time in the district for two consecutive school terms; a "school term" is that portion of the school year from July 1 to the following June 30 when school is in actual session. Bessler v. Board of Educ., 69 Ill. 2d 191, 13 Ill. Dec. 23, 370 N.E.2d 1050 (1977).

It is no infringement upon the constitutional rights for any school board to decline to employ a teacher in the schools; it is free to contract with whomsoever it chooses. Anderson v. Board of Educ., 390 Ill. 412, 61 N.E.2d 562 (1945).

- Renewal

Where a tenured teacher does not enter into a specific written contract with the Board of Education that employed him for the previous school year, then he is deemed automatically to be under continued contractual service for the same terms and conditions and rate of pay that were set forth in his contract for the previous year. Allen v. Maurer, 6 Ill. App. 3d 633, 286 N.E.2d 135 (4 Dist. 1972).

- Retirement

Having entered upon contractual continued service, the plaintiff's employment as a teacher in the defendant district could have continued, barring dismissal, until the end of the term following his 65th birthday; his employment subsequent to that time would be on an annual basis. Pearson v. Board of Educ., 12 Ill. App. 2d 44, 138 N.E.2d 326 (3 Dist. 1956).

Dismissal

- Administrative Review

The Administrative Review Act (735 ILCS 5/3-101 et seq.) is applicable only to the review of dismissals of tenured teachers after a hearing is held in accordance with the provisions of 105 ILCS 5/24-12. Brown v. Board of Educ., 38 Ill. App. 3d 403, 347 N.E.2d 791 (5 Dist. 1976).

The scope of review of the Board of Education is limited to determining whether a decision finds support in the evidence. Keyes v. Board of Educ., 20 Ill. App. 2d 504, 156 N.E.2d 763 (3 Dist. 1959).

- Age Discrimination

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School board's decision to terminate the general counsel because it was more cost-effective under the counsel's employment contract, 105 ILCS 5/24-11, than to pay the counsel the age-based retirement benefits for a public school employee, set forth in 40 ILCS 5/16-132, alleged a sufficient cause of action under the Age Discrimination in Employment Act, 29 U.S.C.S. § 621 et seq. to survive a motion to dismiss under 735 ILCS 5/2-615. Kiser v. Naperville Cmty. Unit, 227 F. Supp. 2d 954, 2002 U.S. Dist. LEXIS 16361 (N.D. Ill. 2002).

- De Facto Superintendent

Where technically there was no superintendent for a school district, but there was a de facto superintendent who performed substantially all the duties of that office, the Board had a chief administrative officer who consulted with the Board and, thus, defendant's contention that the absence of a formally appointed chief administrator did not render the Board's action in terminating defendant's employment a nullity. Allen v. Thornblad, 42 Ill. App. 3d 554, 1 Ill. Dec. 235, 356 N.E.2d 361 (4 Dist. 1976).

- Discussions

Simply because discussion of reasons for dismissal of a nontenured school teacher took place in closed sessions did not make such discussions irrelevant nor ineffective. Verticchio v. Divernon Community Unit Sch. Dist., 198 Ill. App. 3d 202, 144 Ill. Dec. 379, 555 N.E.2d 738 (4 Dist. 1990).

- Laches

Trial court erred in granting summary judgment pursuant to 735 ILCS 5/2-1005(c) to a probationary teacher who was not rehired for the following school year and who did not receive notice of same, as required by § 24-11 of the Illinois School Code, 105 ILCS 5/24-11, as there was a question of fact as to whether the employer was prejudiced by the delay; although laches applied to such an action under the per se six-month rule where the teacher sought backpay wages, which was not in conflict with the "catch-all" five year limitations period of 735 ILCS 5/13-205, there was only an inherent prejudice that existed in such situations, not an absolute presumption of prejudice where certain facts were not established. Bill v. Bd. of Educ., 351 Ill. App. 3d 47, 285 Ill. Dec. 784, 812 N.E.2d 604, 2004 Ill. App. LEXIS 784 (1 Dist. 2004), appeal denied, 211 Ill. 2d 571, Ill. Dec. , 823 N.E.2d 962 (2004).

Where a teacher had no clear right of action in mandamus so long as proceedings attempting to discharge him were pending, and where the school board failed to show a change of position or hardship that would justify the application of the doctrine of laches, the suit was not barred by laches. Betebenner v. Board of Educ., 336 Ill. App. 448, 84 N.E.2d 569 (4 Dist. 1949).

- Mandamus

A writ of manadmus would have been proper had the plaintiff established that the school board failed to dismiss him in accordance with the statute; however, since the plaintiff failed to bring himself within this tenure statute, the trial court properly denied issuance of the writ. Howard v. Board of Educ., 160 Ill. App. 3d 309, 112 Ill. Dec. 131, 513 N.E.2d 545 (2 Dist. 1987).

Because a probationary teacher has no procedural right to appear before the employer Board of Education to question the reasonableness or truthfulness of the reasons for dismissal, a writ of mandamus will issue only where the reasons on their face are clearly arbitrary or without substantial basis in fact. Burns v. Board of Educ. of Fairfield Sch., 47 Ill. App. 3d 589, 5 Ill. Dec. 882, 362 N.E.2d 353 (5 Dist. 1977).

A teacher could bring a mandamus proceeding against a board of education to determine whether he was entitled to contractual continued service and to compel the board to employ him, because the issue of whether he had served probationary period and was thus entitled to

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continued service was not litigated at proceeding prior to dismissal. Betebenner v. Board of Educ., 336 Ill. App. 448, 84 N.E.2d 569 (4 Dist. 1949).

The teacher hired when the appellee was prevented from teaching was not a necessary party in mandamus action to compel the Board of Education to employ two teachers that were not rehired. Betebenner v. Board of Educ., 336 Ill. App. 448, 84 N.E.2d 569 (4 Dist. 1949).

A suit that was, for all practical purposes, a suit against the high school district was properly brought against the school board and the board members in their official capacities. Betebenner v. Board of Educ., 336 Ill. App. 448, 84 N.E.2d 569 (4 Dist. 1949).

- Nontenured Teacher

A probationary teacher lacked a property interest in his job for due process purposes and it was irrelevant whether his notice of dismissal violated procedural requirements. Kyle v. Morton High Sch., 144 F.3d 448 (7th Cir. 1998).

The School Code distinguishes between the dismissal of probationary teachers and tenured teachers; while a tenured teacher is entitled to notice, hearing, and a bill of particulars as to the cause of his dismissal, the nontenured teacher need only be provided with a specific reason for his dismissal. Howard v. Board of Educ., 160 Ill. App. 3d 309, 112 Ill. Dec. 131, 513 N.E.2d 545 (2 Dist. 1987).

A probationary teacher cannot use a petition for writ of mandamus to test the reasons for his dismissal unless the reasons on their face are clearly arbitrary or without substantial basis in fact. Jackson v. Board of Educ., 63 Ill. App. 3d 671, 20 Ill. Dec. 364, 380 N.E.2d 41 (5 Dist. 1978).

The Board of Education's alleged compliance with statute regarding discharge of nontenured teachers was totally irrelevant to dismissed teacher's federal constitutional rights. Austin v. Board of Educ., 562 F.2d 446 (7th Cir. 1977).

School board, authorized by statute to dismiss and retain probationary teachers entirely in its discretion, may not delegate this power by agreeing to dismiss teachers only for just cause and further agreeing to allow binding arbitration as to whether or not there is just cause; the very issue of whether just cause in fact exists is to be determined by the school board and the school board may only agree to follow certain procedures before making a determination, which only the school board can make. Lockport Area Special Educ. Coop. v. Lockport Area Special Educ. Coop. Ass'n, 33 Ill. App. 3d 789, 338 N.E.2d 463 (3 Dist. 1975).

The only statutory requirements for the dismissal of a nontenured (probationary) teacher are that dismissal be on the grounds enumerated in 105 ILCS 5/10-22.4, and that the teacher receive written notice from the employing board at least 60 days before the end of any school term whether he will be re-employed for the following school term. Wesclin Educ. Ass'n v. Board of Educ., 30 Ill. App. 3d 67, 331 N.E.2d 335 (5 Dist. 1975).

Where a plaintiff failed to state a cause of action for denial of due process and where he did not possess an interest in continued employment, within the terms of this section, plaintiff was not entitled to the statutory contractual service. Kennedy v. Community Unit School, 23 Ill. App. 3d 382, 319 N.E.2d 243 (4 Dist. 1974).

Under this section, a school board may terminate a non-tenured teacher for any reason at all; therefore, a non-tenured teacher's claim of entitlement to his position is insufficient to constitute a property interest within the meaning of the Fourteenth Amendment (see U.S. Const., Amend XIV). Miller v. School Dist. No. 167, 500 F.2d 711 (7th Cir. 1974).

Where 60 day notice was given to all first year teachers at the school notifying them that because of insufficient funds all teachers who had not entered upon contractual continued service would be dismissed, but the board subsequently sent reinstatement letters to 86 of the dismissed

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teachers, dismissal of the remaining teachers was proper and the literal requirements of the statute were met. Rockford Educ. Ass'n v. Board of Educ., 11 Ill. App. 3d 78, 296 N.E.2d 100 (2 Dist. 1973).

Where Illinois law was unclear as to whether a probationary teacher had a property interest sufficient to require a hearing and the full procedural due process before re-employment for another year could be denied, a federal district court abstained from deciding civil rights action and the plaintiff was left to resort to state courts on a question arising under state law. Miller v. School Dist. Number 167, 354 F. Supp. 922 (N.D. Ill. 1973), aff'd, 495 F.2d 658 (7th Cir. 1974).

- Procedure

The mode of dismissing teachers is expressly regulated by statute and must be substantially followed if dismissal is to be effective and valid. Verticchio v. Divernon Community Unit Sch. Dist., 198 Ill. App. 3d 202, 144 Ill. Dec. 379, 555 N.E.2d 738 (4 Dist. 1990).

School board did not err in not appointing an independent hearing officer to hear the charges against plaintiff and in not having given her a notice to remedy the charges prior to instituting dismissal proceedings. McCutcheon v. Board of Educ., 94 Ill. App. 3d 993, 50 Ill. Dec. 343, 419 N.E.2d 451 (1 Dist. 1981), cert. denied, 455 U.S. 1018, 102 S. Ct. 1713, 72 L. Ed. 2d 135 (1982).

Dismissing or removing teachers from their positions is a matter expressly regulated by statute, which must be substantially followed if a dismissal is to be valid and effective. Seim v. Board of Educ., 21 Ill. App. 3d 386, 315 N.E.2d 282 (4 Dist. 1974).

- Proper

Where charges against plaintiff established a pattern of disrespect for school policy and insubordination to school personnel in the face of repeated attempts to persuade her to follow established procedures and policy, then the repeated nature of this behavior, threats and attacks on school personnel, and inappropriate dress in the school constituted a sufficient basis for the finding of irremediable dismissal. McCutcheon v. Board of Educ., 94 Ill. App. 3d 993, 50 Ill. Dec. 343, 419 N.E.2d 451 (1 Dist. 1981), cert. denied, 455 U.S. 1018, 102 S. Ct. 1713, 72 L. Ed. 2d 135 (1982).

Where plaintiff as superintendent of the school district, (1) had been the subject of much controversy, conflict and dissension, resulting in a condition detrimental to the best interests of the students in the district's schools, (2) had actively participated in fomenting such controversy, conflict and dissension, (3) and had failed to properly co-operate with the Board of Education and his subordinate administrators and teachers, such dismissal was not against the weight of the evidence. Keyes v. Board of Educ., 20 Ill. App. 2d 504, 156 N.E.2d 763 (3 Dist. 1959).

- Review

In a dismissal of a school teacher, the fact that a decision maker, such as a school board member, had taken a position prior to the hearing did not disqualify him as a decision maker and there is a strong presumption of honesty and integrity in those serving as adjudicators. Verticchio v. Divernon Community Unit Sch. Dist., 198 Ill. App. 3d 202, 144 Ill. Dec. 379, 555 N.E.2d 738 (4 Dist. 1990).

The initial determination of nurse's tenure status for purposes of applying the "reduction in personnel" contract provisions in bargaining agreement between the faculty association where nurse was a member and school board should have been done by an arbitrator, subject to ultimate judicial review in the event of an appeal. Board of Educ. v. Faculty Ass'n, 120 Ill. App. 3d 930, 76 Ill. Dec. 363, 458 N.E.2d 1017 (1 Dist. 1983).

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The test for determining whether a cause for dismissal is irremediable is whether damage has been done to the students, faculty or school, and whether the conduct causing the damage could have been corrected, had the teacher been warned by her superiors. McCutcheon v. Board of Educ., 94 Ill. App. 3d 993, 50 Ill. Dec. 343, 419 N.E.2d 451 (1 Dist. 1981), cert. denied, 455 U.S. 1018, 102 S. Ct. 1713, 72 L. Ed. 2d 135 (1982).

The determination whether defendant school district acted in good faith in demoting a principal is for the trier of fact; the trial court's decision under such circumstances is not to be disturbed unless contrary to the manifest weight of the evidence. Lane v. Board of Educ., 38 Ill. App. 3d 742, 348 N.E.2d 470 (4 Dist. 1976).

The discretionary power to determine whether the interests of the schools required the plaintiff's dismissal is vested in the Board of Education; the court is not authorized to interfere with the exercise of such power unless the determination upon which it rests is manifestly against the weight of the evidence. Keyes v. Board of Educ., 20 Ill. App. 2d 504, 156 N.E.2d 763 (3 Dist. 1959).

- School Principal

As former similar provision (see now this section) did not apply to the plaintiff in his capacity as superintendent-principal, the fact that Board of Education followed the procedure outlined in that act to dismiss the plaintiff could not have put him under the provisions of the act. Biehn v. Tess, 340 Ill. App. 140, 91 N.E.2d 160 (1 Dist. 1950).

- Specific Reason

The term "specific reason" is defined to mean that it must fairly apprise the teacher of the alleged deficiency upon which the employer-school board bases its action, and with sufficient specificity to enable the teacher to refute the charge. Wade v. Granite City Community Unit Sch., 71 Ill. App. 2d 34, 218 N.E.2d 19 (5 Dist. 1966).

- Standing to Object

A local high school education association, an unincorporated association, had standing to maintain an action against a school board for refusal to allow a probationary teacher continued contractual service pursuant to this section. Graham v. Board of Educ., 15 Ill. App. 3d 1092, 305 N.E.2d 310 (5 Dist. 1973).

- Tenured Teacher

The tenure provisions are not intended to preclude dismissal where a teacher's conduct is detrimental to the operation of the school. Aulwurm v. Board of Educ., 43 Ill. App. 3d 963, 2 Ill. Dec. 772, 357 N.E.2d 1215 (5 Dist. 1976), rev'd on other grounds, 67 Ill. 2d 434, 10 Ill. Dec. 571, 367 N.E.2d 1337 (1977).

Duty of Board

A school board is charged not only with providing for the continuum of educational services, but with the fiscal management incidental thereto. Bond v. Board of Educ., 81 Ill. 2d 242, 42 Ill. Dec. 136, 408 N.E.2d 714 (1980).

Effective Date of Contracts

Following the rules of statutory construction and utilizing the plain meaning of subsection (g) of this section, the legislature, by reenacting the School Reform Act, intended to create a contract with the subdistrict superintendents effective until June 30, 1991, therefore, since the language of

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subsection (g) granted subdistrict superintendents a contract by operation of law, the subsequent actions of the Interim Board which resulted in their termination or reassignment violated those contractual rights. Kaszubowski v. Board of Educ., 248 Ill. App. 3d 451, 188 Ill. Dec. 39, 618 N.E.2d 609 (1 Dist.), appeal denied, 152 Ill. 2d 561, 190 Ill. Dec. 891, 622 N.E.2d 1208 (1993).

Extracurricular Positions

Extracurricular positions do not have to be filled by certified teachers, and those holding the extracurricular positions, regardless of certification, have no tenure rights to those positions. Board of Educ. v. Illinois Educ. Labor Relations Bd., 175 Ill. App. 3d 347, 125 Ill. Dec. 34, 529 N.E.2d 1110 (4 Dist. 1988).

The tenured teacher reinstatement provisions and other sections of this Code dealing with tenure do not make specific reference to coaching or other extracurricular assignments carried out by otherwise tenured teachers. School Dirs. v. Kossoff, 95 Ill. App. 3d 26, 50 Ill. Dec. 550, 419 N.E.2d 658 (2 Dist. 1981).

Hearing

Where the transfer of a teacher into or out of a position that he is qualified to fill also includes a corresponding salary reduction, the teacher is granted a statutory right to notice and a hearing before an impartial hearing officer to insure that the reduction is uniform or based upon a reasonable classification. Taylor v. State Bd. of Educ., 56 Ill. App. 3d 387, 14 Ill. Dec. 324, 372 N.E.2d 129 (4 Dist. 1978).

No means of review of the reasons for dismissal is afforded a probationary teacher; tenured teachers, on the other hand, have the right to a pretermination hearing by the board of education and review of its final decision by a circuit court through the Administrative Review Act (735 ILCS 5/3-101 et seq.). Burns v. Board of Educ. of Fairfield Sch., 47 Ill. App. 3d 589, 5 Ill. Dec. 882, 362 N.E.2d 353 (5 Dist. 1977).

Petition for writ of mandamus filed by teacher dismissed without a hearing and ordering her reinstatement and award of back pay stated a cause of action, and thus the trial court was in error when it granted the school board's motion to dismiss. Smith v. Board of Educ., 52 Ill. App. 3d 647, 9 Ill. Dec. 862, 367 N.E.2d 296 (5 Dist. 1977).

The lack of a predischarge hearing against the plaintiff did not violate due process of law, where the contract between the Faculty Association and the Board of Trustees of College under which plaintiff worked, gained tenure and was terminated, incorporated this Act, and the Board followed the procedures prescribed by the Act. Barszcz v. Board of Trustees, 400 F. Supp. 675 (N.D. Ill. 1975), aff'd, 539 F.2d 715 (7th Cir. 1976), cert. dismissed, 429 U.S. 1080, 97 S. Ct. 827, 50 L. Ed. 2d 801 (1977).

The plaintiff did not have a property interest in re-employment sufficient to require defendant to give her a hearing when it declined to renew her contract; thus, she held no "property" interest protected by procedural due process. Lavin v. Board of Educ., 22 Ill. App. 3d 555, 317 N.E.2d 717 (1 Dist. 1974).

Jurisdiction

The Education Labor Relations Board had jurisdiction to hear a dispute where the Illinois Educational Labor Relations Act (115 ILCS 5/1 et seq.) was not being erroneously applied retroactively. Faculty Ass'n of Dist. 205 v. Illinois Educ. Labor Relations Bd., 175 Ill. App. 3d 880, 125 Ill. Dec. 390, 530 N.E.2d 548 (4 Dist. 1988).

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Nontenured Teachers

While a tenured teacher is entitled to notice, hearing, and a bill of particulars, the nontenured teacher need only be provided with a specific reason for his dismissal. Verticchio v. Divernon Community Unit Sch. Dist., 198 Ill. App. 3d 202, 144 Ill. Dec. 379, 555 N.E.2d 738 (4 Dist. 1990).

Notice

District did not commit an unfair labor practice in not renewing the contracts of three nontenured probationary teachers and, thus, the state educational labor relations board should not have found that the district was obligated to arbitrate the matter. The collective bargaining agreement provided that nontenured teachers could only challenge such decisions through the board of education level of the grievance procedure and the district was only required pursuant to 105 ILCS 5/24-11 to provide the teachers with written notice stating the reasons for dismissal, both of which occurred. Niles Twp. High Sch. Dist. 219 v. Ill. Educ. Labor Rels. Bd., 379 Ill. App. 3d 22, 318 Ill. Dec. 195, 883 N.E.2d 29, 2007 Ill. App. LEXIS 1291 (1 Dist. 2007).

- Actual Notice

Where plaintiff teacher was notified of a school board's action by receiving the board meeting minutes, even though the teacher did not receive notice by registered mail, he had actual knowledge that his probationary period had been extended; thus the notice requirement had been satisfied and the teacher had not acquired tenure. Glover v. Board of Educ., 62 Ill. 2d 122, 340 N.E.2d 4 (1975).

- De Facto

A teacher who has served her entire probationary period cannot be dismissed merely by being notified that she will be hired to teach the following year on a part-time basis. Williams v. Board of Educ., 166 Ill. App. 3d 765, 117 Ill. Dec. 603, 520 N.E.2d 954 (5 Dist. 1988).

- Delegation

Where evidence showed that school board passed a resolution to terminate employment, and they had the board's secretary send the notice of dismissal, then the board gave the secretary no discretion, nor did they abdicate their authority but they simply gave her a ministerial task, since the board may delegate ministerial duties, the notice comported with this section. Allen v. Thornblad, 42 Ill. App. 3d 554, 1 Ill. Dec. 235, 356 N.E.2d 361 (4 Dist. 1976).

- Errors in Notice

Where defendant actually received written notice and notice specified that his employment was being terminated because his job had been abolished, his contention that the omission of the word "administrative" in resolution and board's failure to put the resolution on the agenda was groundless. Allen v. Thornblad, 42 Ill. App. 3d 554, 1 Ill. Dec. 235, 356 N.E.2d 361 (4 Dist. 1976).

- Insufficient

Plain language of § 24-11 of the Illinois School Code, 105 ILCS 5/24-11, requires a school board to provide written notice to a teacher regarding whether he or she will be rehired for the following school year within 45 days of the end of the current school year, and where a probationary teacher's contract indicated simply that it was "null and void" at the end of the school term, such did not constitute sufficient notice under that provision in the contract. Bill v. Bd. of Educ., 351 Ill.

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App. 3d 47, 285 Ill. Dec. 784, 812 N.E.2d 604, 2004 Ill. App. LEXIS 784 (1 Dist. 2004), appeal denied, 211 Ill. 2d 571, Ill. Dec. , 823 N.E.2d 962 (2004).

Where plaintiff was not dismissed but was in fact rehired, though for a reduced teaching load, the reduction of plaintiff's teaching load did not substantially comply with the notice of dismissal mandated by this section. Williams v. Board of Educ., 166 Ill. App. 3d 765, 117 Ill. Dec. 603, 520 N.E.2d 954 (5 Dist. 1988).

This section focuses on a notice of dismissal as the operative fact in preventing tenure from arising, a reduction to part-time does not effect that notice Pennell v. Board of Educ., 137 Ill. App. 3d 139, 91 Ill. Dec. 886, 484 N.E.2d 445 (5 Dist. 1985).

Where petitioner did not receive notice of non-renewal of her employment within a 60 day period before the end of the school term, and where mere mailing of the notice by respondent was not sufficient, respondent did not comply with this section. People ex rel. Head v. Board of Educ., 95 Ill. App. 3d 78, 50 Ill. Dec. 397, 419 N.E.2d 505 (1 Dist. 1981).

Where notice of dismissal was insufficient in that no specific reason therefore was assigned, upon the completion of the second term the plaintiff acquired contractual continued service status. Donahoo v. Board of Educ., 413 Ill. 422, 109 N.E.2d 787 (1952).

- Not Required

A teacher without probationary status is not covered by the notice provisions found in the third paragraph of this section. Booker v. Hutsonville Sch., 107 Ill. App. 3d 357, 63 Ill. Dec. 288, 437 N.E.2d 937 (5 Dist. 1982).

School board was not required by this section to first advise plaintiff of the complaints against her so as to give her an opportunity to correct her deficiencies before removal proceedings were started. McCutcheon v. Board of Educ., 94 Ill. App. 3d 993, 50 Ill. Dec. 343, 419 N.E.2d 451 (1 Dist. 1981), cert. denied, 455 U.S. 1018, 102 S. Ct. 1713, 72 L. Ed. 2d 135 (1982).

This section did not require the school board to give plaintiff 60 day notice prior to the end of the school term nor grant him a hearing prior to his transfer and reduction of salary because the reduction of plaintiff's salary was made to conform plaintiff's salary in his new position with that paid to other teachers in similar positions with similar qualifications and classification, and salary difference was not improperly motivated; therefore, the guaranteed procedural provisions were not applicable. Hicks v. Board of Educ., 77 Ill. App. 3d 974, 33 Ill. Dec. 683, 397 N.E.2d 16 (5 Dist. 1979).

There is no requirement in this section that a formal evaluation be performed before a non tenured teacher's probation may be extended. Jackson v. Board of Educ., 63 Ill. App. 3d 671, 20 Ill. Dec. 364, 380 N.E.2d 41 (5 Dist. 1978).

- Purpose

The section gives teachers considerable protection, since it requires that the board take action in order to prevent tenure and treats silence as resulting in tenure. Johnson v. Board of Educ., 85 Ill. 2d 338, 53 Ill. Dec. 234, 423 N.E.2d 903 (1981).

The purpose of the requirement that notice of non-renewal be sent by registered mail is to provide documentation that the notice was received and thereby avoid potential controversies concerning whether the notice was conclusively given. People ex rel. Head v. Board of Educ., 95 Ill. App. 3d 78, 50 Ill. Dec. 397, 419 N.E.2d 505 (1 Dist. 1981).

The required specific reasons required to be in the notice clearly inform the teacher of the alleged deficiencies which the school board has determined warrants dismissal, in order to enable the teacher to refute the charge. Seim v. Board of Educ., 21 Ill. App. 3d 386, 315 N.E.2d 282 (4 Dist. 1974).

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- Re-Employment

Where Board of Education claimed that a decision not to re-employ teacher was made by the Board in an executive session prior to the sending of the notice of termination, however, there was no claim made that this was an official Board action, and the Board further contended that the public action taken by the Board in its meeting after the statutory deadline constituted ratification of the executive session and the action of the personnel director, the doctrine of ratification was inapplicable; a statutory duty was imposed on the Board which it failed to perform within the time allowed by the statute, and trial court was in error in entering summary judgment for the Board of Education. Bessler v. Board of Educ., 11 Ill. App. 3d 210, 296 N.E.2d 89 (3 Dist. 1973).

Some member of the administrative staff may communicate the Board of Education's action with regard to re-employment to a teacher under the terms of statute. Bessler v. Board of Educ., 11 Ill. App. 3d 210, 296 N.E.2d 89 (3 Dist. 1973).

- Reasons for Dismissal

Whether a school board's explanation that it refused to renew a teacher's contract because the teacher was unsatisfactory in the area of instructional skills was sufficient under 105 ILCS 5/24-11 could not be decided in a motion to dismiss the teacher's complaint. The court could not determine whether the board provided any other relevant information to the teacher. Roller v. Bd. of Educ., F. Supp. 2d , 2006 U.S. Dist. LEXIS 2269 (N.D. Ill. Jan. 18, 2006).

This section does not require the reasons for dismissal be read in public at open session in order for the notice to be effective. Verticchio v. Divernon Community Unit Sch. Dist., 198 Ill. App. 3d 202, 144 Ill. Dec. 379, 555 N.E.2d 738 (4 Dist. 1990).

The statutory requirement of an outline of corrective actions was not intended to be satisfied by a recitation of the reasons for the extension alone, but neither does it require boards to provide a list of specific acts the doing of which would assure that the probationary teacher would receive tenure. Mann v. Board of Educ., 82 Ill. App. 3d 161, 37 Ill. Dec. 455, 402 N.E.2d 345 (5 Dist. 1980).

The "specific reason" requirement as found in this section means that the district must fairly apprise the teacher of the alleged deficiency upon which the employer board bases its action, and with sufficient specificity to enable the teacher to refute the charge. Burns v. Board of Educ. of Fairfield Sch., 47 Ill. App. 3d 589, 5 Ill. Dec. 882, 362 N.E.2d 353 (5 Dist. 1977).

The purpose of the specificity requirement is to prevent arbitrary dismissals which state vague or nebulous reasons or no reason at all, and to compel school boards to state the actual reason for the dismissal of a probationary teacher, rather than an indefinite one such as "failure to perform adequately;" a specific instance of inadequate performance of duties is statutorily required to be given in the notice of dismissal. Burns v. Board of Educ. of Fairfield Sch., 47 Ill. App. 3d 589, 5 Ill. Dec. 882, 362 N.E.2d 353 (5 Dist. 1977).

Teachers who have not acquired tenure by teaching for two consecutive school terms are only entitled to notice of dismissal stating specific reasons given by registered mail at least 60 days before end of the probationary period. Seim v. Board of Educ., 21 Ill. App. 3d 386, 315 N.E.2d 282 (4 Dist. 1974).

It was mandatory that a notice of dismissal state the specific reason underlying the decision; a notice containing no reason for dismissal failed to comply with the statute. Donahoo v. Board of Educ., 413 Ill. 422, 109 N.E.2d 787 (1952).

- Sufficient

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Where the stated reasons for the plaintiff's dismissal contained specific reference to his supervisory duties, and perceived deficiencies in job performance were discussed on several occasions prior to dismissal, the specificity required of the notice provision was satisfied. Howard v. Board of Educ., 160 Ill. App. 3d 309, 112 Ill. Dec. 131, 513 N.E.2d 545 (2 Dist. 1987).

The legal sufficiency of a notice of probation extension must, of necessity, be determined on the facts present in an individual case. Mann v. Board of Educ., 82 Ill. App. 3d 161, 37 Ill. Dec. 455, 402 N.E.2d 345 (5 Dist. 1980).

Although several of the points contained in a notice that a teacher's probationary period was being extended were somewhat vague, other suggestions such as "better control of students," "more challenges for good music students" and "special help for less capable students," were sufficient to provide him with an outline of the corrective actions which were necessary for him to take in order to complete successfully his probationary period. Mann v. Board of Educ., 82 Ill. App. 3d 161, 37 Ill. Dec. 455, 402 N.E.2d 345 (5 Dist. 1980).

Where plaintiffs were initially hired by association as social workers, worked in several school districts within the association, and the association utilized plaintiff's services, evaluated their performance, and made the decision within the prescribed time not to renew plaintiffs' contracts, providing plaintiffs with actual notice more than 60 days before the end of the school term in the required manner with the required information, the only defect was that the administrative school board did not pass on the matter until several days later and consequently plaintiffs suffered no prejudice because the administrative school board had no discretion to exercise in the matter. Seim v. Board of Educ., 21 Ill. App. 3d 386, 315 N.E.2d 282 (4 Dist. 1974).

Where the notice given plaintiff advised him that his employment was being terminated because his certificate did not meet the defendant school district's requirements for the fulfillment of his present position, the court properly deduced that the notice was sufficiently specific to meet the statutory requirement of this section. Wade v. Granite City Community Unit Sch., 71 Ill. App. 2d 34, 218 N.E.2d 19 (5 Dist. 1966).

- Timeliness

Institute days are part of the school term; the duration of the school term for purposes of the timeliness of a 60 day notice under this section includes institute days. Howard v. Board of Educ., 160 Ill. App. 3d 309, 112 Ill. Dec. 131, 513 N.E.2d 545 (2 Dist. 1987).

Part-Time Teaching

Part-time teaching agreed to by an experienced teacher who has tenure at the time of agreement may not cause that teacher to lose tenure, but part-time teaching cannot be relied upon by a nontenured teacher to establish tenure. Pennell v. Board of Educ., 137 Ill. App. 3d 139, 91 Ill. Dec. 886, 484 N.E.2d 445 (5 Dist. 1985).

Where a teacher was not inexperienced, and she worked full-time for seven years with students, she did not lose her tenure as a result of being reduced to part-time; however, the Board of Education retained the discretion to determine her teaching position. Pennell v. Board of Educ., 137 Ill. App. 3d 139, 91 Ill. Dec. 886, 484 N.E.2d 445 (5 Dist. 1985).

Powers of Board

- Options

The tap root of the tenure doctrine is full-time teaching; where at the end of a probationary period, the school board has three options, to terminate, grant tenure, or to offer employment in a less

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than full-time capacity. Johnson v. Board of Educ., 87 Ill. App. 3d 441, 42 Ill. Dec. 644, 409 N.E.2d 139 (4 Dist. 1980), aff'd, 85 Ill. 2d 338, 53 Ill. Dec. 234, 423 N.E.2d 903 (1981).

- Reduction of Status

Where plaintiff was a teacher and also the only librarian, and the Board of Education made a motion to employ a half-time librarian, the only reasonable interpretation was that she was reduced to half-time, and the Board's action complied with this section. Pennell v. Board of Educ., 137 Ill. App. 3d 139, 91 Ill. Dec. 886, 484 N.E.2d 445 (5 Dist. 1985).

- Teaching Assignments

The discretion of the school board to make assignments must be exercised with extreme caution in order not to subvert a fundamental purpose of this Act, that being the protection of teachers from political, partisan, capricious, fickle, and irregular decision-making. Pennell v. Board of Educ., 137 Ill. App. 3d 139, 91 Ill. Dec. 886, 484 N.E.2d 445 (5 Dist. 1985).

Courts cannot allow school boards, whether in good or bad faith, to rearrange teaching assignments in ways which circumvent the purpose and spirit of the tenure laws. Kuykendall v. Board of Educ., 111 Ill. App. 3d 809, 67 Ill. Dec. 530, 444 N.E.2d 766 (1 Dist. 1982).

Probationary Period

- Aide

This section does not authorize duties of a teacher aide, even if unsupervised, as counting toward the necessary two year probationary period. Strejcek v. Board of Educ., 78 Ill. App. 3d 400, 33 Ill. Dec. 942, 397 N.E.2d 448 (1 Dist. 1979).

- Extension

The General Assembly in enacting this section did not intend for the optional third year of probation to be required for all new teachers, but instead that the probationary period could be extended if the Board of Education exercised its discretion in the case of an individual; under this analysis, a Board's policy of automatic extension of the probationary period is contrary to the intent of this section. Graham v. Board of Educ., 15 Ill. App. 3d 1092, 305 N.E.2d 310 (5 Dist. 1973).

- Federal Program

Since local boards have no control over the continuation of positions which are wholly federally funded, teachers in programs that are wholly federally funded are not full-time teachers within the meaning of this section. Kuykendall v. Board of Educ., 111 Ill. App. 3d 809, 67 Ill. Dec. 530, 444 N.E.2d 766 (1 Dist. 1982).

When a school district employee teaches in a wholly federally funded program, that employment cannot be considered part of a probationary year. Kuykendall v. Board of Educ., 111 Ill. App. 3d 809, 67 Ill. Dec. 530, 444 N.E.2d 766 (1 Dist. 1982).

- Illustrative Cases

Where, for eight of the ten years petitioner taught, she was employed and paid in a half-time position, and while she was employed and paid on a full-time basis for two school years, they were not consecutive, then, even though petitioner considered her teaching efforts to be a full-time activity and that she was employed in planning and preparation in addition to the classroom teaching periods, she failed to complete the two consecutive full-time probationary years necessary for tenure. Evans v. Benjamin Sch., 134 Ill. App. 3d 875, 89 Ill. Dec. 637, 480 N.E.2d 1380 (2 Dist. 1985).

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A teacher who had taught two consecutive school years as a full-time teacher did not attain tenure when she was re-employed in a part-time position the following year. Johnson v. Board of Educ., 87 Ill. App. 3d 441, 42 Ill. Dec. 644, 409 N.E.2d 139 (4 Dist. 1980), aff'd, 85 Ill. 2d 338, 53 Ill. Dec. 234, 423 N.E.2d 903 (1981).

Although plaintiff was employed as a probationary teacher for more than two years chronologically, under the plain wording of this section, she did not complete two consecutive school terms and did not gain contractual continued service status, and was not entitled to a hearing prior to dismissal. Strejcek v. Board of Educ., 78 Ill. App. 3d 400, 33 Ill. Dec. 942, 397 N.E.2d 448 (1 Dist. 1979).

Where plaintiff was employed as a full-time teacher on October 28, 1970, and taught for the remainder of the 1970-71 school term and was re-employed and taught in the district for the 1971-72 school term, she had not been employed by school district as a full-time teacher for two consecutive school terms and therefore she did not attain contractual continued service. Bessler v. Board of Educ., 69 Ill. 2d 191, 13 Ill. Dec. 23, 370 N.E.2d 1050 (1977).

- Legislative Intent

Since the teacher tenure provisions provides that tenured service continues in effect for the last school term of the probationary period, the legislature must have intended that tenure result from service in positions over which local school boards have control. Kuykendall v. Board of Educ., 111 Ill. App. 3d 809, 67 Ill. Dec. 530, 444 N.E.2d 766 (1 Dist. 1982).

Argument that the provision for extending probation indirectly prohibits dismissing a third year probationary teacher for reasons other than those which caused the extension of probation, would mean that when a nontenured teacher's probation is extended, he is granted de facto tenure as to all of those facets of his performance not described as unsatisfactory, which would not only be beyond the meaning of this section, but would also be in direct contradiction to the legislative intention of providing an extra chance for those second year probationary teachers whom the school board believes show promise, but whose teaching does not meet the standards for tenure. Jackson v. Board of Educ., 63 Ill. App. 3d 671, 20 Ill. Dec. 364, 380 N.E.2d 41 (5 Dist. 1978).

The purpose of this section was to provide probationary teachers with additional job protection that they formerly did not possess; the use of the January 1 date in this section was intended only to classify and define what the legislature intended by full-time probationary teachers who would be protected by the amendment. It was not intended to shorten the two full consecutive years of employment necessary for acquiring tenure. Bessler v. Board of Educ., 43 Ill. App. 3d 322, 1 Ill. Dec. 920, 356 N.E.2d 1253 (3 Dist. 1976), rev'd on other grounds, 69 Ill. 2d 191, 13 Ill. Dec. 23, 370 N.E.2d 1050 (1977).

The purpose of a probationary period under this Code is to give the school board an opportunity to observe and evaluate the teacher's work; the board has, by statute, the right to two consecutive school years of probationary period to determine whether the probationary teacher is in the eyes of the board qualified to enter upon contractual continued service. Elder v. Board of Educ., 60 Ill. App. 2d 56, 208 N.E.2d 423 (1 Dist. 1965).

- Means to Correct Deficiencies

Where there was a material issue of fact regarding whether the superintendent met with a teacher of schools after the school board meeting and informed her of the reasons for her probation and the corrective actions she needed to take, the district court's decision granting summary judgment was reversed. Matthiessen v. Board of Educ., 857 F.2d 404 (7th Cir. 1988).

The minimum requirements which must be met include providing notice of deficiencies and of necessary corrective actions set out in such a manner that the teacher understands what it is he or she must do to successfully complete the probationary period and achieve a tenured position;

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this does not mean that specific methods for achieving the necessary goals must be listed. Matthiessen v. Board of Educ., 857 F.2d 404 (7th Cir. 1988).

Where notice to a probationary teacher extended his probationary period for one additional year, but failed to make him aware of the means to correct the deficiencies listed in the notice, the teacher automatically attained contractual continued service status. Brunstrom v. Board of Educ., 52 Ill. App. 3d 653, 10 Ill. Dec. 456, 367 N.E.2d 1065 (3 Dist. 1977).

The right of a teacher to be informed about causes that are remediable, and to have an opportunity to correct such causes, is extremely important and one that goes to the heart of the tenure system. Waller v. Board of Educ., 13 Ill. App. 3d 1056, 302 N.E.2d 190 (5 Dist. 1973).

- Part-Time Teaching

Because the legislature has specifically required full-time teaching for the requisite probationary period, part-time teaching cannot be relied upon by a nontenured teacher to establish tenure; the school board lacked authority to grant tenure to petitioner absent her compliance with the requirements of this section. Evans v. Benjamin Sch., 134 Ill. App. 3d 875, 89 Ill. Dec. 637, 480 N.E.2d 1380 (2 Dist. 1985).

A teacher's part-time business education appointment did not confirm her status as a regular member of the high school faculty and was insufficient to count towards her probationary period. Kuykendall v. Board of Educ., 111 Ill. App. 3d 809, 67 Ill. Dec. 530, 444 N.E.2d 766 (1 Dist. 1982).

Part-time teaching is not probationary service which can be relied upon by a nontenured teacher to establish tenure. Kuykendall v. Board of Educ., 111 Ill. App. 3d 809, 67 Ill. Dec. 530, 444 N.E.2d 766 (1 Dist. 1982).

- Reinstatement

Where an arbitrator's action conflicted with the purpose as well as the language of this section, which reserved determinations regarding teacher retention for the school board, the remedy of reinstatement for a third probationary term was invalid and not binding, and the school district committed no unfair labor practice in refusing to reinstate the teacher. Midwest Cent. Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 277 Ill. App. 3d 440, 213 Ill. Dec. 894, 660 N.E.2d 151 (1 Dist. 1995), appeal denied, 167 Ill. 2d 556, 217 Ill. Dec. 665, 667 N.E.2d 1058 (1996).

Allowing an arbitrator to impose a remedy of reinstatement to a third year probationary period would be in clear derogation of the policy contemplated under this section since such discretion is granted solely to the employing board. Midwest Cent. Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 277 Ill. App. 3d 440, 213 Ill. Dec. 894, 660 N.E.2d 151 (1 Dist. 1995), appeal denied, 167 Ill. 2d 556, 217 Ill. Dec. 665, 667 N.E.2d 1058 (1996).

- Substitute Teachers

Substitute teaching is not probationary service which can be relied upon by a nontenured teacher to establish tenure. Kuykendall v. Board of Educ., 111 Ill. App. 3d 809, 67 Ill. Dec. 530, 444 N.E.2d 766 (1 Dist. 1982).

- Temporary Appointment

A teacher's initial nine week appointment in the high school to replace a teacher on leave was not included as part of her first probationary year where the position was full-time in terms of hours per day and teaching load, but was merely temporary. Kuykendall v. Board of Educ., 111 Ill. App. 3d 809, 67 Ill. Dec. 530, 444 N.E.2d 766 (1 Dist. 1982).

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Custom of defendant school district to treat administrative employees, such as principals, as a separate and distinct class, and an understanding between the defendant and plaintiff that plaintiff was to perform solely administrative duties, did not suffice to create a property right in plaintiff's employment as principal. Lane v. Board of Educ., 38 Ill. App. 3d 742, 348 N.E.2d 470 (4 Dist. 1976).

Purpose

- Academic Quality

This Act was intended to bolster the quality of academic programs in Illinois schools by ensuring that qualified teachers with several years' teaching experience are not replaced for arbitrary, political, or partisan reasons; it was certainly not intended to improve the caliber of play on football fields and baseball diamonds in the state. Smith v. Board of Educ., 708 F.2d 258 (7th Cir. 1983).

- Full-Time Teaching

This section emphasizes the necessary relationship between full-time teaching and tenure. Johnson v. Board of Educ., 85 Ill. 2d 338, 53 Ill. Dec. 234, 423 N.E.2d 903 (1981).

Full-time teaching in the probationary period not only allows the Board of Education to observe the teacher under the stress of a full work load, but also gives the teacher experience; full-time teaching after the probationary period and in the early stages of a teaching career continues to assure the board that skills will be properly developed so that the teacher retained will become an experienced, seasoned teacher. Johnson v. Board of Educ., 85 Ill. 2d 338, 53 Ill. Dec. 234, 423 N.E.2d 903 (1981).

- Job Security

The purpose of the tenure system is to afford tenured teachers procedural safeguards, guarantee continuous service on the basis of merit for able, experienced teachers, and prevent dismissal for political, partisan or capricious reasons. Evans v. Benjamin Sch., 134 Ill. App. 3d 875, 89 Ill. Dec. 637, 480 N.E.2d 1380 (2 Dist. 1985).

One purpose of the tenure system is to provide teachers of ability and experience some degree of job security. Hankenson v. Board of Educ., 15 Ill. App. 2d 440, 146 N.E.2d 194 (2 Dist. 1957); Johnson v. Board of Educ., 87 Ill. App. 3d 441, 42 Ill. Dec. 644, 409 N.E.2d 139 (4 Dist. 1980), aff'd, 85 Ill. 2d 338, 53 Ill. Dec. 234, 423 N.E.2d 903 (1981); Kuykendall v. Board of Educ., 111 Ill. App. 3d 809, 67 Ill. Dec. 530, 444 N.E.2d 766 (1 Dist. 1982).

The tenure system is intended to provide continuity and stability for students, provide some degree of job security, thus affording teachers the ability to pursue a career free from arbitrary hiring and firing, attract teachers of high quality, and retain experienced teachers. Johnson v. Board of Educ., 85 Ill. 2d 338, 53 Ill. Dec. 234, 423 N.E.2d 903 (1981); Pennell v. Board of Educ., 137 Ill. App. 3d 139, 91 Ill. Dec. 886, 484 N.E.2d 445 (5 Dist. 1985).

Undoubtedly the objective of the legislature in passing this Act was to improve the school system by assuring teachers of experience and ability a continuance of service and a re-hiring based on merit, while reserving in the Board of Education the right to have a two-year period to judge a teacher's character and qualifications before granting tenure status and the right to dismiss or refuse to re-hire a teacher for good cause. Burns v. Board of Educ. of Fairfield Sch., 47 Ill. App. 3d 589, 5 Ill. Dec. 882, 362 N.E.2d 353 (5 Dist. 1977).

The purpose of this section is to provide a two-year probationary period for the employee to prove himself, and for the employer to evaluate the employee's performance before being committed to

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the relationship of contractual continued service. Seim v. Board of Educ., 21 Ill. App. 3d 386, 315 N.E.2d 282 (4 Dist. 1974).

This Act was enacted for the protection of teachers of experience and designed to eliminate political, partisan or capricious considerations by a Board of Education in dealing with them. Rockford Educ. Ass'n v. Board of Educ., 11 Ill. App. 3d 78, 296 N.E.2d 100 (2 Dist. 1973).

This law appears to have been designed primarily for the protection of tenured teachers, evidencing an intent to give first year probationary teachers the least amount of protection and the board the maximum amount of flexibility in dealing with such teachers so long as the notice requirement is fulfilled. Rockford Educ. Ass'n v. Board of Educ., 11 Ill. App. 3d 78, 296 N.E.2d 100 (2 Dist. 1973).

This law was enacted primarily for the protection of Illinois teachers who, prior to its enactment in 1941, served at the pleasure of boards of directors of education; its object was to improve Illinois school systems by assuring teachers of experience and ability continuous service and a rehiring based upon merit rather than failure to rehire upon reasons that are political, partisan or capricious. Hauswald v. Board of Educ., 20 Ill. App. 2d 49, 155 N.E.2d 319 (1 Dist. 1958); Allen v. Maurer, 6 Ill. App. 3d 633, 286 N.E.2d 135 (4 Dist. 1972).

This law was enacted for the purpose of improving the educational facilities of this state by assuring teachers of experience and ability a continuous service dependent upon merit and by preventing dismissal for reasons that are political, partisan or capricious; under this law a teacher's position does not depend upon the personal whims of individual citizens. Lusk v. Community Consol. Sch., 20 Ill. App. 2d 252, 155 N.E.2d 650 (2 Dist. 1959).

The legislature has declared the public policy of this State to be that in cases where a decrease in the number of teachers employed is necessary, qualified tenure teachers are to be preferred for retention over qualified nontenure teachers. Hankenson v. Board of Educ., 15 Ill. App. 2d 440, 146 N.E.2d 194 (2 Dist. 1957).

The purpose of the General Assembly in enacting this section is apparent, for it is in the best interests of the schools that competent and capable teachers be continued in their employment; it adds to the stability of the employment and works to the advantage not only of the public but to the teachers and those employed with the administration of school affairs. Pack v. Sporleder, 394 Ill. 130, 67 N.E.2d 198 (1946).

- School Board

If the legislature had wanted school board rules to have the same binding effect in other areas within the state, it would have said so. Allen v. Thornblad, 42 Ill. App. 3d 554, 1 Ill. Dec. 235, 356 N.E.2d 361 (4 Dist. 1976).

Where the General Assembly provided that the board itself, which appoints the chief administrative officer, should "establish tenure policies for the employment of teachers and administrative personnel," it intended, in using this language, to give the board authority to establish its own policies with respect to tenure which in its broadest sense included the limited tenure afforded by a contract calling for a term in excess of one year. Hostrop v. Board of Junior College Dist. No. 515, 523 F.2d 569 (7th Cir. 1975), cert. denied, 425 U.S. 963, 96 S. Ct. 1748, 48 L. Ed. 2d 208 (1976).

Raises

Where the record reflected ample evidence of plaintiff's shortcomings as an instructor and numerous attempts at remediation by the school board, the board's action in electing not to grant plaintiff a raise was neither discriminatory nor unreasonable. Hansen v. Board of Educ., 150 Ill. App. 3d 979, 104 Ill. Dec. 204, 502 N.E.2d 467 (2 Dist. 1986).

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Where the defendant Board of Education of a school district argued that it was not bound to follow salary schedules it prepared, nor under obligation to increase salaries automatically by reason of an employee's additional experience, but that it had a complete right to determine in each case whether a teacher earned a raise or not, there was no sound basis for withholding the experience increments which the plaintiff would normally have received. Miller v. Board of Educ., 98 Ill. App. 2d 305, 240 N.E.2d 471 (1 Dist. 1968).

Reassignment

A person serving as an administrator may be reassigned to any position he is qualified to fill, such as teacher, provided that reassignment is bona fide and not in the nature of chicanery and subterfuge designed to subvert the provisions of this section. Danno v. Peterson, 421 F. Supp. 950 (N.D. Ill. 1976).

This Act was not applicable in a case involving a teacher transfer where there was no reduction in salary. Classroom Teachers Ass'n v. Board of Educ., 15 Ill. App. 3d 224, 304 N.E.2d 516 (3 Dist. 1973).

Reduction in Scope of Employment

When teachers employed after July 1, 1987, experience a reduction in the scope of their employment, without the termination of a probationary program or the special educational joint agreement, they have no rights in the member districts; the only right provided to these teachers by this section is to fill positions in the joint agreement in the order of seniority. Costello v. Governing Bd. of Lee County Special Educ. Ass'n, 252 Ill. App. 3d 547, 191 Ill. Dec. 376, 623 N.E.2d 966 (2 Dist. 1993), cert. denied, 155 Ill. 2d 563, 198 Ill. Dec. 541, 633 N.E.2d 3 (1994).

Resignation

Teachers who had attained tenure under the provisions of this section of this Code were under contractual continued service with the Board of Education and could only terminate that relationship through compliance with the provisions of 105 ILCS 5/24-14 by giving the Board of Education written notice of such termination within the time period specified therein. Allen v. Maurer, 6 Ill. App. 3d 633, 286 N.E.2d 135 (4 Dist. 1972).

Salary as Leverage

- Denial of Increase

A school board acted arbitrarily, unreasonably, and capriciously in denying tenured teachers their base salary increases solely on the grounds that they refused to sign individual contracts when they did not know that by not signing the individual contracts they would be denied the benefits of the base salary increases, and were informed that the signing of individual contracts might not even be necessary. Bagley v. Board of Educ., 83 Ill. App. 3d 247, 38 Ill. Dec. 681, 403 N.E.2d 1285 (3 Dist. 1980).

- For No Strike Clause

No-strike clause was consideration for payment of a salary increase to only those teachers who signed contracts containing the clause and, therefore, clause was not arbitrary, capricious or unreasonable. Bond v. Board of Educ., 81 Ill. 2d 242, 42 Ill. Dec. 136, 408 N.E.2d 714 (1980).

Salary

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- Differences

Under the proper conditions, a salary distinction between signing and nonsigning teachers is not arbitrary nor unreasonable. Bond v. Board of Educ., 81 Ill. 2d 242, 42 Ill. Dec. 136, 408 N.E.2d 714 (1980).

- Reduction

The fact that after two successive years with no increase, plaintiff was reassigned to new responsibilities and remained at the same salary with no increase, did not make such action a reduction within the meaning of this section. Hansen v. Board of Educ., 150 Ill. App. 3d 979, 104 Ill. Dec. 204, 502 N.E.2d 467 (2 Dist. 1986).

- Requirements

Teachers who did not sign new contract had the right to be paid a salary under the terms of the prior year's contract, and where the terms of the prior year's contract included a schedule of longevity and educational salary increments, the school board was in error in withholding these increments from the teachers. Bond v. Board of Educ., 81 Ill. 2d 242, 42 Ill. Dec. 136, 408 N.E.2d 714 (1980).

The Board of Education had not complied with the provisions of 105 ILCS 5/24-12 empowering the district to terminate superintendent's employment as a full-time teacher, where superintendent was entitled under this section to a salary based upon a reasonable classification for the work to which he was assigned and was entitled to be assigned to work for which he was qualified regardless of the availability of such a position. If the Board did not comply with these rights, however, superintendent's remedy was to mandamus the Board to do so and not to require the school district to reinstate him as superintendent. Champaign County Bank & Trust Co. v. Brewer, 63 Ill. App. 3d 490, 20 Ill. Dec. 377, 380 N.E.2d 54 (4 Dist. 1978).

School Term Defined

This section, which applies to elementary and high school teachers, includes summer school in the school term. Frame v. Board of Trustees, 212 Ill. App. 3d 617, 156 Ill. Dec. 735, 571 N.E.2d 519 (3 Dist. 1991).

For tenure purposes, 105 ILCS 5/103B-1, which applies to community college teachers, defines "school year" as a regular academic year or its equivalent (excluding summer school), while this section, which applies to elementary and high school teachers, provides tenure whenever school is in actual session, including during summer school. Frame v. Board of Trustees, 212 Ill. App. 3d 617, 156 Ill. Dec. 735, 571 N.E.2d 519 (3 Dist. 1991).

By defining "school term" in this section, the apparent intent of the legislature was to distinguish between the school year and the calendar year. Howard v. Board of Educ., 160 Ill. App. 3d 309, 112 Ill. Dec. 131, 513 N.E.2d 545 (2 Dist. 1987).

Substitute Teachers

A probationary teacher's employment will ripen into a permanent position; conversely, although this Code (105 ILCS 5/1-1 et seq.) is silent on the subject, a substitute teacher is generally regarded as one employed on a temporary basis as a replacement for a regular teacher. Booker v. Hutsonville Sch., 107 Ill. App. 3d 357, 63 Ill. Dec. 288, 437 N.E.2d 937 (5 Dist. 1982).

Where both the plaintiff and her principal testified that plaintiff was employed as a temporary replacement for a regular teacher on disability leave, the fact that the plaintiff felt "reasonably assured" that her employment would continue for a full year does not alter the temporary nature

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of her status, although she received the higher salary of a permanent or probationary teacher in accordance with the school board. Booker v. Hutsonville Sch., 107 Ill. App. 3d 357, 63 Ill. Dec. 288, 437 N.E.2d 937 (5 Dist. 1982).

Suspension

- Procedure

Neither 105 ILCS 5/10-22.4 nor this section entitled teacher, who was suspended for 31/2 days without pay, to the procedural requirements of 105 ILCS 5/10-22.4; if the legislature intended suspensions to be treated the same as dismissals, it would have said so. Kearns v. Board of Educ., 73 Ill. App. 3d 907, 29 Ill. Dec. 591, 392 N.E.2d 148 (1 Dist. 1979).

Tenure

Teacher was entitled to tenure under 105 ILCS 5/24-11 as that the teacher was granted a leave of absence from teaching duties to recover from a serious injury did not change the fact that the teacher was a contractual employee and that the teacher was paid as a full-time teacher for four consecutive years; 105 ILCS 5/24-11 did not require the teacher to teach for four consecutive school terms. Wood v. N. Wamac Sch. Dist. No. 186, 386 Ill. App. 3d 874, 326 Ill. Dec. 361, 899 N.E.2d 578, 2008 Ill. App. LEXIS 1224 (5 Dist. 2008).

105 ILCS 5/24-11 plainly states that a teacher who is employed in a school district as a full-time teacher for four consecutive school terms shall attain contractual continued service unless he or she is given a written notice stating a specific reason for his or her dismissal; it does not state or imply that a teacher must teach for four consecutive school terms. Wood v. N. Wamac Sch. Dist. No. 186, 386 Ill. App. 3d 874, 326 Ill. Dec. 361, 899 N.E.2d 578, 2008 Ill. App. LEXIS 1224 (5 Dist. 2008).

Illinois School Code, 105 ILCS 5/24-11, provides for the tenure rights of special education teachers in special education joint agreements. Barrington Community Unit Sch. Dist. No. 220 v. Special Educ. Dist., 245 Ill. App. 3d 242, 186 Ill. Dec. 96, 615 N.E.2d 1153, 1993 Ill. App. LEXIS 644 (1 Dist. 1993).

- In General

As tenure provisions are in derogation of the common law, they must be strictly construed in favor of school districts, so as not to unduly interfere with local board's responsibility to operate educational systems efficiently and provisions must be construed to effect the intention of the legislature. Evans v. Benjamin Sch., 134 Ill. App. 3d 875, 89 Ill. Dec. 637, 480 N.E.2d 1380 (2 Dist. 1985).

Prior to the adoption of this section, boards of school directors could not contract for the employment of a teacher beyond the current year and a court still cannot extend a teacher's employment contract beyond one year in the absence of statutory language enabling it to do so. Pack v. Sporleder, 394 Ill. 130, 67 N.E.2d 198 (1946).

- By Estoppel

The tenure by estoppel theory directly conflicts with established Illinois law. Faculty Ass'n of Dist. 205 v. Illinois Educ. Labor Relations Bd., 175 Ill. App. 3d 880, 125 Ill. Dec. 390, 530 N.E.2d 548 (4 Dist. 1988).

The doctrine of estoppel may not be applied to validate an ultra vires act; accordingly, even if arbitrator correctly found school board had treated a nurse as tenured in the past, the principle of estoppel could not have legally been applied to grant statutory tenure. Faculty Ass'n of Dist. 205

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v. Illinois Educ. Labor Relations Bd., 175 Ill. App. 3d 880, 125 Ill. Dec. 390, 530 N.E.2d 548 (4 Dist. 1988).

- Defined

A tenured teacher, in contractual continued service, is one who has been employed as a full-time teacher for a probationary term of two (or three in certain circumstances) consecutive yearly school terms without receiving a notice of dismissal. Evans v. Benjamin Sch., 134 Ill. App. 3d 875, 89 Ill. Dec. 637, 480 N.E.2d 1380 (2 Dist. 1985).

- Effect

This section creates a liability to tenured employees where none would otherwise exist; therefore, any claim under the tenure law must be clearly evident. Penman v. Board of Trustees, 94 Ill. App. 3d 139, 49 Ill. Dec. 775, 418 N.E.2d 795 (5 Dist. 1981).

This section and the Public Community College Act (110 ILCS 805/1-1 et seq.) create a liability to tenured employees where none would otherwise exist; therefore, any claim under the tenure law must be clearly evident. Penman v. Board of Trustees, 94 Ill. App. 3d 139, 49 Ill. Dec. 775, 418 N.E.2d 795 (5 Dist. 1981).

The law does not require tenured teachers to sign a new contract, and those who decline the option of signing cannot be removed for their failure to do so. Bond v. Board of Educ., 81 Ill. 2d 242, 42 Ill. Dec. 136, 408 N.E.2d 714 (1980).

A tenured teacher has the option of declining a contract and continuing employment at a salary and according to the terms of the prior year's contract. Bond v. Board of Educ., 81 Ill. 2d 242, 42 Ill. Dec. 136, 408 N.E.2d 714 (1980).

Tenured teachers who did not sign their contracts because they wanted to negotiate a raise were held by the school board to the terms of their previous year's contract; tenured teachers had the option to sign a new contract with new provisions or not to sign and remain under the previous contract. Littrell v. Board of Educ., 45 Ill. App. 3d 690, 4 Ill. Dec. 355, 360 N.E.2d 102 (5 Dist. 1977).

The job security envisioned by this section is a guarantee of employment, but not a guarantee of continued employment in any single capacity when the educational employee is qualified to serve in more than one position. Danno v. Peterson, 421 F. Supp. 950 (N.D. Ill. 1976).

- Eligibility

It is for the legislature, not the court or the school board, to determine the basis upon which tenure may be granted, and to determine who should be embraced within the scope of the law relating to teacher tenure. James v. Board of Educ., 193 Ill. App. 3d 406, 140 Ill. Dec. 350, 549 N.E.2d 1001 (5 Dist. 1990).

Non-special education teachers are not to be afforded the "super tenure" protection of this section. Koppi v. Board of Control of Whiteside Area Vocational Ctr., 133 Ill. App. 3d 591, 88 Ill. Dec. 701, 479 N.E.2d 36 (3 Dist. 1985).

A principal does not acquire tenure as a principal under this section, but as a certified employee; thus, a principal may be reassigned without notice and a hearing to a teaching position at a reduced salary based upon some reasonable classification, provided that action is bona fide and not in the nature of chicanery or subterfuge designed to subvert the provisions of the teacher tenure law. Lane v. Board of Educ., 38 Ill. App. 3d 742, 348 N.E.2d 470 (4 Dist. 1976).

- Full-Time Not Required

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The mere fact that this section requires two years of full-time teaching for a teacher to acquire tenure does not mean that the teacher must continue to teach full-time to maintain that status. Brown v. Board of Educ., 38 Ill. App. 3d 403, 347 N.E.2d 791 (5 Dist. 1976); Pennell v. Board of Educ., 137 Ill. App. 3d 139, 91 Ill. Dec. 886, 484 N.E.2d 445 (5 Dist. 1985).

- Illustrative Cases

Plaintiffs, teachers at a practical nursing program in defendant's district who had been laid off by defendant, were employed full-time in defendant's district for a probationary period of two consecutive years, without receiving a notice of dismissal, and therefore had entered upon contractual continued service and had, thus, acquired tenure prior to the defendant's serving them with notice of their honorable dismissal. James v. Board of Educ., 193 Ill. App. 3d 406, 140 Ill. Dec. 350, 549 N.E.2d 1001 (5 Dist. 1990).

- Loss of Status

Since the plaintiff was given an appropriate notice of termination in March 1976, she could not be said to have had any tenure rights later in 1976, when she was offered the part-time employment. Johnson v. Board of Educ., 85 Ill. 2d 338, 53 Ill. Dec. 234, 423 N.E.2d 903 (1981).

Nowhere in this section does it provide that a teacher loses tenure merely by accepting a reduced teaching load for one year. Brown v. Board of Educ., 38 Ill. App. 3d 403, 347 N.E.2d 791 (5 Dist. 1976).

It is true that a teacher may lose tenured status by resigning or abandoning an obligation to teach, two letters written by plaintiff requesting part-time employment, did not indicate an attempt to abandon or resign. Brown v. Board of Educ., 38 Ill. App. 3d 403, 347 N.E.2d 791 (5 Dist. 1976).

- Part-Time Teachers

If the legislature had intended to accord tenure rights to those who teach on less than a full-time basis, it would surely have given some guidance with respect to the difficult questions which would result; foremost among these is determining the amount of teaching which would be sufficient to entitle one to tenure. Johnson v. Board of Educ., 85 Ill. 2d 338, 53 Ill. Dec. 234, 423 N.E.2d 903 (1981).

- Purpose

The legislature's goal in creating the tenure provisions of the School Code was to protect teachers of experience and ability through an assurance of continuous employment and rehiring based on merit and not partisan politics. Costello v. Governing Bd. of Lee County Special Educ. Ass'n, 252 Ill. App. 3d 547, 191 Ill. Dec. 376, 623 N.E.2d 966 (2 Dist. 1993), cert. denied, 155 Ill. 2d 563, 198 Ill. Dec. 541, 633 N.E.2d 3 (1994).

- Super Tenure

The "super-tenure" provisions of the School Code give bumping rights to tenured special education joint agreement teachers but only when there has been a loss of jobs in the special education joint agreement are these teachers entitled to "bump" into the member district. SEDOL Teachers Union v. Illinois Educ. Labor Relations Bd., 282 Ill. App. 3d 804, 218 Ill. Dec. 285, 668 N.E.2d 1117 (1 Dist. 1996), appeal denied, 168 Ill. 2d 625, 219 Ill. Dec. 576, 671 N.E.2d 743 (1996).

The amendments to this section limit the right of "super-tenure" to full-time teachers employed in a probationary special education program prior to September 23, 1997. Costello v. Governing Bd. of Lee County Special Educ. Ass'n, 252 Ill. App. 3d 547, 191 Ill. Dec. 376, 623 N.E.2d 966 (2 Dist. 1993), cert. denied, 155 Ill. 2d 563, 198 Ill. Dec. 541, 633 N.E.2d 3 (1994).

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Plaintiffs, employees of a cooperative vocational education program under the control of defendant and tenured teachers of the defendant board, who were honorably dismissed from employment due to a reduction in force, were not entitled to "bumping" rights or "super-tenure" in the member school districts participating in the joint education program, and there was a rational basis to treat them differently from special education teachers who were granted "super-tenure" rights under this section. Aken v. Board of Control of Lake County Area Vocational Ctr., 237 Ill. App. 3d 97, 178 Ill. Dec. 268, 604 N.E.2d 524 (2 Dist. 1992).

In granting super tenure to teachers other than special education teachers, the board of control had created an ultra vires policy; when it amended the policy to limit its application to special education teachers, it was conforming to the mandates of this section and did not alter plaintiff's contract by the policy change. Koppi v. Board of Control of Whiteside Area Vocational Ctr., 133 Ill. App. 3d 591, 88 Ill. Dec. 701, 479 N.E.2d 36 (3 Dist. 1985).

- Teachers and Administrators

Coaches do not fit within the definition of teacher in this section. Smith v. Board of Educ., 708 F.2d 258 (7th Cir. 1983).

Employees did not enjoy tenure as coaches under this section because the school board hired them as teachers. Smith v. Board of Educ., 708 F.2d 258 (7th Cir. 1983).

A person serving in an administrative capacity in a school enjoys no property interest in his position as administrator as would require a due process hearing prior to his reassignment to a regular teaching position. Hicks v. Board of Educ., 77 Ill. App. 3d 974, 33 Ill. Dec. 683, 397 N.E.2d 16 (5 Dist. 1979).

This section does not distinguish between administrative and teaching personnel; an administrator in the public schools does not acquire tenure in the position of administrator, but rather acquires tenure as a certified employee of the school district. Danno v. Peterson, 421 F. Supp. 950 (N.D. Ill. 1976).

School directors are invested by law with large discretion in all matters pertaining to the management of schools; with the discretionary powers of officers, whether executive or judicial, courts have no rightful authority to interfere unless where there has been such abuse of their discretion as works palpable injustice or injury. Meredith v. Board of Educ., 7 Ill. App. 2d 477, 130 N.E.2d 5 (3 Dist. 1955).

Plaintiff as a principal or superintendent of community high school district was not employed under the provisions of the former Teacher Tenure Law (see now this section) and was not entitled to its protection. Biehn v. Tess, 340 Ill. App. 140, 91 N.E.2d 160 (1 Dist. 1950).

A teacher whose contract for second year of teaching was only for nine months was not entitled to tenure where the required time to obtain tenure was two full calendar years. Haag v. Board of Educ., 337 Ill. App. 201, 84 N.E.2d 833 (2 Dist. 1949).

- Vocational Adjustment Counselor

Where the record did not establish that petitioner's vocational adjustment counselor (VAC) position was either a teaching or a supervising position but rather, petitioner was a counselor who assisted student and graduates in vocational rehabilitation and job placement, petitioner was not a teacher eligible for tenure when she worked as a VAC. Abernathy v. Board of Educ., 242 Ill. App. 3d 1013, 183 Ill. Dec. 374, 611 N.E.2d 1022 (1 Dist. 1992), appeal denied, 152 Ill. 2d 553, 190 Ill. Dec. 882, 622 N.E.2d 1199 (1993).

Termination of Program

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- Construction

"Termination of the program" does not refer to the full elimination of the entire array of services provided by the joint agreement; rather, the phrase refers to the full elimination of one instructional, consultative, supervisory, administrative, diagnostic or related service, on a two year probationary status, managed by the association by virtue of the joint agreement. Costello v. Governing Bd. of Lee County Special Educ. Ass'n, 252 Ill. App. 3d 547, 191 Ill. Dec. 376, 623 N.E.2d 966 (2 Dist. 1993), cert. denied, 155 Ill. 2d 563, 198 Ill. Dec. 541, 633 N.E.2d 3 (1994).

- Teacher Eligibility

When a tenured teacher employed prior to September 23, 1987, is honorably dismissed because a program on a probationary two year status provided by the association is completely eliminated, the teacher is eligible to fill any vacant position in any of the member districts according to his or her tenure in the joint program and the particular member district. Costello v. Governing Bd. of Lee County Special Educ. Ass'n, 252 Ill. App. 3d 547, 191 Ill. Dec. 376, 623 N.E.2d 966 (2 Dist. 1993), cert. denied, 155 Ill. 2d 563, 198 Ill. Dec. 541, 633 N.E.2d 3 (1994).

Tort Liability

Where plaintiff's contract provided that it was subject to applicable law which allowed the Board of Education full discretionary power to terminate the employment of any nontenured teacher by dismissal or nonrenewal of probationary contract, although plaintiff may have entertained a hope that he would remain in his position, the mere hope, without more, does not constitute a reasonable expectancy to state a cause of action for tortious interference with prospective business relations. Williams v. Weaver, 145 Ill. App. 3d 562, 99 Ill. Dec. 412, 495 N.E.2d 1147 (1 Dist. 1986).

Transfer

Under this Article, local school boards retain the complete power and authority to transfer a teacher to any position which the teacher is qualified to fill and to reduce teaching staff through lay-offs whenever it is economically necessary in the Board's judgment. Proviso Council of W. Suburban Teachers Union v. Board of Educ., 160 Ill. App. 3d 1020, 112 Ill. Dec. 387, 513 N.E.2d 996 (1 Dist. 1987).

The purpose of the transfer provision is to allow school boards the flexibility that school boards need in order to efficiently operate public schools. Hansen v. Board of Educ., 150 Ill. App. 3d 979, 104 Ill. Dec. 204, 502 N.E.2d 467 (2 Dist. 1986).

Status as a tenured teacher did not restrain the power of the school board to transfer the teacher who was discharged; the teacher could have been reinstated to any position she was qualified to fill and the school board did not lack good faith in assigning her upon her reinstatement. People ex rel. Brown v. Board of Educ., 66 Ill. App. 3d 169, 22 Ill. Dec. 903, 383 N.E.2d 711 (5 Dist. 1978).

Under this section, a principal does not acquire tenure as a principal, but does acquire tenure as a certified employee of a school district; consequently, a school board may transfer a principal to a teaching position at a reduced salary based upon some reasonable classification, provided the action is bona fide and not in the nature of chicanery or subterfuge designed to subvert the provisions of the Teacher Tenure Law. Van Dyke v. Board of Educ., 115 Ill. App. 2d 10, 254 N.E.2d 76 (1 Dist. 1969).

Subject to constitutional and statutory provisions, school boards must be allowed flexibility consonant with the purposes of the former Teacher Tenure Law in the transfer of its certificated

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personnel. Van Dyke v. Board of Educ., 115 Ill. App. 2d 10, 254 N.E.2d 76 (1 Dist. 1969).

LEGAL PERIODICALS

For article, "Dismissal of Tenured Teachers in Illinois: Evolution of a Viable System," see 1990 U. Ill. L. Rev. 1.

For note, "A No-Strike Clause Can Serve as Valid Consideration in Tenured Public School Teachers' Contracts - Bond v. Board of Education," see 30 De Paul L. Rev. 441 (1981).

For article, "Tenured Teacher Dismissal in Illinois, 1975-1979," see 69 Ill. B.J. 422 (1981).

For article, "The Effect of Teachers' Part-Time Employment on the Aquisition and Retention of Tenure," see 69 Ill. B.J. 564 (1981).

For article, "Teacher Contract Disputes and Contractual Continued Service," see 70 Ill. B.J. 250 (1981).

For comment, "A Question of Remediability: Standards of Conduct for Illinois Public School Teachers," see 29 De Paul L. Rev. 523 (1980).

For article, "Survey of Illinois Law: Significant Developments in Education Law 2003- 2004," see, 29 S. Ill. U.L.J. 603 (2005).

For article, "Survey of Illinois Law: Employment Law," see, 29 S. Ill. U.L.J. 639 (2005).

RESEARCH REFERENCES

Services included in computing period of service for purpose of teachers' seniority, salary, tenure, or retirement benefits. 56 ALR5th 493.

§ 105 ILCS 5/24-12. Removal or dismissal of teachers in contractual continued service

Sec. 24-12. Removal or dismissal of teachers in contractual continued service. (a) This subsection (a) applies only to honorable dismissals and recalls in which the notice of dismissal is provided on or before the end of the 2010-2011 school term. If a teacher in contractual continued service is removed or dismissed as a result of a decision of the board to decrease the number of teachers employed by the board or to discontinue some particular type of teaching service, written notice shall be mailed to the teacher and also given the teacher either by certified mail, return receipt requested or personal delivery with receipt at least 60 days before the end of the school term, together with a statement of honorable dismissal and the reason therefor, and in all such cases the board shall first remove or dismiss all teachers who have not entered upon contractual continued service before removing or dismissing any teacher who has entered upon contractual continued service and who is legally qualified to hold a position currently held by a teacher who has not entered upon contractual continued service.

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As between teachers who have entered upon contractual continued service, the teacher or teachers with the shorter length of continuing service with the district shall be dismissed first unless an alternative method of determining the sequence of dismissal is established in a collective bargaining agreement or contract between the board and a professional faculty members' organization and except that this provision shall not impair the operation of any affirmative action program in the district, regardless of whether it exists by operation of law or is conducted on a voluntary basis by the board. Any teacher dismissed as a result of such decrease or discontinuance shall be paid all earned compensation on or before the third business day following the last day of pupil attendance in the regular school term.

If the board has any vacancies for the following school term or within one calendar year from the beginning of the following school term, the positions thereby becoming available shall be tendered to the teachers so removed or dismissed so far as they are legally qualified to hold such positions; provided, however, that if the number of honorable dismissal notices based on economic necessity exceeds 15% of the number of full time equivalent positions filled by certified employees (excluding principals and administrative personnel) during the preceding school year, then if the board has any vacancies for the following school term or within 2 calendar years from the beginning of the following school term, the positions so becoming available shall be tendered to the teachers who were so notified and removed or dismissed whenever they are legally qualified to hold such positions. Each board shall, in consultation with any exclusive employee representatives, each year establish a list, categorized by positions, showing the length of continuing service of each teacher who is qualified to hold any such positions, unless an alternative method of determining a sequence of dismissal is established as provided for in this Section, in which case a list shall be made in accordance with the alternative method. Copies of the list shall be distributed to the exclusive employee representative on or before February 1 of each year. Whenever the number of honorable dismissal notices based upon economic necessity exceeds 5, or 150% of the average number of teachers honorably dismissed in the preceding 3 years, whichever is more, then the board also shall hold a public hearing on the question of the dismissals. Following the hearing and board review the action to approve any such reduction shall require a majority vote of the board members.

(b) This subsection (b) applies only to honorable dismissals and recalls in which the notice of dismissal is provided during the 2011-2012 school term or a subsequent school term. If any teacher, whether or not in contractual continued service, is removed or dismissed as a result of a decision of a school board to decrease the number of teachers employed by the board, a decision of a school board to discontinue some particular type of teaching service, or a reduction in the number of programs or positions in a special education joint agreement, then written notice must be mailed to the teacher and also given to the teacher either by certified mail, return receipt requested, or personal delivery with receipt at least 45 days before the end of the school term, together with a statement of honorable dismissal and the reason therefor, and in all such cases the sequence of dismissal shall occur in accordance with this subsection (b); except that this subsection (b) shall not impair the operation of any affirmative action program in the school district,

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regardless of whether it exists by operation of law or is conducted on a voluntary basis by the board.

Each teacher must be categorized into one or more positions for which the teacher is qualified to hold, based upon legal qualifications and any other qualifications established in a district or joint agreement job description, on or before the May 10 prior to the school year during which the sequence of dismissal is determined. Within each position and subject to agreements made by the joint committee on honorable dismissals that are authorized by subsection (c) of this Section, the school district or joint agreement must establish 4 groupings of teachers qualified to hold the position as follows:

(1) Grouping one shall consist of each teacher not in contractual continued service who has not received a performance evaluation rating.

(2) Grouping 2 shall consist of each teacher with a Needs Improvement or Unsatisfactory performance evaluation rating on either of the teacher's last 2 performance evaluation ratings.

(3) Grouping 3 shall consist of each teacher with a performance evaluation rating of at least Satisfactory or Proficient on both of the teacher's last 2 performance evaluation ratings, if 2 ratings are available, or on the teacher's last performance evaluation rating, if only one rating is available, unless the teacher qualifies for placement into grouping 4.

(4) Grouping 4 shall consist of each teacher whose last 2 performance evaluation ratings are Excellent and each teacher with 2 Excellent performance evaluation ratings out of the teacher's last 3 performance evaluation ratings with a third rating of Satisfactory or Proficient.

Among teachers qualified to hold a position, teachers must be dismissed in the order of their groupings, with teachers in grouping one dismissed first and teachers in grouping 4 dismissed last.

Within grouping one, the sequence of dismissal must be at the discretion of the school district or joint agreement. Within grouping 2, the sequence of dismissal must be based upon average performance evaluation ratings, with the teacher or teachers with the lowest average performance evaluation rating dismissed first. A teacher's average performance evaluation rating must be calculated using the average of the teacher's last 2 performance evaluation ratings, if 2 ratings are available, or the teacher's last performance evaluation rating, if only one rating is available, using the following numerical values: 4 for Excellent; 3 for Proficient or Satisfactory; 2 for Needs Improvement; and 1 for Unsatisfactory. As between or among teachers in grouping 2 with the same average performance evaluation rating and within each of groupings 3 and 4, the teacher or teachers with the shorter length of continuing service with the school district or joint agreement must be dismissed first unless an alternative method of determining the sequence of dismissal is established in a collective bargaining agreement or contract between the board and a professional faculty members' organization.

Each board, including the governing board of a joint agreement, shall, in consultation with any exclusive employee representatives, each year establish a sequence of honorable

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dismissal list categorized by positions and the groupings defined in this subsection (b). Copies of the list must be distributed to the exclusive bargaining representative at least 75 days before the end of the school term, provided that the school district or joint agreement may, with notice to any exclusive employee representatives, move teachers from grouping one into another grouping during the period of time from 75 days until 45 days before the end of the school term.

Any teacher dismissed as a result of such decrease or discontinuance must be paid all earned compensation on or before the third business day following the last day of pupil attendance in the regular school term.

If the board or joint agreement has any vacancies for the following school term or within one calendar year from the beginning of the following school term, the positions thereby becoming available must be tendered to the teachers so removed or dismissed who were in groupings 3 or 4 of the sequence of dismissal and are qualified to hold the positions, based upon legal qualifications and any other qualifications established in a district or joint agreement job description, on or before the May 10 prior to the date of the positions becoming available, provided that if the number of honorable dismissal notices based on economic necessity exceeds 15% of the number of full-time equivalent positions filled by certified employees (excluding principals and administrative personnel) during the preceding school year, then the recall period is for the following school term or within 2 calendar years from the beginning of the following school term. Among teachers eligible for recall pursuant to the preceding sentence, the order of recall must be in inverse order of dismissal, unless an alternative order of recall is established in a collective bargaining agreement or contract between the board and a professional faculty members' organization. Whenever the number of honorable dismissal notices based upon economic necessity exceeds 5 notices or 150% of the average number of teachers honorably dismissed in the preceding 3 years, whichever is more, then the school board or governing board of a joint agreement, as applicable, shall also hold a public hearing on the question of the dismissals. Following the hearing and board review, the action to approve any such reduction shall require a majority vote of the board members.

For purposes of this subsection (b), subject to agreement on an alternative definition reached by the joint committee described in subsection (c) of this Section, a teacher's performance evaluation rating means the overall performance evaluation rating resulting from an annual or biannual performance evaluation conducted pursuant to Article 24A of this Code [105 ILCS 5/24A-1 et seq.] by the school district or joint agreement determining the sequence of dismissal, not including any performance evaluation conducted during or at the end of a remediation period. For performance evaluation ratings determined prior to September 1, 2012, any school district or joint agreement with a performance evaluation rating system that does not use either of the rating category systems specified in subsection (d) of Section 24A-5 of this Code [105 ILCS 5/24A-5] for all teachers must establish a basis for assigning each teacher a rating that complies with subsection (d) of Section 24A-5 of this Code for all of the performance evaluation ratings that are to be used to determine the sequence of dismissal. A teacher's grouping and ranking on a sequence of honorable dismissal shall be deemed a part of the teacher's performance evaluation, and that information may be disclosed to the exclusive bargaining representative as part of a sequence of honorable dismissal list,

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notwithstanding any laws prohibiting disclosure of such information. A performance evaluation rating may be used to determine the sequence of dismissal, notwithstanding the pendency of any grievance resolution or arbitration procedures relating to the performance evaluation. If a teacher has received at least one performance evaluation rating conducted by the school district or joint agreement determining the sequence of dismissal and a subsequent performance evaluation is not conducted in any school year in which such evaluation is required to be conducted under Section 24A-5 of this Code, the teacher's performance evaluation rating for that school year for purposes of determining the sequence of dismissal is deemed Proficient. If a performance evaluation rating is nullified as the result of an arbitration determination, then the school district or joint agreement is deemed to have conducted a performance evaluation for that school year, but the performance evaluation rating may not be used in determining the sequence of dismissal.

Nothing in this subsection (b) shall be construed as limiting the right of a school board or governing board of a joint agreement to dismiss a teacher not in contractual continued service in accordance with Section 24-11 of this Code [105 ILCS 5/24-11].

Any provisions regarding the sequence of honorable dismissals and recall of honorably dismissed teachers in a collective bargaining agreement entered into on or before January 1, 2011 and in effect on the effective date of this amendatory Act of the 97th General Assembly [P.A. 97-8] that may conflict with this amendatory Act of the 97th General Assembly shall remain in effect through the expiration of such agreement or June 30, 2013, whichever is earlier.

(c) Each school district and special education joint agreement must use a joint committee composed of equal representation selected by the school board and its teachers or, if applicable, the exclusive bargaining representative of its teachers, to address the matters described in paragraphs (1) through (5) of this subsection (c) pertaining to honorable dismissals under subsection (b) of this Section.

(1) The joint committee must consider and may agree to criteria for excluding from grouping 2 and placing into grouping 3 a teacher whose last 2 performance evaluations include a Needs Improvement and either a Proficient or Excellent.

(2) The joint committee must consider and may agree to an alternative definition for grouping 4, which definition must take into account prior performance evaluation ratings and may take into account other factors that relate to the school district's or program's educational objectives. An alternative definition for grouping 4 may not permit the inclusion of a teacher in the grouping with a Needs Improvement or Unsatisfactory performance evaluation rating on either of the teacher's last 2 performance evaluation ratings.

(3) The joint committee may agree to including within the definition of a performance evaluation rating a performance evaluation rating administered by a school district or joint agreement other than the school district or joint agreement determining the sequence of dismissal.

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(4) For each school district or joint agreement that administers performance evaluation ratings that are inconsistent with either of the rating category systems specified in subsection (d) of Section 24A-5 of this Code, the school district or joint agreement must consult with the joint committee on the basis for assigning a rating that complies with subsection (d) of Section 24A-5 of this Code to each performance evaluation rating that will be used in a sequence of dismissal.

(5) Upon request by a joint committee member submitted to the employing board by no later than 10 days after the distribution of the sequence of honorable dismissal list, a representative of the employing board shall, within 5 days after the request, provide to members of the joint committee a list showing the most recent and prior performance evaluation ratings of each teacher identified only by length of continuing service in the district or joint agreement and not by name. If, after review of this list, a member of the joint committee has a good faith belief that a disproportionate number of teachers with greater length of continuing service with the district or joint agreement have received a recent performance evaluation rating lower than the prior rating, the member may request that the joint committee review the list to assess whether such a trend may exist. Following the joint committee's review, but by no later than the end of the applicable school term, the joint committee or any member or members of the joint committee may submit a report of the review to the employing board and exclusive bargaining representative, if any. Nothing in this paragraph (5) shall impact the order of honorable dismissal or a school district's or joint agreement's authority to carry out a dismissal in accordance with subsection (b) of this Section.

Agreement by the joint committee as to a matter requires the majority vote of all committee members, and if the joint committee does not reach agreement on a matter, then the otherwise applicable requirements of subsection (b) of this Section shall apply. Except as explicitly set forth in this subsection (c), a joint committee has no authority to agree to any further modifications to the requirements for honorable dismissals set forth in subsection (a) of this Section. The joint committee must be established and the first meeting of the joint committee must occur on or before December 1, 2011 or 30 days after the effective date of this amendatory Act of the 97th General Assembly, whichever is later.

The joint committee must reach agreement on a matter on or before February 1 of a school year in order for the agreement of the joint committee to apply to the sequence of dismissal determined during that school year. Subject to the February 1 deadline for agreements, the agreement of a joint committee on a matter shall apply to the sequence of dismissal until the agreement is amended or terminated by the joint committee.

(d) Notwithstanding anything to the contrary in this subsection (d), the requirements and dismissal procedures of Section 24-16.5 of this Code [105 ILCS 5/24-16.5] shall apply to any dismissal sought under Section 24-16.5 of this Code.

(1) If a dismissal of a teacher in contractual continued service is sought for any reason or cause other than an honorable dismissal under subsections (a) or (b) of this Section or a dismissal sought under Section 24-16.5 of this Code, including those under Section 10-22.4 [105 ILCS 5/10-22.4], the board must first approve a motion containing specific

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charges by a majority vote of all its members. Written notice of such charges, including a bill of particulars and the teacher's right to request a hearing, must be mailed to the teacher and also given to the teacher either by certified mail, return receipt requested, or personal delivery with receipt within 5 days of the adoption of the motion. Any written notice sent on or after July 1, 2012 shall inform the teacher of the right to request a hearing before a mutually selected hearing officer, with the cost of the hearing officer split equally between the teacher and the board, or a hearing before a board-selected hearing officer, with the cost of the hearing officer paid by the board.

Before setting a hearing on charges stemming from causes that are considered remediable, a board must give the teacher reasonable warning in writing, stating specifically the causes that, if not removed, may result in charges; however, no such written warning is required if the causes have been the subject of a remediation plan pursuant to Article 24A of this Code.

If, in the opinion of the board, the interests of the school require it, the board may suspend the teacher without pay, pending the hearing, but if the board's dismissal or removal is not sustained, the teacher shall not suffer the loss of any salary or benefits by reason of the suspension.

(2) No hearing upon the charges is required unless the teacher within 17 days after receiving notice requests in writing of the board that a hearing be scheduled before a mutually selected hearing officer or a hearing officer selected by the board. The secretary of the school board shall forward a copy of the notice to the State Board of Education.

(3) Within 5 business days after receiving a notice of hearing in which either notice to the teacher was sent before July 1, 2012 or, if the notice was sent on or after July 1, 2012, the teacher has requested a hearing before a mutually selected hearing officer, the State Board of Education shall provide a list of 5 prospective, impartial hearing officers from the master list of qualified, impartial hearing officers maintained by the State Board of Education. Each person on the master list must (i) be accredited by a national arbitration organization and have had a minimum of 5 years of experience directly related to labor and employment relations matters between employers and employees or their exclusive bargaining representatives and (ii) beginning September 1, 2012, have participated in training provided or approved by the State Board of Education for teacher dismissal hearing officers so that he or she is familiar with issues generally involved in evaluative and non-evaluative dismissals.

If notice to the teacher was sent before July 1, 2012 or, if the notice was sent on or after July 1, 2012, the teacher has requested a hearing before a mutually selected hearing officer, the board and the teacher or their legal representatives within 3 business days shall alternately strike one name from the list provided by the State Board of Education until only one name remains. Unless waived by the teacher, the teacher shall have the right to proceed first with the striking. Within 3 business days of receipt of the list provided by the State Board of Education, the board and the teacher or their legal representatives shall each have the right to reject all prospective hearing officers named on the list and notify the State Board of Education of such rejection. Within 3 business days after receiving this notification, the State Board of Education shall appoint a

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qualified person from the master list who did not appear on the list sent to the parties to serve as the hearing officer, unless the parties notify it that they have chosen to alternatively select a hearing officer under paragraph (4) of this subsection (d).

If the teacher has requested a hearing before a hearing officer selected by the board, the board shall select one name from the master list of qualified impartial hearing officers maintained by the State Board of Education within 3 business days after receipt and shall notify the State Board of Education of its selection.

A hearing officer mutually selected by the parties, selected by the board, or selected through an alternative selection process under paragraph (4) of this subsection (d) (A) must not be a resident of the school district, (B) must be available to commence the hearing within 75 days and conclude the hearing within 120 days after being selected as the hearing officer, and (C) must issue a decision as to whether the teacher must be dismissed and give a copy of that decision to both the teacher and the board within 30 days from the conclusion of the hearing or closure of the record, whichever is later.

(4) In the alternative to selecting a hearing officer from the list received from the State Board of Education accepting the appointment of a hearing officer by the State Board of Education or if the State Board of Education cannot provide a list or appoint a hearing officer that meets the foregoing requirements, the board and the teacher or their legal representatives may mutually agree to select an impartial hearing officer who is not on the master list either by direct appointment by the parties or by using procedures for the appointment of an arbitrator established by the Federal Mediation and Conciliation Service or the American Arbitration Association. The parties shall notify the State Board of Education of their intent to select a hearing officer using an alternative procedure within 3 business days of receipt of a list of prospective hearing officers provided by the State Board of Education, notice of appointment of a hearing officer by the State Board of Education, or receipt of notice from the State Board of Education that it cannot provide a list that meets the foregoing requirements, whichever is later.

(5) If the notice of dismissal was sent to the teacher before July 1, 2012, the fees and costs for the hearing officer must be paid by the State Board of Education. If the notice of dismissal was sent to the teacher on or after July 1, 2012, the hearing officer's fees and costs must be paid as follows in this paragraph (5). The fees and permissible costs for the hearing officer must be determined by the State Board of Education. If the board and the teacher or their legal representatives mutually agree to select an impartial hearing officer who is not on a list received from the State Board of Education, they may agree to supplement the fees determined by the State Board to the hearing officer, at a rate consistent with the hearing officer's published professional fees. If the hearing officer is mutually selected by the parties, then the board and the teacher or their legal representatives shall each pay 50% of the fees and costs and any supplemental allowance to which they agree. If the hearing officer is selected by the board, then the board shall pay 100% of the hearing officer's fees and costs. The fees and costs must be paid to the hearing officer within 14 days after the board and the teacher or their legal representatives receive the hearing officer's decision set forth in paragraph (7) of this subsection (d).

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(6) The teacher is required to answer the bill of particulars and aver affirmative matters in his or her defense, and the time for initially doing so and the time for updating such answer and defenses after pre-hearing discovery must be set by the hearing officer. The State Board of Education shall promulgate rules so that each party has a fair opportunity to present its case and to ensure that the dismissal process proceeds in a fair and expeditious manner. These rules shall address, without limitation, discovery and hearing scheduling conferences; the teacher's initial answer and affirmative defenses to the bill of particulars and the updating of that information after pre-hearing discovery; provision for written interrogatories and requests for production of documents; the requirement that each party initially disclose to the other party and then update the disclosure no later than 10 calendar days prior to the commencement of the hearing, the names and addresses of persons who may be called as witnesses at the hearing, a summary of the facts or opinions each witness will testify to, and all other documents and materials, including information maintained electronically, relevant to its own as well as the other party's case (the hearing officer may exclude witnesses and exhibits not identified and shared, except those offered in rebuttal for which the party could not reasonably have anticipated prior to the hearing); pre-hearing discovery and preparation, including provision for written interrogatories and requests for production of documents, provided that discovery depositions are prohibited; the conduct of the hearing; the right of each party to be represented by counsel, the offer of evidence and witnesses and the cross-examination of witnesses; the authority of the hearing officer to issue subpoenas and subpoenas duces tecum, provided that the hearing officer may limit the number of witnesses to be subpoenaed on behalf of each party to no more than 7; the length of post-hearing briefs; and the form, length, and content of hearing officers' decisions. The hearing officer shall hold a hearing and render a final decision for dismissal pursuant to Article 24A of this Code or shall report to the school board findings of fact and a recommendation as to whether or not the teacher must be dismissed for conduct. The hearing officer shall commence the hearing within 75 days and conclude the hearing within 120 days after being selected as the hearing officer, provided that the hearing officer may modify these timelines upon the showing of good cause or mutual agreement of the parties. Good cause for the purpose of this subsection (d) shall mean the illness or otherwise unavoidable emergency of the teacher, district representative, their legal representatives, the hearing officer, or an essential witness as indicated in each party's pre-hearing submission. In a dismissal hearing pursuant to Article 24A of this Code, the hearing officer shall consider and give weight to all of the teacher's evaluations written pursuant to Article 24A that are relevant to the issues in the hearing.

Each party shall have no more than 3 days to present its case, unless extended by the hearing officer to enable a party to present adequate evidence and testimony, including due to the other party's cross-examination of the party's witnesses, for good cause or by mutual agreement of the parties. The State Board of Education shall define in rules the meaning of "day" for such purposes. All testimony at the hearing shall be taken under oath administered by the hearing officer. The hearing officer shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all the testimony. The costs of the reporter's attendance and services at the hearing shall be paid by the party or parties who are responsible for paying the fees and costs of the hearing officer. Either party desiring a transcript of the hearing shall pay

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for the cost thereof. Any post-hearing briefs must be submitted by the parties by no later than 21 days after a party's receipt of the transcript of the hearing, unless extended by the hearing officer for good cause or by mutual agreement of the parties.

(7) The hearing officer shall, within 30 days from the conclusion of the hearing or closure of the record, whichever is later, make a decision as to whether or not the teacher shall be dismissed pursuant to Article 24A of this Code or report to the school board findings of fact and a recommendation as to whether or not the teacher shall be dismissed for cause and shall give a copy of the decision or findings of fact and recommendation to both the teacher and the school board. If a hearing officer fails without good cause, specifically provided in writing to both parties and the State Board of Education, to render a decision or findings of fact and recommendation within 30 days after the hearing is concluded or the record is closed, whichever is later, the parties may mutually agree to select a hearing officer pursuant to the alternative procedure, as provided in this Section, to rehear the charges heard by the hearing officer who failed to render a decision or findings of fact and recommendation or to review the record and render a decision. If any hearing officer fails without good cause, specifically provided in writing to both parties and the State Board of Education, to render a decision or findings of fact and recommendation within 30 days after the hearing is concluded or the record is closed, whichever is later, the hearing officer shall be removed from the master list of hearing officers maintained by the State Board of Education for not more than 24 months. The parties and the State Board of Education may also take such other actions as it deems appropriate, including recovering, reducing, or withholding any fees paid or to be paid to the hearing officer. If any hearing officer repeats such failure, he or she must be permanently removed from the master list maintained by the State Board of Education and may not be selected by parties through the alternative selection process under this paragraph (7) or paragraph (4) of this subsection (d). The board shall not lose jurisdiction to discharge a teacher if the hearing officer fails to render a decision or findings of fact and recommendation within the time specified in this Section. If the decision of the hearing officer for dismissal pursuant to Article 24A of this Code or of the school board for dismissal for cause is in favor of the teacher, then the hearing officer or school board shall order reinstatement to the same or substantially equivalent position and shall determine the amount for which the school board is liable, including, but not limited to, loss of income and benefits.

(8) The school board, within 45 days after receipt of the hearing officer's findings of fact and recommendation as to whether (i) the conduct at issue occurred, (ii) the conduct that did occur was remediable, and (iii) the proposed dismissal should be sustained, shall issue a written order as to whether the teacher must be retained or dismissed for cause from its employ. The school board's written order shall incorporate the hearing officer's findings of fact, except that the school board may modify or supplement the findings of fact if, in its opinion, the findings of fact are against the manifest weight of the evidence.

If the school board dismisses the teacher notwithstanding the hearing officer's findings of fact and recommendation, the school board shall make a conclusion in its written order, giving its reasons therefor, and such conclusion and reasons must be included in its written order. The failure of the school board to strictly adhere to the timelines contained in this Section shall not render it without jurisdiction to dismiss the teacher. The school board shall not lose jurisdiction to discharge the teacher for cause if the hearing officer

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fails to render a recommendation within the time specified in this Section. The decision of the school board is final, unless reviewed as provided in paragraph (9) of this subsection (d).

If the school board retains the teacher, the school board shall enter a written order stating the amount of back pay and lost benefits, less mitigation, to be paid to the teacher, within 45 days after its retention order. Should the teacher object to the amount of the back pay and lost benefits or amount mitigated, the teacher shall give written objections to the amount within 21 days. If the parties fail to reach resolution within 7 days, the dispute shall be referred to the hearing officer, who shall consider the school board's written order and teacher's written objection and determine the amount to which the school board is liable. The costs of the hearing officer's review and determination must be paid by the board.

(9) The decision of the hearing officer pursuant to Article 24A of this Code or of the school board's decision to dismiss for cause is final unless reviewed as provided in Section 24-16 of this Act [105 ILCS 5/24-16]. If the school board's decision to dismiss for cause is contrary to the hearing officer's recommendation, the court on review shall give consideration to the school board's decision and its supplemental findings of fact, if applicable, and the hearing officer's findings of fact and recommendation in making its decision. In the event such review is instituted, the school board shall be responsible for preparing and filing the record of proceedings, and such costs associated therewith must be divided equally between the parties.

(10) If a decision of the hearing officer for dismissal pursuant to Article 24A of this Code or of the school board for dismissal for cause is adjudicated upon review or appeal in favor of the teacher, then the trial court shall order reinstatement and shall remand the matter to the school board with direction for entry of an order setting the amount of back pay, lost benefits, and costs, less mitigation. The teacher may challenge the school board's order setting the amount of back pay, lost benefits, and costs, less mitigation, through an expedited arbitration procedure, with the costs of the arbitrator borne by the school board.

Any teacher who is reinstated by any hearing or adjudication brought under this Section shall be assigned by the board to a position substantially similar to the one which that teacher held prior to that teacher's suspension or dismissal.

(11) The changes made by this amendatory Act of the 97th General Assembly shall apply to dismissals instituted on or after September 1, 2011 or the effective date of this amendatory Act of the 97th General Assembly, whichever is later. Any dismissal instituted prior to the effective date of these changes must be carried out in accordance with the requirements of this Section prior to amendment by this amendatory Act of 97th General Assembly.

(Source: P.A. 84-1308; 84-1334; 86-1285; 89-618, § 25; 90-224, § 5; 97-8, § 5.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-12.

Section 99 of P.A. 90-224 stated "This Act takes effect upon becoming law and shall apply to hearings requested on or after such effective date". The Act was approved July 25, 1997.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 50.50.

Effect of Amendments. The 1996 amendment by P.A. 89-618, effective August 9, 1996, in the first paragraph, in the first sentence, inserted "shall be mailed to the teacher and also", inserted "either", inserted a comma after "mail" and inserted "or personal delivery with receipt".

The 1997 amendment by P.A. 90-224, effective July 25, 1997, in the second paragraph, in the seventh sentence, added at the end "and have had a minimum of 5 years of experience directly related to labor and employment relations matters between educational employers and educational employees or their exclusive bargaining representatives", in the tenth sentence added at the beginning "Unless waived by the teacher", added the eleventh through sixteenth sentences, in the nineteenth sentence inserted "determined and" and deleted from the end "and may not exceed $300" and deleted the former twenty first sentence which read "The hearing shall be public at the request of either the teacher or the board"; and in the third paragraph, in the third sentence, substituted "within 30 days from the conclusion of the hearing or closure of the record, whichever is later" for "with reasonable dispatch" and added the fourth through tenth sentences.

The 2011 amendment by P.A. 97-8, effective June 13, 2011, added the (a) and (d) designations; added the first sentence to (a); inserted (b) and (c); and rewrote (d).

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- Finding Not Disturbed
- Findings Required
- Remand for Evidentiary Support
- Ripeness

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Rights
- Compliance with Section
- Fortuitous Circumstances Not Sufficient
- Good Faith
- Inclusion of Agreement Provision
- Noncompliance by Board
- Notice and Hearing
- One Calendar Year
Seniority
Standard of Review
State Control
Substantially Similar Positions
- Contract Employment
Suspension
- Hearing
- Opportunity to be Heard
- Pending Hearing
- Power
- Procedural Due Process
- Valid
Temporary Illness or Incapacity
Tenure
- Alternative Sequence of Dismissal
- Application
- Choice of Teachers
- Collective Bargaining Agreement
- Contract Reduction and Dismissal
- Effect
- Illustrative Cases
- Part-Time Assignment
- Purpose
- Qualifications
- Recombination of Courses
- Responsibility for Self Interest
- Right to "Bump"
- Status Preference
Termination Unauthorized
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- Attrition
- Not Created
- Priority
Vacancy Improper
- Creation
Warning
- Appellate Review
- Compliance

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- Duty of Board
- Inadequate
- Irremediable Conduct
- Jurisdiction
- Not Given
- Strict Compliance
- When Required

Constitutionality

- In General

(Unpublished) Under 105 ILCS 5/24-12, the hearing given to a tenured high-school teacher who had been notified of a board of education's vote to terminate him sufficed to protect his interest in continued employment, even though the hearing had not been set until October, because the teacher would have remained employed until after the hearing, even though he might have been suspended pending the hearing. Glover v. Bd. of Educ., F.3d , 2006 U.S. App. LEXIS 15813 (7th Cir. June 20, 2006).

Former Ill. Rev. Stat., ch. 136c of the former Teacher Tenure Act (see now this section) was found constitutional; the statute was not special legislation (see Ill.Const., 1970, Art. IV, sec. 13) and did not impair the right to contract (see Ill. Const., 1970, Art. I, sec. 16). Anderson v. Board of Educ., 390 Ill. 412, 61 N.E.2d 562 (1945).

- Discretionary Power

Authority of a board of education to determine remediability is not an unconstitutional or unlawful delegation of discretionary power without adequate standards. Fender v. School Dist. No. 25, 37 Ill. App. 3d 736, 347 N.E.2d 270 (1 Dist. 1976).

- Due Process

Power to dismiss for just cause belongs to local boards of education by virtue of 105 ILCS 5/10-22.4 this section merely governs the procedure by which those dismissals are accomplished so this section cannot be said to unconstitutionally infringe upon the power of local boards to dismiss because use of impartial hearing officers is based upon a rational, logical purpose, and is not inimical to the constitutional mandate of an efficient system of high quality education. Board of Educ. v. File, 89 Ill. App. 3d 1132, 45 Ill. Dec. 448, 412 N.E.2d 1030 (3 Dist. 1980).

Due process requirements did not disqualify a school board from deciding to terminate a teacher's employment where the board had been involved in earlier events upon which its decision was based. Gilliland v. Board of Educ., 67 Ill. 2d 143, 8 Ill. Dec. 84, 365 N.E.2d 322 (1977).

Where the initial charge or determination of probable cause and the adjudication have different bases and purposes, the fact that the same agency makes them in tandem and that they relate to the same issues does not result in a procedural violation; a due process violation will be shown only when the facts demonstrate that the school board's prehearing involvement foreclosed a fair consideration of the evidence presented at the hearing. Morelli v. Board of Educ., 42 Ill. App. 3d 722, 1 Ill. Dec. 312, 356 N.E.2d 438 (3 Dist. 1976).

- Equal Protection

A prior version of this statute which denied procedural equality to teachers who had reached the age of 65, without basis in a justifiable and rational state purpose, violated plaintiff's Fourteenth

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Amendment equal protection rights (see U.S. Const., Amend XIV). Gault v. Garrison, 569 F.2d 993 (7th Cir. 1977), cert. denied, 440 U.S. 945, 99 S. Ct. 1421, 59 L. Ed. 2d 633 (1979).

In General

This section and 105 ILCS 5/24-11 deal with the procedural rights of teachers in contractual continued service (tenure). Champaign County Bank & Trust Co. v. Brewer, 63 Ill. App. 3d 490, 20 Ill. Dec. 377, 380 N.E.2d 54 (4 Dist. 1978).

Adoption of Rule

- Principal as Board's Agent

Although the rule requiring typing appears to have originated with the principal, he acted as the board's agent, and by placing the letter of remediation in teacher's file in support of the principal's demand, the board adopted the rule. Thomas v. Board of Educ., 117 Ill. App. 3d 374, 72 Ill. Dec. 845, 453 N.E.2d 150 (5 Dist. 1983).

Applicability

- Administrators

As the former Teacher Tenure Act (see now this section) did not apply to plaintiff in his capacity as superintendent-principal, the fact that board of education followed the procedure outlined in that act to dismiss plaintiff could not have put him under the provisions of the act. Biehn v. Tess, 340 Ill. App. 140, 91 N.E.2d 160 (1 Dist. 1950).

- Limited

Only tenured teachers are covered by the provisions of this section. Wheatley v. Board of Educ., 113 Ill. App. 3d 129, 68 Ill. Dec. 860, 446 N.E.2d 1257 (1 Dist. 1983), rev'd on other grounds, 99 Ill. 2d 481, 77 Ill. Dec. 115, 459 N.E.2d 1364 (1984).

- Reduction of Contract

105 ILCS 5/10-23.8b was designed to include the precise factual situation where a principal with two or more years of administrative service in the school district is returned to a teaching position with a reduction in salary; plaintiff was entitled to a private hearing and a public hearing before the board, and a hearing before an impartial hearing officer was not required. Meadows v. School Dist. U-46, 141 Ill. App. 3d 335, 95 Ill. Dec. 667, 490 N.E.2d 140 (2 Dist. 1986).

The reduction of plaintiff's contract entitled him to the protections of this section. Birk v. Board of Educ., 104 Ill. 2d 252, 84 Ill. Dec. 447, 472 N.E.2d 407 (1984).

Arbitrary and Capricious Conduct

- Not Shown

Where a local board of education did not present any credible evidence that an economic necessity existed at the time it dismissed the plaintiff, and where additional administrative personnel were hired while three tenured teachers were reduced in force, two of whom were conceded to have been wrongfully dismissed, the board's conduct was arbitrary and capricious. Temple v. Board of Educ., 192 Ill. App. 3d 182, 139 Ill. Dec. 255, 548 N.E.2d 640 (1 Dist. 1989).

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Appellate court erred in deciding that board of education acted arbitrarily and capriciously by refusing to rehire a tenured teacher, who was dismissed because of a discontinuance of teaching positions, where the board made no attempt to reassign courses to create new positions so that it could deny her employment. Peters v. Board of Educ., 97 Ill. 2d 166, 73 Ill. Dec. 450, 454 N.E.2d 310 (1983).

Arbitration

- Arbitrable Issues

The grievance concerning the dismissal of tenured teachers in a school district, which included the issues of whether the reduction in force was in fact a result of economic conditions and whether the administrative consequences of the school board's determination were properly applied, included arbitrable issues. Board of Educ. v. Crete-Monee Educ. Ass'n, 147 Ill. App. 3d 188, 101 Ill. Dec. 35, 497 N.E.2d 1348 (3 Dist. 1986).

- Arbitrator's Authority

Where a collective bargaining agreement authorized an arbitrator to determine whether the school board complied with this section, the arbitrator was empowered to decide whether the statutory notices were valid. Board of Educ. v. Bremen Dist. No. 228, 114 Ill. App. 3d 1051, 70 Ill. Dec. 613, 449 N.E.2d 960 (1 Dist. 1983), rev'd on other grounds, 101 Ill. 2d 115, 77 Ill. Dec. 783, 461 N.E.2d 406 (1984).

- Award Unenforceable

Arbitrator's award declaring that school district acted against teacher in issuing a "notice to remedy" without just cause was prohibited because it was inconsistent and conflicted with 105 ILCS 5/10-22.4 and this section; therefore, the arbitration award was not binding and could not be enforced and, thus, the district could not have committed an unfair labor practice by failing to comply with it. Board of Educ. v. Illinois Educ. Labor Relations Bd., 165 Ill. 2d 80, 208 Ill. Dec. 313, 649 N.E.2d 369 (1995).

- School Board Compliance

A school board can validly agree to let an arbitrator decide whether it has complied with this section. Board of Educ. v. Bremen Dist. No. 228, 114 Ill. App. 3d 1051, 70 Ill. Dec. 613, 449 N.E.2d 960 (1 Dist. 1983), rev'd on other grounds, 101 Ill. 2d 115, 77 Ill. Dec. 783, 461 N.E.2d 406 (1984).

Assignments and Curriculum

- Alignment

This section prohibits a bad faith alignment of teaching assignments to avoid the existence of a position that could be filled by a tenured teacher for whom dismissal was sought. Pennell v. Board of Educ., 137 Ill. App. 3d 139, 91 Ill. Dec. 886, 484 N.E.2d 445 (5 Dist. 1985).

This section prohibits a bad faith alignment of teaching assignments to avoid the existence of a "position" which could be filled by a tenured teacher for whom dismissal was sought, and such conduct by a school district would entitle the teacher to retention; however, teaching assignments made in good faith may also be improper. Hayes v. Board of Educ., 103 Ill. App. 3d 498, 59 Ill. Dec. 189, 431 N.E.2d 690 (4 Dist. 1981).

- Circumvention of Law

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As petitioner had held the position to which driver's education courses had been assigned, no longer had a full assignment, and could have taught all of those classes in addition to his present assignment, he was entitled under this section to have been assigned to those classes where the good faith rearrangement of assignments by school district operated to circumvent the purpose and spirit of the tenure laws. Hayes v. Board of Educ., 103 Ill. App. 3d 498, 59 Ill. Dec. 189, 431 N.E.2d 690 (4 Dist. 1981).

- Deprivation as Dismissal

The total deprivation of teaching responsibilities and assignments bestowed upon plaintiff for no bona fide reasons was deemed the equivalent of dismissal under this section so as to require the following of procedures required by this section. Hansen v. Board of Educ., 150 Ill. App. 3d 979, 104 Ill. Dec. 204, 502 N.E.2d 467 (2 Dist. 1986).

- Horizontal Realignment

Where it appears that two teachers were equally competent to perform the guidance duties during the tenth month, the tenured teacher with seniority was entitled to insist on the horizontal realignment of course assignments in his favor. Birk v. Board of Educ., 120 Ill. App. 3d 181, 75 Ill. Dec. 623, 457 N.E.2d 1065 (5 Dist. 1983).

- Incidental Reassignments

A tenured teacher does not have the right to object to incidental assignments of a single course to established teaching positions that they are unqualified to teach, thereby fractionalizing tenure rights, unless a pattern of incidental reassignments can be proved. Pennell v. Board of Educ., 137 Ill. App. 3d 139, 91 Ill. Dec. 886, 484 N.E.2d 445 (5 Dist. 1985).

Incidental reassignment of single courses to established teaching positions to maximize the use of staff and accommodate changes in enrollment, curriculum, and economy may be permissible - although as a result, a tenured teacher is dismissed or prohibited from returning from leave - as long as the tenured teacher is (1) not qualified to teach the courses comprising the "position" of less senior teachers, and (2) teaching assignments are not aligned in bad faith to avoid the existence of a "position" which could be filled by a tenured teacher for whom dismissal was sought. Catron v. Board of Educ., 126 Ill. App. 3d 693, 81 Ill. Dec. 750, 467 N.E.2d 621 (4 Dist. 1984).

This section does not preclude the incidental reassignment of a single class to an otherwise established teaching position; but a pattern of incidental reassignments could well be designed to frustrate the purposes of the tenure law, and such a bad faith action by the school board clearly could not be countenanced. Higgins v. Board of Educ., 101 Ill. App. 3d 1003, 57 Ill. Dec. 446, 428 N.E.2d 1126 (3 Dist. 1981).

- Rearrangement of Curriculum

When school boards rearrange curriculum to defeat the rights of a tenured teacher, it cannot be tolerated even if the action is taken under the guise of discretionary authority and duty. Pennell v. Board of Educ., 137 Ill. App. 3d 139, 91 Ill. Dec. 886, 484 N.E.2d 445 (5 Dist. 1985).

Attorney Fees

A wrongfully discharged teacher may not recover attorney fees as damages under this section. Waller v. Board of Educ., 28 Ill. App. 3d 328, 328 N.E.2d 604 (5 Dist. 1975).

Bad Faith

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- Illustrative Case

Where a board of education reduced a teacher/librarian to part-time, rearranged her schedule, assigned language arts classes to less qualified teachers, and passed her by for an elementary teaching position, the board manipulated the assignments in bad faith to defeat her tenure rights. Pennell v. Board of Educ., 137 Ill. App. 3d 139, 91 Ill. Dec. 886, 484 N.E.2d 445 (5 Dist. 1985).

Bill of Particulars

Where in specifying the facts supporting each of the charges, the bill of particulars only set out facts upon which the school board's earlier decision was based, any deficiency which existed in the procedure was cured by the board's later denial of plaintiff's motion directed at questioning the authority of school board's attorney to prepare and submit the bill of particulars. Morelli v. Board of Educ., 42 Ill. App. 3d 722, 1 Ill. Dec. 312, 356 N.E.2d 438 (3 Dist. 1976).

Board of Education

- Typed Copies of Examinations

Board of education may require all teachers to provide typed copies of their examinations. Thomas v. Board of Educ., 117 Ill. App. 3d 374, 72 Ill. Dec. 845, 453 N.E.2d 150 (5 Dist. 1983).

Cause

- Definition

"Cause" is some substantial shortcoming which renders continuance in employment detrimental to discipline and effectiveness of service; something which the law and sound public opinion recognize as a good reason for the teacher to no longer occupy his position. Board of Educ. v. Illinois State Bd. of Educ., 217 Ill. App. 3d 720, 160 Ill. Dec. 575, 577 N.E.2d 900 (5 Dist. 1991).

- Determination

No provision is made in the statutes for a determination of cause by local school boards. Board of Educ. v. Epstein, 72 Ill. App. 3d 723, 28 Ill. Dec. 915, 391 N.E.2d 114 (1 Dist. 1979).

A determination, as to whether failure of a teacher to cooperate properly with the other teachers and students at the school as charged in the notice constituted a cause for dismissal, was left to the discretion of the board. Pearson v. Board of Educ., 12 Ill. App. 2d 44, 138 N.E.2d 326 (3 Dist. 1956).

- Failure to File Tax Returns

Teacher's failure to file income tax returns and the surrounding circumstances, including the publicity surrounding teacher's criminal case and his behavior during its pendency, was sufficient cause to justify his dismissal. McCullough v. Illinois State Bd. of Educ., 204 Ill. App. 3d 1082, 150 Ill. Dec. 430, 562 N.E.2d 1233 (5 Dist. 1990).

- Illustrative Cases

A dismissal of teacher, brought about because of the failure to comply with board regulations on temporary incapacity, comes within the category of dismissals "sought for any other reason or

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cause" and gave teacher a right to a hearing prior to dismissal. Friesel v. Board of Educ., 79 Ill. App. 3d 460, 34 Ill. Dec. 814, 398 N.E.2d 637 (1979).

Petition for writ of mandamus filed by teacher dismissed without a hearing and ordering her reinstatement and award of back pay stated a cause of action, and thus, the trial court was in error when it granted the school board's motion to dismiss. Smith v. Board of Educ., 52 Ill. App. 3d 647, 9 Ill. Dec. 862, 367 N.E.2d 296 (5 Dist. 1977).

- Insufficient Charges

Vague accusations of failure to perform instructional duties were wholly insufficient to qualify as a specific charge for termination. Hutchison v. Board of Educ., 32 Ill. App. 2d 247, 177 N.E.2d 420 (3 Dist. 1961).

- Right to Determine

Illinois Educational Labor Relations Board's application of just cause provision of collective-bargaining agreement which in effect gave an arbitrator the power to determine whether a dismissal was warranted was inconsistent and conflicted with 105 ILCS 5/10-22.4 and this section, and thus clearly violated 115 ILCS 5/10, which prohibits the implementation of a provision in a collective bargaining agreement which would be inconsistent or in conflict with any Illinois statute. Board of Educ. v. Illinois Educ. Labor Relations Bd., 258 Ill. App. 3d 859, 196 Ill. Dec. 252, 629 N.E.2d 797 (4 Dist.), appeal granted, 156 Ill. 2d 556, 202 Ill. Dec. 919, 638 N.E.2d 1113 (1994), aff'd, 165 Ill. 2d 80, 208 Ill. Dec. 313, 649 N.E.2d 369 (1995).

- Sufficient Charges

Where the state board of education gave plaintiff one school year to remedy her deficiencies and at the end of that year determined that plaintiff was still incompetent to teach because of her lack of classroom discipline and management of the curriculum, such charges were sufficient for dismissal for cause. Stamper v. Board of Educ., 141 Ill. App. 3d 884, 96 Ill. Dec. 222, 491 N.E.2d 36 (1 Dist. 1986).

Where a teacher was notified that the board of education was of the opinion that the interests of the school required his dismissal, there was no basis for the complaint that the board did not rely upon a sufficiently specific cause. Pearson v. Board of Educ., 12 Ill. App. 2d 44, 138 N.E.2d 326 (3 Dist. 1956).

A board of education in exercising its power to dismiss a teacher is not confined to situations where certain specified causes exist; in addition to the power to dismiss for incompetency, cruelty, negligence, immorality and lack of qualifications, a board may also dismiss a teacher for other sufficient causes whenever in its opinion the interests of the school require it. Pearson v. Board of Educ., 12 Ill. App. 2d 44, 138 N.E.2d 326 (3 Dist. 1956).

It is a question for the General Assembly to specify the conditions and reasons upon which a pre-existing contract of employment may be terminated; courts have no power to read into a statute something that is not within the manifest intention of the law-making body as gathered from the statute itself. Pack v. Sporleder, 394 Ill. 130, 67 N.E.2d 198 (1946).

Certified Employee

- Tenured Position

Where a tenured teacher is also serving in another position in the school, the teacher does not acquire tenure in that other position but rather is tenured only as a certified employee of the school district. School Dirs. v. Kossoff, 95 Ill. App. 3d 26, 50 Ill. Dec. 550, 419 N.E.2d 658 (2 Dist. 1981).

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Conduct

- Detrimental

The tenure provisions of this Code are not intended to preclude dismissal where a teacher's conduct is detrimental to the operation of the school. Aulwurm v. Board of Educ., 43 Ill. App. 3d 963, 2 Ill. Dec. 772, 357 N.E.2d 1215 (5 Dist. 1976), rev'd on other grounds, 67 Ill. 2d 434, 10 Ill. Dec. 571, 367 N.E.2d 1337 (1977).

- Illustrative Cases

Teacher's letters of a sexual nature to two students were immoral and were detrimental to the discipline and effectiveness of his continued service in the school district. Board of Educ. v. Illinois State Bd. of Educ., 217 Ill. App. 3d 720, 160 Ill. Dec. 575, 577 N.E.2d 900 (5 Dist. 1991).

Construction

- Dismissal

"Dismissal," as used in this section, must be reasonably and justly construed to mean not only the power to permanently dismiss but also to temporarily dismiss or suspend. Craddock v. Board of Educ., 76 Ill. App. 3d 43, 29 Ill. Dec. 376, 391 N.E.2d 1059 (3 Dist. 1979), aff'd, 81 Ill. 2d 28, 39 Ill. Dec. 815, 405 N.E.2d 794 (1980).

- Removed or Dismissed

The terms "removed" and "dismissed" in this section encompass any reduction in the extent of a teacher's employment. Caviness v. Board of Educ., 59 Ill. App. 3d 28, 16 Ill. Dec. 526, 375 N.E.2d 157 (4 Dist. 1978); Wilson v. Board of Educ., 127 Ill. App. 3d 433, 82 Ill. Dec. 341, 468 N.E.2d 995 (3 Dist. 1984).

Limiting the application of "removed" or "dismissed" to instances of complete termination would totally obliterate the protections intended by the statute. Caviness v. Board of Educ., 59 Ill. App. 3d 28, 16 Ill. Dec. 526, 375 N.E.2d 157 (4 Dist. 1978).

- Statutes

As the language found in 105 ILCS 5/3B-1 and 105 ILCS 5/3B-5 is unambiguous and clear, there is no need to review these statutes in pari materia with this section of this chapter. Frame v. Board of Trustees, 212 Ill. App. 3d 617, 156 Ill. Dec. 735, 571 N.E.2d 519 (3 Dist. 1991).

This Act must be strictly construed in order not to unduly interfere with the responsibility of local boards to efficiently operate the educational systems. Johnson v. Board of Educ., 85 Ill. 2d 338, 53 Ill. Dec. 234, 423 N.E.2d 903 (1981).

Contemporaneous Duty

Although court order did impose a duty on the school board to offer and hold open a teaching position in the school district for plaintiff, implicit in this requirement was the understanding that plaintiff had to proceed through the appropriate administrative channels; and thus, while the board had a duty to reinstate plaintiff, plaintiff had a contemporaneous duty to report to the board. Plaintiff was, therefore, precluded from claiming a financial injury which was as much within her power to remedy as it was with appellant's. Neal v. Board of Educ., 93 Ill. App. 3d 386, 48 Ill. Dec. 815, 417 N.E.2d 217 (5 Dist. 1981).

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Contractual Continued Service

- Application

The term "contractual continued service" applies only to employees covered by this paragraph of this section, and not to those covered by 105 ILCS 5/10-23.5. Buckellew v. Board of Educ., 215 Ill. App. 3d 506, 159 Ill. Dec. 58, 575 N.E.2d 556 (4 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 915, 584 N.E.2d 127 (1991).

- Requirement Satisfied

Allegations of tenured status and a mutually agreed-upon reduction in teaching to part-time were sufficient to satisfy the requirements of this section of a "teacher in contractual continued service" who is "removed or dismissed" due to a decision of the board to "decrease the number of teachers employed * * * or to discontinue some particular type of teaching service." Deem v. Board of Educ., 200 Ill. App. 3d 903, 146 Ill. Dec. 328, 558 N.E.2d 291 (5 Dist. 1990).

Contractual Standing

Board of education's Fed. R. Civ. P. 12(b)(6) motion to dismiss a former employee's 42 U.S.C.S. § 1983 action alleging a procedural due process violation in the termination of her employment was denied because the employee alleged that her employment contract was under the terms and conditions of state law and 105 ILCS 5/10-22.4 and 105 ILCS 5/24-12 prohibited teachers in contractual continued service from being terminated without cause, which would create a property interest in employment through the end of the contract term that could not be terminated without due process. Carrizales v. Bd. of Educ., F. Supp. 2d , 2004 U.S. Dist. LEXIS 4400 (N.D. Ill. Mar. 19, 2004).

A faculty association was entitled to assert its contractual rights as a party to a collective bargaining agreement, and the aggrieved teachers, as members of the collective bargaining unit which the association represented, could assert their contractual rights to rely on this section as the intended beneficiaries of the agreement between the school board and the association. Board of Educ. v. Bremen Dist. No. 228, 114 Ill. App. 3d 1051, 70 Ill. Dec. 613, 449 N.E.2d 960 (1 Dist. 1983), rev'd on other grounds, 101 Ill. 2d 115, 77 Ill. Dec. 783, 461 N.E.2d 406 (1984).

Costs

At common law in Illinois, a successful litigant is not entitled to recover costs and expenses of litigation from the other party. Waller v. Board of Educ., 28 Ill. App. 3d 328, 328 N.E.2d 604 (5 Dist. 1975).

Court reporter fees may be included in the definition of "costs" as used in this statute. Miller v. Board of Educ., 98 Ill. App. 2d 305, 240 N.E.2d 471 (1 Dist. 1968).

Where court reporter fees were a necessary expense incurred by a plaintiff, he was entitled to reimbursement therefor. Miller v. Board of Educ., 98 Ill. App. 2d 305, 240 N.E.2d 471 (1 Dist. 1968).

Some additional damages must have been contemplated by the legislature because of the statutory language "loss of income and other costs incurred." Miller v. Board of Educ., 98 Ill. App. 2d 305, 240 N.E.2d 471 (1 Dist. 1968).

Damages

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- Disallowed

A plaintiff's cross-appeal for increased damages as compensation for injury to his professional reputation and for punitive damages was rejected. Miller v. Board of Educ., 98 Ill. App. 2d 305, 240 N.E.2d 471 (1 Dist. 1968).

- Elements

Lost wages are one element of the damages, and the amount of lost wages would be that amount a teacher would normally have received had he not been discharged less the amount he earned or reasonably should have earned in mitigation. Miller v. Board of Educ., 98 Ill. App. 2d 305, 240 N.E.2d 471 (1 Dist. 1968).

- Mitigation

Plaintiff acted with reasonable diligence in attempting to mitigate damages where he wrote to 134 school superintendents in an unsuccessful attempt to find a teaching position and at one time was forced to take a job as a laborer in a can factory. Miller v. Board of Educ., 98 Ill. App. 2d 305, 240 N.E.2d 471 (1 Dist. 1968).

- Wrongful Discharge

A wrongfully discharged employee can recover only the difference between what he would have received had he been permitted to complete the contract and what he earned or could reasonably have earned in the interval between his wrongful discharge and the date on which his contract would have been completed. Wells v. Board of Educ., 121 Ill. App. 2d 112, 257 N.E.2d 252 (1 Dist 1970).

In determining damages suffered for a wrongful discharge, the question was not what amount the board of education of a school district offered the plaintiff, but what the teacher could reasonably have expected to receive in the normal course of events. Miller v. Board of Educ., 98 Ill. App. 2d 305, 240 N.E.2d 471 (1 Dist. 1968).

Disciplinary Penalties

Under this section a reviewing court is empowered to make only one of two decisions: to reinstate the teacher with no loss in pay, to uphold the order of dismissal with no award of back pay. There is no language in the statute which suggest that a disciplinary penalty other than discharge is available. Szabo v. Board of Educ., 117 Ill. App. 3d 869, 73 Ill. Dec. 295, 454 N.E.2d 39 (1 Dist. 1983).

Disclosure

While this section authorizes the issuance of subpoenas, the statute itself does not direct disclosure as required by 105 ILCS 5/112-6(b). Board of Educ. v. Verisario, 143 Ill. App. 3d 1000, 97 Ill. Dec. 692, 493 N.E.2d 355 (2 Dist. 1986).

Discretion of Boards

School boards have broad discretion to create new teaching positions and to rearrange teaching assignments in all cases except where the continued employment of a tenured teacher might be jeopardized; however, when a tenured teacher's employment is at stake, teachers cannot be shifted from one established position to another - even in good faith - if the rights of tenure would be defeated. Higgins v. Board of Educ., 101 Ill. App. 3d 1003, 57 Ill. Dec. 446, 428 N.E.2d 1126 (3 Dist. 1981).

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Dismissal

- In General

A suspension or temporary dismissal, derived from the power of dismissal in this section, cannot be exercised as power without compliance with this section. Craddock v. Board of Educ., 76 Ill. App. 3d 43, 29 Ill. Dec. 376, 391 N.E.2d 1059 (3 Dist. 1979), aff'd, 81 Ill. 2d 28, 39 Ill. Dec. 815, 405 N.E.2d 794 (1980).

- Alternative Method

To be permissible under this section, any alternative method of dismissal must bear the same characteristics as inverse seniority and must be founded upon objectively verifiable criteria unrelated to a teacher's skills, abilities or performance. Piquard v. Board of Educ., 242 Ill. App. 3d 477, 182 Ill. Dec. 888, 610 N.E.2d 757 (3 Dist. 1993).

- Improper

Where the school board fails, by a preponderance of the evidence, to show that the examples of conduct constituted a pattern of deficiency, then dismissal cannot be permitted. Board of Educ. v. Ingels, 75 Ill. App. 3d 334, 31 Ill. Dec. 153, 394 N.E.2d 69 (3 Dist. 1979).

Since the board of education did not comply with the steps and procedures required by law for the removal and dismissal of the plaintiff from his position as a school teacher, the circuit court judgment was reversed. Everett v. Board of Educ., 22 Ill. App. 3d 594, 317 N.E.2d 753 (1 Dist. 1974).

In view of the history and purpose of the teacher tenure law, a school board may not retain the services of nontenure teachers and dismiss tenure teachers who are qualified to teach the subjects for which the nontenure teachers are employed. Hankenson v. Board of Educ., 15 Ill. App. 2d 440, 146 N.E.2d 194 (2 Dist. 1957).

- Insubordination

The hearing officer reached the correct decision that the action of defendant was not insubordination so as to justify dismissal. Board of Educ. v. Metskas, 106 Ill. App. 3d 943, 62 Ill. Dec. 561, 436 N.E.2d 587 (1 Dist. 1982).

- Proper

Under this Article, local school boards retain the complete power and authority to transfer a teacher to any position which the teacher is qualified to fill and to reduce teaching staff through lay-offs whenever it is economically necessary in the board's judgment. Proviso Council of W. Suburban Teachers Union v. Board of Educ., 160 Ill. App. 3d 1020, 112 Ill. Dec. 387, 513 N.E.2d 996 (1 Dist. 1987).

After the state board of education determined that plaintiff could not competently teach in her home economics position, it had the discretion to transfer her to another grade or to proceed with a dismissal action; the board's choice to dismiss plaintiff was within its discretion. Stamper v. Board of Educ., 141 Ill. App. 3d 884, 96 Ill. Dec. 222, 491 N.E.2d 36 (1 Dist. 1986).

The hearing officer's conclusion that plaintiff was unable to properly manage or discipline her home economics classroom, along with the unrebutted testimony of eleven witness, adequately supported plaintiff's dismissal. Stamper v. Board of Educ., 141 Ill. App. 3d 884, 96 Ill. Dec. 222, 491 N.E.2d 36 (1 Dist. 1986).

Since there was no position held by a nontenured teacher for which plaintiff was legally qualified to teach, his dismissal was proper. Hagopian v. Board of Educ., 56 Ill. App. 3d 940, 14 Ill. Dec.

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711, 372 N.E.2d 990 (3 Dist. 1978), modified on other grounds, 83 Ill. App. 2d 1097, 39 Ill. Dec. 308, 404 N.E.2d 899 (1980).

Where ten of plaintiff's former students (as well as the school principal) testified as to the constant loud noise, general disorder, physical abuse and to arbitrary grading policies, the teacher's dismissal was proper. Glover v. Board of Educ., 21 Ill. App. 3d 1053, 316 N.E.2d 534 (4 Dist. 1974), aff'd, 62 Ill. 2d 122, 340 N.E.2d 4 (1975).

Dismissal of tenured science teacher, whose educational requirements were unquestioned, whose conduct and character in and out of the school was not tainted, whose experience extended through 20 years, whose academic ability as a teacher appeared to be both sincere and dedicated, but whose emotional self-control was wholly insufficient to maintain a proper rapport with his pupils, his administrators, and the parents in the system, due to uncontrolled temper outbursts, was warranted. Kallas v. Board of Educ., 15 Ill. App. 3d 450, 304 N.E.2d 527 (4 Dist. 1973).

The record disclosed that a hearing concerning the dismissal of a teacher accused of kissing and touching female students was conducted strictly in accordance with the provisions of this Act; the appellate court would not interfere with the discretionary authority vested in the school board absent arbitrary or capricious action, as the action of the board and the determination of the circuit court were abundantly supported by the evidence and the law, and were correct and in no wise arbitrary or capricious. Lombardo v. Board of Educ., 100 Ill. App. 2d 108, 241 N.E.2d 495 (1 Dist. 1968).

Where thirty-five witnesses testified at the hearing, the school board's decision discharging a teacher for the reason that the teacher had exhibited and pursued a course of non-cooperation with his fellow teachers and his superiors over a long period of time was supported by the record. Robinson v. Community Unit Sch., 35 Ill. App. 2d 325, 182 N.E.2d 770 (4 Dist. 1962).

The board of education was well within its rights in determining, in the first instance, that the charges were not remediable where the appellant was not only engaged in an outside business but had developed it to an extent that he was not only selling seed oats and other seeds but had erected buildings for the sale of fertilizer, commenced to blend fertilizer, possessed a truck in his business and advertised extensively. Meredith v. Board of Educ., 7 Ill. App. 2d 477, 130 N.E.2d 5 (3 Dist. 1955).

Distinction Between Positions

Defendant's distinction between the reduction of an administrative position and the reduction of a guidance counseling position in Birk v. Board of Education of Flora Community was not logical in that this section treats both positions the same for discharge purposes. Duncan v. Board of Educ., 177 Ill. App. 3d 806, 127 Ill. Dec. 98, 532 N.E.2d 927 (3 Dist. 1988).

Economic Necessity

This section obligates school boards to hold a public hearing when the number of teachers dismissed because of economic necessity exceeds a specified threshold; when teacher dismissals are based on economic necessity, the School Code does not give a school board authority to deny that the dismissals were in fact based on economic necessity. Board of Educ. v. Bremen Dist. No. 228, 114 Ill. App. 3d 1051, 70 Ill. Dec. 613, 449 N.E.2d 960 (1 Dist. 1983), rev'd on other grounds, 101 Ill. 2d 115, 77 Ill. Dec. 783, 461 N.E.2d 406 (1984).

Education

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Appellate court found that teacher's improper use of sick leave, while hardly exemplary behavior, was not so odious that the court could dispense with a finding that it could not have been corrected with a warning. Bd. of Educ. v. Ill. State Bd. of Educ., 331 Ill. App. 3d 131, 264 Ill. Dec. 406, 770 N.E.2d 711, 2002 Ill. App. LEXIS 409 (3 Dist. 2002), appeal denied, 201 Ill. 2d 561, 271 Ill. Dec. 922, 786 N.E.2d 180 (2002).

Federal Employee

Where an employee at a school was hired under the Comprehensive Employment and Training Act of 1973 (29 U.S.C. § 801 et seq.) and was not under written contract with the school board, it was evident that the position occupied by the employee was not a new or reinstated position funded by the school district which would have been available to the plaintiff within the meaning of this section. McLain v. Board of Educ., 66 Ill. App. 3d 1024, 23 Ill. Dec. 746, 384 N.E.2d 540 (4 Dist. 1978).

Federal Law

State was not obligated to notify its subdivisions, such as public school districts, of a change in law, such as the abolition of mandatory retirement brought about by the amendment of federal legislation nullifying state statute. EEOC v. Illinois, 69 F.3d 167 (7th Cir. 1995).

Finality

- Decision Rendered

Final dismissal of a tenured public school teacher occurs only when the hearing officer renders his decision. Combs v. Board of Educ., 147 Ill. App. 3d 1092, 101 Ill. Dec. 482, 498 N.E.2d 806 (2 Dist. 1986).

- Failure to Submit Findings

Failure of the hearing officer to submit written findings in conjunction with his decision does not make that decision any less a final order under former section 1 of the Administrative Review Act (see now 735 ILCS 5/3-101); however, even though the order may be final, it may not be reviewable. Board of Educ. v. File, 89 Ill. App. 3d 1132, 45 Ill. Dec. 448, 412 N.E.2d 1030 (3 Dist. 1980).

Hearing

- In General

If the school board seeks to dismiss a tenured teacher because of lack of qualifications, it has the discretion to do so under 105 ILCS 5/10-22.4, provided that such a dismissal is accomplished by an administrative hearing as provided by this section. Walter v. Board of Educ., 93 Ill. 2d 101, 66 Ill. Dec. 309, 442 N.E.2d 870 (1982).

- Duty of Board

The board of education had the duty to hold a requested dismissal hearing before the close of the school term; where the Board failed to do so, a writ of mandamus was properly issued. Smith v. Board of Educ., 75 Ill. App. 3d 186, 31 Ill. Dec. 125, 394 N.E.2d 41 (5 Dist. 1979).

Tenured teachers have the right to a pretermination hearing by the board of education and review of its final decision by a circuit court through the Administrative Review Act (105 ILCS 5/24-12

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and 105 ILCS 5/14-16). Burns v. Board of Educ. of Fairfield Sch., 47 Ill. App. 3d 589, 5 Ill. Dec. 882, 362 N.E.2d 353 (5 Dist. 1977).

School board was the proper party to conduct a hearing regarding a plaintiff teacher's dismissal, notwithstanding that the board had originally passed the resolution relieving him of his duties. Tetmeir v. Board of Educ., 5 Ill. App. 3d 982, 284 N.E.2d 380 (1 Dist. 1972).

- Fair Consideration of Evidence

Absent facts demonstrating that a board of education prehearing involvement foreclosed a fair consideration of evidence presented at the hearing, a due process violation was not shown. Fender v. School Dist. No. 25, 37 Ill. App. 3d 736, 347 N.E.2d 270 (1 Dist. 1976).

Where the teacher unequivocally admitted the misconduct with which he was charged by the board of education, the procedural protections in insuring a fair and reliable determination of the factual question was not essential. Yang v. Special Charter Sch. Dist. No. 150, 11 Ill. App. 3d 239, 296 N.E.2d 74 (3 Dist. 1973).

This section provides that a teacher may ask for a hearing on the question of whether he should or should not be dismissed; there is a fundamental right to a fair hearing. Lusk v. Community Consol. Sch., 20 Ill. App. 2d 252, 155 N.E.2d 650 (2 Dist. 1959).

In a hearing called by a teacher regarding dismissal, the school board (as an administrative agency) does not represent one party against the other; the hearing it held should have been fair and impartial. Lusk v. Community Consol. Sch., 20 Ill. App. 2d 252, 155 N.E.2d 650 (2 Dist. 1959).

- Hearsay Exception

While the attitude of one teacher to another may not, in and of itself, be sufficient to dismiss a teacher, it is one of several factors to be considered by the school board in reaching its decision and, as such, it is relevant to the scope of inquiry at the hearing; therefore, any hearsay evidence which demonstrated the attitude of the various members of the faculty to the plaintiff was competent under the state of mind exception to the hearsay rule. Morelli v. Board of Educ., 42 Ill. App. 3d 722, 1 Ill. Dec. 312, 356 N.E.2d 438 (3 Dist. 1976).

- Necessity

Although board erroneously believed that plaintiff had lost her tenure, the circuit court, through two different judges, specifically found that plaintiff was tenured at the time of her dismissal. Under the Code in effect in 1979, the board of education was not required to hold an administrative hearing when it dismissed a tenured teacher for economic necessity; such hearings were required only when a teacher was removed or dismissed for any other reason or cause. Hampson v. Board of Educ., 215 Ill. App. 3d 817, 159 Ill. Dec. 385, 576 N.E.2d 54 (1 Dist.), appeal denied, 142 Ill. 2d 654, 164 Ill. Dec. 917, 584 N.E.2d 129 (1991), cert. denied, 504 U.S. 944, 112 S. Ct. 2284, 119 L. Ed. 2d 209 (1992).

When teacher dismissals are based on economic necessity, this Code does not give a school board authority to deny that the dismissals were in fact based on economic necessity so as to not hold a public hearing. Board of Educ. v. Bremen Dist. No. 228, 114 Ill. App. 3d 1051, 70 Ill. Dec. 613, 449 N.E.2d 960 (1 Dist. 1983), rev'd on other grounds, 101 Ill. 2d 115, 77 Ill. Dec. 783, 461 N.E.2d 406 (1984).

The lack of a predischarge hearing against the plaintiff did not violate due process of law where the contract between the faculty association and the board of trustees of the college under which plaintiff worked, gained tenure and was terminated, incorporated this Act, and the board followed the procedures prescribed by the Act. Barszcz v. Board of Trustees, 400 F. Supp. 675 (N.D. Ill.

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1975), aff'd, 539 F.2d 715 (7th Cir. 1976), cert. dismissed, 429 U.S. 1080, 97 S. Ct. 827, 50 L. Ed. 2d 801 (1977).

- Parol Evidence

Where in a mandamus proceeding for reinstatement, a former teacher sought to introduce evidence of conversations by members of the board of education among themselves in their official capacity, the court's refusal to admit such evidence on the ground that the record could not be contradicted by parol evidence was proper. Lingle v. Slifer, 8 Ill. App. 2d 489, 131 N.E.2d 822 (4 Dist. 1956).

- Presence of Individuals

The district superintendent's and counsel's presence at the board of education meeting, in and of itself, did not establish that plaintiff was deprived of a fair trial; though the presence of the individuals at the meeting was an error, plaintiff failed to show that the error was so serious as to violate his constitutional rights and render the five day hearing a nullity. Fender v. School Dist. No. 25, 37 Ill. App. 3d 736, 347 N.E.2d 270 (1 Dist. 1976).

- Right to Regulations

The school board's right to promulgate regulations is subject to the right of the teacher to a hearing before dismissal. Friesel v. Board of Educ., 79 Ill. App. 3d 460, 34 Ill. Dec. 814, 398 N.E.2d 637 (1979).

- Supporting Evidence

There was no abuse of discretion where the board of education hearing officer did not permit all of the teacher's character and reputation witnesses to testify, nor permit proof to be made that jury had found him not guilty of the criminal charges which had been placed against him. Yang v. Special Charter Sch. Dist. No. 150, 11 Ill. App. 3d 239, 296 N.E.2d 74 (3 Dist. 1973).

In a dismissal proceeding against a teacher, where the charges referred to collateral criminal action, evidence of acquittal should have been admitted; however, such error was not prejudicial in view of the teacher's own admissions. Yang v. Special Charter Sch. Dist. No. 150, 11 Ill. App. 3d 239, 296 N.E.2d 74 (3 Dist. 1973).

- Timeliness

The legislature intended the local school board to schedule the hearing within the 60 day period, and did not intend that the hearing would actually have to be held by the independent hearing officer within the period of the time or not at all. Watts v. Board of Educ., 125 Ill. App. 3d 532, 80 Ill. Dec. 859, 466 N.E.2d 311 (5 Dist. 1984).

- Waiver

A plaintiff who erred in her assessment of the school board's lack of jurisdiction and who arbitrarily refused to participate further in the administrative process at the time most advantageous to all concerned, had to accept the consequence of her arbitrary refusal and abandonment of the administrative process; plaintiff could not resume the process. Watts v. Board of Educ., 125 Ill. App. 3d 532, 80 Ill. Dec. 859, 466 N.E.2d 311 (5 Dist. 1984).

Hearing Officer

- Decision

The failure of hearing officer to render his decision within 30 days from the conclusion of a hearing involving tenured public school teacher did not nullify the proceedings where hearing

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officer did not receive his copy of the transcript until the 30 day period had already expired. Combs v. Board of Educ., 147 Ill. App. 3d 1092, 101 Ill. Dec. 482, 498 N.E.2d 806 (2 Dist. 1986).

- Duty to Furnish List

Respondents were under a mandatory, and not a discretionary, duty to furnish a list of impartial hearing officers upon receipt of notice of the scheduled hearing. Taylor v. State Bd. of Educ., 56 Ill. App. 3d 387, 14 Ill. Dec. 324, 372 N.E.2d 129 (4 Dist. 1978).

- Purpose

The purpose of requiring an independent hearing officer is to avoid inequities which may result from having a school board hear and decide a case in which an initial decision to discipline the teacher had already been made, the board having passed a motion containing specific charges against the teacher. Craddock v. Board of Educ., 76 Ill. App. 3d 43, 29 Ill. Dec. 376, 391 N.E.2d 1059 (3 Dist. 1979), aff'd, 81 Ill. 2d 28, 39 Ill. Dec. 815, 405 N.E.2d 794 (1980).

- Selection

Although a defendant school board failed to hold a hearing within the 60 day period, it did not lack jurisdiction to continue with the selection of the hearing officer; the plaintiff's prayer for reinstatement was properly denied. Watts v. Board of Educ., 125 Ill. App. 3d 532, 80 Ill. Dec. 859, 466 N.E.2d 311 (5 Dist. 1984).

In order to select an impartial hearing officer, the statute implicitly requires a certain amount of interaction on the part of several persons and entities, including the local board of education, the state board, the teacher himself or herself, or his or her legal representative, as well as the impartial hearing officer who is ultimately chosen. Watts v. Board of Educ., 125 Ill. App. 3d 532, 80 Ill. Dec. 859, 466 N.E.2d 311 (5 Dist. 1984).

The legislative purpose would not be defeated by the failure of the state board to provide a list of five prospective, impartial hearing officers precisely within the 10 day period; conceivably such a delay would cause no delay at all in the holding of the hearing as scheduled. Watts v. Board of Educ., 125 Ill. App. 3d 532, 80 Ill. Dec. 859, 466 N.E.2d 311 (5 Dist. 1984).

- Selection of Penalty

The hearing officer at a discharge hearing of tenured public school teacher could not accurately select a penalty less than dismissal. Combs v. Board of Educ., 147 Ill. App. 3d 1092, 101 Ill. Dec. 482, 498 N.E.2d 806 (2 Dist. 1986).

Jurisdiction

- Assumption of Jurisdiction

In the assumption of jurisdiction, a board of education must make an initial finding of whether the charges for which a discharge is contemplated is remediable or irremediable; that decision, as well as the decision to terminate the teacher, may be reviewed on administrative review. Welch v. Board of Educ., 45 Ill. App. 3d 35, 3 Ill. Dec. 679, 358 N.E.2d 1364 (4 Dist. 1977).

- Not Acquired

The board was without jurisdiction to dismiss a tenured teacher because the giving of notice of remediable causes was jurisdictional, and the failure by board to give such a warning prevented it from acquiring jurisdiction. Grissom v. Board of Educ., 75 Ill. 2d 314, 26 Ill. Dec. 683, 388 N.E.2d 398 (1979).

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Mandamus

- Substitution of Estate

The plaintiff, who alleged unlawful dismissal in violation of this section, proceeded properly in bringing the original complaint as a mandamus action, and her estate was entitled to be substituted in appealing that part of the mandamus action that survived, the portion asking for damages in the form of back salary arising out of her contract with the board of education. Walter v. Board of Educ., 93 Ill. 2d 101, 66 Ill. Dec. 309, 442 N.E.2d 870 (1982).

- Survival of Action

In plaintiff's mandamus action, the issue of back salary from the time of plaintiff's unlawful termination by the board of education to the time of her death survived by virtue of the Survival Act 755 ILCS 5/27-6. Walter v. Board of Educ., 93 Ill. 2d 101, 66 Ill. Dec. 309, 442 N.E.2d 870 (1982).

Motion for Dismissal

A motion for dismissal filed pursuant to this section is not itself an order of dismissal; the only time a motion for dismissal will operate to terminate a tenured teacher is where the teacher does not request a hearing on the charges against him; however, where a hearing is requested, no dismissal occurs until the hearing officer renders his decision. Massie v. East St. Louis Sch., 203 Ill. App. 3d 965, 148 Ill. Dec. 940, 561 N.E.2d 246 (5 Dist. 1990).

Notice

- Actual Date of Receipt

Where there was substantial compliance with the requirement of notice, and there was no dispute that notice and a copy of the decision of the state board of education to dismiss a teacher was received by the teacher's attorney within days after the decision was rendered, the actual date of the receipt of the notice by the attorney controlled for purposes of filing a review action. Massoud v. Board of Educ., 97 Ill. App. 3d 65, 52 Ill. Dec. 555, 422 N.E.2d 236 (3 Dist. 1981).

- Actual Notice

Where the plaintiff teacher was notified of a school board's action by receiving the board meeting minutes, even though the teacher did not receive notice by registered mail, he had actual knowledge that his probationary period had been extended; thus, the notice requirement had been satisfied, and therefore, the teacher had not acquired tenure. Glover v. Board of Educ., 62 Ill. 2d 122, 340 N.E.2d 4 (1975).

- Bill of Particulars

There is no express statement in this statute which requires the school board to formally pass upon the precise content of a bill of particulars nor does the drafting of a bill of particulars involve the degree of judgment and discretion which requires formal action by the board. Morelli v. Board of Educ., 42 Ill. App. 3d 722, 1 Ill. Dec. 312, 356 N.E.2d 438 (3 Dist. 1976).

- Effective Date

There was no requirement under former section 24-3 (see now this section) that the effective date of the dismissal be specified in the notice. Miller v. Board of Educ., 37 Ill. App. 2d 451, 186 N.E.2d 790 (1 Dist. 1962).

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- Form

The school board's finding that plaintiff's deficiencies were irremedial was clearly not against the manifest weight of the evidence, and written notice of such defects was not required before action could be initiated to dismiss plaintiff. Glover v. Board of Educ., 21 Ill. App. 3d 1053, 316 N.E.2d 534 (4 Dist. 1974), aff'd, 62 Ill. 2d 122, 340 N.E.2d 4 (1975).

Where teacher's dismissal was stated to be effective at a date later than that of the notice, and the notice given him was both a notice of dismissal and the written notice of charges, the notice was in proper form and the procedure followed was in compliance with statute. Yang v. Special Charter Sch. Dist. No. 150, 11 Ill. App. 3d 239, 296 N.E.2d 74 (3 Dist. 1973).

- Improper Service

If written notice is not properly served, it follows that a board of education's actions were not within the contemplation of the statute, and therefore void ab initio. Yesinowski v. Board of Educ., 28 Ill. App. 3d 119, 328 N.E.2d 23 (2 Dist. 1975).

- Incorrect Statute Citation

A mislabeled notice, incorrectly citing 105 ILCS 5/24-11, given to plaintiff who was contesting her dismissal as a tenured teacher, provided plaintiff with both the statement of honorable dismissal and the reason for the termination, thereby complying with the salient requirements and legislative intent of this section, although purporting to proceed under 105 ILCS 5/24-11; since the statutory objective of the notice was met, the notice complied with the intent of the statute and satisfied its general purpose of informing plaintiff of the Board's reasons behind the termination action. Hampson v. Board of Educ., 215 Ill. App. 3d 817, 159 Ill. Dec. 385, 576 N.E.2d 54 (1 Dist.), appeal denied, 142 Ill. 2d 654, 164 Ill. Dec. 917, 584 N.E.2d 129 (1991), cert. denied, 504 U.S. 944, 112 S. Ct. 2284, 119 L. Ed. 2d 209 (1992).

- Mailing

Notice of the decision of the state board of education to dismiss a teacher did not comply with the requirements of this Code or the board's rules and regulations where the notice was not given by certified or registered mail, but only by first class mail. Massoud v. Board of Educ., 97 Ill. App. 3d 65, 52 Ill. Dec. 555, 422 N.E.2d 236 (3 Dist. 1981).

- Mandatory 60 Day Notice

The 60 day notice required to be given to a teacher, if that individual is to be dismissed is a mandatory requirement, and it cannot be waived nor circumvented. Hagopian v. Board of Educ., 56 Ill. App. 3d 940, 14 Ill. Dec. 711, 372 N.E.2d 990 (3 Dist. 1978), modified on other grounds, 83 Ill. App. 2d 1097, 39 Ill. Dec. 308, 404 N.E.2d 899 (1980).

A notice sent to plaintiff which stated that her dismissal was effective immediately did not comply with the statutory requirements. Neal v. Board of Educ., 56 Ill. App. 3d 10, 13 Ill. Dec. 777, 371 N.E.2d 869 (5 Dist. 1977).

This section, in clear and unambiguous language, mandates that the dismissal must be at least 60 days after the service of the notice. Neal v. Board of Educ., 56 Ill. App. 3d 10, 13 Ill. Dec. 777, 371 N.E.2d 869 (5 Dist. 1977).

- Noncompliance

Where the requirements of this section and the state board of education's rules and regulations as to the method of mail notification were not strictly followed by the state board, notice was not received on the date of mailing. Massoud v. Board of Educ., 97 Ill. App. 3d 65, 52 Ill. Dec. 555, 422 N.E.2d 236 (3 Dist. 1981).

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- Nontenured Teacher

The decision to send a notice of dismissal is the decision to dismiss in the case of a nontenured teacher, and "final action" is the public roll call vote. Haight v. Board of Educ., 29 Ill. App. 3d 48, 329 N.E.2d 442 (3 Dist. 1975).

- Reason

When tenured teachers are dismissed because of economic necessity, this section imposes upon school boards a nondiscretionary obligation to give notices which specify the reason for the dismissals; the notices give the teachers an opportunity to determine whether the board is obligated to hold a public hearing before voting on the dismissals and also give the targeted teachers a chance to prepare for the required hearing. Board of Educ. v. Bremen Dist. No. 228, 114 Ill. App. 3d 1051, 70 Ill. Dec. 613, 449 N.E.2d 960 (1 Dist. 1983), rev'd on other grounds, 101 Ill. 2d 115, 77 Ill. Dec. 783, 461 N.E.2d 406 (1984).

Where a teacher was given notice from the employing board at least 60 days before the end of a school term stating whether or not he would be re-employed for the following school term, during which he would reach age 65, his employment was properly terminated at the end of that school term, without notice of specific charges or a hearing that would otherwise be required by this section. Kennedy v. Community Unit School, 23 Ill. App. 3d 382, 319 N.E.2d 243 (4 Dist. 1974).

- Reassignment

Where, except for vague charges that a certain number of teachers would be discharged as the result of the defendant's actions, the plaintiff's complaint was concerned, not with the summary dismissal of teachers, but with the reassignment of various teachers to actual classroom teaching positions, statutory notice requirements did not apply. Chicago Teachers Union v. Board of Educ., 14 Ill. App. 3d 154, 301 N.E.2d 833 (1 Dist. 1973).

The transfer of plaintiff from a position as principal to a teaching assignment by the defendant Board of Education was bona fide and did not require compliance with this section, which provides for "removal or dismissal of teachers in contractual continued service." Van Dyke v. Board of Educ., 115 Ill. App. 2d 10, 254 N.E.2d 76 (1 Dist. 1969).

- Requirement

Under this section defendant was required to give plaintiff 60 days notice prior to the end of the school term in order to legally dismiss him as coordinator of the summer diver's education. Duncan v. Board of Educ., 177 Ill. App. 3d 806, 127 Ill. Dec. 98, 532 N.E.2d 927 (3 Dist. 1988).

- School Closing Date

Required 60 day notice of termination was not given where notice of termination given to teacher was given on March 31, but school board resolution effectively changed school closing date from May 31 to May 23. Koerner v. Joppa Community High Sch., 143 Ill. App. 3d 162, 97 Ill. Dec. 358, 492 N.E.2d 1017 (5 Dist. 1986).

- Statutory Compliance

A letter signed by the secretary of the school board indicating that defendant had approved a resolution terminating plaintiff's contract, which listed specific reasons given plaintiff for such action, fully complied with this section. Lavin v. Board of Educ., 22 Ill. App. 3d 555, 317 N.E.2d 717 (1 Dist. 1974).

- Sufficiency of Charges

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Charges in the notice of dismissal and bill of particulars were sufficiently specific to give tenured faculty member notice of dismissal. Grissom v. Board of Educ., 75 Ill. 2d 314, 26 Ill. Dec. 683, 388 N.E.2d 398 (1979).

- Time for Determination

Since the 60 day notice requirement is mandatory, a school board must make a determination regarding the dismissal of a teacher during some period of time prior to 60 days before the end of the school term. Hagopian v. Board of Educ., 56 Ill. App. 3d 940, 14 Ill. Dec. 711, 372 N.E.2d 990 (3 Dist. 1978), modified on other grounds, 83 Ill. App. 2d 1097, 39 Ill. Dec. 308, 404 N.E.2d 899 (1980).

- Void

Notices of honorable discharge, given in the absence of the public hearing required by the statute, were void. Board of Educ. v. Bremen Dist. 228 Joint Faculty Ass'n, 101 Ill. 2d 115, 77 Ill. Dec. 783, 461 N.E.2d 406 (1984).

- Written

Written notice of specific charges is not required in order to dismiss a teacher under the provisions of this Act. Eveland v. Board of Educ., 340 Ill. App. 308, 92 N.E.2d 182 (3 Dist. 1950).

Options of Board

The tap root of the tenure doctrine is full-time teaching, where at the end of the probationary period, the school board has three options: (1) to terminate, (2) to grant tenure, or (3) to offer employment on a less than full-time capacity. Johnson v. Board of Educ., 87 Ill. App. 3d 441, 42 Ill. Dec. 644, 409 N.E.2d 139 (4 Dist. 1980), aff'd, 85 Ill. 2d 338, 53 Ill. Dec. 234, 423 N.E.2d 903 (1981).

Part-Time Teaching

- Alternate Jobs

The Board of Education was in error in dismissing a tenured teacher before offering her the part-time teaching position of a probationary teacher. Edwards v. Board of Educ., 84 Ill. App. 3d 374, 39 Ill. Dec. 725, 405 N.E.2d 478 (2 Dist. 1980).

- No Loss of Rights

By voluntarily accepting part-time teaching for nine years, a plaintiff did not lose her tenure rights. Wilson v. Board of Educ., 127 Ill. App. 3d 433, 82 Ill. Dec. 341, 468 N.E.2d 995 (3 Dist. 1984).

- Tenure

A teacher who had taught two consecutive school years as a full-time teacher did not attain tenure when she was reemployed in a part-time position the following year. Johnson v. Board of Educ., 87 Ill. App. 3d 441, 42 Ill. Dec. 644, 409 N.E.2d 139 (4 Dist. 1980), aff'd, 85 Ill. 2d 338, 53 Ill. Dec. 234, 423 N.E.2d 903 (1981).

Pattern

- In General

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Where brief instances and isolated lapses occur repeatedly, there emerges a pattern of behavior which, if deficient, will support the dismissal of a tenured teacher. Board of Educ. v. Ingels, 75 Ill. App. 3d 334, 31 Ill. Dec. 153, 394 N.E.2d 69 (3 Dist. 1979).

Probationary Teachers

- Improper Delegation of Authority

School board, authorized by statute to dismiss and retain probationary teachers entirely in its discretion, may not delegate this power by agreeing to dismiss teachers only for just cause and further agreeing to allow binding arbitration as to whether or not there is just cause; the very issue of whether or not just cause in fact exists is to be determined by the school board, and the school board may only agree to follow certain procedures before making a determination, which only the school board can make. Lockport Area Special Educ. Coop. v. Lockport Area Special Educ. Coop. Ass'n, 33 Ill. App. 3d 789, 338 N.E.2d 463 (3 Dist. 1975).

School board could not, by the terms of a collective bargaining agreement, place a substantive limitation on its power to discharge probationary teachers in conjunction with binding review of the substantive discretionary obligation of the school board in the form of a determination by arbitration. Lockport Area Special Educ. Coop. v. Lockport Area Special Educ. Coop. Ass'n, 33 Ill. App. 3d 789, 338 N.E.2d 463 (3 Dist. 1975).

- Rehiring

This Code does not mandate the preferential rehiring of probationary teachers. Huettemann v. Board of Educ., 56 Ill. App. 3d 933, 14 Ill. Dec. 520, 372 N.E.2d 716 (4 Dist. 1978).

Procedure

- In General

This section sets forth the procedures that must be followed where a board seeks to dismiss a tenured teacher because of incompetence. This procedure includes a warning, an opportunity to remedy perceived deficiencies, and an impartial hearing before an independent hearing officer. Where none of these procedures was accorded to a teacher, he was wrongfully discharged by the board, and the trial court properly ordered his reinstatement. Schafer v. Board of Educ., 157 Ill. App. 3d 884, 110 Ill. Dec. 155, 510 N.E.2d 1186 (1 Dist. 1987).

This Code currently permits a school board to dismiss a tenured teacher whenever, in the board's opinion, the interests of the schools require the teacher's dismissal. However, a board's dismissal of a tenured teacher under these circumstances must be preceded by a period of remediation, notice of charges, and an impartial hearing before a disinterested hearing officer, in accordance with this section. Schafer v. Board of Educ., 157 Ill. App. 3d 884, 110 Ill. Dec. 155, 510 N.E.2d 1186 (1 Dist. 1987).

- Assertion of Claim

Where school board failed to give tenured teacher the required notice but tenured teacher knew she had not been rehired, school board's failure to follow statutory procedure did not estop teacher from asserting her claim administratively, and faced with school board's inaction, teacher could have initiated administrative action of her own. Burris v. School Bd., 70 Ill. App. 3d 572, 26 Ill. Dec. 872, 388 N.E.2d 873 (5 Dist. 1979).

- Compliance Shown

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Provisions of this section were complied with even though the board failed to vote to dismiss tenured teacher, and to hold its hearing and render a decision before the effective date of dismissal. Grissom v. Board of Educ., 75 Ill. 2d 314, 26 Ill. Dec. 683, 388 N.E.2d 398 (1979).

- Declaratory Judgment

A declaratory judgment action may not be used to circumvent the requirement that a party exhaust all available administrative remedies before seeking judicial review of an administrative decision. Dudley v. Board of Educ., 260 Ill. App. 3d 1100, 198 Ill. Dec. 35, 632 N.E.2d 94 (1 Dist. 1994).

- Due Process Protection

Provisions of this Code vests in the tenured teacher facing dismissal a right to a hearing, and the procedures are consistent with the quasi judicial nature of a administrative hearing; although the hearing officer is not bound by the formal rules of evidence, the parties to the hearing are accorded due process protection: the right to a public hearing, the right to counsel, and the right to subpoena and confront witnesses, and all testimony is taken under oath and a formal record of the proceedings must be kept. Friesel v. Board of Educ., 79 Ill. App. 3d 460, 34 Ill. Dec. 814, 398 N.E.2d 637 (1979).

- Exhaustion of Administrative Remedy

Where plaintiff had an administrative review remedy available to her claim that her evaluation and remediation programs were conducted in a manner contrary to the school code, there was no clear need for a civil action; the trial court did not err in dismissing complaint for failure to state a private right of action. Dudley v. Board of Educ., 260 Ill. App. 3d 1100, 198 Ill. Dec. 35, 632 N.E.2d 94 (1 Dist. 1994).

Where plaintiff, dismissed tenured teacher seeking reinstatement, asserted that the school board failed to exhaust its administrative remedy, plaintiff's assertion was without foundation since the statutory scheme did not provide for administrative relief where the faculty reduction was due to economic reasons. Hampson v. Board of Educ., 215 Ill. App. 3d 817, 159 Ill. Dec. 385, 576 N.E.2d 54 (1 Dist.), appeal denied, 142 Ill. 2d 654, 164 Ill. Dec. 917, 584 N.E.2d 129 (1991), cert. denied, 504 U.S. 944, 112 S. Ct. 2284, 119 L. Ed. 2d 209 (1992).

- Failure to Comply

Where a school board sought to suspend a tenured teacher for 3 days without pay, the procedural requirements of this section should have been followed, and an independent hearing officer ought to have been appointed to determine whether the facts as presented at the hearing required permanent dismissal, temporary dismissal or no disciplinary action whatsoever. Craddock v. Board of Educ., 76 Ill. App. 3d 43, 29 Ill. Dec. 376, 391 N.E.2d 1059 (3 Dist. 1979), aff'd, 81 Ill. 2d 28, 39 Ill. Dec. 815, 405 N.E.2d 794 (1980).

Where teacher was dismissed "effective immediately" on March 27, 1975 without a hearing ever having been held and was not reemployed for the 1975-76 school term or thereafter, the failure of the board of education to comply with the procedures of this section rendered the order of dismissal null and void. Smith v. Board of Educ., 52 Ill. App. 3d 647, 9 Ill. Dec. 862, 367 N.E.2d 296 (5 Dist. 1977).

- Inapplicability of Section

School board's actions, in not rehiring teacher whose leave of absence was not mutually agreed upon, were not subject to the procedural requirements of this section pertaining to the dismissal of a contractual continued service teacher. Fisher v. Board of Educ., 181 Ill. App. 3d 653, 130 Ill. Dec. 287, 537 N.E.2d 354 (5 Dist. 1989).

- Jurisdictional

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The compliance with procedure is jurisdictional in that absent its use, the board of education has no jurisdiction to dismiss a tenured teacher. Welch v. Board of Educ., 45 Ill. App. 3d 35, 3 Ill. Dec. 679, 358 N.E.2d 1364 (4 Dist. 1977).

- Necessary Parties

Where a hearing officer from the state board of education rendered the final administrative decision over which review was sought by the plaintiff, both the officer and the state Board were necessary parties and were required to be named parties defendant under former section 271 of the Administrative Review Act, see now 735 ILCS 5/3-107; furthermore, they were required to be joined; however, the plaintiff's suit was not dismissed on that basis, and he was given a reasonable opportunity to add them as parties defendant where to do so did not prejudice anyone's interests. Massoud v. Board of Educ., 97 Ill. App. 3d 65, 52 Ill. Dec. 555, 422 N.E.2d 236 (3 Dist. 1981).

- Strict Compliance

Under this Code, a tenured teacher may be dismissed for cause, but such dismissal can be accomplished only by following the procedures prescribed by this section; this Code is essentially procedural, and thus, must be strictly complied with in dismissing a tenured teacher. Smith v. Board of Educ., 75 Ill. App. 3d 186, 31 Ill. Dec. 125, 394 N.E.2d 41 (5 Dist. 1979).

Protected Class

Tenured teachers are not excluded from those whom this section was designed to protect. Board of Educ. v. Bremen Dist. 228 Joint Faculty Ass'n, 101 Ill. 2d 115, 77 Ill. Dec. 783, 461 N.E.2d 406 (1984).

Purpose

- Extracurricular Positions

Had the legislature intended under this statute to grant teachers the right to reassignment in their extracurricular positions, it could easily have chosen more specific language, not framed in singular terms of a position similar to the one which a teacher previously held. School Dirs. v. Kossoff, 95 Ill. App. 3d 26, 50 Ill. Dec. 550, 419 N.E.2d 658 (2 Dist. 1981).

- Hearing

The need for, and wish of, the legislature for a prompt hearing before an impartial hearing officer on charges against a tenured teacher is plain. Watts v. Board of Educ., 125 Ill. App. 3d 532, 80 Ill. Dec. 859, 466 N.E.2d 311 (5 Dist. 1984).

- Job Security

This section is designed to provide continuity and stability for students, to provide teachers with some degree of job stability free from arbitrary hiring and firing, to attract teachers of high capabilities, and to provide for the retention of experienced teachers. Johnson v. Board of Educ., 85 Ill. 2d 338, 53 Ill. Dec. 234, 423 N.E.2d 903 (1981); Zink v. Board of Educ., 146 Ill. App. 3d 1016, 100 Ill. Dec. 657, 497 N.E.2d 835 (4 Dist. 1986).

When courses must be added to or removed from existing positions incidental to overall scheduling, the statutory preference for qualified tenured teachers over qualified nontenured or less senior teachers must be observed as to give effect to the underlying policy; however, the dismissed tenured teacher cannot create a position that he is qualified to teach by taking and

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recombining courses from other teaching positions. Catron v. Board of Educ., 126 Ill. App. 3d 693, 81 Ill. Dec. 750, 467 N.E.2d 621 (4 Dist. 1984).

The purpose of the tenure laws is to protect teachers from political, partisan or capricious board action. Birk v. Board of Educ., 120 Ill. App. 3d 181, 75 Ill. Dec. 623, 457 N.E.2d 1065 (5 Dist. 1983).

The primary purpose of the teachers' tenure law is to protect experienced, able teachers by assuring them that decisions as to their continued employment will be based upon merit and not partisan politics. Relph v. Board of Educ., 51 Ill. App. 3d 1036, 9 Ill. Dec. 614, 366 N.E.2d 1125 (3 Dist. 1977); McLain v. Board of Educ., 66 Ill. App. 3d 1024, 23 Ill. Dec. 746, 384 N.E.2d 540 (4 Dist. 1978); Board of Educ. v. State Bd., 82 Ill. App. 3d 820, 38 Ill. Dec. 189, 403 N.E.2d 277 (2 Dist. 1980); Walter v. Board of Educ., 93 Ill. 2d 101, 66 Ill. Dec. 309, 442 N.E.2d 870 (1982).

The object of the teacher tenure statute is to assure continuous service on the part of teachers of ability and experience, and to accomplish that object, the legislature designed a statutory scheme which protects the tenured teacher, sometimes at the expense of the probationer. Johnson v. Board of Educ., 87 Ill. App. 3d 441, 42 Ill. Dec. 644, 409 N.E.2d 139 (4 Dist. 1980), aff'd, 85 Ill. 2d 338, 53 Ill. Dec. 234, 423 N.E.2d 903 (1981).

The primary purpose of this Act is to give tenured teachers priority over non-tenured teachers. Bilek v. Board of Educ., 61 Ill. App. 3d 323, 18 Ill. Dec. 623, 377 N.E.2d 1259 (1 Dist. 1978).

The tenure provisions of this Code were intended to protect experienced and veteran teachers against capricious, fickle and irregular exploits of school boards. Caviness v. Board of Educ., 59 Ill. App. 3d 28, 16 Ill. Dec. 526, 375 N.E.2d 157 (4 Dist. 1978).

The tenure provisions of this Code are not intended to preclude dismissal where the teacher's conduct is detrimental to the operation of the school. Lombardo v. Board of Educ., 100 Ill. App. 2d 108, 241 N.E.2d 495 (1 Dist. 1968).

This teacher tenure law was enacted for the purpose of improving the educational facilities of this state by assuring teachers who have completed their probationary periods, and have entered upon contractual continued service, that their employment depends upon merit and not upon the personal whims of individual citizens. Hankenson v. Board of Educ., 10 Ill. 2d 560, 141 N.E.2d 5 (1957).

- Procedure

This Act is essentially procedural. Neal v. Board of Educ., 56 Ill. App. 3d 10, 13 Ill. Dec. 777, 371 N.E.2d 869 (5 Dist. 1977).

- School Board

The legislature's intent was to remove from the jurisdiction of local boards the ultimate responsibility on a termination decision following remediation to a disinterested hearing officer. Powell v. Board of Educ., 189 Ill. App. 3d 802, 137 Ill. Dec. 114, 545 N.E.2d 767 (3 Dist. 1989).

The discretion of the school board to make assignments must be exercised with extreme caution in order not to subvert a fundamental purpose of the Tenure Act (105 ILCS 5/24-11 et seq.), that being the protection of teachers from political, partisan, capricious, fickle, and irregular decision making. Pennell v. Board of Educ., 137 Ill. App. 3d 139, 91 Ill. Dec. 886, 484 N.E.2d 445 (5 Dist. 1985).

While the teacher tenure law must be strictly construed because it thrusts new liabilities upon school boards, such construction must be consistent with the primary purpose of protecting

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teachers who have tenure. Birk v. Board of Educ., 120 Ill. App. 3d 181, 75 Ill. Dec. 623, 457 N.E.2d 1065 (5 Dist. 1983).

School boards have broad powers to arrange class schedules and to assign teachers according to their qualifications, but such powers may not, even when exercised in good faith, circumvent the purpose and spirit of the tenure laws. Birk v. Board of Educ., 120 Ill. App. 3d 181, 75 Ill. Dec. 623, 457 N.E.2d 1065 (5 Dist. 1983).

The purpose of this section is to provide a school board with the authority to effectively administer and manage its schools, and the only sensible construction of the statute, to be harmonious with the purpose of effective administration, is that some actions by teachers, though unprofessional, socially unacceptable and arguably within the causes for dismissal listed in 105 ILCS 5/10-22.4, require punishment of a lesser degree than permanent dismissal. Relph v. Board of Educ., 51 Ill. App. 3d 1036, 9 Ill. Dec. 614, 366 N.E.2d 1125 (3 Dist. 1977); Craddock v. Board of Educ., 76 Ill. App. 3d 43, 29 Ill. Dec. 376, 391 N.E.2d 1059 (3 Dist. 1979), aff'd, 81 Ill. 2d 28, 39 Ill. Dec. 815, 405 N.E.2d 794 (1980).

Qualifications

- Grade Points

Particular grade points cannot be solely determinative in a decision as to academic qualifications, but must be considered together with all other aspects of the individual's professional expertise and capacity. Newman v. Board of Educ., 98 Ill. App. 3d 976, 54 Ill. Dec. 428, 424 N.E.2d 1331 (4 Dist. 1981).

- Insufficient Facts

Where there was an indication that plaintiff did not possess the Circular Series A, No. 160, required semester hours for classes she wished to teach, there was nothing in the record to indicate that she sought a position at a grade level to which the additional requirements applied; the cause had to be remanded for further proceedings. Relph v. Board of Educ., 84 Ill. 2d 436, 50 Ill. Dec. 830, 420 N.E.2d 147 (1981).

Where a teacher sought reinstatement to a teaching position in home economics at a level and in a program to which the Circular Series A, No. 160 subject matter requirements applied, but there was also a position available to her as a reading teacher, this allegation stood in direct conflict with statements contained in respondent's affidavits that allege the teacher was not qualified under Circular Series A, No. 160, to teach in any of the available positions; the conflict presented a genuine issue of material fact requiring remand. Relph v. Board of Educ., 84 Ill. 2d 436, 50 Ill. Dec. 830, 420 N.E.2d 147 (1981).

- Legally Qualified

Where plaintiff was not simply certified, but was legally qualified under the regulations in effect at the time, she was entitled to reinstatement before the hiring of any probationary teachers. Walter v. Board of Educ., 93 Ill. 2d 101, 66 Ill. Dec. 309, 442 N.E.2d 870 (1982).

- Not Legally Qualified

Where school board had determined that a male physical education teacher's responsibilities include supervision of male students in the locker rooms, and for obvious reasons a female teacher was unable to perform this responsibility, the female teacher was not "legally qualified" to assume the position held by the male teacher, and her position was properly reduced from full-time to half-time. Zink v. Board of Educ., 146 Ill. App. 3d 1016, 100 Ill. Dec. 657, 497 N.E.2d 835 (4 Dist. 1986).

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Where teachers did not meet the minimum requirements for the positions held by the nontenured teachers, they were not "legally qualified" to hold those positions, and therefore, they were not entitled to be reinstated. Herbach v. Board of Educ., 94 Ill. App. 3d 889, 50 Ill. Dec. 348, 419 N.E.2d 456 (1 Dist. 1981).

A tenured teacher was held not "legally qualified" to teach junior high departmentalized science or social studies courses such that employer school district was required to tender these positions to her prior to offering them to nontenured faculty members. Newman v. Board of Educ., 98 Ill. App. 3d 976, 54 Ill. Dec. 428, 424 N.E.2d 1331 (4 Dist. 1981).

Where teacher had taught courses in social studies, spelling, science, and physical education in the elementary school level, and at the time of his dismissal, had a Special K-14 teaching certificate with a physical education endorsement and a collegiate background in physical education and social studies, teacher was not legally qualified to teach high school band, chorus, industrial occupations or mathematics. Hagopian v. Board of Educ., 56 Ill. App. 3d 940, 14 Ill. Dec. 711, 372 N.E.2d 990 (3 Dist. 1978), modified on other grounds, 83 Ill. App. 2d 1097, 39 Ill. Dec. 308, 404 N.E.2d 899 (1980).

- Not Shown

A teacher's bare allegations of his belief that he was qualified for a position was insufficient to contradict the positive statements of the affidavit by the board of education which described that position and stated that the teacher was not qualified to hold it. Hancon v. Board of Educ., 130 Ill. App. 3d 224, 85 Ill. Dec. 679, 474 N.E.2d 407 (2 Dist. 1985).

It was within the school board's discretion to refuse to tender to a dismissed tenured male teacher the position of girl's physical education teacher, despite tenured teacher's professional certification, because the position included responsibilities for supervising the locker room during changing and showering after class in the two girls' junior high physical education classes. McLain v. Board of Educ., 66 Ill. App. 3d 1024, 23 Ill. Dec. 746, 384 N.E.2d 540 (4 Dist. 1978).

- Qualification to Hold Position

In a proceeding brought by a more senior female tenured teacher of home economics to "bump" a less senior male tenured teacher teaching physical education, the question was not whether the home economics teacher was legally qualified to teach physical education, but instead, whether she was legally qualified to hold the position held by the physical education teacher. Zink v. Board of Educ., 146 Ill. App. 3d 1016, 100 Ill. Dec. 657, 497 N.E.2d 835 (4 Dist. 1986).

- Regulatory Standards

Regulatory standards for teachers, promulgated by the Superintendent of Public Instruction, now the state board of education, pursuant to authority delegated by this Code, which required that secondary and certain upper elementary teachers have a specific minimum number of semester hours in each field to be taught, were incorporated into the meaning of the phrase "legally qualified" as it appears in this section. Lenard v. Board of Educ., 74 Ill. 2d 260, 24 Ill. Dec. 163, 384 N.E.2d 1321 (1979).

- Relation Back of Documents

The mandatory notice provision of this Act requires the local school board to determine which teachers to dismiss prior to 60 days before the end of the school year; receipt of college transcripts after the dismissal deadline did not relate back to render a dismissed teacher qualified. Hancon v. Board of Educ., 130 Ill. App. 3d 224, 85 Ill. Dec. 679, 474 N.E.2d 407 (2 Dist. 1985).

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After proper notice of dismissal has been given, the securing and registration of a valid high school certificate prior to the end of the school year does not serve to relate back or become retroactive so as to prevent the dismissal of a teacher. Hagopian v. Board of Educ., 56 Ill. App. 3d 940, 14 Ill. Dec. 711, 372 N.E.2d 990 (3 Dist. 1978), modified on other grounds, 83 Ill. App. 2d 1097, 39 Ill. Dec. 308, 404 N.E.2d 899 (1980).

- Time of Decision

A board must base its decisions as to the dismissal of a teacher on the qualifications of that teacher during some period of time prior to 60 days before the end of a school year. Hagopian v. Board of Educ., 56 Ill. App. 3d 940, 14 Ill. Dec. 711, 372 N.E.2d 990 (3 Dist. 1978), modified on other grounds, 83 Ill. App. 2d 1097, 39 Ill. Dec. 308, 404 N.E.2d 899 (1980).

Reduction

A reduction in employment may be tantamount to dismissal or removal. Wilson v. Board of Educ., 127 Ill. App. 3d 433, 82 Ill. Dec. 341, 468 N.E.2d 995 (3 Dist. 1984).

Reinstatement

- Entitlement

Under this section a guidance counselor, who lost his position when the school district reduced its work force, was entitled to be offered any available vacancy, according to his seniority, for which he was legally qualified; it was sufficient that after each reduction in force, plaintiff was offered a position as a social studies teacher. Valentine v. Joliet Tp. High Sch. Dist. No. 204, 802 F.2d 981 (7th Cir. 1986).

This section does not establish a statutory entitlement to a specific position upon recall after a reduction in force. Valentine v. Joliet Tp. High Sch. Dist. No. 204, 802 F.2d 981 (7th Cir. 1986).

Defendant, who was charged with harassing and intimidating students and parents with whom he came into contact, was properly reinstated where the record showed the parents communicated with the superintendent of schools regarding these charges on the date defendant was dismissed, which was two and one half months after the notice of remediation was sent to defendant warning of possible dismissal. Board of Educ. v. Metskas, 106 Ill. App. 3d 943, 62 Ill. Dec. 561, 436 N.E.2d 587 (1 Dist. 1982).

- Increased Number of Teachers

If the board of education increases the number of teachers, the positions becoming available must be tendered first to tenured teachers who were honorably dismissed or removed within one calendar year. Relph v. Board of Educ., 51 Ill. App. 3d 1036, 9 Ill. Dec. 614, 366 N.E.2d 1125 (3 Dist. 1977).

Where board of education reduced number of teachers, including petitioners position, from 30 to 26, and then in the next school year added two new non-tenured teachers, although there was no overall increase in the number of teachers, petitioner had the right to have tendered to her the two available jobs filled by new non-tenured teachers; to hold otherwise would be to defeat the clear purpose of the tenure provisions of this Code. Relph v. Board of Educ., 51 Ill. App. 3d 1036, 9 Ill. Dec. 614, 366 N.E.2d 1125 (3 Dist. 1977).

- Retaliatory Discharge

Where a teacher was dismissed in retaliation for exercising his constitutional rights to engage in union activities, he was properly ordered to be reinstated with backpay and damages for

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retaliatory discharge. Temple v. Board of Educ., 192 Ill. App. 3d 182, 139 Ill. Dec. 255, 548 N.E.2d 640 (1 Dist. 1989).

- Salary Level

A wrongfully discharged teacher, who following her discharge accepted employment as a teacher in another state, was not entitled to advance one teaching experience level on the salary schedule after each school term, upon return to her prior school district, despite her assertion that such advancement was automatic, because the controlling salary schedule expressly conditioned advancement upon the joint recommendation of her principal and superintendent and the approval of the board of education. Wells v. Board of Educ., 121 Ill. App. 2d 112, 257 N.E.2d 252 (1 Dist 1970).

- Superintendent

Where a school principal was hired as superintendent of the district, without the position first being offered to the former superintendent as required by this section of this Code, the fact that the position had been temporarily eliminated in order to avoid the required offer was improper. McNely v. Board of Educ., 9 Ill. 2d 143, 137 N.E.2d 63 (1956).

Remediability

- In General

If, following a notice to remedy, a remedial deficiency is not corrected within a reasonable period of time, it may be grounds for discharge. Board of Educ. v. State Bd., 82 Ill. App. 3d 820, 38 Ill. Dec. 189, 403 N.E.2d 277 (2 Dist. 1980).

- Authority of Board

Once a remediation program has been instituted by the administration, the local board has no more responsibility or control over firing or retention of the affected teacher. Powell v. Board of Educ., 189 Ill. App. 3d 802, 137 Ill. Dec. 114, 545 N.E.2d 767 (3 Dist. 1989).

A board of education has the authority to determine initially whether its grounds for dismissal are remediable or irremediable. Gilliland v. Board of Educ., 35 Ill. App. 3d 861, 343 N.E.2d 704 (3 Dist. 1976), rev'd on other grounds, 67 Ill. 2d 143, 8 Ill. Dec. 84, 365 N.E.2d 322 (1977).

Whether or not causes for dismissal of a teacher are irremediable is a question of fact whose initial determination lies within the discretion of the school board. Glover v. Board of Educ., 21 Ill. App. 3d 1053, 316 N.E.2d 534 (4 Dist. 1974), aff'd, 62 Ill. 2d 122, 340 N.E.2d 4 (1975).

The determination of whether or not a cause of dismissal is remediable vests discretionary power in the board of education. Meredith v. Board of Educ., 7 Ill. App. 2d 477, 130 N.E.2d 5 (3 Dist. 1955).

- Charges

The hearing officer's determination that charges against a teacher were remediable was not against the manifest weight of the evidence, and he did not err in striking the charges. Board of Educ. v. State Bd., 82 Ill. App. 3d 820, 38 Ill. Dec. 189, 403 N.E.2d 277 (2 Dist. 1980).

- Discipline and Class Control

Problems of discipline and class control are remediable grounds for dismissal which entitle tenured teachers to a written warning; however, if defects which are remedial in nature continue for a long enough period of time and where the teacher refuses or fails to remedy them, they

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have been considered irremedial. Yesinowski v. Board of Educ., 28 Ill. App. 3d 119, 328 N.E.2d 23 (2 Dist. 1975).

- Discretion of Board

Board of education has discretion to determine whether the causes constituting grounds for dismissal are remediable so as to require written warnings. Aulwurm v. Board of Educ., 43 Ill. App. 3d 963, 2 Ill. Dec. 772, 357 N.E.2d 1215 (5 Dist. 1976), rev'd on other grounds, 67 Ill. 2d 434, 10 Ill. Dec. 571, 367 N.E.2d 1337 (1977).

Board of education had discretion in the first instance to determine whether the causes for which plaintiff was dismissed were remediable. Werner v. Community Unit Sch., 40 Ill. App. 2d 491, 190 N.E.2d 184 (2 Dist. 1963).

Boards of education are vested with discretionary power to make a determination of whether causes of dismissal are remediable, but such discretion may not be exercised arbitrarily and without cause, and on review the appellate court has the power to determine whether there has been an abuse of such power. Hutchison v. Board of Educ., 32 Ill. App. 2d 247, 177 N.E.2d 420 (3 Dist. 1961).

This section gave a school board ample authority to determine in the first instance what causes were or were not remediable. Eveland v. Board of Educ., 340 Ill. App. 308, 92 N.E.2d 182 (3 Dist. 1950).

- Duty of Board

At a dismissal hearing, a board of education must make a finding of fact determining whether the evidence established that the causes were remediable. Gilliland v. Board of Educ., 35 Ill. App. 3d 861, 343 N.E.2d 704 (3 Dist. 1976), rev'd on other grounds, 67 Ill. 2d 143, 8 Ill. Dec. 84, 365 N.E.2d 322 (1977).

Where there was nothing in the record to show that the school board made a finding regarding remediability, and there was no reference to any such finding at the conclusion of the board's hearing, that failure of the board to make any finding of record regarding the remediability of the causes enumerated in its bill of particulars was not in accord with the obvious intent of the law and was prejudicial to the rights of the teacher. Waller v. Board of Educ., 13 Ill. App. 3d 1056, 302 N.E.2d 190 (5 Dist. 1973).

- Failure to Remedy

Where causes which are remediable in nature continue for a long enough period of time and where the teacher refuses or fails to remedy them, they may be considered to be irremediable. Szabo v. Board of Educ., 117 Ill. App. 3d 869, 73 Ill. Dec. 295, 454 N.E.2d 39 (1 Dist. 1983).

- Illustrative Cases

Where an elementary school gym teacher was terminated for pinching seven and eight year old girls on the buttocks, such behavior was irremediable, and dismissal was proper. Board of Educ. v. State Bd. of Educ., 138 Ill. App. 3d 947, 93 Ill. Dec. 580, 487 N.E.2d 24 (1 Dist. 1985).

Where a teacher did not seriously injure any student and only used physical force to direct a child into the hallway, toward a desk, or into a line during the last six weeks of his 17 year career, his conduct did not significantly damage his students, but this conduct was remediable and should have been called to his attention, and he was entitled to a written warning before he could be dismissed. Board of Educ. v. State Bd. of Educ., 99 Ill. 2d 111, 75 Ill. Dec. 441, 457 N.E.2d 435 (1983).

Teacher's conduct was irremediable and her dismissal was proper where, despite the board of education's denial of her request to attend a three day out-of-state conference, teacher made

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insubordinate statements to various school employees telling them that she would attend the conference. Christopherson v. Spring Valley Elementary Sch. Dist., 90 Ill. App. 3d 460, 45 Ill. Dec. 866, 413 N.E.2d 199 (3 Dist. 1980).

Where the record contained considerable testimony of damage to plaintiff's students and to the school itself, including detailed expert testimony that the causes for dismissal were irremediable, where there was evidence that the complained-of conduct of the teacher extended over a period of four school years despite numerous parental complaints culminating in discussions between plaintiff and her superiors concerning her conduct, the evidence showed that the board's findings were not contrary to the manifest weight of that evidence. Gilliland v. Board of Educ., 67 Ill. 2d 143, 8 Ill. Dec. 84, 365 N.E.2d 322 (1977).

Where a teacher violated the strictures of the child discipline policy of the board of education, by administering corporal punishment without the requisite cooling-off period, and there was no cause for the paddling within the definition of misconduct enumerated in the board policy, there was sufficient evidence of irremediable damage to the student, and the board's determination that the cause for teacher's discharge was irremediable was not contrary to the manifest weight of the evidence. Welch v. Board of Educ., 45 Ill. App. 3d 35, 3 Ill. Dec. 679, 358 N.E.2d 1364 (4 Dist. 1977).

Although a teacher's principal and her other superiors testified that they regarded her as a poor teacher and her classroom program as deficient, there was no evidence in the record that the plaintiff could not have corrected her teaching program and changed its orientation if her superiors had given her a firm program and demanded that she adopt it; where nothing suggested that, had she been warned that her refusal or failure to do so might result in charges, her compliance would not have been complete, and the finding of irremediability was against the manifest weight of the evidence. Wells v. Board of Educ., 85 Ill. App. 2d 312, 230 N.E.2d 6 (1 Dist. 1967).

- Immoral Conduct

The second prong of the remediability test, whether the conduct resulting in damage could have been corrected had the teacher been warned, is not appropriate in situations involving immoral conduct by a teacher. Board of Educ. v. Illinois State Bd. of Educ., 217 Ill. App. 3d 720, 160 Ill. Dec. 575, 577 N.E.2d 900 (5 Dist. 1991).

- Irremediable Cause

A cause is not remediable where irreparable damage has been done. Werner v. Community Unit Sch., 40 Ill. App. 2d 491, 190 N.E.2d 184 (2 Dist. 1963); Glover v. Board of Educ., 21 Ill. App. 3d 1053, 316 N.E.2d 534 (4 Dist. 1974), aff'd, 62 Ill. 2d 122, 340 N.E.2d 4 (1975).

A cause for teacher's dismissal is irremediable where damage has been done to the students, the faculty or the school itself and the damage could not have been corrected if warnings had been given by the teacher's superiors when they learned of the cause. Wells v. Board of Educ., 85 Ill. App. 2d 312, 230 N.E.2d 6 (1 Dist. 1967).

- Long Period of Time

Uncorrected causes for dismissal which originally were remediable in nature can become irremediable if continued over a long period of time. Gilliland v. Board of Educ., 67 Ill. 2d 143, 8 Ill. Dec. 84, 365 N.E.2d 322 (1977).

- No Harm Shown

Where a tenured teacher did not exhibit hostile defiance of his employer and did not erode the disciplinary authority of the school board, defendants were not irremediably harmed and the

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school board's decision to dismiss the teacher was against the manifest weight of the evidence. Szabo v. Board of Educ., 117 Ill. App. 3d 869, 73 Ill. Dec. 295, 454 N.E.2d 39 (1 Dist. 1983).

- Observation

In order to assure a teacher his statutorily protected opportunity to remediate, it was incumbent on the school board to ground its dismissal decision on observations and evaluations made after, and not during, the agreed upon remediation period. Board of Educ. v. State Bd., 82 Ill. App. 3d 820, 38 Ill. Dec. 189, 403 N.E.2d 277 (2 Dist. 1980).

- Proof

In order to justify the dismissal of a teacher without giving prior warning, the board must prove by competent and substantial evidence that the cause for discharge is not remedial. Board of Educ. v. Illinois State Bd. of Educ., 112 Ill. App. 3d 696, 68 Ill. Dec. 188, 445 N.E.2d 832 (2 Dist. 1983).

Evidence presented at the hearing before the board of education must not only prove that the reasons and causes for discharge existed, but it must also be shown by competent substantial evidence that the reasons and causes were not remediable. Werner v. Community Unit Sch., 40 Ill. App. 2d 491, 190 N.E.2d 184 (2 Dist. 1963).

A teacher can not circumvent the procedure provided for by this Act by merely alleging that the charges are untrue or remediable, or by similar allegations. Eveland v. Board of Educ., 340 Ill. App. 308, 92 N.E.2d 182 (3 Dist. 1950).

- Remediable Cause

Where there was no evidence of any breakdown in a discharged tenured teacher's relationships with other teachers, no evidence that her teaching ability was affected in any manner, and no evidence that the standing of the school as an education institution was in any manner affected, there cannot properly be a finding of irremediability on teacher's conduct. Reinhardt v. Board of Educ., 19 Ill. App. 3d 481, 311 N.E.2d 710 (5 Dist. 1974), vacated on other grounds, 61 Ill. 2d 101, 329 N.E.2d 218 (1975).

- Remediation Plans

A teacher did not have a constitutionally protected right to be free from the imposition of remediation plan where this section affirmatively required the board of education to provide a remediation plan as a specific element of the process due before the board of education may dismiss a tenured employee, and only if such a remediation plan did not accomplish its intended purposes and results in a dismissal hearing did an employee then have the opportunity to show that the remediation plan was unnecessary or vexatious. Sweeney v. Board of Educ., 746 F. Supp. 758 (N.D. Ill. 1990).

- Role Model

Where plaintiff can no longer function as a role model to impart basic societal values and qualities of good citizenship to his students, his conduct is irremediable. McCullough v. Illinois State Bd. of Educ., 204 Ill. App. 3d 1082, 150 Ill. Dec. 430, 562 N.E.2d 1233 (5 Dist. 1990).

- Standard of Review

An administrative determination by a board of education as to irremediability involves an exercise of judgment, and the finding of the board will be reversed by a court only if against the manifest weight of evidence. Morelli v. Board of Educ., 42 Ill. App. 3d 722, 1 Ill. Dec. 312, 356 N.E.2d 438 (3 Dist. 1976).

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For the school board to have found the causes for discharge of a tenured teacher irremediable under the current interpretation of the statute, they must have found that damage had been done to the students, the faculty or the school itself, and that the damage could not have been corrected if warnings had been given by the teacher's superiors when they learned of the cause. Reinhardt v. Board of Educ., 19 Ill. App. 3d 481, 311 N.E.2d 710 (5 Dist. 1974), vacated on other grounds, 61 Ill. 2d 101, 329 N.E.2d 218 (1975).

A record cannot be properly reviewed on appeal unless there is a showing that the board made a determination regarding the remediability of causes and unless its reasons are expressed in such fashion that the reviewing court can pass judgment on them. Waller v. Board of Educ., 13 Ill. App. 3d 1056, 302 N.E.2d 190 (5 Dist. 1973).

Whether or not the causes for a teacher's dismissal are irremediable is a question of fact whose initial determination lies within the discretion of the board; but a court of review must determine whether the board's finding was against the manifest weight of the evidence. Wells v. Board of Educ., 85 Ill. App. 2d 312, 230 N.E.2d 6 (1 Dist. 1967).

Court had power on review to test the exercise of the board of education's discretion and determine whether there has been an abuse where teacher was dismissed for an alleged remedial cause. Werner v. Community Unit Sch., 40 Ill. App. 2d 491, 190 N.E.2d 184 (2 Dist. 1963).

Boards of education are vested with discretionary power to make a determination of whether causes of dismissal are remediable, but such discretion may not be exercised arbitrarily and without cause; and on review the appellate court has the power to determine whether there has been an abuse of such power. Hutchison v. Board of Educ., 32 Ill. App. 2d 247, 177 N.E.2d 420 (3 Dist. 1961).

The determinations of the board of education in the first instance that the causes of dismissal are not remediable, and its final decision on the hearing, are both subject to review. Keyes v. Board of Educ., 20 Ill. App. 2d 504, 156 N.E.2d 763 (3 Dist. 1959).

The trial court had the power to pass on the question of whether a school board's finding of irremediability was against the manifest weight of the evidence. Hauswald v. Board of Educ., 20 Ill. App. 2d 49, 155 N.E.2d 319 (1 Dist. 1958).

- Test

The test for determining whether conduct is irremediable is (1) whether damage has been done to the students, faculty, or school, and (2) whether the conduct resulting in that damage could have been corrected had the teacher been warned. Gilliland v. Board of Educ., 35 Ill. App. 3d 861, 343 N.E.2d 704 (3 Dist. 1976), rev'd on other grounds, 67 Ill. 2d 143, 8 Ill. Dec. 84, 365 N.E.2d 322 (1977); Fender v. School Dist. No. 25, 37 Ill. App. 3d 736, 347 N.E.2d 270 (1 Dist. 1976); Board of Educ. v. State Bd., 82 Ill. App. 3d 820, 38 Ill. Dec. 189, 403 N.E.2d 277 (2 Dist. 1980); Szabo v. Board of Educ., 117 Ill. App. 3d 869, 73 Ill. Dec. 295, 454 N.E.2d 39 (1 Dist. 1983); Board of Educ. v. Illinois State Bd. of Educ., 112 Ill. App. 3d 696, 68 Ill. Dec. 188, 445 N.E.2d 832 (2 Dist. 1983); Board of Educ. v. Illinois State Bd. of Educ., 217 Ill. App. 3d 720, 160 Ill. Dec. 575, 577 N.E.2d 900 (5 Dist. 1991).

- Time for Correction

If the remediable cause is not corrected within a reasonable period of time after a teacher receives the written warning, it may then be grounds for discharge. Paprocki v. Board of Educ., 31 Ill. App. 3d 112, 334 N.E.2d 841 (2 Dist. 1975).

Where defects which are remedial in nature continue for a long enough period of time, and where the teacher refuses or fails to remedy them, they may be considered to be irremedial. Glover v.

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Board of Educ., 21 Ill. App. 3d 1053, 316 N.E.2d 534 (4 Dist. 1974), aff'd, 62 Ill. 2d 122, 340 N.E.2d 4 (1975).

- Triggering

A remediation period is only triggered by official school board action; unofficial notices given by school administrators are not controlling. Board of Educ. v. State Bd., 82 Ill. App. 3d 820, 38 Ill. Dec. 189, 403 N.E.2d 277 (2 Dist. 1980).

- Unreasonable

The hearing officer's determination that the school board failed to give a teacher a reasonable remediation period to correct his alleged deficiencies was supported by the evidence. Board of Educ. v. State Bd., 82 Ill. App. 3d 820, 38 Ill. Dec. 189, 403 N.E.2d 277 (2 Dist. 1980).

Review

- Administrative Review Act

Some teacher reduction and discontinuation of particular type of teaching service cases are not suitable for review under the Administrative Review Act (735 ILCS 5/3-101 et seq.) primarily because the dismissed teacher has no statutory right to a hearing, and the board of education minutes are ordinarily insufficient to constitute a record to provide the basis for administrative review. Hagopian v. Board of Educ., 56 Ill. App. 3d 940, 14 Ill. Dec. 711, 372 N.E.2d 990 (3 Dist. 1978), modified on other grounds, 83 Ill. App. 2d 1097, 39 Ill. Dec. 308, 404 N.E.2d 899 (1980).

- Appellate Court

On administrative review, the appellate court must determine whether the procedures required by law were followed and, if so, whether the decision of the finder of fact was against the manifest weight of the evidence. Board of Educ. v. Illinois State Bd. of Educ., 154 Ill. App. 3d 375, 107 Ill. Dec. 470, 507 N.E.2d 134 (1 Dist. 1987).

In a review of the circuit court's decision reversing the school board's discharge of a tenured teacher, it had to be considered whether the steps and procedures required by law were taken, and if so, the decision of the board or administrative agency against the manifest weight of the evidence. Reinhardt v. Board of Educ., 19 Ill. App. 3d 481, 311 N.E.2d 710 (5 Dist. 1974), vacated on other grounds, 61 Ill. 2d 101, 329 N.E.2d 218 (1975).

- Duty of Board

The board of education, in a quasi judicial role, must weigh the evidence presented, and after due consideration to matters affecting credibility, must decide whether sufficient evidence exists to support the charge. Morelli v. Board of Educ., 42 Ill. App. 3d 722, 1 Ill. Dec. 312, 356 N.E.2d 438 (3 Dist. 1976).

- Finding Not Disturbed

The court would not disturb a hearing officer's finding that cause to dismiss a teacher was not shown where the evidence did not establish that defendant's conduct was intentional, nor that the matters in regard to which he was negligent were of great consequence, nor that his behavior toward students was seriously improper. Board of Educ. v. Epstein, 72 Ill. App. 3d 723, 28 Ill. Dec. 915, 391 N.E.2d 114 (1 Dist. 1979).

Where the board of education, in the exercise of its discretionary power, determined that the charge specified in the notice constituted sufficient cause for a dismissal of teacher, the appellate

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court was without power to override its judgment in that regard. Pearson v. Board of Educ., 12 Ill. App. 2d 44, 138 N.E.2d 326 (3 Dist. 1956).

- Findings Required

Order of hearing officer which merely stated that the dismissal of the defendant was not for just cause was a bare decision, nothing more; absent written findings of fact supporting his decision, order of hearing officer, although a final order, was not reviewable by a court under former section 1 of the Administrative Review Act (see now 735 ILCS 5/3-101). Board of Educ. v. File, 89 Ill. App. 3d 1132, 45 Ill. Dec. 448, 412 N.E.2d 1030 (3 Dist. 1980).

Judgment of the circuit and appellate courts were vacated and the cause was remanded where there could be no judicial review of a resolution discharging a teacher because the board of education made no findings. Reinhardt v. Board of Educ., 61 Ill. 2d 101, 329 N.E.2d 218 (1975).

- Remand for Evidentiary Support

Although the lack of written findings renders hearing officer's order incapable of judicial review, his order was not null and void; appellate court remanded the cause to the same hearing officer for evidentiary support of his decision pursuant to former section 12(1)(f) of the Administrative Review Act (see now 735 ILCS 5/3-111) and Rule 366(a), Supreme Court Rules. Board of Educ. v. File, 89 Ill. App. 3d 1132, 45 Ill. Dec. 448, 412 N.E.2d 1030 (3 Dist. 1980).

- Ripeness

A teacher who had been given notice of discharge for cause, and who had requested a hearing under the provisions of former section 24-3 of this Code (see now this section), could not sue for alleged breach of contract while the hearing on the charges was still pending and not finally adjudicated. Pearson v. Board of Educ., 12 Ill. App. 2d 70, 138 N.E.2d 687 (3 Dist. 1956).

Rights

- Compliance with Section

The legislature has declared that removal of a teacher or reduction of her employment must be done in accord with this section. Wilson v. Board of Educ., 127 Ill. App. 3d 433, 82 Ill. Dec. 341, 468 N.E.2d 995 (3 Dist. 1984).

- Fortuitous Circumstances Not Sufficient

There is nothing is this section that authorizes a board to dispense with the rights of a tenured teacher whose discharge is based upon concerns relating to the teacher's skills, abilities, or performance, merely because the board wishes to discharge the teacher when the board is undergoing the fortuitous circumstances of a reduction in force of the number of teachers it employs. Schafer v. Board of Educ., 157 Ill. App. 3d 884, 110 Ill. Dec. 155, 510 N.E.2d 1186 (1 Dist. 1987).

- Good Faith

A teacher's rights under this section are not conditioned upon whether the school board acted in good faith or not. Wilson v. Board of Educ., 127 Ill. App. 3d 433, 82 Ill. Dec. 341, 468 N.E.2d 995 (3 Dist. 1984).

- Inclusion of Agreement Provision

The inclusion of the provision in the procedural agreement that reduction of tenured certificated personnel would be made in accordance with this section of this Code neither expanded nor reduced the powers of the plaintiff or the rights of the school teachers whose tenured positions

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were involved; the power to determine whether to act on the basis of economic necessity was nondelegable and vested exclusively in plaintiff's board, but a grievance arising out of a charge that action purportedly taken for other reasons was in fact based upon economic necessity was, under the agreement, subject to arbitration. Board of Educ. v. Bremen Dist. 228 Joint Faculty Ass'n, 101 Ill. 2d 115, 77 Ill. Dec. 783, 461 N.E.2d 406 (1984).

- Noncompliance by Board

The board of education had not complied with the provisions of this section empowering the district to terminate superintendent's employment as a full-time teacher; superintendent was entitled under section 24-11 (105 ILCS 5/24-11) to a salary based upon a reasonable classification for the work to which he was assigned and was entitled to be assigned to work for which he was qualified regardless of the availability of such a position. If the board did not comply with these rights, however, superintendent's remedy was to petition the board to do so and not to require the school district to reinstate him as superintendent. Champaign County Bank & Trust Co. v. Brewer, 63 Ill. App. 3d 490, 20 Ill. Dec. 377, 380 N.E.2d 54 (4 Dist. 1978).

- Notice and Hearing

If dismissal of a tenured teacher is sought for cause, such teacher is entitled to notice of the specific charges for dismissal and to a hearing before a disinterested hearing officer. Hansen v. Board of Educ., 150 Ill. App. 3d 979, 104 Ill. Dec. 204, 502 N.E.2d 467 (2 Dist. 1986).

- One Calendar Year

Under this section, which provides an honorably dismissed tenured teacher with preferential rights in rehiring for "1 calendar year," the "1 calendar year" commences at the end of the school term in which the tenured teacher last taught. Hartley v. Board of Educ., 66 Ill. App. 3d 1021, 23 Ill. Dec. 741, 384 N.E.2d 535 (4 Dist. 1978).

Seniority

The defendant was compelled to follow the seniority requirements of this section and reduce plaintiff rather than a senior staff member to a part-time position. Verdeyen v. Board of Educ., 150 Ill. App. 3d 915, 103 Ill. Dec. 620, 501 N.E.2d 937 (2 Dist. 1986).

Standard of Review

Hearing officer correctly applied the preponderance of the evidence standard at discharge hearing of a tenured public school teacher. Combs v. Board of Educ., 147 Ill. App. 3d 1092, 101 Ill. Dec. 482, 498 N.E.2d 806 (2 Dist. 1986).

Because hearing officer did not apply the proper tests, there were no findings in the record subject to review, and the circuit court should have remanded the cause to the hearing officer so that he could reconsider his decision in light of the appropriate standards. Board of Educ. v. Ingels, 75 Ill. App. 3d 334, 31 Ill. Dec. 153, 394 N.E.2d 69 (3 Dist. 1979).

State Control

The control exerted by the State of Illinois over public school teachers does not make the state the "real" employer of teachers; so far as discrimination in hiring and firing on the basis of age or other forbidden characteristics is concerned, the key powers are, naturally, those of hiring and firing, and those powers are in the hands of the local school district, though constrained by the tenure provision of the state's school code. EEOC v. Illinois, 69 F.3d 167 (7th Cir. 1995).

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Substantially Similar Positions

- Contract Employment

The "position substantially similar" language of the statute does not compel plaintiff to reassign defendants to the athletic coaching duties held by them under separate employment contracts, where these contracts and any right to recovery of damages under them were not before the trial court on administrative review. School Dirs. v. Kossoff, 95 Ill. App. 3d 26, 50 Ill. Dec. 550, 419 N.E.2d 658 (2 Dist. 1981).

Suspension

- Hearing

School board was not required to afford a suspended, rather than dismissed, tenured teacher a hearing which satisfied the procedural requirements of this section. Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc., 118 Ill. 2d 389, 113 Ill. Dec. 915, 515 N.E.2d 1222 (1987).

- Opportunity to be Heard

Where the plaintiff was afforded a last-minute opportunity to appear before the school board on the day it adopted the charges against him, tenured teacher was afforded the minimal opportunity to be heard prior to suspension without pay, considering the school board's strong interest in the expedient removal of incompetent teachers, the provision of a full evidentiary hearing, and the board's interest in avoiding the delay and expense of two hearings. Combs v. Board of Educ., 147 Ill. App. 3d 1092, 101 Ill. Dec. 482, 498 N.E.2d 806 (2 Dist. 1986).

- Pending Hearing

Pending a hearing on a school board's motion for dismissal, the most that the board can do by statute is suspend the teacher. Massie v. East St. Louis Sch., 203 Ill. App. 3d 965, 148 Ill. Dec. 940, 561 N.E.2d 246 (5 Dist. 1990).

- Power

This section, which sets out a procedure a school board must follow to dismiss or remove a teacher, must be construed to permit a temporary dismissal, that is, a suspension. Craddock v. Board of Educ., 81 Ill. 2d 28, 39 Ill. Dec. 815, 405 N.E.2d 794 (1980).

The power to dismiss or remove given in section 10-22.4 of this Code (105 ILCS 5/10-22.4) was not required to be construed to include the power to suspend. Kearns v. Board of Educ., 73 Ill. App. 3d 907, 29 Ill. Dec. 591, 392 N.E.2d 148 (1 Dist. 1979).

A school board may suspend a teacher pending a hearing under this section. Barszcz v. Board of Trustees, 400 F. Supp. 675 (N.D. Ill. 1975), aff'd, 539 F.2d 715 (7th Cir. 1976), cert. dismissed, 429 U.S. 1080, 97 S. Ct. 827, 50 L. Ed. 2d 801 (1977).

- Procedural Due Process

Proceedings to suspend tenured teachers without pay are not governed by the procedural requirements of this section, they are nevertheless entitled to procedural due process. Massie v. East St. Louis Sch., 203 Ill. App. 3d 965, 148 Ill. Dec. 940, 561 N.E.2d 246 (5 Dist. 1990).

Although tenured teachers who face suspension are not entitled to a hearing pursuant to this section, they are nevertheless entitled to procedural due process. Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc., 118 Ill. 2d 389, 113 Ill. Dec. 915, 515 N.E.2d 1222 (1987).

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Neither 105 ILCS 5/10-22.4 nor 150 ILCS 5/24-11 entitled teacher, who was suspended for 3 1/2 days without pay, to the procedural requirements of this section; if the legislature intended suspensions to be treated the same as dismissals, it would have said so. Kearns v. Board of Educ., 73 Ill. App. 3d 907, 29 Ill. Dec. 591, 392 N.E.2d 148 (1 Dist. 1979).

- Valid

Where four charges were lodged against the plaintiff by the defendant school board: one, he actively and wilfully participated in securing the enrollment of a person under false and forged credentials in classes and did so for purposes not disclosed to the principal superintendent, or board of education; two, he actively and wilfully, with intent to discredit, caused, by word and deed, false accusations and suspicions to be directed toward certain teaching and administrative personnel to the effect that they were involved with or condoned drugs and drug usage in said school; three, he failed to maintain proper rapport with the superintendent and other members of the administrative staff of school and failed to carry out administrative policies and suggestions over a period of several months; four, his involvement in matters outside his areas of responsibility adversely affected his effectiveness in his primary assignment; the board's ultimate decision to suspend plaintiff was not against the manifest weight of the evidence. Morelli v. Board of Educ., 42 Ill. App. 3d 722, 1 Ill. Dec. 312, 356 N.E.2d 438 (3 Dist. 1976).

Temporary Illness or Incapacity

Although 105 ILCS 5/24-13 allows a school board to define what is a temporary illness or incapacity, that board may not define it out of existence; 105 ILCS 5/10-22.4 provides that a school board may not discharge a teacher for temporary illness or incapacity. Board of Educ. v. Illinois State Bd. of Educ., 154 Ill. App. 3d 375, 107 Ill. Dec. 470, 507 N.E.2d 134 (1 Dist. 1987).

Tenure

- Alternative Sequence of Dismissal

In order for a school board to dismiss a tenured teacher without notice of charges, a period of remediation, and an independent hearing, an alternative sequence of dismissal permissible under this section must bear the same characteristics as inverse seniority. Thus, an alternative sequence of dismissal pursuant to this section established in a teacher association's agreement with a school board must also be founded upon objectively verifiable criteria unrelated to a teacher's skills, abilities, or performance. Schafer v. Board of Educ., 157 Ill. App. 3d 884, 110 Ill. Dec. 155, 510 N.E.2d 1186 (1 Dist. 1987).

- Application

This section prohibited reduction of plaintiff's extended term contract while a guidance counselor with less seniority than plaintiff was allowed to retain a ten month position. Birk v. Board of Educ., 104 Ill. 2d 252, 84 Ill. Dec. 447, 472 N.E.2d 407 (1984).

The "bumping" provisions of this section applied when a school board reduced a tenured teacher's contract from ten to nine months while retaining a less senior tenured teacher on a ten month contract, when both teachers were qualified to do the work required during the tenth month, such that the seniority of the teachers had to be taken into account. Birk v. Board of Educ., 120 Ill. App. 3d 181, 75 Ill. Dec. 623, 457 N.E.2d 1065 (5 Dist. 1983).

- Choice of Teachers

As between tenured teachers, the more senior tenured teacher has the right to "bump" a less senior tenured teacher, and thus avoid dismissal, if he is qualified for the position held by the less

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senior teacher. Zink v. Board of Educ., 146 Ill. App. 3d 1016, 100 Ill. Dec. 657, 497 N.E.2d 835 (4 Dist. 1986).

This section permits a school board to dismiss a tenured teacher only after first dismissing probationary and less senior tenured teachers who hold positions which the senior tenured teacher is qualified to teach. Hancon v. Board of Educ., 130 Ill. App. 3d 224, 85 Ill. Dec. 679, 474 N.E.2d 407 (2 Dist. 1985).

Where circumstances force a school board to retain only one of two teachers qualified for a position, this section requires that the tenured teacher be preferred over the untenured; where the choice is between equally qualified tenured teachers, the senior teacher is to be preferred. Birk v. Board of Educ., 120 Ill. App. 3d 181, 75 Ill. Dec. 623, 457 N.E.2d 1065 (5 Dist. 1983).

- Collective Bargaining Agreement

The alternative method of determining the sequence of dismissal provided by a collective bargaining agreement cannot diminish the rights of tenured teachers. Piquard v. Board of Educ., 242 Ill. App. 3d 477, 182 Ill. Dec. 888, 610 N.E.2d 757 (3 Dist. 1993).

- Contract Reduction and Dismissal

The seniority provisions of this section apply when a teaching contract is reduced, as well as when a teacher is dismissed, because to hold otherwise would allow school boards to undermine the protections afforded experienced teachers under the School Code. Birk v. Board of Educ., 104 Ill. 2d 252, 84 Ill. Dec. 447, 472 N.E.2d 407 (1984).

- Effect

This sections extends a preference to tenured teachers over nontenured teachers if a tenured teacher is legally qualified to hold a position. Hagopian v. Board of Educ., 56 Ill. App. 3d 940, 14 Ill. Dec. 711, 372 N.E.2d 990 (3 Dist. 1978), modified on other grounds, 83 Ill. App. 2d 1097, 39 Ill. Dec. 308, 404 N.E.2d 899 (1980).

- Illustrative Cases

Petitioner alleged and proved she was reduced to a one-half time teaching position so that the sum total of full-time teachers was decreased, thereby activating the "bumping" privileges for teachers in contractual continued service. Caviness v. Board of Educ., 59 Ill. App. 3d 28, 16 Ill. Dec. 526, 375 N.E.2d 157 (4 Dist. 1978).

- Part-Time Assignment

Where petitioner, a full-time tenured teacher, had been reduced to part-time teaching while teachers of less seniority were assigned to teach courses he was qualified to teach, a writ of mandamus would issue to compel the board of education to assign him to a full-time schedule of courses. Hayes v. Board of Educ., 103 Ill. App. 3d 498, 59 Ill. Dec. 189, 431 N.E.2d 690 (4 Dist. 1981).

- Purpose

The legislature's goal in creating the tenure provisions of the School Code was to protect teachers of experience and ability through an assurance of continuous employment and rehiring based on merit and not partisan politics. Costello v. Governing Bd. of Lee County Special Educ. Ass'n, 252 Ill. App. 3d 547, 191 Ill. Dec. 376, 623 N.E.2d 966 (2 Dist. 1993), cert. denied, 155 Ill. 2d 563, 198 Ill. Dec. 541, 633 N.E.2d 3 (1994).

- Qualifications

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Less senior teacher's position preexisted the school board's decision to reduce the tenured teacher's position of band teacher to half-time; since petitioner, the tenured teacher, did not claim to be qualified to teach all of the classes of less senior teacher's position, relief under this section was properly denied. Catron v. Board of Educ., 126 Ill. App. 3d 693, 81 Ill. Dec. 750, 467 N.E.2d 621 (4 Dist. 1984).

A tenured teacher who has been dismissed because of a discontinuance of teaching positions has no right to reassignment to a position held by nontenured teachers for which the tenured teacher is not qualified. Peters v. Board of Educ., 97 Ill. 2d 166, 73 Ill. Dec. 450, 454 N.E.2d 310 (1983).

A tenured teacher must satisfy all of the minimal academic qualifications prescribed by statute for a given teaching position before the tenured teacher can invoke the statutory right to "bump" or displace a nontenured teacher. Peters v. Board of Educ., 97 Ill. 2d 166, 73 Ill. Dec. 450, 454 N.E.2d 310 (1983).

- Recombination of Courses

Member school districts are not obligated to realign courses to "create" a vacancy the plaintiffs are qualified to fill by recombining and realigning courses from several positions. Costello v. Governing Bd. of Lee County Special Educ. Ass'n, 252 Ill. App. 3d 547, 191 Ill. Dec. 376, 623 N.E.2d 966 (2 Dist. 1993), cert. denied, 155 Ill. 2d 563, 198 Ill. Dec. 541, 633 N.E.2d 3 (1994).

A dismissed tenured teacher cannot create a position that she is qualified to teach by taking and recombining courses from other teaching positions; to permit this would usurp and, if extended, destroy the authority of the school board. Peters v. Board of Educ., 97 Ill. 2d 166, 73 Ill. Dec. 450, 454 N.E.2d 310 (1983).

- Responsibility for Self Interest

A teacher, who was qualified for positions held by other teachers with less seniority to which he might have been assigned, was responsible for providing timely clarification of his qualifications to the board in order to avoid dismissal due to staff reduction. Hancon v. Board of Educ., 130 Ill. App. 3d 224, 85 Ill. Dec. 679, 474 N.E.2d 407 (2 Dist. 1985).

- Right to "Bump"

Plaintiff could only bump in the member districts if the plaintiff was legally qualified for an entire position currently held by a nontenured or tenured but less senior teacher. Costello v. Governing Bd. of Lee County Special Educ. Ass'n, 252 Ill. App. 3d 547, 191 Ill. Dec. 376, 623 N.E.2d 966 (2 Dist. 1993), cert. denied, 155 Ill. 2d 563, 198 Ill. Dec. 541, 633 N.E.2d 3 (1994).

A tenured teacher who agrees to a reduction in teaching load, who requests to be returned to full-time teaching, can assert "bumping rights" against a new, nontenured teacher, who has been hired to teach a newly created course which the tenured teacher is qualified to teach. Deem v. Board of Educ., 200 Ill. App. 3d 903, 146 Ill. Dec. 328, 558 N.E.2d 291 (5 Dist. 1990).

Where a teacher was given his notice of honorable dismissal at least 60 days prior to the end of the school term, but retained his employment as a history teacher to the end of that term, there was no occasion to consider whether he had any right to "bump" a less senior teacher during that school term. Hancon v. Board of Educ., 130 Ill. App. 3d 224, 85 Ill. Dec. 679, 474 N.E.2d 407 (2 Dist. 1985).

- Status Preference

This section does require the school board, when reducing staff, to dismiss a nontenured teacher before dismissing any tenured teacher who is legally qualified to hold the position currently held by the nontenured teacher. Herbach v. Board of Educ., 94 Ill. App. 3d 889, 50 Ill. Dec. 348, 419 N.E.2d 456 (1 Dist. 1981).

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The circuit court was correct in holding that the defendant had complied with the statutory provisions of this section; however, the circuit court's refusal to consider the plaintiff's demand for preference over nontenure teachers was not upheld. Hankenson v. Board of Educ., 10 Ill. 2d 560, 141 N.E.2d 5 (1957).

Termination Unauthorized

This section does not confer discretion upon a local school board to terminate a tenured teacher it considers unqualified. Walter v. Board of Educ., 93 Ill. 2d 101, 66 Ill. Dec. 309, 442 N.E.2d 870 (1982).

Vacancy

- Attrition

Tenured teachers must be given priority in the filling of vacancies that have occurred due to attrition. Bilek v. Board of Educ., 61 Ill. App. 3d 323, 18 Ill. Dec. 623, 377 N.E.2d 1259 (1 Dist. 1978).

Though this section does not expressly deal with vacancies caused by attrition, such vacancies must be filled by qualified tenured teachers who have been honorably dismissed within the preceding calendar year, if possible; if the vacancies cannot be filled by the tenured teachers, then untenured teachers may be hired. Bilek v. Board of Educ., 61 Ill. App. 3d 323, 18 Ill. Dec. 623, 377 N.E.2d 1259 (1 Dist. 1978).

- Not Created

This section does not require as a matter of law the removal or dismissal of a tenured teacher who is not in compliance with coursework requirements, and therefore, no vacancy existed in the position teaching general business and cooperative work training to which plaintiff, an honorably dismissed tenured teacher, could be entitled to be recalled. Ballard v. Board of Educ., 167 Ill. App. 3d 224, 118 Ill. Dec. 85, 521 N.E.2d 153 (3 Dist. 1988).

- Priority

Honorably dismissed tenured teachers must be given priority when vacancies due to attrition are filled. Bilek v. Board of Educ., 61 Ill. App. 3d 323, 18 Ill. Dec. 623, 377 N.E.2d 1259 (1 Dist. 1978).

Vacancy Improper

- Creation

A dismissed teacher, who was not legally qualified to fill the position held by a probationary or less senior tenured teacher, had no right to have the school board transfer a teacher to create a vacancy which he would be qualified to hold. Hancon v. Board of Educ., 130 Ill. App. 3d 224, 85 Ill. Dec. 679, 474 N.E.2d 407 (2 Dist. 1985).

Warning

- Appellate Review

The defendant board of education, in a formal notice of dismissal and accompanying causes for discharge, determined that such causes were irremediable; it then became incumbent upon the defendant to prove at the subsequent public hearing not only that the alleged causes actually

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existed, but also by substantial evidence that the causes upon which the charges were based were not remediable; whether the causes for dismissal were remediable may and must be considered by the appellate court upon review, both as to the board's initial determination and its ultimate finding after the public hearing. Gilliland v. Board of Educ., 35 Ill. App. 3d 861, 343 N.E.2d 704 (3 Dist. 1976), rev'd on other grounds, 67 Ill. 2d 143, 8 Ill. Dec. 84, 365 N.E.2d 322 (1977).

- Compliance

Where the school board placed in teacher's personnel file a letter of remediation declaring him insubordinate for failing to provide typed copies of examination, and the board informed teacher that his insubordination could lead to dismissal if not remedied, and teacher, on the day before receiving that letter, had complied with the requirement by providing typed copies prepared by a paid typist, teacher's compliance eliminated any issue related to his dismissal. Thomas v. Board of Educ., 117 Ill. App. 3d 374, 72 Ill. Dec. 845, 453 N.E.2d 150 (5 Dist. 1983).

- Duty of Board

The duty to send notice of remediable cause lies solely with the board, and is a non-delegable responsibility; a written warning sent to a teacher by his principal was not sufficient notice. Paprocki v. Board of Educ., 31 Ill. App. 3d 112, 334 N.E.2d 841 (2 Dist. 1975).

- Inadequate

Where a letter from a principal to a high school teacher, failed to contain any intimation that penalties such as dismissal could befall the plaintiff if he did not follow the class schedules or the pass procedures, the letter did not comply with the statutory requirement of a "reasonable warning in writing." Everett v. Board of Educ., 22 Ill. App. 3d 594, 317 N.E.2d 753 (1 Dist. 1974).

- Irremediable Conduct

A written warning is not required when the teacher's conduct is irremediable. Szabo v. Board of Educ., 117 Ill. App. 3d 869, 73 Ill. Dec. 295, 454 N.E.2d 39 (1 Dist. 1983).

As plaintiff's deficiencies were irremediable, the board was not required to give written notice of such defects before initiating action to dismiss plaintiff. Fender v. School Dist. No. 25, 37 Ill. App. 3d 736, 347 N.E.2d 270 (1 Dist. 1976).

- Jurisdiction

Because compliance with the procedures set forth in this section is jurisdictional, if a warning is not given with respect to a remediable cause, the board of education lacks jurisdiction to dismiss the teacher. Board of Educ. v. State Bd. of Educ., 138 Ill. App. 3d 947, 93 Ill. Dec. 580, 487 N.E.2d 24 (1 Dist. 1985).

If alleged causes of dismissal are remediable, and the teacher is not given proper notice in writing, then the failure to provide the warnings required by the School Code deprives the school board of jurisdiction. Aulwurm v. Board of Educ., 43 Ill. App. 3d 963, 2 Ill. Dec. 772, 357 N.E.2d 1215 (5 Dist. 1976), rev'd on other grounds, 67 Ill. 2d 434, 10 Ill. Dec. 571, 367 N.E.2d 1337 (1977); Szabo v. Board of Educ., 117 Ill. App. 3d 869, 73 Ill. Dec. 295, 454 N.E.2d 39 (1 Dist. 1983).

The notice of remediable cause is jurisdictional, and a board's failure to give a written warning deprives a board of the jurisdictional authority to discharge the teacher for those once remediable causes. Paprocki v. Board of Educ., 31 Ill. App. 3d 112, 334 N.E.2d 841 (2 Dist. 1975).

- Not Given

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A hearing officer properly overturned a handicapped teacher's dismissal where the teacher was not given reasonable warning, notwithstanding the school district's assertion that the teacher's conduct was irremediable and that, therefore, no warning was required, where the more serious charges against the teacher were not proved and the hearing officer found that the proved charges could have been dealt with procedurally with a notice to remedy, corrective discipline, and reasonable accommodation for the teacher. Shreve v. Board of Educ., 309 Ill. App. 3d 670, 243 Ill. Dec. 112, 722 N.E.2d 1181 (4 Dist. 1999).

Dismissal of tenured teacher, without proper warning for excessive use of force, was improper. Board of Educ. v. Illinois State Bd. of Educ., 112 Ill. App. 3d 696, 68 Ill. Dec. 188, 445 N.E.2d 832 (2 Dist. 1983).

Where a tenured teacher was not instructed to refrain from working part-time nor was he warned in writing that to use his sick and business leave days to coach would result in his termination, in the absence of such warnings, plaintiff's conduct was not an irremediable cause for dismissal. Szabo v. Board of Educ., 117 Ill. App. 3d 869, 73 Ill. Dec. 295, 454 N.E.2d 39 (1 Dist. 1983).

Teacher's failure to submit lesson plans, attendance forms, student recognition reports, failure to conduct a student musical in the spring of 1974, and failure to perform adequately his duties as an assistant football coach, did not warrant dismissal where no reasonable warning in writing was given to the plaintiff notifying him that, if the stated causes were not removed or corrected, charges might be brought against him; the board was without jurisdiction to discharge him for these causes. Aulwurm v. Board of Educ., 67 Ill. 2d 434, 10 Ill. Dec. 571, 367 N.E.2d 1337 (1977).

Where the appellate court found there was a complete failure of proof establishing the fact that the plaintiff's insubordination cause was not remediable, plaintiff's discharge was wrongful since the provisions of former Ill. Rev. Stat., ch. 122, para. 24-3 (see now this section) regarding warning to the plaintiff were not complied with. Allione v. Board of Educ., 29 Ill. App. 2d 261, 173 N.E.2d 13 (3 Dist. 1961).

- Strict Compliance

This section is essentially procedural and must be strictly complied with by a school board in dismissing a tenured teacher, the teacher must be given written warning notice of the remediable causes, allowing a sufficiently reasonable time to correct those causes before formal charges of dismissal result; not only must the statutory written warning notice be given in sufficient time to allow for correction of the causes by the teacher, but the notice must categorically state that if the causes are not corrected, charges of dismissal will be filed by the school board. Gilliland v. Board of Educ., 35 Ill. App. 3d 861, 343 N.E.2d 704 (3 Dist. 1976), rev'd on other grounds, 67 Ill. 2d 143, 8 Ill. Dec. 84, 365 N.E.2d 322 (1977).

- When Required

If conduct is remediable, a teacher is entitled to written warning before being dismissed, but if the teacher's conduct is irremediable, no written warning is required before dismissal action is initiated. Board of Educ. v. Illinois State Bd. of Educ., 217 Ill. App. 3d 720, 160 Ill. Dec. 575, 577 N.E.2d 900 (5 Dist. 1991).

When a board determines the cause to be grounds for discharge, it may send the tenured teacher notice of discharge without prior written warnings, but when a board determines a cause to be remediable, it must send a teacher written warning. Paprocki v. Board of Educ., 31 Ill. App. 3d 112, 334 N.E.2d 841 (2 Dist. 1975).

Where a teacher was prevented from having a fair trial by the multiple capacities in which the school board and its attorney were functioning, and charges against the plaintiff were remediable, the teacher should have been given a warning notice as required by former section 24-3 of the Tenure Act (see now this section). Miller v. Board of Educ., 51 Ill. App. 2d 20, 200 N.E.2d 838

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(1 Dist. 1964).

OPINIONS OF ATTORNEY GENERAL

Continuous Employment

- Presumed

Teachers who are transferred from one board to another as the result of a reorganization (including consolidation or annexation) are to be considered, for purposes of Illinois law, as being continuously employed; therefore, teachers in a consolidated or annexed district should not be considered newly hired employees of the resulting entity, for purposes of section 3121 of the Internal Revenue Code (26 U.S.C. 3121 (1986)), but rather should be covered by the "continuing employment" exception to coverage. 1991 Op. Atty. Gen. (91-032).

LEGAL PERIODICALS

For article, "Dismissal of Tenured Teachers in Illinois: Evolution of a Viable System," see 1990 U. Ill. L. Rev. 1.

For article, "Labor Law: 1987-88 Illinois Law Survey," see 20 Loy. U. Chi. L.J. 527 (1988-89).

For article, "Teacher Contract Disputes and Contractual Continued Service," see 70 Ill. B.J. 250 (1981).

For article, "The Effect of Teachers' Part-Time Employment on the Aquisition and Retention of Tenure," see 69 Ill. B.J. 564 (1981).

For article, "Tenured Teacher Dismissal in Illinois, 1975-1979," see 69 Ill. B.J. 422 (1981).

For comment, "A Question of Remediability: Standards of Conduct for Illinois Public School Teachers," see 29 De Paul L. Rev. 523 (1980).

For article, "The Permissible Scope of Public Sector Bargaining in Illinois: A Proposed Solution," see 12 J. Marshall J. Prac. & Proc. 509 (1979).

For case note, "Gilliland v. Board of Education - The Supreme Court Redefines 'Irremediable' Cause and Holds the Multi-Functioned School Board Constitutional," see 1978 U. Ill. L.F. 225.

For article, "Survey of Illinois Law: Employment Law," see, 28 S. Ill. U.L.J. 705 (2004).

RESEARCH REFERENCES

Public school teacher's self-defense, or defense of another, as justification, in dismissal proceedings, for use or threat of use of force against student. 37 ALR4th 842.

Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice. 52 ALR4th 301.

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§ 105 ILCS 5/24-12.1. Rights of recalled teachers

Sec. 24-12.1. Rights of recalled teachers. Any teacher on contractual continued service who is removed or dismissed as a result of a decision of the board to decrease the number of teachers employed by the board or to discontinue some particular type of teaching service and who accepts the tender of a vacancy within one calendar year from the beginning of the following school term pursuant to Section 24-12 [105 ILCS 5/24-12] shall lose no rights which accrued while in contractual continued service.

(Source: P.A. 82-997.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-12.1.

CASE NOTES

Constitutionality

Former Ill. Rev. Stat., ch. 122, para. 136c (see now this section) was constitutional. Anderson v. Board of Educ., 390 Ill. 412, 61 N.E.2d 562 (1945).

§ 105 ILCS 5/24-13. Age or absences not affecting contractual continued service - Teachers replacing teachers in military service or in the General Assembly

Sec. 24-13. Age or absences not affecting contractual continued service - Teachers replacing teachers in military service or in the General Assembly. The contractual continued service status of a teacher is not affected by his attained age, promotion, absence caused by temporary illness or temporary incapacity as defined by regulations of the employing board, leave of absence mutually agreed upon between the teacher and the board, or because of absence while in the military service of the United States. If a teacher is elected to serve in the General Assembly, the board shall grant him a leave of absence if he so requests. A teacher employed to replace one in the military service of the United States or one serving in the General Assembly does not acquire contractual continued service under this Article. If a teacher is elected to serve as an officer of a state or national teacher organization that represents teachers in collective bargaining negotiations, the board shall grant the teacher, upon written request, a leave (or leaves) of absence of up to 6 years or the period of time the teacher serves as an officer, whichever is longer.

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(Source: P.A. 86-478; 93-377, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-13.

Effect of Amendments. The 2003 amendment by P.A. 93-377, effective January 1, 2004, added "or the period of time the teacher serves as an officer, whichever is longer" at the end of the paragraph.

CASE NOTES

Analysis

Applicability
- Part-Time Teaching
Cause Unrelated to Disability
Conditions Imposed
- Power
- Preservation of Rights
Disability Leave
- Not Applicable
Jurisdiction
- Incapacity
Leave of Absence
- Duration
- Mutually Agreeable Leave
- Procedural Requirements of Dismissal
- Types
Regulations

Applicability

- Part-Time Teaching

This section was not applicable where plaintiff was never really absent or on leave, but was merely teaching part-time. Brown v. Board of Educ., 38 Ill. App. 3d 403, 347 N.E.2d 791 (5 Dist. 1976).

Cause Unrelated to Disability

Neither 105 ILCS 5/10-22.4 nor this section prohibits dismissal of a teacher for any other cause set forth in 105 ILCS 5/10-22.4 such as incompetency, cruelty or immorality, if such cause is

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unrelated to a disability. DeBernard v. Illinois State Bd. of Educ., 172 Ill. App. 3d 938, 123 Ill. Dec. 153, 527 N.E.2d 616 (2 Dist. 1988).

Conditions Imposed

- Power

A school board has the implied power to impose conditions upon an extended leave of absence. Fisher v. Board of Educ., 181 Ill. App. 3d 653, 130 Ill. Dec. 287, 537 N.E.2d 354 (5 Dist. 1989).

- Preservation of Rights

The fact that the school board imposed conditions on a leave of absence placed petitioner on notice that her leave was not one contemplated by this section as preserving her rights as a tenured teacher. Fisher v. Board of Educ., 181 Ill. App. 3d 653, 130 Ill. Dec. 287, 537 N.E.2d 354 (5 Dist. 1989).

Disability Leave

- Not Applicable

Policy adopted by the board of education allowing three months temporary disability leave was not applicable to the plaintiff since it was adopted after her leave had been granted. Gould v. Board of Educ., 32 Ill. App. 3d 808, 336 N.E.2d 69 (5 Dist. 1975).

Jurisdiction

- Incapacity

Temporary disability does not deprive a board of education of jurisdiction to dismiss a teacher who has committed a crime of immorality. DeBernard v. Illinois State Bd. of Educ., 172 Ill. App. 3d 938, 123 Ill. Dec. 153, 527 N.E.2d 616 (2 Dist. 1988).

Leave of Absence

- Duration

The three month period of time which the board specified in defining temporary illness was not unreasonably short, as the three-month period was approximately one-third of the school term. Elder v. Board of Educ., 60 Ill. App. 2d 56, 208 N.E.2d 423 (1 Dist. 1965).

- Mutually Agreeable Leave

This section protects a teacher's contractual continued service status when specified leaves of absence enumerated in the statute are taken, but contractual continued service status will only be preserved if the leave of absence was one which was mutually agreeable to both the school board and to the teacher. Fisher v. Board of Educ., 181 Ill. App. 3d 653, 130 Ill. Dec. 287, 537 N.E.2d 354 (5 Dist. 1989).

- Procedural Requirements of Dismissal

School board's actions in not rehiring teacher whose leave of absence was not mutually agreed upon were not subject to the procedural requirements of 105 ILCS 5/24-12 pertaining to the

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dismissal of a contractually continued service teacher. Fisher v. Board of Educ., 181 Ill. App. 3d 653, 130 Ill. Dec. 287, 537 N.E.2d 354 (5 Dist. 1989).

- Types

The language of this section does not expressly prohibit a school board from granting types of leave other than those stated in this section, but only preserves a teacher's tenure if the leave is mutually agreeable. Fisher v. Board of Educ., 181 Ill. App. 3d 653, 130 Ill. Dec. 287, 537 N.E.2d 354 (5 Dist. 1989).

Regulations

The school board's right to promulgate regulations is subject to the right of the teacher to a hearing before dismissal. Friesel v. Board of Educ., 79 Ill. App. 3d 460, 34 Ill. Dec. 814, 398 N.E.2d 637 (1979).

The powers of the board of education are governed by this Code, which specifically gives the boards of education the power to make regulations defining temporary illness or incapacity. Elder v. Board of Educ., 60 Ill. App. 2d 56, 208 N.E.2d 423 (1 Dist. 1965).

OPINIONS OF ATTORNEY GENERAL

Leave

- General Assembly Member

Pursuant to this section, a school board may require a teacher-legislator to file a separate request for each period of leave taken, but it may not require such leave to be held in abeyance pending final approval by the board. 1979 Op. Atty. Gen. 93.

A school board may not require a legislator to take any more or less leave than the amount he has requested. 1979 Op. Atty. Gen. 93.

LEGAL PERIODICALS

For article, "The Effect of Teachers' Part-Time Employment on the Aquisition and Retention of Tenure," see 69 Ill. B.J. 564 (1981).

§ 105 ILCS 5/24-13.1. Contractual continued service of teachers employed in Department of Defense overseas dependents' schools

Sec. 24-13.1. Contractual continued service of teachers employed in Department of Defense overseas dependents' schools. By mutual agreement of a teacher and the employing board, the board may, but is not required to, grant the teacher a leave of absence to accept employment in a Department of Defense overseas dependents' school. If such a leave of absence is granted, the teacher may elect, for a period not exceeding the

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lesser of the period for which he is so employed or 5 years, (a) to preserve his contractual continued service status under this Act, and (b) to continue receipt, on the same basis as if he were teaching in the school system subject to the employing board, of service credit earned for requirements of promotion, incremental increases in salary, leaves of absence and other privileges based on an established period of service or employment. In addition, a teacher whose armed forces reserve unit is activated during the school year and who as a result is required to enter into active military service duty shall continue to have his or her full salary as a teacher paid by the school board for the first 2 weeks of the period during which he or she is required to remain on active military service duty; provided, however, that if the teacher is required to remain on active military service duty for any additional period, his or her contractual continued service under this Act shall be preserved, and he or she shall continue to receive throughout the entire period that he or she is required to remain on active military service duty, on the same basis as if he or she were teaching in the school system governed by the employing board, service credit earned for requirements of promotion, incremental increases in salary, leaves of absence and other privileges based on an established period of service or employment; provided further that a teacher who receives payment of his or her full salary as a teacher for the first 2 weeks of the period his or her armed forces reserve unit is required to remain on active military service duty shall return to the school board such portion of his or her teaching salary so paid as is equal to the payment he or she received for such 2 week period from his or her armed forces reserve unit, excluding, however, all payments received by the teacher from the armed forces reserve unit which are allocable to nonschool days or which constitute a travel, meal or housing allowance.

A person employed to replace a teacher making the election provided for in this Section does not acquire contractual continued service status as a teacher under this Article.

(Source: P.A. 84-1401.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-13.1.

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:76 Teacher leaves and sabbaticals.

§ 105 ILCS 5/24-14. Termination of contractual continued service by teacher

Sec. 24-14. Termination of contractual continued service by teacher. A teacher who has entered into contractual continued service may resign at any time by obtaining concurrence of the board or by serving at least 30 days' written notice upon the secretary of the board. However, no teacher may resign during the school term, without the

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concurrence of the board, in order to accept another teaching assignment. Any teacher terminating said service not in accordance with this Section is guilty of unprofessional conduct and liable to suspension of licensure for a period not to exceed 1 year, as provided in Section 21B-75 of this Code [105 ILCS 5/21B-75].

(Source: P.A. 85-256; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-14.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effect of Amendments. The 2011 amendment by P.A. 97-607, effective August 26, 2011, in the last sentence, substituted "licensure" for "certificate" and "Section 21B-75 of this Code" for "Section 21-23."

CASE NOTES

Analysis

Applicability
Replacement Teacher
- Acceptance of Resignation
- Authority of Superintendent
Service
Termination
- Written Notice Required

Applicability

Since the second sentence of 105 ILCS 5/24-14 of the Illinois School Code, was ambiguous on whether it only applied to tenured teachers or whether it applied to both tenured and nontenured teachers, the court looked to the statute's legislative history and construction before determining that the prohibition against resigning during the school year for another teaching assignment subjected both tenured and nontenured teachers to a one year suspension of their teaching certificates. As to construction, the first sentence of 105 ILCS 5/24-14 specifically referenced teachers who "entered into contractual continued service" and the second sentence contained no such qualification, so the failure to limit teachers in the second sentence to those who have "entered into contractual continued service" was construed as intentional. As to legislative history, the second sentence was altered from a version that included a qualification applicable only to tenured teachers and the new language of the second sentence was added out of concern for school districts being unable to replace teachers who resigned during the school year to take teaching positions elsewhere, which was a concern that applied equally whether tenured or nontenured teachers resigned during the school year. Bd. of Educ. v. State Teacher Certification

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Bd., 363 Ill. App. 3d 433, 299 Ill. Dec. 878, 842 N.E.2d 1230, 2006 Ill. App. LEXIS 32 (1 Dist. 2006).

Replacement Teacher

- Acceptance of Resignation

The hiring of teacher's replacement constituted the school board's implied acceptance of her resignation. Braught v. Board of Educ., 136 Ill. App. 3d 486, 91 Ill. Dec. 277, 483 N.E.2d 623 (1 Dist. 1985).

- Authority of Superintendent

School superintendent was acting within the scope of his authority as the board of education's agent when he hired the replacement teacher upon resignation of tenured teacher. Braught v. Board of Educ., 136 Ill. App. 3d 486, 91 Ill. Dec. 277, 483 N.E.2d 623 (1 Dist. 1985).

Service

The state board's rules and regulations allow service by personal service, certified mail or registered mail, without a requirement of a returned receipt from the addressee, and such a requirement may not be inferred. Board of Educ. v. Adelman, 137 Ill. App. 3d 965, 92 Ill. Dec. 773, 485 N.E.2d 584 (2 Dist. 1985).

Termination

- Written Notice Required

Teachers who had attained tenure under the provisions of 105 ILCS 5/24-11 were under contractual continued service with the board of education and could only terminate that relationship by complying with the provisions of this section by giving the board of education written notice of such termination within the time period specified therein. Allen v. Maurer, 6 Ill. App. 3d 633, 286 N.E.2d 135 (4 Dist. 1972).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Employment Law," see 31 S. Ill. U.L.J. 859 (2007).

§ 105 ILCS 5/24-15. Right to amend or repeal - Partial invalidity

Sec. 24-15. Right to amend or repeal - Partial invalidity. Nothing herein limits the right of the General Assembly to amend or repeal any part of Sections 24-11 to 24-15, inclusive [105 ILCS 5/24-11 to 105 ILCS 5/24-15], or any contract resulting therefrom.

If any section, paragraph, sentence or clause of this Article is held invalid or unconstitutional, such decision shall not affect the remaining portion of this Article or this Act, or any section or part thereof.

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(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-15.

§ 105 ILCS 5/24-16. Judicial review of administrative decision

Sec. 24-16. Judicial review of administrative decision. The provisions of the Administrative Review Law [735 ILCS 5/3-101 et seq.], and all amendments and modifications thereof and the rules adopted pursuant thereto, shall apply to and govern all proceedings instituted for the judicial review of final administrative decisions of the hearing officer for dismissals pursuant to Article 24A of this Code or of a school board for dismissal for cause under Section 24-12 of this Article [105 ILCS 5/24-12]. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure [735 ILCS 5/3-101].

(Source: P.A. 82-783; 97-8, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-16.

Effect of Amendments. The 2011 amendment by P.A. 97-8, effective June 13, 2011, inserted "for dismissals pursuant to Article 24A of this Code or of a school board for dismissal for cause" in the first sentence; and made a stylistic change.

CASE NOTES

Analysis

Applicability
Findings
- Failure to Submit Findings
- Required for Review
Irremediable Cause
- In General
- Not Shown
Pretermination Hearings
Procedure

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- Exhaustion of Administrative Remedy

Applicability

Teacher, who had been given notice of discharge for cause and who had requested a hearing under a prior similar provision (see now this section), could not sue for alleged breach of contract while the hearing on the charges was still pending and not finally adjudicated. Pearson v. Board of Educ., 12 Ill. App. 2d 70, 138 N.E.2d 687 (3 Dist. 1956).

Findings

- Failure to Submit Findings

Failure of the hearing officer to submit written findings in conjunction with his decision does not make that decision any less a final order under former section 1 of the Administrative Review Act (see now 735 ILCS 5/3-101); however, even if an order is final, it may not be reviewable. Board of Educ. v. File, 89 Ill. App. 3d 1132, 45 Ill. Dec. 448, 412 N.E.2d 1030 (3 Dist. 1980).

- Required for Review

Order of hearing officer which merely stated that the dismissal of the defendant was not for just cause was a bare decision, nothing more; absent written findings of fact supporting his decision, the order, although final, was not reviewable by a court under former section 1 of the Administrative Review Act (see now 735 ILCS 5/3-101). Board of Educ. v. File, 89 Ill. App. 3d 1132, 45 Ill. Dec. 448, 412 N.E.2d 1030 (3 Dist. 1980).

Judgment of the circuit and appellate courts were vacated and the cause was remanded where there could be no judicial review of a resolution discharging a teacher because the board of education made no findings. Reinhardt v. Board of Educ., 61 Ill. 2d 101, 329 N.E.2d 218 (1975).

Irremediable Cause

- In General

For the school board to have found the causes for discharge of a tenured teacher irremediable under the current interpretation of the statute, they must have found that damage had been done to the students, the faculty or the school itself, and that the damage could not have been corrected if warnings had been given by the teacher's superiors when they learned of the cause. Reinhardt v. Board of Educ., 19 Ill. App. 3d 481, 311 N.E.2d 710 (5 Dist. 1974), vacated on other grounds, 61 Ill. 2d 101, 329 N.E.2d 218 (1975).

- Not Shown

Where there was no evidence of any breakdown in discharged tenured teacher's relationships with other teachers, no evidence that her teaching ability was affected in any manner, and no evidence that the standing of the school as an educational institution was in any manner affected, there could not properly be a finding of irremediability on teacher's conduct. Reinhardt v. Board of Educ., 19 Ill. App. 3d 481, 311 N.E.2d 710 (5 Dist. 1974), vacated on other grounds, 61 Ill. 2d 101, 329 N.E.2d 218 (1975).

Pretermination Hearings

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No means of review of the reasons for dismissal is afforded a probationary teacher by 105 ILCS 5/24-11. Tenured teachers, on the other hand, have the right to a pretermination hearing by the board of education and review of its final decision by a circuit court through the Administrative Review Act (105 ILCS 5/24-12 and 105 ILCS 5/14-16). Burns v. Board of Educ. of Fairfield Sch., 47 Ill. App. 3d 589, 5 Ill. Dec. 882, 362 N.E.2d 353 (5 Dist. 1977).

Procedure

- Exhaustion of Administrative Remedy

Where plaintiff had an administrative review remedy available to her claim that her evaluation and remediation programs were conducted in a manner contrary to the school code, there was no clear need for a civil action; the trial court did not err in dismissing complaint for failure to state a private right of action. Dudley v. Board of Educ., 260 Ill. App. 3d 1100, 198 Ill. Dec. 35, 632 N.E.2d 94 (1 Dist. 1994).

§ 105 ILCS 5/24-16.5. Optional alternative evaluative dismissal process for PERA evaluations

Sec. 24-16.5. Optional alternative evaluative dismissal process for PERA evaluations. (a) As used in this Section:

"Applicable hearing requirements" means, for any school district having less than 500,000 inhabitants or a program of a special education joint agreement, those procedures and requirements relating to a teacher's request for a hearing, selection of a hearing officer, pre-hearing and hearing procedures, and post-hearing briefs set forth in paragraphs (1) through (6) of subsection (d) of Section 24-12 of this Code [105 ILCS 5/24-12].

"Board" means, for a school district having less than 500,000 inhabitants or a program of a special education joint agreement, the board of directors, board of education, or board of school inspectors, as the case may be. For a school district having 500,000 inhabitants or more, "board" means the Chicago Board of Education.

"Evaluator" means an evaluator, as defined in Section 24A-2.5 of this Code [105 ILCS 5/24A-2.5], who has successfully completed the pre-qualification program described in subsection (b) of Section 24A-3 of this Code [105 ILCS 5/24A-3].

"Hearing procedures" means, for a school district having 500,000 inhabitants or more, those procedures and requirements relating to a teacher's request for a hearing, selection of a hearing officer, pre-hearing and hearing procedures, and post-hearing briefs set forth in paragraphs (1) through (5) of subsection (a) of Section 34-85 of this Code [105 ILCS 5/34-85].

"PERA-trained board member" means a member of a board that has completed a training program on PERA evaluations either administered or approved by the State Board of Education.

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"PERA evaluation" means a performance evaluation of a teacher after the implementation date of an evaluation system for teachers, as specified by Section 24A-2.5 of this Code, using a performance evaluation instrument and process that meets the minimum requirements for teacher evaluation instruments and processes set forth in rules adopted by the State Board of Education to implement Public Act 96-861.

"Remediation" means the remediation plan, mid-point and final evaluations, and related processes and requirements set forth in subdivisions (i), (j), and (k) of Section 24A-5 of this Code [105 ILCS 5/24A-5].

"School district" means a school district or a program of a special education joint agreement.

"Second evaluator" means an evaluator who either conducts the mid-point and final remediation evaluation or conducts an independent assessment of whether the teacher completed the remediation plan with a rating equal to or better than a "Proficient" rating, all in accordance with subdivision (c) of this Section.

"Student growth components" means the components of a performance evaluation plan described in subdivision (c) of Section 24A-5 of this Code, as may be supplemented by administrative rules adopted by the State Board of Education.

"Teacher practice components" means the components of a performance evaluation plan described in subdivisions (a) and (b) of Section 24A-5 of this Code, as may be supplemented by administrative rules adopted by the State Board of Education.

"Teacher representatives" means the exclusive bargaining representative of a school district's teachers or, if no exclusive bargaining representatives exists, a representative committee selected by teachers.

(b) This Section applies to all school districts, including those having 500,000 or more inhabitants. The optional dismissal process set forth in this Section is an alternative to those set forth in Sections 24-12 and 34-85 of this Code. Nothing in this Section is intended to change the existing practices or precedents under Section 24-12 or 34-85 of this Code, nor shall this Section be interpreted as implying standards and procedures that should or must be used as part of a remediation that precedes a dismissal sought under Section 24-12 or 34-85 of this Code.

A board may dismiss a teacher who has entered upon contractual continued service under this Section if the following are met:

(1) the cause of dismissal is that the teacher has failed to complete a remediation plan with a rating equal to or better than a "Proficient" rating;

(2) the "Unsatisfactory" performance evaluation rating that preceded remediation resulted from a PERA evaluation; and

(3) the school district has complied with subsection (c) of this Section.

A school district may not, through agreement with a teacher or its teacher representatives, waive its right to dismiss a teacher under this Section.

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(c) Each school district electing to use the dismissal process set forth in this Section must comply with the pre-remediation and remediation activities and requirements set forth in this subsection (c).

(1) Before a school district's first remediation relating to a dismissal under this Section, the school district must create and establish a list of at least 2 evaluators who will be available to serve as second evaluators under this Section. The school district shall provide its teacher representatives with an opportunity to submit additional names of teacher evaluators who will be available to serve as second evaluators and who will be added to the list created and established by the school district, provided that, unless otherwise agreed to by the school district, the teacher representatives may not submit more teacher evaluators for inclusion on the list than the number of evaluators submitted by the school district. Each teacher evaluator must either have (i) National Board of Professional Teaching Standards certification, with no "Unsatisfactory" or "Needs Improvement" performance evaluating ratings in his or her 2 most recent performance evaluation ratings; or (ii) "Excellent" performance evaluation ratings in 2 of his or her 3 most recent performance evaluations, with no "Needs Improvement" or "Unsatisfactory" performance evaluation ratings in his or her last 3 ratings. If the teacher representatives do not submit a list of teacher evaluators within 21 days after the school district's request, the school district may proceed with a remediation using a list that includes only the school district's selections. Either the school district or the teacher representatives may revise or add to their selections for the list at any time with notice to the other party, subject to the limitations set forth in this paragraph (1).

(2) Before a school district's first remediation relating to a dismissal under this Section, the school district shall, in good faith cooperation with its teacher representatives, establish a process for the selection of a second evaluator from the list created pursuant to paragraph (1) of this subsection (c). Such process may be amended at any time in good faith cooperation with the teacher representatives. If the teacher representatives are given an opportunity to cooperate with the school district and elect not to do so, the school district may, at its discretion, establish or amend the process for selection. Before the hearing officer and as part of any judicial review of a dismissal under this Section, a teacher may not challenge a remediation or dismissal on the grounds that the process used by the school district to select a second evaluator was not established in good faith cooperation with its teacher representatives.

(3) For each remediation preceding a dismissal under this Section, the school district shall select a second evaluator from the list of second evaluators created pursuant to paragraph (1) of this subsection (c), using the selection process established pursuant to paragraph (2) of this subsection (c). The selected second evaluator may not be the same individual who determined the teacher's "Unsatisfactory" performance evaluation rating preceding remediation, and, if the second evaluator is an administrator, may not be a direct report to the individual who determined the teacher's "Unsatisfactory" performance evaluation rating preceding remediation. The school district's authority to select a second evaluator from the list of second evaluators must not be delegated or limited through any agreement with the teacher representatives, provided that nothing shall prohibit a school district and its teacher representatives from agreeing to a formal peer evaluation process as permitted

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under Article 24A of this Code that could be used to meet the requirements for the selection of second evaluators under this subsection (c).

(4) The second evaluator selected pursuant to paragraph (3) of this subsection (c) must either (i) conduct the mid-point and final evaluation during remediation or (ii) conduct an independent assessment of whether the teacher completed the remediation plan with a rating equal to or better than a "Proficient" rating, which independent assessment shall include, but is not limited to, personal or video-recorded observations of the teacher that relate to the teacher practice components of the remediation plan. Nothing in this subsection (c) shall be construed to limit or preclude the participation of the evaluator who rated a teacher as "Unsatisfactory" in remediation.

(d) To institute a dismissal proceeding under this Section, the board must first provide written notice to the teacher within 30 days after the completion of the final remediation evaluation. The notice shall comply with the applicable hearing requirements and, in addition, must specify that dismissal is sought under this Section and include a copy of each performance evaluation relating to the scope of the hearing as described in this subsection (d).

The applicable hearing requirements shall apply to the teacher's request for a hearing, the selection and qualifications of the hearing officer, and pre-hearing and hearing procedures, except that all of the following must be met:

(1) The hearing officer must, in addition to meeting the qualifications set forth in the applicable hearing requirements, have successfully completed the pre-qualification program described in subsection (b) of Section 24A-3 of this Code, unless the State Board of Education waives this requirement to provide an adequate pool of hearing officers for consideration.

(2) The scope of the hearing must be limited as follows:

(A) The school district must demonstrate the following:

(i) that the "Unsatisfactory" performance evaluation rating that preceded remediation applied the teacher practice components and student growth components and determined an overall evaluation rating of "Unsatisfactory" in accordance with the standards and requirements of the school district's evaluation plan;

(ii) that the remediation plan complied with the requirements of Section 24A-5 of this Code;

(iii) that the teacher failed to complete the remediation plan with a performance evaluation rating equal to or better than a "Proficient" rating, based upon a final remediation evaluation meeting the applicable standards and requirements of the school district's evaluation plan; and

(iv) that if the second evaluator selected pursuant to paragraph (3) of subsection (c) of this Section does not conduct the mid-point and final evaluation and makes an independent assessment that the teacher completed the remediation plan with a rating equal to or better than a "Proficient" rating, the school district must demonstrate that the

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final remediation evaluation is a more valid assessment of the teacher's performance than the assessment made by the second evaluator.

(B) The teacher may only challenge the substantive and procedural aspects of (i) the "Unsatisfactory" performance evaluation rating that led to the remediation, (ii) the remediation plan, and (iii) the final remediation evaluation. To the extent the teacher challenges procedural aspects, including any in applicable collective bargaining agreement provisions, of a relevant performance evaluation rating or the remediation plan, the teacher must demonstrate how an alleged procedural defect materially affected the teacher's ability to demonstrate a level of performance necessary to avoid remediation or dismissal or successfully complete the remediation plan. Without any such material effect, a procedural defect shall not impact the assessment by the hearing officer, board, or reviewing court of the validity of a performance evaluation or a remediation plan.

(C) The hearing officer shall only consider and give weight to performance evaluations relevant to the scope of the hearing as described in clauses (A) and (B) of this subdivision (2).

(3) Each party shall be given only 2 days to present evidence and testimony relating to the scope of the hearing, unless a longer period is mutually agreed to by the parties or deemed necessary by the hearing officer to enable a party to present adequate evidence and testimony to address the scope of the hearing, including due to the other party's cross-examination of the party's witnesses.

(e) The provisions of Sections 24-12 and 34-85 pertaining to the decision or recommendation of the hearing officer do not apply to dismissal proceedings under this Section. For any dismissal proceedings under this Section, the hearing officer shall not issue a decision, and shall issue only findings of fact and a recommendation, including the reasons therefor, to the board to either retain or dismiss the teacher and shall give a copy of the report to both the teacher and the superintendent of the school district. The hearing officer's findings of fact and recommendation must be issued within 30 days from the close of the record of the hearing.

The State Board of Education shall adopt rules regarding the length of the hearing officer's findings of fact and recommendation. If a hearing officer fails without good cause, specifically provided in writing to both parties and the State Board of Education, to render a recommendation within 30 days after the hearing is concluded or the record is closed, whichever is later, the parties may mutually agree to select a hearing officer pursuant to the alternative procedure, as provided in Section 24-12 or 34-85, to rehear the charges heard by the hearing officer who failed to render a recommendation or to review the record and render a recommendation. If any hearing officer fails without good cause, specifically provided in writing to both parties and the State Board of Education, to render a recommendation within 30 days after the hearing is concluded or the record is closed, whichever is later, the hearing officer shall be removed from the master list of hearing officers maintained by the State Board of Education for not more than 24 months. The parties and the State Board of Education may also take such other actions as it deems appropriate, including recovering, reducing, or withholding any fees paid or to be paid to the hearing officer. If any hearing officer repeats such failure, he or she shall be

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permanently removed from the master list of hearing officers maintained by the State Board of Education.

(f) The board, within 45 days after receipt of the hearing officer's findings of fact and recommendation, shall decide, through adoption of a written order, whether the teacher must be dismissed from its employ or retained, provided that only PERA-trained board members may participate in the vote with respect to the decision.

If the board dismisses the teacher notwithstanding the hearing officer's recommendation of retention, the board shall make a conclusion, giving its reasons therefor, and such conclusion and reasons must be included in its written order. The failure of the board to strictly adhere to the timelines contained in this Section does not render it without jurisdiction to dismiss the teacher. The board shall not lose jurisdiction to discharge the teacher if the hearing officer fails to render a recommendation within the time specified in this Section. The decision of the board is final, unless reviewed as provided in subsection (g) of this Section.

If the board retains the teacher, the board shall enter a written order stating the amount of back pay and lost benefits, less mitigation, to be paid to the teacher, within 45 days of its retention order.

(g) A teacher dismissed under this Section may apply for and obtain judicial review of a decision of the board in accordance with the provisions of the Administrative Review Law, except as follows:

(1) for a teacher dismissed by a school district having 500,000 inhabitants or more, such judicial review must be taken directly to the appellate court of the judicial district in which the board maintains its primary administrative office, and any direct appeal to the appellate court must be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the teacher;

(2) for a teacher dismissed by a school district having less than 500,000 inhabitants after the hearing officer recommended dismissal, such judicial review must be taken directly to the appellate court of the judicial district in which the board maintains its primary administrative office, and any direct appeal to the appellate court must be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the teacher; and

(3) for all school districts, if the hearing officer recommended dismissal, the decision of the board may be reversed only if it is found to be arbitrary, capricious, an abuse of discretion, or not in accordance with law.

In the event judicial review is instituted by a teacher, any costs of preparing and filing the record of proceedings must be paid by the teacher. If a decision of the board is adjudicated upon judicial review in favor of the teacher, then the court shall remand the matter to the board with direction for entry of an order setting the amount of back pay, lost benefits, and costs, less mitigation. The teacher may challenge the board's order setting the amount of back pay, lost benefits, and costs, less mitigation, through an

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expedited arbitration procedure with the costs of the arbitrator borne by the board.

(Source: P.A. 97-8, § 5.)

Effective Date. Section 99 of P.A. 97-8 made this section effective upon becoming law. The Act was approved June 13, 2011.

§ 105 ILCS 5/24-17. Care of property

Sec. 24-17. Care of property. Every teacher shall see that the property of the district under his care and control is not unnecessarily damaged or destroyed. No teacher shall be paid any part of the school funds unless he has furnished schedules, when required by law, and has satisfactorily accounted for all books, apparatus and other property belonging to the district.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-17.

§ 105 ILCS 5/24-18. Daily registers

Sec. 24-18. Daily registers. Teachers shall keep daily registers showing the name, age and attendance of each pupil, the day of the week, month and year. Registers shall be in the form prescribed by the State Board of Education.

Such registers shall be furnished by the school directors, and each teacher shall, at the end of his term of school, return his register to the clerk or secretary of the school board. No teacher shall be paid any part of the school funds unless he has accurately kept and returned such a register.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-18.

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CASE NOTES

Applicability

- Minor Disputes

Teacher's complaint that they were required to write in the names of their students on monthly attendance cards, was not regulated by this section; the dispute was minor in nature and it could have been submitted to arbitration pursuant to a collective bargaining agreement. Board of Educ. v. Johnson, 21 Ill. App. 3d 482, 315 N.E.2d 634 (1 Dist. 1974).

§§ 105 ILCS 5/24-19, 105 ILCS 5/24-20: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/24-21. Payment of teachers' wages

Sec. 24-21. Payment of teachers' wages. The directors shall pay the wages of teachers in a manner agreed upon by the board, but at least 1 payment shall be made during each school month. The directors shall issue and deliver to the teacher an order on the school treasurer for the amount of salary due. The order shall state the rate and time for which the teacher is paid. It is unlawful for the directors: (1) to issue an order before they have certified to any schedule then required to be made; (2) after the date for filing schedules as fixed by law, to certify any schedule not delivered to them before that date when such schedule is for time taught before the first of July preceding; (3) to give an order in payment of a teacher's wages for the time covered by such delinquent schedule. Teachers not covered by a negotiated collective bargaining agreement may elect to receive payment of wages over either a 10 or 12 month period annually.

(Source: P.A. 82-396.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-21.

CASE NOTES

Analysis

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Dues
Ownership of School Property
Party in Interest

Dues

Employees have a right under this Code to authorize dues payment from their salaries directly by the employer to any labor organization, and this right necessarily runs to the employee; it is not material whether the beneficiary of the dues authorization is the exclusive bargaining representative. Local 253 Div. v. Illinois Educ. Labor Relations Bd., 159 Ill. App. 3d 352, 111 Ill. Dec. 467, 512 N.E.2d 1008 (4 Dist. 1987).

Ownership of School Property

In respect to school property, the city is a mere passive trustee, holding the naked legal title to the property without any power or control in the management of such property and can only convey the property with the consent of the Board of Education. Dalton v. Joseph Lumber Co., 340 Ill. App. 267, 91 N.E.2d 450 (1 Dist. 1950).

Party in Interest

The board of education is the real party interested in and affected by the establishment and maintenance of a business on premises contiguous to its property. Dalton v. Joseph Lumber Co., 340 Ill. App. 267, 91 N.E.2d 450 (1 Dist. 1950).

§ 105 ILCS 5/24-21.1. Organization dues, payments and contributions

Sec. 24-21.1. Organization dues, payments and contributions. The board shall, upon the written request of an employee, withhold from the compensation of that employee any dues, payments or contributions payable by such employee to any employee labor organization as defined in the Illinois Educational Labor Relations Act [115 ILCS 5/1 et seq.]. Under such arrangement, an amount shall be withheld from each regular payroll period which is equal to the pro rata share of the annual dues plus any payments or contributions and the board shall transmit such withholdings to the specified labor organization within 10 working days from the time of the withholding.

(Source: P.A. 83-1014.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-21.1.

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LEGAL PERIODICALS

For article, "Teacher Contract Disputes and Contractual Continued Service," see 70 Ill. B.J. 250 (1981).

§ 105 ILCS 5/24-22: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/24-23. Teacher transcript of credits

Sec. 24-23. Teacher transcript of credits. Each teacher shall file with the superintendent of the school in which he is teaching or, if there is no such superintendent, with the Regional Superintendent of Schools a complete transcript of credits earned in recognized institutions of higher learning attended by him. On or before September 1 of each year thereafter, unless otherwise provided in a collective bargaining agreement, every teacher shall file a transcript of any credits that have been earned since the date the last transcript was filed.

Such record of credits shall be used as the base for determining the minimum salary for such teachers as provided by Section 24-8 of this Act [105 ILCS 5/24-8].

(Source: Laws 1961, p. 31; P.A. 96-998, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-23.

Effect of Amendments. The 2010 amendment by P.A. 96-998, effective July 2, 2010, in the introductory paragprah, substituted "Regional Superintendent" for "County Superintendent" in the first sentence, and rewrote the last sentence.

CASE NOTES

Analysis

Qualifications
- Responsibility for Clarification

Relation Back of Transcripts
- Not Allowed

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Qualifications

- Responsibility for Clarification

A teacher, who was qualified for positions held by other teachers with less seniority to which he might have been assigned, was responsible for providing timely clarification of his qualifications to the board in order to avoid dismissal due to staff reduction. Hancon v. Board of Educ., 130 Ill. App. 3d 224, 85 Ill. Dec. 679, 474 N.E.2d 407 (2 Dist. 1985).

Relation Back of Transcripts

- Not Allowed

The mandatory notice provision of this Act requires the local school board to determine which teachers to dismiss prior to 60 days before the end of the school year; receipt of college transcripts after the dismissal deadline did not relate back to render a dismissed teacher qualified. Hancon v. Board of Educ., 130 Ill. App. 3d 224, 85 Ill. Dec. 679, 474 N.E.2d 407 (2 Dist. 1985).

§ 105 ILCS 5/24-24. Maintenance of discipline

Sec. 24-24. Maintenance of discipline. Subject to the limitations of all policies established or adopted under Section 14-8.05 [105 ILCS 5/14-8.05], teachers, other certificated educational employees, and any other person, whether or not a certificated employee, providing a related service for or with respect to a student shall maintain discipline in the schools, including school grounds which are owned or leased by the board and used for school purposes and activities. In all matters relating to the discipline in and conduct of the schools and the school children, they stand in the relation of parents and guardians to the pupils. This relationship shall extend to all activities connected with the school program, including all athletic and extracurricular programs, and may be exercised at any time for the safety and supervision of the pupils in the absence of their parents or guardians.

Nothing in this Section affects the power of the board to establish rules with respect to discipline; except that each board shall establish a policy on discipline, and the policy so established shall provide, subject to the limitations of all policies established or adopted under Section 14-8.05 [105 ILCS 5/14-8.05], that a teacher, other certificated employee, and any other person, whether or not a certificated employee, providing a related service for or with respect to a student may use reasonable force as needed to maintain safety for the other students, school personnel or persons or for the purpose of self defense or the defense of property, shall provide that a teacher may remove a student from the classroom for disruptive behavior, and shall include provisions which provide due process to students. The policy shall not include slapping, paddling or prolonged maintenance of students in physically painful positions nor shall it include the intentional infliction of bodily harm.

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The board may make and enforce reasonable rules of conduct and sportsmanship for athletic and extracurricular school events. Any person who violates such rules may be denied admission to school events for not more than one year, provided that written 10 days notice of the violation is given such person and a hearing had thereon by the board pursuant to its rules and regulations. The administration of any school may sign complaints as agents of the school against persons committing any offense at school events.

(Source: P.A. 85-375; 87-1103, § 1; 88-346, § 1; 88-670, § 2-34; 89-184, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-24.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.280.

Effect of Amendments. The 1992 amendment, effective September 15, 1992, inserted "Subject to the limitations of all policies established or adopted under Section 14-8.05" at the beginning of the first paragraph and following "so established must provide" in the second paragraph.

The 1993 amendment by P.A. 88-346, effective January 1, 1994, in the second paragraph, in the first sentence substituted "shall establish" for "may establish", substituted "shall provide" for "may provide", inserted ", school personnel or persons or for the purpose of self defense or the defense of property" and substituted "shall include" for "must include" and added the second sentence.

The 1994 amendment by P.A. 88-670, effective December 2, 1994, combined the amendments by P.A. 87-1103 and P.A. 88-346.

The 1995 amendment by P.A. 89-184, effective July 19, 1995, in the first paragraph, in the first sentence, substituted a comma for "and" after "teachers" and inserted "and any other person, whether or not a certificated employee, providing a related service for or with respect to a student"; and in the second paragraph, in the first sentence, inserted "other certificated employee, and any other person, whether or not a certificated employee, providing a related service for or with respect to a student", substituted "shall provide that a teacher" for "and" and inserted a comma after "behavior".

CASE NOTES

Analysis

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Constitutionality

- Rational

This section is not irrational although it allows an immunity from negligence for teachers but not for other non-certified school personnel who may engage in the same activity since other non-certified school employees are granted an immunity by the Local Governmental and Governmental Tort Immunity Act (745 ILCS 10/3-108). Montag v. Board of Educ., 112 Ill. App. 3d 1039, 68 Ill. Dec. 565, 446 N.E.2d 299 (3 Dist. 1983).

- Special Legislation

This section is not unconstitutional as special legislation. Weinstein v. Evanston Tp. Community Consol. Sch., 40 Ill. App. 3d 6, 351 N.E.2d 236 (1 Dist. 1976).

In General

This section extends in loco parentis status to teachers and other certificated educational employees for matters relating to the discipline in and conduct of the schools and the school children and confers immunity from liability for negligence arising out of such matters; to recover, the plaintiff must prove wilful and wanton misconduct. O'Brien v. Township High Sch. Dist., 83 Ill. 2d 462, 47 Ill. Dec. 702, 415 N.E.2d 1015 (1980).

In the interest of student-teacher harmony, litigation between them should not be encouraged, absent wilful and wanton conduct. Thomas v. Chicago Bd. of Educ., 77 Ill. 2d 165, 32 Ill. Dec. 308, 395 N.E.2d 538 (1979).

The relationship conferred by this section extends to teachers the status of a parent regarding matters of supervision and discipline; thus, teachers, like parents, are liable only for wilful and wanton misconduct arising out of the teacher-student relationship in matters relating to the teachers' personal supervision and control of the conduct or physical movement of the student. This supervision and control may be exercised by the teachers in the absence of the students' parents or guardians. Lynch ex rel. Lynch v. Board of Educ., 72 Ill. App. 3d 317, 28 Ill. Dec. 359, 390 N.E.2d 526 (5 Dist. 1979), aff'd, 82 Ill. 2d 415, 45 Ill. Dec. 96, 412 N.E.2d 447 (1980).

This section was intended to confer in loco parentis status in nondisciplinary as well as disciplinary matters, and the plaintiff-student must therefore prove wilful and wanton misconduct in order to impose liability upon teachers and other certified educational employees. Rinck v.

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Palos Hills Consol. High Sch. Dist., 82 Ill. App. 3d 856, 38 Ill. Dec. 239, 403 N.E.2d 470 (1 Dist. 1978).

Activities

- Degree of Supervision

While this section requires teachers and other certified educational employees to maintain discipline at all activities related to the school program, school district was not bound to provide at least one adult supervisor on a constant basis at school track and field meet. Poelker v. Warrensburg Latham Community Unit Sch. Dist. No. 11, 251 Ill. App. 3d 270, 190 Ill. Dec. 487, 621 N.E.2d 940 (4 Dist. 1993), appeal denied, 154 Ill. 2d 569, 197 Ill. Dec. 496, 631 N.E.2d 718 (1994).

Agent of Teacher

The temporary designation, of a grade school student as monitor, did not make the student the agent and servant of the teacher or of the defendant. Booker ex rel. Booker v. Chicago Bd. of Educ., 75 Ill. App. 3d 381, 31 Ill. Dec. 250, 394 N.E.2d 452 (1 Dist. 1979).

Applicability

- Corporations

There is no statutory authority insulating a corporation from liability for negligently supervising or disciplining children. Wallace v. Smyth, 301 Ill. App. 3d 75, 234 Ill. Dec. 555, 703 N.E.2d 416, 1998 Ill. App. LEXIS 727 (1 Dist. 1998), appeal denied, 191 Ill. 2d 562, 249 Ill. Dec. 176, 735 N.E.2d 1001 (2000).

- Landowner's Premise Theory

This section did not apply where parents brought suit on behalf of minor student who was injured when he fell against a concrete riser during supervised activities on school premises and where the complaint was brought under the theory of landowner's premises liability. Prest ex rel. Prest v. Sparta Community Unit Sch., 157 Ill. App. 3d 569, 109 Ill. Dec. 727, 510 N.E.2d 595 (5 Dist. 1987).

- Private Schools

While § 24-24 of the Illinois School Code, 105 ILCS 5/24-24 (1994), applies equally to private and public schools, the Illinois Tort Immunity Act, 745 ILCS 10/1-101 et seq. (1996), does not apply to private schools, but only to public schools. Brugger v. Joseph Academy, Inc., 326 Ill. App. 3d 328, 260 Ill. Dec. 56, 760 N.E.2d 135, 2001 Ill. App. LEXIS 863 (1 Dist. 2001), aff'd, 202 Ill. 2d 435, 269 Ill. Dec. 472, 781 N.E.2d 269 (2002).

This section is equally applicable to private schools. Merrill ex rel. Merrill v. Catholic Bishop, 8 Ill. App. 3d 910, 290 N.E.2d 259 (2 Dist. 1972).

- School Bus Drivers

Decision by the Illinois Educational Labor Relations Board to reinstate a high school custodian was reversed and remanded to an arbitrator because the decision to give no weight to the custodian's conduct as a school bus driver was arbitrary and capricious. By excluding the custodian's ill-tempered conduct as a bus driver, the Board's review was improperly limited to whether the arbitrator's award violated a public policy against using profanity in front of children, which was too narrow a look at the public policy at issue as a broader and very important public

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policy pursuant to 105 ILCS 5/24-24 concerning the safety of school children was really what was at issue in the case. Cent. Cmty. Unit Sch. Dist. No. 4 v. Ill. Educ. Labor Rels. Bd., 388 Ill. App. 3d 1060, 328 Ill. Dec. 451, 904 N.E.2d 640, 2009 Ill. App. LEXIS 79 (4 Dist. 2009).

This section does not to apply to school bus drivers. People v. Davis, 88 Ill. App. 3d 728, 43 Ill. Dec. 673, 410 N.E.2d 673 (2 Dist. 1980).

- School Grounds

Nothing in this section of the Code limits its application to school grounds; the language "including school grounds" is intended to make clear that school grounds, as well as the classroom, are covered. Stiff ex rel. Stiff v. Eastern Ill. Area of Special Educ., 251 Ill. App. 3d 859, 190 Ill. Dec. 349, 621 N.E.2d 218 (4 Dist. 1993), appeal denied, 154 Ill. 2d 569, 197 Ill. Dec. 496, 631 N.E.2d 718 (1994).

- Shown

Statute was not inapplicable because the defendant violated an Illinois High School Association rule prohibiting students from playing football without adequate practice; the statute does not speak of discretion, only of supervision, which does not entail only those situations involving discretion. Kain v. Rockridge Community Unit, 117 Ill. App. 3d 681, 72 Ill. Dec. 813, 453 N.E.2d 118 (3 Dist. 1983).

- Waiver Provision

The waiver provision of 745 ILCS 10/9-103(b), based on a local public entity's purchase of liability insurance, is inapplicable to suits based upon violations of this section and 105 ILCS 5/34-84a. Kobylanski v. Chicago Bd. of Educ., 63 Ill. 2d 165, 347 N.E.2d 705 (1976).

Cause of Action

- Not Barred

In action brought by student injured when container of alcohol burst into flames during physics class, although plaintiff's negligence allegations contained some elements of both improper supervision and defective equipment, plaintiff's negligence count was based primarily on a defective equipment theory, since plaintiff 's primary allegation was that the school district knew, or should have known, that container was defective and a dangerous instrumentality; thus, plaintiff's negligence count was not barred as a matter of law since school district had a duty not only to provide safe equipment but to provide equipment to prevent serious injuries, and plaintiff's negligence count contained allegations of defective equipment and failure to provide other protective devices. Nielsen v. Community Unit Sch. Dist., 90 Ill. App. 3d 243, 45 Ill. Dec. 595, 412 N.E.2d 1177 (4 Dist. 1980).

- Stated

Complaint filed by high school student which challenged the legal sufficiency of the grade reduction penalties imposed by the school on a wide range of statutory and constitutional grounds and sought to prevent defendant from enforcing that sanction against plaintiff stated a cause of action under former section 45 of the Civil Practice Act (see now 735 ILCS 5/2-615). Hamer ex rel. Hamer v. Board of Educ., 66 Ill. App. 3d 7, 22 Ill. Dec. 755, 383 N.E.2d 231 (2 Dist. 1978).

Certification

While this Code does provide for teacher and other educational employee certification, there is no indication in the Child Care Act of 1969 (225 ILCS 10/2-09) that certification of the personnel

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working in the facilities is required; where defendant has not made any claim that either she or any other employee in the establishment was certified, this Code under its express term could not be invoked. Possekel ex rel. Possekel v. O'Donnell, 51 Ill. App. 3d 313, 9 Ill. Dec. 332, 366 N.E.2d 589 (1 Dist. 1977).

Construction with Other Laws

While 105 ILCS 5/24-24 posits a duty of enforcement in educators, it is not a law enforced or executed in the sense contemplated by 745 ILCS 10/2-202, moreover, while it does not bar an action for wilful and wanton misconduct, neither does it defeat immunity separately conferred upon public entities under the Tort Immunity Act. [The court's opinion cites to 105 ILCS 5/34-84(a)] A.R. v. Chicago Bd. of Educ., 311 Ill. App. 3d 29, 243 Ill. Dec. 697, 724 N.E.2d 6, 1999 Ill. App. LEXIS 924 (1 Dist. 1999), appeal denied, 188 Ill. 2d 561, 246 Ill. Dec. 121, 729 N.E.2d 494 (2000); but see Doe v. Chi. Bd. of Educ., 213 Ill. 2d 19, 289 Ill. Dec. 642, 820 N.E.2d 418 (2004).

Dangerous Activity

Unless the activity is one which is required to be provided pursuant to some other provision of the law, the district may, of course, also choose not to allow the student to participate in a potentially dangerous activity. Bertetto ex rel. Bertetto v. Sparta Community Unit, 188 Ill. App. 3d 954, 136 Ill. Dec. 365, 544 N.E.2d 1140 (5 Dist. 1989).

Duties

- Illustrative Cases

A school district owed two duties to plaintiff involved in a tackle powderpuff football game under this section and the applicable case law, which were the duty of ordinary care in providing adequate equipment and the duty to be free of wilful and wanton misconduct in matters relating to the discipline in and conduct of the schools and the school children. Lynch ex rel. Lynch v. Board of Educ., 72 Ill. App. 3d 317, 28 Ill. Dec. 359, 390 N.E.2d 526 (5 Dist. 1979), aff'd, 82 Ill. 2d 415, 45 Ill. Dec. 96, 412 N.E.2d 447 (1980).

- Maintenance of Discipline

The duty of the public educational system is to provide for the physical safety of its students; such duty is prescribed by the legislature and places with the school and its agents the responsibility of maintaining discipline among pupils. Gammon ex rel. Gammon v. Edwardsville Community Unit Sch. Dist., 82 Ill. App. 3d 586, 38 Ill. Dec. 28, 403 N.E.2d 43 (5 Dist. 1980).

Equipment

- Adequate

The affirmative duty to furnish adequate equipment as set forth in Lynch v. Board of Education of Collinsville, 82 Ill. 2d 415, 45 Ill. Dec. 96, 412 N.E.2d 447 (1980), belongs to the school district, not the parents; accordingly, if the equipment supplied by parents is not adequate for a particular activity, the district must provide alternate equipment which is adequate. Bertetto ex rel. Bertetto v. Sparta Community Unit, 188 Ill. App. 3d 954, 136 Ill. Dec. 365, 544 N.E.2d 1140 (5 Dist. 1989).

- Appropriate

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A school district could not be held liable for failure to provide "appropriate" mats for jazz dancing where no allegations were made as to how the wrestling mats used for the activity were inappropriate. Gara ex rel. Gara v. Lomonaco, 199 Ill. App. 3d 633, 145 Ill. Dec. 713, 557 N.E.2d 483 (1 Dist. 1990).

- Liability

Where high school student did not allege negligence arising out of the teacher student relationship in matters relating to the teacher's personal supervision and control of the conduct or physical movement of a student, but instead alleged negligence in connection with the separate function of furnishing equipment which was alleged to be inadequate, ill fitting and defective and which was known, or which in the exercise of ordinary care should have been known, to be liable to cause injury to the plaintiff, the public policy considerations in authorizing and encouraging teachers to have broad discretion and latitude in the former situations did not apply with as much force to the latter, and to hold school districts to the duty of ordinary care in such matters would not be unduly burdensome, nor did it appear to be inconsistent with the intended purposes of this section and 105 ILCS 5/34-84a. Gerrity v. Beatty, 71 Ill. 2d 47, 15 Ill. Dec. 639, 373 N.E.2d 1323 (1978).

- Loco Parentis Immunity

In a negligence suit against school board, brought on behalf of student injured when hit in the face with a wooden bat during a physical education class, the in loco parentis status of education did not extend to school board where negligence in furnishing improper equipment was alleged. Ausmus ex rel. Ausmus v. Board of Educ., 155 Ill. App. 3d 705, 108 Ill. Dec. 137, 508 N.E.2d 298 (1 Dist. 1987).

- Parental Presence

The furnishing of unsafe equipment or the failure to furnish any equipment for the use of the participants in a tackle football game is not the type of school activity over which students' parents were in a position to exercise any control, and since teachers and other certified educational employees are charged with the duty of maintaining discipline in the schools in all events, and in all activities connected with the school program, in the absence of the students' parents or guardians, they may exercise the status created by the section for the safety and supervision of the pupils; a school district was not relieved of the duty to provide safe equipment for the participants in a tackle football game on the grounds that the plaintiff's parents were physically present. Lynch ex rel. Lynch v. Board of Educ., 72 Ill. App. 3d 317, 28 Ill. Dec. 359, 390 N.E.2d 526 (5 Dist. 1979), aff'd, 82 Ill. 2d 415, 45 Ill. Dec. 96, 412 N.E.2d 447 (1980).

- Student Purchase

A duty to warn students of the advisability of wearing safety equipment, and a duty to allow students to wear such equipment if it is purchased at their own expense, would be in conflict with a school district's duty to provide such safety equipment in the first instance; a school district should not be permitted to avoid its obligation to provide appropriate safety equipment by advising students that they should purchase such equipment at their own expense. Palmer v. Mt. Vernon Tp. High Sch. Dist. 201, 169 Ill. 2d 551, 215 Ill. Dec. 120, 662 N.E.2d 1260 (1996).

- Sufficient Evidence of Negligence

Where plaintiff's complaint alleged that when plaintiff was being transported from the center to the playground and was thus engaged in a "school activity," the school district, through its agents and servants acting in its behalf, owed the duty of exercising due care and caution in providing, operating and utilizing adequate equipment, namely, the entrusted wheelchair and attached seat belt, and carelessly and negligently failed to provide, operate and utilize adequate equipment, namely, the entrusted wheelchair and seat belt, which would have prevented plaintiff from being thrown from the wheelchair at times and places pertinent hereto, these allegations were sufficient

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to bring the complaint within the rule set forth in Lynch v. Board of Education of Collinsville, 82 Ill. 2d 415, 45 Ill. Dec. 96, 412 N.E.2d 447 (1980), and the circuit court therefore erred in dismissing for failure to state a cause of action. Bertetto ex rel. Bertetto v. Sparta Community Unit, 188 Ill. App. 3d 954, 136 Ill. Dec. 365, 544 N.E.2d 1140 (5 Dist. 1989).

School district, which did not furnish any equipment to students for "powder puff" football game, was not absolved from liability for failing to provide effective equipment; school district had an affirmative duty, where students were engaging in school activities, whether they are extracurricular, or formally authorized as part of the school program, to furnish equipment to prevent serious injuries; evidence established negligence on the part of the defendant because it did not furnish any protective head gear or face gear to the students although it knew or should have known through its agents that an injury was foreseeable. Lynch v. Board of Educ., 82 Ill. 2d 415, 45 Ill. Dec. 96, 412 N.E.2d 447 (1980).

Illustrative Cases

- Non-Profit Private School

A non-profit private school and its staff were held not liable for personal injuries suffered at the school by a student due to ordinary negligence. Merrill ex rel. Merrill v. Catholic Bishop, 8 Ill. App. 3d 910, 290 N.E.2d 259 (2 Dist. 1972).

Immunity

- In General

This section does not expressly provide any immunity; rather, whatever immunity this section provides arises indirectly from the in loco parentis relationship of teachers and other educational employees with students. Henrich ex rel. Henrich v. Libertyville High Sch., 289 Ill. App. 3d 809, 225 Ill. Dec. 191, 683 N.E.2d 135 (2 Dist. 1997), aff'd, 86 Ill. 2d 381, 238 Ill. Dec. 576, 712 N.E.2d 298 (1998).

Teachers stand in the relation of parents and guardians to pupils, and are therefore granted immunity from suits for negligence arising out of matters connected to school. Bowers ex rel. Bowers v. DuPage County Regional Bd. of Sch. Trustees, 183 Ill. App. 3d 367, 131 Ill. Dec. 893, 539 N.E.2d 246 (2 Dist. 1989).

This section confers immunity on teachers and school districts from negligence in the supervision of activities connected with school programs. Kain v. Rockridge Community Unit, 117 Ill. App. 3d 681, 72 Ill. Dec. 813, 453 N.E.2d 118 (3 Dist. 1983).

Teachers and other certified educational employees are immune from suits for negligence arising out of matters relating to the discipline in and conduct of the schools and the school children. Booker ex rel. Booker v. Chicago Bd. of Educ., 75 Ill. App. 3d 381, 31 Ill. Dec. 250, 394 N.E.2d 452 (1 Dist. 1979).

This section confers upon teachers and other certificated educational employees immunity from suits for negligence arising out of matters relating to the discipline in and conduct of the schools and the school children; in order to impose liability against such educators, plaintiff must prove wilful and wanton misconduct. Kobylanski v. Chicago Bd. of Educ., 63 Ill. 2d 165, 347 N.E.2d 705 (1976).

- Administrative Jobs

Since record keeping and administrative details are necessary for the effective administration of a school and its programs, the personnel are protected by this immunity for ordinary negligence.

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Hopwood ex rel. Hopwood v. Elmwood Community High Sch., 171 Ill. App. 3d 280, 121 Ill. Dec. 441, 525 N.E.2d 247 (3 Dist. 1988).

- Board of Education

Where a student attending a special education school for socially maladjusted boys was sexually assaulted on a school bus, the board of education was, under 105 ILCS 5/24-24 and 34-84a, immune from liability for negligent conduct; the board of education was not immune from liability for willful and wanton misconduct, under 745 ILCS 10/4-102, where the student pled knowledge by the board that the attacker was likely to commit sexual assault on the passengers and that an attendant was required. Doe v. Chi. Bd. of Educ., 339 Ill. App. 3d 848, 274 Ill. Dec. 872, 791 N.E.2d 1283, 2003 Ill. App. LEXIS 753 (1 Dist. 2003), aff'd, 213 Ill. 2d 19, 289 Ill. Dec. 642, 820 N.E.2d 418 (2004).

- Day Care Center

A day-care program operated by the defendant church was a "school" within the meaning of this section and was entitled to the immunity that is derived from this section. Hilgendorf ex rel. Hilgendorf v. First Baptist Church, 157 Ill. App. 3d 428, 109 Ill. Dec. 659, 510 N.E.2d 527 (4 Dist. 1987).

- Educable Mentally Handicapped

The limited immunity afforded teachers is applicable to an educably mentally handicapped classroom setting. Jackson ex rel. Jackson v. Chicago Bd. of Educ., 192 Ill. App. 3d 1093, 140 Ill. Dec. 178, 549 N.E.2d 829 (1 Dist. 1989).

- Furnishing Equipment

School districts can be sued in their own capacity and held liable for ordinary negligence in furnishing defective equipment or for not furnishing necessary equipment, but school districts have vicarious immunity when the cause of action against the school district is predicated upon the ordinary negligence of a teacher. Palmer v. Mount Vernon Tp. High Sch. Dist. 201, 269 Ill. App. 3d 1056, 207 Ill. Dec. 550, 647 N.E.2d 1043 (5 Dist. 1995), appeal granted, 162 Ill. 2d 570, 209 Ill. Dec. 804, 652 N.E.2d 344 (1995), rev'd on other grounds, 169 Ill. 2d 551, 215 Ill. Dec. 120, 662 N.E.2d 1260 (1996).

- Illustrative Cases

High school dean, who had ordered two students to submit to strip searches, was not entitled to immunity under 105 ILCS 5/24-24 as a matter of law, with regard to the students' invasion of privacy, negligent infliction of emotional distress, and intentional infliction of emotional distress claims, because the students had sufficiently asserted facts that, if proven, would show wanton and willful misconduct on the dean's part. 105 ILCS 5/24-24 provided immunity only as to negligence; it did not protect school officials from liability arising from their intentional, wanton, and willful misconduct. Carlson v. Bremen High Sch. Dist. 228, 423 F. Supp. 2d 823, 2006 U.S. Dist. LEXIS 14468 (N.D. Ill. 2006).

Teacher's actions during a field trip where the child sustained an injury were immune from claims of negligence where the court found that 1) the conduct was related to the conduct of the student during the field trip and 2) the conduct constituted conduct inherent to the parent-child relationship such that the teacher was standing in loco parentis. Stiff ex rel. Stiff v. Eastern Ill. Area of Special Educ., 279 Ill. App. 3d 1076, 216 Ill. Dec. 893, 666 N.E.2d 343 (4 Dist. 1996), appeal denied, 168 Ill. 2d 626, 219 Ill. Dec. 577, 671 N.E.2d 744 (1996).

Where a teacher was alleged to have treated an injury suffered by a student in a school activity, and he allegedly treated the student immediately after the injury occurred, the immunity provided by this section from liability for ordinary negligence was applicable. Halper v. Vayo, 210 Ill. App.

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3d 81, 154 Ill. Dec. 693, 568 N.E.2d 914 (2 Dist.), cert. denied, 139 Ill. 2d 595, 159 Ill. Dec. 107, 575 N.E.2d 914 (1991).

- Immediate Inferiors

Since principals and superintendents are deemed immune from suit, their immediate inferiors should be likewise immune under the same policy. Hopwood ex rel. Hopwood v. Elmwood Community High Sch., 171 Ill. App. 3d 280, 121 Ill. Dec. 441, 525 N.E.2d 247 (3 Dist. 1988).

- Limited

This section provides limited immunity for teachers whose negligent acts injure pupils. Ward v. Community Unit Sch. Dist. No. 220, 243 Ill. App. 3d 968, 184 Ill. Dec. 901, 614 N.E.2d 102 (1 Dist. 1993).

- Negligence of School District

Only when the complaint alleges independent negligence of a school district, rather than liability through acts of a teacher or other school official, is the district not entitled to vicarious immunity under the school code. Poelker v. Warrensburg Latham Community Unit Sch. Dist. No. 11, 251 Ill. App. 3d 270, 190 Ill. Dec. 487, 621 N.E.2d 940 (4 Dist. 1993), appeal denied, 154 Ill. 2d 569, 197 Ill. Dec. 496, 631 N.E.2d 718 (1994).

A school district does not benefit from immunity under this section when a complaint alleges a claim which is based on the negligence of the school district itself, and not based on the negligence of a teacher. Sidwell v. Griggsville Community Unit Sch. Dist., 146 Ill. 2d 467, 167 Ill. Dec. 1055, 588 N.E.2d 1185 (1992).

- No Waiver

The purchase of liability insurance by a school district did not operate as a voluntary waiver of the general immunity from liability for negligent misconduct created by the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/9-103(b)), because the immunity at issue stemmed from this section and not from the Local Governmental and Governmental Employees Tort Immunity Act. Weinstein v. Evanston Tp. Community Consol. Sch., 40 Ill. App. 3d 6, 351 N.E.2d 236 (1 Dist. 1976).

- Not Shown

Where no allegation was made that defendant was a teacher, principal or certified educational employee, and it appeared from the evidence that he was not, defendant and his employer board, vicariously, were unprotected by this Code. LeRose v. City of Zion/Police Dep't, 696 F. Supp. 1222 (N.D. Ill. 1988).

- Premises Liability

Where a student was injured while playing touch football on a school playing field during a supervised physical education class, this section provided immunity to the defendants against a claim based on premises liability. Brock v. Rockridge Community Unit Dist., 183 Ill. App. 3d 447, 132 Ill. Dec. 135, 539 N.E.2d 445 (3 Dist. 1989).

- Private Institution

The differences between a day-care facility operated by a private institution and a day-care facility licensed under 225 ILCS 10/2.09, the Child Care Act, are sufficient to create the mere rational basis necessary to meet equal protection requirements in granting teacher immunity to the private institution. Hilgendorf ex rel. Hilgendorf v. First Baptist Church, 157 Ill. App. 3d 428, 109 Ill. Dec. 659, 510 N.E.2d 527 (4 Dist. 1987).

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- School Districts

The selection and modification of specific athletic equipment involve a degree of discretion and district court erred in ruling the Tort Immunity Act (745 ILCS 10/1-101 et seq.) did not immunize school district for alleged negligence in furnishing and modifying of football helmet. McGurk v. Lincolnway Community Sch. Dist. # 210, 287 Ill. App. 3d 1059, 223 Ill. Dec. 127, 679 N.E.2d 71 (3 Dist. 1997), appeal denied, 173 Ill. 2d 527, 226 Ill. Dec. 133, 684 N.E.2d 1336 (1997).

By its terms, this statute does not grant immunity to school districts; a school district has vicarious immunity, however, if the cause of action is predicated on the negligence of an employee who has the statutory immunity, to wit, a teacher or other certificated educational employee. Jastram ex rel. Jastram v. Lake Village Sch., 192 Ill. App. 3d 599, 139 Ill. Dec. 686, 549 N.E.2d 9 (2 Dist. 1989).

- Teachers

By its plain language, the statute confers on educators the status of parent or guardian to their pupils, and grants educators the immunity that parents enjoy and that school districts vicariously enjoy. Henrich v. Libertyville High Sch., 186 Ill. 2d 381, 238 Ill. Dec. 576, 712 N.E.2d 298 (1999).

The Supreme Court has interpreted this section as applying the parental immunity doctrine to the teacher-pupil situation and granting immunity to teachers from suits by their pupils for negligent acts occuring within the teacher-pupil relationship. American States Ins. Co. ex rel. Community Unit Sch. v. Flynn, 102 Ill. App. 3d 201, 57 Ill. Dec. 689, 429 N.E.2d 587 (4 Dist. 1981).

Absent wilful and wanton conduct in the course of their supervisory authority, which encompasses inspecting and supplying the students with equipment, teachers and coaches are immune under this section and 105 ILCS 5/34-84a. Thomas v. Chicago Bd. of Educ., 77 Ill. 2d 165, 32 Ill. Dec. 308, 395 N.E.2d 538 (1979).

Teachers are not liable for mere negligence in the performance of their supervisory function. Thomas v. Chicago Bd. of Educ., 77 Ill. 2d 165, 32 Ill. Dec. 308, 395 N.E.2d 538 (1979).

Teachers did not lose their immunity under this section nor under 105 ILCS 5/34-84a because the football program they coached and supervised was an extracurricular activity. Thomas v. Chicago Bd. of Educ., 77 Ill. 2d 165, 32 Ill. Dec. 308, 395 N.E.2d 538 (1979).

The duty of ordinary care (while furnishing equipment) on teachers would burden them to the extent that a teacher might become immobile in the performance of his obligations; a proliferation of actions for negligence would drain teachers' judgment by courts, and quite possibly discourage persons from the career of teaching. Thomas v. Chicago Bd. of Educ., 77 Ill. 2d 165, 32 Ill. Dec. 308, 395 N.E.2d 538 (1979).

Where the school district had the authority to purchase and furnish equipment to students and the authority was not shared with teachers and coaches, who had instead the distinct competence or authority to supervise the students and their use of that equipment, the teachers and coaches were immune from negligent actions. Thomas v. Chicago Bd. of Educ., 77 Ill. 2d 165, 32 Ill. Dec. 308, 395 N.E.2d 538 (1979).

- Teacher's Aide

Defendant, a teacher's aide, was not an individual who fell within the class of persons entitled to immunity from suit for ordinary negligence under the section because she was not a teacher performing the function of classroom instruction, but she was protected from any ordinary negligent conduct under the Local Government and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 et seq.), and therefore the circuit court's application of the wilful and wanton

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misconduct standard was proper. Jackson ex rel. Jackson v. Chicago Bd. of Educ., 192 Ill. App. 3d 1093, 140 Ill. Dec. 178, 549 N.E.2d 829 (1 Dist. 1989).

- Tort Immunity Act

Where both 745 ILCS 10/3-108(a) and this section applied to a cause of action which alleged that a school district required, allowed, or failed to prohibit the plaintiff's participation in a water basketball game with knowledge of the plaintiff's medical condition and permanent medical restrictions on his activities, and where the immunity granted by the former statute barred the cause of action while the immunity granted by the latter statute did not bar the cause of action, the former statute controlled. Henrich v. Libertyville High Sch., 186 Ill. 2d 381, 238 Ill. Dec. 576, 712 N.E.2d 298 (1999).

The School Code and Tort Immunity Act (745 ILCS 10/1-101 et seq.) are to be interpreted independently of each other. Henrich ex rel. Henrich v. Libertyville High Sch., 289 Ill. App. 3d 809, 225 Ill. Dec. 191, 683 N.E.2d 135 (2 Dist. 1997), aff'd, 86 Ill. 2d 381, 238 Ill. Dec. 576, 712 N.E.2d 298 (1998).

With respect to the immunity provided to a school district, 105 ILCS 5/3-108(a) of the Act is more direct and specific than this section. Henrich ex rel. Henrich v. Libertyville High Sch., 289 Ill. App. 3d 809, 225 Ill. Dec. 191, 683 N.E.2d 135 (2 Dist. 1997), aff'd, 86 Ill. 2d 381, 238 Ill. Dec. 576, 712 N.E.2d 298 (1998).

- Vicarious

Any immunity provided for by this section is vicarious in that it is derived from the immunity provided to teachers and other educational employees. Henrich ex rel. Henrich v. Libertyville High Sch., 289 Ill. App. 3d 809, 225 Ill. Dec. 191, 683 N.E.2d 135 (2 Dist. 1997), aff'd, 86 Ill. 2d 381, 238 Ill. Dec. 576, 712 N.E.2d 298 (1998).

In Loco Parentis

- In General

This statute confers upon educators the status of parent or guardian to the students. Jastram ex rel. Jastram v. Lake Village Sch., 192 Ill. App. 3d 599, 139 Ill. Dec. 686, 549 N.E.2d 9 (2 Dist. 1989).

This section and 105 ILCS 5/34-84a confers upon educators in loco parentis status, and this statute extends to nondisciplinary as well as disciplinary matters. Plesnicar ex rel. Plesnicar v. Kovach, 102 Ill. App. 3d 867, 58 Ill. Dec. 616, 430 N.E.2d 648 (1 Dist. 1981).

- Absence of Relationship

This section was not applicable where there was an absence of a loco parentis relationship between the injured plaintiff and the certificated employees of the defendant school district who allegedly failed to exercise proper supervision. Tanari v. School Dirs., 69 Ill. 2d 630, 14 Ill. Dec. 874, 373 N.E.2d 5 (1977).

- Applicable Standards

Since parents are not liable to their children for negligence, teachers are also not liable for negligence when they are acting in loco parentis. Kain v. Rockridge Community Unit, 117 Ill. App. 3d 681, 72 Ill. Dec. 813, 453 N.E.2d 118 (3 Dist. 1983).

This section confers in loco parentis status upon educational employees in matters relating to discipline and supervision of school activities, and teachers thus are not subjected to any greater liability than parents who are liable to their children for wilful and wanton misconduct, but not for

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mere negligence. Montague v. School Bd., 57 Ill. App. 3d 828, 15 Ill. Dec. 373, 373 N.E.2d 719 (1 Dist. 1978).

Since this statute specifically confers upon educators the status of parent or guardian to the students, and since a parent is not liable for injuries to his child absent wilful and wanton misconduct, it therefore follows that the same standard applies as between educator and student. Tanari v. School Dirs., 69 Ill. 2d 630, 14 Ill. Dec. 874, 373 N.E.2d 5 (1977).

- Illustrative Cases

Court declined to reconsider the dismissal of a false imprisonment claim that was asserted by the mother of a student against defendants, including a school district and a resource officer, in connection with the officer's interview of the student regarding an alleged sexual assault against the student by a classmate; in loco parentis immunity, as codified under 105 ILCS 5/24-24, precluded the false imprisonment claim, and in any event the record indicated that the student's presence at the interview was voluntary. Wilson v. Cahokia Sch. Dist. # 187, 470 F. Supp. 2d 897, 2007 U.S. Dist. LEXIS 3974 (S.D. Ill. 2007).

Defendant school district was immune from liability for ordinary negligence under the doctrine of in loco parentis where plaintiff's complaint alleged that defendants were negligent for failing to take action to prevent deceased's suicide based on his statements and conduct while at school during regular school activities as these allegations clearly related to the official conduct of the school program. Grant v. Board of Trustees of Valley View Sch. Dist. No. 365-U, 286 Ill. App. 3d 642, 221 Ill. Dec. 902, 676 N.E.2d 705 (3 Dist. 1997), appeal denied, 173 Ill. 2d 524, 226 Ill. Dec. 132, 684 N.E.2d 1335 (1997).

The defendants were acting in loco parentis where student was injured in football game; therefore defendants were not liable for mere negligence. Kain v. Rockridge Community Unit, 117 Ill. App. 3d 681, 72 Ill. Dec. 813, 453 N.E.2d 118 (3 Dist. 1983).

- Insufficient Complaint

Count of an amended complaint failed to state cause of action against school district and high school for negligence in furnishing defective equipment and electrical outlets during a home economics class, where the amended complaint did not contain an allegation that defendants knew, or in the exercise of ordinary care should have known, of the defective condition. Rinck v. Palos Hills Consol. High Sch. Dist., 82 Ill. App. 3d 856, 38 Ill. Dec. 239, 403 N.E.2d 470 (1 Dist. 1978).

- Limitation

Although the in loco parentis status of teachers is not restricted to disciplinary matters, its application is limited to activities connected with the school program. O'Brien v. Township High Sch. Dist., 83 Ill. 2d 462, 47 Ill. Dec. 702, 415 N.E.2d 1015 (1980).

- Nondisciplinary and Disciplinary Matters

This provision was intended to confer in loco parentis status upon teachers with regard to all activities connected with the school program, in disciplinary and nondisciplinary matters. Halper v. Vayo, 210 Ill. App. 3d 81, 154 Ill. Dec. 693, 568 N.E.2d 914 (2 Dist.), cert. denied, 139 Ill. 2d 595, 159 Ill. Dec. 107, 575 N.E.2d 914 (1991).

The status in loco parentis shields a teacher from liability in both nondisciplinary and disciplinary matters. Hadley v. Witt Unit Sch. Dist., 123 Ill. App. 3d 19, 78 Ill. Dec. 758, 462 N.E.2d 877 (5 Dist. 1984).

Language of the statute extends the loco parentis relationship to circumstances other than just disciplinary conduct; coaching of a gymnastics team practice session was within the loco parentis

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immunity provided by this section. Montag v. Board of Educ., 112 Ill. App. 3d 1039, 68 Ill. Dec. 565, 446 N.E.2d 299 (3 Dist. 1983).

This section and 105 ILCS 5/34-84a were intended to confer the status in loco parentis in nondisciplinary as well as disciplinary matters; since physical education is a required part of the academic curriculum (105 ILCS 5/27-5 to 105 ILCS 5/27-7), the classes in which injury took place were clearly activities connected with the school program. Kobylanski v. Chicago Bd. of Educ., 63 Ill. 2d 165, 347 N.E.2d 705 (1976).

- Pleadings

As count I of the amended complaint was based on the theory of landowners' premises liability which is an entirely different function than the matters involved in the provisions of this section, the parental relationship standard did not apply, and allegations of ordinary negligence would have been sufficient to state a cause of action. Ramos v. Waukegan Community Unit Sch., 188 Ill. App. 3d 1031, 136 Ill. Dec. 527, 544 N.E.2d 1302 (2 Dist. 1989).

- Proximate Cause

Where a student is injured, the possible liability of the teacher and the possible application of the statutory immunity is based upon causation; the student teacher relationship must give rise to the conduct which was the proximate cause of the plaintiff's injuries in order for the immunity to apply, and where something or someone outside this relationship is the proximate cause of the injury, then an action in negligence may lie. Montag v. Board of Educ., 112 Ill. App. 3d 1039, 68 Ill. Dec. 565, 446 N.E.2d 299 (3 Dist. 1983).

- Student Teacher Relationship

This section only applies to teachers acting within the student teacher relationship, and actions of a school board in purchasing and supplying the gymnastics equipment did not come within this special relationship; instructor need only make a reasonable inspection of the equipment. Montag v. Board of Educ., 112 Ill. App. 3d 1039, 68 Ill. Dec. 565, 446 N.E.2d 299 (3 Dist. 1983).

- Unsafe Playing Field

Where it was the physical education teacher's decision to play touch football on the uneven school field, and this kind of supervision of classroom activities was not a separate and distinct function from the teacher/student relationship the court found, thus, that playing touch football on a school field during physical education class fell under the purview of the immunity granted in this section. Brock v. Rockridge Community Unit Dist., 183 Ill. App. 3d 447, 132 Ill. Dec. 135, 539 N.E.2d 445 (3 Dist. 1989).

Infliction of Bodily Harm

Dismissal of teacher who taught a small engines class in the high school was proper where teacher allowed two students to trade class detentions for electric shocks from a small engine. Rush v. Board of Educ., 312 Ill. App. 3d 473, 245 Ill. Dec. 202, 727 N.E.2d 649, 2000 Ill. App. LEXIS 190 (3 Dist. 2000).

Legislative Intent

This section was not intended primarily to grant immunity, but to promote discipline in the schools of this state; in addition, by its language this section imposes upon teachers and certificated educational employees the duty to maintain discipline in the schools. It is only in connection with this duty and for the safety and supervision of pupils that teachers and certificated educational employees stand in the relation of parents and guardians to pupils; thus, the legislature, in

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enacting this section, was primarily concerned with imposing upon teachers an obligation and simultaneously giving them the power to fulfill it, not with adopting any doctrine of immunity in the teacher-pupil situation. American States Ins. Co. ex rel. Community Unit Sch. v. Flynn, 102 Ill. App. 3d 201, 57 Ill. Dec. 689, 429 N.E.2d 587 (4 Dist. 1981).

This statutory provision reflects a legislative determination that the orderly conduct of the schools and the maintenance of a sound learning atmosphere require that there be a personal relationship between teacher and student in which the teacher has disciplinary and supervisory authority similar to that which exists between parent and child, and this relationship would be seriously jeopardized if teachers and school districts were amenable to ordinary negligence actions for accident occurring in the course of the exercise of such authority. Gerrity v. Beatty, 71 Ill. 2d 47, 15 Ill. Dec. 639, 373 N.E.2d 1323 (1978).

- In Loco Parentis

This section was intended to confer in loco parentis status in nondisciplinary as well as disciplinary matters and the plaintiff-student must therefore prove wilful and wanton misconduct in order to impose liability upon teachers and other certified educational employees. Rinck v. Palos Hills Consol. High Sch. Dist., 82 Ill. App. 3d 856, 38 Ill. Dec. 239, 403 N.E.2d 470 (1 Dist. 1978).

This section was intended to confer in loco parentis status in nondisciplinary as well as disciplinary matters. Kobylanski v. Chicago Bd. of Educ., 63 Ill. 2d 165, 347 N.E.2d 705 (1976).

Liability

- In General

Teachers are not subject to any greater liability than parents who are liable to their children for willful and wanton misconduct but not for mere negligence. McCauley ex rel. McCauley v. Chicago Bd. of Educ., 66 Ill. App. 3d 676, 23 Ill. Dec. 464, 384 N.E.2d 100 (1 Dist. 1978).

This section and 105 ILCS 5/34-84a confer upon teachers and other certificated educational employees immunity from suits for negligence arising out of matters relating to the discipline in and conduct of the schools and the school children; in order to impose liability against such educators, a plaintiff must prove wilful and wanton misconduct. Kobylanski v. Chicago Bd. of Educ., 63 Ill. 2d 165, 347 N.E.2d 705 (1976).

A school district and its certificated personnel are immune for liability for acts of negligence, and liability for conduct in the supervision of student activities must be established by the allegation and proof of wilful and wanton misconduct upon the part of the school district. Morrison ex rel. Morrison v. Community Unit Sch., 44 Ill. App. 3d 315, 3 Ill. Dec. 222, 358 N.E.2d 389 (4 Dist. 1976).

- Breach of Duty

In meeting their responsibility of maintaining discipline among pupils, teachers and school officials stand in the same position as do parents and guardians, and a breach of the duty imposed requires more than common negligence - wilful and wanton conduct must be shown. Gammon ex rel. Gammon v. Edwardsville Community Unit Sch. Dist., 82 Ill. App. 3d 586, 38 Ill. Dec. 28, 403 N.E.2d 43 (5 Dist. 1980).

- Day Care Center

Whether or not the defendant's establishment, called a "nursery and kindergarten" but licensed as a day care center, could be considered a "school" at common law, it did not fall within the perimeter of this section, and therefore did not enjoy the liability protection extended by

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Kobylanski v. Chicago Board of Education 63 Ill. 2d 165, 347 N.E.2d 705 (1976). Possekel ex rel. Possekel v. O'Donnell, 51 Ill. App. 3d 313, 9 Ill. Dec. 332, 366 N.E.2d 589 (1 Dist. 1977).

- Immunity Not Found

This section did not clothe defendants with immunity from liability for negligent actions in which a school district, through its agents, had student's injuries cared for by a student who was not a district employee and who was not competent and trained to treat student's left leg. O'Brien v. Township High Sch. Dist., 83 Ill. 2d 462, 47 Ill. Dec. 702, 415 N.E.2d 1015 (1980).

It was error for the trial court to dismiss the negligence count where complaint alleged that the school district and its agents undertook to have the minor student's knee condition treated by another student in a negligent fashion, because these allegations portrayed a situation which did not arise out of a teacher's personal supervision and control of a student's conduct or physical movement, nor did it affect the orderly conduct of the schools or the maintenance of a sound learning atmosphere; when teachers undertake to provide medical treatment, there is little need for the broad discretion and latitude required in the classroom setting, and when medical treatment is undertaken by a school or its agent, public policy considerations dictate an obligation to ensure that it is competently rendered; therefore, to hold school districts to an ordinary care standard in this area did not appear unduly burdensome. O'Brien v. Township High Sch. Dist., 73 Ill. App. 3d 618, 29 Ill. Dec. 918, 392 N.E.2d 615 (1 Dist. 1979), modified on other grounds, 83 Ill. 2d 462, 47 Ill. Dec. 702, 415 N.E.2d 1015 (1980).

Plaintiff's amended negligence complaint properly stated a cause of action and was not subject to educator tort immunity where it did not allege the existence of a teacher-student relationship, as it alleged the conduct of the school board was negligent in allowing teachers to smoke and leave cigarettes burning in close proximity to a flammable liquid in a school teacher's lounge. Griffis ex rel. Adamovich v. Board of Educ., 72 Ill. App. 3d 784, 29 Ill. Dec. 188, 391 N.E.2d 451 (1 Dist. 1979).

- Independent Negligence of School

When a complaint alleges the independent negligence of the school district rather than liability through the acts of a teacher, the defendant school district is not entitled to vicarious immunity. Ward v. Community Unit Sch. Dist. No. 220, 243 Ill. App. 3d 968, 184 Ill. Dec. 901, 614 N.E.2d 102 (1 Dist. 1993).

- Maintenance of Property

The function of maintaining the grounds is not one which is entitled to immunity. Sidwell ex rel. Sidwell v. Griggsville Community Sch., 208 Ill. App. 3d 296, 152 Ill. Dec. 961, 566 N.E.2d 838 (4 Dist. 1991), aff'd, 146 Ill. 2d 467, 167 Ill. Dec. 1055, 588 N.E.2d 1185 (1992).

The immunity under this section does not apply to allegations of negligence in maintaining the school premises. Jastram ex rel. Jastram v. Lake Village Sch., 192 Ill. App. 3d 599, 139 Ill. Dec. 686, 549 N.E.2d 9 (2 Dist. 1989).

Even assuming the teacher was negligent in her supervision of plaintiff, which was not alleged in count I of the amended complaint, the school district could not avoid liability under this section for its alleged separate negligence in maintaining its property, and the trial court erred in dismissing count I of the complaint on that grounds. Ramos v. Waukegan Community Unit Sch., 188 Ill. App. 3d 1031, 136 Ill. Dec. 527, 544 N.E.2d 1302 (2 Dist. 1989).

- No Cause of Action

Complaint did not provide a basis for a cause of action against the school board based on "negligence" for failing to provide transportation for after-school activities. Plesnicar ex rel. Plesnicar v. Kovach, 102 Ill. App. 3d 867, 58 Ill. Dec. 616, 430 N.E.2d 648 (1 Dist. 1981).

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- Ordinary Negligence

In the absence of proof of wilful and wanton misconduct, teachers and certificated educational employees, and school districts are not liable for ordinary negligence. Hopwood ex rel. Hopwood v. Elmwood Community High Sch., 171 Ill. App. 3d 280, 121 Ill. Dec. 441, 525 N.E.2d 247 (3 Dist. 1988).

- Proximate Cause

Board of education's failure to furnish student a scaffold for the purposes of changing names on scoreboard could not be a proximate cause of injuries sustained in fall where the scaffold was "furnished" and available, though it was not implemented for the task. Braun v. Board of Educ., 151 Ill. App. 3d 787, 104 Ill. Dec. 416, 502 N.E.2d 1076 (5 Dist. 1986).

- Standard of Care

A teacher and a school district could be responsible for injuries sustained by a student in the course of a physical education class as a result of their alleged careless and negligent supervision and instruction as opposed to wilful and wanton misconduct. Wilson v. Kroll, 26 Ill. App. 3d 954, 326 N.E.2d 94 (1 Dist. 1975).

- Students

Students are not immune from a suit by a teacher for negligent injury. American States Ins. Co. ex rel. Community Unit Sch. v. Flynn, 102 Ill. App. 3d 201, 57 Ill. Dec. 689, 429 N.E.2d 587 (4 Dist. 1981).

Miranda Warnings

Where disciplinary action taken against a minor by the school administrator, was independent of police's investigatory activities, and the minor's rights under Miranda were not violated by the fact that the school administrator did not give Miranda warnings prior to his questioning, the evidence of the minor's confession to the school administrator was properly admitted. In re E.M., 262 Ill. App. 3d 302, 199 Ill. Dec. 556, 634 N.E.2d 395 (2 Dist. 1994).

Nursery Schools and Kindergartens

This Code (105 ILCS 5/1-1 et seq.) does not concern itself with nursery schools and kindergartens unless they are run by a school system; nursery schools and kindergartens not run by the school system are governed by the Child Care Act. Possekel ex rel. Possekel v. O'Donnell, 51 Ill. App. 3d 313, 9 Ill. Dec. 332, 366 N.E.2d 589 (1 Dist. 1977).

Purpose

The purpose of this section is to extend to teachers the limited liability of parents in matters relating to the teachers' personal supervision and control of the conduct or physical movement of a student. Lynch ex rel. Lynch v. Board of Educ., 72 Ill. App. 3d 317, 28 Ill. Dec. 359, 390 N.E.2d 526 (5 Dist. 1979), aff'd, 82 Ill. 2d 415, 45 Ill. Dec. 96, 412 N.E.2d 447 (1980).

Relationship with Other Laws

105 ILCS 5/34-84a is identical in language and purpose to this section except that the former applies to a school district having a population more than 500,000 while the latter applies to a

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smaller school district. Rinck v. Palos Hills Consol. High Sch. Dist., 82 Ill. App. 3d 856, 38 Ill. Dec. 239, 403 N.E.2d 470 (1 Dist. 1978).

- Search

Where defendant school principal received a phone call which led him to suspect that plaintiff possessed illegal drugs, the principal called the police, and when the police arrived plaintiff was searched by the school nurse and the school psychologist, and no drugs were found, a jury could find that plaintiff's constitutional rights had been violated. Picha ex rel. Picha v. Wielgos, 410 F. Supp. 1214 (N.D. Ill. 1976).

Right to Notice and Hearing

This section does not create and define a right to notice and a hearing for participants in interscholastic athletics, therefore, school officials can administer discipline for zero tolerance conduct code violations without formal notice and hearing. Jordan v. O'Fallon Tp. High Sch. Dist. No. 203, 302 Ill. App. 3d 1070, 235 Ill. Dec. 877, 706 N.E.2d 137 (5 Dist. 1999).

Standard of Care

- Ordinary Care Required

Where high school student did not allege negligence arising out of the teacher-student relationship in matters relating to the teacher's personal supervision and control of the conduct or physical movement of a student, but instead alleged negligence in connection with the separate function of furnishing equipment which was alleged to be inadequate, ill fitting and defective and which was known, or which in the exercise of ordinary care should have been known, to be liable to cause injury to the plaintiff, the public policy considerations in authorizing and encouraging teachers to have broad discretion and latitude in the former situations did not apply with as much force to the latter; therefore, to hold school districts to the duty of ordinary care in such matters was not unduly burdensome, nor did it appear to be inconsistent with the intended purposes of this section. Gerrity v. Beatty, 71 Ill. 2d 47, 15 Ill. Dec. 639, 373 N.E.2d 1323 (1978).

Summary Judgment

- Improper

From the facts presented to the trial court in student's memorandum and teacher's deposition offered in opposition to defendants school's motion for summary judgment, a jury could have inferred a reckless disregard for the safety of others after knowledge of impending danger; the granting of summary judgment was improper where there was an issue suitable for jury determination. Hadley v. Witt Unit Sch. Dist., 123 Ill. App. 3d 19, 78 Ill. Dec. 758, 462 N.E.2d 877 (5 Dist. 1984).

Tort Immunity Act Distinguished

Immunity under the School Code does not derive from immunity in the Tort Immunity Act (see 745 ILCS 10/1-101 et seq.); the two statutes are to be interpreted apart from one another. Bowers ex rel. Bowers v. DuPage County Regional Bd. of Sch. Trustees, 183 Ill. App. 3d 367, 131 Ill. Dec. 893, 539 N.E.2d 246 (2 Dist. 1989).

Truancy

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Legislation giving the districts powers to make disciplinary rules empowers them to punish pupils for unexcused absences. Knight ex rel. Knight v. Board of Educ., 38 Ill. App. 3d 603, 348 N.E.2d 299 (4 Dist. 1976).

Waiver

The waiver provision of 745 ILCS 10/9-103(b) is inapplicable to suits based upon violations of this section and 105 ILCS 5/34-84a. Kobylanski v. Chicago Bd. of Educ., 63 Ill. 2d 165, 347 N.E.2d 705 (1976).

Wilful and Wanton Conduct

- Not Shown

If school counselor had failed to take any action upon learning of student's statement about suicide, counselor's inaction could have constituted wilful and wanton conduct, however, the complaint admitted that counselor contacted mother and advised her to take student to the hospital, albeit for an overdose; the plaintiff failed to allege sufficient facts that would support a finding that counselor or any other school official acted with conscious disregard or indifference for student's safety or had any knowledge their conduct posed a high probability of serious physical harm to student. Grant v. Board of Trustees of Valley View Sch. Dist. No. 365-U, 286 Ill. App. 3d 642, 221 Ill. Dec. 902, 676 N.E.2d 705 (3 Dist. 1997), appeal denied, 173 Ill. 2d 524, 226 Ill. Dec. 132, 684 N.E.2d 1335 (1997).

Plaintiff's complaint did not set forth a cause of action against the school district sounding in wilful and wanton misconduct where decedent jumped on the hood of a car being driven to and from auto class to the parking lot. Knapp v. Hill, 276 Ill. App. 3d 376, 212 Ill. Dec. 723, 657 N.E.2d 1068 (1 Dist. 1995), appeal denied, 165 Ill. 2d 552, 214 Ill. Dec. 859, 662 N.E.2d 425 (1996).

Wilful and Wanton Misconduct

- Allegation

The mere conclusional allegation that defendant's actions were wilful and wanton is not sufficient; it must be supported by factual allegations. Halper v. Vayo, 210 Ill. App. 3d 81, 154 Ill. Dec. 693, 568 N.E.2d 914 (2 Dist.), cert. denied, 139 Ill. 2d 595, 159 Ill. Dec. 107, 575 N.E.2d 914 (1991).

- Damages

Since wilful and wanton conduct forms the basis for an action against a teacher for excessive corporal punishment, punitive damages cannot be sanctioned as an additional recovery. Holt ex rel. Holt v. Cross, 121 Ill. App. 3d 695, 77 Ill. Dec. 149, 460 N.E.2d 8 (5 Dist. 1983).

- Jury Question

Whether the evidence presents conduct of a wilful and wanton nature is a question of fact to be left to the jury's determination. Gammon ex rel. Gammon v. Edwardsville Community Unit Sch. Dist., 82 Ill. App. 3d 586, 38 Ill. Dec. 28, 403 N.E.2d 43 (5 Dist. 1980).

- Not Shown

A physical education teacher's direction to a student to jazz dance on wrestling mats which were not taped down, where the mats overlapped during the dance, and the teacher did not discover the overlapped mats or stop the activity, did not prove a deliberate intention to harm or an utter indifference or conscious disregard for the student's safety, and thus did not rise to the level of

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wilful and wanton misconduct. Gara ex rel. Gara v. Lomonaco, 199 Ill. App. 3d 633, 145 Ill. Dec. 713, 557 N.E.2d 483 (1 Dist. 1990).

A physical education teacher's conduct in attempting to control a group of complaining teenage girls, and to see that they participated in prescribed physical education activity, was not wilful and wanton misconduct as a matter of law as required to avoid liability for injuries sustained students in her class. Hopwood ex rel. Hopwood v. Elmwood Community High Sch., 171 Ill. App. 3d 280, 121 Ill. Dec. 441, 525 N.E.2d 247 (3 Dist. 1988).

Where there were no facts alleging that a teacher intentionally abandoned her duty to supervise the plaintiff, and no allegations that the teacher had knowledge of an impending danger to the plaintiff if she entered a bathroom unaccompanied by the teacher, although the teacher may have been negligent in naming the alleged leader of the classmate as monitor, such an action did not constitute willful and wanton conduct. Booker ex rel. Booker v. Chicago Bd. of Educ., 75 Ill. App. 3d 381, 31 Ill. Dec. 250, 394 N.E.2d 452 (1 Dist. 1979).

Where complaint failed to state a cause of action for willful and wanton misconduct by her son's teacher, the trial court did not err in dismissing plaintiff's complaint. McCauley ex rel. McCauley v. Chicago Bd. of Educ., 66 Ill. App. 3d 676, 23 Ill. Dec. 464, 384 N.E.2d 100 (1 Dist. 1978).

In a personal injury action brought by a minor who nearly drowned during a school club outing at a swimming, where there was neither allegation nor proof of wilful or wanton misconduct on the part of the defendant, school district, a directed verdict in favor of the school district was proper. Morrison ex rel. Morrison v. Community Unit Sch., 44 Ill. App. 3d 315, 3 Ill. Dec. 222, 358 N.E.2d 389 (4 Dist. 1976).

- Parental Presence

A school district is not freed from its obligation to refrain from wilful and wanton misconduct in the supervision of an authorized school activity merely because of the fortuitous presence of the student's parents. Lynch ex rel. Lynch v. Board of Educ., 72 Ill. App. 3d 317, 28 Ill. Dec. 359, 390 N.E.2d 526 (5 Dist. 1979), aff'd, 82 Ill. 2d 415, 45 Ill. Dec. 96, 412 N.E.2d 447 (1980).

- Private Schools

This section, imposing a wilful and wanton standard for injuries arising out of the school pupil relationship, applies also to private schools. Cotton ex rel. Walls v Catholic Bishop, 39 Ill. App. 3d 1062, 351 N.E.2d 247 (1 Dist. 1976).

- Riots

School district will not be held liable for injuries suffered by student due to riots and disturbances at high school unless there was wilful and wanton misconduct. Poynter v. Kankakee School Dist., 55 Ill. App. 3d 46, 12 Ill. Dec. 863, 370 N.E.2d 667 (3 Dist. 1977).

- Shown

Where it was alleged not only that the teacher failed to contact the parents or the rescue squad after the initial injury so he could receive proper medical treatment, the teacher also performed other acts which resulted in further injury to the knee, including pulling on the student's leg and manipulating his knee in an attempt to treat the injury, and then directed the student to wrestle against a far more skilled and experienced wrestler who was a collegiate champion, exposing him to a risk of further injury, and when the student suffered additional injury, the teacher still failed to secure proper medical treatment for him by calling the local rescue squad or the parents, these actions, if true and not mitigated by other circumstances, would constitute a reckless course of conduct which needlessly exposed the student to the risk of further injury and, therefore, stated a cause of action for wilful and wanton conduct. Halper v. Vayo, 210 Ill. App. 3d 81, 154 Ill. Dec.

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693, 568 N.E.2d 914 (2 Dist.), cert. denied, 139 Ill. 2d 595, 159 Ill. Dec. 107, 575 N.E.2d 914 (1991).

Where plaintiff's complaint stated that the district allowed plaintiff to be moved from the school to the playground without causing her to be secured in the wheelchair with the seat belt when it had knowledge, or through reckless and wanton conduct, failed to acquire knowledge that plaintiff was not secured with the seat belt and further alleged that while plaintiff was being transported between the center and the playground, the wheels of her wheelchair struck a crevice in the surface of the passageway between those two locations "thereby throwing [her] with force and violence upon the pavement," these allegations, if true, would establish such a "reckless disregard for the safety of others" as to constitute wilful and wanton misconduct. Bertetto ex rel. Bertetto v. Sparta Community Unit, 188 Ill. App. 3d 954, 136 Ill. Dec. 365, 544 N.E.2d 1140 (5 Dist. 1989).

Where the amended counterclaim did not make mention of the school district's failure to acquire knowledge as to the dangerous condition presented by the "crevice" in the passageway between the center and the playground, but instead, focused exclusively on the district's having allowed plaintiff to be pushed in her wheelchair from the center to the nearby playground by one of plaintiff's fellow students, a child of tender years, without having her seat belt fastened, these allegations sufficiently allege a cause of action for wilful and wanton misconduct. Bertetto ex rel. Bertetto v. Sparta Community Unit, 188 Ill. App. 3d 954, 136 Ill. Dec. 365, 544 N.E.2d 1140 (5 Dist. 1989).

In personal injury action by injured student against school district, evidence, that physical education instructor was aware that student was obese, that she was untrained in the backward somersault maneuver and fearful of attempting it because of her size, that student had experienced physical problems as a small child after attempting the maneuver, that dangers were presented to the performer by this maneuver, that if a performer did not have sufficient arm strength to take the weight of the body and push it backwards, the weight would drop onto the person's neck, that she directed student to practice the maneuver on her own, without personal instruction or a preliminary testing of her strength and that student injured her neck while attempting the maneuver, supported a finding of wilful and wanton misconduct. Landers v. School Dist. No. 203, 66 Ill. App. 3d 78, 22 Ill. Dec. 837, 383 N.E.2d 645 (5 Dist. 1978).

Where the evidence of the witness students was clear and definite to the effect that defendant, without reason or proper investigation, seized plaintiff forcibly and thrust him strongly against the steel lockers, this evidence was sufficient to support the general verdict of the jury against defendants and the special verdict finding defendant guilty of wilful and wanton conduct. Baikie v. Luther High Sch. S., 51 Ill. App. 3d 405, 9 Ill. Dec. 285, 366 N.E.2d 542 (1 Dist. 1977).

- Standard of Proof

Plaintiff, whose son was allegedly beaten during student disturbance at high school, must sufficiently allege and prove wilful and wanton misconduct on the part of defendant school system to recover for the injuries sustained as a result of the beating as school districts are generally held immune from liability in their capacity in loco parentis. Cipolla ex rel. Cipolla v. Bloom Tp. High Sch., 69 Ill. App. 3d 434, 26 Ill. Dec. 407, 388 N.E.2d 31 (1 Dist. 1979).

In suits arising out of matters relating to the discipline in and conduct of the schools and the school children, to impose liability against the educators, a plaintiff must allege and prove wilful and wanton misconduct, rather than ordinary negligence. Lynch ex rel. Lynch v. Board of Educ., 72 Ill. App. 3d 317, 28 Ill. Dec. 359, 390 N.E.2d 526 (5 Dist. 1979), aff'd, 82 Ill. 2d 415, 45 Ill. Dec. 96, 412 N.E.2d 447 (1980).

Wilful and Wanton Negligence

- Not Shown

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Where complaint alleged that an employee of the school board failed to exercise proper supervision and was thereby responsible for injury of child struck in the face and eye by another student, the trial court was correct in its decision that a cause of action for wilful and wanton negligence was not stated against the school board and that the board's motion to dismiss adequately presented its claim that wilful and wanton negligence was not properly shown by the facts stated. Clay ex rel. James v. Chicago Bd. of Educ., 22 Ill. App. 3d 437, 318 N.E.2d 153 (1 Dist. 1974).

LEGAL PERIODICALS

For comment, "The Chicago Public Schools and its violent students: How Can the Law Protect Teachers?", see 48 DePaul L. Rev. 907 (1999).

For article, "When the King Does Wrong: What Immunity Does Local Government Deserve?," see 86 Ill. B.J. 138 (1998).

For article, "Survey of Illinois Law: Education Law," see 21 S. Ill. U.L.J. 815 (1997).

For article, "Student Vandalism and Public Schools: The Scope of the Illinois Educators' Directive to Discipline," see 9 N. Ill. U.L. Rev. 87 (1988).

For article, "School Drug Searches: A Primer for the Rush to Come," see 75 Ill. B.J. 274 (1987).

For article, "Recent Trends in School Tort Immunity," see 71 Ill. B.J. 240 (1982).

For article, "The Effect of Teachers' Part-Time Employment on the Aquisition and Retention of Tenure," see 69 Ill. B.J. 564 (1981).

For note on torts discussing Gerity v. Beatty, 71 Ill. 2d 47, 373 N.E.2d 1323 (1978), see 67 Ill. B.J. 184 (1978).

For comment, "The In Loco Parentis Status of Ill. School Teachers: An Unjustifiably Broad Extension of Immunity," see 10 J. Marshall J. Prac. & Proc. 629 (1977).

For article, "Tort Immunity of Teachers and School Districts," see 65 Ill. B.J. 456.

For note on school law and torts discussing Kobylanski v. Chicago Bd. of Ed., 63 Ill. 2d 165, 347 N.E.2d 705 (1976), see 65 Ill. B.J. 466 (1977).

RESEARCH REFERENCES

Liability of school or school personnel for injury to student resulting from cheerleader activities. 25 ALR5th 784.

Liability of private school or educational institution for breach of contract arising from expulsion or suspension of student. 47 ALR5th 1.

Validity, construction, and operation of school "zero tolerance" policies towards drugs, alcohol, or violence. 117 ALR5th 459.

Practice Guides and Treatises.

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2-43 Illinois Forms of Jury Instructions § 43.92 Burden of Proof on the Issues: Privilege of Teacher or Other Person Providing School-Related Service.

Illinois Jurisprudence, Personal Injury and Torts § 35:82 Nursery schools, kindergartens, and day-care centers.

Illinois Jurisprudence, Personal Injury and Torts § 35:81 Generally.

Illinois Jurisprudence, Personal Injury and Torts § 35:23 Generally; corporal punishment.

Illinois Jurisprudence, Personal Injury and Torts § 35:22 Student's assault of third person.

Illinois Jurisprudence, Personal Injury and Torts § 35:14 Administrative personnel.

Illinois Jurisprudence, Personal Injury and Torts § 35:13 Immunity of noncertificated personnel.

Illinois Jurisprudence, Personal Injury and Torts § 35:07 Validity of limited immunity.

Illinois Jurisprudence, Personal Injury and Torts § 35:06 Generally.

Illinois Jurisprudence, Personal Injury and Torts § 35:02 Immunity under School code and the Local Governmental and Governmental Employees Tort Immunity Act, generally.

§ 105 ILCS 5/24-25. [Identification; penalty; bargaining representatives]

Sec. 24-25. Teachers and other employees may request any person entering a public school building or the grounds which are owned or leased by the board and used for school purposes and activities to identify himself and the purpose of his entry. A person who refuses to provide such information is guilty of a Class A misdemeanor.

Authorized agents of an exclusive bargaining representative, upon notifying the school office, may meet with school employees in the school building during duty free times of such employees.

(Source: P.A. 86-202.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-25.

§ 105 ILCS 5/24-26. Intervening to help students or their family members who may have alcohol or other drug problems

Sec. 24-26. Intervening to help students or their family members who may have alcohol or other drug problems. Teachers and other employees of school districts may intervene to help students or their family members who appear to have problems with alcohol and other drugs by encouraging them to seek an assessment and treatment. School personnel

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who intervene shall have immunity from civil liability in accordance with the Alcoholism and Drug Addiction Intervenor and Reporter Immunity Law [745 ILCS 35/1 et seq.]. School personnel shall not be subject to disciplinary action by the school because of an intervention and may not be prohibited by school policy from intervening.

(Source: P.A. 87-213.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24-26.

Article 24A.

Evaluation of Certified Employees

§ 105 ILCS 5/24A-1. Purpose

Sec. 24A-1. Purpose. The purpose of this Article is to improve the educational services of the elementary and secondary public schools of Illinois by requiring that all certified school district employees be evaluated on a periodic basis and that the evaluations result in remedial action being taken when deemed necessary.

(Source: P.A. 84-972.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24A-1.

CASE NOTES

Waiver

- Requirement

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A waiver in a collective-bargaining agreement must be established by clear and express contractual language. Central City Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 149 Ill. 2d 496, 174 Ill. Dec. 808, 599 N.E.2d 892 (1992).

LEGAL PERIODICALS

For article, "Dismissal of Tenured Teachers in Illinois: Evolution of a Viable System," see 1990 U. Ill. L. Rev. 1.

§ 105 ILCS 5/24A-2. Application

Sec. 24A-2. Application. The provisions of this Article shall apply to all public school districts organized and operating pursuant to the provisions of this Code, including special charter districts and those school districts operating in accordance with Article 34 [105 ILCS 5/34-1 et seq.], except that this Section does not apply to teachers assigned to schools identified in an agreement entered into between the board of a school district operating under Article 34 [105 ILCD 5/34.1 et seq.] and the exclusive representative of the district's teachers in accordance with Section 34-85c of this Code [105 ILCS 5/34-85c].

(Source: P.A. 84-972; 95-510, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24A-2.

As to the purpose and applicability of P.A. 86-1477, see Sections 1, 4 and 5 thereof, which ratify certain actions and proceedings taken pursuant to this Article as enacted by P.A. 85-1418.

Effect of Amendments. The 2007 amendment by P.A. 95-510, effective August 28, 2007, added the exception language.

§ 105 ILCS 5/24A-2.5. Definitions

Sec. 24A-2.5. Definitions. In this Article:

"Evaluator" means:

(1) an administrator qualified under Section 24A-3 [105 ILCS 5/24A-3]; or

(2) other individuals qualified under Section 24A-3, provided that, if such other individuals are in the bargaining unit of a district's teachers, the district and the exclusive

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bargaining representative of that unit must agree to those individuals evaluating other bargaining unit members.

Notwithstanding anything to the contrary in item (2) of this definition, a school district operating under Article 34 of this Code [105 ILCS 5/34-1 et seq.] may require department chairs qualified under Section 24A-3 [105 ILCS 5/24A-3] to evaluate teachers in their department or departments, provided that the school district shall bargain with the bargaining representative of its teachers over the impact and effects on department chairs of such a requirement.

"Implementation date" means, unless otherwise specified and provided that the requirements set forth in subsection (d) of Section 24A-20 [105 ILCS 5/24A-20] have been met:

(1) For school districts having 500,000 or more inhabitants, in at least 300 schools by September 1, 2012 and in the remaining schools by September 1, 2013.

(2) For school districts having less than 500,000 inhabitants and receiving a Race to the Top Grant or School Improvement Grant after the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-861], the date specified in those grants for implementing an evaluation system for teachers and principals incorporating student growth as a significant factor.

(3) For the lowest performing 20% percent of remaining school districts having less than 500,000 inhabitants (with the measure of and school year or years used for school district performance to be determined by the State Superintendent of Education at a time determined by the State Superintendent), September 1, 2015.

(4) For all other school districts having less than 500,000 inhabitants, September 1, 2016.

Notwithstanding items (3) and (4) of this definition, a school district and the exclusive bargaining representative of its teachers may jointly agree in writing to an earlier implementation date, provided that such date must not be earlier than September 1, 2013. The written agreement of the district and the exclusive bargaining representative must be transmitted to the State Board of Education.

"Race to the Top Grant" means a grant made by the Secretary of the U.S. Department of Education for the program first funded pursuant to paragraph (2) of Section 14006(a) of the American Recovery and Reinvestment Act of 2009 [P.L. 111-5].

"School Improvement Grant" means a grant made by the Secretary of the U.S. Department of Education pursuant to Section 1003(g) of the Elementary and Secondary Education Act [P.L. 107-110].

(Source: P.A. 96-861, § 10; 97-8, § 5.)

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Effective Date. Section 99 of P.A. 96-861 made this section effective upon becoming law. The Act was approved January 15, 2010.

Effect of Amendments. The 2011 amendment by P.A. 97-8, effective June 13, 2011, added the second paragraph to the end of the definition of Implementation date; and inserted "for the program first funded" in the definition of Race to the Top Grant.

§ 105 ILCS 5/24A-3. Evaluation training and pre-qualification

Sec. 24A-3. Evaluation training and pre-qualification. (a) School boards shall require evaluators to participate in an inservice training on the evaluation of certified personnel provided or approved by the State Board of Education prior to undertaking any evaluation and at least once during each certificate renewal cycle. Training provided or approved by the State Board of Education shall include the evaluator training program developed pursuant to Section 24A-20 of this Code [105 ILCS 5/24A-20].

(b) Any evaluator undertaking an evaluation after September 1, 2012 must first successfully complete a pre-qualification program provided or approved by the State Board of Education. The program must involve rigorous training and an independent observer's determination that the evaluator's ratings properly align to the requirements established by the State Board pursuant to this Article.

(Source: P.A. 85-1418; 86-1477; 87-1076, § 1; 96-861, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24A-3.

Effect of Amendments. The 1992 amendment, effective September 15, 1992, added "either school improvement or the" preceding "evaluation of certified personnel".

The 2010 amendment by P.A. 96-861, effective January 15, 2010, rewrote the section and section heading.

§ 105 ILCS 5/24A-4. Development of evaluation plan

Sec. 24A-4. Development of evaluation plan. (a) As used in this and the succeeding Sections, "teacher" means any and all school district employees regularly required to be certified under laws relating to the certification of teachers. Each school district shall develop, in cooperation with its teachers or, where applicable, the exclusive bargaining representatives of its teachers, an evaluation plan for all teachers.

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(b) By no later than the applicable implementation date, each school district shall, in good faith cooperation with its teachers or, where applicable, the exclusive bargaining representatives of its teachers, incorporate the use of data and indicators on student growth as a significant factor in rating teaching performance, into its evaluation plan for all teachers, both those teachers in contractual continued service and those teachers not in contractual continued service. The plan shall at least meet the standards and requirements for student growth and teacher evaluation established under Section 24A-7 [105 ILCS 5/24A-7], and specifically describe how student growth data and indicators will be used as part of the evaluation process, how this information will relate to evaluation standards, the assessments or other indicators of student performance that will be used in measuring student growth and the weight that each will have, the methodology that will be used to measure student growth, and the criteria other than student growth that will be used in evaluating the teacher and the weight that each will have.

To incorporate the use of data and indicators of student growth as a significant factor in rating teacher performance into the evaluation plan, the district shall use a joint committee composed of equal representation selected by the district and its teachers or, where applicable, the exclusive bargaining representative of its teachers. If, within 180 calendar days of the committee's first meeting, the committee does not reach agreement on the plan, then the district shall implement the model evaluation plan established under Section 24A-7 with respect to the use of data and indicators on student growth as a significant factor in rating teacher performance.

Nothing in this subsection (b) shall make decisions on the use of data and indicators on student growth as a significant factor in rating teaching performance mandatory subjects of bargaining under the Illinois Educational Labor Relations Act that are not currently mandatory subjects of bargaining under the Act.

(c) Notwithstanding anything to the contrary in subsection (b) of this Section, if the joint committee referred to in that subsection does not reach agreement on the plan within 90 calendar days after the committee's first meeting, a school district having 500,000 or more inhabitants shall not be required to implement any aspect of the model evaluation plan and may implement its last best proposal.

(Source: P.A. 85-1163; 95-510, § 10; 96-861, § 10; 96-1423, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24A-4.

The reference in the last paragraph of (b) to "this subsection (a)" appears to be in error.

Effect of Amendments. The 2007 amendment by P.A. 95-510, effective August 28, 2007, added the last two sentences.

The 2010 amendment by P.A. 96-861, effective January 15, 2010, deleted "and submission" following "Development" in the section heading; and rewrote the section.

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The 2010 amendment by P.A. 96-1423, effective August 3, 2010, substituted "subsection (b)" for "subsection (a)" in the last paragraph of (b).

CASE NOTES

Analysis

Bargaining
- Collective
- Incomplete
- Mandatory

Bargaining

- Collective

Teacher evaluation plans are, at least, subjects of permissible collective bargaining. Alton Community Unit Sch. v. Illinois Educ. Labor Relations Bd., 209 Ill. App. 3d 16, 153 Ill. Dec. 713, 567 N.E.2d 671 (4 Dist. 1991).

- Incomplete

Where district and negotiators for teachers' association and school district knew that a provision concerning teacher evaluations in a collective-bargaining agreement failed to comply with this section, and where both sides to the collective-bargaining agreement knew that simultaneous meetings were being held between negotiators from both organizations concerning evaluation plans, the finding of the Educational Labor Relations Board that the parties had not fully bargained teacher evaluation plans was supported by the manifest weight of the evidence, and the teacher's association did not waive the issue by signing a collective-bargaining agreement. Central City Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 149 Ill. 2d 496, 174 Ill. Dec. 808, 599 N.E.2d 892 (1992).

- Mandatory

The substantive criteria, weight, and areas evaluated, including the decision as to whether an instructor has successfully completed a remediation plan and his subsequent rating, are not subject to mandatory bargaining; however, the mechanical procedures involved in the evaluation process and the remediation plan are subject to mandatory bargaining. Board of Educ. v. Illinois Educ. Labor Relations Bd., 199 Ill. App. 3d 347, 145 Ill. Dec. 239, 556 N.E.2d 857 (4 Dist. 1990).

§ 105 ILCS 5/24A-5. Content of evaluation plans

Sec. 24A-5. Content of evaluation plans. This Section does not apply to teachers assigned to schools identified in an agreement entered into between the board of a school district operating under Article 34 of this Code [105 ILCS 5/34-1 et seq.] and the exclusive

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representative of the district's teachers in accordance with Section 34-85c of this Code [105 ILCS 5/34-85c].

Each school district to which this Article applies shall establish a teacher evaluation plan which ensures that each teacher in contractual continued service is evaluated at least once in the course of every 2 school years.

By no later than September 1, 2012, each school district shall establish a teacher evaluation plan that ensures that:

(1) each teacher not in contractual continued service is evaluated at least once every school year; and

(2) each teacher in contractual continued service is evaluated at least once in the course of every 2 school years. However, any teacher in contractual continued service whose performance is rated as either "needs improvement" or "unsatisfactory" must be evaluated at least once in the school year following the receipt of such rating.

Notwithstanding anything to the contrary in this Section or any other Section of the School Code, a principal shall not be prohibited from evaluating any teachers within a school during his or her first year as principal of such school.

The evaluation plan shall comply with the requirements of this Section and of any rules adopted by the State Board of Education pursuant to this Section.

The plan shall include a description of each teacher's duties and responsibilities and of the standards to which that teacher is expected to conform, and shall include at least the following components:

(a) personal observation of the teacher in the classroom by the evaluator, unless the teacher has no classroom duties.

(b) consideration of the teacher's attendance, planning, instructional methods, classroom management, where relevant, and competency in the subject matter taught.

(c) by no later than the applicable implementation date, consideration of student growth as a significant factor in the rating of the teacher's performance.

(d) prior to September 1, 2012, rating of the performance of teachers in contractual continued service as either:

(i) "excellent", "satisfactory" or "unsatisfactory"; or

(ii) "excellent", "proficient", "needs improvement" or "unsatisfactory".

(e) on and after September 1, 2012, rating of the performance of all teachers as "excellent", "proficient", "needs improvement" or "unsatisfactory".

(f) specification as to the teacher's strengths and weaknesses, with supporting reasons for the comments made.

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(g) inclusion of a copy of the evaluation in the teacher's personnel file and provision of a copy to the teacher.

(h) within 30 school days after the completion of an evaluation rating a teacher in contractual continued service as "needs improvement", development by the evaluator, in consultation with the teacher, and taking into account the teacher's on-going professional responsibilities including his or her regular teaching assignments, of a professional development plan directed to the areas that need improvement and any supports that the district will provide to address the areas identified as needing improvement.

(i) within 30 school days after completion of an evaluation rating a teacher in contractual continued service as "unsatisfactory", development and commencement by the district of a remediation plan designed to correct deficiencies cited, provided the deficiencies are deemed remediable. In all school districts the remediation plan for unsatisfactory, tenured teachers shall provide for 90 school days of remediation within the classroom, unless an applicable collective bargaining agreement provides for a shorter duration. In all school districts evaluations issued pursuant to this Section shall be issued within 10 days after the conclusion of the respective remediation plan. However, the school board or other governing authority of the district shall not lose jurisdiction to discharge a teacher in the event the evaluation is not issued within 10 days after the conclusion of the respective remediation plan.

(j) participation in the remediation plan by the teacher in contractual continued service rated "unsatisfactory", an evaluator and a consulting teacher selected by the evaluator of the teacher who was rated "unsatisfactory", which consulting teacher is an educational employee as defined in the Educational Labor Relations Act, has at least 5 years' teaching experience, and a reasonable familiarity with the assignment of the teacher being evaluated, and who received an "excellent" rating on his or her most recent evaluation. Where no teachers who meet these criteria are available within the district, the district shall request and the applicable regional office of education shall supply, to participate in the remediation process, an individual who meets these criteria.

In a district having a population of less than 500,000 with an exclusive bargaining agent, the bargaining agent may, if it so chooses, supply a roster of qualified teachers from whom the consulting teacher is to be selected. That roster shall, however, contain the names of at least 5 teachers, each of whom meets the criteria for consulting teacher with regard to the teacher being evaluated, or the names of all teachers so qualified if that number is less than 5. In the event of a dispute as to qualification, the State Board shall determine qualification.

(k) a mid-point and final evaluation by an evaluator during and at the end of the remediation period, immediately following receipt of a remediation plan provided for under subsections (i) and (j) of this Section. Each evaluation shall assess the teacher's performance during the time period since the prior evaluation; provided that the last evaluation shall also include an overall evaluation of the teacher's performance during the remediation period. A written copy of the evaluations and ratings, in which any deficiencies in performance and recommendations for correction are identified, shall be provided to and discussed with the teacher within 10 school days after the date of the

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evaluation, unless an applicable collective bargaining agreement provides to the contrary. These subsequent evaluations shall be conducted by an evaluator. The consulting teacher shall provide advice to the teacher rated "unsatisfactory" on how to improve teaching skills and to successfully complete the remediation plan. The consulting teacher shall participate in developing the remediation plan, but the final decision as to the evaluation shall be done solely by the evaluator, unless an applicable collective bargaining agreement provides to the contrary. Evaluations at the conclusion of the remediation process shall be separate and distinct from the required annual evaluations of teachers and shall not be subject to the guidelines and procedures relating to those annual evaluations. The evaluator may but is not required to use the forms provided for the annual evaluation of teachers in the district's evaluation plan.

(l) reinstatement to the evaluation schedule set forth in the district's evaluation plan for any teacher in contractual continued service who achieves a rating equal to or better than "satisfactory" or "proficient" in the school year following a rating of "needs improvement" or "unsatisfactory".

(m) dismissal in accordance with subsection (d) of Section 24-12 or Section 24-16.5 or 34-85 of this Code [105 ILCS 5/24-12 or 105 ILCS 5/24-16.5 or 105 ILCS 5/34-85] of any teacher who fails to complete any applicable remediation plan with a rating equal to or better than a "satisfactory" or "proficient" rating. Districts and teachers subject to dismissal hearings are precluded from compelling the testimony of consulting teachers at such hearings under subsection (d) of Section 24-12 or Section 24-16.5 or 34-85 of this Code, either as to the rating process or for opinions of performances by teachers under remediation.

(n) After the implementation date of an evaluation system for teachers in a district as specified in Section 24A-2.5 of this Code [105 ILCS 5/24A-2.5], if a teacher in contractual continued service successfully completes a remediation plan following a rating of 'unsatisfactory' and receives a subsequent rating of 'unsatisfactory' in any of the teacher's annual or biannual overall performance evaluation ratings received during the 36-month period following the teacher's completion of the remediation plan, then the school district may forego remediation and seek dismissal in accordance with subsection (d) of Section 24-12 or Section 34-85 of this Code.

Nothing in this Section or Section 24A-4 [105 ILCS 5/24A-4] shall be construed as preventing immediate dismissal of a teacher for deficiencies which are deemed irremediable or for actions which are injurious to or endanger the health or person of students in the classroom or school, or preventing the dismissal or non-renewal of teachers not in contractual continued service for any reason not prohibited by applicable employment, labor, and civil rights laws. Failure to strictly comply with the time requirements contained in Section 24A-5 [105 ILCS 5/24A-5] shall not invalidate the results of the remediation plan.

(Source: P.A. 85-1418; 86-1477; 89-15, § 5; 90-548, § 5-915; 90-653, § 10; 95-510, § 10; 96-861, § 10; 96-1423, § 5; 97-8, § 5.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24A-5.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, in subsection (f), in the first sentence, deleted "the subdistrict superintendent" preceding "an administrator qualified under", in the third sentence, substituted "6 months" for "one year" and added the fifth and sixth sentences; in subsection (g), in the second paragraph, in the first sentence, inserted "having a population of less than 500,000"; in subsection (h), added the fifth, sixth and seventh sentences; and in subsection (i), substituted "6-months" for "one-year".

The 1997 amendment by P.A. 90-548, effective January 1, 1998, in subsection (f), in the second sentence, inserted "all", deleted "having a population exceeding 500,000" preceding "the remediation", substituted "90 school" for "45" and deleted "school" preceding "remediation", deleted the former third and fourth sentences, regarding additional remediation, in the present third sentence added "In all school districts" at the beginning and deleted "in school districts having a population exceeding 500,000" and in the fourth sentence added "However" at the beginning; in subsection (i) substituted "90" for "45" and deleted "or extended plan of up to 6 months" preceding "with a"; and in the sixth paragraph, rewrote the first sentence which read "In districts subject to a collective bargaining agreement as of August 1, 1985, the provisions of this Section shall go into effect only upon expiration of that agreement".

The 1998 amendment by P.A. 90-653, effective July 29, 1998, incorporated the amendments by P.A. 90-548; rewrote the language preceding the proviso in the first sentence in subsection (h); and substituted "90 school day" for "1 year" in subsection (i).

The 2007 amendment by P.A. 95-510, effective August 28, 2007, added the first sentence of the first paragraph.

The 2010 amendment by P.A. 96-861, effective January 15, 2010, rewrote the section.

The 2010 amendment by P.A. 96-1423, effective August 3, 2010, in the sixth paragraph, inserted "school" in the first sentence of subsection (i) and substituted "applicable regional office of education" for "State Board of Education" in the last sentence of the first paragraph of subsection (j).

The 2011 amendment by P.A. 97-8, effective June 13, 2011, deleted "in contractual continued service" following "teachers" in (e); in (m), inserted "subsection (d) of" twice, inserted "Section 24-16.5 or" twice, substituted "this Code" for "the School Code" in the first sentence, and inserted "of this Code" in the second sentence; and added (n).

CASE NOTES

Analysis

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Cause for Dismissal
Consulting Teacher
Evaluation

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Administrative Code Provisions

The waiver provisions of the Administrative Code, 23 Ill.Adm.Code § 52.90, is limited in scope to the procedures outlined in Part 52 of the Administrative Code and does not apply to procedural requirements contained in the School Code of the Handbook. Chicago Bd. of Educ. v. Smith, 279 Ill. App. 3d 26, 215 Ill. Dec. 716, 664 N.E.2d 113 (1 Dist. 1996).

Cause for Dismissal

Board of education's discharge of a tenured teacher, pursuant to 105 ILCS 5/24A-5(j) and 105 ILCS 5/34-85 following the teacher's unsatisfactory rating, after a remediation period imposed due to chronic classroom mismanagement problems, was proper, was not against the manifest weight of the evidence. Raitzik v. Bd. of Educ., 356 Ill. App. 3d 813, 292 Ill. Dec. 427, 826 N.E.2d 568, 2005 Ill. App. LEXIS 241 (1 Dist. 2005).

When a tenured teacher completed his remediation plan with an unsatisfactory rating, such rating constituted cause for dismissal. Davis v. Board of Educ., 276 Ill. App. 3d 693, 213 Ill. Dec. 456, 659 N.E.2d 86 (1 Dist. 1995).

Consulting Teacher

A certified consulting teacher's status as department chair did not disqualify him from serving as the statutorily mandated consulting teacher. Davis v. Board of Educ., 276 Ill. App. 3d 693, 213 Ill. Dec. 456, 659 N.E.2d 86 (1 Dist. 1995).

Evaluation

Document which school principal gave defendant did not comply with the requirements of the School Code and the Handbook regarding evaluations and ratings where it simply listed almost verbatim the items from the remediation plan and a statement the items had not been complied with. Chicago Bd. of Educ. v. Smith, 279 Ill. App. 3d 26, 215 Ill. Dec. 716, 664 N.E.2d 113 (1 Dist. 1996).

Irremediable Conduct Defined

A teacher's conduct is irremediable if it (1) has caused significant damage to students, the faculty, or the school and (2) could not have been corrected even if superiors had given the teacher the

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statutorily prescribed warning. Board of Educ. v. Harris, 218 Ill. App. 3d 1017, 161 Ill. Dec. 598, 578 N.E.2d 1244 (1 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 914, 584 N.E.2d 126 (1991).

Individual acts, separately remediable, may be irremediable when considered in totality; they must have long continued, and a court may consider whether the cause for dismissal is itself irremediable and whether the teacher demonstrated willingness to correct the conduct. Board of Educ. v. Harris, 218 Ill. App. 3d 1017, 161 Ill. Dec. 598, 578 N.E.2d 1244 (1 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 914, 584 N.E.2d 126 (1991).

Mandatory Bargaining

The substantive criteria, weight, and areas evaluated, including the decision as to whether an instructor has successfully completed a remediation plan and his subsequent rating, are not subject to mandatory bargaining; however, the mechanical procedures involved in the evaluation process and the remediation plan are subject to mandatory bargaining. Board of Educ. v. Illinois Educ. Labor Relations Bd., 199 Ill. App. 3d 347, 145 Ill. Dec. 239, 556 N.E.2d 857 (4 Dist. 1990).

Notice and Warning

If the causes for dismissal of a teacher may be deemed remediable, the local board is not to serve notice of charges unless the the teacher has first been given reasonable written warning, specifying the causes that, if not removed, might result in charges; however, as stated in this section, the warning requirement does not apply if the teacher's deficiencies are deemed irremediable. Board of Educ. v. Harris, 218 Ill. App. 3d 1017, 161 Ill. Dec. 598, 578 N.E.2d 1244 (1 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 914, 584 N.E.2d 126 (1991).

Procedure

- Exhaustion of Administrative Remedy

Where plaintiff had an administrative review remedy available to her claim that her evaluation and remediation programs were conducted in a manner contrary to the school code, there was no clear need for a civil action; the trial court did not err in dismissing complaint for failure to state a private right of action. Dudley v. Board of Educ., 260 Ill. App. 3d 1100, 198 Ill. Dec. 35, 632 N.E.2d 94 (1 Dist. 1994).

Rating Scheme

Language in 105 ILCS 5/24A-5(c) regarding the three categories for rating teacher performance is mandatory, thus, where a school district used a two category system, that did not include an "unsatisfactory" rating, placement of a teacher on remediation was improper as was her termination when she failed to perform as required by her remediation plan. Buchna v. Ill. State Bd. of Educ., 342 Ill. App. 3d 934, 277 Ill. Dec. 377, 795 N.E.2d 1045, 2003 Ill. App. LEXIS 1082 (3 Dist. 2003), appeal denied, 206 Ill. 2d 618, 282 Ill. Dec. 476, 806 N.E.2d 1064 (2003).

Remediation Plans

Any ambiguity concerning the appropriate length of time for remediation was resolved with the passage of Article 24A, which specifically prescribes a 45-day remediation period for Chicago

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school teachers. Davis v. Board of Educ., 276 Ill. App. 3d 693, 213 Ill. Dec. 456, 659 N.E.2d 86 (1 Dist. 1995).

This section clearly vests the principal and consulting teacher with the power to make the determination to extend a teacher's remediation period beyond 45 days. Davis v. Board of Educ., 276 Ill. App. 3d 693, 213 Ill. Dec. 456, 659 N.E.2d 86 (1 Dist. 1995).

The trial court erred in finding that school boards are solely responsible for remediation plans; the district administrators are permitted under the statute to develop the individual teacher's remedial plans under the overall supervision of the school board. Powell v. Board of Educ., 189 Ill. App. 3d 802, 137 Ill. Dec. 114, 545 N.E.2d 767 (3 Dist. 1989).

Teacher Dismissal Upheld

Teacher's contention that a principal and a board of education violated her due process rights under the School Code and the Illinois Administrative Code after the teacher was discharged from her employment as a tenured school teacher after receiving an unsatisfactory rating following a 90-day remediation period was meritless as the principal properly conducted more than the statutorily required monthly evaluations of the teacher during the remediation period and completed a form regarding the teacher's strength's and weaknesses following each evaluation. Raitzik v. Bd. of Educ., 356 Ill. App. 3d 813, 292 Ill. Dec. 427, 826 N.E.2d 568, 2005 Ill. App. LEXIS 241 (1 Dist. 2005).

Termination

- Irremediable Conduct

A hearing officer is not required to find a tenured teacher's conduct was irremediable in order to sustain a termination. Davis v. Board of Educ., 276 Ill. App. 3d 693, 213 Ill. Dec. 456, 659 N.E.2d 86 (1 Dist. 1995).

Waiver of Objection

Teacher did not waive her right to object to errors in the evaluation process even though she proceeded with a hearing without raising the objection since the waiver provisions, 23 Ill.Adm.Code § 52.90, do not apply to the procedural requirements in the School Code. Chicago Bd. of Educ. v. Smith, 279 Ill. App. 3d 26, 215 Ill. Dec. 716, 664 N.E.2d 113 (1 Dist. 1996).

LEGAL PERIODICALS

For article, "Dismissal of Tenured Teachers in Illinois: Evolution of a Viable System," see 1990 U. Ill. L. Rev. 1.

For article, "Survey of Illinois Law: Employment Law," see, 28 S. Ill. U.L.J. 705 (2004).

For article, "Survey of Illinois Law: Significant Developments in Education Law 2003- 2004," see, 29 S. Ill. U.L.J. 603 (2005).

§ 105 ILCS 5/24A-6: Repealed by P.A. 96-861, § 20, effective January 15, 2010.

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§ 105 ILCS 5/24A-7. Rules

Sec. 24A-7. Rules. The State Board of Education is authorized to adopt such rules as are deemed necessary to implement and accomplish the purposes and provisions of this Article, including, but not limited to, rules (i) relating to the methods for measuring student growth (including, but not limited to, limitations on the age of useable data; the amount of data needed to reliably and validly measure growth for the purpose of teacher and principal evaluations; and whether and at what time annual State assessments may be used as one of multiple measures of student growth), (ii) defining the term "significant factor" for purposes of including consideration of student growth in performance ratings, (iii) controlling for such factors as student characteristics (including, but not limited to, students receiving special education and English Language Learner services), student attendance, and student mobility so as to best measure the impact that a teacher, principal, school and school district has on students' academic achievement, (iv) establishing minimum requirements for district teacher and principal evaluation instruments and procedures, and (v) establishing a model evaluation plan for use by school districts in which student growth shall comprise 50% of the performance rating. Notwithstanding any provision in this Section, such rules shall not preclude a school district having 500,000 or more inhabitants from using an annual State assessment as the sole measure of student growth for purposes of teacher or principal evaluations.

The rules shall be developed through a process involving collaboration with a Performance Evaluation Advisory Council, which shall be convened and staffed by the State Board of Education. Members of the Council shall be selected by the State Superintendent and include, without limitation, representatives of teacher unions and school district management, persons with expertise in performance evaluation processes and systems, as well as other stakeholders. The Performance Evaluation Advisory Council shall meet at least quarterly following the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-861] until June 30, 2017.

Prior to the applicable implementation date, these rules shall not apply to teachers assigned to schools identified in an agreement entered into between the board of a school district operating under Article 34 of this Code [105 ILCS 5/34-1 et seq.] and the exclusive representative of the district's teachers in accordance with Section 34-85c of this Code [105 ILCS 5/34-85c].

(Source: P.A. 84-972; 95-510, § 10; 96-861, § 10; 96-1423, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24A-7.

Effect of Amendments. The 2007 amendment by P.A. 95-510, effective August 28, 2007, added the exception language.

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The 2010 amendment by P.A. 96-861, effective January 15, 2010, rewrote the section.

The 2010 amendment by P.A. 96-1423, effective August 3, 2010, inserted "such" in the last sentence of the first paragraph.

§ 105 ILCS 5/24A-7.1. Teacher, principal, and superintendent performance evaluations

Sec. 24A-7.1. Teacher, principal, and superintendent performance evaluations. Except as otherwise provided under this Act, disclosure of public school teacher, principal, and superintendent performance evaluations is prohibited.

(Source: P.A. 96-861, § 10.)

Effective Date. Section 99 of P.A. 96-861 made this section effective upon becoming law. The Act was approved January 15, 2010.

§ 105 ILCS 5/24A-8. Evaluation of teachers not in contractual continued service

Sec. 24A-8. Evaluation of teachers not in contractual continued service. Each teacher not in contractual continued service shall be evaluated at least once each school year.

(Source: P.A. 84-1419; 96-861, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 24A-8.

Effect of Amendments. The 2010 amendment by P.A. 96-861, effective January 15, 2010, deleted "Beginning with the 1987-88 school year" at the beginning of the paragraph.

§ 105 ILCS 5/24A-15. Development of evaluation plan for principals and assistant principals

Sec. 24A-15. Development of evaluation plan for principals and assistant principals. (a) Each school year thereafter, each school district, except for a school district organized under Article 34 of this Code [105 ILCS 5/34-1 et seq.], shall establish a principal and

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assistant principal evaluation plan in accordance with this Section. The plan must ensure that each principal and assistant principal is evaluated as follows:

(1) For a principal or assistant principal on a single-year contract, the evaluation must take place by March 1 of each year.

(2) For a principal or assistant principal on a multi-year contract under Section 10-23.8a of this Code, the evaluation must take place by March 1 of the final year of the contract.

On and after September 1, 2012, the plan must:

(i) rate the principal's or assistant principal's performance as "excellent", "proficient", "needs improvement" or "unsatisfactory"; and

(ii) ensure that each principal and assistant principal is evaluated at least once every school year.

Nothing in this Section prohibits a school district from conducting additional evaluations of principals and assistant principals.

(b) The evaluation for a principal shall include a description of the principal's or assistant principal's duties and responsibilities and the standards to which the principal or assistant principal is expected to conform.

(c) The evaluation for a principal must be performed by the district superintendent, the superintendent's designee, or, in the absence of the superintendent or his or her designee, an individual appointed by the school board who holds a registered Type 75 State administrative certificate.

Prior to September 1, 2012, the evaluation must be in writing and must at least do all of the following:

(1) Consider the principal's specific duties, responsibilities, management, and competence as a principal.

(2) Specify the principal's strengths and weaknesses, with supporting reasons.

(3) Align with research-based standards established by administrative rule.

On and after September 1, 2012, the evaluation must, in addition to the requirements in items (1), (2), and (3) of this subsection (c), provide for the use of data and indicators on student growth as a significant factor in rating performance.

(c-5) The evaluation of an assistant principal must be performed by the principal, the district superintendent, the superintendent's designee, or, in the absence of the superintendent or his or her designee, an individual appointed by the school board who holds a registered Type 75 State administrative certificate. The evaluation must be in writing and must at least do all of the following:

(1) Consider the assistant principal's specific duties, responsibilities, management, and competence as an assistant principal.

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(2) Specify the assistant principal's strengths and weaknesses with supporting reasons.

(3) Align with the Illinois Professional Standards for School Leaders or research-based district standards. On and after September 1, 2012, the evaluation must, in addition to the requirements in items (1), (2), and (3) of this subsection (c-5), provide for the use of data and indicators on student growth as a significant factor in rating performance.

(d) One copy of the evaluation must be included in the principal's or assistant principal's personnel file and one copy of the evaluation must be provided to the principal or assistant principal.

(e) Failure by a district to evaluate a principal or assistant principal and to provide the principal or assistant principal with a copy of the evaluation at least once during the term of the principal's or assistant principal's contract, in accordance with this Section, is evidence that the principal or assistant principal is performing duties and responsibilities in at least a satisfactory manner and shall serve to automatically extend the principal's or assistant principal's contract for a period of one year after the contract would otherwise expire, under the same terms and conditions as the prior year's contract. The requirements in this Section are in addition to the right of a school board to reclassify a principal or assistant principal pursuant to Section 10-23.8b of this Code [105 ILCS 5/10-23.8b].

(f) Nothing in this Section prohibits a school board from ordering lateral transfers of principals or assistant principals to positions of similar rank and salary.

(Source: P.A. 94-1039, § 5; 96-861, § 10; 97-217, § 5.)

Effective Date. Section 99 of P.A. 94-1039 made the section effective upon becoming law. The Act was approved July 20, 2006.

Effect of Amendments. The 2010 amendment by P.A. 96-861, effective January 15, 2010, deleted "and submission" following "Development" in the section heading; deleted "Beginning with the 2006-2007 school year and each school year thereafter" in the introductory paragraph of (a); substituted "March 1" for "February 1" in (a)(1) and (a)(2); added the second paragraph in (a)(2); Added "Prior to September 1, 2012" at the beginning of the second paragraph of (c); rewrote (c)(3); and added the last paragraph of (c).

The 2011 amendment by P.A. 97-217, effective July 28, 2011, added "and assistant principal" or variants to the end of the section heading and twice in the introductory language of (a), in (a)(2)(ii), and the second paragraph of (a); added "or assistant principal" or variants throughout the section; inserted "for a principal" in the first paragraph of (c); and inserted (c-5).

§ 105 ILCS 5/24A-20. State Board of Education data collection and evaluation assessment and support systems

Sec. 24A-20. State Board of Education data collection and evaluation assessment and support systems. (a) On or before the date established in subsection (b) of this Section,

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the State Board of Education shall, through a process involving collaboration with the Performance Evaluation Advisory Council, develop or contract for the development of and implement all of the following data collection and evaluation assessment and support systems:

(1) A system to annually collect and publish data by district and school on teacher and administrator performance evaluation outcomes. The system must ensure that no teacher or administrator can be personally identified by publicly reported data.

(2) Both a teacher and principal model evaluation template. The model templates must incorporate the requirements of this Article and any other requirements established by the State Board by administrative rule, but allow customization by districts in a manner that does not conflict with such requirements.

(3) An evaluator pre-qualification program based on the model teacher evaluation template.

(4) An evaluator training program based on the model teacher evaluation template. The training program shall provide multiple training options that account for the prior training and experience of the evaluator.

(5) A superintendent training program based on the model principal evaluation template.

(6) One or more instruments to provide feedback to principals on the instructional environment within a school.

(7) A State Board-provided or approved technical assistance system that supports districts with the development and implementation of teacher and principal evaluation systems.

(8) Web-based systems and tools supporting implementation of the model templates and the evaluator pre-qualification and training programs.

(9) A process for measuring and reporting correlations between local principal and teacher evaluations and (A) student growth in tested grades and subjects and (B) retention rates of teachers.

(10) A process for assessing whether school district evaluation systems developed pursuant to this Act and that consider student growth as a significant factor in the rating of a teacher's and principal's performance are valid and reliable, contribute to the development of staff, and improve student achievement outcomes. By no later than September 1, 2014, a research-based study shall be issued assessing such systems for validity and reliability, contribution to the development of staff, and improvement of student performance and recommending, based on the results of this study, changes, if any, that need to be incorporated into teacher and principal evaluation systems that consider student growth as a significant factor in the rating performance for remaining school districts to be required to implement such systems.

(b) If the State of Illinois receives a Race to the Top Grant, the data collection and support systems described in subsection (a) must be developed on or before September 30, 2011. If the State of Illinois does not receive a Race to the Top Grant, the data

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collection and support systems described in subsection (a) must be developed on or before September 30, 2012; provided, however, that the data collection and support systems set forth in items (3) and (4) of subsection (a) of this Section must be developed by September 30, 2011 regardless of whether the State of Illinois receives a Race to the Top Grant. By no later than September 1, 2011, if the State of Illinois receives a Race to the Top Grant, or September 1, 2012, if the State of Illinois does not receive a Race to the Top Grant, the State Board of Education must execute or contract for the execution of the assessment referenced in item (10) of subsection (a) of this Section to determine whether the school district evaluation systems developed pursuant to this Act have been valid and reliable, contributed to the development of staff, and improved student performance.

(c) Districts shall submit data and information to the State Board on teacher and principal performance evaluations and evaluation plans in accordance with procedures and requirements for submissions established by the State Board. Such data shall include, without limitation, (i) data on the performance rating given to all teachers in contractual continued service, (ii) data on district recommendations to renew or not renew teachers not in contractual continued service, and (iii) data on the performance rating given to all principals.

(d) If the State Board of Education does not timely fulfill any of the requirements set forth in Sections 24A-7 and 24A-20 [105 ILCS 5/24A-7 and 105 ILCS 5/24A-20], and adequate and sustainable federal, State, or other funds are not provided to the State Board of Education and school districts to meet their responsibilities under this Article, the applicable implementation date shall be postponed by the number of calendar days equal to those needed by the State Board of Education to fulfill such requirements and for the adequate and sustainable funds to be provided to the State Board of Education and school districts. The determination as to whether the State Board of Education has fulfilled any or all requirements set forth in Sections 24A-7 and 24A-20 and whether adequate and sustainable funds have been provided to the State Board of Education and school districts shall be made by the State Board of Education in consultation with the P-20 Council.

(Source: P.A. 96-861, § 10.)

Effective Date. Section 99 of P.A. 96-861 made this section effective upon becoming law. The Act was approved January 15, 2010.

Article 25.

[Reserved]

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Article 26.

Pupils - Compulsory Attendance

§ 105 ILCS 5/26-1. Compulsory school age-Exemptions

Sec. 26-1. Compulsory school age-Exemptions. Whoever has custody or control of any child between the ages of 7 and 17 years (unless the child has already graduated from high school) shall cause such child to attend some public school in the district wherein the child resides the entire time it is in session during the regular school term, except as provided in Section 10-19.1 [105 ILCS 5/10-19.1], and during a required summer school program established under Section 10-22.33B [105 ILCS 5/10-22.33B]; provided, that the following children shall not be required to attend the public schools:

1.Any child attending a private or a parochial school where children are taught the branches of education taught to children of corresponding age and grade in the public schools, and where the instruction of the child in the branches of education is in the English language;

2.Any child who is physically or mentally unable to attend school, such disability being certified to the county or district truant officer by a competent physician licensed in Illinois to practice medicine and surgery in all its branches, a chiropractic physician licensed under the Medical Practice Act of 1987 [225 ILCS 60/1 et seq.], an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations, a physician assistant who has been delegated the authority to perform health examinations by his or her supervising physician, or a Christian Science practitioner residing in this State and listed in the Christian Science Journal; or who is excused for temporary absence for cause by the principal or teacher of the school which the child attends; the exemptions in this paragraph (2) do not apply to any female who is pregnant or the mother of one or more children, except where a female is unable to attend school due to a complication arising from her pregnancy and the existence of such complication is certified to the county or district truant officer by a competent physician;

3.Any child necessarily and lawfully employed according to the provisions of the law regulating child labor may be excused from attendance at school by the county

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superintendent of schools or the superintendent of the public school which the child should be attending, on certification of the facts by and the recommendation of the school board of the public school district in which the child resides. In districts having part time continuation schools, children so excused shall attend such schools at least 8 hours each week;

4.Any child over 12 and under 14 years of age while in attendance at confirmation classes;

5.Any child absent from a public school on a particular day or days or at a particular time of day for the reason that he is unable to attend classes or to participate in any examination, study or work requirements on a particular day or days or at a particular time of day, because the tenets of his religion forbid secular activity on a particular day or days or at a particular time of day. Each school board shall prescribe rules and regulations relative to absences for religious holidays including, but not limited to, a list of religious holidays on which it shall be mandatory to excuse a child; but nothing in this paragraph 5 shall be construed to limit the right of any school board, at its discretion, to excuse an absence on any other day by reason of the observance of a religious holiday. A school board may require the parent or guardian of a child who is to be excused from attending school due to the observance of a religious holiday to give notice, not exceeding 5 days, of the child's absence to the school principal or other school personnel. Any child excused from attending school under this paragraph 5 shall not be required to submit a written excuse for such absence after returning to school; and

6.Any child 16 years of age or older who (i) submits to a school district evidence of necessary and lawful employment pursuant to paragraph 3 of this Section and (ii) is enrolled in a graduation incentives program pursuant to Section 26-16 of this Code [105 ILCS 5/26-16] or an alternative learning opportunities program established pursuant to Article 13B of this Code [105 ILCS 5/13B].

(Source: P.A. 84-1338; 89-610, § 5; 93-858, § 5; 94-350, § 5; 96-367, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-1.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 120.230, 3040.110.

Effect of Amendments. The 1996 amendment by P.A. 89-610, effective August 6, 1996, in the introductory language inserted "and during a required summer school program established under Section 10-22.33B".

The 2004 amendment by P.A. 93-858, effective January 1, 2005, in the introductory paragraph substituted "17" for "16" and inserted the parenthetical; and added paragraph (6).

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The 2005 amendment by P.A. 94-350, effective July 28, 2005, added language in 2 beginning "licensed in Illinois" and ending "her supervising physician".

The 2009 amendment by P.A. 96-367, effective August 13, 2009, added "a chiropractic physician licensed under the Medical Practice Act of 1987" in (2).

CASE NOTES

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Constitutionality

This section is constitutional under U.S. Const., Amends. I, V, and XIV. Scoma v. Chicago Bd. of Educ., 391 F. Supp. 452 (N.D. Ill. 1974).

Construction

This section merely has the effect of requiring a minor's custodian to send the child to school while he is of a certain age; it cannot be construed as a straitjacket that would preclude a court in a juvenile proceeding from making an appropriate dispositional order. In re White, 103 Ill. App. 3d 105, 58 Ill. Dec. 50, 429 N.E.2d 1383 (4 Dist. 1982).

The term "private school" as a lawful substitute for public schooling has been extended to include home schooling, where the teacher is competent, the required subjects are taught, and the child receives an education at least equivalent to public schooling. People v. Harrell, 34 Ill. App. 2d 205, 180 N.E.2d 889 (4 Dist. 1962).

Contempt

A contempt sanction cannot be predicated on the violation of a void order. People v. A.M., 128 Ill. App. 3d 100, 83 Ill. Dec. 303, 470 N.E.2d 58 (1 Dist. 1984).

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The court was not in error in treating the contempt order imposed against habitually truant minor as criminal rather than civil and, for that reason, its action (placing the minor on probation for a period of one year subject to 60 days' incarceration and ordering him to pay court costs) was not too severe. People v. G.B., 88 Ill. App. 3d 64, 43 Ill. Dec. 410, 410 N.E.2d 410 (4 Dist. 1980), rev'd on other grounds, 88 Ill. 2d 36, 58 Ill. Dec. 845, 430 N.E.2d 1096 (1981), cert. denied, 456 U.S. 963, 102 S. Ct. 2041, 72 L. Ed. 2d 487 (1982).

Jurisdiction

When complaints were filed against minors' mothers and not the minors, the minor respondents did not "appear" before the court and consequently, did not waive their objections to the court's exercise of jurisdiction; accordingly, the circuit court was without jurisdiction to enter orders requiring them to attend school, and the orders were void. People v. A.M., 128 Ill. App. 3d 100, 83 Ill. Dec. 303, 470 N.E.2d 58 (1 Dist. 1984).

Purpose

105 ILCS 5/26-2, appears to be an administrative measure designed to prevent problems from arising in the maintenance of attendance and credit records of those children under 7 years and over 16 years who, by reason on their ages, are not compelled to attend school under this section, but who are nevertheless enrolled in a public school. Morton v. Board of Educ., 69 Ill. App. 2d 38, 216 N.E.2d 305 (1 Dist. 1966).

Since the object of the compulsory attendance law is that all children be educated and not that they be educated in any particular manner or place, part time enrollment in a public school and part time enrollment in a nonpublic school is permitted by this section, so long as the child receives a complete education. Morton v. Board of Educ., 69 Ill. App. 2d 38, 216 N.E.2d 305 (1 Dist. 1966).

Compulsory education laws are enacted to enforce the natural obligation of parents to provide an education for their young, an obligation which corresponds to the parents' right of control over the child; the object is that all children shall be educated, not that they shall be educated in any particular manner or place. People v. Levisen, 404 Ill. 574, 90 N.E.2d 213 (1950).

This law is not made to punish those who provide their children with instruction equal or superior to that obtainable in the public schools; it is made for the parent who fails or refuses to properly educate his child. People v. Levisen, 404 Ill. 574, 90 N.E.2d 213 (1950).

Requirements

- Dual Enrollment Program

While this section requires private and parochial schools to offer a full curriculum of studies comparable to those offered in the public schools to children of corresponding age and grade, it did not follow that the children must be in full time attendance at any particular school. Morton v. Board of Educ., 69 Ill. App. 2d 38, 216 N.E.2d 305 (1 Dist. 1966).

Standing

Where student failed to establish that she was in any way aggrieved by the grade reduction policy which she sought to invalidate, student lacked standing to maintain the action. Hamer ex rel. Hamer v. Board of Educ., 140 Ill. App. 3d 308, 94 Ill. Dec. 849, 488 N.E.2d 1096 (2 Dist. 1986).

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Truancy

- Evidence Sufficient

The evidence clearly supported that a student's parents were guilty of permitting their child's truancy where the child only attended high school 121/2 days out of 352 school days during two academic years, and although the child saw 13 doctors in a two year period, there was no evidence that a single doctor thought her unable to attend school, no medical certificate was ever received by school personnel which indicated that the child had been absent due to illness, or that she was unable to attend school, and the degree of illness established regarding her allergies was not one which would amount to a valid cause for such a protracted absence. People v. Berger, 109 Ill. App. 3d 1054, 65 Ill. Dec. 600, 441 N.E.2d 915 (2 Dist. 1982).

Violation

- Burden of Proof

Those parents who prefer a home schooling method as a substitute for attendance at the public school have the burden of showing that they have in good faith provided an adequate course of instruction in the prescribed branches of learning; this burden is not satisfied if the evidence fails to show a type of instruction and discipline having the required quality and character. People v. Harrell, 34 Ill. App. 2d 205, 180 N.E.2d 889 (4 Dist. 1962).

Though parents of a seven year old girl who did not attend school, but rather was taught at home, had not been proved guilty of violating this section, the Supreme Court did not imply that parents may, under a pretext of instruction by a private tutor or by the parents themselves, evade their responsibility to educate their children; those who prefer this method as a substitute for attendance at a public school have the burden of showing that they have in good faith provided an adequate course of instruction in the prescribed branches of learning; this burden is not satisfied if the evidence fails to show a type of instruction and discipline having the required quality and character. People v. Levisen, 404 Ill. 574, 90 N.E.2d 213 (1950).

- Not Shown

The dual enrollment program did not violate this section of this Code. Morton v. Board of Educ., 69 Ill. App. 2d 38, 216 N.E.2d 305 (1 Dist. 1966).

- Shown

The jury could properly find from the evidence beyond a reasonable doubt, that the defendants kept their children out of public school before an adequate private school was in existence, and that at the time of the trial the private school was still disorganized, lacking in system, with mostly inexperienced teachers attempting to teach from textbooks without uniformity; thus, there could be no reasonable doubt the defendants were guilty of violating the law. People v. Harrell, 34 Ill. App. 2d 205, 180 N.E.2d 889 (4 Dist. 1962).

OPINIONS OF ATTORNEY GENERAL

Child with Disabilities

- Home Schooling Permitted

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Parents may legally educate their disabled child at home school, provided that the child receives an adequate course of instruction in the subjects taught to children of his age and ability in the public schools. 1991 Op. Atty. Gen. 45.

Parents of a child with disabilities may elect to educate their child in home school if the education provided is equivalent to that which a child of similar abilities receives in the public schools. 1991 Op. Atty. Gen. 45.

LEGAL PERIODICALS

For note, "What's in a Name? Nothing Good if it's Friday: The Seventh Circuit Invalidates Good Friday Public School Holiday," see 29 J. Marshall L. Rev. 1031 (1996).

For note, "Public School Fees in Illinois: A Re-Examination of Constitutional and Policy Questions," see 1984 U. Ill. L. Rev. 99.

RESEARCH REFERENCES

Validity, construction, and application of statute, regulation, or policy governing home schooling or affecting rights of home-schooled students. 70 ALR5th 169.

§ 105 ILCS 5/26-2. Enrolled pupils below 7 or over 17

Sec. 26-2. Enrolled pupils below 7 or over 17. (a) Any person having custody or control of a child who is below the age of 7 years or is 17 years of age or above and who is enrolled in any of grades kindergarten through 12 in the public school shall cause him to attend the public school in the district wherein he resides when it is in session during the regular school term, unless he is excused under paragraph 2, 3, 4, 5, or 6 of Section 26-1 [105 ILCS 5/26-1].

(b) A school district shall deny reenrollment in its secondary schools to any child 19 years of age or above who has dropped out of school and who could not, because of age and lack of credits, attend classes during the normal school year and graduate before his or her twenty-first birthday. A district may, however, enroll the child in a graduation incentives program under Section 26-16 of this Code [105 ILCS 5/26-16] or an alternative learning opportunities program established under Article 13B [105 ILCS 5/13B]. No child shall be denied reenrollment for the above reasons unless the school district first offers the child due process as required in cases of expulsion under Section 10-22.6 [105 ILCS 5/10-22.6]. If a child is denied reenrollment after being provided with due process, the school district must provide counseling to that child and must direct that child to alternative educational programs, including adult education programs, that lead to graduation or receipt of a GED diploma.

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(c) A school or school district may deny enrollment to a student 17 years of age or older for one semester for failure to meet minimum academic standards if all of the following conditions are met:

(1) The student achieved a grade point average of less than "D" (or its equivalent) in the semester immediately prior to the current semester.

(2) The student and the student's parent or guardian are given written notice warning that the student is failing academically and is subject to denial from enrollment for one semester unless a "D" average (or its equivalent) or better is attained in the current semester.

(3) The parent or guardian is provided with the right to appeal the notice, as determined by the State Board of Education in accordance with due process.

(4) The student is provided with an academic improvement plan and academic remediation services.

(5) The student fails to achieve a "D" average (or its equivalent) or better in the current semester.

A school or school district may deny enrollment to a student 17 years of age or older for one semester for failure to meet minimum attendance standards if all of the following conditions are met:

(1) The student was absent without valid cause for 20% or more of the attendance days in the semester immediately prior to the current semester.

(2) The student and the student's parent or guardian are given written notice warning that the student is subject to denial from enrollment for one semester unless the student is absent without valid cause less than 20% of the attendance days in the current semester.

(3) The student's parent or guardian is provided with the right to appeal the notice, as determined by the State Board of Education in accordance with due process.

(4) The student is provided with attendance remediation services, including without limitation assessment, counseling, and support services.

(5) The student is absent without valid cause for 20% or more of the attendance days in the current semester.

A school or school district may not deny enrollment to a student (or reenrollment to a dropout) who is at least 17 years of age or older but below 19 years for more than one consecutive semester for failure to meet academic or attendance standards.

(d) No child may be denied enrollment or reenrollment under this Section in violation of the Individuals with Disabilities Education Act [20 U.S.C. § 1400 et seq.,] or the Americans with Disabilities Act [42 U.S.C. § 12101 et seq.].

(e) In this subsection (e), "reenrolled student" means a dropout who has reenrolled full-time in a public school. Each school district shall identify, track, and report on the

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educational progress and outcomes of reenrolled students as a subset of the district's required reporting on all enrollments. A reenrolled student who again drops out must not be counted again against a district's dropout rate performance measure. The State Board of Education shall set performance standards for programs serving reenrolled students.

(f) The State Board of Education shall adopt any rules necessary to implement the changes to this Section made by Public Act 93-803.

(Source: P.A. 84-212; 88-199, § 5; 88-555, § 10; 92-42, § 5; 93-803, § 5; 93-858, § 5; 93-1079, § 5; 95-417, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-2.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 205.20.

Effect of Amendments. The 1993 amendment by P.A. 88-199, effective January 1, 1994, added the second paragraph.

The 1994 amendment by P.A. 88-555, effective July 27, 1994, in the second paragraph, in the second sentence substituted "No child shall be" for "For any child who is", inserted "unless" and added at the end "first offers the child due process as required in cases of expulsion under Section 10-22.6", in the second sentence added at the beginning "If a child is denied enrollment after being provided with due process, the school district", inserted "to that child" and substituted "that child" for "the child" and added the third sentence.

The 2001 amendment by P.A. 92-42, effective January 1, 2002, inserted the second sentence in the second paragraph.

The 2004 amendment by P.A. 93-803, effective July 23, 2004, inserted the subsection (a) and (b) designations and subsection (c) through (f); and substituted "19" for "16" in subsection (b).

The 2004 amendment by P.A. 93-858, effective January 1, 2005, substituted references to "17 years of age" for references to "16 years of age" throughout the section and made related changes; in the first paragraph inserted "or 6" near the end and made related changes; and in the second sentence of the second paragraph inserted "a graduation incentives program under Section 26-16 of this Code or".

The 2005 amendment by P.A. 93-1079, effective January 21, 2005, rewrote the section, in part by substituting references to "17 years of age" for references to "16 years of age".

The 2007 amendment by P.A. 95-417, effective June 30, 2007, substituted "kindergarten" for "1" in (a).

CASE NOTES

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Analysis

In General
- Enrollment
Child Molestation
- Duty to Act
Enrollment
- Hourly Attendance
Legislative Intent
Non-Public School Attendance
Purpose

In General

- Enrollment

This section permits part-time enrollment in a public school and part-time enrollment in a non-public school. Morton v. Board of Educ., 69 Ill. App. 2d 38, 216 N.E.2d 305 (1 Dist. 1966).

Child Molestation

- Duty to Act

The plaintiffs' claims of child molestation, failed to state a claim for deprivation of a constitutionally protected liberty interest on the basis of a special relationship between the school defendants and the minor school children, where an affirmative duty to protect that individual would arise only where the state had exercised its power so as to render an individual unable to care for himself or herself. J.O. v. Alton Community Unit Sch. Dist. 11, 909 F.2d 267 (7th Cir. 1990).

Enrollment

- Hourly Attendance

Students who are regularly enrolled in a public school for only a part of the school day may be counted on a basis of one-sixth of a day for every class hour attended pursuant to such enrollment. Morton v. Board of Educ., 69 Ill. App. 2d 38, 216 N.E.2d 305 (1 Dist. 1966).

Legislative Intent

This section does not apply to children enrolled in non-public schools, indicating the legislature intended such children to be governed by the regulations of the particular non-public school administrations wherein such children are enrolled. Morton v. Board of Educ., 69 Ill. App. 2d 38, 216 N.E.2d 305 (1 Dist. 1966).

Non-Public School Attendance

The lack of a "non-public school attendance" exception in this section has no bearing on whether the legislature intended to permit or to prohibit dual enrollment programs. Morton v. Board of Educ., 69 Ill. App. 2d 38, 216 N.E.2d 305 (1 Dist. 1966).

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Purpose

Since the object of the compulsory attendance law is that all children be educated and not that they be educated in any particular manner or place, part-time enrollment in a non-public school is permitted by 105 ILCS 5/26-1, so long as the child receives a complete education. Morton v. Board of Educ., 69 Ill. App. 2d 38, 216 N.E.2d 305 (1 Dist. 1966).

This section appears to be an administrative measure designed to prevent problems from arising in the maintenance of attendance and credit records of those children under 7 years and over 16 years who, by reason of their ages, are not compelled to attend school under 105 ILCS 5/26-1, but who are nevertheless enrolled in a public school. Morton v. Board of Educ., 69 Ill. App. 2d 38, 216 N.E.2d 305 (1 Dist. 1966).

§ 105 ILCS 5/26-2a. [Terms defined]

Sec. 26-2a. A "truant" is defined as a child subject to compulsory school attendance and who is absent without valid cause from such attendance for a school day or portion thereof.

"Valid cause" for absence shall be illness, observance of a religious holiday, death in the immediate family, family emergency, and shall include such other situations beyond the control of the student as determined by the board of education in each district, or such other circumstances which cause reasonable concern to the parent for the safety or health of the student.

"Chronic or habitual truant" shall be defined as a child who is subject to compulsory school attendance and who is absent without valid cause from such attendance for 5% or more of the previous 180 regular attendance days.

"Truant minor" is defined as a chronic truant to whom supportive services, including prevention, diagnostic, intervention and remedial services, alternative programs and other school and community resources have been provided and have failed to result in the cessation of chronic truancy, or have been offered and refused.

A "dropout" is defined as any child enrolled in grades 9 through 12 whose name has been removed from the district enrollment roster for any reason other than the student's death, extended illness, removal for medical non-compliance, expulsion, aging out, graduation, or completion of a program of studies and who has not transferred to another public or private school and is not known to be home-schooled by his or her parents or guardians or continuing school in another country.

"Religion" for the purposes of this Article, includes all aspects of religious observance and practice, as well as belief.

(Source: P.A. 84-1308; 84-1420; 84-1424; 84-1438; 96-1423, § 5; 97-218, § 5.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-2a.

Effect of Amendments. The 2010 amendment by P.A. 96-1423, effective August 3, 2010, in the fifth paragraph, substituted "9 through 12" for "1 through 12," substituted "the student's" for "his," inserted "removal for medical non-compliance, expulsion, aging out," and added "and is not known to be home-schooled by his or her parents or guardians or continuing school in another country" to the end; and made a stylistic change.

The 2011 amendment by P.A. 97-218, effective July 28, 2011, substituted "5%" for "10%" in the definition of Chronic or habitual truant; and made a stylistic change.

CASE NOTES

Analysis

Jurisdiction
Truant
- Excused Absences
- Shown

Jurisdiction

Subject matter jurisdiction of the trial court under former Ill. Rev. Stat., ch. 37, para. 702-3 (see now 705 ILCS 405/2-7, 705 ILCS 405/3-9,705 ILCS 405/4-6, and 705 ILCS 405/5-7) was not lacking when the petition alleged that the minor was an habitual truant even if the petition set forth ultimate facts that were, of themselves, insufficient to support the allegation. People v. K.M.B., 117 Ill. App. 3d 89, 72 Ill. Dec. 623, 452 N.E.2d 876 (4 Dist. 1983).

Truant

- Excused Absences

Although the continuance order's provisions which required minor to attend school under former Ill. Rev. Stat., ch. 37, para. 704-7(6)(k) (see now 705 ILCS 405/2-20, 705 ILCS 405/3-21,705 ILCS 405/4-18, and 705 ILCS 405/5-19) were unnecessarily broad for failure to indicate that certain absences might be excused, there was some inherent implication in the order that noncompliance on reasonable grounds was permitted by the order; however, the record gave no indication that the minor was confused in regard to whether she was required to attend school when she had a reasonable excuse not to do so; therefore, the order of continuance did not contain error. People v. K.M.B., 117 Ill. App. 3d 89, 72 Ill. Dec. 623, 452 N.E.2d 876 (4 Dist. 1983).

- Shown

The evidence clearly supported that a student's parents were guilty of permitting their child's truancy where the child only attended high school 121/2 days out of 352 school days during two academic years, and although the child saw 13 doctors in a two year period, there was no

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evidence that a single doctor thought her unable to attend school, no medical certificate was ever received by school personnel which indicated that the child had been absent due to illness, or that she was unable to attend school, and the degree of illness established regarding her allergies was not one which would amount to a valid cause for such a protracted absence. People v. Berger, 109 Ill. App. 3d 1054, 65 Ill. Dec. 600, 441 N.E.2d 915 (2 Dist. 1982).

§ 105 ILCS 5/26-2b. [Religious holidays; inability to attend school]

Sec. 26-2b. Any child enrolled in a public school who is unable, because of the observance of a religious holiday, to attend classes on a particular day or days or at a particular time of day shall be excused from any examination or any study or work assignments on such particular day or days or at such particular time of day. It shall be the responsibility of the teachers and of the administrative officials of each public school to make available to each child who is absent from school because of the observance of a religious holiday an equivalent opportunity to make up any examination, study or work requirements which he has missed because of such absence on any particular day or days or at any particular time of day. No special fees of any kind shall be charged to the child for making available to such child such equivalent opportunity. No adverse or prejudicial effects shall result to any child because of his availing himself of the provisions of this Section.

The provisions of this Section shall apply only if the rules and regulations of the school board promulgated pursuant to paragraph 5 of Section 26-1 [105 ILCS 5/26-1] have been complied with.

(Source: P.A. 84-212.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-2b.

LEGAL PERIODICALS

For note, "What's in a Name? Nothing Good if it's Friday: The Seventh Circuit Invalidates Good Friday Public School Holiday," see 29 J. Marshall L. Rev. 1031 (1996).

§ 105 ILCS 5/26-3. Teachers furnished list - Report of non-attendance - Report of persons not on list

Sec. 26-3. Teachers furnished list - Report of non-attendance - Report of persons not on list. The clerk or secretary of the school board of all school districts except those

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employing district truant officers shall furnish the superintendent of schools at the beginning of the school year a list of the names and addresses of the children living in the district who come under the provisions of this Article and of persons having custody or control of such children. The superintendent shall at the opening of school and at other times when required by the regional superintendent of schools compare the list with the enrollment of the school or schools and report to the regional superintendent of schools the names of persons having custody or control of children included under the provisions of this Article who are truant or who are chronic or habitual truants for whom supportive services and other school resources have failed to correct the truant behavior and who are not in regular attendance at the public school, and the names of such children and their ages, stating in each case, if known, the cause of such absence. The report shall also contain the names of any other persons who were not enumerated in the list at the beginning of school and who have the custody or control of children not attending school. The regional superintendent shall, without delay, place such information at the disposal of the regional truant officer.

(Source: P.A. 80-908.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-3.

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 35:14 Administrative personnel.

§ 105 ILCS 5/26-3a. Report of pupils no longer enrolled in school

Sec. 26-3a. Report of pupils no longer enrolled in school. The clerk or secretary of the school board of all school districts shall furnish quarterly on the first school day of October, January, April and July to the regional superintendent and to the Secretary of State a list of pupils, excluding transferees, who have been expelled or have withdrawn or who have left school and have been removed from the regular attendance rolls during the period of time school was in regular session from the time of the previous quarterly report. Such list shall include the names and addresses of pupils formerly in attendance, the names and addresses of persons having custody or control of such pupils, the reason, if known, such pupils are no longer in attendance and the date of removal from the attendance rolls. The list shall also include the names of: pupils whose withdrawal is due to extraordinary circumstances, including but not limited to economic or medical necessity or family hardship, as determined by the criteria established by the school district; pupils who have re-enrolled in school since their names were removed from the attendance rolls; any pupil certified to be a chronic or habitual truant, as defined in

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Section 26-2a [105 ILCS 5/26-2a]; and pupils previously certified as chronic or habitual truants who have resumed regular school attendance. The regional superintendent shall inform the county or district truant officer who shall investigate to see that such pupils are in compliance with the requirements of this Article.

Each local school district shall establish, in writing, a set of criteria for use by the local superintendent of schools in determining whether a pupil's failure to attend school is the result of extraordinary circumstances, including but not limited to economic or medical necessity or family hardship.

If a pupil re-enrolls in school after his or her name was removed from the attendance rolls or resumes regular attendance after being certified a chronic or habitual truant, the pupil must obtain and forward to the Secretary of State, on a form designated by the Secretary of State, verification of his or her re-enrollment. The verification may be in the form of a signature or seal or in any other form determined by the school board.

The State Board of Education shall, if possible, make available to any person, upon request, a comparison of drop out rates before and after the effective date of this amendatory Act of the 94th General Assembly [P.A. 94-916].

(Source: P.A. 87-303; 94-916, § 5; 95-496, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-3a.

Section 95 of P.A. 95-496 contains a "no acceleration or delay" provision.

Effect of Amendments. The 2006 amendment by P.A. 94-916, effective July 1, 2007, in the first paragraph added "and to the Secretary of State" in the first sentence, and added the next-to-last sentence; added the second and third paragraphs; and added the last sentence in the last paragraph.

The 2007 amendment by P.A. 95-496, effective August 28, 2007, in the last paragraph deleted the first sentence, which read: "In addition, the regional superintendent of schools of each educational service region shall report to the State Board of Education, in January of 1992 and in January of each year thereafter, the number and ages of dropouts, as defined in Section 26-2a, in his educational service region during the school year that ended in the immediately preceding calendar year, together with any efforts, activities and programs undertaken, established, implemented or coordinated by the regional superintendent of schools that have been effective in inducing dropouts to re-enroll in school."

§ 105 ILCS 5/26-3b. [Notification of unexcused absence]

Sec. 26-3b. Beginning July 1, 1986, if any child enrolled in a public school in grades Kindergarten through 8 is absent from school, and there is no record that such absence is

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for a valid cause, as defined under Article 26 of this Code [105 ILCS 5/26-1 et seq.], nor notification that the absence has been authorized by the parent, legal guardian or other person having legal custody of such child, an employee or other agent, whether a volunteer or otherwise, designated by the public school in which the child is enrolled shall, within 2 hours after the first class in which the child is enrolled, make a reasonable effort to promptly telephone and notify the parent, legal guardian, or other person having legal custody of the child, of the child's absence from school. Such notification shall not be given for an absence authorized by the parent, legal guardian or other person having legal custody of such child. Prior to any enrollment of a child in a public school, the school district shall notify parents, legal guardians, or other persons having legal custody of a child, of their responsibility to authorize any absence and to notify the school in advance or at the time of any such absence, and that the school requires at least one and not more than 2 telephone numbers be given for purposes of this Section. The school district shall require that such telephone numbers be given at the time of enrollment of the child in school, which said numbers may be changed from time to time upon notification to the school.

The requirements of this Section shall have been met by the school if notification of an absence has been attempted by telephoning the 1 or 2 numbers given the school by the parent, legal guardian or other person having legal custody of a child, whether or not there is any answer at such telephone number or numbers. Further, the requirements of this Section shall have been met if the said notification is given to a member of the household of the child's parent, legal guardian or other person having legal custody of the child, which said member of the household must be 10 years of age or older.

An employee or other agent designated by the public school who in good faith makes a reasonable effort to notify the parent, legal guardian or other person having legal custody of a child of the child's absence from school, when required by this Section, shall not, as a result of his acts or omissions, except wilful or wanton misconduct on the part of such employee or agent in attempting to comply with the notification requirements of this Section, be liable for civil damages.

(Source: P.A. 84-178; 84-682.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-3b.

§ 105 ILCS 5/26-3d. [Truants; collection of data]

Sec. 26-3d. All regional superintendents, district superintendents, and special education joint agreement directors shall collect data concerning truants, chronic truants, and truant minor pupils as designated by the State Board of Education. On or before August 15 of

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each year, this data must be submitted to the State Board of Education.

(Source: P.A. 84-1420; 96-734, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-3d.

Effect of Amendments. The 2009 amendment by P.A. 96-734, effective August 25, 2009, in the first sentence, deleted "and all" preceding "district", substituted "and special education joint agreement directors" for "in any municipality of 500,000 or more inhabitants" and deleted "from school districts and truant officers" following "pupils"; and added the second sentence.

§ 105 ILCS 5/26-4: Repealed by P.A. 88-50, § 2, effective January 1, 1994.

§ 105 ILCS 5/26-5. Duties of truant officers

Sec. 26-5. Duties of truant officers. The truant officer of the school district, whenever notified by the Superintendent, teacher, or other person of violations of this Article, or the county truant officer, when notified by the County Superintendent, shall investigate all cases of truancy or non-attendance at school in their respective jurisdictions, and if the children complained of are not exempt under the provisions of this Article, the truant officer shall proceed as is provided in this Article. The county truant officer, within the county and the district truant officers, within their respective districts, shall in the exercise of their duties be conservators of the peace and shall keep the same, suppress riots, routs, affray, fighting, breaches of the peace, and prevent crime; and may arrest offenders on view and cause them to be brought before proper officials for trial or examination.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-5.

CASE NOTES

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In General

This section did not permit a police officer to stop a juvenile and inquire as to his absence from school, since all of the penal provisions of this article were aimed at those individuals having custody or control of a child and not at the child who refused to attend school; this section gave truant officers, not police officers, the power to investigate cases of truancy and nonattendance, and even assuming the police officer had the right to stop respondent and question him concerning his absence from school, there was no evidence in the record indicating that the officer asked any questions of respondent concerning this absence or, for that matter, about anything else, but disclosed he merely stopped the youths and put them in the police car. In re Woods, 20 Ill. App. 3d 641, 314 N.E.2d 606 (1 Dist. 1974).

§ 105 ILCS 5/26-6. List and reports in districts employing truant officers

Sec. 26-6. List and reports in districts employing truant officers. In school districts which employ truant officers the clerk or secretary of the school board shall at the beginning of each school year furnish a copy of the last school census to the superintendent of schools (or principal teacher) in the district, together with the names and addresses of the truant officers in the district, and the superintendent, (or principal teacher) shall compare the census list with the enrollment of the school or schools and, from time to time, report to the proper truant officers the names and addresses of persons having custody or control of children included under the provisions of this Article who are truant or who are chronic or habitual truants for whom supportive services and other school resources have failed to correct the truant behavior and who are not in regular attendance at public schools and also the names of persons having custody or control of children who are not in regular attendance at school and whose names are not included in the census list.

(Source: P.A. 80-908.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-6.

CASE NOTES

Analysis

Purpose
Service

Purpose

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The purpose of the notice section is to give parents an opportunity to comply with the law before a prosecution is commenced. People v. Harrell, 34 Ill. App. 2d 205, 180 N.E.2d 889 (4 Dist. 1962).

Service

It is not material who serves the notice and where there was no question that the defendants were notified, since they retained counsel who conducted their defense, notice by the County Superintendent, instead of by a truancy officer was sufficient. People v. Harrell, 34 Ill. App. 2d 205, 180 N.E.2d 889 (4 Dist. 1962).

§ 105 ILCS 5/26-7. Notice to custodian - Notice of non-compliance

Sec. 26-7. Notice to custodian - Notice of non-compliance. If any person fails to send any child under his custody or control to some lawful school, the truant officer or, in a school district that does not have a truant officer, the regional superintendent of schools or his or her designee shall, as soon as practicable after he is notified thereof, give notice in person or by mail to such person that such child shall be present at the proper public school on the day following the receipt of such notice. The notice shall state the date that attendance at school must begin and that such attendance must be continuous and consecutive in the district during the remainder of the school year. The truant officer or, in a school district that does not have a truant officer, the regional superintendent of schools or his or her designee shall at the same time that such notice is given notify the teacher or superintendent of the proper public school thereof and the teacher or superintendent shall notify the truant officer or regional superintendent of schools of any non-compliance therewith.

(Source: Laws 1961, p. 31; P.A. 93-858, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-7.

Effect of Amendments. The 2004 amendment by P.A. 93-858, effective January 1, 2005, twice inserted language beginning "or, in a school" and ending "her designee"; and inserted "or regional superintendent of schools" in the last sentence.

RESEARCH REFERENCES

Conditions at school as excusing or justifying nonattendance. 9 ALR4th 122.

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§ 105 ILCS 5/26-8. Determination as to compliance - Complaint in circuit court

Sec. 26-8. Determination as to compliance - Complaint in circuit court. A truant officer or, in a school district that does not have a truant officer, the regional superintendent of schools or his or her designee, after giving the notice provided in Section 26-7 [105 ILCS 5/26-7], shall determine whether the notice has been complied with. If 3 notices have been given and the notices have not been complied with, and if the persons having custody or control have knowingly and wilfully permitted the truant behavior to continue, the regional superintendent of schools, or his or her designee, of the school district where the child resides shall conduct a truancy hearing. If the regional superintendent determines as a result of the hearing that the child is truant, the regional superintendent shall, if age appropriate at the discretion of the regional superintendent, require the student to complete 20 to 40 hours of community service over a period of 90 days. If the truancy persists, the regional superintendent shall (i) make complaint against the persons having custody or control to the state's attorney or in the circuit court in the county where such person resides for failure to comply with the provisions of this Article or (ii) conduct truancy mediation and encourage the student to enroll in a graduation incentives program under Section 26-16 of this Code [105 ILCS 5/26-16]. If, however, after giving the notice provided in Section 26-7 [105 ILCS 5/26-7] the truant behavior has continued, and the child is beyond the control of the parents, guardians or custodians, a truancy petition shall be filed under the provisions of Article III of the Juvenile Court Act of 1987 [705 ILCS 405/3-1 et seq.].

(Source: P.A. 85-1209; 93-858, § 5; 93-1079, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-8.

Effect of Amendments. The 2004 amendment by P.A. 93-858, effective January 1, 2005, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2005 amendment by P.A. 93-1079, effective January 21, 2005, in the third sentence inserted "if age appropriate at the discretion of the regional superintendent".

LEGAL PERIODICALS

For article, "Making Criminals of Habitual Truants: Is It Cruel and Unusual," see 70 Ill. B.J. 768 (1982).

§ 105 ILCS 5/26-8a. [Contents of petition]

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Sec. 26-8a. The petition for court action shall include the name of the truant minor, the names and addresses of persons having custody or control of the student, the dates of the truant behavior, the dates and nature of contacts or conferences with the student and the persons having custody or control of the student, and the nature of the supportive services, alternative programs and other school resources the school district provided to that child in an effort to correct that child's truant behavior.

(Source: P.A. 80-908.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-8a.

§ 105 ILCS 5/26-8b. [Hearing on petition]

Sec. 26-8b. When a petition is filed, it shall be set for an adjudicatory hearing within 10 days and acted upon within 30 days, subject to the provisions of the Juvenile Court Act or the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.] if filed thereunder.

(Source: P.A. 85-1209.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-8b.

The Juvenile Court Act, referred to above, has been repealed. See now the Juvenile Court Act of 1987 (705 ILCS 405/1-1 et seq.).

§ 105 ILCS 5/26-9. School officers and teachers to assist truant officers

Sec. 26-9. School officers and teachers to assist truant officers. School officers, superintendents, teachers or other persons shall render such assistance and furnish such information as they have to aid truant officers in the performance of their duties.

(Source: Laws 1961, p. 31.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 26-9.

§ 105 ILCS 5/26-10. Fine for noncompliance

Sec. 26-10. Fine for noncompliance. Any person having custody or control of a child subject to the provisions of this Article to whom notice has been given of the child's truancy and who knowingly and wilfully permits such a child to persist in his truancy within that school year, upon conviction thereof shall be guilty of a Class C misdemeanor and shall be subject to not more than 30 days imprisonment and/or a fine of up to $500.

(Source: P.A. 80-908.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-10.

CASE NOTES

Analysis

Sentencing
Truant
- Shown

Sentencing

During the sentencing hearing for parents found guilty of permitting their daughter's truancy, the trial court did not abuse its discretion in allowing the state to introduce evidence of a similar charge involving another daughter, which was then pending against the defendants. People v. Berger, 109 Ill. App. 3d 1054, 65 Ill. Dec. 600, 441 N.E.2d 915 (2 Dist. 1982).

Truant

- Shown

The evidence clearly supported that a student's parents were guilty of permitting their child's truancy where the child only attended high school 121/2 days out of 352 school days during two academic years, and although the child saw 13 doctors in a two year period, there was no evidence that a single doctor thought her unable to attend school, no medical certificate was ever received by school personnel which indicated that the child had been absent due to illness, or that she was unable to attend school, and the degree of illness established regarding her allergies was not one which would amount to a valid cause for such a protracted absence. People

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v. Berger, 109 Ill. App. 3d 1054, 65 Ill. Dec. 600, 441 N.E.2d 915 (2 Dist. 1982).

§ 105 ILCS 5/26-11. Punishment for certain offenses

Sec. 26-11. Punishment for certain offenses. Any person who induces or attempts to induce any child to be absent from school unlawfully, or who knowingly employs or harbors, while school is in session, any child absent unlawfully from school for 3 consecutive school days, is guilty of a Class C misdemeanor.

(Source: P.A. 77-2267.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-11.

CASE NOTES

Analysis

Constitutionality
Commitment
- In General
- Least Restrictive Alternative
State Interest
- Habitual Truant

Constitutionality

This section is constitutional under U.S. Const., Amends. 1, 5 and 14. Scoma v. Chicago Bd. of Educ., 391 F. Supp. 452 (N.D. Ill. 1974).

Commitment

- In General

Commitment of a habitual truant to a parental school involves a substantial abridgement of personal liberties, including the freedoms of association, movement, and privacy. Chicago Bd. of Educ. v. Terrile, 47 Ill. App. 3d 75, 5 Ill. Dec. 455, 361 N.E.2d 778 (1 Dist. 1977).

- Least Restrictive Alternative

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Where a school board failed to satisfy the constitutional doctrine of least restrictive alternative, the commitment was a denial of due process of law. Chicago Bd. of Educ. v. Terrile, 47 Ill. App. 3d 75, 5 Ill. Dec. 455, 361 N.E.2d 778 (1 Dist. 1977).

State Interest

- Habitual Truant

The only legitimate interest of the state in a habitual truant's commitment to a parental school is to provide the truant with a minimal level of education; punishment is clearly not a legitimate interest. Chicago Bd. of Educ. v. Terrile, 47 Ill. App. 3d 75, 5 Ill. Dec. 455, 361 N.E.2d 778 (1 Dist. 1977).

§ 105 ILCS 5/26-12. Punitive action

Sec. 26-12. Punitive action. No punitive action including out of school suspensions, expulsions or court action, shall be taken against chronic truants for such truancy unless available supportive services and other school resources have been provided to the student.

(Source: P.A. 85-234.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-12.

CASE NOTES

Seriousness of Infractions

Public policy as set forth in this Code does not equate truancy with a major infraction of the law. People v. K.S.Y., 93 Ill. App. 3d 6, 48 Ill. Dec. 463, 416 N.E.2d 736 (4 Dist. 1981).

LEGAL PERIODICALS

For note, "Public School Fees in Illinois: A Re-Examination of Constitutional and Policy Questions," see 1984 U. Ill. L. Rev. 99.

For article, "Making Criminals of Habitual Truants: Is It Cruel and Unusual," see 70 Ill. B.J. 768 (1982).

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§ 105 ILCS 5/26-13. Absenteeism and truancy policies

Sec. 26-13. Absenteeism and truancy policies. School districts shall adopt policies, consistent with rules adopted by the State Board of Education, which identify the appropriate supportive services and available resources which are provided for truants and chronic truants.

(Source: P.A. 84-1420.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-13.

§ 105 ILCS 5/26-14. Truancy programs for dropouts

Sec. 26-14. Truancy programs for dropouts. Any dropout, as defined in Section 26-2a [105 ILCS 5/26-2a], who is 17 years of age may apply to a school district for status as a truant, and the school district shall permit such person to participate in the district's various programs and resources for truants. At the time of the person's application, the district may request documentation of his dropout status for the previous 6 months.

(Source: P.A. 85-629; 93-858, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-14.

Effect of Amendments. The 2004 amendment by P.A. 93-858, effective January 1, 2005, substituted "who is 17" for "whose age is 16 or greater, but less than 18" in the first sentence.

§ 105 ILCS 5/26-15. Truant minors

Sec. 26-15. Truant minors. When a regional superintendent has reason to believe that a pupil is a truant minor as defined in Section 26-2a [105 ILCS 5/26-2a], the regional superintendent may report such pupil under the provisions of the Juvenile Court Act.

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(Source: P.A. 85-1209.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 26-15.

The Juvenile Court Act, referred to above, has been repealed. See now the Juvenile Court Act of 1987 (705 ILCS 405/1-1 et seq.).

§ 105 ILCS 5/26-16. Graduation incentives program

Sec. 26-16. Graduation incentives program. (a) The General Assembly finds that it is critical to provide options for children to succeed in school. The purpose of this Section is to provide incentives for and encourage all Illinois students who have experienced or are experiencing difficulty in the traditional education system to enroll in alternative programs.

(b) Any student who is below the age of 20 years is eligible to enroll in a graduation incentives program if he or she:

(1) is considered a dropout pursuant to Section 26-2a of this Code [105 ILCS 5/26-2a];

(2) has been suspended or expelled pursuant to Section 10-22.6 or 34-19 of this Code [105 ILCS 5/10-22.6 or 105 ILCS 5/34-19];

(3) is pregnant or is a parent;

(4) has been assessed as chemically dependent; or

(5) is enrolled in a bilingual education or LEP program.

(c) The following programs qualify as graduation incentives programs for students meeting the criteria established in this Section:

(1) Any public elementary or secondary education graduation incentives program established by a school district or by a regional office of education.

(2) Any alternative learning opportunities program established pursuant to Article 13B of this Code [105 ILCS 5/13B].

(3) Vocational or job training courses approved by the State Superintendent of Education that are available through the Illinois public community college system. Students may apply for reimbursement of 50% of tuition costs for one course per semester or a maximum of 3 courses per school year. Subject to available funds, students may apply for reimbursement of up to 100% of tuition costs upon a showing of employment within 6 months after completion of a vocational or job training program. The qualifications for reimbursement shall be established by the State Superintendent of Education by rule.

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(4) Job and career programs approved by the State Superintendent of Education that are available through Illinois-accredited private business and vocational schools. Subject to available funds, pupils may apply for reimbursement of up to 100% of tuition costs upon a showing of employment within 6 months after completion of a job or career program. The State Superintendent of Education shall establish, by rule, the qualifications for reimbursement, criteria for determining reimbursement amounts, and limits on reimbursement.

(5) Adult education courses that offer preparation for the General Educational Development Test.

(d) Graduation incentives programs established by school districts are entitled to claim general State aid, subject to Sections 13B-50, 13B-50.5, and 13B-50.10 of this Code [105 ILCS 5/13B-50, 105 ILCS 5/13B-50.5, and 105 ILCS 5/13B-50.10]. Graduation incentives programs operated by regional offices of education are entitled to receive general State aid at the foundation level of support per pupil enrolled. A school district must ensure that its graduation incentives program receives supplemental general State aid, transportation reimbursements, and special education resources, if appropriate, for students enrolled in the program.

(Source: P.A. 93-858, § 5; 93-1079, § 5.)

Effective Date. This section is effective January 1, 2005, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2005 amendment by P.A. 93-1079, effective January 21, 2005, substituted "below the age of 20 years" for "no more than 18 years of age" in the introductory paragraph of (b).

Article 27.

Courses of Study - Special Instruction

§ 105 ILCS 5/27-1. Areas of education taught - discrimination on account of sex

Sec. 27-1. Areas of education taught - discrimination on account of sex. The State of Illinois, having the responsibility of defining requirements for elementary and secondary

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education, establishes that the primary purpose of schooling is the transmission of knowledge and culture through which children learn in areas necessary to their continuing development and entry into the world of work. Such areas include the language arts, mathematics, the biological, physical and social sciences, the fine arts and physical development and health.

Each school district shall give priority in the allocation of resources, including funds, time allocation, personnel, and facilities, to fulfilling the primary purpose of schooling.

The State Board of Education shall establish goals and learning standards consistent with the above purposes and define the knowledge and skills which the State expects students to master and apply as a consequence of their education.

Each school district shall establish learning objectives consistent with the State Board of Education's goals and learning standards for the areas referred to in this Section, shall develop appropriate testing and assessment systems for determining the degree to which students are achieving the objectives, and shall develop reporting systems to apprise the community and State of the assessment results.

Each school district shall make available to all students academic and vocational courses for the attainment of learning objectives.

No student shall be refused admission into or be excluded from any course of instruction offered in the common schools by reason of that person's sex. No student shall, solely by reason of that person's sex, be denied equal access to physical education and interscholastic athletic programs or comparable programs supported from school district funds. This Section is violated when a high school subject to this Act participates in the post-season basketball tournament of any organization or association that does not conduct post-season high school basketball tournaments for both boys and girls, which tournaments are identically structured. Conducting identically structured tournaments includes having the same number of girls' teams as boys' teams playing, in their respective tournaments, at any common location chosen for the final series of games in a tournament; provided, that nothing in this paragraph shall be deemed to prohibit the selection for the final series of games in the girls' tournaments of a common location that is different than the common location selected for the final series of games in the boys' tournaments. Except as specifically stated in this Section, equal access to programs supported by school district funds and comparable programs will be defined in rules promulgated by the State Board of Education in consultation with the Illinois High School Association.

(Source: P.A. 86-532; 87-934, § 1; 87-1215, § 1; 88-45, § 2-31; 94-875, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-1.

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Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 1.10, 452.20.

Effect of Amendments. The 1992 amendment by P.A. 87-934, effective August 28, 1992, in the fifth paragraph inserted "upon request" and "results, plans for improvement" in the first sentence.

The 1992 amendment by P.A. 87-1215, effective November 23, 1992, added the proviso at the end of the fourth sentence of the last paragraph.

The 1993 amendment by P.A. 88-45, effective July 6, 1993 combined the separate amendments of P.A. 87-934 and P.A. 87-1215.

The 2006 amendment by P.A. 94-875, effective July 1, 2006, rewrote the section.

RESEARCH REFERENCES

Modern status of law regarding cure of error, in instruction as to one offense, by conviction of higher or lesser offense. 15 ALR4th 118.

§ 105 ILCS 5/27-1.5. (Repealed effective July 1, 2012) Instructional Mandates Task Force; moratorium

Sec. 27-1.5. (Repealed effective July 1, 2012) Instructional Mandates Task Force; moratorium. (a) The General Assembly recognizes the increasing number of instructional mandates that it passes each year. The State Board shall create the Instructional Mandates Task Force.

(b) The Task Force shall consist of the following voting members:

(1) One member appointed by the Governor, who shall serve as chairperson of the Task Force.

(2) One member appointed by the President of the Senate.

(3) One member appointed by the Minority Leader of the Senate.

(4) One member appointed by the Speaker of the House of Representatives.

(5) One member appointed by the Minority Leader of the House of Representatives.

(6) One member appointed by the State Superintendent of Education.

(7) One district superintendent from a rural district appointed by the Governor upon the recommendation of an organization representing school administrators.

(8) One district superintendent from a suburban school district appointed by the Governor upon the recommendation of an organization representing school administrators.

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(9) One district superintendent from a urban school district appointed by the Governor upon the recommendation of an organization representing school administrators.

(10) One school principal appointed by the Governor upon the recommendation of an association representing school principals.

(11) One member appointed by the Governor upon the recommendation of an association representing special education administrators.

(12) One member appointed by the Governor upon the recommendation of an association representing school boards.

(13) One member appointed by the Governor upon the recommendation of the Chicago Board of Education.

(14) One member appointed by the Governor upon the recommendation of an organization representing teachers.

(15) One member appointed by the Governor upon the recommendation of a different organization representing teachers.

(16) One member appointed by the Governor upon the recommendation of an organization representing parents and teachers.

Members appointed by the legislative leaders shall be appointed for the duration of the Task Force. In the event of a vacancy, the appointment to fill the vacancy shall be made by the legislative leader of the same chamber and party as the leader who made the original appointment.

(c) The Task Force shall explore and examine all instructional mandates governing the public schools of this State that currently exist and shall make recommendations concerning, but not limited to, the propriety of all existing mandates, the imposition of future mandates, and waivers of instructional mandates. The Task Force shall ensure that its recommendations include specifics as to the necessary funding to carry out identified responsibilities.

(d) The Task Force may begin to conduct business upon the appointment of a majority of the voting members.

(e) The State Board of Education shall be responsible for providing staff and administrative support to the Task Force.

(f) Members of the Task Force shall receive no compensation for their participation, but may be reimbursed by the State Board of Education for expenses in connection with their participation, including travel, if funds are available.

(g) The Task Force shall submit a final report of its findings and recommendations to the Governor and the General Assembly on or before July 1, 2011. The Task Force may submit other reports as it deems appropriate.

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(h) The Task Force is abolished on July 2, 2011, and this Section is repealed on July 1, 2012.

(i) Beginning on the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-1374] and until one year after the Task Force submits a final report to the Governor and General Assembly, there shall be a moratorium on the passage of instructional mandates for public schools. For the purposes of this Section, "instructional mandate" means any State law that requires a school district to devote any amount of time to the instruction of or engagement by students in any subject or course.

(Source: P.A. 96-1374, § 5.)

Effective Date. Section 99 of P.A. 96-1374 made this section effective upon becoming law. The Act was approved July 29, 2010.

§ 105 ILCS 5/27-2. Instruction in English language

Sec. 27-2. Instruction in English language. Instruction in all public elementary and secondary schools of the State shall be in the English language except in second language programs and except in conjunction with programs which the school board may provide, with the approval of the State Board of Education pursuant to Article 14C [105 ILCS 5/14C-1 et seq.], in a language other than English for children whose first language is other than English.

(Source: P.A. 85-1389.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-2.

§ 105 ILCS 5/27-3. Patriotism and principles of representative government - Proper use of flag - Method of voting - Pledge of Allegiance

Sec. 27-3. Patriotism and principles of representative government - Proper use of flag - Method of voting - Pledge of Allegiance. American patriotism and the principles of representative government, as enunciated in the American Declaration of Independence, the Constitution of the United States of America and the Constitution of the State of Illinois, and the proper use and display of the American flag, shall be taught in all public schools and other educational institutions supported or maintained in whole or in part by

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public funds. No student shall receive a certificate of graduation without passing a satisfactory examination upon such subjects.

Instruction shall be given in all such schools and institutions in the method of voting at elections by means of the Australian Ballot system and the method of the counting of votes for candidates.

The Pledge of Allegiance shall be recited each school day by pupils in elementary and secondary educational institutions supported or maintained in whole or in part by public funds.

(Source: P.A. 81-959; 92-612, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-3.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.440.

Effect of Amendments. The 2002 amendment by P.A. 92-612, effective July 3, 2002, inserted "and secondary" in the last paragraph.

CASE NOTES

Analysis

Constitutionality
- Equal Protection
- Establishment Clause
- Free Exercise

Abstention by Court
- Not Necessary

Pledge of Allegiance
- In General

Purpose

Ripeness
- Shown

Standing
- Not Shown
- Shown

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Constitutionality

- Equal Protection

Plaintiff's equal protection challenge objecting to the compelling of student to recite the Pledge of Allegiance was found to be meritorious. MC Club Servs., Inc. v. Stovall, 714 F. Supp. 370 (N.D. Ill. 1989).

- Establishment Clause

This statute did not violate the establishment clause (U.S.Const., Amend. 1), where the pledge law was to teach secular patriotic values and not religious values; the primary effect of the statute neither advances nor inhibits religion, and it does not cause excessive entanglement of government with religion. Sherman v. Community Consol. Sch. Dist. 21, 758 F. Supp. 1244 (N.D. Ill. 1991), modified on other grounds, 980 F.2d 437 (7th Cir. 1992), cert. denied, 508 U.S. 950, 113 S. Ct. 2439, 124 L. Ed. 2d 658 (1993).

The recitation of the Pledge of Allegiance by public school students does not violate the Establishment Clause. Sherman v. Community Consol. Sch. Dist. 21, 714 F. Supp. 932 (N.D. Ill. 1989).

- Free Exercise

The word "shall" alone did not necessitate declaring the statute to be facially unconstitutional because the statute did not state that "all" students shall say the pledge, and therefore an exception can be implied for conscientious objectors; it contained no penalty on its face, and plaintiffs must generally show that a statute is unconstitutional as applied, not merely that it may be interpreted to authorize unconstitutional actions. Sherman v. Community Consol. Sch. Dist. 21, 758 F. Supp. 1244 (N.D. Ill. 1991), modified on other grounds, 980 F.2d 437 (7th Cir. 1992), cert. denied, 508 U.S. 950, 113 S. Ct. 2439, 124 L. Ed. 2d 658 (1993).

Plaintiffs objecting to the compelling of student to recite the Pledge of Allegiance stated a claim for violation of the Free Exercise Clause. MC Club Servs., Inc. v. Stovall, 714 F. Supp. 370 (N.D. Ill. 1989).

Abstention by Court

- Not Necessary

Defendant's contention that abstention was necessary because an Illinois court could very well determine that this section was not mandatory, thereby avoiding a resolution of the constitutional questions of U.S. Const., Amends. I and XIV, was without merit, because such a ruling by an Illinois court would not obviate the need to decide whether the pledge of allegiance led by the principal daily was inherently coercive and therefore violative of plaintiffs' rights, or whether school officials' leading of the pledge resulted in unconstitutional coercion. Sherman v. Community Consol. Sch. Dist. 21, 745 F. Supp. 1371 (N.D. Ill. 1990).

Pledge of Allegiance

- In General

Schools may lead the Pledge of Allegiance daily, so long as pupils are free not to participate. Sherman v. Community Consol. Sch. Dist. 21, 980 F.2d 437 (7th Cir. 1992), cert. denied, 508 U.S. 950, 113 S. Ct. 2439, 124 L. Ed. 2d 658 (1993).

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Purpose

The text of the statute and its legislative history reveal that the purpose of the pledge law is to teach secular, patriotic values and not religious values. Sherman v. Community Consol. Sch. Dist. 21, 758 F. Supp. 1244 (N.D. Ill. 1991), modified on other grounds, 980 F.2d 437 (7th Cir. 1992), cert. denied, 508 U.S. 950, 113 S. Ct. 2439, 124 L. Ed. 2d 658 (1993).

Ripeness

- Shown

Plaintiffs' claims were ripe for adjudication, irregardless that no school official had punished first grader for refusing to say the pledge of allegiance, or for leading of the pledge. Sherman v. Community Consol. Sch. Dist. 21, 745 F. Supp. 1371 (N.D. Ill. 1990).

Standing

- Not Shown

Atheist organization did not have standing to bring U.S. Const., Amend. I suit on behalf of its members, where the general allegation did not show any members other than the original parties to the complaint had suffered actual or threatened injuries, other than the psychological consequence presumably produced by observation of conduct, the daily recital of the pledge of allegiance at plaintiff's public elementary school, with which one disagreed. Sherman v. Community Consol. Sch. Dist. 21, 745 F. Supp. 1371 (N.D. Ill. 1990).

Society which supported church and state separation did not have standing to pursue action challenging the provisions of this section. Sherman v. Community Consol. Sch. Dist. 21, 714 F. Supp. 932 (N.D. Ill. 1989).

- Shown

Plaintiffs alleged a concrete injury to confer standing to bring a U.S. Const., Amends. I and XIV action, irregardless that first grade student was never punished or threatened with punishment for not participating in the pledge of allegiance, because he was impressionable and often susceptible to social influence and therefore he felt coerced to recite the pledge even if he was not punished or threatened with punishment. Sherman v. Community Consol. Sch. Dist. 21, 745 F. Supp. 1371 (N.D. Ill. 1990).

§ 105 ILCS 5/27-3.5. Congressional Medal of Honor film

Sec. 27-3.5. Congressional Medal of Honor film. Each school district shall require that all students in grade 7 and all high school students enrolled in a course concerning history of the United States or a combination of history of the United States and American government view a Congressional Medal of Honor film made by the Congressional Medal of Honor Foundation. This requirement does not apply if the Congressional Medal of Honor Foundation charges the school district a fee for a film.

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(Source: P.A. 96-99, § 5.)

Effective Date. Section 99 of P.A.96-99 purports to make this section effective July 1, 2009. This Act was approved July 27, 2009.

§ 105 ILCS 5/27-4. Time devoted to subjects mentioned in Section 27-3

Sec. 27-4. Time devoted to subjects mentioned in Section 27-3. Not less than one hour of each school week shall be devoted to the study of the subject mentioned in Section 27-3 [105 ILCS 5/27-3] in the seventh and eighth grades or their equivalent, and not less than one hour of each school week to the advanced study thereof in all high school grades, in the public schools and other institutions mentioned in such Section.

This Section does not prevent the study of such subjects in any of the lower grades in such schools or institutions.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-4.

§ 105 ILCS 5/27-5. Physical education and training

Sec. 27-5. Physical education and training. School boards of public schools and the Board of Governors of State Colleges and Universities shall provide for the physical education and training of pupils of the schools and laboratory schools under their respective control, and shall include physical education and training in the courses of study regularly taught therein. The physical education and training course offered in grades 5 through 10 may include the health education course required in the Critical Health Problems and Comprehensive Health Education Act [105 ILCS 110/1 et seq.].

(Source: P.A. 84-1334; 89-618, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-5.

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Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 1.420, 452.20.

Effect of Amendments. The 1996 amendment by P.A. 89-618, effective August 9, 1996, in the second sentence substituted "grades 5 through 10" for "grades 9 and 10."

CASE NOTES

Issuance of Bonds

Acquisition and equipment of property for playgrounds, recreation grounds and athletic fields are to be financed out of the building funds of school districts, and the subsequent cost of maintenance out of educational funds and the issuance of bonds to pay for the construction of an athletic field is not prohibited since bonds may be issued for the purpose of purchasing or improving school sites; adequate authority exists for the issuance and sale of bonds to improve a school site by the construction of athletic facilities and in particular, a stadium. Moyer v. Board of Educ., 391 Ill. 156, 62 N.E.2d 802 (1945).

§ 105 ILCS 5/27-6. Courses in physical education required; special activities

Sec. 27-6. Courses in physical education required; special activities. (a) Pupils enrolled in the public schools and State universities engaged in preparing teachers shall be required to engage daily during the school day, except on block scheduled days for those public schools engaged in block scheduling, in courses of physical education for such periods as are compatible with the optimum growth and developmental needs of individuals at the various age levels except when appropriate excuses are submitted to the school by a pupil's parent or guardian or by a person licensed under the Medical Practice Act of 1987 [225 ILCS 60/1 et seq.] and except as provided in subsection (b) of this Section.

Special activities in physical education shall be provided for pupils whose physical or emotional condition, as determined by a person licensed under the Medical Practice Act of 1987, prevents their participation in the courses provided for normal children.

(b) A school board is authorized to excuse pupils enrolled in grades 11 and 12 from engaging in physical education courses if those pupils request to be excused for any of the following reasons: (1) for ongoing participation in an interscholastic athletic program; (2) to enroll in academic classes which are required for admission to an institution of higher learning, provided that failure to take such classes will result in the pupil being denied admission to the institution of his or her choice; or (3) to enroll in academic classes which are required for graduation from high school, provided that failure to take such classes will result in the pupil being unable to graduate. A school board may also excuse pupils in grades 9 through 12 enrolled in a marching band program for credit from engaging in physical education courses if those pupils request to be excused for ongoing

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participation in such marching band program. In addition, a pupil in any of grades 3 through 12 who is eligible for special education may be excused if the pupil's parent or guardian agrees that the pupil must utilize the time set aside for physical education to receive special education support and services or, if there is no agreement, the individualized education program team for the pupil determines that the pupil must utilize the time set aside for physical education to receive special education support and services, which agreement or determination must be made a part of the individualized education program. However, a pupil requiring adapted physical education must receive that service in accordance with the individualized education program developed for the pupil. A school board may also excuse pupils in grades 9 through 12 enrolled in a Reserve Officer's Training Corps (ROTC) program sponsored by the school district from engaging in physical education courses. School boards which choose to exercise this authority shall establish a policy to excuse pupils on an individual basis.

(c) The provisions of this Section are subject to the provisions of Section 27-22.05 [105 ILCS 5/27-22.05].

(Source: P.A. 85-1209; 88-269, § 5; 89-155, § 1; 89-175, § 1; 89-626, § 2-34; 94-189, § 5; 94-198, § 5; 94-200, § 5; 94-1098, § 5; 95-331, § 540.)

Note.

This section was Ill.Rev.Stat., Ch. 122, para. 27-6.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.420.

Effect of Amendments. The 1993 amendment by P.A. 88-269, effective July 1, 1994, added subsection (c).

The 1995 amendment by P.A. 89-155, effective July 19, 1995, in subsection (b) added the second sentence.

The 1995 amendment by P.A. 89-175, effective July 19, 1995, in subsection (b) added the second sentence.

The 1996 amendment by P.A. 89-626, effective August 9, 1996, combined the amendments by P.A. 89-155 and P.A. 89-175.

The 2005 amendment by P.A. 94-189, effective July 12, 2005, in (a) deleted "as soon as practicable" after "teachers shall" and made a stylistic change; and added the third sentence in (b).

The 2005 amendment by P.A. 94-198, effective January 1, 2006, added the exception language in the first paragraph of (a).

The 2005 amendment by P.A. 94-200, effective July 12, 2005, in the first paragraph of (a) deleted "as soon as practicable" after "teachers shall", and made a stylistic change; and added the third sentence in (b).

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The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, combined earlier multiple amendments to the section.

The 2007 amendment by P.A. 94-1098, effective February 2, 2007, rewrote (b).

§ 105 ILCS 5/27-7. Physical education course of study

Sec. 27-7. Physical education course of study. A physical education course of study shall include a developmentally planned and sequential curriculum that fosters the development of movement skills, enhances health-related fitness, increases students' knowledge, offers direct opportunities to learn how to work cooperatively in a group setting, and encourages healthy habits and attitudes for a healthy lifestyle. A physical education course of study shall provide students with an opportunity for an appropriate amount of daily physical activity. A physical education course of study must be part of the regular school curriculum and not extra-curricular in nature or organization.

The State Board of Education shall prepare and make available guidelines for the various grades and types of schools in order to make effective the purposes set forth in this section and the requirements provided in Section 27-6 [105 ILCS 5/27-6], and shall see that the general provisions and intent of Sections 27-5 to 27-9 [105 ILCS 5/27-5 to 105 ILCS 5/27-9], inclusive, are enforced.

(Source: P.A. 81-1508; 90-372, § 5-280; 94-189, § 5; 94-200, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-7.

The section above is effective July 1, 1998.

Effect of Amendments. The 1997 amendment by P.A. 90-372, effective July 1, 1998, in the second paragraph substituted "guidelines" for "courses of instruction in physical education and training that may be used as guides".

The 2005 amendment by P.A. 94-189, effective July 12, 2005, rewrote the section.

The 2005 amendment by P.A. 94-200, effective July 12, 2005, rewrote the section.

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

CASE NOTES

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Religious Exemption

The State of Illinois' daily physical education requirement cannot be construed in such a way that persons have to participate in violation of religious teaching or beliefs or be subject to sanctions; therefore the state could not suspend, coerce, or deny graduation credit or take disciplinary or punitive measures against plaintiffs who refused to participate in coed physical education classes in violation of their free exercise of religion. Moody ex rel. Moody v. Cronin, 484 F. Supp. 270 (C.D. Ill. 1979).

§ 105 ILCS 5/27-8.1. Health examinations and immunizations

Sec. 27-8.1. Health examinations and immunizations. (1) In compliance with rules and regulations which the Department of Public Health shall promulgate, and except as hereinafter provided, all children in Illinois shall have a health examination as follows: within one year prior to entering kindergarten or the first grade of any public, private, or parochial elementary school; upon entering the sixth and ninth grades of any public, private, or parochial school; prior to entrance into any public, private, or parochial nursery school; and, irrespective of grade, immediately prior to or upon entrance into any public, private, or parochial school or nursery school, each child shall present proof of having been examined in accordance with this Section and the rules and regulations promulgated hereunder. Any child who received a health examination within one year prior to entering the fifth grade for the 2007-2008 school year is not required to receive an additional health examination in order to comply with the provisions of Public Act 95-422 when he or she attends school for the 2008-2009 school year, unless the child is attending school for the first time as provided in this paragraph.

A tuberculosis skin test screening shall be included as a required part of each health examination included under this Section if the child resides in an area designated by the Department of Public Health as having a high incidence of tuberculosis. Additional health examinations of pupils, including eye examinations, may be required when deemed necessary by school authorities. Parents are encouraged to have their children undergo eye examinations at the same points in time required for health examinations.

(1.5) In compliance with rules adopted by the Department of Public Health and except as otherwise provided in this Section, all children in kindergarten and the second and sixth grades of any public, private, or parochial school shall have a dental examination. Each of these children shall present proof of having been examined by a dentist in accordance with this Section and rules adopted under this Section before May 15th of the school year. If a child in the second or sixth grade fails to present proof by May 15th, the school may hold the child's report card until one of the following occurs: (i) the child presents proof of a completed dental examination or (ii) the child presents proof that a dental examination will take place within 60 days after May 15th. The Department of Public Health shall establish, by rule, a waiver for children who show an undue burden or a lack of access to a dentist. Each public, private, and parochial school must give notice of this dental examination requirement to the parents and guardians of students at least 60 days before May 15th of each school year.

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(1.10) Except as otherwise provided in this Section, all children enrolling in kindergarten in a public, private, or parochial school on or after the effective date of this amendatory Act of the 95th General Assembly [P.A. 95-671] and any student enrolling for the first time in a public, private, or parochial school on or after the effective date of this amendatory Act of the 95th General Assembly shall have an eye examination. Each of these children shall present proof of having been examined by a physician licensed to practice medicine in all of its branches or a licensed optometrist within the previous year, in accordance with this Section and rules adopted under this Section, before October 15th of the school year. If the child fails to present proof by October 15th, the school may hold the child's report card until one of the following occurs: (i) the child presents proof of a completed eye examination or (ii) the child presents proof that an eye examination will take place within 60 days after October 15th. The Department of Public Health shall establish, by rule, a waiver for children who show an undue burden or a lack of access to a physician licensed to practice medicine in all of its branches who provides eye examinations or to a licensed optometrist. Each public, private, and parochial school must give notice of this eye examination requirement to the parents and guardians of students in compliance with rules of the Department of Public Health. Nothing in this Section shall be construed to allow a school to exclude a child from attending because of a parent's or guardian's failure to obtain an eye examination for the child.

(2) The Department of Public Health shall promulgate rules and regulations specifying the examinations and procedures that constitute a health examination, which shall include the collection of data relating to obesity (including at a minimum, date of birth, gender, height, weight, blood pressure, and date of exam), and a dental examination and may recommend by rule that certain additional examinations be performed. The rules and regulations of the Department of Public Health shall specify that a tuberculosis skin test screening shall be included as a required part of each health examination included under this Section if the child resides in an area designated by the Department of Public Health as having a high incidence of tuberculosis. The Department of Public Health shall specify that a diabetes screening as defined by rule shall be included as a required part of each health examination. Diabetes testing is not required.

Physicians licensed to practice medicine in all of its branches, advanced practice nurses who have a written collaborative agreement with a collaborating physician which authorizes them to perform health examinations, or physician assistants who have been delegated the performance of health examinations by their supervising physician shall be responsible for the performance of the health examinations, other than dental examinations, eye examinations, and vision and hearing screening, and shall sign all report forms required by subsection (4) of this Section that pertain to those portions of the health examination for which the physician, advanced practice nurse, or physician assistant is responsible. If a registered nurse performs any part of a health examination, then a physician licensed to practice medicine in all of its branches must review and sign all required report forms. Licensed dentists shall perform all dental examinations and shall sign all report forms required by subsection (4) of this Section that pertain to the dental examinations. Physicians licensed to practice medicine in all its branches or licensed optometrists shall perform all eye examinations required by this Section and shall sign all report forms required by subsection (4) of this Section that pertain to the eye

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examination. For purposes of this Section, an eye examination shall at a minimum include history, visual acuity, subjective refraction to best visual acuity near and far, internal and external examination, and a glaucoma evaluation, as well as any other tests or observations that in the professional judgment of the doctor are necessary. Vision and hearing screening tests, which shall not be considered examinations as that term is used in this Section, shall be conducted in accordance with rules and regulations of the Department of Public Health, and by individuals whom the Department of Public Health has certified. In these rules and regulations, the Department of Public Health shall require that individuals conducting vision screening tests give a child's parent or guardian written notification, before the vision screening is conducted, that states, "Vision screening is not a substitute for a complete eye and vision evaluation by an eye doctor. Your child is not required to undergo this vision screening if an optometrist or ophthalmologist has completed and signed a report form indicating that an examination has been administered within the previous 12 months."

(3) Every child shall, at or about the same time as he or she receives a health examination required by subsection (1) of this Section, present to the local school proof of having received such immunizations against preventable communicable diseases as the Department of Public Health shall require by rules and regulations promulgated pursuant to this Section and the Communicable Disease Prevention Act [410 ILCS 315/0.01 et seq.].

(4) The individuals conducting the health examination, dental examination, or eye examination shall record the fact of having conducted the examination, and such additional information as required, including for a health examination data relating to obesity (including at a minimum, date of birth, gender, height, weight, blood pressure, and date of exam), on uniform forms which the Department of Public Health and the State Board of Education shall prescribe for statewide use. The examiner shall summarize on the report form any condition that he or she suspects indicates a need for special services, including for a health examination factors relating to obesity. The individuals confirming the administration of required immunizations shall record as indicated on the form that the immunizations were administered.

(5) If a child does not submit proof of having had either the health examination or the immunization as required, then the child shall be examined or receive the immunization, as the case may be, and present proof by October 15 of the current school year, or by an earlier date of the current school year established by a school district. To establish a date before October 15 of the current school year for the health examination or immunization as required, a school district must give notice of the requirements of this Section 60 days prior to the earlier established date. If for medical reasons one or more of the required immunizations must be given after October 15 of the current school year, or after an earlier established date of the current school year, then the child shall present, by October 15, or by the earlier established date, a schedule for the administration of the immunizations and a statement of the medical reasons causing the delay, both the schedule and the statement being issued by the physician, advanced practice nurse, physician assistant, registered nurse, or local health department that will be responsible for administration of the remaining required immunizations. If a child does not comply by October 15, or by the earlier established date of the current school year, with the

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requirements of this subsection, then the local school authority shall exclude that child from school until such time as the child presents proof of having had the health examination as required and presents proof of having received those required immunizations which are medically possible to receive immediately. During a child's exclusion from school for noncompliance with this subsection, the child's parents or legal guardian shall be considered in violation of Section 26-1 [105 ILCS 5/26-1] and subject to any penalty imposed by Section 26-10 [105 ILCS 5/26-10]. This subsection (5) does not apply to dental examinations and eye examinations. Until June 30, 2015, if the student is an out-of-state transfer student and does not have the proof required under this subsection (5) before October 15 of the current year or whatever date is set by the school district, then he or she may only attend classes (i) if he or she has proof that an appointment for the required vaccinations has been scheduled with a party authorized to submit proof of the required vaccinations. If the proof of vaccination required under this subsection (5) is not submitted within 30 days after the student is permitted to attend classes, then the student is not to be permitted to attend classes until proof of the vaccinations has been properly submitted. No school district or employee of a school district shall be held liable for any injury or illness to another person that results from admitting an out-of-state transfer student to class that has an appointment scheduled pursuant to this subsection (5).

(6) Every school shall report to the State Board of Education by November 15, in the manner which that agency shall require, the number of children who have received the necessary immunizations and the health examination (other than a dental examination or eye examination) as required, indicating, of those who have not received the immunizations and examination as required, the number of children who are exempt from health examination and immunization requirements on religious or medical grounds as provided in subsection (8). Every school shall report to the State Board of Education by June 30, in the manner that the State Board requires, the number of children who have received the required dental examination, indicating, of those who have not received the required dental examination, the number of children who are exempt from the dental examination on religious grounds as provided in subsection (8) of this Section and the number of children who have received a waiver under subsection (1.5) of this Section. Every school shall report to the State Board of Education by June 30, in the manner that the State Board requires, the number of children who have received the required eye examination, indicating, of those who have not received the required eye examination, the number of children who are exempt from the eye examination as provided in subsection (8) of this Section, the number of children who have received a waiver under subsection (1.10) of this Section, and the total number of children in noncompliance with the eye examination requirement. This reported information shall be provided to the Department of Public Health by the State Board of Education.

(7) Upon determining that the number of pupils who are required to be in compliance with subsection (5) of this Section is below 90% of the number of pupils enrolled in the school district, 10% of each State aid payment made pursuant to Section 18-8.05 [105 ILCS 5/18-8.05] to the school district for such year may be withheld by the State Board of Education until the number of students in compliance with subsection (5) is the applicable specified percentage or higher.

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(8) Parents or legal guardians who object to health, dental, or eye examinations or any part thereof, or to immunizations, on religious grounds shall not be required to submit their children or wards to the examinations or immunizations to which they so object if such parents or legal guardians present to the appropriate local school authority a signed statement of objection, detailing the grounds for the objection. If the physical condition of the child is such that any one or more of the immunizing agents should not be administered, the examining physician, advanced practice nurse, or physician assistant responsible for the performance of the health examination shall endorse that fact upon the health examination form. Exempting a child from the health, dental, or eye examination does not exempt the child from participation in the program of physical education training provided in Sections 27-5 through 27-7 of this Code [105 ILCS 5/27-5 through 105 ILCS 5/27-7].

(9) For the purposes of this Section, "nursery schools" means those nursery schools operated by elementary school systems or secondary level school units or institutions of higher learning.

(Source: P.A. 85-351; 88-149, § 1; 89-618, § 20; 89-626, § 3-17; 91-357, § 101; 92-703, § 5; 93-504, § 5; 93-530, § 5; 93-946, § 5; 93-966, § 5; 95-331, § 540; 95-422, § 25; 95-496, § 5; 95-671, § 5; 95-737, § 5; 95-876, § 175; 96-953, § 905; 97-216, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-8.1.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Section 95 of P.A. 95-496 contains a "no acceleration or delay" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 452.10, 625.10.

Effect of Amendments. The 1993 amendment by P.A. 88-149, effective January 1, 1994, in subsection (1) added the second and fourth sentences; in subsection (2) added the proviso at the end of the first sentence, in the second sentence substituted "the physician" for "he", in the third sentence substituted "a health examination" for "an examination", in the fourth sentence substituted the first instance of "examinations" for "exams" and the second instance of "examinations" for "exam", and in the fifth sentence substituted "pertain" for "pertains"; in subsection (3) substituted "the Communicable Disease Prevention Act" for "An Act in relation to the prevention of certain communicable diseases approved July 5, 1967, as amended"; and in subsection (8), in the first sentence substituted "the examinations" for "health examinations", inserted "to which they so object" and substituted "the objection" for "such objection" and in the second sentence substituted "that fact" for "such fact".

The 1996 amendment by P.A. 89-618, effective August 9, 1996, in subsection (2), in the first paragraph, in the first sentence, substituted "that constitute" for "which shall constitute" and substituted a period for "provided that" and in the second paragraph, in the first sentence

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substituted "that pertain" for "which pertain", in the third sentence substituted "(4)" for "4" and substituted "that pertain" for "which pertains", in the fourth sentence deleted "which may be" preceding "required by", substituted "(4)" for "4" and substituted "that pertain" for "which pertain" and in the fifth sentence substituted "whom the" for "which the"; in subsection (3), inserted "or she"; in subsection (4), in the second sentence, substituted "that he or she" for "which he"; in subsection (5), in the first sentence, substituted "or by an earlier date of the current school year established by a school district" for "provided", added the second sentence, in the third sentence inserted "or after an earlier established date of the current school year", inserted "or by the earlier established date" and inserted a comma after "nurse" and in the fourth sentence inserted "or by the earlier established date" inserted a comma after "school year" and deleted a comma after "as required"; in subsection (6), in the first sentence, substituted "November" for "October"; in subsection (7) deleted "is below 80% of the number of pupils enrolled in the school district see October 15, 1980, or" preceding "is below 90%" and deleted "on October 15, 1981 or any subsequent year" preceding "10%"; and in subsection (8), in the third sentence, substituted "the child" for "him".

The 1996 amendment by P.A. 89-626, effective August 9, 1996, added a comma following "private" preceding "or parochial" twice and deleted a comma after "parochial school" in subsection (1); in subsection (2) in the first sentence substituted "that" for "which shall" preceding "constitute a health" and substituted a period for "provided, that"; made a minor punctuation change and in the second paragraph, in the first sentence substituted "that" for "which" preceding "pertain to those", in the third sentence substituted "subsection (4) of this Section that pertain" for "subsection 4 of this Section, which pertains", in the fourth sentence deleted "which may be" preceding "required by school" and in the fifth sentence substituted "subsection (4) of this Section that" for "subsection 4 of this Section which" and substituted "whom" for "which" preceding "the Department of Public"; inserted "or she" in subsection (3); substituted "that he or she" for "which he" in the second sentence of subsection (4); added a comma following "nurse" in the first sentence of subsection (5); and substituted "the child" for "him" in the third sentence of subsection (8).

The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "Parents or legal guardians who object" for "Children whose parents or legal guardians object" at the beginning of subsection (8) and made stylistic changes.

The 2002 amendment by P.A. 92-703, effective July 19, 2002, in subsection (2), in the second paragraph, inserted the language beginning with "advanced practice nurses" and ending with "health examinations by their supervising physician" and inserted "advanced practice nurse, or physician assistant"; inserted "advanced practice nurse, physician assistant" in subsection (5); and inserted "advanced practice nurse, or physician assistant" in subsection (8).

The 2003 amendment by P.A. 93-504, effective January 1, 2004, added the last two sentences in the second paragraph of subsection (2).

The 2003 amendment by P.A. 93-530, effective January 1, 2004, inserted the last sentence of the first paragraph in subsection (2).

The 2004 amendment by P.A. 93-946, effective July 1, 2005, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2004 amendment by P.A. 93-966, effective January 1, 2005, inserted the language beginning "which shall include the collection" and ending "date of exam," in the first sentence of subsection (2); and in subsection (4) in the first sentence inserted the language beginning "including data" and ending "and date of exam", and inserted "including factors relating to obesity" in the second sentence.

The 2007 amendment by P.A. 95-331, effective August 21, 2007, in the first and second sentences of (4) inserted "for a health examination"; and made a stylistic change.

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The 2007 amendment by P.A.95-422, effective August 24, 2007, substituted "sixth" for "fifth" in (1); inserted "a health examination" twice in (4); and made related changes.

The 2007 amendment by P.A. 95-496, effective August 28, 2007, added "for a health examination" twice in (4); and in (7) substituted "may be withheld by the State Board of Education" for "shall be withheld by the regional superintendent".

The 2007 amendment by P.A. 95-671, effective January 1, 2008, in the second paragraph of (1), twice substituted "eye examinations" for "vision examinations"; added (1.10); in the first sentence of the second paragraph of (2), inserted "eye examinations"; rewrote the fifth sentence, which formerly read: "Physicians licensed to practice medicine in all its branches, or licensed optometrists, shall perform all vision exams required by school authorities and shall sign all report forms required by subsection (4) of this Section that pertain to the vision exam"; and added the sixth sentence; in the first sentence of (4), inserted "or eye examination", inserted "for a health examination"; in the second sentence, inserted "for a health examination"; in the last sentence of (5), added "and eye examinations"; in the first sentence of (6), inserted "or eye examination"; added the next-to-last sentence; in the first and third sentences of (8), substituted "health, dental, or eye" for "health or dental"; made stylistic changes, and made related changes.

The 2008 amendment by P.A. 95-737, effective July 16, 2008, added the last sentence in the introductory paragraph of (1).

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, combined earlier multiple amendments.

The 2010 amendment by P.A. 96-953, effective June 28, 2010, added the seventh through nine sentences in subsection (5).

The 2011 amendment by P.A. 97-216, effective January 1, 2012, substituted "June 30, 2015" for "June 30, 2012" in the seventh sentence of (5).

CASE NOTES

Vaccination Requirement

Resolution of Board of Health forbidding admission of unvaccinated children to school for two weeks during smallpox epidemic was authorized by a similar prior provision, and, further, was not violative of Ill. Const. (1870), Art. VIII, § 1, which provided for system of free schools. Hagler v. Larner, 284 Ill. 547, 120 N.E. 575 (1918).

OPINIONS OF ATTORNEY GENERAL

Department Authority

- Religious Objections

The Department of Public Health had authority to promulgate a rule which required non-immunized school children whose parents or legal guardians object to measles immunization on religious grounds to be excluded from school attendance for a twenty-one day period following an outbreak of measles in the school and is not an unconstitutional restriction on the free exercise of

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religion protected by U.S. Const., Amend. I. 1983 Op. Atty. Gen. 67.

LEGAL PERIODICALS

For article, "Religious Exemptions to Childhood Immunization Statutes: Reaching for a More Optimal Balance Between Religious Freedom and Public Health," see 29 Loy. U. Chi. L.J. 109 (1997). Green v. No. 35 Check Exch., Inc., 77 Ill. App. 2d 25, 222 N.E.2d 133 (1 Dist. 1966).

RESEARCH REFERENCES

Power of court or other public agency to order vaccination over parental religious objection. 94 ALR5th 613.

§ 105 ILCS 5/27-9. Training teachers to teach physical education

Sec. 27-9. Training teachers to teach physical education. The curriculum in all State universities shall contain courses in methods and materials of physical education and training for teachers. No student or elementary school teacher shall be graduated from such a university who has not had a minimum of 1 course in methods and materials in the teaching of physical education and training.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-9.

§ 105 ILCS 5/27-9.1. Sex Education

Sec. 27-9.1. Sex Education. (a) No pupil shall be required to take or participate in any class or course in comprehensive sex education if his parent or guardian submits written objection thereto, and refusal to take or participate in such course or program shall not be reason for suspension or expulsion of such pupil. Each class or course in comprehensive sex education offered in any of grades 6 through 12 shall include instruction on the prevention, transmission and spread of AIDS. Nothing in this Section prohibits instruction in sanitation, hygiene or traditional courses in biology.

(b) All public elementary, junior high, and senior high school classes that teach sex education and discuss sexual intercourse shall emphasize that abstinence is the expected

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norm in that abstinence from sexual intercourse is the only protection that is 100% effective against unwanted teenage pregnancy, sexually transmitted diseases, and acquired immune deficiency syndrome (AIDS) when transmitted sexually.

(c) All sex education courses that discuss sexual intercourse shall satisfy the following criteria:

(1) Course material and instruction shall be age appropriate.

(2) Course material and instruction shall teach honor and respect for monogamous heterosexual marriage.

(3) Course material and instruction shall stress that pupils should abstain from sexual intercourse until they are ready for marriage.

(4) Course material and instruction shall include a discussion of the possible emotional and psychological consequences of preadolescent and adolescent sexual intercourse outside of marriage and the consequences of unwanted adolescent pregnancy.

(5) Course material and instruction shall stress that sexually transmitted diseases are serious possible hazards of sexual intercourse. Pupils shall be provided with statistics based on the latest medical information citing the failure and success rates of condoms in preventing AIDS and other sexually transmitted diseases.

(6) Course material and instruction shall advise pupils of the laws pertaining to their financial responsibility to children born in and out of wedlock.

(7) Course material and instruction shall advise pupils of the circumstances under which it is unlawful for males to have sexual relations with females under the age of 18 to whom they are not married pursuant to Article 12 of the Criminal Code of 1961 [720 ILCS 5/12-1 et seq.], as now or hereafter amended.

(8) Course material and instruction shall teach pupils to not make unwanted physical and verbal sexual advances and how to say no to unwanted sexual advances. Pupils shall be taught that it is wrong to take advantage of or to exploit another person. The material and instruction shall also encourage youth to resist negative peer pressure.

(9) (Blank).

(10) Course material and instruction shall teach pupils about the dangers associated with drug and alcohol consumption during pregnancy.

(d) An opportunity shall be afforded to parents or guardians to examine the instructional materials to be used in such class or course.

(Source: P.A. 86-941; 93-88, § 5; 94-933, § 5; 96-1082, § 5.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 27-9.1.

Effect of Amendments. The 2003 amendment by P.A. 93-88, effective July 2, 2003, added subdivision (c)(9).

The 2006 amendment by P.A. 94-933, effective June 26, 2006, deleted the text from (c)(9), which read: "Course material and instruction shall advise pupils of the provisions of the Abandoned Newborn Infant Protection Act (325 ILCS 2/1 et seq.) as well as provide information about responsible parenting and the availability of confidential adoption services."

The 2010 amendment by P.A. 96-1082, effective July 16, 2010, added (c)(10).

CASE NOTES

Analysis

Necessary Parties
- Custodial Mother
- Minor Children

Necessary Parties

- Custodial Mother

Where, pursuant to an enforceable divorce agreement, custodial mother had a legally enforceable right to consider the type of classes her children would attend, she satisfied the test for being a necessary party in an action where the children's parents were divorced and the custodial mother wanted the children to participate in sex education and disease instruction classes, and where the noncustodial natural father sought to have the children barred from enrollment. Bergstrand v. Rock Island Bd. of Educ., 161 Ill. App. 3d 180, 112 Ill. Dec. 790, 161 Ill. Dec. 180, 514 N.E.2d 256 (3 Dist. 1987).

- Minor Children

Minor children did not meet the requirements for being a necessary party in action brought by their noncustodial parent to prevent their enrollment in sex education and disease instruction classes. Bergstrand v. Rock Island Bd. of Educ., 161 Ill. App. 3d 180, 112 Ill. Dec. 790, 161 Ill. Dec. 180, 514 N.E.2d 256 (3 Dist. 1987).

RESEARCH REFERENCES

Propriety of prophylactic availability programs. 52 ALR5th 477.

§ 105 ILCS 5/27-9.2. Family Life

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Sec. 27-9.2. Family Life. If any school district provides courses of instruction designed to promote wholesome and comprehensive understanding of the emotional, psychological, physiological, hygienic and social responsibility aspects of family life, then such courses of instruction shall include the teaching of the alternatives to abortion, appropriate to the various grade levels; and whenever such courses of instruction are provided in any of grades 6 through 12, then such courses also shall include instruction on the prevention, transmission and spread of AIDS. However, no pupil shall be required to take or participate in any family life class or course on AIDS instruction if his parent or guardian submits written objection thereto, and refusal to take or participate in such course or program shall not be reason for suspension or expulsion of such pupil.

The State Superintendent of Education shall prepare and make available to local school districts courses of instruction designed to satisfy the requirements of this Section.

The State Superintendent of Education shall develop a procedure for evaluating and measuring the effectiveness of the family life courses of instruction in each local school district, including the setting of reasonable goals for reduced sexual activity, sexually transmitted diseases and premarital pregnancy. The goals shall be set by the beginning of the 1991-92 school year. The State Superintendent shall distribute a copy of the procedure to each local school district. Each local school district may develop additional procedures or methods for measuring the effectiveness of the family life courses of instruction within the district. Before the beginning of the 1993-94 school year, the State Superintendent shall collect and evaluate all relevant data to determine whether the goals are being achieved.

(Source: P.A. 86-941.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-9.2.

§ 105 ILCS 5/27-11. Instruction on diseases

Sec. 27-11. Instruction on diseases. No pupil shall be required to take or participate in instruction on diseases if a parent or guardian files written objection thereto on constitutional grounds, and refusal to take or participate in such instruction on such grounds shall not be reason for suspension or expulsion of such pupil. Nothing in this act shall prohibit instruction in sanitation and hygiene.

(Source: Laws 1961, p. 31.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 27-11.

CASE NOTES

Analysis

Necessary Parties
- Custodial Mother
- Minor Children

Necessary Parties

- Custodial Mother

Where, pursuant to an enforceable divorce agreement, custodial mother had a legally enforceable right to consider the type of classes her children would attend, she satisfied the test for being a necessary party in an action where the children's parents were divorced and the custodial mother wanted the children to participate in sex education and disease instruction classes, and where the non-custodial natural father sought to have the children barred from enrollment. Bergstrand v. Rock Island Bd. of Educ., 161 Ill. App. 3d 180, 112 Ill. Dec. 790, 161 Ill. Dec. 180, 514 N.E.2d 256 (3 Dist. 1987).

- Minor Children

Minor children did not meet the requirements for being a necessary party in action brought by their noncustodial parent to prevent their enrollment in sex education and disease instruction classes. Bergstrand v. Rock Island Bd. of Educ., 161 Ill. App. 3d 180, 112 Ill. Dec. 790, 161 Ill. Dec. 180, 514 N.E.2d 256 (3 Dist. 1987).

§ 105 ILCS 5/27-12. Character education

Sec. 27-12. Character education. Every public school teacher shall teach character education, which includes the teaching of respect, responsibility, fairness, caring, trustworthiness, and citizenship, in order to raise pupils' honesty, kindness, justice, discipline, respect for others, and moral courage for the purpose of lessening crime and raising the standard of good character.

(Source: Laws 1961, p. 31; P.A. 90-620, § 5; 94-187, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-12.

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Effect of Amendments. The 1998 amendment by P.A. 90-620, effective July 10, 1998, inserted "discipline, respect for others".

The 2005 amendment by P.A. 94-187, effective July 12, 2005, rewrote the section.

CASE NOTES

Analysis

Duty of Teacher
Theft

Duty of Teacher

Teachers, as leaders and role models, with their education and background, have the duty to implant basic societal values and qualities of good citizenship in their students. McBroom v. Board of Educ., 144 Ill. App. 3d 463, 98 Ill. Dec. 864, 494 N.E.2d 1191 (2 Dist. 1986).

Theft

There was substantial evidence to support a finding of cause for teacher's dismissal where a teacher's theft of a student's property became a matter of general knowledge and had a substantial adverse impact on plaintiff's effectiveness as a teacher. McBroom v. Board of Educ., 144 Ill. App. 3d 463, 98 Ill. Dec. 864, 494 N.E.2d 1191 (2 Dist. 1986).

§ 105 ILCS 5/27-12.1. Consumer education

Sec. 27-12.1. Consumer education. (a) Pupils in the public schools in grades 9 through 12 shall be taught and be required to study courses which include instruction in the area of consumer education, including but not necessarily limited to (i) understanding the basic concepts of financial literacy, including installment purchasing (including credit scoring, managing credit debt, and completing a loan application), budgeting, savings and investing, banking (including balancing a checkbook, opening a deposit account, and the use of interest rates), understanding simple contracts, State and federal income taxes, personal insurance policies, the comparison of prices, and homeownership (including the basic process of obtaining a mortgage and the concepts of fixed and adjustable rate mortgages, subprime loans, and predatory lending), and (ii) understanding the roles of consumers interacting with agriculture, business, labor unions and government in formulating and achieving the goals of the mixed free enterprise system. The State Board of Education shall devise or approve the consumer education curriculum for grades 9 through 12 and specify the minimum amount of instruction to be devoted thereto.

(b) (Blank.)

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(c) The Financial Literacy Fund is created as a special fund in the State treasury. State funds and private contributions for the promotion of financial literacy shall be deposited into the Financial Literacy Fund. All money in the Financial Literacy Fund shall be used, subject to appropriation, by the State Board of Education to award grants to school districts for the following:

(1) Defraying the costs of financial literacy training for teachers.

(2) Rewarding a school or teacher who wins or achieves results at a certain level of success in a financial literacy competition.

(3) Rewarding a student who wins or achieves results at a certain level of success in a financial literacy competition.

(4) Funding activities, including books, games, field trips, computers, and other activities, related to financial literacy education.

In awarding grants, every effort must be made to ensure that all geographic areas of the State are represented.

(d) A school board may establish a special fund in which to receive public funds and private contributions for the promotion of financial literacy. Money in the fund shall be used for the following:

(1) Defraying the costs of financial literacy training for teachers.

(2) Rewarding a school or teacher who wins or achieves results at a certain level of success in a financial literacy competition.

(3) Rewarding a student who wins or achieves results at a certain level of success in a financial literacy competition.

(4) Funding activities, including books, games, field trips, computers, and other activities, related to financial literacy education.

(e) The State Board of Education, upon the next comprehensive review of the Illinois Learning Standards, is urged to include the basic principles of personal insurance policies and understanding simple contracts.

(Source: P.A. 86-300; 94-929, § 10; 95-863, § 5; 96-1061, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-12.1.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.420.

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Effect of Amendments. The 2006 amendment by P.A. 94-929, effective June 26, 2006, rewrote the section.

The 2008 amendment by P.A. 95-863, effective January 1, 2009, inserted "and homeownership (including the basic process of obtaining a mortgage and the concepts of fixed and adjustable rate mortgages, subprime loans, and predatory lending)", and made a related change in (a)(i).

The 2010 amendment by P.A. 96-1061, effective July 14, 2010, deleted "Subject to the provisions of subsection (b) of this Section" from the beginning of the first sentence of (a); deleted the text of subsection (b); and made a stylistic change.

§ 105 ILCS 5/27-13.1. [Instruction on conservation]

Sec. 27-13.1. In every public school there shall be instruction, study and discussion of current problems and needs in the conservation of natural resources, including but not limited to air pollution, water pollution, waste reduction and recycling, the effects of excessive use of pesticides, preservation of wilderness areas, forest management, protection of wildlife and humane care of domestic animals.

(Source: P.A. 86-229.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-13.1.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.420.

§ 105 ILCS 5/27-13.2. Required instruction

Sec. 27-13.2. Required instruction. In every public school there shall be instruction, study and discussion of effective methods by which pupils may recognize the danger of and avoid abduction, and in every public school maintaining any of grades kindergarten through 8 there shall be, for such grades, instruction, study, and discussion of effective methods for the prevention and avoidance of drug and substance abuse. School boards may include such required instruction, study and discussion in the courses of study regularly taught in the public schools of their respective districts; provided, however, that such instruction shall be given each year to all pupils in grades kindergarten through 8. The State Superintendent of Education may prepare and make available to all public and non-public schools instructional materials which may be used by such schools as guidelines for development of a program of instruction under this Section; provided, however, that each school board shall itself determine the minimum amount of

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instruction time which shall qualify as a program of instruction which will satisfy the requirements of this Section.

The State Superintendent of Education, in cooperation with the Department of Children and Family Services, shall prepare and disseminate to all public schools and non-public schools, information on instructional materials and programs about child sexual abuse which may be used by such schools for their own or community programs. Such information may also be disseminated by such schools to parents.

Notwithstanding the foregoing provisions of this Section, no pupil in any of grades kindergarten through 8 shall be required to take or participate in any class or course providing instruction in recognizing and avoiding sexual abuse if the parent or guardian of the pupil submits written objection thereto; and refusal to take or participate in such class or course after such written objection is made shall not be reason for failing, suspending or expelling such pupil. Each school board intending to offer any such class or course to pupils in any of grades kindergarten through 8 shall give not less than 5 days written notice to the parents or guardians of such pupils before commencing the class or course.

(Source: P.A. 86-788.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-13.2.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.420.

§ 105 ILCS 5/27-13.3. Internet safety education curriculum

Sec. 27-13.3. Internet safety education curriculum. (a) The purpose of this Section is to inform and protect students from inappropriate or illegal communications and solicitation and to encourage school districts to provide education about Internet threats and risks, including without limitation child predators, fraud, and other dangers.

(b) The General Assembly finds and declares the following:

(1) it is the policy of this State to protect consumers and Illinois residents from deceptive and unsafe communications that result in harassment, exploitation, or physical harm;

(2) children have easy access to the Internet at home, school, and public places;

(3) the Internet is used by sexual predators and other criminals to make initial contact with children and other vulnerable residents in Illinois; and

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(4) education is an effective method for preventing children from falling prey to online predators, identity theft, and other dangers.

(c) Each school may adopt an age-appropriate curriculum for Internet safety instruction of students in grades kindergarten through 12. However, beginning with the 2009-2010 school year, a school district must incorporate into the school curriculum a component on Internet safety to be taught at least once each school year to students in grades 3 through 12. The school board shall determine the scope and duration of this unit of instruction. The age-appropriate unit of instruction may be incorporated into the current courses of study regularly taught in the district's schools, as determined by the school board, and it is recommended that the unit of instruction include the following topics:

(1) Safe and responsible use of social networking websites, chat rooms, electronic mail, bulletin boards, instant messaging, and other means of communication on the Internet.

(2) Recognizing, avoiding, and reporting online solicitations of students, their classmates, and their friends by sexual predators.

(3) Risks of transmitting personal information on the Internet.

(4) Recognizing and avoiding unsolicited or deceptive communications received online.

(5) Recognizing and reporting online harassment and cyber-bullying.

(6) Reporting illegal activities and communications on the Internet.

(7) Copyright laws on written materials, photographs, music, and video.

(d) Curricula devised in accordance with subsection (c) of this Section may be submitted for review to the Office of the Illinois Attorney General.

(e) The State Board of Education shall make available resource materials for educating children regarding child online safety and may take into consideration the curriculum on this subject developed by other states, as well as any other curricular materials suggested by education experts, child psychologists, or technology companies that work on child online safety issues. Materials may include without limitation safe online communications, privacy protection, cyber-bullying, viewing inappropriate material, file sharing, and the importance of open communication with responsible adults. The State Board of Education shall make these resource materials available on its Internet website.

(Source: P.A. 95-509, § 5; 95-869, § 5; 96-734, § 5.)

Effective Date. Section 99 of P.A. 95-509 makes this section effective upon becoming law. The Act was approved August 28, 2007.

Effect of Amendments. The 2008 amendment by P.A. 95-869, effective January 1, 2009, rewrote the introductory paragraph of (c); and added (e).

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The 2009 amendment by P.A. 96-734, effective August 25, 2009, substituted "grades 3 through 12" for "grade 3 or above" in the second sentence of the introductory language of (c).

§ 105 ILCS 5/27-14. Experiments upon animals

Sec. 27-14. Experiments upon animals. No experiment upon any living animal for the purpose of demonstration in any study shall be made in any public school. No animal provided by, or killed in the presence of any pupil of a public school shall be used for dissection in such school, and in no case shall dogs or cats be killed for such purposes. Dissection of dead animals, or parts thereof, shall be confined to the classroom and shall not be practiced in the presence of any pupil not engaged in the study to be illustrated thereby.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-14.

§ 105 ILCS 5/27-15. Moral and humane education - In institute programs

Sec. 27-15. Moral and humane education - In institute programs. The superintendent of each region and city shall include once each year moral and humane education in the program of the teachers' institute which is held under his supervision.

(Source: P.A. 79-597.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-15.

§ 105 ILCS 5/27-16: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/27-17. Safety education

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Sec. 27-17. Safety education. School boards of public schools and all boards in charge of educational institutions supported wholly or partially by the State may provide instruction in safety education in all grades and include such instruction in the courses of study regularly taught therein.

In this section "safety education" means and includes instruction in the following:

1.automobile safety, including traffic regulations, highway safety, and the consequences of alcohol consumption and the operation of a motor vehicle;

2.safety in the home;

3.safety in connection with recreational activities;

4.safety in and around school buildings;

5.safety in connection with vocational work or training; and

6.cardio-pulmonary resuscitation for students enrolled in grades 9 through 11.

Such boards may make suitable provisions in the schools and institutions under their jurisdiction for instruction in safety education for not less than 16 hours during each school year.

The curriculum in all State universities shall contain instruction in safety education for teachers that is appropriate to the grade level of the teaching certificate. This instruction may be by specific courses in safety education or may be incorporated in existing subjects taught in the university.

(Source: P.A. 80-1283; 95-168, § 5; 95-371, § 5; 95-876, § 175; 96-734, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-17.

Effect of Amendments. The 2007 amendment by P.A. 95-168, effective August 14, 2007, added "and the consequences of alcohol consumption and the operation of a motor vehicle" and made a related change in 1.

The 2007 amendment by P.A. 95-371, effective August 23, 2007, rewrote the last paragraph.

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, combined earlier multiple amendments.

The 2009 amendment by P.A. 96-734, effective August 25, 2009, substituted "students" for "pupils" in 6.

§ 105 ILCS 5/27-18. Arbor and bird day

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Sec. 27-18. Arbor and bird day. The last Friday in April is designated as "Arbor and Bird Day," to be observed throughout the State as a day for planting trees, shrubs and vines about public grounds, and as a day on which to hold appropriate exercises in the public schools and elsewhere tending to show the value of trees and birds and the necessity for their protection.

(Source: Laws 1961, p. 31; P.A. 92-85, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-18.

Effect of Amendments. The 2001 amendment by P.A. 92-85, effective July 12, 2001, substituted "The last Friday in April is designated" for "The Governor shall annually designate by official proclamation a day in the spring to be known".

§ 105 ILCS 5/27-19. Leif Erickson day

Sec. 27-19. Leif Erickson day. October 9, if a school day, otherwise the school day nearest such date, is designated as Leif Erickson Day. On such day one-half hour may be devoted in the schools to instruction and appropriate exercises relative to and in commemoration of the life and history of Leif Erickson and the principles and ideals he fostered.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-19.

§ 105 ILCS 5/27-20. American Indian day

Sec. 27-20. American Indian day. The fourth Friday of September is designated "American Indian Day," to be observed throughout the State as a day on which to hold appropriate exercises in commemoration of the American Indians.

(Source: Laws 1961, p. 31.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-20.

§ 105 ILCS 5/27-20.1. Illinois Law Week

Sec. 27-20.1. Illinois Law Week. The first full school week in May is designated "Illinois Law Week". During that week, the public schools may devote appropriate time, instruction, study, and exercises in the procedures of the legislature and the enactment of laws, the courts and the administration of justice, the police and the enforcement of law, citizen responsibilities, and other principles and ideals to promote the importance of government under law in the State.

(Source: P.A. 76-1183; 92-85, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-20.1.

Effect of Amendments. The 2001 amendment by P.A. 92-85, effective July 12, 2001, added the present first sentence and deleted the former first sentence, which read: "The Governor shall annually designate by official proclamation one week in May to be known as 'Illinois Law Week' to be observed throughout the State to foster the importance of law and the respect thereof in Illinois".

§ 105 ILCS 5/27-20.2. "Just Say No" Day

Sec. 27-20.2. "Just Say No" Day. May 15, 1987, and in each calendar year thereafter, a school day in May designated by official proclamation of the Governor, shall be known as "Just Say No" Day, to be observed throughout the State as a day on which children and teenagers declare and reaffirm their commitment to living a life free of drugs and alcohol abuse, and as a day on which to hold and participate in appropriate special programs, ceremonies and exercises, in the public schools and elsewhere, tending to encourage children to lead a healthy lifestyle, aware and free of the dangers of using drugs and alcohol abuse.

(Source: P.A. 85-386.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 27-20.2.

§ 105 ILCS 5/27-20.3. Holocaust and Genocide Study

Sec. 27-20.3. Holocaust and Genocide Study. Every public elementary school and high school shall include in its curriculum a unit of instruction studying the events of the Nazi atrocities of 1933 to 1945. This period in world history is known as the Holocaust, during which 6,000,000 Jews and millions of non-Jews were exterminated. One of the universal lessons of the Holocaust is that national, ethnic, racial, or religious hatred can overtake any nation or society, leading to calamitous consequences. To reinforce that lesson, such curriculum shall include an additional unit of instruction studying other acts of genocide across the globe. This unit shall include, but not be limited to, the Armenian Genocide, the Famine-Genocide in Ukraine, and more recent atrocities in Cambodia, Bosnia, Rwanda, and Sudan. The studying of this material is a reaffirmation of the commitment of free peoples from all nations to never again permit the occurrence of another Holocaust and a recognition that crimes of genocide continue to be perpetrated across the globe as they have been in the past and to deter indifference to crimes against humanity and human suffering wherever they may occur.

The State Superintendent of Education may prepare and make available to all school boards instructional materials which may be used as guidelines for development of a unit of instruction under this Section; provided, however, that each school board shall itself determine the minimum amount of instruction time which shall qualify as a unit of instruction satisfying the requirements of this Section.

(Source: P.A. 86-780; 94-478, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-20.3.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.420.

Effect of Amendments. The 2005 amendment by P.A. 94-478, effective August 5, 2005, rewrote the section, adding provisions concerning genocide.

§ 105 ILCS 5/27-20.4. Black History Study

Sec. 27-20.4. Black History Study. Every public elementary school and high school shall include in its curriculum a unit of instruction studying the events of Black History,

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including the history of the African slave trade, slavery in America, and the vestiges of slavery in this country. These events shall include not only the contributions made by individual African-Americans in government and in the arts, humanities and sciences to the economic, cultural and political development of the United States and Africa, but also the socio-economic struggle which African-Americans experienced collectively in striving to achieve fair and equal treatment under the laws of this nation. The studying of this material shall constitute an affirmation by students of their commitment to respect the dignity of all races and peoples and to forever eschew every form of discrimination in their lives and careers.

The State Superintendent of Education may prepare and make available to all school boards instructional materials, including those established by the Amistad Commission, which may be used as guidelines for development of a unit of instruction under this Section; provided, however, that each school board shall itself determine the minimum amount of instruction time which shall qualify as a unit of instruction satisfying the requirements of this Section.

(Source: P.A. 86-1256; 94-285, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-20.4.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.420.

Effect of Amendments. The 2005 amendment by P.A. 94-285, effective July 21, 2005, added "including the history of the African slave trade, slavery in America, and the vestiges of slavery in this country" in the first sentence of the first paragraph; and in the second paragraph added "including those established by the Amistad Commission".

§ 105 ILCS 5/27-20.5. Study of the History of Women

Sec. 27-20.5. Study of the History of Women. Every public elementary school and high school shall include in its curriculum a unit of instruction studying the events of the history of women in America. These events shall include not only the contributions made by individual women in government, the arts, sciences, education, and in the economic, cultural, and political development of Illinois and of the United States, but shall also include a study of women's struggles to gain the right to vote and to be treated equally as they strive to earn and occupy positions of merit in our society.

The State Superintendent of Education may prepare and make available to all school boards instructional materials that may be used as guidelines for development of a unit of

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instruction under this Section. Each school board shall determine the minimum amount of instructional time that shall qualify as a unit of instruction satisfying the requirements of this Section.

(Source: P.A. 86-1256.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-20.5.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.420.

§ 105 ILCS 5/27-20.6. "Irish Famine" study

Sec. 27-20.6. "Irish Famine" study. Every public elementary school and high school may include in its curriculum a unit of instruction studying the causes and effects of mass starvation in mid-19th century Ireland. This period in world history is known as the "Irish Famine", in which millions of Irish died or emigrated. The study of this material is a reaffirmation of the commitment of free people of all nations to eradicate the causes of famine that exist in the modern world.

The State Superintendent of Education may prepare and make available to all school boards instructional materials that may be used as guidelines for development of a unit of instruction under this Section; provided, however, that each school board shall itself determine the minimum amount of instruction time that shall qualify as a unit of instruction satisfying the requirements of this Section.

(Source: P.A. 90-566, § 5; 95-331, § 540.)

Effective Date. Section 99 of P.A. 90-566 made this section effective upon becoming law. The Act was approved January 2, 1998.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, made a typographical correction.

§ 105 ILCS 5/27-21. History of United States

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Sec. 27-21. History of United States. History of the United States shall be taught in all public schools and in all other educational institutions in this State supported or maintained, in whole or in part, by public funds. The teaching of history shall have as one of its objectives the imparting to pupils of a comprehensive idea of our democratic form of government and the principles for which our government stands as regards other nations, including the studying of the place of our government in world-wide movements and the leaders thereof, with particular stress upon the basic principles and ideals of our representative form of government. The teaching of history shall include a study of the role and contributions of African Americans and other ethnic groups including but not restricted to Polish, Lithuanian, German, Hungarian, Irish, Bohemian, Russian, Albanian, Italian, Czech, Slovak, French, Scots, Hispanics, Asian Americans, etc., in the history of this country and this State. To reinforce the study of the role and contributions of Hispanics, such curriculum shall include the study of the events related to the forceful removal and illegal deportation of Mexican-American U.S. citizens during the Great Depression. The teaching of history also shall include a study of the role of labor unions and their interaction with government in achieving the goals of a mixed free enterprise system. No pupils shall be graduated from the eighth grade of any public school unless he has received such instruction in the history of the United States and gives evidence of having a comprehensive knowledge thereof.

(Source: P.A. 84-126; 92-27, § 5; 93-406, § 5; 96-629, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-21.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.420.

Effect of Amendments. The 2001 amendment by P.A. 92-27, effective July 1, 2001, in the third sentence, substituted "African Americans" for "American Negroes", substituted "Czech, Slovak" for "Czechoslovakian", inserted "Hispanics", and made related stylistic changes.

The 2003 amendment by P.A. 93-406, effective January 1, 2004, inserted "Asian Americans" following "Hispanics".

The 2009 amendment by P.A. 96-629, effective January 1, 2010, added the fourth sentence.

§ 105 ILCS 5/27-22. Required high school courses

Sec. 27-22. Required high school courses. (a) As a prerequisite to receiving a high school diploma, each pupil entering the 9th grade in the 1984-1985 school year through

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the 2004-2005 school year must, in addition to other course requirements, successfully complete the following courses:

(1) three years of language arts;

(2) two years of mathematics, one of which may be related to computer technology;

(3) one year of science;

(4) two years of social studies, of which at least one year must be history of the United States or a combination of history of the United States and American government; and

(5) One year chosen from (A) music, (B) art, (C) foreign language, which shall be deemed to include American Sign Language or (D) vocational education.

(b) As a prerequisite to receiving a high school diploma, each pupil entering the 9th grade in the 2005-2006 school year must, in addition to other course requirements, successfully complete all of the following courses:

(1) Three years of language arts.

(2) Three years of mathematics.

(3) One year of science.

(4) Two years of social studies, of which at least one year must be history of the United States or a combination of history of the United States and American government.

(5) One year chosen from (A) music, (B) art, (C) foreign language, which shall be deemed to include American Sign Language, or (D) vocational education.

(c) As a prerequisite to receiving a high school diploma, each pupil entering the 9th grade in the 2006-2007 school year must, in addition to other course requirements, successfully complete all of the following courses:

(1) Three years of language arts.

(2) Two years of writing intensive courses, one of which must be English and the other of which may be English or any other subject. When applicable, writing-intensive courses may be counted towards the fulfillment of other graduation requirements.

(3) Three years of mathematics, one of which must be Algebra I and one of which must include geometry content.

(4) One year of science.

(5) Two years of social studies, of which at least one year must be history of the United States or a combination of history of the United States and American government.

(6) One year chosen from (A) music, (B) art, (C) foreign language, which shall be deemed to include American Sign Language, or (D) vocational education.

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(d) As a prerequisite to receiving a high school diploma, each pupil entering the 9th grade in the 2007-2008 school year must, in addition to other course requirements, successfully complete all of the following courses:

(1) Three years of language arts.

(2) Two years of writing intensive courses, one of which must be English and the other of which may be English or any other subject. When applicable, writing-intensive courses may be counted towards the fulfillment of other graduation requirements.

(3) Three years of mathematics, one of which must be Algebra I and one of which must include geometry content.

(4) Two years of science.

(5) Two years of social studies, of which at least one year must be history of the United States or a combination of history of the United States and American government.

(6) One year chosen from (A) music, (B) art, (C) foreign language, which shall be deemed to include American Sign Language, or (D) vocational education.

(e) As a prerequisite to receiving a high school diploma, each pupil entering the 9th grade in the 2008-2009 school year or a subsequent school year must, in addition to other course requirements, successfully complete all of the following courses:

(1) Four years of language arts.

(2) Two years of writing intensive courses, one of which must be English and the other of which may be English or any other subject. When applicable, writing-intensive courses may be counted towards the fulfillment of other graduation requirements.

(3) Three years of mathematics, one of which must be Algebra I and one of which must include geometry content.

(4) Two years of science.

(5) Two years of social studies, of which at least one year must be history of the United States or a combination of history of the United States and American government.

(6) One year chosen from (A) music, (B) art, (C) foreign language, which shall be deemed to include American Sign Language, or (D) vocational education.

(f) The State Board of Education shall develop and inform school districts of standards for writing-intensive coursework.

(g) This amendatory Act of 1983 does not apply to pupils entering the 9th grade in 1983-1984 school year and prior school years or to students with disabilities whose course of study is determined by an individualized education program.

This amendatory Act of the 94th General Assembly [P.A. 94-676] does not apply to pupils entering the 9th grade in the 2004-2005 school year or a prior school year or to

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students with disabilities whose course of study is determined by an individualized education program.

(h) The provisions of this Section are subject to the provisions of Section 27-22.05 [105 ILCS 5/27-22.05].

(Source: P.A. 88-269, § 5; 89-397, § 5; 94-676, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, para. 27-22.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.440.

Effect of Amendments. The 1993 amendment by P.A. 88-269, effective July 1, 1994, added the last paragraph.

The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the second paragraph, substituted "students with disabilities" for "handicapped students".

The 2005 amendment by P.A. 94-676, effective August 24, 2005, rewrote the section.

CASE NOTES

Vocational Courses

Provisions in School Code regarding vocational courses merely require the state to offer limited vocational courses as elective subjects adjunctive to the otherwise traditional course of academic study and does not require an intensive, extended and exclusive vocational training program. Chicago & N.E. Ill. Dist. Council of Carpenters Apprentice & Trainee Program v. Illinois Dep't of Revenue, 293 Ill. App. 3d 600, 228 Ill. Dec. 23, 688 N.E.2d 721 (1 Dist. 1997), appeal denied, 177 Ill. 2d 568, 232 Ill. Dec. 451, 698 N.E.2d 542 (1998).

RESEARCH REFERENCES

Student's right to compel school officials to issue degree, diploma, or the like. 11 ALR4th 1182.

§ 105 ILCS 5/27-22.05. Required course substitute

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Sec. 27-22.05. Required course substitute. Notwithstanding any other provision of this Article or this Code, a school board that maintains any of grades 9 through 12 is authorized to adopt a policy under which a student who is enrolled in any of those grades may satisfy one or more high school course or graduation requirements, including but not limited to any requirements under Sections 27-6 and 27-22 [105 ILCS 5/27-6 and 105 ILCS 5/27-22] by substituting for and successfully completing in place of the high school course or graduation requirement a related vocational or technical education course. A vocational or technical education course shall not qualify as a related vocational or technical education course within the meaning of this Section unless it contains at least 50% of the content of the required course or graduation requirement for which it is substituted, as determined by the State Board of Education in accordance with standards that it shall adopt and uniformly apply for purposes of this Section. No vocational or technical education course may be substituted for a required course or graduation requirement under any policy adopted by a school board as authorized in this Section unless the pupil's parent or guardian first requests the substitution and approves it in writing on forms that the school district makes available for purposes of this Section.

(Source: P.A. 88-269, § 5.)

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.445.

Effective Date. Section 29 of P.A. 88-269 made this section effective July 1, 1994.

§ 105 ILCS 5/27-22.10. Course credit for high school diploma

Sec. 27-22.10. Course credit for high school diploma. (a) Notwithstanding any other provision of this Code, the school board of a school district that maintains any of grades 9 through 12 is authorized to adopt a policy under which a student enrolled in grade 7 or 8 who is enrolled in the unit school district or would be enrolled in the high school district upon completion of elementary school, whichever is applicable, may enroll in a course required under Section 27-22 of this Code [105 ILCS 5/27-22], provided that the course is offered by the high school that the student would attend, and (i) the student participates in the course at the location of the high school, and the elementary student's enrollment in the course would not prevent a high school student from being able to enroll, or (ii) the student participates in the course where the student attends school as long as the course is taught by a high school teacher certified in accordance with Article 21 of this Code [105 ILCS 5/21-1a et seq.] who teaches in a high school of the school district where the student will attend when in high school and no high school students are enrolled in the course.

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(b) A school board that adopts a policy pursuant to subsection (a) of this Section must grant academic credit to an elementary school student who successfully completes the high school course, and that credit shall satisfy the requirements of Section 27-22 of this Code [105 ILCS 5/27-22] for that course.

(c) A school board must award high school course credit to a student transferring to its school district for any course that the student successfully completed pursuant to subsection (a) of this Section, unless evidence about the course's rigor and content shows that it does not address the relevant Illinois Learning Standard at the level appropriate for the high school grade during which the course is usually taken, and that credit shall satisfy the requirements of Section 27-22 of this Code for that course.

(d) A student's grade in any course successfully completed under this Section must be included in his or her grade point average in accordance with the school board's policy for making that calculation.

(Source: P.A. 95-299, § 5; 96-412, § 5.)

Effective Date. Section 99 of P.A. 95-299 made this section effective August 20, 2007.

Effect of Amendments. The 2009 amendment by P.A. 96-412, effective August 13, 2009, added item (ii) at the end of (a) and made related changes.

§ 105 ILCS 5/27-22.1. Summer school - required instructional time

Sec. 27-22.1. Summer school - required instructional time. Each course offered for high school graduation credit during summer school or any period of the calendar year not embraced within the regular school year, whether or not such course must be successfully completed as a prerequisite to receiving a high school diploma and whether or not such course if successfully completed would be included in the minimum units of credit required by regulation of the State Board of Education for high school graduation, shall provide no fewer than 60 hours of classroom instruction for the equivalent of one semester of high school course credit.

(Source: P.A. 85-839.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-22.1.

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§ 105 ILCS 5/27-22.2. Vocational education elective

Sec. 27-22.2. Vocational education elective. Whenever the school board of any school district which maintains grades 9 through 12 establishes a list of courses from which secondary school students each must elect at least one course, to be completed along with other course requirements as a pre-requisite to receiving a high school diploma, that school board must include on the list of such elective courses at least one course in vocational education.

(Source: P.A. 84-1334; 84-1438.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-22.2.

CASE NOTES

Scope

Provisions in School Code regarding vocational courses merely require the state to offer limited vocational courses as elective subjects adjunctive to the otherwise traditional course of academic study and does not require an intensive, extended and exclusive vocational training program. Chicago & N.E. Ill. Dist. Council of Carpenters Apprentice & Trainee Program v. Illinois Dep't of Revenue, 293 Ill. App. 3d 600, 228 Ill. Dec. 23, 688 N.E.2d 721 (1 Dist. 1997), appeal denied, 177 Ill. 2d 568, 232 Ill. Dec. 451, 698 N.E.2d 542 (1998).

§ 105 ILCS 5/27-22.3. Volunteer service credit program

Sec. 27-22.3. Volunteer service credit program. (a) A school district may establish a volunteer service credit program that enables secondary school students to earn credit towards graduation through performance of community service. This community service may include participation in the organization of a high school or community blood drive or other blood donor recruitment campaign. Any program so established shall begin with students entering grade 9 in the 1993-1994 school year or later. The amount of credit given for program participation shall not exceed that given for completion of one semester of language arts, math, science or social studies.

(b) Any community service performed as part of a course for which credit is given towards graduation shall not qualify under a volunteer service credit program. Any service for which a student is paid shall not qualify under a volunteer service credit

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program. Any community work assigned as a disciplinary measure shall not qualify under a volunteer service credit program.

(c) School districts that establish volunteer service credit programs shall establish any necessary rules, regulations and procedures.

(Source: P.A. 87-1082, § 1; 93-547, § 5.)

Effective Date. This section became effective, January 1, 1993, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2003 amendment by P.A. 93-547, effective August 19, 2003, inserted the second sentence in subsection (a).

§ 105 ILCS 5/27-23: Repealed by P.A. 96-734, § 25, effective August 25, 2009.

CASE NOTES

Although the minor alleged that the district's request and renewal applications for waiver under 105 ILCS 5/2-3.25g(c) (2008) of the Illinois School Code, 105 ILCS 5/27-23 (2008), which sought to increase the driver's education fees in the district to include staffing costs, were unconstitutional under the free education clause of the Illinois Constitution and were therefore invalid, 105 ILCS 5/27-23 (2008) provided that the school district may charge a reasonable fee, and the language of the statute must be given its plain and ordinary meaning, which illustrated that it was never intended to be free. Therefore, because driver's education was not covered by the free education clause, the $ 350 Drivers Education Course fee did not violate the free education clause of the Illinois Constitution and the minor's complaint against the school district was properly dismissed with prejudice. Sherman v. Twp. High Sch. Dist. 214, 404 Ill. App. 3d 1101, 344 Ill. Dec. 580, 937 N.E.2d 286, 2010 Ill. App. LEXIS 1053 (1 Dist. 2010).

§ 105 ILCS 5/27-23.1. Parenting education

Sec. 27-23.1. Parenting education. School districts may provide instruction in parenting education for grades 6 through 12 and include such instruction in the courses of study regularly taught therein. School districts may give regular school credit for satisfactory completion by the student of such courses.

As used in this section, "parenting education" means and includes instruction in the following:

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(1) Child growth and development, including prenatal development.

(2) Childbirth and child care.

(3) Family structure, function and management.

(4) Prenatal and postnatal care for mothers and infants.

(5) Prevention of child abuse.

(6) The physical, mental, emotional, social, economic and psychological aspects of interpersonal and family relationships.

(7) Parenting skill development.

The State Board of Education shall assist those districts offering parenting education instruction, upon request, in developing instructional materials, training teachers, and establishing appropriate time allotments for each of the areas included in such instruction.

School districts may offer parenting education courses during that period of the day which is not part of the regular school day. Residents of the school district may enroll in such courses. The school board may establish fees and collect such charges as may be necessary for attendance at such courses in an amount not to exceed the per capita cost of the operation thereof, except that the board may waive all or part of such charges if it determines that the individual is indigent or that the educational needs of the individual requires his or her attendance at such courses.

(Source: P.A. 84-534.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-23.1.

§ 105 ILCS 5/27-23.2: Repealed by P.A. 95-793, § 11, effective August 8, 2008.

§ 105 ILCS 5/27-23.3. Education in steroid abuse prevention

Sec. 27-23.3. Education in steroid abuse prevention. School districts shall provide instruction in relation to the prevention of abuse of anabolic steroids in grades 7 through 12 and shall include such instruction in science, health, drug abuse, physical education or other appropriate courses of study. School districts shall also provide this instruction to students who participate in interscholastic athletic programs. The instruction shall emphasize that the use of anabolic steroids presents a serious health hazard to persons who use steroids to enhance athletic performance or physical development. The State

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Board of Education may assist in the development of instructional materials and teacher training in relation to steroid abuse prevention.

(Source: P.A. 86-828; 86-1028; 94-14, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-23.3.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.420.

Effect of Amendments. The 2005 amendment by P.A. 94-14, effective January 1, 2006, added the second sentence, and made a stylistic change.

§ 105 ILCS 5/27-23.4. Violence prevention and conflict resolution education

Sec. 27-23.4. Violence prevention and conflict resolution education. School districts shall provide instruction in violence prevention and conflict resolution education for grades kindergarten through 12 and may include such instruction in the courses of study regularly taught therein. School districts may give regular school credit for satisfactory completion by the student of such courses.

As used in this Section, "violence prevention and conflict resolution education" means and includes instruction in the following:

(1) The consequences of violent behavior.

(2) The causes of violent reactions to conflict.

(3) Nonviolent conflict resolution techniques.

(4) The relationship between drugs, alcohol and violence.

The State Board of Education shall prepare and make available to all school boards instructional materials that may be used as guidelines for development of a violence prevention program under this Section, provided that each school board shall determine the appropriate curriculum for satisfying the requirements of this Section. The State Board of Education shall assist in training teachers to provide effective instruction in the violence prevention curriculum.

The State Board of Education and local school boards shall not be required to implement the provisions of this Section unless grants of funds are made available and are received after July 1, 1993 from private sources or from the federal government in amounts sufficient to enable the State Board and local school boards to meet the requirements of

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this Section. Any funds received by the State or a local educational agency pursuant to the federal Safe and Drug-Free Schools and Communities Act of 1994 [20 U.S.C. § 7101] shall first be applied or appropriated to meet the requirements and implement the provisions of this Section.

(Source: P.A. 88-248, § 5; 89-146, § 5; 97-87, § 5.)

Effective Date. Section 29 of P.A. 88-248 made this section effective upon becoming law. The Act was approved August 6, 1993.

Effect of Amendments. The 1995 amendment by P.A. 89-146, effective July 14, 1995, in the second paragraph, added a comma after "Section"; and in the fourth paragraph added the second sentence.

The 2011 amendment by P.A. 97-87, effective July 8, 2011, substituted "kindergarten through 12" for "4 through 12" in the second sentence of the first paragraph; deleted "however" following "provided" in the first sentence of the third paragraph; and made a stylistic change.

§ 105 ILCS 5/27-23.5. Organ/tissue and blood donor and transplantation programs

Sec. 27-23.5. Organ/tissue and blood donor and transplantation programs. Each school district that maintains grades 9 and 10 may include in its curriculum and teach to the students of either such grade one unit of instruction on organ/tissue and blood donor and transplantation programs. No student shall be required to take or participate in instruction on organ/tissue and blood donor and transplantation programs if a parent or guardian files written objection thereto on constitutional grounds, and refusal to take or participate in such instruction on those grounds shall not be reason for suspension or expulsion of a student or result in any academic penalty.

The regional superintendent of schools in which a school district that maintains grades 9 and 10 is located shall obtain and distribute to each school that maintains grades 9 and 10 in his or her district information and data, including instructional materials provided at no cost by America's Blood Centers, the American Red Cross, and Gift of Hope, that may be used by the school in developing a unit of instruction under this Section. However, each school board shall determine the minimum amount of instructional time that shall qualify as a unit of instruction satisfying the requirements of this Section.

(Source: P.A. 90-635, § 5; 93-547, § 5; 93-794, § 10; 95-331, § 540.)

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Effective Date. Section 99 of P.A. 90-635 made this section effective July 1, 1998. The Act was approved July 24, 1998.

Effect of Amendments. The 2003 amendment by P.A. 93-547, effective August 19, 2003, inserted "and blood" throughout the first paragraph; in the second paragraph, substituted "distribute to each school that maintains grades 9 and 10 in" for "make available to the school board of", inserted "including instructional materials provided at no cost by America's Blood Centers, the American Red Cross, and Gift of Hope"; and substituted "school" for "district".

The 2004 amendment by P.A. 93-794, effective July 22, 2004, in the first sentence of the last paragraph substituted "distribute to each school in his or her" for "make available to the school board of the" and substituted "school" for "district".

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, combined earlier multiple amendments to the section.

§ 105 ILCS 5/27-23.6. Anti-bias education

Sec. 27-23.6. Anti-bias education. (a) The General Assembly finds that there is a significant increase in violence in the schools and that much of that violence is the result of intergroup tensions. The General Assembly further finds that anti-bias education and intergroup conflict resolution are effective methods for preventing violence and lessening tensions in the schools and that these methods are most effective when they are respectful of individuals and their divergent viewpoints and religious beliefs, which are protected by the First Amendment to the Constitution of the United States.

(b) Beginning with the 2002-2003 school year, public elementary and secondary schools may incorporate activities to address intergroup conflict, with the objectives of improving intergroup relations on and beyond the school campus, defusing intergroup tensions, and promoting peaceful resolution of conflict. The activities must be respectful of individuals and their divergent viewpoints and religious beliefs, which are protected by the First Amendment to the Constitution of the United States. Such activities may include, but not be limited to, instruction and teacher training programs.

(c) A school board that adopts a policy to incorporate activities to address intergroup conflict as authorized under subsection (b) of this Section shall make information available to the public that describes the manner in which the board has implemented the authority granted to it in this Section. The means for disseminating this information (i) shall include posting the information on the school district's Internet web site, if any, and making the information available, upon request, in district offices, and (ii) may include without limitation incorporating the information in a student handbook and including the information in a district newsletter.

(Source: P.A. 92-763, § 5.)

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Effective Date. Section 99 of P.A. 92-763 made this section effective upon becoming law. The Act was approved August 6, 2002.

§ 105 ILCS 5/27-23.7. Bullying prevention

Sec. 27-23.7. Bullying prevention. (a) The General Assembly finds that a safe and civil school environment is necessary for students to learn and achieve and that bullying causes physical, psychological, and emotional harm to students and interferes with students' ability to learn and participate in school activities. The General Assembly further finds that bullying has been linked to other forms of antisocial behavior, such as vandalism, shoplifting, skipping and dropping out of school, fighting, using drugs and alcohol, sexual harassment, and sexual violence. Because of the negative outcomes associated with bullying in schools, the General Assembly finds that school districts and non-public, non-sectarian elementary and secondary schools should educate students, parents, and school district or non-public, non-sectarian elementary or secondary school personnel about what behaviors constitute prohibited bullying.

Bullying on the basis of actual or perceived race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental disability, military status, sexual orientation, gender-related identity or expression, unfavorable discharge from military service, association with a person or group with one or more of the aforementioned actual or perceived characteristics, or any other distinguishing characteristic is prohibited in all school districts and non-public, non-sectarian elementary and secondary schools. No student shall be subjected to bullying:

(1) during any school-sponsored education program or activity;

(2) while in school, on school property, on school buses or other school vehicles, at designated school bus stops waiting for the school bus, or at school-sponsored or school-sanctioned events or activities; or

(3) through the transmission of information from a school computer, a school computer network, or other similar electronic school equipment.

(b) In this Section:

"Bullying" means any severe or pervasive physical or verbal act or conduct, including communications made in writing or electronically, directed toward a student or students that has or can be reasonably predicted to have the effect of one or more of the following:

(1) placing the student or students in reasonable fear of harm to the student's or students' person or property;

(2) causing a substantially detrimental effect on the student's or students' physical or mental health;

(3) substantially interfering with the student's or students' academic performance; or

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(4) substantially interfering with the student's or students' ability to participate in or benefit from the services, activities, or privileges provided by a school.

Bullying, as defined in this subsection (b), may take various forms, including without limitation one or more of the following: harassment, threats, intimidation, stalking, physical violence, sexual harassment, sexual violence, theft, public humiliation, destruction of property, or retaliation for asserting or alleging an act of bullying. This list is meant to be illustrative and non-exhaustive.

"School personnel" means persons employed by, on contract with, or who volunteer in a school district or non-public, non-sectarian elementary or secondary school, including without limitation school and school district administrators, teachers, school guidance counselors, school social workers, school counselors, school psychologists, school nurses, cafeteria workers, custodians, bus drivers, school resource officers, and security guards.

(c) (Blank).

(d) Each school district and non-public, non-sectarian elementary or secondary school shall create and maintain a policy on bullying, which policy must be filed with the State Board of Education. Each school district and non-public, non-sectarian elementary or secondary school must communicate its policy on bullying to its students and their parent or guardian on an annual basis. The policy must be updated every 2 years and filed with the State Board of Education after being updated. The State Board of Education shall monitor the implementation of policies created under this subsection (d).

(e) This Section shall not be interpreted to prevent a victim from seeking redress under any other available civil or criminal law. Nothing in this Section is intended to infringe upon any right to exercise free expression or the free exercise of religion or religiously based views protected under the First Amendment to the United States Constitution or under Section 3 or 4 of Article 1 of the Illinois Constitution [Ill. Const. (1970), Art. 1, § 3 or § 4].

(Source: P.A. 94-937, § 5; 95-198, § 5; 95-349, § 5; 95-876, § 175; 96-952, § 5.)

Effective Date. Section 99 of P.A. 94-937 made the section effective upon becoming law. The Act was approved June 26, 2006.

Effect of Amendments. The 2007 amendment by P.A. 95-198, effective January 1, 2008, rewrote the section.

The 2007 amendment by P.A. 95-349 effective August 23, 2007, added (d).

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, combined earlier multiple amendments.

The 2010 amendment by P.A. 96-952, effective June 28, 2010, rewrote the section.

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§ 105 ILCS 5/27-23.8. Disability history and awareness

Sec. 27-23.8. Disability history and awareness. (a) A school district shall provide instruction on disability history, people with disabilities, and the disability rights movement. Instruction may be included in those courses that the school district chooses. This instruction must be founded on the principle that all students, including students with disabilities, have the right to exercise self-determination. When possible, individuals with disabilities should be incorporated into the development and delivery of this instruction. This instruction may be supplemented by knowledgeable guest speakers from the disability community. A school board may collaborate with community-based organizations, such as centers for independent living, parent training and information centers, and other consumer-driven groups, and disability membership organizations in creating this instruction.

(b) The State Board of Education may prepare and make available to all school boards resource materials that may be used as guidelines for the development of instruction for disability history and awareness under this Section.

(c) Each school board shall determine the minimum amount of instructional time required under this Section.

(d) The regional superintendent of schools shall monitor a school district's compliance with this Section's curricular requirement during his or her annual compliance visit.

(Source: P.A. 96-191, § 5.)

Effective Date. This section is effective January 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 5/27-23.9: Repealed internally by P.A. 96-952, § 5, effective March 2, 2011.

§ 105 ILCS 5/27-23.10. Gang resistance education and training

Sec. 27-23.10. Gang resistance education and training. (a) The General Assembly finds that the instance of youth delinquent gangs continues to rise on a statewide basis. Given the higher rates of criminal offending among gang members, as well as the availability of increasingly lethal weapons, the level of criminal activity by gang members has taken on new importance for law enforcement agencies, schools, the community, and prevention efforts.

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(b) As used in this Section:

"Gang resistance education and training" means and includes instruction in, without limitation, each of the following subject matters when accompanied by a stated objective of reducing gang activity and educating children in grades K through 12 about the consequences of gang involvement:

(1) conflict resolution;

(2) cultural sensitivity;

(3) personal goal setting; and

(4) resisting peer pressure.

(c) Each school district and non-public, non-sectarian elementary or secondary school in this State may make suitable provisions for instruction in gang resistance education and training in all grades and include that instruction in the courses of study regularly taught in those grades. For the purposes of gang resistance education and training, a school board or the governing body of a non-public, non-sectarian elementary or secondary school must collaborate with State and local law enforcement agencies. The State Board of Education may assist in the development of instructional materials and teacher training in relation to gang resistance education and training.

(Source: P.A. 96-952, § 5.)

Effective Date. Section 99 of P.A. 96-952 made this section effective upon becoming law. The Act was approved June 28, 2010.

§ 105 ILCS 5/27-24. Short title

Sec. 27-24. Short title. Sections 27-24 through 27-24.8 of this Article [105 ILCS 5/27-24 through 105 ILCS 5/27-24.8] are known and may be cited as the Driver Education Act.

(Source: P.A. 76-1835.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-24.

CASE NOTES

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Construction

The Driver Education Act [105 ILCS 5/27-24 et seq.] must be considered with the rest of the School Code [105 ILCS 5/1-1 et seq.] to determine the duties and powers of school districts with respect to driver education. Acorn Auto Driving Sch., Inc. v. Board of Educ., 27 Ill. 2d 93, 187 N.E.2d 722 (1963).

§ 105 ILCS 5/27-24.1. Definitions

Sec. 27-24.1. Definitions. As used in the Driver Education Act [105 ILCS 5/27-24 through 105 ILCS 5/27-24.8] unless the context otherwise requires:

"State Board" means the State Board of Education;

"Driver education course" and "course" means a course of instruction in the use and operation of cars, including instruction in the safe operation of cars and rules of the road and the laws of this State relating to motor vehicles, which meets the minimum requirements of this Act and the rules and regulations issued thereunder by the State Board and has been approved by the State Board as meeting such requirements;

"Car" means a motor vehicle of the first Division as defined in The Illinois Vehicle Code [625 ILCS 5/1-100 et seq.];

"Motorcycle" or "motor driven cycle" means such a vehicle as defined in The Illinois Vehicle Code [625 ILCS 5/1-100 et seq.];

"Driver's license" means any license or permit issued by the Secretary of State under Chapter 6 of The Illinois Vehicle Code [625 ILCS 5/6-100 et seq.].

With reference to persons, the singular number includes the plural and vice versa, and the masculine gender includes the feminine.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-24.1.

CASE NOTES

Duty of Bus Company

While defendant bus company was obligated to comply with safety laws, rules and regulations, its obligation did not extend to teaching students safe bus riding practices under former 105 ILCS

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5/27-26 9 (repealed). Lockett ex rel. Lockett v. Board of Educ., 198 Ill. App. 3d 252, 144 Ill. Dec. 536, 555 N.E.2d 1055 (5 Dist. 1990).

§ 105 ILCS 5/27-24.2. Safety education; driver education course

Sec. 27-24.2. Safety education; driver education course. Instruction shall be given in safety education in each of grades one though 8, equivalent to one class period each week, and any school district which maintains grades 9 through 12 shall offer a driver education course in any such school which it operates. Its curriculum shall include content dealing with Chapters 11, 12, 13, 15, and 16 of the Illinois Vehicle Code [625 ILCS 5/11-100 et seq., 625 ILCS 5/12-101 et seq., 625 ILCS 5/13-100 et seq., 625 ILCS 5/15-100 et seq., and 625 ILCS 5/16-101 et seq.], the rules adopted pursuant to those Chapters insofar as they pertain to the operation of motor vehicles, and the portions of the Litter Control Act relating to the operation of motor vehicles. The course of instruction given in grades 10 through 12 shall include an emphasis on the development of knowledge, attitudes, habits, and skills necessary for the safe operation of motor vehicles, including motorcycles insofar as they can be taught in the classroom, and instruction on distracted driving as a major traffic safety issue. In addition, the course shall include instruction on special hazards existing at and required safety and driving precautions that must be observed at emergency situations, highway construction and maintenance zones, and railroad crossings and the approaches thereto. The course of instruction required of each eligible student at the high school level shall consist of a minimum of 30 clock hours of classroom instruction and a minimum of 6 clock hours of individual behind-the-wheel instruction in a dual control car on public roadways taught by a driver education instructor endorsed by the State Board of Education. Both the classroom instruction part and the practice driving part of such driver education course shall be open to a resident or non-resident student attending a non-public school in the district wherein the course is offered. Each student attending any public or non-public high school in the district must receive a passing grade in at least 8 courses during the previous 2 semesters prior to enrolling in a driver education course, or the student shall not be permitted to enroll in the course; provided that the local superintendent of schools (with respect to a student attending a public high school in the district) or chief school administrator (with respect to a student attending a non-public high school in the district) may waive the requirement if the superintendent or chief school administrator, as the case may be, deems it to be in the best interest of the student. A student may be allowed to commence the classroom instruction part of such driver education course prior to reaching age 15 if such student then will be eligible to complete the entire course within 12 months after being allowed to commence such classroom instruction.

Such a course may be commenced immediately after the completion of a prior course. Teachers of such courses shall meet the certification requirements of this Act and regulations of the State Board as to qualifications.

Subject to rules of the State Board of Education, the school district may charge a reasonable fee, not to exceed $50, to students who participate in the course, unless a student is unable to pay for such a course, in which event the fee for such a student must

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be waived. However, the district may increase this fee to an amount not to exceed $250 by school board resolution following a public hearing on the increase, which increased fee must be waived for students who participate in the course and are unable to pay for the course. The total amount from driver education fees and reimbursement from the State for driver education must not exceed the total cost of the driver education program in any year and must be deposited into the school district's driver education fund as a separate line item budget entry. All moneys deposited into the school district's driver education fund must be used solely for the funding of a high school driver education program approved by the State Board of Education that uses driver education instructors endorsed by the State Board of Education.

(Source: P.A. 85-359; 88-188, § 5; 95-339, § 5; 96-734, § 5; 97-145, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-24.2.

Effect of Amendments. The 1993 amendment by P.A. 88-188, effective January 1, 1994, added the third sentence of the first paragraph.

The 2007 amendment by P.A.95-339, effective August 21, 2007, added the first sentence in the second paragraph.

The 2009 amendment by P.A. 96-734, effective August 25, 2009, rewrote the section.

The 2011 amendment by P.A. 97-145, effective July 14, 2011, inserted the second sentence of the third paragraph.

CASE NOTES

Powers

- Driver Education

Defendants, private auto driving school, were to offer driver education classes for persons over the age of 21, who qualify for classes; however, the defendants may not indiscriminately accept anyone or everyone over 21 who may desire to enroll. Acorn Auto Driving Sch., Inc. v. Board of Educ., 27 Ill. 2d 93, 187 N.E.2d 722 (1963).

§ 105 ILCS 5/27-24.3. Reimbursement

Sec. 27-24.3. Reimbursement. In order for the school district to receive reimbursement from the State as hereinafter provided, the driver education course offered in its schools shall consist of at least 30 clock hours of classroom instruction and, subject to

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modification as hereinafter allowed, at least 6 clock hours of practice driving in a car having dual operating controls under direct individual instruction.

(Source: P.A. 83-243; 95-310, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-24.3.

Effect of Amendments. The 2007 amendment by P.A. 95-310, effective July 1, 2008, deleted the former last two sentences, which read: "The State Board may allow, in lieu of not more than 5 clock hours of practice driving in a dual control car, such practice driving instruction as it determines is the equivalent of such practice driving in a dual control car. School districts may adopt a policy to permit proficiency examinations for the practice driving part of the driver education course at any time after the completion of 3 hours of practice driving under direct individual instruction."

§ 105 ILCS 5/27-24.4. Reimbursement amount

Sec. 27-24.4. Reimbursement amount. Each school district shall be entitled to reimbursement for each student who finishes either the classroom instruction part or the practice driving part of a driver education course that meets the minimum requirements of this Act. Reimbursement under this Act is payable from the Drivers Education Fund in the State treasury.

Each year all funds appropriated from the Drivers Education Fund to the State Board of Education, with the exception of those funds necessary for administrative purposes of the State Board of Education, shall be distributed in the manner provided in this paragraph to school districts by the State Board of Education for reimbursement of claims from the previous school year. As soon as may be after each quarter of the year, if moneys are available in the Drivers Education Fund in the State treasury for payments under this Section, the State Comptroller shall draw his or her warrants upon the State Treasurer as directed by the State Board of Education. The warrant for each quarter shall be in an amount equal to one-fourth of the total amount to be distributed to school districts for the year. Payments shall be made to school districts as soon as may be after receipt of the warrants.

The base reimbursement amount shall be calculated by the State Board by dividing the total amount appropriated for distribution by the total of: (a) the number of students who have completed the classroom instruction part for whom valid claims have been made times 0.2; plus (b) the number of students who have completed the practice driving instruction part for whom valid claims have been made times 0.8.

The amount of reimbursement to be distributed on each claim shall be 0.2 times the base reimbursement amount for each validly claimed student who has completed the

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classroom instruction part, plus 0.8 times the base reimbursement amount for each validly claimed student who has completed the practice driving instruction part. The school district which is the residence of a student who attends a nonpublic school in another district that has furnished the driver education course shall reimburse the district offering the course, the difference between the actual per capita cost of giving the course the previous school year and the amount reimbursed by the State.

By April 1 the nonpublic school shall notify the district offering the course of the names and district numbers of the nonresident students desiring to take such course the next school year. The district offering such course shall notify the district of residence of those students affected by April 15. The school district furnishing the course may claim the nonresident student for the purpose of making a claim for State reimbursement under this Act.

(Source: P.A. 85-359; 94-440, § 5; 94-525, § 5; 95-331, § 540; 95-793, § 5; 96-734, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-24.4.

Effect of Amendments. The 2005 amendment by P.A. 94-440, effective August 4, 2005, in the second paragraph, in the first sentence, added "in the manner provided in this paragraph" and added the last three sentences; and deleted the former second sentence in the fourth paragraph, which concerned a prohibition on the amount of reimbursement made on account of any student exceeding the per pupil cost of the classroom instruction and practice driving instruction.

The 2005 amendment by P.A. 94-525, effective January 1, 2006, added the second sentence and made a stylistic change in the first paragraph.

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, made stylistic changes.

The 2008 amendment by P.A. 95-793, effective August 8, 2008, deleted the second sentence of the first paragraph which read "However, if a school district has adopted a policy to permit proficiency examinations for the practice driving part of the driver education course as provided under Section 27-24.3, then the school district is entitled to only one-half of the reimbursement amount for the practice driving part for each pupil who has passed the proficiency examination, and the State Board of Education shall adjust the reimbursement formula accordingly."

The 2009 amendment by P.A. 96-734, effective August 25, 2009, substituted "student" for "pupil, excluding each resident of the district over age 55" in the first sentence of the first paragraph; deleted "excluding residents of the district over age 55" following "students" twice in the third paragraph; deleted "excluding residents of the district over age 55" following "student" twice in the first sentence of the next-to-last paragraph; substituted "student" for "pupil" in the last sentence of the last two paragraphs; and made a stylistic change.

§ 105 ILCS 5/27-24.5. Submission of claims

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Sec. 27-24.5. Submission of claims. The district shall report on forms prescribed by the State Board, on an ongoing basis, a list of students by name, birth date and sex, with the date the behind-the-wheel instruction or the classroom instruction or both were completed and with the status of the course completion.

The State shall not reimburse any district for any student who has repeated any part of the course more than once or who did not meet the age requirements of this Act during the period that the student was instructed in any part of the drivers education course.

(Source: P.A. 85-359; 88-9, § 5; 90-811, § 5; 94-440, § 5; 96-734, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-24.5.

Effect of Amendments. The 1993 amendment by P.A. 88-9, effective June 30, 1993, deleted the former second paragraph regarding the transmission of a copy of claims to the Secretary of State who would then report to the State Board anyone listed who had not acquired a valid driver's license while a student.

The 1998 amendment by P.A. 90-811, effective January 26, 1999, rewrote this section.

The 2005 amendment by P.A. 94-440, effective August 4, 2005, rewrote the first paragraph.

The 2009 amendment by P.A. 96-734, effective August 25, 2009, deleted "nor shall the State reimburse any district for any resident of the district over age 55" from the end of the second paragraph.

CASE NOTES

In General

A non-reimbursable course of instruction is not prohibited by this Act. Acorn Auto Driving Sch., Inc. v. Board of Educ., 27 Ill. 2d 93, 187 N.E.2d 722 (1963).

§ 105 ILCS 5/27-24.6. Attendance records

Sec. 27-24.6. Attendance records. The school board shall require the teachers of drivers education courses to keep daily attendance records for students attending such courses in the same manner as is prescribed in Section 24-18 of this Act [105 ILCS 5/24-18] and such records shall be used to prepare and certify claims made under the Driver Education Act [105 ILCS 5/27-24 to 105 ILCS 5/27-24.8]. Claims for reimbursement shall be made under oath or affirmation of the chief school administrator for the district employed by the school board or authorized driver education personnel employed by the school board.

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Whoever submits a false claim under the Driver Education Act or makes a false record upon which a claim is based shall be fined in an amount equal to the sum falsely claimed.

(Source: P.A. 85-359; 93-55, § 5; 96-734, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-24.6.

Effect of Amendments. The 2003 amendment by P.A. 93-55, effective July 1, 2003, in the second sentence of the first paragraph deleted "the president or acting president of the school board for the district and" after "affirmation of", and added the language from "or authorized" through the end of the sentence.

The 2009 amendment by P.A. 96-734, effective August 25, 2009, substituted "students" for "pupils, excluding residents of the district over age 55" in the first sentence of the first paragraph.

§ 105 ILCS 5/27-24.7. School code to apply

Sec. 27-24.7. School code to apply. The provisions of this Act not inconsistent with the provisions of the Driver Education Act [105 ILCS 5/27-24 to 105 ILCS 5/27-24.8] shall apply to the conduct of instruction offered by a school district under the provisions of the Driver Education Act [105 ILCS 5/27-24 to 105 ILCS 5/27-24.8].

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-24.7.

§ 105 ILCS 5/27-24.8. Rules and regulations

Sec. 27-24.8. Rules and regulations. The State Board may promulgate rules and regulations not inconsistent with the provisions of the Driver Education Act for the administration of the Driver Education Act [105 ILCS 5/27-24 to 105 ILCS 5/27-24.8].

(Source: P.A. 81-1508.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-24.8.

§§ 105 ILCS 5/27-25 through 105 ILCS 5/27-25.4: Repealed by P.A. 95-793, § 11, effective August 8, 2008.

§ 105 ILCS 5/27-26: Repealed by P.A. 94-600, § 910, effective August 16, 2005.

§ 105 ILCS 5/27-27. [Identification of system of categorizing classes by degree of difficulty]

Sec. 27-27. When school districts use a system of categorizing classes of instruction by degree of difficulty and issues grades in accordance therewith, identification of said system shall be reflected in the affected students' class ranking and permanent records.

(Source: P.A. 81-707.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 27-27.

Article 27A.

Charter Schools

§ 105 ILCS 5/27A-1. Short title and application

Sec. 27A-1. Short title and application. This Article may be cited as the Charter Schools Law. This Article applies in all school districts, including special charter districts and

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school districts located in cities having a population of more than 500,000.

(Source: P.A. 89-450, § 5.)

Effective Date. Section 99 of P.A. 89-450 made this Article effective upon becoming law. The Act was approved April 10, 1996.

RESEARCH REFERENCES

Validity, construction, and application of statute or regulation governing charter schools. 78 ALR5th 533.

§ 105 ILCS 5/27A-2. Legislative declaration

Sec. 27A-2. Legislative declaration. (a) The General Assembly finds and declares as follows:

(1) Encouraging educational excellence is in the best interests of the people of this State.

(2) There are educators, community members, and parents in Illinois who can offer flexible and innovative educational techniques and programs, but who lack an avenue through which to provide them within the public school system.

(3) The enactment of legislation authorizing charter schools to operate in Illinois will promote new options within the public school system and will provide pupils, educators, community members, and parents with the stimulus to strive for educational excellence.

(b) The General Assembly further finds and declares that this Article is enacted for the following purposes:

(1) To improve pupil learning by creating schools with high, rigorous standards for pupil performance.

(2) To increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for at-risk pupils, consistent, however, with an equal commitment to increase learning opportunities for all other groups of pupils in a manner that does not discriminate on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, marital status, or need for special education services.

(3) To encourage the use of teaching methods that may be different in some respects than others regularly used in the public school system.

(4) To allow the development of new, different, or alternative forms of measuring pupil learning and achievement.

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(5) To create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.

(6) To provide parents and pupils with expanded choices within the public school system.

(7) To encourage parental and community involvement with public schools.

(8) To hold charter schools accountable for meeting rigorous school content standards and to provide those schools with the opportunity to improve accountability.

(c) In authorizing charter schools, it is the intent of the General Assembly to create a legitimate avenue for parents, teachers, and community members to take responsible risks and create new, innovative, and more flexible ways of educating children within the public school system. The General Assembly seeks to create opportunities within the public school system of Illinois for development of innovative and accountable teaching techniques. The provisions of this Article should be interpreted liberally to support the findings and goals of this Section and to advance a renewed commitment by the State of Illinois to the mission, goals, and diversity of public education.

(Source: P.A. 89-450, § 5; 90-548, § 5-915.)

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, in subdivision (b)(2) added at the end "consistent, however, with an equal commitment to increase learning opportunities for all other group of pupils in a manner that does not discriminate on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, marital status, or need for special education services"; in subdivision (b)(3) deleted "innovative" preceding "teaching" and added at the end "that may be different in some respects than others regularly used in the public school system"; and in subdivision (b)(4) substituted "new, different, or alternative" for "innovative".

§ 105 ILCS 5/27A-3. Definitions

Sec. 27A-3. Definitions. For purposes of this Article:

"At-risk pupil" means a pupil who, because of physical, emotional, socioeconomic, or cultural factors, is less likely to succeed in a conventional educational environment.

"Authorizer" means an entity authorized under this Article to review applications, decide whether to approve or reject applications, enter into charter contracts with applicants, oversee charter schools, and decide whether to renew, not renew, or revoke a charter.

"Commission" means the State Charter School Commission established under Section 27A-7.5 of this Code [105 ILCS 5/27A-7.5].

"Local school board" means the duly elected or appointed school board or board of education of a public school district, including special charter districts and school

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districts located in cities having a population of more than 500,000, organized under the laws of this State.

"State Board" means the State Board of Education.

(Source: P.A. 89-450, § 5; 97-152, § 5.)

Effect of Amendments. The 2011 amendment by P.A. 97-152, effective July 20, 2011, inserted the definitions of Authorizer and Commission.

§ 105 ILCS 5/27A-4. General Provisions

Sec. 27A-4. General Provisions. (a) The General Assembly does not intend to alter or amend the provisions of any court-ordered desegregation plan in effect for any school district. A charter school shall be subject to all federal and State laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, marital status, or need for special education services.

(b) The total number of charter schools operating under this Article at any one time shall not exceed 120. Not more than 70 charter schools shall operate at any one time in any city having a population exceeding 500,000, with at least 5 charter schools devoted exclusively to students from low-performing or overcrowded schools operating at any one time in that city; and not more than 45 charter schools shall operate at any one time in the remainder of the State, with not more than one charter school that has been initiated by a board of education, or by an intergovernmental agreement between or among boards of education, operating at any one time in the school district where the charter school is located. In addition to these charter schools, up to but no more than 5 charter schools devoted exclusively to re-enrolled high school dropouts and/or students 16 or 15 years old at risk of dropping out may operate at any one time in any city having a population exceeding 500,000. Notwithstanding any provision to the contrary in subsection (b) of Section 27A-5 of this Code [105 ILCS 5/27A-5], each such dropout charter may operate up to 15 campuses within the city. Any of these dropout charters may have a maximum of 1,875 enrollment seats, any one of the campuses of the dropout charter may have a maximum of 165 enrollment seats, and each campus of the dropout charter must be operated, through a contract or payroll, by the same legal entity as that for which the charter is approved and certified.

For purposes of implementing this Section, the State Board shall assign a number to each charter submission it receives under Section 27A-6 [105 ILCS 5/27A-6] for its review and certification, based on the chronological order in which the submission is received by it. The State Board shall promptly notify local school boards when the maximum numbers of certified charter schools authorized to operate have been reached.

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(c) No charter shall be granted under this Article that would convert any existing private, parochial, or non-public school to a charter school.

(d) Enrollment in a charter school shall be open to any pupil who resides within the geographic boundaries of the area served by the local school board, provided that the board of education in a city having a population exceeding 500,000 may designate attendance boundaries for no more than one-third of the charter schools permitted in the city if the board of education determines that attendance boundaries are needed to relieve overcrowding or to better serve low-income and at-risk students. Students residing within an attendance boundary may be given priority for enrollment, but must not be required to attend the charter school.

(e) Nothing in this Article shall prevent 2 or more local school boards from jointly issuing a charter to a single shared charter school, provided that all of the provisions of this Article are met as to those local school boards.

(f) No local school board shall require any employee of the school district to be employed in a charter school.

(g) No local school board shall require any pupil residing within the geographic boundary of its district to enroll in a charter school.

(h) If there are more eligible applicants for enrollment in a charter school than there are spaces available, successful applicants shall be selected by lottery. However, priority shall be given to siblings of pupils enrolled in the charter school and to pupils who were enrolled in the charter school the previous school year, unless expelled for cause, and priority may be given to pupils residing within the charter school's attendance boundary, if a boundary has been designated by the board of education in a city having a population exceeding 500,000. Dual enrollment at both a charter school and a public school or non-public school shall not be allowed. A pupil who is suspended or expelled from a charter school shall be deemed to be suspended or expelled from the public schools of the school district in which the pupil resides. Notwithstanding anything to the contrary in this subsection (h), any charter school with a mission exclusive to educating high school dropouts may grant priority admission to students who are high school dropouts and/or students 16 or 15 years old at risk of dropping out and any charter school with a mission exclusive to educating students from low-performing or overcrowded schools may restrict admission to students who are from low-performing or overcrowded schools. "Priority admission" for charter schools exclusively devoted to re-enrolled dropouts or students at risk of dropping out means a minimum of 90% of students enrolled shall be high school dropouts.

(i) (Blank).

(j) Notwithstanding any other provision of law to the contrary, a school district in a city having a population exceeding 500,000 shall not have a duty to collectively bargain with an exclusive representative of its employees over decisions to grant or deny a charter school proposal under Section 27A-8 of this Code [105 ILCS 5/27A-8], decisions to renew or revoke a charter under Section 27A-9 of this Code [105 ILCS 5/27A-9], and the impact of these decisions, provided that nothing in this Section shall have the effect of

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negating, abrogating, replacing, reducing, diminishing, or limiting in any way employee rights, guarantees, or privileges granted in Sections 2, 3, 7, 8, 10, 14, and 15 of the Illinois Educational Labor Relations Act [115 ILCS 5/2, 115 ILCS 5/3, 115 ILCS 5/7, 115 ILCS 5/8, 115 ILCS 5/10, 115 ILCS 5/14, and 115 ILCS 5/15].

(k) In this Section:

"Low-performing school" means a public school in a school district organized under Article 34 of this Code that enrolls students in any of grades kindergarten through 8 and that is ranked within the lowest 10% of schools in that district in terms of the percentage of students meeting or exceeding standards on the Illinois Standards Achievement Test.

"Overcrowded school' means a public school in a school district organized under Article 34 of this Code that (i) enrolls students in any of grades kindergarten through 8, (ii) has a percentage of low-income students of 70% or more, as identified in the most recently available School Report Card published by the State Board of Education, and (iii) is determined by the Chicago Board of Education to be in the most severely overcrowded 5% of schools in the district. On or before November 1 of each year, the Chicago Board of Education shall file a report with the State Board of Education on which schools in the district meet the definition of "overcrowded school'. "Students at risk of dropping out' means students 16 or 15 years old in a public school in a district organized under Article 34 of this Code that enrolls students in any grades 9-12 who have been absent at least 90 school attendance days of the previous 180 school attendance days.

(Source: P.A. 89-450, § 5; 91-357, § 101; 91-405, § 5; 91-407, § 10; 92-16, § 49; 93-3, § 5; 93-861, § 5; 96-105, § 5; 97-151, § 5; 97-624, § 5.)

Note.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "Not more than 15" for "Not more that 15" in the first paragraph of subsection (b).

The 1999 amendment by P.A. 91-405, effective August 3, 1999, in the second sentence in subsection (b), substituted "Not more than" for "Not more that", and added the language beginning "with not more than one charter school" and ending "where the charter school is located" twice.

The 1999 amendment by P.A. 91-407, effective August 3, 1999, substituted "Not more than" for "Not more that" at the beginning of the second sentence in subsection (b); in subsection (d) deleted the last sentence which read "However, no more than 50% of the number of resident pupils enrolled in any one grade in a school district with only a single attendance center covering that grade may be enrolled in a charter school at one time"; and deleted subsection (i) which read

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"No charter school established under this Article may be authorized to open prior to the school year beginning in the fall of 1996".

The 2001 amendment by P.A. 92-16, effective June 28, 2001, combined the amendments by P.A. 91-357, P.A. 91-405 and P.A. 91-407.

The 2003 amendment by P.A. 93-3, effective April 16, 2003, substituted "60" for "45" and "30" for "15" in the first paragraph of subsection (b); and added subsection (j).

The 2004 amendment by P.A. 93-849, effective January 1, 2005, inserted the proviso and last sentence in subsection (d); and in the second sentence of subsection (h) inserted the language beginning "and priority may" through the end of the sentence.

The 2009 amendment by P.A. 96-105, effective July 30, 2009, rewrote (b); and added the last sentence in (h).

The 2011 amendment by P.A. 97-151, effective January 1, 2012, inserted "through a contract or payroll" in the last sentence of the first paragraph of (b).

The 2011 amendment by P.A. 97-624, effective November 28, 2011, in the first paragraph of (b), inserted "with at least 5 charter schools devoted exclusively to students from low-performing or overcrowded schools operating at any one time in that city" in the second sentence and inserted "and/or students 16 or 15 years old at risk of dropping out" in the third sentence; in the fifth sentence of (h), substituted "grant priority" for "restrict" and added "and/or students 16 or 15 years old at risk of dropping out and any charter school with a mission exclusive to educating students from low-performing or overcrowded schools may restrict admission to students who are from low-performing or overcrowded schools" to the end; added the last sentence to (h); and added (k).

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

§ 105 ILCS 5/27A-5. Charter school; legal entity; requirements

Sec. 27A-5. Charter school; legal entity; requirements. (a) A charter school shall be a public, nonsectarian, nonreligious, non-home based, and non-profit school. A charter school shall be organized and operated as a nonprofit corporation or other discrete, legal, nonprofit entity authorized under the laws of the State of Illinois.

(b) A charter school may be established under this Article by creating a new school or by converting an existing public school or attendance center to charter school status. Beginning on the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-3], in all new applications submitted to the State Board or a local school board to establish a charter school in a city having a population exceeding 500,000, operation of the charter school shall be limited to one campus. The changes made to this Section by this amendatory Act of the 93rd General Assembly do not apply to charter schools existing or approved on or before the effective date of this amendatory Act.

(c) A charter school shall be administered and governed by its board of directors or other governing body in the manner provided in its charter. The governing body of a charter

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school shall be subject to the Freedom of Information Act [5 ILCS 140/1 et seq.] and the Open Meetings Act [5 ILCS 120/1 et seq.].

(d) A charter school shall comply with all applicable health and safety requirements applicable to public schools under the laws of the State of Illinois.

(e) Except as otherwise provided in the School Code [105 ILCS 5/1-1 et seq.], a charter school shall not charge tuition; provided that a charter school may charge reasonable fees for textbooks, instructional materials, and student activities.

(f) A charter school shall be responsible for the management and operation of its fiscal affairs including, but not limited to, the preparation of its budget. An audit of each charter school's finances shall be conducted annually by an outside, independent contractor retained by the charter school. Annually, by December 1, every charter school must submit to the State Board a copy of its audit and a copy of the Form 990 the charter school filed that year with the federal Internal Revenue Service.

(g) A charter school shall comply with all provisions of this Article, the Illinois Educational Labor Relations Act, and its charter. A charter school is exempt from all other State laws and regulations in the School Code governing public schools and local school board policies, except the following:

(1) Sections 10-21.9 and 34-18.5 of the School Code [105 ILCS 5/10-21.9 and 105 ILCS 5/34-18.5] regarding criminal history records checks and checks of the Statewide Sex Offender Database and Statewide Murderer and Violent Offender Against Youth Database of applicants for employment;

(2) Sections 24-24 and 34-84A of the School Code [105 ILCS 5/24-24 and 105 ILCS 5/34-84A] regarding discipline of students;

(3) The Local Governmental and Governmental Employees Tort Immunity Act [745 ILCS 10/1-101 et seq.];

(4) Section 108.75 of the General Not For Profit Corporation Act of 1986 [805 ILCS 105/108.75] regarding indemnification of officers, directors, employees, and agents;

(5) The Abused and Neglected Child Reporting Act [325 ILCS 5/1 et seq.];

(6) The Illinois School Student Records Act [105 ILCS 10/1 et seq.];

(7) Section 10-17a of the School Code [105 ILCS 5/10-17a] regarding school report cards; and

(8) The P-20 Longitudinal Education Data System Act [105 ILCS 13/1 et seq.].

The change made by Public Act 96-104 to this subsection (g) is declaratory of existing law.

(h) A charter school may negotiate and contract with a school district, the governing body of a State college or university or public community college, or any other public or for-profit or nonprofit private entity for: (i) the use of a school building and grounds or any

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other real property or facilities that the charter school desires to use or convert for use as a charter school site, (ii) the operation and maintenance thereof, and (iii) the provision of any service, activity, or undertaking that the charter school is required to perform in order to carry out the terms of its charter. However, a charter school that is established on or after the effective date of this amendatory Act of the 93rd General Assembly and that operates in a city having a population exceeding 500,000 may not contract with a for-profit entity to manage or operate the school during the period that commences on the effective date of this amendatory Act of the 93rd General Assembly and concludes at the end of the 2004-2005 school year. Except as provided in subsection (i) of this Section, a school district may charge a charter school reasonable rent for the use of the district's buildings, grounds, and facilities. Any services for which a charter school contracts with a school district shall be provided by the district at cost. Any services for which a charter school contracts with a local school board or with the governing body of a State college or university or public community college shall be provided by the public entity at cost.

(i) In no event shall a charter school that is established by converting an existing school or attendance center to charter school status be required to pay rent for space that is deemed available, as negotiated and provided in the charter agreement, in school district facilities. However, all other costs for the operation and maintenance of school district facilities that are used by the charter school shall be subject to negotiation between the charter school and the local school board and shall be set forth in the charter.

(j) A charter school may limit student enrollment by age or grade level.

(k) If the charter school is approved by the Commission, then the Commission charter school is its own local education agency.

(Source: P.A. 89-450, § 5; 91-407, § 10; 93-3, § 5; 93-909, § 10; 94-219, § 5; 96-104, § 5; 96-105, § 5; 96-107, § 500; 96-734, § 5; 96-1000, § 260; 97-152, § 5; 97-154, § 10.)

Note.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

P.A. 97-154 Section 1 provides: "This Act may be referred to as Andrea's Law."

Effect of Amendments. The 1999 amendment by P.A. 91-407, effective August 3, 1999, added subdivision (g)(7); and inserted the second sentence in subsection (h).

The 2003 amendment by P.A. 93-3, effective April 16, 2003, added the last paragraph in subsection (b); and inserted the second sentence in subsection (h).

The 2004 amendment by P.A. 93-909, effective August 12, 2004, substituted "history records checks" for "background investigations" in the first sentence of subsection (g)(1).

The 2005 amendment by P.A. 94-219, effective July 14, 2005, added "and checks of the Statewide Sex Offender Database" in (g)(1).

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The 2009 amendment by P.A. 96-104, effective January 1, 2010, inserted "the Illinois Educational Labor Relations Act" in the first sentence of (g); added the concluding paragraph of (g); and made related changes.

The 2009 amendment by P.A. 96-105, effective July 30, 2009, added the second sentence in (f).

The 2009 amendment by P.A. 96-107, effective July 30, 2009, added (g)(8) and made related changes.

The 2009 amendment by P.A. 96-734, effective August 25, 2009, inserted "and Statewide Child Murderer and Violent Offender Against Youth Database" in (g)(1).

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, substituted "Public Act 96-104" for "this amendatory Act of the 96th General Assembly" in the second paragraph of (g).

The 2011 amendment by P.A. 97-152, effective July 20, 2011, added (k).

The 2011 amendment by P.A. 97-154, effective January 1, 2012, deleted "Child" preceding "Murderer" in (g)(1).

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

CASE NOTES

Analysis

Construction
Jurisdiction

Construction

Defendants' motion to dismiss a former charter school employee's 42 U.S.C. § 1983 action was denied because defendant corporation was a state actor for purposes of the instant lawsuit as the corporation considered itself the governing body of the charter school, and thus, under the Illinois Charter School Act, 105 ILCS 5/27A-5(c), it was subject to same disclosure requirements under the Freedom of Information Act, 5 ILCS 140/1, and the Open Meetings Act, 5 ILCS 120/1, that were applicable to other government entities. Jordan v. Northern Kane Educ. Corp., F. Supp. 2d , 2009 U.S. Dist. LEXIS 15794 (N.D. Ill. Mar. 2, 2009).

Jurisdiction

Illinois Educational Labor Relations Board did not have jurisdiction over the charter school's governing body because the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/7, did not apply to charter schools; under 105 ILCS 5/27A-5(g), charter schools were exempt from all other state laws, including the Act. N. Kane Educ. Corp. v. Cambridge Lakes Educ. Ass'n, 394 Ill. App. 3d 755, 333 Ill. Dec. 474, 914 N.E.2d 1286, 2009 Ill. App. LEXIS 916 (4 Dist. 2009), appeal denied, 235 Ill. 2d 590, 924 N.E.2d 456, 2010 Ill. LEXIS 31 (2010).

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RESEARCH REFERENCES

Validity, construction, and application of statute or regulation governing charter schools. 78 ALR5th 533.

§ 105 ILCS 5/27A-6. Contract contents; applicability of laws and regulations

Sec. 27A-6. Contract contents; applicability of laws and regulations. (a) A certified charter shall constitute a binding contract and agreement between the charter school and a local school board under the terms of which the local school board authorizes the governing body of the charter school to operate the charter school on the terms specified in the contract.

(b) Notwithstanding any other provision of this Article, the certified charter may not waive or release the charter school from the State goals, standards, and assessments established pursuant to Section 2-3.64 [105 ILCS 5/2-3.64]. Beginning with the 2003-2004 school year, the certified charter for a charter school operating in a city having a population exceeding 500,000 shall require the charter school to administer any other nationally recognized standardized tests to its students that the chartering entity administers to other students, and the results on such tests shall be included in the chartering entity's assessment reports.

(c) Subject to the provisions of subsection (e), a material revision to a previously certified contract or a renewal shall be made with the approval of both the local school board and the governing body of the charter school.

(c-5) The proposed contract shall include a provision on how both parties will address minor violations of the contract.

(d) The proposed contract between the governing body of a proposed charter school and the local school board as described in Section 27A-7 [105 ILCS 5/27A-7] must be submitted to and certified by the State Board before it can take effect. If the State Board recommends that the proposed contract be modified for consistency with this Article before it can be certified, the modifications must be consented to by both the governing body of the charter school and the local school board, and resubmitted to the State Board for its certification. If the proposed contract is resubmitted in a form that is not consistent with this Article, the State Board may refuse to certify the charter.

The State Board shall assign a number to each submission or resubmission in chronological order of receipt, and shall determine whether the proposed contract is consistent with the provisions of this Article. If the proposed contract complies, the State Board shall so certify.

(e) No material revision to a previously certified contract or a renewal shall be effective unless and until the State Board certifies that the revision or renewal is consistent with

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the provisions of this Article.

(Source: P.A. 89-450, § 5; 91-407, § 10; 93-3, § 5.)

Effect of Amendments. The 1999 amendment by P.A. 91-407, effective August 3, 1999, inserted subdivision (c-5).

The 2003 amendment by P.A. 93-3, effective April 16, 2003, inserted the last sentence in subsection (b).

§ 105 ILCS 5/27A-6.5. Charter school referendum

Sec. 27A-6.5. Charter school referendum. (a) No charter shall be approved under this Section that would convert any existing private, parochial, or non-public school to a charter school or whose proposal has not been certified by the State Board.

(b) A local school board shall, whenever petitioned to do so by 5% or more of the voters of a school district or districts identified in a charter school proposal, order submitted to the voters thereof at a regularly scheduled election the question of whether a new charter school shall be established, which proposal has been certified by the State Board to be in compliance with the provisions of this Article, and the secretary shall certify the proposition to the proper election authorities for submission in accordance with the general election law. The proposition shall be in substantially the following form:

"FOR the establishment of (name of proposed charter school) under charter school proposal (charter school proposal number).

AGAINST the establishment of (name of proposed charter school) under charter school proposal (charter school proposal number)".

(c) Before circulating a petition to submit the question of whether to establish a charter school to the voters under subsection (b) of this Section, the governing body of a proposed charter school that desires to establish a new charter school by referendum shall submit the charter school proposal to the State Board in the form of a proposed contract to be entered into between the State Board and the governing body of the proposed charter school, as provided under Section 27A-6 [105 ILCS 5/27A-6], together with written notice of the intent to have a new charter school established by referendum. The contract shall comply with the provisions of this Article.

If the State Board finds that the proposed contract complies with the provisions of this Article, it shall immediately certify that the proposed contract complies with the provisions of this Article and direct the local school board to notify the proper election authorities that the question of whether to establish a new charter school shall be submitted for referendum.

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(d) If the State Board finds that the proposal fails to comply with the provisions of this Article, it shall refuse to certify the proposal and provide written explanation, detailing its reasons for refusal, to the local school board and to the individuals or organizations submitting the proposal. The State Board shall also notify the local school board and the individuals or organizations submitting the proposal that the proposal may be amended and resubmitted under the same provisions required for an original submission.

(e) If a majority of the votes cast upon the proposition in each school district designated in the charter school proposal is in favor of establishing a charter school, the local school board shall notify the State Board of the passage of the proposition in favor of establishing a charter school and the State Board shall approve the charter within 7 days after the State Board of Elections has certified that a majority of the votes cast upon the proposition is in favor of establishing a charter school. The State Board shall be the chartering entity for charter schools established by referendum under this Section.

(Source: P.A. 91-407, § 10.)

Effective Date. Section 99 of P.A. 91-407 made this section effective upon becoming law. The Act was approved August 3, 1999.

§ 105 ILCS 5/27A-7. Charter submission

Sec. 27A-7. Charter submission. (a) A proposal to establish a charter school shall be submitted to the State Board and the local school board in the form of a proposed contract entered into between the local school board and the governing body of a proposed charter school. The charter school proposal as submitted to the State Board shall include:

(1) The name of the proposed charter school, which must include the words "Charter School".

(2) The age or grade range, areas of focus, minimum and maximum numbers of pupils to be enrolled in the charter school, and any other admission criteria that would be legal if used by a school district.

(3) A description of and address for the physical plant in which the charter school will be located; provided that nothing in the Article shall be deemed to justify delaying or withholding favorable action on or approval of a charter school proposal because the building or buildings in which the charter school is to be located have not been acquired or rented at the time a charter school proposal is submitted or approved or a charter school contract is entered into or submitted for certification or certified, so long as the proposal or submission identifies and names at least 2 sites that are potentially available as a charter school facility by the time the charter school is to open.

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(4) The mission statement of the charter school, which must be consistent with the General Assembly's declared purposes; provided that nothing in this Article shall be construed to require that, in order to receive favorable consideration and approval, a charter school proposal demonstrate unequivocally that the charter school will be able to meet each of those declared purposes, it being the intention of the Charter Schools Law that those purposes be recognized as goals that charter schools must aspire to attain.

(5) The goals, objectives, and pupil performance standards to be achieved by the charter school.

(6) In the case of a proposal to establish a charter school by converting an existing public school or attendance center to charter school status, evidence that the proposed formation of the charter school has received the approval of certified teachers, parents and guardians, and, if applicable, a local school council as provided in subsection (b) of Section 27A-8 [105 ILCS 5/27A-8].

(7) A description of the charter school's educational program, pupil performance standards, curriculum, school year, school days, and hours of operation.

(8) A description of the charter school's plan for evaluating pupil performance, the types of assessments that will be used to measure pupil progress towards achievement of the school's pupil performance standards, the timeline for achievement of those standards, and the procedures for taking corrective action in the event that pupil performance at the charter school falls below those standards.

(9) Evidence that the terms of the charter as proposed are economically sound for both the charter school and the school district, a proposed budget for the term of the charter, a description of the manner in which an annual audit of the financial and administrative operations of the charter school, including any services provided by the school district, are to be conducted, and a plan for the displacement of pupils, teachers, and other employees who will not attend or be employed in the charter school.

(10) A description of the governance and operation of the charter school, including the nature and extent of parental, professional educator, and community involvement in the governance and operation of the charter school.

(11) An explanation of the relationship that will exist between the charter school and its employees, including evidence that the terms and conditions of employment have been addressed with affected employees and their recognized representative, if any. However, a bargaining unit of charter school employees shall be separate and distinct from any bargaining units formed from employees of a school district in which the charter school is located.

(12) An agreement between the parties regarding their respective legal liability and applicable insurance coverage.

(13) A description of how the charter school plans to meet the transportation needs of its pupils, and a plan for addressing the transportation needs of low-income and at-risk pupils.

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(14) The proposed effective date and term of the charter; provided that the first day of the first academic year and the first day of the fiscal year shall be no earlier than August 15 and no later than September 15 of a calendar year.

(15) Any other information reasonably required by the State Board of Education.

(b) A proposal to establish a charter school may be initiated by individuals or organizations that will have majority representation on the board of directors or other governing body of the corporation or other discrete legal entity that is to be established to operate the proposed charter school, by a board of education or an intergovernmental agreement between or among boards of education, or by the board of directors or other governing body of a discrete legal entity already existing or established to operate the proposed charter school. The individuals or organizations referred to in this subsection may be school teachers, school administrators, local school councils, colleges or universities or their faculty members, public community colleges or their instructors or other representatives, corporations, or other entities or their representatives. The proposal shall be submitted to the local school board for consideration and, if appropriate, for development of a proposed contract to be submitted to the State Board for certification under Section 27A-6 [105 ILCS 5/27A-6].

(c) The local school board may not without the consent of the governing body of the charter school condition its approval of a charter school proposal on acceptance of an agreement to operate under State laws and regulations and local school board policies from which the charter school is otherwise exempted under this Article.

(Source: P.A. 89-450, § 5; 90-548, § 5-915; 91-405, § 5.)

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, in subdivisions (a)(3) and (a)(4) added the provisos at the end; in subdivision (a)(6) deleted "required" preceding "approval" substituted "of certified" for "from certified" and deleted "from" preceding "parents" and preceding "a local"; and in subdivision (a)(14) substituted "shall be no earlier than August 15 and no later than September 15 of a calendar year" for "of the charter school shall coincide with the first day of the academic year and the first day of the fiscal year of the local school district".

The 1999 amendment by P.A. 91-405, effective August 3, 1999, inserted "by a board of education or an intergovernmental agreement between or among boards of education" in the first sentence in subsection (b).

CASE NOTES

Analysis

Requirements

- Admission Standards

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- Economic Soundness
- Performance Standards

Requirements

105 ILCS 5/27A-7(a)(9) required that any proposal for a charter school be economically sound for both the party proposing the charter school and the local school district; thus, where a local school district was in a dire financial condition when a charter school was proposed, the Illinois State Board of Education's decision affirming the local school board's rejection of the charter proposal was not clearly erroneous. Comprehensive Cmty. Solutions, Inc. v. Rockford Sch. Dist. No. 205, 216 Ill. 2d 455, 297 Ill. Dec. 221, 837 N.E.2d 1, 2005 Ill. LEXIS 969 (2005).

Illinois Charter Schools Law, 105 ILCS 5/27A-1 through 27A-13, does not require blanket acceptance of charter-school proposals in which other relevant factors outweigh the financial impact on a school district; evidence must be shown that the proposal is economically sound for both the charter school and the school district, and such evidence must realistically require consideration of the school district's finances. Comprehensive Cmty. Solutions, Inc. v. Rockford Sch. Dist. No. 205, 351 Ill. App. 3d 1109, 287 Ill. Dec. 80, 815 N.E.2d 483, 2004 Ill. App. LEXIS 1076 (4 Dist. 2004), aff'd, 216 Ill. 2d 455, 297 Ill. Dec. 221, 837 N.E.2d 1 (2005).

- Admission Standards

Illinois State Board of Education did not manifestly err in finding that a charter school applicant's proposal satisfied the admission standards requirement of 105 ILCS 5/27A-7(a)(2). The record evidence failed to provide any support for the school district's argument that the contract between the charter school and its admitted students and their parents was a mechanism to screen out students. Bd. of Educ. v. Ill. State Bd. of Educ., Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1320 (1 Dist. Dec. 30, 2011).

- Economic Soundness

While a charter school proposal created an adverse financial impact on the school district, both currently and over the course of the five-year charter period, the manifest weight of the evidence did not show that reallocation of funding for the establishment of the charter school and its continued existence over a five-year period would have financially imperiled the entire school district. Accordingly, the Illinois State Board of Education did not manifestly err in finding that the applicant's proposal complied with the economic soundness requirement of 105 ILCS 5/27A-7(a)(9). Bd. of Educ. v. Ill. State Bd. of Educ., Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1320 (1 Dist. Dec. 30, 2011).

- Performance Standards

Illinois State Board of Education did not manifestly err in finding that a charter school applicant's amended goals, objectives, and pupil performance standards in its revised proposal satisfied 105 ILCS 5/27A-7(a)(5) where the standards included in the proposal were stated in measurable terms, with specific benchmarks. Bd. of Educ. v. Ill. State Bd. of Educ., Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1320 (1 Dist. Dec. 30, 2011).

LEGAL PERIODICALS

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For article, "Survey of Illinois Law: Significant Developments in Education Law 2003- 2004," see, 29 S. Ill. U.L.J. 603 (2005).

§ 105 ILCS 5/27A-7.5. State Charter School Commission

Sec. 27A-7.5. State Charter School Commission. (a) A State Charter School Commission is established as an independent State agency with statewide chartering jurisdiction and authority.

(b) The Commission is responsible for authorizing high-quality charter schools throughout this State, particularly schools designed to expand opportunities for at-risk students, consistent with the purposes of this Article.

(c) The Commission shall consist of 9 members, appointed by the State Board. The State Board shall make these appointments from a slate of candidates proposed by the Governor, within 60 days after the effective date of this amendatory Act of the 97th General Assembly [P.A. 97-152] with respect to the initial Commission members. In making the appointments, the State Board shall ensure statewide geographic diversity among Commission members. The Governor shall propose a slate of candidates to the State Board within 60 days after the effective date of this amendatory Act of the 97th General Assembly and 60 days prior to the expiration of the term of a member thereafter. If the Governor fails to timely propose a slate of candidates according to the provisions of this subsection (c), then the State Board may appoint the member or members of the Commission.

(d) Members appointed to the Commission shall collectively possess strong experience and expertise in public and nonprofit governance, management and finance, public school leadership, higher education, assessments, curriculum and instruction, and public education law. All members of the Commission shall have demonstrated understanding of and a commitment to public education, including without limitation charter schooling. At least 3 members must have past experience with urban charter schools.

(e) To establish staggered terms of office, the initial term of office for 3 Commission members shall be 4 years and thereafter shall be 4 years; the initial term of office for another 3 members shall be 3 years and thereafter shall be 4 years; and the initial term of office for the remaining 3 members shall be 2 years and thereafter shall be 4 years. The initial appointments must be made no later than October 1, 2011.

(f) Whenever a vacancy on the Commission exists, the State Board shall appoint a member for the remaining portion of the term.

(g) Subject to the State Officials and Employees Ethics Act [5 ILCS 430/1-1 et seq.], the Commission is authorized to receive and expend gifts, grants, and donations of any kind from any public or private entity to carry out the purposes of this Article, subject to the terms and conditions under which they are given, provided that all such terms and conditions are permissible under law. Funds received under this subsection (g) must be deposited into the State Charter School Commission Fund.

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The State Charter School Commission Fund is created as a special fund in the State treasury. All money in the Fund shall be used, subject to appropriation, by the Commission for operational and administrative costs of the Commission.

Subject to appropriation, any funds appropriated for use by the State Charter School Commission may be used for the following purposes, without limitation: personal services, contractual services, and other operational and administrative costs. The State Charter School Commission is further authorized to make expenditures with respect to any other amounts deposited in accordance with law into the State Charter School Commission Fund.

(h) The Commission shall operate with dedicated resources and staff qualified to execute the day-to-day responsibilities of charter school authorizing in accordance with this Article.

(i) Every 2 years, the Commission shall provide to the State Board and local school boards a report on best practices in charter school authorizing, including without limitation evaluating applications, oversight of charters, and renewal of charter schools.

(j) The Commission may charge a charter school that it authorizes a fee, not to exceed 3% of the revenue provided to the school, to cover the cost of undertaking the ongoing administrative responsibilities of the eligible chartering authority with respect to the school. This fee must be deposited into the State Charter School Commission Fund.

(k) Any charter school authorized by the State Board prior to this amendatory Act of the 97th General Assembly shall have its authorization transferred to the Commission upon a vote of the State Board, which shall then become the school's authorizer for all purposes under this Article. However, in no case shall such transfer take place later than July 1, 2012. At this time, all of the powers, duties, assets, liabilities, contracts, property, records, and pending business of the State Board as the school's authorizer must be transferred to the Commission. Any charter school authorized by a local school board or boards may seek transfer of authorization to the Commission during its current term only with the approval of the local school board or boards. At the end of its charter term, a charter school authorized by a local school board or boards must reapply to the board or boards before it may apply for authorization to the Commission under the terms of this amendatory Act of the 97th General Assembly.

On the effective date of this amendatory Act of the 97th General Assembly, all rules of the State Board applicable to matters falling within the responsibility of the Commission shall be applicable to the actions of the Commission. The Commission shall thereafter have the authority to propose to the State Board modifications to all rules applicable to matters falling within the responsibility of the Commission. The State Board shall retain rulemaking authority for the Commission, but shall work jointly with the Commission on any proposed modifications. Upon recommendation of proposed rule modifications by the Commission and pursuant to the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.], the State Board shall consider such changes within the intent of this amendatory Act of the 97th General Assembly and grant any and all changes consistent with that intent.

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(l) The Commission shall have the responsibility to consider appeals under this Article immediately upon appointment of the initial members of the Commission under subsection (c) of this Section. Appeals pending at the time of initial appointment shall be determined by the Commission; the Commission may extend the time for review as necessary for thorough review, but in no case shall the extension exceed the time that would have been available had the appeal been submitted to the Commission on the date of appointment of its initial members. In any appeal filed with the Commission under this Article, both the applicant and the school district in which the charter school plans to locate shall have the right to request a hearing before the Commission. If more than one entity requests a hearing, then the Commission may hold only one hearing, wherein the applicant and the school district shall have an equal opportunity to present their respective positions.

(Source: P.A. 97-152, § 5; 97-641, § 25.)

Effective Date. Section 99 of P.A. 97-152, made this section effective upon becoming law. The Act was approved July 20, 2011.

Effect of Amendments. The 2011 amendment by P.A. 97-641, effective December 19, 2011, added the last paragraph to (g).

§ 105 ILCS 5/27A-7.10. Authorizer powers and duties; immunity; principles and standards

Sec. 27A-7.10. Authorizer powers and duties; immunity; principles and standards. (a) Authorizers are responsible for executing, in accordance with this Article, all of the following powers and duties:

(1) Soliciting and evaluating charter applications.

(2) Approving quality charter applications that meet identified educational needs and promote a diversity of educational choices.

(3) Declining to approve weak or inadequate charter applications.

(4) Negotiating and executing sound charter contracts with each approved charter school.

(5) Monitoring, in accordance with charter contract terms, the performance and legal compliance of charter schools.

(6) Determining whether each charter contract merits renewal, nonrenewal, or revocation.

(b) An authorizing entity may delegate its duties to officers, employees, and contractors.

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(c) Regulation by authorizers is limited to the powers and duties set forth in subsection (a) of this Section and must be consistent with the spirit and intent of this Article.

(d) An authorizing entity, members of the local school board, or the Commission, in their official capacity, and employees of an authorizer are immune from civil and criminal liability with respect to all activities related to a charter school that they authorize, except for willful or wanton misconduct.

(e) The Commission and all local school boards that have a charter school operating are required to develop and maintain chartering policies and practices consistent with recognized principles and standards for quality charter authorizing in all major areas of authorizing responsibility, including all of the following:

(1) Organizational capacity and infrastructure.

(2) Soliciting and evaluating charter applications.

(3) Performance contracting.

(4) Ongoing charter school oversight and evaluation.

(5) Charter renewal decision-making.

Authorizers shall carry out all their duties under this Article in a manner consistent with nationally recognized principles and standards and with the spirit and intent of this Article.

(Source: P.A. 97-152, § 5.)

Effective Date. Section 99 of P.A. 97-152, made this section effective upon becoming law. The Acts was approved July 20, 2011.

§ 105 ILCS 5/27A-8. Evaluation of charter proposals

Sec. 27A-8. Evaluation of charter proposals. (a) This Section does not apply to a charter school established by referendum under Section 27A-6.5 [105 ILCS 5/27A-6.5]. In evaluating any charter school proposal submitted to it, the local school board and the Commission shall give preference to proposals that:

(1) demonstrate a high level of local pupil, parental, community, business, and school personnel support;

(2) set rigorous levels of expected pupil achievement and demonstrate feasible plans for attaining those levels of achievement; and

(3) are designed to enroll and serve a substantial proportion of at-risk children; provided that nothing in the Charter Schools Law shall be construed as intended to limit the

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establishment of charter schools to those that serve a substantial portion of at-risk children or to in any manner restrict, limit, or discourage the establishment of charter schools that enroll and serve other pupil populations under a nonexclusive, nondiscriminatory admissions policy.

(b) In the case of a proposal to establish a charter school by converting an existing public school or attendance center to charter school status, evidence that the proposed formation of the charter school has received majority support from certified teachers and from parents and guardians in the school or attendance center affected by the proposed charter, and, if applicable, from a local school council, shall be demonstrated by a petition in support of the charter school signed by certified teachers and a petition in support of the charter school signed by parents and guardians and, if applicable, by a vote of the local school council held at a public meeting. In the case of all other proposals to establish a charter school, evidence of sufficient support to fill the number of pupil seats set forth in the proposal may be demonstrated by a petition in support of the charter school signed by parents and guardians of students eligible to attend the charter school. In all cases, the individuals, organizations, or entities who initiate the proposal to establish a charter school may elect, in lieu of including any petition referred to in this subsection as a part of the proposal submitted to the local school board, to demonstrate that the charter school has received the support referred to in this subsection by other evidence and information presented at the public meeting that the local school board is required to convene under this Section.

(c) Within 45 days of receipt of a charter school proposal, the local school board shall convene a public meeting to obtain information to assist the board in its decision to grant or deny the charter school proposal. A local school board may develop its own process for receiving charter school proposals on an annual basis that follows the same timeframes as set forth in this Article. Only after the local school board process is followed may a charter school applicant appeal to the Commission.

(d) Notice of the public meeting required by this Section shall be published in a community newspaper published in the school district in which the proposed charter is located and, if there is no such newspaper, then in a newspaper published in the county and having circulation in the school district. The notices shall be published not more than 10 days nor less than 5 days before the meeting and shall state that information regarding a charter school proposal will be heard at the meeting. Copies of the notice shall also be posted at appropriate locations in the school or attendance center proposed to be established as a charter school, the public schools in the school district, and the local school board office. If 45 days pass without the local school board holding a public meeting, then the charter applicant may submit the proposal to the Commission, where it must be addressed in accordance with the provisions set forth in subsection (g) of this Section.

(e) Within 30 days of the public meeting, the local school board shall vote, in a public meeting, to either grant or deny the charter school proposal. If the local school board has not voted in a public meeting within 30 days after the public meeting, then the charter applicant may submit the proposal to the Commission, where it must be addressed in accordance with the provisions set forth in subsection (g) of this Section.

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(f) Within 7 days of the public meeting required under subsection (e) of this Section, the local school board shall file a report with the State Board granting or denying the proposal. If the local school board has approved the proposal, within 30 days of receipt of the local school board's report, the State Board shall determine whether the approved charter proposal is consistent with the provisions of this Article and, if the approved proposal complies, certify the proposal pursuant to Section 27A-6.

(g) If the local school board votes to deny the proposal, then the charter school applicant has 30 days from the date of that vote to submit an appeal to the Commission. In such instances or in those instances referenced in subsections (d) and (e) of this Section, the Commission shall follow the same process and be subject to the same timelines for review as the local school board.

(h) The Commission may reverse a local school board's decision to deny a charter school proposal if the Commission finds that the proposal (i) is in compliance with this Article and (ii) is in the best interests of the students the charter school is designed to serve. Final decisions of the Commission are subject to judicial review under the Administrative Review Law [735 ILCS 5/3-101 et seq.].

(i) In the case of a charter school proposed to be jointly authorized by 2 or more school districts, the local school boards may unanimously deny the charter school proposal with a statement that the local school boards are not opposed to the charter school, but that they yield to the Commission in light of the complexities of joint administration.

(Source: P.A. 89-450, § 5; 90-548, § 5-915; 91-407, § 10; 96-105, § 5; 96-734, § 5; 96-1000, § 260; 97-152, § 5.)

Note.

Section 995 of P.A. 96-100 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, in subdivision (a)(3) added the proviso at the end; in subsection (b), in the second sentence, substituted "may" for "shall" and added the third sentence; and in subsection (f), in the first sentence, inserted "file a", substituted "with" for "to", substituted "granting or denying the" for "whether a" and deleted from the end "has been granted or denied".

The 1999 amendment by P.A. 91-407, effective August 3, 1999, inserted the first sentence in subsection (a).

The 2009 amendment by P.A. 96-105, effective July 30, 2009, added the provisionary language at the end of (f).

The 2009 amendment by P.A. 96-734, effective August 25, 2009, substituted "30 days" for "14 days" in the second sentence of (f).

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The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, substituted "July 30, 2009 (the effective date of Public Act 96-105)" for "the effective date of this amendatory Act of the 96th General Assembly" in the second sentence of (f).

The 2011 amendment by P.A. 97-152, effective July 20, 2011, inserted "and the Commission" in the introductory language of (a); added the last two sentences to (c); added the last sentence to (d); added the second sentence to (e); in (f), inserted "of this Section" in the first sentence and in the second sentence, added "If the local school board has approved the proposal" to the beginning and deleted "provided that for any charter proposal submitted to the State Board within one year after July 30, 2009 (the effective date of Public Act 96-105), the State Board shall have 60 days from receipt to determine such consistency and certify the proposal" from the end; added (g) through (i); and made a related change.

CASE NOTES

Analysis

Economic Impact
Requirements

Economic Impact

Economic impact of a charter-school proposal was an appropriate concern of a local school district; thus, an Illinois State Board of Education decision, which affirmed a denial of a charter-school proposal, was not clearly erroneous where the evidence established that the school district was in dire financial condition such that accepting the proposal and its financial impact on the district was not in the best interest of the students the proposal was designed to serve. Comprehensive Cmty. Solutions, Inc. v. Rockford Sch. Dist. No. 205, 351 Ill. App. 3d 1109, 287 Ill. Dec. 80, 815 N.E.2d 483, 2004 Ill. App. LEXIS 1076 (4 Dist. 2004), aff'd, 216 Ill. 2d 455, 297 Ill. Dec. 221, 837 N.E.2d 1 (2005).

Requirements

Illinois Charter Schools Law, 105 ILCS 5/27A-1 through 27A-13, does not require blanket acceptance of charter-school proposals in which other relevant factors outweigh the financial impact on a school district; evidence must be shown that the proposal is economically sound for both the charter school and the school district, and such evidence must realistically require consideration of the school district's finances. Comprehensive Cmty. Solutions, Inc. v. Rockford Sch. Dist. No. 205, 351 Ill. App. 3d 1109, 287 Ill. Dec. 80, 815 N.E.2d 483, 2004 Ill. App. LEXIS 1076 (4 Dist. 2004), aff'd, 216 Ill. 2d 455, 297 Ill. Dec. 221, 837 N.E.2d 1 (2005).

§ 105 ILCS 5/27A-9. Term of charter; renewal

Sec. 27A-9. Term of charter; renewal. (a) A charter may be granted for a period not less than 5 and not more than 10 school years. A charter may be renewed in incremental periods not to exceed 5 school years.

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(b) A charter school renewal proposal submitted to the local school board or the Commission, as the chartering entity, shall contain:

(1) A report on the progress of the charter school in achieving the goals, objectives, pupil performance standards, content standards, and other terms of the initial approved charter proposal; and

(2) A financial statement that discloses the costs of administration, instruction, and other spending categories for the charter school that is understandable to the general public and that will allow comparison of those costs to other schools or other comparable organizations, in a format required by the State Board.

(c) A charter may be revoked or not renewed if the local school board or the Commission, as the chartering entity, clearly demonstrates that the charter school did any of the following, or otherwise failed to comply with the requirements of this law:

(1) Committed a material violation of any of the conditions, standards, or procedures set forth in the charter.

(2) Failed to meet or make reasonable progress toward achievement of the content standards or pupil performance standards identified in the charter.

(3) Failed to meet generally accepted standards of fiscal management.

(4) Violated any provision of law from which the charter school was not exempted.

In the case of revocation, the local school board or the Commission, as the chartering entity, shall notify the charter school in writing of the reason why the charter is subject to revocation. The charter school shall submit a written plan to the local school board or the Commission, whichever is applicable, to rectify the problem. The plan shall include a timeline for implementation, which shall not exceed 2 years or the date of the charter's expiration, whichever is earlier. If the local school board or the Commission, as the chartering entity, finds that the charter school has failed to implement the plan of remediation and adhere to the timeline, then the chartering entity shall revoke the charter. Except in situations of an emergency where the health, safety, or education of the charter school's students is at risk, the revocation shall take place at the end of a school year. Nothing in this amendatory Act of the 96th General Assembly [P.A. 96-105] shall be construed to prohibit an implementation timetable that is less than 2 years in duration.

(d) (Blank).

(e) Notice of a local school board's decision to deny, revoke or not to renew a charter shall be provided to the Commission and the State Board. The Commission may reverse a local board's decision if the Commission finds that the charter school or charter school proposal (i) is in compliance with this Article, and (ii) is in the best interests of the students it is designed to serve. The State Board may condition the granting of an appeal on the acceptance by the charter school of funding in an amount less than that requested in the proposal submitted to the local school board. Final decisions of the Commission shall be subject to judicial review under the Administrative Review Law [735 ILCS 5/3-101 et seq.].

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(f) Notwithstanding other provisions of this Article, if the Commission on appeal reverses a local board's decision or if a charter school is approved by referendum, the Commission shall act as the authorized chartering entity for the charter school. The Commission shall approve the charter and shall perform all functions under this Article otherwise performed by the local school board. The State Board shall determine whether the charter proposal approved by the Commission is consistent with the provisions of this Article and, if the approved proposal complies, certify the proposal pursuant to this Article. The State Board shall report the aggregate number of charter school pupils resident in a school district to that district and shall notify the district of the amount of funding to be paid by the Commission to the charter school enrolling such students. The Commission shall require the charter school to maintain accurate records of daily attendance that shall be deemed sufficient to file claims under Section 18-8.05 [105 ILCS 5/18-8.05] notwithstanding any other requirements of that Section regarding hours of instruction and teacher certification. The State Board shall withhold from funds otherwise due the district the funds authorized by this Article to be paid to the charter school and shall pay such amounts to the charter school.

(g) For charter schools authorized by the Commission, the Commission shall quarterly certify to the State Board the student enrollment for each of its charter schools.

(h) For charter schools authorized by the Commission, the State Board shall pay directly to a charter school any federal or State aid attributable to a student with a disability attending the school.

(Source: P.A. 89-450, § 5; 90-548, § 5-915; 91-96, § 10; 91-407, § 10; 92-16, § 49; 96-105, § 5; 97-152, § 5.)

Note.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, in subsection (c), in the introductory language, substituted "clearly demonstrates" for "determines" and substituted "otherwise failed to comply with the requirements of this law" for "for other good cause shown"; deleted subsection (d) which read "In addition, a charter may not be renewed if the local school board determines that it is not in the interest of the pupils residing within the school district or service area to continue the operation of the charter school"; in subsection (e) added the second sentence; and added subsection (f).

The 1999 amendment by P.A. 91-96, effective July 7, 1999, added the next-to-last sentence in subsection (f).

The 1999 amendment by P.A. 91-407, effective August 3, 1999, substituted "not less than 5 and not more than 10" for "not less than 3 and not more than 5" in subsection (a); in subsections (b) and (c) inserted "or State Board, as the chartering entity"; in subsection (e) inserted the next to last sentence; and in subsection (f) inserted "or if a charter school is approved by referendum" in the first sentence.

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The 2001 amendment by P.A. 92-16, effective June 28, 2001, combined the amendments by P.A. 91-96 and P.A. 91-407.

The 2009 amendment by P.A. 96-105, effective July 30, 2009, added the concluding paragraph of (c).

The 2011 amendment by P.A. 97-152, effective July 20, 2011, substituted "Commission" for "State Board" throughout the section; inserted "Commission and the" in the first sentence of (e); in (f), deleted "and certify" following "shall approve" in the second sentence and inserted the third sentence; added (g) and (h); and made stylistic changes.

CASE NOTES

Powers of State Board of Education

The State Board of Education is authorized to reverse the denial of a charter upon a finding that the proposal substantially complies with the act and that the approval of the charter would be in the best interests of the students if certain conditions are met within a specified time period. Board of Educ. of Community Consol. Sch. Dist. No. 59 v. Illinois State Bd. of Educ., 317 Ill. App. 3d 790, 251 Ill. Dec. 347, 740 N.E.2d 428, 2000 Ill. App. LEXIS 879 (1 Dist. 2000).

§ 105 ILCS 5/27A-10. Employees

Sec. 27A-10. Employees. (a) A person shall be deemed to be employed by a charter school unless a collective bargaining agreement or the charter school contract otherwise provides.

(b) In all school districts, including special charter districts and districts located in cities having a population exceeding 500,000, the local school board shall determine by policy or by negotiated agreement, if one exists, the employment status of any school district employees who are employed by a charter school and who seek to return to employment in the public schools of the district. Each local school board shall grant, for a period of up to 5 years, a leave of absence to those of its teachers who accept employment with a charter school. At the end of the authorized leave of absence, the teacher must return to the school district or resign; provided, however, that if the teacher chooses to return to the school district, the teacher must be assigned to a position which requires the teacher's certification and legal qualifications. The contractual continued service status and retirement benefits of a teacher of the district who is granted a leave of absence to accept employment with a charter school shall not be affected by that leave of absence.

(c) Charter schools shall employ in instructional positions, as defined in the charter, individuals who are certificated under Article 21 of this Code [105 ILCS 5/21-1 et seq.] or who possess the following qualifications:

(i) graduated with a bachelor's degree from an accredited institution of higher learning;

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(ii) been employed for a period of at least 5 years in an area requiring application of the individual's education;

(iii) passed the tests of basic skills and subject matter knowledge required by Section 21-1a of the School Code [105 ILCS 5/21-1a]; and

(iv) demonstrate continuing evidence of professional growth which shall include, but not be limited to, successful teaching experience, attendance at professional meetings, membership in professional organizations, additional credits earned at institutions of higher learning, travel specifically for educational purposes, and reading of professional books and periodicals.

(c-5) Charter schools employing individuals without certification in instructional positions shall provide such mentoring, training, and staff development for those individuals as the charter schools determine necessary for satisfactory performance in the classroom.

At least 50% of the individuals employed in instructional positions by a charter school that is operating in a city having a population exceeding 500,000 and that is established on or after April 16, 2003 shall hold teaching certificates issued under Article 21 of this Code.

At least 75% of the individuals employed in instructional positions by a charter school that is operating in a city having a population exceeding 500,000 and that was established before April 16, 2003 shall hold teaching certificates issued under Article 21 of this Code.

(c-10) Notwithstanding any provision in subsection (c-5) to the contrary, in any charter school established before the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-105], at least 75% of the individuals employed in instructional positions by the charter school shall hold teaching certificates issued under Article 21 of this Code beginning with the 2012-2013 school year. In any charter school established after the effective date of this amendatory Act of the 96th General Assembly, at least 75% of the individuals employed in instructional positions by a charter school shall hold teaching certificates issued under Article 21 of this Code by the beginning of the fourth school year during which a student is enrolled in the charter school. Charter schools may employ non-certificated staff in all other positions.

(c-15) Charter schools are exempt from any annual cap on new participants in an alternative certification program. The second and third phases of the alternative certification program may be conducted and completed at the charter school, and the alternative teaching certificate is valid for 4 years or the length of the charter (or any extension of the charter), whichever is longer.

(d) A teacher at a charter school may resign his or her position only if the teacher gives notice of resignation to the charter school's governing body at least 60 days before the end of the school term, and the resignation must take effect immediately upon the end of the school term.

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(Source: P.A. 89-450, § 5; 93-3, § 5; 96-105, § 5.)

Effect of Amendments. The 2003 amendment by P.A. 93-3, effective April 16, 2003, inserted the third, fourth and fifth paragraphs in subsection (c); and made a stylistic change.

The 2009 amendment by P.A. 96-105, effective July 30, 2009, rewrote (c), including redesignating two of the paragraphs as (c-5) and (c-15); and added (c-10).

§ 105 ILCS 5/27A-11. Local financing

Sec. 27A-11. Local financing. (a) For purposes of the School Code, pupils enrolled in a charter school shall be included in the pupil enrollment of the school district within which the pupil resides. Each charter school (i) shall determine the school district in which each pupil who is enrolled in the charter school resides, (ii) shall report the aggregate number of pupils resident of a school district who are enrolled in the charter school to the school district in which those pupils reside, and (iii) shall maintain accurate records of daily attendance that shall be deemed sufficient to file claims under Section 18-8 [105 ILCS 5/18-8] notwithstanding any other requirements of that Section regarding hours of instruction and teacher certification.

(b) Except for a charter school established by referendum under Section 27A-6.5 [105 ILCS 5/27A-6.5], as part of a charter school contract, the charter school and the local school board shall agree on funding and any services to be provided by the school district to the charter school. Agreed funding that a charter school is to receive from the local school board for a school year shall be paid in equal quarterly installments with the payment of the installment for the first quarter being made not later than July 1, unless the charter establishes a different payment schedule.

All services centrally or otherwise provided by the school district including, but not limited to, rent, food services, custodial services, maintenance, curriculum, media services, libraries, transportation, and warehousing shall be subject to negotiation between a charter school and the local school board and paid for out of the revenues negotiated pursuant to this subsection (b); provided that the local school board shall not attempt, by negotiation or otherwise, to obligate a charter school to provide pupil transportation for pupils for whom a district is not required to provide transportation under the criteria set forth in subsection (a)(13) of Section 27A-7 [105 ILCS 5/27A-7].

In no event shall the funding be less than 75% or more than 125% of the school district's per capita student tuition multiplied by the number of students residing in the district who are enrolled in the charter school.

It is the intent of the General Assembly that funding and service agreements under this subsection (b) shall be neither a financial incentive nor a financial disincentive to the establishment of a charter school.

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The charter school may set and collect reasonable fees. Fees collected from students enrolled at a charter school shall be retained by the charter school.

(c) Notwithstanding subsection (b) of this Section, the proportionate share of State and federal resources generated by students with disabilities or staff serving them shall be directed to charter schools enrolling those students by their school districts or administrative units. The proportionate share of moneys generated under other federal or State categorical aid programs shall be directed to charter schools serving students eligible for that aid.

(d) The governing body of a charter school is authorized to accept gifts, donations, or grants of any kind made to the charter school and to expend or use gifts, donations, or grants in accordance with the conditions prescribed by the donor; however, a gift, donation, or grant may not be accepted by the governing body if it is subject to any condition contrary to applicable law or contrary to the terms of the contract between the charter school and the local school board. Charter schools shall be encouraged to solicit and utilize community volunteer speakers and other instructional resources when providing instruction on the Holocaust and other historical events.

(e) (Blank).

(f) The State Board shall provide technical assistance to persons and groups preparing or revising charter applications.

(g) At the non-renewal or revocation of its charter, each charter school shall refund to the local board of education all unspent funds.

(h) A charter school is authorized to incur temporary, short term debt to pay operating expenses in anticipation of receipt of funds from the local school board.

(Source: P.A. 89-450, § 5; 90-548, § 5-915; 90-757, § 5; 91-407, § 10.)

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, in subsection (a), in the second sentence, substituted a comma for "and" preceding "(ii)" and added at the end "and (iii) shall maintain accurate records of daily attendance that shall be deemed sufficient to file claims under Section 18-8 notwithstanding any other requirements of that Section regarding hours of instruction and teacher certification"; in subsection (b), in the first paragraph added the second sentence, in the second paragraph added the proviso at the end and in the third paragraph substituted "75%" for "95%" and substituted "125%" for "185%"; added the subdivision (d)(1) designation; and added subdivision (d)(2).

The 1998 amendment by P.A. 90-757, effective August 14, 1998, in subsection (d)(2), added "A local school board is not responsible for the repayment of the loan."

The 1999 amendment by P.A. 91-407, effective August 3, 1999 inserted "Local" in the section heading; in subsection (b) inserted "Except for a charter school established by referendum under Section 27A-6.5" at the beginning, in the second paragraph inserted "rent" following "not limited to", and inserted the first sentence of the last paragraph; deleted subdivision (d)(2) relating to loans to charter schools to defer start up costs of acquiring textbooks and equipment, and made related changes; and deleted subsection (e), concerning a report to the General Assembly and

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the Governor describing the charter schools.

CASE NOTES

Technical Assistance

Illinois State Board of Education (IBSE) did not violate the procedural rules of the Administrative Code by assisting a charter school applicant in modifying its original proposal to one that the ISBE ultimately found satisfied all the requirements of the Illinois Charter Schools Law, 105 ILCS 5/27A-1 et seq. (2008), and served the best interests of the students it was designed to serve, even though the revised proposal was never submitted to or ruled upon by the local school district. Bd. of Educ. v. Ill. State Bd. of Educ., Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1320 (1 Dist. Dec. 30, 2011).

§ 105 ILCS 5/27A-11.5. State financing

Sec. 27A-11.5. State financing. The State Board of Education shall make the following funds available to school districts and charter schools:

(1) From a separate appropriation made to the State Board for purposes of this subdivision (1), the State Board shall make transition impact aid available to school districts that approve a new charter school or that have funds withheld by the State Board to fund a new charter school that is chartered by the State Board. The amount of the aid shall equal 90% of the per capita funding paid to the charter school during the first year of its initial charter term, 65% of the per capita funding paid to the charter school during the second year of its initial term, and 35% of the per capita funding paid to the charter school during the third year of its initial term. This transition impact aid shall be paid to the local school board in equal quarterly installments, with the payment of the installment for the first quarter being made by August 1st immediately preceding the first, second, and third years of the initial term. The district shall file an application for this aid with the State Board in a format designated by the State Board. If the appropriation is insufficient in any year to pay all approved claims, the impact aid shall be prorated. However, for fiscal year 2004, the State Board of Education shall pay approved claims only for charter schools with a valid charter granted prior to June 1, 2003. If any funds remain after these claims have been paid, then the State Board of Education may pay all other approved claims on a pro rata basis. Transition impact aid shall be paid beginning in the 1999-2000 school year for charter schools that are in the first, second, or third year of their initial term. Transition impact aid shall not be paid for any charter school that is proposed and created by one or more boards of education, as authorized under the provisions of Public Act 91-405.

(2) From a separate appropriation made for the purpose of this subdivision (2), the State Board shall make grants to charter schools to pay their start-up costs of acquiring educational materials and supplies, textbooks, electronic textbooks and the technological equipment necessary to gain access to and use electronic textbooks, furniture, and other

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equipment needed during their initial term. The State Board shall annually establish the time and manner of application for these grants, which shall not exceed $250 per student enrolled in the charter school.

(3) The Charter Schools Revolving Loan Fund is created as a special fund in the State treasury. Federal funds, such other funds as may be made available for costs associated with the establishment of charter schools in Illinois, and amounts repaid by charter schools that have received a loan from the Charter Schools Revolving Loan Fund shall be deposited into the Charter Schools Revolving Loan Fund, and the moneys in the Charter Schools Revolving Loan Fund shall be appropriated to the State Board and used to provide interest-free loans to charter schools. These funds shall be used to pay start-up costs of acquiring educational materials and supplies, textbooks, electronic textbooks and the technological equipment necessary to gain access to and use electronic textbooks, furniture, and other equipment needed in the initial term of the charter school and for acquiring and remodeling a suitable physical plant, within the initial term of the charter school. Loans shall be limited to one loan per charter school and shall not exceed $250 per student enrolled in the charter school. A loan shall be repaid by the end of the initial term of the charter school. The State Board may deduct amounts necessary to repay the loan from funds due to the charter school or may require that the local school board that authorized the charter school deduct such amounts from funds due the charter school and remit these amounts to the State Board, provided that the local school board shall not be responsible for repayment of the loan. The State Board may use up to 3% of the appropriation to contract with a non-profit entity to administer the loan program.

(4) A charter school may apply for and receive, subject to the same restrictions applicable to school districts, any grant administered by the State Board that is available for school districts.

(Source: P.A. 91-407, § 10; 92-16, § 49; 93-21, § 5-5; 96-1403, § 5.)

Note.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 91-407 made this section effective upon becoming law. The Act was approved August 3, 1999.

Effect of Amendments. The 2001 amendment by P.A. 92-16, effective June 28, 2001, in the last sentence of subdivision (1) deleted "If House Bill 230 of the 91st General Assembly becomes law" from the beginning of the sentence, and substituted "Public Act 91-405" for "House Bill 230 of the 91st General Assembly".

The 2003 amendment by P.A. 93-21, effective July 1, 2003, inserted the fifth sentence in subdivision (1).

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The 2010 amendment by P.A. 96-1403, effective July 29, 2010, inserted "electronic textbooks and the technological equipment necessary to gain access to and use electronic textbooks" in the first sentence of (2) and the third sentence of (3).

§ 105 ILCS 5/27A-12. Evaluation; report

Sec. 27A-12. Evaluation; report. On or before September 30 of every odd-numbered year, all local school boards with at least one charter school, as well as the Commission, shall submit to the State Board any information required by the State Board pursuant to applicable rule. On or before the second Wednesday in January of every even-numbered year, the State Board shall issue a report to the General Assembly and the Governor on its findings for the previous 2 school years. The State Board's report shall summarize all of the following:

(1) The authorizer's strategic vision for chartering and progress toward achieving that vision.

(2) The academic and financial performance of all operating charter schools overseen by the authorizer, according to the performance expectations for charter schools set forth in this Article.

(3) The status of the authorizer's charter school portfolio, identifying all charter schools in each of the following categories: approved (but not yet open), operating, renewed, transferred, revoked, not renewed, voluntarily closed, or never opened.

(4) The authorizing functions provided by the authorizer to the charter schools under its purview, including the authorizer's operating costs and expenses detailed in annual audited financial statements, which must conform with generally accepted accounting principles.

Further, in the report required by this Section, the State Board (i) shall compare the performance of charter school pupils with the performance of ethnically and economically comparable groups of pupils in other public schools who are enrolled in academically comparable courses, (ii) shall review information regarding the regulations and policies from which charter schools were released to determine if the exemptions assisted or impeded the charter schools in meeting their stated goals and objectives, and (iii) shall include suggested changes in State law necessary to strengthen charter schools.

In addition, the State Board shall undertake and report on periodic evaluations of charter schools that include evaluations of student academic achievement, the extent to which charter schools are accomplishing their missions and goals, the sufficiency of funding for charter schools, and the need for changes in the approval process for charter schools.

Based on the information that the State Board receives from authorizers and the State Board's ongoing monitoring of both charter schools and authorizers, the State Board has the power to remove the power to authorize from any authorizer in this State if the authorizer does not demonstrate a commitment to high-quality authorization practices and, if necessary, revoke the chronically low-performing charters authorized by the

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authorizer at the time of the removal. The State Board shall adopt rules as needed to carry out this power, including provisions to determine the status of schools authorized by an authorizer whose authorizing power is revoked.

(Source: P.A. 89-450, § 5; 91-407, § 10; 96-105, § 5; 97-152, § 5.)

Effect of Amendments. The 1999 amendment by P.A. 91-407, effective August 3, 1999, added "annual report" to the section heading; added "and shall prepare an annual report on charter schools" to the end of the first sentence, and deleted the second and third sentences relating to the contents of the compiled evaluations; in the third paragraph at the beginning substituted "In the annual report" for "In preparing the report", inserted the (i) designation, and added items (ii) and (iii); and added the last paragraph.

The 2009 amendment by P.A. 96-105, effective July 30, 2009, rewrote the second paragraph which read; "On or before the second Wednesday of January, 1998, and on or before the second Wednesday of January of each subsequent calendar year, the State Board shall issue a report to the General Assembly and the Governor on its findings for the school year ending in the preceding calendar year"; and deleted "annual" preceding "report" in the third paragraph and in the section heading.

The 2011 amendment by P.A. 97-152, effective July 20, 2011, rewrote the first paragraph, which formerly read: "The State Board shall compile annual evaluations of charter schools received from local school boards and shall prepare an annual report on charter schools"; deleted the former second paragraph, which read: "On or before the second Wednesday of every even-numbered year, the State Board shall issue a report to the General Assembly and the Governor on its findings for the previous 2 school years; provided that the report issued in 2010 need only report on the 2008-2009 school year"; added "Further" to the beginning of the present second paragraph; added the last paragraph; and made a related change.

§ 105 ILCS 5/27A-13. Rules

Sec. 27A-13. Rules. The State Board of Education is authorized to adopt any rules not inconsistent with this Article that it deems necessary to implement and accomplish the purposes and provisions of this Article.

(Source: P.A. 89-450, § 5.)

§ 105 ILCS 5/27A-14: Repealed internally by P.A. 96-105, § 5, effective January 10, 2010.

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Article 28.

Instructional Materials

§ 105 ILCS 5/28-1. Copies and prices filed - Bond

Sec. 28-1. Copies and prices filed - Bond. No person shall offer any school instructional materials for adoption, sale or exchange in the State until he has complied with the following conditions:

1.He shall file with the State Board of Education, annually, by July 15, a sworn statement of the usual list price, the lowest net wholesale price, and the lowest net exchange price at which the material is sold or exchanged for old material on the same subject of like grade and kind but of a different series taken in part payment thereof.

2.He shall file with the State Board of Education a bond payable to the People of the State of Illinois with a surety company authorized to do business in the State of Illinois as surety thereon, in a penal sum to be determined by the State Board of Education, not less than $2000 nor more than $10,000 conditioned as follows:

(a) That he will furnish annually any of the materials listed in any annual statement filed by him to any school district and any school corporation in this State at the lowest net prices contained in the statements and that he will maintain said prices uniformly throughout the State.

(b) That he will reduce such net prices in Illinois whenever they are reduced elsewhere in the United States, and that he will file with the State Board of Education a sworn statement of reductions made elsewhere, so that at no time shall any instructional material so filed and listed by him be sold in this State at a higher net price than is received for such material elsewhere in the United States.

(c) He shall not enter into any understanding, agreement or combination to control the prices or to restrict competition in the sale of instructional materials.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 28-1.

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CASE NOTES

Analysis
Constitutionality
Authority

Constitutionality

Under the former Text-Book Law, which provided that no person shall offer any school textbook for adoption, sale, or exchange in the state until he has complied with the Act, and made it unlawful for a dealer to sell the books listed in accordance with the Act, at a price to exceed 15 percent advance of the net listed price, a fair consideration of the whole Act showed that the Act was limited to books to be actually used in the public schools of the state and thus was constitutional under former Ill. Const. (1870), Art. VIII, § 1 (see now Ill. Const. (1970), Art. X, § 1). Charles Scribner's Sons v. Bd. of Educ., 278 F. 366 (7th Cir. 1921).

Authority

The state had undoubted power to make regulations concerning the sale of the textbooks to be for use by the pupils of its free schools, even to the extent of the state itself producing and providing them. Charles Scribner's Sons v. Bd. of Educ., 278 F. 366 (7th Cir. 1921).

The state had no power to regulate the sale of school textbooks for use elsewhere than in its public schools, or for others than the pupils thereof. Charles Scribner's Sons v. Bd. of Educ., 278 F. 366 (7th Cir. 1921).

§ 105 ILCS 5/28-2. Approval of bond - Duration

Sec. 28-2. Approval of bond - Duration. The bond required by Section 28-1 [105 ILCS 5/28-1] shall be approved by the Attorney General and shall continue in force for 5 years after its filing, at or before the expiration of which period a new bond shall be given or the right to continue business within the State shall be forfeited.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 28-2.

§ 105 ILCS 5/28-3: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

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§ 105 ILCS 5/28-4. Notice of violations - Proceedings for forfeiture of bond

Sec. 28-4. Notice of violations - Proceedings for forfeiture of bond. The school board of each district wherein the instructional materials listed under the provisions of this Article have been adopted shall notify the State Board of Education of any violation of any of the conditions contained in said bond. The State Board of Education shall thereupon notify the person guilty of the violation and if such person disregards the notification and fails to comply with the requirements of the contract the State Board of Education shall institute legal proceedings for the forfeiture of the bond.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 28-4.

§ 105 ILCS 5/28-5. Inducement to teacher or officer forbidden

Sec. 28-5. Inducement to teacher or officer forbidden. No person shall secure or attempt to secure the sale of any school instructional materials in any school district by rewarding or promising to reward any teacher or by securing for him any position in any other school. No person shall offer to give any emolument, money or other valuable thing, promise of work or any other inducement to any teacher or school officer for any vote or promise of vote or for the use of his influence for any school instructional materials to be used in this State.

This section does not prevent any person from submitting, or any school officer or teacher from receiving, a reasonable number of copies of printed instructional materials for examination with a view to obtaining information as to the book or series of books for which such officer shall give his vote.

(Source: P.A. 77-2180.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 28-5.

§ 105 ILCS 5/28-6: Repealed by P.A. 97-570, § 10, effective August 25, 2011.

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§ 105 ILCS 5/28-7. Retail prices of books

Sec. 28-7. Retail prices of books. It is unlawful for any retail dealer in textbooks to sell any books listed with the State Board of Education at a price to exceed a 15% advance on the net prices as so listed.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 28-7.

§ 105 ILCS 5/28-8. Purchase by districts for resale at cost

Sec. 28-8. Purchase by districts for resale at cost. School districts may purchase textbooks and electronic textbooks and the technological equipment necessary to gain access to and use electronic textbooks from the publishers and manufacturers at the prices listed with the State Board of Education and sell them to the pupils at the listed prices or at such prices as will include the cost of transportation and handling.

(Source: P.A. 81-1508; 96-1403, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 28-8.

Effect of Amendments. The 2010 amendment by P.A. 96-1403, effective July 29, 2010, inserted "and electronic textbooks and the technological equipment necessary to gain access to and use electronic textbooks" and "and manufacturers."

CASE NOTES

Handling Charge

In action by student's father to recover overcharges for textbook fees paid by him, 15% fee for "handling charges" added to the list price was not a reasonable handling charge under this section. Hamer v. Board of Educ., 52 Ill. App. 3d 531, 10 Ill. Dec. 286, 367 N.E.2d 739 (2 Dist. 1977).

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§ 105 ILCS 5/28-9. Purchase by districts - Designation of agent for sale

Sec. 28-9. Purchase by districts - Designation of agent for sale. School districts may purchase out of contingent funds school textbooks or electronic textbooks, instructional materials, and the technological equipment necessary to gain access to and use electronic textbooks from the publishers and manufacturers at the prices listed with the State Board of Education and may designate a retail dealer or dealers to act as the agent of the district in selling them to pupils. Such dealers shall at stated times make settlement with the district for books sold. Such dealers shall not sell textbooks at prices which exceed a 10% advance on the net prices as listed with the State Board of Education.

(Source: P.A. 81-1508; 96-1403, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 28-9.

Effect of Amendments. The 2010 amendment by P.A. 96-1403, effective July 29, 2010, in the first sentence, inserted "or electronic textbooks, instructional materials, and the technological equipment necessary to gain access to and use electronic textbooks" and "and manufacturers."

§ 105 ILCS 5/28-10: Repealed by P.A. 97-570, § 10, effective August 25, 2011.

§ 105 ILCS 5/28-11. Penalties

Sec. 28-11. Penalties. Any dealer who violates the provisions of Sections 28-7 or 28-9 [105 ILCS 5/28-7 or 105 ILCS 5/28-9] shall be guilty of a petty offense and shall be fined not less than $25 nor more than $100.

Whoever violates any of the provisions of the foregoing sections of this Article, except those of Sections 28-7 and 28-9 [105 ILCS 5/28-7 and 105 ILCS 5/28-9], shall be guilty of a Class B misdemeanor.

(Source: P.A. 77-2267.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 28-11.

§ 105 ILCS 5/28-12: Repealed by P.A. 97-570, § 10, effective August 25, 2011.

§ 105 ILCS 5/28-13. Districts adopting provisions for free textbooks

Sec. 28-13. Districts adopting provisions for free textbooks. The foregoing sections of this Article do not apply to school boards and school districts that have adopted the subsequent provisions of this Article.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 28-13.

§ 105 ILCS 5/28-14. Free textbooks - Referendum - Ballot

Sec. 28-14. Free textbooks - Referendum - Ballot. Any school board may, and whenever petitioned so to do by 5% or more of the voters of such district shall order submitted to the voters thereof at a regular scheduled election the question of furnishing free school textbooks or electronic textbooks for the use of pupils attending the public schools of the district, and the secretary shall certify the proposition to the proper election authorities for submission in accordance with the general election law. The proposition shall be in substantially the following form:

```
FOR furnishing free textbooks or
electronic textbooks in the public
schools.
AGAINST furnishing free textbooks or
electronic textbooks in the public
schools.
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If a majority of the votes cast upon the proposition is in favor of furnishing free textbooks or electronic textbooks, the governing body shall provide, furnish and sell them as provided in Section 28-15 [105 ILCS 5/28-15], but no such books shall be sold until at least 1 year after the election. The furnishing of free textbooks or electronic textbooks when so adopted shall not be discontinued within 4 years, and thereafter only by a vote of the voters of the district upon the same conditions and in substantially the same manner as the vote for the adoption of free textbooks or electronic textbooks. No textbook or

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electronic textbook furnished under the provisions of this Article shall contain any denominational or sectarian matter.

(Source: P.A. 81-1489; 96-1403, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 28-14.

Effect of Amendments. The 2010 amendment by P.A. 96-1403, effective July 29, 2010, inserted "or electronic textbooks" or variants throughout the section.

CASE NOTES

Analysis
Constitutionality
Textbook

Constitutionality

The legislative authority to issue free textbooks without a referendum in cities with a population of over 500,000 is based on a reasonable classification. Hamer v. Board of Educ., 47 Ill. 2d 480, 265 N.E.2d 616 (1970).

Textbook

The term "textbook," as it is used in the free textbook sections, 105 ILCS 5/28-14 to 5/28-17, does not include workbooks, duplicating paper and masters, magazine subscriptions, dictionaries, paperback books, maps, or atlases. Beck v. Board of Educ., 27 Ill. App. 3d 4, 325 N.E.2d 640 (2 Dist. 1975).

The word "textbook" is popularly understood to describe a book, rather than anything of lesser substantiality or permanence, which expounds the principles of a field of knowledge, rather than merely presenting exercises or questions, and which is used as the basis of a course of study, and not as a general reference work or a reference work on a subsidiary topic. Beck v. Board of Educ., 27 Ill. App. 3d 4, 325 N.E.2d 640 (2 Dist. 1975).

LEGAL PERIODICALS

For note, "Public School Fees in Illinois: A Re-Examination of Constitutional and Policy Questions," see 1984 U. Ill. L. Rev. 99.

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§ 105 ILCS 5/28-15. Textbooks provided and loaned to pupils - Sale to pupils

Sec. 28-15. Textbooks provided and loaned to pupils - Sale to pupils. The governing body of every school district having voted in favor of furnishing free textbooks or electronic textbooks under the provisions of Sections 28-14 through 28-19 [105 ILCS 5/28-14 through 105 ILCS 5/28-19] shall provide, at the expense of the district, textbooks or electronic textbooks for use in the public schools and loan them free to the pupils. Textbooks so furnished shall remain the property of the school district. The governing body shall also provide for the sale of such textbooks or electronic textbooks at cost to pupils of the schools in the district wishing to purchase them for their own use.

(Source: Laws 1961, p. 31; P.A. 96-1403, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 28-15.

Effect of Amendments. The 2010 amendment by P.A. 96-1403, effective July 29, 2010, inserted "or electronic textbooks" wherever it appears in the first and last sentences.

CASE NOTES

Analysis

Materials
- Fee
- Parents to Provide

Materials

- Fee

Workbooks, duplicating papers, magazine subscriptions, dictionaries, paperback books, maps and atlases were not textbooks, and the cost of these items could be included in the fee charged to the plaintiff's children. Beck v. Board of Educ., 63 Ill. 2d 10, 344 N.E.2d 440 (1976).

- Parents to Provide

Parents of pupils financially able to do so have been required to provide their children with textbooks, writing materials and other supplies prescribed by the school board and required for the personal use of the students. Beck v. Board of Educ., 63 Ill. 2d 10, 344 N.E.2d 440 (1976).

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LEGAL PERIODICALS

For note, "Public School Fees in Illinois: A Re-Examination of Constitutional and Policy Questions," see 1984 U. Ill. L. Rev. 99.

§§ 105 ILCS 5/28-16, 105 ILCS 5/28-17: Repealed by P.A. 97-570, § 10, effective August 25, 2011.

§ 105 ILCS 5/28-18. Boards may jointly carry out law

Sec. 28-18. Boards may jointly carry out law. School boards of two or more districts may jointly carry out the provisions of Sections 28-14 through 28-19 [105 ILCS 5/28-14 through 105 ILCS 5/28-19].

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 28-18.

§ 105 ILCS 5/28-19. Penalty for demanding or receiving money, promise or thing of value

Sec. 28-19. Penalty for demanding or receiving money, promise or thing of value. Whoever directly or indirectly, demands or receives any money, promise or thing of value from any pupil, parent, guardian or caretaker of a pupil for any book provided in this Article, except as provided in Section 28-15 [105 ILCS 5/28-15] shall be guilty of a Class B misdemeanor.

(Source: P.A. 77-2267.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 28-19.

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§ 105 ILCS 5/28-19.1. [Public inspection of instructional material]

Sec. 28-19.1. Any member of the public may inspect all text and instructional material used in the public schools.

(Source: P.A. 81-625.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 28-19.1.

§ 105 ILCS 5/28-19.2. [Discrimination or punishment for inability to purchase books or pay fees prohibited; penalty]

Sec. 28-19.2. (a) No discrimination or punishment of any kind, including the lowering of grades or exclusion from classes, may be exercised against a student whose parents or guardians are unable to purchase required textbooks or instructional materials or to pay required fees.

(b) Any person who violates this Section is guilty of a petty offense.

(Source: P.A. 83-573.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 28-19.2.

§ 105 ILCS 5/28-19.5. Funding for electronic format of textbooks

Sec. 28-19.5. Funding for electronic format of textbooks. Notwithstanding any other provision of law, a school district may use funding received pursuant to this Code to purchase textbooks or instructional materials in an electronic format or hard-bound format and the technological equipment necessary to gain access to and use electronic textbooks or instructional materials if both of the following conditions are met:

(1) It can ensure that each pupil will be provided with a copy of the instructional materials to use at school and at home.

(2) It will assist the pupil in comprehending the material.

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Providing access to the materials at school and at home does not require the school district to purchase 2 sets of materials.

(Source: P.A. 96-1403, § 5.)

Effective Date. Section 99 of P.A. 96-1403, made this section effective upon becoming law. The Act was approved July 29, 2010.

§ 105 ILCS 5/28-20. Definitions

Sec. 28-20. Definitions. (a) For purposes of this Act the term instructional materials shall mean both print and non-print materials, including electronic textbooks, that are used in the educational process.

(b) For purposes of this Article, "textbook" includes electronic or digital textbooks that are used for educational purposes.

(Source: P.A. 77-2180; 96-1403, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 28-20.

Effect of Amendments. The 2010 amendment by P.A. 96-1403, effective July 29, 2010, rewrote the section heading; added the (a) designation; inserted "including electronic textbooks" in (a); and added (b).

§ 105 ILCS 5/28-21. [Duty of publisher]

Sec. 28-21. The State Board of Education shall require each publisher of any printed textbook or electronic textbook that is listed for use by the State Board of Education under this Article or that is furnished at public expense under Sections 28-14 through 28-19 [105 ILCS 5/28-14 through 105 ILCS 5/28-19] and is first published after July 19, 2006 to furnish, as provided in this Section, an accessible electronic file set of contracted print material to the National Instructional Materials Access Center, which shall then be available to the State Board of Education or its authorized user for the purpose of conversion to an accessible format for use by a child with a print disability and for distribution to local education agencies. An "accessible electronic file" means a file that conforms to specifications of the national file format adopted by the United States Department of Education. Other terms used in this Section shall be construed in

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compliance with the federal Individuals with Disabilities Education Act and related regulations.

(Source: P.A. 87-1071, § 1; 95-415, § 5; 96-1403, § 5.)

Effective Date. Section 2 of P.A. 87-1071 made this section effective upon becoming law. The Act was approved September 13, 1992.

Effect of Amendments. The 2007 amendment by P.A. 95-415, effective July 1, 2007, rewrote the section.

The 2010 amendment by P.A. 96-1403, effective July 29, 2010, inserted "or electronic textbook" in the first sentence.

Article 28A.

Education Purchasing Program

§ 105 ILCS 5/28A-5. Definitions

Sec. 28A-5. Definitions. In this Article:

"State Board" means the State Board of Education.

"Education purchasing contract" means a contract negotiated by the State Board, a local, State, or federal governmental entity, or a not-for-profit, for-profit, or cooperative entity that is certified under Section 28A-15 of this Code [105 ILCS 5/28A-15] and made available to school districts.

"Master contract" means a contract designated as a statewide education master contract under Section 28A-15 of this Code [105 ILCS 5/28A-15].

"Program" means the education purchasing program created under this Article.

(Source: P.A. 93-1036, § 90.)

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Effective Date. Section 99 of P.A. 93-1036 made this Article effective upon becoming law. The Act was approved September 14, 2004.

§ 105 ILCS 5/28A-10. Program created

Sec. 28A-10. Program created. The State Board shall create an education purchasing program. Under the program, the State Board shall designate itself or another entity to act as a State education purchasing entity to form and designate statewide education master contracts and to certify education purchasing contracts for key categories identified and defined by the State Board. The State education purchasing entity shall provide master contract and education purchasing contract information and pricing to school districts.

(Source: P.A. 93-1036, § 90.)

§ 105 ILCS 5/28A-15. Powers of State education purchasing entity

Sec. 28A-15. Powers of State education purchasing entity. The State education purchasing entity shall have all of the following powers:

(1) To select vendors and form contracts in accordance with the State's purchasing laws.

(2) To designate a contract as a statewide education master contract for purposes of subsection (c) of Section 10-20.21 of this Code [105 ILCS 5/10-20.21].

(3) To certify an education purchasing contract, provided that the contract was entered into according to procedures and conditions that conform to applicable State purchasing laws, for purposes of subsection (d) of Section 10-20.21 of this Code [105 ILCS 5/10-20.21].

(4) To facilitate the inter-district sale or transfer of excess inventory or equipment.

(5) To select and subsidize e-procurement tools to be implemented within school districts.

(Source: P.A. 93-1036, § 90.)

§ 105 ILCS 5/28A-20. Rules

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Sec. 28A-20. Rules. The State Board or other State agency designated by the State Board may adopt rules to implement the program.

(Source: P.A. 93-1036, § 90.)

Article 29.

Transportation

§ 105 ILCS 5/29-1. Free transportation of pupils

Sec. 29-1. Free transportation of pupils. School boards may provide free transportation for pupils, as prescribed in Section 10-22.22 [105 ILCS 5/10-22.22].

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 29-1.

§ 105 ILCS 5/29-2. Transportation of pupils less than one and one-half miles from school

Sec. 29-2. Transportation of pupils less than one and one-half miles from school. School boards may provide transportation for pupils living less than one and one-half miles as measured by the customary route of travel from the school attended and may make a charge for such transportation in an amount of not to exceed the cost thereof, which shall include a reasonable allowance for depreciation of the vehicles so used.

(Source: Laws 1961, p. 31.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 29-2.

§ 105 ILCS 5/29-3. Transportation in school districts

Sec. 29-3. Transportation in school districts. School boards of community consolidated districts, community unit districts, consolidated districts, consolidated high school districts, optional elementary unit districts, combined high school - unit districts, combined school districts if the combined district includes any district which was previously required to provide transportation, and any newly created elementary or high school districts resulting from a high school - unit conversion, a unit to dual conversion, or a multi-unit conversion if the newly created district includes any area that was previously required to provide transportation shall provide free transportation for pupils residing at a distance of one and one-half miles or more from any school to which they are assigned for attendance maintained within the district, except for those pupils for whom the school board shall certify to the State Board of Education that adequate transportation for the public is available.

For the purpose of this Act 11/2 miles distance shall be from the exit of the property where the pupil resides to the point where pupils are normally unloaded at the school attended; such distance shall be measured by determining the shortest distance on normally traveled roads or streets.

Such school board may comply with the provisions of this Section by providing free transportation for pupils to and from an assigned school and a pick-up point located not more than one and one-half miles from the home of each pupil assigned to such point.

For the purposes of this Act "adequate transportation for the public" shall be assumed to exist for such pupils as can reach school by walking, one way, along normally traveled roads or streets less than 11/2 miles irrespective of the distance the pupil is transported by public transportation.

In addition to the other requirements of this Section, each school board may provide free transportation for any pupil residing within 11/2 miles from the school attended where conditions are such that walking, either to or from the school to which a pupil is assigned for attendance or to or from a pick-up point or bus stop, constitutes a serious hazard to the safety of the pupil due to vehicular traffic or rail crossings. Such transportation shall not be provided if adequate transportation for the public is available.

The determination as to what constitutes a serious safety hazard shall be made by the school board, in accordance with guidelines promulgated by the Illinois Department of Transportation, in consultation with the State Superintendent of Education. A school board, on written petition of the parent or guardian of a pupil for whom adequate transportation for the public is alleged not to exist because the pupil is required to walk along normally traveled roads or streets where walking is alleged to constitute a serious safety hazard due to vehicular traffic or rail crossings, or who is required to walk between

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the pupil's home and assigned school or between the pupil's home or assigned school and a pick-up point or bus stop along roads or streets where walking is alleged to constitute a serious safety hazard due to vehicular traffic or rail crossings, shall conduct a study and make findings, which the Department of Transportation shall review and approve or disapprove as provided in this Section, to determine whether a serious safety hazard exists as alleged in the petition. The Department of Transportation shall review the findings of the school board and shall approve or disapprove the school board's determination that a serious safety hazard exists within 30 days after the school board submits its findings to the Department. The school board shall annually review the conditions and determine whether or not the hazardous conditions remain unchanged. The State Superintendent of Education may request that the Illinois Department of Transportation verify that the conditions have not changed. No action shall lie against the school board, the State Superintendent of Education or the Illinois Department of Transportation for decisions made in accordance with this Section. The provisions of the Administrative Review Law [735 ILCS 5/3-101 et seq.] and all amendments and modifications thereof and the rules adopted pursuant thereto shall apply to and govern all proceedings instituted for the judicial review of final administrative decisions of the Department of Transportation under this Section.

(Source: P.A. 83-1311; 90-223, § 5; 94-439, § 5; 95-903, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 29-3.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 120.30.

Effect of Amendments. The 1997 amendment by P.A. 90-223, effective January 1, 1998, in the fifth paragraph, in the first sentence, inserted "either to or from the school to which a pupil is assigned for attendance or to or from a pick-up point or bus stop" and added at the end "or rail crossings"; and in the sixth paragraph added the second sentence.

The 2005 amendment by P.A. 94-439, effective August 4, 2005, substituted "determine" for "certify to the State Superintendent of Education" in the next-to-last paragraph.

The 2008 amendment by P.A. 95-903, effective August 15, 2008, in the first paragraph inserted "optional elementary unit districts, combined high school - unit districts" and made related changes, inserted "and any newly created elementary or high school districts resulting from a high school - unit conversion, a unit to dual conversion, or a multi-unit conversion if the newly created district includes any area that was previously required to provide transportation", and made a stylistic change.

CASE NOTES

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Analysis

Legislative Intent
Measurement
Public Transportation
- Adequacy
Validity

Legislative Intent

School Board practice and position that even though a student resides 11/2 miles or more from his assigned school the School Board may satisfy its obligation to furnish free transportation by requiring students to walk to pickup points - so long as such points are within a mile and a half of the residence - and then furnishing transportation from the pickup point to the assigned school is at odds with the clear statutory language of this section and untenable. People ex rel. Schuldt v. Schimanski, 130 Ill. App. 2d 780, 266 N.E.2d 409 (4 Dist. 1971).

Measurement

A distance of 171.5 feet over a public road dedicated at an earlier time for public use counted for purposes of arriving at the total distance and whether the plaintiffs resided more than 11/2 miles from the school to which pupil was assigned. People ex rel. Schuldt v. Schimanski, 130 Ill. App. 2d 780, 266 N.E.2d 409 (4 Dist. 1971).

Public Transportation

- Adequacy

Where plaintiffs lived between three-fourths of a mile and a mile and a quarter from public bus stop, and from the entrance of the trailer court where plaintiffs lived, and there was a perfectly safe path for the children to walk to the bus stop, evidence showed the public transportation was adequate. People ex rel. Cantu v. School Dirs., 58 Ill. App. 2d 282, 208 N.E.2d 301 (1 Dist. 1965).

Validity

The action of a school board in establishing a rule refusing to pick up school children living less than one and a half miles down a dead end road at their home by school bus was held not arbitrary or capricious and invalid. Randolph v. School Unit 201, 132 Ill. App. 2d 936, 270 N.E.2d 50 (3 Dist. 1971).

§ 105 ILCS 5/29-3.1. Transportation to and from school sponsored activities

Sec. 29-3.1. Transportation to and from school sponsored activities. The school board of any school district that provides transportation for pupils to and from the school attended may provide transportation for pupils to and from any school sponsored activities in

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which pupils of the district participate, whether during the school year or not, and may make a charge for such transportation in an amount not to exceed the cost thereof, which may include a reasonable allowance for depreciation of the vehicles so used. The school board may provide transportation for pupils on bona fide field trips in Illinois or adjacent states.

(Source: P.A. 85-1148; 85-1389; 85-1440.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 29-3.1.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 120.40.

CASE NOTES

Reimbursable Costs

This section does not relate to any reimbursable costs, and therefore, has no relation to the concern of 105 ILCS 5/29-5 for potential double reimbursements. Board of Educ. v. Cronin, 69 Ill. App. 3d 472, 26 Ill. Dec. 448, 388 N.E.2d 72 (1 Dist. 1979).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 35:42 Failure to provide transportation.

§ 105 ILCS 5/29-3.2. Transportation to and from activities of private schools

Sec. 29-3.2. Transportation to and from activities of private schools. The school board of any school district that provides transportation for pupils to and from the public schools may, by agreement with the officials of a non-public school, provide transportation, at times when the buses or other conveyances are not needed for public school student transportation, for students attending the non-public school to and from activities sponsored by that school. Such a school board providing transportation under this Section shall make a charge for furnishing that transportation in an amount not less than the cost thereof, including a reasonable allowance for the depreciation of each vehicle used in that transportation.

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(Source: Laws 1967, p. 1228.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 29-3.2.

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 35:42 Failure to provide transportation.

§ 105 ILCS 5/29-3.2a. Transportation to and from summer school sessions

Sec. 29-3.2a. Transportation to and from summer school sessions. The school board of any school district that provides transportation for pupils to and from the school attended may provide transportation for pupils to and from school during that period of the calendar year not embraced with the regular school term in which courses are taught for any pupils of the district who might participate, and may make a charge for such transportation in an amount not to exceed the cost thereof, which may include a reasonable allowance for depreciation of the vehicles so used; provided no charge shall be made for transportation of the types of children defined in Sections 14-1.02 through 14-1.07 of this Act [105 ILCS 5/14-1.02 through 105 ILCS 5/14-1.07] and school boards providing such transportation shall be reimbursed pursuant to Section 14-13.01 of this Act [105 ILCS 5/14-13.01].

(Source: P.A. 79-203.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 29-3.2a.

§ 105 ILCS 5/29-3.3. Transportation for pupils of other districts

Sec. 29-3.3. Transportation for pupils of other districts. The school board of any school district that provides transportation for pupils to and from the public schools may, pursuant to agreement with the school board of any other school district, provide transportation for pupils of that district to and from activities sponsored by any public school in that district, at times when buses or other conveyances used in such transportation are not needed for transporting pupils of the school district so providing that transportation. In providing such transportation for pupils of another district, the school board shall charge an amount not less than the cost of furnishing that

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transportation, including a reasonable allowance for depreciation on each vehicle so used.

(Source: Laws 1967, p. 3480.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 29-3.3.

§ 105 ILCS 5/29-3.4. [Transportation to recreational, cultural and certain other programs; charge]

Sec. 29-3.4. The school board of any school district may provide transportation services to children participating in or adults who are attending organized recreational, cultural, educational, and public service programs. The school board shall make a charge for such transportation in an amount equal to the cost thereof, which shall include a reasonable allowance for insurance premiums and depreciation of the vehicles so used. This Section shall not apply if such transportation services are offered by any public or private mass transit system engaged in the business of transporting people within the county or counties in which the school district is located in whole or in part and if such transit system has received or will receive funds provided by the "Mass Transportation Emergency Operating Assistance Act of 1973", adopted by the 78th General Assembly, or which receives or will receive funds from any other enactment of the General Assembly or from any unit of local government.

(Source: P.A. 79-506.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 29-3.4.

The "Mass Transportation Emergency Operating Assistance Act of 1973," referred to above, has been repealed.

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 35:42 Failure to provide transportation.

§ 105 ILCS 5/29-3.5. Other use of school buses

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Sec. 29-3.5. Other use of school buses. The school board of any school district may provide transportation services to any non-profit organization for recreational, cultural, educational, and public service programs operated by the organization for the benefit of its members. Transportation shall be provided to non-profit organizations during times when the vehicles used are not needed for the transportation of students between school and their homes. The school board shall make a charge for such transportation in an amount equal to the cost thereof, which shall include a reasonable allowance for depreciation of the vehicles used. The school board is authorized to enter into contracts, leases, or agreements covering the use of transportation by non-profit organizations. The school board shall add to the charges made for the use of transportation a reasonable amount to cover any increase in insurance premiums incident to the use of transportation by the organization. Nothing in this Section shall be construed to terminate, either permanently or temporarily, the status of the vehicles used by the organization as school buses.

Nothing in this Section shall be construed to permit any school district to provide transportation services in competition with any mass transit carrier.

(Source: P.A. 79-656.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 29-3.5.

§ 105 ILCS 5/29-4. Pupils attending a charter school or nonpublic school

Sec. 29-4. Pupils attending a charter school or nonpublic school. The school board of any school district that provides any school bus or conveyance for transporting pupils to and from the public schools shall afford transportation, without cost, for children who attend a charter school or any school other than a public school, who reside at least 11/2 miles from the school attended, and who reside on or along the highway constituting the regular route of such public school bus or conveyance, such transportation to extend from some point on the regular route nearest or most easily accessible to their homes to and from the school attended, or to or from a point on such regular route which is nearest or most easily accessible to the school attended by such children. Nothing herein shall be construed to prevent high school districts from transporting public or non-public elementary school pupils on a regular route where deemed appropriate. The elementary district in which such pupils reside shall enter into a contractual agreement with the high school district providing the service, make payments accordingly, and make claims to the State in the amount of such contractual payments. The person in charge of any charter school or school other than a public school shall certify on a form to be provided by the State Superintendent of Education, the names and addresses of pupils transported and when such pupils were in attendance at the school. If any such children reside within 11/2

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miles from the school attended, the school board shall afford such transportation to such children on the same basis as it provides transportation for its own pupils residing within that distance from the school attended.

Nothing herein shall be construed to preclude a school district from operating separate regular bus routes, subject to the limitations of this Section, for the benefit of children who attend a charter school or any school other than a public school where the operation of such routes is safer, more economical and more efficient than if such school district were precluded from operating separate regular bus routes.

If a school district is required by this Section to afford transportation without cost for any child who is not a resident of the district, the school district providing such transportation is entitled to reimbursement from the school district in which the child resides for the cost of furnishing that transportation, including a reasonable allowance for depreciation on each vehicle so used. The school district where the child resides shall reimburse the district providing the transportation for such costs, by the 10th of each month or on such less frequent schedule as may be agreed to by the 2 school districts.

(Source: P.A. 81-1050; 91-407, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 29-4.

Effect of Amendments. The 1999 amendment by P.A. 91-407, effective August 3, 1999, substituted "a charter school or nonpublic" for "other than a public" in the first sentence; in the second sentence inserted "a charter school or" following "children who attend"; and in the next to last sentence inserted "charter school or" following "in charge of any"; and in the second paragraph inserted "a charter school or" following "children who attend".

CASE NOTES

Analysis

Constitutionality
Reimbursement

Constitutionality

The busing of nonpublic school students is not a loan of public credit or property to the private schools, and therefore this section does not violate Ill. Const. (1970), Art. VII, § 1(a). Board of Educ. v. Bakalis, 54 Ill. 2d 448, 299 N.E.2d 737 (1973).

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Where plaintiff was not a member of the class of nonpublic school pupils against whom it contended this section was unreasonably discriminatory, it therefore was without standing to question the validity of the statute on this ground. Board of Educ. v. Bakalis, 54 Ill. 2d 448, 299 N.E.2d 737 (1973).

Transportation at public expense of parochial school students on the same basis as public school students is considered primarily a health and safety measure for the benefit of all students, and any aid to the parochial school, or the church supporting it, is incidental; therefore, this section does not violate Ill. Const. (1970), Art. X, § 3. Board of Educ. v. Bakalis, 54 Ill. 2d 448, 299 N.E.2d 737 (1973).

The same secular purpose, primary neutral effect and absence of excessive government entanglement which places this section outside the prohibition of Ill. Const. (1970), Art. X, § 3 against the use of public funds for sectarian purposes also place it outside the prohibition of Ill. Const. (1970), Art. I, § 3 against any preference being given by law to any religious denomination, and, therefore, this section does not violate Ill. Const. (1970), Art. I, § 3. Board of Educ. v. Bakalis, 54 Ill. 2d 448, 299 N.E.2d 737 (1973).

Reimbursement

The board of education of a school district, which did not provide transportation for students at nonpublic schools, was not entitled to reimbursement for providing transportation for public school students, and the act of withholding transportation reimbursement was not a penalty unlawfully imposed upon it by the defendant for failure to furnish transportation to nonpublic school pupils or for challenging the validity of this section. People ex rel. Bd. of Educ. v. State Bd. of Educ., 62 Ill. 2d 517, 344 N.E.2d 5 (1976).

§ 105 ILCS 5/29-5. Reimbursement by State for transportation

Sec. 29-5. Reimbursement by State for transportation. Any school district, maintaining a school, transporting resident pupils to another school district's vocational program, offered through a joint agreement approved by the State Board of Education, as provided in Section 10-22.22 [105 ILCS 5/10-22.22] or transporting its resident pupils to a school which meets the standards for recognition as established by the State Board of Education which provides transportation meeting the standards of safety, comfort, convenience, efficiency and operation prescribed by the State Board of Education for resident pupils in kindergarten or any of grades 1 through 12 who: (a) reside at least 1 1/2 miles as measured by the customary route of travel, from the school attended; or (b) reside in areas where conditions are such that walking constitutes a hazard to the safety of the child when determined under Section 29-3 [105 ILCS 5/29-3]; and (c) are transported to the school attended from pick-up points at the beginning of the school day and back again at the close of the school day or transported to and from their assigned attendance centers during the school day, shall be reimbursed by the State as hereinafter provided in this Section.

The State will pay the cost of transporting eligible pupils less the assessed valuation in a dual school district maintaining secondary grades 9 to 12 inclusive times a qualifying rate of .05%; in elementary school districts maintaining grades K to 8 times a qualifying rate of .06%; and in unit districts maintaining grades K to 12, including optional elementary

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unit districts and combined high school - unit districts, times a qualifying rate of .07%; provided that for optional elementary unit districts and combined high school - unit districts, assessed valuation for high school purposes, as defined in Article 11E of this Code, must be used. To be eligible to receive reimbursement in excess of 4/5 of the cost to transport eligible pupils, a school district shall have a Transportation Fund tax rate of at least .12%. If a school district does not have a .12% Transportation Fund tax rate, the amount of its claim in excess of 4/5 of the cost of transporting pupils shall be reduced by the sum arrived at by subtracting the Transportation Fund tax rate from .12% and multiplying that amount by the districts equalized or assessed valuation, provided, that in no case shall said reduction result in reimbursement of less than 4/5 of the cost to transport eligible pupils.

The minimum amount to be received by a district is $16 times the number of eligible pupils transported.

When calculating the reimbursement for transportation costs, the State Board of Education may not deduct the number of pupils enrolled in early education programs from the number of pupils eligible for reimbursement if the pupils enrolled in the early education programs are transported at the same time as other eligible pupils.

Any such district transporting resident pupils during the school day to an area vocational school or another school district's vocational program more than 11/2 miles from the school attended, as provided in Sections 10-22.20a and 10-22.22 [105 ILCS 5/10-22.20a], shall be reimbursed by the State for 4/5 of the cost of transporting eligible pupils.

School day means that period of time which the pupil is required to be in attendance for instructional purposes.

If a pupil is at a location within the school district other than his residence for child care purposes at the time for transportation to school, that location may be considered for purposes of determining the 11/2 miles from the school attended.

Claims for reimbursement that include children who attend any school other than a public school shall show the number of such children transported.

Claims for reimbursement under this Section shall not be paid for the transportation of pupils for whom transportation costs are claimed for payment under other Sections of this Act.

The allowable direct cost of transporting pupils for regular, vocational, and special education pupil transportation shall be limited to the sum of the cost of physical examinations required for employment as a school bus driver; the salaries of full or part-time drivers and school bus maintenance personnel; employee benefits excluding Illinois municipal retirement payments, social security payments, unemployment insurance payments and workers' compensation insurance premiums; expenditures to independent carriers who operate school buses; payments to other school districts for pupil transportation services; pre-approved contractual expenditures for computerized bus scheduling; the cost of gasoline, oil, tires, and other supplies necessary for the operation of school buses; the cost of converting buses' gasoline engines to more fuel efficient

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engines or to engines which use alternative energy sources; the cost of travel to meetings and workshops conducted by the regional superintendent or the State Superintendent of Education pursuant to the standards established by the Secretary of State under Section 6-106 of the Illinois Vehicle Code [625 ILCS 5/6-106] to improve the driving skills of school bus drivers; the cost of maintenance of school buses including parts and materials used; expenditures for leasing transportation vehicles, except interest and service charges; the cost of insurance and licenses for transportation vehicles; expenditures for the rental of transportation equipment; plus a depreciation allowance of 20% for 5 years for school buses and vehicles approved for transporting pupils to and from school and a depreciation allowance of 10% for 10 years for other transportation equipment so used. Each school year, if a school district has made expenditures to the Regional Transportation Authority or any of its service boards, a mass transit district, or an urban transportation district under an intergovernmental agreement with the district to provide for the transportation of pupils and if the public transit carrier received direct payment for services or passes from a school district within its service area during the 2000-2001 school year, then the allowable direct cost of transporting pupils for regular, vocational, and special education pupil transportation shall also include the expenditures that the district has made to the public transit carrier. In addition to the above allowable costs school districts shall also claim all transportation supervisory salary costs, including Illinois municipal retirement payments, and all transportation related building and building maintenance costs without limitation.

Special education allowable costs shall also include expenditures for the salaries of attendants or aides for that portion of the time they assist special education pupils while in transit and expenditures for parents and public carriers for transporting special education pupils when pre-approved by the State Superintendent of Education.

Indirect costs shall be included in the reimbursement claim for districts which own and operate their own school buses. Such indirect costs shall include administrative costs, or any costs attributable to transporting pupils from their attendance centers to another school building for instructional purposes. No school district which owns and operates its own school buses may claim reimbursement for indirect costs which exceed 5% of the total allowable direct costs for pupil transportation.

The State Board of Education shall prescribe uniform regulations for determining the above standards and shall prescribe forms of cost accounting and standards of determining reasonable depreciation. Such depreciation shall include the cost of equipping school buses with the safety features required by law or by the rules, regulations and standards promulgated by the State Board of Education, and the Department of Transportation for the safety and construction of school buses provided, however, any equipment cost reimbursed by the Department of Transportation for equipping school buses with such safety equipment shall be deducted from the allowable cost in the computation of reimbursement under this Section in the same percentage as the cost of the equipment is depreciated.

On or before August 15, annually, the chief school administrator for the district shall certify to the State Superintendent of Education the district's claim for reimbursement for the school year ending on June 30 next preceding. The State Superintendent of Education

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shall check and approve the claims and prepare the vouchers showing the amounts due for district reimbursement claims. Each fiscal year, the State Superintendent of Education shall prepare and transmit the first 3 vouchers to the Comptroller on the 30th day of September, December and March, respectively, and the final voucher, no later than June 20.

If the amount appropriated for transportation reimbursement is insufficient to fund total claims for any fiscal year, the State Board of Education shall reduce each school district's allowable costs and flat grant amount proportionately to make total adjusted claims equal the total amount appropriated.

For purposes of calculating claims for reimbursement under this Section for any school year beginning July 1, 1998, or thereafter, the equalized assessed valuation for a school district used to compute reimbursement shall be computed in the same manner as it is computed under paragraph (2) of subsection (G) of Section 18-8.05 [105 ILCS 5/18-8.05].

All reimbursements received from the State shall be deposited into the district's transportation fund or into the fund from which the allowable expenditures were made.

Notwithstanding any other provision of law, any school district receiving a payment under this Section or under Section 14-7.02, 14-7.02b, or 14-13.01 of this Code [105 ILCS 5/14-7.02, 105 ILCS 5/14-7.02b, or 105 ILCS 5/14-13.01] may classify all or a portion of the funds that it receives in a particular fiscal year or from general State aid pursuant to Section 18-8.05 of this Code as funds received in connection with any funding program for which it is entitled to receive funds from the State in that fiscal year (including, without limitation, any funding program referenced in this Section), regardless of the source or timing of the receipt. The district may not classify more funds as funds received in connection with the funding program than the district is entitled to receive in that fiscal year for that program. Any classification by a district must be made by a resolution of its board of education. The resolution must identify the amount of any payments or general State aid to be classified under this paragraph and must specify the funding program to which the funds are to be treated as received in connection therewith. This resolution is controlling as to the classification of funds referenced therein. A certified copy of the resolution must be sent to the State Superintendent of Education. The resolution shall still take effect even though a copy of the resolution has not been sent to the State Superintendent of Education in a timely manner. No classification under this paragraph by a district shall affect the total amount or timing of money the district is entitled to receive under this Code. No classification under this paragraph by a district shall in any way relieve the district from or affect any requirements that otherwise would apply with respect to that funding program, including any accounting of funds by source, reporting expenditures by original source and purpose, reporting requirements, or requirements of providing services.

Any school district with a population of not more than 500,000 must deposit all funds received under this Article into the transportation fund and use those funds for the provision of transportation services.

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(Source: P.A. 87-179; 88-612, § 5; 88-641, § 10; 88-670, § 3-54; 89-235, § 2-90; 91-96, § 10; 92-568, § 5; 93-166, § 5; 93-663, § 5; 93-1022, § 5; 94-875, § 5; 95-903, § 5; 96-1264, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 29-5.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 120.10.

Effect of Amendments. The 1994 amendment by P.A. 88-612, effective July 1, 1995, in the ninth paragraph, in the first sentence, substituted "pursuant to the standards established by the Secretary of State under Section 6-106 of the Illinois Vehicle Code" for "designed"; and in the fifteenth paragraph, in the third sentence, substituted "18-170 of the Property Tax Code" for "162e of the Revenue Act of 1939".

The 1994 amendment by P.A. 88-641, effective September 9, 1994, in the thirteenth paragraph, in the third sentence, deleted "respective educational service regions" preceding "for" and deleted "their" preceding "district"; and in the fifteenth paragraph, in the third sentence, substituted "Section 18-170 of the Property Tax Code" for "Section 162e of the Revenue Act of 1939".

The 1994 amendment by P.A. 88-670, effective December 2, 1994, in the fifteenth paragraph, in the third sentence, substituted "18-170 of the Property Tax Code" for "162e of the Revenue Act of 1939".

The 1995 amendment by P.A. 89-235, effective August 4, 1995, combined the amendments by P.A. 88-612, § 5, P.A. 88-641, § 10 and P.A. 88-670, § 3-54.

The 1999 amendment by P.A. 91-96, effective July 7, 1999, rewrote the next-to-last paragraph, deleting provisions regarding the 1976 through 1986 school years.

The 2002 amendment by P.A. 92-568, effective June 26, 2002, added the last two paragraphs.

The 2003 amendment by P.A. 93-166, effective July 10, 2003, substituted "chief school administrator for" for "board clerk or the secretary of" at the beginning of the thirteenth paragraph.

The 2004 amendment by P.A. 93-663, effective February 17, 2004, added the next-to-last sentence in the ninth paragraph.

The 2004 amendment by P.A. 93-1022, effective August 24, 2004, in the next-to-last paragraph substituted "14-7.02b" for "14-7.02a" in the first sentence.

The 2006 amendment by P.A. 94-875, effective July 1, 2006, in rewrote the thirteenth paragraph,

The 2008 amendment by P.A. 95-903, effective August 15, 2008, substituted "grades K to 12, including optional elementary unit districts and combined high school - unit districts, times a qualifying rate of .07%; provided that for optional elementary unit districts and combined high school - unit districts, assessed valuation for high school purposes, as defined in Article 11E of this Code, must be used" for "grades K to 12 times a qualifying rate of .07%" and made a related change in the first sentence of the second paragraph.

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The 2010 amendment by P.A. 96-1264, effective January 1, 2011, inserted the fourth paragraph.

CASE NOTES

Analysis

Applicability
Jurisdiction of Circuit Court
Reimbursement
- No Entitlement
Relationship to Other Laws

Applicability

Where students were not only transported to and from the physical site of the school, but also were at that site primarily for the purpose of attending school, and the activities which caused them to remain beyond their last classes were themselves incidental to school purposes in character, the transportation provided was occasioned primarily by the students' attendance at school and was appropriately classed by district as coming within section; therefore, the order restraining the state superintendent of schools from withholding reimbursements to offset the alleged overpayment was affirmed. Board of Educ. v. Cronin, 69 Ill. App. 3d 472, 26 Ill. Dec. 448, 388 N.E.2d 72 (1 Dist. 1979).

Jurisdiction of Circuit Court

Suit, where board of education sought injunction from state superintendent of education from withholding transportation funds from board, was not based on failure of the transportation program in question to meet standards of quality or efficiency concerning which the Superintendent had some discretion, but rather on an interpretation of the mandatory language of statute; therefore, the suit was not a suit against the state, but a suit against its agents to compel their conformance with the law, and was within the jurisdiction of the circuit court. Board of Educ. v. Cronin, 69 Ill. App. 3d 472, 26 Ill. Dec. 448, 388 N.E.2d 72 (1 Dist. 1979).

Reimbursement

- No Entitlement

The board of education of a school district, which did not provide transportation for students at nonpublic schools, was not entitled to reimbursement for providing transportation for public school students, and the act of withholding transportation reimbursement was not a penalty unlawfully imposed upon it by the defendant for failure to furnish transportation to nonpublic school pupils or for challenging the validity of 105 ILCS 5/29-4. People ex rel. Bd. of Educ. v. State Bd. of Educ., 62 Ill. 2d 517, 344 N.E.2d 5 (1976).

Relationship to Other Laws

105 ILCS 5/29-3.1 does not apply to any reimbursable costs, and therefore, has no relation to the concern of this section for potential double reimbursements. Board of Educ. v. Cronin, 69 Ill.

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App. 3d 472, 26 Ill. Dec. 448, 388 N.E.2d 72 (1 Dist. 1979).

LEGAL PERIODICALS

For comment, "The In Loco Parentis Status of Ill. School Teachers: An Unjustifiably Broad Extension of Immunity," see 10 J. Marshall J. Prac. & Proc. 629 (1977).

§ 105 ILCS 5/29-5.2. Reimbursement of transportation

Sec. 29-5.2. Reimbursement of transportation. (a) Reimbursement. A custodian of a qualifying pupil shall be entitled to reimbursement in accordance with procedures established by the State Board of Education for qualified transportation expenses paid by such custodian during the school year.

(b) Definitions. As used in this Section:

(1) "Qualifying pupil" means an individual referred to in subsection (c), as well as an individual who:

(A) is a resident of the State of Illinois; and

(B) is under the age of 21 at the close of the school year for which reimbursement is sought; and

(C) during the school year for which reimbursement is sought was a full-time pupil enrolled in a kindergarten through 12th grade educational program at a school which was a distance of 11/2 miles or more from the residence of such pupil; and

(D) did not live within 11/2 miles from the school in which the pupil was enrolled or have access to transportation provided entirely at public expense to and from that school and a point within 11/2 miles of the pupil's residence, measured in a manner consistent with Section 29-3 [105 ILCS 5/29-3].

(2) "Qualified transportation expenses" means costs reasonably incurred by the custodian to transport, for the purposes of attending regularly scheduled day-time classes, a qualifying pupil between such qualifying pupil's residence and the school at which such qualifying pupil is enrolled, as limited in subsection (e) of this Section, and shall include automobile expenses at the standard mileage rate allowed by the United States Internal Revenue Service as reimbursement for business transportation expense, as well as payments to mass transit carriers, private carriers, and contractual fees for transportation.

(3) "School" means a public or nonpublic elementary or secondary school in Illinois, attendance at which satisfies the requirements of Section 26-1 [105 ILCS 5/26-1].

(4) One and one-half miles distance. For the purposes of this Section, 11/2 miles distance shall be measured in a manner consistent with Section 29-3 [105 ILCS 5/29-3].

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(5) Custodian. The term "custodian" shall mean, with respect to a qualifying pupil, an Illinois resident who is the parent, or parents, or legal guardian of such qualifying pupil.

(c) An individual, resident of the State of Illinois, who is under the age of 21 at the close of the school year for which reimbursement is sought and who, during that school year, was a full time pupil enrolled in a kindergarten through 12th grade educational program at a school which was within 11/2 miles of the pupil's residence, measured in a manner consistent with Section 29-3 [105 ILCS 5/29-3], is a "qualifying pupil" within the meaning of this Section if: (i) such pupil did not have access to transportation provided entirely at public expense to and from that school and the pupil's residence, and (ii) conditions were such that walking would have constituted a serious hazard to the safety of the pupil due to vehicular traffic. The determination of what constitutes a serious safety hazard within the meaning of this subsection shall in each case be made by the Department of Transportation in accordance with guidelines which the Department, in consultation with the State Superintendent of Education, shall promulgate. Each custodian intending to file an application for reimbursement under subsection (d) for expenditures incurred or to be incurred with respect to a pupil asserted to be a qualified pupil as an individual referred to in this subsection shall first file with the appropriate regional superintendent, on forms provided by the State Board of Education, a request for a determination that a serious safety hazard within the meaning of this subsection (c) exists with respect to such pupil. Custodians shall file such forms with the appropriate regional superintendents not later than February 1 of the school year for which reimbursement will be sought for transmittal by the regional superintendents to the Department of Transportation not later than February 15; except that any custodian who previously received a determination that a serious safety hazard exists need not resubmit such a request for 4 years but instead may certify on their application for reimbursement to the State Board of Education referred to in subsection (d), that the conditions found to be hazardous, as previously determined by the Department, remain unchanged. The Department shall make its determination on all requests so transmitted to it within 30 days, and shall thereupon forward notice of each determination which it has made to the appropriate regional superintendent for immediate transmittal to the custodian affected thereby. The determination of the Department relative to what constitutes a serious safety hazard within the meaning of subsection (c) with respect to any pupil shall be deemed an "administrative decision" as defined in Section 3-101 of the Administrative Review Law [735 ILCS 5/3-101]; and the Administrative Review Law [735 ILCS 5/3-101 et seq.] and all amendments and modifications thereof and rules adopted pursuant thereto shall apply to and govern all proceedings instituted for the judicial review of final administrative decisions of the Department of Transportation under this subsection.

(d) Request for reimbursement. A custodian, including a custodian for a pupil asserted to be a qualified pupil as an individual referred to in subsection (c), who applies in accordance with procedures established by the State Board of Education shall be reimbursed in accordance with the dollar limits set out in this Section. Such procedures shall require application no later than June 30 of each year, documentation as to eligibility, and adequate evidence of expenditures; except that for reimbursement sought pursuant to subsection (c) for the 1985-1986 school year, such procedures shall require application within 21 days after the determination of the Department of Transportation

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with respect to that school year is transmitted by the regional superintendent to the affected custodian. In the absence of contemporaneous records, an affidavit by the custodian may be accepted as evidence of an expenditure. If the amount appropriated for such reimbursement for any year is less than the amount due each custodian, it shall be apportioned on the basis of the requests approved. Regional Superintendents shall be reimbursed for such costs of administering the program, including costs incurred in administering the provisions of subsection (c), as the State Board of Education determines are reasonable and necessary.

(e) Dollar limit on amount of reimbursement. Reimbursement to custodians for transportation expenses incurred during the 1985-1986 school year, payable in fiscal year 1987, shall be equal to the lesser of (1) the actual qualified transportation expenses, or (2) $50 per pupil. Reimbursement to custodians for transportation expenses incurred during the 1986-1987 school year, payable in fiscal year 1988, shall be equal to the lesser of (1) the actual qualified transportation expenses, or (2) $100 per pupil. For reimbursements of qualified transportation expenses incurred in 1987-1988 and thereafter, the amount of reimbursement shall not exceed the prior year's State reimbursement per pupil for transporting pupils as required by Section 29-3 [105 ILCS 5/29-3] and other provisions of this Article.

(f) Rules and regulations. The State Board of Education shall adopt rules to implement this Section.

(g) The provisions of this amendatory Act of 1986 shall apply according to their terms to the entire 1985-1986 school year, including any portion of that school year which elapses prior to the effective date of this amendatory Act, and to each subsequent school year.

(h) The chief administrative officer of each school shall notify custodians of qualifying pupils that reimbursements are available. Notification shall occur by the first Monday in November of the school year for which reimbursement is available.

(Source: P.A. 85-1209; 91-357, § 101.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 29-5.2.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 120.210, 120.240.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, made stylistic changes.

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§ 105 ILCS 5/29-6. Inter-district contracts for transportation

Sec. 29-6. Inter-district contracts for transportation. Any school district, including any non-high school district, may contract at actual cost with 1 or more school districts for the transportation of pupils to and from the school attended.

(Source: P.A. 78-1245.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 29-6.

§ 105 ILCS 5/29-6.1. Contracts for transportation

Sec. 29-6.1. Contracts for transportation. Subject to Section 6-106.11 of the Illinois Vehicle Code [625 ILCS 5/6-106.11], school boards may enter into contracts for up to 3 years for transportation of pupils to and from school. Such contracts may be extended for up to 2 additional years by mutual agreement of the parties, and thereafter may be extended on a year-to-year basis by mutual agreement of the parties, however no such contract may be extended on a year-to-year basis if a school board receives a timely request from another interested contractor that a contract be let by bid.

(Source: P.A. 84-768.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 29-6.1.

§ 105 ILCS 5/29-6.3. Transportation to and from specified interscholastic or school-sponsored activities

Sec. 29-6.3. Transportation to and from specified interscholastic or school-sponsored activities. (a) Any school district transporting students in grade 12 or below for an interscholastic, interscholastic athletic, or school-sponsored, noncurriculum-related activity that (i) does not require student participation as part of the educational services of the district and (ii) is not associated with the students' regular class-for-credit schedule or required 5 clock hours of instruction shall transport the students only in a school bus, a vehicle manufactured to transport not more than 10 persons, including the driver, or a

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multifunction school-activity bus manufactured to transport not more than 15 persons, including the driver.

(b) Any school district furnishing transportation for students under the authority of this Section shall insure against any loss or liability of the district resulting from the maintenance, operation, or use of the vehicle.

(c) Vehicles used to transport students under this Section may claim a depreciation allowance of 20% over 5 years as provided in Section 29-5 of this Code [105 ILCS 5/29-5].

(Source: P.A. 89-132, § 5; 89-608, § 5; 89-626, § 2-35; 96-410, § 5.)

Note.

The version of this section, enacted by P.A. 89-151, was renumbered as 105 ILCS 5/29-6.4.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 120.115, 275.100.

Effective Date. Section 99 of P.A. 89-132 made this section effective upon becoming law. The Act was approved July 14, 1995.

Effect of Amendments. The 1996 amendment by P.A. 89-608, effective August 2, 1996, deleted "under a rental or for hire arrangement entered into by the district with respect to the specific activity in connection with which such transportation is to be furnished" preceding "and provided further"; and deleted from the end "in a company licensed and authorized to write such coverage in this State".

The 1996 amendment by P.A. 89-626, effective August 9, 1996, appears to have made no changes to this section.

The 2009 amendment by P.A. 96-410, effective July 1, 2010, rewrote the section and made a stylistic change in the section heading.

§ 105 ILCS 5/29-6.4. Non-contract transportation; bids; reimbursement

Sec. 29-6.4. Non-contract transportation; bids; reimbursement. A school board of a school district that provides transportation of its pupils to and from school on buses that are owned by the district that are operated by drivers who are employed by the district shall, if it receives a timely request from an interested private school bus contractor that the district provide that transportation under contract, solicit sealed bids for that purpose. A district or special education cooperative is not required to respond to such a request more than once every 2 years. A request shall not be considered timely if it is made more

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than 24 months or less than 3 months before the expiration of the collective bargaining or other agreement that is in effect at the time the request is made and that governs the terms and conditions of employment of the school bus drivers employed by the district. All requests shall be made in writing by certified mail, return receipt requested, addressed to the school board of the district at the administrative offices or any school of the district. At the conclusion of the bidding process, the school board shall publicly announce the district's fully allocated costs of providing transportation of its pupils to and from school under its present system and thereupon may (i) elect to enter into a contract as provided in Section 29-6.1 [105 ILCS 5/29-6.1] with the lowest responsible bidder for transportation of the district's pupils to and from school or (ii) elect to continue providing transportation of its pupils to and from school under its present system. In the event the school board elects to continue providing transportation of the district's pupils to and from school under its present system even though the district's fully allocated costs of doing so exceed the amount of the lowest responsible bid received by the school board for transportation of the district's pupils to and from school, the school board shall publicly announce at a regularly scheduled meeting of the board held within 30 days after making its election to continue providing pupil transportation under its present system (i) the fully allocated costs of providing transportation of the district's pupils to and from school under its present system, and (ii) the amount of each of the sealed bids submitted to the school board, identifying which of the sealed bid amounts was the lowest responsible bid.

As used in this Section the term "fully allocated costs" includes both the fixed and variable direct costs of the labor, capital, and material resources that are used by the school district exclusively for purposes of providing transportation of the district's pupils to and from school plus that portion of the district's shared costs as is fairly allocable to the products, services, and facilities necessary to provide transportation of the district's pupils to and from school. Direct costs of labor, capital, and material resources used exclusively to provide pupil transportation include the wages, payroll costs, and associated fringe benefits of school bus drivers, mechanics, and any supervisory or administrative personnel whose services relate exclusively to pupil transportation personnel or services, fuel, lubricants, tires, tubes, related material costs incurred in providing pupil transportation, depreciation costs associated with school buses and other vehicles, including spare vehicles, used to provide pupil transportation, and costs of facilities and equipment maintained exclusively to service, garage, or park vehicles used for pupil transportation purposes. "Shared costs" means the aggregate cost of the labor, capital, and material resources that are used in common by the district for a multiplicity of purposes, including the purpose of providing transportation of the district's pupils to and from school. The costs of the management, administration, and underlying infrastructure that support a multiplicity of services provided by the school district (including pupil transportation services) constitute shared costs within the meaning of this Section, and to the extent they are fairly allocable to pupil transportation services they are included within the term fully allocated costs as used in this Section. The State Board of Education shall promulgate rules setting forth the manner in which a district's fully allocated costs of providing transportation of its pupils to and from school under a non-contractual system shall be determined and computed for purposes of this Section. However, those rules shall be consistent with the provisions of this paragraph and shall

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follow recognized principles of fully allocated costing analysis in the transit industry, including generally accepted methods of identifying and estimating the principal cost elements of maintaining and operating a pupil transportation system.

(Source: P.A. 89-151, § 5; 89-626, § 2-35; 93-953, § 5.)

Effective Date. This section became effective January 1, 1996 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 1996 amendment by P.A. 89-626, effective August 9, 1996, renumbered this section which was formerly 105 ILCS 5/29-6.3, as enacted by P.A. 89-151.

The 2004 amendment by P.A. 93-974, effective January 1, 2005, in the first paragraph inserted the second and fourth sentences, and rewrote the third sentence.

§ 105 ILCS 5/29-9. Liability insurance

Sec. 29-9. Liability insurance. Any school district, including any non-high school district, which provides transportation for pupils shall insure against any loss or liability of such district, its agents or employees, resulting from or incident to the ownership, maintenance or use of any school bus. Such insurance shall be carried only in companies duly licensed and authorized to write such coverage in this State and in compliance with the provisions of Section 12-707 of "The Illinois Vehicle Code", approved September 29, 1969, as now or hereafter amended [625 ILCS 5/12-707].

(Source: P.A. 78-310.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 29-9.

§ 105 ILCS 5/29-15. [Lease or sale of buses or equipment]

Sec. 29-15. Subject to the provisions of Section 10-22.8 of this Act [105 ILCS 5/10-22.8], school districts, which own buses or other vehicular equipment for the transportation of pupils to or from school within such district, may sell or lease such buses or equipment to a Mass Transit District organized under the Local Mass Transit District Act [70 ILCS 3610/1 et seq.] or to an Urban Transportation District organized under the Urban Transportation District Act. Such districts may contract with a Mass Transit District or an Urban Transportation District for the transportation of pupils to and from the schools of

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such districts at a consideration to be determined by negotiation between the parties. Such contracts shall otherwise be subject to the provisions of this Article.

(Source: P.A. 77-1492.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 29-15.

The Urban Transportation District Act, referred to above, has been repealed.

§ 105 ILCS 5/29-16. [Rent of buses or equipment to county]

Sec. 29-16. The school board of any school district which owns buses or other vehicular equipment for the transportation of pupils may rent such buses or equipment to the county board of any county in which it is situated to provide public transportation services pursuant to the "Downstate Public Transportation Act" [30 ILCS 740/1-1 et seq.]. The school board may rent such buses and equipment to the county board only for use during times when such buses or equipment are not needed for transporting pupils of the school district. A school board renting school buses or other vehicular equipment under this Section shall make a charge for furnishing such buses or other vehicular equipment in an amount not less than the cost thereof, including a reasonable allowance for the depreciation of each vehicle used.

This amendatory Act is not a limitation upon the contractual and associational powers granted by Section 10 of Article VII of the Constitution.

(Source: P.A. 78-1109.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 29-16.

OPINIONS OF ATTORNEY GENERAL

Incompatible Offices

The offices of school board member and county board are incompatible, and one person may not serve simultaneously in both offices, as a conflict may arise under the activity covered by this section. 1993 Op. Atty. Gen. (93-011).

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§ 105 ILCS 5/29-17: Repealed by P.A. 95-496, § 10, effective August 28, 2007.

§ 105 ILCS 5/29-18: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

Article 30.

Scholarships

§§ 105 ILCS 5/30-1 through 105 ILCS 5/30-4e: Repealed by P.A. 88-228, § 15, effective July 1, 1994.

§ 105 ILCS 5/30-6: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/30-9. General Assembly scholarship; conditions of admission; award by competitive examination

Sec. 30-9. General Assembly scholarship; conditions of admission; award by competitive examination. Each member of the General Assembly may nominate annually 2 persons of school age and otherwise eligible, from his district; each shall receive a certificate of scholarship in any State supported university designated by the member. Any member of the General Assembly in making nominations under this Section may designate that his nominee be granted a 4 year scholarship or may instead designate 2 or 4 nominees for that particular scholarship, each to receive a 2 year or a one year scholarship, respectively. The nominee, if a graduate of a school accredited by the University to which nominated, shall be admitted to the university on the same conditions as to educational qualifications as are other graduates of accredited schools. If the nominee is not a graduate of a school accredited by the university to which nominated, he must, before being entitled to the benefits of the scholarship, pass an examination given by the superintendent of schools of the county where he resides at the time stated in Section 30-

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7 [105 ILCS 5/30-7] for the competitive examination. The president of each university shall prescribe the rules governing the examination for scholarship to his university.

A member of the General Assembly may award the scholarship by competitive examination conducted under like rules as prescribed in Section 30-7 [105 ILCS 5/30-7] even though one or more of the applicants are graduates of schools accredited by the university.

A member of the General Assembly may delegate to the Illinois Student Assistance Commission the authority to nominate persons for General Assembly scholarships which that member would otherwise be entitled to award, or may direct the Commission to evaluate and make recommendations to the member concerning candidates for such scholarships. In the event a member delegates his nominating authority or directs the Commission to evaluate and make recommendations concerning candidates for General Assembly scholarships, the member shall inform the Commission in writing of the criteria which he wishes the Commission to apply in nominating or recommending candidates. Those criteria may include some or all of the criteria provided in Section 25 of the Higher Education Student Assistance Act [110 ILCS 947/25]. A delegation of authority under this paragraph may be revoked at any time by the member.

Failure of a member of the General Assembly to make a nomination in any year shall not cause that scholarship to lapse, but the member may make a nomination for such scholarship at any time thereafter before the expiration of his term, and the person so nominated shall be entitled to the same benefits as holders of other scholarships provided herein. Any such scholarship for which a member has made no nomination prior to the expiration of the term for which he was elected shall lapse upon the expiration of that term.

(Source: P.A. 78-504; 78-704; 78-1297; 87-997, § 310; 93-349, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 30-9.

Effect of Amendments. The 1992 amendment, effective September 3, 1992, rewrote the section catchline; substituted "one" for "1" in the first sentence of the first paragraph; substituted "Illinois Student Assistance Commission" for "State Scholarship Commission" in the first sentence of the third paragraph, substituted "Those" for "Such" and "Section 25 of the Higher Education Student Assistance Act" for "Section 30-15.5 of the School Code" in the next to last sentence of the third paragraph, and in the last paragraph substituted "shall not" for "will not" in the first sentence and "that term" for "such term" in the second sentence.

The 2003 amendment by P.A. 93-349, effective July 24, 2003, substituted "each shall receive a certificate of scholarship in any State" for "one shall receive a certificate of scholarship in the University of Illinois and the other shall receive a certificate of scholarship in any other State" in the first sentence of the first paragraph.

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§ 105 ILCS 5/30-10. Filing nominations - Failure to accept or pass - Second nomination

Sec. 30-10. Filing nominations - Failure to accept or pass - Second nomination. Nominations, under Section 30-9 [105 ILCS 5/30-9], showing the name and address of the nominee, and the term of the scholarship, whether 4 years, 2 years or one year, must be filed with the State Superintendent of Education not later than the opening day of the semester or term with which the scholarship is to become effective. The State Superintendent of Education shall forthwith notify the president of the university of such nomination.

If the nominee fails to accept the nomination or, not being a graduate of a school accredited by the university, fails to pass the examination for admission, the president of the university shall at once notify the State Superintendent of Education. Upon receiving such notification, the State Superintendent of Education shall notify the nominating member, who may name another person for the scholarship. The second nomination must be received by the State Superintendent of Education not later than the middle of the semester or term with which the scholarship was to have become effective under the original nomination in order to become effective as of the opening date of such semester or term otherwise it shall not become effective until the beginning of the next semester or term following the making of the second nomination. Upon receiving such notification, the State Superintendent of Education shall notify the president of the university of such second nomination. If any person nominated after the effective date of this amendatory Act of 1973 to receive a General Assembly scholarship changes his residence to a location outside of the district from which he was nominated, his nominating member may terminate that scholarship at the conclusion of the college year in which he is then enrolled. For purposes of this paragraph, a person changes his residence if he registers to vote in a location outside of the district from which he was nominated, but does not change his residence merely by taking off-campus housing or living in a nonuniversity residence.

(Source: P.A. 80-278; 93-349, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 30-10.

Effect of Amendments. The 2003 amendment by P.A. 93-349, effective July 24, 2003, rewrote the section, in part by deleting references to the University of Illinois.

§ 105 ILCS 5/30-11. Failure to use scholarship - Further nominations

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Sec. 30-11. Failure to use scholarship - Further nominations. If any nominee under Section 30-9 or 30-10 [105 ILCS 5/30-9 or 105 ILCS 5/30-10] discontinues his course of instruction or fails to use the scholarship, leaving 1, 2, 3, or 4 years thereof unused, the member of the General Assembly may, except as otherwise provided in this Article, nominate some other person eligible under this Article from his district who shall be entitled to the scholarship for the unexpired period thereof. Such appointment to an unexpired scholarship vacated before July 1, 1961, may be made only by the member of the General Assembly who made the original appointment and during the time he is such a member. If a scholarship is vacated on or after July 1, 1961, and the member of the General Assembly who made the original appointment has ceased to be a member, some eligible person may be nominated in the following manner to fill the vacancy: If the original appointment was made by a Senator, such nomination shall be made by the Senator from the same district; if the original appointment was made by a Representative, such nomination shall be made by the Representative from the same district. Every nomination to fill a vacancy must be accompanied either by a release of the original nominee or if he is dead then an affidavit to that effect by some competent person. The failure of a nominee to register at the university within 20 days after the opening of any semester or term shall be deemed a release by him of the nomination, unless he has been granted a leave of absence in accordance with Section 30-14 [105 ILCS 5/30-14] or unless his absence is by reason of his entry into the military service of the United States. The university shall immediately upon the expiration of 20 days after the beginning of the semester or term notify the State Board of Education as to the status of each scholarship, who shall forthwith notify the nominating member of any nominee's failure to register or, if the nominating member has ceased to be a member of the General Assembly, shall notify the member or members entitled to make the nomination to fill the vacancy. All nominations to unused or unexpired scholarships shall be effective as of the opening of the semester or term of the university during which they are made if they are filed with the university during the first half of the semester or term, otherwise they shall not be effective until the opening of the next following semester or term.

(Source: P.A. 82-1003; 93-349, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 30-11.

Effect of Amendments. The 2003 amendment by P.A. 93-349, effective July 24, 2003, in the fifth sentence deleted "other than the University of Illinois" after "The university"; and deleted the former sixth sentence concerning a scholarship in the University of Illinois.

§ 105 ILCS 5/30-12. Failure to begin or discontinuance of course because of military service

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Sec. 30-12. Failure to begin or discontinuance of course because of military service. Any nominee, under Sections 30-9, 30-10, or 30-11 [105 ILCS 5/30-9, 105 ILCS 5/30-10 or 105 ILCS 5/30-11], who fails to begin or discontinues his course of instruction because of his entry into the military service of the United States, leaving all or a portion of the scholarship unused, may, upon completion of such service, use the scholarship or the unused portion thereof, regardless of whether or not the member of the General Assembly who nominated him is then a member; provided that during the nominee's period of military service no other person may be nominated by such member to all or any portion of such unused or unfinished scholarship unless the nomination is accompanied either by a release of the original nominee or if he is dead then an affidavit to that effect by some competent person.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 30-12.

§ 105 ILCS 5/30-12.5. Waiver of confidentiality

Sec. 30-12.5. Waiver of confidentiality. (a) As a condition of nomination for a General Assembly scholarship under Section 30-9, 30-10, or 30-11 [105 ILCS 5/30-9, 105 ILCS 5/30-10, or 105 ILCS 5/30-11], each nominee shall provide to the member of the General Assembly making the nomination a waiver document stating that, notwithstanding any provision of law to the contrary, if the nominee receives a General Assembly scholarship, then the nominee waives all rights to confidentiality with respect to the contents of the waiver document. The waiver document shall state at a minimum the nominee's name, domicile address, attending university, degree program in which the nominee is enrolled, amount of tuition waived by the legislative scholarship and the name of the member of the General Assembly who is making the nomination. The waiver document shall also contain a statement by the nominee that, at the time of the nomination for the legislative scholarship, the domicile of the nominee is within the legislative district of the legislator making the scholarship nomination. The waiver document must be signed by the nominee, and the nominee shall have his or her signature on the waiver document acknowledged before a notary public. The member of the General Assembly making the nomination shall file the signed, notarized waiver document, together with the nomination itself, with the State Superintendent of Education. By so filing the waiver document, the member waives all his or her rights to confidentiality with respect to the contents of the waiver document.

(b) The legislative scholarship of any nominee shall be revoked upon a determination by the State Board of Education after a hearing that the nominee knowingly provided false or misleading information on the waiver document. Upon revocation of the legislative

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scholarship, the scholarship nominee shall reimburse the university for the full amount of any tuition waived prior to revocation of the scholarship.

(c) The Illinois Student Assistance Commission shall prepare a form waiver document to be used as provided in subsection (a) and shall provide copies of the form upon request.

(Source: P.A. 89-681, § 10; 93-349, § 5.)

Effective Date. Section 99 of P.A. 89-681 made this section effective upon becoming law. The Act was certified December 13, 1996.

Effect of Amendments. The 2003 amendment by P.A. 93-349, effective July 24, 2003, in the next-to-last sentence of subsection (a) deleted "or the president of the University of Illinois as provided in Section 30-10" from the end.

§ 105 ILCS 5/30-13. [Terms of scholarships]

Sec. 30-13. The scholarships issued under Sections 30-9 through 30-12 of this Article [105 ILCS 5/30-9 through 105 ILCS 5/30-12] may be used at the University of Illinois, Southern Illinois University, Chicago State University, Eastern Illinois University, Governors State University, Illinois State University, Northeastern Illinois University, Northern Illinois University, and Western Illinois University as provided in those sections. Unless otherwise indicated, these scholarships shall be good for a period of not more than 4 years while enrolled for residence credit and shall exempt the holder from the payment of tuition, or any matriculation, graduation, activity, term or incidental fee, except any portion of a multipurpose fee which is used for a purpose for which exemption is not granted under this Section. Exemption shall not be granted from any other fees, including book rental, service, laboratory, supply, union building, hospital and medical insurance fees and any fees established for the operation and maintenance of buildings, the income of which is pledged to the payment of interest and principal on bonds issued by the governing board of any university or community college.

Any student who has been or shall be awarded a scholarship shall be reimbursed by the appropriate university or community college for any fees which he has paid and for which exemption is granted under this Section, if application for such reimbursement is made within 2 months following the school term for which the fees were paid.

The holder of a scholarship shall be subject to all examinations, rules and requirements of the university or community college in which he is enrolled except as herein directed.

This article does not prohibit the Board of Trustees of the University of Illinois, the Board of Trustees of Southern Illinois University, the Board of Regents of the Regency Universities System and the Board of Governors of State Colleges and Universities for

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the institutions under their respective jurisdictions from granting other scholarships.

(Source: P.A. 81-1509; 88-228, § 5; 89-4, § 50-130.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 30-13.

Effect of Amendments. The 1993 amendment by P.A. 88-228, effective July 1, 1994, in the first sentence of the first paragraph, substituted "30-9" for "30-1".

The 1995 amendment by P.A. 89-4, effective January 1, 1996, in the first paragraph, in the first sentence, substituted "Chicago State University, Eastern Illinois University, Governors State University, Illinois State University, Northeastern Illinois University, Northern Illinois University, and Western Illinois University" for "state colleges and universities under jurisdiction of the Board of Governors and Regency Universities under the jurisdiction of the Board of Regents as".

§ 105 ILCS 5/30-14. Leaves of absence to holders of scholarships

Sec. 30-14. Leaves of absence to holders of scholarships. Any student enrolled in a university to which he is holding a scholarship issued under this Article who satisfies the president of the university or someone designated by him, that he requires leave of absence for the purpose of earning funds to defray his expenses while in attendance or on account of illness or military service may be granted such leave and allowed a period of not to exceed 6 years in which to complete his course at the university. The university shall notify the county superintendent of the county from which the scholarship was issued of the granting of the leave. Time spent in the armed forces shall not be part of the 6 years.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 30-14.

§ 105 ILCS 5/30-14.1: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/30-14.2. MIA/POW scholarships

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Sec. 30-14.2. MIA/POW scholarships. (a) Any spouse, natural child, legally adopted child, or any step-child of an eligible veteran or serviceperson who possesses all necessary entrance requirements shall, upon application and proper proof, be awarded a MIA/POW Scholarship consisting of the equivalent of 4 calendar years of full-time enrollment including summer terms, to the state supported Illinois institution of higher learning of his choice, subject to the restrictions listed below.

"Eligible veteran or serviceperson" means any veteran or serviceperson, including an Illinois National Guard member who is on active duty or is active on a training assignment, who has been declared by the U.S. Department of Defense or the U.S. Department of Veterans' Affairs to be a prisoner of war, be missing in action, have died as the result of a service-connected disability or be permanently disabled from service-connected causes with 100% disability and who (i) at the time of entering service was an Illinois resident, (ii) was an Illinois resident within 6 months after entering such service, or (iii) until July 1, 2014, became an Illinois resident within 6 months after leaving the service and can establish at least 30 years of continuous residency in the State of Illinois.

Full-time enrollment means 12 or more semester hours of courses per semester, or 12 or more quarter hours of courses per quarter, or the equivalent thereof per term. Scholarships utilized by dependents enrolled in less than full-time study shall be computed in the proportion which the number of hours so carried bears to full-time enrollment.

Scholarships awarded under this Section may be used by a spouse or child without regard to his or her age. The holder of a Scholarship awarded under this Section shall be subject to all examinations and academic standards, including the maintenance of minimum grade levels, that are applicable generally to other enrolled students at the Illinois institution of higher learning where the Scholarship is being used. If the surviving spouse remarries or if there is a divorce between the veteran or serviceperson and his or her spouse while the dependent is pursuing his or her course of study, Scholarship benefits will be terminated at the end of the term for which he or she is presently enrolled. Such dependents shall also be entitled, upon proper proof and application, to enroll in any extension course offered by a State supported Illinois institution of higher learning without payment of tuition and approved fees.

The holder of a MIA/POW Scholarship authorized under this Section shall not be required to pay any matriculation or application fees, tuition, activities fees, graduation fees or other fees, except multipurpose building fees or similar fees for supplies and materials.

Any dependent who has been or shall be awarded a MIA/POW Scholarship shall be reimbursed by the appropriate institution of higher learning for any fees which he or she has paid and for which exemption is granted under this Section if application for reimbursement is made within 2 months following the end of the school term for which the fees were paid.

(b) In lieu of the benefit provided in subsection (a), any spouse, natural child, legally adopted child, or step-child of an eligible veteran or serviceperson, which spouse or child has a physical, mental or developmental disability, shall be entitled to receive, upon

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application and proper proof, a benefit to be used for the purpose of defraying the cost of the attendance or treatment of such spouse or child at one or more appropriate therapeutic, rehabilitative or educational facilities. The application and proof may be made by the parent or legal guardian of the spouse or child on his or her behalf.

The total benefit provided to any beneficiary under this subsection shall not exceed the cost equivalent of 4 calendar years of full-time enrollment, including summer terms, at the University of Illinois. Whenever practicable in the opinion of the Department of Veterans' Affairs, payment of benefits under this subsection shall be made directly to the facility, the cost of attendance or treatment at which is being defrayed, as such costs accrue.

(c) The benefits of this Section shall be administered by and paid for out of funds made available to the Illinois Department of Veterans' Affairs. The amounts that become due to any state supported Illinois institution of higher learning shall be payable by the Comptroller to such institution on vouchers approved by the Illinois Department of Veterans' Affairs. The amounts that become due under subsection (b) of this Section shall be payable by warrant upon vouchers issued by the Illinois Department of Veterans' Affairs and approved by the Comptroller. The Illinois Department of Veterans' Affairs shall determine the eligibility of the persons who make application for the benefits provided for in this Section.

(Source: P.A. 87-115; 89-267, § 5; 93-825, § 5; 96-1415, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 30-14.2.

Effect of Amendments. The 1995 amendment by P.A. 89-267, effective January 1, 1996, added the section catchline; and in subsection (a), in the fourth paragraph, substituted the present first and second sentences for the former which read "The child must begin using the Scholarship prior to his or her 26th birthday. The course of study as authorized under this Section must be completed by the expiration of the 12th year from the beginning date of the child's or spouse's initial term of study".

The 2004 amendment by P.A. 93-825, effective July 28, 2004, inserted "including an Illinois National Guard member who is on active duty or is active on a training assignment" in the second paragraph of subsection (a).

The 2010 amendment by P.A. 96-1415, effective July 30, 2010, in the second paragraph of (a), added the item (i) and (ii) designations and added item (iii) to the end; and made related and stylistic changes.

OPINIONS OF ATTORNEY GENERAL

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Constitutionality

The statute is unconstitutional to the extent that it conditions the award of POW/MIA scholarships upon the residency of a veteran or serviceperson at or near the time that he or she entered service. 2002 Op. Atty. Gen (02-003).

§ 105 ILCS 5/30-14.3: Repealed by P.A. 88-228, § 15, effective July 1, 1994.

§ 105 ILCS 5/30-14.4: Repealed by P.A. 87-997, § 315, effective September 3, 1992.

§§ 105 ILCS 5/30-14.5 through 105 ILCS 5/30-14.7: Repealed by P.A. 88-228, § 15, effective July 1, 1994.

§ 105 ILCS 5/30-14.8. Christa McAuliffe Fellowship Program

Sec. 30-14.8. Christa McAuliffe Fellowship Program. (a) The General Assembly finds that the Christa McAuliffe federal fellowship is an award expressly and exclusively for the benefit of one or more elementary or secondary teachers, provides funding for a sabbatical for the recipient of the fellowship, has no express relationship to post-secondary educational benefits under State and federal grant and loan programs administered by the Illinois Student Assistance Commission (hereinafter in this Section sometimes referred to as the "Commission"), and therefore is a program that from and after the effective date of this amendatory Act of 1995 should be administered in this State by the State Board of Education.

(b) There is hereby transferred to the State Board of Education from the Illinois Student Assistance Commission all authority and responsibility exercised by the Commission before the effective date of this amendatory Act of 1995 with respect to the administration within this State of the Christa McAuliffe federal fellowship program. From and after the effective date of this amendatory Act, the State Board of Education shall administer on behalf of the State of Illinois and in accordance with all applicable rules and regulations the conduct and operation of the Christa McAuliffe federal fellowship program within this State.

(c) The Illinois Student Assistance Commission shall transfer to the State Board of Education, as successor to the Commission for all purposes of administering the Christa McAuliffe federal fellowship program, all books, accounts, records, papers, documents,

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contracts, agreements, and pending business in the possession or under the control of the Commission and relating to its administration of the Christa McAuliffe fellowship program in this State. All pending applications made before the effective date of this amendatory Act of 1995 for scholarship awards under the Christa McAuliffe fellowship program and all scholarships awarded under that program before the effective date of this amendatory Act of 1995 shall be unaffected by the transfer to the State Board of Education of all responsibilities and authority formerly exercised by the Commission with respect to that program. The Commission shall furnish to the State Board of Education such other information as the State Board of Education may request to assist it in administering this Section.

(Source: P.A. 89-106, § 10.)

Effective Date. Section 99 of P.A. 89-106 made this section effective July 1, 1995. The Act was approved July 7, 1995.

Higher Education Student Assistance Law

§§ 105 ILCS 5/30-15 through 105 ILCS 5/30-15.24: Repealed by P.A. 87-997, § 315, effective September 3, 1992.

Note.

Repealed 105 ILCS 5/30-15.7f was amended effective January 1, 1993 by P.A. 87-920 and effective September 3, 1992 by P.A. 87-1004. The section is treated as repealed.

Cross References.

For the Higher Education Student Assistance Act, see now 110 ILCS 947/1 et seq.

§ 105 ILCS 5/30-15.25. [Disclosure of terms, restrictions and requirements of grants, etc., given by foreign governments or individuals]

Sec. 30-15.25. (a) As used in this Section, the term "public institution of higher education" includes: the University of Illinois; Southern Illinois University; Chicago State University; Eastern Illinois University; Governors State University; Illinois State University; Northeastern Illinois University; Northern Illinois University; Western Illinois University; the public community colleges of the State; and any other public

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universities, colleges and community colleges now or hereafter established or authorized by the General Assembly. The term "nonpublic institution of higher education" includes any educational organization in this State, other than a public institution of higher education, which provides a minimum of an organized 2 year program at the private junior college level or higher and which operates not-for-profit and in conformity with standards substantially equivalent to those of public institutions of higher education.

(b) Each public institution of higher education shall disclose the terms, restrictions and requirements attached to or made a part of any endowment, gift, grant, contract award or property of any kind or value in excess of $100,000 made to such institution, or to any school, college, division, branch or other organizational entity within or forming a part of such institution, by a foreign government or an individual who is neither a citizen nor a resident of the United States, in any calendar or fiscal year. If the foreign government or individual donates more than one gift in any calendar or fiscal year, and the total value of those gifts exceeds $100,000, such institution shall report all the gifts received. This subsection shall not apply to funds that public institutions of higher education receive from grants and contracts through either the federal government or the State of Illinois.

(c) The provisions of this subsection apply to each nonpublic institution of higher education: (i) which receives any grant or award under the Illinois Financial Assistance Act for Nonpublic Institutions of Higher Learning [110 ILCS 210/1 et seq.] or under the Higher Education Cooperation Act [110 ILCS 220/1 et seq.], or (ii) which is a participant in a program of interinstitutional cooperation administered by a not-for-profit organization that is organized to administer such program under the Higher Education Cooperation Act [110 ILCS 220/1 et seq.] and that receives any grant under and in furtherance of the purposes of that Act, or (iii) which receives any grant or distribution of grant moneys appropriated from the State Treasury or any fund therein to such institution or to the Board of Higher Education for distribution to nonpublic institutions of higher education for purposes of Section 4 of the Build Illinois Bond Act [30 ILCS 425/4] or for any other purpose authorized by law. Each nonpublic institution of higher education to which the provisions of this subsection apply shall disclose the terms, restrictions and requirements attached to or made a part of any endowment, gift, grant, contract award or property of any kind or value in excess of $250,000 made to such institution, or to any school, college, division, branch or other organizational entity within or forming a part of such institution, by a foreign government or an individual who is neither a citizen nor a resident of the United States, in any calendar or fiscal year. If the foreign government or individual donates more than one gift in any calendar or fiscal year, and the total value of those gifts exceeds $250,000, such institution shall report all the gifts received.

(d) Such information shall be forwarded to the Attorney General no later than 30 days after the final day of each calendar or fiscal year of such institution, whichever type of year is used by the institution in accounting for the gifts received for the purposes of this Section. The information shall include:

(1) the name of the foreign government in the case of a gift by a government, or the name of the foreign country of which an individual donor is a citizen, in the case of a gift by an individual;

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(2) the amount and the date of the contribution or contributions;

(3) when the gift is conditional, matching or designated for a particular purpose, full details of the conditions, matching provisions or designation; and

(4) the purpose or purposes for which the contribution will be used.

Such information shall be a matter of public record.

(Source: P.A. 86-531; 89-4, § 50-130.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 30-15.25.

Effect of Amendments. The 1995 amendment by P.A. 89-4, effective January 1, 1996, in subsection (a), in the first sentence, substituted "Chicago State University; Eastern Illinois University; Governors State University; Illinois State University; Northeastern Illinois University; Northern Illinois University; Western Illinois University" for "the several universities and colleges under the governance of the Board of Governors of State Colleges and Universities, the several Regency Universities under the jurisdiction of the Board of Regents".

Reserve Officer's Training Corps Scholarships

§ 105 ILCS 5/30-16.1. Purpose

Sec. 30-16.1. Purpose. The General Assembly has found and hereby declares that it is essential for the national defense and for the defense of the State of Illinois that among those residents of this State receiving higher education, provisions should be made for Reserve Officer's Training Corps training, in order to provide officers for the several Armed Forces of the United States of America and to that end, that scholarships should be furnished to eligible residents, in order to encourage their participation in the Reserve Officer's Training Corps programs.

(Source: P.A. 79-768.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 30-16.1.

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§ 105 ILCS 5/30-16.2. Eligible recipients

Sec. 30-16.2. Eligible recipients. Those residents of the State of Illinois whose scholastic standing will enable them to enroll in the Reserve Officer's Training Corps programs of the several Armed Forces available at universities supported by the State of Illinois, are considered as eligible recipients for scholarships set forth in Section 30-16.3 [105 ILCS 5/30-16.3].

(Source: P.A. 79-768.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 30-16.2.

§ 105 ILCS 5/30-16.3. Availability of Scholarships

Sec. 30-16.3. Availability of Scholarships. Scholarships shall be awarded on the following basis:

(a) One scholastic scholarship to an eligible recipient from each private junior college and public community college which has a total enrollment of less than 500 students.

(b) Two scholarships to eligible recipients from each private junior college and public community college which has an enrollment of 500 or more, but less than 1,000, students.

(c) Three scholarships to eligible recipients from private junior colleges and public community colleges having an enrollment of 1,000, or more, students.

(d) The equivalent of 10 scholarships per class, per branch of service, each academic year, to eligible recipients.

(Source: P.A. 82-622; 91-503, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 30-16.3.

Effect of Amendments. The 1999 amendment by P.A. 91-503, effective August 13, 1999, rewrote subsection (d), which formerly provided: "Ten scholarships to eligible recipients who have completed the prior scholastic courses in the university in which eligible recipient is to enroll in a Reserve Officer's Training Corps program."

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§ 105 ILCS 5/30-16.4. Privileges Conferred

Sec. 30-16.4. Privileges Conferred. The scholarships issued under Sections 30-16.1 through 30-16.6, inclusive, of this Article [105 ILCS 5/30-16.1 through 105 ILCS 5/30-16.6], may be used at those State supported universities where there are provided Reserve Officer's Training Corps programs of the several Armed Services over a period during which the eligible recipient is eligible for enrollment in the program. The scholarships exempt the holder from the payment of tuition, or any matriculation, graduation, activity, term or incidental fee, except any portion of a multi-purpose fee which is used for a purpose for which exemption is not granted under this Section. Exemption may not be granted for any other fees including book rental, service, laboratory, supply, Union Building, hospital and medical insurance fees and any fees established for the operation and maintenance of buildings, the income of which is pledged to the payment of interest and principal, or bonds issued by the governing board of the universities.

Any student who has been or is awarded a scholarship shall be reimbursed by the appropriate university for any fees which he has paid and for which exemption is granted under this Section, if application for such reimbursement is made within 2 months following the school term for which the fees were paid.

The holder of a scholarship is subject to all examinations, rules and requirements of the university in which he is enrolled, except as herein directed.

The provisions of Sections 30-16.1 through 30-16.6 of this Act [105 ILCS 5/30-16.1 through 105 ILCS 5/30-16.6] do not prohibit the Board of Trustees of the University of Illinois, the Board of Trustees of Southern Illinois University, the Board of Trustees of Chicago State University, the Board of Trustees of Eastern Illinois University, the Board of Trustees of Governors State University, the Board of Trustees of Illinois State University, the Board of Trustees of Northeastern Illinois University, the Board of Trustees of Northern Illinois University, and the Board of Trustees of Western Illinois University from granting other scholarships.

(Source: P.A. 79-768; 89-4, § 50-130.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 30-16.4.

Effect of Amendments. The 1995 amendment by P.A. 89-4, effective January 1, 1996, in the fourth paragraph, substituted "the Board of Trustees of Chicago State University, the Board of Trustees of Eastern Illinois University, the Board of Trustees of Governors State University, the Board of Trustees of Illinois State University, the Board of Trustees of Northeastern Illinois University, the Board of Trustees of Northern Illinois University, and the Board of Trustees of Western Illinois University" for "the Board of Regents for the institutions under its jurisdiction and the Board of Governors of State Colleges and Universities for the institutions under its

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jurisdiction".

§ 105 ILCS 5/30-16.5. Leaves of absence to holders of scholarships

Sec. 30-16.5. Leaves of absence to holders of scholarships. Any student enrolled in a university to which he is requesting a scholarship issued under the provisions of Section 30-16.3 of this Act [105 ILCS 5/30-16.3] who satisfies the President of the University, or someone designated by him, that he requires leave of absence while in attendance, or on account of illness, or military service, may be granted such leave and allowed a period of not to exceed 6 years, in which to complete his course at the university. Time spent in the armed services is not a part of the 6 years.

(Source: P.A. 79-768.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 30-16.5.

§ 105 ILCS 5/30-16.6. Registration of eligible recipients; examination

Sec. 30-16.6. Registration of eligible recipients; examination. The president or chairman of the board of each private junior college or public community college, and the President of each University in which a Reserve Officer's Training Corps program is available, or some individual or committee designated by such person, shall receive and register the names of all eligible recipients applying for the scholarships set forth in Section 30-16.3 [105 ILCS 5/30-16.3]. Applicants shall take an examination each year according to the rules prescribed jointly by the President of the University of Illinois, the President of Southern Illinois University, the President of Chicago State University, the President of Eastern Illinois University, the President of Governors State University, the President of Illinois State University, the President of Northeastern Illinois University, the President of Northern Illinois University, and the President of Western Illinois University. The scholarships shall be awarded on a merit basis to those eligible recipients receiving the highest grades with evidence of leadership ability, and the number of scholarships to be awarded in any institution shall be as set forth in Section 30-16.3 [105 ILCS 5/30-16.3].

(Source: P.A. 82-622; 89-4, § 50-130.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 30-16.6.

Effect of Amendments. The 1995 amendment by P.A. 89-4, effective January 1, 1996, in the second sentence, substituted "the President of Chicago State University, the President of Eastern Illinois University, the President of Governors State University, the President of Illinois State University, the President of Northeastern University, the President of Northern Illinois University, and the President of Western Illinois University" for "a president appointed by the Board of Regents and a president appointed by the Board of Governors of State Colleges and Universities".

§ 105 ILCS 5/30-17. Revocation of Scholarship Because of Misconduct

Sec. 30-17. Revocation of Scholarship Because of Misconduct. If the holder of any scholarship funded in whole or in part by this State, whether granted by the State Scholarship Commission, granted pursuant to any of Sections 30-1 through 30-16.6 [105 ILCS 5/30-1 through 105 ILCS 5/30-16.6] or otherwise granted by any State supported college or university and whether used at a State-supported institution of higher learning or at a private institution, participates in any disorderly disturbance or course of conduct directed against the administration or policies of such an institution using means which are not protected by the constitution of this State or of the United States, his scholarship is thereupon revoked and no further payments under that scholarship may be made to him or on his behalf, notwithstanding any other provision to the contrary.

The initial determination as to whether the means employed in a course of conduct are not protected by the Constitution of this State or of the United States shall be made by the chief executive officer of the institution at which the scholarship recipient is enrolled. No revocation shall take place until the recipient of the scholarship to be revoked is afforded the opportunity to present evidence against revocation to the chief executive officer or his representatives, either in person, in writing, or by counsel of his choice.

(Source: P.A. 76-1580.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 30-17.

CASE NOTES

Analysis
Constitutionality

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Applicability

Constitutionality

This section was held to be unconstitutionally vague and overbroad, which was not cured by reference to the Disruptive Action Statement of the University of Illinois. Undergraduate Student Ass'n v. Peltason, 367 F. Supp. 1055 (N.D. Ill. 1973).

Applicability

Where a private person otherwise unconnected with the University of Illinois, allegedly conducted a hearing and issued a report on the conduct of certain plaintiff students at the request of defendant and where it was further alleged that private person's report recommended that defendant revoke the scholarship aid of those students pursuant to challenged statute, the private person was subject to suit under civil rights statute even though he was not alleged to hold office. Undergraduate Student Ass'n v. Peltason, 359 F. Supp. 320 (N.D. Ill. 1973).

RESEARCH REFERENCES

Misconduct of college or university student off campus as grounds for expulsion, suspension, or other disciplinary action. 28 ALR4th 463.

Admissibility of hearsay evidence in student disciplinary proceedings. 30 ALR4th 935.

§ 105 ILCS 5/30-17.1. Scholarships - Draft Registration

Sec. 30-17.1. Scholarships - Draft Registration. Each applicant for any student financial aid funded in whole or in part by this State, whether granted by the Illinois Student Assistance Commission, granted pursuant to any of Sections 30-1 through 30-16.6 [105 ILCS 5/30-1 through 105 ILCS 5/30-16.6] or otherwise granted by any State supported college or university, and whether to be used at a State supported institution of higher learning or at a private institution, shall submit to the institution he or she is attending Selective Service registration compliance documentation as required by Part 668 of Title 34 of the Code of Federal Regulations. If an applicant for or holder of any such student financial aid fails to submit documentation in the manner and within the time allowed, any pending application of such person for the award, grant, or renewal of any such student financial aid shall be denied, and any such student financial aid currently held by such person shall be revoked to the extent that no further payments under that student financial aid may be made. Procedures for notification and administrative review shall be consistent with Part 668 of Title 34 of the Code of Federal Regulations.

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(Source: P.A. 86-169.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 30-17.1.

Article 31.

Fraternities - Sororities

§ 105 ILCS 5/31-1. Definition

Sec. 31-1. Definition. A public school fraternity, sorority or secret society, in this Article means any organization, composed wholly or in part of public school pupils, which seeks to perpetuate itself by taking in additional members from the pupils enrolled in such school on the basis of the decision of its membership rather than upon the free choice of any pupil in the school who is qualified by the rules of the school to fill the special aims of the organization.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 31-1.

§ 105 ILCS 5/31-2. Inimical to public good

Sec. 31-2. Inimical to public good. Any public school fraternity, sorority or secret society is inimical to the public good.

(Source: Laws 1961, p. 31.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 31-2.

CASE NOTES

Constitutionality

This section does not purport to control pupils in their homes or in social activities under the supervision of their parents, but declares that the secret societies and organizations defined therein are inimical to the public good, and for that reason they are forbidden. Sutton v. Board of Educ., 306 Ill. 507, 138 N.E. 131 (1923).

§ 105 ILCS 5/31-3. Suspension or expulsion of members, pledges and solicitors

Sec. 31-3. Suspension or expulsion of members, pledges and solicitors. The governing body of any public school shall suspend or expel any pupil who is a member of or joins or promises to join, or who becomes pledged to become a member of, or who solicits any other person to join, promise to join or be pledged to become a member of any public school fraternity, sorority or secret society.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 31-3.

CASE NOTES

Expulsion

- Upheld

Where a student was expelled for allegedly joining a secret fraternal society, a board of education properly heard and considered evidence on the matter, which justified its conclusion, and the record showed no fraud, corruption, oppression, or gross injustice on the part of the Board. Smith v. Board of Educ., 182 Ill. App. 342 (1 Dist. 1913).

§ 105 ILCS 5/31-4. Solicitation unlawful - Penalty

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Sec. 31-4. Solicitation unlawful - Penalty. It is unlawful for any person not enrolled in any public school of this State to solicit any pupil enrolled therein to join or pledge himself or herself to become a member of any public school fraternity, sorority or secret society or to solicit any such pupil to attend a meeting thereof or any meeting where the joining of any such fraternity, sorority or secret society is encouraged. Whoever violates this section shall be guilty of a petty offense and fined not less than $25 nor more than $100.

(Source: P.A. 77-2267.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 31-4.

§ 105 ILCS 5/31-5. Not applicable to universities

Sec. 31-5. Not applicable to universities. The provisions of this Article [105 ILCS 5/31-1 et seq.] do not apply to fraternities, sororities or secret societies in any State University nor to students thereof in their relations to such organizations in these institutions.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 31-5.

Article 32.

Special Charter Districts

§ 105 ILCS 5/32-1. May vote to organize under general law

Sec. 32-1. May vote to organize under general law. (a) Any special charter district may, by vote of its electors, cease to control its school under the Act under which it was organized, and become part of the school

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township or townships in which it is situated. Upon petition of 50 voters of the district, presented to the board having the control and management of the schools, the board shall order submitted to the voters at an election to be held in the district, in accordance with the general election law, the question of "organizing under the general school law". The secretary of the board shall make certification to the proper election authority in accordance with the general election law. If, however, a majority of the votes cast at any such election in any school district subject to Sections 32-3 through 32-4.11 [105 ILCS 5/32-3 through 105 ILCS 5/32-4.11] is against organizing the district under the general school law, the question may not again be submitted in the district for 22 months thereafter, and then only upon petition signed by at least 2% of the voters of the school district. Notice shall be given in accordance with the general election law, which notice shall be in the following form:

NOTICE OF REFERENDUM

Notice is hereby given that on (insert date), a referendum will be held at ..... for the purpose of deciding the question of organizing under the general school law. The polls will be opened at ..... o'clock ....m and closed at ..... o'clock ....m.

Signed .....

If a majority of the votes cast on the proposition is in favor of organizing under the general school law, then the board having the control and management of schools in the district, shall declare the proposition carried.

When such a proposition is declared to have so carried, the board of education shall continue to exercise its powers and duties under the general school law. Each member of the board of education selected under the provisions of the special charter shall continue in office until his term has expired. Before the term of each of these members expires, the board shall give notice of an election to be held on the date of the next regular school election, in accordance with the general election law to fill the vacancy which is created. Nomination papers filed under this Section are not valid unless the candidate named therein files with the secretary of the board of education a receipt from the county clerk showing that the candidate has filed a statement of economic interests as required by the Illinois Governmental Ethics Act [5 ILCS 420/1-101 et seq.]. Such receipt shall be so filed either previously during the calendar year in which his nomination papers were filed or within the period for the filing of nomination papers in accordance with the general election law.

(b) Notwithstanding the foregoing, any special charter district whose board is appointed by the mayor or other corporate authority of that municipality may, by resolution adopted by the corporate authorities of that municipality cease to control its school under the Act under which it was organized, become a part of the school township or townships in which it is situated and become organized under the general school law. If such a resolution is adopted, the board of education shall continue to exercise its powers and duties under the general school law. Each member of the board of education selected

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under the provisions of the special charter shall continue in office until his term has expired. Before the term of each of these members expires, the board shall give notice of an election to be held on the date of the next regular school election, in accordance with the general election law to fill the vacancy which is created.

(Source: P.A. 81-1490; 91-357, § 101.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-1.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "on (insert date)" for "on the .... day of ...., 19.." in the first sentence of the form.

CASE NOTES

Analysis

Constitutionality
Dissolution
General Laws
- Consistency

Constitutionality

Contentions that since there are no provisions in this section for the succession of the new Board of Education to the rights, powers duties and responsibilities of the former Board under a dissolved special charter district, the section is so incomplete, vague and uncertain in the areas of taxation, employment of personnel, leases and contracts as to render it inoperative, void, and in violation of former Ill. Const. (1870), Art. II, § 2 (see now Ill. Const. (1970), Art. I, § 2 and U.S. Const., Amend. XIV), and that by virtue of such deficiencies the children of the district will be denied a good common school education in violation of former Ill. Const. (1870), Art. VIII, § 1 (see now Ill. Const. (1970), Art. X, § 1) are without merit; this section is constitutional. People ex rel. Killeen v. Kankakee Sch., 48 Ill. 2d 419, 270 N.E.2d 36 (1971).

Dissolution

If the electors of a special charter school district vote to organize under the general school law pursuant to this section, the special charter school district is dissolved; the county board of school trustees would cause a new school district, which would be governed under the general school laws, to be formed and established, and would call an election for the directors of such district, and as the successor school district to the special charter district, the new common school district

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would become liable for all of the financial obligations of the dissolved district. People ex rel. Killeen v. Kankakee Sch., 48 Ill. 2d 419, 270 N.E.2d 36 (1971).

General Laws

- Consistency

The enactment of general laws relating to the maintenance and operation of public schools did not abrogate provisions of special charters, also affecting the maintenance and operation of public schools, which are not inconsistent with such general laws. People ex rel. Bell v. New York Cent. R.R., 10 Ill. 2d 612, 141 N.E.2d 38 (1957).

§ 105 ILCS 5/32-1.1. Election and powers of board - No provision in special act

Sec. 32-1.1. Election and powers of board - No provision in special act. In all special charter districts maintaining schools under any general school laws, where there is no provision in the special Acts creating such districts for the election of boards of education as otherwise provided, there shall be elected, in lieu of the school directors as now provided, a board of education, to consist of 7 members to be elected at the time and in the manner as provided by the general election law for the election and qualification of boards of education in other cases. In any district having a population of more than 100,000 but less than 2,000,000 such board may be increased in size to 11 members upon adoption by a majority of electors residing in the district and voting on the question in a referendum as provided in this Section. Such question shall be submitted to the electors at an election upon a resolution adopted by the Board. Members shall be elected biennially in the school district, whose term of office shall be 4 years, and there shall also be elected in each odd-numbered year a president of the board. Following the first such election, those members elected, other than the president, shall, by lot, determine 3 to serve 2 years and 3 to serve 4 years; thereafter, all terms shall be 4 years. In other cases, however, if 4 members, other than the president, are elected in 1983, then those elected shall, by lot, determine one to serve for 2 years and 3 to serve 4 years; thereafter all terms shall be 4 years. In neither case shall such determinations affect the biennial selection of the president. At the first regular school election after the adoption by the district electors of a question as provided in this Section increasing the size of the board in those districts entitled to exercise an option for and elect an 11 member board, 4 additional members shall be elected and shall determine by lot 2 to serve for 2 years and 2 for 4 years. Their successors shall serve for a 4 year term. In case of an 11 member board already in existence, if 7 members, other than the president, are elected in 1983 then those members elected shall, by lot determine one to serve 2 years and 6 to serve 4 years. Terms thereafter shall be 4 years. The board of education shall have all the powers and duties of trustees of schools in school townships and the powers and duties of boards of education in districts having a population of not fewer than 1,000 and not more than 500,000 as provided by this Act.

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The day upon which the election provided for in this section is to be held is subject to the provisions of the general election law.

(Source: P.A. 86-225.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-1.1.

§ 105 ILCS 5/32-1.2. Powers of election boards

Sec. 32-1.2. Powers of election boards. A school board of any special charter district that is elected by the voters shall have the powers and duties of school trustees.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-1.2.

CASE NOTES

Annexation

A special charter district could annex adjoining land according to the provisions of its charter, and need not follow the statutory annexation procedures of this Code. People ex rel. Community Unit Sch. v. Decatur Sch., 45 Ill. App. 2d 33, 194 N.E.2d 659 (3 Dist. 1963).

§ 105 ILCS 5/32-1.3. Determination to elect - Election - Powers

Sec. 32-1.3. Determination to elect - Election - Powers. Any special charter district having a population of not less than 1,000 and not over 20,000, may, by vote of its electors, determine to elect, instead of the directors or other governing or managing board now provided for by the special Act under which it was organized, a board of education which shall be elected at the time and in the manner and have the powers conferred upon boards of education of districts under this Act.

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(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-1.3.

§ 105 ILCS 5/32-1.4. Petition - referendum - election of board

Sec. 32-1.4. Petition - referendum - election of board. Upon petition of 50 voters of any district as defined in Section 32-1.3 [105 ILCS 5/32-1.3] presented to the board having the control and management of schools, the board shall, at the next regularly scheduled election held in such district cause to be submitted to the voters thereof, in accordance with the general election law, the proposition of "electing a board of education having the powers conferred upon such boards in districts organized under The School Code". The board shall publish notice of such election, in the manner provided by the general election law, which notice may be in the following form:

Public notice is hereby given that on (insert date), a referendum will be held at ...., between the hours of .....m. and .....m. of said day for the purpose of deciding the question of "electing a board of education having the powers conferred upon such boards in districts organized under The School Code".

If a majority of the votes cast is in favor of the proposition, then at the time of the next regular election for boards of education, there shall be elected a board of education for the district.

(Source: P.A. 81-1490; 91-357, § 101.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-1.4.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "on (insert date)" for "on the .... day of .... 19.." near the beginning of the form, and made stylistic changes.

CASE NOTES

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Analysis
Constitutionality
Authority
- Reduction
Uniformity

Constitutionality

Reduction under former Ill. Rev. Stat., ch. 122, para. 314 (see now this section) of twenty per cent in an assessed valuation of real property by the board of review, without applying the same reduction to the assessed valuation of personal property, did not violate Ill. Const. (1870), Art. IX, § 1 (see now Ill. Const. (1970), Art. IX, §§ 1, 2, 4 and 5). People v. Southwestern Bell Tel. Co., 377 Ill. 303, 36 N.E.2d 362 (1941).

Authority

Under former similar provision (see now this section) the board of review may, in any year when an assessment does not represent a fair valuation of the property assessed, increase or reduce it so as to make a just assessment. People v. Southwestern Bell Tel. Co., 377 Ill. 303, 36 N.E.2d 362 (1941).

- Reduction

Where the only action intended by the board of review was a reduction in the assessed valuation of real property, then the board did not apply an equalization factor to the assessed valuation of real property. The action of the board simply constituted an exercise of the power to reduce the assessment of real or personal property granted to it by former Ill. Rev. Stat., ch. 122, para. 4314 (see now this section). People v. Southwestern Bell Tel. Co., 377 Ill. 303, 36 N.E.2d 362 (1941).

Uniformity

The command for uniformity means that taxation must be uniform as to the class upon which it operates and that the uniformity demanded applies to property of like kind and character and similarly situated. People v. Southwestern Bell Tel. Co., 377 Ill. 303, 36 N.E.2d 362 (1941).

When the legislature, by a former similar provision (see now this section), authorized the boards of review to reduce the assessed valuation of either real or personal property, this power was granted in compliance with the constitutional rule of uniformity. People v. Southwestern Bell Tel. Co., 377 Ill. 303, 36 N.E.2d 362 (1941).

§ 105 ILCS 5/32-1.5. Election of board of education

Sec. 32-1.5. Election of board of education. Any special charter district may, by vote of its electors, determine to elect, instead of the managing board provided for by its special charter, a board of education which shall be elected at the time and in the manner as boards of education under Article 10 of this Act [105 ILCS 5/10-1 et seq.]; but such

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determination shall not affect any other powers or duties conferred or imposed by the special charter.

Upon petition of 10% or 200 of the voters, whichever is less, of any such district requesting a referendum therefor, presented to the managing board thereof, the board shall, or upon its own initiative if no such petition has been presented the board may order submitted to the voters at the next regular election, in accordance with the general election law, a proposition to elect a board of education of 3 or 5 or 7 members, as the case may be. The proposition shall be substantially as follows:

```
Shall school district  ........ be
governed by a board of education            YES
of  ........ members to be elected at
the time and in the manner as
boards of education under Article           NO
10 of the School Code?
```

If more than one proposition is properly presented to the board, the one first presented shall be submitted to the electors.

If such proposition receives a majority of all valid votes cast thereon, the change in membership shall be effectuated at the next succeeding regular school election. In the conduct of such election, the managing board shall take such measures as may be necessary to arrange for the election of a board of 3, 5, or 7 members, as the case may be. The new board shall be organized as provided in Article 10 of this Act [105 ILCS 5/10-1 et seq.], except that, if only 5 members are to be elected, 2 (instead of 3) shall be selected by lot for a 2 year term, and if only 3 members are to be elected, then one shall be selected by lot for a 2 year term. In case of a 5 member board already established, if 4 are elected in 1983, then those elected shall by lot determine 2 to serve 2 years and 2 to serve 4 years. All successors, except to fill vacancies, shall be elected for terms of 4 years. In the case of a 5 member board already established, on which the members serve 5 year terms, the member elected in 1981 shall serve a 6 year term. The 2 members elected in 1983 shall serve 6 year terms. The 2 members elected in 1985 shall also serve 6 year terms. All successors, except to fill vacancies, shall be elected for terms of 6 years. As soon as the first new board is organized, the terms of all members of the predecessor board shall terminate.

In any such school district which determines to elect a new board of education as hereinabove authorized, the number of members on the board may thereafter be changed by following the procedure hereinabove set forth.

At least 22 months must elapse after the date of an election under this section before any of the above propositions may be again submitted to the electors.

(Source: P.A. 81-1490.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-1.5.

CASE NOTES

Analysis

Number of Members
- Additional Members
- Changing Number
- Petition to Increase Size
Replacement of Managing Board

Number of Members

- Additional Members

This section is applicable to those special charter districts having elected boards who wish to add additional members. Further, if additional members are elected to an already elected board, the elected members shall serve their full terms. Trotter v. Education Officers Electoral Bd., 158 Ill. App. 3d 848, 111 Ill. Dec. 211, 512 N.E.2d 115 (3 Dist. 1987).

- Changing Number

This section provides for changing the number of members to a board of education. Whether the board is or was a managing or elected board is irrelevant. Trotter v. Education Officers Electoral Bd., 158 Ill. App. 3d 848, 111 Ill. Dec. 211, 512 N.E.2d 115 (3 Dist. 1987).

- Petition to Increase Size

A petition filed under this section by residents of a special charter school district to increase the number of elected school board members from five to seven was valid, and the proposition was entitled to be included on an election ballot. Trotter v. Education Officers Electoral Bd., 158 Ill. App. 3d 848, 111 Ill. Dec. 211, 512 N.E.2d 115 (3 Dist. 1987).

Replacement of Managing Board

Although this section provides for the termination of the terms of the predecessor board, this provision applies only when an entirely new board is organized. Thus, when a managing board has been replaced by an elected board, the entire managing board's terms will expire upon organization of the newly elected board. Trotter v. Education Officers Electoral Bd., 158 Ill. App. 3d 848, 111 Ill. Dec. 211, 512 N.E.2d 115 (3 Dist. 1987).

§ 105 ILCS 5/32-1.6. School board districts

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Sec. 32-1.6. School board districts. Section 9-22 [105 ILCS 5/9-22] applies to all special charter districts as well as those organized under the general school law.

(Source: P.A. 78-536.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-1.6.

§ 105 ILCS 5/32-2.1. Boards to which preceding section applicable

Sec. 32-2.1. Boards to which preceding section applicable. The provisions of Section 32-2 [105 ILCS 5/32-2] shall apply to the board of school inspectors of the City of Peoria and to all other boards of directors, boards of education, and boards of school inspectors existing under any special school charter heretofore granted by the State.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-2.1.

§ 105 ILCS 5/32-2.5. Election of board of education in lieu of appointive board

Sec. 32-2.5. Election of board of education in lieu of appointive board. In all special charter districts having a population of over 35,000 by the last federal census, where the board of directors or board of education is elected or appointed by the city council of the city, of which school district such city may form the whole or a part, and where there are no provisions in the special charter creating such school district for the election of a board of directors or board of education, there shall be elected in lieu of the present governing body a board of education to consist of 7 members. Nomination of a candidate for member of the board of education shall be made by petitions signed in the aggregate by not less than 200 qualified voters residing in the school district, and also by filing with the petitions a statement of candidacy as provided in the general election law, which petitions and statements of candidacy shall be filed in the office of the board of education in accordance with the general election law.

Nomination papers filed under this Section are not valid unless the candidate named therein files with the secretary of the board of education a receipt from the county clerk showing that the candidate has filed a statement of economic interests as required by the

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Illinois Governmental Ethics Act [5 ILCS 420/1-101 et seq.]. Such receipt shall be so filed either previously during the calendar year in which his nomination papers were filed or within the period for the filing of nomination papers in accordance with the general election law.

The secretary of the board shall make certification to the proper election authority in accordance with the general election law.

(Source: P.A. 81-1490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-2.5.

CASE NOTES

Analysis
Legislative Intent
Special City Charter
- In Pari Materia

Legislative Intent

The intent of this section is to give the voters of a special charter district a direct voice in the election of their board of education. People v. Van Winkle, 5 Ill. App. 3d 240, 283 N.E.2d 48 (4 Dist. 1972).

Special City Charter

- In Pari Materia

Special city charter and this Code (105 ILCS 5/1-1 et seq.) were legislative enactments which were in pari materia; thus, they should be construed together and every effort must be made to reconcile the two acts and harmonize any seemingly inconsistent provisions. People v. Van Winkle, 5 Ill. App. 3d 240, 283 N.E.2d 48 (4 Dist. 1972).

§ 105 ILCS 5/32-2.6. Election - vacancies - names on ballots

Sec. 32-2.6. Election - vacancies - names on ballots. All elections in school districts described in Section 32-2.5 [105 ILCS 5/32-2.5] shall be conducted in accordance with the provisions of the general election law. If any member of the board of education is

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disqualified to hold office, the board of education may, by resolution, declare the office vacant, and provide for an appointment to fill the vacancy until the next election for members of the board of education. The nomination and election of a candidate thereupon to fill the vacancy shall be made in the same manner as the nomination of a candidate for a regular term, as hereinbefore provided, except that there shall be printed on the ballot that the election is for a certain number of persons for a certain number of years to fill a vacancy. The names of all candidates for member of such board of education shall be printed on the ballot in alphabetical order according to their surnames.

(Source: P.A. 80-1469.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-2.6.

CASE NOTES

Analysis

Power of Appointment
- Not Repealed
Special City Charter
- In Pari Materia

Power of Appointment

- Not Repealed

This section of the School Code did not repeal the Board of Education's power of appointment in the event of resignation under a section of special city charter. People v. Van Winkle, 5 Ill. App. 3d 240, 283 N.E.2d 48 (4 Dist. 1972).

Special City Charter

- In Pari Materia

Special city charter and this Code (105 ILCS 5/1-1 et seq.) were legislative enactments which were in pari materia; thus, they should be construed together and every effort must be made to reconcile the two acts and harmonize any seemingly inconsistent provisions. People v. Van Winkle, 5 Ill. App. 3d 240, 283 N.E.2d 48 (4 Dist. 1972).

§ 105 ILCS 5/32-2.10. Application of law

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Sec. 32-2.10. Application of law. In all special charter districts of this State having a population of not more than 50,000 lying wholly or in part within any city, village, or incorporated town, the school directors or members of the board of education, as provided in the special charter, shall be elected at elections held as provided by the general election law, and all propositions pertaining to said school districts required to be submitted to the voters thereof shall be voted upon at elections held as provided in the general election law.

(Source: P.A. 81-1490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-2.10.

§ 105 ILCS 5/32-2.11. Election of board members

Sec. 32-2.11. Election of board members. In every city whose schools have been operating under special Acts and are governed by a board of school inspectors where such city, together with territory added thereto for school purposes, includes 2 districts for the purpose of electing 6 inspectors (3 in each district) and 1 district for all other school purposes, there shall continue to be elected a board of school inspectors, consisting of 6 members (3 in each district) and 1 inspector at large who shall be chosen for a term of 4 years. If 4 inspectors, excluding the inspector at large, are elected in 1983, those selected shall by lot determine one inspector to serve for 2 years and 3 for 4 years. Thereafter all terms shall be for 4 years.

(Source: P.A. 81-1490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-2.11.

§ 105 ILCS 5/32-2.12. Time for election of board members

Sec. 32-2.12. Time for election of board members. In all special charter districts, the regular election of members of such boards shall hereafter be held on the date set for school elections as provided in the general election law in odd numbered years.

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(Source: P.A. 81-1490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-2.12.

§ 105 ILCS 5/32-2.13. [Method of selection of board of special charter district]

Sec. 32-2.13. No annexation accomplished pursuant to Section 7-2.1 shall affect the method of selection of the board of the special charter district as otherwise provided by law excepting in those instances where the special charter has an appointive school board appointed solely within the boundaries of a municipality within such special charter school district; in those instances where there are voters living within the school district, but outside the municipality, the county superintendent of schools having supervision over the greatest portion of the territory of the special charter district shall appoint one additional member to the board of education of the special charter district effective with the date and for the term for which other appointments to the special charter board are effective; provided, further, that during any period the number of voters living within such school district but outside the municipality exceeds a quotient determined by dividing the total number of voters living in the municipality by the number of school board members appointed within said municipality, the county superintendent shall appoint one additional school board member for each time such quotient is equaled.

(Source: P.A. 82-783.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-2.13.

Section 7-2.1 of this Act, referred to above, has been repealed.

§ 105 ILCS 5/32-3. Law governing appointment

Sec. 32-3. Law governing appointment. Where, by the provisions of any general or special law, the members of the city council of any city have been made ex-officio school directors or members of the board of education for the school district of which the city constitutes the whole or a part, the school directors or members of the board of education shall be appointed as provided in Section 32-3.1.

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(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-3.

§ 105 ILCS 5/32-3.1. Nomination by mayor - President of board

Sec. 32-3.1. Nomination by mayor - President of board. The mayor of any city described in Section 32-3 [105 ILCS 5/32-3], at the first regular meeting of the city council, after each annual municipal election and after his installation into office, shall nominate and place before the council for confirmation as school directors or members of the board of education, as the case may be, 1 person from each ward of the city to serve for 2 years and 1 person from the city at large to serve for 1 year. If the persons so appointed are confirmed by a majority vote of the city council, to be entered of record, such persons shall constitute the board of education or school directors for the district. The person appointed from the city at large for 1 year shall be president of the board of education or school directors but shall have no vote except in case of a tie.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-3.1.

§ 105 ILCS 5/32-3.2. City of 45,000 - Number of members - Nomination - Vacancy

Sec. 32-3.2. City of 45,000 - Number of members - Nomination - Vacancy. In any city, however, having a population of 45,000 or more, constituting a school district to which Sections 32-3 to 32-4.11, inclusive [105 ILCS 5/32-3 to 105 ILCS 5/32-4.11], are applicable, the board of education shall consist of 11 persons who shall be nominated by the mayor from the city at large and confirmed by a majority vote of the city council, 1 of which persons shall be designated by the mayor as the president of the board of education. The president shall have no vote except in case of a tie. 5 Members of the board of education and such person as may be designated as the president thereof shall be nominated by the mayor and placed before the city council for confirmation at the first regular meeting of the city council after the mayor's installation into office, and upon confirmation by the council shall hold their offices for 2 years and until their successor shall be chosen as herein provided. The remaining 5 members of the board of education

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shall be nominated by the mayor and placed before the city council for confirmation at the first regular meeting of the city council next after 1 year from the date of the mayor's installation into office, and upon confirmation by the council shall hold their offices for 2 years and until their successors shall be chosen as herein provided. If a vacancy occurs in the board of education, the mayor shall nominate and place before the city council for confirmation at a regular meeting thereof some person to fill the vacancy, and upon confirmation by the city council, the person so nominated shall hold the office during the remainder of the term for which his predecessor was appointed.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-3.2.

§ 105 ILCS 5/32-3.3. Organization and powers of board

Sec. 32-3.3. Organization and powers of board. The board members appointed under Section 32-3.1 to 32-3.2 [105 ILCS 5/32-3.1 to 105 ILCS 5/32-3.2] shall, as soon as practicable after their appointment, organize by electing 1 of their number secretary, who shall hold his office for 1 year.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-3.3.

§ 105 ILCS 5/32-3.5. Student board member

Sec. 32-3.5. Student board member. The governing board of a special charter district may appoint a student to the board to serve in an advisory capacity. The student member shall serve for a term as determined by the board. The board may not grant the student member any voting privileges, but shall consider the student member as an advisor. The student member may not participate in or attend any executive session of the board.

(Source: P.A. 94-231, § 5.)

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Effective Date. Section 99 of P.A. 94-231 purported to make this section effective July 1, 2005, however P.A. 94-231 was approved July 14, 2005.

§ 105 ILCS 5/32-4. Powers of board

Sec. 32-4. Powers of board. The board of inspectors referred to in Section 32-2.11 [105 ILCS 5/32-2.11] may, in addition to the powers conferred upon it by special law and the applicable provisions of this Act, employ teachers, janitors and such other employees as it deems necessary and fix the amount of their compensation; buy or lease sites for schoolhouses, with the necessary grounds; build, erect, lease or purchase buildings suitable for school purposes; repair and improve buildings and furnish them with the necessary supplies, fixtures, apparatus, libraries and fuel; and may lease school property, when not needed for school purposes, for a term of not longer than 99 years from the date of the granting of the lease. All such leases shall provide for revaluation privileges at least once in every 20 years.

In case the school board and the lessee cannot agree on revaluation and a new rent, the same shall be determined in the following manner: 3 arbitrators shall be appointed, 1 by the school board, 1 by the lessee, and 1 by the arbitrators appointed by the school board and the lessee. The 3 arbitrators, or a majority of them, shall fix and determine the revaluation and the new rent and their decision or a decision of a majority of them shall be final.

When, in the opinion of the school board, a school site, building, or site with building thereon, or any other real estate of the district, has become unnecessary or unsuitable or inconvenient for a school, or unnecessary for the uses of the district and the school board decides to sell the same, unless the property is to be sold to a tenant that has leased the property for 10 or more years and that tenant is a non-profit agency, the school board shall give notice of the sale stating the time and place the sale is to be held, the terms of the sale and a description of the property to be sold. The notice shall be published in a newspaper of general circulation published in the district, or if none, in the county in which the district is situated, such notice to be published once each week for 3 successive weeks, and the first publication to be at least 30 days prior to the day the sale is to be held. Unless the school board holds legal title to the property, the school board shall notify the trustees of schools of the terms upon which the school board desires the property to be conveyed. The school board or trustees of schools holding legal title to the property shall convey the property in accordance with the terms fixed by the school board. The deed of conveyance shall be executed by the president and secretary or clerk of the school board or trustees of the school holding legal title to the property and the proceeds if any shall be paid to the school treasurer for the benefit of the district.

In the case of a sale of property to a tenant that has leased the property for 10 or more years and that is a non-profit agency, an appraisal is required prior to the sale. If the non-profit agency purchases the property for less than the appraised value and subsequently sells the property, the agency may retain only a percentage of the profits that is proportional to the percentage of the appraisal, plus any improvements made by the

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agency while the agency was the owner, that the agency paid in the initial sale. The remaining portion of the profits made by the non-profit agency shall revert to the school district.

(Source: Laws 1961, p. 31; P.A. 88-155, § 5; 92-365, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-4.

Effect of Amendments. The 1993 amendment by P.A. 88-155, effective January 1, 1994, in the third sentence of the third paragraph added "Unless the school board holds legal title to the property" at the beginning and deleted "or county board of school trustees, as the case may be" preceding "of the terms"; in the fourth sentence of the third paragraph inserted "The school board or", substituted "holding legal title to the property" for "or county board of school trustees, as the case may be" and substituted "the terms fixed by the school board" for "such notification"; and in the fifth sentence of the third paragraph, inserted "secretary or", substituted "school board or trustees of the school holding legal title to the property" for "board of trustees or of trustees, as the case may be".

The 2001 amendment by P.A. 92-365, effective August 15, 2001, substituted "unless the property is to be sold to a tenant that has leased the property for 10 or more years and that tenant is a non-profit agency, the school board" for "it" in the third paragraph and added the fourth paragraph.

§ 105 ILCS 5/32-4.1. Annual tax levy - Township treasurer custodian

Sec. 32-4.1. Annual tax levy - Township treasurer custodian. The board of school inspectors of districts described in Section 32-2.11 [105 ILCS 5/32-2.11] may levy a tax, annually, upon all of the taxable property of the district, in the manner provided by Sections 17-2 through 17-9 [105 ILCS 5/17-2 through 105 ILCS 5/17-9], and in accordance with the powers conferred by Section 32-4 [105 ILCS 5/32-4]. All moneys raised by taxation for school purposes, or received from the common school fund or any other source, or held or collected for school purposes, shall be paid to and held by the school treasurer as a special fund for school purposes, subject to the order of the board of school inspectors upon warrants signed by the president and secretary thereof or a majority of the board.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-4.1.

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§ 105 ILCS 5/32-4.2. Leasehold revenue bonds

Sec. 32-4.2. Leasehold revenue bonds. The board of inspectors of districts described in Section 32-2.11 [105 ILCS 5/32-2.11] in addition to all other powers conferred upon it by special law and the applicable provisions of this Act, may borrow money for the purpose of building schoolhouses, or repairing, altering or building additions to any schoolhouses already erected, or purchasing schoolhouse sites, or purchasing land outside the school district pursuant to the provisions of Section 22-16 [105 ILCS 5/22-16] and as evidence of the indebtedness may issue revenue bonds in denominations of not less than $100 nor more than $1,000 payable solely from rentals or other revenue to be derived from any lease of school property made by said board of inspectors in accordance with the power conferred by Section 32-4 [105 ILCS 5/32-4]. Said bonds shall be negotiable instruments and shall bear interest at a rate not exceeding the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, payable semi-annually, and shall mature at or prior to the expiration of the term of said lease, provided that in any event all such bonds shall mature within 40 years from the date of said bonds. Said bonds shall not constitute a general obligation of the school district and may be issued in addition to all other bonds which the school district is now or hereafter may be authorized to issue. Said bonds shall not constitute an indebtedness of the school district within the meaning of any constitutional or statutory limitation.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-4.2.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

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§ 105 ILCS 5/32-4.3. Resolution

Sec. 32-4.3. Resolution. Said bonds shall be sold in such manner and upon such terms not inconsistent with the provisions hereof as the board of inspectors shall determine by resolution authorizing the issuance of said bonds. The resolution may contain such covenants and restrictions upon the issuance of additional revenue bonds thereafter as may be deemed necessary or advisable for the assurance of the payment of all revenue bonds previously issued and secured by the rentals and other revenue from any lease upon the same school property. The resolution shall pledge the rentals and other revenue from said school property for the purpose of paying the cost of operation and maintenance of said school property, providing an adequate depreciation fund, and paying the principal of and interest on bonds issued pursuant thereto and shall provide for the deposit of all rentals and other revenue, as received, in a special fund to be used only for the purpose of paying the cost of operating and maintaining said school property, providing an adequate depreciation fund, and paying the principal of and interest on said bonds.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-4.3.

§ 105 ILCS 5/32-4.4. Publication - Referendum on petition

Sec. 32-4.4. Publication - Referendum on petition. Within 10 days after this resolution has been adopted by the board of inspectors it shall be published at least once in 1 or more newspapers published in the school district, or if no newspaper is published in such school district, then in 1 or more newspapers with a general circulation therein. The publication of the resolution shall include a notice of (1) the specific number of voters required to sign a petition requesting that the question of the adoption of the resolution be submitted to the electors of the school district; (2) the time in which such petition must be filed; and (3) the date of the prospective referendum. The secretary of the Board of inspectors shall provide a petition form to any individual requesting one. If no petition is filed with the secretary of the board of inspectors as hereinafter provided in this Section within 30 days after the publication of the resolution, or if any and all petition filed are invalid, the resolution shall be in effect immediately upon the expiration of that 30 day period. But if within that 30 day period a petition is filed with the secretary, signed by voters residing within the school district equal to 10% or more of the number of registered voters in the district, asking that the question of issuing revenue bonds as provided in said resolution be submitted to the voters of the school district, the board of inspectors of the school district shall certify the proposition of issuing revenue bonds as

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described in said resolution to the proper election authorities for submission to the electors in accordance with the general election law. If a majority of the voters voting upon the question voted in favor of the issuance of said revenue bonds, then the resolution shall be in effect, but if a majority of the voters voting upon the question are not in favor thereof, the resolution shall not take effect.

(Source: P.A. 87-767.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-4.4.

§ 105 ILCS 5/32-4.5. Signing, attestation, numbering and registration

Sec. 32-4.5. Signing, attestation, numbering and registration. All bonds issued pursuant to the authority of sections 32-4.2 to 32-4.5 [105 ILCS 5/32-4.2 to 105 ILCS 5/32-4.5], inclusive, shall be signed, attested, countersigned, numbered, and registered and disposition thereof made pursuant to the provisions of section 32-5.9 [105 ILCS 5/32-5.9].

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-4.5.

§ 105 ILCS 5/32-4.6. Title, care and custody of property; supervision and control

Sec. 32-4.6. Title, care and custody of property; supervision and control. The title, care and custody of all schoolhouses and school sites belonging to districts that are described in Section 32-2.11 [105 ILCS 5/32-2.11] and that are not districts whose school boards under subsection (a) of Section 7-28 [105 ILCS 5/7-28] are to hold legal title to school buildings and school sites of the district shall be vested in the trustees of schools of the townships in which the districts are situated, but the supervision and control of such schoolhouses and sites shall be vested in the board of inspectors of the districts. In all other cases, the legal title, care, custody and control of school houses and school sites belonging to districts that are described in Section 32-2.11 [105 ILCS 5/32-2.11], together with the supervision and control of those school houses and sites, shall be vested in the board of inspectors of the districts.

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(Source: Laws 1961, p. 31; P.A. 88-155, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-4.6.

Effect of Amendments. The 1993 amendment by P.A. 88-155, effective January 1, 1994, in the first sentence inserted "that are", inserted "and that are not districts whose school boards under subsection (a) of Section 7-28 are to hold legal title to school buildings and school sites of the district", and deleted "or county board of school trustees, as the case may be"; and added the second sentence.

§ 105 ILCS 5/32-4.7. Change of boundaries

Sec. 32-4.7. Change of boundaries. The trustees of schools of townships in which districts described in Section 32-2.11 [105 ILCS 5/32-2.11] are situated, may change the boundaries of such school districts when petitioned as provided by this Act.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-4.7.

§ 105 ILCS 5/32-4.8. Powers of boards - Bond of treasurer

Sec. 32-4.8. Powers of boards - Bond of treasurer. The board of education of a school district described in Section 32-2.5 [105 ILCS 5/32-2.5] shall have all the powers of trustees of schools in school townships and all the powers of boards of directors, and boards of education elected by virtue of this Act, and shall also have power to elect and appoint a secretary for such board, who shall attend all its meetings and keep an accurate record of all proceedings of the board and shall also have power to appoint a treasurer for the district whose term of office, duties and obligations shall be the same as a treasurer appointed by the trustees of schools, except that the treasurer appointed under this section shall not be obliged to keep a record of the proceedings of the board. The treasurer shall, before entering upon his duties, execute a bond in such amount and with such sureties to be approved by the board of education, and containing such provisions, as provided in Section 8-2 [105 ILCS 5/8-2] for the bonds of treasurers appointed by trustees of schools; provided, however, the board of education of a school district described in Section 32-2.5 [105 ILCS 5/32-2.5] shall not be required to submit to the voters the propositions of selecting school sites, purchasing school sites and building school buildings, as provided

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by any other section of this Act, but shall have power in its discretion to select and purchase school sites and build, repair, alter and build additions to any school buildings which is deemed necessary and in the interests of the district, and the power to issue bonds and the procedure to be followed in the issuance of bonds shall be governed by the provisions of Sections 32-5.6 to 32-5.9, inclusive [105 ILCS 5/32-5.6 to 105 ILCS 5/32-5.9].

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-4.8.

§ 105 ILCS 5/32-4.9. Powers and duties of board members

Sec. 32-4.9. Powers and duties of board members. All rights, powers and duties heretofore exercised by and devolved upon the members of the city council, as ex-officio member of the board of education, or school directors, shall devolve upon and be exercised by the members of the board of education and school directors appointed under the provisions of this Article.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-4.9.

§ 105 ILCS 5/32-4.10. Amount to be raised - Tax levy

Sec. 32-4.10. Amount to be raised - Tax levy. In all school districts to which Sections 32-3 to 32-4.11, inclusive [105 ILCS 5/32-3 to 105 ILCS 5/32-4.11], apply the school boards shall annually, before August 1, certify to the city council under the signatures of the president and secretary of the board, the amount of money required to be raised by taxation for school purposes in the district for the ensuing year, and the city council shall thereupon cause the amount to be levied and collected in the manner now provided by law for the levy and collection of taxes for school purposes in the district, but the amount to be so levied and collected shall not exceed the amount now allowed to be collected for school purposes by this Act. When such taxes have been collected and paid over to the treasurer of the city or school district, as may be provided by the terms of the Act under which the district has been organized, such funds shall be paid out only on the order of

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the board of education or school directors, signed by the president and secretary.

(Source: P.A. 84-550.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-4.10.

§ 105 ILCS 5/32-4.10a: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/32-4.11. Tax anticipation warrants

Sec. 32-4.11. Tax anticipation warrants. Whenever there is no money in the hands of the treasurer of any school district to which Sections 32-2 to 32-4.11, inclusive [105 ILCS 5/32-2 to 105 ILCS 5/32-4.11], shall apply, to defray the necessary expenses of such district, including amounts necessary to pay maturing principal and interest of bonds, it is lawful for the school board of the district to draw and issue warrants against and in anticipation of any taxes already levied for the payment of the necessary expenses of the district, either for transportation, educational or for all operations, building and maintenance purposes, or for payments to the Illinois Municipal Retirement Fund, or for the payment of maturing principal and interest of bonds, as the case may be, to the extent of 85% of the total amount of any such taxes levied. The warrants shall show upon their face that they are payable solely from said taxes when collected, and shall be received by any collector of taxes in payment of the taxes against which they are issued. The taxes against which the warrants are drawn shall be set apart and held for their payment. Every warrant shall bear interest, payable only out of the taxes against which it shall be drawn, at a rate not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, if issued before January 1, 1972 and not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, if issued after January 1, 1972, from the date of its issuance until paid, or until notice is given by publication in a newspaper or otherwise that the money for its payment is available and that it will be paid upon presentation.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and

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(iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-4.11.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

§ 105 ILCS 5/32-4.12. Sale of real estate - Use of proceeds

Sec. 32-4.12. Sale of real estate - Use of proceeds. The board of education of any special charter district may sell and dispose of any real estate conveyed to it by any city for school purposes and use the proceeds derived from the sale thereof for school building purposes or for the purchase of other real estate for such purposes.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-4.12.

§ 105 ILCS 5/32-4.13. Eminent domain

Sec. 32-4.13. Eminent domain. Whenever any school district existing by virtue of any special charter and governed by any or all such special charter or special school laws of this State, and having a population of fewer than 500,000 inhabitants, requires any lot or parcel of land situated within the district for a site for a school building or for an addition to any school building already erected and used for school purposes, or requires any lot or parcel of land situated within such school district for the purpose of a playground for school children, and the compensation for such lot or parcel of land cannot be agreed upon between the owner or owners of such lot or parcel of land and the corporate authority managing and controlling the public schools of such district it is lawful for the corporate authority of the district to acquire such lot or parcel of land and have the compensation to be paid therefor determined in the manner provided by law for the

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exercise of the right of eminent domain.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-4.13.

CASE NOTES

Analysis

Authority
- Production
Construction
Evidence
- Exclusion
Necessity
- Determination
Procedural Insufficiency
Record
- Adequacy
Sufficiency
Validity
- Shown

Authority

- Production

Although a condemnor was not required to offer in evidence the ordinance or resolution under which it was proceeding, the property owner had the right to have it produced, and where none was forthcoming, the proceeding failed. Goldman v. Moore, 35 Ill. 2d 450, 220 N.E.2d 466 (1966).

Construction

The word "necessary" is an expression for what is requisite; a "necessity" is a "requirement"; to "require" is to "need"; the words are synonymous, and to allege that premises are "required" is a sufficient allegation that they are "necessary." City of Waukegan v. Stanczak, 6 Ill. 2d 594, 129 N.E.2d 751 (1955).

Evidence

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- Exclusion

Evidence of the condemnor's offer to buy was properly excluded. City of Waukegan v. Stanczak, 6 Ill. 2d 594, 129 N.E.2d 751 (1955).

Necessity

- Determination

The question of the necessity for the land to be taken is left largely to the determination of the corporation, subject to judicial review and revision on abuse of the right, and where the court finds that the use for which the property is to be taken is a public one, it will not inquire into the amount of property necessary for such use, unless it appears that the quantity of property taken is grossly in excess of the amount necessary. Goldman v. Moore, 35 Ill. 2d 450, 220 N.E.2d 466 (1966).

Procedural Insufficiency

Where no formal action had been taken by the board of education with respect to the acquisition of the land in question, and until about nine months after the filing of the petition, no record existed by which any property owner or interested citizen could determine the position of the board with respect to the acquisition of the property in question, the procedure followed by the board was inadequate to sustain its exercise of the power of eminent domain. Goldman v. Moore, 35 Ill. 2d 450, 220 N.E.2d 466 (1966).

Record

- Adequacy

Where no formal resolution concerning the acquisition of the land in question had been adopted when a board of education filed its petition, but in response to the defendants' demand for discovery a certified copy of a resolution adopted subsequently was filed reciting that at prior executive conference the board had discussed the acquisition of real estate and had authorized its attorney to proceed with condemnation proceedings and purporting to ratify the actions of the attorney, the resolution was an inadequate record of the prior action of the board. Goldman v. Moore, 35 Ill. 2d 450, 220 N.E.2d 466 (1966).

Sufficiency

There is no merit in the contention that the petition is insufficient or jurisdictionally defective as to proof of necessity and sufficiency of the allegation in the petition. City of Waukegan v. Stanczak, 6 Ill. 2d 594, 129 N.E.2d 751 (1955).

Validity

- Shown

Former Ill. Rev. Stat., ch. 122, para. 32-30 (see now this section) applies alike to all special charter districts and is thus uniform in its application and not invalid under our constitution. City of Waukegan v. Stanczak, 6 Ill. 2d 594, 129 N.E.2d 751 (1955).

§ 105 ILCS 5/32-4.14. Issuance of orders

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Sec. 32-4.14. Issuance of orders. The corporate authorities of any special charter district having a population of less than 500,000 may issue and deliver at least once each month to the teachers and employees of the district orders on the treasurer of the district in payment of their salaries. Such orders shall state the rate of compensation and time for which the teacher or employee is paid and an order so issued, properly endorsed and paid in full shall be sufficient receipt for the purpose of this and the succeeding section. The corporate authorities shall issue no order except an order for the payment of wages of teachers and employees unless at the time of its issuance there are sufficient funds in the hands of the treasurer to pay it.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-4.14.

§ 105 ILCS 5/32-4.15. Form of orders

Sec. 32-4.15. Form of orders. Every order issued by the corporate authorities of a district as described in Section 32-4.14 [105 ILCS 5/32-4.14] shall state for what purpose and on what account it is issued, and shall be in the following form:

STATE OF ILLINOIS

$ ..... No. .....

To the Treasurer of ..... School District, ... County, Illinois.

Pay to the order of ..... the sum of ..... Dollars ($ .....)
for .....

By order of the Board of Education (or Board of School Inspectors) of ..... School District, ... County, Illinois.

.....

(President)

.....

(Clerk)

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(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-4.15.

§ 105 ILCS 5/32-4.16. Cities, villages and towns - Levy made by board of education

Sec. 32-4.16. Cities, villages and towns - Levy made by board of education. Where a school district was organized as a special charter district of a city, village, or town, and where such district has an elective board of education of either 5 or 7 members, and of which board the mayor of the city, village or town is not ex officio a member, it is not necessary for such board of education to present an annual financial report to the city, village or town council, or board of trustees, nor a statement as to the amount of money necessary to be raised by taxation for school purposes for the ensuing school year and the council or board of trustees, as the case may be, shall not make the levy for school purposes but the board of education shall make the levy for school purposes for such district.

The certificate of such levy shall be made at the time and, as near as may be, in the form and manner provided in Section 17-11 [105 ILCS 5/17-11].

(Source: P.A. 77-490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-4.16.

§ 105 ILCS 5/32-5. Bond issues - District boundaries coextensive with city

Sec. 32-5. Bond issues - District boundaries coextensive with city. For the purpose of building or repairing schoolhouses or purchasing or improving school sites, including the purchase of school sites outside the boundaries of the school district and building school buildings thereon as provided by Section 10-20.10 of this Act [105 ILCS 5/10-20.10], any special charter district governed by a special charter, and special or general school laws, whose boundaries are coextensive with or greater than the boundaries of any incorporated city, town or village, where authorized by a majority of all the votes cast on the proposition may borrow money and as evidence of the indebtedness, may issue bonds in denominations of not less than $100 nor more than $1,000, for a term not to exceed 20 years bearing interest at a rate not to exceed the maximum rate authorized by the Bond

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Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, payable annually, semi-annually, or quarterly, signed by the president and secretary of the school board of the district; provided, that the amount borrowed shall not exceed, including existing indebtedness, 5% of the taxable property of such school district, as ascertained by the last assessment for State and county taxes previous to incurring such indebtedness.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 81-1489; 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-5.

Section 10-20.10 of this Act, referred to above, has been repealed.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

CASE NOTES

Illustrative Case

- Construction of Stadium

Acquisition and equipment of property for playgrounds, recreation grounds and athletic fields are to be financed out of the building funds of school districts, and the subsequent cost of maintenance out of educational funds and the issuance of bonds to pay for the construction of an athletic field is not prohibited since bonds may be issued for the purpose of purchasing or improving school sites, adequate authority exists for the issuance and sale of bonds to improve a school site by the construction of athletic facilities and in particular, a stadium. Moyer v. Board of Educ., 391 Ill. 156, 62 N.E.2d 802 (1945).

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§ 105 ILCS 5/32-5.1. Registration, numbering and countersigning

Sec. 32-5.1. Registration, numbering and countersigning. All bonds authorized by Section 32-5 [105 ILCS 5/32-5], before being issued, negotiated and sold, shall be registered, numbered and countersigned by the treasurer of the school district. The registration shall be made in a book in which shall be entered the record of the election authorizing the school district to issue bonds, and a description of the bonds issued, including the number, date, amount, rate of interest and when payable.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-5.1.

§ 105 ILCS 5/32-5.2. Moneys paid into treasury - Delivery of bonds - Records

Sec. 32-5.2. Moneys paid into treasury - Delivery of bonds - Records.

All moneys borrowed by virtue of Section 32-5 [105 ILCS 5/32-5], shall be paid into the treasury of the school district. Upon receiving the moneys, the treasurer shall deliver the bonds issued therefor to the persons entitled to receive them, and shall credit the amount received to the district. The treasurer shall record the amount received for each bond issued, and when any bond is paid the treasurer shall cancel it and enter in the register opposite the record of the bond the words "paid and cancelled" and the date of the payment.

(Source: Laws 1961, p. 31; P.A. 91-357, § 101.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-5.2.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "'paid and cancelled' and the date" for "'paid and cancelled this .... day of ...., 19..' filling the blanks with the date, month and year corresponding with the date" in the last sentence.

§ 105 ILCS 5/32-5.3. Election - Notice - Judges

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Sec. 32-5.3. Election - Notice - Judges. Whenever it is desired to hold a referendum for the purpose of borrowing money as provided by Section 32-5 [105 ILCS 5/32-5], the school board of the district in which the proposition is to be held shall adopt a resolution ordering the referendum and shall certify the proposition to the proper election authorities who shall submit the proposition at a regular scheduled election in accordance with the general election law.

(Source: P.A. 81-1489.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-5.3.

§ 105 ILCS 5/32-5.5. Issue of new bonds

Sec. 32-5.5. Issue of new bonds. When any school district described in Section 32-5 [105 ILCS 5/32-5] has heretofore issued bonds or other evidences of indebtedness, on account of any public school building, or for any other purpose, which are now binding and subsisting obligations against such school district and remaining outstanding, such school district may, upon the surrender of any such bonds or any part thereof, or other evidences of indebtedness, issue in lieu thereof, to the holders of the bonds, or to any persons, for money with which to take them up, new bonds in accordance with the provisions of Sections 32-5 to 32-5.4 [105 ILCS 5/32-5 to 105 ILCS 5/32-5.3], inclusive; provided, such bonds shall not be issued so as to increase the aggregate indebtedness of such school district to exceed, including existing indebtedness, 5% of the taxable property of such school district, to be ascertained by the last assessment for State and county taxes previous to incurring such indebtedness.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-5.5.

Section 32-5.4, referred to above, has been repealed.

§ 105 ILCS 5/32-5.6. Special charter districts with population less than 500,000 - Authority to borrow money and issue bonds

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Sec. 32-5.6. Special charter districts with population less than 500,000 - Authority to borrow money and issue bonds. The corporate authorities of any special charter district having a population of less than 500,000 governed by a special charter, or special charter and general law, may borrow money for the purpose of building schoolhouses, or repairing, altering and building additions to any schoolhouse already erected, or purchasing schoolhouse sites or purchasing grounds adjoining any schoolhouse site, or separated therefrom only by a public street or way, and shall also include the purchase of school sites outside the boundaries of the school district and building school buildings thereon as provided by Sections 10-22.35 and 10-22.36 of this Act [105 ILCS 5/10-22.35 and 105 ILCS 5/10-22.36], and may issue its negotiable coupon bonds therefor in such form and such denominations, payable at such place and at such time or times (not exceeding 20 years from date of issuance) and bearing interest at such rate as the corporate authorities may by resolution prescribe. The bonds shall be in denominations of not less than $100 nor more than $5,000, and shall bear interest at a rate not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, if issued before January 1, 1972 and not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, if issued after January 1, 1972, payable semi-annually. No money may be borrowed or bonds issued, however, unless the proposition to borrow money and issue bonds for the purpose or purposes and in the amount prescribed in the resolution is certified to the proper election authorities and submitted to the voters of the school district at a regular scheduled election in accordance with the general election law, and the majority of all the votes cast on the proposition is in favor thereof. The corporate authorities may not incur any indebtedness under this Section, which together with all other outstanding indebtedness, exceeds in the aggregate the indebtedness limitation under Section 19-1 of this Act [105 ILCS 5/19-1] that would be applicable if the district were not a special charter district.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-5.6.

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Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

§ 105 ILCS 5/32-5.7. Submission to voters - Notice of election

Sec. 32-5.7. Submission to voters - Notice of election. Whenever it is desired to submit to the voters of any school district to which Section 32-5.6 [105 ILCS 5/32-5.6] applies the proposition to borrow money and issue bonds for any or all of the purposes specified in Section 32-5.6 [105 ILCS 5/32-5.6], the school board of such school district shall adopt a resolution directing that such proposition be submitted to referendum and the secretary of the board shall certify the proposition to the proper election authorities for submission to the electors in accordance with the general election law.

(Source: P.A. 81-1489.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-5.7.

§ 105 ILCS 5/32-5.8. Ballots

Sec. 32-5.8. Ballots. The proposition submitted to the voters of any school district to which Sections 32-5.6 to 32-5.9 [105 ILCS 5/32-5.6 to 105 ILCS 5/32-5.9], inclusive, apply shall specify the total amount of the bonds sought to be issued, and the specific purpose or purposes for which the bonds shall be issued, and shall be substantially in the following form:

```
Shall bonds or obligations for the
purpose of (state specific purpose)          YES
in the sum of $ ..... be issued by
(state whether to be issued by the
board of education or board of               NO
school inspectors) of  ........?
```

(Source: P.A. 81-1489.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-5.8.

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§ 105 ILCS 5/32-5.9. Signature and attestation - Numbering and registration - Delivery of bonds

Sec. 32-5.9. Signature and attestation - Numbering and registration - Delivery of bonds. All bonds authorized to be issued under Sections 32-5.6 to 32-5.9, inclusive [105 ILCS 5/32-5.6 to 105 ILCS 5/32-5.9], before being issued, negotiated and sold shall be signed by the president of the school board and attested by the secretary and countersigned by the treasurer of the school board or of the school district. All of the bonds shall be numbered by such treasurer and registered in a book. All moneys borrowed under Section 32-5.6 to 32-5.9, inclusive [105 ILCS 5/32-5.6 to 105 ILCS 5/32.5.9], shall be paid into the treasury of the school board, or of the school district, and thereupon the treasurer thereof shall deliver the bonds therefor to the persons entitled to receive them. The treasurer shall record the amount for which each bond is issued, negotiated and sold, and when any bond is paid, he shall cancel it and enter in the register opposite the record of the bond the date, month and year when it was paid.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-5.9.

§ 105 ILCS 5/32-5.10. Assumption of indebtedness of city for school purposes

Sec. 32-5.10. Assumption of indebtedness of city for school purposes. Whenever any city is by special law made a school district, or whenever any school district created by special law is coterminous with any city, the directors of the district may, at the request of the city council, assume and provide for, by borrowing and taxation, any indebtedness created by the authorities of the city for school purposes.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-5.10.

§ 105 ILCS 5/32-6.1. Territory disconnected from city or village

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Sec. 32-6.1. Territory disconnected from city or village. Whenever the territorial limits of any special charter district governed by any or all of the provisions of the special charter coincide with the territorial limits of (1) any township which is wholly surrounded by any school district, and (2) any city, town, or village from which any land has been heretofore or is hereafter disconnected under the provisions of Section 7-3-6 of the Illinois Municipal Code, as heretofore and hereafter amended [65 ILCS 5/7-3-6], as the territorial limits of such city, town or village existed immediately prior to such disconnection, the land disconnected from such city, town or village shall also be deemed to be disconnected from such school district and annexed to a school district in the township it adjoins.

(Source: Laws 1963, p. 923.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-6.1.

§ 105 ILCS 5/32-6.2. Bonded indebtedness

Sec. 32-6.2. Bonded indebtedness. The disconnection of any land under Section 32-6.1 [105 ILCS 5/32-6.1] shall not exempt it from taxation for the purpose of paying any bonded indebtedness contracted prior to the disconnection, but such land shall be assessed and taxed for this purpose until such indebtedness is completely paid, the same as though not disconnected. After the disconnection the county clerk of the county in which such land is situated shall not include such land within the limits of such school district for any purpose, except as stated herein, but shall include it within the adjoining district.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-6.2.

§ 105 ILCS 5/32-7. Form of bond

Sec. 32-7. Form of bond. The form of bond to be given by any treasurer who has the custody of funds belonging to any special charter district shall be substantially in the following form:

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We, (AB), principal, and (CD and EF), sureties, all of the County of ..... and State of Illinois, are obligated to the People of the State of Illinois, for the use of the ..... (name of school district) in the penal sum of $ ....., for the payment of which to be made, we obligate ourselves, and each of us, our heirs, executors, administrators, successors, and assigns.

Dated (insert date).

The condition of the above bond is that if the above obligated (AB) shall perform all the duties which are, or may be required by law to be performed by him as treasurer of the school district in the time and manner prescribed, or to be prescribed by law, and when he shall be succeeded in office and surrender and deliver over to his successor in office all books, papers, moneys, and other things belonging to the school district and pertaining to his office, then the above bond to be void; otherwise, to remain in full force.

It is expressly understood and intended that the obligation of the above named sureties shall not extend to any loss sustained by the insolvency, failure, or closing of any bank or savings and loan association organized and operating either under the laws of the State of Illinois or the United States wherein such treasurer has placed the funds in his custody or control, or any part thereof, provided, such depository has been approved by the (board of education, board of school inspectors or other governing body of the particular district) of the ..... (name of district).

A B .....

C D .....

E F .....

(Source: P.A. 84-550; 91-357, § 101.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-7.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "Dated (insert date)" for "Dated 19" following the first sentence of the form.

§ 105 ILCS 5/32-7.1. Amount of bond

Sec. 32-7.1. Amount of bond. The amount of the bond prescribed by Section 32-7 [105 ILCS 5/32-7] shall be fixed by the governing body of the district but shall not be less than 1/10 of the maximum amount of all moneys which came into the hands or control of such treasurer or his predecessors during any fiscal year in the preceding 5 years nor less than 11/2 times the largest amount estimated by such governing body will be in his hands or control at any one time if individuals act as sureties nor less than the largest amount

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estimated by such governing body will be in his hands or control at any one time if the surety is a surety company authorized to do business in this State.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-7.1.

§ 105 ILCS 5/32-7.2. Teachers' orders

Sec. 32-7.2. Teachers' orders. The school treasurer of any special charter district having a population of less than 500,000 shall pay out no funds of the district except on an order of the corporate authorities thereof, signed by the president and clerk, or by a majority of the board. When an order issued for the wages of any teacher or employee of such district is presented to the treasurer and is not paid for want of funds, the treasurer shall endorse it over his signature "not paid for want of funds", with the date of presentation, and shall make and keep a record of such endorsement. The order shall thereafter bear interest at the rate established by the school board of the district, payable annually, not exceeding the rate authorized from time to time under the Bond Authorization Act [30 ILCS 305/0.01 et seq.] until the treasurer of such district notifies the clerk in writing that he has funds to pay it, and the treasurer shall keep a record of such notices and hold the funds necessary to pay such order until it is presented. The order shall draw no interest after notice is given to the clerk. Orders presented within 10 days after the notice is mailed to the clerk shall be payable in the numerical order of their issuance.

(Source: P.A. 86-715; 86-1161.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-7.2.

§ 105 ILCS 5/32-7.3. Depositaries

Sec. 32-7.3. Depositaries. The governing body of any special charter district, when requested by the treasurer or custodian of the funds of the district, shall designate one or more banks or savings and loan associations in which the funds in the custody of the treasurer or custodian may be kept. A bank or savings and loan association designated as a depositary shall continue as such until 10 days have elapsed after a new depositary is designated and has qualified by furnishing the statements of resources and liabilities as is

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required by this Section. When a new depositary is designated, the board of education or other governing body shall notify the sureties of the treasurer or custodian of that fact, in writing, at least 5 days before the transfer of funds. The treasurer or custodian shall be discharged from responsibility for all funds which he deposits in a depositary so designated while such funds are so deposited.

No bank or savings and loan association shall receive public funds as permitted by this Section, unless it has complied with the requirements established pursuant to Section 6 of "An Act relating to certain investments of public funds by public agencies", approved July 23, 1943, as now or hereafter amended [30 ILCS 235/6].

(Source: P.A. 83-541.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 32-7.3.

Article 33.

Districts From 100,000 to Not More Than 500,000 Inhabitants

§ 105 ILCS 5/33-1. Board of Education - Election - Terms

Sec. 33-1. Board of Education - Election - Terms. In all school districts, including special charter districts having a population of 100,000 and not more than 500,000, which adopt this Article, as hereinafter provided, there shall be maintained a system of free schools in charge of a board of education, which shall be a body politic and corporate by the name of "Board of Education of the City of .....". The board shall consist of 7 members elected by the voters of the district. Except as provided in Section 33-1b of this Act [105 ILCS 5/33-1b], the regular election for members of the board shall be held at the consolidated election in odd numbered years and at the general primary election in even numbered years. The law governing the registration of voters for the primary election shall apply to the regular election. At the first regular election 7 persons shall be elected as members of the board. The person who receives the greatest number of votes shall be elected for a term of 5 years. The 2 persons who receive the second and third greatest number of votes shall be elected for a term of 4 years. The person who receives the fourth greatest number of votes shall be elected for a term of 3 years. The 2 persons

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who receive the fifth and sixth greatest number of votes shall be elected for a term of 2 years. The person who receives the seventh greatest number of votes shall be elected for a term of 1 year. Thereafter, at each regular election for members of the board, the successors of the members whose terms expire in the year of election shall be elected for a term of 5 years. All terms shall commence on July 1 next succeeding the elections. Any vacancy occurring in the membership of the board shall be filled by appointment until the next regular election for members of the board.

In any school district which has adopted this Article, a proposition for the election of board members by school board district rather than at large may be submitted to the voters of the district at the regular school election of any year in the manner provided in Section 9-22 [105 ILCS 5/9-22]. If the proposition is approved by a majority of those voting on the propositions, the board shall divide the school district into 7 school board districts as provided in Section 9-22. At the regular school election in the year following the adoption of such proposition, one member shall be elected from each school board district, and the 7 members so elected shall, by lot, determine one to serve for one year, 2 for 2 years, one for 3 years, 2 for 4 years, and one for 5 years. Thereafter their respective successors shall be elected for terms of 5 years. The terms of all incumbent members expire July 1 of the year following the adoption of such a proposition.

Any school district which has adopted this Article may, by referendum in accordance with Section 33-1a [105 ILCS 5/33-1a], adopt the method of electing members of the board of education provided in that Section.

Reapportionment of the voting districts provided for in this Article or created pursuant to a court order, shall be completed pursuant to Section 33-1c [105 ILCS 5/33-1c].

A board of education may appoint a student to the board to serve in an advisory capacity. The student member shall serve for a term as determined by the board. The board may not grant the student member any voting privileges, but shall consider the student member as an advisor. The student member may not participate in or attend any executive session of the board.

(Source: P.A. 82-1014; 86-1331; 94-231, § 5; 95-6, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 33-1.

Effect of Amendments. The 2005 amendment by P.A. 94-231, effective July 14, 2005, added the last paragraph.

The 2007 amendment by P.A. 95-6, effective June 20, 2007, in the first sentence of the first paragraph substituted "at the consolidated election in odd numbered years and at the general primary election" for "on the first Tuesday of April in odd numbered years and on the third Tuesday of March".

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§ 105 ILCS 5/33-1a. Board of Education - Alternative Method of Election - Terms

Sec. 33-1a. Board of Education - Alternative Method of Election - Terms. The board of education may, on its own motion, or shall upon the petition of the lesser of 2,500 or 5% of the voters registered in the district, submit to the voters of the district at a regular school election held in an even-numbered year a proposition for the election of 4 board members from school board districts and 3 board members at large. If the proposition is approved by a majority of those voting on the proposition, the board shall divide the school district into 4 school board districts, each of which must be compact and contiguous and substantially equal in population to each other district. At the school election in the following year, one member shall be elected from each school board district and 3 members shall be elected at large. They shall commence their terms on July 1, at which time the terms of the incumbent board members expire. Those members first elected under this Section shall determine by lot which member at large and which 2 district members shall serve for 2 years; the other 2 members at large and the other 2 district members shall serve for a 4 year term. Their respective successors shall be elected for terms of 4 years.

The regular election for members of the board of education shall be held on the same day as the regular township or municipal election. Terms shall commence on July 1 following the election. Any vacancy occurring in the membership of the board shall be filled by appointment of the board until the next regular election for members of such board at which election the office shall be filled.

(Source: P.A. 80-1469.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 33-1a.

§ 105 ILCS 5/33-1b. [Election date conflicting with Passover]

Sec. 33-1b. Whenever the date designated in Section 33-1 [105 ILCS 5/33-1] for the election of members of boards of education conflicts with the celebration of Passover, that election shall be postponed to the first Tuesday following the last day of Passover.

(Source: P.A. 82-1014.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 33-1b.

§ 105 ILCS 5/33-1c. Reapportionment of board voting districts

Sec. 33-1c. Reapportionment of board voting districts. In the year following each decennial census, the Board of Education shall reapportion the board voting districts to reflect the results of such census. The board voting districts shall be compact, contiguous and have substantially the same ratio of population to the total population of the school district as the ratio of the board members elected from that board voting district has to the total number of members of the Board of Education. The reapportionment plan shall be completed and formally approved by a majority of the members of the board not less than 90 days before the last date established by law for the filing of nominating petitions for the second school board election after the decennial census year. If by reapportionment a board member no longer resides within the board voting district from which the member was elected, the member shall continue to serve in office until the expiration of the member's regular term. All new members shall be elected from the board voting districts as reapportioned.

(Source: P.A. 86-1331.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 33-1c.

§ 105 ILCS 5/33-2. Eligibility

Sec. 33-2. Eligibility. To be eligible for election to the board, a person shall be a citizen of the United States, shall have been a resident of the district for at least one year immediately preceding his or her election, and shall not be a child sex offender as defined in Section 11-9.3 of the Criminal Code of 1961 [720 ILCS 5/11-9.3]. Permanent removal from the district by any member constitutes a resignation from and creates a vacancy in the board. Board members shall serve without compensation.

Notwithstanding any provisions to the contrary in any special charter, petitions nominating candidates for the board of education shall be signed by at least 200 voters of the district; and the polls, whether they be located within a city lying in the district or outside of a city, shall remain open during the hours specified in the Election Code [10 ILCS 5/1-1 et seq.].

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(Source: Laws 1961, p. 31; P.A. 93-309, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 33-2.

Effect of Amendments. The 2003 amendment by P.A. 93-309, effective January 1, 2004, substituted "shall have been a resident of the district for at least one year immediately preceding his or her election, and shall not be a child sex offender as defined in Section 11-9.3 of the Criminal Code of 1961" for "and shall have been a resident of the district for at least 1 year immediately preceding his election" in the first paragraph.

§ 105 ILCS 5/33-3. President, secretary and treasurer

Sec. 33-3. President, secretary and treasurer. At the first regular meeting of the board in July of each year, or as soon thereafter as may be, the board shall choose 1 of its number as president, and shall appoint a secretary and a treasurer, who need not be members of the board. The president, secretary and treasurer shall hold their offices for 1 year and until their successors are appointed and qualified. They shall be subject to removal by a majority of all the members and in case of removal or where a vacancy otherwise occurs in either of the offices the board shall appoint a successor to fill the vacancy.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 33-3.

§ 105 ILCS 5/33-4. Rights, powers and duties of board

Sec. 33-4. Rights, powers and duties of board. The board of education shall succeed to all rights, powers and duties of the former governing body of the district.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 33-4.

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§ 105 ILCS 5/33-5. Interest in contracts or transactions

Sec. 33-5. Interest in contracts or transactions. No member or employee of the board shall be directly or indirectly interested in any contract, work, or business of the district, or in the sale of any article, the expense, price or consideration of which is paid by the district; nor in the purchase of any real estate or property belonging to the district, or which shall be sold by virtue of legal process at the suit of the district. Whoever violates any provision of this Section shall be guilty of a Class A misdemeanor.

(Source: P.A. 77-2267.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 33-5.

§ 105 ILCS 5/33-6. Adoption of article by voters

Sec. 33-6. Adoption of article by voters. The electors of any such school district may adopt this Article in the following manner: whenever 1000 of the voters of the district voting at the last preceding election petition the Chief Judge of the Circuit Court or any Judge of that Circuit designated by the Chief Judge of the county in which the district is located to submit to a vote of the electors of the district the proposition as to whether the district shall adopt this Article, the circuit court shall, upon entering an order to that effect, submit the proposition at the next regular scheduled election. The court shall certify the proposition to the proper election authorities for submission to the electors in accordance with the general election law.

(Source: P.A. 81-1489.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 33-6.

§ 105 ILCS 5/33-7. Notice of election - Law applicable - Statement of proposition

Sec. 33-7. Notice of election - Law applicable - Statement of proposition. The Chief Judge of the Circuit Court or any Judge of that Circuit designated by the Chief Judge shall give notice of the election at which such proposition is to be submitted by

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publishing the notice in accordance with the general election law. If a majority of the votes cast upon the proposition is in favor thereof this Article shall thereby be adopted by the school district, and the circuit court shall thereupon enter an order declaring this Article in force therein.

(Source: P.A. 81-1490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 33-7.

Article 34.

Cities of Over 500,000 Inhabitants - Board of Education

§ 105 ILCS 5/34-1. Application of article; Definitions

Sec. 34-1. Application of article; Definitions. This Article applies only to cities having a population exceeding 500,000.

"Trustees", when used in this Article, means the Chicago School Reform Board of Trustees created by this amendatory Act of 1995 and serving as the governing board of the school district organized under this Article beginning with its appointment on or after the effective date of this amendatory Act of 1995 and continuing until June 30, 1999 or the appointment of a new Chicago Board of Education as provided in Section 34-3 [105 ILCS 5/34-3], whichever is later.

"Board", or "board of education" when used in this Article, means: (i) the Chicago School Reform Board of Trustees for the period that begins with the appointment of the Trustees and that ends on the later of June 30, 1999 or the appointment of a new Chicago Board of Education as provided in Section 34-3 [105 ILCS 5/34-3]; and (ii) the new Chicago Board of Education from and after June 30, 1999 or from and after its appointment as provided in Section 34-3 [105 ILCS 5/34-3], whichever is later.

Except during the period that begins with the appointment of the Chicago School Reform Board of Trustees on or after the effective date of this amendatory Act of 1995 and that ends on the later of June 30, 1999 or the appointment of a new Chicago Board of Education as provided in Section 34-3 [105 ILCS 5/34-3]: (i) the school district

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organized under this Article may be subject to further limitations imposed under Article 34A [105 ILCS 5/34A-101 et seq.]; and (ii) the provisions of Article 34A prevail over the other provisions of this Act, including the provisions of this Article, to the extent of any conflict.

(Source: P.A. 81-1221; 89-15, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-1.

As to the purpose and applicability of P.A. 86-1477, see Sections 1, 4 and 5 thereof, which ratify certain actions and proceedings taken pursuant to this Article as enacted by P.A. 85-1418.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the section catchline substituted "Definitions" for "Definition of Board"; added the definition of Trustees; in the definition of Board inserted "or 'board of education' and substituted the language beginning "(i) the Chicago" for "board of education"; and in the last paragraph, substituted "Except during the period that begins with the appointment of the Chicago School Reform Board of Trustees on or after the effective date of this amendatory Act of 1995 and that ends on the later of June 30, 1999 or the appointment of a new Chicago Board of Education as provided in Section 34-3: (i) the" for "Any" and substituted "and (ii)" for "When an Authority has been created under Article 34A for any district operating under this Article".

CASE NOTES

Analysis

Constitutionality
- Due Process
- Equal Protection
- Impairment of Contracts
- Special Legislation
- State Constitutional Law
- Taxation

In General

Constitutionality

- Due Process

P.A. 89-15, which amended this Article by creating different systems for negotiating employee contract terms with school district, did not violate employees' due process rights, so long as normal legislative process was followed and the enactment of the statute was not arbitrary or irrational. Bricklayers Union Local 21 v. Edgar, 922 F. Supp. 100 (N.D. Ill. 1996).

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This article was not violative of due process as an arbitrary delegation of police power and governmental functions to a board not responsible to the electorate, and did not repose unregulated discretion in an appointive board, was not an unlawful delegation of legislative power, and the power to tax so delegated did not deprive plaintiffs of their property without due process. Latham v. Board of Educ., 31 Ill. 2d 178, 201 N.E.2d 111 (1964).

- Equal Protection

Plaintiffs' claim that P.A. 89-15 violated their right under the Equal Protection Clause of the Fourteenth Amendment because it was a mechanism for racial discrimination and discrimination on the basis if political affiliation was properly dismissed; a rational basis underlay the General Assembly's decision to give special treatment to Chicago. Hearne v. Board of Educ., 185 F.3d 770 (7th Cir. 1999).

P.A. 89-15, which amended this Article by creating a different system for negotiating employee contract terms with school district, did not violate the equal protection clause of the Fourteenth Amendment, because non-certificated employees who contracted with the state through unions and state licensed employees who are predominantly teachers are not similarly situated. Bricklayers Union Local 21 v. Edgar, 922 F. Supp. 100 (N.D. Ill. 1996).

This article did not deny plaintiffs equal protection of the laws because it did not establish an arbitrary classification and because it did not deprive plaintiffs of the right to vote for members of the Board of Education which franchise was given residents of smaller districts. Latham v. Board of Educ., 31 Ill. 2d 178, 201 N.E.2d 111 (1964).

- Impairment of Contracts

P.A. 89-15, which amended this Article by creating different systems for negotiating employee contract terms with school district in school system which the General Assembly found to be in an educational crisis was rationally related to the legitimate state interest of eliminating inefficiency and waste, and did not violate the Contract Clause of the United States Constitution. Bricklayers Union Local 21 v. Edgar, 922 F. Supp. 100 (N.D. Ill. 1996).

- Special Legislation

A rational basis existed for singling out Chicago in the 1995 amendments altering existing conditions of the relationship between management and labor in the public schools. Hearne v. Board of Educ., 996 F. Supp. 773 (N.D. Ill. 1998), vacated in part on other grounds, 185 F.3d 770 (7th Cir. Ill. 1999).

The classification found in this Article restricting its operation to cities having a population exceeding 500,000, being based upon exigencies found in such metropolitan areas, did not create local or special legislation in violation of former Ill. Const. (1870), Art. IV, § 22 (see now Ill. Const. (1970), Art. IV, § 13) and was therefore constitutionally valid. Latham v. Board of Educ., 31 Ill. 2d 178, 201 N.E.2d 111 (1964).

- State Constitutional Law

Federal court could not enjoin the enforcement of P.A. 89-15, which amended this Article by creating a different system for negotiating employee contract terms with school district, on the grounds that it violated provisions of the state constitution, because under the Eleventh Amendment of the United States Constitution a federal court may not instruct state officials on how to conform their conduct to state law. Bricklayers Union Local 21 v. Edgar, 922 F. Supp. 100 (N.D. Ill. 1996).

- Taxation

The procedures required by this Article which applied only to cities having a population over 500,000 and resulted in the Board of Education of the City of Chicago levying taxes for the city's

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educational system, by the Board whose members are appointed rather than elected, did not constitute an unlawful exercise of the power to tax in violation of Ill. Const. (1870), Art. IX, § 9 (see now Ill. Const. (1970), Art. VII, §§ 6 and 7). Latham v. Board of Educ., 31 Ill. 2d 178, 201 N.E.2d 111 (1964).

In General

It was lawful under the Public Building Commission Act (50 ILCS 20/1 et seq.) for the Board of Education to lease a schoolhouse from the Commission, that school property be donated to the Commission, and for the city council to levy a tax to cover the costs of operation under such a lease. People ex rel. Stamos v. Public Bldg. Comm'n, 40 Ill. 2d 164, 238 N.E.2d 390 (1968).

§ 105 ILCS 5/34-1.01. Intent

Sec. 34-1.01. Intent. The General Assembly has previously established that the primary purpose of schooling is the transmission of knowledge and culture through which children learn in areas necessary to their continuing development, and the General Assembly has defined these areas as including language arts, mathematics, biological, physical and social sciences, the fine arts, and physical development and health. The General Assembly declares its intent to achieve the primary purpose of schooling in elementary and secondary schools subject to this Article, as now or hereafter amended, in cities of over 500,000 inhabitants, through the provisions of this amendatory Act of 1991.

A.Goals. In the furtherance of this intent, the General Assembly is committed to the belief that, while such urban schools should foster improvement and student growth in a number of areas, first priority should be given to achieving the following goals:

1.assuring that students show significant progress toward meeting and exceeding State performance standards in State mandated learning areas, including the mastery of higher order thinking skills in these and other learning areas;

2.assuring that students attend school regularly and graduate from high school at rates that equal or surpass national norms;

3.assuring that students are adequately prepared for further education and aiding students in making a successful transition to further education;

4.assuring that students are adequately prepared for successful entry into employment and aiding students in making a successful transition to employment;

5.assuring that students are, to the maximum extent possible, provided with a common learning experience that is of high academic quality and that reflects high expectations for all students' capacities to learn;

6.assuring that students are better prepared to compete in the international market place by having foreign language proficiency and stronger international studies;

7.assuring that students are encouraged in exploring potential interests in fields such as journalism, drama, art and music;

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8.assuring that individual teachers are granted the professional authority to make decisions about instruction and the method of teaching;

9.assuring that students are provided the means to express themselves creatively and to respond to the artistic expression of others through the visual arts, music, drama and dance; and

10.assuring that students are provided adequate athletic programs that encourage pride and positive identification with the attendance center and that reduce the number of dropouts and teenage delinquents.

B.Achieving goals. To achieve these priority goals, the General Assembly intends to make the individual local school the essential unit for educational governance and improvement and to establish a process for placing the primary responsibility for school governance and improvement in furtherance of such goals in the hands of parents, community residents, teachers, and the school principal at the school level.

Further, to achieve these priority goals, the General Assembly intends to lodge with the board of education key powers in limited areas related to district-wide policy, so that the board of education supports school-level governance and improvement and carries out functions that can be performed more efficiently through centralized action.

The General Assembly does not intend to alter or amend the provisions of the desegregation obligations of the board of education, including but not limited to the Consent Decree or the Desegregation Plan in United States v. Chicago Board of Education, 80 C 5124, U.S. District Court for the Northern District of Illinois. Accordingly, the implementation of this amendatory Act of 1991, to the extent practicable, shall be consistent with and, in all cases, shall be subject to the desegregation obligations pursuant to such Consent Decree and Desegregation Plan.

(Source: P.A. 86-1477; 87-455; 88-686, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-1.01.

Effect of Amendments. The 1994 amendment by P.A. 88-686, effective January 24, 1995, in subdivision A.1. substituted "show significant progress toward meeting and exceeding State performance standards in State mandated learning areas, including the mastery of higher order thinking skills in these and other learning areas" for "achieve proficiency in reading; writing; mathematics, and higher order thinking that equals or surpasses national norms".

CASE NOTES

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Analysis
Constitutionality
Powers of Principal
Severability Clause

Constitutionality

Although this Act, prior to its amendment, was found unconstitutional, the portion of the Act that eliminated permanent employment status, or tenure, was upheld on the grounds that legislative acts fixing the terms or tenure of employment of public employees do not create private contractual rights and this Act did not create an unconstitutional impairment of the obligation of contract. Fumarolo v. Chicago Bd. of Educ., 142 Ill. 2d 54, 153 Ill. Dec. 177, 566 N.E.2d 1283 (1990).

Powers of Principal

While it is true that the board of education retains general supervision and jurisdiction over the public school system, the intent of subsection B. is to make the local school the focus of reform by turning over significant powers to the principal of the individual local school who is to work in association with and be supervised by the local school council. Fumarolo v. Chicago Bd. of Educ., 142 Ill. 2d 54, 153 Ill. Dec. 177, 566 N.E.2d 1283 (1990).

Severability Clause

Where this Act, prior to its amendment, was held to be unconstitutional, the severability clause was without effect because it was clear that the General Assembly would not have enacted the statute without the portion held to be unconstitutional. Fumarolo v. Chicago Bd. of Educ., 142 Ill. 2d 54, 153 Ill. Dec. 177, 566 N.E.2d 1283 (1990).

§ 105 ILCS 5/34-1.02. Educational reform

Sec. 34-1.02. Educational reform. The General Assembly hereby finds and declares that educational reform in school districts organized under this Article shall be implemented in such manner that:

1.the percentage of entering freshmen who 4 years later graduate from 12th grade from each high school attendance center within the district in each of the 1989-90, 1990-91, 1991-92, 1992-93 and 1993-94 school years exceeds by at least 5% the percentage of similar students graduating from that high school attendance center in the immediately preceding school year;

2.the average daily student attendance rate within the district in each of the 1989-90, 1990-91, 1991-92, 1992-93 and 1993-94 school years exceeds by at least 1% the average daily student attendance rate within the district for the immediately preceding school year;

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3.by the conclusion of the 1993-1994 school year, the percentage of students within the district failing and not advancing to the next higher grade or graduating is at least 10% less than the percentage of students within the district failing and not advancing to the next higher grade or graduating at the conclusion of the 1987-88 school year;

4.on an annual basis, each attendance center within the district makes significant progress toward meeting and exceeding State performance standards in reading, writing, mathematics, and other State mandated learning areas, including the mastery of higher order thinking skills in these learning areas. Significant annual progress toward meeting and exceeding State performance standards shall occur for all students regardless of race, ethnicity, gender, or income status, based on the expectation that these subgroups shall meet and exceed State performance standards. Annual objectives for significant progress and timeframes during which the students' performance overall and as measured within subgroups will meet and exceed State performance standards shall be specified in the school improvement plan required in Section 34-2.4 [105 ILCS 5/34-2.4]; and

5.appropriate improvement and progress are realized each school year in each attendance center within the district, when compared to the performance of such attendance center during the immediately preceding school year, in advancing toward and achieving the objectives established by paragraphs 1 through 4 of this Section.

(Source: P.A. 86-124; 86-1477; 88-686, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-1.02.

Effect of Amendments. The 1994 amendment by P.A. 88-686, effective January 24, 1995, substituted the present language in subsection 4 for "by the conclusion of the 1993-94 school year, at least 50% of all students regardless of race, ethnicity, gender or income status in each attendance center within the district score at or above the national norm on a standardized test".

§ 105 ILCS 5/34-1.1. Definitions

Sec. 34-1.1. Definitions. As used in this Article:

"Academic Accountability Council" means the Chicago Schools Academic Accountability Council created under Section 34-3.4 [105 ILCS 5/34-3.4].

"Local School Council" means a local school council established under Section 34-2.1 [105 ILCS 5/34-2.1].

"School" and "attendance center" are used interchangeably to mean any attendance center operated pursuant to this Article and under the direction of one principal.

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"Secondary Attendance Center" means a school which has students enrolled in grades 9 through 12 (although it may also have students enrolled in grades below grade 9).

"Local Attendance Area School" means a school which has a local attendance area established by the board.

"Multi-area school" means a school other than a local attendance area school.

"Contract school" means an attendance center managed and operated by a for-profit or not-for-profit private entity retained by the board to provide instructional and other services to a majority of the pupils enrolled in the attendance center.

"Contract turnaround school" means an experimental contract school created by the board to implement alternative governance in an attendance center subject to restructuring or similar intervention under federal law that has not made adequate yearly progress for 5 consecutive years or a time period set forth in federal law.

"Parent" means a parent or legal guardian of an enrolled student of an attendance center.

"Community resident" means a person, 18 years of age or older, residing within an attendance area served by a school, excluding any person who is a parent of a student enrolled in that school; provided that with respect to any multi-area school, community resident means any person, 18 years of age or older, residing within the voting district established for that school pursuant to Section 34-2.1c [105 ILCS 5/34-2.1c], excluding any person who is a parent of a student enrolled in that school.

"School staff" means all certificated and uncertificated school personnel, including all teaching and administrative staff (other than the principal) and including all custodial, food service and other civil service employees, who are employed at and assigned to perform the majority of their employment duties at one attendance center served by the same local school council.

"Regular meetings" means the meeting dates established by the local school council at its annual organizational meeting.

(Source: P.A. 86-124; 86-1477; 87-454; 87-455; 87-895; 88-511, § 25; 89-15, § 5; 96-105, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-1.1.

Effect of Amendments. The 1993 amendment by P.A. 88-511, effective November 14, 1993, in the twelfth definition substituted "Reserve teacher" for "Supernumerary teacher".

The 1995 amendment by P.A. 89-15, effective May 30, 1995, added the definition of Academic Accountability Council; deleted the definition of School Board Nominating Commission which read "means the nominating commission established under Section 34-3.1"; deleted the definition of

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Subdistrict Council which read "means a subdistrict council established under Section 34-2.5"; deleted the definition of Subdistrict which read "means a geographic area of the school district formed by boundaries which are coterminous with the boundaries of any one of the elementary or high school administrative subdistricts into which the city is divided, as those elementary or high school administrative subdistrict boundaries existed on January 1, 1988, or as those subdistrict boundaries hereafter are changes by the board as provided in paragraph 7 of Section 34-18"; and deleted the definition of Reserve teacher which read "means a teacher, not on an administrative payroll, who has a rating of 'satisfactory' or better and whose service is no longer required because of a decrease in student membership, a change in subject requirements within the attendance center organization, or the closing of an attendance center".

The 2009 amendment by P.A. 96-105, effective July 30, 2009, added the definitions of "Contract school" and "Contract turnaround school".

§ 105 ILCS 5/34-2. City to constitute district - Corporate status of board

Sec. 34-2. City to constitute district - Corporate status of board. Each city having a population exceeding 500,000 shall constitute one school district which shall maintain a system of free schools under the charge of a board of education. The district shall be a body politic and corporate by the name of "Board of Education of the City of ....." and by that name may sue and be sued in all courts and places where judicial proceedings are had.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-2.

CASE NOTES

Validity

- Bond Issue

The board of education of the city of Chicago is a body politic and corporate; it has bonding powers under former section 151 (see now this section); it has its own limit of indebtedness under the Constitution which is not affected by the indebtedness of the city of Chicago; and $25,000 issue of bonds does not violate former Ill. Const. (1870), Art. IX, § 12 (see now Ill. Const. (1970), Art. VII, § 6). Board of Educ. v. Upham, 357 Ill. 263, 191 N.E. 876 (1934).

§ 105 ILCS 5/34-2.1. Local School Councils - Composition - Voter-Eligibility - Elections - Terms

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Sec. 34-2.1. Local School Councils - Composition - Voter-Eligibility - Elections - Terms. (a) A local school council shall be established for each attendance center within the school district. Each local school council shall consist of the following 12 voting members: the principal of the attendance center, 2 teachers employed and assigned to perform the majority of their employment duties at the attendance center, 6 parents of students currently enrolled at the attendance center, one employee of the school district employed and assigned to perform the majority of his or her employment duties at the attendance center who is not a teacher, and 2 community residents. Neither the parents nor the community residents who serve as members of the local school council shall be employees of the Board of Education. In each secondary attendance center, the local school council shall consist of 13 voting members - the 12 voting members described above and one full-time student member, appointed as provided in subsection (m) below. In the event that the chief executive officer of the Chicago School Reform Board of Trustees determines that a local school council is not carrying out its financial duties effectively, the chief executive officer is authorized to appoint a representative of the business community with experience in finance and management to serve as an advisor to the local school council for the purpose of providing advice and assistance to the local school council on fiscal matters. The advisor shall have access to relevant financial records of the local school council. The advisor may attend executive sessions. The chief executive officer shall issue a written policy defining the circumstances under which a local school council is not carrying out its financial duties effectively.

(b) Within 7 days of January 11, 1991, the Mayor shall appoint the members and officers (a Chairperson who shall be a parent member and a Secretary) of each local school council who shall hold their offices until their successors shall be elected and qualified. Members so appointed shall have all the powers and duties of local school councils as set forth in this amendatory Act of 1991. The Mayor's appointments shall not require approval by the City Council.

The membership of each local school council shall be encouraged to be reflective of the racial and ethnic composition of the student population of the attendance center served by the local school council.

(c) Beginning with the 1995-1996 school year and in every even-numbered year thereafter, the Board shall set second semester Parent Report Card Pick-up Day for Local School Council elections and may schedule elections at year-round schools for the same dates as the remainder of the school system. Elections shall be conducted as provided herein by the Board of Education in consultation with the local school council at each attendance center.

(d) Beginning with the 1995-96 school year, the following procedures shall apply to the election of local school council members at each attendance center:

(i) The elected members of each local school council shall consist of the 6 parent members and the 2 community resident members.

(ii) Each elected member shall be elected by the eligible voters of that attendance center to serve for a two-year term commencing on July 1 immediately following the election

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described in subsection (c). Eligible voters for each attendance center shall consist of the parents and community residents for that attendance center.

(iii) Each eligible voter shall be entitled to cast one vote for up to a total of 5 candidates, irrespective of whether such candidates are parent or community resident candidates.

(iv) Each parent voter shall be entitled to vote in the local school council election at each attendance center in which he or she has a child currently enrolled. Each community resident voter shall be entitled to vote in the local school council election at each attendance center for which he or she resides in the applicable attendance area or voting district, as the case may be.

(v) Each eligible voter shall be entitled to vote once, but not more than once, in the local school council election at each attendance center at which the voter is eligible to vote.

(vi) The 2 teacher members and the non-teacher employee member of each local school council shall be appointed as provided in subsection (l) below each to serve for a two-year term coinciding with that of the elected parent and community resident members.

(vii) At secondary attendance centers, the voting student member shall be appointed as provided in subsection (m) below to serve for a one-year term coinciding with the beginning of the terms of the elected parent and community members of the local school council.

(e) The Council shall publicize the date and place of the election by posting notices at the attendance center, in public places within the attendance boundaries of the attendance center and by distributing notices to the pupils at the attendance center, and shall utilize such other means as it deems necessary to maximize the involvement of all eligible voters.

(f) Nomination. The Council shall publicize the opening of nominations by posting notices at the attendance center, in public places within the attendance boundaries of the attendance center and by distributing notices to the pupils at the attendance center, and shall utilize such other means as it deems necessary to maximize the involvement of all eligible voters. Not less than 2 weeks before the election date, persons eligible to run for the Council shall submit their name, date of birth, social security number, if available, and some evidence of eligibility to the Council. The Council shall encourage nomination of candidates reflecting the racial/ethnic population of the students at the attendance center. Each person nominated who runs as a candidate shall disclose, in a manner determined by the Board, any economic interest held by such person, by such person's spouse or children, or by each business entity in which such person has an ownership interest, in any contract with the Board, any local school council or any public school in the school district. Each person nominated who runs as a candidate shall also disclose, in a manner determined by the Board, if he or she ever has been convicted of any of the offenses specified in subsection (c) of Section 34-18.5 [105 ILCS 5/34-18.5]; provided that neither this provision nor any other provision of this Section shall be deemed to require the disclosure of any information that is contained in any law enforcement record or juvenile court record that is confidential or whose accessibility or disclosure is restricted or prohibited under Section 5-901 or 5-905 of the Juvenile Court Act of 1987

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[705 ILCS 405/5-901 or 705 ILCS 405/5-905]. Failure to make such disclosure shall render a person ineligible for election or to serve on the local school council. The same disclosure shall be required of persons under consideration for appointment to the Council pursuant to subsections (l) and (m) of this Section.

(f-5) Notwithstanding disclosure, a person who has been convicted of any of the following offenses at any time shall be ineligible for election or appointment to a local school council and ineligible for appointment to a local school council pursuant to subsections (l) and (m) of this Section: (i) those defined in Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-6, 11-9.1, 11-14.4, 11-16, 11-17.1, 11-19, 11-19.1, 11-19.2, 11-20.1, 11-20.1B, 11-20.3, 12-13, 12-14, 12-14.1, 12-15, or 12-16, or subdivision (a)(2) of Section 11-14.3, of the Criminal Code of 1961 [720 ILCS 5/11-1.20, 720 ILCS 5/11-1.30, 720 ILCS 5/11-1.40, 720 ILCS 5/11-1.50, 720 ILCS 5/11-1.60, 720 ILCS 5/11-6, 720 ILCS 5/11-9.1,720 ILCS 5/11-4.4, 720 ILCS 5/11-16, 720 ILCS 5/11-17.1, 720 ILCS 5/11-19, 720 ILCS 5/11-19.1, 720 ILCS 5/11-19.2, 720 ILCS 5/11-20.1, 720 ILCS 5/11-20.1B, 720 ILCS 5/11-20.3, 720 ILCS 5/12-13, 720 ILCS 5/12-14, 720 ILCS 12-14.1, 720 ILCS 12-15, or 720 ILCS 5/12-16, 720 ILCS 5/11-14.3] or (ii) any offense committed or attempted in any other state or against the laws of the United States, which, if committed or attempted in this State, would have been punishable as one or more of the foregoing offenses. Notwithstanding disclosure, a person who has been convicted of any of the following offenses within the 10 years previous to the date of nomination or appointment shall be ineligible for election or appointment to a local school council: (i) those defined in Section 401.1, 405.1, or 405.2 of the Illinois Controlled Substances Act [720 ILCS 570/401.1, 720 ILCS 570/405.1, or 720 ILCS 570/405.2] or (ii) any offense committed or attempted in any other state or against the laws of the United States, which, if committed or attempted in this State, would have been punishable as one or more of the foregoing offenses.

Immediately upon election or appointment, incoming local school council members shall be required to undergo a criminal background investigation, to be completed prior to the member taking office, in order to identify any criminal convictions under the offenses enumerated in Section 34-18.5. The investigation shall be conducted by the Department of State Police in the same manner as provided for in Section 34-18.5. However, notwithstanding Section 34-18.5, the social security number shall be provided only if available. If it is determined at any time that a local school council member or member-elect has been convicted of any of the offenses enumerated in this Section or failed to disclose a conviction of any of the offenses enumerated in Section 34-18.5, the general superintendent shall notify the local school council member or member-elect of such determination and the local school council member or member-elect shall be removed from the local school council by the Board, subject to a hearing, convened pursuant to Board rule, prior to removal.

(g) At least one week before the election date, the Council shall publicize, in the manner provided in subsection (e), the names of persons nominated for election.

(h) Voting shall be in person by secret ballot at the attendance center between the hours of 6:00 a.m. and 7:00 p.m.

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(i) Candidates receiving the highest number of votes shall be declared elected by the Council. In cases of a tie, the Council shall determine the winner by lot.

(j) The Council shall certify the results of the election and shall publish the results in the minutes of the Council.

(k) The general superintendent shall resolve any disputes concerning election procedure or results and shall ensure that, except as provided in subsections (e) and (g), no resources of any attendance center shall be used to endorse or promote any candidate.

(l) Beginning with the 1995-1996 school year and in every even numbered year thereafter, the Board shall appoint 2 teacher members to each local school council. These appointments shall be made in the following manner:

(i) The Board shall appoint 2 teachers who are employed and assigned to perform the majority of their employment duties at the attendance center to serve on the local school council of the attendance center for a two-year term coinciding with the terms of the elected parent and community members of that local school council. These appointments shall be made from among those teachers who are nominated in accordance with subsection (f).

(ii) A non-binding, advisory poll to ascertain the preferences of the school staff regarding appointments of teachers to the local school council for that attendance center shall be conducted in accordance with the procedures used to elect parent and community Council representatives. At such poll, each member of the school staff shall be entitled to indicate his or her preference for up to 2 candidates from among those who submitted statements of candidacy as described above. These preferences shall be advisory only and the Board shall maintain absolute discretion to appoint teacher members to local school councils, irrespective of the preferences expressed in any such poll.

(iii) In the event that a teacher representative is unable to perform his or her employment duties at the school due to illness, disability, leave of absence, disciplinary action, or any other reason, the Board shall declare a temporary vacancy and appoint a replacement teacher representative to serve on the local school council until such time as the teacher member originally appointed pursuant to this subsection (l) resumes service at the attendance center or for the remainder of the term. The replacement teacher representative shall be appointed in the same manner and by the same procedures as teacher representatives are appointed in subdivisions (i) and (ii) of this subsection (l).

(m) Beginning with the 1995-1996 school year, and in every year thereafter, the Board shall appoint one student member to each secondary attendance center. These appointments shall be made in the following manner:

(i) Appointments shall be made from among those students who submit statements of candidacy to the principal of the attendance center, such statements to be submitted commencing on the first day of the twentieth week of school and continuing for 2 weeks thereafter. The form and manner of such candidacy statements shall be determined by the Board.

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(ii) During the twenty-second week of school in every year, the principal of each attendance center shall conduct a non-binding, advisory poll to ascertain the preferences of the school students regarding the appointment of a student to the local school council for that attendance center. At such poll, each student shall be entitled to indicate his or her preference for up to one candidate from among those who submitted statements of candidacy as described above. The Board shall promulgate rules to ensure that these non-binding, advisory polls are conducted in a fair and equitable manner and maximize the involvement of all school students. The preferences expressed in these non-binding, advisory polls shall be transmitted by the principal to the Board. However, these preferences shall be advisory only and the Board shall maintain absolute discretion to appoint student members to local school councils, irrespective of the preferences expressed in any such poll.

(iii) For the 1995-96 school year only, appointments shall be made from among those students who submitted statements of candidacy to the principal of the attendance center during the first 2 weeks of the school year. The principal shall communicate the results of any nonbinding, advisory poll to the Board. These results shall be advisory only, and the Board shall maintain absolute discretion to appoint student members to local school councils, irrespective of the preferences expressed in any such poll.

(n) The Board may promulgate such other rules and regulations for election procedures as may be deemed necessary to ensure fair elections.

(o) In the event that a vacancy occurs during a member's term, the Council shall appoint a person eligible to serve on the Council, to fill the unexpired term created by the vacancy, except that any teacher vacancy shall be filled by the Board after considering the preferences of the school staff as ascertained through a non-binding advisory poll of school staff.

(p) If less than the specified number of persons is elected within each candidate category, the newly elected local school council shall appoint eligible persons to serve as members of the Council for two-year terms.

(q) The Board shall promulgate rules regarding conflicts of interest and disclosure of economic interests which shall apply to local school council members and which shall require reports or statements to be filed by Council members at regular intervals with the Secretary of the Board. Failure to comply with such rules or intentionally falsifying such reports shall be grounds for disqualification from local school council membership. A vacancy on the Council for disqualification may be so declared by the Secretary of the Board. Rules regarding conflicts of interest and disclosure of economic interests promulgated by the Board shall apply to local school council members. No less than 45 days prior to the deadline, the general superintendent shall provide notice, by mail, to each local school council member of all requirements and forms for compliance with economic interest statements.

(r)(1) If a parent member of a Local School Council ceases to have any child enrolled in the attendance center governed by the local School Council due to the graduation or voluntary transfer of a child or children from the attendance center, the parent's membership on the Local School Council and all voting rights are terminated

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immediately as of the date of the child's graduation or voluntary transfer. If the child of a parent member of a local school council dies during the member's term in office, the member may continue to serve on the local school council for the balance of his or her term. Further, a local school council member may be removed from the Council by a majority vote of the Council as provided in subsection (c) of Section 34-2.2 [105 ILCS 5/34-2.2] if the Council member has missed 3 consecutive regular meetings, not including committee meetings, or 5 regular meetings in a 12 month period, not including committee meetings. If a parent member of a local school council ceases to be eligible to serve on the Council for any other reason, he or she shall be removed by the Board subject to a hearing, convened pursuant to Board rule, prior to removal. A vote to remove a Council member by the local school council shall only be valid if the Council member has been notified personally or by certified mail, mailed to the person's last known address, of the Council's intent to vote on the Council member's removal at least 7 days prior to the vote. The Council member in question shall have the right to explain his or her actions and shall be eligible to vote on the question of his or her removal from the Council. The provisions of this subsection shall be contained within the petitions used to nominate Council candidates.

(2) A person may continue to serve as a community resident member of a local school council as long as he or she resides in the attendance area served by the school and is not employed by the Board nor is a parent of a student enrolled at the school. If a community resident member ceases to be eligible to serve on the Council, he or she shall be removed by the Board subject to a hearing, convened pursuant to Board rule, prior to removal.

(3) A person may continue to serve as a teacher member of a local school council as long as he or she is employed and assigned to perform a majority of his or her duties at the school, provided that if the teacher representative resigns from employment with the Board or voluntarily transfers to another school, the teacher's membership on the local school council and all voting rights are terminated immediately as of the date of the teacher's resignation or upon the date of the teacher's voluntary transfer to another school. If a teacher member of a local school council ceases to be eligible to serve on a local school council for any other reason, that member shall be removed by the Board subject to a hearing, convened pursuant to Board rule, prior to removal.

(Source: P.A. 86-124; 86-1477; 87-454; 87-455; 87-895; 88-511, § 8.5; 88-686, § 5; 89-15, § 5; 89-369, § 5; 89-626, § 2-36; 89-636, § 5; 90-378, § 5; 90-590, § 1001-16; 91-622, § 10; 91-728, § 5; 95-1015, § 3; 96-1412, § 5; 96-1551, § 965.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-2.1.

Section 95 of P.A. 91-622 contains a "no acceleration or delay" provision.

Section 99 of P.A. 95-1015 purports to make this section effective July 1, 2008; however, the Act was approved and is effective December 15, 2008.

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Section 9995 of P.A. 96-1551 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1993 amendment by P.A. 88-511, effective November 14, 1993, in subsection (o) added at the end the language beginning "except that any"; in subsection (q), at the end of the first sentence added "with the Secretary of the Board", in the second sentence substituted "shall" for "may", in the third sentence substituted "Secretary of the Board" for "subdistrict superintendent" and added the fourth sentence; and added the first sentence of subsection (r) and added "Further" at the beginning of the second sentence.

The 1994 amendment by P.A. 88-686, effective January 24, 1995, in subsection (c), in the first sentence substituted "1995-1996" for "1989-1990", substituted "even" for "odd" and substituted "second semester Parent Report Card Pick-Up Day" for "a date, not later than the 6th week of the school year"; in subsection (d), in the introductory language substituted "1995-96" for "1991-92"; in subdivision (d)(ii), in the first sentence added "commencing on July 1 immediately following the election described in paragraph (c)" at the end; in subdivision (d)(vii), in the first sentence substituted "after the twelfth week of the second semester of the school year" for "on or before November 1" and added at the end "coinciding with the beginning of the terms of the elected parent and community members of the local school council"; in subsection (l), in the introductory language, substituted "1995-1996" for "1991-1992" and substituted "even" for "odd"; in subdivision (l)(i), in the first sentence, deleted "Before November 1, 1991, and every 2 years thereafter" from the beginning and added "to serve for a two-year term coinciding with the beginning of the terms of the elected parent and community members of the local school council" at the end; in subsection (m), in the introductory language substituted "1995-1996" for "1991-1992"; in subdivision (m)(i), in the first sentence inserted "of the twentieth week"; and in subdivision (m)(ii), in the first sentence substituted "twenty-second" for "6th".

The 1995 amendment by P.A. 89-15, effective May 30, 1995, in subdivision (d)(ii), added at the beginning "Subject to the provisions of paragraph (iii) of this subsection (d)", substituted "four-year" for "two-year" and substituted "subsection" for "paragraph; added present subdivision (d)(iii); redesignated former subdivisions (d)(iii) through (d)(vii) as present subdivisions (d)(iv) through (d)(viii); in subdivision (d)(iv), in the first sentence added "In 1996 only" at the beginning and added the second sentence; and in subdivision (d)(vii) substituted "four-year" for "two-year" and added the language at the end "except that in 1996 only"; in subsection (f), in the fourth sentence, deleted "any subdistrict" preceding "any local school council", in subsection (k) substituted "general" for "subdistrict"; and rewrote subsection (l).

The 1995 amendment by P.A. 89-369, effective August 18, 1995, in subsection (f), added the fifth sentence; and in subsection (r) added the third sentence and in the fifth sentence substituted "his or her actions" for "the reasons for his or her absence".

The 1996 amendment by P.A. 89-626, effective August 9, 1996, combined the amendments of this section by P.A. 89-15 and P.A. 89-369.

The 1996 amendment by P.A. 89-636, effective August 9, 1996, in subsection (c), in the first sentence, added at the end "and may schedule elections at year-round schools for the same dates as the remainder of the school system"; in subdivision (d)(ii), in the first sentence, deleted "Subject to the provisions of paragraph (iii) of this subsection (d)" from the beginning and substituted "two-year" for "four-year"; deleted former subdivision (d)(iii) regarding election of parent members and community residents in 1996; and redesignated former subdivisions (d)(iv) through (d)(viii) as present subdivisions (d)(iii) through (d)(vii); in subdivision (d)(iii), in the first sentence, deleted "In 1996 only" from the beginning and deleted the second sentence which read "In 1998 and every even numbered year thereafter, each eligible voter shall be entitled to cast one vote for up to a total of 3 candidates, irrespective of whether those candidates are parent or community resident candidates"; in subdivision (d)(vi) substituted "two-year" for "four-year" and deleted from the end "except that in 1996 only, of the 2 teacher members appointed to the local school council at each attendance center, one of those teachers at each attendance center shall

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be selected as provided in paragraph (ii) of subsection (l) to serve a two-year term"; in subdivision (d)(vii) substituted "as provided in subsection (m) below" for "by the local school council, after the twelfth week of the second semester of the school year" and deleted the second sentence which read "Appointments shall be made as provided in subsection (m) below"; in subsection (f), in the fifth sentence, added at the end "provided that neither this provision nor any other provision of this Section shall be deemed to require the disclosure of any information that is contained in any law enforcement record or juvenile court record that is confidential or whose accessibility or disclosure is restricted or prohibited under Section 1-7 or 1-8 of the Juvenile Court Act of 1987"; rewrote subsection (l); and added subdivision (m)(iii).

The 1997 amendment by P.A. 90-378, effective August 14, 1997, combined the amendments by P.A. 89-626 and P.A. 89-636; and in subsection (a) added the fifth through eighth sentences.

The 1998 amendment by P.A. 90-590, effective January 1, 2000, substituted "Section 5-901 or 5-905" for "Section 1-7 or 1-8" in subsection (f).

The 1999 amendment by P.A. 91-622, effective August 19, 1999, made identical amendments to two versions of this section, the version before amendment by P.A. 90-590, effective until January 1, 2000, and the version after amendment by P.A. 90-590, effective January 1, 2000, as follows: in subsection (f) inserted "date of birth, social security number, if available" in the second sentence and substituted "or to serve on" for "to" in the next-to-last sentence; inserted subsections (f-5) and (l)(iii); in subsection (q) deleted "in addition to the requirements of the Illinois Governmental Ethics Act applicable to local school council members" at the end of the next-to-last sentence and added the last sentence; inserted the (r)(1) designation and rewrote subsection (r)(1) to the extent that a detailed comparison would be impracticable, and added subsections (r)(2) and (r)(3).

The 2000 amendment by P.A. 91-728, effective June 2, 2000, in subsection (f-5): in the first paragraph inserted "election or" following "ineligible for" and deleted "pursuant to subsections (l) and (m) of this Section" preceding "(i) those defined"; and in the second paragraph deleted "using the member's name, date of birth, and social security number, if available" following "taking office" in the first sentence, inserted the present second sentence and deleted the former second sentence which read: "In instances in which one or more individuals have the same name, date of birth, and social security number as the member, the member shall undergo a fingerprint background check".

The 2008 amendment by P.A. 95-1015, effective December 15, 2008, added the present second sentence in (r)(1).

The 2010 amendment by P.A. 96-1412, effective January 1, 2011, in (a), substituted "12" for "11" in the second and fourth sentences, inserted "one employee of the school district employed and assigned to perform the majority of his or her employment duties at the attendance center who is not a teacher" in the second sentence, and substituted "13" for "12" in the fourth sentence; and inserted "and the non-teacher employee member" in (d)(vi).

The 2011 amendment by P.A. 96-1551, effective July 1, 2011, in item (i) of the first sentence of the first paragraph of (f-5), in the section listing, inserted "11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60," "11-14.4," and "11-20.1B, 11-20.3" and inserted "or subdivision (a)(2) of Section 11-14.3."

CASE NOTES

Analysis

Constitutionality

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Applicability
Contract
- Not Shown
Suability

Constitutionality

The restriction on voting for the councils could not be rendered invalid; it was common knowledge that the public schools of the city were a troubled institution and a change in the method of their governance may or may not bring about an improvement but that was a judgment for a legislature to make, not a court. Pittman v. Chicago Bd. of Educ., 64 F.3d 1098 (7th Cir. 1995), cert. denied, 517 U.S. 1243, 116 S. Ct. 2497, 135 L. Ed. 2d 189 (1996).

This section clearly violates the principle of "one man, one vote" but the principle is not applicable to elections to so local and specialized a governmental body as the local school councils. Pittman v. Chicago Bd. of Educ., 64 F.3d 1098 (7th Cir. 1995), cert. denied, 517 U.S. 1243, 116 S. Ct. 2497, 135 L. Ed. 2d 189 (1996).

The legislature has advanced legitimate, significant interest related to the education of public school children which justify the increased role for parents provided for the School Reform Act; weighing these compelling interests against the limited burden on plaintiffs' voting rights, the election and representation scheme provided for in the School Reform Act, as amended, satisfies Fourteenth Amendment requirements. Pittman v. Chicago Bd. of Educ., 860 F. Supp. 495 (N.D. Ill. 1994), aff'd, 64 F.3d 1098 (7th Cir. 1995), cert. denied, 517 U.S. 1243, 116 S. Ct. 2497, 135 L. Ed. 2d 189 (1996).

This section, prior to its amendment, violated the equal protection guarantees of the United States Constitution under the Fourteenth Amendment and Ill. Const. (1970), Art. I, § 2 and Art. III, § 3, because voters who were otherwise qualified to vote, but did not currently have children attending Chicago schools, were denied a vote in local school council elections equal to that of voters who did have children in attendance at the public schools. Fumarolo v. Chicago Bd. of Educ., 142 Ill. 2d 54, 153 Ill. Dec. 177, 566 N.E.2d 1283 (1990).

Applicability

Teacher brought a Voting Rights Act, 42 U.S.C.S. § 1973, claim against defendants for an improper election for a seat on the local school council; however, under Illinois law, teachers were not elected to the local school council but instead, a non-binding, advisory poll was taken to ascertain the preferences of the school staff,105 ILCS 5/34-2.1(l)(ii), and the local school board of education had absolute discretion in appointing teachers to the local school council. 105 ILCS 5/34-2.1(l)(i)-(ii), and the Voting Rights Act did not apply when appointments were used. Even if the Act did apply, the teacher did not submit any affidavits, depositions, answers to interrogatories, or admissions to demonstrate, through specific evidence, that a genuine issue of material fact existed as to whether the Act was violated. Joseph v. Lacoste, F. Supp. 2d , 2005 U.S. Dist. LEXIS 15508 (N.D. Ill. July 27, 2005).

Contract

- Not Shown

Tenure for principals was not a term in a contract, it was a term in a statute, and a statute is presumed not to create contractual rights; since it has long been understood that statutes are not

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contracts the principals could not reasonably have relied on the statute giving them tenure as a reason not to ask for a contract. Pittman v. Chicago Bd. of Educ., 64 F.3d 1098 (7th Cir. 1995), cert. denied, 517 U.S. 1243, 116 S. Ct. 2497, 135 L. Ed. 2d 189 (1996).

Suability

Local school council was a suable entity. Asllani v. Board of Educ., 845 F. Supp. 1209 (N.D. Ill. 1993).

§ 105 ILCS 5/34-2.1b: Repealed by P.A. 89-15, § 50, effective May 30, 1995.

§ 105 ILCS 5/34-2.1c. Multi-Area Schools - Establishment of Voting Districts

Sec. 34-2.1c. Multi-Area Schools - Establishment of Voting Districts. (a) On or before September 1, 1991, the Board shall establish a voting district for each multi-area school. The Board shall take into account the following criteria in establishing such voting districts:

(i) in cases where the multi-area school was previously a school with a local attendance area established by the Board, the boundaries of such local attendance area;

(ii) the location of physical characteristics in the surrounding geographic area, including but not limited to, expressways, rapid transit and railroad rights-of-way, rivers and viaducts;

(iii) the location of established neighborhood and community area boundaries and of boundaries established for other elected offices within the city and the State;

(iv) size of student population; and

(v) compactness and contiguity of voting districts.

Prior to establishing voting districts for multi-area schools, the Board shall hold at least one public hearing thereon. The Board shall establish procedures to ensure the maximum participation of all interested persons in such hearing or hearings.

(b) The Board shall publicize the location and description of these voting districts by posting notices at each multi-area school and in public places within each voting district, by distributing notices to students at the multi-area school and by placing notices both in daily newspapers of general circulation published in the city and in local and community newspapers published within each voting district. The Board shall utilize other means to ensure adequate dissemination of the description and location of the voting districts.

(c) The Board may adjust or alter the voting districts of any multi-area school once every tenth year. The Board shall utilize the same criteria and procedures described above in connection with any adjustment or alteration of any voting district.

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(d) With respect to any school designated as a multi-area school subsequent to the establishment of voting districts, as described in subsection (a), or subsequent to the adjustment of these districts, as described in subsection (c), the Board shall establish a voting district for that school prior to the commencement of its operation as a multi-area school. The Board shall utilize the same criteria and procedures described in subsection (a) in connection with the establishment of such a voting district.

(Source: P.A. 87-454.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-2.1c.

§ 105 ILCS 5/34-2.2. Local school councils - Manner of operation

Sec. 34-2.2. Local school councils - Manner of operation. (a) The annual organizational meeting of each local school council shall be held at the attendance center. At the annual organization meeting, which shall be held no sooner than July 1 and no later than July 14, a parent member of the local school council shall be selected by the members of such council as its chairperson, and a secretary shall be selected by the members of such council from among their number, each to serve a term of one year. Whenever a vacancy in the office of chairperson or secretary of a local school council shall occur, a new chairperson (who shall be a parent member) or secretary, as the case may be, shall be elected by the members of the local school council from among their number to serve as such chairperson or secretary for the unexpired term of office in which the vacancy occurs. At each annual organizational meeting, the time and place of any regular meetings of the local school council shall be fixed. Special meetings of the local school council may be called by the chairperson or by any 4 members by giving notice thereof in writing, specifying the time, place and purpose of the meeting. Public notice of meetings shall also be given in accordance with the Open Meetings Act [5 ILCS 120/1 et seq.].

(b) Members and officers of the local school council shall serve without compensation and without reimbursement of any expenses incurred in the performance of their duties, except that the board of education may by rule establish a procedure and thereunder provide for reimbursement of members and officers of local school councils for such of their reasonable and necessary expenses (excluding any lodging or meal expenses) incurred in the performance of their duties as the board may deem appropriate.

(c) A majority of the full membership of the local school council shall constitute a quorum, and whenever a vote is taken on any measure before the local school council, a quorum being present, the affirmative vote of a majority of the votes of the full membership then serving of the local school council shall determine the outcome thereof; provided that whenever the measure before the local school council is (i) the evaluation of the principal, or (ii) the renewal of his or her performance contract or the inclusion of

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any provision or modification of the contract, or (iii) the direct selection by the local school council of a new principal (including a new principal to fill a vacancy) to serve under a 4 year performance contract, or (iv) the determination of the names of candidates to be submitted to the general superintendent for the position of principal, the principal and student member of a high school council shall not be counted for purposes of determining whether a quorum is present to act on the measure and shall have no vote thereon; and provided further that 7 affirmative votes of the local school council shall be required for the direct selection by the local school council of a new principal to serve under a 4 year performance contract but not for the renewal of a principal's performance contract.

(d) Student members of high school councils shall not be eligible to vote on personnel matters, including but not limited to principal evaluations and contracts and the allocation of teaching and staff resources.

(e) The local school council of an attendance center which provides bilingual education shall be encouraged to provide translators at each council meeting to maximize participation of parents and the community.

(f) Each local school council of an attendance center which provides bilingual education shall create a Bilingual Advisory Committee or recognize an existing Bilingual Advisory Committee as a standing committee. The Chair and a majority of the members of the advisory committee shall be parents of students in the bilingual education program. The parents on the advisory committee shall be selected by parents of students in the bilingual education program, and the committee shall select a Chair. The advisory committee for each secondary attendance center shall include at least one full-time bilingual education student. The Bilingual Advisory Committee shall serve only in an advisory capacity to the local school council.

(g) Local school councils may utilize the services of an arbitration board to resolve intra-council disputes.

(Source: P.A. 86-1477; 87-454; 87-455; 87-895; 88-85, § 55; 88-686, § 5; 89-15, § 5; 91-622, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-2.2.

Section 95 of P.A. 91-622 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1993 amendment by P.A. 88-85, effective July 14, 1993, in subsection (c) inserted "for the unexpired term of the performance contract of the principal creating the vacancy" twice.

The 1994 amendment by P.A. 88-686, effective January 24, 1995, in subsection (a), in the second sentence, substituted "no sooner than July 1 and no later than July 14" for "November 1"; and in subsection (c), inserted twice "(including a new principal to fill a vacancy)", deleted "or to

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fill a vacancy for the unexpired term of the performance contract of the principal creating the vacancy" preceding "or (iv)" and deleted the same preceding "but not for the renewal of".

The 1995 amendment by P.A. 89-15, effective May 30, 1995, in subsection (c) substituted "general" for "subdistrict" throughout.

The 1999 amendment by P.A. 91-622, effective August 19, 1999, in subsection (c) deleted the item (v) designation and rewrote item (iv), deleting references to the selection of a principal as provided in Section 34-23.3.

CASE NOTES

Selection of Principal

A simple majority is all that is needed for a local school council to elect its principal after the superintendent fails to choose from a candidate list. Chicago Sch. Reform Bd. of Trustees v. Martin, 309 Ill. App. 3d 924, 243 Ill. Dec. 428, 723 N.E.2d 731, 1999 Ill. App. LEXIS 879 (1 Dist. 1999).

§ 105 ILCS 5/34-2.3. Local school councils - Powers and duties

Sec. 34-2.3. Local school councils - Powers and duties. Each local school council shall have and exercise, consistent with the provisions of this Article and the powers and duties of the board of education, the following powers and duties:

1. (A) To annually evaluate the performance of the principal of the attendance center using a Board approved principal evaluation form, which shall include the evaluation of (i) student academic improvement, as defined by the school improvement plan, (ii) student absenteeism rates at the school, (iii) instructional leadership, (iv) the effective implementation of programs, policies, or strategies to improve student academic achievement, (v) school management, and (vi) any other factors deemed relevant by the local school council, including, without limitation, the principal's communication skills and ability to create and maintain a student-centered learning environment, to develop opportunities for professional development, and to encourage parental involvement and community partnerships to achieve school improvement;

(B) to determine in the manner provided by subsection (c) of Section 34-2.2 [105 ILCS 5/34-2.2] and subdivision 1.5 of this Section whether the performance contract of the principal shall be renewed; and

(C) to directly select, in the manner provided by subsection (c) of Section 34-2.2, a new principal (including a new principal to fill a vacancy) - without submitting any list of candidates for that position to the general superintendent as provided in paragraph 2 of this Section - to serve under a 4 year performance contract; provided that (i) the determination of whether the principal's performance contract is to be renewed, based upon the evaluation required by subdivision 1.5 of this Section, shall be made no later

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than 150 days prior to the expiration of the current performance-based contract of the principal, (ii) in cases where such performance contract is not renewed - a direct selection of a new principal - to serve under a 4 year performance contract shall be made by the local school council no later than 45 days prior to the expiration of the current performance contract of the principal, and (iii) a selection by the local school council of a new principal to fill a vacancy under a 4 year performance contract shall be made within 90 days after the date such vacancy occurs. A Council shall be required, if requested by the principal, to provide in writing the reasons for the council's not renewing the principal's contract.

1.5.The local school council's determination of whether to renew the principal's contract shall be based on an evaluation to assess the educational and administrative progress made at the school during the principal's current performance-based contract. The local school council shall base its evaluation on (i) student academic improvement, as defined by the school improvement plan, (ii) student absenteeism rates at the school, (iii) instructional leadership, (iv) the effective implementation of programs, policies, or strategies to improve student academic achievement, (v) school management, and (vi) any other factors deemed relevant by the local school council, including, without limitation, the principal's communication skills and ability to create and maintain a student-centered learning environment, to develop opportunities for professional development, and to encourage parental involvement and community partnerships to achieve school improvement. If a local school council fails to renew the performance contract of a principal rated by the general superintendent, or his or her designee, in the previous years' evaluations as meeting or exceeding expectations, the principal, within 15 days after the local school council's decision not to renew the contract, may request a review of the local school council's principal non-retention decision by a hearing officer appointed by the American Arbitration Association. A local school council member or members or the general superintendent may support the principal's request for review. During the period of the hearing officer's review of the local school council's decision on whether or not to retain the principal, the local school council shall maintain all authority to search for and contract with a person to serve as interim or acting principal, or as the principal of the attendance center under a 4-year performance contract, provided that any performance contract entered into by the local school council shall be voidable or modified in accordance with the decision of the hearing officer. The principal may request review only once while at that attendance center. If a local school council renews the contract of a principal who failed to obtain a rating of "meets" or "exceeds expectations" in the general superintendent's evaluation for the previous year, the general superintendent, within 15 days after the local school council's decision to renew the contract, may request a review of the local school council's principal retention decision by a hearing officer appointed by the American Arbitration Association. The general superintendent may request a review only once for that principal at that attendance center. All requests to review the retention or non-retention of a principal shall be submitted to the general superintendent, who shall, in turn, forward such requests, within 14 days of receipt, to the American Arbitration Association. The general superintendent shall send a contemporaneous copy of the request that was forwarded to the American Arbitration Association to the principal and to each local school council member and shall inform the local school council of its rights and responsibilities under the arbitration process,

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including the local school council's right to representation and the manner and process by which the Board shall pay the costs of the council's representation. If the local school council retains the principal and the general superintendent requests a review of the retention decision, the local school council and the general superintendent shall be considered parties to the arbitration, a hearing officer shall be chosen between those 2 parties pursuant to procedures promulgated by the State Board of Education, and the principal may retain counsel and participate in the arbitration. If the local school council does not retain the principal and the principal requests a review of the retention decision, the local school council and the principal shall be considered parties to the arbitration and a hearing officer shall be chosen between those 2 parties pursuant to procedures promulgated by the State Board of Education. The hearing shall begin (i) within 45 days after the initial request for review is submitted by the principal to the general superintendent or (ii) if the initial request for review is made by the general superintendent, within 45 days after that request is mailed to the American Arbitration Association. The hearing officer shall render a decision within 45 days after the hearing begins and within 90 days after the initial request for review. The Board shall contract with the American Arbitration Association for all of the hearing officer's reasonable and necessary costs. In addition, the Board shall pay any reasonable costs incurred by a local school council for representation before a hearing officer.

1.10.The hearing officer shall conduct a hearing, which shall include (i) a review of the principal's performance, evaluations, and other evidence of the principal's service at the school, (ii) reasons provided by the local school council for its decision, and (iii) documentation evidencing views of interested persons, including, without limitation, students, parents, local school council members, school faculty and staff, the principal, the general superintendent or his or her designee, and members of the community. The burden of proof in establishing that the local school council's decision was arbitrary and capricious shall be on the party requesting the arbitration, and this party shall sustain the burden by a preponderance of the evidence. The hearing officer shall set the local school council decision aside if that decision, in light of the record developed at the hearing, is arbitrary and capricious. The decision of the hearing officer may not be appealed to the Board or the State Board of Education. If the hearing officer decides that the principal shall be retained, the retention period shall not exceed 2 years.

2.In the event (i) the local school council does not renew the performance contract of the principal, or the principal fails to receive a satisfactory rating as provided in subsection (h) of Section 34-8.3 [105 ILCS 5/34-8.3], or the principal is removed for cause during the term of his or her performance contract in the manner provided by Section 34-85 [105 ILCS 5/34-85], or a vacancy in the position of principal otherwise occurs prior to the expiration of the term of a principal's performance contract, and (ii) the local school council fails to directly select a new principal to serve under a 4 year performance contract, the local school council in such event shall submit to the general superintendent a list of 3 candidates - listed in the local school council's order of preference - for the position of principal, one of which shall be selected by the general superintendent to serve as principal of the attendance center. If the general superintendent fails or refuses to select one of the candidates on the list to serve as principal within 30 days after being furnished with the candidate list, the general superintendent shall select and place a

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principal on an interim basis (i) for a period not to exceed one year or (ii) until the local school council selects a new principal with 7 affirmative votes as provided in subsection (c) of Section 34-2.2, whichever occurs first. If the local school council fails or refuses to select and appoint a new principal, as specified by subsection (c) of Section 34-2.2, the general superintendent may select and appoint a new principal on an interim basis for an additional year or until a new contract principal is selected by the local school council. There shall be no discrimination on the basis of race, sex, creed, color or disability unrelated to ability to perform in connection with the submission of candidates for, and the selection of a candidate to serve as principal of an attendance center. No person shall be directly selected, listed as a candidate for, or selected to serve as principal of an attendance center (i) if such person has been removed for cause from employment by the Board or (ii) if such person does not hold a valid administrative certificate issued or exchanged under Article 21 [105 ILCS 5/21-1 et seq.] and endorsed as required by that Article for the position of principal. A principal whose performance contract is not renewed as provided under subsection (c) of Section 34-2.2 may nevertheless, if otherwise qualified and certified as herein provided and if he or she has received a satisfactory rating as provided in subsection (h) of Section 34-8.3, be included by a local school council as one of the 3 candidates listed in order of preference on any candidate list from which one person is to be selected to serve as principal of the attendance center under a new performance contract. The initial candidate list required to be submitted by a local school council to the general superintendent in cases where the local school council does not renew the performance contract of its principal and does not directly select a new principal to serve under a 4 year performance contract shall be submitted not later than 30 days prior to the expiration of the current performance contract. In cases where the local school council fails or refuses to submit the candidate list to the general superintendent no later than 30 days prior to the expiration of the incumbent principal's contract, the general superintendent may appoint a principal on an interim basis for a period not to exceed one year, during which time the local school council shall be able to select a new principal with 7 affirmative votes as provided in subsection (c) of Section 34-2.2. In cases where a principal is removed for cause or a vacancy otherwise occurs in the position of principal and the vacancy is not filled by direct selection by the local school council, the candidate list shall be submitted by the local school council to the general superintendent within 90 days after the date such removal or vacancy occurs. In cases where the local school council fails or refuses to submit the candidate list to the general superintendent within 90 days after the date of the vacancy, the general superintendent may appoint a principal on an interim basis for a period of one year, during which time the local school council shall be able to select a new principal with 7 affirmative votes as provided in subsection (c) of Section 34-2.2.

2.5.Whenever a vacancy in the office of a principal occurs for any reason, the vacancy shall be filled in the manner provided by this Section by the selection of a new principal to serve under a 4 year performance contract.

3.To establish additional criteria to be included as part of the performance contract of its principal, provided that such additional criteria shall not discriminate on the basis of race, sex, creed, color or disability unrelated to ability to perform, and shall not be inconsistent with the uniform 4 year performance contract for principals developed by the board as

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provided in Section 34-8.1 of the School Code [105 ILCS 5/34-8.1] or with other provisions of this Article governing the authority and responsibility of principals.

4.To approve the expenditure plan prepared by the principal with respect to all funds allocated and distributed to the attendance center by the Board. The expenditure plan shall be administered by the principal. Notwithstanding any other provision of this Act or any other law, any expenditure plan approved and administered under this Section 34-2.3 shall be consistent with and subject to the terms of any contract for services with a third party entered into by the Chicago School Reform Board of Trustees or the board under this Act.

Via a supermajority vote of 7 members of the local school council or 8 members of a high school local school council, the Council may transfer allocations pursuant to Section 34-2.3 within funds; provided that such a transfer is consistent with applicable law and collective bargaining agreements.

Beginning in fiscal year 1991 and in each fiscal year thereafter, the Board may reserve up to 1% of its total fiscal year budget for distribution on a prioritized basis to schools throughout the school system in order to assure adequate programs to meet the needs of special student populations as determined by the Board. This distribution shall take into account the needs catalogued in the Systemwide Plan and the various local school improvement plans of the local school councils. Information about these centrally funded programs shall be distributed to the local school councils so that their subsequent planning and programming will account for these provisions.

Beginning in fiscal year 1991 and in each fiscal year thereafter, from other amounts available in the applicable fiscal year budget, the board shall allocate a lump sum amount to each local school based upon such formula as the board shall determine taking into account the special needs of the student body. The local school principal shall develop an expenditure plan in consultation with the local school council, the professional personnel leadership committee and with all other school personnel, which reflects the priorities and activities as described in the school's local school improvement plan and is consistent with applicable law and collective bargaining agreements and with board policies and standards; however, the local school council shall have the right to request waivers of board policy from the board of education and waivers of employee collective bargaining agreements pursuant to Section 34-8.1a [105 ILCS 5/34-8.1a].

The expenditure plan developed by the principal with respect to amounts available from the fund for prioritized special needs programs and the allocated lump sum amount must be approved by the local school council.

The lump sum allocation shall take into account the following principles:

a.Teachers: Each school shall be allocated funds equal to the amount appropriated in the previous school year for compensation for teachers (regular grades kindergarten through 12th grade) plus whatever increases in compensation have been negotiated contractually or through longevity as provided in the negotiated agreement. Adjustments shall be made due to layoff or reduction in force, lack of funds or work, change in subject requirements, enrollment changes, or contracts with third parties for the performance of services or to

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rectify any inconsistencies with system-wide allocation formulas or for other legitimate reasons.

b.Other personnel: Funds for other teacher certificated and uncertificated personnel paid through non-categorical funds shall be provided according to system-wide formulas based on student enrollment and the special needs of the school as determined by the Board.

c.Non-compensation items: Appropriations for all non-compensation items shall be based on system-wide formulas based on student enrollment and on the special needs of the school or factors related to the physical plant, including but not limited to textbooks, electronic textbooks and the technological equipment necessary to gain access to and use electronic textbooks, supplies, electricity, equipment, and routine maintenance.

d.Funds for categorical programs: Schools shall receive personnel and funds based on, and shall use such personnel and funds in accordance with State and Federal requirements applicable to each categorical program provided to meet the special needs of the student body (including but not limited to, Federal Chapter I, Bilingual, and Special Education).

d.1.Funds for State Title I: Each school shall receive funds based on State and Board requirements applicable to each State Title I pupil provided to meet the special needs of the student body. Each school shall receive the proportion of funds as provided in Section 18-8 [repealed] to which they are entitled. These funds shall be spent only with the budgetary approval of the Local School Council as provided in Section 34-2.3.

e.The Local School Council shall have the right to request the principal to close positions and open new ones consistent with the provisions of the local school improvement plan provided that these decisions are consistent with applicable law and collective bargaining agreements. If a position is closed, pursuant to this paragraph, the local school shall have for its use the system-wide average compensation for the closed position.

f.Operating within existing laws and collective bargaining agreements, the local school council shall have the right to direct the principal to shift expenditures within funds.

g.(Blank).

Any funds unexpended at the end of the fiscal year shall be available to the board of education for use as part of its budget for the following fiscal year.

5.To make recommendations to the principal concerning textbook selection and concerning curriculum developed pursuant to the school improvement plan which is consistent with systemwide curriculum objectives in accordance with Sections 34-8 and 34-18 of the School Code [105 ILCS 5/34-8 and 105 ILCS 5/34-18] and in conformity with the collective bargaining agreement.

6.To advise the principal concerning the attendance and disciplinary policies for the attendance center, subject to the provisions of this Article and Article 26 [105 ILCS 5/26-1 et seq.], and consistent with the uniform system of discipline established by the board pursuant to Section 34-19 [105 ILCS 5/34-19].

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7.To approve a school improvement plan developed as provided in Section 34-2.4 [105 ILCS 5/34-2.4]. The process and schedule for plan development shall be publicized to the entire school community, and the community shall be afforded the opportunity to make recommendations concerning the plan. At least twice a year the principal and local school council shall report publicly on progress and problems with respect to plan implementation.

8.To evaluate the allocation of teaching resources and other certificated and uncertificated staff to the attendance center to determine whether such allocation is consistent with and in furtherance of instructional objectives and school programs reflective of the school improvement plan adopted for the attendance center; and to make recommendations to the board, the general superintendent and the principal concerning any reallocation of teaching resources or other staff whenever the council determines that any such reallocation is appropriate because the qualifications of any existing staff at the attendance center do not adequately match or support instructional objectives or school programs which reflect the school improvement plan.

9.To make recommendations to the principal and the general superintendent concerning their respective appointments, after August 31, 1989, and in the manner provided by Section 34-8 and Section 34-8.1, of persons to fill any vacant, additional or newly created positions for teachers at the attendance center or at attendance centers which include the attendance center served by the local school council.

10.To request of the Board the manner in which training and assistance shall be provided to the local school council. Pursuant to Board guidelines a local school council is authorized to direct the Board of Education to contract with personnel or not-for-profit organizations not associated with the school district to train or assist council members. If training or assistance is provided by contract with personnel or organizations not associated with the school district, the period of training or assistance shall not exceed 30 hours during a given school year; person shall not be employed on a continuous basis longer than said period and shall not have been employed by the Chicago Board of Education within the preceding six months. Council members shall receive training in at least the following areas:

1.school budgets;

2.educational theory pertinent to the attendance center's particular needs, including the development of the school improvement plan and the principal's performance contract; and

3.personnel selection.

Council members shall, to the greatest extent possible, complete such training within 90 days of election.

11.In accordance with systemwide guidelines contained in the System-Wide Educational Reform Goals and Objectives Plan, criteria for evaluation of performance shall be established for local school councils and local school council members. If a local school

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council persists in noncompliance with systemwide requirements, the Board may impose sanctions and take necessary corrective action, consistent with Section 34-8.3.

12.Each local school council shall comply with the Open Meetings Act [5 ILCS 120/1 et seq.] and the Freedom of Information Act [5 ILCS 140/1 et seq.]. Each local school council shall issue and transmit to its school community a detailed annual report accounting for its activities programmatically and financially. Each local school council shall convene at least 2 well-publicized meetings annually with its entire school community. These meetings shall include presentation of the proposed local school improvement plan, of the proposed school expenditure plan, and the annual report, and shall provide an opportunity for public comment.

13.Each local school council is encouraged to involve additional non-voting members of the school community in facilitating the council's exercise of its responsibilities.

14.The local school council may adopt a school uniform or dress code policy that governs the attendance center and that is necessary to maintain the orderly process of a school function or prevent endangerment of student health or safety, consistent with the policies and rules of the Board of Education. A school uniform or dress code policy adopted by a local school council: (i) shall not be applied in such manner as to discipline or deny attendance to a transfer student or any other student for noncompliance with that policy during such period of time as is reasonably necessary to enable the student to acquire a school uniform or otherwise comply with the dress code policy that is in effect at the attendance center into which the student's enrollment is transferred; and (ii) shall include criteria and procedures under which the local school council will accommodate the needs of or otherwise provide appropriate resources to assist a student from an indigent family in complying with an applicable school uniform or dress code policy. A student whose parents or legal guardians object on religious grounds to the student's compliance with an applicable school uniform or dress code policy shall not be required to comply with that policy if the student's parents or legal guardians present to the local school council a signed statement of objection detailing the grounds for the objection.

15.All decisions made and actions taken by the local school council in the exercise of its powers and duties shall comply with State and federal laws, all applicable collective bargaining agreements, court orders and rules properly promulgated by the Board.

15a.To grant, in accordance with board rules and policies, the use of assembly halls and classrooms when not otherwise needed, including lighting, heat, and attendants, for public lectures, concerts, and other educational and social activities.

15b.To approve, in accordance with board rules and policies, receipts and expenditures for all internal accounts of the attendance center, and to approve all fund-raising activities by nonschool organizations that use the school building.

16.(Blank).

17.Names and addresses of local school council members shall be a matter of public record.

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(Source: P.A. 86-124; 86-1422; 86-1477; 87-455; 88-85, § 55; 88-511, § 20; 88-686, § 5; 89-15, § 5; 89-610, § 5; 89-636, § 5; 90-14, § 2-135; 91-622, § 10; 91-728, § 5; 93-48, § 5; 96-1403, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-2.3.

Section 95 of P.A. 91-622 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1993 amendment by P.A. 88-85, effective July 14, 1993, added subsection 2.5.

The 1993 amendment by P.A. 88-511, effective November 14, 1993, incorporated the amendments made by P.A. 88-85, § 55, and in subsection 2.5 of the first paragraph deleted "other than the failure to renew the performance contract of that principal"; and in subdivision 4.g. substituted "reserve" for "supernumerary".

The 1994 amendment by P.A. 88-686, effective January 24, 1995, in subsection 1, in the first sentence, inserted "(including a new principal to fill a vacancy)", deleted "or to fill a vacancy" preceding "provided that (i)" and inserted "under a 4 year performance contract"; in subsection 2, in the first sentence, inserted "(including a new principal to fill a vacancy)" and deleted "or to fill a vacancy" preceding "the local school council"; and in subsection 2.5 substituted "by the selection of a new principal to serve under a 4 year performance contract" for "for the unexpired term of the performance contract of the principal creating the vacancy".

The 1995 amendment by P.A. 89-15, effective May 30, 1995, substituted "general superintendent" for "subdistrict superintendent" throughout the section; in the introductory language deleted "subdistrict councils and" preceding "the board of education"; in subsection 2, in the first sentence, inserted, "or the principal fails to receive a satisfactory rating as provided in subsection (h) of Section 34-8.3" and in the fifth sentence inserted "and if he or she has received a satisfactory rating as provided in subsection (h) of Section 34-8.3"; in subsection 4, in the first paragraph, added the third sentence, in the third paragraph, in the first sentence, deleted, "subdistrict and city wide" preceding "programs" in the fourth paragraph, in the first sentence, substituted "such formula as the board shall determine taking into account" for "the school enrollment and", in the second sentence inserted "and with board policies and standards" and added "pursuant to Section 34-8.1a" at the end and deleted the former last sentence which read "No waiver of collective bargaining agreements shall be allowed unless there is agreement of the unions affected by the proposed waiver", in the sixth paragraph substituted "take into account" for "be based on"; in subdivision 4.a. deleted "Quota" preceding "Teachers" in the subdivision catchline and in the first sentence and in the second sentence inserted "due to layoff or reduction in force, lack of funds or work, change in subject requirements", substituted "enrollment changes, or contracts with third parties for the performance of services or" for "for enrollment changes from the previous school year and/or" and added "or for other legitimate reasons" at the end; deleted subdivision 4.g. regarding salary which will cost more than allocated; added subsection 15a. and 15b; and deleted subsection 16 regarding authority of local school council to monitor expenditures.

The 1996 amendment by P.A. 89-610, effective August 6, 1996, in subsection 14, in the first sentence, deleted from the beginning "If parents or officials of an individual attendance center request", substituted "may adopt" for "to initiate", deleted "at" preceding "that governs", inserted "governs the" and substituted "and that is necessary to maintain the orderly process of a school function or prevent endangerment of student health or safety, consistent with the policies and

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rules of the Board of Education" for "the local school council may, but shall not be required to, initiate such a policy" and added the second and third sentences.

The 1996 amendment by P.A. 89-636, effective August 9, 1996, in the fourth sentence of subdivision 2 substituted "(i) if such person has been removed for cause from employment by the Board or (ii) if" for "unless"; and substituted "does not hold" for "holds".

The 1997 amendment by P.A. 90-14, effective July 1, 1997, combined the amendments by P.A. 89-610 and P.A. 89-636.

The 1999 amendment by P.A. 91-622, effective August 19, 1999, in subdivision 1. inserted designations (A), (B), and (C), substituted the language in subdivision 1.(A) for "To evaluate the performance of the principal of the attendance center taking into consideration the annual evaluation of the principal conducted by the general superintendent pursuant to subsection (h) of Section 34-8.3", and in item (i) of subdivision 1.(C) substituted "no later than 45 days prior to the expiration of the current performance contract of the principal" for "by April 15 of the calendar year in which the current performance contract of the principal expires"; inserted subdivisions 1.5. and 1.10.; and rewrote subdivision 2. to the extent that a detailed comparison would be impracticable.

The 2000 amendment by P.A. 91-728, effective June 2, 2000, inserted "and subdivision 1.5 of this Section" in subdivision 1.(B); in subdivision 1.(C) inserted "based upon the evaluation required by subdivision 1.5 of this Section, shall be made no later than 150 days prior to the expiration of the current performance-based contract of the principal, (ii)" and substituted "(iii)" for "(ii)" in the first sentence; rewrote subdivision 1.5 to the extent that a detailed comparison would be impracticable; and inserted the second sentence in subdivision 1.10 and made a related change.

The 2003 amendment by P.A. 93-48, effective July 1, 2003, substituted "professional personnel leadership committee" for "professional personnel advisory committee" in the second sentence of the fourth paragraph of subdivision (4).

The 2010 amendment by P.A. 96-1403, effective July 29, 2010, inserted "electronic textbooks and the technological equipment necessary to gain access to and use electronic textbooks" in 4.c.

CASE NOTES

Analysis

Filling of Vacancies
Judicial Review
Private Right of Action

Filling of Vacancies

The requirement that direct selection by the local school council of a new principal to fill a vacancy "shall" be made within 90 days is directory, rather than mandatory, and the failure to select a new principal within that time period does not divest the council of power to select a new principal. Chicago Sch. Reform Bd. of Trustees v. Martin, 309 Ill. App. 3d 924, 243 Ill. Dec. 428, 723 N.E.2d 731, 1999 Ill. App. LEXIS 879 (1 Dist. 1999).

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Judicial Review

School board's refusal to ratify a contract offered to a prinicipal candidate by a local school council (LSC) was a quasi-legislative, not a quasi-judicial decision; thus the appropriate avenue for review of that decision by the courts was through a declaratory judgment action rather than by a writ of certiorari. Brown v. Duncan, 361 Ill. App. 3d 125, 296 Ill. Dec. 663, 836 N.E.2d 78, 2005 Ill. App. LEXIS 881 (1 Dist. 2005).

Members of a local school council (LSC) could not obtain relief under the Illinois Administrative Review Law, 735 ILCS 5/3-101 et seq., after a school board refused to ratify a contract the LSC entered into with a candidate for a principal's decision because the school board's enabling statute, 105 ILCS 5/34-1 et seq., did not expressly adopt the Law. Brown v. Duncan, 361 Ill. App. 3d 125, 296 Ill. Dec. 663, 836 N.E.2d 78, 2005 Ill. App. LEXIS 881 (1 Dist. 2005).

Private Right of Action

The Reform Act is not remedial in nature and plaintiff, as principal, was not an intended beneficiary of the Act; therefore, no private right of action existed. Asllani v. Board of Educ., 845 F. Supp. 1209 (N.D. Ill. 1993).

§ 105 ILCS 5/34-2.3a. Recommendations of the Principal

Sec. 34-2.3a. Recommendations of the Principal. The principal of each attendance center shall be encouraged to make recommendations to the appropriate local school council concerning all educational aspects of the attendance center.

(Source: P.A. 85-1418; 86-1477.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-2.3a.

§ 105 ILCS 5/34-2.3b. Local School Council Training

Sec. 34-2.3b. Local School Council Training. The board shall collaborate with universities and other interested entities and individuals to offer training to local school council members on topics relevant to school operations and their responsibilities as local school council members, including but not limited to legal requirements, role differentiation, responsibilities, and authorities, and improving student achievement. Training of local school council members shall be provided at the direction of the board in consultation with the Council of Chicago-area Deans of Education. Incoming local school council members shall be required to complete a 3-day training program provided under this Section within 6 months of taking office. The board shall monitor the

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compliance of incoming local school council members with the 3-day training program requirement established by this Section. The board shall declare vacant the office of a local school council member who fails to complete the 3-day training program provided under this Section within the 6 month period allowed. Any such vacancy shall be filled as provided in subsection (o) of Section 34-2.1 [105 ILCS 5/34-2.1] by appointment of another person qualified to hold the office. In addition to requiring local school council members to complete the 3-day training program under this Section, the board may encourage local school council members to complete additional training during their term of office and shall provide recognition for individuals completing that additional training. The board is authorized to collaborate with universities, non-profits, and other interested organizations and individuals to offer additional training to local school council members on a regular basis during their term in office. The board shall not be required to bear the cost of the required 3-day training program or any additional training provided to local school council members under this Section.

The board shall also offer training to aid local school councils in developing principal evaluation procedures and criteria. The board shall send out requests for proposals concerning this training and is authorized to contract with universities, non-profits, and other interested organizations and individuals to provide this training. The board is authorized to use funds from private organizations, non-profits, or any other outside source as well as its own funds for this purpose.

(Source: P.A. 88-686, § 5; 89-15, § 5; 90-100, § 5; 91-622, § 10.)

Note.

Section 95 of P.A. 91-622 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 88-686 made this section effective upon becoming law. The Act was approved January 24, 1995.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, rewrote this section.

The 1997 amendment by P.A. 90-100, effective July 11, 1997, in the second sentence deleted "through Chicago area universities" preceding "at the direction" and substituted "the board" for "Dean of the College of Education at the University of Illinois at Chicago and".

The 1999 amendment by P.A. 91-622, effective August 19, 1999, added the last paragraph.

§ 105 ILCS 5/34-2.4. School improvement plan

Sec. 34-2.4. School improvement plan. A 3 year local school improvement plan shall be developed and implemented at each attendance center. This plan shall reflect the

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overriding purpose of the attendance center to improve educational quality. The local school principal shall develop a school improvement plan in consultation with the local school council, all categories of school staff, parents and community residents. Once the plan is developed, reviewed by the professional personnel leadership committee, and approved by the local school council, the principal shall be responsible for directing implementation of the plan, and the local school council shall monitor its implementation. After the termination of the initial 3 year plan, a new 3 year plan shall be developed and modified as appropriate on an annual basis.

The school improvement plan shall be designed to achieve priority goals including but not limited to:

(a) assuring that students show significant progress toward meeting and exceeding State performance standards in State mandated learning areas, including the mastery of higher order thinking skills in these areas;

(b) assuring that students attend school regularly and graduate from school at such rates that the district average equals or surpasses national norms;

(c) assuring that students are adequately prepared for and aided in making a successful transition to further education and life experience;

(d) assuring that students are adequately prepared for and aided in making a successful transition to employment; and

(e) assuring that students are, to the maximum extent possible, provided with a common learning experience that is of high academic quality and that reflects high expectations for all students' capacities to learn.

With respect to these priority goals, the school improvement plan shall include but not be limited to the following:

(a) an analysis of data collected in the attendance center and community indicating the specific strengths and weaknesses of the attendance center in light of the goals specified above, including data and analysis specified by the State Board of Education pertaining to specific measurable outcomes for student performance, the attendance centers, and their instructional programs;

(b) a description of specific annual objectives the attendance center will pursue in achieving the goals specified above;

(c) a description of the specific activities the attendance center will undertake to achieve its objectives;

(d) an analysis of the attendance center's staffing pattern and material resources, and an explanation of how the attendance center's planned staffing pattern, the deployment of staff, and the use of material resources furthers the objectives of the plan;

(e) a description of the key assumptions and directions of the school's curriculum and the academic and non-academic programs of the attendance center, and an explanation of how this curriculum and these programs further the goals and objectives of the plan;

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(f) a description of the steps that will be taken to enhance educational opportunities for all students, regardless of gender, including limited English proficient students, disabled students, low-income students and minority students;

(g) a description of any steps which may be taken by the attendance center to educate parents as to how they can assist children at home in preparing their children to learn effectively;

(h) a description of the steps the attendance center will take to coordinate its efforts with, and to gain the participation and support of, community residents, business organizations, and other local institutions and individuals;

(i) a description of any staff development program for all school staff and volunteers tied to the priority goals, objectives, and activities specified in the plan;

(j) a description of the steps the local school council will undertake to monitor implementation of the plan on an ongoing basis;

(k) a description of the steps the attendance center will take to ensure that teachers have working conditions that provide a professional environment conducive to fulfilling their responsibilities;

(l) a description of the steps the attendance center will take to ensure teachers the time and opportunity to incorporate new ideas and techniques, both in subject matter and teaching skills, into their own work;

(m) a description of the steps the attendance center will take to encourage pride and positive identification with the attendance center through various athletic activities; and

(n) a description of the student need for and provision of services to special populations, beyond the standard school programs provided for students in grades K through 12 and those enumerated in the categorical programs cited in item d of part 4 of Section 34-2.3 [105 ILCS 5/34-2.3], including financial costs of providing same and a timeline for implementing the necessary services, including but not limited, when applicable, to ensuring the provisions of educational services to all eligible children aged 4 years for the 1990-91 school year and thereafter, reducing class size to State averages in grades K-3 for the 1991-92 school year and thereafter and in all grades for the 1993-94 school year and thereafter, and providing sufficient staff and facility resources for students not served in the regular classroom setting.

Based on the analysis of data collected indicating specific strengths and weaknesses of the attendance center, the school improvement plan may place greater emphasis from year to year on particular priority goals, objectives, and activities.

(Source: P.A. 85-1418; 86-1477; 88-686, § 5; 93-48, § 5.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 34-2.4.

Effect of Amendments. The 1994 amendment by P.A. 88-686, effective January 24, 1995, in subsection (a) under the second paragraph substituted "show significant progress toward meeting and exceeding State performance standards in State mandated learning areas, including the mastery of higher order thinking skills in these areas" for "achieve proficiency in reading, writing, mathematics, science, and critical thinking skills so that district averages equal or surpass national norms"; in subsection (a) under the third paragraph added the language at the end beginning "including data"; and added the last paragraph.

The 2003 amendment by P.A. 93-48, effective July 1, 2003, substituted "reviewed by the professional personnel leadership committee, and approved by the local school council" for "and after the local school council has approved the same" in the third sentence of the introductory paragraph.

CASE NOTES

Authority

Board had the authority to close seven schools governed by Local School Councils (LSC) and open schools designated as "small" or "alternative" schools in their place under the Board's control. Although the interested parties claimed that the Board acted beyond its authority, the express language of the School Code, 105 ILCS 5/34-2.4(b), allowed the Board to act as it did and the interested parties did not introduce evidence to show that the Board was not entitled to judgment as a matter of law. Parents United for Responsible Educ. v. Bd. of Educ., Ill. App. 3d , 353 Ill. Dec. 490, 956 N.E.2d 10, 2011 Ill. App. LEXIS 784 (1 Dist. 2011).

§ 105 ILCS 5/34-2.4a. Professional personnel leadership committee

Sec. 34-2.4a. Professional personnel leadership committee. (a) At each attendance center operated pursuant to this Article, a professional personnel leadership committee consisting of (i) up to 7 members elected each school year who are certified classroom teachers or other certificated personnel, who are employed at the attendance center, and who desire to be members of the committee and (ii) the 2 teacher members of the local school council. The teacher members of the local school council shall serve as co-chairs of the committee, or one teacher member of the local school council chosen by the committee shall serve as chair of the committee. The size of the committee shall be determined by the certified classroom teachers and other certificated personnel at the attendance center, including the principal.

(b) The purpose of the committee is to develop and formally present recommendations to the principal and the local school council on all matters of educational program, including but not limited to curriculum, school improvement plan development and implementation, and school budgeting.

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(c) For the elected committee members, the principal shall convene a publicized meeting of all certified classroom teachers and other certificated personnel, at which meeting those certified classroom teachers and other certificated personnel present, excluding the principal, shall elect members to serve on the committee. A staff member eligible to vote may vote for the same number of candidates in the election as the number of members to be elected, but votes shall not be cumulated. Ties shall be determined by lot. Vacancies shall be filled in like manner.

(d) All committee meetings shall be held before or after school with no loss of instructional time. Committee members shall receive no compensation for their activities as committee members.

(e) In furtherance of its purpose, the committee shall have the authority to gather information from school staff through interviews, on noninstructional time, without the prior approval of the principal, the local school council, the board, the board's chief executive officer, or the chief executive officer's administrative staff.

The committee shall meet once a month with the principal to make recommendations to the principal regarding the specific methods and contents of the school's curriculum and to make other educational improvement recommendations approved by the committee. A report from the committee regarding these matters may be an agenda item at each regular meeting of the local school council.

The principal shall provide the committee with the opportunity to review and make recommendations regarding the school improvement plan and school budget. The teacher members of the local school council may bring motions concerning the recommendations approved by the committee, which motions shall formally be considered at meetings of the local school council.

(Source: P.A. 85-1418; 86-1477; 93-48, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-2.4a.

Effect of Amendments. The 2003 amendment by P.A. 93-48, effective July 1, 2003, rewrote the section.

§ 105 ILCS 5/34-2.4b. Limitation upon applicability

Sec. 34-2.4b. Limitation upon applicability. The provisions of Sections 34-2.1, 34-2.2, 34-2.3, 34-2.3a, 34-2.4 and 34-8.3 [105 ILCS 5/34-2.1, 105 ILCS 5/34-2.2, 105 ILCS 5/34-2.3, 105 ILCS 5/34-2.3a, 105 ILCS 5/34-2.4 and 105 ILCS 5/34-8.3], and those provisions of paragraph 1 of Section 34-18 [105 ILCS 5/34-18] and paragraph (c) of

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Section 34A-201a [105 ILCS 5/34A-201a] relating to the allocation or application - - by formula or otherwise - - of lump sum amounts and other funds to attendance centers, shall not apply to attendance centers that have applied for and been designated as a "Small School" by the Board, the Cook County Juvenile Detention Center and Cook County Jail schools, nor to the district's alternative schools for pregnant girls, nor to alternative schools established under Article 13A, nor to a contract school, nor to the Michael R. Durso School, the Jackson Adult Center, the Hillard Adult Center, the Alternative Transitional School, or any other attendance center designated by the Board as an alternative school, provided that the designation is not applied to an attendance center that has in place a legally constituted local school council, except for contract turnaround schools. The board of education shall have and exercise with respect to those schools and with respect to the conduct, operation, affairs and budgets of those schools, and with respect to the principals, teachers and other school staff there employed, the same powers which are exercisable by local school councils with respect to the other attendance centers, principals, teachers and school staff within the district, together with all powers and duties generally exercisable by the board of education with respect to all attendance centers within the district. The board of education shall develop appropriate alternative methods for involving parents, community members and school staff to the maximum extent possible in all of the activities of those schools, and may delegate to the parents, community members and school staff so involved the same powers which are exercisable by local school councils with respect to other attendance centers.

(Source: P.A. 86-124; 87-454; 89-15, § 5; 89-636, § 5; 90-566, § 5; 91-622, § 10; 96-105, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-2.4b.

Section 95 of P.A. 91-622 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the first sentence deleted "34-2.1b" preceding "34-2.2".

The 1996 amendment by P.A. 89-636, effective August 9, 1996, in the first sentence inserted "nor to alternative schools established under Article 13A".

The 1997 amendment by P.A. 90-566, effective January 2, 1998, in the first sentence inserted "attendance centers that have applied for and been designated as a 'Small School' by the Board".

The 1999 amendment by P.A. 91-622, effective August 19, 1999, deleted references to Washburne Trade School and the Industrial Skills Center from the list in the first sentence, and inserted the language beginning "or any other attendance center" and ending "school council" near the middle of the first sentence.

The 2009 amendment by P.A. 96-105, effective July 30, 2009, divided the former first sentence into the present first and second sentences; in the first sentence inserted "nor to a contract school", substituted "an attendance school" for "a school building", and added "except for contract

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turnaround schools"; and made related changes.

§ 105 ILCS 5/34-2.4c. Whistle Blower Protection

Sec. 34-2.4c. Whistle Blower Protection. (a) In any case involving the disclosure of information by an employee of the board of education or a local school council member, which the employee or member reasonably believes evidences (1) a violation of any law, rule, regulation, or policy, or (2) waste, fraud, mismanagement, abuse of authority, or a danger to the health or safety of students or the public, the identity of the employee or members may not be disclosed without the written consent of the employee or member during any investigation of the information or related matters.

(b) No disciplinary action may be taken against any employee or local school council member for the disclosure of information by that employee or local school council member that evidences (1) a violation of any law, rule, regulation, or policy, or (2) waste, fraud, mismanagement, abuse of authority, or a danger to the health or safety of a student or the public. For the purposes of this Section, disciplinary action means any retaliatory action taken against an employee or local school council member by the board of education, employees of the board of education, local school councils, or exclusive bargaining representatives of employees, including, but not limited to, reprimand, suspension, discharge, demotion, involuntary transfer, harassment, or denial of promotion or voluntary transfer.

(c) A violation of this Section shall be a Class A misdemeanor.

(Source: P.A. 89-15, § 5.)

Effective Date. Section 99 of P.A. 89-15 made this section effective upon becoming law. The Act was approved May 30, 1995.

CASE NOTES

Analysis
Private Cause of Action
Retaliation

Private Cause of Action

Teacher's claims against a principal under the Illinois Whistle Blower Protection Act, 105 ILCS 5/34-2.4c, were dismissed because the Act did not provide a private right of action for whistle

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blower activities. Frazier v. Bd. of Educ., F. Supp. 2d , 2003 U.S. Dist. LEXIS 10946 (N.D. Ill. June 27, 2003).

Retaliation

Adverse employment actions for purposes of the Whistleblower provision of the Illinois School Code included forcing teachers to request transfers (which were then granted), after having discharged them for reporting unethical practices by the principal. Prato v. Vallas, 331 Ill. App. 3d 852, 265 Ill. Dec. 94, 771 N.E.2d 1053, 2002 Ill. App. LEXIS 451 (1 Dist. 2002), appeal denied, 201 Ill. 2d 613, 271 Ill. Dec. 941, 786 N.E.2d 199 (2002).

§ 105 ILCS 5/34-2.5: Repealed by P.A. 89-15, § 50, effective May 30, 1995.

§ 105 ILCS 5/34-3. Chicago School Reform Board of Trustees; new Chicago Board of Education; members; term; vacancies

Sec. 34-3. Chicago School Reform Board of Trustees; new Chicago Board of Education; members; term; vacancies. (a) Within 30 days after the effective date of this amendatory Act of 1995, the terms of all members of the Chicago Board of Education holding office on that date are abolished and the Mayor shall appoint, without the consent or approval of the City Council, a 5 member Chicago School Reform Board of Trustees which shall take office upon the appointment of the fifth member. The Chicago School Reform Board of Trustees and its members shall serve until, and the terms of all members of the Chicago School Reform Board of Trustees shall expire on, June 30, 1999 or upon the appointment of a new Chicago Board of Education as provided in subsection (b), whichever is later. Any vacancy in the membership of the Trustees shall be filled through appointment by the Mayor, without the consent or approval of the City Council, for the unexpired term. One of the members appointed by the Mayor to the Trustees shall be designated by the Mayor to serve as President of the Trustees. The Mayor shall appoint a full-time, compensated chief executive officer, and his or her compensation as such chief executive officer shall be determined by the Mayor. The Mayor, at his or her discretion, may appoint the President to serve simultaneously as the chief executive officer.

(b) Within 30 days before the expiration of the terms of the members of the Chicago Reform Board of Trustees as provided in subsection (a), a new Chicago Board of Education consisting of 7 members shall be appointed by the Mayor to take office on the later of July 1, 1999 or the appointment of the seventh member. Three of the members initially so appointed under this subsection shall serve for terms ending June 30, 2002, 4 of the members initially so appointed under this subsection shall serve for terms ending June 30, 2003, and each member initially so appointed shall continue to hold office until his or her successor is appointed and qualified. Thereafter at the expiration of the term of any member a successor shall be appointed by the Mayor and shall hold office for a term of 4 years, from July 1 of the year in which the term commences and until a successor is appointed and qualified. Any vacancy in the membership of the Chicago Board of

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Education shall be filled through appointment by the Mayor for the unexpired term. No appointment to membership on the Chicago Board of Education that is made by the Mayor under this subsection shall require the approval of the City Council, whether the appointment is made for a full term or to fill a vacancy for an unexpired term on the Board. The board shall elect annually from its number a president and vice-president, in such manner and at such time as the board determines by its rules. The officers so elected shall each perform the duties imposed upon their respective office by the rules of the board, provided that (i) the president shall preside at meetings of the board and vote as any other member but have no power of veto, and (ii) the vice president shall perform the duties of the president if that office is vacant or the president is absent or unable to act. The secretary of the Board shall be selected by the Board and shall be an employee of the Board rather than a member of the Board, notwithstanding subsection (d) of Section 34-3.3 [105 ILCS 5/34-3.3]. The duties of the secretary shall be imposed by the rules of the Board.

(c) The board may appoint a student to the board to serve in an advisory capacity. The student member shall serve for a term as determined by the board. The board may not grant the student member any voting privileges, but shall consider the student member as an advisor. The student member may not participate in or attend any executive session of the board.

(Source: P.A. 85-1418; 86-1477; 89-15, § 5; 90-811, § 5; 90-815, § 5; 94-231, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-3.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, rewrote this section.

The 1998 amendment by P.A. 90-811, effective January 26, 1999, substituted "president and vice-president" for "president, vice-president, and secretary" in the sixth sentence in subsection (b), and added the last sentence in subsection (b).

The 1998 amendment by P.A. 90-815, effective February 11, 1999 in subsection (b) in the sixth sentence, inserted the word "and" following "president" and deleted ", and secretary" following "vice-president" and added the last sentence.

The 2005 amendment by P.A. 94-231, effective July 14, 2005, added (c).

§ 105 ILCS 5/34-3.1: Repealed by P.A. 89-15, § 50, effective May 30, 1995.

§ 105 ILCS 5/34-3.2. Board training

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Sec. 34-3.2. Board training. After January 1, 1990 all board members shall participate in training provided by board employees or not-for-profit organizations, including without limitation the following:

1.budget and revenue review;

2.education theory and governance;

3.governmental relations;

4.school-based management; and

5.State and federal education law and regulations.

(Source: P.A. 85-1418; 86-1477.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-3.2.

CASE NOTES

Authority of Local School Council

The local school councils are intended by the legislature to be more than simply advisory but are intended, along with the local principal, to play an important role in the reform of the school system. Fumarolo v. Chicago Bd. of Educ., 142 Ill. 2d 54, 153 Ill. Dec. 177, 566 N.E.2d 1283 (1990).

§ 105 ILCS 5/34-3.3. Chicago School Reform Board of Trustees; powers and duties; chief operating, fiscal, educational, and purchasing officers

Sec. 34-3.3. Chicago School Reform Board of Trustees; powers and duties; chief operating, fiscal, educational, and purchasing officers. The General Assembly finds that an education crisis exists in the Chicago Public Schools and that a 5-member Chicago School Reform Board of Trustees shall be established for a 4 year period to bring educational and financial stability to the system. The Trustees and their chief executive officer are empowered and directed to: (i) increase the quality of educational services in the Chicago Public Schools; (ii) reduce the cost of non-educational services and implement cost-saving measures including the privatization of services where deemed appropriate; (iii) develop a long-term financial plan that to the maximum extent possible reflects a balanced budget for each year; (iv) streamline and strengthen the management of the system, including a responsible school-based budgeting process, in order to refocus

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resources on student achievement; (v) ensure ongoing academic improvement in schools through the establishment of an Academic Accountability Council and a strong school improvement and recognition process; (vi) enact policies and procedures that ensure the system runs in an ethical as well as efficient manner; (vii) establish within 60 days after the effective date of this amendatory Act of 1995, develop, and implement a process for the selection of a local school council advisory board for the Trustees in which those individuals active on Local School Councils serve an advisory role to the Trustees; (viii) establish any organizational structures, including regional offices, that it deems necessary to ensure the efficient and effective operation of the system; and (ix) provide for such other local school council advisory bodies as the Trustees deem appropriate to function in an advisory capacity to any other organizations or offices established by the Trustees under clause (viii) of this Section.

(a) Unless otherwise provided in this Article, the Trustees shall have all powers and duties exercised and performed by the Chicago Board of Education at the time the terms of its members are abolished as provided in subsection (a) of Section 34-3 [105 ILCS 5/34-3].

(b) The Mayor shall appoint a chief executive officer who shall be a person of recognized administrative ability and management experience, who shall be responsible for the management of the system, and who shall have all other powers and duties of the general superintendent as set forth in this Article 34. The chief executive officer shall make recommendations to the Trustees with respect to contracts, policies, and procedures.

(c) The chief executive officer shall appoint, with the approval of the Trustees, a chief operating officer, a chief fiscal officer, a chief educational officer, and a chief purchasing officer to serve until June 30, 1999. These officers shall be assigned duties and responsibilities by the chief executive officer. The chief operating officer, the chief fiscal officer, the chief educational officer, and the chief purchasing officer may be granted authority to hire a specific number of employees to assist in meeting immediate responsibilities. The chief executive officer may remove any officer, subject to the approval of the Trustees. Conditions of employment for such personnel shall not be subject to the provisions of Section 34-85 [105 ILCS 5/34-85].

(d) Upon the expiration on June 30, 1999 of the terms of office of the chief executive, operating, fiscal, educational, and purchasing officers appointed under this Section and the appointment of a new Chicago Board of Education under subsection (b) of Section 34-3 [105 ILCS 5/34-3], the board may retain, reorganize, or abolish any or all of those offices and appoint qualified successors to fill any of those offices that it does not abolish.

(e) The Trustees shall report to the State Superintendent of Education with respect to its performance, the nature of the reforms which it has instituted, the effect those reforms have had in the operation of the central administrative office and in the performance of pupils, staff, and members of the local school councils at the several attendance centers within the district, and such other matters as the Trustees deem necessary to help assure continuing improvement in the public school system of the district. The reports shall be public documents and shall be made annually, beginning with the school year that

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commences in 1995 and concluding in the school year beginning in 1999.

(Source: P.A. 89-15, § 5.)

Effective Date. Section 99 of P.A. 89-15 made this section effective upon becoming law. The Act was approved May 30, 1995.

CASE NOTES

Purpose

Illinois legislature's determination that an "education crisis" existed in the Chicago Public Schools only strengthened the determination that the legislature intended that the board of education did not have to give teachers a warning or show that their conduct caused damage before dismissing them for arriving at work under the influence of marijuana. Younge v. Bd. of Educ., 338 Ill. App. 3d 522, 273 Ill. Dec. 277, 788 N.E.2d 1153, 2003 Ill. App. LEXIS 410 (1 Dist. 2003).

§ 105 ILCS 5/34-3.4: Repealed by P.A. 91-622, § 10, effective June 30, 2004 pursuant to internal provision.

§ 105 ILCS 5/34-3.5. Partnership agreement on advancing student achievement; No Child Left Behind Act of 2001

Sec. 34-3.5. Partnership agreement on advancing student achievement; No Child Left Behind Act of 2001. (a) The General Assembly finds that the Chicago Teachers Union, the Chicago Board of Education, and the district's chief executive officer have a common responsibility beyond their statutory collective bargaining relationship to institute purposeful education reforms in the Chicago Public Schools that maximize the number of students in the Chicago Public Schools who reach or exceed proficiency with regard to State academic standards and assessments. The General Assembly further finds that education reform in the Chicago Public Schools must be premised on a commitment by all stakeholders to redefine relationships, develop, implement, and evaluate programs, seek new and additional resources, improve the value of educational programs to students, accelerate the quality of teacher training, improve instructional excellence, and develop and implement strategies to comply with the federal No Child Left Behind Act of 2001 (Public Law 107-110).

The Chicago Board of Education and the district's chief executive officer shall enter into a partnership agreement with the Chicago Teachers Union to allow the parties to work

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together to advance the Chicago Public Schools to the next level of education reform. This agreement must be entered into and take effect within 90 days after the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-3]. As part of this agreement, the Chicago Teachers Union, the Chicago Board of Education, and the district's chief executive officer shall jointly file a report with the General Assembly at the end of each school year with respect to the nature of the reforms that the parties have instituted, the effect of these reforms on student achievement, and any other matters that the parties deem relevant to evaluating the effectiveness of the agreement.

(b) Decisions concerning matters of inherent managerial policy necessary to comply with the federal No Child Left Behind Act of 2001 (Public Law 107-110), including such areas of discretion or policy as the functions of the employer, the standards and delivery of educational services and programs, the district's overall budget, the district's organizational structure, student assignment, school choice, and the selection of new employees and direction of employees, and the impact of these decisions on individual employees or the bargaining unit shall be permissive subjects of bargaining between the educational employer and the exclusive bargaining representative and are within the sole discretion of the educational employer to decide to bargain. This subsection (b) is exclusive of the parties' obligations and responsibilities under Section 4.5 of the Illinois Educational Labor Relations Act [115 ILCS 5/4.5] (provided that any dispute or impasse that may arise under this subsection (b) shall be resolved exclusively as set forth in subsection (b) of Section 12 of the Illinois Educational Labor Relations Act [115 ILCS 5/12] in lieu of a strike under Section 13 of the Illinois Educational Labor Relations Act [115 ILCS 5/13].

(Source: P.A. 93-3, § 5.)

Effective Date. Section 99 of P.A. 93-3, made this section effective upon becoming law. The Act was approved April 16, 2003.

§ 105 ILCS 5/34-4. Eligibility

Sec. 34-4. Eligibility. To be eligible for appointment to the board, a person shall be a citizen of the United States, shall be a registered voter as provided in the Election Code, shall have been a resident of the city for at least 3 years immediately preceding his or her appointment, and shall not be a child sex offender as defined in Section 11-9.3 of the Criminal Code of 1961 [720 ILCS 5/11-9.3]. Permanent removal from the city by any member of the board during his term of office constitutes a resignation therefrom and creates a vacancy in the board. Except for the President of the Chicago School Reform Board of Trustees who may be paid compensation for his or her services as chief executive officer as determined by the Mayor as provided in subsection (a) of Section 34-3 [105 ILCS 5/34-3], board members shall serve without any compensation; provided, that board members shall be reimbursed for expenses incurred while in the performance

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of their duties upon submission of proper receipts or upon submission of a signed voucher in the case of an expense allowance evidencing the amount of such reimbursement or allowance to the president of the board for verification and approval. The board of education may continue to provide health care insurance coverage, employer pension contributions, employee pension contributions, and life insurance premium payments for an employee required to resign from an administrative, teaching, or career service position in order to qualify as a member of the board of education. They shall not hold other public office under the Federal, State or any local government other than that of Director of the Regional Transportation Authority, member of the economic development commission of a city having a population exceeding 500,000, notary public or member of the National Guard, and by accepting any such office while members of the board, or by not resigning any such office held at the time of being appointed to the board within 30 days after such appointment, shall be deemed to have vacated their membership in the board.

(Source: P.A. 87-794; 89-15, § 5; 93-309, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-4.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the third sentence added at the beginning except for the President of the Chicago School Reform Board of Trustees who may be paid compensation for his or her services as chief executive officer as determined by the mayor as provided in subsection (a) of "Section 34-3".

The 2003 amendment by P.A. 93-309, effective January 1, 2004, inserted "shall be" preceding "a registered"; deleted "as heretofore or hereafter amended, and" preceding "shall have been"; inserted "or her" preceding "appointment"; and inserted "and shall not be a child sex offender as defined in Section 11-9.3 of the Criminal Code of 1961".

§ 105 ILCS 5/34-4.5. Chronic truants

Sec. 34-4.5. Chronic truants. (a) Office of Chronic Truant Adjudication. The board shall establish and implement an Office of Chronic Truant Adjudication, which shall be responsible for administratively adjudicating cases of chronic truancy and imposing appropriate sanctions. The board shall appoint or employ hearing officers to perform the adjudicatory functions of that Office. Principals and other appropriate personnel may refer pupils suspected of being chronic truants, as defined in Section 26-2a of this Code [105 ILCS 5/26-2a], to the Office of Chronic Truant Adjudication.

(b) Notices. Before any hearing may be held under subsection (c), the principal of the school attended by the pupil or the principal's designee shall notify the pupil's parent or guardian by personal visit, letter, or telephone of each unexcused absence of the pupil. After giving the parent or guardian notice of the tenth unexcused absence of the pupil, the

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principal or the principal's designee shall send the pupil's parent or guardian a letter, by certified mail, return receipt requested, notifying the parent or guardian that he or she is subjecting himself or herself to a hearing procedure as provided under subsection (c) and clearly describing any and all possible penalties that may be imposed as provided for in subsections (d) and (e) of this Section.

(c) Hearing. Once a pupil has been referred to the Office of Chronic Truant Adjudication, a hearing shall be scheduled before an appointed hearing officer, and the pupil and the pupil's parents or guardian shall be notified by certified mail, return receipt requested stating the time, place, and purpose of the hearing. The hearing officer shall hold a hearing and render a written decision within 14 days determining whether the pupil is a chronic truant as defined in Section 26-2a of this Code [105 ILCS 5/26-2a] and whether the parent or guardian took reasonable steps to assure the pupil's attendance at school. The hearing shall be private unless a public hearing is requested by the pupil's parent or guardian, and the pupil may be present at the hearing with a representative in addition to the pupil's parent or guardian. The board shall present evidence of the pupil's truancy, and the pupil and the parent or guardian or representative of the pupil may cross examine witnesses, present witnesses and evidence, and present defenses to the charges. All testimony at the hearing shall be taken under oath administered by the hearing officer. The decision of the hearing officer shall constitute an "administrative decision" for purposes of judicial review under the Administrative Review Law [735 ILCS 5/3-101 et seq.].

(d) Penalties. The hearing officer may require the pupil or the pupil's parent or guardian or both the pupil and the pupil's parent or guardian to do any or all of the following: perform reasonable school or community services for a period not to exceed 30 days; complete a parenting education program; obtain counseling or other supportive services; and comply with an individualized educational plan or service plan as provided by appropriate school officials. If the parent or guardian of the chronic truant shows that he or she took reasonable steps to insure attendance of the pupil at school, he or she shall not be required to perform services.

(e) Non-compliance with sanctions. If a pupil determined by a hearing officer to be a chronic truant or the parent or guardian of the pupil fails to comply with the sanctions ordered by the hearing officer under subsection (c) of this Section, the Office of Chronic Truant Adjudication may refer the matter to the State's Attorney for prosecution under Section 3-33.5 of the Juvenile Court Act of 1987 [705 ILCS 405/3-33.5].

(f) Limitation on applicability. Nothing in this Section shall be construed to apply to a parent or guardian of a pupil not required to attend a public school pursuant to Section 26-1 [105 ILCS 5/26-1].

(Source: P.A. 90-143, § 5; 90-566, § 5; 94-1011, § 11.)

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Effective Date. Section 99 of P.A. 90-143 made this section effective upon becoming law. The Act was approved July 23, 1997.

Effect of Amendments. The 1997 amendment by P.A. 90-566, effective January 2, 1998, in subsection (f) substituted "not required to attend a public school pursuant to Section 26-1" for "in a valid home school program".

The 2006 amendment by P.A. 94-1011, effective July 7, 2006, substituted "3-33.5" for "3-33" in (e).

§ 105 ILCS 5/34-5: Repealed by P.A. 89-15, § 50, effective May 30, 1995.

§ 105 ILCS 5/34-6. Superintendent of schools

Sec. 34-6. Superintendent of schools. After June 30, 1999, the board may, by a vote of a majority of its full membership, appoint a general superintendent of schools to serve pursuant to a performance-based contract for a term ending on June 30th of the third calendar year after his or her appointment. He shall be the chief administrative officer of the board and shall have charge and control, subject to the approval of the board and to other provisions of this Article, of all departments and the employees therein of public schools, except the law department. He shall negotiate contracts with all labor organizations which are exclusive representatives of educational employees employed under the Illinois Educational Labor Relations Act [115 ILCS 5/1 et seq.]. All contracts shall be subject to approval of the Board of Education. The board may conduct a national search for a general superintendent. An incumbent general superintendent may not be precluded from being included in such national search. Persons appointed pursuant to this Section shall be exempt from the provisions and requirements of Sections 21-1a, 21-7.1 and 21B-15 of this Code [105 ILCS 5/21-1a, 105 ILCS 5/21-7.1 and 105 ILCS 5/21B-15].

(Source: P.A. 85-1418; 86-1471; 86-1477; 86-1488; 87-1262, § 1; 89-15, § 5; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-6.

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1992 amendment, effective January 7, 1993, deleted from the end of the section "the period beginning January 1, 1990, and ending June 30, 1993".

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The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the first sentence, substituted "June 30, 1999" for "May 1, 1989", substituted "may" for "shall" and inserted "or her"; and in the fifth sentence substituted "may" for "shall".

The 2011 amendment by P.A. 97-607, effective August 26, 2011, substituted "Sections 21-1a, 21-7.1, and 21B-15 of this Code" for "Sections 21-1, 21-1a and 21-7.1" in the last sentence.

CASE NOTES

Mootness

- Shown

Plaintiffs' action for declaratory judgment against the Board of Education of the City of Chicago, challenging the reappointment of the General Superintendent of Schools was moot, as the superintendent submitted his resignation as superintendent, and the case was not one of public interest which should be decided for the future guidance of board members. Johnson v. Board of Educ., 79 Ill. App. 2d 22, 223 N.E.2d 434 (1 Dist. 1967).

§ 105 ILCS 5/34-6.1. [Report on Freedom of Information Act requests]

Sec. 34-6.1. The president or general superintendent shall report any requests made of the district under provisions of The Freedom of Information Act [5 ILCS 140/1 et seq.] and shall report the status of the district's response.

(Source: P.A. 85-942.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-6.1.

§ 105 ILCS 5/34-7. Establishment of departments

Sec. 34-7. Establishment of departments. The board of education shall establish such general departments as it may deem necessary or appropriate and determine the duties and functions of each. The heads of such departments shall be appointed by the general superintendent of schools subject to the approval of a majority of the full membership of the board. Nothing contained in this Section shall apply to the law department.

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(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-7.

§ 105 ILCS 5/34-8. Powers and duties of general superintendent

Sec. 34-8. Powers and duties of general superintendent. The general superintendent of schools shall prescribe and control, subject to the approval of the board and to other provisions of this Article, the courses of study mandated by State law, textbooks, educational apparatus and equipment, discipline in and conduct of the schools, and shall perform such other duties as the board may by rule prescribe. The superintendent shall also notify the State Board of Education, the board and the chief administrative official, other than the alleged perpetrator himself, in the school where the alleged perpetrator serves, that any person who is employed in a school or otherwise comes into frequent contact with children in the school has been named as a perpetrator in an indicated report filed pursuant to the Abused and Neglected Child Reporting Act [325 ILCS 5/1 et seq.], approved June 26, 1975, as amended.

The general superintendent may be granted the authority by the board to hire a specific number of employees to assist in meeting immediate responsibilities. Conditions of employment for such personnel shall not be subject to the provisions of Section 34-85 [105 ILCS 5/34-85].

The general superintendent may, pursuant to a delegation of authority by the board and Section 34-18 [105 ILCS 5/34-18], approve contracts and expenditures.

Pursuant to other provisions of this Article, sites shall be selected, schoolhouses located thereon and plans therefor approved, and textbooks and educational apparatus and equipment shall be adopted and purchased by the board only upon the recommendation of the general superintendent of schools or by a majority vote of the full membership of the board and, in the case of textbooks, subject to Article 28 of this Act [105 ILCS 5/28-1 et seq.]. The board may furnish free textbooks to pupils and may publish its own textbooks and manufacture its own apparatus, equipment and supplies.

In addition, in January of each year, the general superintendent of schools shall report to the State Board of Education the number of high school students in the district who are enrolled in accredited courses (for which high school credit will be awarded upon successful completion of the courses) at any community college, together with the name and number of the course or courses which each such student is taking.

The general superintendent shall also have the authority to monitor the performance of attendance centers, to identify and place an attendance center on remediation and probation, and to recommend to the board that the attendance center be placed on

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intervention and be reconstituted, subject to the provisions of Sections 34-8.3 and 8.4 [105 ILCS 5/34-8.3 and 105 ILCS 5/34-8.4].

The general superintendent, or his or her designee, shall conduct an annual evaluation of each principal in the district pursuant to guidelines promulgated by the Board and the Board approved principal evaluation form. The evaluation shall be based on factors, including the following: (i) student academic improvement, as defined by the school improvement plan; (ii) student absenteeism rates at the school; (iii) instructional leadership; (iv) effective implementation of programs, policies, or strategies to improve student academic achievement; (v) school management; and (vi) other factors, including, without limitation, the principal's communication skills and ability to create and maintain a student-centered learning environment, to develop opportunities for professional development, and to encourage parental involvement and community partnerships to achieve school improvement.

Effective no later than September 1, 2012, the general superintendent or his or her designee shall develop a written principal evaluation plan. The evaluation plan must be in writing and shall supersede the evaluation requirements set forth in this Section. The evaluation plan must do at least all of the following:

(1) Provide for annual evaluation of all principals employed under a performance contract by the general superintendent or his or her designee, no later than July 1st of each year.

(2) Consider the principal's specific duties, responsibilities, management, and competence as a principal.

(3) Specify the principal's strengths and weaknesses, with supporting reasons.

(4) Align with research-based standards.

(5) Use data and indicators on student growth as a significant factor in rating principal performance.

(Source: P.A. 86-721; 86-1477; 88-511, § 45; 89-15, § 5; 91-622, § 10; 95-496, § 5; 96-861, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-8.

Section 95 of P.A. 91-622 contains a "no acceleration or delay" provision.

Section 95 of P.A. 95-496 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1993 amendment by P.A. 88-511, effective November 14, 1993, added the sixth paragraph.

The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the third paragraph inserted "and Section 34-18" and deleted from the end "in amounts of $10,000 or less"; and in the sixth

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paragraph substituted the language beginning "also have the authority to monitor" for "in consultation with subdistrict councils, conduct an annual evaluation of each subdistrict superintendent pursuant to guidelines promulgated by the Board under item 29 of Section 34-18. The completion of each annual evaluation with a satisfactory rating is a condition precedent to the renewal of any subdistrict superintendent's performance contract. A subdistrict superintendent may appeal an unsatisfactory evaluation to the Board of Education".

The 1999 amendment by P.A. 91-622, effective August 19, 1999, added the last paragraph.

The 2007 amendment by P.A. 95-496, effective August 28, 2007, in the fifth paragraph deleted "beginning in 1990" following "year"; substituted "the general superintendent of schools shall report to the State Board of Education" for "the general superintendent of schools shall report to the regional superintendent of schools of the educational service region in which the school district organized under this Article is located"; and made related changes.

The 2010 amendment by P.A. 96-861, effective January 15, 2010, added the last paragraph.

CASE NOTES

Analysis

Constitutionality
Appointment
Powers
Standing
Transfers

Constitutionality

This section is not in contravention of the 1970 Constitution. People v. Board of Educ., 9 Ill. App. 3d 663, 292 N.E.2d 569 (2 Dist. 1973).

Fees charged students for textbooks and towels were not unconstitutional under the 1970 Constitution. People v. Board of Educ., 9 Ill. App. 3d 663, 292 N.E.2d 569 (2 Dist. 1973).

The legislative authority to issue free textbooks without a referendum in cities with a population of over 500,000 is based on a reasonable classification. Hamer v. Board of Educ., 47 Ill. 2d 480, 265 N.E.2d 616 (1970).

Appointment

Mere possession of a principal's certificate itself did not entitle a teacher to an appointment as a principal whenever an opportunity for such an appointment was created. Webster v. Redmond, 599 F.2d 793 (7th Cir. 1979), cert. denied, 444 U.S. 1039, 100 S. Ct. 712, 62 L. Ed. 2d 674 (1980).

Powers

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The general superintendent with the approval of the Board of Education has the power to transfer a principal to a different school. Stevens v. Tillman, 661 F. Supp. 702 (N.D. Ill. 1986), aff'd, 855 F.2d 394 (7th Cir. 1988).

Power of the board of education and its superintendent is not absolute. Stasica v. Hannon, 70 Ill. App. 3d 785, 27 Ill. Dec. 147, 388 N.E.2d 1110 (1 Dist. 1979).

Standing

Plaintiff did not have standing to question the constitutionality of this section since defendant was not a city having a population exceeding 500,000, and plaintiff was not affected by this section as a taxpayer or otherwise. Hamer v. Board of Educ., 47 Ill. 2d 480, 265 N.E.2d 616 (1970).

Transfers

A provision in a memorandum of understanding between the board of education and the principals' union, which required that before a principal was transferred to a lower administrative grade level with a corresponding reduction in salary, he or she had to be informed in writing of the reasons for the transfer, and if requested, afforded a conference for discussion of said reasons, did not attempt to establish any conditions which were required to be satisfied before a principal could be transferred, but rather merely established procedures consistent with ordinary concepts of fairness, and did not unlawfully restrict the Board's power to transfer principals. Chicago Principals Ass'n v. Board of Educ., 84 Ill. App. 3d 1095, 40 Ill. Dec. 381, 406 N.E.2d 82 (1 Dist. 1980).

§ 105 ILCS 5/34-8.05. Reporting firearms in schools

Sec. 34-8.05. Reporting firearms in schools. On or after January 1, 1997, upon receipt of any written, electronic, or verbal report from any school personnel regarding a verified incident involving a firearm in a school or on school owned or leased property, including any conveyance owned, leased, or used by the school for the transport of students or school personnel, the general superintendent or his or her designee shall report all such firearm-related incidents occurring in a school or on school property to the local law enforcement authorities no later than 24 hours after the occurrence of the incident and to the Department of State Police in a form, manner, and frequency as prescribed by the Department of State Police.

The State Board of Education shall receive an annual statistical compilation and related data associated with incidents involving firearms in schools from the Department of State Police. As used in this Section, the term "firearm" shall have the meaning ascribed to it in Section 1.1 of the Firearm Owners Identification Card Act [430 ILCS 65/1.1].

(Source: P.A. 89-498, § 5-110.)

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Effective Date. Section 99-5 of P.A. 89-498 made this section effective upon becoming law. The Act was approved June 27, 1996.

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Criminal Law and Procedure," see 21 S. Ill. U.L.J. 759 (1997).

§ 105 ILCS 5/34-8.1. Principals

Sec. 34-8.1. Principals. Principals shall be employed to supervise the operation of each attendance center. Their powers and duties shall include but not be limited to the authority (i) to direct, supervise, evaluate, and suspend with or without pay or otherwise discipline all teachers, assistant principals, and other employees assigned to the attendance center in accordance with board rules and policies and (ii) to direct all other persons assigned to the attendance center pursuant to a contract with a third party to provide services to the school system. The right to employ, discharge, and layoff shall be vested solely with the board, provided that decisions to discharge or suspend non-certified employees, including disciplinary layoffs, and the termination of certified employees from employment pursuant to a layoff or reassignment policy are subject to review under the grievance resolution procedure adopted pursuant to subsection (c) of Section 10 of the Illinois Educational Labor Relations Act [115 ILCS 5/10]. The grievance resolution procedure adopted by the board shall provide for final and binding arbitration, and, notwithstanding any other provision of law to the contrary, the arbitrator's decision may include all make-whole relief, including without limitation reinstatement. The principal shall fill positions by appointment as provided in this Section and may make recommendations to the board regarding the employment, discharge, or layoff of any individual. The authority of the principal shall include the authority to direct the hours during which the attendance center shall be open and available for use provided the use complies with board rules and policies, to determine when and what operations shall be conducted within those hours, and to schedule staff within those hours. Under the direction of, and subject to the authority of the principal, the Engineer In Charge shall be accountable for the safe, economical operation of the plant and grounds and shall also be responsible for orientation, training, and supervising the work of Engineers, Trainees, school maintenance assistants, custodial workers and other plant operation employees under his or her direction.

There shall be established by the board a system of semi-annual evaluations conducted by the principal as to performance of the engineer in charge. Nothing in this Section shall prevent the principal from conducting additional evaluations. An overall numerical rating shall be given by the principal based on the evaluation conducted by the principal. An unsatisfactory numerical rating shall result in disciplinary action, which may include, without limitation and in the judgment of the principal, loss of promotion or bidding procedure, reprimand, suspension with or without pay, or recommended dismissal. The

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board shall establish procedures for conducting the evaluation and reporting the results to the engineer in charge.

Under the direction of, and subject to the authority of, the principal, the Food Service Manager is responsible at all times for the proper operation and maintenance of the lunch room to which he is assigned and shall also be responsible for the orientation, training, and supervising the work of cooks, bakers, porters, and lunchroom attendants under his or her direction.

There shall be established by the Board a system of semi-annual evaluations conducted by the principal as to the performance of the food service manager. Nothing in this Section shall prevent the principal from conducting additional evaluations. An overall numerical rating shall be given by the principal based on the evaluation conducted by the principal. An unsatisfactory numerical rating shall result in disciplinary action which may include, without limitation and in the judgment of the principal, loss of promotion or bidding procedure, reprimand, suspension with or without pay, or recommended dismissal. The board shall establish rules for conducting the evaluation and reporting the results to the food service manager.

Nothing in this Section shall be interpreted to require the employment or assignment of an Engineer-In-Charge or a Food Service Manager for each attendance center.

Principals shall be employed to supervise the educational operation of each attendance center. If a principal is absent due to extended illness or leave or absence, an assistant principal may be assigned as acting principal for a period not to exceed 100 school days. Each principal shall assume administrative responsibility and instructional leadership, in accordance with reasonable rules and regulations of the board, for the planning, operation and evaluation of the educational program of the attendance center to which he is assigned. The principal shall submit recommendations to the general superintendent concerning the appointment, dismissal, retention, promotion, and assignment of all personnel assigned to the attendance center; provided, that from and after September 1, 1989: (i) if any vacancy occurs in a position at the attendance center or if an additional or new position is created at the attendance center, that position shall be filled by appointment made by the principal in accordance with procedures established and provided by the Board whenever the majority of the duties included in that position are to be performed at the attendance center which is under the principal's supervision, and each such appointment so made by the principal shall be made and based upon merit and ability to perform in that position without regard to seniority or length of service, provided, that such appointments shall be subject to the Board's desegregation obligations, including but not limited to the Consent Decree and Desegregation Plan in U.S. v. Chicago Board of Education; (ii) the principal shall submit recommendations based upon merit and ability to perform in the particular position, without regard to seniority or length of service, to the general superintendent concerning the appointment of any teacher, teacher aide, counselor, clerk, hall guard, security guard and any other personnel which is to be made by the general superintendent whenever less than a majority of the duties of that teacher, teacher aide, counselor, clerk, hall guard, and security guard and any other personnel are to be performed at the attendance center which is under the principal's supervision; and (iii) subject to law and the applicable collective

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bargaining agreements, the authority and responsibilities of a principal with respect to the evaluation of all teachers and other personnel assigned to an attendance center shall commence immediately upon his or her appointment as principal of the attendance center, without regard to the length of time that he or she has been the principal of that attendance center.

Notwithstanding the existence of any other law of this State, nothing in this Act shall prevent the board from entering into a contract with a third party for services currently performed by any employee or bargaining unit member.

Notwithstanding any other provision of this Article, each principal may approve contracts, binding on the board, in the amount of no more than $10,000, if the contract is endorsed by the Local School Council.

Unless otherwise prohibited by law or by rule of the board, the principal shall provide to local school council members copies of all internal audits and any other pertinent information generated by any audits or reviews of the programs and operation of the attendance center.

Each principal shall hold a valid administrative certificate issued or exchanged in accordance with Article 21 [105 ILCS 5/21-1 et seq.] and endorsed as required by that Article for the position of principal. The board may establish or impose academic, educational, examination, and experience requirements and criteria that are in addition to those established and required by Article 21 for issuance of a valid certificate endorsed for the position of principal as a condition of the nomination, selection, appointment, employment, or continued employment of a person as principal of any attendance center, or as a condition of the renewal of any principal's performance contract.

The board shall specify in its formal job description for principals, and from and after July 1, 1990 shall specify in the 4 year performance contracts for use with respect to all principals, that his or her primary responsibility is in the improvement of instruction. A majority of the time spent by a principal shall be spent on curriculum and staff development through both formal and informal activities, establishing clear lines of communication regarding school goals, accomplishments, practices and policies with parents and teachers. The principal, with the assistance of the local school council, shall develop a school improvement plan as provided in Section 34-2.4 [105 ILCS 5/34-2.4] and, upon approval of the plan by the local school council, shall be responsible for directing implementation of the plan. The principal, with the assistance of the professional personnel leadership committee, shall develop the specific methods and contents of the school's curriculum within the board's system-wide curriculum standards and objectives and the requirements of the school improvement plan. The board shall ensure that all principals are evaluated on their instructional leadership ability and their ability to maintain a positive education and learning climate. It shall also be the responsibility of the principal to utilize resources of proper law enforcement agencies when the safety and welfare of students and teachers are threatened by illegal use of drugs and alcohol, by illegal use or possession of weapons, or by illegal gang activity.

Nothing in this Section shall prohibit the board and the exclusive representative of the district's teachers from entering into an agreement under Section 34-85c of this Code

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[105 ILCS 5/34-85c] to establish alternative procedures for teacher evaluation, remediation, and removal for cause after remediation, including an alternative system for peer evaluation and recommendations, for teachers assigned to schools identified in that agreement.

On or before October 1, 1989, the Board of Education, in consultation with any professional organization representing principals in the district, shall promulgate rules and implement a lottery for the purpose of determining whether a principal's existing performance contract (including the performance contract applicable to any principal's position in which a vacancy then exists) expires on June 30, 1990 or on June 30, 1991, and whether the ensuing 4 year performance contract begins on July 1, 1990 or July 1, 1991. The Board of Education shall establish and conduct the lottery in such manner that of all the performance contracts of principals (including the performance contracts applicable to all principal positions in which a vacancy then exists), 50% of such contracts shall expire on June 30, 1990, and 50% shall expire on June 30, 1991. All persons serving as principal on May 1, 1989, and all persons appointed as principal after May 1, 1989 and prior to July 1, 1990 or July 1, 1991, in a manner other than as provided by Section 34-2.3 [105 ILCS 5/34-2.3], shall be deemed by operation of law to be serving under a performance contract which expires on June 30, 1990 or June 30, 1991; and unless such performance contract of any such principal is renewed (or such person is again appointed to serve as principal) in the manner provided by Section 34-2.2 or 34-2.3 [105 ILCS 5/34-2.2], the employment of such person as principal shall terminate on June 30, 1990 or June 30, 1991.

Commencing on July 1, 1990, or on July 1, 1991, and thereafter, the principal of each attendance center shall be the person selected in the manner provided by Section 34-2.3 to serve as principal of that attendance center under a 4 year performance contract. All performance contracts of principals expiring after July 1, 1990, or July 1, 1991, shall commence on the date specified in the contract, and the renewal of their performance contracts and the appointment of principals when their performance contracts are not renewed shall be governed by Sections 34-2.2 and 34-2.3. Whenever a vacancy in the office of a principal occurs for any reason, the vacancy shall be filled by the selection of a new principal to serve under a 4 year performance contract in the manner provided by Section 34-2.3.

The board of education shall develop and prepare, in consultation with the organization representing principals, a performance contract for use at all attendance centers, and shall furnish the same to each local school council. The term of the performance contract shall be 4 years, unless the principal is retained by the decision of a hearing officer pursuant to subdivision 1.5 of Section 34-2.3, in which case the contract shall be extended for 2 years. The performance contract of each principal shall consist of the uniform performance contract, as developed or from time to time modified by the board, and such additional criteria as are established by a local school council pursuant to Section 34-2.3 for the performance contract of its principal.

During the term of his or her performance contract, a principal may be removed only as provided for in the performance contract except for cause. He or she shall also be obliged to follow the rules of the board of education concerning conduct and efficiency.

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In the event the performance contract of a principal is not renewed or a principal is not reappointed as principal under a new performance contract, or in the event a principal is appointed to any position of superintendent or higher position, or voluntarily resigns his position of principal, his or her employment as a principal shall terminate and such former principal shall not be reinstated to the position from which he or she was promoted to principal, except that he or she, if otherwise qualified and certified in accordance with Article 21, shall be placed by the board on appropriate eligibility lists which it prepares for use in the filling of vacant or additional or newly created positions for teachers. The principal's total years of service to the board as both a teacher and a principal, or in other professional capacities, shall be used in calculating years of experience for purposes of being selected as a teacher into new, additional or vacant positions.

In the event the performance contract of a principal is not renewed or a principal is not reappointed as principal under a new performance contract, such principal shall be eligible to continue to receive his or her previously provided level of health insurance benefits for a period of 90 days following the non-renewal of the contract at no expense to the principal, provided that such principal has not retired.

(Source: P.A. 86-124; 86-1477; 87-455; 88-45, § 3-38; 88-85, § 55; 88-511, §§ 12, 20; 88-670, § 2-34; 88-686, § 5; 89-15, § 5; 89-636, § 5; 91-622, § 10; 91-728, § 5; 93-3, § 5; 93-48, § 5; 95-331, § 540; 95-510, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-8.1.

Section 95 of P.A. 91-622 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1993 amendment by P.A. 88-45, effective July 6, 1993, in the fifth paragraph substituted "supersede" for "supercede".

The 1993 amendment by P.A. 88-85, effective July 14, 1993, in the fifth paragraph substituted "supersede" for "supercede"; and in the last sentence of the seventeenth paragraph inserted "for the unexpired term of the performance contract of the principal creating the vacancy".

The 1993 amendment by P.A. 88-511, § 12, effective November 14, 1993, incorporated the amendments made by P.A. 88-45, § 3-38, and P.A. 88-85, § 55, and, in the first paragraph added the present first and second sentences, deleted "So that educational programs may operate successfully, the Engineer In Charge of each attendance center and all persons employed under the direction of", deleted "to the Principal" preceding "for the safe"; added the second paragraph; deleted the former second paragraph regarding failure of the Engineer In Charge to respond to concerns of the Principal; added the seventh paragraph; deleted the former first sentence of the eighth paragraph regarding accountability of employees; deleted the former ninth paragraph regarding failure of the Engineer In Charge to respond to the concerns of the Principal; in subsection (iii) of the twelfth paragraph substituted "reserve" for "supernumerary"; added the thirteenth paragraph; and made stylistic changes.

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The 1993 amendment by P.A. 88-511, § 20, effective November 14, 1993, incorporated the amendments made by P.A. 88-45, § 3-38, and P.A. 88-85, § 55, and, in subsection (iii) of the twelfth paragraph substituted "reserve" for "supernumerary"; in the seventeenth paragraph, in the second sentence substituted "the date specified in the contract" for "July 1 of the year of their appointment" and in the third sentence deleted "other than the failure to renew the performance contract of that principal" preceding "the vacancy shall be filled"; and in the eighteenth paragraph, in the first sentence deleted from the end "in January, 1990", and in the second sentence deleted "paragraph three of" preceding "Section".

The 1994 amendment by P.A. 88-670, effective December 2, 1994, combined the amendments by P.A. 88-511 § 12 and P.A. 88-511 § 20.

The 1994 amendment by P.A. 88-686, effective January 24, 1995, in the fifteenth paragraph, in the fifth sentence, added at the end "by illegal use of possession of weapons, or by illegal gang activity"; and in the seventeenth paragraph, in the third sentence substituted "by the selection of a new principal to serve under a 4 year performance contract" for "for the unexpired term of the performance contract of the principal creating the vacancy".

The 1995 amendment by P.A. 89-15, effective May 30, 1995, combined the amendments by P.A. 88-670 and P.A. 88-686; and rewrote this section.

The 1996 amendment by P.A. 89-636, effective August 9, 1996, in the tenth paragraph, in the second sentence, substituted "The Board may establish or impose" for "No", substituted "and experience" for "or experience", substituted "and criteria that are" for "or criteria", deleted "may be established or imposed by the board" preceding "as a condition", inserted "selection" and inserted a comma after the first occurrence of "employment".

The 1999 amendment by P.A. 91-622, effective August 19, 1999, inserted the second sentence in the fourteenth paragraph.

The 2000 amendment by P.A. 91-728, effective June 2, 2000, in the fourth paragraph from the end, deleted "4 year" preceding "performance contract" in the first sentence, inserted the present second sentence and deleted the former second sentence which read: "The contract's 4 year term may be modified by the board pursuant to the principal retention review provisions of Section 34-2.3".

The 2003 amendment by P.A. 93-3, effective April 16, 2003, in the first paragraph in the third sentence inserted the language beginning "provided that decisions to discharge" through the end of the sentence, and inserted the fourth sentence.

The 2003 amendment by P.A. 93-48, effective July 1, 2003, substituted "professional personnel leadership committee" for "professional personnel Advisory committee" in the fourth sentence of the eleventh paragraph.

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, combined earlier multiple amendments to the section.

The 2007 amendment by P.A. 95-510, effective August 28, 2007, added the twelfth paragraph.

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

CASE NOTES

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Analysis

Constitutionality
Appointments
Certification
- Process
- Requirements
Discharge of Employees
Layoff of Employees
Principal's Examination
- Due Process
- Equal Protection
Reinstatement
Removal

Constitutionality

Although the Chicago School Reform Act (see now this Article) was found unconstitutional on other grounds, the portion of this Article that eliminated permanent employment status, or tenure, was upheld on the grounds that legislative acts fixing the terms or tenure of employment of public employees do not create private contractual rights and this Article did not create an unconstitutional impairment of the obligation of contract. Fumarolo v. Chicago Bd. of Educ., 142 Ill. 2d 54, 153 Ill. Dec. 177, 566 N.E.2d 1283 (1990).

Appointments

The defendant school administration's policy of appointing one principal to supervise the operation of more than one school or branch school did not violate an injunction order which restrained defendants from employing any person to serve as or perform the duties of acting principal, if that person did not hold a principal's (supervisory) certificate because the defendants' policy did not fall within the prohibited activity, nor did assistant principals and head teachers participating in defendants' branch school program or serving under interim principals perform the services of an acting principal within the meaning of the injunction order. Dolnick v. General Superintendent of Schs., 67 Ill. App. 3d 8, 23 Ill. Dec. 614, 384 N.E.2d 408 (1 Dist. 1978).

Certification

- Process

Where employees of school board, as taxpayers, did not cite any instances where an attendance center was not under the supervision of a principal holding a valid principal's certificate, nor did they allege that any positions were currently being held by persons who did not possess the type of certificate required of them by the board, they failed to allege any action taken by the school board and various members which constituted a violation of the school code; the board may act within its statutory authority by establishing its own certification process. Kenny v. Interim Gen. Superintendent, 112 Ill. App. 3d 342, 67 Ill. Dec. 876, 445 N.E.2d 356 (1 Dist. 1983).

- Requirements

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Where the board of education was properly acting within its statutory discretion and the legislative intent of allowing the board to determine certification requirements, the appointment of persons lacking supervisor certificates in positions which have been determined by the board to not require them was not "arbitrary, unreasonable or capricious," and therefore, taxpayers failed to allege conduct of the board which would warrant judicial review. Kenny v. Interim Gen. Superintendent, 112 Ill. App. 3d 342, 67 Ill. Dec. 876, 445 N.E.2d 356 (1 Dist. 1983).

Discharge of Employees

Teacher raised a First Amendment retaliation claim arguing that the school board failed to rehire her in retaliation for her complaints that the principal was violating the No Child Left Behind Act; this claim failed because the principal was not named as a defendant, and the teacher presented no evidence demonstrating that the principal, rather than the school board, had final authority over the nonrenewal of her contract. State law, specifically, 105 ILCS 5/34-8.1, vested such authority in the school board, and the teacher presented no evidence that the school board ratified the principal's decision not to renew the teacher's contract or that it was aware of any potential retaliatory basis for the nonrenewal. Darchak v. City of Chi. Bd. of Educ., 580 F.3d 622, 2009 U.S. App. LEXIS 19849 (7th Cir. 2009).

School principal was authorized to make personnel recommendations to the city school board under 105 ILCS 5/34-8.1 and, thus, her decision to recommend the termination of an employee was an inherently discretionary one and protected by the Illinois Local Governmental and Governmental Employees Tort Immunity Act 745 ILCS 10/2-201. Williams v. Bd. of Educ., F. Supp. 2d , 2009 U.S. Dist. LEXIS 3916 (N.D. Ill. Jan. 21, 2009).

School principal was entitled to dismissal under Fed. R. Civ. P. 12(b)(6) of a tenured teacher's 42 U.S.C.S. § 1983 action alleging violation of due process rights under U.S. Const. Amend. XIV in the placement of the teacher on a mandatory two-year unpaid medical leave as the action failed to state a claim against the principal in her official capacity because it was duplicative of the claim against the board of education; the action failed to state a claim against the principal in her individual capacity because the board, and not the principal, placed the teacher on unpaid leave pursuant to authority under 105 ILCS 5/34-8.1. Searles v. Bd. of Educ., F. Supp. 2d , 2004 U.S. Dist. LEXIS 11977 (N.D. Ill. June 25, 2004).

An arbitration award requiring the reinstatement of a full-time basis substitute teacher was not binding since it violated 115 ILCS 5/10(b), the School Board has the absolute power to discharge all employees, including full-time basis substitute teachers, pursuant to this section. Chicago Sch. Reform Bd. of Trustees v. Illinois Educ. Labor Relations Bd., 309 Ill. App. 3d 88, 242 Ill. Dec. 397, 721 N.E.2d 676 (1 Dist. 1999), appeal denied, 188 Ill. 2d 562, 246 Ill. Dec. 121, 729 N.E.2d 494 (2000).

The statute grants to the School Board the absolute power to discharge all employees, including full-time basis substitute teachers. Chicago Sch. Reform Bd. of Trustees v. Illinois Educ. Labor Relations Bd., 309 Ill. App. 3d 88, 242 Ill. Dec. 397, 721 N.E.2d 676 (1 Dist. 1999), appeal denied, 188 Ill. 2d 562, 246 Ill. Dec. 121, 729 N.E.2d 494 (2000).

Although principals may make recommendations to the board regarding the employment, discharge, or layoff of any individual, the final decision to discharge a Chicago Public School employee lies exclusively with the Board of Education. Nieves v. Bd. of Educ.,, 2001 U.S. Dist. LEXIS 15605 (N.D. Ill. Sept. 28, 2001), aff'd, 297 F.3d 690 (7th Cir. 2002).

Layoff of Employees

Although 105 ILCS 5/34-8.1 prohibits delegation of the authority to make layoffs to principals, the board of education may delegate this authority to a party other than the principal, as the statute is

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not intended to impose a limitation on the board's power to delegate its layoff authority. Land v. Bd. of Educ., 202 Ill. 2d 414, 269 Ill. Dec. 452, 781 N.E.2d 249, 2002 Ill. LEXIS 959 (2002).

Included in a school board's powers is the authority to lay off employees in good faith for lack of work or purposes of economy but the board's actions may not be arbitrary, discriminatory or unreasonable, and the board must act in good faith in ordering a layoff of its employees. Perlin v. Board of Educ., 86 Ill. App. 3d 108, 41 Ill. Dec. 294, 407 N.E.2d 792 (1 Dist. 1980).

Principal's Examination

- Due Process

Teacher who failed oral section of the principal's examination was not denied due process by the absence of an opportunity to have decision of board of examiners reviewed or an opportunity to retake the exam. Thomas v. Board of Exm'rs, 866 F.2d 225 (7th Cir. 1988), cert. denied, 490 U.S. 1035, 109 S. Ct. 1933, 104 L. Ed. 2d 405 (1989).

- Equal Protection

Teacher who failed oral section of principal's examination was denied equal protection by rule prohibiting application for second examination. Thomas v. Board of Exm'rs, 866 F.2d 225 (7th Cir. 1988), cert. denied, 490 U.S. 1035, 109 S. Ct. 1933, 104 L. Ed. 2d 405 (1989).

Reinstatement

A principal who was dismissed for cause could not be reinstated to his position where his contract expired prior to the time that a hearing officer's decision was adjudicated upon review to be in his favor. Eddings v. Board of Educ., 305 Ill. App. 3d 584, 238 Ill. Dec. 798, 712 N.E.2d 902 (1 Dist. 1999), appeal denied, 185 Ill. 2d 622, 242 Ill. Dec. 136, 720 N.E.2d 1091 (1999).

Removal

Reinstatement of a high school principal was not required because a board of education was entitled to remove the principal under 105 ILCS 5/34-8.3(d)(2) without cause and was not mandated to follow the procedures outlined in 105 ILCS 5/34-85; moreover, the board properly followed the procedural requirements of 105 ILCS 5/34-8.3(a), (b) and (c) since a chief executive officer was not required to put the school on remediation before probation and the principal's argument that she did not receive a school improvement plan was meritless. In addition, the plain language of the contract allowed for termination for cause or removal after a hearing, and the decision to remove the principal was not against the manifest weight of the evidence because the evidence showed that the principal failed to make adequate progress in correcting the deficiencies that resulted in a high school being placed on probation. Young-Gibson v. Bd. of Educ., Ill. App. 3d , 355 Ill. Dec. 337, 959 N.E.2d 751, 2011 Ill. App. LEXIS 1209 (1 Dist. 2011).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Employment Law," see, 28 S. Ill. U.L.J. 705 (2004).

§ 105 ILCS 5/34-8.1a. Waiver of collective bargaining agreement provisions

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Sec. 34-8.1a. Waiver of collective bargaining agreement provisions. Notwithstanding the provisions of any law or collective bargaining agreement to the contrary, the principal, with the concurrence of at least 63.5% through August 31, 1995, and 51% thereafter of an attendance center's personnel in the teachers' bargaining unit, whether certificated or uncertificated non-academic, shall have the right to declare waived and superseded a provision of the teachers' collective bargaining agreement as it applies in or at the attendance center to the bargaining unit's employees. Any collective bargaining agreement entered into after the effective date of this amendatory Act of 1995 with a bargaining unit other than the teachers' bargaining unit shall contain a waiver procedure that meets the requirements of this Section.

Any waiver approved as provided in this Section shall be final upon concurrence of the required percentage of personnel and shall not be subject to approval or rejection by a bargaining unit or a committee of the bargaining unit.

(Source: P.A. 88-511, § 40; 89-15, § 5.)

Effective Date. Section 99 of P.A. 88-511 made this section effective upon becoming law. The Act was approved November 14, 1993.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, added the section catchline; in the first paragraph, in the second sentence deleted "waiver procedures established in a" preceding "collective bargaining agreement", substituted "entered into after the effective date of this amendatory Act of 1995 with" for "by" substituted "contain a waiver procedure that meets" for "be subject to" and deleted "concurrence" preceding "requirements" and deleted the third sentence which read "A provision pertaining to salaries, benefits, or other forms of compensation may not be waived" and added the second paragraph.

CASE NOTES

Effect of Amendment

Amendment to this section allowing employee waivers without union consent was not subject to the limitations of the Contract Clause of the United States Constitution because the legislation applied prospectively, and the Contract Clause applies only to laws with retrospective effect. Bricklayers Union Local 21 v. Edgar, 922 F. Supp. 100 (N.D. Ill. 1996).

§ 105 ILCS 5/34-8.1b. Exemption from bargaining unit membership

Sec. 34-8.1b. Exemption from bargaining unit membership. Notwithstanding the provisions of any other law, any employee of the Chicago public schools system whose job description or actual performance of duties requires an Illinois Type 75 General

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Administrative Certificate or its equivalent shall not be a member of the teachers collective bargaining unit.

(Source: P.A. 89-15, § 5.)

Effective Date. Section 99 of P.A. 89-15 made this section effective upon becoming law. The Act was approved May 30, 1995.

CASE NOTES

Analysis

Assistant Principals
Full Time Teachers

Assistant Principals

The Labor Relations Board did not abuse its discretion in holding that the possibility that the assistant principals who teach full time might be called upon to exercise managerial responsibilities was not sufficient to find that they are predominantly engaged in managerial tasks, were closely aligned with management or that their duties required Type 75 certificates. Chicago Teachers Union v. Illinois Educ. Labor Relations Bd., 296 Ill. App. 3d 785, 231 Ill. Dec. 213, 695 N.E.2d 1332 (1 Dist. 1998).

Assistant principals who are in fact full time teachers do not need Type 75 General Administrative Certificates to perform teaching duties. Chicago Teachers Union v. Illinois Educ. Labor Relations Bd., 296 Ill. App. 3d 785, 231 Ill. Dec. 213, 695 N.E.2d 1332 (1 Dist. 1998).

Full Time Teachers

Full time teachers are not excluded by statute from the teachers' bargaining unit under this section. Chicago Teachers Union v. Illinois Educ. Labor Relations Bd., 296 Ill. App. 3d 785, 231 Ill. Dec. 213, 695 N.E.2d 1332 (1 Dist. 1998).

§ 105 ILCS 5/34-8.3. Remediation and probation of attendance centers

Sec. 34-8.3. Remediation and probation of attendance centers. (a) The general superintendent shall monitor the performance of the attendance centers within the district and shall identify attendance centers, pursuant to criteria that the board shall establish, in which:

(1) there is a failure to develop, implement, or comply with a school improvement plan;

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(2) there is a pervasive breakdown in the educational program as indicated by factors, including, but not limited to, the absence of improvement in student reading and math achievement scores, an increased drop-out rate, a decreased graduation rate, and a decrease in rate of student attendance;

(3) (blank); or

(4) there is a failure or refusal to comply with the provisions of this Act, other applicable laws, collective bargaining agreements, court orders, or with Board rules which the Board is authorized to promulgate.

(b) If the general superintendent identifies a nonperforming school as described herein, he or she shall place the attendance center on remediation by developing a remediation plan for the center. The purpose of the remediation plan shall be to correct the deficiencies in the performance of the attendance center by one or more of the following methods:

(1) drafting a new school improvement plan;

(2) applying to the board for additional funding for training for the local school council;

(3) directing implementation of a school improvement plan;

(4) mediating disputes or other obstacles to reform or improvement at the attendance center.

If, however, the general superintendent determines that the problems are not able to be remediated by these methods, the general superintendent shall place the attendance center on probation. The board shall establish guidelines that determine the factors for placing an attendance center on probation.

(c) Each school placed on probation shall have a school improvement plan and school budget for correcting deficiencies identified by the board. The plan shall include specific steps that the local school council and school staff must take to correct identified deficiencies and specific objective criteria by which the school's subsequent progress will be determined. The school budget shall include specific expenditures directly calculated to correct educational and operational deficiencies identified at the school by the probation team.

(d) Schools placed on probation that, after a maximum of one year, fail to make adequate progress in correcting deficiencies are subject to the following actions by the general superintendent with the approval of the board, after opportunity for a hearing:

(1) Ordering new local school council elections.

(2) Removing and replacing the principal.

(3) Replacement of faculty members, subject to the provisions of Section 24A-5 [105 ILCS 5/24A-5].

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(4) Reconstitution of the attendance center and replacement and reassignment by the general superintendent of all employees of the attendance center.

(5) Intervention under Section 34-8.4 [105 ILCS 5/34-8.4].

(5.5) Operating an attendance center as a contract turnaround school.

(6) Closing of the school.

(e) Schools placed on probation shall remain on probation from year to year until deficiencies are corrected, even if such schools make acceptable annual progress. The board shall establish, in writing, criteria for determining whether or not a school shall remain on probation. If academic achievement tests are used as the factor for placing a school on probation, the general superintendent shall consider objective criteria, not just an increase in test scores, in deciding whether or not a school shall remain on probation. These criteria shall include attendance, test scores, student mobility rates, poverty rates, bilingual education eligibility, special education, and English language proficiency programs, with progress made in these areas being taken into consideration in deciding whether or not a school shall remain on probation.

(f) Where the board has reason to believe that violations of civil rights, or of civil or criminal law have occurred, or when the general superintendent deems that the school is in educational crisis it may take immediate corrective action, including the actions specified in this Section, without first placing the school on remediation or probation. Nothing described herein shall limit the authority of the board as provided by any law of this State. The board shall develop criteria governing the determination regarding when a school is in educational crisis.

(g) All persons serving as subdistrict superintendent on May 1, 1995 shall be deemed by operation of law to be serving under a performance contract which expires on June 30, 1995, and the employment of each such person as subdistrict superintendent shall terminate on June 30, 1995. The board shall have no obligation to compensate any such person as a subdistrict superintendent after June 30, 1995.

(h) The general superintendent shall, in consultation with local school councils, conduct an annual evaluation of each principal in the district pursuant to guidelines promulgated by the Board of Education.

(Source: P.A. 86-124; 86-1477; 89-15, § 5; 91-219, § 5; 91-622, § 10; 92-16, § 49; 96-105, § 5.)

Note.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-8.3.

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Section 95 of P.A. 91-622 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, substituted "general" for "subdistrict" throughout; substituted the present catchline for "Subdistrict superintendents"; in the introductory language of subsection (a) substituted "district" for "subdistrict boundaries"; in the introductory language of subsection (b) inserted "or she" and deleted "(1) notify the subdistrict council and (2) obtain the council's approval to" preceding "place the attendance" and in the second paragraph, deleted "serious or" preceding "not able", deleted "or where a remediation plan has been developed by the subdistrict superintendent and the superintendent determines that remediation has not been successful" preceding the second occurrence of "general superintendent" and deleted "notify the subdistrict council and shall obtain the council's approval to" preceding "place the attendance"; in the introductory language of subsection (d) inserted "a maximum of" and inserted "general superintendent with the approval of the"; added subdivisions (d)(4) and (d)(5); redesignated former subdivision (d)(4) as present subdivision (d)(6); rewrote subsections (f) and (g); and in subsection (h) substituted "in the district" for "under his or her jurisdiction".

The 1999 amendment by P.A. 91-219, effective January 1, 2000, in subsection (a) inserted "pursuant to criteria that the board shall establish" in the introductory sentence, and added the last sentence; and added the second, third and fourth sentences in subsection (e).

The 1999 amendment by P.A. 91-622, effective August 19, 1999, rewrote subsections (a) and (c) to the extent that a detailed comparison would be impracticable.

The 2001 amendment by P.A. 92-16, effective June 28, 2001, combined the amendments by P.A. 91-219 and P.A. 91-622.

The 2009 amendment by P.A. 96-105, effective July 30, 2009, substituted "actions" for "action" in (d); and added (d)(5.5).

CASE NOTES

Analysis

Effective Date of Contracts
Removal of Principal

Effective Date of Contracts

Following the rules of statutory construction and utilizing the plain meaning of subsection (g) of this section, the legislature, by reenacting the School Reform Act, intended to create a contract with the subdistrict superintendents effective until June 30, 1991; therefore, since the language of subsection (g) granted subdistrict superintendents a contract by operation of law, the subsequent actions of the Interim Board which resulted in their termination or reassignment violated those contractual rights. Kaszubowski v. Board of Educ., 248 Ill. App. 3d 451, 188 Ill. Dec. 39, 618 N.E.2d 609 (1 Dist.), appeal denied, 152 Ill. 2d 561, 190 Ill. Dec. 891, 622 N.E.2d 1208 (1993).

Removal of Principal

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Illinois Legislature does not intend to require that a board of education follow the procedures outlined in 105 ILCS 5/34-85 to remove a principal under 105 ILCS 5/34-8.3(d). Young-Gibson v. Bd. of Educ., Ill. App. 3d , 355 Ill. Dec. 337, 959 N.E.2d 751, 2011 Ill. App. LEXIS 1209 (1 Dist. 2011).

Nothing in 105 ILCS 5/34-8.3 requires a minimum amount of time for a school improvement plan to be in place before a board of education can remove a principal. Therefore, an argument that a principal should not have been removed because she allegedly only had 37 days to remedy a high school's problems was rejected. Young-Gibson v. Bd. of Educ., Ill. App. 3d , 355 Ill. Dec. 337, 959 N.E.2d 751, 2011 Ill. App. LEXIS 1209 (1 Dist. 2011).

Reinstatement of a high school principal was not required because a board of education was entitled to remove the principal under 105 ILCS 5/34-8.3(d)(2) without cause and was not mandated to follow the procedures outlined in 105 ILCS 5/34-85; moreover, the board properly followed the procedural requirements of 105 ILCS 5/34-8.3(a), (b) and (c) since a chief executive officer was not required to put the school on remediation before probation and the principal's argument that she did not receive a school improvement plan was meritless. In addition, the plain language of the contract allowed for termination for cause or removal after a hearing, and the decision to remove the principal was not against the manifest weight of the evidence because the evidence showed that the principal failed to make adequate progress in correcting the deficiencies that resulted in a high school being placed on probation. Young-Gibson v. Bd. of Educ., Ill. App. 3d , 355 Ill. Dec. 337, 959 N.E.2d 751, 2011 Ill. App. LEXIS 1209 (1 Dist. 2011).

Legislature did not intend to require that a board of education follow the procedures outlined in 105 ILCS 5/34-85 to remove a principal under 105 ILCS 5/34-8.3(d). Young-Gibson v. Bd. of Educ., Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1063 (1 Dist. Sept. 30, 2011).

Board of education complied with the procedural requirements of 105 ILCS 5/34-8.3 because the record showed that: (1) the high school was placed on probation by the board's chief executive officer (CEO) for at least one year; (2) nothing in the statutory scheme required the CEO to place a school on remediation before probation; and (3) the school improvement plan and budget showed that they complied with the requirements of § 34-8.3(c) and specified a number of steps to remedy the numerous academic problems at the high school. Young-Gibson v. Bd. of Educ., Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1063 (1 Dist. Sept. 30, 2011).

Trial court erred by finding that the board had to use the procedures outlined in 105 ILCS 5/34-85 to remove a principal under 105 ILCS 5/34-8.3(d). In addition, the plain language of the principal's contract entitled the board to terminate her for cause under § 34-85 or to remove her under § 34-8.3 after an opportunity for a hearing. Young-Gibson v. Bd. of Educ., Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1063 (1 Dist. Sept. 30, 2011).

Board of education's decision to terminate the principal was not against the manifest weight of the evidence, as it showed that she failed to make adequate progress in correcting the deficiencies that resulted in the high school being placed on probation. Young-Gibson v. Bd. of Educ., Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1063 (1 Dist. Sept. 30, 2011).

§ 105 ILCS 5/34-8.3a. Financial supervision of attendance centers

Sec. 34-8.3a. Financial supervision of attendance centers. (a) A fiscal advisor that has been appointed pursuant to subsection (a) of Section 34-2.1 of this Code [105 ILCS 5/34-2.1] shall, not later than 90 days after his or her appointment, report to the general superintendent, the board of education, the local school council, and the principal of the

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school on the progress made in addressing any of the financial deficiencies. If the fiscal advisor determines that the attendance center has rectified all identified deficiencies or has made satisfactory progress in addressing identified deficiencies such that the deficiencies shall be corrected subsequent to the 90-day period, no further action shall be taken by the Board. If, however, the local school council and the principal have not rectified or made satisfactory progress in correcting identified deficiencies, the general superintendent may appoint a financial supervision team, consisting of the fiscal advisor, the general superintendent or his or her designee, and a representative of an outside, independent auditor. Financial supervision teams may develop and implement school budgets to correct the financial irregularities identified in the fiscal advisor's report. The budget shall identify specifically those expenditures that directly correct the irregularities identified in the fiscal advisor's report. Financial supervision teams shall institute systems and procedures necessary to achieve appropriate fiscal management at the school.

(b) Financial supervision teams may modify an existing school improvement plan only to the extent necessary to implement the school budget it develops. Modifications to a school improvement plan shall include specific steps that the local school council and school staff must take to correct each specific financial irregularity identified by the fiscal advisor's report. The modifications to a school improvement plan shall further specify objective criteria by which the deficiencies identified in the fiscal advisor's report are to be corrected. The local school council and school staff shall be consulted on the school budget and modifications to the school improvement plan to be implemented by the financial supervision team but will have no authority to modify either.

(c) Upon implementation of the budget developed by the financial supervision team, and accompanying modifications to a school improvement plan, the financial supervision team's authority to conduct fiscal or related educational management of a school shall cease.

(Source: P.A. 91-622, § 10.)

Note.

Section 95 of P.A. 91-622 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 91-622 made this section effective August 19, 1999.

§ 105 ILCS 5/34-8.4. Intervention

Sec. 34-8.4. Intervention. The Chicago Schools Academic Accountability Council may recommend to the Chicago School Reform Board of Trustees that any school placed on remediation or probation under Section 34-8.3 [105 ILCS 5/34-8.3] or schools that for the 3 consecutive school years of 1992-1993, 1993-1994, and 1994-1995 have met the State

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Board of Education's category of "does not meet expectations" be made subject to intervention under this Section 34-8.4. In addition to any powers created under this Section, the Trustees shall have all powers created under Section 34-8.3 [105 ILCS 5/34-8.3] with respect to schools subjected to intervention.

Prior to subjecting a school to intervention, the Trustees shall conduct a public hearing and make findings of facts concerning the recommendation of the Chicago Schools Academic Accountability Council and the factors causing the failure of the school to adequately perform. The Trustees shall afford an opportunity at the hearing for interested persons to comment about the intervention recommendation. After the hearing has been held and completion of findings of fact, the Trustees shall make a determination whether to subject the school to intervention.

If the Trustees determine that a school shall be subject to intervention under this Section, the Trustees shall develop an intervention implementation plan and shall cause a performance evaluation to be made of each employee at the school. Upon consideration of such evaluations, and consistent with the intervention implementation plan, the Trustees may reassign, layoff, or dismiss any employees at the attendance center, notwithstanding the provisions of Sections 24A-5 and 34-85 [105 ILCS 5/24A-5 and 105 ILCS 5/34-85].

The chief educational officer shall appoint a principal for the school and shall set the terms and conditions of the principal's contract, which in no case may be longer than 2 years. The principal shall select all teachers and non-certified personnel for the school as may be necessary. Any provision of Section 34-8.1 [105 ILCS 5/34-8.1] that conflicts with this Section shall not apply to a school subjected to intervention under this Section.

If pursuant to this Section, the general superintendent, with the approval of the board, orders new local school council elections, the general superintendent shall carry out the responsibilities of the local school council for a school subject to intervention until the new local school council members are elected and trained.

Each school year, 5% of the supplemental general State aid funds distributed to a school subject to intervention during that school year under subsection 5(i)(1)(a) of part A of Section 18-8 [105 ILCS 5/18-8] or subsection (H) of Section 18-8.05 [105 ILCS 5/18-8.05] shall be used for employee performance incentives. The Trustees shall prepare a report evaluating the results of any interventions undertaken pursuant to this Section and shall make recommendations concerning implementation of special programs for dealing with underperforming schools on an ongoing basis. This report shall be submitted to the State Superintendent of Education and Mayor of the City of Chicago by January 1, 1999.

(Source: P.A. 89-15, § 5; 89-698, § 5; 90-548, § 5-915.)

Effective Date. Section 99 of P.A. 89-15 made this section effective upon becoming law. The Act was approved May 30, 1995.

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Effect of Amendments. The 1996 amendment by P.A. 89-698, effective January 14, 1997, in the first paragraph deleted the first sentence which read "There is hereby created a four year pilot program to test innovative measures to address problems of chronically underperforming schools"; and deleted the seventh paragraph which read "This Section is repealed June 30, 1999".

The 1997 amendment by P.A. 90-548, effective January 1, 1998, in the sixth paragraph, in the first sentence, substituted "supplemental general State aid" for "Chapter 1" and inserted "or subsection (H) of Section 18-8.05".

§ 105 ILCS 5/34-8.5: Repealed by P.A. 89-3, § 10, effective February 27, 1995.

§ 105 ILCS 5/34-8.6. Short title

Sec. 34-8.6. Short title. Sections 34-8.6 through 34-8.19 of this Act [105 ILCS 5/34-8.6 through 105 ILCS 5/34-8.19] may be cited as the Chicago Learning Zone Implementation Law.

(Source: P.A. 89-3, § 5.)

Effective Date. Section 99 of P.A. 89-3 made this section effective upon becoming law. The Act was approved February 27, 1995.

§ 105 ILCS 5/34-8.7. Findings

Sec. 34-8.7. Findings. The General Assembly observes that the Chicago Learning Zone Advisory Committee has issued its report and recommendations. The General Assembly finds, after due consideration of the Committee's report and recommendations, that establishment of a Chicago Learning Zone designation, as the educational version of enterprise zones, will create an opportunity to accelerate the process of Chicago school reform. The General Assembly further finds that the Chicago Learning Zone will offer a fundamental change in operations from a mode of following regulations to an outcome mode, that this change will be one which concentrates on improving academic achievement in ways that can be utilized to reform the system, and that this change will be predicated on the overriding philosophy that attendance centers should be empowered to develop models most appropriate to their situations.

The General Assembly further observes that the value of a learning experience is determined by the outcomes achieved, not by the time or place of attendance; and, it finds that Learning Zone schools should have the ability to operate without State laws and regulations, board rules, and policies, and the ability to operate with contractual waivable

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conditions by a vote of the school staff governed by the contracts. Accordingly, the General Assembly finds that the educational needs of the schoolchildren of Chicago will be served by establishing a Chicago Learning Zone.

(Source: P.A. 89-3, § 5; 89-15, § 5.)

Effective Date. Section 99 of P.A. 89-3 made this section effective upon becoming law. The Act was approved February 27, 1995.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the second paragraph, in the second sentence, deleted "Commission" from the end.

§ 105 ILCS 5/34-8.8: Repealed by P.A. 89-15, § 50, effective May 30, 1995.

Note.

This section, which was enacted by P.A. 89-3, § 5, effective February 27, 1995, has not been set out due to the repeal of this section by P.A. 89-15, § 50. The section as enacted read:

Creation of Commission. There is created the Chicago Learning Zone Commission, referred to in this Law as the Commission. The Commission shall consist of 9 members, including the Governor or his or her designee, the State Superintendent of Education, the President of the Chicago Board of Education, the Mayor of Chicago or his or her designee, and 5 public members to be appointed by the Governor with the advice and consent of the Senate. The public members of the Commission shall be persons with a demonstrated knowledge of, or interest and experience in, matters related to Chicago public school reform.

The Governor shall designate the Chairperson of the Commission from his or her appointees. Members of the Commission shall be residents of Illinois. Any member may be reappointed for consecutive terms. The official authorized to appoint a member may remove that member prior to the expiration of the member's term on the Commission for official misconduct, incompetence, or neglect of duty. Members shall serve without compensation. The Commission may, without regard to the Personnel Code, employ and fix the compensation or remuneration of employees as it considers necessary or desirable.

§ 105 ILCS 5/34-8.9: Repealed by P.A. 89-15, § 50, effective May 30, 1995.

Note.

This section, which was enacted by P.A. 89-3, § 5, effective February 27, 1995, has not been set out due to the repeal of this section by P.A. 89-15, § 50. The section as enacted read:

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Governor's appointments; terms. As soon as possible after the effective date of this amendatory Act of 1995, the Governor shall appoint to the Commission the following initial members: 1 member to serve a term not to exceed one year, 2 members to serve a term not to exceed 2 years, and 2 members to serve a term not to exceed 3 years, with each respective appointed member's term expiring on June 30 of the appropriate year, or when his or her successor is appointed and qualified. If the Senate is in recess on the effective date of this amendatory Act of 1995, the Governor shall make temporary appointments until the next meeting of the Senate, when he shall make a nomination to fill those offices. Upon the expiration of each of the foregoing terms, the successors of the members initially appointed by the Governor shall serve a term of 3 years, expiring on June 30 of the appropriate year, or when their successors are appointed and qualified. A vacancy in the office of a member appointed by the Governor shall be filled by an appointment made by the Governor for the unexpired term.

§ 105 ILCS 5/34-8.10. Applications for Learning Zone designation

Sec. 34-8.10. Applications for Learning Zone designation. The board shall evaluate applications from attendance centers within Chicago. Applications shall be in the form prescribed by the board. The board shall, upon majority vote, grant Learning Zone designations that, in its judgment, satisfy the goals and requirements of this Law. The board shall establish policies and procedures necessary to implement this Law.

(Source: P.A. 89-3, § 5; 89-15, § 5.)

Effective Date. Section 99 of P.A. 89-3 made this section effective upon becoming law. The Act was approved February 27, 1995.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the first sentence, substituted "board" for "Commission shall meet as often as may be necessary and"; and substituted "board" for "Commission" in the second through fourth sentences.

§ 105 ILCS 5/34-8.11. Evaluation criteria

Sec. 34-8.11. Evaluation criteria. In determining whether to grant Learning Zone designation, the board shall consider the following factors:

(1) The extent to which the application demonstrates that improved student learning will be the paramount priority and outcome;

(2) Proposed adoption of high, rigorous standards of achievement and outcome for all students and staff;

(3) Proposed use of shared, collegial decision-making;

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(4) Creative, flexible, and innovative proposed restructuring of the applicant attendance centers to create student-centered learning environments;

(5) Parental and community integration and involvement;

(6) Development of collaborative relationships with health and human services agencies;

(7) Ability to function on a localized, decentralized basis within the Chicago public school system;

(8) Appropriateness of budget and resource allocations, including those functions to be assumed and those to remain centralized;

(9) Impact of the statutes, regulations, rules, and policies for which waivers are sought; and

(10) Such other factors, not confined to the foregoing, that are fiscally sound and reasonably determinative of successful student outcome.

(Source: P.A. 89-3, § 5; 89-15, § 5.)

Effective Date. Section 99 of P.A. 89-3 made this section effective upon becoming law. The Act was approved February 27, 1995.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, substituted "board" for "Commission" in the introductory language.

§ 105 ILCS 5/34-8.12. Attendance center support

Sec. 34-8.12. Attendance center support. Applications for Learning Zone designation must include evidence that the application is supported by the principal of the attendance center and by a majority vote of the Local School Council and attendance center staff. Applications shall include that evidence for each participating attendance center.

(Source: P.A. 89-3, § 5.)

Effective Date. Section 99 of P.A. 89-3 made this section effective upon becoming law. The Act was approved February 27, 1995.

§ 105 ILCS 5/34-8.13. Learning Zone designation principles

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Sec. 34-8.13. Learning Zone designation principles. In performing its duties under this Law, the board shall be guided by the following additional principles:

(1) Learning Zone designations should be effective for an initial period of no less than 3 and no more than 6 years;

(2) Learning Zone designations should encompass clusters of attendance centers through joint application from secondary and feeder elementary schools or in other reasonably related clusters;

(3) Learning Zone designations should encompass, in the aggregate, approximately 10% of the students enrolled in attendance centers within Chicago;

(4) Learning Zone designations should, in the aggregate, be reflective of the racial and ethnic diversity and demography of students enrolled in attendance centers within Chicago;

(5) Learning Zone designations should be fully operational commencing with the 1996-97 school year; and

(6) Learning Zone designation renewals, revisions, and applications for additional waivers of statutes, regulations, rules, and policies should be evaluated in light of the goals of this Law.

(Source: P.A. 89-3, § 5; 89-15, § 5.)

Effective Date. Section 99 of P.A. 89-3 made this section effective upon becoming law. The Act was approved February 27, 1995.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the introductory language, substituted "board" for "Commission".

§ 105 ILCS 5/34-8.14. Non-waivable provisions

Sec. 34-8.14. Non-waivable provisions. Notwithstanding anything in the School Code to the contrary, statutes, regulations, rules, and policy provisions concerning the following shall not be waivable:

(1) Student civil rights;

(2) Staff civil rights;

(3) Health and safety;

(4) Performance and financial audits;

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(5) Local School Council provisions, including required statements of economic disclosure;

(6) The Open Meetings Act [5 ILCS 120/1 et seq.];

(7) The Freedom of Information Act [5 ILCS 140/1 et seq.];

(8) The Illinois goals assessment program;

(9) Chicago learning outcomes;

(10) Sections 2-3.25a through 2-3.25j of the School Code [105 ILCS 5/2-3.25a through 105 ILCS 5/2-3.25j]; and

(11) Collective bargaining agreements.

(Source: P.A. 89-3, § 5.)

Effective Date. Section 99 of P.A. 89-3 made this section effective upon becoming law. The Act was approved February 27, 1995.

§ 105 ILCS 5/34-8.15. Reports

Sec. 34-8.15. Reports. The board shall file reports describing statutory waivers encompassed in the Learning Zone designations it grants under Section 34-8.10 [105 ILCS 5/34-8.10] with the House of Representatives, the Senate, and the Secretary of State before October 1, 1995 and thereafter before each May 1 and October 1. The provisions in the report or as amended by the General Assembly shall take effect as provided by law.

(Source: P.A. 89-3, § 5; 89-15, § 5.)

Effective Date. Section 99 of P.A. 89-3 made this section effective upon becoming law. The Act was approved February 27, 1995.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the section catchline deleted "Commission" from the beginning; and in the first sentence substituted "board" for "Commission".

§ 105 ILCS 5/34-8.16. Disapproval or amendment of reports

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Sec. 34-8.16. Disapproval or amendment of reports. The General Assembly may disapprove the report of the board in whole, or amend it within 30 calendar days after each house of the legislature next convenes after the report is filed, by adoption of a resolution by a record vote of the majority of the members elected in each house directed to the board. The resolution shall be binding upon the board. Reports shall become effective if the General Assembly fails to disapprove or amend the report within the 30 day period.

For the initial report that the board is required to file before October 1, 1995, the General Assembly may, by January 1, 1996, disapprove the report of the board in whole or amend it, after the report is filed, by the adoption of a resolution by a record vote of the majority of the members. The initial report shall become effective if the General Assembly fails to disapprove or amend the report by January 1, 1996.

(Source: P.A. 89-3, § 5; 89-15, § 5.)

Effective Date. Section 99 of P.A. 89-3 made this section effective upon becoming law. The Act was approved February 27, 1995.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, throughout the section substituted "board" for "Commission".

§ 105 ILCS 5/34-8.17. Lump-sum allocation; key centralized functions

Sec. 34-8.17. Lump-sum allocation; key centralized functions. Final designation as a Learning Zone under this Law shall entitle the participating attendance centers to receive funds in lump-sum allocations, to budget and spend those funds, and to operate in accordance with the designation and this Law. Lump-sum allocations shall be based on the number of enrolled regular and special needs students and shall include all operating funds for compensation, supplies, equipment, repairs, energy, maintenance, transportation, and professional services, and all special funds that follow special populations, including desegregation, special education, bilingual, federal, and State Chapter 1 funds. A sum equal to 3.2% of operating funds shall be deducted by the board to provide key centralized functions, unless a designated Learning Zone obtains one or more of those functions elsewhere, in which case the sum shall be appropriately adjusted. As used in this Law, key centralized functions shall mean:

(1) Equity assurance staff to ensure that services are maintained for students with disabilities, limited English proficient students, low-income students, and any other special need students as required by federal law;

(2) Payroll services and background and credential checks;

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(3) Budget and treasury services to levy and collect taxes and distribute lump-sum funding;

(4) Central computer systems providing information distribution and networking;

(5) On-line data collection and analysis centers for student and school data;

(6) Emergency pool funding; and

(7) Legal and labor departmental services for system-wide litigation and collective bargaining negotiations.

(Source: P.A. 89-3, § 5; 89-15, § 5.)

Effective Date. Section 99 of P.A. 89-3 made this section effective upon becoming law. The Act was approved February 27, 1995.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the introductory language, in the third sentence, substituted "board" for "Chicago board of Education".

§ 105 ILCS 5/34-8.18. [Revocation of Learning Zone designation]

Sec. 34-8.18. The board shall revoke Learning Zone designation and the attendance center or centers involved shall return to their prior status upon a finding of:

(1) A material violation of conditions, standards, or procedures established in the designation or this Law;

(2) Failure to meet or make reasonable progress toward achievement of goals;

(3) Failure to meet generally accepted standards of fiscal management; or

(4) Conditions jeopardizing the health or safety of students.

Technical assistance designed to resolve items (1) through (4) may, in the discretion of the board, be provided to attendance centers prior to or in lieu of revocation of Learning Zone designations.

(Source: P.A. 89-3, § 5; 89-15, § 5.)

Effective Date. Section 99 of P.A. 89-3 made this section effective upon becoming law. The Act was approved February 27, 1995.

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Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the introductory language and in the last paragraph substituted "board" for "Commission".

§ 105 ILCS 5/34-8.19: Repealed by P.A. 89-15, § 50, effective May 30, 1995.

Note.

This section, which was enacted by P.A. 89-3, § 5, effective February 27, 1995, has not been set out due to the repeal of this section by P.A. 89-15, § 50. The section as enacted read:

Conflicting employment or LSC interest. Notwithstanding anything to the contrary in the School Code, Commission members shall recuse themselves from any matter involving an attendance center in which they are or have previously been employed or involving an attendance center on whose local school council they serve or have previously served as a member.

§ 105 ILCS 5/34-9. Report and estimates

Sec. 34-9. Report and estimates. On or before December 1, 1972, on or before December 1, 1973, on or before August 1, 1974 and on or before August 1 of each fiscal year thereafter, the general superintendent of schools shall submit to the board a report containing:

1.A separate balance sheet for each fund under the control of the board, showing, by classes, the estimated current assets and liabilities thereof as of the beginning of the next fiscal year and the amounts of such assets available for appropriation in such year, either for expenditures or charges to be made or incurred during such year or for liabilities unpaid at the beginning thereof. Estimates of taxes to be received from prior levies shall be net, after deducting amounts sufficient to cover the loss and cost of collecting taxes and also deferred collections thereof and abatements in the amount of taxes extended or to be extended upon the collectors' books. Estimates of the liabilities of the respective funds shall include (a) all final judgments, and accrued interest thereon, entered against the board and unpaid at the beginning of such next fiscal year, (b) the principal of all general obligation notes or anticipation tax warrants and all temporary loans and all accrued interest thereon unpaid at the beginning of such next fiscal year, (c) any amount for which the board is required to reimburse the working cash fund from the educational purposes fund pursuant to the provisions of Sections 34-30 to 34-36 [105 ILCS 5/34-30 to 105 ILCS 5/34-36] inclusive, and (d) estimates of all accounts payable including estimates of audited vouchers, participation certificates, interfund loans and purchase orders payable.

2.Detailed estimates, by funds, of all taxes to be levied for the next fiscal year and of all other current revenues to be derived from other sources, which will be applicable to expenditures or charges to be made or incurred during such year. In estimating taxes to be levied for any purpose, except for the payment of bonded indebtedness or interest thereon

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and except for pension fund or working cash fund purposes, the general superintendent of schools shall be governed by the limitations in Sections 34-43 to 34-52 [105 ILCS 5/34-43 to 105 ILCS 5/34-52], inclusive.

3.Estimates, by funds, of the amounts necessary for the board to appropriate for expenditures or charges to be made or incurred during the next succeeding fiscal year, including estimates of the interest to accrue during such year upon general obligation notes or anticipation tax warrants and temporary loans. Such estimates shall be so classified as to show the different objects and purposes for which expenditures or charges are to be made or incurred and the amount required for each object or purpose.

4.Such other information concerning the financial affairs of the board as the board may prescribe.

(Source: P.A. 77-2734.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-9.

§ 105 ILCS 5/34-10. Revised report - Amendments - Excessive appropriations

Sec. 34-10. Revised report - Amendments - Excessive appropriations. Within the first 15 days of each fiscal year the general superintendent of schools may submit to the board a revised report on all matters specified in Section 34-9 [105 ILCS 5/34-9], upon the basis of information then available, and may submit amendments to such report at any time prior to the passage of the annual school budget. He shall also submit to the board, whenever requested by it, any additional or supplemental information he may have concerning matters upon which he is required to report. He shall, within 10 days after the first regular meeting of the board occurring not less than 7 days after the adoption of the school budget, report to the board the extent to which and in what respects, if any, the appropriations contained in such budget in his judgment exceed the appropriations which the board is by law authorized to make.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-10.

§ 105 ILCS 5/34-11. Duties of general counsel; assistants

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Sec. 34-11. Duties of general counsel; assistants. The board by a majority vote of its full membership shall appoint a general counsel who shall have charge and control, subject to the approval of the board, of the law department and of all litigation, legal questions and such other legal matters as may be referred to the department by the board or by the general superintendent of schools. Appointments, promotions and discharge of assistant attorneys shall be made by a majority of the board upon recommendation of the attorney or by a majority vote of the full membership of the board. The general counsel shall hold this office for an indefinite term subject to removal by a majority vote of the full membership of the board. In this Article, "attorney" means general counsel.

(Source: Laws 1961, p. 31; 91-622, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-11.

Section 95 of P.A. 91-622 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-622, effective August 19, 1999, substituted "general counsel" for "attorney" throughout the section and added the last sentence.

§ 105 ILCS 5/34-12. Participation in meetings by superintendent and attorney

Sec. 34-12. Participation in meetings by superintendent and attorney. The general superintendent of schools and the general counsel may be present at all meetings of the board and shall have a right to take part in its discussions and deliberations, but shall have no vote.

(Source: Laws 1961, p. 31; 91-622, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-12.

Section 95 of P.A. 91-622 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-622, effective August 19, 1999, substituted "general counsel" for "attorney".

§ 105 ILCS 5/34-13. Appointment, removal or suspension of attorney and assistants

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Sec. 34-13. Appointment, removal or suspension of attorney and assistants. The appointment and removal of the general superintendent of schools, heads of general departments now in existence or hereafter established, the general counsel, and all assistant attorneys shall not be subject to the civil service law. The heads of general departments now in existence or hereafter established may be removed by a majority vote of the full membership of the board upon the recommendation of the general superintendent of schools or by a majority vote of the full membership of the board.

(Source: P.A. 85-1418; 86-1477; 91-622, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-13.

Section 95 of P.A. 91-622 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-622, effective August 19, 1999, substituted "general counsel" for "attorney" in the first sentence.

CASE NOTES

Civil Service Provisions

In an action by a union against school board and various school officials, seeking the board to follow civil service law when filling the vacancies in the position of district supervisory engineer, 105 ILCS 5/34-15 mandated the board to follow the civil service provisions of a city's Municipal Code (Chicago Mun. Code, ch. 25.1-1), which required the use of civil service law in the filling of vacancies; because the position of district supervising engineer was not a position exempted from application of the civil service law by this section, the board had no authority to fill the position contrary to the provisions of the civil service law. Local 143 Int'l Union v. Board of Educ., 156 Ill. App. 3d 431, 108 Ill. Dec. 816, 509 N.E.2d 512 (1 Dist. 1987).

§ 105 ILCS 5/34-13.1. Inspector General

Sec. 34-13.1. Inspector General. (a) The Inspector General and his office in existence on the effective date of this amendatory Act of 1995 shall be transferred to the jurisdiction of the board upon appointment of the Chicago School Reform Board of Trustees. The Inspector General shall have the authority to conduct investigations into allegations of or incidents of waste, fraud, and financial mismanagement in public education within the jurisdiction of the board by a local school council member or an employee, contractor, or member of the board or involving school projects managed or handled by the Public Building Commission. The Inspector General shall make recommendations to the board about the investigations. The Inspector General in office on the effective date of this

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amendatory Act of 1996 shall serve for a term expiring on June 30, 1998. His or her successors in office shall each be appointed by the Mayor, without the consent or approval of the City Council, for 4 year terms expiring on June 30th of an even numbered year. If the Inspector General leaves office or if a vacancy in that office otherwise occurs, the Mayor shall appoint, without the consent or approval of the City Council, a successor to serve under this Section for the remainder of the unexpired term. The Inspector General shall be independent of the operations of the board and the School Finance Authority, and shall perform other duties requested by the board.

(b) The Inspector General shall have access to all information and personnel necessary to perform the duties of the office. If the Inspector General determines that a possible criminal act has been committed or that special expertise is required in the investigation, he or she shall immediately notify the Chicago Police Department and the Cook County State's Attorney. All investigations conducted by the Inspector General shall be conducted in a manner that ensures the preservation of evidence for use in criminal prosecutions.

(c) At all times the Inspector General shall be granted access to any building or facility that is owned, operated, or leased by the board, the Public Building Commission, or the city in trust and for the use and benefit of the schools of the district.

(d) The Inspector General shall have the power to subpoena witnesses and compel the production of books and papers pertinent to an investigation authorized by this Code. Any person who (1) fails to appear in response to a subpoena; (2) fails to answer any question; (3) fails to produce any books or papers pertinent to an investigation under this Code; or (4) knowingly gives false testimony during an investigation under this Code, is guilty of a Class A misdemeanor.

(e) The Inspector General shall provide to the board and the Illinois General Assembly a summary of reports and investigations made under this Section for the previous fiscal year no later than January 1 of each year, except that the Inspector General shall provide the summary of reports and investigations made under this Section for the period commencing July 1, 1998 and ending April 30, 1999 no later than May 1, 1999. The summaries shall detail the final disposition of those recommendations. The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations. The summaries shall also include detailed recommended administrative actions and matters for consideration by the General Assembly.

(f) (Blank).

(g) (Blank).

(Source: P.A. 89-15, § 5; 89-698, § 5.)

Effective Date. Section 99 of P.A. 89-15 made this section effective upon becoming law. The Act was approved May 30, 1995.

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Effect of Amendments. The 1996 amendment by P.A. 89-698, effective January 14, 1997, in subsection (a), in the first sentence, inserted "board upon appointment of the" and deleted "upon appointment of the Trustees by a local" from the end, in the second sentence substituted "board by a local" for "Chicago School Reform Board of Trustees" and "board or" for "Trustees or", in the third sentence substituted "board" for "Trustees" and added the present fourth and fifth sentences, in the sixth sentence deleted "in office on the effective date of this amendatory Act of 1995" preceding "leaves office" and added "for the remainder of the unexpired term" to the end and in the seventh sentence substituted "board" for "Trustees" twice; in subsection (c) and the first sentence of subsection (e), substituted "board" for "Trustees"; deleted subsection (f) regarding transfer to jurisdiction of School Finance Authority; and deleted subsection (g) regarding repeal of section.

§ 105 ILCS 5/34-14. Section 34-15 Not limited by Sections 34-6 To 34-13

Sec. 34-14. Section 34-15 Not limited by Sections 34-6 To 34-13. Nothing contained in Sections 34-6, 34-7, 34-8, 34-9, 34-10, 34-11, 34-12, or 34-13 of this Act [105 ILCS 5/34-6, 105 ILCS 5/34-7, 105 ILCS 5/34-8, 105 ILCS 5/34-9, 105 ILCS 5/34-10, 105 ILCS 5/34-11, 105 ILCS 5/34-12 or 105 ILCS 5/34-13] shall in any wise be construed to limit the scope, effect and applicability of Section 34-15 of this Act [105 ILCS 5/34-15].

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-14.

§ 105 ILCS 5/34-15. Other officers and employees

Sec. 34-15. Other officers and employees. The board may appoint, or provide for the appointment of, such other officers and employees as it deems necessary.

(Source: P.A. 86-478; 89-15, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-15.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, rewrote the section.

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CASE NOTES

Analysis

Career Service Employee
- Not Shown
Civil Service Provisions
Powers
- Suspension Without Pay

Career Service Employee

- Not Shown

Former employee of local board of education who never fulfilled any of the enumerated prerequisites for career service status, did not take a required career service examination or receive a probational appointment to a career service position, and who was put on notice that she was not progressing toward career service status was not a career service employee and not entitled to the privileges and protections accorded to career service employees under this section, although she was employed for over six years, where she held only provisional or temporary appointments. Lyman v. Strasburg, 647 F. Supp. 887 (N.D. Ill. 1986).

Civil Service Provisions

Elimination of civil service rights of union employees did not impair contracts in violation of Contract Clause of the United States Constitution, though rights were memorialized in contracts between unions and school board, where contracts expired with collective bargaining agreements, and the limitations of the Contract Clause do not redress violations of an expired contract. Bricklayers Union Local 21 v. Edgar, 922 F. Supp. 100 (N.D. Ill. 1996).

In an action by a union against school board and various school officials, seeking the board to follow civil service law when filling the vacancies in the position of district supervisory engineer, this section mandated the board to follow the civil service provisions of a city's Municipal Code (Chicago Mun. Code, ch. 25.1-1), which required the use of civil service law in the filling of vacancies; because the position of district supervising engineer was not a position exempted from application of the civil service law by 105 ILCS 5/34-13, the board had no authority to fill the position contrary to the provisions of the civil service law. Local 143 Int'l Union v. Board of Educ., 156 Ill. App. 3d 431, 108 Ill. Dec. 816, 509 N.E.2d 512 (1 Dist. 1987).

Powers

- Suspension Without Pay

Under former Ill. Rev. Stat., ch. 122, para. 34-14 (see now this section) general superintendent could suspend civil service employee for 30 days without pay without stating specific cause. Connors v. Board of Educ., 9 Ill. App. 2d 528, 133 N.E.2d 520 (1 Dist. 1956).

§ 105 ILCS 5/34-15a. Active military service

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Sec. 34-15a. Active military service. Any certificated or non-certificated employee of the Board of Education who is a member of any reserve component of the United States Armed Services, including the Illinois National Guard, and who is mobilized to active military duty on or after August 1, 1990, shall for each pay period beginning on or after August 1, 1990 continue to receive the same regular compensation that he receives or was receiving as an employee of the Board of Education at the time he is or was so mobilized to active military duty, plus any health insurance and other benefits he is or was receiving or accruing at that time, minus the amount of his base pay for military service, for the duration of his active military service. Such active military duty shall not result in the loss or diminishment of any employment benefit, service credit, or status accrued at the time the duty commenced if the duty commenced on or after September 1, 2001.

In the event any provision of a collective bargaining agreement or any board of education or district policy covering any employee so ordered to active duty is more generous than the provisions contained in this Section, the collective bargaining agreement or board of education or district policy shall be controlling.

(Source: P.A. 87-631; 92-660, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-15a.

Effect of Amendments. The 2002 amendment by P.A. 92-660, effective July 16, 2002, in the first paragraph, deleted "as a result of an order of the President of the United States" in the first sentence, and added the last sentence.

§ 105 ILCS 5/34-16. Powers of board respecting officers and employees

Sec. 34-16. Powers of board respecting officers and employees. The board shall, subject to the limitations in this Article, prescribe the duties, compensation and terms of office of its officers and the duties, compensation and terms of employment of its employees and determine which of its officers and employees shall give bond, on what conditions, and in what amount.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-16.

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CASE NOTES

Analysis

Arbitration
Collective Bargaining
- Delegation of Duties
- Salaries and Benefits
Layoff of Employees
Pension or Health Fund Provision
Policy Interpretation
Salaries
- Board of Education
- Formula for Principals
Supplemental Budget

Arbitration

The arbitration of a grievance under valid clause of collective bargaining agreement, governing assault-related absences by teachers, does not improperly require a third party to determine the salary of a teacher. Board of Educ. v. Chicago Teachers Union, 82 Ill. App. 3d 354, 37 Ill. Dec. 639, 402 N.E.2d 641 (1 Dist. 1980).

Collective Bargaining

- Delegation of Duties

The terms of collective bargaining agreement may not delegate or limit duties reserved to the board by this Code, and matters reserved to the board by statute may not be delegated to an arbitrator. Board of Educ. v. Chicago Teachers Union, 82 Ill. App. 3d 354, 37 Ill. Dec. 639, 402 N.E.2d 641 (1 Dist. 1980).

- Salaries and Benefits

Salaries and fringe benefits are permissible subjects of collective bargaining; while a school board's power to set salaries is discretionary, courts have upheld the validity of contractual or policy provisions which determine the compensation of a school board's employees, and have struck down these provisions only where they violate an express provision of this Code, the public policy of the state, or result in a complete delegation of board power without adequate standards. Board of Educ. v. Chicago Teachers Union, 82 Ill. App. 3d 354, 37 Ill. Dec. 639, 402 N.E.2d 641 (1 Dist. 1980).

Layoff of Employees

Included in a school board's powers is the authority to lay off employees in good faith for lack of work or purposes of economy, but the board's actions may not be arbitrary, discriminatory or unreasonable, and the board must act in good faith in ordering a layoff of its employees. Perlin v. Board of Educ., 86 Ill. App. 3d 108, 41 Ill. Dec. 294, 407 N.E.2d 792 (1 Dist. 1980).

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Pension or Health Fund Provision

A provision requiring a board of education to donate a specified sum per employee to a pension or health fund, to be valid, must specify the plan administrator and the exact benefits and terms of the plan. Board of Educ. v. Chicago Teachers Union, 82 Ill. App. 3d 354, 37 Ill. Dec. 639, 402 N.E.2d 641 (1 Dist. 1980).

Policy Interpretation

City board of education was in the best position to interpret its own policies, and its decision would be allowed to stand unless it is clearly erroneous or inconsistent with long-settled constructions. Jefferson v. Board of Educ., 82 Ill. App. 3d 877, 38 Ill. Dec. 255, 403 N.E.2d 486 (1 Dist. 1980).

Salaries

- Board of Education

The Civil Service Commission regulates only the manner of appointment and removal of civil service employees of the board of education; the Commission has nothing to do with fixing the salaries, it considers salaries only to determine to what grade or class a position belongs. The power of determining and fixing wages and salaries of board employees rests solely with the Board. Stahl v. Board of Educ., 334 Ill. App. 366, 79 N.E.2d 640 (1 Dist. 1948).

- Formula for Principals

City board of education's salary formula, based on position classification establishing principals' salaries on a six hour daily basis, was not unreasonable. Jefferson v. Board of Educ., 82 Ill. App. 3d 877, 38 Ill. Dec. 255, 403 N.E.2d 486 (1 Dist. 1980).

Supplemental Budget

School clerks were held ineligible for retroactive payments based upon supplemental budget after salaries had been fixed by specific appropriation. Atkinson v. Board of Educ., 44 Ill. App. 2d 92, 194 N.E.2d 8 (1 Dist. 1963).

§ 105 ILCS 5/34-17. Powers not exercised by city council

Sec. 34-17. Powers not exercised by city council. No power vested in the board or in any of its officers, agents or employees shall be exercised by the city council.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-17.

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§ 105 ILCS 5/34-18. Powers of the board

Sec. 34-18. Powers of the board. The board shall exercise general supervision and jurisdiction over the public education and the public school system of the city, and, except as otherwise provided by this Article, shall have power:

1.To make suitable provision for the establishment and maintenance throughout the year or for such portion thereof as it may direct, not less than 9 months, of schools of all grades and kinds, including normal schools, high schools, night schools, schools for defectives and delinquents, parental and truant schools, schools for the blind, the deaf and the physically disabled, schools or classes in manual training, constructural and vocational teaching, domestic arts and physical culture, vocation and extension schools and lecture courses, and all other educational courses and facilities, including establishing, equipping, maintaining and operating playgrounds and recreational programs, when such programs are conducted in, adjacent to, or connected with any public school under the general supervision and jurisdiction of the board; provided that the calendar for the school term and any changes must be submitted to and approved by the State Board of Education before the calendar or changes may take effect, and provided that in allocating funds from year to year for the operation of all attendance centers within the district, the board shall ensure that supplemental general State aid funds are allocated and applied in accordance with Section 18-8 or 18-8.05 [105 ILCS 5/18-8 or 105 ILCS 5/18-8.05]. To admit to such schools without charge foreign exchange students who are participants in an organized exchange student program which is authorized by the board. The board shall permit all students to enroll in apprenticeship programs in trade schools operated by the board, whether those programs are union-sponsored or not. No student shall be refused admission into or be excluded from any course of instruction offered in the common schools by reason of that student's sex. No student shall be denied equal access to physical education and interscholastic athletic programs supported from school district funds or denied participation in comparable physical education and athletic programs solely by reason of the student's sex. Equal access to programs supported from school district funds and comparable programs will be defined in rules promulgated by the State Board of Education in consultation with the Illinois High School Association. Notwithstanding any other provision of this Article, neither the board of education nor any local school council or other school official shall recommend that children with disabilities be placed into regular education classrooms unless those children with disabilities are provided with supplementary services to assist them so that they benefit from the regular classroom instruction and are included on the teacher's regular education class register;

2.To furnish lunches to pupils, to make a reasonable charge therefor, and to use school funds for the payment of such expenses as the board may determine are necessary in conducting the school lunch program;

3.To co-operate with the circuit court;

4.To make arrangements with the public or quasi-public libraries and museums for the use of their facilities by teachers and pupils of the public schools;

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5.To employ dentists and prescribe their duties for the purpose of treating the pupils in the schools, but accepting such treatment shall be optional with parents or guardians;

6.To grant the use of assembly halls and classrooms when not otherwise needed, including light, heat, and attendants, for free public lectures, concerts, and other educational and social interests, free of charge, under such provisions and control as the principal of the affected attendance center may prescribe;

7.To apportion the pupils to the several schools; provided that no pupil shall be excluded from or segregated in any such school on account of his color, race, sex, or nationality. The board shall take into consideration the prevention of segregation and the elimination of separation of children in public schools because of color, race, sex, or nationality. Except that children may be committed to or attend parental and social adjustment schools established and maintained either for boys or girls only. All records pertaining to the creation, alteration or revision of attendance areas shall be open to the public. Nothing herein shall limit the board's authority to establish multi-area attendance centers or other student assignment systems for desegregation purposes or otherwise, and to apportion the pupils to the several schools. Furthermore, beginning in school year 1994-95, pursuant to a board plan adopted by October 1, 1993, the board shall offer, commencing on a phased-in basis, the opportunity for families within the school district to apply for enrollment of their children in any attendance center within the school district which does not have selective admission requirements approved by the board. The appropriate geographical area in which such open enrollment may be exercised shall be determined by the board of education. Such children may be admitted to any such attendance center on a space available basis after all children residing within such attendance center's area have been accommodated. If the number of applicants from outside the attendance area exceed the space available, then successful applicants shall be selected by lottery. The board of education's open enrollment plan must include provisions that allow low income students to have access to transportation needed to exercise school choice. Open enrollment shall be in compliance with the provisions of the Consent Decree and Desegregation Plan cited in Section 34-1.01 [105 ILCS 5/34-1.01];

8.To approve programs and policies for providing transportation services to students. Nothing herein shall be construed to permit or empower the State Board of Education to order, mandate, or require busing or other transportation of pupils for the purpose of achieving racial balance in any school;

9.Subject to the limitations in this Article, to establish and approve system-wide curriculum objectives and standards, including graduation standards, which reflect the multi-cultural diversity in the city and are consistent with State law, provided that for all purposes of this Article courses or proficiency in American Sign Language shall be deemed to constitute courses or proficiency in a foreign language; and to employ principals and teachers, appointed as provided in this Article, and fix their compensation. The board shall prepare such reports related to minimal competency testing as may be requested by the State Board of Education, and in addition shall monitor and approve special education and bilingual education programs and policies within the district to assure that appropriate services are provided in accordance with applicable State and federal laws to children requiring services and education in those areas;

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10.To employ non-teaching personnel or utilize volunteer personnel for: (i) non-teaching duties not requiring instructional judgment or evaluation of pupils, including library duties; and (ii) supervising study halls, long distance teaching reception areas used incident to instructional programs transmitted by electronic media such as computers, video, and audio, detention and discipline areas, and school-sponsored extracurricular activities. The board may further utilize volunteer non-certificated personnel or employ non-certificated personnel to assist in the instruction of pupils under the immediate supervision of a teacher holding a valid certificate, directly engaged in teaching subject matter or conducting activities; provided that the teacher shall be continuously aware of the non-certificated persons' activities and shall be able to control or modify them. The general superintendent shall determine qualifications of such personnel and shall prescribe rules for determining the duties and activities to be assigned to such personnel;

10.5.To utilize volunteer personnel from a regional School Crisis Assistance Team (S.C.A.T.), created as part of the Safe to Learn Program established pursuant to Section 25 of the Illinois Violence Prevention Act of 1995 [20 ILCS 4027/1 et seq.], to provide assistance to schools in times of violence or other traumatic incidents within a school community by providing crisis intervention services to lessen the effects of emotional trauma on individuals and the community; the School Crisis Assistance Team Steering Committee shall determine the qualifications for volunteers;

11.To provide television studio facilities in not to exceed one school building and to provide programs for educational purposes, provided, however, that the board shall not construct, acquire, operate, or maintain a television transmitter; to grant the use of its studio facilities to a licensed television station located in the school district; and to maintain and operate not to exceed one school radio transmitting station and provide programs for educational purposes;

12.To offer, if deemed appropriate, outdoor education courses, including field trips within the State of Illinois, or adjacent states, and to use school educational funds for the expense of the said outdoor educational programs, whether within the school district or not;

13.During that period of the calendar year not embraced within the regular school term, to provide and conduct courses in subject matters normally embraced in the program of the schools during the regular school term and to give regular school credit for satisfactory completion by the student of such courses as may be approved for credit by the State Board of Education;

14.To insure against any loss or liability of the board, the former School Board Nominating Commission, Local School Councils, the Chicago Schools Academic Accountability Council, or the former Subdistrict Councils or of any member, officer, agent or employee thereof, resulting from alleged violations of civil rights arising from incidents occurring on or after September 5, 1967 or from the wrongful or negligent act or omission of any such person whether occurring within or without the school premises, provided the officer, agent or employee was, at the time of the alleged violation of civil rights or wrongful act or omission, acting within the scope of his employment or under direction of the board, the former School Board Nominating Commission, the Chicago

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Schools Academic Accountability Council, Local School Councils, or the former Subdistrict Councils; and to provide for or participate in insurance plans for its officers and employees, including but not limited to retirement annuities, medical, surgical and hospitalization benefits in such types and amounts as may be determined by the board; provided, however, that the board shall contract for such insurance only with an insurance company authorized to do business in this State. Such insurance may include provision for employees who rely on treatment by prayer or spiritual means alone for healing, in accordance with the tenets and practice of a recognized religious denomination;

15.To contract with the corporate authorities of any municipality or the county board of any county, as the case may be, to provide for the regulation of traffic in parking areas of property used for school purposes, in such manner as is provided by Section 11-209 of The Illinois Vehicle Code [625 ILCS 5/11-209], approved September 29, 1969, as amended;

16.(a) To provide, on an equal basis, access to a high school campus and student directory information to the official recruiting representatives of the armed forces of Illinois and the United States for the purposes of informing students of the educational and career opportunities available in the military if the board has provided such access to persons or groups whose purpose is to acquaint students with educational or occupational opportunities available to them. The board is not required to give greater notice regarding the right of access to recruiting representatives than is given to other persons and groups. In this paragraph 16, "directory information" means a high school student's name, address, and telephone number.

(b) If a student or his or her parent or guardian submits a signed, written request to the high school before the end of the student's sophomore year (or if the student is a transfer student, by another time set by the high school) that indicates that the student or his or her parent or guardian does not want the student's directory information to be provided to official recruiting representatives under subsection (a) of this Section, the high school may not provide access to the student's directory information to these recruiting representatives. The high school shall notify its students and their parents or guardians of the provisions of this subsection (b).

(c) A high school may require official recruiting representatives of the armed forces of Illinois and the United States to pay a fee for copying and mailing a student's directory information in an amount that is not more than the actual costs incurred by the high school.

(d) Information received by an official recruiting representative under this Section may be used only to provide information to students concerning educational and career opportunities available in the military and may not be released to a person who is not involved in recruiting students for the armed forces of Illinois or the United States;

17.(a) To sell or market any computer program developed by an employee of the school district, provided that such employee developed the computer program as a direct result of his or her duties with the school district or through the utilization of the school district resources or facilities. The employee who developed the computer program shall be

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entitled to share in the proceeds of such sale or marketing of the computer program. The distribution of such proceeds between the employee and the school district shall be as agreed upon by the employee and the school district, except that neither the employee nor the school district may receive more than 90% of such proceeds. The negotiation for an employee who is represented by an exclusive bargaining representative may be conducted by such bargaining representative at the employee's request.

(b) For the purpose of this paragraph 17:

(1) "Computer" means an internally programmed, general purpose digital device capable of automatically accepting data, processing data and supplying the results of the operation.

(2) "Computer program" means a series of coded instructions or statements in a form acceptable to a computer, which causes the computer to process data in order to achieve a certain result.

(3) "Proceeds" means profits derived from marketing or sale of a product after deducting the expenses of developing and marketing such product;

18.To delegate to the general superintendent of schools, by resolution, the authority to approve contracts and expenditures in amounts of $10,000 or less;

19.Upon the written request of an employee, to withhold from the compensation of that employee any dues, payments or contributions payable by such employee to any labor organization as defined in the Illinois Educational Labor Relations Act [115 ILCS 5/1 et seq.]. Under such arrangement, an amount shall be withheld from each regular payroll period which is equal to the pro rata share of the annual dues plus any payments or contributions, and the board shall transmit such withholdings to the specified labor organization within 10 working days from the time of the withholding;

19a.Upon receipt of notice from the comptroller of a municipality with a population of 500,000 or more, a county with a population of 3,000,000 or more, the Cook County Forest Preserve District, the Chicago Park District, the Metropolitan Water Reclamation District, the Chicago Transit Authority, or a housing authority of a municipality with a population of 500,000 or more that a debt is due and owing the municipality, the county, the Cook County Forest Preserve District, the Chicago Park District, the Metropolitan Water Reclamation District, the Chicago Transit Authority, or the housing authority by an employee of the Chicago Board of Education, to withhold, from the compensation of that employee, the amount of the debt that is due and owing and pay the amount withheld to the municipality, the county, the Cook County Forest Preserve District, the Chicago Park District, the Metropolitan Water Reclamation District, the Chicago Transit Authority, or the housing authority; provided, however, that the amount deducted from any one salary or wage payment shall not exceed 25% of the net amount of the payment. Before the Board deducts any amount from any salary or wage of an employee under this paragraph, the municipality, the county, the Cook County Forest Preserve District, the Chicago Park District, the Metropolitan Water Reclamation District, the Chicago Transit Authority, or the housing authority shall certify that (i) the employee has been afforded an opportunity for a hearing to dispute the debt that is due and owing the municipality,

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the county, the Cook County Forest Preserve District, the Chicago Park District, the Metropolitan Water Reclamation District, the Chicago Transit Authority, or the housing authority and (ii) the employee has received notice of a wage deduction order and has been afforded an opportunity for a hearing to object to the order. For purposes of this paragraph, "net amount" means that part of the salary or wage payment remaining after the deduction of any amounts required by law to be deducted and "debt due and owing" means (i) a specified sum of money owed to the municipality, the county, the Cook County Forest Preserve District, the Chicago Park District, the Metropolitan Water Reclamation District, the Chicago Transit Authority, or the housing authority for services, work, or goods, after the period granted for payment has expired, or (ii) a specified sum of money owed to the municipality, the county, the Cook County Forest Preserve District, the Chicago Park District, the Metropolitan Water Reclamation District, the Chicago Transit Authority, or the housing authority pursuant to a court order or order of an administrative hearing officer after the exhaustion of, or the failure to exhaust, judicial review;

20.The board is encouraged to employ a sufficient number of certified school counselors to maintain a student/counselor ratio of 250 to 1 by July 1, 1990. Each counselor shall spend at least 75% of his work time in direct contact with students and shall maintain a record of such time;

21.To make available to students vocational and career counseling and to establish 5 special career counseling days for students and parents. On these days representatives of local businesses and industries shall be invited to the school campus and shall inform students of career opportunities available to them in the various businesses and industries. Special consideration shall be given to counseling minority students as to career opportunities available to them in various fields. For the purposes of this paragraph, minority student means a person who is any of the following:

(a) American Indian or Alaska Native (a person having origins in any of the original peoples of North and South America, including Central America, and who maintains tribal affiliation or community attachment).

(b) Asian (a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, but not limited to, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam).

(c) Black or African American (a person having origins in any of the black racial groups of Africa). Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American".

(d) Hispanic or Latino (a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race).

(e) Native Hawaiian or Other Pacific Islander (a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands).

Counseling days shall not be in lieu of regular school days;

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22.To report to the State Board of Education the annual student dropout rate and number of students who graduate from, transfer from or otherwise leave bilingual programs;

23.Except as otherwise provided in the Abused and Neglected Child Reporting Act [325 ILCS 5/1 et seq.] or other applicable State or federal law, to permit school officials to withhold, from any person, information on the whereabouts of any child removed from school premises when the child has been taken into protective custody as a victim of suspected child abuse. School officials shall direct such person to the Department of Children and Family Services, or to the local law enforcement agency if appropriate;

24.To develop a policy, based on the current state of existing school facilities, projected enrollment and efficient utilization of available resources, for capital improvement of schools and school buildings within the district, addressing in that policy both the relative priority for major repairs, renovations and additions to school facilities, and the advisability or necessity of building new school facilities or closing existing schools to meet current or projected demographic patterns within the district;

25.To make available to the students in every high school attendance center the ability to take all courses necessary to comply with the Board of Higher Education's college entrance criteria effective in 1993;

26.To encourage mid-career changes into the teaching profession, whereby qualified professionals become certified teachers, by allowing credit for professional employment in related fields when determining point of entry on teacher pay scale;

27.To provide or contract out training programs for administrative personnel and principals with revised or expanded duties pursuant to this Act in order to assure they have the knowledge and skills to perform their duties;

28.To establish a fund for the prioritized special needs programs, and to allocate such funds and other lump sum amounts to each attendance center in a manner consistent with the provisions of part 4 of Section 34-2.3 [105 ILCS 5/34-2.3]. Nothing in this paragraph shall be construed to require any additional appropriations of State funds for this purpose;

29.(Blank);

30.Notwithstanding any other provision of this Act or any other law to the contrary, to contract with third parties for services otherwise performed by employees, including those in a bargaining unit, and to layoff those employees upon 14 days written notice to the affected employees. Those contracts may be for a period not to exceed 5 years and may be awarded on a system-wide basis. The board may not operate more than 30 contract schools, provided that the board may operate an additional 5 contract turnaround schools pursuant to item (5.5) of subsection (d) of Section 34-8.3 of this Code [105 ILCS 5/34-8.3];

31.To promulgate rules establishing procedures governing the layoff or reduction in force of employees and the recall of such employees, including, but not limited to, criteria for such layoffs, reductions in force or recall rights of such employees and the weight to be given to any particular criterion. Such criteria shall take into account factors including,

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but not be limited to, qualifications, certifications, experience, performance ratings or evaluations, and any other factors relating to an employee's job performance;

32.To develop a policy to prevent nepotism in the hiring of personnel or the selection of contractors;

33.To enter into a partnership agreement, as required by Section 34-3.5 of this Code [105 ILCS 5/34-3.5], and, notwithstanding any other provision of law to the contrary, to promulgate policies, enter into contracts, and take any other action necessary to accomplish the objectives and implement the requirements of that agreement; and

34.To establish a Labor Management Council to the board comprised of representatives of the board, the chief executive officer, and those labor organizations that are the exclusive representatives of employees of the board and to promulgate policies and procedures for the operation of the Council.

The specifications of the powers herein granted are not to be construed as exclusive but the board shall also exercise all other powers that they may be requisite or proper for the maintenance and the development of a public school system, not inconsistent with the other provisions of this Article or provisions of this Code which apply to all school districts.

In addition to the powers herein granted and authorized to be exercised by the board, it shall be the duty of the board to review or to direct independent reviews of special education expenditures and services. The board shall file a report of such review with the General Assembly on or before May 1, 1990.

(Source: P.A. 86-124; 86-623; 86-1002; 86-1028; 86-1477; 87-455; 88-89, § 2-5; 88-511, § 45; 88-686, § 5; 89-15, § 5; 89-397, § 5; 89-626, § 2-36; 90-22, § 15; 90-548, § 5-915; 92-109, § 23; 92-527, § 5; 92-724, § 5; 93-3, § 5; 93-1036, § 90; 96-105, § 5; 97-227, § 60; 97-396, § 40.)

Note.

This section was Ill.Rev.Stat.,Ch.122, para. 34-18.

Rule of construction. This Act shall be construed to make amendments to provisions of State law to substitute the term "intellectual disability" for "mental retardation", "intellectually disabled" for "mentally retarded", "ID/DD Community Care Act" for "MR/DD Community Care Act", "physically disabled" for "crippled", and "physical disability" or "physically disabling", as appropriate, for "crippling" without any intent to change the substantive rights, responsibilities, coverage, eligibility, or definitions referred to in the amended provisions represented in this Act.

Effect of Amendments. The 1993 amendment by P.A. 88-89, effective July 14, 1993, in the first sentence of subsection 10 inserted the subdivision (i) designation and added subdivision (ii); and in the second sentence of subsection 10 inserted "provided that".

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The 1993 amendment by P.A. 88-511, effective November 14, 1993, incorporated the changes made by P.A. 88-89, § 2-5, and added "and" at the end of subsection (28); and added subsection (29).

The 1994 amendment by P.A. 88-686, effective January 24, 1995, in subsection 9, in the first sentence, inserted "including graduation standards" and deleted "and in accordance therewith prescribe the course and methods of study in the various schools" preceding "provided that for all".

The 1995 amendment by P.A. 89-15, effective May 30, 1995, in subsection 7, in the first sentence, deleted "divide the city into subdistricts and" preceding "apportion", in the second sentence deleted "In dividing the city into subdistricts" from the beginning and in the fourth sentence deleted "subdistricts and " preceding "attendance"; in subsection 9, in the first sentence, deleted "subdistrict superintendents" preceding "principals"; in subsection 10, in the first sentence, inserted "including library duties", deleted "and" preceding " detention" and added at the end "and school-sponsored extracurricular activities"; in subsection 14, in the first sentence, inserted "the former" four times, inserted "the Chicago Schools Academic Accountability Council" twice and added a comma after "Local School Councils"; deleted "and" from the end of subsection 28; deleted former subsection 29 which read "To promulgate guidelines for use by the General Superintendent in annually evaluating the performance of subdistrict superintendents"; and added subsections 30, 31 and 32.

The 1995 amendment by P.A. 89-397, effective August 20, 1995, in subsection 1, in the sixth sentence, substituted "children with disabilities" for "handicapped children" twice.

The 1996 amendment by P.A. 89-626, effective August 9, 1996, combined the amendments of this section by P.A. 89-15 and P.A. 89-397.

The 1997 amendment by P.A. 90-22, effective June 20, 1997, added subsection 19a.

The 1997 amendment by P.A. 90-548, effective January 1, 1998, incorporated the amendments by P.A. 90-22; and in subsection 1, in the first sentence, inserted "supplemental general", substituted "aid" for "Chapter 1" and added at the end "or 18-8.05".

The 2001 amendment by P.A. 92-109, effective July 20, 2001, in subsection 19a: in the first sentence inserted "a county with a population of 3,000,000 or more, the Cook County Forest Preserve District, the Chicago Park District, the Metropolitan Water Reclamation District, the Chicago Transit Authority, or a housing authority of a municipality with a population of 500,000 or more", substituted "Chicago Board of Education" for "Chicago School Reform Board of Trustees", inserted "the county, the Cook County Forest Preserve District, the Chicago Park District, the Metropolitan Water Reclamation District, the Chicago Transit Authority, or the housing authority" twice in the first and last sentences and once in the second sentence, also in the second sentence, inserted the item (i) designation, and "the county, the Cook County Forest Preserve District, the Chicago Park District, the Metropolitan Water Reclamation District, the Chicago Transit Authority, or the housing authority and (ii) the employee has received notice of a wage deduction order and has been afforded an opportunity for a hearing to object to the order", and deleted "city" preceding "services, work, or goods" in the last sentence.

The 2001 amendment by P.A. 92-527, effective June 1, 2002, in subdivision 16 inserted the subdivision 16(a) designation and subdivisions 16(b) through (d), and in subdivision 16(a) substituted "a high school" for "the school", inserted "and student directory information" and added the last sentence.

The 2002 amendment by P.A. 92-724, effective July 25, 2002, inserted subsection 10.5.

The 2003 amendment by P.A. 93-3, effective April 16, 2003, inserted subdivisions (33) and (34); and combined the amendments by P.A. 92-109, P.A. 92-527 and P.A. 92-724.

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The 2004 amendment by P.A. 93-1036, effective September 14, 2004, inserted the language beginning "the calendar for the school" and ending "and provided that" and made related and stylistic changes in the first sentence of subdivision 1.

The 2009 amendment by P.A. 96-105, effective July 30, 2009, added the third sentence in (30) and made a related change.

The 2011 amendment by P.A. 97-227, effective January 1, 2012, substituted "physically disabled" for "crippled" in the first sentence of 1.

The 2011 amendment by P.A. 97-396, effective January 1, 2012, added "any of the following" to the end of the introductory language of 21.; rewrote 21.(a) through 21.(d), which formerly read: "(a) Black (a person having origins in any of the black racial groups in Africa); (b) Hispanic (a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean islands, regardless of race); (c) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands); or (d) American Indian or Alaskan Native (a person having origins in any of the original peoples of North America)"; and added 21.(e).

CASE NOTES

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Constitutionality

The reduction of aid to school districts required by this Code was not an unlawful penalty taking away funds which in any way belonged to the Chicago School Board, but rather it was simply the recovery of state aid which was paid in advance but which the Chicago Board was not entitled to as a result of its failure to comply with the requirements for eligibility as set forth in this Code

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when the Chicago Board did not comply with the minimum school year requirement of 176 days. Cronin v. Lindberg, 66 Ill. 2d 47, 4 Ill. Dec. 424, 360 N.E.2d 360 (1976).

In General

The statute does not establish specified substantive predicates to limit discretion and, thus, does not create a property interest. Shegog v. Board of Educ., F. Supp. 2d , 2000 U.S. Dist. LEXIS 6099 (N.D. Ill. May 1, 2000).

Power of the board of education and its superintendent is not absolute. Stasica v. Hannon, 70 Ill. App. 3d 785, 27 Ill. Dec. 147, 388 N.E.2d 1110 (1 Dist. 1979).

It was lawful under the Public Building Commission Act (50 ILCS 20/1 to 50 ILCS 20/24) for the board of education to lease a schoolhouse from the Commission, that school property be donated to the Commission, and for the city council to levy a tax to cover the costs of operation under such a lease. People ex rel. Stamos v. Public Bldg. Comm'n, 40 Ill. 2d 164, 238 N.E.2d 390 (1968).

Certification Requirements

Where the board of education was properly acting within its statutory discretion and the legislative intent of allowing the board to determine certification requirements, the appointment of persons lacking supervisor certificates, in positions which have been determined by the board to not require them, was not "arbitrary, unreasonable or capricious," and therefore, taxpayers failed to allege conduct of the board which would warrant judicial review. Kenny v. Interim Gen. Superintendent, 112 Ill. App. 3d 342, 67 Ill. Dec. 876, 445 N.E.2d 356 (1 Dist. 1983).

Corporal Punishment

The authority of a teacher over a pupil is a delegation of parental authority, and where the teacher inflicts corporal punishment on a pupil which is not actuated by malice and the punishment is not excessive or wanton, the teacher is not liable. Drake v. Thomas, 310 Ill. App. 57, 33 N.E.2d 889 (1 Dist. 1941).

Experimental Programs

The Chicago School Board has the power to create and maintain experimental education programs for the Chicago public school children. Morton v. Board of Educ., 69 Ill. App. 2d 38, 216 N.E.2d 305 (1 Dist. 1966).

Injunction Proper

Where board of education acted arbitrarily, capriciously or unreasonably by giving late notice to the parents concerning closing of school where their children were in attendance, judicial intervention was warranted, and trial court properly issued injunction and set a hearing to determine the merits of this issue. Stasica v. Hannon, 70 Ill. App. 3d 785, 27 Ill. Dec. 147, 388 N.E.2d 1110 (1 Dist. 1979).

Layoff of Employees

Although consultation with plaintiff teachers union may have expedited the process of promulgating the rules for recall of laid-off teachers, there was nothing in 105 ILCS 5/34-18(31)

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that required cooperation with the union, and thus, an injunction ordering defendant school board to promulgate regulations for recall required modification. Chi. Teachers Union, Local No. 1, AFT v. Bd. of Educ. of Chi., 640 F.3d 221, 2011 U.S. App. LEXIS 6395 (7th Cir. 2011).

Neither the 1995 amendments to the Illinois School Code nor Illinois cases construing them suggested that tenured teachers were not entitled to an opportunity to show that they were qualified for vacancies after an economic layoff; rather, the limits on the board's discretion found in 105 ILCS 5/34-18(31) along with the teachers' right to a "permanent" appointment, gave rise to a legitimate expectation that laid-off teachers were to be considered for vacancies for a reasonable time. The teachers were entitled to a recall procedure and were to be given a meaningful opportunity to show that they were qualified for new vacancies; without any procedures for recall, the risk of deprivation to the teachers was significant and would have violated their right to due process under the Fourteenth Amendment. Chi. Teachers Union, Local No. 1, AFT v. Bd. of Educ. of Chi., 640 F.3d 221, 2011 U.S. App. LEXIS 6395 (7th Cir. 2011).

Illinois Legislature, by 105 ILCS 5/34-18(31), gave board of education the authority to formulate and implement its own rules and procedures regarding layoffs of teachers, rather than binding the board to a legislatively mandated procedure; therefore, 105 ILCS 5/34-84 and 105 ILCS 5/34-85 did not exempt tenured teachers from a layoff. Land v. Bd. of Educ., 202 Ill. 2d 414, 269 Ill. Dec. 452, 781 N.E.2d 249, 2002 Ill. LEXIS 959 (2002).

105 ILCS 5/34-18(31) empowers the Board of Education of the City of Chicago, Illinois, to lay off employees of the Chicago Public Schools, which includes all persons who work for and are compensated by the Chicago Public Schools, including tenured teachers; the board may establish a layoff policy as authorized by § 34-18(31) of the School Code, 105 ILCS 5/1-1 et seq., but may not through that policy delegate its absolute layoff power to school administrators. Land v. Bd. of Educ., 325 Ill. App. 3d 294, 259 Ill. Dec. 49, 757 N.E.2d 912, 2001 Ill. App. LEXIS 662 (1 Dist. 2001).

Included in a school board's powers is the authority to layoff employees in good faith for lack of work or purposes of economy, but the board's actions may not be arbitrary, discriminatory or unreasonable, and the board must act in good faith in ordering a layoff of its employees. Perlin v. Board of Educ., 86 Ill. App. 3d 108, 41 Ill. Dec. 294, 407 N.E.2d 792 (1 Dist. 1980).

Legislative Intent

There is intention on the part of the legislature to limit the power of a school board to adopt and develop better methods of educating the children of Illinois, so long as the methods so adopted are otherwise consistent with the provisions of this Code. Morton v. Board of Educ., 69 Ill. App. 2d 38, 216 N.E.2d 305 (1 Dist. 1966).

Mandamus

- Denied

Where the record indicated that the extension of the north boundary of a high school made the high school more convenient for student to attend than another, the board policy and practice which affected future graduating classes and not graduates of preceding years already enrolled in and attending high school, did not appear to be fraudulent or an oppressive or arbitrary abuse of the discretionary powers of the school officials, and petition for writ of mandamus was denied. People v. Board of Educ., 90 Ill. App. 2d 21, 234 N.E.2d 362 (1 Dist. 1967).

Policy Interpretation

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City board of education was in the best position to interpret its own policies, and its decision would be allowed to stand unless it is clearly erroneous or inconsistent with long-settled constructions. Jefferson v. Board of Educ., 82 Ill. App. 3d 877, 38 Ill. Dec. 255, 403 N.E.2d 486 (1 Dist. 1980).

Preferential Treatment

There is nothing in the School Code that allows a school board to give preferential treatment to local businesses; thus, a school board's rule that gave local businesses a 2% preference had no proper legislative authority and was an arbitrary and capricious delegation of power to a municipal unit which was unconstitutional. Best Bus Joint Venture v. Board of Educ., 288 Ill. App. 3d 770, 224 Ill. Dec. 255, 681 N.E.2d 570 (1 Dist. 1997).

Rental of School Lands

Contracts involving the rental of school lands vitally affect the public interest and are to be construed liberally in favor of the public. Board of Ed. v. Crilly, 312 Ill. App. 16, 37 N.E.2d 873 (1 Dist. 1941).

Salaries

- Formula for Principals

City board of education's salary formula, based on position classification establishing principals' salaries on a six hour daily basis, was not unreasonable. Jefferson v. Board of Educ., 82 Ill. App. 3d 877, 38 Ill. Dec. 255, 403 N.E.2d 486 (1 Dist. 1980).

Standing

Neither school board nor superintendent had standing to question the validity of the reduction of aid to school districts, who did not comply with mandatory number of school days, on due process grounds. Cronin v. Lindberg, 66 Ill. 2d 47, 4 Ill. Dec. 424, 360 N.E.2d 360 (1976).

Teacher Transfer

Under Illinois law the board of education clearly has the authority to transfer teachers; absent a property interest in a specific teaching job, and a legitimate claim of entitlement to the interest, the procedural safeguards of the Fourteenth Amendment of the United States Constitution simply do not apply to protect teachers from transfer. Kolz v. Board of Educ., 576 F.2d 747 (7th Cir. 1978).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Employment Law," see 26 S. Ill. U.L.J. 613 (2002).

For article, "A Comprehensive Analysis of Educational Choice: Can the Polemic of Legal Problems be Overcome?", see 43 De Paul L. Rev. 1 (1993).

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RESEARCH REFERENCES

Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice. 52 ALR4th 301.

§ 105 ILCS 5/34-18.1. Protection from suit

Sec. 34-18.1. Protection from suit. The board shall insure or indemnify and protect the board, Chicago Schools Academic Accountability Council, former School Board Nominating Commission, Local School Councils, or former Subdistrict Councils, any member of the board, Chicago Schools Accountability Council, former School Board Nominating Commission, Local School Council, or former Subdistrict Council, or any agent, employee, teacher, student teacher, officer, or member of the supervisory staff of the school district against financial loss and expense, including reasonable legal fees and costs arising out of any claim, demand, suit, or judgment by reason of alleged negligence, alleged violation of civil rights occurring on or after September 5, 1967, or alleged wrongful act resulting in death or bodily injury to any person or accidental damage to or destruction of property, within or without the school premises, provided such board member, agent, employee, teacher, student teacher, officer or member of the supervisory staff, at the time of the occurrence was acting under the direction of the board within the course or scope of his duties.

(Source: P.A. 86-725; 89-15, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-18.1.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, deleted "of education" following "board", inserted "Chicago Schools Academic Accountability Council, former" twice, inserted "former" preceding "Subdistrict Councils", inserted "Chicago Schools Accountability Council, former," inserted "former" preceding "Subdistrict Council" and made minor punctuation changes.

CASE NOTES

Analysis

Construction with other Laws
Insurance Not Required
- Choice

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- Tort Immunity Act

Construction with other Laws

The Tort Immunity Act's prohibition of a local public entity paying punitive damages trumps 105 ILCS 5/34-18.1 and bars a claim for punitive damages against a school board. Anderson v. Bd. of Educ. of Chi., 169 F. Supp. 2d 864, 2001 U.S. Dist. LEXIS 16897 (N.D. Ill. 2001).

Insurance Not Required

- Choice

This section states that a school board shall insure or indemnify meaning the board could choose either to purchase insurance or to indemnify itself. Beckus ex rel. Beckus v. Chicago Bd. of Educ., 78 Ill. App. 3d 558, 33 Ill. Dec. 842, 397 N.E.2d 175 (1 Dist. 1979).

- Tort Immunity Act

The Tort Immunity Act (745 ILCS 10/1-101 et seq.) does not mandate the purchase of insurance by the Board of Education. Beckus ex rel. Beckus v. Chicago Bd. of Educ., 78 Ill. App. 3d 558, 33 Ill. Dec. 842, 397 N.E.2d 175 (1 Dist. 1979).

LEGAL PERIODICALS

For note on school law and torts discussing Kobylanski v. Chicago Bd. of Ed., 63 Ill. 2d 165, 347 N.E.2d 705 (1976), see 65 Ill. B.J. 466 (1977).

§ 105 ILCS 5/34-18.2. Bilingual programs

Sec. 34-18.2. Bilingual programs. The Board of Education may provide programs in a language other than English for those children whose first language is other than English. Such programs are subject to the approval of the State Board of Education pursuant to Article 14C of The School Code [105 ILCS 5/14C-1 et seq.]. Upon approval of the program the Board shall be entitled to payment from the State of Illinois for the services and materials required.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-18.2.

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§ 105 ILCS 5/34-18.3. [Peer assistance; tutorial programs]

Sec. 34-18.3. The Board of Education is authorized to establish and implement peer assistance, tutorial programs whereby qualified, able students assist less able students with their studies and course work. As a part of such program the Board shall award appropriate recognition to students furnishing such tutorial services. In addition, the Board is authorized to cooperate with institutions of higher education and may accept tutorial services provided by qualified students of such institutions under the Educational Partnership Act, as now or hereafter amended [110 ILCS 40/1 et seq.].

(Source: P.A. 84-712.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-18.3.

§ 105 ILCS 5/34-18.4. Before and after school programs

Sec. 34-18.4. Before and after school programs. The Board of Education may develop and maintain before school and after school programs for students in kindergarten through the 6th grade. Such programs may include time for homework, physical exercise, afternoon nutritional snacks and educational offerings which are in addition to those offered during the regular school day. The chief administrator in each district shall be a certified teacher or a person who meets the requirements for supervising a day care center under the Child Care Act of 1969 [225 ILCS 10/1 et seq.]. Individual programs shall be coordinated by certified teachers or by persons who meet the requirements for supervising a day care center under the Child Care Act of 1969 [225 ILCS 10/1 et seq.]. Additional employees who are not so qualified may also be employed for such programs.

The schedule of these programs may follow the work calendar of the local community rather than the regular school calendar. Parents or guardians of the participating students shall be responsible for providing transportation for the students to and from the programs. The school board may charge parents of participating students a fee, not to exceed the actual cost of such before and after school programs.

(Source: P.A. 83-639.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-18.4.

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§ 105 ILCS 5/34-18.5. Criminal history records checks and checks of the Statewide Sex Offender Database and Statewide Murderer and Violent Offender Against Youth Database

Sec. 34-18.5. Criminal history records checks and checks of the Statewide Sex Offender Database and Statewide Murderer and Violent Offender Against Youth Database. (a) Certified and noncertified applicants for employment with the school district are required as a condition of employment to authorize a fingerprint-based criminal history records check to determine if such applicants have been convicted of any of the enumerated criminal or drug offenses in subsection (c) of this Section or have been convicted, within 7 years of the application for employment with the school district, of any other felony under the laws of this State or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in this State, would have been punishable as a felony under the laws of this State. Authorization for the check shall be furnished by the applicant to the school district, except that if the applicant is a substitute teacher seeking employment in more than one school district, or a teacher seeking concurrent part-time employment positions with more than one school district (as a reading specialist, special education teacher or otherwise), or an educational support personnel employee seeking employment positions with more than one district, any such district may require the applicant to furnish authorization for the check to the regional superintendent of the educational service region in which are located the school districts in which the applicant is seeking employment as a substitute or concurrent part-time teacher or concurrent educational support personnel employee. Upon receipt of this authorization, the school district or the appropriate regional superintendent, as the case may be, shall submit the applicant's name, sex, race, date of birth, social security number, fingerprint images, and other identifiers, as prescribed by the Department of State Police, to the Department. The regional superintendent submitting the requisite information to the Department of State Police shall promptly notify the school districts in which the applicant is seeking employment as a substitute or concurrent part-time teacher or concurrent educational support personnel employee that the check of the applicant has been requested. The Department of State Police and the Federal Bureau of Investigation shall furnish, pursuant to a fingerprint-based criminal history records check, records of convictions, until expunged, to the president of the school board for the school district that requested the check, or to the regional superintendent who requested the check. The Department shall charge the school district or the appropriate regional superintendent a fee for conducting such check, which fee shall be deposited in the State Police Services Fund and shall not exceed the cost of the inquiry; and the applicant shall not be charged a fee for such check by the school district or by the regional superintendent. Subject to appropriations for these purposes, the State Superintendent of Education shall reimburse the school district and regional superintendent for fees paid to obtain criminal history records checks under this Section.

(a-5) The school district or regional superintendent shall further perform a check of the Statewide Sex Offender Database, as authorized by the Sex Offender Community Notification Law, for each applicant.

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(a-6) The school district or regional superintendent shall further perform a check of the Statewide Murderer and Violent Offender Against Youth Database, as authorized by the Murderer and Violent Offender Against Youth Community Notification Law, for each applicant.

(b) Any information concerning the record of convictions obtained by the president of the board of education or the regional superintendent shall be confidential and may only be transmitted to the general superintendent of the school district or his designee, the appropriate regional superintendent if the check was requested by the board of education for the school district, the presidents of the appropriate board of education or school boards if the check was requested from the Department of State Police by the regional superintendent, the State Superintendent of Education, the State Teacher Certification Board or any other person necessary to the decision of hiring the applicant for employment. A copy of the record of convictions obtained from the Department of State Police shall be provided to the applicant for employment. Upon the check of the Statewide Sex Offender Database, the school district or regional superintendent shall notify an applicant as to whether or not the applicant has been identified in the Database as a sex offender. If a check of an applicant for employment as a substitute or concurrent part-time teacher or concurrent educational support personnel employee in more than one school district was requested by the regional superintendent, and the Department of State Police upon a check ascertains that the applicant has not been convicted of any of the enumerated criminal or drug offenses in subsection (c) or has not been convicted, within 7 years of the application for employment with the school district, of any other felony under the laws of this State or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in this State, would have been punishable as a felony under the laws of this State and so notifies the regional superintendent and if the regional superintendent upon a check ascertains that the applicant has not been identified in the Sex Offender Database as a sex offender, then the regional superintendent shall issue to the applicant a certificate evidencing that as of the date specified by the Department of State Police the applicant has not been convicted of any of the enumerated criminal or drug offenses in subsection (c) or has not been convicted, within 7 years of the application for employment with the school district, of any other felony under the laws of this State or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in this State, would have been punishable as a felony under the laws of this State and evidencing that as of the date that the regional superintendent conducted a check of the Statewide Sex Offender Database, the applicant has not been identified in the Database as a sex offender. The school board of any school district may rely on the certificate issued by any regional superintendent to that substitute teacher, concurrent part-time teacher, or concurrent educational support personnel employee or may initiate its own criminal history records check of the applicant through the Department of State Police and its own check of the Statewide Sex Offender Database as provided in subsection (a). Any person who releases any confidential information concerning any criminal convictions of an applicant for employment shall be guilty of a Class A misdemeanor, unless the release of such information is authorized by this Section.

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(c) The board of education shall not knowingly employ a person who has been convicted of any offense that would subject him or her to license suspension or revocation pursuant to Section 21B-80 of this Code [105 ILCS 5/21B-80]. Further, the board of education shall not knowingly employ a person who has been found to be the perpetrator of sexual or physical abuse of any minor under 18 years of age pursuant to proceedings under Article II of the Juvenile Court Act of 1987 [705 ILCS 405/2-1 et seq.].

(d) The board of education shall not knowingly employ a person for whom a criminal history records check and a Statewide Sex Offender Database check has not been initiated.

(e) Upon receipt of the record of a conviction of or a finding of child abuse by a holder of any certificate issued pursuant to Article 21 or Section 34-8.1 or 34-83 of the School Code [105 ILCS 5/21-0.01 et seq. or 105 ILCS 5/34-8.1 or 105 ILCS 5/34-83], the State Superintendent of Education may initiate certificate suspension and revocation proceedings as authorized by law.

(e-5) The general superintendent of schools shall, in writing, notify the State Superintendent of Education of any certificate holder whom he or she has reasonable cause to believe has committed an intentional act of abuse or neglect with the result of making a child an abused child or a neglected child, as defined in Section 3 of the Abused and Neglected Child Reporting Act [325 ILCS 5/3], and that act resulted in the certificate holder's dismissal or resignation from the school district. This notification must be submitted within 30 days after the dismissal or resignation. The certificate holder must also be contemporaneously sent a copy of the notice by the superintendent. All correspondence, documentation, and other information so received by the State Superintendent of Education, the State Board of Education, or the State Teacher Certification Board under this subsection (e-5) is confidential and must not be disclosed to third parties, except (i) as necessary for the State Superintendent of Education or his or her designee to investigate and prosecute pursuant to Article 21 of this Code, (ii) pursuant to a court order, (iii) for disclosure to the certificate holder or his or her representative, or (iv) as otherwise provided in this Article and provided that any such information admitted into evidence in a hearing is exempt from this confidentiality and non-disclosure requirement. Except for an act of willful or wanton misconduct, any superintendent who provides notification as required in this subsection (e-5) shall have immunity from any liability, whether civil or criminal or that otherwise might result by reason of such action.

(f) After March 19, 1990, the provisions of this Section shall apply to all employees of persons or firms holding contracts with any school district including, but not limited to, food service workers, school bus drivers and other transportation employees, who have direct, daily contact with the pupils of any school in such district. For purposes of criminal history records checks and checks of the Statewide Sex Offender Database on employees of persons or firms holding contracts with more than one school district and assigned to more than one school district, the regional superintendent of the educational service region in which the contracting school districts are located may, at the request of any such school district, be responsible for receiving the authorization for a criminal history records check prepared by each such employee and submitting the same to the Department of State Police and for conducting a check of the Statewide Sex Offender

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Database for each employee. Any information concerning the record of conviction and identification as a sex offender of any such employee obtained by the regional superintendent shall be promptly reported to the president of the appropriate school board or school boards.

(g) In order to student teach in the public schools, a person is required to authorize a fingerprint-based criminal history records check and checks of the Statewide Sex Offender Database and Statewide Murderer and Violent Offender Against Youth Database prior to participating in any field experiences in the public schools. Authorization for and payment of the costs of the checks must be furnished by the student teacher. Results of the checks must be furnished to the higher education institution where the student teacher is enrolled and the general superintendent of schools.

(h) Upon request of a school, school district, community college district, or private school, any information obtained by the school district pursuant to subsection (f) of this Section within the last year must be made available to that school, school district, community college district, or private school.

(Source: P.A. 85-781; 85-1042; 86-1035; 86-1243; 86-1475; 87-1124, § 1; 89-428, § 225; 89-462, § 225; 89-610, § 5; 90-566, § 5; 91-885, § 20; 93-418, § 10; 93-909, § 10; 94-219, § 5; 94-556, § 950; 94-875, § 5; 94-945, § 1015; 95-331, § 540; 96-431, § 10; 96-1452, § 5; 97-154, § 10; 97-248, § 5; 97-607, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-18.5.

P.A. 97-154 Section 1 provides: "This Act may be referred to as Andrea's Law."

Section 95 of P.A. 97-607 contains a "no acceleration or delay" provision.

Cross References.

For duties of Department of State Police pursuant to this section, see 20 ILCS 2605/2605-325.

Effect of Amendments. The 1992 amendment by P.A. 87-1124, effective September 16, 1992, rewrote the proviso at the end of the last sentence of subsection (a) to form the present last sentence of that subsection.

The 1995 amendment by P.A. 89-428, effective December 13, 1995 and the 1996 amendment by P.A. 89-462, effective May 29, 1996, made identical amendments: they each, in subdivision (c)(i) inserted "12-14.1".

The 1996 amendment by P.A. 89-610, effective August 6, 1996, in subsection (c) inserted "for committing attempted first degree murder or" and inserted "first degree murder or a Class X felony or".

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The 1997 amendment by P.A. 90-566, effective January 2, 1998, combined the amendments by P.A. 89-462 and P.A. 89-610; in subsection (c) added the second sentence; and in subsection (e) inserted "or a finding of child abuse by".

The 2000 amendment by P.A. 91-885, effective July 6, 2000, twice in subsection (a) and twice in subsection (b) inserted the language referring to a felony conviction within 7 years of application for employment.

The 2003 amendment by P.A. 93-418, effective January 1, 2004, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2004 amendment by P.A. 93-909, effective August 12, 2004, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2005 amendment by P.A. 94-219, effective July 14, 2005, rewrote the section, adding references to the Statewide Sex Offender Database.

The 2005 amendment by P.A. 94-556, effective September 11, 2005, in (c) added item (iv) and redesignated former item (iv) as (v), and made related changes.

The 2006 amendment by P.A. 94-875, effective July 1, 2006, in rewrote (b).

The 2006 amendment by P.A. 94-945, effective June 27, 2006, added (a-6).

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, revised the section heading.

The 2009 amendment by P.A. 96-431, effective August 13, 2009, rewrote the first sentence of (c); in (e) deleted "board of education or the" preceding "State Superintendent", and substituted "may initiate" for "shall initiate"; added (e-5); and made stylistic changes.

The 2010 amendment by P.A. 96-1452, effective August 20, 2010, added (g).

The 2011 amendment by P.A. 97-154, effective January 1, 2012, deleted "Child" preceding "Murderer" in the section heading, and wherever it appears in the first paragraph, in (a-6), and the first sentence of (g).

The 2011 amendment by P.A. 97-248, effective January 1, 2012, added (h).

The 2011 amendment by P.A. 97-607, effective August 26, 2011, in the first sentence of (c), substituted "license" for "certification" and "Section 21B-80" for "Section 21-23a."

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

CASE NOTES

Analysis

Constitutionality
Immunity

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Constitutionality

Public Act 89-428 was enacted in violation of the single subject rule of the state constitution and is therefore invalid in its entirety. Johnson v. Edgar, 176 Ill. 2d 499, 224 Ill. Dec. 1, 680 N.E.2d 1372 (1997).

Immunity

When a former student alleged that the student was sexually assaulted by a school bus driver, the school district was not entitled to summary judgment as to the student's negligent hiring claim based on immunity under 745 ILCS 10/2-201, because a fact question existed as to when the district hired the driver and whether 105 ILCS 5/34-18.5(d), requiring criminal background investigations of applicants for employment by a school district, applied. Green v. Carlinville Cmty. Unit Sch. Dist. No. 1, 381 Ill. App. 3d 207, 320 Ill. Dec. 307, 887 N.E.2d 451, 2008 Ill. App. LEXIS 253 (1 Dist. 2008).

Practice Guides and Treatises.

Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 22.2 What Law Controls (IICLE).

§ 105 ILCS 5/34-18.6. Child abuse and neglect - detection, reporting and prevention

Sec. 34-18.6. Child abuse and neglect - detection, reporting and prevention. The Board of Education may provide staff development for local school site personnel who work with pupils in grades kindergarten through 8, in the detection, reporting and prevention of child abuse and neglect.

(Source: P.A. 84-1308.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-18.6.

§ 105 ILCS 5/34-18.6a. Orders of protection

Sec. 34-18.6a. Orders of protection. The board of education may prohibit the disclosure by any school employee to any person against whom the school district has received a certified copy of an order of protection the location or address of the petitioner for the order of protection or the identity of the schools in the district in which the petitioner's child or children are enrolled. The school district shall maintain the copy of the order of

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protection in the records of the child or children enrolled in the district whose parent is the petitioner of an order of protection.

(Source: P.A. 87-437.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-18.6a.

§ 105 ILCS 5/34-18.7. Adolescent and teen suicide detection and intervention

Sec. 34-18.7. Adolescent and teen suicide detection and intervention. School guidance counselors, teachers, school social workers, and other school personnel who work with pupils in grades 7 through 12 shall be trained to identify the warning signs of suicidal behavior in adolescents and teens and shall be taught various intervention techniques. Such training shall be provided within the framework of existing in-service training programs offered by the Board or as part of the professional development activities required under Section 21-14 of this Code [105 ILCS 5/21-14].

(Source: P.A. 85-297; 96-951, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-18.7.

Effect of Amendments. The 2010 amendment by P.A. 96-951, effective June 28, 2010, inserted "school social workers"; and added "or as part of the professional development activities required under Section 21-14 of this Code" at the end of the paragraph.

§ 105 ILCS 5/34-18.8. AIDS training

Sec. 34-18.8. AIDS training. School guidance counselors, nurses, teachers and other school personnel who work with pupils may be trained to have a basic knowledge of matters relating to acquired immunodeficiency syndrome (AIDS), including the nature of the disease, its causes and effects, the means of detecting it and preventing its transmission, the availability of appropriate sources of counseling and referral, and any other information that may be appropriate considering the age and grade level of such pupils. The Board of Education shall supervise such training. The State Board of Education and the Department of Public Health shall jointly develop standards for such

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training.

(Source: P.A. 86-900.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-18.8.

§ 105 ILCS 5/34-18.9. Electronic paging devices on school property

Sec. 34-18.9. Electronic paging devices on school property. (a) The General Assembly finds and declares that the educational development of all persons to the limits of their capacities is a fundamental goal of the people of this State, that to achieve such goal it is essential to provide a safe and secure learning environment within the public schools, and that the unrestricted and unregulated use by students of pocket pagers and similar electronic paging devices on school grounds or in school buildings which are owned, occupied or leased by the board of education for school purposes and activities adversely affects the educational environment, welfare and safety of students enrolled in the public schools, in that pocket pagers and similar electronic paging devices are being regularly used for the conduct of unlawful activities during school hours and on school property, including activities directly related to the unlawful possession, sale, delivery or other trafficking in drugs or other substances which constitute a "controlled substance" as that term is defined in the Illinois Controlled Substances Act [720 ILCS 570/100 et seq.]. It is the purpose and intention of the General Assembly, in enacting this legislation, to reduce or eliminate the occurrence of such unlawful activities during school hours and on school property by restricting and regulating student use or possession of pocket pagers and similar electronic paging devices as provided in this Section, and by providing for the imposition of appropriate discipline and sanctions for any violation of the provisions of this Section.

(b) No student shall use or have in his or her possession any pocket pager or similar electronic paging device while in any school building or on any school property, during regular school hours or at any other time, unless the use or possession of such device by such student has first been expressly authorized by the principal acting in accordance with standards developed as provided in subsection (c) for the granting of approved exceptions to the general prohibition of this Section against such use or possession.

(c) The board of education shall develop and promulgate written standards, which shall be furnished by the board of education to each principal, under which a principal:

(1) may authorize the use or possession of a pocket pager or similar electronic paging device by a student while in a school building or on school property as an approved exception to the general prohibition of this Section against such use or possession; and

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(2) may impose appropriate discipline or other sanctions against any student who violates any provision of this Section.

(Source: P.A. 86-791.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-18.9.

§ 105 ILCS 5/34-18.10. Minority recruitment policy

Sec. 34-18.10. Minority recruitment policy. The board of education shall, by 1991, develop and implement a policy of recruitment and hiring of minority teachers, other certificated employees and non-certificated employees, including custodians, lunch room staff and teacher aides.

(Source: P.A. 86-227; 86-1028.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-18.10.

§ 105 ILCS 5/34-18.10a. Transfer of employees

Sec. 34-18.10a. Transfer of employees. The employment of an employee of the Illinois Chapter I 89-313 special education program transferred from the DuPage County Superintendent of Education to the Chicago Board of Education shall be considered continuous employment.

(Source: P.A. 87-1107, § 1.)

Effective Date. This section became effective January 1, 1993 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 5/34-18.11. Tobacco prohibition

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Sec. 34-18.11. Tobacco prohibition. The Board of Education shall prohibit the use of tobacco on school property when such property is being used for any school purposes. Neither the board nor the local school council may authorize or permit any exception to or exemption from the prohibition at any place or at any time, including without limitation outside of school buildings or before or after the regular school day or on days when school is not in session. "School purposes" include but are not limited to all events or activities or other use of school property that the school board or school officials authorize or permit on school property, including without limitation all interscholastic or extracurricular athletic, academic or other events sponsored by the school board or in which pupils of the district participate. For purposes of this Section "tobacco" shall mean cigarette, cigar, or tobacco in any other form, including smokeless tobacco which is any loose, cut, shredded, ground, powdered, compressed or leaf tobacco that is intended to be placed in the mouth without being smoked.

(Source: P.A. 86-821; 86-1028; 89-181, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-18.11.

Effect of Amendments. The 1995 amendment by P.A. 89-181, effective July 19, 1995, in the second sentence substituted "Neither the board nor the" for "Each" and substituted "authorize or permit any exception to or exemption from the prohibition at any place or at any time, including without limitation outside of school buildings or before or after the regular school day or on days when school is not in session" for "designate the following exemptions: (1) outdoor spectator areas of school property during scheduled school interscholastic or extracurricular athletic activities; (2) a designated area within or outside the school building for use by spectators during indoor scheduled school interscholastic or extracurricular athletic activities; and (3) a designated area within the school building for use by school personnel. If the local school council exempts a designated area for use by school personnel the local school council shall provide for school personnel an equivalent area where the tobacco use prohibition applies"; and in the third sentence inserted "all events or activities or other use of school property that the school board or school officials authorize or permit on school property, including without limitation".

§ 105 ILCS 5/34-18.12. Inspection for drugs

Sec. 34-18.12. Inspection for drugs. The Board of Education is empowered to authorize school officials to request the assistance of law enforcement officials for the purpose of conducting reasonable searches of school grounds and lockers for illegal drugs, including searches conducted through the use of specially trained dogs.

(Source: P.A. 86-850; 86-1028.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-18.12.

§ 105 ILCS 5/34-18.13. Infectious disease policies and rules

Sec. 34-18.13. Infectious disease policies and rules. The Board of Education shall develop policies and adopt rules relating to the appropriate manner of managing children with chronic infectious diseases, not inconsistent with guidelines published by the State Board of Education and the Illinois Department of Public Health. Such policies and rules must include evaluation of students with a chronic infectious disease on an individual case-by-case basis, and may include different provisions for different age groups, classes of instruction, types of educational institution, and other reasonable classifications, as the Board may find appropriate.

(Source: P.A. 86-890; 86-1028.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-18.13.

§ 105 ILCS 5/34-18.14. Cellular radio telecommunication devices

Sec. 34-18.14. Cellular radio telecommunication devices. (a) The General Assembly finds and declares that the educational development of all persons to the limits of their capacities is a fundamental goal of the people of this State and that to achieve such goal it is essential to provide a safe and secure learning environment within the public schools. While recognizing that cellular radio telecommunication devices may be used for inappropriate activities during school hours and on school property and may, on occasion, cause disruption to the classroom environment, the General Assembly also recognizes that the use of cellular radio telecommunication devices can decrease the response time of officials to emergency situations. In addition, cellular radio telecommunication devices allow parents an additional and timely method of contacting their children should an emergency situation arise. Therefore, it is the purpose and intention of the General Assembly in enacting this legislation to (i) reduce the occurrence of inappropriate and disruptive activities during school hours and on school property occurring through the use of cellular radio telecommunication devices and (ii) increase the safety of students and school personnel during school hours and on school property.

(b) The board may establish appropriate rules and disciplinary procedures governing the use or possession of cellular radio telecommunication devices by a student while in a

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school or on school property, during regular school hours, or at any other time.

(Source: P.A. 86-1391; 92-793, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-18.14.

Effect of Amendments. The 2002 amendment by P.A. 92-793, effective August 9, 2002, substituted "devices" for "prohibition" in the section heading; and rewrote the section to the extent that a detailed comparison would be impracticable, in part by deleting the language concerning the use or possession of cellular radio telecommunication device by a pupil during regular school hours, and adding subsections (a) and (b).

§ 105 ILCS 5/34-18.15. Recycled paper and paper products and solid waste management

Sec. 34-18.15. Recycled paper and paper products and solid waste management. (a) Definitions. As used in this Section, the following terms shall have the meanings indicated, unless the context otherwise requires:

"Deinked stock" means paper that has been processed to remove inks, clays, coatings, binders and other contaminants.

"High grade printing and writing papers" includes offset printing paper, duplicator paper, writing paper (stationery), tablet paper, office paper, note pads, xerographic paper, envelopes, form bond including computer paper and carbonless forms, book papers, bond papers, ledger paper, book stock and cotton fiber papers.

"Paper and paper products" means high grade printing and writing papers, tissue products, newsprint, unbleached packaging and recycled paperboard.

"Postconsumer material" means only those products generated by a business or consumer which have served their intended end uses, and which have been separated or diverted from solid waste; wastes generated during the production of an end product are excluded.

"Recovered paper material" means paper waste generated after the completion of the papermaking process, such as postconsumer materials, envelope cuttings, bindery trimmings, printing waste, cutting and other converting waste, butt rolls, and mill wrappers, obsolete inventories, and rejected unused stock. "Recovered paper material", however, does not include fibrous waste generated during the manufacturing process as fibers recovered from waste water or trimmings of paper machine rolls (mill broke), or fibrous byproducts of harvesting, extraction or woodcutting processes, or forest residues such as bark.

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"Recycled paperboard" includes paperboard products, folding cartons and pad backings.

"Tissue products" includes toilet tissue, paper towels, paper napkins, facial tissue, paper doilies, industrial wipers, paper bags and brown papers. These products shall also be unscented and shall not be colored.

"Unbleached packaging" includes corrugated and fiber storage boxes.

(a-5) The school district shall periodically review its procurement procedures and specifications related to the purchase of products and supplies. Those procedures and specifications must be modified as necessary to require the school district to seek out products and supplies that contain recycled materials and to ensure that purchased products and supplies are reusable, durable, or made from recycled materials, if economically and practically feasible. In selecting products and supplies that contain recycled material, preference must be given to products and supplies that contain the highest amount of recycled material and that are consistent with the effective use of the product or supply, if economically and practically feasible.

(b) Wherever economically and practically feasible, as determined by the board of education, the board of education, all public schools and attendance centers within the school district, and their school supply stores shall procure recycled paper and paper products as follows:

(1) Beginning July 1, 2008, at least 10% of the total dollar value of paper and paper products purchased by the board of education, public schools and attendance centers, and their school supply stores shall be recycled paper and paper products.

(2) Beginning July 1, 2011, at least 25% of the total dollar value of paper and paper products purchased by the board of education, public schools and attendance centers, and their school supply stores shall be recycled paper and paper products.

(3) Beginning July 1, 2014, at least 50% of the total dollar value of paper and paper products purchased by the board of education, public schools and attendance centers, and their school supply stores shall be recycled paper and paper products.

(4) Beginning July 1, 2020, at least 75% of the total dollar value of paper and paper products purchased by the board of education, public schools and attendance centers, and their school supply stores shall be recycled paper and paper products.

(5) Beginning upon the effective date of this amendatory Act of 1992, all paper purchased by the board of education, public schools and attendance centers for publication of student newspapers shall be recycled newsprint. The amount purchased shall not be included in calculating the amounts specified in paragraphs (1) through (4).

(c) Paper and paper products purchased from private sector vendors pursuant to printing contracts are not considered paper and paper products for the purposes of subsection (b), unless purchased under contract for the printing of student newspapers.

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(d)(1) Wherever economically and practically feasible, the recycled paper and paper products referred to in subsection (b) shall contain postconsumer or recovered paper materials as specified by paper category in this subsection:

(i) Recycled high grade printing and writing paper shall contain at least 50% recovered paper material. Such recovered paper material, until July 1, 2008, shall consist of at least 20% deinked stock or postconsumer material; and beginning July 1, 2008, shall consist of at least 25% deinked stock or postconsumer material; and beginning July 1, 2010, shall consist of at least 30% deinked stock or postconsumer material; and beginning July 1, 2012, shall consist of at least 40% deinked stock or postconsumer material; and beginning July 1, 2014, shall consist of at least 50% deinked stock or postconsumer material.

(ii) Recycled tissue products, until July 1, 1994, shall contain at least 25% postconsumer material; and beginning July 1, 1994, shall contain at least 30% postconsumer material; and beginning July 1, 1996, shall contain at least 35% postconsumer material; and beginning July 1, 1998, shall contain at least 40% postconsumer material; and beginning July 1, 2000, shall contain at least 45% postconsumer material.

(iii) Recycled newsprint, until July 1, 1994, shall contain at least 40% postconsumer material; and beginning July 1, 1994, shall contain at least 50% postconsumer material; and beginning July 1, 1996, shall contain at least 60% postconsumer material; and beginning July 1, 1998, shall contain at least 70% postconsumer material; and beginning July 1, 2000, shall contain at least 80% postconsumer material.

(iv) Recycled unbleached packaging, until July 1, 1994, shall contain at least 35% postconsumer material; and beginning July 1, 1994, shall contain at least 40% postconsumer material; and beginning July 1, 1996, shall contain at least 45% postconsumer material; and beginning July 1, 1998, shall contain at least 50% postconsumer material; and beginning July 1, 2000, shall contain at least 55% postconsumer material.

(v) Recycled paperboard, until July 1, 1994, shall contain at least 80% postconsumer material; and beginning July 1, 1994, shall contain at least 85% postconsumer material; and beginning July 1, 1996, shall contain at least 90% postconsumer material; and beginning July 1, 1998, shall contain at least 95% postconsumer material.

(2) For the purposes of this Section, "postconsumer material" includes:

(i) paper, paperboard, and fibrous waste from retail stores, office buildings, homes and so forth, after the waste has passed through its end usage as a consumer item, including used corrugated boxes, old newspapers, mixed waste paper, tabulating cards, and used cordage; and

(ii) all paper, paperboard, and fibrous wastes that are diverted or separated from the municipal waste stream.

(3) For the purpose of this Section, "recovered paper material" includes:

(i) postconsumer material;

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(ii) dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets), including envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming and other converting operations, or from bag, box and carton manufacturing, and butt rolls, mill wrappers, and rejected unused stock; and

(iii) finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters or others.

(e) Nothing in this Section shall be deemed to apply to art materials, nor to any newspapers, magazines, text books, library books or other copyrighted publications which are purchased or used by the board of education or any public school or attendance center within the school district, or which are sold in any school supply store operated by or within any such school or attendance center, other than newspapers written, edited or produced by students enrolled in the school district, public school or attendance center.

(e-5) The school district shall periodically review its procedures on solid waste reduction regarding the management of solid waste generated by academic, administrative, and other institutional functions. Those waste reduction procedures must be designed to, when economically and practically feasible, recycle the school district's waste stream, including without limitation landscape waste, computer paper, and white office paper. The school district is encouraged to have procedures that provide for the investigation of potential markets for other recyclable materials that are present in the school district's waste stream. The waste reduction procedures must be designed to achieve, before July 1, 2020, at least a 50% reduction in the amount of solid waste that is generated by the school district.

(f) The State Board of Education, in coordination with the Departments of Central Management Services and Commerce and Economic Opportunity, may adopt such rules and regulations as it deems necessary to assist districts in carrying out the provisions of this Section.

(Source: P.A. 87-626; 87-1082, § 1; 89-445, § 9H-4; 94-793, § 625; 95-741, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-18.15.

Section 995 of P.A. 94-793 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 1992 amendment, effective January 1, 1993, added subdivision (b)(5); in subsection (c) added at the end of the sentence "unless purchased under contract for the printing of student newspapers"; and in subsection (e) added at the end of the paragraph "other than newspapers written, edited or produced by students enrolled in the school district, public school or attendance center".

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The 1996 amendment by P.A. 89-445, effective February 7, 1996, in subsection (f) substituted "Commerce and Community Affairs" for "Energy and Natural Resources".

The 2006 amendment by revisory act P.A. 94-793, effective May 19, 2006, substituted references to "Governor's Office of Management and Budget" for references to "Bureau of the Budget", and substituted references to "Department of Commerce and Economic Opportunity" for references to "Department of Commerce and Community Affairs".

The 2008 amendment by P.A. 95-741, effective July 18, 2008, revised the section heading; added (a-5); revised the dates and percentages in (b)(1) through (b)(4); revised the dates in (d)(1)(i); added (e-5); and made related and stylistic changes.

§ 105 ILCS 5/34-18.16: Repealed by P.A. 89-15, § 50, effective May 30, 1995.

§ 105 ILCS 5/34-18.17. No pass-no play policy

Sec. 34-18.17. No pass-no play policy. Beginning with the 1998-99 school year, the board of education shall establish, implement, and enforce a uniform and consistent policy under which a student in any of grades 9 through 12 who fails to maintain a specified minimum grade point average or a specified minimum grade in each course in which the student is enrolled or both is suspended from further participation in any school-sponsored or school-supported athletic or extracurricular activities for a specified period or until a specified minimum grade point average or minimum grade or both are earned by the student. The board of education shall adopt a policy as required by this Section not later than one year after the effective date of this amendatory Act of 1997 and shall concurrently file a copy of that policy with the State Board of Education. After the policy has been in effect for one year, the board of education shall file a report with the State Board of Education setting forth the number and length of suspensions imposed under the policy during the period covered by the report. If the board of education already has a policy that is consistent with the requirements of this Section in effect on the effective date of this amendatory Act of 1997, it shall file a copy of that policy with the State Board of Education within 90 days after the effective date of this amendatory Act and shall file the annual report required under this Section 12 months thereafter.

(Source: P.A. 90-548, § 5-915.)

Effective Date. Section 990-5 of P.A. 90-548 made this section effective January 1, 1998.

§ 105 ILCS 5/34-18.18. Occupational standards

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Sec. 34-18.18. Occupational standards. The Board shall not require a student to meet occupational standards for grade level promotion or graduation unless that student is voluntarily enrolled in a job training program.

(Source: P.A. 91-175, § 5; 92-16, § 49.)

Note.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Effective Date. This section became effective January 1, 2000, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2001 amendment by P.A. 92-16, effective June 28, 2001, made no changes to this section; renumbered the former version of this section enacted by P.A. 91-491 as 105 ILCS 5/34-18.19, and renumbered the former version of this section enacted by P.A. 91-600 as 105 ILCS 5/34-18.20.

§ 105 ILCS 5/34-18.19: Repealed by P.A. 94-600, § 910, effective August 16, 2005.

§ 105 ILCS 5/34-18.20. Time out and physical restraint

Sec. 34-18.20. Time out and physical restraint. Until rules are adopted under Section 2-3.130 of this Code [105 ILCS 5/2-3.130], the use of any of the following rooms or enclosures for time out purposes is prohibited:

(1) a locked room other than one with a locking mechanism that engages only when a key or handle is being held by a person;

(2) a confining space such as a closet or box;

(3) a room where the student cannot be continually observed; or

(4) any other room or enclosure or time out procedure that is contrary to current guidelines of the State Board of Education.

The use of physical restraints is prohibited except when (i) the student poses a physical risk to himself, herself, or others, (ii) there is no medical contraindication to its use, and (iii) the staff applying the restraint have been trained in its safe application. For the purposes of this Section, "restraint" does not include momentary periods of physical restriction by direct person-to-person contact, without the aid of material or mechanical

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devices, accomplished with limited force and that are designed (i) to prevent a student from completing an act that would result in potential physical harm to himself, herself, or another or damage to property or (ii) to remove a disruptive student who is unwilling to voluntarily leave the area. The use of physical restraints that meet the requirements of this Section may be included in a student's individualized education plan where deemed appropriate by the student's individualized education plan team. Whenever physical restraints are used, school personnel shall fully document the incident, including the events leading up to the incident, the type of restraint used, the length of time the student is restrained, and the staff involved. The parents or guardian of a student shall be informed whenever physical restraints are used.

(Source: P.A. 91-600, § 5; 92-16, § 49.)

Note.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 91-600 made this section effective upon becoming law. The Act was approved August 14, 1999.

Effect of Amendments. The 2001 amendment by P.A. 92-16, effective June 28, 2001, renumbered this section, which was formerly 105 ILCS 5/34-18.18; and substituted "Section 2-3.130" for "Section 2-3.126" in the first sentence.

§ 105 ILCS 5/34-18.21. Medicaid-eligible children; health care resources

Sec. 34-18.21. Medicaid-eligible children; health care resources. As authorized by federal law, the school district may access federally funded health care resources if the school district provides early periodic screening and diagnostic testing services, including screening and diagnostic services, health care and treatment, preventive health care, or any other measure, to correct or improve health impairments of Medicaid-eligible children.

(Source: P.A. 91-842, § 5.)

Effective Date. Section 99 of P.A. 91-842 made this section effective upon becoming law. The Act was approved June 22, 2000.

§ 105 ILCS 5/34-18.22. Unfilled teaching positions list

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Sec. 34-18.22. Unfilled teaching positions list. The school district must post a current list of all unfilled teaching positions in the district on its Internet web site. The State Board of Education's Internet web site must provide a link to this list.

(Source: P.A. 92-41, § 5.)

Effective Date. Section 99 of P.A. 92-41 made this section effective July 1, 2001.

§ 105 ILCS 5/34-18.23. Medical information form for bus drivers and emergency medical technicians

Sec. 34-18.23. Medical information form for bus drivers and emergency medical technicians. The school district is encouraged to create and use an emergency medical information form for bus drivers and emergency medical technicians for those students with special needs or medical conditions. The form may include without limitation information to be provided by the student's parent or legal guardian concerning the student's relevant medical conditions, medications that the student is taking, the student's communication skills, and how a bus driver or an emergency medical technician is to respond to certain behaviors of the student. If the form is used, the school district is encouraged to notify parents and legal guardians of the availability of the form. The parent or legal guardian of the student may fill out the form and submit it to the school that the student is attending. The school district is encouraged to keep one copy of the form on file at the school and another copy on the student's school bus in a secure location.

(Source: P.A. 92-580, § 5; 95-331, § 540.)

Note.

The version of 105 ILCS 5/34-18.23 enacted by P.A. 92-604, was renumbered by P.A. 93-633 as 105 ILCS 5/34-18.24.

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, renumbered a former multiple version of 105 ILCS 34-5/18.23 as 105 ILCS 34-5/18.25.

Effective Date. Section 99 of P.A. 92-580, made this section effective July 1, 2002.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, reenacted the section without changes.

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§ 105 ILCS 5/34-18.24. Transfer of students

Sec. 34-18.24. Transfer of students. (a) The board shall establish and implement a policy governing the transfer of a student from one attendance center to another within the school district upon the request of the student's parent or guardian. Any request by a parent or guardian to transfer his or her child from one attendance center to another within the school district pursuant to Section 1116 of the federal Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6317) must be made no later than 30 days after the parent or guardian receives notice of the right to transfer pursuant to that law. A student may not transfer to any of the following attendance centers, except by change in residence if the policy authorizes enrollment based on residence in an attendance area or unless approved by the board on an individual basis:

(1) An attendance center that exceeds or as a result of the transfer would exceed its attendance capacity.

(2) An attendance center for which the board has established academic criteria for enrollment if the student does not meet the criteria, provided that the transfer must be permitted if the attendance center is the only attendance center serving the student's grade that has not been identified for school improvement, corrective action, or restructuring under Section 1116 of the federal Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6317).

(3) Any attendance center if the transfer would prevent the school district from meeting its obligations under a State or federal law, court order, or consent decree applicable to the school district.

(b) The board shall establish and implement a policy governing the transfer of students within the school district from a persistently dangerous attendance center to another attendance center in that district that is not deemed to be persistently dangerous. In order to be considered a persistently dangerous attendance center, the attendance center must meet all of the following criteria for 2 consecutive years:

(1) Have greater than 3% of the students enrolled in the attendance center expelled for violence-related conduct.

(2) Have one or more students expelled for bringing a firearm to school as defined in 18 U.S.C. 921.

(3) Have at least 3% of the students enrolled in the attendance center exercise the individual option to transfer attendance centers pursuant to subsection (c) of this Section.

(c) A student may transfer from one attendance center to another attendance center within the district if the student is a victim of a violent crime as defined in Section 3 of the Rights of Crime Victims and Witnesses Act [725 ILCS 120/3]. The violent crime must have occurred on school grounds during regular school hours or during a school-sponsored event.

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(d) Transfers made pursuant to subsections (b) and (c) of this Section shall be made in compliance with the federal No Child Left Behind Act of 2001 (Public Law 107-110).

(Source: P.A. 92-604, § 5; 93-633, § 5.)

Effective Date. Section 99 of P.A. 92-604 made this section effective July 1, 2002.

Effect of Amendments. The 2003 amendment by P.A. 93-633, effective December 23, 2003, renumbered the section, which was formerly the version of 105 ILCS 5/34-18.23 as enacted by P.A. 92-604; and added the subsection (a) designation and added subsection (b).

§ 105 ILCS 5/34-18.25. Psychotropic or psychostimulant medication; disciplinary action

Sec. 34-18.25. Psychotropic or psychostimulant medication; disciplinary action. (a) In this Section:

"Psychostimulant medication" means medication that produces increased levels of mental and physical energy and alertness and an elevated mood by stimulating the central nervous system.

"Psychotropic medication" means psychotropic medication as defined in Section 1-121.1 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-121.1].

(b) The board must adopt and implement a policy that prohibits any disciplinary action that is based totally or in part on the refusal of a student's parent or guardian to administer or consent to the administration of psychotropic or psychostimulant medication to the student.

The policy must require that, at least once every 2 years, the in-service training of certified school personnel and administrators include training on current best practices regarding the identification and treatment of attention deficit disorder and attention deficit hyperactivity disorder, the application of non-aversive behavioral interventions in the school environment, and the use of psychotropic or psychostimulant medication for school-age children.

(c) This Section does not prohibit school medical staff, an individualized educational program team, or a professional worker (as defined in Section 14-1.10 of this Code) [105 ILCS 5/14-1.10] from recommending that a student be evaluated by an appropriate medical practitioner or prohibit school personnel from consulting with the practitioner with the consent of the student's parents or guardian.

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(Source: P.A. 92-663, § 5; 95-331, § 540.)

Effective Date. This section is effective January 1, 2003, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, renumbered the section, which was formerly a multiple version of 105 ILCS 34-5/18.23.

§ 105 ILCS 5/34-18.26. Sharing information on school lunch applicants

Sec. 34-18.26. Sharing information on school lunch applicants. The board shall, whenever requested by the Department of Healthcare and Family Services (formerly Department of Public Aid), agree in writing with the Department of Healthcare and Family Services (as the State agency that administers the State Medical Assistance Program as provided in Title XIX of the federal Social Security Act and the State Children's Health Insurance Program as provided in Title XXI of the federal Social Security Act) to share with the Department of Healthcare and Family Services information on applicants for free or reduced-price lunches. The board shall, whenever requested by the Department of Healthcare and Family Services (formerly Department of Public Aid), require each of its schools to agree in writing with the Department of Healthcare and Family Services to share with the Department of Healthcare and Family Services information on applicants for free or reduced-price lunches. This sharing of information shall be for the sole purpose of helping the Department of Healthcare and Family Services identify and enroll children in the State Medical Assistance Program or the State Children's Health Insurance Program or both as allowed under 42 U.S.C. Sec. 1758(b)(2)(C)(iii)(IV) and under the restrictions set forth in 42 U.S.C. Sec. 1758(b)(2)(C)(vi) and (vii).

(Source: P.A. 93-404, § 5; 95-331, § 540.)

Note.

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, renumbered former multiple versions of 105 ILCS 34-5/18.26 as 105 ILCS 34-5/18.27 to 105 ILCS 34-5/18.29.

Effective Date. Section 99 of P.A. 93-404 makes this section effective August 1, 2003.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, substituted "Department of Healthcare and Family Services" for "Department of Public Aid" throughout the section.

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§ 105 ILCS 5/34-18.27. Summer kindergarten

Sec. 34-18.27. Summer kindergarten. The board may establish, maintain, and operate, in connection with the kindergarten program of the school district, a summer kindergarten program that begins 2 months before the beginning of the regular school year and a summer kindergarten program for grade one readiness for those pupils making unsatisfactory progress during the regular kindergarten session that will continue for 2 months after the regular school year. The summer kindergarten program may be held within the school district or, pursuant to a contract that must be approved by the State Board of Education, may be operated by 2 or more adjacent school districts or by a public or private university or college. Transportation for students attending the summer kindergarten program shall be the responsibility of the school district. The expense of establishing, maintaining, and operating the summer kindergarten program may be paid from funds contributed or otherwise made available to the school district for that purpose by federal or State appropriation.

(Source: P.A. 93-472, § 5; 95-331, § 540.)

Effective Date. Section 99 of P.A. 93-472 made this section effective upon becoming law. The Act was approved August 8, 2003.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, renumbered the section, which was formerly a multiple version of 105 ILCS 34-5/18.26.

§ 105 ILCS 5/34-18.28. Prison tour pilot program

Sec. 34-18.28. Prison tour pilot program. The board shall establish a pilot program to prevent crime by developing guidelines to identify students at risk of committing crimes. "Students at risk of committing crimes" shall be limited to those students who have engaged in serious acts of misconduct in violation of the board's policy on discipline. This program, in cooperation with the Department of Corrections, shall include a guided tour of a prison for each student so identified in order to discourage criminal behavior. The touring of a prison under this Section shall be subject to approval, in writing, of a student's parent or guardian.

(Source: P.A. 93-538, § 5; 95-331, § 540.)

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The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, renumbered a former multiple version of 105 ILCS 34-5/18.26 as 105 ILCS 34-5/18.28.

Effective Date. The section above is effective January 1, 2004 pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/2.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, renumbered the section, which was formerly a multiple version of 105 ILCS 34-5/18.26.

§ 105 ILCS 5/34-18.29. Provision of student information prohibited

Sec. 34-18.29. Provision of student information prohibited. The school district, including its agents, employees, student or alumni associations, or any affiliates, may not provide a student's name, address, telephone number, social security number, e-mail address, or other personal identifying information to a business organization or financial institution that issues credit or debit cards.

(Source: P.A. 93-549, § 5; 95-331, § 540; 96-261, § 905.)

Note.

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, renumbered a former multiple version of 105 ILCS 34-5/18.26 as 105 ILCS 34-5/18.29.

Effective Date. Section 99 of P.A. 93-549 made this section effective August 19, 2003.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, renumbered the section, which was formerly a multiple version of 105 ILCS 34-5/18.26.

The 2009 amendment by P.A. 96-261, effective January 1, 2010, inserted "including its agents, employees, student or alumni associations, or any affiliates"; and made related changes.

§ 105 ILCS 5/34-18.30. Dependents of military personnel; no tuition charge

Sec. 34-18.30. Dependents of military personnel; no tuition charge. If, at the time of enrollment, a dependent of United States military personnel is housed in temporary housing located outside of the school district, but will be living within the district within 60 days after the time of initial enrollment, the dependent must be allowed to enroll, subject to the requirements of this Section, and must not be charged tuition. Any United States military personnel attempting to enroll a dependent under this Section shall provide proof that the dependent will be living within the district within 60 days after the time of initial enrollment. Proof of residency may include, but is not limited to,

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postmarked mail addressed to the military personnel and sent to an address located within the district, a lease agreement for occupancy of a residence located within the district, or proof of ownership of a residence located within the district. Non-resident dependents of United States military personnel attending school on a tuition-free basis may be counted for the purposes of determining the apportionment of State aid provided under Section 18-8.05 of this Code [105 ILCS 5/18-8.05].

(Source: P.A. 93-740, § 5; 95-331, § 540.)

Note.

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, renumbered a former multiple version of 105 ILCS 34-5/18.30 as 105 ILCS 34-5/18.31.

Effective Date. Section 99 of P.A. 93-740 made this section effective upon becoming law. The Act was approved July 15, 2004.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, reenacted the section without changes.

§ 105 ILCS 5/34-18.31. Highly qualified teachers; No Child Left Behind Act funds

Sec. 34-18.31. Highly qualified teachers; No Child Left Behind Act funds. If the school district has an overall shortage of highly qualified teachers, as defined by the federal No Child Left Behind Act of 2001 (Public Law 107-110), or a shortage of highly qualified teachers in the subject area of mathematics, science, reading, or special education, then the school board must spend at least 40% of the money it receives from Title 2 grants under the Act on recruitment and retention initiatives to assist in recruiting and retaining highly qualified teachers (in a specific subject area is applicable) as specified in paragraphs (1)(B), (2)(A), (2)(B), (4)(A), (4)(B), and (4)(C) of subsection (a) of Section 2123 of the Act until there is no longer a shortage of highly qualified teachers (in a specific subject area if applicable). As the number of highly qualified teachers in the district increases, however, the school board may spend any surplus of the minimum 40% of funds dedicated to addressing the highly qualified teacher shortage in any manner the school board deems appropriate.

(Source: P.A. 93-997, § 5; 95-331, § 540.)

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Effective Date. Section 99 of P.A. 93-997 made this section effective upon becoming law. The Act was approved August 23, 2004.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, renumbered the section, which was formerly a multiple version of 105 ILCS 34-5/18.30.

§ 105 ILCS 5/34-18.32. Healthy Kids - Healthy Minds Expanded Vision Program

Sec. 34-18.32. Healthy Kids - Healthy Minds Expanded Vision Program. Because 80% of a child's learning is felt to be through the visual system, the board shall establish a program to identify students who are in need of basic vision care, yet are not covered by insurance or public assistance or do not have the financial ability to pay for services and therefore are not receiving appropriate vision care, to be known as the Healthy Kids - Healthy Minds Expanded Vision Program. Through this program, subject to appropriation, the district, in cooperation with health care providers, shall serve students at a minimum or no cost to the students. The program may provide, but is not limited to, vision examinations and glasses. Eligibility for services must be determined by prioritization of students based on both physical and financial need.

(Source: P.A. 94-137, § 5.)

Effective Date. This section is effective January 1, 2006, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 5/34-18.33. Principal mentoring program

Sec. 34-18.33. Principal mentoring program. Beginning on July 1, 2007, and subject to an annual appropriation by the General Assembly, the school district shall develop a principal mentoring program. The school district shall submit a copy of its principal mentoring program to the State Board of Education for its review and public comment. Whenever a substantive change has been made by the school district to its principal mentoring program, these changes must be submitted to the State Board of Education for review and comment.

(Source: P.A. 94-1039, § 5.)

Effective Date. Section 99 of P.A. 94-1039 made the section effective upon becoming law. The Act was approved July 20, 2006.

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§ 105 ILCS 5/34-18.34. Student biometric information

Sec. 34-18.34. Student biometric information. (a) For the purposes of this Section, "biometric information" means any information that is collected through an identification process for individuals based on their unique behavioral or physiological characteristics, including fingerprint, hand geometry, voice, or facial recognition or iris or retinal scans.

(b) If the school district collects biometric information from students, the district shall adopt a policy that requires, at a minimum, all of the following:

(1) Written permission from the individual who has legal custody of the student, as defined in Section 10-20.12b of this Code [105 ILCS 5/10-20.12b], or from the student if he or she has reached the age of 18.

(2) The discontinuation of use of a student's biometric information under either of the following conditions:

(A) upon the student's graduation or withdrawal from the school district; or

(B) upon receipt in writing of a request for discontinuation by the individual having legal custody of the student or by the student if he or she has reached the age of 18.

(3) The destruction of all of a student's biometric information within 30 days after the biometric information is discontinued in accordance with item (2) of this subsection (b).

(4) The use of biometric information solely for identification or fraud prevention.

(5) A prohibition on the sale, lease, or other disclosure of biometric information to another person or entity, unless:

(A) the individual who has legal custody of the student or the student, if he or she has reached the age of 18, consents to the disclosure; or

(B) the disclosure is required by court order.

(6) The storage, transmittal, and protection of all biometric information from disclosure.

(c) Failure to provide written consent under item (1) of subsection (b) of this Section by the individual who has legal custody of the student or by the student, if he or she has reached the age of 18, must not be the basis for refusal of any services otherwise available to the student.

(d) Student biometric information may be destroyed without notification to or the approval of a local records commission under the Local Records Act if destroyed within 30 days after the use of the biometric information is discontinued in accordance with item (2) of subsection (b) of this Section.

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(Source: P.A. 95-232, § 5; 95-793, § 5; 95-876, § 175.)

Effective Date. Section 99 of P.A. 95-232 makes this section August 1, 2007. However, the Act was approved and is effective August 16, 2007.

Effect of Amendments. The 2008 amendment by P.A. 95-793, effective August 8, 2008, in (b)(3) inserted "use of the"; and added (d).

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, renumbered a former multiple version of 105 ILCS 5/34-18.34, and made no changes to this section.

This section was enacted by multiple Acts of the Illinois General Assembly. Although these enactments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

§ 105 ILCS 5/34-18.35. Use of facilities by community organizations

Sec. 34-18.35. Use of facilities by community organizations. The board is encouraged to allow community organizations to use school facilities during non-school hours. If the board allows a community organization to use school facilities during non-school hours, the board must adopt a formal policy governing the use of school facilities by community organizations during non-school hours. The policy shall prohibit such use if it interferes with any school functions or the safety of students or school personnel or affects the property or liability of the school district.

(Source: P.A. 95-232, § 5; 95-876, § 175.)

Effective Date. Section 99 of P.A. 95-308 made this section effective July 1, 2007; however, the Act was approved August 21, 2007.

Effect of Amendments. The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, renumbered this section, which was formerly 105 ILCS 5/34-18.34.

§ 105 ILCS 5/34-18.36. Wind and solar farms

Sec. 34-18.36. Wind and solar farms. The school district may own and operate a wind or solar generation turbine farm, either individually or jointly with a unit of local government, school district, or community college district that is authorized to own and operate a wind or solar generation turbine farm, that directly or indirectly reduces the energy or other operating costs of the school district. The school district may ask for the assistance of any State agency, including without limitation the State Board of Education,

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the Illinois Power Agency, or the Environmental Protection Agency, in obtaining financing options for a wind or solar generation turbine farm.

(Source: P.A. 95-390, § 5; 95-805, § 15; 95-876, § 175; 96-725, § 15.)

Effective Date. Section 99 of P.A.95-390 made this section effective August 23, 2007.

Effect of Amendments. The 2008 amendment by P.A. 95-805, effective August 12, 2008, renumbered the section, which was formerly 105 ILCS 5/34-18.34; inserted "with a unit of local government, school district, or community college district that is authorized to own and operate a wind generation turbine farm" and made a related change in the first sentence; and inserted "the Illinois Power Agency" and made a related change in the second sentence.

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, renumbered a former multiple version of 105 ILCS 5/34-18.34.

The 2009 amendment by P.A. 96-725, effective August 25, 2009, substituted "and solar farms" for "farm" in the section heading; and inserted "or solar" throughout.

§ 105 ILCS 5/34-18.37. Veterans' Day; moment of silence

Sec. 34-18.37. Veterans' Day; moment of silence. If a school holds any type of event at the school on November 11, Veterans' Day, the board shall require a moment of silence at that event to recognize Veterans' Day.

(Source: P.A. 96-84, § 5; 96-1000, § 260; 97-333, § 185.)

Note.

A multiple version of this section enacted by P.A. 96-266 § 5 was redesignated as 105 ILCS 5/34-18.38 by P.A. 96-1000 § 260, effective July 2, 2010.

A multiple version of this section enacted by P.A. 96-417 § 5 was redesignated as 105 ILCS 5/34-18.39 by P.A. 96-1000 § 260, effective July 2, 2010.

A multiple version of this section enacted by P.A. 96-424 § 5 was redesignated as 105 ILCS 5/34-18.40 by P.A. 96-1000 § 260, effective July 2, 2010.

A multiple version of this section enacted by P.A. 96-434 § 5 was redesignated as 105 ILCS 5/34-18.41 by P.A. 96-1000 § 260, effective July 2, 2010.

A multiple version of this section enacted by P.A. 96-674 § 5 was redesignated as 105 ILCS 5/34-18.42 by P.A. 96-1000 § 260, effective July 2, 2010.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

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Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

"The 2011 revisory amendment, effective August 12, 2012, renumbered the version of 105 ILCS 5/34-18.37 as enacted by P.A. 96-803, as 105 ILCS 5/34-18.43."

"The 2011 revisory amendment, effective August 12, 2012, renumbered the version of 105 ILCS 5/34-18.37 as enacted by P.A. 96-843, as 105 ILCS 5/34-18.44."

Effective Date. Section 99 of P.A. 96-84 makes this section effective upon becoming law. The Act was approved July 27, 2009.

Effect of Amendments. The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, reenacted the section without changes.

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, reenacted the section without changes.

§ 105 ILCS 5/34-18.38. Administrator and teacher salary and benefits; report

Sec. 34-18.38. Administrator and teacher salary and benefits; report. The board shall report to the State Board of Education, on or before October 1 of each year, the base salary and benefits of the general superintendent of schools or chief executive officer and all administrators and teachers employed by the school district. For the purposes of this Section, "benefits" includes without limitation vacation days, sick days, bonuses, annuities, and retirement enhancements.

Prior to this annual reporting to the State Board of Education, the information must be presented at a regular board meeting, subject to applicable notice requirements, and then posted on the Internet website of the school district, if any.

(Source: P.A. 96-266, § 5; 96-1000, § 260; 97-256, § 5.)

Note.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 105 ILCS 5/34-18.37 as 105 ILCS 5/34-18.38.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. This section is effective January 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2011 amendment by P.A. 97-256, effective January 1, 2012, substituted "October 1" for "July 1" in the first sentence of the first paragraph; and added the

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second paragraph.

§ 105 ILCS 5/34-18.39. Radon testing

Sec. 34-18.39. Radon testing. (a) It is recommended that every occupied school building of the school district be tested every 5 years for radon pursuant to rules established by the Illinois Emergency Management Agency (IEMA).

(b) It is recommended that new schools of the school district be built using radon resistant new construction techniques, as shown in the United States Environmental Protection Agency document, Radon Prevention in the Design and Construction of Schools and Other Large Buildings.

(c) The school district may maintain, make available for review, and notify parents and faculty of test results under this Section. The district shall report radon test results to the State Board of Education, which shall prepare a report every 2 years of the results from all schools that have performed tests, to be submitted to the General Assembly and the Governor.

(d) If IEMA exempts an individual from being required to be a licensed radon professional, the individual does not need to be a licensed radon professional in order to perform screening tests under this Section. The school district may elect to have one or more employees from the district attend an IEMA-approved, Internet-based training course on school testing in order to receive an exemption to conduct testing in the school district. These school district employees must perform the measurements in accordance with procedures approved by IEMA. If an exemption from IEMA is not received, the school district must use a licensed radon professional to conduct measurements.

(e) If the results of a radon screening test under this Section are found to be 4.0 pCi/L or above, the school district may hire a licensed radon professional to perform measurements before any mitigation decisions are made. If radon levels of 4.0 pCi/L or above are found, it is recommended that affected areas be mitigated by a licensed radon mitigation professional with respect to both design and installation. IEMA may provide the school district with a list of licensed radon mitigation professionals.

(f) A screening test under this Section may be done with a test kit found in a hardware store, department store, or home improvement store or with a kit ordered through the mail or over the Internet. However, the kit must be provided by a laboratory licensed in accordance with the Radon Industry Licensing Act [420 ILCS 44/1 et seq.].

(Source: P.A. 96-417, § 5; 96-1000, § 260.)

Note.

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The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 105 ILCS 5/34-18.37 as 105 ILCS 5/34-18.39.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. This section is effective January 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 5/34-18.40. Compliance with Chemical Safety Acts

Sec. 34-18.40. Compliance with Chemical Safety Acts. The Board of Education must adopt a procedure to comply with the requirements of the Lawn Care Products Application and Notice Act [415 ILCS 65/1 et seq.] and the Structural Pest Control Act [225 ILCS 235/1 et seq.]. The superintendent must designate a staff person who is responsible for compliance with the requirements of these Acts.

(Source: P.A. 96-424, § 5; 96-1000, § 260.)

Note.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 105 ILCS 5/34-18.37 as 105 ILCS 5/34-18.40.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 96-424 makes this section effective upon becoming law. The Act was approved August 13, 2009.

§ 105 ILCS 5/34-18.41: Repealed by P.A. 97-256, § 10, effective January 1, 2012.

§ 105 ILCS 5/34-18.42. Press boxes; accessibility

Sec. 34-18.42. Press boxes; accessibility. The board does not have to comply with the Illinois Accessibility Code (71 Ill. Adm. Code 400) with respect to accessibility to press boxes that are on school property if the press boxes were constructed before the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-674].

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(Source: P.A. 96-674, § 5; 96-1000, § 260.)

Note.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 105 ILCS 5/34-18.37 as 105 ILCS 5/34-18.42.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 96-674 made this section effective July 1, 2009; however, P.A. 96-674 was approved and is effective August 25, 2009.

§ 105 ILCS 5/34-18.43. Establishing an equitable and effective school facility development process

Sec. 34-18.43. Establishing an equitable and effective school facility development process. (a) The General Assembly finds all of the following:

(1) The Illinois Constitution recognizes that a "fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities".

(2) Quality educational facilities are essential for fostering the maximum educational development of all persons through their educational experience from pre-kindergarten through high school.

(3) The public school is a major institution in our communities. Public schools offer resources and opportunities for the children of this State who seek and deserve quality education, but also benefit the entire community that seeks improvement through access to education.

(4) The equitable and efficient use of available facilities-related resources among different schools and among racial, ethnic, income, and disability groups is essential to maximize the development of quality public educational facilities for all children, youth, and adults. The factors that impact the equitable and efficient use of facility-related resources vary according to the needs of each school community. Therefore, decisions that impact school facilities should include the input of the school community to the greatest extent possible.

(5) School openings, school closings, school consolidations, school turnarounds, school phase-outs, school construction, school repairs, school modernizations, school boundary changes, and other related school facility decisions often have a profound impact on education in a community. In order to minimize the negative impact of school facility decisions on the community, these decisions should be implemented according to a clear system-wide criteria and with the significant involvement of local school councils, parents, educators, and the community in decision-making.

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(6) The General Assembly has previously stated that it intended to make the individual school in the City of Chicago the essential unit for educational governance and improvement and to place the primary responsibility for school governance and improvement in the hands of parents, teachers, and community residents at each school. A school facility policy must be consistent with these principles.

(b) In order to ensure that school facility-related decisions are made with the input of the community and reflect educationally sound and fiscally responsible criteria, a Chicago Educational Facilities Task Force shall be established within 15 days after the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-803].

(c) The Chicago Educational Facilities Task Force shall consist of all of the following members:

(1) Two members of the House of Representatives appointed by the Speaker of the House, at least one of whom shall be a member of the Elementary & Secondary Education Committee.

(2) Two members of the House of Representatives appointed by the Minority Leader of the House, at least one of whom shall be a member of the Elementary & Secondary Education Committee.

(3) Two members of the Senate appointed by the President of the Senate, at least one of whom shall be a member of the Education Committee.

(4) Two members of the Senate appointed by the Minority Leader of the Senate, at least one of whom shall be a member of the Education Committee.

(5) Two representatives of school community organizations with past involvement in school facility issues appointed by the Speaker of the House.

(6) Two representatives of school community organizations with past involvement in school facility issues appointed by the President of the Senate.

(7) The chief executive officer of the school district or his or her designee.

(8) The president of the union representing teachers in the schools of the district or his or her designee.

(9) The president of the association representing principals in the schools of the district or his or her designee.

(d) The Speaker of the House shall appoint one of the appointed House members as a co-chairperson of the Chicago Educational Facilities Task Force. The President of the Senate shall appoint one of the appointed Senate members as a co-chairperson of the Chicago Educational Facilities Task Force. Members appointed by the legislative leaders shall be appointed for the duration of the Chicago Educational Facilities Task Force; in the event of a vacancy, the appointment to fill the vacancy shall be made by the legislative leader of the same chamber and party as the leader who made the original appointment.

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(e) The Chicago Educational Facilities Task Force shall call on independent experts, as needed, to gather and analyze pertinent information on a pro bono basis, provided that these experts have no previous or on-going financial interest in school facility issues related to the school district. The Chicago Educational Facilities Task Force shall secure pro bono expert assistance within 15 days after the establishment of the Chicago Educational Facilities Task Force.

(f) The Chicago Educational Facilities Task Force shall be empowered to gather further evidence in the form of testimony or documents or other materials.

(g) The Chicago Educational Facilities Task Force, with the help of the independent experts, shall analyze past Chicago experiences and data with respect to school openings, school closings, school consolidations, school turnarounds, school phase-outs, school construction, school repairs, school modernizations, school boundary changes, and other related school facility decisions on students. The Chicago Educational Facilities Task Force shall consult widely with stakeholders, including public officials, about these facility issues and their related costs and shall examine relevant best practices from other school systems for dealing with these issues systematically and equitably. These initial investigations shall include opportunities for input from local stakeholders through hearings, focus groups, and interviews.

(h) The Chicago Educational Facilities Task Force shall prepare recommendations describing how the issues set forth in subsection (g) of this Section can be addressed effectively based upon educationally sound and fiscally responsible practices.

(i) The Chicago Educational Facilities Task Force shall hold hearings in separate areas of the school district at times that shall maximize school community participation to obtain comments on draft recommendations. The final hearing shall take place no later than 15 days prior to the completion of the final recommendations.

(j) The Chicago Educational Facilities Task Force shall prepare final proposed policy and legislative recommendations for the General Assembly, the Governor, and the school district. The recommendations may address issues, standards, and procedures set forth in this Section. The final recommendations shall be made available to the public through posting on the school district's Internet website and other forms of publication and distribution in the school district at least 7 days before the recommendations are submitted to the General Assembly, the Governor, and the school district.

(k) The recommendations may address issues of system-wide criteria for ensuring clear priorities, equity, and efficiency.

Without limitation, the final recommendations may propose significant decision-making roles for key stakeholders, including the individual school and community; recommend clear criteria or processes for establishing criteria for making school facility decisions; and include clear criteria for setting priorities with respect to school openings, school closings, school consolidations, school turnarounds, school phase-outs, school construction, school repairs, school modernizations, school boundary changes, and other related school facility decisions, including the encouragement of multiple community uses for school space.

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Without limitation, the recommendations may propose criteria for student mobility; the transferring of students to lower performing schools; teacher mobility; insufficient notice to and the lack of inclusion in decision-making of local school councils, parents, and community members about school facility decisions; and costly facilities-related expenditures due to poor educational and facilities planning.

(l) The State Board of Education and the school district shall provide administrative support to the Chicago Educational Facilities Task Force.

(m) After recommendations have been issued, the Chicago Educational Facilities Task Force shall meet at least once annually, upon the call of the chairs, for the purpose of reviewing Chicago public schools' compliance with the provisions of Sections 34-200 through 34-235 of this Code [105 ILCS 5/34-200 through 105 ILCS 5/34-235] concerning school action and facility master planning. The Task Force shall prepare a report to the General Assembly, the Governor's Office, the Mayor of the City of Chicago, and the Chicago Board of Education indicating how the district has met the requirements of the provisions of Sections 34-200 through 34-235 of this Code concerning school action and facility master planning.

(Source: P.A. 96-803, § 5; 97-333, § 185; 97-473, § 5; 97-474, § 5.)

Note.

A multiple version of this section enacted by P.A. 96-266 § 5 as 105 ILCS 5/34-18.37 was redesignated as 105 ILCS 5/34-18.38 by P.A. 96-1000 § 260, effective July 2, 2010.

A multiple version of this section enacted by P.A. 96-417 § 5 as 105 ILCS 5/34-18.37 was redesignated as 105 ILCS 5/34-18.39 by P.A. 96-1000 § 260, effective July 2, 2010.

A multiple version of this section enacted by P.A. 96-424 § 5 as 105 ILCS 5/34-18.37 was redesignated as 105 ILCS 5/34-18.40 by P.A. 96-1000 § 260, effective July 2, 2010.

A multiple version of this section enacted by P.A. 96-434 § 5 was redesignated as 105 ILCS 5/34-18.41 by P.A. 96-1000 § 260, effective July 2, 2010.

A multiple version of this section enacted by P.A. 96-674 § 5 was redesignated as 105 ILCS 5/34-18.42 by P.A. 96-1000 § 260, effective July 2, 2010.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, redesignated a former multiple version of 105 ILCS 5/34-18.37 as 105-5/34-18.43.

Section 97 of P.A. 97-474 provides: "Control over other Act. Senate Bill 620 of the 97th General Assembly passed both houses on May 31, 2011. Thus,this amendatory Act of the 97th General Assembly (Senate Bill 630) is the one last acted upon by the General Assembly. If Senate Bill 620 becomes law and this amendatory Act (Senate Bill 630) becomes law, then this amendatory Act (Senate Bill 630) controls as provided in Section 6 of the Statute on Statutes (5 ILCS 70/6."

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Effective Date. Section 99 of P.A. 96-803 made this section effective upon becoming law. This Act was approved October 30, 2009.

Effect of Amendments. The 2011 amendment by P.A. 97-473, effective January 1, 2012, renumbered the section, which was formerly 105 ILCS 5/34-18.37; substituted "recommendations" for "final recommendations on or before October 30, 2009" in (h); deleted "final" preceding "recommendations are submitted" in the second sentence of (j); deleted "final" preceding "recommendations" in the first and last paragraphs of (k); and added (m).

The 2011 amendment by P.A. 97-474, effective August 22, 2011, renumbered the section, which was formerly 105 ILCS 5/34-18.37; substituted "recommendations" for "final recommendations on or before October 30, 2009" in (h); deleted "final" preceding "recommendations are submitted" in the second sentence of (j); deleted "final" preceding "recommendations" in the first and last paragraphs of (k); and added (m).

§ 105 ILCS 5/34-18.44. American Sign Language courses

Sec. 34-18.44. American Sign Language courses. The school board is encouraged to implement American Sign Language courses into school foreign language curricula.

(Source: P.A. 96-843, § 5; 97-333, § 185.)

Note.

A multiple version of this section enacted by P.A. 96-266 § 5 was redesignated as 105 ILCS 5/34-18.38 by P.A. 96-1000 § 260, effective July 2, 2010.

A multiple version of this section enacted by P.A. 96-417 § 5 was redesignated as 105 ILCS 5/34-18.39 by P.A. 96-1000 § 260, effective July 2, 2010.

A multiple version of this section enacted by P.A. 96-424 § 5 was redesignated as 105 ILCS 5/34-18.40 by P.A. 96-1000 § 260, effective July 2, 2010.

A multiple version of this section enacted by P.A. 96-434 § 5 was redesignated as 105 ILCS 5/34-18.41 by P.A. 96-1000 § 260, effective July 2, 2010.

A multiple version of this section enacted by P.A. 96-674 § 5 was redesignated as 105 ILCS 5/34-18.42 by P.A. 96-1000 § 260, effective July 2, 2010.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, redesignated a former multiple version of 105 ILCS 5/34-18.37 as 105-5/34-18.44.

Effective Date. This section is effective June 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/2.

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§ 105 ILCS 5/34-18.45. (As enacted by P.A. 97-88) Minimum reading instruction

Sec. 34-18.45. (As enacted by P.A. 97-88) Minimum reading instruction. The board shall promote 60 minutes of minimum reading opportunities daily for students in kindergarten through 3rd grade whose reading level is one grade level or lower than his or her current grade level according to current learning standards and the school district.

(Source: P.A. 97-88, § 5.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Effective Date. Section 99 of P.A. 97-88 made this section effective upon becoming law. The Act was approved July 8, 2011.

§ 105 ILCS 5/34-18.45. (As enacted by P.A. 97-204) Student athletes; concussions and head injuries

Sec. 34-18.45. (As enacted by P.A. 97-204) Student athletes; concussions and head injuries. (a) The General Assembly recognizes all of the following:

(1) Concussions are one of the most commonly reported injuries in children and adolescents who participate in sports and recreational activities. The Centers for Disease Control and Prevention estimates that as many as 3,900,000 sports-related and recreation-related concussions occur in the United States each year. A concussion is caused by a blow or motion to the head or body that causes the brain to move rapidly inside the skull. The risk of catastrophic injuries or death are significant when a concussion or head injury is not properly evaluated and managed.

(2) Concussions are a type of brain injury that can range from mild to severe and can disrupt the way the brain normally works. Concussions can occur in any organized or unorganized sport or recreational activity and can result from a fall or from players colliding with each other, the ground, or with obstacles. Concussions occur with or without loss of consciousness, but the vast majority of concussions occur without loss of consciousness.

(3) Continuing to play with a concussion or symptoms of a head injury leaves a young athlete especially vulnerable to greater injury and even death. The General Assembly recognizes that, despite having generally recognized return-to-play standards for concussions and head injuries, some affected youth athletes are prematurely returned to play, resulting in actual or potential physical injury or death to youth athletes in this State.

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(b) The board shall adopt a policy regarding student athlete concussions and head injuries that is in compliance with the protocols, policies, and by-laws of the Illinois High School Association. Information on the board's concussion and head injury policy must be a part of any agreement, contract, code, or other written instrument that the school district requires a student athlete and his or her parents or guardian to sign before participating in practice or interscholastic competition.

(c) The Illinois High School Association shall make available to the school district education materials, such as visual presentations and other written materials, that describe the nature and risk of concussions and head injuries. The school district shall use education materials provided by the Illinois High School Association to educate coaches, student athletes, and parents and guardians of student athletes about the nature and risk of concussions and head injuries, including continuing play after a concussion or head injury.

(Source: P.A. 97-204, § 5.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Note.

P.A. 97-204 Section 1 provides: "This Act may be referred to as the Protecting Our Student Athletes Act."

Effective Date. Section 99 of P.A. 97-204 purports to make this section effective July 1, 2011; however, P.A. 97-204 was approved July 28, 2011.

§ 105 ILCS 5/34-19. By-laws, rules and regulations; business transacted at regular meetings; voting; records

Sec. 34-19. By-laws, rules and regulations; business transacted at regular meetings; voting; records. The board shall, subject to the limitations in this Article, establish by-laws, rules and regulations, which shall have the force of ordinances, for the proper maintenance of a uniform system of discipline for both employees and pupils, and for the entire management of the schools, and may fix the school age of pupils, the minimum of which in kindergartens shall not be under 4 years, except that, based upon an assessment of the child's readiness, children who have attended a non-public preschool and continued their education at that school through kindergarten, were taught in kindergarten by an appropriately certified teacher, and will attain the age of 6 years on or before December 31 of the year of the 2009-2010 school term and each school term thereafter may attend first grade upon commencement of such term, and in grade schools shall not be under 6 years. It may expel, suspend or, subject to the limitations of all policies established or

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adopted under Section 14-8.05 [105 ILCS 5/14-8.05], otherwise discipline any pupil found guilty of gross disobedience, misconduct or other violation of the by-laws, rules and regulations, including gross disobedience or misconduct perpetuated by electronic means. An expelled pupil may be immediately transferred to an alternative program in the manner provided in Article 13A or 13B of this Code. A pupil must not be denied transfer because of the expulsion, except in cases in which such transfer is deemed to cause a threat to the safety of students or staff in the alternative program. A pupil who is suspended in excess of 20 school days may be immediately transferred to an alternative program in the manner provided in Article 13A or 13B of this Code. A pupil must not be denied transfer because of the suspension, except in cases in which such transfer is deemed to cause a threat to the safety of students or staff in the alternative program. The bylaws, rules and regulations of the board shall be enacted, money shall be appropriated or expended, salaries shall be fixed or changed, and textbooks, electronic textbooks, and courses of instruction shall be adopted or changed only at the regular meetings of the board and by a vote of a majority of the full membership of the board; provided that notwithstanding any other provision of this Article or the School Code, neither the board or any local school council may purchase any textbook for use in any public school of the district from any textbook publisher that fails to furnish any computer diskettes as required under Section 28-21 [105 ILCS 5/28-21]. Funds appropriated for textbook purchases must be available for electronic textbook purchases and the technological equipment necessary to gain access to and use electronic textbooks at the local school council's discretion. The board shall be further encouraged to provide opportunities for public hearing and testimony before the adoption of bylaws, rules and regulations. Upon all propositions requiring for their adoption at least a majority of all the members of the board the yeas and nays shall be taken and reported. The by-laws, rules and regulations of the board shall not be repealed, amended or added to, except by a vote of 2/3 of the full membership of the board. The board shall keep a record of all its proceedings. Such records and all by-laws, rules and regulations, or parts thereof, may be proved by a copy thereof certified to be such by the secretary of the board, but if they are printed in book or pamphlet form which are purported to be published by authority of the board they need not be otherwise published and the book or pamphlet shall be received as evidence, without further proof, of the records, by-laws, rules and regulations, or any part thereof, as of the dates thereof as shown in such book or pamphlet, in all courts and places where judicial proceedings are had.

Notwithstanding any other provision in this Article or in the School Code, the board may delegate to the general superintendent or to the attorney the authorities granted to the board in the School Code, provided such delegation and appropriate oversight procedures are made pursuant to board by-laws, rules and regulations, adopted as herein provided, except that the board may not delegate its authorities and responsibilities regarding (1) budget approval obligations; (2) rule-making functions; (3) desegregation obligations; (4) real estate acquisition, sale or lease in excess of 10 years as provided in Section 34-21 [105 ILCS 5/34-21]; (5) the levy of taxes; or (6) any mandates imposed upon the board by "An Act in relation to school reform in cities over 500,000, amending Acts herein named", approved December 12, 1988 (P.A. 85-1418).

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(Source: P.A. 86-124; 87-455; 87-1071, § 1; 87-1103, § 1; 88-45, § 2-31; 89-15, § 5; 96-864, § 5; 96-1403, § 5; 97-340, § 5; 97-495, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-19.

The Act approved December 12, 1988, referred to above, was P.A. 85-1418, which made numerous amendments to the School Code.

Effect of Amendments. The 1992 amendment by P.A. 87-1071, effective September 13, 1992, replaced hyphens with semicolons in the section catchline; in the third sentence of the first paragraph added "and" preceding "textbooks and courses", and added the language which begins "provided that notwithstanding" and continues to the end of that sentence; and deleted "as now or hereafter amended" in the last sentence of the section.

The 1992 amendment by P.A. 87-1103, effective September 15, 1992, inserted "subject to the limitations of all policies established or adopted under this Section 14-8.05" in the first sentence, and deleted "as now or hereafter amended" and added "(P.A. 85-1418)" in the last sentence.

The 1993 amendment by P.A. 88-45, effective July 6, 1993 combined the separate amendments of P.A. 87-1071 and P.A. 87-1103.

The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the first paragraph, in the third sentence, deleted "of education" following "board" and deleted "or subdistrict council" following "local school council".

The 2010 amendment by P.A. 96-864, effective January 21, 2010, added the exception language in the first sentence.

The 2010 amendment by P.A. 96-1403, effective July 29, 2010, in the first paragraph, inserted "electronic textbooks" in the third sentence and inserted the fourth sentence.

The 2011 amendment by P.A. 97-340, effective January 1, 2012, added "including gross disobedience or misconduct perpetuated by electronic means" to the end of the second sentence of the first paragraph.

The 2011 amendment by P.A. 97-495, effective January 1, 2012, inserted the third through sixth sentences of the first paragraph.

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

CASE NOTES

Analysis

Affirmative Action
Authority of the Board
Board of Education Report

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- Judicial Notice
- No Force of Ordinance

Rejection of Low Bidder

Affirmative Action

The board of education had the authority and power to adopt its affirmative action program. John N. Brunsfeld & Sons v. Board of Educ., 54 Ill. App. 3d 119, 11 Ill. Dec. 829, 369 N.E.2d 283 (1 Dist. 1977).

Authority of the Board

Rules which are lawfully adopted by the board of education of the city pursuant to statutory authority have the force of law. Sullivan v. Hannon, 58 Ill. App. 3d 572, 16 Ill. Dec. 136, 374 N.E.2d 911 (1 Dist. 1978).

Board of Education Report

- Judicial Notice

Judicial notice was not taken of a city board of education's report which was submitted to the court in an appendix to the board's brief, and was neither certified by the board's secretary nor produced in book or pamphlet form as required by this section. Jefferson v. Board of Educ., 82 Ill. App. 3d 877, 38 Ill. Dec. 255, 403 N.E.2d 486 (1 Dist. 1980).

- No Force of Ordinance

City board of education's report, which recorded the board's statement and adoption of policy in its administrative compensation plan, was not designated or adopted as a by-law, rule or regulation, and it was not included in the board's official publication of its by-laws, rules and regulation, and therefore, did not have the force of an ordinance. Jefferson v. Board of Educ., 82 Ill. App. 3d 877, 38 Ill. Dec. 255, 403 N.E.2d 486 (1 Dist. 1980).

Rejection of Low Bidder

A city board of education could reject the low monetary bidder for a plumbing project, when the board required contractors to submit with their bid an acceptable written affirmative action program and made its award of contracts contingent upon a finding that the successful bidder had an acceptable program, and when low bidder's affirmative action program was deemed unacceptable. Arthur Weil & Co. v. Board of Educ., 49 Ill. App. 3d 649, 7 Ill. Dec. 381, 364 N.E.2d 542 (1 Dist. 1977).

LEGAL PERIODICALS

For article, "Student Vandalism and Public Schools: The Scope of the Illinois Educators' Directive to Discipline," see 9 N. Ill. U.L. Rev. 87 (1988).

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RESEARCH REFERENCES

Admissibility of hearsay evidence in student disciplinary proceedings. 30 ALR4th 935.

§ 105 ILCS 5/34-19.1. Comment at meetings

Sec. 34-19.1. Comment at meetings. At each regular and special meeting which is open to the public, members of the public and employees of the district shall be afforded time, subject to reasonable constraints, to comment to or ask questions of the board.

(Source: P.A. 84-1308.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-19.1.

CASE NOTES

Private Right of Action

This section does not give a private right of action. Porter v. Board of Educ., 837 F. Supp. 255 (N.D. Ill. 1993).

§ 105 ILCS 5/34-19.2. Mailing list

Sec. 34-19.2. Mailing list. To establish and maintain a mailing list of the names and addresses of persons who each year request inclusion thereon, and to mail to those persons copies of board agenda, school budgets, audits, and within 10 days of each board meeting, a copy of the approved meeting minutes. Annual subscription fees approximating the costs of reproducing and mailing the materials may be charged to the subscribers at the beginning of the subscription period.

(Source: P.A. 83-1362.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-19.2.

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§ 105 ILCS 5/34-20. Acquisition of real estate - Condemnation proceedings - Title - Conveyances

Sec. 34-20. Acquisition of real estate - Condemnation proceedings - Title - Conveyances. The board may acquire by purchase, condemnation or otherwise, real estate for any school purposes. Condemnation proceedings shall be conducted in the name of the city, in trust for the use of schools. The title to all real estate held for the use and benefit of the schools shall be held in the name of the city, in trust for the use of schools. All conveyances of real estate shall be made to the city in trust for the use of schools.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-20.

CASE NOTES

Analysis

Adverse Possession
Condemnation Proceedings
- Fee Simple
Eminent Domain
Review
- Jurisdiction
Role of City
Role of School
School Purposes
- Other Purposes

Adverse Possession

Statutory title to real property, obtained pursuant to this section, cannot be enlarged by continuous possession under it to a fee simple by adverse possession, and the fact that school trustees allowed the owner of subject real property to pay taxes on the site, and accepted and used them was consistent only with a claim of title to an easement. Superior Oil Co. v. Harsh, 39 F. Supp. 467 (E.D. Ill. 1941), aff'd, 126 F.2d 572 (7th Cir. 1942).

Condemnation Proceedings

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- Fee Simple

City was fully empowered under former section 34-19 of the 1947 School Code (see now this section) to take a fee simple absolute and, with no contrary evidence in the record, it was presumed that they exercised their full condemnation power in acquiring a fee simple absolute in the condemned premises. Forest Preserve Dist. v. City of Chicago, 159 Ill. App. 3d 859, 111 Ill. Dec. 776, 513 N.E.2d 22 (1 Dist. 1987).

Eminent Domain

It is presumed that school trustees are acting under the authority of the relevant eminent domain statute in force, when no formal condemnation proceeding has been instituted, and the elements of adverse possession have not been satisfied. Forest Preserve Dist. v. City of Chicago, 159 Ill. App. 3d 859, 111 Ill. Dec. 776, 513 N.E.2d 22 (1 Dist. 1987).

When the record presents no evidence to the contrary, it is presumed that school trustees take only that quantum of estate necessary to accomplish their purpose, at most, a fee simple determinable or easement. Forest Preserve Dist. v. City of Chicago, 159 Ill. App. 3d 859, 111 Ill. Dec. 776, 513 N.E.2d 22 (1 Dist. 1987).

Absent evidence to the contrary, city, as trustees for a school district, acquires a fee simple absolute when it is explicitly acting pursuant to its eminent domain authority. Forest Preserve Dist. v. City of Chicago, 159 Ill. App. 3d 859, 111 Ill. Dec. 776, 513 N.E.2d 22 (1 Dist. 1987).

Review

- Jurisdiction

Supreme Court lacked jurisdiction to determine on direct appeal whether city should pay trustees for school land annexed, where entire municipality had been annexed, as the controversy related solely to the rights of school and city, did not concern the state or the public, and a constitutional question was not presented. Trustees of Schs. v. City of Chicago, 373 Ill. 508, 26 N.E.2d 839 (1940).

Role of City

In respect to school property, the city is a mere passive trustee, holding the naked legal title to the property, without any power or control in the management of such property and can only convey the property with the consent of the Board of Education. Dalton v. Joseph Lumber Co., 340 Ill. App. 267, 91 N.E.2d 450 (1 Dist. 1950).

Role of School

The Board of Education is the real party interested in and affected by the establishment and maintenance of business on premises contiguous to its property. Dalton v. Joseph Lumber Co., 340 Ill. App. 267, 91 N.E.2d 450 (1 Dist. 1950).

School Purposes

- Other Purposes

Where title was acquired by school trustees by eminent domain, and was taken with the owner's consent under a similar prior provision giving the right to use the property for school purposes, no

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title other than that necessary for enjoyment of what was contemplated by the statute, use for school purposes, was included, and the trustees were without the right to lease the school site for oil and gas purposes. Superior Oil Co. v. Harsh, 39 F. Supp. 467 (E.D. Ill. 1941), aff'd, 126 F.2d 572 (7th Cir. 1942).

§ 105 ILCS 5/34-20.1. Limitation on use for school purposes

Sec. 34-20.1. Limitation on use for school purposes. Notwithstanding any other provisions of this Article or this Act, no building or other structure owned by the Board of Education, or by the City as trustee for the use and benefit of the schools, which the Chicago Park District has occupied, and which at any time prior to such occupancy by the Chicago Park District was used as a public school house or other public school building of any attendance center within the school district, shall at any time be again used by the Board as a public school house or other public school building. However, the Board of Education shall have the authority to make and enter into a lease or other agreement with the Chicago Park District providing for their joint use of a public school house or other public school building of any attendance center if such facility contains more than 10 classrooms. For purposes of this Section, "joint use" shall include but not be limited to shared use by the Board and the Chicago Park District during daytime hours.

(Source: P.A. 85-1146.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-20.1.

§ 105 ILCS 5/34-21. Rentals and leases - Sale of real estate - Engagement of real estate broker - Indirect and participating ownership interest - Conveyance, payment and disclosure

Sec. 34-21. Rentals and leases - Sale of real estate - Engagement of real estate broker - Indirect and participating ownership interest - Conveyance, payment and disclosure. (a) The board may:

(1) enter into leases as lessee of buildings, rooms and grounds for the use of schools or for the purpose of school administration; or

(2) enter into leases as lessor of property held by a city in trust for the use and benefit of schools for a term of not longer than 99 years from the date of the granting of the lease, but it shall not make or renew any lease for a term longer than 10 years nor alter the provisions of any lease whose unexpired term may exceed 10 years without the vote of 2/3 of the full membership of the board. The board may, in the case of such a lease, receive consideration in whole or in part in the form of an ownership interest in the entity

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leasing the property from the board, or in its assignee, or a participating interest in the revenues, profits or gains from the development, use, sublease or assignment of such property or interest therein; provided, however, that the board shall not make any further contribution to the capital of such entity. Furthermore, there shall be no diminution thereafter in the value of the board's interest in the entity or participating interest as a result of any subsequent capital contributions by any entity or other capital changes.

(b) The board may sell real estate, or interest therein, held by a city in trust for the use and benefit of the schools subject to the provisions of this Section and approval by the board ordered by a vote of not less than 2/3 of its full membership, if the board determines (i) that such real estate has become unnecessary, unsuitable or inconvenient for the use of schools or for the purpose of school administration, (ii) that such real estate has become inappropriate or unprofitable for the purpose of deriving revenue to support the board's authorized purposes, or (iii) that, in the reasonable judgment of the board, a sale would constitute the best available use or disposition of such real estate for the purpose of deriving revenue to support the board's authorized purposes.

(1) Any sale of such real estate having a fair market value of $25,000 or more shall be made in accordance with the following procedures:

(A) Notice of intended sale shall be published once each week for 3 consecutive weeks in a daily or weekly newspaper published in the city.

(B) The first such notice shall be published not less than 30 days before the day provided for the opening of bids with respect to the intended sale.

(C) The notice shall contain pertinent information on the real estate available for sale, including the location of the real estate, a description of the property, the purpose for which it is used, any other terms for the sale of the real estate as determined by the board, and the dates on which bids will be opened, and on which bids will be considered, and the notice shall advertise for bids for such real estate. The notice may contain a minimum sale price.

(D) The board may:

(i) accept the highest responsible bid determined to be in the best interest of the board; or

(ii) reject any and all bids; or

(iii) if there is more than one responsible bid, negotiate separately with the 2 highest and best among such responsible bids and, upon tentative agreement with one or both bidders, one or both of such bids may be submitted to the board for acceptance of one or rejection of both. Such negotiations may not result in a diminution of the terms of the sale of the real estate and must result in an agreement which is, in the reasonable judgment of the board, equal to or higher in value than the highest responsible bid.

The board may receive consideration for the sale of such real estate, in whole or in part, in the form of an ownership interest in the entity acquiring title to the property by such sale, or in its assignee, or a participating interest in the revenues, profits or gains from the development, use, sale, lease or assignment of such property or interest therein; provided,

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however, that the board shall not make any further contribution to the capital of such entity. The present value of the ownership or participating interest to be received by the board shall, in the reasonable judgement of the board, be at least as great as the value of the highest responsible cash bid for such property or the agreed cash price and terms of sale negotiated pursuant to this subsection, if any, whichever is higher. Furthermore, there shall be no diminution thereafter in the value of the board's interest in the entity or its participating interest in the property as a result of any subsequent capital contributions by any entity or other capital changes.

(2) Any sale of such real estate having a fair market value of less than $25,000 may be negotiated and shall not require notice or competitive bids.

(3) Any sale of such real estate having a fair market value of more than $25,000 which has been continuously leased by the same entity and used as a school attendance center for at least 10 years may be negotiated and shall not require notice or competitive bids.

(c) The board may engage the services of a licensed real estate broker at a fair and reasonable commission in any case involving the sale or lease of real estate when by resolution the board determines such services to be in the best interest of the board; provided, however, that the commission to be paid may not exceed in the case of sale 7% of the sale price, and in the case of lease 7% of the first year's rent and 2% of the base rent of each lease year thereafter not to exceed 4 years. The above stated maximum ceilings on commissions may be raised by not less than a 3/4 vote of the board's full membership. Payment of the commission shall be contingent upon conveyance in accordance with the provisions of this Section and within a reasonable period of time thereafter as determined by the board at the time of the engagement of the real estate broker.

(d)(1) Conveyance of real estate held in trust by the city for the use and benefit of schools shall be by action of the city council in its capacity as trustee upon notice by the board pursuant to resolution that a sale of real estate, or interest therein, has been made in accordance with the provisions of this Section.

(2) Payment in consideration of a transfer of real estate, or interest therein, may be accepted by the board in cash, a combination of cash and securities or in another form described in subsections (a) or (b) of this Section. In any case where an instrument is accepted as part payment, the debt shall be adequately secured by mortgage, trust deed, or if by contract by retention of title, on the property transferred and any such security interest shall not be released until the debt is fully paid. Payments made after the date of sale shall include interest on the outstanding balance computed from the date of sale to the date of payment at rates to be determined by the board.

(3) The board may not consummate any transaction involving the transfer of real estate, or interest therein, provided for in this Section in which there may be an undisclosed principal. Any conveyance of title or other interest in real estate in violation hereof shall be void and any consideration received by the board prior to the discovery of such violation shall be retained as liquidated damages.

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(Source: P.A. 85-1146; 87-1168, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-21.

Effect of Amendments. The 1992 amendment, effective September 18, 1992, added subdivision (b)(3).

CASE NOTES

Good Faith

Where a board of education had legislative authority to enter into a lease of certain land, the record showed it acted in good faith after considering the lease with a view toward maximizing long range benefits and with knowledge of the mutually beneficial pattern of cooperation which existed with the city, and there were no allegations of fraud or corruption; therefore, the judgment that the board acted properly regarding the amount and payment of rent was not contrary to the manifest weight of the evidence. Hall v. Board of Educ., 48 Ill. App. 3d 834, 6 Ill. Dec. 587, 363 N.E.2d 116 (1 Dist. 1977).

§ 105 ILCS 5/34-21.1. Additional powers

Sec. 34-21.1. Additional powers. In addition to other powers and authority now possessed by it, the board shall have power:

(1) To lease from any public building commission created pursuant to the provisions of the Public Building Commission Act [50 ILCS 20/1 et seq.], approved July 5, 1955, as heretofore or hereafter amended or from any individuals, partnerships or corporations, any real or personal property for the purpose of securing space for its school purposes or office or other space for its administrative functions for a period of time not exceeding 40 years.

(2) To pay for the use of this leased property in accordance with the terms of the lease and with the provisions of the Public Building Commission Act, approved July 5, 1955, as heretofore or hereafter amended.

(3) Such lease may be entered into without making a previous appropriation for the expense thereby incurred; provided, however, that if the board undertakes to pay all or any part of the costs of operating and maintaining the property of a public building commission as authorized in subparagraph (4) of this Section, such expenses of operation and maintenance shall be included in the annual budget of such board annually during the term of such undertaking.

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(4) In addition, the board may undertake, either in the lease with a public building commission or by separate agreement or contract with a public building commission, to pay all or any part of the costs of maintaining and operating the property of a public building commission for any period of time not exceeding 40 years.

(5) To enter into agreements, including lease and lease purchase agreements having a term not longer than 40 years from the date on which such agreements are entered into, with private sector individuals, partnerships, or corporations for the construction of school buildings, school administrative offices, site development, and school support facilities. The board shall maintain exclusive possession of all schools, school administrative offices, and school facilities which it is occupying or acquiring pursuant to any such lease or lease purchase agreement, and in addition shall have and exercise complete control over the education program conducted at such schools, offices and facilities. The board's contribution under any such agreement shall be limited to the use of the real estate and existing improvements on a rental basis which shall be exempt from any form of leasehold tax or assessment, but the interests of the board may be subordinated to the interests of a mortgage holder or holders acquired as security for additional improvements made on the property.

(6) To make payments on a lease or lease purchase agreement entered into pursuant to subparagraph (5) of this Section with an individual, partnership, or a corporation for school buildings, school administrative offices, and school support facilities constructed by such individual, partnership, or corporation.

(7) To purchase the interests of an individual, partnership, or corporation pursuant to any lease or lease purchase agreement entered into by the board pursuant to subparagraph (5) of this Section, and to assume or retire any outstanding debt or obligation relating to such lease or lease purchase agreement for any school building, school administrative office, or school support facility.

(8) Subject to the provisions of subparagraph (9) of this Section, to enter into agreements, including lease and lease purchase agreements, having a term not longer than 40 years from the date on which such agreements are entered into for the provision of school buildings and related property and facilities for an agricultural science school. The enrollment in such school shall be limited to 720 students, and no less than 50% of the total number of enrollment positions in each incoming class must be reserved for students who live within proximity to the school. "Proximity to the school" means all areas within the existing city limits of Chicago located south of 87th Street (8700 South) and west of Wood Street (1800 West). Under such agreements the board shall have exclusive possession of all such school buildings and related property and facilities which it is occupying or acquiring pursuant to any such agreements, and in addition shall have and exercise complete control over the educational program conducted at such school. Under such agreements the board also may lease to another party to such agreement real estate and existing improvements which are appropriate and available for use as part of the necessary school buildings and related property and facilities for an agricultural science school. Any interest created by such a lease shall be exempt from any form of leasehold tax or assessment, and the interests of the board as owner or lessor of property covered by such a lease may be subordinated to the interests of a mortgage holder or holders

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acquired as security for additional improvements made on the property. In addition, but subject to the provisions of subparagraph (9) of this Section, the board is authorized: (i) to pay for the use of school buildings and related property and facilities for an agricultural science school as provided for in an agreement entered into pursuant to this subparagraph (8) and to enter into any such agreement without making a previous appropriation for the expense thereby incurred; and (ii) to enter into agreements to purchase any ownership interests in any school buildings and related property and facilities subject to any agreement entered into by the board pursuant to this subparagraph (8) and to assume or retire any outstanding debt or obligation relating to such school buildings and related property and facilities.

(9) Notwithstanding the provisions of subparagraph (8) of this Section or any other law, the board shall not at any time on or after the effective date of this amendatory Act of 1991 enter into any new lease or lease purchase agreement, or amend or modify any existing lease, lease purchase or other agreement entered into pursuant to subparagraph (8), covering all or any part of the property or facilities, consisting of 78.85 acres more or less, heretofore purchased or otherwise acquired by the board for an agricultural science school; nor shall the board enter into any agreement on or after the effective date of this amendatory Act of 1991 to sell, lease, transfer or otherwise convey all or any part of the property so purchased or acquired, nor any of the school buildings or related facilities thereon, but the same shall be held, used, occupied and maintained by the board solely for the purpose of conducting and operating an agricultural science school. The board shall not, on or after the effective date of this amendatory Act of 1991, enter into any contracts or agreements for the construction, alteration or modification of any new or existing school buildings or related facilities or structural improvements on any part of the 78.85 acres purchased or otherwise acquired by the board for agricultural science school purposes, excepting only those contracts or agreements that are entered into by the board for the construction, alteration or modification of such school buildings, related facilities or structural improvements that on the effective date of this amendatory Act of 1991 are either located upon, under construction upon or scheduled under existing plans and specifications to be constructed upon a parcel of land, consisting of 17.45 acres more or less and measuring approximately 880 feet along its northerly and southerly boundaries and 864 feet along its easterly and westerly boundaries, located in the northeast part of the 78.85 acres. Nothing in this subparagraph (9) shall be deemed or construed to alter, modify, impair or otherwise affect the terms and provisions of, nor the rights and obligations of the parties under any agreement or contract made and entered into by the board prior to the effective date of this amendatory Act (i) for the acquisition, lease or lease purchase of, or for the construction, alteration or modification of any school buildings, related facilities or structural improvements upon all or any part of the 78.85 acres purchased or acquired by the board for agricultural science school purposes, or (ii) for the lease by the board of an irregularly shaped parcel, consisting of 23.19 acres more or less, of that 78.85 acres for park board purposes.

(Source: P.A. 87-722; 91-357, § 101; 97-648, § 5.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-21.1.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, made a stylistic change.

The 2011 amendment by P.A. 97-648, effective December 30, 2011, in (8), substituted "720 students, and no less than 50% of the total number of enrollment positions in each incoming class must be reserved for students who live within proximity to the school" for "600 students" in the second sentence and inserted the third sentence.

CASE NOTES

Analysis

Diversion for School Construction
Lease
- In General
- Authority
- Purposes

Diversion for School Construction

Statutes, including the Public Building Commission Act (50 ILCS 20/1 et seq.), authorize the diversion of land dedicated for park purposes for use in school construction. Paepcke v. Public Bldg. Comm'n, 46 Ill. 2d 330, 263 N.E.2d 11 (1970).

Lease

- In General

It was lawful under the Public Building Commission Act (50 ILCS 20/1 et seq.) for the board of education to lease a schoolhouse from the Commission, where school property was donated to the Commission, and the city council was able to levy a tax to cover the costs of operation under such a lease. People ex rel. Stamos v. Public Bldg. Comm'n, 40 Ill. 2d 164, 238 N.E.2d 390 (1968).

- Authority

A city board of education is authorized to lease schoolhouse space from the Building Commission. Paepcke v. Public Bldg. Comm'n, 46 Ill. 2d 330, 263 N.E.2d 11 (1970).

- Purposes

A city park district can lease land from the Building Commission for purposes other than those related to its administrative functions. Paepcke v. Public Bldg. Comm'n, 46 Ill. 2d 330, 263

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N.E.2d 11 (1970).

§ 105 ILCS 5/34-21.2. Playgrounds

Sec. 34-21.2. Playgrounds. The board shall take control and management of all public playgrounds owned or acquired by the city which are adjacent to or connected with any public school in the city and may equip, maintain and operate them for the moral, intellectual and physical welfare of the children and persons using them. The title to all lands occupied as such playgrounds shall vest in and be held by such city in trust for the use of schools. Nothing herein shall prevent the city from owning and operating parks, bathing beaches, municipal piers and athletic fields as provided by law.

(Source: Laws 1961, p. 31; P.A. 89-15, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-21.2.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the first sentence, substituted "may" for "shall".

§ 105 ILCS 5/34-21.3. Contracts

Sec. 34-21.3. Contracts. The board shall by record vote let all contracts (other than those excepted by Section 10-20.21 of The School Code [105 ILCS 5/10-20.21]) for supplies, materials, work, and contracts with private carriers for transportation of pupils, involving an expenditure in excess of $25,000 or a lower amount as required by board policy by competitive bidding as provided in Section 10-20.21 of The School Code.

The board may delegate to the general superintendent of schools, by resolution, the authority to approve contracts in amounts of $25,000 or less.

For a period of one year from and after the expiration or other termination of his or her term of office as a member of the board: (i) the former board member shall not be eligible for employment nor be employed by the board, a local school council, an attendance center, or any other subdivision or agent of the board or the school district governed by the board, and (ii) neither the board nor the chief purchasing officer shall let or delegate authority to let any contract for services, employment, or other work to the former board member or to any corporation, partnership, association, sole proprietorship, or other entity other than publicly traded companies from which the former board member receives an annual income, dividends, or other compensation in excess of $1,500. Any contract that is entered into by or under a delegation of authority from the board or the

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chief purchasing officer shall contain a provision stating that the contract is not legally binding on the board if entered into in violation of the provisions of this paragraph.

In addition, the State Board of Education, in consultation with the board, shall (i) review existing conflict of interest and disclosure laws or regulations that are applicable to the executive officers and governing boards of school districts organized under this Article and school districts generally, (ii) determine what additional disclosure and conflict of interest provisions would enhance the reputation and fiscal integrity of the board and the procedure under which contracts for goods and services are let, and (iii) develop appropriate reporting forms and procedures applicable to the executive officers, governing board, and other officials of the school district.

(Source: P.A. 84-1424; 89-15, § 5; 95-990, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-21.3.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the first paragraph, inserted "by record vote"; and added the last two paragraphs.

The 2008 amendment by P.A. 95-990, effective October 3, 2008, substituted "$25,000 or a lower amount as required by board policy" for "$10,000" in the first paragraph, and substituted "$25,000" for "$10,000" in the second paragraph.

CASE NOTES

Analysis

Competitive Bidding
- HMO Contracts
Formation of Contract
Injunction
Preferential Treatment
Solicitation of Bids

Competitive Bidding

- HMO Contracts

Because the health maintenance organization (HMO) industry is highly competitive, contracts do not involve the type of professional skills which would render them not adapted to competitive bidding, and because the medical benefits contracts at issue were not awarded on the basis of the professional skills, program offerings or cost effectiveness of each HMO, but, rather on the

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number of enrollees in each of the HMO plans offered to school employees, there was no error in the trial court's ruling that HMO contracts are not exempt from the competitive bidding provision of the School Code. Compass Health Care Plans v. Board of Educ., 246 Ill. App. 3d 746, 186 Ill. Dec. 767, 617 N.E.2d 6 (1 Dist. 1992).

Formation of Contract

Where unsuccessful bidder's evidence of lack of receipt was considered in contraposition to board of education's lack of evidence showing that the amendment to bid was actually mailed to anyone, formation of valid contract between board of education and successful bidder was not established. Willett Motor Coach Co. v. Board of Educ., 103 Ill. App. 3d 760, 59 Ill. Dec. 433, 431 N.E.2d 1190 (1 Dist. 1981), cert. denied, 459 U.S. 944, 103 S. Ct. 258, 74 L. Ed. 2d 202 (1982).

Injunction

Where plaintiff failed to submit an acceptable affirmative action program, since it filed to set specific goals and timetables designed to overcome the underutilization of minority workers on its work force, its bid failed to comply with the board of education's affirmative action program, and the trial court erroneously interfered by injunction with the discretion reposed by law in the board of education (this section and 105 ILCS 5/10-20.21). John N. Brunsfeld & Sons v. Board of Educ., 54 Ill. App. 3d 119, 11 Ill. Dec. 829, 369 N.E.2d 283 (1 Dist. 1977).

Preferential Treatment

There is nothing in the School Code that allows a school board to give preferential treatment to local businesses; thus, a school board's rule that gave local businesses a 2% preference had no proper legislative authority and was an arbitrary and capricious delegation of power to a municipal unit which was unconstitutional. Best Bus Joint Venture v. Board of Educ., 288 Ill. App. 3d 770, 224 Ill. Dec. 255, 681 N.E.2d 570 (1 Dist. 1997).

Solicitation of Bids

Mailing of the notice to bidders, containing amendment to board of education's original solicitation for bids on contracts to provide transportation for handicapped pupils, constituted "other means" specified in the rules of the board for bids that would secure the greatest number of qualified proposals, and compliance with rules regarding competitive bidding was a prerequisite to the formation of a valid contract between the board and a successful bidder. Willett Motor Coach Co. v. Board of Educ., 103 Ill. App. 3d 760, 59 Ill. Dec. 433, 431 N.E.2d 1190 (1 Dist. 1981), cert. denied, 459 U.S. 944, 103 S. Ct. 258, 74 L. Ed. 2d 202 (1982).

§ 105 ILCS 5/34-21.4. Full year feasibility study - grant - transitional expenditure reimbursement

Sec. 34-21.4. Full year feasibility study - grant - transitional expenditure reimbursement. The Board of Education may file an application with the State Board of Education and, if approved, receive funds for the purpose of conducting a study of the feasibility of operating one or more schools within the district on a full year school plan pursuant to Section 10-19.1 [105 ILCS 5/10-19.1]. Such feasibility study shall include, but need not

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be limited to, the educational program, building and space needs, administrative and personnel costs, pupil distribution in the district, community attitudes, and transportation costs. The Board of Education which conducts a feasibility study pursuant to this Section shall submit a final report to the State Board of Education upon completion of the study or within one year after receipt of funds, whichever occurs first.

The Board of Education seeking State financial support to conduct feasibility studies shall file applications with the State Board of Education on forms provided by the State Board. The State Board of Education may grant or deny applications, in whole or in part, and provide the funds necessary to implement approved applications, provided that the total amount of funds necessary to implement approved applications does not exceed the annual appropriation for that purpose.

If, based upon the results of a full year feasibility study, the Board determines that it will operate one or more schools within the district in accordance with Section 10-19.1 [105 ILCS 5/10-19.1], the State Board of Education may, pursuant to guidelines established by the State Board, reimburse the Board for expenditures resulting from making such transition, provided that no expenditures shall be reimbursed which would have been incurred by the Board in the absence of a changeover to a full year school program.

In the event any funds appropriated for transition reimbursement during any fiscal year are insufficient for that purpose, payment shall be made in the proportion that the total amount of such expenditures bears to the total amount of money available for payment.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-21.4.

§ 105 ILCS 5/34-21.5: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/34-21.6. Waiver of fees

Sec. 34-21.6. Waiver of fees. (a) The board shall waive all fees assessed by the district on children whose parents are unable to afford them, including but not limited to children living in households that meet the free lunch or breakfast eligibility guidelines established by the federal government pursuant to Section 1758 of the federal Richard B. Russell National School Lunch Act (42 U.S.C. 1758; 7 C.F.R. 245 et seq.), subject to verification as set forth in subsection (b) of this Section. The board shall develop written policies and procedures implementing this Section in accordance with regulations promulgated by the State Board of Education.

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(b) If the board participates in a federally funded, school-based child nutrition program and uses a student's application for, eligibility for, or participation in the federally funded, school-based child nutrition program (42 U.S.C. 1758; 7 C.F.R. 245 et seq.) as the basis for waiving fees assessed by the district, then the board must follow the verification requirements of the federally funded, school-based child nutrition program (42 U.S.C. 1758; 7 C.F.R. 245.6a).

If the board establishes a process for the determination of eligibility for waiver of fees assessed by the district that is completely independent of a student's application for, eligibility for, or participation in a federally funded, school-based child nutrition program, the board may provide for fee waiver verification no more often than every 60 calendar days. Information obtained during the independent, fee waiver verification process indicating that the student does not meet free lunch or breakfast eligibility guidelines may be used to deny the waiver of the student's fees, provided that any information obtained through this independent process for determining or verifying eligibility for fee waivers shall not be used to determine or verify eligibility for any federally funded, school-based child nutrition program.

(Source: P.A. 86-195; 96-360, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-21.6.

Effect of Amendments. The 2009 amendment by P.A. 96-360, effective September 1, 2009, added the section heading; added the (a) designation; substituted "living in households that meet the free lunch or breakfast eligibility guidelines established by the federal government pursuant to Section 1758 of the federal Richard B. Russell National School Lunch Act (42 U.S.C. 1758; 7 C.F.R. 245 et seq.), subject to verification as set forth in subsection (b) of this Section" for "eligible for free lunches or breakfasts under the Community School Lunch Program" in the first sentence of (a); and added (b).

LEGAL PERIODICALS

For note, "Public School Fees in Illinois: A Re-Examination of Constitutional and Policy Questions," see 1984 U. Ill. L. Rev. 99.

§ 105 ILCS 5/34-21.7. Racial reports

Sec. 34-21.7. Racial reports. Beginning July 1, 1994, all forms used by school boards and school districts to collect information within racial categories and all reports used to present information within racial categories shall include a "Multiracial" category, if such

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information is collected and reported for State or local purposes only.

(Source: P.A. 88-71, § 1; 88-670, § 2-34.)

Effective Date. Section 2 of P.A. 88-71 made this section effective July 1, 1994.

Effect of Amendments. The 1994 amendment by P.A. 88-670, effective December 2, 1994, renumbered this section which was formerly 105 ILCS 5/34-22 as enacted by P.A. 88-71; and at the beginning added "Beginning July 1, 1994".

§ 105 ILCS 5/34-21.8. Chicago public schools violence prevention hotline

Sec. 34-21.8. Chicago public schools violence prevention hotline. (a) In consultation with the Chicago Police Department, the Board must establish a hotline for the purpose of receiving anonymous phone calls for information that may prevent violence.

(b) Calls that are placed to the hotline must be answered by the Chicago Police Department.

(c) Each call placed to the hotline must be recorded and investigated by the Chicago Police Department.

(d) Prior to receiving any information, notice must be provided to the caller that the call is being recorded for investigation by the Chicago Police Department. The notice may be provided by a pre-recorded message or otherwise.

(e) The hotline shall be known as the "CPS Violence Prevention Hotline" and its number and anonymous nature must be posted in all Chicago Public Schools.

(Source: P.A. 96-1425, § 5.)

Effective Date. This section became effective January 1, 2011 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Bonds and Tax Anticipation Warrants

§ 105 ILCS 5/34-22. Buildings

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Sec. 34-22. Buildings. The board may erect, purchase or otherwise acquire buildings suitable for school houses, for school administration, and for deriving revenues from school lands, erect temporary school structures, erect additions to, repair, rehabilitate and replace existing school buildings and temporary school structures and may furnish and equip school buildings and temporary school structures and may purchase or otherwise acquire and improve sites therefor, the furnishing and equipping to include but not be limited to furniture, libraries, apparatus, building and architectural supplies, fixtures generally used in school buildings, including but not limited to heating and ventilating systems, mechanical equipment, seats and desks, blackboards, window shades and curtains, gymnasium and recreation apparatus and equipment, auditorium and lunchroom equipment, and all items incidental thereto. The board may use the proceeds of the sale of common school lands or any income from investments of such proceeds in its treasury for any authorized purpose and may deposit the proceeds into any district fund.

In erecting, purchasing or otherwise acquiring buildings for school purposes, the board shall not do so in such a manner as to promote segregation and separation of children in public schools because of color, race or nationality.

(Source: P.A. 80-1466; 88-670, § 2-34.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-22.

This section as enacted by P.A 88-71 was renumbered as 105 ILCS 5/34-21.7.

Effect of Amendments. The 1994 amendment by P.A. 88-670, effective December 2, 1994, appears to have made no changes to this section.

§ 105 ILCS 5/34-22.1. Issuance of bonds

Sec. 34-22.1. Issuance of bonds. For the purpose of erecting, purchasing, or otherwise acquiring buildings suitable for school houses, erecting temporary school structures, erecting additions to, repairing, rehabilitating and replacing existing school buildings and temporary school structures, and furnishing and equipping school buildings and temporary school structures, and purchasing or otherwise acquiring and improving sites for such purposes, the board, with the consent of the city council expressed by ordinance, may incur an indebtedness and issue bonds therefor in an amount or amounts not to exceed in the aggregate $50,000,000. Provided, however, that not more than 25% of the aggregate amount of said bonds shall be issued in any calendar year. The bonds shall bear interest at the rate of not more than the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, and shall mature within not to exceed 20 years from their date, and may be

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made callable on any interest payment date at par and accrued interest, after notice has been given, at the time and in the manner provided in the bond resolution.

These bonds shall not be issued until the question of authorizing such bonds has been submitted to the electors of the city constituting said school district at a regular scheduled election in accordance with the general election law and approved by a majority of the electors voting upon that question.

The board shall adopt a resolution providing for submitting said question at such an election and certify the resolution and the proposition to the proper election authorities. In addition to the requirements of the general election law the notice of the referendum shall contain the amount of the bond issue, maximum rate of interest and purpose for which issued.

This notice shall be published in accordance with the general election law.

The proposition shall be in substantially the following form:

Shall bonds in the amount of $ ..... be issued by the board of education of the City of ..... for the purpose of erecting, purchasing, or otherwise acquiring buildings suitable for school houses, erecting temporary school structures, erecting additions to, repairing, rehabilitating and replacing existing school buildings and temporary school structures, and furnishing and equipping school buildings and temporary school structures, and purchasing or otherwise acquiring and improving sites for such purposes, bearing interest at the rate of not to exceed the maximum rate authorized by the Bond Authorization Act, as amended at the time of the making of the contract?	YES NO

Whenever the board desires to issue bonds as herein authorized, it shall adopt a resolution designating the purpose for which the proceeds of the bonds are to be expended and fixing the amount of the bonds proposed to be issued, the maturity thereof, and optional provisions, if any, the rate of interest thereon, and the amount of taxes to be levied annually for the purpose of paying the interest upon and the principal of such bonds.

Said bonds shall be issued in the corporate name of the school district. They shall be signed by the president and secretary of said board and countersigned by the mayor and the comptroller (or city clerk if there be no comptroller) of the city. They shall be sold upon such terms as may be approved by the board by the city comptroller (or city clerk if there be no comptroller) after advertisement for bids as ordered by and under the direction of the board, and the proceeds thereof shall be received by the city treasurer, as school treasurer, and expended by the board for the purposes provided in the bond resolution.

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Before or at the time of issuing any bonds herein authorized, the city council of such city, upon the demand and under the direction of the board shall, by ordinance, provide for the levy and collection of a direct annual tax upon all the taxable property of such school district sufficient to pay and discharge the principal thereof at maturity and to pay the interest thereon as it falls due. Such tax shall be levied and collected in like manner with the other taxes of such school district and shall be in addition to and exclusive of the maximum of all other taxes which such board or such city council is now, or may hereafter be, authorized by law to levy for any and all school purposes. Upon the filing in the office of the county clerk of the county wherein such school district is located of a duly certified copy of any such ordinance, it shall be the duty of such county clerk to extend the tax therein provided for, including an amount to cover loss and cost of collecting said taxes and also deferred collections thereof and abatements in the amounts of such taxes as extended upon the collector's books.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-22.1.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

CASE NOTES

Judgments

The board of education was not liable to pay the judgments based on anticipation tax warrants nor could it lawfully do so with funds raised by taxation, and, as it had no other means of raising money, the judgments were judgments of record which the board of education could not lawfully pay. Chicago City Bank & Trust Co. v. Board of Educ., 386 Ill. 508, 54 N.E.2d 498 (1944).

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§ 105 ILCS 5/34-22.2. Issuance of bonds

Sec. 34-22.2. Issuance of bonds. For the purpose of erecting, purchasing, or otherwise acquiring buildings suitable for school houses, erecting temporary school structures, erecting additions to, repairing, rehabilitating and replacing existing school buildings and temporary school structures, and furnishing and equipping school buildings and temporary school structures, and purchasing or otherwise acquiring and improving sites for such purposes, the board, with the consent of the city council expressed by ordinance, may incur an indebtedness and issue bonds therefor in an amount or amounts not to exceed in the aggregate $50,000,000 in addition to the bonds authorized under Section 34-22.1 [105 ILCS 5/34-22.1]. The bonds shall bear interest at the rate of not more than the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, and shall mature within not to exceed 20 years from their date, and may be made callable on any interest payment date at par and accrued interest, after notice has been given, at the time and in the manner provided in the bond resolution.

These bonds shall not be issued until the question of authorizing such bonds has been submitted to the electors of the city constituting said school district at a regular scheduled election and approved by a majority of the electors voting upon that question. The board shall adopt a resolution providing for submitting said proposition at such an election and certify the resolution and proposition to the proper election authorities for submission to the electors in accordance with the general election law. In addition to the requirements of the general election law the notice of the referendum shall contain the amount of the bond issue, maximum rate of interest and purpose for which issued.

The proposition shall be in substantially the following form:

```
Shall bonds in the amount of $ ......
be issued by the board of education
of the City of  ............... for the
purpose of erecting, purchasing, or
otherwise acquiring buildings suitable      YES
for school houses, erecting temporary
school structures, erecting
additions to, repairing, rehabilitating
and replacing existing school buildings
and temporary school structures,
and furnishing and equipping
school buildings and temporary
school structures, and purchasing or
otherwise acquiring and improving
sites for such purposes, bearing            NO
interest at the rate of not to exceed
the maximum rate authorized by the
Bond Authorization Act, as amended
at the time of the making of the
contract?
```

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Whenever the board desires to issue bonds as herein authorized, it shall adopt a resolution designating the purpose for which the proceeds of the bonds are to be expended and fixing the amount of the bonds proposed to be issued, the maturity thereof, and optional provisions, if any, the rate of interest thereon, and the amount of taxes to be levied annually for the purpose of paying the interest upon and the principal of such bonds.

Said bonds shall be issued in the corporate name of the school district. They shall be signed by the president and secretary of said board and countersigned by the mayor and the comptroller (or city clerk if there be no comptroller) of the city. They shall be sold by the city comptroller (or city clerk if there be no comptroller) upon such terms as may be approved by the board after advertisement for bids as ordered by and under the direction of the board, and the proceeds thereof shall be received by the city treasurer, as school treasurer, and expended by the board for the purposes provided in the bond resolution.

Before or at the time of issuing any bonds herein authorized, the city council of such city, upon the demand and under the direction of the board shall, by ordinance, provide for the levy and collection of a direct annual tax upon all the taxable property of such school district sufficient to pay and discharge the principal thereof at maturity and to pay the interest thereon as it falls due. Such tax shall be levied and collected in like manner with the other taxes of such school district and shall be in addition to an exclusive of the maximum of all other taxes which such board or such city council is now, or may hereafter be, authorized by law to levy for any and all school purposes. Upon the filing in the office of the county clerk of the county wherein such school district is located of a duly certified copy of any such ordinance, it shall be the duty of such county clerk to extend the tax therein provided for, including an amount to cover loss and cost of collecting said taxes and also deferred collections thereof and abatements in the amounts of such taxes as extended upon the collector's books.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-22.2.

Cross References.

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As to the Omnibus Bond Acts, see 5 ILCS 70/8.

§ 105 ILCS 5/34-22.3. Issuance of bonds

Sec. 34-22.3. Issuance of bonds. For the purpose of erecting, purchasing, or otherwise acquiring buildings suitable for school houses, erecting temporary school structures, erecting additions to, repairing, rehabilitating and replacing existing school buildings and temporary school structures, and furnishing and equipping school buildings and temporary school structures, and purchasing or otherwise acquiring and improving sites for such purposes, the board, with the consent of the city council expressed by ordinance, may incur an indebtedness and issue bonds therefor in an amount or amounts not to exceed in the aggregate $50,000,000 in addition to the bonds authorized under Sections 34-22.1 and 34-22.2 [105 ILCS 5/34-22.1 and 105 ILCS 5/34-22.2]. The bonds shall bear interest at the rate of not more than the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, and shall mature within not to exceed 20 years from their date, and may be made callable on any interest payment date at par and accrued interest, after notice has been given, at the time and in the manner provided in the bond resolution.

These bonds shall not be issued until the question of authorizing such bonds has been submitted to the electors of the city constituting said school district at a regular scheduled election and approved by a majority of the electors voting upon that question.

The board shall adopt a resolution providing for submitting said question at such an election and shall certify the resolution and the proposition to the proper election authorities for submission to the electors in accordance with the general election law. In addition to the requirements of the general election law the notice of the referendum shall contain the amount of the bond issue, maximum rate of interest and purpose for which issued.

The proposition shall be in substantially the following form:

```
Shall bonds in the amount of $ ......
be issued by the board of education
of the City of  .............. for the
purpose of erecting, purchasing, or
otherwise acquiring buildings suitable      YES
for school houses, erecting temporary
school structures, erecting
additions to, repairing, rehabilitating
and replacing existing school buildings
and temporary school structures,
and furnishing and equipping
school buildings and temporary
school structures, and purchasing or
otherwise acquiring and improving
sites for such purposes, bearing
interest at the rate of not to exceed       NO
the maximum rate authorized by the
Bond Authorization Act, as amended
```

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at the time of the making of the
contract?

Whenever the board desires to issue bonds as herein authorized, it shall adopt a resolution designating the purpose for which the proceeds of the bonds are to be expended and fixing the amount of the bonds proposed to be issued, the maturity thereof, and optional provisions, if any, the rate of interest thereon, and the amount of taxes to be levied annually for the purpose of paying the interest upon and the principal of such bonds.

Said bonds shall be issued in the corporate name of the school district. They shall be signed by the president and secretary of said board and countersigned by the mayor and the comptroller (or city clerk if there be no comptroller) of the city. They shall be sold by the city comptroller (or city clerk if there be no comptroller) upon such terms as may be approved by the board after advertisement for bids as ordered by and under the direction of the board, and the proceeds thereof shall be received by the city treasurer, as school treasurer, and expended by the board for the purposes provided in the bond resolution.

Before or at the time of issuing any bonds herein authorized, the city council of such city, upon the demand and under the direction of the board shall, by ordinance, provide for the levy and collection of a direct annual tax upon all the taxable property of such school district sufficient to pay and discharge the principal thereof at maturity and to pay the interest thereon as it falls due. Such tax shall be levied and collected in like manner with the other taxes of such school district and shall be in addition to and exclusive of the maximum of all other taxes which such board or such city council is now, or may hereafter be, authorized by law to levy for any and all school purposes. Upon the filing in the office of the county clerk of the county wherein such school district is located of a duly certified copy of any such ordinance, it shall be the duty of such county clerk to extend the tax therein provided for, including an amount to cover loss and cost of collecting said taxes and also deferred collections thereof and abatements in the amounts of such taxes as extended upon the collector's books.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 34-22.3.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

§ 105 ILCS 5/34-22.4. Issuance of bonds

Sec. 34-22.4. Issuance of bonds. For the purpose of erecting, purchasing, or otherwise acquiring buildings suitable for school houses, erecting temporary school structures, erecting additions to, repairing, rehabilitating, modernizing and replacing existing school buildings and temporary school structures, and furnishing and equipping school buildings and temporary school structures, and purchasing or otherwise acquiring and improving sites for such purposes, the board, with the consent of the city council expressed by ordinance, may incur an indebtedness and issue bonds therefor in an amount or amounts not to exceed in the aggregate $50,000,000 in addition to the bonds authorized under Sections 34-22.1, 34-22.2, and 34-22.3 [105 ILCS 5/34-22.1, 105 ILCS 5/34-22.2, and 105 ILCS 5/34-22.3]. The bonds shall bear interest at the rate of not more than the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, and shall mature within not to exceed 20 years from their date, and may be made callable on any interest payment date at par and accrued interest, after notice has been given, at the time and in the manner provided in the bond resolution.

These bonds shall not be issued until the question of authorizing such bonds has been submitted to the electors of the city constituting said school district at a regular scheduled election and approved by a majority of the electors voting upon that question.

The board shall adopt a resolution providing for submitting said question at such an election and shall certify the resolution and the proposition to the proper election authorities for submission in accordance with the general election law. In addition to the requirements of the general election law the notice of the referendum shall contain the amount of the bond issue, maximum rate of interest and purpose for which issued.

The proposition shall be in substantially the following form:

```
Shall bonds in the amount of $ ......
be issued by the board of education
of the City of  ............... for the
purpose of erecting, purchasing, or
otherwise acquiring buildings suitable      YES
for school houses, erecting temporary
school structures, erecting additions
to, repairing, rehabilitating,
modernizing and replacing existing
school buildings and temporary
school structures, and furnishing
and equipping school buildings and
temporary school structures, and
```

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purchasing or otherwise acquiring
and improving sites for such purposes, NO
bearing interest at the rate of not
to exceed the maximum rate
authorized by the Bond Authorization
Act, as amended at the time of the
making of the contract?

Whenever the board desires to issue bonds as herein authorized, it shall adopt a resolution designating the purpose for which the proceeds of the bonds are to be expended and fixing the amount of the bonds proposed to be issued, the maturity thereof, and optional provisions, if any, the rate of interest thereon, and the amount of taxes to be levied annually for the purpose of paying the interest upon and the principal of such bonds.

Said bonds shall be issued in the corporate name of the school district. They shall be signed by the president and secretary of said board and countersigned by the mayor and the comptroller (or city clerk if there be no comptroller) of the city. They shall be sold by the city comptroller (or city clerk if there be no comptroller) upon such terms as may be approved by the board after advertisement for bids as ordered by and under the direction of the board, and the proceeds thereof shall be received by the city treasurer, as school treasurer, and expended by the board for the purposes provided in the bond resolution.

Before or at the time of issuing any bonds herein authorized, the city council of such city, upon the demand and under the direction of the board shall, by ordinance, provide for the levy and collection of a direct annual tax upon all the taxable property of such school district sufficient to pay and discharge the principal thereof at maturity and to pay the interest thereon as it falls due. Such tax shall be levied and collected in like manner with the other taxes of such school district and shall be in addition to and exclusive of the maximum of all other taxes which such board of such city council is now, or may hereafter be, authorized by law to levy for any and all school purposes. Upon the filing in the office of the county clerk of the county wherein such school district is located of a duly certified copy of any such ordinance, it shall be the duty of such county clerk to extend the tax therein provided for, including an amount to cover loss and cost of collecting said taxes and also deferred collections thereof and abatements in the amounts of such taxes as extended upon the collector's books. The ordinance shall be in force upon its passage.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

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(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-22.4.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

§ 105 ILCS 5/34-22.5. Issuance of bonds

Sec. 34-22.5. Issuance of bonds. For the purpose of erecting, purchasing, or otherwise acquiring buildings suitable for school houses, erecting temporary school structures, erecting additions to, repairing, rehabilitating, modernizing and replacing existing school buildings and temporary school structures, and furnishing and equipping school buildings and temporary school structures, and purchasing or otherwise acquiring and improving sites for such purposes, the board, with the consent of the city council expressed by ordinance, may incur an indebtedness and issue bonds therefor in an amount or amounts not to exceed in the aggregate Twenty-five Million Dollars ($25,000,000) in addition to the bonds authorized under Sections 34-22.1, 34-22.2, 34-22.3, and 34-22.4 [105 ILCS 5/34-22.1, 105 ILCS 5/34-22.2, 105 ILCS 5/34-22.3, and 105 ILCS 5/34-22.4]. The bonds shall bear interest at the rate of not more than the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, and shall mature within not to exceed twenty years from their date, and may be made callable on any interest payment date at par and accrued interest, after notice has been given, at the time and in the manner provided in the bond resolution.

These bonds shall not be issued until the question of authorizing such bonds has been submitted to the electors of the city constituting said school district at a regular scheduled election and approved by a majority of the electors voting upon that question.

The board shall adopt a resolution providing for submitting said proposition at such an election and certify the resolution and the proposition to the proper election authorities for submission in accordance with the general election law. In addition to the requirements of the general election law the notice of the referendum shall contain the amount of the bond issue, maximum rate of interest and purpose for which issued.

The proposition shall be in substantially the following form:

```
Shall bonds in the amount of $ ......
be issued by the board of education
of the City of  ............... for the
purpose of erecting, purchasing, or
otherwise acquiring buildings suitable      YES
for school houses, erecting temporary
```

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school structures, erecting additions to, repairing, rehabilitating, modernizing and replacing existing school buildings and temporary school structures, and furnishing and equipping school buildings and temporary school structures, and purchasing or otherwise acquiring and improving sites for such purposes, bearing interest at the rate of not to exceed the maximum rate authorized by the Bond Authorization Act, as amended at the time of the making of the contract? NO

Whenever the board desires to issue bonds as herein authorized, it shall adopt a resolution designating the purpose for which the proceeds of the bonds are to be expended and fixing the amount of the bonds proposed to be issued, the maturity thereof, and optional provisions, if any, the rate of interest thereon, and the amount of taxes to be levied annually for the purpose of paying the interest upon and the principal of such bonds.

Said bonds shall be issued in the corporate name of the school district. They shall be signed by the president and secretary of said board and countersigned by the mayor and the comptroller (or city clerk if there be no comptroller) of the city. They shall be sold by the city comptroller (or city clerk if there be no comptroller) upon such terms as may be approved by the board after advertisement for bids as ordered by and under the direction of the board, and the proceeds thereof shall be received by the city treasurer, as school treasurer, and expended by the board for the purposes provided in the bond resolution.

Before or at the time of issuing any bonds herein authorized, the city council of such city, upon the demand and under the direction of the board shall, by ordinance, provide for the levy and collection of a direct annual tax upon all the taxable property of such school district sufficient to pay and discharge the principal thereof at maturity and to pay the interest thereon as it falls due. Such tax shall be levied and collected in like manner with the other taxes of such school district and shall be in addition to and exclusive of the maximum of all other taxes which such board or such city council is now, or may hereafter be, authorized by law to levy for any and all school purposes. Upon the filing in the office of the county clerk of the county wherein such school district is located of a duly certified copy of any such ordinance, it shall be the duty of such county clerk to extend the tax therein provided for, including an amount to cover loss and cost of collecting said taxes and also deferred collections thereof and abatements in the amounts of such taxes as extended upon the collector's books. The ordinance shall be in force upon its passage.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and

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(iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-22.5.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

§ 105 ILCS 5/34-22.6. Issuance of bonds

Sec. 34-22.6. Issuance of bonds. For the purpose of erecting, purchasing, or otherwise acquiring buildings suitable for school houses, erecting temporary school structures, erecting additions to, repairing, rehabilitating, modernizing and replacing existing school buildings and temporary school structures, and furnishing and equipping school buildings and temporary school structures, and purchasing or otherwise acquiring and improving sites for such purposes, the board may incur an indebtedness and issue bonds therefor in an amount or amounts not to exceed in the aggregate $150,000,000 in addition to the bonds authorized under Sections 34-22.1, 34-22.2, 34-22.3, 34-22.4, 34-22.5 and 34-22.7 [105 ILCS 5/34-22.1, 105 ILCS 5/34-22.2, 105 ILCS 5/34-22.3, 105 ILCS 5/34-22.4, 105 ILCS 5/34-22.5 and 105 ILCS 5/34-22.7]. Bonds authorized under this Section may also be issued for the purposes of paying interest on such bonds, establishing reserves to secure such bonds and paying the costs of issuance of such bonds. In connection with the issuance of its bonds, the board may enter into arrangements to provide additional security and liquidity for the bonds. These may include, without limitation, municipal bond insurance, letters of credit, lines of credit by which the board may borrow funds to pay or redeem its bonds and purchase or remarketing arrangements for assuring the ability of owners of the board's bonds to sell or to have redeemed their bonds. The board may enter into contracts and may agree to pay fees to persons providing such arrangements, including from bond proceeds but only under circumstances in which the total interest paid or to be paid on the bonds, together with the fees for the arrangements (being treated as if interest), would not, taken together, cause the bonds to bear interest, calculated to their absolute maturity, at a rate in excess of the maximum rate allowed by law.

The resolution of the board authorizing the issuance of its bonds may provide that interest rates may vary from time to time depending upon criteria established by the board, which may include, without limitation, a variation in interest rates as may be necessary to cause bonds to be remarketable from time to time at a price equal to their principal amount, and

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may provide for appointment of a national banking association, bank, trust company, investment banker or other financial institution to serve as a remarketing agent in that connection. The resolution of the board authorizing the issuance of its bonds may provide that alternative interest rates or provisions will apply during such times as the bonds are held by a person providing a letter of credit or other credit enhancement arrangement for those bonds. The Board may use proceeds of the sale of bonds authorized under this Section to pay the cost of obtaining such municipal bond insurance, letter of credit or other credit facilities. Bonds may also be issued under this Section to pay the cost of refunding any bonds issued under this Section, including prior to their maturity. The bonds shall bear interest at a rate or rates not to exceed the maximum annual rate provided for in Section 2 of "An Act to authorize public corporations to issue bonds, other evidences of indebtedness and tax anticipation warrants subject to interest rate limitations set forth therein", approved May 26, 1970, as now or hereafter amended [30 ILCS 305/2], and if issued at such maximum annual rate shall be sold for not less than par and accrued interest. If any of the bonds are issued to bear interest at a rate of less than such maximum annual rate the minimum price at which they may be sold shall be such that the interest cost to the board on the proceeds of the bonds shall not exceed such maximum annual rate computed to stated maturity according to standard tables of bond values.

Whenever the board desires to issue bonds as authorized in this Section, it shall adopt a resolution designating the purpose for which the proceeds of the bonds are to be expended and fixing the amount of the bonds proposed to be issued, the maturity or maturities thereof, and optional provisions, if any, the rate of interest thereon, and the amount of taxes to be levied annually for the purpose of paying the interest upon and the principal, whether due at maturity or upon sinking fund installment dates, of such bonds.

Said bonds shall be issued in the corporate name of the school district. They shall be signed by the president and secretary of said board and countersigned by the mayor and the comptroller (or city clerk if there be no comptroller) of the city. They shall be sold by the city comptroller (or city clerk if there be no comptroller) upon such terms as may be approved by the board after advertisement for bids as ordered by and under the direction of the board, and the proceeds thereof shall be received by the city treasurer, as school treasurer, and expended by the board for the purposes provided in the bond resolution.

Before or at the time of issuing any bonds authorized in this Section, the board shall provide for the levy and collection of a direct annual tax upon all the taxable property of such school district sufficient to pay and discharge the principal thereof at maturity, or upon sinking fund installment dates, and to pay the interest thereon as it falls due. Such tax shall be levied and collected in like manner with the other taxes of such school district and shall be in addition to and exclusive of the maximum of all other taxes which such board is now, or may hereafter be, authorized by law to levy for any and all school purposes. Upon the filing in the office of the county clerk of the county wherein such school district is located of a duly certified copy of any such ordinance, it shall be the duty of such county clerk to extend the tax therein provided for, including an amount to cover loss and cost of collecting said taxes and also deferred collections thereof and abatements in the amounts of such taxes as extended upon the collector's books. The

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ordinance shall be in force upon its passage.

(Source: P.A. 85-1418; 86-1477.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-22.6.

§ 105 ILCS 5/34-22.7. [Bond issuance]

Sec. 34-22.7. For the sole purpose of rehabilitating and accomplishing the deferred maintenance of present school buildings the board, with the consent of the city council expressed by ordinance, may incur an indebtedness and issue bonds therefor without referendum in an amount or amounts not to exceed in the aggregate $330,000,000. The bonds shall bear interest at a rate of not more than the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, and shall mature within not to exceed 20 years from their date, and may be made callable on any interest payment date at par and accrued interest, after notice has been given, at the time and in the manner provided in the bond resolution.

Whenever the board desires to issue bonds as authorized in this Section, it shall adopt a resolution designating the purpose for which the proceeds of the bonds are to be expended and fixing the amount of the bonds proposed to be issued, the maturity thereof, and optional provisions, if any, the rate of interest thereon, and the amount of taxes to be levied annually for the purpose of paying the interest upon and the principal of such bonds.

Said bonds shall be issued in the corporate name of the school district. They shall be signed by the president and secretary of said board and countersigned by the mayor and comptroller (or city clerk if there be no comptroller) of the city. They shall be sold by the city comptroller (or city clerk if there be no comptroller) upon such terms as may be approved by the board after advertisement for bids as ordered by and under the direction of the board, and the proceeds thereof shall be received by the city treasurer, as school treasurer, and expended by the board for the purpose provided in the bond resolution.

Before or at the time of issuing any bonds herein authorized, the board shall provide for the levy and collection of a direct annual tax upon all the taxable property of such school district sufficient to pay and discharge the principal thereof at maturity and to pay the interest thereon as it falls due. Such tax shall be levied and collected in like manner with the other taxes of such school district and shall be in addition to and exclusive of the maximum of all other taxes which such board is now, or may hereafter be, authorized by law to levy for any and all school purposes. Upon the filing in the office of the county clerk of the county wherein such school district is located of a duly certified copy of any such ordinance, it shall be the duty of such county clerk to extend the tax therein

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provided for, including an amount to cover loss and cost of collecting said taxes and also deferred collections thereof and abatements in the amounts of such taxes as extended upon the collector's books. The ordinance shall be in force upon its passage.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4; 86-1477.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-22.7.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

§ 105 ILCS 5/34-22.8: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/34-22.9. Termination of authority to issue bonds for rehabilitation and deferred maintenance of school buildings

Sec. 34-22.9. Termination of authority to issue bonds for rehabilitation and deferred maintenance of school buildings. Effective July 1, 1984, the board shall not subsequently issue any bonds therefor as provided by and authorized under Section 34-22.7 [105 ILCS 5/34-22.7]; provided, however, that nothing contained herein shall effect the validity of any obligations of the board lawfully incurred, pursuant to authorization granted by that Section, and existing on or prior to July 1, 1984. All such obligations shall be discharged as provided pursuant to that authorization and the extension for collection of taxes of the board, pursuant to levies made in accordance with that authorization, shall in no way be impaired or restricted.

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(Source: P.A. 83-1270.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-22.9.

§ 105 ILCS 5/34-22.10. Issuance of bonds

Sec. 34-22.10. Issuance of bonds. For the sole purpose of purchasing or otherwise acquiring school buildings and related property and facilities for an agricultural science school pursuant to an agreement entered into pursuant to subparagraph (7) of Section 34-21.1 [105 ILCS 5/34-21.1], the board may incur an indebtedness and issue bonds therefor in an amount or amounts not to exceed in the aggregate $20,000,000 in addition to the bonds authorized under Sections 34-22.1, 34-22.2, 34-22.3, 34-22.4, 34-22.5, 34-22.6 and 34-22.7 [105 ILCS 5/34-22.1, 105 ILCS 5/34-22.2, 105 ILCS 5/34-22.3, 105 ILCS 5/34-22.4, 105 ILCS 5/34-22.5, 105 ILCS 5/34-22.6 and 105 ILCS 5/34-22.7]. Bonds authorized under this Section may also be issued for the purposes of paying interest on such bonds, establishing reserves to secure such bonds and paying the costs of issuance of such bonds.

In connection with the issuance of its bonds, the board may enter into arrangements to provide additional security and liquidity for the bonds. These may include, without limitation, municipal bond insurance, letters of credit, lines of credit by which the board may borrow funds to pay or redeem its bonds and purchase or remarketing arrangements for assuring the ability of owners of the board's bonds to sell or to have redeemed their bonds. The board may enter into contracts and may agree to pay fees to persons providing such arrangements, including from bond proceeds but only under circumstances in which the total interest paid or to be paid on the bonds, together with the fees for the arrangements (being treated as if interest), would not, taken together, cause the bonds to bear interest, calculated to their absolute maturity, at a rate in excess of the maximum rate allowed by law.

The Board may use proceeds of the sale of bonds authorized under this Section to pay the cost of obtaining such municipal bond insurance, letter of credit or other credit facilities. Bonds may also be issued under this Section to pay the cost of refunding any bonds issued under this Section, including prior to their maturity. The bonds shall bear interest at a rate or rates not to exceed the maximum annual rate provided for in Section 2 of "An Act to authorize public corporations to issue bonds, other evidences of indebtedness and tax anticipation warrants subject to interest rate limitations set forth therein", approved May 26, 1970, as now or hereafter amended [30 ILCS 305/2], and if issued at such maximum annual rate shall be sold for not less than par and accrued interest. If any of the bonds are issued to bear interest at a rate of less than such maximum annual rate the minimum price at which they may be sold shall be such that the interest cost to the board on the proceeds of the bonds shall not exceed such maximum annual rate computed to

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stated maturity according to standard tables of bond values. The resolution of the board authorizing the issuance of its bonds may provide that interest rates may vary from time to time depending upon criteria established by the board, which may include, without limitation, a variation in interest rates as may be necessary to cause bonds to be remarketable from time to time at a price equal to their principal amount, and may provide for appointment of a national banking association, bank, trust company, investment banker or other financial institution to serve as a remarketing agent in that connection. The resolution of the board authorizing the issuance of its bonds may provide that alternative interest rates or provisions will apply during such times as the bonds are held by a person providing a letter of credit or other credit enhancement arrangement for those bonds.

Whenever the board desires to issue bonds as authorized in this Section, it shall adopt a resolution designating the purpose for which the proceeds of the bonds are to be expended and fixing the amount of the bonds proposed to be issued, the maturity or maturities thereof, and optional provisions, if any, the rate of interest thereon, and the amount of taxes to be levied annually for the purpose of paying the interest upon and the principal, whether due at maturity or upon sinking fund installment dates, of such bonds.

Said bonds shall be issued in the corporate name of the school district. They shall be signed by the president and secretary of said board. They shall be sold upon such terms as may be approved by the board after advertisement for bids as ordered by and under the direction of the board, and the proceeds thereof shall be received by the city treasurer, as school treasurer, and expended by the board for the purposes provided in the bond resolution.

Before or at the time of issuing any bonds authorized in this Section, the board shall, by resolution, provide for the levy and collection of a direct annual tax upon all the taxable property of such school district sufficient to pay and discharge the principal thereof at maturity, or upon sinking fund installment dates, and to pay the interest thereon as it falls due. Such tax shall be levied and collected in like manner with the other taxes of such school district and shall be in addition to and exclusive of the maximum of all other taxes which such board is now, or may hereafter be, authorized by law to levy for any and all school purposes. Upon the filing in the office of the county clerk of the county wherein such school district is located of a duly certified copy of any such resolution, it shall be the duty of such county clerk to extend the tax therein provided for, including an amount to cover loss and cost of collecting said taxes and also deferred collections thereof and abatements in the amounts of such taxes as extended upon the collector's books. The resolution shall be in force upon its passage.

(Source: P.A. 86-930.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-22.10.

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§ 105 ILCS 5/34-23. Tax anticipation warrants

Sec. 34-23. Tax anticipation warrants. When there is not sufficient money in the treasury to meet the ordinary and necessary expenses for educational and for building purposes, and for the purpose of paying the principal of and interest on bonds to order issued warrants against and in anticipation of any taxes levied for the payment of the expenditures for educational and for building purposes, and for the purpose of paying the principal of and interest on bonds, to the extent of 85% of the total amount of the taxes levied for such purpose; provided, that whenever a working cash fund has been created pursuant to Sections 34-30 through 34-36 [105 ILCS 5/34-30 through 105 ILCS 5/34-36] warrants shall at no time be drawn against any such taxes levied for educational purposes for such an amount that the aggregate of (a) the amount of such warrants, with the interest to accrue thereon, (b) the aggregate amount of warrants theretofore drawn against such taxes and the interest accrued and to accrue thereon, and (c) the aggregate amount of money theretofore transferred from the working cash fund to the educational purposes fund exceeds 90% of the actual or estimated amount of such taxes extended or to be extended by the county clerk upon the books of the collector or collectors of State and county taxes within the school districts. Warrants may, however, be issued against and in anticipation of any taxes levied for the expenditures for building purposes to the extent of 90% of the total amount of taxes levied for such purposes whenever and only if the board in connection with a grant of money from the federal government or a pledge to any agency, instrumentality, corporation, administration or bureau of the United States of America in connection with such grant, sells or pledges to the federal government or to any agency, instrumentality, corporation, administration or bureau of the United States of America, warrants issued in excess of 75% but not exceeding 90% of the total amount of taxes levied for the payment of the expenditures for building purposes.

(Source: P.A. 86-930.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-23.

CASE NOTES

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- Funds Available
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Form of Warrant

The changing of tax anticipation warrants into bonds issued for their payment does not make them corporate liabilities. Newberry Library v. Board of Educ., 390 Ill. 48, 60 N.E.2d 552 (1945).

If a liability has its inception in a tax anticipation warrant, such liability is still based upon such warrant in whatever form the claim may thereafter assume; the invalidity of the original claim cannot be avoided by simply changing the form in which it is presented in an effort to conceal its identity. Newberry Library v. Board of Educ., 390 Ill. 48, 60 N.E.2d 552 (1945).

Issuance of Warrants

- Wages

A teacher was entitled to a writ of mandamus commanding the school board to issue her a warrant for her wages, absent funds with which to pay her salary. People ex rel. Mathews v. Board of Educ., 349 Ill. 390, 182 N.E. 455 (1932).

Legislative Intent

It was the intention of the legislature, in providing for the issuance of tax anticipation warrants, to make it clear that such warrants do not constitute an obligation between the taxing body and the purchaser or holder thereof. Schreiner v. City of Chicago, 406 Ill. 75, 92 N.E.2d 133 (1950).

Payment

- Funds Available

The only fund available to pay tax anticipation warrants is the money derived from the collection of taxes, and not the proceeds of tax anticipation warrants received by the board or municipality before any taxes have been collected. Schreiner v. City of Chicago, 406 Ill. 75, 92 N.E.2d 133 (1950).

A judgment entered on tax anticipation warrants cannot be paid with the corporate funds of the school district. Newberry Library v. Board of Educ., 390 Ill. 48, 60 N.E.2d 552 (1945).

- Revenue Officers

Under a similar prior provision, the purchaser of tax anticipation warrants must rely solely upon the ability and fidelity of the revenue officers in the collection and payment of the money mentioned in the warrants. Schreiner v. City of Chicago, 406 Ill. 75, 92 N.E.2d 133 (1950).

- Terms

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Due to the long-established practice of paying warrants in numerical order, and the apparent confusion and injurious effect upon the salability of such warrants if they were payable pro rata, it was within legislative contemplation that warrants should be paid in numerical order. Lubezny v. Ball, 389 Ill. 263, 59 N.E.2d 645 (1945).

Rights of Holder

- In General

The right of a holder of tax anticipation warrants is clearly defined, and he must look to the tax collections only, since this section provides such warrants shall not be paid otherwise. Schreiner v. City of Chicago, 406 Ill. 75, 92 N.E.2d 133 (1950).

School District

- Liability

No debt is created by an anticipation warrant, and after delivery there is no future obligation upon it, either absolute or contingent, to pay out of anything except the levy anticipated when collected. Lubezny v. Ball, 389 Ill. 263, 59 N.E.2d 645 (1945).

Tax anticipation warrants are not liabilities of the municipality or school district by which they are issued. Newberry Library v. Board of Educ., 390 Ill. 48, 60 N.E.2d 552 (1945).

- Ultra Vires

Under prior similar provision, the board had no authority to make a covenant that warrants did not exceed the statutory maximum, and, consequently, a court would refuse to enforce it as being ultra vires and void, because the issuing municipality was restricted in its actions to the exercise of powers vested in it by the legislature. Loeb v. Board of Educ., 203 F.2d 775 (7th Cir. 1953).

Where a school board's resolution and purported contracts with the holders of anticipation warrants were plain declarations of an intention to disregard the unambiguous terms of a legislative enactment, the resolution was ultra vires and contrary to public policy, and therefore, void. People ex rel. Mathews v. Board of Educ., 349 Ill. 390, 182 N.E. 455 (1932).

§ 105 ILCS 5/34-23.5. Issuance of notes, bonds, or other obligations in lieu of tax anticipation warrants

Sec. 34-23.5. Issuance of notes, bonds, or other obligations in lieu of tax anticipation warrants. (a) In lieu of issuing tax anticipation warrants in accordance with Section 34-23 of this Code [105 ILCS 5/34-23], the board may issue notes, bonds, or other obligations (and in connection with that issuance, establish a line of credit with a bank) in an amount not to exceed 85% of the amount of property taxes most recently levied for educational and building purposes. Moneys thus borrowed shall be applied to the purposes for which they were obtained and no other purpose. All moneys so borrowed shall be repaid exclusively from property tax revenues within 60 days after the property tax revenues have been received by the board.

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(b) Borrowing authorized under subsection (a) of this Section shall bear interest at a rate not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], from the date of issuance until paid.

(c) Prior to the board borrowing or establishing a line of credit under this Section, the board shall authorize, by resolution, the borrowing or line of credit. The resolution shall set forth facts demonstrating the need for the borrowing or line of credit, state the amount to be borrowed, establish a maximum interest rate limit not to exceed that set forth in subsection (b) of this Section, and provide a date by which the borrowed funds shall be repaid. The resolution shall direct the relevant officials to make arrangements to set apart and hold the taxes, as received, that will be used to repay the borrowing. In addition, the resolution may authorize the relevant officials to make partial repayments of the borrowing as the taxes become available and may contain any other terms, restrictions, or limitations not inconsistent with the provisions of this Section.

(Source: P.A. 92-620, § 5.)

Effective Date. Section 99 of P.A. 92-620 made this section effective upon becoming law. The Act was approved July 11, 2002.

§ 105 ILCS 5/34-24. Numbering of warrants - Setting apart taxes - Interest

Sec. 34-24. Numbering of warrants - Setting apart taxes - Interest. Warrants drawn and issued under Section 34-23 [105 ILCS 5/34-23] shall be numbered consecutively in the order of their issuance and shall show upon their face that they are payable solely from said taxes when collected, and not otherwise, and that payment thereof will be made in the order of their issuance, beginning with the warrant having the lowest number, and shall be received by any collector of taxes in payment of taxes against which they are issued. Such taxes against which the warrants are drawn shall be set apart and held for their payment, as herein provided. Such warrants shall bear interest, payable out of the taxes against which they are drawn, at the rate of not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, if issued before July 1, 1971 and if issued thereafter at the rate of not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, from the date of their issuance until paid, or until notice is given by publication in a newspaper or otherwise that the money for their payment is available and that they will be paid on presentation.

Reissued warrants shall bear the index numerical designation of the original warrant, shall be subnumbered consecutively in the order of reissuance, and shall be paid in the direct order of reissuance, beginning with the earliest subnumber. All warrants so reissued shall be paid prior to the payment of any warrant, or any reissuance thereof,

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issued subsequently to the date of issuance of such original warrant and in anticipation of the collection of the same tax.

Any such outstanding warrants may be paid in the order of their issuance, beginning with the warrants having the lowest number.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-24.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

§ 105 ILCS 5/34-25. Use of special funds to purchase tax anticipation warrants - Payment

Sec. 34-25. Use of special funds to purchase tax anticipation warrants - Payment. Any board holding in its treasury any fund set aside for use for some particular purpose that is not immediately necessary for such purpose may by resolution adopted by a vote of a majority of the full membership of the board use the money in such fund, or in the aggregate of such funds if there may be more than one, in the purchase of tax anticipation warrants of the board ordered issued by the city council of such city at the request of said board of education. Such warrants shall bear interest not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract. All interest on such warrants and all moneys paid in redemption or received from the resale thereof shall at once be credited to and placed in such fund so held by the board. No board, however, so using any of its own funds for the purchase of tax anticipation warrants shall apply to the payment thereof while so held by it any taxes against and in anticipation of which such warrants have been issued, unless and until all warrants and the interest thereon, issued by the board against and in

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anticipation of the same taxes and sold to other purchasers at public or private sale, and all bonds, together with interest thereon, issued pursuant to the provisions of this Act, have been first paid or moneys sufficient for the payment thereof have been deposited with the treasurer of the board as a special fund to be held and used solely for the purpose of paying such warrants and bonds with interest thereon when presented. This section does not prevent the resale or reissue of any warrants as provided in Section 34-26 [105 ILCS 5/34-26].

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-25.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

§ 105 ILCS 5/34-26. Resale of tax anticipation warrants - Sale of new warrants

Sec. 34-26. Resale of tax anticipation warrants - Sale of new warrants. If it is deemed necessary or expedient to convert into money any tax anticipation warrants issued and purchased by public funds pursuant to Section 34-25 [105 ILCS 5/34-25] before the receipt of taxes in anticipation of which the warrants were issued, the board by resolution adopted by a vote of a majority of its entire membership may authorize a resale of such warrants and adjust the interest rate thereon, or as permitted by statute may authorize the issuance and sale of a like principal amount of new warrants for the same purpose and in anticipation of the same taxes as the original warrants were issued and bearing any date subsequent to the date of the original tax anticipation warrants, the new tax anticipation warrants to be of the denomination and bear such interest not to exceed the statutory rate, all as may be authorized by such resolution. Upon the delivery of the new tax anticipation warrants, a like principal amount of such original warrants that were issued against the same tax that is anticipated by the new warrants shall be paid and cancelled and the

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proceeds of the sale of the new tax anticipation warrants shall be used first to restore to the funds so invested in the original tax anticipation warrants money equivalent to the par value and accrued interest of the original tax anticipation warrants and the balance, if any, shall revert to the fund for the creation of which the tax so anticipated was levied. Warrants so resold or reissued shall have the same incidence of priority with respect to payment and shall be paid in the same manner as other warrants issued in anticipation of the same tax and sold in the first instance to any purchaser other than the issuing board of education.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-26.

§ 105 ILCS 5/34-27. Use of special funds to purchase outstanding bonds

Sec. 34-27. Use of special funds to purchase outstanding bonds. If the board has in its treasury any fund set aside for some particular purpose that is not immediately necessary for such purpose, it may by resolution adopted by a majority of its full membership use the money in such fund in the purchase of bonds issued by the board representing an obligation and pledging the credit of the board, and all interest upon such bonds and all moneys paid in redemption of the bonds or realized from the sale thereof shall at once be credited to and placed in such fund.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-27.

§ 105 ILCS 5/34-28. Investment of school funds

Sec. 34-28. Investment of school funds. Investments of school funds shall be made by the board of education only in Federal Government, State or municipal securities the payment of which is protected by the power to levy taxes therefor or in certificates of deposit constituting direct obligations of any savings and loan association, or any bank as defined by the Illinois Banking Act, as heretofore and hereafter amended [205 ILCS 5/1 et seq.], provided, however, that such investments in certificates of deposit may be made only in those banks which are insured by the Federal Deposit Insurance Corporation or in

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withdrawable capital accounts or deposits of State or Federal chartered savings and loan associations which are insured by the Federal Savings and Loan Insurance Corporation.

No bank or savings and loan association shall receive public funds as permitted by this Section, unless it has complied with the requirements established pursuant to Section 6 of "An Act relating to certain investments of public funds by public agencies", approved July 23, 1943, as now or hereafter amended [30 ILCS 235/6].

(Source: P.A. 86-1028.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-28.

The Federal Savings and Loan Insurance Corporation, referred to above, has been abolished. See the historical and Statutory Notes under 12 U.S.C. § 1437.

§ 105 ILCS 5/34-29. Audit of accounts

Sec. 34-29. Audit of accounts. The board shall for each fiscal year and may as often as necessary, appoint certified public accountants to examine the business methods and audit the accounts of the board as of December 31, 1972, as of December 31, 1973, as of August 31, 1974, as of August 31 of each year thereafter through August 31, 1996, as of June 30, 1997, and as of June 30 of each year thereafter, and a report thereof, together with any recommendations of such accountants as to changes in business methods of the board or any of its departments, officers or employees shall be made to the mayor, the city council, and the board and be filed in the records of the board. The board shall prepare and publish an annual report including in detail all receipts and expenditures, specifying the source of the receipts and the objects of the expenditures, and shall transmit it to the mayor and the city council. The board shall account for the expenses of each fiscal year but shall not be required to make any apportionment of such expenses between the two separate levies made during each calendar year.

(Source: P.A. 83-343; 89-15, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-29.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the first sentence, substituted a comma for "and" preceding "as of August 31" and inserted "through August 31, 1996, as of June 30, 1997, and as of June 30 of each year thereafter".

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§ 105 ILCS 5/34-29.1. General obligation notes - Limitations - Issuance - Tax levy - Tax rate - Reimbursement to working cash fund

Sec. 34-29.1. General obligation notes - Limitations - Issuance - Tax levy - Tax rate - Reimbursement to working cash fund. The board may incur an indebtedness by the issuance of full faith and credit general obligation notes in an amount not to exceed 85% of the taxes levied for educational purposes, building purposes and the purchase of school grounds, free textbook purposes and for school playground and recreation purposes respectively, in the fiscal year in which said notes are issued, without the submission to the electors of the school district or city for approval of the question of the issuance of such notes, provided, however, no notes shall be issued when there are outstanding tax anticipation warrants issued or to be issued against such taxes, nor shall such full faith and credit general obligation notes, tax anticipation warrants, or amounts transferred from the working cash fund, in the aggregate, exceed 90% of the taxes levied for the aforesaid purposes. Such notes shall bear interest at a rate of not to exceed the greater of (i) the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, or (ii) 8% per annum, and shall mature within 2 years from date.

Whenever the board desires to issue such notes as herein authorized, it shall adopt a resolution designating the purposes for which the proceeds of the notes are to be expended and fixing the amount of the note proposed to be issued, the maturity thereof, and optional provisions, if any, the rate of interest thereon, and the amount of taxes to be levied annually for the purpose of paying the interest upon and the principal of said notes.

Said notes shall be issued in the corporate name of the school district. They shall be signed by the president and secretary of said board. They shall be sold by the board upon such terms as may be approved by the board, and the proceeds thereof shall be received by the city treasurer, as school treasurer, and expended by the board for the purposes provided in the resolution authorizing any such notes.

Before or at the time of issuing any notes herein authorized, the board shall, by resolution, provide for the levy and collection of a direct annual tax upon all the taxable property of such school district sufficient to pay and discharge the principal thereof at maturity and to pay the interest thereon as it falls due. Such tax shall be levied and collected in like manner with the other taxes of such school district and shall be in addition to and exclusive of the maximum of all other taxes which such board is now, or may hereafter be, authorized by law to levy for any and all school purposes. Upon the filing in the office of the county clerk of the county wherein such school district is located of a duly certified copy of any such resolution, it shall be the duty of such county clerk to extend the tax therein provided for, including an amount to cover loss and cost of collecting said taxes and also deferred collections thereof and abatements in the amounts of such taxes as extended upon the collector's books. The resolution shall be in force upon its passage.

After any such notes have been issued and while such notes are outstanding, it shall be the duty of the county clerk wherein such school district is located in computing the

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several tax rates for the several purposes respectively for which the notes have been issued respectively to reduce said tax rates respectively levied for such purposes respectively by the amount levied to pay the principal of and interest on such notes respectively to maturity, provided the tax rate for educational purposes shall not be reduced beyond the amount necessary to reimburse any money borrowed from the working cash fund, and it shall be the duty of the secretary of the board annually, not less than thirty (30) days prior to the tax extension date, to certify to the county clerk of the county wherein such school district is located the amount of money borrowed from the working cash fund to be reimbursed from the educational purposes tax.

No reimbursement shall be made to the working cash fund until there has been accumulated from the tax levy provided for the notes issued for educational purposes an amount sufficient to pay the principal of and interest on such notes as the same become due.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of Public Act 86-4 (June 6, 1989), it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4; 86-930; 86-1028.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-29.1.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

§ 105 ILCS 5/34-29.2. Debt service funds for obligations

Sec. 34-29.2. Debt service funds for obligations. (a) The board shall establish debt service funds, each to be maintained by a corporate trustee (which may be any trust company or bank having the power of a trust company within the State) separate and segregated from all other funds and accounts of the board, for those issues of obligations of the board for the payment of which a separate tax has been or is to be levied, including, without limitation, a debt service fund for the general obligation bonds of the

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board, a debt service fund for the general obligation notes of the board and a debt service fund for the lease rentals payable by the board to the Public Building Commission of Chicago. Such funds shall be established for each such outstanding obligation of the board and also for each such obligation as shall be issued by the board after the effective date of this amendatory Act of 1981. The trustee maintaining each such debt service fund shall account separately on its books and records for each such issue of such obligations.

(b) The city treasurer, as ex officio treasurer of the board, shall, with respect to each collection of taxes levied on behalf of the board, allocate the amounts collected among the issues of such obligations and deliver a report of such allocation to the county collector of each county wherein the board is located. On the basis of such allocation, the county collector shall pay the proceeds of each separate tax levied for the payment of any issue of such obligations upon receipt directly to the corporate trustee maintaining the debt service fund for such obligations for deposit in such debt service fund. In addition, the board shall pay the amount of personal property tax replacement tax revenues applicable to each issue of such obligations upon receipt directly to the corporate trustee maintaining the debt service fund for such obligations for deposit in such debt service fund. Each such deposit shall be held in trust for the benefit of the party or parties to whom payment of such obligations is payable. All such proceeds of such taxes and revenues shall be applied solely for the payment of the related obligations and shall not be used for any other purpose until such obligations are paid in full. Each levy of such taxes shall be for the sole benefit of the party or parties to whom payment of such obligations is payable and such party or parties shall have a security interest in and lien upon all rights, claims and interest of the board arising pursuant to any such levy and all present and future proceeds of such levy until such obligations are paid in full. Such party or parties shall further have a security interest in and lien upon all personal property tax replacement tax revenues upon deposit in the appropriate debt service fund as above provided.

(c) Any lien or security interest for the benefit of the party or parties to whom any such obligations are payable, made pursuant to this Act, shall be valid and binding from the effective date of the amendatory Act of 1980, and with respect to any obligations issued after the effective date of this amendatory Act of 1981, shall be valid and binding from the date of issue of such obligations, in each case without any physical delivery or further act, and shall be valid and binding as against, and prior to any claims of, all other parties having claims of any kind in tort, contract or otherwise, against the board, irrespective of whether such parties have notice thereof.

(d) Any monies on deposit in any such debt service fund and not necessary for immediate use may be invested or reinvested in Investment Obligations, as defined in Section 34A-103 of this Act [105 ILCS 5/34A-103]. The board may from time to time withdraw from any such debt service fund, to the extent not prohibited by the resolution of the board authorizing issuance of such obligations, the amount of interest or other investment earnings in such funds but only to the extent that the total amounts in such fund after such withdrawal shall not be less than the requirements for that fund. Any amounts deposited in any such debt service fund not required for payment of principal of or interest on any obligation because that payment has been made or provided for may be withdrawn by the board from the fund at any time, but only to the extent that the total amount in the fund

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after the withdrawal is not less than the requirements for the fund. The board is not required to make any tax abatement with respect to any such amounts withdrawn or on account of any provision for payment of principal of or interest on obligations. Any amounts so withdrawn by the board may be used for any lawful purpose of the board.

(Source: P.A. 82-156; 88-511, § 35.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-29.2.

Effect of Amendments. The 1993 amendment by P.A. 88-511, effective November 14, 1993, in subsection (d), in the second sentence, deleted the subdivision (d)(i) designation, deleted "and (ii) any other amounts deposited in any such fund with respect to obligations which shall have been paid in full as to principal or interest or provision having been made for that purpose," following "earnings in such funds" and deleted "in either case," preceding "only to the extent" and added the third and fourth sentences.

§ 105 ILCS 5/34-29.3. Transfer of excess funds

Sec. 34-29.3. Transfer of excess funds. When bonds are issued under Sections 34-22 through 34-22.7 [105 ILCS 5/34-22 through 105 ILCS 5/34-22.7], and the purposes for which the bonds have been issued are accomplished and paid for in full and there remain funds on hand from the bonds so issued, the board by resolution may transfer such excess funds to the working cash fund.

(Source: P.A. 84-1334.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-29.3.

Working Cash Fund

§ 105 ILCS 5/34-30. Establishment of fund authorized - Purpose

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Sec. 34-30. Establishment of fund authorized - Purpose. The board may, by resolution, establish a fund to be known as a "working cash fund" which shall be maintained and administered for the purpose of enabling the board to have in its treasury at all times sufficient money to meet demands thereon for ordinary and necessary expenditures for educational purposes.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-30.

§ 105 ILCS 5/34-31. Bond issue to increase fund

Sec. 34-31. Bond issue to increase fund. (a) Where the board has created and is maintaining such a working cash fund for the purposes above mentioned, it may, with the consent of the city council expressed by ordinance, incur an indebtedness for the purpose of increasing such fund and issue bonds therefor from time to time, in an amount or amounts not exceeding in the aggregate $75,000,000, exclusive of all bonded indebtedness authorized for that purpose prior to May 16, 1967, without the submission thereof to the electors of the school district or city for approval.

(b) The board may incur an additional indebtedness for the purpose of further increasing such fund and issue additional bonds therefor, from time to time, in an amount or amounts not exceeding in the aggregate $20,000,000, exclusive of all bonded indebtedness authorized for that purpose prior to the effective date of this amendatory Act of 1971, without the submission thereof to the electors of the school district or city for approval.

(c) The board may incur an additional indebtedness for the purpose of further increasing such fund and issue additional bonds therefor, from time to time, in an amount or amounts not exceeding in the aggregate $25,000,000, exclusive of all bonded indebtedness authorized for that purpose prior to the effective date of this amendatory Act of 1973, without the submission thereof to the electors of the school district or city for approval.

(d) The board may incur an additional indebtedness for the purpose of further increasing such fund and issue additional bonds therefor, from time to time, in an amount or amounts not exceeding in the aggregate $31,000,000, exclusive of all bonded indebtedness authorized for that purpose prior to the effective date of this amendatory Act of 1977, without the submission thereof to the electors of the school district or city for approval.

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(e) Any bonds issued under paragraphs (a), (b), (c) or (d) of this Section shall bear interest at a rate of not more than the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, and shall mature within 20 years from date of issue. The authority herein granted in paragraphs (a), (b), (c) and (d) shall be considered exclusive of each other and as cumulative authority for the issuance of such bonds.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-31.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

CASE NOTES

Additional Tax Levy Upheld

Under former section 157a (see now this section), levy of additional tax for payment of working cash fund bonds of city schools was not invalid since the levies were made before the bonds were sold and the indebtedness incurred; that section was not made retroactive by its terms, as it was passed and became effective well within the taxing year and before the levy was made. People ex rel. McDonough v. Chicago, M., St. P. & Pac. R.R., 354 Ill. 630, 188 N.E. 821 (1933).

§ 105 ILCS 5/34-32. Resolution for bond issue - Signature - Sale

Sec. 34-32. Resolution for bond issue - Signature - Sale. Before issuing any bonds under Section 34-31, as amended [105 ILCS 5/34-31], the board shall adopt a resolution

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designating the purpose and fixing the amount of the bonds proposed to be issued, the maturity thereof, the rate of interest thereon and the amount of taxes to be levied annually for the purpose of paying the principal and interest.

The bonds shall be issued in the corporate name of the school district. They shall be signed by the president and secretary of the board, and countersigned by the mayor and the comptroller (or city clerk if there be no comptroller) of the city. They shall be sold by the city comptroller (or city clerk if there be no comptroller) at not less than par upon such terms as may be approved by the board after advertisement for bids as ordered by and under the direction of the board and the proceeds thereof shall be received by the city treasurer, as school treasurer, for the uses herein provided.

(Source: Laws 1961, p. 3226.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-32.

§ 105 ILCS 5/34-33. Tax for payment of bonds

Sec. 34-33. Tax for payment of bonds. Before or at the time of issuing bonds under Sections 34-31 and 34-32, as amended [105 ILCS 5/34-31 and 105 ILCS 5/34-32], the city council, upon the demand and under the direction of the board, shall, by ordinance, provide for the collection of a direct annual tax upon all the taxable property of the school district sufficient to pay and discharge the principal thereof at maturity and to pay the interest thereon as it falls due. Upon the filing in the office of the county clerk of the county wherein the school district is located of a certified copy of any such ordinance the county clerk shall extend the tax therein provided for. The ordinance shall be in force upon its passage.

(Source: Laws 1961, p. 3226.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-33.

§ 105 ILCS 5/34-34. Bond moneys set apart - Use and reimbursement of fund

Sec. 34-34. Bond moneys set apart - Use and reimbursement of fund. All moneys derived from the issuance of bonds under Sections 34-31 and 34-32 [105 ILCS 5/34-31 and 105

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ILCS 34-32], or from any tax levied pursuant to Section 34-57 when received by the city treasurer, as school treasurer, shall be set apart in the working cash fund. The moneys in such fund shall not be regarded as current assets available for appropriation and shall not be appropriated by the board in the annual school budget, but in order to provide moneys with which to meet ordinary and necessary disbursements for salaries and other educational purposes may be transferred, in whole or in part, to the educational purposes fund of the board and so disbursed therefrom (a) in anticipation of the collection of any taxes lawfully levied for educational purposes, (b) in anticipation of the receipt of moneys to be derived from the common school fund of the State and from State appropriations, or (c) in anticipation of such taxes, as by law now or hereafter enacted or amended, imposed by the General Assembly of the State of Illinois to replace revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes, pursuant to Article IX, Section 5(c) of the Constitution of the State of Illinois. Moneys transferred to the educational purposes fund in anticipation of the collection of taxes shall be deemed to have been transferred in anticipation of the collection of that part of the taxes so levied or to be received which is in excess of the amount or amounts thereof required to pay any warrants, and the interest thereon, theretofore or thereafter issued under Sections 34-22 through 34-24 [105 ILCS 5/34-22 through 105 ILCS 5/34-24], the amount estimated to be required to satisfy debt service and pension or retirement obligations as set forth in Section 12 of "An Act in relation to State revenue sharing with local government entities", approved July 31, 1969, as amended [30 ILCS 115/12]. Such taxes levied for educational purposes when collected shall be applied first to the payment of any such warrants or notes and the interest thereon and the amount estimated to be required to satisfy debt service and pension or retirement obligations, as set forth in Section 12 of "An Act in relation to State revenue sharing with local government entities", approved July 31, 1969, as amended [30 ILCS 115/12], and then to the reimbursement of the working cash fund as hereinafter provided. Upon the receipt by the city treasurer, as school treasurer, of any taxes or other moneys, in anticipation of the collection or receipt whereof moneys of the working cash fund have been so transferred for disbursement, such fund shall immediately be reimbursed therefrom until the full amount so transferred has been re-transferred to said fund. If taxes in anticipation of the collection of which such transfers are made are not collected in sufficient amounts to effect a complete reimbursement of the working cash fund of the amounts transferred from the working cash fund to the educational purposes fund the deficiencies between the amounts thus transferred and the amounts repaid from collections shall be general obligations of the educational purposes fund until repaid either from taxes in anticipation of which transfers were made or from appropriations which may be made in annual school budgets of sums of money to apply on such general obligations or until repaid from both the taxes in anticipation of which such transfers were made and from appropriations which may be made in annual school budgets of sums of money to apply on such general obligations.

(Source: P.A. 81-1506.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-34.

Section 34-57, referred to above, has been repealed.

§ 105 ILCS 5/34-35. Resolution for transfer from fund - Amount transferred

Sec. 34-35. Resolution for transfer from fund - Amount transferred. Moneys shall be transferred from the working cash fund to the educational purposes fund only upon the authority of the board, which shall by resolution direct the school treasurer to make such transfers. The resolution shall set forth (a) the taxes or other funds in anticipation of the collection or receipt of which the working cash fund is to be reimbursed, (b) the entire amount of taxes extended, or which the board shall estimate will be extended or received, for any year in anticipation of the collection of all or part of which such transfer is to be made, (c) the aggregate amount of warrants or notes theretofore issued in anticipation of the collection of such taxes under the provisions of Sections 34-22 through 34-24 [105 ILCS 5/34-22 through 105 ILCS 5/34-24] together with the amount of interest accrued and which the board of education estimates will accrue thereon, (d) the amount of moneys which the board of education estimates will be derived for any year from the common school fund of the State and from State appropriations in anticipation of the receipt of all or part of which such transfer is to be made, (e) the aggregate amount of receipts from taxes imposed to replace revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes, pursuant to Article IX, Section 5(c) of the Constitution of the State of Illinois, which the corporate authorities estimate will be set aside for the payment of the proportionate amount of debt service and pension or retirement obligations, as required by Section 12 of "An Act in relation to State Revenue Sharing with local government entities", approved July 31, 1969, as amended [30 ILCS 115/12], and (f) the aggregate amount of moneys theretofore transferred from the working cash fund to the educational purposes fund in anticipation of the collection of such taxes or of the receipt of such other moneys from the State. The amount which the resolution shall direct the school treasurer so to transfer in anticipation of the collection of taxes levied or to be received for any year, together with the aggregate amount of such anticipation tax warrants or notes theretofore drawn against such taxes and the amount of the interest accrued and estimated to accrue thereon, the amount estimated to be required to satisfy debt service and pension or retirement obligations, as set forth in Section 12 of "An Act in relation to State revenue sharing with local government entities", approved July 31, 1969, as amended [30 ILCS 115/12], and the aggregate amount of such transfers theretofore made in anticipation of the collection of such taxes shall not exceed 90% of the actual or estimated amount of such taxes extended or to be extended or to be received as set forth in the resolution. The amount which the resolution shall direct the school treasurer so to transfer in anticipation of the receipt of moneys to be derived for any year from the common school fund of the State or from any State appropriation, together with the aggregate amount theretofore transferred in anticipation of the receipt of any such moneys, shall not exceed the total amount which it is so estimated will be received from such source. When moneys are available in the

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working cash fund they shall be transferred to the educational purposes fund and disbursed for the payment of salaries and other educational expenses so as to avoid, whenever possible, the issuance of tax anticipation warrants or notes.

(Source: P.A. 81-1506.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-35.

§ 105 ILCS 5/34-36. Violations of provisions - Liability

Sec. 34-36. Violations of provisions - Liability. Any member of the board or any officer thereof or of the city, or any other person holding any other trust or employment under the board or city, who is guilty of the wilful violation of any of the provisions of Sections 34-30 through 34-35 [105 ILCS 5/34-30 through 105 ILCS 5/34-35], shall be guilty of a business offense and may be fined not exceeding $10,000 and shall forfeit his right to his office, trust or employment and shall be removed therefrom. Any such member, officer or person shall be liable for any sum that may be unlawfully diverted from the working cash fund or otherwise used, to be recovered by the board or by any taxpayer in the name and for the benefit of the board in an appropriate civil action. A taxpayer so suing shall file a bond for and shall be liable for all costs taxed against the board in such suit. Nothing herein shall bar any other remedies.

(Source: P.A. 79-1366.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-36.

§ 105 ILCS 5/34-37. Abolishment of working cash funds

Sec. 34-37. Abolishment of working cash funds. The board may abolish its working cash fund, upon the adoption of a resolution so providing, and directing the transfer of any balance in such fund to the educational purposes fund, effective upon the adoption of such resolution. Thereafter, all outstanding taxes of such board levied pursuant to Section 34-57 of this Article shall be collected and paid into the educational fund. Any obligation incurred by such board pursuant to Section 34-31 of this Article [105 ILCS 5/34-31] shall be discharged as therein provided. Nothing contained herein shall affect the validity of

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any existing obligations of the board.

(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-37.

Section 34-57, referred to above, has been repealed.

§ 105 ILCS 5/34-38. Re-creation of working cash fund

Sec. 34-38. Re-creation of working cash fund. Nothing in this Article prevents a board which has abolished its working cash fund from again creating a working cash fund in the manner provided in Section 34-30 of this Article [105 ILCS 5/34-30]; provided, however that should the working cash fund be so recreated, the board shall not thereby be authorized to issue working cash fund bonds in an amount greater than the amount authorized at the time of abolition of such fund, and no tax shall be levied for the recreated working cash fund pursuant to Section 34-57 of this Article.

(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-38.

Section 34-57, referred to above, has been repealed.

Budget and Appropriations

§ 105 ILCS 5/34-42. Fiscal year

Sec. 34-42. Fiscal year. The period commencing January 1, 1974 and ending August 31, 1974 shall be a fiscal year. Beginning September 1, 1974, each fiscal year of the board through fiscal year 1996 shall commence on September 1 of each year and end on August 31 of the following year. The period commencing September 1, 1996 and ending June 30, 1997 shall be a fiscal year. Beginning July 1, 1997 and thereafter, the fiscal year of the

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board shall commence on July 1 of each year and end on June 30 of the following year.

(Source: P.A. 77-2734; 89-15, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-42.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the first sentence deleted "and thereafter" following "1974", substituted "each fiscal year" for "the fiscal year" and substituted "through fiscal year 1996" for "of education"; and added the second and third sentences.

§§ 105 ILCS 5/34-42.1, 105 ILCS 5/34-42.2: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/34-43. Adoption of budget and resolution

Sec. 34-43. Adoption of budget and resolution. The board shall, within the first 60 days of each fiscal year, adopt a budget and pass a resolution to be termed the "annual school budget", hereinafter called the "budget", in and by which the board, subject to the limitations hereinafter contained, shall appropriate such sums of money as may be required to defray all of its estimated expenses and liabilities to be paid or incurred during the fiscal year.

The budget shall be balanced in each year within standards established by the board, consistent with the provisions of this Article.

The budget may provide for the accumulation of funds for educational purposes as the board may direct for capital improvements or in order to achieve a balanced budget in a future year within the 4-year period of the board's financial plan to begin in that budget year. The budget may also provide for a reserve in the educational fund to ensure uninterrupted services in the event of unfavorable budget variances.

The changes made to this Section by this amendatory Act of 1996 apply to budgets and amended and supplemental budgets for fiscal years beginning in 1995 and subsequent years.

(Source: Laws 1961, p. 31; P.A. 89-636, § 5.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-43.

Effect of Amendments. The 1996 amendment by P.A. 89-636, effective August 9, 1996, added the second, third, and fourth paragraphs.

CASE NOTES

Analysis

Layoff of Employees
Purpose
Requirements
- Estimates
- Specific Itemization

Layoff of Employees

Included in a school board's powers is the authority to lay off employees in good faith for lack of work or purposes of economy, but the board's actions may not be arbitrary, discriminatory or unreasonable. Perlin v. Board of Educ., 86 Ill. App. 3d 108, 41 Ill. Dec. 294, 407 N.E.2d 792 (1 Dist. 1980).

Purpose

The plain purpose of this section, which authorizes the appropriation of money in a supplemental budget, is to meet expenses and liabilities of the school board, including existing deficits. People ex rel. Kucharski v. Adams, 48 Ill. 2d 540, 273 N.E.2d 7 (1971).

The purpose of the budget requirement is to furnish the taxpayer with information as to the amount which is available and for which no current levy will be needed, as well as the amounts to be levied and expended. People ex rel. Schlaeger v. Siebel, 388 Ill. 98, 57 N.E.2d 378 (1944).

The purpose of requiring a budget was to insure that taxes levied for specific school purposes would be expended for such purposes. People ex rel. Lindheimer v. Hamilton, 373 Ill. 124, 25 N.E.2d 517 (1940).

Requirements

- Estimates

Former section 158a (see now this section) requires estimates of all current assets and liabilities of each fund of the board of education, and the amount of such assets available for appropriation, whether for expenditures or charges to be made or incurred during the year, or for liabilities unpaid at the beginning of the year. People ex rel. Lindheimer v. Hamilton, 373 Ill. 124, 25 N.E.2d 517 (1940).

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- Specific Itemization

There is nothing in former section 158a (see now this section) which requires a specific itemization of every expenditure anticipated to be made for each separate school or for the building of separate schools. People ex rel. Lindheimer v. Hamilton, 373 Ill. 124, 25 N.E.2d 517 (1940).

§ 105 ILCS 5/34-43.1. [Limitations; certification; reports]

Sec. 34-43.1. (A) Limitation of noninstructional costs. It is the purpose of this Section to establish for the Board of Education and the general superintendent of schools requirements and standards which maximize the proportion of school district resources in direct support of educational, program, and building maintenance and safety services for the pupils of the district, and which correspondingly minimize the amount and proportion of such resources associated with centralized administration, administrative support services, and other noninstructional services.

For the 1989-90 school year and for all subsequent school years, the Board of Education shall undertake budgetary and expenditure control actions which limit the administrative expenditures of the Board of Education to levels, as provided for in this Section, which represent an average of the administrative expenses of all school districts in this State not subject to Article 34 [105 ILCS 5/34-1 et seq.].

(B) Certification of expenses by the State Superintendent of Education. The State Superintendent of Education shall annually certify, on or before May 1, to the Board of Education and the School Finance Authority, for the applicable school year, the following information:

(1) the annual expenditures of all school districts of the State not subject to Article 34 [105 ILCS 5/34-1 et seq.] properly attributable to expenditure functions defined by the rules and regulations of the State Board of Education as: 2210 (Improvement of Instructional Services); 2300 (Support Services-General Administration) excluding, however, 2320 (Executive Administrative Services); 2490 (Other Support Services-School Administration); 2500 (Support Services-Business); 2600 (Support Services-Central);

(2) the total annual expenditures of all school districts not subject to Article 34 [105 ILCS 5/34-1 et seq.] attributable to the Education Fund, the Operations, Building and Maintenance Fund, the Transportation Fund and the Illinois Municipal Retirement Fund of the several districts, as defined by the rules and regulations of the State Board of Education; and

(3) a ratio, to be called the statewide average of administrative expenditures, derived by dividing the expenditures certified pursuant to paragraph (B)(1) by the expenditures certified pursuant to paragraph (B)(2).

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For purposes of the annual certification of expenditures and ratios required by this Section, the "applicable year" of certification shall initially be the 1986-87 school year and, in sequent years, each succeeding school year.

The State Superintendent of Education shall consult with the Board of Education to ascertain whether particular expenditure items allocable to the administrative functions enumerated in paragraph (B)(1) are appropriately or necessarily higher in the applicable school district than in the rest of the State due to noncomparable factors. The State Superintendent shall also review the relevant cost proportions in other large urban school districts. The State Superintendent shall also review the expenditure categories in paragraph (B)(1) to ascertain whether they contain school-level expenses. If he or she finds that adjustments to the formula are appropriate or necessary to establish a more fair and comparable standard for administrative cost for the Board of Education or to exclude school-level expenses, the State Superintendent shall recommend to the School Finance Authority rules and regulations adjusting particular subcategories in this subsection (B) or adjusting certain costs in determining the budget and expenditure items properly attributable to the functions or otherwise adjust the formula.

(C) Administrative expenditure limitations. The annual budget of the Board of Education, as adopted and implemented, and the related annual expenditures for the school year, shall reflect a limitation on administrative outlays as required by the following provisions, taking into account any adjustments established by the State Superintendent of Education: (1) the budget and expenditures of the Board of Education for the 1989-90 school year shall reflect a ratio of administrative expenditures to total expenditures equal to or less than the statewide average of administrative expenditures for the 1986-87 school year as certified by the State Superintendent of Education pursuant to paragraph (B)(3); (2) for the 1990-91 school year and for all subsequent school years, the budget and expenditures of the Board of Education shall reflect a ratio of administrative expenditures to total expenditures equal to or less than the statewide average of administrative expenditures certified by the State Superintendent of Education for the applicable year pursuant to paragraph (B)(3); (3) if for any school year the budget of the Board of Education reflects a ratio of administrative expenditures to total expenditures which exceeds the applicable statewide average, the Board of Education shall reduce expenditure items allocable to the administrative functions enumerated in paragraph (B)(1) such that the Board of Education's ratio of administrative expenditures to total expenditures is equal to or less than the applicable statewide average ratio.

For purposes of this Section, the ratio of administrative expenditures to the total expenditures of the Board of Education, as applied to the budget of the Board of Education, shall mean: the budgeted expenditure items of the Board of Education properly attributable to the expenditure functions identified in paragraph (B)(1) divided by the total budgeted expenditures of the Board of Education properly attributable to the Board of Education funds corresponding to those funds identified in paragraph (B)(2), exclusive of any monies budgeted for payment to the Public School Teachers' Pension and Retirement System, attributable to payments due from the General Funds of the State of Illinois.

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The annual expenditure of the Board of Education for 2320 (Executive Administrative Services) for the 1989-90 school year shall be no greater than the 2320 expenditure for the 1988-89 school year. The annual expenditure of the Board of Education for 2320 for the 1990-91 school year and each subsequent school year shall be no greater than the 2320 expenditure for the immediately preceding school year or the 1988-89 school year, whichever is less. This annual expenditure limitation may be adjusted in each year in an amount not to exceed any change effective during the applicable school year in salary to be paid under the collective bargaining agreement with instructional personnel to which the Board is a party and in benefit costs either required by law or such collective bargaining agreement.

(D) Cost control measures. In undertaking actions to control or reduce expenditure items necessitated by the administrative expenditure limitations of this Section, the Board of Education shall give priority consideration to reductions or cost controls with the least effect upon direct services to students or instructional services for pupils, and upon the safety and well-being of pupils, and, as applicable, with the particular costs or functions to which the Board of Education is higher than the statewide average.

For purposes of assuring that the cost control priorities of this subsection (D) are met, the State Superintendent of Education shall, with the assistance of the Board of Education, review the cost allocation practices of the Board of Education, and the State Superintendent of Education shall thereafter recommend to the School Finance Authority rules and regulations which define administrative areas which most impact upon the direct and instructional needs of students and upon the safety and well-being of the pupils of the district. No position closed shall be reopened using State or federal categorical funds.

(E) Report of Audited Information. For the 1988-89 school year and for all subsequent school years, the Board of Education shall file with the State Board of Education the Annual Financial Report and its audit, as required by the rules of the State Board of Education. Such reports shall be filed no later than February 15 following the end of the school year of the Board of Education, beginning with the report to be filed no later than February 15, 1990 for the 1988-89 school year.

As part of the required Annual Financial Report, the Board of Education shall provide a detailed accounting of the central level, district, bureau and department costs and personnel included within expenditure functions included in paragraph (B)(1). The nature and detail of the reporting required for these functions shall be prescribed by the State Board of Education in rules and regulations. A copy of this detailed accounting shall also be provided annually to the School Finance Authority and the public. This report shall contain a reconciliation to the board of education's adopted budget for that fiscal year, specifically delineating administrative functions.

If the information required under this Section is not provided by the Board of Education in a timely manner, or is initially or subsequently determined by the State Superintendent of Education to be incomplete or inaccurate, the State Superintendent shall, in writing, notify the Board of Education of reporting deficiencies. The Board of Education shall, within 60 days of such notice, address the reporting deficiencies identified. If the State

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Superintendent of Education does not receive satisfactory response to these reporting deficiencies within 60 days, the next payment of general State aid due the Board of Education under Section 18-8 [105 ILCS 5/18-8], and all subsequent payments, shall be withheld by the State Superintendent of Education until the enumerated deficiencies have been addressed.

Utilizing the Annual Financial Report, the State Superintendent of Education shall certify on or before May 1 to the School Finance Authority the Board of Education's ratio of administrative expenditures to total expenditures for the 1988-89 school year and for each succeeding school year. Such certification shall indicate the extent to which the administrative expenditure ratio of the Board of Education conformed to the limitations required in subsection (C) of this Section, taking into account any adjustments of the limitations which may have been recommended by the State Superintendent of Education to the School Finance Authority. In deriving the administrative expenditure ratio of the Chicago Board of Education, the State Superintendent of Education shall utilize the definition of this ratio prescribed in subsection (C) of this Section, except that the actual expenditures of the Board of Education shall be substituted for budgeted expenditure items.

(F) Approval and adjustments to administrative expenditure limitations. The School Finance Authority organized under Article 34A [105 ILCS 5/34A-101 et seq.] shall monitor the Board of Education's adherence to the requirements of this Section. As part of its responsibility the School Finance Authority shall determine whether the Board of Education's budget for the next school year, and the expenditures for a prior school year, comply with the limitation of administrative expenditures required by this Section. The Board of Education and the State Board of Education shall provide such information as is required by the School Finance Authority in order for the Authority to determine compliance with the provisions of this Section. If the Authority determines that the budget proposed by the Board of Education does not meet the cost control requirements of this Section, the Board of Education shall undertake budgetary reductions, consistent with the requirements of this Section, to bring the proposed budget into compliance with such cost control limitations.

If, in formulating cost control and cost reduction alternatives, the Board of Education believes that meeting the cost control requirements of this Section related to the budget for the ensuing year would impair the education, safety, or well-being of the pupils of the school district, the Board of Education may request that the School Finance Authority make adjustments to the limitations required by this Section. The Board of Education shall specify the amount, nature, and reasons for the relief required and shall also identify cost reductions which can be made in expenditure functions not enumerated in paragraph (B)(1), which would serve the purposes of this Section.

The School Finance Authority shall consult with the State Superintendent of Education concerning the reasonableness from an educational administration perspective of the adjustments sought by the Board of Education. The School Finance Authority shall provide an opportunity for the public to comment upon the reasonableness of the Board's request. If, after such consultation, the School Finance Authority determines that all or a portion of the adjustments sought by the Board of Education are reasonably appropriate

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or necessary, the Authority may grant such relief from the provisions of this Section which the Authority deems appropriate. Adjustments so granted apply only to the specific school year for which the request was made.

In the event that the School Finance Authority determines that the Board of Education has failed to achieve the required administrative expenditure limitations for a prior school year, or if the Authority determines that the Board of Education has not met the requirements of subsection (F), the Authority shall make recommendations to the Board of Education concerning appropriate corrective actions. If the Board of Education fails to provide adequate assurance to the Authority that appropriate corrective actions have been or will be taken, the Authority may, within 60 days thereafter, require the board to adjust its current budget to correct for the prior year's shortage or may recommend to the members of the General Assembly and the Governor such sanctions or remedial actions as will serve to deter any further such failures on the part of the Board of Education.

To assist the Authority in its monitoring responsibilities, the Board of Education shall provide such reports and information as are from time to time required by the Authority.

(G) Independent reviews of administrative expenditures. The School Finance Authority may direct independent reviews of the administrative and administrative support expenditures and services and other non-instructional expenditure functions of the Board of Education. The Board of Education shall afford full cooperation to the School Finance Authority in such review activity. The purpose of such reviews shall be to verify specific targets for improved operating efficiencies of the Board of Education, to identify other areas of potential efficiencies, and to assure full and proper compliance by the Board of Education with all requirements of this Section.

In the conduct of reviews under this subsection, the Authority may request the assistance and consultation of the State Superintendent of Education with regard to questions of efficiency and effectiveness in educational administration.

(H) Reports to Governor and General Assembly. On or before May 1, 1991 and no less frequently than yearly thereafter, the School Finance Authority shall provide to the Governor, the State Board of Education, and the members of the General Assembly an annual report, as outlined in Section 34A-606 [105 ILCS 5/34A-606], which includes the following information: (1) documenting the compliance or non-compliance of the Board of Education with the requirements of this Section; (2) summarizing the costs, findings, and recommendations of any reviews directed by the School Finance Authority, and the response to such recommendations made by the Board of Education; and (3) recommending sanctions or legislation necessary to fulfill the intent of this Section.

(Source: P.A. 86-124; 86-1477.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-43.1.

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§ 105 ILCS 5/34-43a. Post annual budget on web site

Sec. 34-43a. Post annual budget on web site. The school district shall post its current annual school budget, itemized by receipts and expenditures, on the district's Internet web site. The school district shall notify the parents or guardians of its students that the budget has been posted on the district's web site and what the web site's address is.

(Source: P.A. 92-438, § 5.)

Effective Date. This section is effective January 1, 2002, prusuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 5/34-44. Budget estimates

Sec. 34-44. Budget estimates. The budget shall set forth estimates, by classes, of all current assets and liabilities of each fund of the board as of the beginning of the fiscal year, and the amounts of such assets estimated to be available for appropriation in such year, either for expenditures or charges to be made or incurred during such year or for liabilities unpaid at the beginning thereof. Estimates of taxes to be received from prior levies shall be net, after deducting amounts estimated to be sufficient to cover the loss and cost of collecting such taxes and also deferred collections thereof and abatements in the amount of such taxes extended or to be extended upon the collectors' books.

Estimates of the liabilities of the respective funds shall include:

1.All final judgments, including accrued interest thereon, entered against the board and unpaid at the beginning of such fiscal year;

2.The principal of all general obligation notes or anticipation tax warrants and all temporary loans and all accrued interest thereon unpaid at the beginning of such fiscal year;

3.Any amount for which the board is required to reimburse the working cash fund from the educational purposes fund pursuant to the provisions of Section 34-30 through 34-36 [105 ILCS 5/34-30 through 105 ILCS 5/34-36] and

4.The amount of all accounts payable including estimates of audited vouchers, participation certificates, inter fund loans and purchase orders payable.

The budget shall also set forth detailed estimates of all accrued tax revenues recognized for such year and of all current revenues to be derived from sources other than taxes, including State contributions, rents, fees, perquisites and all other types of revenue, which will be applicable to expenditures or charges to be made or incurred during such year.

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All such estimates shall be so segregated and classified as to funds, and in such other manner as to give effect to the requirements of law relating to the respective purposes to which the assets and taxes and other current revenues are applicable, so that no expenditure shall be authorized or made for any purpose in excess of the money lawfully available therefor.

The several estimates of assets, liabilities and expenditure requirements required or authorized to be made by this and the next succeeding section shall be made on the basis of information known to the board at the close of the preceding fiscal year and shall not be invalidated or otherwise subject to attack merely because after that time additional information is known to or could be discovered by the board that would require a different estimate, or because the board might have amended such estimates under any of the provisions of Section 34-47.

(Source: P.A. 84-1238.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-44.

CASE NOTES

Analysis

Assets
- Taxes to be Collected
Burden of Proof
Inter Fund Loans
Requirements
- Specificity
Review
- In General
Specificity

Assets

- Taxes to be Collected

A bond redemption and interest fund has certain assets which have to be included in a budget, one asset which must be included is the taxes to be collected from the levies made at the time the bonds were issued. People ex rel. Schlaeger v. Siebel, 388 Ill. 98, 57 N.E.2d 378 (1944).

Burden of Proof

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It was the duty of the objector to show that the school board failed to comply with the requirements of former section 158a (see now this section) and in what particulars. People ex rel. Gill v. Peterson, 366 Ill. 613, 10 N.E.2d 323 (1937).

Inter Fund Loans

Reference to inter fund loans in prior similar provision related to the type of voluntary inter fund loan to protect municipal credit, but did not contemplate interposition of inter fund debits and credits when refunds had been made for invalid items, and tax collections were distributed pro rata among the funds in accordance with the original levy, rather than confining losses due to refunds which contained the invalid items. People ex rel. Brenza v. Edwards, 413 Ill. 514, 109 N.E.2d 754 (1952).

Requirements

- Specificity

It is not necessary to state each particular purpose for which a tax is levied where each purpose is properly embraced in one general designation. People ex rel. Toman v. Belmont Radio Corp., 388 Ill. 11, 57 N.E.2d 479 (1944).

Review

- In General

A court will adopt the conclusion of the taxing body that a certain item is not available for appropriation in a particular year, unless there has been a showing of an arbitrary abuse of discretion. People ex rel. Schlaeger v. Siebel, 388 Ill. 98, 57 N.E.2d 378 (1944).

Specificity

The fact that a budget furnished a taxpayer with the information that the appropriation was in connection with the Works Progress Administration projects to be expended on school property and made payable from the building fund, and that it was a capital outlay for construction and betterments of such property, was sufficient to designate the general purpose for which the appropriation was made. People ex rel. Toman v. Belmont Radio Corp., 388 Ill. 11, 57 N.E.2d 479 (1944).

§ 105 ILCS 5/34-44.1. Supplemental budget estimate

Sec. 34-44.1. Supplemental budget estimate. When the value of the taxable property in the school district is increased either by the establishment of a new multiplier by the Department of Revenue or the availability of a later assessment by virtue of additions to the tax rolls or increases in assessments made by the county assessor after the annual school budget has been adopted, the board of education may adopt, by a 2/3 vote of the full membership of the board, a supplemental budget to provide for the use of the added potential revenues in an amount that shall not exceed a sum equivalent to the product of the amount of the increase in the value of taxable property in the district multiplied by the maximum per cent or rate of tax which the board and the corporate authorities of the city

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are authorized by law to levy for the current fiscal year for educational, building, free textbook, agricultural science school, supervised playground outside school hours purposes (or supervised playground outside school hours and stadia, social center and summer swimming pool open to the public purposes, as the case may be) or special education purposes. With respect to any supplemental budget based upon an increase in the value of the taxable property in the school district, such supplemental budget shall be adopted within 60 days of the date of the final certification of the equalization rate by the Department of Revenue to the county clerk as provided in the Property Tax Code [35 ILCS 200/1-1 et seq.], regardless of whether the adoption occurs within or after the close of the fiscal year to which the increase applies, but shall not become effective unless approved in accordance with Article 34A of "The School Code" [105 ILCS 5/34A-101 et seq.].

(Source: P.A. 85-1329; 88-670, § 3-54.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-44.1.

Effect of Amendments. The 1994 amendment by P.A. 88-670, effective December 2, 1994, in the second sentence substituted "Property Tax Code" for "'Revenue Act of 1939', as amended".

§ 105 ILCS 5/34-45. Budget appropriations

Sec. 34-45. Budget appropriations. The budget shall specify:

1.the several organization units, purposes, and objects for which appropriations are made;

2.the amount appropriated for each organization unit, purpose or object; and

3.the fund from or to which each amount appropriated is to be paid or charged.

The budget shall include appropriations for:

1.all estimated current expenditures or charges to be made or incurred during such fiscal year, including interest to accrue on anticipation tax warrants and temporary loans;

2.all final judgments, including accrued interest thereon, entered against the board and unpaid at the beginning of such fiscal year;

3.any amount for which the board is required to reimburse the working cash fund from the educational purposes fund pursuant to Sections 34-30 through 34-36 [105 ILCS 5/34-30 through 105 ILCS 5/34-36]; and

4.all other estimated liabilities, including the principal of all tax anticipation warrants and all temporary loans and all accrued interest thereon, incurred during prior years and

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unpaid at the beginning of such fiscal year.

(Source: P.A. 84-1238.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-45.

CASE NOTES

Analysis

Burden of Proof
Purpose
Requirements
- Description
- Purpose of Item
Year of Appropriation

Burden of Proof

It was the duty of the objector to show that the school board failed to comply with the requirements of former section 158a (see now this section) and in what particulars. People ex rel. Gill v. Peterson, 366 Ill. 613, 10 N.E.2d 323 (1937).

Purpose

The budget law is principally for the purpose of requiring school taxes levied for a definite purpose to be applied to that purpose. People ex rel. Toman v. Estate of Otis, 376 Ill. 112, 33 N.E.2d 202 (1941).

Requirements

- Description

It is not necessary to state each particular purpose for which a tax is levied where each purpose is properly embraced in one general designation. People ex rel. Toman v. Estate of Otis, 376 Ill. 112, 33 N.E.2d 202 (1941).

- Purpose of Item

Where a budget item specified a single general purpose, namely, the maintenance of school buildings, with adequate certainty to enlighten the taxpayer of the purposes for which the money was to be expended, it satisfied the requirements of the applicable statute. People ex rel. Toman v. Estate of Otis, 376 Ill. 112, 33 N.E.2d 202 (1941).

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Year of Appropriation

An appropriation for interest on 1968 educational fund tax anticipation warrants was properly set forth as a 1969 appropriation, but was not included, or reflected, in the board of education's 1969 levy for educational purposes, and thus did not constitute illegal duplication. People ex rel. Korzen v. Franklin, 15 Ill. App. 3d 888, 305 N.E.2d 384 (1 Dist. 1973).

§ 105 ILCS 5/34-45.1. [Administration of programs included]

Sec. 34-45.1. The amount appropriated in any annual, additional or supplemental school budget adopted pursuant to this Article and specified in such budget to be for workers' compensation, workers' occupational diseases compensation and unemployment compensation purposes shall include a sum estimated to be sufficient to cover the anticipated costs of operating and administering the workers' compensation, workers' occupational diseases compensation and unemployment compensation program for the purpose of which such amount was appropriated, including employee wages, salaries and the cost of legal services furnished in connection with the operation and administration of such program. Liabilities incurred for such operating and administrative costs, including employee wages and salaries and the cost of legal services, shall upon being vouchered, audited and approved by the board as provided in Section 34-51 [105 ILCS 5/34-51] be charged to and paid from the fund of moneys appropriated for such purpose.

(Source: P.A. 83-718.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-45.1.

§ 105 ILCS 5/34-46. Public participation

Sec. 34-46. Public participation. The budget shall be prepared in tentative form by the board and in such form shall be made available to public inspection for at least 15 days prior to final action thereon, by having at least 5 copies thereof on file in the office of the secretary of the board. Not less than 5 days after such copies are so placed on file and prior to final action thereon, the board shall hold at least 2 public hearings thereon, of which notice shall be given at least once by publication in a newspaper having general circulation in the city at least 5 days prior to the time of the hearing. The board shall arrange for and hold such public hearing or hearings, provided that the final public hearing shall occur not less than 5 days prior to the Board's final action on the budget. The board shall cause its budget to be published in its proceedings within 30 days after its

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adoption.

(Source: P.A. 82-764.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-46.

§ 105 ILCS 5/34-47. Revision of items - Amendment - Publication

Sec. 34-47. Revision of items - Amendment - Publication. Subsequent to the public hearing provided for in Section 34-46 [105 ILCS 5/34-46] and before final action on the budget, the board may revise, alter, increase, or decrease the items contained therein, but the aggregate amount finally appropriated by the budget, including any subsequent amendment thereof, from any fund or for any purpose, including amounts appropriated for judgments and all other unpaid liabilities and all other purposes for which such authorities are herein or otherwise by law required to appropriate, shall not exceed the aggregate amount available in such fund or for such purpose, as shown by the estimates of the available assets thereof at the beginning of such fiscal year and of taxes and other current revenues set forth in the budget. If the appropriations from any fund as set forth in the budget as finally adopted exceed in the aggregate the maximum amount which the board is authorized to appropriate therefrom, all appropriations made from such fund by the budget shall be void and the several amounts appropriated in the budget of the last preceding fiscal year, so far as they relate to operation and maintenance expenses, shall be deemed to be appropriated for the current fiscal year for objects and purposes, respectively, as specified in said last budget and the several amounts so appropriated shall constitute lawful appropriations for the current fiscal year, but not in excess of amounts which will enable the Board to comply with the requirements of Section 34A-402 [105 ILCS 5/34A-402].

The board of education may amend the budget from time to time by the same procedure as is herein provided for the original adoption of the budget.

(Source: P.A. 82-1020.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-47.

§ 105 ILCS 5/34-48. Supplemental budgets - Emergencies

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Sec. 34-48. Supplemental budgets - Emergencies. After the effectiveness of the budget (other than an interim budget), the board shall not make any other appropriations prior to the adoption or passage of the next succeeding budget. The board may not, either directly or indirectly, make any contract or do any act which shall add to its expenditures or liabilities, in any fiscal year, any thing or sum above the amount provided for in the budget for that fiscal year except that the board may, at any time after the adoption of the annual school budget, by a 2/3 vote of the full membership of the board, pass an additional or supplemental budget, thereby adding appropriations to those made in the annual school budget and such supplemental or additional school budget shall be regarded as an amendment of the annual school budget for that year; provided that any such additional or supplemental appropriations so made shall not exceed the amount of additional moneys which the board of education will have available for appropriation in that year from any source, including any fund balances not previously appropriated, over and above the amount of moneys which the board, at the time of the adoption of its annual budget for that year, estimated would be available for appropriation from such sources, or provided that the board, by a concurring vote of 2/3 of all the members thereof (said votes to be taken by yeas and nays and entered in the proceedings of the board) may make any expenditures and incur any liability rendered necessary to meet emergencies such as epidemics, fires, unforeseen damages or other catastrophes happening after the annual school budget has been passed or adopted. This section does not prevent the board from providing for and causing to be paid from its funds any charge imposed by law without the action of the board.

(Source: P.A. 82-765.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-48.

§ 105 ILCS 5/34-49. Contracts, expense and liabilities without appropriation

Sec. 34-49. Contracts, expense and liabilities without appropriation. No contract shall be made or expense or liability incurred by the board, or any member or committee thereof, or by any person for or in its behalf, notwithstanding the expenditure may have been ordered by the board, unless an appropriation therefor has been previously made. Neither the board, nor any member or committee, officer, head of any department or bureau, or employee thereof shall during a fiscal year expend or contract to be expended any money, or incur any liability, or enter into any contract which by its terms involves the expenditure of money for any of the purposes for which provision is made in the budget, in excess of the amounts appropriated in the budget. Any contract, verbal or written, made in violation of this Section is void as to the board, and no moneys belonging thereto shall be paid thereon. Provided, however, that the board may lease from any Public Building Commission created pursuant to the provisions of the Public Building

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Commission Act, approved July 5, 1955, as heretofore or hereafter amended [50 ILCS 20/1 et seq.], or from any individuals, partnerships or corporations, any real or personal property for the purpose of securing space for its school purposes or office or other space for its administrative functions for any period of time not exceeding 40 years, and such lease may be made and the obligation or expense thereunder incurred without making a previous appropriation therefor, except as otherwise provided in Section 34-21.1 of this Act [105 ILCS 5/34-21.1]. Provided that the board may enter into agreements, including lease and lease purchase agreements having a term not longer than 40 years from the date on which such agreements are entered into, with individuals, partnerships, or corporations for the construction of school buildings, school administrative offices, site development, and school support facilities. The board shall maintain exclusive possession of all such schools, school administrative offices, and school facilities which it is occupying or acquiring pursuant to any such lease or lease purchase agreement, and in addition shall have and exercise complete control over the education program conducted at such schools, offices and facilities. The board's contribution under any such lease or lease purchase agreement shall be limited to the use of the real estate and existing improvements on a rental basis which shall be exempt from any form of leasehold tax or assessment, but the interests of the board may be subordinated to the interests of a mortgage holder or holders acquired as security for additional improvements made on the property. Provided that the board may enter into agreements, including lease and lease purchase agreements, having a term not longer than 40 years from the date on which such agreements are entered into for the provision of school buildings and related property and facilities for an agricultural science school pursuant to subparagraphs (8) through (10) of Section 34-21.1 [105 ILCS 5/34-21.1]; and such agreements may be made and the obligations thereunder incurred without making a previous appropriation therefor. This Section does not prevent the making of lawful contracts for the construction of buildings, the purchase of insurance, the leasing of equipment, the purchase of personal property by a conditional sales agreement, or the leasing of personal property under an agreement that upon compliance with the terms of which the board shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration, the term of which may be for periods of more than 1 year, but, in no case, shall such conditional sales agreements or leases of personal property by which the board may or will become the owner of the personal property, provide for the consideration to be paid during a period of time in excess of 10 years nor shall such contracts provide for the payment of interest in excess of the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, on the unpaid balance owing; nor shall this Section prevent the making of lawful contracts for the purchase of fuel and the removal of ashes for a period from July 1 of any year to June 30 of the year following, or the making of lawful contracts for the transportation of pupils to and from school, or the entering into of employment contracts with individuals or groups of employees for any period not to exceed 4 years, or the entering into contracts with third parties for services otherwise performed by employees for any period not to exceed 5 years provided that the contracts with third parties for services provided at attendance centers shall specify that the principal of an attendance center shall have authority, to the maximum extent possible, to direct persons assigned to the attendance center pursuant to that contract, or the making of requirement contracts for

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not to exceed one year the terms of which may extend into the succeeding fiscal year provided, however, that such contracts contain a limitation on the amount to be expended and that such contracts shall impose no obligation on the board except pursuant to written purchase order.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4; 89-15, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-49.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the first paragraph, in the ninth sentence substituted "4 years" for "three years" and inserted "or the entering into contracts with third parties for services otherwise performed by employees for any period not to exceed 5 years provided that the contracts with third parties for services provided at attendance centers shall specify that the principal of an attendance center shall have authority, to the maximum extent possible, to direct persons assigned to the attendance center pursuant to that contract".

CASE NOTES

Analysis

Appropriation and Levy
- Validity
Lease
Partial Illegality
Void Collective Bargaining Agreement
Wages

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- Entitlement
- Retroactive Payments

Appropriation and Levy

- Validity

Where the appropriation and levy were in proper form, the presumption was in favor of their validity, and the mere possibility that the fund, when collected, might have been diverted to some other purpose did not invalidate the levy. People ex rel. Nelson v. Crane Packing Co., 405 Ill. 470, 91 N.E.2d 391 (1950).

Where an appropriation and levy were presumptively valid and legal, the burden was on the objector to prove them illegal. People ex rel. Nelson v. Crane Packing Co., 405 Ill. 470, 91 N.E.2d 391 (1950).

Lease

It was lawful under the Public Building Commission Act (50 ILCS 20/1 et seq.) for the board of education to lease a schoolhouse from the Commission, for school property to be donated to the Commission, and for the city council to levy a tax to cover the costs of operation under such a lease. People ex rel. Stamos v. Public Bldg. Comm'n, 40 Ill. 2d 164, 238 N.E.2d 390 (1968).

Partial Illegality

Where some items in a budget were properly chargeable to the educational fund rather than the building fund and thus were illegally appropriated under the building fund, and the total of the illegal items was definite, specific and ascertainable, and represented a certain percentage of the total appropriations for repairs and replacements, then, by eliminating the illegal items from the appropriation, the taxpayer could carry the percentage of such illegal items through the levy and the rate and successfully determine what portion of the taxes assessed against its property was valid and what portion was invalid; thus, objections to the levy were overruled. People ex rel. Nelson v. Crane Packing Co., 405 Ill. 470, 91 N.E.2d 391 (1950).

Void Collective Bargaining Agreement

Where no appropriation had been made for the salary increase provisions in the 1971-1972 collective bargaining agreement between board of education and teacher's union, the contract was void under the provisions of this section. Board of Educ. v. Chicago Teachers Union, Local 1, 26 Ill. App. 3d 806, 326 N.E.2d 158 (1 Dist. 1975).

Wages

- Entitlement

Carpenters and other building trade workers employed by a school board were not entitled to be paid by the prevailing wage rate when it increased, because there was no further or additional appropriation made for their salaries in the budget. Stahl v. Board of Educ., 334 Ill. App. 366, 79 N.E.2d 640 (1 Dist. 1948).

- Retroactive Payments

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School clerks were held ineligible for retroactive payments based upon supplemental budget after salaries had been fixed by specific appropriation. Atkinson v. Board of Educ., 44 Ill. App. 2d 92, 194 N.E.2d 8 (1 Dist. 1963).

Practice Guides and Treatises.

Contract Law § 20.7 Not Budgeted and Appropriated (IICLE).

Construction Litigation § 1.39 Prior Appropriation (IICLE).

§ 105 ILCS 5/34-50. Transfers between appropriations - Delay

Sec. 34-50. Transfers between appropriations - Delay. The board may, at any time by a two-thirds vote of all the members authorize the making of transfers within any fund under its jurisdiction, of sums of money appropriated for one object or purpose to another object or purpose, which action shall be entered in its proceedings; provided that during the first half of each fiscal year such transfers shall not exceed 10% of any such fund, but no appropriation for any purpose shall be reduced below an amount sufficient to cover all obligations incurred or to be incurred against the appropriation for such purpose.

(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-50.

§ 105 ILCS 5/34-51. Appropriation not to be construed as approval of board of liabilities

Sec. 34-51. Appropriation not to be construed as approval of board of liabilities. The appropriation resolution or budget, including the amounts for the payment of contract liabilities or to defray the expense of any project or purpose, shall not be construed as an approval by the board of any such liabilities or of any project or purpose mentioned, but shall be regarded only as the provisions for a fund or funds for the payment thereof when such liabilities have been found to be valid and legal obligations against the board, and when properly vouchered, audited and approved by the board, or when any project or purpose is approved and authorized by the board, as the case may be.

(Source: Laws 1961, p. 31.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-51.

§ 105 ILCS 5/34-52. Wilful violation of budget provisions

Sec. 34-52. Wilful violation of budget provisions. Any member of the board, or any officer thereof or of the city or any other person holding any trust or employment under the board or city who wilfully violates any of the provisions of Sections 34-43 through 34-51 [105 ILCS 5/34-43 through 105 ILCS 5/34-51] shall be guilty of a business offense and may be fined not exceeding $10,000, and shall forfeit his right to his office, trust or employment and shall be removed therefrom. Any such member, officer or person shall be liable for the amount of any loss or damage suffered by the board resulting from any act of his in violation of the terms of any of those sections, to be recovered by the board or by any taxpayer in the name and for the benefit of the board, in an appropriate civil action. Any taxpayer bringing any such action must file a bond for all costs, and shall be liable for all costs taxed against the board in such suit, and judgment shall be rendered accordingly. This Section does not bar any other remedies.

(Source: P.A. 79-1366.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-52.

§ 105 ILCS 5/34-52.1. Form of ballot and notice

Sec. 34-52.1. Form of ballot and notice. Whenever any proposition to authorize or to levy an annual tax, or to increase the annual rate of tax levied by any school district, for any school purpose is submitted to the voters of such district at any election, each required notice or other publication of the election or referendum and the form of ballot shall contain, in addition to any other matters required by law:

(a) the geographic or other common name of the school district by which that district is commonly known and referred to, as well as the number of the district;

(b) the maximum rate at which such tax may be levied if the proposition is approved; and

(c) if the proposition is to increase the annual rate of an existing tax levied by the school district, then in addition to the matters set forth in (a) and (b) above, the annual rate at which such existing tax currently is levied and the percentage of increase between the maximum rate at which such tax may be levied if the proposition is approved and the

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annual rate at which such tax currently is levied.

(Source: P.A. 85-374.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-52.1.

§ 105 ILCS 5/34-53. Tax levies; Purpose; Rates

Sec. 34-53. Tax levies; Purpose; Rates. For the purpose of establishing and supporting free schools for not fewer than 9 months in each year and defraying their expenses the board may levy annually, upon all taxable property of such district for educational purposes a tax for the fiscal years 1996 and each succeeding fiscal year at a rate of not to exceed the sum of (i) 3.07% (or such other rate as may be set by law independent of the rate difference described in (ii) below) and (ii) the difference between .50% and the rate per cent of taxes extended for a School Finance Authority organized under Article 34A of the School Code, for the calendar year in which the applicable fiscal year of the board begins as determined by the county clerk and certified to the board pursuant to Section 18-110 of the Property Tax Code [35 ILCS 200/18-110], of the value as equalized or assessed by the Department of Revenue for the year in which such levy is made.

Nothing in this amendatory Act of 1995 shall in any way impair or restrict the levy or extension of taxes pursuant to any tax levies for any purposes of the board lawfully made prior to the adoption of this amendatory Act of 1995.

Notwithstanding any other provision of this Code and in addition to any other methods provided for increasing the tax rate the board may, by proper resolution, cause a proposition to increase the annual tax rate for educational purposes to be submitted to the voters of such district at any general or special election. The maximum rate for educational purposes shall not exceed 4.00%. The election called for such purpose shall be governed by Article 9 of this Act. If at such election a majority of the votes cast on the proposition is in favor thereof, the Board of Education may thereafter until such authority is revoked in a like manner, levy annually the tax so authorized.

For purposes of this Article, educational purposes for fiscal years beginning in 1995 and each subsequent year shall also include, but not be limited to, in addition to those purposes authorized before this amendatory Act of 1995, constructing, acquiring, leasing (other than from the Public Building Commission of Chicago), operating, maintaining, improving, repairing, and renovating land, buildings, furnishings, and equipment for school houses and buildings, and related incidental expenses, and provision of special education, furnishing free textbooks and instructional aids and school supplies, establishing, equipping, maintaining, and operating supervised playgrounds under the control of the board, school extracurricular activities, and stadia, social center, and

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summer swimming pool programs open to the public in connection with any public school; making an employer contribution to the Public School Teachers' Pension and Retirement Fund as required by Section 17-129 of the Illinois Pension Code [40 ILCS 5/17-129]; and providing an agricultural science school, including site development and improvements, maintenance repairs, and supplies. Educational purposes also includes student transportation expenses.

All collections of all taxes levied for fiscal years ending before 1996 under this Section or under Sections 34-53.2, 34-53.3, 34-58, 34-60, or 34-62 of this Article as in effect prior to this amendatory Act of 1995 may be used for any educational purposes as defined by this amendatory Act of 1995 and need not be used for the particular purposes for which they were levied. The levy and extension of taxes pursuant to this Section as amended by this amendatory Act of 1995 shall not constitute a new or increased tax rate within the meaning of the Property Tax Extension Limitation Law [35 ILCS 200/18-185] or the One-year Property Tax Extension Limitation Law [35 ILCS 200/18-246].

The rate at which taxes may be levied for the fiscal year beginning September 1, 1996, for educational purposes shall be the full rate authorized by this Section for such taxes for fiscal years ending after 1995.

(Source: P.A. 86-970; 86-1471; 86-1477; 86-1488; 87-828; 88-511, §§ 25, 51; 88-670, § 2-34; 89-15, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-53.

Sections 34-53.2, 34-53.3, 34-58, 34-60 and 34-62, referred to above, have been repealed.

Effect of Amendments. The 1993 amendment by P.A. 88-511, § 25, effective November 14, 1993, in the third paragraph, in the first sentence, substituted "this Code" for "Chapter 122" and substituted "any other methods provided for" for "the methods provided in this chapter for"; and added the last paragraph.

The 1993 amendment by P.A. 88-511, § 51, effective November 14, 1993, in the third paragraph, in the first sentence, substituted "this Code" for "Chapter 122", substituted "any other methods provided for" for "the methods provided in this chapter for" and inserted "(i) the Chicago board . . . and (iii) thereafter".

The 1994 amendment by P.A. 88-670, effective December 2, 1994, combined the amendments by P.A. 88-511 § 25 and P.A. 88-511 § 51; and in the first paragraph, in the first sentence substituted "Section 18-110 of the Property Tax Code" for "Section 162 of the Revenue Act of 1939".

The 1995 amendment by P.A. 89-15, effective May 30, 1995, rewrote this section.

CASE NOTES

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Analysis

Constitutionality
- Equal Protection
- Funding Disparities
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- Fuel Charge
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- Building Purpose

Constitutionality

- Equal Protection

General structure of state's system of funding public schools through state and local resources, and the amounts allocated for distribution, represent legislative efforts to strike a balance between competing considerations of educational equality and local control, and state's system of funding is rationally related to legitimate goal of promoting local control. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

Education is not a fundamental individual right for equal protection purposes, and whether disparities in funding violate Ill. Const. (1970), Art. I, § 2, is not subject to the strict scrutiny test, but the appropriate standard of review is the rational basis test. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

- Funding Disparities

Disparities in educational funding resulting from differences in local property wealth do not offend efficiency requirement in Ill. Const. (1970), Art. X, § 1. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178 (1996).

Building Purposes

For a case discussing whether certain items were for the improvement, repair, or benefit of school buildings and property, and a direct, and not a remote or incidental, connection with a proper building purpose, see People ex rel. Schlaeger v. Reilly Tar & Chem. Corp., 389 Ill. 434, 59 N.E.2d 843 (1945).

Construction

The phrase "expenses incident thereto" logically and grammatically refers to the expenses incident to the purposes listed in the same paragraph, and expenses incident to building, procuring, purchasing, maintaining, repairing and replacing could not be said to extend to those

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expenses of operation which had always been an educational fund charge and which were not mentioned in an amendment. People ex rel. Brenza v. Jasper, 1 Ill. 2d 238, 115 N.E.2d 267 (1953).

Educational Purposes

- Fuel Charge

The fact that some school districts must charge fuel to the educational fund while school districts having a population of more than 500,000 inhabitants must charge fuel to the building fund did not create any special privilege; it is clearly for the legislative branch to determine the method by which any school district must appropriate and account for such expenditure items. People ex rel. Korzen v. Englemann, 32 Ill. 2d 196, 204 N.E.2d 760 (1965).

- Proper Expenses

The expense of electricity to operate motors was properly charged in its entirety to the educational fund and not the building fund. People ex rel. Brenza v. Jasper, 1 Ill. 2d 238, 115 N.E.2d 267 (1953).

- Separate Items

Under prior similar provision, levies made by school districts for fuel, water, light and power were not invalid even though items were not separated, nor because the taxes did not limit the fund to be raised to buildings belonging to the district, since the appropriation related to the operating plant and the item objected to was one of 20 separate items of estimated expenditures contained in the appropriation for necessary expense for educational purposes. People ex rel. Manifold v. Wabash Ry., 386 Ill. 149, 53 N.E.2d 976 (1944).

Itemization

Where objector charged that items included in appropriation ordinance were not itemized as required by law and consequently were void, and the items were classified as "temporarily unclassified items" and given detailed explanations, the items were itemized as required. People ex rel. Schlaeger v. Reilly Tar & Chem. Corp., 389 Ill. 434, 59 N.E.2d 843 (1945).

Purpose

Prior similar provision was principally for the purpose of requiring school taxes levied for a definite purpose to be applied to that purpose. The measure of specification and itemization was fixed by that section in a general way, so as to set forth the objects, amounts and source of payment, and itemization of requirements could be accorded a practical and common sense construction. People ex rel. Manifold v. Wabash Ry., 386 Ill. 149, 53 N.E.2d 976 (1944).

Requirements

- Building Purpose

Under prior similar provision, a building fund item was to have a direct, and not a remote or incidental, connection with a proper building purpose. People ex rel. Brenza v. Jasper, 1 Ill. 2d 238, 115 N.E.2d 267 (1953).

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School Tax

- Maximum Amount

A city, a home rule unit, may enact an ordinance which levies a tax for school purposes in excess of the maximum set out in this section. 1980 Op. Atty. Gen. 51.

§ 105 ILCS 5/34-53.1. Supplemental tax levy

Sec. 34-53.1. Supplemental tax levy. When a supplemental budget has been adopted by the board of education under Section 34-44.1 [105 ILCS 5/34-44.1] the board of education may levy supplemental taxes which shall not exceed the amount of the increase in revenues projected in the supplemental budget nor exceed the maximum rates of taxes which the board is authorized by law to levy for the fiscal year to which the increase applies for the respective purposes. With respect to any supplemental levy based on an increase in the value of taxable property in the school district, such supplemental levy shall be adopted within 60 days of the date of the final certification of the equalization rate by the Department of Revenue to the county clerk as provided in the Property Tax Code [35 ILCS 200/1 et seq.], irrespective of whether the adoption occurs within or after the close of the fiscal year to which the increase applies. The board is authorized to levy supplemental taxes pursuant to this Section.

(Source: P.A. 85-1418; 86-1477; 88-670, § 3-54.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-53.1.

Effect of Amendments. The 1994 amendment by P.A. 88-670, effective December 2, 1994, in the second sentence substituted "Property Tax Code" for "'Revenue Act of 1939', as amended".

§§ 105 ILCS 5/34-53.2, 105-5/34-53.3: Repealed by P.A. 89-15, § 50, effective May 30, 1995.

§ 105 ILCS 5/34-53.5. Capital improvement tax levy; purpose; maximum amount

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Sec. 34-53.5. Capital improvement tax levy; purpose; maximum amount. (a) For the purpose of providing a reliable source of revenue for capital improvement purposes, including without limitation (i) the construction and equipping of a new school building or buildings or an addition or additions to an existing school building or buildings, (ii) the purchase of school grounds on which any new school building or an addition to an existing school building is to be constructed or located, (iii) both items (i) and (ii) of this subsection (a), or (iv) the rehabilitation, renovation, and equipping of an existing school building or buildings, the board may levy, upon all taxable property of the school district, in calendar year 2003, a capital improvement tax to produce, when extended, an amount not to exceed the product attained by multiplying (1) the percentage increase, if any, in the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor for the 12 months ending 2 months prior to the month in which the levy is adopted by (2) $142,500,000. For example, if the percentage increase in the Consumer Price Index is 2.5%, then the computation would be $142,500,000 x 0.025 = $3,562,500.

(b) In each calendar year from 2004 through 2030, the board may levy a capital improvement tax to produce, when extended, an amount not to exceed the sum of (1) the maximum amount that could have been levied by the board in the preceding calendar year pursuant to this Section and (2) the product obtained by multiplying (A) the sum of (i) the maximum amount that could have been levied by the board in the preceding calendar year pursuant to this Section and (ii) $142,500,000 by (B) the percentage increase, if any, in the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor for the 12 months ending 2 months prior to the month in which the levy is adopted.

(c) In calendar year 2031, the board may levy a capital improvement tax to produce, when extended, an amount not to exceed the sum of (1) the maximum amount that could have been levied by the board in calendar year 2030 pursuant to this Section, (2) $142,500,000, and (3) the product obtained by multiplying (A) the sum of (i) the maximum amount that could have been levied by the board in calendar year 2030 pursuant to this Section and (ii) $142,500,000 by (B) the percentage increase, if any, in the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor for the 12 months ending 2 months prior to the month in which the levy is adopted.

(d) In calendar year 2032 and each calendar year thereafter, the board may levy a capital improvement tax to produce, when extended, an amount not to exceed the sum of (1) the maximum amount that could have been levied by the board in the preceding calendar year pursuant to this Section and (2) the product obtained by multiplying (A) the maximum amount that could have been levied by the board in the preceding calendar year pursuant to this Section by (B) the percentage increase, if any, in the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor for the 12 months ending 2 months prior to the month in which the levy is adopted.

(e) An initial tax levy made by the board under this Section must have the approval of the Chicago City Council, by resolution, before the levy may be extended. The board shall

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communicate its adoption of the initial tax levy by delivering a certified copy of the levy resolution to the Clerk of the City of Chicago. The Chicago City Council shall have 60 days after receipt, by the Clerk of the City of Chicago, of the certified resolution to approve or disapprove the levy. The failure of the Chicago City Council to take action to approve or disapprove the initial tax levy within the 60-day period shall be deemed disapproval of the initial tax levy. Upon the adoption of each subsequent levy by the board under this Section, the board must notify the Chicago City Council that the board has adopted the levy.

(f) The board may issue bonds, in accordance with the Local Government Debt Reform Act, including Section 15 of that Act [30 ILCS 350/15], against any revenues to be collected from the capital improvement tax in any year or years and may pledge, pursuant to Section 13 of the Local Government Debt Reform Act [30 ILCS 350/13], those revenues as security for the payment of any such bonds.

(Source: P.A. 92-547, § 10.)

Effective Date. Section 99 of P.A. 92-547 made this section effective upon becoming law. The Act was approved June 13, 2002.

§ 105 ILCS 5/34-53A: Repealed by P.A. 89-698, § 10, effective January 14, 1997.

§ 105 ILCS 5/34-54: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/34-54.1. Tax levies and extensions

Sec. 34-54.1. Tax levies and extensions. The annual tax rates and the several tax levies authorized to be made shall be: (i) for each fiscal year through and including the 1995-96 fiscal year, for a fiscal year commencing September 1 and ending August 31; (ii) for the 1996-97 fiscal year, for a fiscal year commencing September 1 and ending June 30; and (iii) for each subsequent fiscal year, for a fiscal year commencing July 1 and ending June 30.

Notwithstanding any provision in this Article 34 to the contrary, by the last Tuesday in December of each calendar year, the board of education may levy upon all the taxable property of the district or city, the annual taxes required to provide the necessary revenue to defray expenditures, charges and liabilities incurred by the board for the fiscal year beginning in that calendar year. The levy may be based upon the estimated equalized assessed valuation provided the county clerk shall extend for collection only so much

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thereof as is permitted by law. The total amount of the levy shall be certified to the county clerk who shall extend for collection only so much thereof as is required to provide the necessary revenue to defray expenditures, charges and liabilities incurred by the board as certified by the controller of the board to the county clerk upon the value, as equalized or assessed by the Department of Revenue for the calendar year in which the levy was made. The county clerk shall thereafter in the succeeding calendar year extend such remaining amount of the levy as is certified by the controller of the board to the county clerk upon the value, as equalized or assessed by the Department of Revenue for such calendar year. In each year the county clerk shall extend taxes at a rate sufficient to produce the full amount of the 2 partial levies attributable to that tax year. Provided, however, and notwithstanding the provisions of any other law to the contrary: (a) the extension of taxes levied for fiscal years ending before 1996 for building purposes and school supervised playground outside school hours and stadia, social center and summer swimming pool purposes which the county clerk shall make against the value of all taxable property of the district or city, as equalized or assessed by the Department of Revenue, shall be at the respective maximum rates at which the board was authorized to levy taxes for such purposes for the fiscal year which ends in 1995; and (b) notwithstanding any other provision of this Code, in each calendar year the taxes for educational purposes shall be extended at a rate certified by the controller as referred to in this Section, which rate shall not be in excess of the maximum rate for the levy of taxes for educational purposes, occurring in the fiscal year which begins in the calendar year of the extension, (whether or not actually levied at that rate) except for calendar year 1995 in which the rate shall not be in excess of the maximum rate which would be provided for the levy of taxes for educational purposes for the fiscal year which begins in 1995 without regard to this amendatory Act of 1995. In calendar year 1995, the county clerk shall extend any special education purposes tax which was levied as provided in Section 34-53.2 in full in the calendar year following the year in which the levy of such a tax was made.

(Source: P.A. 86-1471; 86-1477; 86-1488; 87-17; 87-435; 88-511, § 2.1; 89-15, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-54.1.

Section 34-53.2, referred to above, has been repealed.

Effect of Amendments. The 1993 amendment by P.A. 88-511, effective November 14, 1993, in the section catchline deleted "rates and" preceding "levies" and substituted "and extensions" for "on and after September 1, 1974 - Levy of taxes for months of September through December of 1974; deleted from the beginning of the first paragraph "On and after September 1, 1974,"; in the second paragraph, in the first sentence deleted "within 60 days after September 1, 1974 and within 60 days after September 1 of each year until 1990, and beginning in 1991" preceding "by the last Tuesday", deleted the former language of subsections (a) through (e) regarding calendar years 1983 through 1987, and substituted the present subsection (b) designation for the former subsection (f) designation; and in subsection (b) deleted "beginning in calendar year 1991," preceding "in each calendar year" and substituted "begins in the year" for "ends in the year".

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The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the first paragraph, inserted "(i) for each fiscal year through and including the 1995-96 fiscal year", substituted "a fiscal year" for "the fiscal year" and added at the end "(ii) for the 1996-97 fiscal year, for a fiscal year commencing September 1 and ending June 30; and (iii) for each subsequent fiscal year, for a fiscal year commencing July 1 and ending June 30"; and in the second paragraph, in the first sentence inserted the first occurrence of "calendar and" substituted "in that calendar year" for "September 1 and ending August 31", rewrote the sixth sentence; and in the seventh sentence, substituted "1995" for "1985 and each calendar year thereafter" and substituted "was levied" for "is levied".

CASE NOTES

Constitutionality

The last sentence of Ill. Const. (1970), Art. X, § 1, which provides, "The state has the primary responsibility for financing the system of public education," does not invalidate this section, which permits the board of education to levy and collect taxes at a rate which generates out of the pockets of local taxpayers funds in excess of the amount contributed by the state, as this section stated a goal, and not a mathematical formula. People ex rel. Carey v. Board of Educ., 55 Ill. 2d 533, 304 N.E.2d 273 (1973).

This section is not unconstitutional although it embraces more than one subject in violation of Ill. Const. (1970), Art. IV, § 8(d). People ex rel. Carey v. Board of Educ., 55 Ill. 2d 533, 304 N.E.2d 273 (1973).

§ 105 ILCS 5/34-54.2. Taxes levied in 1989 and 1990

Sec. 34-54.2. Taxes levied in 1989 and 1990. (a) All real property taxes levied by the board in 1989 and 1990 are confirmed and validated, and are declared to be and are valid, in all respects as if they had been timely and properly levied by the city council upon the demand and direction of the Board. It shall not be a valid ground for any person in any way to object to, protest, bring any proceeding with regard to or defend against the collection of any such taxes, that the taxes were levied by the board.

(b) The board may levy taxes against all taxable property located within the city in an amount equal to all taxes purported to be levied by the board in 1989 and in 1990, for each purpose for which taxes were purported so to be levied, to the extent those taxes shall not yet have been extended for collection at the time of the levy authorized by this paragraph (b). The taxes authorized to be levied by this paragraph (b) shall be levied by a resolution of the board selected pursuant to this amendatory Act of 1991. The resolution shall be adopted upon concurrence of a majority of the members of the board. The taxes levied pursuant to this paragraph (b) shall be extended for collection in 1991 and subsequent years and in amounts so that they do not exceed the maximum rates at which taxes may be extended for the various school purposes, all as shall be set forth in a certificate of the controller of the board as provided in Section 34-54.1 of the School Code [105 ILCS 5/34-54.1], as amended. Taxes levied pursuant to this paragraph (b)

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shall be in addition to all other taxes which have been or may be levied by or for the board, except that the extension of taxes levied pursuant to this paragraph (b), to the extent valid and legal in all respects, shall be an abatement of the same amount of taxes previously purported to be levied by the board which were to have been extended in the same year for the same purpose, it being the intention of the General Assembly that there not be extended duplicate taxes for the same year and purpose. It shall not be necessary that the board give any notice or conduct any hearings for any purpose whatsoever or to have adopted any proceedings with respect to any budget, in connection with the levy and extension of taxes pursuant to this paragraph (b). The board shall cause a certified copy of its resolution levying taxes pursuant to this paragraph (b) to be filed with the county clerk of each county in which any taxable property in the city is located within 30 days after the adoption of the resolution.

(Source: P.A. 86-1477.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-54.2.

§ 105 ILCS 5/34-55. Expenditures in excess of receipts

Sec. 34-55. Expenditures in excess of receipts. The board shall not add to the expenditures for school purposes anything above the amount received from the State common school fund, the rental of school lands or property, funds otherwise received, and the amount of school taxes levied and to be levied for educational and for building purposes. If the board does so add to such expenditures the city shall not be liable therefor. The board is authorized to levy all taxes as provided for in this Article.

(Source: P.A. 85-1418; 86-1477.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-55.

§ 105 ILCS 5/34-56. Amount to cover loss and cost of collecting tax not added

Sec. 34-56. Amount to cover loss and cost of collecting tax not added. In ascertaining the rate per cent that will produce the amount of any tax levied pursuant to the authority granted by Section 34-53 [105 ILCS 5/34-53], the county clerk shall not add any amount

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to cover the loss and cost of collecting the tax.

(Source: Laws 1961, p. 31; 94-1105, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-56.

Effect of Amendments. The 2007 amendment by P.A. 94-1105, effective June 1, 2007, deleted "34-54" after "34-53".

§§ 105 ILCS 5/34-57 through 105 ILCS 5/34-63: Repealed by P.A. 89-15, § 50, effective May 30, 1995.

§ 105 ILCS 5/34-64. Numbering warrants - Contents - Interest

Sec. 34-64. Numbering warrants - Contents - Interest. Warrants issued under Sections 34-24, 34-59, and 34-63 [105 ILCS 5/34-24] shall be numbered consecutively in the order of their issuance and shall show upon their face that they are payable solely from the respective taxes when collected and that payment thereof will be made in the order of their issuance, beginning with the warrant having the lowest number, and shall be received by any collector of taxes in payment of taxes against which they are issued and such taxes against which the warrants are drawn shall be set apart for their payment. The warrants shall bear interest, payable out of the taxes against which they are drawn, at a rate of not to exceed 7% per annum if issued before July 1, 1971 and if issued thereafter at the rate of not to exceed 6% per annum, from the date of their issuance until paid or until notice is given by publication in a newspaper or otherwise that the money for their payment is available and that they will be paid on presentation.

(Source: P.A. 76-1966.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-64.

Sections 34-59 and 34-63, referred to above, have been repealed.

§ 105 ILCS 5/34-65. Refunding bonds authorized - Interest

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Sec. 34-65. Refunding bonds authorized - Interest. Whenever any school district described in this Article has outstanding bonds which are binding and subsisting legal obligations, and the proceeds of taxes levied for the payment of the principal of and interest on such bonds have not been collected and are not available for such payments when due, the board may issue refunding bonds for an amount sufficient to pay and discharge any of the outstanding bonds with accrued interest. The refunding bonds shall bear interest at a rate of not more than the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, if issued before January 1, 1972 and not more than the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, if issued after January 1, 1972 and shall mature within 20 years from the date thereof.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of Public Act 86-4 (June 6, 1989), it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4; 86-930; 86-1028.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-65.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

CASE NOTES

Form of Warrant

Issuance of bonds for the purpose of refunding bonds, which were issued for the purpose of paying tax anticipation warrants, did not change the character of the liability. Newberry Library v. Board of Educ., 390 Ill. 48, 60 N.E.2d 552 (1945).

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§ 105 ILCS 5/34-66. Resolution for refunding bonds - Name in which issued - Signatures

Sec. 34-66. Resolution for refunding bonds - Name in which issued - Signatures. Whenever the board desires to issue refunding bonds under Section 34-65 [105 ILCS 5/34-65], it shall adopt a resolution designating the purpose and fixing the amount of the bonds proposed to be issued, the maturity thereof, the rate of interest thereon, and the amount of taxes to be levied annually for the purpose of paying the interest on and the principal of the bonds.

Refunding bonds shall be issued in the corporate name of the school district. They shall be signed by the president and the secretary of the board.

(Source: P.A. 86-930.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-66.

§ 105 ILCS 5/34-67. Sale or exchange of bonds - Use of proceeds

Sec. 34-67. Sale or exchange of bonds - Use of proceeds. Refunding bonds issued under Section 34-65 [105 ILCS 5/34-65] may be exchanged on the basis of par for par for the bonds being refunded and described in the authorizing resolution, or may be sold at not less than par under the direction of the board, and the proceeds thereof shall be received by the city treasurer, as school treasurer, and shall be kept in a separate fund to be used solely for the purpose of paying the principal and interest on the bonds so refunded. All bonds refunded shall be cancelled.

(Source: P.A. 86-930.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-67.

§ 105 ILCS 5/34-68. Issuance without submission to voters

Sec. 34-68. Issuance without submission to voters. The board may provide that the resolutions authorizing issuance of refunding bonds issued under Section 34-65 [105

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ILCS 5/34-65] shall be effective without the submission thereof to the voters of the school district or city for approval.

The validity of each refunding bond so executed shall remain unimpaired, although one or more of the signing officers have ceased to be such officer or officers before the delivery of the bond to the purchaser.

(Source: P.A. 85-1418; 86-1477.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-68.

§ 105 ILCS 5/34-69. Tax for payment of refunding bonds

Sec. 34-69. Tax for payment of refunding bonds. Before or at the time of issuing refunding bonds authorized by Section 34-65 [105 ILCS 5/34-65] the board shall provide for the collection of a direct annual tax upon all the taxable property of the school district, sufficient to pay and discharge the principal thereof at maturity and to pay the interest thereon as it falls due. Upon the filing in the office of the county clerk of the county wherein such school district is located of a duly certified copy of any such ordinance it shall be the duty of such county clerk to extend the tax therein provided for.

(Source: P.A. 85-1418; 86-1477.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-69.

§ 105 ILCS 5/34-70. Tax for payment of refunded bonds - Reduction of levy

Sec. 34-70. Tax for payment of refunded bonds - Reduction of levy. If the proceeds of the refunding bonds authorized by Section 34-65 [105 ILCS 5/34-65] have been used for the payment of any outstanding bonds of the board, or the refunding bonds have been exchanged for outstanding bonds, and thereafter any portion of the respective taxes levied for the purpose of paying the principal of and interest on the outstanding bonds so paid or exchanged is collected, the money so received shall be placed in the bond and interest sinking fund of the board and used for the purpose of paying the principal of and interest on the refunding bonds issued under Section 34-65 [105 ILCS 5/34-65] and the taxes thereafter to be extended to pay the refunding bonds shall be reduced by that amount by

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the county clerk upon receipt of a certified copy of a resolution which must be adopted by the board directing such reduction. A certified copy of the resolution shall be filed with the county clerk of the county, and it shall thereupon be the duty of such official to reduce and extend the tax levy in accordance with the terms of the resolution.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-70.

§ 105 ILCS 5/34-71. Authority cumulative

Sec. 34-71. Authority cumulative. The authority granted in Sections 34-65 through 34-70 [105 ILCS 5/34-65 through 105 ILCS 5/34-70], is cumulative authority for the issuance of bonds and shall not be held to repeal any laws with respect thereto.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-71.

§ 105 ILCS 5/34-72: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/34-73. Certain taxes additional to maximum otherwise authorized - not reducible

Sec. 34-73. Certain taxes additional to maximum otherwise authorized - not reducible. Each of the taxes authorized to be levied by Sections 34-33, 34-39, 34-53.2, 34-53.3, 34-54.1, 34-57, 34-58, 34-60, 34-62, and 34-69 of this Code [105 ILCS 34-33, 105 ILCS 34-39, 105 ILCS 34-53.2, 105 ILCS 34-53.3, 105 ILCS 34-54.1, 105 ILCS 34-57, 105 ILCS 34-58, 105 ILCS 34-60, 105 ILCS 34-62, and 105 ILCS 34-69], and by Section 17-128 of the "Illinois Pension Code" shall be in addition to and exclusive of the maximum of all other taxes which the school district is authorized by law to levy upon the aggregate valuation of all taxable property within the school district or city and the county clerk in reducing taxes under the provisions of the Property Tax Code shall not consider any of

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such taxes therein authorized as a part of the tax levy of the school district or city required to be included in the aggregate of all taxes to be reduced and no reduction of any tax levy made under the Property Tax Code [35 ILCS 200/1-1 et seq.] shall diminish any amount appropriated or levied for any such tax.

(Source: P.A. 85-1440; 86-1477; 88-670, § 3-54; 94-1105, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-73.

Section 17-128 of the Illinois Pension Code, referred to above, has been repealed.

Sections 34-53.2, 34-53.3, 34-57, 34-58, 34-60 and 34-62, referred to above, have been repealed.

Effect of Amendments. The 1994 amendment by P.A. 88-670, effective December 2, 1994, substituted "Property Tax Code" for "'Revenue Tax Act of 1939', as amended" twice.

The 2007 amendment by P.A. 94-1105, effective June 1, 2007, deleted "34-72" after "34-69" and made related changes.

§ 105 ILCS 5/34-74. Custody of school moneys

Sec. 34-74. Custody of school moneys. Except as provided in Article 34A [105 ILCS 5/34A-101 et seq.] and Section 34-29.2 of this Code [105 ILCS 5/34-29.2], all moneys raised by taxation for school purposes, or received from the state common school fund, or from any other source for school purposes, shall be held by the city treasurer, ex-officio, as school treasurer, in separate funds for school purposes, subject to the order of the board upon (i) its warrants signed by its president and secretary and countersigned by the mayor and city comptroller or (ii) its checks, as defined in Section 3-104 of the Uniform Commercial Code [810 ILCS 5/3-104], signed by its president, secretary, and comptroller and countersigned by the mayor and city comptroller.

(Source: P.A. 81-1221; 91-151, § 5; 94-1105, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-74.

Effect of Amendments. The 1999 amendment by P.A. 91-151, effective January 1, 2000, substituted "Code" for "Article" near the beginning; added the item (i) designation, and added the language beginning "or (ii)" through the end.

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The 2007 amendment by P.A. 94-1105, effective June 1, 2007, deleted "34B" after "34A" and made related changes.

§ 105 ILCS 5/34-75. Duties of city treasurer as to school moneys

Sec. 34-75. Duties of city treasurer as to school moneys. The city treasurer shall, as school treasurer, secure and safely keep all school moneys and shall maintain a separate bank account for capital project funds and process only transactions related to capital projects through those accounts, subject to the control and direction of the board, provided that the amount of interest or other investment earnings in such accounts may be from time to time withdrawn by the board and any amounts so withdrawn by the board may be used for any lawful purpose. He shall, subject to the limitations in this Article, keep his books and accounts concerning such moneys in the manner prescribed by the board. His books and accounts shall always be subject to the inspection of the board, or any member thereof. He shall at the end of each month, and oftener if required, render under oath an account to the board showing the state of the school treasury at the date of the account and the balance of money in the treasury. He shall accompany such accounts with a statement of all moneys received into the school treasury, and on what account, together with all warrants redeemed and paid by him; which warrants and all vouchers held by him shall be delivered to the business manager of the board and filed with his account in the business manager's office upon every day of such settlement. He shall return all warrants paid by him stamped or marked "Paid". He shall keep a register of all warrants redeemed and paid, which shall describe such warrants and show the date, amount, number, the fund from which paid, the name of the person to whom and when paid.

(Source: P.A. 82-156.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-75.

§ 105 ILCS 5/34-76. Unpaid warrants for wages

Sec. 34-76. Unpaid warrants for wages. When a warrant issued for the wages of a teacher or other employee is presented to the school treasurer and is not paid for want of funds, the school treasurer shall endorse it over his signature, "not paid for want of funds," with the date of presentation, and shall make and keep a record of such endorsement. The warrant shall thereafter bear interest at the rate of 7% per annum if issued before January 1, 1972 or at the rate of 6% per annum if issued after January 1, 1972, until the school treasurer notifies the president of the board in writing that he has funds to pay it. The school treasurer shall make and keep a record of such notices and hold the funds

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necessary to pay the warrant until it is presented. The warrant shall draw no interest after notice is given to the president of the board.

(Source: P.A. 76-2012.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-76.

§ 105 ILCS 5/34-77. Depositories

Sec. 34-77. Depositories. The school treasurer may be required to keep all moneys in his hands belonging to the board in such places of deposit as may be ordered by the city council but he shall not be required to deposit such moneys elsewhere than in a savings and loan association or a regularly organized bank.

No bank or savings and loan association shall receive public funds as permitted by this Section, unless it has complied with the requirements established pursuant to Section 6 of "An Act relating to certain investments of public funds by public agencies", approved July 23, 1943, as now or hereafter amended [30 ILCS 235/6].

(Source: P.A. 83-541.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-77.

§ 105 ILCS 5/34-78. Money kept separate - Unlawful use

Sec. 34-78. Money kept separate - Unlawful use. The school treasurer shall keep all moneys in his hands belonging to the board separate from his own moneys, and shall not use, either directly or indirectly, the school moneys or warrants in his custody and keeping for his own use and benefit or that of any other person. If the school treasurer violates this section, the city council may immediately remove him from office and declare his office vacant.

(Source: Laws 1961, p. 31.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-78.

§ 105 ILCS 5/34-79. Annual account of treasurer

Sec. 34-79. Annual account of treasurer. The school treasurer shall annually, between the first and tenth of March 1973, between the first and tenth of March 1974, between the first and tenth of November 1974 and between the first and tenth of November of each year thereafter, file with the controller of the board a detailed account of all receipts and expenditures and of all his transactions during the preceding fiscal year. The account shall show the state of the school treasury at the close of the fiscal year. The account shall immediately be published in the proceedings of the board.

(Source: P.A. 77-2734.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-79.

§ 105 ILCS 5/34-80. Liability on treasurer's bond

Sec. 34-80. Liability on treasurer's bond. The school treasurer shall be liable on his official bond as city treasurer for the proper performance of his duties and the conservation of all moneys held by him under this article. It is hereby made the duty of the city council in fixing the amount, the penalty and conditions of said official bond to do so in such manner as will save the board from any loss. This Section does not prevent the city council from designating a bank or savings and loan association as a depository of school moneys in the manner prescribed in the "Revised Cities and Villages Act [65 ILCS 20/0.01 et seq.]", as amended [65 ILCS 20/0.01 et seq.] and Section 34-77.

(Source: P.A. 83-541.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-80.

§ 105 ILCS 5/34-81. Interest on fund

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Sec. 34-81. Interest on fund. Neither the treasurer nor any other officer having the custody of public school funds is entitled to retain any interest accruing thereon, but such interest shall accrue and inure to the benefit of such funds respectively, become a part thereof and be paid into the city treasury, subject to the purposes of this Act.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-81.

§ 105 ILCS 5/34-82. Designation of person to sign for president

Sec. 34-82. Designation of person to sign for president. The president of the board, with the approval of the board, may designate one or more persons who shall have authority, when directed to do so by the president, to affix the signature of the president to any bond, warrant, certificate, contract or any other written instrument, which by law is required to be signed by the president of the board. When the signature of the president of the board is so affixed to a written instrument, it shall be as binding upon the board as if signed by the president thereof. Whenever the president of the board desires to designate a person to affix the signature of the president to any bond, warrant, certificate, contract or any other written instrument, he shall send a written notice to the board containing the name of the person he has selected and a designation of the instrument or instruments such person shall have authority to sign. Attached to the notice shall be the written signature of the president of the board, executed by the person so designated, with the signature of the person so designated underneath. The notice shall be filed with the secretary and presented at the next meeting of the board for its approval and shall be printed in its proceedings.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-82.

Teachers - Employment and Retirement

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§ 105 ILCS 5/34-83. Board of examiners - Certificates - Examinations

Sec. 34-83. Board of examiners - Certificates - Examinations. A board of 3 examiners shall examine all applicants required to hold certificates to teach and the board of education shall issue gratuitously to those who pass a required test of character, scholarship and general fitness, such certificates to teach as they are found entitled to receive. No person may be granted or continue to hold a teaching certificate who has knowingly altered or misrepresented his or her teaching qualifications in order to acquire the certificate. Any other certificate held by such person may be suspended or revoked by the board of examiners, depending upon the severity of the alteration or misrepresentation. The board of examiners shall consist of the general superintendent of schools and 2 persons approved and appointed by the board of education upon the nomination of the general superintendent of schools. The board of examiners shall hold such examinations as the board of education may prescribe, upon the recommendation of the general superintendent of schools and shall prepare all necessary eligible lists, which shall be kept in the office of the general superintendent of schools and be open to public inspection. Members of the board of examiners shall hold office for a term of 2 years.

The board of examiners created herein is abolished effective July 1, 1988. Commencing July 1, 1988, all new teachers employed by the board shall hold teaching certificates issued by the State Teacher Certification Board under Article 21. The State Board of Education in consultation with the board of examiners and the State Teacher Certification Board shall develop procedures whereby teachers currently holding valid certificates issued by the board of examiners, and all teachers employed by the board after August 1, 1985 and prior to July 1, 1988, shall no later than July 1, 1988 exchange certificates issued by the board of examiners for comparable certificates issued by the State Teacher Certification Board. On the exchange of a certificate on or before July 1, 1988, the State Teacher Certification Board shall not require any additional qualifications for the issuance of the comparable certificate. If prior to July 1, 1988 the board of examiners has issued types of teaching certificates which are not comparable to the types of certificates issued by the State Teacher Certification Board, such certificates shall continue to be valid for and shall be renewable by the holders thereof, and no additional qualifications shall be required by the State Teacher Certification Board for any such renewal; however, no individual who received a letter of continuing eligibility shall be issued an Initial or Standard Teaching Certificate, as provided in Section 21-2 of this Code [105 ILCS 5/21-2], unless that individual also holds such a valid and renewable certificate.

The State Board of Education shall report by July 1, 1986, to the Illinois General Assembly on the procedures for exchange it has developed in consultation with the board of examiners and the State Teacher Certification Board as required in this Section.

(Source: P.A. 84-1308; 89-15, § 5; 91-102, § 5.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 34-83.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the second paragraph, in the second and third sentences substituted "board" for "Chicago board of Education".

The 1999 amendment by P.A. 91-102, effective July 12, 1999, added the language beginning "; however, no individual" through the end of the sentence, in the last sentence of the next-to-last paragraph.

CASE NOTES

Analysis

Authority of Board of Education
- Authority over Board of Examiners
- Transfer of Principal
Certification Process
Due Process
Employment
- Character Inquiry
Review
- Discretion of Board
Rights of Teachers
- Pension Fund

Authority of Board of Education

- Authority over Board of Examiners

Since the board of examiners which was part of the local board of education and the local board of education itself were two separate entities created by the legislature, where a case involved an interpretation of a rule of only the defendant local board of education, and the rule required that a teacher who had resigned must pass a health examination given by a specific physician before the teacher was reappointed under a regular teacher's certificate, the health examination requirements of the board of examiners were not relevant to the issues on appeal. Crofts v. Board of Educ., 105 Ill. App. 2d 139, 245 N.E.2d 87 (1 Dist. 1969).

- Transfer of Principal

Under prior similar provisions, a board of education could transfer a principal from elementary schools to high schools or from high schools to elementary schools where the best interest of the respective schools required transfer, and transfer without stated cause and without a hearing was not a removal contrary to law. People v. McCahey, 296 Ill. App. 310, 15 N.E.2d 988 (1 Dist. 1938).

Certification Process

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Where employees of school board, as taxpayers, did not cite any instances where an attendance center was not under the supervision of a principal holding a valid principal's certificate, nor did they allege that any positions were currently being held by persons who did not possess the type of certificate required of them by the board, they failed to allege any action taken by the school board and various members which constituted a violation of the School Code (105 ILCS 5/1-1 et seq.); the board may act within its statutory authority by establishing its own certification process. Kenny v. Interim Gen. Superintendent, 112 Ill. App. 3d 342, 67 Ill. Dec. 876, 445 N.E.2d 356 (1 Dist. 1983).

Due Process

When a non-tenured teacher has no property or liberty interest entitling him to procedural due process, there cannot be a greater right to substantive due process. Weissbaum v. Hannon, 439 F. Supp. 869 (N.D. Ill. 1976).

Employment

- Character Inquiry

Although it is constitutionally permissible for a school board to inquire into the character and integrity of a party as a teacher, public employment cannot be denied in retaliation for the exercise of First Amendment rights; thus a teacher's interest as a citizen must be balanced against the legitimate interests of the state as employer. Weissbaum v. Hannon, 439 F. Supp. 869 (N.D. Ill. 1976).

Review

- Discretion of Board

Absent a showing of a traditional basis for judicial intervention, such as fraud or collusion, a court will not interfere with the school board and its medical examiners in their areas of discretion. Crofts v. Board of Educ., 105 Ill. App. 2d 139, 245 N.E.2d 87 (1 Dist. 1969).

Rights of Teachers

- Pension Fund

The only right upon which a contributor to a pension fund can insist upon, in case the board of education concludes that it will not re-employ him or her, is the right to receive at once the money he or she has contributed to the fund, and it does not restrict the board of education in its right to select such persons as teachers as it may desire to employ, nor does it confer upon one who has been a contributor to such fund any right to demand that he or she be re-employed. People ex rel. Fursman v. City of Chicago, 278 Ill. 318, 116 N.E. 158 (1917).

§ 105 ILCS 5/34-83.1. Residence Requirements

Sec. 34-83.1. Residence Requirements. Residency within any school district governed by this Article, if not required at the time of employment as a qualification of employment, shall not be considered in determining the compensation of a teacher or whether to retain,

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promote, assign or transfer that teacher.

(Source: P.A. 82-381.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-83.1.

§ 105 ILCS 5/34-84. Appointments and promotions of teachers

Sec. 34-84. Appointments and promotions of teachers. Appointments and promotions of teachers shall be made for merit only, and after satisfactory service for a probationary period of 3 years with respect to probationary employees employed as full-time teachers in the public school system of the district before January 1, 1998 and 4 years with respect to probationary employees who are first employed as full-time teachers in the public school system of the district on or after January 1, 1998, during which period the board may dismiss or discharge any such probationary employee upon the recommendation, accompanied by the written reasons therefor, of the general superintendent of schools and after which period appointments of teachers shall become permanent, subject to removal for cause in the manner provided by Section 34-85 [105 ILCS 5/34-85].

For a probationary-appointed teacher in full-time service who is appointed on or after July 1, 2013 and who receives ratings of "excellent" during his or her first 3 school terms of full-time service, the probationary period shall be 3 school terms of full-time service. For a probationary-appointed teacher in full-time service who is appointed on or after July 1, 2013 and who had previously entered into contractual continued service in another school district in this State or a program of a special education joint agreement in this State, as defined in Section 24-11 of this Code [105 ILCS 5/24-11], the probationary period shall be 2 school terms of full-time service, provided that (i) the teacher voluntarily resigned or was honorably dismissed from the prior district or program within the 3-month period preceding his or her appointment date, (ii) the teacher's last 2 ratings in the prior district or program were at least "proficient" and were issued after the prior district's or program's PERA implementation date, as defined in Section 24-11 of this Code, and (iii) the teacher receives ratings of "excellent" during his or her first 2 school terms of full-time service.

For a probationary-appointed teacher in full-time service who is appointed on or after July 1, 2013 and who has not entered into contractual continued service after 2 or 3 school terms of full-time service as provided in this Section, the probationary period shall be 4 school terms of full-time service, provided that the teacher receives a rating of at least "proficient" in the last school term and a rating of at least "proficient" in either the second or third school term.

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As used in this Section, "school term" means the school term established by the board pursuant to Section 10-19 of this Code [105 ILCS 5/10-19], and 'full-time service' means the teacher has actually worked at least 150 days during the school term. As used in this Article, "teachers" means and includes all members of the teaching force excluding the general superintendent and principals.

There shall be no reduction in teachers because of a decrease in student membership or a change in subject requirements within the attendance center organization after the 20th day following the first day of the school year, except that: (1) this provision shall not apply to desegregation positions, special education positions, or any other positions funded by State or federal categorical funds, and (2) at attendance centers maintaining any of grades 9 through 12, there may be a second reduction in teachers on the first day of the second semester of the regular school term because of a decrease in student membership or a change in subject requirements within the attendance center organization.

The school principal shall make the decision in selecting teachers to fill new and vacant positions consistent with Section 34-8.1 [105 ILCS 5/34-8.1].

(Source: P.A. 86-478; 86-1477; 87-745; 88-338, § 5; 88-511, § 10; 89-15, § 5; 90-548, § 5-915; 97-8, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-84.

Effect of Amendments. The 1993 amendment by P.A. 88-338, effective August 13, 1993, in the third paragraph added to the end the language beginning "except that".

The 1993 amendment by P.A. 88-511, effective November 14, 1993, incorporated the amendments made by P.A. 88-338, § 5; in the section catchline substituted "reserve" for "supernumerary"; in the first paragraph deleted "and" preceding "(2)" and added at the end the language beginning with subdivision (3); added the second sentence of the second paragraph; rewrote the fourth paragraph; and added the fifth through ninth paragraphs.

The 1995 amendment by P.A. 89-15, effective May 30, 1995, rewrote this section.

The 1997 amendment by P.A. 90-548, effective January 1, 1998, in the first paragraph inserted "with respect to probationary employees employed as full-time teachers in the public school system of the district before January 1, 1998 and 4 years with respect to probationary employees who are first employed as full-time teachers in the public school system of the district on or after January 1, 1998".

The 2011 amendment by P.A. 97-8, effective June 13, 2011, inserted "and after which period" in the first paragraph; inserted the second and third paragraphs; added the first sentence to the beginning of fourth paragraph; and made stylistic changes.

CASE NOTES

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Analysis

Appointments
- Improper
- Possession of Certificate
Assistant Principal
- Tenure
Certification Requirements
Immunity
- Negligence
Probation
- Discharge or Dismissal
- Hearing
- Period
Tenure
- Construction
- Layoff

Appointments

- Improper

Where plaintiffs held valid principals' certificates which were approaching the expiration date, and while the certificates were still effective the board of education gave another principal's examination and issued another list of acceptable and qualified candidates, then, in the three and one-half month period following the announcement of the results of the examination, 23 openings for positions as principals were filled by persons who had just been certified, plaintiffs were entitled to prove their allegations that the action of the board in filling the positions from a subsequent examination list and in bypassing the plaintiffs was arbitrary and discriminatory. Courtney v. Board of Educ., 6 Ill. App. 3d 424, 286 N.E.2d 25 (1 Dist. 1972).

- Possession of Certificate

Mere possession of a principal's certificate itself did not entitle a teacher to an appointment as a principal whenever an opportunity for such an appointment was created. Webster v. Redmond, 599 F.2d 793 (7th Cir. 1979), cert. denied, 444 U.S. 1039, 100 S. Ct. 712, 62 L. Ed. 2d 674 (1980).

Assistant Principal

- Tenure

If legislature wanted to provide tenure to assistant principals, it could easily have done so by inserting the words "assistant principal" into the statute, however it did not; therefore, where assistant principal was certified only as a teacher and was not certified as a principal he obtained tenure as a teacher, not as an assistant principal and his demotion from assistant principal to teacher was upheld. Bart v. Board of Educ., 256 Ill. App. 3d 880, 197 Ill. Dec. 970, 632 N.E.2d 39 (1 Dist. 1993), appeal denied, 155 Ill. 2d 561, 198 Ill. Dec. 539, 633 N.E.2d 1 (1994).

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Certification Requirements

Where the Board of Education was properly acting within its statutory discretion and the legislative intent of allowing the Board to determine certification requirements, the appointment of persons lacking supervisor certificates, in positions which had been determined by the Board to not require them, was not arbitrary, unreasonable or capricious, and therefore, taxpayers failed to allege conduct of the Board which would warrant judicial review. Kenny v. Interim Gen. Superintendent, 112 Ill. App. 3d 342, 67 Ill. Dec. 876, 445 N.E.2d 356 (1 Dist. 1983).

Immunity

- Negligence

There is no single test for determining the scope of duties encompassed by this section; courts have stated that teachers are immune from negligence in activities which are connected with the school program and activities which involve the teacher and student relationship in matters relating to the teacher's personal supervision and control of the conduct or physical movement of a student. Guyton ex rel. Guyton v. Roundy, 132 Ill. App. 3d 573, 87 Ill. Dec. 738, 477 N.E.2d 1266 (1 Dist. 1985).

Probation

- Discharge or Dismissal

Only the board of education, by formal action, could discharge or dismiss a probationary teacher and the general superintendent of schools could not himself do so. Provus v. Board of Educ., 11 Ill. App. 3d 1058, 298 N.E.2d 405 (1 Dist. 1973).

The dismissal or discharge of a probationary teacher must be accomplished during the three year probationary period. Provus v. Board of Educ., 11 Ill. App. 3d 1058, 298 N.E.2d 405 (1 Dist. 1973).

- Hearing

A probationary teacher may be discharged or dismissed without a hearing. People ex rel. Thomas v. Board of Educ., 40 Ill. App. 2d 308, 188 N.E.2d 237 (1 Dist. 1963).

- Period

The term "probationary period" connotes an appointment from an eligible list following an examination, and a probationary period, being a testing period, begins with the date of the appointment which will ripen into a permanent position following the statutory probationary period. People ex rel. Thomas v. Board of Educ., 40 Ill. App. 2d 308, 188 N.E.2d 237 (1 Dist. 1963).

Tenure

- Construction

School principals were entitled to summary judgment in their action against a school board claiming that they had been deprived of their rights to continued employment and denied salary and other benefits because, when an act that purported to amend 105 ILCS 5/34-84 and 105 ILCS 5/34-85 by eliminating tenure for principals was declared unconstitutional, the prior law remained in force and the principals were entitled to tenure. Jacobson v. Bd. of Educ., 321 Ill. App. 3d 103, 254 Ill. Dec. 137, 746 N.E.2d 894, 2001 Ill. App. LEXIS 170 (1 Dist. 2001).

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The teacher tenure provisions of the School Code are in derogation of common law and must be strictly construed in favor of the school district. Bart v. Board of Educ., 256 Ill. App. 3d 880, 197 Ill. Dec. 970, 632 N.E.2d 39 (1 Dist. 1993), appeal denied, 155 Ill. 2d 561, 198 Ill. Dec. 539, 633 N.E.2d 1 (1994).

- Layoff

Neither the 1995 amendments to the Illinois School Code nor Illinois cases construing them suggested that tenured teachers were not entitled to an opportunity to show that they were qualified for vacancies after an economic layoff; rather, the limits on the board's discretion found in 105 ILCS 5/34-18(31) along with the teachers' right to a "permanent" appointment, gave rise to a legitimate expectation that laid-off teachers were to be considered for vacancies for a reasonable time. The teachers were entitled to a recall procedure and were to be given a meaningful opportunity to show that they were qualified for new vacancies; without any procedures for recall, the risk of deprivation to the teachers was significant and would have violated their right to due process under the Fourteenth Amendment. Chi. Teachers Union, Local No. 1, AFT v. Bd. of Educ. of Chi., 640 F.3d 221, 2011 U.S. App. LEXIS 6395 (7th Cir. 2011).

Tenured public school teachers were not statutorily exempted from a layoff, and the board of education was not prohibited from delegating the authority to make layoffs to a party other than the school principals. Land v. Bd. of Educ., 202 Ill. 2d 414, 269 Ill. Dec. 452, 781 N.E.2d 249, 2002 Ill. LEXIS 959 (2002).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Employment Law," see 26 S. Ill. U.L.J. 613 (2002).

For article, "Recent Trends in School Tort Immunity," see 71 Ill. B.J. 240 (1982).

For note on torts, discussing Gerity v. Beatty, 71 Ill. 2d 47, 373 N.E.2d 1323 (1978), see 67 Ill. B.J. 184 (1978).

RESEARCH REFERENCES

Liability, Under State Law Claims, of Public and Private Schools and Institutions of Higher Learning for Teacher's, Other Employee's, or Student's Sexual Relationship with, or Sexual Harassment or Abuse of, Student. 86 ALR5th 1.

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 35:23 Generally; corporal punishment.

Illinois Jurisprudence, Personal Injury and Torts § 35:22 Student's assault of third person.

Illinois Jurisprudence, Personal Injury and Torts § 35:13 Immunity of noncertificated personnel.

Illinois Jurisprudence, Personal Injury and Torts § 35:07 Validity of limited immunity.

§ 105 ILCS 5/34-84a. Maintenance of discipline

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Sec. 34-84a. Maintenance of discipline. Subject to the limitations of all policies established or adopted under Section 14-8.05 [105 ILCS 5/14-8.05], teachers, other certificated educational employees, and any other person, whether or not a certificated employee, providing a related service for or with respect to a student shall maintain discipline in the schools, including school grounds which are owned or leased by the board and used for school purposes and activities. In all matters relating to the discipline in and conduct of the schools and the school children, they stand in the relation of parents and guardians to the pupils. This relationship shall extend to all activities connected with the school program, including all athletic and extracurricular programs, and may be exercised at any time for the safety and supervision of the pupils in the absence of their parents or guardians.

Nothing in this Section affects the power of the board to establish rules with respect to discipline, except that the rules of the board must provide, subject to the limitations of all policies established or adopted under Section 14-8.05 [105 ILCS 5/14-8.05], that a teacher, other certificated employee, and any other person, whether or not a certificated employee, providing a related service for or with respect to a student may use reasonable force as needed to maintain safety for the other students, shall provide that a teacher may remove a student from the classroom for disruptive behavior, and must include provisions which provide due process to students.

(Source: P.A. 85-375; 87-1103, § 1; 89-184, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-84a.

Effect of Amendments. The 1992 amendment, effective September 15, 1992, inserted the phrase "Subject to the limitations of all policies established or adopted under Section 14-8.05" at the beginning of the section and following the introductory clause of the second paragraph.

The 1995 amendment by P.A. 89-184, effective July 19, 1995, in the section catchline substituted "Maintenance of" for "Teachers shall maintain"; in the first paragraph, in the first sentence, substituted a comma for "and" following "teachers" and inserted "and any other person, whether or not a certificated employee, providing a related service for or with respect to a student"; and in the second paragraph inserted "other certificated employee, and any other person, whether or not a certificated employee, providing a related service for or with respect to a student", substituted "shall provide that a teacher" for "and" and inserted a comma after "behavior".

CASE NOTES

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- Question of Fact

In General

This section creates no duty owed to parents of school children. Borushek v. Kincaid, 78 Ill. App. 3d 295, 33 Ill. Dec. 839, 397 N.E.2d 172 (1 Dist. 1979).

This section is identical in language and purpose to 105 ILCS 5/24-24 except that the former applies to a school district having a population more than 500,000 while the latter applies to a smaller school district. Rinck v. Palos Hills Consol. High Sch. Dist., 82 Ill. App. 3d 856, 38 Ill. Dec. 239, 403 N.E.2d 470 (1 Dist. 1978).

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Activities Connected with School Program

- Physical Education Classes

Since physical education is a required part of the academic curriculum (105 ILCS 5/27-5 to 105 ILCS 5/27-7), injuries which took place in physical education class were clearly activities connected with the school program. Kobylanski v. Chicago Bd. of Educ., 63 Ill. 2d 165, 347 N.E.2d 705 (1976); Plesnicar ex rel. Plesnicar v. Kovach, 102 Ill. App. 3d 867, 58 Ill. Dec. 616, 430 N.E.2d 648 (1 Dist. 1981).

Where student was injured during her seventh grade physical education class and suffered spinal injuries performing an exercise on an apparatus called the "rings," this section was applicable. Kobylanski ex rel. Kobylanski v. Chicago Bd. of Educ., 22 Ill. App. 3d 551, 317 N.E.2d 714 (1 Dist. 1974), aff'd, 63 Ill. 2d 165, 347 N.E.2d 705 (1976).

Duty to Maintain Discipline

- In General

The public educational system has a duty to provide for the physical safety of its students; such duty is prescribed by the legislature and places with the school and its agents the responsibility of maintaining discipline among pupils. Gammon ex rel. Gammon v. Edwardsville Community Unit Sch. Dist., 82 Ill. App. 3d 586, 38 Ill. Dec. 28, 403 N.E.2d 43 (5 Dist. 1980).

- Corporal Punishment

As long as teachers or parents are obligated under the law to educate, teach, and train children, they may not be denied the necessary means of carrying out their responsibility as teachers or parents; within the broad delegation of parental authority, a teacher may inflict corporal punishment on a student if the circumstances warrant it. People v. Decaro, 17 Ill. App. 3d 553, 308 N.E.2d 196 (1 Dist. 1974).

A teacher may inflict corporal punishment and he may not be guilty of a battery unless he wantonly or maliciously inflicts the punishment. People v. Decaro, 17 Ill. App. 3d 553, 308 N.E.2d 196 (1 Dist. 1974).

Equipment

- In Loco Parentis Immunity

In a negligence suit against a school board, brought on behalf of a student injured when hit in the face with a wooden bat during a physical education class, the in loco parentis status of educators did not extend to the school board where negligence in furnishing improper equipment was alleged. Ausmus ex rel. Ausmus v. Board of Educ., 155 Ill. App. 3d 705, 108 Ill. Dec. 137, 508 N.E.2d 298 (1 Dist. 1987).

- Selection and Modification

The selection and modification of specific athletic equipment involve a degree of discretion and district court erred in ruling the Tort Immunity Act (745 ILCS 10/1-101 et seq.) did not immunize school district for alleged negligence in furnishing and modifying of football helmet. McGurk v. Lincolnway Community Sch. Dist. # 210, 287 Ill. App. 3d 1059, 223 Ill. Dec. 127, 679 N.E.2d 71 (3 Dist. 1997), appeal denied, 173 Ill. 2d 527, 226 Ill. Dec. 133, 684 N.E.2d 1336 (1997).

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Immunity

- In General

The immunity of 745 ILCS 10/2-201 remained available to a county special education district, notwithstanding the assertion that 105 ILCS 5/24-24 and this section governed the level of immunity available. D.M. v. National Sch. Bus Serv., Inc., 305 Ill. App. 3d 735, 238 Ill. Dec. 950, 713 N.E.2d 196 (2 Dist. 1999).

This section reflects a legislative determination that the orderly conduct of the schools and the maintenance of a sound learning atmosphere require that there be a personal relationship between teacher and student in which the teacher has disciplinary and supervisory authority similar to that which exists between parent and child, and this relationship would be seriously jeopardized if teachers and school districts were amenable to ordinary negligence actions for accidents occurring in the course of the exercise of such authority. Gerrity v. Beatty, 71 Ill. 2d 47, 15 Ill. Dec. 639, 373 N.E.2d 1323 (1978).

This section confers upon teachers and other certificated educational employees immunity from suits for negligence arising out of matters relating to the discipline in and conduct of the schools and the school children; in order to impose liability against such educators, plaintiff must prove willful and wanton misconduct. Kobylanski v. Chicago Bd. of Educ., 63 Ill. 2d 165, 347 N.E.2d 705 (1976); Booker ex rel. Booker v. Chicago Bd. of Educ., 75 Ill. App. 3d 381, 31 Ill. Dec. 250, 394 N.E.2d 452 (1 Dist. 1979).

- Agency

The temporary designation of a grade school student as monitor did not make the student the agent and servant of the teacher or of defendant. Booker ex rel. Booker v. Chicago Bd. of Educ., 75 Ill. App. 3d 381, 31 Ill. Dec. 250, 394 N.E.2d 452 (1 Dist. 1979).

- Certificated Employees

Teacher's aide, whose position as a school community representative was to act as a liaison between the school and members of the community, was not entitled to claim teacher status. Edmonson ex rel. Edmonson v. Chicago Bd. of Educ., 62 Ill. App. 3d 211, 19 Ill. Dec. 512, 379 N.E.2d 27 (1 Dist. 1978).

The legislature has seen fit to draw a distinction between those who have completed the requirements for certification who fall within the class of persons entitled to immunity under this section, and those who have not. Edmonson ex rel. Edmonson v. Chicago Bd. of Educ., 62 Ill. App. 3d 211, 19 Ill. Dec. 512, 379 N.E.2d 27 (1 Dist. 1978).

- Corporal Punishment

Where two students were directing vulgarities and defamatory statements at defendant teacher from outside the school with the apparent knowledge of other students, and in the classroom with other students present, the defendant could not have ignored the actions without forfeiting the respect of all of the students in the school, and the students were detrimental to the educational process, and where the corporal punishment given by the teacher to the students was of a traditional nature applied to the traditional place and did not constitute a malicious or wanton disregard for the physical welfare of the boys even though it may have resulted in bruises, the defendant was acting within his authority, and did not act in a malicious or wanton manner; therefore, his conviction for battery was reversed. People v. Decaro, 17 Ill. App. 3d 553, 308 N.E.2d 196 (1 Dist. 1974).

- Educable Mentally Handicapped

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The limited immunity afforded teachers by this section is applicable to an educable mentally handicapped classroom setting. Jackson ex rel. Jackson v. Chicago Bd. of Educ., 192 Ill. App. 3d 1093, 140 Ill. Dec. 178, 549 N.E.2d 829 (1 Dist. 1989).

- Furnishing Equipment

School districts can be sued in their own capacity and held liable for ordinary negligence in furnishing defective equipment or for not furnishing necessary equipment, but school districts have vicarious immunity when the cause of action against the school district is predicated upon the ordinary negligence of a teacher. Palmer v. Mount Vernon Tp. High Sch. Dist. 201, 269 Ill. App. 3d 1056, 207 Ill. Dec. 550, 647 N.E.2d 1043 (5 Dist. 1995), appeal granted, 162 Ill. 2d 570, 209 Ill. Dec. 804, 652 N.E.2d 344 (1995), rev'd on other grounds, 169 Ill. 2d 551, 215 Ill. Dec. 120, 662 N.E.2d 1260 (1996).

- Maintenance of Grounds

The function of maintaining the grounds is not one which is entitled to immunity. Sidwell ex rel. Sidwell v. Griggsville Community Sch., 208 Ill. App. 3d 296, 152 Ill. Dec. 961, 566 N.E.2d 838 (4 Dist. 1991), aff'd, 146 Ill. 2d 467, 167 Ill. Dec. 1055, 588 N.E.2d 1185 (1992).

The immunity under this section does not apply to allegations of negligence in maintaining the school premises. Jastram ex rel. Jastram v. Lake Village Sch., 192 Ill. App. 3d 599, 139 Ill. Dec. 686, 549 N.E.2d 9 (2 Dist. 1989).

- Negligence

A school district does not benefit from immunity under this section or 105 ILCS 5/24-24 when a complaint alleges a claim which is based on the negligence of the school district itself, and not based on the negligence of a teacher. Sidwell v. Griggsville Community Unit Sch. Dist., 146 Ill. 2d 467, 167 Ill. Dec. 1055, 588 N.E.2d 1185 (1992).

Where a school district had the authority to purchase and furnish equipment to students, and the authority was not shared with teachers and coaches, who had instead the authority to supervise the students and to supervise their use of that equipment, the teachers and coaches were immune from negligent actions. Thomas v. Chicago Bd. of Educ., 77 Ill. 2d 165, 32 Ill. Dec. 308, 395 N.E.2d 538 (1979).

- Not Shown

School district which did not furnish any equipment to students for "powder puff" football game was not absolved from liability for failing to provide effective equipment, since it had an affirmative duty, where students were engaging in extracurricular or formally authorized school activities as part of the school program, to furnish equipment to prevent serious injuries. Lynch v. Board of Educ., 82 Ill. 2d 415, 45 Ill. Dec. 96, 412 N.E.2d 447 (1980).

It was error for the trial court to dismiss negligence count where complaint alleged that school district and its agents undertook to have minor student's knee condition treated by another student in a negligent fashion, because these allegations portrayed a situation which did not arise out of a teacher's personal supervision and control of a student's conduct or physical movement, nor did it affect the orderly conduct of the schools or the maintenance of a sound learning atmosphere. O'Brien v. Township High Sch. Dist., 73 Ill. App. 3d 618, 29 Ill. Dec. 918, 392 N.E.2d 615 (1 Dist. 1979), modified on other grounds, 83 Ill. 2d 462, 47 Ill. Dec. 702, 415 N.E.2d 1015 (1980).

- Premises Liability

Plaintiff could not avoid the immunity provided by this section by asserting a claim of negligence through a theory of premises liability, as the premises liability exception to school immunity is a

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legal fiction and is not the policy of this state. Ward v. Community Unit Sch., 213 Ill. App. 3d 1008, 157 Ill. Dec. 522, 572 N.E.2d 986 (1 Dist. 1991).

- Sexual Assault

Trial court had no choice but to dismiss the student's claims of negligent supervision and intentional infliction of emotional distress that the student filed after a teacher from the private school engaged in an improper sexual relationship off school grounds with the student. The private school, operating as a school, had in loco parentis status under the Illinois School Code, 105 ILCS 5/34-84a, which conferred immunity on it for negligence claims and the student had not pled sufficient facts to show that a willful and wanton misconduct exception applied. Doe v. Lawrence Hall Youth Servs., Ill. App. 3d , Ill. Dec. , N.E.2d , 2012 Ill. App. LEXIS 50 (1 Dist. Jan. 26, 2012).

Where a student attending a special education school for socially maladjusted boys was sexually assaulted on a school bus, the board of education was, under 105 ILCS 5/24-24 and 34-84a, immune from liability for negligent conduct; the board of education was not immune from liability for willful and wanton misconduct, under 745 ILCS 10/4-102, where the student pled knowledge by the board that the attacker was likely to commit sexual assault on the passengers and that an attendant was required. Doe v. Chi. Bd. of Educ., 339 Ill. App. 3d 848, 274 Ill. Dec. 872, 791 N.E.2d 1283, 2003 Ill. App. LEXIS 753 (1 Dist. 2003), aff'd, 213 Ill. 2d 19, 289 Ill. Dec. 642, 820 N.E.2d 418 (2004).

- Students

Students are not immune from a suit by a teacher for negligent injury. American States Ins. Co. ex rel. Community Unit Sch. v. Flynn, 102 Ill. App. 3d 201, 57 Ill. Dec. 689, 429 N.E.2d 587 (4 Dist. 1981).

- Supervisory Function

The moving of a single student's desk by a student was not beyond or totally outside the ambit of a teacher's supervisory function and fell within the parameters of a supervisory activity which was connected with the school program; therefore, teacher and school board were immune from liability for the student's injuries which occurred when he moved the desk. Guyton ex rel. Guyton v. Roundy, 132 Ill. App. 3d 573, 87 Ill. Dec. 738, 477 N.E.2d 1266 (1 Dist. 1985).

- Vicarious

If a cause of action is predicated on the negligence of an employee who has statutory immunity, the school, school district, and board of education are also vicariously immune. Ward v. Community Unit Sch., 213 Ill. App. 3d 1008, 157 Ill. Dec. 522, 572 N.E.2d 986 (1 Dist. 1991).

By its terms, this statute does not grant immunity to school districts; however, a school district has vicarious immunity if the cause of action is predicated on the negligence of an employee who has the statutory immunity, such as a teacher or other certificated educational employee. Jastram ex rel. Jastram v. Lake Village Sch., 192 Ill. App. 3d 599, 139 Ill. Dec. 686, 549 N.E.2d 9 (2 Dist. 1989).

Where no allegation was made that defendant was a teacher, principal or certified educational employee, and it appeared from the evidence that he was not, defendant and his employer board, vicariously, were unprotected by this section. LeRose v. City of Zion/Police Dep't, 696 F. Supp. 1222 (N.D. Ill. 1988).

In Loco Parentis

- In General

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This section confers upon educators the status of parent or guardian to the students. Jastram ex rel. Jastram v. Lake Village Sch., 192 Ill. App. 3d 599, 139 Ill. Dec. 686, 549 N.E.2d 9 (2 Dist. 1989).

This section extends in loco parentis status to teachers and other certificated educational employees in matters relating to the discipline in and conduct of schools and school children and confers immunity from liability for negligence arising out of such matters. Edmonson ex rel. Edmonson v. Chicago Bd. of Educ., 62 Ill. App. 3d 211, 19 Ill. Dec. 512, 379 N.E.2d 27 (1 Dist. 1978); O'Brien v. Township High Sch. Dist., 83 Ill. 2d 462, 47 Ill. Dec. 702, 415 N.E.2d 1015 (1980).

This section and 105 ILCS 5/24-24 confer status of in loco parentis on school officials. However, the in loco parentis authority of a school official cannot transcend constitutional rights. Picha ex rel. Picha v. Wielgos, 410 F. Supp. 1214 (N.D. Ill. 1976).

- Absence of Parents or Guardians

The clear wording of this section creates a loco parentis relationship between teachers and students only "in the absence of their parents or guardians." Borushek v. Kincaid, 78 Ill. App. 3d 295, 33 Ill. Dec. 839, 397 N.E.2d 172 (1 Dist. 1979).

- Equipment

In a negligence suit against school board, brought on behalf of student injured when hit in the face with a wooden bat during a physical education class, the in loco parentis status of educators did not extend to school board where negligence in furnishing improper equipment was alleged. Ausmus ex rel. Ausmus v. Board of Educ., 155 Ill. App. 3d 705, 108 Ill. Dec. 137, 508 N.E.2d 298 (1 Dist. 1987).

- School Activity

Although the in loco parentis status of teachers is not restricted to disciplinary matters, its application is limited to activities connected with the school program. O'Brien v. Township High Sch. Dist., 83 Ill. 2d 462, 47 Ill. Dec. 702, 415 N.E.2d 1015 (1980).

Purchase of Insurance

- Waiver Not Applicable

The waiver provision of 745 ILCS 10/9-103(b), based on a local public entity's purchase of liability insurance, is inapplicable to suits based upon violations of this section and [105 ILCS 5/24-24]. Kobylanski v. Chicago Bd. of Educ., 63 Ill. 2d 165, 347 N.E.2d 705 (1976).

Standard of Case

- Ordinary Care Required

Where high school student did not allege negligence arising out of the teacher-student relationship in matters relating to the teacher's personal supervision and control of the conduct or physical movement of a student, but instead alleged negligence in connection with the separate function of furnishing equipment which was alleged to be inadequate, ill fitting and defective and which was known, or which in the exercise of ordinary care should have been known, to be liable to cause injury to the student, the public policy considerations in authorizing and encouraging teachers to have broad discretion and latitude in the former situations did not apply with as much force to the latter; therefore, to hold school districts to the duty of ordinary care in such matters was not unduly burdensome, nor did it appear to be inconsistent with the intended purposes of

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this section and 105 ILCS 5/24-24. Gerrity v. Beatty, 71 Ill. 2d 47, 15 Ill. Dec. 639, 373 N.E.2d 1323 (1978).

Wilful and Wanton Misconduct

- In General

Plaintiff must plead wilful and wanton misconduct, not negligence, to maintain an action against a school or its teachers. Ward v. Community Unit Sch., 213 Ill. App. 3d 1008, 157 Ill. Dec. 522, 572 N.E.2d 986 (1 Dist. 1991).

In meeting their responsibility of maintaining discipline among pupils, teachers and school officials stand in the same position as do parents and guardians, and a breach of the duty to impose discipline requires more than common negligence; wilful and wanton conduct must be shown. Gammon ex rel. Gammon v. Edwardsville Community Unit Sch. Dist., 82 Ill. App. 3d 586, 38 Ill. Dec. 28, 403 N.E.2d 43 (5 Dist. 1980).

Plaintiff, whose son was allegedly beaten during student disturbance at high school, was required to sufficiently allege and prove wilful and wanton misconduct on the part of defendant school system to recover for the injuries sustained as a result of the beating, since school districts are generally held immune from liability in their capacity in loco parentis. Cipolla ex rel. Cipolla v. Bloom Tp. High Sch., 69 Ill. App. 3d 434, 26 Ill. Dec. 407, 388 N.E.2d 31 (1 Dist. 1979).

In suits arising out of matters relating to the discipline in and conduct of the schools and the school children, to impose liability against the educators, plaintiff must allege and prove wilful and wanton misconduct rather than ordinary negligence. Lynch ex rel. Lynch v. Board of Educ., 72 Ill. App. 3d 317, 28 Ill. Dec. 359, 390 N.E.2d 526 (5 Dist. 1979), aff'd, 82 Ill. 2d 415, 45 Ill. Dec. 96, 412 N.E.2d 447 (1980).

In order to recover for injuries sustained during activities connected with a school program, plaintiff must prove wilful and wanton misconduct on the part of the teachers. Edmonson ex rel. Edmonson v. Chicago Bd. of Educ., 62 Ill. App. 3d 211, 19 Ill. Dec. 512, 379 N.E.2d 27 (1 Dist. 1978).

Teachers are not subject to any greater liability than parents who are liable to their children for wilful and wanton misconduct, but not for mere negligence. McCauley ex rel. McCauley v. Chicago Bd. of Educ., 66 Ill. App. 3d 676, 23 Ill. Dec. 464, 384 N.E.2d 100 (1 Dist. 1978).

- Failure to Allege

Where complaint failed to state a dangerous condition which prompted any anticipation of an unreasonable risk of harm to children, and failed to allege knowledge of incidents of such harm to raise a claim of mere negligence to the level of wilful and wanton misconduct, an action against a school could not be maintained. Ward v. Community Unit Sch., 213 Ill. App. 3d 1008, 157 Ill. Dec. 522, 572 N.E.2d 986 (1 Dist. 1991).

Complaint did not provide a basis for a cause of action against school board based on "negligence" for failing to provide transportation for after-school activities. Plesnicar ex rel. Plesnicar v. Kovach, 102 Ill. App. 3d 867, 58 Ill. Dec. 616, 430 N.E.2d 648 (1 Dist. 1981).

Where plaintiff's complaint failed to state a cause of action for wilful and wanton misconduct by her son's teacher, the trial court did not err in dismissing the complaint. McCauley ex rel. McCauley v. Chicago Bd. of Educ., 66 Ill. App. 3d 676, 23 Ill. Dec. 464, 384 N.E.2d 100 (1 Dist. 1978).

Where complaint against school district to recover injuries sustained by student as a result of riots at high school failed to use the words "wilful and wanton" in order to allege that school district

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failed to keep proper discipline, failed to quash riots, and failed to protect students from other students with weapons, the complaint was insufficient even though it consistently and continuously characterized defendant's conduct as being "careless and negligent." Poynter v. Kankakee School Dist., 55 Ill. App. 3d 46, 12 Ill. Dec. 863, 370 N.E.2d 667 (3 Dist. 1977).

- Misconduct

Where defendant, without reason or proper investigation, seized plaintiff forcibly and thrust him strongly against steel lockers, the evidence was sufficient to support the general verdict of the jury against defendants and the special verdict finding defendant guilty of wilful and wanton misconduct. Baikie v. Luther High Sch. S., 51 Ill. App. 3d 405, 9 Ill. Dec. 285, 366 N.E.2d 542 (1 Dist. 1977).

- Not Shown

Plaintiff's complaint did not set forth a cause of action against the school district sounding in wilful and wanton misconduct where decedent jumped on the hood of a car being driven to and from auto class to the parking lot. Knapp v. Hill, 276 Ill. App. 3d 376, 212 Ill. Dec. 723, 657 N.E.2d 1068 (1 Dist. 1995), appeal denied, 165 Ill. 2d 552, 214 Ill. Dec. 859, 662 N.E.2d 425 (1996).

A teacher's failure to supervise student activities, during which a student was injured, does not in itself constitute wilful and wanton misconduct. Guyton ex rel. Guyton v. Roundy, 132 Ill. App. 3d 573, 87 Ill. Dec. 738, 477 N.E.2d 1266 (1 Dist. 1985).

Where there were no facts alleging that teacher intentionally abandoned her duty to supervise plaintiff, and no allegations that the teacher had knowledge of an impending danger to plaintiff if she entered the bathroom unaccompanied by the teacher, although the teacher may have been negligent in naming the alleged leader of the classmates who threatened plaintiff as monitor, such an action did not constitute wilful and wanton misconduct. Booker ex rel. Booker v. Chicago Bd. of Educ., 75 Ill. App. 3d 381, 31 Ill. Dec. 250, 394 N.E.2d 452 (1 Dist. 1979).

- Question of Fact

Whether evidence presents conduct of a wilful and wanton nature is a question of fact to be left to the jury's determination. Gammon ex rel. Gammon v. Edwardsville Community Unit Sch. Dist., 82 Ill. App. 3d 586, 38 Ill. Dec. 28, 403 N.E.2d 43 (5 Dist. 1980).

LEGAL PERIODICALS

For comment, "Violence and Injury in Illinois Schools: Students Deserve a Remedy," see 34 J. Marshall L. Rev. 803 (2001).

For comment, "The Chicago Public Schools and its violent students: How Can the Law Protect Teachers?", see 48 DePaul L. Rev. 907 (1999).

For article, "Student Vandalism and Public Schools: The Scope of the Illinois Educators' Directive to Discipline," see 9 N. Ill. U.L. Rev. 87 (1988).

For article, "Recent Trends in School Tort Immunity," see 71 Ill. B.J. 240 (1982).

For note on torts discussing Gerity v. Beatty, 71 Ill. 2d 47, 373 N.E.2d 1323 (1978), see 67 Ill. B.J. 184 (1978).

For comment, "The In Loco Parentis Status of Ill. School Teachers: An Unjustifiably Broad Extension of Immunity," see 10 J. Marshall J. Prac. & Proc. 629 (1977).

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For article, "Tort Immunity of Teachers and School Districts," see 65 Ill. B.J. 456 (1976).

RESEARCH REFERENCES

Liability of school or school personnel for injury to student resulting from cheerleader activities. 25 ALR5th 784.

Practice Guides and Treatises.

2-43 Illinois Forms of Jury Instructions § 43.92 Burden of Proof on the Issues: Privilege of Teacher or Other Person Providing School-Related Service.

§ 105 ILCS 5/34-84a.1. Principals shall report incidents of intimidation

Sec. 34-84a.1. Principals shall report incidents of intimidation. The principal of each attendance center shall promptly notify and report to the local law enforcement authorities for inclusion in the Department of State Police's Illinois Uniform Crime Reporting Program each incident of intimidation of which he or she has knowledge and each alleged incident of intimidation which is reported to him or her, either orally or in writing, by any pupil or by any teacher or other certificated or non-certificated personnel employed at the attendance center. "Intimidation" shall have the meaning ascribed to it by Section 12-6 of the Criminal Code of 1961 [720 ILCS 5/12-6].

(Source: P.A. 84-1020; 91-357, § 101.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-84a.1.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "Department of State Police's" for "Department of Law Enforcement's" in the first sentence.

§ 105 ILCS 5/34-84b. Conviction of sex or narcotics offense, first degree murder, attempted first degree murder, or Class X felony as grounds for revocation of certificate

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Sec. 34-84b. Conviction of sex or narcotics offense, first degree murder, attempted first degree murder, or Class X felony as grounds for revocation of certificate. (a) Whenever the holder of any certificate issued by the board of education has been convicted of any sex offense or narcotics offense as defined in this Section, the board of education shall forthwith suspend the certificate. If the conviction is reversed and the holder is acquitted of the offense in a new trial or the charges against him are dismissed, the board shall forthwith terminate the suspension of the certificate. When the conviction becomes final, the board shall forthwith revoke the certificate. "Sex offense" as used in this Section means any one or more of the following offenses: (1) any offense defined in Sections 11-6, 11-9, and 11-30, Sections 11-14 through 11-21 [720 ILCS 5/11-6, 720 ILCS 5/11-9, and 720 ILCS 5/11-30,720 ILCS 5/11-14 through 720 ILCS 5/11-21], inclusive, and Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15 and 12-16 of the Criminal Code of 1961 [720 ILCS 5/11-1.20, 720 ILCS 5/11-1.30, 720 ILCS 5/11-1.40, 720 ILCS 5/11-1.50, 720 ILCS 5/11-1.60, 720 ILCS 5/12-13, 720 ILCS 5/12-14, 720 ILCS 5/12-14.1, 720 ILCS 5/12-15 and 720 ILCS 5/12-16]; (2) any attempt to commit any of the foregoing offenses, and (3) any offense committed or attempted in any other state which, if committed or attempted in this State, would have been punishable as one or more of the foregoing offenses. "Narcotics offense" as used in this Section means any one or more of the following offenses: (1) any offense defined in the Cannabis Control Act [720 ILCS 550/1 et seq.] except those defined in Sections 4(a), 4(b) and 5(a) of that Act [720 ILCS 550/4 and 720 ILCS 550/5] and any offense for which the holder of any certificate is placed on probation under the provisions of Section 10 of that Act [720 ILCS 550/10] and fulfills the terms and conditions of probation as may be required by the court; (2) any offense defined in the Illinois Controlled Substances Act [720 ILCS 570/100 et seq.] except any offense for which the holder of any certificate is placed on probation under the provisions of Section 410 of that Act [720 ILCS 570/410] and fulfills the terms and conditions of probation as may be required by the court; (3) any offense defined in the Methamphetamine Control and Community Protection Act [720 ILCS 646/1 et seq.] except any offense for which the holder of any certificate is placed on probation under the provision of Section 70 of that Act [720 ILCS 646/70] and fulfills the terms and conditions of probation as may be required by the court; (4) any attempt to commit any of the foregoing offenses; and (5) any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this State, would have been punishable as one or more of the foregoing offenses.

(b) Whenever the holder of any certificate issued by the board of education or pursuant to Article 21 or any other provisions of the School Code has been convicted of first degree murder, attempted first degree murder, or a Class X felony, the board of education or the State Superintendent of Education shall forthwith suspend the certificate. If the conviction is reversed and the holder is acquitted of that offense in a new trial or the charges that he or she committed that offense are dismissed, the suspending authority shall forthwith terminate the suspension of the certificate. When the conviction becomes final, the State Superintendent of Education shall forthwith revoke the certificate. The stated offenses of "first degree murder", "attempted first degree murder", and "Class X felony" referred to in this section include any offense committed in another state that, if committed in this State, would have been punishable as any one of the stated offenses.

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(Source: P.A. 83-1067; 89-428, § 225; 89-462, § 225; 89-610, § 5; 94-556, § 950; 96-1551, § 965.)

Note.

Section 9995 of P.A. 96-1551 contains a "no acceleration or delay" provision.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-84b.

Effect of Amendments. The 1995 amendment by P.A. 89-428, effective December 13, 1995 and the 1996 amendment by P.A. 89-462, effective May 29, 1996, made identical amendments: they each, in the fourth sentence (now of subsection (a)) inserted "12-14.1".

The 1996 amendment by P.A. 89-610, effective August 6, 1996, in the section catchline inserted "first degree murder, attempted first degree murder, or Class X felony"; added the subsection (a) designation; and added subsection (b).

The 2005 amendment by P.A. 94-556, effective September 11, 2005, in (a) in the second sentence added item (3) and redesignated former items (4) and (5) accordingly.

The 2011 amendment by P.A. 96-1551, effective July 1, 2011, in item (1) of the third sentence of (a), inserted "and 11-30" and inserted "11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60" to the section listing; and made related changes.

CASE NOTES

Constitutionality

Public Act 89-428 was enacted in violation of the single subject rule of the state constitution and is therefore invalid in its entirety. Johnson v. Edgar, 176 Ill. 2d 499, 224 Ill. Dec. 1, 680 N.E.2d 1372 (1997).

§ 105 ILCS 5/34-84.1. Teachers employed in Department of Defense overseas dependents' schools

Sec. 34-84.1. Teachers employed in Department of Defense overseas dependents' schools. By mutual agreement of a teacher and the board of education, the board may, but is not required to, grant the teacher a leave of absence to accept employment in a Department of Defense overseas dependents' school. If such a leave of absence is granted, the teacher may elect, for a period not exceeding the lesser of the period for which he is so employed or 5 years, (a) to preserve his permanent status under this Act, and (b) to continue receipt, on the same basis as if he were teaching in the school system subject to the board of education, of service credit earned for requirements of promotion, incremental increases in salary, leaves of absence and other privileges based on an established period of service or employment.

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A person employed to replace a teacher making the election provided for in this Section does not acquire permanent status as a teacher under this Article.

(Source: Laws 1967, p. 1999.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-84.1.

§ 105 ILCS 5/34-85. Removal for cause; Notice and hearing; Suspension

Sec. 34-85. Removal for cause; Notice and hearing; Suspension. (a) No teacher employed by the board of education shall (after serving the probationary period specified in Section 34-84 [105 ILCS 5/34-84]) be removed except for cause. Teachers (who have completed the probationary period specified in Section 34-84 of this Code) shall be removed for cause in accordance with the procedures set forth in this Section or, at the board's option, the procedures set forth in Section 24-16.5 of this Code [105 ILCS 5/24-16.5] or such other procedures established in an agreement entered into between the board and the exclusive representative of the district's teachers under Section 34-85c of this Code [105 ILCS 5/34-85c] for teachers (who have completed the probationary period specified in Section 34-84 of this Code) assigned to schools identified in that agreement. No principal employed by the board of education shall be removed during the term of his or her performance contract except for cause, which may include but is not limited to the principal's repeated failure to implement the school improvement plan or to comply with the provisions of the Uniform Performance Contract, including additional criteria established by the Council for inclusion in the performance contract pursuant to Section 34-2.3 [105 ILCS 5/34-2.3].

Before service of notice of charges on account of causes that may be deemed to be remediable, the teacher or principal must be given reasonable warning in writing, stating specifically the causes that, if not removed, may result in charges; however, no such written warning is required if the causes have been the subject of a remediation plan pursuant to Article 24A of this Code [105 ILCS 5/24A-1 et seq.] or if the board and the exclusive representative of the district's teachers have entered into an agreement pursuant to Section 34-85c of this Code [105 ILCS 5/34-85c], pursuant to an alternative system of remediation. No written warning shall be required for conduct on the part of a teacher or principal that is cruel, immoral, negligent, or criminal or that in any way causes psychological or physical harm or injury to a student, as that conduct is deemed to be irremediable. No written warning shall be required for a material breach of the uniform principal performance contract, as that conduct is deemed to be irremediable; provided that not less than 30 days before the vote of the local school council to seek the dismissal of a principal for a material breach of a uniform principal performance contract, the local

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school council shall specify the nature of the alleged breach in writing and provide a copy of it to the principal.

(1) To initiate dismissal proceedings against a teacher or principal, the general superintendent must first approve written charges and specifications against the teacher or principal. A local school council may direct the general superintendent to approve written charges against its principal on behalf of the Council upon the vote of 7 members of the Council. The general superintendent must approve those charges within 45 calendar days or provide a written reason for not approving those charges. A written notice of those charges, including specifications, shall be served upon the teacher or principal within 10 business days of the approval of the charges. Any written notice sent on or after July 1, 2012 shall also inform the teacher or principal of the right to request a hearing before a mutually selected hearing officer, with the cost of the hearing officer split equally between the teacher or principal and the board, or a hearing before a qualified hearing officer chosen by the general superintendent, with the cost of the hearing officer paid by the board. If the teacher or principal cannot be found upon diligent inquiry, such charges may be served upon him by mailing a copy thereof in a sealed envelope by prepaid certified mail, return receipt requested, to the teacher's or principal's last known address. A return receipt showing delivery to such address within 20 calendar days after the date of the approval of the charges shall constitute proof of service.

(2) No hearing upon the charges is required unless the teacher or principal within 17 calendar days after receiving notice requests in writing of the general superintendent that a hearing be scheduled. Pending the hearing of the charges, the general superintendent or his or her designee may suspend the teacher or principal charged without pay in accordance with rules prescribed by the board, provided that if the teacher or principal charged is not dismissed based on the charges, he or she must be made whole for lost earnings, less setoffs for mitigation.

(3) The board shall maintain a list of at least 9 qualified hearing officers who will conduct hearings on charges and specifications. The list must be developed in good faith consultation with the exclusive representative of the board's teachers and professional associations that represent the board's principals. The list may be revised on July 1st of each year or earlier as needed. To be a qualified hearing officer, the person must (i) be accredited by a national arbitration organization and have had a minimum of 5 years of experience as an arbitrator in cases involving labor and employment relations matters between employers and employees or their exclusive bargaining representatives and (ii) beginning September 1, 2012, have participated in training provided or approved by the State Board of Education for teacher dismissal hearing officers so that he or she is familiar with issues generally involved in evaluative and non-evaluative dismissals.

(3) Within 5 business days after receiving the notice of request for a hearing, the general superintendent and the teacher or principal or their legal representatives shall alternately strike one name from the list until only one name remains. Unless waived by the teacher, the teacher or principal shall have the right to proceed first with the striking. If the teacher or principal fails to participate in the striking process, the general superintendent shall either select the hearing officer from the list developed pursuant to this paragraph

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(3) or select another qualified hearing officer from the master list maintained by the State Board of Education pursuant to subsection (c) of Section 24-12 of this Code [105 ILCS 5/24-12].

(4) If the notice of dismissal was sent to the teacher or principal before July 1, 2012, the fees and costs for the hearing officer shall be paid by the State Board of Education. If the notice of dismissal was sent to the teacher or principal on or after July 1, 2012, the hearing officer's fees and costs must be paid as follows in this paragraph (4). The fees and permissible costs for the hearing officer shall be determined by the State Board of Education. If the hearing officer is mutually selected by the parties through alternate striking in accordance with paragraph (3) of this subsection (a), then the board and the teacher or their legal representative shall each pay 50% of the fees and costs and any supplemental allowance to which they agree. If the hearing officer is selected by the general superintendent without the participation of the teacher or principal, then the board shall pay 100% of the hearing officer fees and costs. The hearing officer shall submit for payment a billing statement to the parties that itemizes the charges and expenses and divides them in accordance with this Section.

(5) The teacher or the principal charged is required to answer the charges and specifications and aver affirmative matters in his or her defense, and the time for doing so must be set by the hearing officer. The State Board of Education shall adopt rules so that each party has a fair opportunity to present its case and to ensure that the dismissal proceeding is concluded in an expeditious manner. The rules shall address, without limitation, the teacher or principal's answer and affirmative defenses to the charges and specifications; a requirement that each party make mandatory disclosures without request to the other party and then update the disclosure no later than 10 calendar days prior to the commencement of the hearing, including a list of the names and addresses of persons who may be called as witnesses at the hearing, a summary of the facts or opinions each witness will testify to, and all other documents and materials, including information maintained electronically, relevant to its own as well as the other party's case (the hearing officer may exclude witnesses and exhibits not identified and shared, except those offered in rebuttal for which the party could not reasonably have anticipated prior to the hearing); pre-hearing discovery and preparation, including provision for written interrogatories and requests for production of documents, provided that discovery depositions are prohibited; the conduct of the hearing; the right of each party to be represented by counsel, the offer of evidence and witnesses and the cross-examination of witnesses; the authority of the hearing officer to issue subpoenas and subpoenas duces tecum, provided that the hearing officer may limit the number of witnesses to be subpoenaed in behalf of each party to no more than 7; the length of post-hearing briefs; and the form, length, and content of hearing officers' reports and recommendations to the general superintendent.

The hearing officer shall commence the hearing within 75 calendar days and conclude the hearing within 120 calendar days after being selected by the parties as the hearing officer, provided that these timelines may be modified upon the showing of good cause or mutual agreement of the parties. Good cause for the purposes of this paragraph (5) shall mean the illness or otherwise unavoidable emergency of the teacher, district representative, their legal representatives, the hearing officer, or an essential witness as indicated in each party's pre-hearing submission. In a dismissal hearing, the hearing officer shall consider

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and give weight to all of the teacher's evaluations written pursuant to Article 24A that are relevant to the issues in the hearing. The teacher or principal has the privilege of being present at the hearing with counsel and of cross-examining witnesses and may offer evidence and witnesses and present defenses to the charges. Each party shall have no more than 3 days to present its case, unless extended by the hearing officer to enable a party to present adequate evidence and testimony, including due to the other party's cross-examination of the party's witnesses, for good cause or by mutual agreement of the parties. The State Board of Education shall define in rules the meaning of "day" for such purposes. All testimony at the hearing shall be taken under oath administered by the hearing officer. The hearing officer shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all the testimony. The costs of the reporter's attendance and services at the hearing shall be paid by the party or parties who are paying the fees and costs of the hearing officer. Either party desiring a transcript of the hearing shall pay for the cost thereof. At the close of the hearing, the hearing officer shall direct the parties to submit post-hearing briefs no later than 21 calendar days after receipt of the transcript. Either or both parties may waive submission of briefs.

(6) The hearing officer shall within 30 calendar days from the conclusion of the hearing report to the general superintendent findings of fact and a recommendation as to whether or not the teacher or principal shall be dismissed and shall give a copy of the report to both the teacher or principal and the general superintendent. The State Board of Education shall provide by rule the form of the hearing officer's report and recommendation.

(7) The board, within 45 days of receipt of the hearing officer's findings of fact and recommendation, shall make a decision as to whether the teacher or principal shall be dismissed from its employ. The failure of the board to strictly adhere to the timeliness contained herein shall not render it without jurisdiction to dismiss the teacher or principal. In the event that the board declines to dismiss the teacher or principal after review of a hearing officer's recommendation, the board shall set the amount of back pay and benefits to award the teacher or principal, which shall include offsets for interim earnings and failure to mitigate losses. The board shall establish procedures for the teacher's or principal's submission of evidence to it regarding lost earnings, lost benefits, mitigation, and offsets. The decision of the board is final unless reviewed in accordance with paragraph (8) of this subsection (a).

(8) The teacher may seek judicial review of the board's decision in accordance with the Administrative Review Law, which is specifically incorporated in this Section, except that the review must be initiated in the Illinois Appellate Court for the First District. In the event judicial review is instituted, any costs of preparing and filing the record of proceedings shall be paid by the party instituting the review. In the event the appellate court reverses a board decision to dismiss a teacher or principal and directs the board to pay the teacher or the principal back pay and benefits, the appellate court shall remand the matter to the board to issue an administrative decision as to the amount of back pay and benefits, which shall include a calculation of the lost earnings, lost benefits, mitigation, and offsets based on evidence submitted to the board in accordance with procedures established by the board.

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(b) Nothing in this Section affects the validity of removal for cause hearings commenced prior to the effective date of this amendatory Act of the 97th General Assembly [P.A. 97-8].

The changes made by this amendatory Act of the 97th General Assembly shall apply to dismissals instituted on or after September 1, 2011 or the effective date of this amendatory Act of the 97th General Assembly, whichever is later. Any dismissal instituted prior to the effective date of these changes must be carried out in accordance with the requirements of this Section prior to amendment by this amendatory Act of 97th General Assembly.

(Source: P.A. 86-1477; 87-455; 89-15, § 5; 95-510, § 10; 97-8, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-85.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 50.55.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, rewrote this section.

The 2007 amendment by P.A. 95-510, effective August 28, 2007, in the first paragraph added the second sentence; in the seventh paragraph, at the end of the first sentence, added "or where the board of education and the exclusive representative of the district's teachers have entered into an agreement pursuant to Section 34-85c of this Code, pursuant to an alternative system of remediation"; and in the last paragraph, in the second sentence, substituted "board" for "hearing officer".

The 2011 amendment by P.A. 97-8, effective June 13, 2011, rewrote the section.

CASE NOTES

Analysis

Constitutionality
- Due Process
- Unnecessary Resolution
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- Hearing Officers
Applicability
- Chicago Only
- Non-Tenured Teachers

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- Removal of Principal
Assistant Principal
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Award
- Mitigation
Back Pay
- Authorized
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Cause
- In General
- Best Interest of School
- Burden of Proof
- Evidence Held Sufficient
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- Principals
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- Uncontroverted Evidence
Conduct
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- Improper Touching
- Irremediability Shown
- No Prior Misconduct
- Pattern and Practice
- Possession of Marijuana
- Question of Fact

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- Theft
- Violation of Board of Education Rules

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- In General
- Administrative Review Act
- Jurisdiction of Board
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Standard of Proof
- Criminal Conduct Charged
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Standard of Review
- Discretion of Board
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- Remediability
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- Procedural
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Tenure
- Construction
- Layoff

Written Warning
- In General
- Applicability
- Authority to Issue
- Failure to Furnish
- Futility
- Required

Constitutionality

- Due Process

Since the statutory provisions permitting a school board to remove a principal for cause provided her notice and a hearing, and since she could only be removed without prior warnings where it was clear from the evidence of record that she had ample notice that her conduct was wrong, there was no violation of due process. Prato v. Vallas, 331 Ill. App. 3d 852, 265 Ill. Dec. 94, 771 N.E.2d 1053, 2002 Ill. App. LEXIS 451 (1 Dist. 2002), appeal denied, 201 Ill. 2d 613, 271 Ill. Dec. 941, 786 N.E.2d 199 (2002).

There is no federal due process right to have a binding decision rendered by an independent hearing officer rather than the reform board. Hearne v. Board of Educ., 996 F. Supp. 773 (N.D. Ill. 1998), vacated in part on other grounds, 185 F.3d 770 (7th Cir. Ill. 1999).

These procedures are all that this state need reasonably provide to assure a fair and reasonable determination satisfying due process. Dusanek v. Hannon, 677 F.2d 538 (7th Cir.), cert. denied, 459 U.S. 1017, 103 S. Ct. 379, 74 L. Ed. 2d 512 (1982).

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The procedure whereby certain school authorities can require teachers who may have medical difficulties to submit to medical examinations serves strong state interests and is not violative of the teachers' due process rights. Dusanek v. Hannon, 677 F.2d 538 (7th Cir.), cert. denied, 459 U.S. 1017, 103 S. Ct. 379, 74 L. Ed. 2d 512 (1982).

There is nothing unconstitutional about a state establishing a tenure system in which the state retains the prerogative to discontinue the teaching duties of teachers who are not physically or mentally competent to continue teaching. Dusanek v. Hannon, 677 F.2d 538 (7th Cir.), cert. denied, 459 U.S. 1017, 103 S. Ct. 379, 74 L. Ed. 2d 512 (1982).

- Unnecessary Resolution

The circuit court ruling that this section violated the due process rights of tenured teachers was not essential to the resolution of the plaintiff's lawsuit, therefore the circuit court's decision was vacated. Hearne v. Illinois State Bd. of Educ., 185 Ill. 2d 443, 236 Ill. Dec. 12, 706 N.E.2d 886 (1999).

Additional Charges

- Hearing Officers

A school board's amended charge and specifications in a case involving the dismissal of a tenured teacher should not have been heard by the same hearing officer who heard the board's original charge and specifications where the additional charges and specifications were added after the original hearing officer had been selected. Board of Educ. v. State Bd. of Educ., 113 Ill. 2d 173, 100 Ill. Dec. 715, 497 N.E.2d 984 (1986).

Applicability

- Chicago Only

The requirements set forth in this section apply to schools in Chicago and do not apply to schools outside Chicago. Watts v. Board of Educ., 125 Ill. App. 3d 532, 80 Ill. Dec. 859, 466 N.E.2d 311 (5 Dist. 1984).

- Non-Tenured Teachers

Where a defendant board of education purported to extend the validity of the plaintiff's regular teacher's certificate, that action was a nullity, because under the board's rules the plaintiff's regular certificate had terminated due to the lapse of time and her inability to pass a health examination; since the certificate could not have been legally revived by any action of the board, the plaintiff had no tenure and this section did not apply. Crofts v. Board of Educ., 105 Ill. App. 2d 139, 245 N.E.2d 87 (1 Dist. 1969).

- Removal of Principal

Reinstatement of a high school principal was not required because a board of education was entitled to remove the principal under 105 ILCS 5/34-8.3(d)(2) without cause and was not mandated to follow the procedures outlined in 105 ILCS 5/34-85; moreover, the board properly followed the procedural requirements of 105 ILCS 5/34-8.3(a), (b) and (c) since a chief executive officer was not required to put the school on remediation before probation and the principal's argument that she did not receive a school improvement plan was meritless. In addition, the plain language of the contract allowed for termination for cause or removal after a hearing, and the decision to remove the principal was not against the manifest weight of the evidence because the evidence showed that the principal failed to make adequate progress in correcting the deficiencies that resulted in a high school being placed on probation. Young-Gibson v. Bd. of

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Educ., Ill. App. 3d , 355 Ill. Dec. 337, 959 N.E.2d 751, 2011 Ill. App. LEXIS 1209 (1 Dist. 2011).

Legislature did not intend to require that a board of education follow the procedures outlined in 105 ILCS 5/34-85 to remove a principal under 105 ILCS 5/34-8.3(d). Young-Gibson v. Bd. of Educ., Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1063 (1 Dist. Sept. 30, 2011).

Trial court erred by finding that the board had to use the procedures outlined in 105 ILCS 5/34-85 to remove a principal under 105 ILCS 5/34-8.3(d). In addition, the plain language of the principal's contract entitled the board to terminate her for cause under § 34-85 or to remove her under § 34-8.3 after an opportunity for a hearing. Young-Gibson v. Bd. of Educ., Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1063 (1 Dist. Sept. 30, 2011).

Assistant Principal

- Removal from Position

If legislature wanted to provide tenure to assistant principals, it could easily have done so by inserting the words "assistant principal" into the statute, however it did not, therefore, where assistant principal was certified only as a teacher and was not certified as a principal he obtained tenure as a teacher, not as an assistant principal and his demotion from assistant principal to teacher was upheld. Bart v. Board of Educ., 256 Ill. App. 3d 880, 197 Ill. Dec. 970, 632 N.E.2d 39 (1 Dist. 1993), appeal denied, 155 Ill. 2d 561, 198 Ill. Dec. 539, 633 N.E.2d 1 (1994).

Award

- Mitigation

Where board did not offer any evidence to support its argument that teacher could have obtained additional earnings, the award of back pay damages was not reduced. Board of Educ. v. Weed, 281 Ill. App. 3d 1010, 217 Ill. Dec. 538, 667 N.E.2d 627 (1 Dist. 1996).

Back Pay

- Authorized

Under this section, which corresponds to 110 ILCS 805/3B-4, a person suspended in accordance with rule prescribed by the board, who is acquitted, shall not suffer any loss of salary by reason of the suspension. Board of Trustees v. McKinley, 160 Ill. App. 3d 916, 112 Ill. Dec. 342, 513 N.E.2d 951 (1 Dist. 1987).

Where defendant was improperly suspended pending institution of disciplinary actions, this section fully authorized the award of back pay. Carter v. State Bd. of Educ., 90 Ill. App. 3d 1042, 46 Ill. Dec. 431, 414 N.E.2d 153 (1 Dist. 1980).

- Suspension

This section provides that if, in the opinion of the board, the interests of the district require suspension of a teacher, then the board may suspend the tenured faculty member pending the hearing, but if acquitted, the tenured faculty member shall not suffer the loss of any salary by reason of the suspension. Board of Trustees v. McKinley, 160 Ill. App. 3d 916, 112 Ill. Dec. 342, 513 N.E.2d 951 (1 Dist. 1987).

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Cause

- In General

In order to encourage experienced and able teachers to remain within the educational system and to insure that rehiring decisions will be based on merit and not upon political, partisan or capricious reasons, this section provides for the removal of tenured teachers only for cause. Hegener v. Board of Educ., 208 Ill. App. 3d 701, 153 Ill. Dec. 608, 567 N.E.2d 566 (1 Dist.), cert. denied, 137 Ill. 2d 665, 156 Ill. Dec. 561, 571 N.E.2d 148 (1991).

Under this section, no tenured teacher may be removed except for cause, and written warnings must be given to a tenured teacher before dismissal if the causes assigned for dismissal are considered remediable. Board of Educ. v. Johnson, 211 Ill. App. 3d 359, 155 Ill. Dec. 869, 570 N.E.2d 382 (1 Dist. 1991).

- Best Interest of School

The school board has the right to determine what constitutes cause, using the best interest of the school as a "guiding star." Hegener v. Board of Educ., 208 Ill. App. 3d 701, 153 Ill. Dec. 608, 567 N.E.2d 566 (1 Dist.), cert. denied, 137 Ill. 2d 665, 156 Ill. Dec. 561, 571 N.E.2d 148 (1991).

- Burden of Proof

Where no statutory warning has been given a teacher or principal, the evidence presented at the hearing on the charges must not only prove that the causes for discharge existed, but it must also be shown by competent substantial evidence that the causes were not remediable. Morris v. Board of Educ., 96 Ill. App. 3d 405, 51 Ill. Dec. 879, 421 N.E.2d 387 (1 Dist. 1981).

- Evidence Held Sufficient

Board of education's discharge of a tenured teacher, pursuant to 105 ILCS 5/24A-5(j) and 105 ILCS 5/34-85 following the teacher's unsatisfactory rating, after a remediation period imposed due to chronic classroom mismanagement problems, was proper, was not against the manifest weight of the evidence. Raitzik v. Bd. of Educ., 356 Ill. App. 3d 813, 292 Ill. Dec. 427, 826 N.E.2d 568, 2005 Ill. App. LEXIS 241 (1 Dist. 2005).

Chicago Board of Education's findings that plaintiff's conduct was unbecoming as a teacher and that she failed to discharge her duties as a teacher in the Chicago Public Schools was not against the manifest weight of the evidence. Di Caprio v. Redmond, 38 Ill. App. 3d 1031, 350 N.E.2d 119 (1 Dist. 1976).

Where the Chicago Board of Education determined pursuant to law that a teacher's continued employment was detrimental to the operation of her school, dismissal could not be precluded. Di Caprio v. Redmond, 38 Ill. App. 3d 1031, 350 N.E.2d 119 (1 Dist. 1976).

- Evidence Not Sufficient

In the face of repeated warnings, defendant violated Board of Education rules, did not maintain discipline in his classroom, used corporal punishment, and destroyed the chances of an entire class for a year's education; thus, defendant was correctly discharged for cause. Carter v. State Bd. of Educ., 90 Ill. App. 3d 1042, 46 Ill. Dec. 431, 414 N.E.2d 153 (1 Dist. 1980).

- Principals

This section, by its terms, refers to removal of a principal or teacher, and there is no basis for determining that this section contemplates a two-step removal process for principals, first as principals and then as teachers. McCutcheon v. Board of Educ., 94 Ill. App. 3d 993, 50 Ill. Dec.

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343, 419 N.E.2d 451 (1 Dist. 1981), cert. denied, 455 U.S. 1018, 102 S. Ct. 1713, 72 L. Ed. 2d 135 (1982).

Mere possession of a principal's certificate itself did not entitle a teacher to an appointment as a principal whenever an opportunity for such an appointment was created. Webster v. Redmond, 599 F.2d 793 (7th Cir. 1979), cert. denied, 444 U.S. 1039, 100 S. Ct. 712, 62 L. Ed. 2d 674 (1980).

- Psychological Problems

Psychiatrist's testimony that teacher did not suffer from any delusions and that only two of the requisite four symptoms of a paranoid personality disorder were present was sufficient to support the hearing officer's finding that the teacher did not have a personality disorder. Board of Educ. v. Weed, 281 Ill. App. 3d 1010, 217 Ill. Dec. 538, 667 N.E.2d 627 (1 Dist. 1996).

- Tenured School Teachers

When a tenured teacher completed his remediation plan with an unsatisfactory rating, such rating constituted cause for dismissal. Davis v. Board of Educ., 276 Ill. App. 3d 693, 213 Ill. Dec. 456, 659 N.E.2d 86 (1 Dist. 1995).

Under this section of the School Code, no tenured teacher shall be removed except for cause. Board of Educ. v. State Bd. of Educ., 160 Ill. App. 3d 769, 112 Ill. Dec. 236, 513 N.E.2d 845 (1 Dist. 1987).

In order to assure teachers of experience and ability of continuous service and rehiring based upon merit, rather than upon reasons that are political, partisan or capricious, so that they will be encouraged to work within the state educational system, the School Code provides that a tenured teacher may only be discharged for cause. Morris v. Board of Educ., 96 Ill. App. 3d 405, 51 Ill. Dec. 879, 421 N.E.2d 387 (1 Dist. 1981).

No tenured school teacher may be removed from employment except for cause. Chicago Bd. of Educ. v. Payne, 102 Ill. App. 3d 741, 58 Ill. Dec. 368, 430 N.E.2d 310 (1 Dist. 1981).

- Uncontroverted Evidence

Since no evidence was offered in opposition to the evidence offered by the board of education, and since the credibility of the board's evidence was not at issue, the hearing officer had no option but to find that the uncontroverted evidence established that teacher caused student harm. Board of Educ. v. Johnson, 211 Ill. App. 3d 359, 155 Ill. Dec. 869, 570 N.E.2d 382 (1 Dist. 1991).

Conduct

- Ability to Perform Job

Case law requires that the conduct which forms the basis for claiming cause must bear some relationship to a teacher's ability to perform her job. Hegener v. Board of Educ., 208 Ill. App. 3d 701, 153 Ill. Dec. 608, 567 N.E.2d 566 (1 Dist.), cert. denied, 137 Ill. 2d 665, 156 Ill. Dec. 561, 571 N.E.2d 148 (1991).

- Continuation

The mere continuation of conduct for a period of years does not make once remediable conduct irremediable; however, conduct which is initially remediable can become irremediable if continued over a long period of time. Hegener v. Board of Educ., 208 Ill. App. 3d 701, 153 Ill. Dec. 608, 567 N.E.2d 566 (1 Dist.), cert. denied, 137 Ill. 2d 665, 156 Ill. Dec. 561, 571 N.E.2d 148 (1991).

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Illinois case law has found that conduct is irremediable, and no prior warnings need be given before dismissal, when such conduct has occurred over long periods of time. Board of Educ. v. Johnson, 211 Ill. App. 3d 359, 155 Ill. Dec. 869, 570 N.E.2d 382 (1 Dist. 1991).

Construction

Because this section is designed to expedite the disposition of charges against an employee and to protect the employee from arbitrary and capricious delay by the board of education, the procedures and time periods set forth should be interpreted as mandatory rather than directory. Jones v. Hannon, 58 Ill. App. 3d 504, 16 Ill. Dec. 59, 374 N.E.2d 834 (1 Dist. 1978).

Evidence

- Expert Testimony

Hearing officer was incorrect in stating that he was required to give limited weight to psychiatrist's opinion due to its reliance on hearsay; yet, the officer was entitled to weigh the credibility of the psychiatrist's testimony and report as well as the data upon which he relied. Board of Educ. v. Weed, 281 Ill. App. 3d 1010, 217 Ill. Dec. 538, 667 N.E.2d 627 (1 Dist. 1996).

Hearings

- Due Process

The Board of Education failed to comply with procedural due process when, without sufficient interaction and participation of the hearing officer upon remand by the trial court, it rejected the decision of the hearing officer, made its own credibility determinations, and terminated a teacher's employment. Hearne v. Chi. Sch. Reform Bd. of Trs., 322 Ill. App. 3d 467, 255 Ill. Dec. 310, 749 N.E.2d 411, 2001 Ill. App. LEXIS 333 (1 Dist. 2001), appeal denied, 196 Ill. 2d 541, 261 Ill. Dec. 348, 763 N.E.2d 318 (2001).

- Improper Dismissal

Where Board of Education took no action to discharge or dismiss the plaintiff until 26 days after the three year probationary period, the plaintiff was a "tenured" teacher and entitled, under this section, to at least 20 days written notice of the charges against him, an adversary hearing before the full board or a duly authorized committee thereof, to be represented by an attorney, and to be removed only by a vote of a majority of all members of the board; and because none of these steps were taken, the attempt to terminate the plaintiff's employment was legally ineffectual and he was entitled to reinstatement as a "tenured" teacher. Provus v. Board of Educ., 11 Ill. App. 3d 1058, 298 N.E.2d 405 (1 Dist. 1973).

- Probationary Teacher

A probationary teacher may be discharged or dismissed without a hearing. People ex rel. Thomas v. Board of Educ., 40 Ill. App. 2d 308, 188 N.E.2d 237 (1 Dist. 1963).

- Purpose

The purpose of hearings is to provide due process to principals faced with impending reclassification. Kelly v. Board of Educ., 173 Ill. App. 3d 276, 123 Ill. Dec. 47, 527 N.E.2d 510 (1 Dist. 1988).

- Timeliness

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Where the board of education failed to hold a hearing 30 days after employee was served with notice of suspension, and failed to render its decision within 80 days from that date, it had no authority to dismiss or remove employee. Jones v. Hannon, 58 Ill. App. 3d 504, 16 Ill. Dec. 59, 374 N.E.2d 834 (1 Dist. 1978).

Notice

- Letter from Principal

A school board has a nondelegable duty to serve notice on a tenured teacher of charges, and a principal's letter cannot serve in lieu of notice from the board. Litin v. Board of Educ., 72 Ill. App. 3d 889, 28 Ill. Dec. 863, 391 N.E.2d 62 (1 Dist. 1979).

Reinstatement

A principal who was dismissed for cause could not be reinstated to his position where his contract expired prior to the time that a hearing officer's decision was adjudicated upon review to be in his favor. Eddings v. Board of Educ., 305 Ill. App. 3d 584, 238 Ill. Dec. 798, 712 N.E.2d 902 (1 Dist. 1999), appeal denied, 185 Ill. 2d 622, 242 Ill. Dec. 136, 720 N.E.2d 1091 (1999).

Remediability

When a tenured teacher ordered school supplies from an organization which provided them at low cost, with the understanding that they would be used for or given to students, by misrepresenting that they were being obtained for the school where she worked, when, in fact, she sold them in her private business, she engaged in immoral conduct, under 105 ILCS 5/34-85, because her conduct was "immoral," if not criminal theft by deception, as she willfully misled her employer and the organization from which she obtained the supplies by falsely representing herself as an agent of the schools while hiding her conduct from the schools, so her employment could be terminated without a finding that it harmed students, faculty, or the school, as it was irremediable per se. Ahmad v. Bd. of Educ., 365 Ill. App. 3d 155, 301 Ill. Dec. 800, 847 N.E.2d 810, 2006 Ill. App. LEXIS 256 (1 Dist. 2006).

Pursuant to 105 ILCS 5/34-85 of the Illinois School Code, 105 ILCS 5/1-1 et seq., it was unnecessary to employ the Gilliland test to cases concerning the discharge of a tenured teacher involving cruel, immoral, negligent, or criminal conduct because the statute now made this conduct irremediable per se, so not only was no warning required for this type of conduct, but it was also unnecessary for a school board to show that this type of conduct caused damage. Ahmad v. Bd. of Educ., 365 Ill. App. 3d 155, 301 Ill. Dec. 800, 847 N.E.2d 810, 2006 Ill. App. LEXIS 256 (1 Dist. 2006).

When a tenured teacher ordered school supplies from an organization which provided them at low cost, with the understanding that they would be used for or given to students, by misrepresenting that they were being obtained for the school where she worked, when, in fact, she sold them in her private business, she engaged in immoral conduct, under 105 ILCS 5/34-85, that was irremediable per se, and it was unnecessary to find that her conduct caused damage to students, faculty, or the school, that could not have been corrected if warnings had been given by her superiors before she could be discharged for the conduct. Ahmad v. Bd. of Educ., 365 Ill. App. 3d 155, 301 Ill. Dec. 800, 847 N.E.2d 810, 2006 Ill. App. LEXIS 256 (1 Dist. 2006).

- In General

The test for determining whether conduct is irremediable is: (1) whether damage has been done to the students, faculty or school, and (2) whether the conduct could not have been corrected had

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superiors warned the individual charged. Board of Educ. v. Van Kast, 253 Ill. App. 3d 295, 192 Ill. Dec. 246, 625 N.E.2d 206 (1 Dist. 1993).

Conduct is deemed remediable if: (1) the conduct has not damaged the students, faculty, or school, or (2) the conduct could have been corrected had the teacher received the written warning. Hegener v. Board of Educ., 208 Ill. App. 3d 701, 153 Ill. Dec. 608, 567 N.E.2d 566 (1 Dist.), cert. denied, 137 Ill. 2d 665, 156 Ill. Dec. 561, 571 N.E.2d 148 (1991).

A determination of whether conduct is irremediable requires a two-prong analysis: whether damage has been done to the students, faculty or school, and whether the conduct resulting in that damage could have been corrected had the teacher's superiors warned her. McBroom v. Board of Educ., 144 Ill. App. 3d 463, 98 Ill. Dec. 864, 494 N.E.2d 1191 (2 Dist. 1986); Board of Educ. v. Johnson, 211 Ill. App. 3d 359, 155 Ill. Dec. 869, 570 N.E.2d 382 (1 Dist. 1991).

- Burden of Proof

The Board of Education assumes the burden of proving, by a preponderance of the evidence at a hearing before the state board, that the two pronged test for remediability has been met and the conduct complained of is in fact irremediable. Board of Educ. v. Johnson, 211 Ill. App. 3d 359, 155 Ill. Dec. 869, 570 N.E.2d 382 (1 Dist. 1991).

If insufficient written warning is given to a tenured teacher prior to dismissal proceedings, the local board has the burden of proving not only that causes for dismissal existed but also that those causes were irremediable. Board of Educ. v. Harris, 218 Ill. App. 3d 1017, 161 Ill. Dec. 598, 578 N.E.2d 1244 (1 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 914, 584 N.E.2d 126 (1991).

Where no written warning is given, the board's evidence must prove that the teacher's conduct is irremediable; if the board fails to meet this evidentiary burden, it is deprived of jurisdiction to terminate a teacher's employment. Chicago Bd. of Educ. v. Payne, 102 Ill. App. 3d 741, 58 Ill. Dec. 368, 430 N.E.2d 310 (1 Dist. 1981).

- Corporal Punishment

The administration of corporal punishment in the face of a board rule absolutely prohibiting such conduct was clearly irremediable. Board of Educ. v. State Bd. of Educ., 100 Ill. App. 3d 897, 56 Ill. Dec. 288, 427 N.E.2d 368 (1 Dist. 1981).

- Criminal Conduct

Neither first teacher nor second teacher who, in separate incidents, showed up for work at their respective schools while under the influence of marijuana were entitled to written warnings and progressive discipline, as statutory law dictated that criminal conduct was irremediable and permitted the board of education to immediately dismiss them. Younge v. Bd. of Educ., 338 Ill. App. 3d 522, 273 Ill. Dec. 277, 788 N.E.2d 1153, 2003 Ill. App. LEXIS 410 (1 Dist. 2003).

Criminal conduct has been held to be irremediable per se regardless of the test. Board of Educ. v. Harris, 218 Ill. App. 3d 1017, 161 Ill. Dec. 598, 578 N.E.2d 1244 (1 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 914, 584 N.E.2d 126 (1991).

- Damage

The two part test for determining whether conduct is irremediable is whether damage has been done to the students, faculty or the school, and whether the conduct resulting in the damage could have been corrected had the teacher's superiors warned her. It is not enough, however, to show that some damage occurred; the damage must be significant before the conduct causing the damage can be declared irremediable. Board of Educ. v. State Bd. of Educ., 160 Ill. App. 3d 769, 112 Ill. Dec. 236, 513 N.E.2d 845 (1 Dist. 1987).

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A cause for dismissal is irremediable when irreparable damage has already been done and cannot be remedied. Morris v. Board of Educ., 96 Ill. App. 3d 405, 51 Ill. Dec. 879, 421 N.E.2d 387 (1 Dist. 1981).

Conduct is irremediable where damage results therefrom which could not have been corrected regardless of whether the teacher received an adequate timely warning. Chicago Bd. of Educ. v. Payne, 102 Ill. App. 3d 741, 58 Ill. Dec. 368, 430 N.E.2d 310 (1 Dist. 1981).

- Failure to Prove

School board improperly discharged an employee from employment as a tenured teacher because it did not give her prior written warning of the dismissal and did not prove that her conduct was irremediable since the decision was improperly based on her expunged disciplinary records; also, the employee's petition for judicial review was timely. Russell v. Bd. of Educ., 379 Ill. App. 3d 38, 318 Ill. Dec. 175, 883 N.E.2d 9, 2008 Ill. App. LEXIS 170 (1 Dist. 2008).

Trial court erred in affirming a teacher's discharge pursuant to 105 ILCS 5/34-85, as a finding that the teacher's conduct was irremediable was clearly erroneous, because a board of education presented no evidence that the teacher tampered with witnesses, and a hearing officer erred in considering expunged disciplinary records. Russell v. Bd. of Educ., Ill. App. 3d , Ill. Dec. , N.E.2d , 2007 Ill. App. LEXIS 771 (1 Dist. July 23, 2007).

Where school principal was never admonished by the Board to correct his conduct regarding his oversight of accounting and bookkeeping procedures, there was no evidence in the record of ongoing complaints by parents or school personnel about his failure to follow proper accounting procedures, and there was no continuing warning that the conduct in question was inappropriate, the Board failed to demonstrate that principal's noncompliance with the provisions of the manual and the general bulletins could not have been rectified upon proper notice. Board of Educ. v. Van Kast, 253 Ill. App. 3d 295, 192 Ill. Dec. 246, 625 N.E.2d 206 (1 Dist. 1993).

If the local board fails to prove irremediability, it is deprived of jurisdiction to seek dismissal of the teacher. Board of Educ. v. Harris, 218 Ill. App. 3d 1017, 161 Ill. Dec. 598, 578 N.E.2d 1244 (1 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 914, 584 N.E.2d 126 (1991).

- Improper Touching

Conduct of teacher who engaged in improper touching of students was properly found irremediable, subjecting teacher to dismissal, where teacher was warned by his principal at the start of the year not to touch children, and there was unrefuted expert testimony that the type of conduct engaged in by defendant had a high degree of recurrence. Board of Educ. v. Box, 191 Ill. App. 3d 31, 138 Ill. Dec. 460, 547 N.E.2d 627 (1 Dist. 1989).

- Irremediability Shown

Where causes for dismissal involved deficiencies in discipline, instruction, and teaching environment, which could in certain circumstances have been deemed remediable where the specifications to the charge expressly stated that the causes were irremediable due to plaintiff's repeated failure and refusal to follow the recommendations, instructions, and directions of her superiors, and one of the specifications charged plaintiff with corporal punishment of students which has been held to be an irremediable cause for dismissal, then the causes were irremediable. Lowe v. Board of Educ., 76 Ill. App. 3d 348, 32 Ill. Dec. 112, 395 N.E.2d 59 (1 Dist. 1979).

Where plaintiff teacher struck students as a regular means of discipline, plaintiff called students "hogs" and "pigs," and plaintiff did not indicate that she could or would improve her handling of discipline problems, instructional technique, or learning environment, then the findings of irremediability were not against the manifest weight of the evidence. Lowe v. Board of Educ., 76 Ill. App. 3d 348, 32 Ill. Dec. 112, 395 N.E.2d 59 (1 Dist. 1979).

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- No Prior Misconduct

Conduct of teacher with an otherwise unblemished record and no pattern of physical abuse was not shown to be irremediable and uncorrectable. Board of Educ. v. Johnson, 211 Ill. App. 3d 359, 155 Ill. Dec. 869, 570 N.E.2d 382 (1 Dist. 1991).

- Pattern and Practice

Causes for dismissal, remediable when considered alone, will be deemed irremediable where combined with other remediable causes if continued over a long period of time during which the teacher refuses or fails to remedy them. Morris v. Board of Educ., 96 Ill. App. 3d 405, 51 Ill. Dec. 879, 421 N.E.2d 387 (1 Dist. 1981).

- Possession of Marijuana

Teacher's possession of marijuana was irremediable conduct where the damage to the students, faculty, and school which flowed from incident, and which constituted cause for dismissal, occurred immediately upon revelation of it and a warning to teacher could not have remedied this damage or in any way served to lessen its impact. Chicago Bd. of Educ. v. Payne, 102 Ill. App. 3d 741, 58 Ill. Dec. 368, 430 N.E.2d 310 (1 Dist. 1981).

- Question of Fact

Whether causes for dismissal are remediable is a question of fact, the initial determination of which rests with the school board. Board of Educ. v. Box, 191 Ill. App. 3d 31, 138 Ill. Dec. 460, 547 N.E.2d 627 (1 Dist. 1989).

Whether a specific cause for dismissal is remediable depends upon the facts of each case. Board of Educ. v. State Bd. of Educ., 100 Ill. App. 3d 897, 56 Ill. Dec. 288, 427 N.E.2d 368 (1 Dist. 1981).

- Theft

Criminal activity in the nature of theft is conduct which cannot be remedied by a warning. McBroom v. Board of Educ., 144 Ill. App. 3d 463, 98 Ill. Dec. 864, 494 N.E.2d 1191 (2 Dist. 1986).

- Violation of Board of Education Rules

There is no support for the argument that violation of a rule of the board of education equals irremediability per se. Board of Educ. v. Johnson, 211 Ill. App. 3d 359, 155 Ill. Dec. 869, 570 N.E.2d 382 (1 Dist. 1991).

Review

- In General

Under 105 ILCS 5/34-85, a hearing officer's recommendation that a discharged tenured teacher be reinstated with full back pay was a recommendation to the board of education; the board was vested with the final administrative decision on the teacher's removal, and it was to the board's decision that the appellate court deferred, not to that of the hearing officer. Raitzik v. Bd. of Educ., 356 Ill. App. 3d 813, 292 Ill. Dec. 427, 826 N.E.2d 568, 2005 Ill. App. LEXIS 241 (1 Dist. 2005).

The legislature intended the amended statute to grant the Board of Education the final decision making authority in teacher and principal dismissal proceedings; thus, on administrative review, the circuit court is required to review the final decision of the board, rather than the decision of the hearing examiner. Hearne v. Chi. Sch. Reform Bd. of Trs., 322 Ill. App. 3d 467, 255 Ill. Dec.

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310, 749 N.E.2d 411, 2001 Ill. App. LEXIS 333 (1 Dist. 2001), appeal denied, 196 Ill. 2d 541, 261 Ill. Dec. 348, 763 N.E.2d 318 (2001).

- Administrative Review Act

Review of the hearing officer's determination is governed by the Administrative Review Act (735 ILCS 5/3-101 et seq.). Board of Educ. v. Johnson, 211 Ill. App. 3d 359, 155 Ill. Dec. 869, 570 N.E.2d 382 (1 Dist. 1991).

- Jurisdiction of Board

When a board fails to meet its evidentiary burden of proving that a teacher's conduct is irremediable, and when no warning has been given, the board is deprived of jurisdiction to terminate the teacher. Board of Educ. v. State Bd. of Educ., 160 Ill. App. 3d 769, 112 Ill. Dec. 236, 513 N.E.2d 845 (1 Dist. 1987).

- Remand Necessary

Where relevant evidence was at least not properly evaluated and weighed by the hearing officer as to the original specifications against tenured teacher, and other evidence of a possible consciousness of guilt was apparently not thrown into the balance when the hearing officer made his determination, the matter was remanded to the administrative body for another hearing. Board of Educ. v. State Bd. of Educ., 113 Ill. 2d 173, 100 Ill. Dec. 715, 497 N.E.2d 984 (1986).

Standard of Proof

- Criminal Conduct Charged

Due process does not require that the clear and convincing evidence standard of proof be applied in tenured-teacher dismissal proceedings in which conduct that might also constitute a crime is charged. Board of Educ. v. State Bd. of Educ., 113 Ill. 2d 173, 100 Ill. Dec. 715, 497 N.E.2d 984 (1986).

- Preponderance of the Evidence

The proper standard of proof applicable to tenured-teacher dismissal proceedings, including those where conduct that might constitute a crime is charged, is the preponderance of the evidence standard. Board of Educ. v. State Bd. of Educ., 113 Ill. 2d 173, 100 Ill. Dec. 715, 497 N.E.2d 984 (1986).

Standard of Review

- Discretion of Board

Whether causes for dismissal are remediable is a question of fact, and its initial determination lies within the discretion of the board of education; a reviewing court will not interfere with the board's decision unless the board has acted in an arbitrary or capricious manner, or the reasons formulated for such a dismissal were against the manifest weight of the evidence. Morris v. Board of Educ., 96 Ill. App. 3d 405, 51 Ill. Dec. 879, 421 N.E.2d 387 (1 Dist. 1981).

- Reasons for Dismissal

The board's decision will not be overturned unless the reasons given for dismissal are against the manifest weight of the evidence, or the board has acted in an arbitrary or capricious manner. Board of Educ. v. Box, 191 Ill. App. 3d 31, 138 Ill. Dec. 460, 547 N.E.2d 627 (1 Dist. 1989).

- Remediability

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The question of remediability is for the board of education in the first instance, and its decision will not be disturbed absent a showing that it is arbitrary and capricious. Chicago Bd. of Educ. v. Payne, 102 Ill. App. 3d 741, 58 Ill. Dec. 368, 430 N.E.2d 310 (1 Dist. 1981).

- Resignation

A resignation resulting from a choice between resigning or facing proceedings for dismissal is not tantamount to discharge by coercion without procedural review if the employee is given sufficient time and opportunity for deliberation of the choice posed. Dusanek v. Hannon, 677 F.2d 538 (7th Cir.), cert. denied, 459 U.S. 1017, 103 S. Ct. 379, 74 L. Ed. 2d 512 (1982).

Teacher's Rights

- Procedural

Teacher's decision to ignore the board's order to request an unpaid medical leave of absence and wait for a dismissal hearing at which to defend herself was a proper exercise of her procedural rights and did not amount to insubordination. Board of Educ. v. Weed, 281 Ill. App. 3d 1010, 217 Ill. Dec. 538, 667 N.E.2d 627 (1 Dist. 1996).

Under the School Code, former Ill. Rev. Stat. ch. 122, para. 34-85 (now 105 ILCS 5/34-85), a tenured teacher has a right to participate in the selection of the hearing officer as to each charge brought against him or her and within the time frame specified in the statute. Board of Education v. State Bd. of Education, 113 Ill. 2d 173, 100 Ill. Dec. 715, 497 N.E.2d 984, 1986 Ill. LEXIS 292 (1986).

- Protection

A tenured teacher is entitled to a construction of the tenure laws consistent with the prime purpose of providing him with maximum protection. Jones v. Hannon, 58 Ill. App. 3d 504, 16 Ill. Dec. 59, 374 N.E.2d 834 (1 Dist. 1978).

Tenure

- Construction

School principals were entitled to summary judgment in their action against a school board claiming that they had been deprived of their rights to continued employment and denied salary and other benefits because, when an act that purported to amend 105 ILCS 5/34-84 and 105 ILCS 5/34-85 by eliminating tenure for principals was declared unconstitutional, the prior law remained in force and the principals were entitled to tenure. Jacobson v. Bd. of Educ., 321 Ill. App. 3d 103, 254 Ill. Dec. 137, 746 N.E.2d 894, 2001 Ill. App. LEXIS 170 (1 Dist. 2001).

The teacher tenure provisions of the School Code are in derogation of common law and must be strictly construed in favor of the school district. Bart v. Board of Educ., 256 Ill. App. 3d 880, 197 Ill. Dec. 970, 632 N.E.2d 39 (1 Dist. 1993), appeal denied, 155 Ill. 2d 561, 198 Ill. Dec. 539, 633 N.E.2d 1 (1994).

- Layoff

Neither the 1995 amendments to the Illinois School Code nor Illinois cases construing them suggested that tenured teachers were not entitled to an opportunity to show that they were qualified for vacancies after an economic layoff; rather, the limits on the board's discretion found in 105 ILCS 5/34-18(31) along with the teachers' right to a "permanent" appointment, gave rise to a legitimate expectation that laid-off teachers were to be considered for vacancies for a reasonable time. The teachers were entitled to a recall procedure and were to be given a

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meaningful opportunity to show that they were qualified for new vacancies; without any procedures for recall, the risk of deprivation to the teachers was significant and would have violated their right to due process under the Fourteenth Amendment. Chi. Teachers Union, Local No. 1, AFT v. Bd. of Educ. of Chi., 640 F.3d 221, 2011 U.S. App. LEXIS 6395 (7th Cir. 2011).

Tenured public school teachers were not statutorily exempted from a layoff, and the board of education was not prohibited from delegating the authority to make layoffs to a party other than the school principals. Land v. Bd. of Educ., 202 Ill. 2d 414, 269 Ill. Dec. 452, 781 N.E.2d 249, 2002 Ill. LEXIS 959 (2002).

Written Warning

- In General

A warning would appear to be particularly appropriate where the board is apparently taking a new position on relatively widespread conduct of which it previously had tacitly approved, or to which it had apparently turned a blind eye. Hegener v. Board of Educ., 208 Ill. App. 3d 701, 153 Ill. Dec. 608, 567 N.E.2d 566 (1 Dist.), cert. denied, 137 Ill. 2d 665, 156 Ill. Dec. 561, 571 N.E.2d 148 (1991).

- Applicability

If the causes for dismissal of a teacher are deemed remediable, the local board is not to serve notice of charges unless the teacher has first been given reasonable written warning, specifying the causes that, if not removed, might result in charges; however, as stated in 105 ILCS 5/24A-5, the warning requirement does not apply if the teacher's deficiencies are deemed irremediable. Board of Educ. v. Harris, 218 Ill. App. 3d 1017, 161 Ill. Dec. 598, 578 N.E.2d 1244 (1 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 914, 584 N.E.2d 126 (1991).

- Authority to Issue

The statutory written warning, when required, must be sent by or at the direction of the local board and must state causes that may result in charges leading to dismissal; a written warning from a principal without prior local board approval is insufficient. Board of Educ. v. Harris, 218 Ill. App. 3d 1017, 161 Ill. Dec. 598, 578 N.E.2d 1244 (1 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 914, 584 N.E.2d 126 (1991).

- Failure to Furnish

Since the city education board could not find that the teacher had been engaged in irremediable conduct, it was required to give the teacher proper written warning that the teacher's remedial behavior would lead to the teacher's termination; because the city education board did not do so, it had no jurisdiction to seek the teacher's dismissal from the teacher's special education position with the city's public school system. Russell v. Bd. of Educ., Ill. App. 3d , Ill. Dec. , N.E.2d , 2007 Ill. App. LEXIS 830 (1 Dist. July 30, 2007).

Where conduct was remediable and the board had not given the required statutory warning to a teacher, dismissal of that teacher was properly reversed because the board lacked jurisdiction to take such action. Hegener v. Board of Educ., 208 Ill. App. 3d 701, 153 Ill. Dec. 608, 567 N.E.2d 566 (1 Dist.), cert. denied, 137 Ill. 2d 665, 156 Ill. Dec. 561, 571 N.E.2d 148 (1991).

Since there was insufficient proof that any significant damage resulted from tenured teacher's conduct or that it was not correctable, teacher was entitled to the statutory written warning to correct, if she could, her remediable conduct; consequently, having not received such a warning, she could not be dismissed. Board of Educ. v. State Bd. of Educ., 160 Ill. App. 3d 769, 112 Ill. Dec. 236, 513 N.E.2d 845 (1 Dist. 1987); Hegener v. Board of Educ., 208 Ill. App. 3d 701, 153

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Ill. Dec. 608, 567 N.E.2d 566 (1 Dist.), cert. denied, 137 Ill. 2d 665, 156 Ill. Dec. 561, 571 N.E.2d 148 (1991).

Written warnings must be given to a tenured teacher before dismissal if the causes assigned for dismissal are considered remediable; where no warning is given, the board's evidence must prove that the teacher's conduct is irremediable. Board of Educ. v. Box, 191 Ill. App. 3d 31, 138 Ill. Dec. 460, 547 N.E.2d 627 (1 Dist. 1989).

Where three children inoculated without any consent unnecessarily suffered the usual physical reactions to the inoculation, the damage was not severe or permanent enough to warrant the tenured school nurse's immediate suspension without a previous written warning. Board of Educ. v. State Bd. of Educ., 160 Ill. App. 3d 769, 112 Ill. Dec. 236, 513 N.E.2d 845 (1 Dist. 1987).

- Futility

This section makes no exception for instances where the school board deems conduct warning "futile." Board of Educ. v. Van Kast, 253 Ill. App. 3d 295, 192 Ill. Dec. 246, 625 N.E.2d 206 (1 Dist. 1993).

- Required

Where conduct which forms the basis of charges seeking dismissal is deemed remediable, the board must give the teacher a written warning which informs him of the consequences of failing to take corrective measures. Chicago Bd. of Educ. v. Payne, 102 Ill. App. 3d 741, 58 Ill. Dec. 368, 430 N.E.2d 310 (1 Dist. 1981); Hegener v. Board of Educ., 208 Ill. App. 3d 701, 153 Ill. Dec. 608, 567 N.E.2d 566 (1 Dist.), cert. denied, 137 Ill. 2d 665, 156 Ill. Dec. 561, 571 N.E.2d 148 (1991).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Employment Law," see 26 S. Ill. U.L.J. 613 (2002).

For article, "Labor Law: 1986-87 Illinois Law Survey," see 19 Loy. U. Chi. L.J. 591 (1987-88).

For article, "Tenured Teacher Dismissal in Illinois, 1975-1979," see 69 Ill. B.J. 422 (1981).

For comment, "A Question of Remediability: Standards of Conduct for Illinois Public School Teachers," see 29 De Paul L. Rev. 523 (1980).

For article, "Survey of Illinois Law: Employment Law," see 28 S. Ill. U.L.J. 705 (2004).

For article, "Survey of Illinois Law: Significant Developments in Education Law 2003- 2004," see 29 S. Ill. U.L.J. 603 (2005).

For article, "Survey of Illinois Law: Employment Law," see 31 S. Ill. U.L.J. 859 (2007).

§ 105 ILCS 5/34-85b: Repealed by P.A. 97-8, § 15, effective June 13, 2011.

§ 105 ILCS 5/34-85c. Alternative procedures for teacher evaluation, remediation, and removal for cause after remediation

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Sec. 34-85c. Alternative procedures for teacher evaluation, remediation, and removal for cause after remediation. (a) Notwithstanding any law to the contrary, the board and the exclusive representative of the district's teachers are hereby authorized to enter into an agreement to establish alternative procedures for teacher evaluation, remediation, and removal for cause after remediation, including an alternative system for peer evaluation and recommendations; provided, however, that no later than September 1, 2012: (i) any alternative procedures must include provisions whereby student performance data is a significant factor in teacher evaluation and (ii) teachers are rated as "excellent", "proficient", "needs improvement" or "unsatisfactory". Pursuant exclusively to that agreement, teachers assigned to schools identified in that agreement shall be subject to an alternative performance evaluation plan and remediation procedures in lieu of the plan and procedures set forth in Article 24A of this Code and alternative removal for cause standards and procedures in lieu of the removal standards and procedures set forth in Section 34-85 of this Code [105 ILCS 5/34-85]. To the extent that the agreement provides a teacher with an opportunity for a hearing on removal for cause before an independent hearing officer in accordance with Section 34-85 or otherwise, the hearing officer shall be governed by the alternative performance evaluation plan, remediation procedures, and removal standards and procedures set forth in the agreement in making findings of fact and a recommendation.

(b) The board and the exclusive representative of the district's teachers shall submit a certified copy of an agreement as provided under subsection (a) of this Section to the State Board of Education.

(Source: P.A. 95-510, § 10; 96-861, § 10; 97-8, § 5.)

Effective Date. Section 99 of P.A. 95-510 makes this section effective upon becoming law. The Act was approved August 28, 2007.

Effect of Amendments. The 2010 amendment by P.A. 96-861, effective January 15, 2010, added the proviso at the end of the first sentence in (a).

The 2011 amendment by P.A. 97-8, effective June 13, 2011, substituted "Section 34-85" for "Sections 34-85 and 34-85b" twice in the second sentence of (a).

§ 105 ILCS 5/34-87: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

§ 105 ILCS 5/34-88. District and school report cards

Sec. 34-88. District and school report cards. The board shall, in accordance with Section 10-17a of the School Code [105 ILCS 5/10-17a], annually present and disseminate the

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school district and school report cards prepared by the State Superintendent of Education.

(Source: P.A. 84-126; 89-15, § 5; 97-671, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34-88.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, in the first paragraph, in the second sentence, substituted "general" for "subdistrict", deleted "following consultation with the advisory council established by Section 34-18a" preceding "present report", substituted "district" for "subdistrict and deleted "of education" from the end and deleted the second sentence which read "In addition, each subdistrict shall report on the subdistrict performance based on the report cards received from each attendance center therein"; and in the second paragraph deleted "of education" preceding "shall make", deleted "districtwide" preceding "information", deleted "as well as a report card" preceding "detailing" and substituted "the district" for "each subdistrict".

The 2012 amendment by P.A. 97-671, effective January 24, 2012, rewrote the section heading, which formerly read: "School reports"; and rewrote the section.

§ 105 ILCS 5/34-128. [Transportation for trainable mentally handicapped children]

Sec. 34-128. The Board shall provide free bus transportation for every child who is trainable mentally disabled, as defined in Article 14 [105 ILCS 14/1-1 et seq.], who resides at a distance of one mile or more from any school to which he is assigned for attendance and who the State Board of Education determines in advance requires special transportation service in order to take advantage of special educational facilities.

The board may levy, without regard to any other legally authorized tax and in addition to such taxes, an annual tax upon all the taxable property in the school district at a rate not to exceed .005% of the value, as equalized or assessed by the Department of Revenue, that will produce an amount not to exceed the annual cost of transportation provided in accordance with this Section. The board shall deduct from the cost of such transportation any amount reimbursed by the State under Article 14 [105 ILCS 14/1-1 et seq.]. Such levy is authorized in the year following the school year in which the transportation costs were incurred by the district.

(Source: P.A. 81-1550; 89-397, § 5.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 34-128.

Effect of Amendments. The 1995 amendment by P.A. 89-397, effective August 20, 1995, in the first paragraph inserted "child who is" and substituted "disabled" for "handicapped child".

School Action And Facility Master Planning

§ 105 ILCS 5/34-200. Definitions

Sec. 34-200. Definitions. For the purposes of Sections 34-200 through 34-235 of this Article:

"Capital improvement plan" means a plan that identifies capital projects to be started or finished within the designated period, excluding projects funded by locally raised capital not exceeding $10,000.

"Community area" means a geographic area of the City of Chicago defined by the chief executive officer as part of the development of the educational facilities master plan.

"Space utilization" means the percentage achieved by dividing the school's actual enrollment by its design capacity.

"School closing" or "school closure" means the closing of a school, the effect of which is the assignment and transfer of all students enrolled at that school to one or more designated receiving schools.

"School consolidation" means the consolidation of 2 or more schools by closing one or more schools and reassigning the students to another school.

"Phase-out" means the gradual cessation of enrollment in certain grades each school year until a school closes or is consolidated with another school.

"School action" means any school closing; school consolidation; co-location; boundary change that requires reassignment of students, unless the reassignment is to a new school with an attendance area boundary and is made to relieve overcrowding; or phase-out.

(Source: P.A. 97-473, § 5; 97-474, § 5.)

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Note.

Section 97 of P.A. 97-474 provides "Control over other Act. Senate Bill 620 of the 97th General Assembly passed both houses on May 31, 2011. Thus, this amendatory Act of the 97th General Assembly (Senate Bill 630) is the one last acted upon by the General Assembly. If Senate Bill 620 becomes law and this amendatory Act (Senate Bill 630) becomes law, then this amendatory Act (Senate Bill 630) controls as provided in Section 6 of the Statute on Statutes (5 ILCS 70/6)."

Effective Date. Section 99 of P.A. 97-474 made this section effective upon becoming law. The Act was approved August 22, 2011.

§ 105 ILCS 5/34-205. Educational facility standards

Sec. 34-205. Educational facility standards. (a) By January 1, 2012, the district shall publish space utilization standards on the district's website. The standards shall include the following:

(1) the method by which design capacity is calculated, including consideration of the requirements of elementary and secondary programs, shared campuses, after school programming, the facility needs, grade and age ranges of the attending students, and use of school buildings by governmental agencies and community organizations;

(2) the method to determine efficient use of a school building based upon educational program design capacity;

(3) the rate of utilization; and

(4) the standards for overcrowding and underutilization.

(b) The chief executive officer or his or her designee shall publish a space utilization report for each school building operated by the district on the district's website by December 31 of each year.

(c) The facility performance standards provisions are as follows:

(1) On or before January 1, 2012, the chief executive officer shall propose minimum and optimal facility performance standards for thermal comfort, daylight, acoustics, indoor air quality, furniture ergonomics for students and staff, technology, life safety, ADA accessibility, plumbing and washroom access, environmental hazards, and walkability.

(2) The chief executive officer shall conduct at least one public hearing and submit the proposed educational facilities standards to each local school council and to the Chicago Public Building Commission for review and comment prior to adoption.

(3) After the chief executive officer has incorporated the input and recommendations of the public and the Chicago Public Building Commission, the chief executive officer shall issue final facility performance standards.

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(4) The chief executive officer is authorized to amend the facility performance standards following the procedures in this Section.

(5) The final educational facility space utilization and performance standards shall be published on the district's Internet website.

(Source: P.A. 97-473, § 5; 97-474, § 5.)

Note.

Section 97 of P.A. 97-474 provides "Control over other Act. Senate Bill 620 of the 97th General Assembly passed both houses on May 31, 2011. Thus, this amendatory Act of the 97th General Assembly (Senate Bill 630) is the one last acted upon by the General Assembly. If Senate Bill 620 becomes law and this amendatory Act (Senate Bill 630) becomes law, then this amendatory Act (Senate Bill 630) controls as provided in Section 6 of the Statute on Statutes (5 ILCS 70/6)."

Effective Date. Section 99 of P.A. 97-474 made this section effective upon becoming law. The Act was approved August 22, 2011.

§ 105 ILCS 5/34-210. The Educational Facility Master Plan

Sec. 34-210. The Educational Facility Master Plan. (a) In accordance with the schedule set forth in this Article, the chief executive officer or his or her designee shall prepare a 10-year educational facility master plan every 5 years, with updates 2 1/2 years after the approval of the initial 10-year plan, with the first such educational facility master plan to be approved on or before July 1, 2013.

(b) The educational facility master plan shall provide community area level plans and individual school master plans with options for addressing the facility and space needs for each facility operated by the district over a 10-year period.

(c) The data, information, and analysis that shall inform the educational facility master plan shall be published on the district's Internet website and shall include the following:

(1) a description of the district's guiding educational goals and standards;

(2) a brief description of the types of instructional programs and services delivered in each school;

(3) a description of the process, procedure, and timeline for community participation in the development of the plan;

(4) the enrollment capacity of each school and its rate of utilization;

(5) a report on the assessment of individual building and site conditions;

(6) a data table with historical and projected enrollment data by school by grade;

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(7) community analysis, including a study of current and projected demographics, land usage, transportation plans, residential housing and commercial development, private schools, plans for water and sewage service expansion or redevelopment, and institutions of higher education;

(8) an analysis of the facility needs and requirements of the district; and

(9) identification of potential sources of funding for the implementation of the Educational Facility Master Plan.

(d) On or before January 1, 2013, the chief executive officer or his or her designee shall prepare and distribute for comment a preliminary draft of the Educational Facility Master Plan. The draft plan shall be distributed to the City of Chicago, the County of Cook, the Chicago Park District, the Chicago Housing Authority, the Chicago Transit Authority, attendance centers operated by the district, and charter schools operating within the district. Each attendance center shall make the draft plan available to the local school council or alternative advisory body and to the parents, guardians, and staff of the school. The draft plan also shall be distributed to each State Senator and State Representative with a district in the City of Chicago, to the Mayor of the City of Chicago, and to each alderman of the City.

(e) The chief executive or his or her designee shall publish a procedure for conducting public hearings and submitting public comments on the draft plan.

(f) After consideration of public input on the draft plan, the chief executive officer or his or her designee shall prepare and publish a report describing the process used to incorporate public input in the development of the final plan to be recommended to the Board.

(g) The chief executive officer shall present the final plan and report to the Board for final consideration and approval.

(h) The final approved Educational Facility Master Plan shall be published on the district's website.

(i) No later than January 1, 2016, and every 5 years thereafter, the chief executive officer or his or her designee shall prepare and submit for public comment a draft revised Educational Facility Master Plan following the procedures required for development of the original plan.

(j) This proposed revised plan shall reflect the progress achieved during the first 2 1/2 years of the Educational Facility Master Plan.

(Source: P.A. 97-473, § 5; 97-474, § 5.)

Note.

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Section 97 of P.A. 97-474 provides "Control over other Act. Senate Bill 620 of the 97th General Assembly passed both houses on May 31, 2011. Thus, this amendatory Act of the 97th General Assembly (Senate Bill 630) is the one last acted upon by the General Assembly. If Senate Bill 620 becomes law and this amendatory Act (Senate Bill 630) becomes law, then this amendatory Act (Senate Bill 630) controls as provided in Section 6 of the Statute on Statutes (5 ILCS 70/6)."

Effective Date. Section 99 of P.A. 97-474 made this section effective upon becoming law. The Act was approved August 22, 2011.

§ 105 ILCS 5/34-215. Capital improvement plans

Sec. 34-215. Capital improvement plans. (a) The district shall develop a capital needs review process and one-year and 5-year capital improvement plans.

(b) By January 1, 2012, the chief executive officer or his or her designee shall establish a capital needs review process that includes a comprehensive bi-annual assessment of the capital needs at each facility owned, leased, or operated by the district. The review process shall include development of an assessment form to be used by attendance centers to provide a school-based capital, maintenance, utility, and repair needs assessment report and recommendations aligned with the educational program and goals of the attendance center.

(c) Beginning with fiscal year 2013 and for each year thereafter, the chief executive officer shall publish a proposed one-year capital improvement plan at least 60 days prior to the end of the prior fiscal year. The proposed one-year capital improvement plan shall be posted on the district's Internet website and shall be subject to public review and comment and at least 3 public hearings. The one-year capital improvement plan shall include the following information for all capital projects for which funds are to be appropriated:

(1) description of the scope of the project;

(2) justification for the project;

(3) status of the project, including, if appropriate, percentage funded, percentage complete, and approved start and end dates;

(4) original approved cost and current approved cost for each project;

(5) the impact of the project on the district's operating budget;

(6) the name of each school and facility affected by a project;

(7) all funding sources for the project;

(8) any relationship of the project to the needs assessment submitted by the attendance center; and

(9) any relationship to the district's 10-year Educational Facilities Master Plan.

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(d) The chief executive officer shall present a final proposed one-year capital improvement plan to the Board for consideration.

(e) The Board shall adopt a final one-year capital improvement plan no more than 45 days after adopting the annual budget.

(f) Beginning with fiscal year 2013, the chief executive officer shall publish a proposed 5-year capital improvement plan with the proposed one-year capital improvement plan. The 5-year capital improvement plan shall include proposed capital improvements for the next 4 years and, to the extent practicable, the same information for each proposed project that is required for the one-year capital improvement plan.

(g) The 5-year capital improvement plan shall be assessed annually. An annual report shall be published explaining the differences between projected capital projects in the 5-year capital improvement plan and the capital projects authorized in the proposed one-year capital improvement plan for the following fiscal year. The 5-year plan shall be published on the district's Internet website and distributed to all principals.

(Source: P.A. 97-473, § 5; 97-474, § 5.)

Note.

Section 97 of P.A. 97-474 provides "Control over other Act. Senate Bill 620 of the 97th General Assembly passed both houses on May 31, 2011. Thus, this amendatory Act of the 97th General Assembly (Senate Bill 630) is the one last acted upon by the General Assembly. If Senate Bill 620 becomes law and this amendatory Act (Senate Bill 630) becomes law, then this amendatory Act (Senate Bill 630) controls as provided in Section 6 of the Statute on Statutes (5 ILCS 70/6)."

Effective Date. Section 99 of P.A. 97-474 made this section effective upon becoming law. The Act was approved August 22, 2011.

§ 105 ILCS 5/34-220. Financial transparency

Sec. 34-220. Financial transparency. (a) For fiscal year 2012, the chief executive officer shall provide the Board with an annual capital expenditure report within 90 days after the end of the fiscal year. The report shall be published on the district's Internet website.

(b) For fiscal year 2013 and thereafter, the chief executive officer shall provide the Board with an annual capital expenditure report within 90 days after the end of the fiscal year. The report shall be published on the district's Internet website. The annual capital expenditure report shall include the following:

(1) expenditures on all facilities in which students enrolled in the district receive instruction for all capital projects on which funds were expended in that fiscal year, even if the project was not initiated or completed in the fiscal year;

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(2) identification of capital projects that aligned with the school-based facility needs assessment and recommendations of school principals or were the result of other public input;

(3) the levels of appropriation actually provided to the district for capital projects in the fiscal year by the city, the State, and the federal government, with a comparison of the level of such funding against funding levels for the prior 5 years; and

(4) a summary comparison of annual capital expenses and the corresponding one-year capital improvement plan.

(c) A list of all property owned by or leased to the Board shall be published on the district's Internet website by January 1, 2012, and shall be updated annually. For each property listed, the most recent facility standards review and any capital improvement projects that are pending or planned or have been completed in the 2-year period prior to publication shall be outlined.

(d) All lease agreements in which the Board is a lessor or lessee shall be published on the district's Internet website for the duration of the lease. Temporary facility use, right of entry, and other temporary license agreements not exceeding one year in duration are not subject to this requirement.

(e) The district shall publish on the district's Internet website a summary of the lease agreements in which the Board is a lessor or lessee, including the following:

(1) a description of the leasehold;

(2) the full legal name of the parties to the agreement;

(3) the term of the agreement;

(4) the rent amount; and

(5) the party responsible for maintenance, capital improvements, utilities, and other expenses.

(Source: P.A. 97-473, § 5; 97-474, § 5.)

Note.

Section 97 of P.A. 97-474 provides "Control over other Act. Senate Bill 620 of the 97th General Assembly passed both houses on May 31, 2011. Thus, this amendatory Act of the 97th General Assembly (Senate Bill 630) is the one last acted upon by the General Assembly. If Senate Bill 620 becomes law and this amendatory Act (Senate Bill 630) becomes law, then this amendatory Act (Senate Bill 630) controls as provided in Section 6 of the Statute on Statutes (5 ILCS 70/6)."

Effective Date. Section 99 of P.A. 97-474 made this section effective upon becoming law. The Act was approved August 22, 2011.

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§ 105 ILCS 5/34-225. School transition plans

Sec. 34-225. School transition plans. (a) If the Board approves a school action, the chief executive officer or his or her designee shall work collaboratively with local school educators and families of students attending a school that is the subject of a school action to ensure successful integration of affected students into new learning environments.

(b) The chief executive officer or his or her designee shall prepare and implement a school transition plan to support students attending a school that is the subject of a school action that accomplishes the goals of this Section. The chief executive must identify and commit specific resources for implementation of the school transition plan for a minimum of the full first academic year after the board approves a school action.

(c) The school transition plan shall include the following:

(1) services to support the academic, social, and emotional needs of students; supports for students with disabilities, homeless students, and English language learners; and support to address security and safety issues;

(2) options to enroll in higher performing schools;

(3) informational briefings regarding the choice of schools that include all pertinent information to enable the parent or guardian and child to make an informed choice, including the option to visit the schools of choice prior to making a decision; and

(4) the provision of appropriate transportation where practicable.

(Source: P.A. 97-473, § 5; 97-474, § 5.)

Note.

Section 97 of P.A. 97-474 provides "Control over other Act. Senate Bill 620 of the 97th General Assembly passed both houses on May 31, 2011. Thus, this amendatory Act of the 97th General Assembly (Senate Bill 630) is the one last acted upon by the General Assembly. If Senate Bill 620 becomes law and this amendatory Act (Senate Bill 630) becomes law, then this amendatory Act (Senate Bill 630) controls as provided in Section 6 of the Statute on Statutes (5 ILCS 70/6)."

Effective Date. Section 99 of P.A. 97-474 made this section effective upon becoming law. The Act was approved August 22, 2011.

§ 105 ILCS 5/34-230. School action public meetings and hearings

Sec. 34-230. School action public meetings and hearings. (a) By November 1 of each year, the chief executive officer shall prepare and publish guidelines for school actions.

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The guidelines shall outline the academic and non-academic criteria for a school action. These guidelines, and each subsequent revision, shall be subject to a public comment period of at least 21 days before their approval.

(b) The chief executive officer shall announce all proposed school actions to be taken at the close of the current academic year consistent with the guidelines by December 1 of each year.

(c) On or before December 1 of each year, the chief executive officer shall publish notice of the proposed school actions.

(1) Notice of the proposal for a school action shall include a written statement of the basis for the school action, an explanation of how the school action meets the criteria set forth in the guidelines, and a draft School Transition Plan identifying the items required in Section 34-225 of this Code [105 ILCS 5/34-225] for all schools affected by the school action. The notice shall state the date, time, and place of the hearing or meeting.

(2) The chief executive officer or his or her designee shall provide notice to the principal, staff, local school council, and parents or guardians of any school that is subject to the proposed school action.

(3) The chief executive officer shall provide written notice of any proposed school action to the State Senator, State Representative, and alderman for the school or schools that are subject to the proposed school action.

(4) The chief executive officer shall publish notice of proposed school actions on the district's Internet website.

(5) The chief executive officer shall provide notice of proposed school actions at least 30 calendar days in advance of a public hearing or meeting. No Board decision regarding a proposed school action may take place less than 60 days after the announcement of the proposed school action.

(d) The chief executive officer shall publish a brief summary of the proposed school actions and the date, time, and place of the hearings or meetings in a newspaper of general circulation.

(e) The chief executive officer shall designate at least 3 opportunities to elicit public comment at a hearing or meeting on a proposed school action and shall do the following:

(1) Convene at least one public hearing at the centrally located office of the Board.

(2) Convene at least 2 additional public hearings or meetings at a location convenient to the school community subject to the proposed school action.

(f) Public hearings shall be conducted by a qualified independent hearing officer chosen from a list of independent hearing officers. The general counsel shall compile and publish a list of independent hearing officers by November 1 of each school year. The independent hearing officer shall have the following qualifications:

(1) he or she must be a licensed attorney eligible to practice law in Illinois;

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(2) he or she must not be an employee of the Board; and

(3) he or she must not have represented the Board, its employees or any labor organization representing its employees, any local school council, or any charter or contract school in any capacity within the last year.

(4) The independent hearing officer shall issue a written report that summarizes the hearing and determines whether the chief executive officer complied with the requirements of this Section and the guidelines.

(5) The chief executive officer shall publish the report on the district's Internet website within 5 calendar days after receiving the report and at least 15 days prior to any Board action being taken.

(g) Public meetings shall be conducted by a representative of the chief executive officer. A summary of the public meeting shall be published on the district's Internet website within 5 calendar days after the meeting.

(h) If the chief executive officer proposes a school action without following the mandates set forth in this Section, the proposed school action shall not be approved by the Board during the school year in which the school action was proposed.

(Source: P.A. 97-473, § 5; 97-474, § 5.)

Note.

Section 97 of P.A. 97-474 provides "Control over other Act. Senate Bill 620 of the 97th General Assembly passed both houses on May 31, 2011. Thus, this amendatory Act of the 97th General Assembly (Senate Bill 630) is the one last acted upon by the General Assembly. If Senate Bill 620 becomes law and this amendatory Act (Senate Bill 630) becomes law, then this amendatory Act (Senate Bill 630) controls as provided in Section 6 of the Statute on Statutes (5 ILCS 70/6)."

Effective Date. Section 99 of P.A. 97-474 made this section effective upon becoming law. The Act was approved August 22, 2011.

§ 105 ILCS 5/34-235. Emergencies

Sec. 34-235. Emergencies. Nothing in Sections 34-200 through 34-235 of this Code [105 ILCS 5/34-200 through 105 ILCS 5/34-235] prevents the district from taking emergency action to protect the health and safety of students and staff in an attendance center. In the event of an emergency that requires the district to close all or part of a school facility, including compliance with a directive of a duly authorized public safety agency, the chief executive officer or his or her designees are authorized to take all steps necessary to protect the safety of students and staff, including relocation of the attendance center to another location or closing the attendance center. In such cases, the chief executive

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officer shall provide written notice of the basis for the emergency action within 3 days after declaring the emergency and shall publish the steps that have been taken or will be taken to address the emergency within 10 days after declaring the emergency. The notice shall be posted on the district's website and provided to the principal, the local school council, and the State Senator, the State Representative, and the alderman of the school that is the subject of the emergency action. The notice shall explain why the district could not comply with the provisions in Sections 34-200 through 34-235 of this Code.

(Source: P.A. 97-473, § 5; 97-474, § 5.)

Note.

Section 97 of P.A. 97-474 provides "Control over other Act. Senate Bill 620 of the 97th General Assembly passed both houses on May 31, 2011. Thus, this amendatory Act of the 97th General Assembly (Senate Bill 630) is the one last acted upon by the General Assembly. If Senate Bill 620 becomes law and this amendatory Act (Senate Bill 630) becomes law, then this amendatory Act (Senate Bill 630) controls as provided in Section 6 of the Statute on Statutes (5 ILCS 70/6)."

Effective Date. Section 99 of P.A. 97-474 made this section effective upon becoming law. The Act was approved August 22, 2011.

Article 34A.

School Finance Authority

§ 105 ILCS 5/34A-101. Short title

Sec. 34A-101. Short title. This Article shall be known and may be cited as the "School Finance Authority Act."

(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-101.

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CASE NOTES

Constitutionality

This Act is valid under the public education, equal protection, delegation of powers, separation of powers and legislative provisions of the 1970 Illinois Constitution. Polich v. Chicago Sch. Fin. Auth., 79 Ill. 2d 188, 37 Ill. Dec. 357, 402 N.E.2d 247 (1980).

§ 105 ILCS 5/34A-102. Findings and purpose

Sec. 34A-102. Findings and purpose. (a) The General Assembly finds:

(i) A fundamental goal of the people of the State, as expressed in Section 1 of Article X of the Illinois Constitution, is the educational development of all persons to the limits of their capacities. When a board of education faces financial difficulties, continued operation of the public school system is threatened.

(ii) A sound financial structure is essential to the continued operation of any school system. It is vital to commercial, educational and cultural interests that the public schools remain in operation. To achieve that goal, public school systems must have effective access to the private market to borrow short and long term funds.

(iii) To promote the financial integrity of boards of education of cities having a population exceeding 500,000, it is necessary to provide for the creation of school finance authorities with the powers necessary to promote sound financial management and to assure the continued operation of the public schools.

(b) It is the purpose of this Article to provide a secure financial basis for the continued operation of the public schools. In addition, it is the further purpose of this Article to facilitate implementation of school reform in the continued operation of the public schools in accordance with the provisions of this amendatory Act of 1991. The intention of the General Assembly, in enacting this legislation, is to establish procedures, provide powers and impose restrictions to assure the financial and educational integrity of the public schools while leaving principal responsibility for the educational policies of the public schools to the boards of education within the State, consistent with the requirements for satisfying the public policy and purpose herein set forth.

(Source: P.A. 85-1418; 86-1477.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-102.

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As to the purpose and applicability of P.A. 86-1477, see Sections 1, 4 and 5 thereof, which ratify certain actions and proceedings taken pursuant to this Article as enacted by P.A. 85-1418.

§ 105 ILCS 5/34A-103. Definitions

Sec. 34A-103. Definitions. As used in this Article:

(a) "Authority" means the "(Name of City) School Finance Authority";

(b) "Board" means any board of education to which this Article is applicable;

(c) "Budget" means the budget of the Board as defined in Section 34-43 of this Act [105 ILCS 5/34-43], as from time to time in effect;

(d) "Chairman" means the chairman of the Authority appointed pursuant to paragraph (c) of Section 34A-301 of this Article [105 ILCS 5/34A-301];

(e) "City" means the city wherein the school district of such Board is located;

(f) "Financial Plan" means the financial plan of the Board to be developed pursuant to Section 34A-403 of this Article [105 ILCS 5/34A-403], as from time to time in effect;

(g) "Fiscal Year" means the fiscal year of the Board;

(h) "Governor" means the Governor of the State of Illinois;

(i) "School year" means the school year of the Board;

(j) "Approved System-Wide Educational Reform Goals and Objectives Plan" means the system-wide educational reform goals and objectives plan that has been accepted and approved by the Authority;

(k) "Investment Obligations" means any of the following which at the time of investment are legal investments under the laws of the State for the money proposed to be invested therein:

(i) Direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America;

(ii) Bonds, debentures or notes or other evidence of indebtedness issued or guaranteed by any of the following agencies: Bank for Cooperatives; Federal Intermediate Credit Banks; Federal Land Banks; Federal Home Loan Banks; the Federal National Mortgage Association; the United States Postal Service; the Government National Mortgage Association; the Federal Financing National Mortgage Association; the Federal Financing Bank; or any other agency or instrumentality of the United States of America now existing or hereafter created;

(iii) New Housing Authority Bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an Annual Contributions Contract or Contracts with the United States

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of America, or Project Notes issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;

(iv) Direct and general obligations of, or obligations guaranteed by, the State, to the payment of the principal of and interest on which the full faith and credit of the State is pledged;

(v) Negotiable or non-negotiable time deposits evidenced by certificates of deposit issued by banks, trust companies or national banking associations (which may include the trustee) which are members of the Federal Deposit Insurance Corporation and savings and loan associations which are members of the Federal Savings and Loan Insurance Corporation, provided that such time deposits in any such bank, trust company, national banking association or savings and loan association are continuously secured by obligations described in clauses (i), (ii), (iii), or (iv) of this definition, provided further that such obligations at all times have a market value at least equal to the maturity value of the deposits so secured, including accrued interest; and

(vi) Repurchase agreements with banks (which may include the trustee) described in clause (v) of this definition and government bond dealers reporting to, trading with, and recognized as primary dealers by a Federal Reserve Bank, the underlying securities of which are obligations described in clauses (i) or (ii) of this definition, provided that the underlying securities are required to be continuously maintained at a market value not less than the amount so invested;

(l) "Mayor" means the Mayor of the City;

(m) "Obligations" means bonds and notes of the Authority;

(n) "State" means the State of Illinois.

(Source: P.A. 85-1418; 86-1477.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-103.

§ 105 ILCS 5/34A-104. Establishment of Authority

Sec. 34A-104. Establishment of Authority. For each school district organized under Article 34 [105 ILCS 5/34-1 et seq.] there is established a body both corporate and politic and a unit of local government to be known as the "(Name of City) School Finance Authority" which, in such name, shall exercise all authority vested in such Authority by this Article.

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(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-104.

§ 105 ILCS 5/34A-201. General powers

Sec. 34A-201. General powers. The purposes of the Authority shall be to exercise financial control over the Board, and to furnish financial assistance so that the Board can provide public education within the Board's jurisdiction while permitting the Board to meet its obligations to its creditors and the holders of its notes and bonds. Except as expressly limited by this Article, the Authority shall have all powers necessary to meet its responsibilities and to carry out its purposes and the purposes of this Article, including, but not limited to, the following powers:

(a) to sue and be sued;

(b) to provide for its organization and internal management and, subject to agreements with or for the benefit of holders of its Obligations, to make rules and regulations governing the use of its property and facilities;

(c) to make and execute contracts, leases, subleases and all other instruments or agreements necessary or convenient for the exercise of the powers and functions granted by this Article;

(d) to purchase real or personal property necessary or convenient for its purposes; to execute and deliver deeds for real property held in its own name; to mortgage, pledge or otherwise grant security interests in such properties; and to sell, lease, or otherwise dispose of such of its property as, in the judgment of the Authority, is no longer necessary for its purposes;

(e) to appoint officers, agents, and employees of the Authority, define their duties and qualifications and fix their compensation and employee benefits;

(f) to lend or otherwise transfer to the Board such sums of money as are not required for other purposes;

(g) to borrow money and to issue Obligations pursuant to this Article, to fund, refund or advance refund the same, to provide for the rights of the holders of its Obligations, and to repay any advances;

(h) subject to the provisions of any contract with or for the benefit of the holders of its Obligations, to purchase or redeem its Obligations or to purchase the notes, bonds or obligations of the Board or the notes, bonds or obligations of the City;

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(i) to procure insurance against any loss in such amounts and from such insurers as it deems desirable;

(j) to engage the services of consultants for rendering professional and technical assistance and advice on matters within the Authority's power;

(k) to contract for and to accept any gifts, grants or loans of funds or property or financial or other aid in any form from the federal government, state government, unit of local government, school district or any agency or instrumentality thereof, or from any other private or public source, and to comply with the terms and conditions thereof;

(l) as security for the payment of the principal of and interest on its Obligations and for the performance of any agreements made in connection therewith, to grant a security interest or lien upon all or any part of its property or revenues;

(m) to pay the expenses of its operations; and

(n) to do any and all things necessary or convenient to carry out its purposes and exercise the powers given to the Authority by this Article.

(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-201.

CASE NOTES

Analysis

Consent Decree
Intervention

Consent Decree

Consent decree between the United States and school board did not lawfully extinguish the right and duty conferred on finance authority by the School Finance Authority Act to control the school board's finances. United States v. Board of Educ., 11 F.3d 668 (7th Cir. 1993).

Intervention

District judge was right to permit finance authority to intervene in opposition to school board's request to enjoin the finance authority from exercising its statutory control over the board's finances. United States v. Board of Educ., 11 F.3d 668 (7th Cir. 1993).

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§ 105 ILCS 5/34A-201.1: Repealed by P.A. 89-698, § 10, effective January 14, 1997.

§ 105 ILCS 5/34A-201a: Repealed by P.A. 88-511, § 4.05, effective November 14, 1993.

§ 105 ILCS 5/34A-202. Deposits and Investments

Sec. 34A-202. Deposits and Investments. (a) The Authority shall have the power to establish checking and whatever other banking or savings and loan association accounts it may deem appropriate for conducting its affairs.

(b) Subject to the provisions of any contract with or for the benefit of the holders of its Obligations, the Authority may invest any funds not required for immediate use or disbursement, whether pursuant to Section 34A-201 of this Article [105 ILCS 5/34A-201] or otherwise, only in Investment Obligations.

No bank or savings and loan association shall receive public funds as permitted by this Section, unless it has complied with the requirements established pursuant to Section 6 of "An Act relating to certain investments of public funds by public agencies", approved July 23, 1943, as now or hereafter amended [30 ILCS 235/6].

(Source: P.A. 83-541.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-202.

§ 105 ILCS 5/34A-301. Board of Directors

Sec. 34A-301. Board of Directors. The governing body of the Authority shall be a board consisting of 5 Directors appointed as follows:

(a) Two Directors appointed by the Governor, with the approval of the Mayor.

(b) Two Directors appointed by the Mayor, with the approval of the Governor.

(c) One Director appointed jointly by the Governor and the Mayor, who shall serve as Chairman.

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(d) The Governor and the Mayor shall certify their respective appointments and approvals to the Secretary of State.

(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-301.

§ 105 ILCS 5/34A-302. Terms, vacancies and removal

Sec. 34A-302. Terms, vacancies and removal. Of the initial Directors appointed by the Governor, with the approval of the Mayor, one each shall be selected for terms expiring on January 31, 1981 and January 31, 1982. Of the initial Directors appointed by the Mayor with the approval of the Governor, one each shall be selected for terms expiring on January 31, 1981 and January 31, 1982. The initial Chairman shall be selected for a term expiring January 31, 1983. Thereafter, each Director shall hold office for a term of 3 years, and until his successor has been appointed as provided in Section 34A-301 [105 ILCS 5/34A-301]. Any vacancy which shall arise, shall be filled as provided in Section 34A-301 [105 ILCS 5/34A-301]. Any Director appointed to fill a vacancy shall serve until the expiration of his predecessor's term, and until his successor has been appointed as provided in Section 34A-301 [105 ILCS 5/34A-301]. A vacancy shall occur upon resignation, death, conviction of a felony, or removal from office of a Director. Directors shall be eligible for reappointment. Any Director may be removed for incompetence, malfeasance or neglect of duty, at the instance of the occupant of the office entitled to appoint that Director, or in the case of the Chairman at the instance of the occupant of each office so entitled.

(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-302.

§ 105 ILCS 5/34A-303. Chairman and other officers

Sec. 34A-303. Chairman and other officers. The Chairman shall preside at meetings of the Directors. The Directors may establish such offices and appoint such officers for the Authority as they may deem appropriate.

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(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-303.

§ 105 ILCS 5/34A-304. Assistance by state agencies, units of local government or school districts

Sec. 34A-304. Assistance by state agencies, units of local government or school districts. The Board shall render such services to, and permit the use of its facilities and resources by, the Authority at no charge as may be requested by the Authority. Any state agency, unit of local government, or school district may, within its respective function, render such services to the Authority as may be requested by the Authority. Upon request of the Authority any such agency, unit of local government or school district is hereby authorized and empowered to transfer to the Authority such officers and employees as the Authority may deem necessary in carrying out its functions and duties. Officers and employees so transferred shall not lose or forfeit their employment status or rights.

(Source: P.A. 85-1418; 86-1477.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-304.

§ 105 ILCS 5/34A-305. Compensation

Sec. 34A-305. Compensation. The Directors shall serve without compensation, but each Director shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties as a Director.

(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-305.

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§ 105 ILCS 5/34A-306. Meetings and records

Sec. 34A-306. Meetings and records. (a) The Governor shall call the first meeting of the Authority. Thereafter, the Directors shall prescribe the times and places for their meetings and the manner in which regular and special meetings may be called. The Directors shall comply in all respects with "An Act in relation to meetings", approved July 11, 1957, as now or hereafter amended [5 ILCS 120/1 et seq.]. The Authority shall be an Agency to which the Local Records Act, as amended [5 ILCS 205/1 et seq.], applies.

(b) A majority of the Directors holding office shall constitute a quorum for the conduct of business. The affirmative votes of at least 3 Directors shall be necessary for adopting any rule or regulation, and for any other action required by this Article to be taken by resolution, directive or ordinance.

(c) The Authority and the State Superintendent of Education shall cooperate with each other in the exercise of their respective powers under The School Code [105 ILCS 5/1-1 et seq.]. There shall be at least one annual meeting between the Authority and the State Superintendent of Education in order to facilitate cooperation and communication.

(Source: P.A. 85-1418; 86-1477.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-306.

§ 105 ILCS 5/34A-401. Approval of Financial Plan and Budget

Sec. 34A-401. Approval of Financial Plan and Budget. In carrying out the purposes of this Article and pursuant to Sections 34A-402 through 34A-411 [105 ILCS 5/34A-402 through 105 ILCS 5/34A-411], as hereinafter provided, the Authority shall have the power to approve or to reject the Financial Plans, Budgets and contracts of the Board; provided, however, that the Authority shall have no power to impair any existing contract or obligation of the Board; and provided further, that with respect to any multi-year employment contract or collective bargaining agreement authorized or entered into pursuant to Section 34-49 [105 ILCS 5/34-49] or the Illinois Educational Labor Relations Act, as now or hereafter amended [115 ILCS 5/1 et seq.], the Authority's power to approve or reject the same shall be limited to the first year of such contract or agreement as provided in Section 34A-405 [105 ILCS 5/34A-405]. Except as provided in Section 34A-403 [105 ILCS 5/34A-403] with regard to revenue estimates, the Authority shall have no power to amend or reject in part any Financial Plan, Budget or contract presented to the Authority for its approval.

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(Source: P.A. 84-1057.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-401.

CASE NOTES

Analysis
Legislative Intent
Suspended

Legislative Intent

It is clear the General Assembly intended to benefit economically disadvantaged children attending public schools. Noyola v. Board of Educ., 284 Ill. App. 3d 128, 219 Ill. Dec. 635, 671 N.E.2d 802 (1 Dist. 1996), aff'd, 179 Ill. 2d 121, 227 Ill. Dec. 744, 688 N.E.2d 81 (1997).

Suspended

Through section 105 ILCS 5/34A-410 has been suspended by the General Assembly until July 1, 1999 pursuant to 105 ILCS 5/34A-411. Noyola v. Board of Educ., 284 Ill. App. 3d 128, 219 Ill. Dec. 635, 671 N.E.2d 802 (1 Dist. 1996), aff'd, 179 Ill. 2d 121, 227 Ill. Dec. 744, 688 N.E.2d 81 (1997).

§ 105 ILCS 5/34A-401.1. Limitation

Sec. 34A-401.1. Limitation. Notwithstanding the provisions of any other law to the contrary, the Authority shall have no power to reject the Financial Plans, Budgets and Contracts of the Board for the failure of the Board to keep reserves in excess of $5,000,000.

(Source: P.A. 83-1130.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-401.1.

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§ 105 ILCS 5/34A-402. Balanced budget

Sec. 34A-402. Balanced budget. The Board's budget for its fiscal year ending in 1982 and for each subsequent fiscal year shall be balanced in accordance with an accounting system and procedure to be prescribed by the Authority, with substantial progress toward balancing the budget to be achieved in each of the preceding fiscal years; provided, however, that (1) for the fiscal year of the Board ending in 1992, the aggregate amount of the reserved fund balances required to be maintained by the Board under its budget for that fiscal year as last balanced by the Board and approved by the Authority prior to the effective date of this amendatory Act of 1992 in accordance with the accounting system and procedure prescribed by the Authority is hereby reduced by $13,266,200, (2) the $13,266,200 released from reserved fund balance requirements in fiscal year 1992 by this amendatory Act of 1992 shall be available to the Board for appropriation by it for any lawful school purpose during its fiscal year ending in 1992, and (3) the Authority shall not require the $13,266,200 released from reserved fund balance requirements in fiscal year 1992 by this amendatory Act of 1992 to be restored by the Board under any regular, supplemental or amended budget adopted for any fiscal year ending in 1992 or thereafter.

For the fiscal year of the Board ending in 1994, the aggregate amount of the reserved fund balances required to be maintained by the Board under its budget for that fiscal year in accordance with the accounting system and procedure prescribed by the Authority as of the effective date of this amendatory Act of 1993 is hereby reduced by $22,000,000. The $22,000,000 released from reserved fund balance requirements in fiscal year 1994 by this amendatory Act of 1993 shall be available to the Board for appropriation by it for any lawful school purpose during its fiscal year ending in 1994. The Authority shall not require the $22,000,000 released from reserved fund balance requirements in fiscal year 1994 by this amendatory Act of 1993 to be restored by the Board under any regular, supplemental or amended budget adopted for any fiscal year ending in 1994 or thereafter. This reduction in the required reserved fund balance is in addition to the reduction made by Public Act 87-838.

For the fiscal year of the Board ending in 1994, the aggregate amount of the reserved fund balances required to be maintained by the Board under its budget for that fiscal year in accordance with the accounting system and procedure prescribed by the Authority as of the effective date of this amendatory Act of 1993 is hereby reduced to $100,000,000. The reserved fund balances required to be maintained in each subsequent fiscal year shall not exceed $100,000,000.

(Source: P.A. 87-838; 88-89, § 5-5; 88-511, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-402.

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Effect of Amendments. The 1993 amendment by P.A. 88-89, effective July 14, 1993, added the second paragraph.

The 1993 amendment by P.A. 88-511, effective November 14, 1993, incorporated the amendments from P.A. 88-89 and added the third paragraph.

§ 105 ILCS 5/34A-403. Financial Plans

Sec. 34A-403. Financial Plans. The Board shall develop, adopt and submit to the Authority on or before March 1, 1980, for approval by the Authority, an initial Financial Plan with respect to the remaining portion of the Fiscal Year ending in 1980 and for the two succeeding Fiscal Years. The Board shall develop and adopt subsequent Financial Plans in accordance with this Section. Beginning with the Fiscal Year beginning in 1993, and every second year thereafter, the Board shall adopt a Financial Plan covering a period of 2 fiscal years. After adoption by the Board, the Board shall submit each plan to the Authority for its approval not later than 30 days prior to the commencement of the first Fiscal Year to which the Financial Plan relates, except that the Financial Plan to be developed for the Fiscal Years beginning in 1993 and 1994 shall be submitted to the Authority within 90 days of the effective date of this amendatory Act of 1993. The Authority shall approve or reject the Financial Plan within 15 days of its receipt of the Financial Plan from the Board. No Financial Plan shall have force or effect without approval of the Authority. Each Financial Plan shall be developed, submitted, approved and monitored in accordance with the following procedures:

(a) The Board shall determine and submit to the Authority, at a time and in a manner prescribed by the Authority, estimates of revenues available to the Board during the period for which the Financial Plan is to be in effect. The Authority shall approve, reject or amend the revenue estimates. In the event the Board fails, for any reason, to submit to the Authority estimates of revenue as required by this paragraph, the Authority may prepare such estimates. The Financial Plan submitted by the Board shall be based upon revenue estimates approved or prepared by the Authority. As soon as practicable following the establishment of the Authority, the President of the Board shall, at the request of the Chairman of the Authority, make available to the Chairman of the Authority copies of the audited financial statements and of the books and records of account of the Board for the preceding 5 fiscal years of the Board.

(b) Each Financial Plan for each Fiscal Year or part thereof to which it relates, shall contain (i) a description of revenues and expenditures, provision for debt service, cash resources and uses, and capital improvements, each in such manner and detail as the Authority shall prescribe, (ii) a description of the means by which the Budget will be brought into balance in accordance with Section 34A-402 of this Article [105 ILCS 5/34A-402], and (iii) such other matters that the Authority, in its discretion, requires. The initial Financial Plan shall also include a description of the means by which any outstanding short-term indebtedness shall be paid or refunded by the Board. The Authority may prescribe any reasonable time, standards, procedures or forms consistent with this Section for preparation and submission of the Financial Plan.

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(c) The Authority shall approve the initial and each subsequent Financial Plan if, in its judgment, the plan is complete, is reasonably capable of being achieved, and meets the requirement set forth in Section 34A-402 of this Article [105 ILCS 5/34A-402]. Otherwise, the Authority shall reject the Financial Plan. In the event of rejection, the Authority may prescribe a procedure and standards for revision of the Financial Plan by the Board.

(d) The Board shall report to the Authority, at such times and in such manner as the Authority may direct, concerning the Board's compliance with each Financial Plan. The Authority may review the Board's operations, obtain budgetary data and financial statements, require the Board to produce reports, and have access to any other information in the possession of the Board that it deems relevant. The Authority may issue recommendations or directives within its powers to the Board to assure compliance with the Financial Plan. The Board shall produce such budgetary data, financial statements, reports and other information and comply with such directives.

(e) After approval of each Financial Plan, the Board shall regularly reexamine the revenue and expenditure estimates on which it was based and revise them as necessary. The Board shall promptly notify the Authority of any material change in the revenue or expenditure estimates in the Financial Plan. The Board may submit to the Authority, or the Authority may require the Board to submit, modified Financial Plans based upon revised revenue or expenditure estimates or for any other good reason. The Authority shall approve or reject each modified Financial Plan pursuant to paragraph (c) of this Section.

(Source: P.A. 84-1334; 84-1401; 84-1438; 88-511, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-403.

Effect of Amendments. The 1993 amendment by P.A. 88-511, effective November 14, 1993, in the introductory language, in the second sentence substituted "in accordance with this Section" for "as directed by the Authority", in the third sentence substituted "Beginning with the Fiscal Year beginning in 1993, and every second year thereafter, the Board shall adopt a" for "The Authority shall require that each", substituted "covering" for "cover", and substituted "2" for "at least 3", in the fourth sentence added at the end the language beginning "except that the Financial Plan to be developed", and in the fifth sentence substituted "15" for "30"; and in the last sentence of subsection (b) inserted "consistent with this Section".

§ 105 ILCS 5/34A-403.1. Fiscal year 1994 contracts

Sec. 34A-403.1. Fiscal year 1994 contracts. Notwithstanding any provision of this Article to the contrary, the failure of a Board to have a Financial Plan approved by the School Finance Authority within 90 days after the effective date of this amendatory Act of 1993

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shall not impair the Board's power to enter into any contract or other obligation or the Authority's powers and responsibilities under Sections 34A-404, 34A-405, and 34A-405.2 [105 ILCS 5/34A-404, 105 ILCS 34A-405, and 105 ILCS 5/34A-405.2] or in any other way affect the operations of the Board.

(Source: P.A. 88-511, § 1; 92-651, § 37.)

Note.

Section 997 of P.A. 92-651 is a no acceleration or delay provision, and Section 998 is a no revival or extension provision.

Effective Date. Section 99 of P.A. 88-511 made this section effective upon becoming law. The Act was approved November 14, 1993.

Effect of Amendments. The 2002 amendment by P.A. 92-651, effective July 11, 2002, substituted "34A-405" for "34-405".

§ 105 ILCS 5/34A-404. Budgets

Sec. 34A-404. Budgets. The Board shall develop and adopt and submit to the Authority on or before February 1, 1980, for approval by the Authority, a revised Budget for the remaining portion of the Fiscal Year ending in 1980 and, thereafter, an annual Budget for each Fiscal Year. After adoption by the Board, the Board shall submit each Budget to the Authority for its approval not later than 30 days prior to the commencement of the Fiscal Year to which the Budget relates. The Authority shall approve or reject the Budget within 15 days of its receipt from the Board. No Budget shall have force or effect without approval of the Authority. Each Budget shall be developed, submitted, approved and monitored in accordance with the following procedures:

(a) Each Budget submitted by the Board shall be based upon revenue estimates approved or prepared by the Authority, as provided in paragraph (a) of Section 34A-403 of this Article [105 ILCS 5/34A-403].

(b) Each Budget shall contain such information and detail as may be prescribed by the Authority. The Authority may also prescribe any reasonable time, standards, procedures or forms for preparation and submission of the Budget. Any deficit for the Fiscal Year ending in 1981 and for any Fiscal Year thereafter shall be included as a current expense item for the succeeding Fiscal Year.

(c)(1) The Authority shall approve each Budget if, in its judgment, the Budget is complete, is reasonably capable of being achieved, will meet the requirement set forth in Section 34A-402 of this Article [105 ILCS 5/34A-402], and will be consistent with the Financial Plan in effect. Otherwise, the Authority shall reject the Budget. In the event of

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rejection, the Authority may prescribe a procedure and standards for revision of the Budget by the Board.

(2) For any Fiscal Year, the Authority may approve a provisional budget that, in its judgment, will satisfy the standards of subdivision (c)(1) of this Section if, notwithstanding the provisions of the Illinois Educational Labor Relations Act [115 ILCS 5/1 et seq.] or any other law to the contrary, the amount appropriated therein for all spending for operations shall not at any time, on an annualized basis, exceed an Expenditure Limitation established by the Authority. The Authority may establish and enforce, including by exercise of its powers under Section 34A-409(b) [105 ILCS 5/34A-409], such monitoring and control measures as it deems necessary to assure that the commitments, obligations, expenditures, and cash disbursements of the Board continue to conform on an ongoing basis with any Expenditure Limitation. No commitment, contract, or other obligation of the Board in excess of the Expenditure Limitation shall be legally binding, and any member of the Board or any local school council, or officer, employee or agent thereof, who violates the provisions of this Section shall be subject to the provisions of Sections 34-52 and 34A-608 [105 ILCS 5/34-52 and 105 ILCS 5/34A-608]. An Expenditure Limitation established by the Authority shall remain in effect for that Fiscal Year or until revoked by the Authority.

(d) The Board shall report to the Authority at such times and in such manner as the Authority may direct, concerning the Board's compliance with each Budget. The Authority may review the Board's operations, obtain budgetary data and financial statements, require the Board to produce reports, and have access to any other information in the possession of the Board that the Authority deems relevant. The Authority may issue recommendations or directives within its powers to the Board to assure compliance with the Budget. The Board shall produce such budgetary data, financial statements, reports and other information and comply with such directives.

(e) After approval of each Budget, the Board shall promptly notify the Authority of any material change in the revenue or expenditure estimates in the Budget. The Board may submit to the Authority, or the Authority may require the Board to submit, a supplemental Budget. The Authority shall approve or reject each supplemental Budget pursuant to paragraph (c) of this Section.

(Source: P.A. 84-1334; 84-1401; 84-1438; 88-511, § 2.1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-404.

Effect of Amendments. The 1993 amendment by P.A. 88-511, effective November 14, 1993, in the third sentence of the introductory language substituted "15" for "30"; added the subdivision (c)(1) designation; and added subdivision (c)(2).

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§ 105 ILCS 5/34A-405. Contracts

Sec. 34A-405. Contracts. (a) No contract or other obligation shall be entered into by the Board unless it is consistent with the Financial Plan and Budget in effect. No multi-year employment contract or collective bargaining agreement authorized or entered into pursuant to Section 34-49 [105 ILCS 5/34-49] or the Illinois Educational Labor Relations Act, as now or hereafter amended [115 ILCS 5/1 et seq.], shall, with respect to any terms and provisions thereof which are operative after expiration of the first year of any such contract or agreement, be deemed inconsistent with any Financial Plan and Budget at any time in effect; provided, however, that any terms and provisions of a contract or agreement which would increase expenditures for salaries, benefits or other forms of compensation after the expiration of the first year of such contract or agreement shall be contingent upon the attainment of sufficient available revenues, considering all necessary expenditures, to support such increases.

(b) The Authority may adopt, and from time to time amend, regulations identifying categories and types of contracts and other obligations that shall be subject to approval by the Authority and the procedure for submitting contracts for approval. Each contract or other obligation that is entered into by the Board and requires approval by the Authority shall contain a provision stating that it shall not become legally binding on the Board unless and until it has received the approval of the Authority. No contract or other obligation that requires the approval of the Authority shall be legally binding on the Board unless and until it has received such approval. The Authority shall not, either by regulation or in practice, withhold approval of any multi-year employment contract or collective bargaining agreement authorized or entered into pursuant to Section 34-49 [105 ILCS 5/34-49] or the Illinois Educational Labor Relations Act, as now or hereafter amended [115 ILCS 5/1 et seq.], if, in the judgment of the Authority, the terms and provisions operative during the first year of such contract or agreement are consistent with the Budget and Financial Plan in effect for that period; provided, however, that any terms and provisions of a contract or agreement which would increase expenditures for salaries, benefits or other forms of compensation after the expiration of the first year of such contract or agreement shall be contingent upon the attainment of sufficient available revenues, considering all necessary expenditures, to support such increases.

(c) The Board shall submit to the Authority a copy of any contract or other obligation for which the approval of the Authority is required, along with a cost analysis and such other information as the Authority may require. The Authority may prescribe any reasonable time, standards, procedures or forms for submission of the contract or other obligation.

(d) The Authority shall approve the contract or obligation if, in its judgment, the information required to be submitted is complete and the contract or other obligation is consistent with the Budget and Financial Plan in effect. Otherwise, the Authority shall reject the contract or other obligation; provided, however, that any multi-year employment contract or collective bargaining agreement authorized or entered into pursuant to Section 34-49 [105 ILCS 5/34-49] or the Illinois Educational Labor Relations Act, as now or hereafter amended [115 ILCS 5/1 et seq.], shall be approved by the

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Authority if in its judgment the terms and provisions operative during the first year of such contract or agreement are consistent with the Budget and Financial Plan in effect for that period; provided, however, that any terms and provisions of a contract or agreement which would increase expenditures for salaries, benefits or other forms of compensation after the expiration of the first year of such contract or agreement shall be contingent upon the attainment of sufficient available revenues, considering all necessary expenditures, to support such increases. Contracts or other obligations not rejected within 30 days after submission to the Authority shall be considered approved, provided, however, that the Authority shall have an additional 30 days to approve or reject the contract or other obligation if it so advises the Board within the initial 30 day period.

(Source: P.A. 84-1057.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-405.

§ 105 ILCS 5/34A-405.1. Interim operations

Sec. 34A-405.1. Interim operations. Notwithstanding any other provision of law to the contrary, for the period September 1 through September 12, 1993, the following provisions apply:

(1) The Board of Education shall not be subject to the provisions of Section 34A-406 [105 ILCS 5/34A-406].

(2) Neither the Board, the general superintendent, nor any other officer or employee of the Board, nor any local school council, may hire any person as an employee or officer of the Board in any position.

(3) The Board of Education shall not be subject to the provisions of Section 14 of the Illinois Educational Labor Relations Act [115 ILCS 5/14] for any actions taken under item (2) of this Section.

(4) The Board shall adopt an interim appropriation authorizing the expenditure of funds consistent with the provisions of this Section.

(Source: P.A. 88-473 (1st Sp. Sess.), § 1.)

Effective Date. Section 99 of P.A. 88-473 made this section effective upon becoming law. The Act was approved September 3, 1993.

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§ 105 ILCS 5/34A-405.2. Staffing levels

Sec. 34A-405.2. Staffing levels. (a) No hiring or appointment of any person in any position by the Board, the general superintendent, any other officer or employee of the Board, or any local school council shall be made or entered into unless it is consistent with the Financial Plan and Budget in effect and the staffing plan approved by the Authority under this Section. The hiring or appointment of any person shall not be binding on the Board unless and until it is in compliance with this Section.

(b) The Board shall submit to the Authority for approval by the Authority a staffing plan for the upcoming school year at the same time as the submission of the Budget, except that the staffing plan for the fiscal year ending in 1994 shall be submitted to the Authority within 90 days after the effective date of this amendatory Act of 1993. The staffing plan shall be accompanied by a cost analysis and such other information as the Authority may require. The Authority may adopt, and from time to time amend, regulations to implement this Section and may prescribe standards, procedures, and forms for submission of the staffing plan.

(c) The Authority shall approve the staffing plan if, in its judgment, the information required to be submitted is complete and the staffing plan is consistent with the Budget and Financial Plan in effect. Otherwise, the Authority shall reject the staffing plan; in the event of rejection, the Authority shall prescribe a procedure and standards for revision of the staffing plan. The Authority shall act on the staffing plan at the same time as the approval of the Budget, except that the staffing plan for the fiscal year ending in 1994 shall be acted upon at the same time as approval of the Financial Plan for that fiscal year.

(d) The Board shall report to the Authority, at such times and in such manner as the Authority may direct, concerning the Board's compliance with each staffing plan. The Authority may review the Board's operations, obtaining budgetary data and financial statements, may require the Board to produce reports, and shall have access to any other information in the possession of the Board that it deems relevant. The Authority may issue recommendations or directives within its powers to the Board to assure compliance with the staffing plan. The Board shall produce such budgetary data, financial statements, reports, and other information and shall comply with such directives.

(e) After approval of each staffing plan, the Board shall regularly reexamine the estimates on which it was based and revise them as necessary. The Board shall promptly notify the Authority of any material change in the estimates in the staffing plan. The Board may submit to the Authority, or the Authority may require the Board to submit, modifications to the staffing plan based upon revised revenue or expenditure estimates or for any other good reason. The Authority shall approve or reject each modified staffing plan pursuant to subsection (c) of this Section.

(Source: P.A. 88-511, § 2.1.)

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Effective Date. Section 99 of P.A. 88-511 made this section effective upon becoming law. The Act was approved November 14, 1993.

§ 105 ILCS 5/34A-406. Expenditures

Sec. 34A-406. Expenditures. The Board shall meet its debt service obligations as they become due. No other expenditure shall be made by the Board unless it is consistent with the Financial Plan and Budget or a provisional budget provided for in Section 34A-404(c)(2) [105 ILCS 5/34A-404], in each case as in effect.

(Source: P.A. 81-1221; 88-511, § 2.1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-406.

Effect of Amendments. The 1993 amendment by P.A. 88-511, effective November 14, 1993, in the second sentence inserted "or a provisional budget provided for in Section 34A-404(c)(2), in each case as".

§ 105 ILCS 5/34A-406.1. [Number of education fund positions for 1984-85]

Sec. 34A-406.1. During the 1984-85 school year only, the number of education fund positions for both teacher-certificated and career service personnel employed by the Chicago Board of Education shall not exceed the previous year's budgeted positions, as certified by the Chicago School Finance Authority.

(Source: P.A. 83-1131.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-406.1.

§ 105 ILCS 5/34A-406.2. Interim Operations for Fiscal Year 1994 Pending Budget Adoption and Approval

Sec. 34A-406.2. Interim Operations for Fiscal Year 1994 Pending Budget Adoption and Approval. Notwithstanding any other provision of law to the contrary, for the fiscal year

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of the Board ending in 1994 only, during the period of 30 days after the effective date of this amendatory Act of 1993, the Board of Education is not subject to Sec. 34A-406 [105 ILCS 5/34A-406] and shall adopt an interim appropriation authorizing the expenditure of funds consistent with the provisions of this Section and of this amendatory Act of 1993. If the Board fails to timely meet and satisfy items (1) through (3) of this Section, no funds may be spent or disbursed and no obligations, commitments, or liabilities incurred for any part of the 30-day period after the failure occurs.

(1) Notwithstanding any provision of Section 34-46 [105 ILCS 5/34-46] to the contrary, within 10 days after the effective date of this amendatory Act of 1993, the Board shall prepare in tentative form a Budget for the fiscal year ending in 1994 and shall make at least 5 copies available for public inspection in the office of the Secretary of the Board and file 5 copies with the Authority.

(2) Notwithstanding any provision of Section 34-46 [105 ILCS 5/34-46] to the contrary, not less than 2 days before its final action on the Budget, the Board shall have a public hearing on the filed tentative Fiscal Year 1994 Budget. Public notice of the hearing shall be given once at least 2 days before the hearing by publication in a newspaper having general circulation in the City.

(3) Notwithstanding any provision of Section 34-43, 34-46, or 34A-404 [105 ILCS 5/34-43, 105 ILCS 5/34-46, or 105 ILCS 5/34A-404] to the contrary, within 15 days after the effective date of this amendatory Act of 1993, the Board shall adopt and submit to the Authority for approval or rejection the Budget for the fiscal year of the Board ending in 1994. The Authority shall approve or reject that Budget in accordance with Section 34A-404 [105 ILCS 5/34A-404] within 15 days of its receipt from the Board but not more than 30 days after the effective date of this amendatory Act of 1993. This item (3) does not apply to any revision, amendment, or supplement to the Budget for the fiscal year of the Board ending in 1994 if the revision, amendment, or supplement is adopted by the Board more than 30 days after, or is received by the Authority more than 20 days after, the effective date of this amendatory Act of 1993.

(Source: P.A. 88-511, § 1.)

Effective Date. Section 99 of P.A. 88-511 made this section effective upon becoming law. The Act was approved November 14, 1993.

§ 105 ILCS 5/34A-407. Approval of chief financial officer

Sec. 34A-407. Approval of chief financial officer. The Board shall appoint a chief financial officer subject to the approval of the Authority. Either the Authority or the Board shall have the power to remove the chief financial officer. The chief financial officer shall have the responsibility for preparing and supervising the Budget and Financial Plan of the Board and overseeing expenditures of the Board. The chief financial

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officer shall report to the Board. The chief financial officer may be granted the authority by the Board to hire a specific number of employees to assist in meeting immediate responsibilities. Conditions of employment for such personnel shall not be subject to the provisions of Section 34-85.

(Source: P.A. 82-485.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-407.

§ 105 ILCS 5/34A-408. Financial and managerial audits

Sec. 34A-408. Financial and managerial audits. (a) The Authority may examine the business records and audit the accounts of the Board or require that the Board examine its business records and audit its accounts at such time and in such manner as the Authority may prescribe. The Board shall appoint a certified public accountant annually, approved by the Authority, to audit its financial statements.

(b) The Authority shall initiate and direct financial and managerial assessments and similar analyses of the operations of the Chicago Board of Education, as may be required by this Section or as may, in the judgment of the Authority, assure sound and efficient financial management of the Board.

(c) On or before April 1, 1994, the Authority shall assure completion of assessments and analyses that:

(1) Provide for a review of the managerial and financial efficiencies and improvements that can be achieved in the operation of the special education programs of the Board.

(2) Analyze the potential cost savings and efficiencies that the Board can achieve through the consolidation of attendance centers and the operations of buildings.

Upon the completion of these required assessments, the Authority shall make recommendations to the Board regarding improvements and changes that derive from these assessments, which the Board should implement.

In conjunction with its budgetary submission to the Authority for the fiscal year that ends in 1995, the Board shall demonstrate to the satisfaction of the Authority that the recommendations requested by the Authority have been implemented in whole or in part or, in the alternative, are not capable of being implemented. In consideration of whether to approve or reject the budget for the fiscal year that ends in 1995, the Authority shall adjudge whether the Board has fully considered and responsibly proposed implementation of the Authority's recommendations.

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(d) On or before April 1, 1995, the Authority shall adopt and submit a report to the General Assembly, the Governor, and the Chicago Board of Education that reflects a comprehensive assessment of the financial status of the Chicago Board of Education. The report shall include an expenditure analysis of all special education programs provided by the Board, which shall include the number of programs available and student participation, the dollar amount spent on each program, the program location, the availability of transportation for students participating in the programs, and related expenditure recommendations. In addition, the report shall also include a review of all attendance centers for efficiency purposes, which shall include the total number of attendance centers in use, their capacities, and the number of students currently enrolled in the attendance centers, and the attendance center long range capital needs (repair and maintenance) based upon current and estimated future enrollments. A study shall also be included on teacher/student ratios.

(e) The Authority shall initiate and direct a management audit of the Board at least once every 2 years. The audit shall review the personnel, organization, contracts, leases, and physical properties of the Board to determine whether the Board is managing and utilizing its resources in an economical and efficient manner. The audit shall determine the causes of any inefficiencies or uneconomical practices, including inadequacies in internal and administrative procedures, organizational structure, uses of resources, utilization of real property, allocation of personnel, purchasing policies, and equipment.

(Source: P.A. 81-1221; 88-511, § 2.1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-408.

Effect of Amendments. The 1993 amendment by P.A. 88-511, effective November 14, 1993, in the section catchline inserted "and managerial"; added the subsection (a) designation; and added subsections (b) through (e).

§ 105 ILCS 5/34A-409. Cash accounts and bank accounts

Sec. 34A-409. Cash accounts and bank accounts. (a) The Authority shall require the Board or any officer of the Board, including the Board's treasurer or any person acting as the Board's official or ex officio treasurer, to establish and maintain separate cash accounts and separate bank accounts in accordance with such rules, standards and procedures as the Authority may prescribe.

(b) The Authority shall have the power to assume exclusive administration of the cash accounts and bank accounts of the Board, to establish and maintain whatever new cash accounts and bank accounts it may deem appropriate, and to withdraw funds from such

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accounts for the lawful expenditures of the Board.

(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-409.

§ 105 ILCS 5/34A-410. Financial, management and budgetary structure

Sec. 34A-410. Financial, management and budgetary structure. Upon direction of the Authority, the Board shall reorganize the financial accounts, management and Budgetary systems of the Board in whatever manner the Authority deems appropriate to achieve greater financial responsibility and to reduce financial inefficiency. Except as provided in Sections 34A-501 through 34A-512 of this Act [105 ILCS 5/34A-501 through 105 ILCS 5/34A-512], the Authority shall not have the power to affect the taxing authority or to consolidate or reduce the restricted debt service funds of the Board.

(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-410.

§ 105 ILCS 5/34A-411. Termination and reinstatement of Authority's power under this Article

Sec. 34A-411. Termination and reinstatement of Authority's power under this Article. (a) The powers and responsibilities granted to or imposed upon the Authority and the Board under Sections 34A-401 through 34A-410 of this Article [105 ILCS 5/34A-401 through 105 ILCS 5/34A-410] shall not be exercised after the Authority has certified to the Governor and the Mayor that the Board has completed 6 successive Fiscal Years of balanced Budgets pursuant to the accounting and other principles prescribed by the Authority. Notwithstanding the foregoing sentence, Sections 34A-402, 34A-404, 34A-405, and 34A-408 [105 ILCS 5/34A-402, 105 ILCS 5/34A-404, 105 ILCS 5/34A-405, and 105 ILCS 5/34A-408] shall continue in full force and effect after such certification of the completion of 6 successive Fiscal Years of balanced Budgets.

(b) Upon determination by the Authority and certification of the Authority to the Governor and the Mayor that the Board has failed to adopt a balanced Budget by August

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15th immediately preceding the commencement of each Fiscal Year or failed to achieve a balanced Budget for two successive Fiscal Years, subsequent to a time in which the powers and responsibilities of the Authority and the Board are not exercised pursuant to paragraph (a) of this Section, the Authority and Board shall resume the exercise of their respective powers and responsibilities pursuant to each Section of this Article.

(c) Notwithstanding the provisions of subsections (a) and (b) of this Section or any other provision of law to the contrary, the powers and responsibilities granted to or imposed upon the Authority and the Board under Sections 34A-401 through 34A-410 [105 ILCS 5/34A-401 through 105 ILCS 5/34A-410] and Section 34A-606 [105 ILCS 5/34A-606] are suspended until December 31, 2010.

(Source: P.A. 83-1130; 83-1131; 88-511, § 1; 89-15, § 5; 90-757, § 5; 93-488, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-411.

Effect of Amendments. The 1993 amendment by P.A. 88-511, effective November 14, 1993, in the last sentence of subsection (a) inserted "34A-405"; and in subsection (b) substituted "August 15th immediately preceding the commencement of each Fiscal Year" for "the commencement of any Fiscal Year".

The 1995 amendment by P.A. 89-15, effective May 30, 1995, added subsection (c).

The 1998 amendment by P.A. 90-757, effective August 14, 1998, in subsection (c), substituted "2004" for "1999."

The 2003 amendment by P.A. 93-488, effective August 8, 2003, substituted "December 31, 2010" for "July 1, 2004" at the end of subsection (c).

§§ 105 ILCS 5/34A-412 through 105 ILCS 5/34A-415: Repealed by P.A. 88-511, § 4-5, effective November 14, 1993.

§ 105 ILCS 5/34A-501. Power to issue Bonds

Sec. 34A-501. Power to issue Bonds. (a) The Authority may incur indebtedness by the issuance of its negotiable full faith and credit general obligation bonds (the "Bonds") in an amount not to exceed at any time the sum of $695,000,000 (excluding Bonds to be issued to refund outstanding Bonds) for the purpose of providing the Board with moneys for ordinary and necessary expenditures for educational purposes, maintenance of school facilities, and other operational needs of the Board; payment of outstanding debt obligations of the Board and of the City, the proceeds of which were used to provide

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financing for the Board; providing or increasing a working cash fund as provided by paragraph (d) of this Section 34A-501 [105 ILCS 5/34A-501]; providing the Board with moneys for school construction and rehabilitation purposes as provided by paragraph (e) of this Section; payment of fees for arrangements as provided by paragraph (c) of Section 34A-502 [105 ILCS 5/34A-502]; payment of interest on Bonds; establishment of reserves to secure Bonds; the payment of costs of issuance of Bonds; payment of principal of or interest or redemption premium on any Bonds or notes of the Authority; and all other expenditures of the Authority incidental to and necessary or convenient for carrying out its corporate purposes and powers, and in an additional amount not to exceed at any time the sum of $427,000,000 (excluding Bonds to be issued to refund outstanding Bonds) for the purpose of providing the Board with moneys for ordinary and necessary expenditures for educational purposes, maintenance of school facilities, and other operational needs of the Board; payment of fees for arrangements as provided by paragraph (c) of Section 34A-502 [105 ILCS 5/34A-502]; payment in connection with agreements or contracts entered into as provided for in Section 7 of the Bond Authorization Act [30 ILCS 305/7]; payment of interest on Bonds; establishment of reserves to secure Bonds; the payment of costs of issuance of Bonds; payment of principal of or interest or redemption premium on any Bonds or notes of the Authority; and all other expenditures of the Authority incidental to and necessary or convenient for carrying out its corporate purposes and powers. No more than $40,000,000 of proceeds of Bonds of the Authority shall be deposited in a working cash fund as provided by paragraph (d) of this Section 34A-501 [105 ILCS 5/34A-501]. No more than $95,000,000 of proceeds of Bonds of the Authority shall be provided to the Board for school construction and rehabilitation purposes; provided that not less than $32,000,000 nor more than $37,000,000 of such proceeds shall be used by the Board for constructing new school buildings or providing additions to school buildings.

(b) The Authority may from time to time (i) issue Bonds to refund any outstanding Bonds or notes of the Authority whether the Bonds or notes to be refunded have or have not matured or become redeemable and (ii) issue Bonds partly to refund Bonds or notes then outstanding and partly for any other purpose hereinabove set forth.

(c) Bonds issued in accordance with paragraph (a) of this Section may be issued in excess of any statutory limitation as to debt, and may be issued without referendum.

(d) The Authority may create a working cash fund to provide working cash for the Board. Amounts in the working cash fund shall be used by the Authority to make loans from time to time to the Board to enable the Board to cover anticipated cash flow deficiencies which it may experience within the fiscal year of the Board in which the loan is made, all as and to the extent determined by the Authority. The loans shall be made in such amounts and upon such terms as the Board and the Authority shall agree. The Authority shall not under any circumstance be obligated to make any such loan. No interest need be charged on any such loan. The Board may pledge and assign to the repayment of such loans and may apply to that repayment any particular receipts of the Board which have not been pledged to the payment of any of the Board's bonds, notes, tax anticipation warrants or state aid anticipation certificates. Each loan shall be required to be repaid in full by the Board within the fiscal year of the Board in which the loan was made and, in any event, within 11 months from the date on which it was made. Interest and other

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investment earnings on the working cash fund shall be deposited in and shall be part of that fund. Whenever the Authority shall determine that all or part of the working cash fund is no longer needed for making loans to the Board as provided in this paragraph, the Authority shall reduce the amount of the fund so that the amount in the fund does not exceed the amount which the Authority determines is necessary for use for making future loans to the Board as provided in this paragraph. Upon any such reduction in the amount of the working cash fund and upon its abolition, all amounts in excess of the amounts to remain in the fund shall be deposited in the debt service fund established by the Authority for the Bonds for use for paying principal of Bonds at their maturity or on earlier redemption dates, redemption premium and any interest accruing on those Bonds, all as the Authority shall determine and direct.

(e) For purposes of this Section, "school construction and rehabilitation purposes" means constructing new school buildings and rehabilitating and accomplishing the deferred maintenance existing as of August 31, 1984, of school buildings, including, without limitation, repairing, modernizing, providing additions to and facilities in, altering and reconstructing school buildings and equipment.

Any interest or other investment earnings on proceeds of Bonds issued for the purpose of providing the Board with moneys for school construction and rehabilitation purposes shall be applied as provided in the resolution authorizing such Bonds, which resolution shall require those earnings to be used for the same purpose as the proceeds of those Bonds or for the payment of principal of or interest or redemption premium on any Bonds, either at maturity or an earlier redemption date. Application by the Authority of any proceeds of Bonds issued for the purpose of providing the Board with moneys for school construction and rehabilitation purposes, or interest or other investment earnings thereon, shall be in the sole judgment and discretion of the Authority, but no such moneys shall be so provided unless the Authority shall have found and determined, in its sole judgment and discretion, that such moneys are to be used for those purposes and not for providing the Board with moneys for its ordinary and necessary expenditures for educational purposes, maintenance of school facilities or other operational needs. The Authority may, in making its findings and determinations, rely upon information provided by or on behalf of the Board. The Authority may from time to time make and amend regulations and issue directives with respect to the use and application of such moneys.

The Authority may, at any time, in its sole judgment and discretion, deposit unexpended proceeds of Bonds issued for the purpose of providing the Board with moneys for school construction and rehabilitation purposes or interest or other investment earnings thereon solely in a debt service fund for any Bonds and shall apply such moneys to the payment of principal of or interest or redemption premium on Bonds, at maturity or an earlier redemption date. In the resolution authorizing Bonds, the Authority may make commitments or covenants to holders of Bonds with respect to such use of such unexpended proceeds and interest or other investment earnings.

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(Source: P.A. 83-1270; 88-511, § 2.1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-501.

Effect of Amendments. The 1993 amendment by P.A. 88-511, effective November 14, 1993, in subsection (a), added at the end of the first sentence the language beginning ", and in an additional amount not to exceed" and ending "purposes and powers", and deleted the fourth sentence which read "No Bonds of the Authority shall be issued after July 1, 1984 for the purposes of providing the Board with moneys other than for school construction and rehabilitation purposes as provided in paragraph (e) of this Section".

§ 105 ILCS 5/34A-501.1. Additional bond authority

Sec. 34A-501.1. Additional bond authority. Subject to the limitation in additional amount authorized by this amendatory Act of 1993 in Section 34A-501 [105 ILCS 5/34A-501], the Authority shall incur indebtedness by the issuance of its Bonds on or after July 1, 1993 in principal amounts sufficient to provide the Board from the proceeds of the Bonds the sum of $175,000,000 during the Fiscal Year beginning in 1993, and the sum of $203,000,000 during the Fiscal Year beginning in 1994, in each year for ordinary and necessary expenditures for educational purposes, maintenance of school facilities, and other operational needs of the Board. All sums provided to the Board from proceeds of Bonds issued on or after July 1, 1993 shall be treated as revenues of the Board in that fiscal year for all purposes.

(Source: P.A. 88-511, § 2.1.)

Effective Date. Section 99 of P.A. 88-511 made this section effective upon becoming law. The Act was approved November 14, 1993.

§ 105 ILCS 5/34A-502. Terms of Bonds

Sec. 34A-502. Terms of Bonds. (a) Whenever the Authority desires or is required to issue Bonds as provided in this Article, it shall adopt a resolution designating the amount of the Bonds to be issued, the purposes for which the proceeds of the Bonds are to be used and the manner in which such proceeds shall be held pending the application thereof. The Bonds shall be issued in the corporate name of the Authority, shall bear such date or dates, and shall mature at such time or times not exceeding 30 years from their date as such resolution may provide; provided, however, that Bonds issued on or after

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July 1, 1993 shall mature on or before June 1, 2009. The Bonds may be issued as serial bonds payable in installments or as term bonds with sinking fund installments or as a combination thereof as the Authority may determine in such resolution. The Bonds shall be in such denominations of $1,000 or integral multiples thereof. The Bonds shall be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable at such place or places and be subject to such terms of redemption at such redemption prices, including premium, as such resolution may provide. The Bonds shall be sold by the Authority at public sale. The Bonds shall be sold to the highest and best bidders upon sealed bids. The Authority shall, from time to time as Bonds are to be sold, advertise in at least 2 daily newspapers, one of which is published in the City of Springfield and one in the City of Chicago, for proposals to purchase Bonds. Each of such advertisements for proposals shall be published at least ten days prior to the date of the opening of the bids. The Authority may reserve the right to reject any and all bids.

(b) Bonds issued prior to December 31, 1980 shall bear interest at such rate or rates and at such price or prices as the Authority may approve in the resolution authorizing the issuance of Bonds. Bonds issued after December 31, 1980 shall bear interest at a rate or rates not to exceed the maximum annual rate provided for in Section 2 of "An Act to authorize public corporations to issue bonds, other evidences of indebtedness and tax anticipation warrants subject to interest rate limitations set forth therein", approved May 26, 1970, as amended [30 ILCS 305/2], and if issued at such maximum annual rate shall be sold for not less than par and accrued interest. If any of the Bonds are issued to bear interest at a rate of less than such maximum annual rate the minimum price at which they may be sold shall be such that the interest cost to the Authority on the proceeds of the Bonds shall not exceed such maximum annual rate computed to stated maturity according to standard tables of bond values.

(c) In connection with the issuance of its Bonds, the Authority may enter into arrangements to provide additional security and liquidity for the Bonds. These may include, without limitation, municipal bond insurance, letters of credit, lines of credit by which the Authority may borrow funds to pay or redeem its Bonds and purchase or remarketing arrangements for assuring the ability of owners of the Authority's Bonds to sell or to have redeemed their Bonds. The Authority may enter into contracts and may agree to pay fees to persons providing such arrangements, including from Bond proceeds but only under circumstances in which the total interest paid or to be paid on the Bonds, together with the fees for the arrangements (being treated as if interest), would not, taken together, cause the Bonds to bear interest, calculated to their absolute maturity, at a rate in excess of the maximum rate allowed by law.

The resolution of the Authority authorizing the issuance of its Bonds may provide that interest rates may vary from time to time depending upon criteria established by the Authority, which may include, without limitation, a variation in interest rates as may be necessary to cause Bonds to be remarketable from time to time at a price equal to their principal amount, and may provide for appointment of a national banking association, bank, trust company, investment banker or other financial institution to serve as a remarketing agent in that connection. The resolution of the Authority authorizing the issuance of its Bonds may provide that alternative interest rates or provisions will apply

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during such times as the Bonds are held by a person providing a letter of credit or other credit enhancement arrangement for those Bonds.

(Source: P.A. 83-1270; 88-511, § 2.1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-502.

Effect of Amendments. The 1993 amendment by P.A. 88-511, effective November 14, 1993, in subsection (a), in the first sentence inserted "or is required" and substituted "provided in this Article" for "herein authorized", and added the proviso at the end of the second sentence.

§ 105 ILCS 5/34A-503. Tax levy

Sec. 34A-503. Tax levy. (a) Before or at the time of issuing any Bonds, the Authority shall provide by resolution for the levy and collection of a direct annual tax upon all the taxable property located within the school district without limit as to rate or amount sufficient to pay and discharge the principal thereof at maturity or on sinking fund installment dates and to pay the interest thereon as it falls due. The taxes as levied shall also include such additional amounts to the extent that the collections in the prior years were insufficient to pay and discharge such principal thereof at maturity, such sinking fund installments, if any, and interest thereon as it fell due and the amount so collected shall be placed in the debt service reserve fund. Such tax shall be in addition to and exclusive of the maximum of all taxes which the Authority, the Board or the City Council of the City is now, or may hereafter be, authorized by law to levy for any and all school purposes. Any such resolution shall be in force upon its adoption.

(b) Such levy shall be for the sole benefit of the holders of the Bonds and the holders of the Bonds shall have a security interest in, and lien upon, all rights, claims and interests of the Authority arising pursuant to such levy and all present and future proceeds of such levy until principal of and sinking fund installments and interest on the Bonds are paid in full. All proceeds from such levy shall be deposited by each county collector directly in the debt service funds established pursuant to Section 34A-504 hereof [105 ILCS 5/34A-504] and shall be applied solely for the payment of principal of and sinking fund installments and interest on the Bonds and shall not be used for any other purpose.

A levy with respect to Bonds issued prior to July 1, 1993 (or to refund or continue the refunding of Bonds issued prior to July 1, 1993) shall be for the sole benefit of holders of Bonds issued prior to July 1, 1993 (or to refund or continue the refunding of Bonds issued prior to July 1, 1993). A levy with respect to Bonds issued on or after July 1, 1993 (other than to refund or to continue the refunding of Bonds issued prior to July 1, 1993) shall be for the sole benefit of owners of Bonds issued on or after July 1, 1993 (other than to refund or to continue the refunding of Bonds issued prior to July 1, 1993). Proceeds of

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taxes levied under this Section shall be deposited in the debt service fund relating to the Bonds with respect to which the taxes were levied.

(c) Upon the filing in the office of the county clerk of each county wherein the Board is located of a duly certified copy of any such ordinance, it shall be the duty of each such county clerk to extend the tax therein provided for, including an amount determined by the Authority to cover loss and cost of collection and also deferred collections thereof and abatements in the amount of such taxes as extended on the collectors' books. The tax shall be separate and apart from all other taxes of the Authority, the Board and the City and shall be separately identified by the collectors.

(Source: P.A. 81-1221; 88-511, § 2.1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-503.

Effect of Amendments. The 1993 amendment by P.A. 88-511, effective November 14, 1993, in subsection (a), in the first sentence deleted "demand and direct the City Council of the City to" preceding "provide by" and substituted "resolution" for "ordinance", deleted the third sentence which read "The City Council of the City shall levy and collect such tax as directed by the Authority", and in the last sentence substituted "resolution" for "ordinance"; and in subsection (b) in the second sentence of the first paragraph substituted "funds" for "fund" and added the second paragraph of that subsection.

CASE NOTES

Constitutionality

The power of a city's school financing authority to compel the city council to levy taxes to be used for the payment of bonds issued to finance the schools is constitutional and cannot be characterized as a violation of the constitutional home rule powers of a city. Chicago Sch. Fin. Auth. v. City Council, 104 Ill. 2d 437, 84 Ill. Dec. 668, 472 N.E.2d 805 (1984).

§ 105 ILCS 5/34A-504. Debt service fund

Sec. 34A-504. Debt service fund. (a) The Authority shall establish a debt service fund for the Bonds to be maintained by a corporate trustee (which may be any trust company or bank having the power of a trust company within the State) separate and segregated from all other funds and accounts of the Authority and the Board. All moneys on deposit in the debt service fund shall be held in trust in such debt service fund for the benefit of holders of the Bonds, shall be applied solely for the payment of principal of and sinking fund installment, redemption premium, if any, and interest on the Bonds and shall not be

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used for any other purpose. The holders of the Bonds shall have a security interest in and lien upon all such moneys.

(b) The Authority shall, by its resolution authorizing Bonds to be issued on or after July 1, 1993 (other than to refund or to continue the refunding of Bonds issued prior to July 1, 1993), establish a debt service fund which shall be separate from any such fund for Bonds issued prior to July 1, 1993 (including Bonds issued to refund or to continue the refunding of those prior Bonds). Such a separate debt service fund shall secure only Bonds issued on or after July 1, 1993 (other than Bonds to refund or to continue the refunding of Bonds issued prior to July 1, 1993). The debt service fund established with respect to Bonds issued prior to July 1, 1993 (or to refund or to continue the refunding of Bonds issued prior to July 1, 1993) shall not secure Bonds issued on or after July 1, 1993 (other than Bonds issued to refund or to continue the refunding of Bonds issued prior to July 1, 1993).

(Source: P.A. 81-1450; 88-511, § 2.1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-504.

Effect of Amendments. The 1993 amendment by P.A. 88-511, effective November 14, 1993, added the subsection (a) designation and added subsection (b).

§ 105 ILCS 5/34A-505. Debt service reserve fund

Sec. 34A-505. Debt service reserve fund. (a) The Authority may create and establish a debt service reserve fund to be maintained by a corporate trustee (which may be any trust company or bank having the power of a trust company within the State) separate and segregated from all other funds and accounts of the Authority. The Authority may pay into such debt service reserve fund:

(i) any proceeds from the sale of Bonds to the extent provided in the resolution authorizing the issuance thereof; and

(ii) any other moneys which may be available to the Authority for the purpose of the fund.

(b) The amount to be accumulated in the debt service reserve fund shall be determined by the Authority but shall not exceed the maximum amount of interest, principal and sinking fund installments due in any succeeding calendar year.

(c) All moneys on deposit in such debt service reserve fund shall be held in trust for the benefit of holders of the Bonds, shall be applied solely for the payment of principal of

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and sinking fund installments and interest on the Bonds to the extent not paid from the debt service fund and shall not be used for any other purpose.

(d) Any moneys in the debt service reserve fund in excess of the amount determined by the Authority pursuant to a resolution authorizing the issuance of Bonds may be withdrawn by the Authority and used for any of its lawful purposes.

(e) In computing the amount of the debt service reserve fund, investments shall be valued as the Authority shall provide in the resolution authorizing the issuance of the Bonds.

(f) The Authority may by its resolution authorizing Bonds to be issued on or after July 1, 1993 (other than to refund or to continue the refunding of Bonds issued prior to July 1, 1993) create and establish such a debt service reserve fund, which shall be separate from any such fund for Bonds issued prior to July 1, 1993 (including Bonds issued to refund or to continue the refunding of those prior Bonds). Such a separate debt service reserve fund shall secure only Bonds issued on or after July 1, 1993 (other than to refund or to continue the refunding of Bonds issued prior to July 1, 1993). The debt service reserve fund established with respect to Bonds issued prior to July 1, 1993 (or to refund or to continue the refunding of Bonds issued prior to July 1, 1993) shall not secure Bonds issued on or after July 1, 1993 (other than Bonds issued to refund or to continue the refunding of Bonds issued prior to July 1, 1993).

(Source: P.A. 81-1221; 88-511, § 2.1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-505.

Effect of Amendments. The 1993 amendment by P.A. 88-511, effective November 14, 1993, added subsection (f).

§ 105 ILCS 5/34A-506. Bond Anticipation Notes

Sec. 34A-506. Bond Anticipation Notes. (a) After the issuance of Bonds shall have been authorized, the Authority shall have power to issue from time to time, pursuant to a resolution or resolutions of the Authority, its negotiable Bond Anticipation Notes in anticipation of the issuance of Bonds.

(b) Bond Anticipation Notes shall mature not later than 2 years after the date of issuance, may be made redeemable prior to their maturity and may be sold in such manner, in such denominations, at such price or prices, and shall bear interest at such rate or rates not to exceed the maximum annual rate in accordance with the provisions of paragraph (b) of Section 34A-502 [105 ILCS 5/34A-502] hereof, as a resolution authorizing the issuance of the Bond Anticipation Notes may provide.

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(c) The Bond Anticipation Notes may be made payable as to both principal and interest from the proceeds of Bonds. The Authority may provide for payment of interest on the Bond Anticipation Notes from direct annual taxes upon all the taxable property located within the school district which are hereby authorized to be levied annually for such purpose without limit as to rate or amount sufficient to pay such interest as it falls due, in the manner, subject to the security interest and lien and with the effect provided in Section 34A-503 hereof [105 ILCS 5/34A-503].

(d) The Authority is authorized to issue renewal notes in the event it is unable to issue Bonds to pay outstanding Bond Anticipation Notes on terms the Authority deems reasonable.

(e) A debt service fund shall be established in the manner provided in Section 34A-504 [105 ILCS 5/34A-504] by the Authority for such Bond Anticipation Notes and the proceeds of any tax levy made pursuant to this Section shall be deposited therein upon receipt.

(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-506.

§ 105 ILCS 5/34A-507. Resolution vesting powers in trustee

Sec. 34A-507. Resolution vesting powers in trustee. The resolution authorizing issuance of the Bonds shall vest in a trustee such rights, powers and duties in trust as the Authority may determine and may contain such provisions for protecting and enforcing the rights and remedies of the holders of the Bonds and limiting such rights and remedies, as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the exercise of its corporate powers and the custody, safeguarding and application of all moneys. Such resolution shall provide for the manner in which moneys in the various funds and accounts of the Authority may be invested in Investment Obligations and the disposition of the earnings on such investments.

(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-507.

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§ 105 ILCS 5/34A-508. Property of Authority exempt from taxation

Sec. 34A-508. Property of Authority exempt from taxation. The property of the Authority shall be exempt from taxation.

(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-508.

§ 105 ILCS 5/34A-509. Discharge of Bonds

Sec. 34A-509. Discharge of Bonds. (a) If the Authority shall pay or cause to be paid to the holders of all Bonds and coupons, if any, then outstanding, the principal of, redemption price, if any, and interest to become due thereon, at the times and in the manner stipulated therein and in the resolution authorizing the issuance of Bonds, then the covenants, agreements and other obligations of the Authority to the Bondholders shall be discharged and satisfied.

(b) Bonds or coupons or interest installments for the payment or redemption of which moneys shall have been set aside and shall be held in trust by the trustee provided for in Section 34A-507 hereof [105 ILCS 5/34A-507] or any paying agent for the Bonds (through deposit by the Authority of funds for such payment or redemption or otherwise) at the maturity or redemption date thereof shall be deemed to have been paid within the meaning and, with the effect expressed in paragraph (a) above. All outstanding Bonds of any series and all coupons, if any, appertaining to such Bonds shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning and with the effect expressed in such paragraph (a) above if (i) there shall have been deposited with such trustee or paying agent either moneys in an amount which shall be sufficient, or direct obligations of the United States of America the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with such trustee or paying agent at the same time, shall be sufficient to pay, when due, the principal of, sinking fund installment or redemption price, if applicable, and interest due and to become due on said Bonds on and prior to the redemption date, sinking fund installment date, or maturity date thereof, as the case may be, and (ii) the Authority shall have given such trustee or paying agent in form satisfactory to it irrevocable instructions to publish a notice to the effect and in accordance with the procedures provided in the resolution authorizing the issuance of the Bonds. Neither direct obligations of the United States of America nor moneys deposited with such trustee or paying agent nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal or redemption price,

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if applicable, and interest on said Bonds.

(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-509.

§ 105 ILCS 5/34A-510. Pledge of the State

Sec. 34A-510. Pledge of the State. The State of Illinois pledges to and agrees with the holders of Bonds that the State will not limit or alter the rights and powers vested in the Authority by this Act with respect to Sections 34A-501 through 34A-512 hereof [105 ILCS 5/34A-501 through 105 ILCS 5/34A-512] so as to impair the terms of any contract made by the Authority with such holders or in any way impair the rights and remedies of such holders until the Bonds, together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders, are fully met and discharged or provisions made for their payment. The Authority is authorized to include such pledge and agreement of the State in any resolution or contract with the holders of Bonds.

(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-510.

§ 105 ILCS 5/34A-511. Statutory lien

Sec. 34A-511. Statutory lien. Any pledge, assignment, lien or security interest for the benefit of the holders of Bonds or Bond Anticipation Notes, if any, created pursuant to this Act shall be valid and binding from the time the Bonds are issued, without any physical delivery or further act, and shall be valid and binding as against, and prior to any claims of, all other parties having claims of any kind in tort, contract or otherwise against the State, the Authority, the Board or the City, or any other person, irrespective of whether such other parties have notice thereof.

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(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-511.

§ 105 ILCS 5/34A-512. Complete authority

Sec. 34A-512. Complete authority. This Act, without reference to any other statute, shall be deemed full and complete authority for the issuance of the Bonds and the Bond Anticipation Notes as hereinabove provided.

(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-512.

§ 105 ILCS 5/34A-601. Hearings

Sec. 34A-601. Hearings. To the extent feasible, the Authority shall provide for and encourage participation by the public in the development and review of financial and educational policy. The Authority shall hold public hearings as it may deem appropriate to the performance of any of its functions. The Authority may designate one or more of its Directors or may appoint one or more hearing officers to preside over any hearing. The Authority shall hold public hearings as it may deem appropriate to the performance of any of its functions. The Authority shall have the power in connection with any such hearing to issue subpoenas to require attendance of witnesses and the production of documents, and may apply to any circuit court in the State to require compliance with such subpoenas. Upon the request of the Authority, the Board shall provide the facilities for and pay the expense of any hearing conducted by the Authority.

(Source: P.A. 85-1418; 86-1477.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-601.

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§ 105 ILCS 5/34A-602. Limitations of actions after abolition; indemnification

Sec. 34A-602. Limitations of actions after abolition; indemnification. (a) Abolition of the Authority pursuant to Section 34A-605 [105 ILCS 5/34A-605] shall bar any remedy available against the Authority, its Directors, employees, or agents, for any right or claim existing, or any liability incurred, prior to such abolition unless the action or other proceeding thereon is commenced prior to the expiration of 2 years after the date of such abolition.

(b) The Authority may indemnify any Director, officer, employee, or agent who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he was a Director, officer, employee or agent of the Authority, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to the best interests of the Authority and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith in a manner which he reasonably believed to be in or not opposed to the best interest of the Authority, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

To the extent that a Director, officer, employee or agent of the Authority has been successful, on the merits or otherwise, in the defense of any such action, suit or proceeding referred to in this subsection or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith. Any such indemnification shall be made by the Authority only as authorized in the specific case, upon a determination that indemnification of the Director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct. Such determination shall be made: (1) by the Board of Directors by a majority vote of a quorum consisting of Directors who are not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion.

Reasonable expenses incurred in defending an action, suit or proceeding shall be paid by the Authority in advance of the final disposition of such action, suit or proceeding, as authorized by the Board of Directors in the specific case, upon receipt of an undertaking by or on behalf of the Director, officer, employee or agent to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the Authority as authorized in this Section.

Any Director, officer, employee or agent against whom any action, suit or proceeding is brought may employ his or her own attorney to appear on his or her behalf.

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The right to indemnification accorded by this Section shall not limit any other right to indemnification to which the Director, officer, employee or agent may be entitled. Any rights hereunder shall inure to the benefit of the heirs, executors and administrators of any Director, officer, employee or agent of the Authority.

The Authority may purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Authority against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Authority would have the power to indemnify him against such liability under the provisions of this Section.

(Source: P.A. 82-97.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-602.

§ 105 ILCS 5/34A-603. State, City or Board not liable on Obligations

Sec. 34A-603. State, City or Board not liable on Obligations. Obligations issued under the provisions of this Article shall not be deemed to constitute a debt or liability of the State, the City or the Board or of any political subdivision thereof other than the Authority or a pledge of the full faith and credit of the State, the City or the Board or of any such political subdivision other than the Authority, but shall be payable solely from the funds and revenues herein provided therefor. The issuance of Obligations under the provisions of this Article shall not directly or indirectly or contingently obligate the State, the City or the Board or any political subdivision thereof other than the Authority to levy any form of taxation therefor or to make any appropriation for their payment. Nothing in this Section contained shall prevent or be construed to prevent the Authority from pledging its full faith and credit to the payment of obligations authorized pursuant to this Article. Nothing in this Article shall be construed to authorize the Authority to create a debt of the State, the City or the Board within the meaning of the Constitution or Statutes of Illinois and all Obligations issued by the Authority pursuant to the provisions of this Article are payable and shall state that they are payable solely from the funds and revenues pledged for their payment in accordance with the resolution authorizing their issuance or in any trust indenture or mortgage or deed of trust executed as security therefor. The State, the City or the Board shall not in any event be liable for the payment of the principal of or interest on any Obligations of the Authority or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the Authority. No breach of any such pledge, mortgage, obligation or agreement may impose any liability upon the State, the City or the Board or any charge upon their general credit or against their taxing power.

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(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-603.

§ 105 ILCS 5/34A-604. Abolition of Authority

Sec. 34A-604. Abolition of Authority. The Authority shall be abolished one year after all its Obligations have been fully paid and discharged or otherwise provided for. Upon the abolition of the Authority, all of its rights and property shall pass to and be vested in the Board.

(Source: P.A. 81-1221; 96-705, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-604.

Effect of Amendments. The 2009 amendment by P.A. 96-705, effective January 1, 2010, substituted "Board" for "State" in the second sentence.

§ 105 ILCS 5/34A-605. Obligations as legal investments

Sec. 34A-605. Obligations as legal investments. The Obligations are hereby made securities in which all public officers and bodies of this State and all political subdivisions of the State and other persons carrying on an insurance business, all banks, bankers, trust companies, saving banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all credit unions, pension funds, administrators, and guardians who are now or may hereafter be authorized to invest in bonds or in other obligations of the State, may properly and legally invest funds, including capital, in their control or belonging to them. The Obligations are also hereby made securities which may be deposited with and may be received by all public officers and bodies of the State and all political subdivisions of the State and public corporations for any purpose for which the deposit of bonds or other obligations of the State is now or may hereafter be authorized.

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(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-605.

§ 105 ILCS 5/34A-606. Reports

Sec. 34A-606. Reports. (a) The Directors, upon taking office and annually thereafter, shall prepare and submit to the Governor, Mayor, General Assembly, and City Council a report which shall include the audited financial statement for the preceding Fiscal Year of the Board, an approved Financial Plan or a statement of reasons for the failure to adopt such a Financial Plan, a statement of the major steps necessary to accomplish the objectives of the Financial Plan, and a request for any legislation necessary to achieve the objectives of the Financial Plan.

(b) Annual reports shall be submitted on or before May 1 of each year.

(c) The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report with the Board, the Governor, the Mayor and also the Speaker, the Minority Leader and the Clerk of the House of Representatives and the President, the Minority Leader and the Secretary of the Senate and the Legislative Research Unit, as required by Section 3.1 of "An Act to revise the law in relation to the General Assembly", approved February 25, 1874, as amended [25 ILCS 5/3.1], and filing such additional copies with the State Government Report Distribution Center for the General Assembly as is required under paragraph (t) of Section 7 of the State Library Act [15 ILCS 320/7].

(d) Each annual report required to be submitted through May 1, 1995, shall also include: (i) a description of the activities of the Authority; (ii) an analysis of the educational performance of the Board for the preceding school year; (iii) an Approved System-Wide Educational Reform Goals and Objectives Plan or a statement of reasons for the failure to adopt such an Approved System-Wide Educational Reform Goals and Objectives Plan; (iv) a statement of the major steps necessary to accomplish the goals of the Approved System-Wide Educational Reform Goals and Objectives Plan; (v) a commentary with respect to those Board policies and rules and those provisions of The School Code [105 ILCS 5/1-1 et seq.] and collective bargaining agreements between the Board and its employees which, in the opinion of the Authority, are obstacles and a hindrance to fulfillment of any Approved System-Wide Educational Reform Goals and Objectives Plan; and (vi) a request for any legislative action necessary to achieve the goals of the Approved System-Wide Educational Reform Goals and Objectives Plan.

(Source: P.A. 85-1418; 86-1477.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-606.

§ 105 ILCS 5/34A-607. Audit of Authority

Sec. 34A-607. Audit of Authority. The Authority shall be subject to audit in the manner now or hereafter provided for the audit of State funds and accounts. A copy of the audit report shall be submitted to the Auditor General, the Governor, the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate.

(Source: P.A. 81-1221.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-607.

§ 105 ILCS 5/34A-608. Sanctions

Sec. 34A-608. Sanctions. (a) No member, officer, employee, or agent of the Board shall commit the Board to any contract or other obligation or incur any liability on behalf of the Board for any purpose if the amount of such contract, obligation or liability is in excess of the amount authorized for that purpose then available under the Financial Plan and Budget then in effect.

(b) No member, officer, employee, or agent of the Board shall commit the Board to any contract or other obligation on behalf of the Board for the payment of money for any purpose required to be approved by the Authority unless such contract or other obligation has been approved by the Authority.

(c) No member, officer, employee, or agent of the Board shall take any action in violation of any valid order of the Authority or shall fail or refuse to take any action required by any such order or shall prepare, present, or certify any information (including any projections or estimates) or report for the Authority or any of its agents that is false or misleading, or, upon learning that any such information is false or misleading, shall fail promptly to advise the Authority or its agents.

(d) In addition to any penalty or liability under any other law, any member, officer, employee, or agent of the Board who shall violate subsections (a), (b), or (c) of this Section shall be subject to appropriate administrative discipline, including, if warranted, suspension from duty without pay, removal from office, or termination of employment.

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(Source: P.A. 85-1418; 86-1477.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 34A-608.

Article 34B.

Bridge Note Statute

§§ 105 ILCS 5/34B-1 through 105 ILCS 5/34B-16: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

Article 35.

Buildings - School Building Commission

§§ 105 ILCS 5/35-1 through 105 ILCS 5/35-31: Repealed by P.A. 94-1105, § 85, effective June 1, 2007.

CASE NOTES

Analysis
Construction
Legislative Intent

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Construction

x.

Legislative Intent

x.

Article 36.

Repeal - Saving

§ 105 ILCS 5/36-1. Repeal - Saving Clause

Sec. 36-1. Repeal - Saving Clause. The following acts are repealed:

"An Act providing for a system of free schools and for transportation of all school children, and further providing for the establishment of junior colleges with or without tuition charges," approved May 1, 1945, as amended;

"An Act authorizing school districts to levy a tax to pay rental for use and occupancy of school buildings owned by the State of Illinois," approved July 6, 1957;

"An Act to provide for the acquisition, construction, rental and disposition of buildings used for school purposes," approved June 21, 1957;

"An Act to provide scholarships in institutions of higher learning for qualified residents of the State, to create the State Scholarship Commission and define its powers and duties, to provide for the administration of a State scholarship program, and to make appropriations for such purposes," approved June 21, 1957;

"An Act in relation to driver education courses in the public schools and to make appropriations in connection therewith," approved July 9, 1957.

Such repeal shall not affect or impair any of the following: suits pending or rights existing at the time this act takes effect; any grant or conveyance made or right acquired or cause of action now existing under any such act; the validity of any bonds or other obligations issued or sold and constituting valid obligations of the issuing authority at the time this act takes effect; the validity of any contract; the validity of any tax levied under

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any law in effect prior to the effective date of this Act; any offense committed, act done, penalty, punishment or forfeiture incurred, or any claim, right, power or remedy accrued under any law in effect prior to the effective date of this Act; nor shall the repeal herein of any curative or validating act affect the corporate existence or powers of any school district lawfully validated thereby.

(Source: Laws 1961, p. 31.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 36-1.

CASE NOTES

Applicability

- Detachment

Enactment of the School Code of 1961 (105 ILCS 5/1-1 et seq.) did not eliminate "old type units" created prior to its enactment, and there was nothing in it or in the case law to support the claim that "old type units" were to be treated for detachment purposes under the same standards applicable to "community unit districts." Davis v. Regional Bd. of Sch. Trustees, 155 Ill. App. 3d 185, 108 Ill. Dec. 11, 507 N.E.2d 1352 (5 Dist. 1987).

§ 105 ILCS 5/95. No acceleration or delay

Sec. 95. No acceleration or delay. Where this Act makes changes in a statute that is represented in this Act by text that is not yet or no longer in effect (for example, a Section represented by multiple versions), the use of that text does not accelerate or delay the taking effect of (i) the changes made by this Act or (ii) provisions derived from any other Public Act.

(Source: P.A. 95-496, § 95.)

Effective Date. Section 99 of P.A. 95-496 makes this section effective upon becoming law. The Act was approved August 28, 2007.

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Illinois School Student Records Act

Sec.

105 ILCS 10/1.[Short title]
105 ILCS 10/2.[Definitions]
105 ILCS 10/3.[Rules and regulations]
105 ILCS 10/4.[Official records custodian; maintenance of permanent and temporary records; periodic review; notice prior to deletion of information]
105 ILCS 10/5.[Right to inspect records; costs; confidentiality]
105 ILCS 10/6.[Nondisclosure of records; exceptions; prior notice; record of release]
105 ILCS 10/7.[Challenge to records; procedures; judicial review; statement on disputed information]
105 ILCS 10/8.[Conditioning of rights, benefits, etc., on release of temporary record prohibited]
105 ILCS 10/8.1.[Refusal to admit student for lack of record prohibited; request for record; special education]
105 ILCS 10/9.[Injunctive relief; damages; attorneys' fees; criminal penalty; immunity]
105 ILCS 10/10.[Severability]

§ 105 ILCS 10/1. [Short title]

Sec. 1. This Act shall be known and may be cited as the Illinois School Student Records Act.

(Source: P.A. 79-1108.)

Derivation.

Title: An Act relating to the school records of students.

Cite: 105 ILCS 10/1 et seq.

Source: P.A. 79-1108.

Date: Approved September 26, 1975.

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 50-1.

CASE NOTES

Exhaustion of Administrative Remedies

Trial court erred in dismissing the father's first claim against the school district and its legal counsel for not responding to his request to see his daughter's school records, as the trial court concluded that he had not met an exhaustion of administrative remedies requirement and the state records law did not have such a requirement even though federal law did; however, it properly dismissed his claim under state mental health law concerning how his pediatrician obtained some of those records, as he could not show he she had done so. Ibata v. Bd. of Educ., 365 Ill. App. 3d 1056, 303 Ill. Dec. 471, 851 N.E.2d 658, 2006 Ill. App. LEXIS 398 (1 Dist. 2006).

§ 105 ILCS 10/2. [Definitions]

Sec. 2. As used in this Act,

(a) "Student" means any person enrolled or previously enrolled in a school.

(b) "School" means any public preschool, day care center, kindergarten, nursery, elementary or secondary educational institution, vocational school, special educational facility or any other elementary or secondary educational agency or institution and any person, agency or institution which maintains school student records from more than one school, but does not include a private or non-public school.

(c) "State Board" means the State Board of Education.

(d) "School Student Record" means any writing or other recorded information concerning a student and by which a student may be individually identified, maintained by a school or at its direction or by an employee of a school, regardless of how or where the information is stored. The following shall not be deemed school student records under this Act: writings or other recorded information maintained by an employee of a school or other person at the direction of a school for his or her exclusive use; provided that all such writings and other recorded information are destroyed not later than the student's graduation or permanent withdrawal from the school; and provided further that no such records or recorded information may be released or disclosed to any person except a person designated by the school as a substitute unless they are first incorporated in a school student record and made subject to all of the provisions of this Act. School student records shall not include information maintained by law enforcement professionals working in the school.

(e) "Student Permanent Record" means the minimum personal information necessary to a school in the education of the student and contained in a school student record. Such information may include the student's name, birth date, address, grades and grade level,

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parents' names and addresses, attendance records, and such other entries as the State Board may require or authorize.

(f) "Student Temporary Record" means all information contained in a school student record but not contained in the student permanent record. Such information may include family background information, intelligence test scores, aptitude test scores, psychological and personality test results, teacher evaluations, and other information of clear relevance to the education of the student, all subject to regulations of the State Board. The information shall include information provided under Section 8.6 of the Abused and Neglected Child Reporting Act [325 ILCS 5/1 et seq.]. In addition, the student temporary record shall include information regarding serious disciplinary infractions that resulted in expulsion, suspension, or the imposition of punishment or sanction. For purposes of this provision, serious disciplinary infractions means: infractions involving drugs, weapons, or bodily harm to another.

(g) "Parent" means a person who is the natural parent of the student or other person who has the primary responsibility for the care and upbringing of the student. All rights and privileges accorded to a parent under this Act shall become exclusively those of the student upon his 18th birthday, graduation from secondary school, marriage or entry into military service, whichever occurs first. Such rights and privileges may also be exercised by the student at any time with respect to the student's permanent school record.

(Source: P.A. 79-1108; 90-590, § 1001-20; 92-295, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 50-2.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 226.75, 375.10.

Effect of Amendments. The 1998 amendment by P.A. 90-590, effective January 1, 2000, added the last sentence in subsection (d); and added the last two sentences in subsection (f).

The 2001 amendment by P.A. 92-295, effective January 1, 2002, inserted the third sentence of subsection (f).

CASE NOTES

Analysis

School Student Record

- Contents

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- Masked Records
- Memorandum
- Psychological Tests

School Student Record

- Contents

Because a student's test question booklets contained student markings and other individually identifiable information, they fell in their entirety under the definition of a student record in 105 ILCS 10/2(d). Garlick v. Oak Park & River Forest High Sch. Dist. # 200, 389 Ill. App. 3d 306, 329 Ill. Dec. 92, 905 N.E.2d 930, 2009 Ill. App. LEXIS 160 (1 Dist. 2009).

Test booklets did not constitute a student record under 105 ILCS 10/2(d) because the test booklets were devoid of student marks or other identifying information and thus neither concerned an individual student nor individually identified a student; instead of expanding the definition of student record, 105 ILCS 10/2(e), (f) merely subdivided that term into 2 categories: temporary records and permanent records, each falling under the umbrella definition of student record provided in 105 ILCS 10/2(d). Whether categorized as temporary or permanent, only those records by which a student could have been individually identified constituted a student record. Garlick v. Oak Park & River Forest High Sch. Dist. # 200, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1356 (1 Dist. Feb. 28, 2008).

Any writing about a student which identifies that student is considered a part of their school student record. Sieck v. Oak Park-River Forest High Sch. Dist. No. 200, 807 F. Supp. 73 (N.D. Ill. 1992).

- Masked Records

Though this Act prohibits the disclosure of a school student's record whereby that student may be individually identified, a masked record, which would delete individual identifying information, did not fall within the definition of a school student record and, therefore, was not prohibited from disclosure under the Act. Bowie v. Evanston Community Consol. Sch., 128 Ill. 2d 373, 131 Ill. Dec. 182, 538 N.E.2d 557 (1989).

The access provisions of subsection (d) of this section apply only to school student records which are defined as any writing or other recorded information by which a student may be individually identified; a masked record does not fall within this definition. Human Rights Auth. v. Miller, 124 Ill. App. 3d 701, 79 Ill. Dec. 929, 464 N.E.2d 833 (3 Dist. 1984).

Where a school district did not contend that the masking process would have constituted an unreasonable burden, this Act did not apply to subpoenaed material. Human Rights Auth. v. Miller, 124 Ill. App. 3d 701, 79 Ill. Dec. 929, 464 N.E.2d 833 (3 Dist. 1984).

- Memorandum

A memorandum that named a student and reported that he would be suspended from the school for a specified period of time was a school record. Sieck v. Oak Park-River Forest High Sch. Dist. No. 200, 807 F. Supp. 73 (N.D. Ill. 1992).

- Psychological Tests

Plaintiffs' daughter's responses to a Rorschach test administered to her by defendant school district were part of her "school student record," but were not materials maintained by the school psychologist administering the test for the psychologist's "exclusive use." John K. v. Board of

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Educ., 152 Ill. App. 3d 543, 105 Ill. Dec. 512, 504 N.E.2d 797 (1 Dist. 1987).

OPINIONS OF ATTORNEY GENERAL

Analysis
Parents
- Notice
Suspected Criminal Activity.

Parents

- Notice

Until a student has passed his or her 18th birthday, graduated from high school, married or entered military service, the student's parents are entitled to receive the required notice; thereafter, the student or former student will be entitled to receive any notice which his or her parents would previously have been entitled to receive. 1991 Op. Atty. Gen. (91-030).

Suspected Criminal Activity.

Because suspected criminal activity is not information falling within the scope of the Student Records Act merely because it may be recorded by school officials, however school officials may, in accordance with any agreement developed, report any alleged or suspected criminal acts to the police. 1996 Op. Atty. Gen. (96-040).

§ 105 ILCS 10/3. [Rules and regulations]

Sec. 3. (a) The State Board shall issue regulations to govern the contents of school student records, to implement and assure compliance with the provisions of this Act and to prescribe appropriate procedures and forms for all administrative proceedings, notices and consents required or permitted under this Act. All such regulations and any rules and regulations adopted by any school relating to the maintenance of, access to, dissemination of or challenge to school student records shall be available to the general public.

(b) The State Board, each local school board or other governing body and each school shall take reasonable measures to assure that all persons accorded rights or obligations under this Act are informed of such rights and obligations.

(c) The principal of each school or the person with like responsibilities or his or her designate shall take all action necessary to assure that school personnel are informed of the provisions of this Act.

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(Source: P.A. 79-1108.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 50-3.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 375.30.

§ 105 ILCS 10/4. [Official records custodian; maintenance of permanent and temporary records; periodic review; notice prior to deletion of information]

Sec. 4. (a) Each school shall designate an official records custodian who is responsible for the maintenance, care and security of all school student records, whether or not such records are in his personal custody or control.

(b) The official records custodian shall take all reasonable measures to prevent unauthorized access to or dissemination of school student records.

(c) Information contained in or added to a school student record shall be limited to information which is of clear relevance to the education of the student.

(d) Information added to a student temporary record after the effective date of this Act shall include the name, signature and position of the person who has added such information and the date of its entry into the record.

(e) Each school shall maintain student permanent records and the information contained therein for not less than 60 years after the student has transferred, graduated or otherwise permanently withdrawn from the school.

(f) Each school shall maintain student temporary records and the information contained in those records for not less than 5 years after the student has transferred, graduated, or otherwise withdrawn from the school. However, student temporary records shall not be disclosed except as provided in Section 5 or 6 [105 ILCS 10/5 or 105 ILCS 10/6] or by court order. A school may maintain indefinitely anonymous information from student temporary records for authorized research, statistical reporting or planning purposes, provided that no student or parent can be individually identified from the information maintained.

(g) The principal of each school or the person with like responsibilities or his or her designate shall periodically review each student temporary record for verification of entries and elimination or correction of all inaccurate, misleading, unnecessary or irrelevant information. The State Board shall issue regulations to govern the periodic review of the student temporary records and length of time for maintenance of entries to such records.

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(h) Before any school student record is destroyed or information deleted therefrom, the parent shall be given reasonable prior notice at his or her last known address in accordance with regulations adopted by the State Board and an opportunity to copy the record and information proposed to be destroyed or deleted.

(i) No school shall be required to separate permanent and temporary school student records of a student not enrolled in such school on or after the effective date of this Act or to destroy any such records, or comply with the provisions of paragraph (g) of this Section with respect to such records, except (1) in accordance with the request of the parent that any or all of such actions be taken in compliance with the provisions of this Act or (2) in accordance with regulations adopted by the State Board.

(Source: P.A. 79-1108; 90-590, § 1001-20; 90-811, § 10)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 50-4.

Illinois Administrative Code.

See 23 Illinois Administrative Code, §§ 1.445, 252.25, 375.40.

Effect of Amendments. The 1998 amendment by P.A. 90-590, effective January 1, 2000, rewrote subsection (f).

The 1998 amendment by P.A. 90-811, effective January 1, 1999, in subsection (f) as amended by P.A. 90-590, added "or 6" and deleted ", notwithstanding the provisions of Section 6", and in subsection (h) added "at his or her last known address".

CASE NOTES

In Camera Inspection

The court's order directing that the complainant's school records be turned over to the court for in camera inspection was in keeping with the Act. People v. Harlacher, 262 Ill. App. 3d 1, 199 Ill. Dec. 527, 634 N.E.2d 366 (2 Dist. 1994).

OPINIONS OF ATTORNEY GENERAL

Analysis

Disposal of Records

- Notice

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- Requirements

Disposal of Records

- Notice

Permanent retention of student records is not required if reasonable efforts to give notice have been made but the person entitled to notice cannot be located; once a school's obligation to give reasonable notice has been met, the records may be disposed of as authorized under the Local Records Act (50 ILCS 205/1 et seq.). 1991 Op. Atty. Gen. (91-030).

The required notice may be given by any means likely to reach the person entitled to receive notice. 1991 Op. Atty. Gen. (91-030).

- Requirements

The Local Records Act (50 ILCS 205/1 et seq.) is applicable to student records maintained pursuant to this Act and therefore, a local school district must obtain the written approval of the appropriate local records commission before destroying or otherwise disposing of such records. 1983 Op. Atty. Gen. 60.

§ 105 ILCS 10/5. [Right to inspect records; costs; confidentiality]

Sec. 5. (a) A parent or any person specifically designated as a representative by a parent shall have the right to inspect and copy all school student permanent and temporary records of that parent's child. A student shall have the right to inspect and copy his or her school student permanent record. No person who is prohibited by an order of protection from inspecting or obtaining school records of a student pursuant to the Illinois Domestic Violence Act of 1986 [750 ILCS 60/101 et seq.], as now or hereafter amended, shall have any right of access to, or inspection of, the school records of that student. If a school's principal or person with like responsibilities or his designee has knowledge of such order of protection, the school shall prohibit access or inspection of the student's school records by such person.

(b) Whenever access to any person is granted pursuant to paragraph (a) of this Section, at the option of either the parent or the school a qualified professional, who may be a psychologist, counsellor or other advisor, and who may be an employee of the school or employed by the parent, may be present to interpret the information contained in the student temporary record. If the school requires that a professional be present, the school shall secure and bear any cost of the presence of the professional. If the parent so requests, the school shall secure and bear any cost of the presence of a professional employed by the school.

(c) A parent's or student's request to inspect and copy records, or to allow a specifically designated representative to inspect and copy records, must be granted within a reasonable time, and in no case later than 15 school days after the date of receipt of such request by the official records custodian.

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(d) The school may charge its reasonable costs for the copying of school student records, not to exceed the amounts fixed in schedules adopted by the State Board, to any person permitted to copy such records, except that no parent or student shall be denied a copy of school student records as permitted under this Section 5 for inability to bear the cost of such copying.

(e) Nothing contained in this Section 5 shall make available to a parent or student confidential letters and statements of recommendation furnished in connection with applications for employment to a post-secondary educational institution or the receipt of an honor or honorary recognition, provided such letters and statements are not used for purposes other than those for which they were specifically intended, and

(1) were placed in a school student record prior to January 1, 1975; or

(2) the student has waived access thereto after being advised of his right to obtain upon request the names of all such persons making such confidential recommendations.

(f) Nothing contained in this Act shall be construed to impair or limit the confidentiality of:

(1) Communications otherwise protected by law as privileged or confidential, including but not limited to, information communicated in confidence to a physician, psychologist or other psychotherapist, school social worker, school counselor, school psychologist, or school social worker, school counselor, or school psychologist intern who works under the direct supervision of a school social worker, school counselor, or school psychologist; or

(2) Information which is communicated by a student or parent in confidence to school personnel; or

(3) Information which is communicated by a student, parent, or guardian to a law enforcement professional working in the school, except as provided by court order.

(g) No school employee shall be subjected to adverse employment action, the threat of adverse employment action, or any manner of discrimination because the employee is acting or has acted to protect communications as privileged or confidential pursuant to applicable provisions of State or federal law or rule or regulation.

(Source: P.A. 86-966; 90-590, § 1001-20; 96-628, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 50-5.

Effect of Amendments. The 1998 amendment by P.A. 90-590, effective January 1, 2000, added subdivision (f)(3).

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The 2009 amendment by P.A. 96-628, effective January 1, 2010, added "school social worker, school counselor, school psychologist, or school social worker, school counselor, or school psychologist intern who works under the direct supervision of a school social worker, school counselor, or school psychologist" in (f)(1); and added (g).

CASE NOTES

Analysis

Confidentiality
Freedom of Information Act
- School Test Results
Injunction
Right to Inspection

Confidentiality

Although confidential in nature, plaintiffs' daughter's responses to a Rorschach test administered to her by the defendant school district's psychologist, which were part of her "school student record" (105 ILCS 10/5), were still subject to disclosure upon plaintiffs' request. John K. v. Board of Educ., 152 Ill. App. 3d 543, 105 Ill. Dec. 512, 504 N.E.2d 797 (1 Dist. 1987).

Freedom of Information Act

- School Test Results

Reports of test results for each school year, school, and grade within each school, containing each student's name, sex, race, and his or her raw score and percentile rank in eleven testing categories on the standardized California Achievement Test, properly masked and scrambled so as to preclude identification of the students, were not exempt from disclosure under the Freedom of Information Act. Bowie v. Evanston Community Consol. Sch. Dist., 168 Ill. App. 3d 101, 119 Ill. Dec. 7, 522 N.E.2d 669 (1 Dist. 1988).

Injunction

Where plaintiffs' right to access was violated by defendant's refusal to disclose the requested data, the circuit court's conclusion that an injunction was improvident given plaintiffs' purportedly adequate remedy at law was improper. John K. v. Board of Educ., 152 Ill. App. 3d 543, 105 Ill. Dec. 512, 504 N.E.2d 797 (1 Dist. 1987).

Right to Inspection

Because the test question booklets of a parent's child contained student markings and other individually identifiable information, they fell in their entirety under the definition of a student record in 105 ILCS 10/2(d). Therefore, the parent had a right to inspect and copy the test question booklets as student records under 105 ILCS 10/5(a), and the school district's allowing the parent to review and hand copy the test question booklets, rather than provide the parent with a copy of the booklets that was not redacted, did not comply with 105 ILCS 10/5(d). Garlick v.

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§ 105 ILCS 10/6. [Nondisclosure of records; exceptions; prior notice; record of release]

Sec. 6. (a) No school student records or information contained therein may be released, transferred, disclosed or otherwise disseminated, except as follows:

(1) To a parent or student or person specifically designated as a representative by a parent, as provided in paragraph (a) of Section 5 [105 ILCS 10/5];

(2) To an employee or official of the school or school district or State Board with current demonstrable educational or administrative interest in the student, in furtherance of such interest;

(3) To the official records custodian of another school within Illinois or an official with similar responsibilities of a school outside Illinois, in which the student has enrolled, or intends to enroll, upon the request of such official or student;

(4) To any person for the purpose of research, statistical reporting, or planning, provided that such research, statistical reporting, or planning is permissible under and undertaken in accordance with the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g);

(5) Pursuant to a court order, provided that the parent shall be given prompt written notice upon receipt of such order of the terms of the order, the nature and substance of the information proposed to be released in compliance with such order and an opportunity to inspect and copy the school student records and to challenge their contents pursuant to Section 7 [105 ILCS 10/7];

(6) To any person as specifically required by State or federal law;

(6.5) To juvenile authorities when necessary for the discharge of their official duties who request information prior to adjudication of the student and who certify in writing that the information will not be disclosed to any other party except as provided under law or order of court. For purposes of this Section "juvenile authorities" means: (i) a judge of the circuit court and members of the staff of the court designated by the judge; (ii) parties to the proceedings under the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.] and their attorneys; (iii) probation officers and court appointed advocates for the juvenile authorized by the judge hearing the case; (iv) any individual, public or private agency having custody of the child pursuant to court order; (v) any individual, public or private agency providing education, medical or mental health service to the child when the requested information is needed to determine the appropriate service or treatment for the minor; (vi) any potential placement provider when such release is authorized by the court for the limited purpose of determining the appropriateness of the potential placement;

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(vii) law enforcement officers and prosecutors; (viii) adult and juvenile prisoner review boards; (ix) authorized military personnel; (x) individuals authorized by court;

(7) Subject to regulations of the State Board, in connection with an emergency, to appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons;

(8) To any person, with the prior specific dated written consent of the parent designating the person to whom the records may be released, provided that at the time any such consent is requested or obtained, the parent shall be advised in writing that he has the right to inspect and copy such records in accordance with Section 5, to challenge their contents in accordance with Section 7 and to limit any such consent to designated records or designated portions of the information contained therein;

(9) To a governmental agency, or social service agency contracted by a governmental agency, in furtherance of an investigation of a student's school attendance pursuant to the compulsory student attendance laws of this State, provided that the records are released to the employee or agent designated by the agency;

(10) To those SHOCAP committee members who fall within the meaning of "state and local officials and authorities", as those terms are used within the meaning of the federal Family Educational Rights and Privacy Act, for the purposes of identifying serious habitual juvenile offenders and matching those offenders with community resources pursuant to Section 5-145 of the Juvenile Court Act of 1987 [705 ILCS 405/5-145], but only to the extent that the release, transfer, disclosure, or dissemination is consistent with the Family Educational Rights and Privacy Act [20 U.S.C. § 1221 et seq.];

(11) To the Department of Healthcare and Family Services in furtherance of the requirements of Section 2-3.131, 3-14.29, 10-28, or 34-18.26 of the School Code [105 ILCS 5/2-3.131, 105 ILCS 5/3-14.29, 105 ILCS 5/10-28, 105 ILCS 5/34-18.26] or Section 10 of the School Breakfast and Lunch Program Act [105 ILCS 125/10]; or

(12) To the State Board or another State government agency or between or among State government agencies in order to evaluate or audit federal and State programs or perform research and planning, but only to the extent that the release, transfer, disclosure, or dissemination is consistent with the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g).

(b) No information may be released pursuant to subparagraphs (3) or (6) of paragraph (a) of this Section 6 unless the parent receives prior written notice of the nature and substance of the information proposed to be released, and an opportunity to inspect and copy such records in accordance with Section 5 and to challenge their contents in accordance with Section 7. Provided, however, that such notice shall be sufficient if published in a local newspaper of general circulation or other publication directed generally to the parents involved where the proposed release of information is pursuant to subparagraph 6 of paragraph (a) in this Section 6 and relates to more than 25 students.

(c) A record of any release of information pursuant to this Section must be made and kept as a part of the school student record and subject to the access granted by Section 5. Such

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record of release shall be maintained for the life of the school student records and shall be available only to the parent and the official records custodian. Each record of release shall also include:

(1) The nature and substance of the information released;

(2) The name and signature of the official records custodian releasing such information;

(3) The name of the person requesting such information, the capacity in which such a request has been made, and the purpose of such request;

(4) The date of the release; and

(5) A copy of any consent to such release.

(d) Except for the student and his parents, no person to whom information is released pursuant to this Section and no person specifically designated as a representative by a parent may permit any other person to have access to such information without a prior consent of the parent obtained in accordance with the requirements of subparagraph (8) of paragraph (a) of this Section.

(e) Nothing contained in this Act shall prohibit the publication of student directories which list student names, addresses and other identifying information and similar publications which comply with regulations issued by the State Board.

(Source: P.A. 86-1028; 90-566, § 7; 90-590, § 1001-20; 91-357, § 102; 91-665, § 5; 93-404, § 7; 95-331, § 545; 95-793, § 6; 96-107, § 505; 96-1000, § 265.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 50-6.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 375.10.

Effect of Amendments. The 1997 amendment by P.A. 90-566, effective January 2, 1998, in subdivision (a)(7) deleted "or" from the end; in subdivision (a)(8) added "or" at the end; and added subdivision (a)(9).

The 1998 amendment by P.A. 90-590, effective January 1, 2000, inserted subdivision (a)(6.5).

The 1999 amendment by P.A. 91-357, effective July 29, 1999, made no changes.

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The 1999 amendment by P.A. 91-665, effective December 22, 1999, added subsection (a)(10) and made related changes.

The 2003 amendment by P.A. 93-404, effective August 1, 2003, added subsection (a)(11) and made related changes.

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, substituted "Department of Healthcare and Family Services" for "Department of Public Aid" in (a)(11).

The 2008 amendment by P.A. 95-793, effective August 8, 2008, added (a)(12).

The 2009 amendment by P.A. 96-107, effective July 30, 2009, rewrote (a)(4); and substituted "20 U.S.C. 1232g)" for "(20 U.S.C. 1221 et seq.)" in (a)(12).

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, made stylistic changes.

CASE NOTES

Analysis

Court Orders
- Subpoena Quashed
Disclosure of School Records
In Camera Inspection
Inconsistent Provisions
Purpose

Court Orders

- Subpoena Quashed

Where defendant was given an opportunity in a voir dire hearing to provide the court with the evidence he wished presented at trial, an examination of the alleged sexual abuse victim's teacher to determine the victim's credibility, and defendant refused to proceed, his failure to present the evidence made it impossible to determine any prejudicial impact caused by the court's ruling; therefore, the trial court did not err in quashing the teacher's subpoena. People v. Monk, 174 Ill. App. 3d 528, 124 Ill. Dec. 172, 528 N.E.2d 1063 (4 Dist. 1988), appeal denied, 124 Ill. 2d 560, 129 Ill. Dec. 154, 535 N.E.2d 919 (1989).

Disclosure of School Records

Where a customer alleged that a restaurant was negligent in hiring an employee who allegedly assaulted the customer, the restaurant's failure to obtain the employee's high school disciplinary record did not constitute negligence because (1) under subdivision (a)(8) of this section, the restaurant could obtain such information only with the written permission of the employee's parent and (2) even if the employer had obtained the employee's school records, information showing that the employee had been suspended once in his freshman year of high school for missing class and trespassing at another school would not have tended to show that the employee would foreseeably be a danger to customers. Montgomery v. Petty Management Corp., 323 Ill. App. 3d 514, 256 Ill. Dec. 716, 752 N.E.2d 596, 2001 Ill. App. LEXIS 475 (1 Dist. 2001).

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In an action against a housing authority for lead paint poisoning, the release of school records of nonparties was authorized where the trial court issued an order calling for the release of the school student records of nonparty siblings and the order provided that the records would be delivered to the court for an in camera inspection to determine their relevancy. D. H. v. Chicago Hous. Auth., 319 Ill. App. 3d 771, 253 Ill. Dec. 826, 746 N.E.2d 274, 2001 Ill. App. LEXIS 108 (1 Dist. 2001).

In Camera Inspection

Circuit court should have ordered the production of and conducted an in camera review of the school records of three witnesses in a juvenile proceeding in which respondent juvenile was charged with aggravated criminal sexual abuse; the records should have been reviewed to determine if they contained information as to the competency of the witnesses to testify because respondent and the witnesses all attended a therapeutic day school, one witness had been placed in a psychiatric institution shortly after the alleged incident, school personnel had interviewed the witnesses after the incident, and as the witnesses presented the only direct evidence against respondent, a thorough examination of their credibility was especially important to protect respondent's due process rights under U.S. Const. amend. XIV. People v. K.S., 387 Ill. App. 3d 570, 326 Ill. Dec. 1028, 900 N.E.2d 1275, 2008 Ill. App. LEXIS 1333 (1 Dist. 2008).

Inconsistent Provisions

The provisions of 105 ILCS 5/14-8.02 abrogate those of this section, to the extent that the provisions are inconsistent; accordingly, a school district may reveal the contents of a student's school records to an attorney representing the district in proceedings concerning the student's special education placement. Aufox v. Board of Educ., 225 Ill. App. 3d 444, 167 Ill. Dec. 675, 588 N.E.2d 316 (2 Dist.), appeal denied, 146 Ill. 2d 621, 176 Ill. Dec. 791, 602 N.E.2d 445 (1992).

Purpose

The purpose of subdivision (a)(6) of this section is to ensure that parents will be aware of any information to be released and will have a chance to challenge the accuracy of that information. Aufox v. Board of Educ., 225 Ill. App. 3d 444, 167 Ill. Dec. 675, 588 N.E.2d 316 (2 Dist.), appeal denied, 146 Ill. 2d 621, 176 Ill. Dec. 791, 602 N.E.2d 445 (1992).

OPINIONS OF ATTORNEY GENERAL

Disposal of Records

- Requirements

The Local Records Act (50 ILCS 205/1 et seq.) is applicable to student records maintained pursuant to this Act and therefore, a local school district must obtain the written approval of the appropriate local records commission before destroying or otherwise disposing of such records. 1983 Op. Atty. Gen. 60.

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§ 105 ILCS 10/7. [Challenge to records; procedures; judicial review; statement on disputed information]

Sec. 7. (a) Parents shall have the right to challenge the accuracy, relevance or propriety of any entry in the school student records, exclusive of (i) academic grades of their child and (ii) references to expulsions or out-of-school suspensions, if the challenge is made at the time the student's school student records are forwarded to another school to which the student is transferring.

(b) The State Board shall prescribe by regulation procedures to govern challenges to school student records under this Act. Such challenge procedures shall provide for a hearing at which each party shall have:

(1) The right to present evidence and to call witnesses;

(2) The right to cross-examine witnesses;

(3) The right to counsel;

(4) The right to a written statement of any decision and the reasons therefor;

(5) The right to appeal an adverse decision to an administrative tribunal or official to be established or designated by the State Board.

(c) A final decision under the procedures established pursuant to this Section may be appealed to the Circuit Court of the County in which the school is located.

(d) Parents shall also have the right to insert in their child's school student record a statement of reasonable length setting forth their position on any disputed information contained in that record. The school shall include a copy of such statement in any subsequent dissemination of the information in dispute.

(Source: P.A. 79-1108; 89-261, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 50-7.

Effect of Amendments. The 1995 amendment by P.A. 89-261, effective August 10, 1995, in subsection (a) inserted "(i)" and added at the end "and (ii) references to expulsions or out-of-school suspensions, if the challenge is made at the time the student's school student records are forwarded to another school to which the student is transferring".

CASE NOTES

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Analysis
Construction
Student Records

Construction

Although 105 ILCS 10/7(a) provided that a parent had the right to challenge the accuracy, relevance, or propriety of any entry in the school student records, exclusive of academic grades of a child, the parent's right to inspect and copy their child's permanent and temporary student records under 105 ILCS 10/5(a) was not conditioned upon the exercise of such a right. Garlick v. Oak Park & River Forest High Sch. Dist. # 200, 389 Ill. App. 3d 306, 329 Ill. Dec. 92, 905 N.E.2d 930, 2009 Ill. App. LEXIS 160 (1 Dist. 2009).

Student Records

Test booklets did not constitute a student record under 105 ILCS 10/2(d) because the test booklets were devoid of student marks or other identifying information and thus neither concerned an individual student nor individually identified a student; instead of expanding the definition of student record, 105 ILCS § 10/2(e), (f) merely subdivided that term into 2 categories: temporary records and permanent records, each falling under the umbrella definition of student record provided in 105 ILCS § 10/2(d). Whether categorized as temporary or permanent, only those records by which a student could have been individually identified constituted a student record. Garlick v. Oak Park & River Forest High Sch. Dist. # 200, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1356 (1 Dist. Feb. 28, 2008).

§ 105 ILCS 10/8. [Conditioning of rights, benefits, etc., on release of temporary record prohibited]

Sec. 8. No person may condition the granting or withholding of any right, privilege or benefit or make as a condition of employment, credit or insurance the securing by any individual of any information from a student's temporary record which such individual may obtain through the exercise of any right secured under this Act.

(Source: P.A. 79-1108.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 50-8.

§ 105 ILCS 10/8.1. [Refusal to admit student for lack of record prohibited; request for record; special education]

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Sec. 8.1. (a) No school may refuse to admit or enroll a student because of that student's failure to present his student permanent or temporary record from a school previously attended.

(b) When a new student applies for admission to a school and does not present his school student record, such school may notify the school or school district last attended by such student, requesting that the student's school student record be copied and sent to it; such request shall be honored within 10 days after it is received. Within 10 days after receiving a request from the Department of Children and Family Services, the school district last attended by the student shall send the student's school student record to the receiving school district.

(c) In the case of a transfer between school districts of a student who is eligible for special education and related services, when the parent or guardian of the student presents a copy of the student's then current individualized education program (IEP) to the new school, the student shall be placed in a special education program in accordance with that described in the student's IEP.

(d) Until June 30, 2015, out-of-state transfer students, including children of military personnel that transfer into this State, may use unofficial transcripts for admission to a school until official transcripts are obtained from his or her last school district.

(Source: P.A. 87-372; 96-953, § 910; 97-216, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 50-8.1.

Effect of Amendments. The 2010 amendment by P.A. 96-953, effective June 28, 2010, added subsection (d).

The 2011 amendment by P.A. 97-216, effective January 1, 2012, substituted "June 30, 2015" for "June 30, 2012" in (d).

§ 105 ILCS 10/9. [Injunctive relief; damages; attorneys' fees; criminal penalty; immunity]

Sec. 9. (a) Any person aggrieved by any violation of this Act may institute an action for injunctive relief in the Circuit Court of the County in which the violation has occurred or the Circuit Court of the County in which the school is located.

(b) Any person injured by a wilful or negligent violation of this Act may institute an action for damages in the Circuit Court of the County in which the violation has occurred or the Circuit Court of the County in which the school is located.

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(c) In the case of any successful action under paragraph (a) or (b) of this Section, any person or school found to have wilfully or negligently violated any provision of this Act is liable to the plaintiff for the plaintiff's damages, the costs of the action and reasonable attorneys' fees, as determined by the Court.

(d) Actions for injunctive relief to secure compliance with this Act may be brought by the State Board, by the State's Attorney of the County in which the alleged violation has occurred or the State's Attorney of the County in which the school is located, in each case in the Circuit Court of such County.

(e) Wilful failure to comply with any Section of this Act is a petty offense; except that any person who wilfully and maliciously falsifies any school student record, student permanent record or student temporary record shall be guilty of a Class A misdemeanor.

(f) Absent proof of malice, no cause of action or claim for relief, civil or criminal, may be maintained against any school, or employee or official of a school or person acting at the direction of a school for any statement made or judgment expressed in any entry to a school student record of a type which does not violate this Act or the regulations issued by the State Board pursuant to this Act; provided that this paragraph (f) does not limit or deny any defense available under existing law.

(Source: P.A. 84-712.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 50-9.

CASE NOTES

Analysis

Injunctive Relief
- Warranted
Student Records

Injunctive Relief

- Warranted

Parent's proper recourse to pursue the parent's right to inspect the test booklets of the parent's child was to institute a cause of action for injunctive relief in the circuit court under 105 ILCS 10/9(a). Garlick v. Oak Park & River Forest High Sch. Dist. # 200, 389 Ill. App. 3d 306, 329 Ill. Dec. 92, 905 N.E.2d 930, 2009 Ill. App. LEXIS 160 (1 Dist. 2009).

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Where plaintiffs' right to access was violated by defendant's refusal to disclose the requested data, the circuit court's conclusion that an injunction was improvident given plaintiffs' purportedly adequate remedy at law was improper. John K. v. Board of Educ., 152 Ill. App. 3d 543, 105 Ill. Dec. 512, 504 N.E.2d 797 (1 Dist. 1987).

Student Records

Test booklets did not constitute a student record under 105 ILCS 10/2(d) because the test booklets were devoid of student marks or other identifying information and thus neither concerned an individual student nor individually identified a student; instead of expanding the definition of student record, 105 ILCS 10/2(e), (f) merely subdivided that term into 2 categories: temporary records and permanent records, each falling under the umbrella definition of student record provided in 105 ILCS § 10/2(d). Whether categorized as temporary or permanent, only those records by which a student could have been individually identified constituted a student record. Garlick v. Oak Park & River Forest High Sch. Dist. # 200, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1356 (1 Dist. Feb. 28, 2008).

§ 105 ILCS 10/10. [Severability]

Sec. 10. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

(Source: P.A. 79-1108.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 50-10.

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P-20 Longitudinal Education Data System Act

Sec.

105 ILCS 13/1.Short title
105 ILCS 13/5.Findings; declarations
105 ILCS 13/10.Definitions
105 ILCS 13/15.Establishment of the longitudinal data system and data warehouse
105 ILCS 13/20.Collection and maintenance of data
105 ILCS 13/25.Data sharing
105 ILCS 13/30.Subject to privacy protection laws
105 ILCS 13/35.No impact on existing authority
105 ILCS 13/40.Evaluation
105 ILCS 13/999.Effective date

§ 105 ILCS 13/1. Short title

Sec. 1. Short title. This Act may be cited as the P-20 Longitudinal Education Data System Act.

(Source: P.A. 96-107, § 1.)

Effective Date. Section 999 of P.A. 96-107 makes this Act effective upon becoming law. The Act was approved July 30, 2009.

§ 105 ILCS 13/5. Findings; declarations

Sec. 5. Findings; declarations. The General Assembly finds and declares all of the following:

(1) Sound data collection, reporting, and analysis are critical to building a State education system capable of ensuring all Illinois students are adequately prepared for college and the global workforce. School districts and institutions of higher learning can improve instructional and educational decision-making using data that is collected and made available by this State.

(2) Reliable and sufficient education data is necessary to ensure that this State bases education policy decisions on valid, objective measures of student outcomes. Publicly

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accessible data on State, school district, and school performance allows the citizens of this State to assess local and statewide investments in education.

(3) A national collaborative effort among State education officials, national education organizations, and state and federal policymakers has defined the essential elements a State longitudinal data system should contain. Public Law 110-69, the America COMPETES Act, requires state longitudinal data systems to include all 10 elements identified by this national, collaborative effort for states to qualify for federal funding opportunities. The federal American Recovery and Reinvestment Act of 2009 [Public Law 111-5] requires states to establish longitudinal data systems with all 10 elements to qualify for federal funding for education, public safety, and other government services.

(4) Public Law 110-134 requires the Illinois Early Learning Council to develop recommendations regarding the establishment of a unified data collection system for public early childhood education and development programs and services throughout this State, and those efforts should be coordinated with the development of this State's longitudinal data system.

(5) State education policymaking benefits from partnerships between State education agencies and entities with expertise in education research, including school districts, institutions of higher learning, and research organizations. This State should establish systems and processes to permit qualified researchers to assist with State evaluation and research functions in a manner consistent with privacy protection laws.

(6) State education systems and national policymaking benefit from multi-state collaborations that are informed by high quality data collection systems.

(7) This State is committed to establishing and maintaining a longitudinal student unit record data system that educators and policymakers can use to analyze and assess student progress from early learning programs through postsecondary education and into employment. The State Board of Education, the Illinois Community College Board, and the Board of Higher Education have designed, built, and deployed some of the fundamental components of a longitudinal data system and have engaged in extensive efforts to effectively link and use available education data. However, the various education data components maintained by this State must be integrated and managed in a cooperative manner to establish a data-driven, decision-making environment for this State's education system.

(8) The longitudinal data system established by this Act is intended, among other purposes, to link student test scores, length of enrollment, and graduation records over time, as permitted by Section 1111(b)(3)(B) of the federal Elementary and Secondary Education Act (20 U.S.C. 6311(b)(3)(B)).

(9) Students will achieve improved learning outcomes as a result of the longitudinal data system established by this Act through instruction and educational programs informed by valid and reliable data.

(10) State use and management of education data must be in accordance with all legal requirements protecting student privacy and must protect personal information from

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intentional or accidental release to unauthorized persons and from intentional or accidental use for unauthorized purposes.

(Source: P.A. 96-107, § 5.)

§ 105 ILCS 13/10. Definitions

Sec. 10. Definitions. In this Act:

"Community College Board" means the Illinois Community College Board.

"Community colleges" has the meaning ascribed to that term in Section 1-2 of the Public Community College Act [110 ILCS 805/1-2].

"Early learning" means any publicly funded education and care program supporting young children not yet enrolled in kindergarten.

"Elementary" means kindergarten through eighth grade.

"Institution of higher learning" has the meaning ascribed to that term in Section 10 of the Higher Education Student Assistance Act [110 ILCS 949/10].

"Longitudinal data system" means a student unit record data system that links student records from early learning through the postsecondary level, which may consist of separate student unit record systems integrated through agreement and data transfer mechanisms.

"Privacy protection laws" means the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g), the Illinois School Student Records Act [105 ILCS 10/1 et seq.], the Personal Information Protection Act [815 ILCS 530/1 et seq.], and any other State or federal law relating to the confidentiality and protection of personally identifiable information.

"Research organization" means a governmental entity, institution of higher learning, public policy or advocacy organization, or other person or entity conducting educational research that (i) is qualified to perform educational research and protect the privacy of student data, (ii) is seeking to perform research for a non-commercial purpose authorized by privacy protection laws, and (iii) agrees to perform the research pursuant to a written agreement meeting the requirements of privacy protection laws and this Act.

"School" means any elementary or secondary educational institution, charter school, vocational school, special education facility, or any other elementary or secondary educational agency or institution, but does not include a non-public school.

"Secondary" means ninth through twelfth grade.

"State Board" means the State Board of Education.

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"State Education Authorities" means the State Board, Community College Board, and Board of Higher Education.

(Source: P.A. 96-107, § 10.)

§ 105 ILCS 13/15. Establishment of the longitudinal data system and data warehouse

Sec. 15. Establishment of the longitudinal data system and data warehouse. (a) The State Education Authorities shall jointly establish and maintain a longitudinal data system by entering into one or more agreements that link early learning, elementary, and secondary school student unit records with institution of higher learning student unit records. To the extent authorized by this Section and Section 20 of this Act [105 ILCS 13/20]:

(1) the State Board is responsible for collecting and maintaining authoritative enrollment, completion, and student characteristic information on early learning, public school (kindergarten through grade 12), and non-public school (kindergarten through grade 12) students;

(2) the Community College Board is responsible for collecting and maintaining authoritative enrollment, completion, and student characteristic information on community college students; and

(3) the Board of Higher Education is responsible for collecting and maintaining authoritative enrollment, completion, and student characteristic information on students enrolled in institutions of higher learning, other than community colleges.

(b) On or before June 30, 2013, subject to the availability of funding through appropriations made specifically for the purposes of this Act, the State Education Authorities shall improve and expand the longitudinal data system to enable the State Education Authorities to perform or cause to be performed all of the following activities and functions:

(1) Reduce, to the maximum extent possible, the data collection burden on school districts and institutions of higher learning by using data submitted to the system for multiple reporting and analysis functions.

(2) Provide authorized officials of early learning programs, schools, school districts, and institutions of higher learning with access to their own student-level data, summary reports, and data that can be integrated with additional data maintained outside of the system to inform education decision-making.

(3) Link data to instructional management tools that support instruction and assist collaboration among teachers and postsecondary instructors.

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(4) Enhance and expand existing high school-to-postsecondary reporting systems to inform school and school district officials, education policymakers, and members of the public about public school students' performance in postsecondary education.

(5) Provide data reporting, analysis, and planning tools that assist with financial oversight, human resource management, and other education support functions.

(6) Improve student access to educational opportunities by linking data to student college and career planning portals, facilitating the submission of electronic transcripts and scholarship and financial aid applications, and enabling the transfer of student records to officials of a school or institution of higher learning where a student enrolls or seeks or intends to enroll.

(7) Establish a public Internet web interface that provides non-confidential data reports and permits queries so that parents, the media, and other members of the public can more easily access information pertaining to statewide, district, and school performance.

(8) Provide research and reports to the General Assembly that assist with evaluating the effectiveness of specific programs and that enable legislators to analyze educational performance within their legislative districts.

(9) Allow the State Education Authorities to efficiently meet federal and State reporting requirements by drawing data for required reports from multiple State systems.

(10) Establish a system to evaluate teacher and administrator preparation programs using student academic growth as one component of evaluation.

(11) In accordance with a data sharing agreement entered into between the State Education Authorities and the Illinois Student Assistance Commission, establish procedures and systems to evaluate the relationship between need-based financial aid and student enrollment and success in institutions of higher learning.

(12) In accordance with data sharing agreements entered into between the State Education Authorities and health and human service agencies, establish procedures and systems to evaluate the relationship between education and other student and family support systems.

(13) In accordance with data sharing agreements entered into between the State Education Authorities and employment and workforce development agencies, establish procedures and systems to evaluate the relationship between education programs and outcomes and employment fields, employment locations, and employment outcomes.

(c) On or before June 30, 2013, subject to the availability of funding through appropriations made specifically for the purposes of this Act, the State Board shall establish a data warehouse that integrates data from multiple student unit record systems and supports all of the uses and functions of the longitudinal data system set forth in this Act. The data warehouse must be developed in cooperation with the Community College Board and the Board of Higher Education and must have the ability to integrate longitudinal data from early learning through the postsecondary level in accordance with one or more data sharing agreements entered into among the State Education Authorities.

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The data warehouse, as integrated with the longitudinal data system, must include, but is not limited to, all of the following elements:

(1) A unique statewide student identifier that connects student data across key databases across years. The unique statewide student identifier must not be derived from a student's social security number and must be provided to institutions of higher learning to assist with linkages between early learning through secondary and postsecondary data.

(2) Student-level enrollment, demographic, and program participation information, including information on participation in dual credit programs.

(3) The ability to match individual students' elementary and secondary test records from year to year to measure academic growth.

(4) Information on untested students in the elementary and secondary levels, and the reasons they were not tested.

(5) A teacher and administrator identifier system with the ability to match students to early learning, elementary, and secondary teachers and elementary and secondary administrators. Information able to be obtained only as a result of the linkage of teacher and student data through the longitudinal data system may not be used by a school district for decisions involving teacher pay or teacher benefits unless the district and the exclusive bargaining representative of the district's teachers, if any, have agreed to this use. Information able to be obtained only as a result of the linkage of teacher and student data through the longitudinal data system may not be used by a school district as part of an evaluation under Article 24A of the School Code [105 ILCS 5/24A-1 et seq.] unless, in good faith cooperation with the school district's teachers or, where applicable, the exclusive bargaining representative of the school district's teachers, the school district has developed an evaluation plan or substantive change to an evaluation plan that specifically describes the school district's rationale for using this information for evaluations, how this information will be used as part of the evaluation process, and how this information will relate to evaluation standards. However, nothing in this subdivision (5) or elsewhere in this Act limits or restricts (i) a district's use of any local or State data that has been obtained independently from the linkage of teacher and student data through the longitudinal data system or (ii) a charter school's use of any local or State data in connection with teacher pay, benefits, or evaluations.

(6) Student-level transcript information, including information on courses completed and grades earned, from middle and high schools. The State Board shall establish a statewide course classification system based upon the federal School Codes for Exchange of Data or a similar course classification system. Each school district and charter school shall map its course descriptions to the statewide course classification system for the purpose of State reporting. School districts and charter schools are not required to change or modify the locally adopted course descriptions used for all other purposes. The State Board shall establish or contract for the establishment of a technical support and training system to assist schools and districts with the implementation of this item (6) and shall, to the extent possible, collect transcript data using a system that permits automated reporting from district student information systems.

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(7) Student-level college readiness test scores.

(8) Student-level graduation and dropout data.

(9) The ability to match early learning through secondary student unit records with institution of higher learning student unit record systems.

(10) A State data audit system assessing data quality, validity, and reliability.

(d) Using data provided to and maintained by the longitudinal data system, the State Education Authorities may, in addition to functions and activities specified elsewhere in this Section, perform and undertake the following:

(1) research for or on behalf of early learning programs, schools, school districts, or institutions of higher learning, which may be performed by one or more State Education Authorities or through agreements with research organizations meeting all of the requirements of this Act and privacy protection laws; and

(2) audits or evaluations of federal or State-supported education programs and activities to enforce federal or State legal requirements with respect to those programs. Each State Education Authority may assist another State Education Authority with audit, evaluation, or enforcement activities and may disclose education records with each other for those activities relating to any early learning through postsecondary program. The State Education Authorities may disclose student information to authorized officials of a student's former early learning program, school, or school district to assist with the evaluation of federal or State-supported education programs.

(e) In establishing, operating, and expanding the longitudinal data system, the State Education Authorities shall convene stakeholders and create opportunities for input and advice in the areas of data ownership, data use, research priorities, data management, confidentiality, data access, and reporting from the system. Such stakeholders include, but are not limited to, public and non-public institutions of higher learning, school districts, charter schools, non-public elementary and secondary schools, early learning programs, teachers, professors, parents, principals and administrators, school research consortiums, education policy and advocacy organizations, news media, the Illinois Student Assistance Commission, the Illinois Education Research Council, the Department of Commerce and Economic Opportunity, the Illinois Early Learning Council, and the Legislative Research Unit.

(f) Representatives of the State Education Authorities shall report to and advise the Illinois P-20 Council on the implementation, operation, and expansion of the longitudinal data system.

(g) Appropriations made to the State Education Authorities for the purposes of this Act shall be used exclusively for expenses for the development and operation of the longitudinal data system. Authorized expenses of the State Education Authorities may relate to contracts with outside vendors for the development and operation of the system, agreements with other governmental entities or research organizations for authorized uses and functions of the system, technical support and training for entities submitting data to the system, or regular or contractual employees necessary for the system's development

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or operation.

(Source: P.A. 96-107, § 15.)

§ 105 ILCS 13/20. Collection and maintenance of data

Sec. 20. Collection and maintenance of data. (a) The State Board is authorized to collect and maintain data from school districts, schools, and early learning programs and disclose this data to the longitudinal data system for the purposes set forth in this Act. The State Board shall collect data from charter schools with more than one campus in a manner that can be disaggregated by campus site. The State Board may also disclose data to the longitudinal data system that the State Board is otherwise authorized by law to collect and maintain.

On or before July 1, 2010, the State Board shall establish procedures through which State-recognized, non-public schools may elect to participate in the longitudinal data system by disclosing data to the State Board for one or more of the purposes set forth in this Act.

Subject to the availability of funding through appropriations made specifically for the purposes of this Act, the State Board shall establish or contract for the establishment of a technical support and training system to assist school districts, schools, and early learning programs with data submission, use, and analysis.

(b) The Community College Board is authorized to collect and maintain data from community college districts and disclose this data to the longitudinal data system for the purposes set forth in this Act. The Community College Board may also disclose data to the longitudinal data system that the Community College Board is otherwise authorized by law to collect and maintain.

Subject to the availability of funding through appropriations made specifically for the purposes of this Act, the Community College Board shall establish or contract for the establishment of a technical support and training system to assist community colleges with data submission, use, and analysis.

(c) The Board of Higher Education is authorized to collect and maintain data from any public institution of higher learning, other than community colleges, and disclose this data to the longitudinal data system for the purposes set forth in this Act. The Board of Higher Education may also disclose data to the longitudinal data system that the Board of Higher Education is otherwise authorized by law to collect and maintain.

Beginning on July 1, 2012, the Board of Higher Education is authorized to collect and maintain data from any non-public institution of higher learning enrolling one or more students receiving Monetary Award Program grants and any non-public institution of higher learning that confers graduate and professional degrees, pursuant to Section 35 of

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the Higher Education Student Assistance Act [110 ILCS 947/35], and disclose this data to the longitudinal data system for the purposes set forth in this Act. Prior to July 1, 2012, any non-public institution of higher learning may elect to participate in the longitudinal data system by disclosing data for one or more of the purposes set forth in this Act to the Board of Higher Education or to a consortium that has contracted with the Board of Higher Education pursuant to this subsection (c).

The Board of Higher Education may contract with one or more voluntary consortiums of non-public institutions of higher learning established for the purpose of data sharing, research, and analysis. The contract may allow the consortium to collect data from participating institutions on behalf of the Board of Higher Education. The contract may provide for consultation with a representative committee of participating institutions and a representative of one or more organizations representing the participating institutions prior to the use of data from the consortium for a data sharing arrangement entered into with any party other than a State Education Authority pursuant to Section 25 of this Act [105 ILCS 13/25]. The contract may further provide that individual institutions of higher learning shall have the right to opt out of specific uses of their data or portions thereof for reasons specified in the contract. Student-level data submitted by each institution of higher learning participating in a consortium that has contracted with the Board of Higher Education pursuant to this paragraph shall remain the property of that institution. Upon notice to the consortium and the Board of Higher Education, any non-public institution of higher learning shall have the right to remove its data from the consortium if the institution has reasonable cause to believe that there is a threat to the security of its data or its data is used in a manner that violates the terms of the contract between the consortium and the Board of Higher Education. In the event data is removed from a consortium pursuant to the preceding sentence, the data must be returned by the institution to the consortium after the basis for removal has been corrected. The data submitted from the consortium to the Board of Higher Education must be used only for agreed-upon purposes, as stated in the terms of the contract between the consortium and the Board of Higher Education. Non-public institutions of higher learning submitting student-level data to a consortium that has contracted with the Board of Higher Education pursuant to this paragraph shall not be required to submit student-level data to the Board of Higher Education.

Subject to the availability of funding through appropriations made specifically for the purposes of this Act, the Board of Higher Education shall establish or contract for the establishment of a technical support and training system to assist institutions of higher learning, other than community colleges, with data submission, use, and analysis. The Board of Higher Education shall seek and may make available grant funding to a consortium including non-public institutions of higher learning to provide assistance in the development of a data collection system. The Board of Higher Education shall engage in a cooperative planning process with public and non-public institutions of higher learning and statewide higher education associations in connection with all of the activities authorized by this subsection (c).

(d) The State Education Authorities shall establish procedures and requirements relating to the submission of data authorized to be collected pursuant to this Section, including requirements for data specifications, quality, security, and timeliness. All early learning

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programs, schools, school districts, and institutions of higher learning subject to the data collection authority of a State Education Authority pursuant to this Section shall comply with the State Education Authority's procedures and requirements for data submissions. A State Education Authority may require that staff responsible for collecting, validating, and submitting data participate in training and technical assistance offered by this State if data is not submitted in accordance with applicable procedures and requirements.

(Source: P.A. 96-107, § 20; 96-1249, § 5.)

Effect of Amendments. The 2010 amendment by P.A. 96-1249, effective July 23, 2010, inserted "and any non-public institution of higher learning that confers graduate and professional degrees" in the first sentence of the second paragraph of (c); and in the second sentence of the fourth paragraph of (c), inserted "shall seek and" and substituted "including" for "of."

§ 105 ILCS 13/25. Data sharing

Sec. 25. Data sharing. (a) The State Education Authorities may disclose data from the longitudinal data system collected pursuant to Section 20 of this Act [105 ILCS 13/20] only in connection with a data sharing arrangement meeting the requirements of this Section.

(b) Any State agency, board, authority, or commission may enter into a data sharing arrangement with one or more of the State Education Authorities to share data to support the research and evaluation activities authorized by this Act. State Education Authorities may also enter into data sharing arrangements with other governmental entities, institutions of higher learning, and research organizations that support the research and evaluation activities authorized by this Act.

(c) Any data sharing arrangement entered into pursuant to this Section must:

(1) be permissible under and undertaken in accordance with privacy protection laws;

(2) be approved by the following persons:

(A) the State Superintendent of Education or his or her designee for the use of early learning, public school, and non-public school student data;

(B) the chief executive officer of the Community College Board or his or her designee for the use of community college student data; and

(C) the executive director of the Board of Higher Education or his or her designee for the use of student data from an institution of higher learning, other than a community college;

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(3) not permit the personal identification of any person by individuals other than authorized representatives of the recipient entity that have legitimate interests in the information;

(4) ensure the destruction or return of the data when no longer needed for the authorized purposes under the data sharing arrangement; and

(5) be performed pursuant to a written agreement with the recipient entity that does the following:

(A) specifies the purpose, scope, and duration of the data sharing arrangement;

(B) requires the recipient of the data to use personally identifiable information from education records to meet only the purpose or purposes of the data sharing arrangement stated in the written agreement;

(C) describes specific data access, use, and security restrictions that the recipient will undertake; and

(D) includes such other terms and provisions as the State Education Authorities deem necessary to carry out the intent and purposes of this Act.

(d) Data that has been submitted to the Board by a consortium of non-public colleges and universities is prohibited from being included in any interstate data-sharing agreements with other states unless consortium participants agree to allow interstate data sharing.

Any non-public college may prohibit its data from being shared with any other state.

Any non-public college may prohibit its data from being included in any interstate data-sharing agreement.

(Source: P.A. 96-107, § 25; 96-1249, § 5.)

Effect of Amendments. The 2010 amendment by P.A. 96-1249, effective July 1, 2010, added (d).

§ 105 ILCS 13/30. Subject to privacy protection laws

Sec. 30. Subject to privacy protection laws. The collection, use, maintenance, disclosure, and sharing of data authorized by this Act must be conducted in accordance with privacy protection laws. The State Education Authorities shall each develop security measures and procedures that protect personal information from intentional or accidental release to unauthorized persons and from intentional or accidental use for unauthorized purposes.

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(Source: P.A. 96-107, § 30.)

§ 105 ILCS 13/35. No impact on existing authority

Sec. 35. No impact on existing authority. This Act does not modify or diminish any responsibilities or authority that a State Education Authority or the State Education Authorities collectively may otherwise have under law with respect to the collection, use, maintenance, disclosure, and sharing of data.

(Source: P.A. 96-107, § 35.)

§ 105 ILCS 13/40. Evaluation

Sec. 40. Evaluation. Subject to the availability of funding through appropriations made specifically for the purposes of this Act, the State Education Authorities shall contract with an independent outside evaluator for oversight of the development and operation of the longitudinal data system. The independent outside evaluator shall annually submit a report to the State Education Authorities, the Illinois P-20 Council, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate. The report shall include without limitation (i) an evaluation of the extent to which the system is being developed and operated to achieve the purposes, objectives, and requirements of this Act; (ii) an evaluation of the oversight and governance of the system by the State Education Authorities and any recommendations to improve the oversight and governance of the system; and (iii) an evaluation of the security measures and procedures developed by the State Education Authorities to protect personally identifiable information and any recommendations to further ensure the privacy of personally identifiable information.

(Source: P.A. 96-107, § 40.)

§ 105 ILCS 13/999. Effective date

Sec. 999. Effective date. This Act takes effect upon becoming law.

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(Source: P.A. 96-107, § 40.)

Note.

The Act was approved July 30, 2009.

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Surplus Federal Property for Schools Act

Sec.

105 ILCS 15/0.01.Short title
105 ILCS 15/1.[Vesting of title]

§ 105 ILCS 15/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Surplus Federal Property for Schools Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act in relation to disposition of equipment and supplies acquired by the State of Illinois under the provisions of Public Law 124, 79th Congress, 1st Session, approved July 3, 1945.

Cite: 105 ILCS 15/0.01 et seq.

Source: L. 1953, p. 1663.

Date: Approved July 15, 1953.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 737.9.

§ 105 ILCS 15/1. [Vesting of title]

Sec. 1. Title to any equipment and supplies acquired by the State of Illinois under the provisions of Public Law 124, 79th Congress, 1st Session, approved July 3, 1945, shall be vested in the school board of the district that has possession and use of such property and supplies on July 1, 1953.

(Source: Laws 1953, p. 1663.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 738.

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Silent Reflection and Student Prayer Act

Sec.

105 ILCS 20/0.01.Short title
105 ILCS 20/1.[Period of silence]
105 ILCS 20/5.Student prayer

§ 105 ILCS 20/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Silent Reflection and Student Prayer Act.

(Source: P.A. 86-1324; 92-832, § 5.)

Derivation.

Title: An Act to authorize the observance of a brief period of silence in public school classrooms at the opening of each school day.

Cite: 105 ILCS 20/0.01 et seq.

Source: P.A. 76-21.

Date: Approved April 16, 1969.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 770.

Effect of Amendments. The 2002 amendment by P.A. 92-832, effective January 1, 2003, inserted "and Student Prayer".

§ 105 ILCS 20/1. [Period of silence]

Sec. 1. In each public school classroom the teacher in charge shall observe a brief period of silence with the participation of all the pupils therein assembled at the opening of every school day. This period shall not be conducted as a religious exercise but shall be an opportunity for silent prayer or for silent reflection on the anticipated activities of the day.

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(Source: P.A. 76-21; 95-680, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 771.

Effect of Amendments. The 2007 amendment by P.A. 95-680, effective October 11, 2007, substituted "shall observe" for "may observe" in the first sentence.

CASE NOTES

Analysis

Constitutionality
Class Action
Parties
Standing

Constitutionality

Vagueness challenge of state's "moment of silence" law, 105 ILCS 20/1, which mandated a period of silence to calm school children before the start of their day, failed because the statute was not unconstitutionally vague in all of its operations. Sherman v. Koch, 623 F.3d 501, 2010 U.S. App. LEXIS 21266 (7th Cir. 2010), cert. denied, 132 S. Ct. 92, 2011 U.S. LEXIS 6890, 181 L. Ed. 2d 22 (U.S. 2011).

Illinois legislature had secular purpose in passing its "moment of silence" law, 105 ILCS 20/1, which mandated a period of silence to calm school children before the start of their day; moreover, the provision did not advance or inhibit religion, but rather mandated only a period of silence, and there was no state entanglement with religion. So statute passed the Lemon test. Sherman v. Koch, 623 F.3d 501, 2010 U.S. App. LEXIS 21266 (7th Cir. 2010), cert. denied, 132 S. Ct. 92, 2011 U.S. LEXIS 6890, 181 L. Ed. 2d 22 (U.S. 2011).

Class Action

Minor student alleged that the Illinois Silent Reflection and Student Prayer Act (Act), 105 ILCS 20/1, was unconstitutionally vague and violated her First Amendment rights under the Establishment Clause and moved to certify bilateral classes of plaintiffs and defendants. Plaintiff class was certified because differences of opinion among plaintiff class members as to the validity of the Act or the propriety of the policy it codified were no obstacle to finding the named plaintiff's claim typical; also, while it may have been true that some plaintiff class members supported the Act, such differences of opinion did not amount to antagonistic interests sufficient to undermine class certification. Sherman v. Twp. High Sch. Dist. 214, 540 F. Supp. 2d 985, 2008 U.S. Dist. LEXIS 25979 (N.D. Ill. 2008).

Minor student alleged that the Illinois Silent Reflection and Student Prayer Act (Act), 105 ILCS 20/1, was unconstitutionally vague and violated her First Amendment rights under the

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Establishment Clause and moved to certify bilateral classes of plaintiffs and defendants. Defendant class was certified because typicality did not require that defenses be identical or perfectly coextensive, they needed only to be substantially similar; because the court could fairly conclude that by pursuing their own interests, the school district, amici curiae, and potential intervenors would necessarily raise all defenses common to the class, it found representation adequate. Sherman v. Twp. High Sch. Dist. 214, 540 F. Supp. 2d 985, 2008 U.S. Dist. LEXIS 25979 (N.D. Ill. 2008).

Parties

State Department of Education Superintendent was a proper defendant in a case where a student challenged the Silent Reflection and Student Prayer Act, 105 ILCS 20/1, because pursuant to 105 ILCS 5/1A-4(C), the chief executive officer of the Illinois State Board of Education was responsible for the educational policies and guidelines for public schools in Illinois, and presumably these powers would include the authority to compel school districts to comply with this statute. Sherman v. Twp. High Sch. Dist. 214, 624 F. Supp. 2d 907, 2007 U.S. Dist. LEXIS 84440 (N.D. Ill. 2007).

Standing

Where minor student's complaint, brought through her father, alleged that the Illinois Silent Reflection and Student Prayer Act, 105 ILCS 20/1, violated the Establishment Clause, was unconstitutionally vague and overbroad, and subjected the minor and other students to a mandatory period of prayer, this was sufficient notice pleading under Fed. R. Civ. P. 8, and it clearly established that the minor had standing. Sherman v. Twp. High Sch. Dist. 214, 540 F. Supp. 2d 985, 2008 U.S. Dist. LEXIS 25979 (N.D. Ill. 2008).

§ 105 ILCS 20/5. Student prayer

Sec. 5. Student prayer. In order that the right of every student to the free exercise of religion is guaranteed within the public schools and that each student has the freedom to not be subject to pressure from the State either to engage in or to refrain from religious observation on public school grounds, students in the public schools may voluntarily engage in individually initiated, non-disruptive prayer that, consistent with the Free Exercise and Establishment Clauses of the United States and Illinois Constitutions, is not sponsored, promoted, or endorsed in any manner by the school or any school employee.

(Source: P.A. 92-832, § 5.)

Effective Date. This section is effective January 1, 2003 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

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Interscholastic Athletic Organization Act

Sec.

105 ILCS 25/0.01.Short title
105 ILCS 25/1.[Membership in certain entities prohibited]
105 ILCS 25/1.5.Cancer screening
105 ILCS 25/2.[Repealed]

§ 105 ILCS 25/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Interscholastic Athletic Organization Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act relating to membership representation on certain interscholastic athletic organizations.

Cite: 105 ILCS 25/0.01 et seq.

Source: P.A. 85-656.

Date: Approved September 20, 1987.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1820.

§ 105 ILCS 25/1. [Membership in certain entities prohibited]

Sec. 1. No membership or other dues or fees shall be paid by the governing body of any public elementary or public secondary school in this State to any association or other entity which has as one of its purposes promoting, sponsoring, regulating or in any manner providing for interscholastic athletics or any form of athletic competition among schools and students within this State if such association or other entity adopts or maintains in effect any bylaw, rule, regulation or policy which designates or requires a member to designate its school principal or any other school administrator as the representative of the member who alone is entitled to cast the vote of the member on any matter coming before such association or entity which is to be determined by a vote of its

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general membership; provided, that the provisions of this Section shall not apply if the bylaws, rules, regulations or policies of such association or entity, as adopted and applied: (i) authorize the governing board of each secondary school which is a member of the association or entity to appoint, as the allotted representative of such secondary school entitled to cast its vote on any matter coming before the association or entity which is to be determined by a vote of its general membership, any coach, athletic director, teacher, principal or other school administrator employed at the secondary school which the governing body chooses to appoint as such representative, and (ii) provide that if no representative of a member is so appointed by its governing body, that the school principal of the member shall be its representative authorized to cast its vote unless and until the governing body shall otherwise appoint.

(Source: P.A. 85-656.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1821.

§ 105 ILCS 25/1.5. Cancer screening

Sec. 1.5. Cancer screening. An association or other entity that has as one of its purposes promoting, sponsoring, regulating, or in any manner providing for interscholastic athletics or any form of athletic competition among schools and students within this State shall include a question asking whether a student has a family history of cancer on any pre-participation examination form given to students participating or seeking to participate in interscholastic athletics. The association or entity may require that a testicular examination be conducted as a part of any physical required for a male student's participation in interscholastic athletics.

(Source: P.A. 96-128, § 10; 96-1000, § 270.)

Note.

A former multiple version of this section enacted by P.A. 96-132 § 5 was redesignated as 105 ILCS 25/2 by P.A. 96-1000 § 270, effective July 2, 2010.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. This section is effective January 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

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Effect of Amendments. The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, reenacted the section without changes.

§ 105 ILCS 25/2: Repealed by P.A. 96-132, § 5, effective July 1, 2011.

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Illinois Peace Corps Fellowship Program Law

Sec.

105 ILCS 30/2-1.Short title
105 ILCS 30/2-2.Purpose
105 ILCS 30/2-3.Program description
105 ILCS 30/2-4.Eligibility

§ 105 ILCS 30/2-1. Short title

Sec. 2-1. Short title. This Article may be cited as the Illinois Peace Corps Fellowship Program Law.

(Source: P.A. 86-1467.)

Derivation.

Title: An Act in relation to education. (Art. 2).

Cite: 105 ILCS 30/2-1 et seq.

Source: P.A. 86-1467.

Date: Certified December 12, 1990.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2001.

§ 105 ILCS 30/2-2. Purpose

Sec. 2-2. Purpose. In the spirit of improving educational standards and providing alternative routes into teaching at public elementary and secondary schools, and in an effort to enhance and reform troubled public school systems, including but not limited to the public school systems within the City of Chicago and the City of East St. Louis, there is hereby created the Illinois Peace Corps Fellowship Program. The purpose of this program shall be: (i) to help reduce the shortage of qualified teachers at both inner-city and rural public schools by placing qualified United States Peace Corps veterans into salaried teacher aide and certificated teaching positions in underserved school districts, while at the same time providing fellowships to those former Peace Corps volunteers under cooperative agreements established between or among school districts, Illinois'

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public universities and colleges, the United States Peace Corps and the private sector; and (ii) to facilitate the collaboration required among such entities to effectively implement the provisions of this Article.

(Source: P.A. 86-1467.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2002.

§ 105 ILCS 30/2-3. Program description

Sec. 2-3. Program description. The University of Illinois, Southern Illinois University, the several universities and colleges under the governance of the Board of Governors of State Colleges and Universities, and the several Regency Universities under the jurisdiction of the Board of Regents are hereby authorized to become participants in the Illinois Peace Corps Fellowship Program. Any such participating public institution of higher education may conduct and administer this program to augment the number of Illinois public school teachers by bringing the teaching skills of recently returned United States Peace Corps volunteers to those school districts, including the school districts situated within the City of Chicago and the City of East St. Louis or any other school district designated by the State Board of Education, which enter into cooperative agreements required for implementation of the program. In designating such school districts, the State Board of Education may consider districts that have a high proportion of drop-out students, a high percentage of minority students, a high proportion of low income families and high truancy rates. The program shall utilize former United States Peace Corps volunteers with two years of Peace Corps experience by placing them in the designated cooperating school districts as full time teachers or teacher aides. In return for making a two-year commitment to teaching and being placed in a full-time salaried teacher aide or certificated teaching position at a public school located in a designated cooperating school district, the former Peace Corps volunteer may be awarded a fellowship to the participating public institution of higher education to complete (in the case of teacher aides who are not yet certificated) the courses required for issuance of a teaching certificate under Article 21 of The School Code [105 ILCS 5/21-1a et seq.], or to pursue a master's degree program in education. The fellowships may consist of tuition waivers applicable toward enrollment at the participating public institution of higher education to complete required courses for teacher certification and to pursue a master's degree program in education; and the award of such tuition waivers may be supported by funds and grants made available to the participating university or universities through private or public sources. A participating university may also consider an authorization under which all fellowship recipients are allowed to pay in-state tuition rates while enrolled for credit in a master's degree program.

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An annual salary for the fellowship recipient to teach in a designated school district for a period of two years may be provided by the designated cooperating school district at which the fellowship recipient shall teach, and may be set at an amount equal to that paid to other teacher aides and certificated teachers in a comparable position.

(Source: P.A. 86-1467; 95-331, § 550.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2003.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, corrected a typographical error.

§ 105 ILCS 30/2-4. Eligibility

Sec. 2-4. Eligibility. To be eligible to receive a Peace Corps Fellowship an applicant shall:

(a) have been a United States Peace Corps volunteer for two years with an outstanding record of service in the Peace Corps;

(b) have been awarded a baccalaureate degree from a recognized institution of higher learning;

(c) have a genuine commitment to teaching students in underserved areas; and

(d) be admitted to the participating public institution of higher education on the same conditions as to educational qualifications as are applicable to other candidates for admission to a master's degree program in education at that institution.

(Source: P.A. 86-1467.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2004.

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Children and Family Community Protection Act

Sec.

105 ILCS 35/1.Short title
105 ILCS 35/5.Notice of proposed school
105 ILCS 35/10.Public hearing
105 ILCS 35/15.Enforcement

§ 105 ILCS 35/1. Short title

Sec. 1. Short title. This Act may be cited as the Children and Family Community Protection Act.

(Source: P.A. 87-355.)

Derivation.

Title: An Act concerning the safety and welfare of children in a community and the rights of their families.

Cite: 105 ILCS 35/1 et seq.

Source: P.A. 87-355.

Date: Approved September 9, 1991.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2051.

§ 105 ILCS 35/5. Notice of proposed school

Sec. 5. Notice of proposed school. (a) To protect the safety and welfare of children in a community and the rights of their families, in any municipality with a population greater than 1,000,000, the board of education of the school district constituted by that municipality shall give written notice of any proposed construction of a building to be used as a school or any conversion of an existing building to new use as a school. The notice shall be sent by certified mail, return receipt requested, to each owner of residential property the lot line of which is contiguous with or within 250 feet of the lot line of the site on which the school is proposed to be constructed or the site of the building that is proposed to be converted to use as a school.

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(b) The notice shall identify the site described in subsection (a) and shall state the date, time, and place of a public hearing to be held on the proposed construction or conversion.

(Source: P.A. 87-355.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2055.

§ 105 ILCS 35/10. Public hearing

Sec. 10. Public hearing. The board of education shall conduct a public hearing at which interested persons may ask questions of the board concerning the proposed construction or conversion and may offer comments (written, verbal, or both) on the proposal.

(Source: P.A. 87-355.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2060.

§ 105 ILCS 35/15. Enforcement

Sec. 15. Enforcement. Any property owner to whom notice is required to be sent under this Act may seek enforcement of the provisions of this Act by commencing a civil action in the circuit court.

(Source: P.A. 87-355.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 2065.

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Illinois Distance Learning Foundation Act

Sec.

105 ILCS 40/1.Short title
105 ILCS 40/5.Creation of Foundation
105 ILCS 40/10.Foundation purposes
105 ILCS 40/15.Organization, powers, and duties of Foundation
105 ILCS 40/900.[Not Set Out]
105 ILCS 40/999.Effective date

§ 105 ILCS 40/1. Short title

Sec. 1. Short title. This Act may be cited as the Illinois Distance Learning Foundation Act.

(Source: P.A. 88-146, § 1.)

Derivation.

Title: An Act to create the Illinois Distance Learning Foundation, amending a named Act.

Cite: 105 ILCS 40/1 et seq.

Source: P.A. 88-146.

Date: Approved July 27, 1993.

Effective Date. Section 999 of P.A. 88-146 made this Act effective upon becoming law. The Act was approved July 27, 1993.

§ 105 ILCS 40/5. Creation of Foundation

Sec. 5. Creation of Foundation. The General Assembly authorizes the Lieutenant Governor, in accordance with Section 10 of the State Agency Entity Creation Act, to create the Illinois Distance Learning Foundation. Pursuant to this authority, the Lieutenant Governor shall create the Illinois Distance Learning Foundation as a not-for-profit foundation. The Lieutenant Governor shall file articles of incorporation as required under the General Not For Profit Corporation Act of 1986 to create the Foundation. The Foundation's Board of Directors shall be appointed by the Lieutenant Governor from time to time. The Lieutenant Governor shall serve as Chairman of the Board of Directors of

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the Foundation. The Director of the Governor's Rural Affairs Council shall serve as the initial Director of the Foundation. No member of the Board of Directors may receive compensation for his or her services to the Foundation.

Until January 11, 1999, while the office of Lieutenant Governor is vacant, the powers and duties of the Lieutenant Governor and the Office of the Lieutenant Governor under this Act shall be carried out as provided in Section 67.35 of the Civil Administrative Code of Illinois (renumbered; now Section 405-500 of the Department of Central Management Services Law, 20 ILCS 405/405-500).

(Source: P.A. 88-146, § 5; 88-553, § 50; 90-609, § 40; 91-239, § 5-260.)

Effect of Amendments. The 1994 amendment by P.A. 88-553, effective July 14, 1994, added the second paragraph.

The 1998 amendment by P.A. 90-609, effective June 30, 1998, substituted "January 11, 1999" for "January 9, 1995".

The 1999 amendment by P.A. 91-239, effective January 1, 2000, added the parenthetical clause at the end of the last sentence.

§ 105 ILCS 40/10. Foundation purposes

Sec. 10. Foundation purposes. The purposes of the Foundation are: to promote increased use of communication and information technology in rural school districts in the State of Illinois in order to improve curriculum, access to skilled faculty, parental participation, and adult education opportunities; to make grants and gifts in aid and support of that goal, and to engage generally in other lawful endeavors consistent with the foregoing purposes. The Foundation shall operate within the provisions of the General Not For Profit Corporation Act of 1986 [805 ILCS 105/101.01 et seq.].

(Source: P.A. 88-146, § 10.)

§ 105 ILCS 40/15. Organization, powers, and duties of Foundation

Sec. 15. Organization, powers, and duties of Foundation. As soon as practicable after the Foundation is created, the Board of Directors shall meet, organize, and designate, by majority vote, a treasurer, secretary, and any additional officers as may be needed to carry out the activities of the Foundation, and shall adopt bylaws of the Foundation. The Lieutenant Governor may adopt other rules and regulations deemed necessary to govern Foundation procedures.

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The Foundation may accept gifts or grants from the federal government, its agencies or officers, or from any person, firm, or corporation, and may expend receipts on activities that it considers suitable to the performance of its duties under this Act. Funds collected by the Foundation shall be considered private funds and shall be held in an appropriate account outside of the State Treasury. The treasurer of the Foundation shall be custodian of all Foundation funds. The Foundation's accounts and books shall be set up and maintained in a manner approved by the Auditor General and the Foundation and its officers shall be responsible for the approval of recording of receipts, approval of payments, and the proper filing of required reports. The Foundation may be assisted in carrying out its functions by personnel of the Office of the Lieutenant Governor with respect to matters falling within their scope and function. The Foundation shall cooperate fully with the boards, commissions, agencies, departments and institutions of the State. The funds held and made available by the Illinois Distance Learning Foundation shall be subject to financial and compliance audits by the Auditor General in compliance with the Illinois State Auditing Act [30 ILCS 5/1-1 et seq.].

(Source: P.A. 88-146, § 15.)

§ 105 ILCS 40/900. [Not Set Out]

Note.

This section, as found in P.A. 88-146, § 900, contained amendatory provisions.

§ 105 ILCS 40/999. Effective date

Sec. 999. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 88-146, § 999.)

Effective Date. P.A. 88-146 was approved July 27, 1993.

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Education for Homeless Children Act

Article 1
105 ILCS 45/1-1.Short title
105 ILCS 45/1-5.Definitions
105 ILCS 45/1-10.Choice of schools
105 ILCS 45/1-15.Transportation to school of origin
105 ILCS 45/1-20.Enrollment
105 ILCS 45/1-25.Ombudspersons; dispute resolution; civil actions
105 ILCS 45/1-30.McKinney-Vento Education for Homeless Children Act implementation and technical assistance
105 ILCS 45/1-35.Application of Act
105 ILCS 45/1-40.Federal obligations unaffected
105 ILCS 45/1-45.Penalties
105 ILCS 45/1-50.Education of Homeless Children and Youth State Grant Program

Article 2
105 ILCS 45/2-5, 105 ILCS 45/2-10 [Not Set Out]

Article 3
105 ILCS 45/3-5.[Effective date]

Article 1.

§ 105 ILCS 45/1-1. Short title

Sec. 1-1. Short title. This Act may be cited as the Education for Homeless Children Act.

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(Source: P.A. 88-634, § 1-1.)

Derivation.

Title: An Act in relation to schools and government, amending named Acts.

Cite: 105 ILCS 45/1-1 et seq.

Source: P.A. 88-634, eff. 1-1-95.

Date: Approved September 9, 1994.

Effective Date. This Article became effective January 1, 1995 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 45/1-5. Definitions

Sec. 1-5. Definitions. As used in this Act:

"School of origin" means the school that the child attended when permanently housed or the school in which the child was last enrolled.

"Parent" means the parent or guardian having legal or physical custody of a child.

"Homeless person, child, or youth" includes, but is not limited to, any of the following:

(1) An individual who lacks a fixed, regular, and adequate nighttime place of abode.

(2) An individual who has a primary nighttime place of abode that is:

(A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(B) an institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.

(Source: P.A. 88-634, § 1-5; 88-686, § 7.)

Effect of Amendments. The 1994 amendment by P.A. 88-686, effective January 24, 1995, added the definition of "parent"; and deleted subsection (3) under the definition of "Homeless person, child, or youth" which read "An individual who, due to economic hardship, domestic

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violence, or abuse, is staying in the residence of another while seeking permanent housing".

§ 105 ILCS 45/1-10. Choice of schools

Sec. 1-10. Choice of schools. (a) When a child loses permanent housing and becomes a homeless person within the meaning of Section 5 [105 ILCS 45/1-5], or when a homeless child changes his or her temporary living arrangements, the parents or guardians of the homeless child shall have the option of either:

(1) continuing the child's education in the school of origin for as long as the child remains homeless or, if the child becomes permanently housed, until the end of the academic year during which the housing is acquired; or

(2) enrolling the child in any school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend.

(Source: P.A. 88-634, § 1-10.)

Note.

This section was enacted by P.A. 88-634 with no subsection (b) designated.

§ 105 ILCS 45/1-15. Transportation to school of origin

Sec. 1-15. Transportation to school of origin. Subject to the provisions of Article 29 of the School Code [105 ILCS 5/29-1 et seq.], if a child becomes a homeless child or if a homeless child changes his or her temporary living arrangements, and if the homeless child's parents or guardians decide to continue the child's education in the school of origin, the parents or guardians shall make a good faith effort to provide or arrange for transportation to and from the school of origin, including authorizing relatives, friends, or a program for homeless persons to provide the child with transportation to and from the school of origin. If transportation to and from the school of origin is not provided in that manner, it shall be provided in the following manner:

(1) if the homeless child continues to live in the school district in which the school of origin is located, the child's transportation to and from the school of origin shall be provided or arranged by the school district in which the school of origin is located consistent with the requirements of Article 29 of the School Code [105 ILCS 5/29-1 et seq.]; and

(2) if the homeless child's living arrangements in the school district of origin terminate and the child, though continuing his or her education in the school of origin, begins living in another school district, the school district of origin and the school district in which the

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homeless child is living shall meet to apportion the responsibility and costs for providing the child with transportation to and from the school of origin. If the school districts are unable to agree, the responsibility and costs for transportation shall be shared equally.

If a parent or guardian chooses to have the child attend the school of origin, that parent or guardian, a teacher of the child, and the principal or his or her designee from the school of origin may meet at the option of the parent or the school to evaluate whether that travel is in the best interest of the child's development and education as compared to the development and education available in attending the school nearest the child's abode. The meeting shall also include consideration of the best interests of the homeless family at its current abode. A parent may bring a representative of his or her choice to the meeting. The meeting shall be convened if travel time is longer than one hour each way.

(Source: P.A. 88-634, § 1-15; 88-686, § 7.)

Effect of Amendments. The 1994 amendment by P.A. 88-686, effective January 24, 1995, in the introductory language of the first paragraph, in the first sentence, inserted "make a good faith effort to", substituted "arrange for transportation to and from the school of origin, including authorizing" for "attempt to provide or may authorize" and substituted "program for homeless persons" for "shelter"; in subsection (1) inserted "or arranged" and inserted "consistent with the requirements of Article 29 of the School Code"; in subsection (2), in the first sentence deleted "the responsibility and the costs of providing the child with transportation to and from the school of origin shall be shared equally by" preceding "school district" and added at the end the language beginning "shall meet to apportion" and added the second sentence; and rewrote the second paragraph.

§ 105 ILCS 45/1-20. Enrollment

Sec. 1-20. Enrollment. If the parents or guardians of a homeless child or youth choose to enroll the child in a school other than the school of origin, that school immediately shall enroll the homeless child or youth even if the child or youth is unable to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation. Nothing in this subsection shall prohibit school districts from requiring parents or guardians of a homeless child to submit an address or such other contact information as the district may require from parents or guardians of nonhomeless children. It shall be the duty of the enrolling school to immediately contact the school last attended by the child or youth to obtain relevant academic and other records. If the child or youth must obtain immunizations, it shall be the duty of the enrolling school to promptly refer the child or youth for those immunizations.

(Source: P.A. 88-634, § 1-20; 88-686, § 7.)

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Effect of Amendments. The 1994 amendment by P.A. 88-686, effective January 24, 1995, substituted the present section catchline for "Prompt"; added the second sentence; and in the third sentence deleted "then" preceding "be the duty" and inserted "academic and other".

§ 105 ILCS 45/1-25. Ombudspersons; dispute resolution; civil actions

Sec. 1-25. Ombudspersons; dispute resolution; civil actions. (a) Each regional superintendent of schools shall appoint an ombudsperson who is fair and impartial and familiar with the educational rights and needs of homeless children to provide resource information and resolve disputes at schools within his or her jurisdiction relating to the rights of homeless children under this Act. If a school denies a homeless child enrollment or transportation, it shall immediately refer the child or his or her parent or guardian to the ombudsperson and provide the child or his or her parent or guardian with a written statement of the basis for the denial. The child shall be admitted and transported to the school chosen by the parent or guardian until final resolution of the dispute. The ombudsperson shall convene a meeting of all parties and attempt to resolve the dispute within 5 school days after receiving notice of the dispute, if possible.

(a-5) Whenever a child and his or her parent or guardian who initially share the housing of another person due to loss of housing, economic hardship, or a similar hardship continue to share the housing, a school district may, after the passage of 18 months and annually thereafter, conduct a review as to whether such hardship continues to exist. The district may, at the time of review, request information from the parent or guardian to reasonably establish the hardship, and sworn affidavits or declarations may be sought and provided. If, upon review, the district determines that the family no longer suffers such hardship, it may notify the family in writing and begin the process of dispute resolution as set forth in this Act. Any change required as a result of this review and determination shall be effective solely at the close of the school year. Any person who knowingly or willfully presents false information regarding the hardship of a child in any review under this subsection (a-5) shall be guilty of a Class C misdemeanor.

(b) Any party to a dispute under this Act may file a civil action in a court of competent jurisdiction to seek appropriate relief. In any civil action, a party whose rights under this Act are found to have been violated shall be entitled to recover reasonable attorney's fees and costs.

(c) If a dispute arises, the school district shall inform parents and guardians of homeless children of the availability of the ombudsperson, sources of low cost or free legal assistance, and other advocacy services in the community.

(Source: P.A. 88-634, § 1-25; 94-235, § 5.)

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Effect of Amendments. The 2005 amendment by P.A. 94-235, effective July 14, 2005, rewrote the section.

LEGAL PERIODICALS

For comment, "Universities, Corporations, and States Use Them Now It's Time To Protect Them: An Analysis of the Public and Private Sector Ombudsman and the Continued Need for a Privileged Relationship," see 27 S. Ill. U. L.J. 389 (2003).

§ 105 ILCS 45/1-30. McKinney-Vento Education for Homeless Children Act implementation and technical assistance

Sec. 1-30. McKinney-Vento Education for Homeless Children Act implementation and technical assistance. The Homeless Children Committee is abolished on the effective date of this amendatory Act of the 94th General Assembly [P.A. 94-235]. The Office of the Coordinator for the Education of Homeless Children and Youth, established pursuant to the federal McKinney-Vento Homeless Assistance Act [42 U.S.C. § 11361 et seq.], shall convene meetings throughout the State for the purpose of providing technical assistance, education, training, and problem-solving regarding the implementation of this Act and the federal McKinney-Vento Homeless Assistance Act [42 U.S.C. § 11361 et seq.]. These meetings shall include lead liaisons, local educational agency liaisons, educators, shelter, housing, and service providers, homeless or formerly homeless persons, advocates working with homeless families, and other persons or agencies deemed appropriate by the Coordinator.

(Source: P.A. 88-634, § 1-30; 94-235, § 5.)

Effect of Amendments. The 2005 amendment by P.A. 94-235, effective July 14, 2005, rewrote the section.

§ 105 ILCS 45/1-35. Application of Act

Sec. 1-35. Application of Act. The provisions of this Act apply to all school districts organized under the School Code [105 ILCS 5/1-1 et seq.], except that provisions that relate to transportation with respect to school districts organized under Article 34 of the School Code [105 ILCS 5/34-1 et seq.] shall be phased in during the 2-year period after the effective date of this Act. However, during that 2-year period, school districts organized under Article 34 [105 ILCS 5/34-1 et seq.] shall continue transportation programs serving homeless children.

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(Source: P.A. 88-634, § 1-35.)

§ 105 ILCS 45/1-40. Federal obligations unaffected

Sec. 1-40. Federal obligations unaffected. Nothing in this Act shall limit the obligations of school districts under the federal Stewart B. McKinney Homeless Assistance Act [42 U.S.C. § 11301 et seq.].

(Source: P.A. 88-634, § 1-40.)

§ 105 ILCS 45/1-45. Penalties

Sec. 1-45. Penalties. No person shall, under the provisions of this Act, enroll or attempt to enroll in a school other than the school of origin a child who he or she knows is not a homeless person as defined in this Act. No person shall knowingly or willfully present to any school district false information regarding the homelessness of any child or family for the purpose of enabling that child to attend a school other than the school of origin. Any person who violates this Section shall be guilty of a Class C misdemeanor.

(Source: P.A. 88-686, § 7.)

Effective Date. Section 99 of P.A. 88-686 made this section effective upon becoming law. The Act was approved January 24, 1995.

§ 105 ILCS 45/1-50. Education of Homeless Children and Youth State Grant Program

Sec. 1-50. Education of Homeless Children and Youth State Grant Program. (a) It is the purpose and intent of this Section to establish a State grant program that parallels and supplements, but operates independently of, the federal grant program allocating funds for assistance under Subtitle B of Title VII of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) and to establish a State grant program to support school districts throughout this State in facilitating the enrollment, attendance, and success of homeless children and youth.

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(b) Subject to appropriation, the State Board of Education shall award competitive grants under an Education of Homeless Children and Youth State Grant Program to applicant school districts in accordance with this Section. Services provided by school districts through the use of grant funds may not replace the regular academic program and must be designed to expand upon or improve services provided for homeless students as part of the school's regular academic program.

(c) A school district that desires to receive a grant under this Section shall submit an application to the State Board of Education at such time, in such manner, and containing or accompanied by such information as the State Board of Education may reasonably require.

(d) Grants must be awarded on the basis of the need of the school district for assistance under this Section and the quality of the applications submitted.

(1) In determining need under this subsection (d), the State Board of Education may consider the number of homeless children and youths enrolled in preschool, elementary school, and secondary school within the school district and shall consider the needs of such children and youths and the ability of the district to meet such needs. The State Board of Education may also consider the following:

(A) The extent to which the proposed use of funds will facilitate the enrollment, retention, and educational success of homeless children and youths.

(B) The extent to which the application (i) reflects coordination with other local and State agencies that serve homeless children and youths and (ii) describes how the applicant will meet the requirements of this Act and the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001.

(C) The extent to which the applicant exhibits in the application and in current practice a commitment to education for all homeless children and youths.

(D) Such other criteria as the State Board determines is appropriate.

(2) In determining the quality of applications under this subsection (d), the State Board of Education shall consider the following:

(A) The applicant's assessment of needs and the likelihood that the services presented in the application will meet such needs.

(B) The types, intensity, and coordination of the services to be provided.

(C) The involvement of parents or guardians of homeless children or youths in the education of these children.

(D) The extent to which homeless children and youths are effectively integrated within the regular education program.

(E) The quality of the applicant's evaluation plan for the services.

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(F) The extent to which services provided will be coordinated with other services available to homeless children and youths and their families.

(G) Such other measures as the State Board considers indicative of high-quality services, such as the extent to which the school district will provide case management or related services to unaccompanied youths.

(e) Grants awarded under this Section shall be for terms not to exceed 3 years, but are subject to annual appropriation for the Education of Homeless Children and Youth State Grant Program. School districts shall use funds awarded under this Section only for those activities set forth in Section 723(d) of Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act of 1987 (42 U.S.C. 11433(d)).

(f) The State Board of Education may use up to 5% of the funds appropriated for the purposes of this Section for administrative costs, including the hiring of positions for the implementation and administration of the grant program, provided that if no appropriation is made to the State Board of Education for a given fiscal year for the purposes of the grant program, then the State Board of Education is not required to make any expenditures in support of the program during that fiscal year.

(Source: P.A. 96-1229, § 5.)

Effective Date. This section became effective January 1, 2011 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Article 2.

§§ 105 ILCS 45/2-5, 105 ILCS 45/2-10 [Not Set Out]

Note.

This Article, as found in P.A. 88-634, contained amendatory provisions.

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Article 3.

§ 105 ILCS 45/3-5. [Effective date]

Sec. 3-5. Article 2 of this Act takes effect upon becoming law.

(Source: P.A. 88-634, § 3-5.)

Note.

P.A. 88-634 was approved September 9, 1994.

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Voting by Minors Act

Sec.

105 ILCS 50/1.Short title
105 ILCS 50/5.Development of program
105 ILCS 50/10.Funding
105 ILCS 50/15.Volunteer assistance
105 ILCS 50/20.Educational curriculum
105 ILCS 50/25.Basic program requirements
105 ILCS 50/30.Report
105 ILCS 50/35.Timetable
105 ILCS 50/99.Effective date

§ 105 ILCS 50/1. Short title

Sec. 1. Short title. This Act may be cited as the Voting by Minors Act.

(Source: P.A. 93-230, § 1.)

Effective Date. Section 99 of P.A. 93-230 made this Act effective upon becoming law. The Act was approved July 22, 2003.

§ 105 ILCS 50/5. Development of program

Sec. 5. Development of program. (a) The State Board of Elections and the State Board of Education shall develop a pilot program under which elementary and secondary school students in kindergarten through grade 12 in participating school districts and counties may participate in a simulated election held on the date of the general election in 2004.

(b) The program shall be designed for implementation only in those counties in which the election authority elects to participate in the program. Each school district located in those counties may elect to participate in the program.

(c) In each county and school district electing to participate in the program, the program shall be implemented in accordance with standards jointly developed for that purpose by the State Board of Elections and State Board of Education.

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(Source: P.A. 93-230, § 5.)

§ 105 ILCS 50/10. Funding

Sec. 10. Funding. (a) Implementation of the program is contingent upon receipt of the necessary funding from private sources.

(b) The program as developed by the State Board of Elections and State Board of Education: (i) shall require the formation of a nonprofit, volunteer administrative board in each participating county and a coordinating statewide board that is also nonprofit and volunteer; (ii) shall prescribe the manner in which those boards shall be formed; (iii) shall prescribe the responsibilities of those boards, including securing the necessary private funding and volunteer assistance required to implement the program; and (iv) shall prescribe measures designed to assure fiscal integrity in the use of donated funds and equitable distribution of those funds for program purposes in the participating counties and school districts.

(Source: P.A. 93-230, § 10.)

§ 105 ILCS 50/15. Volunteer assistance

Sec. 15. Volunteer assistance. State funds shall not be used for implementation of the program. The program shall be conducted and operated with volunteer assistance and private funds. The State Board of Elections and State Board of Education, however, shall develop the program as required by this Act and may make their personnel available on a reasonable basis for consulting purposes.

(Source: P.A. 93-230, § 15.)

§ 105 ILCS 50/20. Educational curriculum

Sec. 20. Educational curriculum. A component of the program as developed by the State Board of Education and State Board of Elections shall include a reasonable amount of classroom instruction, as part of existing courses offered by a participating school district, concerning voting history and laws, voting procedures, election campaigns, media influence, and the importance of voter participation. The suggested curriculum shall be developed by the State Board of Education and State Board of Elections by January 1,

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2004 and shall be made available to school districts that may later elect to participate in the program. The suggested curriculum shall be based upon 6 to 12 hours of classroom instruction and shall include homework assignments that necessitate dialogue between children and their parents or guardians concerning the voting process and specifically the candidates and propositions to be voted upon at the general election.

(Source: P.A. 93-230, § 20.)

§ 105 ILCS 50/25. Basic program requirements

Sec. 25. Basic program requirements. The program standards jointly developed under subsection (c) of Section 5 shall require: (i) that children register to vote in the simulated election; (ii) that on the day of the 2004 general election the children accompany their parents to the polls and vote on separate ballots in voting booths adjacent to the adult booths; (iii) that the children vote on the same races and propositions as the adult voters, except that the number of races or propositions on which the younger children vote may be reduced as necessary based on their grade level; (iv) that the ballots be designed, using pictures and symbols as necessary, so that all children may vote their choice even though they are unable to read; (v) that simulated election judges participate at the polls as part of the simulated election; (vi) that the results of the simulated election be tabulated beginning after the closing of the polls and the results announced on the following day; and (vii) other standards that the State Board of Elections and State Board of Education determine will contribute to the voting experience of the children.

(Source: P.A. 93-230, § 25.)

§ 105 ILCS 50/30. Report

Sec. 30. Report. The State Board of Elections and State Board of Education shall develop the voting by minors pilot program and distribute it to all county election authorities and school districts in January of 2004. In addition, before January 1, 2004, the State Board of Elections and State Board of Education shall jointly file with the Governor and the General Assembly a copy of the program together with a written report recommending any additional legislation necessary before actual implementation of the program at the 2004 general election.

(Source: P.A. 93-230, § 30.)

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§ 105 ILCS 50/35. Timetable

Sec. 35. Timetable. The State Board of Elections and State Board of Education shall adopt rules under which (i) counties and school districts that chose to participate in the voting by minors program are determined beginning no later than March 1, 2004, (ii) the county and statewide boards described in subsection (b) of Section 10 [105 ILCS 50/10] are established no later than July 1, 2004, and (iii) the availability of sufficient private funding is determined by August 1, 2004, along with those counties and school districts that will be actual program participants.

(Source: P.A. 93-230, § 35.)

§ 105 ILCS 50/99. Effective date

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 93-230, § 99.)

Note.

P.A. 93-230 was approved July 22, 2003.

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School Employee Benefit Act

Sec.

105 ILCS 55/1.Short title
105 ILCS 55/5.Purpose
105 ILCS 55/10.Definitions
105 ILCS 55/15.Prescription drug benefits; contract
105 ILCS 55/20.Prescription drug benefits; program
105 ILCS 55/25.Pharmacy providers
105 ILCS 55/85 through 105 ILCS 55/95 [Not Set Out].
105 ILCS 55/97.Severability
105 ILCS 55/99.Effective date

§ 105 ILCS 55/1. Short title

Sec. 1. Short title. This Act may be cited as the School Employee Benefit Act.

(Source: P.A. 93-1036, § 1.)

Effective Date. Section 99 of P.A. 93-1036 made this Act effective upon becoming law. The Act was approved September 14, 2004.

§ 105 ILCS 55/5. Purpose

Sec. 5. Purpose. The purpose of this Act is to require the Department of Central Management Services to establish and administer a prescription drug benefit program that will enable eligible school employees access to affordable prescription drugs.

(Source: P.A. 93-1036, § 5.)

§ 105 ILCS 55/10. Definitions

Sec. 10. Definitions. "Annuitant" means a retired school district employee entitled to receive retirement benefits, as defined by the school district.

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"Department" means the Department of Central Management Services.

"Dependent" means a school district employee's dependent as defined by the school district.

"Director" means the Director of Central Management Services.

"Employee" means a school district employee who is entitled to benefits as defined by the school district.

"Rules" includes rules adopted and forms prescribed by the Department.

"School district" means a public school district in this State, including a vocational education district, a special education district, a program operated by an educational service region, and a joint agreement.

(Source: P.A. 93-1036, § 10; 94-227, § 5.)

Effect of Amendments. The 2005 amendment by P.A. 94-227, effective January 1, 2006, in the definition of "School district" added the language beginning "including a vocational" through the end.

§ 105 ILCS 55/15. Prescription drug benefits; contract

Sec. 15. Prescription drug benefits; contract. (a) The Director shall, by contract, self-insurance, or otherwise, make available a voluntary program of prescription drug benefits for school districts under Section 15 of this Act. The contract or other arrangement for the provision of the prescription drug benefits shall be on terms deemed by the Director to be in the best interest of the State of Illinois and school districts based on criteria set by the Department, which must include without limitation administrative cost, service capabilities of the carrier or other contractors, and premiums, fees, or charges as related to the costs of the benefits.

(b) The term of a contract under this Section may not extend beyond 5 fiscal years. The Director may exercise renewal options of the same contract for up to a period of 5 years. Any increases in premiums, fees, or charges requested by a contractor whose contract may be renewed pursuant to a renewal option contained in the contract must be justified on the basis of (1) audited experience data, (2) increases in the costs of prescription drug coverage provided under the contract, (3) contractor performance, (4) increases in contractor responsibilities, or (5) any combination of these bases.

(c) A contractor shall agree to abide by all requirements and rules of the prescription drug benefit program, to submit such information and data as may from time to time be deemed necessary by the Director for effective administration of the program, and to

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fully cooperate in any audit.

(Source: P.A. 93-1036, § 15.)

§ 105 ILCS 55/20. Prescription drug benefits; program

Sec. 20. Prescription drug benefits; program. (a) Beginning July 1, 2005, the Department shall be responsible for administering the prescription drug benefit program established under this Act for employees, annuitants, and dependents on a non-insured basis.

(b) For each program year, the Department shall set a date by which school districts must notify the Department of their election to participate in the prescription drug benefit program. The Department shall provide notification of the election date to school districts at least 45 days prior to the election date.

(c) Any school district may apply to the Director to have employees, annuitants, and dependents be provided a prescription drug benefit program under this Act. To participate, a school district must agree to enroll all of its employees. A participating school district is not required to enroll a full-time employee who has waived coverage under the district's health plan.

(d) The Director shall determine the insurance rates and premiums for those employees, annuitants, and dependents participating in the prescription drug benefit program. Rates and premiums may be based in part on age and eligibility for federal Medicare coverage.

A school district must remit the entire cost of providing prescription drug coverage under this Section.

(e) All revenues arising from the administration of the prescription drug benefit program shall be deposited into the Illinois Prescription Drug Discount Program Fund.

(f) The prescription drug benefit program shall be maintained on an ongoing, affordable basis, and the cost to school districts shall not exceed the State's actual program costs. The prescription drug benefit program may be changed by the State and is not intended to be a pension or retirement benefit subject to protection under Section 5 of Article XIII of the Illinois Constitution.

(Source: P.A. 93-1036, § 20; 94-91, § 30-5.)

Effect of Amendments. The 2005 amendment by P.A. 94-91, effective July 1, 2005, in (e) substituted "the Illinois Prescription Drug Discount Program Fund" for "general revenue funds".

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§ 105 ILCS 55/25. Pharmacy providers

Sec. 25. Pharmacy providers. (a) The Department or its contractor may enter into a contract with a pharmacy registered or licensed under Section 16a of the Pharmacy Practice Act [225 ILCS 85/16a].

(b) Before entering into an agreement with other pharmacy providers, pursuant to Sections 15 and 20 of this Act [105 ILCS 55/15 and 105 ILCS 55/20], the Department or its contractor must by rule or contract establish terms or conditions that must be met by pharmacy providers desiring to contract with the Department or its contractor. If a pharmacy licensed under Section 15 of the Pharmacy Practice Act [225 ILCS 85/15] rejects the terms and conditions established, the Department or its contractor may offer other terms and conditions necessary to comply with the network adequacy requirements.

(c) Notwithstanding the provisions of subsection (a) of this Section, the Department or its contractor may not refuse to contract with a pharmacy licensed under Section 15 of the Pharmacy Practice Act that meets the terms and conditions established by the Department or its contractor under subsection (a) or (b) of this Section.

(Source: P.A. 93-1036, § 25; 95-689, § 35.)

Effect of Amendments. The 2007 amendment by P.A. 95-689, effective October 29, 2007, substituted "Pharmacy Practice Act" for "Pharmacy Practice Act of 1987" throughout the section.

§§ 105 ILCS 55/85 through 105 ILCS 55/95 [Not Set Out]

(Source: P.A. 93-1036, § 85.)

Note.

These sections, as found in P.A. 93-1036, § 85, contained amendatory provisions.

§ 105 ILCS 55/97. Severability

Sec. 97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

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(Source: P.A. 93-1036, § 97.)

§ 105 ILCS 55/99. Effective date

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 93-1036, § 99.)

Note.

This Act was approved September 14, 2004.

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Community Service Education Act

Sec.

105 ILCS 60/1.Short title
105 ILCS 60/5.Policy
105 ILCS 60/10.Community Service Education Program
105 ILCS 60/25.Establishment of community service education program by school district
105 ILCS 60/60.Local input
105 ILCS 60/65.Director of Community Service Education
105 ILCS 60/75.Non-duplication of programs
105 ILCS 60/80.Community service education consortiums
105 ILCS 60/85.Partnership agreements
105 ILCS 60/90.Funding
105 ILCS 60/92.Grants
105 ILCS 60/500.Rules
105 ILCS 60/999.Effective date

§ 105 ILCS 60/1. Short title

Sec. 1. Short title. This Act may be cited as the Community Service Education Act.

(Source: P.A. 94-904, § 1.)

Effective Date. Section 999 of P.A. 94-904 made the Act effective upon becoming law. The Act was approved June 22, 2006.

§ 105 ILCS 60/5. Policy

Sec. 5. Policy. Community service education programs educate students about the value of civic involvement through actual school-sponsored involvement in their communities. Students, citizens, civic groups, businesses, and community organizations benefit from community service education programs by developing strong partnerships that enhance the value of schools and quality of life in communities. Community service education programs build stronger schools, stronger communities, and a positive environment.

In many communities, the school district is the economic engine that provides jobs, economic stability, and prosperity. Community service education programs enable more school districts and communities to prosper economically while promoting good

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citizenship. School districts that offer community service education programs enjoy a significant return on their investment. Hence, the policy of the State of Illinois is to support such programs by providing incentives to encourage school districts to offer community service education programs.

(Source: P.A. 94-904, § 5.)

§ 105 ILCS 60/10. Community Service Education Program

Sec. 10. Community Service Education Program. There is created the Community Service Education Program, administered by the State Board of Education, in cooperation with school districts. Participation in this program is voluntary. The following items may serve as best practices to be considered by school districts opting to implement the program under Section 25 of this Act [105 ILCS 60/25]:

(1) The program contains provisions and standards conducive to the establishment of community, business, and education partnerships that give use to lasting relationships between school districts and partners that are mutually beneficial.

(2) The program provides greater community access to school facilities and programs to promote increased achievement by children.

(3) The program makes school facilities available for citizen use.

(4) The program organizes local residents to assess local conditions, set priorities, identify program needs, and participate in program planning and development.

(5) The program identifies and utilizes resources within the community or those that impact on the community.

(6) The program assists in the initiation of new and improved programs in an effort to improve opportunities for all residents of the community.

(7) The program provides effective youth training programs and employment counseling in schools, as well as paid work experience linking the schools with the private sector.

(8) The program provides student involvement in community service learning activities, organizations, and intergenerational programs.

(9) The program provides volunteer programs to bring parents, business personnel, community agency representatives, retirees, and other students into the classroom as participants in the teaching of students.

(10) The program provides supplemental or additional programs for junior high school and high school age youth that may consist of enrichment, individual, and supplemental activities, as well as recreational, cultural, and vocational programs.

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(11) The program provides programs to meet the individual needs of all people who reside in the school district being served. Nothing set forth in items (7) through (11) shall be constituted as either requiring or permitting the Community Service Education Program to have any program or programs serving the same purpose or purposes as those elsewhere specifically provided for in the School Code.

The Community Service Education Program shall avoid duplication of existing programs operated by other entities in whole or in part within a school district. The Community Service Education Program shall provide for the involvement of the residents of a school district in ascertaining the identity of local problems and in ascertaining the community resources available for dealing with these problems.

(Source: P.A. 94-904, § 10.)

§ 105 ILCS 60/25. Establishment of community service education program by school district

Sec. 25. Establishment of community service education program by school district. A school district may establish and operate a community service education program that qualifies for a grant under Section 92 of this Act [105 ILCS 60/92] by complying with the provisions of this Act and any rules adopted by the State Board of Education under Section 500 of this Act [105 ILCS 60/500].

(Source: P.A. 94-904, § 25.)

§ 105 ILCS 60/60. Local input

Sec. 60. Local input. Each school board that establishes a community service education program under Section 25 of this Act [105 ILCS 60/25] shall establish a process to obtain input into the development and operation of its community service education program by members who represent various service organizations, churches, public schools, units of local government, businesses and professions, public and private agencies serving youth, families, or senior citizens, municipal governments, townships, libraries, park, recreation, or forest preserve districts located in whole or in part within the school district, and any other group or groups participating in the school district's community service education program.

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(Source: P.A. 94-904, § 60.)

§ 105 ILCS 60/65. Director of Community Service Education

Sec. 65. Director of Community Service Education. Each school district maintaining a community service education program established under Section 25 of this Act [105 ILCS 60/25] shall employ or appoint a Director of Community Service Education. The Director shall be responsible for all aspects of the school district's community service education program. An individual employed solely as a Director of Community Service Education need not hold a teaching or administrative certificate from the State of Illinois.

(Source: P.A. 94-904, § 65.)

§ 105 ILCS 60/75. Non-duplication of programs

Sec. 75. Non-duplication of programs. A school district that establishes a community service education program under Section 25 of this Act [105 ILCS 60/25] must strive to ensure that its community service education program does not duplicate services offered by other entities or school programs.

(Source: P.A. 94-904, § 75.)

§ 105 ILCS 60/80. Community service education consortiums

Sec. 80. Community service education consortiums. Any school district that opts to conduct a community service education program pursuant to the provisions of this Act may enter into an agreement with other school districts to form a consortium for the purpose of offering a consolidated community service education program.

(Source: P.A. 94-904, § 80.)

§ 105 ILCS 60/85. Partnership agreements

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Sec. 85. Partnership agreements. A school district community service education program established under Section 25 of this Act [105 ILCS 60/25] shall have the power to enter into agreements with any other public or private entity or entities for the furnishing of any component of its community service education program. These agreements may provide for payments from the school district's community service education fund to other entities as contributions to the expenses of the program or programs covered by these agreements.

(Source: P.A. 94-904, § 85.)

§ 105 ILCS 60/90. Funding

Sec. 90. Funding. A school district maintaining a community service education program established under Section 25 of this Act [105 ILCS 60/25] is authorized to receive money from the State, as grants that are subject to appropriation, and other public and private sources for the support of its program or any component thereof and to expend this money pursuant to the provisions of this Act, subject to the terms and conditions under which the money is received. A not-for-profit organization may be established in support of the program, in accordance with the General Not For Profit Corporation Act of 1986 [805 ILCS 105/101.01 et seq.], and may seek tax exemption for the organization from the Internal Revenue Service and the Department of Revenue. Subject to guidelines approved by the school board, the school district is also authorized to charge and collect fees from persons voluntarily participating in a specific community service education program. The school board shall also have the authority to designate funds to be used for community service education purposes.

(Source: P.A. 94-904, § 90.)

§ 105 ILCS 60/92. Grants

Sec. 92. Grants. Subject to the availability of funds for the specific purpose of making grants for community service education, the State Board of Education is authorized to make grants to school districts operating community service education programs that meet the standards set forth in this Act and any rules adopted by the State Board of Education.

(Source: P.A. 94-904, § 92.)

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§ 105 ILCS 60/500. Rules

Sec. 500. Rules. The State Board of Education may adopt any rules that are necessary to implement and administer this Act.

(Source: P.A. 94-904, § 500.)

§ 105 ILCS 60/999. Effective date

Sec. 999. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 94-904, § 999.)

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Children's Low-Cost Laptop Act

Sec.

105 ILCS 65/1.Short title
105 ILCS 65/5.Policy and purpose
105 ILCS 65/10.Definitions
105 ILCS 65/15.Pilot project; Children's Low-cost Laptop Fund
105 ILCS 65/20.Program participation requirements
105 ILCS 65/25.Reporting
105 ILCS 65/30.Repeal
105 ILCS 65/99.Effective date

§ 105 ILCS 65/1. Short title

Sec. 1. Short title. This Act may be cited as the Children's Low-cost Laptop Act.

(Source: P.A. 96-421, § 1.)

Effective Date. Section 99 of P.A. 96-421 makes this Act effective upon becoming law. The Act was approved August 13, 2009.

§ 105 ILCS 65/5. Policy and purpose

Sec. 5. Policy and purpose. The General Assembly finds that the decreasing cost of computer technology makes it possible today to equip more children than ever before with 21st century learning tools. The dramatic expansion of low-cost computing options and the worldwide reliance on computer technology for commerce, education, information, and social interaction makes it ever more important to introduce computing skills to students at an early age. Accordingly, the State Board of Education shall establish a pilot project whereby schools will provide a low-cost laptop computer to each student, teacher, and relevant administrator in a participating school and implement the use of educational software and computer skills training in order to improve academic achievement and the progress measures listed in subsection (a) of Section 25 in this Act [105 ILCS 65/20].

(Source: P.A. 96-421, § 5; 97-333, § 190.)

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Note.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, substituted "Section 25" for "Section 20" in the last sentence.

§ 105 ILCS 65/10. Definitions

Sec. 10. Definitions. In this Act:

"Primary school" means any school with students in third, fourth, fifth, sixth, seventh, or eighth grade.

"Low-cost laptop" means a portable personal computing device suitable for use among primary school-aged children, under $400 in initial cost or with a financed cost of under $250 per year.

"State Board" means the State Board of Education.

(Source: P.A. 96-421, § 10.)

§ 105 ILCS 65/15. Pilot project; Children's Low-cost Laptop Fund

Sec. 15. Pilot project; Children's Low-cost Laptop Fund. (a) Subject to an appropriation made specifically for this purpose, the State Board shall provide for the administration of a low-cost laptop pilot project. The pilot project shall be for a period of at least 2 years. In administering the pilot project, the State Board shall:

(1) select participating primary schools;

(2) coordinate a statewide grant program for selected schools to purchase and distribute laptop computers and other technologies;

(3) define the conditions for the distribution and use of grant funding;

(4) monitor project implementation; and

(5) evaluate the project.

(b) The State Board may also use, for the purposes of the pilot project, any public or private gift, grant, or donation deposited into the State Board of Education Special Purpose Trust Fund under Section 2-3.127a of the School Code [105 ILCS 5/2-3.127a]. Pilot project funds must be used for the following:

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(1) to purchase low-cost laptop computers;

(2) for network infrastructure to support wireless access points, cables, and routers;

(3) for replacements for any of the following low-cost laptop components: batteries, power cords, or other software and hardware;

(4) for professional development and technical support for participating teachers; for the purposes of this item (4), "professional development" means the training of certified teaching professionals in the integration of low-cost laptop computers into the classroom curriculum;

(5) to support necessary staff positions at the State Board; and

(6) to evaluate the pilot program's effectiveness.

The State Board may not allocate more than $100 million for the pilot project. The pilot project must be implemented as long as funds are available under this Section to support the participation of at least 3 schools.

(Source: P.A. 96-421, § 15.)

§ 105 ILCS 65/20. Program participation requirements

Sec. 20. Program participation requirements. A school may apply to the State Board to establish a low-cost laptop pilot project grant for the entire school or for a particular grade or classroom or classrooms.

The State Board shall select up to 300 schools to participate in the pilot project. At least one-third of the participating students shall be located in the City of Chicago; at least one-third shall be located in the area that makes up the counties of DuPage, Kane, Lake, McHenry, Will, and that portion of Cook County that is located outside of the City of Chicago; and at least one-third shall be located in the remainder of the State.

The State Board shall select the participating schools for the pilot project based on need. In selecting participants, the State Board shall consider each school's:

(1) free and reduced lunch eligible student population;

(2) access to educational technology resources; and

(3) performance on standardized tests required by the State Board.

(Source: P.A. 96-421, § 20.)

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§ 105 ILCS 65/25. Reporting

Sec. 25. Reporting. (a) The school board of each participating school shall send an annual progress report to the State Board no later than September 1 of each year that the school is participating in the pilot project. The report must include the project's effect on:

(1) performance on standardized tests required by the State Board;

(2) school costs;

(3) attendance rates;

(4) teacher performance and retention;

(5) parental involvement in education;

(6) community support for the school; and

(7) student technology proficiency.

(b) With guidance from the State Board, each participating school shall determine how the low-cost laptops are purchased, assigned, maintained, and retained.

(Source: P.A. 96-421, § 25.)

§ 105 ILCS 65/30. Repeal

Sec. 30. Repeal. This Act is repealed on August 31, 2012.

(Source: P.A. 96-421, § 30.)

§ 105 ILCS 65/99. Effective date

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 96-421, § 99.)

Note.

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P.A. 96-421 was approved August 13, 2009.

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Educational Opportunity for Military Children Act

Sec.

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§ 105 ILCS 70/1. (For postponed repeal of this Act, see 105 ILCS 70/995) Short title

Sec. 1. (For postponed repeal of this Act, see 105 ILCS 70/995) Short title. This Act may be cited as the Educational Opportunity for Military Children Act.

(Source: P.A. 96-953, § 1.)

Effective Date. Section 999 [105 ILCS 70/999] made this Act effective upon becoming law. The Act was approved June 28, 2010.

§ 105 ILCS 70/5. (For postponed repeal of this Act, see 105 ILCS 70/995) Purpose

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Sec. 5. (For postponed repeal of this Act, see 105 ILCS 70/995) Purpose. It is the purpose of this Act to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

(1) facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of educational records from the previous school district;

(2) facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, or assessment;

(3) facilitating the qualification and eligibility for enrollment and educational programs;

(4) facilitating the on-time graduation of children of military families; and

(5) promoting flexibility and cooperation between the educational system, parents, and the student in order to achieve educational success for the student.

(Source: P.A. 96-953, § 5.)

§ 105 ILCS 70/10. (For postponed repeal of this Act, see 105 ILCS 70/995) Findings; authority to enter into compact

Sec. 10. (For postponed repeal of this Act, see 105 ILCS 70/995) Findings; authority to enter into compact. The General Assembly finds and declares that this State recognizes that there is created an Interstate Commission on Educational Opportunity for Military Children through the Council of State Governments, in cooperation with the U.S. Department of Defense Office of Personnel and Readiness, for addressing the needs of students in transition. The Interstate Commission on Educational Opportunity for Military Children is a group of member states who have joined to create laws easing the transition of children of military families. The Governor of this State is authorized and directed to enter into a compact governed by this Act on behalf of this State with any of the United States legally joining therein.

(Source: P.A. 96-953, § 10.)

§ 105 ILCS 70/15. (For postponed repeal of this Act, see 105 ILCS 70/995) Applicability

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Sec. 15. (For postponed repeal of this Act, see 105 ILCS 70/995) Applicability. This Act applies only if the member states of the Interstate Commission on Educational Opportunity for Military Children approve this State as a member state with this Act governing.

(Source: P.A. 96-953, § 15.)

§ 105 ILCS 70/20. (For postponed repeal of this Act, see 105 ILCS 70/995) Definitions

Sec. 20. (For postponed repeal of this Act, see 105 ILCS 70/995) Definitions. For purposes of this Act:

"Active duty military personnel" means active duty members of the uniformed military services, including any of the following:

(1) Members of the National Guard and Reserve that are on active duty pursuant to 10 U.S.C. 1209 and 10 U.S.C. 1211.

(2) Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement.

(3) Members of the uniformed services who die on active duty for a period of one year after death.

"State Council" means the Illinois P-20 Council and additional representatives appointed by the Illinois P-20 Council as provided under Section 40 of this Act [105 ILCS 70/40].

(Source: P.A. 96-953, § 20.)

§ 105 ILCS 70/25. (For postponed repeal of this Act, see 105 ILCS 70/995) Tuition for transfer students

Sec. 25. (For postponed repeal of this Act, see 105 ILCS 70/995) Tuition for transfer students. (a) For purposes of this Section, "non-custodial parent" means a person who has temporary custody of the child of active duty military personnel and who is responsible for making decisions for that child.

(b) If a student who is a child of active duty military personnel is (i) placed with a non-custodial parent and (ii) as a result of placement, must attend a non-resident school

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district, then the student must not be charged the tuition of the school that the student attends as a result of placement with the non-custodial parent and the student must be counted in the calculation of average daily attendance under Section 18-8.05 of the School Code [105 ILCS 5/18-8.05].

(Source: P.A. 96-953, § 25.)

§ 105 ILCS 70/30. (For postponed repeal of this Act, see 105 ILCS 70/995) Power of attorney for children of active duty military personnel

Sec. 30. (For postponed repeal of this Act, see 105 ILCS 70/995) Power of attorney for children of active duty military personnel. A student who has a parent who is active duty military personnel who must place the student with a non-custodial parent may submit a special power of attorney to the school district that authorizes the student (i) to enroll in the district of the non-custodial parent and (ii) have decisions made by the non-custodial parent. If a special power of attorney created pursuant to this Section is filed with the school district, then the school district must follow the direction of the special power of attorney.

(Source: P.A. 96-953, § 30.)

§ 105 ILCS 70/35. (For postponed repeal of this Act, see 105 ILCS 70/995) Required courses for transfer students; pre-requisites; credit transfer; graduation

Sec. 35. (For postponed repeal of this Act, see 105 ILCS 70/995) Required courses for transfer students; pre-requisites; credit transfer; graduation. (a) A student that transfers to a new school district may transfer into a comparable course to continue credit work for a course from which the student transferred out of only if the new school district offers the course and space is available. This subsection (a) includes courses offered for gifted and talented children pursuant to Article 14A of the School Code [105 ILCS 5/14A-5 et seq.] and courses for English as a Second Language program.

(b) The school district of a school may determine if courses taken by a transfer student at his or her old school satisfy the pre-requisite course requirements for any courses that the transfer student wishes to take at his or her current school. The school district may determine a current and future schedule that is appropriate for the student that satisfies any pre-requisite course requirements in order for that student to take any courses that he or she wishes to attend.

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(c) The school district of a school may work with a transfer student to determine an appropriate schedule that ensures that a student will graduate, provided that the student has met the district's minimal graduation requirements, which may be modified provided that the modifications are a result of scheduling issues and not a result of the student's academic failure.

(d) If a student transfers to a new school district during his or her senior year and the receiving school district cannot make reasonable adjustments under this Section to ensure graduation, then the school district shall make every reasonable effort to ensure that the school district from where the student transfers issues the student a diploma.

(Source: P.A. 96-953, § 35.)

§ 105 ILCS 70/40. (For postponed repeal of this Act, see 105 ILCS 70/995) State coordination

Sec. 40. (For postponed repeal of this Act, see 105 ILCS 70/995) State coordination. (a) Each member state of the Interstate Commission on Educational Opportunity for Military Children shall, through the creation of a State Council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies, and military installations concerning the State's participation in and compliance with the compact and Interstate Commission activities. The State Council shall be comprised of the Illinois P-20 Council, representatives appointed by the Illinois P-20 Council from the 3 school districts in this State with the highest percentage of children from military families, and one non-voting representative appointed by each active-duty military installation commander in this State.

(b) The compact commissioner responsible for the administration and management of the State's participation in the compact shall be appointed by the State Council.

(Source: P.A. 96-953, § 40; 97-216, § 15.)

Effect of Amendments. The 2011 amendment by P.A. 97-216, effective January 1, 2012, rewrote the second sentence of (a), which formerly read: "In this State, the Illinois P-20 Council and representatives appointed by the Illinois P-20 Council from the 3 school districts in this State with the highest percentage of children from military families shall constitute the State Council."

§ 105 ILCS 70/45. (For postponed repeal of this Act, see 105 ILCS 70/995) Interstate Commission on Educational Opportunity for Military Children

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Sec. 45. (For postponed repeal of this Act, see 105 ILCS 70/995) Interstate Commission on Educational Opportunity for Military Children. (a) The member states hereby create the "Interstate Commission on Educational Opportunity for Military Children". The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

(1) Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of the compact.

(2) Consist of one Interstate Commission voting representative from each member state who shall be that state's compact commissioner.

(A) Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

(B) A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(C) A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the Interstate Commission, the State Council may delegate voting authority to another person from their state for a specified meeting.

(D) The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

(3) Consist of ex-officio, non-voting representatives who are members of interested organizations. Such ex-officio members, as defined in the bylaws, may include, but not be limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the U.S. Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the education of children of military members.

(4) Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

(5) Establish an executive committee, whose members shall include the officers of the Interstate Commission and such other members of the Interstate Commission as determined by the bylaws. Members of the executive committee shall serve a one-year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact, including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The U.S.

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Department of Defense shall serve as an ex-officio, nonvoting member of the executive committee.

(6) Establish bylaws and rules that provide for conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(7) Give public notice of all meetings, and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

(A) relate solely to the Interstate Commission's internal personnel practices and procedures;

(B) disclose matters specifically exempted from disclosure by federal and state statute;

(C) disclose trade secrets or commercial or financial information which is privileged or confidential;

(D) involve accusing a person of a crime or formally censuring a person;

(E) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(F) disclose investigative records compiled for law enforcement purposes; or

(G) specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

(8) Cause its legal counsel or designee to certify that a meeting may be closed and shall reference each relevant exemptible provision for any meeting, or portion of a meeting, which is closed pursuant to this provision. The Interstate Commission shall keep minutes, which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission.

(9) Collect standardized data concerning the educational transition of the children of military families under the compact as directed through its rules, which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange, and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate State custodian of educational records as identified in the rules.

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(10) Create a process that permits military officials, education officials, and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This Section shall not be construed to create a private right of action against the Interstate Commission or any member state.

(b) The Interstate Commission shall have the following powers:

(1) To provide for dispute resolution among member states.

(2) To promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as enumerated in the compact. The rules shall be binding in the compact states to the extent and in the manner provided in this Act. These rules are not effective or enforceable in this State until enacted into law in this State.

(3) To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, and actions.

(4) To enforce compliance with the compact provisions and the rules promulgated by the Interstate Commission using all necessary and proper means, including, but not limited to, the use of judicial process. These rules are not effective or enforceable in this State until enacted into law in this State.

(5) To establish and maintain offices, which shall be located within one or more of the member states.

(6) To purchase and maintain insurance and bonds.

(7) To borrow, accept, hire, or contract for services of personnel.

(8) To establish and appoint committees including, but not limited to, an executive committee as required by item (5) of subsection (a) of this Section, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants; to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(13) To establish a budget and make expenditures.

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(14) To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

(15) To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

(16) To coordinate education, training, and public awareness regarding the compact, its implementation, and operation for officials and parents involved in such activity.

(17) To establish uniform standards for the reporting, collecting, and exchanging of data. These standards are not effective or enforceable in this State until enacted into law in this State.

(18) To maintain corporate books and records in accordance with the bylaws.

(19) To perform such functions as may be necessary or appropriate to achieve the purposes of the compact.

(20) To provide for the uniform collection and sharing of information between and among member states, schools, and military families under the compact. Provision for the collection and sharing of information is not effective or enforceable in this State until enacted into law in this State.

(c) The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the Interstate Commission.

(2) Establishing an executive committee and such other committees as may be necessary.

(3) Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission.

(4) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting.

(5) Establishing the titles and responsibilities of the officers and staff of the Interstate Commission.

(6) Providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations.

(7) Providing "start-up" rules for initial administration of the compact. These rules are not effective or enforceable in this State until enacted into law in this State.

(d) The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall

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have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission, provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

(e) The executive committee shall have such authority and duties as may be set forth in the bylaws, including, but not limited to:

(1) managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

(2) overseeing an organizational structure within and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

(3) planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the Interstate Commission.

The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a member of the Interstate Commission. The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

(f) The Interstate Commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(g) The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of such person's employment or duties, for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection (g) shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

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(h) The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(i) To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

(Source: P.A. 96-953, § 45.)

§ 105 ILCS 70/50. (For postponed repeal of this Act, see 105 ILCS 70/995) Rulemaking of the Interstate Commission

Sec. 50. (For postponed repeal of this Act, see 105 ILCS 70/995) Rulemaking of the Interstate Commission. The Interstate Commission on Educational Opportunity for Military Children shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect. Notwithstanding the other provisions of this Section, no rule is effective or enforceable in this State until enacted into law in this State.

Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act," of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

Notwithstanding any other provision of this Act, no rule of the Interstate Commission has force and effect in this State unless and until the State Council reviews the rule and recommends to the General Assembly that the rule be enacted into law in this State and

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the rule is enacted into law in this State.

(Source: P.A. 96-953, § 50.)

§ 105 ILCS 70/55. (For postponed repeal of this Act, see 105 ILCS 70/995) Resolution of disputes

Sec. 55. (For postponed repeal of this Act, see 105 ILCS 70/995) Resolution of disputes. The Interstate Commission on Educational Opportunity for Military Children shall attempt, upon the request of a member state, to resolve disputes that are subject to the compact and that may arise among member states and between member and non-member states.

(Source: P.A. 96-953, § 55.)

§ 105 ILCS 70/60. (For postponed repeal of this Act, see 105 ILCS 70/995) Financing of the Interstate Commission

Sec. 60. (For postponed repeal of this Act, see 105 ILCS 70/995) Financing of the Interstate Commission. (a) The Interstate Commission on Educational Opportunity for Military Children shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The Interstate Commission may levy and collect an annual assessment of $1 per student who has a parent who is active duty military personnel.

(c) The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

(d) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

(Source: P.A. 96-953, § 60.)

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§ 105 ILCS 70/65. (For postponed repeal of this Act, see 105 ILCS 70/995) Withdrawal and dissolution of compact

Sec. 65. (For postponed repeal of this Act, see 105 ILCS 70/995) Withdrawal and dissolution of compact. (a) Once effective, the compact shall continue in force and remain binding upon each and every member state, provided that a member state may withdraw from the compact by specifically repealing the statute that enacted the compact into law.

(b) Withdrawal from the compact shall be by the enactment of a statute repealing the same.

(c) The withdrawing state shall immediately notify the chairperson of the Interstate Commission on Educational Opportunity for Military Children in writing upon the introduction of legislation repealing the compact in the withdrawing state. The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

(d) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal.

(e) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

(f) The compact shall dissolve effective upon the date of the withdrawal or default of the member state that reduces the membership in the compact to one member state.

(g) Upon the dissolution of the compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

(Source: P.A. 96-953, § 65.)

§ 105 ILCS 70/70. (For postponed repeal of this Act, see 105 ILCS 70/995) Severability and construction

Sec. 70. (For postponed repeal of this Act, see 105 ILCS 70/995) Severability and construction. (a) The provisions of this Act are severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of this Act are enforceable.

(b) The provisions of this Act shall be liberally construed to effectuate its purposes.

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(c) Nothing in this Act shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

(Source: P.A. 96-953, § 70.)

§ 105 ILCS 70/75. (For postponed repeal of this Act, see 105 ILCS 70/995) Binding effect of Act and other laws

Sec. 75. (For postponed repeal of this Act, see 105 ILCS 70/995) Binding effect of Act and other laws. (a) Nothing in this Act prevents the enforcement of any other law that is not inconsistent with this Act.

(b) All laws conflicting with this Act are superseded to the extent of the conflict.

(c) All agreements between the Interstate Commission on Educational Opportunity for Military Children and the member states are binding in accordance with their terms.

(d) In the event any provision of this Act exceeds the constitutional limits imposed on the legislature, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question.

(Source: P.A. 96-953, § 75.)

§ 105 ILCS 70/905. , 105 ILCS 70/910 [Not Set Out]

Note.

This section, as found in P.A. 96-953, § 905, contained amendatory provisions.

§ 105 ILCS 70/995. Repealer

Sec. 995. Repealer. This Act is repealed on June 30, 2015.

(Source: P.A. 97-216, § 15.)

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§ 105 ILCS 70/999. Effective date

Sec. 999. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 96-953, § 999.)

Note.

P.A. 96-953 was approved June 28, 2010.

HEALTH AND SAFETY

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Asbestos Abatement Act

Sec.

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§ 105 ILCS 105/1. Short title

Sec. 1. Short title. This Act shall be known and may be cited as the "Asbestos Abatement Act".

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(Source: P.A. 83-1325.)

Derivation.

Title: An Act to eliminate the health hazards posed by the presence of asbestos materials in Illinois schools, amending an Act therein named.

Cite: 105 ILCS 105/1 et seq.

Source: P.A. 83-1325.

Date: Approved September 5, 1984.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1401.

CASE NOTES

Analysis

Private Right
- Not Established
Public Right
- Established
- Statute of Limitations

Private Right

- Not Established

This Act does not impose a duty on defendants and does not confer a private right on the school districts. Board of Educ. v. A, C & S, Inc., 171 Ill. App. 3d 737, 121 Ill. Dec. 643, 525 N.E.2d 950 (1 Dist. 1988), rev'd on other grounds, 131 Ill. 2d 428, 137 Ill. Dec. 635, 546 N.E.2d 580 (1989).

Public Right

Environmental cleanup company was entitled to recover its administrative litigation expenses pursuant to 5 ILCS 100/10-55(a), where the Illinois Department of Public Health (IDPH) erroneously found that the company was engaged in an asbestos-abatement project on the date in question under 77 Ill. Admin. Code § 855.20. The court found unreasonable the IDPH's contention that once a 3-foot threshold of asbestos abatement work was reached in a school, the resulting project retroactively encompassed the pre-abatement work that was done before reaching the threshold. Lake Envtl., Inc. v. State, 54 Ill. Ct. Cl. 408, 2001 Ill. Ct. Cl. LEXIS 20 (Ct. Cl. 2001).

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- Established

A public right is involved within this Act. Board of Educ. v. A, C & S, Inc., 131 Ill. 2d 428, 137 Ill. Dec. 635, 546 N.E.2d 580 (1989).

- Statute of Limitations

Unless the terms of a statute of limitations expressly include the state, county, municipality or other governmental agencies, so far as public rights are concerned, as distinguished from private and local rights, it is inapplicable to them. Board of Educ. v. A, C & S, Inc., 131 Ill. 2d 428, 137 Ill. Dec. 635, 546 N.E.2d 580 (1989).

LEGAL PERIODICALS

For comment: "Recovery for Risk Comes of Age: Asbestos in Schools and the Duty to Abate a Latent Environmental Hazard," see 83 Nw. U.L. Rev. 512 (1989).

For article, "Survey of Illinois Law: Insurance Law," see, See 29 S. Ill. U.L.J. 761 (2005).

RESEARCH REFERENCES

Student's right to compel school officials to issue degree, diploma, or the like. 11 ALR4th 1182.

§ 105 ILCS 105/2. Legislative declaration

Sec. 2. Legislative declaration. The General Assembly finds that:

(a) substantial amounts of asbestos materials were used throughout school buildings during the period from 1946 to 1972 for fireproofing, soundproofing, decorative and other purposes;

(b) exposure to asbestos fibers and particles in the air over a long period of time has been linked by reputable medical and scientific authorities to a significant increase in the incidence of disease, such as asbestosis, bronchogenic carcinoma, mesothelioma, and other malignancies;

(c) precise scientific data as to the levels at which asbestos materials constitute a hazard to health in educational settings are not yet available and may not be available for many years to come because of the long period of time which elapses between the onset of exposure and the appearance of clinically detectable illness; however, mesothelioma has been found among individuals exposed to asbestos in some nonoccupational settings; and

(d) in view of the fact that the State of Illinois has compulsory attendance laws for children of school age and these children must be educated in a safe and healthy environment, the presence and condition of asbestos in the schools is of special concern to the General Assembly.

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Therefore, it is the purpose of this Act to provide for the identification, containment or removal of those asbestos materials that constitute a significant health hazard and repair or maintenance of those asbestos materials that do not constitute a significant health hazard in schools to students, school personnel, parents and visitors to such schools, and to provide financial assistance to elementary and secondary schools within this State as provided by law.

(Source: P.A. 84-1096.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1402.

CASE NOTES

Private Remedy

- Not Established

The purpose of this Act is to regulate the safe removal of asbestos, not to provide a remedy for a worker injured in a job site mishap. Busick v. Streator Township High School Dist. # 40, 234 Ill. App. 3d 647, 175 Ill. Dec. 423, 600 N.E.2d 46 (3 Dist. 1992).

The legislature did not express an intent to create a private remedy by enacting this section and 105 ILCS 105/9. Board of Educ. v. A, C & S, Inc., 131 Ill. 2d 428, 137 Ill. Dec. 635, 546 N.E.2d 580 (1989).

§ 105 ILCS 105/3. Definitions

Sec. 3. Definitions. As used in this Act:

(a) "Asbestos" means the asbestiform varieties of chrysotile, amosite, crocidolite, tremolite, anthrophyllite, and actinolite.

(b) "Asbestos materials" means materials formed by mixing asbestos fibers with other products, including but not limited to rock wool, plaster, cellulose, clay, vermiculite, perlite and a variety of adhesives, and which contain more than 1% asbestos by weight. Some of these materials may be sprayed on surfaces or applied to surfaces in the form of plaster or a textured paint.

(c) "School" means any school district or public, private or nonpublic day or residential educational institution that provides elementary or secondary education for grade 12 or under.

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(d) "Local educational agency" means:

(1) Any local education agency as defined in Section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381).

(2) The owner of any nonpublic, nonprofit elementary or secondary school building.

(3) The governing authority of any school operated under the defense dependents' education system provided for under the Defense Department's Education Act of 1978 (20 U.S.C. 921, et seq.).

(e) "Response action" means a method, including removal, encapsulation, enclosure, repair, operations and maintenance, that protects human health and the environment from friable ACBM.

(f) "Asbestos containing building materials" or ACBM means surfacing asbestos containing material or ACM, thermal system insulation ACM or miscellaneous ACM that is found in or on interior structural members or other parts of a school building.

(g) "Friable" when referring to material in a school building means that the material, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable materials after such previously nonfriable material becomes damaged to the extent that, when dry, it may be crumbled, pulverized, or reduced to powder by hand pressure.

(h) "Asbestos Abatement Contractor" means any entity that engages in the removal, enclosure, or encapsulation of asbestos containing materials for any school.

(i) "Response action contractor" means any entity that engages in response action services for any school.

(j) "Friable material containment" means the encapsulation or enclosure of any friable asbestos material in a facility.

(k) "Enclosure" means the construction of airtight walls and ceilings between the asbestos material and the educational facility environment, or around surfaces coated with asbestos materials, or any other appropriate scientific procedure as determined by the Department which prevents the release of asbestos materials.

(l) "Encapsulation" means the treatment of ACBM with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surfaces (bridging encapsulant or penetrates the material and binds its components together (penetrating encapsulant).

(m) "Department" means the Department of Public Health.

(n) "Director" means the Director of Public Health.

(o) "School personnel" means any employee of a school.

(p) "Student" means any student enrolled in a school.

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(q) "School Building" means:

(1) Any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food.

(2) Any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education.

(3) Any other facility used for the instruction or housing of students or for the administration of educational or research programs.

(4) Any maintenance, storage, or utility facility, including any hallway essential to the operation of any facility described in this definition of "school building" under items (1), (2), or (3).

(5) Any portico or covered exterior hallway or walkway.

(6) Any exterior portion of a mechanical system used to condition interior space.

(r) "Asbestos worker" means an individual who cleans, removes, encapsulates, encloses, hauls or disposes of friable asbestos material in schools as defined in this Act.

(s) "Nonfriable" means material in a school building which, when dry, may not be crumbled, pulverized, or reduced to powder by hand pressure.

(t) "Management plan" means a plan developed for a local educational agency for the management of asbestos in its school buildings pursuant to the federal Asbestos Hazard Emergency Response Act of 1986 [15 U.S.C. § 2601 et seq.] and the regulations promulgated thereunder.

(u) "Management planner" means an individual licensed by the Department to prepare management plans.

(v) "Project designer" means an individual licensed by the Department to design response actions for school buildings.

(w) "Asbestos inspector" means an individual licensed by the Department to perform inspections of schools for the presence of asbestos containing materials.

(Source: P.A. 86-416; 86-1475.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1403.

§ 105 ILCS 105/4. Response action

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Sec. 4. Response action. Schools shall undertake and complete such response action as may be required by the federal Asbestos Hazard Emergency Response Act of 1986 [15 U.S.C. § 2601 et seq.], the regulations promulgated thereunder, and the rules promulgated by the Department pursuant to the Asbestos Abatement Act [105 ILCS 105/1 et seq.]. Response actions shall be undertaken and completed within the timeframe required by the federal Asbestos Hazard Emergency Response Act of 1986 [15 U.S.C. § 2601 et seq.] and the regulations promulgated thereunder.

(Source: P.A. 86-416.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1404.

§ 105 ILCS 105/5a: Repealed by P.A. 96-537, § 3, effective August 14, 2009.

§ 105 ILCS 105/6. Powers and duties of the Department

Sec. 6. Powers and duties of the Department. (a) The Department is empowered to promulgate any rules necessary to ensure proper implementation and administration of this Act and of the federal Asbestos Hazard Emergency Response Act of 1986 [15 U.S.C. § 2601 et seq.], and the regulations promulgated thereunder.

(b) Rules promulgated by the Department shall include, but not be limited to:

(1) all rules necessary to achieve compliance with the federal Asbestos Hazard Emergency Response Act of 1986 [15 U.S.C. § 2601 et seq.] and the regulations promulgated thereunder;

(2) rules providing for the training and licensing of persons and firms to perform asbestos inspection and air sampling; to perform abatement work; and to serve as asbestos abatement contractors, management, planners, project designers, project supervisors, project managers and asbestos workers for public and private secondary and elementary schools; and any necessary rules relating to the correct and safe performance of those tasks; and

(3) rules for the development and submission of asbestos management plans by local educational agencies, and for review and approval of such plans by the Department.

(c) In carrying out its responsibilities under this Act, the Department shall:

(1) publish a list of persons and firms licensed pursuant to this Act, except that the Department shall not be required to publish a list of licensed asbestos workers;

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(2) require each local educational agency to maintain records of asbestos-related activities, which shall be made available to the Department upon request; and

(3) adopt rules for the collection of fees for training course approval; and for licensing of inspectors, management planners, project designers, contractors, supervisors, air sampling professionals, project managers and workers.

(Source: P.A. 86-416; 91-357, § 103; 96-537, § 5; 96-1000, § 275.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1406.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Section 995 of P.A. 96-100 contains a ""no acceleration or delay" provision, and Section 996 contains a ""no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, made stylistic changes.

The 2009 amendment by P.A. 96-537, effective August 14, 2009, deleted former (c)(3), which read: "require local educational agencies to submit to the Department for review and approval all asbestos-related response action contracts for which the local educational agency seeks indemnification under the Response Action Contractor Indemnification Act, and with respect to such response action contracts, to collect from the local educational agency and deposit in the Response Contractors Indemnification Fund 5% of the amount of each response action contract, as required under the Response Action Contractor Indemnification Act"; and made related changes.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated former (d) as (c)(3); and made related changes.

CASE NOTES

Analysis

Air Sampling Professional
Project Managers

Air Sampling Professional

The "air sampling professional" is hired to conduct air monitoring which involves measuring the fiber content of a known volume of air to confirm the complete removal, encapsulation, or enclosure of asbestos containing building materials but is not responsible for the detection or

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testing of fumes. Arnett v. Environmental Science & Eng'g, Inc., 275 Ill. App. 3d 938, 212 Ill. Dec. 467, 657 N.E.2d 668 (3 Dist. 1995), appeal denied, 166 Ill. 2d 535, 216 Ill. Dec. 1, 664 N.E.2d 638 (1996).

Project Managers

The project manager must observe project activities at all times, go inside the abatement project at least once every two hours to inspect ongoing removal of asbestos containing materials, bear the responsibility for enforcing contract specifications and the project manager also possesses the authority to stop any job activities not performed in accordance with the contract and the rules. Arnett v. Environmental Science & Eng'g, Inc., 275 Ill. App. 3d 938, 212 Ill. Dec. 467, 657 N.E.2d 668 (3 Dist. 1995), appeal denied, 166 Ill. 2d 535, 216 Ill. Dec. 1, 664 N.E.2d 638 (1996).

§ 105 ILCS 105/6a. [Application of The Illinois Administrative Procedure Act]

Sec. 6a. The provisions of the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.] are hereby expressly adopted and shall apply to all administrative rules and procedures of the Department of Public Health under this Act, except that in case of conflict between the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.] and this Act the provisions of this Act shall control, and except that Section 5-35 of the Illinois Administrative Procedure Act [5 ILCS 100/5-35] relating to procedures for rule-making does not apply to the adoption of any rule required by federal law in connection with which the Department is precluded by law from exercising any discretion.

(Source: P.A. 84-951; 88-45, § 3-38.5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1406a.

Effect of Amendments. The 1993 amendment by P.A. 88-45, effective July 6, 1993, deleted the quotation marks around "the Illinois Administrative Procedure Act" twice; deleted "approved September 22, 1975" preceding "are hereby expressly"; and substituted "Section 5-35" for "Section 5".

§ 105 ILCS 105/6b. [Judicial review]

Sec. 6b. All final administrative decisions of the Department hereunder shall be subject to judicial review pursuant to the provisions of the "Administrative Review Law", as amended [735 ILCS 5/3-101 et seq.], and the rules adopted pursuant thereto. The term "Administrative Decision" is defined as in Section 3-101 of the Code of Civil Procedure

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[735 ILCS 5/3-101].

(Source: P.A. 84-951.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1406b.

§ 105 ILCS 105/6c. [Denial, suspension or revocation or expungement from state list; notice and hearing]

Sec. 6c. The Director after notice and opportunity for hearing to the contractor, applicant or license holder may deny, suspend, or revoke a license or expunge such person from the state list in any case in which he or she finds that there has been a substantial failure to comply with the provisions of this Act or the standards, rules and regulations established by virtue thereof.

Such notice shall be provided by certified mail or by personal service setting forth the particular reasons for the proposed action and fixing a date, not less than 15 days from the date of such mailing or service, at which time the applicant, contractor, or license holder shall be given an opportunity to request hearing.

The hearing shall be conducted by the Director or by an individual designated in writing by the Director as Hearing Officer to conduct the hearing. On the basis of any such hearing, or upon default of the contractor, applicant or license holder, the Director shall make a determination specifying his or her findings and conclusions. A copy of such determination shall be sent by certified mail or served personally upon the applicant, contractor or license holder.

The procedure governing hearings authorized by this Section shall be in accordance with rules promulgated by the Department. A full and complete record shall be kept of all proceedings, including the notice of hearing, complaint, and all other documents in the nature of pleadings, written motions filed in the proceedings, and the report and orders of the Director and Hearing Officer. All testimony shall be reported but need not be transcribed unless the decision is sought to be reviewed pursuant to the "Administrative Review Law" [735 ILCS 5/3-101 et seq.]. A copy or copies of the transcript may be obtained by any interested party on payment of the cost of preparing such copy or copies. The Director or Hearing Officer, shall upon his or her own motion, or on the written request of any party to the proceeding, issue subpoenas requiring the attendance and the giving of testimony by witnesses, and subpoenas duces tecum requiring the production of books, papers, records or memoranda. All subpoenas and subpoenas duces tecum issued under the terms of this Act may be served by any person of legal age. The fees of witnesses for attendance and travel shall be the same as the fees of witnesses before the Circuit Court of this State, such fees to be paid when the witness is excused from further

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attendance. When the witness is subpoenaed at the instance of the Director or Hearing Officer, such fees shall be paid in the same manner as other expenses of the Department, and when the witness is subpoenaed at the instance of any other party to any such proceeding the Department may require that the cost of service of the subpoena or subpoena duces tecum and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the Department in its discretion may require a deposit to cover the cost of such service and witness fees. A subpoena or subpoena duces tecum so issued as above stated shall be served in the same manner as a subpoena issued by a circuit court.

Any circuit court of this State, upon the application of the Director, or upon the application of any other party to the proceeding, may, in its discretion, compel the attendance of witnesses, the production of books, papers, records or memoranda and the giving of testimony before the Director or Hearing Officer conducting an investigation or holding a hearing authorized by this Act, by an attachment for contempt or otherwise, in the same manner as production of evidence may be compelled before the court.

The Director or Hearing Officer, or any party in an investigation or hearing before the Department, may cause the depositions of witnesses within the State to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State, and to that end compel the attendance of witnesses and the production of books, papers, records, or memoranda.

(Source: P.A. 84-951.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1406c.

§ 105 ILCS 105/7. Consistency with federal law

Sec. 7. Consistency with federal law. Rules and regulations issued pursuant to this Act, including those governing the preparation of a list of contractors and the removal of contractors therefrom as provided for in Section 10 [105 ILCS 105/10], shall not be inconsistent with rules and regulations promulgated by the United States Environmental Protection Agency pursuant to the Toxic Substances Control Act [15 U.S.C. § 2601 et seq.], the Clean Air Act [42 U.S.C. § 7401 et seq.] or other applicable federal statutes.

(Source: P.A. 84-951.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 1407.

§ 105 ILCS 105/9. State Funding

Sec. 9. State Funding. Funding sources for State funding with respect to costs of corrective action shall include appropriations from the General Revenue Fund, proceeds from litigation against manufacturers, distributors and contractors of asbestos products, funds provided under the provisions of the federal Asbestos School Hazard Abatement Act of 1984 [20 U.S.C. § 4011 et seq.], or any combination thereof. The Department shall request appropriations from any of these funds based on its review of school funding needs and include such in its annual budget request.

(Source: P.A. 84-951.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1409.

CASE NOTES

Private Remedy

- Not Established

The legislature did not express an intent to create a private remedy by enacting 105 ILCS 105/2 and this section. Board of Educ. v. A, C & S, Inc., 131 Ill. 2d 428, 137 Ill. Dec. 635, 546 N.E.2d 580 (1989).

§ 105 ILCS 105/9a. Reimbursement for corrective action

Sec. 9a. Reimbursement for corrective action. The Department shall, from funds appropriated for this purpose, reimburse schools which have undertaken corrective action. Such schools, upon completion of an inspection by the Department, shall be eligible for reimbursement only for those projects found to have been conducted in accordance with the provisions of this Act and the rules promulgated thereunder. Schools shall apply for such reimbursement to the Department on forms designed and provided by the Department.

The amount of reimbursement for which a public school district is eligible shall be calculated by the Department based upon a Grant Index developed by the State Board of Education. This Grant Index shall be based upon the equalized assessed valuation of the

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school district and other measures of relative wealth to determine the percentage of the total cost of corrective action for which reimbursement shall be authorized. The Grant Index for any school district is equal to one minus the ratio of the district's equalized assessed valuation per pupil in weighted daily average attendance to the equalized assessed valuation per pupil in weighted average daily attendance of the district located at the ninetieth percentile for all districts of the same type. The Grant Index for any school district shall be not less than .50 and no greater than 1.00. The product of the district's Grant Index and the project cost, as determined by the Department for approved corrective action, equals the total amount that shall be reimbursed to the school according to the provisions of this Section. All non-public schools shall be eligible for reimbursement in an amount equal to 50% of the cost of corrective action.

Out of funds appropriated for such purpose, 20% of the amount of reimbursement to which any school is determined entitled shall be paid in each of 5 successive fiscal years. The Department shall request an annual appropriation in an amount sufficient to cover all expected reimbursements to be paid out in that fiscal year.

For purposes of reimbursement under this Section, corrective action means removal, encapsulation or enclosure. Schools reimbursed pursuant to this Section for corrective action shall not be eligible for grants under Section 9b [105 ILCS 105/9b] with respect to the corrective action for which they are so reimbursed.

(Source: P.A. 84-1245.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1409a.

§ 105 ILCS 105/9b. Grants for asbestos abatement work undertaken on or after January 1, 1986

Sec. 9b. Grants for asbestos abatement work undertaken on or after January 1, 1986. Schools which undertake corrective action on or after January 1, 1986 shall be eligible for grants for asbestos abatement activities conducted in accordance with this Act and the rules promulgated thereunder. Funds shall be provided only to those schools which have been inspected pursuant to this Act. Schools which desire abatement grants shall apply to the Department for such grants on forms designed and provided by the Department. The Department shall evaluate applications to establish priorities for funding recognizing the degree of health hazard present and shall categorize school needs using a numerical ranking.

In conjunction with the State Board of Education, the Department shall calculate the amount of grant for which a public school district is eligible, based upon a Grant Index developed by the State Board of Education. The Grant Index shall be based upon the

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equalized assessed valuation of the school district and other measures of relative wealth to determine the percentage of the total cost of corrective action for which grants shall be authorized. The Grant Index for any school district is equal to one minus the ratio of the district's equalized assessed valuation per pupil in weighted daily average attendance to the equalized assessed valuation per pupil in weighted average daily attendance of the district located at the ninetieth percentile for all districts of the same type. The Grant Index for any school district shall be not less than .50 and no greater than 1.00. The product of the district's Grant Index and the project cost, as determined by the Department for approved corrective action, equals the amount that shall be expended on behalf of the school. All non-public schools shall be eligible for grants in an amount equal to 50% of the cost of corrective action.

In conjunction with the Capital Development Board, the Department shall issue grants to schools for corrective action. The Capital Development Board shall, in conjunction with the schools, contract with a contractor whose name appears on the Department's list of approved contractors for the corrective action determined necessary according to provisions of this Act and the rules promulgated thereunder. All such contractors shall be prequalified as may be required by The Illinois Purchasing Act [30 ILCS 505/1 et seq.]. All contracts entered into by the schools and the Capital Development Board shall include a provision that all work to be conducted under that contract shall be undertaken in accordance with this Act and the rules promulgated thereunder. The Capital Development Board shall exercise general supervision over corrective action financed pursuant to the provisions of this Act and the rules promulgated thereunder in schools. The Capital Development Board shall request an annual appropriation in an amount sufficient to cover all expected grants to be awarded in that year. For purposes of reimbursement under this Section, corrective action means removal, encapsulation or enclosure.

A school district may levy a tax in accordance with Section 17-2.11 of "The School Code" [105 ILCS 5/17-2.11] in order to provide local funding for corrective action ordered under this Act. A school may use federal loans or grants to finance the cost of corrective action, but no State funding shall be used to repay any federal loan received by a school for asbestos abatement projects.

(Source: P.A. 84-1096.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1409b.

§ 105 ILCS 105/9c. [Costs of corrective action; litigation; reimbursement]

Sec. 9c. (a) Public school districts that have received corrective action reimbursement or grants pursuant to this Act shall cooperate fully with the Attorney General in litigation to

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recover costs of corrective action. The Attorney General may, in his discretion, take exclusive charge of such litigation. Any amounts recovered, less costs of litigation, shall be divided pro rata between the grantee public school district and the Asbestos Abatement Fund, based upon the percentage of costs of corrective action borne by the State and the school district, respectively.

(b) Any nonpublic school which has received a grant or reimbursement pursuant to this Act, and which subsequently recovers costs of corrective action through litigation, shall reimburse the State from such recovery. The percentage of the recovery reimbursed to the State shall equal the percentage of costs of corrective action initially borne by the State. All reimbursements paid to the State under this subsection shall be deposited in the Asbestos Abatement Fund.

(Source: P.A. 85-585.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1409c.

§ 105 ILCS 105/10. Asbestos Abatement Contractors

Sec. 10. Asbestos Abatement Contractors. The Department shall prepare a list in cooperation with appropriate State and federal agencies on an annual basis of asbestos abatement contractors familiar with and capable of complying with all applicable federal and State standards for asbestos containment and removal. Additional asbestos abatement contractors wishing to be placed on this list shall notify the Department. The Department shall evaluate this request based on the training and experience of such a potential asbestos abatement contractor and render a decision. If the Department denies the request, such contractor may appeal such a decision pursuant to the provisions of the "Administrative Review Law" [735 ILCS 5/3-101 et seq.]. Such list shall be made available to all school districts. In contracting for response action services, schools shall select an asbestos abatement contractor from the Department's list.

(Source: P.A. 86-416.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1410.

§ 105 ILCS 105/10a. Licensing

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Sec. 10a. Licensing. No inspector, management planner, project designer, project manager, air sampling professional, asbestos abatement contractor, worker or project supervisor may be employed as a response action contractor unless that individual or entity is licensed by the Department. Those individuals and entities wishing to be licensed shall make application on forms prescribed and furnished by the Department. A license shall expire annually according to a schedule determined by the Department. Applications for renewal of licenses shall be filed with the Department at least 30 days before the expiration date. When a licensure examination is required, the application for licensure shall be submitted to the Department at least 30 days prior to the date of the scheduled examination. The Department shall evaluate each application based on its minimum standards for licensure, promulgated as rules, and render a decision. Such standards may include a requirement for the successful completion of a course of training approved by the Department. If the Department denies the application, the applicant may appeal such decision pursuant to the provisions of the "Administrative Review Law" [735 ILCS 5/3-101 et seq.].

(Source: P.A. 86-416.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1410a.

§ 105 ILCS 105/10b. Certified Industrial Hygienists

Sec. 10b. Certified Industrial Hygienists. For purposes of this Act and the rules promulgated thereunder, the Department shall use the list of certified industrial hygienists as prepared by the American Board of Industrial Hygiene.

(Source: P.A. 86-981.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1410b.

§ 105 ILCS 105/11. Recordkeeping

Sec. 11. Recordkeeping. Each school district shall:

(a) Keep a record of each asbestos abatement project that is performed in schools; and

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(b) Make that record available to the Department at any reasonable time.

(Source: P.A. 83-1325.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1411.

§ 105 ILCS 105/12. Limitations

Sec. 12. Limitations. Schools shall not undertake any response action in a manner that would endanger the health or safety of school personnel or students; provided, however, schools shall not undertake response action to remove friable asbestos material during which time school personnel or students are using or occupying an educational facility unless appropriate safety measures are instituted which protect the health and safety of school personnel and students. Neither school personnel nor students shall use or occupy a school building containing friable asbestos material in which response action has not been undertaken or completed within the period provided by the federal Asbestos Hazard Emergency Response Act [15 U.S.C. § 2601 et seq.] or the regulations promulgated thereunder.

(Source: P.A. 86-416.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1412.

§ 105 ILCS 105/12a. Emergency stop work orders

Sec. 12a. Emergency stop work orders. Whenever the Department finds that an emergency exists which requires immediate action to protect the public health, it may, without notice or hearing, issue an order reciting the existence of such an emergency and then require that such action be taken as it may deem necessary to meet the emergency, including but not limited to the issuance of a stop work order and the immediate removal of a contractor or contractors from the list provided for in Section 10 [105 ILCS 105/10]. Notwithstanding any other provision in this Act, such order shall be effective immediately. The State's Attorney and Sheriff of the county in which the school is located shall enforce the order after receiving notice thereof. Any contractor affected by such an order is entitled, upon request, to a hearing as provided for in rules and regulations promulgated pursuant to this Act. When such conditions are abated, in the

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opinion of the Department, the Department may authorize the reinstitution of the activities and inclusion on the list of contractors of those activities and contractors which were the subject of a stop work order.

(Source: P.A. 84-951.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1412a.

§ 105 ILCS 105/12b. Civil Penalties

Sec. 12b. Civil Penalties. The Department is empowered to assess civil penalties against a contractor inspector, management planner, project designer, supervisor, worker, project manager, or air sampling professional for violations of this Act and the rules promulgated thereunder, pursuant to rules for such penalties established by the Department.

(Source: P.A. 86-416.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1412b.

§ 105 ILCS 105/12c. [Emergency conditions; removal of material]

Sec. 12c. Under emergency conditions, an employee of a school district may clean or dispose of less than 3 linear feet or 3 square feet of friable or non-friable asbestos containing material in schools without meeting the definition of an "asbestos worker" as defined in this Act, provided the employee has completed the maximum asbestos awareness program provided for in federal law or rules. "Emergency conditions" for the purpose of this Section shall mean:

1) the facility is without heat, water, gas, or electric; or

2) the facility is unable to keep outside elements such as water from entering the interior of the structure; or

3) the dislodging or falling of less than 3 linear feet or 3 square feet of asbestos containing materials.

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The Department may further define, by rule, what circumstances constitute an "emergency condition" under this Section. The Department may also set forth, by rule, the training or awareness program a school employee must meet as a prerequisite to conducting of asbestos clean-up or disposal pursuant to this Section.

(Source: P.A. 86-647.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1412c.

§ 105 ILCS 105/13. Federal funding

Sec. 13. Federal funding. To the extent that federal funds become available for the removal of asbestos from schools and subject to any limitations which may be imposed, such federal funds shall be used in lieu of State financing of corrective actions and for any administrative costs incurred by the Department in the administration of this Act.

(Source: P.A. 83-1325.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1413.

§ 105 ILCS 105/14. Enforcement

Sec. 14. Enforcement. Notwithstanding the existence or pursuit of any other remedy, the Director may, in the manner provided by law, in the name of the People of the State and through the Attorney General who shall represent the Director in the proceedings, maintain an action for injunction or other relief or process against any school, the governing body thereof and any other person or unit of local government to enforce and compel compliance with the provisions of this Act, the rules and regulations promulgated thereunder and any order entered for any response action pursuant to this Act and such rules and regulations.

(Source: P.A. 86-416.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1414.

§ 105 ILCS 105/15. Liability insurance

Sec. 15. Liability insurance. The governing body of each public school which is ordered to undertake any corrective action pursuant to this Act may thereupon insure against any loss or liability of the school district, members of the school board, school employees, student teachers and authorized volunteer personnel by reason of civil damage claims and suits, including death and bodily injury and property damage actions and the defense thereof, for injuries and damages allegedly resulting for any negligent or wrongful acts or omissions allegedly committed by any of the persons to be so insured, during the scope of employment or under direction of the school board, in connection with any corrective action which any such school is ordered to take pursuant to the provisions of this Act.

(Source: P.A. 83-1325.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1415.

§ 105 ILCS 105/15a. Contractor's Certificates of Financial Responsibility

Sec. 15a. Contractor's Certificates of Financial Responsibility. Each contractor wishing to be placed on the Department's approved list of contractors shall submit to the Department a certificate documenting that the contractor carries liability insurance, self insurance, group insurance, group self insurance, a letter of credit or bond in an amount of at least $500,000 for work performed pursuant to the Asbestos Abatement Act [105 ILCS 105/1 et seq.] and the rules promulgated thereunder. No contractor may be placed on the approved list in the absence of such a certificate. All contractors presently on the approved list shall submit said certificate within 90 days of the effective date of this amendatory Act of 1985, or the Department shall remove their names from the approved list.

Each contractor shall maintain on file with the Department a current certificate of financial responsibility throughout the entire length of time the contractor's name appears on the Department's list of approved contractors. A contractor shall notify the Department of any change in the status of a certificate which has been filed including expiration, renewal, or alteration of the terms of the certificate.

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(Source: P.A. 84-1096.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1415a.

§ 105 ILCS 105/16. Illinois School Asbestos Abatement Fund

Sec. 16. Illinois School Asbestos Abatement Fund. All fees and penalties collected by the Department pursuant to this Act shall be deposited into the Illinois School Asbestos Abatement Fund which is hereby created in the State Treasury. Subject to appropriation, all monies deposited in the Illinois School Asbestos Abatement Fund under this Act shall be available to the Department for its administration of this Act and of the federal Asbestos Hazard Emergency Response Act of 1986 [15 U.S.C. § 2601 et seq.]. Subject to appropriation, all moneys deposited in the Illinois School Asbestos Abatement Fund shall be available to the Department of Public Health for administration of the Asbestos Abatement Act and the Commercial and Public Building Asbestos Abatement Act [225 ILCS 207/1 et seq.].

(Source: P.A. 86-416; 89-143, § 900.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1416.

Effect of Amendments. The 1995 amendment by P.A. 89-143, effective July 14, 1995, in the second sentence inserted "under this Act"; and added the third sentence.

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Critical Health Problems and Comprehensive Health Education Act

Sec.

105 ILCS 110/1.Short title
105 ILCS 110/2.Definitions
105 ILCS 110/3.Comprehensive Health Education Program
105 ILCS 110/3.5.Nutrition and physical activity best practices database
105 ILCS 110/4.Powers of the State Board of Education
105 ILCS 110/5.Advisory Committee
105 ILCS 110/6.Rules and Regulations

§ 105 ILCS 110/1. Short title

Sec. 1. Short title. This Act shall be known and may be cited as the "Critical Health Problems and Comprehensive Health Education Act".

(Source: P.A. 77-1405.)

Derivation.

Title: An Act to create a critical health problems and comprehensive health education program in the schools of this State, and to define the powers and duties of the State Board of Education relating thereto.

Cite: 105 ILCS 110/1 et seq.

Source: P.A. 77-1405. Title amended by P.A. 81-1508.

Date: Approved August 31, 1971.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 861.

§ 105 ILCS 110/2. Definitions

Sec. 2. Definitions. The following terms shall have the following meanings respectively prescribed for them, except as the context otherwise requires:

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(a) "Comprehensive Health Education Program": a systematic and extensive educational program designed to provide a variety of learning experiences based upon scientific knowledge of the human organism as it functions within its environment which will favorably influence the knowledge, attitudes, values and practices of Illinois school youth; and which will aid them in making wise personal decisions in matters of health.

(Source: P.A. 77-1405.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 862.

§ 105 ILCS 110/3. Comprehensive Health Education Program

Sec. 3. Comprehensive Health Education Program. The program established under this Act shall include, but not be limited to, the following major educational areas as a basis for curricula in all elementary and secondary schools in this State: human ecology and health, human growth and development, the emotional, psychological, physiological, hygienic and social responsibilities of family life, including sexual abstinence until marriage, prevention and control of disease, including instruction in grades 6 through 12 on the prevention, transmission and spread of AIDS, sexual assault awareness in secondary schools, public and environmental health, consumer health, safety education and disaster survival, mental health and illness, personal health habits, alcohol, drug use, and abuse including the medical and legal ramifications of alcohol, drug, and tobacco use, abuse during pregnancy, sexual abstinence until marriage, tobacco, nutrition, and dental health. The program shall also provide course material and instruction to advise pupils of the Abandoned Newborn Infant Protection Act [325 ILCS 2/1 et seq.]. The program shall include information about cancer, including without limitation types of cancer, signs and symptoms, risk factors, the importance of early prevention and detection, and information on where to go for help. Notwithstanding the above educational areas, the following areas may also be included as a basis for curricula in all elementary and secondary schools in this State: basic first aid (including, but not limited to, cardiopulmonary resuscitation and the Heimlich maneuver), heart disease, diabetes, stroke, the prevention of child abuse, neglect, and suicide, and teen dating violence in grades 8 through 12.

The school board of each public elementary and secondary school in the State shall encourage all teachers and other school personnel to acquire, develop, and maintain the knowledge and skills necessary to properly administer life-saving techniques, including without limitation the Heimlich maneuver and rescue breathing. The training shall be in accordance with standards of the American Red Cross, the American Heart Association, or another nationally recognized certifying organization. A school board may use the services of non-governmental entities whose personnel have expertise in life-saving

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techniques to instruct teachers and other school personnel in these techniques. Each school board is encouraged to have in its employ, or on its volunteer staff, at least one person who is certified, by the American Red Cross or by another qualified certifying agency, as qualified to administer first aid and cardiopulmonary resuscitation. In addition, each school board is authorized to allocate appropriate portions of its institute or inservice days to conduct training programs for teachers and other school personnel who have expressed an interest in becoming qualified to administer emergency first aid or cardiopulmonary resuscitation. School boards are urged to encourage their teachers and other school personnel who coach school athletic programs and other extracurricular school activities to acquire, develop, and maintain the knowledge and skills necessary to properly administer first aid and cardiopulmonary resuscitation in accordance with standards and requirements established by the American Red Cross or another qualified certifying agency. Subject to appropriation, the State Board of Education shall establish and administer a matching grant program to pay for half of the cost that a school district incurs in training those teachers and other school personnel who express an interest in becoming qualified to administer cardiopulmonary resuscitation (which training must be in accordance with standards of the American Red Cross, the American Heart Association, or another nationally recognized certifying organization) or in learning how to use an automated external defibrillator. A school district that applies for a grant must demonstrate that it has funds to pay half of the cost of the training for which matching grant money is sought. The State Board of Education shall award the grants on a first-come, first-serve basis.

No pupil shall be required to take or participate in any class or course on AIDS or family life instruction if his parent or guardian submits written objection thereto, and refusal to take or participate in the course or program shall not be reason for suspension or expulsion of the pupil.

Curricula developed under programs established in accordance with this Act in the major educational area of alcohol and drug use and abuse shall include classroom instruction in grades 5 through 12. The instruction, which shall include matters relating to both the physical and legal effects and ramifications of drug and substance abuse, shall be integrated into existing curricula; and the State Board of Education shall develop and make available to all elementary and secondary schools in this State instructional materials and guidelines which will assist the schools in incorporating the instruction into their existing curricula. In addition, school districts may offer, as part of existing curricula during the school day or as part of an after school program, support services and instruction for pupils or pupils whose parent, parents, or guardians are chemically dependent.

(Source: P.A. 86-878; 86-941; 86-1028; 87-584; 87-1095, § 1; 90-566, § 8; 92-23, § 5; 94-933, § 10; 95-43, § 5; 95-764, § 5; 96-128, § 5; 96-328, § 150; 96-383, § 5; 96-1000, § 280.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 863.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 1992 amendment by P.A. 87-1095, effective January 1, 1993, added the current last sentence of this section.

The 1997 amendment by P.A. 90-566, effective January 2, 1998, in the first paragraph substituted the third and fourth sentences for "However".

The 2001 amendment by P.A. 92-23, effective July 1, 2001, in the first paragraph, at the end of the third sentence, added "shall encourage all teachers and other school personnel to acquire, develop, and maintain the knowledge and skills necessary to properly administer life-saving techniques, including without limitation the Heimlich maneuver and rescue breathing"; inserted the present fourth and fifth sentences; and, at the beginning of the present sixth sentence, added "Each school board."

The 2006 amendment by P.A. 94-933, effective June 26, 2006, added the second sentence in the first paragraph.

The 2007 amendment by P.A. 95-43, effective January 1, 2008, added the last two sentences in the second paragraph.

The 2008 amendment by P.A. 95-764, effective January 1, 2009, added "sexual assault awareness in secondary schools" in the first sentence of the first paragraph.

The 2009 amendment by P.A. 96-128, effective January 1, 2010, in the introductory paragraph, added the third sentence and deleted "early prevention and detection of cancer" following "the Heimlich maneuver)" in the last sentence.

The 2009 revisory amendment by P.A. 96-328, effective August 11, 2009, combined earlier multiple amendments to the section.

The 2009 amendment by P.A. 96-383, effective January 1, 2010, added "and teen dating violence in grades 8 through 12" in the last sentence of the first paragraph and made a related change.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, combined earlier multiple amendments to the section.

LEGAL PERIODICALS

For note, "The Prosecution of Maternal Fetal Abuse: Is This the Answer?" see 1991 U. Ill. L. Rev. 533.

For comment, "When Self Abuse Becomes Child Abuse: The Need for Coercive Prenatal Government Act in Response to the Cocaine Baby Problem," see 11 N. Ill. U.L. Rev. 73 (1990).

§ 105 ILCS 110/3.5. Nutrition and physical activity best practices database

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Sec. 3.5. Nutrition and physical activity best practices database. (a) The State Board of Education shall develop and maintain a nutrition and physical activity best practices database. The database shall contain the results of any wellness-related fitness testing done by local school districts, as well as information on successful programs and policies implemented by local school districts designed to improve nutrition and physical activity in the public and charter schools. This information may include (i) a description of the program or policy, (ii) advice on implementation, (iii) any assessment of the program or policy, (iv) a contact person from the local school district, and (v) any other information the State Board of Education deems appropriate. The database shall be readily accessible to all local school districts Statewide. The State Board of Education shall encourage local school districts to submit information to the database, however no school district shall be required to submit information.

(b) The State Board of Education may adopt rules necessary for administration of this Section.

(c) The requirements of the State Board of Education to establish this database shall become effective once the State Board of Education has secured all of the funding necessary to implement it.

(Source: P.A. 96-1223, § 5.)

Effective Date. Section 99 of P.A. 96-1223 purports to make this section effective July 1, 2010; however, P.A. 96-1223 was approved July 23, 2010.

§ 105 ILCS 110/4. Powers of the State Board of Education

Sec. 4. Powers of the State Board of Education. In order to carry out the purposes of this Act the State Board of Education is empowered to:

(a) Establish the minimum amount of instruction time to be devoted to comprehensive health education at all elementary and secondary grade levels.

(b) Establish guidelines to aid local school districts in developing comprehensive health education programs at all grade levels.

(c) Establish special in-service programs to provide professional preparation in the field of health education for teachers and administrators throughout the schools of the State.

(d) Develop cooperative health training programs between school districts and institutions of higher education whereby qualified health education personnel of such institutions will be available to guide the continuing professional preparation of teachers in health education.

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(e) Encourage institutions of higher education to develop and extend curricula in health education for professional preparation in both in-service and pre-service programs.

(f) Assist in the development of evaluative techniques which will insure that a comprehensive program in health education is being conducted throughout the State which meets the needs of Illinois youth.

(g) Make sure additions to the staff of the State Board of Education to insure a sufficient number of health education personnel to effectuate the purposes of this Act.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 864.

§ 105 ILCS 110/5. Advisory Committee

Sec. 5. Advisory Committee. An advisory committee consisting of 11 members is hereby established as follows: the Director of Public Health or his or her designee, the Secretary of Human Services or his or her designee, and an additional person representing the Department of Human Services designated by the Secretary, the Director of Children and Family Services or his or her designee, the Chairman of the Illinois Joint Committee on School Health or his or her designee, and 6 members to be appointed by the State Board of Education to be chosen, insofar as is possible, from the following groups: colleges and universities, voluntary health agencies, medicine, dentistry, professional health associations, teachers, administrators, members of local boards of education, and lay citizens. The original public members shall, upon their appointment, serve until July 1, 1973, and, thereafter, new appointments of public members shall be made in like manner and such members shall serve for 4 year terms commencing on July 1, 1973, and until their successors are appointed and qualified. Vacancies in the terms of public members shall be filled in like manner as original appointments for the balance of the unexpired terms. The members of the advisory committee shall receive no compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties. Such committee shall select a chairman and establish rules and procedures for its proceedings not inconsistent with the provisions of this Act. Such committee shall advise the State Board of Education on all matters relating to the implementation of the provisions of this Act. They shall assist in presenting advice and interpretation concerning a comprehensive health education program to the Illinois public, especially as related to critical health problems. They shall also assist in establishing a sound understanding and sympathetic relationship between such comprehensive health education program and the public health, welfare and educational programs of other agencies in the community.

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(Source: P.A. 83-969; 89-507, § 90D-41; 90-372, § 5-285; 91-61, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 865.

Effect of Amendments. The 1996 amendment by P.A. 89-507, effective July 1, 1997, in the first sentence deleted "the Illinois Department of" preceding "Public Health", substituted "Secretary of Human Services and an additional person representing the Department of Human Services designated by the Secretary" for "Director of the Illinois Department of Mental Health and Developmental Disabilities, the Director of the Illinois Department of Alcoholism and Substance Abuse" and deleted "the Illinois Department of" preceding "Children and Family Services".

The 1997 amendment by P.A. 90-372, effective July 1, 1998, in the first sentence substituted "11" for "12" and deleted "the Chairman of the Illinois Commission on Children" preceding "the Director of Public Health".

The 1999 amendment by P.A. 91-61, effective June 30, 1999, inserted "or his or her designee" four times in the first sentence.

§ 105 ILCS 110/6. Rules and Regulations

Sec. 6. Rules and Regulations. In carrying out the powers and duties of the State Board of Education and the advisory committee established by this Act, the State Board and such committee are authorized to promulgate rules and regulations in order to implement the provisions of this Act.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 866.

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Dissection Alternatives Act

Sec.

105 ILCS 112/1.Short title
105 ILCS 112/5.Findings and purpose
105 ILCS 112/10.Definitions
105 ILCS 112/15.Alternative student projects
105 ILCS 112/20.Guidelines for notification of students and parents
105 ILCS 112/25.Discrimination prohibited
105 ILCS 112/99.Effective date

§ 105 ILCS 112/1. Short title

Sec. 1. Short title. This Act may be cited as the Dissection Alternatives Act.

(Source: P.A. 91-771, § 1.)

Effective Date. Section 99 of P.A. 91-771, provides: "This Act takes effect upon becoming law and first applies to the 2000-2001 school year." The Act was approved June 9, 2000.

§ 105 ILCS 112/5. Findings and purpose

Sec. 5. Findings and purpose. (a) The General Assembly finds and declares that the appropriate use of dissection in research and education has contributed a great deal to the advancement of medical and biological science. Without dissection the science of anatomy could not have advanced, and it is the bedrock supporting the modern practice of surgery in its many forms. The appropriate use of dissection has brought many benefits to the people of this State, and it continues to play important roles in medical and veterinary practice, research, and education.

(b) The General Assembly also finds that the remarkable progress of the last few decades has produced significant advances in computing and the graphic and representational arts, and that these developments have resulted in the creation of many new technologies for teaching anatomy, physiology, and other medical and biological sciences. In certain circumstances these new technologies are capable of providing an educational experience superior to dissection, and they have often proven to be less expensive and more humane.

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(c) The General Assembly also finds that the use of dissection, when inappropriate or poorly supervised, can result in the inhumane treatment and unnecessary suffering of animals. The inappropriate or careless use of dissection in schools has also in some instances traumatized students and contributed to a failure to teach proper respect for life and living creatures.

(d) It is the purpose of this Act to encourage schools in this State to make available and use alternatives to dissection when those alternatives are appropriate and can provide an educational experience that is equal or superior to the traditional use of dissection. It is not in any way the intention of this Act to discourage the appropriate use of dissection in research or when it provides a valuable educational experience to students.

(Source: P.A. 91-771, § 5.)

§ 105 ILCS 112/10. Definitions

Sec. 10. Definitions. For the purposes of this Act, unless the context otherwise requires:

"Student" means a pupil at a public or private elementary or secondary school in Illinois.

"Teacher" means a person who is teaching at a public or private elementary or secondary school in Illinois, regardless of whether that teaching is on a full-time or part-time, temporary or permanent, or regular or substitute basis.

"Dissection" includes cutting, killing, preserving, or mounting of living or dead animals or animal parts for scientific study; but does not include the cutting, preserving, or mounting of (1) meat or other animal products that have been processed for use as food or in the preparation of food or (2) wool, silk, glue, or other commercial or artistic products derived from animals.

(Source: P.A. 91-771, § 10.)

§ 105 ILCS 112/15. Alternative student projects

Sec. 15. Alternative student projects. A school may excuse a student enrolled in a course in which students are ordinarily expected to perform, participate in, or observe dissection who objects for any reason to performing, participating in, or observing that dissection and instead allow the student to complete an alternative project. The alternative project should be nonpunitive and should be reasonably chosen to provide the student, through means other than dissection, with knowledge similar to that expected to be gained by other students in the course who perform, participate in, or observe the dissection. The

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alternative project should be consistent with any guidelines for alternative projects that have been adopted by the State Board of Education.

(Source: P.A. 91-771, § 15.)

§ 105 ILCS 112/20. Guidelines for notification of students and parents

Sec. 20. Guidelines for notification of students and parents. (a) The State Board of Education shall develop and make available guidelines that may be used by the public elementary and secondary schools within this State to give appropriate notice of the following to students and their parents or legal guardians:

(1) Which, if any, of the courses taught at the school ordinarily require or allow the student to perform, participate in, or observe dissection.

(2) Whether or not the school makes available to students the opportunity to complete an alternative project.

(b) When offering high school students an opportunity to choose between dissection or an alternative project, teachers should encourage the students to take into consideration the expectations and requirements of the colleges and graduate programs that they may be interested in attending.

(Source: P.A. 91-771, § 20.)

§ 105 ILCS 112/25. Discrimination prohibited

Sec. 25. Discrimination prohibited. A student may not be penalized or discriminated against in any way for refusing to perform, participate in, or observe dissection.

(Source: P.A. 91-771, § 25.)

§ 105 ILCS 112/99. Effective date

Sec. 99. Effective date. This Act takes effect upon becoming law and first applies to the 2000-2001 school year.

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(Source: P.A. 91-771, § 99.)

Note.

P.A. 91-771 was approved June 9, 2000.

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Eye Protection in School Act

Sec.

105 ILCS 115/0.01.Short title
105 ILCS 115/1.[Eye protective devices required]

§ 105 ILCS 115/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Eye Protection in School Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act to require the wearing of eye protective devices by all students, teachers and visitors when participating in or observing certain vocational, industrial arts and chemical-physical courses or laboratories, and providing minimum standards for such devices.

Cite: 105 ILCS 115/0.01 et seq.

Source: L. 1965, p. 2545.

Date: Approved August 4, 1965.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 698.10.

§ 105 ILCS 115/1. [Eye protective devices required]

Sec. 1. Every student, teacher and visitor is required to wear an industrial quality eye protective device when participating in or observing any of the following courses in schools, colleges and universities:

(a) vocational or industrial arts shops or laboratories involving experience with the following: hot molten metals; milling, sawing, turning, shaping, cutting, grinding or stamping of any solid materials; heat treatment, tempering or kiln firing of any metal or other materials; gas or electric arc welding; repair or servicing of any vehicle; caustic or explosive materials;

(b) chemical or combined chemical-physical laboratories involving caustic or explosive chemicals or hot liquids or solids.

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Such devices may be furnished for all students and teachers, and shall be furnished for all visitors to such classrooms and laboratories.

The State Board of Education shall establish nationally accepted standards for such devices.

(Source: P.A. 81-1508; 88-9, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 698.11.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1.420.

Effect of Amendments. The 1993 amendment by P.A. 88-9, effective June 30, 1993, in the last paragraph inserted "nationally accepted", and deleted from the end "but the standards shall not be lower than the standards prescribed by the American Standards Association Safety Code for Head, Eye, and Respiratory Protection, Z2.1-1959, promulgated by the American Standards Association, Inc., in effect on the effective date of this Act of 1965."

CASE NOTES

Analysis
In General
Governmental Immunity

In General

While the Eye Protection Act, 105 ILCS 115/1 does not require schools to provide eye protection to teachers and students, it does require schools to ensure that eye protection is worn before proceeding with any of the activities listed in the statute. Hill v. Galesburg Cmty. Unit Sch. Dist. 205, 346 Ill. App. 3d 515, 281 Ill. Dec. 931, 805 N.E.2d 299, 2004 Ill. App. LEXIS 180 (3 Dist. 2004).

Governmental Immunity

Teacher who failed to ensure that a student was wearing eye protection before proceeding with a chemistry experiment was acting in a supervisory capacity; thus, the school district the teacher worked for was immune from liability under 745 ILCS 10/3-108(a) for the teacher's negligence in carrying out her supervisory duty. Hill v. Galesburg Cmty. Unit Sch. Dist. 205, 346 Ill. App. 3d 515, 281 Ill. Dec. 931, 805 N.E.2d 299, 2004 Ill. App. LEXIS 180 (3 Dist. 2004).

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The duty to ensure that eye protection is worn when students undertake any of the activities listed in 105 ILCS 115/1 is ministerial in nature and, thus, is not protected by the immunity granted to public entities and their employees under 745 ILCS 10/2-201. Hill v. Galesburg Cmty. Unit Sch. Dist. 205, 346 Ill. App. 3d 515, 281 Ill. Dec. 931, 805 N.E.2d 299, 2004 Ill. App. LEXIS 180 (3 Dist. 2004).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Significant Developments in Education Law 2003- 2004," see, 29 S. Ill. U.L.J. 603 (2005).

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Fire Drill Act

Sec.
105 ILCS 120/0.01 through 105 ILCS 120/3 [Repealed].

§§ 105 ILCS 120/0.01 through 105 ILCS 120/3: Repealed by P.A. 94-600, § 915, effective August 16, 2005.

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Farm Fresh Schools Program Act

Sec.

105 ILCS 124/1.Short title
105 ILCS 124/5.Findings
105 ILCS 124/10.Farm Fresh Schools Program
105 ILCS 124/15.Grants
105 ILCS 124/20.Farm Fresh Schools Program Fund
105 ILCS 124/25.Rules

§ 105 ILCS 124/1. Short title

Sec. 1. Short title. This Act may be cited as the Farm Fresh Schools Program Act.

(Source: P.A. 96-153, § 1.)

Effective Date. This Act is effective January 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 124/5. Findings

Sec. 5. Findings. The General Assembly finds all of the following:

(1) According to the Centers for Disease Control and Prevention, less than 20% of young people eat the recommended 5 or more servings of fruits and vegetables each day. A recent study in the New England Journal of Medicine finds that, unless reversed, in the next 50 years obesity will shorten life expectancy in the United States by 2 to 5 years, exceeding the impact of cancer or heart disease. Studies by the Yale University School of Public Health have found that, due to obesity and related diseases, the current generation of young people may be the first in American history whose life expectancy is projected to be less than that of their parents.

(2) Farm-to-school programs link schools with local and regional farms in order to provide schools with fresh and minimally processed farm commodities for inclusion in school meals, vending machines, salad bars, and snacks. These programs also help children develop nutritional awareness and healthy eating habits.

(3) In addition to procuring farm fresh foods for school food offerings, farm-to-school programs often include activities that provide pupils with hands-on learning

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opportunities, such as farm visits, cooking demonstrations, and school gardening and composting programs, and integrate nutritional and agricultural education into school curricula.

(4) It is in the interest of this State to promote farm-to-school programs that emphasize the purchase of farm fresh foods by schools in order to improve child nutrition and strengthen local and regional farm economies.

(Source: P.A. 96-153, § 5.)

§ 105 ILCS 124/10. Farm Fresh Schools Program

Sec. 10. Farm Fresh Schools Program. The Department of Agriculture, in cooperation with the State Board of Education and the Department of Public Health, shall create the Farm Fresh Schools Program. The intent of the Program is to reduce obesity and improve nutrition and public health, as well as strengthen local agricultural economies by increasing access to and promoting the consumption of locally grown fruits and vegetables in schools and increasing physical activities and programs that promote pupil wellness.

(Source: P.A. 96-153, § 10.)

§ 105 ILCS 124/15. Grants

Sec. 15. Grants. (a) The Department of Agriculture and the State Board of Education shall jointly administer a process to review grant proposals and award grants on a competitive basis to eligible applicants to implement the Farm Fresh Schools Program.

(b) The first 6 grants awarded pursuant to the Farm Fresh Schools Program shall be awarded in 6 different counties, including 3 urban counties and 3 rural counties with a significant agricultural economy.

(Source: P.A. 96-153, § 15.)

§ 105 ILCS 124/20. Farm Fresh Schools Program Fund

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Sec. 20. Farm Fresh Schools Program Fund. The Farm Fresh Schools Program Fund is created as a special fund in the State treasury. Moneys in the Fund shall be used, subject to appropriation, by the Department of Agriculture and the State Board of Education for the purposes of this Act.

(Source: P.A. 96-153, § 20.)

§ 105 ILCS 124/25. Rules

Sec. 25. Rules. The Department of Agriculture, with the cooperation of the Department of Public Health and the State Board of Education, shall adopt rules for the implementation of this Act.

(Source: P.A. 96-153, § 25.)

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School Breakfast and Lunch Program Act

Sec.

105 ILCS 125/0.01.Short title
105 ILCS 125/0.05.State policy and legislative intent
105 ILCS 125/1.Definitions
105 ILCS 125/2.Reimbursement of sponsors
105 ILCS 125/2.5.Breakfast incentive program
105 ILCS 125/3.Agreements with sponsors; standardized breakfasts and lunches
105 ILCS 125/4.Accounts; copies of menus served; free lunch program required; report
105 ILCS 125/5.Application for participation in programs
105 ILCS 125/6.Disapproval or reduction of reimbursement
105 ILCS 125/7.Disbursement of funds
105 ILCS 125/8.Filing and forwarding claims for reimbursement
105 ILCS 125/9.Certification and payment of claims
105 ILCS 125/10.Sharing information on school lunch applicants

§ 105 ILCS 125/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the School Breakfast and Lunch Program Act.

(Source: P.A. 86-1324; 91-843, § 5.)

Derivation.

Title: An Act authorizing school boards and welfare centers to sponsor community school breakfast and lunch programs and free breakfast and lunch programs and authorizing and requiring free school lunch programs, providing for State reimbursement.

Cite: 105 ILCS 125/0.01 et seq.

Source: L. 1945, p. 1576. Title amended by P.A. 76-875; 76-2552.

Date: Approved July 24, 1945.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 712.01.

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Effect of Amendments. The 2000 amendment by P.A. 91-843, effective June 22, 2000, substituted "Breakfast and Lunch" for "Free Lunch".

§ 105 ILCS 125/0.05. State policy and legislative intent

Sec. 0.05. State policy and legislative intent. The General Assembly recognizes that hunger and food security are serious problems in the State of Illinois with as many as one million citizens being affected. These citizens have lost their sense of food security. It is estimated that just under 600,000 Illinois children experience hunger or food insecurity, meaning that they either go without eating meals, or their parents cannot provide the kinds of food they need. Because low-income children are not being adequately nourished, even to the point where many are arriving at school hungry, the General Assembly believes it is in the best interest of Illinois to utilize resources available through existing child nutrition programs, to the fullest extent possible.

The General Assembly also recognizes a definite correlation between adequate child nutrition and a child's physical, emotional, and cognitive development. There is also a correlation between adequate nutrition and a child's ability to perform well in school. In this regard, the General Assembly realizes the importance of the National School Breakfast Program as an effective measure that must be widely implemented to insure more adequate nutrition for Illinois children.

(Source: P.A. 91-843, § 5.)

Effective Date. Section 99 of P.A. 91-843 made this section effective upon becoming law. The Act was approved June 22, 2000.

§ 105 ILCS 125/1. Definitions

Sec. 1. Definitions. For the purposes of this Act:

"School board" means school principal, directors, board of education and board of school inspectors of public and private schools.

"Welfare center" means an institution not otherwise receiving funds from any governmental agency, serving breakfasts or lunches to children of school age or under, in conformance with the authorized free breakfast program, school breakfast program, free lunch program, or school lunch program.

"Free breakfast program" means those programs through which school boards may supply needy children in their respective districts with free school breakfasts.

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"Free lunch program" means those programs through which school boards supply all of the needy children in their respective districts with free school lunches.

"School breakfast program" means a school breakfast program that meets the requirements for school breakfast programs under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

"School lunch program" means a school lunch program that meets the requirements for school lunch programs under the National School Lunch Act (42 U.S.C. 1751 et seq.).

"Comptroller" means Comptroller of the State of Illinois.

(Source: P.A. 81-1508; 91-843, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 712.1.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 252.30.

Effect of Amendments. The 2000 amendment by P.A. 91-843, effective June 22, 2000, added the section heading, and rewrote the section to the extent that a detailed comparison would be impracticable.

§ 105 ILCS 125/2. Reimbursement of sponsors

Sec. 2. Reimbursement of sponsors. The State Board of Education is authorized to reimburse school boards and welfare centers that operate free breakfast programs, school breakfast programs, free lunch programs, or school lunch programs for a portion of the costs of food served in balanced, nutritious breakfasts or lunches and served to students in non-profit public or private schools and non-profit welfare centers.

The State Board of Education shall reimburse not less than $0.15 or the actual cost, whichever is less, to School Boards for each free lunch and not less than $0.15 or the actual cost, whichever is less, for each free breakfast supplied by them. This appropriation shall be in addition to any federal contributions.

(Source: P.A. 83-728; 91-843, § 5.)

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This section was Ill.Rev.Stat., Ch. 122, Para. 712.2.

Effect of Amendments. The 2000 amendment by P.A. 91-843, effective June 22, 2000, added the section heading, and rewrote the section to the extent that a detailed comparison would be impracticable.

§ 105 ILCS 125/2.5. Breakfast incentive program

Sec. 2.5. Breakfast incentive program. The State Board of Education shall fund a breakfast incentive program comprised of the components described in paragraphs (1), (2), and (3) of this Section, provided that a separate appropriation is made for the purposes of this Section. The State Board of Education may allocate the appropriation among the program components in whatever manner the State Board of Education finds will best serve the goal of increasing participation in school breakfast programs. If the amount of the appropriation allocated under paragraph (1), (2), or (3) of this Section is insufficient to fund all claims submitted under that particular paragraph, the claims under that paragraph shall be prorated.

(1) Additional funding incentive. The State Board of Education may reimburse each sponsor of a school breakfast program at least an additional $0.10 for each free, reduced-price, and paid breakfast served over and above the number of such breakfasts served in the same month during the preceding year.

(2) Start-up incentive. The State Board of Education may make grants to school boards and welfare centers that agree to start a school breakfast program in one or more schools or other sites. First priority for these grants shall be given through August 15 to schools in which 40% or more of their students are eligible for free and reduced price meals, based on the school district's previous year's October claim, under the National School Lunch Act (42 U.S.C. 1751 et seq.). Depending on the availability of funds and the rate at which funds are being utilized, the State Board of Education is authorized to allow additional schools or other sites to receive these grants in the order in which they are received by the State Board of Education. The amount of the grant shall be $3,500 for each qualifying school or site in which a school breakfast program is started. The grants shall be used to pay the start-up costs for the school breakfast program, including equipment, supplies, and program promotion, but shall not be used for food, labor, or other recurring operational costs. Applications for the grants shall be made to the State Board of Education on forms designated by the State Board of Education. Any grantee that fails to operate a school breakfast program for at least 3 years after receipt of a grant shall refund the amount of the grant to the State Board of Education.

(3) Non-traditional breakfast incentive. Understanding that there are barriers to implementing a school breakfast program in a traditional setting such as in a cafeteria, the State Board of Education may make grants to school boards and welfare centers to offer the school breakfast program in non-traditional settings or using non-traditional methods. Priority will be given to applications through August 15 of each year from schools that are on the Early Academic Warning List. Depending on the availability of funds and the

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rate at which funds are being utilized, the State Board of Education is authorized to allow additional schools or other sites to receive these grants in the order in which they are received by the State Board of Education.

(Source: P.A. 91-843, § 5; 93-1086, § 95; 94-981, § 5; 96-158, § 5.)

Effective Date. Section 99 of P.A. 91-843 made this section effective upon becoming law. The Act was approved June 22, 2000.

Effect of Amendments. The 2005 amendment by P.A. 93-1086, effective February 15, 2005, substituted "in a participating school building" for "by a sponsor" in (1); and substituted "40%" for "50%" in (2).

The 2006 amendment by P.A. 94-981, effective June 30, 2006, added "at least" in (1).

The 2009 amendment by P.A. 96-158, effective August 7, 2009, rewrote the section.

§ 105 ILCS 125/3. Agreements with sponsors; standardized breakfasts and lunches

Sec. 3. Agreements with sponsors; standardized breakfasts and lunches. The State Board of Education is authorized to enter into agreements with the sponsors of free breakfast programs, school breakfast programs, free lunch programs, and school lunch programs and shall prepare a standardized, general list of type breakfasts and lunches, for which the State will reimburse, subject to the provisions of Section 8 [105 ILCS 125/8], the sponsors of such programs.

The State Board of Education is also authorized to enter into agreements with any governmental agency, school boards, corporations, private individuals, or welfare centers which would permit the distribution or processing of surplus commodities or in any other way tend to improve the school breakfast program or school lunch program.

(Source: P.A. 87-420; 91-843, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 712.3.

Effect of Amendments. The 2000 amendment by P.A. 91-843, effective June 22, 2000, added the section heading, and rewrote the section to the extent that a detailed comparison would be impracticable.

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§ 105 ILCS 125/4. Accounts; copies of menus served; free lunch program required; report

Sec. 4. Accounts; copies of menus served; free lunch program required; report. School boards and welfare centers shall keep an accurate, detailed and separate account of all moneys expended for school breakfast programs, school lunch programs, free breakfast programs, free lunch programs, and summer food service programs, and of the amounts for which they are reimbursed by any governmental agency, moneys received from students and from any other contributors to the program. School boards and welfare centers shall also keep on file a copy of all menus served under the programs, which together with all records of receipts and disbursements, shall be made available to representatives of the State Board of Education at any time.

Every public school must have a free lunch program.

(Source: P.A. 81-1508; 91-843, § 5; 93-1086, § 95; 94-981, § 5; 96-158, § 5; 96-1423, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 712.4.

Effect of Amendments. The 2000 amendment by P.A. 91-843, effective June 22, 2000, added the section heading, and rewrote the section to the extent that a detailed comparison would be impracticable.

The 2005 amendment by P.A. 93-1086, effective February 15, 2005, inserted "and summer food service programs" and made a related change in the introductory paragraph; and substituted "2007, 2009, and 2011" for "2001, 2003, and 2005" in the last paragraph.

The 2006 amendment by P.A. 94-981, effective June 30, 2006, added "and a list of school districts and schools granted an exemption from a regional superintendent of schools" in (3); and substituted "with" for "in coordination with the State Board of Education's Child Nutrition Advisory Council and" in the first sentence of the last paragraph.

The 2009 amendment by P.A. 96-158, effective August 7, 2009, rewrote the section.

The 2010 amendment by P.A. 96-1423, effective August 3, 2010, deleted the former last paragraph pertaining to the report containing the list of schools where breakfast and lunch is provided free to eligible students, and the reasons why schools dropped the program during last year or exempted from next year within specified date.

§ 105 ILCS 125/5. Application for participation in programs

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Sec. 5. Application for participation in programs. Applications for participation in the school breakfast program, the school lunch program, the free breakfast program, the free lunch program, and the summer food service program shall be made on forms provided by the State Board of Education and filed with the State Board.

(Source: P.A. 81-1508; 91-843, § 5; 93-1086, § 95.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 712.5.

Effect of Amendments. The 2000 amendment by P.A. 91-843, effective June 22, 2000, added the section heading, and inserted "school breakfast program, the".

The 2005 amendment by P.A. 93-1086, effective February 15, 2005, inserted "and summer food service programs" and made a related change; and deleted "through the Regional Superintendent of Schools" from the end.

§ 105 ILCS 125/6. Disapproval or reduction of reimbursement

Sec. 6. Disapproval or reduction of reimbursement. The State Board of Education may disapprove any reimbursement if it is found that balanced, nutritious meals are not served in accordance with the prescribed standards.

The State Board of Education may reduce or disapprove the amount of reimbursement if it is found that the total income for the free breakfast program, school breakfast program, free lunch program, or school lunch program exceeds the expenditures therefor.

(Source: P.A. 87-420; 91-843, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 712.6.

Effect of Amendments. The 2000 amendment by P.A. 91-843, effective June 22, 2000, added the section heading and inserted "free breakfast program, school breakfast program, free lunch program, or".

§ 105 ILCS 125/7. Disbursement of funds

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Sec. 7. Disbursement of funds. The funds appropriated shall be paid to school boards and welfare centers in accordance with the reimbursement rates established in Section 2 [105 ILCS 125/2]. If the total amount of the claims for reimbursement for any school year exceeds the amount appropriated for that year, the money shall be apportioned to each claimant in an equitable manner based upon meals claimed.

(Source: P.A. 87-420; 91-843, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 712.7.

Effect of Amendments. The 2000 amendment by P.A. 91-843, effective June 22, 2000, added the section heading.

§ 105 ILCS 125/8. Filing and forwarding claims for reimbursement

Sec. 8. Filing and forwarding claims for reimbursement. School boards and welfare centers shall file claims for reimbursement, on forms provided by the State Board of Education, on a monthly basis as prescribed by the State Board of Education.

(Source: P.A. 87-420; 91-764, § 10; 91-843, § 5; 92-16, § 49.5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 712.8.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Effect of Amendments. The 2000 amendment by P.A. 91-764, effective June 9, 2000, deleted "with the Regional Superintendent of Schools" following "Education" in the first sentence and deleted the former second sentence, which read: "The Regional Superintendent of Schools shall sign and forward to the State Board of Education one copy of each such claim filed with him".

The 2000 amendment by P.A. 91-843, effective June 22, 2000, added the section heading.

The 2001 amendment by P.A. 92-16, effective June 28, 2001, combined the amendments by P.A. 91-764 and P.A. 91-843.

§ 105 ILCS 125/9. Certification and payment of claims

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Sec. 9. Certification and payment of claims. The State Board of Education shall prepare and certify to the State Comptroller at least monthly the amount due each board and welfare center, whereupon the Comptroller shall draw his warrants on the State Treasurer for the amounts certified for the various school boards and welfare centers.

(Source: P.A. 81-1447; 88-641, § 15; 91-843, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 712.9.

Effect of Amendments. The 1994 amendment by P.A. 88-641, effective September 9, 1994, added the section catchline; substituted "school district and welfare center" for "Regional Superintendent of Schools", deleted "to him to the regional superintendent of schools" preceding "for the various" and deleted "in their respective regions" from the end; and deleted the former second sentence which read "The regional superintendent straightway shall transmit the payment to the respective school boards through the proper school treasurer or to the welfare centers".

The 2000 amendment by P.A. 91-843, effective June 22, 2000, substituted "board" for "school district" and made a related change.

§ 105 ILCS 125/10. Sharing information on school lunch applicants

Sec. 10. Sharing information on school lunch applicants. Each private school that receives funds for free or reduced-price lunches under this Act shall, whenever requested by the Department of Healthcare and Family Services (formerly Public Aid), agree in writing with the Department of Healthcare and Family Services (as the State agency that administers the State Medical Assistance Program as provided in Title XIX of the federal Social Security Act and the State Children's Health Insurance Program as provided in Title XXI of the federal Social Security Act) to share with the Department of Healthcare and Family Services information on applicants for free or reduced-price lunches. This sharing of information shall be for the sole purpose of helping the Department of Healthcare and Family Services identify and enroll children in the State Medical Assistance Program or the State Children's Health Insurance Program or both as allowed under 42 U.S.C. Sec. 1758(b)(2)(C)(iii)(IV) and under the restrictions set forth in 42 U.S.C. Sec. 1758(b)(2)(C)(vi) and (vii).

(Source: P.A. 93-404, § 10; 95-331, § 555.)

Effective Date. Section 99 of P.A. 93-404 makes this section effective August 1, 2003.

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Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, substituted "Department of Healthcare and Family Services" for "Department of Public Aid" throughout the section.

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Childhood Hunger Relief Act

Sec.

105 ILCS 126/1.Short title
105 ILCS 126/5.State policy and legislative intent
105 ILCS 126/10.Definitions
105 ILCS 126/15.School breakfast program
105 ILCS 126/20.Summer food service program
105 ILCS 126/99.Effective date

§ 105 ILCS 126/1. Short title

Sec. 1. Short title. This Act may be cited as the Childhood Hunger Relief Act.

(Source: P.A. 93-1086, § 1.)

Effective Date. Section 99 of P.A. 93-1086 made this Act effective upon becoming law. The Act was approved February 15, 2005.

§ 105 ILCS 126/5. State policy and legislative intent

Sec. 5. State policy and legislative intent. The General Assembly recognizes that hunger and food security are serious problems in the State of Illinois with as many as one million citizens being affected. These citizens have lost their sense of food security. Food insecurity occurs whenever the availability of nutritionally adequate and safe foods or the ability to acquire acceptable foods in socially acceptable ways is limited or uncertain. Hunger is a painful or uneasy sensation caused by a recurrent or involuntary lack of food and is a potential, although not necessary, consequence of food insecurity. Over time, hunger may result in malnutrition. It is estimated that just under 600,000 Illinois children experience hunger or food insecurity, meaning that they either go without eating meals, or their parents or guardians cannot provide the kinds of food they need. At present, the Illinois economy is steadily experiencing a 6% unemployment rate, people are being laid off who thought they had job security, and the unemployed are remaining unemployed beyond the terms of unemployment benefits. Emergency food providers throughout the State are experiencing an increase in the number of working poor families requesting emergency food. In October 2003, Illinois was ranked 48th in the nation in providing school breakfasts to low-income children of families who meet the criteria for free and reduced-price lunches. Because low-income children are not being adequately nourished,

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even to the point where many are arriving at school hungry, the General Assembly believes it is in the best interest of Illinois to utilize resources available through existing child nutrition programs, to the fullest extent possible.

The General Assembly also recognizes a definite correlation between adequate child nutrition and a child's physical, emotional, and cognitive development. There is also a correlation between adequate nutrition and a child's ability to perform well in school. Documented research has proven that school breakfasts improve attendance and increase a child's readiness to learn. In this regard, the General Assembly realizes the importance of the National School Breakfast Program and the Summer Food Service Program as effective measures that must be widely implemented to ensure more adequate nutrition for Illinois children.

(Source: P.A. 93-1086, § 5.)

§ 105 ILCS 126/10. Definitions

Sec. 10. Definitions. In this Act:

"Hunger" means a symptom of poverty caused by a lack of resources that prevents the purchasing of a nutritionally adequate diet resulting in a chronic condition of being undernourished.

"Food insecurity" means a limited or uncertain availability of nutritionally adequate foods.

"Food security" means ensured access to enough food for an active, healthy life.

"School Breakfast Program" means the federal child nutrition entitlement program that helps serve nourishing low-cost breakfast meals to school children. In addition to cash assistance, participating schools get foods donated by and technical guidance from the United States Department of Agriculture. Payments to schools are higher for meals served to children who qualify, on the basis of family size and income, for free or reduced-price meals. The program is administered in Illinois by the State Board of Education.

"Summer Food Service Program" means the federal child nutrition entitlement program that helps communities serve meals to needy children when school is not in session. The United States Department of Agriculture reimburses sponsors for operating costs of food services up to a specific maximum rate for each meal served. In addition, sponsors receive some reimbursement for planning and supervising expenses. The program in Illinois is administered by the State Board of Education.

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(Source: P.A. 93-1086, § 10.)

§ 105 ILCS 126/15. School breakfast program

Sec. 15. School breakfast program. (a) The board of education of each school district in this State shall implement and operate a school breakfast program in the next school year, if a breakfast program does not currently exist, in accordance with federal guidelines in each school building within its district in which at least 40% or more of the students are eligible for free or reduced-price lunches based upon the current year's October claim (for those schools that participate in the National School Lunch Program) or in which at least 40% or more of the students are classified as low-income according to the Fall Housing Data from the previous year (for those schools that do not participate in the National School Lunch Program).

(b) School districts may charge students who do not meet federal criteria for free school meals for the breakfasts served to these students within the allowable limits set by federal regulations.

(c) School breakfast programs established under this Section shall be supported entirely by federal funds and commodities, charges to students and other participants, and other available State and local resources, including under the School Breakfast and Lunch Program Act [105 ILCS 125/0.01 et seq.]. Allowable costs for reimbursement to school districts, in accordance with the United States Department of Agriculture, include compensation of employees for the time devoted and identified specifically to implement the school breakfast program; the cost of materials acquired, consumed, or expended specifically to implement the school breakfast program; equipment and other approved capital expenditures necessary to implement the school breakfast program; and transportation expenses incurred specifically to implement and operate the school breakfast program.

(d) A school district shall be allowed to opt out a school or schools from the school breakfast program requirement of this Section if it is determined that, due to circumstances specific to that school district, the expense reimbursement would not fully cover the costs of implementing and operating a school breakfast program. The school district shall petition its regional superintendent of schools by February 15 of each year to request to be exempt from operating the school breakfast program in the school or schools in the next school year. The petition shall include all legitimate costs associated with implementing and operating a school breakfast program, the estimated reimbursement from State and federal sources, and any unique circumstances the school district can verify that exist that would cause the implementation and operation of such a program to be cost prohibitive.

The regional superintendent of schools shall review the petition. In accordance with the Open Meetings Act, he or she shall convene a public hearing to hear testimony from the school district and interested community members. The regional superintendent shall, by

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March 15 of each year, inform the school district of his or her decision, along with the reasons why the exemption was granted or denied, in writing. The regional superintendent must also send notification to the State Board of Education detailing which schools requested an exemption and the results. If the regional superintendent grants an exemption to the school district, then the school district is relieved from the requirement to establish and implement a school breakfast program in the school or schools granted an exemption for the next school year.

If the regional superintendent of schools does not grant an exemption, then the school district shall implement and operate a school breakfast program in accordance with this Section by the first student attendance day of the next school year. However, the school district or a resident of the school district may by April 15 appeal the decision of the regional superintendent to the State Superintendent of Education. The State Superintendent shall hear appeals on the decisions of regional superintendents of schools no later than May 15 of each year. The State Superintendent shall make a final decision at the conclusion of the hearing on the school district's request for an exemption from the school breakfast program requirement. If the State Superintendent grants an exemption, then the school district is relieved from the requirement to implement and operate a school breakfast program in the school or schools granted an exemption for the next school year. If the State Superintendent does not grant an exemption, then the school district shall implement and operate a school breakfast program in accordance with this Section by the first student attendance day of the next school year.

A school district may not attempt to opt out a school or schools from the school breakfast program requirement of this Section by requesting a waiver under Section 2-3.25g of the School Code [105 ILCS 5/2-3.25g].

(Source: P.A. 93-1086, § 15; 94-981, § 10; 96-158, § 10.)

Effect of Amendments. The 2006 amendment by P.A. 94-981, effective June 30, 2006, added the parenthetical in the first paragraph of (a); and in (d): added references to "of each year" and "for that school year" throughout, and added "In accordance with the Open Meetings Act" in the second paragraph.

The 2009 amendment by P.A. 96-158, effective August 7, 2009, rewrote the section.

§ 105 ILCS 126/20. Summer food service program

Sec. 20. Summer food service program. (a) The State Board of Education shall promulgate a State plan for summer food service programs, in accordance with 42 U.S.C. Sec. 1761 and any other applicable federal laws and regulations, by February 1, 2008.

(b) On or before February 15, 2008, and each year thereafter, a school district must promulgate a plan to have a summer breakfast or lunch (or both) food service program for each school (i) in which at least 50% of the students are eligible for free or reduced-

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price school meals and (ii) that has a summer school program. The plan must be implemented during the summer of 2008 and each year thereafter as long as the school district has a school or schools that meet the above criteria. Each summer food service program must operate for the duration of the school's summer school program. If the school district has one or more elementary schools that qualify, the summer food service program must be operated in a manner that ensures all eligible students receive services. If a school in which at least 50% of the students are eligible for free or reduced-price school meals is not open during the summer months, the school shall provide information regarding the number of children in the school who are eligible for free or reduced-price school meals upon request by a not-for-profit entity.

(c) Summer food service programs established under this Section shall be supported by federal funds and commodities and other available State and local resources.

(d) A school district shall be allowed to opt out of the summer food service program requirement of this Section if it is determined that, due to circumstances specific to that school district, the expense reimbursement would not fully cover the costs of implementing and operating a summer food service program. The school district shall petition its regional superintendent of schools by January 15 to request to be exempt from the summer food service program requirement. The petition shall include all legitimate costs associated with implementing and operating a summer food service program, the estimated reimbursement from State and federal sources, and any unique circumstances the school district can verify that exist that would cause the implementation and operation of such a program to be cost prohibitive.

The regional superintendent of schools shall review the petition. He or she shall convene a public hearing to hear testimony from the school district and interested community members. The regional superintendent shall, by March 1, inform the school district of his or her decision, along with the reasons why the exemption was granted or denied, in writing. If the regional superintendent grants an exemption to the school district, then the school district is relieved from the requirement to establish and implement a summer food service program.

If the regional superintendent of schools does not grant an exemption to the school district, then the school district shall implement and operate a summer food service program in accordance with this Section the summer following the current school year. However, the school district or a resident of the school district may appeal the decision of the regional superintendent to the State Superintendent of Education. No later than April 1 of each year, the State Superintendent shall hear appeals on the decisions of regional superintendents of schools. The State Superintendent shall make a final decision at the conclusion of the hearing on the school district's request for an exemption from the summer food service program requirement. If the State Superintendent grants an exemption to the school district, then the school district is relieved from the requirement to implement and operate a summer food service program. If the State Superintendent does not grant an exemption to the school district, then the school district shall implement and operate a summer food service program in accordance with this Section the summer following the current school year.

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(Source: P.A. 93-1086, § 20; 95-155, § 5; 96-734, § 10.)

Effect of Amendments. The 2007 amendment by P.A. 95-155, effective August 14, 2007, in (a) substituted "February 1, 2008" for "January 15, 2006"; rewrote (b); in (c) substituted "shall" for "may"; and added (d).

The 2009 amendment by P.A. 96-734, effective August 25, 2009, in (b), inserted "and each year thereafter" in the first sentence and added the language beginning with "and each year" through the end of the second sentence.

§ 105 ILCS 126/99. Effective date

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 93-1086, § 99.)

Note.

P.A. 93-1086 was approved February 15, 2005.

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School Reporting of Drug Violations Act

Sec.

105 ILCS 127/1.Short title
105 ILCS 127/2.Duty of school administrators
105 ILCS 127/99.Effective date

§ 105 ILCS 127/1. Short title

Sec. 1. Short title. This Act may be cited as the School Reporting of Drug Violations Act.

(Source: P.A. 90-395, § 1.)

Derivation.

Title: An Act in relation to cannabis and controlled substances.

Cite: 105 ILCS 127/1 et seq.

Source: P.A. 90-395, eff. 8-15-97.

Date: Approved August 15, 1997.

Short title: School Reporting of Drug Violations Act.

Effective Date. Section 99 of P.A. 90-395 made this Act effective upon becoming law. The Act was approved August 15, 1997.

§ 105 ILCS 127/2. Duty of school administrators

Sec. 2. Duty of school administrators. It is the duty of the principal of a public elementary or secondary school, or his or her designee, and the chief administrative officer of a private elementary or secondary school or a public or private community college, college, or university, or his or her designee, to report to the municipal police department or office of the county sheriff of the municipality or county where the school is located violations of Section 5.2 of the Cannabis Control Act [720 ILCS 550/5.2], violations of Section 401 [720 ILCS 570/401] and subsection (b) of Section 407 of the Illinois Controlled Substances Act [720 ILCS 570/407], and violations of the Methamphetamine Control and Community Protection Act [720 ILCS 646/1 et seq.] occurring in a school, on the real property comprising any school, on a public way within

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1,000 feet of a school, or in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school related activity within 48 hours of becoming aware of the incident.

(Source: P.A. 90-395, § 2; 94-556, § 955.)

Effect of Amendments. The 2005 amendment by P.A. 94-556, effective September 11, 2005, added "and violations of the Methamphetamine Control and Community Protection Act" and made related and stylistic changes.

§ 105 ILCS 127/99. Effective date

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 90-395, § 99.)

Note.

The Act was approved August 15, 1997.

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School Safety Drill Act

Sec.

105 ILCS 128/1.Short title
105 ILCS 128/5.Definitions
105 ILCS 128/10.Purpose
105 ILCS 128/15.Types of drills
105 ILCS 128/20.Number of drills; incidents covered; local authority participation
105 ILCS 128/25.Annual review
105 ILCS 128/30.Reporting; duties of the State Fire Marshal, regional superintendents, and the State Board of Education
105 ILCS 128/35.Reporting and recording mechanism for fires
105 ILCS 128/40.Common rules
105 ILCS 128/910, 105 ILCS 128/915, 105 ILCS 128/990 [Not Set Out].
105 ILCS 128/999.Effective date

§ 105 ILCS 128/1. Short title

Sec. 1. Short title. This Act may be cited as the School Safety Drill Act.

(Source: P.A. 94-600, § 1.)

Effective Date. 105 ILCS 128/999 purported to make this Act effective June 1, 2005, however P.A. 94-600, which enacted this Act, was approved August 16, 2005.

§ 105 ILCS 128/5. Definitions

Sec. 5. Definitions. In this Act:

"First responder" means and includes all fire departments and districts, law enforcement agencies and officials, emergency medical responders, and emergency management officials involved in the execution and documentation of the drills administered under this Act.

"School" means a public or private facility that offers elementary or secondary education to students under the age of 21. As used in this definition, "public facility" means a facility operated by the State or by a unit of local government. As used in this definition, "private facility" means any non-profit, non-home-based, non-public elementary or

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secondary school that is in compliance with Title VI of the Civil Rights Act of 1964 and attendance at which satisfies the requirements of Section 26-1 of the School Code [105 ILCS 5/26-1]. While more than one school may be housed in a facility, for purposes of this Act, the facility shall be considered a school. When a school has more than one location, for purposes of this Act, each different location shall be considered its own school.

"School safety drill" means a pre-planned exercise conducted by a school in accordance with the drills and requirements set forth in this Act.

(Source: P.A. 94-600, § 5.)

§ 105 ILCS 128/10. Purpose

Sec. 10. Purpose. The purpose of this Act is to establish minimum requirements and standards for schools to follow when conducting school safety drills and reviewing school emergency and crisis response plans and to encourage schools and first responders to work together for the safety of children. Communities and schools may exceed these requirements and standards.

(Source: P.A. 94-600, § 10.)

§ 105 ILCS 128/15. Types of drills

Sec. 15. Types of drills. Under this Act, the following school safety drills shall be instituted by all schools in this State:

(1) School evacuation drills, which shall address and prepare students and school personnel for situations that occur when conditions outside of a school building are safer than inside a school building. Evacuation incidents are based on the needs of particular communities and may include without limitation the following:

(A) fire;

(B) suspicious items;

(C) incidents involving hazardous materials, including, but not limited to, chemical, incendiary, and explosives; and

(D) bomb threats.

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(2) Bus evacuation drills, which shall address and prepare students and school personnel for situations that occur when conditions outside of a bus are safer than inside the bus. Evacuation incidents are based on the needs of particular communities and may include without limitation the following:

(A) fire;

(B) suspicious items; and

(C) incidents involving hazardous materials, including, but not limited to, chemical, incendiary, and explosives.

(3) Law enforcement drills, which shall address and prepare students and school personnel for situations calling for the involvement of law enforcement when conditions inside a school building are safer than outside of a school building and it is necessary to protect building occupants from potential dangers in a school building. Law enforcement drills may involve situations that call for the reverse-evacuation or the lock-down of a school building. Evacuations incidents may include without limitation the following:

(A) shooting incidents;

(B) bomb threats;

(C) suspicious persons; and

(D) incidents involving hazardous materials.

(4) Severe weather and shelter-in-place drills, which shall address and prepare students for situations involving severe weather emergencies or the release of external gas or chemicals. Severe weather and shelter-in-place incidents shall be based on the needs and environment of particular communities and may include without limitation the following:

(A) severe weather, including, but not limited to, shear winds, lightning, and earthquakes;

(B) incidents involving hazardous materials, including, but not limited to, chemical, incendiary, and explosives; and

(C) incidents involving weapons of mass destruction, including, but not limited to, biological, chemical, and nuclear weapons.

(Source: P.A. 94-600, § 15.)

§ 105 ILCS 128/20. Number of drills; incidents covered; local authority participation

Sec. 20. Number of drills; incidents covered; local authority participation. (a) During each academic year, schools must conduct a minimum of 3 school evacuation drills to

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address and prepare students and school personnel for fire incidents. These drills must meet all of the following criteria:

(1) One of the 3 school evacuation drills shall require the participation of the appropriate local fire department or district.

(A) Each local fire department or fire district must contact the appropriate school administrator or his or her designee no later than September 1 of each year in order to arrange for the participation of the department or district in the school evacuation drill.

(B) Each school administrator or his or her designee must contact the responding local fire official no later than September 15 of each year and propose to the local fire official 4 dates within the month of October, during at least 2 different weeks of October, on which the drill shall occur. The fire official may choose any of the 4 available dates, and if he or she does so, the drill shall occur on that date.

(C) The school administrator or his or her designee and the local fire official may also, by mutual agreement, set any other date for the drill, including a date outside of the month of October.

(D) If the fire official does not select one of the 4 offered dates in October or set another date by mutual agreement, the requirement that the school include the local fire service in one of its mandatory school evacuation drills shall be waived. Schools, however, shall continue to be strongly encouraged to include the fire service in a school evacuation drill at a mutually agreed-upon time.

(E) Upon the participation of the local fire service, the appropriate local fire official shall certify that the school evacuation drill was conducted.

(F) When scheduling the school evacuation drill, the school administrator or his or her designee and the local fire department or fire district may, by mutual agreement on or before September 14, choose to waive the provisions of subparagraphs (B), (C), and (D) of this paragraph (1).

Additional school evacuation drills for fire incidents may involve the participation of the appropriate local fire department or district.

(2) Schools may conduct additional school evacuation drills to account for other evacuation incidents, including without limitation suspicious items or bomb threats.

(3) All drills shall be conducted at each school building that houses school children.

(b) During each academic year, schools must conduct a minimum of one bus evacuation drill. This drill shall be accounted for in the curriculum in all public schools and in all other educational institutions in this State that are supported or maintained, in whole or in part, by public funds and that provide instruction in any of the grades kindergarten through 12. This curriculum shall include instruction in safe bus riding practices for all students. Schools may conduct additional bus evacuation drills. All drills shall be conducted at each school building that houses school children.

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(c) During each academic year, schools must conduct a law enforcement drill to address incidents, including without limitation reverse evacuations, lock-downs, shootings, bomb threats, or hazardous materials. Such drills must be conducted according to the school district's or private school's emergency and crisis response plans, protocols, and procedures, with the participation of the appropriate law enforcement agency. Law enforcement drills may be conducted on days and times when students are not present in the school building.

(1) A law enforcement drill must meet all of the following criteria:

(A) During each calendar year, the appropriate local law enforcement agency shall contact the appropriate school administrator to request to participate in a law enforcement drill and may actively participate on-site in a drill.

(B) Upon the participation of a local law enforcement agency in a law enforcement drill, the appropriate local law enforcement official shall certify that the law enforcement drill was conducted.

(2) Schools may conduct additional law enforcement drills at their discretion.

(3) (Blank).

(d) During each academic year, schools must conduct a minimum of one severe weather and shelter-in-place drill to address and prepare students and school personnel for possible tornado incidents and may conduct additional severe weather and shelter-in-place drills to account for other incidents, including without limitation earthquakes or hazardous materials. All drills shall be conducted at each school building that houses school children.

(Source: P.A. 94-600, § 20; 95-1015, § 5.)

Note.

Section 99 of P.A. 95-1015 purports to make this section effective July 1, 2008; however, the Act was approved and is effective December 15, 2008.

Effect of Amendments. The 2008 amendment by P.A. 95-1015, effective December 15, 2008, in (c) substituted "schools must conduct a law enforcement drill to address incidents" for "schools may conduct strongly encouraged law enforcement drills to address and prepare students and school personnel for incidents", and added the second and third sentences; deleted "if conducted" at the beginning of (c)(1) and made a related change; and deleted the text of (c)(3), which read "All drills shall be conducted at each school building that houses school children".

§ 105 ILCS 128/25. Annual review

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Sec. 25. Annual review. (a) Each public school district, through its school board or the board's designee, shall conduct a minimum of one annual meeting at which it will review each school building's emergency and crisis response plans, protocols, and procedures and each building's compliance with the school safety drill programs. The purpose of this annual review shall be to review and update the emergency and crisis response plans, protocols, and procedures and the school safety drill programs of the district and each of its school buildings.

(b) Each school board or the board's designee is required to participate in the annual review and to invite each of the following parties to the annual review and provide each party with a minimum of 30-days' notice before the date of the annual review:

(1) The principal of each school within the school district or his or her official designee.

(2) Representatives from any other education-related organization or association deemed appropriate by the school district.

(3) Representatives from all local first responder organizations to participate, advise, and consult in the review process, including, but not limited to:

(A) the appropriate local fire department or district;

(B) the appropriate local law enforcement agency;

(C) the appropriate local emergency medical services agency if the agency is a separate, local first responder unit; and

(D) any other member of the first responder or emergency management community that has contacted the district superintendent or his or her designee during the past year to request involvement in a school's emergency planning or drill process.

(4) The school board or its designee may also choose to invite to the annual review any other persons whom it believes will aid in the review process, including, but not limited to, any members of any other education-related organization or the first responder or emergency management community.

(c) Upon the conclusion of the annual review, the school board or the board's designee shall sign a one page report, which may be in either a check-off format or a narrative format, that does the following:

(1) summarizes the review's recommended changes to the existing school safety plans and drill plans;

(2) lists the parties that participated in the annual review, and includes the annual review's attendance record;

(3) certifies that an effective review of the emergency and crisis response plans, protocols, and procedures and the school safety drill programs of the district and each of its school buildings has occurred;

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(4) states that the school district will implement those plans, protocols, procedures, and programs, during the academic year; and

(5) includes the authorization of the school board or the board's designee.

(d) The school board or its designee shall send a copy of the report to each party that participates in the annual review process and to the appropriate regional superintendent of schools. If any of the participating parties have comments on the certification document, those parties shall submit their comments in writing to the appropriate regional superintendent. The regional superintendent shall maintain a record of these comments. The certification document may be in a check-off format or narrative format, at the discretion of the district superintendent.

(e) The review must occur at least once during the fiscal year, at a specific time chosen at the school district superintendent's discretion.

(Source: P.A. 94-600, § 25; 96-734, § 15.)

Effect of Amendments. The 2009 amendment by P.A. 96-734, effective August 25, 2009, substituted "fiscal year" for "calendar year" in (e).

§ 105 ILCS 128/30. Reporting; duties of the State Fire Marshal, regional superintendents, and the State Board of Education

Sec. 30. Reporting; duties of the State Fire Marshal, regional superintendents, and the State Board of Education. (a) The Office of the State Fire Marshal shall accept, directly, one-page annual review compliance reports from private schools. The Office of the State Fire Marshal shall create a mechanism for the reporting and filing of these reports and give notice to the private schools as to how this reporting shall be made. The Office of the State Fire Marshal shall make these records available directly to the State Board of Education.

(b) Each regional superintendent of schools shall provide an annual school safety review compliance report to the State Board of Education as a part of its regular annual report to the State Board, which shall set forth those school districts that have successfully completed their annual review and those school districts that have failed to complete their annual review. These reports shall be delivered to the State Board of Education on or before October 1 of each year.

(c) The State Board of Education shall file and maintain records of the annual school safety review compliance reports received from each of the regional superintendents of schools. The State Board shall be responsible for ensuring access to the records by the Office of the State Fire Marshal and other State agencies. The State Board shall provide an annual report to the Office of the Governor and the Office of the State Fire Marshal

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concerning the compliance of school districts with the annual school safety review requirement.

(Source: P.A. 94-600, § 30.)

§ 105 ILCS 128/35. Reporting and recording mechanism for fires

Sec. 35. Reporting and recording mechanism for fires. The Office of the State Fire Marshal, in conjunction with the State Board of Education, shall create a reporting and recording mechanism concerning fires that occur in schools located in this State. The recording system shall be based in the Office of the State Fire Marshal.

(Source: P.A. 94-600, § 35.)

§ 105 ILCS 128/40. Common rules

Sec. 40. Common rules. The State Board of Education and the Office of the State Fire Marshal shall cooperate together and coordinate with all appropriate education, first responder, and emergency management officials to (i) develop and implement one common set of rules to be administered under this Act and (ii) develop clear and definitive guidelines to school districts, private schools, and first responders as to how to develop school emergency and crisis response plans, how to develop school emergency and crisis response plans, how to exercise and drill based on such plans, and how to incorporate lessons learned from these exercises and drills into school emergency and crisis response plans.

(Source: P.A. 94-600, § 40.)

§§ 105 ILCS 128/910, 105 ILCS 128/915, 105 ILCS 128/990 [Not Set Out]

(Source: P.A. 94-600, § 915.)

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These sections, as found in P.A. 94-600, §§ 910 to 915, contained amendatory provisions.

§ 105 ILCS 128/999. Effective date

Sec. 999. Effective date. This Act takes effect June 1, 2005.

(Source: P.A. 94-600, § 999.)

Note.

P.A. 94-600, which enacted this Act, was approved and is effective August 16, 2005.

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School Health Center Act

Sec.

105 ILCS 129/1.Short title
105 ILCS 129/5.Legislative findings
105 ILCS 129/10.Eligibility
105 ILCS 129/15.Consent
105 ILCS 129/20.Department of Human Services to initiate school health centers
105 ILCS 129/99.Effective date

§ 105 ILCS 129/1. Short title

Sec. 1. Short title. This Act may be cited as the School Health Center Act.

(Source: P.A. 95-488, § 1.)

Effective Date. Section 99 of P.A. 95-488 makes this Act effective upon becoming law. The Act was approved August 28, 2007.

§ 105 ILCS 129/5. Legislative findings

Sec. 5. Legislative findings. The General Assembly finds as follows:

(1) Asthma and oral health problems are 2 of the leading causes of absenteeism among Illinois elementary and secondary school students.

(2) Illinois youth must deal with increasing obesity, poor nutrition, substance abuse, and mental health crises.

(3) Many Illinois families lack adequate health insurance or access to health care facilities.

(4) Improving the physical and mental health of Illinois' youth is vital to building an educated workforce for Illinois' future.

(5) School health centers provide quality health care services like immunizations, physical exams, asthma care, mental health counseling, and health in schools, and national and local evaluations have found that school health centers increase access to

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health care, reduce absenteeism, reduce health care access disparities, and reduce unhealthy behaviors that compromise health and education success.

(6) Illinois school health centers were found to save the State an estimated $2,500,000 each year by reducing emergency room visits, $2,720,000 a year by providing immunizations, and $233,000-$342,000 a year by reducing asthma-related hospitalizations.

(Source: P.A. 95-488, § 5.)

§ 105 ILCS 129/10. Eligibility

Sec. 10. Eligibility. All students in the school under the age of 18 are eligible for services if they have obtained written parental consent or if they are otherwise permitted under Illinois law to consent on their own behalf to such care. All students 18 years of age or older are eligible for the services.

(Source: P.A. 95-488, § 10.)

§ 105 ILCS 129/15. Consent

Sec. 15. Consent. The school health center shall provide a list of the health care services available. The form shall enumerate the provided services using either a check off or other means. The consent form shall state that a parent, legal guardian, or student who is permitted under Illinois law to consent on his or her own behalf has a right to refuse any health care services.

(Source: P.A. 95-488, § 15.)

§ 105 ILCS 129/20. Department of Human Services to initiate school health centers

Sec. 20. Department of Human Services to initiate school health centers. Subject to appropriation, the Illinois Department of Human Services shall initiate 20 new school health centers over a 5-year period beginning July 1, 2007, and shall build capacity with

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existing school health centers in the State of Illinois.

(Source: P.A. 95-488, § 20.)

§ 105 ILCS 129/99. Effective date

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 95-488, § 99.)

Note.

The Act was approved August 28, 2007.

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Sex Education Act

Sec.
105 ILCS 130/1 through 105 ILCS 130/5 [Repealed].

§§ 105 ILCS 130/1 through 105 ILCS 130/5: Repealed by P.A. 96-734, § 30, effective August 25, 2009.

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Toxic Art Supplies in Schools Act

Sec.

105 ILCS 135/1.[Short title]
105 ILCS 135/2.[Legislative findings]
105 ILCS 135/3.[Definitions]
105 ILCS 135/4.[Material Safety Data Sheets]
105 ILCS 135/5.[Warning labels]
105 ILCS 135/6.[Purchases prohibited]
105 ILCS 135/7.[Injunctive relief]
105 ILCS 135/8.[Exemption]
105 ILCS 135/9.[Approved lists]
105 ILCS 135/10.[Study of materials]

§ 105 ILCS 135/1. [Short title]

Sec. 1. This Act shall be known and may be cited as the "Toxic Art Supplies in Schools Act."

(Source: P.A. 84-725.)

Derivation.

Title: An Act in relation to schools and to amend an Act herein named.

Cite: 105 ILCS 135/1 et seq.

Source: P.A. 84-725.

Date: Approved September 21, 1985.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1601.

§ 105 ILCS 135/2. [Legislative findings]

Sec. 2. The General Assembly finds that:

(a) Art supplies which contain toxic substances or which are potential human carcinogens pose a significant danger to the health and safety of school children.

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(b) School children are not sufficiently protected by present health laws in so far as materials which may be seriously harmful are not so labeled and therefore children are not properly warned as to the dangers inherent in the use of those materials.

(c) Elementary school children should be protected by prohibiting the sale of art supplies containing toxic substances to schools and school districts for use in kindergarten and grades one through 6, and art supplies containing toxic substances should be purchased by schools and school districts for students in grades 7 through 12 only if the materials are properly labeled, as described in this Act.

(Source: P.A. 84-725.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1602.

§ 105 ILCS 135/3. [Definitions]

Sec. 3. For the purpose of this Act, unless the context requires otherwise:

(a) "Art or craft material" means any raw or processed material or manufactured product marketed or being represented by the manufacturer or repackager as being suitable for use in the demonstration or the creation of any work of visual or graphic art in any medium. Such media may include, but need not be limited to, paintings, drawings, prints, sculpture, ceramics, enamels, jewelry, stained glass, plastic sculpture, photographs, and leather and textile goods.

(b) "Human carcinogen" means any substance listed as a human carcinogen by the International Agency for Research on Cancer or by the National Toxicology Program of the U.S. Department of Health and Human Services.

(c) "Potential human carcinogen" means one of the following:

(1) any substance which does not meet the definition of human carcinogen, but for which there exists sufficient evidence of carcinogenicity in animals, as determined by the International Agency for Research on Cancer or the National Toxicology Program of the U.S. Department of Health and Human Services; or

(2) any chemical shown to be changed by the human body into a human carcinogen.

(d) "Toxic substance" means any of the following:

(1) human carcinogens;

(2) potential human carcinogens;

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(3) any substance having a potential for causing a chronic adverse health effect as determined pursuant to ASTM Standard D 4236 of the American Society for Testing and Materials or latest revision.

For the purposes of this Act, an art or craft material shall be presumed to contain an ingredient which is a toxic substance if the ingredient, whether an intentional ingredient or an impurity, constitutes 1% or more by weight of the product.

(e) "Department" means the Illinois Department of Public Health.

(Source: P.A. 84-725.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1603.

§ 105 ILCS 135/4. [Material Safety Data Sheets]

Sec. 4. The Department of Labor shall supply Material Safety Data Sheets to the Department of Public Health, as requested, to assist in the determination of the presence of toxic substances in any art or craft material.

(Source: P.A. 84-725.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1604.

§ 105 ILCS 135/5. [Warning labels]

Sec. 5. Warning labels for art or craft materials containing toxic substances shall meet all of the following standards:

(a) The warning label shall be affixed in a conspicuous place and shall contain the signal word "WARNING" to alert users of potential adverse health effects.

(b) The warning label shall contain information on the health related dangers of the art or craft material, as follows:

(1) If the product contains a human carcinogen, the warning shall contain the statement: "CANCER HAZARD! Overexposure may create cancer risk.".

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(2) If the product contains a potential human carcinogen, and does not contain a human carcinogen, the warning shall contain the statement: "POSSIBLE CANCER HAZARD! Overexposure might create cancer risk.".

(3) The warning shall contain all of the following statements which apply:

(A) May cause sterility or damage to reproductive organs.

(B) May cause birth defects or harm to developing fetus.

(C) May be excreted in human milk causing harm to nursing infant.

(D) May cause central nervous system depression or injury.

(E) May cause numbness or weakness in the extremities.

(F) Overexposure may cause damage to (specify organ).

(G) Heating above (specify degrees) may cause hazardous decomposition products.

(4) If a product contains more than one toxic substance, or if a single substance can cause more than one health effect, the required statements may be combined into one warning statement.

(c) The warning label shall contain a list of ingredients which are toxic substances.

(d) The warning label shall contain a statement of safe use and storage instructions, conforming to the following. The label shall contain as many of the following risk statements as applicable:

(1) Keep out of reach of children.

(2) When using, do not eat, drink, or smoke.

(3) Wash hands after use and before eating, drinking or smoking.

(4) Keep container tightly closed.

(5) Store in well-ventilated area.

(6) Avoid contact with skin.

(7) Wear protective clothing (specify type).

(8) Wear NIOSH certified masks for dust, mists, or fumes.

(9) Wear NIOSH certified respirator with appropriate cartridge for (specify type).

(10) Wear NIOSH certified supplied-air respirator.

(11) Use window exhaust fan to remove vapors and assure adequate ventilation (specify explosion-proof if necessary).

(12) Use local exhaust hood (specify type).

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(13) Do not heat above (specify degrees) without adequate ventilation.

(14) Do not use/mix with (specify material).

(e) The warning label shall contain a statement on where to obtain more information, such as: "Call your local poison control center for more health information."

(f) The warning label, or any other label on the substance, shall contain the name and address of the manufacturer or repackager.

(g) If all of the above information cannot fit on the package label, a package insert shall be required to convey all the necessary information to the consumer. In this event, the label shall contain a statement to refer to the package insert, such as "CAUTION: See package insert before use.". The language of the insert shall be nontechnical and nonpromotional in tone and content.

(h) Art or craft material offered for sale in containers which contain less than one fluid ounce or one ounce net weight shall be deemed to comply with this Section if there is affixed thereon a precautionary label that includes the words "USE WITH CAUTION: Contains Toxic Substances", and a list of potentially harmful or sensitizing ingredients.

(i) An art or craft material shall be considered to be in compliance with the labeling requirements of this Act if the art or craft material complies with labeling standard D 4236 of the American Society for Testing and Materials (ASTM), or latest revision thereof unless the Department determines that the label on an art or craft material does not satisfy the purposes of this Act.

(j) Nothing in this Act shall require or prohibit the labeling of any art or craft material containing toxic substances prior to June 1, 1986.

(Source: P.A. 84-725.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1605.

§ 105 ILCS 135/6. [Purchases prohibited]

Sec. 6. (a) Except as provided in Section 7 below [105 ILCS 135/7], for the 1986-87 academic year and for each academic year thereafter, no art or craft material which is a toxic substance as defined in this Act, shall be ordered or purchased by any school or school district in Illinois for use in kindergarten or grades one through 6, inclusive.

(b) Commencing June 1, 1986, no toxic substance may be purchased or ordered by a school or school district for use by students in grades 7 through 12, unless it meets the

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labeling standards specified in this Act.

(Source: P.A. 84-725.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1606.

§ 105 ILCS 135/7. [Injunctive relief]

Sec. 7. The State Board of Education, in the name of the People of the State of Illinois, through the Attorney General of the State of Illinois, or through the State's Attorney of any county in the State of Illinois, upon any complaint may apply for an injunction in the circuit court to enjoin any school or school district that has continued to use art supplies labeled as containing hazardous toxic substances after May 31, 1986; and upon the filing of a verified complaint in such court, the court, if satisfied by affidavit or otherwise, that the school or school district has been using such art supplies, may enter a temporary restraining order or preliminary injunction, without notice or bond, enjoining the defendant from further using such supplies. A copy of the verified complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other civil cases. If it is established that the school or school district has been or is using such supplies after having been enjoined, the court may enter an order or judgment perpetually enjoining the defendant from further purchase of such supplies.

Such injunctional proceeding shall be in addition to, and not in lieu of, all penalties and other remedies provided in this Act.

(Source: P.A. 84-725.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1607.

§ 105 ILCS 135/8. [Exemption]

Sec. 8. If the Department finds that, because the toxic substances contained in an art or craft material cannot be ingested, inhaled or otherwise absorbed into the body during any reasonably foreseeable use of the product in such a manner as to pose a risk of adverse health effects, the Department may exempt the product from the requirements of this Act.

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(Source: P.A. 84-725.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1608.

§ 105 ILCS 135/9. [Approved lists]

Sec. 9. (a) The Department shall, by July 1, 1987, develop a list of those art or craft materials which can be purchased or ordered for use in kindergarten or grades one through 6, and a list of materials which, while not currently sold or manufactured, may be reasonably suspected to still exist at some schools. In developing the approved lists, the Department may, as a condition of placement on such list, demand, under appropriate provisions of confidentiality to protect a manufacturer's trade secrets, submission of such lists of ingredients and the results of tests, studies, findings and analysis as may be extant from manufacturers.

(b) The Department shall consider the findings and conclusions of a voluntary art and craft material certifying organization as to the appropriateness of placement of any product on the Department's art and craft materials approved list if:

(1) such voluntary certifying organization bases its findings and conclusions upon the findings of an independent certified toxicologist; and

(2) such voluntary certifying organization discloses to the Department the standards and procedures used by its certifying toxicologist for determining whether art and craft materials contain toxic substances causing chronic illness and if so, whether such substances can reasonably be expected to pose or not to pose a risk of adverse health effects. The Department may determine to add any product to such art and craft materials approved list for good cause. Such determination shall afford due consideration to uniform determinations by other state health departments or agencies and voluntary certifying organizations as specified above on this subject.

(c) The State Superintendent of Education shall distribute the lists to all school districts in Illinois and shall make the lists available to preschool, child care centers, and other businesses and organizations which involve children in the use of art or craft materials.

(d) The Superintendent shall inform school districts of the requirements of this Act, and shall encourage school districts to dispose of unnecessary art or craft materials which contain toxic substances.

(Source: P.A. 86-595.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1609.

§ 105 ILCS 135/10. [Study of materials]

Sec. 10. By July 1, 1986, the Department shall complete a study of art and craft materials purchased for use by children in Illinois school districts to determine the extent of toxic substances in such materials and the scope of their use in school districts throughout the State.

(Source: P.A. 84-725.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1610.

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Green Cleaning Schools Act

Sec.

105 ILCS 140/1.Short title
105 ILCS 140/5.Legislative findings
105 ILCS 140/10.Use of green cleaning supplies
105 ILCS 140/15.Green cleaning supply guidelines and specifications
105 ILCS 140/20.Dissemination to schools
105 ILCS 140/99.Effective date

§ 105 ILCS 140/1. Short title

Sec. 1. Short title. This Act may be cited as the Green Cleaning Schools Act.

(Source: P.A. 95-84, § 1.)

Effective Date. Section 99 of P.A. 95-84 makes this Act effective upon becoming law. The Act was approved August 13, 2007.

§ 105 ILCS 140/5. Legislative findings

Sec. 5. Legislative findings. Both children and adults are vulnerable to and may be severely affected by exposure to chemicals, hazardous waste, and other environmental hazards. The Federal Environmental Protection Agency estimates that human exposure to indoor air pollutants can be 2 to 5 times and up to 100 times higher than outdoor levels. Children, workers, teachers, janitors, and other staff members spend a significant amount of time inside school and other institutional buildings and are continuously exposed to chemicals from cleaners, waxes, deodorizers, and other maintenance products.

(Source: P.A. 95-84, § 5; 96-75, § 10.)

Effect of Amendments. The 2009 amendment by P.A. 96-75, effective July 24, 2009, substituted "Both children and adults" for "Children" at the beginning of the first sentence; and inserted "workers" and "and other institutional" in the third sentence.

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§ 105 ILCS 140/10. Use of green cleaning supplies

Sec. 10. Use of green cleaning supplies. By no later than 90 days after implementation of the guidelines and specifications established under Section 15 of this Act [105 ILCS 140/15] or thereafter when it is economically feasible, all elementary and secondary public schools and all elementary and secondary non-public schools with 50 or more students shall establish a green cleaning policy and exclusively purchase and use environmentally-sensitive cleaning products pursuant to the guidelines and specifications established under Section 15 of this Act. However, a school may deplete its existing cleaning and maintenance supply stocks and implement the new requirements in the procurement cycle for the following school year.

For the purposes of this Section, adopting a green cleaning policy is not economically feasible if such adoption would result in an increase in the cleaning costs of the school. If adopting a green cleaning policy is not economically feasible, the school must provide annual written notification to the Illinois Green Government Coordinating Council (IGGCC), on a form provided by the IGGCC, that the development and implementation of a green cleaning policy is not economically feasible until such time that it is economically feasible.

(Source: P.A. 95-84, § 10.)

§ 105 ILCS 140/15. Green cleaning supply guidelines and specifications

Sec. 15. Green cleaning supply guidelines and specifications. The Illinois Green Government Coordinating Council (IGGCC) shall, in consultation with the Department of Public Health, the State Board of Education, regional offices of education, the Illinois Environmental Protection Agency, and a panel of interested stakeholders, including cleaning product industry representatives, non-governmental organizations, and others, establish and amend on an annual basis guidelines and specifications for environmentally-sensitive cleaning and maintenance products for use in school facilities as well as State-owned buildings under Section 405-216 of the Department of Central Management Services Law [20 ILCS 405/405-216] of the Civil Administrative Code of Illinois. The IGGCC shall provide multiple avenues by which cleaning products may be determined to be environmentally-sensitive under the guidelines. Guidelines and specifications must be established after a review and evaluation of existing research and must be completed no later than 180 days after the effective date of this Act. Guidelines and specifications may include implementation practices, including inspection. The completed guidelines and specifications must be posted on the IGGCC's Internet website.

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(Source: P.A. 95-84, § 15; 96-75, § 10.)

Effect of Amendments. The 2009 amendment by P.A. 96-75, effective July 24, 2009, added "as well as State-owned buildings under Section 405-216 of the Department of Central Management Services Law of the Civil Administrative Code of Illinois" at the end of the first sentence.

§ 105 ILCS 140/20. Dissemination to schools

Sec. 20. Dissemination to schools. (a) Upon the completion of the guidelines and specifications under Section 15 of this Act [105 ILCS 140/15], the IGGCC shall provide each regional office of education and each elementary or secondary non-public school with 50 or more students in this State with the guidelines and specifications. Each regional office of education shall immediately disseminate the guidelines and specifications to every public school in the educational service region. Regional offices of education and the IGGCC shall provide on-going assistance to schools to carry out the requirements of this Act.

(b) In the event that the guidelines and specifications under Section 15 of this Act are updated by the IGGCC, the IGGCC shall provide the updates to each regional office of education for immediate dissemination to each public school. Additionally, the IGGCC shall post all updated materials on its Internet website.

(Source: P.A. 95-84, § 20.)

§ 105 ILCS 140/99. Effective date

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 95-84, § 99.)

Note.

P.A. 95-84 was approved August 13, 2007.

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Care of Students with Diabetes Act

Sec.

105 ILCS 145/1.Short title
105 ILCS 145/5.Legislative findings
105 ILCS 145/10.Definitions
105 ILCS 145/15.Diabetes care plan
105 ILCS 145/20.Delegated care aides
105 ILCS 145/25.Training for school employees and delegated care aides
105 ILCS 145/30.Self-management
105 ILCS 145/35.Restricting access to school prohibited
105 ILCS 145/40.Protections against retaliation
105 ILCS 145/45.Civil immunity
105 ILCS 145/50.Federal law
105 ILCS 145/95.[Not Set Out]
105 ILCS 145/99.Effective date

§ 105 ILCS 145/1. Short title

Sec. 1. Short title. This Act may be cited as the Care of Students with Diabetes Act.

(Source: P.A. 96-1485, § 1.)

Effective Date. Section 99 of P.A. 96-1485 made this section effective upon becoming law. The Act was approved December 1, 2010.

§ 105 ILCS 145/5. Legislative findings

Sec. 5. Legislative findings. The General Assembly finds the following:

(1) Diabetes is a serious chronic disease in which the pancreas does not make insulin (Type 1) or the body cannot use insulin properly (Type 2).

(2) Diabetes must be managed 24 hours a day to avoid the potentially life-threatening, short-term consequences of low blood sugar and prevent or delay the serious complications caused by blood sugar levels that are too high for too long, such as atherosclerosis, coronary artery disease, peripheral vascular disease, hypertension, blindness, kidney failure, amputation, and stroke.

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(3) Federal law affords people with diabetes specific rights and protections. These laws include Section 504 of the Rehabilitation Act of 1973 [29 U.S.C. § 794], the Individuals with Disabilities Education Improvement Act of 2004 [20 U.S.C. § 1400 et seq.], and the Americans with Disabilities Act of 1990 [29 U.S.C. § 706], and the ADA Amendments Act of 2008.

(4) Federal laws enforced consistently in schools provide students with diabetes equal educational opportunities and a healthy and safe environment.

(5) A school nurse is the most appropriate person in a school setting to provide for all students' healthcare needs; however, a school nurse may not be available when needed, and many schools do not have a full-time nurse.

(6) Many students are capable of checking their blood glucose levels, calculating a carbohydrate-to-insulin ratio, and administering insulin independently. Allowing capable students to manage diabetes independently in school is consistent with the recommendations of pediatric endocrinologists and certified diabetes educators and other specialists.

(7) Because appropriate and consistent diabetes care decreases the risks of serious short-term and long-term complications, increases a student's learning opportunities, and promotes individual and public health benefits, the General Assembly deems it in the public interest to enact this Act.

(Source: P.A. 96-1485, § 5.)

§ 105 ILCS 145/10. Definitions

Sec. 10. Definitions. As used in this Act:

"Delegated care aide" means a school employee who has agreed to receive training in diabetes care and to assist students in implementing their diabetes care plan and has entered into an agreement with a parent or guardian and the school district or private school.

"Diabetes care plan" means a document that specifies the diabetes-related services needed by a student at school and at school-sponsored activities and identifies the appropriate staff to provide and supervise these services.

"Health care provider" means a physician licensed to practice medicine in all of its branches, advanced practice nurse who has a written agreement with a collaborating physician who authorizes the provision of diabetes care, or a physician assistant who has a written supervision agreement with a supervising physician who authorizes the provision of diabetes care.

"Principal" means the principal of the school.

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"School" means any primary or secondary public, charter, or private school located in this State.

"School employee" means a person who is employed by a public school district or private school, a person who is employed by a local health department and assigned to a school, or a person who contracts with a school or school district to perform services in connection with a student's diabetes care plan. This definition must not be interpreted as requiring a school district or private school to hire additional personnel for the sole purpose of serving as a designated care aide.

(Source: P.A. 96-1485, § 10.)

§ 105 ILCS 145/15. Diabetes care plan

Sec. 15. Diabetes care plan. (a) A diabetes care plan shall serve as the basis of a student's Section 504 plan (29 U.S.C. Sec. 794) and shall be signed by a student's parent or guardian and submitted to the school for any student with diabetes who seeks assistance with diabetes care in the school setting, unless the student has been managing his or her diabetes care in the school setting before the effective date of this Act, in which case the student's parent or guardian may sign and submit a diabetes care plan under this Act. It is the responsibility of the student's parent or guardian to share the health care provider's instructions concerning the student's diabetes management during the school day. The diabetes care plan shall include the treating health care provider's instructions concerning the student's diabetes management during the school day, including a copy of the signed prescription and the methods of insulin administration.

(b) The services and accommodations specified in a diabetes care plan shall be reasonable, reflect the current standard of diabetes care, include appropriate safeguards to ensure that syringes and lancets are disposed of properly, and include requirements for diet, glucose testing, insulin administration, and treatment for hypoglycemia, hyperglycemia, and emergency situations.

(c) A diabetes care plan shall include a uniform record of glucometer readings and insulin administered by the school nurse or delegated care aide during the school day using a standardized format provided by the State Board of Education.

(d) A diabetes care plan shall include procedures regarding when a delegated care aide shall consult with the parent or guardian, school nurse, where available, or health care provider to confirm that an insulin dosage is appropriate.

(e) A diabetes care plan shall be submitted to the school at the beginning of the school year; upon enrollment, as soon as practical following a student's diagnosis; or when a student's care needs change during the school year. Parents shall be responsible for informing the school in a timely manner of any changes to the diabetes care plan and

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their emergency contact numbers.

(Source: P.A. 96-1485, § 15.)

§ 105 ILCS 145/20. Delegated care aides

Sec. 20. Delegated care aides. (a) Delegated care aides shall perform the duties necessary to assist a student with diabetes in accordance with his or her diabetes care plan and in compliance with any guidelines provided during training under Section 25 of this Act [105 ILCS 145/25].

(b) In accordance with the diabetes care plan or when an unexpected snack or meal requires a dose of insulin not anticipated by a student's diabetes care plan, the delegated care aide shall consult with the parent or guardian, school nurse, where available, or health care provider to confirm that the insulin dosage is appropriate given the number of carbohydrates to be taken and the student's blood glucose level as determined by a glucometer reading.

(c) The principal shall facilitate compliance with the provisions of a diabetes care plan.

(d) Delegated care aides are authorized to provide assistance by a student's parents or guardian and the school district or private school.

(Source: P.A. 96-1485, § 20.)

§ 105 ILCS 145/25. Training for school employees and delegated care aides

Sec. 25. Training for school employees and delegated care aides. (a) In schools that have a student with diabetes, all school employees shall receive training in the basics of diabetes care, how to identify when a student with diabetes needs immediate or emergency medical attention, and whom to contact in the case of an emergency during regular inservice training under Section 3-11 of the School Code [105 ILCS 5/3-11].

(b) Delegated care aides shall be trained to perform the tasks necessary to assist a student with diabetes in accordance with his or her diabetes care plan, including training to do the following:

(1) check blood glucose and record results;

(2) recognize and respond to the symptoms of hypoglycemia according to the diabetes care plan;

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(3) recognize and respond to the symptoms of hyperglycemia according to the diabetes care plan;

(4) estimate the number of carbohydrates in a snack or lunch;

(5) administer insulin according to the student's diabetes care plan and keep a record of the amount administered; and

(6) respond in an emergency, including how to administer glucagon and call 911.

(c) The school district shall coordinate staff training.

(d) Initial training of a delegated care aide shall be provided by a licensed healthcare provider with expertise in diabetes or a certified diabetic educator and individualized by a student's parent or guardian. Training must be consistent with the guidelines provided by the U.S. Department of Health and Human Services in the guide for school personnel entitled "Helping the Student with Diabetes Succeed". The training shall be updated when the diabetes care plan is changed and at least annually.

(e) School nurses, where available, or health care providers may provide technical assistance or consultation or both to delegated care aides.

(f) An information sheet shall be provided to any school employee who transports a student for school-sponsored activities. It shall identify the student with diabetes, identify potential emergencies that may occur as a result of the student's diabetes and the appropriate responses to such emergencies, and provide emergency contact information.

(Source: P.A. 96-1485, § 25; 97-559, § 5.)

Effect of Amendments. The 2011 amendment by P.A. 97-559, effective August 25, 2011, substituted "inservice training under Section 3-11" for "in-service training as provided for by Section 10-22.39" in (a); and inserted "of a delegated care aide" in the first sentence of (d).

§ 105 ILCS 145/30. Self-management

Sec. 30. Self-management. Provided that the student is authorized according to his or her diabetes care plan, a student shall be permitted to do the following:

(1) check blood glucose when and wherever needed;

(2) administer insulin with the insulin delivery system used by the student;

(3) treat hypoglycemia and hyperglycemia and otherwise attend to the care and management of his or her diabetes in the classroom, in any area of the school or school grounds and at any school-related activity or event in accordance with the diabetes care plan; and

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(4) possess on his or her person, at all times, the supplies and equipment necessary to monitor and treat diabetes, including, but not limited to, glucometers, lancets, test strips, insulin, syringes, insulin pens and needle tips, insulin pumps, infusion sets, alcohol swabs, a glucagon injection kit, glucose tablets, and food and drink, in accordance with the diabetes care plan.

(Source: P.A. 96-1485, § 30.)

§ 105 ILCS 145/35. Restricting access to school prohibited

Sec. 35. Restricting access to school prohibited. A school district shall not restrict the assignment of a student with diabetes to a particular school on the basis that the school does not have a full-time school nurse, nor shall a school deny a student access to any school or school-related activities on the basis that a student has diabetes.

(Source: P.A. 96-1485, § 35.)

§ 105 ILCS 145/40. Protections against retaliation

Sec. 40. Protections against retaliation. A school employee shall not be subject to any penalty, sanction, reprimand, discharge, demotion, denial of a promotion, withdrawal of benefits, or other disciplinary action for choosing not to agree to serve as a delegated care aide.

(Source: P.A. 96-1485, § 40.)

§ 105 ILCS 145/45. Civil immunity

Sec. 45. Civil immunity. (a) A school or a school employee is not liable for civil or other damages as a result of conduct, other than willful or wanton misconduct, related to the care of a student with diabetes.

(b) A school employee shall not be subject to any disciplinary proceeding resulting from an action taken in compliance with this Act, unless the action constitutes willful or wanton misconduct.

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(Source: P.A. 96-1485, § 45.)

§ 105 ILCS 145/50. Federal law

Sec. 50. Federal law. Nothing in this Act shall limit any rights available under federal law.

(Source: P.A. 96-1485, § 50.)

§ 105 ILCS 145/95. [Not Set Out]

Note.

This section as found in P.A. 96-1485, § 95, contained amendatory provisions.

§ 105 ILCS 145/99. Effective date

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 96-1485, § 99.)

Note.

P.A. 96-1485 was approved December 1, 2010.

FINANCES AND REFORM

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School District Educational Effectiveness and Fiscal Efficiency Act

Sec.
105 ILCS 205/0.1 through 105 ILCS 205/5 [Repealed].

§§ 105 ILCS 205/0.1 through 105 ILCS 205/5 [Repealed]: Repealed by P.A. 94-1105, § 90, effective June 1, 2007.

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School Bus Performance Bond Act

Sec.

105 ILCS 210/0.01.Short title
105 ILCS 210/1.[School bus company defined]
105 ILCS 210/2.[Bond required]

§ 105 ILCS 210/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the School Bus Performance Bond Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act to require school bus companies to furnish performance bonds.

Cite: 105 ILCS 210/0.01 et seq.

Source: P.A. 77-1745.

Date: Approved December 3, 1971.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 990.

§ 105 ILCS 210/1. [School bus company defined]

Sec. 1. As used in this Act "School bus company" means and includes any individual or business entity, regardless of its form of organization, which transports pupils to or from any school under contract with the parents of the pupils but does not include any regulated public utility or any school-operated bus service.

(Source: P.A. 77-1745.)

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This section was Ill.Rev.Stat., Ch. 122, Para. 991.

§ 105 ILCS 210/2. [Bond required]

Sec. 2. Before any school bus company may begin the performance of any contract for the transportation of pupils it must file with the employing school board, cooperative, or joint agreement, if so requested by the employer, a bond assuring performance of the contract by the school bus company.

(Source: P.A. 85-410.)

Note.

This section was Ill.Rev.Stat., Ch. 122, para. 992.

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Chicago Community Schools Study Commission Act

Sec.

105 ILCS 215/0.01.Short title
105 ILCS 215/1.Creation
105 ILCS 215/2.Duties of Commission
105 ILCS 215/3.Subcommittee
105 ILCS 215/4.Special study groups
105 ILCS 215/5.Donations and grants
105 ILCS 215/6.Employees

§ 105 ILCS 215/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Chicago Community Schools Study Commission Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act creating the Chicago Community Schools Study Commission and defining its powers and duties.

Cite: 105 ILCS 215/0.01 et seq.

Source: P.A. 82-241.

Date: Approved August 19, 1981.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1300.

§ 105 ILCS 215/1. Creation

Sec. 1. Creation. There is created the Chicago Community Schools Study Commission consisting of 27 members as follows: 6 members of the Senate, 3 each to be appointed by the President and the Minority Leader of the Senate, and 6 members of the House of Representatives, 3 each to be appointed by the Speaker and the Minority Leader of the House, who have a particular interest in education in Chicago; the State Superintendent of Education or his designee; the General Superintendent of Schools of the Board of

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Education of the City of Chicago or his designee; the Superintendent of the Cook County Educational Service Region or his designee; and 12 citizens to be appointed, 3 each by the President and Minority Leader of the Senate and the Speaker and Minority Leader of the House, who are actively interested in the education of children in Chicago. Vacancies in the Commission's membership shall be filled in the same manner as the original appointments are made. A vacancy is created if a legislative member is not reelected to the General Assembly or if he retires from that body, except that Commission members who are members of the 82nd General Assembly shall serve on the Commission until the reporting date specified in paragraph (5) of subsection (b) of Section 2 [105 ILCS 215/2]. Where a member of the 82nd General Assembly not returning to the legislature serves on the Commission until such reporting date, a vacancy is created after such reporting date. The Commission shall select from its membership a chairman and such other officers as it considers necessary. Members of the Commission shall serve without compensation but shall be reimbursed for actual expenses incurred in the performance of their duties.

(Source: P.A. 82-998.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1301.

§ 105 ILCS 215/2. Duties of Commission

Sec. 2. Duties of Commission. (a) The Commission shall study:

(1) The matter of the creation of separate autonomous school districts within the City of Chicago for all regular school purposes to be operated in accord with Articles 1 through 33 of The School Code [105 ILCS 5/1-1 through 105 ILCS 5/33-1 et seq.], and the restructuring of the Chicago Board of Education so as to provide education for certain limited designated purposes such as alternative, vocational, special, exceptional, gifted and magnet quality education.

(2) All aspects of a transition to such an educational framework for the City of Chicago and all necessary modifications to existing statutes, ordinances, policies, and programs. This shall include, but not be limited to, the following matters: the Public School Teachers' Pension and Retirement Fund of Chicago and the Board of Trustees of the Fund; the issuance of bonds; the issuance of tax anticipation warrants; working cash fund; the adoption of a school budget; the various funds held by the Board of Education of the City of Chicago; the operable tax rates levied by the Board of Education of the City of Chicago; the ownership and utilization of property presently owned or controlled by the Board of Education and the City of Chicago; labor contracts with professional employees' organizations and labor unions; employees who hold permanent appointments; contracts and grants with public and private entities; and litigation involving the Board of Education of the City of Chicago.

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(b) The Commission may:

(1) recommend a plan to effectuate the transition of the educational system within Chicago from that of a single unit to that of separate units as described herein.

(2) provide in its plan for local school boards of elected members who may not hold or run for any other elective office during the period of board membership.

(3) submit to the General Assembly proposed legislation to effectuate the described plan.

(4) suggest boundary lines and propose tax rates, to be included in the legislative proposals, for approval by the General Assembly and the registered voters of Chicago.

(5) report to the General Assembly on or before March 1, 1983 its findings, recommendations and proposed legislation.

(Source: P.A. 82-998.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1302.

§ 105 ILCS 215/3. Subcommittee

Sec. 3. Subcommittee. The Commission may select a subcommittee and provide it with an adequate staff to study any specific area designated by the Commission. The report of such subcommittee shall be included in the report of the Commission to the General Assembly.

(Source: P.A. 82-241.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1303.

§ 105 ILCS 215/4. Special study groups

Sec. 4. Special study groups. The Commission may appoint members of the General Assembly to act as special study groups to operate under the direction of the Commission and such appointed members shall receive only actual and necessary expenses incurred in

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the performance of their duties.

(Source: P.A. 82-241.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1304.

§ 105 ILCS 215/5. Donations and grants

Sec. 5. Donations and grants. The Commission may receive donations and grants intended to promote the work of the Commission and shall hold all such grants and donations in trust for the designated purpose.

(Source: P.A. 82-241.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1305.

§ 105 ILCS 215/6. Employees

Sec. 6. Employees. The Commission shall employ and fix the compensation of such employees as it deems necessary to effectuate the purposes of this Act.

(Source: P.A. 82-241.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1306.

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1985 School District Reorganization Act

Sec.
105 ILCS 220/1 through 105-220/9.1 [Repealed].

§§ 105 ILCS 220/1 through 105-220/9.1: Repealed by P.A. 90-372, § 5-295, effective July 1, 1998.

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Education Cost-Effectiveness Agenda Act

Sec.

105 ILCS 225/0.01.Short title
105 ILCS 225/2.Findings and declaration of policy
105 ILCS 225/3.[Creation of Illinois Agenda for Cost-Effectiveness in Education]
105 ILCS 225/4.[Illinois Cost-Effectiveness in Education Fund]
105 ILCS 225/5.[Appropriation of monies in Fund]
105 ILCS 225/6.[Report on implementation of Act]

§ 105 ILCS 225/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Education Cost-Effectiveness Agenda Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act relating to an agenda for cost-effectiveness in education, amending a named Act.

Cite: 105 ILCS 225/0.01 et seq.

Source: P.A. 86-852.

Date: Approved September 7, 1989.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1950.

§ 105 ILCS 225/2. Findings and declaration of policy

Sec. 2. Findings and declaration of policy. The General Assembly finds and declares that:

(1) A number of studies in recent years have emphasized the importance of experiences outside the classroom to the educational experience. A tremendous need exists for preschool training, both in a school setting and in the home; for programs that enhance the home as a learning environment, particularly in economically depressed areas in

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central cities and in rural counties; and for programs and activities that provide a direct supplement to classroom instruction, particularly in rural districts whose size and lack of a strong tax base often combine to restrict curricular diversity. Counties are losing population. In many instances, the local tax base is being eroded as well. Yet while local school districts may be experiencing financial problems that inhibit their ability to offer wider curricula, the State Board of Higher Education has acted to require that university applicants have completed more advanced high school course work.

(2) Such proposals as expanded kindergarten, contained in the 1985 education reform package, are often the first to be eliminated. Four years after it was passed into law, this and other similar initiatives remain woefully underfunded, if funded at all.

(3) At the same time, however, the State has resources on which it can draw to help meet these goals, without massive additional funding. Specifically, technological resources are now available, as well as honor students, retired teachers, parents and members of the private sector, that can be mobilized to help meet these needs with only a minimum commitment of funding from the State.

(4) The Agenda for Cost-Effectiveness in Education is being created for the purpose of utilizing a great pool of untapped resources available in the State to improve educational achievement and to insure the success of the Education Reform Act of 1985 and other vital initiatives.

(Source: P.A. 86-852.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1952.

The Education Reform Act of 1985, referred to above, inter alia, enacted 105 ILCS 220/1 et seq. and 105 ILCS 305/0.01 et seq. and made numerous changes to The School Code, 105 ILCS 5/1-1 et seq.

§ 105 ILCS 225/3. [Creation of Illinois Agenda for Cost-Effectiveness in Education]

Sec. 3. The Illinois Agenda for Cost-Effectiveness in Education is hereby created. The agenda shall be developed and coordinated by the Illinois State Board of Education. It shall be funded by the Illinois Cost-Effectiveness in Education Fund, a special fund created in the State Treasury.

(Source: P.A. 86-852.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1953.

§ 105 ILCS 225/4. [Illinois Cost-Effectiveness in Education Fund]

Sec. 4. The Illinois Cost-Effectiveness in Education Fund shall consist of appropriations, grants from the federal government and donations from any public or private source.

(Source: P.A. 86-852.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1954.

§ 105 ILCS 225/5. [Appropriation of monies in Fund]

Sec. 5. Monies in the Fund shall be appropriated to the Illinois State Board of Education for use in establishing and administering:

(1) A Retired Teacher Service Corps, which would utilize the skills and knowledge of retired teachers to provide supplementary instruction of at-risk children, as defined by the State Board of Education, and any other students in need of assistance.

(2) A Partnership in Training program designed to bring private businesses and the State together in ensuring a trained and trainable workforce for employers of the State. The partnership shall cooperate in preparing educational programs in the schools designed to increase the vocational abilities of students as they leave high school and enter the private sector. The purpose shall be to tie the schools and the business community together.

(3) A Parents as Teachers program designed to provide training, materials and other assistance necessary to enable parents to provide basic preschool education in the home.

(4) A Rural School Satellite Instruction program to link rural schools, through video or audio communication systems, to otherwise unavailable educational services.

Monies of the Fund shall supplement, not supplant, any funding being used by the State Board of Education for these purposes on the effective date of this Act. The State Board of Education may enter into contractual or cooperative agreements with the Illinois Board of Higher Education, Illinois Community College Board, Illinois State Scholarship Commission and any other relevant State department or agency or public or private organization.

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(Source: P.A. 86-852; 90-655, § 78.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1955.

Effect of Amendments. The 1998 amendment by P.A. 90-655, effective July 30, 1998, made minor punctuation changes in subsections (1) through (3), and in the last sentence of the section substituted "contractual" for "contractural" and "public or private organization" for "public and private organizations".

§ 105 ILCS 225/6. [Report on implementation of Act]

Sec. 6. The State Board of Education shall report to the General Assembly the Board's proposals and timelines for implementation of this Act. The report shall be submitted no later than 6 months after the effective date of this Act.

(Source: P.A. 86-852.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1956.

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School Construction Law

Article 5

105 ILCS 230/5-1.Short title
105 ILCS 230/5-5.Definitions
105 ILCS 230/5-10.Grant awards
105 ILCS 230/5-15.Grant entitlements
105 ILCS 230/5-20.Grant application; district facilities plan
105 ILCS 230/5-25.Eligibility and project standards
105 ILCS 230/5-30.Priority of school construction projects
105 ILCS 230/5-35.School construction project grant amounts; permitted use; prohibited use
105 ILCS 230/5-37.Carry over projects
105 ILCS 230/5-38.Fiscal Year 2002 escalation
105 ILCS 230/5-40.Supervision of school construction projects; green projects
105 ILCS 230/5-45.Debt service grants
105 ILCS 230/5-50.Referendum requirements
105 ILCS 230/5-55.Rules
105 ILCS 230/5-57.Administration of powers; no changes
105 ILCS 230/5-60.School capital needs assessment
105 ILCS 230/5-100.School maintenance project grants
105 ILCS 230/5-200.School energy efficiency grants
105 ILCS 230/5-300.Early childhood construction grants
105 ILCS 230/5-400.Charter school construction grants
105 ILCS 230/5-900.[Not Set Out]
105 ILCS 230/5-905.[Not Set Out]
105 ILCS 230/5-910 through 105 ILCS 230/5-920 [Not Set Out]

Article 10

105 ILCS 230/10-5 through 105 ILCS 230/10-25 [Not Set Out]

Article 15

105 ILCS 230/15-5 through 105 ILCS 230/15-25 [Not Set Out]

Article 925

105 ILCS 230/925-5.No acceleration or delay

Article 950

105 ILCS 230/950-5.Severability and inseverability

Article 990

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105 ILCS 230/990-5.Effective date

Article 5.

§ 105 ILCS 230/5-1. Short title

Sec. 5-1. Short title. This Article may be cited as the School Construction Law.

(Source: P.A. 90-548, § 5-1.)

Derivation.

Title: An Act relating to education, amending named Acts. (Article 5)

Cite: 105 ILCS 230/5-1 et seq.

Source: P.A. 90-548, Article 5 generally effective 1-1-98, some part effective 12-4-97, other parts effective 7-1-98.

Date: Approved December 4, 1997.

Short title: School Construction Law.

Effective Date. Section 990-5 of P.A. 90-548 made this Act effective January 1, 1998.

§ 105 ILCS 230/5-5. Definitions

Sec. 5-5. Definitions. As used in this Article:

"Approved school construction bonds" mean bonds that were approved by referendum after January 1, 1996 but prior to January 1, 1998 as provided in Sections 19-2 through 19-7 of the School Code [105 ILCS 5/19-2 through 105 ILCS 5/19-7] to provide funds for the acquisition, development, construction, reconstruction, rehabilitation, improvement, architectural planning, and installation of capital facilities consisting of buildings, structures, durable-equipment, and land for educational purposes.

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"Grant index" means a figure for each school district equal to one minus the ratio of the district's equalized assessed valuation per pupil in average daily attendance to the equalized assessed valuation per pupil in average daily attendance of the district located at the 90th percentile for all districts of the same category. For the purpose of calculating the grant index, school districts are grouped into 2 categories, Category I and Category II. Category I consists of elementary and unit school districts. The equalized assessed valuation per pupil in average daily attendance of each school district in Category I shall be computed using its grades kindergarten through 8 average daily attendance figure. A unit school district's Category I grant index shall be used for projects or portions of projects constructed for elementary school pupils. Category II consists of high school and unit school districts. The equalized assessed valuation per pupil in average daily attendance of each school district in Category II shall be computed using its grades 9 through 12 average daily attendance figure. A unit school district's Category II grant index shall be used for projects or portions of projects constructed for high school pupils. The changes made by this amendatory Act of the 92nd General Assembly [P.A. 92-168] apply to all grants made on or after the effective date of this amendatory Act, provided that for grants not yet made on the effective date of this amendatory Act but made in fiscal year 2001 and for grants made in fiscal year 2002, the grant index for a school district shall be the greater of (i) the grant index as calculated under this Law on or after the effective date of this amendatory Act or (ii) the grant index as calculated under this Law before the effective date of this amendatory Act. The grant index shall be no less than 0.35 and no greater than 0.75 for each district; provided that the grant index for districts whose equalized assessed valuation per pupil in average daily attendance is at the 99th percentile and above for all districts of the same type shall be 0.00.

The grant index shall be calculated for each of those school districts forming a reorganized school district or cooperative high school if one or more of the following happen within the current or prior 2 fiscal years:

(1) a new school district is created in accordance with Article 11E of the School Code [105 ILCS 5/11E-5 et seq.];

(2) an existing school district annexes all of the territory of one or more entire other school districts in accordance with Article 7 of the School Code [105 ILCS 5/7-01 et seq.]; or

(3) a cooperative high school is formed in accordance with Section 10-22.22c of the School Code [105 ILCS 5/10-22.22c].

The average grant index of those school districts shall be used as the grant index for the newly reorganized district or cooperative high school.

"School construction project" means the acquisition, development, construction, reconstruction, rehabilitation, improvement, architectural planning, and installation of capital facilities consisting of buildings, structures, durable equipment, and land for educational purposes.

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"School district" means a school district or a Type 40 area vocational center that is jointly owned if the joint agreement includes language that specifies how the debt obligation is to be paid, including in the event that an entity withdraws from the joint agreement.

"School district" includes a cooperative high school, which shall be considered a high school district for the purpose of calculating its grant index.

"School maintenance project" means a project, other than a school construction project, intended to provide for the maintenance or upkeep of buildings or structures for educational purposes, but does not include ongoing operational costs.

(Source: P.A. 90-548, § 5-5; 91-38, § 10; 92-168, § 5; 93-1094, § 5; 96-731, § 5; 96-1381, § 5.)

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 151.110.

Effect of Amendments. The 1999 amendment by P.A. 91-38, effective June 15, 1999, added the definition of "School maintenance project".

The 2001 amendment by P.A. 92-168, effective July 26, 2001, in the definition of "Grant Index", at the end of the first sentence substituted "category" for "type", and inserted the second through ninth sentences.

The 2005 amendment by P.A. 93-1094, effective March 29, 2005, added the definition of "School district".

The 2009 amendment by P.A. 96-731, effective August 25, 2009, added the definition of "school district".

The 2010 amendment by P.A. 96-1381, effective January 1, 2011, added the last paragraph to the end of the definition of Grant index.

§ 105 ILCS 230/5-10. Grant awards

Sec. 5-10. Grant awards. The Capital Development Board is authorized to make grants to school districts for school construction projects with funds appropriated by the General Assembly from the School Infrastructure Fund pursuant to the provisions of this Article. The State Board of Education is authorized to make grants to school districts for debt service with funds appropriated by the General Assembly from the School Infrastructure Fund pursuant to the provisions of this Article.

(Source: P.A. 90-548, § 5-10.)

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§ 105 ILCS 230/5-15. Grant entitlements

Sec. 5-15. Grant entitlements. The State Board of Education is authorized to issue grant entitlements for school construction projects and debt service and shall determine the priority order for school construction project grants to be made by the Capital Development Board. When issuing a grant entitlement for a school construction project, the Capital Development Board, as a part of that entitlement, shall certify to the district receiving the entitlement the dollar amount of the school construction project's cost that the district will be required to finance with non-grant funds in order to qualify to receive a school construction project grant under this Article from the Capital Development Board.

(Source: P.A. 90-548, § 5-15; 91-55, § 10.)

Effect of Amendments. The 1999 amendment by P.A. 91-55, effective June 30, 1999, added the second sentence.

§ 105 ILCS 230/5-20. Grant application; district facilities plan

Sec. 5-20. Grant application; district facilities plan. School districts shall apply to the State Board of Education for school construction project grants and debt service grants. Districts filing grant applications shall submit to the State Board a district facilities plan that shall include, but not be limited to, an assessment of present and future district facility needs as required by present and anticipated educational programming, the availability of local financial resources including current revenues, fund balances, and unused bonding capacity, a fiscal plan for meeting present and anticipated debt service obligations, and a maintenance plan and schedule that contain necessary assurances that new, renovated, and existing facilities are being or will be properly maintained. If a district that applies for a school construction project grant has no unused bonding capacity or if its unused bonding capacity may be less than the portion of the cost of the proposed school construction project that the district would be required to finance with non-grant funds, the application and facilities plan submitted by the district shall set forth the estimated amount of the project's cost that the district proposes to finance by the issuance of bonds under subsection (n) of Section 19-1 of the School Code [105 ILCS 230/19-1]. The State Board of Education shall review and approve district facilities plans prior to issuing grant entitlements. Each district that receives a grant entitlement shall annually update its district facilities plan and submit the revised plan to the State Board for approval.

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(Source: P.A. 90-548, § 5-20; 91-55, § 10.)

Effect of Amendments. The 1999 amendment by P.A. 91-55, effective June 30, 1999, inserted the second sentence.

§ 105 ILCS 230/5-25. Eligibility and project standards

Sec. 5-25. Eligibility and project standards. (a) The State Board of Education shall establish eligibility standards for school construction project grants and debt service grants. These standards shall include minimum enrollment requirements for eligibility for school construction project grants of 200 students for elementary districts, 200 students for high school districts, and 400 students for unit districts. The total enrollment of member districts forming a cooperative high school in accordance with subsection (c) of Section 10-22.22 of the School Code [105 ILCS 5/10-22.22] shall meet the minimum enrollment requirements specified in this subsection (a). The State Board of Education shall approve a district's eligibility for a school construction project grant or a debt service grant pursuant to the established standards.

For purposes only of determining a Type 40 area vocational center's eligibility for an entity included in a school construction project grant or a school maintenance project grant, an area vocational center shall be deemed eligible if one or more of its member school districts satisfy the grant index criteria set forth in this Law. A Type 40 area vocational center that makes application for school construction funds after August 25, 2009 (the effective date of Public Act 96-731) shall be placed on the respective application cycle list. Type 40 area vocational centers must be placed last on the priority listing of eligible entities for the applicable fiscal year.

(b) The Capital Development Board shall establish project standards for all school construction project grants provided pursuant to this Article. These standards shall include space and capacity standards as well as the determination of recognized project costs that shall be eligible for State financial assistance and enrichment costs that shall not be eligible for State financial assistance.

(c) The State Board of Education and the Capital Development Board shall not establish standards that disapprove or otherwise establish limitations that restrict the eligibility of (i) a school district with a population exceeding 500,000 for a school construction project grant based on the fact that any or all of the school construction project grant will be used to pay debt service or to make lease payments, as authorized by subsection (b) of Section 5-35 of this Law [105 ILCS 230/5-35], (ii) a school district located in whole or in part in a county that imposes a tax for school facility purposes pursuant to Section 5-1006.7 of the Counties Code [55 ILCS 5/5-1006.7], or (iii) a school district that (1) was organized prior to 1860 and (2) is located in part in a city originally incorporated prior to 1840, based on the fact that all or a part of the school construction project is owned by a public building commission and leased to the school district or the fact that any or all of the

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school construction project grant will be used to pay debt service or to make lease payments.

(d) A reorganized school district or cooperative high school may use a school construction application that was submitted by a school district that formed the reorganized school district or cooperative high school if that application has not been entitled for a project by the State Board of Education and any one or more of the following happen within the current or prior 4 fiscal years:

(1) a new school district is created in accordance with Article 11E of the School Code;

(2) an existing school district annexes all of the territory of one or more other school districts in accordance with Article 7 of the School Code; or

(3) a cooperative high school is formed in accordance with subsection (c) of Section 10-22.22 of the School Code.

A new elementary district formed from a school district conversion, as defined in Section 11E-15 of the School Code, may use only the application of the dissolved district whose territory is now included in the new elementary district and must obtain the written approval of the local school board of any other school district that includes territory from that dissolved district. A new high school district formed from a school district conversion, as defined in Section 11E-15 of the School Code, may use only the application of any dissolved district whose territory is now included in the new high school district, but only after obtaining the written approval of the local school board of any other school district that includes territory from that dissolved district. A cooperative high school using this Section must obtain the written approval of the local school board of the member school district whose application it is using. All other eligibility and project standards apply to this Section.

(Source: P.A. 90-548, § 5-25; 91-38, § 10; 96-37, § 75-5; 96-731, § 5; 96-1000, § 285; 96-1467, § 10; 96-1381, § 5; 96-1467, § 10; 97-232, § 5; 97-333, § 195.)

Note.

P.A. 96-37, § 1, provides: "It is the purpose of this Act to make changes in state programs that are necessary to implement the Governor's Fiscal Year 2010 budget recommendations concerning capital."

Section 60-95 of P.A. 96-37 contains a "no acceleration or delay" provision.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-38, effective June 15, 1999, added subsection (c).

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The 2009 amendment by P.A. 96-37, effective July 13, 2009, in (c), added the item (i) designation, added (ii), and made related changes.

The 2009 amendment by P.A. 96-731, effective August 25, 2009, added the second paragraph of (a).

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, substituted "August 25, 2009 (the effective date of Public Act 96-731)" for "the effective date of this amendatory Act of the 96th General Assembly" in the second sentence of the second paragraph of (a).

The 2010 amendment by P.A. 96-1381, effective January 1, 2011, in (a), inserted the third sentence in the first paragraph and substituted "August 25, 2009 (the effective date of Public Act 96-731)" for "the effective date of this amendatory Act of the 96th General Assembly" in the second sentence of the second paragraph; and added (d).

The 2010 amendment by P.A. 96-1467, effective August 20, 2010, substituted "August 25, 2009 (the effective date of Public Act 96-731)" for "the effective date of this amendatory Act of the 96th General Assembly" in the second sentence of the second paragraph of (a); added item (iii) to the end of (c); and made a related change.

The 2011 amendment by P.A. 97-232, effective July 28, 2011, substituted "4 fiscal years" for "2 fiscal years" in the introductory language of (d).

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, combined earlier multiple amendments to the section.

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

§ 105 ILCS 230/5-30. Priority of school construction projects

Sec. 5-30. Priority of school construction projects. The State Board of Education shall develop standards for the determination of priority needs concerning school construction projects based upon approved district facilities plans. Such standards shall call for prioritization based on the degree of need and project type in the following order:

(1) Replacement or reconstruction of school buildings destroyed or damaged by flood, tornado, fire, earthquake, mine subsidence, or other disasters, either man-made or produced by nature;

(2) Projects designed to alleviate a shortage of classrooms due to population growth or to replace aging school buildings;

(3) Projects resulting from interdistrict reorganization of school districts contingent on local referenda;

(4) Replacement or reconstruction of school facilities determined to be severe and continuing health or life safety hazards;

(5) Alterations necessary to provide accessibility for qualified individuals with disabilities; and

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(6) Other unique solutions to facility needs.

Except for those changes absolutely necessary to comply with the changes made to subsection (c) of Section 5-25 of this Law [105 ILCS 230/5-25] by Public Act 96-37, the State Board of Education may not make any material changes to the standards in effect on May 18, 2004, unless the State Board of Education is specifically authorized by law.

(Source: P.A. 90-548, § 5-30; 93-679, § 20; 96-37, § 75-5; 96-102, § 10; 96-1000, § 285.)

Note.

P.A. 96-37, § 1, provides: "It is the purpose of this Act to make changes in state programs that are necessary to implement the Governor's Fiscal Year 2010 budget recommendations concerning capital."

Section 60-95 of P.A. 96-37 contains a "no acceleration or delay" provision.

Effect of Amendments. The 2004 amendment by P.A. 93-679, effective June 30, 2004, added the last paragraph.

The 2009 amendment by P.A. 96-37, effective July 13, 2009, added the exception language at the beginning of the concluding paragraph, and made a related change.

The 2009 amendment by P.A. 96-102, effective July 29, 2009, inserted "mine subsidence" in (1) and made a related change.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, substituted "Public Act 96-37" for "this amendatory Act of the 96th General Assembly" in the second paragraph.

§ 105 ILCS 230/5-35. School construction project grant amounts; permitted use; prohibited use

Sec. 5-35. School construction project grant amounts; permitted use; prohibited use. (a) The product of the district's grant index and the recognized project cost, as determined by the Capital Development Board, for an approved school construction project shall equal the amount of the grant the Capital Development Board shall provide to the eligible district. The grant index shall not be used in cases where the General Assembly and the Governor approve appropriations designated for specifically identified school district construction projects.

The average of the grant indexes of the member districts in a joint agreement shall be used to calculate the amount of a school construction project grant awarded to an eligible Type 40 area vocational center.

(b) In each fiscal year in which school construction project grants are awarded, 20% of the total amount awarded statewide shall be awarded to a school district with a population exceeding 500,000, provided such district complies with the provisions of this Article.

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In addition to the uses otherwise authorized by this Law, any school district with a population exceeding 500,000 is authorized to use any or all of the school construction project grants (i) to pay debt service, as defined in the Local Government Debt Reform Act [30 ILCS 350/1 et seq.], on bonds, as defined in the Local Government Debt Reform Act, issued to finance one or more school construction projects and (ii) to the extent that any such bond is a lease or other installment or financing contract between the school district and a public building commission that has issued bonds to finance one or more qualifying school construction projects, to make lease payments under the lease.

(b-5) In addition to the uses otherwise authorized by this Law, any school district that (1) was organized prior to 1860 and (2) is located in part in a city originally incorporated prior to 1840 is authorized to use any or all of the school construction project grants (i) to pay debt service on bonds, as those terms are defined in the Local Government Debt Reform Act, that are issued to finance one or more school construction projects and (ii) to the extent that any such bond is a lease or other installment or financing contract between the school district and a public building commission that has issued bonds to finance one or more qualifying school construction projects, to make lease payments under the lease.

(c) No portion of a school construction project grant awarded by the Capital Development Board shall be used by a school district for any on-going operational costs.

(Source: P.A. 90-548, § 5-35; 91-38, § 10; 96-731, § 5; 96-1467, § 10.)

Effect of Amendments. The 1999 amendment by P.A. 91-38, effective June 15, 1999, inserted "; permitted use;" in the section heading; and added the second paragraph of subsection (b).

The 2009 amendment by P.A. 96-731, effective August 25, 2009, added the second paragraph of (a).

The 2010 amendment by P.A. 96-1467, effective August 20, 2010, inserted (b-5).

§ 105 ILCS 230/5-37. Carry over projects

Sec. 5-37. Carry over projects. If a school district has been issued a grant entitlement for a school construction project, has arranged and approved all local financing, and is eligible to receive a school construction project grant award in any fiscal year, but does not receive such award in that year due to lack of adequate appropriations, such school construction projects shall be placed ahead of any new school construction projects within the same priority category as defined in Section 5-30 [105 ILCS 230/5-30] that are approved for grant awards for the following year.

(Source: P.A. 90-653, § 15.)

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Effective Date. Section 99 of P.A. 90-635 provided that the Act take effect upon becoming law, except the changes to Sec. 18-8.05 of the School Code which were to take effect July 1, 1998. The act was approved July 29, 1998.

§ 105 ILCS 230/5-38. Fiscal Year 2002 escalation

Sec. 5-38. Fiscal Year 2002 escalation. If a school district has been issued a school construction grant in Fiscal Year 2010 and the school district was on the FY2002 priority ranking, the Capital Development Board shall escalate the state share grant amount of the project on a 3% annual escalation rate.

(Source: P.A. 96-1554, § 20.)

Effective Date. Section 99 of P.A. 96-1554, made this section effective upon becoming law. The Act was approved March 18, 2011.

§ 105 ILCS 230/5-40. Supervision of school construction projects; green projects

Sec. 5-40. Supervision of school construction projects; green projects. The Capital Development Board shall exercise general supervision over school construction projects financed pursuant to this Article. School districts, however, must be allowed to choose the architect and engineer for their school construction projects, and no project may be disapproved by the State Board of Education or the Capital Development Board solely due to a school district's selection of an architect or engineer.

With respect to those school construction projects for which a school district first applies for a grant on or after July 1, 2007, the school construction project must receive certification from the United States Green Building Council's Leadership in Energy and Environmental Design Green Building Rating System or the Green Building Initiative's Green Globes Green Building Rating System or must meet green building standards of the Capital Development Board and its Green Building Advisory Committee. With respect to those school construction projects for which a school district applies for a grant on or after July 1, 2009, the school construction project must receive silver certification from the United States Green Building Council's Leadership in Energy and Environmental Design Green Building Rating System.

(Source: P.A. 90-548, § 5-40; 93-679, § 20; 95-416, § 5; 96-37, § 30-20.)

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P.A. 96-37, § 1, provides: "It is the purpose of this Act to make changes in state programs that are necessary to implement the Governor's Fiscal Year 2010 budget recommendations concerning capital."

Effect of Amendments. The 2004 amendment by P.A. 93-679, effective June 30, 2004, added the last sentence.

The 2007 amendment by P.A. 95-416, effective July 1, 2007, inserted "green projects" in the first paragraph; and added the second paragraph.

The 2009 amendment by P.A. 96-37, effective July 13, 2009, added the last sentence in the second paragraph.

§ 105 ILCS 230/5-45. Debt service grants

Sec. 5-45. Debt service grants. School districts that have issued approved school construction bonds shall be eligible to apply for debt service grants. The amount awarded to eligible districts for debt service grants shall be equal to 10% of the principal amount of approved school construction bonds issued by the district times the grant index for the district. Debt service grants shall only be used by school districts to: retire principal of approved school construction bonds, restructure the debt service on such bonds, or abate the property taxes levied for the district's bond and interest fund by an amount identical to the amount of the debt service grant. No debt service grants shall be awarded by the State Board of Education after June 30, 1999.

(Source: P.A. 90-548, § 5-45.)

§ 105 ILCS 230/5-50. Referendum requirements

Sec. 5-50. Referendum requirements. After the State Board of Education has approved all or part of a district's application and issued a grant entitlement for a school construction project grant, the district shall submit the project or the financing of the project to a referendum when such referendum is required by law, except for a project financed by bonds issued pursuant to subsection (p-70) of Section 19-1 of the School Code [105 ILCS 5/19-1].

(Source: P.A. 90-548, § 5-50; 96-1438, § 10; 97-333, § 195.)

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Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 2010 amendment by P.A. 96-1438, effective August 20, 2010, added the exception language to the end.

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, substituted "subsection (p-70)" for "subsection (p-60)."

§ 105 ILCS 230/5-55. Rules

Sec. 5-55. Rules. (a) The Capital Development Board shall promulgate such rules as it deems necessary for carrying out its responsibilities under the provisions of this Article.

(b) The State Board of Education shall promulgate such rules as it deems necessary for carrying out its responsibilities under the provisions of this Article.

(Source: P.A. 90-548, § 5-55.)

§ 105 ILCS 230/5-57. Administration of powers; no changes

Sec. 5-57. Administration of powers; no changes. Notwithstanding any other law to the contrary and except for those changes absolutely necessary to comply with the changes made to subsection (c) of Section 5-25 of this Law [105 ILCS 230/5-25] by this amendatory Act of the 96th General Assembly [P.A. 96-37], the Capital Development Board may not make any material changes in the administration of its powers granted under this Law from how it administered those powers on May 18, 2004, unless specifically authorized by law.

(Source: P.A. 93-679, § 20; 96-37, § 75-5.)

Note.

P.A. 96-37, § 1, provides: "It is the purpose of this Act to make changes in state programs that are necessary to implement the Governor's Fiscal Year 2010 budget recommendations concerning capital."

Section 60-95 of P.A. 96-37 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 93-679 made this section effective upon becoming law. The Act was approved June 30, 2004.

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Effect of Amendments. The 2009 amendment by P.A. 96-37, effective July 13, 2009, added the exception language.

§ 105 ILCS 230/5-60. School capital needs assessment

Sec. 5-60. School capital needs assessment. The State Board of Education and the Capital Development Board shall file with the General Assembly a comprehensive assessment report of the capital needs of all school districts in this State before January 1, 2005 and every 2 years thereafter. This assessment shall include without limitation an analysis of the 6 categories of capital needs prioritized in Section 5-30 of this Law [105 ILCS 230/5-30].

(Source: P.A. 93-489, § 5.)

Effective Date. Section 99 of P.A. 93-489 made this section effective upon becoming law. The Act was approved August 8, 2003.

§ 105 ILCS 230/5-100. School maintenance project grants

Sec. 5-100. School maintenance project grants. (a) The State Board of Education is authorized to make grants to school districts, without regard to enrollment, for school maintenance projects. These grants shall be paid out of moneys appropriated for that purpose from the School Infrastructure Fund. No grant under this Section for one fiscal year shall exceed $50,000, but a school district may receive grants for more than one project during one fiscal year. A school district must provide local matching funds in an amount equal to the amount of the grant under this Section. A school district has no entitlement to a grant under this Section.

(b) The State Board of Education shall adopt rules to implement this Section. These rules need not be the same as the rules for school construction project grants or debt service grants.

The rules may specify: (1) the manner of applying for grants; (2) project eligibility requirements; (3) restrictions on the use of grant moneys; (4) the manner in which school districts must account for the use of grant moneys; and (5) any other provision that the State Board determines to be necessary or useful for the administration of this Section.

The rules shall specify the methods and standards to be used by the State Board to prioritize applications. School maintenance projects shall be prioritized in the following order:

(i) emergency projects;

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(ii) health/life safety projects;

(iii) State Program priority projects;

(iv) permanent improvement projects; and

(v) other projects.

(c) In each school year in which school maintenance project grants are awarded, 20% of the total amount awarded shall be awarded to a school district with a population of more than 500,000, provided that the school district complies with the requirements of this Section and the rules adopted under this Section.

(Source: P.A. 91-38, § 10.)

Effective Date. Section 99 of P.A. 91-38 made this section effective upon becoming law. The Act was approved June 15, 1999.

§ 105 ILCS 230/5-200. School energy efficiency grants

Sec. 5-200. School energy efficiency grants. (a) The State Board of Education is authorized to make grants to school districts and special education cooperatives, without regard to enrollment, for school energy efficiency projects. These grants shall be paid out of moneys appropriated for that purpose from the School Infrastructure Fund. No grant under this Section for one fiscal year shall exceed $250,000, but a school district or special education cooperative may receive grants for more than one project during one fiscal year. A school district or special education cooperative must provide local matching funds in an amount equal to the amount of the grant under this Section. A school district or special education cooperative has no entitlement to a grant under this Section.

(b) The State Board of Education shall adopt rules to implement this Section. These rules need not be the same as the rules for school construction project grants or school maintenance project grants. The rules may specify:

(1) the manner of applying for grants;

(2) project eligibility requirements;

(3) restrictions on the use of grant moneys;

(4) the manner in which school districts and special education cooperatives must account for the use of grant moneys; and

(5) any other provision that the State Board determines to be necessary or useful for the administration of this Section.

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(c) In each school year in which school energy efficiency project grants are awarded, 20% of the total amount awarded shall be awarded to a school district in a city with a population of more than 500,000, provided that the school district complies with the requirements of this Section and the rules adopted under this Section.

(Source: P.A. 96-37, § 30-20; 96-1423, § 13; 97-205, § 5.)

Note.

P.A. 96-37, § 1, provides: "It is the purpose of this Act to make changes in state programs that are necessary to implement the Governor's Fiscal Year 2010 budget recommendations concerning capital."

Effective Date. Section 99-99 of P.A. 96-37 makes this section effective upon becoming law. The Act was approved July 13, 2009.

Effect of Amendments. The 2010 amendment by P.A. 96-1423, effective August 3, 2010, inserted "in a city" in (c).

The 2011 amendment by P.A. 97-205, effective July 28, 2011, inserted "and special education cooperatives" in the first sentence of (a) and in (b)(4); and inserted "or special education cooperative" in the last three sentences of (a).

§ 105 ILCS 230/5-300. Early childhood construction grants

Sec. 5-300. Early childhood construction grants. (a) The Capital Development Board is authorized to make grants to public school districts and not-for-profit entities for early childhood construction projects. These grants shall be paid out of moneys appropriated for that purpose from the School Construction Fund. No grants may be awarded to entities providing services within private residences. A public school district or other eligible entity must provide local matching funds in an amount equal to 10% of the grant under this Section. A public school district or other eligible entity has no entitlement to a grant under this Section.

(b) The Capital Development Board shall adopt rules to implement this Section. These rules need not be the same as the rules for school construction project grants or school maintenance project grants. The rules may specify:

(1) the manner of applying for grants;

(2) project eligibility requirements;

(3) restrictions on the use of grant moneys;

(4) the manner in which school districts and other eligible entities must account for the use of grant moneys;

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(5) requirements that new or improved facilities be used for early childhood and other related programs for a period of at least 10 years; and

(6) any other provision that the Capital Development Board determines to be necessary or useful for the administration of this Section.

(b-5) When grants are made to non-profit corporations for the acquisition or construction of new facilities, the Capital Development Board or any State agency it so designates shall hold title to or place a lien on the facility for a period of 10 years after the date of the grant award, after which title to the facility shall be transferred to the non-profit corporation or the lien shall be removed, provided that the non-profit corporation has complied with the terms of its grant agreement. When grants are made to non-profit corporations for the purpose of renovation or rehabilitation, if the non-profit corporation does not comply with item (5) of subsection (b) of this Section, the Capital Development Board or any State agency it so designates shall recover the grant pursuant to the procedures outlined in the Illinois Grant Funds Recovery Act [30 ILCS 705/1 et seq.].

(c) The Capital Development Board, in consultation with the State Board of Education, shall establish standards for the determination of priority needs concerning early childhood projects based on projects located in communities in the State with the greatest underserved population of young children, utilizing Census data and other reliable local early childhood service data.

(d) In each school year in which early childhood construction project grants are awarded, 20% of the total amount awarded shall be awarded to a school district with a population of more than 500,000, provided that the school district complies with the requirements of this Section and the rules adopted under this Section.

(Source: P.A. 96-37, § 30-20; 96-1402, § 5.)

Note.

P.A. 96-37, § 1, provides: "It is the purpose of this Act to make changes in state programs that are necessary to implement the Governor's Fiscal Year 2010 budget recommendations concerning capital."

Effective Date. Section 99-99 of P.A. 96-37 makes this section effective upon becoming law. The Act was approved July 13, 2009.

Effect of Amendments. The 2010 amendment by P.A. 96-1402, effective July 29, 2010, substituted "10%" for "the amount" in the fourth sentence of (a); inserted (b)(5) and (b-5); redesignated former (b)(5) as (b)(6); and made a related change.

§ 105 ILCS 230/5-400. Charter school construction grants

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Sec. 5-400. Charter school construction grants. (a) The Capital Development Board is authorized to make grants to charter schools, as authorized by Article 27A of the School Code, 105 ILCS 5rt. 27A, for construction projects. The grants shall be paid out of moneys appropriated for that purpose from the Build Illinois Bond Fund. A charter school and other eligible entities have no entitlement to a grant under this Section.

(b) The Capital Development Board shall adopt rules to implement this Section. These rules need not be the same as the rules for school construction project grants or school maintenance project grants. The rules may specify:

(1) the manner of applying for grants;

(2) project eligibility requirements;

(3) restrictions on the use of grant moneys;

(4) the manner in which school districts must account for the use of grant moneys; and

(5) any other provision that the Capital Development Board determines to be necessary or useful for the administration of this Section.

With respect to those school construction projects for which a charter school applies for a grant on or after July 1, 2009, the school construction project must receive silver certification from the United States Green Building Council's Leadership in Energy and Environmental Design Green Building Rating System.

(Source: P.A. 96-37, § 30-20.)

Note.

P.A. 96-37, § 1, provides: "It is the purpose of this Act to make changes in state programs that are necessary to implement the Governor's Fiscal Year 2010 budget recommendations concerning capital."

Effective Date. Section 99-99 of P.A. 96-37 makes this section effective upon becoming law. The Act was approved July 13, 2009.

§ 105 ILCS 230/5-900. [Not Set Out]

Note.

This section, as found in P.A. 90-548, § 5-900, contained amendatory provisions.

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§ 105 ILCS 230/5-905. [Not Set Out]

Note.

This section is compiled at 30 ILCS 105/5.500, 30 ILCS 105/5.505 and 30 ILCS 105/6z-45.

§§ 105 ILCS 230/5-910 through 105 ILCS 230/5-920 [Not Set Out]

Note.

These sections, as found in P.A. 90-548, § 5-910 through § 5-920, contained amendatory provisions.

Article 10.

§§ 105 ILCS 230/10-5 through 105 ILCS 230/10-25 [Not Set Out]

Note.

This Article, as found in P.A. 90-548, § 10-5 through § 10-25, contained amendatory provisions.

Article 15.

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§§ 105 ILCS 230/15-5 through 105 ILCS 230/15-25 [Not Set Out]

Note.

This Article is compiled at 105 ILCS 235/15-5 et seq.

Article 925.

§ 105 ILCS 230/925-5. No acceleration or delay

Sec. 925-5. No acceleration or delay. Where this Act makes changes in a statute that is represented in this Act by text that is not yet or no longer in effect (for example, a Section represented by multiple versions), the use of that text does not accelerate or delay the taking effect of (i) the changes made by this Act or (ii) provisions derived from any other Public Act.

(Source: P.A. 90-548, § 925-5.)

Article 950.

§ 105 ILCS 230/950-5. Severability and inseverability

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Sec. 950-5. Severability and inseverability. (a) If any provision of this Act, other than Article 10 [105 ILCS 10/1-1 et seq.], or the application of any provision of this Act, other than a provision of Article 10 [105 ILCS 10/1-1 et seq.], to any person or circumstance is held invalid, the invalidity of that provision or application does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application.

(b) Each provision of Article 10 [105 ILCS 10/1-1 et seq.] is mutually dependent upon and inseverable from each other provision of that Article. If any provision of Article 10 [105 ILCS 10/1-1 et seq.] or its application to any person or circumstance is held invalid, then all of Article 10 [105 ILCS 10/1-1 et seq.] is invalid.

(c) If Article 10 [105 ILCS 10/1-1 et seq.] or any provision of that Article or the application of that Article or provision of that Article to any other person or circumstance is held invalid, the invalidity of that Article or provision does not affect any other Article of this Act or any provision of any such other Article that can be given effect without the invalid provision or application.

(Source: P.A. 90-548, § 950-5.)

Article 990.

§ 105 ILCS 230/990-5. Effective date

Sec. 990-5. Effective date. This Act takes effect upon becoming law, except that (i) all provisions of Article 5 [105 ILCS 5/1-1 et seq.], other than the changes made by Section 5-910 to the Illinois Pension Code [40 ILCS 5/5-910] and other than the changes to Sections 18-7 and 18-8 of and the addition of Section 18-8.05 to the School Code [105 ILCS 5/18-7 and 105 ILCS 5/18-8 and 105 ILCS 5/18-8.05], take effect January 1, 1998, (ii) the changes made by Section 5-910 to the Illinois Pension Code [40 ILCS 5/5-910] and the changes to Sections 18-7 and 18-8 of the School Code [105 ILCS 5/18-7 and 105 ILCS 5/18-8] take effect upon becoming a law, and (iii) the addition of Section 18-8.05 to the School Code [105 ILCS 5/18-8.05] takes effect July 1, 1998.

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(Source: P.A. 90-548, § 990-5.)

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State Aid Continuing Appropriation Law

Sec.
105 ILCS 235/5-1 through 105 ILCS 235/15-5 [Repealed].

§§ 105 ILCS 235/5-1 through 105 ILCS 235/15-5: Repealed by terms of 105 ILCS 235/15-25, as amended by P.A. 92-597, § 50, effective June 30, 2003.

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School District Intergovernmental Cooperation Renewable Energy Act

Sec.

105 ILCS 240/1.Short title
105 ILCS 240/5.Findings
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105 ILCS 240/15.Powers supplemental
105 ILCS 240/20.Actions by resolution
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105 ILCS 240/50.Lawful expense of school district
105 ILCS 240/55.Powers and duties generally
105 ILCS 240/60.Bonds
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105 ILCS 240/70.School districts may contract
105 ILCS 240/97.Severability
105 ILCS 240/999.Effective date

§ 105 ILCS 240/1. Short title

Sec. 1. Short title. This Act may be cited as the School District Intergovernmental Cooperation Renewable Energy Act.

(Source: P.A. 96-946, § 1.)

Effective Date. Section 999 [105 ILCS 240/999] made this Act effective upon becoming law. The Act was approved June 25, 2010.

§ 105 ILCS 240/5. Findings

Sec. 5. Findings. The General Assembly finds that there is a need to promote the use of renewable energy resources, including facilities designed to convert wind or solar power to energy, and to promote employment in the construction and operation of such facilities, and further finds that a means of meeting such need is to authorize school

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districts to join together to acquire and construct facilities for such purposes.

(Source: P.A. 96-946, § 5.)

§ 105 ILCS 240/10. Definitions

Sec. 10. Definitions. In this Act:

"Agency" means a joint action agency organized and operating under this Act.

"Applicable law" means any provision of law, including this Act, authorizing school districts to issue bonds as that term is defined in the Local Government Debt Reform Act [30 ILCS 350/1 et seq.].

"Board" means the board of directors of an agency organized under this Act.

"Bond" means a bond as such term is defined in the Local Government Debt Reform Act issued by an agency payable from one or more of the agency's revenue sources and other sources as the agency may lawfully pledge, which sources may include school district bonds or proceeds or payments to be made pursuant to an intergovernmental agreement.

"Eligible project" means any land or rights in land, plant, works, system, facility, machinery, intellectual property, or other real or personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, used or useful in the generation, production, such distribution or transmission as may be required in a relevant electric service agreement, purchase, sale, exchange, or interchange of electrical energy derived from renewable energy resources as defined in Section 1-10 of the Illinois Power Agency Act [20 ILCS 3855/1-10], including wind, solar power, and other renewable resources, and in the acquisition, extraction, conversion, transportation, storage, or reprocessing of ancillary fuel of any kind for any of those purposes, or any interest in, or right to the use, services, output, or capacity of any plant, works, system, or facilities.

"Governing body" means the school board having charge of the corporate affairs of a school district.

"Intergovernmental agreement" means the agreement by which an agency is formed by school districts pursuant to this Act.

"Members" means the school districts joining pursuant to intergovernmental agreement to organize an agency under this Act.

"Resolution" means a resolution duly adopted by a governing body.

"Revenue source" means any revenue source as such term is defined in the Local Government Debt Reform Act.

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"School district" means a combined elementary district, a combined high school district, a combined unit district, a unit district, a combined high school unit district, an elementary district, or an optional elementary unit district organized and operating under the School Code [105 ILCS 5/1-1 et seq.]of the State of Illinois, but does not include any office, officer, department, division, bureau, board, commission, or similar agency of the State of Illinois.

"School district bond" means any bond as such term is defined in the Local Government Debt Reform Act authorized or issued by or on behalf of a school district under applicable law.

(Source: P.A. 96-946, § 10.)

§ 105 ILCS 240/15. Powers supplemental

Sec. 15. Powers supplemental. The provisions of this Act are intended to be supplemental and, in addition to all other powers or authorities granted to any school district, shall be construed liberally and shall not be construed as a limitation of any power or authority otherwise granted.

(Source: P.A. 96-946, § 15.)

§ 105 ILCS 240/20. Actions by resolution

Sec. 20. Actions by resolution. All actions to be taken by a school district or an agency pursuant to this Act shall be fully effective if taken by resolution.

(Source: P.A. 96-946, § 20.)

§ 105 ILCS 240/25. Agency status

Sec. 25. Agency status. An agency organized under this Act shall be a unit of local government of the State of Illinois and a body politic and corporate.

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(Source: P.A. 96-946, § 25.)

§ 105 ILCS 240/30. Organization

Sec. 30. Organization. Any 2 or more school districts, whether contiguous or noncontiguous, may form an agency by the execution of an intergovernmental agreement authorized by resolution adopted by the governing body of each school district. The intergovernmental agreement shall state or may state, as applicable, the following:

(1) the name of the agency and the date of its establishment, which may be by reference to a date or the dates of the resolutions adopted by the governing bodies, and the duration of its existence, which may be perpetual;

(2) the names of the school districts that have adopted the intergovernmental agreement and constitute the initial members;

(3) the names and addresses of the persons initially appointed in the resolutions adopting the intergovernmental agreement to serve as initial directors on the board and provision for the organizational meeting of the agency;

(4) provision for the terms of office of the directors and for alternate directors, if so provided, but such directors and alternate directors shall always be selected and vacancies in their offices declared and filled by resolutions adopted by the governing body of the respective school districts;

(5) if so provided, provision for weighted voting among the school districts or by the directors;

(6) the location by city, village, or incorporated town in the State of Illinois of the principal office of the agency;

(7) provision for amendment of the intergovernmental agreement;

(8) if provided, initial funding for the agency, which may include binding agreements of the school districts to provide money or to issue school district bonds for the benefit of the agency;

(9) provisions for the disposition, division, or distribution of obligations, property, and assets of the agency upon dissolution; and

(10) any other provisions for regulating the business of the agency or the conduct of its affairs consistent with this Act.

(Source: P.A. 96-946, § 30.)

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§ 105 ILCS 240/35. Officers; board; bylaws

Sec. 35. Officers; board; bylaws. (a) At the organizational meeting of the board, the directors shall elect from their members a presiding officer to preside over the meetings of the board and an alternate presiding officer and may elect an executive board. The board shall determine and designate in the agency's bylaws the titles for the presiding officers. The directors shall also elect a secretary and treasurer, who need not be directors. The board may select such other officers, employees, and agents as deemed to be necessary, who need not be directors or residents of any of the school districts that are members. The board may designate appropriate titles for all other officers, employees, and agents. All persons selected by the board shall hold their respective offices at the pleasure of the board, and give bond as may be required by the board.

(b) The board is the corporate authority of the agency and shall exercise all the powers and manage and control all of the affairs and property of the agency. The board shall have full power to pass all necessary resolutions and rules for the proper management and conduct of the business of the agency and for carrying into effect the objects for which the agency was established. The board shall have not less than one meeting each year for the election of officers and the transaction of any other business. Unless otherwise provided by this Act, the intergovernmental agreement, or the bylaws, an act of the majority of the directors present at a meeting at which a quorum is present is required for an act of the board.

(c) The board shall adopt bylaws that may include without limitation the following provisions:

(1) the rights and obligations of members consistent with the intergovernmental agreement and this Act;

(2) if not governed in the intergovernmental agreement, then the manner of adding new members and the rights and obligations of the members;

(3) the time, place, and date of the regular meeting or meetings and the procedures for calling special meetings of the board;

(4) procedural rules;

(5) the composition, powers, and responsibilities of any committee or executive board;

(6) the criteria as called for in item (20) of Section 55 of this Act [105 ILCS 240/55]; and

(7) other rules or provisions for regulating the affairs of the agency as the board shall determine to be advisable.

(Source: P.A. 96-946, § 35.)

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§ 105 ILCS 240/40. Filing

Sec. 40. Filing. Within 3 months after the organizational meeting, the board shall cause a certified copy of the intergovernmental agreement to be filed with the Secretary of State of Illinois. The Secretary of State shall accept such filing and issue an acknowledgement of filing over his or her signature and the Great Seal of the State. The Secretary of State shall make and keep a register of agencies established under this Act.

(Source: P.A. 96-946, § 40.)

§ 105 ILCS 240/45. Place of business

Sec. 45. Place of business. Every agency shall maintain an office in the State of Illinois to be known as its principal office. When an agency desires to change the location of such office, it shall file with the Secretary of State a certificate of change of location, stating the new address and the effective date of change. Meetings of the board may be held at any place within the State of Illinois designated by the board after notice.

(Source: P.A. 96-946, § 45.)

§ 105 ILCS 240/50. Lawful expense of school district

Sec. 50. Lawful expense of school district. Each member shall have full power and authority to appropriate money from its operation and maintenance fund, by whatever name now or hereafter known, for the payment of the expenses of the agency and of its representative in exercising its functions as a member of the agency, which expenses may include payment of principal of and interest on bonds of the agency for a period not greater than 40 years after the dated date of any bonds. Each member shall have full power and authority, subject to the provisions of applicable law, to agree to the issuance and delivery of school district bonds to aid the agency.

(Source: P.A. 96-946, § 50.)

§ 105 ILCS 240/55. Powers and duties generally

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Sec. 55. Powers and duties generally. An agency shall have all the powers and duties enumerated in this Section in furtherance of the purposes of this Act. In the exercise thereof it shall be deemed to be performing an essential governmental function and exercising a part of the sovereign powers of the State of Illinois, separate and distinct from member school districts, and shall have the privileges, immunities, and rights of a public body politic and corporate, municipal corporation, and unit of local government, but shall not have taxing power. All powers of the agency shall be exercised by its board unless otherwise provided by the bylaws.

(1) An agency may plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, extend, or otherwise participate in, individually or jointly with other persons or other entities of any type, one or more eligible projects, proposed, existing, or under construction, within or without the State of Illinois, acquire any interest in or any right to products and services of an eligible project, purchase, own, sell, dispose of, or otherwise participate in securities issued in connection with the financing of an eligible project or any portion thereof, create such subsidiary entity or entities of any type as may be necessary or desirable, and may act as agent, or designate one or more persons, public agencies, or other entities of any type, whether or not participating in an eligible project, to act as its agent, in connection with the planning, financing, acquisition, construction, reconstruction, ownership, lease, operation, maintenance, repair, extension, or improvement of the eligible project.

(2) An agency may investigate the desirability of and necessity for additional means of providing electrical energy from wind sources of any kind for such purpose and make studies, surveys, and estimates as may be necessary to determine its feasibility and cost.

(3) An agency may cooperate with other persons, public agencies, or other entities of any type in the development of means of providing electrical energy from wind sources of any kind for those purposes and give assistance with personnel and equipment in any eligible project.

(4) An agency may structure the ownership and investment in an eligible project in such a way as to maximize the use of any available United States federal incentives for such projects, including, but not limited to, New Markets Tax Credits under Section 45D of the Internal Revenue Code of 1986 [26 U.S.C. § 45D], as amended, or any successor provision.

(5) An agency may apply for consents, authorizations, or approvals required for any eligible project within its powers and take all actions necessary to comply with the conditions thereof.

(6) An agency may perform any act authorized by this Act through, or by means of, its officers, agents, or employees or by contract with others, including without limitation the employment of engineers, architects, attorneys, appraisers, financial advisors, and such other consultants and employees as may be required in the judgment of the agency, and fix and pay their compensation from funds available to the agency.

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(7) An agency may, individually or jointly with other persons, public agencies, or other entities of any type, acquire, hold, use, and dispose of income, revenues, funds, and money.

(8) An agency may, individually or jointly with other persons, public agencies, or other entities of any type, acquire, own, hire, use, operate and dispose of personal property and any interest therein.

(9) An agency may, individually or jointly with other persons, public agencies, or other entities of any type, acquire, own, use, lease as lessor or lessee, operate, and dispose of real property and interests in real property, including eligible projects existing, proposed, or under construction, and make improvements thereon.

(10) An agency may grant the use by franchise, lease, or otherwise and make charges for the use of any property or facility owned or controlled by it.

(11) An agency may borrow money and issue negotiable bonds, secured or unsecured, in accordance with this Act.

(12) An agency may invest money of the agency not required for immediate use, including proceeds from the sale of any bonds, in such obligations, securities, and other investments as authorized by the provisions of the Public Funds Investment Act [30 ILCS 235/0.01 et seq.].

(13) An agency may determine the location and character of, and all other matters in connection with, any and all eligible projects it is authorized to acquire, hold, establish, effectuate, operate, or control.

(14) An agency may contract with any persons, public agencies, or other entities of any type for the planning, development, construction, or operation of any eligible project or for the sale, transmission, or distribution of the products and services of any eligible project, or for any interest therein or any right to the products and services thereof, on such terms and for such period not in excess of 50 years of time as its board shall determine.

(15) An agency may enter into any contract or agreement necessary, appropriate, or incidental to the effectuation of its lawful purposes and the exercise of the powers granted by this Act for a period not in excess of 50 years in time, including without limitation contracts or agreements for the purchase, sale, exchange, interchange, wheeling, pooling, transmission, distribution, or storage of electrical energy and fuel of any kind for any such purposes, within and without the State of Illinois, in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, on such terms and for such period of time as its board determines. Any such contract or agreement may include provisions for requirements purchases, restraints on resale or other dealings, exclusive dealing, pricing, territorial division, and other conduct or arrangements that do not have an anti-competitive effect. Provided, however, that the production, interconnection, transmission, distribution, and sale at wholesale or retail of electric energy generated by the eligible project must be in accordance with all laws, regulations, and rules applicable to generators of electricity,

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alternative retail electric suppliers, municipal utilities, or electric cooperatives, as applicable, but further provided that this provision does not affect any exemption otherwise available under the Public Utilities Act [220 ILCS 5/1-101 et seq.].

(16) An agency may procure insurance against any losses in connection with its property, operations, or assets in such amounts and from such insurers as it deems desirable or may self-insure or enter into pooled insurance arrangements with other school districts against such losses.

(17) An agency may contract for and accept any gifts or grants or loans of funds or property or financial or other aid in any form from any source and may comply, subject to the provisions of this Act, with the terms and conditions thereof.

(18) An agency may mortgage, pledge, or grant a security interest in any or all of its real and personal property to secure the payment of its bonds or contracts.

(19) That part of an eligible project owned by an agency shall be exempt from property taxes.

(20) An agency shall not be subject to any taxes of the State of Illinois based on or measured by income or receipts or revenue.

(21) An agency may adopt a corporate seal and may sue and be sued.

(22) An agency may exercise all other powers not inconsistent with the Constitution of the State of Illinois or the United States Constitution, which powers may be reasonably necessary or appropriate for or incidental to effectuate its authorized purposes or to the exercise of any of the powers enumerated in this Act.

(Source: P.A. 96-946, § 55.)

§ 105 ILCS 240/60. Bonds

Sec. 60. Bonds. An agency may issue bonds pursuant to applicable law and the following provisions:

(1) An agency may from time to time issue its bonds in such principal amounts as the agency shall deem necessary to provide sufficient funds to carry out any of its corporate purposes and powers, including without limitation the acquisition, construction, or termination of any eligible project to be owned or leased, as lessor or lessee, by the agency, or the acquisition of any interest therein or any right to the products or services thereof, the funding or refunding of the principal of, redemption premium, if any, and interest on, any bonds issued by it whether or not such bonds or interest to be funded or refunded have or have not become due, the payment of engineering, legal and other expenses, together with interest for a period of 3 years or to a date one year subsequent to the estimated date of completion of the project, whichever period is longer, the

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establishment or increase of reserves to secure or to pay such bonds or interest thereon, the providing of working capital and the payment of all other costs or expenses of the agency incident to and necessary or convenient to carry out its corporate purposes and powers.

(2) Every issue of bonds of the agency shall be payable out of the revenues or funds available to the agency, subject to any agreements with the holders of particular bonds pledging any particular revenues or funds. An agency may issue types of bonds as it may determine, including bonds as to which the principal and interest are payable exclusively from the revenues from one or more projects, or from an interest therein or a right to the products and services thereof, or from one or more revenue producing contracts made by the agency, or its revenues generally. Any such bonds may be additionally secured by a pledge of any grant, subsidy, or contribution from any source or a pledge of any income or revenues, funds, or moneys of the agency from any source whatsoever.

(3) All bonds of an agency shall have all the qualities of negotiable instruments under the laws of this State.

(4) Bonds of an agency shall be authorized by resolution of its board and may be issued under such resolution or under a trust indenture or other security agreement, in one or more series, and shall bear the date or dates, mature at a time or times within the estimated period of usefulness of the project involved and in any event not more than 40 years after the date thereof, bear interest at such rate or rates without regard to any limitation in any other law, be in such denominations, be in such form, either coupon or registered, carry such conversion, registration, and exchange privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place or places within or without the State of Illinois, be subject to such terms of redemption with or without premium, and contain or be subject to such other terms as the resolution, trust indenture, or other security agreement may provide, and shall not be restricted by the provisions of any other law limiting the amounts, maturities, interest rates, or other terms of obligations of units of local government or private parties. The bonds shall be sold in a manner and at such price as the board shall determine at private or public sale.

(5) Bonds of an agency may be issued under the provisions of this Act without obtaining the consent of any department, division, commission, board, bureau, or agency of the State of Illinois or of any member, except as may be limited in an intergovernmental agreement, and without any other proceeding or the happening of any other condition or occurrence except as specifically required by this Act.

(6) The resolution, trust indenture, or other security agreement under which any bonds are issued shall constitute a contract with the holders of the bonds and may contain provisions, among others, prescribing:

(A) the terms and provisions of the bonds;

(B) the mortgage or pledge of and the grant of a security interest in any real or personal property and all or any part of the revenue from any project or any revenue producing

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contract made by the agency to secure the payment of bonds, subject to any agreements with the holders of bonds which might then exist;

(C) the custody, collection, securing, investments, and payment of any revenues, assets, money, funds, or property with respect to which the agency may have any rights or interest;

(D) the rates or charges for the products or services rendered by the agency, the amount to be raised by the rates or charges, and the use and disposition of any or all revenue;

(E) the creation of reserves or sinking funds and the regulation and disposition thereof;

(F) the purposes to which the proceeds from the sale of any bonds then or thereafter to be issued may be applied, and the pledge of revenues to secure the payment of the bonds;

(G) the limitations on the issuance of any additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

(H) the rank or priority of any bonds with respect to any lien or security;

(I) the creation of special funds or moneys to be held in trust or otherwise for operational expenses, payment, or redemption of bonds, reserves or other purposes, and the use and disposition of moneys held in such funds;

(J) the procedure by which the terms of any contract with or for the benefit of the holders of bonds may be amended or revised, the amount of bonds the holders of which must consent thereto, and the manner in which consent may be given;

(K) the definition of the acts or omissions to act that shall constitute a default in the duties of the agency to holders of its bonds, and the rights and remedies of the holders in the event of default, including, if the agency so determines, the right to accelerate the due date of the bonds or the right to appoint a receiver or receivers of the property or revenues subject to the lien of the resolution, trust indenture, or other security agreement;

(L) any other or additional agreements with or for the benefit of the holders of bonds or any covenants or restrictions necessary or desirable to safeguard the interests of the holders;

(M) the custody of its properties or investments, the safekeeping thereof, the insurance to be carried thereon, and the use and disposition of insurance proceeds;

(N) the vesting in a trustee or trustees, within or without the State of Illinois, of such properties, rights, powers, and duties in trust as the agency may determine; or the limiting or abrogating of the rights of the holders of any bonds to appoint a trustee, or the limiting of the rights, powers, and duties of such trustee; or

(O) the appointment of and the establishment of the duties and obligations of any paying agent or other fiduciary within or without the State of Illinois.

(7) For the security of bonds issued or to be issued by an agency, the agency may mortgage or execute deeds of trust of the whole or any part of its property and franchises.

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Any pledge of revenues, securities, contract rights, or other personal property made by an agency pursuant to this Act shall be valid and binding from the date the pledge is made. The revenues, securities, contract rights, or other personal property so pledged and then held or thereafter received by the agency or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the agency without regard to whether the parties have notice. The resolution, trust indenture, security agreement, or other instrument by which a pledge is created shall be recorded in the county in which the principal office is located in the manner provided by law.

(8) Neither the officials, the directors, nor the members of an agency nor any person executing bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof. An agency shall have power to indemnify and to purchase and maintain insurance on behalf of any director, officer, employee, or agent of the agency, in connection with any threatened, pending, or completed action, suit, or proceeding.

(9) An agency shall have power to purchase out of any funds available therefor, bonds, and to hold for re-issuance, pledge, cancel, or retire the bonds and coupons prior to maturity, subject to and in accordance with any agreements with the holders.

(10) The principal of and interest upon any bonds issued by an agency shall be payable solely from the revenue sources or funds pledged or available for their payment as authorized in this Act. Each bond shall contain a statement that it constitutes an obligation of the agency issuing the bond, that its principal and interest are payable solely from revenues or funds of the agency and that neither the State of Illinois nor any political subdivision thereof, except the issuer, nor any school district that is a member of the agency, is obligated to pay the principal or interest on the bonds and that neither the faith and credit nor the taxing power of the State of Illinois or any such political subdivision thereof or of any such school district is pledged to the payment of the principal of or the interest on the bonds.

(Source: P.A. 96-946, § 60.)

§ 105 ILCS 240/65. Charges

Sec. 65. Charges. An agency may establish, levy, and collect or may authorize, by contract, franchise, lease, or otherwise, the establishment, levying, and collection of rents, rates, and other charges for the products and services afforded by the agency or by or in connection with any eligible project or properties that it may construct, acquire, own, operate, or control or with respect to which it may have any interest or any right to the products and services thereof as it may deem necessary, proper, desirable, or reasonable, except that such agency shall not sell electricity to end-use customers otherwise than in

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accordance with the provisions of the Public Utilities Act [220 ILCS 5/1-101 et seq.], but further provided that this provision does not affect any exemption otherwise available to the agency under the Public Utilities Act. Rents, rates, and other charges shall be established so as to be sufficient to meet the operation, maintenance, and other expenses thereof, including reasonable reserves, interest, and principal payments, including payments into one or more sinking funds for the retirement of principal. An agency may pledge its rates, rents, and other revenue, or any part thereof, as security for the repayment, with interest and premium, if any, of any moneys borrowed by it or advanced to it for any of its authorized purposes and as security for the payment of amounts due and owing by it under any contract.

(Source: P.A. 96-946, § 65.)

§ 105 ILCS 240/70. School districts may contract

Sec. 70. School districts may contract. (a) In order to accomplish the purposes of this Act, a school district may enter into and carry out contracts and agreements for the sale, lease, or other use of property, real or personal, cooperative provision of services, such as police services, or the purchase of power from an agency, or transmission services, development services, and other services.

(b) Any contract and agreement shall be for a period not to exceed 50 years and shall contain other terms, conditions, and provisions that are not inconsistent with the provisions of this Act as the governing body of such school district shall approve, including without limitation provisions whereby the school district is obligated to pay for the products and services of an agency without set-off or counterclaim and irrespective of whether such products or services are furnished, made available, or delivered to the school district, or whether any project contemplated by any such contract and agreement is completed, operable or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the products and services of the project.

(c) Any contract and agreement may be pledged by the agency to secure its obligations and may provide that if one or more school districts defaults in the payment of its obligations under such contract and agreement, the remaining school districts having such contracts and agreements shall be required to pay for and shall be entitled proportionately to use or otherwise dispose of the products and services that were to be purchased by the defaulting school district.

(d) Any contract and agreement providing for payments by a school district shall be an obligation of the school district payable from and secured by such lawfully available funds as may be made pursuant to applicable law. Notwithstanding the sources of funds pledged, any contract between the agency and its members with respect to an eligible project shall not constitute an indebtedness of such members within any statutory limitation.

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(e) Nothing in this Act shall be construed to preclude a school district from appropriating and using taxes and other revenues received in any year to make payments due or to comply with covenants to be performed during that year under any contract or agreement for a term of years entered into as contemplated in this Act, subject to the provisions of applicable law.

(f) Any contract or agreement may include provisions for requirements purchases, restraints on resale or other dealings, exclusive dealing, pricing, territorial division, and other conduct or arrangements that do not have an anti-competitive effect. Provided, however, that the production, interconnection, transmission, distribution, and sale at wholesale or retail of electric energy generated by the eligible project must be in accordance with all laws, regulations, and rules applicable to generators of electricity, alternative retail electric suppliers, municipal utilities, or electric cooperatives, as applicable, but further provided that this provision does not affect any exemption otherwise available under the Public Utilities Act [220 ILCS 5/1-101 et seq.].

(g) Notwithstanding the provisions of any other law, in the making of a contract or agreement between an agency and a member, the director of the agency who represents such member must recuse himself or herself from participation in discussions or voting as director, but may participate and vote in his or her capacity as an officer of the governing body of such member, and such participation and voting shall not be a conflict of interest.

(Source: P.A. 96-946, § 70.)

§ 105 ILCS 240/97. Severability

Sec. 97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes [5 ILCS 70/1.31].

(Source: P.A. 96-946, § 97.)

§ 105 ILCS 240/999. Effective date

Sec. 999. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 96-946, § 999.)

Note.

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P.A. 96-946 was approved June 25, 2010.

EDUCATIONAL ENHANCEMENT

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College and Career Success for All Students Act

Sec.

105 ILCS 302/1.Short title
105 ILCS 302/5.Purpose
105 ILCS 302/10.Definitions.
105 ILCS 302/15.Teacher training
105 ILCS 302/20.Duties of the State Board
105 ILCS 302/25.AP exam fee waiver program

§ 105 ILCS 302/1. Short title

Sec. 1. Short title. This Act may be cited as the College and Career Success for All Students Act.

(Source: P.A. 94-534.)

Effective Date. This section is effective January 1, 2006, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

§ 105 ILCS 302/5. Purpose

Sec. 5. Purpose. The purpose of this Act is to ensure that each Illinois student has a sufficient education for success after high school and that all students have equal access to a substantive and rigorous curriculum that is designed to challenge their minds, enhance their knowledge and skills, and prepare them for success in college and work.

(Source: P.A. 94-534.)

§ 105 ILCS 302/10. Definitions.

Sec. 10. Definitions. In this Act:

"Advanced Placement course" means a course sponsored by the College Board and offered for college credit at the high school level.

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"Advanced Placement teacher" means a teacher of an Advanced Placement course.

"Pre-Advanced Placement" means set professional development resources and services that equip all middle and high school teachers with the strategies and tools they need to engage their students in active, high-level learning, thereby ensuring that every middle and high school student develops the skills, habits of mind, and concepts they need to succeed in Advanced Placement courses.

"Vertical Team" means a group of teachers and educators from different grade levels in a given discipline who work cooperatively to develop and implement a vertically aligned program aimed at helping students from diverse backgrounds acquire the academic skills necessary for success in Advanced Placement courses and other challenging courses.

(Source: P.A. 94-534.)

§ 105 ILCS 302/15. Teacher training

Sec. 15. Teacher training. (a) Subject to appropriation, a teacher of an Advanced Placement course must obtain appropriate training. Subject to appropriation, the State Board of Education shall establish clear, specific, and challenging training guidelines that require teachers of Advanced Placement courses to obtain recognized Advanced Placement training endorsed by the College Board.

(b) Advanced Placement and Pre-Advanced Placement training to teachers in Illinois high schools must do all of the following:

(1) Provide teachers of Advanced Placement and teachers in courses that lead to Advanced Placement with the necessary content knowledge and instructional skills to prepare students for success in Advanced Placement courses and examinations and other advanced course examinations and mastery of postsecondary course content.

(2) Provide administrators, including principals and counselors, with professional development that will enable them to create strong and effective Advanced Placement programs in their schools.

(3) Provide middle grade, junior high, and high school teachers with Advanced Placement Vertical Team training and other Pre-Advanced Placement professional development that prepares students for success in Advanced Placement courses.

(4) Support the implementation of an instructional program for students in grades 6 through 12 that provides an integrated set of instructional materials, diagnostic assessments, and teacher professional development in reading, writing, and mathematics that prepares all students for enrollment and success in Advanced Placement courses and in college.

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(Source: P.A. 94-534.)

§ 105 ILCS 302/20. Duties of the State Board

Sec. 20. Duties of the State Board. (a) In order to fulfill the purposes of this Act, the State Board of Education shall encourage school districts to offer rigorous courses in grades 6 through 11 that prepare students for the demands of Advanced Placement course work. The State Board of Education shall also encourage school districts to make it a goal that all 10th graders take the Preliminary SAT/National Merit Scholars Qualifying Test (PSAT/NMSQT) so that test results will provide each high school with a database of student assessment data that guidance counselors and teachers will be able to use to identify students who are prepared or who need additional work to be prepared to enroll and be successful in Advanced Placement courses, using a research-based Advanced Placement identification program provided by the College Board.

(b) The State Board of Education shall do all of the following:

(1) Seek federal funding through the Advanced Placement Incentive Program and the Math-Science Partnership Program and use it to support Advanced Placement and Pre-Advanced Placement teacher professional development and to support the implementation of an integrated instructional program for students in grades 6 through 12 in reading, writing, and mathematics that prepares all students for enrollment and success in Advanced Placement courses and in college.

(2) Focus State and federal funding with the intent to carry out activities that target school districts serving high concentrations of low-income students.

(3) Subject to appropriation, provide a plan of communication that includes without limitation disseminating to parents materials that emphasize the importance of Advanced Placement or other advanced courses to a student's ability to gain access to and to succeed in postsecondary education and materials that emphasize the importance of the PSAT/NMSQT, which provides diagnostic feedback on skills and relates student scores to the probability of success in Advanced Placement courses and examinations, and disseminating this information to students, teachers, counselors, administrators, school districts, public community colleges, and State universities.

(4) Subject to appropriation, annually evaluate the impact of this Act on rates of student enrollment and success in Advanced Placement courses, on high school graduation rates, and on college enrollment rates.

(Source: P.A. 94-534.)

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§ 105 ILCS 302/25. AP exam fee waiver program

Sec. 25. AP exam fee waiver program. Subject to appropriation, the State Board of Education shall create, under the College and Career Success for All Students program set forth in this Act, a program in public schools where at least 40% of students qualify for free or reduced-price lunches whereby fees charged by the College Board for Advanced Placement exams are waived by the school, but paid for by the State, for those students who do not qualify for a fee waiver provided by federal funds or the College Board.

(Source: P.A. 95-491, § 5.)

Effective Date. Section 99 of P.A. 95-491 makes this section effective upon becoming law. The Act was approved August 28, 2007.

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Illinois Mathematics and Science Academy Law

Sec.

105 ILCS 305/0.01.[Short title]
105 ILCS 305/1.Policy and Purposes
105 ILCS 305/2.Establishment, Funding and Location
105 ILCS 305/3.Board of Trustees
105 ILCS 305/4.Powers of the Board

§ 105 ILCS 305/0.01. [Short title]

Sec. 0.01. This Article may be cited as the Illinois Mathematics and Science Academy Law.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act in relation to educational reform and the financing thereof, amending Acts therein named. Article III.

Cite: 105 ILCS 305/0.01 et seq.

Source: P.A. 84-126.

Date: Approved August 1, 1985.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1503.

§ 105 ILCS 305/1. Policy and Purposes

Sec. 1. Policy and Purposes. It shall be the policy of the State of Illinois to provide excellence in mathematics and science education in order to nourish an informed citizenry, assure technological skills for the work force, and assist in the preparation of professionals to serve the interests of Illinois in such fields as engineering, research, teaching and computer technology. It shall further be the policy to enlist the support of the educational, industrial, and scientific communities in a cooperative effort to provide excellence in science and mathematics education. As a symbol of this cooperative endeavor, there shall be established the Illinois Mathematics and Science Academy to

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serve the people of Illinois as a preparatory institution and the school system of the State as a catalyst and laboratory for the advancement of teaching.

The primary role of the Academy shall be to offer a uniquely challenging education for students talented in the areas of mathematics and science. Both high school and college levels of instruction will be provided in order to assure appropriate linkage with higher education. Other programs deemed necessary to assure the elements of a strong general education required of creative scientists will be provided.

The Academy shall also carry a responsibility to stimulate further excellence for all Illinois schools in mathematics and science. That responsibility may be exercised through any or all of the following means:

1.Stimulating curriculum development and revisions through the collaborative efforts of the interacting institutions involved in the Academy including: universities, secondary schools, the industrial sector and national laboratories.

2.Providing preservice training sites for persons in preparation for the teaching of science and mathematics.

3.Hosting summer institute opportunities for Illinois teachers modeled after the successful National Science Foundation program prevalent in the 1960s.

4.Providing opportunities for exchanging teaching or faculty seats at the Academy for science and math educators in the elementary and secondary schools in this State.

5.Creating the opportunity and potential to link vocational programs, education for technology and employment programs to the work of the Academy.

6.Offering speakers and programs for teacher institutes and in-service training around the State.

7.Producing videotapes of lectures and experiments for use in the schools of this State.

8.Providing assistance in identifying necessary competencies to be incorporated in public school district graduation requirements.

(Source: P.A. 84-126.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1503-1.

§ 105 ILCS 305/2. Establishment, Funding and Location

Sec. 2. Establishment, Funding and Location. There is hereby created the Illinois Mathematics and Science Academy, which shall be a residential institution located in the

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Fox River Valley in close proximity to the national science laboratories based in Illinois. The Academy may develop additional campuses throughout the State, however, any additional campus does not need to serve as a residential institution. The Academy shall be a State agency, funded by State appropriations, private contributions and endowments. Minimal fees for residential students may be charged. The Academy may admit those students who have completed the academic equivalent of the 9th grade and may offer a program of secondary and postsecondary course work. Admission shall be determined by competitive examination.

In order to be eligible for State appropriations, the Academy shall submit to the Board of Higher Education not later than the 1st day of October of each year its budget proposal for the operation and capital needs of the Academy for its next fiscal year.

(Source: P.A. 86-109; 95-793, § 7.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1503-2.

Effect of Amendments. The 2008 amendment by P.A. 95-793, effective August 8, 2008, added the second sentence in the first paragraph; and made stylistic changes.

§ 105 ILCS 305/3. Board of Trustees

Sec. 3. Board of Trustees. The Illinois Mathematics and Science Academy shall be governed by a Board of Trustees which shall consist of the following members:

1.Ex officio nonvoting members who shall be: the State Superintendent of Education; the Executive Director of the Illinois Community College Board; the Executive Director of the Board of Higher Education; and the superintendent of schools of the school district where each campus of the Academy is located.

2.Three Representatives of Secondary Education, one of whom must be a math or science teacher, appointed by the State Superintendent of Education.

3.Two Representatives of Higher Education, one of whom must be a Dean of Education, appointed by the Executive Director of the Board of Higher Education.

4.Three representatives of the scientific community in Illinois appointed by the Governor.

5.Three representatives of the Illinois private industrial sector appointed by the Governor.

6.Two members representative of the general public at large appointed by the Governor.

With the exception of the initial appointments, the members terms of office shall be for 6 years. At the first meeting members shall draw lots for appointments of 2, 4 or 6 year

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initial terms. Vacancies shall be filled for the unexpired portion of the terms by appointment of the officer who appointed the person causing such vacancy. The initial terms shall commence upon appointment and upon expiration of a term, the member shall continue serving until a successor is appointed. The Board shall select a chair from among its members who shall serve a 2 year term as chair. Members shall receive no salary but shall be reimbursed for all ordinary and necessary expenses incurred in performing their duties as members of the Board.

(Source: P.A. 84-126; 95-793, § 7.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1503-3.

Effect of Amendments. The 2008 amendment by P.A. 95-793, effective August 8, 2008, in 1. deleted "Four" preceding "ex officio" and made a related change, deleted "State" preceding "Board", substituted "where each campus of the Academy" for "in which the Academy", and made a stylistic change; and deleted "Illinois" preceding "Board" in 3.

§ 105 ILCS 305/4. Powers of the Board

Sec. 4. Powers of the Board. The board is hereby authorized to:

(a) Accept donations, bequests, or other forms of financial assistance for educational purposes from any public or private person or agency and comply with rules and regulations governing grants from the federal government or from any other person or agency, which are not in contravention of the Illinois Constitution or the laws of the State of Illinois.

(b) Purchase equipment and make improvements to facilities necessary for the use of the school, in accordance with applicable law.

(c) Adopt, amend, or repeal rules, regulations, and policies necessary or proper for the conduct of the business of the board.

(d) Award certificates and issue diplomas for successful completion of programs of study requirements.

(e) Select a Director who shall be the chief administrative officer of the Academy and who shall administer the rules, regulations, and policies adopted by the Board pursuant hereto. The Director shall also be the chief administrative officer of the Board and shall be responsible for all the administrative functions, duties, and needs of the Board.

(f) Determine faculty and staff positions necessary for the efficient operation of the school and select personnel for such positions.

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(g) Prepare and adopt an annual budget necessary for the continued operation of the school.

(h) Enter into contracts and agreements which have been recommended by the Director, in accordance with applicable law, and to the extent that funds are specifically appropriated therefor, with other public agencies with respect to cooperative enterprises and undertaking related to or associated with an educational purpose or program affecting education in the school. This shall not preclude the Board from entering into other such contracts and agreements that it may deem necessary to carry out its duties and functions.

(i) Perform such other functions as are necessary to the supervision and control of those phases of education under its supervision and control.

(j) The Board shall delegate to the Director such of its administrative powers and duties as it deems appropriate to aid the Director in the efficient administration of his responsibility for the implementation of the policies of the Board.

(k) The Academy shall be empowered to lease or purchase real and personal property on commercially reasonable terms for the use of the Academy. After July 1, 1988, any leases or purchases of real or personal property and any disposition thereof by the Academy must be in compliance with the provisions of The Civil Administrative Code of Illinois [20 ILCS 5/1-1 et seq.] and the State Property Control Act [30 ILCS 605/1 et seq.]. Personal property acquired for the use of the Academy shall be inventoried and disposed of in accordance with the State Property Control Act [30 ILCS 605/1 et seq.].

In addition to the authorities granted herein and any powers, duties, and responsibilities vested by any other applicable laws, the Board shall:

(1) Adopt rules, regulations, and policies necessary for the efficient operation of the school.

(2) Establish criteria to be used in determining eligibility of applicants for enrollment. Such criteria shall ensure adequate geographic, sexual and ethnic representation.

(3) Determine subjects and extracurricular activities to be offered.

(4) Pay salaries and expenses, including but not necessarily restricted to facilities, equipment, and supplies of the faculty and staff of the Academy out of funds appropriated or otherwise made available for the operating and administrative expenses of the Board and the Academy.

(5) Exercise budgetary responsibility and allocate for expenditure by the Academy and programs under its jurisdiction, all monies appropriated or otherwise made available for purposes of the Board and of such Academy and programs.

(6) Prescribe and select for use in the school free school books and other materials of instruction for children enrolled in the school and programs under its jurisdiction for which the General Assembly provides funds.

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(7) Prepare and adopt or approve programs of study and rules, bylaws, and regulations for the conduct of students and for the government of the school and programs under its jurisdiction.

(8) Employ such personnel as may be needed, establish policies governing their employment and dismissal, and fix the amount of their compensation. In the employment, establishment of policies and fixing of compensation the board may make no discrimination on account of sex, race, creed, color or national origin.

The Academy, its board of trustees, and its employees shall be represented and indemnified in certain civil law suits in accordance with "An Act to provide for representation and indemnification in certain civil law suits", approved December 3, 1977, as amended [5 ILCS 350/1 et seq.].

Neither the Academy, nor its officers, employees or board members shall participate in the creation of any corporation, joint venture, partnership, association, or other organizational entity which exercises, expands, or enhances the powers, duties, or responsibilities of the Academy unless specifically authorized by the General Assembly by law.

This Section does not restrict the Academy from creating any organization entity which is within or a part of the Academy.

(Source: P.A. 86-109.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1503-4.

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Illinois Summer School for the Arts Act

Sec.

105 ILCS 310/1.[Short title]
105 ILCS 310/2.Policy and purposes
105 ILCS 310/3.Establishment, funding, and location
105 ILCS 310/4.[Repealed.]
105 ILCS 310/4.5.Transfer to State Board of Education
105 ILCS 310/5.[Repealed.]

§ 105 ILCS 310/1. [Short title]

Sec. 1. This Act shall be known and may be cited as the "Illinois Summer School for the Arts Act".

(Source: P.A. 84-1351.)

Derivation.

Title: An Act in relation to the Illinois Summer School for the Arts.

Cite: 105 ILCS 310/1 et seq.

Source: P.A. 84-1351.

Date: Approved September 10, 1986.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1751.

§ 105 ILCS 310/2. Policy and purposes

Sec. 2. Policy and purposes. It shall be the policy of the State of Illinois to seek out and nurture the artistic talent of high school students from throughout the State who exhibit unique artistic ability in the expressive areas of Dance, Language Arts, Media, Music, Theatre, and Visual Arts, in order to preserve and enhance the State's historic commitment to the cultural richness which contributes to the ability of the State to attract and maintain a citizenry who choose to reside in Illinois for its support of a quality life as well as for its economic advantages. It shall further be the policy to enlist the support of the educational, professional, and commercial communities in a cooperative effort to

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provide excellence in ARTS education and to serve as a model for the development of innovative instructional techniques and curricula. As a symbol of this cooperative endeavor, there shall be established the Illinois Summer School for the Arts to serve the people of Illinois as a place to nourish the creativity of its youth who possess outstanding talent in the various arts areas, and to return these young people to their home community better prepared to make a contribution to the cultural opportunities available in their town.

The primary mission of the Illinois Summer School for the Arts is to seek out the artistically talented high school students from throughout the State and to immerse them in a challenging residential arts programs, unlike those typically available in local schools, where under the instruction of outstanding teachers and professional artists they will better understand how their talents can be further developed. Additionally, the summer arts school will provide opportunities to test new approaches in the teaching of the arts and staff development, and serve as a model for school programming which can be carried out in community schools State-wide. The Summer Arts School shall also carry a responsibility to provide instruction about how the participants whether students, intern, or teacher can make a positive contribution to the development of the arts in their local community upon their return home.

The mission of the Illinois Summer School for the Arts shall be carried out through the following means:

(a) Regionally based talent searches shall be conducted to identify the most artistically talented high school students from throughout the State from grades 9, 10, and 11 in the six arts components.

(b) Teachers for the Summer Arts School shall be selected from throughout the State based upon criteria which insure the highest quality faculty represented by professional artists known for the quality of their work, teachers of the arts recognized for their excellence in teaching and curriculum development by their colleagues, and individuals possessing unique insights about the commercial and professional possibilities available to aspiring artists.

(c) The instructional program shall be enhanced by visiting lecturers, performers and special exhibits open to the public by way of open houses and audience participation.

(d) The Summer Arts School shall network with existing professional organizations, universities, and arts programs to foster the exchange of personnel, equipment, and conceptual enrichment. Such interaction shall include contributions in kind as well as consulting relationships.

(e) Faculty of the Summer Arts School shall present professional papers and lectures around the State and in professional conferences nationally about the program and the potential for improved arts programming at the local level.

(f) Participants will have access to facilities and equipment seldom available in most high school settings where they will be able to expand their knowledge of the mediums

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available to creative artists in the professional and commercial worlds.

(Source: P.A. 86-1028.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1752.

§ 105 ILCS 310/3. Establishment, funding, and location

Sec. 3. Establishment, funding, and location. There is hereby created the Illinois Summer School for the arts which shall be a residential arts program, conducted in the summer, at a State operated institution which successfully bids to host the program and which affords the program appropriate laboratory space, equipment, office space, recreational opportunities, and housing. The Summer Arts School shall be funded by Federal grants and State appropriations. Private contributions and endowment programs may be established. Special scholarships shall be available to assist economically disadvantaged students and special needs students who require assistance or who may have other exceptional needs which if not addressed would deny their participation in the program. The Illinois Summer School for the Arts shall admit those students who have completed the 9th, 10th, or 11th grades, and who have been determined to be eligible to attend based upon the criteria established for the arts area of their talent. Furthermore, students shall be selected from throughout the State to maintain a geographically representative population.

(Source: P.A. 84-1351.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1753.

§ 105 ILCS 310/4: Repealed by P.A. 95-793, § 15, effective August 8, 2008.

§ 105 ILCS 310/4.5. Transfer to State Board of Education

Sec. 4.5. Transfer to State Board of Education. (a) On the effective date of this amendatory Act of the 95th General Assembly [P.A. 95-793], the board of trustees of the

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Illinois Summer School for the Arts is abolished and the terms of all members end. On that date, all of the powers, duties, assets, liabilities, employees, contracts, property, records, pending business, and unexpended appropriations of the board of trustees of the Illinois Summer School for the Arts are transferred to the State Board of Education.

(b) For purposes of the Successor Agency Act and Section 9b of the State Finance Act, the State Board of Education is declared to be the successor agency of the board of trustees of the Illinois Summer School for the Arts.

(c) Beginning on the effective date of this amendatory Act of the 95th General Assembly, references in statutes, rules, forms, and other documents to the board of trustees of the Illinois Summer School for the Arts shall, in appropriate contexts, be deemed to refer to the State Board of Education.

(d) Rules, standards, and procedures of the board of trustees of the Illinois Summer School for the Arts in effect on the effective date of this amendatory Act of the 95th General Assembly shall be deemed rules, standards, and procedures of the State Board of Education and shall remain in effect until amended or repealed by the State Board of Education.

(Source: P.A. 95-793, § 8.)

Effective Date. Section 99 of P.A. 95-793 made this section effective upon becoming law. The Act was approved August 8, 2008.

§ 105 ILCS 310/5: Repealed by P.A. 95-793, § 15, effective August 8, 2008.

ADULT AND VOCATIONAL EDUCATION

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Adult Education Act

Article I

Short Title; Construction; Transfer Of Powers And Duties
105 ILCS 405/1-1.Short title
105 ILCS 405/1-2.Construction
105 ILCS 405/1-3.Definitions
105 ILCS 405/1-4.[Transfer of powers; transition]

Article II

Illinois Community College Board
105 ILCS 405/2-1.Contracting with other state agencies
105 ILCS 405/2-2.Agreement with public or private agencies
105 ILCS 405/2-4.Area Planning Councils

Article III

Apportionment
105 ILCS 405/3-1.Apportionment for Adult Education Courses
105 ILCS 405/3-2.Agreements by boards of education
105 ILCS 405/3-3.Bilingual courses; State grants

Article IV

Hard Core Dropouts
105 ILCS 405/4-1.Hard Core Dropouts

Article I.

Short Title; Construction; Transfer of Powers and Duties

§ 105 ILCS 405/1-1. Short title

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Sec. 1-1. Short title. This Act may be cited as the Adult Education Act.

(Source: P.A. 86-1475.)

Derivation.

Title: An Act in relation to adult and continuing education in the State of Illinois.

Cite: 105 ILCS 405/1-1 et seq.

Source: L. 1967, p. 3066.

Date: Approved August 14, 1967.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 201-1.

Cross References.

As to grants for supplemental activities to improve or expand services under this Act, see 105 ILCS 5/10-22.20.

§ 105 ILCS 405/1-2. Construction

Sec. 1-2. Construction. The provisions of this Act, so far as they are the same as those of any prior statute, shall be construed as a continuation of such prior provisions, and not as a new enactment.

(Source: Laws 1967, p. 3066.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 201-2.

§ 105 ILCS 405/1-3. Definitions

Sec. 1-3. Definitions. The following terms shall have the meanings respectively prescribed for them, except as the context otherwise requires:

"Adult and Continuing Education" means organized, systematic instruction, and related educational services, for students enrolled in a program conducted by a publicly

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supported educational institution. Such students are beyond compulsory education age, not currently enrolled in a regular elementary or high school, and are not seeking college credit toward an associate degree or degree. The instruction may be full-time or part-time for the purpose of providing students or groups with opportunities for personal improvement and enrichment, preparation for effective participation as citizens (including English for foreign-speaking individuals), family life and parent education, elementary and high school education, for which credit may be granted toward diploma requirements, occupational and technical training and retraining.

"Board" means (i) the State Board of Education until July 1, 2001 and (ii) the Illinois Community College Board on and after July 1, 2001.

(Source: P.A. 82-622; 91-830, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 201-3.

Effect of Amendments. The 2000 amendment by P.A. 91-830, effective July 1, 2000, deleted the subdivision (a) designation and inserted "means" and made a related change in the first sentence; and added the definition "Board".

§ 105 ILCS 405/1-4. [Transfer of powers; transition]

Sec. 1-4. On July 1, 2001, all powers and duties of the State Board of Education and the State Superintendent of Education under this Act and related grants and contracts shall be transferred to the Illinois Community College Board, and references to the State Board of Education or the State Superintendent of Education in this Act or any other law concerning adult and continuing education shall be deemed to refer to the Illinois Community College Board. All rules, standards, and procedures adopted by the State Board of Education or the State Superintendent of Education under this Act shall continue in effect as the rules, standards, and procedures of the Illinois Community College Board, until they are modified by the Illinois Community College Board. In order to effect an orderly transition, from July 1, 2000 until July 1, 2001, the State Board of Education and the State Superintendent of Education shall coordinate administration of this Act with the Illinois Community College Board.

(Source: P.A. 91-830, § 10.)

Effective Date. Section 99 of P.A. 91-830 made this section effective July 1, 2000.

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Article II.

Illinois Community College Board

§ 105 ILCS 405/2-1. Contracting with other state agencies

Sec. 2-1. Contracting with other state agencies. For the purpose of promoting and establishing special classes for the instruction (1) of persons of age 21 or older and (2) of persons less than age 21 and not otherwise in attendance in the public schools, the Board may contract with other state agencies to accept and expend appropriations given such agencies for educational purposes to reimburse the community college district or local school district for the cost of such program.

(Source: P.A. 81-1508; 91-830, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 202-1.

Effect of Amendments. The 2000 amendment by P.A. 91-830, effective July 1, 2000, substituted "Board" for "State Board of Education".

§ 105 ILCS 405/2-2. Agreement with public or private agencies

Sec. 2-2. Agreement with public or private agencies. The State Board shall enter into agreements with public or private welfare, educational, or other agencies, other than the public common schools, competent to provide the education or training defined in said Section, for the establishment of such special classes by such agencies.

The Board shall establish the standards for such courses of instruction and supervise the administration thereof. The Board shall determine the cost of such instruction, including therein such incidental costs of student transportation, facilities, or provision for child care for students who are parents, and other special needs of the students, as authorized by Section 10-22.20 of the School Code [105 ILCS 5/10-22.20].

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The provisions of Section 10-22.20 of the School Code [105 ILCS 5/10-22.20] respecting the reimbursement of the total cost of such instruction or training by the Department of Employment Security for students who may be authorized under the Illinois Public Aid Code, approved April 11, 1967 [305 ILCS 5/1-1 et seq.], shall be applicable to classes established under this Act. Each agency entering into an agreement shall keep accurate and detailed accounts of students assigned to it and receiving instruction in such special classes and submit claims for reimbursement in the manner provided for school districts or community college districts under said Section 10-22.20 [105 ILCS 5/10-22.20], and claims for reimbursement shall be processed as therein provided.

Any such agreement may be terminated by the Board when it determines (1) that such classes are no longer necessary, or (2) that the instruction or training established by an agency fails to meet the established standards, or (3) that the classes established by a school district or community college district, within whose geographical limits the agency is located, pursuant to Section 10-22.20 of the School Code [105 ILCS 5/10-22.20], are adequate for the purpose.

(Source: P.A. 83-1503; 91-830, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 202-2.

Effect of Amendments. The 2000 amendment by P.A. 91-830, effective July 1, 2000, rewrote the section to the extent that a detailed comparison would be impracticable.

§ 105 ILCS 405/2-4. Area Planning Councils

Sec. 2-4. Area Planning Councils. On or before October 15, 1982, an Area Planning Council shall be established within the boundaries of each community college district. Each school district included within the boundaries of the community college district maintaining either grades kindergarten through 12 or grades 9 through 12; each regional superintendent of schools, the majority of whose region is included within the boundaries of the community college district; and the community college district shall be entitled to one representative on the Area Planning Council. Area Planning Councils may elect to form a joint Area Planning Council consisting of 2 or more community college districts as approved by the Board. School districts which are not included within the boundaries of a community college district may elect to participate in an Area Planning Council associated with a community college district with the approval of the Board; or they may elect to establish an Area Planning Council which is not associated with a community college district with the approval of the Board.

On or before March 1 of each year each Area Planning Council shall submit an annual Adult Education Plan for the area. The Area Adult Education Plan shall provide for the

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development and coordination of adult education programs in the area. If the Board finds that the annual Area Adult Education Plan submitted by the Area Planning Council meets the requirements of this amendatory Act of 1982 and the established standards and guidelines, the Board shall approve the Plan. The approval of adult education programs by the Board for reimbursement under Section 10-22.20 of the School Code [105 ILCS 5/10-22.20] shall be based on the Adult Education Plan approved for the Area.

On or before March 1, 2002 and each year thereafter, the Board shall submit an annual report to the Governor and the General Assembly for adult education for the preceding school year. The annual report shall include a summary of adult education needs and programs; the number of students, credit hours or units of instruction, total adult education costs, and State reimbursement for adult basic, adult secondary and vocational skills programs; the criteria used for program approval and any recommendations.

(Source: P.A. 83-460; 91-830, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 202-4.

Effect of Amendments. The 2000 amendment by P.A. 91-830, effective July 1, 2001, substituted "Board" for "State Board of Education" and deleted "in consultation with the Illinois Community College Board" following "Board" throughout the section and made stylistic changes; and substituted "2002" for "1983" in the first sentence of the third paragraph.

Article III.

Apportionment

§ 105 ILCS 405/3-1. Apportionment for Adult Education Courses

Sec. 3-1. Apportionment for Adult Education Courses. Any school district maintaining adult education classes for the instruction of persons over 21 years of age and youths under 21 years of age whose schooling has been interrupted shall be entitled to claim an apportionment in accordance with the provisions of Section 10-22.20 of the School Code [105 ILCS 5/10-22.20] and Section 2-4 of this Act [105 ILCS 405/2-4]. Any public community college district maintaining adult education classes for the instruction of

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persons over 21 years of age and youths under 21 years of age whose schooling has been interrupted shall be entitled to claim an apportionment in accordance with the provisions of Section 2-16.02 [105 ILCS 5/2-16.02] of the Public Community College Act.

Reimbursement as herein provided shall be limited to courses regularly accepted for graduation from elementary or high schools and for Americanization and General Educational Development Review classes which are approved by the Board.

If the amount appropriated for this purpose is less than the amount required under the provisions of this Section, the apportionment for local districts shall be proportionately reduced.

(Source: P.A. 83-460; 91-830, § 10; 93-21, § 10-10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 203-1.

Effect of Amendments. The 2000 amendment by P.A. 91-830, effective July 1, 2000, substituted "Board" for "State Board of Education" in the second paragraph.

The 2003 amendment by P.A. 93-21, effective July 1, 2003, in the first paragraph deleted "or public community college district" after "school district or" in the first sentence and added the second sentence.

§ 105 ILCS 405/3-2. Agreements by boards of education

Sec. 3-2. Agreements by boards of education. Two or more boards of education or public community college boards may provide by agreement, adopted by resolution of the participating boards, for the joint employment of a Director of Adult Education, for an adult education program, and for utilization of buildings, equipment, and other school facilities under the control of one or more of the participating boards. Such an agreement shall direct one of the boards of education or public community college boards to receive and disburse funds and to administer the program for the benefit of all participating school districts or public community college districts.

(Source: P.A. 82-622.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 203-2.

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§ 105 ILCS 405/3-3. Bilingual courses; State grants

Sec. 3-3. Bilingual courses; State grants. In school districts having a substantial Spanish-speaking population, the Board shall establish standards for and supervise the development of bilingual, adult vocational and educational programs under this Act. Such classes, when approved, qualify for the reimbursement provided under Section 3-1 of this Act [105 ILCS 405/3-1]. In addition, from moneys appropriated for that purpose, the Board may provide grants to school districts to establish pilot programs under this Section.

(Source: P.A. 79-933; 91-830, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 203-3.

Effect of Amendments. The 2000 amendment by P.A. 91-830, effective July 1, 2001, substituted "Board" for "State Superintendent of Education" and made a related change.

Article IV.

Hard Core Dropouts

§ 105 ILCS 405/4-1. Hard Core Dropouts

Sec. 4-1. Hard Core Dropouts. School boards or community college boards may establish or enter into contracts with public or private agencies for approved programs which provide essential academic and employability skills needed to obtain gainful employment for hard core dropout youth between the ages of 16 and 21 years who are no longer enrolled in school, including necessary support services.

Pursuant to appropriation, the Board may award grants for the establishment and operation of such programs which are contained within the area adult education plans as required under this Act. Such grants, to the extent practicable, shall be based upon student performance outcomes of academic achievement and attendance as well as the extent of contributions to such programs by proposed recipients. The Board shall

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promulgate rules for the administration of grants and the operation and evaluation of such programs.

(Source: P.A. 84-1068; 91-830, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 204-1.

Effect of Amendments. The 2000 amendment by P.A. 91-830, effective July 1, 2000, substituted "Board" for "State Board of Education" twice.

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Adult Education Reporting Act

Sec.

105 ILCS 410/0.01.Short title
105 ILCS 410/1.[Agency defined]
105 ILCS 410/2.[Report to be filed by agencies]

§ 105 ILCS 410/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Adult Education Reporting Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act concerning programs available to adults through State agencies.

Cite: 105 ILCS 410/0.01 et seq.

Source: P.A. 85-807.

Date: Approved September 24, 1987.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1850.

§ 105 ILCS 410/1. [Agency defined]

Sec. 1. As used in this Act, "agency" means: the Departments of Corrections, Public Aid, Commerce and Economic Opportunity, Human Services, and Public Health; the Secretary of State; the Illinois Community College Board; and the Administrative Office of the Illinois Courts. On and after July 1, 2001, "agency" includes the State Board of Education and does not include the Illinois Community College Board.

(Source: P.A. 85-807; 89-507, § 90D-43; 91-830, § 15; 94-793, § 635.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 1851.

Section 995 of P.A. 94-793 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 1996 amendment by P.A. 89-507, effective July 1, 1997, inserted a comma following "As used in this Act", substituted "Human Services" for "Alcoholism and Substance Abuse, Mental Health and Developmental Disabilities, Rehabilitation Services", substituted a semicolon for a comma following "the Secretary of State" and inserted a semicolon following "Illinois Community College Board".

The 2000 amendment by P.A. 91-830, effective July 1, 2000, added the last sentence.

The 2006 amendment by revisory act P.A. 94-793, effective May 19, 2006, substituted references to "Governor's Office of Management and Budget" for references to "Bureau of the Budget", and substituted references to "Department of Commerce and Economic Opportunity" for references to "Department of Commerce and Community Affairs".

§ 105 ILCS 410/2. [Report to be filed by agencies]

Sec. 2. (a) Within 90 days of the effective date of this Act, each agency shall file with the State Board of Education a report listing all education, training or intern programs, grants, loans or other services it administers or makes available for providing education or training to Illinois adult citizens as defined in Section 10-22.20 of the School Code [105 ILCS 5/10-22.20]. Before July 1, 2001, the State Board of Education shall file with the Illinois Community College Board a report listing all education, training or intern programs, grants, loans, or other services it administers or makes available for providing education or training to Illinois adult citizens as defined in Section 10-22.20 of the School Code [105 ILCS 5/10-22.20].

(b) Such list shall be updated annually, with the list being updated with the Illinois Community College Board instead of the State Board of Education beginning on July 1, 2001. Before July 1, 2001, the State Board of Education shall forward a copy of each updated list to the Illinois Community College Board.

(c) If an agency has no education or training services for adult citizens in Illinois, the report shall so state.

(Source: P.A. 85-807; 91-830, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 1852.

Effect of Amendments. The 2000 amendment by P.A. 91-830, effective July 1, 2000, inserted the second sentence of subsection (a); and inserted the language in subsection (b) beginning

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with "with the list" to the end.

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Conservation Education Act

Sec.

105 ILCS 415/0.01.Short title
105 ILCS 415/1.[Definitions]
105 ILCS 415/2.[Division of Conservation Education established]
105 ILCS 415/3.Advisory Board
105 ILCS 415/4.[Powers and duties of Division]
105 ILCS 415/5.[Conservation education program to be open to interested persons; classes; sponsors; costs]
105 ILCS 415/7.[Rules and regulations]

§ 105 ILCS 415/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Conservation Education Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act in relation to the promotion of conservation education and establishment of a division of conservation education under the State Board of Education.

Cite: 105 ILCS 415/0.01 et seq.

Source: L. 1957, p. 997. Title amended by P.A. 81-1508.

Date: Approved June 29, 1957.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 698.01.

§ 105 ILCS 415/1. [Definitions]

Sec. 1. Definitions: as used in this Act:

(a) "State agency" means the Board of Trustees of the University of Illinois, the Board of Trustees of Southern Illinois University, the Board of Trustees of Chicago State University, the Board of Trustees of Eastern Illinois University, the Board of Trustees of Governors State University, the Board of Trustees of Northeastern Illinois University, the

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Board of Trustees of Western Illinois University, boards of education and boards of directors of public schools, elected State officers and departments, boards and commissions and other agencies of State government.

(b) "School" means any school or class established by this Act.

(Source: Laws 1967, p. 506; P.A. 89-4, § 50-135.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 698.1.

P.A. 89-24, § 5 amended P.A. 89-4, § 99-1 containing the effective date provisions. P.A. 89-24 did not affect the January 1, 1996 effective date of this section however.

Effect of Amendments. The 1995 amendment by P.A. 89-4, effective January 1, 1996, in subsection (a), substituted "the Board of Trustees of Chicago State University, the Board of Trustees of Eastern Illinois University, the Board of Trustees of Governors State University, the Board of Trustees of Northeastern Illinois University, the Board of Trustees of Western Illinois University" for "the Board of Governors of State Colleges and Universities".

§ 105 ILCS 415/2. [Division of Conservation Education established]

Sec. 2. There is hereby established a Division of Conservation Education under the State Board of Education.

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 698.2.

§ 105 ILCS 415/3. Advisory Board

Sec. 3. Advisory Board. (a) An Advisory Board is hereby established consisting of the Director of Agriculture, the Director of Natural Resources, the Director of the Environmental Protection Agency, the State Superintendent of Education, the Director of Commerce and Economic Opportunity, the Director of Public Health, the Director of Nuclear Safety, the Director of the University of Illinois Cooperative Extension Service, and 4 members to be appointed by the Governor. The appointed members shall consist of: a representative of the colleges and universities of the State of Illinois, a member of a

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soil conservation district within the State of Illinois, a classroom teacher who has won the Conservation Teacher of the Year Award, and a representative of business and industry. All appointive members shall be appointed for terms of 3 years except when an appointment is made to fill a vacancy, in which case the appointment shall be made by the Governor for the unexpired term of the position vacant. In selecting the appointive members of the Advisory Board, the Governor shall give due consideration to the recommendations of such professional organizations as are concerned with the conservation education program. Members of the Advisory Board shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in the administration of the Act. Each of the members serving ex officio may designate a person to serve in his or her place.

(b) The Advisory Board shall select its own Chairman, establish rules and procedures not inconsistent with this Act and shall keep a record of matters transpiring at all meetings. The Board shall hold regular meetings at least 4 times each year and special meetings shall be held at the call of the Chairman or any 3 members of the Board. All matters coming before the Board shall be decided by a majority vote of those present at any meeting.

(c) The Advisory Board from time to time shall make recommendations concerning the conservation education program within the State of Illinois.

(Source: P.A. 83-1362; 89-445, § 9A-44; 92-229, § 5; 94-793, § 640.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 698.3.

Section 995 of P.A. 94-793 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 1996 amendment by P.A. 89-445, effective February 7, 1996, in the first paragraph, in the first sentence, substituted "Natural Resources plus a person designated by the Director of Natural Resources" for "Conservation" and deleted "the Director of the Department of Energy and Natural Resources" and inserted a comma after "Education".

The 2001 amendment by P.A. 92-229, effective August 2, 2001, added the section heading; rewrote subsection (a) to the extent that a detailed comparison would be impracticable; added the subsection designation (b) and added subsection (c).

The 2006 amendment by revisory act P.A. 94-793, effective May 19, 2006, substituted references to "Governor's Office of Management and Budget" for references to "Bureau of the Budget", and substituted references to "Department of Commerce and Economic Opportunity" for references to "Department of Commerce and Community Affairs".

§ 105 ILCS 415/4. [Powers and duties of Division]

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Sec. 4. The Division shall have the power and it shall be its duty:

A.To cooperate with the Federal government and State agencies engaged in a program of adult education to the extent and in the manner necessary to carry out the provisions of this Act.

B.To promote and aid in the establishment of schools and classes within the State, for the purpose of teaching the methods of conservation of wildlife, forests, timber lands, minerals and scenic and recreational areas, soil and water concerning which the Departments of Agriculture and Natural Resources of the State of Illinois have an interest. The Division may establish and operate branches of such schools at any location in this State determined by the Division to be suitable therefor and as the public convenience may require.

C.To cooperate with other State or Federal agencies in the operation of schools and branches thereof in developing and teaching a conservation education program and with the approval of any State agency affected, may use the facilities under the control or custody of any other State agency. All State agencies are granted authority to permit the use of their facilities for such purpose and to cooperate with the Division in the development and teaching of conservation education programs.

D.To establish courses to be taught in the conservation education program, with the advice of the Advisory Board.

(Source: Laws 1963, p. 1104; P.A. 89-445, § 9A-44.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 698.4.

Effect of Amendments. The 1996 amendment by P.A. 89-445, effective February 7, 1996, in subsection B, in the first sentence, substituted "Natural Resources" for "Conservation".

§ 105 ILCS 415/5. [Conservation education program to be open to interested persons; classes; sponsors; costs]

Sec. 5. The conservation education program shall be open to any persons interested in the courses offered in any school or branch thereof.

The Division shall encourage the establishment of classes and sponsors of classes established may make reasonable charges to persons enrolled in such schools for the cost of any board, lodging, textbooks and other text materials, field trip transportation and student activity costs furnished in connection with such schools but such charges shall not exceed the actual per capita expense of furnishing the same.

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(Source: Laws 1963, p. 1104.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 698.5.

§ 105 ILCS 415/7. [Rules and regulations]

Sec. 7. With the approval of the Advisory Board the Division shall promulgate, and from time to time may change, reasonable rules and regulations not inconsistent with the provisions of this Act, for the proper administration of the Act. Such rules and regulations and changes therein shall be filed and shall become effective as provided by "The Illinois Administrative Procedure Act", approved September 22, 1975, as amended [5 ILCS 100/1-1 et seq.].

(Source: P.A. 83-333.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 698.7.

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Council on Vocational Education Act

Sec.
105 ILCS 420/0.01 through 105 ILCS 420/5 [Repealed].

§§ 105 ILCS 420/0.01 through 105 ILCS 420/5: Repealed by P.A. 95-793, § 20, effective August 8, 2008.

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Occupational Skill Standards Act

Sec.
105 ILCS 423/1 through 105 ILCS 423/99 [Repealed].

§§ 105 ILCS 423/1 through 105 ILCS 423/99: Repealed by P.A. 95-793, § 25, effective August 8, 2008.

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Private Business and Vocational Schools Act

Sec.
105 ILCS 425/1 through 105 ILCS 425/11 [Repealed].
105 ILCS 425/11.5.[Repealed].
105 ILCS 425/12 through 105 ILCS 425/27 [Repealed].

§§ 105 ILCS 425/1 through 105 ILCS 425/11: Repealed by P.A. 97-650, § 900, effective February 1, 2012.

§ 105 ILCS 425/11.5: Repealed internally, effective July 16, 2003.

§§ 105 ILCS 425/12 through 105 ILCS 425/27: Repealed by P.A. 97-650, § 900, effective February 1, 2012.

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Private Business and Vocational Schools Act of 2012

Sec.

105 ILCS 426/1.Short title
105 ILCS 426/5.Purpose
105 ILCS 426/10.Validity of certificates under the Private Business and Vocational Schools Act
105 ILCS 426/15.Definitions
105 ILCS 426/20.Permit of approval
105 ILCS 426/25.Award of certificates
105 ILCS 426/30.Exemptions
105 ILCS 426/35.Institution and program approval criteria
105 ILCS 426/37.Disclosures
105 ILCS 426/40.Enrollment agreements
105 ILCS 426/45.Board approval
105 ILCS 426/50.Requirements for approved institutions
105 ILCS 426/55.Maintenance of approval
105 ILCS 426/60.Refund policy
105 ILCS 426/65.Prohibition against advertising a school or soliciting students without Board authorization
105 ILCS 426/70.Closing of a school
105 ILCS 426/75.Application and renewal fees
105 ILCS 426/80.Private Business and Vocational Schools Quality Assurance Fund
105 ILCS 426/85.Violations under the Act
105 ILCS 426/90.Rulemaking authority
105 ILCS 426/500 through 105 ILCS 426/900 [Not Set Out]
105 ILCS 426/999.Effective date

§ 105 ILCS 426/1. Short title

Sec. 1. Short title. This Act may be cited as the Private Business and Vocational Schools Act of 2012.

(Source: P.A. 97-650, § 1.)

Effective Date. Section 999 of P.A. 97-650 made this Act effective February 1, 2012.

§ 105 ILCS 426/5. Purpose

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Sec. 5. Purpose. It is the purpose of this Act to provide for the protection, education, and welfare of the citizens of this State; to provide for the education, protection, and welfare of the students of its private business and vocational schools; and to facilitate and promote quality education and responsible, ethical, business practices in each of the private business and vocational schools enrolling students in this State.

(Source: P.A. 97-650, § 5.)

§ 105 ILCS 426/10. Validity of certificates under the Private Business and Vocational Schools Act

Sec. 10. Validity of certificates under the Private Business and Vocational Schools Act. Certificates of approval granted by the State Board of Education under the Private Business and Vocational Schools Act [Repealed], which is repealed by this Act, shall remain valid through June 30, 2012.

(Source: P.A. 97-650, § 10.)

Note.

The Private Business and Vocational Schools Act, referred to in above section, has been repealed.

§ 105 ILCS 426/15. Definitions

Sec. 15. Definitions. As used in this Act, unless the context otherwise requires:

"Board" means the Board of Higher Education established under the Board of Higher Education Act [110 ILCS 205/0.01 et seq.].

"Certificate of completion" or "certificate" means any designation, appellation, series of letters or words, or other symbol that signifies or purports to signify that the recipient thereof has satisfactorily completed a private business and vocational school's program of study that is beyond the secondary school level, but not a post-secondary degree program at the associate, baccalaureate, master's, doctoral, or post-baccalaureate, professional degree level.

"Chief managing employee" is the individual who is the head administrator or supervisor at a school's principal location.

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"Educational institution" or "institution" means an organization that promotes business and vocational education, even though the institution's principal effort may not be exclusively educational in nature.

"Enrollment agreement" means any agreement or instrument, however named, that creates or evidences an obligation binding a student to purchase a program of study from a school.

"Non-degree program of study" or "program of study" means any designation, appellation, series of letters or words, or other symbol that signifies or purports to signify that the recipient has satisfactorily completed an organized academic program of study beyond the secondary school level, such as a certificate, but below the associate's degree level and that does not include any recognized degree program such as an associate's, baccalaureate, master's, or doctoral degree, a post-baccalaureate, professional degree, or a post-degree certificate, such as a post-baccalaureate certificate, post-master's certificate, or post-doctoral certificate. "Program of study" as used in this definition means any academic program beyond the secondary school level, except for a program that is devoted entirely to religion or theology, a program offered by an institution operating under the authority of the Private College Act, the Academic Degree Act, or the Board of Higher Education Act [110 ILCS 1005/0.01 et seq., 110 ILCS 1010/0.01 et seq. or 110 ILCS 205/0.01 et seq.], or a program of study of less than one year in length operating under the statutory authority granted to the Department of Financial and Professional Regulation.

"Permit of approval" means a non-transferable permit, issued by and pursuant to the authority of the Board of Higher Education through its Division of Private Business and Vocational Schools to a private business and vocational school in the name of the school, that authorizes the school to solicit students and to offer and maintain one or more courses of instruction in compliance with the provisions of this Act and such standards and rules as may be adopted by the Board.

"Private business and vocational school" or "school" means an educational institution privately owned or operated by a person, partnership, corporation, or other entity offering courses of instruction for which tuition is charged, whether such courses of instruction are offered on site, through correspondence, by distance education, or by other methods, to prepare individuals to do any of the following:

(1) To follow a trade or artistic occupation.

(2) To pursue a manual, mechanical, technical, industrial, business, commercial, office, personal service (other than nursing), or other non-professional occupation.

(3) To follow a profession, if the profession is not subject to licensing or registration under any existing State statute requiring the licensing or registration of persons practicing such profession or if the school is not subject to the regulation of the agency with such licensing or registration authority.

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(4) To improve, enhance, or add to the skills and abilities of the individual relative to occupational responsibilities or career opportunities.

(Source: P.A. 97-650, § 15.)

§ 105 ILCS 426/20. Permit of approval

Sec. 20. Permit of approval. No person or group of persons subject to this Act may establish and operate or be permitted to become incorporated for the purpose of operating a private business and vocational school without obtaining from the Board a permit of approval, provided that a permit of approval is not required for a program that is devoted entirely to religion or theology or a program offered by an institution operating under the authority of the Private College Act, the Academic Degree Act, or the Board of Higher Education Act [110 ILCS 1005/0.01 et seq., 110 ILCS 1010/0.01 et seq. or 110 ILCS 205/0.01 et seq.]. Application for a permit must be made to the Board upon forms furnished by it. Permits of approval are not transferable. Whenever a change of ownership of a school occurs, an application for a permit of approval for the school under the changed ownership must immediately be filed with the Board. Whenever an owner, partnership, or corporation operates a school at different locations, an application for a permit of approval must be filed for each location. A school must have approval prior to operating at a location and must make application to the Board for any change of location and for a classroom extension at a new or changed location. Each application required to be filed in accordance with the provisions of this Section must be accompanied by the required fee under the provisions of Sections 75 and 85 of this Act [105 ILCS 426/75, 105 ILCS 426/85], and all such applications must be made on forms prepared and furnished by the Board. The permit of approval must be prominently displayed at some place on the premises of the school at each school location open to the inspection of all interested persons. The Board shall maintain, open to public inspection, a list of schools, their classroom extensions, and their courses of instruction approved under this Act and may annually publish such a list. Issuance of the permit of approval by the Board does not denote that the school or any program offered by the school is recommended, guaranteed, or endorsed by the Board or that the Board is responsible for the quality of the school or its programs, and no school may communicate this to be the case. No guarantee of employability of school graduates is made by the Board in its approval of programs or schools, and no school may communicate such information.

(Source: P.A. 97-650, § 20.)

§ 105 ILCS 426/25. Award of certificates

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Sec. 25. Award of certificates. (a) A certificate may be awarded only by a private business and vocational school approved by the Board to award such a certificate or by an institution approved by the Board under the authority of the Private College Act, the Academic Degree Act, or the Board of Higher Education Act [110 ILCS 1005/0.01 et seq., 110 ILCS 1010/0.01 et seq., or 110 ILCS 205/0.01 et seq.]. No private business and vocational school shall be authorized to award a certificate or be approved as a certificate-granting institution unless it provides documentation to the Board that it satisfies the criteria for approval. The documentation provided must be under oath or affirmation of the principal officer of the private business and vocational school and shall contain the name and address of the institution, the names and addresses of the president or other administrative head and of each member of the board of trustees or other governing board, a description of the certificates to be awarded and the course or courses of instruction prerequisite thereto, and such additional information relevant to the purposes of this Act as the Board may prescribe. Any amendment to the documentation must be under oath or affirmation of the principal officer of the institution and must be filed with the Board prior to the award of any certificate.

(b) A certificate-granting institution shall keep the documentation that it shall have filed with the Board current at all times. For this purpose, it shall report annually, by appropriate amendment of the notice, any change in a fact previously reported.

The Board may not approve any documentation or amendment to the documentation filed pursuant to this Section unless it finds the facts stated therein to be correct and further finds that such facts constitute compliance with the requirements of this Act for institutions.

Failure to provide such documentation is grounds for revocation of the permit of approval.

(Source: P.A. 97-650, § 25.)

§ 105 ILCS 426/30. Exemptions

Sec. 30. Exemptions. For purposes of this Act, the following shall not be considered to be a private business and vocational school:

(1) Any institution devoted entirely to the teaching of religion or theology.

(2) Any in-service program of study and subject offered by an employer, provided that no tuition is charged and the instruction is offered only to employees of the employer.

(3) Any educational institution that (A) enrolls a majority of its students in degree programs and has maintained an accredited status with a regional accrediting agency that is recognized by the U.S. Department of Education or (B) enrolls students in one or more bachelor-level programs, enrolls a majority of its students in degree programs, and is

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accredited by a national or regional accrediting agency that is recognized by the U.S. Department of Education or that (i) is regulated by the Board under the Private College Act or the Academic Degree Act [110 ILCS 1005/0.01 et seq., or 110 ILCS 1010/0.01 et seq.] or is exempt from such regulation under either the Private College Act or the Academic Degree Act solely for the reason that the educational institution was in operation on the effective date of either the Private College Act or the Academic Degree Act or (ii) is regulated by the State Board of Education.

(4) Any institution and the franchisees of that institution that exclusively offer a program of study in income tax theory or return preparation at a total contract price of no more than $400, provided that the total annual enrollment of the institution for all such courses of instruction exceeds 500 students and further provided that the total contract price for all instruction offered to a student in any one calendar year does not exceed $3,000.

(5) Any person or organization selling mediated instruction products through a media, such as tapes, compact discs, digital video discs, or similar media, so long as the instruction is not intended to result in the acquisition of training for a specific employment field, is not intended to meet a qualification for licensure or certification in an employment field, or is not intended to provide credit that can be applied toward a certificate or degree program.

(6) Schools with no physical presence in this State. Schools offering instruction or programs of study, but that have no physical presence in this State, are not required to receive Board approval. Such an institution must not be considered not to have a physical presence in this State unless it has received a written finding from the Board that it has a limited physical presence. In determining whether an institution has no physical presence, the Board shall require all of the following:

(A) Evidence of authorization to operate in at least one other state and that the school is in good standing with that state's authorizing agency.

(B) Evidence that the school has a means of receiving and addressing student complaints in compliance with any federal or state requirements.

(C) Evidence that the institution is providing no instruction in this State.

(D) Evidence that the institution is not providing core academic support services, including, but not limited to, admissions, evaluation, assessment, registration, financial aid, academic scheduling, and faculty hiring and support in this State.

(Source: P.A. 97-650, § 30.)

§ 105 ILCS 426/35. Institution and program approval criteria

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Sec. 35. Institution and program approval criteria. Each entity seeking a permit of approval is required to demonstrate that it satisfies institution-approval criteria and that each program of study offered meets the program-approval criteria in this Act and any applicable rules. The following standard criteria are intended to measure the appropriateness of the stated educational objectives of the educational programs of a given institution and the extent to which suitable and proper processes have been developed for meeting those objectives. Information related to the satisfaction of the approval criteria outlined in this Section must be supplied to the Board by institutions on forms provided by the Board. Additional information may be requested by the Board to determine the institution's ability to satisfy the criteria. The following must be considered as part of, but not necessarily all of, the criteria for approval of institutions and the programs offered under this Act:

(1) Qualifications of governing board members, owners, and senior administrators. At a minimum, these individuals must be of good moral character and have no felony criminal record.

(2) Qualifications of faculty and staff.

(3) Demonstration of student learning and quality of program delivery.

(4) Sufficiency of institutional finances.

(5) Accuracy, clarity, and appropriateness of program descriptions. Institutional promotional, advertising, and recruiting materials must be clear, appropriate, and accurate.

(6) Sufficiency of facilities and equipment. At a minimum, these must be appropriate and must meet applicable safety code requirements and ordinances.

(7) Fair and equitable refund policies. At a minimum, these must be fair and equitable, must satisfy any related State or federal rules, and must abide by the standards established in Section 60 of this Act and the rules adopted for the implementation of this Act.

(8) Appropriate and ethical admissions and recruitment practices. At a minimum, recruiting practices must be ethical and abide by any State or federal rules.

(9) Recognized accreditation status. Accreditation with an accrediting body approved by the U.S. Department of Education may be counted as significant evidence of the institution's ability to meet curricular approval criteria.

(10) Meeting employment requirements in the field of study. The institution must clearly demonstrate how a student's completion of the program of study satisfies employment requirements in the occupational field. Such information must be clearly and accurately provided to students. If licensure, certification, or their equivalent is required of program graduates to enter the field of employment, the institution must clearly demonstrate that completion of the program will allow students to achieve this status.

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(11) Enrollment agreements that, at a minimum, meet the requirements outlined in Section 40 of this Act.

(12) Clearly communicated tuition and fee charges. Tuition and fees and any other expense charged by the school must be appropriate to the expected income that will be earned by graduates. No school may have a tuition policy or enrollment agreement that requires that a student register for more than a single semester, quarter, term, or other such period of enrollment as a condition of the enrollment nor shall any school charge a student for multiple periods of enrollment prior to completion of the single semester, quarter, term, or other such period of enrollment.

(13) Legal action against the institution, its parent company, its owners, its governing board, or its board members. Any such legal action must be provided to the Board and may be considered as a reason for denial or revocation of the permit of approval.

(Source: P.A. 97-650, § 35.)

§ 105 ILCS 426/37. Disclosures

Sec. 37. Disclosures. All schools shall make, at a minimum, the disclosures required under this Section clearly and conspicuously on their Internet websites. The disclosure shall consist of a statement containing the following information for the most recent 12-month reporting period of July 1 through June 30:

(1) The number of students who were admitted in the course of instruction as of July 1 of that reporting period.

(2) Additions during the year due to:

(A) new starts;

(B) re-enrollments; and

(C) transfers into the course of instruction from other courses of instruction at the school.

(3) The total number of students admitted during the reporting period (the number of students reported under paragraph (1) of this Section plus the additions reported under subparagraphs (A), (B), and (C) of paragraph (2) of this Section.

(4) Of the total course of instruction enrollment, the number of students who:

(A) transferred out of the course of instruction to another course of instruction;

(B) completed or graduated from a course of instruction;

(C) withdrew from the school;

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(D) are still enrolled.

(5) The number of students listed in paragraph (4) of this Section who:

(A) were placed in their field of study;

(B) were placed in a related field;

(C) placed out of the field;

(D) were not available for placement due to personal reasons;

(E) were not employed.

(6) The number of students who took a State licensing examination or professional certification examination, if any, during the reporting period, as well as the number who passed.

(7) The number of graduates who obtained employment in the field who did not use the school's placement assistance during the reporting period; such information may be compiled by reasonable efforts of the school to contact graduates by written correspondence.

(8) The average starting salary for all school graduates employed during the reporting period; such information may be compiled by reasonable efforts of the school to contact graduates by written correspondence.

(9) The following clear and conspicuous caption, set forth with the address and telephone number of the Board's office:

"COMPLAINTS AGAINST THIS SCHOOL MAY BE REGISTERED WITH THE BOARD OF HIGHER EDUCATION.".

An alphabetical list of names, addresses, and dates of admission by course or course of instruction and a sample copy of the enrollment agreement employed to enroll the students listed shall be filed with the Board's Executive Director on an annual basis. The list shall be signed and verified by the school's chief managing employee.

(Source: P.A. 97-650, § 37.)

§ 105 ILCS 426/40. Enrollment agreements

Sec. 40. Enrollment agreements. A copy of the enrollment agreement must be provided to the Board. Enrollment agreements may be used by schools only if approved by the Board. The Board shall develop a standard enrollment agreement for use by schools approved or seeking approval under this Act. Schools may create an enrollment agreement that meets the minimum requirements of this Section, but it must be approved

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by the Board prior to implementation. The student must be given a copy of the enrollment agreement at the time the student signs that agreement and at the time of the agreement's acceptance, if those events occur at different times. The school shall retain a signed copy of the fully executed enrollment agreement as a part of the student's permanent record. No school may enter into an enrollment agreement wherein the student waives the right to assert against the school or any assignee any claim or defense he or she may have against the school arising under the agreement. Any provisions in an enrollment agreement wherein the student agrees to such a waiver shall be rendered void. Enrollment agreements shall include, at a minimum, a clear description of costs, refund policies, program information, all disclosures required by this Act, the Board's Internet website, the address and phone number of the Board for students to report complaints, and any additional information the Board may require by rule.

(Source: P.A. 97-650, § 40.)

§ 105 ILCS 426/45. Board approval

Sec. 45. Board approval. Each school approved by the Board under this Act is responsible for the content of any program offered. Issuance of the permit of approval does not denote that the school or any program offered by the school is recommended, guaranteed, or endorsed by the Board. Schools may not advertise or communicate to students or the public in any way that indicates endorsement of the school or any program by the Board.

(Source: P.A. 97-650, § 45.)

§ 105 ILCS 426/50. Requirements for approved institutions

Sec. 50. Requirements for approved institutions. Each school and each of the non-degree programs of study offered by the school shall be approved for 5 years, subject to the terms and conditions of approval, including without limitation the submission of required reporting and the payment of required charges and fees under the provisions of Section 75 of this Act [105 ILCS 426/75], and compliance with any other requirements in this Act or supporting rules. Failure to so comply at any time during the 5 years is grounds for immediate revocation of the permit of approval. Information requested by the Board must be submitted annually or, in special circumstances, at the request of the Board. Failure to do so is grounds for immediate revocation of the permit of approval. Each non-degree program of study must be approved by the Board as well. Regardless of when the program was approved, all programs of study must be approved again with the

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institutional approval at the end of the 5-year approval period or in conjunction with an earlier review if so required under this Act or the administrative rules adopted in support of this Act. The Board's Executive Director has the authority to order any school subject to this Act to cease and desist operations if the school is found to have acted contrary to the standards set forth in this Act or the supporting administrative rules.

(Source: P.A. 97-650, § 50.)

§ 105 ILCS 426/55. Maintenance of approval

Sec. 55. Maintenance of approval. Institutions covered under this Act must meet the following requirements to receive and maintain approval:

(1) Provide a surety bond. A continuous surety company bond, written by a company authorized to do business in this State, for the protection of contractual rights, including faithful performance of all contracts and agreements for students and their parents, guardians, or sponsors. The Board shall establish the bond amount by rule. The amount of the bond must be sufficient to provide for the repayment of full tuition to all students enrolled at the institution in the event of closure of the institution. Evidence of the continuation of the bond must be filed annually with the Board. The surety bond must be a written agreement that provides for monetary compensation in the event that the school fails to fulfill its obligations to its students and their parents, guardians, or sponsors. The surety bonding company shall guarantee the return to students and their parents, guardians, or sponsors of all prepaid, unearned tuition in the event of school closure. A condition of the bond shall be that the bond agent shall notify the Board in the event the bond is no longer in effect.

(2) Provide to the Board and each student the school's policy for addressing student complaints. Included in this process, the school must provide in its promotional materials and on its Internet website the Board's address and Internet website for reporting complaints.

(3) Provide on the institution's Internet website and in promotional materials and enrollment agreements the Internet website, address, and phone number of the Board for students to report complaints.

(4) Provide evidence of liability insurance, in such form and amount as the Board shall from time to time prescribe pursuant to rules adopted under this Act, to protect students and employees at the school's places of business and at all classroom extensions, including any work-experience locations.

(5) Provide data as requested by the Board to support the satisfaction of the requirements of this Act or to provide vocational and technical educational data for the longitudinal data system created under the P-20 Longitudinal Education Data System Act [105 ILCS 13/1 et seq.].

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(6) Pay required fees as described under the provisions of Section 75 of this Act [105 ILCS 426/75] by prescribed deadlines.

(7) With respect to advertising programs of study, all of the following apply:

(A) A school may state that it is approved to offer a program of study or authorized to award a certificate in this State only after that approval has been officially granted and received in writing from the Board.

(B) A school shall not advertise or state in any manner that it is accredited by the Board to award degrees or certificates.

(C) No school may publish or otherwise communicate to prospective students, faculty, staff, or the public misleading or erroneous information about the certificate or degree-granting status of a given institution.

(D) All advertisements or solicitations by approved schools shall only reference the Board's approval by stating that the school is approved by the "Division of Private Business and Vocational Schools".

(E) All advertisements or solicitations by approved schools shall contain the school's official Internet website address.

(8) Permit the Board's Executive Director or his or her designees to inspect the school or classes thereof from time to time with or without notice and to make available to the Board's Executive Director or his or her designees, at any time when required to do so, information, including financial information, pertaining to the activities of the school required for the administration of this Act and the standards and rules adopted under this Act.

(9) Maintain satisfactory student retention and graduation rates and State licensing examination or professional certification examination passage rates. Student retention and graduation rates must be maintained that are appropriate to standards in the field. A State licensing examination or professional certification examination passage rate of at least 50% of the average passage rate for schools within the industry for any State licensing examination or professional certification examination must be maintained. In the event that the school fails to do so, then that school shall be placed on probation for one year. If that school's passage rate in its next reporting period does not exceed 50% of the average passage rate of that class of school as a whole, then the Board shall revoke the school's approval for that program to operate in this State. In addition, this shall be grounds for reviewing the institution's approval to operate. The Board shall develop, by rule, a procedure to ensure the veracity of the information required under this Section.

(10) Not enter into an enrollment agreement wherein the student waives the right to assert against the school or any assignee any claim or defense he or she may have against the school arising under the agreement. Any provisions in an enrollment agreement wherein the student agrees to such a waiver shall be rendered void.

(11) Not have a tuition policy or enrollment agreement that requires that a student register for more than a single semester, quarter, term, or other such period of enrollment as a

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condition of the enrollment nor charge a student for multiple periods of enrollment prior to completion of a single semester, quarter, term, or other such period of enrollment.

(12) Provide the Board with a copy of any notice of warning or suspension or revocation received from an accrediting agency or State or federal oversight body within 15 days after receipt of the notice. The school shall, at the same time, inform the Board, in writing, on actions being taken to correct all deficiencies cited.

(13) Maintain a fair and equitable refund policy and abide by it. Such a policy shall abide by any State or federal rules as appropriate. The same policy shall apply to all students equally.

(14) Act in an ethical manner.

(Source: P.A. 97-650, § 55.)

§ 105 ILCS 426/60. Refund policy

Sec. 60. Refund policy. The Board shall establish minimum standards for a fair and equitable refund policy that must be applied by all institutions subject to this Act. The same refund policy must be applied to all students even if they are not eligible for federal financial aid. Schools that are accredited by an accrediting body recognized by the U.S. Department of Education and approved to participate in offering Federal Title IV student financial aid may apply the required federal refund policy as long as the same policy is applied to all students even if they are not eligible for federal financial aid.

(Source: P.A. 97-650, § 60.)

§ 105 ILCS 426/65. Prohibition against advertising a school or soliciting students without Board authorization

Sec. 65. Prohibition against advertising a school or soliciting students without Board authorization. Prior to the issuance of a permit of approval by the Board, no person or organization shall advertise a school or any program of study or solicit prospective students unless the person or organization has applied for and received from the Board authorization to conduct such activity. If the Board has authorized such activity, all advertisements or solicitations must reference the Board's approval by stating that the school is approved by the "Division of Private Business and Vocational Schools of the Illinois Board of Higher Education".

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(Source: P.A. 97-650, § 65.)

§ 105 ILCS 426/70. Closing of a school

Sec. 70. Closing of a school. (a) In the event a school proposes to discontinue its operations, the chief administrative officer of the school shall cause to be filed with the Board the original or legible true copies of all such academic records of the institution as may be specified by the Board.

(b) These records shall include, at a minimum, the academic records of each former student that is traditionally provided on an academic transcript, such as, but not limited to, courses taken, terms, grades, and other such information.

(c) In the event it appears to the Board that any such records of an institution discontinuing its operations is in danger of being lost, hidden, destroyed, or otherwise made unavailable to the Board, the Board may seize and take possession of the records, on its own motion and without order of court.

(d) The Board shall maintain or cause to be maintained a permanent file of such records coming into its possession.

(e) As an alternative to the deposit of such records with the Board, the institution may propose to the Board a plan for permanent retention of the records. The plan must be put into effect only with the approval of the Board.

(f) When a postsecondary educational institution now or hereafter operating in this State proposes to discontinue its operation, such institution shall cause to be created a teach-out plan acceptable to the Board, which shall fulfill the school's educational obligations to its students. Should the school fail to deliver or act on the teach-out plan, the Board is in no way responsible for providing the teach-out.

(g) The school and its designated surety bonding company are responsible for the return to students of all prepaid, unearned tuition. As identified in Section 55 of this Act [105 ILCS 426/55], the surety bond must be a written agreement that provides for monetary compensation in the event that the school fails to fulfill its obligations. The surety bonding company shall guarantee the return to the school's students and their parents, guardians, or sponsors of all prepaid, unearned tuition in the event of school closure. Should the school or its surety bonding company fail to deliver or act to fulfill the obligation, the Board is in no way responsible for the repayment or any related damages or claims.

(Source: P.A. 97-650, § 70.)

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§ 105 ILCS 426/75. Application and renewal fees

Sec. 75. Application and renewal fees. Fees for application and renewal may be set by the Board by rule. Fees shall be collected for all of the following:

(1) An original school application for a certificate of approval.

(2) An initial school application for a certificate of approval upon occurrence of a change of ownership.

(3) An annual school application for renewal of a certificate of approval.

(4) A school application for a change of location.

(5) A school application for a classroom extension.

(6) If an applicant school that has not remedied all deficiencies cited by the Board within 12 months after the date of its original application for a certificate of approval, an additional original application fee for the continued cost of investigation of its application.

(7) Transcript processing.

(Source: P.A. 97-650, § 75.)

§ 105 ILCS 426/80. Private Business and Vocational Schools Quality Assurance Fund

Sec. 80. Private Business and Vocational Schools Quality Assurance Fund. The Private Business and Vocational Schools Quality Assurance Fund is created as a special fund in the State treasury. All fees collected for the administration and enforcement of this Act must be deposited into this Fund. All money in the Fund must be used, subject to appropriation, by the Board to supplement support for the administration and enforcement of this Act and must not be used for any other purpose.

(Source: P.A. 97-650, § 80.)

§ 105 ILCS 426/85. Violations under the Act

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Sec. 85. Violations under the Act. (a) The Board's Executive Director has the authority to order any school subject to this Act to cease and desist operations if the school is found to have acted contrary to the standards set forth in this Act or supporting rules.

(b) The Board's Executive Director shall, before refusing to issue or renew, and before revocation of any certificate or permit, at least 10 days prior to the date set for the hearing, notify in writing the applicant for or holder of a certificate or permit (the respondent) that a hearing shall be held on the date designated to determine whether the respondent is privileged to hold such certificate or permit, and shall afford the respondent an opportunity to be heard in person or by counsel in reference thereto. The written notice may be served by delivery of the same personally to the respondent, or by mailing the same by registered mail to the place of business last specified by the respondent in the last notification to the Board's Executive Director. At the time and place fixed in the notice, the Board's Executive Director or his or her designated hearing officer shall proceed to hear the charges and both the respondent and the complainant shall be accorded ample opportunity to present in person or by counsel such statements, testimony, evidence, and arguments as may be pertinent to the charges or to any defense thereto. The Board's Executive Director or his or her designated hearing officer may continue such hearing from time to time. If the Board's Executive Director shall not be sitting at the time and place fixed in the notice or at the time and place to which the hearing shall have been continued, the Board's Executive Director or his or her designated hearing officer shall continue such hearing for a period not to exceed 30 days. Failure of the respondent to appear on the date set for hearing or failure to proceed as ordered by the Board's Executive Director or his or her designated hearing officer shall constitute a default and automatic revocation.

(c) The Board's Executive Director is authorized to subpoena and bring before a hearing officer any person or persons in this State and to take testimony either orally or by deposition or by exhibit, with the same fees and mileage and in the same manner as prescribed by law in judicial proceedings in civil cases in circuit courts of this State. The Board's Executive Director or the designated hearing officer shall administer oaths to witnesses at any hearing that the Board's Executive Director is authorized by law to conduct.

(d) Any circuit court, upon the application of the respondent or complainant or of the Board's Executive Director, may by order duly entered, require the attendance of witnesses and the production of relevant books and papers before any hearing the Board's Executive Director is authorized to conduct, and the court may compel obedience to its order by proceedings for contempt.

(e) The Board shall establish rules for the appeal of decisions to revoke the permit of approval. At a minimum, the rules shall include all of the following:

(1) The school must be notified of the revocation in writing through registered mail or other appropriate notification.

(2) The school has 10 business days after notification to request an appeal of the decision.

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(3) The Board shall not be required to schedule a hearing and has the option to waive a hearing if the institution has not operated for one continuous, 12-month period or the institution has been abandoned; however, even in these cases, the Board shall be required to revoke the authority at a public hearing at which any opponent who is injured or impacted by the revocation must be given the opportunity to be heard.

(4) The Board shall designate a hearing officer, who shall schedule and conduct a hearing.

(5) The hearing officer shall make a final administrative decision, which decision may be reviewed judicially by the circuit court in accordance with subsection (f) of this Section.

(f) Any person affected by a final administrative decision of the Board's Executive Director may have such decision reviewed judicially by the circuit court of the county wherein the person resides, or in the case of a corporation, wherein the registered office is located. If the plaintiff in the review proceeding is not a resident of this State, the venue shall be in Sangamon County. The provisions of the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Board's Executive Director. "Administrative decisions" has the same meaning as in Section 3-101 of the Code of Civil Procedure [735 ILCS 5/3-101].

(g) Except for the violations enumerated in subsection (e) of this Section, any owner, operator, or authorized agent of a school who knowingly violates any provision of this Act is guilty of a business offense.

(h) Any owner, operator, or authorized agent of a private business and vocational school who commits any of the following offenses is guilty of a Class A misdemeanor for the first offense and a Class 4 felony for the second or subsequent offense:

(1) Knowingly, and for the purpose of influencing or inducing a person to enroll in the program of study offered by the school, makes any false or misleading statements, misrepresentations, or false promises to the person regarding opportunities upon graduation from the school for (i) employment in a business, industry, or trade, (ii) admission to an institution of higher learning, or (iii) admission to an occupational licensing examination.

(2) Knowingly, and with intent to defraud, retains in excess of the school's refund policy prescribed in this Act any unearned tuition or fees paid by a student who has cancelled his or her enrollment agreement and is entitled to a refund.

(3) Knowingly, and with intent to defraud, misrepresents that any student who has cancelled his or her enrollment agreement is presently enrolled in the school, has completed the program of study, or has graduated from the school.

(4) Knowingly uses or attempts to use students in any commercial or manufacturing activity related to the operation of the school and to the school's advantage and profit, except to the extent that the school provides the student with practical experience supplemental to the course of instruction or except in the case of students who are employed by the school and compensated for such employment.

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(i) The Board shall adopt rules to pursue resolution of complaints. At a minimum, the rules shall include all of the following:

(1) Student complaints must be submitted in writing to the Board.

(2) Board staff shall contact the school about the complaint by registered mail or other appropriate notification. The school has 10 business days to respond to the Board about the complaint. The Board shall provide a resolution determination to the school. The school may request a hearing about the proposed resolution within 10 business days after the delivery of the complaint by registered mail or other appropriate notification. If the school does not abide by the resolution determination, then the Board can issue a cease and desist order to the school. If the school does not comply with the cease and desist order, then the Board may revoke the school's permit of approval.

(3) The complaint may be forwarded to the institution's accrediting body.

(4) The Board shall annually issue a public report about the complaints received. At a minimum, the report shall include the institution, the nature of the complaint, and the current resolution status of the complaint. No individual student shall be named in the report.

(j) Upon application of the Board's Executive Director, the Attorney General or any State's Attorney, the Circuit Court of each county in which a violation of this Act or the rules and regulations has occurred, shall have jurisdiction to enjoin any violation thereof.

(k) The following acts or omissions by an owner, operator, or authorized agent of a private business and vocational school shall constitute violations of this Act and unlawful practices pursuant to the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/1 et seq.]:

(1) False or misleading statements, misrepresentations, or false promises that have the tendency or capacity to influence or induce persons to enroll in the program of study offered by the school.

(2) Failure or refusal of the school to make the disclosures in advertising materials in the enrollment agreement and on its Internet website as required by this Act, or the making of false or inaccurate statements in such disclosures.

(3) Failure or refusal of the school to refund fees and unearned tuition, in accordance with the refund policy prescribed by this Act, to any student who cancels his or her enrollment agreement.

(4) Failure or refusal of the school to employ course instructors under conditions presented to the Board to satisfy the requirements of this Act or to provide the equipment, facilities, or services necessary to implement the program of study as presented to the Board to satisfy the requirements of the Act.

(l) Whenever the Attorney General or a State's Attorney receives a complaint against a private business and vocational school that alleges one or more of the violations enumerated in subsection (k) of this Section, he or she may conduct an investigation to

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determine the validity of the complaint and, if a violation or violations are found, may use any or all of the remedies, penalties, or authority granted to him or her by the Consumer Fraud and Deceptive Business Practices Act to correct such violations and enforce the provisions of this Act. Within 10 business days after receipt, the Board shall transmit to the Attorney General and the appropriate State's Attorney copies of complaints filed in the Board's office that allege one or more of the violations enumerated in subsection (k) of this Section.

(m) Any person who suffers damages as a result of a violation of this Act committed by a school or its representative may bring an action against the school. The court, in its discretion, may award actual damages, treble actual damages if fraud is proved, injunctive relief, and any other relief that the court deems proper.

Such action may be commenced in the county where the school is located or has its principal place of business or in the county where the transaction or any substantial portion thereof occurred.

In any action brought by a person under this Section, the court may award, in addition to the relief provided in this Section, reasonable attorney's fees and costs to the prevailing party.

Either party to an action under this Section may request a trial by jury.

(Source: P.A. 97-650, § 85.)

§ 105 ILCS 426/90. Rulemaking authority

Sec. 90. Rulemaking authority. The Board shall have rulemaking authority as necessary and appropriate to implement this Act. Rulemaking authority to implement this Act, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.] and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized.

(Source: P.A. 97-650, § 90.)

§§ 105 ILCS 426/500 through 105 ILCS 426/900 [Not Set Out]

Note.

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These sections as found in P.A. 97-650, §§ 500 through 900, contained amendatory provisions.

§ 105 ILCS 426/999. Effective date

Sec. 999. Effective date. This Act takes effect February 1, 2012.

(Source: P.A. 97-650, § 999.)

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Recognized Normal School Act

Sec.
105 ILCS 430/0.01 through 105 ILCS 430/3 [Repealed].

§§ 105 ILCS 430/0.01 through 105 ILCS 430/3: Repealed by P.A. 96-734, § 35, effective August 25, 2009.

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Vocational Academies Act

Sec.

105 ILCS 433/1.Short title
105 ILCS 433/5.Purpose
105 ILCS 433/10.Establishment
105 ILCS 433/15.Grants
105 ILCS 433/99.Effective date

§ 105 ILCS 433/1. Short title

Sec. 1. Short title. This Act may be cited as the Vocational Academies Act.

(Source: P.A. 94-220, § 1.)

Effective Date. Section 99 of P.A. 94-220 made this Act effective upon becoming law. The Act was approved July 14, 2005.

§ 105 ILCS 433/5. Purpose

Sec. 5. Purpose. The purpose of this Act is to integrate workplace competencies and career and technical education with core academic subjects.

(Source: P.A. 94-220, § 5.)

§ 105 ILCS 433/10. Establishment

Sec. 10. Establishment. A school district, in partnership with community colleges, local employers, and community-based organizations, may establish a vocational academy that is eligible for a grant under this Act if the vocational academy meets all of the following requirements:

(1) The vocational academy must have a minimum 5-clock-hour day and be under the direct supervision of teachers.

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(2) The vocational academy must be a 2-year school within a school program for grades 10 through 12 that is organized around a career theme and operated as a business-education partnership.

(3) The vocational academy must be a career-oriented program that uses the direct involvement of local employers to provide students with an education and the skills needed for employment.

(4) The vocational academy must be a standards-based educational program that prepares students both academically and technically for entrance into postsecondary education or careers in a selected field.

(5) The curriculum of the vocational academy must be based on the Illinois Learning Standards, and work-site training must provide students with learning experiences for entry-level employment in the local job market and lifelong learning skills for higher education.

(Source: P.A. 94-220, § 10.)

§ 105 ILCS 433/15. Grants

Sec. 15. Grants. Subject to appropriation or other available federal or private funding, the State Board of Education may provide grants to vocational academies that meet the requirements of this Act.

(Source: P.A. 94-220, § 15.)

§ 105 ILCS 433/99. Effective date

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 94-220, § 99.)

Note.

This Act was approved July 14, 2005.

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Vocational Education Act

Sec.

105 ILCS 435/0.01.Short title
105 ILCS 435/1.[Provisions of Federal Vocational Education Law accepted]
105 ILCS 435/2.[Duties of State Board of Education]
105 ILCS 435/2.1.Gender Equity Advisory Committee

§ 105 ILCS 435/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Vocational Education Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act in relation to vocational education.

Cite: 105 ILCS 435/0.01 et seq.

Source: L. 1919, p. 928. Title amended by L. 1951, p. 1201; P.A. 79-1175.

Date: Approved March 6, 1919.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 693h.

§ 105 ILCS 435/1. [Provisions of Federal Vocational Education Law accepted]

Sec. 1. That all of the provisions and benefits of an act of Congress entitled, "An Act to provide for the promotion of vocational education; to provide for cooperation with the states in the promotion of such education in agriculture and the trades and industries; to provide for cooperation with the states in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditures," approved February 23, 1917, as amended, hereinafter referred to as the Federal Vocational Education Law [20 U.S.C. § 11 et seq.], are hereby accepted by the State of Illinois.

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(Source: Laws 1919, p. 928.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 694.

§ 105 ILCS 435/2. [Duties of State Board of Education]

Sec. 2. Upon the effective date of this amendatory Act of 1975 and thereafter, any reference in this Act or any other Illinois statute to the Board of Vocational Education and Rehabilitation, as such reference pertains to vocational and technical education, means and refers to the State Board of Education. Notwithstanding the provisions of any Act or statute to the contrary, upon the effective date of this amendatory Act of 1975, the State Board of Education shall assume all powers and duties pertaining to vocational and technical education. The State Board of Education shall be responsible for policy and guidelines pertaining to vocational and technical education and shall exercise the following powers and duties:

(a) To co-operate with the federal government in the administration of the provisions of the Federal Vocational Education Law [Repealed], to the extent and in the manner therein provided;

(b) To promote and aid in the establishment of schools and classes of the types and standards provided for in the plans of the Board, as approved by the federal government, and to co-operate with State agencies maintaining such schools or classes and with State and local school authorities in the maintenance of such schools and classes;

(c) To conduct and prepare investigations and studies in relation to vocational education and to publish the results of such investigations and studies;

(d) To promulgate reasonable rules and regulations relating to vocational and technical education;

(e) To report, in writing, to the Governor annually on or before the fourteenth day of January. The annual report shall contain (1) a statement to the extent to which vocational education has been established and maintained in the State; (2) a statement of the existing condition of vocational education in the State; (3) a statement of suggestions and recommendations with reference to the development of vocational education in the State; (4) (blank); and (5) an itemized statement of the amounts of money received from Federal and State sources, and of the objects and purposes to which the respective items of these several amounts have been devoted;

(f) To make such reports to the federal government as may be required by the provisions of the Federal Vocational Education Law [Repealed], and by the rules and regulations of the federal agency administering the Federal Vocational Education Law [Repealed]; and

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(g) To make grants subject to appropriation and to administer and promulgate rules and regulations to implement a vocational equipment program. The use of such grant funds shall be limited to obtaining equipment for vocational education programs, school shops and laboratories. The State Board of Education shall adopt appropriate regulations to administer this paragraph.

(Source: P.A. 86-560; 95-793, § 9; 96-328, § 155.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 697.

The Federal Vocational Education Law, referred to in subsection (a) and (f), has been repealed.

Effect of Amendments. The 2008 amendment by P.A. 95-793, effective August 8, 2008, in (e) deleted the text of item (4) relating to a statement of recommendations regarding gender bias in vocational education.

The 2009 revisory amendment by P.A. 96-328, effective August 11, 2009, made stylistic changes.

CASE NOTES

Right to Sue

A county board or some other taxing body must direct the bringing of the suit, and the State's attorney is the only proper person to bring the suit in the name of the People of this state. People ex rel. Morse v. Chambliss, 399 Ill. 151, 77 N.E.2d 191 (1948).

There is no right in an individual taxpayer to bring a suit for the collection of taxes, but a suit having for its purpose such collection must be brought by the person or agency designated by statute for that purpose. People ex rel. Morse v. Chambliss, 399 Ill. 151, 77 N.E.2d 191 (1948).

§ 105 ILCS 435/2.1. Gender Equity Advisory Committee

Sec. 2.1. Gender Equity Advisory Committee. (a) The Superintendent of the State Board of Education shall appoint a Gender Equity Advisory Committee of at least 9 members to advise and consult with the State Board of Education and the gender equity coordinator in all aspects relating to ensuring that all students have equal educational opportunities to pursue high wage, high skill occupations leading to economic self-sufficiency.

(b) Membership shall include without limitation one regional gender equity coordinator, 2 State Board of Education employees, the Department of Labor's Displaced Homemaker Program Manager, and 5 citizen appointees who have expertise in one or more of the following areas: nontraditional training and placement, service delivery to single parents,

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service delivery to displaced homemakers, service delivery to female teens, business and industry experience, and Education-to-Careers experience. Membership also may include employees from the Department of Commerce and Economic Opportunity, the Department of Human Services, and the Illinois Community College Board who have expertise in one or more of the areas listed in this subsection (b) for the citizen appointees. Appointments shall be made taking into consideration expertise of services provided in secondary, postsecondary and community based programs.

(c) Members shall initially be appointed to one year terms commencing in January 1, 1990, and thereafter to two year terms commencing on January 1 of each odd numbered year. Vacancies shall be filled as prescribed in subsection (b) for the remainder of the unexpired term.

(d) Each newly appointed committee shall elect a Chair and Secretary from its members. Members shall serve without compensation, but shall be reimbursed for expenses incurred in the performance of their duties. The Committee shall meet at least bi-annually and at other times at the call of the Chair or at the request of the gender equity coordinator.

(Source: P.A. 86-560; 88-555, § 15; 91-304, § 5; 94-793, § 645.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 697.1.

Section 995 of P.A. 94-793 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 1994 amendment by P.A. 88-555, effective July 27, 1994, in subsection (a) substituted "9" for "nine"; and in subsection (b), in the first sentence substituted "Labor's" for "Commerce and Community Affairs'", substituted "5" for "five", inserted "2 with expertise in nontraditional training and placement and", deleted "service delivery to homemakers, nontraditional training and placement" preceding "and service delivery" and added the second sentence.

The 1999 amendment by P.A. 91-304, effective January 1, 2000, rewrote subsections (a) and (b) to the extent that a detailed comparison would be impracticable; and in subsection (d) inserted "and Secretary" following "Chair", and deleted "and the state vocational education sex equity coordinator shall serve as Secretary" from the end of the first sentence.

The 2006 amendment by revisory act P.A. 94-793, effective May 19, 2006, substituted references to "Governor's Office of Management and Budget" for references to "Bureau of the Budget", and substituted references to "Department of Commerce and Economic Opportunity" for references to "Department of Commerce and Community Affairs".

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VALIDATION ACTS

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Education Ballot and Bond Validation Act

Sec.

105 ILCS 505/0.01.Short title
105 ILCS 505/1.[Certain ballots declared valid]

§ 105 ILCS 505/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Education Ballot and Bond Validation Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act in relation to the validity of ballots used to submit the proposition of increasing the annual educational tax rate and the proposition of issuing bonds for school building purposes in certain school districts.

Cite: 105 ILCS 505/0.01 et seq.

Source: L. 1965, p. 244.

Date: Approved March 31, 1965.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 407.35h.

§ 105 ILCS 505/1. [Certain ballots declared valid]

Sec. 1. In all cases where, prior to the time this Act becomes effective, an election has been duly called and held by the governing body of any school district in manner and form provided by law, for the purpose of submitting the proposition of increasing the annual educational tax rate of said school district, and the proposition of issuing bonds of said school district for school building purposes, and a majority of the legal voters voting on each of such propositions voted in favor thereof, and the face of the ballots used to vote upon each of said propositions, respectively, was in the form provided by statute and each ballot stated the proper purpose, and there appeared on the back of each such ballot the election precinct and polling place at which such ballot was to be used, each such ballot voted at such election be and is hereby declared to be legal and valid

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notwithstanding that the ballots used at such election contained an erroneous statement of the proposition submitted on the reverse side thereof.

(Source: Laws 1965, p. 244.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 407.36.

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School Election Validation (1965) Act

Sec.
105 ILCS 510/0.01.Short title
105 ILCS 510/1.[Certain elections declared valid]

§ 105 ILCS 510/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the School Election Validation (1965) Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act to validate certain school elections.

Cite: 105 ILCS 510/0.01 et seq.

Source: L. 1965, p. 2572.

Date: Approved August 4, 1965.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 407.36h.

§ 105 ILCS 510/1. [Certain elections declared valid]

Sec. 1. In all cases where prior to the effective date of this Act an election was held for members of the board of education of a special charter school district, the validity of such election shall not be affected by whether the election was conducted by the board of education or by a board of election commissioners existing within the district.

(Source: Laws 1965, p. 2572.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 407.37.

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School Tax Rate Validation (1967) Act

Sec.

105 ILCS 515/0.01.Short title
105 ILCS 515/1.[Certain elections declared valid]

§ 105 ILCS 515/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the School Tax Rate Validation (1967) Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act to validate certain school tax rate elections.

Cite: 105 ILCS 515/0.01 et seq.

Source: L. 1967, p. 2607.

Date: Approved August 3, 1967.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 407.37h.

§ 105 ILCS 515/1. [Certain elections declared valid]

Sec. 1. In all cases where, before the effective date of this Act, an election was held in any school district on the question of increasing any tax rate limit of such district and a majority of the votes cast on such question were in favor of such increase, and the election was otherwise held in substantial compliance with the law then applicable to such elections, such election is declared to be legal and valid for all purposes despite the fact that the ballots used at such election used the words "For" and "Against" instead of "Yes" and "No".

(Source: Laws 1967, p. 2607.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 407.38.

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School Tax Rate Validation (1968) Act

Sec.

105 ILCS 520/0.01.Short title
105 ILCS 520/1.[Certain elections declared valid]

§ 105 ILCS 520/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the School Tax Rate Validation (1968) Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act to validate certain tax rate elections in school districts.

Cite: 105 ILCS 520/0.01 et seq.

Source: L. 1968, p. 59.

Date: Approved August 16, 1968.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 407.38h.

§ 105 ILCS 520/1. [Certain elections declared valid]

Sec. 1. Where in any school district maintaining grades 1 through 8 or grades 9 through 12, at any time after July 15, 1965, and prior to the effective date of this Act, a majority of the legal voters voting on a proposition to increase the maximum annual educational tax rate of such district to a rate in excess of 1.60%, but not in excess of 1.81% upon the value, as equalized or assessed by the Department of Revenue, have voted in favor of increasing such educational tax rate, and the election was otherwise held in substantial compliance with the law then applicable to such elections, such election is declared to be legal and valid for all purposes, notwithstanding that at the time of such election the maximum annual tax rate applicable to such school district was 1.60% of the full, fair cash value as equalized or assessed by the Department of Revenue upon the taxable property within such school district.

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(Source: Laws 1968, p. 59.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 407.39.

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School Tax Rate Validation (1969) Act

Sec.

105 ILCS 525/0.01.Short title
105 ILCS 525/1.[Certain elections declared valid]

§ 105 ILCS 525/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the School Tax Rate Validation (1969) Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act to validate certain tax rate elections in school districts.

Cite: 105 ILCS 525/0.01 et seq.

Source: P.A. 76-30.

Date: Approved April 23, 1969.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 407.39h.

§ 105 ILCS 525/1. [Certain elections declared valid]

Sec. 1. In any case where before the effective date of this Act the voters of a school district approved a proposition to increase an educational tax rate to a stated maximum at an election called and held for such purpose, that election is valid despite the fact that the election notice and ballot omitted an estimate of the amount of taxes extendible under the maximum rate then in force and an estimate of the amount of taxes extendible under the proposed rate.

(Source: P.A. 76-30.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 407.40.

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School Election Validation (1970) Act

Sec.

105 ILCS 530/0.01.Short title
105 ILCS 530/1.[Certain elections declared valid]

§ 105 ILCS 530/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the School Election Validation (1970) Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act to validate certain school elections.

Cite: 105 ILCS 530/0.01 et seq.

Source: P.A. 76-2502.

Date: Approved July 2, 1970.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 407.40h.

§ 105 ILCS 530/1. [Certain elections declared valid]

Sec. 1. In all cases where prior to the effective date of this Act an election was held for members of the board of education of a special charter school district, the validity of such election shall not be affected by whether the election was conducted by the board of education or by a board of election commissioners existing within the district.

(Source: P.A. 76-2502.)

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This section was Ill.Rev.Stat., Ch. 122, Para. 407.41.

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Municipal and School Tax Levy Validation Act

Sec.

105 ILCS 535/0.01.Short title
105 ILCS 535/1.[Certain tax levies held valid]

§ 105 ILCS 535/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Municipal and School Tax Levy Validation Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act to validate the tax levies of certain special charter cities and school districts.

Cite: 105 ILCS 535/0.01 et seq.

Source: P.A. 77-3.

Date: Approved March 4, 1971.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 407.41h.

§ 105 ILCS 535/1. [Certain tax levies held valid]

Sec. 1. Whenever, prior to the enactment of this Act, a tax levy ordinance levying taxes for city and for school purposes has been passed by a majority of a quorum of the members of a city council of a city with a population of less than 500,000 which city operates under special charter (the levy for school purposes having been duly adopted by the Board of Education for such city and duly forwarded to such city council) and a certified copy of such tax levy ordinance has been filed with the County Clerk by the second Tuesday of September of such year and the tax levy ordinance has been ratified by action approved by the majority of the members of the city council (even though such ratifying action has taken place after such second Tuesday of September or after the last day of December of such year) such tax levy is valid and of the same effect as if the tax levy ordinance had been adopted originally by a majority of the members of the city

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council.

(Source: P.A. 77-3.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 407.42.

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School District Validation (1971) Act

Sec.

105 ILCS 540/0.01.Short title
105 ILCS 540/1.[Creation of certain districts upheld]

§ 105 ILCS 540/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the School District Validation (1971) Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act to validate certain school district creations, annexations, detachments, and dissolutions.

Cite: 105 ILCS 540/0.01 et seq.

Source: P.A. 77-1231.

Date: Approved August 24, 1971.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 407.42h.

§ 105 ILCS 540/1. [Creation of certain districts upheld]

Sec. 1. In any case where before the effective date of this Act a new district was created or the boundaries of any school district was changed by the annexation or detachment of territory or by the dissolution of a district and its annexation to another district, the creation, annexation, detachment or dissolution is valid despite the fact that an election was not held on the proposition of retaining the existing bonded indebtedness of such districts in any or all of such districts involved.

(Source: P.A. 77-1231.)

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This section was Ill.Rev.Stat., Ch. 122, Para. 407.43.

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School District Validation (1975) Act

Sec.

105 ILCS 545/0.01.Short title
105 ILCS 545/1.[Certain elections declared valid]
105 ILCS 545/2.[Proceedings validated]

§ 105 ILCS 545/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the School District Validation (1975) Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act to validate the organization of certain community unit school districts.

Cite: 105 ILCS 545/0.01 et seq.

Source: P.A. 79-435.

Date: Approved August 14, 1975.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 407.43h.

§ 105 ILCS 545/1. [Certain elections declared valid]

Sec. 1. In all cases in which, before the effective date of this Act, the superintendent of the educational service region of the region containing all of the territory proposed to be organized and established into a community unit school district, or a greater per cent of the assessed valuation of the proposed district than is contained in any other region in which assessed valuation of the proposed district is situated, has called an election for the purpose of submitting to the electors of the compact and contiguous territory proposed to be organized and established into a community unit school district the proposition of establishing that territory into a community unit school district, and a majority of those electors voting on the proposition has voted in favor of the proposition of establishing the territory into a community unit school district, and in which at a subsequent election similarly called and held a board of education has been chosen for such district, each such election is hereby made legal and valid and such territory is hereby declared legally and

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validly organized and established as a community unit school district, and a valid and existing school district.

(Source: P.A. 79-435.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 407.44.

§ 105 ILCS 545/2. [Proceedings validated]

Sec. 2. All acts and proceedings done, had or performed before the effective date of this Act by each such district described in Section 1 [105 ILCS 545/1] and the persons from time to time elected and acting as the board of education thereof, such as are authorized to be done, had or performed by community unit school districts or boards of education thereof by The School Code of this State [105 ILCS 5/1-1 et seq.], are hereby declared to be legal and valid in all respects.

(Source: P.A. 79-435.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 407.45.

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School District Validation (1988) Act

Sec.

105 ILCS 550/0.01.Short title
105 ILCS 550/1.[Certain elections and proceedings confirmed]

§ 105 ILCS 550/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the School District Validation (1988) Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act to validate the organization of certain community unit school districts.

Cite: 105 ILCS 550/0.01 et seq.

Source: P.A. 85-1320.

Date: Approved August 31, 1988.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 407.50h.

§ 105 ILCS 550/1. [Certain elections and proceedings confirmed]

Sec. 1. In all cases in which, before the effective date of this Act, the regional superintendent of schools of a multicounty educational service region containing all of the territory of an elementary school district and all of the territory of a high school district proposed to be established and organized into a community unit school district has called an election for the purpose of submitting to the electors the proposition of establishing and organizing such territory into a community unit school district, and when the elementary and high school districts proposed to be so established and organized into a community unit school district had coterminous boundaries and the election on the proposition to establish and organize the territory of such districts into a community unit school district was preceded by petition therefor and hearing thereon and approval of the petition by such regional superintendent and by the State Superintendent of Education, and when a majority of the electors voting on the proposition at an election held in November of 1987 has voted in favor of the proposition to establish and organize such

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territory into a community unit school district, such election and the proceedings with respect to the petition, hearing and approval of the petition prior to such election are hereby made legal and valid, and such territory is hereby declared legally and validly organized and established as a community unit school district.

(Source: P.A. 85-1320.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 407.51.

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School District Validation (1995) Act

Sec.

105 ILCS 555/1.Short Title
105 ILCS 555/5.Validation
105 ILCS 555/75.[Not Set Out]
105 ILCS 555/99.Effective date

§ 105 ILCS 555/1. Short Title

Sec. 1. Short Title. This Act may be cited as the School District Validation (1995) Act.

(Source: P.A. 89-416, § 1.)

Effective Date. Section 99 of P.A. 89-416 made this Act effective upon becoming law. The Act was approved November 22, 1995.

§ 105 ILCS 555/5. Validation

Sec. 5. Validation. In all cases in which, before the effective date of this Act, the regional superintendent of schools was required to publish notice of a referendum to establish a community unit school district in territory comprising 2 community unit school districts, 2 community consolidated school districts, and 2 community high school districts and such notice was not published by the regional superintendent of schools as required by Section 11A-5 of the School Code [105 ILCS 5/11A-5] (now repealed) and a majority of the voters residing in each of the school districts comprising the proposed community unit school district voted in favor of the creation of such community unit school district in the general election held on November 8, 1994, and in which territory at a subsequent election similarly called and held a board of education has been chosen for such district, each such election is hereby made legal and valid and such territory is hereby declared legally and validly organized and established as a community unit school district, and a valid and existing school district.

(Source: P.A. 89-416, § 5; 94-1019, § 20.)

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Effect of Amendments. The 2006 amendment by P.A. 94-1019, effective July 10, 2006, added "(now repealed)".

CASE NOTES

District Establishment

Where, at the time that certain taxpayers filed a petition calling for an election to vote on the establishment of a community unit school, the law in effect allowed such a petition, Ill. Rev. Stat. ch. 122, para. 729, § 16, a subsequent legislative act that required a survey committee, had no application and a trial court had properly dissolved an injunction barring the holding of the election. Radford v. Withrow, 401 Ill. 14, 81 N.E.2d 417, 1948 Ill. LEXIS 386 (1948).

§ 105 ILCS 555/75. [Not Set Out]

Note.

The section, as found in P.A. 89-416, § 75, contained amendatory provisions.

§ 105 ILCS 555/99. Effective date

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 89-416, § 99.)

Note.

The Act was approved November 22, 1995.

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School District Validation (2001) Act

Sec.

105 ILCS 560/1.Short title
105 ILCS 560/5.Taxing validation
105 ILCS 560/10.Bonding validation
105 ILCS 560/15.Validation of actions of school district and school board
105 ILCS 560/99.Effective date

§ 105 ILCS 560/1. Short title

Sec. 1. Short title. This Act may be cited as the School District Validation (2001) Act.

(Source: P.A. 92-381, § 1.)

Effective Date. Section 99 of P.A. 92-381 made this act effective upon becoming law. The Act was approved August 16, 2001.

§ 105 ILCS 560/5. Taxing validation

Sec. 5. Taxing validation. All taxes levied before the effective date of this amendatory Act of the 92nd General Assembly [P.A. 92-381] by any school district for the purpose of providing funds for the payment of the principal of and interest on bonds issued by that school district for the purpose of implementing equitable remedies ordered by a federal court in litigation involving school desegregation and refunding bonds issued before the effective date of this amendatory Act of the 92nd General Assembly [P.A. 92-381] to refund those bonds are hereby validated, ratified, and confirmed as valid taxes lawfully levied and fully authorized to be extended for collection against all taxable property in the school district without limitation as to rate or amount, notwithstanding that this levy and extension of unlimited ad valorem taxes was not authorized in accordance with law.

(Source: P.A. 92-381, § 5.)

§ 105 ILCS 560/10. Bonding validation

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Sec. 10. Bonding validation. All bonds issued before the effective date of this amendatory Act of the 92nd General Assembly [P.A. 92-381] by any school district for the purpose of funding the costs of equitable remedies ordered by a federal court in litigation involving school desegregation and all refunding bonds issued before the effective date of this amendatory Act of the 92nd General Assembly [P.A. 92-381] to refund those bonds are hereby validated, ratified, and confirmed as lawful, valid, and binding general obligations of that school district, notwithstanding that the bonds and refunding bonds were not approved by referendum or otherwise authorized and issued in accordance with law.

(Source: P.A. 92-381, § 10.)

§ 105 ILCS 560/15. Validation of actions of school district and school board

Sec. 15. Validation of actions of school district and school board. All actions taken before the effective date of this amendatory Act of the 92nd General Assembly [P.A. 92-381] by any school district and its board of education to authorize and issue bonds and refunding bonds for the purpose of implementing equitable remedies ordered by a federal court in litigation involving school desegregation and to levy and extend unlimited ad valorem taxes for the payment of the principal of and interest on bonds and refunding bonds issued for the purpose of implementing equitable remedies ordered by a federal court in litigation involving school desegregation are hereby ratified, validated, and confirmed as valid and lawful acts of that school district and board of education undertaken in accordance with law, notwithstanding that the bonds or refunding bonds were not approved by referendum or otherwise authorized and issued in accordance with law and notwithstanding that the unlimited ad valorem taxes were not levied and authorized to be extended in accordance with law.

(Source: P.A. 92-381, § 15.)

§ 105 ILCS 560/99. Effective date

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 92-381, § 99.)

Note.

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This Act was approved August 16, 2001.

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CHAPTER 110.
HIGHER EDUCATION

GENERAL PROVISIONS
110 ILCS 48Grow Your Own Teacher Education Act
PUBLIC COMMUNITY COLLEGES
110 ILCS 805Public Community College Act

GENERAL PROVISIONS

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Grow Your Own Teacher Education Act

Sec.

110 ILCS 48/1.Short title
110 ILCS 48/5.Purpose
110 ILCS 48/10.Definitions
110 ILCS 48/13.Transfer of powers and duties to the Board of Higher Education
110 ILCS 48/15.Creation of Initiative
110 ILCS 48/20.Selection of grantees
110 ILCS 48/25.Expenditures under the Initiative
110 ILCS 48/30.Implementation of Initiative
110 ILCS 48/35.Independent program evaluation
110 ILCS 48/40.Funding
110 ILCS 48/90.Rules
110 ILCS 48/99.Effective date

§ 110 ILCS 48/1. Short title

Sec. 1. Short title. This Act may be cited as the Grow Your Own Teacher Education Act.

(Source: P.A. 93-802, § 1; 94-979, § 5.)

Effective Date. Section 99 of P.A. 93-802 made this Act effective January 1, 2005.

Effect of Amendments. The 2006 amendment by P.A. 94-979, effective June 30, 2006, substituted "Grow Your Own Teacher" for "Grow Our Own Teacher".

§ 110 ILCS 48/5. Purpose

Sec. 5. Purpose. The Grow Your Own Teacher preparation programs established under this Act shall comprise a major new statewide initiative, known as the Grow Your Own Teacher Education Initiative, to prepare highly skilled, committed teachers who will teach in hard-to-staff schools, including within the Department of Juvenile Justice School District, and hard-to-staff teaching positions and who will remain in these schools for substantial periods of time.

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The Grow Your Own Teacher Education Initiative shall effectively recruit and prepare parent and community leaders and paraeducators to become effective teachers statewide in hard-to-staff schools serving a substantial percentage of low-income students and hard-to-staff teaching positions in schools serving a substantial percentage of low-income students. Further, the Initiative shall increase the diversity of teachers, including diversity based on race and ethnicity.

The Grow Your Own Teacher Education Initiative shall ensure educational rigor by effectively preparing candidates in accredited bachelor's degree programs in teaching, through which graduates shall meet the requirements to secure an Illinois initial teaching certificate.

The goal of the Grow Your Own Teacher Education Initiative is to add 1,000 teachers to low-income, hard-to-staff Illinois schools by 2016.

(Source: P.A. 93-802, § 5; 94-979, § 5; 95-476, § 5; 96-144, § 5; 96-414, § 5; 96-1000, § 290.)

Effect of Amendments. The 2006 amendment by P.A. 94-979, effective June 30, 2006, substituted "Grow Your Own Teacher" for "Grow Our Own Teacher" throughout; deleted "and teacher leaders" after "statewide" in the first sentence of the second paragraph; and in the third paragraph substituted "candidates" for "students", and "initial" for "standard".

The 2007 amendment by P.A. 95-476, effective January 1, 2008, in the first sentence of the second paragraph, inserted "serving a substantial percentage of low-income students" following "hard-to-staff schools"; in the last paragraph, deleted "and other" following "income"; and made a related change.

The 2009 amendment by P.A. 96-144, effective August 7, 2009, substituted "race and ethnicity" for "race, ethnicity, and disability" at the end of the second paragraph; and deleted "with an average retention period of 7 years, as opposed to the current rate of 2.5 years for new teachers in such areas" following "2016" at the end of the last paragraph.

The 2009 amendment by P.A. 96-414, effective January 1, 2010, added "including within the Department of Juvenile Justice School District" in the first paragraph; and made related changes.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, combined earlier multiple amendments to the section.

§ 110 ILCS 48/10. Definitions

Sec. 10. Definitions. In this Act:

"Accredited teacher preparation program" means a regionally accredited, Illinois approved teacher education program authorized to prepare individuals to fulfill all of the requirements to receive an Illinois initial teaching certificate.

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"Cohort" means a group of teacher education candidates who are enrolled in and share experiences in the same program and are linked by their desire to become Illinois teachers in hard-to-staff schools and by their need for the services and supports offered by the Initiative.

"Community organization" means a nonprofit organization that has a demonstrated capacity to train, develop, and organize parents and community leaders into a constituency that will hold the school and the school district accountable for achieving high academic standards; in addition to organizations with a geographic focus, "community organization" includes general parent organizations, organizations of special education or bilingual education parents, and school employee unions.

"Developmental classes" means classes in basic skill areas, such as mathematics and language arts that are prerequisite to, but not counted towards, degree requirements of a teacher preparation program.

"Eligible school" means a public elementary, middle, or secondary school in this State that serves a substantial percentage of low-income students and that is either hard to staff or has hard-to-staff teaching positions.

"Hard-to-staff school" means a public elementary, middle, or secondary school in this State that, based on data compiled by the State Board of Education in conjunction with the Board of Higher Education, serves a substantial percentage of low-income students, as defined by the State Board.

"Hard-to-staff teaching position" means a teaching category (such as special education, bilingual education, mathematics, or science) in which statewide data compiled by the State Board of Education in conjunction with the Board of Higher Education indicates a multi-year pattern of substantial teacher shortage or that has been identified as a critical need by the local school board.

"Initiative" means the Grow Your Own Teacher Education Initiative created under this Act.

"Paraeducator" means an individual with a history of demonstrated accomplishments in school staff positions (such as teacher assistants, school-community liaisons, school clerks, and security aides) in schools that meet the definition of a hard-to-staff school under this Section.

"Parent and community leader" means an individual who has or had a child enrolled in a school or schools that meet the definition of a hard-to-staff school under this Section and who has a history of active involvement in the school or who has a history of working to improve schools serving a substantial percentage of low-income students, including membership in a community organization.

"Program" means a Grow Your Own Teacher preparation program established by a consortium under this Act.

"Schools serving a substantial percentage of low-income students" means schools that maintain any of grades pre-kindergarten through 8, in which at least 35% of the students

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are eligible to receive free or reduced-price lunches and schools that maintain any of grades 9 through 12, in which at least 25% of the students are eligible to receive free or reduced price lunches.

"State Board" means the Board of Higher Education.

(Source: P.A. 93-802, § 10; 94-979, § 5; 95-476, § 5; 96-144, § 5; 96-1393, § 5.)

Effect of Amendments. The 2006 amendment by P.A. 94-979, effective June 30, 2006, rewrote the section.

The 2007 amendment by P.A. 95-476, effective January 1, 2008, inserted the present third paragraph; and rewrote the present fourth paragraph.

The 2009 amendment by P.A. 96-144, effective August 7, 2009, rewrote the section.

The 2010 amendment by P.A. 96-1393, effective July 29, 2010, inserted "in conjunction with the Board of Higher Education" in the definitions of 'Hard-to-staff school' and 'Hard-to-staff teaching position'; and substituted "Board of Higher Education" for "State Board of Education" in the definition of State Board.

§ 110 ILCS 48/13. Transfer of powers and duties to the Board of Higher Education

Sec. 13. Transfer of powers and duties to the Board of Higher Education. On July 1, 2010, all powers and duties of the State Board of Education under this Act shall be transferred to the Board of Higher Education. All rules, standards, guidelines, and procedures adopted by the State Board of Education under this Act shall continue in effect as the rules, standards, guidelines, and procedures of the Board of Higher Education, until they are modified or abolished by the Board of Higher Education.

(Source: P.A. 96-1393, § 5.)

Effective Date. Section 99 of P.A. 96-1393 purports to make this section effective July 1, 2010; however, P.A. 96-1393 was approved July 29, 2010.

§ 110 ILCS 48/15. Creation of Initiative

Sec. 15. Creation of Initiative. The Grow Your Own Teacher Education Initiative is created. The State Board shall administer the Initiative as a grant competition to fund

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consortia that will carry out Grow Your Own Teacher preparation programs.

(Source: P.A. 93-802, § 15; 94-979, § 5.)

Effect of Amendments. The 2006 amendment by P.A. 94-979, effective June 30, 2006, twice substituted "Grow Your Own Teacher" for "Grow Our Own Teacher".

§ 110 ILCS 48/20. Selection of grantees

Sec. 20. Selection of grantees. The State Board shall award grants to qualified consortia that reflect the distribution and diversity of hard-to-staff schools and hard-to-staff positions across this State. In awarding grants, the State Board shall select programs that successfully address Initiative criteria and that reflect a diversity of strategies in terms of serving urban areas, serving rural areas, the nature of the participating institutions of higher education, and the nature of hard-to-staff schools and hard-to-staff teaching positions on which a program is focused.

The State Board shall select consortia that meet the following requirements:

(1) A consortium shall be composed of at least one 4-year institution of higher education with an Illinois approved teacher preparation program, at least one school district or group of schools, and one or more community organizations. The consortium membership may also include a 2-year institution of higher education, a school employee union, or a regional office of education.

(2) The 4-year institution of higher education participating in the consortium shall have past, demonstrated success in preparing teachers for elementary or secondary schools serving a substantial percentage of low-income students.

(3) The consortium shall focus on a clearly defined set of eligible schools that will participate in the program. The consortium shall articulate the steps that it will carry out in preparing teachers for its participating schools and in preparing teachers for one or more hard-to-staff teaching positions in those schools.

(4) A candidate in a program under the Initiative must hold a high school diploma or its equivalent, must meet either the definition of "parent and community leader" or the definition of "paraeducator" contained in Section 10 of this Act [110 ILCS 48/10], must not have attended college right after high school or must have experienced an interruption in his or her college education, and does not hold a bachelor's degree.

(5) The consortium shall employ effective procedures for teaching the skills and knowledge needed to prepare highly competent teachers. Professional preparation shall include on-going direct experience in target schools and evaluation of this experience.

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(6) The consortium shall offer the program to cohorts of candidates, as defined in Section 10 of this Act, on a schedule that enables candidates to work full time while participating in the program and allows paraeducators to continue in their current positions. In any fiscal year in which an appropriation for the Initiative is made, the consortium shall guarantee that support will be available to an admitted cohort for the cohort's education for that fiscal year. At the beginning of the Initiative, programs that are already operating and existing cohorts of candidates under this model shall be eligible for funding.

(7) The institutions of higher education participating in the consortium shall document and agree to expend the same amount of funds in implementing the program that these institutions spend per student on similar educational programs. Grants received by the consortium shall supplement and not supplant these amounts.

(8) The State Board shall establish additional criteria for review of proposals, including criteria that address the following issues:

(A) Previous experience of the institutions of higher education in preparing candidates for hard-to-staff schools and positions and in working with students with non-traditional backgrounds.

(B) The quality of the implementation plan, including strategies for overcoming institutional barriers to the progress of non-traditional candidates.

(C) If a community college is a participant, the nature and extent of existing articulation agreements and guarantees between the community college and the 4-year institution of higher education.

(D) The number of candidates to be educated in the planned cohort or cohorts and the capacity of the consortium for adding cohorts in future cycles.

(E) Experience of the community organization or organizations in organizing parents and community leaders to achieve school improvement and a strong relational school culture.

(F) The qualifications of the person or persons designated by the 4-year institution of higher education to be responsible for cohort support and the development of a shared learning and social environment among candidates.

(G) The consortium's plan for collective consortium decision-making, involving all consortium members, including mechanisms for candidate input.

(H) The consortium's plan for direct impact of the program on the quality of education in the eligible schools.

(I) The relevance of the curriculum to the needs of the eligible schools and positions, and the use in curriculum and instructional planning of principles for effective education for adults.

(J) The availability of classes under the program in places and times accessible to the candidates.

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(K) Provision of a level of performance to be maintained by candidates as a condition of continuing in the program.

(L) The plan of the 4-year institution of higher education to ensure that candidates take advantage of existing financial aid resources before using the loan funds described in Section 25 of this Act [110 ILCS 48/25].

(M) The availability of supportive services, including, but not limited to, counseling, tutoring, transportation, technology and technology support, and child care.

(N) A plan for continued participation of graduates of the program in a program of support for at least 2 years, including mentoring and group meetings.

(O) A plan for testing and qualitative evaluation of candidates' teaching skills that ensures that graduates of the program are as prepared for teaching as other individuals completing the institution of higher education's preparation program for the certificate sought.

(P) A plan for internal evaluation that provides reports at least yearly on the progress of candidates towards graduation and the impact of the program on the target schools and their communities.

(Q) Contributions from schools, school districts, and other consortia members to the program, including stipends for candidates during their student teaching.

(R) Consortium commitment for sustaining the program over time, as evidenced by plans for reduced requirements for external funding, in subsequent cycles.

(S) The inclusion in the planned program of strategies derived from community organizing that will help candidates develop tools for working with parents and other community members.

(Source: P.A. 93-802, § 20; 94-979, § 5; 95-476, § 5; 96-144, § 5.)

Effect of Amendments. The 2006 amendment by P.A. 94-979, effective June 30, 2006, rewrote the section.

The 2007 amendment by P.A. 95-476, effective January 1, 2008, rewrote (3); in (4), substituted "A candidate" for "Candidate"; in the third sentence of (6), added "In any fiscal year in which an appropriation for the Initiative is made", and substituted "for the cohort's training for that fiscal year" for "through the cohort's full period of training"; in (8)(H) and (8)(I), substituted "eligible" for "target" and substituted "the eligible" for "targeted", respectively; and made related changes.

The 2009 amendment by P.A. 96-144, effective August 7, 2009, in (1) substituted "Illinois approved" for "accredited", inserted "membership", substituted "or a regional office of education" for "or both" and made related changes; rewrote (4); in (6) substituted "as defined in Section 10 of this Act" for "who begin by moving through the program together. The program shall be offered" in the first sentence, and substituted "education" for "training" in the second sentence, and made related changes; substituted "educated" for "trained" in (8)(D); in (8)(G) inserted "involving all consortium members" and deleted "community and" preceding "candidate"; and in (8)(M) inserted "but not limited to", inserted "transportation, technology and technology support", and made

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related changes.

§ 110 ILCS 48/25. Expenditures under the Initiative

Sec. 25. Expenditures under the Initiative. (a) Every program under the Initiative shall implement a program of forgivable loans to cover any portion of tuition, books, and fees of candidates under the program in excess of the candidates' grants-in-aid. All students admitted to a cohort shall be eligible for a forgivable student loan. Loans shall be fully forgiven if a graduate completes 5 years of service in hard-to-staff schools or hard-to-staff teaching positions, with partial forgiveness for shorter periods of service. The State Board shall establish standards for the approval of requests for waivers or deferrals from individuals to waive this obligation. The State Board shall also define standards for the fiscal management of these loan funds.

(b) The State Board shall award grants under the Initiative in such a way as to provide the required support for a cohort of candidates for any fiscal year in which an appropriation for the Initiative is made. Program budgets must show expenditures and needed funds for the entire period that candidates are expected to be enrolled.

(c) No funds under the Initiative may be used to supplant the average per-capita expenditures by the institution of higher education for candidates.

(d) Where necessary, program budgets shall include the costs of child care and other indirect expenses, such as transportation, tutoring, technology, and technology support, necessary to permit candidates to maintain their class schedules. Grant funds may be used by any member of a consortium to offset such costs, and the services may be provided by the community organization or organizations, by any other member of the consortium, or by independent contractors.

(e) The institution of higher education may expend grant funds to cover the additional costs of offering classes in community settings and for tutoring services.

(f) The community organization or organizations may receive a portion of the grant money for the expenses of recruitment, community orientation, and counseling of potential candidates, for providing space in the community, and for working with school personnel to facilitate individual work experiences and support of candidates.

(g) The school district or school employee union or both may receive a portion of the grant money for expenses of supporting the work experiences of candidates and providing mentors for graduates. Notwithstanding the provisions of Section 10-20.15 [105 ILCS 5/10-20.15] of the School Code, school districts may also use these or other applicable public funds to pay participants in programs under the Initiative for student teaching required by an accredited teacher preparation program.

(h) One or more members of the consortium may expend funds to cover the salary of a site-based cohort coordinator.

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(i) Grant funds may also be expended to pay directly for required developmental classes for candidates beginning a program.

(Source: P.A. 93-802, § 25; 94-979, § 5; 95-476, § 5; 96-144, § 5.)

Effect of Amendments. The 2006 amendment by P.A. 94-979, effective June 30, 2006, rewrote the section.

The 2007 amendment by P.A. 95-476, effective January 1, 2008, in the fourth sentence of (a), substituted "for waivers or deferrals of" for "from programs to waive" and deleted "and for deferral of repayment for work interruptions after certification" following "candidates"; in (b), substituted "any fiscal year in which an appropriation for the Initiative is made" for "the cohort's entire training period" in the first sentence and inserted "and needed funds" in the last sentence; and rewrote (d).

The 2009 amendment by P.A. 96-144, effective August 7, 2009, in (a), in the first sentence substituted "books, and fees" for "and direct expenses", inserted "the candidates" and deleted "and other forgivable loans received" following "grants-in-aid"; substituted "a forgivable student loan" for "such loans" in the second sentence, substituted "deferrals from individuals to waive this obligation" for "deferrals of this obligation for individual candidates" in the third sentence, and made related changes; substituted "The State Board shall award grants under the Initiative" for "Grants under the Initiative shall be awarded" in the first sentence of (b); in (d) deleted "that are" following "support" in the first sentence, and rewrote the second sentence; and substituted "One or more members" for "One member" in (h).

§ 110 ILCS 48/30. Implementation of Initiative

Sec. 30. Implementation of Initiative. The State Board shall develop guidelines and application procedures for the Initiative in fiscal year 2011. The State Board may, if it chooses, award a small number of planning grants during any fiscal year to potential consortia. Other than existing cohorts, the first programs under the Initiative shall be awarded grants in such a way as to allow candidates to begin their work at the beginning of the 2006-2007 school year.

(Source: P.A. 93-802, § 30; 94-979, § 5; 96-1393, § 5.)

Effect of Amendments. The 2006 amendment by P.A. 94-979, effective June 30, 2006, rewrote the section.

The 2010 amendment by P.A. 96-1393, effective July 29, 2010, substituted "year 2011" for "year 2005" in the first sentence.

§ 110 ILCS 48/35. Independent program evaluation

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Sec. 35. Independent program evaluation. The State Board shall contract for an independent evaluation of program implementation by each of its participating consortia and of the impact of each program, including the extent of candidate persistence in program enrollment, acceptance as an education major in a 4-year institution of higher education, completion of a bachelor's degree in teaching, obtaining a teaching position in a target school or similar school, subsequent effectiveness as a teacher, and persistence in teaching in a target school or similar school. The evaluation shall assess the Initiative's overall effectiveness and shall identify particular program strategies that are especially effective.

(Source: P.A. 93-802, § 35; 94-979, § 5.)

Effect of Amendments. The 2006 amendment by P.A. 94-979, effective June 30, 2006, substituted "candidate" for "student" in the first sentence.

§ 110 ILCS 48/40. Funding

Sec. 40. Funding. Funding of the Initiative is subject to appropriation.

(Source: P.A. 93-802, § 40.)

§ 110 ILCS 48/90. Rules

Sec. 90. Rules. The State Board may adopt any rules necessary to carry out its responsibilities under this Act.

(Source: P.A. 93-802, § 90.)

§ 110 ILCS 48/99. Effective date

Sec. 99. Effective date. This Act takes effect January 1, 2005.

(Source: P.A. 93-802, § 99.)

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PUBLIC COMMUNITY COLLEGES

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Public Community College Act

ARTICLE I

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110 ILCS 805/1-3.Applicable laws
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110 ILCS 805/2-4.[Rules and regulations]
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110 ILCS 805/2-6.[Executive officer and employees]
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110 ILCS 805/2-16.2.[Renumbered].
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110 ILCS 805/3-4.1.[Referendum costs]
110 ILCS 805/3-5.[Form of proposition]
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110 ILCS 805/3-7.[Terms; vacancies; compensation]
110 ILCS 805/3-7a.Trustee districts; Community College District No. 522.
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110 ILCS 805/3-7.1.[Governing law]
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ARTICLE VI

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110 ILCS 805/6-4.Variable rates and fees

110 ILCS 805/6-4a.In-state tuition charge

110 ILCS 805/6-4.1.[Students failing to qualify for financial support]

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110 ILCS 805/6-5.3a.[Repealed.]

110 ILCS 805/6-5.5.[Date of annexation and disconnection]

110 ILCS 805/6-5.9.[Repealed.]

110 ILCS 805/6-6.1.[New districts]

110 ILCS 805/6-7.[Repealed.]

110 ILCS 805/6-7.1 through 110 ILCS 805/6-7.5 [Repealed].

110 ILCS 805/6-10.[Application of paragraphs]

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110 ILCS 805/7-4.[Vesting of power by city council]

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ARTICLE I.

SHORT TITLE; DEFINITIONS

§ 110 ILCS 805/1-1. [Short title]

Sec. 1-1. This Act shall be known and shall be cited as the Public Community College Act.

(Source: P.A. 78-669.)

Derivation.

Title: An Act in relation to the establishment, operation and maintenance of public community colleges.

Cite: 110 ILCS 805/408 et seq.

Source: L. 1965, p. 1529. Title amended, P.A. 78-669.

Date: Approved July 15, 1965.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 101-1.

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CASE NOTES

Analysis

Constitutionality
Board of Trustees
- Administrative Review
Community College

Constitutionality

The Act is constitutional; it is not vague and does not improperly delegate legislative authority. Allen v. Illinois Community College Bd., 315 Ill. App. 3d 837, 248 Ill. Dec. 635, 734 N.E.2d 926, 2000 Ill. App. LEXIS 685 (5 Dist. 2000).

Board of Trustees

- Administrative Review

The Administrative Review Act (735 ILCS 5/3-101 et seq.) was unavailable to review the action of a community college board of trustees who discharged plaintiff teacher for violating a sabbatical-professional leave agreement, since this Act which governs the operations of community colleges, did not expressly adopt the Administrative Review Act. Maas v. Board of Trustees, 94 Ill. App. 3d 562, 50 Ill. Dec. 35, 418 N.E.2d 1029 (5 Dist. 1981).

Community College

Trial court erred in dismissing the community college board's declaratory judgment action seeking a declaration that its community college was a "political subdivision" subject to the Local Governmental Professional Services Selection Act, 50 ILCS 510/0.01 et seq., and, thus, was not prohibited from soliciting fee or cost information from professionals before negotiating construction projects with professional service firms. A community college was a "political subdivision" and was not, as the state professional regulation agency and its director contended, a "state agency" under the Qualifications Based Selection Act, 30 ILCS 535/1 et seq., that was not entitled to solicit such information. Bd. of Trs. v. Dep't of Prof'l Regulation, 363 Ill. App. 3d 190, 299 Ill. Dec. 903, 842 N.E.2d 1255, 2006 Ill. App. LEXIS 48 (1 Dist. 2006).

§ 110 ILCS 805/1-2. [Definitions]

Sec. 1-2. The following terms have the meanings respectively prescribed for them except as the context otherwise requires:

(a) "Board of Higher Education": The Board of Higher Education created by "An Act creating a Board of Higher Education, defining its powers and duties, making an appropriation therefor, and repealing an Act herein named", approved August 22, 1961, as now or hereafter amended [110 ILCS 205/1 et seq.].

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(b) "State Board": Illinois Community College Board created by Article II of this Act [110 ILCS 805/2-1 et seq.].

(c) "Community Colleges": Public community colleges existing in community college districts organized under this Act, or public community colleges which prior to October 1, 1973, were organized as public junior colleges under this Act, or public community colleges existing in districts accepted as community college districts under this Act which districts have a population of not less than 30,000 inhabitants or consist of at least 3 counties or that portion of 3 counties not included in a community college district and an assessed valuation of not less than $75,000,000 and which districts levy a tax for community college purposes.

(d) "Community College Districts": Districts authorized to maintain community colleges under this Act, including community college districts which prior to October 1, 1973, were established under this Act as public junior college districts.

(e) "Comprehensive community college program": A program offered by a community college which includes (1) courses in liberal arts and sciences and general education; (2) adult education courses; and (3) courses in occupational, semi-technical or technical fields leading directly to employment. At least 15% of all courses taught must be in fields leading directly to employment, one-half of which courses to be in fields other than business education.

(f) "Common Schools": Schools in districts operating grades 1 through 8, 1 through 12 or 9 through 12.

(g) "Board": The board of trustees of a community college district, whether elected or appointed.

(h) "The election for the establishment": An election to establish a community college district under Article III, or an election to establish a junior college district prior to July 15, 1965, which district has become a community college district under this Act.

(i) "Regional superintendent": The superintendent of an educational service region.

(j) "Employment Advisory Board": A board, appointed by the Board of Trustees of a Community College District, for the purpose of advising the Board of Trustees as to local employment conditions within the boundaries of the Community College District.

(k) "Operation and maintenance of facilities": The management of fixed equipment, plant and infrastructure.

(Source: P.A. 85-1335; 97-539, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 101-2.

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Effect of Amendments. The 2011 amendment by P.A. 97-539, effective August 23, 2011, in (g), deleted "as provided in Section 3-7" following "whether elected" and deleted "as provided in Section 7-2" from the end.

CASE NOTES

Analysis

Authority
- Arbitrator
Board of Trustees
- Faculty Qualifications

Authority

- Arbitrator

An arbitrator may not award contracts to cure a defect in school board procedure. Board of Trustees v. Cook County College Teachers Union Local 1600, 22 Ill. App. 3d 1060, 318 N.E.2d 193 (1 Dist. 1974), rev'd on other grounds, 62 Ill. 2d 470, 343 N.E.2d 473 (1976).

Board of Trustees

- Faculty Qualifications

The determination of faculty qualifications is one of the board of trustees' nondelegable discretionary powers, as established through judicial interpretation of this Act. Board of Trustees v. Cook County College Teachers Local 1600, 139 Ill. App. 3d 617, 94 Ill. Dec. 79, 487 N.E.2d 956 (1 Dist. 1985).

§ 110 ILCS 805/1-3. Applicable laws

Sec. 1-3. Applicable laws. Other State laws and related administrative requirements apply to this Act, including, but not limited to, the following laws and related administrative requirements: the Illinois Human Rights Act [775 ILCS 5/1-101 et seq.], the Prevailing Wage Act [820 ILCS 130/0.01 et seq.], the Public Construction Bond Act [30 ILCS 550/0.01 et seq.], the Public Works Preference Act [30 ILCS 560/0.01 et seq.] (repealed on June 16, 2010 by Public Act 96-929), the Employment of Illinois Workers on Public Works Act [30 ILCS 570/0.01 et seq.], the Freedom of Information Act [5 ILCS 140/1 et seq.], the Open Meetings Act [5 ILCS 120/1 et seq.], the Illinois Architecture Practice Act of 1989 [225 ILCS 305/1 et seq.], the Professional Engineering Practice Act of 1989 [225 ILCS 325/1 et seq.], the Structural Engineering Practice Act of 1989 [225 ILCS 340/1 et seq.], the Local Government Professional Services Selection Act [50 ILCS 510/0.01 et seq.], and the Contractor Unified License and Permit Bond Act

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[50 ILCS 830/1 et seq.].

(Source: P.A. 94-1062, § 15; 97-333, § 255.)

Note.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 94-1062 made the section effective upon becoming law. The Act was approved July 31, 2006.

Effect of Amendments. The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, inserted "(repealed on June 16, 2010 by Public Act 96-929)."

§ 110 ILCS 805/1-4. Applicability

Sec. 1-4. Applicability. In order to protect the integrity of historic buildings, no provision of this Act shall be interpreted to require the implementation of energy conservation measures that conflict with respect to any property eligible for, nominated to, or entered on the National Register of Historic Places, pursuant to the National Historic Preservation Act of 1966 [16 U.S.C. § 470 et seq.], or the Illinois Register of Historic Places, pursuant to the Illinois Historic Preservation Act [20 ILCS 3410/1 et seq.].

(Source: P.A. 94-1062, § 15.)

Effective Date. Section 99 of P.A. 94-1062 made the section effective upon becoming law. The Act was approved July 31, 2006.

ARTICLE II.

STATE BOARD; POWERS AND DUTIES

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§ 110 ILCS 805/2-1. [State Board]

Sec. 2-1. There is created the Illinois Community College Board hereinafter referred to as the "State Board". The State Board shall consist of 12 members as follows: a nonvoting student member selected by the recognized advisory committee of students of the Illinois Community College Board, this student to serve for a term of one year beginning on July 1 of each year, except that the student member initially selected shall serve a term beginning on the date of such selection and expiring on the next succeeding June 30, and except that any student member or former student member may be selected by the recognized advisory committee of students of the State Board to serve a second term as the nonvoting student member of the State Board; and 11 members, one of whom shall be a senior citizen age 60 or over, to be appointed by the Governor by and with the advice and consent of the Senate. Beginning on July 1, 2005, one of the 11 members appointed by the Governor, by and with the advice and consent of the Senate, must be a faculty member at an Illinois public community college. Also beginning on July 1, 2005, one of the 11 members appointed by the Governor, by and with the advice and consent of the Senate, must be a member of the board of trustees of a public community college district. The membership requirements set forth in this Section apply only to the State Board and shall have no effect on the membership of the board of trustees of a community college district. The members first appointed under this amendatory Act of 1984 shall serve for a term of 6 years. After the expiration of the terms of the office of the members first appointed to the State Board, their respective successors shall hold office for a term of 6 years and until their successors are qualified and seated. In the event of vacancies on the State Board in offices appointed by the Governor occurring during a recess of the Senate, the Governor shall have the power to make temporary appointments until the next meeting of the Senate, when the vacancy shall be filled by nomination to be confirmed by the Senate.

(Source: P.A. 86-469; 94-157, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 102-1.

Effect of Amendments. The 2005 amendment by P.A. 94-157, effective July 8, 2005, added the third through fifth sentences.

CASE NOTES

Analysis

Intent

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Notice

Intent

Where the General Assembly provided that the board itself, which appoints the chief administrative officer, should "establish tenure policies for the employment of teachers and administrative personnel," it intended, in using this language, to give the board authority to establish its own policies with respect to tenure which in its broadest sense included the limited tenure afforded by a contract calling for a term in excess of one year. Hostrop v. Board of Junior College Dist. No. 515, 523 F.2d 569 (7th Cir. 1975), cert. denied, 425 U.S. 963, 96 S. Ct. 1748, 48 L. Ed. 2d 208 (1976).

Notice

Unlike 105 ILCS 5/24-1 et seq., this Act does not require that a junior college board give notice of nonrenewal to a nontenured faculty member, or that such a faculty member is presumed to be employed for the next academic year if he receives untimely or insufficient notice. Jackson v. Board of Trustees, 22 Ill. App. 3d 898, 317 N.E.2d 318 (5 Dist. 1974).

§ 110 ILCS 805/2-2. [Members of State Board]

Sec. 2-2. The members of the State Board shall be citizens and residents of the State of Illinois and shall be selected as far as may be practicable on the basis of their knowledge of, or interest and experience in, community colleges. No member of the State Board shall hold current membership on a school board or board of trustees of a public or non-public university or technical institute or be employed by the State or federal government.

This Section does not prohibit a member of the State Board from being employed by a public community college.

(Source: P.A. 86-485; 94-157, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 102-2.

Effect of Amendments. The 2005 amendment by P.A. 94-157, effective July 8, 2005, in the first paragraph, second sentence, deleted "be engaged in education as a profession or" after "Board shall" and deleted "college" after "non-public"; and in the last paragraph substituted "a" for "the student".

§ 110 ILCS 805/2-3. [Officers; terms; quorum]

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Sec. 2-3. The chairman of the State Board shall be selected by the Governor to serve until another selection is made by the Governor. At a regular meeting by the end of June each year the vice-chairman shall be selected by the members of the board for an annual term beginning July 1 next. The vice-chairman shall act as chairman in the absence of the chairman. In the event of the death or resignation of the chairman, the vice-chairman shall assume the chairman's duties, including those specified in Section 3-7 [110 ILCS 805/3-7], until such time as the Governor selects a chairman. The principal office of the State Board shall be located in Springfield, Illinois. The State Board shall meet at regular intervals at times determined by the State Board. Special meetings of the State Board may be called by the chairman or in the event he is unable to act, by the vice-chairman, or upon written notice signed by at least 3 members of the State Board. Notice of the time, purpose and place of any special meeting shall be given to each member in writing at least 5 days before the date fixed for the meeting. A majority of the members of the State Board shall constitute a quorum at all meetings, but the approval of a new unit of instruction, research, or a public service, as defined in Section 3-25.1 [110 ILCS 805/3-25.1], for a community college shall require the concurrence of a majority of all members of the State Board.

The nonvoting student member shall have all of the privileges of membership, including the right to make and second motions and to attend executive sessions, other than the right to vote. The nonvoting student member shall not be considered a member for the purpose of determining a quorum at any meeting of the board or any of its committees. No action of the board shall be invalidated by reason of any vacancies on the board, or by reason of any failure to select a nonvoting student member.

(Source: P.A. 86-485; 88-322, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 102-3.

Effect of Amendments. The 1993 amendment by P.A. 88-322, effective August 12, 1993, in the last sentence of the first paragraph inserted "as defined in Section 3-25.1"; and deleted the last paragraph regarding the definition of new unit of instruction, research or public service.

CASE NOTES

In General

To obtain mandamus relief the relator must show not only a clear right to the relief sought to be compelled, but also a corresponding duty on the part of the respondent to do the act sought to be compelled. Jackson v. Board of Trustees, 22 Ill. App. 3d 898, 317 N.E.2d 318 (5 Dist. 1974).

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§ 110 ILCS 805/2-4. [Rules and regulations]

Sec. 2-4. The State Board shall have the power to make and provide rules and regulations not inconsistent with the provisions of this Act. The rules shall include, but shall not be limited to: (a) the information which the State Board requires of community college districts when applying for approval of new colleges and branches, including (i) the name, district number, and college number of the college applying for approval of a new branch, and (ii) the name, location, and address of the proposed branch, and (iii) the proposed date of implementation of the application; (b) (blank); and (c) the information which the State Board requires of community college districts when applying for approval of new programs, including (i) the community college district name and number, (ii) the name, location, and address of the proposed college, and (iii) the proposed date of implementation of the application. The State Board may not require information other than that specified in the rules. Such rules and regulations and changes therein shall be filed and shall become effective as provided by "The Illinois Administrative Procedure Act", approved September 22, 1975, as now or hereafter amended [5 ILCS 100/1-1 et seq.].

(Source: P.A. 84-1358; 90-372, § 5-312.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 102-4.

Effect of Amendments. The 1997 amendment by P.A. 90-372, effective July 1, 1998, deleted subsection (b) regarding information required by State Board of community college districts when applying for approval to extend courses into non-district territory.

CASE NOTES

Analysis

In General
Authority of Court
- Scope of Jurisdiction
Scope of Review

In General

The rules promulgated by a community college board, acting in the capacity of an administrative agency pursuant to statutory authority, have the binding force of law which must govern the

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board's own actions. Rend Lake College Fed'n of Teachers v. Board of Community College, 84 Ill. App. 3d 308, 39 Ill. Dec. 611, 405 N.E.2d 364 (5 Dist. 1980).

Authority of Court

- Scope of Jurisdiction

In dispute between teachers and school board, the trial court had jurisdiction to restrain or restrict the scope of arbitration before the arbitration was held pursuant to an agreement of the parties, which had been incorporated into a collective bargaining agreement. Board of Trustees v. Cook County College Teachers Union Local 1600, 22 Ill. App. 3d 1060, 318 N.E.2d 193 (1 Dist. 1974), rev'd on other grounds, 62 Ill. 2d 470, 343 N.E.2d 473 (1976).

Scope of Review

Reviewing courts may interfere with the construction and application of regulations only where administrative interpretation is plainly erroneous. Rend Lake College Fed'n of Teachers v. Board of Community College, 84 Ill. App. 3d 308, 39 Ill. Dec. 611, 405 N.E.2d 364 (5 Dist. 1980).

OPINIONS OF ATTORNEY GENERAL

Special Grants

- Distribution

Amounts paid out in special grants should not be included in the computation of the monetary average even if such grants are distributed on a credit hour basis. 1977 Op. Atty. Gen. 161.

§ 110 ILCS 805/2-5. Compensation and expenses of members

Sec. 2-5. Compensation and expenses of members. The members of the State Board shall serve without compensation but they shall be reimbursed for their actual and necessary expenses while engaged in the performance of their duties.

(Source: P.A. 79-932; 96-910, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 102-5.

Effect of Amendments. The 2010 amendment by P.A. 96-910, effective July 1, 2010, deleted the last sentence which read: "Such expenses incurred by any non-voting student member may, at the discretion of the Chairman of the Board, be provided for by advance payment to such

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member, who shall account therefor to the Board immediately after each meeting".

§ 110 ILCS 805/2-6. [Executive officer and employees]

Sec. 2-6. In accordance with the provisions of "An Act to create the State Universities Civil Service System," approved May 11, 1905, as now or hereafter amended [110 ILCS 70/36b et seq.], the Board shall employ and fix the compensation of an executive officer and such employees as it deems necessary for the purposes of this Act.

(Source: P.A. 80-281.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 102-6.

§ 110 ILCS 805/2-6.1. [Indemnification; insurance]

Sec. 2-6.1. The State Board shall indemnify and save harmless the State Board, its members and employees from financial loss, including court costs and attorneys' fees, arising out of any claim, demand, suit or judgment by reason of alleged wrongful act or negligence of the State Board or such member or employee, provided that the State Board or such member or employee, at the time of the alleged act or omission causing the damages, was acting in the discharge of its or his duties and within the scope of employment and that such damages did not result from the intentional act or omission of the State Board or such member or employee.

The State Board may provide insurance coverage for the purposes of this Section. Such insurance shall be carried in a company licensed to write such coverage in this State.

(Source: P.A. 81-685.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 102-6.1.

CASE NOTES

Bond Requirement

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As a board of trustees of a community college had the duty to indemnify its employees against civil suits based on acts performed within the scope of employment, and it funded the college vice president's appeal bond, the trial court erred in denying the vice president a waiver of the bond requirement, which it had granted the board. Valentino v. Hilquist, 337 Ill. App. 3d 461, 271 Ill. Dec. 697, 785 N.E.2d 891, 2003 Ill. App. LEXIS 84 (1 Dist. 2003), appeal denied, 204 Ill. 2d 684, 275 Ill. Dec. 83, 792 N.E.2d 314 (2003).

§ 110 ILCS 805/2-7. [Advisory committees]

Sec. 2-7. The Board may appoint advisory committees, the members of which shall serve without compensation.

(Source: Laws 1965, p. 1529; P.A. 96-910, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 102-7.

Effect of Amendments. The 2010 amendment by P.A. 96-910, effective July 1, 2010, deleted "but shall be reimbursed for actual and necessary expenses incurred in the administration of the Act" at the end of the paragraph.

§ 110 ILCS 805/2-8. [Oaths]

Sec. 2-8. Before entering upon his duties each member of the State Board shall take and subscribe an oath as required by Section 3 of Article XIII of the Constitution of Illinois, and file the same in the office of the Secretary of State.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 102-8.

§ 110 ILCS 805/2-9. [Records]

Sec. 2-9. The Executive Secretary of the State Board shall have charge of all the records of the State Board and keep the same secure at all times. He shall keep a full and complete record of the attendance of members of the State Board and full and complete

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minutes of meetings thereof.

(Source: Laws 1965, p. 1529.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 102-9.

§ 110 ILCS 805/2-10. [Study of the status of community college education]

Sec. 2-10. The State Board shall make a thorough, comprehensive and continuous study of the status of community college education, its problems, needs for improvement, and projected developments and shall make a detailed report thereof to the General Assembly not later than March 1 of each odd-numbered year and shall submit recommendations for such legislation as it deems necessary.

The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report with the Speaker, the Minority Leader and the Clerk of the House of Representatives and the President, the Minority Leader and the Secretary of the Senate and the Legislative Research Unit, as required by Section 3.1 of "An Act to revise the law in relation to the General Assembly", approved February 25, 1874, as amended [25 ILCS 5/3.1], and filing such additional copies with the State Government Report Distribution Center for the General Assembly as is required under paragraph (t) of Section 7 of the State Library Act [15 ILCS 320/7].

(Source: P.A. 84-1438.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 102-10.

§ 110 ILCS 805/2-11. [Articulation procedures]

Sec. 2-11. The State Board in cooperation with the four-year colleges is empowered to develop articulation procedures to the end that maximum freedom of transfer among community colleges and between community colleges and degree-granting institutions be available, and consistent with minimum admission policies established by the Board of Higher Education.

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(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 102-11.

§ 110 ILCS 805/2-11.1. [Monitoring of agreements under 110 ILCS 805/3-40.2]

Sec. 2-11.1. The State Board is authorized to review, approve, and monitor performance under any contract or agreement that community college districts are authorized to enter into under Section 3-40.2 [110 ILCS 805/3-40.2] and, when appropriate and necessary in the opinion of the State Board, to facilitate the application for grants under Section 3-40.2 [110 ILCS 805/3-40.2] and to accept and distribute any grant funds received thereby in accordance with law and the terms of the grant.

(Source: P.A. 87-1044, § 1.)

Effective Date. This section became effective July 1, 1993 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 110 ILCS 805/2-11.5: Repealed by P.A. 90-278, § 10, effective July 31, 1997.

Note.

The 1997 amendment by P.A. 90-278, effective July 31, 1997, added subsections (g) through (i). This amendment has not been set out due to the section's repeal.

§ 110 ILCS 805/2-12. [Powers and duties of Board]

Sec. 2-12. The State Board shall have the power and it shall be its duty:

(a) To provide statewide planning for community colleges as institutions of higher education and co-ordinate the programs, services and activities of all community colleges in the State so as to encourage and establish a system of locally initiated and administered comprehensive community colleges.

(b) To organize and conduct feasibility surveys for new community colleges or for the inclusion of existing institutions as community colleges and the locating of new institutions.

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(c) To approve all locally funded capital projects for which no State monies are required, in accordance with standards established by rule.

(d) To cooperate with the community colleges in continuing studies of student characteristics, admission standards, grading policies, performance of transfer students, qualification and certification of facilities and any other problem of community college education.

(e) To enter into contracts with other governmental agencies and eligible providers, such as local educational agencies, community-based organizations of demonstrated effectiveness, volunteer literacy organizations of demonstrated effectiveness, institutions of higher education, public and private nonprofit agencies, libraries, and public housing authorities; to accept federal funds and to plan with other State agencies when appropriate for the allocation of such federal funds for instructional programs and student services including such funds for adult education and adult literacy, vocational and technical education, and retraining as may be allocated by state and federal agencies for the aid of community colleges. To receive, receipt for, hold in trust, expend and administer, for all purposes of this Act, funds and other aid made available by the federal government or by other agencies public or private, subject to appropriation by the General Assembly. The changes to this subdivision (e) made by this amendatory Act of the 91st General Assembly [P.A. 91-830] apply on and after July 1, 2001.

(f) To determine efficient and adequate standards for community colleges for the physical plant, heating, lighting, ventilation, sanitation, safety, equipment and supplies, instruction and teaching, curriculum, library, operation, maintenance, administration and supervision, and to grant recognition certificates to community colleges meeting such standards.

(g) To determine the standards for establishment of community colleges and the proper location of the site in relation to existing institutions of higher education offering academic, occupational and technical training curricula, possible enrollment, assessed valuation, industrial, business, agricultural, and other conditions reflecting educational needs in the area to be served; however, no community college may be considered as being recognized nor may the establishment of any community college be authorized in any district which shall be deemed inadequate for the maintenance, in accordance with the desirable standards thus determined, of a community college offering the basic subjects of general education and suitable vocational and semiprofessional and technical curricula.

(h) To approve or disapprove new units of instruction, research or public service as defined in Section 3-25.1 of this Act [110 ILCS 805/3-25.1] submitted by the boards of trustees of the respective community college districts of this State. The State Board may discontinue programs which fail to reflect the educational needs of the area being served. The community college district shall be granted 60 days following the State Board staff recommendation and prior to the State Board's action to respond to concerns regarding the program in question. If the State Board acts to abolish a community college program, the community college district has a right to appeal the decision in accordance with

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administrative rules promulgated by the State Board under the provisions of the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.].

(i) To participate in, to recommend approval or disapproval, and to assist in the coordination of the programs of community colleges participating in programs of interinstitutional cooperation with other public or nonpublic institutions of higher education. If the State Board does not approve a particular cooperative agreement, the community college district has a right to appeal the decision in accordance with administrative rules promulgated by the State Board under the provisions of the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.].

(j) To establish guidelines regarding sabbatical leaves.

(k) To establish guidelines for the admission into special, appropriate programs conducted or created by community colleges for elementary and secondary school dropouts who have received truant status from the school districts of this State in compliance with Section 26-14 of The School Code [105 ILCS 5/26-14].

(l) The Community College Board shall conduct a study of community college teacher education courses to determine how the community college system can increase its participation in the preparation of elementary and secondary teachers.

(m) To establish by July 1, 1997 uniform financial accounting and reporting standards and principles for community colleges and develop procedures and systems for community colleges for reporting financial data to the State Board.

(n) To create and participate in the conduct and operation of any corporation, joint venture, partnership, association, or other organizational entity that has the power: (i) to acquire land, buildings, and other capital equipment for the use and benefit of the community colleges or their students; (ii) to accept gifts and make grants for the use and benefit of the community colleges or their students; (iii) to aid in the instruction and education of students of community colleges; and (iv) to promote activities to acquaint members of the community with the facilities of the various community colleges.

(o) On and after July 1, 2001, to ensure the effective teaching of adults and to prepare them for success in employment and lifelong learning by administering a network of providers, programs, and services to provide adult basic education, adult secondary/general education development, English as a second language, and any other instruction designed to prepare adult students to function successfully in society and to experience success in postsecondary education and the world of work.

(p) On and after July 1, 2001, to supervise the administration of adult education and adult literacy programs, to establish the standards for such courses of instruction and supervise the administration thereof, to contract with other State and local agencies and eligible providers, such as local educational agencies, community-based organizations of demonstrated effectiveness, volunteer literacy organizations of demonstrated effectiveness, institutions of higher education, public and private nonprofit agencies, libraries, and public housing authorities, for the purpose of promoting and establishing classes for instruction under these programs, to contract with other State and local

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agencies to accept and expend appropriations for educational purposes to reimburse local eligible providers for the cost of these programs, and to establish an advisory council consisting of all categories of eligible providers; agency partners, such as the State Board of Education, the Department of Human Services, the Department of Employment Security, and the Secretary of State literacy program; and other stakeholders to identify, deliberate, and make recommendations to the State Board on adult education policy and priorities. The State Board shall support statewide geographic distribution; diversity of eligible providers; and the adequacy, stability, and predictability of funding so as not to disrupt or diminish, but rather to enhance, adult education by this change of administration.

(Source: P.A. 85-1209; 86-1228; 87-1023, § 2; 88-322, § 5; 91-830, § 20; 94-1105, § 25.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 102-12.

Effect of Amendments. The 1992 amendment by P.A. 86-1228, effective September 4, 1992, added the last sentence to subsection (h); inserted "to recommend approval or disapproval" in subsection (i); inserted "or non public" in the first sentence of subsection (i); deleted "or with nonpublic institutions of higher education or with both public and nonpublic institutions of higher education" following "of higher Education" in the first sentence of subsection (i); added the last sentence of subsection (i); and added subsection (m).

The 1993 amendment by P.A. 88-322, effective August 12, 1993, in subsection (h) substituted "Section 3-25.1" for "Section 2-3" and added subsection (n).

The 2000 amendment by P.A. 91-830, effective July 1, 2000, rewrote subsection (e) to the extent that a detailed comparison would be impracticable, and added subsections (o) and (p).

The 2007 amendment by P.A. 94-1105, effective June 1, 2007, in the last sentence of (o) and the second sentence of (p) deleted the former sentence which read: "In order to effect an orderly transition as provided under Section 10-22.19a of the School Code and Section 1-4 of the Adult Education Act, from July 1, 2000 until July 1, 2001, the State Board of Education shall coordinate administration of the powers and duties listed in this subdivision with the State Board."

CASE NOTES

Analysis

Constitutionality
Authority of Court
- Mandamus Action

Constitutionality

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This section and 110 ILCS 805/5-4 are not invalid grants of legislative power, are not discriminatory special legislation and do not violate due process and equal protection. People v. Francis, 40 Ill. 2d 204, 239 N.E.2d 129 (1968).

Authority of Court

- Mandamus Action

When a mandamus action is brought against school officials and any reasonable doubt exists as to the question court should hesitate to interfere, preferring to extend the benefit of doubt in favor of the school officials, as long as such action is not unreasonable, arbitrary or discriminatory. Jackson v. Board of Trustees, 22 Ill. App. 3d 898, 317 N.E.2d 318 (5 Dist. 1974).

OPINIONS OF ATTORNEY GENERAL

Community College Board

- Budgeting and Use of Funds

Once the Illinois Community College Board has approved the establishment of an institution, the construction of facilities, the units of instruction and the research and public services to be provided by a community college, the proper budgeting and use of funds is the responsibility of the community college board of trustees, who in turn are responsible to the voters who elect them. 1992 Op. Atty. Gen. (92-011).

§ 110 ILCS 805/2-12.1. Experimental district; abolition of experimental district and establishment of new community college district

Sec. 2-12.1. Experimental district; abolition of experimental district and establishment of new community college district. (a) The State Board shall establish an experimental community college district, referred to in this Act as the "experimental district", to be comprised of territory which includes the City of East St. Louis, Illinois. The State Board shall determine the area and fix the boundaries of the territory of the experimental district. Within 30 days of the establishment of the experimental district, the State Board shall file with the county clerk of the county, or counties, concerned a map showing the territory of the experimental district.

Within the experimental district, the State Board shall establish, maintain and operate, until the experimental district is abolished and a new community college district is established under subsection (c), an experimental community college to be known as the State Community College of East St. Louis.

(b) (Blank).

(c) The experimental district shall be abolished and replaced by a new community college district as follows:

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(1) The establishment of the new community college district shall become effective for all purposes on July 1, 1996, notwithstanding any minimum population, equalized assessed valuation or other requirements provided by Section 3-1 [110 ILCS 805/3-1] or any other provision of this Act for the establishment of a community college district.

(2) The experimental district established pursuant to subsection (a) shall be abolished on July 1, 1996 when the establishment of the new community college district becomes effective for all purposes.

(3) The territory of the new community college district shall be comprised of the territory of, and its boundaries shall be coterminous with the boundaries of the experimental district which it will replace, as those boundaries existed on November 7, 1995.

(4) Notwithstanding the fact that the establishment of the new community college district does not become effective for all purposes until July 1, 1996, the election for the members of the initial board of the new community college district, to consist of 7 members, shall be held at the nonpartisan election in November of 1995 in the manner provided by the general election law, nominating petitions for members of the initial board shall be filed with the regional superintendent in the manner provided by Section 3-7.10 [110 ILCS 805/3-7.10] with respect to newly organized districts, and the persons entitled to nominate and to vote at the election for the members of the board of the new community college district shall be the electors in the territory referred to in paragraph (3) of this subsection. In addition, for purposes of the levy, extension, and collection of taxes as provided in paragraph (5.5) of this subsection and for the purposes of establishing the territory and boundaries of the new community college district within and for which those taxes are to be levied, the new community college district shall be deemed established and effective when the 7 members of the initial board of the new community college district are elected and take office as provided in this subsection (c).

(5) Each member elected to the initial board of the new community college district must, on the date of his election, be a citizen of the United States, of the age of 18 years or over, and a resident of the State and the territory referred to in paragraph (3) of this subsection for at least one year preceding his election. Election to the initial board of the new community college district of a person who on July 1, 1996 is a member of a common school board constitutes his resignation from, and creates a vacancy on that common school board effective July 1, 1996.

(5.5) The members first elected to the board of trustees shall take office on the first Monday of December, 1995, for the sole and limited purpose of levying, at the rates specified in the proposition submitted to the electors under subsection (b), taxes for the educational purposes and for the operations and maintenance of facilities purposes of the new community college district. The taxes shall be levied in calendar year 1995 for extension and collection in calendar year 1996, notwithstanding the fact that the new community college district does not become effective for the purposes of administration of the community college until July 1, 1996. The regional superintendent shall convene the meeting under this paragraph and the members shall organize for the purpose of that meeting by electing, pro tempore, a chairperson and a secretary. At that meeting the board is authorized to levy taxes for educational purposes and for operations and

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maintenance of facilities purposes as authorized in this paragraph without adopting any budget for the new community college district and shall certify the levy to the appropriate county clerk or county clerks in accordance with law. The county clerks shall extend the levy notwithstanding any law that otherwise requires adoption of a budget before extension of the levy. The funds produced by the levy made under this paragraph to the extent received by a county collector before July 1, 1996 shall immediately be invested in lawful investments and held by the county collector for payment and transfer to the new community college district, along with all accrued interest or other earnings accrued on the investment, as provided by law on July 1, 1996. All funds produced by the levy and received by a county collector on or after July 1, 1996 shall be transferred to the new community college district as provided by law at such time as they are received by the county collector.

(5.75) Notwithstanding any other provision of this Section or the fact that establishment of the new community college district as provided in this subsection does not take effect until July 1, 1996, the members first elected to the board of trustees of the new community college district are authorized to meet, beginning on June 1, 1996 and thereafter for purposes of: (i) arranging for and approving educational programs, ancillary services, staffing, and associated expenditures that relate to the offering by the new community college district of educational programs beginning on or after July 1, 1996 and before the fall term of the 1996-97 academic year, and (ii) otherwise facilitating the orderly transition of operations from the experimental district known as State Community College of East St. Louis to the new community college district established under this subsection. The persons elected to serve, pro tempore, as chairperson and secretary of the board for purposes of paragraph (5.5) shall continue to serve in that capacity for purposes of this paragraph (5.75).

(6) Except as otherwise provided in paragraphs (5.5) and (5.75), each of the members first elected to the board of the new community college district shall take office on July 1, 1996, and the Illinois Community College Board, publicly by lot and not later than July 1, 1996, shall determine the length of term to be served by each member of the initial board as follows: 2 shall serve until their successors are elected at the nonpartisan election in 1997 and have qualified, 2 shall serve until their successors are elected at the consolidated election in 1999 and have qualified, and 3 shall serve until their successors are elected at the consolidated election in 2001 and have qualified. Their successors shall serve 6 year terms. Terms of members are subject to Section 2A-54 of the Election Code [10 ILCS 5/2A-54].

(7) The regional superintendent shall convene the initial board of the new community college district on July 1, 1996, and the non-voting student member initially selected to that board as provided in Section 3-7.24 [110 ILCS 805/3-7.24] shall serve a term beginning on the date of selection and expiring on the next succeeding April 15. Upon being convened on July 1, 1996, the board shall proceed to organize in accordance with Section 3-8 [110 ILCS 805/3-8], and shall thereafter continue to exercise the powers and duties of a board in the manner provided by law for all boards of community college districts except where obviously inapplicable or otherwise provided by this Act. Vacancies shall be filled, and members shall serve without compensation subject to reimbursement for reasonable expenses incurred in connection with their service as

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members, as provided in Section 3-7 [110 ILCS 805/3-7]. The duly elected and organized board of the new community college district shall levy taxes at a rate not to exceed .175 percent for educational purposes and at a rate not to exceed .05 percent for operations and maintenance of facilities purposes; provided that the board may act to increase such rates at a regular election in accordance with Section 3-14 [110 ILCS 805/3-14] and the general election law.

(d) Upon abolition of the experimental district and establishment of the new community college district as provided in this Section, all tangible personal property, including inventory, equipment, supplies, and library books, materials, and collections, belonging to the experimental district and State Community College of East St. Louis at the time of their abolition under this Section shall be deemed transferred, by operation of law, to the board of trustees of the new community college district. In addition, all real property, and the improvements situated thereon, held by State Community College of East St. Louis or on its behalf by its board of trustees shall, upon abolition of the experimental district and college as provided in this Section, be conveyed by the Illinois Community College Board, in the manner prescribed by law, to the board of trustees of the new community college district established under this Section for so long as that real property is used for the conduct and operation of a public community college and the related purposes of a public community college district of this State. Neither the new community college district nor its board of trustees shall have any responsibility to any vendor or other person making a claim relating to the property, inventory, or equipment so transferred. On August 22, 1997, the endowment funds, gifts, trust funds, and funds from student activity fees and the operation of student and staff medical and health programs, union buildings, bookstores, campus centers, and other auxiliary enterprises and activities that were received by the board of trustees of State Community College of East St. Louis and held and retained by that board of trustees at the time of the abolition of the experimental district and its replacement by the new community college district as provided in this Section shall be deemed transferred by operation of law to the board of trustees of that new community college district, to be retained in its own treasury and used in the conduct and operation of the affairs and related purposes of the new community college district. On August 22, 1997, all funds held locally in the State Community College of East St. Louis Contracts and Grants Clearing Account, the State Community College of East St. Louis Income Fund Clearing Account and the Imprest Fund shall be transferred by the Board to the General Revenue Fund.

(e) The outstanding obligations incurred for fiscal years prior to fiscal year 1997 by the board of trustees of State Community College of East St. Louis before the abolition of that college and the experimental district as provided in this Section shall be paid by the State Board from appropriations made to the State Board from the General Revenue Fund for purposes of this subsection. To facilitate the appropriations to be made for that purpose, the State Comptroller and State Treasurer, without delay, shall transfer to the General Revenue Fund from the State Community College of East St. Louis Income Fund and the State Community College of East St. Louis Contracts and Grants Fund, special funds previously created in the State Treasury, any balances remaining in those special funds on August 22, 1997.

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(Source: P.A. 86-722; 89-141, § 5; 89-473, § 20; 90-358, § 15; 90-509, § 5; 90-655, § 80.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 102-12.1.

Effect of Amendments. The 1995 amendment by P.A. 89-141, effective July 14, 1995, added the section catchline; in subdivision (c)(1) inserted "for purposes of administration of the community college"; in subdivision (c)(2) substituted "on July 1, 1996 when the establishment of the new community college district becomes effective for purposes of administration of the community college" for "effective upon establishment of the new community college district on July 1, 1996"; in subdivision (c)(3) substituted "will replace, as those boundaries exist on the date of the November, 1995 nonpartisan election referred to in paragraph (4) of this subsection" for "replaces"; in subdivision (c)(4), in the first sentence, inserted "for purposes of administration of the community college" and added the second sentence; added subdivision (c)(5.5); in subdivision (c)(6), in the first sentence, added "Except as otherwise provided in paragraph (5.5)" at the beginning; and in subdivision (c)(7), in the second sentence, inserted "on July 1, 1996".

The 1996 amendment by P.A. 89-473, effective June 18, 1996, in the section catchline inserted "abolition of experimental district and"; in subsection (a), in the first paragraph, in the second sentence, deleted from the end "but that territory must contain at least 75,000 inhabitants and may not include the territory of any existing community college district", in the second paragraph inserted "until the experimental district is abolished and a new community college district is established under subsection (c)" and deleted from the end "and the State Board shall have the powers and duties of the experimental district board enumerated in Article IV until the effective date of appointment of the experimental district board" and deleted the third paragraph regarding report due before January 1, 1982; deleted subsection (b) regarding proposition to be submitted to electors in November 1994 elections; in subsection (c), substituted the present introductory language for "If a majority of the votes cast on the proposition at the election provided for in subsection (b) is in favor of the proposition"; in subdivisions (c)(1), (c)(2) and (c)(4) substituted "all purposes" for "purposes of administration of the community college"; in subdivision (c)(3) substituted "existed on November 7, 1995" for "exist on the date of the November, 1995 nonpartisan election referred to in paragraph (4) of this subsection"; added subdivision (c)(5.75); in subdivision (c)(6), in the first sentence, substituted "paragraphs (5.5) and (5.75)" for "paragraph (5.5)"; and rewrote subsection (d).

The 1997 amendment by P.A. 90-358, effective January 1, 1998, in subdivision (c)(6), in the first sentence, substituted "consolidated" for "nonpartisan" twice and added the second sentence.

The 1997 amendment by P.A. 90-509, effective August 22, 1997, in subsection (d) added the fourth and fifth sentences; and added subsection (e).

The 1998 amendment by P.A. 90-655, effective July 30, 1998 incorporated the amendments by P.A. 90-358 and P.A. 90-509; and twice in subsection (d) and once in subsection (e), substituted "August 22, 1997" for "the effective date of this amendatory Act of 1997".

OPINIONS OF ATTORNEY GENERAL

Abolition of Experimental District

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The existing experimental community college district (the State Community College of East St. Louis) will be completely abolished, and a new district formed, on the effective date set forth in 110 ILCS 805/4-1 (now repealed); the existing entity will not continue in a different form. 1996 Op. Atty. Gen. (96-020).

§ 110 ILCS 805/2-15. Recognition

Sec. 2-15. Recognition. The State Board shall grant recognition to community colleges which maintain equipment, courses of study, standards of scholarship and other requirements set by the State Board. Application for recognition shall be made to the State Board. The State Board shall set the criteria by which the community colleges shall be judged and through the executive officer of the State Board shall arrange for an official evaluation of the community colleges and shall grant recognition of such community colleges as may meet the required standards.

If a community college district fails to meet the recognition standards set by the State Board, and if the district, in accordance with: (a) Government Auditing Standards issued by the Comptroller General of the United States, (b) auditing standards established by the American Institute of Certified Public Accountants, or (c) other applicable State and federal standards, is found by the district's auditor or the State Board working in cooperation with the district's auditor to have material deficiencies in the design or operation of financial control structures that could adversely affect the district's financial integrity and stability, or is found to have misused State or federal funds and jeopardized its participation in State or federal programs, the State Board may, notwithstanding any laws to the contrary, implement one or more of the following emergency powers:

(1) To direct the district to develop and implement a plan that addresses the budgetary, programmatic, and other relevant factors contributing to the need to implement emergency measures. The State Board shall assist in the development and shall have final approval of the plan.

(2) To direct the district to contract for educational services in accordance with Section 3-40 [110 ILCS 805/3-40]. The State Board shall assist in the development and shall have final approval of any such contractual agreements.

(3) To approve and require revisions of the district's budget.

(4) To appoint a Financial Administrator to exercise oversight and control over the district's budget. The Financial Administrator shall serve at the pleasure of the State Board and may be an individual, partnership, corporation, including an accounting firm, or other entity determined by the State Board to be qualified to serve, and shall be entitled to compensation. Such compensation shall be provided through specific appropriations made to the State Board for that express purpose.

(5) To develop and implement a plan providing for the dissolution or reorganization of the district if in the judgement of the State Board the circumstances so require.

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(Source: P.A. 78-669; 89-147, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 102-15.

Effect of Amendments. The 1995 amendment by P.A. 89-147, effective July 14, 1995, added the section catchline; and added the second paragraph.

§ 110 ILCS 805/2-16.02. Grants

Sec. 2-16.02. Grants. Any community college district that maintains a community college recognized by the State Board shall receive, when eligible, grants enumerated in this Section. Funded semester credit hours or other measures or both as specified by the State Board shall be used to distribute grants to community colleges. Funded semester credit hours shall be defined, for purposes of this Section, as the greater of (1) the number of semester credit hours, or equivalent, in all funded instructional categories of students who have been certified as being in attendance at midterm during the respective terms of the base fiscal year or (2) the average of semester credit hours, or equivalent, in all funded instructional categories of students who have been certified as being in attendance at midterm during the respective terms of the base fiscal year and the 2 prior fiscal years. For purposes of this Section, "base fiscal year" means the fiscal year 2 years prior to the fiscal year for which the grants are appropriated. Such students shall have been residents of Illinois and shall have been enrolled in courses that are part of instructional program categories approved by the State Board and that are applicable toward an associate degree or certificate. Courses that are eligible for reimbursement are those courses for which the district pays 50% or more of the program costs from unrestricted revenue sources, with the exception of courses offered by contract with the Department of Corrections in correctional institutions. For the purposes of this Section, "unrestricted revenue sources" means those revenues in which the provider of the revenue imposes no financial limitations upon the district as it relates to the expenditure of the funds. Except for Fiscal Year 2012, operating grants shall be paid based on rates per funded semester credit hour or equivalent calculated by the State Board for funded instructional categories using cost of instruction, enrollment, inflation, and other relevant factors. For Fiscal Year 2012, the allocations for base operating grants to community college districts shall be the same as they were in Fiscal Year 2011, reduced or increased proportionately according to the appropriation for base operating grants for Fiscal Year 2012. A portion of the base operating grant shall be allocated on the basis of non-residential gross square footage of space maintained by the district.

Equalization grants shall be calculated by the State Board by determining a local revenue factor for each district by: (A) adding (1) each district's Corporate Personal Property Replacement Fund allocations from the base fiscal year or the average of the base fiscal year and prior year, whichever is less, divided by the applicable statewide average tax

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rate to (2) the district's most recently audited year's equalized assessed valuation or the average of the most recently audited year and prior year, whichever is less, (B) then dividing by the district's audited full-time equivalent resident students for the base fiscal year or the average for the base fiscal year and the 2 prior fiscal years, whichever is greater, and (C) then multiplying by the applicable statewide average tax rate. The State Board shall calculate a statewide weighted average threshold by applying the same methodology to the totals of all districts' Corporate Personal Property Tax Replacement Fund allocations, equalized assessed valuations, and audited full-time equivalent district resident students and multiplying by the applicable statewide average tax rate. The difference between the statewide weighted average threshold and the local revenue factor, multiplied by the number of full-time equivalent resident students, shall determine the amount of equalization funding that each district is eligible to receive. A percentage factor, as determined by the State Board, may be applied to the statewide threshold as a method for allocating equalization funding. A minimum equalization grant of an amount per district as determined by the State Board shall be established for any community college district which qualifies for an equalization grant based upon the preceding criteria, but becomes ineligible for equalization funding, or would have received a grant of less than the minimum equalization grant, due to threshold prorations applied to reduce equalization funding. As of July 1, 2004, a community college district must maintain a minimum required combined in-district tuition and universal fee rate per semester credit hour equal to 85% of the State-average combined rate, as determined by the State Board, for equalization funding. As of July 1, 2004, a community college district must maintain a minimum required operating tax rate equal to at least 95% of its maximum authorized tax rate to qualify for equalization funding. This 95% minimum tax rate requirement shall be based upon the maximum operating tax rate as limited by the Property Tax Extension Limitation Law [35 ILCS 200/18-185 et seq.].

The State Board shall distribute such other grants as may be authorized or appropriated by the General Assembly.

Each community college district entitled to State grants under this Section must submit a report of its enrollment to the State Board not later than 30 days following the end of each semester, quarter, or term in a format prescribed by the State Board. These semester credit hours, or equivalent, shall be certified by each district on forms provided by the State Board. Each district's certified semester credit hours, or equivalent, are subject to audit pursuant to Section 3-22.1 [110 ILCS 805/3-22.1].

The State Board shall certify, prepare, and submit monthly vouchers to the State Comptroller setting forth an amount equal to one-twelfth of the grants approved by the State Board for base operating grants and equalization grants. The State Board shall prepare and submit to the State Comptroller vouchers for payments of other grants as appropriated by the General Assembly. If the amount appropriated for grants is different from the amount provided for such grants under this Act, the grants shall be proportionately reduced or increased accordingly.

For the purposes of this Section, "resident student" means a student in a community college district who maintains residency in that district or meets other residency definitions established by the State Board, and who was enrolled either in one of the

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approved instructional program categories in that district, or in another community college district to which the resident's district is paying tuition under Section 6-2 [110 ILCS 805/6-2] or with which the resident's district has entered into a cooperative agreement in lieu of such tuition.

For the purposes of this Section, a "full-time equivalent" student is equal to 30 semester credit hours.

The Illinois Community College Board Contracts and Grants Fund is hereby created in the State Treasury. Items of income to this fund shall include any grants, awards, endowments, or like proceeds, and where appropriate, other funds made available through contracts with governmental, public, and private agencies or persons. The General Assembly shall from time to time make appropriations payable from such fund for the support, improvement, and expenses of the State Board and Illinois community college districts.

(Source: P.A. 87-1018, § 1; 88-103, § 5; 88-553, § 55; 89-141, § 5; 89-281, § 10; 89-473, § 20; 89-626, § 2-38; 90-468, § 5; 90-486, § 70; 90-497, § 15; 90-587, § 45; 90-655, § 80; 90-720, § 5; 93-21, § 10-15; 96-911, § 5; 97-72, § 15-50.)

Note.

Section 45 of P.A. 90-587 provided that its amendment of 110 ILCS 805/2-16.02 was effective only if Senate Bill 1338 of the 90th General Assembly became law in the form in which it was introduced. Senate Bill 1338 was enacted into law as P.A. 90-720. Section 99 of P.A. 90-720 provided that the act became effective July 1, 1998, but the act was not approved until August 7, 1998.

Section 97-97 of P.A. 97-72 contains a severability provision.

Effective Date. Section 1 of P.A. 88-1018 made this section effective upon becoming law. The Act was approved September 3, 1992.

Effect of Amendments. The 1993 amendment by P.A. 88-103, effective July 20, 1993, rewrote this section.

The 1994 amendment by P.A. 88-553, effective July 14, 1994, in the first paragraph, in the third sentence inserted "except general studies" twice, substituted "1993" for "1992" twice, substituted "1991" for "1990" and substituted "1992" for "1991", and in the list of categories made the following substitutions: "$26.29" for "$26.03", "$16.50" for "$19.38", "$35.04" for "$34.54", "$59.39" for "$60.52", "$15.82" for "$19.13" and "$16.78" for "$14.91" and deleted the last category "General Studies ..... $0.00"; in the second paragraph substituted "1993" for "1992" throughout, substituted "1992" for "1991" throughout, substituted "1991" for "1990" throughout, in the first sentence substituted "$0.002359" for "0.2363", in the second sentence substituted "$0.002359" for "0.2363ō" and in the first and second sentences substituted "$626,833" for "$581,147"; in the sixth paragraph, in the first sentence substituted "1994" for "1993"; and in the eighth paragraph, in the second sentence inserted "of the fiscal year a voucher setting forth a one-time payment of any Education Assistance Fund appropriation, and during" and substituted

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"equal payments of General Revenue Fund appropriations" for "an amount equal to 25% of the grant".

The 1995 amendment by P.A. 89-141, effective July 14, 1995, in the first paragraph, in the third sentence, inserted "funded" twice, deleted "except general studies" preceding "who have been certified" twice, inserted "the base" twice, deleted "1993" preceding "or (2)" and added at the end "and the 2 prior fiscal years", in the fourth sentence, substituted "For purposes of this Section, 'base fiscal year' means the fiscal year 2 years prior to the fiscal year for which the grants are appropriated" for "1991, fiscal year 1992, and fiscal year 1993" and rewrote the seventh sentence; rewrote the second paragraph; and in the sixth paragraph, in the first sentence, substituted "of the fiscal year prior to the fiscal year for which grants are appropriated" for "1994".

The 1995 amendment by P.A. 89-281, effective August 10, 1995, in the sixth paragraph, in the first sentence, inserted "or entity created pursuant to Section 3-55".

The 1996 amendment by P.A. 89-473, effective June 18, 1996, combined the amendments by P.A. 89-141 and P.A. 89-281; and in the first paragraph, in the first sentence, deleted "other than a district established pursuant to Section 2-12.1" preceding "that maintains a community".

The 1996 amendment by P.A. 89-626, effective August 9, 1996, combined the amendments to this section by P.A. 89-141 and P.A. 89-281.

The 1997 amendment by P.A. 90-468, effective August 17, 1997 and the 1997 amendment by P.A. 90-486, effective July 1, 1997, approved August 17, 1997 both rewrote this section with identical changes.

The 1997 amendment by P.A. 90-497, effective August 18, 1997, added the section catchline; and in the sixth paragraph, in the first sentence, added at the beginning "Until January 1, 1999" and added the third and fourth sentences.

The 1998 amendment by P.A. 90-587, effective July 1, 1998, incorporated the amendments by P.A. 90-48, P.A. 90-486 and P.A. 90-497; and added the last sentence in the fifth paragraph.

The 1998 amendment by P.A. 90-655, effective July 30, 1998, incorporated the amendments by P.A. 90-468, P.A. 90-486 and P.A. 90-497.

The 1998 amendment by P.A. 90-720, effective August 7, 1998, in the second sentence of the first paragraph inserted "or both" following "other measures", in the seventh sentence substituted "Base operating" for "Credit hour", added the eighth sentence and deleted the last sentence regarding small district grant allocations; deleted the former third through eighth paragraphs regarding the distribution of grants; and rewrote the present fifth paragraph.

The 2003 amendment by P.A. 93-21, effective July 1, 2003, in the first paragraph, rewrote the sixth sentence, which formerly read: "Courses are not eligible for reimbursement where the district receives federal or State financing or both, except financing through the State Board, for 50% or more of the program costs with the exception of courses offered by contract with the Department of Corrections in correctional institutions"; and in the last paragraph rewrote the last two sentences, which formerly read: "As of July 1, 1997, community college districts must maintain a minimum required in-district tuition rate per semester credit hour as determined by the State Board. For each fiscal year between July 1, 1997 and June 30, 2001, districts not meeting the minimum required rate will be subject to a percent reduction of equalization funding as determined by the State Board. As of July 1, 2001, districts must meet the required minimum in-district tuition rate to qualify for equalization funding."

The 2010 amendment by P.A. 96-911, effective July 1, 2010, in the fifth paragraph, inserted "monthly vouchers", deleted "during August, November, February, and May of each fiscal year vouchers" following "State Comptroller", and made a stylistic change.

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The 2011 amendment by P.A. 97-72, effective July 1, 2011, in the introductory paragraph, added the exception language at the beginning of the eighth sentence, and added the ninth sentence.

§ 110 ILCS 805/2-16.03. [AFDC Opportunities Fund]

Sec. 2-16.03. The AFDC Opportunities Fund is hereby created in the State Treasury. Expenditures and distributions from the AFDC Opportunities Fund shall be made by the State Board, pursuant to appropriations made by the General Assembly from that Fund, for grants to public community colleges for costs of work force training and technology and for the operating expenses made and incurred by the State Board in connection with these purposes.

(Source: P.A. 87-860; 88-45, § 2-36; 91-776, § 5; 94-436, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 102-16.2.

Effect of Amendments. The 1993 amendment by P.A. 88-45, effective July 6, 1993 renumbered this section which was formerly 110 ILCS 805/16.2.

The 2000 amendment by P.A. 91-776, effective June 9, 2000, rewrote the second paragraph to the extent that a detailed comparison would be impracticable.

The 2005 amendment by P.A. 94-436, effective August 2, 2005, deleted the former second sentence, concerning monthly transfer of amounts credited for the Employment and Training Fund.

§ 110 ILCS 805/2-16.04: Repealed by P.A. 94-436, § 20, effective August 15, 2006.

§ 110 ILCS 805/2-16.05. The Academic Improvement Trust Fund for Community College Foundations

Sec. 2-16.05. The Academic Improvement Trust Fund for Community College Foundations. (a) The Academic Improvement Trust Fund for Community College Foundations is created in the State treasury. All moneys transferred, credited, deposited, or otherwise paid to the Fund as provided in this Section shall be promptly invested by the State Treasurer in accordance with law, and all interest and other earnings accruing or received thereon shall be credited and paid to the Fund. No moneys, interest, or earnings transferred, credited, deposited, or otherwise paid to the Academic Improvement Trust

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Fund for Community College Foundations shall be transferred or allocated by the Comptroller or Treasurer to any other fund, nor shall the Governor authorize any such transfer or allocation, nor shall any moneys, interest, or earnings transferred, credited, deposited, or otherwise paid to the Fund be used, temporarily or otherwise, for interfund borrowing, or be otherwise used or appropriated, except to encourage private support in enhancing community college foundations by providing community college foundations with the opportunity to receive and match challenge grants as provided in this Section.

(b) On the first day of fiscal year 2000 and each fiscal year thereafter, or as soon thereafter as may be practicable, the Comptroller shall order the transfer and the Treasurer shall transfer from the General Revenue Fund to the Academic Improvement Trust Fund for Community College Foundations the amount of the fiscal year appropriation made to the State Board for making challenge grants to community college foundations as provided in this Section.

(c) For each fiscal year in which an appropriation and transfer are made as provided in subsection (b), moneys sufficient to provide each community college foundation with the opportunity to match at least one $25,000 challenge grant shall be reserved from moneys in the Academic Improvement Trust Fund for Community College Foundations, and the balance of the moneys in the Fund shall be available for matching by any community college foundation. Moneys in the Academic Improvement Trust Fund for Community College Foundations that remain unmatched by contribution or pledge on April 1 of the fiscal year in which an appropriation and transfer are made as provided in subsection (b) shall also be available for matching by any community college foundation, along with any interest or earnings accruing to the unmatched portion of the Fund. If for any fiscal year in which an appropriation and transfer are made as provided in subsection (b) there are not sufficient moneys which may be reserved in the Academic Improvement Trust Fund for Community College Foundations to provide each community college foundation with the opportunity to match at least one $25,000 challenge grant, the amount of the challenge grant that each community college foundation shall have the opportunity to match for the fiscal year shall be reduced from $25,000 to an amount equal to the result obtained when the total of all moneys, interest, and earnings in the Fund immediately following the appropriation and transfer made for the fiscal year is divided by the number of community college foundations then existing in this State. The State Board shall promulgate rules prescribing the form and content of applications made by community college foundations for challenge grants under this Section. These rules shall provide all community college foundations with an opportunity to apply for challenge grants to be awarded from any moneys in the Academic Improvement Trust Fund for Community College Foundations in excess of the moneys required to be reserved in the Fund for the purpose of providing each community college foundation with the opportunity to match at least one $25,000 challenge grant; and the opportunity to apply for challenge grants to be awarded from the excess moneys shall be afforded to all community college foundations prior to awarding any challenge grants from the excess moneys. No community college foundation shall receive more than $100,000 in challenge grants awarded from the excess moneys.

(d) Challenge grants shall be proportionately allocated from the Academic Improvement Trust Fund for Community College Foundations on the basis of matching each $2 of

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State funds with $3 of local funds. The matching funds shall come from contributions made after July 1, 1999, which are pledged for the purpose of matching challenge grants. To be eligible, a minimum of $10,000 must be raised from private sources, and the contributions must be in excess of the total average annual cash contributions made to the foundation at each community college district in the 3 fiscal years before July 1, 1999.

(e) Funds sufficient to provide the match shall be paid, subject to appropriation, from the Academic Improvement Trust Fund for Community College Foundations to the community college foundation in increments of $5,000, after the initial $10,000 is matched and released, and upon certification to the Comptroller by the State Board that a proportionate amount has been received and deposited by the community college foundation in its own trust fund. However, no community college foundation may receive more than $100,000, above the original allocation, from the Academic Improvement Trust Fund for Community College Foundations in any fiscal year.

(f) The State Board shall certify, prepare, and submit to the Comptroller vouchers setting forth the amount of each challenge grant from time to time to be proportionately allocated in accordance with this Section from the Academic Improvement Trust Fund for Community College Foundations to the community college foundation entitled to receive the challenge grant, and the Comptroller shall cause his or her warrants to be drawn for the respective amounts due, payable from the Fund to the foundation.

(g) The board of each community college foundation shall establish an academic improvement trust fund as a depository for the private contributions and challenge grants allocated to any such community college foundation from the Academic Improvement Trust Fund for Community College Foundations. Each community college foundation is responsible for the maintenance, investment, and administration of its academic improvement trust fund.

(h) The board of the community college foundation is responsible for determining the uses for the proceeds of the academic improvement trust fund established. Such uses may include:

(1) scientific and technical equipment;

(2) professional development and training for faculty; and

(3) student scholarships and other activities appropriate to improving the quality of education at the community college.

(i) The State Board may promulgate such additional rules as are required to provide for the efficient operation and administration of the challenge grant program established by this Section.

(Source: P.A. 91-664, § 10; 92-16, § 51.)

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Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 91-664 made this section effective upon becoming law. The Act was approved December 22, 1999.

Effect of Amendments. The 2001 amendment by P.A. 92-16, effective June 28, 2001, renumbered this section, which was formerly 110 ILCS 805/2-16.04.

§ 110 ILCS 805/2-16.06. ICCB Adult Education Fund

Sec. 2-16.06. ICCB Adult Education Fund. The ICCB Adult Education Fund is created as a special fund in the State treasury. All money in the ICCB Adult Education Fund may be used, subject to appropriation, by the State Board for operational expenses associated with the administration of adult education and literacy activities and for the payment of costs associated with education and educational-related services to local eligible providers for adult education and literacy as provided by the United States Department of Education.

(Source: P.A. 92-49, § 5.)

Effective Date. Section 99 of P.A. 92-49 made this section effective upon becoming law. The Act was approved July 9, 2001.

§ 110 ILCS 805/2-16.07. Career and Technical Education Fund

Sec. 2-16.07. Career and Technical Education Fund. The Career and Technical Education Fund is created as a special fund in the State treasury. The Comptroller shall order transferred and the State Treasurer shall transfer from the Federal Department of Education Fund into the Career and Technical Education Fund such amounts as may be directed in writing by the State Board of Education. All moneys so deposited into the Career and Technical Education Fund may be used, subject to appropriation, by the State Board for operational expenses associated with the administration of Career and Technical Education, for payment of Career and Technical Education grants to colleges, and for payment of costs relating to State leadership activities, as provided by the United States Department of Education.

(Source: P.A. 92-597, § 55.)

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Effective Date. Section 99 of P.A. 92-597 made this section effective upon becoming law. The Act was approved June 28, 2002.

§ 110 ILCS 805/2-16.08. ICCB Federal Trust Fund

Sec. 2-16.08. ICCB Federal Trust Fund. The ICCB Federal Trust Fund is created as a special fund in the State treasury. Money recovered from federal programs for general administration that is received by the State Board shall be deposited into the ICCB Federal Trust Fund. All money in the ICCB Federal Trust Fund shall be used, subject to appropriation by the General Assembly, by the State Board for the ordinary and contingent expenses of the State Board.

(Source: P.A. 93-153, § 10; 95-331, § 560.)

Effective Date. Section 99 of P.A. 93-153, made this section effective upon becoming law. The Act was approved July 10, 2003.

Effect of Amendments. The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, made a stylistic change.

§ 110 ILCS 805/2-16.09. ICCB Instructional Development and Enhancement Applications Revolving Fund

Sec. 2-16.09. ICCB Instructional Development and Enhancement Applications Revolving Fund. The ICCB Instructional Development and Enhancement Applications Revolving Fund is created as a special fund in the State treasury. The State Board shall deposit into the Fund moneys received by the State Board from the sale of instructional technology developed by the State Board. All moneys in the Fund shall be used by the State Board, subject to appropriation by the General Assembly, for costs associated with maintaining and updating that instructional technology.

(Source: P.A. 94-436, § 5.)

Effective Date. Section 99 of P.A. 94-436 made this section effective upon becoming law. The Act was approved August 2, 2005.

§ 110 ILCS 805/2-16.2: Renumbered by P.A. 88-45, § 2-36 as 110 ILCS 805/2-16.03, effective July 6, 1993.

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§ 110 ILCS 805/2-18a. [Adverse court decisions]

Sec. 2-18a. Adverse court decision grants shall be distributed to any district from appropriations made by the General Assembly for the purposes of grants for equalization under Section 2-16.02 [110 ILCS 805/2-16.02], whenever the following four conditions are satisfied: (i) the effect of any adverse court decision was to reduce the district's equalized assessed valuation in excess of one percent; (ii) the district would have received a larger equalization grant, based on the provisions of Section 2-16 or 2-16.02 [110 ILCS 805/2-16.02], as the case may be, which were in effect that fiscal year, had the reduced valuation been known; (iii) the reduced valuation is attributable to an adverse court decision which became final less than 3 years from August 1 of the fiscal year such equalization grants were distributed; and (iv) a district that has been affected by an adverse court decision as provided in this Section has submitted a claim thereof to the State Board by December 1 not more than 3 years from the fiscal year such equalization grants were distributed in a format prescribed by the State Board. When such conditions are satisfied the State Board shall recompute the district's equalization grant based on the provisions of Section 2-16 or 2-16.02 [110 ILCS 805/2-16.02], as the case may be, which were in effect for that fiscal year and shall certify, prepare and submit vouchers for the third quarter setting forth 100% of the difference between the district's recomputed equalization grant; subject, however to any prorata reduction of equalization grants for that fiscal year, and such district's equalization grant, if any, distributed for that fiscal year. The Comptroller shall cause his warrants to be drawn for the respective amounts due, payable to the named community college district, within fifteen days following the receipt of such vouchers. If the amount available for distribution for adverse court decision grants is less than the amount required for such grants under this Act, such grants shall be proportionately reduced.

(Source: P.A. 84-1244; 87-1018, § 1; 89-473, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 102-18a.

Section 2-16, referred to in this section, has been repealed.

Effect of Amendments. The 1992 amendment by P.A. 87-1018, effective September 3, 1992, substituted "2-16.02" for "2-16" following "under Section" in the introductory language of the first sentence, and added "or 2-16.02, as the case may be," following "of Section 2-16" in two places.

The 1996 amendment by P.A. 89-473, effective June 18, 1996, in the first sentence deleted "other than a district established pursuant to Section 2-12.1" preceding "from appropriations

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made by".

§ 110 ILCS 805/2-19. Payment of accumulated sick leave and vacation benefits

Sec. 2-19. Payment of accumulated sick leave and vacation benefits. The State Board shall calculate and determine the amount to be paid, from an appropriation made for purposes of this Section, to employees of State Community College District No. 601 for sick leave and vacation benefits that are earned and accumulated by those employees and that remain unused and unpaid at the time State Community College District No. 601, otherwise known as the experimental district, is abolished as provided in Section 2-12.1 [110 ILCS 805/2-12.1]. The State Board shall certify, prepare, and submit to the State Comptroller for payment during the first quarter of fiscal year 1997 vouchers setting forth the amount required to be paid under this Section to each such employee of the former experimental district for his or her earned, accumulated, unused, and unpaid sick leave and vacation benefits. The amount due each such employee of the former experimental district shall be calculated without and shall not include any interest, and the Comptroller shall cause a warrant to be drawn for the amount due, without interest, payable to each such employee within 15 days following the receipt of the required voucher.

(Source: P.A. 89-473, § 20.)

Effective Date. Section 30 of P.A. 89-473 made this section effective upon becoming law. The Act was approved June 18, 1996.

§ 110 ILCS 805/2-20. Deferred maintenance grants

Sec. 2-20. Deferred maintenance grants. For fiscal year 2004 only, the State Board shall award a deferred maintenance grant only to a district to which Article VII [110 ILCS 805/7-1 etc.] of this Act applies, for that district's general purposes. This grant shall be awarded under a formula determined by the State Board.

(Source: P.A. 93-21, § 10-15.)

Effective Date. Section 99 of P.A. 93-21 made this section effective July 1, 2003.

§ 110 ILCS 805/2-21. High school equivalency testing

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Sec. 2-21. High school equivalency testing. On the effective date of this amendatory Act of the 94th General Assembly [P.A. 94-108], all powers and duties of the State Board of Education and State Superintendent of Education with regard to high school equivalency testing under the School Code shall be transferred to the Illinois Community College Board. Within a reasonable period of time after that date, all assets, liabilities, contracts, property, records, pending business, and unexpended appropriations of the State Board of Education with regard to high school equivalency testing shall be transferred to the Illinois Community College Board. The Illinois Community College Board may adopt any rules necessary to carry out its responsibilities under the School Code with regard to high school equivalency testing. All rules, standards, and procedures adopted by the State Board of Education under the School Code with regard to high school equivalency testing shall continue in effect as the rules, standards, and procedures of the Illinois Community College Board, until they are modified by the Illinois Community College Board.

(Source: P.A. 94-108, § 10.)

Effective Date. Section 99 of P.A. 94-108 made this section effective upon becoming law. The Act was approved July 1, 2005.

§ 110 ILCS 805/2-22. High school equivalency certificates

Sec. 2-22. High school equivalency certificates. On the effective date of this amendatory Act of the 94th General Assembly [P.A. 94-108], all powers and duties of the State Board of Education and State Superintendent of Education with regard to high school equivalency certificates under the School Code shall be transferred to the Illinois Community College Board. Within a reasonable period of time after that date, all assets, liabilities, contracts, property, records, pending business, and unexpended appropriations of the State Board of Education with regard to high school equivalency certificates shall be transferred to the Illinois Community College Board. The Illinois Community College Board may adopt any rules necessary to carry out its responsibilities under the School Code with regard to high school equivalency certificates and to carry into efficient and uniform effect the provisions for the issuance of high school equivalency certificates in this State. All rules, standards, and procedures adopted by the State Board of Education under the School Code with regard to high school equivalency certificates shall continue in effect as the rules, standards, and procedures of the Illinois Community College Board, until they are modified by the Illinois Community College Board.

(Source: P.A. 94-108, § 10.)

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Effective Date. Section 99 of P.A. 94-108 made this section effective upon becoming law. The Act was approved July 1, 2005.

§ 110 ILCS 805/2-23. Mobile response workforce training pilot program

Sec. 2-23. Mobile response workforce training pilot program. (a) From appropriations made for the purposes of this Section, the State Board shall implement and administer a mobile response workforce training pilot program at 3 community colleges to address the fact that businesses are struggling to recruit a qualified workforce because of the frequent emergence of new technologies in the workplace and subsequent skill set requirements. The program shall meet all of the following requirements:

(1) The program must be a collaborative model that integrates mobile workforce training with job creation and economic development.

(2) The program must provide participating businesses with on-site training activities and resources across all functions, including without limitation recruiting, assessing and training potential employees, developing and producing training materials, providing training facilities, and delivering customized services, with the long-term objective of maintaining business and industry in this State and attracting new businesses and industries to this State.

(3) The program must be operated for a period of 3 years.

The program is encouraged to use the highly successful Alabama Industrial Development Training program as a model for guidance and direction.

(b) The State Board is authorized to administer the mobile response workforce training pilot program in conjunction with current programs and grants and in cooperation with other State agencies.

(c) The State Board shall by rule establish the criteria to be used in selecting the community colleges that are to participate in the mobile response workforce training pilot program, standards for implementation of the program, and goals to be accomplished during the 3 years of the program.

(d) On or before January 1, 2009, the State Board shall file with the Governor and the General Assembly a report on the progress of the mobile response workforce training pilot program.

(Source: P.A. 94-890, § 5.)

Effective Date. Section 99 of P.A. 94-890 made the section effective upon becoming law. The Act was approved June 20, 2006.

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§ 110 ILCS 805/2-24. We Want to Learn English Initiative

Sec. 2-24. We Want to Learn English Initiative. (a) Subject to appropriation and Section 7 of the Board of Higher Education Act [110 ILCS 205/7], the State Board may establish and administer a We Want to Learn English Initiative to provide resources for immigrants and refugees in this State to learn English in order to move towards becoming full members of American society.

(b) Each fiscal year, the State Board may include, as a separate line item, in its budget proposal $15,000,000 or less in funding for the We Want to Learn English Initiative, to be disbursed by the State Board. If the State Board decides to disburse the funds appropriated for this Initiative, then it must disburse no less than half of the funds appropriated each fiscal year to community-based, not-for-profit organizations, immigrant social service organizations, faith-based organizations, and on-site job training programs so that immigrants and refugees can learn English where they live, work, pray, and socialize and where their children go to school.

(c) Funds for the We Want to Learn English Initiative may be used only to provide programs that teach English to United States citizens, lawful permanent residents, and other persons residing in this State who are in lawful immigration status.

(Source: P.A. 95-638, § 5.)

Effective Date. This section is effective June 1, 2008, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/2.

§ 110 ILCS 805/2-25. College and Career Readiness Pilot Program

Sec. 2-25. College and Career Readiness Pilot Program. (a) The General Assembly finds that there is a direct and significant link between academic preparation of students and success in postsecondary education and careers. Many students enter college unprepared for the academic rigors of college and require noncredit remedial courses to attain skills and knowledge needed for regular, credit coursework. Remediation lengthens time to degree, imposes additional costs on students and colleges, and uses student financial aid for courses that will not count toward a degree. All students entering college take a college entrance exam or a placement test. These tests can be used to assist high school students to identify areas for improvement and help to close skill gaps during students' senior year. College and career readiness reduces the need for remediation, lowers educational costs, shortens time to degree, and increases the overall success rate of Illinois college students.

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(b) Subject to appropriation, the State Board shall create a pilot project, to be known as the College and Career Readiness Pilot Program. Subject to appropriation, on July 1, 2010, the State Board shall extend the current program for an additional 3 years and include an additional 7 sites (or as many as are allowed by available funding), as evidenced by the effectiveness of the current program. If in any of these 3 additional years, money is not appropriated for the program, then the State Board shall extend the program for an additional year. The goals of the program are as follows:

(1) To diagnose college readiness by developing a system that aligns ACT scores or college placement examinations to specific community college courses in developmental and freshman curriculums.

(2) To reduce remediation by decreasing the need for remedial coursework in mathematics, reading, and writing at the college level through (i) increasing the number of students enrolled in a college-prep core curriculum, (ii) assisting students in improving college readiness skills, and (iii) increasing successful student transitions into postsecondary education.

(3) To align high school and college curriculums.

(4) To provide resources and academic support to students to enrich the junior and senior year of high school through remedial or advanced coursework and other interventions.

(5) To develop an appropriate evaluation process to measure the effectiveness of readiness intervention strategies.

(c) The first year of the program extended under this Section by this amendatory Act of the 96th General Assembly [P.A. 96-1300] shall begin with the high school class of 2011 and the high school class of 2012 (or such later classes if money is not appropriated for the program in a given fiscal year).

(1) In addition to the community colleges participating in the program before July 1, 2010, the State Board shall select 7 additional community colleges (or as many as are allowable by available funding) to participate in the program based on all of the following:

(A) The percentage of students in developmental coursework.

(B) Demographics of student enrollment, including socioeconomic status, race and ethnicity, and enrollments of first-generation college students.

(C) Geographic diversity.

(D) The ability of the community college to partner with local high schools to develop college and career readiness strategies and college readiness teams.

(2) Each participating community college shall establish an agreement with a high school or schools to do all of the following:

(A) Create a data-sharing agreement.

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(B) Create a Readiness Plan for each student, showing all of the following:

(i) The readiness status for college-level work.

(ii) Course recommendations for remediation or for advanced coursework in Advanced Placement classes or dual credit and dual enrollment programs.

(iii) Additional academic support services, including tutoring, mentoring, and college application assistance.

(C) Create college and career readiness teams, which shall include the chief academic officer, the chief student services officer, an institutional researcher, faculty, and counselors or advisers from the community college and high school, the college and career readiness coordinator from the community college, and other members as determined by the high school and community college. The teams may include local business or civic leaders. The teams shall develop intervention strategies as follows:

(i) Use the Readiness Plan to develop a contract with each student for remedial or advanced coursework to be taken during the senior year.

(ii) Monitor student progress.

(iii) Provide readiness support services.

(D) Retest students upon the completion of the appropriate intervention to assess progress and college readiness.

(3) The State Board shall work with participating community colleges and high schools to develop an appropriate evaluation process to measure effectiveness of intervention strategies, including all of the following:

(A) Baseline data for each participating school.

(B) Baseline data for the Illinois system.

(C) Comparison of college entrance exams or college placement scores, or both, within each group of students.

(D) Student enrollment in each applicable intervention.

(E) Placement of college and career readiness students in developmental and regular courses upon the completion of the intervention and subsequent enrollment in additional courses.

(F) Retention of college and career readiness students in the semester after enrollment.

(G) Other measures as selected by the State Board.

(d) The second year of the program extended under this Section by this amendatory Act of the 96th General Assembly shall begin with the high school class of 2012 and the high school class of 2013 (or such later classes if money is not appropriated for the program in

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a given fiscal year). In the second year of the extended program, the State Board shall have all of the following duties:

(1) Undertake intervention strategies through college and career readiness teams with students of the classes of 2012 and 2013.

(2) Monitor and assist college and career readiness graduates from the class of 2011 in college.

(e) The third year of the program extended under this Section by this amendatory Act of the 96th General Assembly shall begin with the high school class of 2013 and the high school class of 2014 (or such later classes if money is not appropriated for the program in a given fiscal year). In the third year of the extended program, the State Board shall have all of the following duties:

(1) Undertake intervention strategies through college and career readiness teams with students of the classes of 2013 and 2014.

(2) Monitor and assist students from the classes of 2011 and 2012 in college.

(f) At the end of the 3-year extension of the program, the State Board shall prepare and submit a report outlining its findings and recommendations to the Senate and the House of Representatives by filing a copy of its report with the Secretary of the Senate and Clerk of the House of Representatives no later than December 31, 2013.

(Source: P.A. 95-694, § 5; 95-876, § 185; 96-1300, § 5.)

Effective Date. Section 99 of P.A. 95-694 made this section effective upon becoming law. The Act was approved November 5, 2007.

Effect of Amendments. The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, renumbered this section, which was formerly 110 ILCS 805/2.24.

The 2010 amendment by P.A. 96-1300, effective July 26, 2010, rewrote the section.

ARTICLE III.

Community College Districts; Organization; Powers and Duties; Elections

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§ 110 ILCS 805/3-1. [Organization of community college district]

Sec. 3-1. Any contiguous and compact territory, no part of which is included within any community college district, unless all of such district is included which has an equalized assessed valuation of not less than $150,000,000 and contains a population of not less than 60,000 persons may be organized into a community college district within the State system.

For the purpose of this section and Sections 6-5.3, 6-5.5, and 6-6.1 [110 ILCS 106-5.3, 110 ILCS 106-5.5, and 110 ILCS 106-6.1] any territory which is completely surrounded by a community college district governed by the provisions of Article 7 of this Act, shall be considered contiguous to any territory beyond the boundaries of such community college district governed by the provisions of Article 7, the closest boundary of which is not more than 5 miles from the boundary of such territory so surrounded. Any territory which comprises a special charter school district and which is completely surrounded by a non-district territory shall be considered contiguous to any community college district beyond the boundaries of such non-district territory, the closest boundary of which is not more than 20 miles from the boundary of such territory so surrounded. The contiguity of such territory shall not be affected by any subsequent change in the status of the surrounding non-district territory, including the inclusion of such non-district territory in a community college district other than the district to which the original territory was annexed.

A petition signed by at least 500 or more voters residing in the territory described in the petition shall be filed with the State Board. The petition shall:

(1) Request the calling of an election for the purpose of voting for or against the establishment of a community college district.

(2) Describe the territory comprising the proposed district.

(3) Describe the extent to which educational programs will be provided by contract with existing public or private educational institutions.

(4) Set forth the maximum tax rates for educational purposes and for operations and maintenance of facilities purposes. The proposed district shall be authorized to levy rates which shall not exceed .75 per cent of the value, as equalized or assessed by the Department of Revenue, for educational purposes, and .1 per cent for operations and maintenance of facilities purposes.

(Source: P.A. 85-1335.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-1.

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§ 110 ILCS 805/3-1.1. [Amendment]

Sec. 3-1.1. Any petition filed under this Act, which bears the signatures of 25 or more persons, may designate a committee of 5 of the petitioners as attorney in fact for all the petitioners, who may amend the petition to correct errors in the description of the territory included in the petition prior to the public hearing, or if no hearing is required, prior to approval or disapproval of the petition by the State Board. The petition must after amendment comply with the requirements for such a petition under this Act.

(Source: Laws 1967, p. 3308.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-1.1.

§ 110 ILCS 805/3-2. [Required study]

Sec. 3-2. Upon the receipt of such a petition, the State Board shall, in cooperation with the regional superintendent of the county or counties in which the territory of the proposed district is located, cause a study to be made of the territory of the proposed district and the community college needs and condition thereof and the area within and adjacent thereto in relation to existing facilities for general education, including pre-professional curricula and for training in occupational activities, and in relation to a factual survey of the possible enrollment, assessed valuation, industrial business, agricultural and other conditions reflecting educational needs in the area to be served, in order to determine whether in its judgment the proposed district may adequately maintain a community college in accordance with such desirable standards. In reviewing the application the State Board shall consider the feasibility of any proposed utilization of existing public or private educational facilities and land within or in near proximity to the boundary of the proposed district, and of contracting with such public or private institutions for the provision of educational programs. If the State Board finds as the result of its study that it is not possible for the proposed district to produce a desirable program of community college education at a reasonable cost, it shall provide a brief statement of the reasons for this decision and shall thereupon cause a copy of the statement to be published in a newspaper or newspapers having a general circulation in the territory of the proposed district and no election shall be held or further proceedings had on said petition to establish such a community college district. If approved the State Board shall submit its findings to the Board of Higher Education for a determination as to whether or not the proposal is in conformity with a comprehensive community college program. When the Board of Higher Education approves the request for a new community college, the State Board shall prepare a report of such action on the petition. The report shall contain a brief statement of the reasons for the decision and a resume

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stating why the State Board deems it possible for the proposed district to provide a desirable two-year college program at reasonable cost, the conditions under which such operation would be possible, the estimated results of such operation in terms of local taxes, the nature and probable cost of alternative methods of providing adequate community college educational opportunities for students in the territory involved and such other information as the State Board believes may be helpful to the voters in such territory in voting on the proposition to establish a community college district.

(Source: P.A. 84-509.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-2.

§ 110 ILCS 805/3-3. [Request approval]

Sec. 3-3. If the Board of Higher Education disapproves the request for a new community college, no election shall be held or further proceedings had on such petition to establish a community college district. If the Board of Higher Education approves the request to establish a community college district, the State Board shall cause notice of a hearing on the petition to be given by publishing a notice thereof at least once each week for 3 successive weeks in at least one newspaper having general circulation within the territory of the proposed district, and if no such newspaper exists, then the publication shall be made in 2 or more newspapers which together cover the territory with general circulation. The notice shall state when and to whom the petition was presented, the description of the territory of the proposed district, and the day on which the hearing upon the petition and the report of the State Board will be held. On such day or on a day to which the State Board shall continue said hearing, the State Board or a hearing officer appointed by it shall hear the petition, present the report and determine the sufficiency of the petition as herein prescribed, and may adjourn the hearing from time to time or continue the matter for want of sufficient notice or for other good cause. The State Board or a hearing officer appointed by it shall hear any additional evidence as to the school needs and conditions of the territory and in the area within and adjacent thereto and if a hearing officer is appointed he shall report a summary of the testimony to the State Board. Whereupon the State Board shall determine whether it is for the best interests of the schools of such area and the educational welfare of the students therein that such district be organized, and shall determine also whether the territory described in the petition is compact and contiguous for college purposes.

(Source: P.A. 78-669.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-3.

CASE NOTES

Analysis

Constitutionality
Applicability
- Laches

Constitutionality

This section and 110 ILCS 805/3-4 are not discriminatory special legislation in violation of due process under the federal and state constitutions; there is a reasonable basis for the restriction because those persons who did not take sufficient interest to appear and be heard at the hearing are in a different category from those who did appear. People v. Francis, 40 Ill. 2d 204, 239 N.E.2d 129 (1968).

Applicability

- Laches

Quo warranto action was barred by laches where action was commenced nearly two years after the junior college district was originally organized, its board levied and collected taxes for the two years and expended those monies to establish the junior college, land was leased, contracts were entered into for the purchase of buildings and facilities for a temporary campus, faculty and administrative personnel were employed, and over 1500 students had enrolled and were now attending classes. People v. Junior College, 42 Ill. 2d 136, 246 N.E.2d 292 (1969).

§ 110 ILCS 805/3-4. [Denial and approval of petition]

Sec. 3-4. At the hearing, any resident in the proposed district or any district affected thereby may appear in support of the petition or to object thereto. At the conclusion of the hearing the State Board shall make a decision either granting or denying the petition. If the State Board denies the petition no election shall be held or further proceedings had unless its decision is reversed upon review. If the State Board approves the petition or if its denial of the petition is reversed on review, the regional superintendent of the county in which the territory described in the petition is situated or if the petition describes territory consisting of one county and all or a part of several counties, the regional superintendent of the county having the greater number of people included in the territory described in the petition, shall certify the proposition to the proper election officials, who shall submit such proposition at a regular scheduled election as provided in the general election law for the purpose of voting for or against the proposition of establishing a

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community college district. The decision of the State Board after the hearing shall be deemed an "administrative decision" as defined in Section 3-101 of the Code of Civil Procedure [735 ILCS 5/3-101] and any petitioner or resident who appears at the hearing may file a complaint for a judicial review of such decision in accordance with the Administrative Review Law [735 ILCS 5/3-101 et seq.], and all amendments and modifications thereof and the rules adopted pursuant thereto. The commencement of any action for review shall operate as a stay of enforcement, and no referendum shall be held pending final disposition of such review.

(Source: P.A. 84-551.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-4.

CASE NOTES

Constitutionality

This section and 110 ILCS 805/3-4 are not discriminatory special legislation in violation of due process under the federal and state Constitutions; there is a reasonable basis for the restriction because those persons who did not take sufficient interest to appear and be heard at the hearing are in a different category from those who did appear. People v. Francis, 40 Ill. 2d 204, 239 N.E.2d 129 (1968).

§ 110 ILCS 805/3-4.1. [Referendum costs]

Sec. 3-4.1. The costs of any referendum conducted under this Act shall be borne by the county or counties in which the territory involved in the election is located.

(Source: P.A. 81-1489.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-4.1.

§ 110 ILCS 805/3-5. [Form of proposition]

Sec. 3-5. The proposition shall be in substantially the following form:

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FOR the establishment of a community college district with authority to levy taxes at the rate of ..... per cent for educational purposes, and ..... per cent for operations and maintenance of facilities purposes.

AGAINST the establishment of a community college district with authority to levy taxes at the rate of ..... per cent for educational purposes, and ..... per cent for operations and maintenance of facilities purposes.

In order for the proposition to be approved, a majority of the votes cast in the territory at the election must be in favor of the proposition of establishing a community college district; provided, however, that if the territory described in the petition includes one or more community college districts, the proposition has not received a majority of the votes cast on the proposition unless it also receives a majority of the votes cast on the proposition within the territory included within each such district, the count to be taken separately within such districts.

(Source: P.A. 85-1335.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-5.

CASE NOTES

Constitutionality

This section does not violate the equal protection clause of the United States Constitution or Ill. Const. (1870), Art. II, § 18 (see now Ill. Const. (1970), Art. IV, § 13). People v. Francis, 40 Ill. 2d 204, 239 N.E.2d 129 (1968).

§ 110 ILCS 805/3-6. [Election of board]

Sec. 3-6. If a majority of the votes cast at the election, as determined in the manner provided in Section 3-5 [110 ILCS 805/3-5], is in favor of the establishment of a community college district, the regional superintendent who ordered that election shall forthwith order an election to be held at the time and in the manner provided in the general election law for the purpose of selecting the board for that community college district, to consist of 7 members.

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(Source: P.A. 81-1490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-6.

CASE NOTES

Constitutionality

This section did not violate former Ill. Const. (1870), Art. II, § 18, which guaranteed free and equal elections (see now Ill. Const. (1970), Art. III, § 3). People v. Francis, 40 Ill. 2d 204, 239 N.E.2d 129 (1968).

§ 110 ILCS 805/3-7. [Terms; vacancies; compensation]

Sec. 3-7. (a) The election of the members of the board of trustees shall be nonpartisan and shall be held at the time and in the manner provided in the general election law.

(b) Unless otherwise provided in this Act, members shall be elected to serve 6 year terms. The term of members elected in 1985 and thereafter shall be from the date the member is officially determined to be elected to the board by a canvass conducted pursuant to the Election Code [10 ILCS 5/1-1 et seq.], to the date that the winner of the seat is officially determined by the canvass conducted pursuant to the Election Code the next time the seat on the board is to be filled by election.

(c) Each member must on the date of his election be a citizen of the United States, of the age of 18 years or over, and a resident of the State and the territory which on the date of the election is included in the community college district for at least one year immediately preceding his election. In Community College District No. 526, each member elected at the consolidated election in 2005 or thereafter must also be a resident of the trustee district he or she represents for at least one year immediately preceding his or her election, except that in the first consolidated election for each trustee district following reapportionment, a candidate for the board may be elected from any trustee district that contains a part of the trustee district in which he or she resided at the time of the reapportionment and may be reelected if a resident of the new trustee district he or she represents for one year prior to reelection. In the event a person who is a member of a common school board is elected or appointed to a board of trustees of a community college district, that person shall be permitted to serve the remainder of his or her term of office as a member of the common school board. Upon the expiration of the common school board term, that person shall not be eligible for election or appointment to a common school board during the term of office with the community college district board of trustees.

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(d) Whenever a vacancy occurs, the remaining members shall fill the vacancy, and the person so appointed shall serve until a successor is elected at the next regular election for board members and is certified in accordance with Sections 22-17 and 22-18 of the Election Code [10 ILCS 5/22-17 and 10 ILCS 5/22-18]. If the remaining members fail so to act within 60 days after the vacancy occurs, the chairman of the State Board shall fill that vacancy, and the person so appointed shall serve until a successor is elected at the next regular election for board members and is certified in accordance with Sections 22-17 and 22-18 of the Election Code. The person appointed to fill the vacancy shall have the same residential qualifications as his predecessor in office was required to have. In either instance, if the vacancy occurs with less than 4 months remaining before the next scheduled consolidated election, and the term of office of the board member vacating the position is not scheduled to expire at that election, then the term of the person so appointed shall extend through that election and until the succeeding consolidated election. If the term of office of the board member vacating the position is scheduled to expire at the upcoming consolidated election, the appointed member shall serve only until a successor is elected and qualified at that election.

(e) Members of the board shall serve without compensation but shall be reimbursed for their reasonable expenses incurred in connection with their service as members. Compensation, for purposes of this Section, means any salary or other benefits not expressly authorized by this Act to be provided or paid to, for or on behalf of members of the board. The board of each community college district may adopt a policy providing for the issuance of bank credit cards, for use by any board member who requests the same in writing and agrees to use the card only for the reasonable expenses which he or she incurs in connection with his or her service as a board member. Expenses charged to such credit cards shall be accounted for separately and shall be submitted to the chief financial officer of the district for review prior to being reported to the board at its next regular meeting.

(f) Except in an election of the initial board for a new community college district created pursuant to Section 6-6.1, the ballot for the election of members of the board for a community college district shall indicate the length of term for each office to be filled. In the election of a board for any community college district, the ballot shall not contain any political party designation.

(Source: P.A. 86-469; 86-481; 86-550; 86-1028; 86-1032; 86-1245; 86-1264; 86-1475; 87-707; 87-776; 87-895; 88-686, § 10; 90-358, § 15; 92-1, § 5; 93-582, § 5; 95-100, § 5; 97-539, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-7.

Effect of Amendments. The 1994 amendment by P.A. 88-686, effective January 24, 1995, in the third paragraph inserted "or has been contiguous"; in the fourth paragraph, in the first sentence, deleted "and in the year following each decennial census thereafter" preceding "shall reapportion"

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and substituted "the last decennial" for "such", added the second sentence, in the third sentence inserted "with respect to the initial division . . . each decennial census thereafter", in the fourth sentence substituted "board of trustees" for "State Board of Elections"; and deleted the seventh sentence regarding terms of office of board members.

The 1997 amendment by P.A. 90-358, effective January 1, 1998, in the sixth paragraph, in the fourth sentence, substituted "consolidated" for "nonpartisan" twice and in the fifth sentence substituted "consolidated" for "nonpartisan".

The 2001 amendment by P.A. 92-1, effective March 30, 2001, all in the fourth paragraph: in the third sentence deleted "by a majority of the members appointed to the State Board of Elections with respect to the initial division of the community college district into 7 trustee districts in 1991, and" following "formally approved", substituted "in 2001 and in" for "with respect to", and deleted "thereafter, not less than 60 days before the last date established by the general election law for the submission of nominating petitions for the next regularly scheduled election for community college trustees" from the end of the sentence; inserted "Beginning in 2003 and every 10 years thereafter" in the fifth sentence; and added the last two sentences.

The 2003 amendment by P.A. 93-582, effective January 1, 2004, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2007 amendment by P.A. 95-100, effective August 13, 2007, inserted "annexations, and natural boundaries" and "and maps produced by the Department of Revenue" in the third sentence of (d); and inserted the eleventh sentence in (d).

The 2011 amendment by P.A. 97-539, effective August 23, 2011, deleted former (c) and (d); redesignated former (e) through (h) as (c) through (f); and deleted "by the General Assembly" following "reapportionment" in the second sentence of present (c).

CASE NOTES

Constitutionality

- Special Legislation

Since it is conceivable that the legislature, by amending this section, sought to remedy the "evil" of at-large elections in one district, the legislature's action had a rational basis, as there is no reason why the legislature had to change every community college district at once; thus, plaintiff's special legislation claim was without merit. Pidgeon v. State Bd. of Elections, 234 Ill. App. 3d 490, 175 Ill. Dec. 615, 600 N.E.2d 858 (4 Dist. 1992).

OPINIONS OF ATTORNEY GENERAL

Vacancy

Under 10 ILCS 5/25-2, a vacancy in the office of community college district trustee occurs under this section when the officeholder ceases to be an actual resident to the board of which he or she was elected. 1996 Op. Atty. Gen. (96-012).

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§ 110 ILCS 805/3-7a. Trustee districts; Community College District No. 522.

Sec. 3-7a. Trustee districts; Community College District No. 522. A board of trustees of a community college district which is contiguous or has been contiguous to an experimental community college district as authorized and defined by Article IV of this Act may, on its own motion, or shall, upon the petition of the lesser of 1/10 or 2,000 of the voters registered in the district, order submitted to the voters of the district at the next general election the proposition for the election of board members by trustee district rather than at large, and such proposition shall thereupon be certified by the secretary of the board to the proper election authority in accordance with the general election law for submission.

If the proposition is approved by a majority of those voting on the proposition, the State Board of Elections, in 1991, shall reapportion the trustee districts to reflect the results of the last decennial census, and shall divide the community college district into 7 trustee districts, each of which shall be compact, contiguous and substantially equal in population to each other district. In 2001, and in the year following each decennial census thereafter, the board of trustees of community college District #522 shall reapportion the trustee districts to reflect the results of the census, and shall divide the community college district into 7 trustee districts, each of which shall be compact, contiguous, and substantially equal in population to each other district. The division of the community college district into trustee districts shall be completed and formally approved by a majority of the members of the board of trustees of community college District #522 in 2001 and in the year following each decennial census. At the same meeting of the board of trustees, the board shall, publicly by lot, divide the trustee districts as equally as possible into 2 groups. Beginning in 2003 and every 10 years thereafter, trustees or their successors from one group shall be elected for successive terms of 4 years and years; and members or their successors from the second group shall be elected for successive terms of 6 years and 4 years. One member shall be elected from each such trustee district. Each member elected in 2001 shall be elected at the 2001 consolidated election from the trustee districts established in 1991. The term of each member elected in 2001 shall end on the date that the trustees elected in 2003 are officially determined by a canvass conducted pursuant to the Election Code [10 ILCS 5/1-1 et seq.].

(Source: P.A. 97-539, § 5.)

Effective Date. Section 99 of P.A. 97-539 made this section effective upon becoming law. The Act was approved August 23, 2011.

§ 110 ILCS 805/3-7b. Trustee districts prior to the 2013 consolidated election; Community College District No. 526

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Sec. 3-7b. Trustee districts prior to the 2013 consolidated election; Community College District No. 526. (a) In Community College District No. 526, the election of board members shall be by trustee district rather than at large beginning with the consolidated election in 2005.

(b) For the 2005, 2007, and 2009 consolidated elections, Community College District No. 526 is divided into 7 trustee districts as follows:

TRUSTEE DISTRICT 1

Sangamon County (pt)

Capital CCD (pt)

Tract 0001.00

Tract 0002.01 (pt)

BG 1 (pt)

Block 1010

Block 1011

Block 1013

Block 1014

Block 1015

Block 1016

Block 1017

Block 1018

BG 2 (pt)

Block 2002

Block 2003

Block 2004

Block 2005

Block 2008

Block 2013

Block 2014

Block 2015

Block 2016

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Block 2017

Block 2018

Block 2019

Block 2020

Block 2021

BG 3 (pt)

Block 3000

Block 3001

Block 3008

Block 3009

Tract 0002.02

Tract 0003.00

Tract 0004.00

Tract 0005.01

Tract 0005.03

Tract 0005.04

Tract 0006.00 (pt)

BG 1

BG 2 (pt)

Block 2000

Block 2001

Block 2002

Block 2003

Block 2004

Block 2005

Block 2006

Block 2008

Block 2011

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Block 2012

Block 2015

Block 2017

Block 2018

Block 2020

Block 2021

Block 2022

Block 2023

Block 2024

Block 2025

Block 2027

Block 2028

Block 2029

Block 2030

BG 3

BG 4 (pt)

Block 4000

Block 4002

Block 4003

Block 4004

Block 4005

Block 4006

Block 4007

Block 4010

Block 4018

Block 4019

BG 5 (pt)

Block 5001

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Block 5004

Block 5006

Block 5007

Block 5015

Block 5016

Block 5018

Tract 0007.00 (pt)

BG 1 (pt)

Block 1033

Block 1036

BG 2 (pt)

Block 2000

Block 2001

Block 2002

Block 2003

Block 2004

Block 2005

Block 2006

Block 2007

Block 2008

Block 2009

Block 2010

Block 2011

Block 2012

Block 2013

Block 2014

Block 2015

Block 2016

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Block 2017

Block 2018

Block 2019

Block 2020

Block 2021

Tract 0008.00 (pt)

BG 1 (pt)

Block 1000

Block 1001

Block 1002

Block 1003

Block 1004

Block 1005

Block 1006

Block 1007

Block 1008

Block 1009

Block 1010

Block 1011

Block 1012

Block 1013

Block 1014

Block 1015

Block 1016

Block 1017

Block 1018

Block 1019

Block 1020

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Block 1021

Block 1023

Block 1024

Block 1025

Block 1026

Block 1027

Block 1028

BG 2 (pt)

Block 2000

Block 2001

Block 2002

Block 2003

Block 2004

Block 2005

Block 2006

Block 2010

Block 2011

Block 2012

BG 3 (pt)

Block 3003

Tract 0009.00

Tract 0010.01 (pt)

BG 2 (pt)

Block 2000

Block 2002

Block 2016

Block 2017

Block 2018

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Tract 0010.02 (pt)

BG 1 (pt)

Block 1016

BG 2

BG 3

BG 4 (pt)

Block 4000

BG 5 (pt)

Block 5000

BG 6 (pt)

Block 6000

Block 6001

Block 6002

Block 6003

Block 6005

Tract 0011.00 (pt)

BG 1 (pt)

Block 1000

Block 1001

Block 1002

Block 1003

Block 1004

Block 1005

Block 1006

Block 1007

Block 1008

Block 1009

Block 1010

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Block 1011

BG 3 (pt)

Block 3000

Block 3001

Block 3002

Block 3003

Block 3004

Block 3005

Block 3006

Block 3007

Block 3009

Block 3010

Block 3011

Block 3012

Block 3013

Tract 0012.00 (pt)

BG 1 (pt)

Block 1000

Block 1001

Block 1002

Block 1003

Block 1004

Block 1005

Block 1006

Block 1007

Block 1008

Block 1009

BG 2 (pt)

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Block 2000

Block 2001

Block 2002

Block 2003

Block 2004

Block 2005

Block 2006

Block 2007

Block 2009

Tract 0013.00

Tract 0014.00

Tract 0016.00 (pt)

BG 1 (pt)

Block 1001

Block 1002

Tract 0018.00 (pt)

BG 1 (pt)

Block 1000

Block 1001

Block 1002

Block 1003

Block 1004

Block 1005

Block 1006

Block 1007

Block 1008

Block 1009

Block 1010

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Block 1011

Block 1012

Block 1013

Block 1014

Block 1015

Block 1016

Block 1017

Block 1018

Block 1019

Block 1020

Block 1030

Block 1031

Tract 0019.00 (pt)

BG 1 (pt)

Block 1000

BG 2 (pt)

Block 2000

Block 2001

Block 2002

Block 2003

Block 2004

Block 2005

Block 2006

Block 2007

Block 2008

Block 2010

Block 2011

Block 2012

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Block 2013

Block 2014

Block 2015

Block 2016

Tract 0037.00

Tract 0038.01 (pt)

BG 1

Clear Lake CCD (pt)

Tract 0001.00 (pt)

BG 1 (pt)

Block 1018

Tract 0005.01

Tract 0038.01 (pt)

BG 1 (pt)

Block 1003

Block 1010

Block 1011

Block 1012

Block 1015

Block 1016

Block 1018

Block 1019

Block 1022

Block 1023

Block 1026

Block 1027

Block 1032

Block 1033

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Block 1034

Block 1035

BG 2 (pt)

Block 2000

Block 2001

Block 2002

Block 2999

Springfield CCD (pt)

Tract 0001.00 (pt)

BG 1

BG 2

BG 3

BG 4 (pt)

Block 4000

Block 4001

Block 4002

Block 4005

Block 4006

Block 4010

Block 4012

Block 4018

Block 4021

Block 4022

Block 4024

Block 4025

Block 4032

Block 4040

Block 4041

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Block 4044

Block 4047

Block 4049

Block 4051

Block 4052

Block 4053

Block 4055

Block 4995

Block 4996

Block 4997

Block 4999

Tract 0002.01 (pt)

BG 1 (pt)

Block 1012

Block 1019

Block 1020

BG 2 (pt)

Block 2000

Block 2001

BG 3 (pt)

Block 3002

Tract 0002.02

Tract 0003.00

Tract 0004.00

Tract 0005.01

Tract 0005.04

Tract 0006.00 (pt)

BG 1

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BG 2

BG 3

BG 4

BG 5 (pt)

Block 5000

Block 5002

Block 5003

Block 5005

Block 5008

Block 5009

Block 5010

Block 5011

Block 5012

Block 5013

Block 5014

Block 5017

Block 5019

Block 5020

Block 5021

Tract 0007.00

Tract 0016.00 (pt)

BG 1 (pt)

Block 1000

Tract 0037.00 (pt)

BG 1 (pt)

Block 1023

Block 1025

Block 1991

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Block 1996

Block 1997

Block 1998

Block 1999

BG 2

BG 3

BG 4

TRUSTEE DISTRICT 2

Sangamon County (pt)

Ball CCD (pt)

Tract 0031.00 (pt)

BG 3 (pt)

Block 3056

Block 3058

Block 3064

Block 3067

Block 3069

Block 3071

Block 3073

Block 3075

Block 3079

Block 3081

Block 3084

Block 3085

Block 3088

Block 3089

Block 3166

Block 3173

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BG 4 (pt)

Block 4013

Block 4014

Block 4015

Block 4016

Block 4020

Block 4022

Block 4024

Block 4029

Block 4038

Block 4043

Block 4044

Block 4045

Block 4047

Block 4049

Block 4051

Block 4052

Block 4055

Block 4057

Block 4059

Block 4061

Block 4062

BG 5

Tract 0032.01 (pt)

BG 2 (pt)

Block 2025

Tract 0032.03 (pt)

BG 2 (pt)

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Block 2009

Block 2010

BG 4 (pt)

Block 4006

Block 4008

Capital CCD (pt)

Tract 0006.00 (pt)

BG 2 (pt)

Block 2031

Block 2033

Block 2034

BG 4 (pt)

Block 4011

Block 4012

Block 4015

BG 5 (pt)

Block 5026

Block 5032

Block 5036

Block 5037

Block 5038

Block 5039

Block 5041

Block 5043

Block 5044

BG 6

Tract 0007.00 (pt)

BG 1 (pt)

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Block 1037

BG 2 (pt)

Block 2022

Tract 0008.00 (pt)

BG 1 (pt)

Block 1022

BG 2 (pt)

Block 2007

Block 2008

Block 2009

Block 2013

Block 2014

Block 2015

Block 2016

Block 2017

Block 2018

Block 2019

Block 2020

Block 2021

Block 2022

Block 2023

Block 2024

Block 2025

Block 2026

Block 2027

Block 2028

BG 3 (pt)

Block 3000

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Block 3001

Block 3002

Tract 0015.00

Tract 0016.00 (pt)

BG 1 (pt)

Block 1003

Block 1004

Block 1005

Block 1006

Block 1007

Block 1008

Block 1009

Block 1010

Block 1011

Block 1012

Block 1013

Block 1016

Block 1020

Block 1021

Block 1022

Block 1023

BG 2

BG 3

BG 4

Tract 0017.00

Tract 0023.00

Tract 0024.00

Tract 0025.00

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Tract 0026.00 (pt)

BG 1

BG 2

BG 3

BG 4 (pt)

Block 4000

Block 4003

Tract 0027.00 (pt)

BG 1

BG 2

BG 3 (pt)

Block 3000

Block 3019

Block 3020

Block 3040

Block 3042

Block 3043

Block 3044

Block 3045

BG 4 (pt)

Block 4016

Block 4017

Block 4018

Block 4019

Block 4020

Block 4023

Block 4024

Block 4025

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Block 4028

Block 4029

Tract 0030.00 (pt)

BG 1

BG 2

BG 3

BG 4 (pt)

Block 4001

Block 4002

Block 4005

Block 4006

Block 4007

Block 4008

Block 4009

Block 4010

Block 4011

Block 4012

Block 4013

Block 4014

Block 4015

Block 4016

Block 4017

Block 4018

Block 4020

Block 4022

Block 4023

Block 4024

Block 4025

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Block 4027

Block 4030

Block 4031

Block 4032

Block 4042

Block 4044

Block 4047

Block 4048

Block 4049

Block 4050

Block 4051

Block 4052

Block 4053

Block 4056

Tract 0031.00 (pt)

BG 1

BG 2

BG 3

BG 4

BG 5 (pt)

Block 5002

Block 5003

Block 5005

Block 5007

Block 5008

Block 5009

Block 5010

Block 5012

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Block 5013

Block 5014

Block 5015

Block 5016

Block 5019

Block 5020

Block 5022

Block 5025

Block 5026

Block 5029

Block 5030

Block 5031

Block 5032

Block 5034

Block 5035

Block 5037

Block 5039

Block 5053

Block 5054

Block 5055

Block 5998

Block 5999

Tract 0032.01 (pt)

BG 2

Tract 0032.03 (pt)

BG 2 (pt)

Block 2000

Block 2001

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Block 2012

BG 4

Tract 0038.01 (pt)

BG 2

Tract 0039.01

Tract 0039.02

Clear Lake CCD (pt)

Tract 0006.00

Tract 0038.01 (pt)

BG 1 (pt)

Block 1031

Block 1993

Block 1994

Block 1999

BG 2 (pt)

Block 2003

Block 2004

Block 2005

Block 2006

Block 2007

Block 2008

Block 2009

Block 2010

Block 2011

Block 2012

Block 2013

Block 2014

Block 2015

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Block 2016

Block 2017

Block 2018

Block 2019

Block 2020

Block 2021

Block 2022

Block 2023

Block 2024

Block 2030

Block 2031

Block 2032

Block 2033

Block 2034

Block 2991

Block 2992

Block 2993

Block 2994

Block 2995

Block 2996

Block 2997

Block 2998

BG 3

Tract 0038.02

Tract 0039.02

Rochester CCD (pt)

Tract 0031.00 (pt)

BG 1

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BG 3 (pt)

Block 3006

Block 3011

Block 3015

Block 3019

Block 3023

Block 3025

Block 3028

Block 3034

Block 3035

Block 3036

Block 3043

Block 3047

Block 3048

Tract 0039.01 (pt)

BG 1 (pt)

Block 1000

Block 1009

Block 1010

Block 1011

Block 1012

Block 1014

Block 1016

Block 1017

Block 1995

Block 1996

Block 1997

Block 1998

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Block 1999

BG 2

BG 4 (pt)

Block 4006

Block 4007

Block 4008

Block 4009

Block 4010

Block 4011

Block 4012

Block 4013

Block 4014

Block 4015

Block 4016

Block 4017

Tract 0039.02 (pt)

BG 1

BG 2 (pt)

Block 2003

Block 2004

Block 2005

Block 2006

Block 2007

Block 2008

Block 2009

Block 2010

Block 2011

Block 2012

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Block 2013

Block 2014

Block 2015

Block 2016

Block 2017

Block 2018

Block 2019

Block 2020

Block 2021

Block 2022

Block 2023

Block 2024

Block 2025

Block 2026

Block 2027

Block 2028

Block 2029

Block 2030

Block 2031

Block 2032

Block 2033

BG 3

Tract 0040.00

Springfield CCD (pt)

Tract 0006.00 (pt)

BG 5 (pt)

Block 5022

Block 5023

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Block 5024

Block 5025

Block 5027

Block 5028

Block 5029

Block 5030

Block 5031

Block 5033

Block 5034

Block 5035

Block 5040

Block 5042

BG 6

Tract 0016.00 (pt)

BG 1 (pt)

Block 1014

Block 1015

Block 1017

Block 1018

Block 1019

BG 2

BG 3

Tract 0024.00

Tract 0039.02

Woodside CCD (pt)

Tract 0006.00

Tract 0016.00

Tract 0024.00

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Tract 0025.00

Tract 0026.00

Tract 0027.00 (pt)

BG 1

BG 2

BG 3 (pt)

Block 3001

Block 3002

Block 3003

Block 3004

Block 3005

Block 3006

Block 3009

Block 3010

Block 3011

Block 3012

Block 3013

Block 3014

Block 3015

Block 3016

Block 3017

Block 3018

Block 3021

Block 3022

Block 3023

Block 3024

Block 3025

Block 3026

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Block 3027

Block 3028

Block 3029

Block 3030

Block 3034

Block 3035

Block 3037

Block 3041

Block 3046

BG 4

Tract 0030.00 (pt)

BG 1

BG 2

BG 3

BG 4 (pt)

Block 4000

Block 4003

Block 4004

Block 4019

Block 4021

Block 4026

Block 4028

Block 4029

Block 4033

Block 4034

Block 4035

Block 4036

Block 4037

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Block 4038

Block 4039

Block 4040

Block 4041

Block 4043

Block 4045

Block 4046

Block 4054

Block 4055

Tract 0031.00 (pt)

BG 1

BG 2

BG 3

BG 4

BG 5 (pt)

Block 5000

Block 5001

Block 5004

Block 5006

Block 5011

Block 5017

Block 5018

Block 5021

Block 5023

Block 5024

Block 5027

Block 5028

Block 5038

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Tract 0032.01 (pt)

BG 2

Tract 0039.02

TRUSTEE DISTRICT 3

Sangamon County (pt)

Ball CCD (pt)

Tract 0032.01 (pt)

BG 1

BG 2 (pt)

Block 2002

Block 2017

Block 2018

Block 2019

Block 2020

Block 2021

Block 2023

Block 2024

Block 2027

Block 2028

Block 2029

Block 2030

Block 2031

Block 2032

Block 2033

Block 2034

Block 2037

Block 2038

Block 2041

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Block 2042

Block 2045

Tract 0032.03 (pt)

BG 1 (pt)

Block 1000

Block 1001

Block 1002

Block 1003

Block 1004

Block 1005

Block 1006

Block 1007

Block 1008

Block 1009

Block 1010

Block 1011

Block 1038

Block 1052

BG 2 (pt)

Block 2002

Block 2004

Block 2005

Block 2006

Block 2007

Block 2008

Block 2011

Block 2013

Block 2014

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Block 2015

Block 2016

Block 2017

Block 2018

Block 2019

Block 2020

Block 2021

Block 2022

Capital CCD (pt)

Tract 0010.02 (pt)

BG 4 (pt)

Block 4001

Block 4002

Block 4003

Block 4004

Block 4005

Block 4006

Block 4007

Block 4008

Block 4009

BG 5 (pt)

Block 5001

Block 5002

Block 5003

Block 5004

Block 5005

Block 5006

Block 5007

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Block 5008

Block 5009

Block 5010

Block 5011

Block 5012

Block 5013

BG 6 (pt)

Block 6004

Block 6006

Block 6007

Tract 0011.00 (pt)

BG 1 (pt)

Block 1012

Block 1013

Block 1014

Block 1015

Block 1016

BG 2

BG 3 (pt)

Block 3008

Block 3014

Block 3015

Tract 0012.00 (pt)

BG 1 (pt)

Block 1010

Block 1011

Block 1012

Block 1013

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Block 1014

BG 2 (pt)

Block 2008

BG 3

BG 4

Tract 0018.00 (pt)

BG 1 (pt)

Block 1021

Block 1022

Block 1023

Block 1024

Block 1025

Block 1026

Block 1027

Block 1028

Block 1029

Block 1032

Block 1033

Block 1034

Block 1035

Block 1036

Block 1037

Block 1038

Block 1039

Block 1040

Block 1041

Block 1042

Block 1043

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Block 1044

Block 1045

Block 1046

Block 1047

Block 1048

Block 1049

BG 2

Tract 0019.00 (pt)

BG 1 (pt)

Block 1001

Block 1002

Block 1003

Block 1004

Block 1005

Block 1006

Block 1007

Block 1008

Block 1009

Block 1010

Block 1011

Block 1012

Block 1013

Block 1014

Block 1015

Block 1016

Block 1017

BG 2 (pt)

Block 2009

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Block 2017

Block 2018

Block 2019

Block 2020

Block 2021

Block 2022

Block 2023

Block 2024

Block 2025

Block 2026

Block 2027

Block 2028

Block 2029

Block 2030

Block 2031

Block 2032

Block 2033

Block 2034

Block 2035

Block 2036

BG 3

Tract 0020.00

Tract 0021.00

Tract 0022.00

Tract 0026.00 (pt)

BG 4 (pt)

Block 4001

Block 4002

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Block 4004

Block 4005

Block 4006

Block 4007

Block 4008

Block 4009

Block 4010

Block 4011

Block 4012

Block 4013

Block 4014

Tract 0027.00 (pt)

BG 3 (pt)

Block 3007

Block 3008

Block 3031

Block 3032

Block 3033

Block 3036

BG 4 (pt)

Block 4000

Block 4001

Block 4002

Block 4003

Tract 0028.01

Tract 0028.02

Tract 0029.00

Tract 0030.00 (pt)

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BG 4 (pt)

Block 4058

Block 4059

Tract 0031.00 (pt)

BG 5 (pt)

Block 5041

Block 5043

Block 5052

Tract 0032.01 (pt)

BG 1

Tract 0032.03 (pt)

BG 2 (pt)

Block 2003

Tract 0036.03 (pt)

BG 2 (pt)

Block 2000

Block 2001

Block 2002

Block 2003

Block 2042

Block 2051

Tract 0036.04 (pt)

BG 1 (pt)

Block 1000

Block 1001

Block 1013

Block 1018

Block 1023

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Block 1024

Block 1025

Block 1026

Block 1027

BG 2 (pt)

Block 2000

Block 2001

Block 2002

Block 2003

Block 2004

Block 2005

Block 2006

Block 2007

Block 2008

Block 2009

Block 2010

Block 2011

Block 2012

Block 2013

Block 2014

Block 2015

Block 2018

Block 2030

Chatham CCD (pt)

Tract 0032.01

Tract 0032.02 (pt)

BG 1 (pt)

Block 1000

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Block 1001

Block 1002

Block 1003

Block 1004

Block 1005

Block 1006

Block 1009

Block 1010

Block 1011

Block 1012

Block 1013

Block 1014

Block 1015

Block 1016

BG 2

BG 3 (pt)

Block 3000

Block 3001

Block 3031

Block 3033

Block 3034

Block 3035

Block 3036

Block 3037

Block 3038

Tract 0032.03 (pt)

BG 1 (pt)

Block 1012

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Block 1013

Block 1014

Block 1015

Block 1016

Block 1017

Block 1018

Block 1019

Block 1020

Block 1021

Block 1022

Block 1023

Block 1024

Block 1025

Block 1026

Block 1027

Block 1028

Block 1029

Block 1030

Block 1031

Block 1032

Block 1033

Block 1034

Block 1035

Block 1036

Block 1037

Block 1040

Block 1041

Block 1042

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Curran CCD (pt)

Tract 0020.00

Tract 0029.00

Tract 0036.04 (pt)

BG 1 (pt)

Block 1002

Block 1003

Block 1009

Block 1010

Block 1011

Block 1012

Block 1014

Block 1022

BG 2 (pt)

Block 2029

Woodside CCD (pt)

Tract 0018.00

Tract 0020.00

Tract 0021.00

Tract 0027.00 (pt)

BG 3 (pt)

Block 3038

Block 3039

Tract 0028.01

Tract 0028.02

Tract 0029.00

Tract 0030.00 (pt)

BG 4 (pt)

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Block 4057

Block 4060

Block 4061

Tract 0031.00 (pt)

BG 5 (pt)

Block 5040

Block 5042

Block 5044

Block 5045

Block 5046

Block 5047

Block 5048

Block 5049

Block 5050

Block 5051

Tract 0032.01 (pt)

BG 1 (pt)

Block 1000

Block 1001

Block 1005

Block 1015

Tract 0036.03

TRUSTEE DISTRICT 4

Christian County (pt)

Bear Creek CCD

Buckhart CCD (pt)

Tract 9581.00 (pt)

BG 2 (pt)

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Block 2066

Block 2067

Block 2068

Block 2069

Block 2070

Block 2071

Block 2072

Block 2078

Block 2079

Block 2080

Block 2081

Block 2082

Block 2083

Block 2084

Block 2085

Block 2086

Block 2096

Block 2097

Block 2098

Block 2099

Block 2100

Block 2101

Block 2102

Block 2103

Block 2108

Block 2109

Block 2110

Block 2111

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Block 2112

Block 2113

BG 3

Tract 9582.00

Greenwood CCD (pt)

Tract 9590.00 (pt)

BG 4 (pt)

Block 4044

Block 4045

Block 4046

Block 4047

Block 4048

Block 4099

Block 4100

Block 4101

Block 4102

Block 4103

Block 4104

Block 4105

Block 4106

Block 4107

Block 4108

Block 4109

Block 4111

Block 4116

Block 4117

Block 4118

Block 4119

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Block 4120

Block 4121

Block 4122

Block 4137

Block 4138

Block 4139

Block 4140

Block 4141

Block 4142

Block 4143

Block 4144

Block 4145

Block 4146

Block 4147

Block 4148

Block 4149

Block 4150

Block 4151

Block 4152

Block 4153

Block 4154

Block 4155

Block 4156

Block 4157

Block 4158

Block 4159

Johnson CCD

King CCD

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Locust CCD (pt)

Tract 9587.00 (pt)

BG 3 (pt)

Block 3002

Block 3003

Block 3004

Block 3007

Block 3008

Block 3009

Block 3010

Block 3016

Block 3017

Block 3029

Block 3030

Block 3031

Block 3032

Block 3033

Block 3034

Block 3035

Block 3042

Block 3043

Block 3044

Block 3045

Block 3046

Block 3047

Block 3048

Block 3049

Block 3050

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Block 3051

Block 3052

Block 3053

Block 3054

Block 3055

Block 3056

Block 3057

Block 3058

Block 3068

Block 3069

Block 3070

Block 3071

Block 3072

Block 3073

Block 3074

Block 3075

Block 3076

Block 3077

Block 3078

Block 3079

Block 3080

Block 3081

Block 3082

Block 3083

Block 3084

Block 3085

Block 3086

Block 3087

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Block 3088

Block 3089

Block 3090

Block 3091

Block 3092

Block 3093

Block 3094

Block 3095

Block 3096

Block 3097

Block 3098

Block 3099

Block 3100

Block 3101

Block 3102

Block 3103

Block 3104

Block 3105

Block 3106

Block 3107

Block 3108

Block 3109

Block 3110

Block 3111

Block 3112

Block 3113

Block 3114

Block 3115

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Block 3116

Block 3117

Block 3118

Block 3119

Block 3120

Block 3121

Block 3122

Block 3130

Block 3131

Block 3133

Block 3134

Block 3154

Block 3155

Block 3995

Block 3997

Block 3999

Tract 9590.00

May CCD (pt)

Tract 9586.00 (pt)

BG 2 (pt)

Block 2125

Block 2126

Block 2127

Block 2130

Block 2167

Block 2168

Block 2169

Block 2170

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Block 2180

Block 2181

Block 2182

Block 2183

BG 3 (pt)

Block 3051

Block 3053

Block 3054

Block 3055

Block 3056

Block 3057

Block 3058

Block 3059

Block 3060

Block 3061

Block 3066

Block 3067

Block 3071

Block 3075

Block 3076

Block 3077

Block 3078

Block 3079

Block 3080

Block 3081

Block 3082

Block 3083

Block 3084

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Block 3085

Block 3091

Block 3092

Block 3093

Tract 9587.00

Tract 9590.00

Mosquito CCD (pt)

Tract 9581.00 (pt)

BG 1 (pt)

Block 1004

Block 1005

Block 1006

Block 1010

Block 1011

Block 1012

Block 1013

Block 1014

Block 1022

Block 1023

Block 1024

Block 1025

Block 1026

Block 1027

Block 1028

Block 1029

Block 1068

Block 1069

Block 1070

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Block 1071

Block 1072

Block 1073

Block 1074

Block 1075

Block 1076

Block 1077

Block 1078

Block 1083

Block 1085

Block 1086

Block 1087

Block 1088

Block 1089

Block 1090

Block 1091

Block 1092

Block 1093

Block 1094

Block 1095

Block 1107

Block 1108

Block 1109

Block 1110

Block 1111

Block 1120

Block 1121

Mount Auburn CCD

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Ricks CCD

Rosamond CCD (pt)

Tract 9587.00 (pt)

BG 3 (pt)

Block 3156

Block 3157

South Fork CCD

Stonington CCD (pt)

Tract 9586.00 (pt)

BG 2 (pt)

Block 2017

Taylorville CCD De

Witt County (pt)

Tunbridge CCD (pt)

Tract 9716.00 (pt)

BG 3 (pt)

Block 3172

BG 4 (pt)

Block 4057

Block 4058

Block 4059

Block 4060

Block 4061

Logan County (pt)

Aetna CCD (pt)

Tract 9536.00 (pt)

BG 1 (pt)

Block 1020

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Block 1021

Block 1022

Block 1023

Block 1024

Block 1026

Block 1028

Block 1040

Block 1041

Block 1042

Block 1043

Block 1044

Block 1045

Block 1047

Block 1048

Block 1049

Block 1050

Block 1051

Block 1052

Block 1060

Block 1061

Block 1062

Block 1068

Block 1069

Block 1070

Block 1071

Block 1072

Block 1073

Block 1074

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Block 1075

Block 1076

Block 1077

Block 1078

Block 1079

Block 1080

Block 1081

Block 1082

Block 1083

Block 1084

Block 1085

Block 1086

Block 1087

Block 1088

Block 1089

Block 1090

Block 1091

Block 1092

BG 4

Broadwell CCD (pt)

Tract 9535.00 (pt)

BG 1 (pt)

Block 1094

Block 1096

Block 1097

Block 1098

Block 1099

Block 1100

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Block 1103

Block 1104

Block 1105

Block 1156

Chester CCD (pt)

Tract 9535.00 (pt)

BG 1 (pt)

Block 1115

Block 1116

Block 1117

Block 1120

Block 1121

Block 1127

Tract 9536.00 (pt)

BG 1 (pt)

Block 1064

Block 1065

Block 1097

Block 1098

Block 1099

Corwin CCD (pt)

Tract 9535.00 (pt)

BG 2 (pt)

Block 2005

Block 2006

Block 2010

Block 2015

Block 2016

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Block 2017

Block 2018

Block 2019

Block 2020

Block 2021

Block 2022

Block 2023

Block 2024

Block 2025

Block 2026

Block 2027

Block 2028

Block 2029

Block 2030

Block 2031

Block 2032

Block 2033

Block 2034

Block 2035

Block 2036

Block 2037

Block 2038

Block 2039

Block 2040

Block 2041

Block 2042

Block 2043

Block 2044

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Block 2045

Block 2046

Block 2047

Block 2048

Block 2049

Block 2050

Block 2051

Block 2052

Block 2053

Block 2054

Block 2055

Block 2056

Block 2057

Block 2059

Block 2060

Block 2061

Block 2062

Block 2063

Block 2064

Block 2065

Block 2066

Block 2067

Block 2068

Block 2069

Block 2070

Block 2071

Block 2072

Block 2073

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Block 2074

Block 2075

Block 2076

Block 2077

Block 2078

Block 2079

Block 2080

Block 2085

Block 2126

Block 2127

Block 2128

Block 2129

Block 2130

Block 2131

Block 2132

Block 2133

Block 2134

Block 2135

Block 2136

Block 2137

Block 2138

Block 2139

Block 2140

Block 2141

Block 2142

Elkhart CCD

Hurlbut CCD

Laenna CCD (pt)

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Tract 9536.00 (pt)

BG 1

BG 4 (pt)

Block 4000

Block 4001

Block 4002

Block 4005

Block 4006

Block 4007

Block 4008

Block 4009

Block 4010

Block 4011

Block 4012

Block 4013

Block 4014

Block 4015

Block 4019

Block 4020

Block 4021

Block 4023

Block 4024

Block 4025

Block 4061

Block 4062

Block 4063

Block 4064

Block 4073

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Block 4074

Lake Fork CCD (pt)

Tract 9536.00 (pt)

BG 4 (pt)

Block 4072

Block 4075

Block 4076

Block 4088

Block 4089

Block 4090

Block 4091

Block 4095

Block 4096

Mount Pulaski CCD

Prairie Creek CCD (pt)

Tract 9530.00 (pt)

BG 2 (pt)

Block 2039

Block 2041

Block 2042

Block 2045

Block 2046

Block 2047

Block 2048

Block 2049

Block 2050

Block 2052

Block 2054

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Block 2055

Sheridan CCD (pt)

Tract 9530.00 (pt)

BG 2 (pt)

Block 2056

Block 2057

Block 2058

Block 2059

Block 2060

Block 2062

Block 2063

Block 2065

Block 2066

Block 2067

Block 2068

Block 2069

Block 2070

Block 2071

Block 2072

Block 2073

Block 2074

Block 2075

Block 2076

Block 2077

Block 2078

Block 2079

Block 2080

Block 2081

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Block 2082

Block 2083

Block 2084

Block 2085

Block 2086

Block 2087

Block 2088

Block 2089

Block 2090

Block 2091

Block 2092

Block 2093

Block 2094

Block 2095

Block 2096

Block 2097

Block 2098

Block 2099

Block 2100

Block 2101

Block 2102

Block 2103

Block 2104

Block 2106

Block 2107

Block 2108

Block 2109

Block 2111

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Block 2112

Block 2113

Block 2114

Block 2115

Block 2116

Block 2117

Block 2118

Block 2119

Block 2120

Block 2121

Block 2122

Tract 9535.00 (pt)

BG 2 (pt)

Block 2007

Block 2011

Block 2012

Block 2013

Block 2014

Macon County (pt)

Austin CCD (pt)

Tract 0028.00 (pt)

BG 1 (pt)

Block 1009

Block 1010

Sangamon County (pt)

Auburn CCD (pt)

Tract 0033.00 (pt)

BG 4

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BG 5 (pt)

Block 5038

Block 5039

Tract 0034.00 (pt)

BG 1

BG 2

BG 3

BG 4 (pt)

Block 4004

Block 4005

Block 4006

Block 4007

Block 4008

Block 4009

Block 4011

Block 4012

Block 4013

Block 4014

Block 4015

Block 4016

Block 4017

Block 4018

Block 4019

Block 4020

Block 4021

Block 4022

Block 4023

Block 4027

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BG 5 (pt)

Block 5000

Block 5001

Block 5002

Block 5003

Block 5004

Block 5005

Block 5006

Block 5007

Block 5008

Block 5009

Block 5010

Block 5011

Block 5012

Block 5013

Block 5014

Block 5015

Block 5019

Block 5036

Ball CCD (pt)

Tract 0031.00 (pt)

BG 3 (pt)

Block 3055

Block 3062

Block 3087

Block 3164

BG 4 (pt)

Block 4037

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Block 4063

Block 4066

Block 4067

Block 4068

Tract 0032.03 (pt)

BG 1 (pt)

Block 1039

Block 1046

Block 1051

BG 2 (pt)

Block 2023

Block 2024

Block 2025

Block 2026

BG 3

BG 4 (pt)

Block 4000

Block 4009

Block 4010

Block 4011

Block 4012

Block 4013

Block 4016

Block 4018

Block 4019

Block 4020

Block 4022

Block 4023

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Block 4024

Block 4025

Block 4026

Block 4027

Block 4028

Block 4029

Block 4030

Block 4031

Block 4032

Block 4033

Block 4034

Block 4035

Block 4036

Block 4037

Block 4038

Block 4039

Block 4040

Block 4041

Block 4042

Block 4043

Block 4044

Block 4045

Block 4046

Block 4047

Block 4048

Block 4049

Block 4995

Block 4996

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Block 4997

Tract 0033.00

Buffalo Hart CCD

Cooper CCD

Cotton Hill CCD

Divernon CCD

Illiopolis CCD (pt)

Tract 0040.00 (pt)

BG 2 (pt)

Block 2000

Block 2003

Block 2004

Block 2005

Block 2006

Block 2011

Block 2016

Block 2101

Lanesville CCD (pt)

Tract 0040.00 (pt)

BG 2 (pt)

Block 2007

Block 2008

Block 2009

Block 2010

Block 2102

Block 2104

BG 3 (pt)

Block 3003

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Block 3004

Block 3034

Block 3035

Block 3091

Block 3092

Block 3093

Block 3094

BG 5 (pt)

Block 5003

Block 5004

Block 5005

Block 5006

Block 5008

Block 5009

Block 5010

Block 5011

Block 5012

Block 5013

Block 5018

Block 5019

Block 5020

Block 5027

Block 5028

Block 5029

Block 5030

Block 5031

Block 5032

Block 5076

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Block 5077

Block 5080

Block 5081

Block 5083

Block 5084

Mechanicsburg CCD

Pawnee CCD

Rochester CCD (pt)

Tract 0031.00 (pt)

BG 3 (pt)

Block 3033

Tract 0039.01 (pt)

BG 1 (pt)

Block 1020

Block 1021

Block 1022

BG 3

BG 4 (pt)

Block 4005

Block 4018

Block 4019

Block 4020

Block 4021

Block 4022

Block 4023

Block 4024

Block 4025

Block 4026

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Block 4036

Block 4996

Block 4999

Tract 0039.02 (pt)

BG 2 (pt)

Block 2035

Williams CCD (pt)

Tract 0037.00 (pt)

BG 3 (pt)

Block 3000

BG 5

BG 6 (pt)

Block 6000

Block 6001

Block 6002

Block 6003

Block 6004

Block 6023

Block 6024

Block 6025

Block 6026

Block 6027

Block 6028

Block 6029

Block 6030

Block 6031

Block 6032

Block 6033

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Block 6034

Block 6039

Block 6040

Block 6041

Block 6042

Block 6043

Block 6044

Block 6045

Block 6046

Block 6047

Block 6048

Block 6049

Block 6050

Block 6052

Block 6053

Block 6054

Block 6055

Block 6056

Block 6057

Block 6058

Tract 0040.00 (pt)

BG 3 (pt)

Block 3017

Block 3018

Block 3022

Block 3023

TRUSTEE DISTRICT 5

Cass County (pt)

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Ashland CCD

Bluff Springs CCD (pt)

Tract 9602.00

Tract 9603.00 (pt)

BG 1 (pt)

Block 1006

Block 1007

Block 1008

Block 1009

Block 1025

Block 1026

Block 1027

Block 1028

Block 1031

Block 1032

Block 1033

Block 1034

Block 1035

Block 1036

Block 1037

Block 1038

Block 1044

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Block 1048

Block 1049

Block 1050

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Block 1051

Block 1055

Block 1056

Block 1059

Block 1060

Block 1061

Block 1062

Block 1063

Block 1064

Block 1065

Block 1066

Block 1067

Block 1068

Block 1069

Block 1070

Block 1071

Block 1086

Block 1087

Block 1088

Block 1089

Block 1090

Block 1093

Block 1094

Block 1095

Block 1990

Block 1991

Block 1992

Block 1993

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Block 1995

Block 1996

BG 2 (pt)

Block 2042

Block 2043

Block 2044

Block 2045

Chandlerville CCD (pt)

Tract 9601.00 (pt)

BG 1 (pt)

Block 1002

Block 1003

Block 1004

Block 1005

Block 1006

Block 1007

Block 1008

Block 1009

Block 1010

Block 1011

Block 1012

Block 1013

Block 1014

Block 1017

Block 1018

Block 1019

Block 1020

Block 1021

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Block 1022

Block 1023

Block 1028

Block 1029

Block 1030

Block 1031

Block 1032

Block 1033

Block 1034

Block 1035

Block 1036

Block 1037

Block 1038

Block 1039

Block 1040

Block 1041

Block 1042

Block 1043

Block 1044

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Block 1046

Block 1047

Block 1048

Block 1049

Block 1050

Block 1051

Block 1052

Block 1053

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Block 1054

Block 1055

Block 1056

Block 1057

Block 1058

Block 1059

Block 1060

Block 1061

Block 1062

Block 1063

Block 1064

Block 1065

Block 1066

Block 1067

Block 1068

Block 1069

Block 1070

Block 1071

Block 1075

Block 1076

Block 1077

Block 1078

Block 1079

Block 1080

Block 1081

Block 1082

Block 1083

Block 1084

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Block 1085

Block 1086

Block 1111

Block 1113

Block 1114

Block 1115

Block 1116

Block 1117

Block 1118

Block 1119

Block 1120

Block 1121

Block 1122

Block 1123

Block 1984

Block 1985

Block 1986

Block 1987

Block 1988

Block 1989

Block 1990

Block 1991

Block 1992

Block 1993

Block 1994

Block 1995

Block 1996

Block 1997

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Block 1998

BG 2

Newmansville CCD

Panther Creek CCD

Philadelphia CCD

Sangamon Valley CCD (pt)

Tract 9601.00

Tract 9602.00

Tract 9603.00 (pt)

BG 1 (pt)

Block 1000

Block 1001

Block 1002

Block 1003

Block 1004

Block 1005

Block 1010

Block 1011

Block 1012

Block 1013

Block 1014

Block 1015

Block 1016

Block 1017

Block 1018

Block 1019

Block 1020

Block 1021

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Block 1022

Block 1023

Block 1024

Block 1072

Block 1073

Block 1074

Block 1075

Block 1076

Block 1077

Block 1078

Block 1079

Block 1080

Block 1081

Block 1082

Block 1083

Block 1084

Block 1085

Block 1091

Block 1997

Block 1999

Virginia CCD

Mason County (pt)

Allens Grove CCD (pt)

Tract 9567.00 (pt)

BG 1 (pt)

Block 1077

Block 1078

Block 1079

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Block 1095

Block 1096

Block 1097

Block 1098

Block 1099

Block 1100

Block 1101

Block 1102

Block 1103

Block 1104

Block 1105

Block 1109

Block 1110

Bath CCD (pt)

Tract 9566.00 (pt)

BG 3 (pt)

Block 3122

Block 3125

Block 3126

Block 3145

Block 3149

Block 3975

Block 3976

Block 3978

Block 3980

Crane Creek CCD

Forest City CCD (pt)

Tract 9563.00 (pt)

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BG 3 (pt)

Block 3186

Block 3187

Tract 9564.00 (pt)

BG 1 (pt)

Block 1085

Block 1086

Block 1091

Block 1092

Block 1095

Block 1135

Havana CCD (pt)

Tract 9564.00 (pt)

BG 3 (pt)

Block 3043

Block 3068

Block 3069

Block 3070

Block 3072

Block 3073

Block 3074

Kilbourne CCD (pt)

Tract 9566.00 (pt)

BG 1 (pt)

Block 1000

Block 1001

Block 1002

Block 1003

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Block 1099

Block 1100

Block 1101

Block 1102

Block 1105

BG 3 (pt)

Block 3001

Block 3002

Block 3131

Block 3132

Block 3139

Block 3140

Block 3990

Block 3992

Block 3998

Block 3999

Tract 9567.00

Lynchburg CCD (pt)

Tract 9566.00 (pt)

BG 2 (pt)

Block 2080

Block 2148

Block 2153

Block 2986

Block 2989

Mason City CCD (pt)

Tract 9567.00 (pt)

BG 2 (pt)

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Block 2000

Block 2001

Block 2003

Block 2004

Block 2005

Block 2006

Block 2007

Block 2008

Block 2009

Block 2010

Block 2011

Block 2012

Block 2013

Block 2014

Block 2015

Block 2016

Block 2082

Block 2086

Block 2087

Block 2088

Block 2089

Block 2090

Block 2091

Block 2092

Block 2093

Block 2094

Block 2095

Block 2096

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Block 2097

Block 2098

Block 2099

Block 2100

Block 2101

Block 2102

Block 2103

Block 2104

Block 2105

Block 2106

Block 2107

Block 2108

Block 2109

Block 2110

Block 2111

Block 2112

Block 2113

Block 2114

Block 2115

Block 2116

Block 2117

Block 2118

Block 2119

Block 2120

Block 2121

Block 2122

Block 2123

Block 2124

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Block 2125

Block 2126

Block 2127

Block 2128

Block 2129

Block 2130

Block 2131

Block 2132

Block 2133

Block 2134

Block 2135

Block 2136

Block 2137

Block 2138

Block 2180

Block 2181

Block 2182

Block 2183

Block 2184

Block 2185

Block 2186

Block 2187

Block 2188

Block 2189

Block 2190

Block 2191

Block 2192

Block 2990

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Block 2991

Block 2992

Block 2993

Block 2994

Block 2995

Block 2996

Block 2997

Block 2998

Block 2999

Tract 9568.00

Pennsylvania CCD (pt)

Tract 9567.00 (pt)

BG 2 (pt)

Block 2017

Block 2018

Block 2019

Block 2020

Block 2021

Block 2022

Block 2026

Block 2027

Block 2028

Block 2029

Block 2030

Block 2031

Block 2032

Block 2034

Block 2035

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Block 2036

Block 2037

Block 2038

Block 2039

Block 2040

Block 2041

Block 2042

Block 2043

Block 2044

Block 2045

Block 2046

Block 2047

Block 2048

Block 2049

Block 2050

Block 2051

Block 2052

Block 2053

Quiver CCD (pt)

Tract 9564.00 (pt)

BG 1 (pt)

Block 1076

Block 1079

Block 1096

Block 1097

Block 1098

Block 1099

Block 1110

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Block 1117

Block 1118

Block 1119

Block 1120

Block 1121

Block 1122

Block 1123

Block 1124

Block 1125

Block 1126

Block 1127

Block 1128

Block 1129

Block 1130

Block 1131

Block 1132

Block 1133

Block 1134

BG 3 (pt)

Block 3000

Block 3031

Salt Creek CCD

Sherman CCD

Menard County

Sangamon County (pt)

Capital CCD (pt)

Tract 0002.01 (pt)

BG 1 (pt)

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Block 1002

Block 1003

Block 1004

Block 1005

Block 1006

Block 1007

Block 1008

Block 1009

BG 2 (pt)

Block 2010

Block 2012

BG 3 (pt)

Block 3003

Block 3004

Block 3007

Tract 0010.01 (pt)

BG 1

BG 2 (pt)

Block 2001

Block 2003

Block 2004

Block 2005

Block 2007

Block 2008

Block 2009

Block 2010

Block 2011

Block 2012

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Block 2013

Block 2014

Block 2015

Tract 0010.02 (pt)

BG 1 (pt)

Block 1000

Block 1001

Block 1002

Block 1003

Block 1004

Block 1005

Block 1006

Block 1007

Block 1009

Block 1010

Block 1013

Block 1014

Block 1015

Block 1999

Tract 0036.02

Tract 0036.03 (pt)

BG 1

BG 2 (pt)

Block 2004

Block 2005

Block 2006

Block 2007

Block 2008

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Block 2010

Block 2011

Block 2012

Block 2016

Block 2017

Block 2019

Block 2022

Block 2023

Block 2029

Block 2030

Block 2033

Block 2034

Block 2035

Block 2036

Block 2037

Block 2043

Block 2045

Block 2047

Block 2048

Block 2049

Block 2053

Block 2054

Block 2055

Block 2056

Block 2059

Block 2060

Block 2061

Block 2074

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Block 2075

Block 2076

Tract 0036.04 (pt)

BG 1 (pt)

Block 1004

Block 1005

Block 1007

Block 1008

Block 1015

Block 1016

Block 1017

Block 1019

Block 1020

Block 1021

Block 1029

BG 2 (pt)

Block 2016

Block 2017

Block 2019

Block 2020

Block 2021

Block 2027

Cartwright CCD

Chatham CCD (pt)

Tract 0032.02 (pt)

BG 1 (pt)

Block 1007

Block 1008

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BG 3 (pt)

Block 3002

Block 3003

Block 3004

Block 3005

Block 3006

Block 3007

Block 3012

Block 3013

Block 3015

Block 3016

Block 3017

Block 3018

Block 3019

Block 3020

Block 3021

Block 3022

Block 3023

Block 3024

Block 3025

Block 3026

Block 3027

Block 3028

Block 3029

Block 3030

Block 3032

Block 3039

Block 3040

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Block 3041

Block 3042

Block 3043

Block 3044

Block 3045

Block 3046

Block 3047

Block 3048

Block 3049

Block 3050

Block 3051

Block 3052

Block 3053

Block 3054

Block 3055

Block 3056

Block 3057

Block 3058

Tract 0032.03 (pt)

BG 1 (pt)

Block 1043

Block 1044

Block 1045

Block 1047

Block 1048

Block 1049

Block 1050

BG 3

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Tract 0033.00

Tract 0034.00

Tract 0036.03

Clear Lake CCD (pt)

Tract 0001.00 (pt)

BG 1 (pt)

Block 1000

Tract 0037.00

Tract 0038.01 (pt)

BG 1 (pt)

Block 1000

Block 1013

Block 1992

Block 1995

Block 1997

Curran CCD (pt)

Tract 0032.02

Tract 0036.01

Tract 0036.03

Tract 0036.04 (pt)

BG 1 (pt)

Block 1006

Block 1028

BG 2 (pt)

Block 2022

Block 2023

Block 2024

Block 2025

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Block 2026

Block 2028

Fancy Creek CCD

Gardner CCD

Island Grove CCD

Maxwell CCD

New Berlin CCD

Springfield CCD (pt)

Tract 0001.00 (pt)

BG 4 (pt)

Block 4056

Block 4057

Block 4059

Block 4994

Tract 0002.01 (pt)

BG 1 (pt)

Block 1000

Block 1001

BG 2 (pt)

Block 2006

Block 2007

Block 2009

Block 2011

BG 3 (pt)

Block 3005

Block 3006

Tract 0010.01

Tract 0036.01

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Tract 0036.02

Tract 0037.00 (pt)

BG 1 (pt)

Block 1020

Block 1021

Block 1022

Block 1992

Block 1994

Block 1995

Williams CCD (pt)

Tract 0037.00 (pt)

BG 3 (pt)

Block 3001

Block 3002

Block 3003

Block 3004

Block 3005

Block 3006

Block 3007

Block 3008

Block 3009

Block 3010

Block 3011

Block 3012

Block 3013

Block 3014

Block 3015

Block 3016

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Block 3017

Block 3035

Block 3036

Block 3037

Block 3038

Block 3039

Block 3040

Block 3041

Block 3042

Block 3043

Block 3044

Block 3045

Block 3046

Block 3047

Block 3048

Block 3049

Block 3050

Block 3051

Block 3052

Block 3053

Block 3054

Block 3055

Block 3056

Block 3999

BG 4

BG 6 (pt)

Block 6051

Tract 0038.01

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Tract 0038.02

Tract 0040.00 (pt)

BG 3 (pt)

Block 3024

Block 3104

Block 3105

Block 3106

Block 3107

Block 3108

Block 3109

Woodside CCD (pt)

Tract 0032.01 (pt)

BG 1 (pt)

Block 1007

TRUSTEE DISTRICT 6

Cass County (pt)

Arenzville CCD

Beardstown CCD

Bluff Springs CCD (pt)

Tract 9603.00 (pt)

BG 1 (pt)

Block 1987

Block 1989

BG 2 (pt)

Block 2000

Block 2038

Block 2039

Block 2040

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Block 2041

Block 2046

Block 2047

Block 2064

Block 2065

Block 2069

Block 2070

Block 2192

Block 2193

Block 2194

Hagener CCD (pt)

Tract 9602.00

Tract 9603.00 (pt)

BG 2 (pt)

Block 2059

Block 2060

Block 2061

Block 2062

Block 2080

Block 2081

Block 2082

Block 2111

Block 2112

Block 2113

Block 2119

Block 2120

Block 2121

Block 2122

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Block 2123

Block 2124

Block 2125

Block 2126

Block 2127

Block 2128

Block 2129

Block 2130

Block 2131

Block 2132

Block 2133

Block 2134

Block 2135

Block 2136

Block 2137

Block 2138

Block 2153

Block 2154

Block 2155

Block 2156

Block 2157

Block 2158

Block 2159

Block 2160

Block 2161

Block 2162

Block 2163

Block 2164

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Block 2167

Block 2168

Block 2169

Block 2170

Block 2172

Block 2175

Block 2176

Block 2177

Block 2178

Block 2195

Block 2196

Block 2197

Block 2198

Block 2199

Block 2204

Block 2205

Block 2211

Block 2213

Block 2214

Block 2221

Block 2222

Block 2223

Block 2224

Morgan County (pt)

Alexander CCD

Arcadia CCD

Chapin CCD (pt)

Tract 9514.00 (pt)

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BG 1

BG 4 (pt)

Block 4000

Block 4001

Block 4002

Block 4003

Block 4004

Block 4012

Block 4013

Block 4014

Block 4015

Block 4019

Block 4020

Block 4021

Block 4022

Block 4023

Block 4024

Block 4025

Block 4026

Block 4027

Block 4028

Block 4029

Block 4030

Block 4031

Block 4032

Block 4033

Block 4034

Block 4035

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Block 4036

Block 4037

Block 4038

Block 4039

Block 4040

Block 4041

Block 4042

Block 4043

Block 4044

Block 4045

Block 4046

Block 4047

Block 4048

Block 4049

Block 4050

Block 4051

Block 4052

Block 4053

Block 4054

Block 4055

Block 4056

Block 4057

Block 4058

Block 4060

Block 4064

Block 4065

Block 4066

Block 4067

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Block 4068

Concord CCD

Franklin CCD

Jacksonville No. 1 CCD

Jacksonville No. 2 CCD

Jacksonville No. 3 CCD

Jacksonville No. 4 CCD

Jacksonville No. 5 CCD

Jacksonville No. 6 CCD

Jacksonville No. 7 CCD

Jacksonville No. 8 CCD

Jacksonville No. 9 CCD

Jacksonville No. 10 CCD

Jacksonville No. 11 CCD

Jacksonville No. 12 CCD

Jacksonville No. 13 CCD

Jacksonville No. 14 CCD

Jacksonville No. 15 CCD

Jacksonville No. 16 CCD

Jacksonville No. 17 CCD

Jacksonville No. 18 CCD

Jacksonville No. 19 CCD

Jacksonville No. 22 CCD

Jacksonville No. 23 CCD

Jacksonville No. 24 CCD

Jacksonville No. 25 CCD

Jacksonville No. 26 CCD

Jacksonville No. 27 CCD

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Jacksonville No. 28 CCD

Literberry CCD

Lynnville CCD

Markham CCD

Meredosia No. 1 CCD (pt)

Tract 9514.00 (pt)

BG 1 (pt)

Block 1009

Block 1015

Block 1016

Block 1054

Block 1055

Block 1056

Block 1057

Block 1058

Block 1072

Meredosia No. 2 CCD (pt)

Tract 9514.00 (pt)

BG 1 (pt)

Block 1073

Murrayville No. 1 CCD (pt)

Tract 9522.00 (pt)

BG 1

BG 3 (pt)

Block 3000

Block 3001

Block 3002

Block 3003

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Block 3017

Block 3018

Block 3019

Block 3020

Block 3021

Block 3022

Block 3023

Block 3024

Block 3025

Block 3026

Block 3027

Block 3028

Block 3039

Block 3040

Block 3041

Block 3042

Block 3043

Block 3044

Block 3045

Block 3046

Block 3051

Block 3052

Block 3053

Block 3056

Block 3075

Block 3076

Block 3095

Block 3096

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Block 3097

Block 3098

Block 3099

Block 3101

Block 3104

Block 3105

Block 3107

Block 3108

Murrayville No. 2 CCD

Nortonville CCD (pt)

Tract 9522.00 (pt)

BG 1 (pt)

Block 1158

Block 1159

Block 1160

Block 1161

Block 1166

Block 1168

Block 1169

Block 1170

Block 1171

Block 1172

Block 1173

Block 1174

Block 1175

Block 1176

Block 1178

Block 1179

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Block 1180

Block 1181

Block 1182

Block 1183

Block 1184

Block 1185

Block 1186

Block 1187

Block 1188

Block 1189

Block 1190

Block 1191

Block 1192

Block 1193

Block 1194

Block 1195

Block 1196

Block 1197

Block 1200

Block 1201

Block 1202

Block 1203

Block 1204

Block 1205

Block 1206

Block 1207

Block 1208

Block 1209

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Block 1210

Block 1211

Block 1212

Block 1213

Block 1214

BG 3

Tract 9523.00

Pisgah CCD

Prentice CCD

Waverly No. 1 CCD

Waverly No. 2 CCD

Waverly No. 3 CCD

Woodson CCD

Schuyler County (pt)

Frederick CCD (pt)

Tract 9703.00 (pt)

BG 1 (pt)

Block 1997

Scott County (pt)

Alsey CCD

Bloomfield CCD (pt)

Tract 9706.00 (pt)

BG 2 (pt)

Block 2103

Block 2135

Block 2136

Block 2141

Block 2158

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Block 2159

Block 2160

Block 2161

Block 2163

Block 2164

Block 2165

Block 2166

Block 2167

Block 2168

Block 2184

Block 2185

Block 2186

Block 2187

Block 2188

Block 2189

Block 2190

Block 2191

Block 2192

Block 2193

Block 2197

Block 2198

Block 2199

Block 2200

Block 2201

Block 2202

Block 2203

Block 2204

Block 2205

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Block 2995

Tract 9707.00

Exeter-Bluffs CCD (pt)

Tract 9706.00 (pt)

BG 2 (pt)

Block 2099

Block 2100

Glasgow CCD

Manchester CCD

Merritt CCD (pt)

Tract 9706.00 (pt)

BG 1 (pt)

Block 1000

Block 1001

Block 1002

Block 1003

Block 1004

Block 1005

Block 1096

Block 1097

Block 1099

Block 1100

Block 1101

Block 1102

Block 1103

Block 1104

Block 1105

Block 1106

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Block 1107

Block 1108

Block 1109

Block 1110

Winchester No. 1 CCD

Winchester No. 2 CCD

Winchester No. 3 CCD

TRUSTEE DISTRICT 7

Bond County (pt)

Lagrange CCD (pt)

Tract 9512.00 (pt)

BG 1 (pt)

Block 1014

Block 1018

Block 1022

Block 1023

Block 1024

Block 1025

Block 1026

Block 1027

Block 1028

Block 1029

Block 1030

Block 1132

Tract 9514.00 (pt)

BG 1 (pt)

Block 1107

Shoal Creek CCD (pt)

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Tract 9514.00 (pt)

BG 1 (pt)

Block 1000

Block 1001

Block 1002

Block 1003

Block 1004

Block 1005

Block 1006

Block 1007

Block 1008

Block 1009

Block 1010

Block 1022

Block 1023

Block 1024

Block 1025

Block 1026

Block 1027

Block 1028

Block 1029

Block 1030

Block 1031

Block 1032

Block 1033

Block 1097

Block 1098

Block 1099

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Block 1100

Block 1101

Block 1102

Block 1105

Block 1106

Block 114

Fayette County (pt)

Hurricane CCD (pt)

Tract 9507.00 (pt)

BG 2 (pt)

Block 2011

Block 2012

Macoupin County (pt)

Barr CCD (pt)

Tract 9562.00 (pt)

BG 4 (pt)

Block 4021

Block 4022

Block 4023

Block 4034

Block 4035

Block 4036

Block 4037

Block 4038

Block 4039

Block 4040

Block 4041

Block 4042

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Block 4043

Block 4044

Block 4045

Block 4046

Block 4047

Block 4048

Block 4049

Block 4050

Block 4051

Block 4052

Block 4053

Block 4054

Block 4055

Block 4056

Block 4057

Block 4059

Block 4060

Block 4061

Block 4062

Block 4063

Block 4064

Block 4065

Block 4066

Block 4067

Block 4089

Block 4090

Block 4091

Block 4092

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Block 4100

Block 4101

Block 4102

Block 4104

Block 4105

Block 4106

Block 4107

Block 4108

Block 4109

Block 4110

Block 4111

Block 4112

Block 4113

Block 4114

Block 4115

Block 4116

Block 4117

Block 4118

Block 4132

Block 4133

Block 4134

Block 4135

Bird CCD (pt)

Tract 9565.00 (pt)

BG 1 (pt)

Block 1005

Block 1006

Block 1007

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Block 1008

Block 1009

Block 1044

Block 1045

Block 1046

Block 1047

Block 1048

Cahokia CCD (pt)

Tract 9570.00 (pt)

BG 1 (pt)

Block 1000

Block 1013

Block 1014

Block 1029

Block 1032

Block 1033

Block 1034

Block 1035

Block 1036

Block 1037

Block 1038

Block 1039

Block 1040

Block 1041

Block 1042

Block 1043

Block 1044

Block 1045

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Block 1046

Block 1047

Block 1048

Block 1049

Block 1050

Block 1051

Block 1078

Block 1079

Block 1080

Block 1081

Block 1082

Block 1083

Block 1084

Block 1085

Block 1086

Block 1087

Block 1088

Block 1089

Block 1090

Block 1091

Block 1092

Block 1093

Block 1094

Block 1997

Block 1998

Block 1999

BG 4 (pt)

Block 4000

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Block 4001

Tract 9571.00 (pt)

BG 1 (pt)

Block 1001

Block 1002

Block 1003

Block 1004

Block 1005

Block 1006

Block 1007

Block 1008

Block 1009

Block 1010

Block 1011

Block 1012

Block 1013

Block 1014

Block 1015

Block 1016

Block 1017

Block 1018

Block 1019

Block 1020

Block 1021

Block 1022

Block 1023

Block 1027

Block 1039

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Block 1040

Block 1997

Block 1999

Girard CCD

Honey Point CCD (pt)

Tract 9563.00 (pt)

BG 3 (pt)

Block 3053

BG 4 (pt)

Block 4000

Block 4001

Block 4072

Block 4073

Block 4091

Block 4092

Block 4095

Block 4096

Block 4120

Block 4121

Mount Olive CCD (pt)

Tract 9570.00 (pt)

BG 4 (pt)

Block 4046

Block 4047

Block 4048

Block 4049

Block 4050

Block 4051

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Block 4052

Block 4053

Block 4054

Block 4055

Block 4056

Block 4057

Block 4058

BG 5 (pt)

Block 5000

Block 5001

Block 5002

Block 5003

Block 5004

Block 5005

Block 5006

Block 5007

Block 5008

Block 5009

Block 5010

Block 5011

Block 5021

Block 5022

Block 5023

Block 5024

Block 5025

Block 5026

Block 5027

Block 5028

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Block 5029

Block 5030

Block 5031

Block 5999

Tract 9571.00

Nilwood CCD (pt)

Tract 9561.00

Tract 9563.00 (pt)

BG 1 (pt)

Block 1000

Block 1001

Block 1002

Block 1003

Block 1004

Block 1005

Block 1006

Block 1007

Block 1008

Block 1009

Block 1010

Block 1011

Block 1012

Block 1013

Block 1014

Block 1015

Block 1016

Block 1017

Block 1018

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Block 1019

Block 1020

Block 1021

Block 1022

Block 1023

Block 1024

Block 1025

Block 1026

Block 1027

Block 1028

Block 1029

Block 1030

Block 1031

Block 1032

Block 1033

Block 1034

Block 1035

Block 1036

Block 1037

Block 1038

Block 1039

Block 1040

Block 1041

Block 1042

Block 1043

Block 1044

Block 1045

Block 1046

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Block 1047

Block 1048

Block 1049

Block 1050

Block 1051

Block 1052

Block 1053

Block 1054

Block 1055

Block 1056

Block 1057

Block 1058

Block 1059

Block 1060

Block 1063

Block 1064

Block 1065

Block 1066

Block 1067

Block 1068

Block 1069

Block 1070

Block 1071

Block 1072

Block 1073

Block 1074

Block 1075

Block 1076

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Block 1077

Block 1078

Block 1079

Block 1080

Block 1081

Block 1082

Block 1083

Block 1084

Block 1085

Block 1086

Block 1087

Block 1095

Block 1096

Block 1097

Block 1098

Block 1146

Block 1147

Block 1148

Block 1149

BG 2

North Otter CCD

North Palmyra CCD

Scottville CCD

Shaws Point CCD (pt)

Tract 9563.00 (pt)

BG 3 (pt)

Block 3003

South Otter CCD (pt)

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Tract 9561.00

Tract 9562.00 (pt)

BG 1 (pt)

Block 1063

Block 1064

Tract 9563.00 (pt)

BG 1 (pt)

Block 1061

BG 2 (pt)

Block 2002

Block 2003

Block 2004

Block 2005

Block 2006

Block 2007

Block 2008

Block 2009

Block 2010

Block 2011

Block 2012

Block 2013

Block 2014

Block 2015

Block 2016

Block 2017

Block 2018

Block 2022

Block 2023

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Block 2024

Block 2025

Block 2026

Block 2027

Block 2028

Block 2029

Block 2030

Block 2031

Block 2032

Block 2033

Block 2034

Block 2051

Block 2060

Block 2061

Block 2062

Block 2063

Block 2064

Block 2067

Block 2995

Block 2996

Block 2997

Block 2998

Block 2999

South Palmyra CCD (pt)

Tract 9562.00 (pt)

BG 1

BG 2

BG 3

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BG 4 (pt)

Block 4001

Block 4002

Block 4003

Block 4004

Block 4005

Block 4010

Block 4011

Block 4012

Block 4013

Block 4014

Block 4015

Block 4016

Block 4017

Block 4018

Block 4019

Block 4020

Block 4068

Block 4069

Block 4070

Block 4071

Block 4072

Block 4073

Block 4074

Block 4075

Block 4076

Block 4077

Block 4078

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Block 4079

Block 4080

Block 4081

Block 4082

Block 4083

Block 4084

Block 4085

Block 4086

Block 4087

Block 4088

Block 4093

Block 4094

Block 4095

Block 4096

Block 4097

Block 4098

Block 4099

Block 4103

Block 4140

Block 4142

Block 4998

Block 4999

Staunton CCD (pt)

Tract 9571.00 (pt)

BG 2 (pt)

Block 2052

Block 2053

Block 2058

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Virden CCD

Western Mound CCD (pt)

Tract 9565.00 (pt)

BG 1 (pt)

Block 1010

Block 1011

Block 1012

Block 1013

Block 1023

Block 1024

Block 1026

Block 1032

Block 1035

Block 1036

Block 1038

Block 1039

Block 1040

Block 1071

Block 1072

Block 1073

Block 1074

Block 1075

Block 1076

Block 1077

Block 1078

Block 1079

Block 1080

Block 1081

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Block 1082

Block 1092

Block 1093

Block 1999

Montgomery County (pt)

Audubon CCD (pt)

Tract 9573.00 (pt)

BG 1 (pt)

Block 1005

Block 1006

Block 1010

Block 1011

Block 1012

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Bois D'Arc CCD

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Butler Grove CCD

East Fork CCD

Fillmore CCD (pt)

Tract 9580.00 (pt)

BG 1 (pt)

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BG 3

Grisham CCD (pt)

Tract 9576.00

Tract 9580.00 (pt)

BG 5 (pt)

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Harvel CCD

Hillsboro CCD

Irving CCD

Nokomis CCD

North Litchfield CCD

Pitman CCD

Raymond CCD

Rountree CCD

South Fillmore CCD (pt)

Tract 9580.00 (pt)

BG 1 (pt)

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BG 2

South Litchfield CCD

Walshville CCD (pt)

Tract 9576.00 (pt)

BG 3 (pt)

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BG 4

Tract 9576.00

Sangamon County (pt)

Auburn CCD (pt)

Tract 0033.00 (pt)

BG 5 (pt)

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All counties, townships, census tracts, block groups, blocks, annexations, and natural boundaries are those that appear on maps published by the United States Bureau of the Census for the 2000 census and maps produced by the Department of Revenue. The term "tract" means census tract. Trustee districts created by this subsection (b) for the purpose of electing board members shall not be altered by operation of any other statute, ordinance, or resolution. Any part of the community college district that has not been described as included in one of the trustee districts described in this subsection (b) is included within the trustee district that (i) is contiguous to the part and (ii) contains the

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least population of all trustee districts contiguous to the part according to the 2000 decennial census of Illinois. If any part of the community college district is described in this subsection (b) as being in more than one trustee district, the part is included within the trustee district that (i) is one of the trustee districts in which that part is listed in this subsection (b), (ii) is contiguous to that part, and (iii) contains the least population according to the 2000 decennial census of Illinois. If any part of the community college district (i) is described in this subsection (b) as being in one trustee district and (ii) is entirely surrounded by another trustee district, then the part shall be incorporated into the trustee district that surrounds the part. If any part of the community college district (i) is described in this subsection (b) as being in one trustee district and (ii) is not contiguous to another part of that trustee district, then the part is included within the contiguous trustee district that contains the least population according to the 2000 decennial census of Illinois. The Speaker of the House, the Minority Leader of the House, the President of the Senate, and the Minority Leader of the Senate shall by joint letter of transmittal present to the Secretary of State for deposit into the State Archives an official set of United States Bureau of the Census maps and descriptions used for conducting the 2000 census, and those maps shall serve as the official record of all counties, townships, census tracts, block groups, and blocks referred to in this subsection (b). The State Board of Elections shall prepare and make available to the public a metes and bounds description of the trustee districts created under this subsection (b). The State Board of Elections shall adjust census tract boundaries, municipal and township annexations, and natural boundaries to make compact and contiguous districts.

(c) For each at-large seat on the board that is to be filled by election in 2005 or 2007, the seat shall be filled by a trustee elected from a trustee district. The State Board shall determine which trustee district seat is to replace which at-large seat by lot. The term of each trustee elected at the or 2007 consolidated election shall end on the date that the trustees elected in 2009 are officially determined by a canvass conducted pursuant to the Election Code. For the 2009 consolidated election, one trustee shall be elected from each trustee district to serve a 4-year term.

(Source: P.A. 97-539, § 5.)

Effective Date. Section 99 of P.A. 97-539 made this section effective upon becoming law. The Act was approved August 23, 2011.

§ 110 ILCS 805/3-7c. Trustee districts for the 2013 consolidated election and thereafter; Community College District No. 526

Sec. 3-7c. Trustee districts for the 2013 consolidated election and thereafter; Community College District No. 526. (a) In Community College District No. 526, board of trustee members shall be elected by trustee district at the 2013 consolidated election and thereafter.

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(b) On or before July 1, 2012 and thereafter in the year following each decennial census, the board of trustees of Community College District No. 526 shall reapportion the trustee districts to reflect the results of the census and shall divide the community college district into 7 trustee districts, each of which shall be compact, contiguous, and substantially equal in population to each other district. The division of the community college district into trustee districts must be completed and formally approved by a majority of the members of the board of trustees. At the same meeting of the board of trustees, the board shall, publicly by lot, divide the trustee districts into 2 groups. Beginning in 2013 and every 10 years thereafter, 4 trustees or their successors from one group shall be elected for successive terms of 4 years and 6 years, and 3 trustees or their successors from the second group shall be elected for successive terms of 6 years and 4 years. One member shall be elected from each such trustee district.

(Source: P.A. 97-539, § 5.)

Effective Date. Section 99 of P.A. 97-539 made this section effective upon becoming law. The Act was approved August 23, 2011.

§ 110 ILCS 805/3-7.1. [Governing law]

Sec. 3-7.1. All elections held pursuant to this Act shall be governed by the provisions of the general election law.

(Source: P.A. 81-1490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-7.1.

§ 110 ILCS 805/3-7.10. [Nomination; nominating petitions]

Sec. 3-7.10. Nominations for members of the board shall be made by a petition signed by at least 50 voters or 10% of the voters, whichever is less, residing within the district and shall be filed with the secretary of the board. In addition to the requirements of the general election law, the form of such petitions shall be substantially as follows:

NOMINATING PETITIONS

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To the Secretary of the Board of Trustees of Community College District No. ....:

We the undersigned, being (........ or more) (or 10% or more) of the voters residing within said district, hereby petition that .... who resides at .... in the (city or village) of .... in Township .... (or who resides outside any city, village or incorporated town and in Township ....) in said district shall be a candidate for the office of .... of the Board of Trustees (full term) (vacancy) to be voted for at the election to be held on (insert date).

Name: Address:

Nomination papers filed under this Section are not valid unless the candidate named therein files with the secretary of the board a receipt from the county clerk showing that the candidate has filed a statement of economic interests as required by the Illinois Governmental Ethics Act [5 ILCS 420/1-101 et seq.]. Such receipt shall be so filed either previously during the calendar year in which his nomination papers were filed or within the period for the filing of nomination papers in accordance with the general election law.

The secretary of the board shall notify each candidate, or the appropriate committee, for whom a petition for nomination has been filed of their obligations under the Campaign Financing Act [10 ILCS 5/9-1 et seq.], as required by the general election law. Such notice shall be given on a form prescribed by the State Board of Elections and in accordance with the requirements of the general election law.

All petitions for the nomination of members of a board of trustees shall be filed with the secretary of the board within the time provided for by the general election law. Said secretary shall make certification to the proper election authority in accordance with the requirements of the general election law. If the secretary is an incumbent board member seeking reelection, a disinterested person must be a witness to the filing of his petition. It is the duty of the secretary to provide candidates with petition forms and statements of candidacy.

The secretary shall within 7 days of filing or on the last day for filing, whichever is earlier, acknowledge to the petitioner in writing his acceptance of the petition.

In all newly organized districts the petition for the nomination of candidates for members of the board at the first election shall be addressed to and filed with the regional superintendent in the manner specified for the petitions for candidates of a community college board. For such election the regional superintendent shall fulfill all duties otherwise assigned to the secretary of the board.

(Source: P.A. 81-1490; 91-357, § 107.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-7.10.

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P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, changed the date block on the form.

§ 110 ILCS 805/3-7.11. [Tax estimates]

Sec. 3-7.11. In addition to the notice requirements of the general election law, whenever a proposition to increase a tax rate under Section 3-14 [110 ILCS 805/3-14] is submitted to be voted upon by the voters of any community college district the notice of such election shall include an estimate of the approximate amount of taxes expendable under the maximum rate then in force and an estimate of the approximate amount of taxes extendible under the proposed increased rate, such amounts being computed upon, the last known equalized, assessed value, but any error, miscalculation or inaccuracy in computing such amounts shall not invalidate or affect the validity of any rate so increased. The board shall make such estimate and the secretary shall certify such amount to the election authority as part of the certification of the proposition as required by the general election law.

(Source: P.A. 81-1490.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-7.11.

§ 110 ILCS 805/3-7.13. [Public measures]

Sec. 3-7.13. More than one public measure may be submitted on the same ballot. No proposition under this Section which is substantially the same shall be submitted more than once every 2 months, except where the proposition is submitted as a consequence of a disaster, calamity or other Act of God.

(Source: P.A. 81-1489.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-7.13.

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§ 110 ILCS 805/3-7.24. [Student member]

Sec. 3-7.24. Each community college board shall have one non-voting member who is a student enrolled in the community college under the jurisdiction of the board. One non-voting student member shall also be selected in multi-campus districts to represent all campuses in those districts. In multi-campus districts, the campus from which the member is selected shall be determined by lot each year provided that no campus shall twice have selected a non-voting student member until all campuses in the district have once been represented on the district board. The same procedure shall be followed until all campuses have been represented a second time, a third time, and subsequent times. The method of selecting these student members shall be determined by campus-wide student referendum.

The student members shall serve a term of one year beginning on April 15 of each year, except that the student member initially selected shall serve a term beginning on the date of selection and expiring on the next succeeding June 30.

The nonvoting student members shall have all of the privileges of membership, including the right to make and second motions and to attend executive sessions, other than the right to vote.

(Source: P.A. 80-730.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-7.24.

CASE NOTES

Analysis

Constitutionality
Purpose

Constitutionality

Provisions for the election and seating of a member of the student body on the Board of Trustees was not ambiguous and unconstitutionally vague despite the fact that it did not spell out in detail the method of electing the student member and the qualifications of the student member. Myers v. Elgin Community College Bd. of Trustees, 46 Ill. App. 3d 768, 5 Ill. Dec. 175, 361 N.E.2d 314 (2 Dist. 1977).

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Purpose

The purpose of placing a non-voting member on the Community College Board of Trustees was to afford the student body representation in that body, not only in public meetings but in closed session as well. Myers v. Elgin Community College Bd. of Trustees, 46 Ill. App. 3d 768, 5 Ill. Dec. 175, 361 N.E.2d 314 (2 Dist. 1977).

§ 110 ILCS 805/3-8. [Organizational meeting]

Sec. 3-8. Following each election and canvass, the new board shall hold its organizational meeting on or before the 28th day after the election. If the election is the initial election ordered by the regional superintendent, the organizational meeting shall be convened by the regional superintendent, who shall preside over the meeting until the election for chairman, vice chairman and secretary of board is completed. At all other organizational meetings, the chairman of the board, or, in his or her absence, the president of the community college or acting chief executive officer of the college shall convene the new board, and conduct the election for chairman, vice chairman and secretary. The board shall then proceed with its organization under the newly elected board officers, and shall fix a time and place for its regular meetings. It shall then enter upon the discharge of its duties. Public notice of the schedule of regular meetings for the next calendar year, as set at the organizational meeting, must be given at the beginning of that calendar year. The terms of board office shall be 2 years, except that the board by resolution may establish a policy for the terms of office to be one year, and provide for the election of officers for the remaining one year period. Terms of members are subject to Section 2A-54 of the Election Code [10 ILCS 5/2A-54].

Special meetings of the board may be called by the chairman or by any 3 members of the board by giving notice thereof in writing stating the time, place and purpose of the meeting. Such notice may be served by mail 48 hours before the meeting or by personal service 24 hours before the meeting.

At each regular and special meeting which is open to the public, members of the public and employees of the community college district shall be afforded time, subject to reasonable constraints, to comment to or ask questions of the board.

(Source: P.A. 86-758; 86-1032; 87-707; 87-915, § 1; 90-358, § 15; 90-814, § 5; 92-1, § 5; 93-847, § 45; 95-116, § 5; 95-791, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-8.

Section 95 of P.A. 93-847 contains a severability provision.

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Effect of Amendments. The 1992 amendment by P.A. 87-915, effective August 14, 1992, deleted "at the community college" following "its organizational meeting" in the first sentence of the first paragraph; added "or before" following "on" in the first sentence of the first paragraph; and deleted "provided, however, that the organizational meeting may be held at a sooner time after the canvass is conducted at the call of the chairman of the board, if the chairman of the board was not a candidate for election at the most recent election, or if the term as trustee of the chairman of the board did not end with the official canvass for the election" following "after the election" in the first sentence of the first paragraph.

The 1997 amendment by P.A. 90-358, effective January 1, 1998, in the first paragraph added the seventh sentence.

The 1998 amendment by P.A. 90-814, effective February 4, 1999, in the first sentence of the first paragraph added "except that in 1999, 2001, and 2003 the board shall organize within 14 days after the first Tuesday after the first Monday of November in each of those 3 years".

The 2001 amendment by P.A. 92-1, effective March 30, 2001, in the first paragraph inserted "(except District #522)" in the first sentence and inserted the second sentence.

The 2004 amendment by P.A. 93-847, effective July 30, 2004, substituted "28th day" for "14th day" in the first sentence of the first paragraph.

The 2007 amendment by P.A. 95-116 effective August 13, 2007, inserted the seventh sentence; and made a grammatical change.

The 2008 amendment by P.A. 95-791, effective August 8, 2008, in the first paragraph, deleted "except that in 1999, 2001, and 2003 (except District #522) the board shall organize within 14 days after the first Tuesday after the first Monday of November in each of those 3 years" following "election" at the end of the first sentence; and deleted the second sentence, which read "In 2003 in District #522, the new board shall hold its organizational meeting on or before the 14th day after the consolidated election."

§ 110 ILCS 805/3-9. [Quorums]

Sec. 3-9. A majority of full voting membership of the Board shall constitute a quorum. For all meetings of the Board, a quorum of members must be physically present at the location of the meeting. When a vote is taken upon any measure before the Board, a quorum being present, a majority of the members voting on the measure shall determine the outcome thereof. No action of such board shall be invalidated by reason of any vacancies on such board, or by reason of any failure to select any nonvoting student members.

(Source: P.A. 78-822; 95-117, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-9.

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Effect of Amendments. The 2007 amendment by P.A. 95-117 effective August 13, 2007, inserted the second sentence.

§ 110 ILCS 805/3-10. [Officers]

Sec. 3-10. The chairman shall preside at all meetings and shall perform such duties as are imposed upon him by law or by action of the board. The vice-chairman shall serve in the chairman's absence. If the chairman and vice-chairman are absent from any meeting or refuse to perform their duties, a chairman pro tempore shall be appointed by the board from among their number.

The secretary shall perform the duties usually pertaining to his office. If he is absent from any meeting or refuses to perform his duties, a member of the board shall be appointed secretary pro tempore.

(Source: Laws 1967, p. 1229.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-10.

§ 110 ILCS 805/3-11. [Nature of board]

Sec. 3-11.

The board of each community college district is a body politic and corporate by the name of "Board of Trustees of Community College District No. ....., County (or Counties) of ..... and State of Illinois" or "Board of Trustees of ..... (common name of community college), County (or Counties) of ..... and State of Illinois" and by that name may sue and be sued in all courts and places where judicial proceedings are had. The State Board shall issue a number to each community college district, which number shall be incorporated in the name of the board of that district.

(Source: P.A. 78-669; 91-306, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-11.

Effect of Amendments. The 1999 amendment by P.A. 91-306, effective January 1, 2000, inserted "or 'Board of Trustees of .... (common name of community college), County (or Counties) of ..... and State of Illinois'".

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§ 110 ILCS 805/3-12. [Funding]

Sec. 3-12. Following election and organization of the community college board, as soon as may be, the board may draw upon the fund appropriated to the State Board for grants to new community college districts an amount equal to the product of $750 multiplied by the projected fulltime equivalent enrollment in the first year of the community college operation as determined by the State Board, but such amount shall not exceed $250,000.

(Source: P.A. 86-469.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-12.

§ 110 ILCS 805/3-12.1. [Grants]

Sec. 3-12.1. Any community college district to which Article VII applies, and which has not previously received a grant, may receive upon application a grant from the funds appropriated to the State Board in an amount equal to the product of $300 multiplied by the projected full-time equivalent enrollment in the first year of the community college operation as determined by the State Board or of $500,000, whichever is less.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-12.1.

§ 110 ILCS 805/3-12.2. [New branches or campuses]

Sec. 3-12.2. Any community college district which has been or is authorized by the State Board to establish a new branch or campus as provided in Section 2-3 [110 ILCS 805/2-3], may draw upon the funds appropriated to the State Board for a grant equal to the product of $300 multiplied by the projected full-time equivalent enrollment in the first year of the new branch or campus operation as determined by the State Board or of $100,000, whichever is less. Each new branch or campus for which an initial grant is awarded under this Section must serve an area which increases both the population and the area of the existing district by at least 20%, or must have the district head count

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enrollment increased by 20% because of the addition of the new branch or campus operation.

(Source: P.A. 78-981; 78-1297.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-12.2.

§ 110 ILCS 805/3-13. [Territories]

Sec. 3-13. Unless otherwise provided in this Act, the forming of any territory into a community college district shall become effective upon the date of organization of the community college board. Provided, that an existing community college located within the territory shall continue operation under its board and the tax levying authority shall likewise continue until such time as the new community college district begins the operation of its program of studies and thereafter any existing community college board in the territory shall cease to operate the community college and the new community college district shall succeed to all assets, receivables and liabilities of the existing community college district at the time the new community college board is ready to begin the operation of its program of studies.

(Source: P.A. 86-469.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-13.

§ 110 ILCS 805/3-14. [Rate increases; annual tax levy]

Sec. 3-14. Subject to the limits imposed by this Article, the rates for any community college district may be increased at a regular scheduled election held in accordance with the general election law, after the establishment of that district. At any regular scheduled election, the proper election authorities shall submit to the electors, after the proposition has been certified to them by the board of the community college district, a proposition for an increase of the authorized annual levy for educational purposes not to exceed .125% and for operations and maintenance of facilities purposes not to exceed .05%.

A community college board may within the limits set forth in Section 3-1 of this Act [110 ILCS 805/3-1] and in the manner provided in this Article levy a maximum annual tax

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upon all the taxable property of the district upon its value, as equalized or assessed by the Department of Revenue. Within the limits provided in this Section, the community college board may annually levy the tax for operation and maintenance of facilities purposes and the purchase of sites so that funds may accumulate to not more than 5% of the equalized assessed valuation of the district. Accumulated funds may be used for building purposes as defined in Section 5-2 [110 ILCS 805/5-2]. No such accumulation may be transferred or used for any other purpose.

(Source: P.A. 85-1335.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-14.

§ 110 ILCS 805/3-14.1. Form of ballot and notice

Sec. 3-14.1. Form of ballot and notice. Whenever any proposition to authorize or to levy an annual tax, or to increase the annual rate of tax levied by any community college district, including a community college district to which Article VII applies, for any community college purpose is submitted to the voters of such district at any election, each required notice or other publication of the election or referendum and the form of ballot shall contain, in addition to any other matters required by law:

(a) the geographic or other common name of the community college district by which that district is commonly known and referred to, as well as the number of the district;

(b) the maximum rate at which such tax may be levied if the proposition is approved; and

(c) if the proposition is to increase the annual rate of an existing tax levied by the community college district, then in addition to the matters set forth in (a) and (b) above, the annual rate at which such existing tax currently is levied and the percentage of increase between the maximum rate at which such tax may be levied if the proposition is approved and the annual rate at which such tax currently is levied.

(Source: P.A. 85-374.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-14.1.

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§ 110 ILCS 805/3-14.2. [Additional tax for educational and operations, building and maintenance purposes]

Sec. 3-14.2. In addition to any other tax levies authorized by law, the board of a community college district (1) whose boundaries are entirely within a county with a population in excess of 2 million persons and (2) which was organized as a public junior college prior to October 1, 1973, and (3) whose existence was validated by an Act filed with the Secretary of State on May 31, 1937, may levy an additional tax upon the taxable property of the district in any year in which the State Board issues a certificate of eligibility to do so. The additional tax may be used to increase the total taxing authority of the district to the rate of 23.54 cents per $100 of equalized assessed value for educational and operations, building and maintenance purposes.

In order to be eligible to levy the additional tax as provided herein, the district shall have been eligible to receive equalization grants pursuant to Section 102-16 for each of the five fiscal years in the period 1984 to 1988.

The additional amount certified by the State Board to be levied shall not exceed the combined increases in the educational and operations, building and maintenance purposes funds authorized in Section 3-14 [110 ILCS 805/3-14]. The State Board shall notify the board of trustees of the community college district of its eligibility to levy additional taxes as authorized in this Section and the amount of such levy, by November 1, 1988.

A resolution, adopted pursuant to the provisions of the Open Meetings Act [5 ILCS 120/1.01 et seq.], which expresses the district's intent to levy such a tax, or a portion thereof, when accompanied by the State Board certificate of eligibility, shall be the authority for the county clerk or clerks to extend such a tax. The district board shall cause a copy of the resolution to be published in one or more newspapers published in the district within 10 days after such levy is made. If no newspaper is published in the district, the resolution shall be published in a newspaper having general circulation within the district. The publication of the resolution shall include a notice of (1) the specific number of voters required to sign a petition requesting that the question of the adoption of the tax levy be submitted to the voters of the district; (2) the time within which the petition must be filed; and (3) the date of the prospective referendum. The district secretary shall provide a petition form to any individual requesting one.

If within 30 days of the adoption of such additional levy, a petition is filed with the secretary of the board of trustees, signed by not less than 10% of the voters of the district, requesting that the proposition to levy such additional taxes as authorized by this Section be submitted to the voters of the district, then the district shall not be authorized to levy such additional taxes as permitted by this Section until the proposition has been submitted to and approved by a majority of the voters voting on the proposition at a regularly scheduled election in the manner provided in the general election law. The secretary shall certify the proposition to the proper election authority for submission to the voters. If no such petition with the requisite number of signatures and which is otherwise valid is filed within such 30 day period, then the district shall thereafter be authorized to levy such additional taxes as provided and for the purposes expressed in

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this Section.

(Source: P.A. 85-1150; 86-1253.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-14.2.

Section 102-16, referred to above, has been repealed.

§ 110 ILCS 805/3-14.3. [Additional tax]

Sec. 3-14.3. In addition to any other tax levies authorized by law, the board of a community college district may levy an additional tax upon the taxable property of the district in any year in which the State Board issues a certificate of eligibility to do so. The additional tax may be used to increase the total taxing authority of the district to the most recently reported statewide average actual levy rate in cents per $100 of equalized assessed value for educational and operations and maintenance purposes as certified by the State Board.

In order to be eligible to levy the additional tax as provided herein, the district shall have been eligible to receive equalization grants pursuant to Section 2-16 or 2-16.02 [110 ILCS 805/2-16.02], as the case may be, in the year of eligibility certification or in the previous fiscal year.

The additional amount certified by the State Board to be levied shall not exceed the combined increases in the educational and operations and maintenance purposes funds authorized in Section 3-14 [110 ILCS 805/3-14]. The State Board shall notify the board of trustees of the community college district of its eligibility to levy additional taxes as authorized in this Section and the amount of such levy, by November 1 of each year.

A resolution, adopted annually pursuant to the provisions of the Open Meetings Act [5 ILCS 120/1 et seq.], which expresses the district's intent to levy such a tax, or a portion thereof, when accompanied by the State Board certificate of eligibility, shall be the authority for the county clerk or clerks to extend such a tax. Within 10 days after adoption of such resolution, the district shall cause to be published the resolution in at least one or more newspapers published in the district. The publication of the resolution shall include a notice of (1) the specific number of voters required to sign a petition requesting that the proposition of the adoption of the resolution be submitted to the voters of the district; (2) the time in which the petition must be filed; and (3) the date of the prospective referendum. The secretary shall provide a petition form to any individual requesting one.

If within 30 days of the annual adoption of such additional levy, a petition is filed with the secretary of the board of trustees, signed by not less than 10% of the registered voters

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of the district, requesting that the proposition to levy such additional taxes as authorized by this Section be submitted to the voters of the district, then the district shall not be authorized to levy such additional taxes as permitted by this Section until the proposition has been submitted to and approved by a majority of the voters voting on the proposition at a regularly scheduled election in the manner provided in the general election law. The secretary shall certify the proposition to the proper election authority for submission to the voters. If no such petition with the requisite number of signatures and which is otherwise valid is filed within such 30 day period, then the district shall be authorized to levy such additional taxes as provided for the purposes expressed in this Section.

(Source: P.A. 86-360; 87-1018, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-14.3.

Section 2-16, referred to above, has been repealed.

Effect of Amendments. The 1992 amendment, effective September 3, 1992, added "or 2-16.02, as the case may be" in the second paragraph.

§ 110 ILCS 805/3-15: Repealed by P.A. 88-322, § 10, effective August 12, 1993.

§ 110 ILCS 805/3-16. [Academic term]

Sec. 3-16. The academic term of community college districts shall be determined by the community college board with the consent of the State Board. However, days within such term designated for the purpose of enrollment, testing, orientation or examination of students and all days on which scheduled classes are held shall be considered as days of student attendance. Classes may be held on Saturdays, notwithstanding any other provisions of this Act.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-16.

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§ 110 ILCS 805/3-17. [Admission standards]

Sec. 3-17. The community college districts shall admit all students qualified to complete any one of their programs including general education, transfer, occupational, technical, and terminal, as long as space for effective instruction is available. After entry, the college shall counsel and distribute the students among its programs according to their interests and abilities. Students allowed entry in college transfer programs must have ability and competence similar to that possessed by students admitted to state universities for similar programs. Entry level competence to such college transfer programs may be achieved through successful completion of other preparatory courses offered by the college. If space is not available for all students applying, the community college will accept those best qualified, using rank in class and ability and achievement tests as guides, and shall give preference to students residing in the district unless the district has entered into a contractual agreement for the mutual exchange of students with another community college district, in which case, equal enrollment preference may be granted to students residing in such contracting districts.

A student who has graduated from high school and has scored within the community college's accepted range on the ACT or SAT shall not be required to take the high school level General Educational Development (GED) Test as a prerequisite to admission.

(Source: P.A. 78-669; 78-677; 78-1297; 91-374, § 50.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-17.

Effect of Amendments. The 1999 amendment by P.A. 91-374, effective July 30, 1999, added the second paragraph.

CASE NOTES

Analysis

Applicability
Construction

Applicability

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This section does not affect the validity of the organization of the district or the selection of the board, comes into effect only after the organization, has always been recognized as proper and does not constitute discrimination. People v. Francis, 40 Ill. 2d 204, 239 N.E.2d 129 (1968).

Construction

This section does not address class offerings or student enrollment in specific classes but is concerned only with student admission into the community college system; the provision is silent as to whether the Board of Trustees has a duty to offer classes to fill all available physical space. Espinosa v. Board of Trustees, 265 Ill. App. 3d 504, 198 Ill. Dec. 220, 632 N.E.2d 279 (1 Dist. 1994).

§ 110 ILCS 805/3-18. [Treasurer]

Sec. 3-18. Community college boards shall appoint a treasurer to serve at the pleasure of the board. The treasurer may not be a member of the community college board. The board of the community college district shall fix the compensation of the treasurer.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-18.

§ 110 ILCS 805/3-19. [Execution of bond]

Sec. 3-19. Before entering upon his duties, each treasurer shall execute a bond with 2 or more persons having an interest in real estate who are not members of the board of the district, or with a surety company authorized to do business in this State, as sureties, payable to the board of the community college district for which he is treasurer and conditioned upon the faithful discharge of his duties. The penalty of the bond shall be 25% of the amount of all bonds, notes, mortgages, moneys, and effects of which the treasurer is to have custody, whether individuals act as surety or whether the surety is given by a surety authorized to do business in this State. The penalty of the bond of the treasurer shall be increased or decreased from time to time, as the increase or decrease of the amount of notes, bonds, mortgages, moneys and effects may require, and whenever in the judgment of the State board the penalty of the bond should be increased or decreased. The bond must be approved by at least a majority of the board of the community college district and filed with the State Board. A copy of the bond must also be filed with the county clerk of each county in which any part of the community college district is situated. The bond shall be in substantially the following form:

STATE OF ILLINOIS)

) SS.

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..... COUNTY)

We, ... and ..... are obligated, jointly and severally, to the Board of Community College District No. ....., County (or Counties) of ..... and State of Illinois in the penal sum of $ ....., for the payment of which we obligate ourselves, our heirs, executors and administrators.

Dated (insert date).

The condition of this obligation is such that if ....., treasurer in the district above stated, faithfully discharges the duties of his or her office, according to law, and delivers to his or her successor in office, after that successor has qualified by giving bond as provided by law, all moneys, books, papers, securities and property, which shall come into his or her possession or control, as such treasurer, from the date of his or her bond to the time that his or her successor has qualified as treasurer, by giving such bond as is required by law, then this obligation to be void; otherwise to remain in full force and effect.

Signed: .....

.....

.....

.....

Approved and accepted by Board of Community College District No. ..... County (or Counties) of ..... and State of Illinois. By ..... Chairman ..... Secretary

No part of any State or other district funds may be paid to any treasurer or other persons authorized to receive it unless the treasurer has filed his or her bond as required herein.

(Source: P.A. 84-1308; 91-357, § 107; 92-167, § 5; 93-163, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-19.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, changed the date box.

The 2001 amendment by P.A. 92-167, effective July 27, 2001, in the first paragraph, inserted the second sentence, at the beginning of the third sentence added "However," and inserted "of the treasurer of a community college district in a city having a population of 500,000 or more inhabitants", and in the fourth sentence substituted "In all community college districts, the penalty of the bond of the treasurer" for "and".

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The 2003 amendment by P.A. 93-163, effective July 10, 2003, deleted the beginning of the second sentence concerning an exception for a college district in a city having a population of 500,000 or more and deleted the third sentence describing the penalty of the bond of the treasure of a community college district in a city having a population of 500,000 or more and made a stylistic change.

§ 110 ILCS 805/3-19.1. [Wage warrants]

Sec. 3-19.1. When any warrant issued for the wages of an educational employee is presented to the treasurer and is not paid for want of funds, the treasurer shall endorse it over his signature, "not paid for want of funds", with the date of presentation, and shall make and keep a record of that endorsement. The warrant shall thereafter bear interest at the rate of 6% per annum, until the treasurer notifies the chairman of the board in writing that he has funds to pay it. The treasurer shall make and keep a record of that notice and hold the funds necessary to pay the warrant until it is presented. The warrant shall draw no interest after notice is given to the chairman of the board.

(Source: P.A. 82-622.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-19.1.

§ 110 ILCS 805/3-20. [Budgets; tax anticipation warrants]

Sec. 3-20. The community college board, except a board to which Article VII applies, shall prepare and adopt a budget in the manner provided in this Article.

The amount of money to be raised by taxes for the community college district, except a district to which Article VII applies, shall be levied, extended, certified, and collected in the manner provided in this Article and tax anticipation warrants may be issued in the manner provided in Section 3-20.10 [110 ILCS 805/3-20.10].

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-20.

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Community College Board

- Budgeting and Use of Funds

Once the Illinois Community College Board has approved the establishment of an institution, the construction of facilities, the units of instruction and the research and public services to be provided by a community college, the proper budgeting and use of funds is the responsibility of the community college board of trustees, who in turn are responsible to the voters who elect them. 1992 Op. Atty. Gen. (92-011).

§ 110 ILCS 805/3-20.1. [Annual budgets]

Sec. 3-20.1. The board of each community college district shall within or before the first quarter of each fiscal year, adopt an annual budget which it deems necessary to defray all necessary expenses and liabilities of the district, and in such annual budget shall specify the objects and purposes of each item and amount needed for each object or purpose.

The budget shall contain a statement of the cash on hand at the beginning of the fiscal year, an estimate of the cash expected to be received during such fiscal year from all sources, an estimate of the expenditures contemplated for such fiscal year, and a statement of the estimated cash expected to be on hand at the end of such year. The estimate of taxes to be received may be based upon the amount of actual cash receipts that may reasonably be expected by the district during such fiscal year, estimated from the experience of the district in prior years and with due regard for other circumstances that may substantially affect such receipts. Nothing in this Section shall be construed as requiring any district to change or preventing any district from changing from a cash basis of financing to a surplus or deficit basis of financing; or as requiring any district to change or preventing any district from changing its system of accounting.

The board of each community college district shall fix a fiscal year. If the beginning of the fiscal year of a district is subsequent to the time that the tax levy for such fiscal year shall be made, then such annual budget shall be adopted prior to the time such tax levy shall be made.

Such budget shall be prepared in tentative form by some person or persons designated by the board, and in such tentative form shall be made conveniently available to public inspection for at least 30 days prior to final action thereon. At least one public hearing shall be held as to such budget prior to final action thereon. Notice of availability for public inspection and of such public hearing shall be given by publication in a newspaper published in such district, at least 30 days prior to the time of such hearing. If there is no newspaper published in such district, notice of such public hearing shall be given by posting notices thereof in 5 of the most public places in such district. It shall be the duty of the secretary of the board to make the tentative budget available to public inspection, and to arrange for such public hearing. The board may from time to time make transfers between the various items in any fund not exceeding in the aggregate 10% of the total of

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such fund as set forth in the budget. The board may from time to time amend such budget by the same procedure as is herein provided for its original adoption.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-20.1.

§ 110 ILCS 805/3-20.2. [Additional or supplemental budget]

Sec. 3-20.2. Whenever the voters of a community college district have voted in favor of an increase in the annual tax rate for educational or operation and maintenance of facilities purposes or both at an election held after the adoption of the annual community college budget for any fiscal year, the board may adopt or pass during that fiscal year an additional or supplemental budget under the sole authority of this Section by a vote of a majority of the full membership of the board, any other provision of this Article to the contrary notwithstanding, in and by which such additional or supplemental budget the board shall appropriate such additional sums of money as it may find necessary to defray expenses and liabilities of that district to be incurred for educational or operation and maintenance of facilities purposes or both of the district during that fiscal year, but not in excess of the additional funds estimated to be available by virtue of such voted increase in the annual tax rate for educational or operation and maintenance of facilities purposes or both. Such additional or supplemental budget shall be regarded as an amendment of the annual community college budget for the fiscal year in which it is adopted, and the board may levy the additional tax for educational or operation and maintenance of facilities purposes or both to equal the amount of the additional sums of money appropriated in that additional or supplemental budget, immediately.

(Source: P.A. 85-1335.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-20.2.

§ 110 ILCS 805/3-20.3. [Payments from the tax levy for operation and maintenance of facilities purposes and the purchase of college grounds]

Sec. 3-20.3. Any sum expended or obligations incurred for the improvement, maintenance, repair or benefit of buildings and property, including the cost of interior

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decorating and the installation, improvement, repair, replacement and maintenance of building fixtures, for the rental of buildings and property for community college purposes, or for the payment of all premiums for insurance upon buildings and building fixtures shall be paid from the tax levied for operation and maintenance of facilities purposes and the purchase of college grounds. The board may provide by resolution that the payment of all salaries of janitors, engineers or other custodial employees and all costs of fuel, lights, gas, water, telephone service, and custodial supplies and equipment or the cost of a professional survey of the conditions of school buildings, or any one or more of the preceding items shall be paid from the tax levied for operation and maintenance of facilities purposes and the purchase of college grounds in which event such salaries or specified costs, or both, shall be so paid until the next fiscal year after the repeal of such resolution. Expenditures for all purposes not specified in this Section or Section 3-14 [110 ILCS 805/3-14] shall be made from the educational fund.

(Source: P.A. 85-1335.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-20.3.

§ 110 ILCS 805/3-20.3.01. [Regulations designed for the protection, health or safety of individuals or the environment]

Sec. 3-20.3.01. Whenever, as a result of any lawful order of any agency, other than a local community college board, having authority to enforce any law or regulation designed for the protection, health or safety of community college students, employees or visitors, or any law or regulation for the protection and safety of the environment, pursuant to the "Environmental Protection Act" [415 ILCS 5/1 et seq.], any local community college district, including any district to which Article VII of this Act [110 ILCS 805/7-1 et seq.] applies, is required to alter or repair any physical facilities, or whenever any district determines that it is necessary for energy conservation, health or safety, environmental protection or handicapped accessibility purposes that any physical facilities should be altered or repaired and that such alterations or repairs will be made with funds not necessary for the completion of approved and recommended projects for fire prevention and safety, or whenever after the effective date of this amendatory Act of 1984 any district, including any district to which Article VII applies, provides for alterations or repairs determined by the local community college board to be necessary for health and safety, environmental protection, handicapped accessibility or energy conservation purposes, such district may, by proper resolution which specifically identifies the project and which is adopted pursuant to the provisions of the Open Meetings Act [5 ILCS 120/1 et seq.], levy a tax for the purpose of paying for such alterations or repairs, or survey by a licensed architect or engineer, upon the equalized assessed value of all the taxable property of the district at a rate not to exceed .05% per

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year for a period sufficient to finance such alterations or repairs, upon the following conditions:

(a) When in the judgment of the local community college board of trustees there are not sufficient funds available in the operations and maintenance fund of the district to permanently pay for such alterations or repairs so ordered, determined as necessary.

(b) When a certified estimate of a licensed architect or engineer stating the estimated amount that is necessary to make the alterations or repairs so ordered or determined as necessary has been secured by the local community college district and the project and estimated amount have been approved by the Executive Director of the State Board.

The filing of a certified copy of the resolution or ordinance levying the tax when accompanied by the certificate of approval of the Executive Director of the State Board shall be the authority of the county clerk or clerks to extend such tax; provided, however, that in no event shall the extension for the current and preceding years, if any, under this Section be greater than the amount so approved, and interest on bonds issued pursuant to this Section and in the event such current extension and preceding extensions exceed such approval and interest, it shall be reduced proportionately.

The county clerk of each of the counties in which any community college district levying a tax under the authority of this Section is located, in reducing raised levies, shall not consider any such tax as a part of the general levy for community college purposes and shall not include the same in the limitation of any other tax rate which may be extended. Such tax shall be levied and collected in like manner as all other taxes of community college districts.

The tax rate limit hereinabove specified in this Section may be increased to .10% upon the approval of a proposition to effect such increase by a majority of the electors voting on that proposition at a regular scheduled election. Such proposition may be initiated by resolution of the local community college board and shall be certified by the secretary of the local community college board to the proper election authorities for submission in accordance with the general election law.

Each local community college district authorized to levy any tax pursuant to this Section may also or in the alternative by proper resolution or ordinance borrow money for such specifically identified purposes not in excess of $4,500,000 in the aggregate at any one time when in the judgment of the local community college board of trustees there are not sufficient funds available in the operations and maintenance fund of the district to permanently pay for such alterations or repairs so ordered or determined as necessary and a certified estimate of a licensed architect or engineer stating the estimated amount has been secured by the local community college district and the project and the estimated amount have been approved by the State Board, and as evidence of such indebtedness may issue bonds without referendum. However, Community College District No. 522 and Community College District No. 536 may or in the alternative by proper resolution or ordinance borrow money for such specifically identified purposes not in excess of $20,000,000 in the aggregate at any one time when in the judgment of the community college board of trustees there are not sufficient funds available in the operations and maintenance fund of the district to permanently pay for such alterations or repairs so

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ordered or determined as necessary and a certified estimate of a licensed architect or engineer stating the estimated amount has been secured by the community college district and the project and the estimated amount have been approved by the State Board, and as evidence of such indebtedness may issue bonds without referendum. Such bonds shall bear interest at a rate or rates authorized by "An Act to authorize public corporations to issue bonds, other evidences of indebtedness and tax anticipation warrants subject to interest rate limitations set forth therein", approved May 26, 1970, as now or hereafter amended [30 ILCS 305/1 et seq.], shall mature within 20 years from date, and shall be signed by the chairman, secretary and treasurer of the local community college board.

In order to authorize and issue such bonds the local community college board shall adopt a resolution fixing the amount of bonds, the date thereof, the maturities thereof and rates of interest thereof, and the board by such resolution, or in a district to which Article VII applies the city council upon demand and under the direction of the board by ordinance, shall provide for the levy and collection of a direct annual tax upon all the taxable property in the local community college district sufficient to pay the principal and interest on such bonds to maturity. Upon the filing in the office of the county clerk of each of the counties in which the community college district is located of a certified copy of such resolution or ordinance it is the duty of the county clerk or clerks to extend the tax therefor without limit as to rate or amount and in addition to and in excess of all other taxes heretofore or hereafter authorized to be levied by such community college district.

The State Board shall prepare and enforce regulations and specifications for minimum requirements for the construction, remodeling or rehabilitation of heating, ventilating, air conditioning, lighting, seating, water supply, toilet, handicapped accessibility, fire safety and any other matter that will conserve, preserve or provide for the protection and the health or safety of individuals in or on community college property and will conserve the integrity of the physical facilities of the district.

This Section is cumulative and constitutes complete authority for the issuance of bonds as provided in this Section notwithstanding any other statute or law to the contrary.

(Source: P.A. 85-1335; 90-468, § 5; 96-561, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-20.3.01.

Effect of Amendments. The 1997 amendment by P.A. 90-468, effective August 17, 1997, substituted "$4,500,000" for "$1,500,000" in the first sentence of the fifth paragraph in (b).

The 2009 amendment by P.A. 96-561, effective January 1, 2010, deleted "of not less than $25,000" preceding "that is necessary" in the first paragraph of (b); and in the fifth paragraph of (b), deleted "of not less than $25,000" preceding "has been secured" in the first sentence and added the second sentence.

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§ 110 ILCS 805/3-20.4. [Certificates showing assessed value]

Sec. 3-20.4. The county clerk shall furnish the board of any community college district, upon request, a certificate showing the last ascertained equalized, assessed value of the taxable property of the district.

When a community college district lies partly in 2 or more counties, the county clerk of each county in which any part of such district lies shall furnish, upon request, to the board of the district, a certificate showing the last ascertained equalized, assessed value of the taxable property in that part of the district lying in such county.

When making out the tax books for the collector, the county clerk shall compute each taxable person's tax in each district upon the total equalized, assessed value of taxable property for that year, located in such district, whether belonging to residents or non-residents. Such computation shall be made so as to realize the amount of money required to be raised in such district, as shown in the certificate of tax levy, made out by the governing body of such district, and filed with the county clerk as required by this Act. The county clerk shall cause each person's tax, so computed, to be set upon the tax book to be delivered to the collector for that year, in a separate column against each taxpayer's name, or parcel of taxable property, as it appears in the collector's books, to be collected in the same manner, and at the same time, and by the same person, as State and county taxes are collected. He shall number the community college districts on the maps in his office to correspond with the numbers of districts as designated by the State Board under Section 3-11 [110 ILCS 805/3-11], and in making up the tax books to be delivered to the collector of taxes, the county clerk shall copy therein the number of the districts set opposite each person's assessment of personal property by the assessor making the assessment of such person, and shall extend the tax on each person's assessment of personal property. The computation of each person's tax and the extension made by the clerk shall be final and conclusive. The rate shall be uniform, and shall not exceed that required by the amount certified by the board. The county clerk, before delivering the tax book to the collector, shall make and send by mail to each treasurer of a community college district in the county a certificate of the amount due his district or districts from the tax so extended and placed on the tax books.

(Source: P.A. 80-1332.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-20.4.

§ 110 ILCS 805/3-20.5. [Money raised by special tax for educational purposes]

Sec. 3-20.5. (a) The board of each community college district shall ascertain, as near as practicable, annually, how much money must be raised by

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special tax for educational purposes and for operations and maintenance of facilities purposes for the next ensuing year. Such amounts shall be certified and returned to the county clerk on or before the last Tuesday in December, annually. The certificate shall be signed by the chairman and secretary, and may be in the following form:

CERTIFICATE OF TAX LEVY

We hereby certify that we require the sum of ..... dollars to be levied as a special tax for educational purposes, and the sum of ..... dollars to be levied as a special tax for operations and maintenance of facilities purposes, on the equalized assessed value of the taxable property of our district, for the year (insert year).

Signed on (insert date).

A ..... B ....., Chairman

C ..... D ....., Secretary

Community College Dist. No. ....., ... County (or Counties)

An amended certificate may be filed by the community college board within 10 days of receipt of official notification from the county clerk of the multiplier that will be applied to assessed value of the taxable property of the district, provided such multiplier will alter the amount of revenue received by the district from either local or State sources.

A failure by the board to file the certificate with the county clerk in the time required shall not vitiate the assessment.

(Source: P.A. 85-1335; 91-357, § 107.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-20.5.

P.A. 91-357, § 996, contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, changed the date box.

§ 110 ILCS 805/3-20.6. [Districts in two or more counties]

Sec. 3-20.6. When a district lies partly in two or more counties the board shall ascertain, as near as practicable, the amount to be raised by special tax for educational and operations and maintenance of facilities purposes and shall prepare a certificate for each

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county in which the community college district lies and shall deliver one of such certificates to each of the county clerks of the counties in which a part of the district is situated. On the first Monday of October, annually, or as soon thereafter as may be practicable, each county clerk shall ascertain the total equalized valuation of all the taxable property in that part of the district as lies in his county, and certify the amount thereof to the county clerk of each of the other counties in which any part of the district lies; and from the aggregate of such equalized valuation and from the certificate of the amount so required to be levied, such clerk shall ascertain the rate per cent required to produce in the district the amount of such levy, and at that rate shall extend the special tax to be levied for educational purposes and operations and maintenance of facilities purposes in that part of the district lying in his respective county.

(Source: P.A. 85-1335.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-20.6.

§ 110 ILCS 805/3-20.7. [Assessments of personal property]

Sec. 3-20.7. The assessors shall, when making assessments of personal property, designate the number of the community college district in which the person assessed resides. The designation shall be made by writing the number of the district opposite each person's assessment of personal property in the assessment roll returned by the assessor to the county clerk. The officers preparing blank books and notices for the use of assessors shall provide columns and blanks, so that the number of the community college district may be designated.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-20.7.

§ 110 ILCS 805/3-20.8. [Presentment and demand of certificate]

Sec. 3-20.8. Within 30 days after the delinquent date for the payment of any tax or installment thereof and after the delivery of the tax books containing the computation and levy of the taxes, or as soon thereafter as the community college treasurer shall present the certificate of the amount of the tax and make a demand therefor, the collector shall

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pay to the treasurer the full amount of the tax certified by the county clerk, or if any part remains uncollected, the collector shall, in addition to the amount collected, deliver to the treasurer a statement of the amount of uncollected taxes for his district or districts, taking his receipt therefor, which receipt shall be evidence in favor of the collector as against the treasurer.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-20.8.

§ 110 ILCS 805/3-20.9. [Failure to pay]

Sec. 3-20.9. If any collector fails to pay the taxes or any part thereof, the community college treasurer or other authorized person may proceed against him and his sureties in a civil action upon his official bond in the circuit court. The collector so in default shall pay 12% of the amount due to be assessed as damages, which shall be included in the judgment rendered against him. If he can show that any part of the taxes could not be collected by law, he shall not be liable for such taxes until he has collected, or may be able to collect them.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-20.9.

§ 110 ILCS 805/3-20.10. [Issue of warrants]

Sec. 3-20.10. When there is no money in the treasury of any community college district to defray the necessary expenses of the district, including amounts necessary to pay maturing principal and interest of bonds, the board may issue warrants, or may provide a fund to meet the expenses by issuing and disposing of warrants, drawn against and in anticipation of any taxes levied for the payment of the necessary expenses of the district, either for educational purposes or for all operations and maintenance of facilities purposes, or for the payment of maturing principal and interest of bonds, as the case may be, to the extent of 85% of the total amount of the tax so levied. The warrants shall show upon their face that they are payable in the numerical order of their issuance solely from such taxes when collected, and shall be received by any collector of taxes in payment of

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the taxes against which they are issued, and such taxes shall be set apart and held for their payment.

Every warrant shall bear interest, payable only out of the taxes against which it is drawn, at a rate not exceeding the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, if issued before July 1, 1971 and if issued thereafter at the rate of not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, from the date of its issuance until paid or until notice shall be given by publication in a newspaper or otherwise that the money for its payment is available and that it will be paid on presentation, unless a lower rate of interest is specified therein, in which case the interest shall be computed and paid at the lower rate.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-20.10.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

§ 110 ILCS 805/3-21. [Duties of board]

Sec. 3-21. The board of community college districts shall have the duties enumerated in the Sections following this Section and preceding Section 3-30 [110 ILCS 805/3-30].

Notwithstanding any provision of this Article to the contrary, when bonds are issued by any district and the purposes for which such bonds have been issued have been accomplished and paid for in full and there remains funds on hand in such bond and interest account, the board by resolution may transfer such excess to the fund of the district which bears the nearest relation to the purpose for which the bonds from which

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such excess funds arose were issued.

(Source: P.A. 86-1246; 94-587, § 50.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-21.

Effect of Amendments. The 2005 amendment by P.A. 94-587, effective August 15, 2005, substituted "the Sections following this Section and preceding Section 3-30" for "Sections 3-22 through 3-29.2".

§ 110 ILCS 805/3-22. [Maintenance of records]

Sec. 3-22. To maintain records to substantiate all claims for state apportionment in accordance with regulations prescribed by the State Board and to retain such records for a period of 3 years.

(Source: Laws 1967, p. 1229.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-22.

§ 110 ILCS 805/3-22.1. [Audits]

Sec. 3-22.1. To cause an audit to be made as of the end of each fiscal year by an accountant licensed to practice public accounting in Illinois and appointed by the board. The auditor shall perform his or her examination in accordance with generally accepted auditing standards and regulations prescribed by the State Board, and submit his or her report thereon in accordance with generally accepted accounting principles. The examination and report shall include a verification of student enrollments and any other bases upon which claims are filed with the State Board. The audit report shall include a statement of the scope and findings of the audit and a professional opinion signed by the auditor. If a professional opinion is denied by the auditor he or she shall set forth the reasons for that denial. The board shall not limit the scope of the examination to the extent that the effect of such limitation will result in the qualification of the auditor's professional opinion. The procedures for payment for the expenses of the audit shall be in accordance with Section 9 of the Governmental Account Audit Act [50 ILCS 310/9]. Copies of the audit report shall be filed with the State Board in accordance with

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regulations prescribed by the State Board. The State Board shall file one copy of the audit report with the Auditor General. The State Board shall file copies of the uniform financial statements from the audit report with the Board of Higher Education.

(Source: P.A. 87-246; 90-468, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-22.1.

Effect of Amendments. The 1997 amendment by P.A. 90-468, effective August 17, 1997, in the second sentence inserted "or her" twice; in the fifth sentence inserted "or she"; and in the tenth sentence substituted "The State Board shall file copies of the uniform financial statements from the audit report" for "and one copy".

§ 110 ILCS 805/3-22.2. [Annual financial statements]

Sec. 3-22.2. To publish annually a financial statement in accordance with rules and regulations issued by the State Board. Such statement shall be published at least once in a newspaper of general circulation in the community college district.

(Source: P.A. 79-304.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-22.2.

§ 110 ILCS 805/3-22.3. Mailing list

Sec. 3-22.3. Mailing list. To establish and maintain a mailing list of the names and addresses of persons who each year request inclusion thereon, and to mail to those persons copies of board agenda, budgets or audits as requested within 10 working days after copies of such agenda, budgets or audits become available, and to mail to those persons within 10 working days after each subsequent board meeting a copy of the previous meeting minutes as approved. Annual subscription fees approximating the costs of assembling, reproducing and mailing the materials may be charged to the subscribers at the beginning of the subscription period.

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(Source: P.A. 85-1420.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-22.3.

§ 110 ILCS 805/3-23. [Revenue]

Sec. 3-23. To provide for the revenue necessary to maintain such community college.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-23.

§ 110 ILCS 805/3-24. [Designation of treasurer]

Sec. 3-24. To designate the treasurer who is to receive the taxes of the district and to notify the collectors in writing accordingly.

(Source: Laws 1965, p. 1529.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-24.

§ 110 ILCS 805/3-25. [Management and government]

Sec. 3-25. To adopt and enforce all necessary rules for the management and government of the colleges of its district.

(Source: Laws 1965, p. 1529.)

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This section was Ill.Rev.Stat., Ch. 122, Para. 103-25.

CASE NOTES

Related Laws

This section should be interpreted in the same manner as 105 ILCS 5/10-20.5, and it similarly empowers the board to promulgate rules for the imposition of disciplinary suspensions. Inwang v. Community College Dist., 117 Ill. App. 3d 608, 73 Ill. Dec. 71, 453 N.E.2d 896 (1 Dist. 1983).

§ 110 ILCS 805/3-25.1. [New units]

Sec. 3-25.1. To authorize application to the Illinois Community College Board for the approval of new units of instruction, research or public service as defined in this Section and to establish such new units following approval in accordance with the provisions of this Act and the Board of Higher Education Act [110 ILCS 205/0.01 et seq.].

The term "new unit of instruction, research or public service" includes the establishment of a college, school, division, institute, department or other unit including majors and curricula in any field of instruction, research, or public service not theretofore included in the program of the community college, and includes the establishment of any new branch or campus of the institution. The term shall not include reasonable and moderate extensions of existing curricula, research, or public service programs which have a direct relationship to existing programs; and the State Board may, under its rule making power define the character of reasonable and moderate extensions.

(Source: P.A. 78-669; 88-322, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-25.1.

Effect of Amendments. The 1993 amendment by P.A. 88-322, effective August 12, 1993, in the first paragraph substituted "this Section" for "Section 2-3" and substituted "the Board of Higher Education Act" for "'An Act creating a Board of Higher Education, defining its powers and duties, making an appropriation therefor, and repealing an Act herein named', approved August 22, 1961, as now or hereafter amended" and added the last paragraph.

§ 110 ILCS 805/3-25.2. Armed forces recruiting and training

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Sec. 3-25.2. Armed forces recruiting and training. (a) To provide, on an equal basis, access to the campus to the official recruiting representatives of the armed forces of Illinois and the United States for the purpose of informing students of the educational and career opportunities available in the military if the board has provided such access to persons or groups whose purpose is to acquaint students with educational or occupational opportunities available to them. The board is not required to give greater notice regarding the right of access to recruiting representatives than is given to other persons and groups.

(b) To not bar or exclude from its curriculum, campus, or school facilities any armed forces training program or organization operated under the authority of the United States government because the program or organization complies with rules, regulations, or policies of the United States government or any agency, branch, or department thereof.

(Source: P.A. 87-788; 92-651, § 38.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-25.2.

Section 997 of P.A. 92-651 is a no acceleration or delay provision, and Section 998 is a no revival or extension provision.

Effect of Amendments. The 2002 amendment by P.A. 92-651, effective July 11, 2002, added the section heading.

§ 110 ILCS 805/3-26. [Salaries; withholding membership dues]

Sec. 3-26. (a) To make appointments and fix the salaries of a chief administrative officer, who shall be the executive officer of the board, other administrative personnel and all teachers. In making these appointments and fixing the salaries, the board may make no discrimination on account of sex, race, creed, color or national origin.

(b) Upon the written request of an employee, to withhold from the compensation of that employee the membership dues of such employee payable to any specified labor organization as defined in the Illinois Educational Labor Relations Act [115 ILCS 5/1 et seq.]. Under such arrangement, an amount shall be withheld for each regular payroll period which is equal to the prorata share of the annual membership dues plus any payments or contributions and the board shall pay such withholding to the specified labor organization within 10 working days from the time of the withholding.

(Source: P.A. 83-1014.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-26.

CASE NOTES

Analysis
Authority of Arbitrator
Intent

Authority of Arbitrator

Arbitrator was without authority to award positions of employment in the Junior Colleges of this state. Board of Trustees v. Cook County College Teachers Union Local 1600, 22 Ill. App. 3d 1060, 318 N.E.2d 193 (1 Dist. 1974), rev'd on other grounds, 62 Ill. 2d 470, 343 N.E.2d 473 (1976).

Intent

Where the General Assembly provided that the Community College District Board itself, which appoints the chief administrative officer, should "establish tenure policies for the employment of teachers and administrative personnel," it intended, in using this language, to give the board authority to establish its own policies with respect to tenure which in its broadest sense included the limited tenure afforded by a contract calling for a term in excess of one year. Hostrop v. Board of Junior College Dist. No. 515, 523 F.2d 569 (7th Cir. 1975), cert. denied, 425 U.S. 963, 96 S. Ct. 1748, 48 L. Ed. 2d 208 (1976).

§ 110 ILCS 805/3-26.1. [Members of reserve components]

Sec. 3-26.1. Any employee of a community college board who is a member of any reserve component of the United States Armed Services, including the Illinois National Guard, and who is mobilized to active military duty on or after August 1, 1990 as a result of an order of the President of the United States, shall for each pay period beginning on or after August 1, 1990 continue to receive the same regular compensation that he receives or was receiving as an employee of the community college board at the time he is or was so mobilized to active military duty, plus any health insurance and other benefits he is or was receiving or accruing at that time, minus the amount of his base pay for military service, for the duration of his active military service.

In the event any provision of a collective bargaining agreement or any community college board or district policy covering any employee so ordered to active duty is more generous than the provisions contained in this Section the collective bargaining

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agreement or community college board or district policy shall be controlling.

(Source: P.A. 87-631.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-26.1.

§ 110 ILCS 805/3-26.5. Students called to active military service

Sec. 3-26.5. Students called to active military service. A community college shall allow a currently enrolled student who is called to active military service to complete any unfinished courses at a later date at no additional charge, unless course credit has already been given or the student received a full refund upon withdrawing from the course (in which case the student's record shall reflect that the withdrawal is due to active military service). The student must be given priority over other students in reenrolling in the course or courses. The Board may adopt any rules necessary to implement this Section.

(Source: P.A. 94-587, § 50.)

Effective Date. Section 99 of P.A. 94-587 made this section effective upon becoming law. The Act was approved August 15, 2005.

§ 110 ILCS 805/3-27. [Payment of orders]

Sec. 3-27. To pay no orders except for teachers' wages unless at the time there are sufficient funds in the hands of the treasurer to pay such order, except as herein provided.

(a) It shall be lawful for the board to submit to the treasurer a certified copy of the board minutes properly signed by the secretary and chairman or by a majority of the Board, showing all bills approved for payment by the Board and clearly showing to whom and for what purpose each payment is to be made by the treasurer and to what budgetary item each payment shall be debited and such certified copy shall serve as full authority to the treasurer to make the payments as thus approved; this shall not preclude the use of a voucher system, or any other system of sound accounting and business procedure, provided that such system reflects the facts and that the same is in accordance with the regulations prescribed by or approved by the State Board.

(b) It shall be lawful for the Board by resolution to establish revolving funds provided such funds are in the custody of an employee who shall be bonded as provided in Section

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3-19 [110 ILCS 805/3-19] for bonding treasurers and who shall be responsible to the Board and the treasurer, subject to regular annual audit by licensed public accountants and other such examinations as the Board shall deem advisable and kept in accordance with regulations prescribed by the State Board. A monthly report and annual summary of all receipts and expenditures of the fund shall be submitted to the Board and the treasurer. All funds advanced by the treasurer to operate the revolving funds shall be carried on the treasurer's books as cash obligations due the district and all receipts of such revolving funds shall be deposited daily in a bank or savings and loan association to be approved by the treasurer, unless there is no bank or savings and loan association in the community, in which event receipts shall be deposited intact not less than once a week in a bank or savings and loan association approved by the treasurer. All reimbursements to any such revolving funds from the district funds shall be completely itemized as to whom paid, for what purpose, and against what budgetary item the expenditure is chargeable.

No bank or savings and loan association shall receive public funds as permitted by this Section, unless it has complied with the requirements established pursuant to Section 6 of "An Act relating to certain investments of public funds by public agencies", approved July 23, 1943, as now or hereafter amended [30 ILCS 235/6].

(c) The Board shall establish rules and regulations governing conditions under which classes, clubs, and associations may acquire or collect funds in the name of any college and under such regulations as the State Board may prescribe.

(Source: P.A. 83-541.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-27.

CASE NOTES

Applicability

This section is clearly meant to apply to purchases of goods or services and cannot be fairly interpreted to cover situations involving the receipt of funds. Robinson v. City Colleges, 656 F. Supp. 555 (N.D. Ill. 1987).

§ 110 ILCS 805/3-27.1. Contracts

Sec. 3-27.1. Contracts. To award all contracts for purchase of supplies, materials or work involving an expenditure in excess of $25,000 or a lower amount as required by board policy to the lowest responsible bidder considering conformity with specifications, terms

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of delivery, quality, and serviceability; after due advertisement, except the following: (a) contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part; (b) contracts for the printing of finance committee reports and departmental reports; (c) contracts for the printing or engraving of bonds, tax warrants and other evidences of indebtedness; (d) contracts for materials and work which have been awarded to the lowest responsible bidder after due advertisement, but due to unforeseen revisions, not the fault of the contractor for materials and work, must be revised causing expenditures not in excess of 10% of the contract price; (e) contracts for the maintenance or servicing of, or provision of repair parts for, equipment which are made with the manufacturer or authorized service agent of that equipment where the provision of parts, maintenance, or servicing can best be performed by the manufacturer or authorized service agent; (f) purchases and contracts for the use, purchase, delivery, movement, or installation of data processing equipment, software, or services and telecommunications and inter-connect equipment, software, and services; (g) contracts for duplicating machines and supplies; (h) contracts for the purchase of natural gas when the cost is less than that offered by a public utility; (i) purchases of equipment previously owned by some entity other than the district itself; (j) contracts for repair, maintenance, remodeling, renovation, or construction, or a single project involving an expenditure not to exceed $50,000 and not involving a change or increase in the size, type, or extent of an existing facility; (k) contracts for goods or services procured from another governmental agency; (l) contracts for goods or services which are economically procurable from only one source, such as for the purchase of magazines, books, periodicals, pamphlets and reports, and for utility services such as water, light, heat, telephone or telegraph; and (m) where funds are expended in an emergency and such emergency expenditure is approved by 3/4 of the members of the board.

All competitive bids for contracts involving an expenditure in excess of $25,000 or a lower amount as required by board policy must be sealed by the bidder and must be opened by a member or employee of the board at a public bid opening at which the contents of the bids must be announced. Each bidder must receive at least 3 days' notice of the time and place of such bid opening. For purposes of this Section due advertisement includes, but is not limited to, at least one public notice at least 10 days before the bid date in a newspaper published in the district, or if no newspaper is published in the district, in a newspaper of general circulation in the area of the district. Electronic bid submissions shall be considered a sealed document for competitive bid requests if they are received at the designated office by the time and date set for receipt for bids. However, bids for construction purposes are prohibited from being submitted electronically. Electronic bid submissions must be authorized by specific language in the bid documents in order to be considered and must be opened in accordance with electronic security measures in effect at the community college at the time of opening. Unless the electronic submission procedures provide for a secure receipt, the vendor assumes the risk of premature disclosure due to submission in an unsealed form.

The provisions of this Section do not apply to guaranteed energy savings contracts entered into under Article V-A.

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(Source: P.A. 86-1246; 87-1023, § 2; 88-173, § 75; 95-990, § 10; 96-380, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-27.1.

Effect of Amendments. The 1992 amendment, effective September 4, 1992, substituted "$10,000" for "$5000" in the first sentence of the first paragraph and the first sentence of the second paragraph; and substituted "$15,000" for "$10,000" in subsection (j).

The 1993 amendment by P.A. 88-173, effective July 28, 1993, added the last paragraph.

The 2008 amendment by P.A. 95-990, effective October 3, 2008, twice substituted "$25,000 or a lower amount as required by board policy" for "$10,000"; and in the first paragraph substituted "$50,000" for "$15,000".

The 2009 amendment by P.A. 96-380, effective August 13, 2009, added the fourth through last sentences of the second paragraph.

Practice Guides and Treatises.

Construction Litigation § 1.55 Sealed bids (IICLE).

§ 110 ILCS 805/3-27.2. [Joint purchases]

Sec. 3-27.2. To participate in joint purchases by governmental units pursuant to "An Act authorizing certain governmental units to purchase personal property, supplies and services jointly", approved August 15, 1961, as amended [30 ILCS 525/1 et seq.].

(Source: P.A. 78-488.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-27.2.

§ 110 ILCS 805/3-27.3. [Prompt payment]

Sec. 3-27.3. Purchases made pursuant to this Act shall be made in compliance with the "Local Government Prompt Payment Act", approved by the Eighty-fourth General Assembly [50 ILCS 505/1 et seq.].

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(Source: P.A. 84-731.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-27.3.

§ 110 ILCS 805/3-28. [Admission of students]

Sec. 3-28. To adopt regulations for the admission of students which do not conflict with the provisions in Section 3-17 [110 ILCS 805/3-17].

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-28.

§ 110 ILCS 805/3-29. [Indemnification and protection of board members]

Sec. 3-29. To indemnify and protect board members, employees, and student teachers of boards against civil rights damage claims and suits, constitutional rights damage claims and suits, death, bodily injury and property damage claims and suits, including defense thereof, when damages are sought for alleged negligent or wrongful acts while such board member, employee or student teacher is engaged in the exercise or performance of any powers or duties of the board, or is acting within the scope of employment or under the direction of the community college board.

To insure against any loss or liability of the district or board members, employees, and student teachers of boards against civil rights damage claims and suits, constitutional rights damage claims and suits and death, bodily injury and property damage claims and suits, including defense thereof, when damages are sought for alleged negligent or wrongful acts while such board member, employee, or student teacher is engaged in the exercise or performance of any powers or duties of the board, or is acting within the scope of employment or under the direction of the board. Such insurance shall be carried in a company licensed to write such coverage in this State.

(Source: P.A. 83-1391.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-29.

CASE NOTES

Insurance

- Immunity from Suit

State community college was not immune from suit in circuit court where the state board had contracted with a private insurance carrier for liability coverage, no provision existed whereby general funds of the state would be reached for the payment of claims, and the state board possessed that degree of administrative autonomy sufficient to make it amenable to suit in circuit court. Gocheff v. State Community College, 69 Ill. App. 3d 178, 25 Ill. Dec. 477, 386 N.E.2d 1141 (5 Dist. 1979).

§ 110 ILCS 805/3-29.1. [Sick leave]

Sec. 3-29.1. To grant to full time teachers and other employees sick leave not less in amount than 10 days at full pay in each school year. If any such teacher or employee does not use the full amount of annual leave thus allowed, the unused amount shall accumulate to a minimum available leave of 180 days at full pay, including the leave of the current year.

(Source: P.A. 83-735.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-29.1.

§ 110 ILCS 805/3-29.2. [Oral English language proficiency]

Sec. 3-29.2. To establish a program to assess the oral English language proficiency of all persons providing classroom instruction to students at each community college and campus thereof under the jurisdiction, governance or supervision of the board, and to ensure that each person who is not orally proficient in the English language attain such proficiency prior to providing any classroom instruction to students. The program required by this Section shall be fully implemented to ensure the oral English language proficiency of all classroom instructors at each community college and campus thereof under the jurisdiction, governance or supervision of the board by the beginning of the

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1987-88 academic year. Any other provisions of this Section to the contrary notwithstanding, nothing in this Section shall be deemed or construed to apply to, or to require such oral English language proficiency of any person who provides classroom instruction to students in foreign language courses only.

(Source: P.A. 84-1434.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-29.2.

§ 110 ILCS 805/3-29.3. Sexual assault awareness education

Sec. 3-29.3. Sexual assault awareness education. A community college shall provide some form of sexual assault awareness education to all incoming students, whether through a seminar, online training, or some other way of informing students.

(Source: P.A. 95-764, § 55.)

Effective Date. This section is effective January 1, 2009, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

§ 110 ILCS 805/3-29.4. Buildings available for emergency purposes

Sec. 3-29.4. Buildings available for emergency purposes. The board shall make mutually agreed buildings of the college available for emergency purposes, upon the request of the Illinois Emergency Management Agency, the State-accredited emergency management agency with jurisdiction, or the American Red Cross, and cooperate in all matters with the Illinois Emergency Management Agency, local emergency management agencies, State-certified, local public health departments, the American Red Cross, and federal agencies concerned with emergency preparedness and response.

(Source: P.A. 96-57, § 55; 96-1000, § 345; 97-333, § 255.)

Note.

A former multiple version of this section enacted by P.A. 96-84 was redesignated as 110 ILCS 805/3-29.5 by P.A. 96-1000 § 345, effective July 2, 2010.

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A former multiple version of this section enacted by P.A. 96-147 was redesignated as 110 ILCS 805/3-29.6 by P.A. 96-1000 § 345, effective July 2, 2010.

A former multiple version of this section enacted by P.A. 96-148 was redesignated as 110 ILCS 805/3-29.7 by P.A. 96-1000 § 345, effective July 2, 2010.

A former multiple version of this section enacted by P.A. 96-266 was redesignated as 110 ILCS 805/3-29.8 by P.A. 96-1000 § 345, effective July 2, 2010.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

The 2011 revisory amendment, effective August 12, 2012, renumbered the version of 110 ILCS 805/3-29.4 as enacted by P.A. 96-843, as 110 ILCS 805/3-29.9.

Effective Date. Section 99 of P.A. 96-57 makes this section effective upon becoming law. The Act was approved July 23, 2009.

Effect of Amendments. The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, reenacted the section without changes.

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, reenacted the section without changes.

§ 110 ILCS 805/3-29.5. Veterans' Day; moment of silence

Sec. 3-29.5. Veterans' Day; moment of silence. If a community college holds any type of event at the community college on November 11, Veterans' Day, the board shall require a moment of silence at that event to recognize Veterans' Day.

(Source: P.A. 96-84, § 55; 96-1000, § 345.)

Note.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 110 ILCS 805/3-29.4 as 110 ILCS 805/3-29.5.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 96-84 makes this section effective upon becoming law. The Act was approved July 27, 2009.

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§ 110 ILCS 805/3-29.6. Faculty and staff contact with public officials

Sec. 3-29.6. Faculty and staff contact with public officials. All faculty and staff members of a community college are free to communicate their views on any matter of private or public concern to any member of the legislative, executive, or judicial branch of government, State or federal, without notice to or prior approval of the community college, so long as they do not represent that they are speaking for or on behalf of the community college.

(Source: P.A. 96-147, § 50; 96-1000, § 345.)

Note.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 110 ILCS 805/3-29.4 as 110 ILCS 805/3-29.6.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. Section 99 of P.A. 96-147 makes this section effective upon becoming law. The Act was approved August 7, 2009.

§ 110 ILCS 805/3-29.7. Faculty and staff political displays

Sec. 3-29.7. Faculty and staff political displays. A community college may not prohibit any faculty or staff member from (i) displaying political buttons, stickers, or patches while on community college property, provided that such display by any member of the faculty in an instructional setting is for a purpose relevant to the subject of instruction; (ii) attending a partisan political rally, provided that the employee is not on duty; or (iii) displaying a partisan bumper sticker on his or her motor vehicle.

(Source: P.A. 96-148, § 50; 96-1000, § 345.)

Note.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 110 ILCS 805/3-29.4 as 110 ILCS 805/3-29.7.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

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Effective Date. Section 99 of P.A. 96-148 makes this section effective upon becoming law. The Act was approved August 7, 2009.

§ 110 ILCS 805/3-29.8. Administrator and faculty salary and benefits; report

Sec. 3-29.8. Administrator and faculty salary and benefits; report. Each board of trustees shall report to the Board of Higher Education, on or before July 1 of each year, the base salary and benefits of the president or chief executive officer of the community college and all administrators, faculty members, and instructors employed by the community college district. For the purposes of this Section, "benefits" includes without limitation vacation days, sick days, bonuses, annuities, and retirement enhancements.

(Source: P.A. 96-266, § 55; 96-1000, § 345.)

Note.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, redesignated a former multiple version of 110 ILCS 805/3-29.4 as 110 ILCS 805/3-29.8.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. This section is effective January 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

§ 110 ILCS 805/3-29.9. American Sign Language courses

Sec. 3-29.9. American Sign Language courses. To adopt regulations for the awarding of academic credit for the successful completion of any American Sign Language course offered or approved by a community college, which may be applied toward the satisfaction of any foreign language requirements of the community college, except for those requirements related to the content of a student's academic major.

(Source: P.A. 96-843, § 55; 97-333, § 255.)

Note.

A former multiple version of this section enacted by P.A. 96-84 was redesignated as 110 ILCS 805/3-29.5 by P.A. 96-1000 § 345, effective July 2, 2010.

A former multiple version of this section enacted by P.A. 96-147 was redesignated as 110 ILCS 805/3-29.6 by P.A. 96-1000 § 345, effective July 2, 2010.

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A former multiple version of this section enacted by P.A. 96-148 was redesignated as 110 ILCS 805/3-29.7 by P.A. 96-1000 § 345, effective July 2, 2010.

A former multiple version of this section enacted by P.A. 96-266 was redesignated as 110 ILCS 805/3-29.8 by P.A. 96-1000 § 345, effective July 2, 2010.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. This section is effective June 1, 2010, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/2.

Effect of Amendments. The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, redesignated a former multiple version of 110 ILCS 805/3-29.4 as 110 ILCS 805/3-29.9.

§ 110 ILCS 805/3-30. [Powers of board]

Sec. 3-30. The board of any community college district has the powers enumerated in Sections 3-31 through 3-43 of this Act [110 ILCS 805/3-31 through 110 ILCS 805/3-43]. This enumeration of powers is not exclusive but the board may exercise all other powers, not inconsistent with this Act, that may be requisite or proper for the maintenance, operation and development of any college or colleges under the jurisdiction of the board.

(Source: P.A. 78-669; 96-269, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-30.

Effect of Amendments. The 2009 amendment by P.A. 96-269, effective August 11, 2009, added "of this Act" at the end of the first sentence.

CASE NOTES

Analysis

Arbitration
- Classes of Issues
- Employment Matters
Board Rules
- Force of Law
Delegation of Powers

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- Budgetary Controls
- Faculty Qualification
- Fixing of Compensation
- Tenure Policies

Arbitration

- Classes of Issues

The class of issues not subject to arbitration is limited to those areas specifically reserved to a community college board of trustees by statute. Board of Trustees v. Cook County College Teachers Union, Local 1600, 111 Ill. App. 3d 600, 67 Ill. Dec. 462, 444 N.E.2d 698 (1 Dist. 1982).

- Employment Matters

Grievance was arbitrable where the question to be determined by arbitration was not whether the grievant was actually qualified but, whether the decision of the board of trustees was, in fact, a qualification determination or was instead a decision which allowed the college administration to favor an administrator under the guise of making a qualification decision. Board of Trustees v. Cook County College Teachers Local 1600, 139 Ill. App. 3d 617, 94 Ill. Dec. 79, 487 N.E.2d 956 (1 Dist. 1985).

Where collective bargaining agreement prevented arbitrator from "limiting or interfering in any way with the powers, duties, and responsibilities of the board of trustees of a junior college under applicable law," teacher's grievance based on denial of advancement to higher teaching category by college administration pertained to the exercise by the board of its legal responsibilities "under applicable law"; therefore, the grievance could not be the subject of arbitration. Board of Trustees v. Cook County College Teachers Union, 87 Ill. App. 3d 246, 42 Ill. Dec. 317, 408 N.E.2d 1026 (1 Dist. 1980).

Grievances of teacher at junior college concerned with the assignment of teaching programs, the fairness of the work allotted, and the seniority qualifications of various faculty members had to be determined by the board of trustees and not by an arbitrator. Board of Trustees v. Cook County College Teachers Union, 87 Ill. App. 3d 246, 42 Ill. Dec. 317, 408 N.E.2d 1026 (1 Dist. 1980).

Board Rules

- Force of Law

The rules of a community college district board of trustees have the force of law. Board of Trustees v. Federation of College Clerical & Technical Personnel, 153 Ill. App. 3d 37, 106 Ill. Dec. 473, 505 N.E.2d 1264 (1 Dist. 1987).

A provision in a three-year agreement between the community college district board of trustees and an employee's union which conflicted with a board rule was unenforceable under the conformity to law clause in the agreement. Board of Trustees v. Federation of College Clerical & Technical Personnel, 153 Ill. App. 3d 37, 106 Ill. Dec. 473, 505 N.E.2d 1264 (1 Dist. 1987).

Delegation of Powers

- Budgetary Controls

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Where the decision of a community college district board of trustees to discharge five employees and to abolish the temporary positions of two employees was due to a reduction in state funds which the board had not anticipated when the parties entered into a collective bargaining agreement or when the board adopted its annual budget for the fiscal year, and this Act empowered the board to control budgetary considerations and provided for employee dismissals, the board's authority was discretionary unto itself and could not be delegated. Board of Trustees v. Federation of College Clerical & Technical Personnel, 153 Ill. App. 3d 37, 106 Ill. Dec. 473, 505 N.E.2d 1264 (1 Dist. 1987).

- Faculty Qualification

The determination of faculty qualifications is one of a board of trustees' nondelegable discretionary powers, as established through judicial interpretation of this Act. Board of Trustees v. Cook County College Teachers Local 1600, 139 Ill. App. 3d 617, 94 Ill. Dec. 79, 487 N.E.2d 956 (1 Dist. 1985).

- Fixing of Compensation

This Act imposes duties on the members of the Board of Education which cannot be delegated, and these include the fixing of compensation for the teachers employed by the Board. Harper College Faculty Senate v. Board of Trustees, 51 Ill. App. 3d 443, 9 Ill. Dec. 488, 366 N.E.2d 999 (1 Dist. 1977).

- Tenure Policies

When the legislature has given a community college board of trustees discretionary powers to rehire or terminate a non-tenured teacher, the power may not be delegated. Board of Trustees v. Cook County College Teachers Union, 167 Ill. App. 3d 998, 118 Ill. Dec. 638, 522 N.E.2d 93 (1 Dist. 1987).

When the legislature gives a community college district board of trustees discretionary powers, such as whether to rehire or dismiss a nontenured teacher, the power may not be delegated; thus, the courts will refuse to compel arbitration when the arbitrator would be required to perform one of the board's discretionary duties. Board of Trustees v. Federation of College Clerical & Technical Personnel, 153 Ill. App. 3d 37, 106 Ill. Dec. 473, 505 N.E.2d 1264 (1 Dist. 1987).

§ 110 ILCS 805/3-31. [Insurance protection and benefits]

Sec. 3-31. To provide for or participate in provisions for insurance protection and benefits for its employees and their dependents, including but not limited to retirement annuities, medical, surgical and hospital benefits, in such types and amounts as shall be determined by the board for the purpose of aiding in securing and retaining the services of competent employees. Such insurance may include provisions for employees and their dependents who rely on treatment by spiritual means alone through prayer for healing in accord with the tenets and practices of well-recognized religious denominations. Where employee participation in such provisions is involved, the board may with the consent of the employee withhold deductions from the employee's salary necessary to defray the employee's share of such insurance cost.

For purposes of this section, the term "dependent" means an employee's spouse and any unmarried child (1) under the age of 19 years including (a) an adopted child and (b) a step-child or recognized child who lives with the employee in a regular parent-child

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relationship, or (2) under the age of 23 who is enrolled as a fulltime student in any accredited school, college or university.

(Source: P.A. 86-1245.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-31.

§ 110 ILCS 805/3-31.1. [Auxiliary services]

Sec. 3-31.1. To provide, for students and employees, auxiliary services related to the adequate operation of the college. In exercising this power the board may provide, purchase, lease or contract for such services.

(Source: Laws 1967, p. 1229.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-31.1.

§ 110 ILCS 805/3-31.2. [Technical and vocational skills directory]

Sec. 3-31.2. To distribute to every manufacturer doing business within the community, by June 15th of each year, a technical and vocational skills directory of graduating vocational and technical school students. The directory may include the name, address, and telephone number of the graduate; a profile of the graduate's technical and vocational skills obtained while attending the community college; the courses that the graduate completed; and any apprenticeship, on-the-job training, or internship that the graduate has completed while attending the community college. A graduate shall not be included in the directory without the graduate's written consent.

(Source: P.A. 90-521, § 5.)

Effective Date. Section 99 of P.A. 90-521 made this section effective upon becoming law. The Act was approved August 22, 1997.

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§ 110 ILCS 805/3-32. [Tenure policies]

Sec. 3-32. To establish tenure policies for the employment of teachers and administrative personnel, and the cause for removal.

(Source: P.A. 78-699.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-32.

CASE NOTES

Analysis

Academic Qualifications
District Wide Policy
- Upheld
Full-Time Positions
Liability to Tenured Employees
Purpose
Retrenchment
- Dismissal

Academic Qualifications

Little else which would fall more clearly within the ambit of powers requisite or proper for the maintenance, operation and development of a college than the determination of what academic preparation is required of an instructor. Steinmetz v. Board of Trustees, 68 Ill. App. 3d 83, 24 Ill. Dec. 604, 385 N.E.2d 745 (5 Dist. 1978).

District Wide Policy

- Upheld

The decision of a community college board not to grant a right of seniority or a right to bump nontenured teachers, and the choice to make tenure campus wide, not district wide, was upheld; the term "tenure" does not give any greater rights, either substantive or procedural, than the policy which defines the term. Steinmetz v. Board of Trustees, 68 Ill. App. 3d 83, 24 Ill. Dec. 604, 385 N.E.2d 745 (5 Dist. 1978).

Full-Time Positions

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Being classified as a full-time teacher or administrator, according to this section, only qualifies the individual as a teacher or administrator for tenure consideration under whatever policy the board of trustees at that college may establish; it does not grant tenure. Penman v. Board of Trustees, 94 Ill. App. 3d 139, 49 Ill. Dec. 775, 418 N.E.2d 795 (5 Dist. 1981).

Liability to Tenured Employees

This section and 105 ILCS 5/24-11 create a liability to tenured employees where none would otherwise exist; therefore, any claim under the tenure law must be clearly evident. Penman v. Board of Trustees, 94 Ill. App. 3d 139, 49 Ill. Dec. 775, 418 N.E.2d 795 (5 Dist. 1981).

Purpose

Where the General Assembly provided that the Community College District Board itself, which appoints the chief administrative officer, should "establish tenure policies for the employment of teachers and administrative personnel," it intended, in using this language, to give the board authority to establish its own policies with respect to tenure which in its broadest sense included the limited tenure afforded by a contract calling for a term in excess of one year. Hostrop v. Board of Junior College Dist. No. 515, 523 F.2d 569 (7th Cir. 1975), cert. denied, 425 U.S. 963, 96 S. Ct. 1748, 48 L. Ed. 2d 208 (1976).

Retrenchment

- Dismissal

Community college board of trustees policy provisions on tenure which did not specify retrenchment as a reason for dismissal at the time plaintiff was on tenured status was permitted under the authority of this Act. Steinmetz v. Board of Trustees, 68 Ill. App. 3d 83, 24 Ill. Dec. 604, 385 N.E.2d 745 (5 Dist. 1978).

The power to dismiss tenure teachers for reasons of retrenchment is one which is necessarily implied from those powers granted to community college board of trustees under this section. Steinmetz v. Board of Trustees, 68 Ill. App. 3d 83, 24 Ill. Dec. 604, 385 N.E.2d 745 (5 Dist. 1978).

§ 110 ILCS 805/3-33. [Borrowing money; issuing bonds]

Sec. 3-33. To borrow money and issue or cause to be issued bonds for the purposes, and in the manner provided in this Act.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-33.

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§ 110 ILCS 805/3-33.1. [Working cash fund; establishment]

Sec. 3-33.1. The board may, by resolution, establish a fund to be known as a "working cash fund" which shall be maintained and administered for the purpose of enabling the board to have in its treasury at all times sufficient money to meet demands thereon for ordinary and necessary expenditures for all community college purposes.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-33.1.

§ 110 ILCS 805/3-33.2. Bonds for working cash fund

Sec. 3-33.2. Bonds for working cash fund. (a) Except as provided in subsection (b) of this Section, in order to create, maintain or increase such a working cash fund for the purposes mentioned in Section 3-33.1 [110 ILCS 805/3-33.1], the board may incur an indebtedness for such purpose and issue bonds therefor from time to time, in an amount or amounts not exceeding in the aggregate at any one time outstanding 75% of the taxes permitted to be levied for educational purposes and for operations and maintenance of facilities purposes for the then current year to be determined by multiplying the aggregate of the authorized maximum educational tax rate and the maximum operations and maintenance tax rate applicable to such district by the last assessed valuation as determined at the time of the issue of those bonds plus 75% of the last known entitlement of such district to taxes as by law now or hereafter enacted or amended, imposed by the General Assembly of the State of Illinois to replace revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes, pursuant to Article IX, Section 5(c) [Illinois Const., Art. IX, § 5] of the Constitution of the State of Illinois.

(b) For a period of 3 years after the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-912], in order to create, maintain, or increase such a working cash fund for the purposes mentioned in Section 3-33.1, the board may incur an indebtedness for such purpose and issue bonds therefor from time to time, in an amount or amounts not exceeding in the aggregate at any one time outstanding 150% of the taxes permitted to be levied for educational purposes and for operations and maintenance of facilities purposes for the then current year to be determined by multiplying the aggregate of the authorized maximum educational tax rate and the maximum operations and maintenance tax rate applicable to such district by the last assessed valuation as determined at the time of the issue of those bonds plus 150% of the last known entitlement of such district to taxes as by law now or hereafter enacted or amended,

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imposed by the General Assembly of the State of Illinois to replace revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes, pursuant to Article IX, Section 5(c) of the Constitution of the State of Illinois.

(c) The bonds may be issued without submitting the question of issuance thereof to the voters of the community college district for approval. Any bonds issued under this Section shall bear interest at a rate of not more the maximum rate authorized by the Bond Authorization Act, as amended at the time of the making of the contract, and shall mature within 20 years from the date of issue. Subject to the foregoing limitations as to amount, the bonds may be issued in an amount including existing indebtedness which will exceed any statutory debt limitation.

(d) With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4; 89-281, § 10; 96-912, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-33.2.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

Effect of Amendments. The 1995 amendment by P.A. 89-281, effective August 10, 1995, added the section catchline; and in the first paragraph, in the first sentence, deleted "or, in a district to which Article VII applies, the board with the consent of the city council expressed by ordinance" preceding "may incur".

The 2010 amendment by P.A. 96-912, effective June 9, 2010, added the subsection (c) and (d) designations; and added (b).

§ 110 ILCS 805/3-33.3. [Adoption of resolutions]

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Sec. 3-33.3. Before issuing any bonds under Section 3-33.2 [110 ILCS 805/3-33.2], the board shall adopt a resolution designating the purpose and fixing the amount of the bonds proposed to be issued, the maturity thereof, the rate of interest thereon and the amount of taxes to be levied annually for the purpose of paying the principal and interest.

The bonds shall be issued in the corporate name of the community college district. They shall be signed by the chairman and secretary of the board. The bonds shall be sold by the board at not less than par upon such terms as may be approved by the board after advertisement for bids and the proceeds thereof shall be received by the treasurer for the uses herein provided.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-33.3.

§ 110 ILCS 805/3-33.4. Working cash fund; tax to pay bond principal and interest

Sec. 3-33.4. Working cash fund; tax to pay bond principal and interest. The board by resolution, before or at the time of issuing the bonds, shall provide for the levy and collection of a direct annual tax upon all the taxable property within the district sufficient to pay the principal thereof at maturity and to pay the interest thereon as it falls due, which tax shall be in addition to the maximum amount of all other taxes, either educational or operations and maintenance fund taxes, now or hereafter authorized and in addition to any limitations upon the levy of taxes provided by this Act. All monies derived from any tax levied pursuant to this Section when received by the community college treasurer, shall be set apart in a fund specified by the State Board and used in the manner provided in this Section. The bonds may be issued redeemable at the option of the board of the district issuing them on any interest payment date upon terms and in the manner provided in the bond resolution. Upon the filing in the office of the county clerk of each county in which any part of the community college district is situated of a certified copy of such resolution or ordinance, as the case may be, the county clerk shall extend the tax therein provided for. The resolution or ordinance, as the case may be, shall be in force upon its passage.

(Source: P.A. 85-1335; 86-1246; 89-281, § 10.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 103-33.4.

Effect of Amendments. The 1995 amendment by P.A. 89-281, effective August 10, 1995, added the section catchline; and in the first sentence, deleted "or in a district to which Article VII applies the city council upon the demand and under the direction of the board by ordinance" preceding "before or at".

§ 110 ILCS 805/3-33.5. [Working cash fund; manner of use]

Sec. 3-33.5. All monies derived from the issuance of bonds under Section 3-33.2 [110 ILCS 805/3-33.2] when received by the community college treasurer, shall be set apart in the working cash fund and used in the manner provided in this Section. The monies in such fund shall not be regarded as current assets available for appropriation and may not be appropriated by the board in the annual community college budget. The board may appropriate monies to the working cash fund up to the maximum amount allowable in the fund, and the working cash fund may receive such appropriations and any other contributions. In order to provide monies with which to meet ordinary and necessary disbursements for educational and operations and maintenance of facilities purposes, such monies may be transferred, in whole or in part, to the educational purposes or operations and maintenance purposes fund of the board, or to both, and so disbursed therefrom (a) in anticipation of the collection of that part of the taxes so levied which is in excess of the amount or amounts thereof required to pay any warrants, and the interest thereon, theretofore or thereafter issued under this Act, (b) in anticipation of the receipt by the district of monies from the State, Federal government or other sources or (c) in anticipation of such taxes, as by law now or hereafter enacted or amended, imposed by the General Assembly of the State of Illinois to replace revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes, pursuant to Article IX, Section 5(c) of the Constitution of the State of Illinois. Such taxes levied or to be received for educational or operations and maintenance of facilities purposes when collected shall be applied first to the payment of any such warrants or notes and the interest thereon and then to the reimbursement of the working cash fund as hereinafter provided. Such monies from the State, Federal government and other sources, when received, shall be used to reimburse the working cash fund to the extent transfers therefrom were made in anticipation thereof. If taxes in anticipation of the collection of which such transfers are made are not collected in sufficient amounts to effect a complete reimbursement of the working cash fund of the amounts transferred from the working cash fund to the educational fund and operations and maintenance fund the deficiencies between the amounts thus transferred and the amounts repaid from collections shall be general obligations of the educational fund and operations and maintenance fund until repaid either from taxes in anticipation of which transfers were made or from appropriations which may be made in annual community college budgets of sums of money to apply on such general obligations, or until repaid from both the taxes in anticipation of which such transfers were made and from appropriations which may be made in annual community college budgets of sums of

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money to apply on such general obligations.

(Source: P.A. 85-1335; 86-1246.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-33.5.

§ 110 ILCS 805/3-33.6. [Working cash fund; transfer of monies]

Sec. 3-33.6. Monies may be transferred from the working cash fund to the educational fund or operations and maintenance fund only upon the authority of the board, which shall by resolution direct the community college treasurer to make such transfers. The resolution shall set forth (a) the taxes or other funds in anticipation of the collection or receipt of which the working cash fund is to be reimbursed, (b) the entire amount of taxes extended, or which the board shall estimate will be extended or received, for any year in anticipation of the collection of all or part of which such transfers are to be made, (c) the aggregate amount of warrants or notes theretofore issued in anticipation of the collection of such taxes under this Act together with the amount of interest accrued and which the community college board estimates will accrue thereon, (d) the amount of monies which the community college board estimates will be derived for any year from the State, Federal government or other sources in anticipation of the receipt of all or part of which such transfer is to be made, (e) the aggregate amount of receipts from taxes imposed to replace revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes, pursuant to Article IX, Section 5(c) of the Constitution of the State of Illinois, which the corporate authorities estimate will be set aside for the payment of the proportionate amount of debt service and pension or retirement obligations, as required by Section 12 of "An Act in relation to State Revenue Sharing with local government entities", approved July 31, 1969, as amended [30 ILCS 115/12], and (f) the aggregate amount of monies theretofore transferred from the working cash fund to the educational fund or operations and maintenance fund in anticipation of the collection of such taxes or of the receipt of such other monies from other sources. The amount which the resolution shall direct the community college treasurer so to transfer in anticipation of the collection of taxes levied or to be received for any year, together with the aggregate amount of such anticipation tax warrants or notes theretofore drawn against such taxes and the amount of the interest accrued and estimated to accrue thereon, the amount estimated to be required to satisfy debt service and pension or retirement obligations, as set forth in Section 12 of "An Act in relation to State revenue sharing with local government entities", approved July 31, 1969, as amended [30 ILCS 115/12], and the aggregate amount of such transfers theretofore made in anticipation of the collection of such taxes may not exceed 90% of the actual or estimated amount of such taxes extended or to be extended or to be received as set forth in the resolution. The amount which the resolution shall direct the community college treasurer so to transfer in

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anticipation of the receipt of monies to be derived for any year from the State, Federal government or from other sources, together with the aggregate amount theretofore transferred in anticipation of the receipt of any such monies, may not exceed the total amount which it is so estimated will be received from such source. Any community college district may also abolish its working cash fund upon the adoption of a resolution so providing and directing the transfer of any balance in such fund to the operating funds. If a community college district elects to abolish its working cash fund under this provision, it shall not establish another working cash fund, unless approved by the voters of the community college district in the manner provided by Article III of this Act. When monies are available in the working cash fund, they shall, unless the community college district has abolished its working cash fund pursuant to this Section, be transferred to the educational fund and operations and maintenance fund and disbursed for the payment of salaries and other educational purposes and operation and maintenance of facilities purposes expenses so as to avoid, whenever possible, the issuance of tax anticipation warrants.

Monies earned as interest from the investment of the working cash fund, or any portion thereof, may be transferred from the working cash fund to the educational fund or operations and maintenance fund of the district without any requirement of repayment to the working cash fund, upon the authority of the board by separate resolution directing the treasurer to make such transfer and stating the purpose therefor.

(Source: P.A. 85-1335.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-33.6.

§ 110 ILCS 805/3-33.7. Establishment of lines of credit

Sec. 3-33.7. Establishment of lines of credit. The board may establish a line of credit with a bank or other financial institution in an amount not to exceed the following:

(1) if anticipating State revenues due in the current fiscal year, 85% of the amount or amounts of the revenues due in the current fiscal year, as certified by the President/CEO of the State Board or other official in a position to provide assurances as to the amounts; and

(2) if anticipating State revenues expected to be due in the next subsequent fiscal year, 50% of the amount or amounts of the revenues due in the current fiscal year, as certified by the President/CEO of the State Board or other official in a position to provide assurances as to the amounts.

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All moneys so borrowed shall be repaid exclusively from the anticipated revenues within 60 days after the revenues have been received. Borrowing authorized under subdivisions (1) and (2) of this Section shall bear interest at a rate not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], from the date of issuance until paid.

Prior to establishing a line of credit under this Section, the board shall authorize, by resolution, the line of credit. The resolution shall set forth facts demonstrating the need for the line of credit, state the amount to be borrowed, establish a maximum interest rate limit not to exceed that set forth in this Section, and provide a date by which the borrowed funds must be repaid. The resolution shall direct the relevant officials to make arrangements to set apart and hold the revenue, as received, that will be used to repay the borrowing. In addition, the resolution may authorize the relevant officials to make partial repayments of the borrowing as the revenues become available and may contain any other terms, restrictions, or limitations not inconsistent with the provisions of this Section.

(Source: P.A. 96-912, § 5.)

Effective Date. Section 99 of P.A. 96-912 made this section effective upon becoming law. The Act was approved June 9, 2010.

§ 110 ILCS 805/3-34. [Interfund loans]

Sec. 3-34. To authorize the treasurer to make interfund loans from any fund to any other fund maintained by the board and to make the necessary transfers therefor, but each such loan must be repaid and retransferred to the proper fund within one year.

(Source: Laws 1967, p. 1229.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-34.

§ 110 ILCS 805/3-35: Repealed by P.A. 96-57, § 60, effective July 23, 2009.

§ 110 ILCS 805/3-36. [Condemnation]

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Sec. 3-36. To buy one or more sites for college purposes with necessary ground, and to take and purchase the site for a college site either with or without the owner's consent, by condemnation or otherwise; to pay the amount of any award made by a jury in a condemnation proceedings; and to select and purchase all sites without the submission of the question to any referendum. No such purchase may be made without the prior approval of the State Board. Purchases under this Section may be made by contract for deed when the board considers the use of such a contract to be advantageous to the district but a contract for deed may not provide for interest on the unpaid balance of the purchase price at a rate in excess of 6% per year nor for a period of more than 10 years in which that price is to be paid. Title to all real estate shall be taken and held in the name of the board of the community college district.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-36.

§ 110 ILCS 805/3-36.5. Eminent domain

Sec. 3-36.5. Eminent domain. Notwithstanding any other provision of this Act, any power granted under this Act to acquire property by condemnation or eminent domain is subject to, and shall be exercised in accordance with, the Eminent Domain Act [735 ILCS 30/1-1-1 et seq.].

(Source: P.A. 94-1055, § 95-5-545.)

Effective Date. Section 99-5-5 of P.A. 94-1055 makes this section effective January 1, 2007.

§ 110 ILCS 805/3-37. [Building, buying or leasing building]

Sec. 3-37. To build, buy or lease suitable buildings upon a site approved by the State Board and issue bonds, in the manner provided in Article IIIA [110 ILCS 805/3A-1 et seq.], or, with the prior approval of the Illinois Community College Board, enter into an installment loan arrangement with a financial institution with a payback period of less than 20 years provided the board has entered into a contractual agreement which provides sufficient revenue to pay such loan in full from sources other than local taxes, tuition, or State appropriations and to provide adequate additional operation and maintenance

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funding for the term of the agreement, for the purpose of borrowing money to buy sites and to either or both buy or build and equip buildings and improvements.

Any provision in a contractual agreement providing for an installment loan agreement authorized by this Section that obligates the State of Illinois is against public policy and shall be null and void.

(Source: P.A. 83-576; 91-776, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-37.

Effect of Amendments. The 2000 amendment by P.A. 91-776, effective June 9, 2000, in the first sentence deleted "the Board of Higher Education and" following "prior approval of", and "and for the purpose of transferring funds to the Illinois Building Authority" at the end of the first sentence.

§ 110 ILCS 805/3-38. [Purchase of personal property]

Sec. 3-38. To lease, with or without an option to purchase, for a period not to exceed 5 years or purchase under an installment contract extending over a period of not more than 5 years, with interest at a rate not to exceed 6% per year on the unpaid principal, such apparatus, equipment, machinery or other personal property as may be required when authorized by the affirmative vote of 2/3 of the members of the board. To lease for a period not to exceed 20 years such rooms, buildings and land, or any one or more of such items, as may be required when authorized by the affirmative vote of 2/3 of the members of the board. Any lease for rooms, buildings or land for a period exceeding 5 years must have the prior approval of the State Board. The provisions of this Section do not apply to guaranteed energy savings contracts or leases entered into under Article V-A.

(Source: Laws 1967, p. 1229; P.A. 88-173, § 75.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-38.

Effect of Amendments. The 1993 amendment by P.A. 88-173, effective July 28, 1993, added the last sentence.

OPINIONS OF ATTORNEY GENERAL

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Contract Prohibited

- Lease

Under an intergovernmental agreement the exposition authority assigned to Juliet Junior College all of its rights, title and interests and obligations and duties and complete usage and control of property leased to the exposition authority of the Juliet Junior College Foundation with certain minor exceptions in return for specified annual payments to be made over the life of the agreement; it is clear that the agreement is a lease and not a license and is therefore prohibited by this section. 1985 Op. Atty. Gen. (85-010).

§ 110 ILCS 805/3-38.1. [Insurance]

Sec. 3-38.1. To procure fire and extended coverage insurance on the buildings, furnishings, machinery, equipment and other personal property used for community college purposes. To procure liability and other types of insurance, assurance, and indemnity bonds considered appropriate by the board. Any insurance must be purchased from a company authorized to write such insurance in this State.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-38.1.

§ 110 ILCS 805/3-38.2. [Fire protection]

Sec. 3-38.2. To enter into contracts with any municipality or fire protection district in which any community college buildings are located for the purpose of reimbursing such fire protection district or municipality for the additional costs of providing fire fighting equipment, apparatus or additional paid personnel occasioned by the presence of community college buildings within the municipality or fire protection district.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-38.2.

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§ 110 ILCS 805/3-39. [Federal funds]

Sec. 3-39. To accept federal funds when proffered for all types of instructional programs, for student services and counseling, and for construction of physical facilities.

(Source: Laws 1965, p. 1529.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-39.

§ 110 ILCS 805/3-39.1. [Gifts]

Sec. 3-39.1. To accept gifts, grants or legacies from any source when made for community college purposes.

(Source: P.A. 83-388.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-39.1.

§ 110 ILCS 805/3-40. [Educational service contracts]

Sec. 3-40. To enter into contracts with any person, organization, association, educational institution, or governmental agency for providing or securing educational services. Any initial contract with a public university or a private degree-granting college or university entered into on or after July 1, 1985 shall have prior approval of the State Board and the Illinois Board of Higher Education.

(Source: P.A. 84-509.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-40.

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§ 110 ILCS 805/3-40.1. [Joint agreements]

Sec. 3-40.1. To enter into joint agreements with school boards to acquire and improve sites, construct and equip facilities thereon and lease and equip facilities deemed necessary by the parties to the joint agreement, and to maintain programs and to provide for financing of the foregoing for advanced vocational training and career education and to bill each participating student's school district for an amount equal to the per capita cost of operating the community college or to charge for participation in accordance with the joint agreement between the community college district and the student's school district under Section 10-22.20a of "The School Code", as now or hereafter amended [105 ILCS 5/10-22.20a].

Nothing herein contained shall be construed to restrict or prohibit the rights of community college districts or school districts to enter into joint agreements under the provisions of the Intergovernmental Cooperation Act, as now or hereinafter amended [5 ILCS 220/1 et seq.].

(Source: P.A. 79-76.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-40.1.

§ 110 ILCS 805/3-40.2. [High school dropouts and academically deficient graduates; agreements]

Sec. 3-40.2. To enter into contracts or agreements with any corporation that is organized for educational purposes under the General Not For Profit Corporation Act of 1986 [805 ILCS 105/101.01 et seq.] and that, consistent with those purposes, establishes and administers a program to provide the academic, occupational and other training necessary to qualify high school dropouts and academically deficient high school graduates, who are at least 16 but not more than 20 years of age and who enroll in the program, for gainful employment, for acceptance into the U. S. Military Service or its Reserve or National Guard units, or for admittance to colleges and universities that award baccalaureate degrees. Under the terms of any such contract or agreement the community college district is authorized to (i) provide educational services and vocational training to persons enrolled in the program established and administered by the not for profit corporation with which the district has contracted, (ii) charge and collect tuition and fees for providing the educational services and vocational training as provided in the contract or agreement, (iii) assist the not for profit corporation with which the district has contracted in applying and qualifying for federal and State grant funds to be expended for the conduct and operation of the program established and administered by the corporation

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as set forth in this Section, and (iv) in the event any federal or State grants are made to the community college district for purposes of the program with respect to which the contract or agreement is entered into, to accept and distribute the grant funds so received in accordance with the terms of the grant for the benefit of the program for which the grants are made. The authority of any community college district to exercise the powers granted to it under this Section is subject to the prior review and approval of the State Board under Section 2-11.1 [110 ILCS 805/2-11.1].

(Source: P.A. 87-1044, § 1.)

Effective Date. This section became effective July 1, 1993 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 110 ILCS 805/3-41. [Sale of personal or real property]

Sec. 3-41. To sell at private or public sale any personal or real property belonging to the district and not needed for community college purposes.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-41.

§ 110 ILCS 805/3-42. [Personnel employment]

Sec. 3-42. To employ such personnel as may be needed, to establish policies governing their employment and dismissal, and to fix the amount of their compensation. In the employment, establishment of policies and fixing of compensation the board may make no discrimination on account of sex, race, creed, color or national origin.

Residence within any community college district or outside any community college district shall not be considered:

(a) in determining whether to retain or not retain any employee of a community college employed prior to July 1, 1977 or prior to the adoption by the community college board of a resolution making residency within the community college district of some or all employees a condition of employment, whichever is later;

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(b) in assigning, promoting or transferring any employee of a community college to an office or position employed prior to July 1, 1977 or prior to the adoption by the community college board of a resolution making residency within the community college district of some or all employees a condition of employment, whichever is later; or

(c) in determining the salary or other compensation of any employee of a community college.

(Source: P.A. 80-248.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-42.

CASE NOTES

Analysis

Absolute Immunity
Arbitration
- Faculty Qualifications
- Promotions
Authority to Employ
Compensation
- Credit for Prior Occupations
Delegation of Powers
- In General
- Faculty Qualification
- Not Permitted

Absolute Immunity

Members of community college board of trustees who made charges against president of college and adopted notice of reasons for terminating him acted within the scope of their official duties and were absolutely immune from any liability for defamation stemming from their charges; president could not overcome their privilege by contending charges were false. Bakalis v. Board of Trustees, 948 F. Supp. 729 (N.D. Ill. 1996), aff'd sub nom. Bakalis v. Golembeski, 125 F.3d 576 (7th Cir. 1997).

Arbitration

- Faculty Qualifications

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Grievance was arbitrable where the question to be determined by arbitration was not whether the grievant was actually qualified but whether the decision of a board of trustees was, in fact, a qualification determination or was instead a decision which allowed the college administration to favor an administrator under the guise of making a qualification decision. Board of Trustees v. Cook County College Teachers Local 1600, 139 Ill. App. 3d 617, 94 Ill. Dec. 79, 487 N.E.2d 956 (1 Dist. 1985).

- Promotions

Arbitration of when faculty promotions became effective did not interfere with the board of trustees' nondelegable duty to control its budget by determining the timing of salary adjustments that were necessarily linked to promotion decisions. Board of Trustees v. Cook County College Teachers Union, Local 1600, 111 Ill. App. 3d 600, 67 Ill. Dec. 462, 444 N.E.2d 698 (1 Dist. 1982).

Where a community college board agreed to a fixed date in a collective bargaining agreement establishing when promotions would take effect, to the benefit of the faculty members whom the board had found qualified, the issue involved had not been reserved to the board, and was an arbitrable matter which could be enforced through the courts. Board of Trustees v. Cook County College Teachers Union, Local 1600, 111 Ill. App. 3d 600, 67 Ill. Dec. 462, 444 N.E.2d 698 (1 Dist. 1982).

The matter of faculty promotions is a nondelegable power of a board of trustees, which it cannot be compelled to submit to arbitration. Board of Trustees v. Cook County College Teachers Union, Local 1600, 62 Ill. 2d 470, 343 N.E.2d 473 (1976).

Authority to Employ

Boards of Trustees of the various community colleges are given sole authority to employ personnel. Goodman v. Board of Trustees, 498 F. Supp. 1329 (N.D. Ill. 1980).

Compensation

- Credit for Prior Occupations

The determination of whether to allow credit for certain kinds of prior occupational experience falls within the statutory power of the board of a community college district to fix the amount of compensation to be paid to those whom it employs. Darnell v. Board of Trustees, 151 Ill. App. 3d 742, 104 Ill. Dec. 666, 502 N.E.2d 1326 (5 Dist. 1987).

Delegation of Powers

- In General

Fact that the Illinois courts had held that the authority given by Illinois' Public Community College Act, 110 ILCS 805/3-42, to community college district boards to establish policies governing the employment and dismissal of community college personnel could not be delegated was not necessarily determinative of a delegation issue; instead, courts had to take into account both state positive law and state custom that had the force of law. Consequently, where a former college program manager expressly alleged that final policymaking authority was delegated to two college employees, the court could not say on a Fed. R. Civ. P. 12(b)(6) motion that the manager would not be able to prove any set of facts showing that the two employees were delegated final policymaking authority. Carpanzano v. College of Dupage, F. Supp. 2d , 2003 U.S. Dist. LEXIS 22004 (N.D. Ill. Dec. 5, 2003).

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- Faculty Qualification

The determination of faculty qualifications is one of a board of trustees' nondelegable discretionary powers, as established through judicial interpretation of this Act. Board of Trustees v. Cook County College Teachers Local 1600, 139 Ill. App. 3d 617, 94 Ill. Dec. 79, 487 N.E.2d 956 (1 Dist. 1985).

- Not Permitted

When the legislature has given a community college board of trustees discretionary powers to rehire or terminate a non-tenured teacher, the power may not be delegated. Board of Trustees v. Cook County College Teachers Union, 167 Ill. App. 3d 998, 118 Ill. Dec. 638, 522 N.E.2d 93 (1 Dist. 1987).

The board of education has nondelegable duty to establish and maintain an employment policy, and this duty cannot be overcome by either the recognition agreement or any other contract. Harper College Faculty Senate v. Board of Trustees, 51 Ill. App. 3d 443, 9 Ill. Dec. 488, 366 N.E.2d 999 (1 Dist. 1977).

§ 110 ILCS 805/3-42.1. [Security Department of the community college]

Sec. 3-42.1. (a) To appoint law enforcement officer and non-law enforcement officer members of the community college district police department or department of public safety.

(b) Members of the community college district police department or department of public safety who are law enforcement officers, as defined in the Illinois Police Training Act [50 ILCS 705/1 et seq.], shall be peace officers under the laws of this State. As such, law enforcement officer members of these departments shall have all of the powers of police officers in cities and sheriffs in counties, including the power to make arrests on view or on warrants for violations of State statutes and to enforce county or city ordinances in all counties that lie within the community college district, when such is required for the protection of community college personnel, students, property, or interests. Such officers shall have no power to serve and execute civil process.

As peace officers in this State, all laws pertaining to hiring, training, retention, service authority, and discipline of police officers, under State law, shall apply. Law enforcement officer members must complete the minimum basic training requirements of a police training school under the Illinois Police Training Act. Law enforcement officer members who have successfully completed an Illinois Law Enforcement Training and Standards Board certified firearms course shall be equipped with appropriate firearms and auxiliary weapons.

(c) Non-law enforcement officer members of the community college police, public safety, or security departments whose job requirements include performing patrol and security type functions shall, within 6 months after their initial hiring date or the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-269], whichever is later, be required to successfully complete the 20-hour basic security training course required by (i) the Department of Financial and Professional Regulation, Division of

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Professional Regulation for Security Officers, (ii) by the International Association of College Law Enforcement Administrators, or (iii) campus protection officer training program or a similar course certified and approved by the Illinois Law Enforcement Training and Standards Board. They shall also be permitted to become members of an Illinois State Training Board Mobile Training Unit and shall complete 8 hours in continuing training, related to their specific position of employment, each year. The board may establish reasonable eligibility requirements for appointment and retention of non-law enforcement officer members.

All non-law enforcement officer members authorized to carry weapons, other than firearms, shall receive training on the proper deployment and use of force regarding such weapons.

(Source: P.A. 79-1002; 96-269, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-42.1.

Effect of Amendments. The 2009 amendment by P.A. 96-269, effective August 11, 2009, rewrote the section.

§ 110 ILCS 805/3-42.2. [Parking regulations]

Sec. 3-42.2. (a) To establish parking regulations, to regulate, and control the speed of, travel on all paths, driveways and roadways which are owned and maintained by, and within the property of, the community college district, to prohibit the use of such paths, driveways and roadways for racing or speeding purposes, to exclude therefrom traffic and vehicles, and to prescribe such fines and penalties for the violation of such traffic regulations as cities and villages are allowed to prescribe for the violation of their traffic ordinances.

(b) To establish such other regulations as are determined to be necessary for the protection of community college students, staff, visitors, properties, and interests or for the proper maintenance, operation, or development of any community college or colleges under the jurisdiction of the board, and to prescribe fines and penalties for the violation of these regulations.

(c) Fines and penalties recovered under this Section shall be paid, collected and used in accordance with the policy of the local community college board.

(d) The local community college board may enforce the provisions of this Section by use of members of the police department, public safety department, or security department of the community college or by agreeing in writing with a municipality, county or the State

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for its law enforcement officers to provide such enforcement.

(Source: P.A. 81-311; 96-269, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-42.2.

Effect of Amendments. The 2009 amendment by P.A. 96-269, effective August 11, 2009, added the subsection designations; added (b); and substituted "police department, public safety department, or security department" for "Security Department" in (d).

§ 110 ILCS 805/3-42.3. Wind and solar farms

Sec. 3-42.3. Wind and solar farms. To own and operate a wind or solar generation turbine farm, either individually or jointly with a unit of local government, school district, or community college district that is authorized to own and operate a wind or solar generation turbine farm, that directly or indirectly reduces the energy or other operating costs of the community college district. The board may ask for the assistance of any State agency, including without limitation the State Board, the Illinois Power Agency, or the Environmental Protection Agency, in obtaining financing options for a wind or solar generation turbine farm.

(Source: P.A. 95-390, § 10; 95-805, § 20; 96-725, § 20.)

Effective Date. Section 99 of P.A. 95-390 made this section effective upon becoming law. The Act was approved August 23, 2007.

Effect of Amendments. The 2008 amendment by P.A. 95-805, effective August 12, 2008, inserted "with a unit of local government, school district, or community college district that is authorized to own and operate a wind generation turbine farm" in the first sentence and made a related change; and inserted "the Illinois Power Agency" and made a related change.

The 2009 amendment by P.A. 96-725, effective August 25, 2009, substituted "and solar farms" for "farm" in the section heading; and inserted "or solar" throughout.

§ 110 ILCS 805/3-43. [Use of buildings]

Sec. 3-43. To grant use of the community college buildings, when not occupied by the college, for religious meetings, for evening schools and literary societies, and for such

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other meetings as the board deems proper; to grant the use of assembly halls and classrooms and grounds, including light, heat and attendants, for public lectures, concerts, and other educational, recreational and social interests, under such provisions and control as they may see fit to impose and to conduct, or provide for the conducting of recreational, social and civic activities in the college buildings or on the college grounds, or both.

(Source: P.A. 86-489.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-43.

CASE NOTES

Powers of Board

The powers defined by this section belong to the community college board, not to the individual members thereof, as community college boards are collective bodies. Jenner v. Wissore, 164 Ill. App. 3d 259, 115 Ill. Dec. 534, 517 N.E.2d 1220 (5 Dist. 1988).

Plaintiff does not have any separate interest as an individual sufficient to allow her to bring suit against a fellow board member, and her status as a Community College District Board member cannot, standing alone, permit her to unilaterally "step into the shoes of the board" and file suit to vindicate its collective rights. Jenner v. Wissore, 164 Ill. App. 3d 259, 115 Ill. Dec. 534, 517 N.E.2d 1220 (5 Dist. 1988).

§ 110 ILCS 805/3-44. [Retirement rights]

Sec. 3-44. Notwithstanding any provision of this Act to the contrary all retirement rights that had accrued to the benefit of a teacher prior to the time the teacher was first employed by a community college district shall continue in full force and effect as provided in Article 15 of the Illinois Pension Code [40 ILCS 5/15-101 et seq.].

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-44.

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§ 110 ILCS 805/3-45. [Tuition]

Sec. 3-45. Notwithstanding any provision of this Article to the contrary a community college board may require tuition of students as provided in Section 6-4 of this Act [110 ILCS 805/6-4].

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-45.

§ 110 ILCS 805/3-46.1. Accounts and claims

Sec. 3-46.1. Accounts and claims. The board of trustees of a community college district may certify to the State Board the amount that is due and payable on any account or claim in favor of the board of trustees against any person. The State Board may require the board of trustees to submit such additional documents and data as the State Board deems necessary to support and evidence the account or claim as certified to it, and may accept the same as an account or claim in favor of the State within the meaning and for the purpose of Section 10.05 of the State Comptroller Act [15 ILCS 405/10.05]. Any account or claim certified to and accepted by the State Board in accordance with this Section shall be deemed due, payable and assigned to the State Board by operation of law. The Illinois Community College Board shall be the notifying agency under Section 10.05 of the State Comptroller Act [15 ILCS 405/10.05] with respect to each account or claim assigned to it by operation of law under this Section 3-46.1 and shall account to the board of trustees of the community college district for all payments that the Illinois Community College Board receives pursuant to this Section and Section 10.05 of the State Comptroller Act [15 ILCS 405/10.05] on behalf of that board of trustees. The account or claim with respect to which the Illinois Community College Board receives any such payments shall be credited for the full amount of all payments so received.

(Source: P.A. 87-741.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-46.1.

§ 110 ILCS 805/3-47. [Investment of funds]

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Sec. 3-47. Community college funds are public funds within the meaning of the Public Funds Investment Act [30 ILCS 235/0.01 et seq.] and may be invested by the board as provided in that Act, except as otherwise provided in this Act.

Any community college district, with the approval of its board, is authorized to enter into agreements of any definite or indefinite term regarding the deposit, redeposit, investment, reinvestment or withdrawal of community college funds, including, without limitation, agreements with other community college districts, agreements with township and school treasurers authorized by Section 8-7 of the School Code [105 ILCS 5/8-7] and agreements with educational service regions authorized by Section 3-9.1 of the School Code [105 ILCS 5/3-9.1].

Each community college district is permitted to (i) combine moneys from more than one fund of such community college district for the purpose of investing such funds and (ii) join with other community college districts, with township and school treasurers and with educational service regions in investing community college funds, school funds and educational service region funds. Such joint investments shall be made only in investments authorized by law for the investment of community college funds or, in the case of investments made jointly with school and township treasurers and educational service regions, in investments authorized by law for the investment of community college funds, school funds and educational service region funds. When moneys of more than one fund of a single community college district are combined for investment purposes or when moneys of a community college district are combined with moneys of other community college districts, school districts or educational service regions, the moneys combined for such purpose shall be accounted for separately in all respects, and the earnings from such investment shall be separately and individually computed and recorded, and credited to the fund or community college district, school district or educational service region, as the case may be, for which the investment was acquired.

(Source: P.A. 84-1424; 87-968, § 3.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-47.

Effect of Amendments. The 1992 amendment, effective January 1, 1993, in the first paragraph, in the first sentence, substituted "the Public Funds Investment Act" for "An Act relating to certain investments of public funds by public agencies, approved July 23, 1943, as now or hereafter amended"; in the second paragraph deleted "and" preceding "agreements with township", and added "and agreements with educational service regions authorized by Section 3-9.1 of the School Code"; in the third paragraph, in the first sentence, deleted "and" preceding "with township and school treasurers" and preceding "school funds", inserted "and with educational service regions" after "treasurers" and added "and educational service region funds" at the end of the sentence, in the second sentence inserted "and educational service regions" after "treasurers", deleted "both" preceding "community college funds" and inserted "and educational service region funds" at the end of the sentence and in the last sentence deleted "or moneys of" preceding "school districts", inserted "or educational service regions", deleted "or" following "college district"

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and inserted "or educational service region" following "school district"; and made other stylistic changes.

§ 110 ILCS 805/3-48. [Interest in contracts or property]

Sec. 3-48. No community college board member shall be interested, directly or indirectly, in his own name or in the name of any other person, association, trust or corporation, in any contract, work, or business of the district or in the sale of any article, whenever the expense, price, or consideration of the contract, work, business, or sale is paid either from the treasury or by any assessment levied by any statute or ordinance. No community college board member shall be interested, directly or indirectly, in the purchase of any property which (1) belongs to the district, or (2) is sold for taxes or assessments, or (3) is sold by virtue of legal process at the suit of the district.

However, any board member may provide materials, merchandise, property, services, or labor, if:

A.the contract is with a person, firm, partnership, association, corporation, or cooperative association in which the board member has less than a 71/2% share in the ownership; and

B.such interested board member publicly discloses the nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract; and

C.such interested board member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum; and

D.such contract is approved by a majority vote of those board members presently holding office; and

E.the contract is awarded after sealed bids to the lowest responsible bidder if the amount of the contract exceeds $1500, or awarded without bidding if the amount of the contract is less than $1500; and

F.the award of the contract would not cause the aggregate amount of all such contracts so awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed $25,000.

In addition to the above exemption, any board member may provide materials, merchandise, property, services or labor if:

A.the award of the contract is approved by a majority vote of the board provided that any such interested member shall abstain from voting; and

B.the amount of the contract does not exceed $250; and

C.the award of the contract would not cause the aggregate amount of all such contracts so awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed $500; and

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D.such interested member publicly discloses the nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract; and

E.such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum.

A contract for the procurement of public utility services by a district with a public utility company is not barred by this Section by one or more members of the board being an officer or employee of the public utility company or holding an ownership interest of no more than 71/2% in the public utility company. An elected or appointed member of the board having such an interest shall be deemed not to have a prohibited interest under this Section.

This Section does not prohibit a student member of the board from maintaining official status as an enrolled student, from maintaining normal student employment at the college or from receiving scholarships or grants when the eligibility for the scholarships or grants is not determined by the board.

Nothing contained in this Section shall preclude a contract of deposit of monies, loans or other financial services by a district with a local bank or local savings and loan association, regardless of whether a member or members of the community college board are interested in such bank or savings and loan association as a director, as an officer or employee or as a holder of less than 71/2% of the total ownership interest. A member or members holding such an interest in such a contract shall not be deemed to be holding a prohibited interest for purposes of this Act. Such interested member or members of the community college board must publicly state the nature and extent of their interest during deliberations concerning the proposed award of such a contract, but shall not participate in any further deliberations concerning the proposed award. Such interested member or members shall not vote on such a proposed award. Any member or members abstaining from participation in deliberations and voting under this Section may be considered present for purposes of establishing a quorum. Award of such a contract shall require approval by a majority vote of those members presently holding office. Consideration and award of any such contract in which a member or members are interested may only be made at a regularly scheduled public meeting of the community college board.

Any board member who violates this Section is guilty of a Class 4 felony and in addition thereto any office held by such person so convicted shall become vacant and shall be so declared as part of the judgment of the court.

(Source: P.A. 86-930.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-48.

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§ 110 ILCS 805/3-49. [Employment Advisory Board]

Sec. 3-49. Each Board of Trustees of a Community College District may, at its discretion, appoint an Employment Advisory Board. Such Employment Advisory Board shall consist of not more than 15 members appointed to terms of 4 years, and their membership shall include, but not be limited to, representatives of the following groups:

(a) small businesses;

(b) large businesses which employ residents of the Community College District;

(c) governmental units which employ residents of the Community College District;

(d) non-profit private organizations;

(e) organizations which serve as advocates for the handicapped; and

(f) employee organizations.

(Source: P.A. 85-458.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-49.

§ 110 ILCS 805/3-50. [Employment Advisory Board officers]

Sec. 3-50. The Employment Advisory Board shall, upon its first meeting, elect one of its members as chairman and another as vice chairman. A secretary, who may or may not be a member, shall also be elected. A majority of the Employment Advisory Board shall constitute a quorum. Members of the Employment Advisory Board shall serve without compensation. Any vacancies, through resignations or otherwise, shall be filled by the Community College District Board of Trustees.

(Source: P.A. 85-458.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-50.

§ 110 ILCS 805/3-51. [Employment Advisory Board advisory report]

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Sec. 3-51. The Employment Advisory Board shall meet at least once within each calendar quarter. It shall issue an advisory report, at least once within each calendar year, to its Community College District Board of Trustees concerning:

(a) the medium and long-term employment prospects of the communities comprising their Community College District;

(b) the course and instruction mix most likely to produce community college graduates, associates and alumni with the job skills necessary for local employment; and

(c) the practicality of using existing community college employees, contractors, instructors, professors, classrooms, and facilities to train and retrain employees of existing public and private enterprises within the boundaries of their Community College District to enhance their continued employment skills.

The Employment Advisory Board shall also produce special advisory reports, upon the request of the chairman or acting chairman of the Board of Trustees of their Community College District.

(Source: P.A. 85-458.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-51.

§ 110 ILCS 805/3-52. [Nonpartisan]

Sec. 3-52. Employment Advisory Boards shall be nonpartisan. Nothing in this Act shall prevent appointees to Employment Advisory Boards from also being members of the Board of Trustees, or from being enrolled community college students, of their Community College District.

(Source: P.A. 85-458.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-52.

§ 110 ILCS 805/3-55. [Community college boards in associations]

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Sec. 3-55. Community college boards may form, join and provide for the expenses of associations of Illinois community college boards formed, in compliance with this Section, for the purpose of conducting community college board institutes and otherwise disseminating and interchanging information regarding community college board problems, duties and responsibilities.

Such an association shall adopt a constitution or by-laws providing for admission to membership of any community college board whose district lies wholly or in part within the area covered by the association, providing for the election of the officers and governing board of the association at an annual meeting of the association or in some other manner which will insure to the member boards an equal opportunity to participate in the election, and providing otherwise for the effective operation of the association on behalf of the member boards. Within 30 days of the adoption thereof, the association shall file a copy of the constitution or by-laws, or of any amendment thereto, with the Governor and with the State Board.

No community college board member may receive any compensation for services rendered to any such association, whether as an officer or otherwise, but shall be entitled to reimbursement for expenses necessarily incurred in the work of the association.

Each association shall perform such duties and exercise such powers as are provided for employers for purposes of Article 15 of the Illinois Pension Code [40 ILCS 5/15-101 et seq.].

Within 60 days after the close of its fiscal year annually, each such association shall make an annual report to the Governor and to the State Board setting forth the activities of the association for the preceding fiscal year, the institutes held, the subjects discussed and the attendance, and shall furnish the Governor and the State Board copies of all publications sent to members.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103-55.

§ 110 ILCS 805/3-60. Provision of student and social security information prohibited

Sec. 3-60. Provision of student and social security information prohibited. (a) A community college, including its agents, employees, student or alumni organizations, or any affiliates, may not provide a student's name, address, telephone number, social security number, e-mail address, or other personal identifying information to a business organization or financial institution that issues credit or debit cards, unless the student is

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21 years of age or older. This prohibition does not apply to service providers of the community college that (i) assist the community college in the electronic disbursement of refunds, including, but not limited to, financial aid refunds, and (ii) do not provide loan or credit services.

(b) A community college may not print an individual's social security number on any card or other document required for the individual to access products or services provided by the community college.

(Source: P.A. 93-549, § 55; 94-226, § 145; 96-261, § 955; 96-1391, § 50.)

Effective Date. Section 99 of P.A. 93-549 made this section effective August 19, 2003.

Effect of Amendments. The 2005 amendment by P.A. 94-226, effective January 1, 2006, added the (a) designation and added (b).

The 2009 amendment by P.A. 96-261, effective January 1, 2010, inserted "including its agents, employees, student or alumni organizations, or any affiliates" in (a); and made related changes.

The 2010 amendment by P.A. 96-1391, effective July 29, 2010, added the last sentence to the end of (a).

ARTICLE IIIA.

BONDS

§ 110 ILCS 805/3A-1. [Borrowing of money by bonds]

Sec. 3A-1. Any community college district may borrow money for the purpose of building, equipping, altering or repairing community college buildings or purchasing or improving community college sites, or acquiring and equipping recreation grounds, athletic fields, and other buildings or land used or useful for community college purposes or for the purpose of purchasing a site, with or without a building or buildings thereon, or for the building of a house or houses on such site, or for the building of a house or houses on the site of the community college district, for residential purposes of the administrators or faculty of the community college district, and issue its negotiable coupon bonds therefor signed by the chairman and secretary of the board, in denominations of not less than $100 nor more than $5,000, payable at such place and at

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such time or times, not exceeding 20 years from date of issuance, as the board may prescribe, and bearing interest at a rate not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, payable annually, semiannually or quarterly, but no such bonds shall be issued unless the proposition to issue them is submitted to the voters of the community college district at a regular scheduled election in such district and the board shall certify the proposition to the proper election authorities for submission in accordance with the general election law and a majority of all the votes cast on the proposition is in favor of the proposition, nor shall any residential site be acquired unless such proposition to acquire a site is submitted to the voters of the district at a regular scheduled election and the board shall certify the proposition to the proper election authorities for submission to the electors in accordance with the general election law and a majority of all the votes cast on the proposition is in favor of the proposition. Nothing in this Act shall be construed as to require the listing of maturity dates of any bonds either in the notice of bond election or ballot used in the bond election.

Bonds issued in accordance with this Section for Elgin Community College District No. 509 may be payable at such time or times, not exceeding 25 years from date of issuance, as the board may prescribe, if the following conditions are met:

(i) The voters of the district approve a proposition for the bond issuance at an election held in 2009.

(ii) Prior to the issuance of the bonds, the board determines, by resolution, that the projects built, acquired, altered, renovated, repaired, purchased, improved, installed, or equipped with the proceeds of the bonds are required as a result of a projected increase in the enrollment of students in the district, to meet demand in the fields of health care or public safety, to meet accreditation standards, or to maintain campus safety and security.

(iii) The bonds are issued, in one more more bond issuances, on or before April 7, 2014.

(iv) The proceeds of the bonds are used to accomplish only those purposes approved by the voters at an election held in 2009.

Bonds issued in accordance with this Section for Kishwaukee Community College District No. 523 may be payable at such time or times, not exceeding 25 years from date of issuance, as the board may prescribe, if the following conditions are met:

(i) The voters of the district approve a proposition for the bond issuance at an election held in 2010 or 2011.

(ii) Prior to the issuance of the bonds, the board determines, by resolution, that the projects built, acquired, altered, renovated, repaired, purchased, improved, installed, or equipped with the proceeds of the bonds are required as a result of a projected increase in the enrollment of students in the district, to meet demand in the fields of health care or public safety, to meet accreditation standards, or to maintain campus safety and security.

(iii) The bonds are issued, in one or more bond issuances, on or before November 2, 2015.

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(iv) The proceeds of the bonds are used to accomplish only those purposes approved by the voters at an election held in 2010 or 2011.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4; 96-787, § 15; 96-1077, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-1.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

Effect of Amendments. The 2009 amendment by P.A. 96-787, effective August 28, 2009, inserted the second paragraph.

The 2010 amendment by P.A. 96-1077, effective July 16, 2010, inserted the third paragraph.

§ 110 ILCS 805/3A-2. [Use of proceeds change]

Sec. 3A-2. Where bonds are issued by any community college district under Sections 3A-1 through 3A-4 [110 ILCS 805/3A-1 through 110 ILCS 805/3A-4], and before any contract is let for the construction of buildings or improvements in accordance therewith the district boundaries are changed by the formation of a new district including all or a part of such district, or by the annexation of a district in its entirety to another district, then upon the adoption of a resolution by the board of the new district or the district to which the territory has been annexed, that the building or improvements are no longer feasible, the board shall order a referendum in the manner provided in the general election law to vote on the proposition of authorizing the board to use the proceeds of such bonds or the portion thereof allotted to the new district or district to which such territory is annexed for a specific new building or improvement in some locality of the district other than the one specified at the previous referendum, or for a different improvement, or for a part of the original improvements. In case a new district has been

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formed, no such referendum shall be held unless the new district embraces territory having as much or more assessed valuation as the territory embraced in the district at the first referendum.

Where bonds are issued by any district under Sections 3A-1 through 3A-4 [110 ILCS 805/3A-1 through 110 ILCS 805/3A-4], and it is determined by the board by resolution that it is in the interests of the district that part or all of the proceeds of the bonds be used for different purposes than authorized but for purposes for which bonds may be issued under Sections 3A-1 through 3A-4 [110 ILCS 805/3A-1 through 110 ILCS 805/3A-4], the board shall order a referendum in the manner provided in the general election law to vote on the proposition of authorizing the board to use the proceeds of such bonds or a part thereof for the purposes set forth in such resolution. The board shall certify the proposition to the proper election authorities for submission to the electors. If a majority of all the votes cast on such proposition is in favor the board shall have such authority.

Notwithstanding any provision of this Section to the contrary, when bonds are issued by any district under Sections 3A-1 through 3A-4 [110 ILCS 805/3A-1 through 110 ILCS 805/3A-4], and the purposes for which such bonds have been issued have been accomplished and paid for in full and there remains funds on hand in such bond and interest account, the board by resolution may transfer such excess to the fund of the district which bears the nearest relation to the purpose for which the bonds from which such excess funds arose were issued.

Notwithstanding any provision of this Section to the contrary, when bonds have been issued by a district under Sections 3A-1 through 3A-4 [110 ILCS 805/3A-1 through 110 ILCS 805/3A-4], and the board of trustees of the district has determined that a site acquired with the proceeds of such bond issue without the use of State funds has become unnecessary, unsuitable or inconvenient for community college purposes and has sold such site in accordance with the provisions of Section 3-41 of this Act [110 ILCS 805/3-41], the board shall first use the proceeds from the sale of such site to pay the portion of the principal originally expended to purchase such site, together with the interest thereon, and may use the remaining proceeds from such sale for the purpose for which the bonds were issued or to retire other bonds of the same issue. Such remaining proceeds may also be used for any other authorized purpose designated in a resolution approved by not less than 5 members of the board of trustees. The board of trustees shall cause notice of any such resolution and of the right to petition for an election under this Section to be published within 10 days after the adoption of the resolution in a newspaper having a general circulation in the district. The publication of the resolution shall include a notice of (1) the specific number of voters required to sign a petition requesting that the question of the other authorized use of the remaining proceeds be submitted to the voters of the district; (2) the time within which the petition must be filed; and (3) the date of the prospective referendum. The district secretary shall provide a petition form to any individual requesting one. If 10% or 1000, whichever is less, of the resident voters of the district sign and file a petition with the board, not more than 30 days after the resolution of the board is adopted, requesting that the question of such other authorized use designated in the resolution of the remaining proceeds be submitted to the voters of the community college district, the board shall call an election upon such question, to be held not less than 30 days nor more than 60 days after the filing of the petition and to be

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conducted as provided in Article III. The remaining proceeds may be used for the designated purpose only if a majority of those voting on the question approve such use.

(Source: P.A. 86-1253.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-2.

§ 110 ILCS 805/3A-3. [Registration]

Sec. 3A-3. All bonds issued under this Act, before being issued, negotiated and sold, shall be registered, numbered and countersigned by the treasurer who receives the taxes of the district. The registration shall be made in a book in which shall be entered the record of the election authorizing the board to borrow money and a description of the bonds issued, including the number, date, to whom issued, amount, rate of interest and when due.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-3.

§ 110 ILCS 805/3A-4. [Payment of borrowed moneys]

Sec. 3A-4.

All moneys borrowed under the authority of this Act, shall be paid to the treasurer of the district. Upon receiving such moneys the treasurer shall deliver the bonds issued therefor to the persons entitled to receive them, and shall credit the funds received to the district issuing the bonds. The treasurer shall record the amount received for each bond issued. When any bonds are paid the treasurer shall cancel them and shall enter, against the record of the bonds, the words, "paid and cancelled the ..... day of ....." filling the blanks with the day, month, and year corresponding to the date of payment.

(Source: P.A. 82-622.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 103A-4.

§ 110 ILCS 805/3A-5. [Filing of certified copy of resolution]

Sec. 3A-5. Whenever any district is authorized to issue bonds, the secretary shall file in the office of the county clerk of each county in which any portion of the district is situated a certified copy of the resolution providing for their issuance and levying a tax to pay them. The county clerk shall prepare and keep in his office a registry of all such bonds which shall show the name of the issuing body and the date, amount, purpose, rate of interest and maturity of the bonds to be issued, and the county clerk, annually shall extend taxes against all the taxable property situated in the county and contained in the district in amounts sufficient to pay maturing principal and interest, and such taxes shall be computed, extended and collected in the same manner as is now or may hereafter be provided for the computation, extension and collection of taxes for general corporate purposes for the issuing district. If no such certified copy of resolution has been filed with reference to any bonds heretofore authorized one shall promptly be filed.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-5.

§ 110 ILCS 805/3A-6. [Bonds for paying orders issued for the wages of teachers]

Sec. 3A-6. Any community college district is authorized to issue bonds for the purpose of paying orders issued for the wages of teachers, or for the payment of claims against any such district.

Such bonds may be issued in an amount, including existing indebtedness, in excess of any statutory limitation as to debt.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-6.

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§ 110 ILCS 805/3A-7. [Examination and consideration of teachers' orders or claims]

Sec. 3A-7. Before any district as described in Section 3A-6 [110 ILCS 805/3A-6] shall avail itself of the provisions of that Section the board shall examine and consider the several teachers' orders or claims, or both, proposed to be paid and if it appears that they were authorized and allowed for proper community college purposes it shall adopt a resolution so declaring and set forth and describe in detail such teachers' orders and claims and the adoption of the resolution shall establish the validity thereof, notwithstanding the amount of such orders and claims may exceed in whole or in part any applicable statutory debt limit in force at the time the indebtedness evidenced by such orders and claims was incurred. The resolution shall also declare the intention of the district to issue bonds for the purpose of paying such teachers' orders or claims, or both, and direct that notice of such intention be published at least once in a newspaper published within the district and if there be no newspaper published within the district then notice shall be published in a newspaper having general circulation within the district. The notice shall set forth (1) the specific number of voters required to sign a petition requesting that the proposition to issue bonds under this Section be submitted to the voters of the district; (2) the time within which a petition must be filed; and (3) the date of the prospective referendum. The district secretary shall provide a petition form to any individual requesting one. If within 30 days after such publication of such notice a petition is filed with the recording officer of the district, signed by the voters of the district equal to 10% or more of the registered voters of the district requesting that the proposition to issue bonds as authorized by Section 3A-6 [110 ILCS 805/3A-6] be submitted to the voters thereof, then the district shall not be authorized to issue bonds as provided by Section 3A-6 [110 ILCS 805/3A-6] until the proposition has been submitted to and approved by a majority of the voters voting on the proposition at a regular scheduled election in the manner provided in the general election law. The board shall certify the proposition to the proper election authorities for submission to the voters. If no such petition with the requisite number of signatures is filed within said 30 days, or if any and all petitions filed are invalid, then the district shall thereafter be authorized to issue bonds for the purposes and as provided in Section 3A-6 [110 ILCS 805/3A-6].

(Source: P.A. 86-1253; 87-767.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-7.

§ 110 ILCS 805/3A-8. [Adoption of resolution]

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Sec. 3A-8. Any district which has complied with Section 3A-7 [110 ILCS 805/3A-7] and which is authorized to issue bonds under Sections 3A-6 and 3A-7 [110 ILCS 805/3A-6 and 110 ILCS 805/3A-7] shall adopt a resolution specifying the amount of indebtedness to be funded, whether for the purpose of paying claims, or for paying teachers' orders. The resolution shall set forth the date, denomination, rate of interest and maturities of the bonds, fix all details with respect to the issue and execution thereof, and provide for the levy of a tax sufficient to pay both principal and interest of the bonds as they mature. The bonds shall bear interest at a rate not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, payable annually or semi-annually, as the board may determine, and mature in not more than 20 years from date thereof.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-8.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

§ 110 ILCS 805/3A-9. [Copy of the resolution]

Sec. 3A-9. A certified copy of the resolution authorizing the issue of bonds under Sections 3A-6 through 3A-8 [110 ILCS 805/3A-6 through 110 ILCS 805/3A-8] shall be filed with the county clerk of each county in which any portion of any such district is situated and the county clerk shall annually extend taxes against all of the taxable property situated in the county and contained in such district in amounts sufficient to pay maturing principal and interest of such bonds without limitation as to rate or amount and in addition to and in excess of any taxes that may now or hereafter be authorized to be levied by a community college district.

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(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-9.

§ 110 ILCS 805/3A-10. [Exchange of bonds]

Sec. 3A-10. Any bonds issued under Sections 3A-6 to 3A-8, inclusive [110 ILCS 805/3A-6 through 110 ILCS 805/3A-8], may be exchanged par for par for claims or unpaid orders for wages of teachers, or both, or may be sold and the proceeds received used to pay such claims or orders.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-10.

§ 110 ILCS 805/3A-11. [Purchasers of bonds]

Sec. 3A-11. Purchasers of such bonds shall not be obligated to inquire into the validity of the indebtedness funded, and bonds issued under Sections 3A-6 through 3A-8 [110 ILCS 805/3A-6 through 110 ILCS 805/3A-8] shall be the valid and binding obligations of the community college district, notwithstanding the fact that the bonds, together with existing indebtedness, either in whole or in part, exceed any statutory debt limitation in force at the time the bonds are issued.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-11.

§ 110 ILCS 805/3A-12. [Surrender of bonds]

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Sec. 3A-12. When a community college district has issued bonds or other evidence of indebtedness for any purposes which are binding and subsisting legal obligations and remaining outstanding, the board of the district may, upon the surrender of the bonds or other evidences of indebtedness, issue in lieu thereof to the holders or owners thereof or to other persons for money with which to pay them, new bonds or other evidences of indebtedness, according to the subsequent provisions of this Article.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-12.

§ 110 ILCS 805/3A-13. Refunding bonds

Sec. 3A-13. Refunding bonds. The corporate authorities of any community college district, without submitting the question to the electors thereof for approval, may authorize by resolution the issuance of refunding bonds (1) to refund its bonds prior to their maturity; (2) to refund its unpaid matured bonds; (3) to refund matured coupons evidencing interest upon its unpaid bonds; (4) to refund interest at the coupon rate upon its unpaid matured bonds that has accrued since the maturity of those bonds; (5) to refund its bonds which by their terms are subject to redemption before maturity; (6) to refund other valid and subsisting evidences of indebtedness that are due and payable; and (7) to refund or continue to refund indebtedness initially incurred after February 1, 1994 and prior to March 1, 1994 in an amount not exceeding $34,000,000, the proceeds of which were used to preserve a district's rights, title and interest in a portfolio of investment securities previously purchased by such district. The refunding bonds and the procedure for issuing them shall comply with Sections 3A-3 through 3A-5 [110 ILCS 805/3A-3 through 110 ILCS 805/3A-5].

(Source: P.A. 78-669; 89-281, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-13.

Effect of Amendments. The 1995 amendment by P.A. 89-281, effective August 10, 1995, added the section catchline; and in the first sentence deleted "and" preceding "(6)" and added at the end "and (7) to refund or continue to refund indebtedness initially incurred after February 1, 1994 and prior to March 1, 1994 in an amount not exceeding $34,000,000, the proceeds of which were used to preserve a district's rights, title and interest in a portfolio of investment securities

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previously purchased by such district".

§ 110 ILCS 805/3A-14. [Registration of refunding bonds]

Sec. 3A-14. The refunding bonds may be made registerable as to principal and may bear interest at a rate not to exceed the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended, at the time of the making of the contract, payable at such time and place as may be provided in the bond resolution. They shall remain valid even though one or more of the officers executing the bonds ceases to hold his or their offices before the bonds are delivered.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-14.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

§ 110 ILCS 805/3A-15. [Resolution authorizing refunding bonds]

Sec. 3A-15. The resolution authorizing refunding bonds shall prescribe all details thereof and shall provide for the levy and collection of a direct annual tax upon all the taxable property within the community college district sufficient to pay the principal thereof and interest thereon as it matures. The tax shall be levied and collected in like manner as the general taxes for the district and shall not be included within any limitation of rate for general purposes as now or hereafter provided by law but shall be excluded therefrom and be in addition thereto and in excess thereof.

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A certified copy of the bond resolution shall be filed with the county clerk of the county in which the district or any portion thereof is situated, and shall constitute the authority for the extension and collection of refunding bond and interest taxes as required by the constitution.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-15.

§ 110 ILCS 805/3A-16. [Exchange of refunding bonds]

Sec. 3A-16. The refunding bonds may be exchanged for the bonds to be refunded on the basis of dollar for dollar for the par value of the bonds, interest coupons, and interest not represented by coupons, if any, or they may be sold at not less than their par value and accrued interest. The proceeds received from their sale shall be used to pay the bonds, interest coupons, and interest not represented by coupons, if any, without any prior appropriation therefor under any budget law.

Bonds and interest coupons which have been received in exchange or paid shall be cancelled and the obligation for interest, not represented by coupons, which has been discharged, shall be evidenced by a written acknowledgment of the exchange or payment thereof.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-16.

§ 110 ILCS 805/3A-17. [Form and denomination of refunding bonds]

Sec. 3A-17. The refunding bonds shall be of such form and denomination, payable at such place, bear such date, and be executed by such officials as may be provided by the board of the community college district in the bond resolution. They shall mature within not to exceed 20 years from their date, and may be made callable on any interest payment date at par and accrued interest after notice has been given at the time and in the manner provided in the bond resolution.

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(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-17.

§ 110 ILCS 805/3A-18. [Redemption of refunding bonds]

Sec. 3A-18. If there is no default in payment of the principal of or interest upon the refunding bonds, and a sum of money equal to the amount of interest that will accrue on the refunding bonds and a sum of money equal to the amount of principal that will become due thereon within the next 6 months period has been set aside, the treasurer of the community college district shall use the money available from the proceeds of taxes levied for the payment of the refunding bonds in calling them for payment, if, by their terms, they are subject to redemption. However, a district may provide in the bond resolution that whenever the district is not in default in payment of the principal of or interest upon the refunding bonds and has set aside the sums of money provided in this Section for interest accruing and principal maturing within the next 6 months period, the money available from the proceeds of taxes levied for the payment of refunding bonds shall be used, first, in the purchase of the refunding bonds at the lowest price obtainable, but not to exceed their par value and accrued interest, after sealed tenders for their purchase have been advertised for as may be directed by the board.

Refunding bonds called for payment and paid or purchased under this Section shall be marked paid and cancelled.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-18.

§ 110 ILCS 805/3A-19. [Reduced taxes for redemption of refunding bonds]

Sec. 3A-19. Whenever refunding bonds are purchased and cancelled as provided in Section 3A-18 [110 ILCS 805/3A-18], the taxes thereafter to be extended for payment of the principal of and the interest on the remainder of the issue shall be reduced in an amount equal to the principal of and the interest that would have thereafter accrued upon the refunding bonds so cancelled. A resolution shall be adopted by the board of the district finding these facts. A certified copy of this resolution shall be filed with the county clerk specified in Section 3A-15 [110 ILCS 805/3A-15], whereupon he shall

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reduce and extend such tax levies in accordance therewith.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-19.

§ 110 ILCS 805/3A-20. [Reduction of taxes levied for payment of refunded bonds]

Sec. 3A-20. Whenever refunding bonds are issued, proper reduction of taxes theretofore levied for the payment of the bonds refunded and next to be extended for collection shall be made by the county clerk upon receipt of a certificate signed by the treasurer of the community college district, or by the chairman and secretary of the district, showing the bonds refunded and the tax to be abated.

Money which becomes available from taxes that were levied for prior years for payment of bonds or interest coupons that were paid or refunded before those taxes were collected, after payment of all warrants that may have been issued in anticipation of these taxes, shall be placed in the sinking fund account provided in Section 3A-21 [110 ILCS 805/3A-21]. It shall be used to purchase, call for payment, or to pay at maturity refunding bonds and interest thereon as herein provided.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-20.

§ 110 ILCS 805/3A-21. [Refunding Bond and Interest Sinking Fund Accounts]

Sec. 3A-21.

Money received from the proceeds of taxes levied for payment of the principal of and interest upon refunding bonds shall be deposited in a special fund of the community college district, designated as the "Refunding Bond and Interest Sinking Fund Account of .....". This fund shall be applied to the purchase or payment of refunding bonds and the interest thereon as provided in Sections 3A-13 through 3A-23 [110 ILCS 805/3A-13 through 110 ILCS 805/3A-23].

If the money in this fund is not immediately necessary for the payment of refunding bonds or if refunding bonds can not be purchased before maturity, then, under the

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direction of the board of the community college district, the money may be invested by the treasurer of the district in bonds or other interest bearing obligations of the United States or in bonds of the State of Illinois.

The maturity date of the securities in which this money is invested shall be prior to the due date of any issue of refunding bonds of the investing district. The board may sell these securities whenever necessary to obtain cash to meet bond and interest payments.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-21.

§ 110 ILCS 805/3A-22. [Action taken by board]

Sec. 3A-22. The board of a district may take any action that may be necessary to inform the owners of unpaid bonds regarding the financial condition of the district, the necessity of refunding its unpaid bonds and readjusting the maturities thereof in order that sufficient taxes may be collected to take care of these bonds, and thus re-establish the credit of the community college district. The board may enter into any agreement required to prepare and carry out any refunding plan and, without any previous appropriation therefor under any budget law, may incur and pay expenditures that may be necessary in order to accomplish the refunding of the bonds of the district.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-22.

§ 110 ILCS 805/3A-23. [Application; construction]

Sec. 3A-23. Sections 3A-13 through 3A-23 [110 ILCS 805/3A-13 through 110 ILCS 805/3A-23] apply to any district, regardless of the population of the district and of the law under which it is organized and operating, and constitute complete authority for issuing refunding bonds as therein provided without reference to other laws. Those Sections shall be construed as conferring powers in addition to, but not as limiting powers granted under, other laws or other provisions of this Act.

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(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-23.

§ 110 ILCS 805/3A-24. [Payment of balance of funds]

Sec. 3A-24. Whenever all the bonds of any community college district have been paid and cancelled upon the records of the community college treasurer and there remains in the hands of the county collector or any ex-county collector, the county treasurer, or ex-county treasurer, any balance to the credit of the bond fund of the community college, the county collector or ex-county collector, county treasurer or ex-county treasurer shall pay to the community college treasurer the balance of such funds in his hands and the treasurer shall give his receipt therefor.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-24.

§ 110 ILCS 805/3A-25. [Exhibition facility defined]

Sec. 3A-25. In Sections 3A-25 through 3A-29 [110 ILCS 805/3A-25 through 110 ILCS 805/3A-29], "exhibition facility" means a building or stadium constructed to be used primarily for athletic spectator sports and not facilities built primarily for physical education instruction.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-25.

§ 110 ILCS 805/3A-26. [Authorizations by board]

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Sec. 3A-26. Any board is authorized to:

a.Acquire by purchase, construct, enlarge, improve, equip, complete, operate, control and manage an exhibition facility.

b.Charge for the use of such a facility.

c.Hold in its treasury all funds derived from the operation of the facility and apply them toward the retirement of any revenue bonds issued in connection with the facility.

d.Enter into contracts touching in any manner any matter within the objects and purposes of Sections 3A-25 through 3A-29 [110 ILCS 805/3A-25 through 110 ILCS 805/3A-29].

e.Pledge the revenues raised from such a facility for the payment of any bonds issued to pay for the facility as provided in Sections 3A-25 through 3A-29 [110 ILCS 805/3A-25 through 110 ILCS 805/3A-29].

f.Borrow money and issue and sell bonds at such price as the board may determine to finance and to refund or refinance any and all bonds issued and sold by the board pursuant to Sections 3A-25 through 3A-29 [110 ILCS 805/3A-25 through 110 ILCS 805/3A-29]. No bonds issued under Sections 3A-25 through 3A-29 [110 ILCS 805/3A-25 through 110 ILCS 805/3A-29], however, may bear interest in excess of the maximum rate authorized by the Bond Authorization Act [30 ILCS 305/0.01 et seq.], as amended at the time of the making of the contract, computed to the maturity of the bonds.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-26.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

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§ 110 ILCS 805/3A-27. [Charges for the use of the exhibition facility]

Sec. 3A-27. Whenever bonds are issued pursuant to Sections 3A-25 through 3A-29 [110 ILCS 805/3A-25 through 110 ILCS 805/3A-29], the board must establish charges or fees for the use of the exhibition facility to pay the principal and interest on the bonds.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-27.

§ 110 ILCS 805/3A-28. [General obligation bonds]

Sec. 3A-28. If the board determines subsequent to the original issue of bonds under Sections 3A-25 through 3A-29 [110 ILCS 805/3A-25 through 110 ILCS 805/3A-29] that the income from the facility is insufficient to pay the principal and interest on these bonds, the board, after submitting the proposition to referendum held in accordance with the general election law, may pay the deficit by issuing general obligation bonds in the manner prescribed by this Article. The board shall certify the proposition to the proper election authorities for submission to the electors.

(Source: P.A. 81-1489.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103A-28.

§ 110 ILCS 805/3A-29. [Personal liability]

Sec. 3A-29. Members of a board issuing bonds pursuant to Sections 3A-25 through 3A-29 [110 ILCS 805/3A-25 through 110 ILCS 805/3A-29] incur no personal liability thereby.

(Source: P.A. 78-669.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 103A-29.

ARTICLE IIIB.

TENURE

§ 110 ILCS 805/3B-1. Definitions

Sec. 3B-1. Definitions. As used in this Article, the following terms shall have the meanings hereinafter stated:

"District" means a Community College District.

"Board" means a Board of a Community College District.

"Faculty Member" means a full time employee of the District regularly engaged in teaching or academic support services, but excluding supervisors, administrators and clerical employees.

"School Year" means a regular academic year or its equivalent excluding summer school.

"Term" means a term within a school year.

"Notice" means a written notice delivered in person or deposited in the U.S. mail by certified or registered mail, postage prepaid, addressed to the faculty member's last known address.

(Source: P.A. 81-1100.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103B-1.

CASE NOTES

Analysis

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Construction
Faculty Member
- Part-Time Instructors
School Year
- Summer School

Construction

The language found in this section and 110 ILCS 805/3B-5 is unambiguous and clear, and there is no need to review these statutes in pari materia with 105 ILCS 5/24-12, which deals with removal or dismissal of teachers in contractual continued services. Frame v. Board of Trustees, 212 Ill. App. 3d 617, 156 Ill. Dec. 735, 571 N.E.2d 519 (3 Dist. 1991).

Faculty Member

- Part-Time Instructors

Part-time instructors are not considered "faculty members" as that term is defined in this section. Biggiam v. Board of Trustees of Cumminty College, 154 Ill. App. 3d 627, 107 Ill. Dec. 120, 506 N.E.2d 1011 (2 Dist. 1987).

School Year

- Summer School

A school counselor's action for reinstatement during summer months failed, as the tenure provisions of this section do not apply to summer school or assignments performed during the summer months in conjunction with summer school. Frame v. Board of Trustees, 212 Ill. App. 3d 617, 156 Ill. Dec. 735, 571 N.E.2d 519 (3 Dist. 1991).

For tenure purposes, this section, which applies to community college teachers, defines "school year" as a regular academic year or its equivalent (excluding summer school), while 105 ILCS 5/24-11, which applies to elementary and high school teachers, provides tenure whenever school is in actual session, including during summer school. Frame v. Board of Trustees, 212 Ill. App. 3d 617, 156 Ill. Dec. 735, 571 N.E.2d 519 (3 Dist. 1991).

§ 110 ILCS 805/3B-2. Tenure

Sec. 3B-2. Tenure. Any faculty member who has been employed in any district for a period of 3 consecutive school years shall enter upon tenure unless dismissed as hereinafter provided. However, a board may at its option extend such period for one additional school year by giving the faculty member notice not later than 60 days before the end of the school year or term during the school year or term immediately preceding the school year or term in which tenure would otherwise be conferred. Such notice must state the corrective actions which the faculty member should take to satisfactorily complete service requirements for tenure. The specific reasons for the one-year extension shall be confidential but shall be issued to the teacher upon request. The foregoing

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provision for a three-year period and optional one-year extension shall not be construed to interfere with or abrogate local board rules or contracts which now or hereafter may provide for a lesser period of service before entering upon tenure. A tenured faculty member shall have a vested contract right in continued employment as a faculty member subject to termination only upon occurrence of one or more of the following:

a.Just cause for dismissal; or

b.A reduction in the number of faculty members employed by the board or a discontinuance of some particular type of teaching service or program.

(Source: P.A. 81-1100.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103B-2.

CASE NOTES

Denial of Hearing

- Held Proper

The denial of a hearing for community college employee before her discharge at which she could have urged that she, like others in her position, be retained while she gets her master's degree was not error where there was evidence that the regulation had been bent for others. Dauel v. Board of Trustees, 768 F.2d 128 (7th Cir. 1985).

LEGAL PERIODICALS

For note, "A No-Strike Clause Can Serve as Valid Consideration in Tenured Public School Teachers' Contracts - Bond v. Board of Education," see 30 De Paul L. Rev. 441 (1981).

§ 110 ILCS 805/3B-3. Dismissal of Non-tenure Faculty Member

Sec. 3B-3. Dismissal of Non-tenure Faculty Member. Every Board shall provide by rule or contract for a procedure to evaluate the performance and qualifications of non-tenure faculty members. If the implementation of such procedure results in a decision to dismiss a non-tenure faculty member for the ensuing school year or term, the Board shall give notice thereof to the faculty member not later than 60 days before the end of the school year or term. The specific reasons for the dismissal shall be confidential but shall be issued to the teacher upon request. If the Board fails to give such notice, within the time

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period, the faculty member shall be deemed reemployed for the ensuing school year. If the Board fails to give such notice within the time provided during the third year, or during the fourth year in the case of a one year extension, the faculty member shall enter upon tenure during the ensuing school year or term.

(Source: P.A. 81-1100.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103B-3.

CASE NOTES

Analysis

Applicability
Collective Bargaining Agreements
- Exhaustion of Remedies
- Prior Law
- Superseded
Delegation of Powers
- Collective Bargaining Agreements
Discretion of Board
Intent
Notice
Tenure
- Following Notice

Applicability

Where the decision not to renew a teacher's contract occurred before the effective date of this Act, there was no violation of this Act. Fleischer v. Board of Community College, 128 Ill. App. 3d 757, 83 Ill. Dec. 914, 471 N.E.2d 213 (2 Dist. 1984).

Collective Bargaining Agreements

- Exhaustion of Remedies

An employee subject to a collective bargaining agreement must at least attempt to exhaust contractual remedies before resorting to a judicial remedy. Quist v. Board of Trustees of Community College Dist., 258 Ill. App. 3d 814, 196 Ill. Dec. 262, 629 N.E.2d 807 (3 Dist. 1994).

- Prior Law

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The enactment of this section did not serve to overrule earlier cases holding that nonrenewal of teaching contacts was not invalidated by the noncompliance of a board of education with evaluation procedures contained in collective bargaining agreements. Williams v. Weaver, 145 Ill. App. 3d 562, 99 Ill. Dec. 412, 495 N.E.2d 1147 (1 Dist. 1986).

- Superseded

Nothing prevented the parties to a contract from agreeing to be bound with reference to future laws and collective bargaining agreements between teachers' union and community college board specifically incorporating present and future laws of the state and making those laws binding on the parties; thus, the statutory requirements for terminating nontenured teachers completely superseded any contrary or supplementary requirements in the collective bargaining agreement, as the statutory power to terminate cannot be delegated, modified or conditioned by agreement. Board of Trustees v. Krizek, 113 Ill. App. 3d 222, 68 Ill. Dec. 770, 446 N.E.2d 941 (3 Dist. 1983).

Delegation of Powers

- Collective Bargaining Agreements

The ultimate decision whether to dismiss a teacher is a duty which rests upon a board of education and it may not, by means of a collective bargaining agreement, delegate or limit the power to dismiss granted it by the General Assembly. Board of Trustees v. Cook County College Teachers Union, 167 Ill. App. 3d 998, 118 Ill. Dec. 638, 522 N.E.2d 93 (1 Dist. 1987).

Notice provision of Ill. Rev. Stat., ch. 122, par 103B-3 for terminating a nontenured teacher superseded any contrary or supplementary requirements in the collective bargaining agreement because the statutory power to terminate could not be delegated and, thus, the teacher's termination was valid since it was effected in compliance with the notice provision of § 103B-3. Board of Trustees v. Cook County Coll. Teachers Union, Local 1600, 167 Ill. App. 3d 998, 118 Ill. Dec. 638, 522 N.E.2d 93, 1987 Ill. App. LEXIS 3803 (1 Dist. 1987).

While this section required a community college board of trustees to set up some type of evaluation process to use in its decision to renew or not to renew a nontenured teacher's contract, it did not allow the board to delegate its final decision-making power by arbitrating plaintiff's dismissal under a collective bargaining agreement. Fleischer v. Board of Community College, 128 Ill. App. 3d 757, 83 Ill. Dec. 914, 471 N.E.2d 213 (2 Dist. 1984).

Discretion of Board

Even though dismissal of a non-tenure teacher with excellent evaluations was not in compliance with the required evaluation procedure, the action of the board was within its inherent discretionary managerial authority. Kerger v. Board of Trustees, 295 Ill. App. 3d 272, 229 Ill. Dec. 706, 692 N.E.2d 695 (2 Dist. 1997), appeal denied, 178 Ill. 2d 580, 232 Ill. Dec. 847, 699 N.E.2d 1032 (1998), cert. denied, 526 U.S. 1065, 119 S. Ct. 1457, 143 L. Ed. 2d 543 (1999).

Intent

The provisions of this section requiring the board to adopt and follow certain procedures clearly imposes obligations and confers rights which previously did not exist; thus, it was intended to apply only prospectively. Williams v. Weaver, 145 Ill. App. 3d 562, 99 Ill. Dec. 412, 495 N.E.2d 1147 (1 Dist. 1986).

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Notice

Notice provision of Ill. Rev. Stat., ch. 122, par 103B-3 for terminating a nontenured teacher superseded any contrary or supplementary requirements in the collective bargaining agreement and, thus, the teacher's termination was valid since it was effected in compliance with the notice provision of § 103B-3. Board of Trustees v. Cook County Coll. Teachers Union, Local 1600, 167 Ill. App. 3d 998, 118 Ill. Dec. 638, 522 N.E.2d 93, 1987 Ill. App. LEXIS 3803 (1 Dist. 1987).

Tenure

- Following Notice

The trial court erred where it held that a third year nontenured teacher would be "employed" until his contract expired at the end of his third year and would thereby enter tenure under the three year requirement of 110 ILCS 805/3B-2, regardless of whether the teacher received his nonrenewal notice, since this section clearly implies that if a third year nontenured teacher is given a notice of nonrenewal, that teacher will not obtain tenure; therefore, the legislature intended that a teacher would no longer be "employed" for purposes of acquiring tenure after he has been notified that his contract will not be renewed. Fleischer v. Board of Community College, 128 Ill. App. 3d 757, 83 Ill. Dec. 914, 471 N.E.2d 213 (2 Dist. 1984).

§ 110 ILCS 805/3B-4. Dismissal of Tenured Faculty Member for Cause

Sec. 3B-4. Dismissal of Tenured Faculty Member for Cause. If a dismissal of a tenured faculty member is sought for cause, the board must first approve a motion by a majority vote of all its members. The specific charges for dismissal shall be confidential but shall be issued to the tenured faculty member upon request. The Board decision shall be final unless the tenured faculty member within 10 days requests in writing of the Board that a hearing be scheduled. If the faculty member within 10 days requests in writing that a hearing be scheduled, the Board shall schedule such hearing on those charges before a disinterested hearing officer on a date no less than 45 days, nor more than 70 days after the adoption of the motion. The hearing officer shall be selected from a list of 5 qualified arbitrators provided by a nationally recognized arbitration organization. Within 10 days after the teacher receives the notice of hearing, either the Board and the teacher mutually or the teacher alone shall request the list of qualified hearing officers from the arbitration organization. Within 5 days from receipt of the list, the Board and the teacher, or their legal representatives, shall alternately strike one name from the list until one name remains. The teacher shall make the first strike. Notice of such charges shall be served upon the tenured faculty member at least 21 days before the hearing date. Such notice shall contain a bill of particulars. The hearing shall be public at the request of either the tenured faculty member or the Board. The tenured faculty member has the privilege of being present at the hearing with counsel and of cross-examining witnesses and may offer evidence and witnesses and present defenses to the charges. The hearing officer upon request by either party may issue subpoenas requiring the attendance of witnesses and production of documents. All testimony at the hearing shall be taken under oath administered by the hearing officer. The hearing officer shall cause a record of the proceedings to be kept and the Board shall employ a competent reporter to take

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stenographic or stenotype notes of all testimony. The costs of the reporter's attendance and services at the hearing and all other costs of the hearing shall be borne equally by the Board and the tenured faculty member. Either party desiring a transcript of the hearing shall pay for the cost thereof. If in the opinion of the Board the interests of the district require it the Board, after 20 days notice, may suspend the tenured faculty member pending the hearing, but if acquitted, the tenured faculty member shall not suffer the loss of any salary by reason of the suspension. The hearing officer shall, with reasonable dispatch, make a decision as to whether or not the tenured faculty member shall be dismissed and shall give a copy of the decision to both the tenured faculty member and the Board. The decision of the hearing officer shall be final and binding.

(Source: P.A. 81-1100.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103B-4.

CASE NOTES

Analysis

Applicability
- Back Pay
Construction
Hearing Officer
- Cause for Discharge
- Evidentiary Hearing
- Exhaustion of Remedies
Hearing Officers
- Extended Suspensions
Power of Board
- Suspension

Applicability

- Back Pay

Where tenured employee's dismissal was found to be unjustified, the concept of an award of back pay by the hearing officer, as affirmed by the circuit court, was authorized under this section. Board of Trustees v. McKinley, 160 Ill. App. 3d 916, 112 Ill. Dec. 342, 513 N.E.2d 951 (1 Dist. 1987).

Construction

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This Act provides that the Employment Advisory Board's decision is final unless, under this section, the individual chooses to appeal that decision to a hearing officer, in which case the hearing officer's decision becomes the final administrative decision and must be accorded the statutory presumption of factual correctness. Board of Trustees v. McKinley, 160 Ill. App. 3d 916, 112 Ill. Dec. 342, 513 N.E.2d 951 (1 Dist. 1987).

Hearing Officer

- Cause for Discharge

Cause for discharge or dismissal, the precise fact finding responsibility of the hearing officer under this section, has been defined as some substantial shortcoming which renders the employee's continuance in office in some way detrimental to the discipline and efficiency of the service and which the law and sound public policy recognize as good reason for his or her no longer holding that position. Board of Trustees v. McKinley, 160 Ill. App. 3d 916, 112 Ill. Dec. 342, 513 N.E.2d 951 (1 Dist. 1987).

It was the function of the hearing officer to determine whether the tenured employee's violations constituted cause for discharge subject to judicial review. Board of Trustees v. McKinley, 160 Ill. App. 3d 916, 112 Ill. Dec. 342, 513 N.E.2d 951 (1 Dist. 1987).

- Evidentiary Hearing

This section directs the hearing officer particularly to make a decision as to whether or not the tenured faculty member shall be dismissed, and the hearing officer is thereby empowered not only to evaluate the facts in a given case, but he or she may also evaluate the propriety of dismissal; toward that end, the hearing officer is authorized to conduct a full evidentiary hearing. Board of Trustees v. McKinley, 160 Ill. App. 3d 916, 112 Ill. Dec. 342, 513 N.E.2d 951 (1 Dist. 1987).

- Exhaustion of Remedies

While exhaustion of adequate and appropriate state administrative remedies may be required even in the context of a suit brought under 42 U.S.C. § 1983, the administrative remedy available to plaintiffs under the law of this state was inadequate and would not afford plaintiffs complete relief where the plaintiffs challenged the constitutionality of the very rule under which they were to be judged and the hearing officer or arbitrator was not empowered to rule on the constitutionality of the rule. Kaufman v. Board of Trustees, 522 F. Supp. 90 (N.D. Ill. 1981).

Hearing Officers

- Extended Suspensions

Failure to appoint an independent hearing officer in cases involving suspensions for an extended period of time does not violate due process rights in the absence of an allegation that the board hearing the evidence is biased. Inwang v. Community College Dist., 117 Ill. App. 3d 608, 73 Ill. Dec. 71, 453 N.E.2d 896 (1 Dist. 1983).

Power of Board

- Suspension

This section provides that if in the opinion of the Board of the Community College District the interests of the District required it, the Board may suspend the tenured faculty member pending the hearing, but if acquitted, the tenured faculty member shall not suffer the loss of any salary by

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reason of the suspension. Board of Trustees v. McKinley, 160 Ill. App. 3d 916, 112 Ill. Dec. 342, 513 N.E.2d 951 (1 Dist. 1987).

§ 110 ILCS 805/3B-5. Reduction in Number of Faculty Members

Sec. 3B-5. Reduction in Number of Faculty Members. If a dismissal of a faculty member for the ensuing school year results from the decision by the Board to decrease the number of faculty members employed by the Board or to discontinue some particular type of teaching service or program, notice shall be given the affected faculty member not later than 60 days before the end of the preceding school year, together with a statement of honorable dismissal and the reason therefor; provided that the employment of no tenured faculty member may be terminated under the provisions of this Section while any probationary faculty member, or any other employee with less seniority, is retained to render a service which the tenured employee is competent to render. In the event a tenured faculty member is not given notice within the time herein provided, he shall be deemed reemployed for the ensuing school year. Each board, unless otherwise provided in a collective bargaining agreement, shall each year establish a list, categorized by positions, showing the seniority of each faculty member for each position entailing services such faculty member is competent to render. Copies of the list shall be distributed to the exclusive employee representative on or before February 1 of each year. For the period of 24 months from the beginning of the school year for which the faculty member was dismissed, any faculty member shall have the preferred right to reappointment to a position entailing services he is competent to render prior to the appointment of any new faculty member; provided that no non-tenure faculty member or other employee with less seniority shall be employed to render a service which a tenured faculty member is competent to render.

(Source: P.A. 86-501.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103B-5.

CASE NOTES

Analysis

Construction
Discretion of Board
Right to Bump
Right to Reappointment
Seniority

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- Part-Time Instructors

Construction

The language found in this section and 110 ILCS 805/3B-5 is unambiguous and clear, and there is no need to review these statutes in pari materia with 105 ILCS 5/24-12, which deals with removal or dismissal of teachers in contractual continued services. Frame v. Board of Trustees, 212 Ill. App. 3d 617, 156 Ill. Dec. 735, 571 N.E.2d 519 (3 Dist. 1991).

Discretion of Board

Even though, in dismissing a non-tenure teacher with excellent evaluations, the board did not provide a statement of honorary dismissal, the action of the board was within its inherent discretionary managerial authority. Kerger v. Board of Trustees, 295 Ill. App. 3d 272, 229 Ill. Dec. 706, 692 N.E.2d 695 (2 Dist. 1997), appeal denied, 178 Ill. 2d 580, 232 Ill. Dec. 847, 699 N.E.2d 1032 (1998), cert. denied, 526 U.S. 1065, 119 S. Ct. 1457, 143 L. Ed. 2d 543 (1999).

Right to Bump

This section does not confer upon a dismissed faculty member the right to "bump" a less senior faculty member from a teaching position upon gaining competency in the less senior faculty member's field of instruction. Piatak v. Black Hawk College Dist. # 503, 269 Ill. App. 3d 1032, 207 Ill. Dec. 586, 647 N.E.2d 1079 (3 Dist. 1995).

Right to Reappointment

A dismissed faculty member has a right to reappointment to an open position prior to the appointment of a new faculty member and a tenured faculty member will be appointed to that position before a non-tenured faculty member or employee with less seniority is appointed. Piatak v. Black Hawk College Dist. # 503, 269 Ill. App. 3d 1032, 207 Ill. Dec. 586, 647 N.E.2d 1079 (3 Dist. 1995).

Seniority

- Part-Time Instructors

The phrase "employee with less seniority" as used in this section does not include part-time instructors, who are not considered "faculty members" as that term is defined in 110 ILCS 805/3B-1. Biggiam v. Board of Trustees of Cumminty College, 154 Ill. App. 3d 627, 107 Ill. Dec. 120, 506 N.E.2d 1011 (2 Dist. 1987).

§ 110 ILCS 805/3B-6. Review under the Administrative Review Law

Sec. 3B-6. Review under the Administrative Review Law. The provisions of the Administrative Review Law, and all amendments and modifications thereof [735 ILCS 5/3-101 et seq.] and the rules adopted pursuant thereto, shall apply to and govern all

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proceedings instituted for the judicial review of final administrative decisions of a hearing officer under Section 3B-4 of this Article [110 ILCS 805/3B-4]. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure [735 ILCS 5/3-101].

(Source: P.A. 82-783.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 103B-6.

CASE NOTES

Scope of Review

- Final Agency Decision

The decision made by a statutorily prescribed disinterested hearing officer, was the final agency decision and cannot be overturned unless it was arbitrary or unreasonable. Board of Trustees v. McKinley, 160 Ill. App. 3d 916, 112 Ill. Dec. 342, 513 N.E.2d 951 (1 Dist. 1987).

ARTICLE IV.

STATE COMMUNITY COLLEGE OF EAST ST. LOUIS

§§ 110 ILCS 805/4-1 through 110 ILCS 805/4-7: Repealed by P.A. 89-473, § 25, effective July 1, 1996.

§ 110 ILCS 805/4-8. [Jurisdiction of claims]

Sec. 4-8. The Illinois Court of Claims shall have exclusive jurisdiction of all claims either in tort or contract against the experimental district and its board of trustees, including any such claims filed upon or after the abolition of the experimental district as provided in

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Section 2-12.1 [110 ILCS 805/2-12.1].

(Source: P.A. 80-293; 89-473, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 104-8.

Effect of Amendments. The 1996 amendment by P.A. 89-473, effective June 18, 1996, added at the end "including any such claims filed upon or after the abolition of the experimental district as provided in Section 2-12.1".

CASE NOTES

Prospective Application

This section, which became effective subsequent to accident and to the institution of proceedings, was construed as prospective only. Gocheff v. State Community College, 69 Ill. App. 3d 178, 25 Ill. Dec. 477, 386 N.E.2d 1141 (5 Dist. 1979).

ARTICLE V.

BUILDING PROGRAMS

§ 110 ILCS 805/5-1. Application; State funds

Sec. 5-1. Application; State funds. (a) This Article does not apply to community college energy conservation measures and guaranteed energy saving contracts undertaken, implemented, or entered into under Article V-A.

(b) Upon compliance with the provisions of this Article, any community college may receive and expend funds for building purposes under the direction of the State Board pursuant to the provisions of the Capital Development Bond Act of 1972 [30 ILCS 420/1 et seq.] and the Capital Development Board Act [20 ILCS 3105/1 et seq.].

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(Source: P.A. 79-1168; 88-173, § 75.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 105-1.

Effect of Amendments. The 1993 amendment by P.A. 88-173, effective July 28, 1993, added the section catchline; added subsection (a); added the subsection (b) designation; and in subsection (b) deleted "as now or hereafter amended" following "Act of 1972" and "Capital Development Board Act".

CASE NOTES

Constitutionality

This section and 110 ILCS 805/2-12, allocating state tax funds for local purposes when all of the territory in the state is not eligible, are not special legislation and do not deny due process. People v. Francis, 40 Ill. 2d 204, 239 N.E.2d 129 (1968).

§ 110 ILCS 805/5-2. [Definitions]

Sec. 5-2. As used in this Article, unless the context otherwise requires; "Building purposes" means the preparation of preliminary drawings and sketches, working drawings and specifications, erection, building acquiring, altering, improving or expanding college facilities, including the acquisition of land therefor, and the inspection and supervision thereof, to be used exclusively for community colleges.

"Facilities" means classroom buildings and equipment, related structures and utilities necessary or appropriate for the uses of a community college, but not including land or buildings intended primarily for staff housing, dormitories, or for athletic exhibitions, contests or games for which admission charges are to be made to the general public.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 105-2.

§ 110 ILCS 805/5-3. [Application to participate in special program]

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Sec. 5-3. Community college districts desiring to participate in the program authorized in Section 5-1 of this Act [110 ILCS 805/5-1] shall make a written application to the State Board on forms provided by such Board. The State Board may require the following information:

(a) Description of present facilities and those planned for construction.

(b) Present community college enrollment.

(c) The projected enrollment over the next 5 years. However, no application shall be accepted unless such district contains 3 counties, or that portion of 3 counties not included in an existing community college district, or the projected enrollment shows more than 1,000 fulltime equivalent students within 5 years in districts outside the Chicago standard metropolitan area and more than 2,000 fulltime equivalent students in the Chicago standard metropolitan area, such area as defined by U.S. Bureau of Census.

(d) Outline of community college curricula, including vocational and technical education, present and proposed.

(e) District financial report including financing plans for district's share of costs.

(f) Facts showing adequate standards for the physical plant, heating, lighting, ventilation, sanitation, safety, equipment and supplies, instruction and teaching, curricula, library, operation, maintenance, administration and supervision.

(g) Survey of the existing community college or proposed community college service area and the proper location of the site in relation to the existing institutions of higher education offering pre-professional, occupational and technical training curricula. The factual survey must show the possible enrollment, assessed valuation, industrial, business, agricultural and other conditions reflecting educational needs in the area to be served; however, no community college will be authorized in any location which, on the basis of the evidence supplied by the factual survey, shall be deemed inadequate for the maintenance of desirable standards for the offering of basic subjects of general education, semiprofessional and technical curricula.

(h) Such other information as the State Board may require.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 105-3.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1501.603.

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CASE NOTES

Constitutionality

This section provides a rational basis for classifying eligibility for allocating funds for building purposes. People v. Francis, 40 Ill. 2d 204, 239 N.E.2d 129 (1968).

§ 110 ILCS 805/5-4. [Application to participate in program for new facilities]

Sec. 5-4. Any community college district desiring to participate in the program for new academic facilities or any facilities built or bought under contract entered into after July 7, 1964, shall file an application with the State Board prior to such dates as are designated by the State Board. The State Board in providing priorities if such are needed because of limited funds shall be regulated by objective criteria which shall be such as will tend best to achieve the objectives of this Article, while leaving opportunity and flexibility for the development of standards and methods that will best accommodate the varied needs of the community colleges in the State. Basic criteria shall give special consideration to the expansion of enrollment capacity and shall include consideration of the degree to which the applicant districts effectively utilize existing facilities and which allow the Board, for priority purposes, to provide for the grouping in a reasonable manner, the application for facilities according to functional or educational type.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 105-4.

§ 110 ILCS 805/5-5. [Formulation of study]

Sec. 5-5. The State Board shall make a study of the need for the community college facilities proposed, the ability of the community college district to finance 25% of the project and any other matters which the State Board deems necessary. If the State Board determines that the conditions and needs for facilities justify the project as set forth in the application, the plan shall be approved.

(Source: P.A. 78-669.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 105-5.

§ 110 ILCS 805/5-6. [Contributions]

Sec. 5-6. Any community college district may, as a part of its 25% contribution for building purposes, contribute real property situated within the geographical boundaries of such community college district at market value as determined at the time the contribution is made to the Capital Development Board in accordance with the program and budget, the plan as approved by the State Board by 3 appraisers appointed by the State Board, except that where a community college district has acquired such lands without cost or for a consideration substantially less than the market value thereof at the time of acquisition, the amount of the community college district's contribution for the land shall be limited (a) to the difference, if any, between the appraised market value at the time of acquisition and the appraised market value at the time the contribution is made to the Capital Development Board, if the grantor is the Federal government, (except that no property acquired prior to December 18, 1975 shall be affected by the provisions of this section), or any department, agency, board or commission thereof or (b) to the actual amount, if any, of the consideration paid for the land if the grantor is the State of Illinois or any department, agency, board or commission thereof.

In the event the highest appraisal exceeds the average of the other two appraisals by more than 10%, such appraisal shall not be considered in determining the market value of the land and a new appraiser shall be appointed by the State Board, who shall re-appraise the land. The re-appraisal shall then become the third appraisal as required by this section. The cost of the appraisement shall be paid by the community college district.

(Source: P.A. 84-1308.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 105-6.

§ 110 ILCS 805/5-7. Transfer of funds or designation of real property

Sec. 5-7. Transfer of funds or designation of real property. Prior to entering into an agreement with the Capital Development Board, the community college board shall transfer to the Capital Development Board funds or designate for building purposes any real property it may own, either improved or unimproved, situated within the geographical boundaries of such community college district, or both, in an amount equal to at least 25% of the total amount necessary to finance the project, except that no real

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property may be so designated, unless prior to its acquisition by the community college district after December 18, 1975 the Capital Development Board has had an opportunity to evaluate the land and issue a report concerning its suitability for construction purposes. For the purposes of this Section, the proceeds derived from the sale of bonds as provided in this Act, any lands designated as all or part of the 25% contribution by the community college district or any other money available to the community college for building purposes may be used.

(Source: P.A. 84-1308; 89-281, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 105-7.

Effect of Amendments. The 1995 amendment by P.A. 89-281, effective August 10, 1995, added the section catchline; and in the second sentence deleted "except that Federal funds may not be included in the first 25% financed by the district" from the end.

§ 110 ILCS 805/5-8. [Filing of claims]

Sec. 5-8. If the State of Illinois makes funds available, the community college district which has had its project plan approved by the State Board shall be entitled to file a claim with the State Board in a sum not exceeding 75% of the cost of the project. The State Board shall within 30 days certify such claims to the State Comptroller, who shall draw his warrants on the State Treasurer payable to the community college district.

(Source: P.A. 78-669; 78-1297.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 105-8.

§ 110 ILCS 805/5-9. [Financing of project]

Sec. 5-9. The community college district may finance 25% or more of the project by issuing bonds in the manner provided in Article IIIA. The community college board is authorized to transfer to the Capital Development Board to supplement the financing by the Capital Development Board responsive to the "Capital Development Bond Act of 1972", as now or hereafter amended [30 ILCS 420/1 et seq.], and the "Capital Development Board Act", as now or hereafter amended [20 ILCS 3105/1 et seq.], such

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monies as are necessary to finance at least 25% of the project. In addition any community college district may designate for building purposes any property it may own, either real or personal, situated within the geographical boundaries of such community college district, as part of its contribution necessary to finance at least 25% of the project. The obligation of property and money may be made for any project authorized by law to be undertaken by the Capital Development Board responsive to a declaration of such project being in the public interest by the General Assembly for any of the purposes approved by the State Board.

(Source: P.A. 81-1509.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 105-9.

§ 110 ILCS 805/5-10. [Progress reports]

Sec. 5-10. The community college district shall make written reports on the progress and completion of the project as required by the State Board.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 105-10.

§ 110 ILCS 805/5-11. [Grants for expenditures]

Sec. 5-11. Any public community college which subsequent to July 1, 1972, commenced construction of any facilities approved by the State Board and the Illinois Board of Higher Education may, after completion thereof, apply to the State for a grant for expenditures made by the community college from its own funds for building purposes for such facilities in excess of 25% of the cost of such facilities as approved by the State Board and the Illinois Board of Higher Education. Such grant shall be contingent upon said community college having otherwise complied with Sections 5-3, 5-4, 5-5 and 5-10 of this Act [110 ILCS 805/5-3, 110 ILCS 805/5-4, 110 ILCS 805/5-5 and 110 ILCS 805/5-10].

If any payments or contributions of any kind which are based upon, or are to be applied to, the cost of such construction are received from the Federal government, or an agency

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thereof, subsequent to receipt of the grant herein provided, the amount of such subsequent payment or contributions shall be paid over to the Capital Development Board by the community college for deposit in the Capital Development Bond Interest and Retirement Fund.

(Source: P.A. 80-1200.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 105-11.

§ 110 ILCS 805/5-12. [Defective design or construction]

Sec. 5-12. In the event the Capital Development Board determines that a facility previously provided for a community college under this Article was defectively designed or constructed, the cost of any necessary corrective work shall be fully funded by monies appropriated pursuant to the Capital Development Bond Act of 1972, as now or hereafter amended [30 ILCS 420/1 et seq.]. In such an instance, the community college shall not be required to provide any portion of the cost of the corrective work.

Should a community college district recover damages against any party responsible for the defective design or construction of a community college facility, the community college district shall reimburse the State of Illinois for any funds provided by the State to correct building defects.

No provision of this Section shall preclude or delay litigation by a community college district to recover damages for such defective design or construction from the party or parties responsible for same.

(Source: P.A. 81-994.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 105-12.

OPINIONS OF ATTORNEY GENERAL

Analysis
Board's Authority

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- Cause of Defects
Release
- Correction Not Precluded

Board's Authority

- Cause of Defects

Under this section the Capital Development Board may determine whether building defects in a community college building are the result of design error or defective construction even though a lawsuit resulting from such building defects has been settled and that settlement effectively works to preclude a judicial determination on causation or fault regarding the building defects. 1985 Op. Atty. Gen. (85-020).

Release

- Correction Not Precluded

A release executed by a college and the Illinois Building Authority in the course of settling a claim or claims emanating from building defects in a college building did not preclude the Capital Development Board from using state funds, pursuant to this section to correct the building defects. 1985 Op. Atty. Gen. (85-020).

Article V-A.

Community College Energy Conservation and Saving Measures

§ 110 ILCS 805/5A-5. Definitions

Sec. 5A-5. Definitions. In this Article words and phrases have the meanings set forth in the following Sections preceding Section 5A-30 [110 ILCS 805/5A-30].

(Source: P.A. 88-173, § 75.)

Effective Date. Section 99 of P.A. 88-173 made this Article effective upon becoming law. The Act was approved July 28, 1993.

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§ 110 ILCS 805/5A-10. Energy conservation measure

Sec. 5A-10. Energy conservation measure. "Energy conservation measure" means any improvement, repair, alteration, or betterment of any building or facility owned or operated by a community college district or any equipment, fixture, or furnishing to be added to or used in any such building or facility, subject to all applicable building codes, that is designed to reduce energy consumption or operating costs, and may include, without limitation, one or more of the following:

(1) Insulation of the building structure or systems within the building.

(2) Storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption.

(3) Automated or computerized energy control systems.

(4) Heating, ventilating, or air conditioning system modifications or replacements.

(5) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code for the lighting system after the proposed modifications are made.

(6) Energy recovery systems.

(7) Energy conservation measures that provide long-term operating cost reductions.

(Source: P.A. 88-173, § 75; 94-1062, § 15.)

Effect of Amendments. The 2006 amendment by P.A. 94-1062, effective July 31, 2006, added "subject to all applicable building codes" in the first paragraph.

§ 110 ILCS 805/5A-15. Guaranteed energy savings contract

Sec. 5A-15. Guaranteed energy savings contract. "Guaranteed energy savings contract" means a contract for: (i) the implementation of an energy audit, data collection, and other related analyses preliminary to the undertaking of energy conservation measures; (ii) the evaluation and recommendation of energy conservation measures; (iii) the implementation of one or more energy conservation measures; and (iv) the implementation of project monitoring and data collection to verify post-installation energy consumption and energy-related operating costs. The contract shall provide that all payments, except obligations on termination of the contract before its expiration, are

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to be made over time and that the savings are guaranteed to the extent necessary to pay the costs of the energy conservation measures.

(Source: P.A. 88-173, § 75.)

§ 110 ILCS 805/5A-20. Qualified provider

Sec. 5A-20. Qualified provider. "Qualified provider" means a person or business whose employees are experienced and trained in the design, implementation, or installation of energy conservation measures. The minimum training required for any person or employee under this Section shall be the satisfactory completion of at least 40 hours of course instruction dealing with energy conservation measures. A qualified provider to whom the contract is awarded shall give a sufficient bond to the community college district for its faithful performance.

(Source: P.A. 88-173, § 75.)

§ 110 ILCS 805/5A-25. Request for proposals

Sec. 5A-25. Request for proposals. "Request for proposals" means a competitive selection achieved by negotiated procurement. The request for proposals shall be announced in the Illinois Procurement Bulletin and through at least one public notice, at least 14 days before the request date in a newspaper published in the district, or if no newspaper is published in the district, in a newspaper of general circulation in the area of the district, by a community college district that will administer the program, requesting innovative solutions and proposals for energy conservation measures. Proposals submitted shall be sealed. The request for proposals shall include all of the following:

(1) The name and address of the community college district.

(2) The name, address, title, and phone number of a contact person.

(3) Notice indicating that the community college district is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.

(4) The date, time, and place where proposals must be received.

(5) The evaluation criteria for assessing the proposals.

(6) Any other stipulations and clarifications the community college district may require.

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(Source: P.A. 88-173, § 75; 94-1062, § 15.)

Effect of Amendments. The 2006 amendment by P.A. 94-1062, effective July 31, 2006, in the first sentence, added "competitive selection achieved by", and in the second sentence added "in the Illinois Procurement Bulletin and" and substituted "14 days" for "10 days".

§ 110 ILCS 805/5A-30. Evaluation of proposal

Sec. 5A-30. Evaluation of proposal. Before entering into a guaranteed energy savings contract under Section 5A-35 [110 ILCS 805/5A-35], a community college district shall submit a request for proposals. The community college district shall evaluate any sealed proposal from a qualified provider. The evaluation shall analyze the estimates of all costs of installations, modifications or remodeling, including, without limitation, costs of a pre-installation energy audit or analysis, design, engineering, installation, maintenance, repairs, debt service, conversions to a different energy or fuel source, or post-installation project monitoring, data collection, and reporting. The evaluation shall include a detailed analysis of whether either the energy consumed or the operating costs, or both, will be reduced. If technical assistance is not available by a licensed architect or registered professional engineer on the community college district staff, then the evaluation of the proposal shall be done by a registered professional engineer or architect, who is retained by the community college district. Any licensed architect or registered professional engineer evaluating a proposal under this Section may not have any financial or contractual relationship with a qualified provider or other source that would constitute a conflict of interest. The community college district may pay a reasonable fee for evaluation of the proposal or include the fee as part of the payments made under Section 5A-40 [110 ILCS 805/5A-40].

(Source: P.A. 88-173, § 75; 94-1062, § 15.)

Effect of Amendments. The 2006 amendment by P.A. 94-1062, effective July 31, 2006, added the next-to-last sentence.

§ 110 ILCS 805/5A-35. Award of guaranteed energy savings contract

Sec. 5A-35. Award of guaranteed energy savings contract. Sealed proposals must be opened by a member or employee of the community college board at a public opening at which the contents of the proposals must be announced. Each person or entity submitting a sealed proposal must receive at least 10 days notice of the time and place of the opening. The community college district shall select the qualified provider that best meets the needs of the district. The community college district shall provide public notice

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of the meeting at which it proposes to award a guaranteed energy savings contract of the names of the parties to the proposed contract and of the purpose of the contract. The public notice shall be made at least 10 days prior to the meeting. After evaluating the proposals under Section 5A-30 [110 ILCS 805/5A-30], a community college district may enter into a guaranteed energy savings contract with a qualified provider if it finds that the amount it would spend on the energy conservation measures recommended in the proposal would not exceed the amount to be saved in either energy or operational costs, or both, within a 20-year period from the date of installation, if the recommendations in the proposal are followed. Contracts let or awarded shall be published in the next available subsequent Illinois Procurement Bulletin.

(Source: P.A. 88-173, § 75; 94-1062, § 15.)

Effect of Amendments. The 2006 amendment by P.A. 94-1062, effective July 31, 2006, substituted "20-year" for "10-year" in the next-to-last sentence; and added the last sentence.

§ 110 ILCS 805/5A-40. Guarantee

Sec. 5A-40. Guarantee. The guaranteed energy savings contract shall include a written guarantee of the qualified provider that either the energy or operational cost savings, or both, will meet or exceed within 20 years the costs of the energy conservation measures. The qualified provider shall reimburse the community college district for any shortfall of guaranteed energy savings projected in the contract. A qualified provider shall provide a sufficient bond to the community college district for the installation and the faithful performance of all the measures included in the contract. The guaranteed energy savings contract may provide for payments over a period of time, not to exceed 20 years from the date of final installation of the measures.

(Source: P.A. 88-173, § 75; 88-615, § 14; 94-1062, § 15.)

Effect of Amendments. The 1994 amendment by P.A. 88-615, effective September 9, 1994, in the last sentence, added at the end "from the date of final installation of the measures".

The 2006 amendment by P.A. 94-1062, effective July 31, 2006, twice substituted "20 years" for "10 years".

§ 110 ILCS 805/5A-45. Installment payment; lease purchase

Sec. 5A-45. Installment payment; lease purchase. A community college district or 2 or more such districts in combination may enter into an installment payment contract or

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lease purchase agreement with a qualified provider or with a third-party lender, as authorized by law, for the purchase and installation of energy conservation measures by a qualified provider. Every community college district may issue certificates evidencing the indebtedness incurred pursuant to the contracts or agreements. Any such contract or agreement shall be valid whether or not an appropriation with respect thereto is first included in any annual or additional or supplemental budget adopted by the community college district. Each contract or agreement entered into by a community college district pursuant to this Section shall be authorized by resolution of the community college board.

(Source: P.A. 88-173, § 75; 95-612, § 15.)

Effect of Amendments. The 2007 amendment by P.A. 95-612, effective September 11, 2007, in the first sentence, inserted "or with a third-party lender, as authorized by law", and added "by a qualified provider".

§ 110 ILCS 805/5A-50. Term; budget and appropriations

Sec. 5A-50. Term; budget and appropriations. Guaranteed energy savings contracts may extend beyond the fiscal year in which they become effective. The community college district shall include in its annual budget and appropriations measures for each subsequent fiscal year any amounts payable under guaranteed energy savings contracts during that fiscal year.

(Source: P.A. 88-173, § 75.)

§ 110 ILCS 805/5A-55. Operational and energy cost savings

Sec. 5A-55. Operational and energy cost savings. The community college district shall document the operational and energy cost savings specified in the guaranteed energy savings contract and designate and appropriate that amount for an annual payment of the contract. If the annual energy savings are less than projected under the guaranteed energy savings contract the qualified provider shall pay the difference as provided in Section 5A-40 [110 ILCS 805/5A-40].

(Source: P.A. 88-173, § 75.)

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§ 110 ILCS 805/5A-60. Available funds

Sec. 5A-60. Available funds. A community college district may use funds designated for operating or capital expenditures for any guaranteed energy savings contract including purchases using installment payment contracts or lease purchase agreements. A community college district that enters into such a contract or agreement may covenant in such contract or agreement that payments made thereunder shall be payable from the first funds legally available in each fiscal year.

(Source: P.A. 88-173, § 75.)

§ 110 ILCS 805/5A-65. Funding

Sec. 5A-65. Funding. No State credit hour grants or other grants or funds appropriated for distribution to or reimbursement of a community college district shall be reduced as a result of energy savings realized from a guaranteed energy savings contract or a lease purchase agreement for the purchase and installation of energy conservation measures.

(Source: P.A. 88-173, § 75.)

ARTICLE VI.

TUITION; ANNEXATION AND DISCONNECTION OF TERRITORY; TAXATION

§ 110 ILCS 805/6-1. [Additional annual tax]

Sec. 6-1. The board of education of any non-high school district or any school district maintaining grades 9 through 12, any part of which lies outside a community college district may, beginning in the year 1985, levy an additional annual tax upon that part of the taxable property of the school district lying outside a community college district in an amount sufficient for community college educational purposes for the payment of tuition

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as provided in Section 6-2 [110 ILCS 805/6-2] for any graduate of a recognized high school or student otherwise qualified to attend a public community college, and shall apply the proceeds for the purpose for which levied. Such tax may be levied for 5 successive years. This levy authority shall expire on or before the last Tuesday of December, 1989, and 1989 is the last year for which such additional tax may be levied. This tax is in addition to and in excess of any other tax for educational purposes and shall be levied and collected at the same time and in the same manner as other school district taxes. By October 1, 1989, a petition shall be filed or resolution adopted under either Article 3 or Article 6 seeking the inclusion of such territory of the school district lying outside a community college district in a new community college district, or the annexation of such territory to an existing community college district. If such petition or resolution is not filed within the specified time, the State Board shall assign the territory to a new or existing community college district, such assignment to be effective July 1, 1990.

When such a non-high school district or school district maintaining grades 9 through 12 becomes totally included in a community college district, any balance of the funds received from the tax levied for community college educational purposes remaining after the payment of all claims against those funds shall be credited to the educational fund of that school district, except that the board of education of any high school district or any school district maintaining grades 9 through 12 which is included in a new community college district formed pursuant to Section 6-6.1 [110 ILCS 805/6-6.1] shall continue to comply with the provisions of this Section and Section 6-2 [110 ILCS 805/6-2] until January 1, 1991.

(Source: P.A. 86-469.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 106-1.

§ 110 ILCS 805/6-2. [Attendance at community college outside of district]

Sec. 6-2. Any graduate of a recognized high school or student otherwise qualified to attend a public community college and residing outside a community college district who notifies the board of education of his district may, subject to Section 3-17 [110 ILCS 805/3-17], attend any recognized public community college in the State which he chooses, and the board of education of that district shall pay his tuition, as defined herein, for any semester, quarter or term of that academic year and the following summer term from the educational fund or the proceeds of a levy made under Section 6-1 [110 ILCS 805/6-1]. In addition, any graduate of a recognized high school or student otherwise qualified to attend a public community college and residing in a new community college district formed pursuant to Section 6-6.1 [110 ILCS 805/6-6.1] who notifies the board of

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education of his district may, subject to the provisions of Section 3-17 [110 ILCS 805/3-17], attend any recognized public community college in the State, and the board of education of that district shall pay his tuition until January 1, 1991. If a resident is not eligible for tuition for a summer term because he did not notify his board of education by the previous September 15, he may become eligible for that tuition for a summer term by giving notice to the board of education by May 15 preceding his enrollment for the summer term. Such tuition may not exceed the per capita cost of the community college attended for the previous year, or in the case of the first year of operation the estimated per capita cost, less certain deductions to be computed in the manner set forth below. The community college per capita cost shall be computed, in a manner consistent with any accounting system prescribed by the State Board, by adding all of the non-capital expenditures, including interest, to the depreciation on capital outlay expenditures paid from sources other than State and Federal funds and then dividing by the number of full-time equivalent students for the fiscal year as defined in this Section. The community college tuition to be charged to the district of the student's residence shall be computed, in a manner consistent with any accounting system prescribed by the State Board, by adding all of the non-capital expenditures for the previous year, including interest, to the depreciation on capital outlay expenditures paid from sources other than State and Federal funds less any payments toward non-capital expenditures received from State and Federal sources for the previous year except grants through the State Board, as authorized in Section 2-16 or 2-16.02 [110 ILCS 805/2-16.02], as the case may be, and then dividing by the number of full-time equivalent students for that fiscal year as defined in this Section; this average per student computation shall be converted to a semester hour or quarter hour base and further reduced by the combined rate of State grants other than equalization grants for the current year as provided for in Section 2-16.02 [110 ILCS 805/2-16.02] and any rate of tuition and fees assessed all students for the current year as authorized in Section 6-4 [110 ILCS 805/6-4].

Any person who has notified the board of education of his or her district as provided above and who is a resident of that district at the time of such notification shall have his or her tuition paid by that district for that academic year and the following summer term so long as he or she resides in Illinois outside a community college district. If he or she becomes a resident of a community college district, he or she shall be classified as a resident of that district at the beginning of any semester, quarter or term following that change of residence.

If a resident of a community college district wishes to attend the community college maintained by the district of his or her residence but the program in which the student wishes to enroll is not offered by that community college, and the community college maintained by the district of his residence does not have a contractual agreement under Section 3-40 of this Act [110 ILCS 805/3-40] for such program, the student may attend any recognized public community college in some other district, subject to the provisions of Section 3-17 [110 ILCS 805/3-17], and have his or her tuition, as defined herein, paid by the community college district of his or her residence while enrolled in a program at that college which is not offered by his or her home community college if he or she makes application to his or her home board at least 30 days prior to the beginning of any semester, quarter or term in accordance with rules, regulations and procedures established

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and published by his or her home board. The payment of tuition by his or her district of residence may not exceed the per capita cost of the community college attended for the previous year, or in the case of the first year of operation the estimated per capita cost, less certain deductions to be computed in the manner set forth above for the community college tuition to be charged to the district of the student's residence.

Payment shall be made hereunder to the community college district of attendance immediately upon receipt, by the district liable for the payment, of a statement from that community college district of the amount due it. Before sending such a statement requesting payment, however, the community college district of attendance shall make all calculations and deductions required under this Section so that the amount requested for payment is the exact amount required under this Section to be paid by the district liable for payment.

If the moneys in the educational fund or the proceeds from a levy made under Section 6-1 [110 ILCS 805/6-1] of a district liable for payments under this Section are insufficient to meet such payments, the district liable for such payments may issue tax anticipation warrants as provided in Section 3-20.10 [110 ILCS 805/3-20.10].

A full-time equivalent student for a semester, quarter or term is defined as a student doing 15 semester hours of work per semester or 15 quarter hours of work per quarter or the equivalent thereof, and the number of full-time equivalent students enrolled per term shall be determined by dividing by 15 the total number of semester hours or quarter hours of work for which State Board grants are received, or the equivalent thereof, carried by all students of the college through the mid-term of each semester, quarter or term. The number of full-time equivalent students for a fiscal year shall be computed by adding the total number of semester hours or quarter hours of work or the equivalent thereof carried by all students of the college through the mid-term of each semester, quarter or term during that fiscal year and dividing that sum by 30 semester hours or 45 quarter hours or the equivalent thereof depending upon the credit hour system utilized by the college. Tuition of students carrying more or less than 15 semester hours of work per semester or 15 quarter hours of work per quarter or the equivalent thereof shall be computed in the proportion which the number of hours so carried bears to 15 semester hours or 15 quarter hours or the equivalent thereof.

If the United States Government, the State of Illinois, or any agency pays tuition for any community college student, neither the district of residence of the student nor the student may be required to pay that tuition or such part thereof as is otherwise paid. No part of the State's financial responsibility provided for in Section 2-16 may be transferred to a student's district of residence under this Section.

(Source: P.A. 86-469; 86-1246; 87-1018, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 106-2.

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Section 2-16, referred to above, has been repealed.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 2700.20.

Effect of Amendments. The 1992 amendment, effective September 3, 1992, added "or 2-16.02, as the case may be," in the first paragraph; and substituted "2-16.02" for "2-16" in the last sentence of the first paragraph.

CASE NOTES

Constitutionality

This section does not violate former Ill. Const. (1870), Art. IX, § 10 (see now Ill. Const. (1970), Art. VII, § 7). People v. Francis, 40 Ill. 2d 204, 239 N.E.2d 129 (1968).

This section does not violate the requirement of uniformity of taxation. People v. Francis, 40 Ill. 2d 204, 239 N.E.2d 129 (1968).

§ 110 ILCS 805/6-4. Variable rates and fees

Sec. 6-4. Variable rates and fees. Any community college district, by resolution of the board, may establish variable tuition rates and fees for students attending its college in an amount not to exceed 1/3 of the per capita cost as defined in Section 6-2 [110 ILCS 805/6-2], provided that voluntary contributions, as defined in Section 65 of the Higher Education Student Assistance Act [110 ILCS 947/65], shall not be included in any calculation of community college tuition and fee rates for the purpose of this Section.

(Source: P.A. 86-1445; 87-435; 90-14, § 3-75.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 106-4.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 1501.505.

Effect of Amendments. The 1997 amendment by P.A. 90-14, effective July 1, 1997, added the section catchline; and substituted "Section 65 of the Higher Education Student Assistance" for "the Matching Grants for Scholarships Act".

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§ 110 ILCS 805/6-4a. In-state tuition charge

Sec. 6-4a. In-state tuition charge. (a) Notwithstanding any other provision of law to the contrary, for tuition purposes, a board shall deem an individual an Illinois resident, until the individual establishes a residence outside of this State, if all of the following conditions are met:

(1) The individual resided with his or her parent or guardian while attending a public or private high school in this State.

(2) The individual graduated from a public or private high school or received the equivalent of a high school diploma in this State.

(3) The individual attended school in this State for at least 3 years as of the date the individual graduated from high school or received the equivalent of a high school diploma.

(4) The individual registers as an entering student in the community college not earlier than the 2003 fall semester.

(5) In the case of an individual who is not a citizen or a permanent resident of the United States, the individual provides the community college with an affidavit stating that the individual will file an application to become a permanent resident of the United States at the earliest opportunity the individual is eligible to do so.

(b) This Section applies only to tuition for a term or semester that begins on or after the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-13].

(Source: P.A. 93-7, § 50.)

Effective Date. Section 99 of P.A. 93-7, made this section effective upon becoming law. The Act was approved May 20, 2003.

§ 110 ILCS 805/6-4.1. [Students failing to qualify for financial support]

Sec. 6-4.1. If a resident of Illinois qualifies for admission to a public community college under Section 3-17 [110 ILCS 805/3-17] but does not qualify for financial support under Section 6-2 [110 ILCS 805/6-2], he may be enrolled in the college upon payment of the difference between the per capita cost as defined in Section 6-2 [110 ILCS 805/6-2] less any payments toward noncapital expenditures received from State and federal sources for the previous year except grants through the State Board as authorized in Section 2-16 or 2-16.02 [110 ILCS 805/2-16.02], as the case may be, converted to a semester hour or quarter hour base, and the combined rate of State grants other than equalization grants for

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the current year as authorized in Section 2-16.02 [110 ILCS 805/2-16.02], notwithstanding tuition limits of Section 6-4 [110 ILCS 805/6-4]. Subject to Section 3-17 [110 ILCS 805/3-17], a public community college may accept out-of-state students upon payment of the per capita cost as defined in Section 6-2 [110 ILCS 805/6-2]. Notwithstanding the provisions of this Section, the out-of-district or out-of-state tuition, whichever is applicable, may be waived for a student who is employed for at least 35 hours per week by an entity located in the district or is enrolled in a course that is being provided under terms of a contract for services between the employing entity and the college.

(Source: P.A. 86-1246; 87-741; 87-1018, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 106-4.1.

Section 2-16, referred to above, has been repealed.

Effect of Amendments. The 1992 amendment, effective September 3, 1992, added "or 2-16.02, as the case may be,"; and substituted "2-16.02" for "2-16".

§ 110 ILCS 805/6-5.3. [Territory included in one community college district; disconnection and annexation]

Sec. 6-5.3. Any part of the territory included in one community college district which is on the border of that district and the disconnection of which will not destroy the contiguity of that district may be disconnected from that district and annexed to another community college district to which that territory is contiguous if (1) that disconnection and annexation will make community college educational opportunities more readily available to the residents of that territory and (2) the disconnection from the community college district of which the territory is presently a part will not reduce the population and equalized assessed valuation of the remainder of that district below that required for original organization.

Subject to those conditions, a petition signed by 2/3 of the resident voters of the territory may be filed with the appropriate regional superintendent of the community college district of which the territory is a part. The petition must contain a description of the territory to be disconnected and annexed and must petition for the disconnection thereof from one designated community college district and for the annexation thereof to another designated community college district. Upon the filing of such a petition the regional superintendent shall submit the petition to the State Board for review.

Subject to those conditions, a petition signed by 1/5 or 500, whichever is less, of the resident voters of the territory may be filed with the appropriate regional superintendent

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who conducted the election for the establishment of the community college district of which the territory is a part. The petition must contain a description of the territory to be disconnected and annexed and request that an election be called in the territory described therein for the purpose of voting on the proposition whether that territory shall be disconnected from one designated community college district and annexed to another designated community college district. Upon the filing of such a petition, the regional superintendent shall submit the petition to the State Board for review.

Upon the receipt from a regional superintendent of a petition filed with him under this Section and signed by 2/3 of the resident voters of the territory described in the petition, the State Board shall notify the board of the community college district affected by the petition of the receipt of the petition and shall cause to be published in one or more newspapers having a general circulation in the territory described in the petition a notice stating that a petition has been filed for certain described territory, stating the prayer of that petition and that any persons wishing to object to the prayer of that petition must file a petition signed by 10% or 25, whichever is less, of the resident voters of that territory requesting a public hearing on such petition with the State Board within 30 days of the publication of the notice. In the event that there are no resident voters in the territory described in the petition filed with the regional superintendent, then any petition requesting a public hearing shall be signed by the owners of 25% or more of the area of that territory. If a petition requesting a public hearing on the petition filed with the regional superintendent is so filed, the State Board shall set that petition for hearing not sooner than 10 nor more than 60 days from the date on which the petition for a public hearing was filed and shall cause notice of the date, time and place of the hearing to be published in one or more newspapers having a general circulation in the territory described in the petition and the community college district. On such day, or on a day to which the State Board continues that hearing, the State Board or a hearing officer appointed by it shall hear the petition and determine its sufficiency under this Article and may adjourn the hearing from time to time or continue the matter for want of sufficient notice or for other good cause. The State Board or a hearing officer appointed by it shall hear any additional evidence as to the school needs and conditions of the territory described in the petition and in the area within and adjacent thereto. If a hearing officer is appointed he shall report a summary of the testimony to the State Board. At the hearing, any resident of the territory described in the petition or any community district affected thereby may appear in support of the petition or to object thereto. If on the basis of its own study or at a public hearing the State Board finds the petition to be insufficient it shall disapprove the petition. If on the basis of its own study or at a public hearing the State Board finds the petition to be sufficient it shall determine whether the prayer of the petition is in the best interests of the schools in the general area and the educational welfare of the students within the territory described in the petition and shall either approve or disapprove the petition. If the prayer of the petition is determined to be in the best interests of the schools in the general area and the educational welfare of the students within the territory described in the petition, the State Board shall approve the petition. If the State Board disapproves the petition no further action shall be taken. If it approves the petition the State Board shall direct the appropriate regional superintendent to enter an order effecting the prayer of the petition.

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Within 30 days after receipt of the direction from the State Board the regional superintendent shall make and file with the State Board and the county clerk of the county or counties concerned a map showing the amended boundaries of the community college district.

Upon the receipt from a regional superintendent of a petition filed with him under this Section and signed by 1/5 or 500, whichever is applicable, of the resident voters of the territory described in that petition, the State Board shall notify the board of the community college district affected by the petition of the receipt of the petition and shall set the petition for hearing not sooner than 10 nor more than 60 days from the date it was submitted by the regional superintendent and shall cause notice of the filing of the petition and of the date, time and place of the hearing to be published in one or more newspapers having a general circulation in the territory described in that petition and in the community college district. On such day, or on a day to which the State Board continues the hearing, the State Board or a hearing officer appointed by it shall hear the petition and determine its sufficiency under this Article and may adjourn the hearing from time to time or continue the matter for want of sufficient notice or for other good cause. The State Board or a hearing officer appointed by it shall hear any additional evidence as to the school needs and conditions of the territory described in the petition and in the area within and adjacent thereto, and if a hearing officer is appointed he shall report a summary of the testimony to the State Board. At the hearing, any resident of the territory described in the petition or any district affected thereby may appear in support of the petition or to object thereto. If the State Board finds the petition to be insufficient it shall disapprove the petition. If the State Board finds the petition to be sufficient it shall determine whether the prayer of the petition is in the best interests of the schools in the general area and the educational welfare of the students within the territory and shall either approve or disapprove the petition. If the prayer of the petition is determined to be in the best interests of the schools in the general area and the educational welfare of the students within the territory described in the petition, the State Board shall approve the petition. If the State Board disapproves the petition no further action shall be taken. If it approves the petition, the State Board shall direct the appropriate regional superintendent to certify the proposition to the proper election authorities, who shall submit to the electorate, at a regular scheduled election in accordance with the general election law, the proposition presented by the petition in the territory described in the petition.

The election shall be conducted in accordance with the general election law. If a majority of the votes cast on the proposition are in favor of the proposition, the territory shall be changed accordingly. If the proposition relates to 2 community college districts, immediately following such favorable referendum, the regional superintendent who certified the proposition for submission shall certify the results of the election, along with a copy of the ballot, the petition and the approval of the petition by the State Board, to the appropriate regional superintendent for the other community college district. Within 30 days after the referendum the regional superintendent or superintendent of schools shall make and file with the State Board and the county clerk of the county or counties concerned a map or maps showing the amended boundaries of the community college district or districts.

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(Source: P.A. 81-1489.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 106-5.3.

CASE NOTES

Disconnection Held Proper

As there was nothing in the record to indicate that community college board's favorable action on a petition to disconnect was arbitrary, unreasonable, capricious or contrary to the manifest weight of the evidence before it, the trial court erred in overturning the board's decision. Board of Trustees v. Illinois Community College Bd., 43 Ill. App. 3d 956, 2 Ill. Dec. 779, 357 N.E.2d 1222 (5 Dist. 1976).

§ 110 ILCS 805/6-5.3a: Repealed by P.A. 90-372, § 5-312, effective July 1, 1998.

§ 110 ILCS 805/6-5.5. [Date of annexation and disconnection]

Sec. 6-5.5. Any annexation, disconnection and annexation, or disconnection accomplished under this Article takes effect on July 1st following the entry of the order by the regional superintendent or the court, or following the election, as the case may be. Any territory which is disconnected from a community college district, except territory that initiates proceedings to disconnect from its initial district and annex to another community college district within 30 days after the order for annexation to the first district, remains subject to taxation to pay its proportionate share of the bonded indebtedness of that community college district outstanding on the date the disconnection takes effect but no other part of the district to which that territory is annexed is subject to taxation on that bonded indebtedness of the district from which that territory was disconnected. That territory which initiates proceedings for disconnection from its initial district and annexation to another community college district within 30 days of the order for its annexation to its initial district shall not be considered a part of a community college district until the disconnection and annexation to another community college district has been allowed or denied by the State Board.

(Source: P.A. 83-132.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 106-5.5.

§ 110 ILCS 805/6-5.9: Repealed by P.A. 90-372, § 5-312, effective July 1, 1998.

§ 110 ILCS 805/6-6.1. [New districts]

Sec. 6-6.1. By December 1, 1989, the State Board shall establish or otherwise provide for new districts or for the annexation to an adjacent community college district (referred to in this Section as "the district") of each parcel of territory within this State that is not a part of a community college district (referred to in this Section as "nondistrict territory"). The State Board shall, by January 1, 1990, file with the county clerk of each county where any nondistrict territory is located a map showing the boundaries of the district as they will appear after the proposed new districts or annexation, shall publish notice within that county of the proposed new districts or annexation and shall notify each community college district to be affected by the proposed annexation. If, however, there is filed with the State Board, no later than October 1, 1989, a resolution of the board of education having jurisdiction over the high school which serves territory that is not part of a community college district designating the community college district to which the board of education desires that territory to be annexed, and also a resolution of the board of that community college district expressing agreement to such annexation, the State Board shall in performing its duties under this Section provide for such annexation in accordance with the desires expressed in such resolutions provided the State Board determines that such annexation is in the best interests of the schools in the general area and the educational welfare of the students within that territory.

For purposes of this Section, any territory which comprises a special charter school district and which is completely surrounded by a nondistrict territory shall be considered contiguous to any community college district beyond the boundaries of such nondistrict territory, the closest boundary of which is not more than 20 miles from the boundary of such territory so surrounded. The contiguity of such territory shall not be affected by any subsequent change in the status of the surrounding nondistrict territory, including the inclusion of such nondistrict territory in a community college district other than the district which the original territory was annexed to.

The notice required to be published in the county shall consist of a description of the nondistrict territory, the name of the community college district to which annexation is proposed and a statement that the proposed annexation takes effect by operation of law on July 1, 1990. Notice to a community college district is sufficient if it sets out a description of the nondistrict territory and the name of the community college district to which annexation is proposed and is mailed to the secretary of the district.

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If 1/10 or 50, whichever is less, of the resident voters of a nondistrict territory or, if nondistrict territory is uninhabited, the owners of record of at least 1/2 of that territory, file a petition with the State Board, by February 1, 1990, for a hearing in regard to the proposed annexation, or in regard to the proposed new district, or if a community college district, by resolution of its board, files such a petition with the State Board by February 1, 1990, the State Board shall set a public hearing in a county where the nondistrict territory is located, to be held, between March 1 and June 1, 1990, and shall give notice of the date, time and place of the hearing, not less than 10 nor more than 20 days before the date of the hearing, provided that no more than one such hearing shall be held in and for any such nondistrict territory or territories served by a high school or high schools under the jurisdiction of a single board of education.

If such a hearing is held, the State Board or a person designated by the State Board as hearing officer shall afford all interested persons a reasonable opportunity to be heard. After the hearing, that State Board shall determine whether the proposed annexation or new district should be modified in any way and this determination shall be evidenced by the filing by June 30, 1990, of a final map with the county clerk of each county affected showing the boundaries of each existing and proposed new community college district. Such a determination is an "administrative decision" as defined in Section 3-101 of the "Administrative Review Law" [735 ILCS 5/3-101]. If no hearing has been requested under this Section, the proposed map shall, upon notification to the appropriate county clerk, constitute the final map.

For purposes of this Section, publication of notice is sufficient if given once in a paper of general circulation in the county where nondistrict territory is located.

All new districts and annexations under this Section become effective, by operation of law, as of July 1, 1990. The board of any new community college district established by the State Board under the provisions of this Section shall be elected and organized under the Community College Act [110 ILCS 805/1-1 et seq.] and the general election law. In such cases the State Board shall designate the appropriate regional superintendent of schools to receive petitions, certify propositions to the proper election authorities for submission to the electors in accordance with the general election law, and convene the newly elected board in accordance with Sections 3-6, 3-7 and 3-8 [110 ILCS 805/3-6, 110 ILCS 805/3-7 and 110 ILCS 805/3-8]. The newly elected board shall proceed to organize in accordance with Section 3-8 [110 ILCS 805/3-8] and shall thereafter continue to exercise the powers and duties of a board in the manner as provided by law for all boards of community college districts except where obviously inapplicable or otherwise provided by this Act. The duly elected and organized board of any new community college district established under this Section shall levy taxes for operations and maintenance of facilities purposes and for educational purposes at rates not to exceed the maximums established by Section 7-18 [110 ILCS 805/7-18] but the board may act to increase such rates at a regular election in accordance with Section 3-14 [110 ILCS 805/3-14] and the general election law.

In the year 1990, or at such time as a prior annexation becomes effective under this Act, the board of trustees of a community college district to which territory is annexed shall levy taxes upon the annexed territory for operations and maintenance of facilities

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purposes and for educational purposes which, when compared to the amount of the tax authorized under Section 6-1 [110 ILCS 805/6-1] with respect to such territory for the year 1989, represents an increase of not more than .06 percent of the equalized assessed valuation of such annexed territory. However, such a rate shall not exceed the authorized rates for operation of the community college district. For each year subsequent to 1990, such a levy may increase by no more than .06 percent of the equalized assessed valuation of the annexed territory until it reaches the maximum authorized rates of the community college district or until the 1992 levy at which time the full authorized rates for operations shall be applied to the annexed territory. The board of trustees of the community college district shall levy the full amount of all taxes upon the annexed territory other than those described in this paragraph as soon as the annexation becomes effective. Annexed territory shall not be assessed an amount to pay for bonded indebtedness incurred prior to July 1, 1990 under Section 3A-1 of this Act [110 ILCS 805/3A-1] by the community college district.

(Source: P.A. 85-1335.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 106-6.1.

CASE NOTES

Applicability

- Laches

Quo warranto action was barred by laches where action was commenced nearly two years after the junior college district was originally organized, its board levied and collected taxes for the two years and expended those monies to establish the junior college, land was leased, contracts were entered into for the purchase of buildings and facilities for a temporary campus, faculty and administrative personnel were employed, and over 1500 students had enrolled and were now attending classes. People v. Junior College, 42 Ill. 2d 136, 246 N.E.2d 292 (1969).

Prior similar provisions were not unconstitutional on grounds of due process or equal protection. People v. Francis, 40 Ill. 2d 204, 239 N.E.2d 129 (1968).

§ 110 ILCS 805/6-7: Repealed by P.A. 90-372, § 5-312, effective July 1, 1998.

§§ 110 ILCS 805/6-7.1 through 110 ILCS 805/6-7.5: Repealed by P.A. 90-372, § 5-312, effective July 1, 1998.

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§ 110 ILCS 805/6-10. [Application of paragraphs]

Sec. 6-10. Sections 6-5.3, 6-5.5 and 6-6.1 [110 ILCS 805/6-5.3, 110 ILCS 805/6-5.5 and 110 ILCS 805/6-6.1] do not apply to community college districts to which Article VII applies.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 106-10.

§ 110 ILCS 805/6-12. [Revenue Act of 1939]

Sec. 6-12. The tax rates and the tax rate limitation in this Act shall not be subject to the provisions of the Revenue Act of 1939 or its successor provisions included in the Property Tax Code [35 ILCS 200/1-1 et seq.].

(Source: Laws 1965, p. 1529; P.A. 88-670, § 3-56.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 106-12.

The Revenue Act of 1939, referred to above, was repealed. See now the Property Tax Code, 35 ILCS 200/1-1 et seq.

Effect of Amendments. The 1994 amendment by P.A. 88-670, effective December 2, 1994, added "or its successor provisions included in the Property Tax Code" at the end.

CASE NOTES

Time Limitations

Under the Revenue Act of 1939, even though the five-year statute of limitations applied to petitions for a sale-in-error, petitioner was still required to comply with the one-year deadline for

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taking out a tax deed; because petitioner failed to execute or file a tax deed within the one-year period, petitioner's certificate was null and void, and petitioner was not entitled to any relief. First Cent. Corp. v. Rosewell (In re County Treasurer), 264 Ill. App. 3d 476, 201 Ill. Dec. 850, 637 N.E.2d 439, 1994 Ill. App. LEXIS 910 (1 Dist. 1994).

Article VII.

§ 110 ILCS 805/7-1. [Application of act]

Sec. 7-1. This Article applies only to community college districts in cities having a population of 500,000 or more inhabitants. Each such community college district shall maintain a system of community colleges under the charge of a board, which is appointed as provided in Section 7-2 [110 ILCS 805/7-2]. Except as otherwise provided in this Article, such a community college district and its board have all the rights, duties, powers and responsibilities and are subject to the same limitations as are provided for other community college districts in this Act, as now or hereafter amended.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-1.

§ 110 ILCS 805/7-1.1. Additional powers

Sec. 7-1.1. Additional powers. (a) In addition to other powers and authority now possessed by it, the board shall have power (1) to lease from any public building commission created pursuant to the provisions of the "Public Building Commission Act", approved July 5, 1955, as now or hereafter amended [50 ILCS 20/1 et seq.], any real or personal property for the purpose of securing office or other space for its administrative functions or for community college purposes for a period of time not exceeding 40 years; and (2) to pay for the use of this leased property in accordance with the terms of the lease and with the provisions of the "Public Building Commission Act", approved July 5, 1955, as now or hereafter amended [50 ILCS 20/1 et seq.].

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Such lease may be entered into without making a previous appropriation for the expense thereby incurred; provided, however, that if the board undertakes to pay all or any part of the costs of operating and maintaining the property of a public building commission as authorized in this Section, such expenses of operation and maintenance shall be included in the annual budget of such board annually during the term of such undertaking.

In addition, the board may undertake, either in the lease with a public building commission or by separate agreement or contract with a public building commission, to pay all or any part of the costs of maintaining and operating the property of a public building commission for any period of time not exceeding 40 years.

(b) In addition, the board shall have power to borrow money (including, without limitation, in the form of a line of credit which may vary from time to time as to outstanding principal amount) from any source, public or private, for the purpose of refunding or continuing to refund bonds, notes or other indebtedness when they become due and payable, and to enter into agreements in connection with such borrowing, including agreements providing for the issuance of indebtedness to evidence the obligation to repay such borrowing and agreements providing for the pledge of and the granting of a lien on tuition and fees established and collected by the board pursuant to Section 6-4 [110 ILCS 805/6-4]; provided that the proceeds of any such indebtedness shall be used only to refund or continue to refund bonds, notes or other indebtedness initially issued between February 1, 1994 and March 1, 1994 in an amount not exceeding $34,000,000, and that any such indebtedness be repaid within 20 years.

(Source: P.A. 79-1456; 89-281, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-1.1.

Effect of Amendments. The 1995 amendment by P.A. 89-281, effective August 10, 1995, added the subsection (a) designation; and added subsection (b).

§ 110 ILCS 805/7-1.2. Power to deduct wages for municipal debts

Sec. 7-1.2. Power to deduct wages for municipal debts. Upon receipt of notice from the comptroller of a municipality with a population of 500,000 or more that a debt is due and owing the municipality by an employee of the board, the board may withhold, from the compensation of that employee, the amount of the debt that is due and owing and pay the amount withheld to the municipality; provided, however, that the amount deducted from any one salary or wage payment shall not exceed 25% of the net amount of the payment. Before the board deducts any amount from any salary or wage of an employee under this Section, the municipality shall certify that the employee has been afforded an opportunity for a hearing to dispute the debt that is due and owing the municipality. For purposes of

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this Section, "net amount" means that part of the salary or wage payment remaining after the deduction of any amounts required by law to be deducted and "debt due and owing" means (i) a specified sum of money owed to the municipality for city services, work, or goods, after the period granted for payment has expired, or (ii) a specified sum of money owed to the municipality pursuant to a court order or order of an administrative hearing officer after the exhaustion of, or the failure to exhaust, judicial review.

(Source: P.A. 90-22, § 20.)

Effective Date. Section 99 of P.A. 90-22 made this section effective upon becoming law. The Act was approved June 20, 1997.

§ 110 ILCS 805/7-2. [Members of board; vacancies; eligibility]

Sec. 7-2. The board shall consist of 7 members, appointed by the mayor with the approval of the city council. Prior to the expiration of the term of any member his successor shall be appointed in like manner and shall hold office for a term of 3 years from July 1 of the year in which he is appointed and until his successor is appointed and qualified. Any vacancy in the membership of the board shall be filled through appointment by the mayor, with the approval of the city council, for the unexpired term. If any appointee fails to qualify within 30 days after his appointment, the office shall be filled by a new appointment for the unexpired term. To be eligible for appointment to a board under this Section, a person must possess the same qualifications and meet the same requirements as are prescribed by this Act for members of an elected board of a community college district.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-2.

§ 110 ILCS 805/7-3. [Organization of board and election of officers]

Sec. 7-3. The organization of the board and election of officers for a board appointed under Section 7-2 [110 ILCS 805/7-2] shall be conducted in accordance with the general election law and this Act.

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(Source: P.A. 81-1489.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-3.

§ 110 ILCS 805/7-4. [Vesting of power by city council]

Sec. 7-4. No power vested in the board or in any of its officers, agents or employees may be exercised by the city council.

(Source: Laws 1967, p. 9.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-4.

§ 110 ILCS 805/7-5. [Fiscal year]

Sec. 7-5. Until January 1, 1972, the fiscal year of the Board is the calendar year, and thereafter the fiscal year shall commence on the first day of July and end on the last day of June of each succeeding year. To effect this transition the Board shall adopt a resolution establishing the first fiscal year for the period commencing on January 1, 1972, and ending on June 30, 1973. All reports of the chief administrative officer, the budget and all appropriations shall be prepared for such period.

The board and its officers shall have all necessary powers to effectuate such change in the fiscal year, but the proceedings had pursuant to this Section shall not alter the procedures for the levy of taxes as provided in Section 7-18 [110 ILCS 805/7-18].

(Source: P.A. 77-676.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-5.

§§ 110 ILCS 805/7-6, 110 ILCS 805/7-7: Repealed by P.A. 95-1046, § 8, effective March 27, 2009.

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§ 110 ILCS 805/7-8. [Budgets; adoption]

Sec. 7-8. Before or within the first quarter of each fiscal year, the board shall adopt a budget and pass a resolution to be termed the "annual budget", hereinafter called the "budget", in and by which the board, subject to the limitations in Sections 7-9 through 7-13 [110 ILCS 805/7-9 through 110 ILCS 805/7-13], shall appropriate such sums of money as may be required to defray all of its estimated expenses and liabilities to be paid or incurred during that fiscal year.

(Source: P.A. 82-1001.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-8.

§ 110 ILCS 805/7-9. [Budgets; estimates]

Sec. 7-9. The budget shall set forth estimates, by classes, of all current assets and liabilities of each fund of the board as of the beginning of the fiscal year, and the amounts of those assets estimated to be available for appropriation in that year, either for expenditures or charges to be made or incurred during that year or for liabilities unpaid at the beginning thereof. Estimates of taxes to be received from the levies of prior years shall be net, after deducting amounts estimated to be sufficient to cover the loss and cost of collecting those taxes and also deferred collections thereof and abatements in the amount of those taxes extended or to be extended upon the collectors' books.

Estimates of the liabilities of the respective funds shall include:

1.All final judgments, including accrued interest thereon, entered against the board and unpaid at the beginning of that fiscal year;

2.The principal of all tax anticipation warrants and all temporary loans and all accrued interest thereon unpaid at the beginning of that fiscal year;

3.Any amount for which the board is required under this Act to reimburse the working cash fund from the educational fund and operations and maintenance fund; and

4.The amount of all accounts payable including estimates of audited vouchers, participation certificates, interfund loans and purchase orders payable.

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The budget shall also set forth detailed estimates of all taxes to be levied for that year and of all current revenues to be derived from sources other than taxes, including State and Federal contributions, rents, fees, perquisites, and all other types of revenue, which will be applicable to expenditures or charges to be made or incurred during that year.

No estimate of taxes to be levied during the fiscal year for educational purposes and operations and maintenance of facilities purposes may exceed a sum equivalent to the product of the value of the taxable property in the district, as ascertained by the last assessment for State and county taxes previous to the passage of the budget, multiplied by the maximum per cent or rate of tax which the corporate authorities of the city are authorized by law to levy for the current fiscal year for those purposes: Provided that any estimate of taxes to be levied for the year 1975 collectible in 1976 and for the first half of the year 1976 collectible in 1977 for educational purposes and operations and maintenance of facilities purposes may be equal to a sum equivalent to the product of the value of the taxable property in the district, as ascertained by the 1972 assessment for State and county taxes, multiplied by the maximum per cent or rate of tax which the corporate authorities of the city are authorized by law to levy for the current fiscal year for those purposes.

All these estimates shall be so segregated and classified as to funds and in such other manner as to give effect to the requirements of law relating to the respective purposes to which the assets and taxes and other current revenues are applicable, so that no expenditure will be authorized or made for any purpose in excess of the money lawfully available therefor.

The several estimates of assets, liabilities and expenditure requirements required or authorized to be made by this Section and by Section 7-10 [110 ILCS 805/7-10] shall be made on the basis of information known to the board at the time of the passage of the annual budget and are not invalidated or otherwise subject to attack merely because after that time additional information is known to or could be discovered by the board that would require a different estimate or because the board might have amended these estimates under Section 7-12 [110 ILCS 805/7-12].

(Source: P.A. 85-1335.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-9.

§ 110 ILCS 805/7-10. [Budgets; appropriations]

Sec. 7-10. The budget shall specify the organizational unit, fund, activity and object to which an appropriation is applicable, as well as the amount of such appropriation.

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The budget shall include appropriations for:

1.All estimated current expenditures or charges to be made or incurred during that fiscal year, including interest to accrue on tax anticipation warrants and temporary loans;

2.All final judgments, including accrued interest thereon, entered against the board and unpaid at the beginning of that fiscal year;

3.Any amount for which the board is required under this Act to reimburse the working cash fund from the educational fund and operations and maintenance fund;

4.All other estimated liabilities, including the principal of all tax anticipation warrants and all temporary loans and all accrued interest thereon, incurred during prior years and unpaid at the beginning of that fiscal year; and

5.An amount or amounts estimated to be sufficient to cover the loss and cost of collecting taxes levied for that fiscal year and also deferred collections thereof and abatements in the amounts of those taxes as extended upon the collectors' books.

(Source: P.A. 85-1335.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-10.

§ 110 ILCS 805/7-11. [Budgets; form]

Sec. 7-11. The budget shall be prepared in tentative form by the board and in that form shall be made available to public inspection for at least 10 days prior to final action thereon, by having at least 5 copies thereof on file in the office of the secretary of the board. Not less than one week after those copies are placed on file and prior to final action thereon, the board shall hold at least one public hearing thereon, of which notice shall be given by publication in a newspaper published and having general circulation in the district at least one week prior to the time of the hearing. The board shall arrange for and hold the public hearing or hearings.

(Source: Laws 1967, p. 9.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-11.

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§ 110 ILCS 805/7-12. [Budgets; revisions]

Sec. 7-12. Subsequent to the public hearing provided for in Section 7-11 [110 ILCS 805/7-11] and before final action on the budget, the board may revise, alter, increase, or decrease the items contained therein, but the aggregate amount finally appropriated by the budget, including any subsequent amendment thereof, from any fund or for any purpose, including amounts appropriated for judgments and all other unpaid liabilities and all other purposes for which such authorities are herein or otherwise by law required to appropriate, may not exceed the aggregate amount available in that fund or for that purpose, as shown by the estimates of the available assets thereof at the beginning of that fiscal year and of taxes and other current revenues set forth in the budget. If the appropriations from any fund as set forth in the budget as finally adopted exceed in the aggregate the maximum amount which the board is authorized to appropriate therefrom, all appropriations made from that fund by the budget are void and the several amounts appropriated in the budget of the last preceding fiscal year, so far as they relate to operation and maintenance expenses, shall be considered to be appropriated for the current fiscal year for objects and purposes, respectively, as specified in the budget for the preceding fiscal year and the several amounts so appropriated shall constitute lawful appropriations for the current fiscal year. The board shall cause the budget to be entered in its proceedings within 10 days after its passage.

(Source: Laws 1967, p. 9.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-12.

§ 110 ILCS 805/7-13. [Budgets; actions after adoption]

Sec. 7-13. After the adoption of the budget, the board may not make any other appropriations before the adoption or passage of the next succeeding budget. The board may not, either directly or indirectly, make any contract or do any act which will add to its expenditures or liabilities, in any fiscal year, any thing or sum above the amount provided for in the annual budget for that fiscal year, but the board, by a concurring vote of 2/3 of all the members thereof (this vote to be taken by yeas and nays and entered in the proceedings of the board), may make any expenditures and incur any liability rendered necessary to meet emergencies such as epidemics, fires, unforeseen damages or other catastrophes happening after the annual budget has been passed or adopted. However, the board may at any time after the adoption of the annual budget, by a vote of 2/3 of all the members of the board, pass an additional or supplemental budget, thereby adding appropriations to those made in the annual budget and such supplemental or additional budget shall be regarded as an amendment of the annual budget for that year,

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but any additional or supplemental appropriations so made may not exceed the amount of moneys which the board estimates it will receive in that year from State appropriations, from federal funds and from any increase in the authorized tax rates over and above the amount of moneys which the board, at the time of the adoption of its annual budget for that year, estimated would be received from those sources. This Section does not prevent the board from providing for and causing to be paid from its funds any charge imposed by law without the action of the board.

(Source: P.A. 85-1335; 90-655, § 80.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-13.

Effect of Amendments. The 1998 amendment by P.A. 90-655, effective July 30, 1998, in the second sentence made minor punctuation changes and substituted "catastrophes" for "catastrophies", and in the third sentence made a minor punctuation change.

§ 110 ILCS 805/7-14. [Expenses incurred when no appropriation has been made]

Sec. 7-14. No contract may be made or expense or liability incurred by the board, by any member or committee of the board, or by any person for or in its behalf, notwithstanding the expenditure may have been ordered by the board, unless an appropriation therefor has been previously made. Neither the board, nor any member or committee, officer, head of any department or bureau, or employee thereof may during a fiscal year expend or contract to be expended any money, incur any liability, or enter into any contract which by its terms involves the expenditure of money for any of the purposes for which provision is made in the annual budget, in excess of the amounts appropriated in the annual budget. Any contract, verbal or written, made in violation of this Section is void as to the board, and no moneys belonging to the board may be paid on that contract. This Section does not prevent the making of lawful contracts for the construction of buildings, the purchase of insurance, or the leasing of realty, space and equipment, the terms of which conform with the requirements of this Act, or the making of lawful employment contracts and purchase orders the terms of which exceed one year.

The board may, however, lease from any public building commission created pursuant to the provisions of the "Public Building Commission Act", approved July 5, 1955, as now or hereafter amended [50 ILCS 20/1 et seq.], any real or personal property for the purpose of securing office or other space for its administrative functions or for community college purposes for any period of time not exceeding 40 years, and such lease may be made and the obligation or expense thereunder incurred without making a previous appropriation therefor, except as otherwise provided in Section 7-1.1 of this Act

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[110 ILCS 805/7-1.1].

(Source: P.A. 79-1456.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-14.

§ 110 ILCS 805/7-15. [Transfers within funds]

Sec. 7-15. The board may at any regular meeting on or after July 1 in any year, by a vote of 2/3 of all its members, authorize the making of transfers within any fund under its jurisdiction of sums of money appropriated for one object or purpose to another object or purpose, which action shall be entered in its proceedings; but no appropriation for any purpose may be reduced below an amount sufficient to cover all obligations incurred or to be incurred against the appropriation for that purpose.

If, at the termination of any fiscal year or the time when the budget for the ensuing fiscal year should have been passed as provided in this Article, the appropriations necessary for the expenditures of the board for that ensuing fiscal year has not been made, the several amounts appropriated in the last budget for operation and maintenance expenses shall be considered to be appropriated for the current fiscal year for those purposes. Until the board passes an appropriation for the current fiscal year, the treasurer shall make the payments necessary for the support of the public community college on the basis of the appropriations of the preceding fiscal year.

(Source: P.A. 82-622.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-15.

§ 110 ILCS 805/7-15a. [Change of accounting basis]

Sec. 7-15a. Notwithstanding any other provision of this Act, the board of a community college district which changes from a full accrual basis of accounting for the recognition of local property tax revenues to a basis of accounting consistent with generally accepted accounting principles as interpreted by National Council on Governmental Accounting Interpretation No. 3, may, by resolution of the board adopted by vote of a majority of the members voting on the measure at a meeting of the board at which a quorum is present,

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permanently transfer a portion of its working cash fund to its educational fund and to its operations and maintenance fund in an amount equal to the difference between the cumulative amount of local property tax revenues which it would have recognized in its educational fund and in its operations and maintenance fund through the then current fiscal year under the full accrual basis of accounting and the cumulative amount of local property tax revenues which it does recognize in those 2 funds through the then current fiscal year under the basis of accounting consistent with National Council on Governmental Accounting Interpretation No. 3. This transfer shall be a one-time occurrence in a year in which the community college district makes a change from the full accrual basis of accounting to a basis of accounting consistent with National Council on Governmental Accounting Interpretation No. 3.

(Source: P.A. 85-1335.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-15a.

§ 110 ILCS 805/7-16. [Appropriation resolution or budget]

Sec. 7-16. The appropriation resolution or budget, including the amounts for the payment of contract liabilities or to defray the expense of any project or purpose, does not constitute an approval by the board of any liability or of any project or purpose mentioned, but shall be regarded only as the provisions for a fund or funds for the payment of legal obligations of the board, which amounts have been properly vouchered, audited and approved by or under authority of the board, or of any project or purpose that has been approved and authorized by the board, as the case may be.

(Source: Laws 1967, p. 9.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-16.

§ 110 ILCS 805/7-17. [Violation of act]

Sec. 7-17. Any member or officer of the board, any officer of the city or any other person holding any trust or employment under the board or city who wilfully violates any of the provisions of Sections 7-8 through 7-16 [110 ILCS 805/7-8 through 110 ILCS 805/7-16] shall be guilty of a business offense and may be fined not exceeding $10,000 and forfeits

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his right to and shall be removed from his office, trust or employment. Any such member, officer or person is liable for the amount of any loss or damage suffered by the board resulting from his violation of any of those Sections, to be recovered by the board or by any taxpayer in the name and for the benefit of the board, in a civil action. Any taxpayer bringing an action under this Section must file a bond for all costs, and is liable for all costs taxed against the board in that suit. This Section does not bar any other remedy.

(Source: P.A. 79-1366; 95-1046, § 7.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-17.

Effect of Amendments. The 2009 amendment by P.A. 95-1046, effective March 27, 2009, substituted "Sections 7-8" for "Sections 7-6" in the first sentence.

§ 110 ILCS 805/7-18. Tax for operation and maintenance of facilities and purchase of grounds

Sec. 7-18. Tax for operation and maintenance of facilities and purchase of grounds. For the purpose of establishing and supporting community colleges in each year and defraying the expenses incident to this purpose; for the purpose of building, acquiring, repairing and improving community college buildings, or procuring community college lands, furniture, fuel, libraries and apparatus, for building and architectural supplies, for the purchase, maintenance, repair and replacement of fixtures generally used in community college buildings, including but not limited to heating and ventilating systems, mechanical equipment, seats and desks, blackboards, window shades and curtains, gymnasium and recreation apparatus and equipment, auditorium and lunchroom equipment, and, if provided by resolution of the board, for the rental of buildings and property for community college purposes, for the payment of premiums for insurance upon buildings and building fixtures, for the payment of salaries of janitors, engineers, other custodial and security employees, for the costs of lights, gas, water, telephone service, custodial supplies and equipment and the cost of a professional survey of the conditions of school buildings, and all expenses incident to each of these purposes, the board may levy annually, upon all taxable property of the district, a tax for operation and maintenance of facilities purposes and the purchase of grounds at a rate for each year not to exceed .05% of the value, as equalized or assessed by the Department of Revenue for the year in which the levy is made; and may levy annually, upon all taxable property of the district, for educational purposes a tax for each year at a rate not to exceed .175% of the value, as equalized or assessed by the Department of Revenue for the year in which the levy is made. The taxes levied for operations and maintenance purposes and for educational purposes, respectively, may not exceed the estimated amounts of taxes to be levied for that year for those purposes as determined under Sections 7-8 through 7-17

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[110 ILCS 805/7-8 through 110 ILCS 805/7-17] and set forth in the annual budget of the board: But when bonds are issued by the board as authorized by Section 7-26 or Section 7-27 [110 ILCS 805/7-26 or 110 ILCS 805/7-27], the rate of tax authorized in this Section to be levied for operations and maintenance of facilities purposes and the purchase of grounds shall be reduced each year by the rate of tax necessary to be levied for that year to pay the principal of and interest on all such bonds when issued. Except sums expended or obligations incurred for purposes described in any resolution and ordinance authorizing bonds issued under Sections 7-25, 7-26 and 7-27 [110 ILCS 805/7-25, 110 ILCS 805/7-26 and 110 ILCS 805/7-27], any sum expended or obligations incurred for the purpose of building or acquiring community colleges, for procuring land, furniture, fuel, libraries and apparatus, for the improvement, repair or benefit of community college buildings and property, for building and architectural supplies, for the purchase, maintenance, repair and replacement of fixtures generally used in community college buildings, including but not limited to heating and ventilating systems, mechanical equipment, seats and desks, blackboards, window shades and curtains, gymnasium and recreational apparatus and equipment, auditorium and lunchroom equipment, and all expenses incident to each of these purposes shall be paid from that portion of the tax levied for operations and maintenance of facilities purposes.

Educational purposes and operations and maintenance of facilities purposes, respectively, include expenses of administration incidental to each of those purposes.

(Source: P.A. 85-1335; 89-281, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-18.

Effect of Amendments. The 1995 amendment by P.A. 89-281, effective August 10, 1995, added the section catchline; and in the first paragraph, in the first sentence, substituted "board may" for "city council shall, upon the demand and under the direction of the board" and inserted "may" preceding "levy annually".

§ 110 ILCS 805/7-18.1. Supplemental budget and taxes

Sec. 7-18.1. Supplemental budget and taxes. When a supplemental budget has been adopted by the board under Section 7-13 [110 ILCS 805/7-13], the board may levy supplemental taxes which may not exceed the amount of the moneys appropriated in the supplemental budget nor the maximum rates of taxes which the board is authorized by law to levy for the current fiscal year for the respective purposes. This Section shall be effective only until January 1, 1974.

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(Source: P.A. 77-2067; 89-281, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-18.1.

Effect of Amendments. The 1995 amendment by P.A. 89-281, effective August 10, 1995, added the section catchline; and in the first sentence substituted "board may" for "city council, upon the demand and under the direction of the board, shall" and substituted "is authorized" for "and the corporate authorities of the city are authorized".

§ 110 ILCS 805/7-19. Limit on expenditures

Sec. 7-19. Limit on expenditures. The board may not add to the expenditures for community college purposes any amount above the total estimated receipts from the State or Federal government, from the rental of lands or property, from funds otherwise received, and from taxes levied for educational purposes and for operations and maintenance of facilities purposes. The city is not liable for the board's expenditures which exceed those total estimated receipts. The board is authorized to levy all taxes as provided for in this Article.

(Source: P.A. 85-1335; 89-281, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-19.

Effect of Amendments. The 1995 amendment by P.A. 89-281, effective August 10, 1995, added the section catchline; and substituted the present third sentence for "This Article does not authorize the board to levy or collect any tax, but the city council shall, upon the demand and under the direction of the board, annually levy all community college taxes".

§ 110 ILCS 805/7-20. [Ascertaining the rate per cent]

Sec. 7-20. In ascertaining the rate per cent that will produce the amount of any tax levied under Section 7-18 [110 ILCS 805/7-18] the county clerk may not add any amount to cover any loss or cost of collecting the tax.

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(Source: Laws 1967, p. 9.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-20.

§ 110 ILCS 805/7-21. Tax anticipation warrants

Sec. 7-21. Tax anticipation warrants. When there is not sufficient money in the treasury to meet the ordinary and necessary expenses for educational purposes and for operations and maintenance of facilities purposes, the board may order issued warrants against and in anticipation of any taxes levied for the payment of the expenditures for educational purposes and for operations and maintenance of facilities purposes, to the extent of 85% of the total amount of the taxes levied for those purposes.

(Source: P.A. 85-1335; 89-281, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-21.

Effect of Amendments. The 1995 amendment by P.A. 89-281, effective August 10, 1995, added the section catchline; and substituted "board may" for "city council, upon the request of the board, shall".

§ 110 ILCS 805/7-22. [Warrants]

Sec. 7-22. Warrants drawn and issued under Section 7-21 [110 ILCS 805/7-21] shall be numbered consecutively in the order of their issuance and shall show upon their face that they are payable solely from the taxes when collected, and not otherwise, and that payment thereof will be made in the order of their issuance, beginning with the warrant having the lowest number, and shall be received by any collector of taxes in payment of taxes against which they are issued. The warrants shall be signed by the chairman and secretary of the board. The taxes against which the warrants are drawn shall be set apart and held for their payment, as herein provided. The warrants shall bear interest, payable out of the taxes against which they are drawn, at the rate of not to exceed 6% per annum, from the date of their issuance until paid, or until notice is given by publication in a newspaper or otherwise that the money for their payment is available and that they will be paid on presentation.

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(Source: P.A. 76-1505.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-22.

§ 110 ILCS 805/7-23. [Signature of chairman]

Sec. 7-23. The chairman of the board, with the approval of the board, may designate one or more persons to have authority, when so directed by the chairman to affix the signature of the chairman to any warrant, certificate, contract or any other written instrument, which by law is required to be signed by the chairman of the board. When the signature of the chairman of the board is so affixed to a written instrument, it is as binding upon the board as if signed personally by its chairman. Whenever the chairman of the board desires to designate a person to affix the signature of the chairman to any warrant, certificate, contract or any other written instrument, he shall send a written notice to the board containing the name of the person he has selected and a designation of the instruments that person shall have authority to sign. Attached to the notice shall be the written signature of the chairman of the board, executed by the person so designated, with the signature of the person so designated underneath. The notice shall be filed with the secretary, presented at the next meeting of the board for its approval and entered in the proceedings of that meeting.

(Source: P.A. 76-1505.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-23.

§ 110 ILCS 805/7-23.1. Contracts

Sec. 7-23.1. Contracts. The board shall let all contracts (other than those excepted by Section 3-27.1 of this Act [110 ILCS 805/3-27.1]) for supplies, materials or work involving an expenditure in excess of $25,000 or a lower amount as required by board policy by competitive bidding as provided in Section 3-27.1 of this Act.

(Source: P.A. 82-295; 92-648, § 5; 95-990, § 10.)

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Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-23.1.

Effect of Amendments. The 2002 amendment by P.A. 92-648, effective July 11, 2002, substituted "$10,000" for "$5,000".

The 2008 amendment by P.A. 95-990, effective October 3, 2008, substituted "$25,000 or a lower amount as required by board policy" for "$10,000".

§ 110 ILCS 805/7-24. [Appointment of certified public accountants]

Sec. 7-24. The board shall yearly, and may as often as necessary, appoint certified public accountants to examine the business methods and audit the accounts of the board, and to submit a report of that examination and audit, together with any of their recommendations as to changes in business methods of the board or any of its departments, officers or employees. That report shall be made to the mayor, the city council, and the board and be filed in the records of the board. The board shall prepare, publish and transmit to the mayor and the city council an annual report including in detail all receipts and expenditures, specifying the source of the receipts and the objects of the expenditures.

(Source: P.A. 83-343.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-24.

§ 110 ILCS 805/7-25. Issuance of bonds; terms and sale

Sec. 7-25. Issuance of bonds; terms and sale. The board may incur an indebtedness and issue bonds for the purpose of erecting, purchasing or otherwise acquiring buildings suitable for community college use, transferring funds to the Illinois Building Authority for community college building purposes, erecting temporary community college structures, erecting additions to, repairing, rehabilitating and replacing existing community college buildings and temporary community college structures, furnishing and equipping community college buildings and temporary community college structures, and purchasing or otherwise acquiring and improving sites for such purposes.

The bonds may not be issued until the proposition of authorizing such bonds has been certified to the proper election officials, who shall have submitted it to the electors of the city at a regular scheduled election in accordance with the general election law, and approved by a majority of the electors voting upon that question.

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The board shall adopt a resolution providing for certifying that proposition for such an election. In addition to the requirements of the general election law the notice of the referendum must contain the amount of the bond issue, maximum rate of interest and purpose for which issued. This notice shall be published in accordance with the general election law.

The proposition shall be in substantially the following form:

```
Shall bonds in the amount of
$. . . . . .  be issued by the
Board
of community College District No.          YES
. . . . . ., County of . . . . . .
.
and State of Illinois for the purpose
of (Here print the purpose of the
public measure) bearing interest at
the rate of not to exceed the maximum
rate authorized by the Bond
Authorization Act, as amended at           NO
the time of the making of the
contract?
```

Whenever the board desires to issue bonds as herein authorized, it shall adopt a resolution designating the purpose for which the proceeds of the bonds are to be expended and fixing the amount of the bonds proposed to be issued, the maturity thereof, and optional provisions, if any, the rate of interest thereon, and the amount of taxes to be levied annually for the purpose of paying the interest upon and the principal of such bonds.

The bonds shall bear interest at the rate of not more than the maximum rate authorized by the Bond Authorization Act, as amended at the time of the making of the contract [30 ILCS 305/0.01 et seq.], and shall mature within not to exceed 20 years from their date, and may be made callable on any interest payment date at par and accrued interest, after notice has been given, at the time and in the manner provided in the bond resolution.

The bonds shall be issued in the corporate name of the community college district, and they shall be signed by the chairman and secretary of the community college board. The bonds shall also be registered, numbered and countersigned by the treasurer who receives the taxes of the district. The registration shall be in a book in which shall be entered the record of the election authorizing the board to borrow money and a description of the bonds issued, including the number, date, to whom issued, amount, rate of interest and when due.

The bonds shall be sold by the board upon such terms as are approved by the board after advertisement for bids, and the proceeds thereof shall be received by the community college treasurer, and expended by the board for the purposes provided in the bond resolution.

The community college treasurer shall, before receiving any of such money, execute a surety bond conditioned upon the faithful discharge of his duties with a surety company authorized to do business in this State, which surety bond shall be approved by the

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community college board and filed as otherwise required under this Act for the treasurer's bond. The penalty of the surety bond shall be in the amount of such bond issue. The surety bond shall be in substantially the same form as the bond otherwise required under this Act for the treasurer and when so given shall fully describe the bond issue which it specifically covers and shall remain in force until the funds of the bond issue are fully disbursed in accordance with the law.

Before or at the time of issuing any bonds herein authorized, the board shall by resolution provide for the levy and collection of a direct annual tax upon all the taxable property of such community college district sufficient to pay and discharge the principal thereof at maturity and to pay the interest thereon as it falls due. Such tax shall be levied and collected in like manner with the other taxes of the community college district and shall be in addition to and exclusive of the maximum of all other taxes which the board is authorized by law to levy for community college purposes. Upon the filing in the office of the county clerk of the county wherein such community college district is located of a certified copy of any such ordinance, the county clerk shall extend the tax therein provided for, including an amount to cover loss and cost of collecting such taxes and also deferred collections thereof and abatements in the amounts of such taxes as extended upon the collector's books. The ordinance shall be in force upon its passage.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4; 89-281, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-25.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

Effect of Amendments. The 1995 amendment by P.A. 89-281, effective August 10, 1995, added the section catchline; in the first paragraph deleted "with the consent of the city council expressed by ordinance" preceding "may incur"; and in the tenth paragraph, in the first sentence, deleted "the city council, upon the demand and under the direction of" preceding "the board", deleted a comma after "shall" and substituted "resolution" for "ordinance" and in the second sentence

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substituted "the board is" for "such city council is now, or may hereafter be".

§ 110 ILCS 805/7-26. Issuance of bonds not exceeding $15,000,000 aggregate

Sec. 7-26. Issuance of bonds not exceeding $15,000,000 aggregate. The board may incur an indebtedness and issue bonds therefor in an amount or amounts not to exceed in the aggregate $15,000,000 for the purpose of erecting, purchasing, or otherwise acquiring buildings suitable for community college use, transferring funds to the Illinois Building Authority for community college building purposes, erecting temporary community college structures, erecting additions to, repairing, rehabilitating, and replacing existing community college buildings and temporary community college structures, furnishing and equipping community college buildings and temporary community college structures, and purchasing or otherwise acquiring and improving sites for such purposes. The bonds may be issued without submitting the question of issuance thereof to the voters of the community college district for approval.

Whenever the board desires to issue bonds as herein authorized, it shall adopt a resolution designating the purpose for which the proceeds of the bonds are to be expended and fixing the amount of the bonds proposed to be issued, the schedule of the maturities thereof; and optional provisions, if any, and the maximum rate of interest thereon and directing the sale upon such terms as are determined by the board.

The secretary of the board shall cause such sale to be advertised by publication of a notice of sale once, as a legal notice in a newspaper having general circulation in the district, and once in a financial journal published in the City of New York, New York, or Chicago, Illinois. Such notice of sale shall be published not less than 7 nor more than 21 days prior to the date set for the sale of the bonds being advertised. The notice of sale shall state that sealed bids will be received by the board for its bonds and shall include: the amount, date, maturity or maturities of such bonds; the date, time and place of receipt of bids; the maximum permissible interest rate; the basis upon which the bonds will be awarded; call provisions, if any; and such other information as the board may deem pertinent.

After the bonds have been awarded to the successful bidder, the board shall adopt a resolution confirming the sale of said bonds to the successful bidder, setting forth the terms of sale, designating the place of payment for the principal and interest, prescribing the form of bond and determining the amount of taxes to be levied annually for each of the years in which said bonds are outstanding for the purpose of paying the interest on and the principal of such bonds.

The bonds shall be issued in the corporate name of the community college district, and they shall be signed by the chairman and secretary of the community college board. The bonds shall bear interest at a rate of not more than the maximum rate authorized by the Bond Authorization Act, as amended at the time of the making of the contract [30 ILCS 305/0.01 et seq.], and shall mature within 20 years from the date of issuance, and may be made callable on any interest payment date at par and accrued interest, after notice has

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been given, at the time and in the manner provided in the bond resolution. The proceeds of sale of said bonds shall be received by the community college treasurer, and expended by the board for the purpose provided in the bond resolution.

The community college treasurer shall, before receiving any of such money, execute a surety bond with a surety company authorized to do business in this State conditioned upon the faithful discharge of his duties. That surety bond must pass approval by the community college board and, upon such approval, shall be filed as otherwise required under this Act for the treasurer's bond. The penalty of the surety bond shall be in the amount of such bond issue. The surety bond shall be in substantially the same form as the bond otherwise required under this Act for the treasurer and when so given shall fully describe the bond issue which it specifically covers and shall remain in force until the funds of the bond issue are fully disbursed in accordance with the law.

Before or at the time of issuing any bonds herein authorized, the city council, upon the demand and under the direction of the board shall, by ordinance, provide for the levy and collection of a direct annual tax upon all the taxable property within the community college district sufficient to pay and discharge the principal thereof at maturity and to pay the interest thereon as it falls due. Such tax shall be levied and collected in like manner with the other taxes of the community college district and shall be in addition to and exclusive of the maximum of all other taxes which the board is authorized by law to levy for community college purposes. Upon the filing in the office of the county clerk of each county wherein such community college district is located of a certified copy of any such ordinance, the county clerk shall extend the tax therein provided for, including an amount to cover loss and cost of collecting such taxes and also deferred collections thereof and abatements in the amounts of such taxes as extended upon the collector's books.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

(Source: P.A. 86-4; 89-281, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-26.

Cross References.

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As to the Omnibus Bond Acts, see 5 ILCS 70/8.

Effect of Amendments. The 1995 amendment by P.A. 89-281, effective August 10, 1995, added the section catchline; in the first paragraph, in the first sentence, deleted "with the consent of the city council expressed by ordinance" preceding "may incur"; and in the seventh paragraph, in the second sentence, substituted "the board is" for "such city council is now or may hereafter be".

§ 110 ILCS 805/7-27. Issuance of bonds not exceeding $20,000,000 aggregate

Sec. 7-27. Issuance of bonds not exceeding $20,000,000 aggregate. The board may incur an indebtedness and issue bonds therefor in an amount or amounts not to exceed in the aggregate $20,000,000 for the purpose of erecting, purchasing, or otherwise acquiring buildings suitable for community college use, transferring funds to the Capital Development Board for community college building purposes, erecting temporary community college structures, erecting additions to, repairing, rehabilitating, and replacing existing community college buildings and temporary community college structures, furnishing and equipping community college buildings and temporary community college structures, and purchasing or otherwise acquiring and improving sites for such purposes. The bonds may be issued without submitting the question of issuance thereof to the voters of the community college district for approval.

Whenever the board desires to issue bonds as herein authorized, it shall adopt a resolution designating the purpose for which the proceeds of the bonds are to be expended and fixing the amount of the bonds proposed to be issued, the schedule of the maturities thereof, and optional provisions, if any, and the maximum rate of interest thereon and directing the sale upon such terms as are determined by the board.

The secretary of the board shall cause such sale to be advertised by publication of a notice of sale once, as a legal notice in a newspaper having general circulation in the district, and once in a financial journal published in the City of New York, New York, or Chicago, Illinois. Such notice of sale shall be published not less than 7 nor more than 21 days prior to the date set for the sale of the bonds being advertised. The notice of sale shall state that sealed bids will be received by the board for its bonds and shall include: the amount, date, maturity or maturities of such bonds; the date, time and place of receipt of bids; the maximum permissible interest rate; the basis upon which the bonds will be awarded; call provisions, if any; and such other information as the board may deem pertinent.

After the bonds have been awarded to the successful bidder, the board shall adopt a resolution confirming the sale of the bonds to the successful bidder setting forth the terms of sale, designating the place of payment for the principal and interest, prescribing the form of bond and determining the amount of taxes to be levied annually for each of the years in which said bonds are outstanding for the purpose of paying the interest on and the principal of such bonds.

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The bonds shall be issued in the corporate name of the community college district, and shall be signed by such officers of the district as may be designated in the bond resolution. The bonds shall bear interest at a rate of not more than the maximum rate authorized by the Bond Authorization Act, as amended at the time of the making of the contract [30 ILCS 305/0.01 et seq.], and shall mature not more than 20 years from the date of issuance, and may be made callable on any interest payment date at par and accrued interest, after notice has been given, at the time and in the manner provided in the bond resolution. The proceeds of sale of said bonds shall be received by the community college treasurer, and expended by the board for the purpose provided in the bond resolution.

The community college treasurer shall, before receiving any of such money, execute a surety bond with a surety company authorized to do business in this State conditioned upon the faithful discharge of his duties. That surety bond must be approved by the community college board and, upon such approval, shall be filed as otherwise required under this Act for the treasurer's bond. The penalty of the surety bond shall be in the amount of such bond issue. The surety bond shall be in substantially the same form as the bond otherwise required under this Act for the treasurer and when so given shall fully describe the bond issue which it specifically covers and shall remain in force until the funds of the bond issue are fully disbursed in accordance with law.

Before or at the time of issuing any bonds herein authorized, the board shall by resolution provide for the levy and collection of a direct annual tax upon all the taxable property within the community college district sufficient to pay and discharge the principal thereof at maturity and to pay the interest thereon as it falls due. Such tax shall be levied and collected in like manner with the other taxes of the community college district and shall be in addition to and exclusive of the maximum of all other taxes that the board is authorized by law to levy for community college purposes. Upon the filing of a certified copy of any such ordinance in the office of the county clerk of each county wherein such community college district is located, the county clerk shall extend the tax therein provided for, including an amount to cover loss and cost of collecting such taxes and also deferred collections thereof and abatements in the amounts of such taxes as extended upon the collector's books.

With respect to instruments for the payment of money issued under this Section either before, on, or after the effective date of this amendatory Act of 1989, it is and always has been the intention of the General Assembly (i) that the Omnibus Bond Acts are and always have been supplementary grants of power to issue instruments in accordance with the Omnibus Bond Acts, regardless of any provision of this Act that may appear to be or to have been more restrictive than those Acts, (ii) that the provisions of this Section are not a limitation on the supplementary authority granted by the Omnibus Bond Acts, and (iii) that instruments issued under this Section within the supplementary authority granted by the Omnibus Bond Acts are not invalid because of any provision of this Act that may appear to be or to have been more restrictive than those Acts.

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(Source: P.A. 86-4; 89-281, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 107-27.

Cross References.

As to the Omnibus Bond Acts, see 5 ILCS 70/8.

Effect of Amendments. The 1995 amendment by P.A. 89-281, effective August 10, 1995, added the section catchline; in the first paragraph, in the first sentence, deleted "with the consent of the city council expressed by ordinance" preceding "may incur"; and in the seventh paragraph, in the first sentence, deleted "the city council, upon the demand and under the direction of" preceding "the board shall", deleted a comma after "shall" and substituted "resolution" for "ordinance" and in the second sentence substituted "that the board is" for "which such city council is now or hereafter be".

ARTICLE VIII.

§ 110 ILCS 805/8-1. [Validation of acts and proceedings]

Sec. 8-1. All acts and proceedings relating to the organization, maintenance and operation of a junior college which have been performed before February 16, 1967 by a common school board, by a junior college board or by a city council in a city having over 500,000 inhabitants and which could have been performed in any community college district are hereby validated. Any acts and proceedings which have been initiated or performed by a board governing a junior college in existence before February 16, 1967, shall be deemed to be in accordance with, and in compliance with, the requirements of this Act, as amended.

(Source: P.A. 78-669.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 108-1.

§ 110 ILCS 805/8-2. [Severability]

Sec. 8-2. The Sections, clauses, sentences and parts of this Act are severable, are not matters of mutual essential inducement, and any of them may be excised by any court of competent jurisdiction if this Act would otherwise be unconstitutional or ineffective. It is the intention of this Act to confer upon community college districts the whole or any part of the powers in this Act provided for, and if any one or more Sections, clauses, sentences and parts of this Act shall for any reason be questioned in any court of competent jurisdiction and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any Section, clause, sentence or part of this Act in any one or more instances shall not be taken to affect or prejudice its applicability or validity in any other instance.

(Source: P.A. 78-669.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 108-2.

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CHAPTER 115.
EDUCATIONAL LABOR RELATIONS

115 ILCS 5Illinois Educational Labor Relations Act

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Illinois Educational Labor Relations Act

Sec.

115 ILCS 5/1.Policy
115 ILCS 5/2.Definitions
115 ILCS 5/3.Employee rights
115 ILCS 5/4.Employer rights
115 ILCS 5/4.5.Subjects of collective bargaining
115 ILCS 5/5.Illinois Educational Labor Relations Board
115 ILCS 5/6.Illinois Educational Labor Mediation Roster
115 ILCS 5/7.Recognition of exclusive bargaining representatives - unit determination
115 ILCS 5/8.Election - certification
115 ILCS 5/9.Board Rules
115 ILCS 5/10.Duty to bargain
115 ILCS 5/11.Non-member fair share payments
115 ILCS 5/12.Impasse procedures
115 ILCS 5/13.Strikes
115 ILCS 5/14.Unfair labor practices
115 ILCS 5/15.Unfair labor practice procedure
115 ILCS 5/16.Judicial review
115 ILCS 5/17.Effect on other laws
115 ILCS 5/17.1.Precedents established by other labor boards
115 ILCS 5/18.Meetings
115 ILCS 5/19.Sovereign immunity
115 ILCS 5/20.Short title
115 ILCS 5/21.Inapplicability of State Mandates Act

§ 115 ILCS 5/1. Policy

Sec. 1. Policy. It is the public policy of this State and the purpose of this Act to promote orderly and constructive relationships between all educational employees and their employers. Unresolved disputes between the educational employees and their employers are injurious to the public, and the General Assembly is therefore aware that adequate means must be established for minimizing them and providing for their resolution. It is the purpose of this Act to regulate labor relations between educational employers and educational employees, including the designation of educational employee representatives, negotiation of wages, hours and other conditions of employment and resolution of disputes arising under collective bargaining agreements. The General Assembly recognizes that substantial differences exist between educational employees and other public employees as a result of the uniqueness of the educational work calendar and educational work duties and the traditional and historical patterns of collective

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bargaining between educational employers and educational employees and that such differences demand statutory regulation of collective bargaining between educational employers and educational employees in a manner that recognizes these differences. Recognizing that harmonious relationships are required between educational employees and their employers, the General Assembly has determined that the overall policy may best be accomplished by (a) granting to educational employees the right to organize and choose freely their representatives; (b) requiring educational employers to negotiate and bargain with employee organizations representing educational employees and to enter into written agreements evidencing the result of such bargaining; and (c) establishing procedures to provide for the protection of the rights of the educational employee, the educational employer and the public.

(Source: P.A. 83-1014.)

Derivation.

Title: An Act to establish the right of educational employees to organize and bargain collectively, to define and resolve unfair practice disputes and to establish the Illinois Educational Labor Relations Board to administer the Act.

Cite: 115 ILCS 5/1 et seq.

Source: P.A. 83-1014.

Date: Certified December 27, 1983.

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1701.

Cross References.

As to the ability of an employer to expend or cause to expend public funds on, or to seek or obtain services or advice from, any organization established by and including public or educational employers under this Act, see 5 ILCS 315/10.

As to the consideration of precedent by the State Labor Relations Board of decisions in representation and unfair labor practice cases decided under this Act, see 5 ILCS 315/15.1.

As to authority of the superintendent of schools to negotiate contracts with labor organizations representing educational employees employed under this Act, see 105 ILCS 5/34-6.

As to the requirement that no multi-year employment contract or collective bargaining agreement authorized under this Act, with respect to any terms which are operative after expiration of the first year of any such agreement, be deemed inconsistent with any financial plan or budget in effect, see 105 ILCS 5/34A-405.

For the authority to withhold from the compensation of an employee, upon the request of that employee, any dues, payments or contributions payable by the employee to any labor organization as defined by this Act see the following: as to the board of a community college district, see 110 ILCS 805/3-26; as to a board of education in cities of over 500,000 inhabitants,

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see 105 ILCS 5/34-18; as to the Board of Governors of State Colleges and Universities, see 110 ILCS 605/8; as to the Board of Regents of the Regency Universities System, see 110 ILCS 705/8; as to the Board of Trustees of Southern Illinois University, see 110 ILCS 520/8; as to the Board of Trustees of the University of Illinois, see 110 ILCS 305/7.

As to the representation of a party by a person who is not an attorney in a proceeding before a labor relations board under this Act, see 705 ILCS 205/1.

CASE NOTES

Analysis

Constitutionality
In General
Arbitration
Authority
Bonus Points Rule
Federal Law
In Camera Examination
Interpretation of the Executive Director
Judicial Review
Jurisdiction
Legislative Purpose
Objection Procedure
Privilege
Recommendations
Retroactive Application
Review
Status Quo Salary Increments
Statute of Limitations
Successor Labor Organizations

Constitutionality

Filing of objections pursuant to the procedures prescribed by the Illinois Educational Labor Relations Board is not an undue burden on persons who object to fair share fees; the filing of an objection involves nothing more than the completion of a rather simple form and its submission to the Illinois Education Labor Relations Board. Shinn v. Illinois Educ. Labor Relations Bd., 183 Ill. App. 3d 915, 132 Ill. Dec. 284, 539 N.E.2d 847 (4 Dist. 1989).

In General

This Act revolutionizes Illinois school labor law by permitting collective bargaining and, within certain limitations, the right to strike. Board of Educ. v. Compton, 123 Ill. 2d 216, 122 Ill. Dec. 9, 526 N.E.2d 149 (1988).

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Arbitration

It is the purpose of this Act to regulate, inter alia, resolution of disputes arising under collective bargaining agreements, and it does not prescribe circuit court determination of a dispute's arbitrability as one of the means of regulating disputes arising under collective bargaining agreements. Board of Trustees v. Illinois Educ. Labor Relations Bd., 173 Ill. App. 3d 395, 123 Ill. Dec. 75, 527 N.E.2d 538 (4 Dist. 1988).

The responsibility for determining the merits of an arbitration claim belongs, in the first instance, to the Educational Labor Relations Board. Board of Educ. v. Compton, 123 Ill. 2d 216, 122 Ill. Dec. 9, 526 N.E.2d 149 (1988).

Authority

The Educational Labor Relations Board has the authority to determine and compel mandatory bargaining under the Act. Board of Regents v. Illinois Educ. Labor Relations Bd., 202 Ill. App. 3d 559, 148 Ill. Dec. 229, 560 N.E.2d 627 (4 Dist. 1990).

Bonus Points Rule

The bonus points rule was primarily related to the selection of new employees, and under § 4 of the Act (115 ILCS 5/4), this is clearly a matter of inherent management policy exempt from mandatory bargaining requirements. Board of Regents v. Illinois Educ. Labor Relations Bd., 202 Ill. App. 3d 559, 148 Ill. Dec. 229, 560 N.E.2d 627 (4 Dist. 1990).

Federal Law

Decisions of the National Labor Relations Board (NLRB) and the federal courts interpreting similar provisions under the Labor Management Relations Act, 1947 (LMRA) (29 U.S.C. § 141 et seq.), are persuasive authority, as are the decisions of sister states interpreting comparable statutory provisions, but the Illinois Educational Labor Relations Board is not bound to interpret the Act as the NLRB or federal courts have interpreted the LMRA. Wapella Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 177 Ill. App. 3d 153, 126 Ill. Dec. 532, 531 N.E.2d 1371 (4 Dist. 1988).

The Illinois Educational Labor Relations Board is not bound to interpret this Act as the National Labor Relations Board or the federal courts have interpreted the National Labor Relations Act (29 U.S.C. § 151 et. seq.). Hardin County Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 174 Ill. App. 3d 168, 124 Ill. Dec. 49, 528 N.E.2d 737 (4 Dist. 1988).

In Camera Examination

The circuit court should perform an in camera examination of materials sought to be cloaked by privilege because the circuit court is in a position of detachment. Illinois Educ. Labor Relations Bd. v. Homer Community Consol. Sch., 132 Ill. 2d 29, 138 Ill. Dec. 213, 547 N.E.2d 182 (1989).

Interpretation of the Executive Director

School district did not have the right to rely on the Executive Director's interpretation of the Illinois Educational Labor Relations Board's authority to reconsider its decisions. Board of Educ. v.

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Illinois Educ. Labor Relations Bd., 183 Ill. App. 3d 972, 132 Ill. Dec. 319, 539 N.E.2d 882 (4 Dist. 1989).

Judicial Review

The lack of a provision for automatic review of an arbitrator's decision, absent an unfair labor practice, is in accord with this Act's declared goal of minimizing disputes and encouraging arbitration. Board of Educ. v. Compton, 123 Ill. 2d 216, 122 Ill. Dec. 9, 526 N.E.2d 149 (1988).

Jurisdiction

In action by labor union and an individual against the board of governors of a state university to compel arbitration of employment disputes under a collective bargaining agreement, the agreement and the union's claims were governed by the Illinois Public Labor Relations Act, 5 ILCS 315/1 et seq., rather than by the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq., because the employees affected by the agreement were peace officers. Teamsters Local Union No. 525 v. Bd. of Governors, 53 Ill. Ct. Cl. 245, 2001 Ill. Ct. Cl. LEXIS 6 (Ct. Cl. 2001).

Jurisdiction in cases involving disputes between teachers and the school board is not exclusively within the Illinois Educational Labor Relations Board where no collective bargaining agreement exists. Semmens v. Board of Educ., 215 Ill. App. 3d 407, 158 Ill. Dec. 948, 574 N.E.2d 1341 (4 Dist.), cert. denied, 141 Ill. 2d 560, 162 Ill. Dec. 509, 580 N.E.2d 135 (1991).

Where the complaint merely alleged the existence of an educational employer and educational employees and the failure of the employer to comply with § 24-9 of the School Code (105 ILCS 5/24-9), and no mention was made of a collective bargaining agreement requiring arbitration or providing for a grievance procedure, exclusive jurisdiction of the Illinois Educational Labor Relations Board under the terms of this Act was not shown on the face of the complaint; therefore, the circuit court erred in dismissing the complaint for lack of subject matter jurisdiction pursuant to § 2-619(a)(1) of the Code of Civil Procedure (735 ILCS 5/2-619). Semmens v. Board of Educ., 190 Ill. App. 3d 174, 137 Ill. Dec. 801, 546 N.E.2d 746 (4 Dist. 1989).

Under this Act, primary jurisdiction over arbitration decisions involving disputes between educational employers and employees rests with the Illinois Educational Labor Relations Board, not the circuit court. Teamsters & Chauffeurs Union Local 525 v. Board of Trustees, 188 Ill. App. 3d 161, 135 Ill. Dec. 690, 544 N.E.2d 47 (5 Dist. 1989).

Where the plaintiff union was able to invoke this Act's provisions and pursue redress thereunder, this Act provided the exclusive avenue for recourse by the union under Board of Education of Community School District No. 1, Coles County v. Compton, 123 Ill. 2d 216, 122 Ill. Dec. 9, 526 N.E.2d 149 (1988), and the union could not pursue a separate action in circuit court. Teamsters & Chauffeurs Union Local 525 v. Board of Trustees, 188 Ill. App. 3d 161, 135 Ill. Dec. 690, 544 N.E.2d 47 (5 Dist. 1989).

This Act divests the circuit court, and confers upon the Educational Labor Relations Board, exclusive jurisdiction to determine whether an employment dispute is arbitrable under a public educational collective bargaining agreement. Board of Trustees v. Prairie State College Fed'n of Teachers Local 3816, 184 Ill. App. 3d 363, 132 Ill. Dec. 872, 540 N.E.2d 794 (1 Dist. 1989).

Pursuant to this Act, the circuit court lacked jurisdiction to enjoin arbitration in the context of public educational labor disputes and to decide questions of arbitrability; the Illinois Education Labor Relations Board, and not the circuit court, has exclusive jurisdiction to decide questions of arbitrability. Board of Educ. v. Warren Tp. High Sch. Fed'n of Teachers Local 504, 128 Ill. 2d 155, 131 Ill. Dec. 149, 538 N.E.2d 524 (1989).

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The circuit court lacks jurisdiction to vacate or enforce an arbitration award because original jurisdiction over educational arbitration awards belongs exclusively to the Illinois Educational Labor Relations Board. Board of Educ. v. Compton, 123 Ill. 2d 216, 122 Ill. Dec. 9, 526 N.E.2d 149 (1988).

This Act divests the circuit courts of jurisdiction to vacate or enforce arbitration awards in public education. Board of Educ. v. Compton, 123 Ill. 2d 216, 122 Ill. Dec. 9, 526 N.E.2d 149 (1988).

Legislative Purpose

Illinois Public Labor Relations Act, 5 ILCS 315/1 et seq., was intended to regulate labor relations between public employers and employees, specifically excluding labor relations between educational employees and educational employers. Labor relations between the latter two groups are governed by the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq. Bd. of Trs. v. Ill. Labor Rels. Bd., 224 Ill. 2d 88, 308 Ill. Dec. 741, 862 N.E.2d 944, 2007 Ill. LEXIS 6 (2007).

Purpose of the Illinois Educational Labor Relations Act, 115 ILCS 5/1, is to regulate labor relations between educational employers and educational employees, including the designation of educational employee representatives, negotiation of wages, hours, and other conditions of employment and resolution of disputes arising under collective bargaining agreements. Barrington Community Unit Sch. Dist. No. 220 v. Special Educ. Dist., 245 Ill. App. 3d 242, 186 Ill. Dec. 96, 615 N.E.2d 1153, 1993 Ill. App. LEXIS 644 (1 Dist. 1993).

This Act supports the conclusion that the legislature intended to divest the circuit courts of primary jurisdiction over educational labor arbitration awards. Board of Educ. v. Compton, 123 Ill. 2d 216, 122 Ill. Dec. 9, 526 N.E.2d 149 (1988).

The absence of any reference to the Uniform Arbitration Act (710 ILCS 5/1 et seq.) in this Act strongly suggests that the legislature did not intend review of arbitration awards by the circuit court, even as to "arbitrability." Board of Educ. v. Compton, 123 Ill. 2d 216, 122 Ill. Dec. 9, 526 N.E.2d 149 (1988).

The legislature intended for the provisions of this Act to serve as the exclusive means to resolve disputes between educational employers and employees. Board of Educ. v. Benton Fed'n of Teachers Local 1956, 165 Ill. App. 3d 514, 116 Ill. Dec. 277, 518 N.E.2d 1257 (5 Dist. 1988).

The broad purpose of this Act is to promote orderly and constructive relationships between all educational employees and their employers, to regulate labor relations between educational employees and employers, and to provide a procedure for resolving collective bargaining disputes. Board of Educ. v. Illinois Educ. Labor Relations Bd., 143 Ill. App. 3d 898, 98 Ill. Dec. 109, 493 N.E.2d 1130 (4 Dist. 1986).

The purpose of this Act is to alleviate situations injurious to the public and caused by educational employee disputes. Board of Educ. v. Illinois Educ. Labor Relations Bd., 143 Ill. App. 3d 898, 98 Ill. Dec. 109, 493 N.E.2d 1130 (4 Dist. 1986).

Objection Procedure

Educational employees who are obligated to pay fair share fees may properly be required to follow the Illinois Educational Labor Relations Board's objection procedures in order to contest the amount of their fair share fees. Shinn v. Illinois Educ. Labor Relations Bd., 183 Ill. App. 3d 915, 132 Ill. Dec. 284, 539 N.E.2d 847 (4 Dist. 1989).

Privilege

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Collective bargaining strategy sessions are partially privileged from disclosure during unfair labor practice proceedings conducted under this Act. Illinois Educ. Labor Relations Bd. v. Homer Community Consol. Sch., 132 Ill. 2d 29, 138 Ill. Dec. 213, 547 N.E.2d 182 (1989).

Some type of privilege is necessary to prevent disclosure of either party's negotiating strategy during an unfair labor practice proceeding before the Illinois Educational Labor Relations Board. Illinois Educ. Labor Relations Bd. v. Homer Community Consol. Sch., 132 Ill. 2d 29, 138 Ill. Dec. 213, 547 N.E.2d 182 (1989).

The privilege found in this section is at least a qualified one. Illinois Educ. Labor Relations Bd. v. Homer Community Consol. Sch., 132 Ill. 2d 29, 138 Ill. Dec. 213, 547 N.E.2d 182 (1989).

The deliberations of the protected meetings of a school district where collective bargaining strategy was discussed were subject to a qualified privilege from discovery, based on necessity, for litigation purposes in an action brought by teachers' union charging the school district with unfair labor practices. Illinois Educ. Labor Relations Bd. v. Homer Community Consol. Sch. Dist., 160 Ill. App. 3d 730, 112 Ill. Dec. 802, 514 N.E.2d 465 (4 Dist. 1987).

Recommendations

No recommendation from an employer to the Merit Board can be mandated; bargaining, which may be mandated, and the recommendations, which may not, are two separate matters. Board of Regents v. Illinois Educ. Labor Relations Bd., 202 Ill. App. 3d 559, 148 Ill. Dec. 229, 560 N.E.2d 627 (4 Dist. 1990).

Retroactive Application

This Act was not applied so as to give it possible retroactive application absent some statutory direction in that regard. Board of Trustees v. Cook County College Teachers Local 1600, 139 Ill. App. 3d 617, 94 Ill. Dec. 79, 487 N.E.2d 956 (1 Dist. 1985).

Review

The appellate court must accord deference to the Illinois Educational Labor Relations Board's interpretation of this Act, unless its interpretation is erroneous. Staunton Community Unit Sch. v. Illinois Educ. Labor Relations Bd., 200 Ill. App. 3d 370, 146 Ill. Dec. 788, 558 N.E.2d 751 (4 Dist. 1990).

Status Quo Salary Increments

School district could not unilaterally alter teachers' annual salary increments during collective bargaining without prior negotiation to impasse; salary increments were "status quo" and school district was required to implement them pursuant to expired contract. Vienna Sch. v. Illinois Educ. Labor Relations Bd., 162 Ill. App. 3d 503, 113 Ill. Dec. 667, 515 N.E.2d 476 (4 Dist. 1987).

Statute of Limitations

Since the Illinois Educational Labor Relations Board did not have the statutory authority to reconsider its orders, the time limit set forth in section 3-103 of the Code of Civil Procedure (735 ILCS 5/3-103) for review started upon service of the final order; no stay would have been effective to toll the running of the 35 days. Board of Educ. v. Illinois Educ. Labor Relations Bd., 183 Ill. App. 3d 972, 132 Ill. Dec. 319, 539 N.E.2d 882 (4 Dist. 1989).

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Successor Labor Organizations

Various interrelated factors must be considered in determining the existence, or likelihood, of continuity between predecessor and successor labor organizations in the collective bargaining context. These include: (1) the change, if any, in the conduct of negotiations and whether the organization claiming successor status assumes the obligations, as well as the rights, of the predecessor organization, (2) any changes in the officers and leadership of the organization, (3) the terms of the constitution and bylaws of the predecessor and successor organizations, and whether they are significantly similar despite any change in structure and/or name of the organization and (4) conduct and alterations in the day to day relationship between the exclusive representative, as conducted by the predecessor organization, and the employer. Local 253 Div. v. Illinois Educ. Labor Relations Bd., 159 Ill. App. 3d 352, 111 Ill. Dec. 467, 512 N.E.2d 1008 (4 Dist. 1987).

The focus in determining a claim of successor-organization status is whether the organization in question continues to be the one which the employees freely chose to represent them; therefore, continuity in (1) the officers and leadership of the organization, and (2) its structure and method of operation, are relevant, and any significant change in leadership may be deemed indicative of the absence of continuity. Local 253 Div. v. Illinois Educ. Labor Relations Bd., 159 Ill. App. 3d 352, 111 Ill. Dec. 467, 512 N.E.2d 1008 (4 Dist. 1987).

LEGAL PERIODICALS

For note, "Taking the Public Out of Determining Government Policy: The Need for an Appropriate Scope of Bargaining Test in the Illinois Public Sector," 29 J. Marshall L. Rev. 531 (1996).

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Labor Law Handbook § 18.62 Matters for Bargaining (IICLE).

Labor Law Handbook § 18.50 Bargaining Unit Appropriateness (IICLE).

Labor Law Handbook § 18.47 Investigation of Petitions (IICLE).

Labor Law Handbook § 18.42 Right To Present Grievances (IICLE).

Labor Law Handbook § 18.40 Subjects of Bargaining (IICLE).

Labor Law Handbook § 18.39 Right To Refrain from Concerted Activity (IICLE).

Labor Law Handbook § 18.37 Introduction (IICLE).

Labor Law Handbook § 18.36 Powers (IICLE).

Illinois Jurisprudence, Labor and Employment § 11:19 Public policy.

Illinois Jurisprudence, Labor and Employment § 10:01 Overview.

§ 115 ILCS 5/2. Definitions

Sec. 2. Definitions. As used in this Act:

(a) "Educational employer" or "employer" means the governing body of a public school district, including the governing body of a charter school established under Article 27A [105 ILCS 5/27A-1 et seq.] of the School Code or of a contract school or contract turnaround school established under paragraph 30 of Section 34-18 of the School Code

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[105 ILCS 5/34-18], combination of public school districts, including the governing body of joint agreements of any type formed by 2 or more school districts, public community college district or State college or university, a subcontractor of instructional services of a school district (other than a school district organized under Article 34 of the School Code [105 ILCS 5/34]), combination of school districts, charter school established under Article 27A of the School Code [105 ILCS 5/27A], or contract school or contract turnaround school established under paragraph 30 of Section 34-18 of the School Code, and any State agency whose major function is providing educational services. "Educational employer" or "employer" does not include (1) a Financial Oversight Panel created pursuant to Section 1A-8 of the School Code [105 ILCS 5/1A-8] due to a district violating a financial plan or (2) an approved nonpublic special education facility that contracts with a school district or combination of school districts to provide special education services pursuant to Section 14-7.02 of the School Code [105 ILCS 5/14-7.02], but does include a School Finance Authority created under Article 1E or 1F of the School Code [105 ILCS 5/1E or 105 ILCS 5/1F] and a Financial Oversight Panel created under Article 1B or 1H of the School Code [105 ILCS 5/1B et seq. or 105 ILCS 5/1H et seq.]. The change made by this amendatory Act of the 96th General Assembly [P.A. 96-104] to this paragraph (a) to make clear that the governing body of a charter school is an "educational employer" is declaratory of existing law.

(b) "Educational employee" or "employee" means any individual, excluding supervisors, managerial, confidential, short term employees, student, and part-time academic employees of community colleges employed full or part time by an educational employer, but shall not include elected officials and appointees of the Governor with the advice and consent of the Senate, firefighters as defined by subsection (g-1) of Section 3 of the Illinois Public Labor Relations Act [5 ILCS 315/3], and peace officers employed by a State university. For the purposes of this Act, part-time academic employees of community colleges shall be defined as those employees who provide less than 3 credit hours of instruction per academic semester. In this subsection (b), the term "student" includes graduate students who are research assistants primarily performing duties that involve research or graduate assistants primarily performing duties that are pre-professional, but excludes graduate students who are teaching assistants primarily performing duties that involve the delivery and support of instruction and all other graduate assistants.

(c) "Employee organization" or "labor organization" means an organization of any kind in which membership includes educational employees, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, employee-employer disputes, wages, rates of pay, hours of employment, or conditions of work, but shall not include any organization which practices discrimination in membership because of race, color, creed, age, gender, national origin or political affiliation.

(d) "Exclusive representative" means the labor organization which has been designated by the Illinois Educational Labor Relations Board as the representative of the majority of educational employees in an appropriate unit, or recognized by an educational employer prior to January 1, 1984 as the exclusive representative of the employees in an appropriate unit or, after January 1, 1984, recognized by an employer upon evidence that

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the employee organization has been designated as the exclusive representative by a majority of the employees in an appropriate unit.

(e) "Board" means the Illinois Educational Labor Relations Board.

(f) "Regional Superintendent" means the regional superintendent of schools provided for in Articles 3 and 3A of The School Code [105 ILCS 5/3-0.01 et seq. and 105 ILCS 5/3A-1 et seq.].

(g) "Supervisor" means any individual having authority in the interests of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, reward or discipline other employees within the appropriate bargaining unit and adjust their grievances, or to effectively recommend such action if the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment. The term "supervisor" includes only those individuals who devote a preponderance of their employment time to such exercising authority.

(h) "Unfair labor practice" or "unfair practice" means any practice prohibited by Section 14 of this Act [115 ILCS 5/14].

(i) "Person" includes an individual, educational employee, educational employer, legal representative, or employee organization.

(j) "Wages" means salaries or other forms of compensation for services rendered.

(k) "Professional employee" means, in the case of a public community college, State college or university, State agency whose major function is providing educational services, the Illinois School for the Deaf, and the Illinois School for the Visually Impaired, (1) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (2) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (1) of this subsection, and (ii) is performing related work under the supervision of a professional person to qualify himself or herself to become a professional as defined in paragraph (l).

(l) "Professional employee" means, in the case of any public school district, or combination of school districts pursuant to joint agreement, any employee who has a certificate issued under Article 21 or Section 34-83 of the School Code [105 ILCS 5/21-1a et seq. or 105 ILCS 5/34-83], as now or hereafter amended.

(m) "Unit" or "bargaining unit" means any group of employees for which an exclusive representative is selected.

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(n) "Confidential employee" means an employee, who (i) in the regular course of his or her duties, assists and acts in a confidential capacity to persons who formulate, determine and effectuate management policies with regard to labor relations or who (ii) in the regular course of his or her duties has access to information relating to the effectuation or review of the employer's collective bargaining policies.

(o) "Managerial employee" means an individual who is engaged predominantly in executive and management functions and is charged with the responsibility of directing the effectuation of such management policies and practices.

(p) "Craft employee" means a skilled journeyman, craft person, and his or her apprentice or helper.

(q) "Short-term employee" is an employee who is employed for less than 2 consecutive calendar quarters during a calendar year and who does not have a reasonable expectation that he or she will be rehired by the same employer for the same service in a subsequent calendar year. Nothing in this subsection shall affect the employee status of individuals who were covered by a collective bargaining agreement on the effective date of this amendatory Act of 1991.

(Source: P.A. 86-412; 87-736; 89-409, § 10; 89-572, § 10; 92-547, § 15; 92-748, § 5; 93-314, § 5; 93-501, § 5; 93-1044, § 5; 95-331, § 575; 96-104, § 10; 97-429, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1702.

Effect of Amendments. The 1995 amendment by P.A. 89-409, effective November 15, 1995, certified November 17, 1995, in subsection (b), in the first sentence, substituted a comma for "or" preceding "firefighters" and added "and peace officers employed by a State university" at the end.

The 1996 amendment by P.A. 89-572, effective July 30, 1996, in subsection (a) added the second sentence.

The 2002 amendment by P.A. 92-547, effective June 13, 2002, inserted "but does include a School Finance Authority created under Article 1E of the School Code" in the last sentence of subsection (a).

The 2002 amendment by P.A. 92-748, effective January 1, 2003, substituted "expectation" for "assurance" in subsection (q).

The 2003 amendment by P.A. 93-314, effective January 1, 2004, substituted "3" for "6" in the last sentence of subsection (b).

The 2003 amendment by P.A. 93-501, effective August 11, 2003, inserted "or 1F" following "Article 1E" in subdivision (a).

The 2004 amendment by P.A. 93-1044, effective October 14, 2004, added the last sentence in subsection (b).

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The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, combined earlier multiple amendments to the section.

The 2009 amendment by P.A. 96-104, effective January 1, 2010, rewrote (a).

The 2011 amendment by P.A. 97-429, effective August 16, 2011, added "and a Financial Oversight Panel created under Article 1B or 1H of the School Code" to the end of the second sentence of (a).

CASE NOTES

Analysis

Academic Semester
Assistant Principals
Assurance of Rehire
Calendar
Confidential Employee
Educational Employee
Educational Employer
Legislative Purpose
Managerial Employee
Peace Officers
Short-Term Employee
Weight of Evidence

Academic Semester

Subsection (b) requires six hours of instruction per "academic semester," which clearly means every semester the college is open. William Rainey Harper Community College 512 v. Harper College Adjunct Faculty Ass'n, 273 Ill. App. 3d 648, 210 Ill. Dec. 506, 653 N.E.2d 411 (4 Dist. 1995), appeal denied, 163 Ill. 2d 591, 212 Ill. Dec. 440, 657 N.E.2d 641 (1995).

Assistant Principals

Where an assistant principal is assigned the same duties as a teacher, and has not been assigned managerial tasks, that employee is not authorized to engage in managerial functions or assist the principal in a way that aligns professional interests, such employees are not managerial employees. Chicago Teachers Union v. Illinois Educ. Labor Relations Bd., 296 Ill. App. 3d 785, 231 Ill. Dec. 213, 695 N.E.2d 1332 (1 Dist. 1998).

All assistant principals who engage in nonteaching managerial tasks assigned by the principals, are aligned with management and should not be required to divide their loyalty to management with their loyalty to an exclusive collective bargaining representative. Chicago Teachers Union v. Illinois Educ. Labor Relations Bd., 296 Ill. App. 3d 785, 231 Ill. Dec. 213, 695 N.E.2d 1332 (1 Dist. 1998).

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Assurance of Rehire

An "assurance" of being rehired requires more than mere expectations; an "assurance" implies some affirmative act by the employer to demonstrate that it intends to rehire an employee, like a contract or oral representation. William Rainey Harper Community College 512 v. Harper College Adjunct Faculty Ass'n, 273 Ill. App. 3d 648, 210 Ill. Dec. 506, 653 N.E.2d 411 (4 Dist. 1995), appeal denied, 163 Ill. 2d 591, 212 Ill. Dec. 440, 657 N.E.2d 641 (1995).

Calendar

Board's interpretation of the term "calendar" to mean "educational calendar" was reasonable and advanced the legislative intent by taking into account the uniqueness of the educational calendar year. William Rainey Harper Community College 512 v. Harper College Adjunct Faculty Ass'n, 273 Ill. App. 3d 648, 210 Ill. Dec. 506, 653 N.E.2d 411 (4 Dist. 1995), appeal denied, 163 Ill. 2d 591, 212 Ill. Dec. 440, 657 N.E.2d 641 (1995).

Confidential Employee

Based on the lack of authorization, the lack of actual access and the lack of access during regular duties, the Illinois Educational Labor Relations Board was not clearly erroneous when it concluded that a systems and networking engineer and a web communications assistant were not confidential employees under the authorized access test of 115 ILCS 5/2(n). Niles Twp. High Sch. Dist. 219 v. Ill. Educ. Labor Rels. Bd., 387 Ill. App. 3d 58, 326 Ill. Dec. 700, 900 N.E.2d 336, 2008 Ill. App. LEXIS 1233 (1 Dist. 2008).

Chance that a systems and networking engineer or a web communications assistant had access to collective bargaining materials was pretty slim, since the employees testified that they had never read or retrieved collective bargaining information in five years' time; such theoretical access was insufficient to declare the employees confidential as contemplated by 115 ILCS 5/2(n). Niles Twp. High Sch. Dist. 219 v. Ill. Educ. Labor Rels. Bd., 387 Ill. App. 3d 58, 326 Ill. Dec. 700, 900 N.E.2d 336, 2008 Ill. App. LEXIS 1233 (1 Dist. 2008).

Neither a systems and networking engineer nor a web communications assistant were confidential employees under the Illinois Educational Labor Relations Act, 115 ILCS 5/2(n). Their role was, in some ways, similar to the cleaning person who could open other people's desk drawers at night: while both the computer persons and the cleaning person had the capability to read confidential documents pertaining to collective bargaining, neither was authorized to do so. Niles Twp. High Sch. Dist. 219 v. Ill. Educ. Labor Rels. Bd., 387 Ill. App. 3d 58, 326 Ill. Dec. 700, 900 N.E.2d 336, 2008 Ill. App. LEXIS 1233 (1 Dist. 2008).

Because a systems and networking engineer and a web communications assistant did not have to read collective bargaining documents to perform their duties, the logic of the Wilmette case compelled a finding that the employees were not confidential employees, as contemplated by 115 ILCS 5/2(n), even though a computer use policy was a subject of negotiation. Access to information relating to hiring, performance, promotion, personnel or statistics did not turn an employee into a confidential one, for purposes of the statute. Niles Twp. High Sch. Dist. 219 v. Ill. Educ. Labor Rels. Bd., 387 Ill. App. 3d 58, 326 Ill. Dec. 700, 900 N.E.2d 336, 2008 Ill. App. LEXIS 1233 (1 Dist. 2008).

Administrative board properly determined that an administrative assistant to a school official was included in a collective bargaining unit, as the evidence supported the finding that the assistant was not a confidential employee under 115 ILCS 5/2(n)(ii), because the assistant did not have unfettered access to confidential information concerning collective bargaining activity. Bd. of

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Educ. v. Ill. Educ. Labor Rels. Bd., 374 Ill. App. 3d 892, 314 Ill. Dec. 248, 874 N.E.2d 158, 2007 Ill. App. LEXIS 929 (1 Dist. 2007).

When the Illinois Educational Labor Relations Board (IELRB) overruled its prior ruling and announced a new rule that unit clarification petitions seeking to exclude allegedly statutorily excluded employees from a bargaining unit must be filed within a reasonable period of time after the unit begins to include allegedly statutorily excluded employees, and found that a school district's unit clarification petition was untimely, the IELRB acted arbitrarily and capriciously because a time limit for the filing of a petition to remove allegedly confidential employees, which results in the inability to remove them until a future time, if at all, contravenes the legislature's express policy to exclude them as stated in 115 ILCS 5/2(n) of the Illinois Educational Labor Relations Act and 5 ILCS 315/3(c) of the Illinois Public Labor Relations Act, and keeping an otherwise statutorily confidential employee in a bargaining unit did not conform with the Act's purposes and policies to promote stability, orderly and constructive relationships between employees and employers, and effectively resolve disputes. Niles Twp. High Sch. Dist. 219 v. Ill. Educ. Labor Rels. Bd., 369 Ill. App. 3d 128, 307 Ill. Dec. 57, 859 N.E.2d 57, 2006 Ill. App. LEXIS 1027 (1 Dist. 2006).

As school district's newly created position of "network manager" would allow the manager unfettered access to confidential financial and workforce information, as well as to highly confidential data from the district's superintendent and other high-level administrators, the Illinois Educational Labor Relations Board decision that the position involved a confidential employee that would be excluded from the district's collective bargaining unit, was not clearly erroneous. Support Council of Dist. 39, Wilmette Local 1274 v. Educ. Labor Rels. Bd., 366 Ill. App. 3d 830, 304 Ill. Dec. 122, 852 N.E.2d 372, 2006 Ill. App. LEXIS 539 (1 Dist. 2006).

Illinois Educational Labor Relation Board's finding that two employees who voted in election to decide whether union would represent a specified bargaining unit were "confidential employees" whose votes had to be excluded was clearly erroneous as it considered only the two employees' present job duties and did not take into account whether it was reasonable to expect that the restructuring of their work unit would impose duties on them that would make them "confidential employees." One Equal Voice v. Ill. Educ. Labor Rels. Bd., 333 Ill. App. 3d 1036, 267 Ill. Dec. 845, 777 N.E.2d 648, 2002 Ill. App. LEXIS 892 (1 Dist. 2002), appeal denied, 202 Ill. 2d 674, 272 Ill. Dec. 359, 787 N.E.2d 174 (2003).

A person who performs confidential duties on a sporadic basis is still confidential. Board of Educ. v. Illinois Educ. Labor Relations Bd., 143 Ill. App. 3d 898, 98 Ill. Dec. 109, 493 N.E.2d 1130 (4 Dist. 1986).

Confidential employees under subsection 2(n) of this section are those who assist managerial employees, as defined in subsection 2(o) of this section. Board of Educ. v. Illinois Educ. Labor Relations Bd., 143 Ill. App. 3d 898, 98 Ill. Dec. 109, 493 N.E.2d 1130 (4 Dist. 1986).

There is a two-part definition of a confidential employee; subdivision (n)(i) is generally called the "labor-nexus" test and subdivision (n)(ii) is generally called the "access" test. Board of Educ. v. Illinois Educ. Labor Relations Bd., 143 Ill. App. 3d 898, 98 Ill. Dec. 109, 493 N.E.2d 1130 (4 Dist. 1986).

School principals whose personnel functions involved only the effectuation of policy, not its formulation and determination, were not managerial employees within the meaning of subsection (o) of this section, and it follows that their secretaries are not confidential employees as defined by subsection (n) of this section. Board of Educ. v. Illinois Educ. Labor Relations Bd., 143 Ill. App. 3d 898, 98 Ill. Dec. 109, 493 N.E.2d 1130 (4 Dist. 1986).

Educational Employee

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Whether teaching assistants, graduate assistants and research assistants, who were seeking to organize, were "educational employees" who were authorized to organize or "students" who were precluded from organizing, required the application of the significant connection test to the facts presented at the evidentiary hearings in a fair and thorough manner and, therefore, the matter was remanded for further proceedings. Graduate Emples. Org. v. Illinois Educ. Labor Rels. Bd., 315 Ill. App. 3d 278, 248 Ill. Dec. 84, 733 N.E.2d 759, 2000 Ill. App. LEXIS 548 (1 Dist. 2000), appeal denied, 191 Ill. 2d 529, 250 Ill. Dec. 456, 738 N.E.2d 925 (2000), appeal denied, 191 Ill. 2d 529, 250 Ill. Dec. 456 (2000).

Principals of schools operated by city's board of education were not "educational employee[s]" by the terms of subsection (b) of this section and, thus, were not entitled to organize for collective-bargaining purposes pursuant to § 3(a) of this Act (115 ILCS 5/3) and could not require the board of education to bargain with them. Chicago Principals Ass'n, Local 2 v. Illinois Educ. Labor Relations Bd., 187 Ill. App. 3d 64, 134 Ill. Dec. 883, 543 N.E.2d 166 (4 Dist. 1989).

Educational Employer

Illinois Educational Labor Relations Act, 115 ILCS 5/2(a), defines an "educational employer" as the governing body of a public school district, or combination of public school district, including the governing body of joint agreements of any type formed by two or more school districts; therefore, whether a plaintiff is considered an educational employer depends on the interpretation of the statute. Barrington Community Unit Sch. Dist. No. 220 v. Special Educ. Dist., 245 Ill. App. 3d 242, 186 Ill. Dec. 96, 615 N.E.2d 1153, 1993 Ill. App. LEXIS 644 (1 Dist. 1993).

Decision by Educational Labor Relations Board that the Merit Board was not an educational employer or joint employer in that it did not provide educational services was supported by the manifest weight of the evidence where the board's influence on terms of employment was limited to the approval of terms negotiated by the constituent universities. AFSCME v. Illinois Educ. Labor Relations Bd., 197 Ill. App. 3d 521, 143 Ill. Dec. 541, 554 N.E.2d 476 (4 Dist. 1990).

Legislative Purpose

The purpose of subsection (n) of this section is to protect educational employers from premature disclosure of their bargaining proposals and labor relations policies that could undermine their bargaining strategies. Illinois Educ. Labor Relations Bd. v. Homer Community Consol. Sch., 132 Ill. 2d 29, 138 Ill. Dec. 213, 547 N.E.2d 182 (1989).

Managerial Employee

Salary is not a determining factor under the Educational Labor Relations Act's definition of managerial employee. Chicago Teachers Union v. Illinois Educ. Labor Relations Bd., 296 Ill. App. 3d 785, 231 Ill. Dec. 213, 695 N.E.2d 1332 (1 Dist. 1998).

The managerial exclusion was not applicable only to those "who exercised substantial and continuing independent authority over crucial aspects of school's operation." Board of Regents v. Illinois Educ. Labor Relations Bd., 166 Ill. App. 3d 730, 117 Ill. Dec. 799, 520 N.E.2d 1150 (4 Dist. 1988).

Peace Officers

Peace officers employed by a state university were specifically excluded from coverage by 115 ILCS 5/2(b) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq., and were deemed public employees by 5 ILCS 315/3(n) of the Illinois Public Labor Relations Act, 5 ILCS

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315/1 et seq. Bd. of Trs. v. Ill. Labor Rels. Bd., 224 Ill. 2d 88, 308 Ill. Dec. 741, 862 N.E.2d 944, 2007 Ill. LEXIS 6 (2007).

Short-Term Employee

A member of the adjunct faculty who teaches six hours each and every semester, even without assurance of reemployment, is not a "short-term employee" and is entitled to representation. William Rainey Harper Community College 512 v. Harper College Adjunct Faculty Ass'n, 273 Ill. App. 3d 648, 210 Ill. Dec. 506, 653 N.E.2d 411 (4 Dist. 1995), appeal denied, 163 Ill. 2d 591, 212 Ill. Dec. 440, 657 N.E.2d 641 (1995).

Weight of Evidence

The hearing officer's determination that principals' secretaries do not regularly assist or act in a confidential capacity in regard to labor relations matters was not against the manifest weight of the evidence. Board of Educ. v. Illinois Educ. Labor Relations Bd., 165 Ill. App. 3d 41, 116 Ill. Dec. 91, 518 N.E.2d 713 (4 Dist. 1987).

LEGAL PERIODICALS

For article, "Implementing the Illinois Educational Labor Relations Act," see 61 Chi.-Kent L. Rev. 101 (1985).

For article, "Illinois Public Labor Relations Laws: A Commentary and Analysis," see 60 Chi.-Kent L. Rev. 883 (1984).

For article, "The Significance of the Supervisory and Managerial Definitions in the Illinois Educational Labor Relations Act and the Public Labor Relations Act of Illinois," see 60 Chi.-Kent L. Rev. 863 (1984).

For article, "Survey of Illinois Law: Employment Law," see 28 S. Ill. U.L.J. 705 (2004).

For article, "Survey of Illinois Law: Employment Law," see 31 S. Ill. U.L.J. 859 (2007).

Practice Guides and Treatises.

Labor Law Handbook § 18.56 Areas To Watch for When Determining Which Unit Is Appropriate (IICLE).

Labor Law Handbook § 18.52 IELRA §§ 2(m) and 7 (IICLE).

Labor Law Handbook § 18.31 Short-Term Employees (IICLE).

Labor Law Handbook § 18.30 Managerial Employees (IICLE).

Labor Law Handbook § 18.29 Confidential Employees (IICLE).

Labor Law Handbook § 18.28 Supervisors (IICLE).

Labor Law Handbook § 18.27 Professional Employees (IICLE).

Labor Law Handbook § 18.26 Educational Employees (IICLE).

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Labor Law Handbook § 18.25 Educational Employers (IICLE).

Labor Law Handbook § 18.11 Summary of Acts (IICLE).

Illinois Jurisprudence, Labor and Employment § 12:03 "Educational employer" and "educational employee".

Illinois Jurisprudence, Labor and Employment § 11:21 "Exclusive representative" and "bargaining unit," defined.

Illinois Jurisprudence, Labor and Employment § 10:11 "Labor organization" defined.

Illinois Jurisprudence, Labor and Employment § 10:02 "Public" and "educational" employees and employers defined.

§ 115 ILCS 5/3. Employee rights

Sec. 3. Employee rights. (a) It shall be lawful for educational employees to organize, form, join, or assist in employee organizations or engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or bargain collectively through representatives of their own free choice and, except as provided in Section 11 [115 ILCS 5/11], such employees shall also have the right to refrain from any or all such activities.

(b) Representatives selected by educational employees in a unit appropriate for collective bargaining purposes shall be the exclusive representative of all the employees in such unit to bargain on wages, hours, terms and conditions of employment. However, any individual employee or a group of employees may at any time present grievances to their employer and have them adjusted without the intervention of the bargaining representative as long as the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, provided that the bargaining representative has been given an opportunity to be present at such adjustment.

(Source: P.A. 83-1014.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1703.

CASE NOTES

Analysis

Concerted Activity
Educational Employee

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Protected Activity
- Not Shown
Reassignment
School District Contracts

Concerted Activity

Employees engage in "concerted" activity where they invoke a right grounded upon a collective bargaining agreement or the activity is engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself. Board of Educ. v. Illinois Educ. Labor Relations Bd., 247 Ill. App. 3d 439, 186 Ill. Dec. 649, 616 N.E.2d 1281 (1 Dist. 1993).

Public venting of a personal grievance, even a grievance shared by others, is not a concerted activity. Board of Educ. v. Illinois Educ. Labor Relations Bd., 247 Ill. App. 3d 439, 186 Ill. Dec. 649, 616 N.E.2d 1281 (1 Dist. 1993).

Educational Employee

Persons who are not "employees" are not entitled by this Act to the benefits of an historical pattern of bargaining. Chicago Principals Ass'n, Local 2 v. Illinois Educ. Labor Relations Bd., 187 Ill. App. 3d 64, 134 Ill. Dec. 883, 543 N.E.2d 166 (4 Dist. 1989).

Protected Activity

- Not Shown

Board of education's ruling that school district took adverse action against teachers because they had engaged in activity protected by subsection (a) of this act was based on an overbroad and erroneous interpretation of the act, and was contrary to the manifest weight of the evidence. Board of Educ. v. Illinois Educ. Labor Relations Bd., 247 Ill. App. 3d 439, 186 Ill. Dec. 649, 616 N.E.2d 1281 (1 Dist. 1993).

Reassignment

Not every action of a school district reassigning teachers requires collective bargaining. Sherrard Community Unit Sch. Dist. No. 200 v. Illinois Educ. Labor Relations Bd., 296 Ill. App. 3d 1002, 231 Ill. Dec. 537, 696 N.E.2d 833 (4 Dist. 1998).

The district committed an unfair labor practice by bargaining with a teacher over reassignment without the participation of the association. Sherrard Community Unit Sch. Dist. No. 200 v. Illinois Educ. Labor Relations Bd., 296 Ill. App. 3d 1002, 231 Ill. Dec. 537, 696 N.E.2d 833 (4 Dist. 1998).

School District Contracts

Contracting out, hiring of independent contractors to perform work which was formerly bargaining unit work, is encompassed in the phrase terms and conditions of employment. Service Employees Int'l Local Union 316 v. Illinois Educ. Labor Relations Bd., 153 Ill. App. 3d 744, 106 Ill. Dec. 112, 505 N.E.2d 418 (4 Dist. 1987).

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A school district's decision to contract out its custodial and maintenance work was a mandatory subject of bargaining under this Act. Service Employees Int'l Local Union 316 v. Illinois Educ. Labor Relations Bd., 153 Ill. App. 3d 744, 106 Ill. Dec. 112, 505 N.E.2d 418 (4 Dist. 1987).

LEGAL PERIODICALS

For article, "Dismissal of Tenured Teachers in Illinois: Evolution of a Viable System," see 1990 U. Ill. L. Rev. 1.

For article, "Illinois Public Labor Relations Laws: A Commentary and Analysis," see 60 Chi.-Kent L. Rev. 883 (1984).

Practice Guides and Treatises.

Labor Law Handbook § 18.38 Right To Form, Join, and Assist Labor Organizations and To Engage in Concerted Activity (IICLE).

Illinois Jurisprudence, Labor and Employment § 11:22 Scope of exclusive representative.

Illinois Jurisprudence, Labor and Employment § 10:09 Right to refrain from labor activities.

§ 115 ILCS 5/4. Employer rights

Sec. 4. Employer rights. Employers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees and direction of employees. Employers, however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives. To preserve the rights of employers and exclusive representatives which have established collective bargaining relationships or negotiated collective bargaining agreements prior to the effective date of this Act, employers shall be required to bargain collectively with regard to any matter concerning wages, hours or conditions of employment about which they have bargained for and agreed to in a collective bargaining agreement prior to the effective date of this Act.

(Source: P.A. 83-1014.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1704.

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CASE NOTES

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Arbitration

The initial question of arbitrability, when raised by the parties in proceedings under this Act, should be resolved by the Illinois Educational Labor Relations Board; if the Board makes an initial determination that the grievance is arbitrable, then it goes to the arbitrator, where the parties may again raise arbitrability as well as the merits of the grievance. Staunton Community Unit Sch. v. Illinois Educ. Labor Relations Bd., 200 Ill. App. 3d 370, 146 Ill. Dec. 788, 558 N.E.2d 751 (4 Dist. 1990).

- Prior Exclusions Not Grandfathered in

Based upon the language of this section, and the Illinois Educational Labor Relations Board's construction of this section, its determination that the prior exclusions from arbitration were not "grandfathered in" were supported by this act. Board of Trustees v. Illinois Educ. Labor Relations Bd., 244 Ill. App. 3d 945, 184 Ill. Dec. 205, 612 N.E.2d 1365 (4 Dist.), appeal denied, 152 Ill. 2d 554, 190 Ill. Dec. 883, 622 N.E.2d 1200 (1993).

Balancing Test

A three part balancing test is used to determine whether an action taken by an employer involves a mandatory subject of bargaining: (1) whether the action taken by the employer directly or indirectly involves one of the mandatory subjects of bargaining set forth in subdivision (a)(2) of 115 ILCS 5/10, (2) whether the action taken by the employer is a matter of inherent managerial policy as defined in this section, and (3) if both an employee right under 115 ILCS 5/10 and an employer right under this section exist, then the employees' right to bargain is balanced with the policy of protecting the employers' inherent managerial rights to determine whose interests are more at risk. West Chicago Sch. Dist. v. Illinois Educ. Labor Relations Bd., 218 Ill. App. 3d 304, 161 Ill. Dec. 105, 578 N.E.2d 232 (1 Dist.), appeal denied, 142 Ill. 2d 666, 164 Ill. Dec. 929, 584 N.E.2d 141 (1991).

If the topic in issue appears to be both a matter involving terms and conditions of employment and one of management prerogative, use of the balancing test is proper, weighing the interests of the employees in bargaining the issues against the school district's interest in maintaining

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unfettered control over the managerial policy involved. Central City Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 199 Ill. App. 3d 559, 145 Ill. Dec. 648, 557 N.E.2d 418 (1 Dist. 1990), modified, 149 Ill. 2d 496, 145 Ill. Dec. 648, 599 N.E.2d 892, aff'd, cause remanded, 149 Ill. 2d 496, 174 Ill. Dec. 808, 599 N.E.2d 892 (1992).

The balancing of competing interests requires a factual determination of whether the subject in issue has a "direct" or "indirect" affect on the terms and conditions of employment, or whether the issue has as its "primary subject" employee wages, hours, and terms and conditions of employment. Central City Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 199 Ill. App. 3d 559, 145 Ill. Dec. 648, 557 N.E.2d 418 (1 Dist. 1990), modified, 149 Ill. 2d 496, 145 Ill. Dec. 648, 599 N.E.2d 892, aff'd, cause remanded, 149 Ill. 2d 496, 174 Ill. Dec. 808, 599 N.E.2d 892 (1992).

Classroom Size

Classroom size is a mandatory issue for collective bargaining in Illinois. Decatur Bd. of Educ. v. Illinois Educ. Labor Relations Bd., 180 Ill. App. 3d 770, 129 Ill. Dec. 693, 536 N.E.2d 743 (4 Dist. 1989).

Collective Bargaining

Some school district employment policies, which in the common use of the English language would be said to directly affect conditions of employment, are so intertwined with matters of inherent managerial policy as to be beyond the right of collective bargaining. Decatur Bd. of Educ. v. Illinois Educ. Labor Relations Bd., 180 Ill. App. 3d 770, 129 Ill. Dec. 693, 536 N.E.2d 743 (4 Dist. 1989).

Where an agreement between the teachers' union and the school district did not include a provision that revisions to the school calendar would be subject to collective bargaining, and the agreement contained a zipper clause, the right to bargain on this issue was waived; the Illinois Educational Labor Relations Board could rely on the language in the zipper clause and did not have to consider the union negotiator's subjective intent. East Richland Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 173 Ill. App. 3d 878, 124 Ill. Dec. 63, 528 N.E.2d 751 (4 Dist. 1988).

Duty to Bargain

This section imposes a duty only upon the employer to bargain collectively with regard to matters included in a collective bargaining agreement agreed to prior to the effective date of the act; the exclusive representative of the bargaining unit does not have a corresponding duty to bargain. Board of Trustees v. Illinois Educ. Labor Relations Bd., 244 Ill. App. 3d 945, 184 Ill. Dec. 205, 612 N.E.2d 1365 (4 Dist.), appeal denied, 152 Ill. 2d 554, 190 Ill. Dec. 883, 622 N.E.2d 1200 (1993).

Factors to Consider

Parking proposals by an employees union were subject to mandatory collective bargaining as they involved terms and conditions of workers' employment and did not affect a university's inherent managerial rights. Bd. of Trs. v. Ill. Labor Rels. Bd., 224 Ill. 2d 88, 308 Ill. Dec. 741, 862 N.E.2d 944, 2007 Ill. LEXIS 6 (2007).

In order to determine whether or not a given issue is a mandatory subject of bargaining, the following test must be applied: first, a determination must be made as to whether the matter is

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one of wages, hours and terms and conditions of employment; if yes, then the second question is asked, whether the matter is one of inherent managerial authority; if the answer is no, the matter is a mandatory subject of bargaining; if yes, a hybrid situation discussed in this section exists, and at this point the Educational Labor Relations Board should balance the benefits that bargaining will have on the decisionmaking process with the burdens that bargaining imposes on the employer's authority. Central City Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 149 Ill. 2d 496, 174 Ill. Dec. 808, 599 N.E.2d 892 (1992).

Layoff

The layoff of four teachers in a district with 18 employees to reduce expenditures was deemed appropriate for mandatory bargaining. Central City Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 199 Ill. App. 3d 559, 145 Ill. Dec. 648, 557 N.E.2d 418 (1 Dist. 1990), modified, 149 Ill. 2d 496, 145 Ill. Dec. 648, 599 N.E.2d 892, aff'd, cause remanded, 149 Ill. 2d 496, 174 Ill. Dec. 808, 599 N.E.2d 892 (1992).

Reassignment

Not every action of a school district reassigning teachers requires collective bargaining. Sherrard Community Unit Sch. Dist. No. 200 v. Illinois Educ. Labor Relations Bd., 296 Ill. App. 3d 1002, 231 Ill. Dec. 537, 696 N.E.2d 833 (4 Dist. 1998).

The district committed an unfair labor practice by bargaining with a teacher over reassignment without the participation of the association. Sherrard Community Unit Sch. Dist. No. 200 v. Illinois Educ. Labor Relations Bd., 296 Ill. App. 3d 1002, 231 Ill. Dec. 537, 696 N.E.2d 833 (4 Dist. 1998).

School District Contracts

A school district's decision to contract out its custodial and maintenance work was a mandatory subject of bargaining under this Act. Service Employees Int'l Local Union 316 v. Illinois Educ. Labor Relations Bd., 153 Ill. App. 3d 744, 106 Ill. Dec. 112, 505 N.E.2d 418 (4 Dist. 1987).

Contracting out, hiring of independent contractors to perform work which was formerly bargaining unit work, is encompassed in the phrase terms and conditions of employment. Service Employees Int'l Local Union 316 v. Illinois Educ. Labor Relations Bd., 153 Ill. App. 3d 744, 106 Ill. Dec. 112, 505 N.E.2d 418 (4 Dist. 1987).

Standard of Review

The appellate court must accord deference to the Illinois Educational Labor Relations Board's interpretation of this Act, unless its interpretation is erroneous. Staunton Community Unit Sch. v. Illinois Educ. Labor Relations Bd., 200 Ill. App. 3d 370, 146 Ill. Dec. 788, 558 N.E.2d 751 (4 Dist. 1990).

Considerable deference should be given by a reviewing court to the Illinois Educational Labor Relations Board's decisions pertaining to mandatory bargaining subjects. Decatur Bd. of Educ. v. Illinois Educ. Labor Relations Bd., 180 Ill. App. 3d 770, 129 Ill. Dec. 693, 536 N.E.2d 743 (4 Dist. 1989).

Subject of Bargaining

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Based on the availability of parking and the fact that most of a university support services union's employees drove to work, the issue of parking fees at university supported parking lots was an issue that concerned a term and condition of employment; however, the issue was not one that required mandatory bargaining under 115 ILCS 5/4 because the burden on the university if it was required to bargain on the issue outweighed the benefit that bargaining would provide to the employees. Bd. of Trs. v. Ill. Educ. Labor Rels. Bd., 359 Ill. App. 3d 1116, 296 Ill. Dec. 784, 836 N.E.2d 199, 2005 Ill. App. LEXIS 1007 (4 Dist. 2005), reversed at Bd. of Trs. v. Ill. Labor Rels. Bd., 224 Ill. 2d 88, 862 N.E.2d 944, 2007 Ill. LEXIS 6, 308 Ill. Dec. 741, 181 L.R.R.M. (BNA) 2218 (2007).

When the Educational Labor Relations Board balances the benefits and the burdens in a given case, the practicality of the situation is an important factor for it to consider. However, it should be noted that meaningful negotiations do not necessarily have to be long and drawn out. Central City Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 149 Ill. 2d 496, 174 Ill. Dec. 808, 599 N.E.2d 892 (1992).

LEGAL PERIODICALS

For article, "Implementing the Illinois Educational Labor Relations Act," see 61 Chi.-Kent L. Rev. 101 (1985).

For article, "Illinois Public Labor Relations Laws: A Commentary and Analysis," see 60 Chi.-Kent L. Rev. 883 (1984).

Practice Guides and Treatises.

Labor Law Handbook § 18.65 IELRA §§ 4 and 10 (IICLE).

Labor Law Handbook § 18.63 Mandatory Subject Matter (IICLE).

Labor Law Handbook § 18.41 Management Rights (IICLE).

Illinois Jurisprudence, Labor and Employment § 11:23 Duty to bargain collectively.

§ 115 ILCS 5/4.5. Subjects of collective bargaining

Sec. 4.5. Subjects of collective bargaining. (a) Notwithstanding the existence of any other provision in this Act or other law, collective bargaining between an educational employer whose territorial boundaries are coterminous with those of a city having a population in excess of 500,000 and an exclusive representative of its employees may include any of the following subjects:

(1) (Blank).

(2) Decisions to contract with a third party for one or more services otherwise performed by employees in a bargaining unit and the procedures for obtaining such contract or the identity of the third party.

(3) Decisions to layoff or reduce in force employees.

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(4) Decisions to determine class size, class staffing and assignment, class schedules, academic calendar, length of the work and school day with respect to a public school district organized under Article 34 of the School Code [105 ILCS 5/34-1 et. seq.] only, length of the work and school year with respect to a public school district organized under Article 34 of the School Code only, hours and places of instruction, or pupil assessment policies.

(5) Decisions concerning use and staffing of experimental or pilot programs and decisions concerning use of technology to deliver educational programs and services and staffing to provide the technology.

(b) The subject or matters described in subsection (a) are permissive subjects of bargaining between an educational employer and an exclusive representative of its employees and, for the purpose of this Act, are within the sole discretion of the educational employer to decide to bargain, provided that the educational employer is required to bargain over the impact of a decision concerning such subject or matter on the bargaining unit upon request by the exclusive representative. During this bargaining, the educational employer shall not be precluded from implementing its decision. If, after a reasonable period of bargaining, a dispute or impasse exists between the educational employer and the exclusive representative, the dispute or impasse shall be resolved exclusively as set forth in subsection (b) of Section 12 of this Act [115 ILCS 5/12] in lieu of a strike under Section 13 of this Act [115 ILCS 5/13]. Neither the Board nor any mediator or fact-finder appointed pursuant to subsection (a-10) of Section 12 of this Act shall have jurisdiction over such a dispute or impasse.

(c) A provision in a collective bargaining agreement that was rendered null and void because it involved a prohibited subject of collective bargaining under this subsection (c) as this subsection (c) existed before the effective date of this amendatory Act of the 93rd General Assembly [P.A. 93-3] remains null and void and shall not otherwise be reinstated in any successor agreement unless the educational employer and exclusive representative otherwise agree to include an agreement reached on a subject or matter described in subsection (a) of this Section as subsection (a) existed before this amendatory Act of the 93rd General Assembly [P.A. 93-3].

(Source: P.A. 89-15, § 10; 93-3, § 10; 97-7, § 5; 97-8, § 10.)

Note.

The introductory language of Section 5 of P.A. 97-7 provided: "If and only if Senate Bill 7 as passed by the 97th General Assembly becomes law, the Illinois Educational Labor Relations Act is amended by changing Sections 4.5, 12, and 13 as follows". Senate Bill 7 (P.A. 97-8) became effective June 13, 2011.

Effective Date. Section 99 of P.A. 89-15 made this section effective upon becoming law. The Act was approved May 30, 1995.

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Effect of Amendments. The 2003 amendment by P.A. 93-3, effective April 16, 2003, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2011 amendment by P.A. 97-7, effective June 13, 2011, inserted "with respect to a public school district organized under Article 34 of the School Code only" twice in (a)(4); and added the last sentence to the end of (b).

The 2011 amendment by P.A. 97-8, effective June 13, 2011, inserted "length of the work and school day" and "length of the work and school year" in (a)(4).

CASE NOTES

Analysis

Class Size, Staffing and Assignment
Layoff or Reduction in Force

Class Size, Staffing and Assignment

Placement of a teacher in the reassigned teacher pool was a job retention issue, not a mere matter of class staffing and assignment, so it could properly be the subject of collective bargaining and subject to arbitration. Chi. Teachers Union, Local 1 v. Chi. Sch. Reform Bd. of Trs., 338 Ill. App. 3d 90, 272 Ill. Dec. 409, 787 N.E.2d 224, 2003 Ill. App. LEXIS 297 (1 Dist. 2003).

Although "class staffing and assignment" was prohibited as a collective bargaining agreement subject, the board of education's refusal to comply with an arbitration award to compensate teachers it did not select for summer school involved an unfair labor practice as selection of teachers for summer school positions did not involve "class staffing and assignment," and, thus, the teachers' grievances were arbitrable and the resulting arbitration award was binding. Chicago Teachers Union, Local No. 1 v. Ill. Educ. Labor Rels. Bd., 334 Ill. App. 3d 936, 268 Ill. Dec. 610, 778 N.E.2d 1232, 2002 Ill. App. LEXIS 974 (1 Dist. 2002), appeal denied, 202 Ill. 2d 668, 272 Ill. Dec. 356, 787 N.E.2d 171 (2003).

Subsection (a)(4) pertains to which class a teacher is assigned to, not whether a teacher is assigned to a permanent position. Chicago Sch. Reform Bd. of Trustees v. Illinois Educ. Labor Rels. Bd., 318 Ill. App. 3d 293, 251 Ill. Dec. 811, 741 N.E.2d 989, 2000 Ill. App. LEXIS 785 (1 Dist. 2000).

Layoff or Reduction in Force

When the Illinois Educational Labor Relations Board (Board) found that a teacher's position was not eliminated due to a lack of work or lack of funds, arbitration of her grievance complaining that the school board did not provide her with contractually required job assistance was not precluded under 115 ILCS 5/4.5(a)(4) as that section's preclusion of collective bargaining regarding class size, class staffing, and assignment as "class staffing and assignment" meant how a class was staffed (e.g., one teacher or two teachers working as a team), or to what class a particular teacher was assigned. Chi. Teachers Union, Local 1 v. Ill. Educ. Labor Rels. Bd., 344 Ill. App. 3d 624, 279 Ill. Dec. 406, 800 N.E.2d 475, 2003 Ill. App. LEXIS 1347 (1 Dist. 2003).

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The arbitration of a teacher's grievance was not barred by subsection (a)(3) since the teacher was not laid off due to either lack of work or funds where: (1) the record indicated that, at any given time, there were 700 to 1,000 teaching positions available in the school system, (2) the defendant school board did not articulate any facts showing that a lack of funds was the basis of the termination, and (3) the teacher was terminated pursuant to a policy which called for the honorable termination of a teacher who was on reserve teacher status for more than 25 school-months without being appointed to a permanent position. Chicago Sch. Reform Bd. of Trustees v. Illinois Educ. Labor Rels. Bd., 318 Ill. App. 3d 293, 251 Ill. Dec. 811, 741 N.E.2d 989, 2000 Ill. App. LEXIS 785 (1 Dist. 2000).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Employment Law," see, 28 S. Ill. U.L.J. 705 (2004).

Practice Guides and Treatises.

Contract Law § 20.9 Miscellaneous Provisions (IICLE).

§ 115 ILCS 5/5. Illinois Educational Labor Relations Board

Sec. 5. Illinois Educational Labor Relations Board. (a) There is hereby created the Illinois Educational Labor Relations Board.

(a-5) Until July 1, 2003 or when all of the new members to be initially appointed under this amendatory Act of the 93rd General Assembly [P.A. 93-509] have been appointed by the Governor, whichever occurs later, the Illinois Educational Labor Relations Board shall consist of 7 members, no more than 4 of whom may be of the same political party, who are residents of Illinois appointed by the Governor with the advice and consent of the Senate.

The term of each appointed member of the Board who is in office on June 30, 2003 shall terminate at the close of business on that date or when all of the new members to be initially appointed under this amendatory Act of the 93rd General Assembly have been appointed by the Governor, whichever occurs later.

(b) Beginning on July 1, 2003 or when all of the new members to be initially appointed under this amendatory Act of the 93rd General Assembly have been appointed by the Governor, whichever occurs later, the Illinois Educational Labor Relations Board shall consist of 5 members appointed by the Governor with the advice and consent of the Senate. No more than 3 members may be of the same political party.

The Governor shall appoint to the Board only persons who are residents of Illinois and have had a minimum of 5 years of experience directly related to labor and employment relations in representing educational employers or educational employees in collective

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bargaining matters. One appointed member shall be designated at the time of his or her appointment to serve as chairman.

Of the initial members appointed pursuant to this amendatory Act of the 93rd General Assembly, 2 shall be designated at the time of appointment to serve a term of 6 years, 2 shall be designated at the time of appointment to serve a term of 4 years, and the other shall be designated at the time of his or her appointment to serve a term of 4 years, with each to serve until his or her successor is appointed and qualified.

Each subsequent member shall be appointed in like manner for a term of 6 years and until his or her successor is appointed and qualified. Each member of the Board is eligible for reappointment. Vacancies shall be filled in the same manner as original appointments for the balance of the unexpired term.

(c) The chairman shall be paid $50,000 per year, or an amount set by the Compensation Review Board, whichever is greater. Other members of the Board shall each be paid $45,000 per year, or an amount set by the Compensation Review Board, whichever is greater. They shall be entitled to reimbursement for necessary traveling and other official expenditures necessitated by their official duties.

Each member shall devote his entire time to the duties of the office, and shall hold no other office or position of profit, nor engage in any other business, employment or vocation.

(d) Three members of the Board constitute a quorum and a vacancy on the Board does not impair the right of the remaining members to exercise all of the powers of the Board.

(e) Any member of the Board may be removed by the Governor, upon notice, for neglect of duty or malfeasance in office, but for no other cause.

(f) The Board may appoint or employ an executive director, attorneys, hearing officers, and such other employees as it deems necessary to perform its functions, except that the Board shall employ a minimum of 8 attorneys and 5 investigators. The Board shall prescribe the duties and qualifications of such persons appointed and, subject to the annual appropriation, fix their compensation and provide for reimbursement of actual and necessary expenses incurred in the performance of their duties.

(g) The Board may promulgate rules and regulations which allow parties in proceedings before the Board to be represented by counsel or any other person knowledgeable in the matters under consideration.

(h) To accomplish the objectives and to carry out the duties prescribed by this Act, the Board may subpoena witnesses, subpoena the production of books, papers, records and documents which may be needed as evidence on any matter under inquiry and may administer oaths and affirmations.

In cases of neglect or refusal to obey a subpoena issued to any person, the circuit court in the county in which the investigation or the public hearing is taking place, upon application by the Board, may issue an order requiring such person to appear before the

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Board or any member or agent of the Board to produce evidence or give testimony. A failure to obey such order may be punished by the court as in civil contempt.

Any subpoena, notice of hearing, or other process or notice of the Board issued under the provisions of this Act may be served personally, by registered mail or by leaving a copy at the principal office of the respondent required to be served. A return, made and verified by the individual making such service and setting forth the manner of such service, is proof of service. A post office receipt, when registered mail is used, is proof of service. All process of any court to which application may be made under the provisions of this Act may be served in the county where the persons required to be served reside or may be found.

(i) The Board shall adopt, promulgate, amend, or rescind rules and regulations in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.] as it deems necessary and feasible to carry out this Act.

(j) The Board at the end of every State fiscal year shall make a report in writing to the Governor and the General Assembly, stating in detail the work it has done in hearing and deciding cases and otherwise.

(Source: P.A. 85-1393; 90-548, § 5-920; 91-798, § 55; 93-509, § 115-5; 96-813, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1705.

Effect of Amendments. The 1997 amendment by P.A. 90-548, effective January 1, 1998, in subsection (a), in the first sentence, substituted "5" for "3" and substituted "3" for "2", deleted the former fourth and fifth sentences regarding initial appointments and added the present fourth and fifth sentences; in subsection (d) substituted "Three" for "Two" and deleted "2" preceding "remaining"; and in subsection (i) added a comma after "amend".

The 2000 amendment by P.A. 91-798, effective July 9, 2000, in subsection (a) substituted "7" for "5" and "4" for "3" in the first sentence, and added the last paragraph.

The 2003 amendment by P.A. 93-509, effective August 11, 2003, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2009 amendment by P.A. 96-813, effective October 30, 2009, added the exception language to the end of the first sentence of (f).

CASE NOTES

Analysis

In General

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Administrative Regulations
Jurisdiction
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Recusal
Rulemaking Requirements
Violation
- Union Demand

In General

Appellate court accorded deference to a determination by an education labor relations board on the issue of which zipper clauses were mandatory subjects of bargaining based on the expertise required of its members pursuant to 115 ILCS 5/5 of the Illinois Education Labor Relations Act. Mt. Vernon Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 278 Ill. App. 3d 814, 215 Ill. Dec. 553, 663 N.E.2d 1067, 1996 Ill. App. LEXIS 183 (1 Dist. 1996).

The decisions of the National Labor Relations Board and the federal courts interpreting similar provisions under the Labor Management Relations Act (29 U.S.C. § 141 et seq.) are persuasive authority; the Illinois Educational Labor Relations Board is not, however, bound to interpret this Act as the National Labor Relations Board or the federal courts have interpreted the Labor Management Relations Act. East Richland Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 173 Ill. App. 3d 878, 124 Ill. Dec. 63, 528 N.E.2d 751 (4 Dist. 1988).

Administrative Regulations

The public has an interest in the speedy resolution of unfair labor practice charges in the educational labor relations area, and the Illinois Educational Labor Relations Board regulations prescribing time frames for unfair labor practice proceedings and the Board's strict enforcement of the time frames set forth in those regulations further this interest. Mattoon Community Unit Sch. v. Illinois Educ. Labor Relations Bd., 193 Ill. App. 3d 875, 140 Ill. Dec. 725, 550 N.E.2d 610 (4 Dist. 1990).

The Educational Labor Relations Board did not err in interpreting and enforcing administrative rule (d) of § 1120.30 of the Illinois Administrative Code (see now primarily 20 ILCS 5/1-1 et. seq.), that failure to file a timely answer to an unfair labor practice complaint was deemed an admission of the material facts alleged in the complaint and waiver of a hearing in the manner it did in this case. Mattoon Community Unit Sch. v. Illinois Educ. Labor Relations Bd., 193 Ill. App. 3d 875, 140 Ill. Dec. 725, 550 N.E.2d 610 (4 Dist. 1990).

Jurisdiction

Charges filed by an employees union against a state university were governed by the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq., under the jurisdiction of the Illinois Educational Labor Relations Board pursuant to 115 ILCS 5/5. Bd. of Trs. v. Ill. Labor Rels. Bd., 224 Ill. 2d 88, 308 Ill. Dec. 741, 862 N.E.2d 944, 2007 Ill. LEXIS 6 (2007).

An administrative decision is a final order if it terminates the proceedings before the agency and fixes the rights and liabilities of the parties involved; an agency, being a creation of statute, has only those powers specifically conferred upon it, and has no inherent authority to amend or

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change a decision it has made. Board of Educ. v. Illinois Educ. Labor Relations Bd., 179 Ill. App. 3d 696, 128 Ill. Dec. 577, 534 N.E.2d 1022 (4 Dist. 1989).

In situations where administrative agency rules purporting to authorize rehearings from agency decisions were not involved, the Supreme Court has consistently held that an administrative agency may allow a rehearing, or modify and alter its decisions, only when authorized to do so by statute. Board of Educ. v. Illinois Educ. Labor Relations Bd., 179 Ill. App. 3d 696, 128 Ill. Dec. 577, 534 N.E.2d 1022 (4 Dist. 1989).

This Act does not expressly grant the Illinois Educational Labor Relations Board the authority to reconsider its orders, nor does it include any guidelines to be followed should a party request reconsideration of the Board's orders. Board of Educ. v. Illinois Educ. Labor Relations Bd., 179 Ill. App. 3d 696, 128 Ill. Dec. 577, 534 N.E.2d 1022 (4 Dist. 1989).

Legislative Intent

Subsection (f) of this section reflects a legislative intent that the Illinois Educational Labor Relations Board have the power to delegate functions which do not result in the final adjudication of substantive rights to such of its subordinate employees as it sees fit. Board of Trustees v. Illinois Educ. Labor Relations Bd., 173 Ill. App. 3d 395, 123 Ill. Dec. 75, 527 N.E.2d 538 (4 Dist. 1988).

Proper Forum

The circuit court, rather than the Educational Labor Relations Board, was the proper forum for a hearing in which to determine the scope of a school district's qualified privilege relating to deliberations of closed meetings where collective bargaining strategy was discussed, because a great burden would be placed on the board if, after hearing what happened in the various meetings, it was then required to make a decision on the merits without considering matters heard at the hearing which did not meet the necessity standard so as to overcome the privilege. Illinois Educ. Labor Relations Bd. v. Homer Community Consol. Sch. Dist., 160 Ill. App. 3d 730, 112 Ill. Dec. 802, 514 N.E.2d 465 (4 Dist. 1987).

Recusal

The recusal of a disqualified Illinois Educational Labor Relations Board member did not impair the right of the two remaining members to exercise all powers of the Board. Board of Educ. v. Illinois Educ. Labor Relations Bd., 165 Ill. App. 3d 41, 116 Ill. Dec. 91, 518 N.E.2d 713 (4 Dist. 1987).

Rulemaking Requirements

The actions of the Illinois Educational Labor Relations Board in announcing, by agency opinion, the standards it would apply to reconsideration motions were contrary to the express rulemaking requirements set forth in the Illinois Administrative Procedure Act (5 ILCS 100/1-1 et seq.) and outside the authority granted in subsection (h) of this section and thus were void. Board of Educ. v. Illinois Educ. Labor Relations Bd., 179 Ill. App. 3d 696, 128 Ill. Dec. 577, 534 N.E.2d 1022 (4 Dist. 1989).

Violation

- Union Demand

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A violation under subdivision (b)(3) is not committed by a union's demand to arbitrate an inarbitrable grievance. Board of Trustees of Community College Dist. No. 502 v. Illinois Educ. Labor Relations Bd., 241 Ill. App. 3d 914, 181 Ill. Dec. 699, 608 N.E.2d 950 (4 Dist. 1993).

LEGAL PERIODICALS

For article, "Illinois Public Labor Relations Laws: A Commentary and Analysis," see 60 Chi.-Kent L. Rev. 883 (1984).

Practice Guides and Treatises.

Labor Law Handbook § 18.35 Jurisdiction (IICLE).

Illinois Jurisprudence, Labor and Employment § 10:07 Illinois Education Labor Relations Board.

§ 115 ILCS 5/6. Illinois Educational Labor Mediation Roster

Sec. 6. Illinois Educational Labor Mediation Roster. The Board shall establish an Illinois Educational Labor Mediation Roster, the services of which are available to the educational employer and to labor organizations for purposes of arbitration of grievances and mediation or arbitration of contract disputes. The members of the roster shall be qualified impartial individuals who are not employees of the Board.

(Source: P.A. 83-1014.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1706.

LEGAL PERIODICALS

For article, "The Courts and Legislature Begin to Adopt ADR Methods to Deal with Growing Number of Employment Discrimination Claims," see 13 N. Ill. U.L. Rev. 221 (1993).

Practice Guides and Treatises.

Labor Law Handbook § 18.81 Mediation (IICLE).

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§ 115 ILCS 5/7. Recognition of exclusive bargaining representatives - unit determination

Sec. 7. Recognition of exclusive bargaining representatives - unit determination. The Board is empowered to administer the recognition of bargaining representatives of employees of public school districts, including employees of districts which have entered into joint agreements, or employees of public community college districts, or any State college or university, and any State agency whose major function is providing educational services, making certain that each bargaining unit contains employees with an identifiable community of interest and that no unit includes both professional employees and nonprofessional employees unless a majority of employees in each group vote for inclusion in the unit.

(a) In determining the appropriateness of a unit, the Board shall decide in each case, in order to ensure employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purpose of collective bargaining, based upon but not limited to such factors as historical pattern of recognition, community of interest, including employee skills and functions, degree of functional integration, interchangeability and contact among employees, common supervision, wages, hours and other working conditions of the employees involved, and the desires of the employees. Nothing in this Act, except as herein provided, shall interfere with or negate the current representation rights or patterns and practices of employee organizations which have historically represented employees for the purposes of collective bargaining, including but not limited to the negotiations of wages, hours and working conditions, resolutions of employees' grievances, or resolution of jurisdictional disputes, or the establishment and maintenance of prevailing wage rates, unless a majority of the employees so represented expresses a contrary desire under the procedures set forth in this Act. This Section, however, does not prohibit multi-unit bargaining. Notwithstanding the above factors, where the majority of public employees of a craft so decide, the Board shall designate such craft as a unit appropriate for the purposes of collective bargaining.

The sole appropriate bargaining unit for tenured and tenure-track academic faculty at each campus of the University of Illinois shall be a unit that is comprised of non-supervisory academic faculty employed more than half-time and that includes all tenured and tenure-track faculty of that University campus employed by the board of trustees in all of the campus's undergraduate, graduate, and professional schools and degree and non-degree programs (with the exception of the college of medicine, the college of pharmacy, the college of dentistry, the college of law, and the college of veterinary medicine, each of which shall have its own separate unit), regardless of current or historical representation rights or patterns or the application of any other factors. Any decision, rule, or regulation promulgated by the Board to the contrary shall be null and void.

(b) An educational employer shall voluntarily recognize a labor organization for collective bargaining purposes if that organization appears to represent a majority of employees in the unit. The employer shall post notice of its intent to so recognize for a

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period of at least 20 school days on bulletin boards or other places used or reserved for employee notices. Thereafter, the employer, if satisfied as to the majority status of the employee organization, shall send written notification of such recognition to the Board for certification. Any dispute regarding the majority status of a labor organization shall be resolved by the Board which shall make the determination of majority status.

Within the 20 day notice period, however, any other interested employee organization may petition the Board to seek recognition as the exclusive representative of the unit in the manner specified by rules and regulations prescribed by the Board, if such interested employee organization has been designated by at least 15% of the employees in an appropriate bargaining unit which includes all or some of the employees in the unit intended to be recognized by the employer. In such event, the Board shall proceed with the petition in the same manner as provided in paragraph (c) of this Section.

(c) A labor organization may also gain recognition as the exclusive representative by an election of the employees in the unit. Petitions requesting an election may be filed with the Board:

(1) by an employee or group of employees or any labor organizations acting on their behalf alleging and presenting evidence that 30% or more of the employees in a bargaining unit wish to be represented for collective bargaining or that the labor organization which has been acting as the exclusive bargaining representative is no longer representative of a majority of the employees in the unit; or

(2) by an employer alleging that one or more labor organizations have presented a claim to be recognized as an exclusive bargaining representative of a majority of the employees in an appropriate unit and that it doubts the majority status of any of the organizations or that it doubts the majority status of an exclusive bargaining representative.

The Board shall investigate the petition and if it has reasonable cause to suspect that a question of representation exists, it shall give notice and conduct a hearing. If it finds upon the record of the hearing that a question of representation exists, it shall direct an election, which shall be held no later than 90 days after the date the petition was filed. Nothing prohibits the waiving of hearings by the parties and the conduct of consent elections.

(c-5) The Board shall designate an exclusive representative for purposes of collective bargaining when the representative demonstrates a showing of majority interest by employees in the unit. If the parties to a dispute are without agreement on the means to ascertain the choice, if any, of employee organization as their representative, the Board shall ascertain the employees' choice of employee organization, on the basis of dues deduction authorization or other evidence, or, if necessary, by conducting an election. All evidence submitted by an employee organization to the Board to ascertain an employee's choice of an employee organization is confidential and shall not be submitted to the employer for review. The Board shall ascertain the employee's choice of employee organization within 120 days after the filing of the majority interest petition; however, the Board may extend time by an additional 60 days, upon its own motion or upon the motion of a party to the proceeding. If either party provides to the Board, before the designation of a representative, clear and convincing evidence that the dues deduction

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authorizations, and other evidence upon which the Board would otherwise rely to ascertain the employees' choice of representative, are fraudulent or were obtained through coercion, the Board shall promptly thereafter conduct an election. The Board shall also investigate and consider a party's allegations that the dues deduction authorizations and other evidence submitted in support of a designation of representative without an election were subsequently changed, altered, withdrawn, or withheld as a result of employer fraud, coercion, or any other unfair labor practice by the employer. If the Board determines that a labor organization would have had a majority interest but for an employer's fraud, coercion, or unfair labor practice, it shall designate the labor organization as an exclusive representative without conducting an election. If a hearing is necessary to resolve any issues of representation under this Section, the Board shall conclude its hearing process and issue a certification of the entire appropriate unit not later than 120 days after the date the petition was filed. The 120-day period may be extended one or more times by the agreement of all parties to a hearing to a date certain.

(c-6) A labor organization or an employer may file a unit clarification petition seeking to clarify an existing bargaining unit. The Board shall conclude its investigation, including any hearing process deemed necessary, and issue a certification of clarified unit or dismiss the petition not later than 120 days after the date the petition was filed. The 120-day period may be extended one or more times by the agreement of all parties to a hearing to a date certain.

(d) An order of the Board dismissing a representation petition, determining and certifying that a labor organization has been fairly and freely chosen by a majority of employees in an appropriate bargaining unit, determining and certifying that a labor organization has not been fairly and freely chosen by a majority of employees in the bargaining unit or certifying a labor organization as the exclusive representative of employees in an appropriate bargaining unit because of a determination by the Board that the labor organization is the historical bargaining representative of employees in the bargaining unit, is a final order. Any person aggrieved by any such order issued on or after the effective date of this amendatory Act of 1987 may apply for and obtain judicial review in accordance with provisions of the Administrative Review Law [735 ILCS 5/3-101 et seq.], as now or hereafter amended, except that such review shall be afforded directly in the Appellate Court of a judicial district in which the Board maintains an office. Any direct appeal to the Appellate Court shall be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision.

No election may be conducted in any bargaining unit during the term of a collective bargaining agreement covering such unit or subdivision thereof, except the Board may direct an election after the filing of a petition between January 15 and March 1 of the final year of a collective bargaining agreement. Nothing in this Section prohibits the negotiation of a collective bargaining agreement covering a period not exceeding 3 years. A collective bargaining agreement of less than 3 years may be extended up to 3 years by the parties if the extension is agreed to in writing before the filing of a petition under this Section. In such case, the final year of the extension is the final year of the collective bargaining agreement. No election may be conducted in a bargaining unit, or subdivision

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thereof, in which a valid election has been held within the preceding 12 month period.

(Source: P.A. 85-924; 88-1, § 2; 89-4, § 50-243; 93-444, § 10; 93-445, § 5; 95-331, § 575; 96-813, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1707.

Effect of Amendments. The 1993 amendment by P.A. 88-1, effective January 1, 1994, added the last sentence of the first paragraph of subsection (d).

The 1995 amendment by P.A. 89-4, as amended by P.A. 89-24, effective July 1, 1995, in subsection (a), in the first paragraph, in the first sentence, inserted "except as herein provided" and added the second paragraph.

The 2003 amendment by P.A. 93-444, effective August 5, 2003, added the last sentence of the first paragraph in subdivision (b) and made a stylistic change; and added subdivision (c-5).

The 2003 amendment by P.A. 93-445, effective January 1, 2004, in the second paragraph of subdivision (a), inserted "tenured and tenure-track" preceding "academic"; inserted "each campus of" preceding "the University of Illinois"; deleted "and nontenure track" preceding and inserted "of that University campus" following "faculty"; deleted "of that University" following "board of trustees"; inserted the language beginning "(with the exception of the college" and ending "have its own separate unit)"; and made related changes.

Although the amendments to this section by P.A. 93-444, § 10 and P.A. 93-445, § 5 did not take into account the amendments made by the other, the amendments have been combined into a single version by the publisher.

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, combined earlier multiple amendments to the section.

The 2009 amendment by P.A. 96-813, effective October 30, 2009, in (c-5), substituted "or" for "and" following "authorization" in the second sentence, inserted the third and fourth sentences, and added the last two sentences; and inserted (c-6).

CASE NOTES

Analysis

Constitutionality
Applicability
Bargaining Unit Composition
Community of Interest
Construction
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Labor Nexus Test

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Mootness
Subjects of Bargaining

Constitutionality

Any deleterious effect P.A. 90-4, § 50-423, which amended this section, had on the politically active Local 4100 was insufficient to defeat a motion to dismiss in the face of an independent rational purpose for the legislation that did not rest upon a suspect classification or implicate a fundamental right. University Professionals, Local 4100 v. Edgar, 114 F.3d. 665 (7th Cir. 1997).

Applicability

Illinois Educational Labor Relations Board did not have jurisdiction over the charter school's governing body because the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/7, did not apply to charter schools; under 105 ILCS 5/27A-5(g), charter schools were exempt from all other state laws, including the Act. N. Kane Educ. Corp. v. Cambridge Lakes Educ. Ass'n, 394 Ill. App. 3d 755, 333 Ill. Dec. 474, 914 N.E.2d 1286, 2009 Ill. App. LEXIS 916 (4 Dist. 2009), appeal denied, 235 Ill. 2d 590, 924 N.E.2d 456, 2010 Ill. LEXIS 31 (2010).

Subsection (d) is not applicable to a self-determination petition which merely seeks to merge two existing bargaining units of the same union and which would not significantly change or destabilize the collective bargaining relationship between the employer and the labor union. Black Hawk College Professional Technical Unit v. State Educ. Labor Relations Bd., 275 Ill. App. 3d 189, 211 Ill. Dec. 671, 655 N.E.2d 1054 (1 Dist. 1995), appeal denied, 164 Ill. 2d 558, 214 Ill. Dec. 317, 660 N.E.2d 1266 (1995).

Subsection (d) is applicable only to representational elections or elections where a representational issue is raised, or decertification elections. Black Hawk College Professional Technical Unit v. State Educ. Labor Relations Bd., 275 Ill. App. 3d 189, 211 Ill. Dec. 671, 655 N.E.2d 1054 (1 Dist. 1995), appeal denied, 164 Ill. 2d 558, 214 Ill. Dec. 317, 660 N.E.2d 1266 (1995).

Bargaining Unit Composition

The Educational Labor Relations Board's decision - that the proposed unit that included the regular, part-time faculty of a community college was an appropriate collective bargaining unit - was against the manifest weight of the evidence. Community College Dist. No. 509 v. Illinois Educ. Labor Relations Bd., 277 Ill. App. 3d 114, 214 Ill. Dec. 74, 660 N.E.2d 265 (1 Dist. 1996).

Bargaining unit of former employees was appropriate for the purpose of collective bargaining, where the former employees shared a community of interest with current employees, had similar skills and functions, had contact with each other, shared common supervision, performed their functions during the same hours of the day and were paid from Federal funds. Sedol Teachers Union, Local 504 v. Illinois Educ. Labor Relations Bd., 276 Ill. App. 3d 872, 213 Ill. Dec. 343, 658 N.E.2d 1364 (1 Dist. 1995).

A wall-to-wall standard to determine the appropriateness of a collective bargaining unit may be applied where the proposed unit consists of all of the educational employees of a single educational employer, including the nonprofessional employees with the professional; in a wall-to-wall unit, only a minimal showing of a community of interest among the subgroups is required to attain the goal of a convenient and efficient bargaining process and a single comprehensive agreement. Sandburg Faculty Ass'n v. Illinois Educ. Labor Relations Bd., 248 Ill. App. 3d 1028,

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188 Ill. Dec. 419, 618 N.E.2d 989 (1 Dist.), appeal denied, 152 Ill. 2d 580, 190 Ill. Dec. 910, 622 N.E.2d 1227 (1993).

A proposed wall-to-wall unit may be approved where the terms and conditions of employment of the included employees of a single educational employer, including the nonprofessional employees, are under the direct and exclusive control of the employer, while a small number of employees are under the control of someone other than the employer. Sandburg Faculty Ass'n v. Illinois Educ. Labor Relations Bd., 248 Ill. App. 3d 1028, 188 Ill. Dec. 419, 618 N.E.2d 989 (1 Dist.), appeal denied, 152 Ill. 2d 580, 190 Ill. Dec. 910, 622 N.E.2d 1227 (1993).

Despite their differences, professional and nonprofessional employees may combine into one bargaining unit with an identifiable community of interests. DuPage Area Vocational Educ. Auth. v. Illinois Educ. Labor Relations Bd., 167 Ill. App. 3d 927, 118 Ill. Dec. 837, 522 N.E.2d 292 (4 Dist. 1988).

Where the contents of a petition clearly indicated the professional composition of the existing unit without using the specific terminology, the Educational Labor Relations Board was within its discretion in finding adequate compliance with subsection (d) of this section. DuPage Area Vocational Educ. Auth. v. Illinois Educ. Labor Relations Bd., 167 Ill. App. 3d 927, 118 Ill. Dec. 837, 522 N.E.2d 292 (4 Dist. 1988).

This Act does not provide for the addition of employees by accretion; it does not provide any specific method for adding employees to an already existing bargaining unit. DuPage Area Vocational Educ. Auth. v. Illinois Educ. Labor Relations Bd., 167 Ill. App. 3d 927, 118 Ill. Dec. 837, 522 N.E.2d 292 (4 Dist. 1988).

This Act grants the Board of Educational Labor Relations a fair measure of discretion to utilize appropriate procedures for adding elements to already existing bargaining units. DuPage Area Vocational Educ. Auth. v. Illinois Educ. Labor Relations Bd., 167 Ill. App. 3d 927, 118 Ill. Dec. 837, 522 N.E.2d 292 (4 Dist. 1988).

Where the Board of Educational Labor Relations determines that (1) an appropriate community of interest exists, (2) that an appropriate bargaining unit would be maintained by the addition of certain employees, and (3) that no question of representation exists, then the Board may add such employees without a general election of the combined proposed bargaining unit. DuPage Area Vocational Educ. Auth. v. Illinois Educ. Labor Relations Bd., 167 Ill. App. 3d 927, 118 Ill. Dec. 837, 522 N.E.2d 292 (4 Dist. 1988).

The clear limitation upon the Educational Labor Relations Board's discretion to add employees to a bargaining unit is that, if the additional employees are different in nature than those in the existing bargaining unit, i.e., nonprofessional as opposed to professional, then the approval of both groups is required; this is no more than the clear mandate of the statute. DuPage Area Vocational Educ. Auth. v. Illinois Educ. Labor Relations Bd., 167 Ill. App. 3d 927, 118 Ill. Dec. 837, 522 N.E.2d 292 (4 Dist. 1988).

Community of Interest

There was a sufficient community of interest between the two bargaining units' employees so that if they chose to merge, the merger would form an appropriate bargaining unit for the employees. Black Hawk College Professional Technical Unit v. State Educ. Labor Relations Bd., 275 Ill. App. 3d 189, 211 Ill. Dec. 671, 655 N.E.2d 1054 (1 Dist. 1995), appeal denied, 164 Ill. 2d 558, 214 Ill. Dec. 317, 660 N.E.2d 1266 (1995).

Although collegial governance and tenure may be properly considered under "working conditions," neither collegial governance nor tenure are specifically mentioned in subsection (a) as factors to be considered under the community of interest standard. Black Hawk College Professional Technical Unit v. State Educ. Labor Relations Bd., 275 Ill. App. 3d 189, 211 Ill.

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Dec. 671, 655 N.E.2d 1054 (1 Dist. 1995), appeal denied, 164 Ill. 2d 558, 214 Ill. Dec. 317, 660 N.E.2d 1266 (1995).

The board improperly and admittedly focused upon governance/collegiality and tenure while the facts and circumstances surrounding the other issues at small community college clearly indicated that an identifiable community of interest existed, as viewed from the employees' perspective. Black Hawk College Professional Technical Unit v. State Educ. Labor Relations Bd., 275 Ill. App. 3d 189, 211 Ill. Dec. 671, 655 N.E.2d 1054 (1 Dist. 1995), appeal denied, 164 Ill. 2d 558, 214 Ill. Dec. 317, 660 N.E.2d 1266 (1995).

Community of interest must be judged by the interests of the various employee groups, not the interest of the employer. DuPage Area Vocational Educ. Auth. v. Illinois Educ. Labor Relations Bd., 167 Ill. App. 3d 927, 118 Ill. Dec. 837, 522 N.E.2d 292 (4 Dist. 1988).

The duties and responsibilities of public affairs center directors were more managerial than those of the faculty at a collegially governed university, and they were not acting in a managerial or executive way within the meaning of this Act, despite the fact that they "shared a community of interest with other faculty," since their duties and responsibilities were such that they should not have been in a position requiring them to divide their loyalty to the administration with their loyalty to an exclusive collective bargaining representative. Board of Regents v. Illinois Educ. Labor Relations Bd., 166 Ill. App. 3d 730, 117 Ill. Dec. 799, 520 N.E.2d 1150 (4 Dist. 1988).

Construction

Subsection (a) does not require that a proposed unit be the "most appropriate unit"; rather, it designates that the unit be "appropriate." Black Hawk College Professional Technical Unit v. State Educ. Labor Relations Bd., 275 Ill. App. 3d 189, 211 Ill. Dec. 671, 655 N.E.2d 1054 (1 Dist. 1995), appeal denied, 164 Ill. 2d 558, 214 Ill. Dec. 317, 660 N.E.2d 1266 (1995).

Judicial Review

Even where the precedent for denying administrative review of an order of certification was deemed to make the administrative review provisions of this section ambiguous, that ambiguity was resolved in favor of holding the order of certification final and subject to administrative review. Board of Regents v. Illinois Educ. Labor Relations Bd., 166 Ill. App. 3d 730, 117 Ill. Dec. 799, 520 N.E.2d 1150 (4 Dist. 1988).

Labor Nexus Test

The traditional concept of the management exclusion did not include a "labor nexus" test, nor a more expanded test derived therefrom. Board of Regents v. Illinois Educ. Labor Relations Bd., 166 Ill. App. 3d 730, 117 Ill. Dec. 799, 520 N.E.2d 1150 (4 Dist. 1988).

Mootness

An exception to the mootness doctrine is limited to those situations where (1) the challenged action is in its duration too short to be fully litigated prior to its cessation, and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again. Where petitioner won an election conducted pursuant to an order of the Illinois Educational Labor Relations Board, petitioner's petition for review of the order was moot; and although a new representation petition could have been filed again by the challenging federations within the time constraints set forth in this section, and therefore the situation was capable of repetition, the challenged actions of the Labor Relations Board were not such as to evade review. Ewardsville

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Sch. Serv. Personnel Ass'n v. Illinois Educ. Labor Relations Bd., 235 Ill. App. 3d 954, 175 Ill. Dec. 667, 600 N.E.2d 910 (4 Dist. 1992).

Subjects of Bargaining

The board correctly found the mandatory subjects of bargaining to be: (1) criteria for promotions; (2) weighting criteria; (3) minimum eligibility requirements to participate in exams; (4) order of promotion from the final eligibility list; and (5) posting exam scores and found the following not to be mandatory subjects: (1) exam format and design; (2) identity of those who conduct the oral and written parts of the exam; (3) standards and guidelines for exam questions; and (4) standards and guidelines for the merit and efficiency rating. Village of Franklin Park v. Illinois State Labor Relations Bd., 265 Ill. App. 3d 997, 203 Ill. Dec. 18, 638 N.E.2d 1144 (1 Dist.), appeal denied, 157 Ill. 2d 498, 205 Ill. Dec. 160, 642 N.E.2d 1277 (1994).

The board found that the proposal for promotion to captain was not mandatory subject of bargaining and that the village was not required to give the union information about subjects the board found were not mandatory subjects of bargaining. Village of Franklin Park v. Illinois State Labor Relations Bd., 265 Ill. App. 3d 997, 203 Ill. Dec. 18, 638 N.E.2d 1144 (1 Dist.), appeal denied, 157 Ill. 2d 498, 205 Ill. Dec. 160, 642 N.E.2d 1277 (1994).

LEGAL PERIODICALS

For article, "Implementing the Illinois Educational Labor Relations Act," see 61 Chi.-Kent L. Rev. 101 (1985).

For article, "Illinois Public Labor Relations Laws: A Commentary and Analysis," see 60 Chi.-Kent L. Rev. 883 (1984).

Practice Guides and Treatises.

Labor Law Handbook § 18.55 IELRA § 7(a) (IICLE).

Labor Law Handbook § 18.52 IELRA §§ 2(m) and 7 (IICLE).

Labor Law Handbook § 18.46 IELRA § 7(c)(2) (IICLE).

Labor Law Handbook § 18.44 IELRA § 7(b) (IICLE).

Illinois Jurisprudence, Labor and Employment § 11:20 Recognition of exclusive bargaining representative.

§ 115 ILCS 5/8. Election - certification

Sec. 8. Election - certification. Elections shall be by secret ballot, and conducted in accordance with rules and regulations established by the Illinois Educational Labor Relations Board. An incumbent exclusive bargaining representative shall automatically be placed on any ballot with the petitioner's labor organization. An intervening labor organization may be placed on the ballot when supported by 15% or more of the

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employees in the bargaining unit. The Board shall give at least 30 days notice of the time and place of the election to the parties and, upon request, shall provide the parties with a list of names and addresses of persons eligible to vote in the election at least 15 days before the election. The ballot must include, as one of the alternatives, the choice of "no representative". No mail ballots are permitted except where a specific individual would otherwise be unable to cast a ballot.

The labor organization receiving a majority of the ballots cast shall be certified by the Board as the exclusive bargaining representative. If the choice of "no representative" receives a majority, the employer shall not recognize any exclusive bargaining representative for at least 12 months. If none of the choices on the ballot receives a majority, a run-off shall be conducted between the 2 choices receiving the largest number of valid votes cast in the election. The Board shall certify the results of the election within 6 working days after the final tally of votes unless a charge is filed by a party alleging that improper conduct occurred which affected the outcome of the election. The Board shall promptly investigate the allegations, and if it finds probable cause that improper conduct occurred and could have affected the outcome of the election, it shall set a hearing on the matter on a date falling within 2 weeks of when it received the charge. If it determines, after hearing, that the outcome of the election was affected by improper conduct, it shall order a new election and shall order corrective action which it considers necessary to insure the fairness of the new election. If it determines upon investigation or after hearing that the alleged improper conduct did not take place or that it did not affect the results of the election, it shall immediately certify the election results.

Any labor organization that is the exclusive bargaining representative in an appropriate unit on the effective date of this Act shall continue as such until a new one is selected under this Act.

(Source: P.A. 83-1014; 92-206, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1708.

Effect of Amendments. The 2001 amendment by P.A. 92-206, effective January 1, 2002, substituted "6" for "5" in the second paragraph, fourth sentence.

CASE NOTES

Analysis

Improper Conduct
Legislative Purpose

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Improper Conduct

The Board of Educational Labor Relations properly determined that the Board agent's conduct in temporarily closing the polls without authorization or advance notice was improper as such conduct affected the outcome of the election. Decatur Fed'n of Teachers v. State of Ill. Educ. Labor Relations Bd., 199 Ill. App. 3d 190, 145 Ill. Dec. 162, 556 N.E.2d 780 (4 Dist. 1990).

This section discusses two different standards applicable to a claim that an election was affected by improper conduct: (1) before investigating an allegation of improper election conduct, the Board of Educational Labor Relations must find probable cause that the conduct could have affected the outcome of the election and (2) before ordering a new election, the Board must find that the outcome of the election was affected by the improper conduct. Decatur Fed'n of Teachers v. State of Ill. Educ. Labor Relations Bd., 199 Ill. App. 3d 190, 145 Ill. Dec. 162, 556 N.E.2d 780 (4 Dist. 1990).

Legislative Purpose

The primary focus of former § 3-14.24 of the School Code (now repealed) related to the duty of the regional superintendent of schools to oversee the certification of bargaining representatives. Minooka High Sch. Educ. Ass'n v. Board of Educ., 119 Ill. App. 3d 826, 75 Ill. Dec. 372, 457 N.E.2d 162 (3 Dist. 1983).

Prior Law

Nothing in the express language of former § 3-14.24 of the School Code (now repealed) imposed affirmative or negative duties upon school boards, vis a vis the exclusive bargaining representatives. Minooka High Sch. Educ. Ass'n v. Board of Educ., 119 Ill. App. 3d 826, 75 Ill. Dec. 372, 457 N.E.2d 162 (3 Dist. 1983).

The meaning of "exclusive" in former § 3-14.24 of the School Code (now repealed) was that the Board of Education could not bargain with any other agent or representative for the teachers, should the Board of Education have chosen to bargain collectively. Minooka High Sch. Educ. Ass'n v. Board of Educ., 119 Ill. App. 3d 826, 75 Ill. Dec. 372, 457 N.E.2d 162 (3 Dist. 1983).

The prohibition in former § 3-14.24 of the School Code (now repealed) relating to collective bargaining did not prevent the Board of Education from bargaining on an individual basis directly with the principals involved. Minooka High Sch. Educ. Ass'n v. Board of Educ., 119 Ill. App. 3d 826, 75 Ill. Dec. 372, 457 N.E.2d 162 (3 Dist. 1983).

The only intent of former section 3-14.24 of the School Code (now repealed), as taken from its plain language, was to be that the Board of Education not bargain collectively with any other agent or representative for the teachers, other than the representative certified by the regional superintendent. Minooka High Sch. Educ. Ass'n v. Board of Educ., 119 Ill. App. 3d 826, 75 Ill. Dec. 372, 457 N.E.2d 162 (3 Dist. 1983).

LEGAL PERIODICALS

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For article, "Implementing the Illinois Educational Labor Relations Act," see 61 Chi.-Kent L. Rev. 101 (1985).

For article, "Illinois Public Labor Relations Laws: A Commentary and Analysis," see 60 Chi.-Kent L. Rev. 883 (1984).

For article, "The Significance of the Supervisory and Managerial Definitions in the Illinois Educational Labor Relations Act and the Public Labor Relations Act of Illinois," see 60 Chi.-Kent L. Rev. 863 (1984).

Practice Guides and Treatises.

Labor Law Handbook § 18.49 Election Procedure (IICLE).

§ 115 ILCS 5/9. Board Rules

Sec. 9. Board Rules. The Board shall promulgate rules and regulations governing the appropriateness of bargaining units, representation elections, employee petitions for recognition and procedures for voluntary recognition of employee organizations by employers.

(Source: P.A. 83-1014.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1709.

§ 115 ILCS 5/10. Duty to bargain

Sec. 10. Duty to bargain. (a) An educational employer and the exclusive representative have the authority and the duty to bargain collectively as set forth in this Section. Collective bargaining is the performance of the mutual obligations of the educational employer and the representative of the educational employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, and to execute a written contract incorporating any agreement reached by such obligation, provided such obligation does not compel either party to agree to a proposal or require the making of a concession.

(b) The parties to the collective bargaining process shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly of Illinois. The parties to the collective bargaining process may effect or implement a provision in a collective bargaining agreement if the

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implementation of that provision has the effect of supplementing any provision in any statute or statutes enacted by the General Assembly of Illinois pertaining to wages, hours or other conditions of employment; provided however, no provision in a collective bargaining agreement may be effected or implemented if such provision has the effect of negating, abrogating, replacing, reducing, diminishing, or limiting in any way any employee rights, guarantees or privileges pertaining to wages, hours or other conditions of employment provided in such statutes. Any provision in a collective bargaining agreement which has the effect of negating, abrogating, replacing, reducing, diminishing or limiting in any way any employee rights, guarantees or privileges provided in an Illinois statute or statutes shall be void and unenforceable, but shall not affect the validity, enforceability and implementation of other permissible provisions of the collective bargaining agreement.

(c) The collective bargaining agreement negotiated between representatives of the educational employees and the educational employer shall contain a grievance resolution procedure which shall apply to all employees in the unit and shall provide for binding arbitration of disputes concerning the administration or interpretation of the agreement. The agreement shall also contain appropriate language prohibiting strikes for the duration of the agreement. The costs of such arbitration shall be borne equally by the educational employer and the employee organization.

(d) Once an agreement is reached between representatives of the educational employees and the educational employer and is ratified by both parties, the agreement shall be reduced to writing and signed by the parties.

(Source: P.A. 84-832.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1710.

CASE NOTES

Analysis

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Arbitrable Dispute
Award
- Not Enforceable
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- Unenforceable Agreement
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Exclusion from Bargaining
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Mandatory Bargaining
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Non-Arbitrable Dispute
Provision Not in Agreement
Qualified Privilege
Reinstatement
Res Judicata
Retroactive Application
Rights of Tenured Teachers
Unfair Labor Practice
Waiver and Inclusion

In General

Arbitration is looked upon as a uniquely suitable method for settling labor disputes, and in cases of doubt, courts should decide in favor of arbitration. Board of Governors ex rel. Northeastern Ill. Univ. v. Illinois Educ. Labor Relations Bd., 170 Ill. App. 3d 463, 120 Ill. Dec. 728, 524 N.E.2d 758 (4 Dist. 1988).

Arbitrable Dispute

Although an issue that could not be the subject of a collective bargaining agreement also could not be arbitrated, the board of education's decision not to select four teachers for summer school position did not involve the subject of "class staffing and assignment," and, thus, the four teachers' grievances concerning the refusal to select could be arbitrated, the arbitration award was binding, and the board of education was not entitled to refuse to comply with the binding arbitration award. Chicago Teachers Union, Local No. 1 v. Ill. Educ. Labor Rels. Bd., 334 Ill. App. 3d 936, 268 Ill. Dec. 610, 778 N.E.2d 1232, 2002 Ill. App. LEXIS 974 (1 Dist. 2002), appeal denied, 202 Ill. 2d 668, 272 Ill. Dec. 356, 787 N.E.2d 171 (2003).

An arbitration award requiring the reinstatement of a full-time basis substitute teacher was not binding since it violated subsection (b) of this section, the School Board has the absolute power to discharge all employees, including full-time basis substitute teachers, pursuant to 105 ILCS 5/34-8.1. Chicago Sch. Reform Bd. of Trustees v. Illinois Educ. Labor Relations Bd., 309 Ill. App. 3d 88, 242 Ill. Dec. 397, 721 N.E.2d 676 (1 Dist. 1999), appeal denied, 188 Ill. 2d 562, 246 Ill. Dec. 121, 729 N.E.2d 494 (2000).

Viewing a bargaining agreement as a whole, a dispute over whether a discharge was for good cause could be the subject of a grievance, because the contract provided for the grievability of all disputes arising out of the application or interpretation of its terms; thus, such a dispute was subject to arbitration. Board of Governors ex rel. Northeastern Ill. Univ. v. Illinois Educ. Labor Relations Bd., 170 Ill. App. 3d 463, 120 Ill. Dec. 728, 524 N.E.2d 758 (4 Dist. 1988).

Dismissal of a nontenured probationary faculty member is a discretionary, nondelegable power of the Board of Trustees and, therefore, is not subject to binding arbitration in spite of § 10(b) of the Illinois Education Labor Relations Act, Ill, Rev. Stat., 1983 Supp., ch. 48, par. 1710(b). Board of

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Trustees v. Cook County Coll. Teachers Union, Local 1600, 167 Ill. App. 3d 998, 118 Ill. Dec. 638, 522 N.E.2d 93, 1987 Ill. App. LEXIS 3803 (1 Dist. 1987).

The fact that appellate court considered the provisions of a collective bargaining agreement in relation to defendant's arguments did not in itself give rise to an arbitrable matter; such a rule would defeat the purpose of all examinations into the arbitrability of disputes. Board of Educ. v. Indian Prairie Educ. Ass'n, 139 Ill. App. 3d 1040, 94 Ill. Dec. 272, 487 N.E.2d 1149 (2 Dist. 1985).

A class size memorandum was not a part of a collective bargaining agreement, and therefore the education association's assertion that an arbitrable dispute existed failed, since the only provisions of the collective bargaining agreement relating to teaching assignments reserved that authority to the board of education and thus presented no basis for a grievance subject to arbitration. Board of Educ. v. Indian Prairie Educ. Ass'n, 139 Ill. App. 3d 1040, 94 Ill. Dec. 272, 487 N.E.2d 1149 (2 Dist. 1985).

Award

- Not Enforceable

Arbitrator's award declaring that school district acted against teacher in issuing a "notice to remedy" without just cause was prohibited because it was inconsistent and conflicted with 105 ILCS 5/10-22.4 and 105 ILCS 5/24-12; therefore, the arbitration award was not binding and could not be enforced and, thus, the district could not have committed an unfair labor practice by failing to comply with it. Board of Educ. v. Illinois Educ. Labor Relations Bd., 165 Ill. 2d 80, 208 Ill. Dec. 313, 649 N.E.2d 369 (1995).

If an arbitration award is contrary to a specific law or statute, then the award is nonbinding and the Illinois Educational Labor Relations Board cannot enforce it. Board of Educ. v. Illinois Educ. Labor Relations Bd., 258 Ill. App. 3d 859, 196 Ill. Dec. 252, 629 N.E.2d 797 (4 Dist.), appeal granted, 156 Ill. 2d 556, 202 Ill. Dec. 919, 638 N.E.2d 1113 (1994), aff'd, 165 Ill. 2d 80, 208 Ill. Dec. 313, 649 N.E.2d 369 (1995).

Balancing Test

A three part balancing test is used to determine whether an action taken by an employer involves a mandatory subject of bargaining: (1) whether the action taken by the employer directly or indirectly involves one of the mandatory subjects of bargaining set forth in, subdivision (a)(2) of this section, (2) whether the action taken by the employer is a matter of inherent managerial policy as defined in 115 ILCS 5/4, and (3) if both an employee right under this section and an employer right under 115 ILCS 5/4 exist, then the employees' right to bargain is balanced with the policy of protecting the employers' inherent managerial rights to determine whose interests are more at risk. West Chicago Sch. Dist. v. Illinois Educ. Labor Relations Bd., 218 Ill. App. 3d 304, 161 Ill. Dec. 105, 578 N.E.2d 232 (1 Dist.), appeal denied, 142 Ill. 2d 666, 164 Ill. Dec. 929, 584 N.E.2d 141 (1991).

Collective Bargaining Waived

Where an agreement between the teachers' union and the school district did not include a provision that revisions to the school calendar would be subject to collective bargaining, and the agreement contained a zipper clause, the right to bargain on this issue was waived; the Illinois Educational Labor Relations Board could rely on the language in the zipper clause and did not have to consider the union negotiator's subjective intent. East Richland Educ. Ass'n v. Illinois

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Educ. Labor Relations Bd., 173 Ill. App. 3d 878, 124 Ill. Dec. 63, 528 N.E.2d 751 (4 Dist. 1988).

Construction

- Unenforceable Agreement

Where a provision in a collective-bargaining agreement is in violation of, or inconsistent with, or in conflict with any Illinois statute, subsection (b) prohibits its implementation in an arbitration award; under these circumstances, an arbitration award would not be binding and could not be enforced. Board of Educ. v. Illinois Educ. Labor Relations Bd., 165 Ill. 2d 80, 208 Ill. Dec. 313, 649 N.E.2d 369 (1995).

Denial of Reappointment

Where the decision of a school district to deny reappointment of an employee to the track assistantship was announced and apparently made shortly before he entered a plea of guilty to a criminal charge, the district's action in refusing reappointment could reasonably have been found to result from an intent to discipline the employee. Board of Educ. v. Illinois Educ. Labor Relations Bd., 175 Ill. App. 3d 347, 125 Ill. Dec. 34, 529 N.E.2d 1110 (4 Dist. 1988).

Exclusion from Bargaining

In order to exclude a matter from the grievance arbitration process, the bargaining agreement must specifically state the matter is not grievable. Board of Governors ex rel. Northeastern Ill. Univ. v. Illinois Educ. Labor Relations Bd., 170 Ill. App. 3d 463, 120 Ill. Dec. 728, 524 N.E.2d 758 (4 Dist. 1988).

Ultimate decision whether to dismiss a teacher is a duty that rests with the board of education and the board may not, by means of a collective bargaining agreement, delegate or limit the power to dismiss granted it by the General Assembly. Board of Trustees v. Cook County Coll. Teachers Union, Local 1600, 167 Ill. App. 3d 998, 118 Ill. Dec. 638, 522 N.E.2d 93, 1987 Ill. App. LEXIS 3803 (1 Dist. 1987).

Freedom to Bargain

Once the pompon squad sponsor position became a paid extracurricular position, it became a fairly claimable work opportunity for school district's certified employees allowing the district to negotiate salary, hours, and terms and conditions of employment. Board of Educ. v. Illinois Educ. Labor Relations Bd., 152 Ill. App. 2d 577, 189 Ill. Dec. 450, 620 N.E.2d 418 (4 Dist. 1993).

While exclusion of a mandatory or permissive subject of bargaining from grievance and arbitration provisions cannot be required, and a party may not be able to insist to impasse that some aspect be excluded from those provisions, such rules do not prohibit parties from freely and independently agreeing to bargain as to such matters. Alton Community Unit Sch. v. Illinois Educ. Labor Relations Bd., 209 Ill. App. 3d 16, 153 Ill. Dec. 713, 567 N.E.2d 671 (4 Dist. 1991).

Good Faith

Illinois Educational Labor Relations Board's order was affirmed as the Board's finding that representatives of a union and a school district orally entered into a collective bargaining agreement during negotiations, but that the school district failed to bargain in good faith by reneging on the oral agreement was not against the manifest weight of the evidence. Further, the

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Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq., controlled any conflict in the laws pursuant to 115 ILCS 5/17. Bd. of Educ. v. Sered, 366 Ill. App. 3d 330, 303 Ill. Dec. 16, 850 N.E.2d 821, 2006 Ill. App. LEXIS 103 (1 Dist. 2006).

Good faith in the overall bargaining context is assessed upon a review of all of the circumstances; however, the concept is variable and factors which indicate bad faith bargaining in one circumstance will not be determinative in a different setting. Service Employees Int'l Local Union 316 v. Illinois Educ. Labor Relations Bd., 153 Ill. App. 3d 744, 106 Ill. Dec. 112, 505 N.E.2d 418 (4 Dist. 1987).

The duty to bargain in good faith does not obligate parties to yield fairly maintained positions or make concessions; however, the parties are obligated to do more than go through the motions of bargaining. Service Employees Int'l Local Union 316 v. Illinois Educ. Labor Relations Bd., 153 Ill. App. 3d 744, 106 Ill. Dec. 112, 505 N.E.2d 418 (4 Dist. 1987).

Good faith bargaining presupposes an open mind and a sincere desire to reach an ultimate agreement. Service Employees Int'l Local Union 316 v. Illinois Educ. Labor Relations Bd., 153 Ill. App. 3d 744, 106 Ill. Dec. 112, 505 N.E.2d 418 (4 Dist. 1987).

Good faith bargaining in the subcontracting situation requires that the union be notified that subcontracting is under consideration prior to the decision to subcontract and terminate the employment of union members. Service Employees Int'l Local Union 316 v. Illinois Educ. Labor Relations Bd., 153 Ill. App. 3d 744, 106 Ill. Dec. 112, 505 N.E.2d 418 (4 Dist. 1987).

Good faith bargaining requires timely notice and a meaningful opportunity to bargain regarding the employer's proposed changes. Service Employees Int'l Local Union 316 v. Illinois Educ. Labor Relations Bd., 153 Ill. App. 3d 744, 106 Ill. Dec. 112, 505 N.E.2d 418 (4 Dist. 1987).

If the union is given notice, an opportunity to negotiate before a subcontracting decision is finalized, and the employer bargains over the effects of its decision, no unfair labor practice will be found, absent anti-union animus or evidence of sham negotiations. Service Employees Int'l Local Union 316 v. Illinois Educ. Labor Relations Bd., 153 Ill. App. 3d 744, 106 Ill. Dec. 112, 505 N.E.2d 418 (4 Dist. 1987).

Where the district notified the union, met and discussed the proposal to contract out maintenance and custodial work, and considered the union's counterproposal before finalizing its subcontracting plans, the district had bargained in good faith. Service Employees Int'l Local Union 316 v. Illinois Educ. Labor Relations Bd., 153 Ill. App. 3d 744, 106 Ill. Dec. 112, 505 N.E.2d 418 (4 Dist. 1987).

Jurisdiction

Where the question of a free lunch period was not covered by the collective bargaining agreement, no question of improper refusal to bargain was possible, because no collective bargaining agreement could provide for a lunch period violating § 24-9 of the School Code (105 ILCS 5/24-9); therefore, the circuit court had jurisdiction to proceed with plaintiffs' complaint alleging violations of 105 ILCS 5/24-9. Semmens v. Board of Educ., 190 Ill. App. 3d 174, 137 Ill. Dec. 801, 546 N.E.2d 746 (4 Dist. 1989).

This Act divests the circuit court, and confers upon the Educational Labor Relations Board, exclusive jurisdiction to determine whether an employment dispute is arbitrable under a public educational collective bargaining agreement. Board of Trustees v. Prairie State College Fed'n of Teachers Local 3816, 184 Ill. App. 3d 363, 132 Ill. Dec. 872, 540 N.E.2d 794 (1 Dist. 1989).

Legislative Intent

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The absence of any reference to the Uniform Arbitration Act (710 ILCS 5/1 et seq.) in this Act strongly suggests that the legislature did not intend review of arbitration awards by the circuit court, even as to arbitrability. Illinois Dep't of Cent. Mgt. Serv. v. AFSCME, 222 Ill. App. 3d 678, 165 Ill. Dec. 138, 584 N.E.2d 317 (1 Dist. 1991).

Mandatory Bargaining

Mileage, release time, and stipends for teachers appointed to serve on Local Professional Development Committees, under 105 ILCS 21-14(f), to review and approve teachers' certificate renewal plans, concerned wages, hours and terms and conditions of employment and were mandatory subjects of bargaining under 115 ILCS 5/10(a). Governing Bd. of the Special Educ. Dist. v. Sedol Teachers' Union, Local 504, 332 Ill. App. 3d 144, 265 Ill. Dec. 476, 772 N.E.2d 847, 2002 Ill. App. LEXIS 517 (1 Dist. 2002), appeal denied sub nom., 201 Ill. 2d 566, 271 Ill. Dec. 925, 786 N.E.2d 183 (2002).

The unilateral changes instituted by a school district constituted changes in subjects requiring mandatory bargaining, and failure to give notice and opportunity to the teacher's association to bargain any of the changes made, and refusal to engage in mid-term bargaining over these items, was a violation of subsection (a) of this section. West Chicago Sch. Dist. v. Illinois Educ. Labor Relations Bd., 218 Ill. App. 3d 304, 161 Ill. Dec. 105, 578 N.E.2d 232 (1 Dist.), appeal denied, 142 Ill. 2d 666, 164 Ill. Dec. 929, 584 N.E.2d 141 (1991).

Memorandum of Understanding

Memorandum of understanding could not be termed a "collective bargaining" agreement under subsection (a) of this section and thereby subject to the requirement of binding arbitration under subsection (c) of this section inasmuch as the parties clearly did not intend the memorandum to be construed as such. Board of Educ. v. Indian Prairie Educ. Ass'n, 139 Ill. App. 3d 1040, 94 Ill. Dec. 272, 487 N.E.2d 1149 (2 Dist. 1985).

Non-Arbitrable Dispute

District did not commit an unfair labor practice in not renewing the contracts of three nontenured probationary teachers and, thus, the state educational labor relations board should not have found that the district was obligated to arbitrate the matter. The collective bargaining agreement provided that nontenured teachers could only challenge such decisions through the board of education level of the grievance procedure and the district was only required pursuant to 105 ILCS 5/24-11 to provide the teachers with written notice stating the reasons for dismissal, both of which occurred. Niles Twp. High Sch. Dist. 219 v. Ill. Educ. Labor Rels. Bd., 379 Ill. App. 3d 22, 318 Ill. Dec. 195, 883 N.E.2d 29, 2007 Ill. App. LEXIS 1291 (1 Dist. 2007).

Grievance filed by union on behalf of school teacher claiming unfair labor practice by school district was not arbitrable where evidence showed that the teacher evaluation plan involved in the grievance did not result from "collective bargaining" between union and school district but rather, resulted from cooperation and consensus building. Board of Educ. of Du Page High Sch. Dist. No. 88 v. Educational Labor Relations Bd., 246 Ill. App. 3d 967, 187 Ill. Dec. 333, 617 N.E.2d 790 (1 Dist. 1993).

Provision Not in Agreement

The implementation of a working condition not covered by a collective bargaining agreement does not bring subsection (b) of this section into play and thus does not create a right guaranteed

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under the Act within the meaning of 115 ILCS 5/14. Semmens v. Board of Educ., 190 Ill. App. 3d 174, 137 Ill. Dec. 801, 546 N.E.2d 746 (4 Dist. 1989).

Qualified Privilege

The deliberations of the protected meetings of a school district where collective bargaining strategy was discussed were subject to a qualified privilege from discovery, based on necessity, for litigation purposes in an action brought by teachers' union charging the school district with unfair labor practices. Illinois Educ. Labor Relations Bd. v. Homer Community Consol. Sch. Dist., 160 Ill. App. 3d 730, 112 Ill. Dec. 802, 514 N.E.2d 465 (4 Dist. 1987).

Reinstatement

When an arbitrator directed that a teacher be reinstated as a reserve or reassigned teacher, after a school board did not provide her with contractually required job assistance after eliminating her position, that award was binding, under 115 ILCS 5/10(b) as it did not conflict with any provision of the School Code, 105 Ill. Comp. Stat. 5/1-1. Chi. Teachers Union, Local 1 v. Ill. Educ. Labor Rels. Bd., 344 Ill. App. 3d 624, 279 Ill. Dec. 406, 800 N.E.2d 475, 2003 Ill. App. LEXIS 1347 (1 Dist. 2003).

Res Judicata

The Illinois Educational Labor Relations Board correctly found the Board of Governors of State Colleges and Universities committed an unfair labor practice by refusing to process employee's grievance over discharge; however, principles of res judicata required affirmance of the determination of the Merit Board where the employee had elected to follow civil service discharge procedures. Board of Governors ex rel. Northeastern Ill. Univ. v. Illinois Educ. Labor Relations Bd., 170 Ill. App. 3d 463, 120 Ill. Dec. 728, 524 N.E.2d 758 (4 Dist. 1988).

Retroactive Application

Subsection (b) of this section cannot be given retroactive application unless there is a clear expression from the legislature that it intended such a result, and no such legislative expression exists. Board of Trustees v. Cook County College Teachers Union, 167 Ill. App. 3d 998, 118 Ill. Dec. 638, 522 N.E.2d 93 (1 Dist. 1987).

Rights of Tenured Teachers

Placement of a teacher in the reassigned teacher pool was a job retention issue, not a mere matter of class staffing and assignment, so it could properly be the subject of collective bargaining and subject to arbitration. Chi. Teachers Union, Local 1 v. Chi. Sch. Reform Bd. of Trs., 338 Ill. App. 3d 90, 272 Ill. Dec. 409, 787 N.E.2d 224, 2003 Ill. App. LEXIS 297 (1 Dist. 2003).

Where no statutory power was usurped by an arbitrator, arbitration of temporary suspension of a teacher did not violate subsection (b) of this section. Granite City Community Unit Sch. Dist. No. 9 v. Illinois Educ. Labor Relations Bd., 279 Ill. App. 3d 439, 216 Ill. Dec. 132, 664 N.E.2d 1060 (4 Dist. 1996), appeal denied, 168 Ill. 2d 589, 219 Ill. Dec. 563, 671 N.E.2d 730 (1996).

The Illinois legislature has determined that a school board has the sole authority to decide whether a dismissal is warranted (see 105 ILCS 5/10-22.4 and 105 ILCS 5/24-12) and an interpretation of a collective-bargaining agreement provision which gives that power to an

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arbitrator clearly violates this section. Board of Educ. v. Illinois Educ. Labor Relations Bd., 258 Ill. App. 3d 859, 196 Ill. Dec. 252, 629 N.E.2d 797 (4 Dist.), appeal granted, 156 Ill. 2d 556, 202 Ill. Dec. 919, 638 N.E.2d 1113 (1994), aff'd, 165 Ill. 2d 80, 208 Ill. Dec. 313, 649 N.E.2d 369 (1995).

The alternative method of determining the sequence of dismissal provided by a collective bargaining agreement cannot diminish the rights of tenured teachers. Piquard v. Board of Educ., 242 Ill. App. 3d 477, 182 Ill. Dec. 888, 610 N.E.2d 757 (3 Dist. 1993).

Unfair Labor Practice

Where an arbitrator's action conflicted with the purpose as well as the language of 105 ILCS 5/24-11, which reserved determinations regarding teacher retention for the school board, the remedy of reinstatement for a third probationary term was invalid and not binding and the school district committed no unfair labor practice in refusing to reinstate the teacher. Midwest Cent. Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 277 Ill. App. 3d 440, 213 Ill. Dec. 894, 660 N.E.2d 151 (1 Dist. 1995), appeal denied, 167 Ill. 2d 556, 217 Ill. Dec. 665, 667 N.E.2d 1058 (1996).

An educational employer violates the essential principle of collective bargaining when that employer bargains, or attempts to bargain, with an individual employee or employees with respect to wages, hours, and terms or conditions of employment. Board of Educ. v. Illinois Educ. Labor Relations Bd., 152 Ill. App. 2d 577, 189 Ill. Dec. 450, 620 N.E.2d 418 (4 Dist. 1993).

When considering whether a party has committed the unfair labor practice of refusing to comply with a binding arbitration award, the inquiry is limited to three issues: whether the award was binding; what the content of the award is; and whether the party has complied with the award. Board of Educ. of Du Page High Sch. Dist. No. 88 v. Educational Labor Relations Bd., 246 Ill. App. 3d 967, 187 Ill. Dec. 333, 617 N.E.2d 790 (1 Dist. 1993).

A refusal to submit an employee grievance to arbitration is an unfair labor practice within the meaning of subdivision (a)(1) of 115 ILCS 5/15, given the arbitration requirements of this section. Board of Trustees v. Illinois Educ. Labor Relations Bd., 173 Ill. App. 3d 395, 123 Ill. Dec. 75, 527 N.E.2d 538 (4 Dist. 1988).

This Act mandates binding arbitration of unresolved disputes, and creates a new unfair labor practice for refusal to comply with the provisions of a binding arbitration award. Chicago Bd. of Educ. v. Chicago Teachers Union, 142 Ill. App. 3d 527, 96 Ill. Dec. 799, 491 N.E.2d 1259 (1 Dist. 1986).

Waiver and Inclusion

If parties can waive application of grievance and arbitration provisions of a collective-bargaining agreement by clear express language, logic dictates that they can also agree to bargain as to what portion of the plan would be subject to the grievance and arbitration provisions of the contract. Alton Community Unit Sch. v. Illinois Educ. Labor Relations Bd., 209 Ill. App. 3d 16, 153 Ill. Dec. 713, 567 N.E.2d 671 (4 Dist. 1991).

LEGAL PERIODICALS

For article, "Implementing the Illinois Educational Labor Relations Act," see 61 Chi.-Kent L. Rev. 101 (1985).

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For article, "Illinois Public Labor Relations Laws: A Commentary and Analysis," see 60 Chi.-Kent L. Rev. 883 (1984).

For article, "The Significance of the Supervisory and Managerial Definitions in the Illinois Educational Labor Relations Act and the Public Labor Relations Act of Illinois," see 60 Chi.-Kent L. Rev. 863 (1984).

Practice Guides and Treatises.

Contract Law § 20.53 Illinois Educational Labor Relations Act (IICLE).

Labor Law Handbook § 18.77 IELRA §§ 10(c) and 16(d) (IICLE).

Labor Law Handbook § 18.67 Prohibited Subject Matter - IPLRA § 7 and IELRA § 10(b) (IICLE).

Labor Law Handbook § 18.65 IELRA §§ 4 and 10 (IICLE).

Labor Law Handbook § 18.63 Mandatory Subject Matter (IICLE).

Labor Law Handbook § 18.61 Duty To Provide Information (IICLE).

Labor Law Handbook § 18.59 IELRA § 10(a) (IICLE).

Illinois Jurisprudence, Labor and Employment § 12:47 Matters excluded from arbitration by law.

Illinois Jurisprudence, Labor and Employment § 11:26 Contract provisions in violation of statute.

Illinois Jurisprudence, Labor and Employment § 11:24 "Collective bargaining," defined.

Illinois Jurisprudence, Labor and Employment § 11:23 Duty to bargain collectively.

§ 115 ILCS 5/11. Non-member fair share payments

Sec. 11. Non-member fair share payments. When a collective bargaining agreement is entered into with an exclusive representative, it may include a provision requiring employees covered by the agreement who are not members of the organization to pay to the organization a fair share fee for services rendered. The exclusive representative shall certify to the employer an amount not to exceed the dues uniformly required of members which shall constitute each non member employee's fair share fee. The fair share fee payment shall be deducted by the employer from the earnings of the non member employees and paid to the exclusive representative.

The amount certified by the exclusive representative shall not include any fees for contributions related to the election or support of any candidate for political office. Nothing in this Section shall preclude the non member employee from making voluntary political contributions in conjunction with his or her fair share payment.

If a collective bargaining agreement that includes a fair share clause expires or continues in effect beyond its scheduled expiration date pending the negotiation of a successor agreement, then the employer shall continue to honor and abide by the fair share clause until a new agreement that includes a fair share clause is reached. Failure to honor and

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abide by the fair share clause for the benefit of any exclusive representative as set forth in this paragraph shall be a violation of the duty to bargain and an unfair labor practice.

Agreements containing a fair share agreement must safeguard the right of non-association of employees based upon bonafide religious tenets or teaching of a church or religious body of which such employees are members. Such employees may be required to pay an amount equal to their proportionate share, determined under a proportionate share agreement, to a non-religious charitable organization mutually agreed upon by the employees affected and the exclusive representative to which such employees would otherwise pay such fee. If the affected employees and the exclusive representative are unable to reach an agreement on the matter, the Illinois Educational Labor Relations Board may establish an approved list of charitable organizations to which such payments may be made.

The Board shall by rule require that in cases where an employee files an objection to the amount of the fair share fee, the employer shall continue to deduct the employee's fair share fee from the employee's pay, but shall transmit the fee, or some portion thereof, to the Board for deposit in an escrow account maintained by the Board; provided, however, that if the exclusive representative maintains an escrow account for the purpose of holding fair share fees to which an employee has objected, the employer shall transmit the entire fair share fee to the exclusive representative, and the exclusive representative shall hold in escrow that portion of the fee that the employer would otherwise have been required to transmit to the Board for escrow, provided that the escrow account maintained by the exclusive representative complies with rules to be promulgated by the Board within 30 days of the effective date of this amendatory Act of 1989 or that the collective bargaining agreement requiring the payment of the fair share fee contains an indemnification provision for the purpose of indemnifying the employer with respect to the employer's transmission of fair share fees to the exclusive representative.

(Source: P.A. 86-412; 94-210, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1711.

Effect of Amendments. The 2005 amendment by P.A. 94-210, effective July 14, 2005, added the third paragraph.

CASE NOTES

Analysis

Constitutionality
Convention Cost

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Due Process
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Validity of Chargeable Percentage

Constitutionality

As to the fees over which an objection is filed, each local union has to provide complete information concerning its finances at proceedings before the Illinois Educational Labor Relations Board if it wants to collect any fair share fees at all from objectors who are included in a bargaining unit it represents; such procedure does not violate the constitutional rights of the payors of fair share fees to local educational labor unions. Antry v. Illinois Educ. Labor Relations Bd., 195 Ill. App. 3d 221, 141 Ill. Dec. 945, 552 N.E.2d 313 (4 Dist. 1990).

Convention Cost

The entire cost of union conventions was chargeable to nonmember fee payors, because if a union is to perform its statutory functions, it must maintain its corporate or associational existence, must elect officers to manage and carry on its affairs, and may consult its members about overall bargaining goals and policy. Antry v. Illinois Educ. Labor Relations Bd., 195 Ill. App. 3d 221, 141 Ill. Dec. 945, 552 N.E.2d 313 (4 Dist. 1990).

Due Process

Where one group of petitioners admittedly did not have an opportunity to participate in the Educational Labor Relations Board hearing which preceded the Board's determination of the amount of that group's fair share fees, the collection of fair share fees from that group of petitioners under these circumstances violated their rights to due process of law. Antry v. Illinois Educ. Labor Relations Bd., 195 Ill. App. 3d 221, 141 Ill. Dec. 945, 552 N.E.2d 313 (4 Dist. 1990).

Dues Authorization

An employer not only must honor employees dues-check-off authorizations, but it has a concomitant duty to pay these moneys to the organization designated by the individual employee and to seek resolution of legitimate questions as to the status of the legal entity which the employee authorization specifies. Local 253 Div. v. Illinois Educ. Labor Relations Bd., 159 Ill. App. 3d 352, 111 Ill. Dec. 467, 512 N.E.2d 1008 (4 Dist. 1987).

Evidence of Calculation

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In cases involving calculation of national, state, and local union fair share fees, the unions need only introduce evidence which establishes the fees claimed were calculated in a careful, conscientious, and trustworthy manner; this would include a description of the methodology used in the calculation of the fees, documents listing the total expenditures for each area of operations which the union concluded were chargeable and nonchargeable, and detailed descriptions of the activities of each of the unions' operational areas. Antry v. Illinois Educ. Labor Relations Bd., 195 Ill. App. 3d 221, 141 Ill. Dec. 945, 552 N.E.2d 313 (4 Dist. 1990).

All documents supporting the unions' fair share fee calculations should be made available to objectors, and all union employees should be available to testify as witnesses on behalf of objectors. Antry v. Illinois Educ. Labor Relations Bd., 195 Ill. App. 3d 221, 141 Ill. Dec. 945, 552 N.E.2d 313 (4 Dist. 1990).

Hearsay Exception

Hearsay evidence is generally inadmissible in administrative proceedings; however, an exception to this general rule is recognized if evidence more reliable than hearsay evidence is not available and if the administrative tribunal's findings are supported by the type of evidence on which responsible persons are accustomed to rely in serious affairs. Antry v. Illinois Educ. Labor Relations Bd., 195 Ill. App. 3d 221, 141 Ill. Dec. 945, 552 N.E.2d 313 (4 Dist. 1990).

Improvement Activities

Activities which are related to improvement of working conditions or which are designed to improve the professional competence of members of the bargaining unit are chargeable to fee payors; this includes activities such as development of computer programs for education, development of new student learning styles and teacher strategy, teacher-parent projects, and studies for early childhood development. Antry v. Illinois Educ. Labor Relations Bd., 195 Ill. App. 3d 221, 141 Ill. Dec. 945, 552 N.E.2d 313 (4 Dist. 1990).

Necessity of Audit

A union is required to provide independent verification and an independent audit of the amount of fair share fees escrowed only when it seeks to utilize a portion of the fair share fees withheld from the salaries of objectors while their objections are pending. Antry v. Illinois Educ. Labor Relations Bd., 195 Ill. App. 3d 221, 141 Ill. Dec. 945, 552 N.E.2d 313 (4 Dist. 1990).

Where it was undisputed that all amounts withheld from the petitioners' salaries as fair share fees were escrowed pending resolution of the petitioners' objections, the failure of the unions to obtain audits and verification of the amounts withheld from the petitioners' salaries and escrowed did not violate any of the petitioners' constitutional rights. Antry v. Illinois Educ. Labor Relations Bd., 195 Ill. App. 3d 221, 141 Ill. Dec. 945, 552 N.E.2d 313 (4 Dist. 1990).

Objection Procedure

Under the procedure for handling objections to fair share fees, the impartial decision maker is the Educational Labor Relations Board and not the fee umpire; thus, so long as objections to fair share fees are adjudicated by the Board, alleged lack of neutrality on the part of the fee umpire who initially determines the amount of the fair share fees on behalf of the unions is of no consequence with regard to compliance with the constitutional requirements pertaining to the fair share fee information which must be provided fee payors. Antry v. Illinois Educ. Labor Relations Bd., 195 Ill. App. 3d 221, 141 Ill. Dec. 945, 552 N.E.2d 313 (4 Dist. 1990).

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Organizing Efforts

Internal and external organizing expenses are not chargeable to nonmembers as part of their fair share fees. Illinois Fed'n of Teachers v. Illinois Educ. Labor Relations Bd., 278 Ill. App. 3d 954, 215 Ill. Dec. 710, 664 N.E.2d 107 (1 Dist. 1996).

Parent Union Services

Parent unions provide a vast array of services to their affiliated local unions and, therefore, local unions should have the option of (1) paying fees to their state and national affiliate unions in order to assure the continuous availability of these organizations' services and (2) compelling all who benefit from their collective bargaining activities to pay their fair share cost of having these services continuously available. Antry v. Illinois Educ. Labor Relations Bd., 195 Ill. App. 3d 221, 141 Ill. Dec. 945, 552 N.E.2d 313 (4 Dist. 1990).

Subsidizing Aspersions

Nonmember fee payors may not be compelled to subsidize the dissemination of materials which might tend to cast aspersions on various organizations and beliefs, even ones which are highly repugnant to most of the population. Antry v. Illinois Educ. Labor Relations Bd., 195 Ill. App. 3d 221, 141 Ill. Dec. 945, 552 N.E.2d 313 (4 Dist. 1990).

Sweetheart Agreement

There may be no employer domination of a labor union and no so-called "sweetheart agreement" between the employer and its selected bargaining representative. Local 253 Div. v. Illinois Educ. Labor Relations Bd., 159 Ill. App. 3d 352, 111 Ill. Dec. 467, 512 N.E.2d 1008 (4 Dist. 1987).

Validity of Chargeable Percentage

A fee payor dissatisfied with the determination of the chargeable percentage of local union expenditures can object to the amount of his or her fair share fee; upon the filing of objections to fair share fees, the burden of establishing the validity of the initial determination of the chargeable percentage of local union expenditures shifts to the unions. Antry v. Illinois Educ. Labor Relations Bd., 195 Ill. App. 3d 221, 141 Ill. Dec. 945, 552 N.E.2d 313 (4 Dist. 1990).

Practice Guides and Treatises.

Labor Law Handbook § 18.109 Checkoff (IICLE).

Labor Law Handbook § 18.73 IELRA (IICLE).

Illinois Jurisprudence, Labor and Employment § 10:20 Objections based on religious grounds.

Illinois Jurisprudence, Labor and Employment § 10:19 Objections to fair share fee, generally.

Illinois Jurisprudence, Labor and Employment § 10:17 Chargeable expenses.

Illinois Jurisprudence, Labor and Employment § 10:16 Fair share payments, generally.

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§ 115 ILCS 5/12. Impasse procedures

Sec. 12. Impasse procedures. (a) This subsection (a) applies only to collective bargaining between an educational employer that is not a public school district organized under Article 34 of the School Code [105 ILCS 5/34-1 et seq.] and an exclusive representative of its employees.

If the parties engaged in collective bargaining have not reached an agreement by 90 days before the scheduled start of the forthcoming school year, the parties shall notify the Illinois Educational Labor Relations Board concerning the status of negotiations. This notice shall include a statement on whether mediation has been used.

Upon demand of either party, collective bargaining between the employer and an exclusive bargaining representative must begin within 60 days of the date of certification of the representative by the Board, or in the case of an existing exclusive bargaining representative, within 60 days of the receipt by a party of a demand to bargain issued by the other party. Once commenced, collective bargaining must continue for at least a 60 day period, unless a contract is entered into.

Except as otherwise provided in subsection (b) of this Section, if after a reasonable period of negotiation and within 90 days of the scheduled start of the forth-coming school year, the parties engaged in collective bargaining have reached an impasse, either party may petition the Board to initiate mediation. Alternatively, the Board on its own motion may initiate mediation during this period. However, mediation shall be initiated by the Board at any time when jointly requested by the parties and the services of the mediators shall continuously be made available to the employer and to the exclusive bargaining representative for purposes of arbitration of grievances and mediation or arbitration of contract disputes. If requested by the parties, the mediator may perform fact-finding and in so doing conduct hearings and make written findings and recommendations for resolution of the dispute. Such mediation shall be provided by the Board and shall be held before qualified impartial individuals. Nothing prohibits the use of other individuals or organizations such as the Federal Mediation and Conciliation Service or the American Arbitration Association selected by both the exclusive bargaining representative and the employer.

If the parties engaged in collective bargaining fail to reach an agreement within 45 days of the scheduled start of the forthcoming school year and have not requested mediation, the Illinois Educational Labor Relations Board shall invoke mediation.

Whenever mediation is initiated or invoked under this subsection (a), the parties may stipulate to defer selection of a mediator in accordance with rules adopted by the Board.

(a-5) This subsection (a-5) applies only to collective bargaining between a public school district or a combination of public school districts, including, but not limited to, joint cooperatives, that is not organized under Article 34 of the School Code and an exclusive representative of its employees.

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(1) Any time 15 days after mediation has commenced, either party may declare an impasse. The mediator may declare an impasse at any time during the mediation process. Notification of an impasse must be filed in writing with the Board, and copies of the notification must be submitted to the parties on the same day the notification is filed with the Board.

(2) Within 7 days after the declaration of impasse, each party shall submit to the mediator, the Board, and the other party in writing the final offer of the party, including a cost summary of the offer. Seven days after receipt of the parties' final offers, the Board shall make public the final offers and each party's cost summary dealing with those issues on which the parties have failed to reach agreement by immediately posting the offers on its Internet website, unless otherwise notified by the mediator or jointly by the parties that agreement has been reached. On the same day of publication by the mediator, at a minimum, the school district shall distribute notice of the availability of the offers on the Board's Internet website to all news media that have filed an annual request for notices from the school district pursuant to Section 2.02 of the Open Meetings Act [5 ILCS 120/2.02].

(a-10) This subsection (a-10) applies only to collective bargaining between a public school district organized under Article 34 of the School Code and an exclusive representative of its employees.

(1) For collective bargaining agreements between an educational employer to which this subsection (a-10) applies and an exclusive representative of its employees, if the parties fail to reach an agreement after a reasonable period of mediation, the dispute shall be submitted to fact-finding in accordance with this subsection (a-10). Either the educational employer or the exclusive representative may initiate fact-finding by submitting a written demand to the other party with a copy of the demand submitted simultaneously to the Board.

(2) Within 3 days following a party's demand for fact-finding, each party shall appoint one member of the fact-finding panel, unless the parties agree to proceed without a tri-partite panel. Following these appointments, if any, the parties shall select a qualified impartial individual to serve as the fact-finder and chairperson of the fact-finding panel, if applicable. An individual shall be considered qualified to serve as the fact-finder and chairperson of the fact-finding panel, if applicable, if he or she was not the same individual who was appointed as the mediator and if he or she satisfies the following requirements: membership in good standing with the National Academy of Arbitrators, Federal Mediation and Conciliation Service, or American Arbitration Association for a minimum of 10 years; membership on the mediation roster for the Illinois Labor Relations Board or Illinois Educational Labor Relations Board; issuance of at least 5 interest arbitration awards arising under the Illinois Public Labor Relations Act [5 ILCS 315/1 et seq.]; and participation in impasse resolution processes arising under private or public sector collective bargaining statutes in other states. If the parties are unable to agree on a fact-finder, the parties shall request a panel of fact-finders who satisfy the requirements set forth in this paragraph (2) from either the Federal Mediation and Conciliation Service or the American Arbitration Association and shall select a fact-

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finder from such panel in accordance with the procedures established by the organization providing the panel.

(3) The fact-finder shall have the following duties and powers:

(A) to require the parties to submit a statement of disputed issues and their positions regarding each issue either jointly or separately;

(B) to identify disputed issues that are economic in nature;

(C) to meet with the parties either separately or in executive sessions;

(D) to conduct hearings and regulate the time, place, course, and manner of the hearings;

(E) to request the Board to issue subpoenas requiring the attendance and testimony of witnesses or the production of evidence;

(F) to administer oaths and affirmations;

(G) to examine witnesses and documents;

(H) to create a full and complete written record of the hearings;

(I) to attempt mediation or remand a disputed issue to the parties for further collective bargaining;

(J) to require the parties to submit final offers for each disputed issue either individually or as a package or as a combination of both; and

(K) to employ any other measures deemed appropriate to resolve the impasse.

(4) If the dispute is not settled within 75 days after the appointment of the fact-finding panel, the fact-finding panel shall issue a private report to the parties that contains advisory findings of fact and recommended terms of settlement for all disputed issues and that sets forth a rationale for each recommendation. The fact-finding panel, acting by a majority of its members, shall base its findings and recommendations upon the following criteria as applicable:

(A) the lawful authority of the employer;

(B) the federal and State statutes or local ordinances and resolutions applicable to the employer;

(C) prior collective bargaining agreements and the bargaining history between the parties;

(D) stipulations of the parties;

(E) the interests and welfare of the public and the students and families served by the employer;

(F) the employer's financial ability to fund the proposals based on existing available resources, provided that such ability is not predicated on an assumption that lines of

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credit or reserve funds are available or that the employer may or will receive or develop new sources of revenue or increase existing sources of revenue;

(G) the impact of any economic adjustments on the employer's ability to pursue its educational mission;

(H) the present and future general economic conditions in the locality and State;

(I) a comparison of the wages, hours, and conditions of employment of the employees involved in the dispute with the wages, hours, and conditions of employment of employees performing similar services in public education in the 10 largest U.S. cities;

(J) the average consumer prices in urban areas for goods and services, which is commonly known as the cost of living;

(K) the overall compensation presently received by the employees involved in the dispute, including direct wage compensation; vacations, holidays, and other excused time; insurance and pensions; medical and hospitalization benefits; the continuity and stability of employment and all other benefits received; and how each party's proposed compensation structure supports the educational goals of the district;

(L) changes in any of the circumstances listed in items (A) through (K) of this paragraph (4) during the fact-finding proceedings;

(M) the effect that any term the parties are at impasse on has or may have on the overall educational environment, learning conditions, and working conditions with the school district; and

(N) the effect that any term the parties are at impasse on has or may have in promoting the public policy of this State.

(5) The fact-finding panel's recommended terms of settlement shall be deemed agreed upon by the parties as the final resolution of the disputed issues and incorporated into the collective bargaining agreement executed by the parties, unless either party tenders to the other party and the chairperson of the fact-finding panel a notice of rejection of the recommended terms of settlement with a rationale for the rejection, within 15 days after the date of issuance of the fact-finding panel's report. If either party submits a notice of rejection, the chairperson of the fact-finding panel shall publish the fact-finding panel's report and the notice of rejection for public information by delivering a copy to all newspapers of general circulation in the community with simultaneous written notice to the parties.

(b) If, after a period of bargaining of at least 60 days, a dispute or impasse exists between an educational employer whose territorial boundaries are coterminous with those of a city having a population in excess of 500,000 and the exclusive bargaining representative over a subject or matter set forth in Section 4.5 of this Act [115 ILCS 5/4.5], the parties shall submit the dispute or impasse to the dispute resolution procedure agreed to between the parties. The procedure shall provide for mediation of disputes by a rotating mediation panel and may, at the request of either party, include the issuance of advisory findings of fact and recommendations.

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(c) The costs of fact finding and mediation shall be shared equally between the employer and the exclusive bargaining agent, provided that, for purposes of mediation under this Act, if either party requests the use of mediation services from the Federal Mediation and Conciliation Service, the other party shall either join in such request or bear the additional cost of mediation services from another source. All other costs and expenses of complying with this Section must be borne by the party incurring them.

(c-5) If an educational employer or exclusive bargaining representative refuses to participate in mediation or fact finding when required by this Section, the refusal shall be deemed a refusal to bargain in good faith.

(d) Nothing in this Act prevents an employer and an exclusive bargaining representative from mutually submitting to final and binding impartial arbitration unresolved issues concerning the terms of a new collective bargaining agreement.

(Source: P.A. 86-412; 93-3, § 10; 97-7, § 5; 97-8, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1712.

The introductory language of Section 5 of P.A. 97-7 provided: "If and only if Senate Bill 7 as passed by the 97th General Assembly becomes law, the Illinois Educational Labor Relations Act is amended by changing Sections 4.5, 12, and 13 as follows". Senate Bill 7 (P.A. 97-8) became effective June 13, 2011.

Effect of Amendments. The 2003 amendment by P.A. 93-3, effective April 16, 2003, inserted the subsection designations; in subsection (a) added "Except as otherwise provided in subsection (b) of this Section" at the beginning of the third paragraph, and substituted "subsection (a)" for "Section" in the last paragraph; and inserted subsection (b).

The 2011 amendment by P.A. 97-7, effective June 13, 2011, inserted "the Board" in the first sentence of (a-5)(2); in the second sentence of (a-5)(2), substituted "Board" for "mediator" and added "by immediately posting the offers on its Internet website, unless otherwise notified by the mediator or jointly by the parties that agreement has been reached" to the end; deleted the former third sentence of (a-5)(2), which read: "The mediator shall make the final offers public by filing them with the Board, which shall immediately post the offers on its Internet website"; substituted "to which this subsection (a-10) applies" for "whose territorial boundaries are coterminous with those of a city having a population in excess of 500,000" in the first sentence of (a-10)(1); deleted the former last two sentences of (b), pertaining to the procedures set forth for resolving the dispute or impasse; and made a stylistic change.

The 2011 amendment by P.A. 97-8, effective June 13, 2011, in (a), added the first paragraph to the beginning, added the second sentence to the second paragraph, substituted "90 days" for "45 days" in the first sentence of the fourth paragraph, and substituted "45 days" for "15 days" in the fifth paragraph; inserted (a-5), (a-10), and (c-5); in (b), inserted "educational" in the first sentence and added the last two sentences; and added the second sentence to (c).

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LEGAL PERIODICALS

For article, "The Courts and Legislature Begin to Adopt ADR Methods to Deal with Growing Number of Employment Discrimination Claims," see 13 N. Ill. U.L. Rev. 221 (1993).

For article, "Implementing the Illinois Educational Labor Relations Act," see 61 Chi.-Kent L. Rev. 101 (1985).

For article, "Illinois Public Labor Relations Laws: A Commentary and Analysis," see 60 Chi.-Kent L. Rev. 883 (1984).

For article, "The Kenneth M. Piper Lectures: Public Sector Impasse Resolution Procedures," see 60 Chi.-Kent L. Rev. 779 (1984).

Practice Guides and Treatises.

Labor Law Handbook § 18.80 IELRA § 12 (IICLE).

Labor Law Handbook § 18.71 IELRA (IICLE).

Illinois Jurisprudence, Labor and Employment § 11:25 New contract negotiation.

§ 115 ILCS 5/13. Strikes

Sec. 13. Strikes. (a) Notwithstanding the existence of any other provision in this Act or other law, educational employees employed in school districts organized under Article 34 of the School Code [105 ILCS 5/34-1 et seq.] shall not engage in a strike at any time during the 18 month period that commences on the effective date of this amendatory Act of 1995. An educational employee employed in a school district organized under Article 34 of the School Code who participates in a strike in violation of this Section is subject to discipline by the employer. In addition, no educational employer organized under Article 34 of the School Code may pay or cause to be paid to an educational employee who participates in a strike in violation of this subsection any wages or other compensation for any period during which an educational employee participates in the strike, except for wages or compensation earned before participation in the strike. Notwithstanding the existence of any other provision in this Act or other law, during the 18-month period that strikes are prohibited under this subsection nothing in this subsection shall be construed to require an educational employer to submit to a binding dispute resolution process.

(b) Notwithstanding the existence of any other provision in this Act or any other law, educational employees other than those employed in a school district organized under Article 34 of the School Code and, after the expiration of the 18 month period that commences on the effective date of this amendatory Act of 1995, educational employees in a school district organized under Article 34 of the School Code shall not engage in a strike except under the following conditions:

(1) they are represented by an exclusive bargaining representative;

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(2) mediation has been used without success and, if an impasse has been declared under subsection (a-5) of Section 12 of this Act [115 ILCS 5/12], at least 14 days have elapsed after the mediator has made public the final offers;

(2.5) if fact-finding was invoked pursuant to subsection (a-10) of Section 12 of this Act, at least 30 days have elapsed after a fact-finding report has been released for public information;

(2.10) for educational employees employed in a school district organized under Article 34 of the School Code, at least three-fourths of all bargaining unit employees who are members of the exclusive bargaining representative have affirmatively voted to authorize the strike; provided, however, that all members of the exclusive bargaining representative at the time of a strike authorization vote shall be eligible to vote;

(3) at least 10 days have elapsed after a notice of intent to strike has been given by the exclusive bargaining representative to the educational employer, the regional superintendent and the Illinois Educational Labor Relations Board;

(4) the collective bargaining agreement between the educational employer and educational employees, if any, has expired or been terminated; and

(5) the employer and the exclusive bargaining representative have not mutually submitted the unresolved issues to arbitration.

If, however, in the opinion of an employer the strike is or has become a clear and present danger to the health or safety of the public, the employer may initiate in the circuit court of the county in which such danger exists an action for relief which may include, but is not limited to, injunction. The court may grant appropriate relief upon the finding that such clear and present danger exists. An unfair practice or other evidence of lack of clean hands by the educational employer is a defense to such action. Except as provided for in this paragraph, the jurisdiction of the court under this Section is limited by the Labor Dispute Act [820 ILCS 5/1 et seq.].

(Source: P.A. 83-1014; 89-15, § 10; 90-548, § 5-920; 97-7, § 5; 97-8, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1713.

The introductory language of Section 5 of P.A. 97-7 provided: "If and only if Senate Bill 7 as passed by the 97th General Assembly becomes law, the Illinois Educational Labor Relations Act is amended by changing Sections 4.5, 12, and 13 as follows". Senate Bill 7 (P.A. 97-8) became effective June 13, 2011.

Effect of Amendments. The 1995 amendment by P.A. 89-15, effective May 30, 1995, redesignated former subsections (a) through (e) as subdivisions (b)(1) through (b)(5); in present subsection (a), in the first sentence, added at the beginning "Notwithstanding the existence of any other provision in this Act or other law", inserted "employed in school districts organized under

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Article 34 of the School Code" and added at the end "at any time during the 18 month period that commences on the effective date of this amendatory Act of 1995" and added the second through fourth sentences; in subsection (b) in the introductory paragraph added the language at the beginning ending with "engage in a strike"; and in the last paragraph, in the first sentence substituted "the strike" for "a strike" and substituted "the employer" for "it" and in the fourth sentence substituted "paragraph" for "subparagraph" and substituted "the Labor Dispute Act" for "'An Act relating to disputes concerning terms and conditions of employment', approved June 19, 1925, as now or hereafter amended".

The 1997 amendment by P.A. 90-548, effective January 1, 1998, in subsection (3) substituted "10" for "5".

The 2011 amendment by P.A. 97-7, effective June 13, 2011, in (b)(2.10), inserted "employees who are" and added "provided, however, that all members of the exclusive bargaining representative at the time of a strike authorization vote shall be eligible to vote" to the end.

The 2011 amendment by P.A. 97-8, effective June 13, 2011, added "and, if an impasse has been declared under subsection (a-5) of Section 12 of this Act, at least 14 days have elapsed after the mediator has made public the final offers" to the end of (b)(2); inserted (b)(2.5) and (b)(2.10); and inserted "or been terminated" in (b)(4).

CASE NOTES

Action for Relief

This section provides an avenue for immediate review of an order of the Illinois Educational Labor Relations Board denying a school district's request seeking an injunctive relief to prevent a strike. However, having forsaken that remedy, the district was required to wait for a final appealable order. Niles Tp. High Sch. Dist. 219 Bd. of Educ. v. Niles Tp. Fed'n of Teachers, Local 1274, 295 Ill. App. 3d 510, 229 Ill. Dec. 711, 692 N.E.2d 700 (1 Dist. 1997).

LEGAL PERIODICALS

For article, "Implementing the Illinois Educational Labor Relations Act," see 61 Chi.-Kent L. Rev. 101 (1985).

For article, "Illinois Public Labor Relations Laws: A Commentary and Analysis," see 60 Chi.-Kent L. Rev. 883 (1984).

For article, "The Kenneth M. Piper Lectures: Public Sector Impasse Resolution Procedures," see 60 Chi.-Kent L. Rev. 779 (1984).

Practice Guides and Treatises.

Labor Law Handbook § 18.106 Injunctions (IICLE).

Illinois Jurisprudence, Labor and Employment § 12:40 Generally.

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§ 115 ILCS 5/14. Unfair labor practices

Sec. 14. Unfair labor practices. (a) Educational employers, their agents or representatives are prohibited from:

(1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed under this Act.

(2) Dominating or interfering with the formation, existence or administration of any employee organization.

(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization.

(4) Discharging or otherwise discriminating against an employee because he or she has signed or filed an affidavit, authorization card, petition or complaint or given any information or testimony under this Act.

(5) Refusing to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative; provided, however, that if an alleged unfair labor practice involves interpretation or application of the terms of a collective bargaining agreement and said agreement contains a grievance and arbitration procedure, the Board may defer the resolution of such dispute to the grievance and arbitration procedure contained in said agreement.

(6) Refusing to reduce a collective bargaining agreement to writing and signing such agreement.

(7) Violating any of the rules and regulations promulgated by the Board regulating the conduct of representation elections.

(8) Refusing to comply with the provisions of a binding arbitration award.

(9) Expending or causing the expenditure of public funds to any external agent, individual, firm, agency, partnership or association in any attempt to influence the outcome of representational elections held pursuant to paragraph (c) of Section 7 of this Act [115 ILCS 5/7]; provided, that nothing in this subsection shall be construed to limit an employer's right to be represented on any matter pertaining to unit determinations, unfair labor practice charges or pre-election conferences in any formal or informal proceeding before the Board, or to seek or obtain advice from legal counsel. Nothing in this paragraph shall be construed to prohibit an employer from expending or causing the expenditure of public funds on, or seeking or obtaining services or advice from, any organization, group or association established by, and including educational or public employers, whether or not covered by this Act, the Illinois Public Labor Relations Act [5 ILCS 315/1 et seq.] or the public employment labor relations law of any other state or the federal government, provided that such services or advice are generally available to the

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membership of the organization, group, or association, and are not offered solely in an attempt to influence the outcome of a particular representational election.

(b) Employee organizations, their agents or representatives or educational employees are prohibited from:

(1) Restraining or coercing employees in the exercise of the rights guaranteed under this Act, provided that a labor organization or its agents shall commit an unfair labor practice under this paragraph in duty of fair representation cases only by intentional misconduct in representing employees under this Act.

(2) Restraining or coercing an educational employer in the selection of his representative for the purposes of collective bargaining or the adjustment of grievances.

(3) Refusing to bargain collectively in good faith with an educational employer, if they have been designated in accordance with the provisions of this Act as the exclusive representative of employees in an appropriate unit.

(4) Violating any of the rules and regulations promulgated by the Board regulating the conduct of representation elections.

(5) Refusing to reduce a collective bargaining agreement to writing and signing such agreement.

(6) Refusing to comply with the provisions of a binding arbitration award.

(c) The expressing of any views, argument, opinion or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

(d) The actions of a Financial Oversight Panel created pursuant to Section 1A-8 of the School Code [105 ILCS 5/1A-8] due to a district violating a financial plan shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act. Such actions include, but are not limited to, reviewing, approving, or rejecting a school district budget or a collective bargaining agreement.

(Source: P.A. 86-412; 89-572, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1714.

Effect of Amendments. The 1996 amendment by P.A. 89-572, effective July 30, 1996, added subsection (d).

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In General

This Act changed the rules dealing with employees and one of these changes is that employee benefits may no longer be changed and special benefits can no longer be given without the opportunity for good faith bargaining. Board of Educ. v. Illinois Educ. Labor Relations Bd., 152 Ill. App. 2d 577, 189 Ill. Dec. 450, 620 N.E.2d 418 (4 Dist. 1993).

Anti-Union Comments

Allegedly anti-union comments made in 1981 were the strongest evidence of anti-union animus, but they were not enough to support a finding of anti-union motivation, since they occurred nearly four years prior to the teacher's dismissal. Hardin County Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 174 Ill. App. 3d 168, 124 Ill. Dec. 49, 528 N.E.2d 737 (4 Dist. 1988).

Applicability

- Employee Organizations

Subdivision (b)(3) applies to employee organizations and their agents or representatives, and not to individual educational employees. Board of Educ. v. Illinois Educ. Labor Relations Bd., 229 Ill. App. 3d 475, 170 Ill. Dec. 239, 592 N.E.2d 675 (4 Dist. 1992).

Arbitration Compliance

When considering whether a party has committed the unfair labor practice of refusing to comply with a binding arbitration award, the inquiry is limited to three issues: whether the award was binding; what the content of the award is; and whether the party has complied with the award. Board of Educ. of Du Page High Sch. Dist. No. 88 v. Educational Labor Relations Bd., 246 Ill. App. 3d 967, 187 Ill. Dec. 333, 617 N.E.2d 790 (1 Dist. 1993).

The refusal to abide by a binding arbitration award is the accepted and only method of attacking the validity of the award. Board of Educ. v. Illinois Educ. Labor Relations Bd., 175 Ill. App. 3d 347, 125 Ill. Dec. 34, 529 N.E.2d 1110 (4 Dist. 1988).

Refusing to abide by an arbitration award in contravention of subdivision (a)(8) of this section is not always a violation under subdivisions (a)(1) or (a)(5) of this section. Board of Educ. v. Illinois Educ. Labor Relations Bd., 170 Ill. App. 3d 490, 120 Ill. Dec. 681, 524 N.E.2d 711 (4 Dist. 1988).

This Act mandates binding arbitration of unresolved disputes, and creates a new unfair labor practice for refusal to comply with the provisions of a binding arbitration award. Chicago Bd. of Educ. v. Chicago Teachers Union, 142 Ill. App. 3d 527, 96 Ill. Dec. 799, 491 N.E.2d 1259 (1 Dist. 1986).

Authority of Arbitrator

Where the parties were unable to stipulate to the issues the arbitrator was to decide, but their written queries as to remedy were similar in breadth: the school district asked the arbitrator to decide whether the employee was entitled to "any remedy," and the union asked him to decide

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"what is the appropriate remedy," the open-ended wording in these two submissions indicated no intention by either the district or the union to confine the arbitrator to an award of reinstatement and back pay or nothing. Instead, from the board wording of both parties' written submissions to the arbitrator, it was plain that the arbitrator had been given virtual carte blanche to fashion a suitable remedy. Board of Educ. of Community High Sch. Dist. No. 155 v. Illinois Educ. Labor Relations Bd., 247 Ill. App. 3d 337, 187 Ill. Dec. 61, 617 N.E.2d 269, 1993 Ill. App. LEXIS 703 (1 Dist. 1993).

Collective Bargaining

Illinois Educational Labor Relations Board's order was affirmed as the Board's finding that representatives of a union and a school district orally entered into a collective bargaining agreement during negotiations, although the school district denied that an agreement was reached, but that the school district reneged on the oral agreement was not against the manifest weight of the evidence. Further, the Board did not abuse its discretion by ordering the rescission of all policies and procedures inconsistent with the oral agreement, and the making of the union employees whole for the loss of any pay or benefits caused by the unfair labor practice of the school district not bargaining in good faith. Bd. of Educ. v. Sered, 366 Ill. App. 3d 330, 303 Ill. Dec. 16, 850 N.E.2d 821, 2006 Ill. App. LEXIS 103 (1 Dist. 2006).

The give and take between a committee of representatives from employers and employees which resembles that typical of labor negotiations, can, under some circumstances, constitute collective bargaining. Alton Community Unit Sch. v. Illinois Educ. Labor Relations Bd., 209 Ill. App. 3d 16, 153 Ill. Dec. 713, 567 N.E.2d 671 (4 Dist. 1991).

Where an agreement between the teachers' union and the school district did not include a provision that revisions to the school calendar would be subject to collective bargaining, and the agreement contained a zipper clause, the right to bargain on this issue was waived; the Illinois Educational Labor Relations Board could rely on the language in the zipper clause and did not have to consider the union negotiator's subjective intent. East Richland Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 173 Ill. App. 3d 878, 124 Ill. Dec. 63, 528 N.E.2d 751 (4 Dist. 1988).

- Contest of Award

The appropriate method for an educational employer to contest, in good faith, the validity of an arbitration award made under the provisions of a collective bargaining agreement is to refuse to abide by the award, thereby subjecting itself to unfair labor charges under subdivision (a)(8) and derivatively under subdivision (a)(1) of this section. Board of Educ. of Harrisburg v. Illinois Educ. Labor Relations Bd., 227 Ill. App. 3d 208, 169 Ill. Dec. 205, 591 N.E.2d 85 (4 Dist. 1992).

- Subject of Bargaining

Parking proposals by an employees union were subject to mandatory collective bargaining as they involved terms and conditions of workers' employment and did not affect a university's inherent managerial rights. Bd. of Trs. v. Ill. Labor Rels. Bd., 224 Ill. 2d 88, 308 Ill. Dec. 741, 862 N.E.2d 944, 2007 Ill. LEXIS 6 (2007).

Conversation

- Violation

Where clear message to president of education association in school superintendent's remarks was that she and the Association should think twice before taking legal action to enforce the rights of employees represented by the Association, the conversation was a violation of the Act.

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Georgetown-Ridge Farm Community Unit Sch. Dist. No. 4 v. State Educ. Labor Relations Bd., 239 Ill. App. 3d 428, 179 Ill. Dec. 835, 606 N.E.2d 667 (4 Dist. 1992).

Direct Dealing

An educational employer violates the essential principle of collective bargaining when that employer bargains, or attempts to bargain, with an individual employee or employees with respect to wages, hours, and terms or conditions of employment. Board of Educ. v. Illinois Educ. Labor Relations Bd., 152 Ill. App. 2d 577, 189 Ill. Dec. 450, 620 N.E.2d 418 (4 Dist. 1993).

Discriminatory Discharge

- Coercion

A supervisor's questions to a teacher about her union affiliation were not casual in the atmosphere existing at the school following another teacher's dismissal, and were coercive in that circumstance. Hardin County Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 174 Ill. App. 3d 168, 124 Ill. Dec. 49, 528 N.E.2d 737 (4 Dist. 1988).

Factors to be considered in determining coerciveness include (1) background, (2) nature of the information sought, (3) identity of the questioner, and (4) the place and method of interrogation. Hardin County Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 174 Ill. App. 3d 168, 124 Ill. Dec. 49, 528 N.E.2d 737 (4 Dist. 1988).

- Dual Motive

Where the Education Association made out a prima facie case of discriminatory discharge, the school district met its burden of proving by a preponderance of the evidence that the teacher's discharge would have occurred absent the protected activity; there was a dual motive in that the employer's asserted reason for the discharge, poor discipline, had merit. Hardin County Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 174 Ill. App. 3d 168, 124 Ill. Dec. 49, 528 N.E.2d 737 (4 Dist. 1988).

Where there was ample evidence to suggest a teacher was a poor disciplinarian and, although her complaints about conditions in the art room and other matters may have reached a crescendo during the spring of 1985, the discipline problem was a long-standing one, the Labor Board's decision that there was no discriminatory discharge was not contrary to the manifest weight of the evidence. Hardin County Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 174 Ill. App. 3d 168, 124 Ill. Dec. 49, 528 N.E.2d 737 (4 Dist. 1988).

- Evidence Held Insufficient

The evidence was insufficient to establish that the school district's decision to discharge a teacher was motivated by anti-union animus or that her protected activity was a substantial or motivating factor in her dismissal; the education association failed to establish a prima facie case. Hardin County Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 174 Ill. App. 3d 168, 124 Ill. Dec. 49, 528 N.E.2d 737 (4 Dist. 1988).

Evidence held insufficient to establish that an employers' actions were either intentionally discriminatory or inherently destructive. Local 253 Div. v. Illinois Educ. Labor Relations Bd., 159 Ill. App. 3d 352, 111 Ill. Dec. 467, 512 N.E.2d 1008 (4 Dist. 1987).

- Evidence Held Sufficient

Evidence supported a determination that a school district violated subsections (a)(1), (3), and (4) with regard to a custodian where (1) the custodian testified that he complained to union

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representatives about overtime issues, teachers working summertime, replacement workers, and custodians doing carpenter work and that he also pursued previous unfair labor practice charges against the school district, the latest of which was resolved by the court just months before he was discharged, (2) a school principal testified that the custodian presented her with grievances for her signatures and that overtime was never an issue until he was assigned to her building and raised the issue, (3) witnesses testified that the head custodian told them that the custodian was a troublemaker and to document his activities, (4) the principal told the custodian in front of other witnesses that he should not have filed charges against the school district and that she wanted him fired, and (5) there was insufficient evidence to show that the custodian would have been discharged for his poor work performance notwithstanding his protected activities. Board Of Educ. v. State Educ. Labor Rels. Bd., Ill. App. 3d , Ill. Dec. , N.E.2d , 2001 Ill. App. LEXIS 11 (January 10, 2001).

The dismissal of part-time custodial employees was an unfair labor practice where custodian engaged in protected activity by seeking Association assistance in regard to reduction of his hours, and then, with that assistance, by filing the lawsuit. Georgetown-Ridge Farm Community Unit Sch. Dist. No. 4 v. State Educ. Labor Relations Bd., 239 Ill. App. 3d 428, 179 Ill. Dec. 835, 606 N.E.2d 667 (4 Dist. 1992).

- Prima Facie Case

In order to establish a prima facie case of discriminatory discharge, a complaint must show the employee engaged in an activity protected under subdivision (a)(3) of this section, that the district was aware of that protected activity, and that the employee was discharged for engaging in that activity. Board of Educ. v. State Educ. Labor Relations Bd., 220 Ill. App. 3d 984, 163 Ill. Dec. 444, 581 N.E.2d 395 (4 Dist. 1991), cert. denied, 143 Ill. 2d 636, 167 Ill. Dec. 397, 587 N.E.2d 1012 (1992).

In order to establish a prima facie case of discriminatory discharge, the complainant must show (1) the employee engaged in activity protected under subdivision (a)(3) of this section, (2) the district was aware of that activity and (3) the employee was discharged for engaging in that activity. Hardin County Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 174 Ill. App. 3d 168, 124 Ill. Dec. 49, 528 N.E.2d 737 (4 Dist. 1988).

- Protected Conduct

An employee must establish the discharge was based on anti-union animus, which is another way of saying the protected conduct must have been a motivating or substantial reason for the employer's action. Hardin County Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 174 Ill. App. 3d 168, 124 Ill. Dec. 49, 528 N.E.2d 737 (4 Dist. 1988).

- Test

In discriminatory discharge cases, a "but for" test is to be applied: once the complaining party establishes a prima facie case of discriminatory discharge, the burden of proof shifts to the employer to demonstrate by a preponderance of the evidence that the discharge occurred for legitimate reasons. Hardin County Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 174 Ill. App. 3d 168, 124 Ill. Dec. 49, 528 N.E.2d 737 (4 Dist. 1988).

- Timing

Timing alone cannot establish a prima facie case of discriminatory discharge. Hardin County Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 174 Ill. App. 3d 168, 124 Ill. Dec. 49, 528 N.E.2d 737 (4 Dist. 1988).

Due Process

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Plaintiffs were not afforded due process of law where the complaint alleged only a subdivision (a)(1) violation, and the Illinois Educational Labor Relations Board found that the facts revealed a subdivision (a)(3) violation and applied a subdivision (a)(3) analysis. General Serv. Employees Union, Local 73 v. Illinois Educ. Labor Relations Bd., 285 Ill. App. 3d 507, 220 Ill. Dec. 663, 673 N.E.2d 1084 (1 Dist. 1996).

Duty of Fair Representation

Evidence supported the determination that the conduct of the president of a teachers' union reflected personal hostility toward two band directors employed by the school district and that such personal hostility constituted "intentional misconduct" resulting in an unfair labor practice in violation of subsection (b)(1). Paxton-Buckley-Loda Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 304 Ill. App. 3d 343, 237 Ill. Dec. 908, 710 N.E.2d 538 (4 Dist. 1999).

Educational Labor Relations Board lacked jurisdiction to decide teacher's unfair labor practice charge by reason of the fact that it was, and continued to be, time barred; even if jurisdiction existed, the Board properly struck the petitioner's exceptions and its adoption of the Executive Director's recommended decision that the teacher's union did not breach the duty of fair representation. Jones v. State Educ. Labor Relations Bd., 272 Ill. App. 3d 612, 209 Ill. Dec. 119, 650 N.E.2d 1092 (1 Dist. 1995).

Guaranteed Right

The implementation of a working condition not covered by a collective bargaining agreement does not bring 115 ILCS 5/1 into play and thus does not create a right guaranteed under this Act within the meaning of subdivision (a)(1) of this section. Semmens v. Board of Educ., 190 Ill. App. 3d 174, 137 Ill. Dec. 801, 546 N.E.2d 746 (4 Dist. 1989).

Illegal Contract

Union's attempt to avoid the effect of the Uniform Arbitration Act (710 ILCS 5/1 et. seq.) by a strained interpretation of the definition of unfair labor practices to include an attempt to arbitrate an "illegal" contract provision was without merit. Board of Trustees v. Cook County College Teachers Local 1600, 139 Ill. App. 3d 617, 94 Ill. Dec. 79, 487 N.E.2d 956 (1 Dist. 1985).

Injunctions

This Act does not abolish a traditional action in the circuit court to enjoin arbitration. Board of Trustees v. Cook County College Teachers Local 1600, 139 Ill. App. 3d 617, 94 Ill. Dec. 79, 487 N.E.2d 956 (1 Dist. 1985).

Jurisdiction

Court lacked jurisdiction over a university employee's retaliation claim under 115 ILCS 5/14(a) of the Illinois Educational Labor Relations (IELR) Act; the IELR Board had exclusive initial jurisdiction over such a claim pursuant to 115 ILCS 5/15, and even if there had been a final Board order, it could not have been appealed to federal court pursuant to 115 ILCS 5/16(a). Alexander v. Northeastern Ill. Univ., 586 F. Supp. 2d 905, 2008 U.S. Dist. LEXIS 48719 (N.D. Ill. 2008).

The scope of the Illinois Education Labor Relations Board's jurisdiction to review educational arbitration awards was not limited to issues dealing with lack of compliance with the arbitration award, because the limitation would render the unfair labor practice procedures of subdivisions

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(a)(8) and (b)(6) of this section superfluous. Chicago Bd. of Educ. v. Chicago Teachers Union, 142 Ill. App. 3d 527, 96 Ill. Dec. 799, 491 N.E.2d 1259 (1 Dist. 1986).

Where the employer takes the position that a particular grievance is inarbitrable, the issue of arbitrability should be decided by the circuit court rather than by the arbitrator. Board of Trustees v. Cook County College Teachers Local 1600, 139 Ill. App. 3d 617, 94 Ill. Dec. 79, 487 N.E.2d 956 (1 Dist. 1985).

Legislative Purpose

In enacting this section, 115 ILCS 5/15, and 115 ILCS 5/17, the legislature intended to implement a new regulatory scheme, covering the entire subject of arbitration of educational labor disputes, and in so doing, the legislature impliedly repealed the right to circuit court determination of the arbitrability of educational labor disputes. Board of Trustees v. Illinois Educ. Labor Relations Bd., 173 Ill. App. 3d 395, 123 Ill. Dec. 75, 527 N.E.2d 538 (4 Dist. 1988).

Mandatory Bargaining

Illinois Educational Labor Relations Board's decision that a university committed an unfair labor practice under 115 ILCS 5/14(a) when it refused to bargain with a union regarding parking fees, was clearly erroneous; based on the availability of parking the fee issue concerned a term and condition of employment, however, as the burden on the university if it was required to bargain on the subject outweighed the benefit the union employees would receive, the issue was not a mandatory bargaining issue under 115 ILCS 5/4. Bd. of Trs. v. Ill. Educ. Labor Rels. Bd., 359 Ill. App. 3d 1116, 296 Ill. Dec. 784, 836 N.E.2d 199, 2005 Ill. App. LEXIS 1007 (4 Dist. 2005), reversed at Bd. of Trs. v. Ill. Labor Rels. Bd., 224 Ill. 2d 88, 862 N.E.2d 944, 2007 Ill. LEXIS 6, 308 Ill. Dec. 741, 181 L.R.R.M. (BNA) 2218 (2007).

Education labor relations board properly concluded that an education association had violated 115 ILCS 5/14(b)(3) of the Illinois Educational Labor Relations Act, when it refused to bargain in good faith over a certain "zipper" clause. The zipper clause in the collective bargaining agreement between the association and the school district was a narrow zipper clause; thus it encompassed a mandatory subject of bargaining. Mt. Vernon Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 278 Ill. App. 3d 814, 215 Ill. Dec. 553, 663 N.E.2d 1067, 1996 Ill. App. LEXIS 183 (1 Dist. 1996).

The unilateral changes instituted by the school district constituted changes in subjects requiring mandatory bargaining, and failure to give notice and opportunity to the teacher's association to bargain any of the changes made, and refusal to engage in mid-term bargaining over these items, was a violation of subdivisions (a)(1) and (a)(5) of this section. West Chicago Sch. Dist. v. Illinois Educ. Labor Relations Bd., 218 Ill. App. 3d 304, 161 Ill. Dec. 105, 578 N.E.2d 232 (1 Dist.), appeal denied, 142 Ill. 2d 666, 164 Ill. Dec. 929, 584 N.E.2d 141 (1991).

Non-Arbitrable Dispute

District did not commit an unfair labor practice in not renewing the contracts of three nontenured probationary teachers and, thus, the state educational labor relations board should not have found that the district was obligated to arbitrate the matter. The collective bargaining agreement provided that nontenured teachers could only challenge such decisions through the board of education level of the grievance procedure and the district was only required pursuant to 105 ILCS 5/24-11 to provide the teachers with written notice stating the reasons for dismissal, both of which occurred. Niles Twp. High Sch. Dist. 219 v. Ill. Educ. Labor Rels. Bd., 379 Ill. App. 3d 22, 318 Ill. Dec. 195, 883 N.E.2d 29, 2007 Ill. App. LEXIS 1291 (1 Dist. 2007).

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Grievance filed by union on behalf of school teacher claiming unfair labor practice by school district was not arbitrable where evidence showed that the teacher evaluation plan involved in the grievance did not result from "collective bargaining" between union and school district but rather, resulted from cooperation and consensus building. Board of Educ. of Du Page High Sch. Dist. No. 88 v. Educational Labor Relations Bd., 246 Ill. App. 3d 967, 187 Ill. Dec. 333, 617 N.E.2d 790 (1 Dist. 1993).

Permissibility

Teacher evaluation plans are, at least, subjects of permissible collective bargaining. Alton Community Unit Sch. v. Illinois Educ. Labor Relations Bd., 209 Ill. App. 3d 16, 153 Ill. Dec. 713, 567 N.E.2d 671 (4 Dist. 1991).

Protected Conduct

Teacher did not show that the teacher had a right to union representation in remediation and evaluation meetings held to address the teacher's questionable performance and, thus, the teacher could not show that the teacher was engaging in protected conduct or that the teaching contract of the teacher was not renewed to discourage the teacher's participation in the union, in violation of the Illinois Educational Labor Relations Act, 115 ILCS 5/14(a)(1), or, derivatively, 115 ILCS 5/14(a)(3). As a result, the Board's decision that the school district committed an unfair labor practice when it failed to renew the teaching contract of the teacher was clearly erroneous of the Administrative Review Law, 735 ILCS 5/3-101 et seq., and had to be set aside. Speed Dist. 802 v. Warning, 242 Ill. 2d 92, 351 Ill. Dec. 241, 950 N.E.2d 1069, 2011 Ill. LEXIS 431 (2011).

Insufficient evidence was presented to demonstrate that the employee was not hired for a 12-month position in a guidance office by a school district because of animus toward against her union activity under 115 ILCS 5/14(a)(1) and (3) because, inter alia, testimony was presented that the most qualified person would receive the 12-month position and no evidence was offered by the employee or the union that the employee was the most qualified person. Thornton Fractional High Sch. Dist. No. 215 v. Ill. Educ. Labor Rels. Bd., 404 Ill. App. 3d 757, 344 Ill. Dec. 431, 936 N.E.2d 1188, 2010 Ill. App. LEXIS 1046 (1 Dist. 2010).

Where employee was disciplined repeatedly in the past but was not discharged until his union activity increased, anti-union motivation was controlling in the employee's discharge and the school district violated subsections (a)(1) and (a)(3) of this section of the Educational Labor Relations Act. Bloom Twp. High Sch. Dist. 206 v. Illinois Educ. Labor Rels. Bd., 312 Ill. App. 3d 943, 245 Ill. Dec. 530, 728 N.E.2d 612, 2000 Ill. App. LEXIS 197 (1 Dist. 2000), appeal denied, 189 Ill. 2d 685, 248 Ill. Dec. 602, 734 N.E.2d 893 (2000).

Public Policy

Decision by the Illinois Educational Labor Relations Board to reinstate a high school custodian was reversed and remanded to an arbitrator because the decision to give no weight to the custodian's conduct as a school bus driver was arbitrary and capricious. By excluding the custodian's ill-tempered conduct as a bus driver, the Board's review was improperly limited to whether the arbitrator's award violated a public policy against using profanity in front of children, which was too narrow a look at the public policy at issue as a broader and very important public policy pursuant to 105 ILCS 5/24-24 concerning the safety of school children was really what was at issue in the case. Cent. Cmty. Unit Sch. Dist. No. 4 v. Ill. Educ. Labor Rels. Bd., 388 Ill. App. 3d 1060, 328 Ill. Dec. 451, 904 N.E.2d 640, 2009 Ill. App. LEXIS 79 (4 Dist. 2009).

A court's refusal to enforce an arbitrator's award under a collective-bargaining agreement because it is contrary to public policy is a specific application of the more general doctrine, rooted

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in the common law, that a court may refuse to enforce contracts that violate law or public policy; however, such a public policy, must be well-defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests. Board of Educ. v. Illinois Educ. Labor Relations Bd., 216 Ill. App. 3d 990, 159 Ill. Dec. 802, 576 N.E.2d 471 (4 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 914, 584 N.E.2d 126 (1991).

Arbitrator's award which reinstated school bus driver terminated for unsafe driving habits to her position was contrary to the public policy favoring the safe transportation of school children. Board of Educ. v. Illinois Educ. Labor Relations Bd., 216 Ill. App. 3d 990, 159 Ill. Dec. 802, 576 N.E.2d 471 (4 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 914, 584 N.E.2d 126 (1991).

Reasonable Tendency Test

Under the "reasonable tendency" test, illegality results when conduct may reasonably be said to have a tendency to interfere with the free exercise of employee rights. Hardin County Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 174 Ill. App. 3d 168, 124 Ill. Dec. 49, 528 N.E.2d 737 (4 Dist. 1988).

In evaluating whether the employer interfered, restrained or coerced, and whether the employer engaged in conduct which had a reasonable tendency to interfere, the reasonable construction given to the employer's comments by the listener is critical. Hardin County Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 174 Ill. App. 3d 168, 124 Ill. Dec. 49, 528 N.E.2d 737 (4 Dist. 1988).

Refusal to Arbitrate

An employer's refusal to arbitrate a grievance obviously interferes with and restrains a grievant in the exercise of a right guaranteed under the Act within the meaning of subdivision (a)(1) of this section. Board of Trustees v. Illinois Educ. Labor Relations Bd., 173 Ill. App. 3d 395, 123 Ill. Dec. 75, 527 N.E.2d 538 (4 Dist. 1988).

Refusal to Bargain

Illinois Educational Labor Relations Board erred in finding violations of 115 ILCS 5/14(a)(5) based on a claim that a school district unilaterally changed how the assignments were made to 12-month schedules in the guidance office because there were no existing terms or written pronouncements by the district indicating an official policy of assigning such schedules based solely on seniority; there was no evidence of a settled past practice on which the employee had the right to rely. Thornton Fractional High Sch. Dist. No. 215 v. Ill. Educ. Labor Rels. Bd., 404 Ill. App. 3d 757, 344 Ill. Dec. 431, 936 N.E.2d 1188, 2010 Ill. App. LEXIS 1046 (1 Dist. 2010).

Where the question of a free lunch period was not covered by the collective bargaining agreement, no question of improper refusal to bargain was possible, because no collective bargaining agreement could provide for a lunch period violating section 24-9 of the School Code (105 ILCS 5/24-9); therefore, the circuit court had jurisdiction to proceed with plaintiffs' complaint alleging violations of 105 ILCS 5/24-9. Semmens v. Board of Educ., 190 Ill. App. 3d 174, 137 Ill. Dec. 801, 546 N.E.2d 746 (4 Dist. 1989).

Refusal to Provide Information

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The defendant school board violated subsections (a)(1) and (a)(5) by failing to provide requested information to the plaintiff union where the requested information was relevant to the union's duties as the exclusive bargaining agent of its members and where the requested information was not related to class staffing and assignment or to any other prohibited subject of bargaining. Chicago Sch. Reform Bd. of Trustees v. Illinois Educ. Labor Rels. Bd., 315 Ill. App. 3d 522, 248 Ill. Dec. 361, 734 N.E.2d 69, 2000 Ill. App. LEXIS 598 (1 Dist. 2000).

Refusal to Submit Grievance

A refusal to submit an employee grievance to arbitration is an unfair labor practice within the meaning of subdivision (a)(1) of this section, given the arbitration requirements of 115 ILCS 5/10. Board of Trustees v. Illinois Educ. Labor Relations Bd., 173 Ill. App. 3d 395, 123 Ill. Dec. 75, 527 N.E.2d 538 (4 Dist. 1988).

Remedies

Illinois Educational Labor Relations Board had the authority under § 15 (115 ILCS 5/15) of the Illinois Educational Labor Relations Act, to direct a teacher's reinstatement after it violated § 14(a)(3) (115 ILCS 5/14(a)(3)), and derivatively § 14(a)(1) (115 ILCS 5/14(a)(1)) of the Act, even though the reinstatement resulted in the teacher obtaining tenure; since the denial of tenure on account of union activity was unlawful, the Board's remedial powers necessarily included the authority to reinstate the teacher who was unlawfully discharged in retaliation for participating in a protected activity. Speed Dist. 802 v. Warning, 392 Ill. App. 3d 628, 331 Ill. Dec. 604, 911 N.E.2d 425, 2009 Ill. App. LEXIS 515 (1 Dist. 2009).

Right to Discipline Employee

The fact the school district apparently said nothing to a teacher about her disciplinary problems in the classroom does not extinguish its right to discipline an employee whose performance continues to deteriorate. Hardin County Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 174 Ill. App. 3d 168, 124 Ill. Dec. 49, 528 N.E.2d 737 (4 Dist. 1988).

Status Quo Salary Increments

School district could not unilaterally alter teachers' annual salary increments during collective bargaining without prior negotiation to impasse; salary increments were "status quo" and school district was required to implement them pursuant to expired contract. Vienna Sch. v. Illinois Educ. Labor Relations Bd., 162 Ill. App. 3d 503, 113 Ill. Dec. 667, 515 N.E.2d 476 (4 Dist. 1987).

Teacher Evaluations

The substantive criteria, weight, and areas evaluated, including the decision as to whether an instructor has successfully completed a remediation plan and his subsequent rating, are not subject to mandatory bargaining; however, the mechanical procedures involved in the evaluation process and the remediation plan are subject to mandatory bargaining. Board of Educ. v. Illinois Educ. Labor Relations Bd., 199 Ill. App. 3d 347, 145 Ill. Dec. 239, 556 N.E.2d 857 (4 Dist. 1990).

Teaching Assignment

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Placement of a teacher in the reassigned teacher pool was a job retention issue, not a mere matter of class staffing and assignment, so it could properly be the subject of collective bargaining and subject to arbitration. Chi. Teachers Union, Local 1 v. Chi. Sch. Reform Bd. of Trs., 338 Ill. App. 3d 90, 272 Ill. Dec. 409, 787 N.E.2d 224, 2003 Ill. App. LEXIS 297 (1 Dist. 2003).

Teachers had the right to file grievances over the board of education's refusal to select them for summer school teaching positions and the board of education did not have a right to refuse to comply with the provisions of the binding arbitration award that was entered to compensate the teachers for not being selected as the grievances did not involve an impermissible collective bargaining subject, "class staffing and assignment." Chicago Teachers Union, Local No. 1 v. Ill. Educ. Labor Rels. Bd., 334 Ill. App. 3d 936, 268 Ill. Dec. 610, 778 N.E.2d 1232, 2002 Ill. App. LEXIS 974 (1 Dist. 2002), appeal denied, 202 Ill. 2d 668, 272 Ill. Dec. 356, 787 N.E.2d 171 (2003).

The school board violated subdivision (a)(8) of this section by failing to place teacher in an extended day assignment and pay him accordingly for two school years; however, the board did not commit an unfair labor practice for failure to place teacher in an extended day schedule for the school years under subdivisions (a)(1) and (a)(5) of this section. Board of Educ. v. Illinois Educ. Labor Relations Bd., 170 Ill. App. 3d 490, 120 Ill. Dec. 681, 524 N.E.2d 711 (4 Dist. 1988).

LEGAL PERIODICALS

For article, "Implementing the Illinois Educational Labor Relations Act," see 61 Chi.-Kent L. Rev. 101 (1985).

For article, "Illinois Public Labor Relations Laws: A Commentary and Analysis," see 60 Chi.-Kent L. Rev. 883 (1984).

For article, "Survey of Illinois Law: Employment Law," see 31 S. Ill. U.L.J. 859 (2007).

Practice Guides and Treatises.

Labor Law Handbook § 18.110 Duty of Fair Representation (IICLE).

Labor Law Handbook § 18.94 IELRA § 14(c) (IICLE).

Labor Law Handbook § 18.92 "Free Speech" Proviso (IICLE).

Labor Law Handbook § 18.91 IELRA (IICLE).

Labor Law Handbook § 18.89 IELRA (IICLE).

Labor Law Handbook § 18.73 IELRA (IICLE).

Labor Law Handbook § 18.72 Grievance Arbitration (Rights Arbitration) (IICLE).

Illinois Jurisprudence, Labor and Employment § 12:20 Generally.

Illinois Jurisprudence, Labor and Employment § 12:15 Other unfair labor practices.

Illinois Jurisprudence, Labor and Employment § 12:14 Refusal to comply with arbitration award.

Illinois Jurisprudence, Labor and Employment § 12:13 Refusal to bargain.

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§ 115 ILCS 5/15. Unfair labor practice procedure

Sec. 15. Unfair labor practice procedure. A charge of unfair labor practice may be filed with the Board by an employer, an individual or a labor organization. If the Board after investigation finds that the charge states an issue of law or fact, it shall issue and cause to be served upon the party complained of a complaint which fully states the charges and thereupon hold a hearing on the charges, giving at least 5 days' notice to the parties. At hearing, the charging party may also present evidence in support of the charges and the party charged may file an answer to the charges, appear in person or by attorney, and present evidence in defense against the charges.

The Board has the power to issue subpoenas and administer oaths. If any party wilfully fails or neglects to appear or testify or to produce books, papers and records pursuant to subpoena issued by the Board, the Board shall apply to the circuit court for an order to compel the attendance of the party at the hearing to testify or produce requested documents.

If the Board finds that the party charged has committed an unfair labor practice, it shall make findings of fact and is empowered to issue an order requiring the party charged to stop the unfair practice, and may take additional affirmative action, including requiring the party to make reports from time to time showing the extent to which he or she has complied with the order. No order shall be issued upon an unfair practice occurring more than 6 months before the filing of the charge alleging the unfair labor practice. If the Board awards back pay, it shall also award interest at the rate of 7% per annum. If the Board finds that the party charged has not committed any unfair labor practice, findings of fact shall be made and an order issued dismissing the charges.

The Board may petition the circuit court of the county in which the unfair labor practice in question occurred or where the party charged with the unfair labor practice resides or transacts business to enforce an order and for other relief which may include, but is not limited to, injunctions. The Board's order may in its discretion also include an appropriate sanction, based on the Board's rules and regulations, and the sanction may include an order to pay the other party or parties' reasonable expenses including costs and reasonable attorney's fee, if the other party has made allegations or denials without reasonable cause and found to be untrue or has engaged in frivolous litigation for the purpose of delay or needless increase in the cost of litigation; the State of Illinois or any agency thereof shall be subject to the provisions of this sentence in the same manner as any other party.

(Source: P.A. 86-412; 87-736.)

Note.

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This section was Ill.Rev.Stat., Ch. 48, Para. 1715.

CASE NOTES

Analysis

Arbitration Compliance
Dismissal by Board
Jurisdiction
Qualified Privilege
Remand by Board
Remedies
Service of Process
Time Limitation

Arbitration Compliance

District did not commit an unfair labor practice in not renewing the contracts of three nontenured probationary teachers and, thus, the state educational labor relations board should not have found that the district was obligated to arbitrate the matter. The collective bargaining agreement provided that nontenured teachers could only challenge such decisions through the board of education level of the grievance procedure and the district was only required pursuant to 105 ILCS 5/24-11 to provide the teachers with written notice stating the reasons for dismissal, both of which occurred. Niles Twp. High Sch. Dist. 219 v. Ill. Educ. Labor Rels. Bd., 379 Ill. App. 3d 22, 318 Ill. Dec. 195, 883 N.E.2d 29, 2007 Ill. App. LEXIS 1291 (1 Dist. 2007).

Refusal to comply with a binding arbitration award triggers the unfair labor practice procedures set forth in this Act and allows a charging party to apply directly to the Illinois Educational Labor Relations Board for relief. Chicago Bd. of Educ. v. Chicago Teachers Union, 142 Ill. App. 3d 527, 96 Ill. Dec. 799, 491 N.E.2d 1259 (1 Dist. 1986).

Dismissal by Board

The board acted within its power and discretion where it was presented with a charge of an unfair labor practice and dismissed it and refused to file a complaint upon the basis that, although the charge presented some questions of fact or law, any impact upon an aggrieved party was "de minimis." Macomb Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 265 Ill. App. 3d 194, 202 Ill. Dec. 602, 638 N.E.2d 248 (4 Dist. 1994).

Jurisdiction

Court lacked jurisdiction over a university employee's retaliation claim under 115 ILCS 5/14(a) of the Illinois Educational Labor Relations (IELR) Act; the IELR Board had exclusive initial jurisdiction over such a claim pursuant to 115 ILCS 5/15, and even if there had been a final Board order, it could not have been appealed to federal court pursuant to 115 ILCS 5/16(a). Alexander v. Northeastern Ill. Univ., 586 F. Supp. 2d 905, 2008 U.S. Dist. LEXIS 48719 (N.D. Ill. 2008).

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Qualified Privilege

The deliberations of the protected meetings of a school district where collective bargaining strategy was discussed were subject to a qualified privilege from discovery, based on necessity, for litigation purposes in an action brought by teachers' union charging the school district with unfair labor practices. Illinois Educ. Labor Relations Bd. v. Homer Community Consol. Sch. Dist., 160 Ill. App. 3d 730, 112 Ill. Dec. 802, 514 N.E.2d 465 (4 Dist. 1987).

Remand by Board

When the Illinois Educational Labor Relations Board (Board) found that a school board violated a teacher's collective bargaining agreement by not providing her with certain contractually required job assistance after eliminating her position, but found that the reinstatement remedy ordered by an arbitrator was unauthorized, the Board could remand the matter to the arbitrator for the formulation of an alternative remedy; as 115 ILCS 5/15 did not confine the Board to determining that an unfair labor practice had or had not occurred. Chi. Teachers Union, Local 1 v. Ill. Educ. Labor Rels. Bd., 344 Ill. App. 3d 624, 279 Ill. Dec. 406, 800 N.E.2d 475, 2003 Ill. App. LEXIS 1347 (1 Dist. 2003).

Remedies

Illinois Educational Labor Relations Board had the authority under § 15 (115 ILCS 5/15) of the Illinois Educational Labor Relations Act, to direct a teacher's reinstatement after it violated § 14(a)(3) (115 ILCS 5/14(a)(3)), and derivatively § 14(a)(1) (115 ILCS 5/14(a)(1)) of the Act, even though the reinstatement resulted in the teacher obtaining tenure; since the denial of tenure on account of union activity was unlawful, the Board's remedial powers necessarily included the authority to reinstate the teacher who was unlawfully discharged in retaliation for participating in a protected activity. Speed Dist. 802 v. Warning, 392 Ill. App. 3d 628, 331 Ill. Dec. 604, 911 N.E.2d 425, 2009 Ill. App. LEXIS 515 (1 Dist. 2009).

Service of Process

The unfair labor practice complaint was properly served in accordance with Illinois Education Labor Relations Board regulations by sending the complaint by certified mail to the attorney representing the university. Board of Trustees v. Illinois Educ. Labor Relations Bd., 274 Ill. App. 3d 145, 210 Ill. Dec. 687, 653 N.E.2d 882 (1 Dist. 1995).

Time Limitation

Educational Labor Relations Board lacked jurisdiction to decide teacher's unfair labor practice charge by reason of the fact that it was, and continued to be, time barred; even if jurisdiction existed, the Board properly struck the petitioner's exceptions and its adoption of the Executive Director's recommended decision that the teacher's union did not breach the duty of fair representation. Jones v. State Educ. Labor Relations Bd., 272 Ill. App. 3d 612, 209 Ill. Dec. 119, 650 N.E.2d 1092 (1 Dist. 1995).

An unfair labor practice charge by teacher's association was timely filed where it was filed five months and three days after it initially had notice of the practice. Central City Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 149 Ill. 2d 496, 174 Ill. Dec. 808, 599 N.E.2d 892 (1992).

Illinois precedent indicates that time limitations upon bringing actions before administrative agencies are matters of jurisdiction which cannot be tolled and can be distinguished from a

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statute of limitations on the basis that if the right being asserted is one unknown to the common law, the time limitation is an inherent element of the right and of the power of the tribunal to hear the matter, whereas if the right upon which the request for relief is based is a common law right, the time limitation is merely a procedural matter not affecting the jurisdiction of the tribunal and is subject to waiver. Charleston Community Unit Sch. v. Illinois Educ. Labor Relations Bd., 203 Ill. App. 3d 619, 149 Ill. Dec. 53, 561 N.E.2d 331 (4 Dist. 1990).

In a collective bargaining action, the limitation period did not start until the teacher's association received unambiguous notice of the adoption of a unilateral change in policy. Board of Educ. v. Illinois Educ. Labor Relations Bd., 199 Ill. App. 3d 347, 145 Ill. Dec. 239, 556 N.E.2d 857 (4 Dist. 1990).

Where petitioner alleged that the school district violated subdivisions (a)(1) and (a)(5) of 115 ILCS 5/14 by unilaterally changing and implementing a new policy regarding outside teaching credit for placement on the salary schedule, the Illinois Educational Labor Relations Board (IELRB) reasonably concluded the limitation period began when the charging party became aware (or should have become aware) of the change in policy - and this date was that upon which the change was unambiguously announced, rather than the date it was implemented, since the claimed unfair labor practice was the unilateral change in policy, not its application to particular individuals per se; therefore, the IELRB properly determined the unfair labor practice charge was not filed within the requisite six month period. Wapella Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 177 Ill. App. 3d 153, 126 Ill. Dec. 532, 531 N.E.2d 1371 (4 Dist. 1988).

Where a complaint based upon an earlier unlawful event is time barred, a refusal to bargain over the same matter will neither revive a legally defunct unfair labor practice, nor constitute an independent unfair labor practice for the purpose of triggering a new six month limitation period. Wapella Educ. Ass'n v. Illinois Educ. Labor Relations Bd., 177 Ill. App. 3d 153, 126 Ill. Dec. 532, 531 N.E.2d 1371 (4 Dist. 1988).

LEGAL PERIODICALS

For article, "Implementing the Illinois Educational Labor Relations Act," see 61 Chi.-Kent L. Rev. 101 (1985).

Practice Guides and Treatises.

Labor Law Handbook § 18.98 Charge Filing (IICLE).

Illinois Jurisprudence, Labor and Employment § 12:31 Enforcement.

Illinois Jurisprudence, Labor and Employment § 12:30 Generally.

Illinois Jurisprudence, Labor and Employment § 12:22 Limitation period for unfair labor practice charges.

§ 115 ILCS 5/16. Judicial review

Sec. 16. Judicial review. (a) A charging party or any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may apply for and obtain judicial review of an order of the Board entered under this Act in accordance with

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the provisions of the Administrative Review Law, as now or hereafter amended [735 ILCS 5/3-101 et seq.], except that such judicial review shall be taken directly to the Appellate Court of a judicial district in which the Board maintains an office. Any direct appeal to the Appellate Court shall be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision.

(b) Whenever it appears that any person has violated a final order of the Board issued under this Act, the Board may commence an action in the name of the people of the State of Illinois by petition, alleging the violation, attaching a copy of the order of the Board, and praying for the issuance of an order directing the person, his officers, agents, servants, successors, and assigns to comply with the order of the Board. Upon the commencement of the action, the Court may grant or refuse, in whole or in part, the relief sought, provided that the Court may stay an order of the Board in accordance with Section 3-111 of the Code of Civil Procedure [735 ILCS 5/3-111] pending disposition of the proceedings. The Court may punish a violation of its order as in civil contempt.

(c) The proceedings provided in subsection (b) of this Section shall be commenced in the Appellate Court of a judicial district in which the Board maintains an office.

(d) The Board may, upon issuance of an unfair labor practice complaint, petition the circuit court where the alleged unfair practice which is the subject of the Board's complaint was allegedly committed, or where a person required to cease and desist from such alleged unfair labor practice resides or transacts business, for appropriate temporary relief or a restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

(e) In any judicial review proceeding brought hereunder, the employee organization may sue or be sued as an entity and in behalf of the employees whom it represents. The service of legal process, summons, or subpoena upon an officer or agent of the employee organization in his or her capacity as such, shall constitute service upon said employee organization.

(Source: P.A. 86-412; 88-1, § 2.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1716.

Effect of Amendments. The 1993 amendment by P.A. 88-1, effective January 1, 1994, added the last sentence of subsection (a).

CASE NOTES

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Analysis

Constitutionality
Federal Preemption
Final Order
Jurisdiction
Limited Districts
Sufficiency of Evidence

Constitutionality

Subsection (c) of this section, as amended in 1989, is unconstitutional, since enforcement-compliance procedures brought pursuant to the amended section necessarily involve the exercise of original jurisdiction by the appellate court. Board of Educ. v. Illinois Educ. Labor Relations Bd., 199 Ill. App. 3d 347, 145 Ill. Dec. 239, 556 N.E.2d 857 (4 Dist. 1990).

Federal Preemption

Illinois Educational Labor Relations Act (IELRA) did not preempt the teachers' federal claims for constitutional violations where there were many incidents of defendants' misconduct which were sufficient to place the teachers' claims outside the scope of the IELRA. Andrekus v. Bd. of Educ. of Dist. U-46, F. Supp. 2d , 2003 U.S. Dist. LEXIS 4310 (N.D. Ill. Mar. 18, 2003).

Final Order

Order of the Illinois Educational Labor Relations Board denying the school district's request seeking injunctive relief to prevent a strike was not a final appealable order. Niles Tp. High Sch. Dist. 219 Bd. of Educ. v. Niles Tp. Fed'n of Teachers, Local 1274, 295 Ill. App. 3d 510, 229 Ill. Dec. 711, 692 N.E.2d 700 (1 Dist. 1997).

Even where the precedent for denying administrative review of an order of certification was deemed to make the administrative review provisions of this section ambiguous, that ambiguity was resolved in favor of holding the order of certification final and subject to administrative review. Board of Regents v. Illinois Educ. Labor Relations Bd., 166 Ill. App. 3d 730, 117 Ill. Dec. 799, 520 N.E.2d 1150 (4 Dist. 1988).

Jurisdiction

Because the Illinois Educational Labor Relations Board maintained an office in Chicago, an appeal directly to the First Judicial District was proper under 115 ILCS 5/16(a). Niles Twp. High Sch. Dist. 219 v. Ill. Educ. Labor Rels. Bd., 387 Ill. App. 3d 58, 326 Ill. Dec. 700, 900 N.E.2d 336, 2008 Ill. App. LEXIS 1233 (1 Dist. 2008).

Court lacked jurisdiction over a university employee's retaliation claim under 115 ILCS 5/14(a) of the Illinois Educational Labor Relations (IELR) Act; the IELR Board had exclusive initial jurisdiction over such a claim pursuant to 115 ILCS 5/15, and even if there had been a final Board order, it could not have been appealed to federal court pursuant to 115 ILCS 5/16(a). Alexander v. Northeastern Ill. Univ., 586 F. Supp. 2d 905, 2008 U.S. Dist. LEXIS 48719 (N.D. Ill. 2008).

When the Illinois Educational Labor Relations Board (Board) found that a school board violated a teacher's collective bargaining agreement by not providing her with certain contractually required

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job assistance after eliminating her position, but found that the reinstatement remedy ordered by an arbitrator was unauthorized and remanded the matter to the arbitrator for the formulation of an alternative remedy, the Appellate Court of Illinois had jurisdiction to review the Board's order where the teacher's union might otherwise be unable to obtain judicial review of the Board's action vacating the arbitrator's award, and, in view of the school board's uncontested wrongdoing, such a result would be manifestly unjust. Chi. Teachers Union, Local 1 v. Ill. Educ. Labor Rels. Bd., 344 Ill. App. 3d 624, 279 Ill. Dec. 406, 800 N.E.2d 475, 2003 Ill. App. LEXIS 1347 (1 Dist. 2003).

Review of an Illinois Educational Labor Relations Board decision on an unfair labor practice charge must be sought in the appellate court rather than in the circuit court. Board of Educ. of Du Page High Sch. Dist. No. 88 v. Educational Labor Relations Bd., 246 Ill. App. 3d 967, 187 Ill. Dec. 333, 617 N.E.2d 790 (1 Dist. 1993).

The circuit court lacks subject matter jurisdiction over actions seeking to vacate or enforce arbitration awards involving educational employers and unions representing teachers; such actions are properly brought before the Educational Labor Relations Board with review by the state appellate courts. Board of Educ. v. Compton, 157 Ill. App. 3d 439, 109 Ill. Dec. 640, 510 N.E.2d 508 (4 Dist. 1987), aff'd, 123 Ill. 2d 216, 122 Ill. Dec. 9, 526 N.E.2d 149 (1988).

Limited Districts

Because appellate review of a board decision may be sought only in a judicial district in which the board maintains an office and because the board maintains offices in Chicago and Springfield, only the first and fourth districts of the appellate court may review board decisions. Board of Trustees v. Illinois Educ. Labor Relations Bd., 274 Ill. App. 3d 145, 210 Ill. Dec. 687, 653 N.E.2d 882 (1 Dist. 1995).

Sufficiency of Evidence

Once the invalidity of the Illinois Educational Labor Relations Board's decision was timely discovered and acted upon because of the disqualifying interest of one member, its action vacating its earlier ruling on the merits was appropriate. Board of Educ. v. Illinois Educ. Labor Relations Bd., 165 Ill. App. 3d 41, 116 Ill. Dec. 91, 518 N.E.2d 713 (4 Dist. 1987).

LEGAL PERIODICALS

For article, "Civil Procedure: 1987-88 Illinois Law Survey," see 20 Loy. U. Chi. L.J. 215 (1988-89).

For article, "Implementing the Illinois Educational Labor Relations Act," see 61 Chi.-Kent L. Rev. 101 (1985).

Practice Guides and Treatises.

Labor Law Handbook § 18.100 Injunctive Relief (IICLE).

Labor Law Handbook § 18.77 IELRA §§ 10(c) and 16(d) (IICLE).

§ 115 ILCS 5/17. Effect on other laws

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Sec. 17. Effect on other laws. In case of any conflict between the provisions of this Act and any other law, executive order or administrative regulation, the provisions of this Act shall prevail and control. Nothing in this Act shall be construed to replace or diminish the rights of employees established by Section 36d of "An Act to create the State Universities Civil Service System", approved May 11, 1905, as amended or modified [110 ILCS 70/36d].

(Source: P.A. 83-1014.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1717.

CASE NOTES

Applicability

Illinois Educational Labor Relations Board's order was affirmed as the Board's finding that representatives of a union and a school district orally entered into a collective bargaining agreement during negotiations, but that the school district failed to bargain in good faith by reneging on the oral agreement was not against the manifest weight of the evidence. Further, the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq., controlled any conflict in the laws pursuant to 115 ILCS 5/17 so that the school district directors did not have to approve of the agreement. Bd. of Educ. v. Sered, 366 Ill. App. 3d 330, 303 Ill. Dec. 16, 850 N.E.2d 821, 2006 Ill. App. LEXIS 103 (1 Dist. 2006).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 10:04 Precedence of labor laws.

§ 115 ILCS 5/17.1. Precedents established by other labor boards

Sec. 17.1. Precedents established by other labor boards. Unless contradicted by administrative precedent previously established by the Board, all final decisions in representation and unfair labor practice cases decided by the State or Local Panel of the Illinois Labor Relations Board or their predecessors, the Illinois State Labor Relations Board and the Illinois Local Labor Relations Board previously created under the Illinois Public Labor Relations Act [5 ILCS 315/1 et seq.], which have not been reversed by subsequent court rulings shall be considered, but need not be followed, by the Board.

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(Source: P.A. 85-924; 91-798, § 55.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1717.1.

Effect of Amendments. The 2000 amendment by P.A. 91-798, effective July 9, 2000, inserted "State or Local Panel of the Illinois Labor Relations Board or their predecessors, the" and the last occurance of "previously" and made stylistic changes.

CASE NOTES

Precedent

Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq., provides that Illinois State Labor Relations Board decisions should be considered by the Board. Additionally, Illinois courts often look to federal decisions construing the National Labor Relations Act, 29 U.S.C. §§ 151 et seq., in deciding state labor issues. Bd. of Educ. v. Sered, 366 Ill. App. 3d 330, 303 Ill. Dec. 16, 850 N.E.2d 821, 2006 Ill. App. LEXIS 103 (1 Dist. 2006).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 12:23 Precedential effect of administrative decisions.

§ 115 ILCS 5/18. Meetings

Sec. 18. Meetings. The provisions of the Open Meetings Act [5 ILCS 120/1 et seq.] shall not apply to collective bargaining negotiations and grievance arbitrations conducted pursuant to this Act.

(Source: P.A. 83-1014.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1718.

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 12:48 Applicability of Open Meetings Act.

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§ 115 ILCS 5/19. Sovereign immunity

Sec. 19. Sovereign immunity. For purposes of this Act, the State of Illinois waives sovereign immunity.

(Source: P.A. 83-1014.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1719.

§ 115 ILCS 5/20. Short title

Sec. 20. Short title. This Act shall be known and may be cited as the "Illinois Educational Labor Relations Act".

(Source: P.A. 83-1014.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 1720.

§ 115 ILCS 5/21. Inapplicability of State Mandates Act

Sec. 21. Inapplicability of State Mandates Act. The General Assembly finds that this Act imposes additional duties on local educational employers which can be carried out by existing staff and procedures at no appreciable net cost increase. The increased additional annual net costs resulting from the enactment of this Act would be less than $50,000, in the aggregate, for all local educational employers affected by this Act, and reimbursements of local educational employers is not required of the State under The State Mandates Act [30 ILCS 805/1 et seq.], by reason of the exclusions specified in clauses (2) and (5) of subsection (a) of Section 8 of that Act [30 ILCS 805/8].

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(Source: P.A. 83-1014.)

Note.

This section was Ill.Rev.Stat., Ch. 48, para. 1721.

LEGAL PERIODICALS

For article, "The Kenneth M. Piper Lectures: Public Sector Impasse Resolution Procedures," see 60 Chi.-Kent L. Rev. 779 (1984).

For article, "Dismissal of Tenured Teachers in Illinois: Evolution of a Viable System," see 1990 U. Ill. L. Rev. 1.

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CHAPTER 325.
CHILDREN

325 ILCS 5Abused and Neglected Child Reporting Act
325 ILCS 27Afterschool Youth Development Project Act

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Abused and Neglected Child Reporting Act

Sec.

325 ILCS 5/1.[Short title]
325 ILCS 5/2.[Scope of act]
325 ILCS 5/2.1.[Eligibility]
325 ILCS 5/3.[Definitions]
325 ILCS 5/4.Persons required to report; privileged communications; transmitting false report
325 ILCS 5/4.02.[Failure to report]
325 ILCS 5/4.1.[Reports to medical examiner or coroner]
325 ILCS 5/4.2.Departmental report on death or serious life-threatening injury of child
325 ILCS 5/4.3.DCFS duty to report
325 ILCS 5/4.4.DCFS duty to report to State's Attorney
325 ILCS 5/4.4a.Department of Children and Family Services duty to report to Department of Human Services' Office of Inspector General
325 ILCS 5/4.5.Electronic and information technology workers; reporting child pornography
325 ILCS 5/5.[Temporary protective custody]
325 ILCS 5/6.[Photographs and x-rays]
325 ILCS 5/7.Time and manner of making reports
325 ILCS 5/7.1.[Cooperation with other agencies]
325 ILCS 5/7.2.[Child Protective Service Unit]
325 ILCS 5/7.3.[Investigations]
325 ILCS 5/7.3a.[Perinatal Coordinator]
325 ILCS 5/7.3b.[Addicted pregnant persons]
325 ILCS 5/7.3c.Substance abuse services for women with children
325 ILCS 5/7.4.[Investigation procedures]
325 ILCS 5/7.5.[Access to child]
325 ILCS 5/7.6.[Posted telephone number]
325 ILCS 5/7.7.[Central register]
325 ILCS 5/7.8.[Notification of prior report]
325 ILCS 5/7.9.[Initial written reports; contents]
325 ILCS 5/7.10.[Preliminary report]
325 ILCS 5/7.12.[Determination]
325 ILCS 5/7.13.[Additional information]
325 ILCS 5/7.14.[Classification of reports]
325 ILCS 5/7.15.[Other information in central register]
325 ILCS 5/7.16.[Amendment, expunction or removal]
325 ILCS 5/7.17.[Notice]
325 ILCS 5/7.18.[Amending reports]

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325 ILCS 5/7.19.[Copies]
325 ILCS 5/7.20.Inter-agency agreements for information
325 ILCS 5/7.21.Multidisciplinary Review Committee
325 ILCS 5/8.1.[Unfounded reports]
325 ILCS 5/8.2.[Service plan; report to General Assembly]
325 ILCS 5/8.3.[Assisting Circuit Court]
325 ILCS 5/8.4.[Rehabilitative services]
325 ILCS 5/8.5.[Child abuse and neglect index]
325 ILCS 5/8.6.Reports to a child's school
325 ILCS 5/9.[Immunity from liability]
325 ILCS 5/9.1.Employer discrimination
325 ILCS 5/10.[Testimony]
325 ILCS 5/11.[Confidentiality of records]
325 ILCS 5/11.1.Access to records
325 ILCS 5/11.1a.Disclosure of information
325 ILCS 5/11.2.Disclosure to mandated reporting source
325 ILCS 5/11.2a.Disclosure to extended family member
325 ILCS 5/11.3.[Information not to be publicized; exceptions]
325 ILCS 5/11.4.[Court and criminal justice system records]
325 ILCS 5/11.5.[Continuing education and training]
325 ILCS 5/11.6.[Review of administrative decisions]
325 ILCS 5/11.7.[State-wide Citizen's Committee on Child Abuse and Neglect]
325 ILCS 5/11.8.Cross-reporting

§ 325 ILCS 5/1. [Short title]

Sec. 1. This Act shall be known and may be cited as the Abused and Neglected Child Reporting Act.

(Source: P.A. 79-65.)

Derivation.

Title: An Act creating the Abused and Neglected Child Reporting Act and repealing and amending other Acts.

Cite: 325 ILCS 5/1 et seq.

Source: P.A. 79-65.

Date: Approved June 26, 1975.

Note.

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This section was Ill.Rev.Stat., Ch. 23, Para. 2051.

Cross References.

As to the administration of child abuse prevention shelters, under the Children and Family Services Act, see 20 ILCS 505/4a.

As to the admissibility of an Abused and Neglected Child report into evidence, see 705 ILCS 405/2-18.

As to disciplinary action by the Department of Professional Regulation for Violation of the Abused and Neglected Child Reporting Act see the following: as to athletic trainers, see 225 ILCS 10/16; as to hearing aid dispensers, see 225 ILCS 50/18; as to interior design professionals, see 225 ILCS 310/13; as to marriage and family therapists, see 225 ILCS 55/85; as to medical practice, see 225 ILCS 60/22; as to nursing, see 225 ILCS 65/25; as to optometrists, see 225 ILCS 80/24; as to physical therapists, see 225 ILCS 90/17; as to physician's assistants, see 225 ILCS 95/21; as to psychologists, see 225 ILCS 15/15; as to social workers, see 225 ILCS 20/19; as to speech language pathologists, see 225 ILCS 110/16.

As to suspension or revocation of a teacher's certification, for failure to file an abused and neglected child report under the School Code, see 105 ILCS 5/21-23.

CASE NOTES

Analysis

Attorney's Fees
Due Process
Registration
School Board
Standing

Attorney's Fees

Where a caregiver was falsely accused by the State of child neglect stemming from a child's death, attorney's fees were awarded because the expense remedy in the Illinois Administrative Procedure Act, 5 ILCS 100/10-55(a), applies to the Illinois Abused and Neglected Child Reporting Act, 325 ILCS 5/1 et seq.. Curry v. State, 55 Ill. Ct. Cl. 348, 2003 Ill. Ct. Cl. LEXIS 9 (Ct. Cl. 2003).

Due Process

Due process rights of foster parents, who were the focus of an "indicated" report for the abuse of foster children in their care, were not violated as a result of a lengthy administrative hearing that stretched over several months and was interrupted by several continuances; the totality of the circumstances, including the number of witnesses, the gravity of the allegations, and the fact that the foster parent's counsel proposed or consented to the various hearing dates, showed that the length of the hearing was neither a violation of the Illinois Administrative Code nor unreasonable.

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Lehmann v. Dep't of Children & Family Servs., 342 Ill. App. 3d 1069, 277 Ill. Dec. 799, 796 N.E.2d 1165, 2003 Ill. App. LEXIS 1122 (1 Dist. 2003).

Due process rights of foster parents, who were the focus of an "indicated" report for the abuse of foster children in their care, were not violated by the fact that the administrative law judge filed his recommendation beyond the 30-day limit set out in Ill. Admin. Code 89, § 336.130(b)(14) (1996) because the foster parents failed to show that they were prejudiced in any way by the delay. Lehmann v. Dep't of Children & Family Servs., 342 Ill. App. 3d 1069, 277 Ill. Dec. 799, 796 N.E.2d 1165, 2003 Ill. App. LEXIS 1122 (1 Dist. 2003).

Registration

Abused and Neglected Child Reporting Act, 325 ILCS 5/1 et seq., required the state child welfare agency to maintain pursuant to 325 ILCS 5/7.7 a central register of all cases of suspected child abuse or neglect and that the agency classify a report as "indicated" pursuant to 325 ILCS 5/7.12 if an investigation determined that credible evidence of the alleged abuse or neglect existed, as contemplated by 325 ILCS 5/3. However, that did not mean the report filed against the mother should remain on the register, as the injury to the mother's seven-month-old daughter from falling on a colored pencil that the mother was using to complete a school assignment was an isolated incident that could have happened to anyone rather than evidence of neglect. Slater v. Dep't of Children & Family Servs., Ill. App. 3d , 352 Ill. Dec. 108, 953 N.E.2d 44, 2011 Ill. App. LEXIS 642 (1 Dist. 2011).

School Board

It was error to dismiss counts against a school board by a student alleging negligence, negligent infliction of emotional distress, and willful and wanton conduct, pursuant to 735 ILCS 5/2-619(a)(9), where the student had sufficiently pled the causes of action which revolved around the board's failure to report allegations of sexual harassment by a teacher, pursuant to its obligations under the Abused and Neglected Child Report Act, 325 ILCS 5/1 et seq.; Sections 2-201 and 3-108 of the Tort Immunity Act, 745 ILCS 10/2-201,3-108 were inapplicable because the failure to report was not subject to the immunity of § 2-201 and the immunity under § 3-108 was applicable to failures to supervise. Doe v. Dimovski, 336 Ill. App. 3d 292, 270 Ill. Dec. 618, 783 N.E.2d 193, 2003 Ill. App. LEXIS 42 (2 Dist. 2003), appeal denied, 204 Ill. 2d 658, 275 Ill. Dec. 75, 792 N.E.2d 306 (2003).

Standing

Department of Children and Family Services had standing to contest circuit court's order that future interviews with parent's children regarding alleged sexual abuse be video recorded since the Department is responsible for investigating reports of suspected child abuse. In re R.V., 288 Ill. App. 3d 860, 224 Ill. Dec. 345, 681 N.E.2d 660 (1 Dist. 1997).

LEGAL PERIODICALS

For essay, "The Criminal Courtroom: Is It Child Proof?," see 26 Loy. U. Chi. L.J. 681 (1995).

For article "A Primer on the Juvenile Court Act of 1987," see 9 CBA Rec. 33 (1995).

For article, "Cocaine Babies: Meeting the Challenge," see 80 Ill. B.J. 348.

For article, "Child Abuse - Despite the Law It's Not Reported," see 5 CBA Rec. 24 (1991).

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For comment, "When Self Abuse Becomes Child Abuse: The Need for Coercive Prenatal Government Act in Response to the Cocaine Baby Problem," see 11 N. Ill. U.L. Rev. 73 (1990).

For note, "Towards an Upstream Model of Child Abuse Legislation in Illinois," see 11 Loy. U. Chi. L.J. 251 (1979-80).

For article, "Survey of Illinois Law: Employment Law," see, 28 S. Ill. U.L.J. 705 (2004).

RESEARCH REFERENCES

Validity and construction of penal statute prohibiting child abuse. 1 ALR4th 38.

Validity, construction, and application of state statute requiring doctor or other person to report child abuse. 73 ALR4th 782.

Practice Guides and Treatises.

1-15 Illinois Tort Law § 15.04 Other Professions.

§ 325 ILCS 5/2. [Scope of act]

Sec. 2. (a) The Illinois Department of Children and Family Services shall, upon receiving reports made under this Act, protect the health, safety, and best interests of the child in all situations in which the child is vulnerable to child abuse or neglect, offer protective services in order to prevent any further harm to the child and to other children in the same environment or family, stabilize the home environment, and preserve family life whenever possible. Recognizing that children also can be abused and neglected while living in public or private residential agencies or institutions meant to serve them, while attending day care centers, schools, or religious activities, or when in contact with adults who are responsible for the welfare of the child at that time, this Act also provides for the reporting and investigation of child abuse and neglect in such instances. In performing any of these duties, the Department may utilize such protective services of voluntary agencies as are available.

(b) The Department shall be responsible for receiving and investigating reports of adult resident abuse or neglect under the provisions of this Act.

(Source: P.A. 84-1318; 90-28, § 10-15; 92-801, § 5; 96-1446, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2052.

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Section 95 of P.A. 96-1446 contains a "no acceleration or delay" provision.

Cross References.

As to home visits, interviews, or communications of the Department of Children and Family Services, for determining the amount of public assistance, see 305 ILCS 5/4-7.

As to reporting the mismanagement of funds, provided for assisting a child, under the Public Aid Code, see 305 ILCS 5/4-8.

As to the licensing of a child care facility, who fails to report suspected abuse or neglect, see 225 ILCS 10/8.

Effect of Amendments. The 1997 amendment by P.A. 90-28, effective January 1, 1998, in the first sentence, inserted "health, safety, and", inserted "in all situations in which the child is vulnerable to child abuse or neglect", inserted "and" and deleted from the end "and protect the health and safety of children in all situations in which they are vulnerable to child abuse or neglect".

The 2002 amendment by P.A. 92-801, effective August 16, 2002, inserted "or religious activities", and made a stylistic change.

The 2010 amendment by P.A. 96-1446, effective August 20, 2010, added the (a) designation; and added (b).

CASE NOTES

Analysis

Due Process
- Property Interest Insufficient
Preservation of Family Life
Termination of Parental Rights Upheld
Tort Duty of Hospital Employees

Due Process

- Property Interest Insufficient

Services to stabilize the home environment, preserve family life whenever possible, and protect the health and safety of children were not sufficiently precise to show a property interest sufficient to sustain a due process claim. B.H. v. Johnson, 715 F. Supp. 1387 (N.D. Ill. 1989).

Preservation of Family Life

Pursuant to the provisions in the Juvenile Court Act (705 ILCS 405/1-1 et seq.) and Department of Children and Family Services' (DCFS) mandate, the court may enter interim orders for services to the child and his or her family in order to prevent the unnecessary separation of children from their families and restoring to their families children who have been removed where it has found

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that they are in the best interest of the minor and his or her family and will help preserve the family. In re Lawrence M., 269 Ill. App. 3d 253, 206 Ill. Dec. 817, 645 N.E.2d 1069 (1 Dist.), aff'd, 172 Ill. 2d 523, 219 Ill. Dec. 32, 670 N.E.2d 710 (1996).

Termination of Parental Rights Upheld

Termination of parental rights held not against the manifest weight of the evidence. People ex rel. Greanias v. Holmes, 28 Ill. App. 3d 104, 328 N.E.2d 35 (4 Dist. 1975).

Tort Duty of Hospital Employees

Where the abuse victims filed suit against the psychological clinic alleging that it failed to report abuse, allegedly in violation of 325 ILCS 5/4, of which its therapist was informed by the abuser, the action was properly dismissed under 735 ILCS 5/2-615 as the Illinois Abused and Neglected Child Reporting Act granted no private right of action; while the Act, as stated in 325 ILCS 5/2, was meant to protect children from abuse, it did so by imposing a misdemeanor under 325 ILCS 5/4.02 if a person who was obligated to report abuse failed to do so rather than by granting a private right of action. John Doe 1 v. N. Cent. Behavioral Health Sys., 352 Ill. App. 3d 284, 287 Ill. Dec. 493, 816 N.E.2d 4, 2004 Ill. App. LEXIS 992 (3 Dist. 2004), appeal denied, 213 Ill. 2d 560, Ill. Dec. , 829 N.E.2d 788 (2005).

Judgment for plaintiff in a wrongful death action was reversed and the case was dismissed because Illinois' Abused and Neglected Child Reporting Act (ANCRA), 325 ILCS 5/2 et seq., did not impose a tort duty to report child abuse on hospital employees; nothing in the statute's text indicated that the legislature meant to expand the scope of tort liability to encompass people who failed to report child abuse, and a private right should not be implied because the fact that the only sanction the legislature had provided was for a willful violation (which was not alleged in plaintiff's case) suggested a reluctance to impose liability for merely negligent violations. Cuyler v. United States, 362 F.3d 949, 2004 U.S. App. LEXIS 5837 (7th Cir. 2004).

OPINIONS OF ATTORNEY GENERAL

Applicability

The reporting provisions of this Act are not limited only to cases of a child whose death occurs from suspected abuse or neglect before being found or brought to a hospital; this section contemplates the offering of protective services in order to prevent further harm to the child, and therefore clearly contemplates a situation where the child is alive. 1979 Op. Atty. Gen. 43.

LEGAL PERIODICALS

For comments, "Child Abuse: The Role of Adoption as a Preventative Measure," see 10 J. Marshall J. Prac. & Proc. 546 (1977).

Practice Guides and Treatises.

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§ 325 ILCS 5/2.1. [Eligibility]

Sec. 2.1. Any person or family seeking assistance in meeting child care responsibilities may use the services and facilities established by this Act which may assist in meeting such responsibilities. Whether or not the problem presented constitutes child abuse or neglect, such persons or families shall be referred to appropriate resources or agencies. No person seeking assistance under this Section shall be required to give his name or any other identifying information.

(Source: P.A. 81-1077.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2052.1.

§ 325 ILCS 5/3. [Definitions]

Sec. 3. As used in this Act unless the context otherwise requires:

"Adult resident" means any person between 18 and 22 years of age who resides in any facility licensed by the Department under the Child Care Act of 1969 [225 ILCS 10/1 et seq.]. For purposes of this Act, the criteria set forth in the definitions of "abused child" and "neglected child" shall be used in determining whether an adult resident is abused or neglected.

"Child" means any person under the age of 18 years, unless legally emancipated by reason of marriage or entry into a branch of the United States armed services.

"Department" means Department of Children and Family Services.

"Local law enforcement agency" means the police of a city, town, village or other incorporated area or the sheriff of an unincorporated area or any sworn officer of the Illinois Department of State Police.

"Abused child" means a child whose parent or immediate family member, or any person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent:

(a) inflicts, causes to be inflicted, or allows to be inflicted upon such child physical injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;

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(b) creates a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;

(c) commits or allows to be committed any sex offense against such child, as such sex offenses are defined in the Criminal Code of 1961 [720 ILCS 5/1-1 et seq.], as amended, or in the Wrongs to Children Act [720 ILCS 150/0.01 et seq.], and extending those definitions of sex offenses to include children under 18 years of age;

(d) commits or allows to be committed an act or acts of torture upon such child;

(e) inflicts excessive corporal punishment;

(f) commits or allows to be committed the offense of female genital mutilation, as defined in Section 12-34 of the Criminal Code of 1961 [720 ILCS 5/12-34], against the child;

(g) causes to be sold, transferred, distributed, or given to such child under 18 years of age, a controlled substance as defined in Section 102 of the Illinois Controlled Substances Act [720 ILCS 570/102] in violation of Article IV of the Illinois Controlled Substances Act [720 ILCS 570/401 et seq.] or in violation of the Methamphetamine Control and Community Protection Act [720 ILCS 646/1 et seq.], except for controlled substances that are prescribed in accordance with Article III of the Illinois Controlled Substances Act [720 ILCS 570/301 et seq.] and are dispensed to such child in a manner that substantially complies with the prescription; or

(h) commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services as defined in Section 10-9 of the Criminal Code of 1961 [720 ILCS 5/10-9] against the child.

A child shall not be considered abused for the sole reason that the child has been relinquished in accordance with the Abandoned Newborn Infant Protection Act [325 ILCS 2/1 et seq.].

"Neglected child" means any child who is not receiving the proper or necessary nourishment or medically indicated treatment including food or care not provided solely on the basis of the present or anticipated mental or physical impairment as determined by a physician acting alone or in consultation with other physicians or otherwise is not receiving the proper or necessary support or medical or other remedial care recognized under State law as necessary for a child's well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter; or who is abandoned by his or her parents or other person responsible for the child's welfare without a proper plan of care; or who has been provided with interim crisis intervention services under Section 3-5 of the Juvenile Court Act of 1987 [705 ILCS 405/3-5] and whose parent, guardian, or custodian refuses to permit the child to return home and no other living arrangement agreeable to the parent, guardian, or custodian can be made, and the parent, guardian, or custodian has not made any other appropriate living arrangement for the child; or who is a newborn infant whose blood, urine, or meconium contains any amount of a controlled

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substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act [720 ILCS 570/102] or a metabolite thereof, with the exception of a controlled substance or metabolite thereof whose presence in the newborn infant is the result of medical treatment administered to the mother or the newborn infant. A child shall not be considered neglected for the sole reason that the child's parent or other person responsible for his or her welfare has left the child in the care of an adult relative for any period of time. A child shall not be considered neglected for the sole reason that the child has been relinquished in accordance with the Abandoned Newborn Infant Protection Act. A child shall not be considered neglected or abused for the sole reason that such child's parent or other person responsible for his or her welfare depends upon spiritual means through prayer alone for the treatment or cure of disease or remedial care as provided under Section 4 of this Act [325 ILCS 5/4]. A child shall not be considered neglected or abused solely because the child is not attending school in accordance with the requirements of Article 26 of The School Code, as amended [105 ILCS 5/26-1 et seq.].

"Child Protective Service Unit" means certain specialized State employees of the Department assigned by the Director to perform the duties and responsibilities as provided under Section 7.2 of this Act [325 ILCS 5/7.2].

"Person responsible for the child's welfare" means the child's parent; guardian; foster parent; relative caregiver; any person responsible for the child's welfare in a public or private residential agency or institution; any person responsible for the child's welfare within a public or private profit or not for profit child care facility; or any other person responsible for the child's welfare at the time of the alleged abuse or neglect, or any person who came to know the child through an official capacity or position of trust, including but not limited to health care professionals, educational personnel, recreational supervisors, members of the clergy, and volunteers or support personnel in any setting where children may be subject to abuse or neglect.

"Temporary protective custody" means custody within a hospital or other medical facility or a place previously designated for such custody by the Department, subject to review by the Court, including a licensed foster home, group home, or other institution; but such place shall not be a jail or other place for the detention of criminal or juvenile offenders.

"An unfounded report" means any report made under this Act for which it is determined after an investigation that no credible evidence of abuse or neglect exists.

"An indicated report" means a report made under this Act if an investigation determines that credible evidence of the alleged abuse or neglect exists.

"An undetermined report" means any report made under this Act in which it was not possible to initiate or complete an investigation on the basis of information provided to the Department.

"Subject of report" means any child reported to the central register of child abuse and neglect established under Section 7.7 of this Act [325 ILCS 5/7.7] as an alleged victim of child abuse or neglect and the parent or guardian of the alleged victim or other person responsible for the alleged victim's welfare who is named in the report or added to the report as an alleged perpetrator of child abuse or neglect.

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"Perpetrator" means a person who, as a result of investigation, has been determined by the Department to have caused child abuse or neglect.

"Member of the clergy" means a clergyman or practitioner of any religious denomination accredited by the religious body to which he or she belongs.

(Source: P.A. 86-274; 86-601; 86-659; 86-1028; 88-85, § 80; 89-21, § 15-10; 90-239, § 10; 90-684, § 5; 91-802, § 5; 92-408, § 92; 92-432, § 92; 92-801, § 5; 94-556, § 1025; 95-443, § 5; 96-1196, § 5; 96-1446, § 10; 96-1464, § 5; 97-333, § 465.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2053.

Section 95 of P.A. 96-1446 contains a "no acceleration or delay" provision.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Illinois Administrative Code.

See 20 Illinois Administrative Code, § 801.150.

Effect of Amendments. The 1995 amendment by P.A. 89-21, effective July 1, 1995, in the definition of "neglected child", in the second sentence, deleted "as a plan of care" from the end; and in the definition of "person responsible" inserted "relative caregiver".

The 1997 amendment by P.A. 90-239, effective July 28, 1997, in the definition of neglected child, in the first sentence, substituted "blood, urine, or meconium" for "blood or urine".

The 1998 amendment by P.A. 90-684, effective July 31, 1998 in the definition of "Abused Child" added item f, and made related changes.

The 2000 amendment by P.A. 91-802, effective January 1, 2001, inserted subdivision g in the definition of "Abused child".

The 2001 amendment by P.A. 92-408, effective August 17, 2001, inserted the last paragraph in the definition of "Abused child" and inserted the third sentence in the definition of "Neglected child".

The 2001 amendment by P.A. 92-432, effective August 17, 2001, inserted the last paragraph in the definition of "Abused child" and inserted the third sentence in the definition of "Neglected child".

The 2002 amendment by P.A. 92-801, effective August 16, 2002, redesignated subsections a. through g. as (a) through (g); inserted "members of the clergy" in the paragraph defining " 'Person responsible for the child's welfare' "; and added the last paragraph.

The 2005 amendment by P.A. 94-556, effective September 11, 2005, in (g) added "or in violation of the Methamphetamine Control and Community Protection Act".

The 2007 amendment by P.A. 95-443, effective January 1, 2008, in the definition of "Neglected child" added "or who has been provided with interim crisis intervention services under Section 3-5

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of the Juvenile Court Act of 1987 and whose parent, guardian, or custodian refuses to permit the child to return home and no other living arrangement agreeable to the parent, guardian, or custodian can be made, and the parent, guardian, or custodian has not made any other appropriate living arrangement for the child".

The 2010 amendment by P.A. 96-1196, effective January 1, 2011, in the definition of Subject of report, inserted "as an alleged victim of child abuse or neglect" and substituted "of the alleged victim or other person responsible for the alleged victim's welfare who is named in the report or added to the report as an alleged perpetrator of child abuse or neglect" for "or other person responsible who is also named in the report"; and made related and stylistic changes.

The 2010 amendment by P.A. 96-1446, effective August 20, 2010, added the definition of Adult resident.

The 2010 amendment by P.A. 96-1464, effective August 20, 2010, in the definition of Abused child, inserted "or in the Wrongs to Children Act" in subsection (c) and added subsection (h).

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, made stylistic changes.

CASE NOTES

Analysis

"Indicated Report"
Abuse
- Corporal Punishment
- Inappropriate Behavior
- Not Shown
- Shown

Neglect
- Not Shown

Religious Beliefs Exception
Subject of Report

"Indicated Report"

Abused and Neglected Child Reporting Act, 325 ILCS 5/1 et seq., required the state child welfare agency to maintain pursuant to 325 ILCS 5/7.7 a central register of all cases of suspected child abuse or neglect and that the agency classify a report as "indicated" pursuant to 325 ILCS 5/7.12 if an investigation determined that credible evidence of the alleged abuse or neglect existed, as contemplated by 325 ILCS 5/3. However, that did not mean the report filed against the mother should remain on the register, as the injury to the mother's seven-month-old daughter from falling on a colored pencil that the mother was using to complete a school assignment was an isolated incident that could have happened to anyone rather than evidence of neglect. Slater v. Dep't of Children & Family Servs., Ill. App. 3d , 352 Ill. Dec. 108, 953 N.E.2d 44, 2011 Ill. App. LEXIS 642 (1 Dist. 2011).

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Abuse

- Corporal Punishment

Where the actions by teacher caused marks but did not cause death, disfigurement, any impairment of health, or any loss of bodily function, his actions did not constitute excessive corporal punishment and did not amount to abuse. Korunka v. Department of Children & Family Servs., 259 Ill. App. 3d 527, 197 Ill. Dec. 537, 631 N.E.2d 759 (4 Dist. 1994).

- Inappropriate Behavior

Under the holding in In re T.W., 291 Ill. App. 3d 955, 226 Ill. Dec. 376 (1997), and the definition of "abused child" in 325 ILCS 5/3 of the Abused and Neglected Child Reporting Act, 325 ILCS 5/1 et seq., a clinical social worker's client and two children under 17 with whom the client engaged in consensual sex could all be considered to be abused children. This fact could then trigger the requirements of the Reporting Act, compelling the social worker to report the client's sexual activity to the Department of Children and Family Services. Magnus v. Dep't of Prof'l Regulation, 359 Ill. App. 3d 773, 296 Ill. Dec. 222, 835 N.E.2d 77, 2005 Ill. App. LEXIS 742 (1 Dist. 2005).

Where the abuse victims filed suit against the psychological clinic alleging that it failed to report abuse, allegedly in violation of 325 ILCS 5/4, of which its therapist was informed by the abuser, the action was properly dismissed under 735 ILCS 5/2-615, as the clinic was not required to report the abuse; the children did not fall within the 325 ILCS 5/3 definition of abused children since there was no allegation that a parent or anyone else reponsible for the victims' welfare allowed the abuse to occur, and the clinic did not see the abuser in a professional or official capacity. John Doe 1 v. N. Cent. Behavioral Health Sys., 352 Ill. App. 3d 284, 287 Ill. Dec. 493, 816 N.E.2d 4, 2004 Ill. App. LEXIS 992 (3 Dist. 2004), appeal denied, 213 Ill. 2d 560, Ill. Dec. , 829 N.E.2d 788 (2005).

Inappropriate behavior does not necessarily amount to abuse. Korunka v. Department of Children & Family Servs., 259 Ill. App. 3d 527, 197 Ill. Dec. 537, 631 N.E.2d 759 (4 Dist. 1994).

- Not Shown

Whether the foster parent and acquaintance inflicted abuse and neglect upon two foster children by confining them for brief intervals in an enclosure was heavily dependent on the facts and the relevant facts did not show that confining their mobility was either unreasonable under the circumstances or abuse and neglect as contemplated under the Child Reporting Act, 325 ILCS 5/3. The record showed that the two foster children had severe behavioral problems and that the confinement of them for brief intervals was necessary to protect them from harming themselves. Walk v. Ill. Dep't of Children & Family Servs., 399 Ill. App. 3d 1174, 339 Ill. Dec. 298, 926 N.E.2d 773, 2010 Ill. App. LEXIS 171 (4 Dist. 2010).

Because a review of the factors promulgated by DCFS in Ill. Admin. Code Tit. 89, § 300 app. B revealed that assistant's actions did not amount to abuse, the trial court correctly reversed the decision of the Illinois Department of Children and Family Services in regard to expunging an assistant teacher's record of abuse of a 10-year-old student where the student bumped his head when the assistant took the student to the floor so that the student would not be injured while flailing his arms when the assistant tried to physically take him to a corner to serve a timeout. Lyons v. Ill. Dep't of Children & Family Servs., 368 Ill. App. 3d 557, 306 Ill. Dec. 745, 858 N.E.2d 542, 2006 Ill. App. LEXIS 999 (1 Dist. 2006).

- Shown

A kiss on the lips and a pat on the buttocks qualified as child abuse. Doe v. Illinois Dep't of Children & Family Servs., 265 Ill. App. 3d 907, 203 Ill. Dec. 110, 639 N.E.2d 149 (1 Dist.), appeal denied, 157 Ill. 2d 498, 205 Ill. Dec. 159, 642 N.E.2d 1276 (1994).

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Neglect

- Not Shown

Indicated finding of neglect was against the manifest weight of the evidence, because the evidence offered by the Department of Children and Family Services regarding the mother's prior history of alcohol abuse was inadmissible and the child's testimony that the mother locked the child in the child's bedroom and was drinking was not credible given the child's history of untruthfulness and the evidence that the child's bedroom door did not lock. Julie Q. v. Dep't of Children & Family Servs., Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1299 (2 Dist. Dec. 22, 2011).

Religious Beliefs Exception

The religious beliefs exception in the definition of medical neglect in this section is not applicable to the definition of medical neglect in section 802-3 of the Juvenile Court Act (705 ILCS 405/2-3). People v. E.G., 161 Ill. App. 3d 765, 113 Ill. Dec. 477, 515 N.E.2d 286 (1 Dist. 1987).

Subject of Report

The legislature does not consider a person who makes a report a subject of the report. Kemp-Golden v. Department of Children & Family Servs., 281 Ill. App. 3d 869, 217 Ill. Dec. 594, 667 N.E.2d 688 (1 Dist. 1996).

Although the definition of Subject of Report in this section does include a parent named in the report, it refers only to a parent named as an alleged perpetrator of abuse or neglect. Kemp-Golden v. Department of Children & Family Servs., 281 Ill. App. 3d 869, 217 Ill. Dec. 594, 667 N.E.2d 688 (1 Dist. 1996).

LEGAL PERIODICALS

For article, "The Folly of Joint Custody," see 69 Ill. B.J. 412 (1981).

Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 10:27 The Abused and Neglected Child Reporting Act.

§ 325 ILCS 5/4. Persons required to report; privileged communications; transmitting false report

Sec. 4. Persons required to report; privileged communications; transmitting false report. Any physician, resident, intern, hospital, hospital administrator and personnel engaged in examination, care and treatment of persons, surgeon, dentist, dentist hygienist, osteopath, chiropractor, podiatrist, physician assistant, substance abuse treatment personnel, funeral home director or employee, coroner, medical examiner, emergency medical technician, acupuncturist, crisis line or hotline personnel, school personnel (including administrators

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and both certified and non-certified school employees), educational advocate assigned to a child pursuant to the School Code, member of a school board or the Chicago Board of Education or the governing body of a private school (but only to the extent required in accordance with other provisions of this Section expressly concerning the duty of school board members to report suspected child abuse), truant officers, social worker, social services administrator, domestic violence program personnel, registered nurse, licensed practical nurse, genetic counselor, respiratory care practitioner, advanced practice nurse, home health aide, director or staff assistant of a nursery school or a child day care center, recreational program or facility personnel, law enforcement officer, licensed professional counselor, licensed clinical professional counselor, registered psychologist and assistants working under the direct supervision of a psychologist, psychiatrist, or field personnel of the Department of Healthcare and Family Servies, Juvenile Justice, Public Health, Human Services (acting as successor to the Department of Mental Health and Developmental Disabilities, Rehabilitation Services, or Public Aid), Corrections, Human Rights, or Children and Family Services, supervisor and administrator of general assistance under the Illinois Public Aid Code [305 ILCS 5/1-1 et seq.], probation officer, animal control officer or Illinois Department of Agriculture Bureau of Animal Health and Welfare field investigator, or any other foster parent, homemaker or child care worker having reasonable cause to believe a child known to them in their professional or official capacity may be an abused child or a neglected child shall immediately report or cause a report to be made to the Department.

Any member of the clergy having reasonable cause to believe that a child known to that member of the clergy in his or her professional capacity may be an abused child as defined in item (c) of the definition of "abused child" in Section 3 of this Act [325 ILCS 5/3] shall immediately report or cause a report to be made to the Department.

Any physician, physician's assistant, registered nurse, licensed practical nurse, medical technician, certified nursing assistant, social worker, or licensed professional counselor of any office, clinic, or any other physical location that provides abortions, abortion referrals, or contraceptives having reasonable cause to believe a child known to him or her in his or her professional or official capacity may be an abused child or a neglected child shall immediately report or cause a report to be made to the Department.

If an allegation is raised to a school board member during the course of an open or closed school board meeting that a child who is enrolled in the school district of which he or she is a board member is an abused child as defined in Section 3 of this Act, the member shall direct or cause the school board to direct the superintendent of the school district or other equivalent school administrator to comply with the requirements of this Act concerning the reporting of child abuse. For purposes of this paragraph, a school board member is granted the authority in his or her individual capacity to direct the superintendent of the school district or other equivalent school administrator to comply with the requirements of this Act concerning the reporting of child abuse.

Notwithstanding any other provision of this Act, if an employee of a school district has made a report or caused a report to be made to the Department under this Act involving the conduct of a current or former employee of the school district and a request is made by another school district for the provision of information concerning the job

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performance or qualifications of the current or former employee because he or she is an applicant for employment with the requesting school district, the general superintendent of the school district to which the request is being made must disclose to the requesting school district the fact that an employee of the school district has made a report involving the conduct of the applicant or caused a report to be made to the Department, as required under this Act. Only the fact that an employee of the school district has made a report involving the conduct of the applicant or caused a report to be made to the Department may be disclosed by the general superintendent of the school district to which the request for information concerning the applicant is made, and this fact may be disclosed only in cases where the employee and the general superintendent have not been informed by the Department that the allegations were unfounded. An employee of a school district who is or has been the subject of a report made pursuant to this Act during his or her employment with the school district must be informed by that school district that if he or she applies for employment with another school district, the general superintendent of the former school district, upon the request of the school district to which the employee applies, shall notify that requesting school district that the employee is or was the subject of such a report.

Whenever such person is required to report under this Act in his capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, or as a member of the clergy, he shall make report immediately to the Department in accordance with the provisions of this Act and may also notify the person in charge of such institution, school, facility or agency, or church, synagogue, temple, mosque, or other religious institution, or his designated agent that such report has been made. Under no circumstances shall any person in charge of such institution, school, facility or agency, or church, synagogue, temple, mosque, or other religious institution, or his designated agent to whom such notification has been made, exercise any control, restraint, modification or other change in the report or the forwarding of such report to the Department.

The privileged quality of communication between any professional person required to report and his patient or client shall not apply to situations involving abused or neglected children and shall not constitute grounds for failure to report as required by this Act or constitute grounds for failure to share information or documents with the Department during the course of a child abuse or neglect investigation. If requested by the professional, the Department shall confirm in writing that the information or documents disclosed by the professional were gathered in the course of a child abuse or neglect investigation.

A member of the clergy may claim the privilege under Section 8-803 of the Code of Civil Procedure [735 ILCS 5/8-803].

Any office, clinic, or any other physical location that provides abortions, abortion referrals, or contraceptives shall provide to all office personnel copies of written information and training materials about abuse and neglect and the requirements of this Act that are provided to employees of the office, clinic, or physical location who are required to make reports to the Department under this Act, and instruct such office personnel to bring to the attention of an employee of the office, clinic, or physical

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location who is required to make reports to the Department under this Act any reasonable suspicion that a child known to him or her in his or her professional or official capacity may be an abused child or a neglected child. In addition to the above persons required to report suspected cases of abused or neglected children, any other person may make a report if such person has reasonable cause to believe a child may be an abused child or a neglected child.

Any person who enters into employment on and after July 1, 1986 and is mandated by virtue of that employment to report under this Act, shall sign a statement on a form prescribed by the Department, to the effect that the employee has knowledge and understanding of the reporting requirements of this Act. The statement shall be signed prior to commencement of the employment. The signed statement shall be retained by the employer. The cost of printing, distribution, and filing of the statement shall be borne by the employer.

The Department shall provide copies of this Act, upon request, to all employers employing persons who shall be required under the provisions of this Section to report under this Act.

Any person who knowingly transmits a false report to the Department commits the offense of disorderly conduct under subsection (a)(7) of Section 26-1 of the "Criminal Code of 1961" [720 ILCS 5/26-1]. A violation of this provision is a Class 4 felony.

Any person who knowingly and willfully violates any provision of this Section other than a second or subsequent violation of transmitting a false report as described in the preceding paragraph, is guilty of a Class A misdemeanor for a first violation and a Class 4 felony for a second or subsequent violation; except that if the person acted as part of a plan or scheme having as its object the prevention of discovery of an abused or neglected child by lawful authorities for the purpose of protecting or insulating any person or entity from arrest or prosecution, the person is guilty of a Class 4 felony for a first offense and a Class 3 felony for a second or subsequent offense (regardless of whether the second or subsequent offense involves any of the same facts or persons as the first or other prior offense).

A child whose parent, guardian or custodian in good faith selects and depends upon spiritual means through prayer alone for the treatment or cure of disease or remedial care may be considered neglected or abused, but not for the sole reason that his parent, guardian or custodian accepts and practices such beliefs.

A child shall not be considered neglected or abused solely because the child is not attending school in accordance with the requirements of Article 26 of the School Code, as amended [105 ILCS 5/26-1 et seq.].

Nothing in this Act prohibits a mandated reporter who reasonably believes that an animal is being abused or neglected in violation of the Humane Care for Animals Act [510 ILCS 70/1 et seq.] from reporting animal abuse or neglect to the Department of Agriculture's Bureau of Animal Health and Welfare.

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A home rule unit may not regulate the reporting of child abuse or neglect in a manner inconsistent with the provisions of this Section. This Section is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution [Ill. Const. (1970) Art. VII, § 6] on the concurrent exercise by home rule units of powers and functions exercised by the State.

For purposes of this Section "child abuse or neglect" includes abuse or neglect of an adult resident as defined in this Act.

(Source: P.A. 86-601; 86-716; 86-835; 86-1004; 86-1028; 89-363, § 15; 89-507, § 90L-74; 89-706, § 275; 90-116, § 20; 91-259, § 15; 91-516, § 5; 92-16, § 78; 92-801, § 5; 93-137, § 5; 93-356, § 5; 93-431, § 5; 93-1041, § 905; 94-888, § 5; 95-10, § 5; 95-461, § 5; 95-876, § 270; 95-908, § 5; 96-494, § 10; 96-1446, § 10; 97-189, § 5; 97-254, § 5; 97-387, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2054.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Section 95 of P.A. 96-1446 contains a "no acceleration or delay" provision.

Cross References.

As to the type of training a person needs, in order to report suspected child abuse or neglect, see 20 ILCS 505/34.8.

As to medical practitioners and immunity from suit for divulging information about a venereal disease contracted by a minor, see 745 ILCS 45/1.

Effect of Amendments. The 1995 amendment by P.A. 89-363, effective January 1, 1996, in the first paragraph, in the first sentence, inserted "funeral home director or employee".

The 1996 amendment by P.A. 89-507, effective July 1, 1997, in the first paragraph, in the first sentence, inserted "Human Services (acting as successor to the Department of", inserted "Rehabilitation Services, or Public Aid)" and deleted "Rehabilitation Services" following "Human Rights".

The 1996 amendment by P.A. 89-706, effective January 31, 1997, incorporated the amendments by P.A. 89-507; and inserted "acupuncturist" in the first sentence of the first paragraph.

The 1997 amendment by P.A. 90-116, effective July 14, 1997, in the first paragraph, in the first sentence, inserted "physician assistant".

The 1999 amendment by P.A. 91-259, effective January 1, 2000, added the section heading, and inserted "respiratory care practitioner" in the first sentence of the first paragraph.

The 1999 amendment by P.A. 91-516, effective August 13, 1999, inserted "advanced practice nurse, home health aide" near the middle of the first sentence in the first paragraph.

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The 2001 amendment by P.A. 92-16, effective June 28, 2001, combined the amendments by P.A. 91-259 and P.A. 91-516.

The 2002 amendment by P.A. 92-801, effective August 16, 2002, added the second paragraph; in the third paragraph inserted "or as a member of the clergy", inserted "or church, synagogue, temple, mosque, or other religious institution" in two places; inserted the third paragraph; in the third-to-last paragraph substituted "is" for "shall be", inserted "for a first violation and a Class 4 felony for a second or subsequent violation", and made stylistic changes.

The 2003 amendment by P.A. 93-137, effective July 10, 2003, inserted "Licensed professional counselor, licensed clinical professional counselor" in the first sentence.

The 2003 amendment by P.A. 93-356, effective July 24, 2003, deleted "Christian Science practitioner" following "abuse treatment personnel" in the first paragraph.

The 2003 amendment by P.A. 93-431, effective August 5, 2003, substituted "3" for "4" in the ninth paragraph; and inserted the language beginning "except that if the person acted" and ending "persons as the first or other prior offense" in the tenth paragraph.

The 2004 amendment by P.A. 93-1041, effective September 29, 2004, inserted "genetic counselor" in the first paragraph.

The 2006 amendment by P.A. 94-888, effective June 20, 2006, added the parenthetical near the beginning of the first paragraph; substituted "Department of Healthcare and Family Services" for "Illinois Department of Public Aid" in the first paragraph; and added the third paragraph.

The 2007 amendment by P.A. 95-10, effective June 30, 2007, added "Juvenile Justice" in the first paragraph.

The 2007 amendment by P.A. 95-461, effective August 27, 2007, inserted "member of a school board or the Chicago Board of Education or the governing body of a private school (but only to the extent required in accordance with other provisions of this Section expressly concerning the duty of school board members to report suspected child abuse)" in the first paragraph; and made related changes.

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, combined earlier multiple amendments.

The 2008 amendment by P.A. 95-908, effective August 26, 2008, added the present fourth paragraph.

The 2009 amendment by P.A. 96-494, effective August 14, 2009, added "animal control officer or Illinois Department of Agriculture Bureau of Animal Health and Welfare field investigator" in the first paragraph; and added the last two paragraphs.

The 2010 amendment by P.A. 96-1446, effective August 20, 2010, added the last paragraph.

The 2011 amendment by P.A. 97-189, effective July 22, 2011, rewrote the second sentence of the eleventh paragraph, which formerly read: "Any person who violates this provision a second or subsequent time shall be guilty of a Class 3 felony."

The 2011 amendment by P.A. 97-254, effective January 1, 2012, inserted the third paragraph; and added the first sentence of the ninth paragraph.

The 2011 amendment by P.A. 97-387, effective August 15, 2011, in the sixth paragraph, added "or constitute grounds for failure to share information or documents with the Department during the course of a child abuse or neglect investigation" to the end of the first sentence and added the second sentence.

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This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

CASE NOTES

Analysis

Clergy Members
Confidentiality
Constitutional Rights
Duty to Report Abuse
Judicial Immunity
Neglect Finding
Privilege
Suppression

Clergy Members

Since clergy members are not listed in the category of professionals who must immediately make a report to the Division of Child and Family Services when they have reasonable cause to believe a child known to them in their professional or official capacity may be abused or neglected, the clergy privilege is applicable to communications between clergyman and accused child abuser. People v. Burnidge, 279 Ill. App. 3d 127, 216 Ill. Dec. 19, 664 N.E.2d 656 (2 Dist. 1996), aff'd, 178 Ill. 2d 429, 227 Ill. Dec. 331, 687 N.E.2d 813 (1997).

Confidentiality

The express language of this section destroys any confidentiality, for use in a criminal prosecution for child abuse, of information given by an accused to a therapist where the recipient was advised the conversation would not be confidential. People v. Morton, 188 Ill. App. 3d 95, 135 Ill. Dec. 619, 543 N.E.2d 1366 (4 Dist. 1989).

Constitutional Rights

(Unpublished) Teacher did not have an actionable claim for retaliation against a school district because the speech at issue was not protected speech when the teacher had a legal obligation to disclose the alleged complaints of sexual misconduct as part of her job duties pursuant to 325 ILCS 5/4. Tierney v. Quincy Sch. Dist. No. 172, F.3d , 2005 U.S. App. LEXIS 3348 (7th Cir. Feb. 22, 2005).

Teacher's claim under the Illinois Abused and Neglected Child Reporting Act failed for the same reason as her 42 U.S.C. § 1983 claim that she had been retaliated against for exercising her First Amendment rights by urging a school counselor to file a child abuse report failed for lack of evidence from which a reasonable jury could find a causal connection between the report of abuse and the school district's decision not to rehire her. Hausknecht v. Naperville Sch. Dist. Unit 203, F. Supp. 2d , 2004 U.S. Dist. LEXIS 8939 (N.D. Ill. May 19, 2004).

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The requirement that a tenured teacher, school psychologist and others in similar positions of responsibility promptly report child abuse to a state agency does not unconstitutionally infringe any federal right to confidentiality, especially because this state has a compelling interest in protecting children. Pesce v. J. Sterling Morton High Sch., 830 F.2d 789 (7th Cir. 1987).

Where there was no evidence that a caseworker deliberately elicited defendant's statement for prosecutorial purposes, and defendant freely relayed information to caseworker in order to effect a return of his daughter to his home, neither defendant's right to counsel nor his privilege against self-incrimination was violated by the fact that he made the statement to the caseworker without his counsel being present. People v. Bradley, 128 Ill. App. 3d 372, 83 Ill. Dec. 701, 470 N.E.2d 1121 (4 Dist. 1984).

Duty to Report Abuse

Defendant Illinois Department of Children and Family Services officials were entitled to qualified immunity on plaintiff child's Fourth Amendment claim regarding his initial removal from the family home, because his arm was fractured, no one observed how he was injured, he had an unexplained older bruise, a doctor and nurse (who were "mandated reporters" under 325 ILCS 5/4) suspected abuse because the injury didn't fit with the parents' statements, and the parents gave conflicting reports about who was home at the time. Hernandez v. Foster, 657 F.3d 463, 2011 U.S. App. LEXIS 17861 (7th Cir. 2011).

In an action arising from a teacher's sexual abuse of a student at a new school district, the student's tort claim against the school district that previously employed the harassing teacher was properly dismissed under Fed. R. Civ. P. 12(b)(6) because the student failed to identify any duty that the previous school district owed to her under Illinois tort law; the student could not rely on the previous school district's alleged violation of the reporting requirements of 325 ILCS 5/4 to support her private tort claim, and she did not identify any common law duty owed to her by the previous school district. Doe-2 v. McLean County Unit Dist. No. 5 Bd. of Dirs., 593 F.3d 507, 2010 U.S. App. LEXIS 1454 (7th Cir. 2010).

Plaintiffs state-law retaliatory discharge claims failed as plaintiffs did not identify any common law, constitutional provision, or statute that mandated criteria for investigating threats of child abuse or otherwise required the child welfare agency's chief executive officer (CEO) to do something other than what he did. Moreover, because plaintiffs had no evidence to suggest that the CEO's behavior even implicated the State's interest, they would not have viable claims for retaliatory discharge even if they were fired for reporting it. Elstad v. SOS Children's Vills. Ill., F. Supp. 2d , 2005 U.S. Dist. LEXIS 20472 (N.D. Ill. Sept. 16, 2005).

Where the abuse victims filed suit against the psychological clinic alleging that it failed to report abuse, allegedly in violation of 325 ILCS 5/4, of which its therapist was informed by the abuser, the action was properly dismissed under 735 ILCS 5/2-615, as the clinic was not required to report the abuse; the children did not fall within the 325 ILCS 5/3 definition of abused children since there was no allegation that a parent or anyone else reponsible for the victims' welfare allowed the abuse to occur, and the clinic did not see the abuser in a professional or official capacity. John Doe 1 v. N. Cent. Behavioral Health Sys., 352 Ill. App. 3d 284, 287 Ill. Dec. 493, 816 N.E.2d 4, 2004 Ill. App. LEXIS 992 (3 Dist. 2004), appeal denied, 213 Ill. 2d 560, Ill. Dec. , 829 N.E.2d 788 (2005).

Where the abuse victims filed suit against the psychological clinic alleging that it failed to report abuse, allegedly in violation of 325 ILCS 5/4, of which its therapist was informed by the abuser, the action was properly dismissed under 735 ILCS 5/2-615 as the Illinois Abused and Neglected Child Reporting Act granted no private right of action; while the Act, as stated in 325 ILCS 5/2, was meant to protect children from abuse, it did so by imposing a misdemeanor under 325 ILCS 5/4.02 if a person who was obligated to report abuse failed to do so rather than by granting a private right of action. John Doe 1 v. N. Cent. Behavioral Health Sys., 352 Ill. App. 3d 284, 287

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Ill. Dec. 493, 816 N.E.2d 4, 2004 Ill. App. LEXIS 992 (3 Dist. 2004), appeal denied, 213 Ill. 2d 560, Ill. Dec. , 829 N.E.2d 788 (2005).

Judicial Immunity

Where plaintiffs brought an action pursuant to 42 U.S.C. § 1983, based on a court order removing their son from their custody and appointing a guardian to consent to medical treatment and to the administration of blood transfusions to the child, and sued the judge who entered the order, the judge was protected by judicial immunity since his authority was based on, among other statutes, this Act. Staelens v. Yake, 432 F. Supp. 834 (N.D. Ill. 1977).

Neglect Finding

Fact that hospital failed to make a report pursuant to this section did not contradict a finding of neglect where school officials had already made a report. People v. Gomez, 53 Ill. App. 3d 353, 11 Ill. Dec. 224, 368 N.E.2d 775 (1 Dist. 1977).

Privilege

In a defamation action, the trial court did not err in instructing the jury on qualified privilege where the trial court found that the communication by the child's aunt, a doctor, as alleged sexual abuse by the child's father was qualifiedly privileged under the Abused and Neglected Child Reporting Act, 325 ILCS 5/1 et seq. Naleway v. Agnich, 386 Ill. App. 3d 635, 325 Ill. Dec. 363, 897 N.E.2d 902, 2008 Ill. App. LEXIS 1065 (2 Dist. 2008).

Defendant's constitutional rights were not violated when the social worker to whom he admitted incestuous acts informed the authorities of his conduct; even if a "social worker-patient privilege" or a "therapist-patient privilege" otherwise existed, it was not applicable where abused or neglected children were involved. People v. McKean, 94 Ill. App. 3d 502, 50 Ill. Dec. 136, 418 N.E.2d 1130 (2 Dist. 1981).

Suppression

Suppression of evidence was not required where defendant's counselor, who was both a clergyman and a psychologist, reported to the Department of Children and Family Services the name of victim of abuse, but did not name the defendant. People v. Burnidge, 178 Ill. 2d 429, 227 Ill. Dec. 331, 687 N.E.2d 813 (1997).

OPINIONS OF ATTORNEY GENERAL

Analysis

Applicability
Reasonable Cause to Believe

Applicability

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The reporting provisions of this Act are not limited only to cases of a child whose death occurs from suspected abuse or neglect before being found or brought to a hospital, but contemplates the offering of protective services in order to prevent further harm to the child and therefore clearly contemplates a situation where the child is alive. 1979 Op. Atty. Gen. 43.

Reasonable Cause to Believe

The term "reasonable cause to believe" as used in the Abused and Neglected Child Reporting Act (325 ILCS 5/1 et seq.) is equivalent to the term "suspect" as used in the federal Child Abuse Prevention and Treatment Act (42 U.S.C. § 5101 et seq.), 1977 Op. Atty. Gen. 173.

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Evidence," see 21 Ill. S. U.L.J. 847 (1997).

For article, "Survey of Illinois Law: Significant Developments in Education Law 2003- 2004," see, 29 S. Ill. U.L.J. 603 (2005).

Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 10:29 Reporting of child abuse and neglect.

§ 325 ILCS 5/4.02. [Failure to report]

Sec. 4.02. Any physician who willfully fails to report suspected child abuse or neglect as required by this Act shall be referred to the Illinois State Medical Disciplinary Board for action in accordance with paragraph 22 of Section 22 of the Medical Practice Act of 1987 [225 ILCS 60/22]. Any dentist or dental hygienist who willfully fails to report suspected child abuse or neglect as required by this Act shall be referred to the Department of Professional Regulation for action in accordance with paragraph 19 of Section 23 of the Illinois Dental Practice Act [225 ILCS 25/23]. Any other person required by this Act to report suspected child abuse and neglect who willfully fails to report such is guilty of a Class A misdemeanor for a first violation and a Class 4 felony for a second or subsequent violation.

(Source: P.A. 86-1004; 91-197, § 5; 92-801, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2054.02.

Cross References.

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As to revocation of a dental license for failure to report suspected child abuse or neglect, see 225 ILCS 25/23.

Effect of Amendments. The 1999 amendment by P.A. 91-197, effective January 1, 2000, inserted the second sentence.

The 2002 amendment by P.A. 92-801, effective August 16, 2002, in the last sentence substituted "is" for "shall be", and inserted "for a first violation and a Class 4 felony for a second or subsequent violation".

CASE NOTES

Duty To Report Abuse

Where the abuse victims filed suit against the psychological clinic alleging that it failed to report abuse, allegedly in violation of 325 ILCS 5/4, of which its therapist was informed by the abuser, the action was properly dismissed under 735 ILCS5/2-615 as the Illinois Abused and Neglected Child Reporting Act granted no private right of action; while the Act, as stated in 325 ILCS 5/2, was meant to protect children from abuse, it did so by imposing a misdemeanor under 325 ILCS 5/4.02 if a person who was obligated to report abuse failed to do so rather than by granting a private right of action. John Doe 1 v. N. Cent. Behavioral Health Sys., 352 Ill. App. 3d 284, 287 Ill. Dec. 493, 816 N.E.2d 4, 2004 Ill. App. LEXIS 992 (3 Dist. 2004), appeal denied, 213 Ill. 2d 560, Ill. Dec. , 829 N.E.2d 788 (2005).

§ 325 ILCS 5/4.1. [Reports to medical examiner or coroner]

Sec. 4.1. Any person required to report under this Act who has reasonable cause to suspect that a child has died as a result of abuse or neglect shall also immediately report his suspicion to the appropriate medical examiner or coroner. Any other person who has reasonable cause to believe that a child has died as a result of abuse or neglect may report his suspicion to the appropriate medical examiner or coroner. The medical examiner or coroner shall investigate the report and communicate his apparent gross findings, orally, immediately upon completion of the gross autopsy, but in all cases within 72 hours and within 21 days in writing, to the local law enforcement agency, the appropriate State's attorney, the Department and, if the institution making the report is a hospital, the hospital. The child protective investigator assigned to the death investigation shall have the right to require a copy of the completed autopsy report from the coroner or medical examiner.

(Source: P.A. 85-193.)

Note.

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This section was Ill.Rev.Stat., Ch. 23, Para. 2054.1.

§ 325 ILCS 5/4.2. Departmental report on death or serious life-threatening injury of child

Sec. 4.2. Departmental report on death or serious life-threatening injury of child. (a) In the case of the death or serious life-threatening injury of a child whose care and custody or custody and guardianship has been transferred to the Department, or in the case of a child abuse or neglect report made to the central register involving the death of a child, the Department shall (i) investigate or provide for an investigation of the cause of and circumstances surrounding the death or serious life-threatening injury, (ii) review the investigation, and (iii) prepare and issue a report on the death or serious life-threatening injury.

(b) The report shall include (i) the cause of death or serious life-threatening injury, whether from natural or other causes, (ii) any extraordinary or pertinent information concerning the circumstances of the child's death or serious life-threatening injury, (iii) identification of child protective or other social services provided or actions taken regarding the child or his or her family at the time of the death or serious life-threatening injury or within the preceding 5 years, (iv) any action or further investigation undertaken by the Department since the death or serious life-threatening injury of the child, (v) as appropriate, recommendations for State administrative or policy changes, and (vi) whether the alleged perpetrator of the abuse or neglect has been charged with committing a crime related to the report and allegation of abuse or neglect. In any case involving the death or near death of a child, when a person responsible for the child has been charged with committing a crime that results in the child's death or near death, there shall be a presumption that the best interest of the public will be served by public disclosure of certain information concerning the circumstances of the investigations of the death or near death of the child and any other investigations concerning that child or other children living in the same household.

If the Department receives from the public a request for information relating to a case of child abuse or neglect involving the death or serious life-threatening injury of a child, the Director shall consult with the State's Attorney in the county of venue and release the report related to the case, except for the following, which may be redacted from the information disclosed to the public: any mental health or psychological information that is confidential as otherwise provided in State law; privileged communications of an attorney; the identity of the individual or individuals, if known, who made the report; information that may cause mental or physical harm to a sibling or another child living in the household; information that may undermine an ongoing criminal investigation; and any information prohibited from disclosure by federal law or regulation. Any information provided by an adult subject of a report that is released about the case in a public forum shall be subject to disclosure upon a public information request. Information about the case shall also be subject to disclosure upon consent of an adult subject. Information about the case shall also be subject to disclosure if it has been publicly disclosed in a report by a law enforcement agency or official, a State's Attorney, a judge, or any other

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State or local investigative agency or official. Except as it may apply directly to the cause of the death or serious life-threatening injury of the child, nothing in this Section shall be deemed to authorize the release or disclosure to the public of the substance or content of any psychological, psychiatric, therapeutic, clinical, or medical reports, evaluation, or like materials or information pertaining to the child or the child's family.

(c) No later than 6 months after the date of the death or serious life-threatening injury of the child, the Department shall notify the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, and the members of the Senate and the House of Representatives in whose district the child's death or serious life-threatening injury occurred upon the completion of each report and shall submit an annual cumulative report to the Governor and the General Assembly incorporating cumulative data about the above reports and including appropriate findings and recommendations. The reports required by this subsection (c) shall be made available to the public after completion or submittal.

(d) To enable the Department to prepare the report, the Department may request and shall timely receive from departments, boards, bureaus, or other agencies of the State, or any of its political subdivisions, or any duly authorized agency, or any other agency which provided assistance, care, or services to the deceased or injured child any information they are authorized to provide.

(Source: P.A. 90-15, § 13; 95-405, § 5.)

Effective Date. Section 99 of P.A. 90-15 made this section effective upon becoming law. The Act was approved June 13, 1997.

Effect of Amendments. The 2007 amendment by P.A. 95-405, effective August 24, 2007, rewrote the section.

§ 325 ILCS 5/4.3. DCFS duty to report

Sec. 4.3. DCFS duty to report. The Department shall report the disappearance of any child under its custody or guardianship to the local law enforcement agency working in cooperation with the I SEARCH Unit located nearest the last known whereabouts of the child.

(Source: P.A. 90-27, § 20.)

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Effective Date. This section became effective January 1, 1998 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 325 ILCS 5/4.4. DCFS duty to report to State's Attorney

Sec. 4.4. DCFS duty to report to State's Attorney. Whenever the Department receives, by means of its statewide toll-free telephone number established under Section 7.6 [325 ILCS 5/7.6] for the purpose of reporting suspected child abuse or neglect or by any other means or from any mandated reporter under Section 4 [325 ILCS 5/4], a report of a newborn infant whose blood, urine, or meconium contains any amount of a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act [720 ILCS 570/102] or a metabolite thereof, with the exception of a controlled substance or metabolite thereof whose presence in the newborn infant is the result of medical treatment administered to the mother or the newborn infant, the Department must immediately report that information to the State's Attorney of the county in which the infant was born.

(Source: P.A. 95-361, § 5.)

Effective Date. Section 99 of P.A. 95-361 made this section effective upon becoming law. The Act was approved August 23, 2007.

§ 325 ILCS 5/4.4a. Department of Children and Family Services duty to report to Department of Human Services' Office of Inspector General

Sec. 4.4a. Department of Children and Family Services duty to report to Department of Human Services' Office of Inspector General. Whenever the Department receives, by means of its statewide toll-free telephone number established under Section 7.6 [325 ILCS 5/7.6] for the purpose of reporting suspected child abuse or neglect or by any other means or from any mandated reporter under Section 4 of this Act [325 ILCS 5/4], a report of suspected abuse, neglect, or financial exploitation of a disabled adult between the ages of 18 and 59 and who is not residing in a DCFS licensed facility, the Department shall instruct the reporter to contact the Department of Human Services' Office of the Inspector General and shall provide the reporter with the statewide, 24-hour toll-free telephone number established and maintained by the Department of Human Services' Office of the Inspector General.

(Source: P.A. 96-1446, § 10.)

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Note.

Section 95 of P.A. 96-1446 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 96-1446 made this section effective upon becoming law. The Act was approved August 20, 2010.

§ 325 ILCS 5/4.5. Electronic and information technology workers; reporting child pornography

Sec. 4.5. Electronic and information technology workers; reporting child pornography. (a) In this Section:

"Child pornography" means child pornography as described in Section 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-20.1] or aggravated child pornography as described in Section 11-20.1B of the Criminal Code of 1961 [720 ILCS 5/11-20.1B].

"Electronic and information technology equipment" means equipment used in the creation, manipulation, storage, display, or transmission of data, including internet and intranet systems, software applications, operating systems, video and multimedia, telecommunications products, kiosks, information transaction machines, copiers, printers, and desktop and portable computers.

"Electronic and information technology equipment worker" means a person who in the scope and course of his or her employment or business installs, repairs, or otherwise services electronic and information technology equipment for a fee but does not include (i) an employee, independent contractor, or other agent of a telecommunications carrier or telephone or telecommunications cooperative, as those terms are defined in the Public Utilities Act [220 ILCS 5/1-101 et seq.], or (ii) an employee, independent contractor, or other agent of a provider of commercial mobile radio service, as defined in 47 C.F.R. 20.3.

(b) If an electronic and information technology equipment worker discovers any depiction of child pornography while installing, repairing, or otherwise servicing an item of electronic and information technology equipment, that worker or the worker's employer shall immediately report the discovery to the local law enforcement agency or to the Cyber Tipline at the National Center for Missing & Exploited Children.

(c) If a report is filed in accordance with the requirements of 42 U.S.C. 13032, the requirements of this Section 4.5 will be deemed to have been met.

(d) An electronic and information technology equipment worker or electronic and information technology equipment worker's employer who reports a discovery of child pornography as required under this Section is immune from any criminal, civil, or administrative liability in connection with making the report, except for willful or wanton misconduct.

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(e) Failure to report a discovery of child pornography as required under this Section is a business offense subject to a fine of $1,001.

(Source: P.A. 95-944, § 5; 96-1551, § 1008.)

Multiple Versions of Subsections Multiple versions of subsections within this section have been created by the editor to reflect conflicting or postponed legislation.

Note.

Section 9995 of P.A. 96-1551 contains a "no acceleration or delay" provision.

Effective Date. Section 99 of P.A. 95-944 makes this section effective upon becoming law. The Act was approved August 29, 2008.

Effect of Amendments. The 2011 amendment by P.A. 96-1551, effective July 1, 2011, substituted "Section 11-20.1B" for "Section 11-20.3" in the definition of Child pornography in (a).

§ 325 ILCS 5/5. [Temporary protective custody]

Sec. 5. An officer of a local law enforcement agency, designated employee of the Department, or a physician treating a child may take or retain temporary protective custody of the child without the consent of the person responsible for the child's welfare, if (1) he has reason to believe that the child cannot be cared for at home or in the custody of the person responsible for the child's welfare without endangering the child's health or safety; and (2) there is not time to apply for a court order under the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.] for temporary custody of the child. The person taking or retaining a child in temporary protective custody shall immediately make every reasonable effort to notify the person responsible for the child's welfare and shall immediately notify the Department. The Department shall provide to the temporary caretaker of a child any information in the Department's possession concerning the positive results of a test performed on the child to determine the presence of the antibody or antigen to Human Immunodeficiency Virus (HIV), or of HIV infection, as well as any communicable diseases or communicable infections that the child has. The temporary caretaker of a child shall not disclose to another person any information received by the temporary caretaker from the Department concerning the results of a test performed on the child to determine the presence of the antibody or antigen to HIV, or of HIV infection, except pursuant to Section 9 of the AIDS Confidentiality Act, as now or hereafter amended [410 ILCS 235/9]. The Department shall promptly initiate proceedings under the Juvenile Court Act of 1987 for the continued temporary custody of the child.

Where the physician keeping a child in his custody does so in his capacity as a member of the staff of a hospital or similar institution, he shall notify the person in charge of the

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institution or his designated agent, who shall then become responsible for the further care of such child in the hospital or similar institution under the direction of the Department.

Said care includes, but is not limited to the granting of permission to perform emergency medical treatment to a minor where the treatment itself does not involve a substantial risk of harm to the minor and the failure to render such treatment will likely result in death or permanent harm to the minor, and there is not time to apply for a court order under the Juvenile Court Act of 1987.

Any person authorized and acting in good faith in the removal of a child under this Section shall have immunity from any liability, civil or criminal that might otherwise be incurred or imposed as a result of such removal. Any physician authorized and acting in good faith and in accordance with acceptable medical practice in the treatment of a child under this Section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of granting permission for emergency treatment.

With respect to any child taken into temporary protective custody pursuant to this Section, the Department of Children and Family Services Guardianship Administrator or his designee shall be deemed the child's legally authorized representative for purposes of consenting to an HIV test if deemed necessary and appropriate by the Department's Guardianship Administrator or designee and obtaining and disclosing information concerning such test pursuant to the AIDS Confidentiality Act [410 ILCS 305/1 et seq.] if deemed necessary and appropriate by the Department's Guardianship Administrator or designee and for purposes of consenting to the release of information pursuant to the Illinois Sexually Transmissible Disease Control Act [410 ILCS 325/1 et seq.] if deemed necessary and appropriate by the Department's Guardianship Administrator or designee.

Any person who administers an HIV test upon the consent of the Department of Children and Family Services Guardianship Administrator or his designee, or who discloses the results of such tests to the Department's Guardianship Administrator or his designee, shall have immunity from any liability, civil, criminal or otherwise, that might result by reason of such actions. For the purpose of any proceedings, civil or criminal, the good faith of any persons required to administer or disclose the results of tests, or permitted to take such actions, shall be presumed.

(Source: P.A. 86-733; 86-904; 86-1028; 90-28, § 10-15.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2055.

Effect of Amendments. The 1997 amendment by P.A. 90-28, effective January 1, 1998, in the first paragraph, in the first sentence, substituted "child cannot be cared for at home or in the" for "circumstances or conditions of the child are such that continuing in his place of residence or in the care and" and substituted "without endangering the child's health or safety" for "presents an

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imminent danger to that child's life or health".

CASE NOTES

Analysis

Constitutionality
- Due Process
- Good Faith Immunity

Constitutionality

- Due Process

Because case law on whether a pre-deprivation hearing was required before a child's removal from the family was conflicting, defendant Illinois child protection workers could have been uncertain about the procedural due process consequences of removing plaintiff child from plaintiff parents' home when a doctor and a nurse expressed suspicions about the child's injuries; case law did not put a reasonable investigator, supervisor, or manager on notice that removing the child without a pre-deprivation hearing violated plaintiffs' clearly established procedural due process rights. Hernandez v. Foster, 657 F.3d 463, 2011 U.S. App. LEXIS 17861 (7th Cir. 2011).

Due Process Clause of the Fourteenth Amendment did not require a hearing before the Illinois Department of Children and Family Services offered "safety plans" in lieu of removal of a child from parental custody during an abuse or neglect investigation, as entry into safety plans was voluntary in nature and did not impair parental rights. Although parents claimed that plans were offered based on "mere suspicion" of child abuse or neglect, any such offers could be refused because there would be no basis for removal of the child under 325 ILCS 5/5. Dupuy v. Samuels, 465 F.3d 757, 2006 U.S. App. LEXIS 24655 (7th Cir. 2006).

This Act protects both the interest of the state and the parents while also minimizing the risk to erroneous deprivation of rights. The procedures and safeguards mandated by the Act strike a proper balance between the privacy rights involved while promoting important interests. Lehman v. Stephens, 148 Ill. App. 3d 538, 101 Ill. Dec. 736, 499 N.E.2d 103 (4 Dist. 1986).

- Good Faith Immunity

In light of the substantial state interest in uncovering child abuse or neglect, and in protecting the children of this state, the "good faith" immunity mandated and permitted under this Act is clearly justified and is in no way inconsistent with the Illinois Constitution. Lehman v. Stephens, 148 Ill. App. 3d 538, 101 Ill. Dec. 736, 499 N.E.2d 103 (4 Dist. 1986).

RESEARCH REFERENCES

Validity and application of statute allowing endangered child to be temporarily removed from parental custody. 38 ALR4th 756.

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Illinois Jurisprudence, Family Law § 10:32 Immunity.

Illinois Jurisprudence, Family Law § 10:30 Taking protective custody of child.

Illinois Jurisprudence, Family Law § 10:28 Constitutionality.

§ 325 ILCS 5/6. [Photographs and x-rays]

Sec. 6. Any person required to investigate cases of suspected child abuse or neglect may take or cause to be taken, at Department expense, color photographs and x-rays of the child who is the subject of a report, and color photographs of the physical environment in which the alleged abuse or neglect has taken place. The person seeking to take such photographs or x-rays shall make every reasonable effort to notify the person responsible for the child's welfare.

(Source: P.A. 84-611.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2056.

§ 325 ILCS 5/7. Time and manner of making reports

Sec. 7. Time and manner of making reports. All reports of suspected child abuse or neglect made under this Act shall be made immediately by telephone to the central register established under Section 7.7 [325 ILCS 5/7.7] on the single, State-wide, toll-free telephone number established in Section 7.6 [325 ILCS 5/7.6], or in person or by telephone through the nearest Department office. The Department shall, in cooperation with school officials, distribute appropriate materials in school buildings listing the toll-free telephone number established in Section 7.6, including methods of making a report under this Act. The Department may, in cooperation with appropriate members of the clergy, distribute appropriate materials in churches, synagogues, temples, mosques, or other religious buildings listing the toll-free telephone number established in Section 7.6, including methods of making a report under this Act.

Wherever the Statewide number is posted, there shall also be posted the following notice:

"Any person who knowingly transmits a false report to the Department commits the offense of disorderly conduct under subsection (a)(7) of Section 26-1 of the Criminal Code of 1961 [720 ILCS 5/26-1]. A violation of this subsection is a Class 4 felony.

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The report required by this Act shall include, if known, the name and address of the child and his parents or other persons having his custody; the child's age; the nature of the child's condition including any evidence of previous injuries or disabilities; and any other information that the person filing the report believes might be helpful in establishing the cause of such abuse or neglect and the identity of the person believed to have caused such abuse or neglect. Reports made to the central register through the State-wide, toll-free telephone number shall be immediately transmitted by the Department to the appropriate Child Protective Service Unit. All such reports alleging the death of a child, serious injury to a child including, but not limited to, brain damage, skull fractures, subdural hematomas, and internal injuries, torture of a child, malnutrition of a child, and sexual abuse to a child, including, but not limited to, sexual intercourse, sexual exploitation, sexual molestation, and sexually transmitted disease in a child age 12 and under, shall also be immediately transmitted by the Department to the appropriate local law enforcement agency. The Department shall within 24 hours orally notify local law enforcement personnel and the office of the State's Attorney of the involved county of the receipt of any report alleging the death of a child, serious injury to a child including, but not limited to, brain damage, skull fractures, subdural hematomas, and, internal injuries, torture of a child, malnutrition of a child, and sexual abuse to a child, including, but not limited to, sexual intercourse, sexual exploitation, sexual molestation, and sexually transmitted disease in a child age twelve and under. All oral reports made by the Department to local law enforcement personnel and the office of the State's Attorney of the involved county shall be confirmed in writing within 24 hours of the oral report. All reports by persons mandated to report under this Act shall be confirmed in writing to the appropriate Child Protective Service Unit, which may be on forms supplied by the Department, within 48 hours of any initial report.

Written confirmation reports from persons not required to report by this Act may be made to the appropriate Child Protective Service Unit. Written reports from persons required by this Act to report shall be admissible in evidence in any judicial proceeding or administrative hearing relating to child abuse or neglect. Reports involving known or suspected child abuse or neglect in public or private residential agencies or institutions shall be made and received in the same manner as all other reports made under this Act.

For purposes of this Section "child" includes an adult resident as defined in this Act.

(Source: P.A. 86-659; 86-1028; 86-1357; 89-187, § 40; 92-801, § 5; 95-57, § 5; 96-1446, § 10; 97-189, § 5; 97-387, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.

Section 95 of P.A. 96-1446 contains a "no acceleration or delay" provision.

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Effect of Amendments. The 1995 amendment by P.A. 89-187, effective July 19, 1995, added the section catchline; and in the third paragraph, in the third sentence, substituted "sexually transmitted" for "venereal".

The 2002 amendment by P.A. 92-801, effective August 16, 2002, added the last sentence in the first paragraph.

The 2007 amendment by P.A. 95-57, effective August 10, 2007, in the third paragraph added "by the Department" in the second sentence, added the third sentence, and in the fifth sentence substituted "24 hours" for "48 hours".

The 2010 amendment by P.A. 96-1446, effective August 20, 2010, added the last paragraph.

The 2011 amendment by P.A. 97-189, effective July 22, 2011, in the third paragraph, added the second sentence and deleted the former last two sentences, which read: "A first violation of this subsection is a Class A misdemeanor, punishable by a term of imprisonment for up to one year, or by a fine not to exceed $1,000, or by both such term and fine. A second or subsequent violation is a Class 4 felony."

The 2011 amendment by P.A. 97-387, effective August 15, 2011, inserted "or administrative hearing" in the second sentence of the fourth paragraph.

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

§ 325 ILCS 5/7.1. [Cooperation with other agencies]

Sec. 7.1. (a) To the fullest extent feasible, the Department shall cooperate with and shall seek the cooperation and involvement of all appropriate public and private agencies, including health, education, social service and law enforcement agencies, religious institutions, courts of competent jurisdiction, and agencies, organizations, or programs providing or concerned with human services related to the prevention, identification or treatment of child abuse or neglect.

Such cooperation and involvement shall include joint consultation and services, joint planning, joint case management, joint public education and information services, joint utilization of facilities, joint staff development and other training, and the creation of multidisciplinary case diagnostic, case handling, case management, and policy planning teams. Such cooperation and involvement shall also include consultation and planning with the Illinois Department of Human Services regarding referrals to designated perinatal centers of newborn children requiring protective custody under this Act, whose life or development may be threatened by a developmental disability or handicapping condition.

For implementing such intergovernmental cooperation and involvement, units of local government and public and private agencies may apply for and receive federal or State funds from the Department under this Act or seek and receive gifts from local philanthropic or other private local sources in order to augment any State funds appropriated for the purposes of this Act.

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(b) The Department may establish up to 5 demonstrations of multidisciplinary teams to advise, review and monitor cases of child abuse and neglect brought by the Department or any member of the team. The Director shall determine the criteria by which certain cases of child abuse or neglect are brought to the multidisciplinary teams. The criteria shall include but not be limited to geographic area and classification of certain cases where allegations are of a severe nature. Each multidisciplinary team shall consist of 7 to 10 members appointed by the Director, including, but not limited to representatives from the medical, mental health, educational, juvenile justice, law enforcement and social service fields.

(Source: P.A. 85-1440; 89-507, § 90M-5; 92-801, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.1.

Effect of Amendments. The 1996 amendment by P.A. 89-507, effective July 1, 1997, in the second paragraph, in the second sentence, substituted "Human Services" for "Public Health".

The 2002 amendment by P.A. 92-801, effective August 16, 2002, inserted "religious institutions" in subsection (a) and made a stylistic change.

§ 325 ILCS 5/7.2. [Child Protective Service Unit]

Sec. 7.2. The Department shall establish a Child Protective Service Unit within each geographic region as designated by the Director of the Department. The Child Protective Service Unit shall perform those functions assigned by this Act to it and only such others that would further the purposes of this Act. It shall have a sufficient staff of qualified personnel to fulfill the purpose of this Act and be organized in such a way as to maximize the continuity of responsibility, care and service of the individual workers toward the individual children and families.

The Child Protective Service Unit shall designate members of each unit to receive specialty training to serve as special consultants to unit staff and the public in the areas of child sexual abuse, child deaths and injuries, and out-of-home investigations.

(Source: P.A. 85-1440.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.2.

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§ 325 ILCS 5/7.3. [Investigations]

Sec. 7.3. (a) The Department shall be the sole agency responsible for receiving and investigating reports of child abuse or neglect made under this Act, including reports of adult resident abuse or neglect as defined in this Act, except where investigations by other agencies may be required with respect to reports alleging the death of a child, serious injury to a child or sexual abuse to a child made pursuant to Sections 4.1 or 7 of this Act [325 ILCS 5/4.1 or 325 ILCS 5/7], and except that the Department may delegate the performance of the investigation to the Department of State Police, a law enforcement agency and to those private social service agencies which have been designated for this purpose by the Department prior to July 1, 1980.

(b) Notwithstanding any other provision of this Act, the Department shall adopt rules expressly allowing law enforcement personnel to investigate reports of suspected child abuse or neglect concurrently with the Department, without regard to whether the Department determines a report to be "indicated" or "unfounded" or deems a report to be "undetermined".

(Source: P.A. 85-1440; 95-57, § 5; 96-1446, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.3.

Section 95 of P.A. 96-1446 contains a "no acceleration or delay" provision.

Effect of Amendments. The 2007 amendment by P.A. 95-57, effective August 10, 2007, added the (a) subsection designation and added subsection (b).

The 2010 amendment by P.A. 96-1446, effective August 20, 2010, inserted "including reports of adult resident abuse or neglect as defined in this Act" in (a).

CASE NOTES

Documentation

Inherent in the public policy of protecting children from abuse we find another public policy requiring accurate documentation of investigations; investigations into alleged cases of child abuse must necessarily be complete and accurate. Illinois Dept. of Cent. Mgt. Servs. v. AFSCME, 245 Ill. App. 3d 87, 185 Ill. Dec. 379, 614 N.E.2d 513 (4 Dist.), appeal denied, 152 Ill. 2d 556, 190 Ill. Dec. 886, 622 N.E.2d 1203 (1993).

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Illinois Jurisprudence, Family Law § 10:31 Investigation of abuse by the Department of Children and Family Services.

§ 325 ILCS 5/7.3a. [Perinatal Coordinator]

Sec. 7.3a. The Director of the Department shall appoint a Perinatal Coordinator who shall be a physician licensed to practice medicine in all its branches with a specialty certification in pediatric care. Such coordinator, or other designated medical specialists, shall review all reports of suspected medical neglect involving newborns or infants, coordinate the evaluation of the subject of such report, and assist in necessary referrals to appropriate perinatal medical care and treatment. When the Perinatal Coordinator or other designated medical specialists, alone or in consultation with an infant care review committee established by a medical facility, determine that a newborn or infant child is being neglected as defined in Section 3 of this Act [325 ILCS 5/3], a designated employee of the Department shall take the steps necessary to protect such newborn or infant child's life or health, including but not limited to taking temporary protective custody.

(Source: P.A. 83-1248.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.3a.

§ 325 ILCS 5/7.3b. [Addicted pregnant persons]

Sec. 7.3b. All persons required to report under Section 4 [325 ILCS 5/4] may refer to the Department of Human Services any pregnant person in this State who is addicted as defined in the Alcoholism and Other Drug Abuse and Dependency Act [20 ILCS 301/1-1 et seq.]. The Department of Human Services shall notify the local Infant Mortality Reduction Network service provider or Department funded prenatal care provider in the area in which the person resides. The service provider shall prepare a case management plan and assist the pregnant woman in obtaining counseling and treatment from a local substance abuse service provider licensed by the Department of Human Services or a licensed hospital which provides substance abuse treatment services. The local Infant Mortality Reduction Network service provider and Department funded prenatal care provider shall monitor the pregnant woman through the service program. The Department of Human Services shall have the authority to promulgate rules and regulations to

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implement this Section.

(Source: P.A. 86-1004; 88-670, § 3-73; 89-507, §§ 90C-25, 90M-5.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.3b.

Effect of Amendments. The 1994 amendment by P.A. 88-670, effective December 2, 1994, in the first sentence deleted "Illinois" preceding "Alcoholism" and inserted "Abuse and".

The 1996 amendment by P.A. 89-507, § 90C-25, effective July 1, 1997, in the third sentence substituted "Human Services" for "Alcoholism and Substance Abuse".

The 1996 amendment by P.A. 89-507, § 90M-5, effective July 1, 1997, in the first, second and fifth sentences substituted "Human Services" for "Public Health"; and in the third sentence substituted "Human Services" for "Alcoholism and Substance Abuse".

Although the amendments to this section by P.A. 89-507, § 90C-25 and P.A. 89-507, § 90M-5 did not take into account the amendments made by the other, the amendments to this section have been combined into a single version by the publisher.

§ 325 ILCS 5/7.3c. Substance abuse services for women with children

Sec. 7.3c. Substance abuse services for women with children. The Department of Human Services and the Department of Children and Family Services shall develop a community based system of integrated child welfare and substance abuse services for the purpose of providing safety and protection for children, improving adult health and parenting outcomes, and improving family outcomes.

The Department of Children and Family Services, in cooperation with the Department of Human Services, shall develop case management protocols for DCFS clients with substance abuse problems. The Departments may establish pilot programs designed to test the most effective approaches to case-management. The Departments shall evaluate the effectiveness of these pilot programs and report to the Governor and the General Assembly on an annual basis.

(Source: P.A. 89-268, § 5; 89-507, § 90C-25.)

Effective Date. This section became effective January 1, 1996 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

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Effect of Amendments. The 1996 amendment by P.A. 89-507, effective July 1, 1997, in the first paragraph substituted "Human Services" for "Alcoholism and Substance Abuse (DASA)" and deleted "(DCFS)" following "Family Services"; and in the second paragraph, in the first sentence, substituted "The Department of Children and Family Services" for "DCFS" and substituted "The Department of Human Services" for "DASA" and in the second sentence substituted "The Departments shall" for "DCFS and DASA will".

§ 325 ILCS 5/7.4. [Investigation procedures]

Sec. 7.4. (a) The Department shall be capable of receiving reports of suspected child abuse or neglect 24 hours a day, 7 days a week. Whenever the Department receives a report alleging that a child is a truant as defined in Section 26-2a of The School Code [105 ILCS 5/26-2a], as now or hereafter amended, the Department shall notify the superintendent of the school district in which the child resides and the appropriate superintendent of the educational service region. The notification to the appropriate officials by the Department shall not be considered an allegation of abuse or neglect under this Act.

(a-5) Beginning January 1, 2010, the Department of Children and Family Services may implement a 5-year demonstration of a "differential response program" in accordance with criteria, standards, and procedures prescribed by rule. The program may provide that, upon receiving a report, the Department shall determine whether to conduct a family assessment or an investigation as appropriate to prevent or provide a remedy for child abuse or neglect.

For purposes of this subsection (a-5), "family assessment" means a comprehensive assessment of child safety, risk of subsequent child maltreatment, and family strengths and needs that is applied to a child maltreatment report that does not allege substantial child endangerment. "Family assessment" does not include a determination as to whether child maltreatment occurred but does determine the need for services to address the safety of family members and the risk of subsequent maltreatment.

For purposes of this subsection (a-5), "investigation" means fact-gathering related to the current safety of a child and the risk of subsequent abuse or neglect that determines whether a report of suspected child abuse or neglect should be indicated or unfounded and whether child protective services are needed.

Under the "differential response program" implemented under this subsection (a-5), the Department:

(1) Shall conduct an investigation on reports involving substantial child abuse or neglect.

(2) Shall begin an immediate investigation if, at any time when it is using a family assessment response, it determines that there is reason to believe that substantial child abuse or neglect or a serious threat to the child's safety exists.

(3) May conduct a family assessment for reports that do not allege substantial child endangerment. In determining that a family assessment is appropriate, the Department

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may consider issues including, but not limited to, child safety, parental cooperation, and the need for an immediate response.

(4) Shall promulgate criteria, standards, and procedures that shall be applied in making this determination, taking into consideration the Child Endangerment Risk Assessment Protocol of the Department.

(5) May conduct a family assessment on a report that was initially screened and assigned for an investigation.

In determining that a complete investigation is not required, the Department must document the reason for terminating the investigation and notify the local law enforcement agency or the Department of State Police if the local law enforcement agency or Department of State Police is conducting a joint investigation.

Once it is determined that a "family assessment" will be implemented, the case shall not be reported to the central register of abuse and neglect reports.

During a family assessment, the Department shall collect any available and relevant information to determine child safety, risk of subsequent abuse or neglect, and family strengths.

Information collected includes, but is not limited to, when relevant: information with regard to the person reporting the alleged abuse or neglect, including the nature of the reporter's relationship to the child and to the alleged offender, and the basis of the reporter's knowledge for the report; the child allegedly being abused or neglected; the alleged offender; the child's caretaker; and other collateral sources having relevant information related to the alleged abuse or neglect. Information relevant to the assessment must be asked for, and may include:

(A) The child's sex and age, prior reports of abuse or neglect, information relating to developmental functioning, credibility of the child's statement, and whether the information provided under this paragraph (A) is consistent with other information collected during the course of the assessment or investigation.

(B) The alleged offender's age, a record check for prior reports of abuse or neglect, and criminal charges and convictions. The alleged offender may submit supporting documentation relevant to the assessment.

(C) Collateral source information regarding the alleged abuse or neglect and care of the child. Collateral information includes, when relevant: (i) a medical examination of the child; (ii) prior medical records relating to the alleged maltreatment or care of the child maintained by any facility, clinic, or health care professional, and an interview with the treating professionals; and (iii) interviews with the child's caretakers, including the child's parent, guardian, foster parent, child care provider, teachers, counselors, family members, relatives, and other persons who may have knowledge regarding the alleged maltreatment and the care of the child.

(D) Information on the existence of domestic abuse and violence in the home of the child, and substance abuse.

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Nothing in this subsection (a-5) precludes the Department from collecting other relevant information necessary to conduct the assessment or investigation. Nothing in this subsection (a-5) shall be construed to allow the name or identity of a reporter to be disclosed in violation of the protections afforded under Section 7.19 of this Act [325 ILCS 5/7.19].

After conducting the family assessment, the Department shall determine whether services are needed to address the safety of the child and other family members and the risk of subsequent abuse or neglect.

Upon completion of the family assessment, if the Department concludes that no services shall be offered, then the case shall be closed. If the Department concludes that services shall be offered, the Department shall develop a family preservation plan and offer or refer services to the family.

At any time during a family assessment, if the Department believes there is any reason to stop the assessment and conduct an investigation based on the information discovered, the Department shall do so.

The procedures available to the Department in conducting investigations under this Act shall be followed as appropriate during a family assessment.

The Department shall arrange for an independent evaluation of the "differential response program" authorized and implemented under this subsection (a-5) to determine whether it is meeting the goals in accordance with Section 2 of this Act [325 ILCS 5/2]. The Department may adopt administrative rules necessary for the execution of this Section, in accordance with Section 4 of the Children and Family Services Act [20 ILCS 505/4].

The demonstration conducted under this subsection (a-5) shall become a permanent program on January 1, 2015, upon completion of the demonstration project period.

(b)(1) The following procedures shall be followed in the investigation of all reports of suspected abuse or neglect of a child, except as provided in subsection (c) of this Section.

(2) If, during a family assessment authorized by subsection (a-5) or an investigation, it appears that the immediate safety or well-being of a child is endangered, that the family may flee or the child disappear, or that the facts otherwise so warrant, the Child Protective Service Unit shall commence an investigation immediately, regardless of the time of day or night. All other investigations shall be commenced within 24 hours of receipt of the report. Upon receipt of a report, the Child Protective Service Unit shall conduct a family assessment authorized by subsection (a-5) or begin an initial investigation and make an initial determination whether the report is a good faith indication of alleged child abuse or neglect.

(3) Based on an initial investigation, if the Unit determines the report is a good faith indication of alleged child abuse or neglect, then a formal investigation shall commence and, pursuant to Section 7.12 of this Act [325 ILCS 5/7.12], may or may not result in an indicated report. The formal investigation shall include: direct contact with the subject or subjects of the report as soon as possible after the report is received; an evaluation of the environment of the child named in the report and any other children in the same

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environment; a determination of the risk to such children if they continue to remain in the existing environments, as well as a determination of the nature, extent and cause of any condition enumerated in such report; the name, age and condition of other children in the environment; and an evaluation as to whether there would be an immediate and urgent necessity to remove the child from the environment if appropriate family preservation services were provided. After seeing to the safety of the child or children, the Department shall forthwith notify the subjects of the report in writing, of the existence of the report and their rights existing under this Act in regard to amendment or expungement. To fulfill the requirements of this Section, the Child Protective Service Unit shall have the capability of providing or arranging for comprehensive emergency services to children and families at all times of the day or night.

(4) If (i) at the conclusion of the Unit's initial investigation of a report, the Unit determines the report to be a good faith indication of alleged child abuse or neglect that warrants a formal investigation by the Unit, the Department, any law enforcement agency or any other responsible agency and (ii) the person who is alleged to have caused the abuse or neglect is employed or otherwise engaged in an activity resulting in frequent contact with children and the alleged abuse or neglect are in the course of such employment or activity, then the Department shall, except in investigations where the Director determines that such notification would be detrimental to the Department's investigation, inform the appropriate supervisor or administrator of that employment or activity that the Unit has commenced a formal investigation pursuant to this Act, which may or may not result in an indicated report. The Department shall also notify the person being investigated, unless the Director determines that such notification would be detrimental to the Department's investigation.

(c) In an investigation of a report of suspected abuse or neglect of a child by a school employee at a school or on school grounds, the Department shall make reasonable efforts to follow the following procedures:

(1) Investigations involving teachers shall not, to the extent possible, be conducted when the teacher is scheduled to conduct classes. Investigations involving other school employees shall be conducted so as to minimize disruption of the school day. The school employee accused of child abuse or neglect may have his superior, his association or union representative and his attorney present at any interview or meeting at which the teacher or administrator is present. The accused school employee shall be informed by a representative of the Department, at any interview or meeting, of the accused school employee's due process rights and of the steps in the investigation process. The information shall include, but need not necessarily be limited to the right, subject to the approval of the Department, of the school employee to confront the accuser, if the accuser is 14 years of age or older, or the right to review the specific allegations which gave rise to the investigation, and the right to review all materials and evidence that have been submitted to the Department in support of the allegation. These due process rights shall also include the right of the school employee to present countervailing evidence regarding the accusations.

(2) If a report of neglect or abuse of a child by a teacher or administrator does not involve allegations of sexual abuse or extreme physical abuse, the Child Protective Service Unit

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shall make reasonable efforts to conduct the initial investigation in coordination with the employee's supervisor.

If the Unit determines that the report is a good faith indication of potential child abuse or neglect, it shall then commence a formal investigation under paragraph (3) of subsection (b) of this Section.

(3) If a report of neglect or abuse of a child by a teacher or administrator involves an allegation of sexual abuse or extreme physical abuse, the Child Protective Unit shall commence an investigation under paragraph (2) of subsection (b) of this Section.

(c-5) In any instance in which a report is made or caused to made by a school district employee involving the conduct of a person employed by the school district, at the time the report was made, as required under Section 4 of this Act [325 ILCS 5/4], the Child Protective Service Unit shall send a copy of its final finding report to the general superintendent of that school district.

(d) If the Department has contact with an employer, or with a religious institution or religious official having supervisory or hierarchical authority over a member of the clergy accused of the abuse of a child, in the course of its investigation, the Department shall notify the employer or the religious institution or religious official, in writing, when a report is unfounded so that any record of the investigation can be expunged from the employee's or member of the clergy's personnel or other records. The Department shall also notify the employee or the member of the clergy, in writing, that notification has been sent to the employer or to the appropriate religious institution or religious official informing the employer or religious institution or religious official that the Department's investigation has resulted in an unfounded report.

(e) Upon request by the Department, the Department of State Police and law enforcement agencies are authorized to provide criminal history record information as defined in the Illinois Uniform Conviction Information Act [20 ILCS 2635/1 et seq.] and information maintained in the adjudicatory and dispositional record system as defined in Section 2605-355 of the Department of State Police Law (20 ILCS 2605/2605-355) to properly designated employees of the Department of Children and Family Services if the Department determines the information is necessary to perform its duties under the Abused and Neglected Child Reporting Act [325 ILCS 5/1 et seq.], the Child Care Act of 1969 [225 ILCS 10/1 et seq.], and the Children and Family Services Act [20 ILCS 505/1 et seq.]. The request shall be in the form and manner required by the Department of State Police. Any information obtained by the Department of Children and Family Services under this Section is confidential and may not be transmitted outside the Department of Children and Family Services other than to a court of competent jurisdiction or unless otherwise authorized by law. Any employee of the Department of Children and Family Services who transmits confidential information in violation of this Section or causes the information to be transmitted in violation of this Section is guilty of a Class A misdemeanor unless the transmittal of the information is authorized by this Section or otherwise authorized by law.

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(f) For purposes of this Section "child abuse or neglect" includes abuse or neglect of an adult resident as defined in this Act.

(Source: P.A. 86-601; 87-400; 88-614, § 107; 91-239, § 5-480; 92-801, § 5; 95-908, § 5; 96-760, § 10; 96-1446, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.4.

Section 95 of P.A. 96-1446 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1994 amendment by P.A. 88-614, effective September 7, 1994, added subsection (e).

The 1999 amendment by P.A. 91-239, effective January 1, 2000, in the first sentence of subsection (e), substituted "Section 2605-355 of the Department of State Police Law (20 ILCS 2605/2605-355)" for "subdivision (A)19 of Section 55a of the Civil Administrative Code of Illinois".

The 2002 amendment by P.A. 92-801, effective August 16, 2002, in subsection (d) in the first sentence inserted "or with a religious institution or religious official having supervisory or hierarchical authority over a member of the clergy accused of the abuse of a child", "or the religious institution or religious official", "or member of the clergy's", and "or other", in the second sentence inserted "or the member of the clergy", "or to the appropriate religious institution or religious official", and "or religious institution or religious official"; and made stylistic changes.

The 2008 amendment by P.A. 95-908, effective August 26, 2008, added (c-5).

The 2009 amendment by P.A. 96-760, effective January 1, 2010, inserted (a-5); in (b)(2), inserted "during a family assessment authorized by subsection (a-5) or an investigation" in the first sentence, substituted "All other" for "In all other cases" in the second sentence, and inserted "conduct a family assessment authorized by subsection (a-5) or begin" in the last sentence; added "Based on an initial investigation" to the beginning of the first sentence of (b)(3); and made stylistic changes.

The 2010 amendment by P.A. 96-1446, effective August 20, 2010, added (f).

CASE NOTES

Videotaped Interviews

Circuit court did not have jurisdiction to compel Department of Children and Family Services to videotape interviews with allegedly sexually abused children. In re R.V., 288 Ill. App. 3d 860, 224 Ill. Dec. 345, 681 N.E.2d 660 (1 Dist. 1997).

Practice Guides and Treatises.

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§ 325 ILCS 5/7.5. [Access to child]

Sec. 7.5. If the Child Protective Service Unit is denied reasonable access to a child by the parents or other persons and it deems that the health, safety, and best interests of the child so require, it shall request the intervention of a local law enforcement agency or seek an appropriate court order to examine and interview the child.

(Source: P.A. 81-1077; 90-28, § 10-15.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.5.

Effect of Amendments. The 1997 amendment by P.A. 90-28, effective January 1, 1998, inserted "health, safety, and".

§ 325 ILCS 5/7.6. [Posted telephone number]

Sec. 7.6. There shall be a single State-wide, toll-free telephone number established and maintained by the Department which all persons, whether or not mandated by law, may use to report suspected child abuse or neglect at any hour of the day or night, on any day of the week. Immediately upon receipt of such reports, the Department shall transmit the contents of the report, either orally or electronically, to the appropriate Child Protective Service Unit. Any other person may use the State-wide number to obtain assistance or information concerning the handling of child abuse and neglect cases.

Wherever the Statewide number is posted, there shall also be posted the following notice:

"Any person who knowingly transmits a false report to the Department commits the offense of disorderly conduct under subsection (a)(7) of Section 26-1 of the Criminal Code of 1961 [720 ILCS 5/26-1]. A violation of this subsection is a Class 4 felony.

(Source: P.A. 84-1318; 97-189, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.6.

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Effect of Amendments. The 2011 amendment by P.A. 97-189, effective July 22, 2011, rewrote the second sentence of the last paragraph, which formerly read: "A violation of this subsection is a Class B misdemeanor, punishable by a term of imprisonment for not more than 6 months, or by a fine not to exceed $500, or by both such term and fine."

§ 325 ILCS 5/7.7. [Central register]

Sec. 7.7. There shall be a central register of all cases of suspected child abuse or neglect reported and maintained by the Department under this Act. Through the recording of initial, preliminary, and final reports, the central register shall be operated in such a manner as to enable the Department to: (1) immediately identify and locate prior reports of child abuse or neglect; (2) continuously monitor the current status of all reports of child abuse or neglect being provided services under this Act; and (3) regularly evaluate the effectiveness of existing laws and programs through the development and analysis of statistical and other information.

The Department shall maintain in the central register a listing of unfounded reports where the subject of the unfounded report requests that the record not be expunged because the subject alleges an intentional false report was made. Such a request must be made by the subject in writing to the Department, within 10 days of the investigation.

The Department shall also maintain in the central register a listing of unfounded reports where the report was classified as a priority one or priority two report in accordance with the Department's rules or the report was made by a person mandated to report suspected abuse or neglect under this Act.

The Department shall maintain in the central register for 3 years a listing of unfounded reports involving the death of a child, the sexual abuse of a child, or serious physical injury to a child as defined by the Department in rules.

The Department shall maintain all other unfounded reports for 12 months following the date of the final finding.

For purposes of this Section "child abuse or neglect" includes abuse or neglect of an adult resident as defined in this Act.

(Source: P.A. 84-611; 88-614, § 107; 90-15, § 13; 96-1164, § 5; 96-1446, § 10; 97-333, § 465.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.7.

Section 95 of P.A. 96-1446 contains a "no acceleration or delay" provision.

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Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Cross References.

As to the duty of an officer to register abused, or neglected minors, see 705 ILCS 405/2-6.

Effect of Amendments. The 1994 amendment by P.A. 88-614, effective September 7, 1994, added the last paragraph.

The 1997 amendment by P.A. 90-15, effective June 13, 1997, added the fourth paragraph.

The 2010 amendment by P.A. 96-1164, effective July 21, 2010, added the next to last paragraph.

The 2010 amendment by P.A. 96-1446, effective August 20, 2010, added the last paragraph.

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, combined earlier multiple amendments to the section.

CASE NOTES

Maintain Register

Abused and Neglected Child Reporting Act, 325 ILCS 5/1 et seq., required the state child welfare agency to maintain pursuant to 325 ILCS 5/7.7 a central register of all cases of suspected child abuse or neglect and that the agency classify a report as "indicated" pursuant to 325 ILCS 5/7.12 if an investigation determined that credible evidence of the alleged abuse or neglect existed, as contemplated by 325 ILCS 5/3. However, that did not mean the report filed against the mother should remain on the register, as the injury to the mother's seven-month-old daughter from falling on a colored pencil that the mother was using to complete a school assignment was an isolated incident that could have happened to anyone rather than evidence of neglect. Slater v. Dep't of Children & Family Servs., Ill. App. 3d , 352 Ill. Dec. 108, 953 N.E.2d 44, 2011 Ill. App. LEXIS 642 (1 Dist. 2011).

§ 325 ILCS 5/7.8. [Notification of prior report]

Sec. 7.8. Upon receiving an oral or written report of suspected child abuse or neglect, the Department shall immediately notify, either orally or electronically, the Child Protective Service Unit of a previous report concerning a subject of the present report or other pertinent information. In addition, upon satisfactory identification procedures, to be established by Department regulation, any person authorized to have access to records under Section 11.1 [325 ILCS 5/11.1] relating to child abuse and neglect may request and shall be immediately provided the information requested in accordance with this Act. However, no information shall be released unless it prominently states the report is "indicated", and only information from "indicated" reports shall be released, except that information concerning pending reports may be released to any person authorized under paragraphs (1), (2), (3) and (11) of Section 11.1. In addition, State's Attorneys are

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authorized to receive unfounded reports for prosecution purposes related to the transmission of false reports of child abuse or neglect in violation of subsection (a), paragraph (7) of Section 26-1 of the Criminal Code of 1961 [720 ILCS 5/26-1] and guardians ad litem appointed under Article II of the Juvenile Court Act of 1987 [705 ILCS 405/2-1 et seq.] shall receive the classified reports set forth in Section 7.14 of this Act [325 ILCS 5/7.14] in conformance with paragraph (19) of Section 11.1 and Section 7.14 of this Act [325 ILCS 5/11.1 and 325 ILCS 5/7.14]. The names and other identifying data and the dates and the circumstances of any persons requesting or receiving information from the central register shall be entered in the register record.

(Source: P.A. 86-904; 86-1293; 87-649.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.8.

§ 325 ILCS 5/7.9. [Initial written reports; contents]

Sec. 7.9. The Department shall prepare, print, and distribute initial, preliminary, and final reporting forms to each Child Protective Service Unit. Initial written reports from the reporting source shall contain the following information to the extent known at the time the report is made: (1) the names and addresses of the child and his parents or other persons responsible for his welfare; (1.5) the name and address of the school that the child attends (or the school that the child last attended, if the report is written during the summer when school is not in session), and the name of the school district in which the school is located, if applicable; (2) the child's age, sex, and race; (3) the nature and extent of the child's abuse or neglect, including any evidence of prior injuries, abuse, or neglect of the child or his siblings; (4) the names of the persons apparently responsible for the abuse or neglect; (5) family composition, including names, ages, sexes, and races of other children in the home; (6) the name of the person making the report, his occupation, and where he can be reached; (7) the actions taken by the reporting source, including the taking of photographs and x-rays, placing the child in temporary protective custody, or notifying the medical examiner or coroner; and (8) any other information the person making the report believes might be helpful in the furtherance of the purposes of this Act.

(Source: P.A. 84-611; 92-295, § 10; 92-651, § 66.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.9.

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Section 997 of P.A. 92-651 is a no acceleration or delay provision, and Section 998 is a no revival or extension provision.

Effect of Amendments. The 2001 amendment by P.A. 92-295, effective January 1, 2002, inserted item (1.5).

The 2002 amendment by P.A. 92-651, effective July 11, 2002, made a stylistic change.

§ 325 ILCS 5/7.10. [Preliminary report]

Sec. 7.10. Upon the receipt of each oral report made under this Act, the Child Protective Service Unit shall immediately transmit a copy thereof to the state central register of child abuse and neglect. A preliminary report from a Child Protective Service Unit shall be made at the time of the first of any 30-day extensions made pursuant to Section 7.12 [325 ILCS 5/7.12] and shall describe the status of the related investigation up to that time, including an evaluation of the present family situation and danger to the child or children, corrections or up-dating of the initial report, and actions taken or contemplated.

For purposes of this Section "child" includes an adult resident as defined in this Act.

(Source: P.A. 86-904; 96-1446, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.10.

Section 95 of P.A. 96-1446 contains a "no acceleration or delay" provision.

Effect of Amendments. The 2010 amendment by P.A. 96-1446, effective August 20, 2010, added the last paragraph.

§ 325 ILCS 5/7.12. [Determination]

Sec. 7.12. The Child Protective Service Unit shall determine, within 60 days, whether the report is "indicated" or "unfounded" and report it forthwith to the central register; where it is not possible to initiate or complete an investigation within 60 days the report may be deemed "undetermined" provided every effort has been made to undertake a complete investigation. The Department may extend the period in which such determinations must be made in individual cases for additional periods of up to 30 days each for good cause shown. The Department shall by rule establish what shall constitute good cause.

In those cases in which the Child Protective Service Unit has made a final determination that a report is "indicated" or "unfounded", the Department shall provide written

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notification of the final determination to the subjects of the report and to the alleged perpetrator, parents, personal guardian or legal guardian of the alleged child victim, and other persons required to receive notice by regular U.S. mail. Subject to appropriation, written notification of the final determination shall be sent to a perpetrator indicated for child abuse or child neglect, or both, by both regular and certified mail.

(Source: P.A. 86-904; 96-385, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.12.

Effect of Amendments. The 2009 amendment by P.A. 96-385, effective January 1, 2010, added the second paragraph.

CASE NOTES

Classifications

Abused and Neglected Child Reporting Act, 325 ILCS 5/1 et seq., required the state child welfare agency to maintain pursuant to 325 ILCS 5/7.7 a central register of all cases of suspected child abuse or neglect and that the agency classify a report as "indicated" pursuant to 325 ILCS 5/7.12 if an investigation determined that credible evidence of the alleged abuse or neglect existed, as contemplated by 325 ILCS 5/3. However, that did not mean the report filed against the mother should remain on the register, as the injury to the mother's seven-month-old daughter from falling on a colored pencil that the mother was using to complete a school assignment was an isolated incident that could have happened to anyone rather than evidence of neglect. Slater v. Dep't of Children & Family Servs., Ill. App. 3d , 352 Ill. Dec. 108, 953 N.E.2d 44, 2011 Ill. App. LEXIS 642 (1 Dist. 2011).

§ 325 ILCS 5/7.13. [Additional information]

Sec. 7.13. The reports made under this Act may contain such additional information in the furtherance of the purposes of this Act as the Department, by rule, may require.

(Source: P.A. 81-1077.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.13.

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§ 325 ILCS 5/7.14. [Classification of reports]

Sec. 7.14. All reports in the central register shall be classified in one of three categories: "indicated", "unfounded" or "undetermined", as the case may be. After the report is classified, the person making the classification shall determine whether the child named in the report is the subject of an action under Article II of the Juvenile Court Act of 1987 [705 ILCS 405/2-1 et seq.]. If the child is the subject of an action under Article II of the Juvenile Court Act, the Department shall transmit a copy of the report to the guardian ad litem appointed for the child under Section 2-17 of the Juvenile Court Act [705 ILCS 405/2-17]. All information identifying the subjects of an unfounded report shall be expunged from the register forthwith, except as provided in Section 7.7 [325 ILCS 5/7.7]. Unfounded reports may only be made available to the Child Protective Service Unit when investigating a subsequent report of suspected abuse or maltreatment involving a child named in the unfounded report; and to the subject of the report, provided the Department has not expunged the file in accordance with Section 7.7. The Child Protective Service Unit shall not indicate the subsequent report solely based upon the existence of the prior unfounded report or reports. Notwithstanding any other provision of law to the contrary, an unfounded report shall not be admissible in any judicial or administrative proceeding or action. Identifying information on all other records shall be removed from the register no later than 5 years after the report is indicated. However, if another report is received involving the same child, his sibling or offspring, or a child in the care of the persons responsible for the child's welfare, or involving the same alleged offender, the identifying information may be maintained in the register until 5 years after the subsequent case or report is closed.

Notwithstanding any other provision of this Section, identifying information in indicated reports involving serious physical injury to a child as defined by the Department in rules, may be retained longer than 5 years after the report is indicated or after the subsequent case or report is closed, and may not be removed from the register except as provided by the Department in rules. Identifying information in indicated reports involving sexual penetration of a child, sexual molestation of a child, sexual exploitation of a child, torture of a child, or the death of a child, as defined by the Department in rules, shall be retained for a period of not less than 50 years after the report is indicated or after the subsequent case or report is closed.

For purposes of this Section "child" includes an adult resident as defined in this Act.

(Source: P.A. 86-904; 87-649; 90-15, § 13; 92-801, § 5; 94-160, § 5; 96-1164, § 5; 96-1446, § 10; 97-333, § 465.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.14.

Section 95 of P.A. 96-1446 contains a "no acceleration or delay" provision.

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Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 1997 amendment by P.A. 90-15, effective June 13, 1997, in the first paragraph, added the fifth through seventh sentences.

The 2002 amendment by P.A. 92-801, effective August 16, 2002, inserted "or involving the same alleged offender" in the last sentence of the first paragraph, and made a stylistic change.

The 2005 amendment by P.A. 94-160, effective July 11, 2005, in the second paragraph deleted "the sexual abuse of a child, the death of a child, or" in the first sentence after "reports involving", and added the last sentence.

The 2010 amendment by P.A. 96-1164, effective July 21, 2010, substituted "the Department has not expunged the file in accordance with Section 7.7" for "that the subject requests the report within 60 days of being notified that the report was unfounded" in the fifth sentence of the first paragraph.

The 2010 amendment by P.A. 96-1446, effective August 20, 2010, added the last paragraph.

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, combined earlier multiple amendments to the section.

§ 325 ILCS 5/7.15. [Other information in central register]

Sec. 7.15. The central register may contain such other information which the Department determines to be in furtherance of the purposes of this Act. Pursuant to the provisions of Sections 7.14 and 7.16 [325 ILCS 5/7.14 and 325 ILCS 5/7.16], the Department may amend or remove from the central register appropriate records upon good cause shown and upon notice to the subjects of the report and the Child Protective Service Unit.

(Source: P.A. 81-1077; 90-15, § 13.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.15.

Cross References.

As to unfounded reports identifying an employee as the subject of an investigation by the Department of Children and Family Services, see 820 ILCS 40/13.

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Effect of Amendments. The 1997 amendment by P.A. 90-15, effective June 13, 1997, in the second sentence, deleted "expunge" preceding "or remove from".

§ 325 ILCS 5/7.16. [Amendment, expunction or removal]

Sec. 7.16. For any investigation or appeal initiated on or after, or pending on July 1, 1998, the following time frames shall apply. Within 60 days after the notification of the completion of the Child Protective Service Unit investigation, determined by the date of the notification sent by the Department, a subject of a report may request the Department to amend the record or remove the record of the report from the register. Such request shall be in writing and directed to such person as the Department designates in the notification. If the Department disregards any request to do so or does not act within 10 days, the subject shall have the right to a hearing within the Department to determine whether the record of the report should be amended or removed on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this Act, except that there shall be no such right to a hearing on the ground of the report's inaccuracy if there has been a court finding of child abuse or neglect, the report's accuracy being conclusively presumed on such finding. Such hearing shall be held within a reasonable time after the subject's request and at a reasonable place and hour. The appropriate Child Protective Service Unit shall be given notice of the hearing. In such hearings, the burden of proving the accuracy and consistency of the record shall be on the Department and the appropriate Child Protective Service Unit. The hearing shall be conducted by the Director or his designee, who is hereby authorized and empowered to order the amendment or removal of the record to make it accurate and consistent with this Act. The decision shall be made, in writing, at the close of the hearing, or within 45 days thereof, and shall state the reasons upon which it is based. Decisions of the Department under this Section are administrative decisions subject to judicial review under the Administrative Review Law [735 ILCS 5/3-101 et seq.].

Should the Department grant the request of the subject of the report pursuant to this Section either on administrative review or after administrative hearing to amend an indicated report to an unfounded report, the report shall be released and expunged in accordance with the standards set forth in Section 7.14 of this Act [325 ILCS 5/7.14].

(Source: P.A. 86-904; 90-15, § 13; 90-608, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.16.

Effect of Amendments. The 1997 amendment by P.A. 90-15, effective June 13, 1997, in the first paragraph, in the first sentence, substituted "the record" for "expunge identifying information from", in the fourth sentence deleted "expunged" preceding "or removed on" and in the eighth sentence deleted "expunction" preceding "or removal of"; and added the second paragraph.

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The 1998 amendment by P.A. 90-608, effective June 30, 1998, added the present first sentence; rewrote the present fourth sentence; and substituted "45 days" for "30 days" in the present ninth sentence.

CASE NOTES

Analysis

Delay
Expungement
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Delay

Appellate court's judgment affirming the expungement of indicated findings of sexual abuse by a teacher from the Illinois State Central Register was affirmed because the teacher's due process rights were violated by the standard of proof used, the low credible-evidence standard to indicate the report against the teacher and to deny his first-stage appeal, and by the delays in the provision of the hearing and the final administrative decision. Lyon v. Dep't of Children & Family Servs., 209 Ill. 2d 264, 282 Ill. Dec. 799, 807 N.E.2d 423, 2004 Ill. LEXIS 361 (2004).

In a proceeding to expunge an indicated finding of sexual molestation, where the Department of Children and Family Services conceded that time periods established in this and the Illinois Administrative Code (5 ILCS 100/1-1 et seq.) were exceeded, and plaintiff did not seek mandamus relief and instead acquiesced throughout the proceedings, and the delay was reasonable, the delay did not constitute a violation of plaintiff's due process rights. S.W. v. Illinois Dep't of Children & Family Servs., 276 Ill. App. 3d 672, 213 Ill. Dec. 280, 658 N.E.2d 1301 (1 Dist. 1995).

Expungement

Mother was entitled to have expunged the indicated report filed against the mother that found the mother was neglectful of the mother's daughter after the daughter was injured when she fell on a colored pencil the mother was using for a school project. The finding that the mother was clearly erroneous, as the injury involved an isolated incident that could have happened to anyone, which meant expungement pursuant to 325 ILCS 5/7.16 was warranted. Slater v. Dep't of Children & Family Servs., Ill. App. 3d , 352 Ill. Dec. 108, 953 N.E.2d 44, 2011 Ill. App. LEXIS 642 (1 Dist. 2011).

Court properly denied a guardian's request to expunge medical neglect findings because the guardian was not qualified to assess the degree of the child's burns, and doctors indicated that due to the significant size of the burns, the child needed to be evaluated for risk of infection, the degree of the burns, and the necessary treatment. Bolger v. Dep't of Children & Family Servs.,

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399 Ill. App. 3d 437, 339 Ill. Dec. 184, 926 N.E.2d 416, 2010 Ill. App. LEXIS 321 (2 Dist. 2010).

Hearing

The legislature did not intend that provision requiring the Department of Children and Family Services to hold a hearing within a reasonable time after request for expunction would limit the jurisdiction of the agency. Thus, the proper remedy for Department's refusal to hold a hearing is to proceed in mandamus. Shawgo v. Department of Children & Family Servs., 182 Ill. App. 3d 485, 131 Ill. Dec. 46, 538 N.E.2d 234 (4 Dist. 1989).

Proof

In an action for expunction, the burden of proving the accuracy and consistency of the record is upon the agency. Doe v. Illinois Dep't of Children & Family Servs., 265 Ill. App. 3d 907, 203 Ill. Dec. 110, 639 N.E.2d 149 (1 Dist.), appeal denied, 157 Ill. 2d 498, 205 Ill. Dec. 159, 642 N.E.2d 1276 (1994).

In an action for expunction under this section, the burden of proving the accuracy and consistency of the record is upon the agency. I.F. v. Department of Children & Family Servs., 146 Ill. App. 3d 68, 100 Ill. Dec. 97, 496 N.E.2d 1162 (1 Dist. 1986).

Where Department of Children and Family Services found that there was sufficient credible evidence which indicated child abuse based on excessive corporal punishment and recommended family counseling, and the circuit court affirmed the agency decision, petitioner's request to expunge the record was denied, as mother had admitted to striking the child and then discovering the blow had caused bleeding. I.F. v. Department of Children & Family Servs., 146 Ill. App. 3d 68, 100 Ill. Dec. 97, 496 N.E.2d 1162 (1 Dist. 1986).

Reconsideration

Letter was not a notice of "intent to deny" but was a denial which anticipated no action in the future where it contained provisions indicating that the only recourse available to plaintiff was to wait 18 months and to then apply anew for the license. Teal v. Department of Children & Family Servs., 275 Ill. App. 3d 966, 212 Ill. Dec. 475, 657 N.E.2d 676 (4 Dist. 1995).

Review

Only if department refuses to amend, expunge or remove a report, or fails to act on a subject's request to do so, is the subject entitled to an administrative hearing, and potentially, judicial review of the department's decision. Kemp-Golden v. Department of Children & Family Servs., 281 Ill. App. 3d 869, 217 Ill. Dec. 594, 667 N.E.2d 688 (1 Dist. 1996).

Standing

Parent who made the report on alleged child abuse was not a subject of the report to have standing to seek judicial review of the department's decision to expunge report. Kemp-Golden v. Department of Children & Family Servs., 281 Ill. App. 3d 869, 217 Ill. Dec. 594, 667 N.E.2d 688 (1 Dist. 1996).

Time Limitations

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Though the "credible-evidence" standard for recording an "indicated" report of child molestation by plaintiff was constitutional, the Department of Children and Family Services violated plaintiff's right to due process by failing to meet statutory and regulatory deadlines and thereby delaying his appeal. Lyon v. Dep't of Children & Family Servs., 335 Ill. App. 3d 376, 269 Ill. Dec. 276, 780 N.E.2d 748, 2002 Ill. App. LEXIS 1071 (4 Dist. 2002), aff'd, 209 Ill. 2d 264, 282 Ill. Dec. 799, 807 N.E.2d 423 (2004).

When the Department of Children and Family Services enters an "indicated" report in the central register on the basis of "credible evidence" rather than a preponderance of the evidence, due process requires the Department to strictly comply with its statutory and regulatory deadlines for processing the administrative appeal. Lyon v. Dep't of Children & Family Servs., 335 Ill. App. 3d 376, 269 Ill. Dec. 276, 780 N.E.2d 748, 2002 Ill. App. LEXIS 1071 (4 Dist. 2002), aff'd, 209 Ill. 2d 264, 282 Ill. Dec. 799, 807 N.E.2d 423 (2004).

Placement of the name of an individual who was the focus of an "indicated report" of child sex abuse on the Illinois State Central Register of suspected child abusers implicated both federal liberty interests and Illinois constitutional due process rights; a court decision upholding the Illinois Department of Children and Family Services indicated finding was reversed because the Department violated the individual's due process rights when it failed to comply with time requirements in Ill. Admin. Code ch. 89, § 336.220(a) (2001) and 325 ILCS 5/7.16 inasmuch as it failed to timely confirm the original "credible evidence" finding by a preponderance of evidence finding. Montalbano v. Ill. Dep't of Children & Family Servs., 343 Ill. App. 3d 471, 278 Ill. Dec. 160, 797 N.E.2d 1078, 2003 Ill. App. LEXIS 1220 (4 Dist. 2003), appeal denied, 209 Ill. 2d 583, 286 Ill. Dec. 166, 813 N.E.2d 223 (2004).

A gross deviation from time limitations would be deemed to be unreasonable and contrary to the legislative intent, evidenced by the setting of time limitations, that the agency act in a reasonably timely manner. Stull v. Department of Children & Family Servs., 239 Ill. App. 3d 325, 179 Ill. Dec. 954, 606 N.E.2d 786 (5 Dist. 1992), appeal denied, 149 Ill. 2d 661, 183 Ill. Dec. 872, 612 N.E.2d 524 (1993).

§ 325 ILCS 5/7.17. [Notice]

Sec. 7.17. To the fullest extent possible, written notice of any amendment, expunction, or removal of any record made under this Act shall be served upon each subject of such report and the appropriate Child Protective Service Unit. Upon receipt of such notice, the Child Protective Service Unit shall take similar action in regard to the local child abuse and neglect index and shall inform, for the same purpose, any other individuals or agencies which received such record under this Act or in any other manner. Nothing in this Section is intended to require the destruction of case records.

(Source: P.A. 81-1077.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.17.

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§ 325 ILCS 5/7.18. [Amending reports]

Sec. 7.18. Pursuant to Sections 7.15 and 7.16 [325 ILCS 5/7.15 and 325 ILCS 5/7.16] and for good cause shown, the Child Protective Service Unit may amend any report previously sent to the State-wide center. Unless otherwise prescribed by this Act, the content, form, manner and timing of making the reports shall be established by rules of the Department.

(Source: P.A. 81-1077.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.18.

§ 325 ILCS 5/7.19. [Copies]

Sec. 7.19. Upon request, a subject of a report shall be entitled to receive a copy of all information contained in the central register pertaining to his case. However, the Department may prohibit the release of data that would identify or locate a person who, in good faith, made a report or cooperated in a subsequent investigation. In addition, the Department may seek a court order from the circuit court prohibiting the release of any information which the court finds is likely to be harmful to the subject of the report.

(Source: P.A. 81-1077.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2057.19.

CASE NOTES

Confidentiality

A family's motion to require the state defendants to divulge the name of the person who reported abuse in their home was properly denied, since under this Act a mandatory reporter was given immunity from liability for good faith reporting of possible child abuse and the release of information concerning the identity of such persons was also prohibited as provided in this section. Darryl H. v. Coler, 585 F. Supp. 383 (N.D. Ill. 1984), modified on other grounds, 801

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F.2d 893 (7th Cir. 1986).

§ 325 ILCS 5/7.20. Inter-agency agreements for information

Sec. 7.20. Inter-agency agreements for information. The Department shall enter into an inter-agency agreement with the Secretary of State to establish a procedure by which employees of the Department may have immediate access to driver's license records maintained by the Secretary of State if the Department determines the information is necessary to perform its duties under the Abused and Neglected Child Reporting Act [325 ILCS 5/1 et seq.], the Child Care Act of 1969 [225 ILCS 10/1 et seq.], and the Children and Family Services Act [20 ILCS 505/1 et seq.]. The Department shall enter into an inter-agency agreement with the Department of Healthcare and Family Services and the Department of Human Services (acting as successor to the Department of Public Aid under the Department of Human Services Act [20 ILCS 1305/1-1 et seq.]) to establish a procedure by which employees of the Department may have immediate access to records, files, papers, and communications (except medical, alcohol or drug assessment or treatment, mental health, or any other medical records) of the Department of Healthcare and Family Services, county departments of public aid, the Department of Human Services, and local governmental units receiving State or federal funds or aid to provide public aid, if the Department determines the information is necessary to perform its duties under the Abused and Neglected Child Reporting Act, the Child Care Act of 1969, and the Children and Family Services Act.

(Source: P.A. 88-614, § 107; 89-507, § 90L-74; 95-331, § 860.)

Effective Date. Section 999 of P.A. 88-614 made this section effective upon becoming law. The Act was approved September 7, 1994.

Effect of Amendments. The 1996 amendment by P.A. 89-507, effective July 1, 1997, in the second sentence inserted "and the Department of Human Services (acting as successor to the Department of Public Aid under the Department of Human Services Act)", inserted "of Public Aid" following "Illinois Department" and inserted "the Department of Human Services".

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, twice substituted "Department of Healthcare and Family Services" for "Illinois Department of Public Aid".

§ 325 ILCS 5/7.21. Multidisciplinary Review Committee

Sec. 7.21. Multidisciplinary Review Committee. (a) The Department may establish multidisciplinary review committees in each region of the State to assure that mandated reporters have the ability to have a review conducted on any situation where a child abuse or neglect report made by them was "unfounded", and they have concerns about the

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adequacy of the investigation. These committees shall draw upon the expertise of the Child Death Review Teams as necessary and practicable. Each committee will be composed of the following: a health care professional, a Department employee, a law enforcement official, a licensed social worker, and a representative of the State's attorney's office. In appointing members of a committee, primary consideration shall be given to a prospective member's prior experience in dealing with cases of suspected child abuse or neglect.

(b) Whenever the Department determines that a reported incident of child abuse or neglect from a mandated reporter is "unfounded", the mandated reporter may request a review of the investigation within 10 days of the notification of the final finding. Whenever the Department determines that a reported incident of child abuse or neglect from a mandated reporter or any other reporter is "unfounded", the minor's guardian ad litem appointed under the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.] may request a review of the investigation within 10 days of the notification of the final finding if the subject of the report is also the minor for whom the guardian ad litem has been appointed. The review of the investigation requested by the guardian ad litem may be conducted by the Regional Child Protection Manager.

A review under this subsection will be conducted by the committee, except those requests for review that are made by the guardian ad litem, which shall be conducted by the Regional Child Protection Manager. The Department shall make available to the committee all information in the Department's possession concerning the case. The committee shall make recommendations to the Department as to the adequacy of the investigation and of the accuracy of the final finding determination. These findings shall be forwarded to the Regional Child Protection Manager.

(c) The Department shall provide complete records of these investigations to the committee. Records provided to the committee and recommendation reports generated by the committee shall not be public record.

(c-5) On or before October 1 of each year, the Department shall prepare a report setting forth (i) the number of investigations reviewed by each committee during the previous fiscal year and (ii) the number of those investigations that the committee found to be inadequate. The report shall also include a summary of the committee's comments and a summary of the corrective action, if any, that was taken in response to the committee's recommendations. The report shall be a public record. The Department shall submit the report to the General Assembly and shall make the report available to the public upon request.

(d) The Department shall adopt rules to implement this Section.

(Source: P.A. 89-269, § 5; 90-239, § 10; 91-812, § 510.)

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Section 995 of P.A. 91-812 contains a severability provision.

Effective Date. This section became effective January 1, 1996 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 1997 amendment by P.A. 90-239, effective July 28, 1997, in subsection (a), rewrote the second sentence which read "These committees will serve under the auspices of the Child Death Review Teams".

The 2000 amendment by P.A. 91-812, effective July 13, 2000, in subsection (b) inserted the last two sentences in the first paragraph and rewrote the first sentence in the second paragraph, which formerly read: "This review will be conducted by the committee"; and inserted subsection (c-5).

§ 325 ILCS 5/8.1. [Unfounded reports]

Sec. 8.1. If the Child Protective Service Unit determines after investigating a report that there is no credible evidence that a child is abused or neglected, it shall deem the report to be an unfounded report. However, if it appears that the child or family could benefit from other social services, the local service may suggest such services, including services under Section 8.2 [325 ILCS 5/8.2], for the family's voluntary acceptance or refusal. If the family declines such services, the Department shall take appropriate action in keeping with the best interest of the child, including referring a member of the child's family to a facility licensed by the Department of Human Services or the Department of Public Health. For purposes of this Section "child" includes an adult resident as defined in this Act.

(Source: P.A. 84-611; 88-85, § 80; 88-487, § 45; 88-670, § 2-53; 89-507, § 90C-25; 96-1446, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2058.1.

Section 95 of P.A. 96-1446 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1994 amendment by P.A. 88-670, effective December 2, 1994, combined the amendments by P.A. 88-85 and P.A. 88-487.

The 1996 amendment by P.A. 89-507, effective July 1, 1997, in the third sentence substituted "Human Services" for "Alcoholism and Substance Abuse".

The 2010 amendment by P.A. 96-1446, effective August 20, 2010, added the last sentence.

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§ 325 ILCS 5/8.2. [Service plan; report to General Assembly]

Sec. 8.2. If the Child Protective Service Unit determines, following an investigation made pursuant to Section 7.4 of this Act [325 ILCS 5/7.4], that there is credible evidence that the child is abused or neglected, the Department shall assess the family's need for services, and, as necessary, develop, with the family, an appropriate service plan for the family's voluntary acceptance or refusal. In any case where there is evidence that the perpetrator of the abuse or neglect is an addict or alcoholic as defined in the Alcoholism and Other Drug Abuse and Dependency Act [20 ILCS 301/1-1 et seq.], the Department, when making referrals for drug or alcohol abuse services, shall make such referrals to facilities licensed by the Department of Human Services or the Department of Public Health. The Department shall comply with Section 8.1 [325 ILCS 5/8.1] by explaining its lack of legal authority to compel the acceptance of services and may explain its concomitant authority to petition the Circuit court under the Juvenile Court Act of 1987 or refer the case to the local law enforcement authority or State's attorney for criminal prosecution.

For purposes of this Act, the term "family preservation services" refers to all services to help families, including adoptive and extended families. Family preservation services shall be offered, where safe and appropriate, to prevent the placement of children in substitute care when the children can be cared for at home or in the custody of the person responsible for the children's welfare without endangering the children's health or safety, to reunite them with their families if so placed when reunification is an appropriate goal, or to maintain an adoptive placement. The term "homemaker" includes emergency caretakers, homemakers, caretakers, housekeepers and chore services. The term "counseling" includes individual therapy, infant stimulation therapy, family therapy, group therapy, self-help groups, drug and alcohol abuse counseling, vocational counseling and post-adoptive services. The term "day care" includes protective day care and day care to meet educational, prevocational or vocational needs. The term "emergency assistance and advocacy" includes coordinated services to secure emergency cash, food, housing and medical assistance or advocacy for other subsistence and family protective needs.

Before July 1, 2000, appropriate family preservation services shall, subject to appropriation, be included in the service plan if the Department has determined that those services will ensure the child's health and safety, are in the child's best interests, and will not place the child in imminent risk of harm. Beginning July 1, 2000, appropriate family preservation services shall be uniformly available throughout the State. The Department shall promptly notify children and families of the Department's responsibility to offer and provide family preservation services as identified in the service plan. Such plans may include but are not limited to: case management services; homemakers; counseling; parent education; day care; emergency assistance and advocacy assessments; respite care; in-home health care; transportation to obtain any of the above services; and medical assistance. Nothing in this paragraph shall be construed to create a private right of action or claim on the part of any individual or child welfare agency, except that when a child is the subject of an action under Article II of the Juvenile Court Act of 1987 [705 ILCS

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405/2-1 et seq.] and the child's service plan calls for services to facilitate achievement of the permanency goal, the court hearing the action under Article II of the Juvenile Court Act of 1987 may order the Department to provide the services set out in the plan, if those services are not provided with reasonable promptness and if those services are available.

The Department shall provide a preliminary report to the General Assembly no later than January 1, 1991, in regard to the provision of services authorized pursuant to this Section. The report shall include:

(a) the number of families and children served, by type of services;

(b) the outcome from the provision of such services, including the number of families which remained intact at least 6 months following the termination of services;

(c) the number of families which have been subjects of founded reports of abuse following the termination of services;

(d) an analysis of general family circumstances in which family preservation services have been determined to be an effective intervention;

(e) information regarding the number of families in need of services but unserved due to budget or program criteria guidelines;

(f) an estimate of the time necessary for and the annual cost of statewide implementation of such services;

(g) an estimate of the length of time before expansion of these services will be made to include families with children over the age of 6; and

(h) recommendations regarding any proposed legislative changes to this program.

Each Department field office shall maintain on a local basis directories of services available to children and families in the local area where the Department office is located.

The Department shall refer children and families served pursuant to this Section to private agencies and governmental agencies, where available.

Where there are 2 equal proposals from both a not-for-profit and a for-profit agency to provide services, the Department shall give preference to the proposal from the not-for-profit agency.

No service plan shall compel any child or parent to engage in any activity or refrain from any activity which is not reasonably related to remedying a condition or conditions that gave rise or which could give rise to any finding of child abuse or neglect.

(Source: P.A. 86-425; 87-860; 87-895; 87-1199, § 2; 88-670, § 3-73; 89-21, § 15-10; 89-507, § 90C-25; 90-14, § 3-120; 90-28, § 10-15; 90-608, § 20; 96-600, § 10.)

Note.

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This section was Ill.Rev.Stat., Ch. 23, Para. 2058.2.

Effect of Amendments. The 1994 amendment by P.A. 88-670, effective December 2, 1994, in the first paragraph, in the second sentence deleted "Illinois" preceding "Alcoholism", inserted "Abuse and" and deleted "as now or hereafter amended" following "Dependency Act".

The 1995 amendment by P.A. 89-21, effective June 6, 1995, in the third paragraph, added the first, second and fifth sentences, deleted the former fourth paragraph which read "The availability of family preservation services shall be phased in, so that orderly development may occur, during the first 5 fiscal years after the effective date (December 22, 1987) of this amendatory Act of 1987). The Department shall develop a phase in plan and rules in consultation with the Child Welfare Advisory Committee"; and deleted the former fifth paragraph which read "During the phase in period, any type of service enumerated in this Act and made available pursuant to the phase in plan to any client population in one geographic area shall be made equally available to the same client population throughout the State within 3 full years. By July 1, 1995, the family preservation services shall be uniformly available throughout the State".

The 1996 amendment by P.A. 89-507, effective July 1, 1997, in the first paragraph, in the second sentence, substituted "Human Services" for "Alcoholism and Substance Abuse".

The 1997 amendment by P.A. 90-14, effective July 1, 1997, in the first paragraph, in the third sentence, substituted "concomitant" for "noncommitant".

The 1997 amendment by P.A. 90-28, effective January 1, 1998, in the first paragraph, in the third sentence, substituted "concomitant" for "noncommitant"; in the second paragraph, in the first sentence, inserted "when the children can be cared for at home or in the custody of the person responsible for the children's welfare without endangering the children's health or safety" and substituted "when" for "and if"; and in the third paragraph, in the first sentence, inserted "will ensure the child's health and safety" added a comma after "interests" and substituted "will not place the child" for "when the child will not be".

The 1998 amendment by P.A. 90-608, effective June 30, 1998, incorporated the amendments by P.A. 90-14 and P.A. 90-28; and rewrote the former first sentence of the second paragraph to form the present first and second sentences.

The 2009 amendment by P.A. 96-600, effective August 21, 2009, added the exception language at the end of the last sentence of the third paragraph.

CASE NOTES

Analysis

Construction
Family Preservation Services
Notice of Plans
Payment for Services

Construction

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Section 750 ILCS 50/1(D)(m) and this section together indicate that the measure of reasonable progress encompasses those conditions which could give rise to a finding of abuse or neglect (not merely those conditions which led to the initial removal of the child), and support a holding that "the standard by which progress is to be measured is parental compliance with the court's directives, the service plan, or both." In re C.S., 294 Ill. App. 3d 780, 229 Ill. Dec. 225, 691 N.E.2d 161 (4 Dist. 1998).

The Juvenile Court Act (705 ILCS 405/1-1 et seq.), this Act, the Children and Family Services Act (20 ILCS 505/1 et seq.) and to some extent the Illinois Alcoholism and Other Drug Dependency Act (20 ILCS 301/1-1 et seq.) must be construed in concert to determine the powers and responsibilities of Department of Children and Family Services in cases involving abuse or neglect resulting from parental drug abuse. In re Lawrence M., 172 Ill. 2d 523, 219 Ill. Dec. 32, 670 N.E.2d 710 (1996).

Family Preservation Services

Pursuant to the provisions in the Juvenile Court Act (705 ILCS 405/1-1 et seq.) and Department of Children and Family Services' (DCFS) mandate, the court may enter interim orders for services to the child and his or her family in order to prevent the unnecessary separation of children from their families and restoring to their families children who have been removed where it has found that they are in the best interest of the minor and his or her family and will help preserve the family. In re Lawrence M., 269 Ill. App. 3d 253, 206 Ill. Dec. 817, 645 N.E.2d 1069 (1 Dist.), aff'd, 172 Ill. 2d 523, 219 Ill. Dec. 32, 670 N.E.2d 710 (1996).

Orders were essential to the reunification of the families in question as in each case the Department of Children and Family Services did not dispute the need for inpatient treatment, but simply claimed that it should not be required to pay for such treatment and in all cases but one drug treatment was recommended by Department of Children and Family Services itself or by substance abuse professionals. In re Lawrence M., 172 Ill. 2d 523, 219 Ill. Dec. 32, 670 N.E.2d 710 (1996).

Notice of Plans

Where Department of Children and Family Services (DCFS) failed to inform father of the various service plans which were created to enable him to work towards visitation and/or custody of his children and there was no indication in the record that any of the DCFS workers involved in case ever contacted the Department of Corrections in an effort to locate the father who had informed DCFS of his incarceration, DCFS' handling of the case was inexcusably clumsy, and since DCFS did not keep the father apprised of the service plans, his failure to complete the tasks within those plans could not alone support a finding of unfitness. T.D. v. Baldwin, 268 Ill. App. 3d 239, 205 Ill. Dec. 708, 643 N.E.2d 1315 (1 Dist. 1994).

Payment for Services

While it is true several statutory provisions allude to the Department of Children and Family Service's duty to make drug or alcohol abuse treatment recommendations in the family's case or service plan, these provisions do not abrogate its responsibility to provide and pay for drug and alcohol treatment services for parents who need these services. In re Lawrence M., 172 Ill. 2d 523, 219 Ill. Dec. 32, 670 N.E.2d 710 (1996).

Practice Guides and Treatises.

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§ 325 ILCS 5/8.3. [Assisting Circuit Court]

Sec. 8.3. The Department shall assist a Circuit Court during all stages of the court proceeding in accordance with the purposes of this Act and the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.] by providing full, complete, and accurate information to the court and by appearing in court if requested by the court. Failure to provide assistance requested by a court shall be enforceable through proceedings for contempt of court.

(Source: P.A. 85-1209; 88-310, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2058.3.

§ 325 ILCS 5/8.4. [Rehabilitative services]

Sec. 8.4. The Department shall provide or arrange for and monitor, as authorized by this Act, rehabilitative services for children and their families on a voluntary basis or under a final or intermediate order of the Court.

(Source: P.A. 84-611.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2058.4.

§ 325 ILCS 5/8.5. [Child abuse and neglect index]

Sec. 8.5. The Child Protective Service Unit shall maintain a local child abuse and neglect index of all cases reported under this Act which will enable it to determine the location of case records and to monitor the timely and proper investigation and disposition of cases. The index shall include the information contained in the initial, progress, and final reports required under this Act, and any other appropriate information. For purposes of this Section "child abuse and neglect" includes abuse or neglect of an adult resident as defined in this Act.

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(Source: P.A. 81-1077; 96-1446, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2058.5.

Section 95 of P.A. 96-1446 contains a "no acceleration or delay" provision.

Effect of Amendments. The 2010 amendment by P.A. 96-1446, effective August 20, 2010, added the last sentence.

§ 325 ILCS 5/8.6. Reports to a child's school

Sec. 8.6. Reports to a child's school. Within 10 days after completing an investigation of alleged physical or sexual abuse under this Act, if the report is indicated, the Child Protective Service Unit shall send a copy of its final finding report to the school that the child who is the indicated victim of the report attends. If the final finding report is sent during the summer when the school is not in session, the report shall be sent to the last school that the child attended. The final finding report shall be sent as "confidential", and the school shall be responsible for ensuring that the report remains confidential in accordance with the Illinois School Student Records Act [105 ILCS 10/1 et seq.]. If an indicated finding is overturned in an appeal or hearing, or if the Department has made a determination that the child is no longer at risk of physical or sexual harm, the Department shall request that the final finding report be purged from the student's record, and the school shall purge the final finding report from the student's record and return the report to the Department. If an indicated report is expunged from the central register, and that report has been sent to a child's school, the Department shall request that the final finding report be purged from the student's record, and the school shall purge the final finding report from the student's record and return the report to the Department.

(Source: P.A. 92-295, § 10.)

Effective Date. This section is effective January 1, 2002, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 325 ILCS 5/9. [Immunity from liability]

Sec. 9. Any person, institution or agency, under this Act, participating in good faith in the making of a report or referral, or in the investigation of such a report or referral or in the taking of photographs and x-rays or in the retaining a child in temporary protective

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custody or in making a disclosure of information concerning reports of child abuse and neglect in compliance with Sections 4.2 and 11.1 of this Act [325 ILCS 5/4.2 and 325 ILCS 5/11.1] or Section 4 of this Act [325 ILCS 5/4], as it relates to disclosure by school personnel and except in cases of wilful or wanton misconduct shall have immunity from any liability, civil, criminal or that otherwise might result by reason of such actions. For the purpose of any proceedings, civil or criminal, the good faith of any persons required to report or refer, or permitted to report, cases of suspected child abuse or neglect or permitted to refer individuals under this Act or required to disclose information concerning reports of child abuse and neglect in compliance with Sections 4.2 and 11.1 of this Act, shall be presumed. For purposes of this Section "child abuse and neglect" includes abuse or neglect of an adult resident as defined in this Act.

(Source: P.A. 86-1004; 90-15, § 13; 95-908, § 5; 96-1446, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2059.

Section 95 of P.A. 96-1446 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1997 amendment by P.A. 90-15, effective June 13, 1997, in the first sentence inserted "or in making a disclosure of information concerning reports of child abuse and neglect in compliance with Sections 4.2 and 11.1 of this Act"; and in the second sentence added "or required to disclose information concerning reports of child abuse and neglect in compliance with Sections 4.2 and 11.1 of this Act" at the end.

The 2008 amendment by P.A. 95-908, effective August 26, 2008, inserted "or Section 4 of this Act, as it relates to disclosure by school personnel and except in cases of wilful or wanton misconduct" and made a related change in the first sentence.

The 2010 amendment by P.A. 96-1446, effective August 20, 2010, added the last sentence.

CASE NOTES

Analysis

Constitutionality
Immunity
- Not Granted
- Precluded by Allegations
Presumption
- Rebuttal
- To Whom Recorded
- Upheld

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Constitutionality

In light of the substantial state interest in uncovering child abuse or neglect, and in protecting the children of this state, the "good faith" immunity provided for, mandated, and permitted reporters under this Act is clearly justified and is in no way inconsistent with the Illinois Constitution. Lehman v. Stephens, 148 Ill. App. 3d 538, 101 Ill. Dec. 736, 499 N.E.2d 103 (4 Dist. 1986).

Immunity

- Not Granted

Liability resulting from the independent negligence of a doctor did not come within the umbrella of the immunity provision of the Abused and Neglected Child Reporting Act, 325 ILCS 5/9, simply if the result of that malpractice became a predicate of a Department of Children and Family Services (DCFS) report that followed; under these circumstances, if it could be shown that the damages claimed resulted directly from the misdiagnosis and not from the DCFS report itself, there would be no reason to extend to that independent malpractice the protection of the statute's immunity provision. Nosbaum by Harding v. Martini, 312 Ill. App. 3d 108, 244 Ill. Dec. 488, 726 N.E.2d 84, 2000 Ill. App. LEXIS 86 (1 Dist. 2000).

Immunity under 325 ILCS 5/9 of the Abused and Neglected Child Reporting Act, was not conditioned on the reporting being done immediately. Nosbaum by Harding v. Martini, 312 Ill. App. 3d 108, 244 Ill. Dec. 488, 726 N.E.2d 84, 2000 Ill. App. LEXIS 86 (1 Dist. 2000).

Although a doctor did not herself report suspected child abuse to the Department of Children and Family Services (DCFS), her medical examination of the child was listed in a social worker's report as evidence of suspected abuse and therefore, she participated in the report; thus, she could not be denied immunity under 325 ILCS 5/9 of the Abused and Neglected Child Reporting Act, on the ground that she did not make the specific report. Nosbaum by Harding v. Martini, 312 Ill. App. 3d 108, 244 Ill. Dec. 488, 726 N.E.2d 84, 2000 Ill. App. LEXIS 86 (1 Dist. 2000).

Where trial court determined that defendant did not know a statement to be true and had no reasonable basis to know that it was true, that defendant's behavior in general was corroborative of an attitude of malice, and that defendant's subsequent explanations as to his making the statement were hollow with discordance, in light of the finding of lack of good faith, defendant was not entitled to immunity under this section. Brown v. Farkas, 158 Ill. App. 3d 772, 110 Ill. Dec. 823, 511 N.E.2d 1143 (1 Dist. 1986).

- Precluded by Allegations

Statute did not afford immunity where the plaintiff alleged personal injury resulting from medical care and treatment administered by a physician; however, a physician was protected from liability in reporting a diagnosis provided that he has acted in good faith in diagnosing the patient and reporting the information. Doe v. Winny, 327 Ill. App. 3d 668, 261 Ill. Dec. 852, 764 N.E.2d 143, 2002 Ill. App. LEXIS 73 (2 Dist. 2002).

Allegations that defendant grabbed plaintiff by the shoulders and threw her on a bed supported the conclusion that the defendant acted wilfully or recklessly and perhaps with malice, and was sufficient to preclude, on a motion to dismiss, the application of the good faith immunity provided by this section. Falk ex rel. Falk v. Martel, 210 Ill. App. 3d 557, 155 Ill. Dec. 248, 569 N.E.2d 248 (3 Dist. 1991).

Presumption

- Rebuttal

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Allegations in a mother's complaint that a hospital continued to question a child about sexual abuse, conducted multiple vaginal examinations on the child, and refused to release the child to her mother until the Illinois Department of Children and Family Services gave its okay, even though at the time, the hospital had clear evidence that no sexual abuse involving the child had taken place, were sufficient to rebut any presumption of good faith by the hospital at the pleading stage of the mother's action and were sufficient to withstand a motion to dismiss. Lipscomb v. Sisters of St. Francis Health Servs., 343 Ill. App. 3d 1036, 278 Ill. Dec. 575, 799 N.E.2d 293, 2003 Ill. App. LEXIS 1135 (1 Dist. 2003).

The presumption of good faith afforded by this section on the part of the mandated reporter must be rebutted in order to have the name divulged. Darryl H. v. Coler, 585 F. Supp. 383 (N.D. Ill. 1984), modified on other grounds, 801 F.2d 893 (7th Cir. 1986).

- To Whom Recorded

The second sentence of this section grants a presumption of good faith to required and permitted reporters, and not to the other categories of persons mentioned in the first sentence. Thus, defendant, who was investigating a report of child abuse, was not entitled to a presumption of good faith. Falk ex rel. Falk v. Martel, 210 Ill. App. 3d 557, 155 Ill. Dec. 248, 569 N.E.2d 248 (3 Dist. 1991).

- Upheld

Court held that the district court's finding that the parents did not rebut the Illinois statutory presumption of good faith, 325 ILCS 5/9, running in favor of the doctor, for reporting suspected child abuse with respect to their claim for defamation was proper; as the doctor did not have to have evidence of previous abuse per 325 ILCS 5/3, the doctor's belief that the parents might not be equipped to provide their child with the necessary medical care was sufficient. Franciski v. Univ. of Chi. Hosps., 338 F.3d 765, 2003 U.S. App. LEXIS 15430 (7th Cir. 2003).

Where a doctor followed proper procedures in conducting her examination of a child, and reported positive gonorrhea test results to the Illinois Department of Children and Family Services (DCFS) as required by statute, after notifying parents, the parents failed to overcome the statutory presumption that the doctor acted in good faith in reporting the child's test results to the DCFS. Poulos v. Lane, 276 Ill. App. 3d 524, 213 Ill. Dec. 404, 659 N.E.2d 34 (1 Dist. 1995), appeal denied, 166 Ill. 2d 553, 216 Ill. Dec. 10, 664 N.E.2d 647 (1996).

OPINIONS OF ATTORNEY GENERAL

Federal Compliance

The term "reasonable cause to believe" as used in the Abused and Neglected Child Reporting Act (325 ILCS 5/1 et seq.) is equivalent to the term "suspect" as used in the federal Child Abuse Prevention and Treatment Act (42 U.S.C. § 5101 et seq.), 1977 Op. Atty. Gen. 173.

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Torts," see 25 S. Ill. U. L.J. 1001 (2001).

For article, "Survey of Illinois Law: Health Care," see 25 S. Ill. U. L.J. 873 (2001).

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Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 10:32 Immunity.

Illinois Jurisprudence, Family Law § 10:28 Constitutionality.

Illinois Jurisprudence, Family Law § 10:27 The Abused and Neglected Child Reporting Act.

§ 325 ILCS 5/9.1. Employer discrimination

Sec. 9.1. Employer discrimination. No employer shall discharge, demote or suspend, or threaten to discharge, demote or suspend, or in any manner discriminate against any employee who makes any good faith oral or written report of suspected child abuse or neglect, or who is or will be a witness or testify in any investigation or proceeding concerning a report of suspected child abuse or neglect. For purposes of this Section "child abuse or neglect" includes abuse or neglect of an adult resident as defined in this Act.

(Source: P.A. 86-904; 96-1446, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2059.1.

Section 95 of P.A. 96-1446 contains a "no acceleration or delay" provision.

Effect of Amendments. The 2010 amendment by P.A. 96-1446, effective August 20, 2010, added the last sentence.

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Employment Law, "see, 28 S. Ill. U.L.J. 705 (2004).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 4:62 Reporting of suspected child abuse or participation in investigation.

§ 325 ILCS 5/10. [Testimony]

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Sec. 10. Any person who makes a report or who investigates a report under this Act shall testify fully in any judicial proceeding or administrative hearing resulting from such report, as to any evidence of abuse or neglect, or the cause thereof. Any person who is required to report a suspected case of abuse or neglect under Section 4 of this Act [325 ILCS 5/4] shall testify fully in any administrative hearing resulting from such report, as to any evidence of abuse or neglect or the cause thereof. No evidence shall be excluded by reason of any common law or statutory privilege relating to communications between the alleged perpetrator of abuse or neglect, or the child subject of the report under this Act and any person who is required to report a suspected case of abuse or neglect under Section 4 of this Act or the person making or investigating the report.

(Source: P.A. 86-904; 97-387, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2060.

Cross References.

As to privileged communication of a clinical social worker or licensed social worker, see 225 ILCS 20/16.

Effect of Amendments. The 2011 amendment by P.A. 97-387, effective August 15, 2011, inserted "or administrative hearing" in the first sentence; and inserted "any person who is required to report a suspected case of abuse or neglect under Section 4 of this Act or" in the last sentence.

CASE NOTES

Analysis

Applicability
Status of Witness

Applicability

The statute does not apply to a custody proceeding brought pursuant to § 602 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/602). In re Troy S., 319 Ill. App. 3d 61, 253 Ill. Dec. 335, 745 N.E.2d 109, 2001 Ill. App. LEXIS 84 (3 Dist. 2001).

Status of Witness

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Although plaintiff filed the report of abuse and testified as a witness at the administrative hearing, such participation did not vest her with party status. Kemp-Golden v. Department of Children & Family Servs., 281 Ill. App. 3d 869, 217 Ill. Dec. 594, 667 N.E.2d 688 (1 Dist. 1996).

§ 325 ILCS 5/11. [Confidentiality of records]

Sec. 11. All records concerning reports of child abuse and neglect or records concerning referrals under this Act and all records generated as a result of such reports or referrals, shall be confidential and shall not be disclosed except as specifically authorized by this Act or other applicable law. It is a Class A misdemeanor to permit, assist, or encourage the unauthorized release of any information contained in such reports, referrals or records.

Nothing contained in this Section prevents the sharing or disclosure of records relating or pertaining to the death of a minor under the care of or receiving services from the Department of Children and Family Services and under the jurisdiction of the juvenile court with the juvenile court, the State's Attorney, and the minor's attorney. For purposes of this Section "child abuse and neglect" includes abuse or neglect of an adult resident as defined in this Act.

(Source: P.A. 86-1004; 90-15, § 13; 96-1446, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2061.

Section 95 of P.A. 96-1446 contains a "no acceleration or delay" provision.

Cross References.

As to the disclosure of privileged communication, see 750 ILCS 60/227.

As to nondisclosure of information, under the School Code, see 105 ILCS 5/10-22.6b.

Effect of Amendments. The 1997 amendment by P.A. 90-15, effective June 13, 1997, added the second paragraph.

The 2010 amendment by P.A. 96-1446, effective August 20, 2010, added the last sentence to the end of the last paragraph.

CASE NOTES

Analysis

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Confidential Records
- In General
- Access
- Disclosure
Discoverability
- Discretion of Court

Confidential Records

- In General

The confidentiality provision applies not only to written records and reports but also to testimony regarding information contained in such reports. In re Troy S., 319 Ill. App. 3d 61, 253 Ill. Dec. 335, 745 N.E.2d 109, 2001 Ill. App. LEXIS 84 (3 Dist. 2001).

- Access

The right to confront and cross-examine does not entitle defendant to full access to confidential records in the hope of finding impeaching material. People v. Jennings, 254 Ill. App. 3d 14, 193 Ill. Dec. 232, 626 N.E.2d 265 (2 Dist. 1993), appeal denied, 156 Ill. 2d 562, 202 Ill. Dec. 927, 638 N.E.2d 1121 (1994).

- Disclosure

In the action against the parents of a 15 year old boy for negligent supervision, the parents' motion for a protective order was granted in that they were not required to provide copies of any child abuse records that they may have because Illinois's Abused and Neglected Child Reporting Act, 325 ILCS 5/11 provides that reports of child abuse and neglect or records concerning referrals under the Act and all records generated as a result of such reports or referrals, shall be confidential and shall not be disclosed except as specifically authorized by the Act or other applicable law. A.K. v. G.V., F. Supp. 2d , 2004 U.S. Dist. LEXIS 7570 (N.D. Ill. Apr. 29, 2004).

In a case involving criminal sexual assault of a child, the trial court did not abuse its discretion in refusing to turn over all of the records of the Department of Children and Family Services, for these records are confidential and generally they are not to be disclosed. People v. Jennings, 254 Ill. App. 3d 14, 193 Ill. Dec. 232, 626 N.E.2d 265 (2 Dist. 1993), appeal denied, 156 Ill. 2d 562, 202 Ill. Dec. 927, 638 N.E.2d 1121 (1994).

Discoverability

- Discretion of Court

Determination of whether material is discoverable and subject to disclosure is to be made by the circuit court; no error occurred where the circuit court conducted an in camera inspection of certain records without either defense counsel or the State's attorney present and permitted defendant to use certain portions of the documents for impeachment purposes. People v. Coates, 109 Ill. 2d 431, 94 Ill. Dec. 421, 488 N.E.2d 247 (1985), cert. denied, 475 U.S. 1088, 106 S. Ct. 1474, 89 L. Ed. 2d 729 (1986), overruled on other grounds, 145 Ill. 2d 188, 164 Ill. Dec. 127, 582 N.E.2d 690 (1991).

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§ 325 ILCS 5/11.1. Access to records

Sec. 11.1. Access to records. (a) A person shall have access to the records described in Section 11 [325 ILCS 5/11] only in furtherance of purposes directly connected with the administration of this Act or the Intergovernmental Missing Child Recovery Act of 1984 [325 ILCS 40/1 et seq.]. Those persons and purposes for access include:

(1) Department staff in the furtherance of their responsibilities under this Act, or for the purpose of completing background investigations on persons or agencies licensed by the Department or with whom the Department contracts for the provision of child welfare services.

(2) A law enforcement agency investigating known or suspected child abuse or neglect, known or suspected involvement with child pornography, known or suspected criminal sexual assault, known or suspected criminal sexual abuse, or any other sexual offense when a child is alleged to be involved.

(3) The Department of State Police when administering the provisions of the Intergovernmental Missing Child Recovery Act of 1984.

(4) A physician who has before him a child whom he reasonably suspects may be abused or neglected.

(5) A person authorized under Section 5 of this Act [325 ILCS 5/5] to place a child in temporary protective custody when such person requires the information in the report or record to determine whether to place the child in temporary protective custody.

(6) A person having the legal responsibility or authorization to care for, treat, or supervise a child, or a parent, prospective adoptive parent, foster parent, guardian, or other person responsible for the child's welfare, who is the subject of a report.

(7) Except in regard to harmful or detrimental information as provided in Section 7.19 [325 ILCS 5/7.19], any subject of the report, and if the subject of the report is a minor, his guardian or guardian ad litem.

(8) A court, upon its finding that access to such records may be necessary for the determination of an issue before such court; however, such access shall be limited to in camera inspection, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it.

(8.1) A probation officer or other authorized representative of a probation or court services department conducting an investigation ordered by a court under the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.].

(9) A grand jury, upon its determination that access to such records is necessary in the conduct of its official business.

(10) Any person authorized by the Director, in writing, for audit or bona fide research purposes.

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(11) Law enforcement agencies, coroners or medical examiners, physicians, courts, school superintendents and child welfare agencies in other states who are responsible for child abuse or neglect investigations or background investigations.

(12) The Department of Professional Regulation, the State Board of Education and school superintendents in Illinois, who may use or disclose information from the records as they deem necessary to conduct investigations or take disciplinary action, as provided by law.

(13) A coroner or medical examiner who has reason to believe that a child has died as the result of abuse or neglect.

(14) The Director of a State-operated facility when an employee of that facility is the perpetrator in an indicated report.

(15) The operator of a licensed child care facility or a facility licensed by the Department of Human Services (as successor to the Department of Alcoholism and Substance Abuse) in which children reside when a current or prospective employee of that facility is the perpetrator in an indicated child abuse or neglect report, pursuant to Section 4.3 of the Child Care Act of 1969 [225 ILCS 10/4.3].

(16) Members of a multidisciplinary team in the furtherance of its responsibilities under subsection (b) of Section 7.1 [325 ILCS 5/7.1]. All reports concerning child abuse and neglect made available to members of such multidisciplinary teams and all records generated as a result of such reports shall be confidential and shall not be disclosed, except as specifically authorized by this Act or other applicable law. It is a Class A misdemeanor to permit, assist or encourage the unauthorized release of any information contained in such reports or records. Nothing contained in this Section prevents the sharing of reports or records relating or pertaining to the death of a minor under the care of or receiving services from the Department of Children and Family Services and under the jurisdiction of the juvenile court with the juvenile court, the State's Attorney, and the minor's attorney.

(17) The Department of Human Services, as provided in Section 17 of the Disabled Persons Rehabilitation Act [20 ILCS 2405/17].

(18) Any other agency or investigative body, including the Department of Public Health and a local board of health, authorized by State law to conduct an investigation into the quality of care provided to children in hospitals and other State regulated care facilities. The access to and release of information from such records shall be subject to the approval of the Director of the Department or his designee.

(19) The person appointed, under Section 2-17 of the Juvenile Court Act of 1987, as the guardian ad litem of a minor who is the subject of a report or records under this Act.

(20) The Department of Human Services, as provided in Section 10 of the Early Intervention Services System Act [325 ILCS 20/10], and the operator of a facility providing early intervention services pursuant to that Act, for the purpose of determining whether a current or prospective employee who provides or may provide direct services under that Act is the perpetrator in an indicated report of child abuse or neglect filed under this Act. (b) Nothing contained in this Act prevents the sharing or disclosure of

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information or records relating or pertaining to juveniles subject to the provisions of the Serious Habitual Offender Comprehensive Action Program when that information is used to assist in the early identification and treatment of habitual juvenile offenders.

(b) Nothing contained in this Act prevents the sharing or disclosure of information or records relating or pertaining to juveniles subject to the provisions of the Serious Habitual Offender Comprehensive Action Program when that information is used to assist in the early identification and treatment of habitual juvenile offenders.

(c) To the extent that persons or agencies are given access to information pursuant to this Section, those persons or agencies may give this information to and receive this information from each other in order to facilitate an investigation conducted by those persons or agencies.

(Source: P.A. 86-904; 86-1167; 86-1203; 86-1475; 87-649; 87-928, § 1; 87-1184, § 47; 88-45, § 2-49; 89-507, § 90C-25; 90-15, § 13; 91-357, § 183; 93-147, § 3; 94-1010, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2061.1.

Section 95 of P.A. 90-15 provided "Where this Act makes changes in a statute that is represented in this Act by text that is not yet or no longer in effect (for example, a Section represented by multiple versions), the use of that text does not accelerate or delay the taking effect of (i) the changes made by this Act or (ii) provisions derived from any other Public Act".

P.A. 91-357, § 996 contains a "no acceleration or delay" provision, and P.A. 91-357, § 997 contains a "no revival or extension" provision.

Cross References.

Concerning access to records by the guardian ad litem of an abused child, see 705 ILCS 405/2-17.

Effect of Amendments. The 1996 amendment by P.A. 89-507, effective July 1, 1997, in subsection (15) inserted "Human Services (as successor to the Department of" and inserted a closing parenthesis following "Alcoholism and Substance Abuse"; and in subsection (17) substituted "Human Services" for "Rehabilitation Services".

The 1997 amendment by P.A. 90-15, effective June 13, 1997, in subsection (16) added the fourth sentence; and added subsection (21).

The 1999 amendment by P.A. 91-357, effective July 29, 1999, inserted the subsection (a) designation; inserted "of 1987" following "Juvenile Court Act" in subsection (a)(19); and substituted the subsection designations (b) and (c) for the former subdivision designations (20) and (21).

The 2003 amendment by P.A. 93-147, effective January 1, 2004, added subsection (a)(20).

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The 2006 amendment by P.A. 94-1010, effective October 1, 2006, added "prospective adoptive parent, foster parent" in (a)(6).

CASE NOTES

Access to Records

A court may gain limited access to Department of Children and Family Services records, but only if they may be necessary for the determination of an issue before the court. People v. Bell, 152 Ill. App. 3d 1007, 106 Ill. Dec. 59, 505 N.E.2d 365 (3 Dist. 1987).

§ 325 ILCS 5/11.1a. Disclosure of information

Sec. 11.1a. Disclosure of information. (a) The Director or a person designated in writing by the Director for this purpose may disclose information regarding the abuse or neglect of a child as set forth in this Section, the investigation thereof, and any services related thereto, if he or she determines that such disclosure is not contrary to the best interests of the child, the child's siblings, or other children in the household, and one of the following factors are present:

(1) The subject of the report has been criminally charged with committing a crime related to the child abuse or neglect report; or

(2) A law enforcement agency or official, a State's Attorney, or a judge of the State court system has publicly disclosed in a report as part of his or her official duty, information regarding the investigation of a report or the provision of services by the Department; or

(3) An adult subject of the report has knowingly and voluntarily made a public disclosure concerning a Child Abuse and Neglect Tracking System report; or

(4) The child named in the report has been critically injured or died.

(b) Information may be disclosed pursuant to this Section as follows:

(1) The name of the alleged abused or neglected child.

(2) The current status of the investigation, including whether a determination of credible evidence has been made.

(3) Identification of child protective or other services provided or actions taken regarding the child named in the report and his or her family as a result of this report.

(4) Whether there have been past reports of child abuse or neglect involving this child or family, or both. Any such reports shall be clearly identified as being "Indicated", "Unfounded", or "Pending".

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(5) Whether the Department has a current or past open service case with the family, and a history of what types of services have been, or are being, provided.

(6) Any extraordinary or pertinent information concerning the circumstances of the report, if the Director determines such disclosure is consistent with the public interest.

(c) Any disclosure of information pursuant to this Section shall not identify the name of or provide identifying information regarding the source of the report.

(d) In determining pursuant to subsection (a) of this Section, whether disclosure will be contrary to the best interests of the child, the child's siblings, or other children in the household, the Director shall consider the interest in privacy of the child and the child's family and the effects which disclosure may have on efforts to reunite and provide services to the family.

(e) Except as it applies directly to the cause of the abuse or neglect of the child, nothing in this Section shall be deemed to authorize the release or disclosure of the substance or content of any psychological, psychiatric, therapeutic, clinical, or medical reports, evaluations, or like materials pertaining to the child or the child's family. Prior to the release or disclosure of any psychological, psychiatric, or therapeutic reports pursuant to this subsection, the Deputy Director of Clinical Services shall review such materials and make recommendations regarding its release. Any disclosure of information pursuant to this Section shall not identify the health care provider, health care facility or other maker of the report or source of any psychological, psychiatric, therapeutic, clinical, or medical reports, evaluations, or like materials.

(f) Regarding child abuse or neglect reports which occur at a facility licensed by the Department of Children and Family Services, only the following information may be disclosed or released:

(1) The name of the facility.

(2) The nature of the allegations of abuse or neglect.

(3) The number and ages of child victims involved, and their relationship to the perpetrator.

(4) Actions the Department has taken to ensure the safety of the children during and subsequent to the investigation.

(5) The final finding status of the investigation.

(Source: P.A. 90-75, § 5.)

Effective Date. This section became effective January 1, 1998 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

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§ 325 ILCS 5/11.2. Disclosure to mandated reporting source

Sec. 11.2. Disclosure to mandated reporting source. A mandated reporting source as provided in Section 4 of this Act [325 ILCS 5/4] may receive appropriate information about the findings and actions taken by the Child Protective Service Unit in response to its report. The information shall include the actions taken by the Child Protective Service Unit to ensure a child's safety.

(Source: P.A. 81-1077; 92-319, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2061.2.

Effect of Amendments. The 2001 amendment by P.A. 92-319, effective January 1, 2002, added the section heading, deleted "Upon request" from the beginning of the first sentence, made stylistic changes, and added the second sentence.

§ 325 ILCS 5/11.2a. Disclosure to extended family member

Sec. 11.2a. Disclosure to extended family member. Upon request, an extended family member interviewed for relevant information in the course of an investigation by the Child Protective Service Unit may receive appropriate information about the findings and actions taken by the Child Protective Service Unit to ensure the safety of the child or children who were the subjects of the investigation.

(Source: P.A. 92-319, § 5.)

Effective Date. This section is effective January 1, 2002, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 325 ILCS 5/11.3. [Information not to be publicized; exceptions]

Sec. 11.3. A person given access to the names or other information identifying the subjects of the report, except the subject of the report, shall not make public such identifying information unless he is a State's attorney or other law enforcement official and the purpose is to initiate court action. Violation of this Section is a Class A

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misdemeanor.

(Source: P.A. 81-1077.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2061.3.

§ 325 ILCS 5/11.4. [Court and criminal justice system records]

Sec. 11.4. Nothing in this Act affects existing policies or procedures concerning the status of court and criminal justice system records.

(Source: P.A. 81-1077.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2061.4.

§ 325 ILCS 5/11.5. [Continuing education and training]

Sec. 11.5. Within the appropriation available, the Department shall conduct a continuing education and training program for State and local staff, persons and officials required to report, the general public, and other persons engaged in or intending to engage in the prevention, identification, and treatment of child abuse and neglect. The program shall be designed to encourage the fullest degree of reporting of known and suspected child abuse and neglect, and to improve communication, cooperation, and coordination among all agencies in the identification, prevention, and treatment of child abuse and neglect. The program shall inform the general public and professionals of the nature and extent of child abuse and neglect and their responsibilities, obligations, powers and immunity from liability under this Act. It may include information on the diagnosis of child abuse and neglect and the roles and procedures of the Child Protective Service Unit, the Department and central register, the courts and of the protective, treatment, and ameliorative services available to children and their families. Such information may also include special needs of mothers at risk of delivering a child whose life or development may be threatened by a handicapping condition, to ensure informed consent to treatment of the condition and understanding of the unique child care responsibilities required for such a child. The program may also encourage parents and other persons having responsibility for the welfare of children to seek assistance on their own in meeting their child care responsibilities and encourage the voluntary acceptance of available services when they

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are needed. It may also include publicity and dissemination of information on the existence and number of the 24 hour, State-wide, toll-free telephone service to assist persons seeking assistance and to receive reports of known and suspected abuse and neglect.

Within the appropriation available, the Department also shall conduct a continuing education and training program for State and local staff involved in investigating reports of child abuse or neglect made under this Act. The program shall be designed to train such staff in the necessary and appropriate procedures to be followed in investigating cases which it appears may result in civil or criminal charges being filed against a person. Program subjects shall include but not be limited to the gathering of evidence with a view toward presenting such evidence in court and the involvement of State or local law enforcement agencies in the investigation. The program shall be conducted in cooperation with State or local law enforcement agencies, State's Attorneys and other components of the criminal justice system as the Department deems appropriate.

(Source: P.A. 85-984.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2061.5.

§ 325 ILCS 5/11.6. [Review of administrative decisions]

Sec. 11.6. All final administrative decisions of the Department under this Act are subject to judicial review under the Administrative Review Law [735 ILCS 5/3-101 et seq.], as now or hereafter amended, and the rules adopted pursuant thereto. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure [735 ILCS 5/3-101].

Review of a final administrative decision under the Administrative Review Law is not applicable to a decision to conduct a family assessment under subsection (a-5) of Section 7.4 [325 ILCS 5/7.4] because no determination concerning child abuse or neglect is made and nothing is reported to the central register.

(Source: P.A. 82-783; 96-760, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2061.6.

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Effect of Amendments. The 2009 amendment by P.A. 96-760, effective January 1, 2010, added the second paragraph.

§ 325 ILCS 5/11.7. [State-wide Citizen's Committee on Child Abuse and Neglect]

Sec. 11.7. (a) The Director shall appoint the chairperson and members of a "State-wide Citizen's Committee on Child Abuse and Neglect" to consult with and advise the Director. The Committee shall be composed of individuals of distinction in human services, neonatal medical care, needs and rights of the disabled, law and community life, broadly representative of social and economic communities across the State, who shall be appointed to 3 year staggered terms. The chairperson and members of the Committee shall serve without compensation, although their travel and per diem expenses shall be reimbursed in accordance with standard State procedures. Under procedures adopted by the Committee, it may meet at any time, confer with any individuals, groups, and agencies; and may issue reports or recommendations on any aspect of child abuse or neglect it deems appropriate.

(b) The Committee shall advise the Director on setting priorities for the administration of child abuse prevention, shelters and service programs, as specified in Section 4a of "An Act creating the Department of Children and Family Services, codifying its powers and duties, and repealing certain Acts and Sections herein named", approved June 4, 1963, as amended [20 ILCS 505/4a].

(c) The Committee shall advise the Director on policies and procedures with respect to the medical neglect of newborns and infants.

(Source: P.A. 84-611.)

Note.

This section was Ill.Rev.Stat., Ch. 23, Para. 2061.7.

§ 325 ILCS 5/11.8. Cross-reporting

Sec. 11.8. Cross-reporting. (a) Investigation Specialists, Intact Family Specialists, and Placement Specialists employed by the Department of Children and Family Services who reasonably believe that an animal observed by them when in their professional or official capacity is being abused or neglected in violation of the Humane Care for Animals Act [510 ILCS 70/1 et seq.] must immediately make a written or oral report to the Department of Agriculture's Bureau of Animal Health and Welfare. However, the Department of Children and Family Services may not discipline an Investigation Specialist, an Intact Family Specialist, or a Placement Specialist for failing to make such

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a report if the Specialist determines that making the report would interfere with the performance of his or her child welfare protection duties.

(b) A home rule unit may not regulate the reporting of child abuse or neglect in a manner inconsistent with the provisions of this Section. This Section is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution [Ill. Const. (1970) Art. VII, § 6] on the concurrent exercise by home rule units of powers and functions exercised by the State.

(Source: P.A. 96-494, § 10.)

Effective Date. Section 99 of P.A. 96-494 makes this section effective upon becoming law. The Act was approved August 14, 2009.

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Afterschool Youth Development Project Act

Sec.

325 ILCS 27/1.Short title
325 ILCS 27/5.Purpose and findings
325 ILCS 27/10.Definitions
325 ILCS 27/15.Illinois Youth Development Council
325 ILCS 27/20.Afterschool Demonstration Program
325 ILCS 27/25.Effectiveness of afterschool programs
325 ILCS 27/30.Funding
325 ILCS 27/99.Effective date

§ 325 ILCS 27/1. Short title

Sec. 1. Short title. This Act may be cited as the Afterschool Youth Development Project Act.

(Source: P.A. 96-1302, § 1.)

Effective Date. Section 99 of P.A. 96-1302 made this Act effective upon becoming law. The Act was approved July 27, 2010.

§ 325 ILCS 27/5. Purpose and findings

Sec. 5. Purpose and findings. The General Assembly declares that it is the policy of this State to provide all young people between the ages of 6 and 19 with access to quality afterschool programs through a State commitment to sufficient and sustainable funding for programs that promote positive youth development. The need for this policy is based on a series of facts:

The General Assembly finds that youth who are engaged in quality afterschool activities are more likely to succeed in academics, employment, and civic affairs than youth who do not participate in afterschool activities. Youth with high levels of participation in quality afterschool programs miss fewer days of school, have lower drop-out rates, and higher rates of graduation.

The General Assembly also finds that youth in Illinois face greater barriers to success than ever before:

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(1) Statewide demand for quality afterschool activities far outpaces the current supply, with shortfall estimates between 60 and 70 percent.

(2) Illinois youth spend fewer hours in school than in most other states and approximately 45% of all children in grades K-12 are either responsible for themselves or are in the care of a sibling during afterschool hours.

(3) On school days, the hours between 3:00 p.m. and 6:00 p.m. are the peak hours for juvenile crime and experimentation with drugs, alcohol, cigarettes, and sex.

The General Assembly also finds that the State of Illinois, having demonstrated national leadership in advancing toward universal early childhood education, must also expand youth development programming in order to realize the full, continued benefits of public investment in Illinois' young people.

The policy established by this Act will be developed through an afterschool demonstration program the results of which will be used to establish standards and policies to design and fund a statewide system of quality afterschool programs accessible to all youth between the ages of 6 and 19 that promote positive outcomes in such areas as education, employment, and civic success.

(Source: P.A. 96-1302, § 5.)

§ 325 ILCS 27/10. Definitions

Sec. 10. Definitions. As used in this Act:

"Afterschool program" means positive youth development activities provided to youth between the ages of 6 and 19 during the hours before or after school, during summer recess from school, or during the weekends. These activities may include, but are not limited to, the following activity areas: academic support; arts, music, sports, cultural enrichment, and other recreation; health promotion and diseases prevention; life skills and work and career development; and youth leadership development. For the purposes of this Act, "afterschool program" also means a program funded under the Afterschool Demonstration Program.

"Demonstration" or "Demonstration Program" means the Afterschool Demonstration Program as established under this Act.

"Council" means the Illinois Youth Development Council.

"Community advisory group" means a group of key local stakeholders convened to help ensure effective program delivery through increased collaboration. This group is required as a condition of participating in the demonstration period.

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(Source: P.A. 96-1302, § 10.)

§ 325 ILCS 27/15. Illinois Youth Development Council

Sec. 15. Illinois Youth Development Council. (a) Creation. In order to effectively achieve the policy established in this Act, the Illinois Youth Development Council shall be created. The purpose of the Council is to provide oversight and coordination to the State's public funds currently invested to support positive youth development programs and activities and to set systemwide policies and priorities to accomplish the following 5 major objectives: (i) set afterschool program expansion priorities, such as addressing gaps in programming for specific ages and populations; (ii) create outcome measures and require all afterschool programs to be evaluated to ensure that outcomes are being met; (iii) oversee the establishment of a statewide program improvement system that provides technical assistance and capacity building to increase program participation and quality systemwide; (iv) monitor and assess afterschool program quality through outcome measures; and (v) establish State policy to support the attainment of outcomes. The Council shall be created within the Department of Human Services.

(b) Governance. The Illinois Youth Development Council shall reflect the regional, racial, socioeconomic, and cultural diversity of the State to ensure representation of the needs of all Illinois youth. The Council shall be composed of no less than 28 and no more than 32 members. The Council may establish a defined length of term for membership on the Council.

(1) Membership. The Council shall include representation from both public and private organizations comprised of the following:

(A) Four members of the General Assembly: one appointed by the President of the Senate, one appointed by the Minority Leader of the Senate, one appointed by the Speaker of the House of Representatives, and one appointed by the Minority Leader of the House of Representatives.

(B) The chief administrators of the following State agencies: the Department of Human Services; the Illinois State Board of Education; the Department of Children and Family Services; the Department of Public Health; the Department of Juvenile Justice; the Department of Healthcare and Family Services; the Department of Commerce and Economic Opportunity; the Illinois Board of Higher Education; and the Illinois Community College Board.

(C) The Chair of the Illinois Workforce Investment Board and the Executive Director of the Illinois Violence Prevention Authority.

The following Council members shall be appointed by the Governor:

(D) Two officials from a unit of local government.

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(E) At least 3 representatives of direct youth service providers and faith-based providers.

(F) Three young people who are between the ages of and 21 and who are members of the Youth Advisory Group as established in paragraph (2) of this subsection.

(G) Two parents of children between the ages of 6 and 19.

(H) One academic researcher in the field of youth development.

(I) Additional public members that include local government stakeholders and nongovernmental stakeholders with an interest in youth development and afterschool programs, including representation from the following private sector fields and constituencies: child and youth advocacy; children and youth with special needs; child and adolescent health; business; and law enforcement.

Persons may be nominated by organizations representing the fields outlined in this Section. The Governor shall designate one of the Council members who is a nongovernment stakeholder to serve as co-chairperson. The Council shall create a subcommittee of additional direct youth service providers as well as other subcommittees as deemed necessary.

(2) Youth Advisory Group. To ensure that the Council is responsive to the needs and priorities of Illinois' young people, the Council shall establish an independent Youth Advisory Group, which shall be composed of a diverse body of 15 youths between the ages of 14 and 19 from across the State. Members that surpass the age of 19 while serving on the Youth Advisory Group may complete the term of the appointment. The Youth Advisory Group shall be charged with: (i) presenting recommendations to the Council 4 times per year on issues related to afterschool and youth development programming and policy; and (ii) reviewing key programmatic, funding, and policy decisions made by the Council. To develop priorities and recommendations, the Youth Advisory Group may engage students from across the State via focus groups, on-line surveys, and other means. The Youth Advisory Group shall be administered by the Department of Human Services and facilitated by an independent, established youth organization with expertise in youth civic engagement. This youth civic engagement organization shall administer the application requirements and process and shall nominate 30 youth. The Department of Human Services shall select 15 of the nominees for the Youth Advisory Group, 3 of whom shall serve on the Council.

(c) Activities. The major objectives of the Council shall be accomplished through the following activities:

(1) Publishing an annual plan that sets system goals for Illinois' afterschool funding that include key indicators, performance standards, and outcome measures and that outlines funding evaluation and reporting requirements.

(2) Developing and maintaining a system and processes to collect and report consistent program and outcome data on all afterschool programs funded by State and local government.

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(3) Developing linkages between afterschool data systems and other statewide youth program outcome data systems (e.g. schools, post-secondary education, juvenile justice, etc.).

(4) Developing procedures for implementing an evaluation of the statewide system of program providers, including programs established by this Act.

(5) Reviewing evaluation results and data reports to inform future investments and allocations and to shape State policy.

(6) Developing technical assistance and capacity-building infrastructure and ensuring appropriate workforce development strategies across agencies for those who will be working in afterschool programs.

(7) Reviewing and making public recommendations to the Governor and the General Assembly with respect to the budgets for State youth services to ensure the adequacy of those budgets and alignment to system goals outlined in the plan described in paragraph (1) of this subsection.

(8) Developing and overseeing execution of a research agenda to inform future program planning.

(9) Providing strategic advice to other State agencies, the Illinois General Assembly, and Illinois' Constitutional Officers on afterschool-related activities statewide.

(10) Approving awards of grants to demonstration projects as outlined in Section 20 of this Act [325 ILCS 27/20].

(d) Accountability. The Council shall annually report to the Governor and the General Assembly on the Council's progress towards its goals and objectives. The Department of Human Services shall provide resources to the Council, including administrative services and data collection and shall be responsible for conducting procurement processes required by the Act. The Department may contract with vendors to provide all or a portion of any necessary resources.

(Source: P.A. 96-1302, § 15.)

§ 325 ILCS 27/20. Afterschool Demonstration Program

Sec. 20. Afterschool Demonstration Program. (a) Program. The Department of Human Services, in coordination with the Council, shall establish and administer a 3-year statewide, quality Afterschool Demonstration Program with an evaluation and outcome-based expansion model. The ultimate goal of the Demonstration shall be to develop and evaluate the costs, impact, and quality outcomes of afterschool programs in order to establish an effective expansion toward universal access.

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(b) Eligible activity areas. Afterschool programs created under the Demonstration Program shall serve youths in Illinois by promoting one or more of the following:

(1) Academic support activities, including but not limited to remediation, tutoring, homework assistance, advocacy with teachers, college preparatory guidance, college tours, application assistance, and college counseling.

(2) Arts, music, sports, recreation, and cultural enrichment, including structured, ongoing activities such as theatre groups, development of exhibits, graphic design, cultural activities, and sports and athletic teams.

(3) Health promotion and disease prevention, including activities and tools for increasing knowledge and practice of healthy behavior, drug, alcohol, tobacco and pregnancy prevention, conflict resolution, and violence prevention.

(4) Life skills and work and career development activities that prepare youth for a successful transition to the workplace, including career awareness, job fairs, career exploration, job shadowing, work readiness skills, interview skills, resume building and work experience, and paid internships and summer jobs.

(5) Youth leadership development activities aimed at increasing youths' communication skills and ability to help a group make decisions, to facilitate or lead a group discussion, and to initiate and direct projects involving other people including civic engagement, service learning, and other activities that promote youth leadership.

(c) Eligible entities. Currently funded or new entities, including but not limited to the following, shall be eligible to apply for funding:

(1) Schools or school districts.

(2) Community-based organizations.

(3) Faith-based organizations.

(4) Park districts.

(5) Libraries.

(6) Cultural institutions.

Priority for participation in the Demonstration Program shall be given to entities with experience in providing afterschool programs in Illinois.

(d) Program criteria. New or existing applicants shall demonstrate the capacity to achieve the goals of this Act and meet the deadlines set forth by the Council through:

(1) The promotion of the development of those items outlined in subsection (b) of this Section.

(2) Evidence of community need and collaboration to avoid duplicating or supplanting existing services, which shall be shown through the creation of or reliance on an appropriate, existing community advisory group composed of a diverse makeup of

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members that may include, but is not limited to, educators, afterschool providers, local government officials, local business owners, parents, and youth.

(3) Cost-effective methods that will maximize the impact of the total dollar amount of the award.

(e) Expansion. Three years from the award of the first dollars, initial findings of an outcome evaluation of the Demonstration, conducted by an independent evaluator as described in subsection (d) of Section 25 of this Act [325 ILCS 27/25], shall be reported to the Governor, the General Assembly, the Council, and the Youth Advisory Group with a hearing scheduled before the appropriate committees of the House and Senate for the purpose of establishing an effective expansion toward universal access. A positive outcome evaluation, whereby performance outcomes determined by the Council are met, shall trigger a phased-in expansion toward full implementation.

(Source: P.A. 96-1302, § 20.)

§ 325 ILCS 27/25. Effectiveness of afterschool programs

Sec. 25. Effectiveness of afterschool programs. (a) Program standards. Research has shown that high-performing youth programs demonstrate shared features of program quality. The Council shall establish a universal framework of youth development program standards that commonly define measurable indicators of program quality across the diverse array of eligible demonstration program activities.

(b) Evaluation and monitoring. Afterschool programs shall be held accountable to universal program quality standards as adopted by the Council. Data informing performance against these standards shall be monitored and collected by the Department of Human Services. Each afterschool program, in coordination with the corresponding community advisory group, shall also assess needs and gaps relative to addressing outcome goals.

(c) Capacity-building supports. A statewide program quality improvement system shall be established by the Council utilizing a qualified third party to provide assessment, coaching, technical assistance, and system and professional development. Provided supports shall first target those afterschool programs created under the Demonstration with the ultimate goal of expansion to support the larger statewide system of youth development program providers.

(d) Demonstration outcome evaluation. An evaluation of the Demonstration shall be conducted by a third-party evaluator or evaluators selected through a competitive request for proposals (RFP) process. The purpose of the evaluation is to determine how well the Demonstration Program meets the cost, impact, and quality outcome goals established by the Council. Initial findings shall be reported to the Council, the Governor, and the General Assembly within 3 years from the award of the first dollars and shall be the

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primary determining evidence to trigger expansion as described in subsection (e) of Section 20 of this Act [325 ILCS 27/20].

(Source: P.A. 96-1302, § 25.)

§ 325 ILCS 27/30. Funding

Sec. 30. Funding. The creation and establishment of the Council, the Youth Advisory Group, and the Afterschool Demonstration Program shall be subject to appropriations, however the Department of Human Services shall be permitted to accept private funding or private resources at any time to implement this Act.

(Source: P.A. 96-1302, § 30.)

§ 325 ILCS 27/99. Effective date

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 96-1302, § 99.)

Note.

P.A. 96-1302 was approved July 27, 2010.

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CHAPTER 405.
MENTAL HEALTH

405 ILCS 49Children's Mental Health Act of 2003

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Children's Mental Health Act of 2003

Sec.

405 ILCS 49/1.Short title
405 ILCS 49/5.Children's Mental Health Plan
405 ILCS 49/10.Office of Mental Health services
405 ILCS 49/15.Mental health and schools
405 ILCS 49/95.[Not Set Out]
405 ILCS 49/99.Effective date

§ 405 ILCS 49/1. Short title

Sec. 1. Short title. This Act may be cited as the Children's Mental Health Act of 2003.

(Source: P.A. 93-495, § 1.)

Effective Date. Section 99 of P.A. 93-495 made this Act effective upon becoming law. The Act was approved August 8, 2003.

§ 405 ILCS 49/5. Children's Mental Health Plan

Sec. 5. Children's Mental Health Plan. (a) The State of Illinois shall develop a Children's Mental Health Plan containing short-term and long-term recommendations to provide comprehensive, coordinated mental health prevention, early intervention, and treatment services for children from birth through age 18. This Plan shall include but not be limited to:

(1) Coordinated provider services and interagency referral networks for children from birth through age 18 to maximize resources and minimize duplication of services.

(2) Guidelines for incorporating social and emotional development into school learning standards and educational programs, pursuant to Section 15 of this Act [405 ILCS 49/15].

(3) Protocols for implementing screening and assessment of children prior to any admission to an inpatient hospital for psychiatric services, pursuant to subsection (a) of Section 5-5.23 of the Illinois Public Aid Code [305 ILCS 5/5-5.23].

(4) Recommendations regarding a State budget for children's mental health prevention, early intervention, and treatment across all State agencies.

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(5) Recommendations for State and local mechanisms for integrating federal, State, and local funding sources for children's mental health.

(6) Recommendations for building a qualified and adequately trained workforce prepared to provide mental health services for children from birth through age 18 and their families.

(7) Recommendations for facilitating research on best practices and model programs, and dissemination of this information to Illinois policymakers, practitioners, and the general public through training, technical assistance, and educational materials.

(8) Recommendations for a comprehensive, multi-faceted public awareness campaign to reduce the stigma of mental illness and educate families, the general public, and other key audiences about the benefits of children's social and emotional development, and how to access services.

(9) Recommendations for creating a quality-driven children's mental health system with shared accountability among key State agencies and programs that conducts ongoing needs assessments, uses outcome indicators and benchmarks to measure progress, and implements quality data tracking and reporting systems.

(b) The Children's Mental Health Partnership (hereafter referred to as "the Partnership") is created. The Partnership shall have the responsibility of developing and monitoring the implementation of the Children's Mental Health Plan as approved by the Governor. The Children's Mental Health Partnership shall be comprised of: the Secretary of Human Services or his or her designee; the State Superintendent of Education or his or her designee; the directors of the departments of Children and Family Services, Healthcare and Family Services, Public Health, and Juvenile Justice, or their designees; the head of the Illinois Violence Prevention Authority, or his or her designee; the Attorney General or his or her designee; up to 25 representatives of community mental health authorities and statewide mental health, children and family advocacy, early childhood, education, health, substance abuse, violence prevention, and juvenile justice organizations or associations, to be appointed by the Governor; and 2 members of each caucus of the House of Representatives and Senate appointed by the Speaker of the House of Representatives and the President of the Senate, respectively. The Governor shall appoint the Partnership Chair and shall designate a Governor's staff liaison to work with the Partnership.

(c) The Partnership shall submit a Preliminary Plan to the Governor on September 30, 2004 and shall submit the Final Plan on June 30, 2005. Thereafter, on September 30 of each year, the Partnership shall submit an annual report to the Governor on the progress of Plan implementation and recommendations for revisions in the Plan. The Final Plan and annual reports submitted in subsequent years shall include estimates of savings achieved in prior fiscal years under subsection (a) of Section 5-5.23 of the Illinois Public Aid Code and federal financial participation received under subsection (b) of Section 5-5.23 of that Code. The Department of Healthcare and Family Services shall provide technical assistance in developing these estimates and reports.

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(Source: P.A. 93-495, § 5; 94-696, § 18; 95-331, § 880.)

Effect of Amendments. The 2005 amendment by P.A. 94-696, effective June 1, 2006, substituted "Juvenile Justice" for "Corrections" in (b).

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, twice substituted "Healthcare and Family Services" for "Public Aid".

§ 405 ILCS 49/10. Office of Mental Health services

Sec. 10. Office of Mental Health services. The Office of Mental Health within the Department of Human Services shall allow grant and purchase-of-service moneys to be used for services for children from birth through age 18.

(Source: P.A. 93-495, § 10.)

§ 405 ILCS 49/15. Mental health and schools

Sec. 15. Mental health and schools. (a) The Illinois State Board of Education shall develop and implement a plan to incorporate social and emotional development standards as part of the Illinois Learning Standards for the purpose of enhancing and measuring children's school readiness and ability to achieve academic success. The plan shall be submitted to the Governor, the General Assembly, and the Partnership by December 31, 2004.

(b) Every Illinois school district shall develop a policy for incorporating social and emotional development into the district's educational program. The policy shall address teaching and assessing social and emotional skills and protocols for responding to children with social, emotional, or mental health problems, or a combination of such problems, that impact learning ability. Each district must submit this policy to the Illinois State Board of Education by August 31, 2004.

(Source: P.A. 93-495, § 15.)

LEGAL PERIODICALS

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For comment, "Brave New School: A Constitutional Argument Against State-Mandated Mental Health Assessments in Public Schools," see 26 N. Ill. U. L. Rev. 213 (2005).

§ 405 ILCS 49/95. [Not Set Out]

Note.

This section, as contained in P.A. 93-495, § 15, contained amendatory provisions.

§ 405 ILCS 49/99. Effective date

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 93-495, § 99.)

Note.

P.A. 93-495 was approved August 8, 2003.

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CHAPTER 410.
PUBLIC HEALTH

HEALTH PREVENTION AND PROTECTION
410 ILCS 4Automated External Defibrillator Act

HEALTH PREVENTION AND PROTECTION

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Automated External Defibrillator Act

Sec.

410 ILCS 4/1.Short title
410 ILCS 4/5.Findings; intent
410 ILCS 4/10.Definitions
410 ILCS 4/15.Training
410 ILCS 4/20.Maintenance; oversight
410 ILCS 4/25.Illinois Department of Public Health; responsibilities
410 ILCS 4/30.Exemption from civil liability

§ 410 ILCS 4/1. Short title

Sec. 1. Short title. This Act may be cited as the Automated External Defibrillator Act.

(Source: P.A. 91-524, § 1.)

Effective Date. This Act became effective January 1, 2000, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 410 ILCS 4/5. Findings; intent

Sec. 5. Findings; intent. The General Assembly finds that timely attention in medical emergencies saves lives, and that trained use of automated external defibrillators in medical emergency response can increase the number of lives saved. It is the intent of the General Assembly to encourage training in lifesaving first aid, to set standards for the use of automated external defibrillators and to encourage their use.

(Source: P.A. 91-524, § 5.)

§ 410 ILCS 4/10. Definitions

Sec. 10. Definitions. As used in this Act:

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"Automated external defibrillator" means a medical device heart monitor and defibrillator that:

(1) has received approval of its premarket notification, filed pursuant to 21 U.S.C. Section 360(k), from the United States Food and Drug Administration;

(2) is capable of recognizing the presence or absence of ventricular fibrillation and rapid ventricular tachycardia, and is capable of determining, without intervention by an operator, whether defibrillation should be performed;

(3) upon determining that defibrillation should be performed, either automatically charges and delivers an electrical impulse to an individual, or charges and delivers an electrical impulse at the command of the operator; and

(4) in the case of a defibrillator that may be operated in either an automatic or a manual mode, is set to operate in the automatic mode.

"Defibrillation" means administering an electrical impulse to an individual in order to stop ventricular fibrillation or rapid ventricular tachycardia.

"Person" means an individual, partnership, association, corporation, limited liability company, or organized group of persons (whether incorporated or not).

"Trained AED user" means a person who has successfully completed a course of instruction in accordance with the standards of a nationally recognized organization such as the American Red Cross or the American Heart Association or a course of instruction in accordance with the rules adopted under this Act to use an automated external defibrillator, or who is licensed to practice medicine in all its branches in this State.

"Department" means the Department of Public Health.

(Source: P.A. 91-524, § 10.)

§ 410 ILCS 4/15. Training

Sec. 15. Training. (a) The Department shall adopt rules regarding the establishment of programs to train individuals as trained AED users. Rules regarding the establishment of programs to train individuals as trained AED users shall specify the following:

(1) The curriculum of any program to train individuals shall include complete training in cardiopulmonary resuscitation (commonly referred to as "CPR") prepared according to nationally recognized guidelines.

(2) The qualifications necessary for any individuals to teach a program to train an individual as a trained AED user.

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(3) The time period for which training recognition shall be valid, and the recommendation for subsequent renewal.

(b) In carrying out subsection (a), the Department shall identify an appropriate training curriculum designed for trained AED users who are members of the general public, and a training curriculum designed for trained AED users who are health professionals.

(Source: P.A. 91-524, § 15.)

§ 410 ILCS 4/20. Maintenance; oversight

Sec. 20. Maintenance; oversight. (a) A person acquiring an automated external defibrillator shall take reasonable measures to ensure that:

(1) (blank);

(2) the automated external defibrillator is maintained and tested according to the manufacturer's guidelines;

(3) any person considered to be an anticipated rescuer or user will have successfully completed a course of instruction in accordance with the standards of a nationally recognized organization, such as the American Red Cross or the American Heart Association, or a course of instruction in accordance with existing rules under this Act to use an automated external defibrillator and to perform cardiovascular resuscitation (CPR); and

(4) any person who renders out-of-hospital emergency care or treatment to a person in cardiac arrest by using an automated external defibrillator activates the EMS system as soon as possible and reports any clinical use of the automated external defibrillator.

(b) A person in possession of an automated external defibrillator shall notify an agent of the local emergency communications or vehicle dispatch center of the existence, location, and type of the automated external defibrillator.

(Source: P.A. 91-524, § 20; 95-447, § 10.)

Effect of Amendments. The 2007 amendment by P.A. 95-447, effective August 27, 2007, rewrote (a)(1) and (3).

CASE NOTES

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Retroactivity of amendments

Where plaintiffs, the family of a deceased passenger, alleged that a gate agent for defendant airline suggested that the deceased, carrying luggage and pushing his wife in a wheelchair, run to another gate for a connecting flight and a crewmember on the connecting flight attempted to use an automated external defibrillator to help revive the deceased when he suffered a heart attack after boarding the connecting plane, but before he used the device, paramedics arrived and assumed control, the Illinois Automated External Defibrillator Act did not provide immunity pursuant to 410 ILCS 4/30(d) because no evidence established that the connecting airline had satisfied the registration requirement of 410 ILCS 4/20(a)(3) (amended) and the notice requirement of 410 ILCS 4/20(b), and further, because there was no indication that the removal of the registration requirements in 2007 was to be retroactive, the new version of 410 ILCS 4/20 did not apply pursuant to the Illinois Statute on Statutes, 5 ILCS 70/4. Tobin v. AMR Corp., 637 F. Supp. 2d 406, 2009 U.S. Dist. LEXIS 58418 (N.D. Tex. 2009).

§ 410 ILCS 4/25. Illinois Department of Public Health; responsibilities

Sec. 25. Illinois Department of Public Health; responsibilities. The Illinois Department of Public Health shall maintain incident reports on automated external defibrillator use and conduct annual analyses of all related data. The Department shall adopt rules to carry out its responsibilities under this Act.

(Source: P.A. 91-524, § 25.)

§ 410 ILCS 4/30. Exemption from civil liability

Sec. 30. Exemption from civil liability. (a) A physician licensed in Illinois to practice medicine in all its branches who authorizes the purchase of an automated external defibrillator is not liable for civil damages as a result of any act or omission arising out of authorizing the purchase of an automated external defibrillator, except for willful or wanton misconduct, if the requirements of this Act are met.

(b) An individual or entity providing training in the use of automated external defibrillators is not liable for civil damages as a result of any act or omission involving the use of an automated external defibrillator, except for willful or wanton misconduct, if the requirements of this Act are met.

(c) A person, unit of State or local government, or school district owning, occupying, or managing the premises where an automated external defibrillator is located is not liable for civil damages as a result of any act or omission involving the use of an automated external defibrillator, except for willful or wanton misconduct, if the requirements of this Act are met.

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(d) An AED user is not liable for civil damages as a result of any act or omission involving the use of an automated external defibrillator in an emergency situation, except for willful or wanton misconduct, if the requirements of this Act are met.

(e) This Section does not apply to a public hospital.

(Source: P.A. 91-524, § 30; 93-910, § 100.)

Effect of Amendments. The 2004 amendment by P.A. 93-974, effective January 1, 2005, inserted "unit of State or local government, or school district" in subsection (c); substituted "An" for "A trained" in subsection (d), and added subsection (e).

CASE NOTES

Registration of devices

Where plaintiffs, the family of a deceased passenger, alleged that a gate agent for defendant airline suggested that the deceased, carrying luggage and pushing his wife in a wheelchair, run to another gate for a connecting flight and a crewmember on the connecting flight attempted to use an automated external defibrillator to help revive the deceased when he suffered a heart attack after boarding the connecting plane, but before he used the device, paramedics arrived and assumed control, the Illinois Automated External Defibrillator Act did not provide immunity pursuant to 410 ILCS 4/30(d) because no evidence established that the connecting airline had satisfied the registration requirement of 410 ILCS 4/20(a)(3) (amended) and the notice requirement of 410 ILCS 4/20(b), and further, because there was no indication that the removal of the registration requirements in 2007 was to be retroactive, the new version of 410 ILCS 4/20 did not apply pursuant to the Illinois Statute on Statutes, 5 ILCS 70/4. Tobin v. AMR Corp., 637 F. Supp. 2d 406, 2009 U.S. Dist. LEXIS 58418 (N.D. Tex. 2009).

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CHAPTER 625.
VEHICLES

625 ILCS 5Illinois Vehicle Code

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Illinois Vehicle Code

Chapter 6

The Illinois Driver Licensing Law

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Issuance Of Licenses Expiration And Renewal

625 ILCS 5/6-103.What persons shall not be licensed as drivers or granted permits

625 ILCS 5/6-104.Classification of Driver - Special Restrictions

625 ILCS 5/6-106.1.School bus driver permit

625 ILCS 5/6-106.1b.Loss of school bus driver permit privileges; failure or refusal to submit to chemical testing

625 ILCS 5/6-106.11.(As amended by P.A. 97-224) [Unlawful operation of school bus; violation; penalty]

625 ILCS 5/6-106.11.(As amended by P.A. 97-229) [Unlawful operation of school bus; violation; penalty]

625 ILCS 5/6-107.Graduated license

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625 ILCS 5/11-1002.Pedestrians' right-of-way at crosswalks

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625 ILCS 5/11-1415.School buses stopping, loading and discharging passengers on one-way roadways on highways having 4 or more lanes

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Chapter 12

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625 ILCS 5/12-806.Identification, stop signal arms and special lighting when not used as a school bus
625 ILCS 5/12-806a.Identification, stop signal arms and special lighting on school buses used in connection with a youth camp, child care facility, or community based rehabilitation facility
625 ILCS 5/12-807.Seat belt for driver
625 ILCS 5/12-807.1.Seat back height
625 ILCS 5/12-807.2.Crossing control arms
625 ILCS 5/12-808.Fire extinguisher
625 ILCS 5/12-809.First aid kit
625 ILCS 5/12-810.Restraining devices for passengers who are persons with disabilities
625 ILCS 5/12-811.Amber 3 bar clearance light
625 ILCS 5/12-812.Rules and regulations
625 ILCS 5/12-812.1.[Use of liquefied petroleum gases, compressed natural gases and liquefied natural gases in school buses]
625 ILCS 5/12-813.1.School bus driver communication devices
625 ILCS 5/12-815.Strobe lamp on school bus
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625 ILCS 5/12-820.Nursery school buses
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Chapter 6.

The Illinois Driver Licensing Law

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Article I.
Issuance of Licenses
Expiration and Renewal

§ 625 ILCS 5/6-103. What persons shall not be licensed as drivers or granted permits

Sec. 6-103. What persons shall not be licensed as drivers or granted permits. The Secretary of State shall not issue, renew, or allow the retention of any driver's license nor issue any permit under this Code:

1.To any person, as a driver, who is under the age of 18 years except as provided in Section 6-107 [625 ILCS 5/6-107], and except that an instruction permit may be issued under Section 6-107.1 [625 ILCS 5/6-107.1] to a child who is not less than 15 years of age if the child is enrolled in an approved driver education course as defined in Section 1-103 of this Code [625 ILCS 5/1-103] and requires an instruction permit to participate therein, except that an instruction permit may be issued under the provisions of Section 6-107.1 to a child who is 17 years and 3 months of age without the child having enrolled in an approved driver education course and except that an instruction permit may be issued to a child who is at least 15 years and 3 months of age, is enrolled in school, meets the educational requirements of the Driver Education Act [105 ILCS 5/27-24 et seq.], and has passed examinations the Secretary of State in his or her discretion may prescribe;

2.To any person who is under the age of 18 as an operator of a motorcycle other than a motor driven cycle unless the person has, in addition to meeting the provisions of Section 6-107 of this Code, successfully completed a motorcycle training course approved by the Illinois Department of Transportation and successfully completes the required Secretary of State's motorcycle driver's examination;

3.To any person, as a driver, whose driver's license or permit has been suspended, during the suspension, nor to any person whose driver's license or permit has been revoked, except as provided in Sections 6-205, 6-206, and 6-208 [625 ILCS 5/6-205, 625 ILCS 5/6-206, and 625 ILCS 5/6-208];

4.To any person, as a driver, who is a user of alcohol or any other drug to a degree that renders the person incapable of safely driving a motor vehicle;

5.To any person, as a driver, who has previously been adjudged to be afflicted with or suffering from any mental or physical disability or disease and who has not at the time of application been restored to competency by the methods provided by law;

6.To any person, as a driver, who is required by the Secretary of State to submit an alcohol and drug evaluation or take an examination provided for in this Code unless the person has successfully passed the examination and submitted any required evaluation;

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7.To any person who is required under the provisions of the laws of this State to deposit security or proof of financial responsibility and who has not deposited the security or proof;

8.To any person when the Secretary of State has good cause to believe that the person by reason of physical or mental disability would not be able to safely operate a motor vehicle upon the highways, unless the person shall furnish to the Secretary of State a verified written statement, acceptable to the Secretary of State, from a competent medical specialist, a licensed physician assistant who has been delegated the performance of medical examinations by his or her supervising physician, or a licensed advanced practice nurse who has a written collaborative agreement with a collaborating physician which authorizes him or her to perform medical examinations, to the effect that the operation of a motor vehicle by the person would not be inimical to the public safety;

9.To any person, as a driver, who is 69 years of age or older, unless the person has successfully complied with the provisions of Section 6-109 [625 ILCS 5/6-109];

10.To any person convicted, within 12 months of application for a license, of any of the sexual offenses enumerated in paragraph 2 of subsection (b) of Section 6-205 [625 ILCS 5/6-205];

11.To any person who is under the age of 21 years with a classification prohibited in paragraph (b) of Section 6-104 [625 ILCS 5/6-104] and to any person who is under the age of 18 years with a classification prohibited in paragraph (c) of Section 6-104;

12.To any person who has been either convicted of or adjudicated under the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.] based upon a violation of the Cannabis Control Act [720 ILCS 550/1 et seq.], the Illinois Controlled Substances Act [720 ILCS 570/100 et seq.], or the Methamphetamine Control and Community Protection Act [720 ILCS 646/1 et seq.] while that person was in actual physical control of a motor vehicle. For purposes of this Section, any person placed on probation under Section 10 of the Cannabis Control Act [720 ILCS 550/10], Section 410 of the Illinois Controlled Substances Act [720 ILCS 570/410], or Section 70 of the Methamphetamine Control and Community Protection Act [720 ILCS 646/70] shall not be considered convicted. Any person found guilty of this offense, while in actual physical control of a motor vehicle, shall have an entry made in the court record by the judge that this offense did occur while the person was in actual physical control of a motor vehicle and order the clerk of the court to report the violation to the Secretary of State as such. The Secretary of State shall not issue a new license or permit for a period of one year;

13.To any person who is under the age of 18 years and who has committed the offense of operating a motor vehicle without a valid license or permit in violation of Section 6-101 [625 ILCS 5/6-101] or a similar out of state offense;

14.To any person who is 90 days or more delinquent in court ordered child support payments or has been adjudicated in arrears in an amount equal to 90 days' obligation or more and who has been found in contempt of court for failure to pay the support, subject to the requirements and procedures of Article VII of Chapter 7 of the Illinois Vehicle Code [625 ILCS 5/7-100 et seq.];

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14.5.To any person certified by the Illinois Department of Healthcare and Family Services as being 90 days or more delinquent in payment of support under an order of support entered by a court or administrative body of this or any other State, subject to the requirements and procedures of Article VII of Chapter 7 of this Code regarding those certifications;

15.To any person released from a term of imprisonment for violating Section 9-3 of the Criminal Code of 1961 [720 ILCS 5/9-3] or a similar provision of a law of another state relating to reckless homicide or for violating subparagraph (F) of paragraph (1) of subsection (d) of Section 11-501 of this Code [625 ILCS 5/11-501] relating to aggravated driving under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or any combination thereof, if the violation was the proximate cause of a death, within 24 months of release from a term of imprisonment;

16.To any person who, with intent to influence any act related to the issuance of any driver's license or permit, by an employee of the Secretary of State's Office, or the owner or employee of any commercial driver training school licensed by the Secretary of State, or any other individual authorized by the laws of this State to give driving instructions or administer all or part of a driver's license examination, promises or tenders to that person any property or personal advantage which that person is not authorized by law to accept. Any persons promising or tendering such property or personal advantage shall be disqualified from holding any class of driver's license or permit for 120 consecutive days. The Secretary of State shall establish by rule the procedures for implementing this period of disqualification and the procedures by which persons so disqualified may obtain administrative review of the decision to disqualify;

17.To any person for whom the Secretary of State cannot verify the accuracy of any information or documentation submitted in application for a driver's license; or

18.To any person who has been adjudicated under the Juvenile Court Act of 1987 based upon an offense that is determined by the court to have been committed in furtherance of the criminal activities of an organized gang, as provided in Section 5-710 of that Act [705 ILCS 405/5-710], and that involved the operation or use of a motor vehicle or the use of a driver's license or permit. The person shall be denied a license or permit for the period determined by the court.

The Secretary of State shall retain all conviction information, if the information is required to be held confidential under the Juvenile Court Act of 1987.

(Source: P.A. 85-951; 86-1450; 87-1114, § 1; 88-212, § 5; 90-369, § 5; 90-733, § 10; 92-343, § 5; 93-174, § 5; 93-783, § 2; 93-788, § 5; 93-895, § 10; 94-556, § 1040; 95-310, § 10; 95-337, § 5; 95-685, § 10; 95-876, § 300; 96-607, § 5; 96-740, § 10; 96-962, § 5; 96-1000, § 575; 97-185, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 6-103.

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Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Illinois Administrative Code.

See 23 Illinois Administrative Code, § 252.20.

Effect of Amendments. The 1992 amendment by P.A. 87-1114, effective September 15, 1992, in the introductory paragraph deleted "or " preceding "renew ", inserted "or allow the retention of, " and substituted "under this Code " for "hereunder ", in subdivision (5) inserted "or physical, " in subdivision (8) inserted "safely, " deleted "with safety " after "operate a motor vehicle " and deleted "or to any person who is afflicted or has been afflicted with epilepsy " after "upon the highways, " and made stylistic changes throughout the section.

The 1993 amendment by P.A. 88-212, effective January 1, 1994, in subsection 6 inserted "submit an alcohol and drug evaluation or " and added at the end "and submitted any required evaluation ".

The 1997 amendment by P.A. 90-369, effective January 1, 1998, in subsection 1. added at the end "except that an instruction permit may be issued under the provisions of Section 6-107.1 to a child who is 17 years and 9 months of age without the child having enrolled in an approved driver education course and except that an instruction permit may be issued to a child who is at least 15 years and 6 months of age, is enrolled in school, meets the educational requirements of the Driver Education Act, and has passed examinations the Secretary of State in his or her discretion may prescribe "; in subsection 11 deleted "or " from the end; in subsection 12 added "or " at the end; and added subsection 13.

The 1998 amendment by P.A. 90-733, effective August 11, 1998, added subsection 14. and made minor stylistic changes.

The 2001 amendment by P.A. 92-343, effective January 1, 2002, added subdivision 15, and made stylistic changes.

The 2003 amendment by P.A. 93-174, effective January 1, 2004, inserted "successfully " in subdivision 2.

The 2004 amendment by P.A. 93-712, effective January 1, 2005, inserted "or a similar provision of a law of another state" in subdivision 15.

The 2004 amendment by P.A. 93-782, effective January 1, 2005, inserted subdivision (16) and made related changes.

The 2004 amendment by P.A. 93-783, effective January 1, 2005, added subdivision (16).

The 2004 amendment by P.A. 93-788, effective January 1, 2005, in subdivision 1 substituted "Section 6-107.1" for "paragraphs (a) and (b) of Section 6-105"; and in subdivision 15 inserted the language beginning "or for violating" and ending "proximate cause of a death".

The 2004 amendment by 93-895, effective January 1, 2005, added subdivision (16).

The 2005 amendment by P.A. 556, effective September 11, 2005, twice added references to the Methamphetamine Control and Community Protection Act in 12; and renumbered former duplicate 16 as 17; and made related changes.

The 2007 amendment by P.A. 95-310, effective January 1, 2008, substituted "3 months" for "9 months" in 1.

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The 2007 amendment by P.A. 95-337, effective June 1, 2008, added 18. and made related changes.

The 2007 amendment by P.A. 95-685, effective October 23, 2007, added 14.5.

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, combined earlier multiple amendments.

The 2009 amendment by P.A. 96-607, effective August 24, 2009, substituted "3 months" for "6 months" in 1.; and added "or a similar out of state offense" in 13.

The 2009 amendment by P.A. 96-740, effective January 1, 2010, inserted "exam" in the first sentence of 16.

Although the amendments made to this section by P.A. 96-607, § 5, P.A. 96-740, § 10 did not take into account the amendments made by the others, the amendments have been combined into a single version by the publisher.

The 2010 amendment by P.A. 96-962, effective July 2, 2010, deleted "exam" following "commercial driver" in 16.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, combined earlier multiple amendments to the section.

The 2011 amendment by P.A. 97-185, effective July 22, 2011, inserted "a licensed physician assistant who has been delegated the performance of medical examinations by his or her supervising physician, or a licensed advanced practice nurse who has a written collaborative agreement with a collaborating physician which authorizes him or her to perform medical examinations" in 8.

CASE NOTES

Analysis

Alcohol
- Evidence Insufficient
- Evidence of Recovery
- Determination

Alcohol

- Evidence Insufficient

The evidence was insufficient to support a finding that plaintiff was a habitual drunkard to a degree which rendered him incapable of safely driving a motor vehicle. Murdy v. Edgar, 117 Ill. App. 3d 1091, 73 Ill. Dec. 722, 454 N.E.2d 819 (4 Dist. 1983).

- Evidence of Recovery

The Secretary of State could not rely upon its statutory authority to adopt administrative rules, and thereby irrebuttably presume, that any applicant with two convictions for driving under the influence of alcohol was an active alcoholic who would remain a threat to public safety on the

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highways for five years following either conviction or revocation of the applicant's license, without regard to the evidence of recovery presented by the applicant. Shanahan v. Edgar, 149 Ill. App. 3d 868, 103 Ill. Dec. 176, 501 N.E.2d 197 (1 Dist. 1986).

- Determination

The determination of whether reinstatement of a restricted driver's permit would threaten public safety must be made within the framework of this Code and the Secretary of State's regulations pursuant thereto; the determination of public safety cannot be made separately from and without regard to this Code and the administrative regulations. Shanahan v. Edgar, 149 Ill. App. 3d 868, 103 Ill. Dec. 176, 501 N.E.2d 197 (1 Dist. 1986).

LEGAL PERIODICALS

For article, "Epilepsy, Motor Vehicle Licensure and the Law: The Physician's Rights and Responsibilities in Illinois ", see 10 Loy. U. Chi. L.J. 203 (1978-79).

§ 625 ILCS 5/6-104. Classification of Driver - Special Restrictions

Sec. 6-104. Classification of Driver - Special Restrictions. (a) A driver's license issued under the authority of this Act shall indicate the classification for which the applicant therefor has qualified by examination or by such other means that the Secretary of State shall prescribe. Driver's license classifications shall be prescribed by rule or regulation promulgated by the Secretary of State and such may specify classifications as to operation of motor vehicles of the first division, or of those of the second division, whether operated singly or in lawful combination, and whether for-hire or not-for-hire, and may specify such other classifications as the Secretary deems necessary.

No person shall operate a motor vehicle unless such person has a valid license with a proper classification to permit the operation of such vehicle, except that any person may operate a moped if such person has a valid current Illinois driver's license, regardless of classification.

(b) No person who is under the age of 21 years or has had less than 1 year of driving experience shall drive: (1) in connection with the operation of any school, day camp, summer camp, or nursery school, any public or private motor vehicle for transporting children to or from any school, day camp, summer camp, or nursery school, or (2) any motor vehicle of the second division when in use for the transportation of persons for compensation.

(c) No person who is under the age of 18 years shall be issued a license for the purpose of transporting property for hire, or for the purpose of transporting persons for compensation in a motor vehicle of the first division.

(d) No person shall drive: (1) a school bus when transporting school children unless such person possesses a valid school bus driver permit or is accompanied and supervised, for the specific purpose of training prior to routine operation of a school bus, by a person

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who has held a valid school bus driver permit for at least one year; or (2) any other vehicle owned or operated by or for a public or private school, or a school operated by a religious institution, where such vehicle is being used over a regularly scheduled route for the transportation of persons enrolled as a student in grade 12 or below, in connection with any activity of the entities unless such person possesses a valid school bus driver permit.

(d-5) No person may drive a bus that does not meet the special requirements for school buses provided in Sections 12-801, 12-802, 12-803, and 12-805 of this Code [625 ILCS 5/12-801, 625 ILCS 5/12-802, 625 ILCS 5/12-803, and 625 ILCS 5/12-805] that has been chartered for the sole purpose of transporting students regularly enrolled in grade 12 or below to or from interscholastic athletic or interscholastic or school sponsored activities unless the person has a valid and properly classified commercial driver's license as provided in subsection (c-1) of Section 6-508 of this Code [625 ILCS 5/6-508] in addition to any other permit or license that is required to operate that bus. This subsection (d-5) does not apply to any bus driver employed by a public transportation provider authorized to conduct local or interurban transportation of passengers when the bus is not traveling a specific school bus route but is on a regularly scheduled route for the transporting of other fare paying passengers.

A person may operate a chartered bus described in this subsection (d-5) if he or she is not disqualified from driving a chartered bus of that type and if he or she holds a CDL that is:

(1) issued to him or her by any other state or jurisdiction in accordance with 49 CFR Part 383;

(2) not suspended, revoked, or canceled; and

(3) valid under 49 CFR 383, subpart F, for the type of vehicle being driven.

A person may also operate a chartered bus described in this subsection (d-5) if he or she holds a valid CDL and a valid school bus driver permit that was issued on or before December 31, 2003.

(e) No person shall drive a religious organization bus unless such person has a valid and properly classified drivers [sic] license or a valid school bus driver permit.

(f) No person shall drive a motor vehicle for the purpose of providing transportation for the elderly in connection with the activities of any public or private organization unless such person has a valid and properly classified driver's license issued by the Secretary of State.

(g) No person shall drive a bus which meets the special requirements for school buses provided in Section 12-801, 12-802, 12-803 and 12-805 of this Code for the purpose of transporting persons 18 years of age or less in connection with any youth camp licensed under the Youth Camp Act [210 ILCS 100/1 et seq.] or any child care facility licensed under the Child Care Act of 1969 [225 ILCS 10/1 et seq.] unless such person possesses a valid school bus driver permit or is accompanied and supervised, for the specific purpose of training prior to routine operation of a school bus, by a person who has held a valid school bus driver permit for at least one year; however, a person who has a valid and

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properly classified driver's license issued by the Secretary of State may operate a school bus for the purpose of transporting persons 18 years of age or less in connection with any such youth camp or child care facility if the "SCHOOL BUS" signs are covered or concealed and the stop signal arm and flashing signal systems are not operable through normal controls.

(Source: P.A. 84-1311; 88-612, § 15; 92-849, § 5; 93-476, § 10; 93-644, § 10; 96-554, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 6-104.

Cross References.

For additional regulations on school bus driver permits, see 105 ILCS 5/3-14.23.

Effect of Amendments. The 1994 amendment by P.A. 88-612, effective July 1, 1995, in subsection (e), deleted "issued by the Secretary of State" preceding "or a valid" and deleted from the end "issued by the Regional Superintendent".

The 2002 amendment by P.A. 92-849, effective January 1, 2003, inserted subsection (d-5).

The 2003 amendment by P.A. 93-476, effective January 1, 2004, rewrote subsection (d-5).

The 2003 amendment by P.A. 93-644, effective June 1, 2004, rewrote subsection (d-5) to the extent that a detailed comparison would be impracticable.

The 2009 amendment by P.A. 96-554, effective January 1, 2010, substituted "moped" for "motorized pedalcycle" in the second paragraph of (a).

§ 625 ILCS 5/6-106.1. School bus driver permit

Sec. 6-106.1. School bus driver permit. (a) The Secretary of State shall issue a school bus driver permit to those applicants who have met all the requirements of the application and screening process under this Section to insure the welfare and safety of children who are transported on school buses throughout the State of Illinois. Applicants shall obtain the proper application required by the Secretary of State from their prospective or current employer and submit the completed application to the prospective or current employer along with the necessary fingerprint submission as required by the Department of State Police to conduct fingerprint based criminal background checks on current and future information available in the state system and current information available through the Federal Bureau of Investigation's system. Applicants who have completed the fingerprinting requirements shall not be subjected to the fingerprinting process when applying for subsequent permits or submitting proof of successful completion of the annual refresher course. Individuals who on the effective date of this Act possess a valid

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school bus driver permit that has been previously issued by the appropriate Regional School Superintendent are not subject to the fingerprinting provisions of this Section as long as the permit remains valid and does not lapse. The applicant shall be required to pay all related application and fingerprinting fees as established by rule including, but not limited to, the amounts established by the Department of State Police and the Federal Bureau of Investigation to process fingerprint based criminal background investigations. All fees paid for fingerprint processing services under this Section shall be deposited into the State Police Services Fund for the cost incurred in processing the fingerprint based criminal background investigations. All other fees paid under this Section shall be deposited into the Road Fund for the purpose of defraying the costs of the Secretary of State in administering this Section. All applicants must:

1.be 21 years of age or older;

2.possess a valid and properly classified driver's license issued by the Secretary of State;

3.possess a valid driver's license, which has not been revoked, suspended, or canceled for 3 years immediately prior to the date of application, or have not had his or her commercial motor vehicle driving privileges disqualified within the 3 years immediately prior to the date of application;

4.successfully pass a written test, administered by the Secretary of State, on school bus operation, school bus safety, and special traffic laws relating to school buses and submit to a review of the applicant's driving habits by the Secretary of State at the time the written test is given;

5.demonstrate ability to exercise reasonable care in the operation of school buses in accordance with rules promulgated by the Secretary of State;

6.demonstrate physical fitness to operate school buses by submitting the results of a medical examination, including tests for drug use for each applicant not subject to such testing pursuant to federal law, conducted by a licensed physician, an advanced practice nurse who has a written collaborative agreement with a collaborating physician which authorizes him or her to perform medical examinations, or a physician assistant who has been delegated the performance of medical examinations by his or her supervising physician within 90 days of the date of application according to standards promulgated by the Secretary of State;

7.affirm under penalties of perjury that he or she has not made a false statement or knowingly concealed a material fact in any application for permit;

8.have completed an initial classroom course, including first aid procedures, in school bus driver safety as promulgated by the Secretary of State; and after satisfactory completion of said initial course an annual refresher course; such courses and the agency or organization conducting such courses shall be approved by the Secretary of State; failure to complete the annual refresher course, shall result in cancellation of the permit until such course is completed;

9.not have been under an order of court supervision for or convicted of 2 or more serious traffic offenses, as defined by rule, within one year prior to the date of application that

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may endanger the life or safety of any of the driver's passengers within the duration of the permit period;

10.not have been under an order of court supervision for or convicted of reckless driving, aggravated reckless driving, driving while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof, or reckless homicide resulting from the operation of a motor vehicle within 3 years of the date of application;

11.not have been convicted of committing or attempting to commit any one or more of the following offenses: (i) those offenses defined in Sections 8-1.2, 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, 9-3.3, 10-1, 10-2, 10-3.1, 10-4, 10-5, 10-5.1, 10-6, 10-7, 10-9, 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-6, 11-6.5, 11-6.6, 11-9, 11-9.1, 11-9.3, 11-9.4, 11-14, 11-14.1, 11-14.3, 11-14.4, 11-15, 11-15.1, 11-16, 11-17, 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1, 11-19.2, 11-20, 11-20.1, 11-20.1B, 11-20.3, 11-21, 11-22, 11-23, 11-24, 11-25, 11-26, 11-30, 12-2.6, 12-3.1, 12-4, 12-4.1, 12-4.2, 12-4.2-5, 12-4.3, 12-4.4, 12-4.5, 12-4.6, 12-4.7, 12-4.9, 12-5.01, 12-6, 12-6.2, 12-7.1, 12-7.3, 12-7.4, 12-7.5, 12-11, 12-13, 12-14, 12-14.1, 12-15, 12-16, 12-16.2, 12-21.5, 12-21.6, 12-33, 16-16, 16-16.1, 18-1, 18-2, 18-3, 18-4, 18-5, 20-1, 20-1.1, 20-1.2, 20-1.3, 20-2, 24-1, 24-1.1, 24-1.2, 24-1.2-5, 24-1.6, 24-1.7, 24-2.1, 24-3.3, 24-3.5, 31A-1, 31A-1.1, 33A-2 [720 ILCS 5/8-1.2, 720 ILCS 5/9-1, 720 ILCS 5/9-1.2, 720 ILCS 5/9-2, 720 ILCS 5/9-2.1, 720 ILCS 5/9-3, 720 ILCS 5/9-3.2, 720 ILCS 5/9-3.3, 720 ILCS 5/10-1, 720 ILCS 5/10-2, 720 ILCS 5/10-3.1, 720 ILCS 5/10-4, 720 ILCS 5/10-5, 720 ILCS 5/10-5.1, 720 ILCS 5/10-6, 720 ILCS 5/10-7, 720 ILCS 5/10-9, 720 ILCS 5/11-1.20, 720 ILCS 5/11-1.30, 720 ILCS 5/11-1.40, 720 ILCS 5/11-1.50, 720 ILCS 5/11-1.60, 720 ILCS 5/11-6, 720 ILCS 5/11-6.5, 720 ILCS 5/11-6.6, 720 ILCS 5/11-30, 720 ILCS 5/11-9.1, 720 ILCS 5/11-9.3,720 ILCS 5/11-9.4, 720 ILCS 5/11-14, 720 ILCS 5/11-14.1, 720 ILCS 5/11-14.3, 720 ILCS 5/11-14.4, 720 ILCS 5/11-15, 720 ILCS 5/11-15.1, 720 ILCS 5/11-16, 720 ILCS 5/11-17, 720 ILCS 5/11-17.1, 720 ILCS 5/11-18, 720 ILCS 5/11-18.1, 720 ILCS 5/11-19, 720 ILCS 5/11-19.1, 720 ILCS 5/11-19.2, 720 ILCS 5/11-20, 720 ILCS 5/11-20.1, 720 ILCS 5/11-20.1B, ILCS 5/11-20.1B, 720 ILCS 5/11-21, 720 ILCS 5/11-22, 720 ILCS 5/11-23, 720 ILCS 5/11-24, 720 ILCS 5/11-25, 720 ILCS 5/11-26, 720 ILCS 5/11-30,720 ILCS 5/12-2.6, 720 ILCS 5/12-3.1, 720 ILCS 5/12-4, 720 ILCS 5/12-4.1 (now repealed), 720 ILCS 5/12-4.2 (now repealed), 720 ILCS 5/12-4.2-5 (now repealed), 720 ILCS 5/12-4.3, 720 ILCS 5/12-4.4, 720 ILCS 5/12-4.5, 720 ILCS 5/12-4.6, 720 ILCS 5/12-4.7, 720 ILCS 5/12-4.9, 720 ILCS 5/12-5.01, 720 ILCS 5/12-6, 720 ILCS 5/12-6.2, 720 ILCS 5/12-7.1, 720 ILCS 5/12-7.3, 720 ILCS 5/12-7.4, 720 ILCS 5/12-7.5, 720 ILCS 5/12-11, 720 ILCS 5/12-13, 720 ILCS 5/12-14, 720 ILCS 5/12-14.1, 720 ILCS 5/12-15, 720 ILCS 5/12-16, 720 ILCS 5/12-16.2, 720 ILCS 5/12-21.5, 720 ILCS 5/12-21.6, 720 ILCS 5/12-33, 720 ILCS 5/16-16, 720 ILCS 5/16-16.1, 720 ILCS 5/18-1, 720 ILCS 5/18-2, 720 ILCS 5/18-3, 720 ILCS 5/18-4, 720 ILCS 5/18-5, 720 ILCS 5/20-1, 720 ILCS 5/20-1.1, 720 ILCS 5/20-1.2, 720 ILCS 5/20-1.3, 720 ILCS 5/20-2, 720 ILCS 5/24-1, 720 ILCS 5/24-1.1, 720 ILCS 5/24-1.2, 720 ILCS 5/24-1.2-5, 720 ILCS 5/24-1.6, 720 ILCS 5/24-1.7, 720 ILCS 5/24-2.1, 720 ILCS 5/24-3.3, 720 ILCS 5/24-3.5, 720 ILCS 5/31A-1, 720 ILCS 5/31A-1.1, 720 ILCS 5/33A-2], and 33D-1 [720 ILCS 5/33D-1], and in subsection (b) of Section 8-1 [720 ILCS 5/8-1], and in subdivisions (a)(1), (a)(2), (b)(1), (e)(1), (e)(2), (e)(3), (e)(4), and (f)(1) of Section 12-3.05 [720 ILCS 5/12-3.05], and in subsection (a) and

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subsection (b), clause (1), of Section 12-4 [720 ILCS 5/12-4] and in subsection (A), clauses (a) and (b), of Section 24-3 [720 ILCS 5/24-3], and those offenses contained in Article 29D of the Criminal Code of 1961 [720 ILCS 5/29D-5 et seq.]; (ii) those offenses defined in the Cannabis Control Act [720 ILCS 550/1 et seq.] except those offenses defined in subsections (a) and (b) of Section 4 [720 ILCS 550/4], and subsection (a) of Section 5 of the Cannabis Control Act [720 ILCS 550/5]; (iii) those offenses defined in the Illinois Controlled Substances Act [720 ILCS 570/100 et seq.]; (iv) those offenses defined in the Methamphetamine Control and Community Protection Act [720 ILCS 646/1 et seq.]; (v) any offense committed or attempted in any other state or against the laws of the United States, which if committed or attempted in this State would be punishable as one or more of the foregoing offenses; (vi) the offenses defined in Section 4.1 and 5.1 of the Wrongs to Children Act or Section 11-9.1A of the Criminal Code of 1961 [720 ILCS 150/4.1, 720 ILCS 150/5.1 (now repealed) or 720 ILCS 150/11-9.1A]; (vii) those offenses defined in Section 6-16 of the Liquor Control Act of 1934 [235 ILCS 5/6-16]; and (viii) those offenses defined in the Methamphetamine Precursor Control Act [720 ILCS 648/1 et seq.];

12.not have been repeatedly involved as a driver in motor vehicle collisions or been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway;

13.not have, through the unlawful operation of a motor vehicle, caused an accident resulting in the death of any person;

14.not have, within the last 5 years, been adjudged to be afflicted with or suffering from any mental disability or disease; and

15.consent, in writing, to the release of results of reasonable suspicion drug and alcohol testing under Section 6-106.1c of this Code [625 ILCS 5/6-106.1c] by the employer of the applicant to the Secretary of State.

(b) A school bus driver permit shall be valid for a period specified by the Secretary of State as set forth by rule. It shall be renewable upon compliance with subsection (a) of this Section.

(c) A school bus driver permit shall contain the holder's driver's license number, legal name, residence address, zip code, and date of birth, a brief description of the holder and a space for signature. The Secretary of State may require a suitable photograph of the holder.

(d) The employer shall be responsible for conducting a pre-employment interview with prospective school bus driver candidates, distributing school bus driver applications and medical forms to be completed by the applicant, and submitting the applicant's fingerprint cards to the Department of State Police that are required for the criminal background investigations. The employer shall certify in writing to the Secretary of State that all pre-employment conditions have been successfully completed including the successful completion of an Illinois specific criminal background investigation through the

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Department of State Police and the submission of necessary fingerprints to the Federal Bureau of Investigation for criminal history information available through the Federal Bureau of Investigation system. The applicant shall present the certification to the Secretary of State at the time of submitting the school bus driver permit application.

(e) Permits shall initially be provisional upon receiving certification from the employer that all pre-employment conditions have been successfully completed, and upon successful completion of all training and examination requirements for the classification of the vehicle to be operated, the Secretary of State shall provisionally issue a School Bus Driver Permit. The permit shall remain in a provisional status pending the completion of the Federal Bureau of Investigation's criminal background investigation based upon fingerprinting specimens submitted to the Federal Bureau of Investigation by the Department of State Police. The Federal Bureau of Investigation shall report the findings directly to the Secretary of State. The Secretary of State shall remove the bus driver permit from provisional status upon the applicant's successful completion of the Federal Bureau of Investigation's criminal background investigation.

(f) A school bus driver permit holder shall notify the employer and the Secretary of State if he or she is issued an order of court supervision for or convicted in another state of an offense that would make him or her ineligible for a permit under subsection (a) of this Section. The written notification shall be made within 5 days of the entry of the order of court supervision or conviction. Failure of the permit holder to provide the notification is punishable as a petty offense for a first violation and a Class B misdemeanor for a second or subsequent violation.

(g) Cancellation; suspension; notice and procedure.

(1) The Secretary of State shall cancel a school bus driver permit of an applicant whose criminal background investigation discloses that he or she is not in compliance with the provisions of subsection (a) of this Section.

(2) The Secretary of State shall cancel a school bus driver permit when he or she receives notice that the permit holder fails to comply with any provision of this Section or any rule promulgated for the administration of this Section.

(3) The Secretary of State shall cancel a school bus driver permit if the permit holder's restricted commercial or commercial driving privileges are withdrawn or otherwise invalidated.

(4) The Secretary of State may not issue a school bus driver permit for a period of 3 years to an applicant who fails to obtain a negative result on a drug test as required in item 6 of subsection (a) of this Section or under federal law.

(5) The Secretary of State shall forthwith suspend a school bus driver permit for a period of 3 years upon receiving notice that the holder has failed to obtain a negative result on a drug test as required in item 6 of subsection (a) of this Section or under federal law.

(6) The Secretary of State shall suspend a school bus driver permit for a period of 3 years upon receiving notice from the employer that the holder failed to perform the inspection

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procedure set forth in subsection (a) or (b) of Section 12-816 of this Code [625 ILCS 5/12-816].

(7) The Secretary of State shall suspend a school bus driver permit for a period of 3 years upon receiving notice from the employer that the holder refused to submit to an alcohol or drug test as required by Section 6-106.1c or has submitted to a test required by that Section which disclosed an alcohol concentration of more than 0.00 or disclosed a positive result on a National Institute on Drug Abuse five-drug panel, utilizing federal standards set forth in 49 CFR 40.87.

The Secretary of State shall notify the State Superintendent of Education and the permit holder's prospective or current employer that the applicant has (1) has failed a criminal background investigation or (2) is no longer eligible for a school bus driver permit; and of the related cancellation of the applicant's provisional school bus driver permit. The cancellation shall remain in effect pending the outcome of a hearing pursuant to Section 2-118 of this Code [625 ILCS 5/2-118]. The scope of the hearing shall be limited to the issuance criteria contained in subsection (a) of this Section. A petition requesting a hearing shall be submitted to the Secretary of State and shall contain the reason the individual feels he or she is entitled to a school bus driver permit. The permit holder's employer shall notify in writing to the Secretary of State that the employer has certified the removal of the offending school bus driver from service prior to the start of that school bus driver's next workshift. An employing school board that fails to remove the offending school bus driver from service is subject to the penalties defined in Section 3-14.23 of the School Code [105 ILCS 5/3-14.23]. A school bus contractor who violates a provision of this Section is subject to the penalties defined in Section 6-106.11 [625 ILCS 5/6-106.11].

All valid school bus driver permits issued under this Section prior to January 1, 1995, shall remain effective until their expiration date unless otherwise invalidated.

(h) When a school bus driver permit holder who is a service member is called to active duty, the employer of the permit holder shall notify the Secretary of State, within 30 days of notification from the permit holder, that the permit holder has been called to active duty. Upon notification pursuant to this subsection, (i) the Secretary of State shall characterize the permit as inactive until a permit holder renews the permit as provided in subsection (i) of this Section, and (ii) if a permit holder fails to comply with the requirements of this Section while called to active duty, the Secretary of State shall not characterize the permit as invalid.

(i) A school bus driver permit holder who is a service member returning from active duty must, within 90 days, renew a permit characterized as inactive pursuant to subsection (h) of this Section by complying with the renewal requirements of subsection (b) of this Section.

(j) For purposes of subsections (h) and (i) of this Section:

"Active duty" means active duty pursuant to an executive order of the President of the United States, an act of the Congress of the United States, or an order of the Governor.

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"Service member" means a member of the Armed Services or reserve forces of the United States or a member of the Illinois National Guard.

(Source: P.A. 86-508; 86-578; 86-1028; 86-1465; 87-526; 87-895; 88-612, § 15; 89-71, § 5; 89-120, § 10; 89-375, § 3; 89-428, § 250; 89-462, § 250; 89-626, § 2-66; 90-191, § 10; 91-500, § 5; 92-703, § 10; 93-895, § 10; 94-556, § 1040; 96-89, § 5; 96-818, § 5; 96-962, § 5; 96-1000, § 575; 96-1182, § 5; 96-1551, §§ 950, 1025; 97-224, § 5; 97-229, § 10; 97-333, § 525; 97-466, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 6-106.1.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Section 9995 of P.A. 96-1551 contains a "no acceleration or delay" provision.

Section 95 of P.A. 97-229 contains a "no acceleration or delay" provision.

Sections 720 ILCS 5/11-9.4, 720 ILCS 5/11-19, 720 ILCS 5/11-16, 720 ILCS 5/12-4.1, 720 ILCS 5/12-4.2, 720 ILCS 5/12-4.2-5, 720 ILCS 5/16-16, 720 ILCS 5/16-16.1, 720 ILCS 5/11-17, 720 ILCS 150/5.1 referred to in subsection (a)(11), have been repealed.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Cross References.

As to the responsibility of the Illinois Department of Children and Family Services to assure that no day care center, group home, or child care institution transports a child without the driver meeting certain licensing criteria, see 225 ILCS 10/5.1.

Illinois Administrative Code.

See 20 Illinois Administrative Code, § 1286.10, 23 Illinois Administrative Code, §§ 120.10, 275.80.

Effect of Amendments. The 1994 amendment by P.A. 88-612, effective July 1, 1995, rewrote subsection (a); in subsection (b), in the first sentence substituted "a period specified by the Secretary of State as set forth by rule" for "one year from the date of issuance" and deleted the third sentence which read "The Regional Superintendent may extend the permit period up to a maximum of 30 days in instances of emergency"; in subsection (c), in the second sentence substituted "Secretary of State" for "State Superintendent of Education"; added present subsections (d) through (f); redesignated former subsection (d) as present subsection (g) and rewrote the subsection.

The 1995 amendments by P.A. 89-71, effective January 1, 1996, P.A. 89-120, effective July 7, 1995 and P.A. 89-375, effective July 1, 1995, approved August 18, 1995, made identical changes, they each: in subsection (a), in the second sentence, substituted "submission" for "cards", added the sixth sentence, and in the seventh sentence inserted "other" and inserted "the

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Secretary of State in"; in subdivision (a)6 substituted "demonstrate" for "demonstrates"; and in subdivision (a)11 inserted "12-21.5, 12-21.6".

The 1995 amendment by P.A. 89-428, effective December 13, 1995 and the 1996 amendment by P.A. 89-462, effective May 29, 1996, made identical amendments: they each incorporated the amendments by P.A. 89-71, P.A. 89-120 and P.A. 89-375; and in subdivision (a)11 inserted "12-14.1".

The 1996 amendment by P.A. 89-626, effective August 9, 1996, combined the amendments by P.A. 89-71, P.A. 89-120 and P.A. 89-375.

The 1997 amendment by P.A. 90-191, effective January 1, 1998, combined the amendments by P.A. 89-462 and P.A. 89-626; in subsection (b), in the second sentence, deleted "but a new permit shall be issued" preceding "upon compliance".

The 1999 amendment by P.A. 91-500, effective August 13, 1999, in subsection (a)3. inserted "or canceled" following "suspended" and made related changes, and inserted the language beginning "or have not had his" to the end; and in subsection (a)11. inserted "9-2, 9-2.1, 9-3, 9-3.2, 9-3.3, 11-9.1, 12-3.1, 12-4.1, 12-4.2, 12-6.2, 12-7.3, 12-7.4, 12-16.2, 12-33, 18-5, 20-2, 24-3.3".

The 2002 amendment by P.A. 92-703, effective July 19, 2002, inserted the language beginning with "an advanced practice nurse" and ending with "medical examinations by his or her supervising physician" in clause (a)6.

The 2004 amendment by P.A. 93-895, effective January 1, 2005, in subsection (c), substituted "legal name, residence address" for "name, address".

The 2005 amendment by P.A. 556, effective September 11, 2005, added item (iv) and redesignated the remaining items accordingly in (a)11.

The 2009 amendment by P.A. 96-89, effective July 26, 2009, added (h) through (j).

The 2009 amendment by P.A. 96-818, effective November 17, 2009, added (g)(6).

The 2010 amendment by P.A. 96-962, effective July 2, 2010, rewrote (a)10.

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, combined earlier multiple amendments to the section.

The 2010 amendment by P.A. 96-1182, effective July 22, 2010, in item (i) of (a)11., inserted "8-1.2," "10-5.1," "10-9," "11-6.5, 11-6.6," "11-9.3, 11-9.4," "11-14.1," "11-17.1," "11-18.1," "11-20.3," "11-23, 11-24, 11-25, 11-26, 12-2.6," "12-4," "12-4.2-5," "12-4.6, 12-4.7, 12-4.9," "12-7.5," "16-16, 16-16.1," "20-1.2, 20-1.3," "24-1.2-5, 24-1.6, 24-1.7, 24-2.1," "24-3.5," "and 33D-1, and in subsection (b) of Section 8-1," and "and in subsection (A), clauses (a) and (b), of Section 24-3, and those offenses contained in Article 29D"; added item (viii) to the end of (a)11.; and made related changes.

The 2011 amendment by P.A. 96-1551,§ 950, effective July 1, 2011, in item (i) of (a)11., inserted "12-5.01" to the section listing and inserted "and in subdivisions (a)(1), (a)(2), (b)(1), (e)(1), (e)(2), (e)(3), (e)(4), and (f)(1) of Section 12-3.05"; and made a stylistic change.

The 2011 amendment by P.A. 96-1551, § 1025, effective July 1, 2011, in (a)11., in the section listing of item (i), inserted "11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60," "11-14.3, 11-14.4," "11-20.1B," "11-30" and inserted "or Section 11-9.1A of the Criminal Code of 1961" in item (vi); and made a stylistic change.

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The 2011 amendment by P.A. 97-224, effective July 28, 2011, inserted "under an order of court supervision for or" in (a)9. and (a)10.; and in (f), inserted "issued an order of court supervision for or" in the first sentence and inserted "order of court supervision or" in the second sentence.

The 2011 amendment by P.A. 97-229, effective July 28, 2011, deleted "social security number" following "zip code" in the first sentence of (c).

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, made a stylistic change.

The 2011 amendment by P.A. 97-466, effective January 1, 2012, added (a)15. and (g)(7); and made related changes.

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

CASE NOTES

Analysis

Constitutionality
Restoration of License
- Arbitration Improper
- Burden of Proof

Constitutionality

Public Act 89-428 was enacted in violation of the single subject rule of the state constitution and is therefore invalid in its entirety. Johnson v. Edgar, 176 Ill. 2d 499, 224 Ill. Dec. 1, 680 N.E.2d 1372 (1997).

Restoration of License

- Arbitration Improper

Arbitrator's award, reinstating school bus driver terminated for unsafe driving habits to her position as a school bus driver, was contrary to the public policy favoring the safe transportation of school children. Board of Educ. v. Illinois Educ. Labor Relations Bd., 216 Ill. App. 3d 990, 159 Ill. Dec. 802, 576 N.E.2d 471 (4 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 914, 584 N.E.2d 126 (1991).

- Burden of Proof

Where a school bus driver had her driving permit suspended based on an alleged positive drug test result, the burden was on the driver to present prima facie evidence that the positive result was unreliable. Once driver presented prima facie evidence regarding unreliability of test result, by offering credible testimony that she did not use marijuana and evidence that, during her 24 years as a bus driver she had taken numerous drug tests, all of which were negative, the burden of proof shifted to the Secretary of State to prove the reliability and accuracy of the positive results. Wigginton v. White, 364 Ill. App. 3d 900, 301 Ill. Dec. 636, 847 N.E.2d 646, 2006 Ill.

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App. LEXIS 221 (1 Dist. 2006).

§ 625 ILCS 5/6-106.1b. Loss of school bus driver permit privileges; failure or refusal to submit to chemical testing

Sec. 6-106.1b. Loss of school bus driver permit privileges; failure or refusal to submit to chemical testing. Unless the loss of school bus driver permit privileges based upon consumption of alcohol by an individual who has been issued a school bus driver permit in accordance with Section 6-106.1 of this Code [625 ILCS 5/6-106.1] or refusal to submit to testing has been rescinded by the Secretary of State in accordance with subsection (c) of Section 6-206 of this Code [625 ILCS 5/6-206], a person whose privilege to possess a school bus driver permit has been canceled under Section 6-106.1a [625 ILCS 5/6-106.1a] is not eligible for restoration of the privilege until the expiration of 3 years from the effective date of the cancellation for a person who has refused or failed to complete a test or tests to determine blood alcohol concentration or has submitted to testing with a blood alcohol concentration of more than 0.00.

(Source: P.A. 90-107, § 5; 91-124, § 5.)

Effective Date. Section 99 of P.A. 90-107 made this section effective January 1, 1998.

Effect of Amendments. The 1999 amendment by P.A. 91-124, effective July 16, 1999, substituted "more than 0.00" for "0.00 or more" at the end of the section.

§ 625 ILCS 5/6-106.11. (As amended by P.A. 97-224) [Unlawful operation of school bus; violation; penalty]

Sec. 6-106.11. (a) Any individual, corporation, partnership or association, who through contractual arrangements with a school district transports students, teachers or other personnel of that district for compensation, shall not permit any person to operate a school bus or any first division vehicle including taxis when used for a purpose that requires a school bus driver permit pursuant to that contract if the driver has not complied with the provisions of Sections 6-106.1 of this Code [625 ILCS 5/6-106.1] or such other rules or regulations that the Secretary of State may prescribe for the classification, restriction or licensing of school bus driver permit holders.

(a-5) Any individual, corporation, partnership, association, or entity that has a contractual arrangement referred to in subsection (a) of this Section must provide the school district with (i) the names of all drivers who will be operating a vehicle requiring a school bus driver permit pursuant to the contract with the school district; and (ii) a copy of each driver's school bus driver permit. Upon notification by the Secretary of State to the

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employer of the school bus driver permit holder that an employee's school bus driver permit has been suspended or cancelled, the employer must notify the school district of the suspension or cancellation within 2 business days.

(a-10) An individual, corporation, partnership, association, or entity that has a contractual arrangement referred to in subsection (a) of this Section may not:

(i) utilize a vehicle in the performance of the contract that has previously been in salvage or junk status; or

(ii) allow smoking in a vehicle while the vehicle is in the performance of the contract.

(b) A violation of this Section is a business offense and shall subject the offender to a fine of no less than $1,000 nor more than $10,000 for a first offense, no less than $1,500 nor more than $15,000 for a second offense, and no less than $2,000 nor more than $20,000 for a third or subsequent offense. In addition to any fines imposed under this subsection, any offender who has been convicted three times under the provisions of subsection (a) shall, upon a fourth or subsequent conviction be prohibited from transporting or contracting to transport students, teachers or other personnel of a school district for a period of five years beginning with the date of conviction of such fourth or subsequent conviction.

(Source: P.A. 83-1286; 97-224, § 5.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 6-106.11.

Cross References.

For extensions of contracts for transportation, see 105 ILCS 5/29-6.1.

Effect of Amendments. The 2011 amendment by P.A. 97-224, effective July 28, 2011, in (a), inserted "or any first division vehicle including taxis when used for a purpose that requires a school bus driver permit" and substituted "driver permit holders" for "drivers"; and inserted (a-5) and (a-10).

§ 625 ILCS 5/6-106.11. (As amended by P.A. 97-229) [Unlawful operation of school bus; violation; penalty]

Sec. 6-106.11. (a) Any individual, corporation, partnership or association, who through contractual arrangements with a school district transports students, teachers or other

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personnel of that district for compensation, shall not permit any person to operate a school bus or any other motor vehicle requiring a school bus driver permit pursuant to that contract if the driver has not complied with the provisions of Sections 6-106.1 of this Code [625 ILCS 5/6-106.1] or such other rules or regulations that the Secretary of State may prescribe for the classification, restriction or licensing of the school bus driver permit holder.

(b) A violation of this Section is a business offense and shall subject the offender to a fine of no less than $1,000 nor more than $10,000 for a first offense, no less than $1,500 nor more than $15,000 for a second offense, and no less than $2,000 nor more than $20,000 for a third or subsequent offense. In addition to any fines imposed under this subsection, any offender who has been convicted three times under the provisions of subsection (a) shall, upon a fourth or subsequent conviction be prohibited from transporting or contracting to transport students, teachers or other personnel of a school district for a period of five years beginning with the date of conviction of such fourth or subsequent conviction.

(Source: P.A. 97-229, § 10.)

Section set out twice. Multiple versions of this section have been created by the editor to reﬂect conﬂicting or postponed legislation.

Note.

Section 95 of P.A. 97-229 contains a "no acceleration or delay" provision.

Effect of Amendments. The 2011 amendment by P.A. 97-229, effective July 28, 2011, in (a), inserted "or any other motor vehicle requiring a school bus driver permit" and substituted "the school bus driver permit holder" for "school bus drivers."

§ 625 ILCS 5/6-107. Graduated license

Sec. 6-107. Graduated license. (a) The purpose of the Graduated Licensing Program is to develop safe and mature driving habits in young, inexperienced drivers and reduce or prevent motor vehicle accidents, fatalities, and injuries by:

(1) providing for an increase in the time of practice period before granting permission to obtain a driver's license;

(2) strengthening driver licensing and testing standards for persons under the age of 21 years;

(3) sanctioning driving privileges of drivers under age 21 who have committed serious traffic violations or other specified offenses; and

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(4) setting stricter standards to promote the public's health and safety.

(b) The application of any person under the age of 18 years, and not legally emancipated by marriage, for a drivers license or permit to operate a motor vehicle issued under the laws of this State, shall be accompanied by the written consent of either parent of the applicant; otherwise by the guardian having custody of the applicant, or in the event there is no parent or guardian, then by another responsible adult. The written consent must accompany any application for a driver's license under this subsection (b), regardless of whether or not the required written consent also accompanied the person's previous application for an instruction permit.

No graduated driver's license shall be issued to any applicant under 18 years of age, unless the applicant is at least 16 years of age and has:

(1) Held a valid instruction permit for a minimum of 9 months.

(2) Passed an approved driver education course and submits proof of having passed the course as may be required.

(3) Certification by the parent, legal guardian, or responsible adult that the applicant has had a minimum of 50 hours of behind-the-wheel practice time, at least 10 hours of which have been at night, and is sufficiently prepared and able to safely operate a motor vehicle.

(b-1) No graduated driver's license shall be issued to any applicant who is under 18 years of age and not legally emancipated by marriage, unless the applicant has graduated from a secondary school of this State or any other state, is enrolled in a course leading to a general educational development (GED) certificate, has obtained a GED certificate, is enrolled in an elementary or secondary school or college or university of this State or any other state and is not a chronic or habitual truant as provided in Section 26-2a of the School Code [105 ILCS 5/26-2a], or is receiving home instruction and submits proof of meeting any of those requirements at the time of application.

An applicant under 18 years of age who provides proof acceptable to the Secretary that the applicant has resumed regular school attendance or home instruction or that his or her application was denied in error shall be eligible to receive a graduated license if other requirements are met. The Secretary shall adopt rules for implementing this subsection (b-1).

(c) No graduated driver's license or permit shall be issued to any applicant under 18 years of age who has committed the offense of operating a motor vehicle without a valid license or permit in violation of Section 6-101 of this Code [625 ILCS 5/6-101] or a similar out of state offense and no graduated driver's license or permit shall be issued to any applicant under 18 years of age who has committed an offense that would otherwise result in a mandatory revocation of a license or permit as provided in Section 6-205 of this Code [625 ILCS 5/6-205] or who has been either convicted of or adjudicated a delinquent based upon a violation of the Cannabis Control Act [720 ILCS 550/1 et seq.], the Illinois Controlled Substances Act [720 ILCS 570/100 et seq.], the Use of Intoxicating Compounds Act [720 ILCS 690/0.01 et seq.], or the Methamphetamine Control and Community Protection Act [720 ILCS 646/1 et seq.] while that individual

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was in actual physical control of a motor vehicle. For purposes of this Section, any person placed on probation under Section 10 of the Cannabis Control Act [720 ILCS 550/10], Section 410 of the Illinois Controlled Substances Act [720 ILCS 570/410], or Section 70 of the Methamphetamine Control and Community Protection Act [720 ILCS 646/70] shall not be considered convicted. Any person found guilty of this offense, while in actual physical control of a motor vehicle, shall have an entry made in the court record by the judge that this offense did occur while the person was in actual physical control of a motor vehicle and order the clerk of the court to report the violation to the Secretary of State as such.

(d) No graduated driver's license shall be issued for 9 months to any applicant under the age of 18 years who has committed and subsequently been convicted of an offense against traffic regulations governing the movement of vehicles, any violation of this Section or Section 12-603.1 of this Code [625 ILCS 5/12-603.1], or who has received a disposition of court supervision for a violation of Section 6-20 of the Illinois Liquor Control Act of 1934 [235 ILCS 5/6-20] or a similar provision of a local ordinance.

(e) No graduated driver's license holder under the age of 18 years shall operate any motor vehicle, except a motor driven cycle or motorcycle, with more than one passenger in the front seat of the motor vehicle and no more passengers in the back seats than the number of available seat safety belts as set forth in Section 12-603 [625 ILCS 5/12-603] of this Code. If a graduated driver's license holder over the age of 18 committed an offense against traffic regulations governing the movement of vehicles or any violation of this Section or Section 12-603.1 of this Code in the 6 months prior to the graduated driver's license holder's 18th birthday, and was subsequently convicted of the violation, the provisions of this paragraph shall continue to apply until such time as a period of 6 consecutive months has elapsed without an additional violation and subsequent conviction of an offense against traffic regulations governing the movement of vehicles or any violation of this Section or Section 12-603.1 of this Code.

(f) No graduated driver's license holder under the age of 18 shall operate a motor vehicle unless each driver and passenger under the age of 19 is wearing a properly adjusted and fastened seat safety belt and each child under the age of 8 is protected as required under the Child Passenger Protection Act [625 ILCS 25/1 et seq.]. If a graduated driver's license holder over the age of 18 committed an offense against traffic regulations governing the movement of vehicles or any violation of this Section or Section 12-603.1 of this Code in the 6 months prior to the graduated driver's license holder's 18th birthday, and was subsequently convicted of the violation, the provisions of this paragraph shall continue to apply until such time as a period of 6 consecutive months has elapsed without an additional violation and subsequent conviction of an offense against traffic regulations governing the movement of vehicles or any violation of this Section or Section 12-603.1 of this Code.

(g) If a graduated driver's license holder is under the age of 18 when he or she receives the license, for the first 12 months he or she holds the license or until he or she reaches the age of 18, whichever occurs sooner, the graduated license holder may not operate a motor vehicle with more than one passenger in the vehicle who is under the age of 20, unless any additional passenger or passengers are siblings, step-siblings, children, or

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stepchildren of the driver. If a graduated driver's license holder committed an offense against traffic regulations governing the movement of vehicles or any violation of this Section or Section 12-603.1 of this Code during the first 12 months the license is held and subsequently is convicted of the violation, the provisions of this paragraph shall remain in effect until such time as a period of 6 consecutive months has elapsed without an additional violation and subsequent conviction of an offense against traffic regulations governing the movement of vehicles or any violation of this Section or Section 12-603.1 of this Code.

(h) It shall be an offense for a person that is age 15, but under age 20, to be a passenger in a vehicle operated by a driver holding a graduated driver's license during the first 12 months the driver holds the license or until the driver reaches the age of 18, whichever occurs sooner, if another passenger under the age of 20 is present, excluding a sibling, step-sibling, child, or step-child of the driver.

(Source: P.A. 86-1450; 88-197, § 5; 90-369, § 5; 93-101, § 5; 93-788, § 5; 94-239, § 10; 94-241, § 5; 94-556, § 1040; 94-897, § 5; 94-916, § 10; 95-310, § 10; 95-331, § 1005; 96-607, § 5; 97-229, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 6-107.

Section 95 of P.A. 97-229 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1993 amendment by P.A. 88-197, effective August 5, 1993, in the first sentence of the third paragraph inserted "who has committed an offense that would otherwise result in a mandatory revocation of a license or permit as provided in Section 6-205 of this Code or".

The 1997 amendment by P.A. 90-369, effective January 1, 1998, added the section catchline; added subsection (a); added the subsection (b) designation; in subsection (b) deleted the catchline "Applications of minors" and substituted the present second paragraph for the former which read "No driver's license shall be issued to any applicant under 18 years of age who is 16 years of age or more unless the applicant has passed an approved driver education course as described in Section 1-103 of this Act, and submits such proof of having passed the course as may be required by the Secretary of State"; added the subsection (c) designation; in subsection (c), in the first sentence, inserted "graduated" and inserted "who has committed the offense of operating a motor vehicle without a valid license or permit in violation of Section 6-101 of this Code and no graduated driver's license or permit shall be issued to any applicant under 18 years of age"; and added subsections (d) through (f).

The 2003 amendment by P.A. 93-101, effective Jan. 1, 2004, added subsection (g).

The 2004 amendment by P.A. 93-788, effective January 1, 2005, inserted "is at least 16 years of age and" in the second paragraph of subsection (b).

The 2005 amendment by P.A. 94-239, effective January 1, 2006, in (f) deleted "front or back seat" after "driver and", and added the language from "and each child" through the end.

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The 2005 amendment by P.A. 94-241, effective January 1, 2006, in (f) substituted "19" for "18".

The 2005 amendment by P.A. 94-556, effective September 11, 2005, twice added references to the Methamphetamine Control and Community Protection Act in (c) and made related changes.

The 2006 amendment by P.A. 94-897, effective June 22, 2006, added the last sentence in the first paragraph of (b); and in (b)(3) substituted "50 hours" for "35 hours" and added "at least 10 hours of which have been at night".

The 2006 amendment by P.A. 94-916, effective July 1, 2007, added (b-1).

The 2007 amendment by P.A. 95-310, effective January 1, 2008, substituted "9" for "3" in (b)(1); rewrote (d); added the last sentence to each of (e), (f), and (g); and added (h).

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, combined earlier multiple amendments to the section.

The 2009 amendment by P.A. 96-607, effective August 24, 2009, in the first sentence of (c), added "or a similar out of state offense" and "the Use of Intoxicating Compounds Act."

The 2011 amendment by P.A. 97-229, effective July 28, 2011, added "or who has received a disposition of court supervision for a violation of Section 6-20 of the Illinois Liquor Control Act of 1934 or a similar provision of a local ordinance" to the end of (d); and made a related change.

CASE NOTES

Constitutionality

- Equal Protection

Where no rational basis had been suggested which justified the distinction drawn by this section between minors under 21 emancipated by marriage and minors under 21 otherwise emancipated, this section, as it existed in 1969, was invalid. People v. Sherman, 57 Ill. 2d 1, 309 N.E.2d 562 (1974).

Chapter 11.

RULES OF THE ROAD

Article X.
Pedestrians' Rights and Duties

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§ 625 ILCS 5/11-1001. Pedestrian obedience to traffic control devices and traffic regulations

Sec. 11-1001. Pedestrian obedience to traffic control devices and traffic regulations. (a) A pedestrian shall obey the instructions of any official traffic control device specifically applicable to him, unless otherwise directed by a police officer.

(b) Pedestrians shall be subject to traffic and pedestrian control signals provided in Sections 11-306 and 11-307 of this Chapter [625 ILCS 5/11-306 and 625 ILCS 5/11-307], but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this Article.

(Source: P.A. 76-1734.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 11-1001.

Practice Guides and Treatises.

Civil Discovery Practice (Illinois) § 12.18 Relevant Deposition Issues in Specific Auto Accident Settings - Handling Comparative Negligence (IICLE).

Proving Fault in Auto Accident Cases § 9.5 A Sampling of Applicable Illinois Statutes and Cases (IICLE).

Proving Fault in Auto Accident Cases § 4.38 Pedestrians (IICLE).

Practice Checklists.

Practice Pointers, Proving Fault in Auto Accident Cases § 9.2 (IICLE).

§ 625 ILCS 5/11-1002. Pedestrians' right-of-way at crosswalks

Sec. 11-1002. Pedestrians' right-of-way at crosswalks. (a) When traffic control signals are not in place or not in operation the driver of a vehicle shall stop and yield the right-of-way to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(b) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a moving vehicle which is so close as to constitute an immediate hazard.

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(c) Paragraph (a) shall not apply under the condition stated in Section 11-1003(b) [625 ILCS 5/11-1003].

(d) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(e) Whenever stop signs or flashing red signals are in place at an intersection or at a plainly marked crosswalk between intersections, drivers shall yield right-of-way to pedestrians as set forth in Section 11-904 of this Chapter [625 ILCS 5/11-904].

(Source: P.A. 79-857; 96-1165, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 11-1002.

Effect of Amendments. The 2010 amendment by P.A. 96-1165, effective July 22, 2010, in (a), inserted "stop and" and deleted "slowing down or stopping if need be to so yield" following "right-of-way."

CASE NOTES

Analysis

In General
Children
Contributory Negligence
- In General
- Not Shown
- Shown
Driver's Duties
- Due Care
Jury Instructions
- Not Erroneous
Pedestrian's Conduct
- In General
- Jury Question
- Negligence Not Shown
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- In General
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- In General
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- Not Absolute
Recovery
- Requirement
Right of Way
- No Traffic Signal
Unmarked Crosswalks
Violation
- Homicide

In General

While crossing within a marked crosswalk, a pedestrian has the right to assume that the automobiles which are being driven on the street will be driven with reasonable care so that they would not collide with her. Kirby v. Swedberg, 117 Ill. App. 2d 217, 253 N.E.2d 699 (2 Dist. 1969).

Children

When children are known or should be known to be present, the Illinois cases thus teach that due care requires a special and higher degree of vigilance, even where the driver has not seen the child. Choe v. Ashdown, 808 F. Supp. 1342 (N.D. Ill. 1992).

Contributory Negligence

- In General

The rule that a pedestrian's failure to keep a continuous lookout is not contributory negligence as a matter of law is particularly applicable where the action is governed by this section. Rees v. Spillane, 341 Ill. App. 647, 94 N.E.2d 686 (2 Dist. 1950).

Pedestrian had no right to rely entirely on the fact that she had the right of way and neither had she a right to unreasonably intrude herself into the midst of the traffic; the danger of such an act on her part would be apparent and have a natural tendency to hold her back, and if she carelessly got herself into such a position, the law charges her with contributory negligence and leaves her remediless. Moran v. Gatz, 390 Ill. 478, 62 N.E.2d 443 (1945).

It was pedestrian's duty to so conduct herself as to be free from contributory negligence. Moran v. Gatz, 390 Ill. 478, 62 N.E.2d 443 (1945).

While a section such as this gives pedestrians the right of way, it does not confer upon them an advantage which necessarily absolves them from guilt of contributory negligence. Moran v. Gatz, 390 Ill. 478, 62 N.E.2d 443 (1945).

- Not Shown

Proof that pedestrian plaintiff was walking in an unmarked crosswalk area was some evidence to show due care on her part, but was not conclusive on the question of contributory negligence. Larson v. Fell, 55 Ill. App. 2d 418, 204 N.E.2d 475 (2 Dist. 1965).

- Shown

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The evidence adduced at trial was sufficient for the jury to find plaintiff guilty of contributory negligence where plaintiff testified that on a dark night in an intersection with only one street light he saw an approaching car one-half to one block away in an S curve and yet made no judgment as to the car's speed before proceeding to cross in front of it, and plaintiff also testified that he knew the speed limit was 30 miles per hour and that defendant's car would not have occasion to stop before it approached him, and a witness testified that a few seconds before the accident she saw plaintiff slowly running across the street. Under those circumstances the jury could have concluded that plaintiff knew or should have known of the impending danger of the advancing car and acted to avoid it. Albaugh v. Cooley, 87 Ill. 2d 241, 57 Ill. Dec. 720, 429 N.E.2d 837 (1981).

Driver's Duties

- Due Care

The driver of a vehicle on a city street is charged with a duty to exercise reasonable care in the operation of his vehicle and to have his vehicle under such control as will enable him to avoid collision with other vehicles or pedestrians; he is charged with notice that pedestrians may cross the street over which he is driving and other vehicles may be traveling over a cross street. Petersen v. General Rug & Carpet Cleaners, Inc., 333 Ill. App. 47, 77 N.E.2d 58 (1 Dist. 1947).

It was duty of driver to drive his car so as to have it under such control as to enable him to avoid collision with other vehicles or pedestrians, and whether he was driving in accordance with his duty to yield the right of way to pedestrians at a crosswalk was a question of fact for the jury. Moran v. Gatz, 390 Ill. 478, 62 N.E.2d 443 (1945).

Driver of vehicle is charged with notice that pedestrians may cross the street over which he is driving, and that other vehicles may be traveling over a cross street. Moran v. Gatz, 390 Ill. 478, 62 N.E.2d 443 (1945).

Jury Instructions

- Not Erroneous

Portion of jury instruction, taken from former Ill. Rev. Stat., ch. 95 1/2, para. 171 (see now this section), relating to the rights of a pedestrian crossing the roadway within the crosswalk at an intersection was not erroneous. Moran v. Gatz, 327 Ill. App. 480, 64 N.E.2d 564 (1 Dist. 1946).

Pedestrian's Conduct

- In General

In a situation involving a pedestrian in a crosswalk injured by a motorist there is an issue of fact as to whether the motorist was guilty of negligence, and there is a corresponding issue arising from the duty of the pedestrian to conduct himself so as to be freed from contributory negligence. Malpica v. Sebastian, 99 Ill. App. 3d 346, 54 Ill. Dec. 812, 425 N.E.2d 1029 (1 Dist. 1981).

- Jury Question

A pedestrian's failure to keep a constant lookout or to look again after having determined that he can safely cross ahead of approaching traffic leaves a question for the jury to determine whether he was in the exercise of ordinary care for his own safety. Albaugh v. Cooley, 87 Ill. 2d 241, 57 Ill. Dec. 720, 429 N.E.2d 837 (1981).

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Where a pedestrian looks once and his vision is obstructed, his failure to look again when he has passed the obstruction, and before he enters the possibly hazardous portion of the street, is sufficient to create a jury question as to whether he exercised due care for his own safety. Sandquist v. Kefalopoulos, 49 Ill. App. 3d 456, 7 Ill. Dec. 314, 364 N.E.2d 475 (1 Dist. 1977).

Appellate court erred in finding that pedestrian hit in crosswalk by automobile was guilty of contributory negligence as a matter of law since the question of whether her conduct constituted contributory negligence was a question for the jury. Moran v. Gatz, 390 Ill. 478, 62 N.E.2d 443 (1945).

- Negligence Not Shown

A pedestrian walking on either the unpaved shoulder of a highway or off the place provided for traffic, even in the nighttime, could not be considered guilty of negligence as a matter of law. Rowley v. Rust, 304 Ill. App. 364, 26 N.E.2d 520 (1 Dist. 1940).

Pedestrian's Duty

- In General

This section does not absolve a pedestrian from the duty to use ordinary care for his own safety in crossing at the crosswalk. Sandquist v. Kefalopoulos, 49 Ill. App. 3d 456, 7 Ill. Dec. 314, 364 N.E.2d 475 (1 Dist. 1977); Albaugh v. Cooley, 87 Ill. 2d 241, 57 Ill. Dec. 720, 429 N.E.2d 837 (1981); Malpica v. Sebastian, 99 Ill. App. 3d 346, 54 Ill. Dec. 812, 425 N.E.2d 1029 (1 Dist. 1981).

Pedestrian's Rights

- In General

The right of pedestrians to use the highway is a fundamental right. Rowley v. Rust, 304 Ill. App. 364, 26 N.E.2d 520 (1 Dist. 1940).

- Illustrative Case

Where minor was crossing street in a designated crosswalk at an intersection uncontrolled by traffic signals, after observing approaching automobile at a considerable distance away, he had the right to continue crossing the street under the belief that the driver would yield the right of way to him. Walls ex rel. Walls v. Hofbauer, 45 Ill. App. 3d 394, 4 Ill. Dec. 85, 359 N.E.2d 1037 (1 Dist. 1977).

- Not Absolute

The right of way section, former Ill. Rev. Stat., ch. 95 1/2, para. 171 (see now this section), did not give a pedestrian, on a crosswalk, the right of way over all vehicles on the street under any and all circumstances; each case must be considered in the light of the facts and the circumstances surrounding it. Gasperik ex rel. Gasperik v. Simons, 124 Ill. App. 2d 360, 260 N.E.2d 458 (1 Dist. 1970).

Recovery

- Requirement

Before plaintiff can recover there must have been evidence that the motorist saw, or in the exercise of reasonable care could have seen, a pedestrian on the crosswalk in question. Gasperik ex rel. Gasperik v. Simons, 124 Ill. App. 2d 360, 260 N.E.2d 458 (1 Dist. 1970).

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Right of Way

- No Traffic Signal

The evidence was sufficient to show that plaintiffs had the right of way at a pedestrian crosswalk where there was no traffic control signal under former Ill. Rev. Stat., ch. 95 1/2, para. 171 (see now this section). Palmer ex rel. Palmer v. De Felippis, 321 Ill. App. 186, 53 N.E.2d 34 (1 Dist. 1944).

Unmarked Crosswalks

Former Ill. Rev. Stat., ch. 95 1/2, para. 171 (see now this section) gave to pedestrians a preferential status when they were in a marked or unmarked crosswalk, but no authority was conferred upon pedestrians to select any place that suited their convenience to cross a street or road and thereby designate it an unmarked crosswalk. Woolsey v. Rupel, 13 Ill. App. 2d 48, 140 N.E.2d 855 (4 Dist. 1957).

The preferential status of a pedestrian in a marked crosswalk in former Ill. Rev. Stat., ch. 95 1/2, para. 171 (see now this section) was extended to one in an unmarked crosswalk only "at an intersection." Woolsey v. Rupel, 13 Ill. App. 2d 48, 140 N.E.2d 855 (4 Dist. 1957).

Violation

- Homicide

Where the evidence was that defendant drove an automobile at a rate of speed between 55 and 80 miles per hour on a street with a 30 mile per hour speed limit, that he failed to stop at a stop sign posted at an intersection, that he failed to yield the right of way to a pedestrian in a cross walk, and struck and killed that pedestrian, and that he then left the scene of the accident without stopping, the evidence was sufficient to sustain a conviction of involuntary manslaughter. People v. Adams, 113 Ill. App. 2d 276, 252 N.E.2d 65 (1 Dist. 1969).

Practice Guides and Treatises.

Proving Fault in Auto Accident Cases § 9.5 A Sampling of Applicable Illinois Statutes and Cases (IICLE).

Proving Fault in Auto Accident Cases § 4.41 With Crosswalk (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 21:143 Generally.

Illinois Jurisprudence, Personal Injury and Torts § 21:135 Limitations upon statutory rights.

§ 625 ILCS 5/11-1002.5. Pedestrians' right-of-way at crosswalks; school zones

Sec. 11-1002.5. Pedestrians' right-of-way at crosswalks; school zones. (a) For the purpose of this Section, "school" has the meaning ascribed to that term in Section 11-605 [625 ILCS 5/11-605].

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On a school day when school children are present and so close thereto that a potential hazard exists because of the close proximity of the motorized traffic and when traffic control signals are not in place or not in operation, the driver of a vehicle shall stop and yield the right-of-way to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

For the purpose of this Section, a school day shall begin at seven ante meridian and shall conclude at four post meridian.

This Section shall not be applicable unless appropriate signs are posted in accordance with Section 11-605.

(b) A first violation of this Section is a petty offense with a minimum fine of $150. A second or subsequent violation of this Section is a petty offense with a minimum fine of $300.

(c) When a fine for a violation of subsection (a) is $150 or greater, the person who violates subsection (a) shall be charged an additional $50 to be paid to the unit school district where the violation occurred for school safety purposes. If the violation occurred in a dual school district, $25 of the surcharge shall be paid to the elementary school district for school safety purposes and $25 of the surcharge shall be paid to the high school district for school safety purposes. Notwithstanding any other provision of law, the entire $50 surcharge shall be paid to the appropriate school district or districts.

For purposes of this subsection (c), "school safety purposes" has the meaning ascribed to that term in Section 11-605.

(Source: P.A. 95-302, § 5; 96-1165, § 5.)

Effective Date. Section 99 of P.A. 95-302, made this section effective January 1, 2008.

Effect of Amendments. The 2010 amendment by P.A. 96-1165, effective July 22, 2010, in the second paragraph of (a), inserted "stop and" and deleted "slowing down or stopping if need be to so yield" following "right-of-way."

Article XIV.
Miscellaneous Laws

§ 625 ILCS 5/11-1414. Approaching, overtaking, and passing school bus

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Sec. 11-1414. Approaching, overtaking, and passing school bus. (a) The driver of a vehicle shall stop such vehicle before meeting or overtaking, from either direction, any school bus stopped at any location for the purpose of receiving or discharging pupils. Such stop is required before reaching the school bus when there is in operation on the school bus the visual signals as specified in Sections 12-803 and 12-805 of this Code [625 ILCS 5/12-803 and 625 ILCS 5/12-805]. The driver of the vehicle shall not proceed until the school bus resumes motion or the driver of the vehicle is signaled by the school bus driver to proceed or the visual signals are no longer actuated.

(b) The stop signal arm required by Section 12-803 of this Code [625 ILCS 5/12-803] shall be extended after the school bus has come to a complete stop for the purpose of loading or discharging pupils and shall be closed before the school bus is placed in motion again. The stop signal arm shall not be extended at any other time.

(c) The alternately flashing red signal lamps of an 8-lamp flashing signal system required by Section 12-805 of this Code [625 ILCS 5/12-805] shall be actuated after the school bus has come to a complete stop for the purpose of loading or discharging pupils and shall be turned off before the school bus is placed in motion again. The red signal lamps shall not be actuated at any other time except as provided in paragraph (d) of this Section.

(d) The alternately flashing amber signal lamps of an 8-lamp flashing signal system required by Section 12-805 of this Code [625 ILCS 5/12-805] shall be actuated continuously during not less than the last 100 feet traveled by the school bus before stopping for the purpose of loading or discharging pupils within an urban area and during not less than the last 200 feet traveled by the school bus outside an urban area. The amber signal lamps shall remain actuated until the school bus is stopped. The amber signal lamps shall not be actuated at any other time.

(d-5) The alternately flashing head lamps permitted by Section 12-805 of this Code [625 ILCS 5/12-805] may be operated while the alternately flashing red or amber signal lamps required by that Section are actuated.

(e) The driver of a vehicle upon a highway having 4 or more lanes which permits at least 2 lanes of traffic to travel in opposite directions need not stop such vehicle upon meeting a school bus which is stopped in the opposing roadway; and need not stop such vehicle when driving upon a controlled access highway when passing a school bus traveling in either direction that is stopped in a loading zone adjacent to the surfaced or improved part of the controlled access highway where pedestrians are not permitted to cross.

(f) Beginning with the effective date of this amendatory Act of 1985, the Secretary of State shall suspend for a period of 3 months the driving privileges of any person convicted of a violation of subsection (a) of this Section or a similar provision of a local ordinance; the Secretary shall suspend for a period of one year the driving privileges of any person convicted of a second or subsequent violation of subsection (a) of this Section or a similar provision of a local ordinance if the second or subsequent violation occurs within 5 years of a prior conviction for the same offense. In addition to the suspensions authorized by this Section, any person convicted of violating this Section or a similar provision of a local ordinance shall be subject to a mandatory fine of $150 or, upon a second or subsequent violation, $500. The Secretary may also grant, for the duration of

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any suspension issued under this subsection, a restricted driving permit granting the privilege of driving a motor vehicle between the driver's residence and place of employment or within other proper limits that the Secretary of State shall find necessary to avoid any undue hardship. A restricted driving permit issued hereunder shall be subject to cancellation, revocation and suspension by the Secretary of State in like manner and for like cause as a driver's license may be cancelled, revoked or suspended; except that a conviction upon one or more offenses against laws or ordinances regulating the movement of traffic shall be deemed sufficient cause for the revocation, suspension or cancellation of the restricted driving permit. The Secretary of State may, as a condition to the issuance of a restricted driving permit, require the applicant to participate in a designated driver remedial or rehabilitative program. Any conviction for a violation of this subsection shall be included as an offense for the purposes of determining suspension action under any other provision of this Code, provided however, that the penalties provided under this subsection shall be imposed unless those penalties imposed under other applicable provisions are greater.

The owner of any vehicle alleged to have violated paragraph (a) of this Section shall, upon appropriate demand by the State's Attorney or other designated person acting in response to a signed complaint, provide a written statement or deposition identifying the operator of the vehicle if such operator was not the owner at the time of the alleged violation. Failure to supply such information shall result in the suspension of the vehicle registration of the vehicle for a period of 3 months. In the event the owner has assigned control for the use of the vehicle to another, the person to whom control was assigned shall comply with the provisions of this paragraph and be subject to the same penalties as herein provided.

(Source: P.A. 84-112; 89-210, § 5; 91-260, § 5; 93-180, § 5; 93-181, § 5; 95-105, § 5; 95-331, § 1005.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 11-1414.

Effect of Amendments. The 1995 amendment by P.A. 89-210, effective August 2, 1995, in subsection (f), in the first sentence, substituted "3 months" for "30 days", substituted "one year" for "60 days" and substituted "5" for "3" and added the second sentence.

The 1999 amendment by P.A. 91-260, effective January 1, 2000, inserted "on a roadway on school property" in the first sentence in subsection (a).

The 2003 amendment by P.A. 93-180, effective July 11, 2003, in the first sentence of subsection (a), inserted "at any location" and deleted "on a highway, on a roadway on school property, or upon a private road within an area that is covered by a contract or agreement executed pursuant to Section 11-209.1 of this Code" at the end.

The 2003 amendment by P.A. 93-181, effective January 1, 2004, added subsection (d-5).

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The 2007 amendment by P.A. 95-105, effective August 13, 2007, substituted "designated person" for "authorized prosecutor" and rewrote the second sentence in the second paragraph of (f).

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, combined earlier multiple amendments to the section.

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

CASE NOTES

Analysis

In General
Corpus Delicti
Evidence Held Sufficient
Interpretation
- Applicability

In General

Terms of 625 ILCS 5/11-1414 are not ambiguous. It clearly prohibits meeting or overtaking a stopped school bus from either direction. People v. Matysik, 363 Ill. App. 3d 1107, 301 Ill. Dec. 41, 845 N.E.2d 906, 2006 Ill. App. LEXIS 182 (1 Dist. 2006).

Corpus Delicti

Where bus driver testified that car passed school buses which were stopped to pick up students and that arms of the buses were extended and the lights were flashing, that was sufficient to show a violation of subsection (a) and prove the corpus delicti of the crime; testimony of identity of offender was not necessary. People v. Tracy, 291 Ill. App. 3d 145, 225 Ill. Dec. 238, 683 N.E.2d 182 (3 Dist. 1997), appeal denied, 175 Ill. 2d 551, 228 Ill. Dec. 724, 689 N.E.2d 1145 (1997).

Evidence Held Sufficient

Testimony from a school bus driver that defendant failed to stop at a stop sign and made a right turn in front of the driver's school bus, which was straddling an intersection, all while applying mascara, was sufficient to support a finding that defendant violated 625 ILCS 5/11-1414(a) beyond a reasonable doubt. People v. Matysik, 363 Ill. App. 3d 1107, 301 Ill. Dec. 41, 845 N.E.2d 906, 2006 Ill. App. LEXIS 182 (1 Dist. 2006).

In an action seeking underinsured motorist coverage, the trial court properly found that children who were injured while exiting from school buses were in actual or virtual contact with the buses at the time of the accident because the activation of the buses' warning lights pursuant to 625 ILCS 5/11-1414(c) and 625 ILCS 5/11-1414(d) indicated to other drivers and members of the public that children were either getting on or off the bus and that the buses had assumed control

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over the children as passengers. Mathey v. Country Mut. Ins. Co., 321 Ill. App. 3d 805, 254 Ill. Dec. 857, 748 N.E.2d 303, 2001 Ill. App. LEXIS 288 (1 Dist. 2001).

In an action seeking underinsured motorist coverage, the trial court properly found a nexus or relationship between children who were injured while exiting from school buses and the buses because, in accordance with 625 ILCS 5/11-1414(c) and 625 ILCS 5/11-1414 (d), the emergency flashers of each bus were activated, indicating that children were in the process of exiting the vehicle, the children had not yet moved away from the buses, and the doors were still open. Mathey v. Country Mut. Ins. Co., 321 Ill. App. 3d 805, 254 Ill. Dec. 857, 748 N.E.2d 303, 2001 Ill. App. LEXIS 288 (1 Dist. 2001).

Where car bus driver observed passing the buses unloading children was registered to defendant's daughter, state's attorney testified defendant admitted being the driver and defendant admitting being at school that day driving one of the family cars, the evidence was sufficient for jury to conclude defendant was guilty beyond a reasonable doubt. People v. Tracy, 291 Ill. App. 3d 145, 225 Ill. Dec. 238, 683 N.E.2d 182 (3 Dist. 1997), appeal denied, 175 Ill. 2d 551, 228 Ill. Dec. 724, 689 N.E.2d 1145 (1997).

Interpretation

- Applicability

Phrase "meeting or overtaking, from either direction" contained in 625 ILCS 5/11-1414(a) is meant to include a vehicle making a right-hand turn from a stop in a direction away from a school bus. People v. Matysik, 363 Ill. App. 3d 1107, 301 Ill. Dec. 41, 845 N.E.2d 906, 2006 Ill. App. LEXIS 182 (1 Dist. 2006).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 21:189 Generally.

§ 625 ILCS 5/11-1414.1. School transportation of students

Sec. 11-1414.1. School transportation of students. (a) Every student enrolled in grade 12 or below in any entity listed in subsection (a) of Section 1-182 of this Code [625 ILCS 5/1-182] must be transported in a school bus or a vehicle described in subdivision (1) or (2) of subsection (b) of Section 1-182 of this Code for any curriculum-related school activity. "Curriculum-related school activity" as used in this subsection (a) includes transportation from home to school or from school to home, tripper or shuttle service between school attendance centers, transportation to a vocational or career center or other trade-skill development site or a regional safe school or other school-sponsored alternative learning program, or a trip that is directly related to the regular curriculum of a student for which he or she earns credit.

(b) Every student enrolled in grade 12 or below in any entity listed in subsection (a) of Section 1-182 of this Code who is transported in a vehicle that is being operated by or for a public or private primary or secondary school, including any primary or secondary school operated by a religious institution, for an interscholastic, interscholastic-athletic, or school-sponsored, noncurriculum-related activity that (i) does not require student

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participation as part of the educational services of the entity and (ii) is not associated with the students' regular class-for-credit schedule shall transport students only in a school bus or vehicle described in subsection (b) of Section 1-182 of this Code. This subsection (b) does not apply to any second division vehicle used by an entity listed in subsection (a) of Section 1-182 of this Code for a parade, homecoming, or a similar noncurriculum-related school activity.

(Source: P.A. 83-299; 89-132, § 10; 96-410, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 11-1414.1.

Effect of Amendments. The 1995 amendment by P.A. 89-132, effective July 14, 1995, in subsection (b) added at the end the language beginning "nor to a motor vehicle".

The 2009 amendment by P.A. 96-410, effective July 1, 2010, rewrote the section.

§ 625 ILCS 5/11-1415. School buses stopping, loading and discharging passengers on one-way roadways on highways having 4 or more lanes

Sec. 11-1415. School buses stopping, loading and discharging passengers on one-way roadways on highways having 4 or more lanes. (a) A school bus traveling on a one-way roadway or a highway having 4 or more lanes for vehicular traffic shall stop for the loading or discharging of passengers only on the right side of the highway. If the highway has 4 or more lanes and permits traffic to operate in both directions, the school bus shall load or discharge only those passengers whose residences are located to the right of the highway. The routes of school buses shall be so arranged that no child shall be required to cross a highway of 4 or more lanes to board a school bus or to reach such child's residence after leaving the school bus. A school child in an urban area shall cross a highway only at a crossing for pedestrians, except as provided in paragraph (b) of this Section.

(b) With respect to school children crossing a highway at other than a pedestrian crossing, this Section shall not apply when children are escorted or controlled by competent persons designated by the school authorities or by police officers.

(Source: P.A. 83-905.)

Note.

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This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 11-1415.

CASE NOTES

Driver Immunity

Bus driver employed by the state who was alleged to have breached a duty imposed under this section, a duty that applies to all school bus drivers regardless of who employs them, was not shielded by sovereign immunity from the jurisdiction of the circuit court. Thomas v. Garner, 284 Ill. App. 3d 90, 219 Ill. Dec. 737, 672 N.E.2d 52 (5 Dist. 1996).

Chapter 12.

Equipment of Vehicles

Article VIII.
Special Requirements for School Buses

§ 625 ILCS 5/12-801. Color

Sec. 12-801. Color. The exterior of each school bus shall be national school bus glossy yellow except as follows:

The rooftop may be white.

The fenders of school buses manufactured before January 1, 1976, may be black.

Body trim, rub rails, lettering other than on a stop signal arm and bumpers on a Type I school bus shall be glossy black.

Lettering on a stop signal arm shall be white on a red background.

Bumpers on a Type II school bus may be glossy black or a bright, light or colorless finish.

The hood and upper cowl may be lusterless black or lusterless school bus yellow.

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Grilles on the front, lamp trim and hubcaps may be a bright finish.

The name or emblem of a manufacturer may be colorless or any color.

The exterior paint of any school bus shall match the central value, hue and chroma set forth in rules promulgated by the Department.

(Source: P.A. 81-740; 88-415, § 10; 89-433, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 12-801.

Effect of Amendments. The 1993 amendment by P.A. 88-415, effective August 20, 1993, in the final paragraph substituted "exterior paint of any school bus" for "following colors" and substituted "set forth in rules promulgated by the Department" for "of the specified color chip numbers of Federal Standard No. 595a; National school bus glossy yellow (13432); glossy black (17038), and lusterless black (37038)".

The 1995 amendment by P.A. 89-433, effective December 15, 1995, added the first sentence.

§ 625 ILCS 5/12-802. Identification

Sec. 12-802. Identification. (a) Each school bus shall have the sign "SCHOOL BUS" painted on both the front and rear of the bus as high as practicable in letters at least 8 inches high.

(b) Each school bus and multifunction school-activity bus (MFSAB) shall have the vehicle weight and the vehicle maximum passenger capacity recommended by the manufacturer of the bus, which shall be based upon provision for 13 inches of seating space for each passenger exclusive of the driver, painted on the body to the left of the service door in letters at least 2 inches high. The name of the owner or the entity or both for which the school bus or MFSAB is operated shall be painted in a contrasting color on both sides, centered as high as practicable below the window line, in letters at least 4 inches high. An identification number shall be painted as high as practicable on both the front and rear of the school bus or MFSAB in letters at least 4 inches high.

(c) Decals may be used instead of painting under this Section.

(Source: P.A. 82-111; 96-410, § 10.)

Note.

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This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 12-802.

Effect of Amendments. The 2009 amendment by P.A. 96-410, effective July 1, 2010, added subdivision designations; added "Each school bus and multifunction school-activity bus (MFSAB) shall have" in the first sentence of (b); added "or MFSAB" in the second sentence of (b); in the last sentence of (b), substituted "An identification" for "A school bus identification" and "school bus or MFSAB" for "bus"; added "under this Section" in (c); and made stylistic changes.

§ 625 ILCS 5/12-803. [Stop signal arm]

Sec. 12-803. (a) Each school bus shall be equipped with a stop signal arm on the driver's side of the school bus that may be operated either manually or mechanically. For each school bus manufactured on and after September 1, 1992, the stop signal arm shall be an octagon shaped semaphore that conforms to 49 C.F.R. 571.131, "SCHOOL BUS PEDESTRIAN SAFETY DEVICES", S5.1 through S5.5.

(b) Each school bus manufactured prior to September 1, 1992 shall be equipped with a stop signal arm that conforms to standards promulgated by the Department.

(Source: P.A. 83-299; 88-415, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 12-803.

Effect of Amendments. The 1993 amendment by P.A. 88-415, effective August 20, 1993, in subsection (a), in the first sentence substituted "that may" for "which may" and added the second sentence; and rewrote subsection (b).

§ 625 ILCS 5/12-804. Other vehicles - Color, stop signal arm and identification

Sec. 12-804. Other vehicles - Color, stop signal arm and identification. No vehicle other than a school bus shall be identified with the sign "SCHOOL BUS", shall be equipped with a stop signal arm, shall be equipped with a strobe lamp or shall be equipped with a warning lamp system as described in Section 12-805 of this Act [625 ILCS 5/12-805]. No commuter van or bus other than a school bus shall be painted national school bus glossy yellow or a color that closely resembles national school bus glossy yellow.

(Source: P.A. 81-0509; 81-0740; 81-1509.)

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Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 12-804.

§ 625 ILCS 5/12-805. Special lighting equipment

Sec. 12-805. Special lighting equipment. Each school bus purchased as a new vehicle after December 31, 1975 shall be equipped with an 8-lamp flashing signal system. Until December 31, 1978, all other school buses shall be equipped with either a 4-lamp or an 8-lamp flashing signal system. After December 31, 1978, all school buses shall be equipped with an 8-lamp flashing signal system.

A 4-lamp flashing signal system shall have 2 alternately flashing red lamps mounted as high and as widely spaced laterally on the same level as practicable at the front of the school bus and 2 such lamps mounted in the same manner at the rear.

An 8-lamp flashing signal system shall have, in addition to a 4-lamp system, 4 alternately flashing amber lamps. Each amber lamp shall be mounted next to a red lamp and at the same level but closer to the centerline of the school bus.

Each signal lamp shall be a sealed beam at least 5 1/2 inches in diameter and shall have sufficient intensity to be visible at 500 feet in normal sunlight. Both the 4-lamp and 8-lamp system shall be actuated only by means of a manual switch. There shall be a device for indicating to the driver that the system is operating properly or is inoperative.

A school bus may also be equipped with alternately flashing head lamps, which may be operated in conjunction with the 8-lamp flashing signal system.

(Source: P.A. 79-1400; 93-181, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 12-805.

Effect of Amendments. The 2003 amendment by P.A. 93-181, effective January 1, 2004, added the last paragraph.

§ 625 ILCS 5/12-806. Identification, stop signal arms and special lighting when not used as a school bus

Sec. 12-806. Identification, stop signal arms and special lighting when not used as a school bus. Except as provided in Section 12-806a [625 ILCS 5/12-806a], whenever a school bus is operated for the purpose of transporting passengers other than persons in

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connection with an activity of the school or religious organization which owns the school bus or for which the school bus is operated, the "SCHOOL BUS" signs shall be covered or concealed and the stop signal arm and flashing signal system shall not be operable through normal controls.

(Source: P.A. 84-1311.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 12-806.

§ 625 ILCS 5/12-806a. Identification, stop signal arms and special lighting on school buses used in connection with a youth camp, child care facility, or community based rehabilitation facility

Sec. 12-806a. Identification, stop signal arms and special lighting on school buses used in connection with a youth camp, child care facility, or community based rehabilitation facility. (a) Subject to the conditions in Subsection (c), a bus which meets any of the special requirements for school buses in Section 12-801, 12-802, 12-803 and 12-805 of this Code [625 ILCS 5/12-801, 625 ILCS 5/12-802, 625 ILCS 5/12-803 and 625 ILCS 5/12-805] may be used for the purpose of transporting persons 18 years of age or less in connection with any of the following facilities:

(i) any youth camp licensed under the Youth Camp Act [210 ILCS 100/1 et seq.]; and

(ii) any child care facility licensed under the Child Care Act of 1969 [225 ILCS 10/1 et seq.].

(b) Subject to the conditions in subsection (c), a bus which meets any of the special requirements for school buses in Sections 12-801, 12-802, 12-803 and 12-805 of this Code [625 ILCS 5/12-801, 625 ILCS 5/12-802, 625 ILCS 5/12-803 and 625 ILCS 5/12-805] may be used for the purpose of transporting persons recognized as clients of a community based rehabilitation facility which is accredited by the Commission on Accreditation of Rehabilitation Facilities of Tucson, Arizona, and which is under a contractual agreement with the Department of Human Services.

(c) A bus used for transportation as provided in subsection (a) or (b) shall either (i) meet all of the special requirements for school buses in Section 12-801, 12-802, 12-803 and 12-805 [625 ILCS 5/12-801, 625 ILCS 5/12-802, 625 ILCS 5/12-803 and 625 ILCS 5/12-805] or (ii) shall have the "SCHOOL BUS" signs covered or concealed and the stop signal arm and flashing signal system rendered inoperable through normal means. A bus which meets all of the special requirements for school buses in Section 12-801, 12-802, 12-803 and 12-805 [625 ILCS 5/12-801, 625 ILCS 5/12-802, 625 ILCS 5/12-803 and 625 ILCS 5/12-805] shall be operated by a person who has a valid and properly classified

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driver's license issued by the Secretary of State and who possesses a valid school bus driver permit or is accompanied and supervised, for the specific purpose of training prior to routine operation of a school bus, by a person who has held a valid school bus driver permit for at least one year. A bus which has had the "SCHOOL BUS" signs covered or concealed and the stop signal arm and flashing signal system rendered inoperable through normal means may be operated by a person who has a valid and properly classified driver's license issued by the Secretary of State.

(Source: P.A. 85-815; 89-507, § 90D-84.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 12-806a.

Effect of Amendments. The 1996 amendment by P.A. 89-507, effective July 1, 1997, in subsection (b) substituted "Human Services" for "Mental Health and Developmental Disabilities or the Department of Rehabilitation Services".

§ 625 ILCS 5/12-807. Seat belt for driver

Sec. 12-807. Seat belt for driver. Each school bus shall be equipped with a retractable lap belt assembly for the driver's seat. No school bus shall be operated unless the driver has properly restrained himself with the lap belt assembly.

(Source: P.A. 78-1244.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 12-807.

§ 625 ILCS 5/12-807.1. Seat back height

Sec. 12-807.1. Seat back height. No Type I school bus manufactured after June 30, 1987 shall be sold for use as, or purchased for use as, or used as a school bus within this State unless such bus is equipped with passenger seat backs having a seat back height of 28 inches installed by the original bus body manufacturer.

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(Source: P.A. 85-1010.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 12-807.1.

§ 625 ILCS 5/12-807.2. Crossing control arms

Sec. 12-807.2. Crossing control arms. (a) No Type I or Type II school bus may be operated or used as a school bus within this State after December 31, 1999 unless that bus is equipped with a crossing control arm on the front of the bus that conforms to equipment and installation standards that the Department of Transportation shall promulgate for purposes of this subsection.

(b) If a Type I or Type II school bus is manufactured after December 31, 1997, that bus shall not be sold for use as, or purchased for the use as, or used as a school bus within this State unless that bus is equipped with a crossing control arm that is installed on the front of the bus by the original bus body manufacturer and that conforms to equipment and installation standards that the Department shall promulgate for purposes of this subsection.

(c) A crossing control arm meeting standards promulgated by the Department under this Section shall be designed to swing out from the front of a school bus when the bus stops and opens its doors while school children enter or exit the bus, as prescribed in rules promulgated by the State Board of Education.

(d) This Section does not apply to the temporary operation in this State of a school bus that is legally registered in another state and is displaying valid registration plates of that state if (i) the bus is not operated in Illinois on a regular basis, and (ii) the bus is being operated in Illinois in connection with a cultural, tourist, athletic, or similar activity that is sponsored by one or more schools located outside of Illinois for the benefit of their enrolled students who are being transported to or from that activity.

(Source: P.A. 90-108, § 15.)

Effective Date. Section 99 of P.A. 90-108 made this section effective July 1, 1997. The Act was approved July 14, 1997.

§ 625 ILCS 5/12-808. Fire extinguisher

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Sec. 12-808. Fire extinguisher. Each school bus shall be equipped with at least one dry chemical gauge type fire extinguisher mounted in the extinguisher manufacturer's automobile type bracket in a position readily accessible to the driver.

(Source: P.A. 78-1244.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 12-808.

§ 625 ILCS 5/12-809. First aid kit

Sec. 12-809. First aid kit. Each school bus shall be equipped with a first aid kit mounted in full view of and readily accessible to the driver.

(Source: P.A. 78-1244.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 12-809.

§ 625 ILCS 5/12-810. Restraining devices for passengers who are persons with disabilities

Sec. 12-810. Restraining devices for passengers who are persons with disabilities. Each school bus which is operated for transporting passengers who are persons with disabilities shall be equipped with an appropriate restraining or safety device for each such passenger.

(Source: P.A. 78-1244; 88-685, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 12-810.

Effect of Amendments. The 1994 amendment by P.A. 88-685, effective January 1, 1995, in the section catchline and in the text substituted "passengers who are persons with disabilities" for

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"handicapped passengers"; and substituted "such passenger" for "handicapped passenger".

§ 625 ILCS 5/12-811. Amber 3 bar clearance light

Sec. 12-811. Amber 3 bar clearance light. Each type I school bus shall be equipped with an amber 3 bar clearance light on the front of the bus. The light shall be illuminated at all times when the bus is being operated between sunset and sunrise and in conditions of reduced visibility.

(Source: P.A. 79-63.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 12-811.

§ 625 ILCS 5/12-812. Rules and regulations

Sec. 12-812. Rules and regulations. (a) The Department may promulgate rules and regulations to more completely specify the equipment requirements of this Article.

(b) All rules, regulations and standards promulgated from time to time by the State Board of Education and the Department for the safety and construction of school buses shall be applicable to every motor vehicle in this State defined as a school bus under Section 1-182 [625 ILCS 5/1-182].

(Source: P.A. 81-1508.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 12-812.

§ 625 ILCS 5/12-812.1. [Use of liquefied petroleum gases, compressed natural gases and liquefied natural gases in school buses]

Sec. 12-812.1. (a) The Department shall adopt and promulgate rules and regulations governing the use of liquefied petroleum gases, compressed natural gases and liquefied natural gases as a propellant fuel in school buses. Such rules and regulations shall include the installation, maintenance and operation of such equipment installed on school buses

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and shall be based on the generally accepted standards of safety as recommended by the National Fire Protection Association.

(b) All school buses using liquefied petroleum gases, compressed natural gases or liquefied natural gases as a propellant fuel must conform to and obey any rule or regulation lawfully adopted by the Department.

(Source: P.A. 83-1027.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 12-812.1.

§ 625 ILCS 5/12-813.1. School bus driver communication devices

Sec. 12-813.1. School bus driver communication devices. (a) In this Section:

"School bus driver" means a person operating a school bus who has a valid school bus driver permit as required under Sections 6-104 and 6-106.1 of this Code [625 ILCS 5/6-104 and 625 ILCS 5/6-106.1].

"Cellular radio telecommunication device" means a device capable of sending or receiving telephone communications without an access line for service and which requires the operator to dial numbers manually. It does not, however, include citizens band radios or citizens band radio hybrids.

"Possession of a school bus" means the period of time from which a bus driver takes possession until the school bus driver returns possession of the school bus, whether or not the school bus driver is operating the school bus.

"Using a cellular radio telecommunication device" means talking or listening to or dialing a cellular radio telecommunication device.

To "operate" means to have the vehicle in motion while it contains one or more passengers.

(b) A school bus driver may not operate a school bus while using a cellular radio telecommunication device.

(c) Subsection (b) of this Section does not apply:

(1) To the use of a cellular radio telecommunication device for the purpose of communicating with any of the following regarding an emergency situation:

(A) an emergency response operator;

(B) a hospital;

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(C) a physician's office or health clinic;

(D) an ambulance service;

(E) a fire department, fire district, or fire company; or

(F) a police department.

(2) To the use of a cellular radio telecommunication device to call for assistance in the event that there is a mechanical breakdown or other mechanical problem that impairs the safe operation of the bus or to communicate with school authorities or their designees about any other issue relating to the operation of the school bus or the welfare and safety of any passenger thereon. In no case may a cellular radio telecommunication device be used for anything not provided for in this Section, including but not limited to, personal use.

(3) (Blank).

(4) When the school bus is parked.

(d) A school bus driver who violates subsection (b) of this Section is guilty of a petty offense punishable by a fine of not less than $100 and not more than $250.

(e) A school bus must contain either an operating cellular radio telecommunication device or two-way radio while the school bus driver is in possession of a school bus. The cellular radio telecommunication device or two-way radio in this subsection must be turned on and adjusted in a manner that would alert the school bus driver of an incoming communication request.

(Source: P.A. 92-730, § 5; 96-818, § 5; 96-1066, § 5.)

Effective Date. This section is effective January 1, 2003, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2009 amendment by P.A. 96-818, effective November 17, 2009, rewrote the section heading; inserted the third paragraph in (a); inserted "Subsection (b) of" at the beginning of the introductory paragraph of (c); inserted "subsection (b) of" in (d); added subsection (e); and made a related change.

The 2010 amendment by P.A. 96-1066, effective July 16, 2010, in (c)(2), added "or to communicate with school authorities or their designees about any other issue relating to the operation of the school bus or the welfare and safety of any passenger thereon" to the end of the first sentence and added the second sentence; deleted the text of subsection (c)(3); and in (e), inserted "either" in the first sentence and inserted "cellular radio telecommunication device or" in the first and second sentences.

§ 625 ILCS 5/12-815. Strobe lamp on school bus

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Sec. 12-815. Strobe lamp on school bus. (a) A school bus manufactured prior to January 1, 2000 may be equipped with one strobe lamp that will emit 60 to 120 flashes per minute of white or bluish-white light visible to a motorist approaching the bus from any direction. A school bus manufactured on or after January 1, 2000 shall be equipped with one strobe lamp that will emit 60 to 120 flashes per minute of white or bluish-white light visible to a motorist approaching the bus from any direction. The lamp shall be of sufficient brightness to be visible in normal sunlight when viewed directly from a distance of at least one mile.

(b) The strobe lamp shall be mounted on the rooftop of the bus with the light generating element in the lamp located equidistant from each side and either at or behind the center of the rooftop. The maximum height of the element above the rooftop shall not exceed 1/30 of its distance from the rear of the rooftop. If the structure of the strobe lamp obscures the light generating element, the element shall be deemed to be in the center of the lamp with a maximum height 1/4 inch less than the maximum height of the strobe lamp unless otherwise indicated in rules and regulations promulgated by the Department. The Department may promulgate rules and regulations to govern measurements, glare, effectiveness and protection of strobe lamps on school buses, including higher strobe lamps than authorized in this paragraph.

(c) The strobe lamp may be lighted only when the school bus is actually being used as a school bus and:

1.is stopping or stopped for loading or discharging pupils on a highway outside an urban area; or

2.is bearing one or more pupils.

(Source: P.A. 87-768; 91-168, § 5; 91-679, § 5; 95-319, § 5.)

Note.

Section 95 of P.A. 91-679 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-168, effective January 1, 2000, in subsection (a) inserted "purchased prior to the effective date of this amendatory Act of the 91st General Assembly" in the first sentence, and inserted the second sentence.

The 1999 amendment by P.A. 91-679, effective January 26, 2000, in subsection (a) substituted "manufactured prior to January 1, 2000" for "purchased prior to the effective date of this amendatory Act of the 91st General Assembly", and "manufactured on or after January 1, 2000" for "purchased on or after the effective date of this amendatory Act of the 91st General Assembly".

The 2007 amendment by P.A. 95-319, effective August 21, 2007, deleted "and is either stopped or, in the interest of safety, is moving very slowly at a speed: (i) less than the posted minimum speed limit, or (ii) less than 30 miles per hour on a highway outside an urban area" from the end of (c)2.

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§ 625 ILCS 5/12-815.1. Emergency exits identification

Sec. 12-815.1. Emergency exits identification. On and after August 1, 2000, all emergency exits of a school bus shall be outlined around the perimeter of the exit with a minimum one inch wide yellow reflective tape or decal. This yellow reflective tape or decal shall be placed on the exterior surface of the school bus.

(Source: P.A. 91-168, § 5; 91-785, § 5.)

Effective Date. Section 99 of P.A. 91-168 made this section effective January 1, 2000.

Effect of Amendments. The 2000 amendment by P.A. 91-785, effective June 9, 2000, substituted "August 1" for "June 1" in the first sentence.

§ 625 ILCS 5/12-815.2. Noise suppression switch

Sec. 12-815.2. Noise suppression switch. Any school bus manufactured on or after January 1, 2006 must be equipped with a noise suppression switch capable of turning off noise producing accessories, including: heater blowers; defroster fans; auxiliary fans; and radios.

(Source: P.A. 94-519, § 5.)

Effective Date. Section 99 of P.A. 94-519 made this section effective upon becoming law. The Act was approved August 10, 2005.

§ 625 ILCS 5/12-816. Pre and post-trip inspection policy for school buses

Sec. 12-816. Pre and post-trip inspection policy for school buses. (a) In order to provide for the welfare and safety of children who are transported on school buses throughout the State of Illinois, each school district shall have in place, by January 1, 2008, a policy to ensure that the school bus driver is the last person leaving the bus and that no passenger is left behind or remains on the vehicle at the end of a route, a work shift, or the work day. This policy and procedure shall, at a minimum, require the school bus driver (i) to test the cellular radio telecommunication device or two-way radio and ensure that it is functioning properly before the bus is operated and (ii) before leaving the bus at the end

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of each route, work shift, or work day, to walk to the rear of the bus and check the bus for children or other passengers in the bus.

(b) If a school district has a contract with a private sector school bus company for the transportation of the district's students, the school district shall require in the contract with the private sector company that the company have a post-trip inspection policy in place. This policy and procedure shall, at a minimum, require the school bus driver (i) to test the cellular radio telecommunication device or two-way radio and ensure that it is functioning properly before the bus is operated and (ii) before leaving the bus at the end of each route, work shift, or work day, to walk to the rear of the bus and check the bus for children or other passengers in the bus.

(c) Before this inspection, the school bus driver shall activate the interior lights of the bus to assist the driver in seeing in and under the seats during a visual sweep of the bus.

(d) This policy may include, at the discretion of the school district, the installation of a mechanical or electronic post-trip inspection reminder system which requires the school bus driver to walk to the rear of the bus to deactivate the system before the driver leaves the bus. The system shall require that when the driver turns off the vehicle's ignition system, the vehicle's interior lights must illuminate to assist the driver in seeing in and under the seats during a visual sweep of the bus.

(Source: P.A. 95-260, § 5; 96-818, § 5; 96-1066, § 5.)

Effective Date. Section 99 of P.A. 95-260 makes this section effective upon becoming law. The Act was approved August 17, 2007.

Effect of Amendments. The 2009 amendment by P.A. 96-818, effective November 17, 2009, substituted "Pre and post-trip" for "Post-trip" in the section heading; added the last sentence in (a); in (b), inserted item (i), added the designation (ii), and substituted "the bus for children or other passengers in the bus" for "in and under each seat for sleeping children".

The 2010 amendment by P.A. 96-1066, effective July 16, 2010, inserted "cellular radio telecommunication device or" in item (i) of the second sentence of (a) and (b).

§ 625 ILCS 5/12-820. Nursery school buses

Sec. 12-820. Nursery school buses. The Department of Transportation, after conducting a Public Hearing, may, by regulation, modify and supplement the requirements pertaining to seat dimensions, spacing and height from the floor and to other safety features in the interior of a school bus used to transport preschool children, when such modification or supplementing will enhance the safety of the bus when transporting such children.

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(Source: P.A. 85-828.)

Note.

This section was Ill.Rev.Stat., Ch. 95 1/2, Para. 12-820.

§ 625 ILCS 5/12-821. Display of telephone number; complaint calls

Sec. 12-821. Display of telephone number; complaint calls. (a) Each school bus and multifunction school-activity bus shall display at the rear of the bus a sign, with letters and numerals readily visible and readable, indicating the area code and telephone number of the owner of the bus, regardless of whether the owner is a school district or another person or entity. The sign shall be in the following form:

"TO COMMENT ON MY DRIVING, CALL (area code and telephone number of school bus owner)".

A school bus owner who placed a sign conforming to the requirements of Public Act 95-176 on a school bus before January 1, 2010 (the effective date of Public Act 96-655) may continue to use that sign on that school bus rather than a sign that conforms to the requirements of Public Act 96-655; however, if the school bus owner replaces that sign, the replacement sign shall conform to the requirements of Public Act 96-655.

(b) The owner of each school bus or multifunction school-activity bus shall establish procedures for accepting the calls provided for under subsection (a) and for taking complaints.

(c) The procedures established under subsection (b) shall include, but not be limited to:

(1) an internal investigation of the events that led to each complaint; and

(2) a report to the complaining party on the results of the investigation and the action taken, if any.

(Source: P.A. 95-176, § 5; 96-410, § 10; 96-655, § 5; 96-1000, § 575.)

Note.

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. This section became effective January 1, 2008, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

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Effect of Amendments. The 2009 amendment by P.A. 96-410, effective July 1, 2010, in the first sentence of (a), added "and multifunction school-activity bus" and deleted "school" following "owner of the"; deleted "school" preceding "bus driver" in the second sentence of (a); and added "or multifunction school-activity bus" in (b).

The 2009 amendment by P.A. 96-655, effective January 1, 2010, in the first paragraph of (a), inserted "area code and" in the first sentence and substituted "be in the following form" for "indicate that the number is to be called to report erratic driving by the school bus driver" in the second sentence; and added the last two paragraphs of (a).

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, amending both versions of the section before and after the amendment by P.A. 96-410, in the second paragraph of (a), substituted "January 1, 2010 (the effective date of Public Act 96-655)" for "the effective date of this amendatory Act of the 96th General Assembly" and "Public Act 96-655" for "this amendatory Act of the 96th General Assembly" following "requirements of" twice.

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CHAPTER 705.
COURTS

JUVENILE COURTS
705 ILCS 405Juvenile Court Act of 1987

JUVENILE COURTS

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Juvenile Court Act of 1987

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ARTICLE I.

GENERAL PROVISIONS

§ 705 ILCS 405/1-1. Short title

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Sec. 1-1. Short title. This Act shall be known and may be cited as the Juvenile Court Act of 1987.

(Source: P.A. 85-601.)

Derivation.

Title: An Act to provide for the protection, guidance, care, custody and guardianship of the persons of boys and girls who are delinquent, requiring authoritative intervention, addicted, abused, neglected or dependent; to prescribe court procedure relating thereto; to provide probation social service and psychiatric personnel therefor; to provide for the financial responsibilities of the State and the several counties in relation thereto; and to repeal an Act therein named.

Cite: 705 ILCS 405/1-1 et seq.

Source: P.A. 85-601.

Date: Approved September 20, 1987.

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 801-1.

Cross References.

For provisions concerning the living arrangements of a child or children, see 305 ILCS 5/4-1.2.

For the filing of a petition under this Act as an action to correct the mismanagement of an assistance grant, see 305 ILCS 5/4-8.

For authorization of the Illinois Department of Public Aid and local governmental units to receive payments directed by court order for the support of recipients, see 305 ILCS 5/10-19.

For the provision allowing the Illinois Department of Public Aid to provide by rule for the county departments and local governmental units to have children declared to be neglected when they deem the action necessary, see 305 ILCS 5/11-9.

For the taking or retention of temporary protective custody of a child where circumstances present an imminent danger to that child's life or health and there is not time to apply for a court order under this Act, see 325 ILCS 5/5.

As to an investigation which resulted in credible evidence that the child is abused or neglected, and the effect of the result is the assessment of family's need for services and perhaps the development of an appropriate service plan, see 325 ILCS 5/8.2.

For the provision requiring the Department of Children and Family Services to assist a circuit court during all stages of the court proceeding, see 325 ILCS 5/8.3.

For the provision concerning the authority of a court to place a minor coming within the terms of this Act, see the following: authority to place a minor in home detention or a shelter care or a detention home, see 55 ILCS 75/1.2; lack of authority to place a neglected or abused minor,

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addicted minor, dependent minor, or minor requiring authoritative intervention in any county detention home, see 55 ILCS 75/2.

For the provision for direct child welfare services when not available through other public or private child care or program facilities for children committed to the Department of Children and Family Services, see 20 ILCS 505/5.

For the requirement that parents or guardians of the estates of children accepted for care and training under this Act be liable for the payment of sums representing charges for the care and training of those children, see 20 ILCS 505/9.1.

For the exemption from liability of legal guardians appointed pursuant to this Act of an unemancipated minor, see the following: from actual damages as a result of a hate crime, see 720 ILCS 5/12-7.1; from actual damages as a result of educational intimidation, see 720 ILCS 5/12-7.2; from civil liability for retail theft, see 720 ILCS 5/16A-7; from actual damages for institutional vandalism, see 720 ILCS 5/21-1.2.

For the provision requiring that the appointment of officers to probation or court services departments under this Act be in accordance with the Probation and Probation Officers Act, 730 ILCS 110/0.01 et seq., see 730 ILCS 110/13a.

For the parole period of a juvenile committed to the Department of Corrections under this Act, see 730 ILCS 5/3-3-8.

For the recommitment term of a juvenile who has violated a condition set by the Prisoner Review Board, see 730 ILCS 5/3-3-9.

For the transfer of a juvenile to the Department of Mental Health and Disabilities, which transfer shall be notified to the committing juvenile court by the Assistant Director of the Juvenile Division, see 730 ILCS 5/3-10-5.

For release to the committing juvenile court following transfer to the Department of Mental Health and Disabilities when a juvenile no longer requires hospitalization for treatment, see 730 ILCS 5/3-10-6.

For transfer to the Juvenile Division of the Department of Corrections when the Department of Children and Family Services lacks adequate facilities, see 730 ILCS 5/3-10-11.

For assessment to a minor adjudicated delinquent of a fee for an analysis fee payable to crime laboratory, see 730 ILCS 5/5-9-1.4.

For joinder of a petition for declaration of emancipation with any pending litigation affecting the interests of the minor including a petition under this Act, see 750 ILCS 30/10.

For treatment of a juvenile who violates the Cannabis Control Act, 720 ILCS 550.1, see 720 ILCS 550/7.

For petition under this Act to ensure that appropriate guardianship is provided concerning the emergency admission of a minor to a mental health facility, see 405 ILCS 5/3-504.

For petition under this Act to ensure that appropriate care or residence is provided where minor's parent, guardian, or person in loco parentis is unwilling or unable to provide for his care or residence, see the following: concerning discharge from a mental health facility, see 405 ILCS 5/3-511; for developmentally disabled minors, see 405 ILCS 5/4-308.

For provisions concerning a written plan for a program of community mental health services and facilities, including programs for persons adjudicated delinquent minors under this Act, see 405 ILCS 20/3e.

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For denial of a license as a driver or of a grant of a permit to persons convicted or adjudicated under this Act based upon a violation of the Cannabis Control Act (720 ILCS 550/1 et seq.) or the Illinois Controlled Substances Act (720 ILCS 570/100 et seq.) while in control of a motor vehicle, see 625 ILCS 5/6-103.

For the provision that convictions under this Act be reported to the Secretary of State for suspension of the driver's license or permit, see 625 ILCS 5/6-204.

For an order of participation in the Youthful Intoxicated Drivers' Visitation Program as a condition of probation or discharge of a person adjudicated delinquent pursuant to this Act, see 625 ILCS 5/11-501.7.

For provisions prohibiting the appointment of a guardian whom the court has determined had caused or substantially contributed to the minor becoming a neglected or abused minor, see 755 ILCS 5/11-5.

For punishment for an escape concerning a field trip or transfer, see 105 ILCS 5/13-44.3.

For reporting by courts and law enforcement agencies to the principal of a public school when a minor enrolled therein is detained for proceedings under this Act, see 105 ILCS 5/22-20.

For commitment of any dependent and neglected boys to a training school for boys, in accordance with this Act, see 730 ILCS 165/1a.

As to the applicability of this Act to persons under 18 charged with cannabis-related offenses, see 720 ILCS 550/7.

For powers and duties of the Department of State Police with respect to record-keeping and confidentiality in juvenile court matters, see 20 ILCS 2605/2605-360.

For the role of the Department of Children and Family Services in exercising the powers and fulfilling the duties of the Department under this Act, see 20 ILCS 510/510-20.

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Constitutionality

Public Act 88-680, which amended this section, violates the single subject clause of the Illinois Constitution (Ill. Const., 1970, Art. IV, § 8), since the act does not pertain solely to neighborhood safety. People v. Cervantes, 189 Ill. 2d 80, 243 Ill. Dec. 233, 723 N.E.2d 265 (1999).

Where the legislature chose to alter the circuit courts' ability to place certain minors with the Department of Children and Family Services, the amendment by P.A. 89-21 did not change the applicability of the "best interests" standard and did not violate the affected minors' equal protection rights. In re C.M., 282 Ill. App. 3d 990, 218 Ill. Dec. 564, 669 N.E.2d 707 (3 Dist. 1996), appeal denied, 177 Ill. 2d 570, 232 Ill. Dec. 452, 698 N.E.2d 543 (1998).

This Act did not create a new court unauthorized by the constitution. Lindsay v. Lindsay, 257 Ill. 328, 100 N.E. 892 (1913).

Where the first proviso of the former Act (see now this Act) which established juvenile courts (see now this section) singled out from all the counties of the state counties which had a population of over 500,000, and purported to turn over to the board of county commissioners or board of supervisors in the counties the power of appointment of officers and assistants of the juvenile court in the discharge of judicial power was in conflict with former Article 3 of the Constitution (see now Ill. Const. (1970), Art. II, § 1). Witter v. County Comm'rs, 256 Ill. 616, 100 N.E. 148 (1912).

In General

Although a child was adjudicated a delinquent in juvenile court for violating 720 ILCS 5/24-9 after he shot a friend with his the service weapon of his sheriff father the juvenile adjudication was not tantamount to a criminal conviction and, therefore, did not absolve the sheriff of respondeat superior liability; a juvenile adjudication was not considered a "conviction" as defined under 720 ILCS 5/2-5 as delinquency proceedings were not criminal but were civil in nature, intended to correct and rehabilitate. Adames v. Sheahan, 378 Ill. App. 3d 502, 316 Ill. Dec. 823, 880 N.E.2d 559, 2007 Ill. App. LEXIS 1263 (1 Dist. 2007).

Plain language of former 705 ILCS 405/5-33(2) (now see generally 705 ILCS 405/1-1) makes it clear that delinquent minor's commitment to the Department of Corrections is subject to early termination if the termination is otherwise provided by law; therefore, delinquent minor's

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commitment is subject to former 705 ILCS 405/5-23(7), which does not allow a minor to be committed to a term in excess of the term for which an adult could be committed for the same act. People v. E.C. (In re E.C.), 297 Ill. App. 3d 177, 231 Ill. Dec. 550, 696 N.E.2d 846, 1998 Ill. App. LEXIS 422 (1 Dist. 1998).

Juveniles have neither a common law nor a constitutional right to adjudication under this Act, since the Act is a purely statutory creature whose parameters and application are defined solely by the legislature. People v. P.H., 145 Ill. 2d 209, 164 Ill. Dec. 137, 582 N.E.2d 700 (1991).

Juvenile proceedings are civil in nature, albeit, many of the rights accorded in adult tribunals are extended to juvenile court proceedings. People ex rel. Hanrahan v. Felt, 48 Ill. 2d 171, 269 N.E.2d 1 (1971).

Applicability

Trial court's judgment ordering the termination of the mother's parental rights in the minor son and appointing a guardian to consent to the minor son's adoption was reversed; not only did the trial court err in having a guardian appointed under the juvenile court laws when the guardian should have been appointed for the mother under probate law because the mother was a mentally disabled adult and not a juvenile, but a plenary guardian had already been appointed, that guardian's letters of office had not been revoked, and that guardian possessed the broad powers necessary to act in the best interests of the mother. People v. Delores W. (In re Mark W.), Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 520 (1 Dist. June 16, 2006).

Confidentiality provisions of the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., were not violated when the apartment manager obtained and filed documents related to the minor son's arrest in its forcible entry and detainer action against the tenant for allegedly violating a lease provision that prohibited drug-related criminal activity. Such records could be disclosed to the public by order of the court and the record showed the documents were obtained pursuant to a lawful subpoena that the apartment manager issued pursuant to Ill. Sup. Ct. R. 237(a). Camco, Inc. v. Lowery, 362 Ill. App. 3d 421, 298 Ill. Dec. 332, 839 N.E.2d 655, 2005 Ill. App. LEXIS 1156 (1 Dist. 2005), appeal denied, 218 Ill. 2d 536, 303 Ill. Dec. 1, 850 N.E.2d 806 (2006).

Where a minor is either arrested without a warrant, or brought into custody for questioning and then later charged with murder, the Juvenile Court Act will apply. People v. Morgan, 306 Ill. App. 3d 616, 239 Ill. Dec. 353, 713 N.E.2d 1203, 1999 Ill. App. LEXIS 484 (1 Dist. 1999).

This act did not apply to defendant who was not arrested pursuant to a petition in the juvenile court, but was simply arrested for murder and was therefore subject to the jurisdiction of the criminal courts. People v. Daniel, 238 Ill. App. 3d 19, 179 Ill. Dec. 262, 606 N.E.2d 94 (1 Dist. 1992), appeal denied, 149 Ill. 2d 654, 183 Ill. Dec. 866, 612 N.E.2d 518 (1993).

Application and Construction

Pursuant to the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., a trial court had limited jurisdiction to remove children from their present custody, as the court's power to act was purely statutory. However, the trial court's order that the minor child's placement with the foster parents be changed was not void, despite the fact that such a change could not be made to a specific alternate party under 705 ILCS 405/2-23(3), as the trial court's placement was not specific but was for "elsewhere" in order to protect the best interests of the minor child. People v. Debra P. (In re M.P.), 401 Ill. App. 3d 742, 340 Ill. Dec. 690, 928 N.E.2d 1287, 2010 Ill. App. LEXIS 492 (3 Dist. 2010).

Defendant juvenile was properly adjudicated delinquent for the offense of aggravated battery, 720 ILCS 5/12-4(a) and (b)(8), because the one-act, one-crime principle had no application when there was but one adjudication of delinquency, and the dispositional order did not reflect that

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defendant's probation was based on multiple offenses. People v. Jessica M. (In re Jessica M.), 385 Ill. App. 3d 894, 325 Ill. Dec. 271, 897 N.E.2d 810, 2008 Ill. App. LEXIS 1009 (1 Dist. 2008).

Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., does not require a court to enter any finding before closing a juvenile case without making a child a ward of the court; thus, while a court determined that two minor children were neglected by their mother, the court properly closed the files regarding the two minors without making them wards of the court where their biological father was ready, willing and able to care for and provide for the minors, and in fact, had been doing so on a temporary basis. People v. Elizabeth L. (In re C.L.), 384 Ill. App. 3d 689, 323 Ill. Dec. 923, 894 N.E.2d 949, 2008 Ill. App. LEXIS 905 (3 Dist. 2008), appeal denied, 2009 Ill. LEXIS 189 (Ill. 2009).

Proceedings dealing with dependency and neglect under the Juvenile Court Act are considered civil in nature and, furthermore, certain provisions of the Civil Practice Law are applicable to juvenile proceedings; thus, motion to dismiss may be considered by the trial court under the Juvenile Court Act. In re J.M., 245 Ill. App. 3d 909, 184 Ill. Dec. 754, 613 N.E.2d 1346 (2 Dist.), appeal denied, 152 Ill. 2d 560, 190 Ill. Dec. 890, 622 N.E.2d 1207 (1993).

Bail Provision Unnecessary

An adequate substitute for bail was provided by this Act. United States ex rel. Burton v. Coughlin, 463 F.2d 530 (7th Cir. 1972).

Best Interests

In ruling on the mother's motion to have the minor child return home and the former foster mother's motion to keep placement of the minor child with the former foster mother, the primary consideration was not which person had the better caretaker skills. Rather, the trial court properly used the best interest factors set forth in the Juvenile Court of Act of 1987, 705 ILCS 405/1-1 et seq., to determine whether reunification with the mother was in the minor child's best interests. People v. Analynn D. (In re Desiree O.), 381 Ill. App. 3d 854, 320 Ill. Dec. 279, 887 N.E.2d 59, 2008 Ill. App. LEXIS 215 (1 Dist. 2008).

The overriding concern of both the Adoption Act (750 ILCS 50/0.01 et seq.) and the Juvenile Court Act is the best interests of the child. In re T.H., 255 Ill. App. 3d 247, 193 Ill. Dec. 370, 626 N.E.2d 403 (5 Dist. 1993), appeal denied, 155 Ill. 2d 577, 198 Ill. Dec. 554, 633 N.E.2d 16, cert. denied, 513 U.S. 905, 115 S. Ct. 269, 130 L. Ed. 2d 187 (1994).

In child custody hearings under this act, the best interest of the child is the standard, and the trial court is vested with wide discretion. In re A.W., 248 Ill. App. 3d 971, 188 Ill. Dec. 159, 618 N.E.2d 729 (1 Dist. 1993).

Boys Court

Defendant's contention that, at the post-trial hearing in aggravation and mitigation, the trial court improperly considered defendant's prior convictions in Boy's Court in determining the sentence, was without merit, as it confused Boy's Court with Juvenile Court; Boy's Court is simply a branch of the First Municipal District of the Circuit Court with its proceedings resulting in routine misdemeanor convictions, whereas "juvenile proceedings" exist by authority of this Act. People v. Malone, 126 Ill. App. 2d 265, 261 N.E.2d 776 (1 Dist. 1970).

Children

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In a transfer hearing under the Illinois Juvenile Court Act of 1987, 705 Ill. Comp. Stat. 405/1-1 et seq., the State need only present evidence sufficient to sustain a finding of probable cause. People v. Morgan, 197 Ill. 2d 404, 259 Ill. Dec. 405, 758 N.E.2d 813, 2001 Ill. LEXIS 1428 (2001).

Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., does not require a court to enter any finding before closing a juvenile case without making a child a ward of the court; thus, while a court determined that two minor children were neglected by their mother, the court properly closed the files regarding the two minors without making them wards of the court where their biological father was ready, willing and able to care for and provide for the minors, and in fact, had been doing so on a temporary basis. People v. Elizabeth L. (In re C.L.), 384 Ill. App. 3d 689, 323 Ill. Dec. 923, 894 N.E.2d 949, 2008 Ill. App. LEXIS 905 (3 Dist. 2008), appeal denied, 2009 Ill. LEXIS 189 (Ill. 2009).

Contempt

Court properly adjudicated defendant, whose children had been adjudicated wards of the court and placed under the guardianship of the Department of Children and Family Services (DCFS), of indirect criminal contempt, for wilfully violating a court order by failing to contact DCFS and failing to visit the children. In re B.J., 268 Ill. App. 3d 449, 206 Ill. Dec. 23, 644 N.E.2d 791 (4 Dist. 1994).

The evidence was sufficient to justify holding the mother in contempt for violating an order of protective supervision. People v. Burr, 119 Ill. App. 2d 134, 255 N.E.2d 57 (4 Dist. 1970).

Custody

- Non-Parent

In divorce proceedings in which the husband sought custody of a minor child who had been adopted by the wife, but for whom the husband never filed a petition for adoption, the trial court properly granted the wife's motion to dismiss due to the husband's lack of standing because there was no basis to invoke the parens patriae power under the Illinois Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq. Moreover, the father had not cited any support for his request to invoke the extraordinary power of the court under 750 ILCS 5/601(a) to confer standing on him under the parens patriae doctrine to seek custody of a child who was legally not his child. In re Marriage of Mancine, Ill. App. 3d , Ill. Dec. , N.E.2d , 2012 Ill. App. LEXIS 70 (1 Dist. Feb. 2, 2012).

To acquire standing to petition for custody of a minor child under 705 ILCS 5/601(b)(2), a non-parent must show that the child is not in the physical possession of one of his or her parents and a non-parent failing to satisfy the standing requirement of 705 ILCS 5/601(b)(2) must proceed under the stricter requirements imposed by the Adoption or Juvenile Court Acts. In re Cannon, 268 Ill. App. 3d 937, 206 Ill. Dec. 343, 645 N.E.2d 348 (1 Dist. 1994).

Habeas Corpus

The form of a request for habeas corpus relief was deemed suitable for adjudicating disputes between parents over custody and visitation of an illegitimate child on the basis of the child's best interests, and where the petition is brought under this Act, and appears to meet the requirements of a petition for habeas corpus, the courts may disregard labels, and may grant relief to which a plaintiff is entitled upon the evidence; even without proof of neglect as defined in 705 ILCS 405/1-3, the court could in the interest of protecting the welfare of the child provide a forum as if under

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the habeas corpus act and find that the child is neglected. Mofrey v. Ritchie, 58 Ill. App. 3d 1045, 16 Ill. Dec. 414, 374 N.E.2d 1292 (2 Dist. 1978).

Illustrative Cases

Sufficient evidence presented during a proceeding under the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., showed that the mother's three minor children were abused or neglected, and supported the trial court's disposition pursuant to 705 ILCS 405/2-21(2) that the three minor children be made wards of the court. That evidence showed that the mother and father were raising the children in an atmosphere of domestic violence and substance abuse, that the children were missing school, and that the children had been physically abused while at least two of the three had also been sexually abused. People v. Danielle T. (In re Alexis H.), 401 Ill. App. 3d 543, 340 Ill. Dec. 901, 929 N.E.2d 552, 2010 Ill. App. LEXIS 393 (1 Dist. 2010).

Where evidence presented to the trial court showed that the mother had an almost continuous history of neglect with the minor child's other siblings, was involved in abusive relationships, had used illicit drugs in the past, and had a diminished cognitive ability, the trial court could find that the minor child was neglected pursuant to 705 ILCS 405/2-3(1)(b) under a theory of anticipatory neglect. Too, since the mother conceded that she was not able to care for, protect, train, or discipline the minor child, the trial court could also found that the mother was an unfit parent in the proceeding under the Juvenile Court Act, 705 ILCS 405/1-1, that the State filed against the mother. People v. T.C. (In re J.C.), 396 Ill. App. 3d 1050, 336 Ill. Dec. 695, 920 N.E.2d 1285, 2009 Ill. App. LEXIS 1325 (3 Dist. 2009).

Trial court erred by sentencing a defendant as an adult with regard to a second degree murder he was convicted of committing at the age of 16, because the State failed to adhere to the statutory 10 day filing deadline and notice provisions of the statute, which provisions were held to be mandatory and not subject to forfeiture. Thus, the judgment convicting defendant for second degree murder was void. People v. Jardon, 393 Ill. App. 3d 725, 332 Ill. Dec. 576, 913 N.E.2d 171, 2009 Ill. App. LEXIS 726 (1 Dist. 2009).

The juvenile court exceeded its authority in ordering a child to be returned to former foster parents in Illinois. In re M.V., 288 Ill. App. 3d 300, 224 Ill. Dec. 217, 681 N.E.2d 532 (1 Dist. 1997).

Judicial Immunity

Where plaintiffs brought an action pursuant to 42 U.S.C. § 1983, claiming that a court order removing their son from their custody and appointing a guardian to consent to medical treatment and to the administration of blood transfusions to the child, the judge who entered the order was protected by judicial immunity since jurisdiction was present under this section, under the Abused and Neglected Child Reporting Act, 325 ILCS 5/1 et seq., and under the Offenses Involving Children Act, 720 ILCS 150/1 et seq. Staelens v. Yake, 432 F. Supp. 834 (N.D. Ill. 1977).

Jurisdiction

Appellate court erred in finding that it lacked jurisdiction to consider an appeal of a permanency goal in a child neglect action pursuant to the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq.; although such permanency orders were normally not final judgments, the permanency goal in question was entered along with a disposition order, and the language of the trial court indicated that it meant the permanency order to be a final order. People v. Perseta D. (In re Faith B.), 216 Ill. 2d 1, 295 Ill. Dec. 1, 832 N.E.2d 152, 2005 Ill. LEXIS 952 (2005).

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In the absence of a petition filed pursuant to 705 ILCS 405/2-10(2) (2000) to initiate custody proceedings, the trial court lacked jurisdiction to enter a custody award to the state of a minor adjudicated delinquent. People v. Dept. of Children & Family Servs. (In re E.F.), 324 Ill. App. 3d 174, 257 Ill. Dec. 845, 754 N.E.2d 837, 2001 Ill. App. LEXIS 645 (3 Dist. 2001).

Trial court's jurisdiction under the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., and the Adoption Act, 750 ILCS 50/0.01 et seq., was broader than the divorce court's jurisdiction under the Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/101 et seq. Thus, the divorce court's grant of visitation to a mother was nullified by the trial court's decision to terminate the mother's parental rights. People v. Eisenburg (In re J.N.), 308 Ill. App. 3d 1073, 242 Ill. Dec. 660, 721 N.E.2d 1191, 1999 Ill. App. LEXIS 857 (1 Dist. 1999).

Where the respondent argued that the court lacked jurisdiction because, when the petition was filed, the child was not physically present in Illinois, it was sufficient that both the petitioner and the respondent were personally subject to the jurisdiction of Illinois. Mofrey v. Ritchie, 58 Ill. App. 3d 1045, 16 Ill. Dec. 414, 374 N.E.2d 1292 (2 Dist. 1978).

Jury Trial

Mother was not entitled to a jury trial in a termination of parental rights proceeding because: (1) neither the Juvenile Court Act of 1987 nor the Adoption Act provided for a jury trial except in certain juvenile delinquency proceedings; (2) as the proceedings were statutory, there was no right to jury trial under Ill. Const. Art. I, § 13; and (3) the Seventh Amendment to the United States Constitution did not extend to state proceedings. People v. Benavides (In re K.J.), 381 Ill. App. 3d 349, 319 Ill. Dec. 436, 885 N.E.2d 1116, 2008 Ill. App. LEXIS 211 (1 Dist. 2008).

Neither the Illinois nor the United States Constitution required a jury trial in proceedings under the former Juvenile Court Act (see now this Act). People v. Jones, 46 Ill. 2d 506, 263 N.E.2d 863 (1970).

Legislative Authority

The legislature has the constitutional power to pass an Act for the protection of dependent, neglected, or delinquent children. Lindsay v. Lindsay, 257 Ill. 328, 100 N.E. 892 (1913).

Legislative Purpose

The salient purpose and nature of this Act is remedial and preventive as opposed to punitive; but although the best interests of the minor must predominate, the interest of society in being protected from anti-social behavior must also be considered. People v. Armour, 15 Ill. App. 3d 529, 305 N.E.2d 47 (1 Dist. 1973), aff'd, 59 Ill. 2d 102, 319 N.E.2d 496 (1974).

The former Juvenile Court Act (see now this Act) treated children coming within the provisions as wards of the state to be protected, rather than as criminals to be punished; the purpose was to save them from the possible effects of delinquency and neglect liable to result in their leading a criminal career. Lindsay v. Lindsay, 257 Ill. 328, 100 N.E. 892 (1913).

Males over 17

This Act does not apply to males over 17 years of age. People v. Korell, 19 Ill. App. 3d 629, 312 N.E.2d 21 (4 Dist. 1974).

Police Procedures

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There was no prejudice accruing to the rights of either juvenile defendants in being allowed to return home in the custody of their parents, nor were the police procedures repugnant to this Act, where the minors were temporarily released in the custody of their parents upon the condition they return the following Monday, the minors were brought before a juvenile officer before being placed in detention, and were subsequently brought before a judicial officer within 36 hours from that time; therefore, the trial court improperly relied on the police procedures as a ground for dismissal of the petition of delinquency. People v. Hill, 133 Ill. App. 2d 147, 272 N.E.2d 840 (1 Dist. 1971).

Presumption of Custody

No presumption exists favoring custody in either parent. Mofrey v. Ritchie, 58 Ill. App. 3d 1045, 16 Ill. Dec. 414, 374 N.E.2d 1292 (2 Dist. 1978).

Probation Term

School district, wherein a delinquent minor was a special education student, was not financially responsible for the delinquent minor's residential placement at an out-of-state residential facility under the Juvenile Court Act; a school district has financial responsiblity for an out-of-district special education program only when it is unable to meet the needs of the student in its own district. People v. D.D. (In re D.D.), 212 Ill. 2d 410, 289 Ill. Dec. 143, 819 N.E.2d 300, 2004 Ill. LEXIS 1023 (2004).

The adult probation term is tolled when a petition to revoke probation is filed pursuant to 730 ILCS 5/5-6-4(a); no express equivalent provision is found in this Act. People v. Sims, 56 Ill. App. 3d 364, 13 Ill. Dec. 843, 371 N.E.2d 935 (1 Dist. 1977).

Reimbursement of Fees Paid

While this Act requires that a minor be represented by counsel at juvenile proceedings and authorizes the court to order parents, to the extent of their ability, to pay a reasonable fee for such representation, it does not permit one divorced parent to recover reimbursement from the other after the professional fees have been fully earned and paid for. In re Van Winkle, 107 Ill. App. 3d 73, 62 Ill. Dec. 831, 437 N.E.2d 358 (3 Dist. 1982).

Search and Seizure

The exclusionary rules required by the prohibition against illegal search and seizures in U.S. Const., Amend. XIV are applicable to proceedings under this Act. People v. Marsh, 40 Ill. 2d 53, 237 N.E.2d 529 (1968).

Stipulation

Children were properly adjudicated wards of the court pursuant to 705 ILCS 405/2-27(1) where the trial court's finding that the mother was unable, unwilling, and unfit to care for them was not against the manifest weight of the evidence. Arguments that she raised regarding the fact that she entered into a stipulation regarding the father's abuse of the children were waived because she failed to raise the issue before the trial court; however, waiver aside, the stipulation, which was made under the Juvenile Court Act, 705 ILCS 405/1-1 et seq., was voluntarily and intelligently entered into. People v. Kathleen C. (In re April C.), 326 Ill. App. 3d 225, 260 Ill. Dec. 6, 760 N.E.2d 85, 2001 Ill. App. LEXIS 828 (1 Dist. 2001).

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Substitution of Judge

Where the minor's liberty is at issue, the juvenile adjudication proceeding is more closely analogous to a criminal proceeding and motions for substitution of judge must be filed according to 725 ILCS 5/114-5(a). In re J.G., 283 Ill. App. 3d 183, 218 Ill. Dec. 699, 669 N.E.2d 1225 (2 Dist. 1996), appeal denied, 169 Ill. 2d 568, 221 Ill. Dec. 438, 675 N.E.2d 633 (1996).

Termination of Parental Rights

State, seeking to terminate the father's parental rights in the minor child pursuant to the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., and the Adoption Act, 750 ILCS 50/1 et seq., was not required to prove every ground it alleged for finding a parent unfit, as a parent's rights could be terminated if even a single alleged ground for unfitness was supported by clear and convincing evidence. Since such evidence showed that the father had not made reasonable progress in having the minor child returned to the father, largely because the father was incarcerated awaiting trial on an aggravated criminal sexual assault charge and was under a no-contact order regarding the minor child, the State sufficiently proved that the father was unfit pursuant to 750 ILCS 50/1(D)(m)(iii). Mariah C. v. Mario C. (In re Mariah C.), Ill. App. 3d , Ill. Dec. , N.E.2d , 2010 Ill. App. LEXIS 699 (1 Dist. July 9, 2010).

Mother's mental health problems, including bipolar disorder, and criminal history, including forgery and robbery, as well as the mother's failure to make reasonable progress towards reunification with the mother's three children supported the trial court's finding that termination of the mother's parental rights was in the best interests of the mother's three children. As a result, the trial court's termination of the mother's parental rights pursuant to the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., and the Adoption Act, 750 ILCS 50/0.01 et seq., because the findings of unfitness and grounds for termination were not against the manifest weight of the evidence. People v. Stephanie L. (In re J.L.), 236 Ill. 2d 329, 338 Ill. Dec. 435, 924 N.E.2d 961, 2010 Ill. LEXIS 271 (2010).

Mother's claim that she was denied effective assistance of counsel, pursuant to Ill. Const. (1970), Art. I, § 8 and the Sixth Amendment, in her termination of parental rights proceeding was rejected on appeal; the appellate court concluded that the Cronic ineffective assistance of counsel test did not apply and due to her lack of effort in being involved in her young son's life, she could not show under the Strickland test that she had been prejudiced by her counsel's performance in informing the court that counsel could not provide much of a defense because counsel had not been in touch with the mother very much. People v. Cundiff (In re C.C.), 368 Ill. App. 3d 744, 307 Ill. Dec. 170, 859 N.E.2d 170, 2006 Ill. App. LEXIS 1048 (1 Dist. 2006).

In the neglect proceedings where the mother argued that the trial court should have uncovered reports where the daughter was previously hospitalized, the argument failed as the Illinois Juvenile Act of 1987, 705 ILCS 405/1-1 et seq., did not impose any obligation on the trial court to do its own factual investigation. People v. Reder (In re S.R.), 349 Ill. App. 3d 1017, 285 Ill. Dec. 406, 811 N.E.2d 1285, 2004 Ill. App. LEXIS 783 (4 Dist. 2004).

Termination of parental rights was affirmed since the trial court's finding of unfitness on three grounds, the parents' failure to: (1) maintain a reasonable degree of interest, concern, or responsibility as to the welfare of their children, (2) make reasonable efforts to correct the conditions which were the basis for the removal of the children and/or the failure to make reasonable progress toward the return of the children within nine months after the adjudication of abuse and neglect, and (3) protect the children from conditions in their environment injurious to their welfare, was not against the manifest weight of the evidence. People v. Linda A. (In re A.A.), 324 Ill. App. 3d 227, 257 Ill. Dec. 834, 754 N.E.2d 826, 2001 Ill. App. LEXIS 637 (5 Dist. 2001), appeal denied, 198 Ill. 2d 591, 262 Ill. Dec. 619, 766 N.E.2d 618 (2002).

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Where a petition to terminate parental rights is filed prior to any petition for adoption, and where multiple petitions for adoption are subsequently filed, albeit one with parental consent, and where that natural parent has been convicted of the murder of the other natural parent, it was not error for the trial court to proceed on the petition to terminate parental rights prior to proceeding on the petitions to adopt. In re T.H., 255 Ill. App. 3d 247, 193 Ill. Dec. 370, 626 N.E.2d 403 (5 Dist. 1993), appeal denied, 155 Ill. 2d 577, 198 Ill. Dec. 554, 633 N.E.2d 16, cert. denied, 513 U.S. 905, 115 S. Ct. 269, 130 L. Ed. 2d 187 (1994).

A finding of unfitness may lead to the termination of parental rights; a court may take such action after finding it to be in the best interests of the minor. People v. Walters, 226 Ill. App. 3d 805, 168 Ill. Dec. 570, 589 N.E.2d 970 (4 Dist. 1992).

Visitation

The trial court did not err in awarding custody of the child to his mother, nor in granting the father reasonable visitation. Mofrey v. Ritchie, 58 Ill. App. 3d 1045, 16 Ill. Dec. 414, 374 N.E.2d 1292 (2 Dist. 1978).

Voluntariness of Admissions

Under former 705 ILCS 405/5-6, a trial court properly admitted defendant's 7 p.m. statement, after determining that the lack of a youth officer's presence was a factor it weighed against the State, but that under the totality of the circumstances, the statements were voluntarily given; therefore, the statement was not against the manifest weight of the evidence. People v. Hardaway, 307 Ill. App. 3d 592, 241 Ill. Dec. 111, 718 N.E.2d 682, 1999 Ill. App. LEXIS 650 (1 Dist. 1999).

The former Family Court Act (see now this Act) did not make juveniles immune from proper police investigation, nor did it render inadmissible voluntary statements to law enforcement officers. People v. Connolly, 33 Ill. 2d 128, 210 N.E.2d 523 (1965).

Waiver

There is a split among the appellate districts regarding whether waiver applies to juvenile proceedings; the fourth district has held that waiver principles apply equally in juvenile cases and criminal cases and the first district has held that waiver does not apply to appeals from delinquency proceedings. In re W.C., 261 Ill. App. 3d 508, 199 Ill. Dec. 160, 633 N.E.2d 956 (1 Dist. 1994), aff'd, 167 Ill. 2d 307, 212 Ill. Dec. 563, 657 N.E.2d 908 (1995).

Waiver does apply to appeals from delinquency findings and defendant waived his challenge of waiver of Miranda rights by failing to include it in his post-trial motion. In re W.C., 261 Ill. App. 3d 508, 199 Ill. Dec. 160, 633 N.E.2d 956 (1 Dist. 1994), aff'd, 167 Ill. 2d 307, 212 Ill. Dec. 563, 657 N.E.2d 908 (1995).

Where defendant contended that the former Juvenile Court Act (see now this Act) was a violation of the equal protection of the law because it classified 17 year old males as adults for purposes of criminal prosecution, while it protected females as "delinquent minors" until age 18, because defendant was tried and convicted in 1967, but did not raise the equal protection contention until after his probation was revoked in December, 1971, his argument was waived pursuant to Rule 606, Supreme Court Rules. People v. Johnson, 12 Ill. App. 3d 511, 299 N.E.2d 545 (1 Dist. 1973).

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LEGAL PERIODICALS

For article, "Conference on Ethical Issues in the Legal Representation of Children in Illinois", see 29 Loy. U. Chi. L.J. 289 (1998).

For comment, "The Sixth Amendment: Protecting Defendants' Rights at the Expense of Child Victims," see 30 J. Marshall L. Rev. 767 (1997).

For article, "Standards of Appellate Review for Denial of Counsel in Child Protection and Parental Severance Cases," see 27 Loy. U. Chi. L.J. 195 (1996).

For note, "United States v. Johnson: Acknowledging the Shift in the Juvenile Court System from Rehabilitation to Punishment," see 45 De Paul L. Rev. 903 (1996).

For article, "Illinois Lifts the Veil on Juvenile Conviction Records," see 83 Ill. B.J. 402 (1995).

For article, "A Primer on the Juvenile Court Act of 1987," see 9 CBA Rec. 33 (1995).

For essay, "The Criminal Courtroom: Is it Child Proof?," see 26 Loy. U. Chi. L.J. 681 (1995).

For article, "Cocaine Babies: Meeting the Challenge," see 80 Ill. B.J. 348 (1992).

For article, "Notice to Minors Under the Illinois Juvenile Court Act: An Anomaly of Due Process," see 36 De Paul L. Rev. 343 (1987).

For note, "In re S.R.H.: A Decline in the Juvenile's Right to Notice in Illinois," see 15 Loy. U. Chi. L.J. 697 (1983-84).

For article, "Making Criminals of Habitual Truants: Is It Cruel and Unusual," see 70 Ill. B.J. 768 (1982).

For comments, "Child Abuse: The Role of Adoption as a Preventative Measure," see 10 J. Marshall J. Prac. & Proc. (1976).

For mentorship article, "One Family in Two Courts: Coordination For Families In Illinois Juvenile and Domestic Relations Courts," see 37 Loy. U. Chi. L.J. 571 (2006).

For note and comment, "Psychological Evaluations: Their Use and Misuse in Illinois Child Abuse and Neglect Cases," see 54 DePaul L. Rev. 971 (2005).

For comment, "Isolating Past Unfitness: The Obstacle of In re Gwynne P. for Incarcerated Parents in Illinois," see 27 N. Ill. U. L. Rev. 281 (2007).

RESEARCH REFERENCES

Defense of infancy in juvenile delinquency proceedings. 83 ALR4th 1135.

Family court jurisdiction to hear contract claims. 46 ALR5th 735.

Practice Guides and Treatises.

Gitlin on Divorce § 14-3 Mandatory Visitation.

Illinois Jurisprudence, Family Law § 11:02 Definitions.

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§ 705 ILCS 405/1-2. Purpose and policy

Sec. 1-2. Purpose and policy. (1) The purpose of this Act is to secure for each minor subject hereto such care and guidance, preferably in his or her own home, as will serve the safety and moral, emotional, mental, and physical welfare of the minor and the best interests of the community; to preserve and strengthen the minor's family ties whenever possible, removing him or her from the custody of his or her parents only when his or her safety or welfare or the protection of the public cannot be adequately safeguarded without removal; if the child is removed from the custody of his or her parent, the Department of Children and Family Services immediately shall consider concurrent planning, as described in Section 5 of the Children and Family Services Act [20 ILCS 505/5] so that permanency may occur at the earliest opportunity; consideration should be given so that if reunification fails or is delayed, the placement made is the best available placement to provide permanency for the child; and, when the minor is removed from his or her own family, to secure for him or her custody, care and discipline as nearly as possible equivalent to that which should be given by his or her parents, and in cases where it should and can properly be done to place the minor in a family home so that he or she may become a member of the family by legal adoption or otherwise. Provided that a ground for unfitness under the Adoption Act [750 ILCS 50/0.01 et seq.] can be met, it may be appropriate to expedite termination of parental rights:

(a) when reasonable efforts are inappropriate, or have been provided and were unsuccessful, and there are aggravating circumstances including, but not limited to, those cases in which (i) the child or another child of that child's parent was (A) abandoned, (B) tortured, or (C) chronically abused or (ii) the parent is criminally convicted of (A) first degree murder or second degree murder of any child, (B) attempt or conspiracy to commit first degree murder or second degree murder of any child, (C) solicitation to commit murder, solicitation to commit murder for hire, solicitation to commit second degree murder of any child, or aggravated assault in violation of subdivision (a)(13) of Section 12-2 of the Criminal Code of 1961 [720 ILCS 5/12-2], or (D) aggravated criminal sexual assault in violation of Section 12-14(b)(1) of the Criminal Code of 1961 [720 ILCS 5/12-14]; or

(b) when the parental rights of a parent with respect to another child of the parent have been involuntarily terminated; or

(c) in those extreme cases in which the parent's incapacity to care for the child, combined with an extremely poor prognosis for treatment or rehabilitation, justifies expedited termination of parental rights.

(2) In all proceedings under this Act the court may direct the course thereof so as promptly to ascertain the jurisdictional facts and fully to gather information bearing upon the current condition and future welfare of persons subject to this Act. This Act shall be administered in a spirit of humane concern, not only for the rights of the parties, but also for the fears and the limits of understanding of all who appear before the court.

(3) In all procedures under this Act, the following shall apply:

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(a) The procedural rights assured to the minor shall be the rights of adults unless specifically precluded by laws which enhance the protection of such minors.

(b) Every child has a right to services necessary to his or her safety and proper development, including health, education and social services.

(c) The parents' right to the custody of their child shall not prevail when the court determines that it is contrary to the health, safety, and best interests of the child.

(4) This Act shall be liberally construed to carry out the foregoing purpose and policy.

(Source: P.A. 85-601; 89-704, § 5; 90-27, § 30; 90-28, § 10-20; 90-443, § 10 and § 20; 90-608, § 30.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 801-2.

Effect of Amendments. The 1998 amendment by P.A. 90-608, effective June 30, 1998, incorporated the amendments by P.A. 90-27, P.A. 90-28, and P.A. 90-443; in subsection (1)(a), substituted "the child or another child of that child's parent" for "a child or a sibling of the child" in item (i), and substituted "or aggravated assault in violation of subdivision (a)(13) of Section 12-2 of the Criminal Code of 1961" for "or accountability for the first or second degree murder of any child" in item (ii)(C); and substituted "another child of the parent" for "a sibling of the child" in subsection (1)(b).

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Constitutionality

The juvenile court acts as parens patriae and the court and its allied agencies must be empowered to give the minor the care and guidance this Act is designed to provide; as the indeterminate sentencing scheme is considered to play a useful role in achieving this goal and is applied similarly to all juveniles declared to be delinquent, it meets constitutional standards. People v. T.D., 81 Ill. App. 3d 369, 36 Ill. Dec. 594, 401 N.E.2d 275 (2 Dist. 1980).

Adult offenders and juveniles adjudicated delinquent are not "similarly circumstanced." People v. T.D., 81 Ill. App. 3d 369, 36 Ill. Dec. 594, 401 N.E.2d 275 (2 Dist. 1980).

In General

This Act is a codification of the ancient equitable jurisdiction over infants under the doctrine of parens patriae; historically, courts of chancery, representing the government, have exercised jurisdiction over the person and property of infants to insure that they were not abused, defrauded, or neglected. People ex rel. Houghland v. Leonard, 415 Ill. 135, 112 N.E.2d 697 (1953).

Adoption Order Held Void

Where petition in proceeding to declare children dependent and neglected did not contain any prayer for the appointment of a guardian with consent to adoption, and where the trial court in the dependency proceedings did not make findings that it was to the best interests of the minors that the guardian be given authority to consent to their adoption, the court was without jurisdiction to enter an order authorizing the guardian to consent to adoption; thus, the order of the court appointing a guardian and authorizing said guardian to consent to the adoption of the minor children was void and could be attacked in a habeas corpus proceeding. Zook v. Spannaus, 34 Ill. 2d 612, 217 N.E.2d 789 (1966).

Appeal

The notice of appeal was prematurely filed and was dismissed where the notice of appeal was filed after the oral pronouncement of the judge's decision but prior to the entry of the written judgment; oral pronouncements are not final, binding or appealable. People v. Wilson, 250 Ill. App. 3d 838, 189 Ill. Dec. 531, 620 N.E.2d 499 (4 Dist.), appeal denied, 153 Ill. 2d 568, 191 Ill. Dec. 628, 624 N.E.2d 816 (1993).

A county court judgment under the former Juvenile Court Act (see now this Act) which found the minor defendants not dependent and neglected children was not appealable to the Supreme Court where the constitutional validity of the statute was not an issue under former Ill. Rev. Stat., ch. 23 para. 190 (see now this section). People ex rel. Dickwisch v. Ruffcorn, 391 Ill. 625, 63 N.E.2d 708 (1945).

Best Interests of Child

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The purpose of the Juvenile Court Act of 1987, 705 ILCS 405/1-2(1), was to serve the best interests of the minor child. As a result, although the trial court could not make a specific placement of the child once it decided that a change of the minor child's custody from the foster parents was necessary, it could without entering a void judgment order that the minor child's placement be "elsewhere," as pursuant to 705 ILCS 405/2-28(2) it could set a permanency goal that was in the best interest of the minor child and under 705 ILCS 405/1-3(11.2) it could use a permanency hearing to further the permanency goal and service plan. People v. Debra P. (In re M.P.), 401 Ill. App. 3d 742, 340 Ill. Dec. 690, 928 N.E.2d 1287, 2010 Ill. App. LEXIS 492 (3 Dist. 2010).

Although the State had the exclusive authority in the trial court to prosecute a petition brought under the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., the public guardian, as the appointed attorney of the two minors and their guardian ad litem, could appeal the trial court's dismissal of the State's petition for adjudication of wardship in order to fulfill the public guardian's duty of protecting the best interests of the two minor children. People v. Rocio T. (In re Gustavo H.), 362 Ill. App. 3d 802, 298 Ill. Dec. 907, 841 N.E.2d 50, 2005 Ill. App. LEXIS 1166 (1 Dist. 2005), appeal denied, 218 Ill. 2d 539, 303 Ill. Dec. 3, 850 N.E.2d 808 (2006).

When the best interests of the child conflict with the statutory preference for placement with a close relative or even a natural parent's right to have custody restored, the best interests of the child take precedence and will defeat all other considerations. In re C.B., 248 Ill. App. 3d 168, 188 Ill. Dec. 28, 618 N.E.2d 598 (1 Dist. 1993).

If a trial court feels that there is insufficient evidence from which it may make a reasoned decision regarding the custody and guardianship of a child, the trial court should seek additional information before reaching a decision. In re C.B., 248 Ill. App. 3d 168, 188 Ill. Dec. 28, 618 N.E.2d 598 (1 Dist. 1993).

Where the trial court unreasonably relied upon expert testimony that was not shown to be relevant, the trial court's award of permanent custody was reversed and remanded for further proceedings to determine what was in child's best interests. In re C.B., 248 Ill. App. 3d 168, 188 Ill. Dec. 28, 618 N.E.2d 598 (1 Dist. 1993).

Where an injurious environment has been found to exist, the trial court need not wait until the child becomes a victim or is emotionally damaged permanently in order to remove the child from the household. People v. Roy, 215 Ill. App. 3d 1059, 158 Ill. Dec. 780, 574 N.E.2d 893 (4 Dist. 1991).

It is not necessary that the natural parent be found unfit or be found to have legally forfeited his rights to custody, if it is in the best interest of the child that he be placed in the custody of someone other than the natural parent. Violetta B. v. Stanciel, 210 Ill. App. 3d 521, 154 Ill. Dec. 896, 568 N.E.2d 1345 (1 Dist.), cert. denied, 139 Ill. 2d 605, 159 Ill. Dec. 118, 575 N.E.2d 925 (1991).

When the state moves to dismiss a petition alleging abuse of a minor, the circuit court shall consider the merits of the motion and determine, on the record, whether dismissal is in the best interests of the minor, the minor's family, and the community. If the circuit court determines the best interests of the minor will not be served by the dismissal, the state's motion should be denied, and the state shall proceed on the petition. In re J.J., 142 Ill. 2d 1, 153 Ill. Dec. 239, 566 N.E.2d 1345 (1991).

Under this Act, both the State's attorney and the juvenile court are charged with acting in the best interests of the minor: prosecution of a petition alleging abuse of a minor, when supported by the evidence, is the responsibility of the State's attorney; determining whether the petition may be dismissed is the responsibility of the juvenile court. In re J.J., 142 Ill. 2d 1, 153 Ill. Dec. 239, 566 N.E.2d 1345 (1991).

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A child's best interest is not part of an equation and it is not to be balanced against any other interest; in custody cases, a child's best interest is and must remain inviolate and impregnable from all other factors, including the interests of the biological parents. In re Ashley K., 212 Ill. App. 3d 849, 156 Ill. Dec. 925, 571 N.E.2d 905 (1 Dist.), appeal denied, 141 Ill. 2d 541, 162 Ill. Dec. 489, 580 N.E.2d 115 (1991).

The overriding concern of this Act is the welfare of the minor. People v. F.H., 190 Ill. App. 3d 321, 137 Ill. Dec. 692, 546 N.E.2d 637 (1 Dist. 1989).

The child's best interest and welfare are to be the prime consideration in proceedings to terminate parental rights; as a practical matter, the court of necessity must consider both the best interests of the child, as well as the rights of the parents to continue to hold the status of parent. Once evidence of parental unfitness has been found, all of the parent's rights must yield to the best interest of the child. People v. Golden, 147 Ill. App. 3d 484, 101 Ill. Dec. 188, 498 N.E.2d 370 (3 Dist. 1986).

Under former Ill. Rev. Stat., ch. 37, para. 701-2 (see now this section), although courts recognized the inherent right which all parents have to the society and custody of their own children, it was clear that the parents' right to custody of their children did not prevail when the court determined it was contrary to the best interests of the child. In re Weinstein, 68 Ill. App. 3d 883, 25 Ill. Dec. 322, 386 N.E.2d 593 (1 Dist. 1979).

While parents have an inherent right to the custody of their own children, these rights are not by any means absolute, but must yield at all times to the paramount factor of the welfare and best interests of the child or children involved. People v. Ayende, 31 Ill. App. 3d 288, 333 N.E.2d 711 (1 Dist. 1975).

Under former Ill. Rev. Stat., ch. 37, paras. 701-2(3)(c) and 705-9, (see now this section and 705 ILCS 405/2-27), as well as former Ill. Rev. Stat., ch. 4, paras. 9.1-1 and 9.1-20a, (see now 750 ILCS 50/1 and 750 ILCS 50/20a), where a court is considering terminating the interest and rights of a natural parent in order to review the merits of an adoption, the courts were required to consider the best interests of the minor. People v. Grant, 29 Ill. App. 3d 731, 331 N.E.2d 219 (1 Dist. 1975).

Blood Sampling

Warrantless and suspicionless blood sampling of convicted sex offenders provision mandated by § 5-4-3(a) of the Unified Code of Corrections (730 ILCS 5/5-4-3(a)), although in some conflict with the purpose and policy of the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., is nonetheless operationally consistent with the Act. People v. Robert K. (In re Robert K.), 336 Ill. App. 3d 867, 271 Ill. Dec. 630, 785 N.E.2d 562, 2003 Ill. App. LEXIS 257 (2 Dist. 2003).

Change of Custody

Trial court's decision to change custody of minor children from foster home to their paternal grandmother was well within the purpose and policy of former Ill. Rev. Stat., ch. 37, para. 701-1, (see now this section) where it would make it possible for the children to grow up among their family blood relatives and their paternal grandmother had already raised a generation of children and had room, money, time and the desire to raise more. People ex rel. Robinson v. Robinson, 27 Ill. App. 3d 774, 332 N.E.2d 14 (2 Dist. 1975).

Civil Procedure

Trial court did not abuse its discretion or violate respondent father's right not to incriminate himself by denying the father's motions to continue hearings on state's petition for adjudication of

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wardship and adjudicating wardship while criminal charges alleging that the father shook and hit his child were pending. People v. Jesse C. (In re D.P.), 327 Ill. App. 3d 153, 261 Ill. Dec. 381, 763 N.E.2d 351, 2001 Ill. App. LEXIS 1487 (1 Dist. 2001), appeal denied, 198 Ill. 2d 615, 264 Ill. Dec. 325, 770 N.E.2d 219 (2002).

Abuse and neglect proceedings under this Act are civil in nature, and the Code of Civil Procedure (735 ILCS 5/1-101 et seq.) applies to juvenile proceedings when the minor's liberty is not involved and when no other statutory provision specifically regulates the procedure at issue. People v. Dominique F., 145 Ill. 2d 311, 164 Ill. Dec. 639, 583 N.E.2d 555 (1991).

Consent to Search

Minor's mother could give valid consent to a warrantless police search of minor's locked bedroom located in her home. People v. Salyer, 44 Ill. App. 3d 854, 3 Ill. Dec. 648, 358 N.E.2d 1333 (3 Dist. 1977).

Construction

Juvenile court's order which directed the Illinois Department of Children and Family Services (DCFS) to pay for psychological evaluations of minor and his mother by a non-approved psychologist was not barred by sovereign immunity. People v. State Dep't of Children & Family Servs. (In re Brandon E.H.), 335 Ill. App. 3d 366, 269 Ill. Dec. 264, 780 N.E.2d 736, 2002 Ill. App. LEXIS 983 (4 Dist. 2002), appeal denied, 203 Ill. 2d 546, 273 Ill. Dec. 137, 788 N.E.2d 728 (2003).

The provisions of this Act are to be liberally construed. People v. B.S., 210 Ill. App. 3d 1085, 155 Ill. Dec. 671, 569 N.E.2d 1282 (2 Dist. 1991).

The terms of the former Juvenile Court Act (see now this Act) were to be read to favor the inclusion, rather than the exclusion, of minors. In re Greene, 76 Ill. 2d 204, 28 Ill. Dec. 525, 390 N.E.2d 884 (1979).

Dispositional Order

A dispositional hearing declaring children as wards of the court immediately followed an adjudicatory hearing in which the court found the children neglected within the meaning of 705 ILCS 405/2-3(1)(b) of the Juvenile Court Act of 1987, where the written adjudication order had not yet been entered. People v. Todd (In re Timothy T.), 343 Ill. App. 3d 1260, 279 Ill. Dec. 191, 799 N.E.2d 994, 2003 Ill. App. LEXIS 1340 (4 Dist. 2003).

A dispositional order must be reviewed in light of the purposes and policies of this Act. In re Wealer, 42 Ill. App. 3d 479, 355 N.E.2d 187 (3 Dist. 1976).

Due Process

Rights of a child to services necessary for his or her proper development, including health, education and social services, were incapable of precise definition and not a property interest within the meaning of the due process clause U.S. Const., Amend. XIV. B.H. v. Johnson, 715 F. Supp. 1387 (N.D. Ill. 1989).

Respondent was not deprived of due process or equal protection of the laws by virtue of the indeterminate sentence imposed. People v. T.D., 81 Ill. App. 3d 369, 36 Ill. Dec. 594, 401 N.E.2d 275 (2 Dist. 1980).

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Duty of Court

The trial court does not have to go out and do its own investigation, nor should the adjudicatory hearing go on indefinitely until the state gathers enough evidence to establish probable cause, the court merely cannot abdicate its duty to make a determination because the parties do not raise the issue. In re Ashley F., 265 Ill. App. 3d 419, 202 Ill. Dec. 722, 638 N.E.2d 368 (1 Dist. 1994).

Evidence

- Parent's Sexual Abuse

Placing the minors in their father's care was not an option available to the court; however, the information concerning the father's alleged sexual and alcohol abuse was relevant to the issue of possible reunification of the children with their father after his release from prison. People v. Hall, 212 Ill. App. 3d 22, 156 Ill. Dec. 213, 570 N.E.2d 689 (3 Dist. 1991).

- Rules Incorporated

While the Juvenile Court Act is construed to provide for procedures protective of juveniles' due process rights, it incorporates expressly only criminal rules of evidence and the burden of proof standard. In re W.C., 167 Ill. 2d 307, 212 Ill. Dec. 563, 657 N.E.2d 908 (1995).

Function of Court

The juvenile court's primary function is to ensure that the best interests of the minor respondent, his family, and society are served, and that this result be obtained in a manner that comports with the concepts of fairness and impartiality. People v. C.T., 120 Ill. App. 3d 922, 76 Ill. Dec. 435, 458 N.E.2d 1089 (1 Dist. 1983).

Guardianship

- Permanency Goal

Where the trial court set a permanency goal of guardianship in the dependency case only four months after the occurrence of the events upon which the petition was based, this did not undermine the trial court's decision; pursuant to 705 ILCS 405/1-2(1), permanency was to be attained as early as possible. People v. Perseta B. (In re Faith B.), 359 Ill. App. 3d 571, 296 Ill. Dec. 73, 834 N.E.2d 630, 2005 Ill. App. LEXIS 885 (2 Dist. 2005).

Illustrative Cases

Trial court erred by permanently placing a minor son with a foster mother pursuant to 705 ILCS 405/2-28(2)(E) when it failed to rule out the other permanency goals of 705 ILCS 405/2-28(2). While the trial court's decision to rule out the goal of return home to the biological father was not against the manifest weight of the evidence, as the father was ill, had violated court visitation order, and had sexually assaulted his step-daughter, the trial court failed to explain why the son could not be returned to the biological mother when three children had been returned to the mother. The trial court's reason was based solely on son's attachment to foster mother, the trial court's decision was inconsistent with the permanency goal of 705 ILCS 405/1-2, and the trial court failed to rule out short-term care with continued goal to return home under 705 ILCS 405/2-28(2)(B) (2004). People v. Roemer (In re S.J.), 368 Ill. App. 3d 749, 307 Ill. Dec. 281, 859 N.E.2d 281, 2006 Ill. App. LEXIS 1114 (1 Dist. 2006).

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Where the trial court set a permanency goal of guardianship pursuant to 705 ILCS 405/2-28 and 705 ILCS 405/1-2(1) and where the mother asserted that the trial court should have given her another chance to seek care and services before disregarding the goal of return home, the trial court's decision was not against the manifest weight of the evidence given the mother's refusal or inability to work with the agency and the mother's definitive in-court statements that she would not seek care for her significant mental health issues. People v. Perseta B. (In re Faith B.), 359 Ill. App. 3d 571, 296 Ill. Dec. 73, 834 N.E.2d 630, 2005 Ill. App. LEXIS 885 (2 Dist. 2005).

Child could not have been neglected absent allegations to the contrary, prior to the date she was placed with the surgical technicians trained to care for child because from the date of her birth until her placement she was under the constant, and presumably excellent, care of the hospital staff. People v. Gates, 57 Ill. App. 3d 844, 15 Ill. Dec. 222, 373 N.E.2d 568 (5 Dist. 1978).

Incarceration

A juvenile delinquent may be incarcerated until his 21st birthday, no matter how insignificant the misconduct that resulted in the jurisdictional finding of delinquency, provided that the requisite findings are made at his dispositional hearing, and provided further that he does not demonstrate that his best interests would be served by an earlier release. United States ex rel. Wilson v. Coughlin, 472 F.2d 100 (7th Cir. 1973).

Indian Tribal Courts

Congress expressed a preference for the tribal court to determine matters of child neglect and dependency of Indian children regardless of any psychological impact upon the child; Illinois' best interests of the child considerations do not provide sufficient bases to deny transfer of jurisdiction to the tribal courts under the Indian Child Welfare Act's (25 U.S.C. §§ 1901 - 1963) good cause provision. In re Armell, 194 Ill. App. 3d 31, 141 Ill. Dec. 14, 550 N.E.2d 1060 (1 Dist.), appeal denied, 132 Ill. 2d 545, 144 Ill. Dec. 255, 555 N.E.2d 374, cert. denied, 498 U.S. 940, 111 S. Ct. 345, 112 L. Ed. 2d 310 (1990).

Intent

The primary objectives of this Act are to ensure that the interests of minor respondents, their families and the community are served and to do so in as expeditious a manner as possible. People v. F.H., 190 Ill. App. 3d 321, 137 Ill. Dec. 692, 546 N.E.2d 637 (1 Dist. 1989).

This Act is intended to be remedial, not punitive; it specifically provides for promptness in juvenile proceedings, and the administration of its provisions in a spirit of humane concern and in a manner consistent with principles of fundamental fairness. People v. F.H., 190 Ill. App. 3d 321, 137 Ill. Dec. 692, 546 N.E.2d 637 (1 Dist. 1989).

This Act is based upon the right inherent in the state to take over the custody of a child when circumstances make it necessary for the welfare of the child and of the state to do so, and upon the institution of any proceeding under this Act the people become the real party to the controversy. People v. Anderson, 152 Ill. App. 3d 1033, 106 Ill. Dec. 72, 505 N.E.2d 378 (2 Dist. 1987).

A primary goal of this Act is to preserve and strengthen the minor's family ties whenever possible. In re Jennings, 32 Ill. App. 3d 857, 336 N.E.2d 786 (2 Dist. 1975), aff'd, 68 Ill. 2d 125, 11 Ill. Dec. 256, 368 N.E.2d 864 (1977); People v. Polovchak, 104 Ill. App. 3d 203, 59 Ill. Dec. 929, 432 N.E.2d 873 (1 Dist. 1981), aff'd, 97 Ill. 2d 212, 73 Ill. Dec. 398, 454 N.E.2d 258 (1983), cert. denied, 465 U.S. 1065, 104 S. Ct. 1413, 79 L. Ed. 2d 739 (1984).

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The policy of this Act is to secure the care and guidance necessary to serve the needs of the minor and the public's interest in safety and familial integrity. People v. Driver, 46 Ill. App. 3d 574, 4 Ill. Dec. 827, 360 N.E.2d 1202 (4 Dist. 1977).

Interim Orders

Pursuant to the provisions in this Act and the Department of Children and Family Services' (DCFS) mandate, the court may enter interim orders for services to the child and his or her family in order to prevent the unnecessary separation of children from their families and restoring to their families children who have been removed where it has found that they are in the best interest of the minor and his or her family and will help preserve the family. In re Lawrence M., 269 Ill. App. 3d 253, 206 Ill. Dec. 817, 645 N.E.2d 1069 (1 Dist.), aff'd, 172 Ill. 2d 523, 219 Ill. Dec. 32, 670 N.E.2d 710 (1996).

Jurisdiction

Juvenile court is without authority to require Department of Children and Family Services (DCFS) to pay for in-home services provided to a minor and his family when DCFS has been removed as the custodial party. Rami M. v. Illinois Dep't of Children & Family Servs., 285 Ill. App. 3d 267, 220 Ill. Dec. 446, 673 N.E.2d 358 (1 Dist. 1996), appeal denied, 172 Ill. 2d 552, 223 Ill. Dec. 195, 679 N.E.2d 380 (1997).

The juvenile court loses jurisdiction over matters concerning a ward of the court when a ward dies, because nowhere in the Juvenile Court Act is the court authorized to initiate, conduct, or facilitate the investigation of a ward's death. In re K.S., 264 Ill. App. 3d 963, 202 Ill. Dec. 427, 637 N.E.2d 1163 (1 Dist.), appeal denied, 158 Ill. 2d 552, 206 Ill. Dec. 836, 645 N.E.2d 1358 (1994).

The juvenile court was a division of the circuit court which, under Ill. Const. (1970), Art. VI, § 9, has jurisdiction in all justiciable matters except where the Supreme Court possesses original and exclusive jurisdiction. In re Thompson, 79 Ill. 2d 262, 37 Ill. Dec. 607, 402 N.E.2d 609 (1980).

Once an allegation is made in a petition for adjudication of wardship that a respondent is under 17 years of age, it is incumbent on respondent to challenge the authority of the court to proceed against him as a minor, or he will be deemed to have consented to the juvenile proceedings. People v. Young, 73 Ill. App. 3d 629, 29 Ill. Dec. 672, 392 N.E.2d 229 (1 Dist. 1979).

This Act grants special statutory jurisdiction to the circuit court to hear juvenile cases. People v. Frazier, 60 Ill. App. 3d 119, 17 Ill. Dec. 497, 376 N.E.2d 643 (1 Dist. 1978), rev'd on other grounds, 76 Ill. 2d 204, 28 Ill. Dec. 525, 390 N.E.2d 884 (1979).

Jury Use Precluded

Under the former Juvenile Court Act, (see now this Act), and the former Adoption Act (Ill. Rev. Stat., ch. 4, para. 9.1-1) (see now 750 ILCS 50/1), the use of "the court" by the legislature suggested that the court is to be the trier of fact in juvenile proceedings. In re Weinstein, 68 Ill. App. 3d 883, 25 Ill. Dec. 322, 386 N.E.2d 593 (1 Dist. 1979).

A review of provisions under the former Juvenile Court Act (see now this Act) compelled the conclusion that sections which required the court to make factual determinations under the Act precluded the use of a jury at all stages of a juvenile proceeding to enhance the protection of minors; a circuit judge does not have discretionary power to impanel an advisory jury to assist him in resolving factual questions in juvenile proceedings. People ex rel. Carey v. White, 65 Ill. 2d 193, 2 Ill. Dec. 345, 357 N.E.2d 512 (1976).

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Legislative Intent

Trial court erred in granting the county public guardian's motion in limine to bar the father from presenting evidence of his successful parenting of four of the minor child's siblings as relevant evidence of his fitness to be a parent. Such evidence might tend to have indicated that he could parent the minor child even though the minor child had been removed from the family home due to the mother's conduct, such evidence was material to the proceedings regarding termination of his parental rights, and the law expressed a preference for preserving family ties, such as that of the minor child, whenever possible. People v. Oscar H. (In re L.W.), 362 Ill. App. 3d 1106, 299 Ill. Dec. 509, 842 N.E.2d 248, 2005 Ill. App. LEXIS 1285 (1 Dist. 2005).

At hearings on the appropriateness of juvenile services, the legislature intended that the circuit court not be empowered to order specific services. In re Chiara C., 279 Ill. App. 3d 761, 216 Ill. Dec. 344, 665 N.E.2d 404 (1 Dist. 1996).

Liberty Interest

The foster family's existence is subject to the state's determination that it should continue, and Illinois law can create no expectancy of a constitutionally protected liberty interest in family relationship. Procopio v. Johnson, 994 F.2d 325 (7th Cir. 1993).

Natural Parent

- Change in Circumstances

Evidence did not support a sufficient showing of change in the mother's circumstances which would justify return of the children to her custody. People v. Ayende, 31 Ill. App. 3d 288, 333 N.E.2d 711 (1 Dist. 1975).

- Continued Relationship

A parent whose child has been adjudged a ward of the court may continue a relationship with the child while he attempts to remedy the conditions which may have led to the child's removal from parental custody. People v. Golden, 147 Ill. App. 3d 484, 101 Ill. Dec. 188, 498 N.E.2d 370 (3 Dist. 1986).

- Found Unfit

For a case concerning adjudication of unfit parents, termination of all parental rights and the assignment of five children as wards of the court see In re McMullen, 29 Ill. App. 3d 284, 331 N.E.2d 403 (4 Dist. 1975).

- Superior Custody Right

The natural parent has a superior right to custody, although that right must yield to the child's best interests, and absent a showing of unfitness, "compelling reason," "good reason," or other such showing, the trial court will award custody of the child to the natural parent. Miske v. Department of Children & Family Servs., 110 Ill. App. 3d 278, 66 Ill. Dec. 1, 442 N.E.2d 273 (2 Dist. 1982); People v. Fontenot, 174 Ill. App. 3d 732, 124 Ill. Dec. 375, 529 N.E.2d 92 (4 Dist. 1988).

Where the juvenile division did nothing more than consider the petitioning noncustodial parent as a "custodial alternative," such an approach was suspect in that it allowed the court merely to consider a parent, not actively determine whether sufficient evidence overcame the superior right to custody, and it proposed to take away the child of a natural parent without the requisite due

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process safeguards. Miske v. Department of Children & Family Servs., 110 Ill. App. 3d 278, 66 Ill. Dec. 1, 442 N.E.2d 273 (2 Dist. 1982).

The interests of a parent in the care, custody and control of his or her child is fundamental and not to be ignored or facilely swept away in the face of a competing petition for custody filed by a third party. Miske v. Department of Children & Family Servs., 110 Ill. App. 3d 278, 66 Ill. Dec. 1, 442 N.E.2d 273 (2 Dist. 1982).

The statement of purpose in subsection (1) of this section is actually a codification of the well recognized principle "that a natural parent has a superior right to the custody of his child"; natural parents possess an inherent right to the society and custody of their own children. People v. Ayende, 31 Ill. App. 3d 288, 333 N.E.2d 711 (1 Dist. 1975).

- Termination of Parental Rights

Provisions in the former Juvenile Court Act (see now this Act) and the Adoption Act (750 ILCS 50/0.01 et seq.) are and should be the exclusive authority by which parental rights may be terminated. Patrick v. Patrick, 59 Ill. App. 3d 11, 16 Ill. Dec. 309, 374 N.E.2d 1084 (4 Dist. 1978).

- Welfare of Child

Parents have the primary role of providing for the care and nurture of their children, but the state as parens patriae may restrict the parents' control and freedom in this regard where the welfare of the child is at issue. People v. Polovchak, 104 Ill. App. 3d 203, 59 Ill. Dec. 929, 432 N.E.2d 873 (1 Dist. 1981), aff'd, 97 Ill. 2d 212, 73 Ill. Dec. 398, 454 N.E.2d 258 (1983), cert. denied, 465 U.S. 1065, 104 S. Ct. 1413, 79 L. Ed. 2d 739 (1984).

New Dispositional Hearing Ordered

Where a minor was adjudged delinquent and committed to the Juvenile Division of the department of corrections by the lower court, a new dispositional hearing was ordered by the reviewing court for consideration of all relevant factors, notably the effect of financial circumstances on the parents' ability, and consideration of available alternative dispositions, before making a final determination. In re Wealer, 42 Ill. App. 3d 479, 355 N.E.2d 187 (3 Dist. 1976).

New Trial

Neither the provisions of the Juvenile Court Act nor Rule 660(a), Supreme Court Rules, incorporates within delinquency procedures the requirement of a motion for a new trial under 725 ILCS 5/116-1. In re W.C., 167 Ill. 2d 307, 212 Ill. Dec. 563, 657 N.E.2d 908 (1995).

Original Notice Requirement

This Act specifically provides for original service of process; this original notice to the parents is jurisdictional. People ex rel. Houghland v. Leonard, 415 Ill. 135, 112 N.E.2d 697 (1953).

Placement

A trial court has the authority to make a specific placement of a delinquent minor. In re D.D., 312 Ill. App. 3d 806, 245 Ill. Dec. 388, 728 N.E.2d 119, 2000 Ill. App. LEXIS 257 (2 Dist. 2000).

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Order that a 19-year old juvenile remain in a placement recommended by the Illinois Department of Children and Family Services, and could not return to her mother's care, was proper where the mother had not made much effort toward the juvenile's return and, where despite the judge's irresponsible comments about the juvenile, he recognized the court's duty to protect her. L.F.H. v. People, 256 Ill. App. 3d 451, 195 Ill. Dec. 341, 628 N.E.2d 805, 1993 Ill. App. LEXIS 1921 (1 Dist. 1993).

It was obvious that if there was no agreement by the minor as to the proposed placement, the behavior which brought the minor to the attention of the court system simply would have continued; thus, respondent parent's asserted "elevation" of the rights of the minor child over the parent was nothing more than practical acknowledgment of what was necessary to begin the intervention process under former Ill. Rev. Stat., ch. 37, para. 701-2(3)(b), (3)(c) (see now this section). People v. McCarron, 170 Ill. App. 3d 552, 121 Ill. Dec. 193, 524 N.E.2d 1241 (2 Dist. 1988), overruled on other grounds, People v. Minor, 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989).

Proof of Age

The former Juvenile Court Act (see now this Act) made no reference to the fact that age was not required as an element of proof; were age not required as an element of proof, an individual 17 years of age or older could sit through the proceedings, remain mute and be adjudicated as a juvenile, and such a possibility was inconsistent with the purpose and policy of the Act as set forth in former Ill. Rev. Stat., ch. 37, para. 701-2 (see now this section). People v. Brown, 49 Ill. App. 3d 580, 7 Ill. Dec. 496, 364 N.E.2d 657 (1 Dist. 1977), aff'd, 71 Ill. 2d 151, 15 Ill. Dec. 774, 374 N.E.2d 209 (1978).

Protective Order Reasonable

An order directing a mother to so comport her behavior to insure her daughter's school attendance unless ill, and requiring that such absence must be supported by a physician's certificate, was not unreasonable. People v. Burr, 119 Ill. App. 2d 134, 255 N.E.2d 57 (4 Dist. 1970).

Purpose

- In General

Placing a child with his foster mother appeared to be inconsistent with the Juvenile Act of 1987 goal of achieving permanency at the "earliest opportunity" for the subject children, 705 ILCS 405/1-2. Placing the child with the foster mother effectively removed involvement of the Illinois Department of Children and Family Services, leaving the foster mother, the biological mother, the biological father, and presumably the court to work out visitation until one of the following occurrences: (1) the child turned 18, (2) the foster mother decided she no longer wanted to care for the child, or (3) the child was returned to the biological mother. People v. Roemer (In re S.J.), 364 Ill. App. 3d 432, 301 Ill. Dec. 308, 846 N.E.2d 633, 2006 Ill. App. LEXIS 260 (1 Dist. 2006).

Language of 705 ILCS 405/2-14 does not require dismissal of a petition for wardship where the adjudicatory hearing has begun, but has not been completed, within the 90-day period set forth in the statute; giving the persons alleged to be endangering children the opportunity to retain custody of the children simply because an adjudicatory hearing, though started, has not been concluded within the 90-day period is not consistent with the overall purpose of the Juvenile Court Act of 1987 to safeguard the children, as expressed in 705 ILCS 405/1-2(1). People v. Radecki

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(In re H.R.), 283 Ill. App. 3d 907, 219 Ill. Dec. 428, 671 N.E.2d 93, 1996 Ill. App. LEXIS 762 (1 Dist. 1996).

The overriding purpose of the Juvenile Court Act is to ensure that the best interests of the minor, the minor's family, and the community are served. In re W.C., 167 Ill. 2d 307, 212 Ill. Dec. 563, 657 N.E.2d 908 (1995).

- Correction

Considering that one of the purposes of the Juvenile Court Act of 1987 was to assist parents who had engaged in allegedly flawed parenting while protecting children, a trial court's finding that the seven-year-old daughter of a hoarder was neglected because of an environment injurious to the daughter's welfare was against the manifest weight of the evidence where the mother cooperated and all of the allegations of an injurious environment had been cleaned up before the petition was filed. People v. Rebekah W. (In re R.W.), 401 Ill. App. 3d 1100, 341 Ill. Dec. 556, 930 N.E.2d 1070, 2010 Ill. App. LEXIS 573 (3 Dist. 2010).

The purpose of this Act is not to punish but to correct and rehabilitate. People v. M.D.B., 121 Ill. App. 3d 77, 76 Ill. Dec. 580, 458 N.E.2d 1380 (2 Dist. 1984).

It is well established that this Act was enacted as a corrective, rather than a penal measure; society is interested in the proceedings for its own sake as well as for the minor's individual welfare in guiding and rehabilitating and these interests cannot always be served by mechanical adherence to rote or formula. People v. D.J.B., 107 Ill. App. 3d 482, 63 Ill. Dec. 239, 437 N.E.2d 888 (5 Dist. 1982).

The primary purpose of this Act is remedial and preventive rather than punitive. People v. T.D., 81 Ill. App. 3d 369, 36 Ill. Dec. 594, 401 N.E.2d 275 (2 Dist. 1980).

The first purpose of the Act is not to punish, but to correct. People v. Armour, 59 Ill. 2d 102, 319 N.E.2d 496 (1974).

- Minor Interests

The overriding purpose of this Act is to ensure that the best interests of the minor, the minor's family, and the community are served. In re A.F., 234 Ill. App. 3d 1010, 176 Ill. Dec. 826, 602 N.E.2d 480 (1 Dist. 1991).

The primary objectives of this Act are to ensure that the interests of minor respondents, their families and the community are served and to do so in as expeditious a manner as possible. People v. F.H., 190 Ill. App. 3d 321, 137 Ill. Dec. 692, 546 N.E.2d 637 (1 Dist. 1989).

The express purpose of this Act includes securing for each minor subject to its provisions such care and guidance, preferably at home, as will serve his or her moral, emotional, mental, and physical welfare, as well as the best interests of the community. People v. M.A., 132 Ill. App. 3d 444, 87 Ill. Dec. 426, 477 N.E.2d 27 (1 Dist. 1985).

The purpose of this Act is to serve the welfare of the minor and the best interests of the community, to preserve family ties by giving preferential treatment to parental custody and to secure to the minor at least the procedural rights afforded adults. People v. Clayborn, 90 Ill. App. 3d 1047, 46 Ill. Dec. 435, 414 N.E.2d 157 (1 Dist. 1980).

The general purpose of this Act, is the furtherance of the best interest of the child. People v. Gates, 57 Ill. App. 3d 844, 15 Ill. Dec. 222, 373 N.E.2d 568 (5 Dist. 1978).

The provisions of this Act reflect a consistent legislative purpose of defining as public policy that the interest of a child in his natural relationships should be preserved wherever practicable. Smith v. Smith, 38 Ill. App. 3d 217, 347 N.E.2d 292 (4 Dist. 1976).

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The purpose and policy of the former Juvenile Court Act (see now this Act), is to secure care and guidance for each minor, preferably in his own home, which will serve the minor's welfare and the best interests of the community; the court will not remove a minor from the custody of his parents unless the minor's welfare and safety, or the protection of the public, cannot be safely guarded without removal. People ex rel. Robinson v. Robinson, 27 Ill. App. 3d 774, 332 N.E.2d 14 (2 Dist. 1975).

Removal from Juvenile Court

Where the State's attorney was directed, under former Ill. Rev. Stat., ch. 37, paras. 701-2 and 702-7, (see now this section and 705 ILCS 405/5-4), to determine whether a juvenile offender should be removed from the jurisdiction of the juvenile court for criminal prosecution, subject only to the right of the presiding juvenile court judge to object, in which event the matter would be referred to the chief judge of the circuit for decision, it was not constitutionally objectionable that the legislature granted that discretion to the State's attorney. People v. Handley, 51 Ill. 2d 229, 282 N.E.2d 131 (1972).

Right to Counsel

- Conflict of Interest

Where a trial court appointed counsel to represent a mother in proceedings to terminate her parental rights under the Juvenile Court Act, the case demanded closer scrutiny for conflicts of interests than if the mother had retained her own counsel. Consequently, the appeals court applied the per se conflict-of-interest rule to advance the sound administration of justice and found that a a per se conflict existed as a result of counsel's prior representation of the mother's minor children as their guardian-ad-litem and that the mother did not need to show prejudice to secure a reversal and remand of the trial court's judgment to terminate her parental rights. People v. T.O. (In re S.G.), 347 Ill. App. 3d 476, 283 Ill. Dec. 405, 807 N.E.2d 1246, 2004 Ill. App. LEXIS 370 (5 Dist. 2004).

- Ineffective Assistance Not Found

Where the trial court performed its duty in an admirable manner and gave respondent a clear explanation of the procedure and its alternatives, where the respondent's admission was coherent and complete and it was difficult to comprehend how one, or more, attorneys of the highest skill or the widest experience could have achieved a different result, and the record did not reflect any actual conflict of interest between the respondent, the parents and the attorney, minor was not denied effective assistance of counsel under former Ill. Rev. Stat., ch. 37, para. 701-2 (see now this section). People v. Stefanini, 57 Ill. App. 3d 788, 15 Ill. Dec. 358, 373 N.E.2d 704 (1 Dist. 1978).

- Parents

It is totally inconsistent with the purpose and policy of this Act to deny the natural parents who are indigent the right to counsel on appeal. People v. Harrison, 120 Ill. App. 3d 108, 76 Ill. Dec. 7, 458 N.E.2d 146 (4 Dist. 1983).

Right to Privacy

The Act provisions allowing for limits on parental rights where a preponderance of the evidence shows those limits are in the best interest of the minor do not violate the Illinois right to privacy. People v. Sandy F., 265 Ill. App. 3d 1092, 202 Ill. Dec. 848, 638 N.E.2d 716 (1 Dist. 1994).

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Rights of Juvenile

- Apprisal

At a bare minimum, the record of an adjudicatory hearing, at which a minor may be declared a delinquent and committed to a state institution, should reflect that the juvenile was clearly apprised of the right to confront and cross-examine witnesses at trial and of the privilege against self-incrimination. People v. Peevy, 43 Ill. App. 3d 579, 2 Ill. Dec. 101, 357 N.E.2d 78 (1 Dist. 1976).

- Legal Representation

When this section and 705 ILCS 405/1-5 are read together in a related manner, right to representation as a minor is clearly established, and the right to representation afforded to minors is almost coextensive to that afforded to adults. In re A.W., 248 Ill. App. 3d 971, 188 Ill. Dec. 159, 618 N.E.2d 729 (1 Dist. 1993).

- Removal

The state many interfere in a parent's fundamental right to the custody of his child when either the child's welfare or the safety or protection of the public cannot adequately be safeguarded without the removal of the child from parental custody, under former Ill. Rev. Stat., ch. 37, para. 701-2(1) (see now subsection (1) of this section); this policy applies to all the proceedings under this Act. People v. McCarron, 170 Ill. App. 3d 552, 121 Ill. Dec. 193, 524 N.E.2d 1241 (2 Dist. 1988), overruled on other grounds, People v. Minor, 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989).

Former Ill. Rev. Stat., ch. 37, para. 702-1 (see now this section) required a showing that a minor child was delinquent, in need of supervision, neglected, or dependent prior to removal; but, a child should be removed from the custody of his parents only when his welfare or safety or protection of the public could not be adequately safeguarded without removal. Menconi v. Menconi, 117 Ill. App. 3d 394, 73 Ill. Dec. 10, 453 N.E.2d 835 (1 Dist. 1983).

Role of Courts

The relation between the juvenile court and the minor is that of parens patriae; it is the duty of the court to attempt to act solely in the best interests of the child and for his own protection. People v. Champaign News-Gazette, 205 Ill. App. 3d 480, 150 Ill. Dec. 942, 563 N.E.2d 1069 (4 Dist. 1990), aff'd, 149 Ill. 2d 247, 172 Ill. Dec. 382, 595 N.E.2d 1052 (1992).

A court may intervene on its own motion and take note of legitimate and substantial errors in the proceeding involving minors even though the minors may be represented by counsel. People v. Champaign News-Gazette, 205 Ill. App. 3d 480, 150 Ill. Dec. 942, 563 N.E.2d 1069 (4 Dist. 1990), aff'd, 149 Ill. 2d 247, 172 Ill. Dec. 382, 595 N.E.2d 1052 (1992).

Former Ill. Rev. Stat., ch. 37, para 701-2(4) (see now this section) clearly required the court to determine whether a child was neglected, that is, whether the child was receiving the care necessary for his well being, and not necessarily whether the parents have been neglectful. People v. Gates, 57 Ill. App. 3d 844, 15 Ill. Dec. 222, 373 N.E.2d 568 (5 Dist. 1978).

In determining the rights of parties to a custody dispute, the court must constantly bear in mind that wide discretion is vested in the trial judge, to an even greater degree than any ordinary appeal to which the familiar manifest weight principle is applied. People v. Ayende, 31 Ill. App. 3d 288, 333 N.E.2d 711 (1 Dist. 1975).

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Sentencing

- Consecutive

A sentence imposed on a juvenile who commits a felony while in the Juvenile Division of the Department of Corrections cannot be made consecutive to the original terms of confinement, when the underlying basis of the commitment was an adjudication of delinquency. People v. Thompson, 229 Ill. App. 3d 606, 170 Ill. Dec. 612, 593 N.E.2d 154 (3 Dist.), cert. denied, 146 Ill. 2d 648, 176 Ill. Dec. 818, 602 N.E.2d 472 (1992).

Separation of Powers

The doctrine of separation of powers does not preclude a juvenile court from hearing the merits of a state's motion to dismiss a petition filed pursuant to this Act alleging abuse of a minor, as the doctrine of separation of powers was not designed to achieve a complete divorce among the three branches of government, nor does it require governmental powers to be divided into rigid, mutually exclusive compartments; there are instances in which the separate spheres of governmental authority overlap. In re J.J., 142 Ill. 2d 1, 153 Ill. Dec. 239, 566 N.E.2d 1345 (1991).

Standard of Legal Representation

A party in a proceeding brought pursuant to the Juvenile Court Act should be afforded the same standard of legal representation as a criminal defendant. People v. T.O. (In re S.G.), 347 Ill. App. 3d 476, 283 Ill. Dec. 405, 807 N.E.2d 1246, 2004 Ill. App. LEXIS 370 (5 Dist. 2004).

Voluntariness of Admissions

Admissions of juveniles must be made intelligently and voluntarily, though not necessarily in accordance with Rule 402, Supreme Court Rules. In re Beasley, 66 Ill. 2d 385, 6 Ill. Dec. 202, 362 N.E.2d 1024 (1977), cert. denied, 434 U.S. 1016, 98 S. Ct. 734, 54 L. Ed. 2d 761 (1978).

Waiver of Process

Where mother of a minor filed a motion to vacate delinquency decree and she expressly admitted that she and her son were present at the hearing which culminated in the finding of delinquency, her actions constituted a general appearance and a waiver of process. People ex rel. Houghland v. Leonard, 415 Ill. 135, 112 N.E.2d 697 (1953).

Wardship

Because a mother failed to object at trial, she waived her challenge to the trial court's decision adjudging her minor son a ward of the court; and in light of the factors set forth in 705 ILCS 405/1-3(4.05), the decision was not against the manifest weight of the evidence. Although 705 ILCS 405/1-2(1) promotes the preservation of family ties, a minor's best interest and welfare are the dominant principles. People v. Dorothy H. (In re William H.), 407 Ill. App. 3d 858, 348 Ill. Dec. 774, 945 N.E.2d 81, 2011 Ill. App. LEXIS 169 (1 Dist. 2011).

The trial court properly continued the wardship of the minor child previously adjudicated to be neglected, while terminating the right of the probation department to visit the child, since its ruling

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was within the spirit of and in keeping with the purpose and policy of this Act. People v. Pyles, 56 Ill. App. 3d 955, 14 Ill. Dec. 860, 372 N.E.2d 1139 (3 Dist. 1978).

Welfare of Minor

The overriding concern of this Act is the welfare of the minor. People v. F.H., 190 Ill. App. 3d 321, 137 Ill. Dec. 692, 546 N.E.2d 637 (1 Dist. 1989).

LEGAL PERIODICALS

For comment, "The Illinois Adoption Act: Should a Child's Length of Time in Foster Care Measure Parental Unfitness", see 30 Loy. U. Chi. L.J. 727 (1999).

For note, "Putting Reason Back in the Reasonable Efforts Requirement in Child Abuse and Neglect Cases", see 1999 U. Ill. L. Rev. 287 (1999).

For article, "The Reality of Family Preservation Under Norman v. Johnson," see 42 De Paul L. Rev. 675 (1992).

For note, "Defining the Scope of Residential Placement and Related Services Under the EHA: Difficult Questions Left Unanswered in Illinois - In re Claudia K," see 32 De Paul L. Rev. 483 (1983).

For note, "In re S.R.H.: A Decline in the Juvenile's Right to Notice in Illinois," see 15 Loy. U. Chi. L.J. 697 (1983-84).

For article: "Delinquency and Due Process: A Review of Illinois Law" 59 Chi-Kent L. Rev. 123 (1982).

For note, "The Termination of Parental Rights: Lassiter and the new Illinois Termination Law," see 13 Loy. U. Chi. L.J. 135 (1981-82).

For comments, "Illegitimacy and the Rights of Unwed Fathers in Adoption Proceedings After Quillian v. Walcott," see 12 J. Marshall J. Prac. & Proc. 383 (1979).

For article, "Denying Child Welfare Services to Delinquent Teens: A Call to Return to the Roots of Illinois' Juvenile Court," see, 36 Loy. U. Chi. L.J. 925 (2005).

For comment, "Extended Jurisdiction Juvenile Prosecutions: To Revoke or Not To Revoke," see, 39 Loy. U. Chi. L.J. 215 (2007).

For article, "Survey of Illinois Law: Juvenile Delinquency - Protecting the Public, "see, 28 S. Ill. U.L.J. 847 (2004).

RESEARCH REFERENCES

Applicability of rules of evidence to juvenile transfer, waiver, or certification hearings. 37 ALR5th 703.

Juvenile's guilty or no contest plea in adult court as waiver of defects in transfer or certification proceedings. 74 ALR5th 453.

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§ 705 ILCS 405/1-3. Definitions

Sec. 1-3. Definitions. Terms used in this Act, unless the context otherwise requires, have the following meanings ascribed to them:

(1) "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition under Section 2-13, 3-15 or 4-12 [705 ILCS 405/2-13, 705 ILCS 405/3-15 or 705 ILCS 405/4-12] that a minor under 18 years of age is abused, neglected or dependent, or requires authoritative intervention, or addicted, respectively, are supported by a preponderance of the evidence or whether the allegations of a petition under Section 5-520 [705 ILCS 405/5-520] that a minor is delinquent are proved beyond a reasonable doubt.

(2) "Adult" means a person 21 years of age or older.

(3) "Agency" means a public or private child care facility legally authorized or licensed by this State for placement or institutional care or for both placement and institutional care.

(4) "Association" means any organization, public or private, engaged in welfare functions which include services to or on behalf of children but does not include "agency" as herein defined.

(4.05) Whenever a "best interest" determination is required, the following factors shall be considered in the context of the child's age and developmental needs:

(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

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(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child.

(4.1) "Chronic truant" shall have the definition ascribed to it in Section 26-2a of the School Code [105 ILCS 5/26-2a].

(5) "Court" means the circuit court in a session or division assigned to hear proceedings under this Act.

(6) "Dispositional hearing" means a hearing to determine whether a minor should be adjudged to be a ward of the court, and to determine what order of disposition should be made in respect to a minor adjudged to be a ward of the court.

(7) "Emancipated minor" means any minor 16 years of age or over who has been completely or partially emancipated under the Emancipation of Minors Act [750 ILCS 30/1 et seq.] or under this Act.

(8) "Guardianship of the person" of a minor means the duty and authority to act in the best interests of the minor, subject to residual parental rights and responsibilities, to make important decisions in matters having a permanent effect on the life and development of the minor and to be concerned with his or her general welfare. It includes but is not necessarily limited to:

(a) the authority to consent to marriage, to enlistment in the armed forces of the United States, or to a major medical, psychiatric, and surgical treatment; to represent the minor in legal actions; and to make other decisions of substantial legal significance concerning the minor;

(b) the authority and duty of reasonable visitation, except to the extent that these have been limited in the best interests of the minor by court order;

(c) the rights and responsibilities of legal custody except where legal custody has been vested in another person or agency; and

(d) the power to consent to the adoption of the minor, but only if expressly conferred on the guardian in accordance with Section 2-29, 3-30 or 4-27 [705 ILCS 405/2-29, 705 ILCS 405/3-30 or 705 ILCS 405/4-27].

(9) "Legal custody" means the relationship created by an order of court in the best interests of the minor which imposes on the custodian the responsibility of physical possession of a minor and the duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, except as these are limited by residual parental rights and responsibilities and the rights and responsibilities of the guardian of the person, if any.

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(9.1) "Mentally capable adult relative" means a person 21 years of age or older who is not suffering from a mental illness that prevents him or her from providing the care necessary to safeguard the physical safety and welfare of a minor who is left in that person's care by the parent or parents or other person responsible for the minor's welfare.

(10) "Minor" means a person under the age of 21 years subject to this Act.

(11) "Parent" means the father or mother of a child and includes any adoptive parent. It also includes a man (i) whose paternity is presumed or has been established under the law of this or another jurisdiction or (ii) who has registered with the Putative Father Registry in accordance with Section 12.1 of the Adoption Act [750 ILCS 50/12.1] and whose paternity has not been ruled out under the law of this or another jurisdiction. It does not include a parent whose rights in respect to the minor have been terminated in any manner provided by law. It does not include a person who has been or could be determined to be a parent under the Illinois Parentage Act of 1984, or similar parentage law in any other state, if that person has been convicted of or pled nolo contendere to a crime that resulted in the conception of the child under Section 11-1.20, 11-1.30, 11-1.40, 11-11, 12-13, 12-14, 12-14.1, subsection (a) or (b) (but not subsection (c)) of Section 11-1.50 or 12-15, or subsection (a), (b), (c), (e), or (f) (but not subsection (d)) of Section 11-1.60 or 12-16 of the Criminal Code of 1961 [720 ILCS 5/11-1.20, 720 ILCS 5/11-1.30, 720 ILCS 5/11-1.40, 720 ILCS 5/11-11, 720 ILCS 5/12-13, 720 ILCS 5/11-1.30, 720 ILCS 5/11-1.40, 720 ILCS 5/11-1.50 or 720 ILCS 5/12-15 or 720 ILCS 5/11-1.60, or 720 ILCS 5/12-16] or similar statute in another jurisdiction unless upon motion of any party, other than the offender, to the juvenile court proceedings the court finds it is in the child's best interest to deem the offender a parent for purposes of the juvenile court proceedings.

(11.1) "Permanency goal" means a goal set by the court as defined in subdivision (2) of Section 2-28 [705 ILCS 405/2-28.01 (now repealed)].

(11.2) "Permanency hearing" means a hearing to set the permanency goal and to review and determine (i) the appropriateness of the services contained in the plan and whether those services have been provided, (ii) whether reasonable efforts have been made by all the parties to the service plan to achieve the goal, and (iii) whether the plan and goal have been achieved.

(12) "Petition" means the petition provided for in Section 2-13, 3-15, 4-12 or 5-20, including any supplemental petitions thereunder in Section 3-15, 4-12 or 5-520.

(12.1) "Physically capable adult relative" means a person 21 years of age or older who does not have a severe physical disability or medical condition, or is not suffering from alcoholism or drug addiction, that prevents him or her from providing the care necessary to safeguard the physical safety and welfare of a minor who is left in that person's care by the parent or parents or other person responsible for the minor's welfare.

(13) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including, but not necessarily limited to, the right to reasonable visitation (which may be limited by the court in the best interests of the minor as provided in subsection

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(8)(b) of this Section), the right to consent to adoption, the right to determine the minor's religious affiliation, and the responsibility for his support.

(14) "Shelter" means the temporary care of a minor in physically unrestricting facilities pending court disposition or execution of court order for placement.

(15) "Station adjustment" means the informal handling of an alleged offender by a Juvenile police officer.

(16) "Ward of the court" means a minor who is so adjudged under Section 2-22, 3-23, 4-20 or 5-705 [705 ILCS 405/2-22, 705 ILCS 405/3-23,705 ILCS 405/4-20 or 705 ILCS 405/5-705], after a finding of the requisite jurisdictional facts, and thus is subject to the dispositional powers of the court under this Act.

(17) "Juvenile police officer" means a sworn police officer who has completed a Basic Recruit Training Course, has been assigned to the position of juvenile police officer by his or her chief law enforcement officer and has completed the necessary juvenile officers training as prescribed by the Illinois Law Enforcement Training Standards Board, or in the case of a State police officer, juvenile officer training approved by the Director of the Department of State Police.

(18) "Secure child care facility" means any child care facility licensed by the Department of Children and Family Services to provide secure living arrangements for children under 18 years of age who are subject to placement in facilities under the Children and Family Services Act and who are not subject to placement in facilities for whom standards are established by the Department of Corrections under Section 3-15-2 of the Unified Code of Corrections [730 ILCS 5/3-15-2]. "Secure child care facility" also means a facility that is designed and operated to ensure that all entrances and exits from the facility, a building, or a distinct part of the building are under the exclusive control of the staff of the facility, whether or not the child has the freedom of movement within the perimeter of the facility, building, or distinct part of the building.

(Source: P.A. 86-820; 88-7, §§ 5, 15; 88-487, § 50; 88-586, § 60; 88-670, § 2-63; 90-28, § 10-20; 90-87, § 5; 90-590, § 2001-10; 90-608, § 30; 90-655, § 156; 91-357, § 236; 95-331, § 1020; 96-168, § 5; 97-568, § 5.)

Note.

Section 705 ILCS 405/2-28.1, referred to in subsection (11.1), has been repealed.

This section was Ill.Rev.Stat., Ch. 37, Para. 801-3.

P.A. 91-357, § 996 contains a "no acceleration or delay" provision, and P.A. 91-357, § 997 contains a "no revival or extension" provision.

Section 95 of P.A. 97-568 contains a "no acceleration or delay" provision.

Cross References.

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For the assumption of the authority, responsibilities and duties that a legal custodian of the child would have, see the following: by the Department of Children and Family Services to provide direct child welfare service, see 20 ILCS 505/5; by legal custodians and guardians of abused, neglected or dependent minors, see 705 ILCS 405/2-27; by legal custodians and guardians of minors requiring authoritative intervention, see 705 ILCS 405/3-28; by legal custodians and guardians of addicted minors, see 705 ILCS 405/4-25; by legal custodians and guardians of delinquent minors, see 705 ILCS 405/5-29.

For the provision allowing a court to appoint a guardian ad litem for a minor as defined in this section, see 725 ILCS 5/111-2.

Illinois Administrative Code.

See 20 Illinois Administrative Code, § 801.850.

Effect of Amendments. The 1998 amendment by P.A. 90-590, effective January 1, 1999, incorporated the amendments by P.A. 88-586 and P.A. 88-670; substituted "5-520" for "5-13" in subsections (1) and (12); substituted "3-30, or 4-27" for "3-30, 4-27 or 5-31" in subdivision (8)(d); and substituted "5-705" for "5-22" in subsection (16).

The 1998 amendment by P.A. 90-608, effective June 30, 1998, incorporated the amendments by P.A. 90-28 and P.A. 90-87; deleted the subsection headings throughout; deleted "racial" preceding "cultural" in subdivision (4.05)(c); rewrote subdivision (4.05)(g), which read "permanence for the child"; in the second sentence of subsection (11), substituted "a man" for "the father", added item (ii), and made a related change; substituted "subdivision (2) of Section 2-28" for "subdivision (2)(c) of Section 2-28 or subsection (c) of Section 2.28.01 or in counties with a population of 3,000,000 or more, a goal ordered by a judge" in subsection (11.1); in subsection (11.2), inserted "set the permanency goal and to", deleted former item (i) which read "the appropriateness of the permanency goal", and redesignated the remaining items accordingly; and added subsection (18).

The 1998 amendment by P.A. 90-655, effective July 30, 1998, incorporated the amendments by P.A. 90-28 and P.A. 90-87; deleted the subsection headings throughout; and substituted "subdivision (2) of Section 2-28 or subsection (c) of Section 2-28.01" for "subdivision (2)(c) of Section 2-28 or subsection (c) of Section 2.28.01 or in counties with a population of 3,000,000 or more, a goal ordered by a judge" in subsection (11.1).

The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "5-520" for "5-13" at the end of subsection (12); and substituted "exits" for "exists" in the second sentence in subsection (18).

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, substituted "Emancipation of Minors Act" for "Emancipation of Mature Minors Act, enacted by the Eighty-First General Assembly" in (7).

The 2009 amendment by P.A. 96-168, effective August 10, 2009, added (9.1) and (12.1)

The 2011 amendment by P.A. 97-568, effective August 25, 2011, added the last sentence of (11).

CASE NOTES

Analysis

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Adjudicatory Hearing
Applicability
Best Interest Test
Costs
Finding of Wardship
- Required
- Upheld
Guardianship
Parents' Rights
- Consent to Adoption
- Identity of Parent
- Participation
- Visitation
Permanence Factor
Placement
Standard of Proof
Standing
- Lack of Parental Notice
Temporary Custodians
Termination Factors

Adjudicatory Hearing

The plain language of 705 ILCS 5/1-3(1) instructs a circuit court to focus solely upon whether a child has been neglected, and there is no mention in the statute that, during the adjudicatory stage of the proceedings, the circuit court is also to determine who may be responsible for the child's neglect, and to assess the proportion of blame with respect to such individuals; thus, while an appellate court's reversal of a neglect finding was correct based on the particular facts of a case, its ruling that the reversal was required because only a mother had been found neglectful was error. People v. Arthur H. (In re Arthur H.), 212 Ill. 2d 441, 289 Ill. Dec. 238, 819 N.E.2d 734, 2004 Ill. LEXIS 1620 (2004).

Under prior similar provision (see now subsection (1) of this section), defendant's subsequent jury trial as an adult on the same charge of armed robbery was not in violation of his constitutional right to not be placed in double jeopardy where the first trial court never made a finding of fact as to the allegations in the petition because the record was incomplete, and instead continued the case for six months. People v. Ray, 51 Ill. App. 3d 748, 9 Ill. Dec. 449, 366 N.E.2d 960 (5 Dist. 1977).

In subsection (1) of this section, the provision for an adjudicatory hearing does not guarantee to the minor the full range of rights which an adult enjoys in a criminal trial. People v. Thomas, 34 Ill. App. 3d 1002, 341 N.E.2d 178 (2 Dist. 1976).

Applicability

Although the legal guardian as the guardian of the two minor grandchildren had a duty to act in the best interests of them, the legal guardian could not remain as a party in the neglect case involving them after the legal guardian was terminated by the court as their guardian. Under 705 ILCS 405/1-3, the legal guardian was not allowed to remain in the case as a party because that statute did not consider whether it would be in their best interests for the legal guardian to remain

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in the case. People v. Long (In re C.C.), Ill. 2d , 355 Ill. Dec. 25, 959 N.E.2d 53, 2011 Ill. LEXIS 1841 (2011).

Manifest weight of the evidence showed that not only was the father unfit to be a parent to the minor child, but that the best interests of the minor child required termination of the father's parental rights in the child. Application of the best interest factors under 705 ILCS 405/1-3(4.05) showed the minor child, who had been physically abused by the father, had bonded with his foster parents, was in good health, appeared to be developing normally, and had no bond with the father because the father was in custody on criminal charges related to the father's treatment of the minor child. People v. M.L. (In re I.B.), 397 Ill. App. 3d 335, 336 Ill. Dec. 941, 921 N.E.2d 797, 2009 Ill. App. LEXIS 1327 (3 Dist. 2009).

Pursuant to 705 ILCS 405/2-29 of the Juvenile Court Act of 1987, the trial court had authority to terminate parental rights with regard to a minor who was under the age of 21, so long as the minor was adjudicated abused, neglected, or dependent and a subsequent dispositional order was entered by the court when the minor was under 18 years of age. Section 29 contained no modifying language as to the term "minor"; thus, the legislature intended to employ the general definition of "minor" provided by the Act, which defined a minor as a person under the age of 21, 705 ILCS 405/1-3(10). People v. Angela E. (In re A.E.), 368 Ill. App. 3d 1142, 307 Ill. Dec. 350, 859 N.E.2d 639, 2006 Ill. App. LEXIS 1137 (1 Dist. 2006).

Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., applied to documents that the apartment manager included with its summary judgment motion in its forcible entry and detainer action against the tenant based on the arrest of the tenant's minor son for selling and possessing illegal drugs and the apartment manager's subsequent attempt to evict the tenant because drug-related criminal activity was a violation of her lease. The minor son was less than 21-years-old and, thus, the apartment manager and tenant could argue about whether the documents included with the summary judgment motion, which detailed the minor son's arrest, were obtained and filed in violation of the Act's confidentiality provisions. Camco, Inc. v. Lowery, 362 Ill. App. 3d 421, 298 Ill. Dec. 332, 839 N.E.2d 655, 2005 Ill. App. LEXIS 1156 (1 Dist. 2005), appeal denied, 218 Ill. 2d 536, 303 Ill. Dec. 1, 850 N.E.2d 806 (2006).

Best Interest Test

Termination of parental rights was in the best interests of the minors, because the father's unfitness finding of depravity was based upon several earlier convictions charging violent acts, the father did not challenge the depravity finding, many of the convictions showed the father's propensity for violence relative to the minors' safety and sense of security, and prior to the best interests hearing, the father had been convicted of the first degree murder charge which alleged that the father killed the mother by stabbing her several times in the presence of one minor and others. People v. Clarence T (In re S.D.), Ill. App. 3d , 352 Ill. Dec. 784, 954 N.E.2d 867, 2011 Ill. App. LEXIS 813 (3 Dist. 2011).

Termination of a mother's parental rights was in the children's best interests because the foster parents were able to provide a stable, secure home for the children, they were deeply involved in the ongoing treatment for the special needs of both children, and they wanted to adopt the children. The home was safe and appropriate, and both children showed significant improvement. State v. Alenka K. (In re Maya B.), Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. Unpub. LEXIS 1174 (1 Dist. May 19, 2011).

Trial court did not err by finding that termination of the mother's parental rights was in her son's best interests under 705 ILCS 405/1-3 (2006) because the son was happy in a stable, appropriate, safe home and had bonded with his foster mother, who wished to adopt him and stated that if she permitted to do so, she would continue to allow the son to have contact with his natural parents. People v. Leanne D. (In re Joshua K.), 405 Ill. App. 3d 569, 345 Ill. Dec. 743, 939 N.E.2d 586, 2010 Ill. App. LEXIS 1254 (1 Dist. 2010).

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Termination of a mother's parental rights was in the child's best interests because there was a lack of participation and inconsistency in the relationship between the mother and child, the child had a positive, safe, and nurturing relationship with her foster parents, and the child had lived with the foster parents since she was six weeks old. People v. Debra J. (In re Anaya J.G.), 403 Ill. App. 3d 875, 342 Ill. Dec. 731, 932 N.E.2d 1192, 2010 Ill. App. LEXIS 759 (1 Dist. 2010).

In a termination of parental rights case, the best-interest findings were not against the manifest weight of the evidence. The evidence showed that the mother had a serious history of substance abuse and had not maintained any independent parental relationship with the children, and the father had an extensive criminal history and would remained incarcerated until 2013; the children had been thriving in the home of an aunt who was interested in adopting them. People v. Hodges (In re Jay H.), 395 Ill. App. 3d 1063, 335 Ill. Dec. 200, 918 N.E.2d 284, 2009 Ill. App. LEXIS 1104 (4 Dist. 2009).

Trial court erred in terminating a juvenile case because the trial court failed to consider whether terminating the wardship, and consequently, terminating Department of Children and Family Services guardianship, would serve the health, safety, and best interests of the child and the public, and because the trial court did not consider that issue, it did not make the required written findings; the trial court did not consider the statutory "best interests" factor, including the child's wishes and sense of attachments. People v. Ill. Dep't of Children & Family Servs. (In re Aaron R.), 387 Ill. App. 3d 1130, 327 Ill. Dec. 416, 902 N.E.2d 171, 2009 Ill. App. LEXIS 31 (4 Dist. 2009).

Termination of parental rights trial court's finding that the children remained very bonded to their mother was well supported by the record. A neutral and professional bonding assessment, ordered by the court pursuant to 705 ILCS 405/1-3(4.05)(d) and prepared by a licensed professional counselor, indicated that the children shared a healthy parent-child bond with their mother and that the mother demonstrated strength in areas of nurturance, challenge, structure and engagement. People v. Quinn T. (In re B.B.), 386 Ill. App. 3d 686, 326 Ill. Dec. 252, 899 N.E.2d 469, 2008 Ill. App. LEXIS 1215 (3 Dist. 2008), appeal denied, 904 N.E.2d 980, 2009 Ill. LEXIS 191 (Ill. 2009).

Trial court meaningfully considered the factors of 705 ILCS 405/1-3(4.05) in finding that it was in a daughter's best interest to award private guardianship to her foster parents: (1) it had been a year-and-a-half since the date of adjudication of wardship and the parents had not made reasonable progress; (2) there was a history of domestic violence between the parents; (3) the mother was an alcoholic; and (4) the father had not accepted responsibility for the daughter's removal from their home. Although the trial court acknowledged that the daughter wanted to return home to her parents, return was not desirable because there still continued to be problems with the parents. People v. Nancy L. (In re Tasha L.-I.), 383 Ill. App. 3d 45, 321 Ill. Dec. 851, 890 N.E.2d 573, 2008 Ill. App. LEXIS 479 (1 Dist. 2008).

Trial court's determination, under 705 ILCS 405/1-3(4.05), that it was not in a daughter's best interests to be returned to her parents' home was not against the manifest weight of the evidence. The parents had not progressed to the point of being allowed unsupervised visits, the lack of progress would have had a detrimental effect on the daughter's development and well-being, and the daughter's return to the parents' home would not have been supported by the evidence. People v. Nancy L. (In re Tasha L.-I.), 383 Ill. App. 3d 45, 321 Ill. Dec. 851, 890 N.E.2d 573, 2008 Ill. App. LEXIS 479 (1 Dist. 2008).

Trial court properly considered the best interest factors set forth in 705 ILCS 405/1-3(4.05) in determining whether the minor child should be returned home to the mother and did not give undue weight to the fact that it was the mother who was petitioning to have the minor child returned home. It correctly rejected any assertion that the best interest consideration meant comparing caretaker skills to determine whether the mother or former foster mother more closely met some ideal standard, and, instead, properly focused on the health, safety, and best interests

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of the minor child. People v. Analynn D. (In re Desiree O.), 381 Ill. App. 3d 854, 320 Ill. Dec. 279, 887 N.E.2d 59, 2008 Ill. App. LEXIS 215 (1 Dist. 2008).

State proved by a preponderance of the evidence that termination of parental rights was in a child's best interests, as the child had resided in an adoptive foster home for over 5 1/2 years, and the record established that the environment was safe, appropriate, and nurturing. There was little evidence that the child had a strong bond with the biological parents. People v. Adeline E. (In re Daphnie E.), 368 Ill. App. 3d 1052, 307 Ill. Dec. 123, 859 N.E.2d 123, 2006 Ill. App. LEXIS 1042 (1 Dist. 2006).

Decision of trial court, Department of Children, and Family Services and Lutheran Social Services to preclude the mother from telling the child that she was his mother ensured that the mother would fail the best interest test because she was prevented from developing a parent-child bond with the child and a majority of the best interest considerations center on the relationship of and bonding between parent and child. People v. I.J.W. (In re O.S.), 364 Ill. App. 3d 628, 302 Ill. Dec. 130, 848 N.E.2d 130, 2006 Ill. App. LEXIS 333 (1 Dist. 2006).

Costs

Department of Children and Family Services (DCFS) is obligated, as legal custodian, to assume ultimate financial responsibility for services provided to minor, but not to pay for in-home services provided to a minor and his family when DCFS has been removed as the custodial party. Rami M. v. Illinois Dep't of Children & Family Servs., 285 Ill. App. 3d 267, 220 Ill. Dec. 446, 673 N.E.2d 358 (1 Dist. 1996), appeal denied, 172 Ill. 2d 552, 223 Ill. Dec. 195, 679 N.E.2d 380 (1997).

Finding of Wardship

Where an insurance policy issued to the live-in fiance of a minor's mother provided uninsured motorist benefits to a ward of the fiance, and the term "ward" was not defined in the policy, the term "ward," in accordance with its usual and ordinary meaning, could encompass an informal relationship whereby the fiance took care of and provided for the minor, even if a formal adjudication of guardianship was not sought, and thus, the minor could seek benefits under the policy's uninsured motorist provision even though he did not meet the legal definition of a ward under the Juvenile Court Act, 705 ILCS 405/1-1 et seq., and 705 ILCS 405/1-3. Clayton v. Millers First Ins. Cos., 384 Ill. App. 3d 429, 322 Ill. Dec. 976, 892 N.E.2d 613, 2008 Ill. App. LEXIS 746 (1 Dist. 2008), appeal denied, 229 Ill. 2d 664, 900 N.E.2d 1116, 2008 Ill. LEXIS 1641 (2008).

Findings were abundant that a mother's conduct was neglect under 705 ILCS 405/2-3(1)(b) and abuse under 705 ILCS 405/2-3(2)(ii) to satisfy the State's burden of proof and to justify making the mother's children wards of the court under 705 ILCS 405/1-3(6) and 705 ILCS 405/2-22. The mother falsely reported illnesses for some of her children, which led to them receiving improper care, she gave other children dangerous doses of medications, which threatened their lives, and she deprived one of her children of proper nutrition while arguing that child was difficult to feed, yet the child thrived under hospital care when properly fed. Since the record showed neglect and abuse to several of the mother's children, anticipatory neglect to the remaining children was sufficiently shown. People v. B.T. (In re K.T.), 361 Ill. App. 3d 187, 297 Ill. Dec. 38, 836 N.E.2d 769, 2005 Ill. App. LEXIS 941 (1 Dist. 2005).

- Required

Under prior similar provision, an explicit adjudication of wardship is required before the court enters a dispositional order regarding the minor. People v. Fornizy, 48 Ill. App. 3d 107, 8 Ill. Dec. 274, 365 N.E.2d 512 (1 Dist. 1977).

- Upheld

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Because a mother failed to object at trial, she waived her challenge to the trial court's decision adjudging her minor son a ward of the court; and in light of the factors set forth in 705 ILCS 405/1-3(4.05), the decision was not against the manifest weight of the evidence. Although 705 ILCS 405/1-2(1) promotes the preservation of family ties, a minor's best interest and welfare are the dominant principles. People v. Dorothy H. (In re William H.), 407 Ill. App. 3d 858, 348 Ill. Dec. 774, 945 N.E.2d 81, 2011 Ill. App. LEXIS 169 (1 Dist. 2011).

A finding of wardship by the lower court will be upheld if it is supported by the record. People v. Driver, 46 Ill. App. 3d 574, 4 Ill. Dec. 827, 360 N.E.2d 1202 (4 Dist. 1977).

Guardianship

Court did not err when it granted the Illinois Department of Children and Family Services guardianship of the minors, while retaining them in the custody of their mother, because the record showed a history of domestic violence between the mother and the minors' father, and the mother needed to learn the skills necessary to protect herself and the minors from experiencing domestic violence in the future, so that she could provide a safe and nurturing home environment for all involved. People v. Chazteen P. (In re M.P.), 408 Ill. App. 3d 1070, 349 Ill. Dec. 45, 945 N.E.2d 1197, 2011 Ill. App. LEXIS 242 (3 Dist. 2011).

Parents' Rights

Trial court did not need to decide whether the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., was constitutional for allowing a court to close a case without giving her an opportunity to assert and enforce her residual parental rights. Since the trial court was able to decide the case on other grounds, which included remanding the case to the trial court for further proceedings, it did not need to decide the constitutional issue she raised. People v. Ti. O. (In re Tr. O.), 362 Ill. App. 3d 860, 298 Ill. Dec. 828, 840 N.E.2d 1263, 2005 Ill. App. LEXIS 1276 (1 Dist. 2005), appeal denied, 218 Ill. 2d 540, 303 Ill. Dec. 3, 850 N.E.2d 808 (2006).

- Consent to Adoption

Child was unavailable for adoption by the mother's brother pursuant to 750 ILCS 50/1(F) (2004) without the consent of the Department of Children and Family Services and because the brother did not have the custody of the child; the trial court correctly proceeded with motion to terminate mother's parental rights despite the mother's consent to adopted in favor of her brother. People v. Anna D. (In re Taylor D.), 368 Ill. App. 3d 854, 306 Ill. Dec. 903, 858 N.E.2d 961, 2006 Ill. App. LEXIS 1013 (1 Dist. 2006).

Subsection (13) is not an affirmative grant of a right to consent but makes clear that whatever right there is to consent belongs not to the legal guardian or custodian but to the parent until such time as parental rights are terminated. In re L.R.B., 278 Ill. App. 3d 1091, 215 Ill. Dec. 950, 664 N.E.2d 347 (4 Dist. 1996), appeal denied, 168 Ill. 2d 591, 219 Ill. Dec. 564, 671 N.E.2d 731 (1996).

- Identity of Parent

Decision of trial court, Department of Children, and Family Services and Lutheran Social Services to preclude the mother from telling the child that she was his mother ensured that the mother would fail the best interest test because she was prevented from developing a parent-child bond with the child and a majority of the best interest considerations center on the relationship of and bonding between parent and child. People v. I.J.W. (In re O.S.), 364 Ill. App. 3d 628, 302 Ill. Dec. 130, 848 N.E.2d 130, 2006 Ill. App. LEXIS 333 (1 Dist. 2006).

- Participation

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Respondent father was not entitled to notice of a prior adjudicatory proceeding in which his son was deemed neglected and made a ward of the court; at the time of the hearing, respondent did not fall within any of the definitions of "parent" found in 705 ILCS 405/1-3(11) in that he was not the son's presumed father, his paternity had never been established, and he was not registered with the Putative Father Registry. People v. Rodney S. (In re Rodney T.), 352 Ill. App. 3d 496, 287 Ill. Dec. 774, 816 N.E.2d 741, 2004 Ill. App. LEXIS 1089 (1 Dist. 2004).

Under prior similar provisions (see now 705 ILCS 405/1-5 and this section), parties had no rights to appear, participate, or to be heard in a juvenile adjudication where they were not parents, did not stand in loco parentis to the children, and were not guardians, legal custodians, responsible relatives, or appointed foster parents. In re Winks, 150 Ill. App. 3d 657, 103 Ill. Dec. 888, 502 N.E.2d 35 (4 Dist. 1986).

- Visitation

Pursuant to 705 ILCS 405/1-3(8)(b), a father retained certain residual rights after legal guardianship of his minor child had been transferred to the State, however, a trial court's suspension of visitation in the best interests of the child was proper under 705 ILCS 405/2-23(3)(ii) and 705 ILCS 405/2-23(3)(iii); the trial court's order was both a "restraining order" and a "visiting order," which the trial court found necessary so as not to frustrate the goals of the trial court's "service plan" for the minor. People v. Thomas B. (In re Taylor B.), 359 Ill. App. 3d 647, 296 Ill. Dec. 48, 834 N.E.2d 605, 2005 Ill. App. LEXIS 863 (3 Dist. 2005).

Permanence Factor

Court's determination that a mother was unlikely to provide long-term stability for her children, as required by 705 ILCS 405/1-3(4.05)(g), absent some remarkable change in her level of cooperation and personal motivation, was supported by evidence that the children did not enjoy a stable lifestyle once they left Illinois. Thus the trial court correctly weighed the need for permanence factor in support of termination of the mother's parental rights. People v. Quinn T. (In re B.B.), 386 Ill. App. 3d 686, 326 Ill. Dec. 252, 899 N.E.2d 469, 2008 Ill. App. LEXIS 1215 (3 Dist. 2008), appeal denied, 904 N.E.2d 980, 2009 Ill. LEXIS 191 (Ill. 2009).

Placement

The purpose of the Juvenile Court Act of 1987, 705 ILCS 405/1-2(1), was to serve the best interests of the minor child. As a result, although the trial court could not make a specific placement of the child once it decided that a change of the minor child's custody from the foster parents was necessary, it could without entering a void judgment order that the minor child's placement be "elsewhere," as pursuant to 705 ILCS 405/2-28(2) it could set a permanency goal that was in the best interest of the minor child and under 705 ILCS 405/1-3(11.2) it could use a permanency hearing to further the permanency goal and service plan. People v. Debra P. (In re M.P.), 401 Ill. App. 3d 742, 340 Ill. Dec. 690, 928 N.E.2d 1287, 2010 Ill. App. LEXIS 492 (3 Dist. 2010).

Original foster placement approved by the Department of Children and Family Services (DCFS) was both seriously flawed and unstable. Two months after the determination of dispositional unfitness, DCFS: (1) suspended its role to supervise visits between a mother and her young children; (2) delegated the responsibility of supervising visits to the foster parent by allowing all visits between the children and their mother to occur at the foster home; (3) did not personally observe, assess or monitor the visits or mother's parenting skills; and (4) the mother did not attend the scheduled visits to be supervised by DCFS, even though the court maintained a "return home" permanency goal, as provided by 705 ILCS 405/1-3(4.05)(g). People v. Quinn T. (In re B.B.), 386 Ill. App. 3d 686, 326 Ill. Dec. 252, 899 N.E.2d 469, 2008 Ill. App. LEXIS 1215 (3 Dist. 2008), appeal denied, 904 N.E.2d 980, 2009 Ill. LEXIS 191 (Ill. 2009).

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Order that a 19-year old juvenile remain in a placement recommended by the Illinois Department of Children and Family Services, and could not return to her mother's care, was proper where the mother had not made much effort toward the juvenile's return and, where despite the judge's irresponsible comments about the juvenile, he recognized the court's duty to protect her. L.F.H. v. People, 256 Ill. App. 3d 451, 195 Ill. Dec. 341, 628 N.E.2d 805, 1993 Ill. App. LEXIS 1921 (1 Dist. 1993).

Standard of Proof

Under prior similar provisions (see now this section and 705 ILCS 405/2-18) which incorporated the preponderance standard for delinquency proceedings, were made void where the correct standard for delinquency proceedings involving misconduct, which would be criminal if charged against an adult, was proof beyond a reasonable doubt. People v. Urbasek, 38 Ill. 2d 535, 232 N.E.2d 716 (1967).

Standing

- Lack of Parental Notice

In order to protect the best interests of a minor, the minor has standing to assert the lack of notice to his or her respondent-parent, regardless of whether that parent has custody of the minor. People v. R.P., 97 Ill. App. 3d 889, 53 Ill. Dec. 251, 423 N.E.2d 920 (1981).

Temporary Custodians

Temporary custodians, who were effectively legal custodians of a minor subject to juvenile court proceedings, were proper parties to the proceedings. People v. D.L., 226 Ill. App. 3d 177, 168 Ill. Dec. 280, 589 N.E.2d 680 (1 Dist.), cert. denied, 146 Ill. 2d 628, 176 Ill. Dec. 799, 602 N.E.2d 453 (1992).

Termination Factors

Parental rights were properly terminated because the mother had a substantial and serious history of drug abuse and had not made any progress in obtaining services necessary to reunite with the child, neither parent had maintained a parental relationship with the child, and the child felt abandoned by his parents. In re Deandre D., 405 Ill. App. 3d 945, 346 Ill. Dec. 246, 940 N.E.2d 246, 2010 Ill. App. LEXIS 1295 (1 Dist. 2010).

Trial court's determination that it was in a minor child's best interests under 705 ILCS 405/1-3(4.05) to terminate a parent's parental rights and to appoint an administrative agency as the guardian with the power to consent to an adoption was not against the manifest weight of the evidence. The parent was incarcerated, the parent had been incarcerated for half of the child's life, the parent faced future incarceration, the child was living with a grandparent who wanted to adopt the child because the child's other parent had died from a drug overdose, and the child was doing better after living with the grandparent. People v. Timothy (In re Brandon A.), 395 Ill. App. 3d 224, 334 Ill. Dec. 250, 916 N.E.2d 890, 2009 Ill. App. LEXIS 990 (5 Dist. 2009).

Evidence that the child was happy in stable, appropriate, safe home, and had bonded with the foster mother, whom the child called "mom" and who wished to adopt the child, and that the child had established ties to the community supported a finding that termination of the mother's parental rights was in the child's best interest. People v. Luz M. (In re Janira T.), Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 842 (1 Dist. Sept. 19, 2006).

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Trial court properly considered the factors of 705 ILCS 405/1-3(4.05) in determining that the best interest of the children necessitated termination of a father's parental rights, as a special service probation officer testified that the children were bonded to the foster mother and perceived her as their parent, that the foster home was safe and appropriate, and that the officer spoke with each of the four children individually and each told her that they wanted to stay with the foster mother. The evidence supported the trial court's finding that termination was in the children's best interest. People v. Eddie R. (In re Katrina R.), 364 Ill. App. 3d 834, 301 Ill. Dec. 576, 847 N.E.2d 586, 2006 Ill. App. LEXIS 189 (1 Dist. 2006).

Trial court did not err by finding that it was in a child's best interest to terminate her father's parental rights because he did not provide for her safety or welfare since he failed to provide support or an adequate home due to his frequent criminal trouble and because she felt a sense of attachment to her foster parents and her half-siblings in a foster home while the foster parents wished to provide guardianship for her. People v. Anthony C. (In re A.C.), 354 Ill. App. 3d 799, 290 Ill. Dec. 679, 821 N.E.2d 1253, 2005 Ill. App. LEXIS 2 (3 Dist. 2005).

Termination of a father's parental rights was not against the manifest weight of the evidence and was in his daughter's best interests, as the undisputed evidence indicated the daughter had lived with foster parents and two of her siblings since birth and considered them her family, the foster mother testified that she and her husband wished to adopt the daughter, and a caseworker testified that the daughter's exceptional development would be least affected by remaining in the foster home. People v. J.M. (In re Tiffany M.), 353 Ill. App. 3d 883, 289 Ill. Dec. 317, 819 N.E.2d 813, 2004 Ill. App. LEXIS 1464 (2 Dist. 2004).

Trial court's determination that the termination of a mother's parental rights was in the best interest of her two children was not in error where the court's review of the record evidence indicated that the trial court touched upon all of the statutory factors set forth in 705 ILCS 405/1-3(4.5) in one form or another throughout the duration of the best interest hearing and where the court's independent review of the record attested to overwhelming evidence that the statutory factors supported the conclusion that termination of the mother's parental rights was in the children's best interest. People v. Lynette H.F. (In re Jaron Z.), 348 Ill. App. 3d 239, 284 Ill. Dec. 455, 810 N.E.2d 108, 2004 Ill. App. LEXIS 457 (1 Dist. 2004), appeal denied, 211 Ill. 2d 578, Ill. Dec. , 823 N.E.2d 966 (2004).

Trial court's determination that terminating the mother's parental rights was in the best interests of her three minor children was neither an abuse of discretion nor contrary to the manifest weight of the evidence where the relationship between the foster parents and the children was a positive parent and child relationship based on love, nurturance, and respect, and the children wished to stay with the foster parents. People v. Tieriel W. (In re Dominique W.), 347 Ill. App. 3d 557, 283 Ill. Dec. 471, 808 N.E.2d 21, 2004 Ill. App. LEXIS 276 (1 Dist. 2004).

Juvenile court did not abuse its discretion in finding that it was in three children's best interests to terminate their mother's parental rights and place them up for adoption, as the mother failed to make reasonable progress toward a return home within nine months after adjudication, and she failed to maintain a reasonable degree of concern or responsibility as to the children's welfare; furthermore, the children were suffering from anxiety because they had been in foster care for a long time, and wished to have the permanency of adoption. People v. Kathleen C. (In re April C.), 345 Ill. App. 3d 872, 281 Ill. Dec. 312, 803 N.E.2d 933, 2004 Ill. App. LEXIS 21 (1 Dist. 2004).

LEGAL PERIODICALS

For article, "Recent Developments in Nontraditional Alternatives in Juvenile Justice," see 28 Loy. U. Chi. L.J. 719 (1997).

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For article, "The Reality of Family Preservation Under Norman v. Johnson," see 42 De Paul L. Rev. 675 (1992).

For comments, "Illegitimacy and the Rights of Unwed Fathers in Adoption Proceedings After Quillian v. Walcott," see 12 J. Marshall J. Prac. & Proc. 383 (1979).

§ 705 ILCS 405/1-4. Limitations of scope of Act

Sec. 1-4. Limitations of scope of Act. Nothing in this Act shall be construed to give: (a) any guardian appointed hereunder the guardianship of the estate of the minor or to change the age of minority for any purpose other than those expressly stated in this Act; or (b) any court jurisdiction, except as provided in Sections 2-7, 3-6, 3-9, 4-6 and 5-410 [705 ILCS 405/2-7, 705 ILCS 405/3-6, 705 ILCS 405/3-9,705 ILCS 405/4-6 and 705 ILCS 405/5-410], over any minor solely on the basis of the minor's (i) misbehavior which does not violate any federal or state law or municipal ordinance, (ii) refusal to obey the orders or directions of a parent, guardian or custodian, (iii) absence from home without the consent of his or her parent, guardian or custodian, or (iv) truancy, until efforts and procedures to address and resolve such actions by a law enforcement officer during a period of limited custody, by crisis intervention services under Section 3-5 [705 ILCS 405/3-5], and by alternative voluntary residential placement or other disposition as provided by Section 3-6 [705 ILCS 405/3-6] have been exhausted without correcting such actions.

(Source: P.A. 85-601; 91-357, § 236.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 801-4.

P.A. 91-357, § 996 contains a "no acceleration or delay" provision, and P.A. 91-357, § 997 contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "5-410" for "5-7" in item (b).

CASE NOTES

Jurisdiction

Jurisdiction of persons under this Act is regulated by the Act and is one of the conditions precedent to the exercise of subject matter jurisdiction. People v. L.E.J., 115 Ill. App. 3d 993, 71 Ill. Dec. 574, 451 N.E.2d 289 (4 Dist. 1983).

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RESEARCH REFERENCES

Possibility of rehabilitation as affecting whether juvenile offender should be tried as adult. 22 ALR4th 1162.

Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 11:03 Limitations of scope of Juvenile Court Act.

§ 705 ILCS 405/1-4.1. [Detention of minors]

Sec. 1-4.1. Except for minors accused of violation of an order of the court, any minor accused of any act under federal or State law, or a municipal ordinance that would not be illegal if committed by an adult, cannot be placed in a jail, municipal lockup, detention center or secure correctional facility. Confinement in a county jail of a minor accused of a violation of an order of the court, or of a minor for whom there is reasonable cause to believe that the minor is a person described in subsection (3) of Section 5-105 [705 ILCS 405/5-105], shall be in accordance with the restrictions set forth in Sections 5-410 and 5-501 of this Act [705 ILCS 405/5-410 and 705 ILCS 405/5-501].

(Source: P.A. 87-1154, § 1; 89-656, § 5; 90-590, § 2001-10.)

Effective Date. This Act became effective January 1, 1993 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 1998 amendment by P.A. 90-590, effective January 1, 1999, in the last sentence, substituted "subsection (3) of Section 5-105" for "Section 5-103" and substituted "Sections 5-410 and 5-501" for "Sections 5-7 and 5-10".

§ 705 ILCS 405/1-5. Rights of parties to proceedings

Sec. 1-5. Rights of parties to proceedings. (1) Except as provided in this Section and paragraph (2) of Sections 2-22, 3-23, 4-20, 5-610 or 5-705 [705 ILCS 405/2-22, 705 ILCS 405/3-23,705 ILCS 405/4-20, 705 ILCS 405/5-610 or 705 ILCS 405/5-705], the minor who is the subject of the proceeding and his parents, guardian, legal custodian or responsible relative who are parties respondent have the right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records and also, although proceedings under this Act are not intended to be adversary in character, the right to be represented by counsel. At the

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request of any party financially unable to employ counsel, with the exception of a foster parent permitted to intervene under this Section, the court shall appoint the Public Defender or such other counsel as the case may require. Counsel appointed for the minor and any indigent party shall appear at all stages of the trial court proceeding, and such appointment shall continue through the permanency hearings and termination of parental rights proceedings subject to withdrawal or substitution pursuant to Supreme Court Rules or the Code of Civil Procedure [735 ILCS 5/1-101 et seq.]. Following the dispositional hearing, the court may require appointed counsel, other than counsel for the minor or counsel for the guardian ad litem, to withdraw his or her appearance upon failure of the party for whom counsel was appointed under this Section to attend any subsequent proceedings.

No hearing on any petition or motion filed under this Act may be commenced unless the minor who is the subject of the proceeding is represented by counsel. Notwithstanding the preceding sentence, if a guardian ad litem has been appointed for the minor under Section 2-17 of this Act [705 ILCS 405/2-17] and the guardian ad litem is a licensed attorney at law of this State, or in the event that a court appointed special advocate has been appointed as guardian ad litem and counsel has been appointed to represent the court appointed special advocate, the court may not require the appointment of counsel to represent the minor unless the court finds that the minor's interests are in conflict with what the guardian ad litem determines to be in the best interest of the minor. Each adult respondent shall be furnished a written "Notice of Rights" at or before the first hearing at which he or she appears.

(1.5) The Department shall maintain a system of response to inquiry made by parents or putative parents as to whether their child is under the custody or guardianship of the Department; and if so, the Department shall direct the parents or putative parents to the appropriate court of jurisdiction, including where inquiry may be made of the clerk of the court regarding the case number and the next scheduled court date of the minor's case. Effective notice and the means of accessing information shall be given to the public on a continuing basis by the Department.

(2)(a) Though not appointed guardian or legal custodian or otherwise made a party to the proceeding, any current or previously appointed foster parent or relative caregiver, or representative of an agency or association interested in the minor has the right to be heard by the court, but does not thereby become a party to the proceeding.

In addition to the foregoing right to be heard by the court, any current foster parent or relative caregiver of a minor and the agency designated by the court or the Department of Children and Family Services as custodian of the minor who is alleged to be or has been adjudicated an abused or neglected minor under Section 2-3 [705 ILCS 405/2-3] or a dependent minor under Section 2-4 of this Act [705 ILCS 405/2-4] has the right to and shall be given adequate notice at all stages of any hearing or proceeding under this Act.

Any foster parent or relative caregiver who is denied his or her right to be heard under this Section may bring a mandamus action under Article XIV of the Code of Civil Procedure [735 ILCS 5/14-101 et seq.] against the court or any public agency to enforce that right. The mandamus action may be brought immediately upon the denial of those

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rights but in no event later than 30 days after the foster parent has been denied the right to be heard.

(b) If after an adjudication that a minor is abused or neglected as provided under Section 2-21 [705 ILCS 405/2-21] of this Act and a motion has been made to restore the minor to any parent, guardian, or legal custodian found by the court to have caused the neglect or to have inflicted the abuse on the minor, a foster parent may file a motion to intervene in the proceeding for the sole purpose of requesting that the minor be placed with the foster parent, provided that the foster parent (i) is the current foster parent of the minor or (ii) has previously been a foster parent for the minor for one year or more, has a foster care license or is eligible for a license, and is not the subject of any findings of abuse or neglect of any child. The juvenile court may only enter orders placing a minor with a specific foster parent under this subsection (2)(b) and nothing in this Section shall be construed to confer any jurisdiction or authority on the juvenile court to issue any other orders requiring the appointed guardian or custodian of a minor to place the minor in a designated foster home or facility. This Section is not intended to encompass any matters that are within the scope or determinable under the administrative and appeal process established by rules of the Department of Children and Family Services under Section 5(o) of the Children and Family Services Act [20 ILCS 505/5]. Nothing in this Section shall relieve the court of its responsibility, under Section 2-14(a) of this Act [705 ILCS 405/2-14] to act in a just and speedy manner to reunify families where it is the best interests of the minor and the child can be cared for at home without endangering the child's health or safety and, if reunification is not in the best interests of the minor, to find another permanent home for the minor. Nothing in this Section, or in any order issued by the court with respect to the placement of a minor with a foster parent, shall impair the ability of the Department of Children and Family Services, or anyone else authorized under Section 5 of the Abused and Neglected Child Reporting Act [325 ILCS 5/5], to remove a minor from the home of a foster parent if the Department of Children and Family Services or the person removing the minor has reason to believe that the circumstances or conditions of the minor are such that continuing in the residence or care of the foster parent will jeopardize the child's health and safety or present an imminent risk of harm to that minor's life.

(c) If a foster parent has had the minor who is the subject of the proceeding under Article II in his or her home for more than one year on or after July 3, 1994 and if the minor's placement is being terminated from that foster parent's home, that foster parent shall have standing and intervenor status except in those circumstances where the Department of Children and Family Services or anyone else authorized under Section 5 of the Abused and Neglected Child Reporting Act has removed the minor from the foster parent because of a reasonable belief that the circumstances or conditions of the minor are such that continuing in the residence or care of the foster parent will jeopardize the child's health or safety or presents an imminent risk of harm to the minor's life.

(d) The court may grant standing to any foster parent if the court finds that it is in the best interest of the child for the foster parent to have standing and intervenor status.

(3) Parties respondent are entitled to notice in compliance with Sections 2-15 and 2-16, 3-17 and 3-18, 4-14 and 4-15 or 5-525 and 5-530 [705 ILCS 405/2-15 and 705 ILCS 405/2-

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16, 705 ILCS 405/3-17 and 705 ILCS 405/3-18,705 ILCS 405/4-14 and 705 ILCS 405/4-15 or 705 ILCS 405/5-525 and 705 ILCS 405/5-530], as appropriate. At the first appearance before the court by the minor, his parents, guardian, custodian or responsible relative, the court shall explain the nature of the proceedings and inform the parties of their rights under the first 2 paragraphs of this Section.

If the child is alleged to be abused, neglected or dependent, the court shall admonish the parents that if the court declares the child to be a ward of the court and awards custody or guardianship to the Department of Children and Family Services, the parents must cooperate with the Department of Children and Family Services, comply with the terms of the service plans, and correct the conditions that require the child to be in care, or risk termination of their parental rights.

Upon an adjudication of wardship of the court under Sections 2-22, 3-23, 4-20 or 5-705, the court shall inform the parties of their right to appeal therefrom as well as from any other final judgment of the court.

When the court finds that a child is an abused, neglected, or dependent minor under Section 2-21, the court shall admonish the parents that the parents must cooperate with the Department of Children and Family Services, comply with the terms of the service plans, and correct the conditions that require the child to be in care, or risk termination of their parental rights.

When the court declares a child to be a ward of the court and awards guardianship to the Department of Children and Family Services under Section 2-22 [705 ILCS 405/2-22], the court shall admonish the parents, guardian, custodian, or responsible relative that the parents must cooperate with the Department of Children and Family Services, comply with the terms of the service plans, and correct the conditions that require the child to be in care, or risk termination of their parental rights.

(4) No sanction may be applied against the minor who is the subject of the proceedings by reason of his refusal or failure to testify in the course of any hearing held prior to final adjudication under Section 2-22, 3-23, 4-20 or 5-705.

(5) In the discretion of the court, the minor may be excluded from any part or parts of a dispositional hearing and, with the consent of the parent or parents, guardian, counsel or a guardian ad litem, from any part or parts of an adjudicatory hearing.

(6) The general public except for the news media and the crime victim, as defined in Section 3 of the Rights of Crime Victims and Witnesses Act [725 ILCS 120/3], shall be excluded from any hearing and, except for the persons specified in this Section only persons, including representatives of agencies and associations, who in the opinion of the court have a direct interest in the case or in the work of the court shall be admitted to the hearing. However, the court may, for the minor's safety and protection and for good cause shown, prohibit any person or agency present in court from further disclosing the minor's identity. Nothing in this subsection (6) prevents the court from allowing other juveniles to be present or to participate in a court session being held under the Juvenile Drug Court Treatment Act [705 ILCS 410/1 et seq.].

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(7) A party shall not be entitled to exercise the right to a substitution of a judge without cause under subdivision (a)(2) of Section 2-1001 of the Code of Civil Procedure [735 ILCS 5/2-1001] in a proceeding under this Act if the judge is currently assigned to a proceeding involving the alleged abuse, neglect, or dependency of the minor's sibling or half sibling and that judge has made a substantive ruling in the proceeding involving the minor's sibling or half sibling.

(Source: P.A. 87-759; 88-7, § 15; 88-549, § 5; 88-550, § 960; 88-691, § 10; 89-235, § 2-125; 90-27, § 30; 90-28, § 10-20; 90-590, § 2001-10; 90-608, § 30; 91-357, § 236; 92-559, § 105; 93-539, § 5; 94-271, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 801-5.

Cross References.

For appointment of the Public Defender, and the duties of the Public Defender, see 55 ILCS 5/3-4006.

For provisions concerning a person against whom an order of protection is being sought who is neither a parent, guardian, legal custodian or relative as described in this section, is not a party or respondent as defined in this section and shall not be entitled to the rights herein, see the following: regarding abused, neglected or dependent minors, see 705 ILCS 405/2-25; regarding minors requiring authoritative intervention, see 705 ILCS 405/3-26; regarding addicted minors, see 705 ILCS 405/4-23; regarding delinquent minors, see 705 ILCS 405/5-27.

Effect of Amendments. The 1998 amendment by P.A. 90-590, effective January 1, 1999, substituted "5-610 or 5-705" for "or 5-22" in the first sentence of subsection (1); substituted "5-525 and 5-530" for "5-15 and 5-16" in the first sentence of the first paragraph of subsection (3); and substituted "5-705" for "5-22" in the third paragraph of subsection (3) and in subsection (4).

The 1998 amendment by P.A. 90-608, effective June 30, 1998, inserted "other than counsel for the minor or counsel for the guardian ad litem" in the last sentence of the first paragraph in subsection (1); in the second paragraph of subdivision (2)(a), inserted "is alleged to be" in the first sentence, deleted "wherein the custody or status of the minor may be charged" from the end of the second sentence, deleted the former last four sentences, relating to notice, and inserted "or relative caregiver" throughout subdivision (2)(a); and added subsection (7).

The 1999 amendment by P.A. 91-357, effective July 29, 1999, incorporated amendments by P.A. 90-590 and P.A. 90-608.

The 2002 amendment by P.A. 92-559, effective January 1, 2003, added the last sentence in subsection (6).

The 2003 amendment by P.A. 93-539, effective August 18, 2003, added the second sentence of the second paragraph in subdivision (1).

The 2005 amendment by P.A. 94-271, effective January 1, 2006, in the first sentence of (6) added "crime" and "as defined in Section 3 of the rights of Crime Victims and Witnesses Act".

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CASE NOTES

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- Not Found

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Specific Placement
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Termination of Parental Rights
Welfare of Child

Abuse of Discretion

- Found

Although a termination hearing may proceed in the respondent's absence where the respondent fails to appear at the hearing, it was an abuse of discretion for the court, upon the respondent's failure to appear, to bar her defense and to deny her counsel the opportunity to present or cross-examine witnesses. People v. Branch, 307 Ill. App. 3d 478, 241 Ill. Dec. 93, 718 N.E.2d 664 (1 Dist. 1999).

- Not Found

Trial court's failure to admonish the mother regarding the need to cooperate with the Florida Department of Children and Family Services and comply with the mother's service plans did not excuse an extended course of conduct manifesting an inherent deficiency of moral sense and rectitude; as such, the failure to admonish the mother pursuant to 705 ILCS 405/1-5(3) did not require a reversal of the termination of the mother's parental rights based on a finding of depravity. J'America B. v. Elunder D., 346 Ill. App. 3d 1034, 282 Ill. Dec. 317, 806 N.E.2d 292, 2004 Ill. App. LEXIS 266 (2 Dist. 2004).

There was no abuse of discretion where respondent was excluded from her children's testimony even though she argued that had she been present during the children's testimony, she could have assisted counsel in providing some defense to the allegations presented, particularly where she contended that counsel was ill-prepared for the hearing. People v. Daniels, 165 Ill. App. 3d 112, 116 Ill. Dec. 69, 518 N.E.2d 691 (2 Dist. 1988).

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Amendment of Wardship Petition

Where a petition for adjudication of wardship charged that respondent committed an aggravated battery by striking a victim on the head with a bottle, then the state amended the petition so that it charged that respondent had struck the victim on the left shoulder with a bottle, the allegations amended were not essential and certainly could be amended before the hearing as respondent was informed of the general facts of the offense. People v. Bardin, 76 Ill. App. 3d 286, 32 Ill. Dec. 144, 395 N.E.2d 91 (1 Dist. 1979).

Best Interests of Child

The state, as plaintiff, has no absolute right to a voluntary dismissal under this Act as the state is under an obligation to act in the best interests of the minor who is the subject of the proceeding. In re J.J., 142 Ill. 2d 1, 153 Ill. Dec. 239, 566 N.E.2d 1345 (1991).

While this section entitles parties to certain rights, including the right, to be present and to cross-examine witnesses, the proceedings are not intended to be adversary in character; the primary concern is the best interests and welfare of the child. People v. W.L., 152 Ill. App. 3d 25, 105 Ill. Dec. 288, 504 N.E.2d 157 (1 Dist. 1987).

Construction

A reading of this section in its entirety does not support the analysis that the term "this Section" in subsection (6) refers only to subsection (6); to confine the term "this Section" to the paragraph it appears in does not comport with the principles of statutory construction. People v. Champaign News-Gazette, 205 Ill. App. 3d 480, 150 Ill. Dec. 942, 563 N.E.2d 1069 (4 Dist. 1990), aff'd, 149 Ill. 2d 247, 172 Ill. Dec. 382, 595 N.E.2d 1052 (1992).

Due Process

Trial court violated the mother's due process rights in terminating her parental rights in the minor son, as the trial court removed her former attorney from representing her because the former attorney advocated the termination of her parental rights but then appointed the former attorney to be her guardian ad litem when the former attorney had gained confidential information while representing her as an attorney that he could use while acting as her guardian ad litem to her disadvantage, which was fundamentally unfair. People v. Delores W. (In re Mark W.), Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 520 (1 Dist. June 16, 2006).

Where a mother, who was incarcerated, filed a motion to continue a parental rights termination hearing so that she could respond to the State's evidence, the trial court's failure to give the mother an opportunity to present evidence violated the mother's right to due process. Although 705 ILCS 405/1-5 provided that a parent had a right to be present at a hearing to terminate her parental rights, (1) 705 ILCS 405/1-5 did not state that the parent had to be present at a termination hearing and (2) prisoners did not enjoy the same rights and privileges as ordinary citizens. People v. Jones (In re of C.J.), 272 Ill. App. 3d 461, 208 Ill. Dec. 833, 650 N.E.2d 290, 1995 Ill. App. LEXIS 353 (1 Dist. 1995).

- Applicability

Because 705 ILCS 405/1-5(3) requires a trial court to admonish parents in child neglect cases that they risk the termination of their parental rights if they fail to comply with various conditions, it acts as a safeguard to a parent's due process rights inherent in their fundamental liberty interest

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in the care, custody, and control of their children. People v. Britt (In re H.D.), 343 Ill. App. 3d 483, 278 Ill. Dec. 194, 797 N.E.2d 1112, 2003 Ill. App. LEXIS 1241 (4 Dist. 2003).

The principles of due process encompassed within the void for vagueness doctrine are so fundamental that there can be no doubt as to their applicability to juveniles. People v. Serna, 67 Ill. App. 3d 406, 24 Ill. Dec. 320, 385 N.E.2d 87 (1 Dist. 1978).

- Not Violated

Biological father's due process rights to notice, and to appear and to participate pursuant to 705 ILCS 405/1-5 in termination of parental rights proceedings was not violated despite the fact that the trial court knew that the biological father was incarcerated in Colorado at the time of the termination hearing. The father had previously appeared in the case on at least four separate occasions and was given notice of the termination hearing at the Colorado prison where the biological father was incarcerated, but by voluntarily deciding not to participate, the biological father under 705 ILCS 405/2-15(7) waived any objection to the trial court's jurisdiction. People v. Richard W. (In re A.M.), 402 Ill. App. 3d 720, 342 Ill. Dec. 191, 932 N.E.2d 82, 2010 Ill. App. LEXIS 682 (3 Dist. 2010).

Procedural due process pursuant to Ill. Const. art. I, § 2 was not a fixed concept, but was a flexible concept that called for such procedural protections as were demanded by a particular situation. While that concept meant that the mother in a proceeding under 705 ILCS 405/1-5 to terminate the mother's parental rights was guaranteed notice and opportunity to be heard, it did not also give the mother the right to call the mother's 15-year-old son as a witness at the best interest phase because that one child's emotional problems due to living with the mother and open hostility towards the mother dictated that the mother be kept from compelling the one child to testify, especially since the mother would not be able to show how his testimony would have assisted the mother. People v. P.W. (In re A.W.), 397 Ill. App. 3d 868, 337 Ill. Dec. 137, 921 N.E.2d 1275, 2010 Ill. App. LEXIS 22 (3 Dist. 2010).

Father was not denied due process by the circuit court's failure to admonish him that he risked termination of his parental rights if he failed to cooperate with Department of Children and Family Services since the record amply demonstrated that the father was aware of the need to cooperate with the Department. People v. T.F. (In re Andrea F.), 208 Ill. 2d 148, 280 Ill. Dec. 531, 802 N.E.2d 782, 2003 Ill. LEXIS 2608 (2003).

Where the child stated that he was afraid to testify in front of his parents, and the court took steps to protect their rights, in that counsel for both sides and a court reporter were present, the child was subjected to cross-examination, and the interview was read into and made a part of the record, the court did not abuse its discretion in allowing the child to testify in chambers; the parents' due process rights were not violated. People v. Bariffe, 63 Ill. App. 3d 328, 20 Ill. Dec. 39, 379 N.E.2d 872 (1 Dist. 1978).

Evidence

Trial court erred in granting the county public guardian's motion in limine to bar the father from presenting evidence of his successful parenting of four of the minor child's siblings as relevant evidence of his fitness to be a parent. Such evidence might tend to have indicated that he could parent the minor child even though the minor child had been removed from the family home due to the mother's conduct, such evidence was material to the proceedings regarding termination of his parental rights, and the law expressed a preference for preserving family ties, such as that of the minor child, whenever possible. People v. Oscar H. (In re L.W.), 362 Ill. App. 3d 1106, 299 Ill. Dec. 509, 842 N.E.2d 248, 2005 Ill. App. LEXIS 1285 (1 Dist. 2005).

- Exclusionary Rule

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Whereas the exclusionary rule is a judicially created means of effectuating the rights secured by the Fourth Amendment (U.S. Const., Amend. XIV), its application in the case of a violation of this Act and to evidence obtained as a consequence of that violation would be a novel remedy and one bearing no relation to the purpose of the exclusionary rule. People v. Lewis, 95 Ill. App. 3d 82, 50 Ill. Dec. 533, 419 N.E.2d 641 (2 Dist. 1981).

Exclusion of Media

Subsection (6) of this section did not violate Ill. Const. (1970), Art. I, § 12 as an illegal invasion of privacy or prior restraint in a juvenile proceeding where the trial judge forbade a newspaper from publishing names of minor victims of abuse; the newspaper was not deprived of the opportunity to exercise its constitutional right to inform the public about the operation of the juvenile court system, and prohibiting the newspaper from disclosing the minor victims' identities in no way interfered with the newspaper's constitutional role of acting as a conduit for the public in generating the free flow of ideas, keeping the public informed of the workings of governmental affairs, and checking abuses by public officials. In re Minor, 149 Ill. 2d 247, 172 Ill. Dec. 382, 595 N.E.2d 1052 (1992).

Because of the nature of the abuse, and due to the size of the community where the minors resided, and would likely continue to reside, extensive publicity of the proceedings would adversely affect the two minors for the rest of their lives; the state's interest in protecting these minors was compelling and the articulated reasons for closing proceedings from the press were sound. People v. Champaign News-Gazette, 205 Ill. App. 3d 480, 150 Ill. Dec. 942, 563 N.E.2d 1069 (4 Dist. 1990), aff'd, 149 Ill. 2d 247, 172 Ill. Dec. 382, 595 N.E.2d 1052 (1992).

The prior similar provision (see now subsection (6) of this section) which gave the court the power to proscribe the publication of a minor's name in connection with a juvenile proceeding could not be constitutionally applied where the publisher learned the identity of the minor, not in a hearing closed to the public, but through routine, reporting techniques, at least where a serious and imminent threat of harm to the minor's well being was not demonstrated by substantial evidence. People v. Daily Journal, 127 Ill. 2d 247, 130 Ill. Dec. 225, 537 N.E.2d 292 (1989).

Interlocutory restraints upon publication of information are reviewable as interlocutory injunctive orders under Rule 307(a)(1), Supreme Court Rules. People v. Daily Journal, 127 Ill. 2d 247, 130 Ill. Dec. 225, 537 N.E.2d 292 (1989).

A protective order in a wardship adjudication proceeding restricting the news media's reporting on the proceeding went beyond what was authorized by prior similar provision (see now subsection (6) of this section), which permitted only the suppression of the minor's identity, and was an unlawful prior restraint of the press. People v. M.B., 137 Ill. App. 3d 992, 92 Ill. Dec. 299, 484 N.E.2d 1154 (4 Dist. 1985).

A trial court did not err in admitting the members of the news media to an adjudicatory hearing pursuant to prior similar provision (see now subsection (6) of this section) as the right of the public to know what is transpiring in the courts so they may properly evaluate the work of their servants - judge, prosecutor, sheriff and clerk - is equally as important as guaranteeing to the defendant a fair and impartial trial. People v. Jones, 46 Ill. 2d 506, 263 N.E.2d 863 (1970).

- Not Shown

In child custody dispute, gag order which provided that the parties and their attorneys may not discuss the case with the news media, did not bar the media from any of the proceedings in the case, nor did it prohibit the media from making its own inquiries. People v. J.M., 267 Ill. App. 3d 145, 204 Ill. Dec. 30, 640 N.E.2d 1379 (2 Dist. 1994), appeal denied, 159 Ill. 2d 568, 207 Ill. Dec. 517, 647 N.E.2d 1010 (1995).

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Explanation of Rights

Appeals court decided that with respect to a trial court's failure to specifically admonish a parent as stated in 705 Ill. Comp. Stat. 405/1-5(3) (2000), where the record demonstrated that, even if properly admonished, a parent would not have complied with a service plan or cooperated with a Department of Children and Family Services (Illinois), the failure to admonish the parent resulted in no prejudice and the error was harmless. People v. Christy F. (In re Kenneth F.), 332 Ill. App. 3d 674, 266 Ill. Dec. 189, 773 N.E.2d 1259, 2002 Ill. App. LEXIS 653 (2 Dist. 2002).

The lower court's failure to fulfill its mandatory duty to fully inform the defendant's parents that they had the right to have counsel appointed to represent them if they were financially unable to employ counsel; to inform them of the nature of the proceedings; and to inform them that they had the right to be present, be heard, present evidence material to the proceedings, cross-examine witnesses, and examine pertinent court files and records was harmless error where the defendant failed to show how the court's admonishing his parents of their rights would have changed the court's decision to order him prosecuted in an adult forum. People v. Beck, 190 Ill. App. 3d 748, 138 Ill. Dec. 72, 546 N.E.2d 1127 (5 Dist. 1989).

Where the parents were represented vigorously from the first shelter care hearing by counsel, testified, presented evidence material to the proceedings, cross-examined state witnesses, presented their own expert witness, had access to the pre-dispositional evaluation, and took an appeal, they exercised the full rights they had; they were not prejudiced by the court's failure to admonish them regarding their rights. People v. Conekin, 107 Ill. App. 3d 902, 63 Ill. Dec. 516, 438 N.E.2d 254 (5 Dist. 1982).

It is clearly error if the court fails to admonish the parents of their rights; however, it does not follow that such error would require reversal in every case; when the state seeks an adjudication of neglect and the court has failed to admonish the parents "that their child may become a ward of the state and that upon such a determination, they may lose custody of their child," a new adjudicatory hearing is required where the parent enters into an admission of neglect and it is not apparent that the parent was aware of his or her rights or that the proceedings could result in the loss of custody of the child. People v. Buck, 87 Ill. App. 3d 1117, 42 Ill. Dec. 820, 409 N.E.2d 435 (1 Dist. 1980).

Although there is little or no authority as to what would constitute adequate admonitions under subsection (3) of this section, it is clear that the statutory language imposes a mandatory duty on the trial court to inform the parties of the nature of the proceedings. In cases in which the state seeks an adjudication of neglect or a finding that a child is otherwise in need of supervision, the parents, at the very minimum, must be informed that their child may become a ward of the state and that, upon such a determination, they may lose the custody of their child. People v. Smith, 77 Ill. App. 3d 1048, 33 Ill. Dec. 856, 397 N.E.2d 189 (5 Dist. 1979).

The rights referred to in subsection (3) of this section include the right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records and to be represented by the public defender or appointed counsel at the request of any party financially unable to employ counsel. People v. Smith, 77 Ill. App. 3d 1048, 33 Ill. Dec. 856, 397 N.E.2d 189 (5 Dist. 1979).

Failure of the trial court to give mother the various admonitions set forth in subsection (3) of this section did not constitute error as far as the adjudicatory hearing was concerned when the mother's position at this hearing was not adverse to the one presented by the Department of Children and Family Services, so that the mother was not prejudiced by the court's failure to admonish her of all the procedural safeguards afforded a respondent at the adjudicatory phase. People v. Smith, 77 Ill. App. 3d 1048, 33 Ill. Dec. 856, 397 N.E.2d 189 (5 Dist. 1979).

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Intent

The language of subsection (6) of this section suggests the legislature intended to give trial courts control over persons admitted to juvenile court hearings. People v. Champaign News-Gazette, 205 Ill. App. 3d 480, 150 Ill. Dec. 942, 563 N.E.2d 1069 (4 Dist. 1990), aff'd, 149 Ill. 2d 247, 172 Ill. Dec. 382, 595 N.E.2d 1052 (1992).

Interview in Chambers

In child neglect cases the trial court has the discretion to interview a child alone in chambers and then make the substance of the interview a part of the record, the rationale being that the best interests and welfare of the child are determinative in custody cases and special care must be exercised by the court on behalf of the minor child. People v. Bariffe, 63 Ill. App. 3d 328, 20 Ill. Dec. 39, 379 N.E.2d 872 (1 Dist. 1978).

Joint Hearings

The revocation of a minor's probation was not reversed where the trial judge on his own motion heard jointly seven cases wherein the juveniles would be offering to admit and stipulate to one or more of the charges pending against them. People v. R.L.G., 125 Ill. App. 3d 292, 80 Ill. Dec. 679, 465 N.E.2d 1025 (4 Dist. 1984).

Jurisdiction

Subject matter jurisdiction and personal jurisdiction existed when a minor was adjudicated delinquent because the minor's father appeared at the initial proceeding and was provided with a copy of the petition, even though the father was not previously served with written notice, and the failure of the State of Illinois to provide notice to the father upon an amendment of the petition did not cause the circuit court to lose jurisdiction. People v. M.W. (In re M.W.), 232 Ill. 2d 408, 328 Ill. Dec. 868, 905 N.E.2d 757, 2009 Ill. LEXIS 171 (2009).

While trial court erred in adjudicating two children neglected in the absence of service of summons or publication notice to the father, the error did not divest the trial court of subject matter jurisdiction to hear the case with regard to the adequately served mother. People v. Darlene T. (In re Brett R.), 343 Ill. App. 3d 1210, 279 Ill. Dec. 108, 799 N.E.2d 911, 2003 Ill. App. LEXIS 1298 (2 Dist. 2003), appeal denied sub nom. In re Brett R., 207 Ill. 2d 603, 283 Ill. Dec. 134, 807 N.E.2d 975 (2004).

Appearance filed by mother, although late, constituted her submission to the authority of the juvenile court and gave that court jurisdiction over her. In re M.B., 241 Ill. App. 3d 697, 182 Ill. Dec. 197, 609 N.E.2d 731 (1 Dist. 1992).

The juvenile division of the circuit court properly exercised its jurisdiction in entertaining the public guardian's motion to limit the authority of the Department of Children and Family Services administrator, although the motion raised issues already pending in the probate division and the Federal court. In re Lehmann, 186 Ill. App. 3d 592, 134 Ill. Dec. 408, 542 N.E.2d 754 (1 Dist. 1989).

Lapse of Time

The court stated that in view of the failure of father to assert his rights, of which the court found he had knowledge, and in view of the lapse of time, his custody petition pursuant to prior similar

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provision was denied. People v. Miller, 84 Ill. App. 3d 199, 39 Ill. Dec. 577, 405 N.E.2d 25 (3 Dist. 1980).

Natural Parent

- Absence at Hearing

Although a parent whose rights are being determined has a right to be present at a termination of parental rights hearing, such presence is not mandatory. People v. Renee R. (In re M.R.), 316 Ill. App. 3d 399, 249 Ill. Dec. 325, 736 N.E.2d 167, 2000 Ill. App. LEXIS 719 (1 Dist. 2000), appeal denied, 191 Ill. 2d 531, 250 Ill. Dec. 457, 738 N.E.2d 926 (2000).

Where prior to the beginning of an adjudicatory hearing, the probation officer stated that respondent's mother was aware of the court date and of the fact that an adjudicatory hearing would take place, and he told the court she chose voluntarily to absent herself from the hearing, sending her 19 year old son in her stead, the trial judge was not obligated to wait until the respondent's mother chose to appear, and the court properly proceeded with the adjudicatory hearing after respondent's mother voluntarily absented herself. In re Williams, 36 Ill. App. 3d 917, 344 N.E.2d 745 (1 Dist. 1976).

- Found Unfit

A finding of unfitness on the part of minor parent was predicated upon clear and convincing proof, and thus was not contrary to the manifest weight of the evidence as mother was slightly retarded, lived in hazardous conditions, showed little interest in child during visitations, and acted hostile toward child. People v. J.B., 146 Ill. App. 3d 523, 100 Ill. Dec. 183, 496 N.E.2d 1248 (4 Dist. 1986).

- Right to Notice

In a proceeding by mother and her husband under the Adoption Act, 750 ILCS 50/0.01 et seq., to terminate respondent father's parental rights, the trial court violated his equal protection rights by failing to provide him with a written "Notice of Rights," as required by subsection (1) of this section, including notice that he had the right to request appointed counsel at trial. James M. v. John M. (In re K.M.), 355 Ill. App. 3d 783, 291 Ill. Dec. 717, 824 N.E.2d 293, 2005 Ill. App. LEXIS 116 (3 Dist. 2005).

Defendant's adjudication as a delinquent was vacated because the State failed to properly serve notice on the father despite the fact that the father's name was included in petition, the mother supplied his telephone number, and the father was paying child support. they could have notified the father. People v. Willie W. (In re Willie W.), 355 Ill. App. 3d 297, 297 Ill. Dec. 518, 838 N.E.2d 5, 2005 Ill. App. LEXIS 1 (2 Dist. 2005), appeal denied, 216 Ill. 2d 689, 298 Ill. Dec. 378, 839 N.E.2d 1025 (2005).

Where the trial court was unaware of the name and address of a juvenile's father, the failure to serve the father with proper notice of the hearing, as required under former 705 ILCS 405/5-15, former 705 ILCS 405/5-16, former 705 ILCS 405/5-13, and 705 ILCS 405/1-5, was waived because the juvenile never raised the issue at trial even though the juvenile and his mother were present at trial and were aware of the father's whereabouts. People v. D.L. (In the Interest of D.L.), 299 Ill. App. 3d 269, 233 Ill. Dec. 689, 701 N.E.2d 539, 1998 Ill. App. LEXIS 674 (1 Dist. 1998).

Although a parent who is a party to a proceeding to have a child declared a dependent minor had certain procedural rights under prior similar provision and although notice by publication does not suffice for due process purposes where an individual's name and address is known or is easily ascertainable, if that parent has actual knowledge of the facts and fails to promptly seek redress,

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the doctrine of laches will bar an attack upon the decree. People v. Miller, 84 Ill. App. 3d 199, 39 Ill. Dec. 577, 405 N.E.2d 25 (3 Dist. 1980).

- Rights at Hearing

Under this section, a minor's mother, one who by law is a party respondent, has the right to be present, to be heard, to present evidence, to cross-examine witnesses and to examine pertinent court files in a juvenile proceeding involving her child; however, this section does not make it mandatory that the mother be present. In re Williams, 36 Ill. App. 3d 917, 344 N.E.2d 745 (1 Dist. 1976).

Necessary Parties

- Former Guardians

Guardianship of a legal guardian continued pursuant to 705 ILCS 405/2-27(5) until the trial court directed otherwise. As a result, the legal guardian of the two minor grandchildren could not remain in the neglect case after the trial court dismissed the legal guardian as guardian since the legal guardian was no longer a necessary party under 705 ILCS 405/1-5(1), although the trial court did have the power under 705 ILCS 405/2-28 to restore a former guardian as guardian if the circumstances warranted doing so. People v. Long (In re C.C.), Ill. 2d , 355 Ill. Dec. 25, 959 N.E.2d 53, 2011 Ill. LEXIS 1841 (2011).

- Grandparents

Underage parent's parental rights could be terminated even though she herself was a minor and her parents, although present, were not parties to the proceeding. People v. J.B., 146 Ill. App. 3d 523, 100 Ill. Dec. 183, 496 N.E.2d 1248 (4 Dist. 1986).

- Guardian of Disabled Person

The plenary guardian of a person adjudicated disabled under the Probate Act is a necessary party under the Juvenile Court Act of 1987 when the disabled person's parental rights are at stake. People v. Kenya C. (In re K.C.), 323 Ill. App. 3d 839, 257 Ill. Dec. 119, 753 N.E.2d 314, 2001 Ill. App. LEXIS 479 (1 Dist. 2001).

- Presence in Court

While biological father was a necessary party respondent under the Act, his presence in court was not required during the abuse and neglect hearing since the hearing involved allegations against mother and stepfather. In re B.A., 283 Ill. App. 3d 930, 219 Ill. Dec. 404, 671 N.E.2d 69 (3 Dist. 1996), appeal denied, 171 Ill. 2d 566, 222 Ill. Dec. 431, 677 N.E.2d 965 (1997).

Notice

Respondent father was not entitled to notice of a prior adjudicatory proceeding in which his son was deemed neglected and made a ward of the court; at the time of the hearing respondent, did not fall within any of the definitions of "parent" found in 705 ILCS 405/1-3(11) in that he was not the son's presumed father, his paternity had never been established, and he was not registered with the Putative Father Registry. People v. Rodney S. (In re Rodney T.), 352 Ill. App. 3d 496, 287 Ill. Dec. 774, 816 N.E.2d 741, 2004 Ill. App. LEXIS 1089 (1 Dist. 2004).

- Right to Notice

While it was undisputed that a minor did not reside with the minor's natural mother and had little contact with the mother, the record was completely silent as to whether the natural mother regularly paid child support to the minor or the minor's father. Accordingly, the natural mother was

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entitled, under 705 ILCS 405/1-5(1)(3), to service of summons and notice, either in person, by certified mail, or by publication because the record did not support the contention of the State of Illinois that the exception for giving notice under 705 ILCS 405/5-525(1)(a)(ii) applied in the case. People v. C.L. (In re C.L.), 392 Ill. App. 3d 1106, 332 Ill. Dec. 479, 913 N.E.2d 74, 2009 Ill. App. LEXIS 649 (3 Dist. 2009).

- Waived

Although the foster parents claimed that they had not received the adequate notice that they were entitled to under 705 ILCS 405/1-5(2)(a) when the trial court held a hearing on the minor child's change of placement, they were not entitled to relief pursuant to 735 ILCS 5/2-1401 from the trial court's judgment denying their motion to intervene and vacate the change of placement order it entered. The foster parents were not parties to that proceeding, they appeared and fully participated in that hearing, and they did not show that the resulting change of placement order that ordered the minor child to be taken away from them was void. People v. Debra P. (In re M.P.), 401 Ill. App. 3d 742, 340 Ill. Dec. 690, 928 N.E.2d 1287, 2010 Ill. App. LEXIS 492 (3 Dist. 2010).

Minor forfeited any right to challenge the lack of notice or service upon one of the natural parents of the minor because the minor failed to raise the issue before the trial court. People v. C.L. (In re C.L.), 392 Ill. App. 3d 1106, 332 Ill. Dec. 479, 913 N.E.2d 74, 2009 Ill. App. LEXIS 649 (3 Dist. 2009).

While due process requires that adequate notice of juvenile proceedings be given to a minor and his parents, it is notice to the custodial parent that is crucial, and where a mother failed to timely raise any issue regarding the lack of notice of a neglect petition to the non-custodial father, the issue was waived. People v. Darlene T. (In re Brett R.), 343 Ill. App. 3d 1210, 279 Ill. Dec. 108, 799 N.E.2d 911, 2003 Ill. App. LEXIS 1298 (2 Dist. 2003), appeal denied sub nom. In re Brett R., 207 Ill. 2d 603, 283 Ill. Dec. 134, 807 N.E.2d 975 (2004).

Procedural Safeguards

Where evidence was presented by both parties in the form of testimony, affidavit, deposition, and video tape, and respondents were present during all phases of the hearing, respondents were afforded proper procedural safeguards. People v. W.L., 152 Ill. App. 3d 25, 105 Ill. Dec. 288, 504 N.E.2d 157 (1 Dist. 1987).

Right of Intervention

- Foster Parents

Pursuant to 705 ILCS 405/1-5(2)(b), the former foster mother had a right to intervene to seek continued placement of the minor child with the former foster mother. The former foster mother had the right to do so because: (1) an adjudication of abuse or neglect had been made regarding the minor child; and (2) the mother had made a motion to restore custody of the minor child to the mother. People v. Analynn D. (In re Desiree O.), 381 Ill. App. 3d 854, 320 Ill. Dec. 279, 887 N.E.2d 59, 2008 Ill. App. LEXIS 215 (1 Dist. 2008).

While foster parents had a right to notice and a hearing, they did not become a party to the proceedings and, therefore, were not entitled to intervene as a matter of right; the circuit court abused its discretion in denying the foster parents' petition to intervene. Statler v. Department of Children & Family Servs., 221 Ill. App. 3d 550, 164 Ill. Dec. 51, 582 N.E.2d 268 (3 Dist. 1991).

Right to Appear and Participate

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Legal guardian did not have a right once the legal guardian was dismissed as the legal guardian of the two grandchildren to remain in their neglect case in the legal guardian's capacity as the legal guardian. The legal guardian was allowed to remain in the case as the legal guardian until the trial court directed otherwise, and after the legal guardian was dismissed as such, the legal guardian could not reenter the case as a permissive party pursuant to 705 ILCS 405/1-5(2)(a), as that statutory provision did not recognize former guardian's as possible permissive parties. People v. Long (In re C.C.), Ill. 2d , 355 Ill. Dec. 25, 959 N.E.2d 53, 2011 Ill. LEXIS 1841 (2011).

Once the Illinois Department of Children and Family Services was made a child's guardian in a dispositional order that found the child neglected, the aunt who had been the child's guardian when the juvenile proceedings were commenced was properly dismissed from the action; however, as the child's former guardian, 705 ILCS 405/1-5(2)(a) gave the aunt the right to continue to be heard in the proceedings. People v. C.L. (In re S.B.), 373 Ill. App. 3d 224, 310 Ill. Dec. 684, 866 N.E.2d 1286, 2007 Ill. App. LEXIS 419 (1 Dist. 2007).

Although the State had the exclusive authority in the trial court to prosecute a petition brought under the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., the public guardian, as the appointed attorney of the two minors and their guardian ad litem, could appeal the trial court's dismissal of the State's petition for adjudication of wardship in order to fulfill the public guardian's duty of protecting the best interests of the two minor children. People v. Rocio T. (In re Gustavo H.), 362 Ill. App. 3d 802, 298 Ill. Dec. 907, 841 N.E.2d 50, 2005 Ill. App. LEXIS 1166 (1 Dist. 2005), appeal denied, 218 Ill. 2d 539, 303 Ill. Dec. 3, 850 N.E.2d 808 (2006).

Trial court did not err in allowing the minor child's guardian ad litem to cross-examine the caseworker and essentially make a case against the father in the proceeding to terminate the father's parental rights in the minor child. Under statutory law, the minor child had not only a right to be present at the proceedings, but also had a right to be heard, to present evidence, and to cross-examine witnesses, and, thus there was nothing wrong in allowing the guardian ad litem to cross-examine the caseworker. People v. D.H. (In re A.H.), 359 Ill. App. 3d 173, 295 Ill. Dec. 709, 833 N.E.2d 915, 2005 Ill. App. LEXIS 696 (1 Dist. 2005), appeal denied sub nom. People v. D.H. (In re D.H.), 217 Ill. 2d 563, 300 Ill. Dec. 366, 844 N.E.2d 38 (2005).

Under prior similar provisions (see now this section and 705 ILCS 405/1-3), parties had no rights to appear, participate, or to be heard in a juvenile adjudication where they were not parents, did not stand in loco parentis to the children, and were not guardians, legal custodians, responsible relatives, or appointed foster parents. In re Winks, 150 Ill. App. 3d 657, 103 Ill. Dec. 888, 502 N.E.2d 35 (4 Dist. 1986).

Right to Counsel

Trial court should not have suppressed a statement made by defendant to a state's attorney for alleged violation of the no contact rule Ill. Sup. Ct. R. Prof. Conduct 4.2, when the state's attorney did not contact counsel appointed to represent defendant in a related juvenile proceeding involving the care and custody of defendant's children because the juvenile proceeding was a different matter than the criminal proceeding, that was not meant to be adversarial. People v. Santiago, 384 Ill. App. 3d 784, 324 Ill. Dec. 274, 895 N.E.2d 989, 2008 Ill. App. LEXIS 901 (1 Dist. 2008), aff'd, remanded, 2010 Ill. LEXIS 287 (Ill. 2010), cert. denied, 2010 U.S. LEXIS 4633 (U.S. 2010).

Although minor daughter was entitled to be represented by counsel under 705 ILCS 405/1-5(1), the father's motion to appoint new counsel for the daughter was properly denied where the motion was brought by the father and the daughter never expressed dissatisfaction with the representation provided by her public guardian or said that she wanted new counsel. People v. Nancy L. (In re Tasha L.-I.), 383 Ill. App. 3d 45, 321 Ill. Dec. 851, 890 N.E.2d 573, 2008 Ill. App. LEXIS 479 (1 Dist. 2008).

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In a delinquency case, where a child was placed on supervision and required to attend school, and the child's mother hired an attorney in an attempt to require the child's school to provide the child with a recommended educational setting, a juvenile court had subject matter jurisdiction to consider the attorney's petition for an award of attorney fees against a school board (board) pursuant to 705 ILCS 405/1-5(2)(a); while the board was not a necessary party to the delinquency proceedings and therefore was not required to receive notice of the commencement of the proceedings, that did not mean the board was to be excluded entirely. Pursuant to § 1-5(2)(a) the juvenile court could hear from the board without the board being named as a party to the proceedings, so the juvenile court's order requiring the board to pay for the child's attorney fees was not void for lack of subject matter jurisdiction for a failure to join the board as a party. Cohen v. Bd. of Educ. (In re Dontrell H.), 382 Ill. App. 3d 612, 321 Ill. Dec. 108, 888 N.E.2d 627, 2008 Ill. App. LEXIS 402 (1 Dist. 2008), appeal denied, 229 Ill. 2d 623, 325 Ill. Dec. 4, 897 N.E.2d 252, 2008 Ill. LEXIS 1338 (2008).

Roles of a guardian ad litem and defense counsel in a delinquency proceeding are not inherently in conflict, because both have essentially the same obligations to the minor and to society, and there is no per se conflict in the same counsel taking on both roles. Appellant's commitment after admitting to charges contained in two delinquency petitions was allowed to stand where he failed to show that any actual conflict existed between his wishes and his defense counsel/GAL's judgment regarding appellant's best interests. People v. B.K. (In re B.K.), 358 Ill. App. 3d 1166, 295 Ill. Dec. 739, 833 N.E.2d 945, 2005 Ill. App. LEXIS 770 (5 Dist. 2005).

- Attorney Fees

Where the record showed that a minor and his mother together had reimbursed the county in a sum greater than that which the county had expended for court appointed counsel, even if reimbursement for these fees had been a proper condition of supervision, there was insufficient basis to justify the court's considering the minor's alleged failure to pay either in making adjudication or disposition. People v. R.J.W., 76 Ill. App. 3d 159, 31 Ill. Dec. 746, 394 N.E.2d 1064 (4 Dist. 1979).

- Conflict of Interest

Trial counsel for juvenile, in a case where trial counsel defended the juvenile on charges that the juvenile committed aggravated battery by striking the juvenile's bus monitor, was not subjected to a per se conflict of interest by acting as both as the juvenile's trial attorney and guardian ad litem. Under the circumstances, where the trial attorney both defended the juvenile and sought as the juvenile's guardian ad litem to determine what was in the juvenile's best interests, the trial attorney could properly represent the juvenile as contemplated under 705 ILCS 405/1-5(1) regarding a juvenile's right to counsel. State v. Rodney S. (In re Rodney S.), 402 Ill. App. 3d 272, 342 Ill. Dec. 461, 932 N.E.2d 588, 2010 Ill. App. LEXIS 691 (4 Dist. 2010).

Implicit within the right to counsel is that such representation be effective; an individual's right to effective assistance of counsel entitles him to the undivided loyalty of his attorney, as the statutory right to counsel in juvenile proceedings is violated when one attorney is appointed to represent parties with conflicting interests. People v. Belton, 102 Ill. App. 3d 1005, 58 Ill. Dec. 31, 429 N.E.2d 1364 (1 Dist. 1981).

Where appellant's admission was not knowingly and intelligently made, the admission standing alone was insufficient to establish that the conflict of which the court had been well aware, no longer existed; as the trial court without further inquiry rested its determination that no conflict existed between the parties solely on the admission, appellant's contention was correct that the appointment of one counsel to represent both appellant and the mother of the minor at the adjudicatory hearing was erroneous. People v. Belton, 102 Ill. App. 3d 1005, 58 Ill. Dec. 31, 429 N.E.2d 1364 (1 Dist. 1981).

Where a conflict of interest between multiple parties clearly appears and separate members of a public defender's staff, appointed under prior similar provision, cannot effectively represent all,

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other counsel must be appointed; where parents were being represented in a juvenile dependency proceeding by an assistant public defender, the presence of the public defender in the same proceeding as guardian ad litem for the minor constituted a conflict of interest and reversible error. People v. Lackey, 71 Ill. App. 3d 705, 28 Ill. Dec. 352, 390 N.E.2d 519 (5 Dist. 1979), aff'd, 79 Ill. 2d 466, 39 Ill. Dec. 769, 405 N.E.2d 748 (1980).

- Construction

Enactment of a statutory scheme that provided appointed counsel for indigent parents facing termination of parental rights under the Juvenile Court Act, but not under the Adoption Act, violated the equal protection clause of the Fourteenth Amendment. Jo Ellen J. v. John M. (In re L.T.M.), 214 Ill. 2d 60, 291 Ill. Dec. 645, 824 N.E.2d 221, 2005 Ill. LEXIS 4 (2005).

Indigent parent facing involuntary termination of parental rights in a proceeding under the Adoption Act, 750 ILCS 50/0.01 et seq., was entitled to court-appointed counsel as equal protection grounds dictated that she receive the same procedural safeguards as a similarly situated parent in a proceeding under the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., which permitted appointment of counsel. R.R.E. v. R.P. (In re K.L.P.), 198 Ill. 2d 448, 261 Ill. Dec. 492, 763 N.E.2d 741, 2002 Ill. LEXIS 8 (2002).

- Effective Counsel

While the father in an abuse and neglect proceeding under the Juvenile Court Act had a right to counsel pursuant to 705 ILCS 405/1-5(1), the father did not show that the father received Ill. Const. art. I, § 8 ineffective assistance even though counsel's performance appeared to be deficient. To show ineffective assistance, the father not only had to show deficient performance, but also had to show prejudice resulting from the deficient performance and the father did not make such a showing. People v. Wells (In re Ch. W.), 408 Ill. App. 3d 541, 350 Ill. Dec. 361, 948 N.E.2d 641, 2011 Ill. App. LEXIS 208 (4 Dist. 2011).

Even though the Juvenile Court Act, 705 ILCS 405/1-5(1), gave the father the right to be represented by counsel and the father was represented by counsel at a hearing to determine whether the father was fit to parent the minor children, it did not provide for a collateral proceeding to determine whether the father received ineffective assistance of counsel in violation of Ill. Const. art. I, § 8. However, since the appellate court was not equipped to hear a direct appeal of the father's ineffective assistance of counsel claim, it had the power pursuant to Ill. Sup. Ct. R. 366(a)(5) to retain jurisdiction over the father's appeal of the finding that the father was unfit while remanding that cause to the trial court for it to conduct a collateral proceeding on that claim. People v. Wells (In re Ch. W.), 399 Ill. App. 3d 825, 340 Ill. Dec. 133, 927 N.E.2d 872, 2010 Ill. App. LEXIS 351 (4 Dist. 2010).

Mother's claim that she was denied effective assistance of counsel, pursuant to Ill. Const. art. I, § 8 and the Sixth Amendment, in her termination of parental rights proceeding was rejected on appeal; the appellate court concluded that the Cronic ineffective assistance of counsel test did not apply and due to her lack of effort in being involved in her young son's life, she could not show under the Strickland test that she had been prejudiced by her counsel's performance in informing the court that counsel could not provide much of a defense because counsel had not been in touch with the mother very much. People v. Cundiff (In re C.C.), 368 Ill. App. 3d 744, 307 Ill. Dec. 170, 859 N.E.2d 170, 2006 Ill. App. LEXIS 1048 (1 Dist. 2006).

Counseling by an attorney is neither a statutory nor a constitutional prerequisite to a valid surrender of parental rights; where there is no right to counsel, there is no right to effective assistance of counsel. In re Jackson, 243 Ill. App. 3d 631, 183 Ill. Dec. 708, 611 N.E.2d 1356 (5 Dist. 1993).

Counsel appointed in a termination of parental rights proceeding should not be judged by a different standard of effectiveness than counsel representing a defendant in a criminal matter. People v. Daniels, 165 Ill. App. 3d 112, 116 Ill. Dec. 69, 518 N.E.2d 691 (2 Dist. 1988).

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Under this section, the right to counsel requires that such representation be effective; effective counsel entitles the individual to undivided loyalty of the attorney. People v. M.D.B., 121 Ill. App. 3d 77, 76 Ill. Dec. 580, 458 N.E.2d 1380 (2 Dist. 1984).

In case where juvenile was tried for possession of cannabis and amphetamine, defendant received competent assistance of counsel where appointed counsel vigorously pursued all available defenses, notwithstanding counsel's failure to move for a continuance on grounds that he was appointed 15 minutes before trial and needed additional time to prepare for trial. In re Williams, 30 Ill. App. 3d 1025, 333 N.E.2d 674 (4 Dist. 1975).

- Failure to Preserve Record

The respondents failed to indicate how they were prejudiced by their trial counsel's failure to obtain verbatim transcripts so as to prove a claim of ineffective assistance of counsel, therefore, it could not be said respondents were deprived of the hearing and appeal guarantees provided under the Act. In re W.L.W. III, 299 Ill. App. 3d 881, 234 Ill. Dec. 266, 702 N.E.2d 606 (2 Dist. 1998).

- Frivolous Claims

The Anders (Anders v. California, 386 U.S. 738, 744, 87 S.Ct. 1396, 1400, 18 L.Ed.2d 493, 498 (1967)) procedure, requiring that indigent appellants be placed on the same footing as those able to afford private counsel, is applicable to cases involving this section; counsel for indigent parents was properly dismissed where the appeal was found by the court to be frivolous. People v. Keller, 138 Ill. App. 3d 746, 93 Ill. Dec. 190, 486 N.E.2d 291 (4 Dist. 1985).

- Mandatory

A clear mandate exists for representation and appointment of counsel, if parties are proceeding under this Act. Pack v. Ellul, 130 Ill. App. 3d 398, 85 Ill. Dec. 685, 474 N.E.2d 413 (3 Dist. 1985).

In a proceeding for termination of parental rights, where most of the evidence before the court as to the mother's unfitness consisted of clinical psychologist's report and medical records of her periodic bouts with mental illness and drug problems, mother had a right to counsel under prior similar provision or under the Adoption Act (see 750 ILCS 50/13(B)(c)). Pack v. Ellul, 130 Ill. App. 3d 398, 85 Ill. Dec. 685, 474 N.E.2d 413 (3 Dist. 1985).

The minor, in a dispositional hearing, is guaranteed the right to counsel and the right to appeal, and generally these rights should be enforced by the guardian of the child. In re Ross, 29 Ill. App. 3d 157, 329 N.E.2d 333 (3 Dist. 1975).

Requiring the court to inform an alleged delinquent (and his parents), against whom a detention petition has been filed, that he has a right to counsel or if they are unable to afford counsel, that counsel will be appointed to represent the child, was mandated by this section. People v. Giminez, 23 Ill. App. 3d 583, 319 N.E.2d 570 (3 Dist. 1974).

- Waiver

The right to counsel must be competently and intelligently waived, and where waiver is relied on, the court should affirmatively find as a fact, that by reason of age, education and information, and all other pertinent facts, the minor was able to and did make an intelligent waiver. People v. Giminez, 23 Ill. App. 3d 583, 319 N.E.2d 570 (3 Dist. 1974).

Rights of Guardians

- Exclusion of Witnesses

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Subsection (1) does not undermine the court's power to exclude a legal guardian as a witness from an adjudicatory hearing for the purpose of securing uninfluenced testimony. In re J.E., 285 Ill. App. 3d 965, 221 Ill. Dec. 249, 675 N.E.2d 156 (1 Dist. 1996), appeal denied, 172 Ill. 2d 552, 223 Ill. Dec. 195, 679 N.E.2d 380 (1997).

- Presence at Hearing

Petitions alleging that the grandmother had raised and cared for the children since their birth required that an evidentiary hearing be held because it raised the possibility that the evidence presented in support of it could have revealed that the grandmother may have been the person having custody and control of the children, and that she was thus required to be a party respondent in the dependency proceedings; the petitions also alleged that the mother of the children was mentally retarded and illiterate. In re Jennings, 68 Ill. 2d 125, 11 Ill. Dec. 256, 368 N.E.2d 864 (1977).

Prior similar provision (see now subsection (1) of this section) did not undermine the court's power to exclude a legal guardian, as a witness, from an adjudicatory hearing for the purpose of securing uninfluenced testimony; therefore, the exclusion of respondent's legal guardian from the courtroom, until she had testified as a witness for the respondent, was not an abuse of discretion. People v. Yates, 35 Ill. App. 3d 829, 342 N.E.2d 791 (1 Dist. 1976).

- Presence Denied

In a hearing adjudging the appellant a delinquent minor, the trial court did not commit error under prior similar provision in excluding his mother from the courtroom during the adjudicatory hearing where it was the defense counsel that decided to exclude the mother; therefore, the defense counsel not only invited the error, but if error was committed, it was properly characterized as harmless. People v. Akers, 17 Ill. App. 3d 624, 307 N.E.2d 630 (4 Dist. 1974).

Rights of Juveniles

- Apprisal

At a bare minimum, the record of an adjudicatory hearing, at which a minor may be declared a delinquent and committed to a state institution, should reflect that a juvenile was clearly apprised of the right to confront and cross-examine witnesses at trial and of the privilege against self-incrimination. People v. Peevy, 43 Ill. App. 3d 579, 2 Ill. Dec. 101, 357 N.E.2d 78 (1 Dist. 1976).

- Freedom from Restraint

A defendant's past criminal record, his reputation, and his character, are factors which the trial court may consider in evaluating the need for shackles; a good reason must be shown by the state to justify shackling a defendant during his trial, before it is determined whether he is innocent or guilty. People v. Staley, 40 Ill. App. 3d 528, 352 N.E.2d 3 (3 Dist. 1976), aff'd, 67 Ill. 2d 33, 7 Ill. Dec. 85, 364 N.E.2d 72 (1977).

The trial court committed prejudicial and reversible error in requiring defendant to remain in handcuffs throughout the adjudicatory hearing when the sole basis of the court's decision was the nature of the charge was a scuffle with a teacher; the fact defendant had run away from his home several times before being placed in a detention home, or, at least on one occasion was not sufficient to support use of shackles. People v. Staley, 40 Ill. App. 3d 528, 352 N.E.2d 3 (3 Dist. 1976), aff'd, 67 Ill. 2d 33, 7 Ill. Dec. 85, 364 N.E.2d 72 (1977).

The general rule that a defendant in a criminal case should not be required to appear shackled in the courtroom, except when it is necessary and when there are no other less extreme measures available, is applicable in delinquency proceedings in juvenile court, even in a bench trial, since

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there is a virtual identity of such proceedings with the criminal process. People v. Staley, 40 Ill. App. 3d 528, 352 N.E.2d 3 (3 Dist. 1976), aff'd, 67 Ill. 2d 33, 7 Ill. Dec. 85, 364 N.E.2d 72 (1977).

- Legal Representation

Juvenile was not denied his right to counsel when an attorney acted as both guardian ad litem and defense counsel because the roles of a guardian ad litem and minor's counsel were not inherently in conflict as both had essentially the same obligations to the minor and to society. As such, although certain situations could arise in which a conflict existed when an attorney served as defense counsel and guardian ad litem, a juvenile's attorney was permitted to serve dual roles without creating a per se conflict of interest. People v. Austin M. (In re Austin M.), 403 Ill. App. 3d 667, 347 Ill. Dec. 34, 941 N.E.2d 903, 2010 Ill. App. LEXIS 888 (4 Dist. 2010).

Representation of a guardian ad litem (GAL) and a child, who was the focus of a termination of parental rights proceeding, by the same counsel was proper as the child was too young to be capable of articulating any position that her attorney would be charged with presenting to the trial court and the record established that the attorney adequately represented the child's best interests during the termination proceedings. People v. King (In re J.D.), 351 Ill. App. 3d 917, 286 Ill. Dec. 803, 815 N.E.2d 13, 2004 Ill. App. LEXIS 970 (4 Dist. 2004).

When 705 ILCS 405/1-2 and this section are read together in a related manner, right to representation as a minor is clearly established, and the right to representation afforded to minors is almost coextensive to that afforded to adults. In re A.W., 248 Ill. App. 3d 971, 188 Ill. Dec. 159, 618 N.E.2d 729 (1 Dist. 1993).

- Protection of Identity

Prior similar provision permitted only the suppression of the minor's identity; anything beyond that was suspect and subject to strict scrutiny. People v. M.B., 137 Ill. App. 3d 992, 92 Ill. Dec. 299, 484 N.E.2d 1154 (4 Dist. 1985).

Rights of Parents

- Exclusion as Witnesses

Trial court did not abuse its discretion in excluding juvenile's parents from court room as potential witnesses as there was nothing in the record to suggest that his parents could have been of any particular benefit during the course of the trial nor were there any incidents where they might have counseled their son and he was adequately represented by counsel. In re J.E., 285 Ill. App. 3d 965, 221 Ill. Dec. 249, 675 N.E.2d 156 (1 Dist. 1996), appeal denied, 172 Ill. 2d 552, 223 Ill. Dec. 195, 679 N.E.2d 380 (1997).

- Fitness Hearing

Trial court did not err by denying a mother's motion for a fitness to stand trial hearing prior to conducting a hearing to terminating her parental rights to her son, which resulted in the termination of her rights, because postponing the termination proceedings - for a fitness hearing or until the mother could be restored to fitness - would delay the child's interest in finding a permanent home and such an indefinite postponement would frustrate the State's parens patriae interest in promoting the welfare of the child. Further, the mother failed to explain how she could have better assisted her attorney had she been found competent to participate as she did not identify any additional evidence that would have been introduced nor presented any argument explaining how the outcome of the hearing would have been different had the proceedings been stayed until she was restored to fitness. People v. Wanda A. (In re Charles A.), 367 Ill. App. 3d 800, 305 Ill. Dec. 764, 856 N.E.2d 569, 2006 Ill. App. LEXIS 878 (1 Dist. 2006).

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Parents have no constitutional right to a fitness hearing in a parental termination proceeding, since such a hearing would postpone adjudication and the parents have a right to be present, to be heard, to present evidence, to cross-examine witnesses, to examine all records, and to have counsel, pursuant to 705 ILCS 405/1-5(1). People v. Wanda A. (In re Charles A.), 367 Ill. App. 3d 800, 305 Ill. Dec. 764, 856 N.E.2d 569, 2006 Ill. App. LEXIS 878 (1 Dist. 2006).

- Presence at Child's Hearing

Where juvenile's parents received proper notice of the adjudicatory hearing and were not prejudiced by their exclusion from the hearing as potential witnesses, neither juvenile's due process rights, nor those of his parents, were violated. In re J.E., 285 Ill. App. 3d 965, 221 Ill. Dec. 249, 675 N.E.2d 156 (1 Dist. 1996), appeal denied, 172 Ill. 2d 552, 223 Ill. Dec. 195, 679 N.E.2d 380 (1997).

Where the state failed to act with even a modicum of diligence in attempting to notify a father of his minor child's delinquency proceeding, this failure violated both the parent's right to be present at the proceeding and the minor's right to due process of law. In re C.H., 277 Ill. App. 3d 32, 214 Ill. Dec. 100, 660 N.E.2d 545 (3 Dist. 1995), appeal denied, 166 Ill. 2d 540, 216 Ill. Dec. 4, 664 N.E.2d 641 (1996).

- Presentation of Defense

A mother's due process rights were violated by the court's sanction barring her from presenting a defense based on her failure to answer the state's interrogatories since there were less severe alternatives available and the mother's liberty interests in her children were at risk of erroneous deprivation if the court failed to hear evidence in support of the mother's expressed desire to reunite her family. People v. Priscilla E. (In re Vanessa C.), 316 Ill. App. 3d 475, 249 Ill. Dec. 399, 736 N.E.2d 593, 2000 Ill. App. LEXIS 709 (1 Dist. 2000).

Specific Placement

The juvenile court did not have the authority to authorize the minor's placement in a specific home as such authority is only available when an application to restore a minor to a parent, guardian or legal custodian has been filed, then foster parents may intervene in the proceeding for the sole purpose of requesting that the minor be placed in their care. In re R.M., 288 Ill. App. 3d 811, 224 Ill. Dec. 337, 681 N.E.2d 652 (1 Dist. 1997).

The language of subdivision (2)(b) means that a court is authorized to order a specific placement of a minor only after intervention by the foster parent and only when a valid application for restoration of custody by a parent is before the court. In re M.V., 288 Ill. App. 3d 300, 224 Ill. Dec. 217, 681 N.E.2d 532 (1 Dist. 1997).

Standing

Because the only request for custody of the minor by her natural parents was denied in September 1995, the request was no longer pending in August 1996, and therefore the court was not authorized to order that the child be returned to the former foster parents in Illinois. In re M.V., 288 Ill. App. 3d 300, 224 Ill. Dec. 217, 681 N.E.2d 532 (1 Dist. 1997).

Where unfitness was not an issue, a third party could not challenge custody under the Adoption Act (750 ILCS 50/0.01 et seq.) or this Act. In re Peterson, 112 Ill. 2d 48, 96 Ill. Dec. 690, 491 N.E.2d 1150 (1986).

Sufficiency of Evidence

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A juvenile defendant was precluded from contesting the legal sufficiency of the evidence presented against him at the adjudicatory hearing in light of his admission of guilt of the offense charged at the dispositional hearing. People v. C.T., 137 Ill. App. 3d 42, 91 Ill. Dec. 802, 484 N.E.2d 361 (5 Dist. 1985).

Termination of Parental Rights

Trial court did not err in allowing the father, who had been repeatedly incarcerated and who was serving a prison sentence for sexual assault, to remain shackled during his termination of parental rights hearing. Many of the concerns associated with shackling a criminal defendant were not applicable in a termination proceeding, due process only required that the termination proceeding be fundamentally fair, and any error in shackling him did not contribute to the ruling that found he was an unfit parent, which was due to the fact that he had at least three felony convictions, including one which occurred within five years of the filing of the petition to terminate his parental rights. People v. D.H. (In re A.H.), 359 Ill. App. 3d 173, 295 Ill. Dec. 709, 833 N.E.2d 915, 2005 Ill. App. LEXIS 696 (1 Dist. 2005), appeal denied sub nom. People v. D.H. (In re D.H.), 217 Ill. 2d 563, 300 Ill. Dec. 366, 844 N.E.2d 38 (2005).

A finding that a ward's parents are "unfit," combined with the court's subsequent order appointing and empowering a guardian to consent to adoption, terminates the entire bundle of parental rights, custodial and non-custodial. People v. Golden, 147 Ill. App. 3d 484, 101 Ill. Dec. 188, 498 N.E.2d 370 (3 Dist. 1986).

Welfare of Child

Parents have the primary role of providing for the care and nurture of their children, but the state as parens patriae may restrict the parents' control and freedom in this regard where the welfare of the child is at issue. People v. Polovchak, 104 Ill. App. 3d 203, 59 Ill. Dec. 929, 432 N.E.2d 873 (1 Dist. 1981), aff'd, 97 Ill. 2d 212, 73 Ill. Dec. 398, 454 N.E.2d 258 (1983), cert. denied, 465 U.S. 1065, 104 S. Ct. 1413, 79 L. Ed. 2d 739 (1984).

OPINIONS OF ATTORNEY GENERAL

Federal Compliance

Illinois law fulfills the Federal requirement under 45 C.F.R. 1340.3-3 that legal counsel will be appointed to protect the rights, interests, welfare, and well-being of the child in every child protective judicial proceeding. 1977 Op. Atty. Gen. 173.

LEGAL PERIODICALS

For article, "Conference on Ethical Issues in the Legal Representation of Children in Illinois", see 29 Loy. U. Chi. L.J. 289 (1998).

For article, "Survey of Illinois Law [1988-89] - Family Law," see 14 S. Ill. U.L.J. 1007 (1990).

For article, "Juvenile Law: 1988-89 Illinois Law Survey," see 21 Loy. U. Chi. L.J. 481 (1989-90).

For article, "Juvenile Law: 1986-87 Illinois Law Survey," see 19 Loy. U. Chi. L.J. 565 (1987-88).

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For article, "Notice to Minors Under the Illinois Juvenile Court Act: An Anomaly of Due Process," see 36 De Paul L. Rev. 343 (1987).

For article, "Juvenile Law: 1985-86 Illinois Law Survey," see 18 Loy. U. Chi. L.J. 633 (1986-87).

For article, "Reporter's Privilege and Juvenile Anonymity: Two Confidentiality Policies on a Collision Course," see 16 Loy. U. Chi. L.J. 43 (1984-85).

For note, "In re S.R.H.: A Decline in the Juvenile's Right to Notice in Illinois," see 15 Loy. U. Chi. L.J. 697 (1983-84).

RESEARCH REFERENCES

Propriety of exclusion of press or other media representatives from civil trial. 39 ALR5th 103.

Propriety of publishing identity of sexual assault victim. 40 ALR5th 787.

Reportorial privilege as to nonconfidential news information. 60 ALR5th 75.

§ 705 ILCS 405/1-6. State's Attorney

Sec. 1-6. State's Attorney. The State's Attorneys of the several counties shall represent the people of the State of Illinois in proceedings under this Act in their respective counties.

(Source: P.A. 85-601.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 801-6.

CASE NOTES

Analysis

In General
Agent of Court
Representation
Standing

In General

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Under this Act, both the State's attorney and the juvenile court are charged with acting in the best interests of the minor; prosecution of a petition alleging abuse of a minor, when supported by the evidence, is the responsibility of the State's attorney, although determining whether the petition may be dismissed is the responsibility of the juvenile court. In re J.J., 142 Ill. 2d 1, 153 Ill. Dec. 239, 566 N.E.2d 1345 (1991).

Agent of Court

The ordering of the State's Attorney to file a petition in respect of a minor is not an impermissible exercise by the judicial branch of powers belonging exclusively to the executive branch. In re J.M., 245 Ill. App. 3d 909, 184 Ill. Dec. 754, 613 N.E.2d 1346 (2 Dist.), appeal denied, 152 Ill. 2d 560, 190 Ill. Dec. 890, 622 N.E.2d 1207 (1993).

A trial court has the power to order the State's Attorney to prosecute a petition under the Juvenile Court Act. In re J.M., 245 Ill. App. 3d 909, 184 Ill. Dec. 754, 613 N.E.2d 1346 (2 Dist.), appeal denied, 152 Ill. 2d 560, 190 Ill. Dec. 890, 622 N.E.2d 1207 (1993).

Representation

Although the State, through its State's Attorneys, had the exclusive authority in the trial court to prosecute a petition brought under the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., the public guardian, as the appointed attorney of the two minors and their guardian ad litem, could appeal the trial court's dismissal of the State's petition for adjudication of wardship in order to fulfill the public guardian's duty of protecting the best interests of the two minor children. People v. Rocio T. (In re Gustavo H.), 362 Ill. App. 3d 802, 298 Ill. Dec. 907, 841 N.E.2d 50, 2005 Ill. App. LEXIS 1166 (1 Dist. 2005), appeal denied, 218 Ill. 2d 539, 303 Ill. Dec. 3, 850 N.E.2d 808 (2006).

In a proceeding to terminate a mother's parental rights, the trial court did not abuse its discretion in permitting private counsel to represent the Department of Children and Family Services. People v. Hillyer, 82 Ill. App. 3d 505, 38 Ill. Dec. 21, 403 N.E.2d 36 (3 Dist. 1980).

This Act clearly contemplates that a probation officer employed by the county, and acting under order of court, shall be represented by the local State's attorney. In re Jennings, 68 Ill. 2d 125, 11 Ill. Dec. 256, 368 N.E.2d 864 (1977).

Standing

State had standing to appeal since this Act specifically directs that it is the duty of the State's attorney to represent the People in proceedings under the Act. In re Jennings, 68 Ill. 2d 125, 11 Ill. Dec. 256, 368 N.E.2d 864 (1977).

Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 11:01 Generally; purpose of Juvenile Court Act.

§ 705 ILCS 405/1-7. Confidentiality of law enforcement records

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Sec. 1-7. Confidentiality of law enforcement records. (A) Inspection and copying of law enforcement records maintained by law enforcement agencies that relate to a minor who has been arrested or taken into custody before his or her 17th birthday shall be restricted to the following:

(1) Any local, State or federal law enforcement officers of any jurisdiction or agency when necessary for the discharge of their official duties during the investigation or prosecution of a crime or relating to a minor who has been adjudicated delinquent and there has been a previous finding that the act which constitutes the previous offense was committed in furtherance of criminal activities by a criminal street gang, or, when necessary for the discharge of its official duties in connection with a particular investigation of the conduct of a law enforcement officer, an independent agency or its staff created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers. For purposes of this Section, "criminal street gang" has the meaning ascribed to it in Section 10 of the Illinois Streetgang Terrorism Omnibus Prevention Act [740 ILCS 147/10].

(2) Prosecutors, probation officers, social workers, or other individuals assigned by the court to conduct a pre-adjudication or pre-disposition investigation, and individuals responsible for supervising or providing temporary or permanent care and custody for minors pursuant to the order of the juvenile court, when essential to performing their responsibilities.

(3) Prosecutors and probation officers:

(a) in the course of a trial when institution of criminal proceedings has been permitted or required under Section 5-805 [705 ILCS 405/5-805]; or

(b) when institution of criminal proceedings has been permitted or required under Section 5-805 and such minor is the subject of a proceeding to determine the amount of bail; or

(c) when criminal proceedings have been permitted or required under Section 5-805 and such minor is the subject of a pre-trial investigation, pre-sentence investigation, fitness hearing, or proceedings on an application for probation.

(4) Adult and Juvenile Prisoner Review Board.

(5) Authorized military personnel.

(6) Persons engaged in bona fide research, with the permission of the Presiding Judge of the Juvenile Court and the chief executive of the respective law enforcement agency; provided that publication of such research results in no disclosure of a minor's identity and protects the confidentiality of the minor's record.

(7) Department of Children and Family Services child protection investigators acting in their official capacity.

(8) The appropriate school official. Inspection and copying shall be limited to law enforcement records transmitted to the appropriate school official by a local law enforcement agency under a reciprocal reporting system established and maintained

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between the school district and the local law enforcement agency under Section 10-20.14 of the School Code [105 ILCS 5/10-20.14] concerning a minor enrolled in a school within the school district who has been arrested or taken into custody for any of the following offenses:

(i) unlawful use of weapons under Section 24-1 of the Criminal Code of 1961 [720 ILCS 5/24-1];

(ii) a violation of the Illinois Controlled Substances Act [720 ILCS 570/100 et seq.];

(iii) a violation of the Cannabis Control Act [720 ILCS 550/1 et seq.];

(iv) a forcible felony as defined in Section 2-8 of the Criminal Code of 1961 [720 ILCS 5/2-8]; or

(v) a violation of the Methamphetamine Control and Community Protection Act [720 ILCS 646/1 et seq.].

(9) Mental health professionals on behalf of the Illinois Department of Corrections or the Department of Human Services or prosecutors who are evaluating, prosecuting, or investigating a potential or actual petition brought under the Sexually Violent Persons Commitment Act [725 ILCS 207/1 et seq.] relating to a person who is the subject of juvenile law enforcement records or the respondent to a petition brought under the Sexually Violent Persons Commitment Act who is the subject of the juvenile law enforcement records sought. Any records and any information obtained from those records under this paragraph (9) may be used only in sexually violent persons commitment proceedings.

(B)(1) Except as provided in paragraph (2), no law enforcement officer or other person or agency may knowingly transmit to the Department of Corrections, Adult Division or the Department of State Police or to the Federal Bureau of Investigation any fingerprint or photograph relating to a minor who has been arrested or taken into custody before his or her 17th birthday, unless the court in proceedings under this Act authorizes the transmission or enters an order under Section 5-805 [705 ILCS 405/5-805] permitting or requiring the institution of criminal proceedings.

(2) Law enforcement officers or other persons or agencies shall transmit to the Department of State Police copies of fingerprints and descriptions of all minors who have been arrested or taken into custody before their 17th birthday for the offense of unlawful use of weapons under Article 24 of the Criminal Code of 1961, a Class X or Class 1 felony, a forcible felony as defined in Section 2-8 of the Criminal Code of 1961, or a Class 2 or greater felony under the Cannabis Control Act, the Illinois Controlled Substances Act, the Methamphetamine Control and Community Protection Act, or Chapter 4 of the Illinois Vehicle Code [625 ILCS 5/4-101 et seq.], pursuant to Section 5 of the Criminal Identification Act [20 ILCS 2630/5]. Information reported to the Department pursuant to this Section may be maintained with records that the Department files pursuant to Section 2.1 of the Criminal Identification Act [20 ILCS 2630/2.1]. Nothing in this Act prohibits a law enforcement agency from fingerprinting a minor taken

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into custody or arrested before his or her 17th birthday for an offense other than those listed in this paragraph (2).

(C) The records of law enforcement officers, or of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers, concerning all minors under 17 years of age must be maintained separate from the records of arrests and may not be open to public inspection or their contents disclosed to the public except by order of the court presiding over matters pursuant to this Act or when the institution of criminal proceedings has been permitted or required under Section 5-805 or such a person has been convicted of a crime and is the subject of pre-sentence investigation or proceedings on an application for probation or when provided by law. For purposes of obtaining documents pursuant to this Section, a civil subpoena is not an order of the court.

(1) In cases where the law enforcement, or independent agency, records concern a pending juvenile court case, the party seeking to inspect the records shall provide actual notice to the attorney or guardian ad litem of the minor whose records are sought.

(2) In cases where the records concern a juvenile court case that is no longer pending, the party seeking to inspect the records shall provide actual notice to the minor or the minor's parent or legal guardian, and the matter shall be referred to the chief judge presiding over matters pursuant to this Act.

(3) In determining whether the records should be available for inspection, the court shall consider the minor's interest in confidentiality and rehabilitation over the moving party's interest in obtaining the information. Any records obtained in violation of this subsection (C) shall not be admissible in any criminal or civil proceeding, or operate to disqualify a minor from subsequently holding public office or securing employment, or operate as a forfeiture of any public benefit, right, privilege, or right to receive any license granted by public authority.

(D) Nothing contained in subsection (C) of this Section shall prohibit the inspection or disclosure to victims and witnesses of photographs contained in the records of law enforcement agencies when the inspection and disclosure is conducted in the presence of a law enforcement officer for the purpose of the identification or apprehension of any person subject to the provisions of this Act or for the investigation or prosecution of any crime.

(E) Law enforcement officers, and personnel of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers, may not disclose the identity of any minor in releasing information to the general public as to the arrest, investigation or disposition of any case involving a minor.

(F) Nothing contained in this Section shall prohibit law enforcement agencies from communicating with each other by letter, memorandum, teletype or intelligence alert bulletin or other means the identity or other relevant information pertaining to a person under 17 years of age if there are reasonable grounds to believe that the person poses a real and present danger to the safety of the public or law enforcement officers. The

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information provided under this subsection (F) shall remain confidential and shall not be publicly disclosed, except as otherwise allowed by law.

(G) Nothing in this Section shall prohibit the right of a Civil Service Commission or appointing authority of any state, county or municipality examining the character and fitness of an applicant for employment with a law enforcement agency, correctional institution, or fire department from obtaining and examining the records of any law enforcement agency relating to any record of the applicant having been arrested or taken into custody before the applicant's 17th birthday.

(Source: P.A. 85-1209; 85-1433; 86-820; 87-927, § 1; 87-1198, § 1; 88-45, § 2-56; 88-467, § 10; 88-679, § 20; 89-221, § 5; 89-362, § 5; 89-626, § 2-68; 90-127, § 5; 91-357, § 236; 91-368, § 5; 92-415, § 5; 94-556, § 1050; 95-123, § 5; 96-419, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 801-7.

Cross References.

For the application of this section to temporary transfer, see 730 ILCS 5/3-6-2.

Illinois Administrative Code.

See 20 Illinois Administrative Code, § 107.320.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "permitted or required under Section 5-805" for "permitted under Section 5-4 or required under Section 5-4" in subsections (A)(3)(a) through (A)(3)(c) and (C); and in subsection (B)(1) substituted "Section 5-805" for "Section 5-4".

The 1999 amendment by P.A. 91-368, effective January 1, 2000, substituted "permitted or required under Section 5-805" for "permitted under Section 5-4 or required under Section 5-4" in subsections (A)(3)(a) through (A)(3)(c) and (C); in subsection (B)(1) substituted "Section 5-805" for "Section 5-4"; and in the middle of subsection (G) inserted "or fire department" following "correctional institution" and made related changes.

The 2001 amendment by P.A. 92-415, effective August 17, 2001, inserted subsection (A)(9).

The 2005 amendment by P.A. 94-556, effective September 11, 2005, added (A)(8)(v); and in (b)(2) added "the Methamphetamine Control and Community Protection Act".

The 2007 amendment by P.A. 95-123, effective August 13, 2007, in the introductory paragraph of (C) added "presiding over matters pursuant to this Act" in the first sentence and added the last sentence; and added (C)(1), (2), and (3).

The 2009 amendment by P.A. 96-419, effective August 13, 2009, added "or, when necessary for the discharge of its official duties in connection with a particular investigation of the conduct of a law enforcement officer, an independent agency or its staff created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers"

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in the first sentence of (A)(1); added "or of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers" in the first paragraph of (C); added "or independent agency" in (C)(1); and added "and personnel of an independent agency created by ordinance and charged by a unit of local government with the duty of investigating the conduct of law enforcement officers" in (E).

CASE NOTES

Analysis

Constitutionality
Expunging of Minor's Record
Impeachment by Use of Juvenile Record
- Against Defendant
- Against Juvenile Witness
Inspection Permissible
Photographs
Reciprocal Reporting
Release
Sanctions

Constitutionality

The former statute (see now 705 ILCS 405/5-4 and this section) which authorized the transfer of cases from the juvenile division of the circuit court to the criminal division did not violate due process of law, and was therefore constitutional. People v. Sprinkle, 56 Ill. 2d 257, 307 N.E.2d 161 (1974).

Expunging of Minor's Record

The circuit court has the equitable authority to order the expunging of a minor's arrest and identification record from police files; the fact that the former Juvenile Court Act (see now this Act) was silent as to the expunging of juvenile records did not necessarily imply that such records could be made and retained where their retention would serve no discernible purpose. In re St. Louis, 67 Ill. 2d 43, 7 Ill. Dec. 74, 364 N.E.2d 61 (1977).

Given the statutory prohibition against the dissemination and publication of juvenile records, even to other law enforcement agencies, and the legislative intent that they be strictly confidential, it is doubtful whether the harm which precipitated the need for the record to be expunged as provided by 20 ILCS 2630/5 is applicable to the highly protected records of a juvenile defendant. Ashenhurst v. Carey, 351 F. Supp. 708 (N.D. Ill. 1972).

Impeachment by Use of Juvenile Record

- Against Defendant

Prosecutor was allowed to impeach a juvenile defendant with a prior juvenile adjudication. People v. Burnette, 97 Ill. App. 3d 1015, 53 Ill. Dec. 389, 423 N.E.2d 1193 (1 Dist. 1981).

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Under appropriate circumstances, a juvenile's record might be used to impeach his testimony at a criminal proceeding. People v. Mareno, 43 Ill. App. 3d 556, 2 Ill. Dec. 425, 357 N.E.2d 592 (1 Dist. 1976).

- Against Juvenile Witness

Prior similar provision did not preclude access to juvenile records for impeaching the credibility of a juvenile witness by showing a possible motive for testifying falsely. People v. Yancey, 57 Ill. App. 3d 256, 14 Ill. Dec. 790, 372 N.E.2d 1069 (1 Dist. 1978).

Where the trial court imposed no limitations on defense counsel's inquiries into the witness' juvenile record, his gang associations, or any other matters reflecting upon his credibility and bias, and in addition, the conviction of rape and deviate sexual assault did not rest entirely upon the testimony of the accomplice, but rather, was supported by the clear and convincing testimony of complainant which was corroborated by the testimony of her mother and the examining physician, denial of the defendant's request for an accomplice's records of juvenile court was not plain error. People v. Montgomery, 19 Ill. App. 3d 206, 311 N.E.2d 361 (1 Dist. 1974).

This section did not bar the disclosure of the juvenile records of the witness insofar as they might be relevant to the defendant's claim that the witness's testimony was attributable to lenient treatment which he had received or had been promised. People v. Norwood, 54 Ill. 2d 253, 296 N.E.2d 852 (1973).

Inspection Permissible

Under a city's ordinances, the mayor was the chief law enforcement officer of the city and under the provisions of the Municipal Code (65 ILCS 5/3-11-3), he was specifically authorized to examine the books, records and papers of any agency, employee or officer of the city, thus, for purposes of prior similar provision the mayor was not precluded from examining the records of arrest under the language that prohibited public inspection. People ex rel. Burgess v. City of Urbana, 33 Ill. App. 3d 623, 338 N.E.2d 220 (4 Dist. 1975).

Photographs

Where there was no suggestion that the use of defendant's photographs in the photo lineup created a condition where his identification by victim could be considered unreliable, the remedy for violation of prior similar provision does not lie in withholding at trial the fact that this photo identification of defendant was made; it was not error to permit testimony regarding this identification. People v. Lewis, 95 Ill. App. 3d 82, 50 Ill. Dec. 533, 419 N.E.2d 641 (2 Dist. 1981).

Reciprocal Reporting

Once school officials received a report of a student's inebriation through a reciprocal reporting agreement with the police department, even though police violated the student's right to confidentiality under 705 ILCS 405/1-7 by releasing the report, school officials were not precluded from commencing a disciplinary action based on the report. Jordan v. O'Fallon Tp. High Sch. Dist. No. 203, 302 Ill. App. 3d 1070, 235 Ill. Dec. 877, 706 N.E.2d 137 (5 Dist. 1999).

Under a reciprocal reporting agreement between a school and a police department, a police report on a student's inebriation was improperly provided to school officials since this report did not pertain to specific offenses referred to in 705 ILCS 405/1-7(A)(8) and the police officers were compelled to guard its confidentiality. Jordan v. O'Fallon Tp. High Sch. Dist. No. 203, 302 Ill. App. 3d 1070, 235 Ill. Dec. 877, 706 N.E.2d 137 (5 Dist. 1999).

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Release

Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., applied to documents that the apartment manager included with its summary judgment motion in its forcible entry and detainer action against the tenant based on the arrest of the tenant's minor son for selling and possessing illegal drugs and the apartment manager's subsequent attempt to evict the tenant because drug-related criminal activity was a violation of her lease. The minor son was less than 21-years-old and, thus, the apartment manager and tenant could argue about whether the documents included with the summary judgment motion, which detailed the minor son's arrest, were obtained and filed in violation of the Act's confidentiality provisions. Camco, Inc. v. Lowery, 362 Ill. App. 3d 421, 298 Ill. Dec. 332, 839 N.E.2d 655, 2005 Ill. App. LEXIS 1156 (1 Dist. 2005), appeal denied, 218 Ill. 2d 536, 303 Ill. Dec. 1, 850 N.E.2d 806 (2006).

Where the State admitted in its petition that the information would not be used for any one specific investigation, and where the State did not identify a crime, subdivision (A)(1) could not permit release. In re W.L., 293 Ill. App. 3d 818, 228 Ill. Dec. 403, 689 N.E.2d 275 (2 Dist. 1997).

Sanctions

Prior similar provision did not impose sanctions for unlawful disclosure; neither does any other section of this Act. People v. Lewis, 95 Ill. App. 3d 82, 50 Ill. Dec. 533, 419 N.E.2d 641 (2 Dist. 1981).

OPINIONS OF ATTORNEY GENERAL

Analysis

Confidentiality
Limitation on Reports.
Relation to Juvenile Court Act
Suspected Criminal Activity.

Confidentiality

Juvenile probation officers have no unilateral authority to furnish confidential information to school officials. 1981 Op. Atty. Gen. 38.

A juvenile court is authorized to release information concerning current juvenile cases and juvenile probationers to school officials without breaching the confidentiality provisions of this Act. 1981 Op. Atty. Gen. 38.

Limitation on Reports.

With respect to reporting by law enforcement agencies, a reciprocal reporting agreement must necessarily be limited to the specific offenses referred to in subsection (A)(8) of the Juvenile Court Act. 1996 Op. Atty. Gen. (96-040).

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Relation to Juvenile Court Act

Clearly, the intent of 105 ILCS 5/22-20 is merely to require notification of the principal of a school of the fact that a child enrolled as a student therein is being detained for juvenile court or other judicial proceedings; this section does not otherwise abrogate the policy of confidentiality contained by this Act nor supersede the specific judicial order requirements of 705 ILCS 405/1-7 and 705 ILCS 405/1-10. 1981 Op. Atty. Gen. 38.

Suspected Criminal Activity.

Because suspected criminal activity is not information falling within the scope of the Student Records Act merely because it may be recorded by school officials, however school officials may, in accordance with any agreement developed, report any alleged or suspected criminal acts to the police. 1996 Op. Atty. Gen. (96-040).

LEGAL PERIODICALS

For article: "Delinquency and Due Process: A Review of Illinois Law," see 59 Chi-Kent L. Rev. 123 (1982).

For article, "Denying Child Welfare Services to Delinquent Teens: A Call to Return to the Roots of Illinois' Juvenile Court," see, 36 Loy. U. Chi. L.J. 925 (2005).

§ 705 ILCS 405/1-8. Confidentiality and accessibility of juvenile court records

Sec. 1-8. Confidentiality and accessibility of juvenile court records. (A) Inspection and copying of juvenile court records relating to a minor who is the subject of a proceeding under this Act shall be restricted to the following:

(1) The minor who is the subject of record, his parents, guardian and counsel.

(2) Law enforcement officers and law enforcement agencies when such information is essential to executing an arrest or search warrant or other compulsory process, or to conducting an ongoing investigation or relating to a minor who has been adjudicated delinquent and there has been a previous finding that the act which constitutes the previous offense was committed in furtherance of criminal activities by a criminal street gang.

Before July 1, 1994, for the purposes of this Section, "criminal street gang" means any ongoing organization, association, or group of 3 or more persons, whether formal or informal, having as one of its primary activities the commission of one or more criminal acts and that has a common name or common identifying sign, symbol or specific color apparel displayed, and whose members individually or collectively engage in or have engaged in a pattern of criminal activity.

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Beginning July 1, 1994, for purposes of this Section, "criminal street gang" has the meaning ascribed to it in Section 10 of the Illinois Streetgang Terrorism Omnibus Prevention Act [740 ILCS 147/10].

(3) Judges, hearing officers, prosecutors, probation officers, social workers or other individuals assigned by the court to conduct a pre-adjudication or predisposition investigation, and individuals responsible for supervising or providing temporary or permanent care and custody for minors pursuant to the order of the juvenile court when essential to performing their responsibilities.

(4) Judges, prosecutors and probation officers:

(a) in the course of a trial when institution of criminal proceedings has been permitted or required under Section 5-805 [705 ILCS 405/5-805]; or

(b) when criminal proceedings have been permitted or required under Section 5-805 and a minor is the subject of a proceeding to determine the amount of bail; or

(c) when criminal proceedings have been permitted or required under Section 5-805 and a minor is the subject of a pre-trial investigation, pre-sentence investigation or fitness hearing, or proceedings on an application for probation; or

(d) when a minor becomes 17 years of age or older, and is the subject of criminal proceedings, including a hearing to determine the amount of bail, a pre-trial investigation, a pre-sentence investigation, a fitness hearing, or proceedings on an application for probation.

(5) Adult and Juvenile Prisoner Review Boards.

(6) Authorized military personnel.

(7) Victims, their subrogees and legal representatives; however, such persons shall have access only to the name and address of the minor and information pertaining to the disposition or alternative adjustment plan of the juvenile court.

(8) Persons engaged in bona fide research, with the permission of the presiding judge of the juvenile court and the chief executive of the agency that prepared the particular records; provided that publication of such research results in no disclosure of a minor's identity and protects the confidentiality of the record.

(9) The Secretary of State to whom the Clerk of the Court shall report the disposition of all cases, as required in Section 6-204 of the Illinois Vehicle Code [625 ILCS 5/6-204]. However, information reported relative to these offenses shall be privileged and available only to the Secretary of State, courts, and police officers.

(10) The administrator of a bonafide substance abuse student assistance program with the permission of the presiding judge of the juvenile court.

(11) Mental health professionals on behalf of the Illinois Department of Corrections or the Department of Human Services or prosecutors who are evaluating, prosecuting, or investigating a potential or actual petition brought under the Sexually Persons

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Commitment Act [725 ILCS 207/1 et seq.] relating to a person who is the subject of juvenile court records or the respondent to a petition brought under the Sexually Violent Persons Commitment Act, who is the subject of juvenile court records sought. Any records and any information obtained from those records under this paragraph (11) may be used only in sexually violent persons commitment proceedings.

(A-1) Findings and exclusions of paternity entered in proceedings occurring under Article II of this Act [705 ILCS 405/2-1 et seq.] shall be disclosed, in a manner and form approved by the Presiding Judge of the Juvenile Court, to the Department of Healthcare and Family Services when necessary to discharge the duties of the Department of Healthcare and Family Services under Article X of the Illinois Public Aid Code [305 ILCS 5/10-1 et seq.].

(B) A minor who is the victim in a juvenile proceeding shall be provided the same confidentiality regarding disclosure of identity as the minor who is the subject of record.

(C) Except as otherwise provided in this subsection (C), juvenile court records shall not be made available to the general public but may be inspected by representatives of agencies, associations and news media or other properly interested persons by general or special order of the court presiding over matters pursuant to this Act.

(0.1) In cases where the records concern a pending juvenile court case, the party seeking to inspect the juvenile court records shall provide actual notice to the attorney or guardian ad litem of the minor whose records are sought.

(0.2) In cases where the records concern a juvenile court case that is no longer pending, the party seeking to inspect the juvenile court records shall provide actual notice to the minor or the minor's parent or legal guardian, and the matter shall be referred to the chief judge presiding over matters pursuant to this Act.

(0.3) In determining whether the records should be available for inspection, the court shall consider the minor's interest in confidentiality and rehabilitation over the moving party's interest in obtaining the information. The State's Attorney, the minor, and the minor's parents, guardian, and counsel shall at all times have the right to examine court files and records. For purposes of obtaining documents pursuant to this Section, a civil subpoena is not an order of the court.

(0.4) Any records obtained in violation of this subsection (C) shall not be admissible in any criminal or civil proceeding, or operate to disqualify a minor from subsequently holding public office, or operate as a forfeiture of any public benefit, right, privilege, or right to receive any license granted by public authority.

(1) The court shall allow the general public to have access to the name, address, and offense of a minor who is adjudicated a delinquent minor under this Act under either of the following circumstances:

(A) The adjudication of delinquency was based upon the minor's commission of first degree murder, attempt to commit first degree murder, aggravated criminal sexual assault, or criminal sexual assault; or

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(B) The court has made a finding that the minor was at least 13 years of age at the time the act was committed and the adjudication of delinquency was based upon the minor's commission of: (i) an act in furtherance of the commission of a felony as a member of or on behalf of a criminal street gang, (ii) an act involving the use of a firearm in the commission of a felony, (iii) an act that would be a Class X felony offense under or the minor's second or subsequent Class 2 or greater felony offense under the Cannabis Control Act [720 ILCS 550/1 et seq.] if committed by an adult, (iv) an act that would be a second or subsequent offense under Section 402 of the Illinois Controlled Substances Act [720 ILCS 570/402] if committed by an adult, (v) an act that would be an offense under Section 401 of the Illinois Controlled Substances Act [720 ILCS 570/401] if committed by an adult, (vi) an act that would be a second or subsequent offense under Section 60 of the Methamphetamine Control and Community Protection Act [720 ILCS 646/60], or (vii) an act that would be an offense under another Section of the Methamphetamine Control and Community Protection Act [720 ILCS 646/1 et seq.].

(2) The court shall allow the general public to have access to the name, address, and offense of a minor who is at least 13 years of age at the time the offense is committed and who is convicted, in criminal proceedings permitted or required under Section 5-4 [705 ILCS 405/5-4 (now repealed)], under either of the following circumstances:

(A) The minor has been convicted of first degree murder, attempt to commit first degree murder, aggravated criminal sexual assault, or criminal sexual assault,

(B) The court has made a finding that the minor was at least 13 years of age at the time the offense was committed and the conviction was based upon the minor's commission of: (i) an offense in furtherance of the commission of a felony as a member of or on behalf of a criminal street gang, (ii) an offense involving the use of a firearm in the commission of a felony, (iii) a Class X felony offense under or a second or subsequent Class 2 or greater felony offense under the Cannabis Control Act, (iv) a second or subsequent offense under Section 402 of the Illinois Controlled Substances Act, (v) an offense under Section 401 of the Illinois Controlled Substances Act, (vi) an act that would be a second or subsequent offense under Section 60 of the Methamphetamine Control and Community Protection Act, or (vii) an act that would be an offense under another Section of the Methamphetamine Control and Community Protection Act.

(D) Pending or following any adjudication of delinquency for any offense defined in Sections 11-1.20 through 11-1.60 or 12-13 through 12-16 of the Criminal Code of 1961 [720 ILCS 5/11-1.20 through 720 ILCS 5/11-1.60 or 720 ILCS 5/11-1.20 through 720 ILCS 5/11-1.60], the victim of any such offense shall receive the rights set out in Sections 4 and 6 of the Bill of Rights for Victims and Witnesses of Violent Crime Act; and the juvenile who is the subject of the adjudication, notwithstanding any other provision of this Act, shall be treated as an adult for the purpose of affording such rights to the victim.

(E) Nothing in this Section shall affect the right of a Civil Service Commission or appointing authority of any state, county or municipality examining the character and fitness of an applicant for employment with a law enforcement agency, correctional institution, or fire department to ascertain whether that applicant was ever adjudicated to

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be a delinquent minor and, if so, to examine the records of disposition or evidence which were made in proceedings under this Act.

(F) Following any adjudication of delinquency for a crime which would be a felony if committed by an adult, or following any adjudication of delinquency for a violation of Section 24-1, 24-3, 24-3.1, or 24-5 of the Criminal Code of 1961 [720 ILCS 5/24-1, 720 ILCS 5/24-3, 720 ILCS 5/24-3.1, or 720 ILCS 5/24-5], the State's Attorney shall ascertain whether the minor respondent is enrolled in school and, if so, shall provide a copy of the dispositional order to the principal or chief administrative officer of the school. Access to such juvenile records shall be limited to the principal or chief administrative officer of the school and any guidance counselor designated by him.

(G) Nothing contained in this Act prevents the sharing or disclosure of information or records relating or pertaining to juveniles subject to the provisions of the Serious Habitual Offender Comprehensive Action Program when that information is used to assist in the early identification and treatment of habitual juvenile offenders.

(H) When a Court hearing a proceeding under Article II of this Act becomes aware that an earlier proceeding under Article II had been heard in a different county, that Court shall request, and the Court in which the earlier proceedings were initiated shall transmit, an authenticated copy of the Court record, including all documents, petitions, and orders filed therein and the minute orders, transcript of proceedings, and docket entries of the Court.

(I) The Clerk of the Circuit Court shall report to the Department of State Police, in the form and manner required by the Department of State Police, the final disposition of each minor who has been arrested or taken into custody before his or her 17th birthday for those offenses required to be reported under Section 5 of the Criminal Identification Act [20 ILCS 2630/5]. Information reported to the Department under this Section may be maintained with records that the Department files under Section 2.1 of the Criminal Identification Act [20 ILCS 2630/2.1].

(Source: P.A. 86-1450; 87-353; 87-614; 87-927, § 1; 87-928, § 5; 88-45, § 2-56; 88-51, § 1; 88-344, § 5; 88-467, § 10; 88-548, § 5; 88-550, § 965; 88-614, § 110; 88-670, § 2-63; 89-198, § 30; 89-235, § 2-125; 89-377, § 10; 89-626, § 2-68; 90-28, § 10-20; 90-87, § 5; 90-127, § 5; 90-655, § 156; 91-357, § 236; 91-368, § 5; 92-415, § 5; 94-556, § 1050; 95-123, § 5; 96-212, § 5; 96-1551, § 1030.)

Note.

Section 705 ILCS 405/5-4, referred to in subsection (A)(11)(2), has been repealed.

This section was Ill.Rev.Stat., Ch. 37, Para. 801-8.

Section 9995 of P.A. 96-1551 contains a "no acceleration or delay" provision.

Cross References.

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For revocation of a minor's driver's license or permit by the Secretary of State upon receiving notice, as provided in this section, that the minor has been adjudicated of an offense relating to motor vehicles, see 625 ILCS 5/6-205.

Illinois Administrative Code.

See 20 Illinois Administrative Code, § 701.270.

Effect of Amendments. The 1998 amendment by P.A. 90-655, effective July 30, 1998, incorporated the amendments by P.A. 90-28, P.A. 90-97, and P.A. 90-127.

The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "permitted or required under Section 5-805" for "permitted under Section 5-4 or required under Section 5-4" in subsections (A)(4)(a) through (A)(4)(c).

The 1999 amendment by P.A. 91-368, effective January 1, 2000, substituted "permitted or required under Section 5-805" for "permitted under Section 5-4 or required under Section 5-4" in subsections (A)(4)(a) through (A)(4)(c); and in subsection (E) inserted "or fire department" following "correctional institution" and made related changes.

The 2001 amendment by P.A. 92-415, effective August 17, 2001, added subsection (A)(11).

The 2005 amendment by P.A. 94-556, effective September 11, 2005, added (C)(1)(B)(vi) and (vii), and added (C)(2)(B)(vi) and (vii); and made related changes.

The 2007 amendment by P.A. 95-123, effective August 13, 2007, in the introductory paragraph of (C) added "presiding over matters pursuant to this Act", and deleted the former second sentence, which read: "The State's Attorney, the minor, his parents, guardian and counsel shall at all times have the right to examine court files and records"; and added (C)(0.1) through (C)(0.4).

The 2009 amendment by P.A. 96-212, effective August 10, 2009, added (A-1).

The 2011 amendment by P.A. 96-1551, effective July 1, 2011, substituted "Sections 11-1.20 through 11-1.60 or 12-13 through 12-16" for "Sections 12-13 through 12-16" in (D).

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In General

The predecessor to this section precluded a trial judge from considering any juvenile record in sentencing the defendant, short of a juvenile record containing a finding of delinquency. People v. Chumbley, 106 Ill. App. 3d 72, 62 Ill. Dec. 13, 435 N.E.2d 811 (4 Dist. 1982).

Admission Versus Guilty Plea

A juvenile admission of guilt, although entitled to protection at least equal to that constitutionally required for the making of a guilty plea, is not the same as an adult guilty plea. Once a guilty plea is entered, nothing remains but to give judgment and determine punishment; in contrast, an admission authorizes the court to find the minor to be delinquent, but the court may then dismiss the petition and discharge the minor. People v. R.B., 81 Ill. App. 3d 462, 36 Ill. Dec. 727, 401 N.E.2d 568 (2 Dist. 1980).

Application

This section applies to abuse and neglect proceedings; that subdivisions (C)(1) and (C)(2) allow public access to some information in some delinquency cases merely reflects the greater protection accorded abused minors. In re K.D., 279 Ill. App. 3d 1020, 216 Ill. Dec. 861, 666 N.E.2d 29 (2 Dist. 1996).

Neither proper police investigation of a minor nor the admission of statements or confessions obtained by the police thwarted or subverted the purpose of the former Juvenile Court Act (see now 705 ILCS 405/1-1 et seq.), in general or of former Ill. Rev. Stat., ch. 37, para. 702-9(1) (see now this section). People v. Zepeda, 47 Ill. 2d 23, 265 N.E.2d 647 (1970).

Completion of Supervision

While it was error for the trial judge to have considered the defendant's placement on, and successful completion of, supervision under a prior similar provision, the error was harmless due to his poor probationary record. People v. Chumbley, 106 Ill. App. 3d 72, 62 Ill. Dec. 13, 435 N.E.2d 811 (4 Dist. 1982).

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Confession

Where defendant's statement was not obtained as a result of juvenile court proceedings and was obtained by law enforcement personnel prior to any juvenile proceedings and existed independently of such proceedings, this section did not bar the admission of the confession. People v. Clements, 135 Ill. App. 3d 1001, 90 Ill. Dec. 696, 482 N.E.2d 675 (1 Dist. 1985).

Cross Examination Policy

Scope of cross-examination pursuant to prior similar provision was within the discretion of the trial court, which should balance the importance of the youthful witness' testimony against the state's policy of preserving the anonymity of a juvenile offender. People v. Holsey, 30 Ill. App. 3d 716, 332 N.E.2d 699 (1 Dist. 1975).

Disclosure of Juvenile Records

Dismissal of the brother's case was affirmed because he failed to file timely objections to the magistrate's report and recommendation and given his numerous delays and missed deadlines dismissal was appropriate; however, the sister could not be held responsible for any delays or missteps in her brother's case, further, dismissal was an inappropriate sanction of the sister's pro se case where the district court required the sister to waive the confidentiality of her juvenile records, without considering that 705 ILCS 405/1-8(c) allowed for the inspection of the records and defendants had already accessed the records without her permission. Brokaw v. Brokaw, F.3d , 2005 U.S. App. LEXIS 5470 (7th Cir. Mar. 30, 2005).

In the action for negligent supervision of their 15 year old son, the parents' motion for a protective order was granted in that the parents did not have to provide copies of any Illinois juvenile court pleadings in their possession because 705 ILCS 405/1-8(A) and 705 ILCS 405/5-901(1)(a)-(b) limited inspection and copying of juvenile court records related to a minor who was the subject of a proceeding to those involved in the proceeding or related proceedings, and it was for the juvenile court to decide whether the minor should have been allowed to inspect the court files based on either of the two cited exceptions under 705 ILCS 405/1-8(A) or 705 ILCS 405/5-901(5); however, to the extent that the parents knew of any Illinois juvenile proceedings involving their son, the parents would be required to disclose the case number and court for any such proceedings as well as their knowledge of the proceedings and any underlying conduct. A.K. v. G.V., F. Supp. 2d , 2004 U.S. Dist. LEXIS 7570 (N.D. Ill. Apr. 29, 2004).

The defendant school district was entitled to discovery of the plaintiff's juvenile court records in an action alleging that it discriminated on the basis of sex, retaliated against the plaintiff, and intentionally inflicted emotional distress upon the plaintiff as the defendant was a properly interested person who sought to inspect the records to enable it to defend against the action. Landon v. Oswego Unit Sch. Dist. # 308, F. Supp. 2d , 2001 U.S. Dist. LEXIS 1394 (N.D. Ill. Feb. 12, 2001).

The trial court erred in releasing the respondent's juvenile court records to the owner of an apartment complex, which was engaged in a civil action arising from the respondent's murder of a five year old child in a vacant apartment at the complex. People v. J.R., 307 Ill. App. 3d 175, 240 Ill. Dec. 375, 717 N.E.2d 468 (1 Dist. 1999).

Protective confidentiality provisions preventing the use of a juvenile adjudication to impeach the credibility of a defense witness do not amount to an absolute prohibition against disclosure of juvenile records. People v. Puente, 98 Ill. App. 3d 936, 54 Ill. Dec. 25, 424 N.E.2d 775 (1 Dist. 1981).

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Defendant's contention that a motion should have been allowed because the use of a fingerprint taken when he was a juvenile violated former Ill. Rev. Stat., ch. 37, para. 702-8 (see now 705 ILCS 405/1-7), and arguing that it thereupon became the duty of the state to prove that such print was not used as evidence in the juvenile proceedings was an interpretation of 725 ILCS 5/114-12 which was the exact opposite of the express language of this section, and his contentions were rejected. People v. Christiansen, 118 Ill. App. 2d 51, 254 N.E.2d 156 (2 Dist. 1969).

The inclusions of a juvenile commitment in the probation officer's report, which report was in the possession of the court, was not deemed reversible error under the former language of this section. People v. Bauer, 111 Ill. App. 2d 211, 249 N.E.2d 859 (2 Dist. 1969).

Due Process

If it is apparent from the record that the minor was aware of the consequences of his admissions, that is, that he understood his right against self-incrimination, his right to confront his accusers, and his right to a trial, and that by his admissions he waived these rights and gave the court authority to enter a disposition permitted by this Act, then the requirements of due process have been sufficiently satisfied. People v. R.B., 81 Ill. App. 3d 462, 36 Ill. Dec. 727, 401 N.E.2d 568 (2 Dist. 1980).

Exclusion of Testimony

- Error Found

Probation officer was an officer of the Juvenile Court and thus could not testify concerning statements made to him by defendant while he served in that capacity; therefore, those statements should have been barred under former Ill. Rev. Stat., ch. 37, para. 702-9 (see now this section). People v. Kavinsky, 91 Ill. App. 3d 784, 47 Ill. Dec. 90, 414 N.E.2d 1206 (1 Dist. 1980).

- Harmless Error

Where the jury was not presented with any relevant evidence from the testimony of the probation officer that it did not otherwise receive from the remainder of the state's case, the failure of the trial court to exclude the testimony was harmless error beyond a reasonable doubt. People v. Kavinsky, 91 Ill. App. 3d 784, 47 Ill. Dec. 90, 414 N.E.2d 1206 (1 Dist. 1980).

- Proper

The trial court did not abuse its discretion in its limitation of the cross-examination of the minor witness regarding charges against her under a prior similar provision where she was not the only witness to the offense, her testimony was substantially corroborated by another witness, and defendant was permitted to inquire of this witness whether any promises had been made to her by the State's attorney or police. People v. Eatherly, 78 Ill. App. 3d 777, 34 Ill. Dec. 77, 397 N.E.2d 533 (2 Dist. 1979).

Ineffective Counsel

Where social investigation to which a defendant objected was compiled pursuant to an adjudication of delinquency, but that finding of delinquency was later vacated, an objection to the inclusion of the investigation in the defendant's presentence report probably would have been sustained under a prior similar provision; yet, even assuming that his trial counsel did commit error in failing to object, this single mistake was not sufficient to state that counsel's representation was below constitutional standards and any prejudice was slight. People v. McNeal, 56 Ill. App. 3d 132, 13 Ill. Dec. 834, 371 N.E.2d 926 (1 Dist. 1977).

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Legislative Intent

This Act was not intended to erect a shield between minors and criminal prosecution in all cases, but, where possible, to accomplish rehabilitation and the treatment of a juvenile's emotional and family problems through guidance, care and supervision. People v. Zepeda, 47 Ill. 2d 23, 265 N.E.2d 647 (1970).

Officers of Court

It could not logically be contended that officers of the Chicago Police Department and Assistant State's attorneys, who were charged with the responsibilities of apprehending and prosecuting criminals, were officers of the juvenile court within the meaning of this section, which clearly was intended to embrace juvenile probation officers and their assistants. People v. Hester, 39 Ill. 2d 489, 237 N.E.2d 466 (1968).

Photographs

Where defendant made no showing that Juvenile Bureau photographs had been used in evidence in a juvenile court proceeding, and where the photographs themselves, although "mug shots," had not been used in evidence in a juvenile court proceeding, and did not constitute an attestation that defendant had at one time been subject to a proceeding under this Act, the trial court properly overruled defendant's objection to the admission of the photographs. People v. Lewis, 95 Ill. App. 3d 82, 50 Ill. Dec. 533, 419 N.E.2d 641 (2 Dist. 1981).

Presentence Report

The inclusion in a defendant's presentence report of a social investigation report which had been compiled as part of his juvenile record under a prior similar provision was proper. People v. McNeal, 56 Ill. App. 3d 132, 13 Ill. Dec. 834, 371 N.E.2d 926 (1 Dist. 1977).

Release

Without evidence the information in minor's file is essential to Alcohol, Tobacco and Firearm agent's alleged investigation, subdivision (A)(2) could not provide a basis for release of records. In re W.L., 293 Ill. App. 3d 818, 228 Ill. Dec. 403, 689 N.E.2d 275 (2 Dist. 1997).

Social Investigations

Written reports of social investigations were evidence admissible at dispositional hearings authorized by the Act and were thus within the ambit of the phrase "records of disposition and evidence" as used in a prior similar provision. People v. McNeal, 56 Ill. App. 3d 132, 13 Ill. Dec. 834, 371 N.E.2d 926 (1 Dist. 1977).

Supreme Court Rules

From the language of Rule 402, Supreme Court Rules, it is apparent that it was adopted for the purpose of assuring certain procedural rights to defendants in criminal proceedings; nothing in the Rules suggests its intended application to other than criminal cases, and this section clearly indicates that proceedings under this Act are not criminal. In re Beasley, 66 Ill. 2d 385, 6 Ill.

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Dec. 202, 362 N.E.2d 1024 (1977), cert. denied, 434 U.S. 1016, 98 S. Ct. 734, 54 L. Ed. 2d 761 (1978).

Use of Juvenile Record

- Aggravation and Mitigation

A juvenile record may be used in aggravation and mitigation in allowing the trial court to render a proper disposition in subsequent criminal matters when the individual is no longer subject to the jurisdiction of the juvenile court. People v. Mareno, 43 Ill. App. 3d 556, 2 Ill. Dec. 425, 357 N.E.2d 592 (1 Dist. 1976).

- Impeachment

Where juvenile accomplice who testified for the People was permitted to enter a plea to a juvenile court petition charging delinquency on the basis of theft under $150 for his part in the armed robbery, for which defendant was convicted, and defense counsel sought to impeach the witness' credibility with his record of conviction, which the trial court refused to allow because of a prior similar provision, whether the testimony of a minor co-defendant was crucial, necessary to conviction, or merely cumulative, its weight and credibility were to be weighed on the same scales and by the same tests as any other witness, and the exclusion of the juvenile's conviction record was reversible error. People v. Hamilton, 17 Ill. App. 3d 740, 308 N.E.2d 216 (4 Dist. 1974).

Voluntary Admissions

Although in principle, an admonition, when given, should be given correctly, the misstatement by the judge as to the potential length of incarceration did not result in the automatic conversion of the respondent's voluntary admissions to involuntary ones where respondent gave his admissions of guilt voluntarily in exchange for the state's agreement to drop three of the six charges pending against him, not in exchange for any specific length of confinement. People v. R.B., 81 Ill. App. 3d 462, 36 Ill. Dec. 727, 401 N.E.2d 568 (2 Dist. 1980).

In defendant's trial for murder, it was not a violation of a prior similar provision to admit into evidence police officer's testimony that defendant had, as a juvenile, previously admitted having a particular nickname and belonging to a particular gang. People v. Hutchins, 9 Ill. App. 3d 447, 292 N.E.2d 494 (1 Dist. 1972).

The trial court's error in admitting the statement of juvenile who had not been taken to a juvenile officer did not involve an infringement of the constitutional rights of the defendant, and the error was harmless since independent evidence amply supported the conviction. People v. Zepeda, 116 Ill. App. 2d 246, 253 N.E.2d 598 (1 Dist. 1969), aff'd, 47 Ill. 2d 23, 265 N.E.2d 647 (1970).

Witness at Criminal Trial

Trial court did not abuse its discretion by limiting cross-examination of minor witness who was a victim of indecent liberties performed by defendant where the minor was not the only witness to the crime, nor was he the crucial identification witness. People v. Holsey, 30 Ill. App. 3d 716, 332 N.E.2d 699 (1 Dist. 1975).

LEGAL PERIODICALS

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For note, "Disclosing the Identities of Juvenile Felons: Introducing Accountability to Juvenile Justice," see 27 Loy. U. Chi. L.J. 349 (1996).

For article, "Illinois Lifts the Veil on Juvenile Conviction Records," see 83 Ill. B.J. 402 (1995).

For article, "Reporter's Privilege and Juvenile Anonymity: Two Confidentiality Policies on a Collision Course," see 16 Loy. U. Chi. L.J. 43 (1984-85).

RESEARCH REFERENCES

What constitutes legitimate research justifying inspection of state or local public records not open to inspection by general public. 40 ALR4th 333.

Propriety of exclusion of press or other media representatives from civil trial. 39 ALR5th 103.

§§ 705 ILCS 405/1-8.1, 705 ILCS 405/1-8.2: Repealed by P.A. 90-590, § 2001-15, effective January 1, 1999.

§ 705 ILCS 405/1-9. Expungement of law enforcement and juvenile court records

Sec. 1-9. Expungement of law enforcement and juvenile court records. (1) Expungement of law enforcement and juvenile court delinquency records shall be governed by Section 5-915 [705 ILCS 405/5-915].

(2) This subsection (2) applies to expungement of law enforcement and juvenile court records other than delinquency proceedings. Whenever any person has attained the age of 17 or whenever all juvenile court proceedings relating to that person have been terminated, whichever is later, the person may petition the court to expunge law enforcement records relating to incidents occurring before his 17th birthday or his juvenile court records, or both, if the minor was placed under supervision pursuant to Sections 2-20, 3-21, or 4-18, and such order of supervision has since been successfully terminated.

(3) The chief judge of the circuit in which an arrest was made or a charge was brought or any judge of that circuit designated by the chief judge may, upon verified petition of a person who is the subject of an arrest or a juvenile court proceeding pursuant to subsection (2) of this Section, order the law enforcement records or juvenile court records, or both, to be expunged from the official records of the arresting authority and the clerk of the circuit court. Notice of the petition shall be served upon the State's Attorney and upon the arresting authority which is the subject of the petition for expungement.

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(Source: P.A. 85-601; 90-590, § 2001-10.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 801-9.

Effect of Amendments. The 1998 amendment by P.A. 90-590, effective January 1, 1999, rewrote subsections (1) and (2).

§ 705 ILCS 405/1-10: Repealed by P.A. 90-590, § 2001-15, effective January 1, 1999.

§ 705 ILCS 405/1-11. Designation of special courtrooms

Sec. 1-11. Designation of special courtrooms. Special courtrooms may be provided in any county for the hearing of all cases under this Act.

(Source: P.A. 85-601.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 801-11.

Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 11:08 Special courtrooms.

§ 705 ILCS 405/1-12. [Liability of state officials or employees]

Sec. 1-12. Neither the State, any unit of local government, probation department, public or community service program or site, nor any official, volunteer, or employee thereof acting in the course of their official duties shall be liable for any injury or loss a person might receive while performing public or community service as ordered either (1) by the court or (2) by any duly authorized station or probation adjustment, teen court, community mediation, or other administrative diversion program authorized by this Act for a violation of a penal statute of this State or a local government ordinance (whether penal, civil, or quasi-criminal) or for a traffic offense, nor shall they be liable for any

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tortious acts of any person performing public or community service, except for wilful, wanton misconduct or gross negligence on the part of such governmental unit, probation department, or public or community service program or site or on the part of the official, volunteer, or employee.

(Source: P.A. 85-1209; 91-820, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 801-12.

Cross References.

For the performance of public service as a condition of a minor's release, or to make restitution for damages, see 705 ILCS 405/5-6.

Effect of Amendments. The 2000 amendment by P.A. 91-820, effective July 13, 2000, rewrote the section to the extent that a detailed comparison would be impracticable.

§ 705 ILCS 405/1-13. [Employee status]

Sec. 1-13. No minor assigned to a public or community service program by either a court or an authorized diversion program shall be considered an employee for any purpose, nor shall the county board be obligated to provide any compensation to such minor.

(Source: P.A. 85-1209; 91-820, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 801-13.

Effect of Amendments. The 2000 amendment by P.A. 91-820, effective July 13, 2000, inserted "by either a court or an authorized diversion program".

§ 705 ILCS 405/1-14: Repealed by P.A. 90-590, § 2001-15, effective January 1, 1999.

§ 705 ILCS 405/1-15. Wrong Venue or Inadequate Service

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Sec. 1-15. Wrong Venue or Inadequate Service. (a) All objections of improper venue are waived by a party respondent unless a motion to transfer to a proper venue is made by that party respondent before the start of an adjudicatory hearing conducted under any Article of this Act. No order or judgment is void because of a claim that it was rendered in the wrong venue unless that claim is raised in accordance with this Section.

(b) A party respondent who either has been properly served, or who appears before the court personally or by counsel at the adjudicatory hearing or at any earlier proceeding on a petition for wardship under this Act leading to that adjudicatory hearing, and who wishes to object to the court's jurisdiction on the ground that some necessary party either has not been served or has not been properly served must raise that claim before the start of the adjudicatory hearing conducted under any Article of this Act. No order or judgment is void because of a claim of inadequate service unless that claim is raised in accordance with this Section.

(Source: P.A. 86-1012; 86-1475.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 801-15.

CASE NOTES

Analysis

Constitutionality
- Due Process
- Separation of Powers
Conflict with Rule 366
Interpretation
Jurisdiction
Waiver

Constitutionality

Because subsection (b) allows service of notice to parents in violation of the constitutional guarantee of due process of law, the section improperly infringes on a constitutional right without applying any of the safeguards required for a valid waiver of a constitutional right and therefore, the section is unconstitutional.

- Due Process

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Subsection (b) infringes upon a parent's constitutional right to receive adequate notice of a juvenile proceeding involving a minor child. In re C.R.H., 251 Ill. App. 3d 102, 190 Ill. Dec. 389, 621 N.E.2d 258 (2 Dist. 1993), aff'd, 163 Ill. 2d 263, 20 Ill. Dec. 100, 644 N.E.2d 1153 (1994).

- Separation of Powers

By statutorily constraining a reviewing court from considering the issue of notice in juvenile cases in subsection (b), the legislature encroaches upon judicial power and thereby violates the separation of powers clause of our constitution.

Conflict with Rule 366

Subsection (b) conflicts with Rule 366(a)(5), Supreme Court Rules, since it curtails the court's ability to review the notice issue and when a statute directly and irreconcilably conflicts with a rule of the court on a matter within the court's authority, the rule will prevail.

Interpretation

Minor is the party respondent contemplated under subsection (b) instead of juvenile's mother. In re C.R.H., 251 Ill. App. 3d 102, 190 Ill. Dec. 389, 621 N.E.2d 258 (2 Dist. 1993), aff'd, 163 Ill. 2d 263, 20 Ill. Dec. 100, 644 N.E.2d 1153 (1994).

Jurisdiction

Unless juvenile's claim of inadequate service of notice could be deemed waived, the circuit court's orders adjudicating him a delinquent and sentencing him to the Department of Corrections were void for lack of jurisdiction.

A jurisdictional claim was not waived because the respondents failed to bring it to the attention of the trial court below. People v. Day, 138 Ill. App. 3d 783, 93 Ill. Dec. 206, 486 N.E.2d 307 (4 Dist. 1985).

Waiver

Subsection (b) qualifies the due process right to notice by mandating waiver if an objection to inadequate notice is not timely made.

Principles of waiver are equally applicable to proceedings involving respondent minors under this Act. People v. T.L.B., 184 Ill. App. 3d 213, 132 Ill. Dec. 534, 539 N.E.2d 1340 (4 Dist. 1989).

Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 11:06 Timely objections to venue and jurisdiction.

§ 705 ILCS 405/1-16. Order of protection; status

Sec. 1-16. Order of protection; status. Whenever relief is sought regarding any type of custody matter under this Act, the court, before granting relief, shall determine whether any order of protection has previously been entered in the instant proceeding or any other

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proceeding in which any party, or a child of any party, or both, if relevant, has been designated as either a respondent or a protected person.

(Source: P.A. 87-743.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 801-16.

Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 11:07 Order of protection.

§ 705 ILCS 405/1-17. [Designation of private agency for court proceedings]

Sec. 1-17. With respect to any minor for whom the Department of Children and Family Services Guardianship Administrator is appointed the temporary custodian or guardian, the Guardianship Administrator may designate in writing a private agency or an employee of a private agency to appear at court proceedings and testify as to the factual matters contained in the casework files and recommendations involving the minor. The private agency or the employee of a private agency must have personal and thorough knowledge of the facts of the case in which the appointment is made. The designated private agency or employee shall appear at the proceedings. If the Court finds that it is in the best interests of the minor that an employee or employees of the Department appear in addition to the private agency or employee of a private agency, the Court shall set forth the reasons in writing for their required appearance.

(Source: P.A. 87-1147, § 1.)

Effective Date. Section 2 of P.A. 87-1147 made this section effective upon becoming law. The Act was approved September 17, 1992.

§ 705 ILCS 405/1-18. Administrative Office of the Illinois Courts; report

Sec. 1-18. Administrative Office of the Illinois Courts; report. The Administrative Office of the Illinois Courts shall study the fiscal impact of the implementation of Public Act 90-590 (the Juvenile Justice Reform Provisions of 1998) which is under its authority and submit a report of that study to the General Assembly within 12 months after the enactment of that Act. The Administrative Office may, in addition to other requests,

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make a request for funding of the implementation of that Act.

(Source: P.A. 91-357, § 236.)

Note.

P.A. 91-357, § 996 contains a "no acceleration or delay" provision, and P.A. 91-357, § 997 contains a "no revival or extension" provision.

Effective Date. This section became effective July 29, 1999, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

ARTICLE II.

ABUSED, NEGLECTED OR DEPENDENT MINORS

§ 705 ILCS 405/2-1. Jurisdictional facts

Sec. 2-1. Jurisdictional facts. Proceedings may be instituted under the provisions of this Article concerning boys and girls who are abused, neglected or dependent, as defined in Sections 2-3 or 2-4 [705 ILCS 405/2-3 or 705 ILCS 405/2-4].

(Source: P.A. 85-601.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-1.

Cross References.

For receipt of classified reports by guardians ad litem, see 325 ILCS 5/7.8.

CASE NOTES

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Analysis

Constitutionality
Abuse of Minor
- Partial Summary Judgment
Abuse Proceedings
Adjudication of Wardship
Collateral Estoppel
- Prior Marriage Dissolution Proceeding
General Limitations Statute
Jurisdiction
- Final Judgment
- Not Usurped
Parens Patriae
Parental Fitness
Review of Custody Determination

Constitutionality

The gender/age distinction of former Ill. Rev. Stat., ch. 37, para. 702-1 (see now this section) was neither invidious nor arbitrary and was well within the legislative discretion. People v. Pardo, 47 Ill. 2d 420, 265 N.E.2d 656 (1970).

Abuse of Minor

- Partial Summary Judgment

Trial court's summary finding of abuse alone was properly rendered because it pertained to a portion of the relief sought (i.e., wardship). People v. W.L., 152 Ill. App. 3d 25, 105 Ill. Dec. 288, 504 N.E.2d 157 (1 Dist. 1987).

Abuse Proceedings

Statutory requirement that there be corroboration and cross-examination of a minor's previous statements relating to claims of abuse or neglect did not apply to proceedings that were concerned with temporary custody, such as 705 ILCS 405/2-10, 705 ILCS 405/2-9(1), and 705 ILCS 405/5-501(2). Temporary custody proceedings involved determinations about whether a minor should be placed outside the home, rather than determinations of abuse and neglect made in such proceedings under 705 ILCS 405/2-1 where such evidentiary limitations would more naturally apply. People v. Jacqueline M. (In re I.H.), 238 Ill. 2d 430, 345 Ill. Dec. 532, 939 N.E.2d 375, 2010 Ill. LEXIS 1541 (2010).

Adjudication of Wardship

Since wardship had not been delineated a jurisdictional fact by the legislature and, because this Act must be liberally construed, there have been and will be circumstances where the lack of an explicit adjudication of wardship would not be a material departure fatal to the proceeding. People v. Martin, 48 Ill. App. 3d 341, 6 Ill. Dec. 500, 363 N.E.2d 29 (1 Dist. 1977).

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Collateral Estoppel

- Prior Marriage Dissolution Proceeding

The state was not collaterally estopped from pursuing a juvenile petition to have a minor declared abused by his father and made a ward of the court, even though in a prior dissolution of marriage proceeding no sexual child abuse by the father was found, where the state was not a party to the dissolution of marriage nor in privity with the mother. People v. Anderson, 152 Ill. App. 3d 1033, 106 Ill. Dec. 72, 505 N.E.2d 378 (2 Dist. 1987).

General Limitations Statute

There is no conflict between the proposition that the juvenile court might retain jurisdiction over an individual until he reaches the age of 21, and the fact that the general statute of limitations for commencement of a personal injury action would apply to the individual upon his attaining the age of 18 years, because such individual may be emancipated for purposes of the general statute of limitations under 735 ILCS 5/13-202 and 735 ILCS 5/13-212, and yet remain subject to the jurisdiction of the juvenile court. Krzyzak v. Pillay, 57 Ill. App. 3d 478, 15 Ill. Dec. 202, 373 N.E.2d 548 (1 Dist. 1978).

Jurisdiction

- Final Judgment

Where the juvenile trial court ordered that an abused minor child remain in the custody of her parents, where there was no adjudication of wardship, and that the case be closed, the court clearly retained no jurisdiction over any issue; therefore, the judgment handed down was final. People v. W.L., 152 Ill. App. 3d 25, 105 Ill. Dec. 288, 504 N.E.2d 157 (1 Dist. 1987).

- Not Usurped

Trial court had jurisdiction to award the Department of Children and Family Services custody of mother's seventh baby the day after he was born in Indiana based on the allegations in the petition that the child was neglected. People v. Hollis (In re D.S.), 354 Ill. App. 3d 251, 293 Ill. Dec. 691, 828 N.E.2d 1189, 2004 Ill. App. LEXIS 1591 (4 Dist. 2004), aff'd, 217 Ill. 2d 306, 298 Ill. Dec. 781, 840 N.E.2d 1216 (2005).

Where a trial court did not hold a second neglect hearing after two children were removed from their mother's custody for the second time, the mother waived any argument that the trial court lacked jurisdiction because she never raised the claim at any point during the proceedings, and, even if the alleged error was preserved for review, (1) the children's return home after the trial court first adjudicated them as neglected did not "reset" the procedural process or erase the adjudication of neglect, and (2) ultimately, even if the failure to conduct a second hearing was error, that error did not divest the trial court of jurisdiction. People v. Lynette H.F. (In re Jaron Z.), 348 Ill. App. 3d 239, 284 Ill. Dec. 455, 810 N.E.2d 108, 2004 Ill. App. LEXIS 457 (1 Dist. 2004), appeal denied, 211 Ill. 2d 578, Ill. Dec. , 823 N.E.2d 966 (2004).

The juvenile court did not usurp jurisdiction over the action pending in the divorce division because it possessed jurisdiction to decide whether two girls for whom a guardian had been appointed by the divorce division were in a condition of neglect. People v. Anast, 22 Ill. App. 3d 750, 318 N.E.2d 18 (1 Dist. 1974).

Parens Patriae

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In appropriate circumstances, the state, as parens patriae, may properly step in and substitute itself as the guardian of minors within its jurisdiction; such circumstances include where parents are unable to care for children in their custody. People v. D.L., 226 Ill. App. 3d 177, 168 Ill. Dec. 280, 589 N.E.2d 680 (1 Dist.), cert. denied, 146 Ill. 2d 628, 176 Ill. Dec. 799, 602 N.E.2d 453 (1992).

The responsibility of government in its character as parens patriae to care for infants within its jurisdiction and to protect them from neglect, abuse and fraud is codified in this Act, which permits the state to interfere when parents fail to exercise the care of children that circumstances justly demand, whether such failure is wilful or unintentional. In re Bauer, 82 Ill. App. 3d 294, 37 Ill. Dec. 715, 402 N.E.2d 717 (1 Dist. 1980).

Parental Fitness

Under the statutory requirements of the former Juvenile Court Act (see now 705 ILCS 405/1-1 et seq.), a petition to adjudicate a neglected child did not require allegations concerning the issue of parental fitness. People v. Smith, 95 Ill. App. 3d 373, 50 Ill. Dec. 883, 420 N.E.2d 200 (4 Dist. 1981).

Review of Custody Determination

A court of review will not disturb a trial court's determination in a child custody case unless the trial court exceeded its broad discretion, or the court's determination results in manifest injustice or is palpably against the weight of the evidence. People v. D.L., 226 Ill. App. 3d 177, 168 Ill. Dec. 280, 589 N.E.2d 680 (1 Dist.), cert. denied, 146 Ill. 2d 628, 176 Ill. Dec. 799, 602 N.E.2d 453 (1992).

LEGAL PERIODICALS

For note, "Guardians Ad Litem: The Guardian Angels of Our Children in Domestic Violence Courts", see 30 Loy. U. Chi. L.J. 281 (1999).

For note, "In re E.G.: The Right of Mature Minors in Illinois to Refuse Lifesaving Medical Treatment," see 21 Loy. U. Chi. L.J. 1199 (1989-90).

For note and comment, "Psychological Evaluations: Their Use and Misuse in Illinois Child Abuse and Neglect Cases," see, 54 DePaul L. Rev. 971 (2005).

RESEARCH REFERENCES

Legal malpractice in defense of parents at proceedings to terminate parental rights over dependent or neglected children. 18 ALR5th 902.

§ 705 ILCS 405/2-2. Venue

Sec. 2-2. Venue. (1) Venue under this Article lies in the county where the minor resides or is found.

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(2) If proceedings are commenced in any county other than that of the minor's residence, the court in which the proceedings were initiated may at any time before or after adjudication of wardship transfer the case to the county of the minor's residence by transmitting to the court in that county an authenticated copy of the court record, including all documents, petitions and orders filed therein, and the minute orders and docket entries of the court. Transfer in like manner may be made in the event of a change of residence from one county to another of a minor concerning whom proceedings are pending.

(Source: P.A. 85-601.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-2.

CASE NOTES

Analysis

Change of Residence
Jurisdiction
- In General
- Found
- Not Affected by Improper Venue
- Residence Inapplicable
Juvenile Proceedings
- Civil in Nature

Change of Residence

Where the minors resided in one county when the original petition was filed, venue was not defeated by their subsequent move to another county since the trial court never transferred venue to the county of the minors' residence. Sullivan v. Sullivan, 110 Ill. App. 3d 714, 66 Ill. Dec. 435, 442 N.E.2d 1348 (5 Dist. 1982).

Jurisdiction

- In General

Under a prior similar provision, a court had jurisdiction in child dependency cases provided only that the child was in the county at the date of the dependency petition. In re Bartha, 87 Ill. App. 2d 263, 230 N.E.2d 886 (2 Dist. 1967).

- Found

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Where, at the outset of the hearing, counsel for the respondents informed the court that the minors were staying with family in the county and were available to appear in court if necessary, the minors could be "found" in the county and venue was established in that manner. Sullivan v. Sullivan, 110 Ill. App. 3d 714, 66 Ill. Dec. 435, 442 N.E.2d 1348 (5 Dist. 1982).

- Not Affected by Improper Venue

Neglect proceedings may appropriately be labeled civil proceedings in both the legal and lay sense of the word; consequently, improper venue could not have deprived the court of jurisdiction and an order requiring payment of attorney fees may not be challenged as void on jurisdictional grounds. Sullivan v. Sullivan, 110 Ill. App. 3d 714, 66 Ill. Dec. 435, 442 N.E.2d 1348 (5 Dist. 1982).

- Residence Inapplicable

The legal residence of the child does not technically affect the jurisdiction of the court, so long as the child is physically present within the state. Sullivan v. Sullivan, 110 Ill. App. 3d 714, 66 Ill. Dec. 435, 442 N.E.2d 1348 (5 Dist. 1982).

Since this section expressly provides for venue in the county where the minor "is found" and permits transfer at the court's discretion to the county of residence, the state's reading of the venue requirement to allow proceedings only in the county of the minor's residence was not tenable. Sullivan v. Sullivan, 110 Ill. App. 3d 714, 66 Ill. Dec. 435, 442 N.E.2d 1348 (5 Dist. 1982).

Juvenile Proceedings

- Civil in Nature

The Illinois Code of Civil Procedure (735 ILCS 5/1-101 et seq.) applies to juvenile proceedings when the minor's liberty is not at issue and when no other section specifically regulates the procedure in question; this Act does not preempt the change of venue provision, and because abuse and neglect proceedings do not involve a minor's liberty, they are appropriately considered civil proceedings. Dominique F. v. People, 204 Ill. App. 3d 271, 149 Ill. Dec. 544, 561 N.E.2d 1240 (1 Dist. 1990), aff'd, 145 Ill. 2d 311, 164 Ill. Dec. 639, 583 N.E.2d 555 (1991).

OPINIONS OF ATTORNEY GENERAL

Analysis

Residence

Resides or Is Found

Residence

The language of this section indicates that "residence" includes the place in which a child is living at the time of filing of the petition. 1979 Op. Atty. Gen. 118.

Resides or Is Found

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The reference to the place in which the child "resides or is found" includes the place in which he is living at the time of institution of the suit; consequently, a child in the care of an individual or agency "resides or is found" there for the purposes of determining venue. 1979 Op. Atty. Gen. 118.

§ 705 ILCS 405/2-3. Neglected or abused minor

Sec. 2-3. Neglected or abused minor. (1) Those who are neglected include:

(a) any minor under 18 years of age who is not receiving the proper or necessary support, education as required by law, or medical or other remedial care recognized under State law as necessary for a minor's well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter, or who is abandoned by his or her parent or parents or other person or persons responsible for the minor's welfare, except that a minor shall not be considered neglected for the sole reason that the minor's parent or parents or other person or persons responsible for the minor's welfare have left the minor in the care of an adult relative for any period of time, who the parent or parents or other person responsible for the minor's welfare know is both a mentally capable adult relative and physically capable adult relative, as defined by this Act; or

(b) any minor under 18 years of age whose environment is injurious to his or her welfare; or

(c) any newborn infant whose blood, urine, or meconium contains any amount of a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act [720 ILCS 570/102], as now or hereafter amended, or a metabolite of a controlled substance, with the exception of controlled substances or metabolites of such substances, the presence of which in the newborn infant is the result of medical treatment administered to the mother or the newborn infant; or

(d) any minor under the age of 14 years whose parent or other person responsible for the minor's welfare leaves the minor without supervision for an unreasonable period of time without regard for the mental or physical health, safety, or welfare of that minor; or

(e) any minor who has been provided with interim crisis intervention services under Section 3-5 of this Act [705 ILCS 405/3-5] and whose parent, guardian, or custodian refuses to permit the minor to return home unless the minor is an immediate physical danger to himself, herself, or others living in the home.

Whether the minor was left without regard for the mental or physical health, safety, or welfare of that minor or the period of time was unreasonable shall be determined by considering the following factors, including but not limited to:

(1) the age of the minor;

(2) the number of minors left at the location;

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(3) special needs of the minor, including whether the minor is physically or mentally handicapped, or otherwise in need of ongoing prescribed medical treatment such as periodic doses of insulin or other medications;

(4) the duration of time in which the minor was left without supervision;

(5) the condition and location of the place where the minor was left without supervision;

(6) the time of day or night when the minor was left without supervision;

(7) the weather conditions, including whether the minor was left in a location with adequate protection from the natural elements such as adequate heat or light;

(8) the location of the parent or guardian at the time the minor was left without supervision, the physical distance the minor was from the parent or guardian at the time the minor was without supervision;

(9) whether the minor's movement was restricted, or the minor was otherwise locked within a room or other structure;

(10) whether the minor was given a phone number of a person or location to call in the event of an emergency and whether the minor was capable of making an emergency call;

(11) whether there was food and other provision left for the minor;

(12) whether any of the conduct is attributable to economic hardship or illness and the parent, guardian or other person having physical custody or control of the child made a good faith effort to provide for the health and safety of the minor;

(13) the age and physical and mental capabilities of the person or persons who provided supervision for the minor;

(14) whether the minor was left under the supervision of another person;

(15) any other factor that would endanger the health and safety of that particular minor.

A minor shall not be considered neglected for the sole reason that the minor has been relinquished in accordance with the Abandoned Newborn Infant Protection Act [325 ILCS 2/1 et seq.].

(2) Those who are abused include any minor under 18 years of age whose parent or immediate family member, or any person responsible for the minor's welfare, or any person who is in the same family or household as the minor, or any individual residing in the same home as the minor, or a paramour of the minor's parent:

(i) inflicts, causes to be inflicted, or allows to be inflicted upon such minor physical injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;

(ii) creates a substantial risk of physical injury to such minor by other than accidental means which would be likely to cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function;

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(iii) commits or allows to be committed any sex offense against such minor, as such sex offenses are defined in the Criminal Code of 1961, as amended [720 ILCS 5/1-1 et seq.], or in the Wrongs to Children Act [720 ILCS 150/0.01 et seq.], and extending those definitions of sex offenses to include minors under 18 years of age;

(iv) commits or allows to be committed an act or acts of torture upon such minor;

(v) inflicts excessive corporal punishment;

(vi) commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services defined in Section 10-9 of the Criminal Code of 1961 [720 ILCS 5/10-9], upon such minor; or

(vii) allows, encourages or requires a minor to commit any act of prostitution, as defined in the Criminal Code of 1961, and extending those definitions to include minors under 18 years of age.

A minor shall not be considered abused for the sole reason that the minor has been relinquished in accordance with the Abandoned Newborn Infant Protection Act.

(3) This Section does not apply to a minor who would be included herein solely for the purpose of qualifying for financial assistance for himself, his parents, guardian or custodian.

(Source: P.A. 86-275; 86-659; 88-85, § 90; 88-479, § 5; 88-670, § 2-63; 89-21, § 15-15; 90-239, § 15; 92-408, § 95; 92-432, § 95; 95-443, § 10; 96-168, § 5; 96-1464, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-3.

Cross References.

For the right of any current foster parent and the agency designated as custodian of a minor who has been adjudicated an abused or neglected minor under this section to be given adequate notice when a proceeding may change the custody or status of the minor, see 705 ILCS 405/1-5.

For the requirement that a petition or supplemental petition sufficiently allege that a minor is abused, neglected, or delinquent, see 705 ILCS 405/2-13.

For the requirement that a court not proceed with an adjudicatory hearing until 10 days after service by publication on any parent, guardian, or legal custodian, see 705 ILCS 405/2-16.

For proof needed to allege neglect for failure to provide education, see 705 ILCS 405/2-18.

For the kinds of dispositional orders made with respect to minors found to be neglected or abused under this section, see 705 ILCS 405/2-23.

For the limitation that no agency may place a minor adjudicated under this section in a child-care facility unless the placement is in compliance with certain rules and regulations found in 20 ILCS 505/5, see 705 ILCS 405/2-27.

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As to court review which cannot restore custody of a minor to any parent, guardian or legal custodian where the minor is found to be neglected or abused under this section, see 705 ILCS 405/2-28.

For the provision that an agency shall file a petition alleging that a minor is neglected or abused when the parent, guardian or legal custodian refuses to permit the minor to return home and no other living arrangement is found, see 705 ILCS 405/3-5.

For provision allowing a shelter care hearing for a minor described in this section to proceed ex parte if the petitioner is unable to serve notice on the party respondent, see 705 ILCS 405/3-12.

For the duty of the probation department, when authorized or directed, to receive, investigate and evaluate complaints indicating dependency, see 705 ILCS 405/6-1.

Effect of Amendments. The 2001 amendment by P.A. 92-408, effective August 17, 2001, inserted "A minor shall not be considered neglected for the sole reason that the minor has been relinquished in accordance with the Abandoned Newborn Infant Protection Act" twice, once following (d)(15) and once as the next-to-last paragraph.

The 2001 amendment by P.A. 92-432, effective August 17, 2001, inserted the last paragraph of subsection (1) and the last paragraph of subsection (2).

Although the amendments to this section by P.A. 92-408, § 95 and P.A. 92-432, § 95 did not take into account the amendments by the other, the amendments have been combined into a single version by the publisher.

The 2007 amendment by P.A. 95-443, effective January 1, 2008, in the definition of "Neglected child" added (e) and made related changes.

The 2009 amendment by P.A. 96-168, effective August 10, 2009, in (1)(a) inserted "parent or", twice inserted "or persons", inserted "or parents", added "who the parent or parents or other person responsible for the minor's welfare know is both a mentally capable adult relative and physically capable adult relative, as defined by this Act", and made related changes.

The 2010 amendment by P.A. 96-1464, effective August 20, 2010, inserted "or in the Wrongs to Children Act" in (2)(iii); added (2)(vi) and (2)(vii); and made related changes.

CASE NOTES

Analysis

Constitutionality
In General
Abuse
- Shown
Abuse of Minor
- Collateral Estoppel
- Intent
- Not Shown
- Pornographic Photographs
- Presence of Guardian

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- Prima Facie Showing
- Prior Parental Abuse
- Protection of State
- Separate Trials Unnecessary
- Torture

Adjudication of Wardship
- Authority of Court
- Properly Denied
- Psychiatrist Privilege

Admissibility of Court Reports
Application and Construction
- Relation to Former Adoption Act

Appointment of Guardian
Best Interests of Minor
- In General

Construction With Other Laws
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- Excessive

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Constitutionality

Where it appeared that no substantial constitutional question was raised, the district judge properly dismissed the overbreadth and vagueness issue; there was no indication that plaintiff was attempting to express anything of a protected nature in absenting himself from school. Sheehan v. Scott, 520 F.2d 825 (7th Cir. 1975).

Former Ill. Rev. Stat., ch. 37, para. 702-4 (see now this section) did not deprive mother of due process of law, was not vague and overly broad as to lack of adequate notice of what parental acts it proscribed, did not foster selective and discriminatory enforcement by prosecuting officials and courts, and did not include within its coverage parental acts which were constitutionally protected. People v. Schoos, 15 Ill. App. 3d 964, 305 N.E.2d 560 (1 Dist. 1973).

As a matter of due process of law, unwed father was entitled to a hearing on his fitness as a parent before his children were taken from him, and by presuming unwed father was unfit, denying him a hearing and extending it to all other parents whose custody of their children was challenged, the state denied unwed father the equal protection of the laws guaranteed by U.S. Const., Amend. XIV. Stanley v. Illinois, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972).

In General

An injurious environment or substantial risk of harm are sufficient for a finding of neglect or abuse. In re M.K., 271 Ill. App. 3d 820, 208 Ill. Dec. 242, 649 N.E.2d 74 (4 Dist. 1995), appeal denied, 163 Ill. 2d 558, 212 Ill. Dec. 421, 657 N.E.2d 622 (1995).

Neglect is viewed as the failure to exercise the care that circumstances justly demand and encompasses parental duty; it is not, however, fixed in definition and takes its meaning from the specific circumstances of each case. People ex rel. Walter B. v. Anita B., 227 Ill. App. 3d 746, 169 Ill. Dec. 787, 592 N.E.2d 274 (1 Dist.), cert. denied, 146 Ill. 2d 649, 176 Ill. Dec. 819, 602 N.E.2d 473 (1992).

Abuse

- Shown

Evidence of burns on two children, caused by an accident which occurred when one child was ironing clothes, another child took the iron away, and the iron fell and hit them, in conjunction with the squalid conditions in the respondent's home and her refusal to address her cocaine addiction, were sufficient to support a finding of abuse. People v. Cynthia N. (In re Jerome F.), 325 Ill. App. 3d 812, 259 Ill. Dec. 42, 757 N.E.2d 905, 2001 Ill. App. LEXIS 375 (1 Dist. 2001).

Abuse of Minor

- Collateral Estoppel

The state was not collaterally estopped from pursuing a juvenile petition to have a minor declared abused by his father and made a ward of the court, even though in a prior dissolution of marriage proceeding no sexual child abuse by the father was found, where the state was not a party to the

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dissolution of marriage nor in privity with the mother. People v. Anderson, 152 Ill. App. 3d 1033, 106 Ill. Dec. 72, 505 N.E.2d 378 (2 Dist. 1987).

- Intent

Although the legal guardian argued that there was no evidence of intent to harm a minor child, pursuant to 705 ILCS 405/2-3(2)(i), there was no requirement for intent to be shown; however, the evidence submitted to the court included a caseworker who testified that the minor had stated that the looped marks on his body were the product of being whipped by the guardian's son, and the minor's statements were corroborated when the caseworker specifically noted that she had seen loop marks on his back and legs, marks on his face, a dark bruise on his eye, and that there were old marks and fresh marks. People v. H.W. (In the Interest of F.S.), 347 Ill. App. 3d 55, 282 Ill. Dec. 499, 806 N.E.2d 1087, 2004 Ill. App. LEXIS 194 (1 Dist. 2004).

The trial court erred in requiring evidence of intent to harm or punish in order to make a finding of abuse. In re Marcus H., 297 Ill. App. 3d 1089, 232 Ill. Dec. 120, 697 N.E.2d 862 (1 Dist. 1998).

- Not Shown

Court's order finding respondent unfit was not supported by any evidence where she had no notice that her fitness as a parent due to a physical abuse allegation was to be tried; the Department of Child and Family Services report recommended return of custody to the respondent and did not make any reference to the respondent's unfitness; the prosecutor, the guardian ad litem, the mother's attorney, and the father's attorney recommended return of the child to the mother; and the petition did not allege any involvement by her in the abuse and did not refer to her unfitness. People v. Wright, 184 Ill. App. 3d 194, 132 Ill. Dec. 531, 539 N.E.2d 1337 (4 Dist. 1989).

- Pornographic Photographs

Where respondent father took a series of photographs of his six-year-old daughter which displayed the child's genitals in a manner that appeared to be suggestive of sexual activity, these photographs later formed the basis for the father's conviction for creating child pornography, and respondent mother testified in her discovery deposition that she was present during the photo session and that she saw nothing wrong with their content, the trial court properly exercised its discretion concluding that the state's evidence supported the finding that minor child had been abused by her parents and that the home environment created by such conduct had been injurious to her welfare. People v. W.L., 152 Ill. App. 3d 25, 105 Ill. Dec. 288, 504 N.E.2d 157 (1 Dist. 1987).

- Presence of Guardian

Despite the fact that there was no requirement that a guardian be present, pursuant to 705 ILCS 405/2-3(2)(ii), during an episode of abuse, the evidence submitted to the court alleged that the guardian did not feed the four-year-old minor and that the guardian's son beat the minor with an extension cord while the guardian was present in the home. People v. H.W. (In the Interest of F.S.), 347 Ill. App. 3d 55, 282 Ill. Dec. 499, 806 N.E.2d 1087, 2004 Ill. App. LEXIS 194 (1 Dist. 2004).

- Prima Facie Showing

The doctor's testimony that victim's injuries were consistent with immersion in a bath, and were inconsistent with an injury caused by a fallen tea kettle, constituted a prima facie evidence that the victim was abused. In re Marcus H., 297 Ill. App. 3d 1089, 232 Ill. Dec. 120, 697 N.E.2d 862 (1 Dist. 1998).

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Trial court's conclusion that minor child was not proved to be an abused child was error where the state presented a prima facie case of abuse which was unrebutted; even assuming that the evidence adduced did not establish that the child's mother or paramour caused the child's injuries, it clearly established that they allowed the child to be seriously physically injured by non-accidental means, and the best interests of the child required that he become a ward of the court. People v. Simmons, 127 Ill. App. 3d 943, 82 Ill. Dec. 681, 469 N.E.2d 215 (5 Dist. 1984).

- Prior Parental Abuse

When faced with evidence of prior abuse by parents, the juvenile court should not be forced to refrain from taking action until each particular child suffers an injury. People v. Bariffe, 63 Ill. App. 3d 328, 20 Ill. Dec. 39, 379 N.E.2d 872 (1 Dist. 1978).

- Protection of State

A parent does not have the privilege of inflicting brutal treatment upon each of his children in succession before they may individually obtain the protection of the state. People v. Bariffe, 63 Ill. App. 3d 328, 20 Ill. Dec. 39, 379 N.E.2d 872 (1 Dist. 1978).

- Separate Trials Unnecessary

Separate trials for two parents were not required merely because only one parent participated in conduct which allegedly caused the death of that parent's step-child. People v. Butt, 76 Ill. App. 3d 587, 32 Ill. Dec. 54, 395 N.E.2d 1 (2 Dist. 1979).

- Torture

The term "torture" includes conduct that involves solely the infliction of emotional harm, mental pain and suffering, mental anguish, and agony. In re A.G., 325 Ill. App. 3d 429, 258 Ill. Dec. 835, 757 N.E.2d 524, 2001 Ill. App. LEXIS 699 (1 Dist. 2001), appeal denied, 198 Ill. 2d 591, 262 Ill. Dec. 619, 766 N.E.2d 239 (2002).

Adjudication of Wardship

Trial court did not err in dismissing the State's petitions for adjudication of wardship regarding the two minors, as evidence in the record supported the trial court's finding that the State had not proven that the two minor children had been abused or neglected since the evidence was conflicting on the cause of the one minor child's injuries. People v. Rocio T. (In re Gustavo H.), 362 Ill. App. 3d 802, 298 Ill. Dec. 907, 841 N.E.2d 50, 2005 Ill. App. LEXIS 1166 (1 Dist. 2005), appeal denied, 218 Ill. 2d 539, 303 Ill. Dec. 3, 850 N.E.2d 808 (2006).

Findings were abundant that a mother's conduct was neglect under 705 ILCS 405/2-3(1)(b) and abuse under 705 ILCS 405/2-3(2)(ii) to satisfy the State's burden of proof and to justify making the mother's children wards of the court under 705 ILCS 405/1-3(6) and 705 ILCS 405/2-22. The mother falsely reported illnesses for some of her children, which led to them receiving improper care, she gave other children dangerous doses of medications, which threatened their lives, and she deprived one of her children of proper nutrition while arguing that child was difficult to feed, yet the child thrived under hospital care when properly fed. Since the record showed neglect and abuse to several of the mother's children, anticipatory neglect to the remaining children was sufficiently shown. People v. B.T. (In re K.T.), 361 Ill. App. 3d 187, 297 Ill. Dec. 38, 836 N.E.2d 769, 2005 Ill. App. LEXIS 941 (1 Dist. 2005).

- Authority of Court

Where the trial court found that the child, age two, was abused and neglected and made the child a ward of the court pursuant to 705 ILCS 405/2-3(2)(ii), 705 ILCS 405/2-4(1)(a), and 705 ILCS 405/2-22(1), based upon the father's abuse of the child's half brother, the determination was

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supported by sufficient evidence; the inculpatory hearsay statement of the child's sibling regarding the abuse of the child's half brother was corroborated by a doctor's report, and the mother admitted that the father struck the half brother. People v. Maxwell (In re C.M.), 351 Ill. App. 3d 913, 286 Ill. Dec. 839, 815 N.E.2d 49, 2004 Ill. App. LEXIS 985 (4 Dist. 2004).

A dispositional hearing declaring children as wards of the court immediately followed an adjudicatory hearing in which the court found the children neglected within the meaning of 705 ILCS 405/2-3(1)(b) of the Juvenile Court Act of 1987, where the written adjudication order had not yet been entered. People v. Todd (In re Timothy T.), 343 Ill. App. 3d 1260, 279 Ill. Dec. 191, 799 N.E.2d 994, 2003 Ill. App. LEXIS 1340 (4 Dist. 2003).

- Properly Denied

Dispositional order returning child to her parents' custody was not error. People ex rel. Monica S. v. Valerica S., 263 Ill. App. 3d 619, 202 Ill. Dec. 189, 637 N.E.2d 728 (1 Dist. 1994).

- Psychiatrist Privilege

In an adjudication of wardship of a neglected minor under a prior similar provision (see now this section), although it was error for the trial court to allow a psychiatrist to testify as to what the child's mother told him in their confidential relationship, it was not reversible error, since sufficient and competent evidence was introduced to the same effect. People v. Carthen, 66 Ill. App. 3d 780, 23 Ill. Dec. 816, 384 N.E.2d 723 (1 Dist. 1978).

Admissibility of Court Reports

At a hearing held to adjudicate the issue of whether children were neglected by their parents, the information contained in court reports was not admissible where much of the information was gleaned from third party sources, was a distillation of the file, and was conclusionary and rank hearsay. People v. Brady, 7 Ill. App. 3d 404, 287 N.E.2d 537 (4 Dist. 1972).

Application and Construction

- Relation to Former Adoption Act

Section 1(D)(l) of the former Adoption Act (see now 750 ILCS 50/1 (D)(m)) was enacted by the legislature to apply only to children who were adjudicated neglected under former Ill. Rev. Stat., ch. 37, para. 702-4 (see now this section). People v. Jankowski, 38 Ill. App. 3d 95, 347 N.E.2d 474 (1 Dist. 1976).

Appointment of Guardian

Minor children's best interests were served by appointing probation officer rather than their natural father as their legal guardian and leaving the children in the custody of their stepmother. Harstad v. People, 337 Ill. App. 74, 84 N.E.2d 855 (1 Dist. 1949).

Best Interests of Minor

- In General

In dependency and neglect proceedings, both the State's attorney and the court are charged with the duty of ensuring that at each step of the wardship adjudication process the best interests of the minor, the minor's family, and the community are served. In re A.F., 234 Ill. App. 3d 1010, 176 Ill. Dec. 826, 602 N.E.2d 480 (1 Dist. 1991).

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Construction With Other Laws

The Appellate Court of Illinois construes § 214(b)(5) of the Illinois Domestic Violence Act of 1986, 750 ILCS 60/214(b)(5), in pari materia with the definition of neglect of a minor in § 2-3(1) of the Illinois Juvenile Court Act of 1987, 705 ILCS 405/2-3(1). Mowen v. Holland, 336 Ill. App. 3d 368, 270 Ill. Dec. 605, 783 N.E.2d 180, 2003 Ill. App. LEXIS 29 (4 Dist. 2003).

Corporal Punishment

While a fight ensued between an adoptive mother and a 15 year old minor, the fight arose because the minor defied the mother and the series of events happened quickly and were one continuous punishment. The corporal punishment was excessive under 705 ILCS 405/2-3(2)(v) as biting and scratching exceeded the bounds of reasonableness; thus, the minor was properly made a ward of the court. People v. Demetrius H. (In re B.H.), 389 Ill. App. 3d 316, 329 Ill. Dec. 55, 905 N.E.2d 893, 2009 Ill. App. LEXIS 152 (1 Dist. 2009).

A 13 year old minor was not a neglected minor on the basis of excessive corporal punishment, notwithstanding that her stepfather hit her with a belt and that her mother did not intervene, where: (1) the minor disobeyed household rules, stayed out all night, associated with persons likely to get her into trouble, and had problems at school, and (2) the corporal punishment was inflicted after the minor had sex with a cousin. People v. McClendon, 309 Ill. App. 3d 702, 243 Ill. Dec. 144, 722 N.E.2d 1213 (4 Dist. 2000), appeal denied, 188 Ill. 2d 565, 246 Ill. Dec. 123, 729 N.E.2d 496 (2000).

Mother's use of a wooden spoon to discipline her child was not "excessive corporal punishment". In re J.P., 294 Ill. App. 3d 991, 229 Ill. Dec. 565, 692 N.E.2d 338 (1 Dist. 1998).

- Excessive

Where there was testimony by a social worker and the boys' father that the whipping by respondent of her seven-year-old son with a belt was vicious and unreasonable and exceeded the bounds of proper parental force, and during consultations with a therapist and a Department of Children and Family Services social worker, respondent had admitted to whipping the boys with a belt, the evidence established excessive, unreasonable or vicious abuse. People v. English M., 189 Ill. App. 3d 392, 136 Ill. Dec. 795, 545 N.E.2d 319 (1 Dist. 1989).

The paddling or spanking, at least fifty strokes and perhaps as many as one hundred strokes by each parent, administered to the boy's unclothed buttocks and rear and side thighs by means of a leather belt, rose to the level of excessive corporal punishment and the judge did not abuse his discretion or decide against the manifest weight of the evidence in finding neglect based upon physical abuse by both parents. People v. Conekin, 107 Ill. App. 3d 902, 63 Ill. Dec. 516, 438 N.E.2d 254 (5 Dist. 1982).

Deceased Child

The wording of this section includes a deceased child in the definition of abused minor, provided the child's death was caused by physical injury inflicted by one of the classes of persons described in the section; therefore the court is authorized to determine whether that deceased child was an abused minor and there is no jurisdictional bar to continuing abuse case after a child's death. In re L.W., 291 Ill. App. 3d 619, 225 Ill. Dec. 629, 683 N.E.2d 1292 (4 Dist. 1997).

Determination of Status

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- Parental Termination Proceeding

Where minors were previously found dependent by the trial court and temporary custody given to Department of Children and Family Services, there would be no reason to require a new determination to be made in parental termination proceeding; the petition alleging that mother was unfit and setting forth the specific grounds which were the basis for that assertion pleaded the essential elements of the cause of action for termination. In re R.K., 247 Ill. App. 3d 512, 187 Ill. Dec. 294, 617 N.E.2d 502 (3 Dist. 1993).

Determinative Factors

- Reasonableness of Parental Conduct

The degree of physical injury inflicted upon a child is not the exclusive or determinative factor in evaluating the reasonableness of the parental conduct, of concern, also, is the likelihood of future punishment which may be more injurious, the psychological effects of the discipline on the child, and the circumstances surrounding the discipline, including whether the parent was calmly attempting to discipline the child or whether the parent was lashing out in anger. In re F.W., 261 Ill. App. 3d 894, 199 Ill. Dec. 769, 634 N.E.2d 1123 (4 Dist. 1994).

- Two Part Test

In determining whether a child has been subjected to abuse or neglect, the court will look to the specific circumstances surrounding such allegation, and then ask whether the person responsible for the care of the minor has failed to exercise the care that circumstances justly demand. People v. W.L., 152 Ill. App. 3d 25, 105 Ill. Dec. 288, 504 N.E.2d 157 (1 Dist. 1987).

Evidence Held Insufficient

Evidence was insufficient to establish that two minor children were neglected where that determination was made based on their mother's failure to follow a safety plan; the safety plan was implemented as a result of a shelter-care hearing but should never have been created because the State failed to establish probable cause at the shelter-care hearing for the trial court's finding that one of the children had been sexually abused by their mother's boyfriend. People v. Jaqueline M. (In re Ivan H.), 382 Ill. App. 3d 1093, 321 Ill. Dec. 882, 890 N.E.2d 604, 2008 Ill. App. LEXIS 544 (1 Dist. 2008).

- Guardianship Determination

Where respondent had pled guilty to the involuntary manslaughter of her stepdaughter, and the problems between them were claimed by the respondent to be due to the interference of the paternal grandmother and the natural father, who allegedly favored the abused child over the respondent's own child, and a recurrence of what occurred was unlikely, then the evidence at the trial did not establish the jurisdictional facts necessary to award the guardianship of the respondent's other children to the administrator. People v. Butt, 76 Ill. App. 3d 587, 32 Ill. Dec. 54, 395 N.E.2d 1 (2 Dist. 1979).

- Housing Conditions

Although the parents and their eight children all lived in a single motel room, the court reversed a determination that the children were neglected where the record demonstrated that the children were uniformly described as well-adjusted individuals who excelled in the classroom and took an active part in school functions; school officials described them as model students; in interviews, they were properly attired, clean and responsible; and, instead of being overwhelmed by their circumstances, they appeared to be progressing well through childhood, despite where they lived.

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People v. M.N. (In re N.), 309 Ill. App. 3d 996, 243 Ill. Dec. 375, 723 N.E.2d 678, 1999 Ill. App. LEXIS 854 (2 Dist. 1999).

- Injurious Environment

Trial court's finding that the seven-year-old daughter of a hoarder was neglected because of an environment injurious to the daughter's welfare was against the manifest weight of the evidence where the mother cooperated and all of the allegations of an injurious environment had been cleaned up before the petition was filed. People v. Rebekah W. (In re R.W.), 401 Ill. App. 3d 1100, 341 Ill. Dec. 556, 930 N.E.2d 1070, 2010 Ill. App. LEXIS 573 (3 Dist. 2010).

The court's determination that two children were subjected to an injurious environment was against the manifest weight of the evidence where: (1) the evidence adduced was devoid of any instance in which the children's mother abused or mistreated them in any way and, in fact, quite the opposite was shown to be true, and (2) there was no evidence that the mother's temper, though admittedly strong, posed any harm to her children. People v. Ca. R. (In re N.B.), 191 Ill. 2d 338, 246 Ill. Dec. 621, 730 N.E.2d 1086, 2000 Ill. LEXIS 651 (2000).

A trial court's finding that the home environment of a five-year-old deaf and mute girl was not injurious was supported by evidence of only infrequent unsanitary conditions and insufficient evidence of other abuses, such as smoking around the child, who suffered from bronchial problems, absences from school, burns on her arms, and lack of a hearing aid. In re J.H., 153 Ill. App. 3d 616, 106 Ill. Dec. 569, 505 N.E.2d 1360 (2 Dist. 1987).

- Neglect

Trial court's finding of neglect of the children due to an injurious environment was against the weight of the evidence, 705 ILCS 405/2-3, where the Pediatric Resource Center records were improperly admitted as a business record under 705 ILCS 405/2-18(4)(a) and the mother and her boyfriend responded appropriately to the incident. People v. Lisa P. (In re A.P.), Ill. App. 3d , Ill. Dec. , N.E.2d , 2012 Ill. App. LEXIS 38 (3 Dist. Jan. 20, 2012).

Appellate court found that a trial court's decision that child was neglected was against the manifest weight of the evidence where the mother's alleged words to her daughter were not enough to prove emotional abuse, the allegations of phyiscal abuse were not proven and the child's credibility was questionable. People v. Moore (In re E.M.), 328 Ill. App. 3d 633, 262 Ill. Dec. 846, 766 N.E.2d 1149, 2002 Ill. App. LEXIS 308 (4 Dist. 2002).

Evidence was insufficient to support a finding of neglect, notwithstanding that the respondent was alert, but confused, highly intoxicated, and uncooperative with authorities when a social worker stopped by her home for a visit where there was no evidence that the respondent failed to provide the care necessary for the child's well-being. People v. C.W. (In re T.W.), 313 Ill. App. 3d 890, 247 Ill. Dec. 209, 731 N.E.2d 982, 2000 Ill. App. LEXIS 476 (2 Dist. 2000), appeal denied, 191 Ill. 2d 532, 250 Ill. Dec. 457, 738 N.E.2d 926 (2000).

Where prior finding of child neglect was based on past sibling abuse, the trial court abused its discretion and made a finding of neglect, contrary to the manifest weight of the evidence, as it was uncontradicted that child had always been in perfect health, mother sought and completed counseling services since prior neglect findings, and caseworker testified that the child was not at risk. In re Edricka C., 276 Ill. App. 3d 18, 212 Ill. Dec. 383, 657 N.E.2d 78 (1 Dist. 1995), appeal denied, 165 Ill. 2d 551, 214 Ill. Dec. 858, 662 N.E.2d 424 (1996).

The trial court's finding of neglect was against the manifest weight of the evidence. People v. Nitz, 54 Ill. App. 3d 851, 11 Ill. Dec. 503, 368 N.E.2d 1111 (3 Dist. 1977), aff'd, 76 Ill. App. 3d 15, 31 Ill. Dec. 685, 394 N.E.2d 887 (1979).

The evidence did not establish that a newborn child was a neglected child under the terms of this Act where at best, the testimony presented by the state established that two social workers with

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limited contact with the mother of the minor did not believe her to be a fit and proper person to raise the child and there was no evidence to establish that the child was neglected as that term was used in the Act; at most, the court was asked to speculate as to the future care of the child. In re Nyce, 131 Ill. App. 2d 481, 268 N.E.2d 233 (1 Dist. 1971).

- Risk of Harm

Although at birth the infant tested positive for cocaine, the evidence presented at the ajudicatory hearing supported a finding that the infant died accidentally, from asphyxia while the mother and infant were sleeping on the couch and these facts did not require a conclusion that anything the mother did in connection with the infant's death created a substantial risk of physical harm to the other children. In re K.G., 288 Ill. App. 3d 728, 224 Ill. Dec. 534, 682 N.E.2d 95 (1 Dist. 1997).

- Sexual Abuse

A trial court's finding that a five-year-old deaf and mute girl was not sexually abused by her father was supported by the lack of corroboration of the child's statements, the conclusions of the expert witness based on miniscule details, the opportunities for contamination of the child's perceptions, and speculative medical evidence. In re J.H., 153 Ill. App. 3d 616, 106 Ill. Dec. 569, 505 N.E.2d 1360 (2 Dist. 1987).

Evidence Held Sufficient

Finding that the children were neglected was supported by the evidence and the finding that the mother was unfit was not against the manifest weight of the evidence, because the child, who was just over a month old had head injuries that were inflicted and caused by abusive head trauma, and the mother still had services to complete, including a psychiatric evaluation and counseling. People v. Anna R. (In re R.R.), 409 Ill. App. 3d 1041, 350 Ill. Dec. 721, 949 N.E.2d 209, 2011 Ill. App. LEXIS 414 (3 Dist. 2011).

Trial court's ruling that minors were abused and neglected was not against the manifest weight of the evidence, as the trial court found a daughter to be a very credible witness as to her abuse, in contrast with its findings that the mother was simply not credible. In addition to the prolonged sexual abuse of a sibling, the record disclosed incidents of physical violence toward a son and threats of physical violence to both the daughter and the son. People v. B.M.-B. (In the Interest of D.W.), 386 Ill. App. 3d 124, 325 Ill. Dec. 139, 897 N.E.2d 387, 2008 Ill. App. LEXIS 1059 (1 Dist. 2008).

Considering the totality of the evidence, which included the father's pattern of erratic behavior that included a total of eight incidents, two of which involved physical violence, the trial court's order adjudicating the children as neglected under 705 ILCS 405/2-3(1)(b) was not against the weight of the evidence, even though four of the incidents were not in the presence of the children. People v. P.W. (In re A.W.), 231 Ill. 2d 241, 325 Ill. Dec. 194, 897 N.E.2d 733, 2008 Ill. LEXIS 1420 (2008).

Evidence regarding the neglect of a child's sibling, which led to that sibling's death by malnutrition as a result of the mother's use of cannabis while breastfeeding and the mother's failure to supplement breast milk with formula, was admissible under 705 ILCS 405/2-18(3) on the issue of whether the child was also neglected under 705 ILCS 405/2-3(1)(b) for living in an injurious home environment. Proof in the record that the mother was continuing to suffer from self-abusive depression, that there was an incident of domestic violence, and that there was a history of drug use in the home justified the trial court's finding that there was a nexus between the prior injurious home environment that led to the sibling's death and the child's current home environment. The trial court did not have to wait for the child to be injured in order to act, the trial court properly adjudicated the child neglected, and the trial court properly made the child a ward of the State in the guardianship of the department of children and family services. People v. Amber P. (In re T.S-

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P), 362 Ill. App. 3d 243, 298 Ill. Dec. 150, 839 N.E.2d 137, 2005 Ill. App. LEXIS 1155 (3 Dist. 2005).

Trial court's finding that the father's children were neglected by reason of an injurious environment pursuant to 705 ILCS 405/2-3(1)(b) was not against the manifest weight of the evidence because the father knew the mother had been found unfit based upon physical abuse, but the father moved the children into a house where the mother was living. People v. Elmore R. (In re A.R.), 359 Ill. App. 3d 1071, 296 Ill. Dec. 852, 836 N.E.2d 375, 2005 Ill. App. LEXIS 959 (3 Dist. 2005), appeal denied, 217 Ill. 2d 563, 300 Ill. Dec. 365, 844 N.E.2d 37 (2005).

Findings were abundant that a mother's conduct was neglect under 705 ILCS 405/2-3(1)(b) and abuse under 705 ILCS 405/2-3(2)(ii) to satisfy the State's burden of proof and to justify making the mother's children wards of the court under 705 ILCS 405/1-3(6), 2-22. The mother falsely reported illnesses for some of her children, which led to them receiving improper care, she gave other children dangerous doses of medications, which threatened their lives, and she deprived one of her children of proper nutrition while arguing that child was difficult to feed, yet the child thrived under hospital care when properly fed. Since the record showed neglect and abuse to several of the mother's children, anticipatory neglect to the remaining children was sufficiently shown. People v. B.T. (In re K.T.), 361 Ill. App. 3d 187, 297 Ill. Dec. 38, 836 N.E.2d 769, 2005 Ill. App. LEXIS 941 (1 Dist. 2005).

Trial court properly found that a mother had neglected her children pursuant to 705 ILCS 405/2-3(1)(b), based on the mother's mental illness which had led to her be violent with the children, and her refusal to undergo treatment for her condition. People v. Perseta D. (In re Faith B.), 216 Ill. 2d 1, 295 Ill. Dec. 1, 832 N.E.2d 152, 2005 Ill. LEXIS 952 (2005).

In the neglect proceedings, where the mother argued that the State did not sufficiently prove that the children were minors under the age of 18, pursuant to 705 ILCS 405/2-3(1)(a), (b), the argument failed as there was sufficient circumstantial evidence in the record that the children were minors. People v. Reder (In re S.R.), 349 Ill. App. 3d 1017, 285 Ill. Dec. 406, 811 N.E.2d 1285, 2004 Ill. App. LEXIS 783 (4 Dist. 2004).

- Abuse

Minor was physically abused under 705 ILCS 405/2-3(2)(i), as the minor had sustained second and third-degree burns to about 30% of the minor's body. People v. Iola H. (In re J.C.), Ill. App. 3d , Ill. Dec. , 961 N.E.2d 825, 2011 Ill. App. LEXIS 1183 (1 Dist. 2011).

Trial court in a case involving an adjudication of wardship involving the mother's minor child due to the mother's admitted abuse of the minor child, as contemplated under 705 ILCS 405/2-3(2)(i) of the Juvenile Court Act of 1987, informed the mother that it would first determine whether the mother's admission was knowing and voluntary, and that a factual basis existed for the mother's admission. Since the trial court then engaged in an analysis to determine, to the extent possible whether the mother's acts or admissions contributed to the abuse, the trial court followed the procedure set forth in 705 ILCS 405/2-21(1), and the trial court could thus decide that the minor child should be made a ward of the court. People v. Izaguirre (In re C.J.), Ill. App. 3d , 355 Ill. Dec. 812, 960 N.E.2d 694, 2011 Ill. App. LEXIS 1137 (4 Dist. 2011).

Trial court finding that the victim was burned by immersion in a bathtub was sufficient to establish that he was burned by other than accidental means and the trial court erred in refusing to make a finding of abuse. In re Marcus H., 297 Ill. App. 3d 1089, 232 Ill. Dec. 120, 697 N.E.2d 862 (1 Dist. 1998).

The conduct of respondent's father, trying to touch sibling's sex organs and requesting that sibling touch his sex organs, supported trial court's adjudication that the minor was abused. In re M.D.H., 297 Ill. App. 3d 181, 231 Ill. Dec. 863, 697 N.E.2d 417 (4 Dist. 1998).

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The finding of neglect and the adjudication of wardship were supported by the manifest weight of the evidence where the record indicated that the child on several occasions had sustained serious marks and bruises on his body, had complained to police that his mother had beaten him, and a friend had seen her hit him in the face, where school officials observed serious bruises and scars on the child and contacted the authorities on three occasions to investigate possible abuse, and where there was other evidence leading the trial court to conclude that the child was physically abused, and that such abuse was caused by respondents. People v. Bariffe, 63 Ill. App. 3d 328, 20 Ill. Dec. 39, 379 N.E.2d 872 (1 Dist. 1978).

The court's determination that the child must be placed under the guardianship of the Illinois Department of Child and Family Services because the evidence established that her best interests would not be served by placing her in the parental home was supported by a preponderance of the evidence where the court found that there was abuse in the home. People v. Bariffe, 63 Ill. App. 3d 328, 20 Ill. Dec. 39, 379 N.E.2d 872 (1 Dist. 1978).

- Background of Divorce and Custody Dispute

Even though the accusations arose in the context of a separation, divorce, and custody dispute, the evidence supported a finding that respondent sexually abused his daughter; the physical evidence revealed by two medical exams supported a finding of sexual abuse and furthermore, the testimonial evidence of numerous persons who interviewed the little girl supported a finding of neglect and sexual abuse. In re Kr. K., 258 Ill. App. 3d 270, 197 Ill. Dec. 446, 631 N.E.2d 449 (2 Dist. 1994).

- Failure to Provide Support and Care

The state's evidence was sufficient to prove that respondent neglected her minor children by failing to provide the proper support and care necessary for their well-being where the testimony revealed numerous instances of irresponsible conduct by respondent in abruptly leaving the household without providing for the care of the minors, absence for days or weeks at a time without contacting the children or making her whereabouts known to them, making no arrangements with the grandmother to care for the minors during her absences, and providing little financial support to the children. People v. Thornton, 204 Ill. App. 3d 277, 149 Ill. Dec. 573, 561 N.E.2d 1269 (1 Dist. 1990).

- Injurious Environment

Evidence presented by the State was sufficient to show that the father had subjected the child to an "injurious environment" under the Juvenile Court Act, 705 ILCS 405/2-3(1)(b), such that the father could be found to have neglected the father's two minor children and they could be made wards of the court. It showed that the father had become sexually aroused while bathing one of the two children and that the father had exposed the father's penis to that same child. People v. Wells (In re Ch. W.), 408 Ill. App. 3d 541, 350 Ill. Dec. 361, 948 N.E.2d 641, 2011 Ill. App. LEXIS 208 (4 Dist. 2011).

Sufficient evidence was presented in an abuse and neglect proceeding against the mother to allow the trial court to order that the mother's three minor children be made wards of the court. The evidence presented showed that the environment in which they were growing up was injurious to their welfare, as recognized by 705 ILCS 405/2-3(1)(b), because the children were exposed to the mother and father engaging in domestic violence and substance abuse, and that the children were abused as contemplated by 705 ILCS 405/2-3(2)(iii) because all three children had been physically abused and two of them had been sexually abused by at least two different people. People v. Danielle T. (In re Alexis H.), 401 Ill. App. 3d 543, 340 Ill. Dec. 901, 929 N.E.2d 552, 2010 Ill. App. LEXIS 393 (1 Dist. 2010).

Finding that the child was not neglected, abused, or dependent due to an injurious environment because the father was the sole parent of the child and lived separately from the mother, who suffered from drug addiction, was against the manifest weight of the evidence, as the parents

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indicated in a stipulation that they lived together and there was no evidence that the mother lived anywhere other than with the father. People v. Melissa A. (In re Tyrese J.), 376 Ill. App. 3d 689, 315 Ill. Dec. 478, 876 N.E.2d 1068, 2007 Ill. App. LEXIS 1020 (1 Dist. 2007).

Trial court's finding of neglect under 705 ILCS 405/2-3(1)(b) because of an injurious environment was not against the manifest weight of the evidence. Abundant evidence was presented that there was an injurious environment based on the mother's continued placement of the children at risk of harm from the father of one of her children by her noncompliance with a safety plan, and her failure to be forthcoming about information as to the whereabouts of the father. People v. Margaret C. (In re Gabriel E.), 372 Ill. App. 3d 817, 310 Ill. Dec. 746, 867 N.E.2d 59, 2007 Ill. App. LEXIS 329 (1 Dist. 2007).

Determination that the child was neglected due to an injurious environment and abused because of a substantial risk of physical injury pursuant to 705 ILCS 405/2-3(l)(b), (2)(ii) was upheld as there was no evidence that the mother had made progress in ameliorating her drug problems and her compliance with drug screening was erratic and inconsistent. People v. Martha L. (In re Kenneth D.), 364 Ill. App. 3d 797, 301 Ill. Dec. 534, 847 N.E.2d 544, 2006 Ill. App. LEXIS 181 (1 Dist. 2006).

Evidence that a mother involved her four-year-old son in a theft was sufficient to establish an injurious environment. People v. Apreley R. (In re D.R.), 354 Ill. App. 3d 468, 290 Ill. Dec. 128, 820 N.E.2d 1195, 2004 Ill. App. LEXIS 1519 (3 Dist. 2004).

Trial court's determination that the parents' younger child was neglected was affirmed, as the court did not err in considering the father's abusive behavior towards hospital personnel and caseworkers in finding neglect through an injurious environment. People v. Catherine P. (In re J.P.), 331 Ill. App. 3d 220, 264 Ill. Dec. 464, 770 N.E.2d 1160, 2002 Ill. App. LEXIS 394 (1 Dist. 2002).

Trial court's determination that the parents' younger child was neglected was affirmed, where its finding was based on the child's current care and condition, not solely on the parents' past neglect of his sibling. People v. Catherine P. (In re J.P.), 331 Ill. App. 3d 220, 264 Ill. Dec. 464, 770 N.E.2d 1160, 2002 Ill. App. LEXIS 394 (1 Dist. 2002).

Evidence was sufficient to establish that the respondent father exposed his three children to an injurious environment in that he sexually molested one of the children and thereby neglected all three children by exposing them to an environment injurious to their welfare. In re B.J., 316 Ill. App. 3d 193, 249 Ill. Dec. 233, 735 N.E.2d 1058, 2000 Ill. App. LEXIS 739 (4 Dist. 2000).

A petition alleging that a minor repeatedly received unexplained bruises was sufficient to sustain a cause of action for injurious environment under former Ill. Rev. Stat., ch. 37, para. 702-4(2)(b) (see now this section). In re Weber, 181 Ill. App. 3d 702, 130 Ill. Dec. 361, 537 N.E.2d 428 (5 Dist. 1989).

- Interference with Medical Treatment

An examination of the record disclosed that the proof was clear and convincing and amply supported a finding of neglect on the part of the respondent where the respondent mother had a 14 year history of emotional problems and it was undisputed that she interfered with the minor's medical treatment after the child's third operation. People v. Calkins, 96 Ill. App. 3d 74, 51 Ill. Dec. 447, 420 N.E.2d 861 (3 Dist. 1981).

- Lack of Concern by Parent

The trial court's finding of neglect was not erroneous where the record showed that the mother was absent for several minutes and that during this time her three year old son was able to secure an electrical cord and beat his three week old infant brother with such severity that he sustained multiple skull fractures and apparently several abrasions upon other parts of his body,

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and where a lack of concern for the minor was further manifested by diaper rash caused by the parents' inattention to the infant's basic needs. People v. Robinson, 69 Ill. App. 3d 565, 26 Ill. Dec. 93, 387 N.E.2d 923 (1 Dist. 1979).

- Neglect

Trial court's finding that a parent's adopted child was a neglected minor pursuant to 705 ILCS 405/2-3(1)(a) was not against the manifest weight of the evidence, as there was ample evidence that the parent failed to provide the child with a place to live and showed a lack of concern about getting the child the necessary psychological care the child needed. People v. Marie M. (In re Diamond M.), Ill. App. 3d , 353 Ill. Dec. 923, 956 N.E.2d 1051, 2011 Ill. App. LEXIS 919 (1 Dist. 2011).

Trial court properly found that a child was neglected pursuant to 705 ILCS 405/2-3(1), as the evidence supported findings that the child was exposed to drugs at the time of her birth, and that the mother's continued drug abuse and inability or unwillingness to complete drug treatment put the child in an injurious environment. People v. Sharon H. (In re Sharena H.), 366 Ill. App. 3d 405, 304 Ill. Dec. 224, 852 N.E.2d 474, 2006 Ill. App. LEXIS 560 (1 Dist. 2006).

Evidence that showed that a mother tolerated, minimized or covered up a father's abuse of both the mother and her child and that the mother continued to feel that the father was not a problem even after learning that the father had broken three of the child's bones while the child was in his care, supported a finding of neglect against the mother under 705 ILCS 405/2-3(1)(b) due to the "injurious environment" the mother's home created with regard to the child's welfare. People v. Caroline M. (In re K.R.), 356 Ill. App. 3d 517, 292 Ill. Dec. 1006, 827 N.E.2d 535, 2005 Ill. App. LEXIS 379 (3 Dist. 2005).

Finding of neglect was not against the weight of the evidence, and trial court did not abuse its discretion in making children wards of the State in a case where it was the children's younger sibling who showed the most obvious signs of neglect, and the custodial parent was clearly identifiable as the perpetrator; the noncustodial parent failed to rebut the presumption that the older children were neglected as well, and the trial court, in making its disposition based on the children's best interests, was entitled to take into account the fact that the noncustodial parent had resumed living with the custodial parent, the source of the neglect. People v. Edward T. (In re Edward T.), 343 Ill. App. 3d 778, 278 Ill. Dec. 586, 799 N.E.2d 304, 2003 Ill. App. LEXIS 1155 (1 Dist. 2003).

Where the evidence showed that a mother refused her daughter shelter, refused to participate in facilitating a care plan, or attend parenting classes, the daughter was neglected and not merely a minor requiring authoritative intervention. People v. Debra T.-M. (In re Christina M.), 333 Ill. App. 3d 1030, 267 Ill. Dec. 852, 777 N.E.2d 655, 2002 Ill. App. LEXIS 891 (1 Dist. 2002), appeal denied sub nom. People v. Debra T.M. (In re Christina M.), 202 Ill. 2d 671, 272 Ill. Dec. 358, 787 N.E.2d 173 (2003).

Finding of neglect was proper where respondent left child with her father, who was an unsuitable caregiver, and who allowed his girlfriend to take the child. In re R.M., 283 Ill. App. 3d 469, 219 Ill. Dec. 149, 670 N.E.2d 827 (1 Dist. 1996).

Where there was 1) evidence respondent had a prior battery conviction for fondling, based upon which his oldest daughter had been adjudicated neglected and taken into protective custody; 2) evidence respondent was uncooperative with Department of Children and Family Services; and 3) evidence respondent refused to engage in sexual abuse counseling, the facts demonstrated an injurious environment and supported a finding of neglect. In re A.D.W., 278 Ill. App. 3d 476, 215 Ill. Dec. 308, 663 N.E.2d 58 (4 Dist. 1996).

In an adjudicatory hearing to determine wardship based upon neglect, as opposed to a dispositional hearing to terminate parental rights, evidence of abuse of a sibling was sufficient to

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establish a prima facie case of neglect based upon an injurious environment. David D. v. People, 202 Ill. App. 3d 1090, 148 Ill. Dec. 369, 560 N.E.2d 966 (1 Dist. 1990).

The trial court's finding of neglect under a prior similar provision was based not only on the stipulation of facts entered into by appellant, but also upon that entered into by the minor's mother, the custodial parent, whose stipulation alone was sufficient to support the finding of neglect by the court and its adjudication of wardship; furthermore, as the issue at the adjudicatory hearing was whether the child was neglected and not the fitness of his parents to care for him, the appointment of the public defender to represent the appellant was not so prejudicial within the context of the adjudicatory hearing as to warrant reversal of neglect finding. People v. Belton, 102 Ill. App. 3d 1005, 58 Ill. Dec. 31, 429 N.E.2d 1364 (1 Dist. 1981).

Adjudicatory finding of neglect was not an abuse of discretion and was supported by the manifest weight of the evidence. People v. Nitz, 76 Ill. App. 3d 15, 31 Ill. Dec. 685, 394 N.E.2d 887 (3 Dist. 1979).

Where immediately after birth, the child had been placed in foster care status in another state while the mother returned to Illinois and did not visit the child, had no plans at that time to raise him or make him part of her family and desired that he be adopted by someone, and even though the mother had been supporting the child, had not abandoned him and was not unfit, the court could still properly conclude that the child was neglected as to the care necessary for his well-being which dictated that the child be made a ward of the court for his protection and in consideration of his best interest. Mofrey v. Ritchie, 58 Ill. App. 3d 1045, 16 Ill. Dec. 414, 374 N.E.2d 1292 (2 Dist. 1978).

Where there was no evidence that the court failed to consider the child's welfare as its primary consideration, the trial court's finding of child neglect due to lack of proper or necessary care and injurious environment was not contrary to the manifest weight of the evidence. People v. Jones, 59 Ill. App. 3d 412, 17 Ill. Dec. 156, 376 N.E.2d 49 (1 Dist. 1978).

A finding of neglect was not contrary to the manifest weight of the evidence. People v. Gomez, 53 Ill. App. 3d 353, 11 Ill. Dec. 224, 368 N.E.2d 775 (1 Dist. 1977).

Evidence was adequate to find parents unfit and children neglected where testimony revealed that the children were left with neighbors for indefinite periods of time, that milk had to be borrowed because there was none available for the children, children were infected with diaper rash and sores on their bottoms and were dirty, flies covered the baby at times, the house was without heat at times, it was dirty inside and out, there was no running water or electricity, proper sanitation was lacking, screens were lacking on the doors, the outhouse had been knocked over and left that way for a long period of time, physical fights between the parents appeared to be a recurrent event, during these fights, the children were placed in a position where they could have been physically injured, and neither parent appeared to have the capacity or the desire to maintain steady employment. People ex rel. Farrand v. Garmon, 4 Ill. App. 3d 391, 280 N.E.2d 19 (4 Dist. 1972).

The trial court did not err in awarding custody of three minor children to persons other than the natural parents of the children where the behavior of the natural parents toward their children prior to the initiation of the custody proceedings was that of abuse, neglect and overt cruelty to the point that it showed a complete disdain for the condition or welfare of the children. People v. Hoerner, 6 Ill. App. 3d 994, 287 N.E.2d 510 (5 Dist. 1972).

- Neglect and Parental Fitness

Where evidence presented to the trial court showed that the mother had an almost continuous history of neglect with the minor child's other siblings, was involved in abusive relationships, had used illicit drugs in the past, and had a diminished cognitive ability, the trial court could find that the minor child was neglected pursuant to 705 ILCS 405/2-3(1)(b) under a theory of anticipatory neglect. Too, since the mother conceded that she was not able to care for, protect, train, or

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discipline the minor child, the trial court could also found that the mother was an unfit parent in the proceeding under the Juvenile Court Act, 705 ILCS 405/1-1, that the State filed against the mother. People v. T.C. (In re J.C.), 396 Ill. App. 3d 1050, 336 Ill. Dec. 695, 920 N.E.2d 1285, 2009 Ill. App. LEXIS 1325 (3 Dist. 2009).

- Neglect and Parental Unfitness

Where evidence showed that mother had abandoned her children, had failed to maintain a reasonable degree of interest, concern or responsibility as to their welfare and had deserted them for more than three months prior to the filing of the supplemental petitions, court properly found mother to be an unfit parent. In re Wright, 142 Ill. App. 3d 809, 97 Ill. Dec. 49, 492 N.E.2d 252 (5 Dist. 1986).

Findings of neglect and parental unfitness were not contrary to the manifest weight of the evidence but rather were well supported by the testimony of numerous witnesses despite testimony to the contrary by parents' witnesses. In re Wheeler, 86 Ill. App. 3d 564, 42 Ill. Dec. 46, 408 N.E.2d 424 (3 Dist. 1980).

- Neglected and Dependent Child

The evidence of the parents' behavior with reference to the minor child in their home environment was sufficient to support the finding of the trial court that the minor was a neglected and dependent child pursuant to prior similar provisions and sufficient for the court to find the natural parents to be unfit. People v. Powers, 94 Ill. App. 3d 646, 50 Ill. Dec. 151, 418 N.E.2d 1145 (2 Dist. 1981).

The finding of neglect and dependency was proper where the trial court heard evidence that there was no food in the house or any way of preparing food, there was no refrigerator, no beds, no running water or gas, the commode was full of excrement, the infant was limp, weak and had poor muscle tone, and when the paternal grandmother visited the home, the baby was weak and had vomited on himself. People v. Hill, 102 Ill. App. 3d 387, 58 Ill. Dec. 133, 430 N.E.2d 75 (1 Dist. 1981).

- Physical and Financial Care

Where the evidence showed that respondent had failed to provide both the physical and financial care necessary for her children's well-being, the children were neglected within the plain meaning of the statute and the trial court properly focused on the parent, rather than the actual condition of the children, in determining whether neglect had been established. People v. Cathey, 206 Ill. App. 3d 730, 151 Ill. Dec. 778, 565 N.E.2d 49 (1 Dist. 1990).

- Physical and Psychological Abuse

Where the facts disclosed that children were beaten, threatened with guns, and subjected to numerous other forms of physical and psychological abuse over a long period of time, and, as a result of this abuse and their environment, children exhibited serious self-destructive tendencies and personality problems, the evidence showed beyond the slightest doubt that the children were indeed neglected. People v. Dalton, 98 Ill. App. 3d 902, 54 Ill. Dec. 323, 424 N.E.2d 1226 (2 Dist. 1981).

- Punishment

Where children were subjected to "unreasonable methods of punishment" i.e., a child was forced to stand in the corner for long periods of time and was spanked repeatedly by respondent's fiance while other child was placed in a closet-like utility room, and while there was a conflict in testimony regarding the children's punishment, trial court's resolution in finding neglect was neither an abuse of discretion nor against the manifest weight of the evidence. In re Walton, 79 Ill. App. 3d 485, 34 Ill. Dec. 734, 398 N.E.2d 409 (3 Dist. 1979).

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- Sexual and Psychological Abuse

Evidence concerning the adjudication of the children as neglected by reason of sexual and psychological abuse included sufficient grounds for making the children wards of the court and therefore subject to the entire range of dispositions available to the court. People v. Hogue, 121 Ill. App. 3d 662, 77 Ill. Dec. 184, 460 N.E.2d 43 (5 Dist. 1984).

- Sexual Abuse

Minor's actions towards doll, reliability of her statements identifying respondent as abuser and findings of her doctor supported the court's finding respondent sexually abused minor and was therefore an unfit parent. In re A.P., 179 Ill. 2d 184, 227 Ill. Dec. 949, 688 N.E.2d 642 (1997).

Trial court's finding of abuse was supported by the evidence where although there were contradictions in her testimony as to when she reported these incidents, minor testified clearly and convincingly with respect to the sexual abuse and she told respondent of the abuse on several occasions prior to her removal from the home. People v. Cynthia H., 186 Ill. App. 3d 535, 134 Ill. Dec. 613, 542 N.E.2d 959 (1 Dist. 1989).

Under former Ill. Rev. Stat., ch. 37, para. 702-4 (see now this section), findings were not against the manifest weight of the evidence in an injurious relationship abuse case where father had been previously adjudicated to have sexually abused children in previous marriage. People v. Rottinghaus, 146 Ill. App. 3d 504, 100 Ill. Dec. 177, 496 N.E.2d 1242 (4 Dist. 1986).

Injurious Environment

Trial court determined that a minor child was a neglected minor in that the child's environment was injurious to the child's welfare under 705 ILCS 405/2-3(1)(b) because the court found that: (1) the child suffered a significant number of bruises without any credible explanation; and (2) the child's age and physical abilities at the time did not support the notion of self-inflicted injuries. People v. Weaver (In re J.W.), 386 Ill. App. 3d 847, 325 Ill. Dec. 756, 898 N.E.2d 803, 2008 Ill. App. LEXIS 1199 (4 Dist. 2008).

In cases in which parental anger is the basis for a finding of an injurious environment, evidence of parental anger and hostility in the presence, as well as outside the presence, of the children is admissible if it is relevant, and the determination of its relevancy is within the sound discretion of the circuit court. People v. P.W. (In re A.W.), 231 Ill. 2d 241, 325 Ill. Dec. 194, 897 N.E.2d 733, 2008 Ill. LEXIS 1420 (2008).

Adjudication that a child was neglected, under 705 ILCS 405/2-3(1)(b), based on an injurious environment, was not against the manifest weight of the evidence, even though the child's mother had never cared for the child, because: (1) under 705 ILCS 405/2-18(3), evidence of adjudications of the child's siblings for neglect was admissible; (2) the trial court did not have to wait until the child was injured to find the child was neglected; and (3) the siblings' adjudications, rather than being based on specific occurrences, were based on the mother's long-standing mental health issues. People v. L.S. (In re R.S.), 382 Ill. App. 3d 453, 321 Ill. Dec. 23, 888 N.E.2d 542, 2008 Ill. App. LEXIS 356 (1 Dist. 2008).

There was sufficient evidence to support the finding of neglect due to an injurious environment pursuant to 705 ILCS 405/2-3(1)(b), as the evidence tended to show that the mother knew the father was involved in child pornography and did not seem to think this was a problem. People v. Angie L. (In re Erin L.), 353 Ill. App. 3d 894, 289 Ill. Dec. 391, 819 N.E.2d 1191, 2004 Ill. App. LEXIS 1450 (3 Dist. 2004).

- In General

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"Injurious environment" has been recognized by Illinois courts as an amorphous concept that cannot be defined with particularity; in general, however, the term "injurious environment" has been interpreted to include the breach of a parent's duty to ensure a "safe and nurturing shelter" for his or her children. People v. Arthur H. (In re Arthur H.), 212 Ill. 2d 441, 289 Ill. Dec. 238, 819 N.E.2d 734, 2004 Ill. LEXIS 1620 (2004).

An "injurious environment" is an amorphous concept which cannot be defined with particularity; therefore, each case should be reviewed considering the specific circumstances of that case. In re M.K., 271 Ill. App. 3d 820, 208 Ill. Dec. 242, 649 N.E.2d 74 (4 Dist. 1995), appeal denied, 163 Ill. 2d 558, 212 Ill. Dec. 421, 657 N.E.2d 622 (1995).

- Abuse of a Sibling

Evidence provided by schoolteacher, caseworker, and others of the children's condition, together with prior findings that another child in the family had already been found neglected and abused, was ample to support adjudication of neglect by reason of an injurious environment and abuse due to a substantial risk of physical injury. People v. Felicia W. (In re Jaber W.), 344 Ill. App. 3d 250, 279 Ill. Dec. 32, 799 N.E.2d 835, 2003 Ill. App. LEXIS 1269 (1 Dist. 2003).

- Abuse of Mother by Father

The abuse of child's mother by the father created an environment injurious to the minor's welfare and the trial court's finding of abuse due to an injurious environment was not against the manifest weight of the evidence; the trial court did not need to wait until the child herself became the victim of physical abuse nor wait until the repeated beatings of her mother caused so much emotional damage that the child was permanently affected. People v. Rankin, 186 Ill. App. 3d 386, 134 Ill. Dec. 308, 542 N.E.2d 487 (4 Dist. 1989).

- Abuse of Sibling

The conduct of respondent's father, trying to touch sibling's sex organs and requesting that sibling touch his sex organs, clearly fell within the concept of statutory neglect based upon an injurious environment. In re M.D.H., 297 Ill. App. 3d 181, 231 Ill. Dec. 863, 697 N.E.2d 417 (4 Dist. 1998).

Evidence of the abuse of a sibling is sufficient to establish a prima facie case of neglect as to another child based on an injurious environment; the trial court abused its discretion in determining there was no probable cause to believe that mother neglected child and provided an environment injurious to her welfare. In re B.C., 262 Ill. App. 3d 906, 200 Ill. Dec. 231, 635 N.E.2d 570 (1 Dist. 1994).

- Abuse Not Limited to Present Family

Under former Ill. Rev. Stat., ch. 37, para. 704-6 (see now 705 ILCS 405/2-18), where a father had previously been adjudged unfit because of sexual abuse of his daughters by a prior marriage and had been denied visitation rights, and where there was no direct evidence of sexual or other abuse of the children by the present marriage, the prior adjudication of sexual abuse of children in a previous marriage amounted to an injurious environment within the meaning subdivision (1)(b) of this section. People v. Rottinghaus, 146 Ill. App. 3d 504, 100 Ill. Dec. 177, 496 N.E.2d 1242 (4 Dist. 1986).

- Elements of Offense

Evidence that mother suffered from a mental illness, that she had been prescribed but was not taking medications for her condition, and that she struck her children during a violent episode, was sufficient to support a finding that the mother's mental illness placed the children in an injurious environment. People v. Perseta B. (In re Faith B.), 349 Ill. App. 3d 930, 285 Ill. Dec.

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820, 812 N.E.2d 640, 2004 Ill. App. LEXIS 789 (2 Dist. 2004), aff'd in part and remanded in part, 216 Ill. 2d 1, 295 Ill. Dec. 1, 832 N.E.2d 152 (2005).

Mere fact that a parent has a mental illness does not lead inevitably to the conclusion that children in his or her care are neglected or that their environment is injurious; rather, in order for a parent's mental illness to form the basis of a finding of an injurious environment, there must be a nexus between the illness and a risk of harm to the children. People v. Perseta B. (In re Faith B.), 349 Ill. App. 3d 930, 285 Ill. Dec. 820, 812 N.E.2d 640, 2004 Ill. App. LEXIS 789 (2 Dist. 2004), aff'd in part and remanded in part, 216 Ill. 2d 1, 295 Ill. Dec. 1, 832 N.E.2d 152 (2005).

Sexual abuse is not part of a cause of action for injurious environment; allegations of physical sexual abuse do not fall within the purview of the injurious environment provision of this Act. In re J.H., 153 Ill. App. 3d 616, 106 Ill. Dec. 569, 505 N.E.2d 1360 (2 Dist. 1987).

- Pleading

Where the sole ground for the petition to remove children from home was an injurious environment, it could not include any allegations of physical abuse. People v. Rottinghaus, 146 Ill. App. 3d 504, 100 Ill. Dec. 177, 496 N.E.2d 1242 (4 Dist. 1986).

- Sexual Abuse

Although a father was found to have committed aggravated criminal sexual abuse against his child's minor mother in violation of 720 ILCS 5/12-16(d), the State failed to show by a preponderance of the evidence that the offenses created an injurious environment and that the child was neglected. In the absence of other factors, the father's status as a sex offender with respect to the child's minor mother did not establish an injurious environment for a finding of neglect under 705 ILCS 405/2-3(1)(b). People v. W.B. (In re L.M.), 319 Ill. App. 3d 865, 254 Ill. Dec. 400, 747 N.E.2d 440, 2001 Ill. App. LEXIS 231 (1 Dist. 2001).

When the State alleges that a minor is neglected due to an injurious environment based upon the respondent's sexual abuse of a sibling, sexual abuse may have a broader meaning than criminal sexual abuse as it is defined in 720 ILCS 5/12-15(a)(2). In re M.D.H., 297 Ill. App. 3d 181, 231 Ill. Dec. 863, 697 N.E.2d 417 (4 Dist. 1998).

Knowledge of Abuse

Where the petition for adjudication of wardship mirrored the content of the statute upon which it was based, the state did not have to prove victim's parent's knowledge or allowance of the abuse, but rather the complicity or knowledge or allowance of any member of the household. People v. Denise M., 258 Ill. App. 3d 669, 197 Ill. Dec. 338, 631 N.E.2d 341 (1 Dist. 1994).

Neglect

While mother's history of allowing a former paramour to abuse an older child and psychological issues put the child in an environment that was injurious to the child's health and welfare and supported a finding of anticipatory neglect, there was no evidence of a substantial risk of physical injury. People v. Lori B. (In re M.W.), 386 Ill. App. 3d 186, 325 Ill. Dec. 161, 897 N.E.2d 409, 2008 Ill. App. LEXIS 1068 (1 Dist. 2008).

Adoptive daughter was neglected as defined by 705 ILCS 405/2-3(1)(a) where her adoptive mother refused to allow the daughter to return home after the daughter was released from a hospital with a diagnosis that she was bipolar and refused to cooperate with the Department of Children and Family Services regarding services it could provide to the mother and daughter. People v. Brenda H. (In re L.H.), 384 Ill. App. 3d 836, 323 Ill. Dec. 857, 894 N.E.2d 883, 2008 Ill. App. LEXIS 852 (1 Dist. 2008).

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Although the youngest child was born after the oldest child's abuse, the youngest child's environment was injurious to the youngest child's welfare pursuant to 705 ILCS 405/2-3(1)(b) and presented a substantial risk of injury pursuant to 705 ILCS 405/2-3(2)(ii); the youngest child was born only three months after the abuse, the abuser still had access to the children, and the mother had failed to protect the oldest child. People v. Amy C. (In re Kamesha J.), 364 Ill. App. 3d 785, 301 Ill. Dec. 611, 847 N.E.2d 621, 2006 Ill. App. LEXIS 200 (1 Dist. 2006).

Evidence regarding the neglect of a child's sibling, which led to that sibling's death by malnutrition as a result of the mother's use of cannabis while breastfeeding and the mother's failure to supplement breast milk with formula, was admissible under 705 ILCS 405/2-18(3) on the issue of whether the child was also neglected under 705 ILCS 405/2-3(1)(b) for living in an injurious home environment. Proof in the record that the mother was continuing to suffer from self-abusive depression, that there was an incident of domestic violence, and that there was a history of drug use in the home justified the trial court's finding that there was a nexus between the prior injurious home environment that led to the sibling's death and the child's current home environment. The trial court did not have to wait for the child to be injured in order to act, the trial court properly adjudicated the child neglected, and the trial court properly made the child a ward of the State in the guardianship of the department of children and family services. People v. Amber P. (In re T.S-P), 362 Ill. App. 3d 243, 298 Ill. Dec. 150, 839 N.E.2d 137, 2005 Ill. App. LEXIS 1155 (3 Dist. 2005).

Where the daughter had been found to be neglected, the State's theory of anticipatory neglect with regard to the son based upon the neglect of the daughter was insufficient to establish that the son was neglected pursuant to 705 ILCS 405/2-3(a); while proof of neglect of the daughter was admissible evidence of neglect of the son under 705 ILCS 405/2-18(3), it did not constitute prima facie evidence of neglect under 705 ILCS 405/2-18(2), and the evidence did not establish that the son was placed in an injurious environment. People v. Reder (In re S.R.), 349 Ill. App. 3d 1017, 285 Ill. Dec. 406, 811 N.E.2d 1285, 2004 Ill. App. LEXIS 783 (4 Dist. 2004).

Finding that the daughter was neglected pursuant to 705 ILCS 405/2-3(1)(a) was not against the manifest weight of the evidence as the mother told several people, including the daughter, that the mother was unwilling to care for the daughter any longer. People v. Reder (In re S.R.), 349 Ill. App. 3d 1017, 285 Ill. Dec. 406, 811 N.E.2d 1285, 2004 Ill. App. LEXIS 783 (4 Dist. 2004).

In a proceeding in which minor children were made wards of the court, the ruling was improper because the parents were not given notice that the State was going to proceed under 705 ILCS 405/2-3(1)(d), regarding leaving the children unsupervised, but only that it was proceeding under 705 ILCS 405/2-3(1)(b). People v. A.B. (In re J.B.), 312 Ill. App. 3d 1140, 728 N.E.2d 59, 1999 Ill. App. LEXIS 943 (1 Dist. 1999).

- Abandonment

Trial court's finding of neglect and adjudication of the child as a ward of the court under a prior similar provision was proper where it was undisputed that the mother abandoned her son for about the first six years of his life, during which time she continued to accept public aid for the child, and the person who cared for the child during this time testified that the mother never once visited him. People v. Blackwell, 192 Ill. App. 3d 837, 140 Ill. Dec. 65, 549 N.E.2d 716 (1 Dist. 1989).

- Anticipatory Neglect

- Burden of Proof

The State must prove neglect by a preponderance of the evidence. In re M.K., 271 Ill. App. 3d 820, 208 Ill. Dec. 242, 649 N.E.2d 74 (4 Dist. 1995), appeal denied, 163 Ill. 2d 558, 212 Ill. Dec. 421, 657 N.E.2d 622 (1995).

- Criminal Case

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A finding of not guilty in a criminal case involving sex abuse did not preclude a civil proceeding finding father's children to be neglected and abused based on the same allegations. People v. Davis, 180 Ill. App. 3d 608, 129 Ill. Dec. 527, 536 N.E.2d 211 (4 Dist. 1989).

- Definition

"Neglect" is not limited to a narrow definition but has, by necessity, a fluid meaning that embraces willful as well as unintentional disregard of duty; it takes its content always from specific circumstances, and its meaning varies as the context of surrounding circumstances changes. People v. Arthur H. (In re Arthur H.), 212 Ill. 2d 441, 289 Ill. Dec. 238, 819 N.E.2d 734, 2004 Ill. LEXIS 1620 (2004).

Neglect is considered to be the failure by a responsible adult to exercise the care that circumstances justly demand and encompasses both wilful and unintentional disregard of parental duty. In re J.M., 245 Ill. App. 3d 909, 184 Ill. Dec. 754, 613 N.E.2d 1346 (2 Dist.), appeal denied, 152 Ill. 2d 560, 190 Ill. Dec. 890, 622 N.E.2d 1207 (1993).

A minor is neglected if his or her "environment is injurious" to his or her welfare; generally, "neglect" is the failure to exercise the care that circumstances justly demand, and it encompasses willful as well as unintentional disregard of parental duty. In re M.B., 241 Ill. App. 3d 697, 182 Ill. Dec. 197, 609 N.E.2d 731 (1 Dist. 1992).

The term "neglect" does not have a fixed meaning; rather, the term acquires content from the specific circumstances of each individual case. People v. Stilley, 66 Ill. 2d 515, 6 Ill. Dec. 873, 363 N.E.2d 820 (1977); People v. Bariffe, 63 Ill. App. 3d 328, 20 Ill. Dec. 39, 379 N.E.2d 872 (1 Dist. 1978); People v. Dalton, 98 Ill. App. 3d 902, 54 Ill. Dec. 323, 424 N.E.2d 1226 (2 Dist. 1981); People v. Thornton, 204 Ill. App. 3d 277, 149 Ill. Dec. 573, 561 N.E.2d 1269 (1 Dist. 1990).

Generally, neglect is the failure to exercise the care that circumstances justly demand and it embraces wilful as well as unintentional disregard of parental duty. People v. Stilley, 66 Ill. 2d 515, 6 Ill. Dec. 873, 363 N.E.2d 820 (1977); People v. Bariffe, 63 Ill. App. 3d 328, 20 Ill. Dec. 39, 379 N.E.2d 872 (1 Dist. 1978); People v. Belton, 102 Ill. App. 3d 1005, 58 Ill. Dec. 31, 429 N.E.2d 1364 (1 Dist. 1981); People v. Hill, 102 Ill. App. 3d 387, 58 Ill. Dec. 133, 430 N.E.2d 75 (1 Dist. 1981); People v. Thornton, 204 Ill. App. 3d 277, 149 Ill. Dec. 573, 561 N.E.2d 1269 (1 Dist. 1990).

- Determination

Since the only issue at an adjudicatory hearing was whether the subject child was neglected - not whether the parent's abusive behavior was responsible for the situation - the issue could be disposed of on the basis of the other parent's stipulation that the child was neglected, after the court determined that the stipulation had a factual basis. State v. Butler (In re R.B.), 336 Ill. App. 3d 606, 271 Ill. Dec. 182, 784 N.E.2d 400, 2003 Ill. App. LEXIS 115 (4 Dist. 2003).

The question of whether children are neglected is to be determined from the specific circumstances of each individual case. People v. Gomez, 53 Ill. App. 3d 353, 11 Ill. Dec. 224, 368 N.E.2d 775 (1 Dist. 1977).

- Equal Protection

A determination that a minor Jehovah's Witness, who refused blood transfusions, was medically neglected did not deny the minor equal protection of the laws as no member of any other faith would have been entitled to exemption from a finding of medical neglect simply because of his religious beliefs. People v. E.G., 161 Ill. App. 3d 765, 113 Ill. Dec. 477, 515 N.E.2d 286 (1 Dist. 1987).

- Evidence Held Insufficient

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Evidence was insufficient to establish neglect of a child by his mother where: (1) although the older sibling of the child at issue died from shaken baby syndrome, such death was caused by the sibling's father while he lived with the mother; (2) the father no longer lived with the mother; (3) the mother never abused the older sibling and had completed parenting classes since the death of the older sibling; (4) there was insufficient evidence of the creation of a service plan or that the mother disregarded such a service plan; and (5) there was only one documented incident of domestic violence since the birth of the child at issue, the parents attended couples' counseling following such incident, the parents were not married and did not live together, and there was no indication of their reuniting. People v. R.S. (In re S.S.), 313 Ill. App. 3d 121, 245 Ill. Dec. 808, 728 N.E.2d 1165, 2000 Ill. App. LEXIS 287 (2 Dist. 2000).

Although the nature of child's injuries established prima facie evidence of neglect, the trial court properly found that the prima facie case was overcome. In re Ashley F., 265 Ill. App. 3d 419, 202 Ill. Dec. 722, 638 N.E.2d 368 (1 Dist. 1994).

The trial court's finding of neglect was against the manifest weight of the evidence. People v. Nitz, 54 Ill. App. 3d 851, 11 Ill. Dec. 503, 368 N.E.2d 1111 (3 Dist. 1977), aff'd, 76 Ill. App. 3d 15, 31 Ill. Dec. 685, 394 N.E.2d 887 (1979).

- Medical Neglect

Adjudication of a minor as medically neglected was supported by unrebutted testimony from the State's medical expert that indicated that despite the fact that a minor had been admitted to a hospital on numerous occasions regarding his cystic fibrosis and despite the numerous efforts made by the hospital's staff to educate the minor's parents about the disease, both parents consistently missed the minor's medical appointments, failed to comply with treatment suggestions, and neglected to utilize programs that would have provided them with subsidized nutritional supplements, included a necessary pancreatic enzyme. People v. Kathy K. (In re Stephen K.), 373 Ill. App. 3d 7, 310 Ill. Dec. 768, 867 N.E.2d 81, 2007 Ill. App. LEXIS 344 (1 Dist. 2007).

Finding that a child with cystic fibrosis was medically neglected was supported by testimony that the child was admitted to the hospital on numerous occasions, the hospital staff educated respondents about the disease, and the parents consistently missed medical appointments, failed to comply with treatment suggestions, and neglected to utilize programs that would have provided them with subsidized nutritional supplements. People v. Kathy K. (In re Stephen K.), Ill. App. 3d , Ill. Dec. , N.E.2d , 2007 Ill. App. LEXIS 257 (1 Dist. Mar. 23, 2007).

- Neglect

Evidence was sufficient to establish neglect of a child by his father, notwithstanding that the child had never been abused by the father and that the past abuse of the child's older sibling occurred almost two years before the child at issue was born, as the father caused a fatal injury to the older sibling, who was found to have suffered shaken baby syndrome. People v. R.S. (In re S.S.), 313 Ill. App. 3d 121, 245 Ill. Dec. 808, 728 N.E.2d 1165, 2000 Ill. App. LEXIS 287 (2 Dist. 2000).

Trial court's order, terminating the mother's parental rights because she had signed irrevocable surrenders for adoption and terminating the fathers' parental rights because they had abandoned the children and failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the children, was sufficient to include findings that the minors were dependent and neglected. In re Jackson, 243 Ill. App. 3d 631, 183 Ill. Dec. 708, 611 N.E.2d 1356 (5 Dist. 1993).

Where adoptive father testified that he did not pick up his son from the hospital on his release date, testified that in October 1991, after child was placed in a foster home by Department of Children and Family Services, he visited his son and brought him money for a haircut and some clothing but since October 1991, the respondent parents had not brought child clothing or money

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and respondent father declared that they have no intention of providing shelter, clothing, food, education, medical or remedial care, or emotional support for child in the future, this evidence was sufficient to prove the state's allegation that respondent parents neglected child by failing to provide the care and support necessary for his welfare. In re J.M., 245 Ill. App. 3d 909, 184 Ill. Dec. 754, 613 N.E.2d 1346 (2 Dist.), appeal denied, 152 Ill. 2d 560, 190 Ill. Dec. 890, 622 N.E.2d 1207 (1993).

Under former Ill. Rev. Stat., ch. 4, para. 9.1-1 (see now 750 ILCS 50/1), where parents had not given child adequate medical care as a baby, based on evidence that when advised by a social worker that a son might need medical attention, mother virtually disregarded the advice, the home was still cluttered and somewhat dirty, and mother would not take a class in homemaking, the court could have found by clear and convincing evidence that the mother had not made reasonable efforts to enable herself to be able to give proper care to the physical needs of the child. Chick v. Massey, 35 Ill. App. 3d 518, 341 N.E.2d 405 (4 Dist. 1976).

- Future Neglect

The scope of authority of a circuit court to deal with minors under former Ill. Rev. Stat., ch. 37, para. 702-4 (see now this section) was limited to minors who were actually neglected and did not extend to those who were thought to be subject to neglect in the future. In re Nyce, 131 Ill. App. 2d 481, 268 N.E.2d 233 (1 Dist. 1971).

- Hospitalization Not Required

There exists no requirement that hospitalization is a pre-requisite for the conclusion that a child is suffering neglect. People v. Gomez, 53 Ill. App. 3d 353, 11 Ill. Dec. 224, 368 N.E.2d 775 (1 Dist. 1977).

- Leaving Child

Leaving a child with neighbors for indefinite periods of time and failing to provide sufficient food for the child are further factors which the court may consider in determining whether substantial and repeated neglect exists. People v. Berry, 86 Ill. App. 3d 522, 42 Ill. Dec. 150, 408 N.E.2d 728 (5 Dist. 1980).

- Medical Neglect

A case pertaining to the physical and, possibly, mental development of a child who was at substantial risk due to his premature birth and the intercerebral bleeding that occurred prior to his birth came within the scope of the part of the statute which addresses medical care necessary for a minor's well-being. People v. M.N. (In re N.), 309 Ill. App. 3d 996, 243 Ill. Dec. 375, 723 N.E.2d 678, 1999 Ill. App. LEXIS 854 (2 Dist. 1999).

A finding that the parents' youngest child was medically neglected was not against the manifest weight of the evidence where the child was at substantial risk due to his premature birth and the intercerebral bleeding that occurred prior to his birth, a physician recommended various followup examinations and treatment, and the parents, due to religious beliefs, refused to follow those recommendations. People v. M.N. (In re N.), 309 Ill. App. 3d 996, 243 Ill. Dec. 375, 723 N.E.2d 678, 1999 Ill. App. LEXIS 854 (2 Dist. 1999).

A Jehovah's Witness, found to be mature and to have made the decision to refuse blood transfusions independently, could not be denied her constitutional right to the free exercise of religion solely because of her minority; upon finding that the minor was medically neglected, she should have been partially emancipated and granted the right to accept or refuse transfusions based on her religious belief. People v. E.G., 161 Ill. App. 3d 765, 113 Ill. Dec. 477, 515 N.E.2d 286 (1 Dist. 1987).

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This Act withstood a constitutional challenge based upon a minor's free exercise of religion claim because after finding a child to be medically neglected, a minor 16 years of age or over who has demonstrated the capacity to manage his own affairs may be partially or completely emancipated and granted whatever rights and responsibilities the court may specify; thus this Act protects the state's interest in guarding immature minors while also allowing a mature minor to exercise the constitutional freedoms of an adult. People v. E.G., 161 Ill. App. 3d 765, 113 Ill. Dec. 477, 515 N.E.2d 286 (1 Dist. 1987).

Where an adjudicatory finding demonstrated only that a child was treated for diabetes acidosis twice within a relatively short period of time and no evidence was produced from which one could have reasonably inferred that the causative factor of this medical condition was her environment, the child was not neglected as severity of her diabetes did not give rise to an inference of parental neglect under former Ill. Rev. Stat., ch. 37, para. 702-4 (see now this section.) People v. Melendez, 25 Ill. App. 3d 136, 323 N.E.2d 42 (1 Dist. 1974).

A child whose parents refused to permit a blood transfusion, when lack of a transfusion meant that the child would almost certainty die or at best be mentally impaired for life, was a neglected child under former Ill. Rev. Stat., ch. 23, para. 190 (see now this section), and the court's ordering a blood transfusion did not violate the parents' freedom of religion. People ex rel. Wallace v. Labrenz, 411 Ill. 618, 104 N.E.2d 769 (1952).

- Notification Held Sufficient

A finding of neglect was not contradicted by the fact that the hospital failed to file a report pursuant to the Abused and Neglected Child Reporting Act (325 ILCS 5/4) where the school officials who were subjected to the same statutory duty had already notified the officials of the Department of Children and Family Services. People v. Gomez, 53 Ill. App. 3d 353, 11 Ill. Dec. 224, 368 N.E.2d 775 (1 Dist. 1977).

- Parental Obligation

Parents have the duty to protect their children from harm, and their refusal to provide their children with safe and nurturing shelter clearly falls within the concept of statutory neglect. In re M.K., 271 Ill. App. 3d 820, 208 Ill. Dec. 242, 649 N.E.2d 74 (4 Dist. 1995), appeal denied, 163 Ill. 2d 558, 212 Ill. Dec. 421, 657 N.E.2d 622 (1995).

In order to find that a parent has neglected a child, it is not necessary to establish that the parent participated in the acts because a parent has an obligation to protect a child from harm. People v. Hogue, 121 Ill. App. 3d 662, 77 Ill. Dec. 184, 460 N.E.2d 43 (5 Dist. 1984).

- Parental Use of Drugs

Evidence was sufficient to establish that a mother's four children were neglected based on the fact that one of them was born with cocaine in his system, notwithstanding that the petition misidentified that child. People v. Cynthia N. (In re Jerome F.), 325 Ill. App. 3d 812, 259 Ill. Dec. 42, 757 N.E.2d 905, 2001 Ill. App. LEXIS 375 (1 Dist. 2001).

Evidence of the abuse of drugs which interferes with the ability of a parent to care for his children is relevant to the question of neglect. People v. Gomez, 53 Ill. App. 3d 353, 11 Ill. Dec. 224, 368 N.E.2d 775 (1 Dist. 1977).

- Pleading

Petition failed to set forth sufficient facts to state a cause of action for neglect where it was devoid of facts alleging negligent acts or omissions directed towards the respondents' children; the failure of respondents to engage in therapy deemed beneficial by Department of Children and Family Services was not the type of failure to provide care for the minors' well-being that was

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contemplated by the legislature in defining a neglected minor. People v. Rottinghaus, 134 Ill. App. 3d 393, 89 Ill. Dec. 391, 480 N.E.2d 873 (4 Dist. 1985).

Where petition charged neglect but the factual allegations were more indicative of a child otherwise in need of supervision or a charge of delinquency, this defect was not fatal to the pending action because the evidence adduced at the hearings could support a finding that the child was neglected in addition to being in need of supervision and delinquent and one could infer the child was not receiving the proper care necessary for his well-being. People v. Smith, 77 Ill. App. 3d 1048, 33 Ill. Dec. 856, 397 N.E.2d 189 (5 Dist. 1979).

- Physical Harm

The fact that no physical harm had befallen the children during respondent's absences did not negate the evidence of neglect apparent in respondent's dereliction of duty to her children; neglect based on lack of necessary care was proven, although the physical needs of the children were being met by others. People v. Thornton, 204 Ill. App. 3d 277, 149 Ill. Dec. 573, 561 N.E.2d 1269 (1 Dist. 1990).

Physical abuse alone will support a finding of neglect. People v. Jackson, 81 Ill. App. 3d 136, 36 Ill. Dec. 507, 400 N.E.2d 1087 (4 Dist. 1980).

- Proof

To prove mother's neglect based upon an unintentional disregard of her parental duties, there must be a showing of whether she knew or should have known that her selected babysitter was an unsuitable caregiver. In re M.Z., 294 Ill. App. 3d 581, 229 Ill. Dec. 99, 691 N.E.2d 35 (1 Dist. 1998).

- Religious Beliefs Exception

The religious beliefs exception to the definition of medical neglect in the Abused and Neglected Child Reporting Act (325 ILCS 5/3) is not applicable to the definition of medical neglect in this section of this Act. People v. E.G., 161 Ill. App. 3d 765, 113 Ill. Dec. 477, 515 N.E.2d 286 (1 Dist. 1987).

- Standard for Determination

If the failure of the parents to alleviate the condition of abuse or neglect had been proved by clear and convincing evidence, it would have been sufficient to support termination of parental rights, even though the original abuse or neglect was only proven by a preponderance of the evidence. In re S.A., 296 Ill. App. 3d 1029, 231 Ill. Dec. 376, 696 N.E.2d 368 (4 Dist. 1998).

In general, "neglect" is the failure to exercise the care that circumstances justly demand and encompasses both wilful and unintentional disregard of parental duty; the term is not one of fixed and measured meaning, and it takes content from the specific circumstances of each case. In re M.K., 271 Ill. App. 3d 820, 208 Ill. Dec. 242, 649 N.E.2d 74 (4 Dist. 1995), appeal denied, 163 Ill. 2d 558, 212 Ill. Dec. 421, 657 N.E.2d 622 (1995).

There is no fixed standard for a determination of neglect, and each case must be judged on its particular facts. People v. Nitz, 54 Ill. App. 3d 851, 11 Ill. Dec. 503, 368 N.E.2d 1111 (3 Dist. 1977), aff'd, 76 Ill. App. 3d 15, 31 Ill. Dec. 685, 394 N.E.2d 887 (1979).

A preponderance of the evidence standard of proof as opposed to proof beyond a reasonable doubt is the proper standard in cases of dependency or neglect. People v. Urbasek, 38 Ill. 2d 535, 232 N.E.2d 716 (1967).

- Standard of Appeal

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The trial court's determination will not be disturbed on appeal unless it is against the manifest weight of the evidence; the finding of the trial court of child neglect is against the manifest weight of the evidence if a review of the record clearly demonstrates that the proper result is the one opposite that reached by the trial court. In re M.K., 271 Ill. App. 3d 820, 208 Ill. Dec. 242, 649 N.E.2d 74 (4 Dist. 1995), appeal denied, 163 Ill. 2d 558, 212 Ill. Dec. 421, 657 N.E.2d 622 (1995).

- Standard of Determination

Exclusive focus of 705 ILCS 405/2-3(1)(a) through (1)(d) is upon the status of a child; no consideration is given to an evaluation of the acts and/or omissions of the child's parents, or any other individual responsible for the welfare of the child, in arriving at a determination of neglect. People v. Arthur H. (In re Arthur H.), 212 Ill. 2d 441, 289 Ill. Dec. 238, 819 N.E.2d 734, 2004 Ill. LEXIS 1620 (2004).

Parental Unfitness

Trial court erred in finding that the father's parental rights in the minor child should be terminated based on its conclusion that he had not shown that he made "reasonable progress" in correcting the conditions that necessitated the minor child's removal. The trial court was required to, but did not, make written findings regarding the basis for its determination, and, thus, it did not adequately substantiate its reason for finding that the father was an unfit parent. People v. Oscar H. (In re L.W.), 362 Ill. App. 3d 1106, 299 Ill. Dec. 509, 842 N.E.2d 248, 2005 Ill. App. LEXIS 1285 (1 Dist. 2005).

- Factors

The essence of former section 1D of the Adoption Act (see now 750 ILCS 50/1), was that the parents whose child had been taken from their custody to protect the child were unfit if they did not make reasonable efforts to change themselves and their circumstances so that they could give the child the care it needed. Chick v. Massey, 35 Ill. App. 3d 518, 341 N.E.2d 405 (4 Dist. 1976).

- Felony Convictions

Respondent's conviction of two counts of aggravated criminal sexual assault of his daughter was vicious and perverted conduct constituting by itself overwhelming evidence that respondent was unfit within the meaning of the Adoption Act (750 ILCS 50/0.01 et seq.) and termination of parental rights was in the child's best interest; respondent was subject to being found unfit due to depravity based solely upon that conduct, and thereby forever forfeited any claim to any further contact with that child or her siblings. People v. Heiman, 284 Ill. App. 3d 392, 219 Ill. Dec. 895, 672 N.E.2d 403 (4 Dist. 1996).

- Pleading

Failure to allege the unfitness of children's natural parents in petition to terminate their parental rights and to give the Department of Children and Family Services the right to consent to their adoption and the grounds therefore, as required by the former Adoption Act (see now 750 ILCS 50/1), rendered the petition fatally defective. People v. Griffin, 45 Ill. App. 3d 784, 4 Ill. Dec. 61, 359 N.E.2d 894 (3 Dist. 1977).

- Shown

Although the agency the father worked with gave him good marks, the evidence was sufficient to support a determination of unfitness by clear and convincing evidence and the conclusion that the termination of his parental rights were in the children's best interests. In re S.A., 296 Ill. App. 3d 1029, 231 Ill. Dec. 376, 696 N.E.2d 368 (4 Dist. 1998).

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Since parental rights were properly terminated because of the findings of dependency and unfitness, it was not necessary that the child be found a neglected minor pursuant to former section 2-4 of the Juvenile Act (see now this section) for parental rights to have been terminated. Department of Children & Family Servs. v. Devine, 81 Ill. App. 3d 314, 36 Ill. Dec. 775, 401 N.E.2d 616 (5 Dist. 1980).

Where a trial court found parental unfitness on the ground that a mother failed to make reasonable progress toward the return of the minor to her within 12 months after the minor was adjudged a neglected minor under former sections 702-4 and 702-5 of the Juvenile Court Act (see now this section and 705 ILCS 405/2-4), such a finding alone was sufficient to support a judgment of parental unfitness. People v. Edmonds, 85 Ill. App. 3d 229, 40 Ill. Dec. 530, 406 N.E.2d 231 (3 Dist. 1980).

- Summary Judgment Improper

In a child neglect case under 705 ILCS 405/2-3(1)(b), the State's motion for summary judgment was improperly granted on grounds that the father had been convicted of a sexual assault; the evidence was insufficient to constitute an injurious environment per se. People v. Terry B. (In re T.B.), 324 Ill. App. 3d 506, 258 Ill. Dec. 121, 755 N.E.2d 504, 2001 Ill. App. LEXIS 656 (1 Dist. 2001).

- Termination of Parental Rights

A finding of unfitness may lead to the termination of parental rights, and a court may take such action after finding it to be in the best interests of the minor. People v. Walters, 226 Ill. App. 3d 805, 168 Ill. Dec. 570, 589 N.E.2d 970 (4 Dist. 1992).

Under former Ill. Rev. Stat., ch. 4, para. 9.1-1, (see now 750 ILCS 50/1), the granting of the supplemental petition terminating the natural parents' rights and empowering the guardian with the power to consent to an adoption was consistent with the best interests of the minor where there was ample evidence to support the trial court's finding unfitness. People ex rel. Dep't of Children & Family Servs. v. Robertson, 45 Ill. App. 3d 148, 3 Ill. Dec. 852, 359 N.E.2d 491 (3 Dist. 1977).

- Unnecessary to Find

The statutory requirements of adjudicating a minor neglected or abused do not require an allegation of parental unfitness, an issue which may, if necessary, be raised in a supplemental petition for termination of parental rights. People v. Roy, 215 Ill. App. 3d 1059, 158 Ill. Dec. 780, 574 N.E.2d 893 (4 Dist. 1991).

Right to Counsel

Per se conflict of interest existed that required reversal of the termination of parental rights where the same attorney appeared on behalf of both the mother and the child at different times during the same proceedings; Illinois has a clear rule that the same attorney cannot, during the proceedings, appear on behalf of different clients. In such a situation, prejudice is presumed, and the mother is not required to demonstrate that the conflict contributed to the judgment entered against her; because termination of parental rights is a drastic measure, the adherence to strict procedural requirements adopted to regulate such proceedings is paramount. People v. Edith F. (In re Paul L.F.), 408 Ill. App. 3d 862, 349 Ill. Dec. 791, 947 N.E.2d 805, 2011 Ill. App. LEXIS 281 (2 Dist. 2011).

Right to Privacy

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Dismissal of plaintiff's complaint that sought an injunction against the enforcement of subsection (b) of this section on its face and as applied because it not only sanctioned, invited, and required unlawful invasions of plaintiff's right to privacy but also was cast in terms so vague, overbroad and devoid of standard as to force him to speculate as to its meaning and to be unable to determine how to conform his conduct to the requirements of such law was proper on the grounds that the complaint did not state a substantial constitutional question in challenging subsection (b) of this section. Sheehan v. Scott, 520 F.2d 825 (7th Cir. 1975).

Service of Process

Court cannot allow the termination of parental rights in the absence of required notice; therefore, although a trial court had personal jurisdiction over a father since he had been served with a neglect petition, the father's due process rights were violated when a default judgment was entered in a termination proceeding because he was not served with notice of that issue, as required by 705 ILCS 405/2-15(3) and Ill. Sup. Ct. R. 11. Therefore, a default judgment entered against the father should have been vacated. People v. Ralph L. (In re Haley D.), 403 Ill. App. 3d 370, 342 Ill. Dec. 835, 933 N.E.2d 421, 2010 Ill. App. LEXIS 755 (2 Dist. 2010).

Unsupervised Visitation

- Abuse of Discretion

Where the court granted unsupervised visitation to parent who physically abused both children and stood by when they were beaten and raped, the court's ruling was against the manifest weight of the evidence and a gross abuse of discretion. In re Beatriz S., 267 Ill. App. 3d 496, 204 Ill. Dec. 523, 641 N.E.2d 953 (1 Dist. 1994).

LEGAL PERIODICALS

For comment, "The Illinois Adoption Act: Should a Child's Length of Time in Foster Care Measure Parental Unfitness", see 30 Loy. U. Chi. L.J. 727 (1999).

For note, "Guardians Ad Litem: The Guardian Angels of Our Children in Domestic Violence Courts", see 30 Loy. U. Chi. L.J. 281 (1999).

For note, "Protecting Our Children: A Call to Reform State Policies to Hold Pregnant Drug Addicts Accountable," see 29 J. Marshall L. Rev. 765 (1996).

For note, "The Prosecution of Maternal Fetal Abuse: Is This the Answer?" see 1991 U. Ill. L. Rev. 533.

For article, "Twas Brillig, and the Court did Gyre, Gimble, and Out Grable," see 69 Ill. B.J. 154 (1980).

For comment, "Child Abuse: The Role of Adoption as a Preventative Measure," see 10 J. Marshall J. Prac. & Proc. (1976).

For article, "Denying Child Welfare Services to Delinquent Teens: A Call to Return to the Roots of Illinois' Juvenile Court," see, 36 Loy. U. Chi. L.J. 925 (2005).

For article, "Survey of Illinois Law: Juvenile Delinquency - Protecting the Public," see, 28 S. Ill. U.L.J. 847 (2004).

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§ 705 ILCS 405/2-4. Dependent minor

Sec. 2-4. Dependent minor. (1) Those who are dependent include any minor under 18 years of age:

(a) who is without a parent, guardian or legal custodian;

(b) who is without proper care because of the physical or mental disability of his parent, guardian or custodian;

(c) who is without proper medical or other remedial care recognized under State law or other care necessary for his or her well being through no fault, neglect or lack of concern by his parents, guardian or custodian, provided that no order may be made terminating parental rights, nor may a minor be removed from the custody of his or her parents for longer than 6 months, pursuant to an adjudication as a dependent minor under this subdivision (c), unless it is found to be in his or her best interest by the court or the case automatically closes as provided under Section 2-31 of this Act [705 ILCS 405/2-31]; or

(d) who has a parent, guardian or legal custodian who with good cause wishes to be relieved of all residual parental rights and responsibilities, guardianship or custody, and who desires the appointment of a guardian of the person with power to consent to the adoption of the minor under Section 2-29 [705 ILCS 405/2-29].

(2) This Section does not apply to a minor who would be included herein solely for the purpose of qualifying for financial assistance for himself, his parent or parents, guardian or custodian or to a minor solely because his or her parent or parents or guardian has left the minor for any period of time in the care of an adult relative, who the parent or parents or guardian know is both a mentally capable adult relative and physically capable adult relative, as defined by this Act.

(Source: P.A. 85-601; 88-491, § 5; 89-21, § 15-15; 91-357, § 236; 96-168, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-4.

Cross References.

For the additional right of a current foster parent or the agency designated custodian of a dependent minor to receive adequate notice at all stages of a hearing or proceeding wherein the custody or status of the minor may be changed, see 705 ILCS 405/1-5.

For the kinds of dispositional orders that may be made with respect to dependent minors, see 705 ILCS 405/2-23.

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Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, substituted "this subdivision (c)" for "this subsection (c)" in subsection (1)(c).

The 2009 amendment by P.A. 96-168, effective August 10, 2009, in (2) inserted "parent or", inserted "or parents", added "who the parent or parents or guardian know is both a mentally capable adult relative and physically capable adult relative, as defined by this Act", and made a related change.

CASE NOTES

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Construction

Where a child is dependent under 705 ILCS 405/2-4(1)(c), a trial court's authority is limited or conditioned in two ways: (1) it may not terminate parental rights; and (2) it may not remove the child from his or her parents for longer than six months. People v. Phyllis B. (In re E.B.), 231 Ill. 2d 459, 326 Ill. Dec. 1, 899 N.E.2d 218, 2008 Ill. LEXIS 1436 (2008).

Custody of Parent

- Unnecessary for Dependency

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A child need not be in the custody of his mentally disabled parent before he can be declared dependent. Joseph B. v. Phynise B., 243 Ill. App. 3d 339, 183 Ill. Dec. 782, 612 N.E.2d 39 (1 Dist. 1993).

Dependent Child

Adoptive daughter was not a "dependent minor" because the situation that led the daughter to be under the care of the Department of Children and Family Services (DCFS) was, contrary to the definition of a dependent minor, directly related to her adoptive mother's refusal to allow the daughter to return to the mother's home after the daughter was released from a hospital with a diagnosis she was bipolar and the mother's refusal to cooperate with DCFS in developing an alternate care plan for the daughter. People v. Brenda H. (In re L.H.), 384 Ill. App. 3d 836, 323 Ill. Dec. 857, 894 N.E.2d 883, 2008 Ill. App. LEXIS 852 (1 Dist. 2008).

- Six Month Limitation

Given the allegation that a minor's parents demonstrated a complete lack of concern for his well-being, the circuit court erred when it allowed the minor to remain a no-fault dependent beyond the six month limitation, without requiring the state to file a requested petition for adjudication of wardship. In re A.F., 234 Ill. App. 3d 1010, 176 Ill. Dec. 826, 602 N.E.2d 480 (1 Dist. 1991).

Determination of Status

Trial court's finding that a minor child was a dependent minor, pursuant to 705 ILCS 405/2-4(1)(a), was fully supported by the facts because one of the child's parents had died and the other parent was arrested and incarcerated on drug charges. At that point, the child was left without a parent or legal guardian to care for the child. People v. Timothy (In re Brandon A.), 395 Ill. App. 3d 224, 334 Ill. Dec. 250, 916 N.E.2d 890, 2009 Ill. App. LEXIS 990 (5 Dist. 2009).

Where the trial court found that the child, age two, was abused and neglected and made the child a ward of the court pursuant to 705 ILCS 405/2-3(2)(ii), 705 ILCS 405/2-4(1)(a), and 705 ILCS 405/2-22(1), based upon the father's abuse of the child's half brother, the determination was supported by sufficient evidence, the inculpatory hearsay statement of the child's sibling regarding the abuse of the child's half brother was corroborated by a doctor's report, and the mother admitted that the father struck the half brother. People v. Maxwell (In re C.M.), 351 Ill. App. 3d 913, 286 Ill. Dec. 839, 815 N.E.2d 49, 2004 Ill. App. LEXIS 985 (4 Dist. 2004).

- Parental Termination Proceeding

Trial court did not err by denying a mother's motion for a fitness to stand trial hearing prior to conducting a hearing to terminating her parental rights to her son, which resulted in the termination of her rights, because postponing the termination proceedings - for a fitness hearing or until the mother could be restored to fitness - would delay the child's interest in finding a permanent home and such an indefinite postponement would frustrate the State's parens patriae interest in promoting the welfare of the child. Further, the mother failed to explain how she could have better assisted her attorney had she been found competent to participate as she did not identify any additional evidence that would have been introduced nor presented any argument explaining how the outcome of the hearing would have been different had the proceedings been stayed until she was restored to fitness. People v. Wanda A. (In re Charles A.), 367 Ill. App. 3d 800, 305 Ill. Dec. 764, 856 N.E.2d 569, 2006 Ill. App. LEXIS 878 (1 Dist. 2006).

Parents have no constitutional right to a fitness hearing in a parental termination proceeding, since such a hearing would postpone adjudication and the parents have a right to be present, to be heard, to present evidence, to cross-examine witnesses, to examine all records, and to have counsel, pursuant to 705 ILCS 405/105(1). People v. Wanda A. (In re Charles A.), 367 Ill. App. 3d 800, 305 Ill. Dec. 764, 856 N.E.2d 569, 2006 Ill. App. LEXIS 878 (1 Dist. 2006).

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Where minors were previously found dependent by the trial court and temporary custody given to Department of Children and Family Services, there would be no reason to require a new determination to be made in parental termination proceeding; the petition alleging that mother was unfit and setting forth the specific grounds which were the basis for that assertion pleaded the essential elements of the cause of action for termination. In re R.K., 247 Ill. App. 3d 512, 187 Ill. Dec. 294, 617 N.E.2d 502 (3 Dist. 1993).

Equal Protection

As a matter of due process of law, unwed father was entitled to a hearing on his fitness as a parent before his children were taken from him, and by presuming unwed father was unfit, denying him a hearing and extending it to all other parents whose custody of their children was challenged, the state denied unwed father the equal protection of the laws guaranteed by U.S. Const., Amend. XIV. Stanley v. Illinois, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972).

Good Cause

Parents had good cause to be relieved of residual parental rights and responsibilities to their adopted child who had reactive attachment disorder where it was found that their continual good-faith efforts to seek and implement therapy, even though such efforts proved unsuccessful, was sufficient to satisfy the statute's "good cause" requirement. People v. Jeff L. (In re Z.L.), 379 Ill. App. 3d 353, 318 Ill. Dec. 427, 883 N.E.2d 658, 2008 Ill. App. LEXIS 112 (1 Dist. 2008).

- Good Faith Effort Required

The language "good cause" in the context of relinquishing parental rights has a restricted application and should, in part, encompass an expression of good faith effort. In re J.M., 245 Ill. App. 3d 909, 184 Ill. Dec. 754, 613 N.E.2d 1346 (2 Dist.), appeal denied, 152 Ill. 2d 560, 190 Ill. Dec. 890, 622 N.E.2d 1207 (1993).

Neglect

- Evidence Held Sufficient

Trial court's order, terminating the mother's parental rights because she had signed irrevocable surrenders for adoption and terminating the fathers' parental rights because they had abandoned the children and failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the children, was sufficient to include findings that the minors were dependent and neglected. In re Jackson, 243 Ill. App. 3d 631, 183 Ill. Dec. 708, 611 N.E.2d 1356 (5 Dist. 1993).

The evidence was sufficient to establish that a mentally retarded mother was unfit to care for her child where the record showed that respondent's son suffered from gastroesophageal reflux, a condition that makes it difficult to keep food down and impairs good nutrition, and where preliminary neurological examinations showed that respondent's son may have had cerebral palsy and would require special attention and medication; these conditions, combined with evidence that respondent was not feeding her son regularly, was feeding him spoiled formula, and was feeding him from dirty bottles and with unsterilized nipples, clearly and convincingly showed that respondent was unable to care for her child. People v. L.M., 221 Ill. App. 3d 93, 163 Ill. Dec. 566, 581 N.E.2d 720 (5 Dist. 1991).

The evidence of the parent's behavior with reference to the minor child in their home environment was sufficient to support the finding of the trial court that the minor was a neglected and dependent child pursuant to former Ill. Rev. Stat., ch. 37, paras. 702-5, 702-4 and 705-7 (see now this section, 705 ILCS 405/2-3 and 705 ILCS 405/2-27) and sufficient evidence for the court to

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find the natural parents to be unfit. People v. Powers, 94 Ill. App. 3d 646, 50 Ill. Dec. 151, 418 N.E.2d 1145 (2 Dist. 1981).

Parens Patriae

In appropriate circumstances, the state, as parens patriae, may properly step in and substitute itself as the guardian of minors within its jurisdiction; such circumstances include where parents are unable to care for children in their custody. People v. D.L., 226 Ill. App. 3d 177, 168 Ill. Dec. 280, 589 N.E.2d 680 (1 Dist.), cert. denied, 146 Ill. 2d 628, 176 Ill. Dec. 799, 602 N.E.2d 453 (1992).

Parent Not at Fault

Finding that the minor was a dependent through no fault of the parents was supported by evidence that the parents contacted over 43 agencies and individuals to find alternative care for the minor, but were unable to find an affordable agency willing to take him. People v. Carol S. (In re Christopher S), 364 Ill. App. 3d 76, 300 Ill. Dec. 941, 845 N.E.2d 830, 2006 Ill. App. LEXIS 150 (1 Dist. 2006).

Trial court's finding that a child was dependent through no fault of the mother under 705 ILCS 405/2-4(1)(c) (West) was not against the manifest weight of the evidence where: (1) the child had been diagnosed with intermittent explosive disorder, attention deficit hyperactivity disorder, pervasive developmental disorder, and mild to moderate mental retardation. (2) the mother could not control the child; and (3) evidence as to the child's progress was offered at the dispositional hearing, after the dependency finding had been made. People v. C.D. (In re S.W.), 342 Ill. App. 3d 445, 276 Ill. Dec. 787, 794 N.E.2d 1037, 2003 Ill. App. LEXIS 961 (1 Dist. 2003).

Parental Incapacity

- Dependency Declared

Where the evidence clearly indicated that minor's mother was seriously mentally ill and exhibited erratic behavior as well as abuse of alcohol and drugs, and the social workers, who had knowledge of her behavior, believed that she was not capable of caring for her child and the administrator and the staff of the shelter where mother resided had serious concerns about her bringing the child there, infant was entitled to adjudication of wardship on basis of dependency. Joseph B. v. Phynise B., 243 Ill. App. 3d 339, 183 Ill. Dec. 782, 612 N.E.2d 39 (1 Dist. 1993).

- Findings Inadequate

Although the trial court properly found that the minor was dependent in that she lacked adequate care, the trial court's dispositional order awarding custody and guardianship of the minor to the state family welfare agency amounted to reversible error; even though the trial court explained that it found the parents had an inability to care for, protect, and properly train the minor it did not enter a written factual basis for that finding of parental inability, and, thus, a new dispositional hearing was required. People v. Mandi H. (In re Madison H.), 347 Ill. App. 3d 1024, 284 Ill. Dec. 99, 809 N.E.2d 221, 2004 Ill. App. LEXIS 426 (3 Dist. 2004), aff'd, 215 Ill. 2d 364, 294 Ill. Dec. 86, 830 N.E.2d 498 (2005).

- Sole Physical Custody

Where evidence demonstrates the parent's disability is one which significantly impairs abilities necessary for the care and parenting of a child, the minor may be found and adjudicated to be a minor without proper care due to the physical or mental disability of the parent even if the parent

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has not had the opportunity to exercise sole physical custody over the minor. In re J.J., 246 Ill. App. 3d 143, 186 Ill. Dec. 23, 615 N.E.2d 827 (4 Dist. 1993).

Patient-Psychiatrist Privilege

The exceptions to the psychiatrist-patient privilege do not include court testimony concerning a parent's mental condition when the best interests of a child are at stake. In re Westland, 48 Ill. App. 3d 172, 6 Ill. Dec. 331, 362 N.E.2d 1153 (4 Dist. 1977).

Review of Custody Determination

A court of review will not disturb a trial court's determination in a child custody case unless the trial court exceeded its broad discretion, or the court's determination results in manifest injustice or is palpably against the weight of the evidence. People v. D.L., 226 Ill. App. 3d 177, 168 Ill. Dec. 280, 589 N.E.2d 680 (1 Dist.), cert. denied, 146 Ill. 2d 628, 176 Ill. Dec. 799, 602 N.E.2d 453 (1992).

Without Parent

- Imprisoned Parent

Where the evidence showed that both respondent and child's mother were incarcerated at the time of the hearing, it was undisputed that the child had no parent or legal guardian to care for her and the trial court's finding of dependency was fully supported. In re A.D.W., 278 Ill. App. 3d 476, 215 Ill. Dec. 308, 663 N.E.2d 58 (4 Dist. 1996).

Where father was serving term of life imprisonment for second degree murder of the children's mother, record supported trial court's finding that children were dependent under former Ill. Rev. Stat., ch. 37, para. 702-5 (see now this section) and it was in their best interest for custody to remain with the prospective adoptive parents. Bryant v. Lenza, 90 Ill. App. 3d 275, 45 Ill. Dec. 572, 412 N.E.2d 1154 (3 Dist. 1980).

LEGAL PERIODICALS

For note, "Guardians Ad Litem: The Guardian Angels of Our Children in Domestic Violence Courts", see 30 Loy. U. Chi. L.J. 281 (1999).

For comment, "Illegitimacy and the Rights of Unwed Fathers in Adoption Proceedings After Quillian v. Walcott," see 12 J. Marshall J. Prac. & Proc. 383 (1979).

For article, "Denying Child Welfare Services to Delinquent Teens: A Call to Return to the Roots of Illinois' Juvenile Court," see, 36 Loy. U. Chi. L.J. 925 (2005).

For article, "Survey of Illinois Law: Juvenile Delinquency - Protecting the Public, "see, 28 S. Ill. U.L.J. 847 (2004).

§ 705 ILCS 405/2-4a. Special immigrant minor

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Sec. 2-4a. Special immigrant minor. (a) Except as otherwise provided in this Act, a special immigrant minor under 18 years of age who has been made a ward of the court may be deemed eligible by the court for long-term foster care due to abuse, neglect, or abandonment and remain under the jurisdiction of the juvenile court until his or her special immigrant juvenile status and adjustment of status applications are adjudicated. The petition filed on behalf of the special immigrant minor must allege that he or she otherwise satisfies the prerequisites for special immigrant juvenile status pursuant to 8 U.S.C. Section 1101(a)(27)(J) and must state the custodial status sought on behalf of the minor.

(b) For the purposes of this Section, a juvenile court may make a finding that a special immigrant minor is eligible for long term foster care if the court makes the following findings:

(1) That a reasonable diligent search for biological parents, prior adoptive parents, or prior legal guardians has been conducted; and

(2) That reunification with the minor's biological parents or prior adoptive parents is not a viable option.

(c) For the purposes of this Section:

(1) The term "abandonment" means the failure of a parent or legal guardian to maintain a reasonable degree of interest, concern, or responsibility for the welfare of his or her minor child or ward.

(2) The term "special immigrant minor" means an immigrant minor who (i) is present in the United States and has been made a ward of the court and (ii) for whom it has been determined by the juvenile court or in an administrative or judicial proceeding that it would not be in his or her best interests to be returned to his or her previous country of nationality or country of last habitual residence.

(d) This Section does not apply to a minor who applies for special immigrant minor status solely for the purpose of qualifying for financial assistance for himself or herself or for his or her parents, guardian, or custodian.

(Source: P.A. 93-145, § 5.)

Effective Date. Section 99 of P.A. 93-145, made this section effective upon becoming law. The Act was approved July 10, 2003.

§ 705 ILCS 405/2-5. Taking into custody

Sec. 2-5. Taking into custody. (1) A law enforcement officer may, without a warrant, take into temporary custody a minor (a) whom the officer with reasonable cause believes

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to be a person described in Section 2-3 or 2-4 [705 ILCS 405/2-3 or 705 ILCS 405/2-4]; (b) who has been adjudged a ward of the court and has escaped from any commitment ordered by the court under this Act; or (c) who is found in any street or public place suffering from any sickness or injury which requires care, medical treatment or hospitalization.

(2) Whenever a petition has been filed under Section 2-13 [705 ILCS 405/2-13] and the court finds that the conduct and behavior of the minor may endanger the health, person, welfare, or property of himself or others or that the circumstances of his home environment may endanger his health, person, welfare or property, a warrant may be issued immediately to take the minor into custody.

(3) The taking of a minor into temporary custody under this Section is not an arrest nor does it constitute a police record.

(Source: P.A. 85-601.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-5.

CASE NOTES

Analysis

Jurisdiction
Temporary Custodian
Treatment of Sick or Injured Minors
- General Order

Jurisdiction

Former Ill. Rev. Stat., ch. 37, para. 703-1 (see now this section) did not relate to the jurisdiction of the court. In re Nyce, 131 Ill. App. 2d 481, 268 N.E.2d 233 (1 Dist. 1971).

Temporary Custodian

Following a shelter care hearing, the trial court properly found probable cause to believe minor was either neglected or abused and properly appointed Department of Children and Family Services (DCFS) as temporary custodian. In re Z.R., 274 Ill. App. 3d 422, 210 Ill. Dec. 956, 654 N.E.2d 255 (4 Dist. 1995), appeal denied, 165 Ill. 2d 552, 214 Ill. Dec. 859, 662 N.E.2d 425 (1996).

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Treatment of Sick or Injured Minors

- General Order

General order concerning procedures for the treatment of sick or injured minors, issued by the presiding judge of the Juvenile Division of the County Department of the Circuit Court of Cook County (the Juvenile Division) exhibited the requisite degree of public interest for an exception to application of the mootness doctrine, allowing the court to look to the public or private nature of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question despite the absence of an actual case involving a minor. In re General Order of October 11, 1990, 256 Ill. App. 3d 693, 195 Ill. Dec. 322, 628 N.E.2d 786 (1 Dist. 1993).

LEGAL PERIODICALS

For article, "Denying Child Welfare Services to Delinquent Teens: A Call to Return to the Roots of Illinois' Juvenile Court," see, 36 Loy. U. Chi. L.J. 925 (2005).

§ 705 ILCS 405/2-6. Duty of officer

Sec. 2-6. Duty of officer. (1) A law enforcement officer who takes a minor into custody under Section 2-5 [705 ILCS 405/2-5] shall immediately make a reasonable attempt to notify the parent or other person legally responsible for the minor's care or the person with whom the minor resides that the minor has been taken into custody and where he or she is being held.

(a) A law enforcement officer who takes a minor into custody with a warrant shall without unnecessary delay take the minor to the nearest juvenile police officer designated for such purposes in the county of venue.

(b) A law enforcement officer who takes a minor into custody without a warrant shall place the minor in temporary protective custody and shall immediately notify the Department of Children and Family Services by contacting either the central register established under 7.7 of the Abused and Neglected Child Reporting Act [325 ILCS 5/7.7] or the nearest Department of Children and Family Services office. If there is reasonable cause to suspect that a minor has died as a result of abuse or neglect, the law enforcement officer shall immediately report such suspected abuse or neglect to the appropriate medical examiner or coroner.

(Source: P.A. 85-601.)

Note.

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This section was Ill.Rev.Stat., Ch. 37, Para. 802-6.

CASE NOTES

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In General

Former Ill. Rev. Stat., ch. 37, para. 703-2(1) (see now this section) recognized that the police might take a minor into custody without a warrant, something they could not constitutionally do unless reasonable cause existed, and it was the purport of former Ill. Rev. Stat., ch. 37, para. 702-7(3) (see now 705 ILCS 405/5-4) that criminal proceedings, as distinguished from delinquency proceedings, could be brought against a minor 13 years of age or over on petition of the state's attorney. People v. Zepeda, 47 Ill. 2d 23, 265 N.E.2d 647 (1970).

Appearance Before Juvenile Officer

The requirement that the minor shall be taken to the nearest youth officer without unnecessary delay does not mean that it is the duty of the police to take an arrested juvenile immediately to a youth officer; therefore, the two and one half hour delay did not require exclusion of the inculpatory statements made by respondent and, therefore, order of the trial court denying the motion to suppress the inculpatory statements of the minor was proper and was affirmed. People v. Potts, 58 Ill. App. 3d 550, 16 Ill. Dec. 116, 374 N.E.2d 891 (1 Dist. 1978).

Confession

- Basis of Admitting

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Where a youth officer was present to protect the juvenile's rights, and considering the "totality of the circumstances", there was no error in admitting the confession. People v. Gardner, 282 Ill. App. 3d 209, 217 Ill. Dec. 940, 668 N.E.2d 125 (1 Dist. 1996), appeal denied, 168 Ill. 2d 606, 219 Ill. Dec. 569, 671 N.E.2d 736 (1996).

- Not Coerced

The absence of respondents' parents during questioning did not create a coercive environment as one youth's mother was contacted before any incriminating statements were made but did not request to be present during questioning, attempt to locate the other youth's mother before he made incriminating statements were unsuccessful, neither youth asked to have their parents present during questioning and a youth officer was present when statements were made. In re J.E., 285 Ill. App. 3d 965, 221 Ill. Dec. 249, 675 N.E.2d 156 (1 Dist. 1996), appeal denied, 172 Ill. 2d 552, 223 Ill. Dec. 195, 679 N.E.2d 380 (1997).

Confession to Private Citizen

Confessions or admissions made by a suspect in response to interrogation by private citizens are admissible in evidence, although the suspect has not been warned or has not waived his rights as required by Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694. People v. Hawkins, 53 Ill. 2d 181, 290 N.E.2d 231 (1972).

Duty to Investigate

Former Ill. Rev. Stat., ch. 37, para. 703-2(1) (see now this section) was not intended to divest the police and the State's attorney of their duty and responsibility to investigate crimes where juveniles are involved. People v. Zepeda, 47 Ill. 2d 23, 265 N.E.2d 647 (1970).

Notification of parent

- Reasonable attempt

The defendant's family received reasonable notification that he was being taken into custody where the defendant was arrested at his home and in the presence of his stepfather and the stepfather testified that the first thing he did when his wife came home was to tell her what had happened and that the defendant left with the police. People v. Dinwiddie, 299 Ill. App. 3d 636, 234 Ill. Dec. 15, 702 N.E.2d 181 (1 Dist. 1998), appeal denied, 183 Ill. 2d 577, 238 Ill. Dec. 716, 712 N.E.2d 820 (1999).

Notification of Parent

- Delay

Police violated this Act by failing to attempt to notify 16 year old defendant's mother, and notifying a youth officer only after he had been in custody for several hours. People v. Cole, 168 Ill. App. 3d 172, 118 Ill. Dec. 965, 522 N.E.2d 635 (1 Dist.), appeal denied, 122 Ill. 2d 582, 125 Ill. Dec. 225, 530 N.E.2d 253 (1988), cert. denied, 489 U.S. 1021, 109 S. Ct. 1143, 103 L. Ed. 2d 203 (1989).

Where there was reasonable doubt in the minds of the police as to whether defendant was actually a juvenile, but they did in fact communicate with defendant's mother by telephone and she refused to take any steps, and where, in addition, the police contacted a youth officer who was present at the time defendant made an oral statement and also a written confession to a police officer, viewing the totality of all of the circumstances, any delay in notifying the parents of

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the minor or in obtaining the presence of the youth officer were not of sufficient significance to require exclusion of the confessions made by respondent. People v. Tolbert, 81 Ill. App. 3d 977, 36 Ill. Dec. 866, 401 N.E.2d 1004 (1 Dist. 1980).

- Failure to Comply

Violation of the parental notice requirement does not mandate suppression of evidence obtained following that violation, at most, such a violation constitutes a factor in determining whether subsequent statements were voluntarily made. People v. Creach, 69 Ill. App. 3d 874, 25 Ill. Dec. 886, 387 N.E.2d 762 (1 Dist. 1979), rev'd on other grounds, 79 Ill. 2d 96, 37 Ill. Dec. 338, 402 N.E.2d 228 (1980).

Where the police officers who thought that the juvenile was 17 years old failed to properly notify the juvenile's parents or to deliver the juvenile to a juvenile probation officer where he was then either to be released or delivered promptly to the court or the court-designated reception area for minors, even in the context of the juvenile's drugged condition, the length of his interrogation prior to his confession did not establish under the totality of the circumstances that the juvenile's written statement was involuntary or coerced in any way. People v. Shutters, 56 Ill. App. 3d 184, 13 Ill. Dec. 198, 370 N.E.2d 1225 (2 Dist. 1977).

Even if there was a failure to reasonably comply with former Ill. Rev. Stat., ch. 37, para. 703-2 (see now this section) and that such failure caused defendant to be unlawfully detained, there was nothing imposing sanctions for a failure to comply and, under the rule long adhered to by the Supreme Court, unlawful detention would not, of itself, invalidate a confession or statement of an accused. People v. Zepeda, 47 Ill. 2d 23, 265 N.E.2d 647 (1970).

- Reasonable Attempt

The police made a reasonable attempt to notify defendant's mother under former Ill. Rev. Stat., ch. 37, para. 703-2 (see now this section) where they directed the defendant's older brother to go home and tell the defendant's mother that the defendant had been arrested and that she should come down to the station, and where the mother did in fact arrive at the police station while the defendant was being interrogated. People v. Smith, 178 Ill. App. 3d 976, 128 Ill. Dec. 81, 533 N.E.2d 1169 (3 Dist. 1989).

Where detective informed defendant's sister that the defendant was being arrested and that their father should call the station, such notice constituted a reasonable attempt to notify under former Ill. Rev. Stat., ch. 37, para. 703-2 (see now this section); the statute did not place an affirmative duty on the police to scour the city in an effort to locate defendant's parents. People v. Baxtrom, 81 Ill. App. 3d 653, 37 Ill. Dec. 437, 402 N.E.2d 327 (5 Dist. 1980).

Questioning

There is nothing in the statute requiring that a youth officer be present when a minor is questioned. People v. Bobe, 227 Ill. App. 3d 681, 169 Ill. Dec. 814, 592 N.E.2d 301 (1 Dist.), cert. denied, 146 Ill. 2d 634, 176 Ill. Dec. 805, 602 N.E.2d 459 (1992).

Treatment of Sick or Injured Minors

- General Order

General order concerning procedures for the treatment of sick or injured minors, issued by the presiding judge of the Juvenile Division of the County Department of the Circuit Court of Cook County (the Juvenile Division) exhibited the requisite degree of public interest for an exception to application of the mootness doctrine, allowing the court to look to the public or private nature of the question presented, the desirability of an authoritative determination for the future guidance of

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public officers, and the likelihood of future recurrence of the question despite the absence of an actual case involving a minor. In re General Order of October 11, 1990, 256 Ill. App. 3d 693, 195 Ill. Dec. 322, 628 N.E.2d 786 (1 Dist. 1993).

LEGAL PERIODICALS

For article, "Delinquency and Due Process: A Review of Illinois Law," see 59 Chi-Kent L. Rev. 123 (1982).

§ 705 ILCS 405/2-7. Temporary custody

Sec. 2-7. Temporary custody. "Temporary custody" means the temporary placement of the minor out of the custody of his or her guardian or parent, and includes the following:

(1) "Temporary protective custody" means custody within a hospital or other medical facility or a place previously designated for such custody by the Department of Children and Family Services, subject to review by the court, including a licensed foster home, group home, or other institution. However, such place shall not be a jail or other place for the detention of the criminal or juvenile offenders.

(2) "Shelter care" means a physically unrestrictive facility designated by the Department of Children and Family Services or a licensed child welfare agency, or other suitable place designated by the court for a minor who requires care away from his or her home.

(Source: P.A. 85-601.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-7.

Cross References.

For provisions concerning payments for the care and support of a minor who has been ordered held in detention or placed in shelter care, see the following: allowing a court to order the county to make payments, see 705 ILCS 405/6-8; for state reimbursement to the county, see 705 ILCS 405/6-10.

CASE NOTES

Analysis

Non-Parent Custody

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Religious Freedom of Minor
Treatment of Sick or Injured Minors
- General Order

Non-Parent Custody

A child may not be placed in the custody of a non-parent unless the parents are found to be "unfit." In re Peterson, 112 Ill. 2d 48, 96 Ill. Dec. 690, 491 N.E.2d 1150 (1986).

Religious Freedom of Minor

The circuit court did not abuse its discretion in allowing a minor ward of the court the freedom to attend the church of her choice over the mother's objection when the mother used religion to exercise excessive control over the minor. People v. Tabor, 185 Ill. App. 3d 110, 133 Ill. Dec. 177, 540 N.E.2d 1043 (4 Dist. 1989).

Treatment of Sick or Injured Minors

- General Order

General order concerning procedures for the treatment of sick or injured minors, issued by the presiding judge of the Juvenile Division of the County Department of the Circuit Court of Cook County (the Juvenile Division) exhibited the requisite degree of public interest for an exception to application of the mootness doctrine, allowing the court to look to the public or private nature of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question despite the absence of an actual case involving a minor. In re General Order of October 11, 1990, 256 Ill. App. 3d 693, 195 Ill. Dec. 322, 628 N.E.2d 786 (1 Dist. 1993).

Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 11:03 Limitations of scope of Juvenile Court Act.

§ 705 ILCS 405/2-8. Investigation; release

Sec. 2-8. Investigation; release. When a minor is delivered to the court, or to the place designated by the court under Section 2-7 of this Act [705 ILCS 405/2-7], a probation officer or such other public officer designated by the court shall immediately investigate the circumstances of the minor and the facts surrounding his or her being taken into custody. The minor shall be immediately released to the custody of his or her parent, guardian, legal custodian or responsible relative, unless the probation officer or such other public officer designated by the court finds that further temporary protective custody is necessary, as provided in Section 2-7 [705 ILCS 405/2-7].

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(Source: P.A. 85-601.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-8.

LEGAL PERIODICALS

For article, "Delinquency and Due Process: A Review of Illinois Law," see 59 Chi-Kent L. Rev. 123 (1982).

§ 705 ILCS 405/2-9. Setting of temporary custody hearing; notice; release

Sec. 2-9. Setting of temporary custody hearing; notice; release. (1) Unless sooner released, a minor as defined in Section 2-3 or 2-4 of this Act [705 ILCS 405/2-3 or 705 ILCS 405/2-4] taken into temporary protective custody must be brought before a judicial officer within 48 hours, exclusive of Saturdays, Sundays and court-designated holidays, for a temporary custody hearing to determine whether he shall be further held in custody.

(2) If the probation officer or such other public officer designated by the court determines that the minor should be retained in custody, he shall cause a petition to be filed as provided in Section 2-13 of this Article [705 ILCS 405/2-13], and the clerk of the court shall set the matter for hearing on the temporary custody hearing calendar. When a parent, guardian, custodian or responsible relative is present and so requests, the temporary custody hearing shall be held immediately if the court is in session, otherwise at the earliest feasible time. The petitioner through counsel or such other public officer designated by the court shall insure notification to the minor's parent, guardian, custodian or responsible relative of the time and place of the hearing by the best practicable notice, allowing for oral notice in place of written notice only if provision of written notice is unreasonable under the circumstances.

(3) The minor must be released from temporary protective custody at the expiration of the 48 hour period specified by this Section if not brought before a judicial officer within that period.

(Source: P.A. 87-759.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-9.

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Cross References.

For requirement that the Department of Children and Family Services follow the provisions of this section when the Department finds a child in his or her residence without a parent, guardian, custodian or responsible caretaker, see 20 ILCS 505/5.

CASE NOTES

Analysis

Jurisdiction
Temporary Custody

Jurisdiction

Plenary guardian was incorrect in arguing that the trial court could not terminate the natural mother's parental rights because the plenary guardian, as the plenary guardian of the mentally-disabled natural mother, should be considered to be the legal custodian of the natural mother's minor son pursuant to 755 ILCS 5/11a-17(a). Although the trial court had the power to enter an order making the plenary guardian the legal guardian of the minor child, the trial court never actually entered an order making the plenary guardian the legal custodian of the minor son, which also meant that the plenary guardian was left with no basis for the claim of entitlement to a temporary custody hearing pursuant to 705 ILCS 405/2-9. People v. Delores W. (In re Mark W.), 383 Ill. App. 3d 572, 324 Ill. Dec. 210, 895 N.E.2d 925, 2008 Ill. App. LEXIS 603 (1 Dist. 2008).

Fact that temporary custody hearing involving an infant did not take place within 48 hours of the infant being taken into temporary custody by the State did not deprive a trial court of jurisdiction to conduct the temporary custody hearing; the remedy for failure to conduct the hearing within 48 hours would have been the release of the child from temporary custody if such a motion had been made. People v. John J. (In re John Paul J.), 343 Ill. App. 3d 865, 278 Ill. Dec. 904, 799 N.E.2d 769, 2003 Ill. App. LEXIS 1185 (1 Dist. 2003), appeal denied sub nom. In re John Paul J., 207 Ill. 2d 604, 283 Ill. Dec. 134, 807 N.E.2d 975 (2004).

Former Ill. Rev. Stat., ch. 37, paras. 703-5 and 704-2 (see now this section and 705 ILCS 405/2-14) did not bear upon the question of jurisdiction. In re Nyce, 131 Ill. App. 2d 481, 268 N.E.2d 233 (1 Dist. 1971).

Temporary Custody

Because defendant Illinois Department of Children and Family Services officials obtained additional information that dissipated the probable cause to keep plaintiff child in protective custody, but they continued to do so, it was error to have granted the officials qualified immunity on the child's Fourth Amendment, and plaintiff parents' substantive due process, continuing withholding claims; the officials' assertion that the child could be kept in protective custody for 48 hours under 705 ILCS 405/2-9(1) regardless of the additional information could not be reconciled with the probable cause analysis. Hernandez v. Foster, 657 F.3d 463, 2011 U.S. App. LEXIS 17861 (7th Cir. 2011).

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Statutory requirement that there be corroboration and cross-examination of a minor's previous statements relating to claims of abuse or neglect did not apply to proceedings that were concerned with temporary custody, such as 705 ILCS 405/2-10, 705 ILCS 405/2-9(1), and 705 ILCS 405/5-501(2). Temporary custody proceedings involved determinations about whether a minor should be placed outside the home, rather than determinations of abuse and neglect made in such proceedings under 705 ILCS 405/2-1 where such evidentiary limitations would more naturally apply. People v. Jacqueline M. (In re I.H.), 238 Ill. 2d 430, 345 Ill. Dec. 532, 939 N.E.2d 375, 2010 Ill. LEXIS 1541 (2010).

LEGAL PERIODICALS

For article, "Significant Pretrial Restraint on Liberty," see 66 Ill. B.J. 258 (1978).

§ 705 ILCS 405/2-10. Temporary custody hearing

Sec. 2-10. Temporary custody hearing. At the appearance of the minor before the court at the temporary custody hearing, all witnesses present shall be examined before the court in relation to any matter connected with the allegations made in the petition.

(1) If the court finds that there is not probable cause to believe that the minor is abused, neglected or dependent it shall release the minor and dismiss the petition.

(2) If the court finds that there is probable cause to believe that the minor is abused, neglected or dependent, the court shall state in writing the factual basis supporting its finding and the minor, his or her parent, guardian, custodian and other persons able to give relevant testimony shall be examined before the court. The Department of Children and Family Services shall give testimony concerning indicated reports of abuse and neglect, of which they are aware of through the central registry, involving the minor's parent, guardian or custodian. After such testimony, the court may, consistent with the health, safety and best interests of the minor, enter an order that the minor shall be released upon the request of parent, guardian or custodian if the parent, guardian or custodian appears to take custody. If it is determined that a parent's, guardian's, or custodian's compliance with critical services mitigates the necessity for removal of the minor from his or her home, the court may enter an Order of Protection setting forth reasonable conditions of behavior that a parent, guardian, or custodian must observe for a specified period of time, not to exceed 12 months, without a violation; provided, however, that the 12-month period shall begin anew after any violation. Custodian shall include any agency of the State which has been given custody or wardship of the child. If it is consistent with the health, safety and best interests of the minor, the court may also prescribe shelter care and order that the minor be kept in a suitable place designated by the court or in a shelter care facility designated by the Department of Children and Family Services or a licensed child welfare agency; however, a minor charged with a criminal offense under the Criminal Code of 1961 [720 ILCS 5/1-1 et seq.] or adjudicated delinquent shall not be placed in the custody of or committed to the Department of Children and Family Services by any court, except a minor less than 15 years of age and

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committed to the Department of Children and Family Services under Section 5-710 of this Act [705 ILCS 405/5-710] or a minor for whom an independent basis of abuse, neglect, or dependency exists. An independent basis exists when the allegations or adjudication of abuse, neglect, or dependency do not arise from the same facts, incident, or circumstances which give rise to a charge or adjudication of delinquency.

In placing the minor, the Department or other agency shall, to the extent compatible with the court's order, comply with Section 7 of the Children and Family Services Act [20 ILCS 505/7]. In determining the health, safety and best interests of the minor to prescribe shelter care, the court must find that it is a matter of immediate and urgent necessity for the safety and protection of the minor or of the person or property of another that the minor be placed in a shelter care facility or that he or she is likely to flee the jurisdiction of the court, and must further find that reasonable efforts have been made or that, consistent with the health, safety and best interests of the minor, no efforts reasonably can be made to prevent or eliminate the necessity of removal of the minor from his or her home. The court shall require documentation from the Department of Children and Family Services as to the reasonable efforts that were made to prevent or eliminate the necessity of removal of the minor from his or her home or the reasons why no efforts reasonably could be made to prevent or eliminate the necessity of removal. When a minor is placed in the home of a relative, the Department of Children and Family Services shall complete a preliminary background review of the members of the minor's custodian's household in accordance with Section 4.3 of the Child Care Act of 1969 [225 ILCS 10/4.3] within 90 days of that placement. If the minor is ordered placed in a shelter care facility of the Department of Children and Family Services or a licensed child welfare agency, the court shall, upon request of the appropriate Department or other agency, appoint the Department of Children and Family Services Guardianship Administrator or other appropriate agency executive temporary custodian of the minor and the court may enter such other orders related to the temporary custody as it deems fit and proper, including the provision of services to the minor or his family to ameliorate the causes contributing to the finding of probable cause or to the finding of the existence of immediate and urgent necessity.

Where the Department of Children and Family Services Guardianship Administrator is appointed as the executive temporary custodian, the Department of Children and Family Services shall file with the court and serve on the parties a parent-child visiting plan, within 10 days, excluding weekends and holidays, after the appointment. The parent-child visiting plan shall set out the time and place of visits, the frequency of visits, the length of visits, who shall be present at the visits, and where appropriate, the minor's opportunities to have telephone and mail communication with the parents. For good cause, the court may waive the requirement to file the parent-child visiting plan or extend the time for filing the parent-child visiting plan. Any party may, by motion, request the court to review the parent-child visiting plan to determine whether it is reasonably calculated to expeditiously facilitate the achievement of the permanency goal and is consistent with the minor's best interest. The frequency, duration, and locations of visitation shall be measured by the needs of the child and family, and not by the convenience of Department personnel. Child development principles shall be considered by the court in its analysis of how frequent visitation should be, how long it should last,

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where it should take place, and who should be present. If upon motion of the party to review the plan and after receiving evidence, the court determines that the parent-child visiting plan is not reasonably calculated to expeditiously facilitate the achievement of the permanency goal or that the restrictions placed on parent-child contact are contrary to the child's best interests, the court shall put in writing the factual basis supporting the determination and enter specific findings based on the evidence. The court shall enter an order for the Department to implement changes to the parent-child visiting plan, consistent with the court's findings. At any stage of proceeding, any party may by motion request the court to enter any orders necessary to implement the parent-child visiting plan. Nothing under this subsection (2) shall restrict the court from granting discretionary authority to the Department to increase opportunities for additional parent-child contacts, without further court orders. Nothing in this subsection (2) shall restrict the Department from immediately restricting or terminating parent-child contact, without either amending the parent-child visiting plan or obtaining a court order, where the Department or its assigns reasonably believe that continuation of parent-child contact, as set out in the parent-child visiting plan, would be contrary to the child's health, safety, and welfare. The Department shall file with the court and serve on the parties any amendments to the visitation plan within 10 days, excluding weekends and holidays, of the change of the visitation. Any party may, by motion, request the court to review the parent-child visiting plan to determine whether the parent-child visiting plan is reasonably calculated to expeditiously facilitate the achievement of the permanency goal, and is consistent with the minor's health, safety, and best interest.

Acceptance of services shall not be considered an admission of any allegation in a petition made pursuant to this Act, nor may a referral of services be considered as evidence in any proceeding pursuant to this Act, except where the issue is whether the Department has made reasonable efforts to reunite the family. In making its findings that it is consistent with the health, safety and best interests of the minor to prescribe shelter care, the court shall state in writing (i) the factual basis supporting its findings concerning the immediate and urgent necessity for the protection of the minor or of the person or property of another and (ii) the factual basis supporting its findings that reasonable efforts were made to prevent or eliminate the removal of the minor from his or her home or that no efforts reasonably could be made to prevent or eliminate the removal of the minor from his or her home. The parents, guardian, custodian, temporary custodian and minor shall each be furnished a copy of such written findings. The temporary custodian shall maintain a copy of the court order and written findings in the case record for the child. The order together with the court's findings of fact in support thereof shall be entered of record in the court.

Once the court finds that it is a matter of immediate and urgent necessity for the protection of the minor that the minor be placed in a shelter care facility, the minor shall not be returned to the parent, custodian or guardian until the court finds that such placement is no longer necessary for the protection of the minor.

If the child is placed in the temporary custody of the Department of Children and Family Services for his or her protection, the court shall admonish the parents, guardian, custodian or responsible relative that the parents must cooperate with the Department of Children and Family Services, comply with the terms of the service plans, and correct the

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conditions which require the child to be in care, or risk termination of their parental rights.

(3) If prior to the shelter care hearing for a minor described in Sections 2-3, 2-4, 3-3 and 4-3 [705 ILCS 405/2-3, 705 ILCS 405/2-4, 705 ILCS 405/3-3 and 705 ILCS 405/4-3] the moving party is unable to serve notice on the party respondent, the shelter care hearing may proceed ex-parte. A shelter care order from an ex-parte hearing shall be endorsed with the date and hour of issuance and shall be filed with the clerk's office and entered of record. The order shall expire after 10 days from the time it is issued unless before its expiration it is renewed, at a hearing upon appearance of the party respondent, or upon an affidavit of the moving party as to all diligent efforts to notify the party respondent by notice as herein prescribed. The notice prescribed shall be in writing and shall be personally delivered to the minor or the minor's attorney and to the last known address of the other person or persons entitled to notice. The notice shall also state the nature of the allegations, the nature of the order sought by the State, including whether temporary custody is sought, and the consequences of failure to appear and shall contain a notice that the parties will not be entitled to further written notices or publication notices of proceedings in this case, including the filing of an amended petition or a motion to terminate parental rights, except as required by Supreme Court Rule 11; and shall explain the right of the parties and the procedures to vacate or modify a shelter care order as provided in this Section. The notice for a shelter care hearing shall be substantially as follows:

NOTICE TO PARENTS AND CHILDREN

OF SHELTER CARE HEARING

On ..... at ....., before the Honorable ....., (address:) .....,the State of Illinois will present evidence (1) that (name of child or children) ..... are abused, neglected or dependent for the following reasons: .....

and (2) whether there is "immediate and urgent necessity" to remove the child or children from the responsible relative.

YOUR FAILURE TO APPEAR AT THE HEARING MAY RESULT IN PLACEMENT of the child or children in foster care until a trial can be held. A trial may not be held for up to 90 days. You will not be entitled to further notices of proceedings in this case, including the filing of an amended petition or a motion to terminate parental rights.

At the shelter care hearing, parents have the following rights:

1.To ask the court to appoint a lawyer if they cannot afford one.

2.To ask the court to continue the hearing to allow them time to prepare.

3.To present evidence concerning:

a.Whether or not the child or children were abused, neglected or dependent.

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b.Whether or not there is "immediate and urgent necessity" to remove the child from home (including: their ability to care for the child, conditions in the home, alternative means of protecting the child other than removal).

c.The best interests of the child.

4.To cross examine the State's witnesses.

The Notice for rehearings shall be substantially as follows:

NOTICE OF PARENT'S AND CHILDREN'S RIGHTS

TO REHEARING ON TEMPORARY CUSTODY

If you were not present at and did not have adequate notice of the Shelter Care Hearing at which temporary custody of ..... was awarded to ....., you have the right to request a full rehearing on whether the State should have temporary custody of ..... To request this rehearing, you must file with the Clerk of the Juvenile Court (address): ....., in person or by mailing a statement (affidavit) setting forth the following:

1.That you were not present at the shelter care hearing.

2.That you did not get adequate notice (explaining how the notice was inadequate).

3.Your signature.

4.Signature must be notarized.

The rehearing should be scheduled within 48 hours of your filing this affidavit.

At the rehearing, your rights are the same as at the initial shelter care hearing. The enclosed notice explains those rights.

At the Shelter Care Hearing, children have the following rights:

1.To have a guardian ad litem appointed.

2.To be declared competent as a witness and to present testimony concerning:

a.Whether they are abused, neglected or dependent.

b.Whether there is "immediate and urgent necessity" to be removed from home.

c.Their best interests.

3.To cross examine witnesses for other parties.

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4.To obtain an explanation of any proceedings and orders of the court.

(4) If the parent, guardian, legal custodian, responsible relative, minor age 8 or over, or counsel of the minor did not have actual notice of or was not present at the shelter care hearing, he or she may file an affidavit setting forth these facts, and the clerk shall set the matter for rehearing not later than 48 hours, excluding Sundays and legal holidays, after the filing of the affidavit. At the rehearing, the court shall proceed in the same manner as upon the original hearing.

(5) Only when there is reasonable cause to believe that the minor taken into custody is a person described in subsection (3) of Section 5-105 [705 ILCS 405/5-105] may the minor be kept or detained in a detention home or county or municipal jail. This Section shall in no way be construed to limit subsection (6).

(6) No minor under 16 years of age may be confined in a jail or place ordinarily used for the confinement of prisoners in a police station. Minors under 17 years of age must be kept separate from confined adults and may not at any time be kept in the same cell, room, or yard with adults confined pursuant to the criminal law.

(7) If the minor is not brought before a judicial officer within the time period as specified in Section 2-9 [705 ILCS 405/2-9], the minor must immediately be released from custody.

(8) If neither the parent, guardian or custodian appears within 24 hours to take custody of a minor released upon request pursuant to subsection (2) of this Section, then the clerk of the court shall set the matter for rehearing not later than 7 days after the original order and shall issue a summons directed to the parent, guardian or custodian to appear. At the same time the probation department shall prepare a report on the minor. If a parent, guardian or custodian does not appear at such rehearing, the judge may enter an order prescribing that the minor be kept in a suitable place designated by the Department of Children and Family Services or a licensed child welfare agency.

(9) Notwithstanding any other provision of this Section any interested party, including the State, the temporary custodian, an agency providing services to the minor or family under a service plan pursuant to Section 8.2 of the Abused and Neglected Child Reporting Act [325 ILCS 5/8.2], foster parent, or any of their representatives, on notice to all parties entitled to notice, may file a motion that it is in the best interests of the minor to modify or vacate a temporary custody order on any of the following grounds:

(a) It is no longer a matter of immediate and urgent necessity that the minor remain in shelter care; or

(b) There is a material change in the circumstances of the natural family from which the minor was removed and the child can be cared for at home without endangering the child's health or safety; or

(c) A person not a party to the alleged abuse, neglect or dependency, including a parent, relative or legal guardian, is capable of assuming temporary custody of the minor; or

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(d) Services provided by the Department of Children and Family Services or a child welfare agency or other service provider have been successful in eliminating the need for temporary custody and the child can be cared for at home without endangering the child's health or safety.

In ruling on the motion, the court shall determine whether it is consistent with the health, safety and best interests of the minor to modify or vacate a temporary custody order.

The clerk shall set the matter for hearing not later than days after such motion is filed. In the event that the court modifies or vacates a temporary custody order but does not vacate its finding of probable cause, the court may order that appropriate services be continued or initiated in behalf of the minor and his or her family.

(10) When the court finds or has found that there is probable cause to believe a minor is an abused minor as described in subsection (2) of Section 2-3 [705 ILCS 405/2-3] and that there is an immediate and urgent necessity for the abused minor to be placed in shelter care, immediate and urgent necessity shall be presumed for any other minor residing in the same household as the abused minor provided:

(a) Such other minor is the subject of an abuse or neglect petition pending before the court; and

(b) A party to the petition is seeking shelter care for such other minor.

Once the presumption of immediate and urgent necessity has been raised, the burden of demonstrating the lack of immediate and urgent necessity shall be on any party that is opposing shelter care for the other minor.

(Source: P.A. 86-1482; 87-759; 88-7, § 15; 88-491, § 5; 88-614, § 110; 88-670, § 2-63; 89-21, § 15-15; 89-422, § 3; 89-582, § 5; 89-626, § 2-68; 90-28, § 10-20; 90-87, § 5; 90-590, § 2001-10; 90-655, § 156; 94-604, § 5; 95-405, § 10; 95-642, § 10; 95-876, § 310.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-10.

Effect of Amendments. The 1998 amendment by P.A. 90-590, effective January 1, 1999, incorporated the amendments by P.A. 90-28 and P.A. 90-87; substituted "Section 5-710" for "Section 5-23" near the end of the fifth sentence of the first paragraph in subsection (2); and substituted "subsection (3) of Section 5-105" for "Section 5-3" in subsection (5).

The 1998 amendment by P.A. 90-655, effective July 30, 1998, incorporated the amendments by P.A. 90-28 and P.A. 90-87.

Although the amendments by P.A. 90-590 and P.A. 90-655 did not take into account the amendments made by the other, the amendments to this section have been combined into a single version by the publisher.

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The 2005 amendment by P.A. 94-604, effective January 1, 2006, added the paragraph beginning "Where the Department of Children and Family".

The 2007 amendment by P.A. 95-405, effective June 1, 2008, added the fourth sentence in (2).

The 2007 amendment by P.A.95-642, effective June 1, 2008, substituted "15 years of age" for "13 years of age" in the fourth sentence of (2); added the fifth sentence in (2); and made a related change.

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, combined earlier multiple amendments.

CASE NOTES

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Constitutionality

The provisions of this section and 705 ILCS 405/2-27, preventing minors 13 years of age or older who have been charged with a criminal offense or adjudicated delinquent from being committed

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to or placed in the custody of the Department of Children and Family Services, do not violate the equal protection clauses of the state or federal constitutions. In re A.A., 181 Ill. 2d 32, 228 Ill. Dec. 905, 690 N.E.2d 980 (1998).

Under a rational basis review, the 1989 amendments to 705 ILCS 405/2-10(2), 705 ILCS 405/2-27(1)(d), and 20 ILCS 505/5 do not violate the equal protection clause of U.S. Const., Amend. XIV by denying minors 13 and over who have been adjudicated delinquent access to services of the Department of Children and Family Services because the classification of minors based on their delinquency serves the rational purposes of allocating the Department's scarce resources to its core population of abused, neglected, or dependent minors with no history of delinquency and because delinquent minors aged 13 and older might present a danger to younger, more vulnerable children with whom they might be placed in foster homes and shelter care facilities. Corman v. C.T. (In re C.T.), 281 Ill. App. 3d 189, 217 Ill. Dec. 219, 666 N.E.2d 888, 1996 Ill. App. LEXIS 423 (1 Dist. 1996).

Appeal

Parent's claim, that trial court had failed to find, at a temporary custody hearing, that the Illinois Department of Children and Family Services had made reasonable efforts at reunification, was mooted by a later adjudication on the merits that the children were neglected; the parent had failed to preserve the issue for review or to provide a transcript of the temporary custody hearing. People v. Edward T. (In re Edward T.), 343 Ill. App. 3d 778, 278 Ill. Dec. 586, 799 N.E.2d 304, 2003 Ill. App. LEXIS 1155 (1 Dist. 2003).

Best Interests Determination

On a motion to remove the minor from his temporary foster placement, there is no need to make a new probable cause finding of abuse, neglect, or dependency by the foster parent or new findings of immediate and urgent necessity or reasonable efforts; rather, in entering "such other orders," the standard is the general best interests standard. Murphy v. Ortega-Piron (In re A.H.), 195 Ill. 2d 408, 254 Ill. Dec. 737, 748 N.E.2d 183, 2001 Ill. LEXIS 471 (2001).

When the juvenile court merely enters an order "related" to the temporary custody, the court need only engage in the best interests determination as outlined in 705 ILCS 405/1-3; under the general best interests determination, the court is not required to consider the immediacy and urgency of the situation or whether reasonable efforts have been made. Murphy v. Ortega-Piron (In re A.H.), 195 Ill. 2d 408, 254 Ill. Dec. 737, 748 N.E.2d 183, 2001 Ill. LEXIS 471 (2001).

When a court "enters such other orders related to the temporary custody [of the minor] as it deems fit and proper," the court must make a best interests determination, though not of the kind required at the temporary custody hearing. Murphy v. Ortega-Piron (In re A.H.), 195 Ill. 2d 408, 254 Ill. Dec. 737, 748 N.E.2d 183, 2001 Ill. LEXIS 471 (2001).

Construction with Other Laws

Statutory requirement that there be corroboration and cross-examination of a minor's previous statements relating to claims of abuse or neglect did not apply to proceedings that were concerned with temporary custody, such as 705 ILCS 405/2-10, 705 ILCS 405/2-9(1), and 705 ILCS 405/5-501(2). Temporary custody proceedings involved determinations about whether a minor should be placed outside the home, rather than determinations of abuse and neglect made in such proceedings under 705 ILCS 405/2-1 where such evidentiary limitations would more naturally apply. People v. Jacqueline M. (In re I.H.), 238 Ill. 2d 430, 345 Ill. Dec. 532, 939 N.E.2d 375, 2010 Ill. LEXIS 1541 (2010).

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Neither 705 ILCS 405/2-10 nor 705 ILCS 405/2-27 makes any provision for the commitment of delinquent minors with an "independent basis" for their wardship; rather, each section provides a clear prohibition on the commitment of a delinquent minor to the custody of the Department of Children and Family Services, excepting only those minors less than 13 years old who have been committed to the Department pursuant to 705 ILCS 405/5-710. Corman v. C.T. (In re C.T.), 281 Ill. App. 3d 189, 217 Ill. Dec. 219, 666 N.E.2d 888, 1996 Ill. App. LEXIS 423 (1 Dist. 1996).

The Juvenile Court Act, the Abused and Neglected Child Reporting Act (325 ILCS 5/1 et seq.), the Children and Family Services Act (20 ILCS 505/1 et seq.) and to some extent the Illinois Alcoholism and Other Drug Dependency Act (20 ILCS 301/1-1 et seq.) must be construed in concert to determine the powers and responsibilities of the Department of Children and Family Services in cases involving abuse or neglect resulting from parental drug abuse. In re Lawrence M., 172 Ill. 2d 523, 219 Ill. Dec. 32, 670 N.E.2d 710 (1996).

Control Over Investigation

Nowhere in the Juvenile Court Act (705 ILCS 405/1-1 et seq.) is the court conferred power to control the Department of Children and Family Service's investigation of alleged abuse, dependence or neglect. In re R.V., 288 Ill. App. 3d 860, 224 Ill. Dec. 345, 681 N.E.2d 660 (1 Dist. 1997).

Cost of Services

Juvenile court has authority to order Department of Children and Family Services (DCFS) to pay for ameliorating services provided to a minor and his family while the minor is in the temporary custody of DCFS. Rami M. v. Illinois Dep't of Children & Family Servs., 285 Ill. App. 3d 267, 220 Ill. Dec. 446, 673 N.E.2d 358 (1 Dist. 1996), appeal denied, 172 Ill. 2d 552, 223 Ill. Dec. 195, 679 N.E.2d 380 (1997).

As it is clear that the legislature contemplated interplay between the Department of Children and Family Services (DCFS) and the juvenile court in deciding the appropriate social services for neglected and abused children and their families, the juvenile court orders directing the DCFS to pay for drug treatment services to parents of minors did not violate the doctrine of the separation of powers. In re Lawrence M., 172 Ill. 2d 523, 219 Ill. Dec. 32, 670 N.E.2d 710 (1996).

Juvenile court did not act outside its authority in directing the Department of Children and Family Services (DCFS) to pay for drug treatment services to the parents of minors before the court as such orders were not barred by sovereign immunity where the orders essentially directed DCFS administrators to provide mandated services. In re Lawrence M., 172 Ill. 2d 523, 219 Ill. Dec. 32, 670 N.E.2d 710 (1996).

Emergency Hearing

Juvenile court did not have the authority to conduct an emergency hearing to change a child's placement where the guardian ad litem did not claim that the need was urgent or a necessity. In re R.M., 288 Ill. App. 3d 811, 224 Ill. Dec. 337, 681 N.E.2d 652 (1 Dist. 1997).

Immediate Placement

Under both the plain language of 705 ILCS 405/2-10 and State Supreme Court precedent, a trial court that had found a youth to be both delinquent and neglected could both award temporary custody to the Illinois Department of Children and Family and specify the type of residential

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placement to be made. In re Sean A., 349 Ill. App. 3d 964, 285 Ill. Dec. 849, 812 N.E.2d 669, 2004 Ill. App. LEXIS 825 (3 Dist. 2004).

Commitment of a 17 year old, who previously had been adjudicated delinquent, to the custody of the Department of Children and Family Services pursuant to dependency proceedings was improper because the plain language of the Juvenile Court Act, 705 ILCS 405/2-10 and 705 ILCS 405/2-27 and the Children and Family Services Act, 20 ILCS 505/5 prohibited such placement for a minor age 13 and older who had been adjudicated delinquent. Corman v. C.T. (In re C.T.), 281 Ill. App. 3d 189, 217 Ill. Dec. 219, 666 N.E.2d 888, 1996 Ill. App. LEXIS 423 (1 Dist. 1996).

The inclusion in Ill. Pub. Act 89-21 of the same amendatory language in both 705 ILCS 405/2-10 and 705 ILCS 405/2-27 (part of the Juvenile Court Act) can serve no purpose but to extend the prohibition against the placement with Department of Children and Family Services of minors aged 13 and over with a history of delinquency to abuse, neglect, and dependency proceedings. Corman v. C.T. (In re C.T.), 281 Ill. App. 3d 189, 217 Ill. Dec. 219, 666 N.E.2d 888, 1996 Ill. App. LEXIS 423 (1 Dist. 1996).

This section authorizes the trial court to order immediate placement of a child if it finds probable cause to believe that it is a matter of urgent necessity for the child's protection. People v. Johnny S., 219 Ill. App. 3d 420, 162 Ill. Dec. 112, 579 N.E.2d 926 (1 Dist. 1991), appeal denied, 143 Ill. 2d 638, 167 Ill. Dec. 400, 587 N.E.2d 1015 (1992).

Interim Services to Child or Family

Pursuant to the provisions in this Act and the Department of Children and Family Services' (DCFS) mandate, the court may enter interim orders for services to the child and his or her family in order to prevent the unnecessary separation of children from their families and restoring to their families children who have been removed where it has found that they are in the best interest of the minor and his or her family and will help preserve the family. In re Lawrence M., 269 Ill. App. 3d 253, 206 Ill. Dec. 817, 645 N.E.2d 1069 (1 Dist.), aff'd, 172 Ill. 2d 523, 219 Ill. Dec. 32, 670 N.E.2d 710 (1996).

Jurisdiction

The juvenile court's jurisdiction over requests for removal of a minor from his temporary foster care derives from the plain language of 705 ILCS 405/2-10. Murphy v. Ortega-Piron (In re A.H.), 195 Ill. 2d 408, 254 Ill. Dec. 737, 748 N.E.2d 183, 2001 Ill. LEXIS 471 (2001).

Neglect

Cirucit court erred in finding that a child was neglected, based on a theory of anticipatory neglect by his mother, where the evidence showed that the child had been living with his father in Wisconsin since the child was eight months old and the State failed to meet its burden of showing that the child was placed at a probable and substantial risk of harm as a result of the neglect of his siblings, all of whom resided with the mother in Illinois. People v. Arthur H. (In re Arthur H.), 212 Ill. 2d 441, 289 Ill. Dec. 238, 819 N.E.2d 734, 2004 Ill. LEXIS 1620 (2004).

Probable Cause

Trial court's finding of probable cause to believe that a minor child had been sexually abused was error because the finding was based solely on the child's out-of-court hearsay statements that were neither corroborated nor subjected to cross-examination as required by 705 ILCS 405/2-

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18(4)(c). People v. Jaqueline M. (In re Ivan H.), 382 Ill. App. 3d 1093, 321 Ill. Dec. 882, 890 N.E.2d 604, 2008 Ill. App. LEXIS 544 (1 Dist. 2008).

Trial court did not err in dismissing the State's petitions for adjudication of wardship regarding the two minors, as evidence in the record supported the trial court's finding that the State had not proven that the two minor children had been abused or neglected since the evidence was conflicting on the cause of the one minor child's injuries. People v. Rocio T. (In re Gustavo H.), 362 Ill. App. 3d 802, 298 Ill. Dec. 907, 841 N.E.2d 50, 2005 Ill. App. LEXIS 1166 (1 Dist. 2005), appeal denied, 218 Ill. 2d 539, 303 Ill. Dec. 3, 850 N.E.2d 808 (2006).

The requirements of "probable cause" and "immediate and urgent necessity" apply to the fifth and seventh sentences of subsection (2); therefore, in order for the juvenile court's order to be valid, there must have been probable cause to believe the juvenile was abused, neglected or dependent, and it must have been a matter of immediate and urgent necessity that he be removed from the foster home. In re A.H., 312 Ill. App. 3d 638, 246 Ill. Dec. 6, 729 N.E.2d 6, 2000 Ill. App. LEXIS 194 (1 Dist. 2000).

The trial court's decision to dismiss the petitions for adjudication of wardship for lack of probable cause was not against the manifest weight of the evidence where evidence established that child's father inadvertently left his knife in his pants pocket, where child informed the police and his mother that he had injured himself while playing with his father's pocket knife, where the police found child was strong enough to open the knife and where a psychiatrist determined that child was not a battered child, the hospital staff found no other bruises or marks on child's body, and a bone survey showed no previous bone breakage. People v. Barbara M., 248 Ill. App. 3d 76, 187 Ill. Dec. 783, 618 N.E.2d 374 (1 Dist. 1993).

Legal Custodians

It is not the exclusive function of the state to care for and protect minors who are adjudicated to be abused and neglected by their natural parents; close relatives, other suitable individuals, and private organizations may serve as legal custodians of abused and neglected children who will then bear the burden of the duty to adequately protect them. Letisha A. ex rel. Murphy v. Morgan, 855 F. Supp. 943 (N.D. Ill. 1994).

Neglect

- Not Shown

Although the nature of child's injuries established prima facie evidence of neglect, the trial court properly found that the prima facie case was overcome. In re Ashley F., 265 Ill. App. 3d 419, 202 Ill. Dec. 722, 638 N.E.2d 368 (1 Dist. 1994).

Notice

After citing subsection (4) in his affidavit, respondent could not argue he had no idea when the rehearing would be held since the very language of the section indicated it would be held within 48 hours and respondent even requested that the matter be placed on the docket within 48 hours; thus there was no question respondent was on notice of the hearing. In re A.D.W., 278 Ill. App. 3d 476, 215 Ill. Dec. 308, 663 N.E.2d 58 (4 Dist. 1996).

Protective Order

An order entered at a temporary custody hearing held pursuant to this Act, which allows children to remain with their father, does not constitute an injunction. People v. Johnny S., 219 Ill. App.

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3d 420, 162 Ill. Dec. 112, 579 N.E.2d 926 (1 Dist. 1991), appeal denied, 143 Ill. 2d 638, 167 Ill. Dec. 400, 587 N.E.2d 1015 (1992).

Rehearing

Trial court properly considered the fact that the parents of a child who was the subject of a neglect and dependency hearing were no longer in jail when they sought a rehearing on the issue of shelter care; the rehearing was a de novo proceeding, available to the parents because they never received notice of the initial shelter care hearing, and nothing within the language of 705 ILCS 405/2-10 limited the evidence that the trial court could consider. People v. P.K. (In re Niki K.), 374 Ill. App. 3d 795, 313 Ill. Dec. 212, 871 N.E.2d 939, 2007 Ill. App. LEXIS 751 (1 Dist. 2007).

Removal from Temporary Foster Placement

705 ILCS 405/2-10 authorizes a court to remove a child from his temporary foster placement by holding a temporary custody hearing. Murphy v. Ortega-Piron (In re A.H.), 195 Ill. 2d 408, 254 Ill. Dec. 737, 748 N.E.2d 183, 2001 Ill. LEXIS 471 (2001).

Right to Appeal

- Waiver

Minors did not waive the right to appeal temporary custody orders by agreeing at each hearing that Department of Children and Family Services custody was in their best interest; if, at the time of the hearings, that interest was served best by removing the children from their home, then the public guardian cannot be viewed as having voluntarily accepted the benefits of the custody and disposition orders. People v. Barbara L., 222 Ill. App. 3d 585, 165 Ill. Dec. 91, 584 N.E.2d 270 (1 Dist. 1991).

Shelter Care

Parents' contentions regarding an alternative to shelter care were not justiciable because the evidence supported the trial court's findings, under 705 ILCS 405/2-10(2), and the contentions were subsumed into the ultimate judgment before the court; the best interest of the child. People v. Weaver (In re J.W.), 386 Ill. App. 3d 847, 325 Ill. Dec. 756, 898 N.E.2d 803, 2008 Ill. App. LEXIS 1199 (4 Dist. 2008).

Trial court did not abuse its discretion when it dismissed the State's neglect and dependency petition and returned the child who was the subject of the petition to her parents; while the parents arrest and subsequent confinement at a county jail had precipitated the State's petition, the parents were no longer in custody when they requested a rehearing on the issue of shelter care, and at that time, they were both willing and able to care for the child, and therefore, there was no immediate and urgent necessity to remove the child from her parents or her home. People v. P.K. (In re Niki K.), 374 Ill. App. 3d 795, 313 Ill. Dec. 212, 871 N.E.2d 939, 2007 Ill. App. LEXIS 751 (1 Dist. 2007).

Trial court erred in ruling that an initial shelter care order had not been renewed on a timely basis where the day that the initial order was to expire fell on a Sunday and a renewal order was entered the next day; the Sunday date was excluded from the computation of time pursuant to 5 ILCS 70/1.11. People v. P.K. (In re Niki K.), 374 Ill. App. 3d 795, 313 Ill. Dec. 212, 871 N.E.2d 939, 2007 Ill. App. LEXIS 751 (1 Dist. 2007).

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Substitution of Judge

Allowing substitution of a judge in a neglect case where there is a case involving the minor's siblings before the court would not frustrate a legislative intent that the child protection court consider the circumstances of a child's siblings when making determinations about ordering shelter care for the minor; a second judge could apply the presumption of an abusive environment and use admissible evidence from an earlier proceeding in the later proceeding. In re Daniel R., 291 Ill. App. 3d 1003, 225 Ill. Dec. 900, 684 N.E.2d 891 (1 Dist. 1997).

Treatment for Parents

The plain language of this section grants the juvenile court the authority to enter orders for the provision of drug treatment services for parents whose addiction has caused or contributed to the minor's placement in shelter care. In re Lawrence M., 172 Ill. 2d 523, 219 Ill. Dec. 32, 670 N.E.2d 710 (1996).

Treatment Plan

Subsection (2) shows that the Department of Children and Family Services must come to court with any and all documentation of its service provisions efforts. In re Lawrence M., 172 Ill. 2d 523, 219 Ill. Dec. 32, 670 N.E.2d 710 (1996).

It is Department of Children and Family Services' (DCFS) responsibility to determine what services are necessary for families of abused or neglected children who are at risk of being placed outside the home and to develop a case plan for the family and file the plan with the juvenile court; where DCFS was aware that the mothers were in need of in-patient drug treatment, and in all but one of these cases DCFS did not develop a treatment plan, in ordering DCFS to pay for such treatment, the court did not assume the role of DCFS, but merely entered an interim order compelling DCFS to comply with the agency's statutory mandate to provide services to reunite the family. In re Lawrence M., 269 Ill. App. 3d 253, 206 Ill. Dec. 817, 645 N.E.2d 1069 (1 Dist.), aff'd, 172 Ill. 2d 523, 219 Ill. Dec. 32, 670 N.E.2d 710 (1996).

LEGAL PERIODICALS

For article, "Juvenile Law: 1985-86 Illinois Law Survey," see 18 Loy. U. Chi. L.J. 633 (1986-87).

For note, "Delineating the Reasonable Progress Ground as a Basis for Termination of Parental Rights - In re Austin," see 28 De Paul L.Rev. 819 (1979).

For comments, "Child Abuse: The Role of Adoption as a Preventative Measure," see 10 J. Marshall J. Prac. & Proc. (1976).

For article, "Denying Child Welfare Services to Delinquent Teens: A Call to Return to the Roots of Illinois' Juvenile Court," see, 36 Loy. U. Chi. L.J. 925 (2005).

§ 705 ILCS 405/2-10.1. [Shelter care]

Sec. 2-10.1. Whenever a minor is placed in shelter care with the Department or a licensed child welfare agency in accordance with Section 2-10 [705 ILCS 405/2-10], the

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Department or agency, as appropriate, shall prepare and file with the court within 45 days of placement under Section 2-10 a case plan which complies with the federal Adoption Assistance and Child Welfare Act of 1980 [42 U.S.C. § 602 et seq., 42 U.S.C. § 1305 et seq.] and is consistent with the health, safety and best interests of the minor.

For the purposes of this Act, "case plan" and "service plan" shall have the same meaning.

(Source: P.A. 86-1293; 88-487, § 50; 90-28, § 10-20; 94-604, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-10.1.

Effect of Amendments. The 1997 amendment by P.A. 90-28, effective January 1, 1998, substituted "consistent with" for "in"; and inserted "health, safety and".

The 2005 amendment by P.A. 94-604, effective January 1, 2006, added the last paragraph.

CASE NOTES

Preparation of Case Plan

Court's order directing the Department of Children and Family Services (DCFS) to provide parents with drug treatment was not premature as DCFS had sufficient time prior to the entry of the order to determine the family's need for drug treatment services. In re Lawrence M., 172 Ill. 2d 523, 219 Ill. Dec. 32, 670 N.E.2d 710 (1996).

§ 705 ILCS 405/2-11. Medical and dental treatment and care

Sec. 2-11. Medical and dental treatment and care. At all times during temporary custody or shelter care, the court may authorize a physician, a hospital or any other appropriate health care provider to provide medical, dental or surgical procedures if such procedures are necessary to safeguard the minor's life or health.

With respect to any minor for whom the Department of Children and Family Services Guardianship Administrator is appointed the temporary custodian, the Guardianship Administrator or his designee shall be deemed the minor's legally authorized representative for purposes of consenting to an HIV test and obtaining and disclosing information concerning such test pursuant to the AIDS Confidentiality Act [410 ILCS 305/1 et seq.] and for purposes of consenting to the release of information pursuant to the Illinois Sexually Transmissible Disease Control Act [410 ILCS 325/1 et seq.].

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Any person who administers an HIV test upon the consent of the Department of Children and Family Services Guardianship Administrator or his designee, or who discloses the results of such tests to the Department's Guardianship Administrator or his designee, shall have immunity from any liability, civil, criminal or otherwise, that might result by reason of such actions. For the purpose of any proceedings, civil or criminal, the good faith of any persons required to administer or disclose the results of tests, or permitted to take such actions, shall be presumed.

(Source: P.A. 86-904.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-11.

CASE NOTES

Analysis

Discontinuation of Life-Sustaining Medical Treatment
Do Not Resuscitate Order
- Upheld

Discontinuation of Life-Sustaining Medical Treatment

This section and 705 ILCS 405/2-27 support a court-appointed guardian's general standing to petition the court for authority to consent to a medical judgment made by a ward's treating physicians, even when that judgment is to discontinue life-sustaining medical treatment. The court is charged with ruling on all matters presented to it regarding the welfare of the child. In re C.A., 236 Ill. App. 3d 594, 177 Ill. Dec. 797, 603 N.E.2d 1171 (1 Dist. 1992).

Do Not Resuscitate Order

- Upheld

The juvenile court acted properly in hearing a petition and in concluding that a minor ward's court-appointed guardian could consent to the placement of a do not resuscitate (DNR) order on her charts under certain conditions even though in future cases decided under the Health Care Surrogate Act (755 ILCS 40/1 et seq.) this precise issue involving the juvenile court's authority to approve DNR orders may be moot. The new Act permits a surrogate to consent to such orders on behalf of incompetent minors. Although the new Act contemplates private decision-making under the statutory guidelines therein, the case at bar affirms the juvenile court's general authority, upon the guardian or other interested party's request, to hear and resolve issues concerning the ward's welfare. In re C.A., 236 Ill. App. 3d 594, 177 Ill. Dec. 797, 603 N.E.2d 1171 (1 Dist. 1992).

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The juvenile court properly used the best interests of the child standard in ruling that a minor ward's court-appointed guardian had authority to consent to the entry of a do not resuscitate (DNR) order at such time as the treating doctors agreed it was medically appropriate based upon the ward's medical condition and prognosis. In re C.A., 236 Ill. App. 3d 594, 177 Ill. Dec. 797, 603 N.E.2d 1171 (1 Dist. 1992).

§ 705 ILCS 405/2-12. Preliminary conferences

Sec. 2-12. Preliminary conferences. (1) The court may authorize the probation officer to confer in a preliminary conference with any person seeking to file a petition under Section 2-13 [705 ILCS 405/2-13], the prospective respondents and other interested persons concerning the advisability of filing the petition, with a view to adjusting suitable cases without the filing of a petition.

The probation officer should schedule a conference promptly except where the State's Attorney insists on court action or where the minor has indicated that he or she will demand a judicial hearing and will not comply with an informal adjustment.

(2) In any case of a minor who is in temporary custody, the holding of preliminary conferences does not operate to prolong temporary custody beyond the period permitted by Section 2-9 [705 ILCS 405/2-9].

(3) This Section does not authorize any probation officer to compel any person to appear at any conference, produce any papers, or visit any place.

(4) No statement made during a preliminary conference may be admitted into evidence at an adjudicatory hearing or at any proceeding against the minor under the criminal laws of this State prior to his or her conviction thereunder.

(5) The probation officer shall promptly formulate a written, non-judicial adjustment plan following the initial conference.

(6) Non-judicial adjustment plans include but are not limited to the following:

(a) up to 6 months informal supervision within family;

(b) up to 6 months informal supervision with a probation officer involved;

(c) up to 6 months informal supervision with release to a person other than parent;

(d) referral to special educational, counseling or other rehabilitative social or educational programs;

(e) referral to residential treatment programs; and

(f) any other appropriate action with consent of the minor and a parent.

(7) The factors to be considered by the probation officer in formulating a non-judicial adjustment plan shall be the same as those limited in subsection (4) of Section 5-405 [705

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ILCS 405/5-405].

(Source: P.A. 86-639; 90-590, § 2001-10.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-12.

Effect of Amendments. The 1998 amendment by P.A. 90-590, effective January 1, 1999, substituted "Section 5-405" for "Section 5-6" in subsection (7).

LEGAL PERIODICALS

For comments, "Child Abuse: The Role of Adoption as a Preventative Measure," see 10 J. Marshall J. Prac. & Proc. (1976).

§ 705 ILCS 405/2-13. Petition

Sec. 2-13. Petition. (1) Any adult person, any agency or association by its representative may file, or the court on its own motion, consistent with the health, safety and best interests of the minor may direct the filing through the State's Attorney of a petition in respect of a minor under this Act. The petition and all subsequent court documents shall be entitled "In the interest of _____, a minor".

(2) The petition shall be verified but the statements may be made upon information and belief. It shall allege that the minor is abused, neglected, or dependent, with citations to the appropriate provisions of this Act, and set forth (a) facts sufficient to bring the minor under Section 2-3 or 2-4 [705 ILCS 405/2-3 or 705 ILCS 405/2-4] and to inform respondents of the cause of action, including, but not limited to, a plain and concise statement of the factual allegations that form the basis for the filing of the petition; (b) the name, age and residence of the minor; (c) the names and residences of his parents; (d) the name and residence of his legal guardian or the person or persons having custody or control of the minor, or of the nearest known relative if no parent or guardian can be found; and (e) if the minor upon whose behalf the petition is brought is sheltered in custody, the date on which such temporary custody was ordered by the court or the date set for a temporary custody hearing. If any of the facts herein required are not known by the petitioner, the petition shall so state.

(3) The petition must allege that it is in the best interests of the minor and of the public that he be adjudged a ward of the court and may pray generally for relief available under this Act. The petition need not specify any proposed disposition following adjudication of

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wardship. The petition may request that the minor remain in the custody of the parent, guardian, or custodian under an Order of Protection.

(4) If termination of parental rights and appointment of a guardian of the person with power to consent to adoption of the minor under Section 2-29 [705 ILCS 405/2-29] is sought, the petition shall so state. If the petition includes this request, the prayer for relief shall clearly and obviously state that the parents could permanently lose their rights as a parent at this hearing.

In addition to the foregoing, the petitioner, by motion, may request the termination of parental rights and appointment of a guardian of the person with power to consent to adoption of the minor under Section 2-29 at any time after the entry of a dispositional order under Section 2-22 [705 ILCS 405/2-22].

(4.5)(a) With respect to any minors committed to its care pursuant to this Act, the Department of Children and Family Services shall request the State's Attorney to file a petition or motion for termination of parental rights and appointment of guardian of the person with power to consent to adoption of the minor under Section 2-29 if:

(i) a minor has been in foster care, as described in subsection (b), for 15 months of the most recent 22 months; or

(ii) a minor under the age of 2 years has been previously determined to be abandoned at an adjudicatory hearing; or

(iii) the parent is criminally convicted of (A) first degree murder or second degree murder of any child, (B) attempt or conspiracy to commit first degree murder or second degree murder of any child, (C) solicitation to commit murder of any child, solicitation to commit murder for hire of any child, or solicitation to commit second degree murder of any child, (D) aggravated battery, aggravated battery of a child, or felony domestic battery, any of which has resulted in serious injury to the minor or a sibling of the minor, (E) aggravated criminal sexual assault in violation of subdivision (b)(1) of Section 11-1.30 of the Criminal Code of 1961 [720 ILCS 5/11-1.30], or (F) an offense in any other state the elements of which are similar and bear a substantial relationship to any of the foregoing offenses unless:

(i) the child is being cared for by a relative,

(ii) the Department has documented in the case plan a compelling reason for determining that filing such petition would not be in the best interests of the child,

(iii) the court has found within the preceding 12 months that the Department has failed to make reasonable efforts to reunify the child and family, or

(iv) paragraph (c) of this subsection (4.5) provides otherwise.

(b) For purposes of this subsection, the date of entering foster care is defined as the earlier of:

(1) The date of a judicial finding at an adjudicatory hearing that the child is an abused, neglected, or dependent minor; or

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(2) 60 days after the date on which the child is removed from his or her parent, guardian, or legal custodian.

(c) With respect to paragraph (a)(i), the following transition rules shall apply:

(1) If the child entered foster care after November 19, and this amendatory Act of 1998 takes effect before the child has been in foster care for 15 months of the preceding 22 months, then the Department shall comply with the requirements of paragraph (a) of this subsection (4.5) for that child as soon as the child has been in foster care for 15 of the preceding 22 months.

(2) If the child entered foster care after November 19, and this amendatory Act of 1998 takes effect after the child has been in foster care for 15 of the preceding 22 months, then the Department shall comply with the requirements of paragraph (a) of this subsection (4.5) for that child within 3 months after the end of the next regular session of the General Assembly.

(3) If the child entered foster care prior to November 19, 1997, then the Department shall comply with the requirements of paragraph (a) of this subsection (4.5) for that child in accordance with Department policy or rule.

(d) If the State's Attorney determines that the Department's request for filing of a petition or motion conforms to the requirements set forth in subdivisions (a), (b), and (c) of this subsection (4.5), then the State's Attorney shall file the petition or motion as requested.

(5) The court shall liberally allow the petitioner to amend the petition to set forth a cause of action or to add, amend, or supplement factual allegations that form the basis for a cause of action up until 14 days before the adjudicatory hearing. The petitioner may amend the petition after that date and prior to the adjudicatory hearing if the court grants leave to amend upon a showing of good cause. The court may allow amendment of the petition to conform with the evidence at any time prior to ruling. In all cases in which the court has granted leave to amend based on new evidence or new allegations, the court shall permit the respondent an adequate opportunity to prepare a defense to the amended petition.

(6) At any time before dismissal of the petition or before final closing and discharge under Section 2-31 [705 ILCS 405/2-31], one or more motions in the best interests of the minor may be filed. The motion shall specify sufficient facts in support of the relief requested.

(Source: P.A. 85-1209; 88-7, § 15; 88-614, § 110; 89-704, § 5; 90-28, § 10-20; 90-443, § 20; 90-608, § 30; 95-405, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-13.

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Cross References.

For functions and duties of a Court Services or Probation Department, in the determination of whether a petition should be filed under this section, see 705 ILCS 405/6-1.

Effect of Amendments. The 1998 amendment by P.A. 90-608, effective June 30, 1998, inserted subsection (4.5).

The 2007 amendment by P.A. 95-405, effective June 1, 2008, added the last sentence in (3).

CASE NOTES

Analysis

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- Separation of Powers
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- Appearance of Guardian
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Names of Parents
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Constitutionality

- Separation of Powers

The order of a circuit court directing the state to prosecute a pending termination petition after setting a permanency goal of substitute care pending court determination on the termination of parental rights does not violate the constitutional doctrine of separation of powers. D.S. v. R.S. (In re D.S.), 198 Ill. 2d 309, 261 Ill. Dec. 281, 763 N.E.2d 251, 2001 Ill. LEXIS 773 (2001).

Agent of Court

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A trial court has the power to order the State's Attorney to prosecute a petition under the Juvenile Court Act. In re J.M., 245 Ill. App. 3d 909, 184 Ill. Dec. 754, 613 N.E.2d 1346 (2 Dist.), appeal denied, 152 Ill. 2d 560, 190 Ill. Dec. 890, 622 N.E.2d 1207 (1993).

The ordering of the State's Attorney to file a petition in respect of a minor is not an impermissible exercise by the judicial branch of powers belonging exclusively to the executive branch. In re J.M., 245 Ill. App. 3d 909, 184 Ill. Dec. 754, 613 N.E.2d 1346 (2 Dist.), appeal denied, 152 Ill. 2d 560, 190 Ill. Dec. 890, 622 N.E.2d 1207 (1993).

A person filing a petition alleging a minor to be delinquent, dependent, neglected or a minor in need of supervision, is merely an agent of the court and the court does not exceed its constitutional powers merely by directing the filing of a petition concerning a minor through the office of a State's Attorney. Sullivan v. Sullivan, 110 Ill. App. 3d 714, 66 Ill. Dec. 435, 442 N.E.2d 1348 (5 Dist. 1982).

Amendment of Petition

Although the State should have moved to amend the pleadings before the close of evidence, the appellate court noted that no prejudice would have arisen from amending the petition for adjudication of wardship to conform to evidence showing that the child was born exposed to illegal substances because the petition stated that the parents admitted that the child was born drug exposed and the trial court had an obligation to intervene when the child's representative failed to protect the minor's interest. People v. Melissa A. (In re Tyrese J.), 376 Ill. App. 3d 689, 315 Ill. Dec. 478, 876 N.E.2d 1068, 2007 Ill. App. LEXIS 1020 (1 Dist. 2007).

Where the state failed to amend its original petition, failed to inform the respondents that it was proceeding under inadequate supervision allegations, yet argued its case under inadequate supervision, the trial court's judgment, which was based on a finding of inadequate supervision, was reversed. People v. A.B. (In re J.B.), 312 Ill. App. 3d 1140, 245 Ill. Dec. 328, 728 N.E.2d 59, 2000 Ill. App. LEXIS 258 (2 Dist. 2000).

Authority of Court

A juvenile court does not have authority to hold parental termination hearings based solely on an interested party's oral request for such at a permanency review hearing; instead, a petition or motion specifically requesting termination of parental rights is required. People v. Mildred B., 305 Ill. App. 3d 813, 239 Ill. Dec. 219, 713 N.E.2d 750 (3 Dist. 1999).

Due Process

Due process of law requires that notice in juvenile proceedings be equivalent to that constitutionally required in criminal or civil cases. People v. R.D.S., 94 Ill. 2d 77, 67 Ill. Dec. 813, 445 N.E.2d 293 (1983), overruled in part by State v. M.W. (In re M.W.), 232 Ill. 2d 408, 905 N.E.2d 757, 2009 Ill. LEXIS 171 (2009).

Finding of Neglect

Finding that a father neglected his daughter was an abuse of discretion where, at the time of the adjudication hearing, the only remaining count in the neglect petition was against the child's mother, the only evidence presented at the adjudication hearing was against the child's mother, and there was no evidence presented that the father had neglected the child.

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Findings of Abuse Upheld

Given the facts in the record, trial court's findings of abuse of minors by mother's boyfriend were held not against the manifest weight of the evidence. People v. Marquardt, 226 Ill. App. 3d 681, 168 Ill. Dec. 701, 589 N.E.2d 1101 (3 Dist. 1992).

Jurisdiction

- Appearance of Guardian

When a party appears before the court, although not formally served, and participates in the proceedings, he waives the formality of service of process and voluntarily submits to the jurisdiction of the court; thus, where county probation office and named individual therein were juvenile's legal guardian, and the record showed that juvenile probation officer was given actual notice of all the proceedings and was present at each of the hearings in the case, juvenile's legal guardian submitted, through the appearance of probation officer, to the jurisdiction of the court. People v. J.L.S., 188 Ill. App. 3d 815, 136 Ill. Dec. 129, 544 N.E.2d 815 (3 Dist. 1989).

- Parties

A pleading that does not name and notify a necessary respondent in a juvenile proceeding fails to invoke the jurisdiction of the court and thereby renders its orders void. People v. J.L.S., 188 Ill. App. 3d 815, 136 Ill. Dec. 129, 544 N.E.2d 815 (3 Dist. 1989).

- Verification of Petition

Since the requirement of verification is a procedural formality designed as a deterrent to frivolous allegations, the failure to verify a petition for the termination of parental rights did not divest the trial court of subject matter jurisdiction. People v. Mikel, 205 Ill. App. 3d 497, 150 Ill. Dec. 872, 563 N.E.2d 999 (4 Dist. 1990).

Names of Parents

Although 705 ILCS 405/2-13 required the names of the minor's parents to be on a petition initiating a juvenile proceeding, the State was not required to do so where the child's father was anonymous, because the mother had conceived of the child through artificial insemination. People v. Shreve (In re E.S.), 324 Ill. App. 3d 661, 258 Ill. Dec. 440, 756 N.E.2d 422, 2001 Ill. App. LEXIS 718 (1 Dist. 2001).

Parental Fitness

The statutory requirements of the former Juvenile Court Act (see now 705 ILCS 405/1-1 et seq.) in a petition to adjudicate a neglected child did not require allegations concerning the issue of parental fitness. People v. Smith, 95 Ill. App. 3d 373, 50 Ill. Dec. 883, 420 N.E.2d 200 (4 Dist. 1981).

Parental Unfitness

As a child's biological mother did not file either a petition to adjudicate wardship under 705 ILCS 405/2-13(1) and (2) of the Juvenile Court Act of 1987, 705 ILCS 405/1-1 through 7-1, or a petition to adopt under the Adoption Act, 750 ILCS 50/1 through 24, alleging the father was unfit pursuant to 750 ILCS 50/1(D)(i), his parental rights could not be terminated. A.S.B. v. Bishop (In re A.S.B.),

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381 Ill. App. 3d 220, 320 Ill. Dec. 301, 887 N.E.2d 445, 2008 Ill. App. LEXIS 260 (1 Dist. 2008).

State of Illinois failed to establish a mother's unfitness where no finding of neglect was entered against the mother in an initial neglect proceeding and a finding that the mother neglected her children made in a second proceeding was improper because it was based on the mother's violation of an order of protection she was ordered to obtain; the trial court was without authority to require the mother to obtain the order of protection. People v. Teresa R. (In re Cheyenne S.), 351 Ill. App. 3d 1042, 287 Ill. Dec. 383, 815 N.E.2d 1186, 2004 Ill. App. LEXIS 1064 (3 Dist. 2004).

705 ILCS 405/2-13, 705 ILCS 405/2-29 authorize the State of Illinois to file a termination petition after a minor has been found by the court to be abused or neglected and the court has entered a dispositional order; common sense dictates, however, that the State cannot file a termination petition alleging that a parent is unfit before the parent that is the subject of the termination petition has been found to have abused or neglected the child in question and, therefore, finding of neglect directed only at a child's father could not be used as the basis for a finding that the child's mother was unfit. People v. Teresa R. (In re Cheyenne S.), 351 Ill. App. 3d 1042, 287 Ill. Dec. 383, 815 N.E.2d 1186, 2004 Ill. App. LEXIS 1064 (3 Dist. 2004).

Trial court's order finding that parents were unfit but that it was not in the best interests of their children to terminate the parents' parental rights was not a final order because it did not fix the parties' rights or finally resolve the issue of whether the parents' parental rights should be terminated, and the appellate court's judgment dismissing the State's appeal because the trial court's order was not a final judgment was upheld by the state supreme court. People v. Tracy H. (In re A.H.), 207 Ill. 2d 590, 280 Ill. Dec. 290, 802 N.E.2d 215, 2003 Ill. LEXIS 2274 (2003).

Procedure

Trial court did not err by allowing a termination matter to proceed with a best-interests hearing upon a supplemental motion for termination under circumstances in which, after the mother was found unfit, the trial court initially found that termination was not in the child's best interests, but 7 months later, the State filed the supplemental motion for termination of parental rights. People v. Hampton (In re M.R.), 393 Ill. App. 3d 609, 332 Ill. Dec. 151, 912 N.E.2d 337, 2009 Ill. App. LEXIS 686 (4 Dist. 2009), appeal denied, 233 Ill. 2d 559, 335 Ill. Dec. 634, 919 N.E.2d 353, 2009 Ill. LEXIS 1292.

Prosecution of Petition

State of Illinois was authorized under 705 ILCS 405/2-13(4.5)(a) to file a motion for the termination of parental rights where a child was being cared for by a relative the entire time the child was in foster care while the child's surviving parent was incarcerated. People v. Timothy (In re Brandon A.), 395 Ill. App. 3d 224, 334 Ill. Dec. 250, 916 N.E.2d 890, 2009 Ill. App. LEXIS 990 (5 Dist. 2009).

A guardian ad litem does not have authority to prosecute a petition to terminate parental rights pursuant to the Juvenile Court Act. D.S. v. R.S. (In re D.S.), 198 Ill. 2d 309, 261 Ill. Dec. 281, 763 N.E.2d 251, 2001 Ill. LEXIS 773 (2001).

Only the state's attorney has the right to prosecute a petition for termination of parental rights; a guardian ad litem has no such right. D.S. v. R.S., 307 Ill. App. 3d 249, 240 Ill. Dec. 464, 717 N.E.2d 557 (2 Dist. 1999).

The trial court has the authority to order the state to prosecute a petition for termination of parental rights when consistent with the overriding purposes of the act. D.S. v. R.S., 307 Ill. App. 3d 249, 240 Ill. Dec. 464, 717 N.E.2d 557 (2 Dist. 1999).

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Standing

A minor child has no authority to individually file a petition to terminate her parents' rights. D.S. v. R.S. (In re D.S.), 198 Ill. 2d 309, 261 Ill. Dec. 281, 763 N.E.2d 251, 2001 Ill. LEXIS 773 (2001).

A guardian ad litem has authority to file, but not to prosecute, a petition to terminate parental rights on behalf of a child. D.S. v. R.S. (In re D.S.), 198 Ill. 2d 309, 261 Ill. Dec. 281, 763 N.E.2d 251, 2001 Ill. LEXIS 773 (2001).

A guardian ad litem may file a petition for termination of parental rights. D.S. v. R.S., 307 Ill. App. 3d 249, 240 Ill. Dec. 464, 717 N.E.2d 557 (2 Dist. 1999).

Although parties qualified as respondents under former Ill. Rev. Stat., ch. 37, para. 704-1(2) (see now subsection (2) of this section), they nevertheless did not qualify to participate or be heard under former Ill. Rev. Stat., ch. 37, para. 701-20(1) and (2) (see now 705 ILCS 405/1-5(1) and (2)). In re Winks, 150 Ill. App. 3d 657, 103 Ill. Dec. 888, 502 N.E.2d 35 (4 Dist. 1986).

Sufficiency of Petition

State's petition in parental unfitness proceeding was sufficient to put parent on notice of termination, even though it did not explicitly mention the intention to seek a termination of parental rights. People v. Dorothy W. (In re Shanna W.), 343 Ill. App. 3d 1155, 279 Ill. Dec. 40, 799 N.E.2d 843, 2003 Ill. App. LEXIS 1267 (1 Dist. 2003).

The 705 ILCS 405/2-13(4) requirement that a petition for termination of parental rights contain language indicating that the State is seeking "permanent" termination of those rights applies only when the state files a single petition that asks the court to adjudicate a minor abused, neglected, or dependent, as well as seeking to terminate parental rights and to have appointed a guardian with the power to consent to the minor's adoption under 705 ILCS 405/2-29; the language is not required where the State seeks termination of parental rights in a separate, distinct proceeding under 705 ILCS 405/2-29. People v. Britt (In re H.D.), 343 Ill. App. 3d 483, 278 Ill. Dec. 194, 797 N.E.2d 1112, 2003 Ill. App. LEXIS 1241 (4 Dist. 2003).

Despite the fact that the State's petition to terminate the mother's parental rights made no explicit request for permanent termination, the petition was not defective as a matter of law since the language used in the State's petition was sufficient to provide notice to the mother that the State sought to permanently terminate her parental rights; specifically, it requested that the Department of Children and Family Services be authorized to consent to the adoption of the children without further notice to or the consent of the mother. People v. Anderson (In re Janine M.A.), 342 Ill. App. 3d 1041, 277 Ill. Dec. 809, 796 N.E.2d 1175, 2003 Ill. App. LEXIS 1160 (4 Dist. 2003).

Where a petition alleged that the defendant was a minor who had violated state laws, including obstructing a peace officer and violating the curfew law, and informed the defendant of the date of the alleged offenses, the city in which they took place and the officers involved, the petition was sufficient to give the defendant proper notice of the charges and to bring the defendant within the statutory definition of delinquency. People v. Casper, 22 Ill. App. 3d 188, 317 N.E.2d 352 (5 Dist. 1974).

State's supplemental petition to terminate the father's parental rights was not flawed due to its failure to state that the father stood to permanently lose the father's parental rights as required under 705 Ill. Comp. Stat. 405/2-13, as the petition was filed under 705 Ill. Comp. Stat. 405/2-29 due to the fact that the daughter had been declared a ward of the court, and no such language in a § 2-29 petition was necessary.

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Verification of Petition

Because (1) the requirement of verifying petitions imposed by 705 ILCS 405/2-13(4) applied only to petitions that sought both to adjudicate a child a ward of the State and to terminate parental rights, and the State's amended motion sought only the latter; and (2) the State's initial motion for termination of parental rights was verified, its amended motion to terminate respondent's parental rights was not defective for not having been verified. People v. Andre D. (In re Andrea D.), 342 Ill. App. 3d 233, 276 Ill. Dec. 793, 794 N.E.2d 1043, 2003 Ill. App. LEXIS 1006 (2 Dist. 2003), appeal denied, 206 Ill. 2d 622, 282 Ill. Dec. 478, 806 N.E.2d 1066 (2003).

The petition to terminate parental rights was adequately verified even though it did not expressly state it was made under oath and did not recite that the allegations were made on information and belief but did set forth the allegations against respondent parents and was signed by the assistant State's Attorney, whose signature was notarized using the proper form for notarizing a verified petition. People v. Mikel, 205 Ill. App. 3d 497, 150 Ill. Dec. 872, 563 N.E.2d 999 (4 Dist. 1990).

It was within the province of the legislature, in order to further the beneficial aspects of the former Juvenile Court Act, (see now 705 ILCS 405/1-1 et seq.), to provide for verification of a delinquency petition. People v. Jones, 46 Ill. 2d 506, 263 N.E.2d 863 (1970).

LEGAL PERIODICALS

For comment, "The Illinois Adoption Act: Should a Child's Length of Time in Foster Care Measure Parental Unfitness", see 30 Loy. U. Chi. L.J. 727 (1999).

For article, "Juvenile Law: 1986-87 Illinois Law Survey," see 19 Loy. U. Chi. L.J. 565 (1987-88).

For article, "Award of Attorneys Fees in Court Cases Where Provided by Statute or Circuit Court Rule," see 67 Ill. B.J. 720 (1979).

For comment, "Isolating Past Unfitness: The Obstacle of In re Gwynne P. for Incarcerated Parents in Illinois," see 27 N. Ill. U. L. Rev. 281 (2007).

§ 705 ILCS 405/2-13.1. Early termination of reasonable efforts

Sec. 2-13.1. Early termination of reasonable efforts. (1) (a) In conjunction with, or at any time subsequent to, the filing of a petition on behalf of a minor in accordance with Section 2-13 of this Act [705 ILCS 405/2-13], the State's Attorney, the guardian ad litem, or the Department of Children and Family Services may file a motion requesting a finding that reasonable efforts to reunify that minor with his or her parent or parents are no longer required and are to cease.

(b) The court shall grant this motion with respect to a parent of the minor if the court finds after a hearing that the parent has:

(i) had his or her parental rights to another child of the parent involuntarily terminated; or

(ii) been convicted of:

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(A) first degree or second degree murder of another child of the parent;

(B) attempt or conspiracy to commit first degree or second degree murder of another child of the parent;

(C) solicitation to commit murder of another child of the parent, solicitation to commit murder for hire of another child of the parent, or solicitation to commit second degree murder of another child of the parent;

(D) aggravated battery, aggravated battery of a child, or felony domestic battery, any of which has resulted in serious bodily injury to the minor or another child of the parent; or

(E) an offense in any other state the elements of which are similar and bear substantial relationship to any of the foregoing offenses

unless the court sets forth in writing a compelling reason why terminating reasonable efforts to reunify the minor with the parent would not be in the best interests of that minor.

(c) The court shall also grant this motion with respect to a parent of the minor if:

(i) after a hearing it determines that further reunification services would no longer be appropriate, and

(ii) a dispositional hearing has already taken place.

(2) (a) The court shall hold a permanency hearing within 30 days of granting a motion pursuant to this subsection. If an adjudicatory or a dispositional hearing, or both, has not taken place when the court grants a motion pursuant to this Section, then either or both hearings shall be held as needed so that both take place on or before the date a permanency hearing is held pursuant to this subsection.

(b) Following a permanency hearing held pursuant to paragraph (a) of this subsection, the appointed custodian or guardian of the minor shall make reasonable efforts to place the child in accordance with the permanency plan and goal set by the court, and to complete the necessary steps to locate and finalize a permanent placement.

(Source: P.A. 90-608, § 30.)

Effective Date. Section 99 of P.A. 90-608 made this section effective upon becoming law. The Act was approved June 30, 1998.

§ 705 ILCS 405/2-14. Date for Adjudicatory Hearing

Sec. 2-14. Date for Adjudicatory Hearing. (a) Purpose and policy. The legislature recognizes that serious delay in the adjudication of abuse, neglect, or dependency cases

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can cause grave harm to the minor and the family and that it frustrates the health, safety and best interests of the minor and the effort to establish permanent homes for children in need. The purpose of this Section is to insure that, consistent with the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272, as amended [42 U.S.C. § 602 et seq.], and the intent of this Act, the State of Illinois will act in a just and speedy manner to determine the best interests of the minor, including providing for the safety of the minor, identifying families in need, reunifying families where the minor can be cared for at home without endangering the minor's health or safety and it is in the best interests of the minor, and, if reunification is not consistent with the health, safety and best interests of the minor, finding another permanent home for the minor.

(b) When a petition is filed alleging that the minor is abused, neglected or dependent, an adjudicatory hearing shall be commenced within 90 days of the date of service of process upon the minor, parents, any guardian and any legal custodian, unless an earlier date is required pursuant to Section 2-13.1 [705 ILCS 405/2-13.1]. Once commenced, subsequent delay in the proceedings may be allowed by the court when necessary to ensure a fair hearing.

(c) Upon written motion of a party filed no later than 10 days prior to hearing, or upon the court's own motion and only for good cause shown, the Court may continue the hearing for a period not to exceed 30 days, and only if the continuance is consistent with the health, safety and best interests of the minor. When the court grants a continuance, it shall enter specific factual findings to support its order, including factual findings supporting the court's determination that the continuance is in the best interests of the minor. Only one such continuance shall be granted. A period of continuance for good cause as described in this Section shall temporarily suspend as to all parties, for the time of the delay, the period within which a hearing must be held. On the day of the expiration of the delay, the period shall continue at the point at which it was suspended.

The term "good cause" as applied in this Section shall be strictly construed and be in accordance with Supreme Court Rule 231 (a) through (f). Neither stipulation by counsel nor the convenience of any party constitutes good cause. If the adjudicatory hearing is not heard within the time limits required by subsection (b) or (c) of this Section, upon motion by any party the petition shall be dismissed without prejudice.

(d) The time limits of this Section may be waived only by consent of all parties and approval by the court.

(e) For all cases filed before July 1, 1991, an adjudicatory hearing must be held within 180 days of July 1, 1991.

(Source: P.A. 85-1440; 86-1293; 88-7, § 15; 90-28, § 10-20; 90-456, § 10; 90-608, § 30; 90-655, § 156; 92-822, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-14.

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P.A. 90-456, which amended this section, was found to contravene the single subject rule clause of Ill. Const. art. IV, § 8(d) (1970), by the Supreme Court of Illinois in People v. Sypien, 2001 Ill. LEXIS 1077 (Ill. Sept. 20, 2001).

Section 1 of P.A. 92-822 provides:

(a) Public Act 90-456, effective January 1, 1998, was entitled 'An Act in relation to criminal law'. It contained provisions amending the Criminal Code of 1961, the Code of Criminal Procedure of 1963, and the Emergency Telephone System Act, all pertaining to the subject of criminal law. It also contained a provision amending subsection (b) of Section 2-14 of the Juvenile Court Act of 1987, relating to the commencement of civil adjudicatory hearings in abuse, neglect, and dependency cases.

(b) The Illinois Supreme Court, in People v. Sypien, Docket No. 89265, has ruled that the inclusion of the amendment to the Juvenile Court Act of 1987 violated the single subject clause of the Illinois Constitution (Article IV, Section 8(d)), and that Public Act 90-456 is therefore unconstitutional in its entirety.

(c) This Act re-enacts Section 2-14 of the Juvenile Court Act of 1987. The text of that Section includes both the changes made by Public Act 90-456 and changes made by subsequent amendments. In order to avoid confusion with the changes made by subsequent amendments, the Section that is re-enacted in this Act is shown as existing text (i.e., without striking and underscoring). This Act is not intended to supersede any other Public Act that amends the text of the re-enacted Section as set forth in this Act. This Act also amends Section 2-22 of the Juvenile Court Act of 1987.

(d) All otherwise lawful actions taken before the effective date of this Act in reliance on or pursuant to Section 2-14 of the Juvenile Court Act of 1987, as set forth in Public Act 90-456 or as subsequently amended, by any officer, employee, or agency of State government or by any other person or entity, are hereby validated.

(e) This Act applies to actions or proceedings pending on or after the effective date of Public Act 90-456 (January 1, 1998), as well as to actions or proceedings pending on or after the effective date of this Act.

Effect of Amendments. The 1997 amendment by P.A. 90-456, effective January 1, 1998, in subsection (b), in the first sentence, substituted "commenced" for "held" and added the second sentence.

The 1998 amendment by P.A. 90-608, effective June 30, 1998, incorporated the amendments by P.A. 90-28 and P.A. 90-456; and added "unless an earlier date is required pursuant to Section 2-13.1" in the first sentence in subsection (b).

The 1998 amendment by P.A. 90-655, effective July 30, 1998 incorporated the amendments by P.A. 90-28 and P.A. 90-456.

The 2002 amendment by P.A. 92-822, effective August 21, 2002, re-enacted the amendments to this section by P.A. 90-456, which was held unconstitutional (see notes).

CASE NOTES

Analysis

Constitutionality

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Constitutionality

This section does not violate the principle of separation of powers; it represents a legislative expression of public policy requiring the expeditious resolution of abuse and neglect cases and neither the doctrine of parens patriae nor inherent guardianship powers provide for the broad judicial power to express a child's best interest and thereby decline to carry out this legislative policy. In re S.G., 175 Ill. 2d 471, 222 Ill. Dec. 386, 677 N.E.2d 920 (1997).

Continuance

Denial of a parent's request for a continuance of an adjudicatory hearing so that additional investigation could be made into the current hospitalization of a child in order to make an offer of proof as to why evidence of the hospitalization should be admitted in the hearing, was appropriate; although the parent knew of the hospitalization before the hearing, he waited until the middle of the hearing to make the request and he made no attempt to offer an affidavit requesting a continuance and establishing good cause to warrant it. People v. Kathy K. (In re Stephen K.), 373 Ill. App. 3d 7, 310 Ill. Dec. 768, 867 N.E.2d 81, 2007 Ill. App. LEXIS 344 (1 Dist. 2007).

Father's motion for a continuance was denied where he failed to move for the continuance 10 days in advance as required by 705 ILCS 405/2-14(c), he failed to establish good cause why a continuance was warranted, and he had over one year to resolve any discrepancies in testimony but failed to do so. People v. W.O. (In re K.O.), 336 Ill. App. 3d 98, 270 Ill. Dec. 276, 782 N.E.2d 835, 2002 Ill. App. LEXIS 1236 (1 Dist. 2002).

Jurisdiction

Any error by the trial court in not holding adjudicatory and dispositional hearings prior to statutory deadlines did not render adjudication and disposition orders void for lack of subject jurisdiction. In re C.S., 294 Ill. App. 3d 780, 229 Ill. Dec. 225, 691 N.E.2d 161 (4 Dist. 1998).

Where 246 days had elapsed between the date petitions for termination of parental rights were filed and the date of convening of the dispositional hearing in which parental rights were terminated, the failure to comply with former Ill. Rev. Stat., ch. 37, para. 704-2 (see now this section) did not deprive the court of jurisdiction, the result being premised on the court's concern with the welfare of the child in contradistinction to procedural safeguards to be accorded minors

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whose cases might have an outcome similar to a criminal proceeding. People ex rel. Department of Children & Family Servs. v. Sparrow, 59 Ill. App. 3d 731, 17 Ill. Dec. 237, 376 N.E.2d 236 (5 Dist. 1978).

Legislative Intent

Legislature intended a mandatory construction of this section. In re S.G., 175 Ill. 2d 471, 222 Ill. Dec. 386, 677 N.E.2d 920 (1997).

Mandatory

The time limits of this section are mandatory. People v. M.Z., 287 Ill. App. 3d 552, 223 Ill. Dec. 62, 678 N.E.2d 1070 (1 Dist. 1997).

Questioning

Evidence sufficiently supported the conclusion that no parent, guardian or juvenile officer was present at the time defendant was initially questioned, but did not require a reversal of the trial court's decision admitting juvenile's statements, where defendant was repeatedly advised of his Miranda rights and he repeatedly acknowledged that he understood them, the defendant was not questioned more than three times, and each interrogation lasted about 15 minutes and these encounters did not amount to intense interrogation. People v. Hernandez, 267 Ill. App. 3d 429, 206 Ill. Dec. 1, 644 N.E.2d 769 (1 Dist. 1994), appeal denied, 161 Ill. 2d 533, 208 Ill. Dec. 365, 649 N.E.2d 421 (1995).

The trial court did not err in denying juvenile defendant's motion to suppress statements from questioning where all officers who testified denied that defendant was physically abused or threatened, there was no evidence in the record that defendant suffered any swelling, bruises or injuries, and defendant and witnesses' testimony that officer physically abused him was incredible. People v. Hernandez, 267 Ill. App. 3d 429, 206 Ill. Dec. 1, 644 N.E.2d 769 (1 Dist. 1994), appeal denied, 161 Ill. 2d 533, 208 Ill. Dec. 365, 649 N.E.2d 421 (1995).

Requirements

Statute requiring corroboration and cross-examination of a minor's previous statements relating to claims of abuse or neglect, 705 ILCS 405/2-18(4)(c), did not apply to temporary custody hearings. Such a hearing was limited to determining whether placement outside the home was required and, thus, did not involve the making of findings of abuse and neglect that might be involved in adjudicative or dispositional proceedings under 705 ILCS 405/2-14(b) or 705 ILCS 405/2-21. People v. Jacqueline M. (In re I.H.), 238 Ill. 2d 430, 345 Ill. Dec. 532, 939 N.E.2d 375, 2010 Ill. LEXIS 1541 (2010).

Reunification

Determining whether the former foster mother or the mother was a better caretaker was not a goal of statutory law which charged the State with acting in a just and speedy manner to determine the minor child's best interests. Rather, the State, through its state welfare agency and pursuant to 705 ILCS 405/2-14(a), aimed to reunify families, and could have determined that the a permanent home with the mother was an acceptable goal because the mother could care for the minor child at home without endangering the minor child's health or safety, and that it was in best interests of the minor child to return home. People v. Analynn D. (In re Desiree O.), 381 Ill. App. 3d 854, 320 Ill. Dec. 279, 887 N.E.2d 59, 2008 Ill. App. LEXIS 215 (1 Dist. 2008).

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- Not Allowed

Where, for over four years, various workers monitored respondent's case, several administrative case reviews evaluated respondent's progress toward reunification and each evaluation was unsatisfactory and the record evinced a lengthy, earnest and diligent attempt to reunify respondent and her children, reunification efforts proved unsuccessful and long-term foster care was thus determined to be in the best interest of the minors; the state was then statutorily charged with finding another permanent home for the minors. People v. Yvonne J., 269 Ill. App. 3d 824, 207 Ill. Dec. 152, 646 N.E.2d 1239 (1 Dist. 1994).

Standing

Guardian ad litem was proper party, and not the mother, to enforce the statutorily prescribed 120-day maximum period for holding an adjudicatory hearing. People v. Winlund, 216 Ill. App. 3d 410, 159 Ill. Dec. 677, 576 N.E.2d 346 (1 Dist. 1991).

Termination of Parental Rights

Trial court did not abuse its discretion or violate respondent father's right not to incriminate himself by denying the father's motions to continue hearings on state's petition for adjudication of wardship and adjudicating wardship while criminal charges alleging that the father shook and hit his child were pending. People v. Jesse C. (In re D.P.), 327 Ill. App. 3d 153, 261 Ill. Dec. 381, 763 N.E.2d 351, 2001 Ill. App. LEXIS 1487 (1 Dist. 2001), appeal denied, 198 Ill. 2d 615, 264 Ill. Dec. 325, 770 N.E.2d 219 (2002).

The timing provisions of subsections (b) and (c) do not apply to adjudications of petitions for termination of parental rights. In re E.M., 295 Ill. App. 3d 220, 229 Ill. Dec. 658, 692 N.E.2d 431 (4 Dist. 1998).

Timeliness

Where the trial court did not hold an adjudicatory hearing on the wardship petition within 90 days of the service of the mother as was required under former 705 ILCS 405/2-14(b), and the trial court dismissed the petition without prejudice as provided for in former 705 ILCS 405/2-14(c), the appellate court lacked jurisdiction over the State's appeal of the dismissal, as a dismissal without prejudice was not a final appealable order. People ex rel. Devine v. Tiara W. (In re Tiona W.), 341 Ill. App. 3d 615, 275 Ill. Dec. 625, 793 N.E.2d 105, 2003 Ill. App. LEXIS 781 (1 Dist. 2003).

Mother waived her argument in a child dependency proceeding as to the failure of the trial court to comply with the statutory time limit for conducting the adjudicatory proceeding by failing to move to dismiss the petition, as the clear language of 705 ILCS 405/2-14(c) (West) provided that the petition was to be dismissed upon motion by any party; to allow defendant to raise the issue for the first time on appeal would be contrary to the statute's stated purpose, expressed in § 2-14(a), to insure that the State of Illinois acted in a just and speedy manner to determine the best interests of the minor. People v. C.D. (In re S.W.), 342 Ill. App. 3d 445, 276 Ill. Dec. 787, 794 N.E.2d 1037, 2003 Ill. App. LEXIS 961 (1 Dist. 2003).

Shelter-care hearing notices were deficient, most notably because they did not apprise the recipient that he or she would not be entitled to further notice in conformity with 705 ILCS 405/2-10(3), and, therefore, they were infirm to trigger the provision of this section, which requires an adjudicatory hearing within 90 days of the date of service. People v. Ellis (In re D.E.), 314 Ill. App. 3d 764, 247 Ill. Dec. 274, 731 N.E.2d 1282, 2000 Ill. App. LEXIS 571 (4 Dist. 2000), appeal denied, 191 Ill. 2d 530, 250 Ill. Dec. 457, 738 N.E.2d 926 (2000).

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This section requires adjudicatory hearings to be completed prior to the statutory deadline, not just commenced. In re S.G., 175 Ill. 2d 471, 222 Ill. Dec. 386, 677 N.E.2d 920 (1997).

Dismissal of a petition for adjudication of wardship of two children was an abuse of discretion because the hearing began, although was not completed, within the 90-day period provided by 705 ILCS 405/2-14. People v. Radecki (In re H.R.), 283 Ill. App. 3d 907, 219 Ill. Dec. 428, 671 N.E.2d 93, 1996 Ill. App. LEXIS 762 (1 Dist. 1996).

Language of 705 ILCS 405/2-14 does not require dismissal of a petition for wardship where the adjudicatory hearing has begun, but has not been completed, within the 90-day period set forth in the statute; giving the persons alleged to be endangering children the opportunity to retain custody of the children simply because an adjudicatory hearing, though started, has not been concluded within the 90-day period is not consistent with the overall purpose of the Juvenile Court Act of 1987 to safeguard the children, as expressed in 705 ILCS 405/1-2(1). People v. Radecki (In re H.R.), 283 Ill. App. 3d 907, 219 Ill. Dec. 428, 671 N.E.2d 93, 1996 Ill. App. LEXIS 762 (1 Dist. 1996).

Since a serious delay in the adjudication of abuse, neglect, or dependency cases can cause grave harm to the child and the family and frustrate the effort to establish permanent homes for children in need, "held within 90 days" means the hearing must be completed within 90 days; if judges were free to defeat the statutory time limits by making a technical start, then continue the hearing from time to time, beyond the limits, the purpose and policy of the statute would be completely frustrated. In re S.G., 277 Ill. App. 3d 803, 214 Ill. Dec. 583, 661 N.E.2d 437 (1 Dist. 1996), aff'd, 175 Ill. 2d 471, 222 Ill. Dec. 386, 677 N.E.2d 920 (1997).

Tolling

Where the circuit court and the state stand ready to commence adjudication on the petition within the statutory time frame (under any construction), yet then encounter delay owing to a respondent's rightful claim of entitlement to substitution of the judge, the running of the time for adjudication must be tolled until such time a judge acceptable to all concerned may hear the case. People v. Ellis (In re D.E.), 314 Ill. App. 3d 764, 247 Ill. Dec. 274, 731 N.E.2d 1282, 2000 Ill. App. LEXIS 571 (4 Dist. 2000), appeal denied, 191 Ill. 2d 530, 250 Ill. Dec. 457, 738 N.E.2d 926 (2000).

The legislature intended that the 90 day period be tolled whenever the parties and the court have unanimously agreed to continuances but that the clock resumes running once the waived period has passed. People v. M.Z., 287 Ill. App. 3d 552, 223 Ill. Dec. 62, 678 N.E.2d 1070 (1 Dist. 1997).

This section provides no support for contention that resolving issues surrounding children's representation should toll the statutory time period. In re S.G., 175 Ill. 2d 471, 222 Ill. Dec. 386, 677 N.E.2d 920 (1997).

Waiver

Court did not lack jurisdiction to adjudicate wardship under 730 ILCS 405/2-22(4) where there was no question that the parties waived the 90-day time period of 705 ILCS 405/2-14(B) in which to hold the adjudicatory hearing; the court found it in the child's best interests to do so, although the hearing was continued for more than the 30 days allowed by § 2-14(c); and the mother did not object to the continuance. People v. Meginnes (In re John C.M.), 382 Ill. App. 3d 553, 328 Ill. Dec. 288, 904 N.E.2d 50, 2008 Ill. App. LEXIS 477 (1 Dist. 2008).

Although parents twice declined to waive the 90-day time limit for completing an adjudicatory hearing on a petition for adjudication of wardship of their infant son, they waived any appellate argument regarding the violation of 705 ILCS 405/2-14(b) and 705 ILCS 405/2-14(c) by failing to

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file a motion to dismiss the petition for adjudication of wardship on the basis of the timeliness of the adjudicatory hearing. People v. John J. (In re John Paul J.), 343 Ill. App. 3d 865, 278 Ill. Dec. 904, 799 N.E.2d 769, 2003 Ill. App. LEXIS 1185 (1 Dist. 2003), appeal denied sub nom. In re John Paul J., 207 Ill. 2d 604, 283 Ill. Dec. 134, 807 N.E.2d 975 (2004).

Mother did not waive her right to prompt adjudicatory hearing under subsection (d) where attorney repeatedly complained of slow progress, stated desire for quick completion and agreed to piece meal review based on judge's choice of piece meal review if unwilling to waive 90 day period. In re S.G., 175 Ill. 2d 471, 222 Ill. Dec. 386, 677 N.E.2d 920 (1997).

LEGAL PERIODICALS

For article, "Baby Richard and Beyond: The Future for Adopted Children", see 18 N. Ill. U.L. Rev. 445 (1999).

For note, "Born to Lose: The Illinois 'Baby Richard' Case - How Examining His Father's Pre-Birth Conduct Might Have Led to a Different Ending for Richard," see 16 N. Ill. U.L. Rev. 543 (1996).

For note, "Protecting Our Children: A Call to Reform State Policies to Hold Pregnant Drug Addicts Accountable," see 29 J. Marshall L. Rev. 765 (1996).

For comments, "Child Abuse: The Role of Adoption as a Preventative Measure," see 10 J. Marshall J. Prac. & Proc. (1976).

For article, "Denying Child Welfare Services to Delinquent Teens: A Call to Return to the Roots of Illinois' Juvenile Court," see, 36 Loy. U. Chi. L.J. 925 (2005).

§ 705 ILCS 405/2-15. Summons

Sec. 2-15. Summons. (1) When a petition is filed, the clerk of the court shall issue a summons with a copy of the petition attached. The summons shall be directed to the minor's legal guardian or custodian and to each person named as a respondent in the petition, except that summons need not be directed to a minor respondent under 8 years of age for whom the court appoints a guardian ad litem if the guardian ad litem appears on behalf of the minor in any proceeding under this Act.

(2) The summons must contain a statement that the minor or any of the respondents is entitled to have an attorney present at the hearing on the petition, and that the clerk of the court should be notified promptly if the minor or any other respondent desires to be represented by an attorney but is financially unable to employ counsel.

(3) The summons shall be issued under the seal of the court, attested in and signed with the name of the clerk of the court, dated on the day it is issued, and shall require each respondent to appear and answer the petition on the date set for the adjudicatory hearing. The summons shall contain a notice that the parties will not be entitled to further written notices or publication notices of proceedings in this case, including the filing of an amended petition or a motion to terminate parental rights, except as required by Supreme Court Rule 11.

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(4) The summons may be served by any county sheriff, coroner or probation officer, even though the officer is the petitioner. The return of the summons with endorsement of service by the officer is sufficient proof thereof.

(5) Service of a summons and petition shall be made by: (a) leaving a copy thereof with the person summoned at least 3 days before the time stated therein for appearance; (b) leaving a copy at his usual place of abode with some person of the family, of the age of 10 years or upwards, and informing that person of the contents thereof, provided the officer or other person making service shall also send a copy of the summons in a sealed envelope with postage fully prepaid, addressed to the person summoned at his usual place of abode, at least 3 days before the time stated therein for appearance; or (c) leaving a copy thereof with the guardian or custodian of a minor, at least 3 days before the time stated therein for appearance. If the guardian or custodian is an agency of the State of Illinois, proper service may be made by leaving a copy of the summons and petition with any administrative employee of such agency designated by such agency to accept service of summons and petitions. The certificate of the officer or affidavit of the person that he has sent the copy pursuant to this Section is sufficient proof of service.

(6) When a parent or other person, who has signed a written promise to appear and bring the minor to court or who has waived or acknowledged service, fails to appear with the minor on the date set by the court, a bench warrant may be issued for the parent or other person, the minor, or both.

(7) The appearance of the minor's legal guardian or custodian, or a person named as a respondent in a petition, in any proceeding under this Act shall constitute a waiver of service of summons and submission to the jurisdiction of the court, except that the filing of a motion authorized under Section 2-301 of the Code of Civil Procedure [735 ILCS 5/2-301] does not constitute an appearance under this subsection. A copy of the summons and petition shall be provided to the person at the time of his appearance.

(8) Notice to a parent who has appeared or been served with summons personally or by certified mail, and for whom an order of default has been entered on the petition for wardship and has not been set aside shall be provided in accordance with Supreme Court Rule 11. Notice to a parent who was served by publication and for whom an order of default has been entered on the petition for wardship and has not been set aside shall be provided in accordance with this Section and Section 2-16 [705 ILCS 405/2-16].

(Source: P.A. 86-441; 90-27, § 30; 90-28, § 10-20; 90-608, § 30; 91-145, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-15.

Cross References.

For provision stating that parties respondent are entitled to notice as provided in this section, see the following: as a right to parties in proceedings, see 705 ILCS 405/1-5; in dispositional hearings,

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see 705 ILCS 405/2-22.

Effect of Amendments. The 1998 amendment by P.A. 90-608, effective June 30, 1998, added subsection (8).

The 1999 amendment by P.A. 91-90, effective January 1, 2000, substituted "motion" for "special appearance" in the first sentence of subsection (7).

CASE NOTES

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Application and Construction

To hold that jurisdiction over a respondent in a juvenile case must be reestablished upon the filing of a termination of parental rights petition would render the language added to the summons section of the Juvenile Court Act of 1987, 705 ILCS 405/1-2 et seq., in 705 ILCS 405/2-15, providing that a summons in such a case must provide notice to the parties that they will not receive further notice of proceedings in the case, including the filing of an amended petition or a motion to terminate parental rights, meaningless. People v. Pavel P. (In re Abner P.), 347 Ill.

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App. 3d 903, 283 Ill. Dec. 304, 807 N.E.2d 1145, 2004 Ill. App. LEXIS 323 (1 Dist. 2004), appeal denied, 211 Ill. 2d 577, Ill. Dec. , 823 N.E.2d 965 (2004).

When a summons in an action to adjudicate the wardship of a father's children was personally served on him and contained the notice required by 705 ILCS 405/2-15(3) that he was not entitled to further written or publication notices of proceedings, including of the filing of a motion to terminate parental rights, and a petition to terminate the father's parental rights was filed, it was unnecessary for the trial court to reestablish its jurisdiction over the father in order to enter his default and terminate his parental rights, when he did not appear at the hearing on that petition. People v. Pavel P. (In re Abner P.), 347 Ill. App. 3d 903, 283 Ill. Dec. 304, 807 N.E.2d 1145, 2004 Ill. App. LEXIS 323 (1 Dist. 2004), appeal denied, 211 Ill. 2d 577, Ill. Dec. , 823 N.E.2d 965 (2004).

- Effect of Amendment

The 1987 amendment to former Ill. Rev. Stat., ch. 37, para. 704-3 (see now this section), providing for service of summons to the minors' legal guardian or custodian and to such person named as respondent, was procedural in nature, and the legislature intended the amended version of this section to apply retroactively. People v. Denise B., 176 Ill. App. 3d 43, 125 Ill. Dec. 622, 530 N.E.2d 1031 (1 Dist. 1988).

Personal service of summons on a minor is no longer a prerequisite to obtaining jurisdiction over the minor; an amendment to former Ill. Rev. Stat., ch. 37, para. 704-3 (see now this section), effective January 12, 1987, allowed service on a minor's legal guardian or custodian and applied retroactively. People v. Pluskis, 167 Ill. App. 3d 534, 118 Ill. Dec. 321, 521 N.E.2d 603 (4 Dist. 1988).

Direction of Summons

- Age of Minor

The clear effect of the 1988 amendment to subsection (1) of this section is to reinstate the requirement of service on minor-respondents eight years of age or older. People v. Joseph S., 168 Ill. App. 3d 76, 118 Ill. Dec. 955, 522 N.E.2d 625 (1 Dist. 1988).

Failure to serve minor-respondents, who were over eight years of age at the time of filing of petition to terminate parental rights, with summons or notify them of proceedings deprived the circuit court of jurisdiction and rendered void the circuit court's order terminating parental rights and appointing a guardian. People v. Joseph S., 168 Ill. App. 3d 76, 118 Ill. Dec. 955, 522 N.E.2d 625 (1 Dist. 1988).

- Custodial Interest Irrelevant

Under former Ill. Rev. Stat., ch. 37, para. 704-3 (see now this section), notice to the parents as required by the Act was jurisdictional and was required to be given notwithstanding that their custodial rights had been terminated, since a parent's custodial interest was irrelevant. People v. C. G., 69 Ill. App. 3d 56, 25 Ill. Dec. 547, 387 N.E.2d 4 (3 Dist. 1979).

- Guardian ad Litem

In termination proceeding, where a guardian ad litem was appointed, was served with process, and appeared on behalf of the minor, no useful purpose as contemplated by the legislature would have been served by requiring personal service on the minor. People v. M.R., 191 Ill. App. 3d 607, 138 Ill. Dec. 837, 548 N.E.2d 67 (5 Dist. 1989).

The trial court's adjudication was not void for lack of jurisdiction over a minor, who was over eight years old and represented by a guardian ad litem in the proceeding, even though the minor was

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not personally served with a summons or a notice of the proceeding, because the legislature intended to allow a guardian ad litem to receive service on behalf of a minor in a juvenile neglect proceeding when it enacted this Act. People v. Warner, 176 Ill. App. 3d 868, 126 Ill. Dec. 297, 531 N.E.2d 924 (1 Dist. 1988).

- Newborn Child

Where a newborn child was not served with any summons or notice of proceedings, the circuit court lacked jurisdiction. People v. Day, 138 Ill. App. 3d 783, 93 Ill. Dec. 206, 486 N.E.2d 307 (4 Dist. 1985).

Notice

- Actual Notice

By appearance, recognition by the trial court, and participation in the court proceedings, the children's legal guardian, through representatives of the Department of Children and Family Services (DCFS), submitted himself to the jurisdiction of the court, and where the record showed that DCFS had actual notice and actually appeared and participated in every hearing involving the petition to terminate the mother's parental rights, no further notice was required. People v. Thompson, 145 Ill. App. 3d 816, 99 Ill. Dec. 605, 495 N.E.2d 1340 (3 Dist. 1986).

- Mandatory

The notice provisions of this Act are not mandatory only when practical; rather, notice to all required by the Act is mandatory. People v. J.W.M., 123 Ill. App. 3d 1036, 79 Ill. Dec. 469, 463 N.E.2d 1023 (4 Dist. 1984); People v. Rogers, 131 Ill. App. 3d 694, 86 Ill. Dec. 893, 476 N.E.2d 69 (4 Dist. 1985).

Service

- In General

Ill. Sup. Ct. R. 11 lays out on whom service shall be made and the acceptable methods of service, depending on whether a party is represented by counsel or not; Illinois Supreme Court rules are not suggestions, they have the force of law, and the presumption must be that they will be obeyed and enforced as written. 705 ILCS 405/2-15(3) does not in anyway exempt the State from notifying a party about anything it might file in a case after it has served that party with process. People v. Ralph L. (In re Haley D.), 403 Ill. App. 3d 370, 342 Ill. Dec. 835, 933 N.E.2d 421, 2010 Ill. App. LEXIS 755 (2 Dist. 2010).

- Due Process

Court cannot allow the termination of parental rights in the absence of required notice; therefore, although a trial court had personal jurisdiction over a father since he had been served with a neglect petition, the father's due process rights were violated when a default judgment was entered in a termination proceeding because he was not served with notice of that issue, as required by 705 ILCS 405/2-15(3) and Ill. Sup. Ct. R. 11. Therefore, a default judgment entered against the father should have been vacated. People v. Ralph L. (In re Haley D.), 403 Ill. App. 3d 370, 342 Ill. Dec. 835, 933 N.E.2d 421, 2010 Ill. App. LEXIS 755 (2 Dist. 2010).

Due process of law requires that notice in juvenile proceedings be equivalent to that constitutionally required in criminal or civil cases. People v. R.D.S., 94 Ill. 2d 77, 67 Ill. Dec. 813, 445 N.E.2d 293 (1983), overruled in part by State v. M.W. (In re M.W.), 232 Ill. 2d 408, 905 N.E.2d 757, 2009 Ill. LEXIS 171 (2009).

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- Failure to Serve Guardian

The plenary guardian of the person of a disabled adult is a necessary party to proceedings for the adjudication of the disabled adult's minor child to himself become a ward of the court and, therefore, the plenary guardian is entitled to notice of such proceedings. People v. Kenya C. (In re K.C.), 323 Ill. App. 3d 839, 257 Ill. Dec. 119, 753 N.E.2d 314, 2001 Ill. App. LEXIS 479 (1 Dist. 2001).

Jurisdiction of the circuit court was not properly invoked when the state failed to name or notify the court-appointed guardian of a minor in an adjudicatory hearing brought against the guardian's charge. People v. R.D.S., 94 Ill. 2d 77, 67 Ill. Dec. 813, 445 N.E.2d 293 (1983), overruled in part by State v. M.W. (In re M.W.), 232 Ill. 2d 408, 905 N.E.2d 757, 2009 Ill. LEXIS 171 (2009).

- Failure to Serve Minors

The state's failure to serve juvenile notice by publication after learning that his whereabouts were unknown did not substantially prejudice his interests, particularly since juvenile submitted to the personal jurisdiction of the court both through his own appearance at the initial hearing in this matter and through his legal guardian's appearance at the hearing on the supplemental petition. Shawn B. v. People, 218 Ill. App. 3d 374, 161 Ill. Dec. 142, 578 N.E.2d 269 (1 Dist. 1991).

Where there was no showing that any substantial interest of the minor was prejudiced by failure to obtain personal service on the minor, the court's decision was not void for lack of jurisdiction. People v. English M., 189 Ill. App. 3d 392, 136 Ill. Dec. 795, 545 N.E.2d 319 (1 Dist. 1989).

In an action adjudicating her children wards of the court where respondent never objected to jurisdiction; a guardian ad litem represented the children at all court proceedings; they appeared at several court hearings but were removed from the courtroom during testimony; and there had been no allegation or showing of prejudice regarding any of their interests, the orders were not void for want of jurisdiction, even though the children were not served with a summons or petition. People v. English M., 189 Ill. App. 3d 392, 136 Ill. Dec. 795, 545 N.E.2d 319 (1 Dist. 1989).

Circuit court lacked jurisdiction over termination proceeding where neither minor was properly served with summons, despite the fact that the minors were one and two years old. People v. Rogers, 131 Ill. App. 3d 694, 86 Ill. Dec. 893, 476 N.E.2d 69 (4 Dist. 1985).

- Failure to Serve Respondents

When 705 ILCS 405/2-15(3) of the Juvenile Court Act of 1987 and Ill. Sup. Ct. R. 11, concerning the service of process, were construed together, they required that the petition to terminate parental rights should have been served on the father, a respondent in a termination of parental rights proceeding, as a court was not permitted to interpret the language of those provisions to reach a different result that the legislature and the state supreme court would not have intended. That result was not changed by the fact that the statute expressly incorporated Ill. Sup. Ct. R. 11 but did not expressly incorporate Ill. Sup. Ct. R. 104 directing service of pleadings after the complaint, as there was no indication in the statute why Ill. Sup. Ct. R. 104 was not expressly mentioned and the reviewing court had to read the statute as it was written. People v. Ralph L. (In re Haley D.), Ill. 2d , 355 Ill. Dec. 375, 959 N.E.2d 1108, 2011 Ill. LEXIS 1838 (2011).

Trial court did not have subject matter jurisdiction to enter dispositional orders that terminated the father's and mother's parental rights in two minor children and adjudicated the two minor children to be neglected, as the State's failure to give the father adequate notice of the adjudicatory proceedings, at a time when it knew where he was located, violated his due process rights and meant the dispositional orders entered against him were void; since those orders were void, the trial court's finding that the mother was an "unfit person" was also void. People v. Gladys C. (In re Miracle C.), 344 Ill. App. 3d 1046, 280 Ill. Dec. 232, 801 N.E.2d 1177, 2003 Ill. App. LEXIS 1546 (2 Dist. 2003), Overruled in part by People v. Juan S. (In re Antwan L.), 368 Ill. App. 3d

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1119, 859 N.E.2d 1085, 2006 Ill. App. LEXIS 1127, 307 Ill. Dec. 408 (Ill. App. Ct. 2d Dist. 2006).

A pleading that does not name and notify a necessary respondent in a juvenile proceeding fails to invoke the jurisdiction of the court and thereby renders its orders void. People v. J.L.S., 188 Ill. App. 3d 815, 136 Ill. Dec. 129, 544 N.E.2d 815 (3 Dist. 1989).

The circuit court lacked jurisdiction to enter a decree of delinquency because minor's father had not been served or notified of the filing of the petition, even though the father, who was divorced from the mother when the minor was three years old, was not close to the minor and did not have custody of him. People v. S.L.S., 181 Ill. App. 3d 453, 130 Ill. Dec. 144, 536 N.E.2d 1355 (4 Dist. 1989).

Where the vital interests of the minor were well protected, and the absent father was not an indispensable party, failure to publish or notify the natural father did not result in any lack of jurisdiction over the subject matter, or lead to any loss of jurisdiction over the persons of the minor and his mother. People v. R.D., 148 Ill. App. 3d 381, 101 Ill. Dec. 890, 499 N.E.2d 478 (1 Dist. 1986).

Failure to notify a known respondent in a juvenile proceeding resulted in the failure to properly invoke the circuit court's jurisdiction under former Ill. Rev. Stat., ch. 37, para. 704-3 (see now this section). People v. Rogers, 131 Ill. App. 3d 694, 86 Ill. Dec. 893, 476 N.E.2d 69 (4 Dist. 1985).

A pleading that does not name and notify a necessary respondent in a juvenile proceeding fails to invoke the jurisdiction of the court and thereby renders its orders void. People v. R.D.S., 94 Ill. 2d 77, 67 Ill. Dec. 813, 445 N.E.2d 293 (1983), overruled in part by State v. M.W. (In re M.W.), 232 Ill. 2d 408, 905 N.E.2d 757, 2009 Ill. LEXIS 171 (2009).

Failure to provide notice to a minor's parents of an adjudicatory and dispositional hearing as provided by former Ill. Rev. Stat., ch. 37, paras. 704-1, 704-3, and 704-4 (see now this section, 705 ILCS 405/2-13 and 705 ILCS 405/2-16) deprives the juvenile court of jurisdiction, and the failure of the state to exercise due diligence to determine a parent's address, and thereby failing to give proper notice, deprives the juvenile court of the jurisdiction to proceed with adjudicatory and dispositional hearings. People v. Rollins, 86 Ill. App. 3d 245, 41 Ill. Dec. 645, 407 N.E.2d 1143 (3 Dist. 1980).

- Personal Service

Trial court should not have denied the father's 735 ILCS 5/2-1401 motion for relief from judgment seeking to vacate the trial court's judgment terminating the father's parental rights in the father's two minor children. The trial court lacked jurisdiction to enter that judgment, as not only did the State fail to personally serve the father with process as it was authorized to do under 705 ILCS 405/2-15 of the Juvenile Court Act of 1987, but it also failed to make the required diligent inquiry to locate the father before it tried to make service by publication pursuant to 705 ILCS 405/2-16(2). People v. Crockett (In re Dar C.), Ill. 2d , 354 Ill. Dec. 304, 957 N.E.2d 898, 2011 Ill. LEXIS 1826 (2011).

Summons and the petition must be served personally, by certified mail if personal service cannot be made or by publication if service by certified mail cannot be made. People v. D.L.F., 136 Ill. App. 3d 873, 91 Ill. Dec. 665, 483 N.E.2d 1300 (3 Dist. 1985).

- Service on Minor

Although the minors' summonses were returned unserved, where respondent appeared in court on the specified date, counsel was appointed to represent her, and a guardian ad litem was appointed for the minors, the rights of the minors were not prejudiced. People v. Denise B., 176 Ill. App. 3d 43, 125 Ill. Dec. 622, 530 N.E.2d 1031 (1 Dist. 1988).

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A 1987 amendment (Pub. Act 84-1460, sec. 1, eff. Jan. 12, 1987) to the prior law on service of summons in a juvenile case (Ill. Rev. Stat., ch. 37, para. 704-3) (see now this section), changing the requirement that a summons in a juvenile case be directed to the minor to require service on the juvenile's legal representative, was intended to be applied retroactively. People v. Green, 118 Ill. 2d 512, 115 Ill. Dec. 390, 517 N.E.2d 1076 (1987).

A minor, no matter how tender its years may be, must be served with a summons or notice, and this requirement as set forth in former Ill. Rev. Stat., ch. 37, para. 704-3 (see now this section) was as constitutionally rigid as procedural requirements relating to criminal or civil cases. People v. Allport, 151 Ill. App. 3d 1055, 105 Ill. Dec. 322, 504 N.E.2d 191 (3 Dist.), rev'd on other grounds, 165 Ill. App. 3d 157, 116 Ill. Dec. 1, 518 N.E.2d 623 (1987).

- Service on Minor Not Required

Where a minor has notice, appears at a proceeding, and is properly represented by a guardian ad litem throughout the proceedings, personal service is unnecessary. People v. English M., 189 Ill. App. 3d 392, 136 Ill. Dec. 795, 545 N.E.2d 319 (1 Dist. 1989).

Former Ill. Rev. Stat., ch. 37, para. 704-3 (see now this section) did not require personal service, even for minors over eight years of age. People v. P.W., 178 Ill. App. 3d 522, 127 Ill. Dec. 840, 533 N.E.2d 922 (1 Dist. 1988).

Standing

Natural mother remained a party-respondent to the proceedings even after she had signed the final and irrevocable surrenders of her parental rights and until such time as those parental rights were terminated by a court of law; neither the state, the guardian ad litem, nor the trial court at any time objected to her participating in the juvenile proceedings after she signed the surrender forms, and indeed, all parties and the trial court acted as though appellant remained a party-respondent. Accordingly, appellant had standing to file demands to start time and subsequent motions to dismiss the amended petitions for failure to hold a timely adjudicatory hearing. In re Jackson, 243 Ill. App. 3d 631, 183 Ill. Dec. 708, 611 N.E.2d 1356 (5 Dist. 1993).

Respondent mother had standing to argue that her daughters did not receive the notice required. People v. Rogers, 131 Ill. App. 3d 694, 86 Ill. Dec. 893, 476 N.E.2d 69 (4 Dist. 1985).

Waiver

By repeatedly filing motions requiring extensions of the 120 day time limit, natural mother effectively waived that time limit; the trial court did not err in denying mother's motions to dismiss with prejudice the amended petitions for adjudication of wardship and appointment of guardian with power to consent to adoption for failure to hold a timely adjudicatory hearing. In re Jackson, 243 Ill. App. 3d 631, 183 Ill. Dec. 708, 611 N.E.2d 1356 (5 Dist. 1993).

- In General

Where a minor, or any named respondent, appears before the court and participates in the proceedings, he waives the formality of service of process and voluntarily submits to the jurisdiction of the court. People v. D.J., 175 Ill. App. 3d 491, 124 Ill. Dec. 931, 529 N.E.2d 1048 (1 Dist. 1988).

- Appearance

Biological father's due process rights to notice, and to appear and to participate pursuant to 705 ILCS 405/1-5 in termination of parental rights proceedings was not violated despite the fact that the trial court knew that the biological father was incarcerated in Colorado at the time of the

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termination hearing. The father had previously appeared in the case on at least four separate occasions and was given notice of the termination hearing at the Colorado prison where the biological father was incarcerated, but by voluntarily deciding not to participate, the biological father under 705 ILCS 405/2-15(7) waived any objection to the trial court's jurisdiction. People v. Richard W. (In re A.M.), 402 Ill. App. 3d 720, 342 Ill. Dec. 191, 932 N.E.2d 82, 2010 Ill. App. LEXIS 682 (3 Dist. 2010).

Orders terminating respondent's parental rights were valid, as the trial court's failure to adhere to the procedure for serving notice by publication under 705 ILCS 405/2-15 and 2-16 did not deprive the trial court of subject matter jurisdiction, which was invoked by the filing of the original petition pursuant to Ill. Const. (1970), Art. VI, § 9, and respondent waived the issue of personal jurisdiction by appearing at the proceeding and failing to challenge the trial court's personal jurisdiction. People v. Juan S. (In re Antwan L.), 368 Ill. App. 3d 1119, 307 Ill. Dec. 408, 859 N.E.2d 1085, 2006 Ill. App. LEXIS 1127 (1 Dist. 2006).

Where a parent has appeared and participated in all proceedings before the circuit court, and does not object to jurisdiction, she has waived the formality of service of process and voluntarily submits to the jurisdiction of the court. People v. English M., 189 Ill. App. 3d 392, 136 Ill. Dec. 795, 545 N.E.2d 319 (1 Dist. 1989).

When a party appears before the court, although not formally served, and participates in the proceedings, he waives the formality of service of process and voluntarily submits to the jurisdiction of the court. Thus, where county probation office and named individual therein were juvenile's legal guardian, and the record showed that juvenile probation officer was given actual notice of all the proceedings and was present at each of the hearings in the case, juvenile's legal guardian submitted, through the appearance of probation officer, to the jurisdiction of the court. People v. J.L.S., 188 Ill. App. 3d 815, 136 Ill. Dec. 129, 544 N.E.2d 815 (3 Dist. 1989).

Where respondent appeared in response to a juvenile petition alleging delinquent acts, was represented by counsel, made no objection to the court's jurisdiction, his parents had actual notice and attended many of the proceedings and he participated fully in the proceedings, he waived any challenge to the court's jurisdiction. People v. T.O., 187 Ill. App. 3d 970, 135 Ill. Dec. 401, 543 N.E.2d 969 (1 Dist. 1989).

- Not Found

The jurisdictional claim was not waived because the respondents failed to bring it to the attention of the trial court below. People v. Day, 138 Ill. App. 3d 783, 93 Ill. Dec. 206, 486 N.E.2d 307 (4 Dist. 1985).

LEGAL PERIODICALS

For article, "Family Law: 1987-88 Illinois Law Survey," see 20 Loy. U. Chi. L.J. 461 (1988-89).

For article, "Juvenile Law: 1986-87 Illinois Law Survey," see 19 Loy. U. Chi. L.J. 565 (1987-88).

For article, "Notice to Minors Under the Illinois Juvenile Court Act: An Anomaly of Due Process," see 36 De Paul L. Rev. 343 (1987).

For article, "Juvenile Law: 1985-86 Illinois Law Survey," see 18 Loy. U. Chi. L.J. 633 (1986-87).

RESEARCH REFERENCES

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Jurisdiction or power of juvenile court to order parent of juvenile to make restitution for juvenile's offense. 66 ALR4th 985.

§ 705 ILCS 405/2-16. Notice by certified mail or publication

Sec. 2-16. Notice by certified mail or publication. (1) If service on individuals as provided in Section 2-15 [705 ILCS 405/2-15] is not made on any respondent within a reasonable time or if it appears that any respondent resides outside the State, service may be made by certified mail. In such case the clerk shall mail the summons and a copy of the petition to that respondent by certified mail marked for delivery to addressee only. The court shall not proceed with the adjudicatory hearing until 5 days after such mailing. The regular return receipt for certified mail is sufficient proof of service.

(2) Where a respondent's usual place of abode is not known, a diligent inquiry shall be made to ascertain the respondent's current and last known address. The Department of Children and Family Services shall adopt rules defining the requirements for conducting a diligent search to locate parents of minors in the custody of the Department. If, after diligent inquiry made at any time within the preceding 12 months, the usual place of abode cannot be reasonably ascertained, or if respondent is concealing his or her whereabouts to avoid service of process, petitioner's attorney shall file an affidavit at the office of the clerk of court in which the action is pending showing that respondent on due inquiry cannot be found or is concealing his or her whereabouts so that process cannot be served. The affidavit shall state the last known address of the respondent. The affidavit shall also state what efforts were made to effectuate service. Within 3 days of receipt of the affidavit, the clerk shall issue publication service as provided below. The clerk shall also send a copy thereof by mail addressed to each respondent listed in the affidavit at his or her last known address. The clerk of the court as soon as possible shall cause publication to be made once in a newspaper of general circulation in the county where the action is pending. Notice by publication is not required in any case when the person alleged to have legal custody of the minor has been served with summons personally or by certified mail, but the court may not enter any order or judgment against any person who cannot be served with process other than by publication unless notice by publication is given or unless that person appears. When a minor has been sheltered under Section 2-10 of this Act [705 ILCS 405/2-10] and summons has not been served personally or by certified mail within 20 days from the date of the order of court directing such shelter care, the clerk of the court shall cause publication. Notice by publication shall be substantially as follows:

"A, B, C, D, (here giving the names of the named respondents, if any) and to All Whom It May Concern (if there is any respondent under that designation):

Take notice that on (insert date) a petition was filed under the Juvenile Court Act of 1987 by ..... in the circuit court of ..... county entitled 'In the interest of ....., a minor', and that in ..... courtroom at ..... on (insert date) at the hour of ....., or as soon thereafter as this cause may be heard, an adjudicatory hearing will be held upon the petition to have the child declared to be a ward of the court under

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that Act. THE COURT HAS AUTHORITY IN THIS PROCEEDING TO TAKE FROM YOU THE CUSTODY AND GUARDIANSHIP OF THE MINOR, TO TERMINATE YOUR PARENTAL RIGHTS, AND TO APPOINT A GUARDIAN WITH POWER TO CONSENT TO ADOPTION. YOU MAY LOSE ALL PARENTAL RIGHTS TO YOUR CHILD. IF THE PETITION REQUESTS THE TERMINATION OF YOUR PARENTAL RIGHTS AND THE APPOINTMENT OF A GUARDIAN WITH POWER TO CONSENT TO ADOPTION, YOU MAY LOSE ALL PARENTAL RIGHTS TO THE CHILD. Unless you appear you will not be entitled to further written notices or publication notices of the proceedings in this case, including the filing of an amended petition or a motion to terminate parental rights.

Now, unless you appear at the hearing and show cause against the petition, the allegations of the petition may stand admitted as against you and each of you, and an order or judgment entered.

.....

Clerk

Dated (insert the date of publication)"

(3) The clerk shall also at the time of the publication of the notice send a copy thereof by mail to each of the respondents on account of whom publication is made at his or her last known address. The certificate of the clerk that he or she has mailed the notice is evidence thereof. No other publication notice is required. Every respondent notified by publication under this Section must appear and answer in open court at the hearing. The court may not proceed with the adjudicatory hearing until 10 days after service by publication on any parent, guardian or legal custodian in the case of a minor described in Section 2-3 or 2-4 [705 ILCS 405/2-3 or 705 ILCS 405/2-4].

(4) If it becomes necessary to change the date set for the hearing in order to comply with Section 2-14 [705 ILCS 405/2-14] or with this Section, notice of the resetting of the date must be given, by certified mail or other reasonable means, to each respondent who has been served with summons personally or by certified mail.

(5) Notice to a parent who has appeared or been served with summons personally or by certified mail, and for whom an order of default has been entered on the petition for wardship and has not been set aside shall be provided in accordance with Supreme Court Rule 11. Notice to a parent who was served by publication and for whom an order of default has been entered on the petition for wardship and has not been set aside shall be provided in accordance with this Section and Section 2-15 [705 ILCS 405/2-15].

(Source: P.A. 85-601; 88-614, § 110; 90-27, § 30; 90-28, § 10-20; 90-608, § 30; 91-357, § 236.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-16.

Effect of Amendments. The 1998 amendment by P.A. 90-608, effective June 30, 1998, added subsection (5).

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The 1999 amendment by P.A. 91-357, effective July 29, 1999, in the form, substituted "(insert date)" for "the ..... day of ....., 19..." twice and inserted "insert" following "Dated".

CASE NOTES

Analysis

In General
Diligence
Due Process
Jurisdiction
Noncustodial Parent
- Publication Acceptable
- Unknown Father
- Unknown Mother

Notice
- Method
- Natural Parent
- Newborn Child
- Required
- Sufficient

Waiver
Whereabouts of Respondent
- Adequacy of Notice
- Effort to Locate

In General

The summons and the petition must be served personally, by certified mail if personal service cannot be made, and by publication if service by certified mail cannot be made. People v. D.L.F., 136 Ill. App. 3d 873, 91 Ill. Dec. 665, 483 N.E.2d 1300 (3 Dist. 1985).

Diligence

Trial court should not have denied the father's 735 ILCS 5/2-1401 motion for relief from judgment seeking to vacate the trial court's judgment terminating the father's parental rights in the father's two minor children. The trial court lacked jurisdiction to enter that judgment, as not only did the State fail to personally serve the father with process as it was authorized to do under 705 ILCS 405/2-15 of the Juvenile Court Act of 1987, but it also failed to make the required diligent inquiry to locate the father before it tried to make service by publication pursuant to 705 ILCS 405/2-16(2). People v. Crockett (In re Dar C.), Ill. 2d , 354 Ill. Dec. 304, 957 N.E.2d 898, 2011 Ill. LEXIS 1826 (2011).

Trial court erred in entering dispositional orders that terminated the mother and father's parental rights in their two minor children and adjudicated the two minor children to be neglected because it did not have subject matter jurisdiction over the action. It did not have subject matter jurisdiction because the State did not make a diligent inquiry in determining the father's last known address,

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even though the record showed that he was in prison, and, thus, it was not entitled to serve him with notice of the adjudicatory proceedings against him by publication and could not enter subsequent valid adjudicatory orders against either him or the mother. People v. Gladys C. (In re Miracle C.), 344 Ill. App. 3d 1046, 280 Ill. Dec. 232, 801 N.E.2d 1177, 2003 Ill. App. LEXIS 1546 (2 Dist. 2003), Overruled in part by People v. Juan S. (In re Antwan L.), 368 Ill. App. 3d 1119, 859 N.E.2d 1085, 2006 Ill. App. LEXIS 1127, 307 Ill. Dec. 408 (Ill. App. Ct. 2d Dist. 2006).

State's attempt to terminate an unknown father's parental rights was properly rejected because the attempted service by publication was statutorily insufficient under subsection (2) of the statute and the record on appeal failed to show that the State filed the required "due diligence" affidavit. People v. Brownlee (In re Brianna B.), 334 Ill. App. 3d 651, 268 Ill. Dec. 458, 778 N.E.2d 724, 2002 Ill. App. LEXIS 1044 (4 Dist. 2002).

The Department of Children and Family Services conducted a diligent search for a putative father where the search included a public aid search and a telephone directory search, but not a check of the Department of Corrections. People v. Brent (In re Sheltanya S.), 309 Ill. App. 3d 941, 243 Ill. Dec. 441, 723 N.E.2d 744, 1999 Ill. App. LEXIS 880 (1 Dist. 1999).

State was not required to conduct a second diligent inquiry into father's identity after default judgment was entered because mother then came forward to name a second possible father. In re A.S.B., 293 Ill. App. 3d 836, 228 Ill. Dec. 238, 688 N.E.2d 1215 (2 Dist. 1997).

Department engaged in a diligent inquiry for natural father prior to filing its affidavit and requesting notice by publication such as contacting relatives and visiting previous listed addresses. In re A.S.B., 293 Ill. App. 3d 836, 228 Ill. Dec. 238, 688 N.E.2d 1215 (2 Dist. 1997).

Due Process

Due process of law requires that notice in juvenile proceedings be equivalent to that constitutionally required in criminal or civil cases. People v. R.D.S., 94 Ill. 2d 77, 67 Ill. Dec. 813, 445 N.E.2d 293 (1983), overruled in part by State v. M.W. (In re M.W.), 232 Ill. 2d 408, 905 N.E.2d 757, 2009 Ill. LEXIS 171 (2009).

Jurisdiction

Failure to provide notice to a minor's parents of an adjudicatory and dispositional hearing as provided by former Ill. Rev. Stat., ch. 37, paras. 704-1, 704-3, and 704-4 (see now this section, 705 ILCS 405/2-13 and 705 ILCS 405/2-15) deprived the juvenile court of jurisdiction, and the failure of the state to exercise due diligence to determine a parent's address, and thereby failing to give proper notice, deprived the juvenile court of the jurisdiction to proceed with adjudicatory and dispositional hearings. People v. Rollins, 86 Ill. App. 3d 245, 41 Ill. Dec. 645, 407 N.E.2d 1143 (3 Dist. 1980).

Noncustodial Parent

- Publication Acceptable

Where a minor's mother had actual, sole custody of the minor and received actual notice of the proceedings, even if she had not received formal service of summons and the petition, then if the noncustodial parent could not have been served by personal or abode service or by certified mail, service by publication was acceptable. In re J.P.J., 109 Ill. 2d 129, 92 Ill. Dec. 802, 485 N.E.2d 848 (1985).

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Where a noncustodial parent's interest will not be significantly affected in a proceeding, notice by publication is sufficient, but is not necessary where the custodial parent has been served. People v. J.P.J., 122 Ill. App. 3d 573, 77 Ill. Dec. 955, 461 N.E.2d 578 (2 Dist. 1984).

- Unknown Father

Service on a noncustodial parent whose whereabouts were known was required under subsection (2) of former Ill. Rev. Stat., ch. 37, para. 704-4 (see now subsection (2) of this section); however no notice, even by publication, was necessary where the unknown father of a minor resided with the mother, who had been served. In re J.P.J., 109 Ill. 2d 129, 92 Ill. Dec. 802, 485 N.E.2d 848 (1985).

Under former Ill. Rev. Stat., ch. 37, para. 704-4 (see now this section), the juvenile court could properly hold an adjudicatory hearing without serving notice upon the minor's father by publication where the petition for adjudication of wardship identified the father as "unknown" and the minor was illegitimate and had no contact whatever with his biological father. In re J.W., 87 Ill. 2d 56, 57 Ill. Dec. 603, 429 N.E.2d 501 (1981).

- Unknown Mother

Where the State's Attorney's petition to terminate parental rights alleged that the mother was "unknown"; notice was given by publication for unknowns in accordance with the statute; the court in the order terminating parental rights expressly found that the natural mother and father were both unknown and that the child was abandoned by both and was dependent on the public for support; and the adoption decree was entered upon the consent of the Department of Probation, appointed to consent upon the termination of parental rights, the trial court acquired jurisdiction of both the subject matter and the parties, and its judgment was presumptively valid under the former Adoption Act (see now 750 ILCS 50/5) and under the former Juvenile Court Act (see now this section). Rodriguez v. Koschny, 57 Ill. App. 3d 355, 14 Ill. Dec. 916, 373 N.E.2d 47 (2 Dist. 1978).

Notice

Affidavit filed by the State of Illinois in support of its request to serve respondent father by publication, was sufficient to satisfy the requirements of 705 ILCS 405/2-16(2) where it stated that the father could not be located within the state so that process could not be served upon him, that the father's last known address was in fact unknown, and that the father's present address could not be ascertained through diligent inquiry. People v. K.M. (In re D.J.), 361 Ill. App. 3d 116, 297 Ill. Dec. 99, 836 N.E.2d 830, 2005 Ill. App. LEXIS 958 (1 Dist. 2005).

- Method

Where a minor's mother had actual, sole custody of the minor and received actual notice of the proceedings, even if she had not received formal service of summons and the petition, then if the noncustodial parent could not have been served by personal or abode service or by certified mail, service by publication was acceptable. In re J.P.J., 109 Ill. 2d 129, 92 Ill. Dec. 802, 485 N.E.2d 848 (1985).

The method of notice appropriate to a particular respondent depended heavily on the state's ability to identify and locate that person under subsection (2) of former Ill. Rev. Stat., ch. 37, para. 704-4 (see now this section); if personal or abode service or service by certified mail was possible, the statute required it. In re J.P.J., 109 Ill. 2d 129, 92 Ill. Dec. 802, 485 N.E.2d 848 (1985).

- Natural Parent

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Under a prior similar provision, proper notice should have been given to the natural mother where three summonses sent to the sheriff were returned to the county circuit clerk without any attempt at service and where the documents directed to the mother were apparently not delivered to the sheriff and were returned to the circuit clerk by the post office due to insufficient or incorrect address. People v. T.M.F., 155 Ill. App. 3d 1026, 108 Ill. Dec. 583, 508 N.E.2d 1160 (4 Dist. 1987).

- Newborn Child

Where a newborn child was not served with any summons or notice of proceedings, the circuit court lacked jurisdiction over that child. People v. Day, 138 Ill. App. 3d 783, 93 Ill. Dec. 206, 486 N.E.2d 307 (4 Dist. 1985).

- Required

Notice to all required by former Ill. Rev. Stat., ch. 37, paras. 704-1, 704-3, and 704-4 (see now this section, 705 ILCS 405/2-13 and 705 ILCS 405/2-15) was mandatory, and failure to comply required reversal of an adjudication of delinquency. People v. J.W.M., 123 Ill. App. 3d 1036, 79 Ill. Dec. 469, 463 N.E.2d 1023 (4 Dist. 1984).

- Sufficient

The state's failure to serve notice on juvenile by publication, after learning that his whereabouts were unknown, did not substantially prejudice his interests, particularly since juvenile submitted to the personal jurisdiction of the court both through his own appearance at the initial hearing in this matter and through his legal guardian's appearance at the hearing on the supplemental petition. Shawn B. v. People, 218 Ill. App. 3d 374, 161 Ill. Dec. 142, 578 N.E.2d 269 (1 Dist. 1991).

There was nothing in the record which would deprive the court of jurisdiction; there were no deficiencies in the notice requirements which would render the court's orders voidable, nor were any due process violations. People v. L.E.J., 115 Ill. App. 3d 993, 71 Ill. Dec. 574, 451 N.E.2d 289 (4 Dist. 1983).

Waiver

Orders terminating respondent's parental rights were valid, as the trial court's failure to adhere to the procedure for serving notice by publication under 705 ILCS 405/2-15 and 2-16 did not deprive the trial court of subject matter jurisdiction, which was invoked by the filing of the original petition pursuant to Ill. Const. (1970), Art. VI, § 9, and respondent waived the issue of personal jurisdiction by appearing at the proceeding and failing to challenge the trial court's personal jurisdiction. People v. Juan S. (In re Antwan L.), 368 Ill. App. 3d 1119, 307 Ill. Dec. 408, 859 N.E.2d 1085, 2006 Ill. App. LEXIS 1127 (1 Dist. 2006).

Where a minor, or any named respondent, appears before the court and participates in the proceedings, under 705 ILCS 405/1-15, he waives the formality of service of process and voluntarily submits to the jurisdiction of the court. People v. D.J., 175 Ill. App. 3d 491, 124 Ill. Dec. 931, 529 N.E.2d 1048 (1 Dist. 1988).

Whereabouts of Respondent

- Adequacy of Notice

Where the written consent of the court-appointed guardian specified that the child was born at a hospital on a particular date, the mother should have been permitted to show that her name and address were easily ascertainable and the trial court erroneously foreclosed an inquiry directed at the adequacy of the notice by publication in that it directly bore on the right to avoid the judgment

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under former Ill. Rev. Stat., ch. 37, para. 704-2 (see now 705 ILCS 405/2-14). Rodriguez v. Koschny, 57 Ill. App. 3d 355, 14 Ill. Dec. 916, 373 N.E.2d 47 (2 Dist. 1978).

- Effort to Locate

Unless some question is raised regarding the failure to identify or locate a noncustodial parent whose identity or address is not known to the state at the outset of the proceedings, the matter is waived and diligence may be assumed. In re J.P.J., 109 Ill. 2d 129, 92 Ill. Dec. 802, 485 N.E.2d 848 (1985).

The state's lack of success in identifying and locating a parent does not, by itself, mean that the state has not been diligent in its efforts. In re J.P.J., 109 Ill. 2d 129, 92 Ill. Dec. 802, 485 N.E.2d 848 (1985).

LEGAL PERIODICALS

For article, "Notice to Minors Under the Illinois Juvenile Court Act: An Anomaly of Due Process," see 36 De Paul L. Rev. 343 (1987).

§ 705 ILCS 405/2-17. Guardian ad litem

Sec. 2-17. Guardian ad litem. (1) Immediately upon the filing of a petition alleging that the minor is a person described in Sections 2-3 or 2-4 [705 ILCS 405/2-3 or 705 ILCS 405/2-4] of this Article, the court shall appoint a guardian ad litem for the minor if:

(a) such petition alleges that the minor is an abused or neglected child; or

(b) such petition alleges that charges alleging the commission of any of the sex offenses defined in Article 11 or in Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-1.20, 11-1.30, 11-1.40, 11-1.50 or 11-1.60, 12-13, 12-14, 12-14.1, 12-15 or 12-16 of the Criminal Code of 1961 [720 ILCS 5/11-6 et seq. or 720 ILCS 5/11-1.20, 720 ILCS 5/11-1.30, 720 ILCS 5/11-1.40, 720 ILCS 5/11-1.50, 720 ILCS 5/11-1.60, 720 ILCS 5/11-1.20, 720 ILCS 5/11-1.30, 720 ILCS 5/11-1.40, 720 ILCS 5/11-1.50 or 720 ILCS 5/11-1.60, 720 ILCS 5/11-1.20, 720 ILCS 5/11-1.30, 720 ILCS 5/11-1.40, 720 ILCS 5/11-1.50 or 720 ILCS 5/11-1.60], as amended, have been filed against a defendant in any court and that such minor is the alleged victim of the acts of defendant in the commission of such offense.

Unless the guardian ad litem appointed pursuant to this paragraph (1) is an attorney at law he shall be represented in the performance of his duties by counsel. The guardian ad litem shall represent the best interests of the minor and shall present recommendations to the court consistent with that duty.

(2) Before proceeding with the hearing, the court shall appoint a guardian ad litem for the minor if

(a) no parent, guardian, custodian or relative of the minor appears at the first or any subsequent hearing of the case;

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(b) the petition prays for the appointment of a guardian with power to consent to adoption; or

(c) the petition for which the minor is before the court resulted from a report made pursuant to the Abused and Neglected Child Reporting Act [325 ILCS 5/1 et seq.].

(3) The court may appoint a guardian ad litem for the minor whenever it finds that there may be a conflict of interest between the minor and his parents or other custodian or that it is otherwise in the minor's best interest to do so.

(4) Unless the guardian ad litem is an attorney, he shall be represented by counsel.

(5) The reasonable fees of a guardian ad litem appointed under this Section shall be fixed by the court and charged to the parents of the minor, to the extent they are able to pay. If the parents are unable to pay those fees, they shall be paid from the general fund of the county.

(6) A guardian ad litem appointed under this Section, shall receive copies of any and all classified reports of child abuse and neglect made under the Abused and Neglected Child Reporting Act in which the minor who is the subject of a report under the Abused and Neglected Child Reporting Act is also the minor for whom the guardian ad litem is appointed under this Section.

(7) The appointed guardian ad litem shall remain the child's guardian ad litem throughout the entire juvenile trial court proceedings, including permanency hearings and termination of parental rights proceedings, unless there is a substitution entered by order of the court.

(8) The guardian ad litem or an agent of the guardian ad litem shall have a minimum of one in-person contact with the minor and one contact with one of the current foster parents or caregivers prior to the adjudicatory hearing, and at least one additional in-person contact with the child and one contact with one of the current foster parents or caregivers after the adjudicatory hearing but prior to the first permanency hearing and one additional in-person contact with the child and one contact with one of the current foster parents or caregivers each subsequent year. For good cause shown, the judge may excuse face-to-face interviews required in this subsection.

(9) In counties with a population of 100,000 or more but less than 3,000,000, each guardian ad litem must successfully complete a training program approved by the Department of Children and Family Services. The Department of Children and Family Services shall provide training materials and documents to guardians ad litem who are not mandated to attend the training program. The Department of Children and Family Services shall develop and distribute to all guardians ad litem a bibliography containing information including but not limited to the juvenile court process, termination of parental rights, child development, medical aspects of child abuse, and the child's need for safety and permanence.

(Source: P.A. 86-1167; 87-649; 88-7, § 15; 89-428, § 255; 89-462, § 255; 90-27, § 30; 90-28, § 10-20; 96-1551, § 1030.)

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Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-17.

Section 9995 of P.A. 96-1551 contains a "no acceleration or delay" provision.

Cross References.

For the provision concerning the records of a minor who is the subject of a report or records under the Abused and Neglected Child Reporting Act (325 ILCS 5/1 et seq.), see the following: requirement that the guardian ad litem receive a copy of the report after it has been classified, see 325 ILCS 5/7.14; permission for the guardian ad litem to have access to the records, see 325 ILCS 5/11.1.

For provision allowing a court to appoint a guardian ad litem for a minor where the minor is alleged to be the victim of a defendant charged with a sex offense, see 725 ILCS 5/111-2.

Effect of Amendments. The 2011 amendment by P.A. 96-1551, effective July 1, 2011, inserted "11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60" to the section listing of (1)(b).

CASE NOTES

Analysis

Constitutionality
Appointment
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Scope of Representation

Constitutionality

Public Act 89-428 was enacted in violation of the single subject rule of the state constitution and is therefore invalid in its entirety. Johnson v. Edgar, 176 Ill. 2d 499, 224 Ill. Dec. 1, 680 N.E.2d 1372 (1997).

Appointment

Trial court's judgment ordering the termination of the mother's parental rights in the minor son and appointing a guardian to consent to the minor son's adoption was reversed; not only did the trial court err in having a guardian appointed under the juvenile court laws when the guardian should have been appointed for the mother under probate law because the mother was a mentally disabled adult and not a juvenile, but a plenary guardian had already been appointed, that guardian's letters of office had not been revoked, and that guardian possessed the broad powers

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necessary to act in the best interests of the mother. People v. Delores W. (In re Mark W.), Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 520 (1 Dist. June 16, 2006).

Although the State, through its State's Attorneys, had the exclusive authority in the trial court to prosecute a petition brought under the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., the public guardian, as the appointed attorney of the two minors and their guardian ad litem, could appeal the trial court's dismissal of the State's petition for adjudication of wardship in order to fulfill the public guardian's duty of protecting the best interests of the two minor children. People v. Rocio T. (In re Gustavo H.), 362 Ill. App. 3d 802, 298 Ill. Dec. 907, 841 N.E.2d 50, 2005 Ill. App. LEXIS 1166 (1 Dist. 2005), appeal denied, 218 Ill. 2d 539, 303 Ill. Dec. 3, 850 N.E.2d 808 (2006).

The issue of whether the trial court erred in not appointing an attorney and guardian ad litem upon the filing of the original petition for adjudication of wardship fell within the public interest exception to the mootness doctrine. In re Justin T., 291 Ill. App. 3d 872, 225 Ill. Dec. 939, 684 N.E.2d 930 (1 Dist. 1997).

The appointment of a guardian ad litem cannot be construed as a substantive ruling because such an appointment is a procedural requirement. Dominique F. v. People, 204 Ill. App. 3d 271, 149 Ill. Dec. 544, 561 N.E.2d 1240 (1 Dist. 1990), aff'd, 145 Ill. 2d 311, 164 Ill. Dec. 639, 583 N.E.2d 555 (1991).

Fees

The parents of a child involved in juvenile court proceedings are to be looked to first for the fees of the guardian ad litem; they have voice in his selection, and although his attitude and his actions may be quite contrary to their immediate interest, they have a responsibility for his fees. In re Kersten, 52 Ill. App. 3d 815, 10 Ill. Dec. 652, 368 N.E.2d 138 (2 Dist. 1977).

Mandatory

The trial court erred when it refused to appoint a guardian ad litem for a child alleged to be neglected before granting the State's motion to dismiss the original petition for adjudication of wardship. In re Justin T., 291 Ill. App. 3d 872, 225 Ill. Dec. 939, 684 N.E.2d 930 (1 Dist. 1997).

Representation by Counsel

Roles of a guardian ad litem and defense counsel in a delinquency proceeding are not inherently in conflict, because both have essentially the same obligations to the minor and to society, and there is no per se conflict in the same counsel taking on both roles. Appellant's commitment after admitting to charges contained in two delinquency petitions was allowed to stand where he failed to show that any actual conflict existed between his wishes and his defense counsel/GAL's judgment regarding appellant's best interests. People v. B.K. (In re B.K.), 358 Ill. App. 3d 1166, 295 Ill. Dec. 739, 833 N.E.2d 945, 2005 Ill. App. LEXIS 770 (5 Dist. 2005).

Representation of a guardian ad litem (GAL) and a child, who was the focus of a termination of parental rights proceeding, by the same counsel was proper as the child was too young to be capable of articulating any position that her attorney would be charged with presenting to the trial court and the record established that the attorney adequately represented the child's best interests during the termination proceedings. People v. King (In re J.D.), 351 Ill. App. 3d 917, 286 Ill. Dec. 803, 815 N.E.2d 13, 2004 Ill. App. LEXIS 970 (4 Dist. 2004).

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Scope of Representation

A guardian ad litem in a juvenile court case represents not only the particular child involved in the litigation, but also the broader interests of society implicit in the establishment of the juvenile court in the first place. In re Kersten, 52 Ill. App. 3d 815, 10 Ill. Dec. 652, 368 N.E.2d 138 (2 Dist. 1977).

OPINIONS OF ATTORNEY GENERAL

Federal Compliance

Illinois law fulfills the Federal requirement under 45 C.F.R. 1340.3-3 that legal counsel will be appointed to protect the rights, interests, welfare, and well-being of the child in every child protective judicial proceeding. 1977 Op. Atty. Gen. 173.

LEGAL PERIODICALS

For article, "Conference on Ethical Issues in the Legal Representation of Children in Illinois", see 29 Loy. U. Chi. L.J. 289 (1998).

§ 705 ILCS 405/2-17.1. Court appointed special advocate

Sec. 2-17.1. Court appointed special advocate. (1) The court may appoint a special advocate upon the filing of a petition under this Article or at any time during the pendency of a proceeding under this Article. Except in counties with a population over 3,000,000, the court appointed special advocate may also serve as guardian ad litem by appointment of the court under Section 2-17 of this Act [705 ILCS 405/2-17].

(2) The court appointed special advocate shall act as a monitor and shall be notified of all administrative case reviews pertaining to the minor and work with the parties' attorneys, the guardian ad litem, and others assigned to the minor's case to protect the minor's health, safety and best interests and insure the proper delivery of child welfare services. The court may consider, at its discretion, testimony of the court appointed special advocate pertaining to the well-being of the child.

(3) Court appointed special advocates shall serve as volunteers without compensation and shall receive training consistent with nationally developed standards.

(4) No person convicted of a criminal offense as specified in Section 4.2 of the Child Care Act of 1969 [225 ILCS 10/4.2] and no person identified as a perpetrator of an act of child abuse or neglect as reflected in the Department of Children and Family Services State Central Register shall serve as a court appointed special advocate.

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(5) All costs associated with the appointment and duties of the court appointed special advocate shall be paid by the court appointed special advocate or an organization of court appointed special advocates. In no event shall the court appointed special advocate be liable for any costs of services provided to the child.

(6) The court may remove the court appointed special advocate or the guardian ad litem from a case upon finding that the court appointed special advocate or the guardian ad litem has acted in a manner contrary to the child's best interest or if the court otherwise deems continued service is unwanted or unnecessary.

(7) In any county in which a program of court appointed special advocates is in operation, the provisions of this Section shall apply unless the county board of that county, by resolution, determines that the county shall not be governed by this Section.

(8) Any court appointed special advocate acting in good faith within the scope of his or her appointment shall have immunity from any civil or criminal liability that otherwise might result by reason of his or her actions, except in cases of willful and wanton misconduct. For the purpose of any civil or criminal proceedings, the good faith of any court appointed special advocate shall be presumed.

(Source: P.A. 88-97, § 5; 90-28, § 10-20; 90-608, § 30; 91-357, § 236.)

Effective Date. Section 99 of P.A. 88-97 made this section effective upon becoming law. The Act was approved July 20, 1993.

Effect of Amendments. The 1998 amendment by P.A. 90-608, effective June 30, 1998, added subsection (8).

The 1999 amendment by P.A. 91-357, effective July 29, 1999, deleted the subsection (a) designation in subsection (7).

LEGAL PERIODICALS

For article, "Conference on Ethical Issues in the Legal Representation of Children in Illinois", see 29 Loy. U. Chi. L.J. 289 (1998).

§ 705 ILCS 405/2-18. Evidence

Sec. 2-18. Evidence. (1) At the adjudicatory hearing, the court shall first consider only the question whether the minor is abused, neglected or dependent. The standard of proof and the rules of evidence in the nature of civil proceedings in this State are applicable to proceedings under this Article. If the petition also seeks the appointment of a guardian of the person with power to consent to adoption of the minor under Section 2-29 [705 ILCS

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405/2-29], the court may also consider legally admissible evidence at the adjudicatory hearing that one or more grounds of unfitness exists under subdivision D of Section 1 of the Adoption Act [750 ILCS 50/1].

(2) In any hearing under this Act, the following shall constitute prima facie evidence of abuse or neglect, as the case may be:

(a) proof that a minor has a medical diagnosis of battered child syndrome is prima facie evidence of abuse;

(b) proof that a minor has a medical diagnosis of failure to thrive syndrome is prima facie evidence of neglect;

(c) proof that a minor has a medical diagnosis of fetal alcohol syndrome is prima facie evidence of neglect;

(d) proof that a minor has a medical diagnosis at birth of withdrawal symptoms from narcotics or barbiturates is prima facie evidence of neglect;

(e) proof of injuries sustained by a minor or of the condition of a minor of such a nature as would ordinarily not be sustained or exist except by reason of the acts or omissions of the parent, custodian or guardian of such minor shall be prima facie evidence of abuse or neglect, as the case may be;

(f) proof that a parent, custodian or guardian of a minor repeatedly used a drug, to the extent that it has or would ordinarily have the effect of producing in the user a substantial state of stupor, unconsciousness, intoxication, hallucination, disorientation or incompetence, or a substantial impairment of judgment, or a substantial manifestation of irrationality, shall be prima facie evidence of neglect;

(g) proof that a parent, custodian, or guardian of a minor repeatedly used a controlled substance, as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act [720 ILCS 570/102], in the presence of the minor or a sibling of the minor is prima facie evidence of neglect. "Repeated use", for the purpose of this subsection, means more than one use of a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act;

(h) proof that a newborn infant's blood, urine, or meconium contains any amount of a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act, or a metabolite of a controlled substance, with the exception of controlled substances or metabolites of those substances, the presence of which is the result of medical treatment administered to the mother or the newborn, is prime facie evidence of neglect.

(i) proof that a minor was present in a structure or vehicle in which the minor's parent, custodian, or guardian was involved in the manufacture of methamphetamine constitutes prima facie evidence of abuse and neglect;

(j) proof that a parent, custodian, or guardian of a minor allows, encourages, or requires a minor to perform, offer, or agree to perform any act of sexual penetration as defined in

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Section 12-12 of the Criminal Code of 1961 [720 ILCS 5/12-12 (now repealed)] for any money, property, token, object, or article or anything of value, or any touching or fondling of the sex organs of one person by another person, for any money, property, token, object, or article or anything of value, for the purpose of sexual arousal or gratification, constitutes prima facie evidence of abuse and neglect;

(k) proof that a parent, custodian, or guardian of a minor commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services defined in Section 10-9 of the Criminal Code of 1961 [720 ILCS 5/10-9], upon such minor, constitutes prima facie evidence of abuse and neglect.

(3) In any hearing under this Act, proof of the abuse, neglect or dependency of one minor shall be admissible evidence on the issue of the abuse, neglect or dependency of any other minor for whom the respondent is responsible.

(4)(a) Any writing, record, photograph or x-ray of any hospital or public or private agency, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any condition, act, transaction, occurrence or event relating to a minor in an abuse, neglect or dependency proceeding, shall be admissible in evidence as proof of that condition, act, transaction, occurrence or event, if the court finds that the document was made in the regular course of the business of the hospital or agency and that it was in the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter. A certification by the head or responsible employee of the hospital or agency that the writing, record, photograph or x-ray is the full and complete record of the condition, act, transaction, occurrence or event and that it satisfies the conditions of this paragraph shall be prima facie evidence of the facts contained in such certification. A certification by someone other than the head of the hospital or agency shall be accompanied by a photocopy of a delegation of authority signed by both the head of the hospital or agency and by such other employee. All other circumstances of the making of the memorandum, record, photograph or x-ray, including lack of personal knowledge of the maker, may be proved to affect the weight to be accorded such evidence, but shall not affect its admissibility.

(b) Any indicated report filed pursuant to the Abused and Neglected Child Reporting Act [325 ILCS 5/1 et seq.] shall be admissible in evidence.

(c) Previous statements made by the minor relating to any allegations of abuse or neglect shall be admissible in evidence. However, no such statement, if uncorroborated and not subject to cross-examination, shall be sufficient in itself to support a finding of abuse or neglect.

(d) There shall be a rebuttable presumption that a minor is competent to testify in abuse or neglect proceedings. The court shall determine how much weight to give to the minor's testimony, and may allow the minor to testify in chambers with only the court, the court reporter and attorneys for the parties present.

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(e) The privileged character of communication between any professional person and patient or client, except privilege between attorney and client, shall not apply to proceedings subject to this Article.

(f) Proof of the impairment of emotional health or impairment of mental or emotional condition as a result of the failure of the respondent to exercise a minimum degree of care toward a minor may include competent opinion or expert testimony, and may include proof that such impairment lessened during a period when the minor was in the care, custody or supervision of a person or agency other than the respondent.

(5) In any hearing under this Act alleging neglect for failure to provide education as required by law under subsection (1) of Section 2-3 [705 ILCS 405/2-3], proof that a minor under 13 years of age who is subject to compulsory school attendance under the School Code is a chronic truant as defined under the School Code shall be prima facie evidence of neglect by the parent or guardian in any hearing under this Act and proof that a minor who is 13 years of age or older who is subject to compulsory school attendance under the School Code is a chronic truant shall raise a rebuttable presumption of neglect by the parent or guardian. This subsection (5) shall not apply in counties with 2,000,000 or more inhabitants.

(6) In any hearing under this Act, the court may take judicial notice of prior sworn testimony or evidence admitted in prior proceedings involving the same minor if (a) the parties were either represented by counsel at such prior proceedings or the right to counsel was knowingly waived and (b) the taking of judicial notice would not result in admitting hearsay evidence at a hearing where it would otherwise be prohibited.

(Source: P.A. 86-883; 88-343, § 5; 89-704, § 5; 90-443, § 20; 90-608, § 30; 93-884, § 5; 96-1464, § 10.)

Note.

Section 720 ILCS 5/12-12, referred to in subsection (2)(j), has been repealed.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-18.

Effect of Amendments. The 1998 amendment by P.A. 90-608, effective June 30, 1998, added subsection (6).

The 2004 amendment by P.A. 93-884, effective January 1, 2005, inserted subsection (2)(i).

The 2010 amendment by P.A. 96-1464, effective August 20, 2010, added (2)(j) and (2)(k).

CASE NOTES

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Analysis
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Constitutionality

Former Ill. Rev. Stat., ch. 37, para. 704-6 (4)(c) (see now subsection (4)(c) of this section), in allowing children's hearsay statements to be admitted, did not infringe on parents' constitutional rights to due process of law. People v. Melody E., 183 Ill. App. 3d 693, 132 Ill. Dec. 34, 539 N.E.2d 344 (1 Dist. 1989).

The wording of former Ill. Rev. Stat., ch. 37, para. 704-6 (see now this section) was neither vague, overbroad, nor violative of the due process clause or any other clause of the federal or state Constitutions. People v. Melody E., 183 Ill. App. 3d 693, 132 Ill. Dec. 34, 539 N.E.2d 344 (1 Dist. 1989).

In General

In a 42 U.S.C.S. § 1983 case alleging a violation of Fourth Amendment rights arising from an order barring a husband from living with his family, the claims against two Illinois Department of Children and Family Services caseworkers were not barred by the Rooker-Feldman doctrine because under 705 ILCS 405/2-18, the juvenile court was limited to considering only the question of whether the children were abused, neglected, or dependent; therefore, the mother and the father lacked a reasonable opportunity to raise their claims Ibitayo v. McDonald, F. Supp. 2d , 2003 U.S. Dist. LEXIS 20990 (N.D. Ill. Nov. 19, 2003).

Neglect proceedings brought pursuant to this Act are considered civil in nature and are accordingly governed by the rules of evidence applicable to civil proceedings. In re Walton, 79 Ill. App. 3d 485, 34 Ill. Dec. 734, 398 N.E.2d 409 (3 Dist. 1979).

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Abuse of Sibling

Trial court could consider the mother's neglect regarding the minor child's other siblings in determining whether the mother's minor child was neglected. Pursuant to 705 ILCS 2-18(3), the trial court was allowed to do so because the mother was responsible not only for the welfare of the minor child, but also had been responsible for the welfare of the other siblings as well. People v. T.C. (In re J.C.), 396 Ill. App. 3d 1050, 336 Ill. Dec. 695, 920 N.E.2d 1285, 2009 Ill. App. LEXIS 1325 (3 Dist. 2009).

Adjudication that a child was neglected, under 705 ILCS 405/2-3(1)(b), based on an injurious environment, was not against the manifest weight of the evidence, even though the child's mother had never cared for the child, because: (1) under 705 ILCS 405/2-18(3), evidence of adjudications of the child's siblings for neglect was admissible; (2) the trial court did not have to wait until the child was injured to find the child was neglected; and (3) the siblings' adjudications, rather than being based on specific occurrences, were based on the mother's long-standing mental health issues. People v. L.S. (In re R.S.), 382 Ill. App. 3d 453, 321 Ill. Dec. 23, 888 N.E.2d 542, 2008 Ill. App. LEXIS 356 (1 Dist. 2008).

Mother's inclusion of her older child in a theft was sufficient evidence of an injurious environment to find the child neglected, but the theft was not sufficient to establish neglect of a child born after the theft. People v. Apreley R. (In re D.R.), 354 Ill. App. 3d 468, 290 Ill. Dec. 128, 820 N.E.2d 1195, 2004 Ill. App. LEXIS 1519 (3 Dist. 2004).

Sibling abuse is prima facie evidence of neglect; yet, this presumption is not permanent; it weakens over time, and it can be overcome. In re Edricka C., 276 Ill. App. 3d 18, 212 Ill. Dec. 383, 657 N.E.2d 78 (1 Dist. 1995), appeal denied, 165 Ill. 2d 551, 214 Ill. Dec. 858, 662 N.E.2d 424 (1996).

Evidence of the abuse of a sibling is sufficient to establish a prima facie case of neglect as to another child based on an injurious environment; the trial court abused its discretion in determining there was no probable cause to believe that mother neglected child and provided an environment injurious to her welfare. In re B.C., 262 Ill. App. 3d 906, 200 Ill. Dec. 231, 635 N.E.2d 570 (1 Dist. 1994).

Adjudicatory and Dispositional Hearings

Adjudication of two minors as neglected due to mother's failure to comply with a safety plan was against the manifest weight of the evidence because there was no basis for a safety plan at all where one child's hearsay statements, admitted at a shelter care hearing under 705 ILCS 405/2-18(4)(c), were uncorroborated and did not support a probable cause finding of neglect. People v. Jaqueline M. (In re Ivan H.), 382 Ill. App. 3d 1093, 321 Ill. Dec. 882, 890 N.E.2d 604, 2008 Ill. App. LEXIS 544 (1 Dist. 2008).

Trial court erred in terminating the mother's parental rights based on the court's sound discretion as "sound discretion" did not define the State's burden of proof at the best-interests stage of a termination of parental rights hearing; due process did not require imposition of a clear and convincing standard of proof, rather, the preponderance standard of proof adequately ensured the level of certainty necessary. People v. Brenda T. (In re D.T.), 212 Ill. 2d 347, 289 Ill. Dec. 11, 818 N.E.2d 1214, 2004 Ill. LEXIS 1617 (2004).

At an adjudicatory hearing, the usual rules of evidence in criminal proceedings apply, but at a dispositional hearing, the court can consider all evidence helpful in determining the question of disposition, including evidence not competent for purposes of the adjudicatory hearing; thus, a combined hearing presents the probability that evidence will be presented which is incompetent

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for purposes of adjudication, though it would properly be considered in making a dispositional decision. People v. L.H., 102 Ill. App. 3d 169, 57 Ill. Dec. 714, 429 N.E.2d 612 (4 Dist. 1981).

Admissibility of Court Reports

At a hearing held to adjudicate the issue of whether children were neglected by their parents, the information contained in court reports was not admissible where much of the information was gleaned from third party sources, was a distillation of the file, and was conclusionary and rank hearsay. People v. Brady, 7 Ill. App. 3d 404, 287 N.E.2d 537 (4 Dist. 1972).

Alcohol Abuse

Evidence of prenatal alcohol abuse, other than that resulting in fetal alcohol syndrome, can properly be considered in determining whether a minor's environment after birth is injurious to his welfare regardless of whether the child had ever been released to the mother's physical custody. In re J.W., 289 Ill. App. 3d 613, 224 Ill. Dec. 739, 682 N.E.2d 300 (1 Dist. 1997).

Anonymous Complaint

Complaint made by anonymous telephone call to Department of Children and Family Services was admissible to show why an investigation of the family was undertaken, but not to prove the truth of the anonymous allegations; however, testimony relating to the anonymous phone call was not prejudicial because of admissions of abuse by child's father that substantiated the anonymous complaint. In re Wheeler, 86 Ill. App. 3d 564, 42 Ill. Dec. 46, 408 N.E.2d 424 (3 Dist. 1980).

Basis of Finding

A finding of parental unfitness may be based on evidence sufficient to support any one statutory ground, even if the evidence is not sufficient to support other grounds alleged. People v. Walters, 226 Ill. App. 3d 805, 168 Ill. Dec. 570, 589 N.E.2d 970 (4 Dist. 1992).

Client Service Plans

Trial court did not abuse its discretion, pursuant to 705 ILCS 405/2-18(4)(a), in admitting into evidence over a parent's objections service plans which an administrative agency had prepared for the parent. People v. Timothy (In re Brandon A.), 395 Ill. App. 3d 224, 334 Ill. Dec. 250, 916 N.E.2d 890, 2009 Ill. App. LEXIS 990 (5 Dist. 2009).

Although client service plans were properly admitted into evidence in a proceeding for termination of parental rights, it was error to allow testimony regarding the specifics of the plans as a witness is not permitted to testify as to the contents of a document or provide a summary thereof; the document "speaks for itself." People v. C.B., 308 Ill. App. 3d 227, 241 Ill. Dec. 487, 719 N.E.2d 348 (2 Dist. 1999).

Client service plans were properly admitted into evidence in a proceeding for termination of parental rights where such plans were required to be prepared by the Department of Children and Family Services or one of its contract agencies in the regular course of the agency's business; the fact that they were used in an adversarial-type proceeding was of no consequence. People v. C.B., 308 Ill. App. 3d 227, 241 Ill. Dec. 487, 719 N.E.2d 348 (2 Dist. 1999).

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Control Over Investigation

Nowhere in the Juvenile Court Act (705 ILCS 405/1-1 et seq.) is the court conferred power to control the Department of Children and Family Service's investigation of alleged abuse, dependence or neglect. In re R.V., 288 Ill. App. 3d 860, 224 Ill. Dec. 345, 681 N.E.2d 660 (1 Dist. 1997).

Corroborating Evidence

Keeping in mind that admission of hearsay evidence under an exception to the hearsay rule for a child's statement of sexual abuse, pursuant to 725 ILCS 5/115-10, in a criminal proceeding served a different purpose than admission of such a statement in a Juvenile Court Act proceeding under 705 ILCS 405/2-18(4)(c), the father's due process rights were not violated when a state family welfare agency investigator in a Juvenile Court Act case testified to the child's statements made to her even though the statement had been deemed too unreliable to be admitted against the father in the criminal proceeding. In the Juvenile Court Act proceeding, the statute required that the statement be corroborated and the declarant be available for cross-examination, and both requirements were fulfilled given statements that the father made to another investigator about the sexual contact at issue and the fact that the father had the ability to cross-examine the state family welfare agency investigator. People v. Wells (In re Ch. W.), 408 Ill. App. 3d 541, 350 Ill. Dec. 361, 948 N.E.2d 641, 2011 Ill. App. LEXIS 208 (4 Dist. 2011).

While a child's statement regarding sexual abuse had to be corroborated to find that a child had been sexually abused, based on 705 ILCS 405/2-18(4)(c), such statements were corroborated in the proceeding brought against the mother for the abuse and neglect of the mother's three minor children and the ultimate disposition making the three minor children wards of the court. The children's statements of sexual abuse corroborated each other's statements, and those statements made it more probable that the children were in fact sexually abused. People v. Danielle T. (In re Alexis H.), 401 Ill. App. 3d 543, 340 Ill. Dec. 901, 929 N.E.2d 552, 2010 Ill. App. LEXIS 393 (1 Dist. 2010).

In the context of subdivision (4)(c), corroborating evidence of the abuse or neglect requires there to be independent evidence which would support a logical and reasonable inference that the act of abuse or neglect described in the hearsay statement occurred and the form of corroboration will vary depending on the facts of each case and can include physical or circumstantial evidence. In re A.P., 179 Ill. 2d 184, 227 Ill. Dec. 949, 688 N.E.2d 642 (1997).

The purpose of subdivision (4)(c) is best effectuated by requiring corroboration only of the occurrence of the abuse, not the identity of the abuser. In re A.P., 179 Ill. 2d 184, 227 Ill. Dec. 949, 688 N.E.2d 642 (1997).

Where record contained no suggestion of motives for fabricating allegations against the parent on behalf of any of the people who spoke to the abused child, their testimony could be used to corroborate the child's. In re T.L., 254 Ill. App. 3d 230, 192 Ill. Dec. 775, 625 N.E.2d 930 (4 Dist. 1993).

This Act requires that the child's out of court statements be corroborated by evidence which, by its nature, makes it more probable than not that the child was abused and the evidence deemed sufficient to serve in corroboration necessarily varies depending upon the facts involved. People ex rel. Walter B. v. Anita B., 227 Ill. App. 3d 746, 169 Ill. Dec. 787, 592 N.E.2d 274 (1 Dist.), cert. denied, 146 Ill. 2d 649, 176 Ill. Dec. 819, 602 N.E.2d 473 (1992).

Corroborating evidence is that which by its nature makes it more probable that the child was abused. People v. Connie C., 224 Ill. App. 3d 207, 166 Ill. Dec. 540, 586 N.E.2d 498 (1 Dist. 1991).

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Hearsay

Parenting assessment team report was admissible as a business record where there was evidence that the report was prepared in the Department of Children and Family Services' regular course of business and it was clearly made contemporaneously with the events the report recorded. People v. Carmen D. (In re Kenneth J.), 352 Ill. App. 3d 967, 288 Ill. Dec. 290, 817 N.E.2d 940, 2004 Ill. App. LEXIS 1128 (1 Dist. 2004), appeal denied, 212 Ill. 2d 533, 291 Ill. Dec. 708, 824 N.E.2d 284 (2004).

Where the hearsay statement of a four-year-old who allegedly witnessed the father's abuse of the declarant's brother was admitted into the proceeding pursuant to 705 ILCS 405/2-18(4)(c) in which the child was found to be a ward of the court, the father's confrontation rights under Ill. Const., Art. I, § 8 were not violated; such protections applied to criminal matters and the wardship case was civil. People v. Maxwell (In re C.M.), 351 Ill. App. 3d 913, 286 Ill. Dec. 839, 815 N.E.2d 49, 2004 Ill. App. LEXIS 985 (4 Dist. 2004).

Statements made by a three year old child regarding physical abuse by her parents were properly admitted into evidence and supported a finding of physical abuse where her statements were corroborated by medical evidence and other psychological and social reports supported the overall diagnosis that the child was physically abused. People v. S.M., 307 Ill. App. 3d 541, 240 Ill. Dec. 917, 718 N.E.2d 550 (1 Dist. 1999).

A victim's assertions of abuse or neglect are inherently reliable as exceptions to the hearsay rule in an effort to meet the pervasive and unique problem of child sexual abuse. People ex rel. Walter B. v. Anita B., 227 Ill. App. 3d 746, 169 Ill. Dec. 787, 592 N.E.2d 274 (1 Dist.), cert. denied, 146 Ill. 2d 649, 176 Ill. Dec. 819, 602 N.E.2d 473 (1992).

While out-of-court statements are generally inadmissible hearsay, this Act provides an exception for the admission of out-of-court statements made by minors that pertain to incidents of abuse or neglect. People v. Connie C., 224 Ill. App. 3d 207, 166 Ill. Dec. 540, 586 N.E.2d 498 (1 Dist. 1991).

The essence of the rule prohibiting the admission of out-of-court statements is the inability of the parties to confront the witnesses in open court while under oath and to cross-examine them about their knowledge of the matters asserted. People ex rel. Jones v. Jones, 39 Ill. App. 3d 821, 350 N.E.2d 826 (5 Dist. 1976).

Injurious Environment

Evidence regarding the neglect of a child's sibling, which led to that sibling's death by malnutrition as a result of the mother's use of cannabis while breastfeeding and the mother's failure to supplement breast milk with formula, was admissible under 705 ILCS 405/2-18(3) on the issue of whether the child was also neglected under 705 ILCS 405/2-3(1)(b) for living in an injurious home environment. Proof in the record that the mother was continuing to suffer from self-abusive depression, that there was an incident of domestic violence, and that there was a history of drug use in the home justified the trial court's finding that there was a nexus between the prior injurious home environment that led to the sibling's death and the child's current home environment The trial court did not have to wait for the child to be injured in order to act, the trial court properly adjudicated the child neglected, and the trial court properly made the child a ward of the State in the guardianship of the department of children and family services. People v. Amber P. (In re T.S-P), 362 Ill. App. 3d 243, 298 Ill. Dec. 150, 839 N.E.2d 137, 2005 Ill. App. LEXIS 1155 (3 Dist. 2005).

"Injurious environment" has been recognized by Illinois courts as an amorphous concept that cannot be defined with particularity; in general, however, the term "injurious environment" has

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been interpreted to include the breach of a parent's duty to ensure a "safe and nurturing shelter" for his or her children. People v. Arthur H. (In re Arthur H.), 212 Ill. 2d 441, 289 Ill. Dec. 238, 819 N.E.2d 734, 2004 Ill. LEXIS 1620 (2004).

Evidence provided by schoolteacher, caseworker, and others of the children's condition, together with prior findings that another child in the family had already been found neglected and abused, was ample to support adjudication of neglect by reason of an injurious environment and abuse due to a substantial risk of physical injury. People v. Felicia W. (In re Jaber W.), 344 Ill. App. 3d 250, 279 Ill. Dec. 32, 799 N.E.2d 835, 2003 Ill. App. LEXIS 1269 (1 Dist. 2003).

Judicial Notice

The trial court erred in taking judicial notice of the entire court file without making findings on admissibility of its contents. In re J.G., 298 Ill. App. 3d 617, 232 Ill. Dec. 720, 699 N.E.2d 167 (4 Dist. 1998).

Legislative Intent

In subdivision (4)(c) the legislature sought to balance the welfare interests of minors and the rights of those accused of abuse or neglect; it was intended to provide a means of proving abuse or neglect where a minor is unable or unwilling to testify. In re A.P., 179 Ill. 2d 184, 227 Ill. Dec. 949, 688 N.E.2d 642 (1997).

Materiality

Trial court properly prohibited a parent from introducing evidence that a minor was hospitalized regarding his cystic fibrosis at the time of an adjudicatory hearing to determine whether a minor, who was then in foster care, was medically neglected; evidence of the minor's post-foster-care hospitalization was not material to the issue of whether the minor had been medically neglected by the parent. People v. Kathy K. (In re Stephen K.), 373 Ill. App. 3d 7, 310 Ill. Dec. 768, 867 N.E.2d 81, 2007 Ill. App. LEXIS 344 (1 Dist. 2007).

Medical Records

- Relating to a Minor

Medical records of the subject child's mother and older sibling that would have been admissible in a neglect proceeding were also admissible in a proceeding seeking to terminate the mother's parental rights under the Illinois Adoption Act. People v. Blanche B. (In re Precious W.), 333 Ill. App. 3d 893, 267 Ill. Dec. 422, 776 N.E.2d 794, 2002 Ill. App. LEXIS 780 (3 Dist. 2002).

Medical records of a parent, which were created as a direct result of an ongoing juvenile proceeding and related to a condition which was also directly related to the proceeding, satisfied the statutory requirement of "relating to a minor" and were, therefore, admissible. People v. B.S., 210 Ill. App. 3d 1085, 155 Ill. Dec. 671, 569 N.E.2d 1282 (2 Dist. 1991).

Mental and Emotional Growth

There was no error in the trial court's admission, pursuant to subdivision (4)(f) of this section, of evidence dealing with mental and emotional growth of the child where neglect petition alleged that child was suffering from delayed growth. In re Walton, 79 Ill. App. 3d 485, 34 Ill. Dec. 734, 398 N.E.2d 409 (3 Dist. 1979).

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Minor Inconsistencies

Minor inconsistencies in statements did not require the statements be considered inconsistent as a whole, given that the statements were consistent in the fact of the abuse and identification of the perpetrator and they were made spontaneously. In re A.P., 179 Ill. 2d 184, 227 Ill. Dec. 949, 688 N.E.2d 642 (1997).

Neglect

Trial court's finding of neglect of the children due to an injurious environment was against the weight of the evidence, 705 ILCS 405/2-3, where the Pediatric Resource Center records were improperly admitted as a business record under 705 ILCS 405/2-18(4)(a) and the mother and her boyfriend responded appropriately to the incident. People v. Lisa P. (In re A.P.), Ill. App. 3d , Ill. Dec. , N.E.2d , 2012 Ill. App. LEXIS 38 (3 Dist. Jan. 20, 2012).

Unrefuted evidence of the mother's neglect or her failing to ensure a safe and nurturing environment for the minor was, alone, sufficient to support the trial court's finding of neglect. The finding of neglect as to the father was also supported by evidence that the father had a history of abusing minors in his care and that the father continued to have a relationship with the minor's mother such that the minor would be adequately protected for the injurious environment if placed in either parent's care. People v. Eugene W. (In re A.W.), 231 Ill. 2d 92, 324 Ill. Dec. 530, 896 N.E.2d 316, 2008 Ill. LEXIS 889 (2008).

- Burden of Proof

Exclusive focus of 705 ILCS 405/2-3(1)(a) through (1)(d) is upon the status of a child; no consideration is given to an evaluation of the acts and/or omissions of the child's parents, or any other individual responsible for the welfare of the child, in arriving at a determination of neglect. People v. Arthur H. (In re Arthur H.), 212 Ill. 2d 441, 289 Ill. Dec. 238, 819 N.E.2d 734, 2004 Ill. LEXIS 1620 (2004).

Although 705 ILCS 405/2-18(3) provides that the proof of neglect of one minor is admissible evidence on the issue of the neglect of any other minor for whom the parent is responsible, the mere admissibility of evidence does not constitute conclusive proof of the neglect of another minor; each case concerning the adjudication of minors, including those cases pursued under a theory of anticipatory neglect based upon the neglect of a child's sibling, must be reviewed according to its own facts. People v. Arthur H. (In re Arthur H.), 212 Ill. 2d 441, 289 Ill. Dec. 238, 819 N.E.2d 734, 2004 Ill. LEXIS 1620 (2004).

The state had the burden of proving allegations of neglect by a preponderance of the evidence. People v. Cathey, 206 Ill. App. 3d 730, 151 Ill. Dec. 778, 565 N.E.2d 49 (1 Dist. 1990).

The state has the burden of proving neglect by a preponderance of the evidence and once a determination is made, the decision will not be overturned on review unless it is against the manifest weight of the evidence. People v. Hill, 102 Ill. App. 3d 387, 58 Ill. Dec. 133, 430 N.E.2d 75 (1 Dist. 1981).

Respondent's argument that a minor must be found to be actually neglected and not merely subject to neglect in the future did not reflect the law. People v. Calkins, 96 Ill. App. 3d 74, 51 Ill. Dec. 447, 420 N.E.2d 861 (3 Dist. 1981).

The proof of neglect and an adjudication of unfitness must be established by more than the preponderance of evidence rule, but instead must be clear and convincing. People v. Calkins, 96 Ill. App. 3d 74, 51 Ill. Dec. 447, 420 N.E.2d 861 (3 Dist. 1981).

- Defined

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"Neglect" is generally viewed as a failure to exercise the regard that circumstances justly demand and encompasses willful as well as unintentional disregard of parental duties. People v. Davis, 220 Ill. App. 3d 498, 163 Ill. Dec. 207, 581 N.E.2d 158 (1 Dist. 1991), cert. denied, 143 Ill. 2d 639, 167 Ill. Dec. 401, 587 N.E.2d 1016 (1992).

- Shelter

Parents have the duty to protect their children from harm, and their refusal to provide their children with safe and nurturing shelter clearly falls within the concept of statutory neglect. People ex rel. Walter B. v. Anita B., 227 Ill. App. 3d 746, 169 Ill. Dec. 787, 592 N.E.2d 274 (1 Dist.), cert. denied, 146 Ill. 2d 649, 176 Ill. Dec. 819, 602 N.E.2d 473 (1992).

Parental Fitness

Evidence regarding the neglect of a child's sibling, which led to that sibling's death by malnutrition as a result of the mother's use of cannabis while breastfeeding and the mother's failure to supplement breast milk with formula, was admissible under 705 ILCS 405/2-18(3) on the issue of whether the child was also neglected under 705 ILCS 405/2-3(1)(b) for living in an injurious home environment. Proof in the record that the mother was continuing to suffer from self-abusive depression, that there was an incident of domestic violence, and that there was a history of drug use in the home justified the trial court's finding that there was a nexus between the prior injurious home environment that led to the sibling's death and the child's current home environment. The trial court did not have to wait for the child to be injured in order to act, the trial court properly adjudicated the child neglected, and the trial court properly made the child a ward of the State in the guardianship of the department of children and family services. People v. Amber P. (In re T.S-P), 362 Ill. App. 3d 243, 298 Ill. Dec. 150, 839 N.E.2d 137, 2005 Ill. App. LEXIS 1155 (3 Dist. 2005).

- Ability to Care for Minor

In spite of the 12 month analysis which ran from the date of the adjudication of neglect, evidence of a parent's ability to care for a minor child, prior to the adjudicatory hearing, was admissible on the issue of parental unfitness if it bore on the issue of a parent's ability in caring for the minor prior to removal. People v. Green, 173 Ill. App. 3d 922, 123 Ill. Dec. 693, 528 N.E.2d 238 (2 Dist. 1988).

- Evidence of Drug Abuse

Hospital records which stated that the child was born with cocaine in his blood, urine, or meconium were conclusive evidence and sufficient for the State to meet its burden of showing by clear and convincing evidence that the mother was unfit. People v. Mitchell C. (In re Jamarqon C.), 338 Ill. App. 3d 639, 273 Ill. Dec. 35, 788 N.E.2d 344, 2003 Ill. App. LEXIS 441 (2 Dist. 2003).

- Evidence Properly Admitted

In a termination of parental rights case, a trial court did not err by using the less restrictive rules of evidence applicable to abuse and neglect adjudications under 705 ILCS 405/2-18(4)(a), rather than the rules applicable to involuntary termination of parental rights proceedings under the Illinois Adoption Act, 750 ILCS 50/0.01 et seq. The evidence applicable to the father's unfitness was admitted by the trial court as a certified record under the appropriate rules of evidence. S.J. v. Dyckman, 407 Ill. App. 3d 63, 347 Ill. Dec. 884, 943 N.E.2d 174, 2011 Ill. App. LEXIS 62 (1 Dist. 2011).

In parental fitness hearing, evidence underlying a previously adjudicated neglect petition was properly admitted where it was necessary for the court's full understanding of that evidence which developed following adjudication on the neglect petition, and where the evidence in the neglect

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petition also gave the court a proper historical context in which to consider if the respondent were fit. In Re J.R., 130 Ill. App. 3d 6, 85 Ill. Dec. 410, 473 N.E.2d 1009 (3 Dist. 1985), overruled on other grounds by People v. Tontorya C. (In re D.C.), 209 Ill. 2d 287, 282 Ill. Dec. 848, 807 N.E.2d 472 (2004).

- History of Neglect

In a proceeding for the restoration of parental custody pursuant to 705 ILCS 405/2-28(4), the question of whether a parent has been neglectful in the past may be relevant to whether a parent has been rehabilitated sufficiently to have the present ability to properly care for the child. Ice v. Department of Children & Family Servs., 35 Ill. App. 3d 783, 342 N.E.2d 460 (3 Dist. 1976).

- Injurious Environment

Evidence of the mother's participation in services after the child was taken into protective custody by the Department of Children and Families was properly excluded at the adjudicatory hearing because such conduct was not relevant to the allegations in the petition, that at the time the child was taken into protective custody, his environment was injurious and there was a substantial risk of physical injury to him. People v. Martha L. (In re Kenneth D.), 364 Ill. App. 3d 797, 301 Ill. Dec. 534, 847 N.E.2d 544, 2006 Ill. App. LEXIS 181 (1 Dist. 2006).

- Mental Examination

Trial court erred in denying a mother's petitions for a mental examination because the examination was necessary as the mother's mental health was at issue in that the allegations by the State of Illinois in a petition for adjudication of wardship rested solely upon the allegation that the mother was mentally disabled or suffered from psychological problems. Thus, the cause was remanded to the trial court with instructions that a mental examination and parenting assessment of the mother was to be undertaken prior to a new adjudicatory hearing. People v. Natalie S. (In re C.S.), 376 Ill. App. 3d 114, 315 Ill. Dec. 884, 878 N.E.2d 110, 2007 Ill. App. LEXIS 1133 (1 Dist. 2007).

- Sexual Abuse

In an action to determine the fitness of the father, statements of sexual abuse by one of the father's children were sufficiently corroborated to support the circuit court's findings of neglect and abuse. People v. W.O. (In re K.O.), 336 Ill. App. 3d 98, 270 Ill. Dec. 276, 782 N.E.2d 835, 2002 Ill. App. LEXIS 1236 (1 Dist. 2002).

- Testimony of Social Worker

In proceeding to terminate parental rights, testimony by social worker that child's father told him that child often went begging for food and that the father had abused his wife and child frequently when he got drunk, was an admission by a party and was properly received in evidence. In re Wheeler, 86 Ill. App. 3d 564, 42 Ill. Dec. 46, 408 N.E.2d 424 (3 Dist. 1980).

Photographs

The admission of photographs is within the discretion of the trial court, and the exercise of that discretion will not be disturbed unless it is shown that there has been an abuse of discretion to the prejudice of the complaining party. People v. Bariffe, 63 Ill. App. 3d 328, 20 Ill. Dec. 39, 379 N.E.2d 872 (1 Dist. 1978).

Where the extent of a child's injuries, and the cause of her death were presented to establish an injurious environment and were facts in issue, it could not be concluded that the trial court abused its discretion in admitting the photographs or that the photographs were not relevant to facts in issue. People v. Bariffe, 63 Ill. App. 3d 328, 20 Ill. Dec. 39, 379 N.E.2d 872 (1 Dist. 1978).

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Physical Appearance

Evidence of child's appearance and malnourished condition was properly admitted to show a continuing pattern of neglect in hearing on petition suggesting that defendant's children were being neglected. In re Walton, 79 Ill. App. 3d 485, 34 Ill. Dec. 734, 398 N.E.2d 409 (3 Dist. 1979).

Previous Statements

Subdivision (4)(c) does not require both that the minor's statement be corroborated and that the minor be subject to cross-examination. In re A.P., 283 Ill. App. 3d 395, 218 Ill. Dec. 747, 669 N.E.2d 1273 (5 Dist. 1996).

Prima Facie Showing of Abuse

Where the daughter had been found to be neglected, the State's theory of anticipatory neglect with regard to the son based upon the neglect of the daughter was insufficient to establish that the son was neglected pursuant to 705 ILCS 405/2-3(a). While proof of neglect of the daughter was admissible evidence of neglect of the son under 705 ILCS 405/2-18(3), it did not constitute prima facie evidence of neglect under 705 ILCS 405/2-18(2), and the evidence did not establish that the son was placed in an injurious environment. People v. Reder (In re S.R.), 349 Ill. App. 3d 1017, 285 Ill. Dec. 406, 811 N.E.2d 1285, 2004 Ill. App. LEXIS 783 (4 Dist. 2004).

Trial court's conclusion that minor child was not proved to be an abused child was error where the state presented a prima facie case of abuse which was unrebutted; even assuming that the evidence adduced did not establish that the child's mother or paramour caused the child's injuries, it clearly established that they allowed the child to be seriously physically injured by non-accidental means, which was sufficient under subdivision (2)(e) of this section. People v. Simmons, 127 Ill. App. 3d 943, 82 Ill. Dec. 681, 469 N.E.2d 215 (5 Dist. 1984).

School Report

The school superintendent's report that the child said she was being required to be a wife, but determining that the report of possible sexual relations between father and minor were unfounded, was admissible under subdivision (4)(c). In re M.D.H., 297 Ill. App. 3d 181, 231 Ill. Dec. 863, 697 N.E.2d 417 (4 Dist. 1998).

Self-Incrimination

At dependency hearing, compelling child's mother to testify as an adverse witness was not a violation of her constitutional right against self-incrimination where she was not threatened with the loss of her liberty or other punishment, and after she took the stand, an objection could have been appropriately made if any question was asked which tended to incriminate her or subject her to possible prosecution for any offense. People v. Davis, 11 Ill. App. 3d 775, 298 N.E.2d 350 (1 Dist. 1973).

Standard of Proof

- Abuse

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The standard of proof of abuse is that applicable to civil proceedings: a preponderance of the evidence, and the primary consideration in such cases is the best interests and welfare of the child. In re J.H., 153 Ill. App. 3d 616, 106 Ill. Dec. 569, 505 N.E.2d 1360 (2 Dist. 1987).

- Appellate Review

The finding of a trial court upon the issue of abuse must be given respectful weight and should not be disturbed unless contrary to the manifest weight of the evidence. In re J.H., 153 Ill. App. 3d 616, 106 Ill. Dec. 569, 505 N.E.2d 1360 (2 Dist. 1987).

The trier of fact who has heard and seen the witnesses is generally in a better position to judge their credibility, and its conclusion will not be disturbed unless it is contrary to the manifest weight of the evidence. People v. Gomez, 53 Ill. App. 3d 353, 11 Ill. Dec. 224, 368 N.E.2d 775 (1 Dist. 1977).

- Misconduct

Former provisions of the Juvenile Court Act which incorporated the preponderance standard for delinquency proceedings (Ill. Rev. Stat., ch. 37, paras. 701-4 and 704-6) (see now 705 ILCS 405/1-3 and this section, respectively), were made void where correct standard for delinquency proceedings involving misconduct, which would be criminal if charged against an adult, was proof beyond a reasonable doubt. People v. Urbasek, 38 Ill. 2d 535, 232 N.E.2d 716 (1967).

- Neglect

Finding of neglect was not against the weight of the evidence, and trial court did not abuse its discretion in making children wards of the State in a case where it was the children's younger sibling who showed the most obvious signs of neglect, and the custodial parent was clearly identifiable as the perpetrator; the noncustodial parent failed to rebut the presumption that the older children were neglected as well, and the trial court, in making its disposition based on the children's best interests, was entitled to take into account the fact that the noncustodial parent had resumed living with the custodial parent, the source of the neglect. People v. Edward T. (In re Edward T.), 343 Ill. App. 3d 778, 278 Ill. Dec. 586, 799 N.E.2d 304, 2003 Ill. App. LEXIS 1155 (1 Dist. 2003).

The determination as to whether the state had met its burden of proving neglect fell upon the trial court which was in a superior position to observe the demeanor and conduct of the parties and the witnesses. People v. Cathey, 206 Ill. App. 3d 730, 151 Ill. Dec. 778, 565 N.E.2d 49 (1 Dist. 1990).

Neglect must be proved by a preponderance of the evidence, but physical abuse alone will support a finding of neglect; the sole admission of the custodial parent as to the allegations of the neglect petition may be sufficient to sustain a finding of neglect by the trial court. People v. Belton, 102 Ill. App. 3d 1005, 58 Ill. Dec. 31, 429 N.E.2d 1364 (1 Dist. 1981).

The standard of proof in neglect cases is a preponderance of the evidence, and only where there has been an abuse of discretion or the judgment has been against the manifest weight of the evidence should the decision be disturbed on appeal. People v. Nitz, 76 Ill. App. 3d 15, 31 Ill. Dec. 685, 394 N.E.2d 887 (3 Dist. 1979).

The proper standard of proof applicable in an adjudication of neglect or dependency is proof by a preponderance of the evidence, not proof beyond a reasonable doubt. People v. Prough, 61 Ill. App. 3d 227, 17 Ill. Dec. 749, 376 N.E.2d 1078 (4 Dist. 1978).

The state has the burden of proving neglect by a preponderance of the evidence, and once this determination is made, the decision will not be overturned on review unless the judgment is against the manifest weight of the evidence. People v. Gomez, 53 Ill. App. 3d 353, 11 Ill. Dec.

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224, 368 N.E.2d 775 (1 Dist. 1977); In re Walton, 79 Ill. App. 3d 485, 34 Ill. Dec. 734, 398 N.E.2d 409 (3 Dist. 1979).

- Sexual Abuse

Where the only evidence of sexual abuse presented at the dispositional hearing was the social investigation report, which contained allegations of sexual abuse based solely on statements by the child that her father touched or rubbed her genitals, but also contained his denial of that allegation, proof by a preponderance of the evidence did not exist. People v. Hall, 212 Ill. App. 3d 22, 156 Ill. Dec. 213, 570 N.E.2d 689 (3 Dist. 1991).

Evidence which is insufficient to find sexual abuse at an adjudicatory hearing is also insufficient to support a de facto finding of abuse at a dispositional hearing, particularly where the result of such a finding is an order which requires affirmative action of a nature not ordinarily expected of a parent. People v. Hall, 212 Ill. App. 3d 22, 156 Ill. Dec. 213, 570 N.E.2d 689 (3 Dist. 1991).

A finding of sexual abuse as to younger daughter by father was upheld, even in the absence of evidence that she was physically molested, where there was evidence of abuse of an older daughter, admissible under subsection (3) of this section. People v. McHone, 171 Ill. App. 3d 361, 121 Ill. Dec. 507, 525 N.E.2d 565 (2 Dist. 1988).

Substitution of Judge

Allowing substitution of a judge in a neglect case where there is a case involving the minor's siblings before the court would not frustrate a legislative intent that the child protection court consider the circumstances of a child's siblings when making determinations about ordering shelter care for the minor; a second judge could apply the presumption of an abusive environment and use admissible evidence from an earlier proceeding in the later proceeding. In re Daniel R., 291 Ill. App. 3d 1003, 225 Ill. Dec. 900, 684 N.E.2d 891 (1 Dist. 1997).

Testimony of Minor

- In General

Age alone is not determinative of competency to testify; the minor must be sufficiently mature to receive correct impressions from senses, be able to recollect these impressions, to comprehend questions, and to narrate answers intelligently and must also be capable to appreciate the moral duty to tell the truth. In re M.B., 241 Ill. App. 3d 697, 182 Ill. Dec. 197, 609 N.E.2d 731 (1 Dist. 1992).

In a proceeding for adjudication of wardship, a minor's in-court testimony need not be treated differently than in any other civil proceeding; although important interests are at stake, a person's liberty is not one of them, and consequently, the rights and protections afforded to an accused due to constitutional considerations are not present. People v. Harper, 148 Ill. App. 3d 877, 102 Ill. Dec. 208, 499 N.E.2d 988 (3 Dist. 1986).

- Admissible

Where statements of minor regarding respondent's abuse of her were corroborated by minor's trial testimony in the judge's chambers, and where she was questioned at length by counsel for all concerned and the guardian ad litem, this fulfilled the statutory requirements to make the statements admissible. In re N.S., 255 Ill. App. 3d 768, 194 Ill. Dec. 536, 627 N.E.2d 1178 (4 Dist. 1994), appeal denied, 156 Ill. 2d 558, 202 Ill. Dec. 922, 638 N.E.2d 1116 (1994).

- Corroboration Insufficient

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Expert testimony that child was physically abused did not corroborate the hearsay evidence of sexual abuse. People v. Alba, 185 Ill. App. 3d 286, 133 Ill. Dec. 250, 540 N.E.2d 1116 (2 Dist. 1989).

Where the trial court was presented unimpeached testimony from a doctor that the minor had been sexually abused, and such independent evidence corroborated only a portion of the minor's statement, the corroboration requirement was not satisfied. People v. Penn, 176 Ill. App. 3d 456, 126 Ill. Dec. 29, 531 N.E.2d 162 (3 Dist. 1988).

Two or more witnesses' testimony as to what a child said did not render it more probable that the matters allegedly asserted were true. People v. Brunken, 139 Ill. App. 3d 232, 93 Ill. Dec. 730, 487 N.E.2d 397 (5 Dist. 1985).

- Corroboration Required

Child's previous statements to doctors who were not subject to cross-examination and which were not corroborated, could not establish abuse or neglect under subdivision (4)(c). In re M.B., 241 Ill. App. 3d 697, 182 Ill. Dec. 197, 609 N.E.2d 731 (1 Dist. 1992).

Corroborating evidence must be evidence which by its nature makes it more probable that the child was actually abused, and the corroboration of a child's claim of abuse requires more than the fact that two or more witnesses may testify that the child related the claims to them. People v. Melody E., 183 Ill. App. 3d 693, 132 Ill. Dec. 34, 539 N.E.2d 344 (1 Dist. 1989).

It may well be that all aspects of a minor's prior statement, admitted pursuant to subdivision (4)(c) of this section, need not be corroborated, but the paramount or determinative aspects, i.e., that abuse occurred and the identity of the abuser, must be corroborated. People v. Penn, 176 Ill. App. 3d 456, 126 Ill. Dec. 29, 531 N.E.2d 162 (3 Dist. 1988).

- Corroboration Sufficient

Minor child's statements that the father of the mother's younger son was hitting the mother and her children was independently corroborated under 705 ILCS 405/2-18(4)(c) by the testimony of two case workers and the children's grandmother. People v. Margaret C. (In re Gabriel E.), 372 Ill. App. 3d 817, 310 Ill. Dec. 746, 867 N.E.2d 59, 2007 Ill. App. LEXIS 329 (1 Dist. 2007).

Minor's hearsay statements that she was sexually abused were sufficiently corroborated by the medical evidence. In re A.P., 179 Ill. 2d 184, 227 Ill. Dec. 949, 688 N.E.2d 642 (1997).

Under former Ill. Rev. Stat., ch. 37, para. 704-6 (see now this section), where testimony of the father indicated that the minor had limited opportunity to have learned about the sexual matters which she was purported to have described, the minor had visited with her mother only in respondent's presence since April 1983, the mother, who might have had motive to damage respondent, had no opportunity to arrange for the minor to give false testimony; and the minor had skin irritation in the genital area; this circumstantial evidence constituted sufficient corroboration of the hearsay evidence admitted under subdivision (4)(c) of this section. In K.L.M., 146 Ill. App. 3d 489, 100 Ill. Dec. 197, 496 N.E.2d 1262 (4 Dist. 1986).

- Cross-Examination

Under former Ill. Rev. Stat., ch. 37, para. 704-6 (see now subdivision (4)(c) of this section), where the trier of fact had a basis to conclude the truth of the hearsay statement and could weigh the strength of the circumstances indicating reliability, and due to the tender age of the minor, cross-examination would have been of little aid in finding the truth, as the minor would probably have become confused, the minor was much more likely to have been accurate in her conversations with case workers than she would have been under cross-examination. In K.L.M., 146 Ill. App. 3d 489, 100 Ill. Dec. 197, 496 N.E.2d 1262 (4 Dist. 1986).

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Subdivision (4)(c) of this section plainly calls for cross-examination of the minor. People v. Brunken, 139 Ill. App. 3d 232, 93 Ill. Dec. 730, 487 N.E.2d 397 (5 Dist. 1985).

- Different Family

Under former Ill. Rev. Stat., ch. 37, para. 704-6 (see now this section) the exception in subdivision (4)(c) of this section is not limited to minors within the same family unit. People v. Rottinghaus, 146 Ill. App. 3d 504, 100 Ill. Dec. 177, 496 N.E.2d 1242 (4 Dist. 1986).

- Drawings

Child's out-of-court drawing, produced in response to a request that she draw a picture showing where her father puts his "favorite part," was hearsay which could not provide the corroboration required. People v. Alba, 185 Ill. App. 3d 286, 133 Ill. Dec. 250, 540 N.E.2d 1116 (2 Dist. 1989).

- Legislative Intent

Former Ill. Rev. Stat., ch. 37, para. 704-6(4)(c) (see now subdivision (4)(c) of this section) appears to have been enacted because of the difficulty of proving acts of sexual abuse or neglect: acts of abuse are particularly hard to prove because they usually occur in the presence of only the victim and the accused and when hearsay evidence concerning statements by the minor victim is introduced pursuant to the requirements of subdivision (4)(c), the evidence is very helpful in the search for the truth. People v. Pluskis, 167 Ill. App. 3d 534, 118 Ill. Dec. 321, 521 N.E.2d 603 (4 Dist. 1988).

- Out-of-Court Statements

Where the child testified and was subject to cross-examination, even though he testified in the court's chambers and outside the presence of the parents, the parents had the opportunity to cross-examine the child through their counsel who was present in the chambers; therefore, the admission of testimony by other witnesses regarding out-of-court statements by the child, pursuant to subdivision (4)(c) of this section, did not constitute a basis for reversal. People v. Bariffe, 63 Ill. App. 3d 328, 20 Ill. Dec. 39, 379 N.E.2d 872 (1 Dist. 1978).

- Outside Defendant's Presence

Subdivision (4)(d) does not expressly authorize a nonparty minor to testify outside the respondent's presence, but where the minor witness would have experienced a similar fear of and pressure about testifying in the presence of his father as a child who was the subject of an abuse petition, the court did not err in allowing the minor witness to testify outside of father's presence. In re M.D.H., 297 Ill. App. 3d 181, 231 Ill. Dec. 863, 697 N.E.2d 417 (4 Dist. 1998).

- Prerequisite

Statute requiring corroboration and cross-examination of a minor's previous statements relating to claims of abuse or neglect, 705 ILCS 405/2-18(4)(c), did not apply to temporary custody hearings. Such a hearing was limited to determining whether placement outside the home was required and, thus, did not involve the making of findings of abuse and neglect that might be involved in adjudicative or dispositional proceedings under 705 ILCS 405/2-14(b) or 705 ILCS 405/2-21. People v. Jacqueline M. (In re I.H.), 238 Ill. 2d 430, 345 Ill. Dec. 532, 939 N.E.2d 375, 2010 Ill. LEXIS 1541 (2010).

The second sentence of subdivision (4)(c) requires either cross examination of the minor who made the statement or corroboration of the minor's hearsay statement. In re A.P., 179 Ill. 2d 184, 227 Ill. Dec. 949, 688 N.E.2d 642 (1997).

- Prior Hearing

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Where hearsay statements describing allegations of sexual abuse related by the employees of Family Advocate were corroborated by the victims' testimony in a prior hearing in which they were adjudicated abused minors, and there was no motive for the children to fabricate the allegations of abuse, their statements were sufficient evidence to support termination of parental rights. People v. Clarence H. B., 215 Ill. App. 3d 85, 158 Ill. Dec. 765, 574 N.E.2d 878 (2 Dist. 1991).

- Waiver of Objection

In a proceeding to terminate parental rights, parents had a duty to raise any objection to the competency of a child as a witness at the time of trial since the testimony was, at most, merely cumulative of the evidence presented by adult witnesses; thus, the parents waived any error by failing to object at trial. In re Wheeler, 86 Ill. App. 3d 564, 42 Ill. Dec. 46, 408 N.E.2d 424 (3 Dist. 1980).

- When Admissible

Four-year old child's hearsay statement, corroborated by other evidence and subject to cross-examination admissible under subdivision (4)(c) of this section, was admissible not only as evidence that his one-year old brother was abused, but also as evidence that he was neglected due to his injurious environment; under subsection (3) of this section, evidence of abuse, neglect, or dependency of one minor is admissible evidence on the issue of abuse, neglect, or dependency of any other minor for whom the respondent is responsible. People v. Winlund, 216 Ill. App. 3d 410, 159 Ill. Dec. 677, 576 N.E.2d 346 (1 Dist. 1991).

Testimony of Parent

Although the taking of judicial notice of custodial parent's purported prior testimony, where there was no showing of the existence of a transcript, would usually have been error, but under the circumstances, where the respondent had warning of the matter of which the court was going to take judicial notice and did nothing to refute it, but rather, tacitly admitted it, any error was harmless. In re McDonald, 144 Ill. App. 3d 1082, 99 Ill. Dec. 13, 495 N.E.2d 78 (4 Dist. 1986).

For the admission of a parent to be valid in the adjudicatory phase of a neglect proceeding, it must be apparent from the record that the parent making the admission understood the consequences of his admission, and understood that a finding of neglect gives the court jurisdiction of the minor, who then becomes subject to the dispositional powers of the court. People v. Belton, 102 Ill. App. 3d 1005, 58 Ill. Dec. 31, 429 N.E.2d 1364 (1 Dist. 1981).

The record was completely devoid of any indication that appellant understood the consequences of his admission; the trial court failed to point out to appellant the consequences of such an action, nor did the assistant public defender do so; although appellant did respond affirmatively to the court's inquiry as to whether he agreed to the appointment of a guardian for his son and to whether he understood that placement would be with the child's aunt, his response did not indicate that he understood the consequences of his admission, as the petition for adjudication also failed to apprise the appellant of the possibility of losing any of his parental rights; the petition only requested "temporary custody" of the child and "other appropriate relief"; accordingly, the record did not demonstrate that the appellant's admission was intelligently or voluntarily made and that he understood the consequences of his admission. People v. Belton, 102 Ill. App. 3d 1005, 58 Ill. Dec. 31, 429 N.E.2d 1364 (1 Dist. 1981).

When the state seeks an adjudication of neglect and the court has failed to admonish the parents "that their child may become a ward of the state and that upon such a determination, they may lose custody of their child," a new adjudicatory hearing is required where the parent enters into an admission of neglect and it is not apparent that the parent was aware of his or her rights or that the proceedings could result in the loss of custody of the child. People v. Buck, 87 Ill. App. 3d 1117, 42 Ill. Dec. 820, 409 N.E.2d 435 (1 Dist. 1980).

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Violation

- Shown

Trial court presiding over a neglect proceeding should not have admitted a letter from a doctor that assessed the minor son's injury, as the State did not meet the 705 ILCS 405/2-18(4)(a) foundational requirements for admitting the letter in to evidence. However, admission of the letter was harmless error, as the State was able to prove neglect and the mother's unfitness to parent the minor son through other evidence. People v. Ashlee S. (In re J.Y.), Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1221 (3 Dist. Nov. 30, 2011).

Minor's actions towards doll, reliability of her statements identifying respondent as abuser and findings of her doctor supported the court's finding respondent sexually abused minor and was therefore an unfit parent. In re A.P., 179 Ill. 2d 184, 227 Ill. Dec. 949, 688 N.E.2d 642 (1997).

Where the voluntary statements made by child's mother to police demonstrated that she knew of and permitted sexually abusive acts visited upon her child, but did nothing about them, and where the greatest interest she mustered for the protection of her son was to punch him in the stomach after one of the episodes, punishing the victim, she both knew of and permitted endangerment to her son and under these circumstances, the statements given by the mother were tantamount to admissions that she permitted the health of her child to be endangered and permitted acts of criminal sexual abuse upon her child in contravention of this section; those admissions constituted substantive evidence to be considered by the court. People ex rel. Walter B. v. Anita B., 227 Ill. App. 3d 746, 169 Ill. Dec. 787, 592 N.E.2d 274 (1 Dist.), cert. denied, 146 Ill. 2d 649, 176 Ill. Dec. 819, 602 N.E.2d 473 (1992).

Witnesses

- Credibility

Where a determination of the credibility of the witnesses was critical to the resolution of the conflicting and contradictory evidence, exclusion of testimony crucial to that credibility determination constituted reversible error. People v. Filemon M., 274 Ill. App. 3d 702, 210 Ill. Dec. 832, 653 N.E.2d 1294 (1 Dist. 1995), appeal denied, 164 Ill. 2d 564, 214 Ill. Dec. 320, 660 N.E.2d 1269 (1995).

LEGAL PERIODICALS

For article, "Survey of Illinois Law [1988-89] - Family Law," see 14 S. Ill. U.L.J. 1007 (1990).

For article, "Juvenile Law: 1988-89 Illinois Law Survey," see 21 Loy. U. Chi. L.J. 481 (1989-90).

For article, "Juvenile Law: 1986-87 Illinois Law Survey," see 19 Loy. U. Chi. L.J. 565 (1987-88).

For article, "Allocation of Burdens in Murder-Voluntary Manslaughter Cases: an Affirmative Defense Approach," see 59 Chi-Kent L. Rev. 23 (1982).

Practice Guides and Treatises.

Civil Trial Evidence (Illinois) § 6.35 The Juvenile Court Act (IICLE).

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§ 705 ILCS 405/2-19. Preliminary orders after filing a petition

Sec. 2-19. Preliminary orders after filing a petition. In all cases involving physical abuse the court shall order, and in all cases involving neglect or sexual abuse the court may order, an examination of the child under Section 2-11 of this Act [705 ILCS 405/2-11] or by a physician appointed or designated for this purpose by the court. As part of the examination, the physician shall arrange to have color photographs taken, as soon as practical, of areas of trauma visible on the child and may, if indicated, arrange to have a radiological examination performed on the child. The physician, on the completion of the examination, shall forward the results of the examination together with the color photographs to the State's Attorney of the county of the court ordering such examination. The court may dispense with the examination in those cases which were commenced on the basis of a physical examination by a physician. Unless color photographs have already been taken or unless there are no areas of visible trauma, the court shall arrange to have color photographs taken if no such examination is conducted.

(Source: P.A. 85-601; 87-1148, § 2.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-19.

CASE NOTES

Temporary Supervision Order

There was no authority within the Juvenile Court Act (705 ILCS 405/1-1 et seq.) for the type of interim or temporary supervision order entered by the court, which covered the time period between the date a minor was made a ward of the court and the date set for the dispositional hearing, and required the minor to attend school each and every day, each and every class. People v. C.Y.B., 109 Ill. App. 3d 1110, 65 Ill. Dec. 637, 441 N.E.2d 952 (4 Dist. 1982).

§ 705 ILCS 405/2-20. Continuance under supervision

Sec. 2-20. Continuance under supervision. (1) The court may enter an order of continuance under supervision (a) upon an admission or stipulation by the appropriate respondent or minor respondent of the facts supporting the petition and before proceeding to findings and adjudication, or after hearing the evidence at the adjudicatory hearing but

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before noting in the minutes of proceeding a finding of whether or not the minor is abused, neglected or dependent; and (b) in the absence of objection made in open court by the minor, his parent, guardian, custodian, responsible relative, defense attorney or the State's Attorney.

(2) If the minor, his parent, guardian, custodian, responsible relative, defense attorney or the State's Attorney, objects in open court to any such continuance and insists upon proceeding to findings and adjudication, the court shall so proceed.

(3) Nothing in this Section limits the power of the court to order a continuance of the hearing for the production of additional evidence or for any other proper reason.

(4) When a hearing where a minor is alleged to be abused, neglected or dependent is continued pursuant to this Section, the court may permit the minor to remain in his home if the court determines and makes written factual findings that the minor can be cared for at home when consistent with the minor's health, safety, and best interests, subject to such conditions concerning his conduct and supervision as the court may require by order.

(5) If a petition is filed charging a violation of a condition of the continuance under supervision, the court shall conduct a hearing. If the court finds that such condition of supervision has not been fulfilled the court may proceed to findings and adjudication and disposition. The filing of a petition for violation of a condition of the continuance under supervision shall toll the period of continuance under supervision until the final determination of the charge, and the term of the continuance under supervision shall not run until the hearing and disposition of the petition for violation; provided where the petition alleges conduct that does not constitute a criminal offense, the hearing must be held within 15 days of the filing of the petition unless a delay in such hearing has been occasioned by the minor, in which case the delay shall continue the tolling of the period of continuance under supervision for the period of such delay.

(Source: P.A. 85-601; 88-7, § 15; 90-27, § 30; 90-28, § 10-20.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-20.

Cross References.

For expungement of law enforcement and juvenile court records when the minor's order of supervision has been successfully terminated, see 705 ILCS 405/1-9.

CASE NOTES

Analysis

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Constitutionality
Appellate Review
Attorney Fees
Finality for Appeal
Temporary Supervision Order
Termination of Continuance
Time for Hearing
Unauthorized Order

Constitutionality

Subdivision (1)(b) of former Ill. Rev. Stat., ch. 37, para. 704-7 (see now subsection (2) of this section), requiring the consent of the State's Attorney before a court could order a continuance under supervision, did not violate the separation of powers doctrine embodied in Ill. Const. (1970), Art. II, § 1. In re T.W., 101 Ill. 2d 438, 79 Ill. Dec. 149, 463 N.E.2d 703 (1984).

Appellate Review

It is not the function of the appellate court to substitute its judgment for that of the trial court unless the trial court's findings and order are contrary to the manifest weight of the evidence; therefore, where the trial court found the parents were unfit for reasons other than financial circumstances alone, and that it was in the best interests of the minors and the public that the minors be placed with the guardianship administrator with the power to consent to adoption, the appellate court did not find such order and such findings were contrary to the manifest weight of the evidence. People ex rel. Farrand v. Garmon, 4 Ill. App. 3d 391, 280 N.E.2d 19 (4 Dist. 1972).

Attorney Fees

Reimbursement for attorney fees is not a proper condition of a continuance under this section. People v. R.J.W., 76 Ill. App. 3d 159, 31 Ill. Dec. 746, 394 N.E.2d 1064 (4 Dist. 1979).

Finality for Appeal

A continuance under supervision pursuant to former Ill. Rev. Stat., ch. 37, para. 704-7 (see now this section) did not finally dispose of the merits of the state's petition for an adjudication of delinquency, but provided only for a continuance of the proceedings; as such, it was an order which was necessarily not based on a judgment and was unappealable except where the Supreme Court Rules permitted interlocutory appeals. People v. M.W.W., 125 Ill. App. 3d 833, 81 Ill. Dec. 2, 466 N.E.2d 588 (2 Dist. 1984).

Temporary Supervision Order

There was no authority within this Act for the type of interim or temporary supervision order entered by the court, which covered the time period between the date a minor was made a ward of the court and the date set for the dispositional hearing, and required the minor to attend school each and every day, each and every class. People v. C.Y.B., 109 Ill. App. 3d 1110, 65 Ill. Dec. 637, 441 N.E.2d 952 (4 Dist. 1982).

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Termination of Continuance

A trial court may not terminate continuance of a case under supervision without a petition to terminate continuance under supervision having been filed or a hearing on such a petition having been held; any objection to supervision must be made in open court before the continuance of the case under supervision, and a later objection to continuance under supervision after such continuance is granted does not eliminate the need for either a petition or a hearing under subsection (5). People v. Burns (In re E.B.), 314 Ill. App. 3d 699, 247 Ill. Dec. 256, 731 N.E.2d 1264, 2000 Ill. App. LEXIS 574 (4 Dist. 2000).

Time for Hearing

The 15-day time period for a hearing applies only where a petition to revoke a continuance under supervision (CUS) has been filed, no criminal conduct is alleged, and the hearing on that petition is not held prior to the CUS lapsing, i.e., the hearing on the petition to revoke is only required to be held within 15 days from the filing of the petition where an automatic tolling of the CUS period applies. People v. Woolsey (In re S.P.), 323 Ill. App. 3d 352, 256 Ill. Dec. 433, 751 N.E.2d 1270, 2001 Ill. App. LEXIS 549 (4 Dist. 2001).

Unauthorized Order

Where an order for continuance under supervision was entered after the trial court found the minor guilty of the charged offenses, but before an express adjudication of the minor's delinquency, the court's dispositional order was entered without authority; under former Ill. Rev. Stat., ch. 37, para. 704-8 (see now this section), a dispositional order was not to be entered until after the court had adjudged the minor a ward of the court. People v. M.W.W., 125 Ill. App. 3d 833, 81 Ill. Dec. 2, 466 N.E.2d 588 (2 Dist. 1984).

LEGAL PERIODICALS

For article, "New Laws Okay Jail and Work for Juveniles," see 68 Ill. B.J. 514 (1980).

§ 705 ILCS 405/2-21. Findings and adjudication

Sec. 2-21. Findings and adjudication. (1) The court shall state for the record the manner in which the parties received service of process and shall note whether the return or returns of service, postal return receipt or receipts for notice by certified mail, or certificate or certificates of publication have been filed in the court record. The court shall enter any appropriate orders of default against any parent who has been properly served in any manner and fails to appear.

No further service of process as defined in Sections 2-15 and 2-16 [705 ILCS 405/2-15 and 705 ILCS 405/2-16] is required in any subsequent proceeding for a parent who was properly served in any manner, except as required by Supreme Court Rule 11.

The caseworker shall testify about the diligent search conducted for the parent.

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After hearing the evidence the court shall determine whether or not the minor is abused, neglected, or dependent. If it finds that the minor is not such a person, the court shall order the petition dismissed and the minor discharged. The court's determination of whether the minor is abused, neglected, or dependent shall be stated in writing with the factual basis supporting that determination.

If the court finds that the minor is abused, neglected, or dependent, the court shall then determine and put in writing the factual basis supporting that determination, and specify, to the extent possible, the acts or omissions or both of each parent, guardian, or legal custodian that form the basis of the court's findings. That finding shall appear in the order of the court.

If the court finds that the child has been abused, neglected or dependent, the court shall admonish the parents that they must cooperate with the Department of Children and Family Services, comply with the terms of the service plan, and correct the conditions that require the child to be in care, or risk termination of parental rights.

If the court determines that a person has inflicted physical or sexual abuse upon a minor, the court shall report that determination to the Department of State Police, which shall include that information in its report to the President of the school board for a school district that requests a criminal history records check of that person, or the regional superintendent of schools who requests a check of that person, as required under Section 10-21.9 or 34-18.5 of the School Code [105 ILCS 5/10-21.9 or 105 ILCS 5/34-18.5].

(2) If, pursuant to subsection (1) of this Section, the court determines and puts in writing the factual basis supporting the determination that the minor is either abused or neglected or dependent, the court shall then set a time not later than 30 days after the entry of the finding for a dispositional hearing (unless an earlier date is required pursuant to Section 2-13.1 [705 ILCS 405/2-13.1]) to be conducted under Section 2-22 [705 ILCS 405/2-22] at which hearing the court shall determine whether it is consistent with the health, safety and best interests of the minor and the public that he be made a ward of the court. To assist the court in making this and other determinations at the dispositional hearing, the court may order that an investigation be conducted and a dispositional report be prepared concerning the minor's physical and mental history and condition, family situation and background, economic status, education, occupation, history of delinquency or criminality, personal habits, and any other information that may be helpful to the court. The dispositional hearing may be continued once for a period not to exceed 30 days if the court finds that such continuance is necessary to complete the dispositional report.

(3) The time limits of this Section may be waived only by consent of all parties and approval by the court, as determined to be consistent with the health, safety and best interests of the minor.

(4) For all cases adjudicated prior to July 1, 1991, for which no dispositional hearing has been held prior to that date, a dispositional hearing under Section 2-22 shall be held within 90 days of July 1, 1991.

(5) The court may terminate the parental rights of a parent at the initial dispositional hearing if all of the following conditions are met:

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(i) the original or amended petition contains a request for termination of parental rights and appointment of a guardian with power to consent to adoption; and

(ii) the court has found by a preponderance of evidence, introduced or stipulated to at an adjudicatory hearing, that the child comes under the jurisdiction of the court as an abused, neglected, or dependent minor under Section 2-18 [705 ILCS 405/2-18]; and

(iii) the court finds, on the basis of clear and convincing evidence admitted at the adjudicatory hearing that the parent is an unfit person under subdivision D of Section 1 of the Adoption Act [750 ILCS 50/1]; and

(iv) the court determines in accordance with the rules of evidence for dispositional proceedings, that:

(A) it is in the best interest of the minor and public that the child be made a ward of the court;

(A-5) reasonable efforts under subsection (l-1) of Section 5 of the Children and Family Services Act [20 ILCS 505/5] are inappropriate or such efforts were made and were unsuccessful; and

(B) termination of parental rights and appointment of a guardian with power to consent to adoption is in the best interest of the child pursuant to Section 2-29 [705 ILCS 405/2-29].

(Source: P.A. 85-601; 86-1293; 88-7, § 15; 88-487, § 50; 88-614, § 110; 88-670, § 2-63; 89-704, § 5; 90-27, § 30; 90-28, § 10-20; 90-443, § 10 and § 20; 90-566, § 10; 90-608, § 30; 93-909, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-21.

Cross References.

For the filing of a petition by the Department of Children and Family Services seeking the termination of parent's parental rights when the parent has been convicted of aggravated battery of the child, see 20 ILCS 505/35.2.

Effect of Amendments. The 1998 amendment by P.A. 90-608, effective June 30, 1998, incorporated the amendments by P.A. 90-27, P.A. 90-28, P.A. 90-443, and P.A. 90-566; rewrote the fourth paragraph in subsection (1); and inserted "pursuant to subsection (1) of this Section" and "(unless an earlier date is required pursuant to Section 2-13.1)" in the first sentence in subsection (2).

The 2004 amendment by P.A. 93-909, effective August 12, 2004, substituted "history records check" for "background investigation" and inserted "or the regional superintendent of schools who requests a check of that person" in the last paragraph of subsection (1).

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In General

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Statute requiring corroboration and cross-examination of a minor's previous statements relating to claims of abuse or neglect, 705 ILCS 405/2-18(4)(c), did not apply to temporary custody hearings. Such a hearing was limited to determining whether placement outside the home was required and, thus, did not involve the making of findings of abuse and neglect that might be involved in adjudicative or dispositional proceedings under 705 ILCS 405/2-14(b) or 705 ILCS 405/2-21. People v. Jacqueline M. (In re I.H.), 238 Ill. 2d 430, 345 Ill. Dec. 532, 939 N.E.2d 375, 2010 Ill. LEXIS 1541 (2010).

Once a minor has been adjudicated abused, neglected, or dependent under the Illinois Juvenile Court Act of 1987 and thrust into the care of this state's juvenile system, the circuit court's main and perhaps only function is to address the minor's needs consistent with his best interests. Terrell L. v. Dep't of Children & Family Servs. (In re Terrell L.), 368 Ill. App. 3d 1041, 307 Ill. Dec. 113, 859 N.E.2d 113, 2006 Ill. App. LEXIS 1041 (1 Dist. 2006).

Cases involving an adjudication of neglect and wardship are in effect sui generis, and each case must be decided on its own particular facts. People v. Bariffe, 63 Ill. App. 3d 328, 20 Ill. Dec. 39, 379 N.E.2d 872 (1 Dist. 1978).

Adjudication of Wardship

- Appeal

Where trial court's finding that mother was unable to care for her child was held to be sufficient by itself to sustain the court's judgment adjudicating the child a ward of the state,mother's appeal from the trial court's additional finding that she was an unfit parent was moot. People v. Neal (In re M.B.), 332 Ill. App. 3d 996, 266 Ill. Dec. 134, 773 N.E.2d 1204, 2002 Ill. App. LEXIS 598 (1 Dist. 2002).

Where the order dismissing petition for adjudication of wardship without prejudice was entered as a matter of law because the circuit court believed that it lacked authority to require the state to proceed with the actions, the dismissal of the petition, in effect ordered as a matter of law, was final as to the minors and the cause was properly appealed pursuant to Rule 301, Supreme Court Rules. James J. v. People, 193 Ill. App. 3d 75, 140 Ill. Dec. 183, 549 N.E.2d 834 (1 Dist. 1989), aff'd, 142 Ill. 2d 1, 153 Ill. Dec. 239, 566 N.E.2d 1345 (1991).

The adjudicatory order in a juvenile case is a final order for purposes of appeal. People v. Pyles, 40 Ill. App. 3d 221, 351 N.E.2d 893 (3 Dist. 1976).

- Authority of Court

A dispositional hearing declaring children as wards of the court immediately followed an adjudicatory hearing in which the court found the children neglected within the meaning of 705 ILCS 405/2-3(1)(b) of the Juvenile Court Act of 1987, where the written adjudication order had not yet been entered. People v. Todd (In re Timothy T.), 343 Ill. App. 3d 1260, 279 Ill. Dec. 191, 799 N.E.2d 994, 2003 Ill. App. LEXIS 1340 (4 Dist. 2003).

Trial court may schedule the dispositional hearing at the conclusion of the adjudicatory hearing, even if the court has not yet entered a written adjudicatory order setting forth the factual basis supporting the court's determination. People v. Todd (In re Timothy T.), 343 Ill. App. 3d 1260, 279 Ill. Dec. 191, 799 N.E.2d 994, 2003 Ill. App. LEXIS 1340 (4 Dist. 2003).

A trial judge should make a finding of wardship at the adjudication hearing, rather than at the dispositional hearing. People v. S.K., 137 Ill. App. 3d 1065, 92 Ill. Dec. 767, 485 N.E.2d 578 (2 Dist. 1985).

A proceeding for adjudication of wardship represents a significant intrusion into the sanctity of the family which should not be undertaken lightly; the scope of a trial court's authority is limited to

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minors who are actually neglected and does not extend to those who are thought to be subject to neglect in the future. People v. Rottinghaus, 134 Ill. App. 3d 393, 89 Ill. Dec. 391, 480 N.E.2d 873 (4 Dist. 1985).

Where an order for continuance under supervision was entered after the trial court found the minor guilty of the charged offenses, but before an express adjudication of the minor's delinquency, the court's dispositional order was entered without authority; under former Ill. Rev. Stat., ch. 37, ara. 704-8 (see now this section), a dispositional order was not to be entered until after the court had adjudged the minor a ward of the court. People v. M.W.W., 125 Ill. App. 3d 833, 81 Ill. Dec. 2, 466 N.E.2d 588 (2 Dist. 1984).

An explicit adjudication of wardship is necessary before a court may enter a dispositional order. People v. Fields, 46 Ill. App. 3d 1028, 5 Ill. Dec. 343, 361 N.E.2d 666 (1 Dist. 1977).

- Not Shown

The evidence adduced fell short of the degree of proof required under this section and did not support adjudication of wardship. People v. Brunken, 139 Ill. App. 3d 232, 93 Ill. Dec. 730, 487 N.E.2d 397 (5 Dist. 1985).

Where the language in the juvenile court's standard form dispositional order stated that "all statutory prerequisites have been complied with," this language did not sufficiently evince that the respondent had been adjudged a ward of the court, and therefore the court could not enter a dispositional order. People v. Smith, 40 Ill. App. 3d 248, 352 N.E.2d 317 (1 Dist. 1976).

Where there was no order in the record declaring the children to be wards of the court, the finding that the children had "been adjudged wards of the Court" was not supported by the evidence and was disregarded. In re Jennings, 32 Ill. App. 3d 857, 336 N.E.2d 786 (2 Dist. 1975), aff'd, 68 Ill. 2d 125, 11 Ill. Dec. 256, 368 N.E.2d 864 (1977).

- Required for Disposition

A dispositional order is not to be entered until after the court has adjudged the minor a ward of the court. In re J.N., 91 Ill. 2d 122, 61 Ill. Dec. 776, 435 N.E.2d 473 (1982).

Former Ill. Rev. Stat., ch. 37, para. 704-8 (see now this section) required that the trial court make an explicit adjudication of wardship before entering a dispositional order regarding a minor. People v. Johnson, 40 Ill. App. 3d 493, 352 N.E.2d 257 (1 Dist. 1976); People v. King, 45 Ill. App. 3d 289, 3 Ill. Dec. 958, 359 N.E.2d 817 (1 Dist. 1977).

Former Ill. Rev. Stat., ch. 37, para. 704-8(2) (see now this section) required an explicit adjudication that a minor be made a ward of the court before the court entered a dispositional order regarding the minor. In making this determination, the court considered whether it was in the best interests of the minor and the public to make the minor a ward of the court, and language in the court's dispositional order which stated "all statutory prerequisites have been complied with" was not sufficient to demonstrate an adjudication that the minor has been made a ward of the court. People v. Barr, 37 Ill. App. 3d 10, 344 N.E.2d 517 (1 Dist. 1976).

Appellate Review

Trial court's finding that neglect was imposed by both parents was not necessary to its earlier finding that the child was neglected. Because this finding merely served to inform the court when the proceedings reached the dispositional hearing, the appellate court declined to review the correctness of that finding, under 705 ILCS 405/2-23(1)(a) and 705 ILCS 405/2-21(1), in its review of the proceedings at the adjudicatory stage. People v. Weaver (In re J.W.), 386 Ill. App. 3d 847, 325 Ill. Dec. 756, 898 N.E.2d 803, 2008 Ill. App. LEXIS 1199 (4 Dist. 2008).

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Application and Construction

- Dispositional Hearings

During the adjudicatory process, a circuit court is first to determine whether a minor is neglected, and there is no direction from the legislature that a court shall consider the actions of the parents in making this determination; it is only after the circuit court has adjudicated a child neglected that the statute directs the court to consider the actions of the parents. People v. Arthur H. (In re Arthur H.), 212 Ill. 2d 441, 289 Ill. Dec. 238, 819 N.E.2d 734, 2004 Ill. LEXIS 1620 (2004).

Although the lack of a dispositional hearing in a neglect and dependency proceeding did not deprive the court of subject matter jurisdiction over a subsequent termination of parental rights petition, the court's failure to hold a hearing as required by subsection (2) denied the respondent parents a fundamentally fair determination of their parental rights. People v. W.H. (In re G.F.H.), 315 Ill. App. 3d 711, 248 Ill. Dec. 591, 734 N.E.2d 519, 2000 Ill. App. LEXIS 671 (2 Dist. 2000).

This Act contemplates holding two separate hearings - adjudicatory and dispositional - and that the dispositional hearing is to be held only after the adjudications of delinquency and wardship have been made. People v. L.H., 102 Ill. App. 3d 169, 57 Ill. Dec. 714, 429 N.E.2d 612 (4 Dist. 1981).

Former Ill. Rev. Stat., ch. 37, paras. 704-6, 704-8, and 705-1 (see now this section and 705 ILCS 405/2-22), generally contemplated the holding of separate adjudicatory and dispositional hearings, and although it was the better practice to use bifurcated proceedings, their consolidation could be proper where there was no resulting prejudice. People v. Prough, 61 Ill. App. 3d 227, 17 Ill. Dec. 749, 376 N.E.2d 1078 (4 Dist. 1978).

- Effect of Amendment

When the proceedings were no longer pending in the trial court when an amendment to this section went into effect, and the amendment made only procedural changes, there was no reason to reverse the decision of the trial court, which was made in accordance with the law in effect at the time of the proceedings. People v. R.D., 148 Ill. App. 3d 381, 101 Ill. Dec. 890, 499 N.E.2d 478 (1 Dist. 1986).

Best Interest

Evidence of a minor's fear of his mother supported the trial court's conclusion that providing therapy for the minor in foster care was the most reasonable effort to reunite the family and that it had been unsuccessful. Moreover, delays in providing reunification services to the mother did not affect the best interest determination under 705 ILCS 405/2-21(2), which does not depend on reasonable efforts toward reunification. People v. Dorothy H. (In re William H.), 407 Ill. App. 3d 858, 348 Ill. Dec. 774, 945 N.E.2d 81, 2011 Ill. App. LEXIS 169 (1 Dist. 2011).

Control Over Investigation

Nowhere in the Juvenile Court Act (705 ILCS 405/1-1 et seq.) is the court conferred power to control the Department of Children and Family Service's investigation of alleged abuse, dependence or neglect. In re R.V., 288 Ill. App. 3d 860, 224 Ill. Dec. 345, 681 N.E.2d 660 (1 Dist. 1997).

Custody by Natural Parents

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A natural parent has a superior right to the custody of his children; however, that right is not absolute and must yield to the best interest of the child. People v. Hoerner, 6 Ill. App. 3d 994, 287 N.E.2d 510 (5 Dist. 1972).

Discretion of Court

The circuit court has broad discretion in determining the existence of neglect and abuse, and its findings will not be disturbed unless they are against the manifest weight of the evidence; because of its ability to observe witnesses and judge their demeanor, the circuit court is in the best position to determine their credibility. People v. Winlund, 216 Ill. App. 3d 410, 159 Ill. Dec. 677, 576 N.E.2d 346 (1 Dist. 1991).

Trial court has broad discretion in deciding child neglect cases; its decision will be overturned on appeal only when the challenging party shows either that the trial court has abused its discretion, or that the decision is contrary to the manifest weight of the evidence. People v. Jackson, 81 Ill. App. 3d 136, 36 Ill. Dec. 507, 400 N.E.2d 1087 (4 Dist. 1980).

Dismissal

The circuit court is required to consider on its merits a motion to dismiss a petition for adjudication of wardship whenever dismissal is deemed warranted by the state, because failure to do so overlooks the purposes behind this Act. James J. v. People, 193 Ill. App. 3d 75, 140 Ill. Dec. 183, 549 N.E.2d 834 (1 Dist. 1989), aff'd, 142 Ill. 2d 1, 153 Ill. Dec. 239, 566 N.E.2d 1345 (1991).

Proceedings under this Act require the circuit court to ensure that a dismissal of a petition to adjudicate wardship is in the best interests of the minors, their family, and society. James J. v. People, 193 Ill. App. 3d 75, 140 Ill. Dec. 183, 549 N.E.2d 834 (1 Dist. 1989), aff'd, 142 Ill. 2d 1, 153 Ill. Dec. 239, 566 N.E.2d 1345 (1991).

Evidence

- Hearsay

Neither 705 ILCS 405/2-21(5)(iv)(B) nor 705 ILCS 405/2-22(1) provides that hearsay testimony is allowed during parental rights termination hearings; thus, hearsay testimony from a case worker about visits made by parents to their two children was properly excluded from a termination of parental rights proceeding. People v. Lacina B. (In re J.B.), 346 Ill. App. 3d 77, 281 Ill. Dec. 376, 803 N.E.2d 997, 2004 Ill. App. LEXIS 22 (1 Dist. 2004), appeal denied sub nom. In re J.B., 208 Ill. 2d 538, 284 Ill. Dec. 340, 809 N.E.2d 1286 (2004).

Evidentiary Hearing

Petitions alleging that the grandmother had raised and cared for the children since their birth, raising the possibility that the evidence presented might reveal that the grandmother was the person having custody for control of the children, and that she was thus required to be a party respondent in the proceedings, and petitions alleging that the mother of the children was mentally retarded and illiterate, required that an evidentiary hearing be held before findings could be made. In re Jennings, 68 Ill. 2d 125, 11 Ill. Dec. 256, 368 N.E.2d 864 (1977).

Finding of Abuse

- Partial Summary Judgment

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Trial court's summary finding of abuse alone was properly rendered because it pertained to a portion of the relief sought (i.e., wardship). People v. W.L., 152 Ill. App. 3d 25, 105 Ill. Dec. 288, 504 N.E.2d 157 (1 Dist. 1987).

Finding of Neglect

- Abuse of Discretion

Trial court abused its discretion in making an adjudication of neglect regarding a father's conduct towards his daughter and in ordering the father to undergo a sexual offender evaluation; the only evidence of neglect presented at the adjudication hearing was against the child's mother, there was no evidence presented that the father had neglected the child, and there was no basis for ordering the sexual offender evaluation because all charges of sexual abuse against the father had been dismissed and there was no direct evidence that the father had ever sexually abused the child's sibling. People v. Kevin S. (In re K.S.), 343 Ill. App. 3d 177, 277 Ill. Dec. 500, 796 N.E.2d 215, 2003 Ill. App. LEXIS 1132 (2 Dist. 2003), appeal denied, Ill. 2d , 282 Ill. Dec. 478, 806 N.E.2d 1066 (2003).

- Appellate Review

The trial court's determination of whether the state met its burden of proving neglect will not be disturbed unless it is against the manifest weight of the evidence. People v. Cathey, 206 Ill. App. 3d 730, 151 Ill. Dec. 778, 565 N.E.2d 49 (1 Dist. 1990).

A finding of neglect caused by the minor's being subjected to an injurious environment will not be set aside unless contrary to the manifest weight of the evidence; there is no fixed standard for neglect and each case is reviewed upon its particular facts. People v. Robinson, 69 Ill. App. 3d 565, 26 Ill. Dec. 93, 387 N.E.2d 923 (1 Dist. 1979).

The determination of neglect is within the province of the trial court, and its decision must be given respectful weight because the trial court had the opportunity to observe the demeanor and conduct of the parties and witnesses. People v. Bariffe, 63 Ill. App. 3d 328, 20 Ill. Dec. 39, 379 N.E.2d 872 (1 Dist. 1978).

- Duty of Court Admonition

It is clearly error if the court fails to admonish the parents of their rights; however, it does not follow that such error would require reversal in every case. People v. Buck, 87 Ill. App. 3d 1117, 42 Ill. Dec. 820, 409 N.E.2d 435 (1 Dist. 1980).

- Fitness Hearing

A finding of neglect by reason of abuse precludes returning the minor to the parents responsible for the abuse until a fitness hearing has been held. People v. Conekin, 107 Ill. App. 3d 902, 63 Ill. Dec. 516, 438 N.E.2d 254 (5 Dist. 1982).

- Noncustodial Parent

Under former Ill. Rev. Stat., ch. 37, para. 704-8 (see now this section), when a finding of neglect was entered against a parent who had previously been awarded sole custody of minor child pursuant to a divorce judgment, the noncustodial parent did not acquire an automatic and conclusive right to the child's custody; the trial court could adjudicate the minor a ward of the court and proceed to a dispositional hearing. People v. Wheat, 68 Ill. App. 3d 471, 25 Ill. Dec. 7, 386 N.E.2d 278 (1 Dist. 1979).

- Parental Unfitness

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The statutory requirements of adjudicating a minor neglected or abused do not require an allegation of parental unfitness, an issue which may, if necessary, be raised in a supplemental petition for termination of parental rights. People v. Smith, 95 Ill. App. 3d 373, 50 Ill. Dec. 883, 420 N.E.2d 200 (4 Dist. 1981); People v. Roy, 215 Ill. App. 3d 1059, 158 Ill. Dec. 780, 574 N.E.2d 893 (4 Dist. 1991).

- Standard of Proof

Finding of neglect was not against the weight of the evidence, and trial court did not abuse its discretion in making children wards of the State in a case where it was the children's younger sibling who showed the most obvious signs of neglect, and the custodial parent was clearly identifiable as the perpetrator; the noncustodial parent failed to rebut the presumption that the older children were neglected as well, and the trial court, in making its disposition based on the children's best interests, was entitled to take into account the fact that the noncustodial parent had resumed living with the custodial parent, the source of the neglect. People v. Edward T. (In re Edward T.), 343 Ill. App. 3d 778, 278 Ill. Dec. 586, 799 N.E.2d 304, 2003 Ill. App. LEXIS 1155 (1 Dist. 2003).

In an adjudication of neglect and dependency, the state proved by a preponderance of the evidence, through overwhelming testimony concerning the deplorable condition of the respondents' home and the heartbreaking testimony concerning the appearance, health, and educational achievements of the respondents' children, that the respondents' children were abused and neglected. People v. Prough, 61 Ill. App. 3d 227, 17 Ill. Dec. 749, 376 N.E.2d 1078 (4 Dist. 1978).

Guardianship

Court did not err when it granted the Illinois Department of Children and Family Services guardianship of the minors, while retaining them in the custody of their mother, because the record showed a history of domestic violence between the mother and the minors' father, and the mother needed to learn the skills necessary to protect herself and the minors from experiencing domestic violence in the future, so that she could provide a safe and nurturing home environment for all involved. People v. Chazteen P. (In re M.P.), 408 Ill. App. 3d 1070, 349 Ill. Dec. 45, 945 N.E.2d 1197, 2011 Ill. App. LEXIS 242 (3 Dist. 2011).

Illustrative Cases

Trial court in a case involving an adjudication of wardship involving the mother's minor child due to the mother's admitted abuse of the minor child, as contemplated under 705 ILCS 405/2-3(2)(i) of the Juvenile Court Act of 1987, informed the mother that it would first determine whether the mother's admission was knowing and voluntary, and that a factual basis existed for the mother's admission. Since the trial court then engaged in an analysis to determine, to the extent possible whether the mother's acts or admissions contributed to the abuse, the trial court followed the procedure set forth in 705 ILCS 405/2-21(1), and the trial court could thus decide that the minor child should be made a ward of the court. People v. Izaguirre (In re C.J.), Ill. App. 3d , 355 Ill. Dec. 812, 960 N.E.2d 694, 2011 Ill. App. LEXIS 1137 (4 Dist. 2011).

Sufficient evidence presented during a proceeding under the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., showed that the mother's three minor children were abused or neglected, and supported the trial court's disposition pursuant to 705 ILCS 405/2-21(2) that the three minor children be made wards of the court. That evidence showed that the mother and father were raising the children in an atmosphere of domestic violence and substance abuse, that the children were missing school, and that the children had been physically abused while at least two of the three had also been sexually abused. People v. Danielle T. (In re Alexis H.), 401 Ill. App. 3d 543, 340 Ill. Dec. 901, 929 N.E.2d 552, 2010 Ill. App. LEXIS 393 (1 Dist. 2010).

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Since the trial court adjudicated the minor child to be abused and neglected, it maintained jurisdiction over the case pursuant to 705, ILCS 405/2-21 to determine whether the minor child could be returned to the mother after the minor child initially had been placed with the former foster mother. Since the mother completed all services and tasks required by the state welfare agency, and was not the person who inflicted the minor child's injuries, the trial court could find that the mother was fit, willing, and able to parent the minor child, which was one step in having the minor child returned to the mother. People v. Analynn D. (In re Desiree O.), 381 Ill. App. 3d 854, 320 Ill. Dec. 279, 887 N.E.2d 59, 2008 Ill. App. LEXIS 215 (1 Dist. 2008).

Where petitioner sought leave to amend a petition for adjudication of wardship orally to include a prayer for appointment of a guardian with power to consent to adoption, the amendment adequately notified defendants of the nature of the proceedings and allegations against them, adequately described the grounds for filing of the petition, and was sufficient to allow the court's specific finding that defendants were unfit and that appointment of a guardian with power to consent to adoption was necessary to protect the best interests of the children. People ex rel. Jones v. Jones, 39 Ill. App. 3d 821, 350 N.E.2d 826 (5 Dist. 1976).

Implied Adjudication

Where the court specifically found that the best interests of the minor and of the public did not require the wardship of the court, and where an adjudication of wardship was expressly stayed, an adjudication of wardship could not be implied. People v. M.W.W., 125 Ill. App. 3d 833, 81 Ill. Dec. 2, 466 N.E.2d 588 (2 Dist. 1984).

Insufficient Record

Where trial court's findings were recorded only in its form order and in brief statements in the record, the appellate court could not determine the facts relied upon by the court in making its findings, and was unable to address the merits of the case. In re M.Z., 294 Ill. App. 3d 581, 229 Ill. Dec. 99, 691 N.E.2d 35 (1 Dist. 1998).

Under former Ill. Rev. Stat., ch. 23, para. 2009 (see now this section), the appellate court was unable to judge the propriety of the trial court's holding of dependency, because the essential findings were not set forth in the order and the appellate court was unable to say as a matter of law that the adjudication of dependency was against the manifest weight of the evidence. In re Bartha, 87 Ill. App. 2d 263, 230 N.E.2d 886 (2 Dist. 1967).

Jurisdiction

Finding of abuse, neglect or dependence is jurisdictional, without which the trial court lacks jurisdiction to proceed to an adjudication of wardship; thus, an appellate court erred when it remanded a matter to the circuit court for a dispositional hearing after the appellate court had reversed the circuit court's finding that a child was neglected. People v. Arthur H. (In re Arthur H.), 212 Ill. 2d 441, 289 Ill. Dec. 238, 819 N.E.2d 734, 2004 Ill. LEXIS 1620 (2004).

Trial court's entry of default against the father in adjudicatory proceedings regarding his and the mother's parental rights, and on the State's petition alleging their children were neglected, was error; the trial court did not have subject matter jurisdiction to enter the default because the State had not given the father adequate notice of the adjudicatory proceedings against him and the State was not entitled to serve notice upon him by publication, as the record showed that it knew his last known address, that he was in prison. People v. Gladys C. (In re Miracle C.), 344 Ill. App. 3d 1046, 280 Ill. Dec. 232, 801 N.E.2d 1177, 2003 Ill. App. LEXIS 1546 (2 Dist. 2003), Overruled in part by People v. Juan S. (In re Antwan L.), 368 Ill. App. 3d 1119, 859 N.E.2d 1085, 2006 Ill. App. LEXIS 1127, 307 Ill. Dec. 408 (Ill. App. Ct. 2d Dist. 2006).

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The minor need not be explicitly adjudged to be a ward of the court in order to give the court jurisdiction. In re J.N., 91 Ill. 2d 122, 61 Ill. Dec. 776, 435 N.E.2d 473 (1982).

Naming Perpetrator

A trial court's finding in the adjudicatory order naming the perpetrator of an onerous offense would have, as the trial court indicated, violated the fundamental principles of due process. Therefore, the trial court did not err by refusing to name the perpetrator in its judicial findings. In re A.M., 296 Ill. App. 3d 752, 231 Ill. Dec. 164, 695 N.E.2d 1283 (1 Dist. 1998).

A specific finding naming the perpetrator of the abuse in the adjudicatory order was unnecessary to protect the minor, because the perpetrator had already been named frequently throughout the proceedings and was named in the original and final orders of protection. In re A.M., 296 Ill. App. 3d 752, 231 Ill. Dec. 164, 695 N.E.2d 1283 (1 Dist. 1998).

The trial court's findings that minor's neglect and abuse were due to her exposure to an injurious environment and sexual abuse constituted a sufficient factual basis for its determinations and, additional findings naming the mother's paramour as the perpetrator were unnecessary to render valid a determination of neglect and abuse and were not mandated by this section. In re A.M., 296 Ill. App. 3d 752, 231 Ill. Dec. 164, 695 N.E.2d 1283 (1 Dist. 1998).

Parental Unfitness

Trial court's order finding that parents were unfit but that it was not in the best interests of their children to terminate the parents' parental rights was not a final order because it did not fix the parties' rights or finally resolve the issue of whether the parents' parental rights should be terminated, and the appellate court's judgment dismissing the State's appeal because the trial court's order was not a final judgment was upheld by the state supreme court. People v. Tracy H. (In re A.H.), 207 Ill. 2d 590, 280 Ill. Dec. 290, 802 N.E.2d 215, 2003 Ill. LEXIS 2274 (2003).

- Grounds

The language of 750 ILCS 50/1 (D)(m) indicates that the two standards therein are disjunctive, making either a failure to make reasonable efforts or reasonable progress a ground for an adjudication of unfitness. People v. Edmonds, 85 Ill. App. 3d 229, 40 Ill. Dec. 530, 406 N.E.2d 231 (3 Dist. 1980).

Ward of the Court

The term "ward of the court" as used in this section has no significance apart from the legal status about which the statute is concerned, and this same status can be acceptably described in other language. In re Jennings, 68 Ill. 2d 125, 11 Ill. Dec. 256, 368 N.E.2d 864 (1977).

Written Findings

Trial court's ruling finding that a child was abused was predicated on stipulated facts that were read into the record, and the court orally specified the facts it was taking into account in making its decision; thus, 705 ILCS 405/2-21(1) was complied with as the stipulations and the statements were, in turn, transcribed and included in the report of proceedings. People v. Oscar H. (In re Leona W.), 228 Ill. 2d 439, 320 Ill. Dec. 855, 888 N.E.2d 72, 2008 Ill. LEXIS 304 (2008).

Trial court erred in finding that the father's parental rights in the minor child should be terminated based on its conclusion that he had not shown that he made "reasonable progress" in correcting the conditions that necessitated the minor child's removal. The trial court was required to, but did

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not, make written findings regarding the basis for its determination, and, thus, it did not adequately substantiate its reason for finding that the father was an unfit parent. People v. Oscar H. (In re L.W.), 362 Ill. App. 3d 1106, 299 Ill. Dec. 509, 842 N.E.2d 248, 2005 Ill. App. LEXIS 1285 (1 Dist. 2005).

The lack of written findings in support of a finding of neglect usually requires the reversal of the order; however, where the trial court made explicit oral findings on the record, it would have been a waste of judicial resources to remand the cause solely to allow the trial court to reiterate its findings in a written order. People v. K.P. (In re Z.Z.), 312 Ill. App. 3d 800, 245 Ill. Dec. 220, 727 N.E.2d 667, 2000 Ill. App. LEXIS 237 (2 Dist. 2000).

LEGAL PERIODICALS

For article, The Development of the Law Applicable to Juvenile Delinquency in Illinois: Origin, Challenges and Current Status, see 66 Ill. B.J. 584 (1978).

For article, "Denying Child Welfare Services to Delinquent Teens: A Call to Return to the Roots of Illinois' Juvenile Court," see, 36 Loy. U. Chi. L.J. 925 (2005).

RESEARCH REFERENCES

Sufficiency of evidence to establish parent's knowledge or allowance of child's sexual abuse by another under statute permitting termination of parental rights for "allowing" or "knowingly allowing" such abuse to occur. 53 ALR5th 499.

Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 6:70 Abuse resulting in death of a child.

Illinois Jurisprudence, Family Law § 6:69 Multiple findings of abuse of any children.

§ 705 ILCS 405/2-21.1: Repealed by P.A. 89-17, § 10, effective May 31, 1995.

§ 705 ILCS 405/2-22. Dispositional hearing; evidence; continuance

Sec. 2-22. Dispositional hearing; evidence; continuance. (1) At the dispositional hearing, the court shall determine whether it is in the best interests of the minor and the public that he be made a ward of the court, and, if he is to be made a ward of the court, the court shall determine the proper disposition best serving the health, safety and interests of the minor and the public. The court also shall consider the permanency goal set for the minor, the nature of the service plan for the minor and the services delivered and to be delivered under the plan. All evidence helpful in determining these questions, including

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oral and written reports, may be admitted and may be relied upon to the extent of its probative value, even though not competent for the purposes of the adjudicatory hearing.

(2) Once all parties respondent have been served in compliance with Sections 2-15 and 2-16 [705 ILCS 405/2-15 and 705 ILCS 405/2-16], no further service or notice must be given to a party prior to proceeding to a dispositional hearing. Before making an order of disposition the court shall advise the State's Attorney, the parents, guardian, custodian or responsible relative or their counsel of the factual contents and the conclusions of the reports prepared for the use of the court and considered by it, and afford fair opportunity, if requested, to controvert them. The court may order, however, that the documents containing such reports need not be submitted to inspection, or that sources of confidential information need not be disclosed except to the attorneys for the parties. Factual contents, conclusions, documents and sources disclosed by the court under this paragraph shall not be further disclosed without the express approval of the court pursuant to an in camera hearing.

(3) A record of a prior continuance under supervision under Section 2-20 [705 ILCS 405/2-20], whether successfully completed with regard to the child's health, safety and best interest, or not, is admissible at the dispositional hearing.

(4) On its own motion or that of the State's Attorney, a parent, guardian, custodian, responsible relative or counsel, the court may adjourn the hearing for a reasonable period to receive reports or other evidence, if the adjournment is consistent with the health, safety and best interests of the minor, but in no event shall continuances be granted so that the dispositional hearing occurs more than 6 months after the initial removal of a minor from his or her home. In scheduling investigations and hearings, the court shall give priority to proceedings in which a minor has been removed from his or her home before an order of disposition has been made.

(5) Unless already set by the court, at the conclusion of the dispositional hearing, the court shall set the date for the first permanency hearing, to be conducted under subsection (2) of Section 2-28 [705 ILCS 405/2-28], which shall be held: (a) within 12 months from the date temporary custody was taken, (b) if the parental rights of both parents have been terminated in accordance with the procedure described in subsection (5) of Section 2-21 [705 ILCS 405/2-21], within 30 days of the termination of parental rights and appointment of a guardian with power to consent to adoption, or (c) in accordance with subsection (2) of Section 2-13.1 [705 ILCS 405/2-13.1].

(6) When the court declares a child to be a ward of the court and awards guardianship to the Department of Children and Family Services, (a) the court shall admonish the parents, guardian, custodian or responsible relative that the parents must cooperate with the Department of Children and Family Services, comply with the terms of the service plans, and correct the conditions which require the child to be in care, or risk termination of their parental rights; and (b) the court shall inquire of the parties of any intent to proceed with termination of parental rights of a parent:

(A) whose identity still remains unknown;

(B) whose whereabouts remain unknown; or

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(C) who was found in default at the adjudicatory hearing and has not obtained an order setting aside the default in accordance with Section 2-1301 of the Code of Civil Procedure [735 ILCS 5/2-1301].

(Source: P.A. 85-601; 88-7, § 15; 88-487, § 50; 88-670, § 2-63; 89-17, § 5; 90-28, § 10-20; 90-87, § 5; 90-608, § 30; 90-655, § 156; 92-822, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-22.

Effect of Amendments. The 1998 amendment by P.A. 90-608, effective June 30, 1998, incorporated the amendments by P.A. 90-28 and P.A. 90-87; rewrote subsection (5); and added subdivision (6)(b) and made a related change.

The 1998 amendment by P.A. 90-655, effective July 30, 1998, deleted "or in counties with a population over 3,000,000 no later than 12 months after the minor is taken into custody" from the end of subsection (5).

The 2002 amendment by P.A. 92-822, effective August 21, 2002, in subsection (2) inserted the first sentence and deleted the former first sentence, which read: "Notice in compliance with Supreme Court Rule 11 must be given to all parties respondent prior to proceeding to a dispositional hearing".

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Constitutionality

The statutory scheme terminating parental rights is not per se unconstitutional, nor is a separate additional hearing to terminate non-custodial parental rights is required. People v. Golden, 147 Ill. App. 3d 484, 101 Ill. Dec. 188, 498 N.E.2d 370 (3 Dist. 1986).

Application and Construction

- Adjudicatory Hearings

The fact that sexual abuse and alcoholism where not the bases for the adjudication of dependency did not foreclose the court from addressing those issues in its dispositional order, assuming sufficient competent evidence of those conditions. People v. Hall, 212 Ill. App. 3d 22, 156 Ill. Dec. 213, 570 N.E.2d 689 (3 Dist. 1991).

This Act contemplates holding two separate hearings - adjudicatory and dispositional - and that the dispositional hearing is to be held only after the adjudications of delinquency and wardship have been made. People v. L.H., 102 Ill. App. 3d 169, 57 Ill. Dec. 714, 429 N.E.2d 612 (4 Dist. 1981).

At an adjudicatory hearing, the usual rules of evidence in criminal proceedings apply, but at a dispositional hearing, the court can consider all evidence helpful in determining the question of disposition, including evidence not competent for purposes of the adjudicatory hearing; thus, a combined hearing presents the probability that evidence will be presented which is incompetent

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for purposes of adjudication, though it would be properly considered in making a dispositional decision. People v. L.H., 102 Ill. App. 3d 169, 57 Ill. Dec. 714, 429 N.E.2d 612 (4 Dist. 1981).

Former Ill. Rev. Stat., ch. 37, paras. 704-6, 704-8 and 705-1 of the former Juvenile Court Act (see now 705 ILCS 405/2-18, 705 ILCS 405/2-21 and this section), generally contemplated the holding of separate adjudicatory and dispositional hearings, and although it was the better practice to use bifurcated proceedings, their consolidation could be proper where there was no resulting prejudice. People v. Prough, 61 Ill. App. 3d 227, 17 Ill. Dec. 749, 376 N.E.2d 1078 (4 Dist. 1978).

- Sentencing Hearing

A dispositional hearing is neither equal to nor comparable with a sentencing hearing for adults (see 730 ILCS 5/5-4-1). People v. Lang, 74 Ill. App. 3d 188, 30 Ill. Dec. 97, 392 N.E.2d 752 (2 Dist. 1979).

Best Interests of the Minor

In a termination of parental rights case, the trial court did not err at the best-interest hearing in taking judicial notice of documents that concerned the relationship between the parents and the children. It was allowed to consider all evidence that it found helpful in answering the best-interest question; formal rules of evidence did not apply. People v. Hodges (In re Jay H.), 395 Ill. App. 3d 1063, 335 Ill. Dec. 200, 918 N.E.2d 284, 2009 Ill. App. LEXIS 1104 (4 Dist. 2009).

Primary issue before the trial court in both dispositional hearings under the Juvenile Court Act and best-interest hearings under the Adoption Act is the same - namely, what action is in the child's best interest? The purpose of the dispositional hearing is for the trial court to determine what is in the child's best interest; the purpose of the best-interest hearing is to minimize further damage to the child by shifting the court's scrutiny to the child's best interest. People v. Hodges (In re Jay H.), 395 Ill. App. 3d 1063, 335 Ill. Dec. 200, 918 N.E.2d 284, 2009 Ill. App. LEXIS 1104 (4 Dist. 2009).

Dispositional hearing pursuant to 705 ILCS 405/2-22 regarding the minor child was not about whether another placement for the minor child was in the best interests of the minor child, but, instead, was about whether the mother was a fit, willing, and able parent. Even a natural parent did not have the right to prevail regarding a child custody determination if a trial court determined that placement with the natural parent was contrary to the health, safety, and best interests of a child, and, thus the best interests of the minor child, rather than the minor child's particular placement, was a primary consideration in a child custody case. People v. Analynn D. (In re Desiree O.), 381 Ill. App. 3d 854, 320 Ill. Dec. 279, 887 N.E.2d 59, 2008 Ill. App. LEXIS 215 (1 Dist. 2008).

- Parental Fitness

Trial court was entitled, pursuant to 705 ILCS 405/2-22(1), to determine whether it was in the best interests of the public and the minor that the minor be made a ward of the court after hearing evidence in the dispositional phase of a Juvenile Court Act proceeding and then determining that the minor child was neglected. As a result, once the trial court found that the mother could not properly care for, protect, train, or discipline the minor child, the trial court was authorized to make the minor child a ward of the court under 705 ILCS 405/2-23(1)(a) in order for the minor child to be committed to the guardianship of the state social services agency pursuant to 705 ILCS 2-27(1). People v. T.C. (In re J.C.), 396 Ill. App. 3d 1050, 336 Ill. Dec. 695, 920 N.E.2d 1285, 2009 Ill. App. LEXIS 1325 (3 Dist. 2009).

Under 705 ILCS 405/2-27(1)(d) and 705 ILCS 405/2-22(1), a determination of parental unfitness at a dispositional phase was affirmed where it was not manifestly against weight of evidence for the trial court to find a father unfit to care for his children based on his criminality; the father had

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been convicted of one count of Class X aggravated kidnapping for the purpose of obtaining a ransom, in violation of 720 ILCS 5/10-2(a)(1), and two counts of Class 1 aggravated kidnapping while armed with a handgun, in violation of 720 ILCS 5/10-2(a)(5). People v. David S. (In re D.S.), 326 Ill. App. 3d 586, 260 Ill. Dec. 750, 762 N.E.2d 16, 2001 Ill. App. LEXIS 1470 (1 Dist. 2001).

The issue of the fitness of a parent or legal guardian is a proper inquiry when the court is considering the best interests of the child at a dispositional hearing. Ice v. Department of Children & Family Servs., 35 Ill. App. 3d 783, 342 N.E.2d 460 (3 Dist. 1976).

- Primary Consideration

All of the parental rights must yield to the best interests of the child. People v. Hobbs, 215 Ill. App. 3d 522, 159 Ill. Dec. 32, 575 N.E.2d 261 (4 Dist.), appeal denied, 142 Ill. 2d 651, 164 Ill. Dec. 914, 584 N.E.2d 126 (1991).

Although a court may not speculate as to the future care of a child, it is well established that the primary consideration in a child neglect case is the best interests and welfare of the child. People v. Bariffe, 63 Ill. App. 3d 328, 20 Ill. Dec. 39, 379 N.E.2d 872 (1 Dist. 1978).

The essential policy consideration and the standard to be applied in child-neglect and custody cases is the best interests and welfare of the child. People v. Jones, 59 Ill. App. 3d 412, 17 Ill. Dec. 156, 376 N.E.2d 49 (1 Dist. 1978).

Compliance

Although this section requires the court to adequately state its reasons for committing a juvenile offender, no particular type of statement is required; the court is merely required to set forth the basis for selecting the particular disposition, and where the court stated that it based its decision on the social investigation and its own contacts with respondent, and specifically requested respondent's probation officer to "state for the record" his attempts "at working with" respondent, this statement was sufficient to comply with the dictates of this section. People v. Fields, 46 Ill. App. 3d 1028, 5 Ill. Dec. 343, 361 N.E.2d 666 (1 Dist. 1977).

Continuance

- Not Granted

The trial court did not abuse its discretion by refusing to grant a 60-day continuance of the dispositional hearing on the question of whether mother's parental rights should be terminated as to the two youngest children after she had been found to be an unfit parent. People v. Smith, 203 Ill. App. 3d 586, 148 Ill. Dec. 682, 560 N.E.2d 1380 (4 Dist. 1990).

Where the public defender requested a continuance of a month so that he could contact mother's counselor, and there was no showing in the record of a prior effort to contact the counselor which would indicate the importance of his presence at the hearing, trial judge did not abuse his discretion by denying the motion for continuance. People v. Hill, 102 Ill. App. 3d 387, 58 Ill. Dec. 133, 430 N.E.2d 75 (1 Dist. 1981).

Discretion of Court

A trial court has the authority to make a specific placement of a delinquent minor. In re D.D., 312 Ill. App. 3d 806, 245 Ill. Dec. 388, 728 N.E.2d 119, 2000 Ill. App. LEXIS 257 (2 Dist. 2000).

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This Act has vested broad discretionary powers in the courts to reach a just determination in child abuse or neglect cases. People v. W.L., 152 Ill. App. 3d 25, 105 Ill. Dec. 288, 504 N.E.2d 157 (1 Dist. 1987).

Evidence

Second step of both the dispositional hearing under the Juvenile Court Act and the best-interest hearing under the Adoption Act are functional equivalents; these respective second steps are subject to the same relaxed standard regarding the admission of evidence - that is, the formal rules of evidence do not apply. Thus, at both second-step hearings, all evidence helpful (in the trial court's judgment) in determining the questions before the court may be admitted and may be relied upon to the extent of its probative value, even though that evidence would not be admissible in a proceeding where the formal rules of evidence applied. People v. Hodges (In re Jay H.), 395 Ill. App. 3d 1063, 335 Ill. Dec. 200, 918 N.E.2d 284, 2009 Ill. App. LEXIS 1104 (4 Dist. 2009).

Although the allegations of neglect were proven, the trial court erred in ordering the father to complete a sexual offender evaluation and follow the resulting recommendations because there was no evidence against the father; the mother's stipulation stating, inter alia, that allegations of sexual molestation had been made were only "evidence" that the trial court heard. The trial court could not order such an evaluation based only upon uncharged, unsubstantiated, and unproven allegations that were misconstrued as evidence; the State was required to prove the allegations by a preponderance of the evidence. People v. Kevin S. (In re K.S.), 365 Ill. App. 3d 566, 302 Ill. Dec. 898, 850 N.E.2d 335, 2006 Ill. App. LEXIS 517 (1 Dist. 2006).

Findings were abundant that a mother's conduct was neglect under 705 ILCS 405/2-3(1)(b) and abuse under 705 ILCS 405/2-3(2)(ii) to satisfy the State's burden of proof and to justify making the mother's children wards of the court under 705 ILCS 405/1-3(6) and 705 ILCS 405/2-22. The mother falsely reported illnesses for some of her children, which led to them receiving improper care, she gave other children dangerous doses of medications, which threatened their lives, and she deprived one of her children of proper nutrition while arguing that child was difficult to feed, yet the child thrived under hospital care when properly fed. Since the record showed neglect and abuse to several of the mother's children, anticipatory neglect to the remaining children was sufficiently shown. People v. B.T. (In re K.T.), 361 Ill. App. 3d 187, 297 Ill. Dec. 38, 836 N.E.2d 769, 2005 Ill. App. LEXIS 941 (1 Dist. 2005).

Although petition to declare respondent's children wards of court did not allege sexual abuse, the trial court did not err in permitting his adult stepdaughter to testify regarding abuse that allegedly occurred 20 years earlier, especially since foster parents had noted sexually acting out on the part of the children. People v. Ernie C. (In re April C.), 326 Ill. App. 3d 245, 260 Ill. Dec. 22, 760 N.E.2d 101, 2001 Ill. App. LEXIS 831 (1 Dist. 2001).

- Child Made Ward of State

Trial court did not err by adjudicating a minor child a ward of the court, under 705 ILCS 405/2-22(1), and appointing an administrative agency as the child's guardian, under 705 ILCS 405/2-27(1), because the child, while living with the child's parents, received numerous unexplained bruises on various parts of the child's body that would not ordinarily have existed except for the acts or omissions of a parent or custodian. People v. Weaver (In re J.W.), 386 Ill. App. 3d 847, 325 Ill. Dec. 756, 898 N.E.2d 803, 2008 Ill. App. LEXIS 1199 (4 Dist. 2008).

The trial court's holding that it was in the best interest of two children to become wards of the court because their mother was unable to care for them was not against the manifest weight of the evidence where (1) while the children were in the care of their father, the younger child was kicked in the stomach by the father and suffered a ruptured intestine, and (2) the mother was diagnosed with bipolar disorder but refused to take medication and did not believe that the

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younger child had been injured. In re B.D. & B., 321 Ill. App. 3d 161, 254 Ill. Dec. 65, 746 N.E.2d 822, 2001 Ill. App. LEXIS 163 (1 Dist. 2001).

- Hearings

While the trial court had considerable discretion in 705 ILCS 405/2-28 permanency review hearings as to what evidence should be admitted to determine the disposition under 705 ILCS 405/2-22(1) of the mother, the trial court erred in admitting sound recordings of telephone calls the mother allegedly made to the father and the father's children, part of which regarded the mother and father's three children. The sound recordings were not authenticated and, thus, they were inadmissible and the error was not harmless as the sound recordings were the sole basis for finding the mother to be unfit. People v. Leah H. (In re C.H.), 398 Ill. App. 3d 603, 339 Ill. Dec. 139, 925 N.E.2d 1260, 2010 Ill. App. LEXIS 210 (3 Dist. 2010), appeal denied, 2010 Ill. LEXIS 667 (Ill. 2010).

The rules of evidence that apply to dispositional hearings also apply to hearings conducted on prior petitions filed seeking relief from earlier dispositional orders. People v. Hoffman, 223 Ill. App. 3d 543, 165 Ill. Dec. 910, 585 N.E.2d 641 (4 Dist. 1992).

When a court considers a proper disposition as to a ward of the court, the court may consider all helpful evidence even though not competent for purposes of the adjudicatory hearing and may rely on such evidence to the extent of its probative value. People v. Green, 173 Ill. App. 3d 922, 123 Ill. Dec. 693, 528 N.E.2d 238 (2 Dist. 1988).

Former Ill. Rev. Stat., ch. 37, para. 705-1(1) (see now this section) allowed the court to use any helpful evidence in determining disposition; under that provision, it was proper for the court to consider evidence produced at prior dispositional hearings. In re White, 103 Ill. App. 3d 105, 58 Ill. Dec. 50, 429 N.E.2d 1383 (4 Dist. 1982).

- Hearsay

Where the trial court found that the child, age two, was abused and neglected and they made the child a ward of the court pursuant to 705 ILCS 405/2-3(2)(ii), 705 ILCS 405/2-4(1)(a), and 705 ILCS 405/2-22(1) based upon the father's abuse of the child's half brother, the determination was supported by sufficient evidence; the inculpatory hearsay statement of the child's sibling regarding the abuse of the child's half brother was corroborated by a doctor's report, and the mother admitted that the father struck the half brother. People v. Maxwell (In re C.M.), 351 Ill. App. 3d 913, 286 Ill. Dec. 839, 815 N.E.2d 49, 2004 Ill. App. LEXIS 985 (4 Dist. 2004).

Neither 705 ILCS 405/2-21(5)(iv)(B) nor 705 ILCS 405/2-22(1) provides that hearsay testimony is allowed during parental rights termination hearings; thus, hearsay testimony from a case worker about visits made by parents to their two children was properly excluded from a termination of parental rights proceeding. People v. Lacina B. (In re J.B.), 346 Ill. App. 3d 77, 281 Ill. Dec. 376, 803 N.E.2d 997, 2004 Ill. App. LEXIS 22 (1 Dist. 2004), appeal denied sub nom. In re J.B., 208 Ill. 2d 538, 284 Ill. Dec. 340, 809 N.E.2d 1286 (2004).

Although hearsay evidence is admissible in the dispositional phase, it is not proper in the adjudicatory phase of the proceedings, even where the adjudicatory and dispositional hearings were held simultaneously. People ex rel. Jones v. Jones, 39 Ill. App. 3d 821, 350 N.E.2d 826 (5 Dist. 1976).

The essence of the rule prohibiting the admission of out-of-court statements is the inability of the parties to confront the witnesses in open court while under oath and to cross-examine them about their knowledge of the matters asserted. People ex rel. Jones v. Jones, 39 Ill. App. 3d 821, 350 N.E.2d 826 (5 Dist. 1976).

At a hearing held to adjudicate the issue of whether children were neglected by their parents, the information contained in court reports was not admissible where much of the information was

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gleaned from third party sources, was a distillation of the file, and was conclusionary and rank hearsay. People v. Brady, 7 Ill. App. 3d 404, 287 N.E.2d 537 (4 Dist. 1972).

Guardian of Disabled Adult

The plenary guardian of the person of a disabled adult is a necessary party to proceedings for the adjudication of the disabled adult's minor child to himself become a ward of the court and, therefore, the plenary guardian is entitled to notice of such proceedings. People v. Kenya C. (In re K.C.), 323 Ill. App. 3d 839, 257 Ill. Dec. 119, 753 N.E.2d 314, 2001 Ill. App. LEXIS 479 (1 Dist. 2001).

Guardianship

Court did not err when it granted the Illinois Department of Children and Family Services guardianship of the minors, while retaining them in the custody of their mother, because the record showed a history of domestic violence between the mother and the minors' father, and the mother needed to learn the skills necessary to protect herself and the minors from experiencing domestic violence in the future, so that she could provide a safe and nurturing home environment for all involved. People v. Chazteen P. (In re M.P.), 408 Ill. App. 3d 1070, 349 Ill. Dec. 45, 945 N.E.2d 1197, 2011 Ill. App. LEXIS 242 (3 Dist. 2011).

Jurisdiction

Court did not lack jurisdiction over a proceeding to adjudicate wardship under 730 ILCS 405/2-22(4) where there was no question that the parties waived the 90-day time period of 705 ILCS 405/2-14(B) in which to hold the adjudicatory hearing; the court found it in the child's best interests to do so, although the hearing was continued for more than the 30 days allowed by 705 ILCS 405/2-14(c); and the mother did not object to the continuance. People v. Meginnes (In re John C.M.), 382 Ill. App. 3d 553, 328 Ill. Dec. 288, 904 N.E.2d 50, 2008 Ill. App. LEXIS 477 (1 Dist. 2008).

Legislative Intent

This section evidences the legislature's intent to give the trial court wide latitude in considering evidence relevant and helpful to the court's determination of a proper disposition as to a ward of the court. People v. Green, 173 Ill. App. 3d 922, 123 Ill. Dec. 693, 528 N.E.2d 238 (2 Dist. 1988).

Former Ill. Rev. Stat., ch. 37, para. 705-1(1) (see now this section) allowed the judge at a dispositional hearing to admit into evidence all evidence helpful in determining the question of disposition; although this provision was not necessarily enacted to supersede the rules of res judicata, it showed a clear intention that juvenile courts have wide latitude in admitting evidence at dispositional hearings. In re White, 103 Ill. App. 3d 105, 58 Ill. Dec. 50, 429 N.E.2d 1383 (4 Dist. 1982).

Neglect

- Natural Parents

The trial court did not err in awarding custody of the three minor children to persons other than the natural parents of the children where the behavior of the natural parents toward their children prior to the initiation of the custody proceedings was that of abuse, neglect and overt cruelty to

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the point that it showed a complete disdain for the condition or welfare of the children. People v. Hoerner, 6 Ill. App. 3d 994, 287 N.E.2d 510 (5 Dist. 1972).

Noncustodial Parent

- Not Indispensable Party

Where the minor's last contact with his father was about 17 months prior to the adjudication, no child support had been received for a year prior to the dispositional hearing, and the record was silent as to the father's exercise of any rights or opportunities for visitation with the minor, the father was not an indispensable party. People v. J.P.J., 122 Ill. App. 3d 573, 77 Ill. Dec. 955, 461 N.E.2d 578 (2 Dist. 1984).

Under a prior similar provision, an illegitimate father who had played no role in raising the minor could not have any greater rights or be more important to the minor than a father who married the mother, lived in the family for a while, but at some point lost legal custody in a divorce or by other means; when someone not only does not share in the custody of the minor, but has so little contact with the minor that he does not learn of the minor's danger and cannot after diligent search be found, his interest is sufficiently slight that he should not be treated as an indispensable party, and the absence of such a comparative stranger does not deprive the minor of any substantial protection if the minor has the assistance of his custodian, the person on whom he relies for other important decisions in his life. In re J.W., 87 Ill. 2d 56, 57 Ill. Dec. 603, 429 N.E.2d 501 (1981).

- State As Parens Patriae

Under former Ill. Rev. Stat., ch. 37, para. 705-7 (see now this section), when a finding of neglect was entered against a parent who had previously been awarded sole custody of minor child pursuant to a divorce decree, the state had the right, in its role as parens patriae, to present evidence at the dispositional hearing to demonstrate that the noncustodial parent was unfit or unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor. People v. Wheat, 68 Ill. App. 3d 471, 25 Ill. Dec. 7, 386 N.E.2d 278 (1 Dist. 1979).

Notice

- Proper Notice Given

Proper notice of a dispositional hearing was given, even if the respondent did not receive personal service, where (1) the respondent was present in court when a date was set for the hearing, and (2) the respondent's attorney was present at the hearing. People v. Cynthia N. (In re Jerome F.), 325 Ill. App. 3d 812, 259 Ill. Dec. 42, 757 N.E.2d 905, 2001 Ill. App. LEXIS 375 (1 Dist. 2001).

- Reversible Error

Reversible error resulted from failure to provide mother with formal notice of dispositional hearing, where the evidence did not show the mother to be the type of parent so lacking in interest in regard to the minor that her appearance would not be significant. People v. J.B., 256 Ill. App. 3d 325, 194 Ill. Dec. 768, 628 N.E.2d 265 (1 Dist. 1993).

- Waiver

A parent's participation in adjudicatory proceedings does not constitute waiver of formal notice of the dispositional hearing, where no notice of the dispositional hearing was given. People v. J.B., 256 Ill. App. 3d 325, 194 Ill. Dec. 768, 628 N.E.2d 265 (1 Dist. 1993).

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Parental Fitness

- Mental Examination

Trial court erred in denying a mother's petitions for a mental examination because the examination was necessary as the mother's mental health was at issue in that the allegations by the State of Illinois in a petition for adjudication of wardship rested solely upon the allegation that the mother was mentally disabled or suffered from psychological problems. Thus, the cause was remanded to the trial court with instructions that a mental examination and parenting assessment of the mother was to be undertaken prior to a new adjudicatory hearing. People v. Natalie S. (In re C.S.), 376 Ill. App. 3d 114, 315 Ill. Dec. 884, 878 N.E.2d 110, 2007 Ill. App. LEXIS 1133 (1 Dist. 2007).

Postponement

Defendant had no statutory or other right to an immediate dispositional hearing where it appeared that the postponement was in the best interests of the minor because it permitted the court to obtain a social report to aid in a proper disposition. People v. Cato, 4 Ill. App. 3d 1093, 283 N.E.2d 259 (1 Dist. 1972).

Reports

- In General

This section does not limit the evidence at dispositional hearings to oral and written reports; rather, it allows the court to consider all helpful evidence. In re White, 103 Ill. App. 3d 105, 58 Ill. Dec. 50, 429 N.E.2d 1383 (4 Dist. 1982).

Former Ill. Rev. Stat., ch. 37, para. 705-1(1) (see now this section) mandated that a written report of social investigation be presented to and considered by a court before an order of commitment to the Department of Corrections was entered. People v. R.D., 84 Ill. App. 3d 203, 39 Ill. Dec. 707, 405 N.E.2d 460 (3 Dist. 1980).

- Hearsay

Former Ill. Rev. Stat. ch. 37, para. 705-1 (see now this section) plainly provided that the circuit court should consider all reports, whether or not the author testified, which would assist the court in determining the proper disposition for the minor; concerns over the hearsay portions of the report could be alleviated by asking for the opportunity to controvert the report. People v. English M., 189 Ill. App. 3d 392, 136 Ill. Dec. 795, 545 N.E.2d 319 (1 Dist. 1989).

Respondent's concern over the hearsay portions of the report could have been alleviated by asking for an opportunity to controvert; by failing to avail herself of the right, the respondent should not now complain about hearsay. People v. Calkins, 96 Ill. App. 3d 74, 51 Ill. Dec. 447, 420 N.E.2d 861 (3 Dist. 1981).

Review

The disposition entered by a juvenile court judge rests within that court's discretion, and the appellate court will not disturb that decision absent an abuse of discretion. People v. G.S., 194 Ill. App. 3d 740, 141 Ill. Dec. 344, 551 N.E.2d 337 (1 Dist. 1990).

Standing

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A former foster parent and nonparty to the proceeding has no right to discovery of or to controvert the contents of reports prepared for the use of the court; she has only the right to be heard. People v. Richko, 208 Ill. App. 3d 602, 153 Ill. Dec. 486, 567 N.E.2d 444 (1 Dist. 1990).

Termination of Parental Rights

- Determination

The language of § 2-13(4) of the Illinois Juvenile Court Act of 1987 (Act), 705 ILCS 405/2-13(4), which requires that a petition clearly and obviously state that a parent can permanently lose his or her parental rights after a hearing does not apply to termination petitions brought under § 2-29 of the Act, 705 ILCS 405/2-29, following the entry of a dispositional order under § 2-22 of the Act, 705 ILCS 405/2-22. People v. Griffin (In re J.R.), 342 Ill. App. 3d 310, 276 Ill. Dec. 519, 794 N.E.2d 414, 2003 Ill. App. LEXIS 976 (4 Dist. 2003).

Trial court violated the mother's due process rights by terminating her parental rights without advising her of the tasks that she was required to complete and the time frame within which she was required to complete them; the mother had engaged in many of the services and counseling sessions recommended in her service plan, and had no reason to anticipate that her parental rights would be terminated. People v. Faulkner (In re Jacob K.), 341 Ill. App. 3d 425, 275 Ill. Dec. 246, 792 N.E.2d 477, 2003 Ill. App. LEXIS 862 (4 Dist. 2003).

Issue before the trial court in proceedings to terminate parental rights is the fitness of the ward's parents to continue to exercise the bundle of parental rights in toto, i.e., should the person as a matter of law continue in the legal status as "parent"; once the court determines a person is not a fit person to hold the status of parent, there remains no basis to support an exercise of non-custodial rights, or any other acts of a parental nature the person might like to exercise. People v. Golden, 147 Ill. App. 3d 484, 101 Ill. Dec. 188, 498 N.E.2d 370 (3 Dist. 1986).

- Timeliness

From the recitals in the order restraining persons from interfering with care and custody of child, appellate court believed the family court intended to enter an order of protection pursuant to the former Family Court Act (see now this section); however, order was invalid where it was not entered in accordance with that section and motion made within thirty days to set the order aside was timely since the court was without jurisdiction. People ex rel. Rosen v. Hoffman, 49 Ill. App. 2d 436, 200 N.E.2d 37 (1 Dist. 1964).

Vacation of Dispositional Order

When a minor is the ward of a court and under its protection, the juvenile court has the authority to vacate any dispositional order upon a finding that a change in circumstances has occurred warranting such an action. In re D.S., 307 Ill. App. 3d 362, 240 Ill. Dec. 404, 717 N.E.2d 497 (5 Dist. 1999).

LEGAL PERIODICALS

For article, The Development of the Law Applicable to Juvenile Delinquency in Illinois: Origin, Challenges and Current Status, see 66 Ill. B.J. 584 (1978).

For article, "Denying Child Welfare Services to Delinquent Teens: A Call to Return to the Roots of Illinois' Juvenile Court," see, 36 Loy. U. Chi. L.J. 925 (2005).

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§ 705 ILCS 405/2-23. Kinds of dispositional orders

Sec. 2-23. Kinds of dispositional orders. (1) The following kinds of orders of disposition may be made in respect of wards of the court:

(a) A minor under 18 years of age found to be neglected or abused under Section 2-3 [705 ILCS 405/2-3] or dependent under Section 2-4 [705 ILCS 405/2-4] may be (1) continued in the custody of his or her parents, guardian or legal custodian; (2) placed in accordance with Section 2-27 [705 ILCS 405/2-27]; (3) restored to the custody of the parent, parents, guardian, or legal custodian, provided the court shall order the parent, parents, guardian, or legal custodian to cooperate with the Department of Children and Family Services and comply with the terms of an after-care plan or risk the loss of custody of the child and the possible termination of their parental rights; or (4) ordered partially or completely emancipated in accordance with the provisions of the Emancipation of Minors Act [750 ILCS 30/1 et seq.].

However, in any case in which a minor is found by the court to be neglected or abused under Section 2-3 of this Act, custody of the minor shall not be restored to any parent, guardian or legal custodian whose acts or omissions or both have been identified, pursuant to subsection (1) of Section 2-21 [705 ILCS 405/2-21], as forming the basis for the court's finding of abuse or neglect, until such time as a hearing is held on the issue of the best interests of the minor and the fitness of such parent, guardian or legal custodian to care for the minor without endangering the minor's health or safety, and the court enters an order that such parent, guardian or legal custodian is fit to care for the minor.

(b) A minor under 18 years of age found to be dependent under Section 2-4 may be (1) placed in accordance with Section 2-27 or (2) ordered partially or completely emancipated in accordance with the provisions of the Emancipation of Minors Act.

However, in any case in which a minor is found by the court to be dependent under Section 2-4 of this Act, custody of the minor shall not be restored to any parent, guardian or legal custodian whose acts or omissions or both have been identified, pursuant to subsection (1) of Section 2-21, as forming the basis for the court's finding of dependency, until such time as a hearing is held on the issue of the fitness of such parent, guardian or legal custodian to care for the minor without endangering the minor's health or safety, and the court enters an order that such parent, guardian or legal custodian is fit to care for the minor.

(b-1) A minor between the ages of 18 and 21 may be placed pursuant to Section 2-27 of this Act if (1) the court has granted a supplemental petition to reinstate wardship of the minor pursuant to subsection (2) of Section 2-33, or (2) the court has adjudicated the minor a ward of the court, permitted the minor to return home under an order of protection, and subsequently made a finding that it is in the minor's best interest to vacate the order of protection and commit the minor to the Department of Children and Family Services for care and service.

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(c) When the court awards guardianship to the Department of Children and Family Services, the court shall order the parents to cooperate with the Department of Children and Family Services, comply with the terms of the service plans, and correct the conditions that require the child to be in care, or risk termination of their parental rights.

(2) Any order of disposition may provide for protective supervision under Section 2-24 [705 ILCS 405/2-24] and may include an order of protection under Section 2-25 [705 ILCS 405/2-25].

Unless the order of disposition expressly so provides, it does not operate to close proceedings on the pending petition, but is subject to modification, not inconsistent with Section 2-28 [705 ILCS 405/2-28], until final closing and discharge of the proceedings under Section 2-31 [705 ILCS 405/2-31].

(3) The court also shall enter any other orders necessary to fulfill the service plan, including, but not limited to, (i) orders requiring parties to cooperate with services, (ii) restraining orders controlling the conduct of any party likely to frustrate the achievement of the goal, and (iii) visiting orders. Unless otherwise specifically authorized by law, the court is not empowered under this subsection (3) to order specific placements, specific services, or specific service providers to be included in the plan. If, after receiving evidence, the court determines that the services contained in the plan are not reasonably calculated to facilitate achievement of the permanency goal, the court shall put in writing the factual basis supporting the determination and enter specific findings based on the evidence. The court also shall enter an order for the Department to develop and implement a new service plan or to implement changes to the current service plan consistent with the court's findings. The new service plan shall be filed with the court and served on all parties within 45 days after the date of the order. The court shall continue the matter until the new service plan is filed. Unless otherwise specifically authorized by law, the court is not empowered under this subsection (3) or under subsection (2) to order specific placements, specific services, or specific service providers to be included in the plan.

(4) In addition to any other order of disposition, the court may order any minor adjudicated neglected with respect to his or her own injurious behavior to make restitution, in monetary or non-monetary form, under the terms and conditions of Section 5-5-6 of the Unified Code of Corrections [730 ILCS 5/5-5-6], except that the "presentence hearing" referred to therein shall be the dispositional hearing for purposes of this Section. The parent, guardian or legal custodian of the minor may pay some or all of such restitution on the minor's behalf.

(5) Any order for disposition where the minor is committed or placed in accordance with Section 2-27 shall provide for the parents or guardian of the estate of such minor to pay to the legal custodian or guardian of the person of the minor such sums as are determined by the custodian or guardian of the person of the minor as necessary for the minor's needs. Such payments may not exceed the maximum amounts provided for by Section 9.1 of the Children and Family Services Act [20 ILCS 505/9.1].

(6) Whenever the order of disposition requires the minor to attend school or participate in a program of training, the truant officer or designated school official shall regularly report

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to the court if the minor is a chronic or habitual truant under Section 26-2a of the School Code [105 ILCS 5/26-2a].

(7) The court may terminate the parental rights of a parent at the initial dispositional hearing if all of the conditions in subsection (5) of Section 2-21 are met.

(Source: P.A. 85-601; 88-7, § 15; 88-487, § 50; 88-670, § 2-63; 89-17, § 5; 89-235, § 3-30; 90-27, § 30; 90-28, § 10-20; 90-608, § 30; 90-655, § 156; 95-331, § 1020; 96-581, § 15; 96-600, § 15; 96-1000, § 590.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-23.

Section 1 of P.A. 96-581, which amended this section, provides: "This Act may be cited as the Foster Youth Successful Transition to Adulthood Act."

Section 995 of P.A. 96-1000 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 1998 amendment by P.A. 90-608, effective June 30, 1998, incorporated the amendments by P.A. 90-27 and P.A. 90-28; rewrote subdivision (1)(a); rewrote the second paragraph in subdivision (1)(b); deleted former subdivision (1)(d), concerning cooperation with the terms of an after-care plan; and deleted "or 2-28.01, whichever is applicable" following "Section 2-28" in subsection (2).

The 1998 amendment by P.A. 90-655, effective July 30, 1998, incorporated the amendments by P.A. 90-27 and P.A. 90-28; and, in subdivision (2) inserted "2-28.01, whichever is applicable".

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, deleted "Mature" from "Emancipation of Mature Minors Act" in (a) and (b).

The 2009 amendment by P.A. 96-581, effective January 1, 2010, added (1)(b-1).

The 2009 amendment by P.A. 96-600, effective August 21, 2009, rewrote (3).

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, combined earlier multiple amendments to the section.

CASE NOTES

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Custody
Discretion of Court
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Jurisdiction
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Vacation of Dispositional Order
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Appellate Review

Trial court's finding that neglect was imposed by both parents was not necessary to its earlier finding that the child was neglected. Because this finding merely served to inform the court when the proceedings reached the dispositional hearing, the appellate court declined to review the correctness of that finding, under 705 ILCS 405/2-23(1)(a) and 705 ILCS 405/2-21(1), in its review of the proceedings at the adjudicatory stage. People v. Weaver (In re J.W.), 386 Ill. App. 3d 847, 325 Ill. Dec. 756, 898 N.E.2d 803, 2008 Ill. App. LEXIS 1199 (4 Dist. 2008).

Appellate court was not required to decide whether the trial court had jurisdiction over the adjudication of wardship of the two children after the trial court concluded it did not, as the matter was moot; since both children involved had reached their 18th birthdays nearly a week before the relevant adjudication and disposition hearing, the appellate court found that the trial court was without authority to grant any relief because the Juvenile Court Act, 705 ILCS 405/2-23(1), limited a trial court to acting with regard to those people who were under 18 years of age. People v. Ann C. (In re An. C.), Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 688 (July 15, 2005).

Orders setting permanency goals in juvenile court cases are not appealable because they are not final orders; thus, a mother's appeal of a permanency goal, set out in a dispositional order, was not appealable even though the dispositional order itself was a final order. People v. Perseta B. (In re Faith B.), 349 Ill. App. 3d 930, 285 Ill. Dec. 820, 812 N.E.2d 640, 2004 Ill. App. LEXIS 789 (2 Dist. 2004), aff'd in part and remanded in part, 216 Ill. 2d 1, 295 Ill. Dec. 1, 832 N.E.2d 152 (2005).

The juvenile court may, at the time it conducts a court review of a case in which a minor has already been adjudicated abused and/or neglected, been made a ward of the court and placed under the protective shield of a court order of supervision, alter custodial placement if the circumstances and best interests of the child warrant. In re P.P., 261 Ill. App. 3d 598, 199 Ill. Dec. 169, 633 N.E.2d 965 (1 Dist. 1994).

An appellate court decision reversing a trial court's dispositional order requiring sexual abuse counseling and alcohol outpatient treatment based on insufficient evidence would not preclude the entry of an order requiring sexual abuse counseling or alcohol abuse treatment in some future

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proceedings should the evidence so warrant. People v. Hall, 212 Ill. App. 3d 22, 156 Ill. Dec. 213, 570 N.E.2d 689 (3 Dist. 1991).

In determining the rights of parties to a custody dispute, the appellate court must constantly bear in mind that wide discretion is vested in the trial judge, to an even greater degree than any ordinary appeal to which the familiar manifest weight principle is applied. People v. Ayende, 31 Ill. App. 3d 288, 333 N.E.2d 711 (1 Dist. 1975).

Application and Construction

- Divorce Proceedings

A parent-custodian under a judgment for divorce did not automatically forfeit any right to further custody if he or she was found to have neglected the child; the trial court, in its discretion, could allow the neglected minor to remain in the custody of the parent-custodian and in such a situation the trial court would normally provide for protective supervision and/or for an order of protection. People v. Wheat, 68 Ill. App. 3d 471, 25 Ill. Dec. 7, 386 N.E.2d 278 (1 Dist. 1979).

Burden of Proof

Juvenile court in a child custody matter should not have restored custody of the minor daughter to the mother based on mother's petition where the minor daughter had been found to be a neglected child due to the mother's drug use, and no finding was made pursuant to 755 ILCS 5/11-7, 705 ILCS 405/2-27(1), 705 ILCS 405/2-23(1)(a), or 705 ILCS 405/2-28 that the mother had been found once again to be a fit parent. People v. R.P. (In re G.P.), 385 Ill. App. 3d 490, 324 Ill. Dec. 654, 896 N.E.2d 440, 2008 Ill. App. LEXIS 996 (3 Dist. 2008).

Clear and convincing evidence is not required for a finding of unfitness under this section, but that the preponderance of the evidence standard applicable to most act sections applies. People v. Sandy F., 265 Ill. App. 3d 1092, 202 Ill. Dec. 848, 638 N.E.2d 716 (1 Dist. 1994).

Costs of Services

Juvenile court is without authority to require Department of Children and Family Services (DCFS) to pay for in-home services provided to a minor and his family when DCFS has been removed as the custodial party. Rami M. v. Illinois Dep't of Children & Family Servs., 285 Ill. App. 3d 267, 220 Ill. Dec. 446, 673 N.E.2d 358 (1 Dist. 1996), appeal denied, 172 Ill. 2d 552, 223 Ill. Dec. 195, 679 N.E.2d 380 (1997).

Custody

Pursuant to the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq., a trial court had limited jurisdiction to remove children from their present custody, as the court's power to act was purely statutory. However, the trial court's order that the minor child's placement with the foster parents be changed was not void, despite the fact that such a change could not be made to a specific alternate party under 705 ILCS 405/2-23(3), as the trial court's placement was not specific but was for "elsewhere" in order to protect the best interests of the minor child. People v. Debra P. (In re M.P.), 401 Ill. App. 3d 742, 340 Ill. Dec. 690, 928 N.E.2d 1287, 2010 Ill. App. LEXIS 492 (3 Dist. 2010).

Where custody of the neglected children remained with the mother, the trial court did not err in granting the agency guardianship. The trial court was permitted under 705 ILCS 405/2-23(1)(a)(1) to continue custody with the mother, and under Illinois caselaw, it was also permitted to split

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guardianship and custody of the children. People v. Angie L. (In re Erin L.), 353 Ill. App. 3d 894, 289 Ill. Dec. 391, 819 N.E.2d 1191, 2004 Ill. App. LEXIS 1450 (3 Dist. 2004).

Where the trial court continued custody of the neglected children with the mother but the trial court awarded guardianship to the state agency, a finding of unfitness was not required under 705 ILCS 405/2-27 before guardianship was awarded to the agency. 705 ILCS 405/2-27 required a finding of unfitness before a minor was placed with the agency for care and service, but it did not apply where mere guardianship was granted to the agency. People v. Angie L. (In re Erin L.), 353 Ill. App. 3d 894, 289 Ill. Dec. 391, 819 N.E.2d 1191, 2004 Ill. App. LEXIS 1450 (3 Dist. 2004).

Under the former Family Court Act (see now this section), it was not necessary that the parent be "unfit" to be deprived of custody; a finding that a parent was unable or unwilling to care for, protect, train, educate or discipline the child was sufficient. Breger v. Seymour, 74 Ill. App. 2d 197, 219 N.E.2d 265 (2 Dist. 1966).

Discretion of Court

Unlike in an adoption scenario, the best interests of the child is the standard in a custody case under this Act and the trial court has wide discretion. People v. Fontenot, 174 Ill. App. 3d 732, 124 Ill. Dec. 375, 529 N.E.2d 92 (4 Dist. 1988).

With regard to the function of the trial court to make the proper disposition, the choice of dispositional order rests within the sound discretion of the trial court; such order will not be overturned absent an abuse of discretion. People v. Sexton, 151 Ill. App. 3d 884, 105 Ill. Dec. 413, 504 N.E.2d 513 (4 Dist. 1987).

A trial court may choose as it sees fit among the various alternatives, and not defer to any particular disposition. People v. T.A.C., 138 Ill. App. 3d 794, 93 Ill. Dec. 274, 486 N.E.2d 375 (4 Dist. 1985).

Any disposition available under former Ill. Rev. Stat., ch. 37, para. 705-2 (see now this section) may be used, with no single disposition being preferred over others. When proceedings are under this Act, the state is concerned with protecting the best interests of the minor; this standard encompasses concern for the least restrictive viable placement for the minor. In re White, 103 Ill. App. 3d 105, 58 Ill. Dec. 50, 429 N.E.2d 1383 (4 Dist. 1982).

Former Ill. Rev. Stat., ch. 37, para. 705-2 (see now this section) set forth the various dispositional alternatives available to the court, including probation and commitment to the Department of Corrections, and without deferring one to another, the trial court may choose, as it sees fit, among the various alternatives, and need not defer to any particular disposition. People v. Antosz, 63 Ill. App. 3d 829, 20 Ill. Dec. 638, 380 N.E.2d 847 (1 Dist. 1978); People v. C.O., 73 Ill. App. 3d 369, 29 Ill. Dec. 392, 391 N.E.2d 1075 (2 Dist. 1979).

Emancipation

This Act withstood a constitutional challenge based upon a minor's free exercise of religion claim because after finding a child to be medically neglected, a minor 16 years of age or over who has demonstrated the capacity to manage his own affairs may be partially or completely emancipated and granted whatever rights and responsibilities the court may specify; thus this Act protects the state's interest in guarding immature minors while also allowing a mature minor to exercise the constitutional freedoms of an adult. People v. E.G., 161 Ill. App. 3d 765, 113 Ill. Dec. 477, 515 N.E.2d 286 (1 Dist. 1987).

A Jehovah's Witness, found to be mature and to have made the decision to refuse blood transfusions independently, could not be denied her constitutional right to the free exercise of

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religion solely because of her minority; upon finding that the minor was medically neglected, she should have been partially emancipated and granted the right to accept or refuse transfusions based on her religious belief. People v. E.G., 161 Ill. App. 3d 765, 113 Ill. Dec. 477, 515 N.E.2d 286 (1 Dist. 1987).

Evidence

Trial court erred in granting the county public guardian's motion in limine to bar the father from presenting evidence of his successful parenting of four of the minor child's siblings as relevant evidence of his fitness to be a parent. Such evidence might tend to have indicated that he could parent the minor child even though the minor child had been removed from the family home due to the mother's conduct, such evidence was material to the proceedings regarding termination of his parental rights, and the law expressed a preference for preserving family ties, such as that of the minor child, whenever possible. People v. Oscar H. (In re L.W.), 362 Ill. App. 3d 1106, 299 Ill. Dec. 509, 842 N.E.2d 248, 2005 Ill. App. LEXIS 1285 (1 Dist. 2005).

Fulfilling Service Plan

When the juvenile court examined the efforts made towards achieving the service plan and found it necessary to enter an order to accomplish the goal set in the service plan (the minors' return home), subsection (3) confers the authority on the court to enter the order removing the minors from a foster home and requesting DCFS to select alternative placement. In re A.L., 294 Ill. App. 3d 441, 228 Ill. Dec. 746, 689 N.E.2d 1167 (2 Dist. 1998).

Guardianship

Court did not err when it granted the Illinois Department of Children and Family Services guardianship of the minors, while retaining them in the custody of their mother, because the record showed a history of domestic violence between the mother and the minors' father, and the mother needed to learn the skills necessary to protect herself and the minors from experiencing domestic violence in the future, so that she could provide a safe and nurturing home environment for all involved. People v. Chazteen P. (In re M.P.), 408 Ill. App. 3d 1070, 349 Ill. Dec. 45, 945 N.E.2d 1197, 2011 Ill. App. LEXIS 242 (3 Dist. 2011).

Jurisdiction

Issue of whether the trial court had jurisdiction to hear the wardship petitions was moot because 705 ILCS 405/2-23(1) did not give the trial court authority to order any disposition for a person who had attained 18 years of age prior to the disposition, and the minors had reached their 18th birthdays before the disposition. People v. Ann C. (In re An. C.), 359 Ill. App. 3d 203, 295 Ill. Dec. 802, 833 N.E.2d 1008, 2005 Ill. App. LEXIS 738 (1 Dist. 2005), appeal denied , 217 Ill. 2d 563, 300 Ill. Dec. 365, 844 N.E.2d 37 (2005).

The trial court could have relied upon subsection (3) of Ill. Rev. Stat., ch. 37, para. 802-28 (see now 705 ILCS 405/2-28(3)) in order to change the custody of the minor from the Illinois Department of Children and Family Services to foster parents and to suspend mother's visitation rights with the minor because a dispositional order which awarded custody of the neglected minor did not operate to close the proceedings on the original petition and such order was always subject to modification by the court until a final closing or discharge of the proceedings. In re S.J.K., 149 Ill. App. 3d 663, 103 Ill. Dec. 75, 500 N.E.2d 1146 (5 Dist. 1986).

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The court's orders were void as to the minor and voidable to the parents where the court lacked jurisdiction. People v. Day, 138 Ill. App. 3d 783, 93 Ill. Dec. 206, 486 N.E.2d 307 (4 Dist. 1985).

The juvenile court could not grant relief beyond that specified by statute. Department of Mental Health v. County of Madison, 59 Ill. App. 3d 548, 16 Ill. Dec. 755, 375 N.E.2d 862 (5 Dist. 1978).

Legislative Intent

At hearings on the appropriateness of juvenile services, the legislature intended that the circuit court not be empowered to order specific services. In re Chiara C., 279 Ill. App. 3d 761, 216 Ill. Dec. 344, 665 N.E.2d 404 (1 Dist. 1996).

Modification

Dispositional orders may normally be modified at any time up to final closing and discharge of the proceedings if a court finds that it would be in the best interests of a child to make the modification. Pursuant to 705 ILCS 405/2-23(2), modifications of dispositional orders must be carried out in a way not inconsistent with 705 ILCS 405/2-28. People v. Oscar H. (In re Leona W.), 228 Ill. 2d 439, 320 Ill. Dec. 855, 888 N.E.2d 72, 2008 Ill. LEXIS 304 (2008).

Order to Vacate

Determination that the mother was fit, willing, and able to care for and protect the child was contrary to manifest weight of evidence, where mother failed to protect the older son from physical and sexual abuse by a former paramour and had unresolved psychological issues. People v. Lori B. (In re M.W.), 386 Ill. App. 3d 186, 325 Ill. Dec. 161, 897 N.E.2d 409, 2008 Ill. App. LEXIS 1068 (1 Dist. 2008).

Parental Fitness

Trial court was entitled, pursuant to 705 ILCS 405/2-22(1), to determine whether it was in the best interests of the public and the minor that the minor be made a ward of the court after hearing evidence in the dispositional phase of a Juvenile Court Act proceeding and then determining that the minor child was neglected. As a result, once the trial court found that the mother could not properly care for, protect, train, or discipline the minor child, the trial court was authorized to make the minor child a ward of the court under 705 ILCS 405/2-23(1)(a) in order for the minor child to be committed to the guardianship of the state social services agency pursuant to 705 ILCS 2-27(1). People v. T.C. (In re J.C.), 396 Ill. App. 3d 1050, 336 Ill. Dec. 695, 920 N.E.2d 1285, 2009 Ill. App. LEXIS 1325 (3 Dist. 2009).

State's reading of 705 ILCS 405/2-23(1)(a) to prohibit a trial court from restoring custody of a child to a parent whose acts formed the basis of a neglect finding without first finding that the parent was both fit and able to care for the minor without endangering the minor's health and safety was rejected where, under the statute's plain language, a finding of fitness was a finding of fitness to care for the minor without endangering his health or safety. People v. Amber P. (in re K.L.S-p), Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill App. Lexis 625 (1 Dist. June 24, 2008).

Issue as to whether the trial court erred in granting custody and guardianship to DCFS was considered under the public interest exception to the mootness doctrine where the trial court had found the mother to be dispositionally fit in its oral finding; that ruling prevailed over the

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subsequently written but reserved finding by the court that she was fit. Having initially found the mother fit, the trial court lacked authority to make the child a ward of the court and grant custody and guardianship to DCFS. People v. Amber P. (in re K.L.S-p), Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill App. Lexis 625 (1 Dist. June 24, 2008).

Trial court's oral and written dispositional findings in neglect proceeding that a father was "fit but reserved" were void because they were not authorized by 705 ILCS 405/2-23(1)(a), 2-27(1)(d); the trial court's oral finding of "fit" was controlling and as the father was willing and able to care for child, the trial court's grant of custody and guardianship of the child to the Illinois Department of Children and Families was error. People v. I.S-P (In re K.L.S-P.), 381 Ill. App. 3d 194, 319 Ill. Dec. 753, 886 N.E.2d 516, 2008 Ill. App. LEXIS 299 (1 Dist. 2008).

Trial court maintained jurisdiction pursuant to 705 ILCS 405/2-23(2) to modify its dispositional order that found the mother to be a fit, willing, able parent to the minor child after the minor child previously had been found to be abused and neglected. Therefore, the trial court had the power to later determine that the return of the minor child to the mother from placement with the former foster mother would not endanger the minor child's welfare and was consistent with the best interests of the minor child. People v. Analynn D. (In re Desiree O.), 381 Ill. App. 3d 854, 320 Ill. Dec. 279, 887 N.E.2d 59, 2008 Ill. App. LEXIS 215 (1 Dist. 2008).

Written order stating that a father seeking custody of his neglected children was "fit but reserved" was not a finding supported by 705 ILCS 405/2-23(1)(a), 2-27(1)(d); thus, the written judgment was void, and the trial court's oral pronouncement that a finding on the father's fitness was reserved, was controlling. People v. Marvin W. (In re R.W.), 371 Ill. App. 3d 1171, 309 Ill. Dec. 766, 864 N.E.2d 1007, 2007 Ill. App. LEXIS 306 (1 Dist. 2007).

Permanency Orders

Appropriate manner to invoke the jurisdiction of an appellate court regarding an order that sets a permanency goal in a juvenile court proceeding is to file a petition under Ill. Sup. Ct. R. 306(a)(5), which allows the permissive appeal of an order affecting the care and custody of a minor where appeal is not specifically provided for elsewhere. People v. Perseta B. (In re Faith B.), 349 Ill. App. 3d 930, 285 Ill. Dec. 820, 812 N.E.2d 640, 2004 Ill. App. LEXIS 789 (2 Dist. 2004), aff'd in part and remanded in part, 216 Ill. 2d 1, 295 Ill. Dec. 1, 832 N.E.2d 152 (2005).

Dispositional order in a juvenile court case is final because it may change the status or rights of the parties, but a permanency order, does not; the selection of a permanency goal is not a final determination on the merits with regard to termination of parental rights but, rather, an intermediate procedural step taken for the protection of and best interests of the child. People v. Perseta B. (In re Faith B.), 349 Ill. App. 3d 930, 285 Ill. Dec. 820, 812 N.E.2d 640, 2004 Ill. App. LEXIS 789 (2 Dist. 2004), aff'd in part and remanded in part, 216 Ill. 2d 1, 295 Ill. Dec. 1, 832 N.E.2d 152 (2005).

Order from a juvenile court remained modifiable under 705 ILCS 405/2-28 until final closing and discharge of the proceedings under 705 ILCS 405/2-31, and since the trial court closed the juvenile court case, the appellate court had jurisdiction to challenge the trial court's appointment of the foster parents as guardian of the biological mother's two minor children, as the law allowed the permanency orders to be modified until a permanent goal was reached and the case was closed, at which time a final judgment existed allowing for appellate review. People v. Sylvia M. (In re M.M.), 337 Ill. App. 3d 764, 272 Ill. Dec. 115, 786 N.E.2d 654, 2003 Ill. App. LEXIS 333 (2 Dist. 2003).

Reunification

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Where the state did not terminate parental rights, an order making the change of custody essentially irrevocable by ordering the Department of Children and Family Services (DCFS) to cease attempts at reunification was improper. People v. Sandy F., 265 Ill. App. 3d 1092, 202 Ill. Dec. 848, 638 N.E.2d 716 (1 Dist. 1994).

Vacation of Dispositional Order

When a minor is the ward of a court and under its protection, the juvenile court has the authority to vacate any dispositional order upon a finding that a change in circumstances has occurred warranting such an action. In re D.S., 307 Ill. App. 3d 362, 240 Ill. Dec. 404, 717 N.E.2d 497 (5 Dist. 1999).

Visitation

Neither the "restraining order" subsection of the Juvenile Court Act of 1987, 705 ILCS 405/2-23(3)(ii)), nor the "visiting order" subsection, 705 ILCS 405/2-23(3)(iii) mentions a time limitation; thus, a trial court's dispositional order, which included a suspsension of a father's visitation rights, was propre even though it did not contain a time limitation for the suspension. People v. Thomas B. (In re Taylor B.), 359 Ill. App. 3d 647, 296 Ill. Dec. 48, 834 N.E.2d 605, 2005 Ill. App. LEXIS 863 (3 Dist. 2005).

Pursuant to 705 ILCS 405/1-3(8)(b), a father retained certain residual rights after legal guardianship of his minor child had been transferred to the State, however, a trial court's suspension of visitation in the best interests of the child was proper under 705 ILCS 405/2-23(3)(ii) and 705 ILCS 405/2-23(3)(iii); the trial court's order was both a "restraining order" and a "visiting order," which the trial court found necessary so as not to frustrate the goals of the trial court's "service plan" for the minor. People v. Thomas B. (In re Taylor B.), 359 Ill. App. 3d 647, 296 Ill. Dec. 48, 834 N.E.2d 605, 2005 Ill. App. LEXIS 863 (3 Dist. 2005).

The circumstances and best interests of a child warranted a change in the dispositional order, requiring that she need not attend visits with her mother, where (1) the child testified that her mother slammed her head into a wall and put her in close proximity to her father, who had sexually abused her from age 9 until age 12, in violation of an order of protection, (2) the child was adamant that she did not want to visit with her mother because her mother made her feel like the sexual abuse to which she was subjected was somehow her fault, and (3) the mother had no intention of divorcing the father and was likely to continue a relationship with him. In re D.S., 307 Ill. App. 3d 362, 240 Ill. Dec. 404, 717 N.E.2d 497 (5 Dist. 1999).

Void Orders

Orders granting a guardianship to a father and dispositionally finding a mother unfit and the father fit as a parent were unauthorized under 705 ILCS 405/2-23(1), 2-27(1) because the trial court did not make the two minor children involved wards of the court; as the orders were unauthorized, they were void. People v. Elizabeth L. (In re C.L.), 384 Ill. App. 3d 689, 323 Ill. Dec. 923, 894 N.E.2d 949, 2008 Ill. App. LEXIS 905 (3 Dist. 2008), appeal denied, 2009 Ill. LEXIS 189 (Ill. 2009).

LEGAL PERIODICALS

For article, "Juvenile Law: 1986-87 Illinois Law Survey," see 19 Loy. U. Chi. L.J. 565 (1987-88).

For article, "New Laws Okay Jail and Work for Juveniles," see 68 Ill. B.J. 514 (1980).

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For article, "Drug Addicts and the Dangerous Drug Abuse Act - Special Relief Available to Criminal Defendants in Illinois," see 65 Ill. B.J. 142 (1976).

For article, "Denying Child Welfare Services to Delinquent Teens: A Call to Return to the Roots of Illinois' Juvenile Court," see, 36 Loy. U. Chi. L.J. 925 (2005).

RESEARCH REFERENCES

Jurisdiction or power of juvenile court to order parent of juvenile to make restitution for juvenile's offense. 66 ALR4th 985.

§ 705 ILCS 405/2-24. Protective supervision

Sec. 2-24. Protective supervision. (1) If the order of disposition, following a determination of the best interests of the minor, releases the minor to the custody of his parents, guardian or legal custodian, or continues him in such custody, the court may, if the health, safety and best interests of the minor require, place the person having custody of the minor, except for representatives of private or public agencies or governmental departments, under supervision of the probation office.

(2) An order of protective supervision may require the parent to present the child for periodic medical examinations, which shall include an opportunity for medical personnel to speak with and examine the child outside the presence of the parent. The results of the medical examinations conducted in accordance with this Section shall be made available to the Department, the guardian ad litem, and the court.

(3) Rules or orders of court shall define the terms and conditions of protective supervision, which may be modified or terminated when the court finds that the health, safety and best interests of the minor and the public will be served thereby.

(Source: P.A. 85-601; 88-7, § 15; 90-28, § 10-20.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-24.

CASE NOTES

Analysis

Appeal

- Not Moot

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Authority of Court
- Retake Custody
Determinative Factors
- Sexual and Alcohol Abuse
Person Having Custody

Appeal

- Not Moot

An appeal in proceeding for child neglect was not moot simply because the child was returned to the parents, where their custody was conditioned upon a one year term of supervision which prescribed that parents undergo counselling and allow visits by a social worker and the grandmother, and where such order might have been extended beyond the initial term or the constraints placed upon parents might have been continued. People v. Robinson, 69 Ill. App. 3d 565, 26 Ill. Dec. 93, 387 N.E.2d 923 (1 Dist. 1979).

Authority of Court

Minor was properly removed from the mother's custody because the mother's efforts to properly care for, protect, and discipline the minor were unavailing since the minor refused to cooperate and had been arrested; however, the minor could not be placed in the custody of the Illinois Department of Children and Family Services, because the minor was over age 12 and had been adjudicated delinquent. People v. Donna L. (In re U.O.), 377 Ill. App. 3d 964, 317 Ill. Dec. 361, 881 N.E.2d 529, 2007 Ill. App. LEXIS 1298 (1 Dist. 2007).

- Retake Custody

A court has the authority to retake custody of a minor upon a determination that the order of protective supervision under this section has been violated and that circumstances and the best interests of the child warrant such action. In re P.P., 261 Ill. App. 3d 598, 199 Ill. Dec. 169, 633 N.E.2d 965 (1 Dist. 1994).

Determinative Factors

- Sexual and Alcohol Abuse

Information concerning the father's sexual and alcohol abuse was necessary for the court in deciding whether to issue an order of protection or protective supervision. People v. Hall, 212 Ill. App. 3d 22, 156 Ill. Dec. 213, 570 N.E.2d 689 (3 Dist. 1991).

Person Having Custody

The legislature intended the phrase "the person having custody" in this section to include parents who had rights of visitation subject to the general custody in the other parent; such parents unwilling to abide by the requirements of supervision should be discharged from any such requirements upon formally giving up visitation rights. In re Rider, 113 Ill. App. 3d 1000, 69 Ill. Dec. 697, 447 N.E.2d 1384 (4 Dist. 1983).

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§ 705 ILCS 405/2-25. Order of protection

Sec. 2-25. Order of protection. (1) The court may make an order of protection in assistance of or as a condition of any other order authorized by this Act. The order of protection shall be based on the health, safety and best interests of the minor and may set forth reasonable conditions of behavior to be observed for a specified period. Such an order may require a person:

(a) to stay away from the home or the minor;

(b) to permit a parent to visit the minor at stated periods;

(c) to abstain from offensive conduct against the minor, his parent or any person to whom custody of the minor is awarded;

(d) to give proper attention to the care of the home;

(e) to cooperate in good faith with an agency to which custody of a minor is entrusted by the court or with an agency or association to which the minor is referred by the court;

(f) to prohibit and prevent any contact whatsoever with the respondent minor by a specified individual or individuals who are alleged in either a criminal or juvenile proceeding to have caused injury to a respondent minor or a sibling of a respondent minor;

(g) to refrain from acts of commission or omission that tend to make the home not a proper place for the minor;

(h) to refrain from contacting the minor and the foster parents in any manner that is not specified in writing in the case plan.

(2) *(As amended by P.A. 96-1551, § 955)* The court shall enter an order of protection to prohibit and prevent any contact between a respondent minor or a sibling of a respondent minor and any person named in a petition seeking an order of protection who has been convicted of heinous battery or aggravated battery under subdivision (a)(2) of Section 12-3.05 [720 ILCS 5/12-3.05], aggravated battery of a child or aggravated battery under subdivision (b)(1) of Section 12-3.05, criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal sexual abuse, or aggravated criminal sexual abuse as described in the Criminal Code of 1961 [720 ILCS 5/1-1 et seq.], or has been convicted of an offense that resulted in the death of a child, or has violated a previous order of protection under this Section.

(2) *(As amended by P.A. 96-1551, § 1030)* The court shall enter an order of protection to prohibit and prevent any contact between a respondent minor or a sibling of a respondent minor and any person named in a petition seeking an order of protection who has been convicted of heinous battery, aggravated battery of a child, criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal sexual abuse, or aggravated criminal sexual abuse as described in the Criminal Code of

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1961, or has been convicted of an offense that resulted in the death of a child, or has violated a previous order of protection under this Section.

(3) When the court issues an order of protection against any person as provided by this Section, the court shall direct a copy of such order to the Sheriff of that county. The Sheriff shall furnish a copy of the order of protection to the Department of State Police within 24 hours of receipt, in the form and manner required by the Department. The Department of State Police shall maintain a complete record and index of such orders of protection and make this data available to all local law enforcement agencies.

(4) After notice and opportunity for hearing afforded to a person subject to an order of protection, the order may be modified or extended for a further specified period or both or may be terminated if the court finds that the health, safety, and best interests of the minor and the public will be served thereby.

(5) An order of protection may be sought at any time during the course of any proceeding conducted pursuant to this Act if such an order is consistent with the health, safety, and best interests of the minor. Any person against whom an order of protection is sought may retain counsel to represent him at a hearing, and has rights to be present at the hearing, to be informed prior to the hearing in writing of the contents of the petition seeking a protective order and of the date, place and time of such hearing, and to cross examine witnesses called by the petitioner and to present witnesses and argument in opposition to the relief sought in the petition.

(6) Diligent efforts shall be made by the petitioner to serve any person or persons against whom any order of protection is sought with written notice of the contents of the petition seeking a protective order and of the date, place and time at which the hearing on the petition is to be held. When a protective order is being sought in conjunction with a temporary custody hearing, if the court finds that the person against whom the protective order is being sought has been notified of the hearing or that diligent efforts have been made to notify such person, the court may conduct a hearing. If a protective order is sought at any time other than in conjunction with a temporary custody hearing, the court may not conduct a hearing on the petition in the absence of the person against whom the order is sought unless the petitioner has notified such person by personal service at least 3 days before the hearing or has sent written notice by first class mail to such person's last known address at least 5 days before the hearing.

(7) A person against whom an order of protection is being sought who is neither a parent, guardian, legal custodian or responsible relative as described in Section 1-5 [705 ILCS 405/1-5] is not a party or respondent as defined in that Section and shall not be entitled to the rights provided therein. Such person does not have a right to appointed counsel or to be present at any hearing other than the hearing in which the order of protection is being sought or a hearing directly pertaining to that order. Unless the court orders otherwise, such person does not have a right to inspect the court file.

(8) All protective orders entered under this Section shall be in writing. Unless the person against whom the order was obtained was present in court when the order was issued, the sheriff, other law enforcement official or special process server shall promptly serve that order upon that person and file proof of such service, in the manner provided for service

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of process in civil proceedings. The person against whom the protective order was obtained may seek a modification of the order by filing a written motion to modify the order within 7 days after actual receipt by the person of a copy of the order. Any modification of the order granted by the court must be determined to be consistent with the best interests of the minor.

(9) If a petition is filed charging a violation of a condition contained in the protective order and if the court determines that this violation is of a critical service necessary to the safety and welfare of the minor, the court may proceed to findings and an order for temporary custody.

(Source: P.A. 85-1209; 88-7, § 15; 89-428, § 255; 89-462, § 255; 90-15, § 15; 90-28, § 10-20; 90-655, § 156; 95-405, § 10; 96-1551, §§ 955, 1030.)

Multiple Versions of Subsections Multiple versions of subsections within this section have been created by the editor to reflect conflicting or postponed legislation.

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-25.

Section 9995 of P.A. 96-1551 contains a "no acceleration or delay" provision.

Cross References.

As to the use of order of protection to prevent the mismanagement of an assistance grant under Article IV of the Public Aid Code, entitled Aid to Families with Dependent Children, see 305 ILCS 5/4-8.

Effect of Amendments. The 1998 amendment by P.A. 90-655, effective July 30, 1998, incorporated the amendments by P.A. 90-15 and P.A. 90-28; inserted "from" in subdivision (1)(h); and substituted "within" for "with" in subsection (3).

The amendment by P.A. 95-405, effective June 1, 2008, added (9).

The 2011 amendment by P.A. 96-1551, § 995, effective July 1, 2011, in (2), inserted "or aggravated battery under subdivision (a)(2) of Section 12-3.05" and "or aggravated battery under subdivision (b)(1) of Section 12-3.05."

The 2011 amendment by P.A. 96-1551, § 1030, effective July 1, 2011, in (2), deleted "under Section 12-4.1" following "heinous battery," deleted "under Section 12-4.3" following "battery of a child," deleted "under Section 12-13" preceding "aggravated criminal sexual assault," deleted "under Section 12-14" preceding "predatory criminal," deleted "under Section 12-14.1" following "assault of a child," deleted "under Section 12-15" preceding "or aggravated," and substituted "as described in" for "under Section 12-16 of."

CASE NOTES

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Analysis

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Constitutionality

Public Act 89-428 was enacted in violation of the single subject rule of the state constitution and is therefore invalid in its entirety. Johnson v. Edgar, 176 Ill. 2d 499, 224 Ill. Dec. 1, 680 N.E.2d 1372 (1997).

Authority of Court

When a child is the ward of the court and under its protection, 705 ILCS 405/2-23(3) and 705 ILCS 405/2-28 give the court the authority to vacate any dispositional order it has made and issue any new dispositional order that it might have made, upon a determination that a change in circumstances has occurred necessitating such action. In re P.P., 261 Ill. App. 3d 598, 199 Ill. Dec. 169, 633 N.E.2d 965 (1 Dist. 1994).

In entering an order of protection, the court may set forth reasonable conditions of behavior to be observed, which need not be limited to problems relating to the abuse of children. People v. Harper, 148 Ill. App. 3d 877, 102 Ill. Dec. 208, 499 N.E.2d 988 (3 Dist. 1986).

Determinative Factors

- Sexual and Alcohol Abuse

Information concerning the father's sexual and alcohol abuse was necessary for the court in deciding whether to issue an order of protection or protective supervision. People v. Hall, 212 Ill. App. 3d 22, 156 Ill. Dec. 213, 570 N.E.2d 689 (3 Dist. 1991).

Illustrative Cases

Because mother's visitation rights with the minor could have been found to constitute a continuous serious threat to the mental, physical, and emotional well being of the minor, an order of protection requiring mother to stay away from the minor could have been entered. In re S.J.K., 149 Ill. App. 3d 663, 103 Ill. Dec. 75, 500 N.E.2d 1146 (5 Dist. 1986).

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Jurisdiction

The failure to apprise a person that his presence was required as a party at hearing, along with the failure to name person as a respondent in a petition or amended petition specifically seeking an order of protection against him, rendered the order of protection void. People v. Rasmussen, 147 Ill. App. 3d 656, 101 Ill. Dec. 103, 498 N.E.2d 285 (4 Dist. 1986).

Where adult was not named as a respondent or served with summons as provided in this Act, he was not "before the court" for purposes of issuing order of protection simply by virtue of his physical presence in the courtroom. People v. Rasmussen, 147 Ill. App. 3d 656, 101 Ill. Dec. 103, 498 N.E.2d 285 (4 Dist. 1986).

An adult who is properly a respondent in a juvenile case might waive summons by an appearance before the court. People v. Rasmussen, 147 Ill. App. 3d 656, 101 Ill. Dec. 103, 498 N.E.2d 285 (4 Dist. 1986).

The language of former Ill. Rev. Stat., ch. 37, para. 705-5 (see now this section), permitting an order of protection to issue against any person "who is before the court on the original or supplemental petition" referred only to a person named as a respondent under the provisions of former Ill. Rev. Stat., ch. 37, para. 704-1(4) (see now 705 ILCS 405/2-13). People v. Rasmussen, 147 Ill. App. 3d 656, 101 Ill. Dec. 103, 498 N.E.2d 285 (4 Dist. 1986).

Legislative Intent

The word "omission" was considered by the legislature and would seem to suggest that one may be required to take affirmative action where appropriate. In adopting the Neglected Children Offense Act the legislature definitely established a requirement that parents have a duty to prevent dependency and neglect. In re J.C., 248 Ill. App. 3d 905, 187 Ill. Dec. 657, 617 N.E.2d 1378 (4 Dist. 1993).

Naming Perpetrator

A trial court's finding in the adjudicatory order naming the perpetrator of an onerous offense would have, as the trial court indicated, violated the fundamental principles of due process. Therefore, the trial court did not err by refusing to name the perpetrator in its judicial findings. In re A.M., 296 Ill. App. 3d 752, 231 Ill. Dec. 164, 695 N.E.2d 1283 (1 Dist. 1998).

A specific finding naming the perpetrator of abuse in the adjudicatory order was unnecessary to protect the minor because the perpetrator had already been named frequently throughout the proceedings and was named in the original and final orders of protection. In re A.M., 296 Ill. App. 3d 752, 231 Ill. Dec. 164, 695 N.E.2d 1283 (1 Dist. 1998).

Permanency Review Hearings

At a permanency review hearing pursuant to 705 ILCS 405/2-28, and without complying with this section, the court may suspend a parent's visitation until the parent obtains previously ordered counseling. People v. Arnold (In re A.A.), 315 Ill. App. 3d 950, 248 Ill. Dec. 859, 735 N.E.2d 179, 2000 Ill. App. LEXIS 705 (4 Dist. 2000).

School Attendance

Although the order of the trial court was erroneously described as a Protective Order, as it applied to the minor, the trial court had the jurisdiction and the statutory authority under former Ill. Rev.

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Stat., ch. 37, para. 705-5 (see now this section) to require the minor to attend school; the mislabeling did not hinder the minor from knowing what she was required to do. People v. J.A., 108 Ill. App. 3d 426, 64 Ill. Dec. 143, 439 N.E.2d 72 (3 Dist. 1982).

Sexual Abuse

A proscription in a court order protecting a child from the risk of incest should be terminated only after there has been an evidentiary hearing and the trial court makes a determination that the child is no longer at foreseeable risk of incest if the child has unsupervised visitation with his or her parent. People ex rel. Yolaine J. v. Yolande, 274 Ill. App. 3d 208, 210 Ill. Dec. 714, 653 N.E.2d 909 (1 Dist. 1995).

Time Limit Required

The order was improperly not limited to a "specified period" of time. People v. Sandy F., 265 Ill. App. 3d 1092, 202 Ill. Dec. 848, 638 N.E.2d 716 (1 Dist. 1994).

The suspension of mother's visitation rights with her child without limitation was impermissible; therefore, the cause was remanded to the trial court with directions to enter an order which specified the period during which mother must stay away from the minor. In re S.J.K., 149 Ill. App. 3d 663, 103 Ill. Dec. 75, 500 N.E.2d 1146 (5 Dist. 1986).

LEGAL PERIODICALS

For article, "Juvenile Law: 1986-87 Illinois Law Survey," see 19 Loy. U. Chi. L.J. 565 (1987-88).

§ 705 ILCS 405/2-26. Enforcement of orders of protective supervision or of protection

Sec. 2-26. Enforcement of orders of protective supervision or of protection. (1) Orders of protective supervision and orders of protection may be enforced by citation to show cause for contempt of court by reason of any violation thereof and, where protection of the welfare of the minor so requires, by the issuance of a warrant to take the alleged violator into custody and bring him before the court.

(2) In any case where an order of protection has been entered, the clerk of the court may issue to the petitioner, to the minor or to any other person affected by the order a certificate stating that an order of protection has been made by the court concerning such persons and setting forth its terms and requirements. The presentation of the certificate to any peace officer authorizes him to take into custody a person charged with violating the terms of the order of protection, to bring such person before the court and, within the limits of his legal authority as such peace officer, otherwise to aid in securing the protection the order is intended to afford.

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(Source: P.A. 85-601.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-26.

§ 705 ILCS 405/2-27. Placement; legal custody or guardianship

Sec. 2-27. Placement; legal custody or guardianship. (1) If the court determines and puts in writing the factual basis supporting the determination of whether the parents, guardian, or legal custodian of a minor adjudged a ward of the court are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so, and that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents, guardian or custodian, the court may at this hearing and at any later point:

(a) place the minor in the custody of a suitable relative or other person as legal custodian or guardian;

(a-5) with the approval of the Department of Children and Family Services, place the minor in the subsidized guardianship of a suitable relative or other person as legal guardian; "subsidized guardianship" means a private guardianship arrangement for children for whom the permanency goals of return home and adoption have been ruled out and who meet the qualifications for subsidized guardianship as defined by the Department of Children and Family Services in administrative rules;

(b) place the minor under the guardianship of a probation officer;

(c) commit the minor to an agency for care or placement, except an institution under the authority of the Department of Corrections or of the Department of Children and Family Services;

(d) commit the minor to the Department of Children and Family Services for care and service; however, a minor charged with a criminal offense under the Criminal Code of or adjudicated delinquent shall not be placed in the custody of or committed to the Department of Children and Family Services by any court, except (i) a minor less than years of age and committed to the Department of Children and Family Services under Section 5-710 of this Act [705 ILCS 405/5-710], (ii) a minor for whom an independent basis of abuse, neglect, or dependency exists, or (iii) a minor for whom the court has granted a supplemental petition to reinstate wardship pursuant to subsection (2) of Section 2-33 of this Act [705 ILCS 405/2-33]. An independent basis exists when the allegations or adjudication of abuse, neglect, or dependency do not arise from the same facts, incident, or circumstances which give rise to a charge or adjudication of delinquency. The Department shall be given due notice of the pendency of the action and the Guardianship Administrator of the Department of Children and Family Services shall

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be appointed guardian of the person of the minor. Whenever the Department seeks to discharge a minor from its care and service, the Guardianship Administrator shall petition the court for an order terminating guardianship. The Guardianship Administrator may designate one or more other officers of the Department, appointed as Department officers by administrative order of the Department Director, authorized to affix the signature of the Guardianship Administrator to documents affecting the guardian-ward relationship of children for whom he or she has been appointed guardian at such times as he or she is unable to perform the duties of his or her office. The signature authorization shall include but not be limited to matters of consent of marriage, enlistment in the armed forces, legal proceedings, adoption, major medical and surgical treatment and application for driver's license. Signature authorizations made pursuant to the provisions of this paragraph shall be filed with the Secretary of State and the Secretary of State shall provide upon payment of the customary fee, certified copies of the authorization to any court or individual who requests a copy.

(1.5) In making a determination under this Section, the court shall also consider whether, based on health, safety, and the best interests of the minor,

(a) appropriate services aimed at family preservation and family reunification have been unsuccessful in rectifying the conditions that have led to a finding of unfitness or inability to care for, protect, train, or discipline the minor, or

(b) no family preservation or family reunification services would be appropriate, and if the petition or amended petition contained an allegation that the parent is an unfit person as defined in subdivision (D) of Section 1 of the Adoption Act [750 ILCS 50/1], and the order of adjudication recites that parental unfitness was established by clear and convincing evidence, the court shall, when appropriate and in the best interest of the minor, enter an order terminating parental rights and appointing a guardian with power to consent to adoption in accordance with Section 2-29 [705 ILCS 405/2-29].

When making a placement, the court, wherever possible, shall require the Department of Children and Family Services to select a person holding the same religious belief as that of the minor or a private agency controlled by persons of like religious faith of the minor and shall require the Department to otherwise comply with Section 7 of the Children and Family Services Act [20 ILCS 505/7] in placing the child. In addition, whenever alternative plans for placement are available, the court shall ascertain and consider, to the extent appropriate in the particular case, the views and preferences of the minor.

(2) When a minor is placed with a suitable relative or other person pursuant to item (a) of subsection (1), the court shall appoint him or her the legal custodian or guardian of the person of the minor. When a minor is committed to any agency, the court shall appoint the proper officer or representative thereof as legal custodian or guardian of the person of the minor. Legal custodians and guardians of the person of the minor have the respective rights and duties set forth in subsection (9) of Section 1-3 [705 ILCS 405/1-3] except as otherwise provided by order of court; but no guardian of the person may consent to adoption of the minor unless that authority is conferred upon him or her in accordance with Section 2-29. An agency whose representative is appointed guardian of the person or legal custodian of the minor may place the minor in any child care facility, but the facility

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must be licensed under the Child Care Act of 1969 [225 ILCS 10/1 et seq.] or have been approved by the Department of Children and Family Services as meeting the standards established for such licensing. No agency may place a minor adjudicated under Sections 2-3 or 2-4 [705 ILCS 405/2-3 or 705 ILCS 405/2-4] in a child care facility unless the placement is in compliance with the rules and regulations for placement under this Section promulgated by the Department of Children and Family Services under Section 5 of the Children and Family Services Act [20 ILCS 505/1 et seq.]. Like authority and restrictions shall be conferred by the court upon any probation officer who has been appointed guardian of the person of a minor.

(3) No placement by any probation officer or agency whose representative is appointed guardian of the person or legal custodian of a minor may be made in any out of State child care facility unless it complies with the Interstate Compact on the Placement of Children. Placement with a parent, however, is not subject to that Interstate Compact.

(4) The clerk of the court shall issue to the legal custodian or guardian of the person a certified copy of the order of court, as proof of his authority. No other process is necessary as authority for the keeping of the minor.

(5) Custody or guardianship granted under this Section continues until the court otherwise directs, but not after the minor reaches the age of 19 years except as set forth in Section 2-31 [705 ILCS 405/2-31], or if the minor was previously committed to the Department of Children and Family Services for care and service and the court has granted a supplemental petition to reinstate wardship pursuant to subsection (2) of Section 2-33.

(6) (Blank).

(Source: P.A. 87-14; 88-7, § 15; 88-487, § 50; 88-614, § 110; 88-670, § 2-63; 89-21, § 15-15; 89-422, § 3; 89-626, § 2-68; 90-27, § 30; 90-28, § 10-20; 90-512, § 13; 90-590, § 2001-10; 90-608, § 30; 90-655, § 156; 91-357, § 236; 95-642, § 10; 96-581, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-27.

Cross References.

As to the termination of parental rights under the Children and Family Services Act, see 20 ILCS 505/35.2.

As to payments by parents or others for the care, support and necessary special care or treatment of a minor placed under this section, see 705 ILCS 405/6-9.

Effect of Amendments. The 1998 amendment by P.A. 90-590, effective January 1, 1999, substituted "5-710" for "5-23" in the first sentence in subdivision (1)(d).

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The 1998 amendment by P.A. 90-608, effective June 30, 1998, incorporated the amendments by P.A. 90-27, P.A. 90-28, and P.A. 90-512; and deleted former subsection (6), concerning default termination of parental rights.

The 1998 amendment by P.A. 90-655, effective July 30, 1998, incorporated the amendments by P.A. 90-27, 90-28, and P.A. 90-512.

The 1999 amendment by P.A. 91-357, effective July 29, 1999, incorporated the amendments by P.A. 90-590, 90-608 and 90-655.

The 2007 amendment by P.A. 95-642, effective June 1, 2008, rewrote (d).

The 2009 amendment by P.A. 96-581, effective January 1, 2010, in the first sentence of (1)(d), added item designations (i) and (ii) and added item (iii); added "or if the minor was previously committed to the Department of Children and Family Services for care and service and the court has granted a supplemental petition to reinstate wardship pursuant to subsection (2) of Section 2-33" in (5); and made related changes.

CASE NOTES

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Constitutionality

The provisions of 705 ILCS 405/2-10 and this section, preventing minors 13 years of age or older who have been charged with a criminal offense or adjudicated delinquent from being committed to or placed in the custody of the Department of Children and Family Services, do not violate the equal protection clauses of the state or federal constitutions. In re A.A., 181 Ill. 2d 32, 228 Ill. Dec. 905, 690 N.E.2d 980 (1998).

Under a rational basis review, the 1989 amendments to 705 ILCS 405/2-10(2), 705 ILCS 405/2-27(1)(d), and 20 ILCS 505/5 do not violate the equal protection clause of U.S. Const., Amend. XIV by denying minors 13 and over who have been adjudicated delinquent access to services of the Department of Children and Family Services because the classification of minors based on their delinquency serves the rational purposes of allocating the Department's scarce resources to its core population of abused, neglected, or dependent minors with no history of delinquency and because delinquent minors aged 13 and older might present a danger to younger, more

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vulnerable children with whom they might be placed in foster homes and shelter care facilities. Corman v. C.T. (In re C.T.), 281 Ill. App. 3d 189, 217 Ill. Dec. 219, 666 N.E.2d 888, 1996 Ill. App. LEXIS 423 (1 Dist. 1996).

In General

Where trial court's finding that mother was unable to care for her child was held to be sufficient by itself to sustain the court's judgment adjudicating the child a ward of the state, mother's appeal from the trial court's additional finding that she was an unfit parent was moot. People v. Neal (In re M.B.), 332 Ill. App. 3d 996, 266 Ill. Dec. 134, 773 N.E.2d 1204, 2002 Ill. App. LEXIS 598 (1 Dist. 2002).

Because any ward of the court, not just neglected children, may be removed from his parent or guardian by a dispositional order of placement pursuant to former Ill. Rev. Stat., ch. 37, para. 705-7 (see now this section), it would be inconsistent with this Act to require that conditions imposed upon a parent at the dispositional hearing, designed to achieve the return of a child removed from the parent pursuant to this section, be reasonably related to the jurisdictional facts which ultimately lead to the adjudication of wardship. People v. Green, 173 Ill. App. 3d 922, 123 Ill. Dec. 693, 528 N.E.2d 238 (2 Dist. 1988).

Appropriate Services

- Factors Considered

To determine whether appropriate services aimed at family preservation and family reunification were provided and were unsuccessful, the following factors are relevant: (1) what type of service plan was set up by the Department of Children and Family Services; (2) what efforts were made by the parents to complete the program; and (3) what was the severity of the conditions which led to the finding of parental unfitness. People v. Lewis, 144 Ill. App. 3d 55, 98 Ill. Dec. 334, 494 N.E.2d 261 (5 Dist. 1986).

Burden of Proof

Juvenile court in a child custody matter should not have restored custody of the minor daughter to the mother based on mother's petition where the minor daughter had been found to be a neglected child due to the mother's drug use, and no finding was made pursuant to 755 ILCS 5/11-7, 705 ILCS 405/2-27(1), 705 ILCS 405/2-23(1)(a), or 705 ILCS 405/2-28 that the mother had been found once again to be a fit parent. People v. R.P. (In re G.P.), 385 Ill. App. 3d 490, 324 Ill. Dec. 654, 896 N.E.2d 440, 2008 Ill. App. LEXIS 996 (3 Dist. 2008).

Because the trial court's finding of unfitness was not a complete termination of all parental rights, the standard of proof for return of custody to a parent is a preponderance of the evidence. In re Lakita B., 297 Ill. App. 3d 985, 232 Ill. Dec. 88, 697 N.E.2d 830 (1 Dist. 1998).

- Stipulation

In action to adjudicate children wards of the court pursuant to 705 ILCS 405/2-27(1), mother's argument that the court never ensured that she was aware of the consequences of entering into a stipulation admitting that her children had been abused by their father was waived because she failed to raise the issue before the trial court; however, even if the issue was not waived, the stipulation, made under the Juvenile Court Act, 705 ILCS 405/1-1, was voluntarily and intelligently entered into. People v. Kathleen C. (In re April C.), 326 Ill. App. 3d 225, 260 Ill. Dec. 6, 760 N.E.2d 85, 2001 Ill. App. LEXIS 828 (1 Dist. 2001).

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Construction

Guardianship of a legal guardian continued pursuant to 705 ILCS 405/2-27(5) until the trial court directed otherwise. As a result, the legal guardian of the two minor grandchildren could not remain in the neglect case after the trial court dismissed the legal guardian as guardian since the legal guardian was no longer a necessary party under 705 ILCS 405/1-5(1), although the trial court did have the power under 705 ILCS 405/2-28 to restore a former guardian as guardian if the circumstances warranted doing so. People v. Long (In re C.C.), Ill. 2d , 355 Ill. Dec. 25, 959 N.E.2d 53, 2011 Ill. LEXIS 1841 (2011).

By wording the terms in the disjunctive, the legislature intended that custody of a minor can be taken away from a natural parent if that parent is adjudged to be either unfit or unable or unwilling. People v. James C. (In re J.B.), 332 Ill. App. 3d 316, 265 Ill. Dec. 603, 772 N.E.2d 974, 2002 Ill. App. LEXIS 534 (1 Dist. 2002).

Although the Act does not specifically define "unable", "unwilling" or "unfit", the terms nonetheless have separate meanings; by wording the terms in the disjunctive, the legislature intended that custody of a minor can be taken away from a natural parent if that parent is adjudged to be either unfit or unable or unwilling. In re Lakita B., 297 Ill. App. 3d 985, 232 Ill. Dec. 88, 697 N.E.2d 830 (1 Dist. 1998).

Neither 705 ILCS 405/2-10 nor 705 ILCS 405/2-27 makes any provision for the commitment of delinquent minors with an "independent basis" for their wardship; rather, each section provides a clear prohibition on the commitment of a delinquent minor to the custody of the Department of Children and Family Services, excepting only those minors less than 13 years old who have been committed to the Department pursuant to 705 ILCS 405/5-710. Corman v. C.T. (In re C.T.), 281 Ill. App. 3d 189, 217 Ill. Dec. 219, 666 N.E.2d 888, 1996 Ill. App. LEXIS 423 (1 Dist. 1996).

The inclusion in Ill. Pub. Act 89-21 of the same amendatory language in both 705 ILCS 405/2-10 and 705 ILCS 405/2-27 (part of the Juvenile Court Act) can serve no purpose but to extend the prohibition against the placement with Department of Children and Family Services of minors aged 13 and over with a history of delinquency to abuse, neglect, and dependency proceedings. Corman v. C.T. (In re C.T.), 281 Ill. App. 3d 189, 217 Ill. Dec. 219, 666 N.E.2d 888, 1996 Ill. App. LEXIS 423 (1 Dist. 1996).

Costs

Juvenile court is without authority to require Department of Children and Family Services (DCFS) to pay for in-home services provided to a minor and his family when DCFS has been removed as the custodial party. Rami M. v. Illinois Dep't of Children & Family Servs., 285 Ill. App. 3d 267, 220 Ill. Dec. 446, 673 N.E.2d 358 (1 Dist. 1996), appeal denied, 172 Ill. 2d 552, 223 Ill. Dec. 195, 679 N.E.2d 380 (1997).

Custody

- Best Interests of the Minor

The parents' rights may be secondary to the state's strong interest in protecting children where the potential for abuse of neglect exists, and the state may separate the parents from the child in such situations. People v. Rankin, 186 Ill. App. 3d 386, 134 Ill. Dec. 308, 542 N.E.2d 487 (4 Dist. 1989).

- Finding of Abuse

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Trial court could deny custody to mother under former Ill. Rev. Stat., ch. 37, paras. 705-2(1)(d) and 705-7 (see now this section), even though the court explicitly stated that it could not determine who was responsible for the abuse of the child. In re Weber, 181 Ill. App. 3d 702, 130 Ill. Dec. 361, 537 N.E.2d 428 (5 Dist. 1989).

- Grandparents

The Department of Children and Family Services cannot be permitted through proceedings involving a neglected child to stall and frustrate a timely petition by fit grandparents for custody and adoption, and then claim that the child's attachments to foster parents, permitted to be formed during this interval, should be preserved, and that the best interests of the infant are better served by refraining from disturbing the relationship the agency has created. Smith v. Smith, 38 Ill. App. 3d 217, 347 N.E.2d 292 (4 Dist. 1976).

- Intervention by State

Although parents have an inherent right to custody of their own children, this right is not absolute; through its role as parens patriae, the state, in appropriate circumstances, can properly step in and substitute itself as the guardian of neglected minor children within its jurisdiction. People v. Wheat, 68 Ill. App. 3d 471, 25 Ill. Dec. 7, 386 N.E.2d 278 (1 Dist. 1979).

- Minors Considered Together

When a child has been subjected to sexual abuse at the hands of a resident of that child's home, the court ought to remove that child (and any siblings similarly found to be neglected or abused) from that home and return them only when the court is confident that the risk of sexual abuse has been eliminated. People v. Deavers, 199 Ill. App. 3d 158, 145 Ill. Dec. 181, 556 N.E.2d 799 (4 Dist. 1990).

Although there is no evidence which indicates that the younger children were abused, the fact of the eldest's abuse is enough to sustain the trial court's conclusion that all the children needed to be removed from the parent's home; the court need not wait until they also become the victims of sexual abuse. People v. Deavers, 199 Ill. App. 3d 158, 145 Ill. Dec. 181, 556 N.E.2d 799 (4 Dist. 1990).

- Rights of Parents

To deprive the parents of custodial rights requires a finding that the parents are unfit or unable, other than for financial reason alone, to properly care for the minor or unwilling to do so and that the custody change is in the minor's best interest. People v. Powers, 94 Ill. App. 3d 646, 50 Ill. Dec. 151, 418 N.E.2d 1145 (2 Dist. 1981).

- Superior Right of Fit Parent

A fit parent has a superior right to custody of his or her child under the Act and that right can be superseded only by a showing of good cause or reason to place custody of the child in a third party. In re M.K., 271 Ill. App. 3d 820, 208 Ill. Dec. 242, 649 N.E.2d 74 (4 Dist. 1995), appeal denied, 163 Ill. 2d 558, 212 Ill. Dec. 421, 657 N.E.2d 622 (1995).

Department of Children and Family Services

The Department of Children and Family Services is the legal custodian of a child committed to its care under this section and may place the child in licensed child care facilities, including a foster home as defined by 225 ILCS 10/2.17. Gorski v. Troy, 929 F.2d 1183 (7th Cir. 1991).

Department of Corrections

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- Commitment

Evidence held sufficient that respondent needed the structured and rehabilitative setting that could best be supplied by the Department of Corrections under former Ill. Rev. Stat., ch. 37, para. 705-7(1) (see now this section). People v. J.C., 163 Ill. App. 3d 877, 114 Ill. Dec. 932, 516 N.E.2d 1326 (2 Dist. 1987).

Discontinuation of Life-Sustaining Medical Treatment

This section and 705 ILCS 405/2-11 support a court-appointed guardian's general standing to petition the court for authority to consent to a medical judgment made by a ward's treating physicians, even when that judgment is to discontinue life-sustaining medical treatment. The court is charged with ruling on all matters presented to it regarding the welfare of the child. In re C.A., 236 Ill. App. 3d 594, 177 Ill. Dec. 797, 603 N.E.2d 1171 (1 Dist. 1992).

Do Not Resuscitate Order

- Upheld

The juvenile court properly used the best interests of the child standard in ruling that a minor ward's court-appointed guardian had authority to consent to the entry of a do not resuscitate (DNR) order at such time as the treating doctors agreed it was medically appropriate based upon the ward's medical condition and prognosis. In re C.A., 236 Ill. App. 3d 594, 177 Ill. Dec. 797, 603 N.E.2d 1171 (1 Dist. 1992).

The juvenile court acted properly in hearing a petition and in concluding that a minor ward's court-appointed guardian could consent to the placement of a do not resuscitate (DNR) order on her charts under certain conditions even though in future cases decided under the Health Care Surrogate Act (755 ILCS 40/1 et seq.) this precise issue involving the juvenile court's authority to approve DNR orders may be moot. The new Act permits a surrogate to consent to such orders on behalf of incompetent minors. Although the new Act contemplates private decision-making under the statutory guidelines therein, the case at bar affirms the juvenile court's general authority, upon the guardian or other interested party's request, to hear and resolve issues concerning the ward's welfare. In re C.A., 236 Ill. App. 3d 594, 177 Ill. Dec. 797, 603 N.E.2d 1171 (1 Dist. 1992).

Guardianship

- Hearing Procedure

Stepfather of two minor girls who was appointed their guardian in a divorce proceeding was entitled to the procedural protections incident to an adjudicatory hearing on the issue of his fitness to retain custody. People v. Anast, 22 Ill. App. 3d 750, 318 N.E.2d 18 (1 Dist. 1974).

- Upheld

Trial court did not err by adjudicating a minor child a ward of the court and appointing an administrative agency as the child's guardian, under 705 ILCS 405/2-27(1), because the child while living with the child's parents received numerous unexplained bruises on various parts of the child's body that would not ordinarily have existed except for the acts or omissions of a parent or custodian. People v. Weaver (In re J.W.), 386 Ill. App. 3d 847, 325 Ill. Dec. 756, 898 N.E.2d 803, 2008 Ill. App. LEXIS 1199 (4 Dist. 2008).

Trial court did not abuse its discretion by declining to order that children be placed in a subsidized adoption with their foster mother, and, instead, ordering the termination of their mother's parental rights, as the mother had been found to be unfit, by clear and convincing evidence, and the

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possibilities of the children's return to their father or of their adoption by their foster mother were options. People v. A.S. (In re Jeffrey S.), 329 Ill. App. 3d 1096, 264 Ill. Dec. 277, 769 N.E.2d 1114, 2002 Ill. App. LEXIS 424 (2 Dist. 2002).

At the dispositional proceeding, the trial court conducted a full hearing on the issue of the best placement for the minor: the state offered evidence showing that the social worker assigned to the case, and a psychiatrist and a psychologist who conducted case studies of the parents, all concluded that neither appellant nor the minor's mother was capable of functioning as a responsible parent; appellant, represented by independent counsel during the entire dispositional hearing, neither rebutted nor discredited this evidence; although evidence may indicate that a parent is not fit to have custody of his child, it does not automatically follow that the parent is not fit to be the child's legal parent; the dispositional order did not terminate either parent's parental rights but rather vested legal custody of the minor in the guardian; the trial court's finding of unfitness and its appointment of a guardian with the right to place the minor was not against the manifest weight of the evidence. People v. Belton, 102 Ill. App. 3d 1005, 58 Ill. Dec. 31, 429 N.E.2d 1364 (1 Dist. 1981).

The court's determination that the child must be placed under the guardianship of the Illinois Department of Child and Family Services because the evidence established that her best interests would not be served by placing her in the parental home was supported by a preponderance of the evidence, where the court found that there was abuse in the home. People v. Bariffe, 63 Ill. App. 3d 328, 20 Ill. Dec. 39, 379 N.E.2d 872 (1 Dist. 1978).

Where a court appointed the guardianship administrator as the proper guardian of a child, and also ordered the guardian not to give the child to either parent without leave of the court, the disposition of the case by the circuit court was proper under the statutes and consistent with the Supreme Court's holdings, and the finding of neglect and the deprivation of custody were correct. People v. Stilley, 66 Ill. 2d 515, 6 Ill. Dec. 873, 363 N.E.2d 820 (1977).

Jurisdiction

Issue as to whether the trial court erred in granting custody and guardianship to DCFS was considered under the public interest exception to the mootness doctrine where the trial court had found the mother to be dispositionally fit in its oral finding; that ruling prevailed over the subsequently written but reserved finding by the court that she was fit. Having initially found the mother fit, the trial court lacked authority to make the child a ward of the court and grant custody and guardianship to DCFS. People v. Amber P. (in re K.L.S-p), Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill App. Lexis 625 (1 Dist. June 24, 2008).

Custodial father who argued that the court erred in awarding custody of neglected infant to mother where there was no custody petition on file by the mother, failed to realize that procedures under the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 et seq.) are not the exclusive means by which the trial court acquires jurisdiction in child custody cases; child custody proceedings may also be initiated under this Act. People v. Baker, 213 Ill. App. 3d 274, 157 Ill. Dec. 101, 571 N.E.2d 1120 (4 Dist. 1991).

The juvenile division of the circuit court properly exercised its jurisdiction in entertaining the public guardian's motion to limit the authority of the Department of Children and Family Services administrator although the motion raised issues already pending in the probate division and the Federal court. In re Lehmann, 186 Ill. App. 3d 592, 134 Ill. Dec. 408, 542 N.E.2d 754 (1 Dist. 1989).

Juvenile Court Authority

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Juvenile court had authority pursuant to 705 ILCS 405/2-27(1)(d) to appoint the state child welfare agency as guardian of the minor despite the fact that the state child welfare agency had already been the minor's guardian years earlier. The required independent basis existed for the appointment, as the earlier finding that the minor child had been abused and neglected arose from a separate set of fact from those that gave rise to the current matter upon which the state child welfare agency sought to disclaim a guardianship appointment, namely, an aggravated robbery charge against the minor. People v. Gardenia S. (In re S.D.), 394 Ill. App. 3d 992, 334 Ill. Dec. 969, 917 N.E.2d 1044, 2009 Ill. App. LEXIS 943 (1 Dist. 2009).

Modification of Guardianship Order

Circuit court's interpretation of 705 ILCS 405/2-27 that required a finding of unfitness of a minor's guardian before a change in guardianship could be made was incorrect; once the minor's parents were found unfit, all subsequent guardianship considerations were to be based on the minor's bests interests, not the fitness of the current guardian. Terrell L. v. Dep't of Children & Family Servs. (In re Terrell L.), 368 Ill. App. 3d 1041, 307 Ill. Dec. 113, 859 N.E.2d 113, 2006 Ill. App. LEXIS 1041 (1 Dist. 2006).

Order entered pursuant to former Ill. Rev. Stat., ch. 23, para. 201 (see now this section) taking the children away from their mother was a continuing order subject to modification and, therefore, natural mother could petition court to modify guardianship decree. Ramelow v. People, 3 Ill. App. 2d 190, 121 N.E.2d 41 (3 Dist. 1954).

Parental Unfitness

Trial court's finding that parents were unable to care for, protect, train or discipline their children, 705 ILCS 405/2-27(1), was not against the manifest weight of the evidence, as the father sexually abused his stepdaughter, and the parents made no progress toward correcting this condition, as both of them continued to deny the abuse occurred and the mother continued to reside with the father. In addition, the father had made no progress toward addressing domestic violence issues and had not yet completed a sexual perpetrator assessment. People v. B.M.-B. (In the Interest of D.W.), 386 Ill. App. 3d 124, 325 Ill. Dec. 139, 897 N.E.2d 387, 2008 Ill. App. LEXIS 1059 (1 Dist. 2008).

Unfitness finding was supported by evidence that the father failed to correct the conditions that led to a prior unfitness determination by, inter alia, engaging in counseling to correct his behavior. People v. Eugene W. (In re A.W.), 231 Ill. 2d 92, 324 Ill. Dec. 530, 896 N.E.2d 316, 2008 Ill. LEXIS 889 (2008).

Trial court did not abuse its discretion in placing a one-year-old minor with the Department of Children and Family Services pursuant to 705 ILCS 405/2-27(1) where even though the father was found fit, the purpose of the dispositional hearing was to determine whether it was in the minor's best interest to be made a ward of the court, the trial court was rightfully concerned that the father was living with the minor's mother, who had been found unfit and had threatened to kill the children if they were placed in someone else's home, and the evidence showed that the father was not prepared to take custody of the minor as he had stopped visiting the child for about a month right before the dispositional hearing, and had he not bought a crib or arranged for day care. People v. P.A. (In re Y.A.), 383 Ill. App. 3d 311, 321 Ill. Dec. 988, 890 N.E.2d 710, 2008 Ill. App. LEXIS 606 (1 Dist. 2008).

Trial court's oral and written dispositional findings in neglect proceeding that a father was "fit but reserved" were void because they were not authorized by 705 ILCS 405/2-23(1)(a), 2-27(1)(d); the trial court's oral finding of "fit" was controlling and as the father was willing and able to care for child, the trial court's grant of custody and guardianship of the child to the Illinois Department of

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Children and Families was error. People v. I.S-P (In re K.L.S-P.), 381 Ill. App. 3d 194, 319 Ill. Dec. 753, 886 N.E.2d 516, 2008 Ill. App. LEXIS 299 (1 Dist. 2008).

In a termination proceeding under the Juvenile Court Act of 1987, 705 ILCS 405/2-27, the trial court properly relied on the recommendations of a psychologist. The parent's assertions that the psychologist should have conducted more testing, should have observed her with her children and at her workplace, should have had her evaluated for medical testing to determine if medication could have corrected her depressive disorder, and should have referred her to another therapist when she was not progressing with him were unsupported by the record or any cited authority and consisted of mere supposition and conjecture; further, the psychologist's testimony and recommendations were fully corroborated by the parent's caseworker. People v. L.W. (In re J.J.), 327 Ill. App. 3d 70, 260 Ill. Dec. 693, 761 N.E.2d 1249, 2001 Ill. App. LEXIS 1481 (1 Dist. 2001).

In a termination proceeding under the Juvenile Court Act of 1987, 705 ILCS 405/2-27, the trial court did not err in determining that a psychologist's education alone qualified him as an expert in psychology even though he had no prior experience in evaluating or counseling caregivers in child protective matters and had not yet earned a doctorate in psychology. The psychologist had a bachelor's degree in general psychology, master's degrees in clinical psychology and clinical social work, and was completing work for his doctorate in clinical psychology when he treated the parent; further, he had been employed in the field of psychology for seven years prior to meeting the parent. People v. L.W. (In re J.J.), 327 Ill. App. 3d 70, 260 Ill. Dec. 693, 761 N.E.2d 1249, 2001 Ill. App. LEXIS 1481 (1 Dist. 2001).

In deciding whether to terminate a mother's custodial rights pursuant to the Juvenile Court Act of 1987, 705 ILCS 405/2-27, her maternal bond with her children was not alone sufficient to demonstrate that she was capable of parenting them. People v. L.W. (In re J.J.), 327 Ill. App. 3d 70, 260 Ill. Dec. 693, 761 N.E.2d 1249, 2001 Ill. App. LEXIS 1481 (1 Dist. 2001).

In terminating a mother's custodial rights pursuant to the Juvenile Court Act of 1987, 705 ILCS 405/2-27, the trial court properly consider a child's gunshot injuries and a prior shaken-baby death even though the mother was not found unfit and her children were not removed from her custody after either incident. Evidence of the past incidents was relevant to show that the mother lacked the cognitive ability to anticipate dangerous situations or to protect her children. People v. L.W. (In re J.J.), 327 Ill. App. 3d 70, 260 Ill. Dec. 693, 761 N.E.2d 1249, 2001 Ill. App. LEXIS 1481 (1 Dist. 2001).

Mother's custodial rights to her children, who had been adjudged wards of the court, were properly terminated pursuant to the Juvenile Court Act of 1987, 705 ILCS 405/2-27. Although she complied with the various services and tasks assigned by the Department of Children and Family Services (DCFS), she lacked sufficient cognitive ability to parent her children. People v. L.W. (In re J.J.), 327 Ill. App. 3d 70, 260 Ill. Dec. 693, 761 N.E.2d 1249, 2001 Ill. App. LEXIS 1481 (1 Dist. 2001).

- Appellate Review

A reviewing court should not reverse a trial court's determination of parental unfitness unless it is palpably erroneous and contrary to the manifest weight of the evidence or an abuse of discretion. People v. English M., 189 Ill. App. 3d 392, 136 Ill. Dec. 795, 545 N.E.2d 319 (1 Dist. 1989).

It is not the function of the appellate court to substitute its judgment for that of the trial court, unless the trial court's findings and order are contrary to the manifest weight of the evidence; therefore, where the trial court found the parents were unfit for reasons other than financial circumstances alone, and that it was in the best interests of the minors and the public that the minors be placed with the guardianship administrator with the power to consent to adoption, the appellate court did not find such order and such findings were contrary to the manifest weight of the evidence. People ex rel. Farrand v. Garmon, 4 Ill. App. 3d 391, 280 N.E.2d 19 (4 Dist. 1972).

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- Best Interests of the Minor

Father in an abuse and neglect case regarding the father's two minor children could be ordered to cooperate regarding recommendations made as a result of a sex offender assessment the trial court ordered the father to undergo. Whether the order was proper depended on the 705 ILCS 405/2-27(1) best interest of the minor children, and ordering the father's cooperation was reasonable given the father's past sexual conduct and risk to offend. In re D.M., 395 Ill. App. 3d 972, 335 Ill. Dec. 278, 918 N.E.2d 1091, 2009 Ill. App. LEXIS 1091 (3 Dist. 2009).

The trial court properly considered the best interests of the child in conjunction with making the general finding of parental unfitness. People v. Berry, 86 Ill. App. 3d 522, 42 Ill. Dec. 150, 408 N.E.2d 728 (5 Dist. 1980).

- Both Parents

Both parents must be adjudged unfit or unable to care for the children before placement with Department of Children and Family Services (DCFS) is authorized. In re M.K., 271 Ill. App. 3d 820, 208 Ill. Dec. 242, 649 N.E.2d 74 (4 Dist. 1995), appeal denied, 163 Ill. 2d 558, 212 Ill. Dec. 421, 657 N.E.2d 622 (1995).

- Counseling

The court properly considered the testimony that the respondent continued counseling and therapy, evidencing a capability and desire to be a good parent. In re Lakita B., 297 Ill. App. 3d 985, 232 Ill. Dec. 88, 697 N.E.2d 830 (1 Dist. 1998).

- Emotional Needs

Where the trial court found the mother would be physically capable of protecting and caring for her children, but could not meet their emotional needs, the court was within its authority in taking the minors from the custody of the mother. People v. Johnson, 134 Ill. App. 3d 365, 89 Ill. Dec. 335, 480 N.E.2d 520 (4 Dist. 1985).

- General Finding Verdict

General finding of unfitness of nonconsenting mother was sufficient to sustain the judgment, where the petition alleges her unfitness, the specific grounds therefor were set forth with particularity, and the evidence in the record clearly and convincingly supported the judgment. People v. Berry, 86 Ill. App. 3d 522, 42 Ill. Dec. 150, 408 N.E.2d 728 (5 Dist. 1980).

- Not Shown

Although the trial court properly found that the minor was dependent in that she lacked adequate care, the trial court's dispositional order awarding custody and guardianship of the minor to the state family welfare agency amounted to reversible error; even though the trial court explained that it found the parents had an inability to care for, protect, and properly train the minor it did not enter a written factual basis for that finding of parental inability, and, thus, a new dispositional hearing was required. People v. Mandi H. (In re Madison H.), 347 Ill. App. 3d 1024, 284 Ill. Dec. 99, 809 N.E.2d 221, 2004 Ill. App. LEXIS 426 (3 Dist. 2004), aff'd, 215 Ill. 2d 364, 294 Ill. Dec. 86, 830 N.E.2d 498 (2005).

Court's order finding respondent unfit was not supported by any evidence, where she had no notice that her fitness as a parent due to a physical abuse allegation was to be tried; respondent and the father were not married; the record shows they lived in separate apartments, albeit across the street from each other; the mother and father shared custody of the minor; the Department of Child and Family Services report recommends return of custody to the respondent and did not make any reference to the respondent's unfitness; the prosecutor, the guardian ad litem, the mother's attorney, and the father's attorney, all recommended return of the child to the mother; and the petition did not allege any involvement by her in the abuse and did not refer to

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her unfitness. People v. Wright, 184 Ill. App. 3d 194, 132 Ill. Dec. 531, 539 N.E.2d 1337 (4 Dist. 1989).

- Reasonable Effort to Correct

Where there was no finding that the injuries were inflicted by respondent, since they could have been inflicted by someone else or incurred in a manner not involving the parents, even assuming that respondent was responsible for inflicting the injuries, she could not make a "reasonable effort" to correct the condition of physically abusing the child since she did not have custody of the child after the adjudicatory and dispositional hearings; therefore, the "reasonable efforts" basis of unfitness in 750 ILCS 50/1 (D)(m) did not apply here. People v. LaShay, 81 Ill. App. 3d 962, 36 Ill. Dec. 833, 401 N.E.2d 971 (1 Dist. 1979).

- Reserved

Written order stating that a father seeking custody of his neglected children was "fit but reserved" was not a finding supported by 705 ILCS 405/2-23(1)(a), 2-27(1)(d); thus, the written judgment was void, and the trial court's oral pronouncement that a finding on the father's fitness was reserved, was controlling. People v. Marvin W. (In re R.W.), 371 Ill. App. 3d 1171, 309 Ill. Dec. 766, 864 N.E.2d 1007, 2007 Ill. App. LEXIS 306 (1 Dist. 2007).

- Shown

Evidence sufficiently supported the trial court's finding under 705 ILCS 405/2-27 that the mother was unfit to parent the child and, thus, that determination had to be upheld on appeal. The findings were based on allegations of the neglect petition filed by the State and the evidence showed that the injury to the minor son's leg could not have occurred without abuse or neglect by the mother and/or the father and that both parents had been previously indicated by the state child and family welfare agency for risk of harm and inadequate supervision, and the patents had stipulated to those allegations. People v. Ashlee S. (In re J.Y.), Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1221 (3 Dist. Nov. 30, 2011).

Finding that the children were neglected was supported by the evidence and the finding that the mother was unfit was not against the manifest weight of the evidence, because the child, who was just over a month old had head injuries that were inflicted and caused by abusive head trauma, and the mother still had services to complete, including a psychiatric evaluation and counseling. People v. Anna R. (In re R.R.), 409 Ill. App. 3d 1041, 350 Ill. Dec. 721, 949 N.E.2d 209, 2011 Ill. App. LEXIS 414 (3 Dist. 2011).

Trial court was entitled, pursuant to 705 ILCS 405/2-22(1), to determine whether it was in the best interests of the public and the minor that the minor be made a ward of the court after hearing evidence in the dispositional phase of a Juvenile Court Act proceeding and then determining that the minor child was neglected. As a result, once the trial court found that the mother could not properly care for, protect, train, or discipline the minor child, the trial court was authorized to make the minor child a ward of the court under 705 ILCS 405/2-23(1)(a) in order for the minor child to be committed to the guardianship of the state social services agency pursuant to 705 ILCS 2-27(1). People v. T.C. (In re J.C.), 396 Ill. App. 3d 1050, 336 Ill. Dec. 695, 920 N.E.2d 1285, 2009 Ill. App. LEXIS 1325 (3 Dist. 2009).

Evidence that the mother was unable to protect and care for the children included the mother's mild mental retardation, testimony that the mother needed assistance in parenting for the mother's children, including two that had special needs, the fact that the mother was only permitted two hours per week of supervised visitation with all five children, testimony that the mother wanted to be reunited with the abuser of the oldest child, and evidence that the mother needed further services to address the mother's history of physical and sexual abuse and domestic violence. People v. Amy C. (In re Kamesha J.), 364 Ill. App. 3d 785, 301 Ill. Dec. 611, 847 N.E.2d 621, 2006 Ill. App. LEXIS 200 (1 Dist. 2006).

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Finding that a mother was unfit to care for her child and that a grant of guardianship of the child with the Illinois Department of Children and Family Services was appropriate, was supported by the evidence and was not an abuse of discretion; the evidence established that although the mother was cooperating with her caseworker, she persisted in tolerating and minimizing the consequences of violence directed at the mother and her child by the child's father, even after the child was found to be abused and neglected. People v. Caroline M. (In re K.R.), 356 Ill. App. 3d 517, 292 Ill. Dec. 1006, 827 N.E.2d 535, 2005 Ill. App. LEXIS 379 (3 Dist. 2005).

Under 705 ILCS 405/2-27(1)(d) and 705 ILCS 405/2-22(1), a determination of parental unfitness at a dispositional phase was affirmed where it was not manifestly against weight of evidence for the trial court to find a father unfit to care for his children based on his criminality; the father had been convicted of one count of Class X aggravated kidnapping for the purpose of obtaining a ransom, in violation of 720 ILCS 5/10-2(a)(1), and two counts of Class 1 aggravated kidnapping while armed with a handgun, in violation of 720 ILCS 5/10-2(a)(5). People v. David S. (In re D.S.), 326 Ill. App. 3d 586, 260 Ill. Dec. 750, 762 N.E.2d 16, 2001 Ill. App. LEXIS 1470 (1 Dist. 2001).

Findings by the trial court that father was an unfit parent were not against the manifest weight of the evidence where a preponderance of the evidence established excessive corporal punishment, family violence, continuing anger management problems, and unwillingness to address the situation. People v. Ernie C. (In re April C.), 326 Ill. App. 3d 245, 260 Ill. Dec. 22, 760 N.E.2d 101, 2001 Ill. App. LEXIS 831 (1 Dist. 2001).

The acts, in the presence of respondent, which led to the child's being burned, an act which required planning and took a period of time to complete, as well as other acts, were sufficient to show by a preponderance of the evidence that respondent was unfit to care for her children. In re Lakita B., 297 Ill. App. 3d 985, 232 Ill. Dec. 88, 697 N.E.2d 830 (1 Dist. 1998).

Minor's actions towards doll, reliability of her statements identifying respondent as abuser and findings of her doctor supported the court's finding respondent sexually abused minor and was therefore an unfit parent. In re A.P., 179 Ill. 2d 184, 227 Ill. Dec. 949, 688 N.E.2d 642 (1997).

The unfitness of a parent was proven by clear and convincing evidence where the evidence showed that her efforts to visit her children were half-hearted and easily abandoned, and that she lacked any commitment necessary to complete a service plan. People v. English M., 189 Ill. App. 3d 392, 136 Ill. Dec. 795, 545 N.E.2d 319 (1 Dist. 1989).

Pursuant to former Ill. Rev. Stat., ch. 37, para. 705-7(1)(a) of this Act (see now this section), evidence that a parent's compliance with a service plan was very sporadic or that she failed to participate in a service plan and was unfit, was sufficient to show that she failed to maintain a reasonable degree of interest, concern, or responsibility for the welfare of her children. People v. English M., 189 Ill. App. 3d 392, 136 Ill. Dec. 795, 545 N.E.2d 319 (1 Dist. 1989).

Where the minor had been physically abused and no reasonable explanation had been offered for the child's injuries, and given the severity of the child's head injuries, the trial court did not abuse its discretion in its finding that respondent was unable to properly care for the child. People v. Sexton, 151 Ill. App. 3d 884, 105 Ill. Dec. 413, 504 N.E.2d 513 (4 Dist. 1987).

Trial court's finding that appropriate services aimed at family preservation and family reunification were provided and were unsuccessful was not contrary to the manifest weight of the evidence, where parents did not comply with social worker's recommendations and service plan, that plan was not excessively demanding or harsh, and the circumstances surrounding the finding of the parents' unfitness necessitated the service plan offered to the parents. People v. Lewis, 144 Ill. App. 3d 55, 98 Ill. Dec. 334, 494 N.E.2d 261 (5 Dist. 1986).

The trial court's conclusion under former Ill. Rev. Stat., ch. 37, para. 705-7 (see now this section) that the interests of neglected minors would best be served by placement in residential facilities was not against the manifest weight of the evidence where their mother refused to cooperate in

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special educational programs that had been established for the minors. In re White, 103 Ill. App. 3d 105, 58 Ill. Dec. 50, 429 N.E.2d 1383 (4 Dist. 1982).

Evidence of fornication, of substantial and repeated neglect, and of failure to make reasonable efforts to correct conditions which led to the original adjudication of neglect was clear and convincing, and supported the finding of appellant's mother's unfitness. People v. Berry, 86 Ill. App. 3d 522, 42 Ill. Dec. 150, 408 N.E.2d 728 (5 Dist. 1980).

- Standard of Proof

Because a determination of unfitness pursuant to this section does not result in a termination of parental rights, the standard of proof is the less rigorous preponderance of the evidence and a trial court's determination of unfitness under this section will be disturbed on review only when found to be against the manifest weight of the evidence. People v. Neal (In re M.B.), 332 Ill. App. 3d 996, 266 Ill. Dec. 134, 773 N.E.2d 1204, 2002 Ill. App. LEXIS 598 (1 Dist. 2002).

While the appointment of a guardian with the power to consent to adoption pursuant to 705 ILCS 405/2-29 requires proof of unfitness by clear and convincing evidence, the standard of proof to support trial court's finding of unfitness under 705 ILCS 405/2-27, which does not result in a complete termination of all parental rights, is a preponderance of the evidence. People v. Kathleen C. (In re April C.), 326 Ill. App. 3d 225, 260 Ill. Dec. 6, 760 N.E.2d 85, 2001 Ill. App. LEXIS 828 (1 Dist. 2001).

In termination of parental rights cases, the standard must be clear and convincing. In cases of lesser intrusion into the family structure, the lesser burden of preponderance, or manifest weight, will suffice. People v. Rottinghaus, 146 Ill. App. 3d 504, 100 Ill. Dec. 177, 496 N.E.2d 1242 (4 Dist. 1986).

Parental unfitness must be established by proof of a clear and convincing nature; this standard is a tacit recognition that parents have an inherent right to the society and custody of their children which should not be abrogated except for the most compelling of reasons. People v. Prough, 61 Ill. App. 3d 227, 17 Ill. Dec. 749, 376 N.E.2d 1078 (4 Dist. 1978).

- Unable or Unwilling

Trial court erroneously found that the father was unwilling under 705 ILCS 405/2-27(l) to care for the child; the appellate court rejected the conclusion that the father's failure to interfere with the mother's custodial rights or to exercise unscheduled visitation pending the wardship proceedings was sufficient proof of unwillingness, as, although the father had not established more than a biological relationship with the child, the father stood ready, willing, and able to care for the child. People v. Dennis E.D. (In re Ryan B.), 367 Ill. App. 3d 517, 305 Ill. Dec. 381, 855 N.E.2d 272, 2006 Ill. App. LEXIS 838 (1 Dist. 2006).

Children were properly adjudicated wards of the court pursuant to 705 ILCS 405/2-27(1), where the trial court's finding that the mother was unable, unwilling, and unfit to care for them was not against the manifest weight of the evidence. That the mother was not alleged to have physically abused the children and might have been able to parent them as a single parent was insufficient to overcome ample evidence that the mother continued to live with the father, that the father continued to be a threat to the children's safety, and that the mother had not made sufficient progress in a number of areas, including her ability to protect the children from the father in the home. People v. Kathleen C. (In re April C.), 326 Ill. App. 3d 225, 260 Ill. Dec. 6, 760 N.E.2d 85, 2001 Ill. App. LEXIS 828 (1 Dist. 2001).

A parent who, at the time of the dispositional hearing, has not clearly and unequivocally chosen, to the trial court's satisfaction, the safety of her children over a continued relationship with their abuser is unwilling or unable within the meaning of this section to care for or protect her children, and it is in their best interest that they be removed from their parent's custody until such time, if

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ever, that the court is so satisfied. People v. Deavers, 199 Ill. App. 3d 158, 145 Ill. Dec. 181, 556 N.E.2d 799 (4 Dist. 1990).

Placement

Minor was properly removed from the mother's custody because the mother's efforts to properly care for, protect, and discipline the minor were unavailing since the minor refused to cooperate and had been arrested; however, the minor could not be placed in the custody of the Illinois Department of Children and Family Services, because the minor was over age 12 and had been adjudicated delinquent. People v. Donna L. (In re U.O.), 377 Ill. App. 3d 964, 317 Ill. Dec. 361, 881 N.E.2d 529, 2007 Ill. App. LEXIS 1298 (1 Dist. 2007).

- In General

Language of 705 ILCS 405/2-27 allowing a circuit court to make a placement during the 705 ILCS 405/2-27 "hearing and at any later point" clearly and unambiguously gives the circuit court authority to place a minor once there is a determination that the parents, guardian, or legal custodian was unfit, unable, or unwilling to properly care for the minor; under this language, the Illinois legislature has expressly given a circuit court authority to exercise the options contained in 705 ILCS 405/2-27 at a dependency hearing and at any later point. Terrell L. v. Dep't of Children & Family Servs. (In re Terrell L.), 368 Ill. App. 3d 1041, 307 Ill. Dec. 113, 859 N.E.2d 113, 2006 Ill. App. LEXIS 1041 (1 Dist. 2006).

- Adoption

The fact that 705 ILCS 405/2-29 is explicitly referenced in subsection (3) of this section shows that any ward of the court may be the subject of a petition to adopt, when the ward of the court is removed from a parent by being placed pursuant to this section. People v. Green, 173 Ill. App. 3d 922, 123 Ill. Dec. 693, 528 N.E.2d 238 (2 Dist. 1988).

- Best Interests of the Minor

Once a minor has been adjudicated abused, neglected, or dependent under the Illinois Juvenile Court Act of 1987 and thrust into the care of this state's juvenile system, the circuit court's main and perhaps only function is to address the minor's needs consistent with his best interests. Terrell L. v. Dep't of Children & Family Servs. (In re Terrell L.), 368 Ill. App. 3d 1041, 307 Ill. Dec. 113, 859 N.E.2d 113, 2006 Ill. App. LEXIS 1041 (1 Dist. 2006).

If the "best interests" standard can be attained only by placing the child in the custody of someone other than the natural parent, it is unnecessary for the court to find the natural parent unfit to care for the child. People v. Fontenot, 174 Ill. App. 3d 732, 124 Ill. Dec. 375, 529 N.E.2d 92 (4 Dist. 1988).

- Control of Court

When a circuit court makes an original disposition order placing a child with the Illinois Department of Children and Family Services pursuant to subdivision (1)(d), the circuit court cannot properly dictate where the department shall place the child. In re T.L.C., 285 Ill. App. 3d 922, 221 Ill. Dec. 321, 675 N.E.2d 228 (4 Dist. 1996).

- Factors Considered

Commitment of a 17 year old, who had been adjudicated delinquent, to the custody of the Department of Children and Family Services pursuant to dependency proceedings was improper because the plain language of the Juvenile Court Act, 705 ILCS 405/2-10 and 705 ILCS 405/2-27 and the Children and Family Services Act, 20 ILCS 505/5 prohibited such placement for a minor

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age 13 and older who had been adjudicated delinquent. Corman v. C.T. (In re C.T.), 281 Ill. App. 3d 189, 217 Ill. Dec. 219, 666 N.E.2d 888, 1996 Ill. App. LEXIS 423 (1 Dist. 1996).

With regard to the trial court's discretion in entering a dispositional order, the trial court may place the minor in the custody of a person not a parent of the minor, as provided in this section, if the court finds that: (1) the parents are unfit or unable for reasons other than financial circumstances alone or are unwilling to care for, train, protect, or discipline the minor; and (2) services aimed at family preservation and reenforcement have been unsuccessful in rectifying the conditions leading to findings of unfitness or inability; and (3) the best interests of the minor require custody be placed with someone other than the parents. People v. Roy, 215 Ill. App. 3d 1059, 158 Ill. Dec. 780, 574 N.E.2d 893 (4 Dist. 1991).

- Long Term

Neither this section nor any other portion of the Act provides for a disposition of "long-term permanent placement" with a foster parent. People v. Sandy F., 265 Ill. App. 3d 1092, 202 Ill. Dec. 848, 638 N.E.2d 716 (1 Dist. 1994).

- Not Proper

The juvenile court exceeded its authority in ordering a child to be returned to former foster parents in Illinois. In re M.V., 288 Ill. App. 3d 300, 224 Ill. Dec. 217, 681 N.E.2d 532 (1 Dist. 1997).

There were some errors in the judge's order regarding placement: 1) the judge did not exercise any of the acceptable placement alternatives; 2) principal error, under the Act was the award of "permanent long-term placement"; 3) judge also erred because she did not give grandmother custody, an available option, but only gave her "placement" and 4) the judge additionally left custody and guardianship with the Department of Children and Family Services (DCFS), in disregard of the requirement that, if a judge places the minors with a relative, the judge "shall" give the relative custody or guardianship. People v. Sandy F., 265 Ill. App. 3d 1092, 202 Ill. Dec. 848, 638 N.E.2d 716 (1 Dist. 1994).

- Permanency

Whether the minor is placed with the Department of Children and Family Services (DCFS) or with a "suitable relative" under this section, the placement is not "permanent" because the parents, whose rights have not been terminated, retain the right to petition the court for a restoration of custody. People v. Sandy F., 265 Ill. App. 3d 1092, 202 Ill. Dec. 848, 638 N.E.2d 716 (1 Dist. 1994).

- Private Facility

Under former Ill. Rev. Stat., ch. 37, para. 705-7(1)(c) (see now subdivision (1)(c) of this section), this Act authorizes directing placement of a minor in a specific private facility, and allows a court to commit its ward to an agency for care or placement, except to an institution under the authority of the Department of Corrections (DOC) or of the Department of Children and Family Services (DCFS); where the facility in question was not under the authority of DOC or DCFS and was an agency for care or placement, then the court was proper in directing such placement. In re White, 103 Ill. App. 3d 105, 58 Ill. Dec. 50, 429 N.E.2d 1383 (4 Dist. 1982).

- Requirements

To deprive the parents of custodial rights requires a finding that the parents are unfit or unable, other than for financial reason alone, to properly care for the minor, or are unwilling to do so and that the custody change is in the minor's best interest. People v. Powers, 94 Ill. App. 3d 646, 50 Ill. Dec. 151, 418 N.E.2d 1145 (2 Dist. 1981).

- Responsibilities Concerning Child

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Once an adoptive placement is determined to be in the best interests of the child, the responsibilities concerning the care, custody, and control of the child vest, solely, in the adoptive parents and it is up to them to decide whether to permit or deny continued contact with the child's biological family; biological family ties do not continue to receive protected status in the face of an adoption. In re Donte, 259 Ill. App. 3d 246, 197 Ill. Dec. 254, 631 N.E.2d 257 (1 Dist. 1994).

Purpose

The purpose of this section is to provide the circuit court with options for custodial placement after it has removed a child from the custody of its parent or guardian; this section does not authorize a court to order residential placement or schooling. In re Chiara C., 279 Ill. App. 3d 761, 216 Ill. Dec. 344, 665 N.E.2d 404 (1 Dist. 1996).

Void Orders

Orders granting a guardianship to a father and dispositionally finding a mother unfit and the father fit as a parent were unauthorized under 705 ILCS 405/2-23(1), 705 ILCS 405/2-27(1) because the trial court did not make the two minor children involved wards of the court; as the orders were unauthorized, they were void. People v. Elizabeth L. (In re C.L.), 384 Ill. App. 3d 689, 323 Ill. Dec. 923, 894 N.E.2d 949, 2008 Ill. App. LEXIS 905 (3 Dist. 2008), appeal denied, 2009 Ill. LEXIS 189 (Ill. 2009).

Waiver

Where respondent failed to object to a finding that she was unfit and conceded that the evidence established that she was unable at the time of the dispositional hearing to effectively care for the minors, respondent effectively waived the issue on an appeal of the trial court's finding that she was unable to care for the minor children. In re Lakita B., 297 Ill. App. 3d 985, 232 Ill. Dec. 88, 697 N.E.2d 830 (1 Dist. 1998).

Ward of Court

Judgment making a parent's minor children wards of the court pursuant to 705 ILCS 405/2-27(1) and naming the Department of Children and Family Services (DCFS) guardian was improper, as the trial court did not consider the parent's superior right to custody of the children and did not articulate a reason as to why it granted the DCFS guardianship. People v. G.A. (In re Ta.A.), 384 Ill. App. 3d 303, 322 Ill. Dec. 743, 891 N.E.2d 1034, 2008 Ill. App. LEXIS 676 (1 Dist. 2008).

Order making a minor who suffered from cystic fibrosis a ward of the court after he had been adjudicated as medically neglected was supported by a preponderance of the evidence and was in the minor's best interest; although the minor's mother had been cooperative in completing the services recommended by the Department of Children and Family Services, the evidence nevertheless showed that she continued to miss the minor's medical appointments, an action the trial court had relied on in finding the mother neglectful in the first place. People v. Kathy K. (In re Stephen K.), 373 Ill. App. 3d 7, 310 Ill. Dec. 768, 867 N.E.2d 81, 2007 Ill. App. LEXIS 344 (1 Dist. 2007).

Trial court's dispositional order, based upon a finding of neglect due to injurious environment, that declared a mother unable, for some reason other than her financial circumstances, to care for or protect her minor children from the father of one of her children was not against the manifest weight of the evidence. People v. Margaret C. (In re Gabriel E.), 372 Ill. App. 3d 817, 310 Ill. Dec. 746, 867 N.E.2d 59, 2007 Ill. App. LEXIS 329 (1 Dist. 2007).

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Evidence concerning adjudication of minor child as neglected by reason of abuse included sufficient grounds for making the child a ward of the court and therefore subject to the entire range of dispositions available to the court. People v. Conekin, 107 Ill. App. 3d 902, 63 Ill. Dec. 516, 438 N.E.2d 254 (5 Dist. 1982).

Written Findings

Where an oral pronouncement is explicit and sufficient to advise the parties of the court's reasoning, the statutory requirement under 705 ILCS 405/2-27(1) of a written explanation will be satisfied. People v. Oscar H. (In re Leona W.), 228 Ill. 2d 439, 320 Ill. Dec. 855, 888 N.E.2d 72, 2008 Ill. LEXIS 304 (2008).

Grant of guardianship to Department of Children and Family Services in the absence of any written findings or factual basis concerning the father's unfitness, inability, or unwillingness to care for, protect, train, or discipline the child violated 705 ILCS 405/2-27(1)(d), which required that the findings be in writing. People v. Kevin S. (In re K.S.), 365 Ill. App. 3d 566, 302 Ill. Dec. 898, 850 N.E.2d 335, 2006 Ill. App. LEXIS 517 (1 Dist. 2006).

Although an oral statement by a trial court on the record can satisfy the writing requirement of 705 ILCS 405/2-27(1) if the statement is explicit and advises the parties of the reasons for the decision, where the trial judge's statements did not reveal the factual basis for adjudging a child a dependent minor, making him a ward of the court, and placing guardianship in DCFS, remand for a new hearing was required. People v. Mandi H. (In re Madison H.), 215 Ill. 2d 364, 294 Ill. Dec. 86, 830 N.E.2d 498, 2005 Ill. LEXIS 633 (2005).

Where court's decision that respondent was unwilling and unable to care for her child was supported by the record, the court's failure to write the factual basis for its determination did not necessitate remand. In re R.M., 283 Ill. App. 3d 469, 219 Ill. Dec. 149, 670 N.E.2d 827 (1 Dist. 1996).

LEGAL PERIODICALS

For note, "Defining the Scope of Residential Placement and Related Services Under the EHA: Difficult Questions Left Unanswered in Illinois - In re Claudia K," see 32 De Paul L. Rev. 483 (1983).

For article, "Denying Child Welfare Services to Delinquent Teens: A Call to Return to the Roots of Illinois' Juvenile Court," see, 36 Loy. U. Chi. L.J. 925 (2005).

RESEARCH REFERENCES

Parents' mental illness or mental deficiency as ground for termination of parental rights - Constitutional issues. 110 ALR5th 579.

Parents' mental illness or mental deficiency as ground for termination of parental rights - General considerations. 113 ALR5th 349.

Parents' mental illness or mental deficiency as ground for termination of parental rights - Effect on parenting ability and parental rights. 116 ALR5th 559.

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Parents' mental illness or mental deficiency as ground for termination of parental rights - Best interests analysis. 117 ALR5th 349.

§ 705 ILCS 405/2-27.1. Placement; secure child care facility

Sec. 2-27.1. Placement; secure child care facility. (1) A minor under 18 years of age and who is subject under Article II of this Act to a secure child care facility may be admitted to a secure child care facility for inpatient treatment upon application to the facility director if, prior to admission, the facility director and the Director of the Department of Children and Family Services or the Director's designate find that: the minor has a mental illness or emotional disturbance, including but not limited to a behavior disorder, of such severity that placement in a secure child care facility is necessary because in the absence of such a placement, the minor is likely to endanger self or others or not meet his or her basic needs and this placement is the least restrictive alternative. Prior to admission, a psychiatrist, clinical social worker, or clinical psychologist who has personally examined the minor shall state in writing that the minor meets the standards for admission. The statement must set forth in detail the reasons for that conclusion and shall indicate what alternatives to secure treatment have been explored. When the minor is placed in a child care facility which includes a secure child care facility in addition to a less restrictive setting, and the application for admission states that the minor will be permanently placed in the less restrictive setting of the child care facility as part of his or her permanency plan after the need for secure treatment has ended, the psychiatrist, clinical social worker, or clinical psychologist shall state the reasons for the minor's need to be placed in secure treatment, the conditions under which the minor may be placed in the less restrictive setting of the facility, and the conditions under which the minor may need to be returned to secure treatment.

(2) The application for admission under this Section shall contain, in large bold-face type, a statement written in simple non-technical terms of the minor's right to object and the right to a hearing. A minor 12 years of age or older must be given a copy of the application and the statement should be explained to him or her in an understandable manner. A copy of the application shall also be given to the person who executed it, the designate of the Director of the Department of Children and Family Services, the minor's parent, the minor's attorney, and, if the minor is 12 years of age or older, 2 other persons whom the minor may designate, excluding persons whose whereabouts cannot reasonably be ascertained.

(3) Thirty days after admission, the facility director shall review the minor's record and assess the need for continuing placement in a secure child care facility. When the minor has been placed in a child care facility which includes a secure child care facility in addition to a less restrictive setting, and the application for admission states that the minor will be permanently placed in the less restrictive setting of the child care facility as part of his or her permanency plan after the need for secure treatment has ended, the facility director shall review the stated reasons for the minor's need to be placed in secure treatment, the conditions under which the minor may be placed in the less restrictive setting of the facility, and the conditions under which the minor may need to be returned

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to secure treatment. The director of the facility shall consult with the designate of the Director of the Department of Children and Family Services and request authorization for continuing placement of the minor. Request and authorization should be noted in the minor's record. Every 60 days thereafter a review shall be conducted and new authorization shall be secured from the designate for as long as placement continues. Failure or refusal to authorize continued placement shall constitute a request for the minor's discharge.

(4) At any time during a minor's placement in a secure child care facility, an objection may be made to that placement by the minor, the minor's parents (except where parental rights have been terminated), the minor's guardian ad litem, or the minor's attorney. When an objection is made, the minor shall be discharged at the earliest appropriate time not to exceed 15 days, including Saturdays, Sundays, and holidays unless the objection is withdrawn in writing or unless, within that time, the Director or his or her designate files with the Court a petition for review of the admission. The petition must be accompanied by a certificate signed by a psychiatrist, clinical social worker, or clinical psychologist. The certificate shall be based upon a personal examination and shall specify that the minor has a mental illness or an emotional disturbance of such severity that placement in a secure facility is necessary, that the minor can benefit from the placement, that a less restrictive alternative is not appropriate, and that the placement is in the minor's best interest.

(5) Upon receipt of a petition, the court shall set a hearing to be held within 5 days, excluding Saturdays, Sundays, and holidays. The court shall direct that notice of the time and place of the hearing shall be served upon the minor, his or her attorney and the minor's guardian ad litem, the Director of the Department of Children and Family Services or his or her designate, the State's Attorney, and the attorney for the parents.

(6) The court shall order the minor discharged from the secure child care facility if it determines that the minor does not have a mental illness or emotional disturbance of such severity that placement in a secure facility is necessary, or if it determines that a less restrictive alternative is appropriate.

(7) If however, the court finds that the minor does have a mental illness or an emotional disturbance for which the minor is likely to benefit from treatment but that a less restrictive alternative is appropriate, the court shall order that the Department of Children and Family Services prepare a case plan for the minor which permits alternative treatment which is capable of providing adequate and humane treatment in the least restrictive setting that is appropriate to the minor's condition and serves the minor's best interests, and shall authorize the continued placement of the minor in the secure child care facility. At each permanency hearing conducted thereafter, the court shall determine whether the minor does not have a mental illness or emotional disturbance of such severity that placement in a secure facility is necessary or, if a less restrictive alternative is appropriate. If either of these 2 conditions are not met, the court shall order the minor discharged from the secure child care facility.

(8) Unwillingness or inability of the Department of Children and Family Services to find a placement for the minor shall not be grounds for the court's refusing to order discharge

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of the minor.

(Source: P.A. 90-608, § 30.)

Effective Date. Section 99 of P.A. 90-608 made this section effective upon becoming law. The Act was approved June 30, 1998.

§ 705 ILCS 405/2-27.5: Repealed by P.A. 90-27, § 35, effective January 1, 1998.

§ 705 ILCS 405/2-28. Court review

Sec. 2-28. Court review. (1) The court may require any legal custodian or guardian of the person appointed under this Act to report periodically to the court or may cite him into court and require him or his agency, to make a full and accurate report of his or its doings in behalf of the minor. The custodian or guardian, within 10 days after such citation, shall make the report, either in writing verified by affidavit or orally under oath in open court, or otherwise as the court directs. Upon the hearing of the report the court may remove the custodian or guardian and appoint another in his stead or restore the minor to the custody of his parents or former guardian or custodian. However, custody of the minor shall not be restored to any parent, guardian or legal custodian in any case in which the minor is found to be neglected or abused under Section 2-3 or dependent under Section 2-4 of this Act [705 ILCS 405/2-3 or 705 ILCS 405/2-4], unless the minor can be cared for at home without endangering the minor's health or safety and it is in the best interests of the minor, and if such neglect, abuse, or dependency is found by the court under paragraph (1) of Section 2-21 of this Act [705 ILCS 405/2-21] to have come about due to the acts or omissions or both of such parent, guardian or legal custodian, until such time as an investigation is made as provided in paragraph (5) and a hearing is held on the issue of the fitness of such parent, guardian or legal custodian to care for the minor and the court enters an order that such parent, guardian or legal custodian is fit to care for the minor.

(2) The first permanency hearing shall be conducted by the judge. Subsequent permanency hearings may be heard by a judge or by hearing officers appointed or approved by the court in the manner set forth in Section 2-28.1 of this Act [705 ILCS 405/2-28.1]. The initial hearing shall be held (a) within 12 months from the date temporary custody was taken, regardless of whether an adjudication or dispositional hearing has been completed within that time frame, (b) if the parental rights of both parents have been terminated in accordance with the procedure described in subsection (5) of Section 2-21, within 30 days of the order for termination of parental rights and appointment of a guardian with power to consent to adoption, or (c) in accordance with subsection (2) of Section 2-13.1 [705 ILCS 405/2-13.1]. Subsequent permanency

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hearings shall be held every 6 months or more frequently if necessary in the court's determination following the initial permanency hearing, in accordance with the standards set forth in this Section, until the court determines that the plan and goal have been achieved. Once the plan and goal have been achieved, if the minor remains in substitute care, the case shall be reviewed at least every 6 months thereafter, subject to the provisions of this Section, unless the minor is placed in the guardianship of a suitable relative or other person and the court determines that further monitoring by the court does not further the health, safety or best interest of the child and that this is a stable permanent placement. The permanency hearings must occur within the time frames set forth in this subsection and may not be delayed in anticipation of a report from any source or due to the agency's failure to timely file its written report (this written report means the one required under the next paragraph and does not mean the service plan also referred to in that paragraph).

The public agency that is the custodian or guardian of the minor, or another agency responsible for the minor's care, shall ensure that all parties to the permanency hearings are provided a copy of the most recent service plan prepared within the prior 6 months at least 14 days in advance of the hearing. If not contained in the plan, the agency shall also include a report setting forth (i) any special physical, psychological, educational, medical, emotional, or other needs of the minor or his or her family that are relevant to a permanency or placement determination and (ii) for any minor age 16 or over, a written description of the programs and services that will enable the minor to prepare for independent living. The agency's written report must detail what progress or lack of progress the parent has made in correcting the conditions requiring the child to be in care; whether the child can be returned home without jeopardizing the child's health, safety, and welfare, and if not, what permanency goal is recommended to be in the best interests of the child, and why the other permanency goals are not appropriate. The caseworker must appear and testify at the permanency hearing. If a permanency hearing has not previously been scheduled by the court, the moving party shall move for the setting of a permanency hearing and the entry of an order within the time frames set forth in this subsection.

At the permanency hearing, the court shall determine the future status of the child. The court shall set one of the following permanency goals:

(A) The minor will be returned home by a specific date within 5 months.

(B) The minor will be in short-term care with a continued goal to return home within a period not to exceed one year, where the progress of the parent or parents is substantial giving particular consideration to the age and individual needs of the minor.

(B-1) The minor will be in short-term care with a continued goal to return home pending a status hearing. When the court finds that a parent has not made reasonable efforts or reasonable progress to date, the court shall identify what actions the parent and the Department must take in order to justify a finding of reasonable efforts or reasonable progress and shall set a status hearing to be held not earlier than 9 months from the date of adjudication nor later than 11 months from the date of adjudication during which the parent's progress will again be reviewed.

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(C) The minor will be in substitute care pending court determination on termination of parental rights.

(D) Adoption, provided that parental rights have been terminated or relinquished.

(E) The guardianship of the minor will be transferred to an individual or couple on a permanent basis provided that goals (A) through (D) have been ruled out.

(F) The minor over age 15 will be in substitute care pending independence.

(G) The minor will be in substitute care because he or she cannot be provided for in a home environment due to developmental disabilities or mental illness or because he or she is a danger to self or others, provided that goals (A) through (D) have been ruled out.

In selecting any permanency goal, the court shall indicate in writing the reasons the goal was selected and why the preceding goals were ruled out. Where the court has selected a permanency goal other than (A), (B), or (B-1), the Department of Children and Family Services shall not provide further reunification services, but shall provide services consistent with the goal selected.

(H) Notwithstanding any other provision in this Section, the court may select the goal of continuing foster care as a permanency goal if:

(1) The Department of Children and Family Services has custody and guardianship of the minor;

(2) The court has ruled out all other permanency goals based on the child's best interest;

(3) The court has found compelling reasons, based on written documentation reviewed by the court, to place the minor in continuing foster care. Compelling reasons include:

(a) the child does not wish to be adopted or to be placed in the guardianship of his or her relative or foster care placement;

(b) the child exhibits an extreme level of need such that the removal of the child from his or her placement would be detrimental to the child; or

(c) the child who is the subject of the permanency hearing has existing close and strong bonds with a sibling, and achievement of another permanency goal would substantially interfere with the subject child's sibling relationship, taking into consideration the nature and extent of the relationship, and whether ongoing contact is in the subject child's best interest, including long-term emotional interest, as compared with the legal and emotional benefit of permanence;

(4) The child has lived with the relative or foster parent for at least one year; and

(5) The relative or foster parent currently caring for the child is willing and capable of providing the child with a stable and permanent environment.

The court shall set a permanency goal that is in the best interest of the child. In determining that goal, the court shall consult with the minor in an age-appropriate manner

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regarding the proposed permanency or transition plan for the minor. The court's determination shall include the following factors:

(1) Age of the child.

(2) Options available for permanence, including both out-of-State and in-State placement options.

(3) Current placement of the child and the intent of the family regarding adoption.

(4) Emotional, physical, and mental status or condition of the child.

(5) Types of services previously offered and whether or not the services were successful and, if not successful, the reasons the services failed.

(6) Availability of services currently needed and whether the services exist.

(7) Status of siblings of the minor.

The court shall consider (i) the permanency goal contained in the service plan, (ii) the appropriateness of the services contained in the plan and whether those services have been provided, (iii) whether reasonable efforts have been made by all the parties to the service plan to achieve the goal, and (iv) whether the plan and goal have been achieved. All evidence relevant to determining these questions, including oral and written reports, may be admitted and may be relied on to the extent of their probative value.

The court shall make findings as to whether, in violation of Section 8.2 of the Abused and Neglected Child Reporting Act [325 ILCS 5/8.2], any portion of the service plan compels a child or parent to engage in any activity or refrain from any activity that is not reasonably related to remedying a condition or conditions that gave rise or which could give rise to any finding of child abuse or neglect. The services contained in the service plan shall include services reasonably related to remedy the conditions that gave rise to removal of the child from the home of his or her parents, guardian, or legal custodian or that the court has found must be remedied prior to returning the child home. Any tasks the court requires of the parents, guardian, or legal custodian or child prior to returning the child home, must be reasonably related to remedying a condition or conditions that gave rise to or which could give rise to any finding of child abuse or neglect.

If the permanency goal is to return home, the court shall make findings that identify any problems that are causing continued placement of the children away from the home and identify what outcomes would be considered a resolution to these problems. The court shall explain to the parents that these findings are based on the information that the court has at that time and may be revised, should additional evidence be presented to the court.

If the goal has been achieved, the court shall enter orders that are necessary to conform the minor's legal custody and status to those findings.

If, after receiving evidence, the court determines that the services contained in the plan are not reasonably calculated to facilitate achievement of the permanency goal, the court shall put in writing the factual basis supporting the determination and enter specific findings based on the evidence. The court also shall enter an order for the Department to

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develop and implement a new service plan or to implement changes to the current service plan consistent with the court's findings. The new service plan shall be filed with the court and served on all parties within 45 days of the date of the order. The court shall continue the matter until the new service plan is filed. Unless otherwise specifically authorized by law, the court is not empowered under this subsection (2) or under subsection (3) to order specific placements, specific services, or specific service providers to be included in the plan.

A guardian or custodian appointed by the court pursuant to this Act shall file updated case plans with the court every 6 months.

Rights of wards of the court under this Act are enforceable against any public agency by complaints for relief by mandamus filed in any proceedings brought under this Act.

(3) Following the permanency hearing, the court shall enter a written order that includes the determinations required under subsection (2) of this Section and sets forth the following:

(a) The future status of the minor, including the permanency goal, and any order necessary to conform the minor's legal custody and status to such determination; or

(b) If the permanency goal of the minor cannot be achieved immediately, the specific reasons for continuing the minor in the care of the Department of Children and Family Services or other agency for short term placement, and the following determinations:

(i) (Blank).

(ii) Whether the services required by the court and by any service plan prepared within the prior 6 months have been provided and (A) if so, whether the services were reasonably calculated to facilitate the achievement of the permanency goal or (B) if not provided, why the services were not provided.

(iii) Whether the minor's placement is necessary, and appropriate to the plan and goal, recognizing the right of minors to the least restrictive (most family-like) setting available and in close proximity to the parents' home consistent with the health, safety, best interest and special needs of the minor and, if the minor is placed out-of-State, whether the out-of-State placement continues to be appropriate and consistent with the health, safety, and best interest of the minor.

(iv) (Blank).

(v) (Blank).

(4) The minor or any person interested in the minor may apply to the court for a change in custody of the minor and the appointment of a new custodian or guardian of the person or for the restoration of the minor to the custody of his parents or former guardian or custodian.

When return home is not selected as the permanency goal:

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(a) The Department, the minor, or the current foster parent or relative caregiver seeking private guardianship may file a motion for private guardianship of the minor. Appointment of a guardian under this Section requires approval of the court.

(b) The State's Attorney may file a motion to terminate parental rights of any parent who has failed to make reasonable efforts to correct the conditions which led to the removal of the child or reasonable progress toward the return of the child, as defined in subdivision (D)(m) of Section 1 of the Adoption Act [750 ILCS 50/1] or for whom any other unfitness ground for terminating parental rights as defined in subdivision (D) of Section 1 of the Adoption Act exists.

When parental rights have been terminated for a minimum of 3 years and the child who is the subject of the permanency hearing is 13 years old or older and is not currently placed in a placement likely to achieve permanency, the Department of Children and Family Services shall make reasonable efforts to locate parents whose rights have been terminated, except when the Court determines that those efforts would be futile or inconsistent with the subject child's best interests. The Department of Children and Family Services shall assess the appropriateness of the parent whose rights have been terminated, and shall, as appropriate, foster and support connections between the parent whose rights have been terminated and the youth. The Department of Children and Family Services shall document its determinations and efforts to foster connections in the child's case plan.

Custody of the minor shall not be restored to any parent, guardian or legal custodian in any case in which the minor is found to be neglected or abused under Section 2-3 or dependent under Section 2-4 of this Act, unless the minor can be cared for at home without endangering his or her health or safety and it is in the best interest of the minor, and if such neglect, abuse, or dependency is found by the court under paragraph (1) of Section 2-21 of this Act to have come about due to the acts or omissions or both of such parent, guardian or legal custodian, until such time as an investigation is made as provided in paragraph (5) and a hearing is held on the issue of the health, safety and best interest of the minor and the fitness of such parent, guardian or legal custodian to care for the minor and the court enters an order that such parent, guardian or legal custodian is fit to care for the minor. In the event that the minor has attained 18 years of age and the guardian or custodian petitions the court for an order terminating his guardianship or custody, guardianship or custody shall terminate automatically 30 days after the receipt of the petition unless the court orders otherwise. No legal custodian or guardian of the person may be removed without his consent until given notice and an opportunity to be heard by the court.

When the court orders a child restored to the custody of the parent or parents, the court shall order the parent or parents to cooperate with the Department of Children and Family Services and comply with the terms of an after-care plan, or risk the loss of custody of the child and possible termination of their parental rights. The court may also enter an order of protective supervision in accordance with Section 2-24 [705 ILCS 405/2-24].

(5) Whenever a parent, guardian, or legal custodian files a motion for restoration of custody of the minor, and the minor was adjudicated neglected, abused, or dependent as a

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result of physical abuse, the court shall cause to be made an investigation as to whether the movant has ever been charged with or convicted of any criminal offense which would indicate the likelihood of any further physical abuse to the minor. Evidence of such criminal convictions shall be taken into account in determining whether the minor can be cared for at home without endangering his or her health or safety and fitness of the parent, guardian, or legal custodian.

(a) Any agency of this State or any subdivision thereof shall co-operate with the agent of the court in providing any information sought in the investigation.

(b) The information derived from the investigation and any conclusions or recommendations derived from the information shall be provided to the parent, guardian, or legal custodian seeking restoration of custody prior to the hearing on fitness and the movant shall have an opportunity at the hearing to refute the information or contest its significance.

(c) All information obtained from any investigation shall be confidential as provided in Section 5-150 of this Act [705 ILCS 405/5-150].

(Source: P.A. 85-1235; 88-7, § 15; 88-487, § 50; 88-614, § 110; 88-670, § 2-63; 89-17, § 5; 89-21, § 15-15; 89-626, § 2-68; 90-27, § 30; 90-28, § 10-20; 90-87, § 5; 90-590, § 2001-10; 90-608, § 30; 90-655, § 156; 91-357, § 236; 92-320, § 5; 95-10, § 10; 95-182, § 5; 95-876, § 310; 96-600, § 15; 96-1375, § 5; 97-425, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-28.

Effect of Amendments. The 1998 amendment by P.A. 90-590, effective January 1, 1999, substituted "Section 5-150" for "Section 1-10" in subdivision (5)(c).

The 1998 amendment by P.A. 90-608, effective June 30, 1998, incorporated the amendments by P.A. 90-27, P.A. 90-28, and P.A. 90-87; deleted "in counties with a population under 3,000,000" at the end of the section heading; deleted subsection (0.5), which provided that this section applied to counties with a population under 3,000,000; in the fourth sentence of subsection (1), inserted "or dependent under Section 2-4", inserted "or dependency", substituted "paragraph (1)" for "paragraph (2)", and substituted "have come about due to the acts or omissions of both of" for "be the result of physical abuse inflicted on the minor by" and made related punctuation changes; in subsection (2), in the first sentence, substituted "The first" for "in counties under 3,000,000 population", deleted the second sentence, relating to counties with a population of 3,000,000 or more, and, in the third sentence, inserted the item (a) designation, and added items (b) and (c); rewrote the second undesignated paragraph in subdivision (2)(G); in subsection (3), substituted "this Section" for "Section 2-28"; in subdivision (4)(a), substituted "Department, the minor," for "State's Attorney"; in the third paragraph of subsection (4), inserted "or dependent under Section 2-4" and "or dependency" and substituted "paragraph (1)" for "paragraph (2)", "have come about due to the acts or omissions or both of" for "be the result of physical abuse inflicted on the minor by", and "paragraph (5)" for "paragraph (4)" and made related punctuation changes; and in subsection (5), inserted "or dependent" and made related changes.

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The 1998 amendment by P.A. 90-655, effective July 30, 1998, incorporated the amendments by P.A. 90-27, P.A. 90-28, and P.A. 90-87; in the first paragraph of subsection (2), deleted "in counties under 3,000,000 population" from the beginning and deleted the second and third sentences, concerning hearing conducted by a judge; and substituted "this section" for "Section 2-28" in the first paragraph of subsection (3).

The 1999 amendment by P.A. 91-357, effective July 29, 1999, combined the amendments made by P.A. 90-608 and P.A. 90-655, and added the second sentence in the first paragraph of subsection (2).

The 2001 amendment by P.A. 92-320, effective January 1, 2002, in subsection (2)(F) substituted "age 15" for "age 12".

The 2007 amendment by P.A. 95-10, effective June 30, 2007, in the paragraph following (2)(G) that begins "The court shall set" added the second sentence; and in (2)(G)(2) added "including both out-of-State and in-State placement options".

The 2007 amendment by P.A. 95-182, effective August 14, 2007, deleted the former last paragraph of (3), which read: "Any order entered pursuant to this subsection (3) shall be immediately appealable as a matter of right under Supreme Court Rule 304(b)(1)."

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, combined earlier multiple amendments.

The 2009 amendment by P.A. 96-600, effective August 21, 2009, added (2)(H); added the sixth and seventh paragraphs of (2); and added the second paragraph of (4)(b).

The 2010 amendment by P.A. 96-1375, effective July 29, 2010, added the last two sentences in the sixth paragraph of (2).

The 2011 amendment by P.A. 97-425, effective August 16, 2011, inserted "regardless of whether an adjudication or dispositional hearing has been completed within that time frame" in item (a) of the third sentence of the first paragraph of (2).

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Constitutionality

705 ILCS 405/2-28(3), allowing an appeal from a permanency order, is unconstitutional, because despite the language under 705 ILCS 405/2-28(2), a permanency order is not final, and any attempt by the legislature to establish its finality and to make it appealable under Ill. Sup. Ct. R. 304(b)(1) is a violation of Ill. Const. art. VI, sec. 6. People v. Leola B (In re Curtis B.), 203 Ill. 2d 53, 271 Ill. Dec. 1, 784 N.E.2d 219, 2002 Ill. LEXIS 624 (2002).

Appeal of order for change in permanency goal to substitute care due to abuse was dismissed as the appellate court lacked jurisdiction; 705 ILCS 405/2-28(3) was a violation of the separation of powers clause. People v. T.H. (In re D.D.H.), 319 Ill. App. 3d 989, 255 Ill. Dec. 251, 749 N.E.2d 31, 2001 Ill. App. LEXIS 252 (5 Dist. 2001).

Since permanency review orders are not final orders, the last sentence of 705 ILCS 405/2-28(3) providing that such orders are immediately appealable violates the separation of powers clause of Ill. Const. art. VI, § 6; only the state supreme court and not the legislature can provide for appeals from judgments other than final judgments. People v. Barbara R. (In re T.B.), 325 Ill. App. 3d 566, 259 Ill. Dec. 366, 758 N.E.2d 489, 2001 Ill. App. LEXIS 807 (3 Dist. 2001).

The portion of 705 ILCS 405/2-28(3) (1998) of the Juvenile Court Act of 1987 that allows a party to appeal a nonfinal permanency order immediately is unconstitutional because it unduly

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encroaches upon the exclusive power of the Supreme Court of Illinois to regulate matters of appellate practice and procedure. In re Curtis B., 325 Ill. App. 3d 393, 259 Ill. Dec. 189, 758 N.E.2d 312, 2001 Ill. App. LEXIS 613 (1 Dist. 2001).

The provision in 705 ILCS 405/2-28(3) which makes permanency review orders immediately appealable is unconstitutional because it violates the separation of powers clause of the Illinois Constitution; the provision encroaches upon the exclusive power of the supreme court to regulate matters of appellate practice and procedure by directing that a nonfinal order is appealable contrary to the rules of the supreme court. People v. Bradley (In re C.B.), 322 Ill. App. 3d 1011, 255 Ill. Dec. 886, 750 N.E.2d 1271, 2001 Ill. App. LEXIS 464 (4 Dist. 2001).

Father's appeal of an order changing the permanency goal for his two daughters was dismissed, for a lack of jurisdiction, since changing a permanency goal was not an appealable final order; that portion of 705 ILCS 405/2-28(3) (1998), which provided that any order entered pursuant to the subsection was immediately appealable as a matter of right under Ill. Sup. Ct. R. 304(b)(1), was unconstitutional because it violated the separation-of-powers clause of Ill. Const. art. VI, § 6 (1970). People v. J.Z. (In re A.Z.), 325 Ill. App. 3d 722, 260 Ill. Dec. 53, 760 N.E.2d 132, 2001 Ill. App. LEXIS 868 (2 Dist. 2001).

The report procedure under this section does not deprive the Department of Children and Family Services of the protection available under the discovery rules that would constitute a denial of the Department's constitutional right to equal protection of the law. People v. Morgan, 206 Ill. App. 3d 140, 151 Ill. Dec. 196, 564 N.E.2d 173 (1 Dist. 1990).

Appealable Order

Fact that during the pendency of an appeal of an order that denied a petition for termination the parental rights of a mother and father, the circuit court entered a new permanency order that changed the goal from termination to private guardianship, did not render the appeal moot; the private guardianship goal had not yet been met, and therefore, the permanency order was not final and could be changed again upon reevaluation by the circuit court. People v. Tonya W. (In re Reiny S.), 374 Ill. App. 3d 1036, 313 Ill. Dec. 108, 871 N.E.2d 835, 2007 Ill. App. LEXIS 726 (1 Dist. 2007), appeal denied, 225 Ill. 2d 635, 875 N.E.2d 1112, 2007 Ill. LEXIS 1617 (2007).

Denial of the State's petition for termination of parental rights was not an appealable order, under Ill. Sup. Ct. R. 301 and 303, because, under 705 ILCS 405/2-28(2), a review of dispositional orders regarding the children was required every six months, until the children's permanency goal was attained, at which time that goal could be reevaluated, so the denial did not absolutely fix the rights of the parties, and was not final. People v. Tracy H. (In re Alexis H.), 335 Ill. App. 3d 1009, 270 Ill. Dec. 583, 783 N.E.2d 158, 2002 Ill. App. LEXIS 1272 (2 Dist. 2002).

Change of Custody

When a circuit court must decide whether a change in custody is in a child's best interests, the court is "not bound" by an administrative determination of abuse, but only in the sense that the administrative determination does not preclude it from finding that the best interests of the child may be served by returning the child to the custody of the person found to have abused him in the past; to say that a court is "not bound" by the administrative determination does not mean, however, that the court is free to wholly ignore the ruling, afford it no probative value, or substitute its own findings on the matter after conducting a de novo review of the evidence. Berkley v. Ill. Dep't of Children & Family Servs. (In re Austin W.), 214 Ill. 2d 31, 291 Ill. Dec. 280, 823 N.E.2d 572, 2005 Ill. LEXIS 9 (2005).

- Abused/Neglected Minor

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Circuit court's finding that a change of custody was in an abused minor's best interests was against the manifest weight of the evidence where the court improperly rejected an administrative finding that the grandparents, to whom custody had been awarded had abused the minor. Berkley v. Ill. Dep't of Children & Family Servs. (In re Austin W.), 214 Ill. 2d 31, 291 Ill. Dec. 280, 823 N.E.2d 572, 2005 Ill. LEXIS 9 (2005).

The juvenile court may, at the time it conducts a court review of a case in which a minor has already been adjudicated abused and/or neglected, been made a ward of the court and placed under the protective shield of a court order of supervision, alter custodial placement if the circumstances and best interests of the child warrant. In re P.P., 261 Ill. App. 3d 598, 199 Ill. Dec. 169, 633 N.E.2d 965 (1 Dist. 1994).

- Best Interests Inquiry

Where three minor children - ages 14 months, 2 years, and 5 years - were removed from their parents' home in 2005 after the father fondled the five-year-old girl's vagina and where the Illinois Department of Children and Family Services (DCFS) moved in 2010 to terminate its guardianship of the children, the circuit court erred in granting the motion and in entering subsequent orders that terminated the minors' wardships and closed their cases because the circuit court failed to comply with 705 ILCS 405/2-31(2) of the Juvenile Court Act of 1987 by failing to consider whether the termination of wardship and guardianship was in the best interest of the minors. Moreover, because the circuit court's termination resulted in the de facto return of the minors' custody to their mother, 705 ILCS 405/2-31(2) required the circuit court to comply with the requirements of 705 ILCS 405/2-28(4) of the Act; the circuit court erred in failing to hold a hearing, order an investigation, or make the necessary finding that the mother was fit to care for the minors as required by 705 ILCS 405/2-28(4). People v. Sandra R. (In re Vicente G.), 408 Ill. App. 3d 678, 349 Ill. Dec. 243, 946 N.E.2d 437, 2011 Ill. App. LEXIS 272 (1 Dist. 2011).

Best-interests determination under 705 ILCS 405/2-28(4) was not about whether the former foster mother or the mother was a better caretaker for the minor child, and the trial court rejected such an assertion. Rather, the mother was entitled to petition for a change of custody from the former foster mother to the mother, to have the minor child returned home, pursuant to the mother's contention that the mother could care for the minor child without endangering the minor child's health or safety, and that it was in the best interests of the minor child to be returned home. People v. Analynn D. (In re Desiree O.), 381 Ill. App. 3d 854, 320 Ill. Dec. 279, 887 N.E.2d 59, 2008 Ill. App. LEXIS 215 (1 Dist. 2008).

When the matter before the court is the modification of a dispositional order regarding custody and guardianship, the standard for the best-interests inquiry is the same as that applicable during the best-interests portion of a proceeding to terminate parental rights; thus, the burden of proof must be the preponderance of the evidence. Berkley v. Ill. Dep't of Children & Family Servs. (In re Austin W.), 214 Ill. 2d 31, 291 Ill. Dec. 280, 823 N.E.2d 572, 2005 Ill. LEXIS 9 (2005).

- Change of Circumstances

Although relevant cases suggest that a "change of circumstances" may be a significant factor in the decision to modify custody under subsection (4) of this section, these cases do not mean that the court's exercise of its statutory authority to modify a dispositional order, particularly with regard to custody, must be predicated on a separate finding of a "change in circumstances" so that the sufficiency of evidence with regard to such a finding is reviewable; rather, the question of whether a change in circumstances warranting modification of the dispositional order has occurred is a matter which is subsumed in the "best-interests" inquiry. Berkley v. Ill. Dep't of Children & Family Servs. (In re Austin W.), 214 Ill. 2d 31, 291 Ill. Dec. 280, 823 N.E.2d 572, 2005 Ill. LEXIS 9 (2005).

- Commitment of Minor

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Commitment to the Department of Corrections was not a bar to terminating wardship under former Ill. Rev. Stat., ch. 37, para. 705-11(2) (see now 705 ILCS 405/2-31) or applying to the court for a change of custody pursuant to former Ill. Rev. Stat., ch. 37, para. 705-8(3) (see now this section). Bardwell v. People, 138 Ill. App. 3d 418, 93 Ill. Dec. 29, 485 N.E.2d 1239 (5 Dist. 1985).

- Evidence Held Insufficient

Evidence did not support a sufficient showing of change in the mother's circumstances which would justify return of the children to her custody. People v. Ayende, 31 Ill. App. 3d 288, 333 N.E.2d 711 (1 Dist. 1975).

- Evidence Held Sufficient

In a custody determination pursuant to 705 ILCS 405/2-28 of the Juvenile Act of 1987, evidence appeared to support ruling out the goal of a return home to the biological father, as the trial court found him unable to care for, protect, train, and discipline any of his children. The father did not have his own house and resided with his mother, his relationship with the subject child's biological mother was antagonistic, he admittedly and knowingly violated a court visitation order restricting visitation with his three oldest children, he was accused by the Illinois Department of Children and Family Services of sexual abuse of his two daughters and stepdaughter, and the biological mother alleged the subject child was conceived by rape. People v. Roemer (In re S.J.), 364 Ill. App. 3d 432, 301 Ill. Dec. 308, 846 N.E.2d 633, 2006 Ill. App. LEXIS 260 (1 Dist. 2006).

Order granting private guardianship to grandparents was affirmed after children were injured while in their mother's care; although while the mother participated in the services required of her, the progress made in those sessions was not satisfactory, and the appellate court could not say that the lower court, which had monitored the case for years, ruled against the manifest weight of the evidence. People v. L.C. (In re V.M.), 352 Ill. App. 3d 391, 287 Ill. Dec. 809, 816 N.E.2d 776, 2004 Ill. App. LEXIS 1101 (1 Dist. 2004).

Trial court did not err by terminating the Department of Children and Family Services' guardianship over the mother's children without first conducting an investigation into the fathers' criminal backgrounds pursuant to 705 ILCS 405/2-28(5) because the children were not found to be neglected because of physical abuse. People v. Lisa I. (In re Stephanie P.), 341 Ill. App. 3d 887, 276 Ill. Dec. 502, 794 N.E.2d 397, 2003 Ill. App. LEXIS 843 (3 Dist. 2003).

Trial court did not err by terminating the Department of Children and Family Services' guardianship over the mother's children without first conducting an investigation into the fathers' criminal backgrounds pursuant to 705 ILCS 405/2-28(5) because the children were not found to be neglected because of physical abuse. People v. Lisa I. (In re Stephanie P.), 341 Ill. App. 3d 887, 276 Ill. Dec. 502, 794 N.E.2d 397, 2003 Ill. App. LEXIS 843 (3 Dist. 2003).

The order of the juvenile court was affirmed, removing child from custody of the mother and placing her in the custody of the Department of Children and Family Services because the circumstances and best interests of the child warranted the change. In re P.P., 261 Ill. App. 3d 598, 199 Ill. Dec. 169, 633 N.E.2d 965 (1 Dist. 1994).

- Foster Parents

As the trial court failed to comply with 705 ILCS 405/2-28 of the Juvenile Act of 1987, a judgment placing custody and guardianship of a child with his foster mother was reversed. The court failed to set a permanency goal, failed to explain the goal it set, and failed to consider all factors to determine the minor's best interest. People v. Roemer (In re S.J.), 364 Ill. App. 3d 432, 301 Ill. Dec. 308, 846 N.E.2d 633, 2006 Ill. App. LEXIS 260 (1 Dist. 2006).

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Illinois statutory law did not require that biological mother's parental rights first be terminated before a trial court could award guardianship on a permanent basis to the foster parents, as the statutory language contained no such requirement and the goal of adoption, listed right before guardianship in the same statute, specifically required that parental rights have been terminated; accordingly, it was clear that the legislature intended that guardianship could be awarded without terminating parental rights even though it required termination of parental rights before an adoption could take place. People v. Sylvia M. (In re M.M.), 337 Ill. App. 3d 764, 272 Ill. Dec. 115, 786 N.E.2d 654, 2003 Ill. App. LEXIS 333 (2 Dist. 2003).

Foster parents were within category of "person interested in the minor" for purposes of subsection (3) of this section and could bring a petition for change of custody, when minor had resided with the foster parents for a period of more than three years. In re S.J.K., 149 Ill. App. 3d 663, 103 Ill. Dec. 75, 500 N.E.2d 1146 (5 Dist. 1986).

Petitioners who had been responsible for the care and custody of the minor for two years prior to adjudication of neglect and thereafter as foster parents were persons "interested in the minor" under subsection (3) of this section, and it was therefore proper for them to request a change in custody in a petition to vacate. In re Dively, 79 Ill. App. 3d 428, 34 Ill. Dec. 812, 398 N.E.2d 635 (2 Dist. 1979).

- Grandmother

The grandmother was a "person interested in the minor" under subsection (3) of this section, and as such, had the right to apply to the court for a change of custody. In re Jennings, 68 Ill. 2d 125, 11 Ill. Dec. 256, 368 N.E.2d 864 (1977).

- Natural Parents

Petitioners did not have an absolute right to a hearing on a petition for change of custody and termination of wardship under former Ill. Rev. Stat., ch. 37 para. 705-8(3) (see now subsection (3) of this section). Bardwell v. People, 138 Ill. App. 3d 418, 93 Ill. Dec. 29, 485 N.E.2d 1239 (5 Dist. 1985).

Upon a petition for restoration of the minor to the custody of a parent following an adjudication that the child is neglected and a ward of the court, the measuring criteria which must be used by the trial court is the best interests of the minor. Ice v. Department of Children & Family Servs., 35 Ill. App. 3d 783, 342 N.E.2d 460 (3 Dist. 1976).

Original order depriving the parents of a neglected child of legal custody is a continuing order and is subject to modification. Ice v. Department of Children & Family Servs., 35 Ill. App. 3d 783, 342 N.E.2d 460 (3 Dist. 1976).

A trial court was not acting within its discretion in denying a mother's petition to regain parental rights and custody of the mother's children, since the court concluded that there was no significant evidence to show clearly that she had become qualified to reacquire parental rights and the custody of the children, when it was in the best interests of the children that she be given such rights. In re Workman, 38 Ill. App. 3d 261, 344 N.E.2d 796 (3 Dist. 1975), cert. denied, 429 U.S. 1038, 97 S. Ct. 734, 50 L. Ed. 2d 749 (1977).

- Written Petition Required

Although this section does not expressly state that the application for a change in custody involves the filing of a written petition, case law indicates that this provision does contemplate the filing of a written petition for a change of custody. In re J.S., 272 Ill. App. 3d 219, 209 Ill. Dec. 716, 652 N.E.2d 30 (2 Dist. 1995).

Construction

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Guardianship of a legal guardian continued pursuant to 705 ILCS 405/2-27(5) until the trial court directed otherwise. As a result, the legal guardian of the two minor grandchildren could not remain in the neglect case after the trial court dismissed the legal guardian as guardian since the legal guardian was no longer a necessary party under 705 ILCS 405/1-5(1), although the trial court did have the power under 705 ILCS 405/2-28 to restore a former guardian as guardian if the circumstances warranted doing so. People v. Long (In re C.C.), Ill. 2d , 355 Ill. Dec. 25, 959 N.E.2d 53, 2011 Ill. LEXIS 1841 (2011).

Consultation

Trial court's failure to consult with a mother's three children, the oldest of whom was 3 years old, prior to changing the children's permanency status was not a violation of 705 ILCS 405/2-28(2). The requirement that the trial court consult with minors before changing their permanency status applied to require only "age-appropriate" consultation, and there was no age-appropriate consultation that could have occurred. People v. Pasley (In re T.P.), 381 Ill. App. 3d 226, 320 Ill. Dec. 299, 887 N.E.2d 443, 2008 Ill. App. LEXIS 262 (1 Dist. 2008).

Continuances

This section does not cover motions for continuances. People v. Jolie R., 305 Ill. App. 3d 1083, 239 Ill. Dec. 391, 713 N.E.2d 1241 (3 Dist. 1999).

Discovery

The juvenile court possesses inherent power to require the parties to seek to resolve any disputes over information sought under subsection (4) of this section in a manner consistent with Rule 201(k), Supreme Court Rules. People v. Morgan, 206 Ill. App. 3d 140, 151 Ill. Dec. 196, 564 N.E.2d 173 (1 Dist. 1990).

Effect of Amendment

This section as amended by P.A. 90-87 took effect on September 1, 1997, and as amended by P.A. 90-608 took effect on June 30, 1998; the amendments contained in P.A. 90-655 never took effect. In re J.H., 304 Ill. App. 3d 188, 237 Ill. Dec. 446, 709 N.E.2d 701 (4 Dist. 1999).

Pursuant to 5 ILCS 70/6, the provisions of P.A. 90-87 with respect to this section took effect on September 1, 1997 and amendments to this section contained in P.A. 90-27 and 90-28 could not take effect on January 1, 1998 because they conflicted with a later Act of the General Assembly. In re J.H., 304 Ill. App. 3d 188, 237 Ill. Dec. 446, 709 N.E.2d 701 (4 Dist. 1999).

Evidence

Trial court erred in granting the county public guardian's motion in limine to bar the father from presenting evidence of his successful parenting of four of the minor child's siblings as relevant evidence of his fitness to be a parent. Such evidence might tend to have indicated that he could parent the minor child even though the minor child had been removed from the family home due to the mother's conduct, such evidence was material to the proceedings regarding termination of his parental rights, and the law expressed a preference for preserving family ties, such as that of the minor child, whenever possible. People v. Oscar H. (In re L.W.), 362 Ill. App. 3d 1106, 299 Ill. Dec. 509, 842 N.E.2d 248, 2005 Ill. App. LEXIS 1285 (1 Dist. 2005).

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The rules of evidence that apply to dispositional hearings also apply to hearings conducted on prior petitions filed seeking relief from earlier dispositional orders. People v. Hoffman, 223 Ill. App. 3d 543, 165 Ill. Dec. 910, 585 N.E.2d 641 (4 Dist. 1992).

Habeas Corpus

Habeas corpus is a proper method for determination of the custody of a child in a dispute between natural parents and third parties. People v. Overton, 21 Ill. App. 3d 1014, 316 N.E.2d 201 (2 Dist. 1974).

Modification

Pursuant to 705 ILCS 405/2-23(2), modifications of dispositional orders must be carried out in a way not inconsistent with 705 ILCS 405/2-28. People v. Oscar H. (In re Leona W.), 228 Ill. 2d 439, 320 Ill. Dec. 855, 888 N.E.2d 72, 2008 Ill. LEXIS 304 (2008).

Notice

The 10 day notice provision of subsection (a) of this section does not apply to proceedings conducted under subsection (3) of this section. People v. Hoffman, 223 Ill. App. 3d 543, 165 Ill. Dec. 910, 585 N.E.2d 641 (4 Dist. 1992).

Permanency Goal

Trial court erred by permanently placing a minor son with a foster mother pursuant to 705 ILCS 405/2-28(2)(E) when it failed to rule out the other permanency goals of § 2-28(2). While the trial court's decision to rule out the goal of return home to the biological father was not against the manifest weight of the evidence, as the father was ill, had violated court visitations order, and had sexually assaulted his step-daughter, the trial court failed to explain why the son could not be returned to the biological mother when three children had been returned to the mother. The trial court's reason was based solely on son's attachment to foster mother, the trial court's decision was inconsistent the permanency goal of 705 ILCS 405/1-2, and the trial court failed to rule out short-term care with continued goal to return home under 705 ILCS 405/2-28(2)(B) (2004). People v. Roemer (In re S.J.), 368 Ill. App. 3d 749, 307 Ill. Dec. 281, 859 N.E.2d 281, 2006 Ill. App. LEXIS 1114 (1 Dist. 2006).

By operation of 705 ILCS 405/2-28(3) of the Juvenile Act, all of the rights and obligations set forth in a permanency order had to remain open for reexamination and possible revision until the permanency goal was achieved and, as none of the determinations contained in a permanency order could be considered set or fixed as a matter of law; the appellate court could not review a mother's challenges to permanency orders under Ill. Sup. Ct. R. 301. People v. L.C. (In re V.M.), 352 Ill. App. 3d 391, 287 Ill. Dec. 809, 816 N.E.2d 776, 2004 Ill. App. LEXIS 1101 (1 Dist. 2004).

Trial court's entrance of a permanency goal of termination of parental rights prior to the termination hearing did not violate the mother's due process rights since the State successfully demonstrated, by clear and convincing evidence and relevant testimony, that the mother had failed to made reasonable progress toward the return home of her son. People v. Laura V. (In re R.L.), 352 Ill. App. 3d 985, 288 Ill. Dec. 304, 817 N.E.2d 954, 2004 Ill. App. LEXIS 1127 (1 Dist. 2004).

Appellate court lacked jurisdiction to hear parents' claim (which would have been denied in any case) that a permanency goal requirement that they admit at least to themselves that they had

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abused their infant son violated their right against self-incrimination, because the statutory provision making an order declining to change a permanency goal a final appealable order violated separation of powers principles. State v. Terry S. (In re Brandon S.), 331 Ill. App. 3d 757, 265 Ill. Dec. 158, 771 N.E.2d 1117, 2002 Ill. App. LEXIS 474 (1 Dist. 2002).

The trial court failed to comply with the procedural mandates of subsection (2) where: (1) the permanency order did not provide for what types of services were previously offered and found "not successful" or the reasons that the services failed and nothing was offered as to availability of services currently needed and whether the services existed; and (2) it appeared that the sole factor factor considered by the trial court in setting the permanency goal as return home within 12 months was failure of the parents to acknowledge that their child's broken leg was not caused by a falling door but was caused by nonaccidental means and to identify the parent that broke the child's leg. People v. Schaeffer (In re D.S.), 317 Ill. App. 3d 467, 251 Ill. Dec. 224, 740 N.E.2d 54, 2000 Ill. App. LEXIS 918 (4 Dist. 2000).

Trial court's decision to change the permanency goal, under 705 ILCS 405/2-28, for three minor children from "return home" to subsidized guardianship with the children's maternal grandmother was not against the manifest weight of the evidence and was not an abuse of the court's discretion where the mother of the children had failed to comply with family counseling as ordered by the court, and the evidence demonstrated that the children were thriving in the care of their grandmother; the trial court did not err in finding that the children's best interests would be served by remaining with their grandmother. People v. M.I. (In re E.I.), 309 Ill. App. 3d 392, 243 Ill. Dec. 13, 722 N.E.2d 779, 1999 Ill. App. LEXIS 926 (1 Dist. 1999).

Where father had not complied with any of the service plan tasks and could offer the child no permanent placement with himself, the trial court's decision to make substitute care pending court determination on termination of parental rights the permanency goal for the child was not against the manifest weight of the evidence. People v. Mason, 311 Ill. App. 3d 868, 244 Ill. Dec. 413, 726 N.E.2d 9, 2000 Ill. App. LEXIS 976 (3 Dist. 1999).

When a trial court establishes a permanency goal at a permanency review hearing, its decision will not be reversed unless it is against the manifest weight of the evidence. People v. Mason, 311 Ill. App. 3d 868, 244 Ill. Dec. 413, 726 N.E.2d 9, 2000 Ill. App. LEXIS 976 (3 Dist. 1999).

- In General

Where the trial court set a permanency goal of guardianship pursuant to 705 ILCS 405/2-28 and 705 ILCS 405/1-2(1) and where the mother asserted that the trial court should have given the mother another chance to seek care and services before disregarding the goal of return home, the trial court's decision was not against the manifest weight of the evidence given the mother's refusal or inability to work with the agency and the mother's definitive in-court statements that the mother would not seek care for her significant mental health issues. People v. Perseta B. (In re Faith B.), 359 Ill. App. 3d 571, 296 Ill. Dec. 73, 834 N.E.2d 630, 2005 Ill. App. LEXIS 885 (2 Dist. 2005).

- Modification

A court properly changed the permanency goal for two children to substitute care pending the court's decision on termination of parental rights where (1) the children had been in substitute care for 20 months with a family that expressed an interest in adopting them, and (2) the mother was at a high risk of relapsing into drug and alcohol abuse and lacked adequate housing for her family. People v. Black (In re S.E.), 319 Ill. App. 3d 937, 253 Ill. Dec. 875, 746 N.E.2d 323, 2001 Ill. App. LEXIS 261 (4 Dist. 2001).

The court's modification of the permanency goal for the minor at issue from "return home" to "substitute care pending court determination" was not against the manifest weight of the evidence where the evidence presented at the permanency review hearing demonstrated the respondent was either unwilling or unable to parent the child, who was medically complex. People v. Huff (In

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re K.H.), 313 Ill. App. 3d 675, 246 Ill. Dec. 451, 730 N.E.2d 131, 2000 Ill. App. LEXIS 396 (4 Dist. 2000).

Petition to Modify

Where an abused minor's guardian ad litem did not ask the circuit court to compel the Illinois Department of Child and Family Services (DCFS) to fulfill its statutory duty nor seek the removal of DCFS as the minor's guardian on the ground that DCFS had failed to fulfill its reporting duties or other statutorily required obligations but simply based his motion for a modification of the circuit court's dispositional order placing the minor in the custody of the DCFS on the ground that the minor's welfare would be better served if a change in custody was made and the minor was placed in the care and custody of his maternal grandparents, the circuit court, by deciding that a change in custody was warranted, exercised its statutory authority to determine the dispositional order that would be in the minor's best interests. The Supreme Court of Illinois's review of the circuit court's determination did not require it to consider, as a separate matter, whether a sufficient change in circumstances was proven or whether DCFS was remiss in its duty. Berkley v. Ill. Dep't of Children & Family Servs. (In re Austin W.), 214 Ill. 2d 31, 291 Ill. Dec. 280, 823 N.E.2d 572, 2005 Ill. LEXIS 9 (2005).

State was incorrect in asserting that no final judgment existed for the purposes of appellate review of the trial court's decision to appoint the foster parents as guardians of the biological mother's two minor children and its related decision to close the juvenile case since the trial court did not have the authority to consider a petition to modify the guardianship order after the juvenile case had been closed. People v. Sylvia M. (In re M.M.), 337 Ill. App. 3d 764, 272 Ill. Dec. 115, 786 N.E.2d 654, 2003 Ill. App. LEXIS 333 (2 Dist. 2003).

The pleading requirements that apply to initial petitions for adjudication, seeking either a finding of abuse or a termination of parental rights, do not apply to petitions to modify dispositional orders. People v. Hoffman, 223 Ill. App. 3d 543, 165 Ill. Dec. 910, 585 N.E.2d 641 (4 Dist. 1992).

Substance of petition was held sufficient to have made clear to parent whose child was ward of the court the state's intent to seek to modify dispositional order. People v. Hoffman, 223 Ill. App. 3d 543, 165 Ill. Dec. 910, 585 N.E.2d 641 (4 Dist. 1992).

Where the court has not terminated all legal rights of the parents in the child, the parents have a right to petition the court for restoration of parental rights and change of custody. People v. Overton, 21 Ill. App. 3d 1014, 316 N.E.2d 201 (2 Dist. 1974).

Placement Upheld

After reviewing all the evidence presented and noting minor's desperate need for permanence and stability in her life, the court properly determined that her current placement with the foster family was necessary, appropriate and in her best interests. In re M.V., 303 Ill. App. 3d 190, 236 Ill. Dec. 522, 707 N.E.2d 649 (1 Dist. 1999).

Power of Court

The purpose of the Juvenile Court Act of 1987, 705 ILCS 405/1-2(1), was to serve the best interests of the minor child. As a result, although the trial court could not make a specific placement of the child once it decided that a change of the minor child's custody from the foster parents was necessary, it could without entering a void judgment order that the minor child's placement be "elsewhere," as pursuant to 705 ILCS 405/2-28(2) it could set a permanency goal that was in the best interest of the minor child and under 705 ILCS 405/1-3(11.2) it could use a permanency hearing to further the permanency goal and service plan. People v. Debra P. (In re

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M.P.), 401 Ill. App. 3d 742, 340 Ill. Dec. 690, 928 N.E.2d 1287, 2010 Ill. App. LEXIS 492 (3 Dist. 2010).

Permanency review hearings are meant to do as the name implies, review the status of the previously entered dispositional orders and set a permanency goal; at a permanency review hearing, the court is essentially asking how well the previous disposition worked and, if it is not working, the court has the power to make a change. People v. Arnold (In re A.A.), 315 Ill. App. 3d 950, 248 Ill. Dec. 859, 735 N.E.2d 179, 2000 Ill. App. LEXIS 705 (4 Dist. 2000).

The statute does not require the trial court's decision regarding a permanency goal be based on clear and convincing evidence as the selection of a permanency goal is not a final determination on the merits with regard to termination of parental rights but, is an intermediate procedural step taken for the protection of and in the best interests of the child. People v. Huff (In re K.H.), 313 Ill. App. 3d 675, 246 Ill. Dec. 451, 730 N.E.2d 131, 2000 Ill. App. LEXIS 396 (4 Dist. 2000).

Subsection (2) does not require the trial court's selection of a permanency goal be conditioned upon a prior filing of a petition to terminate parental rights by the state. People v. Huff (In re K.H.), 313 Ill. App. 3d 675, 246 Ill. Dec. 451, 730 N.E.2d 131, 2000 Ill. App. LEXIS 396 (4 Dist. 2000).

Subsection (2) does not limit a juvenile court's inquiry to a review of the permanency goal, but confers upon the court the authority to conduct permanency review hearings, which may include a review of the efforts made towards achieving the permanency goal and satisfying the service plan. In re A.L., 294 Ill. App. 3d 441, 228 Ill. Dec. 746, 689 N.E.2d 1167 (2 Dist. 1998).

The court had the authority to intervene under subsection (3) when it vacated the order of supervision under 705 ILCS 405/2-24 and appointed a guardian with the right to place. In re P.P., 261 Ill. App. 3d 598, 199 Ill. Dec. 169, 633 N.E.2d 965 (1 Dist. 1994).

Though former Ill. Rev. Stat., ch. 37, para. 705-8 (see now this section) provided that the court may require any legal custodian or guardian of the person appointed under this Act to report periodically to the court, or may cite him into court and require him or his agency to make a full and accurate report of his or its doings on behalf of the minor, it did not empower the court, pursuant to a petition thereunder, to grant relief other than authorized therein. In re Washington, 65 Ill. 2d 391, 3 Ill. Dec. 723, 359 N.E.2d 133 (1976).

Purpose

The purpose of this section is to enable the juvenile court, which has the ultimate responsibility for the children under its jurisdiction, to be apprised of the treatment accorded the children by their guardians. People v. Morgan, 206 Ill. App. 3d 140, 151 Ill. Dec. 196, 564 N.E.2d 173 (1 Dist. 1990).

Removal of Guardian

Trial court erred in terminating a juvenile case because its attempt to make the findings required by the Juvenile Court Act of 1987 Act retroactively by entering its order nunc pro tunc was an improper use of the nunc pro tunc procedure, and the trial court's purported procedures undermined the provisions of the Act for an orderly termination of proceedings based on contemporaneous findings; in attempting to terminate wardship and guardianship retroactively, the trial court was not correcting a clerical error but altering a judgment, and contrary to the Act's requirements, the court's peremptory procedure never allowed the Department of Children and Family Services to be heard concerning the reasons warranting continued court-supervised guardianship. People v. Ill. Dep't of Children & Family Servs. (In re Aaron R.), 387 Ill. App. 3d 1130, 327 Ill. Dec. 416, 902 N.E.2d 171, 2009 Ill. App. LEXIS 31 (4 Dist. 2009).

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Before the failure to perform statutory duties can form the basis for removal of the Illinois Department of Child and Family Services (DCFS) as guardian or be grounds for compelling DCFS to perform its statutory duty, there must be proof that DCFS has not, in fact, fulfilled its statutory obligations. Berkley v. Ill. Dep't of Children & Family Servs. (In re Austin W.), 214 Ill. 2d 31, 291 Ill. Dec. 280, 823 N.E.2d 572, 2005 Ill. LEXIS 9 (2005).

It is implicit in subsection (2) of this section that a guardian may not be removed or a public agency compelled to perform an official duty unless the court is first satisfied by proof presented in a mandamus proceeding that the guardian has not performed its duty. People v. Morgan, 206 Ill. App. 3d 140, 151 Ill. Dec. 196, 564 N.E.2d 173 (1 Dist. 1990).

Removal of the guardian and appointment of another guardian is not the only recourse available to the judge for an unsatisfactory report of a guardian, or a refusal to report. People v. Morgan, 206 Ill. App. 3d 140, 151 Ill. Dec. 196, 564 N.E.2d 173 (1 Dist. 1990).

Reports

- Multiple Wards

This section is applicable not only to a request for a report on the care given to a particular minor; this section is sufficiently broad to encompass one report on a number of wards, assuming that they are factually similarly situated. People v. Morgan, 206 Ill. App. 3d 140, 151 Ill. Dec. 196, 564 N.E.2d 173 (1 Dist. 1990).

Specific Placement

Court erred by placing guardianship of a child with her half-sister's father because the court made the decision solely on the testimony of a foster care worker; neither the child's guardian ad litem nor her representative testified at the hearing. Although the State indicated in its report that it had been unable to verify whether the mother had completed her service plan, no explanation had been provided for why the State was not able to verify that information in the 20-day period between the two permanency review hearings. People v. Johnson (In re T.S.), 402 Ill. App. 3d 1159, 342 Ill. Dec. 642, 932 N.E.2d 1103, 2010 Ill. App. LEXIS 733 (5 Dist. 2010).

Court erred by placing guardianship of a child with her half-sister's father because the court failed to indicate in writing the reasons the permanency goal was selected and why the preceding goals were ruled out. Moreover, the preceding goals were not ruled out because the court failed to rule out a return home to the mother or adoption. People v. Johnson (In re T.S.), 402 Ill. App. 3d 1159, 342 Ill. Dec. 642, 932 N.E.2d 1103, 2010 Ill. App. LEXIS 733 (5 Dist. 2010).

Court erred by placing guardianship of a child with her half-sister's father because it failed to comply with 705 ILCS 405/2-28; the court set a permanency goal for the child to return home, and a return home meant a return home to the mother, where the child had been living prior to being removed from the home. The half-sister's father was not the child's guardian or custodian prior to the child being removed, and it did not appear that the child ever lived in his home. People v. Johnson (In re T.S.), 402 Ill. App. 3d 1159, 342 Ill. Dec. 642, 932 N.E.2d 1103, 2010 Ill. App. LEXIS 733 (5 Dist. 2010).

Trial court had subject matter jurisdiction and acted within its authority where it reviewed the propriety of the foster placement and found it appropriate; this was not a specific placement but was a permanency hearing. In re M.V., 303 Ill. App. 3d 190, 236 Ill. Dec. 522, 707 N.E.2d 649 (1 Dist. 1999).

Standing

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- Guardian Ad Litem

A guardian ad litem may file a petition for termination of parental rights. D.S. v. R.S., 307 Ill. App. 3d 249, 240 Ill. Dec. 464, 717 N.E.2d 557 (2 Dist. 1999).

- Natural Parent

A natural mother had standing to seek temporary custody of her minor who had been adopted where the court found that the natural mother was an interested person. Konczak v. Brya, 55 Ill. App. 3d 217, 13 Ill. Dec. 441, 371 N.E.2d 136 (2 Dist. 1977).

Termination of Services

Court affirmed the change in permanency goal even though the proper proceeding was not strictly complied with because parent was not prejudiced by premature withdrawal of services or the fact that all parties and the court thought the court rather than the Department was required to select and set the permanency goal. In re J.H., 304 Ill. App. 3d 188, 237 Ill. Dec. 446, 709 N.E.2d 701 (4 Dist. 1999).

It is improper for the agency providing services to communicate to a parent, prior to a formal change of the permanency goal, that no further services will be provided and no additional effort on his part will be availing. In re J.H., 304 Ill. App. 3d 188, 237 Ill. Dec. 446, 709 N.E.2d 701 (4 Dist. 1999).

Timeliness of Permanency Review Hearing

Relevant date for determining whether the permanency review hearing is timely is the date a parent lost actual physical custody of the minors. People v. Christy F. (In re Kenneth F.), 332 Ill. App. 3d 674, 266 Ill. Dec. 189, 773 N.E.2d 1259, 2002 Ill. App. LEXIS 653 (2 Dist. 2002).

Unfitness

Trial court, upon terminating the father's parental rights in the minor child due to the father's unfitness as a parent, could pursuant to 705 ILCS 405/2-28 appoint a guardian with the right to consent to the adoption of the father's minor child without first having to consider the private guardianship the father sought. The legislature in drafting that statute used language indicating that adoption was a goal preferred over private guardianship. Mariah C. v. Mario C. (In re Mariah C.), Ill. App. 3d , Ill. Dec. , N.E.2d , 2010 Ill. App. LEXIS 699 (1 Dist. July 9, 2010).

While the trial court had considerable discretion in 705 ILCS 405/2-28 permanency review hearings as to what evidence should be admitted to determine the disposition under 705 ILCS 405/2-22(1) of the mother, the trial court erred in admitting sound recordings of telephone calls the mother allegedly made to the father and the father's children, part of which regarded the mother and father's three children. The sound recordings were not authenticated and, thus, they were inadmissible and the error was not harmless as the sound recordings were the sole basis for finding the mother to be unfit. People v. Leah H. (In re C.H.), 398 Ill. App. 3d 603, 339 Ill. Dec. 139, 925 N.E.2d 1260, 2010 Ill. App. LEXIS 210 (3 Dist. 2010), appeal denied, 2010 Ill. LEXIS 667 (Ill. 2010).

Juvenile court in a child custody matter should not have restored custody of the minor daughter to the mother based on mother's petition to restore custody. The minor daughter had been found to be a neglected child due to the mother's drug use, and no finding was made pursuant to 755 ILCS 5/11-7, 705 ILCS 405/2-27(1), 705 ILCS 405/2-23(1)(a), or 705 ILCS 405/2-28 that the mother had been found once again to be a fit parent. People v. R.P. (In re G.P.), 385 Ill. App. 3d 490, 324 Ill. Dec. 654, 896 N.E.2d 440, 2008 Ill. App. LEXIS 996 (3 Dist. 2008).

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Where unfitness pursuant to 750 ILCS 50/1 (D)(p), has been sufficiently determined, that determination must be affirmed on appeal unless it is contrary to the manifest weight of the evidence. People v. J.M., 219 Ill. App. 3d 747, 162 Ill. Dec. 256, 579 N.E.2d 1070 (1 Dist. 1991).

Sufficient evidence existed in the instant case to support the determination that respondent was unfit to care for her child, where there was evidence of abuse. People v. J.M., 219 Ill. App. 3d 747, 162 Ill. Dec. 256, 579 N.E.2d 1070 (1 Dist. 1991).

Visitation

At a permanency review hearing pursuant to this section, and without complying with 705 ILCS 405/2-25, the court may suspend a parent's visitation until the parent obtains previously ordered counseling. People v. Arnold (In re A.A.), 315 Ill. App. 3d 950, 248 Ill. Dec. 859, 735 N.E.2d 179, 2000 Ill. App. LEXIS 705 (4 Dist. 2000).

Written Findings

Trial court erred in terminating a juvenile case because the trial court did not enter an order finding that parents were fit to care for their child; no evidence was heard concerning the overall fitness of the father to meet the child's complex medical and other needs and to provide a stable home with consistent care, even though those were issues leading to the trial court's original adjudication of unfitness, and no evidence was heard concerning the mother, who was responsible for day-to-day child care. People v. Ill. Dep't of Children & Family Servs. (In re Aaron R.), 387 Ill. App. 3d 1130, 327 Ill. Dec. 416, 902 N.E.2d 171, 2009 Ill. App. LEXIS 31 (4 Dist. 2009).

The trial court's findings were adequate where (1) the trial court filed a written order stating that the court had considered the previously established permanency goal, the most recent service plans, all reports and evidence presented at prior hearings, the court's prior findings and orders, and the recommendations of the parties; (2) the court found that the Department of Children and Family Services (DCFS) had made reasonable efforts to achieve the prior permanency goal of return home; (3) the court further indicated that the mother was unfit and unable to care for, protect, train, and discipline the children and that appropriate services aimed at family preservation and reunification had been unsuccessful in rectifying the conditions leading to the finding of unfitness; and (4) the court specifically noted reasons that the children needed to remain in DCFS. People v. Prince (In re R.A.L.), 319 Ill. App. 3d 946, 253 Ill. Dec. 869, 746 N.E.2d 317, 2001 Ill. App. LEXIS 238 (4 Dist. 2001).

In light of the overwhelming volume of cases moving through the trial courts and the bare-bones support staff at the disposal of those courts, a court's oral pronouncement of its ruling should be viewed as sufficient to comply with subsection (2) if (1) those pronouncements appear in the record, and (2) they would constitute a sufficient statement of the court's findings if the court had turned to the court reporter and requested that its oral pronouncement be typed up and printed in the form of an order; in other words, so long as something exists in the record stating the basis for the court's determination, the writing requirement should be deemed satisfied, regardless of whether the "writing" was prepared by the court reporter or the court's administrative staff. People v. Black (In re S.E.), 319 Ill. App. 3d 937, 253 Ill. Dec. 875, 746 N.E.2d 323, 2001 Ill. App. LEXIS 261 (4 Dist. 2001).

LEGAL PERIODICALS

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For article, "Denying Child Welfare Services to Delinquent Teens: A Call to Return to the Roots of Illinois' Juvenile Court," see, 36 Loy. U. Chi. L.J. 925 (2005).

For note and comment, "Psychological Evaluations: Their Use and Misuse in Illinois Child Abuse and Neglect Cases," see, 54 DePaul L. Rev. 971 (2005).

§ 705 ILCS 405/2-28.01: Repealed by P.A. 90-608, § 32, effective June 30, 1998.

§ 705 ILCS 405/2-28.1. Permanency hearings; before hearing officers

Sec. 2-28.1. Permanency hearings; before hearing officers. (a) The chief judge of the circuit court may appoint hearing officers to conduct the permanency hearings set forth in subsection (2) of Section 2-28 [705 ILCS 405/2-28], in accordance with the provisions of this Section. The hearing officers shall be attorneys with at least 3 years experience in child abuse and neglect or permanency planning and in counties with a population of 3,000,000 or more, any hearing officer appointed after September 1, 1997, must be an attorney admitted to practice for at least 7 years. Once trained by the court, hearing officers shall be authorized to do the following:

(1) Conduct a fair and impartial hearing.

(2) Summon and compel the attendance of witnesses.

(3) Administer the oath or affirmation and take testimony under oath or affirmation.

(4) Require the production of evidence relevant to the permanency hearing to be conducted. That evidence may include, but need not be limited to case plans, social histories, medical and psychological evaluations, child placement histories, visitation records, and other documents and writings applicable to those items.

(5) Rule on the admissibility of evidence using the standard applied at a dispositional hearing under Section 2-22 of this Act [705 ILCS 405/2-22].

(6) When necessary, cause notices to be issued requiring parties, the public agency that is custodian or guardian of the minor, or another agency responsible for the minor's care to appear either before the hearing officer or in court.

(7) Analyze the evidence presented to the hearing officer and prepare written recommended orders, including findings of fact, based on the evidence.

(8) Prior to the hearing, conduct any pre-hearings that may be necessary.

(9) Conduct in camera interviews with children when requested by a child or the child's guardian ad litem.

In counties with a population of 3,000,000 or more, hearing officers shall also be authorized to do the following:

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(i) Accept specific consents for adoption or surrenders of parental rights from a parent or parents.

(ii) Conduct hearings on the progress made toward the permanency goal set for the minor.

(iii) Perform other duties as assigned by the court.

(b) The hearing officer shall consider evidence and conduct the permanency hearings as set forth in subsections (2) and (3) of Section 2-28 [705 ILCS 405/2-28] in accordance with the standards set forth therein. The hearing officer shall assure that a verbatim record of the proceedings is made and retained for a period of 12 months or until the next permanency hearing, whichever date is later, and shall direct to the clerk of the court all documents and evidence to be made part of the court file. The hearing officer shall inform the participants of their individual rights and responsibilities. The hearing officer shall identify the issues to be reviewed under subsection (2) of Section 2-28 [705 ILCS 405/2-28], consider all relevant facts, and receive or request any additional information necessary to make recommendations to the court.

If a party fails to appear at the hearing, the hearing officer may proceed to the permanency hearing with the parties present at the hearing. The hearing officer shall specifically note for the court the absence of any parties. If all parties are present at the permanency hearing, and the parties and the Department are in agreement that the service plan and permanency goal are appropriate or are in agreement that the permanency goal for the child has been achieved, the hearing officer shall prepare a recommended order, including findings of fact, to be submitted to the court, and all parties and the Department shall sign the recommended order at the time of the hearing. The recommended order will then be submitted to the court for its immediate consideration and the entry of an appropriate order.

The court may enter an order consistent with the recommended order without further hearing or notice to the parties, may refer the matter to the hearing officer for further proceedings, or may hold such additional hearings as the court deems necessary. All parties present at the hearing and the Department shall be tendered a copy of the court's order at the conclusion of the hearing.

(c) If one or more parties are not present at the permanency hearing, or any party or the Department of Children and Family Services objects to the hearing officer's recommended order, including any findings of fact, the hearing officer shall set the matter for a judicial determination within 30 days of the permanency hearing for the entry of the recommended order or for receipt of the parties' objections. Any objections shall be in writing and identify the specific findings or recommendations that are contested, the basis for the objections, and the evidence or applicable law supporting the objection. The recommended order and its contents may not be disclosed to anyone other than the parties and the Department or other agency unless otherwise specifically ordered by a judge of the court.

Following the receipt of objections consistent with this subsection from any party or the Department of Children and Family Services to the hearing officer's recommended

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orders, the court shall make a judicial determination of those portions of the order to which objections were made, and shall enter an appropriate order. The court may refuse to review any objections that fail to meet the requirements of this subsection.

(d) The following are judicial functions and shall be performed only by a circuit judge or associate judge:

(1) Review of the recommended orders of the hearing officer and entry of orders the court deems appropriate.

(2) Conduct of judicial hearings on all pre-hearing motions and other matters that require a court order and entry of orders as the court deems appropriate.

(3) Conduct of judicial determinations on all matters in which the parties or the Department of Children and Family Services disagree with the hearing officer's recommended orders under subsection (3).

(4) Issuance of rules to show cause, conduct of contempt proceedings, and imposition of appropriate sanctions or relief.

(Source: P.A. 89-17, § 5; 90-27, § 30; 90-28, § 10-20; 90-87, § 5; 90-608, § 30; 90-655, § 156.)

Effective Date. Section 99 of P.A. 89-17 made this section effective upon becoming law. The Act was approved May 31, 1995.

Effect of Amendments. The 1998 amendment by P.A. 90-608, effective June 30, 1998, incorporated the amendments by P.A. 90-27, P.A. 90-28, and P.A. 90-87; rewrote the introductory paragraph of subsection (a); redesignated the subdivisions designated as (a)(9)(1) - (a)(9)(3) or (a)(10)-(12) as subdivisions (a)(g)(i) through (a)(g)(iii); deleted "or subsection (c) of Section 2-28.01 of this Act" following "Section 2-28" in the first and fourth sentences of subsection (b); and inserted "be in writing and" in the second sentence in subsection (c).

The 1998 amendment by P.A. 90-655, effective July 30, 1998, incorporated the amendments by P.A. 90-27, and P.A. 90-28, and P.A. 90-87; and redesignated the subsections formerly designated as (a)(9)(1) through (a)(9)(3) and (a)(10) through (a)(12) as subsections (g)(g)(i) through (a)(g)(iii).

Although the amendments by P.A. 90-608 and P.A. 90-655 did not take into account the amendments made by the other, the amendments have been combined into a single version by the publisher.

CASE NOTES

Analysis

Adoption Act Considerations Not Applicable

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DCFS Services
- Termination

Adoption Act Considerations Not Applicable

The provision of 750 ILCS 50/1(D)(m) of the Adoption Act regarding the time limit within which a parent's failure to make reasonable efforts to correct conditions which were the basis of a child's removal, and which could be considered as ground for a determination of parental unfitness, did not apply in a permanancy planning hearing under the Juvenile Court Act. In re D.H., 295 Ill. App. 3d 981, 230 Ill. Dec. 469, 693 N.E.2d 1220 (1 Dist. 1998).

DCFS Services

- Termination

Where three minor children - ages 14 months, 2 years, and 5 years - were removed from their parents' home in 2005 after the father fondled the five-year-old girl's vagina and where the Illinois Department of Children and Family Services (DCFS) moved in 2010 to terminate its guardianship of the children, the circuit court erred in granting the motion and in entering subsequent orders that terminated the minors' wardships and closed their cases because the circuit court failed to comply with 705 ILCS 405/2-31(2) of the Juvenile Court Act of 1987 by failing to consider whether the termination of wardship and guardianship was in the best interest of the minors. Moreover, because the circuit court's termination resulted in the de facto return of the minors' custody to their mother, 705 ILCS 405/2-31(2) required the circuit court to comply with the requirements of 705 ILCS 405/2-28(4) of the Act; the circuit court erred in failing to hold a hearing, order an investigation, or make the necessary finding that the mother was fit to care for the minors as required by 705 ILCS 405/2-28(4). People v. Sandra R. (In re Vicente G.), 408 Ill. App. 3d 678, 349 Ill. Dec. 243, 946 N.E.2d 437, 2011 Ill. App. LEXIS 272 (1 Dist. 2011).

§ 705 ILCS 405/2-29. Adoption; appointment of guardian with power to consent

Sec. 2-29. Adoption; appointment of guardian with power to consent. (1) With leave of the court, a minor who is the subject of an abuse, neglect, or dependency petition under this Act may be the subject of a petition for adoption under the Adoption Act [750 ILCS 50/0.01 et seq.].

(1.1) The parent or parents of a child in whose interest a petition under Section 2-13 of this Act [705 ILCS 405/2-13] is pending may, in the manner required by the Adoption Act [750 ILCS 500/0.01 et seq.], (a) surrender him or her for adoption to an agency legally authorized or licensed to place children for adoption, (b) consent to his or her adoption, or (c) consent to his or her adoption by a specified person or persons. Nothing in this Section requires that the parent or parents execute the surrender, consent, or consent to adoption by a specified person in open court.

(2) If a petition or motion alleges and the court finds that it is in the best interest of the minor that parental rights be terminated and the petition or motion requests that a guardian of the person be appointed and authorized to consent to the adoption of the minor, the court, with the consent of the parents, if living, or after finding, based upon

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clear and convincing evidence, that a parent is an unfit person as defined in Section 1 of the Adoption Act [750 ILCS 50/1], may terminate parental rights and empower the guardian of the person of the minor, in the order appointing him or her as such guardian, to appear in court where any proceedings for the adoption of the minor may at any time be pending and to consent to the adoption. Such consent is sufficient to authorize the court in the adoption proceedings to enter a proper order or judgment of adoption without further notice to, or consent by, the parents of the minor. An order so empowering the guardian to consent to adoption deprives the parents of the minor of all legal rights as respects the minor and relieves them of all parental responsibility for him or her, and frees the minor from all obligations of maintenance and obedience to his or her natural parents.

If the minor is over 14 years of age, the court may, in its discretion, consider the wishes of the minor in determining whether the best interests of the minor would be promoted by the finding of the unfitness of a non-consenting parent.

(2.1) Notice to a parent who has appeared or been served with summons personally or by certified mail, and for whom an order of default has been entered on the petition for wardship and has not been set aside shall be provided in accordance with Supreme Court Rule 11. Notice to a parent who was served by publication and for whom an order of default has been entered on the petition for wardship and has not been set aside shall be provided in accordance with Sections 2-15 and 2-16 [705 ILCS 405/2-15 and 705 ILCS 405/2-16].

(3) Parental consent to the order terminating parental rights and authorizing the guardian of the person to consent to adoption of the minor must be in writing and signed in the form provided in the Adoption Act [750 ILCS 50/0.01 et seq.], but no names of petitioners for adoption need be included.

(4) A finding of the unfitness of a parent must be made in compliance with the Adoption Act [750 ILCS 50/0.01 et seq.], without regard to the likelihood that the child will be placed for adoption, and be based upon clear and convincing evidence. Provisions of the Adoption Act [750 ILCS 50/0.01 et seq.] relating to minor parents and to mentally ill or mentally deficient parents apply to proceedings under this Section and any findings with respect to such parents shall be based upon clear and convincing evidence.

(Source: P.A. 85-601; 89-704, § 5; 90-28, § 10-20; 90-443, § 10, 20; 90-608, § 30.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-29.

Cross References.

As to termination of parental rights under the Children and Family Services Act, see 20 ILCS 505/35.2.

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As to the adoption of a dependent minor who has a parent or guardian or legal custodian and that adult wishes to be relieved of all residual parental rights and responsibilities, guardianship or custody, see 705 ILCS 405/2-4.

Illinois Administrative Code.

See 20 Illinois Administrative Code, § 107.320.

Effect of Amendments. The 1998 amendment by P.A. 90-608, effective June 30, 1998, incorporated the amendments by P.A. 90-28 and P.A. 90-443; inserted subsection (2.1); and deleted "shall be made in open court whenever possible and otherwise" preceding "must be in writing" in subsection (3).

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In General

Adoption did not exist at common law, therefore, the juvenile court's authority to appoint a guardian with the power to consent to adoption must be statutorily derived. People v. A.B., 226 Ill. App. 3d 202, 168 Ill. Dec. 287, 589 N.E.2d 687 (1 Dist.), appeal granted, 145 Ill. 2d 634, 173 Ill. Dec. 5, 596 N.E.2d 629 (1992).

Former Ill. Rev. Stat., ch. 37, para. 705-9 (see now this section) made no distinction as to the initial basis for adjudicating a minor a ward of the court under this Act. People v. Green, 173 Ill. App. 3d 922, 123 Ill. Dec. 693, 528 N.E.2d 238 (2 Dist. 1988).

Appointment of Guardian

- In General

The juvenile court, when presented with a petition to terminate parental rights and appoint a guardian with the power to consent to adoption, pursuant to this section, does not have the authority to restrict, condition or limit the power of the appointed guardian in such a manner that would make that authority contingent upon the adoptive parents' willingness to consent to

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continued visitation or contact between the adopted child and his or her biological parents and/or siblings. People v. A.B., 226 Ill. App. 3d 202, 168 Ill. Dec. 287, 589 N.E.2d 687 (1 Dist.), appeal granted, 145 Ill. 2d 634, 173 Ill. Dec. 5, 596 N.E.2d 629 (1992).

Under this section, a trial court may appoint a guardian with the authority to consent to the adoption of a minor whenever it finds by clear and convincing evidence that a nonconsenting parent is unfit as defined in 750 ILCS 50/1 (D) of the Adoption Act. Walker v. State, 199 Ill. App. 3d 1050, 146 Ill. Dec. 17, 557 N.E.2d 959 (3 Dist. 1990).

Only if the trial court finds a nonconsenting parent unfit, after a minor child is adjudged a ward of the court, may a guardian with power to consent to an adoption be appointed. People v. Nitz, 76 Ill. App. 3d 15, 31 Ill. Dec. 685, 394 N.E.2d 887 (3 Dist. 1979).

- Pleadings

Under former Ill. Rev. Stat., ch. 37, para. 705-9 of this Act (see now this section), although the amended petition upon which the case was heard failed to comply with the statutory provision that it had to allege it to be in the best interest of the minor that a guardian with power to consent to adoption be appointed, where the court made a finding that the best interests of the minors would be served by the appointment of the guardian with the power to consent and the evidence supported the finding, and the other allegations of the supplemental petition implied that the best interests of the minors would be served by the guardian's appointment, the decree was proper. People v. McElfresh, 96 Ill. App. 3d 1104, 52 Ill. Dec. 582, 422 N.E.2d 263 (4 Dist. 1981).

- Upheld

Where all three of the respondent's children expressed their desire to have respondent's parental rights terminated, and respondent was found to be an unfit parent, the court did not err in appointing a guardian to consent to the adoption of the children by their foster parents. In re Woods, 54 Ill. App. 3d 729, 12 Ill. Dec. 342, 369 N.E.2d 1356 (1 Dist. 1977).

Best Interests of the Minor

Determination that termination of parental rights was in a child's best interest was not an abuse of discretion or against the manifest weight of the evidence where the trial court went beyond the parent's felony conviction record and considered the desirability of the parent's two children being raised together, the particular child's special needs, and the fact that the child had bonded well with the foster family that wished to adopt. People v. Herman O. (In re Travarius O.), 343 Ill. App. 3d 844, 278 Ill. Dec. 792, 799 N.E.2d 510, 2003 Ill. App. LEXIS 1262 (1 Dist. 2003).

- In General

Once a finding of unfitness is made, all considerations must yield to the best interests of the child. People v. Barrett, 197 Ill. App. 3d 802, 144 Ill. Dec. 214, 555 N.E.2d 111 (4 Dist. 1990).

- Termination of Parental Rights

Termination of parental rights was in the best interests of the minors, because the father's unfitness finding of depravity was based upon several earlier convictions charging violent acts, the father did not challenge the depravity finding, and many of the convictions showed the father's propensity for violence relative to the minors' safety and sense of security, and prior to the best interests hearing, the father had been convicted of the first degree murder charge which alleged that the father killed the mother by stabbing her several times in the presence of one minor and others. People v. Clarence T (In re S.D.), Ill. App. 3d , 352 Ill. Dec. 784, 954 N.E.2d 867, 2011 Ill. App. LEXIS 813 (3 Dist. 2011).

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Parental rights were properly terminated because the mother had a substantial and serious history of drug abuse and had not made any progress in obtaining services necessary to reunite with the child, neither parent had maintained a parental relationship with the child, and the child felt abandoned by his parents. In re Deandre D., 405 Ill. App. 3d 945, 346 Ill. Dec. 246, 940 N.E.2d 246, 2010 Ill. App. LEXIS 1295 (1 Dist. 2010).

Trial court's decision to terminate parents' rights to two small children was in the best interests of the children where the evidence showed that the children were in a safe and happy foster home, that the children had bonded with the foster mother, that it would be traumatic for the children to be removed from their foster home, that reunification attempts in the past had failed, and that the parents were unable to provide a home that was safe and secure or to provide for the children's health or to give them love. People v. Lacina B. (In re J.B.), 346 Ill. App. 3d 77, 281 Ill. Dec. 376, 803 N.E.2d 997, 2004 Ill. App. LEXIS 22 (1 Dist. 2004), appeal denied sub nom. In re J.B., 208 Ill. 2d 538, 284 Ill. Dec. 340, 809 N.E.2d 1286 (2004).

Under former Ill. Rev. Stat., ch. 37, paras. 701-2(3)(c) and 705-9, (see now 705 ILCS 405/1-2 and this section), as well as former Ill. Rev. Stat., ch. 4, paras. 9.1-1 and 9.1-20a, (see now 750 ILCS 50/1 and 750 ILCS 50/202), in the type of situation involving the issue of terminating the interest and rights of a natural parent so that the court might in the future proceed with examination of the merits of an adoption, the courts were required to consider the best interests of the minor. People v. Grant, 29 Ill. App. 3d 731, 331 N.E.2d 219 (1 Dist. 1975).

Change of Custody

- Natural Parents

Petitioners did not have an absolute right to a hearing on a petition for change of custody and termination of wardship under subsection (3) of former Ill. Rev. Stat., ch. 37, para. 705-8 of this Act (see now this section). Bardwell v. People, 138 Ill. App. 3d 418, 93 Ill. Dec. 29, 485 N.E.2d 1239 (5 Dist. 1985).

Children

In order to terminate a parents' rights under the Illinois Adoption Act, 750 ILCS 50/1 et seq., the State must show by clear and convincing evidence, that the parent is "unfit," as that term is defined in 750 ILCS 50/1(D) of the Illinois Adoption Act, codified at 750 ILCS 50/1(D); if the court makes such a finding, it will then consider whether it is in the best interests of the child that parental rights be terminated under 705 ILCS 405/2-29(2). People v. Nancy F. (In re D.F.), 201 Ill. 2d 476, 268 Ill. Dec. 7, 777 N.E.2d 930, 2002 Ill. LEXIS 623 (2002).

Consent

- Conditional

The juvenile court may not condition the court appointed guardian's power to consent to adoption. M.M. v. M.M., 156 Ill. 2d 53, 189 Ill. Dec. 1, 619 N.E.2d 702 (1993).

- Irrevocable

Once a consent to adoption or a surrender for adoption is acknowledged in the prescribed manner, it is irrevocable unless obtained by fraud or duress on the part of the person before whom the document is acknowledged. People v. Kerwood, 44 Ill. App. 3d 1040, 3 Ill. Dec. 773, 359 N.E.2d 183 (1 Dist. 1976).

- Requirements

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Under former Ill. Rev. Stat., ch. 37, para. 705-9 (see now this section), parents were not entitled to an opportunity to consent to the actual adoption of their children prior to being declared unfit. People v. Welch, 164 Ill. App. 3d 142, 115 Ill. Dec. 211, 517 N.E.2d 622 (5 Dist. 1987).

Where the consent requirements of 750 ILCS 50/0.01 et seq. were not met, the mother's consent to adoption was void. In re Jennings, 32 Ill. App. 3d 857, 336 N.E.2d 786 (2 Dist. 1975), aff'd, 68 Ill. 2d 125, 11 Ill. Dec. 256, 368 N.E.2d 864 (1977).

- Validity

Where the order entered appointing the guardian and authorizing her to consent to the adoption of the children found that the mother did sign the consents before the court, there was no reason to question the validity of the manner in which consents to adoption were acknowledged. In re Jennings, 68 Ill. 2d 125, 11 Ill. Dec. 256, 368 N.E.2d 864 (1977).

Depravity

- Criminal Conviction

Depravity may be established by a series of acts or a course of conduct indicating a deficiency in a moral sense and showing either an inability or an unwillingness to conform to accepted morality; however, the mere fact of a felony criminal conviction is not sufficient to justify a finding of depravity. In re T.H., 255 Ill. App. 3d 247, 193 Ill. Dec. 370, 626 N.E.2d 403 (5 Dist. 1993), appeal denied, 155 Ill. 2d 577, 198 Ill. Dec. 554, 633 N.E.2d 16, cert. denied, 513 U.S. 905, 115 S. Ct. 269, 130 L. Ed. 2d 187 (1994).

- Defined

In order to find a person unfit on the ground of depravity, the court must find that the person suffers from an inherent deficiency of moral sense and rectitude. In re T.H., 255 Ill. App. 3d 247, 193 Ill. Dec. 370, 626 N.E.2d 403 (5 Dist. 1993), appeal denied, 155 Ill. 2d 577, 198 Ill. Dec. 554, 633 N.E.2d 16, cert. denied, 513 U.S. 905, 115 S. Ct. 269, 130 L. Ed. 2d 187 (1994).

- Presumption

Appellate court erred in reversing the trial court's judgment that found a father was unfit, that it was in the best interests of the minor to terminate the father's parental rights, and that found the father's parental rights were terminated in the minor son; through a drafting error by the legislature, the legislature did not include a presumption of depravity in the offense for which the father was convicted, predatory criminal sexual assault of a child in violation of 720 ILCS 5/12-14.1(a)(1), that offense included such a presumption and the State showed the presumption applied to support a finding the father was unfit, and the father did not rebut that presumption with clear and convincing evidence to the contrary.

- Purpose of Statute

The purpose of the statute allowing termination of parental rights based on a finding of depravity is not to punish the parent for a criminal act but to protect and safeguard the welfare of children. In re T.H., 255 Ill. App. 3d 247, 193 Ill. Dec. 370, 626 N.E.2d 403 (5 Dist. 1993), appeal denied, 155 Ill. 2d 577, 198 Ill. Dec. 554, 633 N.E.2d 16, cert. denied, 513 U.S. 905, 115 S. Ct. 269, 130 L. Ed. 2d 187 (1994).

Eligibility for Adoption

The fact that this section is explicitly referenced in 705 ILCS 405/2-27(3) shows that any ward of the court may be the subject of a petition to adopt, when the ward of the court is removed from a

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parent by being placed pursuant to that section. People v. Green, 173 Ill. App. 3d 922, 123 Ill. Dec. 693, 528 N.E.2d 238 (2 Dist. 1988).

Evidence

There was no prejudicial error in allowing a caseworker to testify that an adoptive home was available. People v. Martin, 48 Ill. App. 3d 341, 6 Ill. Dec. 500, 363 N.E.2d 29 (1 Dist. 1977).

Formerly Presumed Father

Any formerly presumed father who might qualify under the law of other states as an "equitable parent" would benefit by remaining in a proceeding under this section until all issues are resolved because he would have an opportunity to persuade the court to frame its dispositional order in such a way as to be consistent with any ability he might have to adopt the child; he obtains some of the protection which the "equitable parent" rule might give him while, at the same time, the state is relieved of the burden of establishing his unfitness when the child's best interests appear not to include any role for the formerly presumed father. A.K. v. Kirchner, 250 Ill. App. 3d 981, 189 Ill. Dec. 604, 620 N.E.2d 572 (4 Dist. 1993), cert. denied, 154 Ill. 2d 560, 197 Ill. Dec. 487, 631 N.E.2d 709 (1994).

Once the presumed father is brought into the proceeding under this section he can remain in the proceeding after the presumption of parentage is rebutted, which serves not only to protect himself but also to promote the stated legislative purpose of serving the best interests of the child. A.K. v. Kirchner, 250 Ill. App. 3d 981, 189 Ill. Dec. 604, 620 N.E.2d 572 (4 Dist. 1993), cert. denied, 154 Ill. 2d 560, 197 Ill. Dec. 487, 631 N.E.2d 709 (1994).

A formerly presumed father is entitled to remain in the case and he should be treated as a party entitled to notice of hearing and to present evidence, cross-examine witnesses and make argument. He would also have a right to appeal, but on appeal he could only complain of a denial of the foregoing rights. A.K. v. Kirchner, 250 Ill. App. 3d 981, 189 Ill. Dec. 604, 620 N.E.2d 572 (4 Dist. 1993), cert. denied, 154 Ill. 2d 560, 197 Ill. Dec. 487, 631 N.E.2d 709 (1994).

Jurisdiction

Defects in a supplemental petition to terminate parental rights were not sufficient to deprive the trial court of subject matter jurisdiction. People v. McElfresh, 96 Ill. App. 3d 1104, 52 Ill. Dec. 582, 422 N.E.2d 263 (4 Dist. 1981).

Non-Consenting

The term "non-consenting" in this section means not consenting to the appointment of a guardian with power to consent to adoption rather than not consenting to an adoption petition. People v. Welch, 164 Ill. App. 3d 142, 115 Ill. Dec. 211, 517 N.E.2d 622 (5 Dist. 1987).

Parental Unfitness

- Appellate Review

Where mother challenged two of the five statutory grounds for a finding of unfitness as deficient as a matter of law, if any of the remaining three grounds were sufficiently supported by the evidence to warrant finding parents unfit, the mother's challenge to the legal sufficiency of the other findings would not be considered. People v. Mikel, 205 Ill. App. 3d 497, 150 Ill. Dec. 872, 563 N.E.2d 999 (4 Dist. 1990).

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Proof of unfitness of a natural parent must be made by clear and convincing evidence and the court's determination should not be disturbed unless it is against the manifest weight of the evidence. People v. Saadoon, 78 Ill. App. 3d 319, 33 Ill. Dec. 845, 397 N.E.2d 178 (1 Dist. 1979).

- Determinative Factors

705 ILCS 405/2-13 and 705 ILCS 405/2-29 authorize the State of Illinois to file a termination petition after a minor has been found by the court to be abused or neglected and the court has entered a dispositional order; common sense dictates, however, that the State cannot file a termination petition alleging that a parent is unfit before the parent that is the subject of the termination petition has been found to have abused or neglected the child in question and, therefore, a finding of neglect directed only at a child's father could not be used as the basis for a finding that the child's mother was unfit. People v. Teresa R. (In re Cheyenne S.), 351 Ill. App. 3d 1042, 287 Ill. Dec. 383, 815 N.E.2d 1186, 2004 Ill. App. LEXIS 1064 (3 Dist. 2004).

Evidence of failure to visit is insufficient, of itself, to support a finding of unfitness. Chick v. Massey, 35 Ill. App. 3d 518, 341 N.E.2d 405 (4 Dist. 1976).

- Evidence Held Insufficient

A mother was not unfit where she was living in a foster home at the time of her child's birth and was not even given a chance to care for her child, where she was interested in her child and visited him fairly frequently; her failure to express even more of an interest may have in great part stemmed from the state's failure to inculcate into her the need for maintaining a greater and more consistent contact with her child, and she was unaware of her child's plight. People v. Barber, 55 Ill. App. 3d 587, 13 Ill. Dec. 582, 371 N.E.2d 299 (1 Dist. 1977).

The evidence was held insufficient to sustain the trial court's finding that an incarcerated putative father was an unfit parent within the former statutory definition of "unfit" (see 750 ILCS 50/1 (D)(b)). People v. Allen, 34 Ill. App. 3d 603, 340 N.E.2d 269 (1 Dist. 1975).

- Evidence Held Sufficient

Appellate court erred in reversing the trial court's judgment that found a father was unfit, that it was in the best interests of the minor to terminate the father's parental rights, and that found the father's parental rights were terminated in the minor son; through a drafting error by the legislature, the legislature did not include a presumption of depravity in the offense for which the father was convicted, predatory criminal sexual assault of a child in violation of 720 ILCS 5/12-14.1(a)(1), that offense included such a presumption and the State showed the presumption applied to support a finding the father was unfit, and the father did not rebut that presumption with clear and convincing evidence to the contrary.

Despite the fact that the mother had completed various classes concerning substance abuse, parenting, anger management, and grief, and attended Alcoholics Anonymous on a regular basis, she was found to be unfit where the record failed to that show she had the necessary knowledge or skills to parent a child who suffered from development deficits. People v. Detra W. (In re Gwynne P.), 215 Ill. 2d 340, 294 Ill. Dec. 96, 830 N.E.2d 508, 2005 Ill. LEXIS 635 (2005).

Trial court's finding of the mother's unfitness based on 750 ILCS 50/1(D)(b) was not against the manifest weight of the evidence because the trial court was not precluded from considering evidence of the mother's conduct after the State filed its petitions for termination, and the mother did not dispute that there was sufficient evidence after that date to support the finding of unfitness. People v. Tieriel W. (In re Dominique W.), 347 Ill. App. 3d 557, 283 Ill. Dec. 471, 808 N.E.2d 21, 2004 Ill. App. LEXIS 276 (1 Dist. 2004).

Juvenile court did not abuse its discretion in finding that it was in three children's best interests to terminate their mother's parental rights and place them up for adoption, as the mother failed to

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make reasonable progress toward a return home within nine months after adjudication, and she failed to maintain a reasonable degree of concern or responsibility as to the children's welfare; furthermore, the children were suffering from anxiety because they had been in foster care for a long time, and wished to have the permanency of adoption. People v. Kathleen C. (In re April C.), 345 Ill. App. 3d 872, 281 Ill. Dec. 312, 803 N.E.2d 933, 2004 Ill. App. LEXIS 21 (1 Dist. 2004).

In a termination of rights proceeding, the juvenile court did not err in denying an incarcerated parent's motion to dismiss the proceeding, sought on grounds of retroactive application of a new grounds for termination - long-term parental incarceration; parents did not have vested rights in parenting in all situations, so summary judgment terminating the parent's rights was properly ordered where the children's best interests required it, even though the foster parents, fearful of the parent's reaction, said they did not wish to adopt the children. People v. E. C. (In re E.C.), 337 Ill. App. 3d 391, 272 Ill. Dec. 51, 786 N.E.2d 590, 2003 Ill. App. LEXIS 272 (1 Dist. 2003).

Trial court affirmed the termination of mother's parental rights where the record reflected that one child had been in foster care for six of his seven years of life and had been cared for by his foster mother for years and the youngest child was removed from mother's custody less than two weeks after birth. People v. M.P. (In re G.L.), 329 Ill. App. 3d 18, 263 Ill. Dec. 607, 768 N.E.2d 367, 2002 Ill. App. LEXIS 246 (1 Dist. 2002).

Where respondent parents moved many times, often failed to maintain a home with proper utilities and which was clean and blamed their problem on "poverty," even assuming that two of the five grounds of unfitness found by the trial court were legally deficient, a conclusion opposite to the court's finding that the parents failed to make reasonable progress toward the return of the minors was not clearly evident from a review of the evidence. People v. Mikel, 205 Ill. App. 3d 497, 150 Ill. Dec. 872, 563 N.E.2d 999 (4 Dist. 1990).

Where evidence showed that mother had abandoned her children, had failed to maintain a reasonable degree of interest, concern or responsibility as to their welfare and had deserted them for more than three months prior to the filing of the supplemental petitions, court properly found mother to be an unfit parent. In re Wright, 142 Ill. App. 3d 809, 97 Ill. Dec. 49, 492 N.E.2d 252 (5 Dist. 1986).

Evidence of fornication, of substantial and repeated neglect, and of failure to make reasonable efforts to correct the conditions which led to the original adjudication of neglect was clear and convincing, and supported the finding of mother's unfitness. People v. Berry, 86 Ill. App. 3d 522, 42 Ill. Dec. 150, 408 N.E.2d 728 (5 Dist. 1980).

Evidence that a mother failed to contact the Department of Children and Family Services for purpose of visitation, that she failed to supervise the children properly with regard to school attendance, and that she failed to maintain a clean and healthy household for the children was sufficient to establish the mother's unfitness and to support a termination of her parental rights. People v. Hillyer, 82 Ill. App. 3d 505, 38 Ill. Dec. 21, 403 N.E.2d 36 (3 Dist. 1980).

Evidence supported a finding of unfitness and termination of a mother's parental rights under the former Adoption Act (former Ill. Rev. Stat., ch. 4, para. 9.1-1) (see now 750 ILCS 50/1 et seq.) where the same regrettable series of events which had prevented her from being able to fulfill the responsibilities of parenthood at the time of her original relinquishment of custody had not abated, but had in fact been aggravated by yet another unsuccessful marriage, no successful reconciliation was achieved between the mother and her second husband, and the circuit court correctly analyzed her prospects for establishing any kind of a stable home life, as she drifted through a succession of jobs and addresses. In re Workman, 76 Ill. 2d 256, 28 Ill. Dec. 541, 390 N.E.2d 900 (1979).

- General Verdict

General finding of unfitness of nonconsenting mother was sufficient to sustain the judgment, where the petition alleged her unfitness, the specific grounds therefor were set forth with

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particularity, and the evidence in the record clearly and convincingly supported the judgment. People v. Berry, 86 Ill. App. 3d 522, 42 Ill. Dec. 150, 408 N.E.2d 728 (5 Dist. 1980).

- Incarcerated Parent

Incarceration of a father or mother of legitimate or illegitimate children, limits, indeed it seriously impairs, the ability of that parent to manifest interest, concern or responsibility in the welfare of his or her children; for this reason, the fact of incarceration is relevant to the question whether during imprisonment that parent has maintained a reasonable degree of interest in the welfare of his children, as is the fact that the children of an incarcerated parent have been placed by the state where contact between the parent and the child is frustrated by state authorities. People v. Allen, 34 Ill. App. 3d 603, 340 N.E.2d 269 (1 Dist. 1975).

- Pleadings

No requirement exists that the supplemental petition pray that the parents be found to be unfit. People v. McElfresh, 96 Ill. App. 3d 1104, 52 Ill. Dec. 582, 422 N.E.2d 263 (4 Dist. 1981).

Under former Ill. Rev. Stat., ch. 37, para. 705-9 of this Act (see now this section) pleading with particularity did not require more than setting forth the specific statutory grounds of unfitness; allegation of the particular acts or omissions which constituted the specified statutory grounds of unfitness under 750 ILCS 50/1(D) were not required. People v. McElfresh, 96 Ill. App. 3d 1104, 52 Ill. Dec. 582, 422 N.E.2d 263 (4 Dist. 1981).

Failure to allege the unfitness of children's natural parents in petition to terminate their parental rights and to give the Department of Children and Family Services the right to consent to their adoption and the grounds therefore, as required by the former Adoption Act (see now 750 ILCS 50/7), rendered the petition fatally defective. People v. Griffin, 45 Ill. App. 3d 784, 4 Ill. Dec. 61, 359 N.E.2d 894 (3 Dist. 1977).

- Standard of Proof

State of Illinois failed to establish a mother's unfitness where no finding of neglect was entered against the mother in an initial neglect proceeding and a finding that the mother neglected her children made in a second proceeding was improper because it was based on the mother's violation of an order of protection she was ordered to obtain; thus, the trial court was without authority to require the mother to obtain the order of protection. People v. Teresa R. (In re Cheyenne S.), 351 Ill. App. 3d 1042, 287 Ill. Dec. 383, 815 N.E.2d 1186, 2004 Ill. App. LEXIS 1064 (3 Dist. 2004).

While the appointment of a guardian with the power to consent to adoption pursuant to 705 ILCS 405/2-29 requires proof of unfitness by clear and convincing evidence, the standard of proof to support trial court's finding of unfitness under 705 ILCS 405/2-27, which does not result in a complete termination of all parental rights, is a preponderance of the evidence. People v. Kathleen C. (In re April C.), 326 Ill. App. 3d 225, 260 Ill. Dec. 6, 760 N.E.2d 85, 2001 Ill. App. LEXIS 828 (1 Dist. 2001).

Regarding unfitness, it is the parent's past conduct in the then-existing circumstances that is under scrutiny, and, in a proceeding under 705 ILCS 405/2-29(2) to terminate parental rights, the State must prove by clear and convincing evidence that the nonconsenting parent is "unfit" as defined under 750 ILCS 50/1(D). A trial court's finding that a mother was not unfit was against the manifest weight of the evidence where the State proved she was still addicted to drugs and had not corrected conditions warranting removal of the child. People v. Veronica P. (In re Latifah P.), 307 Ill. App. 3d 558, 241 Ill. Dec. 189, 718 N.E.2d 1043, 1999 Ill. App. LEXIS 647 (1 Dist. 1999).

Because the burden of proof in a proceeding to determine whether a minor has been abused is lower than in a proceeding to declare parents unfit, a court's ruling on a factual issue when

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determining whether a child is an abused or neglected minor is not binding in the proceeding to determine the fitness of the parents. People v. Clarence H. B., 215 Ill. App. 3d 85, 158 Ill. Dec. 765, 574 N.E.2d 878 (2 Dist. 1991).

Where in a criminal prosecution, the trier of fact determined that the state failed to prove beyond a reasonable doubt that respondents committed sexual abuse, they were not exonerated in a subsequent fitness proceeding, where the state only needed to prove that respondents committed the offenses by the lesser standard of clear and convincing evidence. People v. Clarence H. B., 215 Ill. App. 3d 85, 158 Ill. Dec. 765, 574 N.E.2d 878 (2 Dist. 1991).

Where a minor adjudicated a ward of the court and removed from his parents is the subject of a petition for adoption as authorized by this section, this section requires proof by clear and convincing evidence that a parent or legal guardian is unfit as defined in the Adoption Act (750 ILCS 50/1(D)). People v. Green, 173 Ill. App. 3d 922, 123 Ill. Dec. 693, 528 N.E.2d 238 (2 Dist. 1988).

A finding of parental unfitness must be supported by clear and convincing evidence. People v. Steele, 101 Ill. 2d 345, 78 Ill. Dec. 149, 461 N.E.2d 983 (1984); People v. Tamburini, 192 Ill. App. 3d 477, 139 Ill. Dec. 529, 548 N.E.2d 1085 (4 Dist. 1989), cert. denied, 132 Ill. 2d 545, 144 Ill. Dec. 266, 555 N.E.2d 385 (1990).

Although the character of evidence permitted in a dispositional hearing is less stringent than that pertaining at an adjudicatory hearing, nevertheless, a finding of parental unfitness with its attendant drastic consequences, should not and cannot be made unless such finding is supported by the traditionally required clear and convincing evidence. People ex rel. Department of Children & Family Servs. v. Sparrow, 59 Ill. App. 3d 731, 17 Ill. Dec. 237, 376 N.E.2d 236 (5 Dist. 1978).

In order to terminate parental rights, parental unfitness must be shown by clear and convincing evidence. People v. Allen, 34 Ill. App. 3d 603, 340 N.E.2d 269 (1 Dist. 1975).

Procedure

Trial court did not err by allowing a termination matter to proceed with a best-interests hearing upon a supplemental motion for termination under circumstances in which, after the mother was found unfit, the trial court initially found that termination was not in the child's best interests, but 7 months later, the State filed the supplemental motion for termination of parental rights. People v. Hampton (In re M.R.), 393 Ill. App. 3d 609, 332 Ill. Dec. 151, 912 N.E.2d 337, 2009 Ill. App. LEXIS 686 (4 Dist. 2009), appeal denied, 233 Ill. 2d 559, 335 Ill. Dec. 634, 919 N.E.2d 353, 2009 Ill. LEXIS 1292.

- Findings

A termination of parental rights order was not defective for the court's failure to make the minors wards of the court or to specifically find it in the minors' best interests to appoint a guardian; former Ill. Rev. Stat., ch. 37, para. 705-9 of this Act (see now this section) does not state that a minor must be declared a ward of the court prior to the appointment of a guardian; since the finding that a minor is in need of a guardian is tantamount to a finding of wardship. People v. Pluskis, 167 Ill. App. 3d 534, 118 Ill. Dec. 321, 521 N.E.2d 603 (4 Dist. 1988).

In a proceeding for the custody of a child, the best interests of the child is the predominate issue, but in a proceeding where the rights and interests of a parent are sought to be permanently severed, the best interests of the child can be considered only if the court finds by clear and convincing evidence that the parent is unfit or consents to the severance; where the judge found both parents to be unfit, the fact that he pronounced his findings of the child's best interests prior to pronouncing his findings as to unfitness did not violate the rule or constitute error. Chick v. Massey, 35 Ill. App. 3d 518, 341 N.E.2d 405 (4 Dist. 1976).

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- No Jury Trial

In a proceeding seeking a finding of unfitness and termination of parental rights under former Ill. Rev. Stat., ch. 37, para. 705-9, (see now this section), and the former Adoption Act (see now 750 ILCS 50/0.01 et seq.), no right to a jury trial exists. In re Weinstein, 68 Ill. App. 3d 883, 25 Ill. Dec. 322, 386 N.E.2d 593 (1 Dist. 1979).

- Oral Request

A juvenile court does not have authority to hold parental termination hearings based solely on an interested party's oral request for such at a permanency review hearing; instead, a petition or motion specifically requesting termination of parental rights is required. People v. Mildred B., 305 Ill. App. 3d 813, 239 Ill. Dec. 219, 713 N.E.2d 750 (3 Dist. 1999).

- Parental Unfitness

Under former Ill. Rev. Stat., ch. 37, para. 705-9 of this Act (see now this section) there was no express requirement that a finding of parental unfitness be made following the adjudicatory hearing; evidence received at the adjudicatory hearing relevant to parental unfitness should not have been considered by the court at the conclusion of the dispositional hearing if the decision of unfitness was reserved to that time. People ex rel. Department of Children & Family Servs. v. Sparrow, 59 Ill. App. 3d 731, 17 Ill. Dec. 237, 376 N.E.2d 236 (5 Dist. 1978).

Putative Father

Putative fathers are not treated disparately under the Adoption Act (750 ILCS 50/0.01 et seq.) and this Act; the Adoption Act specifically states that it should be construed in concert with this Act, and this section incorporates by reference many of the provisions in the Adoption Act, including those with respect to notice and consent. In re K.J.R., 293 Ill. App. 3d 49, 227 Ill. Dec. 190, 687 N.E.2d 113 (1 Dist. 1997).

Termination of Parental Rights

Trial court's order finding that parents were unfit but that it was not in the best interests of their children to terminate the parents' parental rights was not a final order because it did not fix the parties' rights or finally resolve the issue of whether the parents' parental rights should be terminated, and the appellate court's judgment dismissing the State's appeal because the trial court's order was not a final judgment was upheld by the state supreme court. People v. Tracy H. (In re A.H.), 207 Ill. 2d 590, 280 Ill. Dec. 290, 802 N.E.2d 215, 2003 Ill. LEXIS 2274 (2003).

- In General

Trial court was authorized under 705 ILCS 405/2-29(2) to terminate the parental rights of the paternal grandparents' son and daughter-in-law and appoint a guardian for the minor daughter of the son and daughter-in-law. Since doing so deprived the parents of parental rights in the minor daughter it also deprived the paternal grandparents of any right in the child, including the right to intervene in a case in an attempt to adopt the child. Hixson v. S.G. (In re S.G.), 401 Ill. App. 3d 775, 340 Ill. Dec. 774, 929 N.E.2d 78, 2010 Ill. App. LEXIS 401 (4 Dist. 2010).

In the best interest phase of a termination of parental rights proceeding, the interests of the parent and the child diverge and due process does not require standards as strict as in the unfitness phase; due process requires only a preponderance of the evidence burden of proof in the best interest phase versus a clear and convincing evidence standard in the unfitness phase. People v. Michelle L. (In re Brandon L.), 348 Ill. App. 3d 315, 284 Ill. Dec. 197, 809 N.E.2d 763, 2004 Ill. App. LEXIS 458 (2 Dist. 2004).

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Parents have a fundamental due process right to the care, custody and control of their children, but that right is subject to termination; a parental rights termination proceeding must comport with the guarantees of procedural due process because such a proceeding implicates a fundamental liberty interest. People v. Michelle L. (In re Brandon L.), 348 Ill. App. 3d 315, 284 Ill. Dec. 197, 809 N.E.2d 763, 2004 Ill. App. LEXIS 458 (2 Dist. 2004).

The 705 ILCS 405/2-13(4) requirement that a petition for termination of parental rights contain language indicating that the State is seeking "permanent" termination of those rights applies only when the state files a single petition that asks the court to adjudicate a minor abused, neglected, or dependent, as well as seeking to terminate parental rights and to have appointed a guardian with the power to consent to the minor's adoption under 705 ILCS 405/2-29; the language is not required where the State seeks termination of parental rights in a separate, distinct proceeding under 705 ILCS 405/2-29. People v. Britt (In re H.D.), 343 Ill. App. 3d 483, 278 Ill. Dec. 194, 797 N.E.2d 1112, 2003 Ill. App. LEXIS 1241 (4 Dist. 2003).

The language of § 2-13(4) of the Illinois Juvenile Court Act of 1987 (Act), 705 ILCS 405/2-13(4), which requires that a petition clearly and obviously state that a parent can permanently lose his or her parental rights after a hearing does not apply to termination petitions brought under § 2-29 of the Act, 705 ILCS 405/2-29, following the entry of a dispositional order under § 2-22 of the Act, 705 ILCS 405/2-22. People v. Griffin (In re J.R.), 342 Ill. App. 3d 310, 276 Ill. Dec. 519, 794 N.E.2d 414, 2003 Ill. App. LEXIS 976 (4 Dist. 2003).

Once an adoptive placement is determined to be in the best interests of the child, the responsibilities concerning the care, custody, and control of the child vest, solely, in the adoptive parents and it is up to them to decide whether to permit or deny continued contact with the child's biological family; biological family ties do not continue to receive protected status in the face of an adoption. In re Donte, 259 Ill. App. 3d 246, 197 Ill. Dec. 254, 631 N.E.2d 257 (1 Dist. 1994).

A parent's right to a minor child may be terminated by a trial court after a finding that the child has been neglected under this section and after the parent has been found unfit under the Adoption Act (750 ILCS 50/1(D). People v. M.R., 191 Ill. App. 3d 607, 138 Ill. Dec. 837, 548 N.E.2d 67 (5 Dist. 1989).

Parental rights and responsibilities are of deep human importance and will not be lightly terminated. People v. Steele, 101 Ill. 2d 345, 78 Ill. Dec. 149, 461 N.E.2d 983 (1984); People v. Phillips, 191 Ill. App. 3d 237, 138 Ill. Dec. 437, 547 N.E.2d 604 (4 Dist. 1989).

The issue of termination of parental rights based on parental unfitness arises when a petition to appoint a guardian with authority to consent to adoption is filed in respect to a minor who is a ward of the court and the parents of the minor have not consented to adoption. In such a situation, the petition must allege and the state must prove that: (1) appointment of a guardian with authority to consent to adoption is in the best interests of the minor; and (2) a nonconsenting parent is an unfit person as defined in the Adoption Act (750 ILCS 50/1(D)), shown by clear and convincing evidence. People v. Green, 173 Ill. App. 3d 922, 123 Ill. Dec. 693, 528 N.E.2d 238 (2 Dist. 1988).

This Act contains no express requirement that a petition for adoption be filed before parental rights are terminated under this section. People v. Welch, 164 Ill. App. 3d 142, 115 Ill. Dec. 211, 517 N.E.2d 622 (5 Dist. 1987).

Once there has been a finding of neglect and a child has been adjudged a ward of the court pursuant to this Act, the proceedings by which parental rights are terminated are governed by the Adoption Act (750 ILCS 50/0.01 et seq.). People ex rel. Dep't of Children & Family Servs. v. Tolbert, 62 Ill. App. 3d 927, 19 Ill. Dec. 64, 378 N.E.2d 565 (5 Dist. 1978).

In an action for adoption, one must establish the statutory ground for termination of parental rights before the best interests of the child or children can be considered. People v. Allen, 34 Ill. App. 3d 603, 340 N.E.2d 269 (1 Dist. 1975).

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An adoption severs the rights and interests of natural parents; it permanently terminates the relation between parent and child. People v. Allen, 34 Ill. App. 3d 603, 340 N.E.2d 269 (1 Dist. 1975).

State's supplemental petition to terminate the father's parental rights was not flawed due to its failure to state that the father stood to permanently lose the father's parental rights as required under 705 Ill. Comp. Stat. 405/2-13, as the petition was filed under 705 Ill. Comp. Stat. 405/2-29 due to the fact that the daughter had been declared a ward of the court, and no such language in a § 2-29 petition was necessary.

- Age of Minor

Pursuant to § 29 of the Juvenile Court Act of 1987, 705 ILCS 405/2-29, the trial court had authority to terminate parental rights with regard to a minor who was under the age of 21, so long as the minor was adjudicated abused, neglected, or dependent and a subsequent dispositional order was entered by the court when the minor was under 18 years of age. Section 29 contained no modifying language as to the term "minor"; thus, the legislature intended to employ the general definition of "minor" provided by the Act, which defined a minor as a person under the age of 21, 705 ILCS 405/1-3(10). People v. Angela E. (In re A.E.), 368 Ill. App. 3d 1142, 307 Ill. Dec. 350, 859 N.E.2d 639, 2006 Ill. App. LEXIS 1137 (1 Dist. 2006).

- Appellate Review

Where a mother appealed an order terminating her parental rights, but failed to request a stay, and two of her three children were adopted before the appellate court reversed the termination order, the appellate court's order was vacated as moot. People v. Cooper (In re Tekela), 202 Ill. 2d 282, 269 Ill. Dec. 119, 780 N.E.2d 304, 2002 Ill. LEXIS 373 (2002), cert. denied, 538 U.S. 915, 123 S. Ct. 1502, 155 L. Ed. 2d 241 (2003).

The decision to terminate parental rights rests within the sound discretion of the trial court, and on appeal the appellate court will not interfere with the judgment absent an abuse of discretion. In Re J.R., 130 Ill. App. 3d 6, 85 Ill. Dec. 410, 473 N.E.2d 1009 (3 Dist. 1985), overruled on other grounds by People v. Tontorya C. (In re D.C.), 209 Ill. 2d 287, 282 Ill. Dec. 848, 807 N.E.2d 472 (2004); People v. Barrett, 197 Ill. App. 3d 802, 144 Ill. Dec. 214, 555 N.E.2d 111 (4 Dist. 1990).

Where mother did not file a notice of appeal within 30 days of judgment terminating her parental rights, nor did she file any other appropriate action, such as a post-trial motion, no appeal could be maintained from that judgment under mother's appeal from denial of a "petition for rehearing" which she filed over seven months after entry of the initial judgment. In re Workman, 38 Ill. App. 3d 261, 344 N.E.2d 796 (3 Dist. 1975), cert. denied, 429 U.S. 1038, 97 S. Ct. 734, 50 L. Ed. 2d 749 (1977).

Since a petition alleged that appellant was entitled to regain her parental rights by reason of a change in circumstances occurring since the entry of the termination order, and apparently because no adoption petition was pending as to the children, there was no particular time limit within which the petition was required to be filed and the appeal, timely taken, from the denial of that petition was properly before the appellate court. In re Workman, 38 Ill. App. 3d 261, 344 N.E.2d 796 (3 Dist. 1975), cert. denied, 429 U.S. 1038, 97 S. Ct. 734, 50 L. Ed. 2d 749 (1977).

- Grounds

While parental rights and responsibilities are matters of deep human importance and will not be lightly terminated, the parental rights of a nonconsenting parent may be terminated if the parent is adjudicated unfit for one or more of the grounds listed in the Illinois Adoption Act (750 ILCS 50/1(D)). People v. Phillips, 191 Ill. App. 3d 237, 138 Ill. Dec. 437, 547 N.E.2d 604 (4 Dist. 1989).

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- Legislative Intent

By setting forth a time frame of 12 months after adjudication for a parent to make "reasonable progress" (750 ILCS 50/1(D)(m)) toward the return from foster care of a child found to be neglected or abused, the legislature intended, with good reason, that proceedings involving the termination of parental rights be handled with dispatch. People v. Smith, 203 Ill. App. 3d 586, 148 Ill. Dec. 682, 560 N.E.2d 1380 (4 Dist. 1990).

- Minors Considered Individually

Trial court erred in finding the mother unfit pursuant to 750 ILCS 50/1(D)(m)(iii) with regard to her youngest child, who was born within the statutory nine-month period used to assess the mother's fitness as to her other children, because the youngest child was not adjudicated neglected until April 27, 2001; thus, the nine-month period chosen by the State to demonstrate the mother's unfitness, i.e., November 1, 2000, to July 31, 2001, was not, with respect to the youngest child, a nine-month period after the end of the initial nine-month period following the adjudication. People v. Tontorya C. (In re D.C.), 209 Ill. 2d 287, 282 Ill. Dec. 848, 807 N.E.2d 472, 2004 Ill. LEXIS 364 (2004).

The trial court did not abuse its discretion in terminating parental rights for youngest child where such a decision was supported by clear and convincing evidence that termination was in the best interests of that child, while finding it not to be in the best interests of the two eldest children to terminate parental rights. People v. Johnson, 199 Ill. App. 3d 320, 145 Ill. Dec. 269, 556 N.E.2d 887 (4 Dist. 1990).

- Minors Not Wards of Court

The statute does not prohibit a trial court from terminating a noncustodial parent's rights when a child is residing with the other parent or when an outside guardian has not been appointed. People v. Bose (In re S.B.), 316 Ill. App. 3d 669, 249 Ill. Dec. 726, 736 N.E.2d 1164, 2000 Ill. App. LEXIS 772 (5 Dist. 2000).

Although this section provides for a ward of the court to be subject to a petition for adoption, it does not preclude such petitions on behalf of children who are not wards, and the statute has never been so construed. In re R.K., 247 Ill. App. 3d 512, 187 Ill. Dec. 294, 617 N.E.2d 502 (3 Dist. 1993).

- Nonconsenting Parent

Under this section parental rights of a nonconsenting parent can be terminated only if the parent is found unfit under the provisions of the Adoption Act (750 ILCS 50/0.01 et seq.). People v. Berry, 86 Ill. App. 3d 522, 42 Ill. Dec. 150, 408 N.E.2d 728 (5 Dist. 1980).

- Not Upheld

The termination of respondent mother's parental rights was reversed where no evidence was ever introduced relative to respondent mother's ability or fitness to care for the minors prior to or at the time of removal. People v. Green, 173 Ill. App. 3d 922, 123 Ill. Dec. 693, 528 N.E.2d 238 (2 Dist. 1988).

- Notice

State's petition in parental unfitness proceeding was sufficient to put parent on notice of termination, even though it did not explicitly mention the intention to seek a termination of parental rights. People v. Dorothy W. (In re Shanna W.), 343 Ill. App. 3d 1155, 279 Ill. Dec. 40, 799 N.E.2d 843, 2003 Ill. App. LEXIS 1267 (1 Dist. 2003).

- Parental Unfitness

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Appellate court erred in reversing the trial court's judgment that found a father was unfit, that it was in the best interests of the minor to terminate the father's parental rights, and that found the father's parental rights were terminated in the minor son; through a drafting error by the legislature, the legislature did not include a presumption of depravity in the offense for which the father was convicted, predatory criminal sexual assault of a child in violation of 720 ILCS 5/12-14.1(a)(1), that offense included such a presumption and the State showed the presumption applied to support a finding the father was unfit, and the father did not rebut that presumption with clear and convincing evidence to the contrary. People v. Gaylord (In re Donald A.G.), 221 Ill. 2d 234, 302 Ill. Dec. 735, 850 N.E.2d 172, 2006 Ill. LEXIS 622 (2006).

By the time of the best interest phase of a termination of parental rights proceeding, the parent has been found unfit by clear and convincing evidence, and while the parent retains a fundamental interest, the proper focus of this hearing is on the child; once a finding of unfitness has been made, all considerations, including the parent's rights, must yield to the best interest of the child. People v. Michelle L. (In re Brandon L.), 348 Ill. App. 3d 315, 284 Ill. Dec. 197, 809 N.E.2d 763, 2004 Ill. App. LEXIS 458 (2 Dist. 2004).

Although trial court was not allowed to consider the likelihood that a child would be adopted in determining if the child's mother was an unfit parent, once the court determined that the mother was an unfit parent, it was allowed to consider the likelihood that the child would be adopted in determining if it was in the child's best interest to terminate the mother's parental rights. In re Tashika F., 333 Ill. App. 3d 165, 266 Ill. Dec. 742, 775 N.E.2d 304, 2002 Ill. App. LEXIS 764 (4 Dist. 2002).

Where evidence before the court consisted of 20 convictions in a ten year period, this lengthy series of offenses demonstrated by clear and convincing evidence that mother was unable to cope with the norms of society in a lawful manner and that she was either unable or unwilling to conform to accepted morality; each time she was released from prison, she resumed the same sort of criminal activity in which she previously engaged and her continuing course of criminal conduct during the entire lifetime of the four children at issue was more than sufficient to establish depravity. In re R.K., 247 Ill. App. 3d 512, 187 Ill. Dec. 294, 617 N.E.2d 502 (3 Dist. 1993).

The parental rights of a nonconsenting parent may be terminated only upon an adjudication of unfitness. People v. Steele, 101 Ill. 2d 345, 78 Ill. Dec. 149, 461 N.E.2d 983 (1984).

In proceeding to terminate parental rights, proper standards were followed in finding mother unfit. People v. Berry, 86 Ill. App. 3d 522, 42 Ill. Dec. 150, 408 N.E.2d 728 (5 Dist. 1980).

- Pending Appeal of Conviction

Father's contention that it was precipitous to terminate his parental rights on the basis of a conviction which might be overturned on appeal was meritless, as the likelihood that his conviction would yet be reversed was slight, and the evidence relied upon in the trial court was unimpeached, and the finding of father's parental unfitness was unshaken. In re T.H., 255 Ill. App. 3d 247, 193 Ill. Dec. 370, 626 N.E.2d 403 (5 Dist. 1993), appeal denied, 155 Ill. 2d 577, 198 Ill. Dec. 554, 633 N.E.2d 16, cert. denied, 513 U.S. 905, 115 S. Ct. 269, 130 L. Ed. 2d 187 (1994).

- Standard of Proof

Trial court erred in terminating the mother's parental rights based on the court's sound discretion as "sound discretion" did not define the State's burden of proof at the best-interests stage of a termination of parental rights hearing; due process did not require imposition of a clear and convincing standard of proof, rather, the preponderance standard of proof adequately ensured the level of certainty necessary. People v. Brenda T. (In re D.T.), 212 Ill. 2d 347, 289 Ill. Dec. 11, 818 N.E.2d 1214, 2004 Ill. LEXIS 1617 (2004).

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The fact that respondent mother agreed to a placement order does not alleviate the state's burden to introduce evidence at a later hearing on termination of parental rights as to respondent mother's fitness at the time the children were removed. People v. Green, 173 Ill. App. 3d 922, 123 Ill. Dec. 693, 528 N.E.2d 238 (2 Dist. 1988).

Unlike child custody cases, wherein wide discretion is vested in the trial judge, the termination of parental rights must be supported by clear and convincing evidence. People v. Fay, 44 Ill. App. 3d 260, 2 Ill. Dec. 595, 357 N.E.2d 815 (2 Dist. 1976).

The evidence did not clearly and convincingly demonstrate that respondent had failed to maintain a reasonable degree of interest, concern, or responsibility toward the welfare of her children to warrant the termination of her parental rights; although the record was replete with evidence of respondent's shortcomings and failures, it was her efforts to carry out her parental responsibilities, and not her success, which would measure the standard of fitness. People v. Fay, 44 Ill. App. 3d 260, 2 Ill. Dec. 595, 357 N.E.2d 815 (2 Dist. 1976).

- Upheld

Evidence was sufficient to support the termination of the parental rights of a father where: (1) he had several criminal convictions, was currently incarcerated serving a nine-year sentence, suffered from a mental illness for which he was currently unable to obtain services and, as a result, would not be able to adequately discharge his parental responsibilities in the near future; (2) the minors were happy, doing well in school, and liked their stepfathers; (3) it was not in the children's best interests to leave them in "limbo" for the time their father was incarcerated; and (4) the children were with their respective mothers, both of whom had remarried and whose husbands were willing to adopt the children. People v. Bose (In re S.B.), 316 Ill. App. 3d 669, 249 Ill. Dec. 726, 736 N.E.2d 1164, 2000 Ill. App. LEXIS 772 (5 Dist. 2000).

The trial court acted appropriately in finding that it was in the best interests of all three children that the father's parental rights be terminated and a guardian appointed to consent to their adoption. People v. Smith, 203 Ill. App. 3d 586, 148 Ill. Dec. 682, 560 N.E.2d 1380 (4 Dist. 1990).

Although natural mother made some progress in some areas, such as completing a parenting class, maintaining regular visitation with her child, obtaining a separate residence from her abusive boyfriend, attending counseling and obtaining full time employment, the evidence was sufficient to terminate her parental rights where she refused to cut all ties with her abusive boyfriend and this contact was a condition which led to the removal of her child and upon which the Department of Children and Family Services placed great emphasis upon for the return of her child. People v. Barrett, 197 Ill. App. 3d 802, 144 Ill. Dec. 214, 555 N.E.2d 111 (4 Dist. 1990).

Where the record revealed no clear and convincing showing that continued visitation with the maternal grandmother was in the best interests of the children, or that such a grant would facilitate placement of the children in an environment of stable parenting and family relationships, the mother's parental rights were properly terminated. People v. Golden, 147 Ill. App. 3d 484, 101 Ill. Dec. 188, 498 N.E.2d 370 (3 Dist. 1986).

Evidence sufficiently justified the trial judge's conclusion that termination of parental rights of both natural parents was in the best interest of the children. People v. Dalton, 98 Ill. App. 3d 902, 54 Ill. Dec. 323, 424 N.E.2d 1226 (2 Dist. 1981).

Termination of parental rights held not against the manifest weight of the evidence. People ex rel. Greanias v. Holmes, 28 Ill. App. 3d 104, 328 N.E.2d 35 (4 Dist. 1975).

- Visitation by Relatives

After termination of all parental rights and responsibilities of the natural parents, the children's best interests are better served in allowing the appointed guardian to focus his efforts on

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obtaining stable family and parenting relationships unfettered by lingering ties with the natural parents' relatives; there must be finality and a new beginning for the children whose parents' relationship with them has been terminated. People v. Golden, 147 Ill. App. 3d 484, 101 Ill. Dec. 188, 498 N.E.2d 370 (3 Dist. 1986).

Absent a clear and convincing showing that it would be in the best interests of the children, natural relatives of children whose parents' rights have been terminated are not allowed visitation privileges. People v. Golden, 147 Ill. App. 3d 484, 101 Ill. Dec. 188, 498 N.E.2d 370 (3 Dist. 1986).

LEGAL PERIODICALS

For comment, "The Illinois Adoption Act: Should a Child's Length of Time in Foster Care Measure Parental Unfitness", see 30 Loy. U. Chi. L.J. 727 (1999).

For article, "Baby Richard and Beyond: The Future for Adopted Children", see 18 N. Ill. U.L. Rev. 445 (1999).

For note, "The Best Interests of Children in the Cultural Context of the Indian Child Welfare Act in In re S.S. and R.S.," see 28 Loy. U. Chi. L.J. 839 (1997).

For article, "Ending Family Ties: Termination of Parental Rights in Illinois," see 79 Ill. B.J. 572 (1991).

For article, "Juvenile Law: 1986-87 Illinois Law Survey," see 19 Loy. U. Chi. L.J. 565 (1987-88).

For note, "Delineating the Reasonable Progress Ground as a Basis for Termination of Parental Rights - In re Austin," see 28 De Paul L.Rev. 819 (1979).

For comments, "Child Abuse: The Role of Adoption as a Preventative Measure," see 10 J. Marshall J. Prac. & Proc. (1976).

For comment, "Isolating Past Unfitness: The Obstacle of In re Gwynne P. for Incarcerated Parents in Illinois," see 27 N. Ill. U. L. Rev. 281 (2007).

RESEARCH REFERENCES

Parents' mental illness or mental deficiency as ground for termination of parental rights - Issues concerning guardian ad litem and counsel. 118 ALR5th 561.

Parents' mental illness or mental deficiency as ground for termination of parental rights - Applicability of Americans With Disabilities Act. 119 ALR5th 351.

Parents' mental illness or mental deficiency as ground for termination of parental rights - Evidentiary issues. 122 ALR5th 385.

§ 705 ILCS 405/2-30. Notice to putative father; service

Sec. 2-30. Notice to putative father; service. 1.Upon the written request to any clerk of any circuit court by any interested party, including persons intending to adopt a child, a

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child welfare agency with whom the mother has placed or has given written notice of her intention to place a child for adoption, the mother of a child, or any attorney representing an interested party, a notice may be served on a putative father in the same manner as Summons is served in other proceedings under this Act, or in lieu of personal service, service may be made as follows:

(a) The person requesting notice shall furnish to the clerk an original and one copy of a notice together with an affidavit setting forth the putative father's last known address. The original notice shall be retained by the clerk.

(b) The clerk forthwith shall mail to the putative father, at the address appearing in the affidavit, the copy of the notice, certified mail, return receipt requested; the envelope and return receipt shall bear the return address of the clerk. The receipt for certified mail shall state the name and address of the addressee, and the date of mailing, and shall be attached to the original notice.

(c) The return receipt, when returned to the clerk, shall be attached to the original notice, and shall constitute proof of service.

(d) The clerk shall note the fact of service in a permanent record.

2.The notice shall be signed by the clerk, and may be served on the putative father at any time after conception, and shall read as follows:

"IN THE MATTER OF NOTICE TO ....., PUTATIVE FATHER.

You have been identified as the father of a child born or expected to be born on or about (insert date). The mother of said child is .....

The mother has indicated she intends to place the child for adoption or otherwise have a judgment entered terminating her rights with respect to such child.

As the alleged father of said child, you have certain legal rights with respect to said child, including the right to notice of the filing of proceedings instituted for the termination of your parental rights regarding said child. If you wish to retain your rights with respect to said child, you must file with the Clerk of this Circuit Court of ..... County, Illinois, whose address is ....., ..., Illinois, within 30 days after the date of receipt of this notice, a declaration of paternity stating that you are, in fact, the father of said child and that you intend to retain your legal rights with respect to said child, or request to be notified of any further proceedings with respect to custody, termination of parental rights or adoption of the child.

If you do not file such a declaration of paternity, or a request for notice, then whatever legal rights you have with respect to said child, including the right to notice of any future proceedings for the adoption of said child, may be terminated without any further notice to you. When your legal rights with respect to said child are so terminated, you will not be entitled to notice of any proceeding instituted for the adoption of said child.

If you are not the father of said child, you may file with the Clerk of this Court, a disclaimer of paternity which will be noted in the Clerk's file and you will receive no further notice with respect to said child."

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The disclaimer of paternity shall be substantially as follows:

"IN THE CIRCUIT COURT OF THE

..... JUDICIAL CIRCUIT, ILLINOIS

..... County

No.

DENIAL OF PATERNITY WITH ENTRY OF APPEARANCE

AND CONSENT TO ADOPTION

I, ..., state as follows:

(1) That I am .... years of age; and I reside at ..... in the County of ....., State of .....

(2) That I have been advised that ..... is the mother of a ..... male child named ..... born or expected to be born on or about ..... and that such mother has stated that I am the father of this child.

(3) I deny that I am the father of this child.

(4) I further understand that the mother of this child wishes to consent to the adoption of the child. I hereby consent to the adoption of this child, and waive any rights, remedies and defenses that I may now or in the future have as a result of the mother's allegation of the paternity of this child. This consent is being given in order to facilitate the adoption of the child and so that the court may terminate what rights I may have to the child as a result of being named the father by the mother. This consent is not in any manner an admission of paternity.

(5) I hereby enter my appearance in the above entitled cause and waive service of summons and other pleading and consent to an immediate hearing on a petition TO TERMINATE PARENTAL RIGHTS AND TO APPOINT A GUARDIAN WITH THE POWER TO CONSENT TO THE ADOPTION OF THIS CHILD.

OATH

I have been duly sworn and I say under oath that I have read and understood this Denial of Paternity With Entry of Appearance and Consent to Adoption. The facts it contains are true and correct to the best of my knowledge, and I understand that by signing this document I have not admitted paternity. I have signed this document as my free and voluntary act in order to facilitate the adoption of the child.

.....

(signature)

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Dated (insert date).

Signed and sworn before me on (insert date).

.....

(notary public)".

The names of adoptive parents, if any, shall not be included in the notice.

3.If the putative father files a disclaimer of paternity, he shall be deemed not to be the father of the child with respect to any adoption or other proceeding held to terminate the rights of parents as respects such child.

4.In the event the putative father does not file a declaration of paternity of the child or request for notice within 30 days of service of the above notice, he need not be made a party to or given notice of any proceeding brought for the adoption of the child. An order or judgment may be entered in such proceeding terminating all of his rights with respect to said child without further notice to him.

5.If the putative father files a declaration of paternity or a request for notice in accordance with subsection 2 with respect to the child, he shall be given notice in the event any proceeding is brought for the adoption of the child or for termination of parents' rights of the child.

6.The Clerk shall maintain separate numbered files and records of requests and proofs of service and all other documents filed pursuant to this article. All such records shall be impounded.

(Source: P.A. 85-601; 91-357, § 236.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-30.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, added the subsection 1. designation; in the Notice form, substituted "born or expected to be born on or about (insert date)" for "(born on the ..... day of ....), (expected to be born on or about the .... day of ....., 19....)"; and in the Oath form, substituted "(insert date)" for "this ..... day of ....., 19...." twice.

CASE NOTES

Analysis

Construction with Other Law

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Jurisdiction
Parental Unfitness
- Evidence Held Sufficient

Construction with Other Law

Putative fathers are not treated disparately under the Adoption Act (750 ILCS 50/0.01 et seq.) and this Act; the Adoption Act specifically states that it should be construed in concert with the Juvenile Court Act, and 705 ILCS 405/2-29 incorporates by reference many of the provisions in the Adoption Act, including those with respect to notice and consent. In re K.J.R., 293 Ill. App. 3d 49, 227 Ill. Dec. 190, 687 N.E.2d 113 (1 Dist. 1997).

Jurisdiction

Where the vital interests of the minor were well protected, and the absent father was not an indispensable party, failure to publish or notify the natural father did not result in any lack of jurisdiction over the subject matter, or lead to any loss of jurisdiction over the persons of the minor and his mother. People v. R.D., 148 Ill. App. 3d 381, 101 Ill. Dec. 890, 499 N.E.2d 478 (1 Dist. 1986).

Parental Unfitness

- Evidence Held Sufficient

Evidence that a mother failed to contact the Department of Children and Family Services for purpose of visitation, that she failed to supervise the children properly with regard to school attendance, and that she failed to maintain a clean and healthy household for the children was sufficient to establish the mother's unfitness and to support a termination of her parental rights. People v. Hillyer, 82 Ill. App. 3d 505, 38 Ill. Dec. 21, 403 N.E.2d 36 (3 Dist. 1980).

§ 705 ILCS 405/2-31. Duration of wardship and discharge of proceedings

Sec. 2-31. Duration of wardship and discharge of proceedings. (1) All proceedings under this Act in respect of any minor for whom a petition was filed after the effective date of this amendatory Act of 1991 automatically terminate upon his attaining the age of 19 years, except that a court may continue the wardship of a minor until age 21 for good cause when there is satisfactory evidence presented to the court and the court makes written factual findings that the health, safety, and best interest of the minor and the public require the continuation of the wardship.

(2) Whenever the court determines, and makes written factual findings, that health, safety, and the best interests of the minor and the public no longer require the wardship of the court, the court shall order the wardship terminated and all proceedings under this Act respecting that minor finally closed and discharged. The court may at the same time continue or terminate any custodianship or guardianship theretofore ordered but the termination must be made in compliance with Section 2-28 [705 ILCS 405/2-28]. When terminating wardship under this Section, if the minor is over 18, or if wardship is

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terminated in conjunction with an order partially or completely emancipating the minor in accordance with the Emancipation of Minors Act, the court shall also make specific findings of fact as to the minor's wishes regarding case closure and the manner in which the minor will maintain independence. The minor's lack of cooperation with services provided by the Department of Children and Family Services shall not by itself be considered sufficient evidence that the minor is prepared to live independently and that it is in the best interest of the minor to terminate wardship.

(3) The wardship of the minor and any custodianship or guardianship respecting the minor for whom a petition was filed after the effective date of this amendatory Act of 1991 automatically terminates when he attains the age of 19 years except as set forth in subsection (1) of this Section. The clerk of the court shall at that time record all proceedings under this Act as finally closed and discharged for that reason.

(Source: P.A. 87-14; 88-7, § 15; 90-28, § 10-20; 90-608, § 30; 90-655, § 156; 96-581, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 802-31.

The language deleted by P.A. 90-608 did not exist in this version as amended by P.A. 90-28, but was added by P.A. 90-655.

Cross References.

As to the filing of supplemental petitions before final closing and discharge under this section, see 705 ILCS 405/2-13.

As to the kinds of dispositional orders that may be made with respect to wards of a court, see 705 ILCS 405/2-23.

Effect of Amendments. The 1998 amendment by P.A. 90-608, effective June 30, 1998, deleted "or 2-28.01, whichever is applicable" from the end of subsection (2).

The 1998 amendment by P.A. 90-655, effective July 30, 1998, added "or 2-28.01, whichever is applicable" in subsection (2).

Although the amendments made by P.A. 90-608 and P.A. 90-655 did not take into account the amendments made by the other, the amendments have been made into the single version by the publisher.

The 2009 amendment by P.A. 96-581, effective January 1, 2010, added the last two sentences of (2).

CASE NOTES

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Analysis

DCFS Services
- Termination
- Termination
Jurisdiction
Modification
Placement
Restoration of Wardship
Sufficiency of Findings of Fact
Termination of Proceedings
Termination of Proceedings

DCFS Services

- Termination

Where three minor children - ages 14 months, 2 years, and 5 year - were removed from their parents' home in 2005 after the father fondled the five-year-old girl's vagina and where the Illinois Department of Children and Family Services (DCFS) moved in 2010 to terminate its guardianship of the children, the circuit court erred in granting the motion and in entering subsequent orders that terminated the minors' wardships and closed their cases because the circuit court failed to comply with 705 ILCS 405/2-31(2) of the Juvenile Court Act of 1987 by failing to consider whether the termination of wardship and guardianship was in the best interest of the minors. Moreover, because the circuit court's termination resulted in the de facto return of the minors' custody to their mother, 705 ILCS 405/2-31(2) required the circuit court to comply with the requirements of 705 ILCS 405/2-28(4) of the Act; the circuit court erred in failing to hold a hearing, order an investigation, or make the necessary finding that the mother was fit to care for the minors as required by 705 ILCS 405/2-28(4). People v. Sandra R. (In re Vicente G.), 408 Ill. App. 3d 678, 349 Ill. Dec. 243, 946 N.E.2d 437, 2011 Ill. App. LEXIS 272 (1 Dist. 2011).

- Termination

Juvenile court did not have the authority to order Department of Children and Family Services (DCFS) to provide services to ward of DCFS once she turned twenty-one in order to provide day care services for her baby. Ardedia L. v. Department of Children & Family Servs., 249 Ill. App. 3d 35, 188 Ill. Dec. 234, 618 N.E.2d 804 (1 Dist. 1993).

Jurisdiction

The circuit court possessed no jurisdiction to extend a wardship or guardianship beyond the date that the ward became 21 years old as, on that day, he ceased to be a ward of the court and the Department of Children and Family Service's guardianship administrator ceased to be his guardian, all by operation of law. Illinois Dep't of Children & Family Servs. v. Gerald D., 308 Ill. App. 3d 628, 242 Ill. Dec. 48, 720 N.E.2d 669 (1 Dist. 1999).

The circuit court still had jurisdiction where the minor had not yet reached the age limit required in subsection (1) of this section and the court had not ordered the wardship terminated or the proceedings discharged; therefore, the original neglect proceedings were not terminated by the dispositional order which appointed the Illinois Department of Children and Family Services as the guardian of the minor. In re S.J.K., 149 Ill. App. 3d 663, 103 Ill. Dec. 75, 500 N.E.2d 1146 (5 Dist. 1986).

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Modification

The trial court could have relied upon the provisions of 705 ILCS 405/2-28 in order to change the custody of the minor from the Illinois Department of Children and Family Services to foster parents and to suspend mother's visitation rights with the minor, because once the minor was adjudicated neglected the circuit court had continuing jurisdiction; thus, a dispositional order which awarded custody of the neglected minor did not operate to close the proceedings on the original petition, and such order was always subject to modification by the court until a final closing or discharge of the proceedings under this section. In re S.J.K., 149 Ill. App. 3d 663, 103 Ill. Dec. 75, 500 N.E.2d 1146 (5 Dist. 1986).

Placement

Order that a 19-year old juvenile remain in a placement recommended by the Illinois Department of Children and Family Services, and could not return to her mother's care, was proper where the mother had not made much effort toward the juvenile's return and, where despite the judge's irresponsible comments about the juvenile, he recognized the court's duty to protect her. L.F.H. v. People, 256 Ill. App. 3d 451, 195 Ill. Dec. 341, 628 N.E.2d 805, 1993 Ill. App. LEXIS 1921 (1 Dist. 1993).

Restoration of Wardship

The trial court may grant a guardian or custodian leave to petition the juvenile court for reinstatement of its wardship any time prior to child's 21st birthday. Shawn B. v. People, 218 Ill. App. 3d 374, 161 Ill. Dec. 142, 578 N.E.2d 269 (1 Dist. 1991).

Sufficiency of Findings of Fact

Trial court erred in terminating a juvenile case because the evidence presented supported continuing wardship and guardianship and did not portray a family capable of functioning independently to meet the child's needs; although the trial court determined that the State failed to prove that the child was neglected for any of the reasons set forth in its supplemental petition, that did not provide a sufficient reason to go beyond the relief sought by the pleadings noticed for hearing, i.e., to return the child to parental custody, and the trial court should have considered whether the evidence supported continuing court supervision and oversight. People v. Ill. Dep't of Children & Family Servs. (In re Aaron R.), 387 Ill. App. 3d 1130, 327 Ill. Dec. 416, 902 N.E.2d 171, 2009 Ill. App. LEXIS 31 (4 Dist. 2009).

Although a trial court was supposed to make written factual findings that the health, safety, and best interests of the minor and the public no longer required the wardship of the court before the trial court closed the juvenile proceedings, the State waived the argument that trial court did not make those required factual findings by not raising that issue before the trial court. People v. Sylvia M. (In re M.M.), 337 Ill. App. 3d 764, 272 Ill. Dec. 115, 786 N.E.2d 654, 2003 Ill. App. LEXIS 333 (2 Dist. 2003).

The circuit court made sufficient findings of fact with regard to its order which terminated the appellant's wardships of her minor children and that closed the cases pursuant to a motion filed by the father where: (1) the written order contained the factual findings that "the family is not in need of further monitoring by the court," and "it is in the best interest of the minor that this case be closed;" and (2) the court made additional oral findings that, inter alia, "the family is not in need of further monitoring by the court, it is in the best interest, health, welfare, and safety of [the children] that the cases be closed." In re K.S., 317 Ill. App. 3d 830, 251 Ill. Dec. 344, 740 N.E.2d 425, 2000 Ill. App. LEXIS 873 (1 Dist. 2000).

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Termination of Proceedings

Trial court did not err by terminating the Department of Children and Family Services' guardianship over the mother's children without first conducting an investigation into the fathers' criminal backgrounds pursuant to 705 ILCS 405/2-28(5) because the children were not found to be neglected because of physical abuse. People v. Lisa I. (In re Stephanie P.), 341 Ill. App. 3d 887, 276 Ill. Dec. 502, 794 N.E.2d 397, 2003 Ill. App. LEXIS 843 (3 Dist. 2003).

Since the trial court entered an order closing the two minors' juvenile case, after the trial court appointed the foster parents as the minors' guardians, a final order existed for the purposes of appeal under Ill. Sup. Ct. R. 301, and, thus, the appellate court had jurisdiction to review the biological mother's challenge to the foster parents' appointment as guardians over the two minor children. People v. Sylvia M. (In re M.M.), 337 Ill. App. 3d 764, 272 Ill. Dec. 115, 786 N.E.2d 654, 2003 Ill. App. LEXIS 333 (2 Dist. 2003).

Trial court did not exceed its authority when it closed the two minors' juvenile case after appointing the foster parents to be guardians of the two minor children, as 705 ILCS 405/2-31 specifically authorized a trial court to close a juvenile case where there was an open order of guardianship, which also allowed for entry of a final judgment so that a party could challenge the guardianship determination. People v. Sylvia M. (In re M.M.), 337 Ill. App. 3d 764, 272 Ill. Dec. 115, 786 N.E.2d 654, 2003 Ill. App. LEXIS 333 (2 Dist. 2003).

Where respondent did not exhibit an inability to be a useful and independent member of society, respondent was doing well and respondent would be able to achieve her goal of independence even if her case was closed, the trial court properly applied subsection (2) of this section when it determined that respondent's best interest no longer required her wardship. In re Bettie Jo R., 277 Ill. App. 3d 401, 213 Ill. Dec. 795, 660 N.E.2d 52 (1 Dist. 1995), appeal denied, 168 Ill. 2d 582, 219 Ill. Dec. 559, 671 N.E.2d 726 (1996).

A lack of reasonable progress toward the return of children is a ground for termination of parental rights, but is not involved with termination of proceedings under the Act; the appropriate standard is the child's best interests. In re M.K., 271 Ill. App. 3d 820, 208 Ill. Dec. 242, 649 N.E.2d 74 (4 Dist. 1995), appeal denied, 163 Ill. 2d 558, 212 Ill. Dec. 421, 657 N.E.2d 622 (1995).

Termination of Proceedings

Trial court erred in terminating a juvenile case because its attempt to make the findings required by the Juvenile Court Act of 1987 Act retroactively by entering its order nunc pro tunc was an improper use of the nunc pro tunc procedure, and the trial court's purported procedures undermined the provisions of the Act for an orderly termination of proceedings based on contemporaneous findings; in attempting to terminate wardship and guardianship retroactively, the trial court was not correcting a clerical error but altering a judgment, and contrary to the Act's requirements, the court's peremptory procedure never allowed the Department of Children and Family Services to be heard concerning the reasons warranting continued court-supervised guardianship. People v. Ill. Dep't of Children & Family Servs. (In re Aaron R.), 387 Ill. App. 3d 1130, 327 Ill. Dec. 416, 902 N.E.2d 171, 2009 Ill. App. LEXIS 31 (4 Dist. 2009).

Trial court erred in terminating a juvenile case because it failed to consider whether terminating the wardship, and consequently, terminating Department of Children and Family Services (DCFS) guardianship, would serve the health, safety, and best interests of the child and the public, and because the trial court did not consider that issue, it did not make the required written findings; the trial court did not consider the statutory "best interests" factor, including the child's wishes and sense of attachments, and what was requested and ordered was a return of the child to his parents' physical care, not a discharge of DCFS guardianship or the trial court's wardship. People v. Ill. Dep't of Children & Family Servs. (In re Aaron R.), 387 Ill. App. 3d 1130, 327 Ill. Dec. 416,

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LEGAL PERIODICALS

For note, "Guardians Ad Litem: The Guardian Angels of Our Children in Domestic Violence Courts", see 30 Loy. U. Chi. L.J. 281 (1999).

Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 7:04 Discipline; physical punishment.

§ 705 ILCS 405/2-32. Time limit for relief from final order pursuant to a petition under Section 2-1401 of the Code of Civil Procedure

Sec. 2-32. Time limit for relief from final order pursuant to a petition under Section 2-1401 of the Code of Civil Procedure. A petition for relief from a final order entered in a proceeding under this Act, after 30 days from the entry thereof under the provisions of Section 2-1401 of the Code of Civil Procedure [735 ILCS 5/2-1401] or otherwise, must be filed not later than one year after the entry of the order or judgment.

(Source: P.A. 90-27, § 30; 90-608, § 30.)

Effective Date. This section became effective January 1, 1998 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 1998 amendment by P.A. 90-608, effective June 30, 1998, added "pursuant to a petition under Section 2-1401 of the Code of Civil Procedure" in the section heading.

§ 705 ILCS 405/2-33. Supplemental petition to reinstate wardship

Sec. 2-33. Supplemental petition to reinstate wardship. (1) Any time prior to a minor's 18th birthday, pursuant to a supplemental petition filed under this Section, the court may reinstate wardship and open a previously closed case when:

(a) wardship and guardianship under the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.] was vacated in conjunction with the appointment of a private guardian under the Probate Act of 1975 [755 ILCS 5/1-1 et seq.];

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(b) the minor is not presently a ward of the court under Article II of this Act [705 ILCS 405/2-1 et seq.] nor is there a petition for adjudication of wardship pending on behalf of the minor; and

(c) it is in the minor's best interest that wardship be reinstated.

(2) Any time prior to a minor's 21st birthday, pursuant to a supplemental petition filed under this Section, the court may reinstate wardship and open a previously closed case when:

(a) wardship and guardianship under this Act was vacated pursuant to:

(i) an order entered under subsection (2) of Section 2-31 [705 ILCS 405/2-31] in the case of a minor over the age of 18;

(ii) closure of a case under subsection (2) of Section 2-31 in the case of a minor under the age of 18 who has been partially or completely emancipated in accordance with the Emancipation of Minors Act; or

(iii) an order entered under subsection (3) of Section 2-31 based on the minor's attaining the age of 19 years;

(b) the minor is not presently a ward of the court under Article II of this Act nor is there a petition for adjudication of wardship pending on behalf of the minor; and

(c) it is in the minor's best interest that wardship be reinstated.

(3) The supplemental petition must be filed in the same proceeding in which the original adjudication order was entered. Unless excused by court for good cause shown, the petitioner shall give notice of the time and place of the hearing on the supplemental petition, in person or by mail, to the minor, if the minor is 14 years of age or older, and to the parties to the juvenile court proceeding. Notice shall be provided at least 3 court days in advance of the hearing date.

(4) A minor who is the subject of a petition to reinstate wardship under this Section shall be provided with representation in accordance with Sections 1-5 and 2-17 of this Act [705 ILCS 405/1-5 and 705 ILCS 405/2-17].

(5) Whenever a minor is committed to the Department of Children and Family Services for care and services following the reinstatement of wardship under this Section, the Department shall:

(a) Within 30 days of such commitment, prepare and file with the court a case plan which complies with the federal Adoption Assistance and Child Welfare Act of 1980 [42 U.S.C. § 602 et seq.] and is consistent with the health, safety and best interests of the minor; and

(b) Promptly refer the minor for such services as are necessary and consistent with the minor's health, safety and best interests.

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(Source: P.A. 90-608, § 30; 96-581, § 15.)

Effective Date. Section 99 of P.A. 90-608 made this section effective upon becoming law. The Act was approved June 30, 1998.

Effect of Amendments. The 2009 amendment by P.A. 96-581, effective January 1, 2010, added (2), (4), and (5); and redesignated former (2) as (3).

CASE NOTES

Analysis
Collateral Legal Consequences
Jurisdiction

Collateral Legal Consequences

Father's appeal of an order of the circuit court finding the father's daughter neglected, making her a ward of the court, and placing her in the custody and guardianship of the Illinois Department of Children and Family Services was not moot, even though the proceedings against the father had already been terminated with custody and guardianship of his daughter returned to the father, because of the possible collateral legal consequences to the father in the context of juvenile proceedings under 705 ILCS 405/2-18(3) and 705 ILCS 405/2-33. People v. Bryant (In re Chyna B.), 331 Ill. App. 3d 591, 265 Ill. Dec. 263, 772 N.E.2d 301, 2002 Ill. App. LEXIS 514 (1 Dist. 2002).

Jurisdiction

Trial court could not regain jurisdiction over a case it closed, pursuant to 705 ILCS 405/2-33, where it had concluded that it lacked subject matter jurisdiction because more than 30 days had passed since the relevant order establishing the guardianship was entered; the first condition under that statute had not been met since there was no appointment of a guardian under the Probate Act of 1975, 755 ILCS 5/1-1 et seq. People v. Ti. O. (In re Tr. O.), 362 Ill. App. 3d 860, 298 Ill. Dec. 828, 840 N.E.2d 1263, 2005 Ill. App. LEXIS 1276 (1 Dist. 2005), appeal denied, 218 Ill. 2d 540, 303 Ill. Dec. 3, 850 N.E.2d 808 (2006).

As the legislature plainly limited guardianships pursuant to 705 ILCS 405/2-33 of the Juvenile Court Act of 1987, under the Probate Act of 1975, 755 ILCS 5/1-1 et seq., and there was no appointment of a minor ward's guardian under the Probate Act, the trial court could not regain jurisdiction pursuant to 705 ILCS 405/2-33 of the Juvenile Court Act of 1987 for purposes of a mother's petition to reinstate a wardship over the minor and to vacate a private guardianship. People v. Ti. O. (In re Tr. O.), Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 1171 (2 Dist. Nov. 23, 2005).

Trial court had the authority and jurisdiction to entertain the reinstatement of a neglect proceeding upon the filing of a supplemental petition since, by closing the case, the trial court absolutely and finally determined the rights of the parties and terminated the litigation. People v. Wright (In re

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T.W.), 352 Ill. App. 3d 1208, 288 Ill. Dec. 199, 817 N.E.2d 557, 2004 Ill. App. LEXIS 1259 (4 Dist. 2004).

§ 705 ILCS 405/2-34. Motion to reinstate parental rights

Sec. 2-34. Motion to reinstate parental rights. (1) For purposes of this subsection (1), the term "parent" refers to the person or persons whose rights were terminated as described in paragraph (a) of this subsection; and the term "minor" means a person under the age of 21 years subject to this Act for whom the Department of Children and Family Services Guardianship Administrator is appointed the temporary custodian or guardian.

A motion to reinstate parental rights may be filed only by the Department of Children and Family Services regarding any minor who is presently a ward of the court under Article II of this Act [705 ILCS 405/2-1 et seq.] when all the conditions set out in paragraphs (a), (b), (c), (d), (e), (f), and (g) of this subsection (1) are met:

(a) while the minor was under the jurisdiction of the court under Article II of this Act, the minor's parent or parents surrendered the minor for adoption to an agency legally authorized to place children for adoption, or the minor's parent or parents consented to his or her adoption, or the minor's parent or parents consented to his or her adoption by a specified person or persons, or the parent or parents' rights were terminated pursuant to a finding of unfitness pursuant to Section 2-29 of this Act [705 ILCS 405/2-29] and a guardian was appointed with the power to consent to adoption pursuant to Section 2-29 of this Act; and

(b)(i) since the signing of the surrender, the signing of the consent, or the unfitness finding, the minor has remained a ward of the Court under Article II of this Act; or

(ii) the minor was made a ward of the Court, the minor was placed in the private guardianship of an individual or individuals, and after the appointment of a private guardian and a new petition alleging abuse, neglect, or dependency pursuant to Section 2-3 or 2-4 [705 ILCS 405/2-3 or 705 ILCS 405/2-4] is filed, and the minor is again found by the court to be abused, neglected or dependent; or a supplemental petition to reinstate wardship is filed pursuant to Section 2-33 [705 ILCS 405/2-33], and the court reinstates wardship; or

(iii) the minor was made a ward of the Court, wardship was terminated after the minor was adopted, after the adoption a new petition alleging abuse, neglect, or dependency pursuant to Section 2-3 or 2-4 is filed, and the minor is again found by the court to be abused, neglected, or dependent, and either (i) the adoptive parent or parents are deceased, (ii) the adoptive parent or parents signed a surrender of parental rights, or (iii) the parental rights of the adoptive parent or parents were terminated;

(c) the minor is not currently in a placement likely to achieve permanency;

(d) it is in the minor's best interest that parental rights be reinstated;

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(e) the parent named in the motion wishes parental rights to be reinstated and is currently appropriate to have rights reinstated;

(f) more than 3 years have lapsed since the signing of the consent or surrender, or the entry of the order appointing a guardian with the power to consent to adoption;

(g) (i) the child is 13 years of age or older or (ii) the child is the younger sibling of such child, 13 years of age or older, for whom reinstatement of parental rights is being sought and the younger sibling independently meets the criteria set forth in paragraphs (a) through (h) of this subsection; and

(h) if the court has previously denied a motion to reinstate parental rights filed by the Department, there has been a substantial change in circumstances following the denial of the earlier motion.

(2) The motion may be filed only by the Department of Children and Family Services. Unless excused by the court for good cause shown, the movant shall give notice of the time and place of the hearing on the motion, in person or by mail, to the parties to the juvenile court proceeding. Notice shall be provided at least 14 days in advance of the hearing date. The motion shall include the allegations required in subsection (1) of this Section.

(3) Any party may file a motion to dismiss the motion with prejudice on the basis that the parent has intentionally acted to prevent the child from being adopted, after parental rights were terminated or the parent intentionally acted to disrupt the child's adoption. If the court finds by a preponderance of the evidence that the parent has intentionally acted to prevent the child from being adopted, after parental rights were terminated or that the parent intentionally acted to disrupt the child's adoption, the court shall dismiss the petition with prejudice.

(4) The court shall not grant a motion for reinstatement of parental rights unless the court finds that the motion is supported by clear and convincing evidence. In ruling on a motion to reinstate parental rights, the court shall make findings consistent with the requirements in subsection (1) of this Section. The court shall consider the reasons why the child was initially brought to the attention of the court, the history of the child's case as it relates to the parent seeking reinstatement, and the current circumstances of the parent for whom reinstatement of rights is sought. If reinstatement is being considered subsequent to a finding of unfitness pursuant to Section 2-29 of this Act having been entered with respect to the parent whose rights are being restored, the court in determining the minor's best interest shall consider, in addition to the factors set forth in paragraph (4.05) of Section 1-3 of this Act [705 ILCS 405/1-3], the specific grounds upon which the unfitness findings were made. Upon the entry of an order granting a motion to reinstate parental rights, parental rights of the parent named in the order shall be reinstated, any previous order appointing a guardian with the power to consent to adoption shall be void and with respect to the parent named in the order, any consent shall be void.

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(5) If the case is post-disposition, the court, upon the entry of an order granting a motion to reinstate parental rights, shall schedule the matter for a permanency hearing pursuant to Section 2-28 of this Act [705 ILCS 405/2-28] within 45 days.

(6) Custody of the minor shall not be restored to the parent, except by order of court pursuant to subsection (4) of Section 2-28 of this Act.

(7) In any case involving a child over the age of 13 who meets the criteria established in this Section for reinstatement of parental rights, the Department of Children and Family Services shall conduct an assessment of the child's circumstances to assist in future planning for the child, including, but not limited to a determination regarding the appropriateness of filing a motion to reinstate parental rights.

(8) This Section is repealed 4 years after the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-600].

(Source: P.A. 96-600, § 15; 96-1375, § 5.)

Effective Date. Section 99 of P.A. 96-600 made this section effective upon becoming law. The Act was approved August 21, 2009.

Effect of Amendments. The 2010 amendment by P.A. 96-1375, effective July 29, 2010, substituted "and a new petition alleging abuse, neglect, or dependency pursuant to Section 2-3 or 2-4 is filed, and the minor is again found by the court to be abused, neglected or dependent; or a supplemental petition to reinstate wardship is filed pursuant to Section 2-33, and the court reinstates wardship" for "the minor was again brought to the attention of the Juvenile Court and the private guardianship was vacated" in (1)(b)(ii); and substituted "a new petition alleging abuse, neglect, or dependency pursuant to Section 2-3 or 2-4 is filed, and the minor is again found by the court to be abused, neglected, or dependent" for "the minor was again brought to the attention of the Juvenile Court and made a ward of the Court under Article II of this Act" in (1)(b)(iii).

ARTICLE III.

MINORS REQUIRING AUTHORITATIVE INTERVENTION

§ 705 ILCS 405/3-1. Jurisdictional facts

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Sec. 3-1. Jurisdictional facts. Proceedings may be instituted under this Article concerning boys and girls who require authoritative intervention as defined in Section 3-3 [705 ILCS 405/3-3], who are truant minors in need of supervision as defined in Section 3-33.5 [705 ILCS 405/3-33.5], or who are minors involved in electronic dissemination of indecent visual depictions in need of supervision as defined in Section 3-40 [705 ILCS 405/3-40].

(Source: P.A. 85-1235; 94-1011, § 15; 96-1087, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-1.

Effect of Amendments. The 2006 amendment by P.A. 94-1011, effective July 7, 2006, substituted "3-33.5" for "3-33".

The 2010 amendment by P.A. 96-1087, effective January 1, 2011, added "or who are minors involved in electronic dissemination of indecent visual depictions in need of supervision as defined in Section 3-40" to the end; and made a related change.

CASE NOTES

Analysis

Constitutionality
Construction
Contempt
Fundamental Rights
Legislative Intent
Parens Patriae
Review of Custody Determination
State Interest

Constitutionality

Because the state has a legitimate interest in the welfare of minors and because such welfare is jeopardized when a minor is absent from home without parental consent, the state has a compelling interest to intercede on behalf of the minor; moreover, this Article is narrowly tailored to achieve the state's purpose of protecting the welfare of minors and consequently, does not violate substantive due process. People v. R.G., 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989), cert. denied, 494 U.S. 1035, 110 S. Ct. 1491, 108 L. Ed. 2d 626 (1990).

This Article does not violate procedural due process. People v. R.G., 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989), cert. denied, 494 U.S. 1035, 110 S. Ct. 1491, 108 L. Ed. 2d 626 (1990).

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As the terms and criteria of this Article make it sufficiently clear which minors fall under this Article, it is not void for vagueness and therefore not violative of due process. People v. R.G., 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989), cert. denied, 494 U.S. 1035, 110 S. Ct. 1491, 108 L. Ed. 2d 626 (1990).

This Article survives strict scrutiny and does not violate equal protection. People v. R.G., 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989), cert. denied, 494 U.S. 1035, 110 S. Ct. 1491, 108 L. Ed. 2d 626 (1990).

The gender/age distinction of former Ill. Rev. Stat., ch. 37, para. 702-1 (see now this section) was neither invidious nor arbitrary and was well within the legislative discretion. People v. Pardo, 47 Ill. 2d 420, 265 N.E.2d 656 (1970).

Construction

There is no conflict between the proposition that the juvenile court might retain jurisdiction over an individual until he reaches the age of 21 and the fact that the general statute of limitations for commencement of a personal injury action would apply to the individual upon his attaining the age of 18 years, because such individual may be emancipated for purposes of the general statute of limitations under 735 ILCS 5/13-202 and 735 ILCS 5/13-212 and yet remain subject to the jurisdiction of the juvenile court. Krzyzak v. Pillay, 57 Ill. App. 3d 478, 15 Ill. Dec. 202, 373 N.E.2d 548 (1 Dist. 1978).

Contempt

The evidence was sufficient to justify holding a mother in contempt for violating an Order of Protective Supervision. People v. Burr, 119 Ill. App. 2d 134, 255 N.E.2d 57 (4 Dist. 1970).

Fundamental Rights

This Article affects the fundamental right of the parents of a runaway minor to control over their family. People v. R.G., 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989), cert. denied, 494 U.S. 1035, 110 S. Ct. 1491, 108 L. Ed. 2d 626 (1990).

Legislative Intent

The legislature intended to allow a court to maintain jurisdiction over a minor adjudicated a truant minor in need of supervision despite the fact that the minor subsequently reached the age of 16. In re C.W., 292 Ill. App. 3d 201, 226 Ill. Dec. 80, 684 N.E.2d 1076 (4 Dist. 1997), appeal denied, 175 Ill. 2d 528, 228 Ill. Dec. 718, 689 N.E.2d 1139 (1997).

Parens Patriae

In appropriate circumstances, the state, as parens patriae, may properly step in and substitute itself as the guardian of minors within its jurisdiction; such circumstances include where parents are unable to care for children in their custody. People v. D.L., 226 Ill. App. 3d 177, 168 Ill. Dec. 280, 589 N.E.2d 680 (1 Dist.), cert. denied, 146 Ill. 2d 628, 176 Ill. Dec. 799, 602 N.E.2d 453 (1992).

Review of Custody Determination

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A court of review will not disturb a trial court's determination in a child custody case unless the trial court exceeded its broad discretion or the court's determination results in manifest injustice or is palpably against the weight of the evidence. People v. D.L., 226 Ill. App. 3d 177, 168 Ill. Dec. 280, 589 N.E.2d 680 (1 Dist.), cert. denied, 146 Ill. 2d 628, 176 Ill. Dec. 799, 602 N.E.2d 453 (1992).

State Interest

The state has a compelling interest in protecting the welfare of children. People v. R.G., 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989), cert. denied, 494 U.S. 1035, 110 S. Ct. 1491, 108 L. Ed. 2d 626 (1990).

§ 705 ILCS 405/3-2. [Venue]

Sec. 3-2. (1) Venue under this Article lies in the county where the minor resides or is found.

(2) If proceedings are commenced in any county other than that of the minor's residence, the court in which the proceedings were initiated may at any time before or after adjudication of wardship transfer the case to the county of the minor's residence by transmitting to the court in that county an authenticated copy of the court record, including all documents, petitions and orders filed therein, and the minute orders and docket entries of the court. Transfer in like manner may be made in the event of a change of residence from one county to another of a minor concerning whom proceedings are pending.

(Source: P.A. 85-601.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-2.

§ 705 ILCS 405/3-3. Minor requiring authoritative intervention

Sec. 3-3. Minor requiring authoritative intervention. Those requiring authoritative intervention include any minor under 18 years of age (1) who is (a) absent from home without consent of parent, guardian or custodian, or (b) beyond the control of his or her parent, guardian or custodian, in circumstances which constitute a substantial or immediate danger to the minor's physical safety; and (2) who, after being taken into limited custody for the period provided for in this Section and offered interim crisis intervention services, where available, refuses to return home after the minor and his or her parent, guardian or custodian cannot agree to an arrangement for an alternative voluntary residential placement or to the continuation of such placement. Any minor

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taken into limited custody for the reasons specified in this Section may not be adjudicated a minor requiring authoritative intervention until the following number of days have elapsed from his or her having been taken into limited custody: 21 days for the first instance of being taken into limited custody and 5 days for the second, third, or fourth instances of being taken into limited custody. For the fifth or any subsequent instance of being taken into limited custody for the reasons specified in this Section, the minor may be adjudicated as requiring authoritative intervention without any specified period of time expiring after his or her being taken into limited custody, without the minor's being offered interim crisis intervention services, and without the minor's being afforded an opportunity to agree to an arrangement for an alternative voluntary residential placement. Notwithstanding any other provision of this Section, for the first instance in which a minor is taken into limited custody where one year has elapsed from the last instance of his having been taken into limited custody, the minor may not be adjudicated a minor requiring authoritative intervention until 21 days have passed since being taken into limited custody.

(Source: P.A. 85-601.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-3.

Cross References.

As to the form and contents of a petition filed pursuant to this section, see 705 ILCS 405/3-15.

As to the standard of proof and rules of evidence in proceedings under this section, see 705 ILCS 405/3-20.

As to kinds of dispositional orders available where a minor is found in need of authoritative intervention, see 705 ILCS 405/3-24.

CASE NOTES

Analysis

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Age of Juvenile
Applicability
Double Jeopardy
Evidence Held Insufficient
Evidence Held Sufficient
Extension of Probation
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Political Asylum
Protective Order
Rule of State
Single Isolated Act

Constitutionality

Because the state as parens patriae will step in pursuant to the requirements of this section only when the time-honored parental interest in the minor's society and custody has been so thoroughly thwarted by the minor's behavior that the minor's physical safety is in substantial and immediate danger, this section is not unconstitutional on the ground of vagueness. People v. McCarron, 170 Ill. App. 3d 552, 121 Ill. Dec. 193, 524 N.E.2d 1241 (2 Dist. 1988), overruled on other grounds, People v. Minor, 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989).

On their face, the statutory provisions relating to the possible commitment of a juvenile to the custody of the Department of Corrections following an adjudication of delinquency (prior to 1987 amendment) were not unconstitutional. Vann v. Scott, 467 F.2d 1235 (7th Cir. 1972).

Age of Juvenile

Although it is true that this Article does not apply to persons over 18 years of age, wardship and custodianship could continue until the age of 21 under former Ill. Rev. Stat., ch. 37, paras. 702-3, 705-7, and 705-11 (see now this section, 705 ILCS 405/3-29 and 705 ILCS 405/3-32). People v. McCarron, 170 Ill. App. 3d 552, 121 Ill. Dec. 193, 524 N.E.2d 1241 (2 Dist. 1988), overruled on other grounds, People v. Minor, 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989).

Applicability

Where the evidence showed that a mother refused her daughter shelter, refused to participate in facilitating a care plan, or attend parenting classes, the daughter was neglected and not merely a minor requiring authoritative intervention. People v. Debra T.-M. (In re Christina M.), 333 Ill. App. 3d 1030, 267 Ill. Dec. 852, 777 N.E.2d 655, 2002 Ill. App. LEXIS 891 (1 Dist. 2002), appeal denied sub nom. People v. Debra T.M. (In re Christina M.), 202 Ill. 2d 671, 272 Ill. Dec. 358, 787 N.E.2d 173 (2003).

Minors to whom this Article would be applicable are those whose behavior is the same type of behavior which was found to require supervision under the former Minor Otherwise in Need of Supervision statute (former Ill. Rev. Stat., ch. 37, para. 702-3). People v. McCarron, 170 Ill. App. 3d 552, 121 Ill. Dec. 193, 524 N.E.2d 1241 (2 Dist. 1988), overruled on other grounds, People v. Minor, 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989).

Double Jeopardy

The concepts of double jeopardy and compulsory joinder were applicable to minor in need of supervision proceedings; therefore, proceedings on a delinquency petition were barred where the same charges had been dismissed in prior proceedings. People v. R.L.K., 67 Ill. App. 3d 451, 23 Ill. Dec. 737, 384 N.E.2d 531 (4 Dist. 1978).

Evidence Held Insufficient

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Adoptive daughter was not a minor requiring authoritative intervention because the daughter was not absent from her adoptive mother's home without the mother's consent; the daughter was absent from home because the mother did not want the daughter in her home, the mother had acted affirmatively to keep the daughter from the mother's home, and the mother had essentially given her consent to the daughter being away from the home. People v. Brenda H. (In re L.H.), 384 Ill. App. 3d 836, 323 Ill. Dec. 857, 894 N.E.2d 883, 2008 Ill. App. LEXIS 852 (1 Dist. 2008).

Evidence was held insufficient to sustain trial court's determination that 12 year old minor be removed from the custody of his parents based upon immediate and urgent necessity for minor's protection, and such evidence was also insufficient to find minor was in need of supervision because he was beyond parental control. In re Polovchak, 97 Ill. 2d 212, 73 Ill. Dec. 398, 454 N.E.2d 258 (1983), cert. denied, 465 U.S. 1065, 104 S. Ct. 1413, 79 L. Ed. 2d 740 (1984).

Evidence Held Sufficient

A finding of sexual abuse as to younger daughter by father was justified even in the absence of evidence that she was physically molested when evidence of abuse of older daughter was admissible. People v. McHone, 171 Ill. App. 3d 361, 121 Ill. Dec. 507, 525 N.E.2d 565 (2 Dist. 1988).

The evidence presented at an adjudicatory hearing was sufficient to establish by a preponderance of the evidence that minor was absent from home without parental consent and was beyond the control of her father in circumstances which constituted a substantial or immediate danger to her physical safety; accordingly, the trial court's order which adjudicated minor a Minor Requiring Authoritative Intervention was proper under a similar prior provision. People v. McCarron, 170 Ill. App. 3d 552, 121 Ill. Dec. 193, 524 N.E.2d 1241 (2 Dist. 1988), overruled on other grounds, People v. Minor, 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989).

Where, in the delinquency decree defendant was designated as "incorrigible," the decree, despite the characterization "incorrigible," committed defendant to the Youth Commission and ordered a warrant of commitment to issue, and the exhibits in evidence showed that defendant did, in fact, violate the law on several occasions and attempted other violations, thus, defendant was delinquent within the terms of former Ill. Rev. Stat., ch. 37, para. 702-3 (see now this section). People v. Holmes, 12 Ill. App. 3d 713, 298 N.E.2d 738 (4 Dist. 1973).

Extension of Probation

Where a defendant was placed on probation until March 8, 1976, and on March 25, 1976, a petition for supplemental relief was filed alleging that the defendant had violated her probation, defendant's term of probation expired on March 8, 1976, and the trial court under former Ill. Rev. Stat., ch. 37, para. 702-3 (see now this section) had no authority to extend that term. People v. Sims, 56 Ill. App. 3d 364, 13 Ill. Dec. 843, 371 N.E.2d 935 (1 Dist. 1977).

Immediate Danger

The phrase "in circumstances which constitute a substantial or immediate danger to the minor's physical safety" modifies subdivision (1)(b) but not subdivision (1)(a) of this section. People v. R.G., 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989), cert. denied, 494 U.S. 1035, 110 S. Ct. 1491, 108 L. Ed. 2d 626 (1990).

Jurisdiction

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Subject matter jurisdiction of trial court under former Ill. Rev. Stat., ch. 37, para. 702-3 (see now this section) was not lacking when the petition alleged that the minor was an habitual truant even if the petition set forth ultimate facts that were, of themselves, insufficient to support the allegation. People v. K.M.B., 117 Ill. App. 3d 89, 72 Ill. Dec. 623, 452 N.E.2d 876 (4 Dist. 1983).

Political Asylum

Whether minor may be entitled to political asylum in this country is an issue that should be decided by a forum other than a proceeding under this Act. People v. Polovchak, 104 Ill. App. 3d 203, 59 Ill. Dec. 929, 432 N.E.2d 873 (1 Dist. 1981), aff'd, 97 Ill. 2d 212, 73 Ill. Dec. 398, 454 N.E.2d 258 (1983), cert. denied, 465 U.S. 1065, 104 S. Ct. 1413, 79 L. Ed. 2d 739 (1984).

Protective Order

An order directing a mother to so comport her behavior to insure her daughter's school attendance unless ill, and that such absence must be supported by a physician's certificate, was not unreasonable. People v. Burr, 119 Ill. App. 2d 134, 255 N.E.2d 57 (4 Dist. 1970).

Rule of State

Parents have the primary role of providing for the care and nurture of their children, but the state as parens patriae may restrict the parents' control and freedom in this regard where the welfare of the child is at issue. People v. Polovchak, 104 Ill. App. 3d 203, 59 Ill. Dec. 929, 432 N.E.2d 873 (1 Dist. 1981), aff'd, 97 Ill. 2d 212, 73 Ill. Dec. 398, 454 N.E.2d 258 (1983), cert. denied, 465 U.S. 1065, 104 S. Ct. 1413, 79 L. Ed. 2d 739 (1984).

Single Isolated Act

A single isolated act by a minor could be sufficient to establish that the minor was beyond the control of his parents provided the minor's conduct was seriously harmful and pointed to grave danger; thus, it was not adequate to prove a minor was absent from home or beyond his parents' control without also proving the minor's circumstances constituted a substantial or immediate danger to the minor's physical safety under former Ill. Rev. Stat., ch. 37, para. 702-3 (see now this section). People v. Polovchak, 104 Ill. App. 3d 203, 59 Ill. Dec. 929, 432 N.E.2d 873 (1 Dist. 1981), aff'd, 97 Ill. 2d 212, 73 Ill. Dec. 398, 454 N.E.2d 258 (1983), cert. denied, 465 U.S. 1065, 104 S. Ct. 1413, 79 L. Ed. 2d 739 (1984); People v. McCarron, 170 Ill. App. 3d 552, 121 Ill. Dec. 193, 524 N.E.2d 1241 (2 Dist. 1988), overruled on other grounds, People v. Minor, 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989).

A minor's action was not sufficiently serious to warrant a finding that he was beyond his parents' control where the minor fled the family residence and remained missing for five days because he did not wish to return to his former home in the Soviet Union with his parents. People v. Polovchak, 104 Ill. App. 3d 203, 59 Ill. Dec. 929, 432 N.E.2d 873 (1 Dist. 1981), aff'd, 97 Ill. 2d 212, 73 Ill. Dec. 398, 454 N.E.2d 258 (1983), cert. denied, 465 U.S. 1065, 104 S. Ct. 1413, 79 L. Ed. 2d 739 (1984).

LEGAL PERIODICALS

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For article: "Delinquency and Due Process: A Review of Illinois Law" 59 Chi-Kent L. Rev. 123 (1982).

For article: "Drug Addicts and the Dangerous Drug Abuse Act - Special Relief Available to Criminal Defendants in Illinois," see 65 Ill. B.J. 142. (1976).

For article, "Survey of Illinois Law: Juvenile Delinquency - Protecting the Public," see, 28 S. Ill. U.L.J. 847 (2004).

§ 705 ILCS 405/3-4. Taking into limited custody

Sec. 3-4. Taking into limited custody. (a) A law enforcement officer may, without a warrant, take into limited custody a minor who the law enforcement officer reasonably determines is (i) absent from home without consent of the minor's parent, guardian or custodian, or (ii) beyond the control of his or her parent, guardian or custodian, in circumstances which constitute a substantial or immediate danger to the minor's physical safety.

(b) A law enforcement officer who takes a minor into limited custody shall (i) immediately inform the minor of the reasons for such limited custody, and (ii) make a prompt, reasonable effort to inform the minor's parents, guardian, or custodian that the minor has been taken into limited custody and where the minor is being kept.

(c) If the minor consents, the law enforcement officer shall make a reasonable effort to transport, arrange for the transportation of or otherwise release the minor to the parent, guardian or custodian. Upon release of a minor who is believed to need or would benefit from medical, psychological, psychiatric or social services, the law enforcement officer may inform the minor and the person to whom the minor is released of the nature and location of appropriate services and shall, if requested, assist in establishing contact between the family and an agency or association providing such services.

(d) If the law enforcement officer is unable by all reasonable efforts to contact a parent, custodian, relative or other responsible person; or if the person contacted lives an unreasonable distance away; or if the minor refuses to be taken to his or her home or other appropriate residence; or if the officer is otherwise unable despite all reasonable efforts to make arrangements for the safe release of the minor taken into limited custody, the law enforcement officer shall take or make reasonable arrangements for transporting the minor to an agency or association providing crisis intervention services, or, where appropriate, to a mental health or developmental disabilities facility for screening for voluntary or involuntary admission under Section 3-500 et seq. of the Illinois Mental Health and Developmental Disabilities Code [405 ILCS 5/3-500 et seq.]; provided that where no crisis intervention services exist, the minor may be transported for services to court service departments or probation departments under the court's administration.

(e) No minor shall be involuntarily subject to limited custody for more than 6 hours from the time of the minor's initial contact with the law enforcement officer.

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(f) No minor taken into limited custody shall be placed in a jail, municipal lockup, detention center or secure correctional facility.

(g) The taking of a minor into limited custody under this Section is not an arrest nor does it constitute a police record; and the records of law enforcement officers concerning all minors taken into limited custody under this Section shall be maintained separate from the records of arrest and may not be inspected by or disclosed to the public except by order of the court. However, such records may be disclosed to the agency or association providing interim crisis intervention services for the minor.

(h) Any law enforcement agency, juvenile officer or other law enforcement officer acting reasonably and in good faith in the care of a minor in limited custody shall be immune from any civil or criminal liability resulting from such custody.

(Source: P.A. 85-601; 87-1154, § 1.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-4.

CASE NOTES

Analysis

Detention at Police Station
Dispositional Order

Detention at Police Station

A detective was authorized to take the 13 year old defendant into limited custody because her mother had reported her missing, and he did not violate the statute by not taking her home immediately, even though he knew that she lived two houses away and that her mother was at home since a youth officer testified that it is customary to take a juvenile directly to the police station to complete a missing persons report, and the defendant's parents were notified of her whereabouts within 30 minutes of her arrival at the police station. People v. Kolakowski, 319 Ill. App. 3d 200, 253 Ill. Dec. 288, 745 N.E.2d 62, 2001 Ill. App. LEXIS 49 (1 Dist. 2001), cert. denied, 534 U.S. 1003, 122 S. Ct. 482, 151 L. Ed. 2d 395 (2001), appeal denied, 195 Ill. 2d 565, 257 Ill. Dec. 894, 754 N.E.2d 1289 (2001).

Dispositional Order

Under this Act, a dispositional order is not to be entered until after the court has adjudged the minor a ward of the court. In re J.N., 91 Ill. 2d 122, 61 Ill. Dec. 776, 435 N.E.2d 473 (1982).

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LEGAL PERIODICALS

For article, "Denying Child Welfare Services to Delinquent Teens: A Call to Return to the Roots of Illinois' Juvenile Court," see, 36 Loy. U. Chi. L.J. 925 (2005).

§ 705 ILCS 405/3-5. Interim crisis intervention services

Sec. 3-5. Interim crisis intervention services. (a) Any minor who is taken into limited custody, or who independently requests or is referred for assistance, may be provided crisis intervention services by an agency or association, as defined in this Act, provided the association or agency staff (i) immediately investigate the circumstances of the minor and the facts surrounding the minor being taken into custody and promptly explain these facts and circumstances to the minor, and (ii) make a reasonable effort to inform the minor's parent, guardian or custodian of the fact that the minor has been taken into limited custody and where the minor is being kept, and (iii) if the minor consents, make a reasonable effort to transport, arrange for the transportation of, or otherwise release the minor to the parent, guardian or custodian. Upon release of the child who is believed to need or benefit from medical, psychological, psychiatric or social services, the association or agency may inform the minor and the person to whom the minor is released of the nature and location of appropriate services and shall, if requested, assist in establishing contact between the family and other associations or agencies providing such services. If the agency or association is unable by all reasonable efforts to contact a parent, guardian or custodian, or if the person contacted lives an unreasonable distance away, or if the minor refuses to be taken to his or her home or other appropriate residence, or if the agency or association is otherwise unable despite all reasonable efforts to make arrangements for the safe return of the minor, the minor may be taken to a temporary living arrangement which is in compliance with the Child Care Act [225 ILCS 10/1 et seq.] of or which is with persons agreed to by the parents and the agency or association.

(b) An agency or association is authorized to permit a minor to be sheltered in a temporary living arrangement provided the agency seeks to effect the minor's return home or alternative living arrangements agreeable to the minor and the parent, guardian or custodian as soon as practicable. No minor shall be sheltered in a temporary living arrangement for more than 48 hours, excluding Saturdays, Sundays, and court-designated holidays, when the agency has reported the minor as neglected or abused because the parent, guardian, or custodian refuses to permit the child to return home, provided that in all other instances the minor may be sheltered when the agency obtains the consent of the parent, guardian, or custodian or documents its unsuccessful efforts to obtain the consent or authority of the parent, guardian, or custodian, including recording the date and the staff involved in all telephone calls, telegrams, letters, and personal contacts to obtain the consent or authority, in which instances the minor may be so sheltered for not more than 21 days. If the parent, guardian or custodian refuses to permit the minor to return home, and no other living arrangement agreeable to the parent, guardian, or custodian can be

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made, and the parent, guardian, or custodian has not made any other appropriate living arrangement for the child, the agency may deem the minor to be neglected and report the neglect to the Department of Children and Family Services as provided in the Abused and Neglected Child Reporting Act [325 ILCS 5/1 et seq.]. The Child Protective Service Unit of the Department of Children and Family Services shall begin an investigation of the report within 24 hours after receiving the report and shall determine whether to file a petition alleging that the minor is neglected or abused as described in Section 2-3 of this Act [705 ILCS 405/2-3]. Subject to appropriation, the Department may take the minor into temporary protective custody at any time after receiving the report, provided that the Department shall take temporary protective custody within 48 hours of receiving the report if its investigation is not completed. If the Department of Children and Family Services determines that the minor is not a neglected minor because the minor is an immediate physical danger to himself, herself, or others living in the home, then the Department shall take immediate steps to either secure the minor's immediate admission to a mental health facility, arrange for law enforcement authorities to take temporary custody of the minor as a delinquent minor, or take other appropriate action to assume protective custody in order to safeguard the minor or others living in the home from immediate physical danger.

(c) Any agency or association or employee thereof acting reasonably and in good faith in the care of a minor being provided interim crisis intervention services and shelter care shall be immune from any civil or criminal liability resulting from such care.

(Source: P.A. 85-601; 95-443, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-5.

Cross References.

As to limitations on court's jurisdiction under this Act, see 705 ILCS 405/1-4.

Effect of Amendments. The 2007 amendment by P.A. 95-443, effective January 1, 2008, rewrote (b).

§ 705 ILCS 405/3-6. Alternative voluntary residential placement

Sec. 3-6. Alternative voluntary residential placement. (a) A minor and his or her parent, guardian or custodian may agree to an arrangement for alternative voluntary residential placement, in compliance with the "Child Care Act of 1969" [225 ILCS 10/1 et seq.], without court order. Such placement may continue as long as there is agreement.

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(b) If the minor and his or her parent, guardian or custodian cannot agree to an arrangement for alternative voluntary residential placement in the first instance, or cannot agree to the continuation of such placement, and the minor refuses to return home, the minor or his or her parent, guardian or custodian, or a person properly acting at the minor's request, may file with the court a petition alleging that the minor requires authoritative intervention as described in Section 3-3 [705 ILCS 405/3-3].

(Source: P.A. 85-601.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-6.

Cross References.

As to limitations of the scope of this Act, see 705 ILCS 405/1-4.

CASE NOTES

Analysis

Dismissal
Res Judicata

Dismissal

Where the state asked for dismissal "pursuant to the finding of no probable cause," the state's request for a dismissal merely ensured that the trial court's disposition of the petitions complied with this section. People v. Gomez, 100 Ill. App. 3d 299, 55 Ill. Dec. 759, 426 N.E.2d 1084 (1 Dist. 1981).

Res Judicata

The dismissal of a petition for adjudication of wardship did not have a res judicata effect unless it was final, and no wording in subsection (a) of this section convinced the court that the legislature intended to impose such finality on the findings made at the detention hearing. People v. Gomez, 100 Ill. App. 3d 299, 55 Ill. Dec. 759, 426 N.E.2d 1084 (1 Dist. 1981).

Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 11:03 Limitations of scope of Juvenile Court Act.

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§ 705 ILCS 405/3-7. Taking into temporary custody

Sec. 3-7. Taking into temporary custody. (1) A law enforcement officer may, without a warrant, take into temporary custody a minor (a) whom the officer with reasonable cause believes to be a minor requiring authoritative intervention; (b) who has been adjudged a ward of the court and has escaped from any commitment ordered by the court under this Act; (c) who is found in any street or public place suffering from any sickness or injury which requires care, medical treatment or hospitalization; or (d) whom the officer with reasonable cause believes to be a minor in need of supervision under Section 3-40 [705 ILCS 405/3-40].

(2) Whenever a petition has been filed under Section 3-15 [705 ILCS 405/3-15] and the court finds that the conduct and behavior of the minor may endanger the health, person, welfare, or property of himself or others or that the circumstances of his home environment may endanger his health, person, welfare or property, a warrant may be issued immediately to take the minor into custody.

(3) The taking of a minor into temporary custody under this Section is not an arrest nor does it constitute a police record.

(4) No minor taken into temporary custody shall be placed in a jail, municipal lockup, detention center, or secure correctional facility.

(Source: P.A. 85-601; 87-1154, § 1; 96-1087, § 5; 97-333, § 545.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-7.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 2010 amendment by P.A. 96-1087, effective January 1, 2011, added (1)(d); and made a related change.

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, deleted "or" from the end of (1)(b).

CASE NOTES

Analysis

Jurisdiction
Notice

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- Failure to Give
- Reasonable
Treatment of Sick or Injured Minors
- General Order
Waiver of Rights

Jurisdiction

Former Ill. Rev. Stat., ch. 37, para. 703-1 (see now this section) did not relate to the jurisdiction of the court. In re Nyce, 131 Ill. App. 2d 481, 268 N.E.2d 233 (1 Dist. 1971).

Notice

- Failure to Give

Violation of the parental notice requirement does not mandate suppression of evidence obtained following that violation. At most, such a violation constitutes a factor in determining whether subsequent statements were voluntarily made. People v. Creach, 69 Ill. App. 3d 874, 25 Ill. Dec. 886, 387 N.E.2d 762 (1 Dist. 1979), rev'd on other grounds, 79 Ill. 2d 96, 37 Ill. Dec. 338, 402 N.E.2d 228 (1980).

- Reasonable

Former Ill. Rev. Stat., ch. 37, para. 703-2 (see now 705 ILCS 405/3-8) required a reasonable attempt to notify parents when a minor was taken into custody under former Ill. Rev. Stat., ch. 37, para. 703-1 (see now this section). People v. Creach, 69 Ill. App. 3d 874, 25 Ill. Dec. 886, 387 N.E.2d 762 (1 Dist. 1979), rev'd on other grounds, 79 Ill. 2d 96, 37 Ill. Dec. 338, 402 N.E.2d 228 (1980).

Treatment of Sick or Injured Minors

- General Order

General order concerning procedures for the treatment of sick or injured minors, issued by the presiding judge of the Juvenile Division of the County Department of the Circuit Court of Cook County (the Juvenile Division) exhibited the requisite degree of public interest for an exception to application of the mootness doctrine, allowing the court to look to the public or private nature of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question despite the absence of an actual case involving a minor. In re General Order of October 11, 1990, 256 Ill. App. 3d 693, 195 Ill. Dec. 322, 628 N.E.2d 786 (1 Dist. 1993).

Waiver of Rights

As a matter of good practice, special precautions should be taken to ensure that juveniles understand their rights and how to exercise them and it would be preferable that a parent or guardian is present when a juvenile waives his rights; in a close case, the failure to follow this procedure may result in a finding that under the totality of the circumstances the waiver is ineffective. In re Stiff, 32 Ill. App. 3d 971, 336 N.E.2d 619 (2 Dist. 1975).

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§ 705 ILCS 405/3-8. Duty of officer; admissions by minor

Sec. 3-8. Duty of officer; admissions by minor. (1) A law enforcement officer who takes a minor into custody with a warrant shall immediately make a reasonable attempt to notify the parent or other person legally responsible for the minor's care or the person with whom the minor resides that the minor has been taken into custody and where he or she is being held; and the officer shall without unnecessary delay take the minor to the nearest juvenile police officer designated for such purposes in the county of venue or shall surrender the minor to a juvenile police officer in the city or village where the offense is alleged to have been committed.

The minor shall be delivered without unnecessary delay to the court or to the place designated by rule or order of court for the reception of minors. The court may not designate a place of detention for the reception of minors, unless the minor is alleged to be a person described in subsection (3) of Section 5-105 [705 ILCS 405/5-105].

(2) A law enforcement officer who takes a minor into custody without a warrant under Section 3-7 [705 ILCS 405/3-7] shall, if the minor is not released, immediately make a reasonable attempt to notify the parent or other person legally responsible for the minor's care or the person with whom the minor resides that the minor has been taken into custody and where the minor is being held; and the law enforcement officer shall without unnecessary delay take the minor to the nearest juvenile police officer designated for such purposes in the county of venue or shall surrender the minor to a juvenile police officer in the city or village where the offense is alleged to have been committed, or upon determining the true identity of the minor, may release the minor to the parent or other person legally responsible for the minor's care or the person with whom the minor resides, if the minor is taken into custody for an offense which would be a misdemeanor if committed by an adult. If a minor is so released, the law enforcement officer shall promptly notify a juvenile police officer of the circumstances of the custody and release.

(3) The juvenile police officer may take one of the following actions:

(a) station adjustment with release of the minor;

(b) station adjustment with release of the minor to a parent;

(c) station adjustment, release of the minor to a parent, and referral of the case to community services;

(d) station adjustment, release of the minor to a parent, and referral of the case to community services with informal monitoring by a juvenile police officer;

(e) station adjustment and release of the minor to a third person pursuant to agreement of the minor and parents;

(f) station adjustment, release of the minor to a third person pursuant to agreement of the minor and parents, and referral of the case to community services;

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(g) station adjustment, release of the minor to a third person pursuant to agreement of the minor and parent, and referral to community services with informal monitoring by a juvenile police officer;

(h) release of the minor to his or her parents and referral of the case to a county juvenile probation officer or such other public officer designated by the court;

(i) release of the minor to school officials of his school during regular school hours;

(j) if the juvenile police officer reasonably believes that there is an urgent and immediate necessity to keep the minor in custody, the juvenile police officer shall deliver the minor without unnecessary delay to the court or to the place designated by rule or order of court for the reception of minors; and

(k) any other appropriate action with consent of the minor and a parent.

(Source: P.A. 86-628; 90-590, § 2001-10.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-8.

Effect of Amendments. The 1998 amendment by P.A. 90-590, effective January 1, 1999, substituted "subsection (3) of Section 5-105" for "Section 5-3" in the second paragraph in subsection (1); and, in subsection (2), added the language beginning "or upon determining the true identity" to the end of the first sentence, and added the second sentence.

CASE NOTES

Analysis

Admissions
- Evidence
- Voluntariness
Confession
- Held Involuntary
- Held Voluntary
Constitutional Rights
Criminal Investigations
- Notification of Juvenile Authorities
Noncompliance
- Sanctions
Parental Contact
Unlawful Detention
Violation

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- Denial of Parental Visit
Visit by Family Members
Without Warrant

Admissions

- Evidence

Confessions or admissions made by a suspect in response to interrogation by private citizens are admissible in evidence although the suspect has not been warned or has not waived his rights as required by Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694. People v. Hawkins, 53 Ill. 2d 181, 290 N.E.2d 231 (1972).

- Voluntariness

Delay in presenting a 16-year-old suspect to a youth officer in violation of the Juvenile Court Act of 1987, former Ill. Rev. Stat. 1991, ch. 37, par. 801-1 et seq., did not by itself render a statement involuntary, especially where the youth officer was notified, albeit after the suspect had been in custody for five hours, and where the suspect was given Miranda warnings prior to making the statement. People v. Brown, 235 Ill. App. 3d 479, 176 Ill. Dec. 492, 601 N.E.2d 1190, 1992 Ill. App. LEXIS 1531 (1 Dist. 1992).

Where police officers, who thought that a juvenile was 17 years old, failed to properly notify the juvenile's parents or to deliver the juvenile to a juvenile probation officer, under the totality of the circumstances, the juvenile's written statement was not involuntary nor coerced in any way. People v. Shutters, 56 Ill. App. 3d 184, 13 Ill. Dec. 198, 370 N.E.2d 1225 (2 Dist. 1977).

The voluntariness of a confession must be judged on the totality of the circumstances. In re Stiff, 32 Ill. App. 3d 971, 336 N.E.2d 619 (2 Dist. 1975).

Confession

- Held Involuntary

Where defendant did not confer with an adult interested in his welfare before he was questioned or before he made an inculpatory statement, but rather, the police interrogated defendant at least three times before they notified a youth officer, where no youth officer was present until almost four hours after defendant admitted his presence at the crime and three hours after defendant initially incriminated himself, where the police failed to contact a youth officer until after transferring him to another police station, after further interrogation, after defendant's inculpatory statement, and after his formal arrest, and it was undisputed that the police did not attempt to telephone defendant's parents until after defendant incriminated himself, the absence of an adult interested in defendant's welfare contributed to the coercive circumstances surrounding the interrogation. People v. R.B., 232 Ill. App. 3d 583, 173 Ill. Dec. 905, 597 N.E.2d 879 (1 Dist. 1992).

- Held Voluntary

Circuit court's determination that 15 year old defendant's confession was voluntary was not contrary to the manifest weight of the evidence even though defendant was questioned for a brief amount of time without the presence of a concerned adult. People v. Rhonda F., 289 Ill. App. 3d 148, 224 Ill. Dec. 664, 682 N.E.2d 225 (1 Dist. 1997).

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Constitutional Rights

Because 705 ILCS 405/3-8(3)(d) vested a city's juvenile police officer with the authority to refer a juvenile to serve community service and authorized the monitoring of community service, a jury could reasonably find that the failure by two municipalities to supervise community service placements amounted to a policy, precluding summary judgment in favor of municipal defendants in a 42 U.S.C. § 1983 action arising from the alleged abuse of a juvenile by the "contact person" assigned during community service. Mihalovits v. Village of Crestwood, F. Supp. 2d , 2003 U.S. Dist. LEXIS 4936 (N.D. Ill. Mar. 28, 2003).

Violation of former Ill. Rev. Stat., ch. 37, para. 7-302 (see now this section) by law enforcement officers did not per se constitute a denial of the defendant's rights under the Fourth Amendment. People v. McGhee, 154 Ill. App. 3d 232, 107 Ill. Dec. 369, 507 N.E.2d 33 (1 Dist. 1987).

Criminal Investigations

Former Ill. Rev. Stat., ch. 37, para. 703-2(1) (see now this section) was not intended to divest the police and the state's attorney of their duty and responsibility to investigate crimes where juveniles are involved. People v. Zepeda, 47 Ill. 2d 23, 265 N.E.2d 647 (1970).

- Notification of Juvenile Authorities

Where defendant was taken into custody because of his suspected involvement in a murder, and not because of a juvenile court violation, there was no need to contact the juvenile authorities. People v. Sevier, 230 Ill. App. 3d 1071, 174 Ill. Dec. 336, 598 N.E.2d 968 (1 Dist. 1992).

Noncompliance

- Sanctions

This section imposes no sanctions for noncompliance, and the failure to adhere to this section does not render a statement per se inadmissible. People v. Anderson, 276 Ill. App. 3d 1, 212 Ill. Dec. 362, 657 N.E.2d 57 (1 Dist. 1995), appeal denied, 165 Ill. 2d 554, 214 Ill. Dec. 861, 662 N.E.2d 427 (1996).

Parental Contact

Juvenile defendant's contention that the police did not notify his mother prior to or after his arrest, which was uncontradicted as detective admitted that he did not contact her, was insufficient to vitiate his confession where there was ample affirmative evidence to support the trial court's finding that the confession was voluntary; all four of the state's witnesses at the suppression hearing said that they did nothing to coerce the defendant to confess and they further testified as to defendant's expressed desire and state of mind to make a full and complete disclosure of what he had done. People v. King, 248 Ill. App. 3d 253, 188 Ill. Dec. 139, 618 N.E.2d 709 (1 Dist. 1993).

Unlawful Detention

Even if there were a failure to reasonably comply with former Ill. Rev. Stat., ch. 37, para. 703-2(1) (see now this section), and such failure caused defendant to be unlawfully detained, nothing in that section imposed sanctions for a failure to comply and, under the rule long adhered to, unlawful detention would not, of itself, invalidate a confession or statement of an accused. People v. Zepeda, 47 Ill. 2d 23, 265 N.E.2d 647 (1970).

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Violation

- Denial of Parental Visit

Former Ill. Rev. Stat., ch. 37, para. 703-2 (see now this section) was violated where defendant's mother was denied the opportunity to see him when she came to the station before he had made inculpatory statements, and by not having a juvenile officer present until about 11 hours after he was brought into the station; having an officer leave his business card with the defendant's uncle, and having a juvenile officer present when defendant signed his confession, were insufficient to comply with this section. People v. McGhee, 154 Ill. App. 3d 232, 107 Ill. Dec. 369, 507 N.E.2d 33 (1 Dist. 1987).

Visit by Family Members

The police detectives' refusal to allow the defendant's grandmother and other family members to see defendant was not without reason since the family members were "highly upset" about the death of defendant's mother and the detectives believed the family members might harm the defendant. People v. Rhonda F., 289 Ill. App. 3d 148, 224 Ill. Dec. 664, 682 N.E.2d 225 (1 Dist. 1997).

Without Warrant

Former Ill. Rev. Stat., ch. 37, para. 703-2(1) (see now this section) recognized that the police might take a minor into custody without a warrant, something they could not constitutionally do unless reasonable cause existed, and it was the purport of former Ill. Rev. Stat., ch. 37, para. 702-7(3) (see now 705 ILCS 405/5-4) that criminal proceedings, as distinguished from delinquency proceedings, could be brought against a minor 13 years of age or over on petition of the state's attorney. People v. Zepeda, 47 Ill. 2d 23, 265 N.E.2d 647 (1970).

§ 705 ILCS 405/3-9. Temporary custody; shelter care

Sec. 3-9. Temporary custody; shelter care. Any minor taken into temporary custody pursuant to this Act who requires care away from his or her home but who does not require physical restriction shall be given temporary care in a foster family home or other shelter facility designated by the court. In the case of a minor alleged to be a minor requiring authoritative intervention, the court may order, with the approval of the Department of Children and Family Services, that custody of the minor be with the Department of Children and Family Services for designation of temporary care as the Department determines. No such child shall be ordered to the Department without the approval of the Department.

(Source: P.A. 85-601.)

Note.

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This section was Ill.Rev.Stat., Ch. 37, Para. 803-9.

§ 705 ILCS 405/3-10. Investigation; release

Sec. 3-10. Investigation; release. When a minor is delivered to the court, or to the place designated by the court under Section 3-9 of this Act [705 ILCS 405/3-9], a probation officer or such other public officer designated by the court shall immediately investigate the circumstances of the minor and the facts surrounding his or her being taken into custody. The minor shall be immediately released to the custody of his or her parent, guardian, legal custodian or responsible relative, unless the probation officer or such other public officer designated by the court finds that further shelter care is necessary as provided in Section 3-7 [705 ILCS 405/3-7]. This Section shall in no way be construed to limit Section 5-905 [705 ILCS 405/5-905].

(Source: P.A. 85-601; 90-590, § 2001-10.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-10.

Effect of Amendments. The 1998 amendment by P.A. 90-590, effective January 1, 1999, substituted "Section 5-905" for "Section 1-7" at the end of the last sentence.

§ 705 ILCS 405/3-11. Setting of shelter care hearing; notice; release

Sec. 3-11. Setting of shelter care hearing; notice; release. (1) Unless sooner released, a minor requiring authoritative intervention, taken into temporary custody, must be brought before a judicial officer within 48 hours, exclusive of Saturdays, Sundays and court-designated holidays, for a shelter care hearing to determine whether he shall be further held in custody.

(2) If the probation officer or such other public officer designated by the court determines that the minor should be retained in custody, he shall cause a petition to be filed as provided in Section 3-15 of this Act [705 ILCS 405/3-15], and the clerk of the court shall set the matter for hearing on the shelter care hearing calendar. When a parent, guardian, custodian or responsible relative is present and so requests, the shelter care hearing shall be held immediately if the court is in session, otherwise at the earliest feasible time. The petitioner through counsel or such other public officer designated by the court shall insure notification to the minor's parent, guardian, custodian or responsible relative of the time and place of the hearing by the best practicable notice, allowing for oral notice in place of written notice only if provision of written notice is unreasonable under the circumstances.

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(3) The minor must be released from custody at the expiration of the 48 hour period, if not brought before a judicial officer within that period.

(Source: P.A. 87-759.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-11.

CASE NOTES

Jurisdiction

Former Ill. Rev. Stat., ch. 37, paras. 703-5 and 704-2 of this Act (see now this section and 705 ILCS 405/3-16) did not bear upon the question of jurisdiction. In re Nyce, 131 Ill. App. 2d 481, 268 N.E.2d 233 (1 Dist. 1971).

§ 705 ILCS 405/3-12. Shelter care hearing

Sec. 3-12. Shelter care hearing. At the appearance of the minor before the court at the shelter care hearing, all witnesses present shall be examined before the court in relation to any matter connected with the allegations made in the petition.

(1) If the court finds that there is not probable cause to believe that the minor is a person requiring authoritative intervention, it shall release the minor and dismiss the petition.

(2) If the court finds that there is probable cause to believe that the minor is a person requiring authoritative intervention, the minor, his or her parent, guardian, custodian and other persons able to give relevant testimony shall be examined before the court. After such testimony, the court may enter an order that the minor shall be released upon the request of a parent, guardian or custodian if the parent, guardian or custodian appears to take custody. Custodian shall include any agency of the State which has been given custody or wardship of the child. The Court shall require documentation by representatives of the Department of Children and Family Services or the probation department as to the reasonable efforts that were made to prevent or eliminate the necessity of removal of the minor from his or her home, and shall consider the testimony of any person as to those reasonable efforts. If the court finds that it is a matter of immediate and urgent necessity for the protection of the minor or of the person or property of another that the minor be placed in a shelter care facility, or that he or she is likely to flee the jurisdiction of the court, and further finds that reasonable efforts have been made or good cause has been shown why reasonable efforts cannot prevent or eliminate the necessity of removal of the minor from his or her home, the court may

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prescribe shelter care and order that the minor be kept in a suitable place designated by the court or in a shelter care facility designated by the Department of Children and Family Services or a licensed child welfare agency; otherwise it shall release the minor from custody. If the court prescribes shelter care, then in placing the minor, the Department or other agency shall, to the extent compatible with the court's order, comply with Section 7 of the Children and Family Services Act [20 ILCS 505/7]. If the minor is ordered placed in a shelter care facility of the Department of Children and Family Services or a licensed child welfare agency, the court shall, upon request of the Department or other agency, appoint the Department of Children and Family Services Guardianship Administrator or other appropriate agency executive temporary custodian of the minor and the court may enter such other orders related to the temporary custody as it deems fit and proper, including the provision of services to the minor or his family to ameliorate the causes contributing to the finding of probable cause or to the finding of the existence of immediate and urgent necessity. Acceptance of services shall not be considered an admission of any allegation in a petition made pursuant to this Act, nor may a referral of services be considered as evidence in any proceeding pursuant to this Act, except where the issue is whether the Department has made reasonable efforts to reunite the family. In making its findings that reasonable efforts have been made or that good cause has been shown why reasonable efforts cannot prevent or eliminate the necessity of removal of the minor from his or her home, the court shall state in writing its findings concerning the nature of the services that were offered or the efforts that were made to prevent removal of the child and the apparent reasons that such services or efforts could not prevent the need for removal. The parents, guardian, custodian, temporary custodian and minor shall each be furnished a copy of such written findings. The temporary custodian shall maintain a copy of the court order and written findings in the case record for the child.

The order together with the court's findings of fact and support thereof shall be entered of record in the court.

Once the court finds that it is a matter of immediate and urgent necessity for the protection of the minor that the minor be placed in a shelter care facility, the minor shall not be returned to the parent, custodian or guardian until the court finds that such placement is no longer necessary for the protection of the minor.

(3) If prior to the shelter care hearing for a minor described in Sections 2-3, 2-4, 3-3 and 4-3 [705 ILCS 405/2-3, 705 ILCS 405/2-4, 705 ILCS 405/3-3 and 705 ILCS 405/4-3] the petitioner is unable to serve notice on the party respondent, the shelter care hearing may proceed ex-parte. A shelter care order from an ex-parte hearing shall be endorsed with the date and hour of issuance and shall be filed with the clerk's office and entered of record. The order shall expire after 10 days from the time it is issued unless before its expiration it is renewed, at a hearing upon appearance of the party respondent, or upon an affidavit of the moving party as to all diligent efforts to notify the party respondent by notice as herein prescribed. The notice prescribed shall be in writing and shall be personally delivered to the minor or the minor's attorney and to the last known address of the other person or persons entitled to notice. The notice shall also state the nature of the allegations, the nature of the order sought by the State, including whether temporary custody is sought, and the consequences of failure to appear; and shall explain the right of the parties and the procedures to vacate or modify a shelter care order as provided in this Section. The notice for a shelter care hearing shall

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be substantially as follows:

NOTICE TO PARENTS AND CHILDREN OF

SHELTER CARE HEARING

On ..... at ....., before the Honorable ....., (address:) ....., the State of Illinois will present evidence (1) that (name of child or children) ..... are abused, neglected or dependent for the following reasons:

.....

and (2) that there is "immediate and urgent necessity" to remove the child or children from the responsible relative.

YOUR FAILURE TO APPEAR AT THE HEARING MAY RESULT IN PLACEMENT of the child or children in foster care until a trial can be held. A trial may not be held for up to 90 days.

At the shelter care hearing, parents have the following rights:

1.To ask the court to appoint a lawyer if they cannot afford one.

2.To ask the court to continue the hearing to allow them time to prepare.

3.To present evidence concerning:

a.Whether or not the child or children were abused, neglected or dependent.

b.Whether or not there is "immediate and urgent necessity" to remove the child from home (including: their ability to care for the child, conditions in the home, alternative means of protecting the child other than removal).

c.The best interests of the child.

4.To cross examine the State's witnesses.

The Notice for rehearings shall be substantially as follows:

NOTICE OF PARENT'S AND CHILDREN'S RIGHTS

TO REHEARING ON TEMPORARY CUSTODY

If you were not present at and did not have adequate notice of the Shelter Care Hearing at which temporary custody of ..... was awarded to ....., you have the right to request a full rehearing on whether the State should have temporary custody of ..... To request this rehearing, you must file with the Clerk of the Juvenile Court (address):

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....., in person or by mailing a statement (affidavit) setting forth the following:

1.That you were not present at the shelter care hearing.

2.That you did not get adequate notice (explaining how the notice was inadequate).

3.Your signature.

4.Signature must be notarized.

The rehearing should be scheduled within one day of your filing this affidavit.

At the rehearing, your rights are the same as at the initial shelter care hearing. The enclosed notice explains those rights.

At the Shelter Care Hearing, children have the following rights:

1.To have a guardian ad litem appointed.

2.To be declared competent as a witness and to present testimony concerning:

a.Whether they are abused, neglected or dependent.

b.Whether there is "immediate and urgent necessity" to be removed from home.

c.Their best interests.

3.To cross examine witnesses for other parties.

4.To obtain an explanation of any proceedings and orders of the court.

(4) If the parent, guardian, legal custodian, responsible relative, or counsel of the minor did not have actual notice of or was not present at the shelter care hearing, he or she may file an affidavit setting forth these facts, and the clerk shall set the matter for rehearing not later than 48 hours, excluding Sundays and legal holidays, after the filing of the affidavit. At the rehearing, the court shall proceed in the same manner as upon the original hearing.

(5) Only when there is reasonable cause to believe that the minor taken into custody is a person described in subsection (3) of Section 5-105 [705 ILCS 405/5-105] may the minor be kept or detained in a detention home or county or municipal jail. This Section shall in no way be construed to limit subsection (6).

(6) No minor under 16 years of age may be confined in a jail or place ordinarily used for the confinement of prisoners in a police station. Minors under 17 years of age must be kept separate from confined adults and may not at any time be kept in the same cell, room, or yard with adults confined pursuant to the criminal law.

(7) If the minor is not brought before a judicial officer within the time period specified in Section 3-11 [705 ILCS 405/3-11], the minor must immediately be released from custody.

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(8) If neither the parent, guardian or custodian appears within 24 hours to take custody of a minor released upon request pursuant to subsection (2) of this Section, then the clerk of the court shall set the matter for rehearing not later than 7 days after the original order and shall issue a summons directed to the parent, guardian or custodian to appear. At the same time the probation department shall prepare a report on the minor. If a parent, guardian or custodian does not appear at such rehearing, the judge may enter an order prescribing that the minor be kept in a suitable place designated by the Department of Children and Family Services or a licensed child welfare agency.

(9) Notwithstanding any other provision of this Section, any interested party, including the State, the temporary custodian, an agency providing services to the minor or family under a service plan pursuant to Section 8.2 of the Abused and Neglected Child Reporting Act [235 ILCS 5/8.2], foster parent, or any of their representatives, on notice to all parties entitled to notice, may file a motion to modify or vacate a temporary custody order on any of the following grounds:

(a) It is no longer a matter of immediate and urgent necessity that the minor remain in shelter care; or

(b) There is a material change in the circumstances of the natural family from which the minor was removed; or

(c) A person, including a parent, relative or legal guardian, is capable of assuming temporary custody of the minor; or

(d) Services provided by the Department of Children and Family Services or a child welfare agency or other service provider have been successful in eliminating the need for temporary custody.

The clerk shall set the matter for hearing not later than 14 days after such motion is filed. In the event that the court modifies or vacates a temporary custody order but does not vacate its finding of probable cause, the court may order that appropriate services be continued or initiated in behalf of the minor and his or her family.

(Source: P.A. 87-759; 89-422, § 3; 90-590, § 2001-10.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-12.

Cross References.

As to notice of a shelter care hearing by certified mail or publication, see 705 ILCS 405/3-18.

Effect of Amendments. The 1998 amendment by P.A. 90-590, effective January 1, 1999, substituted "subsection (3) of Section 5-105" for "Section 5-3" in subsection (5).

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CASE NOTES

Analysis
Hearing Procedure
Protection of Minor

Hearing Procedure

Although it was preferable that the court advise the parties of their rights and the nature of the proceedings in greater detail upon their first appearance, there was no prejudice to defendants because of the nature and quantity of the evidence and defendants' failure to avail themselves of the procedure for rehearing outlined in a prior version of this section. People ex rel. Jones v. Jones, 39 Ill. App. 3d 821, 350 N.E.2d 826 (5 Dist. 1976).

Protection of Minor

The first consideration of this process is the immediate protection of the minor with opportunity for prompt re-examination of the proceedings. People ex rel. Jones v. Jones, 39 Ill. App. 3d 821, 350 N.E.2d 826 (5 Dist. 1976).

§ 705 ILCS 405/3-13. Medical and dental treatment and care

Sec. 3-13. Medical and dental treatment and care. At all times during temporary custody or shelter care, the court may authorize a physician, a hospital or any other appropriate health care provider to provide medical, dental or surgical procedures if such procedures are necessary to safeguard the minor's life or health.

(Source: P.A. 85-1209.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-13.

§ 705 ILCS 405/3-14. Preliminary conferences

Sec. 3-14. Preliminary conferences. (1) The court may authorize the probation officer to confer in a preliminary conference with any person seeking to file a petition under Section 3-15 [705 ILCS 405/3-15], the prospective respondents and other interested

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persons concerning the advisability of filing the petition, with a view to adjusting suitable cases without the filing of a petition.

The probation officer should schedule a conference promptly except where the State's Attorney insists on court action or where the minor has indicated that he or she will demand a judicial hearing and will not comply with an informal adjustment.

(2) In any case of a minor who is in temporary custody, the holding of preliminary conferences does not operate to prolong temporary custody beyond the period permitted by Section 3-11 [705 ILCS 405/3-11].

(3) This Section does not authorize any probation officer to compel any person to appear at any conference, produce any papers, or visit any place.

(4) No statement made during a preliminary conference may be admitted into evidence at an adjudicatory hearing or at any proceeding against the minor under the criminal laws of this State prior to his or her conviction thereunder.

(5) The probation officer shall promptly formulate a written, non-judicial adjustment plan following the initial conference.

(6) Non-judicial adjustment plans include but are not limited to the following:

(a) up to 6 months informal supervision within family;

(b) up to 6 months informal supervision with a probation officer involved;

(c) up to 6 months informal supervision with release to a person other than parent;

(d) referral to special educational, counseling or other rehabilitative social or educational programs;

(e) referral to residential treatment programs; and

(f) any other appropriate action with consent of the minor and a parent.

(7) The factors to be considered by the probation officer in formulating a written non-judicial adjustment plan shall be the same as those limited in subsection (4) of Section 5-405 [705 ILCS 405/5-405].

(Source: P.A. 86-639; 90-590, § 2001-10.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-14.

Effect of Amendments. The 1998 amendment by P.A. 90-590, effective January 1, 1999, substituted "Section 5-405" for "Section 5-6" at the end of subsection (7).

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§ 705 ILCS 405/3-15. Petition; supplemental petitions

Sec. 3-15. Petition; supplemental petitions. (1)

Any adult person, any agency or association by its representative may file, or the court on its own motion may direct the filing through the State's Attorney of a petition in respect to a minor under this Act. The petition and all subsequent court documents shall be entitled "In the interest of ....., a minor".

(2) The petition shall be verified but the statements may be made upon information and belief. It shall allege that the minor requires authoritative intervention or supervision and set forth (a) facts sufficient to bring the minor under Section 3-3, 3-33.5, or 3-40 [705 ILCS 405/3-3, 705 ILCS 405/3-33.5 or 705 ILCS 405/3-40]; (b) the name, age and residence of the minor; (c) the names and residences of his parents; (d) the name and residence of his legal guardian or the person or persons having custody or control of the minor, or of the nearest known relative if no parent or guardian can be found; and (e) if the minor upon whose behalf the petition is brought is sheltered in custody, the date on which shelter care was ordered by the court or the date set for a shelter care hearing. If any of the facts herein required are not known by the petitioner, the petition shall so state.

(3) The petition must allege that it is in the best interests of the minor and of the public that he be adjudged a ward of the court and may pray generally for relief available under this Act. The petition need not specify any proposed disposition following adjudication of wardship.

(4) If appointment of a guardian of the person with power to consent to adoption of the minor under Section 3-30 [705 ILCS 405/3-30] is sought, the petition shall so state.

(5) At any time before dismissal of the petition or before final closing and discharge under Section 3-32 [705 ILCS 405/3-32], one or more supplemental petitions may be filed in respect to the same minor.

(Source: P.A. 85-1209; 85-1235; 86-1440; 94-1011, § 15; 96-1087, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-15.

Effect of Amendments. The 2006 amendment by P.A. 94-1011, effective July 7, 2006, substituted "3-33.5" for "3-33" in (2).

The 2010 amendment by P.A. 96-1087, effective January 1, 2011, in the second sentence of (2), inserted "or supervision" and "or 3-40"; and made a related change.

CASE NOTES

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Analysis

Agent of Court
Construction
- Petition
Industrial Schools for Girls Act
Jurisdiction
Notice
- Due Process
- Mandatory
Relation to Other Law
Sufficiency of Petition

Agent of Court

A person filing a petition alleging a minor to be delinquent, dependent, neglected, or a minor in need of supervision is merely an agent of the court, and the court does not exceed its constitutional powers merely by directing the filing of a petition concerning a minor through the office of a state's attorney. Sullivan v. Sullivan, 110 Ill. App. 3d 714, 66 Ill. Dec. 435, 442 N.E.2d 1348 (5 Dist. 1982).

Construction

- Petition

The legislature was not referring to a petition for adoption when it included the term "petition" in subsection (2) of former Ill. Rev. Stat., ch. 37, para. 705-9 (see now this section), but instead was referring to a petition seeking to have a guardian appointed and empowered to consent to adoption under subsection (5) of that section. People v. Welch, 164 Ill. App. 3d 142, 115 Ill. Dec. 211, 517 N.E.2d 622 (5 Dist. 1987).

Industrial Schools for Girls Act

In commitment proceedings under the Industrial Schools for Girls Act (730 ILCS 160/0.01 et seq.), where notice of hearing was served on the mother prior to trial and the stepfather actually appeared, notice sufficed under former Ill. Rev. Stat., ch. 37, para. 704-4 (see now 705 ILCS 405/3-18). In re Ferrier, 103 Ill. 367 (1882).

Jurisdiction

Where a mother had been made a party to the truancy proceedings involving her daughter, she was before the court from a jurisdictional standpoint, and could be held in contempt for not abiding by the Order of Protective Supervision. People v. Burr, 119 Ill. App. 2d 134, 255 N.E.2d 57 (4 Dist. 1970).

Notice

- Due Process

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Due process of law requires that notice in juvenile proceedings be equivalent to that constitutionally required in criminal or civil cases. People v. R.D.S., 94 Ill. 2d 77, 67 Ill. Dec. 813, 445 N.E.2d 293 (1983), overruled in part by State v. M.W. (In re M.W.), 232 Ill. 2d 408, 905 N.E.2d 757, 2009 Ill. LEXIS 171 (2009).

- Mandatory

Notice to all as required by former Ill. Rev. Stat., ch. 37, paras. 704-1, 704-3 and 704-4 (see now this section, 705 ILCS 405/3-17 and 705 ILCS 405/3-18) was mandatory, and failure to comply required reversal of an adjudication of delinquency. People v. J.W.M., 123 Ill. App. 3d 1036, 79 Ill. Dec. 469, 463 N.E.2d 1023 (4 Dist. 1984).

Failure to provide notice to a minor's parents of an adjudicatory and dispositional hearing as provided by former Ill. Rev. Stat., ch. 37, paras. 704-1, 704-3, and 704-4 of the Juvenile Court Act (see now this section, 705 ILCS 405/3-16 and 705 ILCS 405/3-17) deprived the juvenile court of jurisdiction; the failure of the state to exercise due diligence to determine a parent's address, thereby failing to give proper notice, deprived the juvenile court of the jurisdiction to proceed with adjudicatory and dispositional hearings. People v. Rollins, 86 Ill. App. 3d 245, 41 Ill. Dec. 645, 407 N.E.2d 1143 (3 Dist. 1980).

Relation to Other Law

Although parties qualified as respondents under former Ill. Rev. Stat., ch. 37, para. 704-1(2) (see now this section), they nevertheless did not qualify to participate or be heard under former Ill. Rev. Stat., ch. 37, para. 701-20(1) and (2) (see now 705 ILCS 405/1-5). In re Winks, 150 Ill. App. 3d 657, 103 Ill. Dec. 888, 502 N.E.2d 35 (4 Dist. 1986).

Where father contended that the former Family Expense Act (see now 750 ILCS 65/15) was relevant to the establishment of his liability for the support of a minor, the argument had no bearing on the case as it was brought under former Ill. Rev. Stat., ch. 37, para. 704-1 et. seq. (see now this section). People v. Nelsen, 54 Ill. App. 3d 412, 12 Ill. Dec. 18, 369 N.E.2d 515 (2 Dist. 1977).

Sufficiency of Petition

Where a petition alleged that the defendant was a minor who had violated state laws, including obstructing a peace officer and violating the curfew law, informed the defendant of the date of the alleged offenses, the city in which they took place, and the officers involved, the petition was sufficient to give the defendant proper notice of the charges and to bring the defendant within the statutory definition of delinquency. People v. Casper, 22 Ill. App. 3d 188, 317 N.E.2d 352 (5 Dist. 1974).

§ 705 ILCS 405/3-16. Date for adjudicatory hearing

Sec. 3-16. Date for adjudicatory hearing. (a) Until January 1, 1988:

(1) When a petition has been filed alleging that the minor requires authoritative intervention, an adjudicatory hearing shall be held within 120 days. The 120 day period in which an adjudicatory hearing shall be held is tolled by: (A) delay occasioned by the minor; (B) a continuance allowed pursuant to Section 114-4 of the Code of Criminal Procedure of 1963 [725 ILCS 5/114-4] after a court's determination of the minor's

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physical incapacity for trial; or (C) an interlocutory appeal. Any such delay shall temporarily suspend for the time of the delay the period within which the adjudicatory hearing must be held. On the day of expiration of the delay, the said period shall continue at the point at which it was suspended. Where no such adjudicatory hearing is held within 120 days, the court may, on written motion of a minor's guardian ad litem, dismiss the petition with respect to such minor. Such dismissal shall be without prejudice.

Where the court determines that the State exercised, without success, due diligence to obtain evidence material to the case, and that there are reasonable grounds to believe that such evidence may be obtained at a later date, the court may, upon written motion by the State, continue the matter for not more than 30 additional days.

(2) In the case of a minor ordered held in shelter care, the hearing on the petition must be held within 10 judicial days from the date of the order of the court directing shelter care or the earliest possible date in compliance with the notice provisions of Sections 3-17 and 3-18 [705 ILCS 405/3-17 and 705 ILCS 405/3-18] as to the custodial parent, guardian or legal custodian, but no later than 30 judicial days from the date of the order of the court directing shelter care. Delay occasioned by the respondent shall temporarily suspend, for the time of the delay, the period within which a respondent must be tried pursuant to this Section.

Upon failure to comply with the time limits specified in this subsection (a)(2), the minor shall be immediately released. The time limits specified in subsection (a)(1) shall still apply.

(3) Nothing in this Section prevents the minor's exercise of his or her right to waive any time limits set forth in this Section.

(b) Beginning January 1, 1988:

(1)(A) When a petition has been filed alleging that the minor requires authoritative intervention, an adjudicatory hearing shall be held within 120 days of a demand made by any party, except that when the court determines that the State, without success, has exercised due diligence to obtain evidence material to the case and that there are reasonable grounds to believe that such evidence may be obtained at a later date, the court may, upon motion by the State, continue the adjudicatory hearing for not more than 30 additional days.

The 120 day period in which an adjudicatory hearing shall be held is tolled by: (i) delay occasioned by the minor; or (ii) a continuance allowed pursuant to Section 114-4 of the Code of Criminal Procedure of 1963 [725 ILCS 5/114-4] after a court's determination of the minor's physical incapacity for trial; or (iii) an interlocutory appeal. Any such delay shall temporarily suspend, for the time of the delay, the period within which the adjudicatory hearing must be held. On the day of expiration of the delay, the said period shall continue at the point at which it was suspended.

(B) When no such adjudicatory hearing is held within the time required by paragraph (b)(1)(A) of this Section, the court shall, upon motion by any party, dismiss the petition with prejudice.

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(2) Without affecting the applicability of the tolling and multiple prosecution provisions of paragraph (b)(1) of this Section, when a petition has been filed alleging that the minor requires authoritative intervention and the minor is in shelter care, the adjudicatory hearing shall be held within 10 judicial days after the date of the order directing shelter care, or the earliest possible date in compliance with the notice provisions of Sections 3-17 and 3-18 [705 ILCS 405/3-17 and 705 ILCS 405/3-18] as to the custodial parent, guardian or legal custodian, but no later than 30 judicial days from the date of the order of the court directing shelter care.

(3) Any failure to comply with the time limits of paragraph (b)(2) of this Section shall require the immediate release of the minor from shelter care, and the time limits of paragraph (b)(1) shall apply.

(4) Nothing in this Section prevents the minor or the minor's parents or guardian from exercising their respective rights to waive the time limits set forth in this Section.

(Source: P.A. 85-601.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-16.

CASE NOTES

Analysis

Delay
- Due Process
- Undue Delay
Jurisdiction
No Retroactive Application

Delay

- Due Process

Under former Ill. Rev. Stat., ch. 37, para. 704-2 (see now this section), a trial court could dismiss a criminal complaint or indictment where a delay had actually and substantially prejudiced the defendant in clear violation of due process requirements; that rule was held applicable in juvenile proceedings in In re C.T. 458 N.E.2d 1089 (1983). People v. A.L., 169 Ill. App. 3d 581, 120 Ill. Dec. 59, 523 N.E.2d 970 (1 Dist. 1988).

- Undue Delay

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Under former Ill. Rev. Stat., ch. 37, para. 704-2 (see now this section), where neither the interests of the minor nor of society were served by the almost seven months delay, although the state had not made a deliberate attempt to delay the proceedings, the judgment against the juvenile was reversed. People v. A.L., 169 Ill. App. 3d 581, 120 Ill. Dec. 59, 523 N.E.2d 970 (1 Dist. 1988).

Jurisdiction

Former Ill. Rev. Stat., ch. 37, paras. 703-5 and 704-2 (see now 705 ILCS 405/3-11 and this section) did not bear upon the question of jurisdiction. In re Nyce, 131 Ill. App. 2d 481, 268 N.E.2d 233 (1 Dist. 1971).

No Retroactive Application

Under former Ill. Rev. Stat., ch. 37, para. 704-2 (see now this section), a minor's motion to dismiss for failure to grant a speedy trial was dismissed two months before the right to a speedy trial was established by that section; therefore, based on the distinctions between juvenile proceedings and criminal prosecutions, the speedy trial provisions of the Criminal Code (see 720 ILCS 5/103-5) were inapplicable to juveniles. People v. A.L., 169 Ill. App. 3d 581, 120 Ill. Dec. 59, 523 N.E.2d 970 (1 Dist. 1988).

LEGAL PERIODICALS

For comment, "Child Abuse: The Role of Adoption as a Preventative Measure," see 10 J. Marshall J. Prac. & Proc. (1976).

§ 705 ILCS 405/3-17. Summons

Sec. 3-17. Summons. (1) When a petition is filed, the clerk of the court shall issue a summons with a copy of the petition attached. The summons shall be directed to the minor's legal guardian or custodian and to each person named as a respondent in the petition, except that summons need not be directed to a minor respondent under 8 years of age for whom the court appoints a guardian ad litem if the guardian ad litem appears on behalf of the minor in any proceeding under this Act.

(2) The summons must contain a statement that the minor or any of the respondents is entitled to have an attorney present at the hearing on the petition, and that the clerk of the court should be notified promptly if the minor or any other respondent desires to be represented by an attorney but is financially unable to employ counsel.

(3) The summons shall be issued under the seal of the court, attested to and signed with the name of the clerk of the court, dated on the day it is issued, and shall require each respondent to appear and answer the petition on the date set for the adjudicatory hearing.

(4) The summons may be served by any county sheriff, coroner or probation officer, even though the officer is the petitioner. The return of the summons with endorsement of service by the officer is sufficient proof thereof.

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(5) Service of a summons and petition shall be made by: (a) leaving a copy thereof with the person summoned at least 3 days before the time stated therein for appearance; (b) leaving a copy at his usual place of abode with some person of the family, of the age of 10 years or upwards, and informing that person of the contents thereof, provided the officer or other person making service shall also send a copy of the summons in a sealed envelope with postage fully prepaid, addressed to the person summoned at his usual place of abode, at least 3 days before the time stated therein for appearance; or (c) leaving a copy thereof with the guardian or custodian of a minor, at least 3 days before the time stated therein for appearance. If the guardian or custodian is an agency of the State of Illinois, proper service may be made by leaving a copy of the summons and petition with any administrative employee of such agency designated by such agency to accept service of summons and petitions. The certificate of the officer or affidavit of the person that he has sent the copy pursuant to this Section is sufficient proof of service.

(6) When a parent or other person, who has signed a written promise to appear and bring the minor to court or who has waived or acknowledged service, fails to appear with the minor on the date set by the court, a bench warrant may be issued for the parent or other person, the minor, or both.

(7) The appearance of the minor's legal guardian or custodian, or a person named as a respondent in a petition, in any proceeding under this Act shall constitute a waiver of service of summons and submission to the jurisdiction of the court. A copy of the summons and petition shall be provided to the person at the time of his appearance.

(Source: P.A. 86-441.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-17.

CASE NOTES

Analysis

Notice
- Insufficient
Service
- Prior Law
- Service on Minor

Notice

- Insufficient

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Jurisdiction of circuit court was not properly invoked when the state failed to name or notify the court-appointed guardian of a minor in an adjudicatory hearing brought against the guardian's charge. People v. R.D.S., 94 Ill. 2d 77, 67 Ill. Dec. 813, 445 N.E.2d 293 (1983), overruled in part by State v. M.W. (In re M.W.), 232 Ill. 2d 408, 905 N.E.2d 757, 2009 Ill. LEXIS 171 (2009).

Service

- Prior Law

Former Ill. Rev. Stat., ch. 37, para. 704-3 (see now this section) did not require personal service, even for minors over eight years of age. People v. P.W., 178 Ill. App. 3d 522, 127 Ill. Dec. 840, 533 N.E.2d 922 (1 Dist. 1988).

- Service on Minor

A 1987 amendment (Pub. Act 84-1460, sec. 1, eff. Jan. 12, 1987) to the prior law on service of summons in a juvenile case (former Ill. Rev. Stat., ch. 37, para. 704-3) (see now this section), changing the requirement that a summons in a juvenile case be directed to the minor to require service on the juvenile's legal representative, was intended to be applied retroactively. People v. Green, 118 Ill. 2d 512, 115 Ill. Dec. 390, 517 N.E.2d 1076 (1987).

§ 705 ILCS 405/3-18. Notice by certified mail or publication

Sec. 3-18. Notice by certified mail or publication. (1) If service on individuals as provided in Section 3-17 [705 ILCS 405/3-17] is not made on any respondent within a reasonable time or if it appears that any respondent resides outside the State, service may be made by certified mail. In such case the clerk shall mail the summons and a copy of the petition to that respondent by certified mail marked for delivery to addressee only. The court shall not proceed with the adjudicatory hearing until 5 days after such mailing. The regular return receipt for certified mail is sufficient proof of service.

(2) If service upon individuals as provided in Section 3-17 [705 ILCS 405/3-17] is not made on any respondents within a reasonable time or if any person is made a respondent under the designation of "All whom it may Concern", or if service cannot be made because the whereabouts of a respondent are unknown, service may be made by publication. The clerk of the court as soon as possible shall cause publication to be made once in a newspaper of general circulation in the county where the action is pending. Notice by publication is not required in any case when the person alleged to have legal custody of the minor has been served with summons personally or by certified mail, but the court may not enter any order or judgment against any person who cannot be served with process other than by publication unless notice by publication is given or unless that person appears. When a minor has been sheltered under Section 3-12 of this Act [705 ILCS 405/3-12] and summons has not been served personally or by certified mail within 20 days from the date of the order of the court directing such shelter care, the clerk of the court shall cause publication. Notice by publication shall be substantially as follows:

"A, B, C, D, (here giving the names of the named respondents, if any) and to All Whom It May Concern (if there is any respondent under that designation):

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Take notice that on (insert date) a petition was filed under the Juvenile Court Act of 1987 by ..... in the circuit court of ..... county entitled 'In the interest of ....., a minor', and that in ..... courtroom at ..... on (insert date) at the hour of ....., or as soon thereafter as this cause may be heard, an adjudicatory hearing will be held upon the petition to have the child declared to be a ward of the court under that Act. The court has authority in this proceeding to take from you the custody and guardianship of the minor, (and if the petition prays for the appointment of a guardian with power to consent to adoption) and to appoint a guardian with power to consent to adoption of the minor.

Now, unless you appear at the hearing and show cause against the petition, the allegations of the petition may stand admitted as against you and each of you, and an order or judgment entered.

.....

Clerk

Dated (insert the date of publication)"

(3) The clerk shall also at the time of the publication of the notice send a copy thereof by mail to each of the respondents on account of whom publication is made at his or her last known address. The certificate of the clerk that he or she has mailed the notice is evidence thereof. No other publication notice is required. Every respondent notified by publication under this Section must appear and answer in open court at the hearing. The court may not proceed with the adjudicatory hearing until 10 days after service by publication on any custodial parent, guardian or legal custodian in the case of a minor requiring authoritative intervention.

(4) If it becomes necessary to change the date set for the hearing in order to comply with Section 3-17 [705 ILCS 405/3-17] or with this Section, notice of the resetting of the date must be given, by certified mail or other reasonable means, to each respondent who has been served with summons personally or by certified mail.

(Source: P.A. 85-601; 91-357, § 236.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-18.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, in the form, substituted "(insert date)" for "the .... day of ....., 19..." and for "the .... day of ....", inserted "of 1987" following "Juvenile Court Act", and inserted "insert" following "Dated".

CASE NOTES

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Analysis

In General
Effort to Locate Parent
Parental Notice
- Father of Minor
Publication Held Sufficient
Unknown Parent

In General

The method of notice appropriate to a particular respondent depended heavily on the state's ability to identify and locate that person under subsection (2) of former Ill. Rev. Stat., ch. 37, para. 704-4 (see now this section); if personal or usual place of abode service or service by certified mail was possible, the statute required it. In re J.P.J., 109 Ill. 2d 129, 92 Ill. Dec. 802, 485 N.E.2d 848 (1985).

Effort to Locate Parent

Unless some question is raised regarding the failure to identify or locate a noncustodial parent whose identity or address is not known to the state at the outset of the proceedings, the matter is waived and diligence may be assumed. In re J.P.J., 109 Ill. 2d 129, 92 Ill. Dec. 802, 485 N.E.2d 848 (1985).

The state's lack of success in identifying and locating a parent does not, by itself, mean that the state has not been diligent in its efforts. In re J.P.J., 109 Ill. 2d 129, 92 Ill. Dec. 802, 485 N.E.2d 848 (1985).

Parental Notice

- Father of Minor

The circuit court's subject matter jurisdiction under this Act was not dependent upon compliance with statutory provisions concerning notice to father of the minor. People v. K.M.B., 117 Ill. App. 3d 89, 72 Ill. Dec. 623, 452 N.E.2d 876 (4 Dist. 1983).

Publication Held Sufficient

Where a minor's mother had actual, sole custody of the minor and received actual notice of the proceedings, even if she had not received formal service of summons and the petition, and the noncustodial parent could not have been served by personal or abode service or by certified mail, service by publication was acceptable. In re J.P.J., 109 Ill. 2d 129, 92 Ill. Dec. 802, 485 N.E.2d 848 (1985).

Unknown Parent

Service on a noncustodial parent whose whereabouts were known was required under subsection (2) of former Ill. Rev. Stat., ch. 37, para. 704-4 (see now this section); however no notice, even by publication, was necessary where the unknown father of a minor resided with his

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mother. In re J.P.J., 109 Ill. 2d 129, 92 Ill. Dec. 802, 485 N.E.2d 848 (1985).

§ 705 ILCS 405/3-19. Guardian ad litem

Sec. 3-19. Guardian ad litem. (1) Immediately upon the filing of a petition alleging that the minor requires authoritative intervention, the court may appoint a guardian ad litem for the minor if

(a) such petition alleges that the minor is the victim of sexual abuse or misconduct; or

(b) such petition alleges that charges alleging the commission of any of the sex offenses defined in Article 11 or in Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15 or 12-16 of the Criminal Code of 1961, as amended [720 ILCS 5/11-6 et seq. or 720 ILCS 5/11-1.20, 720 ILCS 5/11-1.30, 720 ILCS 5/11-1.40, 720 ILCS 5/11-1.50, 720 ILCS 5/11-1.60, 720 ILCS 5/12-13, 720 ILCS 5/11-1.30, 720 ILCS 5/11-1.40, 720 ILCS 5/11-1.50 or 720 ILCS 5/11-1.60], have been filed against a defendant in any court and that such minor is the alleged victim of the acts of the defendant in the commission of such offense.

(2) Unless the guardian ad litem appointed pursuant to paragraph (1) is an attorney at law he shall be represented in the performance of his duties by counsel.

(3) Before proceeding with the hearing, the court shall appoint a guardian ad litem for the minor if

(a) no parent, guardian, custodian or relative of the minor appears at the first or any subsequent hearing of the case;

(b) the petition prays for the appointment of a guardian with power to consent to adoption; or

(c) the petition for which the minor is before the court resulted from a report made pursuant to the Abused and Neglected Child Reporting Act [325 ILCS 5/1 et seq.].

(4) The court may appoint a guardian ad litem for the minor whenever it finds that there may be a conflict of interest between the minor and his parents or other custodian or that it is otherwise in the minor's interest to do so.

(5) The reasonable fees of a guardian ad litem appointed under this Section shall be fixed by the court and charged to the parents of the minor, to the extent they are able to pay. If the parents are unable to pay those fees, they shall be paid from the general fund of the county.

(Source: P.A. 85-601; 89-428, § 255; 89-462, § 255; 96-1551, § 1030.)

Note.

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This section was Ill.Rev.Stat., Ch. 37, Para. 803-19.

Section 9995 of P.A. 96-1551 contains a "no acceleration or delay" provision.

Effect of Amendments. The 2011 amendment by P.A. 96-1551, effective July 1, 2011, inserted "11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60" in the section listing of (1)(b).

CASE NOTES

Analysis

Constitutionality
Fees
- Determination
- Evidence
- Reasonable
- Responsibility
Scope of Representation

Constitutionality

Public Act 89-428 was enacted in violation of the single subject rule of the state constitution and is therefore invalid in its entirety. Johnson v. Edgar, 176 Ill. 2d 499, 224 Ill. Dec. 1, 680 N.E.2d 1372 (1997).

Fees

- Determination

Trial court erred in setting the guardian ad litem's fee solely on the basis of a directive from the chief judge of the circuit, rather than making a determination based on evidence as to what the amount of a reasonable fee should have been. In re Kersten, 52 Ill. App. 3d 815, 10 Ill. Dec. 652, 368 N.E.2d 138 (2 Dist. 1977).

- Evidence

A court-allowed fee must be proved, just as any other fact, as to the nature of and the necessity for the services rendered and determined and allowed by the court in its judicial discretion. In re Kersten, 52 Ill. App. 3d 815, 10 Ill. Dec. 652, 368 N.E.2d 138 (2 Dist. 1977).

- Reasonable

Standing by itself, the word "reasonable" might be taken to mean reasonable to a private client; however, in the context in which it is used, a fair interpretation is that it means "reasonable" considering the case is a juvenile court case. In re Kersten, 52 Ill. App. 3d 815, 10 Ill. Dec. 652, 368 N.E.2d 138 (2 Dist. 1977).

Even in juvenile cases, where the legislature put no dollar limitation on attorney fees for court-appointed guardians ad litem, merely indicating that reasonable fees would be fixed by the court,

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a fee awarded to court-appointed counsel need not necessarily amount to reasonable and adequate compensation as measured by the fees of attorneys representing paying clients in similar situations. In re Kersten, 52 Ill. App. 3d 815, 10 Ill. Dec. 652, 368 N.E.2d 138 (2 Dist. 1977).

- Responsibility

The parents of the child involved are to be looked to first for the fees of the guardian ad litem; they have voice in his selection, and although his attitude and his actions may be quite contrary to their immediate interest, they have a responsibility for his fees. In re Kersten, 52 Ill. App. 3d 815, 10 Ill. Dec. 652, 368 N.E.2d 138 (2 Dist. 1977).

Scope of Representation

A guardian ad litem in a juvenile court case represents not only the particular child involved in the litigation, but also the broader interests of society implicit in the establishment of the juvenile court in the first place. In re Kersten, 52 Ill. App. 3d 815, 10 Ill. Dec. 652, 368 N.E.2d 138 (2 Dist. 1977).

OPINIONS OF ATTORNEY GENERAL

Federal Compliance

Illinois law fulfills the Federal requirement under 45 C.F.R. 1340.3-3 that legal counsel will be appointed to protect the rights, interests, welfare, and well-being of the child in every child protective judicial proceeding. 1977 Op. Atty. Gen. 173.

§ 705 ILCS 405/3-20. Evidence

Sec. 3-20. Evidence. At the adjudicatory hearing, the court shall first consider only the question whether the minor is a person requiring authoritative intervention. The standard of proof and the rules of evidence in the nature of civil proceedings in this State are applicable to Section 3-3 [705 ILCS 405/3-3].

(Source: P.A. 85-601.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-20.

§ 705 ILCS 405/3-21. Continuance under supervision

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Sec. 3-21. Continuance under supervision. (1) The court may enter an order of continuance under supervision (a) upon an admission or stipulation by the appropriate respondent or minor respondent of the facts supporting the petition and before proceeding to findings and adjudication, or after hearing the evidence at the adjudicatory hearing but before noting in the minutes of proceedings a finding of whether or not the minor is a person requiring authoritative intervention; and (b) in the absence of objection made in open court by the minor, his parent, guardian, custodian, responsible relative, defense attorney or the State's Attorney.

(2) If the minor, his parent, guardian, custodian, responsible relative, defense attorney or State's Attorney, objects in open court to any such continuance and insists upon proceeding to findings and adjudication, the court shall so proceed.

(3) Nothing in this Section limits the power of the court to order a continuance of the hearing for the production of additional evidence or for any other proper reason.

(4) When a hearing where a minor is alleged to be a minor requiring authoritative intervention is continued pursuant to this Section, the court may permit the minor to remain in his home subject to such conditions concerning his conduct and supervision as the court may require by order.

(5) If a petition is filed charging a violation of a condition of the continuance under supervision, the court shall conduct a hearing. If the court finds that such condition of supervision has not been fulfilled the court may proceed to findings and adjudication and disposition. The filing of a petition for violation of a condition of the continuance under supervision shall toll the period of continuance under supervision until the final determination of the charge, and the term of the continuance under supervision shall not run until the hearing and disposition of the petition for violation; provided where the petition alleges conduct that does not constitute a criminal offense, the hearing must be held within 15 days of the filing of the petition unless a delay in such hearing has been occasioned by the minor, in which case the delay shall continue the tolling of the period of continuance under supervision for the period of such delay.

(6) The court must impose upon a minor under an order of continuance under supervision or an order of disposition under this Article III, as a condition of the order, a fee of $25 for each month or partial month of supervision with a probation officer. If the court determines the inability of the minor, or the parent, guardian, or legal custodian of the minor to pay the fee, the court may impose a lesser fee. The court may not impose the fee on a minor who is made a ward of the State under this Act. The fee may be imposed only upon a minor who is actively supervised by the probation and court services department. The fee must be collected by the clerk of the circuit court. The clerk of the circuit court must pay all monies collected from this fee to the county treasurer for deposit into the probation and court services fund under Section 15.1 of the Probation and Probation Officers Act [730 ILCS 110/15.1].

(Source: P.A. 85-601; 92-329, § 5.)

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Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-21.

Effect of Amendments. The 2001 amendment by P.A. 92-329, effective August 9, 2001, added subsection (6).

CASE NOTES

Analysis

Attorney Fees
Jurisdiction
Temporary Supervision Order
Unauthorized Order
Waiver of Appeal

Attorney Fees

Reimbursement for attorney fees is not a proper condition of a continuance under this section. People v. R.J.W., 76 Ill. App. 3d 159, 31 Ill. Dec. 746, 394 N.E.2d 1064 (4 Dist. 1979).

Jurisdiction

A minor need not be explicitly adjudged to be a ward of the court, but it may reasonably be implied, in order to give the court jurisdiction. In re J.N., 91 Ill. 2d 122, 61 Ill. Dec. 776, 435 N.E.2d 473 (1982).

Temporary Supervision Order

There was no authority within this Act for the type of interim or temporary supervision order entered by the court, which covered the time period between the date a minor was made a ward of the court and the date set for the dispositional hearing, and required the minor to attend school each and every day, and each and every class. People v. C.Y.B., 109 Ill. App. 3d 1110, 65 Ill. Dec. 637, 441 N.E.2d 952 (4 Dist. 1982).

Unauthorized Order

Where an order for continuance under supervision was entered after the trial court found the minor guilty of the charged offenses, but before an express adjudication of the minor's delinquency, the court's dispositional order was entered without authority; under former Ill. Rev. Stat., ch. 37, para. 704-8 (see now this section), a dispositional order was not to be entered until after the court had adjudged the minor a ward of the court. People v. M.W.W., 125 Ill. App. 3d 833, 81 Ill. Dec. 2, 466 N.E.2d 588 (2 Dist. 1984).

Waiver of Appeal

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After being found guilty and being placed on supervision, minor did not waive appeal by simply failing to express an objection to being placed on supervision. In re J.N., 91 Ill. 2d 122, 61 Ill. Dec. 776, 435 N.E.2d 473 (1982).

§ 705 ILCS 405/3-22. Findings and adjudication

Sec. 3-22. Findings and adjudication. (1) After hearing the evidence the court shall make and note in the minutes of the proceeding a finding of whether or not the person is a minor requiring authoritative intervention. If it finds that the minor is not such a person, the court shall order the petition dismissed and the minor discharged from any restriction previously ordered in such proceeding.

(2) If the court finds that the person is a minor requiring authoritative intervention, the court shall note in its findings that he or she does require authoritative intervention. The court shall then set a time for a dispositional hearing to be conducted under Section 3-23 [705 ILCS 405/3-23] at which hearing the court shall determine whether it is in the best interests of the minor and the public that he be made a ward of the court. To assist the court in making this and other determinations at the dispositional hearing, the court may order that an investigation be conducted and a dispositional report be prepared concerning the minor's physical and mental history and condition, family situation and background, economic status, education, occupation, history of delinquency or criminality, personal habits, and any other information that may be helpful to the court.

(Source: P.A. 85-601.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-22.

CASE NOTES

Analysis

Procedure
- Adjudication Hearing
Role of Court
Subsequent Crime

Procedure

- Adjudication Hearing

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A trial judge should make a finding of wardship at the adjudication hearing rather than at the dispositional hearing. People v. S.K., 137 Ill. App. 3d 1065, 92 Ill. Dec. 767, 485 N.E.2d 578 (2 Dist. 1985).

Role of Court

Former Ill. Rev. Stat., ch. 37, para. 704-8(2) (see now this section) required an explicit adjudication that a minor be made a ward of the court before the court entered a dispositional order regarding the minor. In making this determination, the court considered whether it was in the best interests of the minor and the public to make the minor a ward of the court, and language in the court's dispositional order which stated "all statutory prerequisites have been complied with" was not sufficient to demonstrate an adjudication that the minor has been made a ward of the court. People v. Barr, 37 Ill. App. 3d 10, 344 N.E.2d 517 (1 Dist. 1976).

Subsequent Crime

In an action for adjudication of wardship, the court erred in finding a minor delinquent based upon proof of a crime occurring after the filing of the delinquency petition. People v. Turner, 66 Ill. App. 3d 661, 23 Ill. Dec. 453, 384 N.E.2d 89 (1 Dist. 1978).

§ 705 ILCS 405/3-23. Dispositional hearing; evidence; continuance

Sec. 3-23. Dispositional hearing; evidence; continuance. (1) At the dispositional hearing, the court shall determine whether it is in the best interests of the minor and the public that he be made a ward of the court, and, if he is to be made a ward of the court, the court shall determine the proper disposition best serving the interests of the minor and the public. All evidence helpful in determining these questions, including oral and written reports, may be admitted and may be relied upon to the extent of its probative value, even though not competent for the purposes of the adjudicatory hearing.

(2) Notice in compliance with Sections 3-17 and 3-18 [705 ILCS 405/3-17 and 705 ILCS 405/3-18] must be given to all parties-respondent prior to proceeding to a dispositional hearing. Before making an order of disposition the court shall advise the State's Attorney, the parents, guardian, custodian or responsible relative or their counsel of the factual contents and the conclusions of the reports prepared for the use of the court and considered by it, and afford fair opportunity, if requested, to controvert them. The court may order, however, that the documents containing such reports need not be submitted for inspection, or that sources of confidential information need not be disclosed except to the attorneys for the parties. Factual contents, conclusions, documents and sources disclosed by the court under this paragraph shall not be further disclosed without the express approval of the court pursuant to an in camera hearing.

(3) A record of a prior continuance under supervision under Section 3-21 [705 ILCS 405/3-21], whether successfully completed or not, is admissible at the dispositional hearing.

(4) On its own motion or that of the State's Attorney, a parent, guardian, custodian, responsible relative or counsel, the court may adjourn the hearing for a reasonable period

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to receive reports or other evidence. In scheduling investigations and hearings, the court shall give priority to proceedings in which a minor has been removed from his or her home before an order of disposition has been made.

(Source: P.A. 85-601.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-23.

CASE NOTES

Analysis

Notice
- Due Process
Plea Bargain
Postponement
Protective Order Reasonable
Written Report Required

Notice

- Due Process

Lack of notice to respondent parent deprived him of due process because it deprived respondent of the opportunity to effectively controvert the social history investigation report's conclusion and to controvert the disposition by presenting evidence relevant to the court's determination of wardship under former Ill. Rev. Stat., ch. 37, para. 705-1(2) (see now this section). People v. McCarron, 170 Ill. App. 3d 552, 121 Ill. Dec. 193, 524 N.E.2d 1241 (2 Dist. 1988), overruled on other grounds, People v. Minor, 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989).

Plea Bargain

Where the record fails to show or reflect the degree of participation or the entire plea bargaining agreement or process, such a failure should not enure to the benefit of the state to the detriment of a minor subject to a finding of delinquency under the former Juvenile Court Act (see now 705 ILCS 405/1-1 et seq.). People v. Jones, 85 Ill. App. 3d 1122, 41 Ill. Dec. 193, 407 N.E.2d 691 (1 Dist. 1980).

Postponement

Defendant had no statutory or other right to an immediate dispositional hearing where it appeared that the postponement was in the best interests of the minor because it permitted the court to

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obtain a social report to aid in a proper disposition. People v. Cato, 4 Ill. App. 3d 1093, 283 N.E.2d 259 (1 Dist. 1972).

Protective Order Reasonable

An order directing a mother to so comport her behavior to insure her daughter's school attendance unless ill, and that such absence must be supported by a physician's certificate, was not unreasonable. People v. Burr, 119 Ill. App. 2d 134, 255 N.E.2d 57 (4 Dist. 1970).

Written Report Required

Former Ill. Rev. Stat., ch. 37, para. 705-1 (see now this section) mandated that a written report of social investigation be presented to and considered by a court before an order of commitment to the Department of Corrections was entered. People v. R.D., 84 Ill. App. 3d 203, 39 Ill. Dec. 707, 405 N.E.2d 460 (3 Dist. 1980).

A two page report from the Department of Corrections describing the minor's prior criminality, his physical and mental condition, and his family situation, including a proposal for family therapy, and a one page clinical evaluation of the minor prepared by the Department's psychiatrist, were adequate to meet the requirements of former Ill. Rev. Stat., ch. 37, para. 705-1 (see now this section). People v. R.D., 84 Ill. App. 3d 203, 39 Ill. Dec. 707, 405 N.E.2d 460 (3 Dist. 1980).

§ 705 ILCS 405/3-24. Kinds of dispositional orders

Sec. 3-24. Kinds of dispositional orders. (1) The following kinds of orders of disposition may be made in respect to wards of the court: A minor found to be requiring authoritative intervention under Section 3-3 [705 ILCS 405/3-3] may be (a) committed to the Department of Children and Family Services, subject to Section 5 of the Children and Family Services Act [20 ILCS 505/5]; (b) placed under supervision and released to his or her parents, guardian or legal custodian; (c) placed in accordance with Section 3-28 [705 ILCS 405/3-28] with or without also being placed under supervision. Conditions of supervision may be modified or terminated by the court if it deems that the best interests of the minor and the public will be served thereby; (d) ordered partially or completely emancipated in accordance with the provisions of the Emancipation of Minors Act [750 ILCS 30/1 et seq.]; or (e) subject to having his or her driver's license or driving privilege suspended for such time as determined by the Court but only until he or she attains 18 years of age.

(2) Any order of disposition may provide for protective supervision under Section 3-25 [705 ILCS 405/3-25] and may include an order of protection under Section 3-26 [705 ILCS 405/3-26].

(3) Unless the order of disposition expressly so provides, it does not operate to close proceedings on the pending petition, but is subject to modification until final closing and discharge of the proceedings under Section 3-32 [705 ILCS 405/3-32].

(4) In addition to any other order of disposition, the court may order any person found to be a minor requiring authoritative intervention under Section 3-3 to make restitution, in

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monetary or non-monetary form, under the terms and conditions of Section 5-5-6 of the Unified Code of Corrections [730 ILCS 5/5-5-6], except that the "presentence hearing" referred to therein shall be the dispositional hearing for purposes of this Section. The parent, guardian or legal custodian of the minor may pay some or all of such restitution on the minor's behalf.

(5) Any order for disposition where the minor is committed or placed in accordance with Section 3-28 shall provide for the parents or guardian of the estate of such minor to pay to the legal custodian or guardian of the person of the minor such sums as are determined by the custodian or guardian of the person of the minor as necessary for the minor's needs. Such payments may not exceed the maximum amounts provided for by Section 9.1 of the Children and Family Services Act [20 ILCS 505/9.1].

(6) Whenever the order of disposition requires the minor to attend school or participate in a program of training, the truant officer or designated school official shall regularly report to the court if the minor is a chronic or habitual truant under Section 26-2a of the School Code [105 ILCS 5/26-2a].

(7) The court must impose upon a minor under an order of continuance under supervision or an order of disposition under this Article III, as a condition of the order, a fee of $25 for each month or partial month of supervision with a probation officer. If the court determines the inability of the minor, or the parent, guardian, or legal custodian of the minor to pay the fee, the court may impose a lesser fee. The court may not impose the fee on a minor who is made a ward of the State under this Act. The fee may be imposed only upon a minor who is actively supervised by the probation and court services department. The fee must be collected by the clerk of the circuit court. The clerk of the circuit court must pay all monies collected from this fee to the county treasurer for deposit into the probation and court services fund under Section 15.1 of the Probation and Probation Officers Act [730 ILCS 110/15.1].

(Source: P.A. 85-1209; 89-235, § 3-30; 90-590, § 3001-10; 92-329, § 5; 95-331, § 1020.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-24.

Effect of Amendments. The 1998 amendment by P.A. 90-590, effective January 1, 1999, added subdivision (1)(e) and made related changes.

The 2001 amendment by P.A. 92-329, effective August 9, 2001, added subsection (7).

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, deleted "Mature" from "Emancipation of Mature Minors Act" in (1).

CASE NOTES

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Analysis

Age of Juvenile
Court's Discretion
- Custody
- Deference

Age of Juvenile

The requirement of the former Juvenile Court Act of 1965 (see now 705 ILCS 405/1-1 et seq.), which allowed commitment if a minor was 13 years of age or older, applied to the time the dispositional order was entered; there was nothing improper in commitment, where minor turned 13 during the trial court's continuance since he was properly 13 at the time the dispositional order was entered. People v. Griffin, 97 Ill. App. 3d 1030, 53 Ill. Dec. 605, 424 N.E.2d 18 (1 Dist. 1981), aff'd, 92 Ill. 2d 48, 64 Ill. Dec. 948, 440 N.E.2d 852 (1982).

Court's Discretion

- Custody

Former Ill.Rev.Stat, ch. 37, para. 705-2 (see now this section) grants sufficient flexibility to the sentencing judge that a juvenile may be remanded to the custody of the Department of Corrections for a period of weeks, months or years. Robinson v. Leahy, 73 F.R.D. 109 (N.D. Ill. 1977).

- Deference

Former Ill. Rev. Stat., ch. 37, para. 705-2 (see now this section) set forth the various dispositional alternatives available to the court, including probation and commitment to the Department of Corrections; without deferring one to another, the trial court may choose, as it sees fit, among the various alternatives, and need not defer to any particular disposition. People v. Antosz, 63 Ill. App. 3d 829, 20 Ill. Dec. 638, 380 N.E.2d 847 (1 Dist. 1978).

§ 705 ILCS 405/3-25. Protective supervision

Sec. 3-25. Protective supervision. If the order of disposition releases the minor to the custody of his parents, guardian or legal custodian, or continues him in such custody, the court may place the person having custody of the minor, except for representatives of private or public agencies or governmental departments, under supervision of the probation office. Rules or orders of court shall define the terms and conditions of protective supervision, which may be modified or terminated when the court finds that the best interests of the minor and the public will be served thereby.

(Source: P.A. 85-601.)

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Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-25.

CASE NOTES

Analysis
Restitution
Societal Interests

Restitution

The trial court did not abuse its discretion by requiring juvenile to pay partial restitution as a condition of her conditional discharge. People v. J.R., 82 Ill. App. 3d 714, 38 Ill. Dec. 99, 403 N.E.2d 114 (5 Dist. 1980).

Societal Interests

Although one of the purposes of supervision is to protect minors, this section intends, at least in part, that judges consider the impact on society in releasing a minor with a given background and a given set of propensities. In re R.R., 92 Ill. 2d 423, 65 Ill. Dec. 941, 442 N.E.2d 252 (1982).

§ 705 ILCS 405/3-26. Order of protection

Sec. 3-26. Order of protection. (1) The court may make an order of protection in assistance of or as a condition of any other order authorized by this Act. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period. Such an order may require a person:

(a) To stay away from the home or the minor;

(b) To permit a parent to visit the minor at stated periods;

(c) To abstain from offensive conduct against the minor, his parent or any person to whom custody of the minor is awarded;

(d) To give proper attention to the care of the home;

(e) To cooperate in good faith with an agency to which custody of a minor is entrusted by the court or with an agency or association to which the minor is referred by the court;

(f) To prohibit and prevent any contact whatsoever with the respondent minor by a specified individual or individuals who are alleged in either a criminal or juvenile

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proceeding to have caused injury to a respondent minor or a sibling of a respondent minor;

(g) To refrain from acts of commission or omission that tend to make the home not a proper place for the minor.

(2) *(As amended by P.A. 96-1551, § 955)* The court shall enter an order of protection to prohibit and prevent any contact between a respondent minor or a sibling of a respondent minor and any person named in a petition seeking an order of protection who has been convicted of heinous battery or aggravated battery under subdivision (a)(2) of Section 12-3.05 [720 ILCS 5/12-3.05], aggravated battery of a child or aggravated battery under subdivision (b)(1) of Section 12-3.05, criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal sexual abuse, or aggravated criminal sexual abuse as described in the Criminal Code of 1961, or has been convicted of an offense that resulted in the death of a child, or has violated a previous order of protection under this Section.

(2) *(As amended by P.A. 96-1551, § 1030)* The court shall enter an order of protection to prohibit and prevent any contact between a respondent minor or a sibling of a respondent minor and any person named in a petition seeking an order of protection who has been convicted of heinous battery, aggravated battery of a child, criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal sexual abuse, or aggravated criminal sexual abuse as described in the Criminal Code of 1961, or has been convicted of an offense that resulted in the death of a child, or has violated a previous order of protection under this Section.

(3) When the court issues an order of protection against any person as provided by this Section, the court shall direct a copy of such order to the Sheriff of that county. The Sheriff shall furnish a copy of the order of protection to the Department of State Police within 24 hours of receipt, in the form and manner required by the Department. The Department of State Police shall maintain a complete record and index of such orders of protection and make this data available to all local law enforcement agencies.

(4) After notice and opportunity for hearing afforded to a person subject to an order of protection, the order may be modified or extended for a further specified period or both or may be terminated if the court finds that the best interests of the minor and the public will be served thereby.

(5) An order of protection may be sought at any time during the course of any proceeding conducted pursuant to this Act. Any person against whom an order of protection is sought may retain counsel to represent him at a hearing, and has rights to be present at the hearing, to be informed prior to the hearing in writing of the contents of the petition seeking a protective order and of the date, place and time of such hearing, and to cross examine witnesses called by the petitioner and to present witnesses and argument in opposition to the relief sought in the petition.

(6) Diligent efforts shall be made by the petitioner to serve any person or persons against whom any order of protection is sought with written notice of the contents of the petition seeking a protective order and of the date, place and time at which the hearing on the

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petition is to be held. When a protective order is being sought in conjunction with a shelter care hearing, if the court finds that the person against whom the protective order is being sought has been notified of the hearing or that diligent efforts have been made to notify such person, the court may conduct a hearing. If a protective order is sought at any time other than in conjunction with a shelter care hearing, the court may not conduct a hearing on the petition in the absence of the person against whom the order is sought unless the petitioner has notified such person by personal service at least 3 days before the hearing or has sent written notice by first class mail to such person's last known address at least 5 days before the hearing.

(7) A person against whom an order of protection is being sought who is neither a parent, guardian, legal custodian or responsible relative as described in Section 1-5 [705 ILCS 405/1-5] is not a party or respondent as defined in that Section and shall not be entitled to the rights provided therein. Such person does not have a right to appointed counsel or to be present at any hearing other than the hearing in which the order of protection is being sought or a hearing directly pertaining to that order. Unless the court orders otherwise, such person does not have a right to inspect the court file.

(8) All protective orders entered under this Section shall be in writing. Unless the person against whom the order was obtained was present in court when the order was issued, the sheriff, other law enforcement official or special process server shall promptly serve that order upon that person and file proof of such service, in the manner provided for service of process in civil proceedings. The person against whom the protective order was obtained may seek a modification of the order by filing a written motion to modify the order within 7 days after actual receipt by the person of a copy of the order.

(Source: P.A. 85-1209; 89-428, § 255; 89-462, § 255; 90-655, § 156; 96-1551, §§ 955, 1030.)

Multiple Versions of Subsections Multiple versions of subsections within this section have been created by the editor to reflect conflicting or postponed legislation.

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-26.

Section 9995 of P.A. 96-1551 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1998 amendment by P.A. 90-655, effective July 30, 1998, substituted "within" for "with" in subsection (3).

The 2011 amendment by P.A. 96-1551, § 955, effective July 1, 2011, in (2), inserted "or aggravated battery under subdivision (a)(2) of Section 12-3.05" and "or aggravated battery under subdivision (b)(1) of Section 12-3.05."

The 2011 amendment by P.A. 96-1551, § 1030, effective July 1, 2011, in (2), deleted "under Section 12-4.1" following "heinous battery," deleted "under Section 12-4.3" following "battery of a

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child," deleted "under Section 12-13" preceding "aggravated criminal sexual assault," deleted "under Section 12-14" preceding "predatory criminal," deleted "under Section 12-14.1" following "assault of a child," deleted "under Section 12-15" preceding "or aggravated," and substituted "as described in" for "under Section 12-16 of."

CASE NOTES

Constitutionality

Public Act 89-428 was enacted in violation of the single subject rule of the state constitution and is therefore invalid in its entirety. Johnson v. Edgar, 176 Ill. 2d 499, 224 Ill. Dec. 1, 680 N.E.2d 1372 (1997).

§ 705 ILCS 405/3-27. Enforcement of orders of protective supervision or of protection

Sec. 3-27. Enforcement of orders of protective supervision or of protection. (1) Orders of protective supervision and orders of protection may be enforced by citation to show cause for contempt of court by reason of any violation thereof and, where protection of the welfare of the minor so requires, by the issuance of a warrant to take the alleged violator into custody and bring him before the court.

(2) In any case where an order of protection has been entered, the clerk of the court may issue to the petitioner, to the minor or to any other person affected by the order a certificate stating that an order of protection has been made by the court concerning such persons and setting forth its terms and requirements. The presentation of the certificate to any peace officer authorizes him to take into custody a person charged with violating the terms of the order of protection, to bring such person before the court and, within the limits of his legal authority as such peace officer, otherwise to aid in securing the protection the order is intended to afford.

(Source: P.A. 85-601.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-27.

LEGAL PERIODICALS

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For note, "Guardians Ad Litem: The Guardian Angels of Our Children in Domestic Violence Courts", see 30 Loy. U. Chi. L.J. 281 (1999).

§ 705 ILCS 405/3-28. Placement; legal custody or guardianship

Sec. 3-28. Placement; legal custody or guardianship. (1) If the court finds that the parents, guardian or legal custodian of a minor adjudged a ward of the court are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so, and that appropriate services aimed at family preservation and family reunification have been unsuccessful in rectifying the conditions which have led to such a finding of unfitness or inability to care for, protect, train or discipline the minor, and that it is in the best interest of the minor to take him from the custody of his parents, guardian or custodian, the court may:

(a) place him in the custody of a suitable relative or other person;

(b) place him under the guardianship of a probation officer;

(c) commit him to an agency for care or placement, except an institution under the authority of the Department of Corrections or of the Department of Children and Family Services;

(d) commit him to some licensed training school or industrial school; or

(e) commit him to any appropriate institution having among its purposes the care of delinquent children, including a child protective facility maintained by a Child Protection District serving the county from which commitment is made, but not including any institution under the authority of the Department of Corrections or of the Department of Children and Family Services.

(2) When making such placement, the court, wherever possible, shall select a person holding the same religious belief as that of the minor or a private agency controlled by persons of like religious faith of the minor and shall require the Department of Children and Family Services to otherwise comply with Section 7 of the Children and Family Services Act [20 ILCS 505/7] in placing the child. In addition, whenever alternative plans for placement are available, the court shall ascertain and consider, to the extent appropriate in the particular case, the views and preferences of the minor.

(3) When a minor is placed with a suitable relative or other person, the court shall appoint him the legal custodian or guardian of the person of the minor. When a minor is committed to any agency, the court shall appoint the proper officer or representative thereof as legal custodian or guardian of the person of the minor. Legal custodians and guardians of the person of the minor have the respective rights and duties set forth in paragraph (9) of Section 1-3 [705 ILCS 405/1-3] except as otherwise provided by order of the court; but no guardian of the person may consent to adoption of the minor unless that authority is conferred upon him in accordance with Section 3-30 [705 ILCS 405/3-30]. An agency whose representative is appointed guardian of the person or legal

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custodian of the minor may place him in any child care facility, but such facility must be licensed under the Child Care Act of 1969 [225 ILCS 10/1 et seq.] or have been approved by the Department of Children and Family Services as meeting the standards established for such licensing. No agency may place such minor in a child care facility unless such placement is in compliance with the rules and regulations for placement under this Section promulgated by the Department of Children and Family Services under Section 5 of "An Act creating the Department of Children and Family Services, codifying its powers and duties, and repealing certain Acts and Sections herein named" [20 ILCS 505/5]. Like authority and restrictions shall be conferred by the court upon any probation officer who has been appointed guardian of the person of a minor.

(4) No placement by any probation officer or agency whose representative is appointed guardian of the person or legal custodian of a minor may be made in any out of State child care facility unless it complies with the Interstate Compact on the Placement of Children.

(5) The clerk of the court shall issue to such legal custodian or guardian of the person a certified copy of the order of the court, as proof of his authority. No other process is necessary as authority for the keeping of the minor.

(6) Custody or guardianship granted hereunder continues until the court otherwise directs, but not after the minor reaches the age of 19 years except as set forth in Section 3-32 [705 ILCS 405/3-32].

(Source: P.A. 86-820; 87-14; 89-422, § 3.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-28.

CASE NOTES

Age of Juvenile

Although it is true the Minor Requiring Authoritative Intervention Law (705 ILCS 405/3-1 et seq.) does not apply to persons over 18 years of age, wardship and custodianship could continue until the age of 21 under former Ill. Rev. Stat., ch. 37, paras. 702-3, 705-7, and 705-11 (see now this section, 705 ILCS 405/3-3 and 705 ILCS 405/3-32). People v. McCarron, 170 Ill. App. 3d 552, 121 Ill. Dec. 193, 524 N.E.2d 1241 (2 Dist. 1988), overruled on other grounds, People v. Minor, 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989).

§ 705 ILCS 405/3-29. Court review

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Sec. 3-29. Court review. (1) The court may require any legal custodian or guardian of the person appointed under this Act to report periodically to the court or may cite him into court and require him or his agency, to make a full and accurate report of his or its doings in behalf of the minor. The custodian or guardian, within 10 days after such citation, shall make the report, either in writing verified by affidavit or orally under oath in open court, or otherwise as the court directs. Upon the hearing of the report the court may remove the custodian or guardian and appoint another in his stead or restore the minor to the custody of his parents or former guardian or custodian.

(2) A guardian or custodian appointed by the court pursuant to this Act shall file updated case plans with the court every 6 months. Every agency which has guardianship of a child shall file a supplemental petition for court review, or review by an administrative body appointed or approved by the court and further order within 18 months of dispositional order and each 18 months thereafter. Such petition shall state facts relative to the child's present condition of physical, mental and emotional health as well as facts relative to his present custodial or foster care. The petition shall be set for hearing and the clerk shall mail 10 days notice of the hearing by certified mail, return receipt requested, to the person or agency having the physical custody of the child, the minor and other interested parties unless a written waiver of notice is filed with the petition.

Rights of wards of the court under this Act are enforceable against any public agency by complaints for relief by mandamus filed in any proceedings brought under this Act.

(3) The minor or any person interested in the minor may apply to the court for a change in custody of the minor and the appointment of a new custodian or guardian of the person or for the restoration of the minor to the custody of his parents or former guardian or custodian.

In the event that the minor has attained 18 years of age and the guardian or custodian petitions the court for an order terminating his guardianship or custody, guardianship or custody shall terminate automatically 30 days after the receipt of the petition unless the court orders otherwise. No legal custodian or guardian of the person may be removed without his consent until given notice and an opportunity to be heard by the court.

(Source: P.A. 85-601.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-29.

Cross References.

As to termination or modification of wardship, custodianship or guardianship, see 705 ILCS 405/3-32.

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CASE NOTES

Analysis

Hearing
Improper Court Intervention
Incarceration
Person Interested in Minor
Petition to Modify

Hearing

Petitioners did not have an absolute right to a hearing on a petition for change of custody and termination of wardship under subsection (3) of former Ill. Rev. Stat., ch. 37, para. 705-8 (see now this section). Bardwell v. People, 138 Ill. App. 3d 418, 93 Ill. Dec. 29, 485 N.E.2d 1239 (5 Dist. 1985).

Improper Court Intervention

The juvenile court loses jurisdiction over matters concerning a ward of the court when a ward dies, because nowhere in the Juvenile Court Act is the court authorized to initiate, conduct, or facilitate the investigation of a ward's death. In re K.S., 264 Ill. App. 3d 963, 202 Ill. Dec. 427, 637 N.E.2d 1163 (1 Dist.), appeal denied, 158 Ill. 2d 552, 206 Ill. Dec. 836, 645 N.E.2d 1358 (1994).

The juvenile division of the circuit court should not attempt to establish treatment and disciplinary procedures for its wards which have been committed to the custody of the Department of Corrections. People v. Owen, 54 Ill. 2d 104, 295 N.E.2d 455 (1973).

Incarceration

Commitment to the Department of Corrections was not a bar to terminating wardship under former Ill. Rev. Stat., ch. 37, para. 705-11(2) (see now 705 ILCS 405/3-32) or applying to the court for a change of custody pursuant to former Ill. Rev. Stat., ch. 37, para. 705-8(3) (see now this section). Bardwell v. People, 138 Ill. App. 3d 418, 93 Ill. Dec. 29, 485 N.E.2d 1239 (5 Dist. 1985).

Person Interested in Minor

Petitioners who had been responsible for the care and custody of a minor for two years prior to adjudication of neglect, and thereafter as foster parents, were persons "interested in the minor" and it was therefore proper for them to request a change in custody under former Ill. Rev. Stat., ch. 37, para. 705-8(3) (see now this section). In re Dively, 79 Ill. App. 3d 428, 34 Ill. Dec. 812, 398 N.E.2d 635 (2 Dist. 1979).

Petition to Modify

The pleading requirements that apply to initial petitions for adjudication, seeking either a finding of abuse or a termination of parental rights, do not apply to petitions to modify dispositional orders.

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People v. Hoffman, 223 Ill. App. 3d 543, 165 Ill. Dec. 910, 585 N.E.2d 641 (4 Dist. 1992).

RESEARCH REFERENCES

Jurisdiction or power of juvenile court to order parent of juvenile to make restitution for juvenile's offense. 66 ALR4th 985.

§ 705 ILCS 405/3-30. Adoption; appointment of guardian with power to consent

Sec. 3-30. Adoption; appointment of guardian with power to consent. (1) A ward of the court under this Act, with the consent of the court, may be the subject of a petition for adoption under "An Act in relation to the adoption of persons, and to repeal an Act therein named", approved July 17, 1959, as amended [750 ILCS 50/0.01 et seq.], or with like consent his or her parent or parents may, in the manner required by such Act, surrender him or her for adoption to an agency legally authorized or licensed to place children for adoption.

(2) If the petition prays and the court finds that it is in the best interests of the minor that a guardian of the person be appointed and authorized to consent to the adoption of the minor, the court with the consent of the parents, if living, or after finding, based upon clear and convincing evidence, that a non-consenting parent is an unfit person as defined in Section 1 of "An Act in relation to the adoption of persons, and to repeal an Act therein named", approved July 17, 1959, as amended [750 ILCS 50/1], may empower the guardian of the person of the minor, in the order appointing him or her as such guardian, to appear in court where any proceedings for the adoption of the minor may at any time be pending and to consent to the adoption. Such consent is sufficient to authorize the court in the adoption proceedings to enter a proper order or judgment of adoption without further notice to, or consent by, the parents of the minor. An order so empowering the guardian to consent to adoption terminates parental rights, deprives the parents of the minor of all legal rights as respects the minor and relieves them of all parental responsibility for him or her, and frees the minor from all obligations of maintenance and obedience to his or her natural parents.

If the minor is over 14 years of age, the court may, in its discretion, consider the wishes of the minor in determining whether the best interests of the minor would be promoted by the finding of the unfitness of a non-consenting parent.

(3) Parental consent to the order authorizing the guardian of the person to consent to adoption of the Minor shall be given in open court whenever possible and otherwise must be in writing and signed in the form provided in "An Act in relation to the adoption of persons, and to repeal an Act therein named", approved July 17, 1959, as amended [750 ILCS 50/0.01 et seq.], but no names of petitioners for adoption need be included. A finding of the unfitness of a nonconsenting parent must be made in compliance with that Act and be based upon clear and convincing evidence. Provisions of that Act relating to minor parents and to mentally ill or mentally deficient parents apply to proceedings under

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this Section and shall be based upon clear and convincing evidence.

(Source: P.A. 85-601.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-30.

Cross References.

As to the form and contents of a petition or supplemental petition under this Act, see 705 ILCS 405/3-15.

CASE NOTES

Analysis

Parental Role
- Consenting
- Non-Consenting
Petition
Pleadings
Role of Court
Termination of Parental Rights
Unfitness
- Evidence Held Insufficient
- Factors
- Supplemental Petition

Parental Role

- Consenting

Under former Ill. Rev. Stat., ch. 37, para. 705-9 (see now this section), parents were not entitled to an opportunity to consent to the actual adoption of their children prior to being declared unfit. People v. Welch, 164 Ill. App. 3d 142, 115 Ill. Dec. 211, 517 N.E.2d 622 (5 Dist. 1987).

- Non-Consenting

The term "non-consenting" in this section means not consenting to the appointment of a guardian with power to consent to adoption rather than not consenting to an adoption petition. People v. Welch, 164 Ill. App. 3d 142, 115 Ill. Dec. 211, 517 N.E.2d 622 (5 Dist. 1987).

Petition

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Under former Ill. Rev. Stat., ch. 37, para. 705-9 (see now this section), a supplemental petition which began by stating that a person under oath stated on information and belief, and was signed by her, and which contained the signature and seal of a notary public who attested that the document was signed and sworn to before her on a particular date, satisfied the requirement of this section. People v. McElfresh, 96 Ill. App. 3d 1104, 52 Ill. Dec. 582, 422 N.E.2d 263 (4 Dist. 1981).

Pleadings

Under former Ill. Rev. Stat., ch. 37, para. 705-9 (see now this section), pleading with particularity did not require more than setting forth the specific statutory grounds of unfitness; allegation of the particular acts or omissions which constituted the specified statutory grounds of unfitness were not required. People v. McElfresh, 96 Ill. App. 3d 1104, 52 Ill. Dec. 582, 422 N.E.2d 263 (4 Dist. 1981).

Under former Ill. Rev. Stat., ch. 37, para. 705-9 (see now this section), although an amended petition failed to comply with the statutory provision to allege it to be in the best interest of the minor that a guardian with power to consent to adoption be appointed, where the court made a finding that the best interests of the minors would have been served by the appointment of a guardian with the power to consent, and the evidence supported the finding, and other allegations implied that the best interests of the minors would have been served, the decree was proper. People v. McElfresh, 96 Ill. App. 3d 1104, 52 Ill. Dec. 582, 422 N.E.2d 263 (4 Dist. 1981).

Role of Court

Before a guardian may be appointed for the purpose of consenting to adoption, the court must give its consent to the adoption. People v. Rogers, 54 Ill. App. 3d 627, 12 Ill. Dec. 756, 370 N.E.2d 560 (1 Dist. 1977).

Termination of Parental Rights

This Act contains no express requirement that a petition for adoption be filed before parental rights are terminated under this section. People v. Welch, 164 Ill. App. 3d 142, 115 Ill. Dec. 211, 517 N.E.2d 622 (5 Dist. 1987).

Unfitness

- Evidence Held Insufficient

Trial court properly refused to grant a guardian's consent to adoption for infant where the evidence did not show that the infant's 16 year old father was unfit. People v. Rogers, 54 Ill. App. 3d 627, 12 Ill. Dec. 756, 370 N.E.2d 560 (1 Dist. 1977).

- Factors

While parental rights and responsibilities are matters of deep importance and will not be lightly terminated, the parental rights of a nonconsenting parent may be terminated if the parent is adjudicated unfit for one or more of the grounds listed in the Illinois Adoption Act (750 ILCS 50/1(D)). People v. Phillips, 191 Ill. App. 3d 237, 138 Ill. Dec. 437, 547 N.E.2d 604 (4 Dist. 1989).

- Supplemental Petition

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No requirement exists that the supplemental petition pray that the parents be found to be unfit. People v. McElfresh, 96 Ill. App. 3d 1104, 52 Ill. Dec. 582, 422 N.E.2d 263 (4 Dist. 1981).

§ 705 ILCS 405/3-31. Notice to putative father; service

Sec. 3-31. Notice to putative father; service. 1.Upon the written request to any Clerk of any Circuit Court by any interested party, including persons intending to adopt a child, a child welfare agency with whom the mother has placed or has given written notice of her intention to place a child for adoption, the mother of a child, or any attorney representing an interested party, a notice may be served on a putative father in the same manner as Summons is served in other proceedings under this Act, or in lieu of personal service, service may be made as follows:

(a) The person requesting notice shall furnish to the Clerk an original and one copy of a notice together with an Affidavit setting forth the putative father's last known address. The original notice shall be retained by the Clerk.

(b) The Clerk forthwith shall mail to the putative father, at the address appearing in the Affidavit, the copy of the notice, certified mail, return receipt requested; the envelope and return receipt shall bear the return address of the Clerk. The receipt for certified mail shall state the name and address of the addressee, and the date of mailing, and shall be attached to the original notice.

(c) The return receipt, when returned to the Clerk, shall be attached to the original notice, and shall constitute proof of service.

(d) The Clerk shall note the fact of service in a permanent record.

2.The notice shall be signed by the Clerk, and may be served on the putative father at any time after conception, and shall read as follows:

"IN THE MATTER OF NOTICE TO ....., PUTATIVE FATHER.

You have been identified as the father of a child born or expected to be born on or about (insert date). The mother of said child is .....

The mother has indicated she intends to place the child for adoption or otherwise have a judgment entered terminating her rights with respect to such child.

As the alleged father of said child, you have certain legal rights with respect to said child, including the right to notice of the filing of proceedings instituted for the termination of your parental rights regarding said child. If you wish to retain your rights with respect to said child, you must file with the Clerk of this Circuit Court of ..... County, Illinois, whose address is ....., ..., Illinois, within 30 days after the date of receipt of this notice, a declaration of paternity stating that you are, in fact, the father of said child and that you intend to retain your legal rights with respect to said child, or request to be notified of any further proceedings with respect to custody, termination of parental rights or adoption of the child.

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If you do not file such a declaration of paternity, or a request for notice, then whatever legal rights you have with respect to said child, including the right to notice of any future proceedings for the adoption of said child, may be terminated without any further notice to you. When your legal rights with respect to said child are so terminated, you will not be entitled to notice of any proceeding instituted for the adoption of said child.

If you are not the father of said child, you may file with the Clerk of this Court, a disclaimer of paternity which will be noted in the Clerk's file and you will receive no further notice with respect to said child."

The disclaimer of paternity shall be substantially as follows:

"IN THE CIRCUIT COURT OF THE .....

JUDICIAL CIRCUIT, ILLINOIS

..... County

No.

DENIAL OF PATERNITY WITH ENTRY

OF APPEARANCE AND CONSENT TO

ADOPTION

I, ..., state as follows:

(1) That I am ..... years of age; and I reside at ..... in the County of ....., State of .....

(2) That I have been advised that ..... is the mother of a .... male child named ..... born or expected to be born on or about ..... and that such mother has stated that I am the father of this child.

(3) I deny that I am the father of this child.

(4) I further understand that the mother of this child wishes to consent to the adoption of the child. I hereby consent to the adoption of this child, and waive any rights, remedies and defenses that I may now or in the future have as a result of the mother's allegation of the paternity of this child. This consent is being given in order to facilitate the adoption of the child and so that the court may terminate what rights I may have to the child as a result of being named the father by the mother. This consent is not in any manner an admission of paternity.

(5) I hereby enter my appearance in the above entitled cause and waive service of summons and other pleading and consent to an immediate hearing on a petition TO TERMINATE PARENTAL RIGHTS AND TO APPOINT A GUARDIAN WITH THE POWER TO CONSENT TO THE ADOPTION OF THIS CHILD.

OATH

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I have been duly sworn and I say under oath that I have read and understood this Denial of Paternity With Entry of Appearance and Consent to Adoption. The facts it contains are true and correct to the best of my knowledge, and I understand that by signing this document I have not admitted paternity. I have signed this document as my free and voluntary act in order to facilitate the adoption of the child.

.....

(signature)

Dated (insert date).

Signed and sworn before me on (insert date).

.....

(notary public)".

The names of adoptive parents, if any, shall not be included in the notice.

3.If the putative father files a disclaimer of paternity, he shall be deemed not to be the father of the child with respect to any adoption or other proceeding held to terminate the rights of parents as respects such child.

4.In the event the putative father does not file a declaration of paternity of the child or request for notice within 30 days of service of the above notice, he need not be made a party to or given notice of any proceeding brought for the adoption of the child. An Order or Judgment may be entered in such proceeding terminating all of his rights with respect to said child without further notice to him.

5.If the putative father files a declaration of paternity or a request for notice in accordance with subsection 2 with respect to the child, he shall be given notice in the event any proceeding is brought for the adoption of the child or for termination of parents' rights of the child.

6.The Clerk shall maintain separate numbered files and records of requests and proofs of service and all other documents filed pursuant to this article. All such records shall be impounded.

(Source: P.A. 85-601; 91-357, § 236.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-31.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, in the first paragraph of the form in subsection 2, substituted "born or expected to be born on or about (insert date)" for "(born on the ..... day of ....., 19 ..), or (expected to be born on or about the .....

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day of ....., 19 ..)," and near the end of the form changed the date blocks.

§ 705 ILCS 405/3-32. Duration of wardship and discharge of proceedings

Sec. 3-32. Duration of wardship and discharge of proceedings. (1) All proceedings under this Act in respect to any minor for whom a petition was filed after the effective date of this amendatory Act of 1991 automatically terminate upon his attaining the age of 19 years, except that a court may continue the wardship of a minor until age 21 for good cause when there is satisfactory evidence presented to the court that the best interest of the minor and the public require the continuation of the wardship.

(2) Whenever the court finds that the best interests of the minor and the public no longer require the wardship of the court, the court shall order the wardship terminated and all proceedings under this Act respecting that minor finally closed and discharged. The court may at the same time continue or terminate any custodianship or guardianship theretofore ordered but termination must be made in compliance with Section 3-29 [705 ILCS 405/3-29].

(3) The wardship of the minor and any custodianship or guardianship respecting the minor for whom a petition was filed after the effective date of this amendatory Act of 1991 automatically terminates when he attains the age of 19 years except as set forth in subsection (1) of this Section. The clerk of the court shall at that time record all proceedings under this Act as finally closed and discharged for that reason.

(Source: P.A. 87-14.)

Note.

This section was Ill.Rev.Stat., Ch. 37, Para. 803-32.

CASE NOTES

Analysis

Age of Juvenile
Incarceration
Truant Minor

Age of Juvenile

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Although it is true that Article III, entitled Minor Requiring Authoritative Intervention (705 ILCS 405/3-1 to 405/3-33) does not apply to persons over 18 years of age, wardship and custodianship may continue until the age of 21 under former Ill. Rev. Stat., ch. 37, paras. 702-3, 705-7, and 705-11 (see now this section, 705 ILCS 405/3-3 and 705 ILCS 405/3-28). People v. McCarron, 170 Ill. App. 3d 552, 121 Ill. Dec. 193, 524 N.E.2d 1241 (2 Dist. 1988), overruled on other grounds, People v. Minor, 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989).

Incarceration

Commitment to the Department of Corrections was not a bar to terminating wardship under former Ill. Rev. Stat., ch. 37, para 705-11(2) of this Act (see now this section) or applying to the court for a change of custody pursuant to former Ill. Rev. Stat., ch. 37, para 705-8(3) of the Juvenile Court Act (see now 705 ILCS 405/3-29). Bardwell v. People, 138 Ill. App. 3d 418, 93 Ill. Dec. 29, 485 N.E.2d 1239 (5 Dist. 1985).

Truant Minor

The legislature intended to allow a court to maintain jurisdiction over a minor adjudicated a truant minor in need of supervision despite the fact that the minor subsequently reached the age of 16. In re C.W., 292 Ill. App. 3d 201, 226 Ill. Dec. 80, 684 N.E.2d 1076 (4 Dist. 1997), appeal denied, 175 Ill. 2d 528, 228 Ill. Dec. 718, 689 N.E.2d 1139 (1997).

§ 705 ILCS 405/3-33: Repealed by P.A. 94-1011, § 20, effective July 7, 2006.

§ 705 ILCS 405/3-33.5. Truant minors in need of supervision

Sec. 3-33.5. Truant minors in need of supervision. (a) Definition. A minor who is reported by the office of the regional superintendent of schools, or, in cities of over 500,000 inhabitants, by the Office of Chronic Truant Adjudication, as a chronic truant may be subject to a petition for adjudication and adjudged a truant minor in need of supervision, provided that prior to the filing of the petition, the office of the regional superintendent of schools, the Office of Chronic Truant Adjudication, or a community truancy review board certifies that the local school has provided appropriate truancy intervention services to the truant minor and his or her family. For purposes of this Section, "truancy intervention services" means services designed to assist the minor's return to an educational program, and includes but is not limited to: assessments, counseling, mental health services, shelter, optional and alternative education programs, tutoring, and educational advocacy. If, after review by the regional office of education, the Office of Chronic Truant Adjudication, or community truancy review board it is determined the local school did not provide the appropriate interventions, then the minor shall be referred to a comprehensive community based youth service agency for truancy intervention services. If the comprehensive community based youth service agency is incapable to provide intervention services, then this requirement for services is not applicable. The comprehensive community based youth service agency shall submit reports to the office of the regional superintendent of schools, the Office of Chronic

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Truant Adjudication, or truancy review board within 20, 40, and 80 school days of the initial referral or at any other time requested by the office of the regional superintendent of schools, the Office of Chronic Truant Adjudication, or truancy review board, which reports each shall certify the date of the minor's referral and the extent of the minor's progress and participation in truancy intervention services provided by the comprehensive community based youth service agency. In addition, if, after referral by the office of the regional superintendent of schools, the Office of Chronic Truant Adjudication, or community truancy review board, the minor declines or refuses to fully participate in truancy intervention services provided by the comprehensive community based youth service agency, then the agency shall immediately certify such facts to the office of the regional superintendent of schools, the Office of Chronic Truant Adjudication, or community truancy review board.

(a-1) There is a rebuttable presumption that a chronic truant is a truant minor in need of supervision.

(a-2) There is a rebuttable presumption that school records of a minor's attendance at school are authentic.

(a-3) For purposes of this Section, "chronic truant" means a minor subject to compulsory school attendance and who is absent without valid cause from such attendance for 10% or more of the previous 180 regular attendance days and has the meaning ascribed to it in Section 26-2a of the School Code [105 ILCS 5/26-2a].

(a-4) For purposes of this Section, a "community truancy review board" is a local community based board comprised of but not limited to: representatives from local comprehensive community based youth service agencies, representatives from court service agencies, representatives from local schools, representatives from health service agencies, and representatives from local professional and community organizations as deemed appropriate by the office of the regional superintendent of schools, or, in cities of over 500,000 inhabitants, by the Office of Chronic Truant Adjudication. The regional superintendent of schools, or, in cities of over 500,000 inhabitants, the Office of Chronic Truant Adjudication, must approve the establishment and organization of a community truancy review board and the regional superintendent of schools or his or her designee, or, in cities of over 500,000 inhabitants, the general superintendent of schools or his or her designee, shall chair the board.

(a-5) Nothing in this Section shall be construed to create a private cause of action or right of recovery against a regional office of education or the Office of Chronic Truant Adjudication, its superintendent, or its staff with respect to truancy intervention services where the determination to provide the services is made in good faith.

(b) Kinds of dispositional orders. A minor found to be a truant minor in need of supervision may be:

(1) committed to the appropriate regional superintendent of schools for a student assistance team staffing, a service plan, or referral to a comprehensive community based youth service agency;

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(2) required to comply with a service plan as specifically provided by the appropriate regional superintendent of schools;

(3) ordered to obtain counseling or other supportive services;

(4) subject to a fine in an amount in excess of $5, but not exceeding $100, and each day of absence without valid cause as defined in Section 26-2a of The School Code is a separate offense;

(5) required to perform some reasonable public service work such as, but not limited to, the picking up of litter in public parks or along public highways or the maintenance of public facilities; or

(6) subject to having his or her driver's license or driving privilege suspended for a period of time as determined by the court but only until he or she attains 18 years of age.

A dispositional order may include a fine, public service, or suspension of a driver's license or privilege only if the court has made an express written finding that a truancy prevention program has been offered by the school, regional superintendent of schools, or a comprehensive community based youth service agency to the truant minor in need of supervision.

(c) Orders entered under this Section may be enforced by contempt proceedings.

(Source: P.A. 94-1011, § 15.)

Effective Date. Section 99 of P.A. 94-1011 made the section effective upon becoming law. The Act was approved July 7, 2006.

§ 705 ILCS 405/3-40. Minors involved in electronic dissemination of indecent visual depictions in need of supervision

Sec. 3-40. Minors involved in electronic dissemination of indecent visual depictions in need of supervision. (a) For the purposes of this Section:

"Computer" has the meaning ascribed to it in Section 16D-2 of the Criminal Code of 1961 [720 ILCS 5/16D-2 (now repealed)].

"Electronic communication device" means an electronic device, including but not limited to a wireless telephone, personal digital assistant, or a portable or mobile computer, that is capable of transmitting images or pictures.

"Indecent visual depiction" means a depiction or portrayal in any pose, posture, or setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the person.

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"Minor" means a person under 18 years of age.

(b) A minor shall not distribute or disseminate an indecent visual depiction of another minor through the use of a computer or electronic communication device.

(c) Adjudication. A minor who violates subsection (b) of this Section may be subject to a petition for adjudication and adjudged a minor in need of supervision.

(d) Kinds of dispositional orders. A minor found to be in need of supervision under this Section may be:

(1) ordered to obtain counseling or other supportive services to address the acts that led to the need for supervision; or

(2) ordered to perform community service.

(e) Nothing in this Section shall be construed to prohibit a prosecution for disorderly conduct, public indecency, child pornography, a violation of the Harassing and Obscene Communications Act [720 ILCS 135/1-1 et seq.], or any other applicable provision of law.

(Source: P.A. 96-1087, § 5.)

Note.

Section 720 ILCS 5/16D-2, referred to in subsection (a), has been repealed.

Effective Date. This section became effective January 1, 2011 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

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CHAPTER 715.
NOTICES

715 ILCS 5Notice By Publication Act
715 ILCS 10Newspaper Legal Notice Act
715 ILCS 15Legal Advertising Rate Act

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Notice By Publication Act

Sec.

715 ILCS 5/0.01.Short title
715 ILCS 5/1.[Publisher's certificate]
715 ILCS 5/2.(Effective until December 31, 2012) [If no local paper available]
715 ILCS 5/2.(As amended by P.A. 96-1144, effective December 31, 2012) [If no local paper available]
715 ILCS 5/2.1.(Effective December 31, 2012) Statewide website
715 ILCS 5/3.[Length of publication]
715 ILCS 5/3.1.(Effective until December 31, 2012) [Notice to be published in total circulation]
715 ILCS 5/3.1.(As amended by P.A. 96-1144, effective December 31, 2012) [Notice to be published in total circulation]
715 ILCS 5/4.[Weekly newspaper sufficient]
715 ILCS 5/5.(Effective until December 31, 2012) [Newspaper defined]
715 ILCS 5/5.(As amended by P.A. 96-1144, effective December 31, 2012) [Newspaper defined]
715 ILCS 5/6.[Computation of time]
715 ILCS 5/7.[Expense of publication; court matters]
715 ILCS 5/8.[Expense of publication; public business]
715 ILCS 5/9.[Legal description]
715 ILCS 5/10.[Municipalities or counties]
715 ILCS 5/11.(Effective until December 31, 2012) Applicability
715 ILCS 5/11.(As amended by P.A. 96-1144, effective December 31, 2012) Applicability

§ 715 ILCS 5/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Notice By Publication Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act to revise the law in relation to notices.

Cite: 715 ILCS 5/0.01 et seq.

Source: R.S. 1874, p. 723.

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Date: Approved February 13, 1874.

Note.

This section was Ill.Rev.Stat., Ch. 100, Para. 0.01.

§ 715 ILCS 5/1. [Publisher's certificate]

Sec. 1. When any notice shall be required by law, or the order of court, or by any contract, to be published in any newspaper, and no other mode of proving the same is provided, the certificate of the publisher, by himself or his authorized agent, with a written or printed copy of such notice annexed, stating the number of times which the same shall have been published, and the dates of the first and last papers containing the same, shall be sufficient evidence of the publication therein set forth. The certificate shall also contain the further certificate of the publisher, by himself or his authorized agent, stating that the newspaper is a newspaper as hereinafter defined.

(Source: Laws 1959, p. 1494.)

Note.

This section was Ill.Rev.Stat., Ch. 100, Para. 1.

Cross References.

For provision governing petition of municipality to sell and assign special assessment liens and the required notice by publication, see 65 ILCS 5/9-2-66.

Illinois Administrative Code.

See 35 Illinois Administrative Code, § 104.410.

CASE NOTES

Analysis

Certification
- By Agent
- By Publisher
Compliance
Role of Court
School Board Elections

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- Evidence of Publication
Sunday Publication
- Judgment Sale

Certification

Lender was entitled to have the tax deed vacated under 735 ILCS 5/2-1401, as the lender showed, pursuant to 35 ILCS 200/22-45(4), that publication notice was deficient under 35 ILCS 200/22-20. The certificate of publication did not satisfy the requirements of 715 ILCS 5/1 because it was not signed by an authorized agent of the newspaper, it did not contain a written copy of the publication notice, and it did not contain a certificate of the publisher. H&H Investments v. Green Tree Servicing, LLC (In re County Treasurer), 361 Ill. App. 3d 504, 297 Ill. Dec. 496, 837 N.E.2d 947, 2005 Ill. App. LEXIS 1064 (3 Dist. 2005).

- By Agent

Certificate of notice of application for judgment and tax sale, which contained no statement of the agency relationship of the person who signed the application to the newspaper in which the notice was published, was not in compliance with this section, and thus the judgment was void for want of jurisdiction. People ex rel. Bestold v. Toluca State Bank, 327 Ill. 638, 159 N.E. 240 (1927).

- By Publisher

Proof of publication in a paper published by a corporation may be made by the authorized agent of the publisher. Maass v. Hess, 140 Ill. 576, 29 N.E. 887 (1892).

Compliance

To obtain jurisdiction by means of publication, it must affirmatively appear that the statute has been strictly pursued and its provisions complied with. McChesney v. People ex rel. Kern, 145 Ill. 614, 34 N.E. 431 (1893).

Role of Court

The affidavit and certificate of publication are merely prima facie evidence on which the court may or may not act upon in a special assessment proceeding in arriving at its finding of jurisdiction. Village of Lansing v. Homesteaders Life Ass'n, 367 Ill. 508, 11 N.E.2d 952 (1937).

School Board Elections

- Evidence of Publication

A written or printed copy of a notice of election as published together with a certificate of publication constitutes sufficient evidence of publication; however, such evidence must appear in school board records because the official record is the only lawful evidence of notice and cannot be contradicted, aided or supplemented by parol evidence. Menssen v. Eureka Unit, 70 Ill. App. 3d 9, 26 Ill. Dec. 649, 388 N.E.2d 273 (4 Dist. 1979).

Sunday Publication

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- Judgment Sale

Neither former chapter 77, paragraph 14 (see now 735 ILCS 5/12-115), which provides for the publication of notice upon the sale of real estate, nor this section, proscribe Sunday publication. Champaign County Bank & Trust Co. v. Brewer, 63 Ill. App. 3d 490, 20 Ill. Dec. 377, 380 N.E.2d 54 (4 Dist. 1978).

RESEARCH REFERENCES

Application of requirement that newspapaer be locally published for official notice publication. 85 ALR4th 581.

§ 715 ILCS 5/2. (Effective until December 31, 2012) [If no local paper available]

Sec. 2. Whenever an officer of a court, unit of local government, or school district is required by law to give notice by publication in a newspaper which is published in a particular unit of local government or school district, he shall, if there is no newspaper which is published in the unit of local government or school district, give notice by publication in a newspaper published in the county in which the unit of local government or school district is located and having general circulation within the unit of local government or school district.

(Source: P.A. 78-425.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Note.

This section was Ill.Rev.Stat., Ch. 100, Para. 2.

§ 715 ILCS 5/2. (As amended by P.A. 96-1144, effective December 31, 2012) [If no local paper available]

Sec. 2. Whenever an officer of a court, unit of local government, or school district is required by law to give notice by publication in a newspaper which is published in a particular unit of local government or school district, he shall, if there is no newspaper which is published in the unit of local government or school district, give notice by publication in a newspaper published in the county in which the unit of local government or school district is located and having general circulation within the unit of local government or school district. If there is no newspaper published in the county in which

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the unit of local government or school district is located, notice by publication in a newspaper shall be given in a secular newspaper, as defined in this Act, published in an adjoining county having general circulation within the unit of local government or school district.

(Source: P.A. 96-1144, § 5.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Effect of Amendments. The 2010 amendment by P.A. 96-1144, effective December 31, 2012, added the second sentence.

§ 715 ILCS 5/2.1. (Effective December 31, 2012) Statewide website

Sec. 2.1. Statewide website. Whenever notice by publication in a newspaper is required by law, order of court, or contract, the newspaper publishing the notice shall, at no additional cost to government, place the notice on the statewide website established and maintained as a joint venture of the majority of Illinois newspapers as a repository for such notices.

(Source: P.A. 96-1144, § 5.)

Effective Date. Section 99 of P.A. 96-1144 made this section effective December 31, 2012.

§ 715 ILCS 5/3. [Length of publication]

Sec. 3. Whenever notice is required by law, or order of court, and the number of publications is not specified, it shall be intended that the same be published for three successive weeks.

(Source: Laws 1874, p. 723.)

Note.

This section was Ill.Rev.Stat., Ch. 100, Para. 3.

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CASE NOTES

Incomplete Notice

Decree of a trustee's sale which was complete except that it did not fix the terms and place of the sale and the length of time it was to be advertised was not erroneous, since this section provides those details in the event they are not specified by the decree. Suiter v. McWard, 328 Ill. 462, 159 N.E. 799 (1927).

§ 715 ILCS 5/3.1. (Effective until December 31, 2012) [Notice to be published in total circulation]

Sec. 3.1. When any notice is required by law, or order of court, to be published in any newspaper, publication of such notice shall include the printing of such notice in the total circulation of each edition on the date of publication of the newspaper in which the notice is published.

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

(Source: P.A. 83-1483.)

Note.

This section was Ill.Rev.Stat., Ch. 100, Para. 3.1.

§ 715 ILCS 5/3.1. (As amended by P.A. 96-1144, effective December 31, 2012) [Notice to be published in total circulation]

Sec. 3.1. When any notice is required by law, or order of court, to be published in any newspaper, publication of such notice shall include the printing of such notice in the total circulation of each edition on the date of publication of the newspaper in which the notice is published; and the newspaper publishing the notice shall, at no additional cost to government, place the notice on the statewide website established and maintained as a joint venture of the majority of Illinois newspapers as a repository for such notices. All notices required for publication by this Act shall remain legal and valid for all purposes when any error that occurs pursuant to the requirements of this Section for placement of the notice on the statewide website is the fault of the printer.

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(Source: P.A. 96-1144, § 5.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Effect of Amendments. The 2010 amendment by P.A. 96-1144, effective December 31, 2012, added "and the newspaper publishing the notice shall, at no additional cost to government, place the notice on the statewide website established and maintained as a joint venture of the majority of Illinois newspapers as a repository for such notices" to the end of the first sentence; and added the second sentence.

§ 715 ILCS 5/4. [Weekly newspaper sufficient]

Sec. 4. When any notice is required by law or order of court, or any contract, and it is not otherwise provided, it shall be sufficient to publish the same in a weekly newspaper.

(Source: P.A. 85-253.)

Note.

This section was Ill.Rev.Stat., Ch. 100, Para. 4.

§ 715 ILCS 5/5. (Effective until December 31, 2012) [Newspaper defined]

Sec. 5. When any notice is required by law or contract to be published in a newspaper (unless otherwise expressly provided in the contract), it shall be intended to be in a secular newspaper of general circulation, published in the city, town or county, or some newspaper specially authorized by law to publish legal notices, in the city, town, or county. Unless otherwise expressly provided in the contract, the term "newspaper" means a newspaper

(a) which consists of not less than 4 pages of printed matter and contains at least 100 square inches of printed matter per page; and

(b) which is printed through the use of one of the conventional and generally recognized printing processes such as letterpress, lithography or gravure; and

(c) which annually averages at least 25% news content per issue; or which annually averages at least 1,000 column inches of news content per issue, the term "news content" meaning for the purposes of this Act any printed matter other than advertising; and

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(d) which publishes miscellaneous reading matter, legal or other announcements and notices, and news and information concerning current happenings and passing events of a political, social, religious, commercial, financial or legal nature, and advertisements or bulletins; and

(e) which has been continuously published at regular intervals of at least once each week with a minimum of 50 issues per year, for at least one year prior to the first publication of the notice; or which is a successor to a newspaper as herein defined with no interruption of publication of more than 30 days; or which is a merged or consolidated newspaper formed by the merger or consolidation of two or more newspapers, one of which has been continuously published at regular intervals of at least once each week with a minimum of 50 issues per year, for at least one year prior to the first publication of the notice. A newspaper shall be considered as continuously or regularly published although its publication has been suspended, where such suspension was caused by fire or an Act of God or by a labor dispute or by its owner, publisher, managing editor or other essential employee entering the active military service of the United States, if the newspaper was continuously or regularly published for at least one year prior to its suspension and if its publication is resumed at any time not later than 12 months after such fire or Act of God, or if its publication is resumed at any time within 12 months after the termination of the labor dispute, or if its publication is resumed at any time within 12 months after the termination of the war in connection with which such persons entered such military service.

(Source: Laws 1959, p. 1494; P.A. 96-59, § 5.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Note.

This section was Ill.Rev.Stat., Ch. 100, Para. 5.

Effect of Amendments. The 2009 amendment by P.A. 96-59, effective July 23, 2009, substituted "100 square inches" for "130 square inches" in (a).

CASE NOTES

Analysis

Compliance
- Presumption
Counties Involved
General Circulation

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Requirements of Secularity
Secular Newspaper of General Circulation
- Chicago Daily Law Bulletin
- Noon Edition

Compliance

- Presumption

Where a partition decree provided that publication would be in some public newspaper printed and published in the county, the Supreme Court would presume that the decree was intended to be published in accordance with this section. Barnes v. Swedish Am. Nat'l Bank, 371 Ill. 20, 19 N.E.2d 929 (1939).

Counties Involved

Under former ch. 3, para. 744(h) (see now 205 ILCS 105/3-4) relating to the relocation of savings and loan associations, and this section, publication must be made in newspapers actually published and circulated within the county or counties involved; publication in metropolitan newspapers published in the City of Chicago but which have general circulation within the counties enumerated by the Commissioner of Saving and Loan Associations is not sufficient. North Shore Sav. & Loan Ass'n v. Griffin, 60 Ill. App. 3d 313, 17 Ill. Dec. 587, 376 N.E.2d 733 (2 Dist. 1978), aff'd, 75 Ill. 2d 166, 25 Ill. Dec. 804, 387 N.E.2d 680 (1979).

General Circulation

A newspaper is of general circulation when it circulates among all classes and is not confined to a particular class or calling in the community. Eisenberg v. Wabash, 355 Ill. 495, 189 N.E. 301 (1934); People ex rel. Toman v. 110 S. Dearborn St. Bldg. Corp., 372 Ill. 459, 24 N.E.2d 373 (1939).

The term "general circulation" refers to a general newspaper, only, as distinguished from one of a special or limited character. Eisenberg v. Wabash, 355 Ill. 495, 189 N.E. 301 (1934); People ex rel. Toman v. 110 S. Dearborn St. Bldg. Corp., 372 Ill. 459, 24 N.E.2d 373 (1939).

The fact that a newspaper is not sold at a newsstand or by a newsboy does not mean that it is not read generally by subscribers who get the newspaper through the mails. Eisenberg v. Wabash, 355 Ill. 495, 189 N.E. 301 (1934).

The general circulation of a newspaper is not determined by the number of subscribers but by the diversity of its subscribers. Eisenberg v. Wabash, 355 Ill. 495, 189 N.E. 301 (1934).

Requirements of Secularity

There is no requirement in the law that a newspaper, in order to be secular and of general circulation, must be distributed from newsstands and by newsboys; all that is required is that it be secular in character, that it circulate among different classes of readers, and that it dispense information which is of interest to the general public. Eisenberg v. Wabash, 355 Ill. 495, 189 N.E. 301 (1934).

Secular Newspaper of General Circulation

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- Chicago Daily Law Bulletin

The notice actually given under the Probate Act in 755 ILCS 5/18-3 was not invalid because the Chicago Daily Law Bulletin was recognized a secular newspaper of general circulation as statutorily required. Gibbs v. Estate of Dolan, 146 Ill. App. 3d 203, 100 Ill. Dec. 61, 496 N.E.2d 1126 (1 Dist. 1986).

- Noon Edition

Where record showed that the Chicago Evening Post was a daily newspaper and was published on six different days each week in seven editions daily and the contract between the city and the paper provided that the paper should print all matters and things required by law or any city ordinance to be printed in at least one edition, and where all copies of that edition bore a single number denoting an issue, and the noon edition carried on its date column the words "Noon Edition," and the words "Official Newspaper of the City of Chicago," and an appropriation ordinance appeared only in the noon edition of that date, that edition, which consisted of 6,100 copies, was a newspaper of general circulation. People ex rel. Stuckart v. Snow, 279 Ill. 289, 116 N.E. 670 (1917).

OPINIONS OF ATTORNEY GENERAL

County of Publication

Where newspaper was printed in county A with an equal number of copies being distributed in county A and county B, the first newspapers were taken to the post office in county B for mailing to subscribers and then delivered to newsstands in county A and B with the first newsstand delivery being made in county B, the publication was clearly published in county B and not in county A. 1981 Op. Atty. Gen. 91.

RESEARCH REFERENCES

Place where corporation is doing business for purposes of state venue statute. 42 ALR5th 221.

§ 715 ILCS 5/5. (As amended by P.A. 96-1144, effective December 31, 2012) [Newspaper defined]

Sec. 5. When any notice is required by law or contract to be published in a newspaper (unless otherwise expressly provided in the contract), it shall be intended to be in a secular newspaper of general circulation, published in the city, town or county, or some newspaper specially authorized by law to publish legal notices, in the city, town, or county. If there is no newspaper published in the county in which the city or town is located, notice shall be given in a secular newspaper, as defined in this Act, that is published in an adjoining county having general circulation within the city or town. Unless otherwise expressly provided in the contract, the term "newspaper" means a newspaper

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(a) which consists of not less than 4 pages of printed matter and contains at least 100 square inches of printed matter per page; and

(b) which is printed through the use of one of the conventional and generally recognized printing processes such as letterpress, lithography or gravure; and

(c) which annually averages at least 25% news content per issue; or which annually averages at least 1,000 column inches of news content per issue, the term "news content" meaning for the purposes of this Act any printed matter other than advertising; and

(d) which publishes miscellaneous reading matter, legal or other announcements and notices, and news and information concerning current happenings and passing events of a political, social, religious, commercial, financial or legal nature, and advertisements or bulletins; and

(e) which has been continuously published at regular intervals of at least once each week with a minimum of 50 issues per year, for at least one year prior to the first publication of the notice; or which is a successor to a newspaper as herein defined with no interruption of publication of more than 30 days; or which is a merged or consolidated newspaper formed by the merger or consolidation of two or more newspapers, one of which has been continuously published at regular intervals of at least once each week with a minimum of 50 issues per year, for at least one year prior to the first publication of the notice. A newspaper shall be considered as continuously or regularly published although its publication has been suspended, where such suspension was caused by fire or an Act of God or by a labor dispute or by its owner, publisher, managing editor or other essential employee entering the active military service of the United States, if the newspaper was continuously or regularly published for at least one year prior to its suspension and if its publication is resumed at any time not later than 12 months after such fire or Act of God, or if its publication is resumed at any time within 12 months after the termination of the labor dispute, or if its publication is resumed at any time within 12 months after the termination of the war in connection with which such persons entered such military service; and

(f) which has the capability of placing notices required pursuant to this Act on a daily or weekly basis on the statewide website as required by Section 2.1 [20 ILCS 2630/2.1].

(Source: P.A. 96-1144, § 5.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Effect of Amendments. The 2010 amendment by P.A. 96-1144, effective December 31, 2012, inserted the second sentence in the first paragraph; added (f); and made a related change.

§ 715 ILCS 5/6. [Computation of time]

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Sec. 6. In computing the time for which any notice is to be given, whether required by law, order of court or contract, the first day shall be excluded and the last included, unless the last is Sunday, and then it also shall be excluded.

(Source: Laws 1874, p. 723.)

Note.

This section was Ill.Rev.Stat., Ch. 100, Para. 6.

CASE NOTES

Analysis

In General
Application
Fraction of Day
Holiday

In General

This section, which was passed in 1874, is a statutory declaration of the law as it was construed before the enactment of the statute. Fiedler v. Eckfeldt, 335 Ill. 11, 166 N.E. 504 (1929).

Application

Where a statute provides that 10 days' notice shall be given of any action to be taken, in computing the time the first day is to be excluded and the last day included, and the action may be taken on the tenth day after the notice. Fiedler v. Eckfeldt, 335 Ill. 11, 166 N.E. 504 (1929).

Fraction of Day

The law does not regard fractions of a day, unless it becomes important to the ends of justice to do so or in order to decide upon conflicting interests; the day is, in general, regarded as an indivisible unit of time. Fiedler v. Eckfeldt, 335 Ill. 11, 166 N.E. 504 (1929).

Holiday

Where the last day for filing a record is a holiday, such day will not be excluded from the computation of time unless it falls on a Sunday. Connell v. North Town Motor Co., 297 Ill. App. 247, 17 N.E.2d 589 (1 Dist. 1938).

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RESEARCH REFERENCES

Place where corporation is doing business for purposes of state venue statute. 42 ALR5th 221.

§ 715 ILCS 5/7. [Expense of publication; court matters]

Sec. 7. When any notice relating to any cause, matter or thing depending in any court, shall have been duly published, it may be paid for by the party at whose instance the same was published, and the expense, or so much thereof as shall be deemed reasonable, may be taxed as costs, or otherwise allowed in the course of the proceedings to which such notice shall relate.

(Source: P.A. 79-1358.)

Note.

This section was Ill.Rev.Stat., Ch. 100, Para. 7.

§ 715 ILCS 5/8. [Expense of publication; public business]

Sec. 8. When any notice shall be required by law to be published by a public officer in relation to public business, in pursuance of law, the reasonable expense thereof shall be allowed and paid out of the state or county treasury, as the case may require.

(Source: Laws 1874, p. 723.)

Note.

This section was Ill.Rev.Stat., Ch. 100, Para. 8.

§ 715 ILCS 5/9. [Legal description]

Sec. 9. When any notice required by law sets forth the legal description of real property, the notice shall also designate the street address of the property, or, if there is no street address applicable to the property, shall describe the property with reference to location, ownership or occupancy or in some other manner that will reasonably identify the property to residents of the neighborhood. In the event of a conflict between the legal description and any other description required by this Section the legal description shall control. No notice under this Section is invalid if the legal description is correct.

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This Section does not apply to any publication or other notice pursuant to the Revenue Act of 1939 or its successor provisions included in the Property Tax Code [35 ILCS 200/1 et seq.].

(Source: Laws 1965, p. 2999; P.A. 88-670, § 3-83.)

Note.

This section was Ill.Rev.Stat., Ch. 100, Para. 8.1.

§ 715 ILCS 5/10. [Municipalities or counties]

Sec. 10. Laws which require notice to be published or posted by a municipality or a county or an officer of a municipality or county shall apply to municipalities and counties which are home rule units as well as municipalities and counties which are not home rule units. Any home rule unit may enact an ordinance prescribing more stringent requirements binding upon itself which would serve to give further notice to the public.

(Source: P.A. 78-458.)

Note.

This section was Ill.Rev.Stat., Ch. 100, Para. 8.2.

CASE NOTES

Appropriation Ordinances

- Mandatory Procedures

Since this section imposes mandatory notice and publication requirements on home rule municipalities, the notice and publication requirements found in the Municipal Code (65 ILCS 5/8-2-9) would appear to be mandatory for an appropriation ordinance to take effect. Anderson v. Rubloff & Co., 194 Ill. App. 3d 414, 141 Ill. Dec. 413, 551 N.E.2d 406 (2 Dist. 1990).

§ 715 ILCS 5/11. (Effective until December 31, 2012) Applicability

Sec. 11. Applicability. Any notice published prior to the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-59] and in compliance with the

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provisions of this amendatory Act shall be legal and valid for all purposes.

(Source: P.A. 96-59, § 5.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Effective Date. Section 99 of P.A. 96-59 makes this section effective upon becoming law. The Act was approved July 23, 2009.

§ 715 ILCS 5/11. (As amended by P.A. 96-1144, effective December 31, 2012) Applicability

Sec. 11. (As amended by P.A. 96-1144, effective December 31, 2012) Applicability. (a) Any notice published prior to the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-1144] and in compliance with the provisions of this amendatory Act shall be legal and valid for all purposes.

(b) If, after the effective date of this amendatory Act of the 96th General Assembly, there is a notice that is required by law or order of court to be published in a particular unit of local government or school district and there is no newspaper published in that unit of local government or school district, or, in the county in which the unit of local government or school district is located, the notice shall be published in a secular newspaper, as defined by this Act, that is published in an adjoining county having general circulation within the unit of local government or school district. To the extent that there is a conflict between the provisions of this amendatory Act of the 96th General Assembly and any other provision of law, the provisions added by this amendatory Act of the 96th General Assembly shall control.

(Source: P.A. 96-1144, § 5.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Effect of Amendments. The 2010 amendment by P.A. 96-1144, effective December 31, 2012, added the (a) designation; and added (b).

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Newspaper Legal Notice Act

Sec.

715 ILCS 10/0.01.Short title
715 ILCS 10/1.[Newspaper defined]
715 ILCS 10/2.(Effective until December 31, 2012) [Printing to be in total circulation]
715 ILCS 10/2.(As amended by P.A. 96-1144, effective December 31, 2012) [Printing to be in total circulation]
715 ILCS 10/3.(Effective until December 31, 2012) Applicability
715 ILCS 10/3.(As amended by P.A. 96-1144, effective December 31, 2012) Applicability

§ 715 ILCS 10/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Newspaper Legal Notice Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act concerning the publication of legal notices.

Cite: 715 ILCS 10/0.01 et seq.

Source: L.1909, p. 288.

Date: Approved June 8, 1909.

Note.

This section was Ill.Rev.Stat., Ch. 100, Para. 9.9.

§ 715 ILCS 10/1. [Newspaper defined]

Sec. 1. Whenever it is required by law that any legal notice or publication shall be published in a newspaper in this State, it shall be held to mean a newspaper

(a) which consists of not less than 4 pages of printed matter and contains at least 100 square inches of printed matter per page; and

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(b) which is printed through the use of one of the conventional and generally recognized printing processes such as letterpress, lithography or gravure; and

(c) which annually averages at least 25% news content per issue; or which annually averages at least 1,000 column inches of news content per issue, the term "news content" meaning for the purposes of this Act any printed matter other than advertising; and

(d) which publishes miscellaneous reading matter, legal or other announcements and notices, and news and information concerning current happenings and passing events of a political, social, religious, commercial, financial or legal nature, and advertisements or bulletins; and

(e) which has been continuously published at regular intervals of at least once each week with a minimum of 50 issues per year, for at least one year prior to the first publication of the notice; or which is a successor to a newspaper as herein defined with no interruption of publication of more than 30 days; or which is a merged or consolidated newspaper formed by the merger or consolidation of two or more newspapers, one of which has been continuously published at regular intervals of at least once each week with a minimum of 50 issues per year for at least one year prior to the first publication of the notice. A newspaper shall be considered as continuously or regularly published although its publication has been suspended, where such suspension was caused by fire or an Act of God or by a labor dispute or by its owner, publisher, managing editor or other essential employee entering the active military service of the United States, if the newspaper was continuously or regularly published for at least one year prior to its suspension and if its publication is resumed at any time not later than 12 months after such fire or Act of God, or if its publication is resumed at any time within 12 months after the termination of the labor dispute, or if its publication is resumed at any time within 12 months after the termination of the war in connection with which such persons entered such military service; and

(f) *(Effective December 31, 2012)* which has the capability of placing, at no additional cost to government, notices required pursuant to this Act on a daily or weekly basis on the statewide website established and maintained as a joint venture by the majority of Illinois newspapers as a repository for such notices.

(Source: Laws 1959, p. 1496; P.A. 96-59, § 10; 96-1144, § 10.)

Multiple Versions of Subsections Multiple versions of subsections within this section have been created by the editor to reflect conflicting or postponed legislation.

Note.

This section was Ill.Rev.Stat., Ch. 100, Para. 10.

Effect of Amendments. The 2009 amendment by P.A. 96-59, effective July 23, 2009, substituted "100 square inches" for "130 square inches" in (a).

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The 2010 amendment by P.A. 96-1144, effective December 31, 2012, added (f); and made a related change.

CASE NOTES

Duration of Publication

Where the recital of a certificate describing a journal as "a regularly published newspaper within the meaning of the law, having been established more than six months," the statement did not mean that the journal had been regularly published for at least six months prior to the first publication of the notice and thus the publication was defective. People ex rel. Thaxton v. Coal Belt Elec. Ry., 311 Ill. 29, 142 N.E. 495 (1924).

RESEARCH REFERENCES

Application of requirement that newspaper be locally published for official notice publication. 85 ALR4th 581.

§ 715 ILCS 10/2. (Effective until December 31, 2012) [Printing to be in total circulation]

Sec. 2. When any legal notice is required by law to be published in any newspaper, such notice shall include the printing of such notice in the total circulation of each edition on the date of publication of the newspaper in which the notice is published.

(Source: P.A. 78-673.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Note.

This section was Ill.Rev.Stat., Ch. 100, Para. 10.1.

§ 715 ILCS 10/2. (As amended by P.A. 96-1144, effective December 31, 2012) [Printing to be in total circulation]

Sec. 2. When any legal notice is required by law to be published in any newspaper, such notice shall include the printing of such notice in the total circulation of each edition on

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the date of publication of the newspaper in which the notice is published; and the newspaper publishing the notice shall, at no additional cost to government, place the notice on the statewide website established and maintained as a joint venture of the majority of Illinois newspapers as a repository for such notices. All notices required for publication by this Act shall remain legal and valid for all purposes when any error that occurs pursuant to the requirements of this Section in the requirement for placement of the notice on the statewide website is the fault of the printer.

(Source: P.A. 96-1144, § 10.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Effect of Amendments. The 2010 amendment by P.A. 96-1144, effective December 31, 2012, added "and the newspaper publishing the notice shall, at no additional cost to government, place the notice on the statewide website established and maintained as a joint venture of the majority of Illinois newspapers as a repository for such notices" to the end of the first sentence; and added the second sentence.

§ 715 ILCS 10/3. (Effective until December 31, 2012) Applicability

Sec. 3. Applicability. Any notice published prior to the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-59] and in compliance with the provisions of this amendatory Act shall be legal and valid for all purposes.

(Source: P.A. 96-59, § 10.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Effective Date. Section 99 of P.A. 96-59 makes this section effective upon becoming law. The Act was approved July 23, 2009.

§ 715 ILCS 10/3. (As amended by P.A. 96-1144, effective December 31, 2012) Applicability

Sec. 3. (As amended by P.A. 96-1144, effective December 31, 2012) Applicability. (a) Any notice published prior to the effective date of this amendatory Act of the 96th

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General Assembly [P.A. 96-1144] and in compliance with the provisions of this amendatory Act shall be legal and valid for all purposes.

(b) If, after the effective date of this amendatory Act of the 96th General Assembly, there is a notice that is required by law or order of court to be published in a particular unit of local government or school district and there is no newspaper published in that unit of local government or school district, or, in the county in which the unit of local government or school district is located, the notice shall be published in a secular newspaper, as defined by this Act, that is published in an adjoining county having general circulation within the unit of local government or school district. To the extent that there is a conflict between the provisions of this amendatory Act of the 96th General Assembly and any other provision of law, the provisions added by this amendatory Act of the 96th General Assembly shall control.

(Source: P.A. 96-1144, § 10.)

Section set out twice. Multiple versions of this section have been created by the editor to reflect conflicting or postponed legislation.

Effect of Amendments. The 2010 amendment by P.A. 96-1144, effective December 31, 2012, added the (a) designation; and added (b).

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Legal Advertising Rate Act

Sec.

715 ILCS 15/0.01.Short title
715 ILCS 15/1.[Typeface]

§ 715 ILCS 15/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Legal Advertising Rate Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act in relation to the form and cost of publications required by law, or by order or rule of court.

Cite: 715 ILCS 15/0.01 et seq.

Source: L. 1919, p. 407. Title amended by L. 1953, p. 49.

Date: Approved June 23, 1919.

Note.

This section was Ill.Rev.Stat., Ch. 100, Para. 10.9.

§ 715 ILCS 15/1. [Typeface]

Sec. 1. For purposes of this Act, "required public notice" means any notice, advertisement, proclamation, statement, proposal, ordinance or proceedings of an official body or board or any other matter or material that is required by law or by the order or rule of any court to be published in any newspaper. The face of type of any required public notice shall be made shall be not smaller than the body type used in the classified advertising in the newspaper in which the required public notice is published. The minimum rate shall be 20 cents per column line for each insertion. of a required public notice. The maximum rate charged for each insertion of a required public notice shall not exceed the lowest classified rate paid by commercial users for comparable space in the newspapers in which the required public notice appears and shall include all cash discounts, multiple insertion discounts, and similar benefits extended to the newspaper's regular customers. For the purposes of this Act, "commercial user" means a customer

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submitting commercial advertising, and does not include a customer submitting a required public notice.

(Source: P.A. 80-504; 94-874, § 5; 97-146, § 25.)

Note.

This section was Ill.Rev.Stat., Ch. 100, para. 11.

Effect of Amendments. The 2006 amendment by P.A. 94-874, effective January 1, 2007, deleted "reasonable" after "minimum" in the next-to-last sentence; and added the last sentence.

The 2011 amendment by P.A. 97-146, effective January 1, 2012, substituted "For purposes of this Act, 'required public notice' means" for "When" in the first sentence; in the second sentence, substituted "of any required public notice" for "in which such publication" and "the required public notice is published" for "such publication is made"; added "of a required public notice" to the end of the third sentence; added the last two sentences; deleted the former last sentence, which read: "The maximum rate for each insertion shall not exceed the newspaper's annually published rate for comparable local advertising space"; and made a stylistic change.

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CHAPTER 720.
CRIMINAL OFFENSES

CRIMINAL CODE
720 ILCS 5Criminal Code of 1961

CRIMINAL CODE

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Criminal Code of 1961

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Title III.

Specific Offenses

Part B.
Offenses Directed Against the Person

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Article 11.

Sex Offenses

§ 720 ILCS 5/11-9.

Sec. 11-9. . Renumbered as 720 ILCS 5/11-30.

Note.

This section was renumbered by P.A. 96-1551 as 720 ILCS 5/11-30, effective July 1, 2011.

§ 720 ILCS 5/11-9.1. Sexual exploitation of a child

Sec. 11-9.1. Sexual exploitation of a child. (a) A person commits sexual exploitation of a child if in the presence or virtual presence, or both, of a child and with knowledge that a child or one whom he or she believes to be a child would view his or her acts, that person:

(1) engages in a sexual act; or

(2) exposes his or her sex organs, anus or breast for the purpose of sexual arousal or gratification of such person or the child or one whom he or she believes to be a child.

(a-5) A person commits sexual exploitation of a child who knowingly entices, coerces, or persuades a child to remove the child's clothing for the purpose of sexual arousal or gratification of the person or the child, or both.

(b) Definitions. As used in this Section:

"Sexual act" means masturbation, sexual conduct or sexual penetration as defined in Section 11-0.1 of this Code [720 ILCS 5/11-0.1].

"Sex offense" means any violation of Article 11 of this Code or Section 12-16.2 of this Code [720-5/11-6 et seq. or 720 ILCS 5/12-16.2].

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"Child" means a person under 17 years of age.

"Virtual presence" means an environment that is created with software and presented to the user and or receiver via the Internet, in such a way that the user appears in front of the receiver on the computer monitor or screen or hand held portable electronic device, usually through a web camming program. "Virtual presence" includes primarily experiencing through sight or sound, or both, a video image that can be explored interactively at a personal computer or hand held communication device, or both.

"Webcam" means a video capturing device connected to a computer or computer network that is designed to take digital photographs or live or recorded video which allows for the live transmission to an end user over the Internet.

(c) Sentence.

(1) Sexual exploitation of a child is a Class A misdemeanor. A second or subsequent violation of this Section or a substantially similar law of another state is a Class 4 felony.

(2) Sexual exploitation of a child is a Class 4 felony if the person has been previously convicted of a sex offense.

(3) Sexual exploitation of a child is a Class 4 felony if the victim was under 13 years of age at the time of the commission of the offense.

(4) Sexual exploitation of a child is a Class 4 felony if committed by a person 18 years of age or older who is on or within 500 feet of elementary or secondary school grounds when children are present on the grounds.

(Source: P.A. 87-1198, § 2; 91-223, § 5; 94-140, § 5; 96-1090, § 5; 96-1098, § 5; 96-1551, § 5; 97-333, § 550.)

Note.

Section 9995 of P.A. 96-1551 contains a "no acceleration or delay" provision.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effective Date. Section 7 of P.A. 87-1198 made this section effective upon becoming law. The Act was approved September 25, 1992.

Effect of Amendments. The 1999 amendment by P.A. 91-223, effective January 1, 2000, inserted subsection (a-5); added the definition of "Sex offense" in subsection (b); and added subdivision (c)(2).

The 2005 amendment by P.A. 94-140, effective July 7, 2005, added "or a substantially similar law of another state" in (c)(1), and added (c)(3).

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The 2010 amendment by P.A. 96-1090, effective January 1, 2011, inserted "or virtual presence, or both" in the introductory language of (a); added "or one whom he or she believes to be a child" in the introductory language of (a) and in (a)(2); and added the definitions of "Virtual presence" and "Webcam" to the end of (b).

The 2010 amendment by P.A. 96-1098, effective January 1, 2011, added (c)(4).

The 2011 amendment by P.A. 96-1551, effective July 1, 2011, added the subdivision heading; subsstituted "A" for "Any" and deleted "intent or" preceding "knowledge" in the introductory language of (a); and in (b), substituted "Section 11-0.1" for "Section 12-12" in the definition of Sexual act and substituted "Section 12-16.2" for "a violation of Section 12-13, 12-14, 12-14.1, 12-15, 12-16, or 12-16.2" in the definition of Sex offense.

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, combined earlier multiple amendments to the section.

CASE NOTES

Analysis

Construction
Insufficient Evidence
Mental State
Sentence
- Proper
Sexual Gratification

Construction

Defendant was properly convicted of sexual exploitation of a child under 720 ILCS 5/11-9.1(a)(1) because masturbation, although not defined by statute, did not require stimulation of defendant's genital organ in any specific way nor did require ejaculation; the evidence that, in his 18-month-old daughter's presence, defendant had a pornographic video in the VCR and had his erect penis three quarters of the ways exposed with his hand wrapped all the way around it supported his conviction. People v. Trego, Ill. App. 3d , Ill. Dec. , N.E.2d , 2010 Ill. App. LEXIS 1089 (2 Dist. Oct. 14, 2010).

As the crime of child pornography, 720 ILCS 5/11-20.1(a)(1)(vii), contained an element not included in the crime of sexual exploitation of a child, 720 ILCS 5/11-9(a-5), namely the photographing of the victim, the two crimes were not identical and the fact that a violation of the child pornography statute carried a harsher mandatory four-year sentence did not violate the proportionate penalties clause, Ill. Const. Art. I, § 11 (1970). People v. Myers, 359 Ill. App. 3d 341, 295 Ill. Dec. 588, 833 N.E.2d 421, 2005 Ill. App. LEXIS 789 (4 Dist. 2005).

Insufficient Evidence

State failed to prove the juvenile guilty of sexual exploitation of a child beyond a reasonable doubt because coercing, persuading or enticing required something more than making a single request of another; the legislature had not made the mere asking of a child to remove the child's clothing a violation of the sexual exploitation of a minor statute, 720 ILCS5/11-9.1(a-5). People v. Ryan B.

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(In re Ryan B.), 212 Ill. 2d 226, 288 Ill. Dec. 137, 817 N.E.2d 495, 2004 Ill. LEXIS 1026 (2004).

Mental State

For purposes of 720 ILCS 5/11-9.1(a)(2), it was not inherently implausible or unreasonable for the trier of fact in a juvenile proceeding involving a 16-year-old male minor and a 6-year-old female victim to infer from circumstantial evidence that the 16-year-old exposed his penis to the female victim for the purpose of the minor's sexual gratification or arousal. People v. Donald R. (In re Donald R.), 343 Ill. App. 3d 237, 277 Ill. Dec. 584, 796 N.E.2d 670, 2003 Ill. App. LEXIS 1103 (3 Dist. 2003).

Sentence

Where defendant was convicted of sexual exploitation of a child in violation of 720 ILCS 5/11-9.1(a)(1) and defendant was sentenced to 12 months of conditional discharge, the trial court did not abuse its discretion; the trial judge could have sentenced defendant to prison for any period less than a year, pursuant to 720 ILCS 5/11-9.1(a)(1) and 730 ILCS 5/5-8-3(a)(1), and the trial court took into consideration the mitigating circumstances in the case by sparing defendant a prison sentence. People v. Grochocki, 343 Ill. App. 3d 664, 277 Ill. Dec. 438, 796 N.E.2d 153, 2003 Ill. App. LEXIS 1237 (3 Dist. 2003).

- Proper

Trial court did not err in sentencing defendant for his violation of the Sex Offender Registration Act, 730 ILCS 150/1 et seq., as the penalty provisions of the Act did not violate the proportionate penalties clause of the Illinois Constitution, Ill. Const. Art. I, § 11 despite the fact that the sentence for violating the Act was a felony whereas the sentence for the underlying offense, sexual exploitation of a child, 720 ILCS 5/11-9.1, was a misdemeanor; the penalties were not unconstitutionally disproportionate because Act served the additional and distinct purpose of tracking the movements of sexual offenders to prevent the recurrence of attacks on adults as well as children. People v. Bonner, 356 Ill. App. 3d 386, 292 Ill. Dec. 303, 826 N.E.2d 444, 2005 Ill. App. LEXIS 175 (1 Dist. 2005), appeal denied, 215 Ill. 2d 601, 295 Ill. Dec. 522, 833 N.E.2d 4 (2005).

Sexual Gratification

It was not "inherently implausible" that a rational trier of fact could have found sufficient proof of defendant's sexual gratification to support his conviction for sexual exploitation of a child, even considering one victim's testimony that nothing came out of defendant's penis. The victims testified that defendant exposed himself to them, masturbated in front of them, and touched one of the victims inappropriately. People v. Alexander, 369 Ill. App. 3d 955, 308 Ill. Dec. 642, 862 N.E.2d 240, 2007 Ill. App. LEXIS 27 (1 Dist. 2007).

LEGAL PERIODICALS

For comment, "Protecting the Most Vulnerable Victims: Prosecution of Child Sex Offenses in Illinois post Crawford v. Washington," see 27 N. Ill. U. L. Rev. 95 (2006).

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RESEARCH REFERENCES

Statute protecting minors in a specified age range from rape or other sexual activity as applicable to defendant minor within protected age group. 18 ALR5th 856.

§ 720 ILCS 5/11-9.3. Presence within school zone by child sex offenders prohibited; approaching, contacting, residing with, or communicating with a child within certain places by child sex offenders prohibited

Sec. 11-9.3. Presence within school zone by child sex offenders prohibited; approaching, contacting, residing with, or communicating with a child within certain places by child sex offenders prohibited. (a) It is unlawful for a child sex offender to knowingly be present in any school building, on real property comprising any school, or in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school related activity when persons under the age of 18 are present in the building, on the grounds or in the conveyance, unless the offender is a parent or guardian of a student attending the school and the parent or guardian is: (i) attending a conference at the school with school personnel to discuss the progress of his or her child academically or socially, (ii) participating in child review conferences in which evaluation and placement decisions may be made with respect to his or her child regarding special education services, or (iii) attending conferences to discuss other student issues concerning his or her child such as retention and promotion and notifies the principal of the school of his or her presence at the school or unless the offender has permission to be present from the superintendent or the school board or in the case of a private school from the principal. In the case of a public school, if permission is granted, the superintendent or school board president must inform the principal of the school where the sex offender will be present. Notification includes the nature of the sex offender's visit and the hours in which the sex offender will be present in the school. The sex offender is responsible for notifying the principal's office when he or she arrives on school property and when he or she departs from school property. If the sex offender is to be present in the vicinity of children, the sex offender has the duty to remain under the direct supervision of a school official.

(a-5) It is unlawful for a child sex offender to knowingly be present within 100 feet of a site posted as a pick-up or discharge stop for a conveyance owned, leased, or contracted by a school to transport students to or from school or a school related activity when one or more persons under the age of 18 are present at the site.

(a-10) It is unlawful for a child sex offender to knowingly be present in any public park building or on real property comprising any public park when persons under the age of 18 are present in the building or on the grounds and to approach, contact, or communicate with a child under 18 years of age, unless the offender is a parent or guardian of a person under 18 years of age present in the building or on the grounds.

(b) It is unlawful for a child sex offender to knowingly loiter within 500 feet of a school building or real property comprising any school while persons under the age of 18 are present in the building or on the grounds, unless the offender is a parent or guardian of a

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student attending the school and the parent or guardian is: (i) attending a conference at the school with school personnel to discuss the progress of his or her child academically or socially, (ii) participating in child review conferences in which evaluation and placement decisions may be made with respect to his or her child regarding special education services, or (iii) attending conferences to discuss other student issues concerning his or her child such as retention and promotion and notifies the principal of the school of his or her presence at the school or has permission to be present from the superintendent or the school board or in the case of a private school from the principal. In the case of a public school, if permission is granted, the superintendent or school board president must inform the principal of the school where the sex offender will be present. Notification includes the nature of the sex offender's visit and the hours in which the sex offender will be present in the school. The sex offender is responsible for notifying the principal's office when he or she arrives on school property and when he or she departs from school property. If the sex offender is to be present in the vicinity of children, the sex offender has the duty to remain under the direct supervision of a school official.

(b-2) It is unlawful for a child sex offender to knowingly loiter on a public way within 500 feet of a public park building or real property comprising any public park while persons under the age of 18 are present in the building or on the grounds and to approach, contact, or communicate with a child under 18 years of age, unless the offender is a parent or guardian of a person under 18 years of age present in the building or on the grounds.

(b-5) It is unlawful for a child sex offender to knowingly reside within 500 feet of a school building or the real property comprising any school that persons under the age of 18 attend. Nothing in this subsection (b-5) prohibits a child sex offender from residing within 500 feet of a school building or the real property comprising any school that persons under 18 attend if the property is owned by the child sex offender and was purchased before the effective date of this amendatory Act of the 91st General Assembly.

(b-10) It is unlawful for a child sex offender to knowingly reside within 500 feet of a playground, child care institution, day care center, part day child care facility, day care home, group day care home, or a facility providing programs or services exclusively directed toward persons under 18 years of age. Nothing in this subsection (b-10) prohibits a child sex offender from residing within 500 feet of a playground or a facility providing programs or services exclusively directed toward persons under 18 years of age if the property is owned by the child sex offender and was purchased before July 7, 2000. Nothing in this subsection (b-10) prohibits a child sex offender from residing within 500 feet of a child care institution, day care center, or part day child care facility if the property is owned by the child sex offender and was purchased before June 26, 2006. Nothing in this subsection (b-10) prohibits a child sex offender from residing within 500 feet of a day care home or group day care home if the property is owned by the child sex offender and was purchased before August 14, 2008 (the effective date of Public Act 95-821).

(b-15) It is unlawful for a child sex offender to knowingly reside within 500 feet of the victim of the sex offense. Nothing in this subsection (b-15) prohibits a child sex offender

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from residing within 500 feet of the victim if the property in which the child sex offender resides is owned by the child sex offender and was purchased before August 22, 2002.

This subsection (b-15) does not apply if the victim of the sex offense is 21 years of age or older.

(b-20) It is unlawful for a child sex offender to knowingly communicate, other than for a lawful purpose under Illinois law, using the Internet or any other digital media, with a person under 18 years of age or with a person whom he or she believes to be a person under 18 years of age, unless the offender is a parent or guardian of the person under 18 years of age.

(c) It is unlawful for a child sex offender to knowingly operate, manage, be employed by, volunteer at, be associated with, or knowingly be present at any: (i) facility providing programs or services exclusively directed toward persons under the age of 18; (ii) day care center; (iii) part day child care facility; (iv) child care institution; (v) school providing before and after school programs for children under 18 years of age; (vi) day care home; or (vii) group day care home. This does not prohibit a child sex offender from owning the real property upon which the programs or services are offered or upon which the day care center, part day child care facility, child care institution, or school providing before and after school programs for children under 18 years of age is located, provided the child sex offender refrains from being present on the premises for the hours during which: (1) the programs or services are being offered or (2) the day care center, part day child care facility, child care institution, or school providing before and after school programs for children under 18 years of age, day care home, or group day care home is operated.

(c-5) It is unlawful for a child sex offender to knowingly operate, manage, be employed by, or be associated with any county fair when persons under the age of 18 are present.

(c-6) It is unlawful for a child sex offender who owns and resides at residential real estate to knowingly rent any residential unit within the same building in which he or she resides to a person who is the parent or guardian of a child or children under 18 years of age. This subsection shall apply only to leases or other rental arrangements entered into after January 1, 2009 (the effective date of Public Act 95-820).

(c-7) It is unlawful for a child sex offender to knowingly offer or provide any programs or services to persons under 18 years of age in his or her residence or the residence of another or in any facility for the purpose of offering or providing such programs or services, whether such programs or services are offered or provided by contract, agreement, arrangement, or on a volunteer basis.

(c-8) It is unlawful for a child sex offender to knowingly operate, whether authorized to do so or not, any of the following vehicles: (1) a vehicle which is specifically designed, constructed or modified and equipped to be used for the retail sale of food or beverages, including but not limited to an ice cream truck; (2) an authorized emergency vehicle; or (3) a rescue vehicle.

(d) Definitions. In this Section:

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(1) "Child sex offender" means any person who:

(i) has been charged under Illinois law, or any substantially similar federal law or law of another state, with a sex offense set forth in paragraph (2) of this subsection (d) or the attempt to commit an included sex offense, and:

(A) is convicted of such offense or an attempt to commit such offense; or

(B) is found not guilty by reason of insanity of such offense or an attempt to commit such offense; or

(C) is found not guilty by reason of insanity pursuant to subsection (c) of Section 104-25 of the Code of Criminal Procedure of 1963 [725 ILCS 5/104-25] of such offense or an attempt to commit such offense; or

(D) is the subject of a finding not resulting in an acquittal at a hearing conducted pursuant to subsection (a) of Section 104-25 of the Code of Criminal Procedure of 1963 for the alleged commission or attempted commission of such offense; or

(E) is found not guilty by reason of insanity following a hearing conducted pursuant to a federal law or the law of another state substantially similar to subsection (c) of Section 104-25 of the Code of Criminal Procedure of 1963 of such offense or of the attempted commission of such offense; or

(F) is the subject of a finding not resulting in an acquittal at a hearing conducted pursuant to a federal law or the law of another state substantially similar to subsection (a) of Section 104-25 of the Code of Criminal Procedure of 1963 for the alleged violation or attempted commission of such offense; or

(ii) is certified as a sexually dangerous person pursuant to the Illinois Sexually Dangerous Persons Act [725 ILCS 205/0.01 et seq.], or any substantially similar federal law or the law of another state, when any conduct giving rise to such certification is committed or attempted against a person less than 18 years of age; or

(iii) is subject to the provisions of Section 2 of the Interstate Agreements on Sexually Dangerous Persons Act [45 ILCS 20/2].

Convictions that result from or are connected with the same act, or result from offenses committed at the same time, shall be counted for the purpose of this Section as one conviction. Any conviction set aside pursuant to law is not a conviction for purposes of this Section.

(2) Except as otherwise provided in paragraph (2.5), "sex offense" means:

(i) A violation of any of the following Sections of the Criminal Code of 1961: 10-7 [720 ILCS 5/10-7] (aiding or abetting child abduction under Section 10-5(b)(10) [720 ILCS 5/10-5]), 10-5(b)(10) (child luring), 11-1.40 (predatory criminal sexual assault of a child) [720 ILCS 5/11-1.40], 11-6 [720 ILCS 5/11-6] (indecent solicitation of a child), 11-6.5 [720 ILCS 5/11-6.5] (indecent solicitation of an adult), 11-9.1 [720 ILCS 5/11-9.1] (sexual exploitation of a child), 11-14.4 (promoting juvenile prostitution) [720 ILCS 5/11-14.4], 11-18.1 [720 ILCS 5/11-18.1] (patronizing a juvenile prostitute), 11-20.1

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[720 ILCS 5/11-20.1] (child pornography), 11-20.1B [720 ILCS 5/11-20.1B] (aggravated child pornography), 11-21 [720 ILCS 5/11-21] (harmful material), 12-33 [720 ILCS 5/12-33] (ritualized abuse of a child), 11-20 [720 ILCS 5/11-20] (obscenity) (when that offense was committed in any school, on real property comprising any school, in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school related activity, or in a public park), 11-30 [720 ILCS 5/11-1.30] (public indecency) (when committed in a school, on real property comprising a school, in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school related activity, or in a public park). An attempt to commit any of these offenses.

(ii) A violation of any of the following Sections of the Criminal Code of 1961 [720 ILCS 5/1-6 et seq.], when the victim is a person under 18 years of age: 11-1.20 (criminal sexual assault), 11-1.30 (aggravated criminal sexual assault), 11-1.50 [720 ILCS 5/11-1.50] (criminal sexual abuse), 11-1.60 [720 ILCS 5/11-1.60] (aggravated criminal sexual abuse). An attempt to commit any of these offenses.

(iii) A violation of any of the following Sections of the Criminal Code of 1961, when the victim is a person under 18 years of age and the defendant is not a parent of the victim:

10-1 (kidnapping),

10-2 (aggravated kidnapping),

10-3 (unlawful restraint),

10-3.1 [720 ILCS 5/10-3.1] (aggravated unlawful restraint).

An attempt to commit any of these offenses.

(iv) A violation of any former law of this State substantially equivalent to any offense listed in clause (2)(i) of subsection (d) of this Section.

(2.5) For the purposes of subsections (b-5) and (b-10) only, a sex offense means:

(i) A violation of any of the following Sections of the Criminal Code of 1961:

10-5(b)(10) (child luring), 10-7 (aiding or abetting child abduction under Section 10-5(b)(10)), 11-1.40 (predatory criminal sexual assault of a child), 11-6 (indecent solicitation of a child), 11-6.5 (indecent solicitation of an adult), 11-14.4 (promoting juvenile prostitution), 11-18.1 (patronizing a juvenile prostitute), 11-20.1 (child pornography), 11-20.1B (aggravated child pornography), or 12-33 (ritualized abuse of a child). An attempt to commit any of these offenses.

(ii) A violation of any of the following Sections of the Criminal Code of 1961, when the victim is a person under 18 years of age: 11-1.20 (criminal sexual assault), 11-1.30 (aggravated criminal sexual assault), 11-1.60 (aggravated criminal sexual abuse), and subsection (a) of Section 11-1.50 (criminal sexual abuse). An attempt to commit any of these offenses.

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(iii) A violation of any of the following Sections of the Criminal Code of 1961, when the victim is a person under 18 years of age and the defendant is not a parent of the victim:

10-1 [720 ILCS 5/10-1] (kidnapping),

10-2 [720 ILCS 5/10-2] (aggravated kidnapping),

10-3 [720 ILCS 5/10-3] (unlawful restraint),

10-3.1 [720 ILCS 5/10-3.1] (aggravated unlawful restraint).

An attempt to commit any of these offenses.

(iv) A violation of any former law of this State substantially equivalent to any offense listed in this paragraph (2.5) of this subsection.

(3) A conviction for an offense of federal law or the law of another state that is substantially equivalent to any offense listed in paragraph (2) of subsection (d) of this Section shall constitute a conviction for the purpose of this Section. A finding or adjudication as a sexually dangerous person under any federal law or law of another state that is substantially equivalent to the Sexually Dangerous Persons Act shall constitute an adjudication for the purposes of this Section.

(4) "Authorized emergency vehicle", "rescue vehicle", and "vehicle" have the meanings ascribed to them in Sections 1-105, 1-171.8 and 1-217 [625 ILCS 5/1-105, 625 ILCS 5/1-171.8 and 625 ILCS 5/1-217], respectively, of the Illinois Vehicle Code.

(5) "Child care institution" has the meaning ascribed to it in Section 2.06 of the Child Care Act of 1969 [225 ILCS 10/2.06].

(6) "Day care center" has the meaning ascribed to it in Section 2.09 of the Child Care Act of 1969 [225 ILCS 10/2.09].

(7) "Day care home" has the meaning ascribed to it in Section 2.18 of the Child Care Act of 1969 [225 ILCS 10/2.18].

(8) "Facility providing programs or services directed towards persons under the age of 18" means any facility providing programs or services exclusively directed towards persons under the age of 18.

(9) "Group day care home" has the meaning ascribed to it in Section 2.20 of the Child Care Act of 1969 [225 ILCS 10/2.20].

(10) "Internet" has the meaning set forth in Section 16J-5 of this Code [720 ILCS 5/16J-5].

(11) "Loiter" means:

(i) Standing, sitting idly, whether or not the person is in a vehicle, or remaining in or around school or public park property.

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(ii) Standing, sitting idly, whether or not the person is in a vehicle, or remaining in or around school or public park property, for the purpose of committing or attempting to commit a sex offense.

(iii) Entering or remaining in a building in or around school property, other than the offender's residence.

(12) "Part day child care facility" has the meaning ascribed to it in Section 2.10 of the Child Care Act of 1969 [225 ILCS 10/2.10].

(13) "Playground" means a piece of land owned or controlled by a unit of local government that is designated by the unit of local government for use solely or primarily for children's recreation.

(14) "Public park" includes a park, forest preserve, or conservation area under the jurisdiction of the State or a unit of local government.

(15) "School" means a public or private preschool or elementary or secondary school.

(16) "School official" means the principal, a teacher, or any other certified employee of the school, the superintendent of schools or a member of the school board.

(e) For the purposes of this Section, the 500 feet distance shall be measured from: (1) the edge of the property of the school building or the real property comprising the school that is closest to the edge of the property of the child sex offender's residence or where he or she is loitering, and (2) the edge of the property comprising the public park building or the real property comprising the public park, playground, child care institution, day care center, part day child care facility, or facility providing programs or services exclusively directed toward persons under 18 years of age, or a victim of the sex offense who is under 21 years of age, to the edge of the child sex offender's place of residence or place where he or she is loitering.

(f) Sentence. A person who violates this Section is guilty of a Class 4 felony.

(Source: P.A. 90-234, § 5; 90-655, § 160; 91-356, § 5; 91-911, § 5; 94-158, § 5; 94-164, § 5; 94-170, § 5; 95-331, § 1030; 95-440, § 10; 95-640, § 5; 95-819, § 5; 95-876, § 315; 96-328, § 330; 96-710, § 25; 96-1551, § 5.)

Note.

Section 9995 of P.A. 96-1551 contains a "no acceleration or delay" provision.

Effective Date. This section became effective January 1, 1998 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 1998 amendment by P.A. 90-655, effective July 30, 1998, renumbered this section, which was formerly 720 ILCS 5/11-9.2 as enacted by P.A. 90-234.

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The 1999 amendment by P.A. 91-356, effective January 1, 2000, in subsection (a); inserted the language beginning "is a parent or guardian" at the end of the first sentence, added the second through fifth sentences, and deleted former subsections (a)(1) and (a)(2), which contained exceptions to the rule prohibiting a child sex offender from any school premises; in subsection (b) inserted the language beginning "is a parent or guardian" at the end of the first sentence and added the second through fifth sentences and deleted former subsections (b)(1) and (b)(2), which contained exceptions to the rule prohibiting child sex offenders from loitering within 500 feet of school premises; and added subsection (c)(6).

The 2000 amendment by P.A. 91-911, effective July 7, 2000, inserted subsection (b-5); inserted "Except as otherwise provided in paragraph (2.5)" in subsection (c)(2); and inserted subsection (c)(2.5).

The 2005 amendment by P.A. 94-158, effective July 11, 2005, rewrote (a) and (b).

The 2005 amendment by P.A. 94-164, effective January 1, 2006, deleted "on a public way" in the first sentence of (b) after "loiter"; and added (c)(5)(iii).

The 2005 amendment by P.A. 94-170, effective July 11, 2005, rewrote the section.

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, deleted (1) and (2) at the end of (a) and (b).

The 2007 amendment by P.A. 95-440, effective August 27, 2007, rewrote (a); and added (a-5) and made a stylistic change in (b).

The 2007 amendment by P.A. 95-640, effective June 1, 2008, made stylistic changes in (a) and (b); in (c)(2)(i) and in (c)(2.5)(i), inserted "11-20.3 (aggravated child pornography)"; and made related changes.

The 2008 amendment by P.A. 95-819, effective January 1, 2009, added (c-5); and deleted former blank subsections.

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2007, combined earlier multiple amendments to the section.

The 2009 revisory amendment by P.A. 96-328, effective August 11, 2009, combined earlier multiple amendments to the section.

The 2009 amendment by P.A. 96-710, effective January 1, 2010, in (c)(2)(i) and in the undesignated paragraph of (c)(2.5)(i), substituted "aiding or abetting" for "aiding and abetting".

The 2011 amendment by P.A. 96-1551, effective July 1, 2011, added "approaching, contacting, residing with, or communicating with a child within certain places by child sex offenders prohibited" to the end of the section heading; and rewrote the section.

CASE NOTES

Constitutionality

Defendant's conviction pursuant to 720 ILCS 5/11-9.3(b-5) of knowingly residing within 500 feet of a school building that persons under the age of 18 attended, in a case where defendant was already a convicted sex offender, did not violate ex post facto laws in either the Illinois or United States Constitutions. That law was aimed at protecting the public and not on imposing

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punishment on defendant. People v. Morgan, 377 Ill. App. 3d 821, 317 Ill. Dec. 339, 881 N.E.2d 507, 2007 Ill. App. LEXIS 1310 (1 Dist. 2007).

A felony conviction for violation of 720 ILCS 5/11-9.3 is not disproportionate to the level of culpability required to commit the offense itself and, thus, does not violate the proportionate penalties clause. People v. Stork, 305 Ill. App. 3d 714, 238 Ill. Dec. 941, 713 N.E.2d 187 (2 Dist. 1999), appeal denied, 185 Ill. 2d 659, 242 Ill. Dec. 148, 720 N.E.2d 1103 (1999).

This section does not violate the Eighth Amendment of the U.S. Constitution, notwithstanding the contention that it criminalizes the status of being a former child sex offender. People v. Stork, 305 Ill. App. 3d 714, 238 Ill. Dec. 941, 713 N.E.2d 187 (2 Dist. 1999), appeal denied, 185 Ill. 2d 659, 242 Ill. Dec. 148, 720 N.E.2d 1103 (1999).

This section is not unconstitutionally vague as applied to a former child sex offender, who entered the front office of a school to ask permission to distribute literature for his disc jockey business. People v. Stork, 305 Ill. App. 3d 714, 238 Ill. Dec. 941, 713 N.E.2d 187 (2 Dist. 1999), appeal denied, 185 Ill. 2d 659, 242 Ill. Dec. 148, 720 N.E.2d 1103 (1999).

This section does not violate the substantive due process rights of a former child sex offender. People v. Stork, 305 Ill. App. 3d 714, 238 Ill. Dec. 941, 713 N.E.2d 187 (2 Dist. 1999), appeal denied, 185 Ill. 2d 659, 242 Ill. Dec. 148, 720 N.E.2d 1103 (1999).

A former child sex offender was not deprived of his right to procedural due process when this section was enacted without prior notice to former child sex offenders that previously-lawful conduct was criminalized by the section. People v. Stork, 305 Ill. App. 3d 714, 238 Ill. Dec. 941, 713 N.E.2d 187 (2 Dist. 1999), appeal denied, 185 Ill. 2d 659, 242 Ill. Dec. 148, 720 N.E.2d 1103 (1999).

§ 720 ILCS 5/11-30. Public indecency

Sec. 11-30. Public indecency. (a) Any person of the age of 17 years and upwards who performs any of the following acts in a public place commits a public indecency:

(1) An act of sexual penetration or sexual conduct; or

(2) A lewd exposure of the body done with intent to arouse or to satisfy the sexual desire of the person.

Breast-feeding of infants is not an act of public indecency.

(b) "Public place" for purposes of this Section means any place where the conduct may reasonably be expected to be viewed by others.

(c) Sentence.

Public indecency is a Class A misdemeanor. A person convicted of a third or subsequent violation for public indecency is guilty of a Class 4 felony. Public indecency is a Class 4 felony if committed by a person 18 years of age or older who is on or within 500 feet of elementary or secondary school grounds when children are present on the grounds.

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(Source: P.A. 83-1067; 89-59, § 5; 91-115, § 5; 96-1098, § 5; 96-1551, § 5.)

Note.

This section was renumbered by P.A. 96-1551 as 720 ILCS 5/11-30, effective July 1, 2011.

This section was Ill.Rev.Stat., Ch. 38, Para. 11-9.

Section 9995 of P.A. 96-1551 contains a "no acceleration or delay" provision.

Effect of Amendments. The 1995 amendment by P.A. 89-59, effective January 1, 1996, in subsection (a), added the second paragraph.

The 1999 amendment by P.A. 91-115, effective January 1, 2000, added the last sentence in subsection (c).

The 2010 amendment by P.A. 96-1098, effective January 1, 2011, added the last sentence to the end of (c).

The 2011 amendment by P.A. 96-1551, effective July 1, 2011, renumbered the section, which was formerly 720 ILCS 5/11-9; added the subdivision heading; deleted "as defined in Section 12-12 of this Code" following "sexual conduct" in (a)(1).

CASE NOTES

Analysis

Constitutionality
Commercial Erotic Displays
Complaint
- Held Insufficient
- Held Sufficient
- Sufficiency
Disorderly Conduct
Elements of Offense
Evidence
- Held Insufficient
- Held Sufficient
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Public Place
- In General
- Construction
- Home
- No Other People
- Park
- Purpose
- Window

Sexual Conduct
- Shown
- Two People Required

Constitutionality

Prosecution under this section did not unconstitutionally invade the defendant's right to privacy. People v. Garrison, 82 Ill. 2d 444, 45 Ill. Dec. 132, 412 N.E.2d 483 (1980), appeal dismissed, 450 U.S. 961, 101 S. Ct. 1475, 67 L. Ed. 2d 610 (1981).

Because this section is aimed at public displays which do not involve protected expressive rights under U.S. Const., Amend. I, defendant's contention that the statute was overbroad was rejected. People v. Garrison, 82 Ill. 2d 444, 45 Ill. Dec. 132, 412 N.E.2d 483 (1980), appeal dismissed, 450 U.S. 961, 101 S. Ct. 1475, 67 L. Ed. 2d 610 (1981).

Defendant's contention that this section was unconstitutionally vague was without merit. People v. Garrison, 82 Ill. 2d 444, 45 Ill. Dec. 132, 412 N.E.2d 483 (1980), appeal dismissed, 450 U.S. 961, 101 S. Ct. 1475, 67 L. Ed. 2d 610 (1981).

Prosecution of some defendants under the obscenity statute (720 ILCS 5/11-20) and prosecution of others under this section, does not violate equal protection by unfairly burdening those who fall into the latter category, because the elements of the obscenity offense are more narrowly drawn and more difficult to prove. People v. Garrison, 82 Ill. 2d 444, 45 Ill. Dec. 132, 412 N.E.2d 483 (1980), appeal dismissed, 450 U.S. 961, 101 S. Ct. 1475, 67 L. Ed. 2d 610 (1981).

Commercial Erotic Displays

Defendants' nude dancing performances were "commercially erotic displays" where patrons were required to pay an admission fee of two dollars to be admitted to a "booth" and then to purchase coins in order to observe the performance through a window overlooking a stage. Furthermore, there is no doubt that the activity in question was commercial; therefore, the public indecency statute was inapplicable to their conduct. People v. Haven, 247 Ill. App. 3d 1040, 187 Ill. Dec. 669, 618 N.E.2d 260 (1 Dist. 1992).

The public indecency statute is applicable to only those exposures which are shocking and disturbing to the immediate audience, and not those commercial erotic displays which were designed to sexually arouse or gratify the audience. People v. Haven, 247 Ill. App. 3d 1040, 187 Ill. Dec. 669, 618 N.E.2d 260 (1 Dist. 1992).

Complaint

- Held Insufficient

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Masturbation itself does not necessarily involve a lewd exposure, and a complaint which did not allege a lewd exposure of the body failed to allege an essential element of the crime of public indecency; therefore, reversal of defendant's conviction of performing an act of public indecency was required. People v. Neumann, 20 Ill. App. 3d 825, 314 N.E.2d 225 (1 Dist. 1974).

Where the complaints merely alleged that the defendant did wilfully and unlawfully perform a lewd or indecent act, they failed to contain any description of the acts alleged to constitute a violation of the statute, and failed to allege that the conduct charged tended to debauch the public morals; therefore, the complaints were insufficient to charge defendant with a criminal offense. People v. Collins, 35 Ill. App. 2d 228, 182 N.E.2d 387 (3 Dist. 1962).

- Held Sufficient

Where complaint charged that defendant, while in a public place, lewdly exposed his body with the intent of arousing the sexual desires of himself or someone else, set out the specific date, time and the location when the act occured, and specified which statute defendant had allegedly violated, it apprised defendant of the offense with which he was charged thereby enabling him to prepare his defense and plead the judgment as a bar to a subsequent prosecution for the same offense. People v. Mikota, 1 Ill. App. 3d 114, 273 N.E.2d 618 (1 Dist. 1971).

In a public indecency action, the fact the complaint was made by 12 year old girl's stepfather rather than by her, the person who was subjected to the exposure, did not render the complaint defective and it was sufficient to inform defendant of the nature and cause of the accusation against him. People v. Mikota, 1 Ill. App. 3d 114, 273 N.E.2d 618 (1 Dist. 1971).

- Sufficiency

A complaint is sufficient even though it is in the terms of the statute creating the offense, when that statute particularly defines the act constituting such offense thereby apprising defendant of the precise nature of the charge against him. People v. Mikota, 1 Ill. App. 3d 114, 273 N.E.2d 618 (1 Dist. 1971).

Disorderly Conduct

A minor could not be prosecuted for public indecency because he was not 17 years or older but he could be prosecuted under 720 ILCS 5/26-1(a)(1) for exposing himself to another in public. People v. P.S., 147 Ill. App. 3d 707, 101 Ill. Dec. 143, 498 N.E.2d 325 (4 Dist. 1986).

Elements of Offense

The purpose for which the act is done is a necessary element and must be charged. People v. Harris, 205 Ill. App. 3d 873, 150 Ill. Dec. 747, 563 N.E.2d 874 (1 Dist. 1990).

Evidence

- Held Insufficient

Evidence was held insufficient to sustain defendant's conviction of public indecency. People v. Taylor, 244 Ill. App. 3d 806, 184 Ill. Dec. 67, 612 N.E.2d 943 (4 Dist. 1993).

The evidence was not of the clear and convincing nature required to establish guilt beyond a reasonable doubt of public indecency. People v. Grear, 42 Ill. 2d 578, 248 N.E.2d 661 (1969).

Where one of two girls admittedly did not see defendant expose himself, which was in fact the girl who received the attention of the defendant and to whom he addressed his inquiry while she was only two feet from his truck, the evidence was not of the clear and convincing nature required to

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establish guilt beyond a reasonable doubt. People v. Neidhofer, 126 Ill. App. 2d 65, 261 N.E.2d 559 (1 Dist. 1970).

- Held Sufficient

Evidence was held sufficient to prove defendant guilty of public indecency by masturbating in two different public places, the living room of his family residence and the bathroom of the family residence, based on the observations of his children. People v. C.H., 255 Ill. App. 3d 315, 193 Ill. Dec. 326, 626 N.E.2d 359 (2 Dist. 1993), appeal denied, 158 Ill. 2d 555, 206 Ill. Dec. 839, 645 N.E.2d 1361 (1994).

The evidence was sufficient to support the trial judge's finding that the defendant was guilty beyond a reasonable doubt of public indecency as charged. People v. Sebag, 110 Ill. App. 3d 821, 66 Ill. Dec. 502, 443 N.E.2d 25 (2 Dist. 1982).

The evidence sustains the local license commissioner's findings that the management of a club knowingly permitted acts of lewdness to be committed upon the licensed premises and that the licensee managed a disorderly establishment in violation of a city ordinance. Cabaret, Inc. v. Daley, 66 Ill. App. 3d 326, 23 Ill. Dec. 374, 384 N.E.2d 10 (1 Dist. 1978).

Where defendant was walking in an area before he exposed himself to the complainant's daughter and then laughed as complainant screamed at him, the record adequately supported the conclusion that defendant possessed the requisite mental state to sustain his conviction of public indecency. People v. Stolfo, 46 Ill. App. 3d 616, 5 Ill. Dec. 101, 361 N.E.2d 101 (1 Dist. 1977).

In public indecency prosecution, defendant's denial of doing act that a witness saw was a matter of credibility, and insufficient to raise a reasonable doubt. People v. Christ, 32 Ill. App. 3d 1014, 337 N.E.2d 53 (4 Dist. 1975).

Evidence was sufficient to sustain defendant's conviction of public indecency. People v. Mikota, 1 Ill. App. 3d 114, 273 N.E.2d 618 (1 Dist. 1971); People v. Williams, 84 Ill. App. 2d 1, 228 N.E.2d 501 (1 Dist. 1967).

Illustrative Cases

Where witnesses testified that "mooning" meant nothing more than a person's merely showing his bare buttocks, even this limited interpretation was sufficient to impute commission of the crime of indecent exposure under this section. Babb v. Minder, 806 F.2d 749 (7th Cir. 1986).

Where a defendant was observed by two minors standing naked in front of a window masturbating, he was properly convicted and concurrently sentenced on two counts of public indecency and two counts of contributing to the sexual delinquency of a minor. People v. Stoehr, 82 Ill. App. 3d 827, 38 Ill. Dec. 203, 403 N.E.2d 291 (2 Dist. 1980).

The evidence was sufficient to sustain a defendant's conviction for public indecency where a police officer testified that he observed the defendant at different times on the same evening stand up from his dining room table, throw his bathrobe back behind his hips, expose his nude crotch area, take his penis in his hand and move his hand about, and the defendant performed these acts before an unveiled glass doors, with a light overhead, in plain view of the casual observer in the neighbor's living room and the defendant made no attempt to conceal his activities, but, to the contrary, did everything possible in order to expose his lewd acts to others. People v. Legel, 24 Ill. App. 3d 554, 321 N.E.2d 164 (2 Dist. 1974).

Indictment

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- Allegations Required

A complaint charging an offense under former version of this section) must have alleged the acts constituting the offense. People v. Collins, 35 Ill. App. 2d 228, 182 N.E.2d 387 (3 Dist. 1962).

- Amendment Not Prejudicial

No error was committed when the state was permitted to amend the complaint from the citation of one subdivision of this section to another subdivision, a technical defect which did not result in prejudice to the defendant sufficient to warrant reversal. People v. Harris, 205 Ill. App. 3d 873, 150 Ill. Dec. 747, 563 N.E.2d 874 (1 Dist. 1990).

Intent to Arouse

- Evidence Held Sufficient

An inference of intent to arouse or satisfy defendant's sexual desires was well justified; the evidence was clear and convincing and sufficient to establish guilt beyond a reasonable doubt. People v. Noll, 109 Ill. App. 3d 306, 64 Ill. Dec. 783, 440 N.E.2d 335 (4 Dist. 1982).

In prosecution for public indecency evidence supported the conclusion that defendant intended to arouse or satisfy his sexual desire and thus evidence was sufficient to sustain conviction. People v. Christ, 32 Ill. App. 3d 1014, 337 N.E.2d 53 (4 Dist. 1975).

- Required

To sustain a conviction under this section, it must be proved that a defendant has committed a lewd exposure of the body done with intent to arouse or to satisfy the sexual desire of the person. People v. Legel, 24 Ill. App. 3d 554, 321 N.E.2d 164 (2 Dist. 1974).

Lesser Included Offense

Where there was no evidence presented that the defendant's acts of exposure were done with intent to arouse or satisfy desire of defendant but rather that defendant disrobed in the hope of achieving sexual gratification the trial court did not err in refusing to give the lesser included offense instruction on public indecency based on lewd exposure because the jury could have rationally convicted defendant of public indecency based on lewd exposure where it was not established that act was done with the intent to arouse or satisfy defendant's sexual desire. People v. Jones, 175 Ill. 2d 126, 221 Ill. Dec. 843, 676 N.E.2d 646 (1997).

Where defendant's act of exposing himself was not done for the purpose of arousal but as a prelude to sexual conduct between victim and defendant for the purpose of sexual gratification, public indecency based on lewd exposure was not an included offense of attempt (aggravated criminal sexual abuse). People v. Jones, 276 Ill. App. 3d 1006, 213 Ill. Dec. 499, 659 N.E.2d 415 (4 Dist. 1995), rev'd on other grounds, 175 Ill. 2d 126, 22 Ill. Dec. 843, 676 N.E.2d 646 (1997).

The offense of public indecency is not a lesser included offense of contributing to the sexual delinquency as a minor. People v. Stoehr, 82 Ill. App. 3d 827, 38 Ill. Dec. 203, 403 N.E.2d 291 (2 Dist. 1980).

Open Behavior

The duty lies with the deviate to keep his activities private. People v. Legel, 24 Ill. App. 3d 554, 321 N.E.2d 164 (2 Dist. 1974).

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Public Place

- In General

The commission of a lewd act in a prison cell or even in a person's own home may, under proper circumstances, be considered public indecency. S & F Corp. v. Bilandic, 62 Ill. App. 3d 193, 19 Ill. Dec. 262, 378 N.E.2d 1137 (1 Dist. 1978).

- Construction

It is the probability of public view that is crucial rather than the ownership or use of the particular real estate upon which the act occurs. For example, a person standing nude before a lighted window of his private apartment at night, adjacent to a well traveled public sidewalk would be, for purposes of this statute, in a public place, contrawise, a couple in a parked car on a public right-of-way but in a lonely country lane might not be in a public place, depending upon the likelihood of others traversing this particular area at such hours. People v. Legel, 24 Ill. App. 3d 554, 321 N.E.2d 164 (2 Dist. 1974).

- Home

Public place is specifically defined as any place where the conduct may reasonably be expected to be viewed by others and may, in some instances, include a room in one's own home; therefore, where it was reasonably foreseeable that lewd conduct would be viewed by the casual public observer, there was a reasonable expectation of public view and the acts could be held to have occurred in a "public place." People v. Legel, 24 Ill. App. 3d 554, 321 N.E.2d 164 (2 Dist. 1974).

- No Other People

Where an act of indecency took place in a club open to the public for business, where there could be no expectancy of privacy, the argument of a plaintiff charged with knowingly permitting an act of public indecency, that there were no other persons in that area of the room, was irrelevant. Cabaret, Inc. v. Daley, 66 Ill. App. 3d 326, 23 Ill. Dec. 374, 384 N.E.2d 10 (1 Dist. 1978).

- Park

Park, where people walked their dogs and jogged and where the defendant not only could have been but was in fact seen by a police officer riding in an automobile on an access road, was indeed a "public place" in that it was a place where there was a high probability that the deviate conduct would be viewed by other members of the public. People v. Baus, 16 Ill. App. 3d 136, 305 N.E.2d 592 (1 Dist. 1973).

- Purpose

Subsection (b) of this section was added to forestall unnecessary ambiguities arising over the phrase "public place" absent statutory definition. People v. Legel, 24 Ill. App. 3d 554, 321 N.E.2d 164 (2 Dist. 1974).

- Window

Apartment window of defendant charged with public indecency for standing nude before a lighted window of his private apartment and having an erection was a public place for purposes of this section. People v. Christ, 32 Ill. App. 3d 1014, 337 N.E.2d 53 (4 Dist. 1975).

Sexual Conduct

- Shown

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Where defendants were charged with public indecency and were arrested only after an officer observed one defendant "simulating" sexual intercourse and oral sex in his presence at the theatre, defendants were properly arrested. City of Chicago v. Hanson, 105 Ill. App. 3d 1017, 61 Ill. Dec. 631, 435 N.E.2d 120 (1 Dist. 1981).

- Two People Required

Subdivision (a)(1) of this section does not plainly embrace the conduct of the accused where the accused touches himself; it requires actual physical contact between a victim and an accused. People v. Harris, 205 Ill. App. 3d 873, 150 Ill. Dec. 747, 563 N.E.2d 874 (1 Dist. 1990).

RESEARCH REFERENCES

Indecent exposure: What is "person.", 63 ALR4th 1040.

Regulation of exposure of female, but not male breasts. 67 ALR5th 431.

What constitutes "public place" within meaning of state statute or local ordinance prohibiting indecency or commission of sexual act in public place. 95 ALR5th 229.

Part C.
Offenses Directed Against Property

Subdivision 35.

Miscellaneous Special Fraud

Article 21.

Damage and Trespass to Property

§ 720 ILCS 5/21-5.5. Criminal trespass to a safe school zone

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Sec. 21-5.5. Criminal trespass to a safe school zone. (a) As used in this Section:

"Employee" means a person employed by a school whose relationship with that agency constitutes an employer-employee relationship under the usual common law rules, and who is not an independent contractor. "Employee" includes, but is not limited to, a teacher, student teacher, aide, secretary, custodial engineer, coach, or his or her designee.

"School administrator" means the school's principal, or his or her designee.

"Safe school zone" means an area that encompasses any of the following places during regular school hours or within 60 minutes before or after the school day or 60 minutes before or after a school-sponsored activity. This shall include any school property, ground, or street, sidewalk, or public way immediately adjacent thereto and any public right-of-way situated immediately adjacent to school property. The safe school zone shall not include any portion of the highway not actually on school property.

"School activity" means and includes any school session, any extracurricular activity or event sponsored by or participated in by the school, and the 60-minute periods immediately preceding and following any session, activity, or event.

"Student" means any person enrolled or previously enrolled in a school.

(b) A person commits the offense of criminal trespass to a safe school zone when he or she knowingly:

(1) enters or remains in a safe school zone without lawful business, when as a student or employee, who has been suspended, expelled, or dismissed for disrupting the orderly operation of the school, and as a condition of the suspension or dismissal, has been denied access to the safe school zone for the period of the suspension or in the case of dismissal for a period not to exceed the term of expulsion, and has been served in person or by registered or certified mail, at the last address given by that person, with a written notice of the suspension or dismissal and condition; or

(2) enters or remains in a safe school zone without lawful business, once being served either in person or by registered or certified mail that his or her presence has been withdrawn by the school administrator, or his or her designee, and whose presence or acts interfere with, or whenever there is reasonable suspicion to believe, such person will disrupt the orderly operation, or the safety, or peaceful conduct of the school or school activities. This clause (b)(2) has no application to conduct protected by the Illinois Educational Labor Relations Act [115 ILCS 5/1 et seq.] or any other law applicable to labor relations. This clause (b)(2) has no application to conduct protected by the First Amendment to the Constitution of the United States or Article I of the Illinois Constitution [Ill. Const., Art. I, § 1], including the exercise of free speech, free expression, and the free exercise of religion or expression of religiously based views.

(c) Sentence. Criminal trespass to a safe school zone is a Class A misdemeanor.

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(Source: P.A. 97-547, § 5.)

Effective Date. This section is effective January 1, 2012 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Article 33.
Official Misconduct

§ 720 ILCS 5/33-1. Bribery

Sec. 33-1. Bribery. A person commits bribery when:

(a) With intent to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness, he promises or tenders to that person any property or personal advantage which he is not authorized by law to accept; or

(b) With intent to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness, he promises or tenders to one whom he believes to be a public officer, public employee, juror or witness, any property or personal advantage which a public officer, public employee, juror or witness would not be authorized by law to accept; or

(c) With intent to cause any person to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness, he promises or tenders to that person any property or personal advantage which he is not authorized by law to accept; or

(d) He receives, retains or agrees to accept any property or personal advantage which he is not authorized by law to accept knowing that such property or personal advantage was promised or tendered with intent to cause him to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness; or

(e) He solicits, receives, retains, or agrees to accept any property or personal advantage pursuant to an understanding that he shall improperly influence or attempt to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness.

(f) Sentence.

Bribery is a Class 2 felony.

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(Source: P.A. 84-761.)

Note.

This section was Ill.Rev.Stat., Ch. 38, Para. 33-1.

CASE NOTES

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- Ex Post Facto
- Vagueness

In General

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- Not Required

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- Client Money
- Competent Counsel

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- Sufficient

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Public Officers and Employees
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- Planning Commission Members
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Tender
Validity
Venue

Constitutionality

- Ex Post Facto

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Where the legislature had reclassified the crimes of conspiracy and bribery from misdemeanors to Class 4 felonies, and the result was to extend the limitation period from 18 months to three years, since this was accomplished prior to expiration of the 18 month period, it was a lawful exercise of legislative power, and was not in violation of the protective doctrine of ex post facto. People v. Liebling, 36 Ill. App. 3d 1073, 344 N.E.2d 520 (1 Dist. 1976).

- Vagueness

Where defendant was accused of giving the deputy circuit clerk $150 if the clerk provided defendant with certain public forms and the clerk was not permitted to accept the money, 720 ILCS 5/33-1(a) was not unconstitutionally vague under these facts because defendant received adequate notice of the statute's proscription. People v. Johnson, 335 Ill. App. 3d 805, 269 Ill. Dec. 331, 780 N.E.2d 803, 2002 Ill. App. LEXIS 1175 (4 Dist. 2002).

The term "tender" in this section is not unconstitutionally vague and uncertain so as to violate due process. People v. Mostert, 34 Ill. App. 3d 767, 340 N.E.2d 300 (3 Dist. 1976).

In General

Agreements for the purchase of the influence of private persons upon the action of public officials are against public policy. Kilian v. Frazier, 4 Ill. App. 2d 108, 123 N.E.2d 592 (1 Dist. 1954).

The gist of the offense of bribery is the giving to, and receiving or accepting of money or other valuable thing by a public officer to influence him with respect to the performance of his official duty. People v. Patillo, 386 Ill. 566, 54 N.E.2d 548 (1944); People v. Siciliano, 4 Ill. 2d 581, 123 N.E.2d 725 (1954); People v. Clemons, 26 Ill. 2d 481, 187 N.E.2d 260 (1962); United States v. Hocking, 860 F.2d 769 (7th Cir. 1988).

Agreement

- Not Required

This section clearly envisions that a defendant can be guilty of bribery without agreeing to be influenced. United States v. Garner, 837 F.2d 1404 (7th Cir. 1987), cert. denied, 486 U.S. 1035, 108 S. Ct. 2022, 100 L. Ed. 2d 608, 487 U.S. 1240, 108 S. Ct. 2914, 101 L. Ed. 2d 945, 488 U.S. 898, 109 S. Ct. 244, 102 L. Ed. 2d 232 (1988).

Attorneys

- Client Money

The former language of this section prohibited the actions of attorneys who accepted money from their clients which they were to use to bribe a judge, and the attorneys could be prosecuted for bribery. People v. Freedman, 155 Ill. App. 3d 469, 108 Ill. Dec. 165, 508 N.E.2d 326 (1 Dist. 1987).

- Competent Counsel

In a prosecution for bribery and official misconduct, the defendant's trial counsel's not presenting any entrapment claim showed legal understanding, not incompetence. People v. Fleming, 50 Ill. 2d 141, 277 N.E.2d 872 (1971).

Charge

- Sufficient

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Where defendant was charged with tendering, with a certain mental state, "personal advantage and property, to wit: $1000 to political campaign," such was sufficient to meet the specificity required even when First Amendment rights were at issue. People v. Brandstetter, 103 Ill. App. 3d 259, 58 Ill. Dec. 699, 430 N.E.2d 731 (4 Dist.), cert. denied, 459 U.S. 988, 103 S. Ct. 342, 74 L. Ed. 2d 383 (1982).

Construction with Other Provisions

Charge of violation of Racketeering Influence and Corruption Act, 18 U.S.C. 1962(a), was not fatally deficient because the money in three of the four payments came from the F.B.I. and therefore were not "dirty" funds obtained from a pattern of racketeering activity since F.B.I. payments can constitute income derived from a pattern of racketeering activity so long as the payor had the intention or understanding specified in subsections (d) or (e) of this section. United States v. Gonzales, 620 F. Supp. 1143 (N.D. Ill. 1985).

Because this section defines bribery consistently with its generic meaning, and the meaning in the Racketeer Influence and Corruption Act (RICO) (18 U.S.C. 1962), such bribery can constitute racketeering activity for RICO purposes. United States v. Kaye, 586 F. Supp. 1395 (N.D. Ill. 1984).

Defenses

- Demand by Official

There is no Illinois authority to support a proposition that any particular degree of pressure by an official demanding money in return for the performance of an official act is a defense to a charge of bribery in Illinois. United States v. Peskin, 527 F.2d 71 (7th Cir. 1975), cert. denied, 429 U.S. 818, 97 S. Ct. 63, 50 L. Ed. 2d 79 (1976).

- Entrapment Generally

Where defendant denied acting with the required mental state for bribery, the entrapment defense was not available to her. People v. Arriaga, 92 Ill. App. 3d 951, 48 Ill. Dec. 387, 416 N.E.2d 418 (2 Dist. 1981).

Where the defendant denied soliciting or receiving a bribe, he could not also admit the crimes and attribute them to entrapment. People v. Fleming, 50 Ill. 2d 141, 277 N.E.2d 872 (1971).

- Entrapment Not Shown

The trial court properly refused to instruct the jury in regard to the law of entrapment, where the record proved that a defendant was apprehended by lawful artifice in the execution of a criminal act of his own conception. People v. Cash, 26 Ill. 2d 595, 188 N.E.2d 20 (1963).

- Inevitably Incident

Where judge aided and abetted the bribe taker by permitting himself to be influenced in his position as a judge, as his conduct was specifically prohibited by this section, his defense that his conduct was inevitably incident to the offense did not apply. United States v. Hogan, 886 F.2d 1497 (7th Cir. 1989).

Eavesdropping

- Order Defective

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Court orders authorizing the use of electronic eavesdropping were defective where they failed to state that defendant was a public official or employee, that defendant was unauthorized by law to accept an unsecured loan, to set forth that the unsecured loan was for the purpose of influencing the performance of any act related to defendant's employment or function as a public official, or to state that receipt of the alleged loan by defendant was to influence an official act of another public official or employee. People v. Monoson, 75 Ill. App. 3d 1, 30 Ill. Dec. 892, 393 N.E.2d 1239 (1 Dist. 1979).

Elements of Offense

- In General

Where defendant was accused of giving the deputy circuit clerk $150 if the clerk provided defendant with certain public documents, and the clerk was not permitted to accept the money, the indictment contained sufficient facts to allege bribery in violation of 720 ILCS 5/33-1(a) even if defendant paid the clerk to perform a duty to which defendant was legally entitled. People v. Johnson, 335 Ill. App. 3d 805, 269 Ill. Dec. 331, 780 N.E.2d 803, 2002 Ill. App. LEXIS 1175 (4 Dist. 2002).

The statute requires only that the defendant received, retained or agreed to accept money knowing that it was offered with the intent that it influence the defendant as a public officer in the performance of an official act. People v. Wright, 105 Ill. App. 3d 187, 61 Ill. Dec. 89, 434 N.E.2d 26 (2 Dist. 1982).

The essence of the crime of bribery is the giving to, and receiving or acceptance by, a public officer of something of value to influence him in the performance of his official duty, whether it be termed general or specific. People v. Powell, 72 Ill. 2d 50, 18 Ill. Dec. 318, 377 N.E.2d 803 (1978).

This section clearly indicates that a person's receipt of property alone is not enough to sustain a bribery conviction; receipt of such property must not be legally authorized and such property must be accepted knowing that such property was tendered with intent to cause him to influence the performance of any act related to the employment or function of any public officer, public employee or juror. People v. Jordan, 15 Ill. App. 3d 672, 304 N.E.2d 713 (1 Dist. 1973).

- Evidence

Where defendant accepted a bribe and failed to report misconduct by parolee, the receipt of the bribe to refrain from doing that which was the official duty of defendant to do was not necessary to prove that parolee had violated his parole. People v. Patillo, 386 Ill. 566, 54 N.E.2d 548 (1944).

- Illustrative Case

In order to find defendant guilty of underlying state bribery charge, it was not necessary that the jury determine that the contractors who paid money to him actually received benefit; rather, all that was necessary for a violation to be made out was proof that defendant was a public employee, that the contractors paid money to defendant with the intent of influencing an act related to his public employment, and finally that defendant accepted the money knowing that the contractors paid it to him in order to influence the performance by him of any act relating to his public employment. United States v. Hocking, 860 F.2d 769 (7th Cir. 1988).

- Intent

The fact that a banker may not have known that it was illegal to procure loans for the county treasurer was irrelevant as long as he did in fact procure them with intent to influence the treasurer. People v. Clark, 71 Ill. App. 3d 381, 27 Ill. Dec. 680, 389 N.E.2d 911 (2 Dist. 1979).

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Where a discretionary or legislative decision on zoning had been requested, the withholding of such action until a money demand was met could not negate the intent to influence the performance of an official act required by this section. United States v. Peskin, 527 F.2d 71 (7th Cir. 1975), cert. denied, 429 U.S. 818, 97 S. Ct. 63, 50 L. Ed. 2d 79 (1976).

There is no explicit statutory requirement that the official accept the property in order to charge the offeror with bribery; the mere offer or promise with the requisite intent is sufficient to constitute the completed offense of bribery. People v. Wallace, 57 Ill. 2d 285, 312 N.E.2d 263 (1974).

Mutual criminal intent is not required before either the giver or the accepter can be found guilty. People v. Lyons, 4 Ill. 2d 396, 122 N.E.2d 809 (1954).

- Knowledge

The evidence supported a finding that an investigator gave money to the defendant pursuant to a prearranged plan and that the defendant was well aware that the money was in payment for having influenced him in the performance of official acts. People v. Wright, 105 Ill. App. 3d 187, 61 Ill. Dec. 89, 434 N.E.2d 26 (2 Dist. 1982).

Under subsection (a) of this section, knowledge by the defendant that the conduct is not authorized by law is not an element of the offense and need not be alleged. People v. Brandstetter, 103 Ill. App. 3d 259, 58 Ill. Dec. 699, 430 N.E.2d 731 (4 Dist.), cert. denied, 459 U.S. 988, 103 S. Ct. 342, 74 L. Ed. 2d 383 (1982).

Evidence

- Conduct Preceding Bribe

Although the general rule is that evidence of other crimes not charged is inadmissible, an exception exists where the evidence is independently relevant to show that the prior acts were part of a related plan, scheme or design. While the trial court must weigh the probative value of such evidence against any possible prejudicial effects, evidence of conduct leading up to bribery is often held admissible because bribery generally involves a continuing course of conduct. People v. Dougherty, 160 Ill. App. 3d 870, 112 Ill. Dec. 337, 513 N.E.2d 946 (1 Dist. 1987).

Evidence of defendant's conduct leading up to the actual bribe is admissible because bribery is generally not an isolated act. People v. Senez, 80 Ill. App. 3d 1021, 36 Ill. Dec. 348, 400 N.E.2d 928 (2 Dist. 1980).

- Held Insufficient

Defendant's conviction of bribery could stand where prosecution's evidence did not prove a corrupt intent to influence sergeant. People v. Gokey, 57 Ill. 2d 433, 312 N.E.2d 637 (1974).

- Held Sufficient

State sufficiently proved that defendant accepted money knowing it was tendered with the intent to influence an act of a judge. People v. Herron, 76 Ill. App. 3d 437, 32 Ill. Dec. 222, 395 N.E.2d 169 (1 Dist. 1979).

Evidence held sufficient to support a conviction for bribery. People v. Bouse, 46 Ill. App. 3d 465, 4 Ill. Dec. 907, 360 N.E.2d 1340 (1 Dist. 1977); People v. Powell, 72 Ill. 2d 50, 18 Ill. Dec. 318, 377 N.E.2d 803 (1978); People v. Clark, 71 Ill. App. 3d 381, 27 Ill. Dec. 680, 389 N.E.2d 911 (2 Dist. 1979); People v. Evans, 80 Ill. App. 3d 87, 35 Ill. Dec. 269, 398 N.E.2d 1219 (1 Dist. 1979); People v. Senez, 80 Ill. App. 3d 1021, 36 Ill. Dec. 348, 400 N.E.2d 928 (2 Dist. 1980); People v. Brandstetter, 103 Ill. App. 3d 259, 58 Ill. Dec. 699, 430 N.E.2d 731 (4 Dist.), cert. denied, 459 U.S. 988, 103 S. Ct. 342, 74 L. Ed. 2d 383 (1982).

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Evidence held sufficient to support bribery conviction based on acceptance of money from a person who had been an informant in various narcotic cases in return for influencing assistant State's attorney to act leniently in prosecuting the informant. People v. Luckett, 48 Ill. App. 3d 536, 6 Ill. Dec. 377, 362 N.E.2d 1297 (1 Dist. 1977).

Sufficient evidence was adduced by the people from which the trier of fact could find the defendant police officer guilty beyond a reasonable doubt of the crime of bribery where the defendant was aware of the bribery solicitation and actively participated therein. People v. Muersch, 4 Ill. App. 3d 1003, 282 N.E.2d 767 (1 Dist. 1972).

The evidence was sufficient to sustain a conviction of a juror for bribery. People v. Harris, 66 Ill. App. 2d 46, 213 N.E.2d 588 (5 Dist. 1966).

Evidence was sufficient to sustain a defendant's conviction of the crimes of agreeing to accept a bribe and of receiving a bribe. People v. Cash, 26 Ill. 2d 595, 188 N.E.2d 20 (1963).

The evidence was sufficient to justify to the jury, beyond a reasonable doubt, the verdict of guilty as to bribery. People v. Woodruff, 9 Ill. 2d 429, 137 N.E.2d 809 (1956); People v. Bergbreiter, 97 Ill. App. 2d 429, 240 N.E.2d 230 (1 Dist. 1968); People v. Fleming, 50 Ill. 2d 141, 277 N.E.2d 872 (1971); United States v. Isaacs, 493 F.2d 1124 (7th Cir.), cert. denied, 417 U.S. 976, 94 S. Ct. 3183, 94 S. Ct. 3184, 41 L. Ed. 2d 1146 (1974).

Evidence held sufficient to show that defendant accepted a bribe for the purpose of influencing his official action. People v. Holub, 382 Ill. 571, 48 N.E.2d 379 (1943).

The defendants violated the statute by participating in an attorney fees kickback scheme which involved a bribe paid by an attorney and accepted by a mayor to influence the latter's past, present, and future use of the attorney as city prosecutor and a law firm to perform legal work for a city. United States v. Genova, 167 F. Supp. 2d 1021, 2001 U.S. Dist. LEXIS 16956 (N.D. Ill. 2001).

- Letters

Trial court erred in admitting letters into evidence at defendant's trial for bribery where such letters were not either an admission by a party to the proceeding nor by one authorized to speak for a party as admissions, there being no proof that the letters were written with defendant's authority or that he later ratified them. People v. Clark, 71 Ill. App. 3d 381, 27 Ill. Dec. 680, 389 N.E.2d 911 (2 Dist. 1979).

- Recording Admitted

Where eavesdropping was approved by the party to whom the solicitation and bribe had been made, police officers advised him of what to do and followed strictly the provisions of the statute, and there was no fishing expedition and no extended wiretap or eavesdropping, interception of the communication was reasonable and the recording was properly admitted into evidence in a prosecution for official misconduct and bribery. People v. Drish, 24 Ill. App. 3d 225, 321 N.E.2d 179 (4 Dist. 1974).

Fine Held Not Excessive

In light of the seriousness of the charges, the granting of probation to the defendant, the defendant's past experience and apparent employability, and the statutory provisions which allow for future modification of a fine, the imposition of a $5,000 fine was not an abuse of the trial court's discretion. People v. Wright, 105 Ill. App. 3d 187, 61 Ill. Dec. 89, 434 N.E.2d 26 (2 Dist. 1982).

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Good Faith Advice

Evidence that the parliamentarian may have been advising legislators in good faith that offers similar to the one made by defendant could be legally accepted was insufficient to prove that, to the knowledge of the prosecutor, this had happened in particular cases. People v. Brandstetter, 103 Ill. App. 3d 259, 58 Ill. Dec. 699, 430 N.E.2d 731 (4 Dist.), cert. denied, 459 U.S. 988, 103 S. Ct. 342, 74 L. Ed. 2d 383 (1982).

Gratuities

- In General

The acceptance of a gratuity without more will not sustain a conviction for bribery. People v. Jordan, 15 Ill. App. 3d 672, 304 N.E.2d 713 (1 Dist. 1973).

- Illustrative Case

An examination of the record clearly supported the conclusion that money was accepted for advancing a case rather than as a mere gratuity. People v. Herron, 76 Ill. App. 3d 437, 32 Ill. Dec. 222, 395 N.E.2d 169 (1 Dist. 1979).

Harmless Error

- Prosecutorial Remarks

Where the defense counsel provoked a part of the state's improper argument in a prosecution for bribery, and the remarks exceeded proper bounds, such error was harmless because the jury could not have reached any verdict other than guilty, even if the remarks had not been made. People v. Mostert, 34 Ill. App. 3d 767, 340 N.E.2d 300 (3 Dist. 1976).

Illustrative Cases

It was irrelevant that an official refused to take the money collected by defendant for the purpose of influencing the official; all that is required to convict defendant under this section is that the money defendant accepted was paid to him pursuant to an understanding that the money be used to influence the performance of a public employee. People v. Dougherty, 160 Ill. App. 3d 870, 112 Ill. Dec. 337, 513 N.E.2d 946 (1 Dist. 1987).

Although defendant was no longer a public official and was without leverage to collect the bribe he asked for, he was still guilty of bribery because the receipt of money by a private citizen for the purpose of paying off a public employee constitutes bribery and defendant took the money with the understanding that it be used to pay off a government official. People v. Dougherty, 160 Ill. App. 3d 870, 112 Ill. Dec. 337, 513 N.E.2d 946 (1 Dist. 1987).

Where a defendant attempted to offer a police officer five dollars not to tow the defendant's car, the state proved that the five dollars were tendered to influence the officer in the performance of his official duty. People v. Davis, 130 Ill. App. 2d 1047, 268 N.E.2d 179 (1 Dist. 1971).

It was not necessary that the defendant make a proposal specifying, in detail, the amount to be paid and how and when he was to receive it in order to commit bribery. People v. Harris, 66 Ill. App. 2d 46, 213 N.E.2d 588 (5 Dist. 1966).

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Where an officer accepted twenty dollars in exchange for not arresting the defendant, the act could constitute bribery, despite the fact that the officer had no absolute duty to arrest the defendant. People v. Clemons, 26 Ill. 2d 481, 187 N.E.2d 260 (1962).

Although payment to police officer was made pursuant to a previous arrangement with police authorities and for the sole purpose of catching defendant in an illegal act, defendant police officer could be convicted of bribery. People v. Lyons, 4 Ill. 2d 396, 122 N.E.2d 809 (1954).

The misappropriation of a check to cover a prior defalcation clearly constituted an offense within the meaning of former Ill. Rev. Stat., ch. 38, para. 80 (see now this section). People v. Donohue, 369 Ill. 558, 17 N.E.2d 21 (1938).

Indictment

- Insufficient

Where count of indictment charged defendant's with two charges: (1) conspiring to commit an offense against the United States; and (2) traveling in interstate commerce with the intent to carry on an "unlawful activity," the count contained only one charge which was not the offense of bribery. Borre v. United States, 940 F.2d 215 (7th Cir. 1991).

- Sufficient

It was not required that an indictment allege that the county treasurer was unauthorized by law to accept each of the loans alleged to have given him a personal advantage where the circumstances surrounding the transactions were set forth quite completely and sufficiently thus charged the illegality of the acceptance of the loans. People v. Clark, 71 Ill. App. 3d 381, 27 Ill. Dec. 680, 389 N.E.2d 911 (2 Dist. 1979).

While an indictment stated the offense in terms of this section but it did not include a statement that the act was done corruptly, the wording of both this section and the indictment carried with them an inherent charge that the act was done corruptly; thus, a reasonable interpretation of the indictment was that the acts charged were necessarily done with a corrupt intention; the indictment was sufficient. People v. Bergbreiter, 97 Ill. App. 2d 429, 240 N.E.2d 230 (1 Dist. 1968).

An indictment which charged that while duly selected and serving as a juror, defendant solicited money which he was not authorized to accept for his personal advantage pursuant to an understanding that he would influence the performance of the jury of which he was a member, and to the advantage of a certain individual, from whom he allegedly solicited a payment of money, the indictment was sufficient to charge bribery. People v. Harris, 66 Ill. App. 2d 46, 213 N.E.2d 588 (5 Dist. 1966).

The indictment was sufficient where it clearly stated the offense of bribery in the terms and language of the section. People v. Woodruff, 9 Ill. 2d 429, 137 N.E.2d 809 (1956).

Influencing Performance

Even if petitioner paid officials of the Board of Tax Appeals only to encourage them to read the files of his appeals, as they were legally required to do, petitioner's actions still constituted bribery, because petitioner intended to influence the performance of an act related to the employment or function of a public officer. In re Fleischman, 135 Ill. 2d 488, 142 Ill. Dec. 838, 553 N.E.2d 352 (1990).

Information

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- Held Sufficient

An information charging defendant with bribery was not void because it alleged that defendant had committed the offense of bribery by offering the officers "a sum of USC"; clearly this terminology would enable a person of common understanding to know what the charging instrument intended, that defendant was alleged to have offered the officers a sum of United States currency. People v. Watson, 163 Ill. App. 3d 163, 114 Ill. Dec. 398, 516 N.E.2d 553 (1 Dist. 1987).

The word "defendant" in prior version of this provision was intended to include any criminal offender who was about to be apprehended or arrested; thus, the allegation in an information that police officer received a bribe for omitting to arrest an individual for violation of a traffic law effectively charged the offense described in the statute. People v. Rizzo, 29 Ill. 2d 471, 194 N.E.2d 205 (1963).

Juror

- Defined

This section applies the term "juror" to persons who have been lawfully selected according to law for the purpose of serving as jurors, whether they have been actually impaneled and sworn or not. People v. Newmark, 312 Ill. 625, 144 N.E. 338 (1924).

Jury Questions

In a bribery prosecution where the testimony was conflicting, the credibility of the witnesses and the weight to be given their testimony were questions for the jury. People v. Harris, 66 Ill. App. 2d 46, 213 N.E.2d 588 (5 Dist. 1966).

Lesser Included Offenses

- Attempt Bribery

Even if the evidence presented might establish the completion of the offense of bribery, conviction for the lesser included offense of attempt was permissible. People v. Wallace, 57 Ill. 2d 285, 312 N.E.2d 263 (1974).

Multiple Violations

Each extension of credit in violation of this section would have been a separate crime, but they also formed a series of acts performed at different times, the last of which were within the limitations (see 720 ILCS 5/3-8). People v. Clark, 71 Ill. App. 3d 381, 27 Ill. Dec. 680, 389 N.E.2d 911 (2 Dist. 1979).

Offer to Witness

Offer by friend of defendant to pay $25 to witness, if she dropped the charges against defendant, was intent to influence the performance of a witness as required for a conviction of burglary even though witness had no power to drop charges, but could only attempt to influence State's Attorney. People v. Jackson, 231 Ill. App. 3d 801, 173 Ill. Dec. 372, 596 N.E.2d 1251 (4 Dist. 1992).

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Offering money to the complaining witness to drop the charges constitutes bribery, a Class 2 felony, and not merely the petty offense of compounding a crime; it is clear the legislature intended for the bribery statute to include bribery of witnesses, even though the same conduct may be punishable as compounding a crime or communicating with a witness. People v. Jackson, 231 Ill. App. 3d 801, 173 Ill. Dec. 372, 596 N.E.2d 1251 (4 Dist. 1992).

Performance of Act

- Not Required

In order to commit the offense of bribery, the statute does not require that the act to be influenced ever be performed. People v. Dougherty, 160 Ill. App. 3d 870, 112 Ill. Dec. 337, 513 N.E.2d 946 (1 Dist. 1987).

Political Campaigns

- Contributions

Evidence that opponents of certain proposed legislation were offering contributions to legislators and sent one of them a note indicating they had "great returns" from an advertisement, admonishing him to "stand firm" and they would "stand with" him was not of such caliber to support prosecution for offering campaign contribution for vote. People v. Brandstetter, 103 Ill. App. 3d 259, 58 Ill. Dec. 699, 430 N.E.2d 731 (4 Dist.), cert. denied, 459 U.S. 988, 103 S. Ct. 342, 74 L. Ed. 2d 383 (1982).

Whether the law permits a legislator to receive a campaign contribution conditioned upon an agreement to vote in a particular way and whether a citizen may offer such a contribution is a question of law for the court. People v. Brandstetter, 103 Ill. App. 3d 259, 58 Ill. Dec. 699, 430 N.E.2d 731 (4 Dist.), cert. denied, 459 U.S. 988, 103 S. Ct. 342, 74 L. Ed. 2d 383 (1982).

- Services

Bribery statute did not prohibit an offer of campaign services by a prospective worker to a candidate if the worker had the intent to influence the candidate's performance of his duties, so long as the candidate neither made a promise to perform nor performed in consideration of the offer. People v. Brandstetter, 103 Ill. App. 3d 259, 58 Ill. Dec. 699, 430 N.E.2d 731 (4 Dist.), cert. denied, 459 U.S. 988, 103 S. Ct. 342, 74 L. Ed. 2d 383 (1982).

Probation

- Discretion of Court

Denial of probation in bribery prosecution was not an abuse of trial court's discretion where, even though denial of probation was not based on defendants' prior record, nor on the necessity to protect society, nor on defendants' need for incarceration for rehabilitative purposes, all these relevant factors mandated by statute were considered by the court; the court obviously considered another relevant factor, the seriousness of the offense and the possible corrupting influence on other public employees, to be decisive. People v. Martin, 19 Ill. App. 3d 631, 312 N.E.2d 24 (4 Dist. 1974).

Promises

An alleged promise made by the mayor of a municipality to appoint plaintiff police chief was not supported by consideration; such appointment was an official act, and a private party could not

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give an official any property or advantage with the intent to influence the performance of the act. Harris v. Johnson, 218 Ill. App. 3d 588, 161 Ill. Dec. 680, 578 N.E.2d 1326 (2 Dist. 1991).

Proof Required

Instructions given the jury which required it to convict defendant of bribery if it found that she received money with knowledge that the person giving her the money intended to influence her performance as a public employee were improper, since these facts alone were insufficient to bring defendant's conduct within either the language or spirit of the bribery statute, and did not take into consideration an opportunity to report the bribe attempt. People v. Arriaga, 92 Ill. App. 3d 951, 48 Ill. Dec. 387, 416 N.E.2d 418 (2 Dist. 1981).

In proving the charges laid in the indictments it was incumbent upon the people to prove that recipient was a public officer; that money or other valuable thing was given by defendant in error to the public official and accepted by him, and that the payments were for the purpose of influencing him in the performance of his official duties. People v. Siciliano, 4 Ill. 2d 581, 123 N.E.2d 725 (1954).

Evidence of any specific agreement by public official to do or to refrain from doing anything relating to the duties of his office is not necessary; it was sufficient to show that the payments made to the official and accepted by him were calculated to influence him. People v. Siciliano, 4 Ill. 2d 581, 123 N.E.2d 725 (1954).

Public Officers and Employees

- In General

To convict a defendant of official misconduct and bribery, the state must prove that the defendant is a public officer. People v. Drish, 24 Ill. App. 3d 225, 321 N.E.2d 179 (4 Dist. 1974).

- Acting Officer

Offering, giving, soliciting or accepting a bribe constitutes bribery where the one solicited, soliciting, or accepting the bribe, though not an officer de jure, was acting under the color of title of the office involved. People v. Woodruff, 9 Ill. 2d 429, 137 N.E.2d 809 (1956).

- Chief of Police

Evidence held sufficient to support defendant's convictions for bribery and official misconduct where the testimony clearly established that defendant was using his office as chief of police in order to extract money from motels and defendant actively solicited the money and accepted payments over a period of six years. People v. Thoms, 30 Ill. App. 3d 229, 332 N.E.2d 538 (1 Dist. 1975).

- County Treasurers

The fact that the county treasurer was obligated to repay loans did not preclude a finding that this assistance was a tender of personal advantage which the county treasurer was not authorized to accept. People v. Clark, 71 Ill. App. 3d 381, 27 Ill. Dec. 680, 389 N.E.2d 911 (2 Dist. 1979).

- Planning Commission Members

A member of a city planning commission who was appointed by the mayor and subject to confirmation by the city council was a public officer for purposes of the official misconduct and bribery statutes. People v. Drish, 24 Ill. App. 3d 225, 321 N.E.2d 179 (4 Dist. 1974).

- Police Officers

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Evidence held sufficient to support defendant's conviction for bribery where he offered police officers money in exchange for his freedom, pushed money across the table toward them, and there was no discussion regarding his bond at the time he did so. People v. Evans, 80 Ill. App. 3d 87, 35 Ill. Dec. 269, 398 N.E.2d 1219 (1 Dist. 1979).

Testimony of a police officer, coupled with the transcript of a conversation between the police officer and defendant, which occurred after the officer gave defendant a grand jury subpoena concerning bribery of that officer, clearly established that defendant solicited the obstruction of justice; defendant telling the assistant State's attorney that he "stiffed" the officer, or did not pay him the bribe money, involved concealing the money, and the defendant directly encouraged the officer to hide the money. People v. Powell, 72 Ill. 2d 50, 18 Ill. Dec. 318, 377 N.E.2d 803 (1978).

A principal duty of a policeman or any other law enforcement officer was the enforcement of the law, and the fact that payments made to an investigating officer in a criminal case to induce him to persuade key prosecuting witnesses not to appear or to withdraw a complaint were not intended to influence the performance of the officer's duties in investigating, identifying, and securing witnesses in criminal cases was a meritless argument. People v. Powell, 72 Ill. 2d 50, 18 Ill. Dec. 318, 377 N.E.2d 803 (1978).

While under arrest for disorderly conduct, where defendant said "I'm married; I have a baby; I'll give you $100; you let me go; you keep the gun and give me a chance"; the words constituted bribery. People v. Lugo, 39 Ill. App. 3d 472, 349 N.E.2d 697 (1 Dist. 1976).

- Prison Guard

Where ample evidence existed that defendant knew that the money she received was offered with the intent to influence her in the performance of her duties as a guard at the county jail, there was sufficient evidence that defendant was guilty of bribery beyond a reasonable doubt. People v. Shelton, 252 Ill. App. 3d 193, 191 Ill. Dec. 827, 624 N.E.2d 1205 (1 Dist. 1993), appeal denied, 154 Ill. 2d 567, 197 Ill. Dec. 494, 631 N.E.2d 716 (1994).

Sentence

- Held Excessive

A defendant's sentence of three years to three years and one day and a fine for bribery were greatly at variance with the purpose and spirit of the law where this was not a situation of a well planned and thought out crime, nor an example of recidivism, as the state contended, and accordingly, the appellate court reduced defendant's minimum sentence from three years to one year and the maximum sentence from three years and one day to one year and one day and quashed the $1000 fine. People v. Davis, 130 Ill. App. 2d 1047, 268 N.E.2d 179 (1 Dist. 1971).

- Held Not Excessive

Trial court properly sentenced defendant to 12 years for possession with intent to deliver and 7 years for each bribery count where the trial judge sentenced defendant after careful thought, deliberation and consideration of the nature of the crime and there was no evidence that the trial court abused its discretion by sentencing defendant to excessive terms for her crimes; the sentences imposed upon defendant were within the statutory parameters for minimum and maximum sentences for the offenses for which defendant was convicted. People v. Shelton, 252 Ill. App. 3d 193, 191 Ill. Dec. 827, 624 N.E.2d 1205 (1 Dist. 1993), appeal denied, 154 Ill. 2d 567, 197 Ill. Dec. 494, 631 N.E.2d 716 (1994).

The imposition of a fine for the offense of bribery was not excessive, nor did the trial court abuse its discretion; however, a 30 day jail sentence was improper because at the time of defendant's

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offense, only periodic imprisonment could be imposed as a condition of probation. People v. Mostert, 34 Ill. App. 3d 767, 340 N.E.2d 300 (3 Dist. 1976).

Tender

The word "tender" as used in subsection (a) of this section has been held to include a mere offer or promise made with the requisite intent; the act of offering or promising the tender of a prohibited commodity or act is sufficient to constitute the completed offense of bribery. People v. Trowers, 215 Ill. App. 3d 862, 159 Ill. Dec. 418, 576 N.E.2d 87 (1 Dist.), cert. denied, 141 Ill. 2d 557, 162 Ill. Dec. 505, 580 N.E.2d 131 (1991).

Validity

The bribery statute adequately informs the public as to what conduct is prohibited and sufficiently establishes standards for enforcibility. People v. Mostert, 34 Ill. App. 3d 767, 340 N.E.2d 300 (3 Dist. 1976).

Venue

Where a public official by virtue of his public office is tried for alleged offenses which directly or indirectly involve the breach of fiduciary duties as to funds under his control, venue may properly be laid in the county of his office. People v. Clark, 71 Ill. App. 3d 381, 27 Ill. Dec. 680, 389 N.E.2d 911 (2 Dist. 1979).

RESEARCH REFERENCES

Validity of state statute prohibiting award of government contract to person or business entity previously convicted of bribery or attempting to bribe state public employee. 7 ALR4th 1202.

Venue in bribery cases where crime is committed partly in one county and partly in another. 11 ALR4th 704.

Practice Guides and Treatises.

Construction Litigation § 1.95 Official Misconduct (IICLE).

§ 720 ILCS 5/33-2. Failure to report a bribe

Sec. 33-2. Failure to report a bribe. Any public officer, public employee or juror who fails to report forthwith to the local State's Attorney, or in the case of a State employee to the Department of State Police, any offer made to him in violation of Section 33-1 [720 ILCS 5/33-1] commits a Class A misdemeanor.

In the case of a State employee, the making of such report to the Department of State Police shall discharge such employee from any further duty under this Section. Upon receiving any such report, the Department of State Police shall forthwith transmit a copy

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thereof to the appropriate State's Attorney.

(Source: P.A. 84-25.)

Note.

This section was Ill.Rev.Stat., Ch. 38, Para. 33-2.

CASE NOTES

Analysis
Elements
Reporting Requirement

Elements

Where no proof is offered that the crime occurred in the county alleged in the indictment, a conviction under this section cannot stand. People v. Choura, 84 Ill. App. 3d 228, 39 Ill. Dec. 740, 405 N.E.2d 493 (5 Dist. 1980).

Reporting Requirement

This section requires an offer to be reported to the State's attorney in the county where the offer of a bribe took place. People v. Choura, 84 Ill. App. 3d 228, 39 Ill. Dec. 740, 405 N.E.2d 493 (5 Dist. 1980).

Practice Guides and Treatises.

Real Estate Taxation § 8.30 Criminal Penalties for Official Misconduct (IICLE).

§ 720 ILCS 5/33-3. Official Misconduct

Sec. 33-3. Official Misconduct. A public officer or employee or special government agent commits misconduct when, in his official capacity or capacity as a special government agent, he commits any of the following acts:

(a) Intentionally or recklessly fails to perform any mandatory duty as required by law; or

(b) Knowingly performs an act which he knows he is forbidden by law to perform; or

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(c) With intent to obtain a personal advantage for himself or another, he performs an act in excess of his lawful authority; or

(d) Solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law.

A public officer or employee or special government agent convicted of violating any provision of this Section forfeits his office or employment or position as a special government agent. In addition, he commits a Class 3 felony.

For purposes of this Section, "special government agent" has the meaning ascribed to it in subsection (l) of Section 4A-101 of the Illinois Governmental Ethics Act [5 ILCS 420/4A-101].

(Source: P.A. 82-790; 94-338, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 38, Para. 33-3.

Effect of Amendments. The 2005 amendment by P.A. 94-338, effective January 1, 2006, in the introductory paragraph, inserted "or special government agent" following "employee" and inserted "or capacity as a special government agent" following "capacity"; in the second paragraph of (d), inserted "or special government agent" following "employee" and inserted "or position as a special government agent" following "employment"; and added the last paragraph the language beginning "For purposes of" and ending "Governmental Ethics Act."

CASE NOTES

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- Double Jeopardy
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- Aggravating Factors
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Constitutionality

Official misconduct statute, 720 ILCS 5/33-3(b), is not unconstitutionally overbroad, since it clearly prohibits public officers from knowingly performing, in their official capacity, an action known to be forbidden by law. Nor is the law vague, as a person of ordinary intelligent would not have to guess that calling a drug dealer to inform him where police were gathering and

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conducting surveillance was unlawful. People v. Williams, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1135 (1 Dist. Nov. 19, 2008).

- Double Jeopardy

Defendant pursuant to double jeopardy principles under Ill. Const. art. I, § 10 could not be retried for official misconduct in violation of 720 ILCS 5/33-3(b) in a case where the evidence was insufficient to show that defendant's violation of a village police department rule while working as a police officer constituted a required violation of the law. Since the evidence was insufficient to convict defendant, retrying defendant would violate defendant's right to be free from double jeopardy on that official misconduct charge. People v. Williams, 239 Ill. 2d 119, 346 Ill. Dec. 50, 940 N.E.2d 50, 2010 Ill. LEXIS 1556 (2010).

- Equal Protection

When conduct violates more than one statute, each of which requires different proof or provides different defenses, a defendant is not denied equal protection of the laws if he is prosecuted under the section which provides the more severe penalty. People v. Barlow, 58 Ill. 2d 41, 317 N.E.2d 49 (1974).

- Overbreadth

Subsection (c) of this section does not violate substantive due process on the grounds of overbreadth. People v. Kleffman, 90 Ill. App. 3d 1, 45 Ill. Dec. 475, 412 N.E.2d 1057 (3 Dist. 1980).

- Vagueness

Subsection (c) of this section is not unconstitutionally vague; it provides fair notice of prohibited conduct and satisfies constitutional requirements. People v. Kleffman, 90 Ill. App. 3d 1, 45 Ill. Dec. 475, 412 N.E.2d 1057 (3 Dist. 1980).

In General

In a prosecution of a prison guard for official misconduct and aiding an escape, in violation of 720 ILCS 5/33-3 and 720 ILCS 5/31-7, defendant's due process rights were violated when state witnesses denied receiving favorable treatment and the State failed to disclose that they received lesser sentences after the State told judge about their cooperation. People v. Perkins, 292 Ill. App. 3d 624, 226 Ill. Dec. 880, 686 N.E.2d 663, 1997 Ill. App. LEXIS 696 (1 Dist. 1997).

School superintendent's conviction was properly reversed, where his conviction under 720 ILCS 5/33-3(b), for official misconduct was legally inconsistent with the verdict acquitting him of theft; therefore, the superintendent could not be retried on charges of official misconduct stemming from the theft, under the principle of collateral estoppel. People v. Klingenberg, 172 Ill. 2d 270, 216 Ill. Dec. 813, 665 N.E.2d 1370, 1996 Ill. LEXIS 52 (1996).

Official misconduct occurs where a public employee, acting in his official capacity, solicits or knowingly accepts a fee or reward which is not authorized by law for the performance of any act. People v. Lynn, 223 Ill. App. 3d 688, 166 Ill. Dec. 182, 585 N.E.2d 1204 (3 Dist. 1992).

A public officer or employee commits misconduct when, in his official capacity, he knowingly performs an act which he knows he is forbidden by law to perform. People v. Price, 225 Ill. App. 3d 1032, 168 Ill. Dec. 78, 589 N.E.2d 192 (3 Dist. 1992).

The general provisions of the official misconduct statute require that the person charged be a "public officer or employee" and that he somehow acted in his "official capacity" in the commission of the offense, in the sense that he manipulated his public office or employment in

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order to achieve illicit gain or perform a proscribed act. People v. Samel, 115 Ill. App. 3d 905, 71 Ill. Dec. 738, 451 N.E.2d 892 (2 Dist. 1983).

Agreements for the purchase of the influence of private persons upon the action of public officials are against public policy. Kilian v. Frazier, 4 Ill. App. 2d 108, 123 N.E.2d 592 (1 Dist. 1954).

Applicability

- Motive

As long as a public official properly performs the duties of his office, it is inappropriate to examine the motives prompting his actions unless he violates a statute, Supreme Court Rule, administrative rule or regulation, or tenet of the Code of Professional Responsibility with the intent to obtain personal advantage for himself or for another. People v. Weber, 133 Ill. App. 3d 686, 88 Ill. Dec. 769, 479 N.E.2d 382 (5 Dist. 1985).

- Use of Handgun

Where a state meat inspector used a handgun to shoot a hog in a meatpacking plant, the inspector was guilty of misconduct; carrying firearms while performing official duties was prohibited by state regulations included in the inspector's employee manual. People v. Price, 225 Ill. App. 3d 1032, 168 Ill. Dec. 78, 589 N.E.2d 192 (3 Dist. 1992).

Basis for Prosecution

Fact that defendant, who worked as police dispatcher, communicated information about police activity to a codefendant, in violation of a home rule community ordinance, supported defendant's conviction for official misconduct under 720 ILCS 5/33-3(b). People v. Williams, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1135 (1 Dist. Nov. 19, 2008).

- Laws of State

A violation of a statute, Supreme Court Rule, rule or regulation of an administrative body, or tenet of the Code of Professional Responsibility will be a sufficient basis for a charge under subsection (c) of this section even though such enactments do not contain a penal clause. People v. Weber, 133 Ill. App. 3d 686, 88 Ill. Dec. 769, 479 N.E.2d 382 (5 Dist. 1985).

- Not Policy of Employment

Where defendant's act was not the policy of the department and was not condoned or promoted, it was sufficient to provide the basis for the charge of official misconduct. People v. Hollingsead, 210 Ill. App. 3d 750, 155 Ill. Dec. 216, 569 N.E.2d 216 (4 Dist.), cert. denied, 139 Ill. 2d 600, 159 Ill. Dec. 112, 575 N.E.2d 919 (1991).

- Public Officer

Defendant, who was a civilian employed by a police department as a dispatcher, was a public employee because: (1) the defendant was authorized to perform official functions; and (2) defendant was paid by a municipality of the State of Illinois. People v. Williams, 393 Ill. App. 3d 77, 331 Ill. Dec. 516, 910 N.E.2d 1272, 2009 Ill. App. LEXIS 593 (1 Dist. 2009).

720 ILCS 5/33-3(d) defines a species of bribery and, thus, official misconduct under 720 ILCS 5/33-3(d) may serve as a predicate act of racketeering. United States v. Warner, F. Supp. 2d , 2004 U.S. Dist. LEXIS 15727 (N.D. Ill. Aug. 11, 2004).

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To convict a defendant of official misconduct, the state must prove that the defendant is a public officer, as defined in 720 ILCS 5/2-18. People v. Drish, 24 Ill. App. 3d 225, 321 N.E.2d 179 (4 Dist. 1974).

Charge Held Sufficient

- Official Misconduct

Indictment charging the offense of official misconduct held sufficient, even though the defendant's scope of lawful authority was not defined, because a public employee's lawful authority is not so poorly defined or understood that the employee is unable to determine the propriety of his acts. People v. Sims, 108 Ill. App. 3d 648, 64 Ill. Dec. 267, 439 N.E.2d 518 (1 Dist. 1982).

City Officials

City Commissioners, with a duty to act in the best interests of the city and a duty to refrain from using their positions for personal benefit, had authority to settle a voting rights lawsuit but lacked authority in the settlement to arrange for their own employment for a fixed term and salary. People v. Scharlau, 141 Ill. 2d 180, 152 Ill. Dec. 401, 565 N.E.2d 1319 (1990), cert. denied, 501 U.S. 1252, 111 S. Ct. 2892, 115 L. Ed. 2d 1057 (1991), 507 U.S. 1051, 113 S. Ct. 1945, 123 L. Ed. 2d 651 (1993).

Under a similar prior provision, where it was circuit clerk's duty to pay funds into the county treasury, he owed no duty to turn them over to his successor. People v. Jochums, 369 Ill. 348, 16 N.E.2d 894 (1938).

Competency of Counsel

- Shown

In a prosecution for bribery and official misconduct, the defendant's trial counsel's not presenting any entrapment claim showed legal understanding, not incompetence. People v. Fleming, 50 Ill. 2d 141, 277 N.E.2d 872 (1971).

Construction

The phrase "as required by law" used in subsection (a) of this section includes constitutional as well as statutory duties. People v. Cornille, 136 Ill. App. 3d 1011, 91 Ill. Dec. 742, 484 N.E.2d 301 (5 Dist. 1985).

County Sheriffs

- Funds

Where a county sheriff did not turn money belonging to the sheriff's office over to the county treasurer, although there was evidence that permission was granted to him to use a portion of the fund for the limited purpose of acquiring information regarding illegal drugs sales, a limit was placed on the funds to be spent by the sheriff to pay drug informants, and where there was evidence that he commingled money from the sheriff's office with his own personal funds, the evidence that he failed to perform his mandatory duty to deposit all funds with the county treasurer was sufficient to sustain his conviction for official misconduct. People v. Cornille, 136 Ill. App. 3d 1011, 91 Ill. Dec. 742, 484 N.E.2d 301 (5 Dist. 1985).

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Criminal Conduct

Because this section does not describe the specific criminal conduct it is intended to reach, extra caution must be used to direct the accused to the specific provision of law he is supposed to have violated. People v. Davis, 281 Ill. App. 3d 984, 217 Ill. Dec. 934, 668 N.E.2d 119 (1 Dist. 1996).

Eavesdropping

- Order Defective

Court orders authorizing the use of electronic eavesdropping were defective where they failed to state that defendant was a public official or employee, that he was unauthorized by law to accept an unsecured loan, that the unsecured loan was for the purpose of influencing the performance of any act related to defendant's employment or function as a public official, or that receipt of the alleged loan by defendant was to influence an official act of another public official or employee. People v. Monoson, 75 Ill. App. 3d 1, 30 Ill. Dec. 892, 393 N.E.2d 1239 (1 Dist. 1979).

- Recording Admitted

Where eavesdropping was approved by the party to whom the solicitation and bribe had been made, police officers advised him of what to do and followed strictly the provisions of the statute, and there was no fishing expedition and no extended wiretap or eavesdropping, interception of the communication was reasonable and the recording was properly admitted into evidence in a prosecution for official misconduct and bribery. People v. Drish, 24 Ill. App. 3d 225, 321 N.E.2d 179 (4 Dist. 1974).

Elements of Offense

Violation of the Illinois Constitution can serve as a predicate unlawful act for the purposes of the official misconduct statute. People v. Howard, 228 Ill. 2d 428, 320 Ill. Dec. 868, 888 N.E.2d 85, 2008 Ill. LEXIS 316 (2008).

Indictment charging defendant with official misconduct, predicated on Ill. Const. art. VIII, § 1(a), was not defective because a violation of the Illinois Constitution can serve as a predicate unlawful act for the purposes of the official misconduct statute. It is the legislature's province, not the court's, to determine whether the statute would benefit from a de minimis exception. People v. Howard, 228 Ill. 2d 428, 320 Ill. Dec. 868, 888 N.E.2d 85, 2008 Ill. LEXIS 316 (2008).

- In General

To convict the defendant of the compound offense of official misconduct, the jury had to believe that he was guilty of the predicate offense of theft; following trial, however, the jury returned verdicts acquitting the defendant of the predicate offense, but convicting him of the compound offense. People v. Klingenberg, 172 Ill. 2d 270, 216 Ill. Dec. 813, 665 N.E.2d 1370, 1996 Ill. LEXIS 52 (1996).

- Act in Excess of Authority

A public official acts in excess of his lawful authority under subsection (c) of this section when he fails to obtain the court appointment of legal counsel to act as a Special Assistant State's Attorney and accepts public funds to pay for that same privately retained legal counsel. People v. Wilkinson, 285 Ill. App. 3d 727, 221 Ill. Dec. 1, 674 N.E.2d 794 (3 Dist. 1996).

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The elements of the offense include that the defendant, in his official capacity, performed an act in excess of his lawful authority; moreover, a public official may act within the scope of his official duties, yet act in excess of his lawful authority at the same time. People v. Krause, 241 Ill. App. 3d 394, 182 Ill. Dec. 446, 609 N.E.2d 980 (2 Dist. 1993).

- Identity of Recipient

The state did not fail to prove that prison guard was guilty beyond a reasonable doubt of official misconduct merely because the prosecution failed to show that she was going to deliver cocaine to an inmate at the county jail in her official capacity and did not establish that "Melvin" was an inmate; whether or not Melvin was actually an inmate was not an element of the offense. People v. Shelton, 252 Ill. App. 3d 193, 191 Ill. Dec. 827, 624 N.E.2d 1205 (1 Dist. 1993), appeal denied, 154 Ill. 2d 567, 197 Ill. Dec. 494, 631 N.E.2d 716 (1994).

- Knowledge

A stipulation that an employee of the circuit court clerk's office was on duty as an employee of that office on the dates on which she was accused of committing the offenses of forgery and official misconduct, coupled with her failure to deny such employment, demonstrated that the only element of official misconduct at issue was whether she knowingly committed forgery with knowledge that it was illegal. People v. Fiore, 169 Ill. App. 3d 601, 120 Ill. Dec. 85, 523 N.E.2d 996 (1 Dist. 1988).

Since public officials and their employees are held to know the scope of their "lawful authority," an information charging official misconduct under subsection (c) of this section need not state that the alleged acts in excess thereof were "knowingly" performed. People v. Mehelic, 152 Ill. App. 3d 843, 105 Ill. Dec. 792, 504 N.E.2d 1310 (5 Dist. 1987).

A critical element of subsection (b) of this section is that defendant "knows he is forbidden by law" to engage in a particular activity. People v. Adams, 64 Ill. App. 3d 547, 21 Ill. Dec. 411, 381 N.E.2d 738 (5 Dist. 1978).

- Motive Not Essential

Where defendant was charged with the intent to obtain a personal advantage for another, this allegation, standing alone, was insufficient to show that defendant exceeded lawful authority, as an allegedly improper motive could not form the basis for an official misconduct charge where a public official or employee otherwise properly performed the duties of his office. People v. Bassett, 169 Ill. App. 3d 232, 119 Ill. Dec. 928, 523 N.E.2d 684 (5 Dist. 1988).

It is not necessary to prove that the officer acted from corrupt motives in order to convict under this section. People v. Thoms, 50 Ill. App. 3d 398, 8 Ill. Dec. 479, 365 N.E.2d 717 (1 Dist. 1977).

Corrupt motives or personal gain are not essential to conviction under this section. People v. Thoms, 50 Ill. App. 3d 398, 8 Ill. Dec. 479, 365 N.E.2d 717 (1 Dist. 1977).

- Violation of Law

As police department's regulations violated by defendant were not "laws" within the meaning of the official misconduct statute (720 ILCS 5/33-3) because there was no evidence on the record that the police department's regulations were enacted, sanctioned, or approved by a governing body, defendant's convictions were improper. People v. Dorrough, 407 Ill. App. 3d 252, 348 Ill. Dec. 401, 944 N.E.2d 354, 2011 Ill. App. LEXIS 70 (1 Dist. 2011).

Defendant, who was a civilian employed as a dispatcher for a municipal police department, did not violate the Illinois official misconduct statute because defendant did not violate a law, as the statute required, when defendant allegedly notified a codefendant about police activity near the codefendant's residence to facilitate illegal drug-dealing by the codefendant. The State of Illinois

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failed to prove that defendant violated a law because, instead, the State presented evidence that defendant violated the police department's rules and regulations, which were not laws. People v. Williams, 393 Ill. App. 3d 77, 331 Ill. Dec. 516, 910 N.E.2d 1272, 2009 Ill. App. LEXIS 593 (1 Dist. 2009).

Evidence

During defendant's trial for official misconduct, the trial court did not err in refusing to strike the testimony of a witness who worked for the United States Attorney's office. Defendant failed to properly serve the witness with a subpoena to disclose certain evidence; thus, the United States Attorney's office had no duty to produce the material in question and was not guilty of a discovery violation. People v. Dixon, 228 Ill. App. 3d 29, 170 Ill. Dec. 424, 592 N.E.2d 1104, 1992 Ill. App. LEXIS 652 (1 Dist. 1992).

During defendant's trial for official misconduct in violation, the State's Attorney's office could not be charged with a discovery violation when it was a witness who worked for the United States Attorney's office, not the prosecutor, who failed to disclose certain evidence in response to a specific request. The State's Attorney's office attempted to obtain the material, which was indisputably in the control of the United States Attorney, and this was all the State's attorney's office could have done. People v. Dixon, 228 Ill. App. 3d 29, 170 Ill. Dec. 424, 592 N.E.2d 1104, 1992 Ill. App. LEXIS 652 (1 Dist. 1992).

Trial court did not abuse its discretion in admitting into evidence master tape-recordings and cassette copies of the master tapes during defendant's trial for official misconduct where the record plainly established that, despite his previous denials, defendant was aware that gambling was going on at a restaurant and he admitted that the event recorded on the cassette for which he was tried did in fact occur and was a one-time favor. People v. Dixon, 228 Ill. App. 3d 29, 170 Ill. Dec. 424, 592 N.E.2d 1104, 1992 Ill. App. LEXIS 652 (1 Dist. 1992).

Evidence Held Insufficient

While there was sufficient evidence to convict defendant on several counts of official misconduct for repeatedly flashing his correctional officer badge while attempting to dissuade security officers, police officers, and wedding guests from preventing his friends from fighting with wedding guests, there was no evidence that defendant used his official status to try to get his friend, who had choked a wedding guest to death, away from the scene; therefore, defendant's conviction on that count of official misconduct was reversed. People v. Brogan, 352 Ill. App. 3d 477, 287 Ill. Dec. 676, 816 N.E.2d 643, 2004 Ill. App. LEXIS 982 (1 Dist. 2004), appeal denied, 213 Ill. 2d 563, 293 Ill. Dec. 864, 829 N.E.2d 789 (2005).

In a case against defendant director of a state hospital, who was charged with failing to take proper measures to render the drinking water at the state hospital fit to drink and thus caused an epidemic of typhoid fever, where it was not proved that there was ever any leak or defect in the system of plumbing and sewage disposal, or of the wells, and in the face of the testimony of a physician it appeared that the infection came from the body of a patient, the evidence was not sufficient to prove guilt on the part of the defendant. People v. Bowen, 376 Ill. 317, 33 N.E.2d 587 (1941).

Evidence was held insufficient to sustain defendant's conviction under a similar prior provision where defendant was a highway commissioner charged with diverting public funds of road district to private roads and there was no proof of corruption or bad faith on the part of the defendant. Summers v. People, 109 Ill. App. 430 (4 Dist. 1903).

Evidence Held Sufficient

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Evidence introduced by the State showed that defendant's conviction for official misconduct in violation of 720 ILCS 5/33-3(b) was supported by sufficient evidence. The evidence proved that defendant, in defendant's position as a part-time village police dispatcher, violated the police department's expressed policy of not revealing confidential information by informing a suspected drug dealer of police activity near his home, and that the misconduct was "forbidden by law" because it had been codified as a village ordinance. People v. Williams, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1174 (3 Dist. Nov. 19, 2008).

Evidence was sufficient to show that defendant disseminated confidential information, as the trial court found incredible defendant's claims that defendant made up the information imparted to a codefendant regarding police activity rather than disseminated confidential information. People v. Williams, Ill. App. 3d , Ill. Dec. , N.E.2d , 2008 Ill. App. LEXIS 1135 (1 Dist. Nov. 19, 2008).

The defendants violated the statute by participating in an attorney fees kickback scheme which involved a bribe paid by an attorney and accepted by a mayor to influence the latter's past, present, and future use of the attorney as city prosecutor and a law firm to perform legal work for a city. United States v. Genova, 167 F. Supp. 2d 1021, 2001 U.S. Dist. LEXIS 16956 (N.D. Ill. 2001).

It was clear that if the State's witnesses were believed, there was sufficient evidence to support conviction even though there were inherent problems with one witness' credibility due to his criminal background and incarceration at the time of the trial; a rational trier of fact could have resolved conflicts in the testimony in the prosecution's behalf. People v. Diaz, 297 Ill. App. 3d 362, 231 Ill. Dec. 523, 696 N.E.2d 819 (1 Dist. 1998).

The commission of aggravated criminal sexual abuse by a school teacher committed against one of his students during the course of his employment supports a conviction of official misconduct. People v. Cora, 238 Ill. App. 3d 492, 179 Ill. Dec. 623, 606 N.E.2d 455 (1 Dist. 1992).

The evidence was sufficient to prove the guilt of defendant beyond reasonable doubt of theft, conspiracy, and official misconduct. People v. Nickson, 58 Ill. App. 3d 470, 16 Ill. Dec. 29, 374 N.E.2d 804 (1 Dist. 1978).

Evidence held sufficient to prove defendant guilty of official misconduct beyond a reasonable doubt. People v. Bouse, 46 Ill. App. 3d 465, 4 Ill. Dec. 907, 360 N.E.2d 1340 (1 Dist. 1977); People v. Clark, 71 Ill. App. 3d 381, 27 Ill. Dec. 680, 389 N.E.2d 911 (2 Dist. 1979); People v. Roberts, 100 Ill. App. 3d 469, 55 Ill. Dec. 779, 426 N.E.2d 1104 (1 Dist. 1981); People v. Locascio, 106 Ill. 2d 529, 88 Ill. Dec. 632, 478 N.E.2d 1358 (1985); People v. Mehelic, 152 Ill. App. 3d 843, 105 Ill. Dec. 792, 504 N.E.2d 1310 (5 Dist. 1987); People v. Early, 158 Ill. App. 3d 232, 110 Ill. Dec. 670, 511 N.E.2d 847 (2 Dist. 1987).

Defendant was proved guilty beyond a reasonable doubt of official misconduct under subsection (a) of this section by failing to forward traffic citations to the circuit court and by failing to collect bond from the offender before releasing him. People v. Thoms, 50 Ill. App. 3d 398, 8 Ill. Dec. 479, 365 N.E.2d 717 (1 Dist. 1977).

Defendant was proved guilty beyond a reasonable doubt under subsection (b) of this section of knowingly performing an act which he knew was forbidden by law when he released a known offender without bond. People v. Thoms, 50 Ill. App. 3d 398, 8 Ill. Dec. 479, 365 N.E.2d 717 (1 Dist. 1977).

Evidence was held sufficient to sustain conviction of two counts of theft of property valued in excess of $150 and two counts of official misconduct. People v. Haycraft, 3 Ill. App. 3d 974, 278 N.E.2d 877 (5 Dist. 1972).

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Despite conflicts in evidence, the prosecution's evidence was clearly sufficient to demonstrate defendant's guilt of bribery and official misconduct beyond reasonable doubt. People v. Fleming, 50 Ill. 2d 141, 277 N.E.2d 872 (1971).

Evidence was sufficient to prove defendant guilty beyond a reasonable doubt of both official misconduct and theft. People v. Laczny, 63 Ill. App. 2d 324, 211 N.E.2d 438 (1 Dist. 1965).

Testimony of both witness and police officers, although denied by defendant, was not doubtful, improbable or unsatisfactory evidence, and was found sufficient by the trial court to sustain the charge of official misconduct. People v. Smith, 57 Ill. App. 2d 74, 206 N.E.2d 463 (1 Dist. 1965).

Forest Preserve Officers

Where the defendants did not dispute that they were acting in their official capacity as forest preserve officers at the time they were in the woods, the defendants must necessarily have known it was unauthorized conduct to shoot deer in the forest preserve or to take deer outside open season. People v. Locascio, 137 Ill. App. 3d 201, 91 Ill. Dec. 892, 484 N.E.2d 451 (1 Dist. 1985).

Forfeiture of Office

- Jurisdiction

The appellate court had jurisdiction to stay the order of a circuit court ousting sanitary district trustees from office pending their appeal from convictions for official misconduct, where the basis of the forfeiture of office was not conviction of an infamous crime but part of the statutory punishment for conviction of official misconduct. People ex rel. Rice v. Appellate Court Fifth Dist., 48 Ill. 2d 195, 268 N.E.2d 420 (1971).

Highway Commissioners

Where the defendant admitted that ordering a township employee to work on his personal automobile during township working hours was in excess of his lawful authority as highway commissioner, it was unnecessary for the jury to be informed of the scope of defendant's duties as defined by statute. People v. Mehelic, 152 Ill. App. 3d 843, 105 Ill. Dec. 792, 504 N.E.2d 1310 (5 Dist. 1987).

Indictment

- Multiple Charges

Where both general criminal statutes against misconduct by public officials (see now this section) and specific provision of Municipal Code (65 ILCS 5/3-14-5) applied to conduct named in indictment of mayor, only the second, more specific statute applied. People v. Flynn, 375 Ill. 366, 31 N.E.2d 591 (1940).

- Not Sufficient

Defendant, a former township supervisor, could not have been convicted on any of the 12 counts of official misconduct charged against him in violation of 720 ILCS 5/33-3 for his failure to report amounts his wife owed to the township for his mother-in-law's care at a county nursing home; the indictment against him did not charge offenses punishable by Illinois criminal law, as the requirement that he file with the township clerk an annual statement of the township's financial

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affairs pursuant to 60 ILCS 1/70-15(c) only addressed amounts that the township owed, not amounts owed to it and, thus, as a matter of statutory construction, defendant's failure was not a criminal act. People v. Grever, 222 Ill. 2d 321, 305 Ill. Dec. 573, 856 N.E.2d 378, 2006 Ill. LEXIS 1084 (2006).

The indictment was facially defective under 725 ILCS 5/111-3(a), where it failed to plead sufficient facts that the act was in excess of lawful authority under subsection (c) of this section. People v. Wilkinson, 285 Ill. App. 3d 727, 221 Ill. Dec. 1, 674 N.E.2d 794 (3 Dist. 1996).

Where indictments alleging official misconduct charged that a deputy tax assessor and the supervisor of assessments, with the intent to obtain a personal advantage for another, performed in their official capacity an act in excess of their lawful authority in that they caused assessment reductions after the assessments had been certified as correct by the supervisor, and said reductions were not pursuant to a hearing by a board of review, this allegation, standing alone, was insufficient to show that defendant exceeded his lawful authority; an allegedly improper motive cannot form the basis for an official misconduct charge where a public official or employee otherwise properly performs the duties of his office. People v. Bassett, 169 Ill. App. 3d 232, 119 Ill. Dec. 928, 523 N.E.2d 684 (5 Dist. 1988).

Because of the ambiguity in the authority of the local supervisor of tax assessments to change assessments after certifying them as correct, and then only on direction of a board of review, the allegation that a supervisor made reductions not pursuant to a hearing by that board were insufficient to state an underlying violation of a statute, rule, regulation or tenet. People v. Bassett, 169 Ill. App. 3d 232, 119 Ill. Dec. 928, 523 N.E.2d 684 (5 Dist. 1988).

Indictment was inadequate where it merely alleged that an agent of defendant, a state employee, cut down a tree on private property on state time and with the state's equipment, and absent an allegation that defendant was violating any statute, rule, regulation or any other duty imposed by law, the indictment did not describe the commission of a criminal act. People v. Adams, 64 Ill. App. 3d 547, 21 Ill. Dec. 411, 381 N.E.2d 738 (5 Dist. 1978).

Where there was no allegation in the indictment that defendant had knowledge of the rules and regulations of the state, an essential element of subsection (b) of this section was lacking. People v. Adams, 64 Ill. App. 3d 547, 21 Ill. Dec. 411, 381 N.E.2d 738 (5 Dist. 1978).

Where an indictment read "knowingly performed an act which they, and each of them, were forbidden by law to perform," but did not allege that defendants had any knowledge that their acts were forbidden by law, these counts did not state an offense, and were void. People v. Campbell, 3 Ill. App. 3d 984, 279 N.E.2d 123 (5 Dist. 1972).

- Requirements

Indictment must specify facts indicating a violation of a statute, rule, regulation or tenet so as to demonstrate how a defendant exceeded his lawful authority. People v. Bassett, 169 Ill. App. 3d 232, 119 Ill. Dec. 928, 523 N.E.2d 684 (5 Dist. 1988).

The indictment must specify the precise "law" which the defendant is alleged to have violated in cases of questionable criminal conduct since subsection (b) of this section, standing by itself, does not delineate specific criminal conduct, but rather derives its meaning by referring to acts which are known to the defendant to be forbidden by law. People v. Samel, 115 Ill. App. 3d 905, 71 Ill. Dec. 738, 451 N.E.2d 892 (2 Dist. 1983).

- Sufficient

Defendant was properly convicted of official misconduct because the charging indictment was not duplicitous where the indictment charged him with violating 720 ILCS 5/33-3 and then listed the ways in which the violation occurred; pleading different acts contributing to the ultimate charged

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offense did not give rise to duplicity. People v. Dixon, 228 Ill. App. 3d 29, 170 Ill. Dec. 424, 592 N.E.2d 1104, 1992 Ill. App. LEXIS 652 (1 Dist. 1992).

The indictment clearly stated that the defendant knew that he was performing acts which were forbidden by law; therefore, the indictment was properly pleaded. People v. Cora, 238 Ill. App. 3d 492, 179 Ill. Dec. 623, 606 N.E.2d 455 (1 Dist. 1992).

Police officer, who was charged with the one offense of official misconduct, in such manner and form that the individual paragraphs of the indictment were not material allegations, but rather, were merely the delineated ways he committed official misconduct, was sufficiently charged; the indictment was not duplicitous in nature. Wojdyla v. City of Park Ridge, 148 Ill. 2d 417, 170 Ill. Dec. 418, 592 N.E.2d 1098 (1992).

Where an information charging official misconduct alleged that: (1) defendant was a township highway commissioner; (2) while he was in this capacity he "directed" township employees to perform "maintenance work" on his personal automobile; (3) such a directive was in excess of his lawful authority as defined by statute; and (4) this directive was given by defendant with the intent to obtain a personal advantage, the information substantially complied with 725 ILCS 5/111-3. People v. Mehelic, 152 Ill. App. 3d 843, 105 Ill. Dec. 792, 504 N.E.2d 1310 (5 Dist. 1987).

Indictment was sufficient to charge defendant with the offense of official misconduct, was as fully descriptive of the offense as the language of the statute denouncing it, and alleged every substantial element of the offense as defined by statute. People v. Smith, 57 Ill. App. 2d 74, 206 N.E.2d 463 (1 Dist. 1965).

Jurisdiction

- Place of Offense

The charge that an offense was committed within a particular county is a material averment which must be proven, and it is the duty of the prosecution to allege where the offense was committed; where there was a failure to allege the county in which the offense occurred, the jurisdiction of the court was not established. People v. Wallace, 125 Ill. App. 2d 455, 261 N.E.2d 214 (4 Dist. 1970).

Legal Fees

The appellees acted in excess of their lawful authority when they accepted money as reimbursement for legal fees incurred while in their official capacity without first having their legal representative appointed as a Special State's Attorney. People v. Wilkinson, 285 Ill. App. 3d 727, 221 Ill. Dec. 1, 674 N.E.2d 794 (3 Dist. 1996).

Legislative Intent

- Relation to Other Laws

There was no indication in either statute that the General Assembly intended that former 65 ILCS 5/3-14-5 (see now 65 ILCS 5/3.1-55-15), which deals with misconduct of municipal officers, should apply to the exclusion of this section. People v. Barlow, 58 Ill. 2d 41, 317 N.E.2d 49 (1974).

Lesser Included Offense

- Same Conduct

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Conviction and sentence for conspiracy were affirmed and the conviction and sentence for official misconduct were vacated because the trial court improperly convicted defendant of official misconduct which arose out of the same conduct as his conviction of conspiracy to commit theft. People v. Nickson, 58 Ill. App. 3d 470, 16 Ill. Dec. 29, 374 N.E.2d 804 (1 Dist. 1978).

Liability

- Public Duty

If the duty discharged by a public officer or employee is a public duty and not a duty which the individuals owe to any particular person, then for their negligence or wanton or wilful omission in the performance of this public duty the officers are not liable, except to the state. People ex rel. Trust Co. v. Maryland Cas. Co., 132 F.2d 850 (7th Cir. 1942).

Misconduct

- Defined

A public officer or employee commits misconduct when, in his official capacity, he knowingly performs an act which he knows he is forbidden by law to perform. People v. Price, 225 Ill. App. 3d 1032, 168 Ill. Dec. 78, 589 N.E.2d 192 (3 Dist. 1992).

Multiple Charges

- Verdicts Not Legally Inconsistent

Jury's failure to make findings on the charged bribery acts did not require that defendants be acquitted on the official misconduct allegations, and that the jury's findings that defendants committed predicate acts of mail fraud, obstruction of justice and perjury provided ample predicate for the Racketeer Influenced and Corrupt Organizations, 18 U.S.C.S. § 1961(1), convictions. United States v. Fawell, F. Supp. 2d , 2003 U.S. Dist. LEXIS 11605 (N.D. Ill. July 8, 2003).

Jury verdicts of not guilty of the offense of official misconduct, and guilty of the offense of forgery were only logically inconsistent, did not raise collateral estoppel issues, and did not require reversal of defendant's conviction of the forgery offense as the verdicts were not legally inconsistent. People v. Fiore, 169 Ill. App. 3d 601, 120 Ill. Dec. 85, 523 N.E.2d 996 (1 Dist. 1988).

Multiple Convictions

- Single Act

Where a defendant's convictions for theft and official misconduct arose out of the same acts, only defendant's conviction for official misconduct could stand, and the judgment and sentence on the misdemeanor theft conviction were reversed. People v. Hajostek, 49 Ill. App. 3d 148, 7 Ill. Dec. 46, 363 N.E.2d 1208 (3 Dist. 1977).

Offense

Since defendant was convicted of violating 720 ILCS 5/33-3, his conduct was described as an offense in the Illinois Code, as required by 720 ILCS 5/1-3. People v. Howard, 228 Ill. 2d 428, 320 Ill. Dec. 868, 888 N.E.2d 85, 2008 Ill. LEXIS 316 (2008).

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Official Capacity

Where the deputy sheriffs were charged with official misconduct in violation of 720 ILCS 5/33-3(b) as a result of their off-duty car chase and they were charged with knowingly performing acts, as public employees in their official capacity, that were forbidden by law, the deputy sheriffs were charged in their official capacity; thus, the Illinois State's Attorney had a duty to defend them pursuant to 55 ILCS 5/3-9005(a)(4). People v. Lanigan, 353 Ill. App. 3d 422, 288 Ill. Dec. 894, 818 N.E.2d 829, 2004 Ill. App. LEXIS 1266 (1 Dist. 2004), appeal denied, 213 Ill. 2d 569, 293 Ill. Dec. 866, 829 N.E.2d 791 (2005).

- Defined

An act of official misconduct is performed in a public officer's official capacity if it is accomplished by exploitation of his public position. People v. Lynn, 223 Ill. App. 3d 688, 166 Ill. Dec. 182, 585 N.E.2d 1204 (3 Dist. 1992).

A state employee has an "official capacity" within the meaning of this section only if he has some official position that could be exploited in some fashion to the detriment of the public goods. People v. Gray, 221 Ill. App. 3d 677, 164 Ill. Dec. 555, 583 N.E.2d 109 (4 Dist. 1991), cert. denied, 144 Ill. 2d 638, 169 Ill. Dec 146, 591 N.E.2d 26 (1992).

- Necessary for Activity

Where defendant, a prison medical technician who had regular access to the prison and its inmates and was also familiar with the search procedures, agreed to deliver cocaine to an inmate, his status as a public employee was integral to the drug transaction; therefore, he was properly found to have acted in an official capacity when he agreed to deliver the cocaine. People v. Lynn, 223 Ill. App. 3d 688, 166 Ill. Dec. 182, 585 N.E.2d 1204 (3 Dist. 1992).

- Not Shown

A police officer's conviction of official misconduct was improper on the basis that his possession of cocaine was not committed in his official capacity where there was no evidence that the defendant gained possession of the drugs by virtue of his official position. People v. Hampton, 307 Ill. App. 3d 464, 241 Ill. Dec. 20, 718 N.E.2d 591, 1999 Ill. App. LEXIS 621 (1 Dist. 1999), appeal denied, 186 Ill. 2d 577, 243 Ill. Dec. 564, 723 N.E.2d 1165 (1999).

Payment to Public Defender

- Cause Dismissed

Plaintiff's claim that a judge conditioned the appointment of the Public Defender to represent him upon the paying to the Defender a fee he was prohibited from accepting under former Ill. Rev. Stat., ch. 38, para. 456 (see now this section) was dismissed because plaintiff was not deprived of any constitutional rights because the Public Defender, allegedly after accepting a fee paid by another, did represent plaintiff. Luttrell v. Douglas, 220 F. Supp. 278 (N.D. Ill. 1963).

Personal Advantage

The counts of the indictment which simply alleged that the defendant engaged in sexual intercourse with prison inmates with the intent to obtain a personal advantage for himself, did not specifically identify the advantage sought, but were sufficient to apprise him of the nature of the offense and a bill of particulars could be used to learn the particular advantage alleged. People v. Selby, 298 Ill. App. 3d 605, 232 Ill. Dec. 672, 698 N.E.2d 1102 (4 Dist. 1998), appeal denied, 181 Ill. 2d 586, 235 Ill. Dec. 947, 706 N.E.2d 502 (1998).

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Since the obtaining of favorable publicity is the aspiration of every public office holder, such a motive cannot serve as the "personal advantage" that will constitute, when coupled with an act in excess of lawful authority, a violation of subsection (c) of this section. People v. Weber, 133 Ill. App. 3d 686, 88 Ill. Dec. 769, 479 N.E.2d 382 (5 Dist. 1985).

Pleading

- Requirements

Where conduct alleged in an indictment may in itself be wholly innocent, it is essential that the unlawfulness of the conduct be averred either by express allegation or by the use of the terms, or statement of facts, which clearly imply such unlawfulness. People v. Campbell, 3 Ill. App. 3d 984, 279 N.E.2d 123 (5 Dist. 1972).

Police Officers

- Evidence Held Insufficient

The state failed to prove a police officer guilty of official misconduct where all of his actions were done in his individual capacity and not in his official capacity. People v. Webb, 144 Ill. App. 3d 83, 98 Ill. Dec. 169, 493 N.E.2d 1190 (5 Dist. 1986).

Where there was no evidence whatsoever that a police officer knew he was forbidden to perform an act, nor that he had any intent to obtain personal advantage for himself, nor that his act was in excess of his lawful authority as a police officer, the evidence was insufficient to support a finding of the Fire and Police Commissioners Board of the village that police officer was guilty of official misconduct. Savaglio v. Board of Fire & Police Comm'rs, 125 Ill. App. 3d 391, 80 Ill. Dec. 719, 465 N.E.2d 1065 (2 Dist. 1984).

Defendant did not use the power attached to his position as lieutenant of the police department to influence officer when he traded a gun and the sale of the gun, the only act forming a basis for the official misconduct charge, was accomplished in his individual and not in his official capacity, and the state failed to prove a requisite element of the crime charged. People v. Steinmann, 57 Ill. App. 3d 887, 15 Ill. Dec. 411, 373 N.E.2d 757 (5 Dist. 1978).

- Evidence Held Sufficient

The evidence was sufficient to prove defendant had the knowledge that his act was wrong where defendant testified that he had been a law enforcement officer for 101/2 years, and other police officers testified that such acts were neither accepted, promoted, nor condoned, and that nothing in department or unit policy allowed an officer to act as defendant did. People v. Hollingsead, 210 Ill. App. 3d 750, 155 Ill. Dec. 216, 569 N.E.2d 216 (4 Dist.), cert. denied, 139 Ill. 2d 600, 159 Ill. Dec. 112, 575 N.E.2d 919 (1991).

Evidence held sufficient to support defendant's convictions for bribery and official misconduct where the testimony established that defendant was using his office as chief of police in order to extract money from motels, and defendant actively solicited the money and accepted payments over a period of six years. People v. Thoms, 30 Ill. App. 3d 229, 332 N.E.2d 538 (1 Dist. 1975).

Police Officer's Termination

A police officer's position is more like that of a teacher than an attorney, and a preponderance of the evidence standard adequately protects a police officer's professional interests in termination proceedings. Clark v. Board of Fire & Police Comm'rs, 245 Ill. App. 3d 385, 184 Ill. Dec. 509, 613 N.E.2d 826 (3 Dist. 1993).

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Private Cause of Action

Victim of police beating brought a claim pursuant to 720 ILCS 5/33-3, but the court granted the police officers' motion to dismiss because 720 ILCS 5/33-3 does not authorize a private right of action. Ernst v. Anderson, F. Supp. 2d , 2003 U.S. Dist. LEXIS 1040 (N.D. Ill. Jan. 23, 2003).

Proof Required

Defendant's arguments concerning the deletion of the alleged elements of "personal pecuniary benefit" and "detriment to the public good" from the jury instructions were without merit because these elements were not required to be proved to sustain a conviction for official misconduct under subsection (c) of this section. People v. Mehelic, 152 Ill. App. 3d 843, 105 Ill. Dec. 792, 504 N.E.2d 1310 (5 Dist. 1987).

To prove the offense of official misconduct under subsection (c) of this section, the state must establish that the defendant, a public officer or employee, while in his official capacity, exceeded his lawful authority by performing an act with the intent to obtain a personal advantage for himself or another. People v. Mehelic, 152 Ill. App. 3d 843, 105 Ill. Dec. 792, 504 N.E.2d 1310 (5 Dist. 1987).

Public Duty

- Liability Not Shown

Where the officers' hospital facilities were discharging a public duty in providing drinking water to persons on hospital grounds, and not a duty they owed to plaintiff laborers, who contracted typhus from drinking water provide by the hospital where they were working, there was no liability on the part of the officers to plaintiffs, and there being no duty, there was no liability. People ex rel. Trust Co. v. Maryland Cas. Co., 132 F.2d 850 (7th Cir. 1942).

Public Officer

- City Planning Commission

A member of a City Planning Commission who was appointed by the mayor and subject to confirmation by the city council was a public officer for purposes of the official misconduct and bribery statutes. People v. Drish, 24 Ill. App. 3d 225, 321 N.E.2d 179 (4 Dist. 1974).

Public Officers

- Evidence Held Sufficient

In official misconduct prosecution, defendant police officer was privileged neither to engage in criminal activity nor to utilize official computer records as a device for screening or selecting clients for his unlawful prostitution enterprise. It was immaterial why defendant found it necessary to screen his potential clients through the computer records; the fact that he did so, as an instrumental step preliminary to meeting with female undercover police officer, sufficiently demonstrated that it was his intention to use the computer information to facilitate his planned commission of an offense. People v. Krause, 241 Ill. App. 3d 394, 182 Ill. Dec. 446, 609 N.E.2d 980 (2 Dist. 1993).

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Purpose

The offense of official misconduct was designed to reach those situations where a public officer or employee has exploited his official position to the detriment of the public good. People v. Lynn, 223 Ill. App. 3d 688, 166 Ill. Dec. 182, 585 N.E.2d 1204 (3 Dist. 1992).

The purpose of the official misconduct statute is to compel public officials and employees, while acting in their official capacity, to do so in a lawful manner. People v. Samel, 115 Ill. App. 3d 905, 71 Ill. Dec. 738, 451 N.E.2d 892 (2 Dist. 1983).

Subsection (b) of this section was designed to prevent the exploitation of one's official position by a public officer or employee to the detriment of the public good. People v. Toolen, 116 Ill. App. 3d 632, 72 Ill. Dec. 41, 451 N.E.2d 1364 (5 Dist. 1983).

The offense of misconduct was designed to reach those situations where a public officer or employee has in some fashion exploited his official position to the detriment of the public good. People v. Steinmann, 57 Ill. App. 3d 887, 15 Ill. Dec. 411, 373 N.E.2d 757 (5 Dist. 1978).

Retaliatory Discharge

- Authority of Mayor

Since the official misconduct statute contains its own strong deterrents to violations, and where the limited benefit that might be gained by recognizing a claim for retaliatory discharge is outweighed by the separate concern articulated in former 65 ILCS 5/3-1-1 (see now 65 ILCS 5/3.1-5-5), which grants to a mayor authority to discharge an appointed officer whenever the mayor believes that discharge is in the municipality's best interest, exposing a mayor to the possibility of suits for retaliatory discharge in an instance such as the termination of the director of a city's electrical department would improperly inhibit the mayor's discretionary authority over appointments without significantly advancing the public policy expressed in the official misconduct statute. Fellhauer v. City of Geneva, 142 Ill. 2d 495, 154 Ill. Dec. 649, 568 N.E.2d 870 (1991).

- Sufficiency of Complaint

The mere citation of a constitutional or statutory provision in a complaint will not by itself be sufficient to state a cause of action for retaliatory discharge; rather, a plaintiff must demonstrate that the public policy mandated by the cited provision is violated by his discharge. Fellhauer v. City of Geneva, 142 Ill. 2d 495, 154 Ill. Dec. 649, 568 N.E.2d 870 (1991).

RICO Predicate

Former owner of a sports facility could assert Racketeer Influenced and Corrupt Organizations Act (RICO) claims against village officials to the extent that the claims were based on an alleged violation of 720 ILCS 5/33-3(d) of the Illinois Official Misconduct Statute, which sounded in bribery; however, alleged violations of § 33-3(c) did not relate to bribery and could not constitute predicate acts under 18 U.S.C. § 1961(1) of RICO. LaFlamboy v. Landek, 587 F. Supp. 2d 914, 2008 U.S. Dist. LEXIS 95156 (N.D. Ill. 2008).

Former owner of a sports facility sufficiently alleged a predicate act under 18 U.S.C. § 1961(1)(A) of the Racketeer Influenced and Corrupt Organizations Act (RICO) where the owner claimed that village officials violated 720 ILCS 5/33-3(d) of the Illinois Official Misconduct Statute by taking part in a kickback scheme, as § 33-3(d) violations fell within the generic classification of bribery. However, to the extent that the owner invoked § 33-3(c) by alleging that the officials acted outside their lawful authority, such allegations did not relate to bribery and did not qualify as RICO

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predicate acts. LaFlamboy v. Landek, F. Supp. 2d , 2008 U.S. Dist. LEXIS 93368 (N.D. Ill. Nov. 17, 2008), corrected, 2008 U.S. Dist. LEXIS 95156 (N.D. Ill. 2008).

720 ILCS 5/33-3(c) does not read like a definition of bribery and therefore may not be used as a predicate offense under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C.S. § 1961 et seq. United States v. Genova, 333 F.3d 750, 2003 U.S. App. LEXIS 12510 (7th Cir. 2003).

Rules and Regulations

- Basis for Prosecution

Defendant's conviction for official misconduct in violation of 720 ILCS 5/33-3(b) could not stand, as the State failed to show that the village police department rule that defendant violated in informing a reputed drug dealer of nearby police activity was a required "law" under that statute. The State did not show that the rule pursuant to 65 ILCS 5/1-2-5 had ever been recorded as an ordinance, that it had been at least passed as an ordinance under 65 ILCS 5/1-2-6, or that it had even undergone any legislative process at all. People v. Williams, 239 Ill. 2d 119, 346 Ill. Dec. 50, 940 N.E.2d 50, 2010 Ill. LEXIS 1556 (2010).

A violation of a rule or regulation properly promulgated by an administrative body may form the basis for prosecution under subsections (b) and (c) of this section. People v. Samel, 115 Ill. App. 3d 905, 71 Ill. Dec. 738, 451 N.E.2d 892 (2 Dist. 1983).

- Crime Not Required

Since it was not necessary that an administrative rule or regulation provide for criminal sanctions or constitute a criminal offense in order to form the basis upon which to predicate a charge of official misconduct, a trial court erred in dismissing official misconduct counts on the grounds that the Law Enforcement Agency Data System regulations did not contain a penalty provision. People v. Samel, 115 Ill. App. 3d 905, 71 Ill. Dec. 738, 451 N.E.2d 892 (2 Dist. 1983).

- Penalty Clause Not Required

It is unnecessary that an administrative rule or regulation contain a penalty clause before it can act as a basis for bringing a charge of official misconduct. People v. Samel, 115 Ill. App. 3d 905, 71 Ill. Dec. 738, 451 N.E.2d 892 (2 Dist. 1983).

Sentencing

- Aggravating Factors

The legislature did not intend for a trial court to consider in aggravation that the defendant's conduct caused or threatened serious harm to society; the aggravating factor of causing or threatening serious harm does not apply to offenses such as official misconduct which threaten nonphysical serious harm only to society at large. People v. Warwick, 123 Ill. App. 3d 692, 79 Ill. Dec. 68, 463 N.E.2d 206 (3 Dist. 1984).

Implicit in the offense of official misconduct by a police officer was that, by the duties of his position, the defendant was "obliged to prevent the particular offense committed"; this absolute duty to prevent the offense of his own official misconduct did not vary by degrees, and this factor was inappropriate to consider in aggravation in this type of case. People v. Warwick, 123 Ill. App. 3d 692, 79 Ill. Dec. 68, 463 N.E.2d 206 (3 Dist. 1984).

In a case of official misconduct by a police officer, absent a proper finding that the defendant held public office at the time of the offense, the aggravating factor of whether the offense related to the

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conduct of that public office was inapplicable. People v. Warwick, 123 Ill. App. 3d 692, 79 Ill. Dec. 68, 463 N.E.2d 206 (3 Dist. 1984).

It was proper for a court to consider in aggravation the fact that a defendant police officer, in a prosecution for official misconduct, used his professional reputation or position in connection with the offense. People v. Warwick, 123 Ill. App. 3d 692, 79 Ill. Dec. 68, 463 N.E.2d 206 (3 Dist. 1984).

- Held Not Excessive

In light of the seriousness of the charges, the granting of probation to the defendant, the defendant's past experience and apparent employability, and the statutory provisions which allowed for future modification of a fine, the imposition of a $5,000 fine was not an abuse of the trial court's discretion. People v. Wright, 105 Ill. App. 3d 187, 61 Ill. Dec. 89, 434 N.E.2d 26 (2 Dist. 1982).

Sentence was not excessive for guilty plea to official misconduct. People v. Hunt, 3 Ill. App. 3d 1074, 280 N.E.2d 46 (2 Dist. 1972).

- Single Act

Where the offenses charged, official misconduct and poaching, arose from the a single course of conduct by defendants, and the trial court entered judgment of conviction and sentence only on the most serious offense, official misconduct, and where the sentence conformed to the statutory prescription for a Class 3 felony, the fact that the trial court failed to articulate which of the three counts of official misconduct served as the basis for conviction was immaterial as all counts charged the same offense, and the trial court correctly entered judgment of conviction and sentence for only a single felony offense. People v. Locascio, 137 Ill. App. 3d 201, 91 Ill. Dec. 892, 484 N.E.2d 451 (1 Dist. 1985).

Statute of Limitations

- Failure to Report

The extended statute of limitations for acts of misconduct by public employees (720 ILCS 5/3-6) was not barred by the fact that a deputy discovered the offense of his colleagues regarding money taken from a motorist and failed to report the same. People v. Wenstrom, 43 Ill. App. 3d 250, 1 Ill. Dec. 883, 356 N.E.2d 1165 (2 Dist. 1976).

Township Employees

Where defendant had access to a township truck and was authorized to pick up rock from a quarry solely for the township account, and he contracted with another party for the hauling of rock in the township truck, and where the township truck was apparently observed on several occasions delivering rock to that party's property, and expert testimony indicated that rock so delivered on one occasion originated from the quarry, the delivery of township gravel to private individuals and the use of the township truck for private purposes was beyond the scope of defendant's lawful authority and supported a finding of guilty of official misconduct. People v. Hajostek, 49 Ill. App. 3d 148, 7 Ill. Dec. 46, 363 N.E.2d 1208 (3 Dist. 1977).

Venue

Where a public official by virtue of his public office is tried for alleged offenses which directly or indirectly involve the breach of fiduciary duties as to funds under his control, venue may properly be laid in the county of his office. People v. Clark, 71 Ill. App. 3d 381, 27 Ill. Dec. 680, 389

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N.E.2d 911 (2 Dist. 1979).

OPINIONS OF ATTORNEY GENERAL

Ethics Code

The county board of a non-home-rule county may adopt ordinances regulating specific activities and business interests concerning which the county has been granted authority to act, and may compile those ordinances into an ethics code; such ordinances, however, may not conflict with state law or impair the power of county officers to control the internal operations of their offices. 1994 Op. Atty. Gen. (94-014).

LEGAL PERIODICALS

For comment, "Illinois Conflict of Interest Law and Municipal Officers," see 12 S. Ill. U.L.J. 571 (1988).

For article, "Strip and Body Cavity Searches in Illinois," see 69 Ill. B.J. 86 (1980).

RESEARCH REFERENCES

What constitutes conviction within statutory or constitutional provision making conviction of crime ground of disqualification for, removal from, or vacancy in, public office. 10 ALR5th 139.

Practice Guides and Treatises.

Real Estate Taxation § 8.30 Criminal Penalties for Official Misconduct (IICLE).

§ 720 ILCS 5/33-3.1. Solicitation misconduct (State government)

Sec. 33-3.1. Solicitation misconduct (State government). (a) An employee of an executive branch constitutional officer commits solicitation misconduct (State government) when, at any time, he or she knowingly solicits or receives contributions, as that term is defined in Section 9-1.4 of the Election Code [10 ILCS 5/9-1.4], from a person engaged in a business or activity over which the person has regulatory authority.

(b) For the purpose of this Section, "employee of an executive branch constitutional officer" means a full-time or part-time salaried employee, full-time or part-time salaried appointee, or any contractual employee of any office, board, commission, agency, department, authority, administrative unit, or corporate outgrowth under the jurisdiction of an executive branch constitutional officer; and "regulatory authority" means having the

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responsibility to investigate, inspect, license, or enforce regulatory measures necessary to the requirements of any State or federal statute or regulation relating to the business or activity.

(c) An employee of an executive branch constitutional officer, including one who does not have regulatory authority, commits a violation of this Section if that employee knowingly acts in concert with an employee of an executive branch constitutional officer who does have regulatory authority to solicit or receive contributions in violation of this Section.

(d) Solicitation misconduct (State government) is a Class A misdemeanor. An employee of an executive branch constitutional officer convicted of committing solicitation misconduct (State government) forfeits his or her employment.

(e) An employee of an executive branch constitutional officer who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee or on behalf of the employee or others in furtherance of the enforcement of this Section shall be entitled to all relief necessary to make the employee whole.

(f) Any person who knowingly makes a false report of solicitation misconduct (State government) to the State Police, the Attorney General, a State's Attorney, or any law enforcement official is guilty of a Class C misdemeanor.

(Source: P.A. 92-853, § 10.)

Effective Date. Section 99 of P.A. 92-853, made this section effective upon becoming law. The Act was approved August 28, 2002.

§ 720 ILCS 5/33-3.2. Solicitation misconduct (local government)

Sec. 33-3.2. Solicitation misconduct (local government). (a) An employee of a chief executive officer of a local government commits solicitation misconduct (local government) when, at any time, he or she knowingly solicits or receives contributions, as that term is defined in Section 9-1.4 of the Election Code [10 ILCS 5/9-1.4], from a person engaged in a business or activity over which the person has regulatory authority.

(b) For the purpose of this Section, "chief executive officer of a local government" means an executive officer of a county, township or municipal government or any administrative subdivision under jurisdiction of the county, township, or municipal government including but not limited to: chairman or president of a county board or commission, mayor or village president, township supervisor, county executive, municipal manager, assessor, auditor, clerk, coroner, recorder, sheriff or State's Attorney; "employee of a chief executive officer of a local government" means a full-time or part-time salaried

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employee, full-time or part-time salaried appointee, or any contractual employee of any office, board, commission, agency, department, authority, administrative unit, or corporate outgrowth under the jurisdiction of a chief executive officer of a local government; and "regulatory authority" means having the responsibility to investigate, inspect, license, or enforce regulatory measures necessary to the requirements of any State, local, or federal statute or regulation relating to the business or activity.

(c) An employee of a chief executive officer of a local government, including one who does not have regulatory authority, commits a violation of this Section if that employee knowingly acts in concert with an employee of a chief executive officer of a local government who does have regulatory authority to solicit or receive contributions in violation of this Section.

(d) Solicitation misconduct (local government) is a Class A misdemeanor. An employee of a chief executive officer of a local government convicted of committing solicitation misconduct (local government) forfeits his or her employment.

(e) An employee of a chief executive officer of a local government who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee or on behalf of the employee or others in furtherance of the enforcement of this Section shall be entitled to all relief necessary to make the employee whole.

(f) Any person who knowingly makes a false report of solicitation misconduct (local government) to the State Police, the Attorney General, a State's Attorney, or any law enforcement official is guilty of a Class C misdemeanor.

(Source: P.A. 92-853, § 10.)

Effective Date. Section 99 of P.A. 92-853, made this section effective upon becoming law. The Act was approved August 28, 2002.

CASE NOTES

Elements

Court denied a Fed. R. Civ. P. 12(b)(6) motion filed by a county sheriff's political campaign committee to dismiss a sheriff department employee's First Amendment and Racketeer Influenced and Corrupt committees Act (RICO), 18 U.S.C.S. §§ 1961-68, claims, holding that (1) it had previously held that the employee had adequately alleged a pattern of racketeering activity under 18 U.S.C.S. § 1961(5) based on defendants' conditioning of employment decisions on political campaign contributions; (2) the employee's class allegations also supported her contention of a pattern of racketeering activity; (3) the employee alleged that defendants accomplished their scheme through interstate travel and mail, which sufficiently alleged interstate activity; (4) the employee sufficiently stated a claim under 720 ILCS 5/33-3.2(c) because the

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statute's definition of an "employee of a chief executive officer of a local government" in broad terms was sufficient to encompass the committee; (5) the committee's motion to dismiss marked the third challenge to the pattern of racketeering element in the employee's RICO action, and there was still no reason to find that element lacking; (6) the court had previously held that the employee satisfied the "enterprise" element of RICO set forth in 18 U.S.C.S. § 1961(4), so it would not revisit that conclusion; (7) the committee's reliance on Younger was misplaced as there was no claim that a concurrent proceeding in state court existed, and the employee established jurisdiction under 28 U.S.C.S. § 1343 (and also 42 U.S.C.S. § 1983), and did not need to allege any "exception to federal court interference"; and (8) the employee's First Amendment claim was against all defendants but the committee. Cobbs v. Sheahan, F. Supp. 2d , 2005 U.S. Dist. LEXIS 26041 (N.D. Ill. Oct. 26, 2005).

§ 720 ILCS 5/33-4. Peace officer or correctional officer; gang-related activity prohibited

Sec. 33-4. Peace officer or correctional officer; gang-related activity prohibited. (a) It is unlawful for a peace officer or correctional officer to knowingly commit any act in furtherance of gang-related activities, except when acting in furtherance of an undercover law enforcement investigation.

(b) In this Section, "gang-related" has the meaning ascribed to it in Section 10 of the Illinois Streetgang Terrorism Omnibus Prevention Act [740 ILCS 147/10].

(c) Sentence. A violation of this Section is a Class 3 felony.

(Source: P.A. 90-131, § 5.)

Effective Date. This section became effective January 1, 1998 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

§ 720 ILCS 5/33-5. Preservation of evidence

Sec. 33-5. Preservation of evidence. (a) It is unlawful for a law enforcement agency or an agent acting on behalf of the law enforcement agency to intentionally fail to comply with the provisions of subsection (a) of Section 116-4 of the Code of Criminal Procedure of 1963 [725 ILCS 5/116-4].

(b) Sentence. A person who violates this Section is guilty of a Class 4 felony.

(c) For purposes of this Section, "law enforcement agency" has the meaning ascribed to it in subsection (e) of Section 116-4 of the Code of Criminal Procedure of 1963.

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(Source: P.A. 91-871, § 5; 92-459, § 5.)

Effective Date. This section is effective January 1, 2001, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2001 amendment by P.A. 92-459, effective August 22, 2001, rewrote the section heading; in subsection (a) substituted "law enforcement agency or an agent acting on behalf of the law enforcement agency" for "State's Attorney, an Assistant State's Attorney, or another employee of the Office of the State's Attorney, or for a peace officer or other employee of a law enforcement agency" in the first sentence; and in subsection (c) substituted "subsection (e) of Section 116-4" for "clause (a)(4) of Section 107-4".

§ 720 ILCS 5/33-6. Bribery to obtain driving privileges

Sec. 33-6. Bribery to obtain driving privileges. (a) A person commits the offense of bribery to obtain driving privileges when:

(1) with intent to influence any act related to the issuance of any driver's license or permit by an employee of the Illinois Secretary of State's Office, or the owner or employee of any commercial driver training school licensed by the Illinois Secretary of State, or any other individual authorized by the laws of this State to give driving instructions or administer all or part of a driver's license examination, he or she promises or tenders to that person any property or personal advantage which that person is not authorized by law to accept; or

(2) with intent to cause any person to influence any act related to the issuance of any driver's license or permit by an employee of the Illinois Secretary of State's Office, or the owner or employee of any commercial driver training school licensed by the Illinois Secretary of State, or any other individual authorized by the laws of this State to give driving instructions or administer all or part of a driver's license examination, he or she promises or tenders to that person any property or personal advantage which that person is not authorized by law to accept; or

(3) as an employee of the Illinois Secretary of State's Office, or the owner or employee of any commercial driver training school licensed by the Illinois Secretary of State, or any other individual authorized by the laws of this State to give driving instructions or administer all or part of a driver's license examination, solicits, receives, retains, or agrees to accept any property or personal advantage that he or she is not authorized by law to accept knowing that such property or personal advantage was promised or tendered with intent to influence the performance of any act related to the issuance of any driver's license or permit; or

(4) as an employee of the Illinois Secretary of State's Office, or the owner or employee of any commercial driver training school licensed by the Illinois Secretary of State, or any other individual authorized by the laws of this State to give driving instructions or

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administer all or part of a driver's license examination, solicits, receives, retains, or agrees to accept any property or personal advantage pursuant to an understanding that he or she shall improperly influence or attempt to influence the performance of any act related to the issuance of any driver's license or permit.

(b) Sentence. Bribery to obtain driving privileges is a Class 2 felony.

(Source: P.A. 93-783, § 5; 96-740, § 15; 96-962, § 10.)

Effective Date. This section is effective January 1, 2005, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2009 amendment by P.A. 96-740, effective January 1, 2010, inserted "exam" in (a)(1) through (a)(4).

The 2010 amendment by P.A. 96-962, effective July 2, 2010, deleted "exam" following "driver" four times throughout the section.

§ 720 ILCS 5/33-7. Public contractor misconduct

Sec. 33-7. Public contractor misconduct. (a) A public contractor; a person seeking a public contract on behalf of himself, herself, or another; an employee of a public contractor; or a person seeking a public contract on behalf of himself, herself, or another commits public contractor misconduct when, in the performance of, or in connection with, a contract with the State, a unit of local government, or a school district or in obtaining or seeking to obtain such a contract he or she commits any of the following acts:

(1) intentionally or knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property;

(2) knowingly performs an act that he or she knows he or she is forbidden by law to perform;

(3) with intent to obtain a personal advantage for himself, herself, or another, he or she performs an act in excess of his or her contractual responsibility;

(4) solicits or knowingly accepts for the performance of any act a fee or reward that he or she knows is not authorized by law; or

(5) knowingly or intentionally seeks or receives compensation or reimbursement for goods and services he or she purported to deliver or render, but failed to do so pursuant to the terms of the contract, to the unit of State or local government or school district.

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(b) Sentence. Any person who violates this Section commits a Class 3 felony. Any person convicted of this offense or a similar offense in any state of the United States which contains the same elements of this offense shall be barred for 10 years from the date of conviction from contracting with, employment by, or holding public office with the State or any unit of local government or school district. No corporation shall be barred as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and (1) it has been finally adjudicated not guilty or (2) it demonstrates to the government entity with which it seeks to contract, and that entity finds, that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer or high managerial agent on behalf of the corporation as provided in paragraph (2) of subsection (a) of Section 5-4 of this Code [720 ILCS 5/5-4].

(c) The Attorney General or the State's Attorney in the county where the principal office of the unit of local government or school district is located may bring a civil action on behalf of any unit of State or local government to recover a civil penalty from any person who knowingly engages in conduct which violates subsection (a) of this Section in treble the amount of the monetary cost to the unit of State or local government or school district involved in the violation. The Attorney General or State's Attorney shall be entitled to recover reasonable attorney's fees as part of the costs assessed to the defendant. This subsection (c) shall in no way limit the ability of any unit of State or local government or school district to recover moneys or damages regarding public contracts under any other law or ordinance. A civil action shall be barred unless the action is commenced within 6 years after the later of (1) the date on which the conduct establishing the cause of action occurred or (2) the date on which the unit of State or local government or school district knew or should have known that the conduct establishing the cause of action occurred.

(d) This amendatory Act of the 96th General Assembly [P.A. 96-575] shall not be construed to create a private right of action.

(Source: P.A. 94-338, § 5; 96-575, § 5.)

Effective Date. This section is effective January 1, 2006 pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2009 amendment by P.A. 96-575, effective August 18, 2009, added (a)(5); added the last two sentences of (b); added (c) and (d); and made related changes.

Part F.
Certain Aggravated Offenses

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Article 33E.

Public Contracts

§ 720 ILCS 5/33E-1. Interference with public contracting

Sec. 33E-1. Interference with public contracting. It is the finding of the General Assembly that the cost to the public is increased and the quality of goods, services and construction paid for by public monies is decreased when contracts for such goods, services or construction are obtained by any means other than through independent noncollusive submission of bids or offers by individual contractors or suppliers, and the evaluation of those bids or offers by the governmental unit pursuant only to criteria publicly announced in advance.

(Source: P.A. 85-1295.)

Note.

This section was Ill.Rev.Stat., Ch. 38, Para. 33E-1.

LEGAL PERIODICALS

For article, "Illinois' Public Bidding Statute: The Pitfalls," see 78 Ill. B.J. 402 (1990).

§ 720 ILCS 5/33E-2. Definitions

Sec. 33E-2. Definitions. In this Act:

(a) "Public contract" means any contract for goods, services or construction let to any person with or without bid by any unit of State or local government.

(b) "Unit of State or local government" means the State, any unit of state government or agency thereof, any county or municipal government or committee or agency thereof, or any other entity which is funded by or expends tax dollars or the proceeds of publicly guaranteed bonds.

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(c) "Change order" means a change in a contract term other than as specifically provided for in the contract which authorizes or necessitates any increase or decrease in the cost of the contract or the time to completion.

(d) "Person" means any individual, firm, partnership, corporation, joint venture or other entity, but does not include a unit of State or local government.

(e) "Person employed by any unit of State or local government" means any employee of a unit of State or local government and any person defined in subsection (d) who is authorized by such unit of State or local government to act on its behalf in relation to any public contract.

(f) "Sheltered market" has the meaning ascribed to it in Section 8b of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act; except that, with respect to State contracts set aside for award to service-disabled veteran-owned small businesses and veteran-owned small businesses pursuant to Section 45-57 of the Illinois Procurement Code [30 ILCS 500/45-57], "sheltered market" means procurements pursuant to that Section.

(g) "Kickback" means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

(h) "Prime contractor" means any person who has entered into a public contract.

(i) "Prime contractor employee" means any officer, partner, employee, or agent of a prime contractor.

(i-5) "Stringing" means knowingly structuring a contract or job order to avoid the contract or job order being subject to competitive bidding requirements.

(j) "Subcontract" means a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining goods or services of any kind under a prime contract.

(k) "Subcontractor" (1) means any person, other than the prime contractor, who offers to furnish or furnishes any goods or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract; and (2) includes any person who offers to furnish or furnishes goods or services to the prime contractor or a higher tier subcontractor.

(l) "Subcontractor employee" means any officer, partner, employee, or agent of a subcontractor.

(Source: P.A. 86-150; 90-800, § 5; 92-16, § 88; 97-260, § 10.)

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Note.

This section was Ill.Rev.Stat., Ch. 38, Para. 33E-2.

The Minority and Female Business Enterprise Act, referred to above, is now the Business Enterprise for Minorities, Females, and Persons with Disabilities Act, 30 ILCS 575/2.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Effect of Amendments. The 1998 amendment by P.A. 90-800, effective January 1, 1999, in subsection (b) inserted a comma and deleted "or" following "the State,"; added subsection (i-5).

The 2001 amendment by P.A. 92-16, effective June 28, 2001, rewrote subsection (f), which formerly read: "'Sheltered market' has the meaning ascribed to it in Section 2 of the Minority and Female Business Enterprise Act, as now or hereafter amended".

The 2011 amendment by P.A. 97-260, effective August 5, 2011, added "except that, with respect to State contracts set aside for award to service-disabled veteran-owned small businesses and veteran-owned small businesses pursuant to Section 45-57 of the Illinois Procurement Code, 'sheltered market' means procurements pursuant to that Section" to the end of (f).

Practice Guides and Treatises.

Construction Litigation § 1.43 Bid Splitting and Stringing (IICLE).

§ 720 ILCS 5/33E-3. Bid-rigging

Sec. 33E-3. Bid-rigging. A person commits the offense of bid-rigging when he knowingly agrees with any person who is, or but for such agreement would be, a competitor of such person concerning any bid submitted or not submitted by such person or another to a unit of State or local government when with the intent that the bid submitted or not submitted will result in the award of a contract to such person or another and he either (1) provides such person or receives from another information concerning the price or other material term or terms of the bid which would otherwise not be disclosed to a competitor in an independent noncollusive submission of bids or (2) submits a bid that is of such a price or other material term or terms that he does not intend the bid to be accepted.

Bid-rigging is a Class 3 felony. Any person convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be barred for 5 years from the date of conviction from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded,

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nor performed by a director, officer or a high managerial agent in behalf of the corporation as provided in paragraph (2) of subsection (a) of Section 5-4 of this Code [720 ILCS 5/4].

(Source: P.A. 86-150.)

Note.

This section was Ill.Rev.Stat., Ch. 38, Para. 33E-3.

CASE NOTES

Relationship with Other Laws

Lighting supplier's letter to prime contractor, in which she accused the contractor of favoring another supplier who she believed was related to the contractor, was an accusation of bid-rigging in violation of 720 ILCS 5/33E-3, and was thus defamatory per se. Parker v. House O'Lite Corp., 324 Ill. App. 3d 1014, 258 Ill. Dec. 304, 756 N.E.2d 286, 2001 Ill. App. LEXIS 651 (1 Dist. 2001).

LEGAL PERIODICALS

For article, "An Illinois Lawyer's Guide to Government Grants", see 86 Ill. B.J. 444 (1998).

Practice Guides and Treatises.

Construction Litigation § 1.110 Contractor Certification (IICLE).

Construction Litigation § 1.96 Bid Rigging (IICLE).

§ 720 ILCS 5/33E-4. Bid rotating

Sec. 33E-4. Bid rotating. A person commits the offense of bid rotating when, pursuant to any collusive scheme or agreement with another, he engages in a pattern over time (which, for the purposes of this Section, shall include at least 3 contract bids within a period of 10 years, the most recent of which occurs after the effective date of this amendatory Act of 1988) of submitting sealed bids to units of State or local government with the intent that the award of such bids rotates, or is distributed among, persons or business entities which submit bids on a substantial number of the same contracts. Bid rotating is a Class 2 felony. Any person convicted of this offense or any similar offense

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of any state or the United States which contains the same elements as this offense shall be permanently barred from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer or a high managerial agent in behalf of the corporation as provided in paragraph (2) of subsection (a) of Section 5-4 of this Code [720 ILCS 5-4].

(Source: P.A. 86-150.)

Note.

This section was Ill.Rev.Stat., Ch. 38, Para. 33E-4.

Practice Guides and Treatises.

Construction Litigation § 1.110 Contractor Certification (IICLE).

Construction Litigation § 1.97 Bid Rotating (IICLE).

Construction Litigation § 1.92 Deprivation of Due Process (IICLE).

§ 720 ILCS 5/33E-5. Acquisition or disclosure of bidding information by public official

Sec. 33E-5. Acquisition or disclosure of bidding information by public official. (a) Any person who is an official of or employed by any unit of State or local government who knowingly opens a sealed bid at a time or place other than as specified in the invitation to bid or as otherwise designated by the State or unit of local government, or outside the presence of witnesses required by the applicable statute or ordinance, commits a Class 4 felony.

(b) Any person who is an official of or employed by any unit of State or local government who knowingly discloses to any interested person any information related to the terms of a sealed bid whether that information is acquired through a violation of subsection (a) or by any other means except as provided by law or necessary to the performance of such official's or employee's responsibilities relating to the bid, commits a Class 3 felony.

(c) It shall not constitute a violation of subsection (b) of this Section for any person who is an official of or employed by any unit of State or local government to make any

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disclosure to any interested person where such disclosure is also made generally available to the public.

(d) This Section only applies to contracts let by sealed bid.

(Source: P.A. 86-150.)

Note.

This section was Ill.Rev.Stat., Ch. 38, Para. 33E-5.

Practice Guides and Treatises.

Construction Litigation § 1.98 Acquisition or Disclosure of Bidding Information (IICLE).

§ 720 ILCS 5/33E-6. Interference with contract submission and award by public official

Sec. 33E-6. Interference with contract submission and award by public official. (a) Any person who is an official of or employed by any unit of State or local government who knowingly conveys, either directly or indirectly, outside of the publicly available official invitation to bid, pre-bid conference, solicitation for contracts procedure or such procedure used in any sheltered market procurement adopted pursuant to law or ordinance by that unit of government, to any person any information concerning the specifications for such contract or the identity of any particular potential subcontractors, when inclusion of such information concerning the specifications or contractors in the bid or offer would influence the likelihood of acceptance of such bid or offer, commits a Class 4 felony. It shall not constitute a violation of this subsection to convey information intended to clarify plans or specifications regarding a public contract where such disclosure of information is also made generally available to the public.

(b) Any person who is an official of or employed by any unit of State or local government who, either directly or indirectly, knowingly informs a bidder or offeror that the bid or offer will be accepted or executed only if specified individuals are included as subcontractors commits a Class 3 felony.

(c) It shall not constitute a violation of subsection (a) of this Section where any person who is an official of or employed by any unit of State or local government follows procedures established (i) by federal, State or local minority or female owned business enterprise programs or (ii) pursuant to Section 45-57 of the Illinois Procurement Code [30 ILCS 500/45-57].

(d) Any bidder or offeror who is the recipient of communications from the unit of government which he reasonably believes to be proscribed by subsections (a) or (b), and

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fails to inform either the Attorney General or the State's Attorney for the county in which the unit of government is located, commits a Class A misdemeanor.

(e) Any public official who knowingly awards a contract based on criteria which were not publicly disseminated via the invitation to bid, when such invitation to bid is required by law or ordinance, the pre-bid conference, or any solicitation for contracts procedure or such procedure used in any sheltered market procurement procedure adopted pursuant to statute or ordinance, commits a Class 3 felony.

(f) It shall not constitute a violation of subsection (a) for any person who is an official of or employed by any unit of State or local government to provide to any person a copy of the transcript or other summary of any pre-bid conference where such transcript or summary is also made generally available to the public.

(Source: P.A. 86-150; 97-260, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 38, Para. 33E-6.

Effect of Amendments. The 2011 amendment by P.A. 97-260, effective August 5, 2011, in (c), added the item (i) designation and added item (ii); and made a related change.

RESEARCH REFERENCES

Public contracts: Low bidder's monetary relief against state or local agency for nonaward of contract. 65 ALR4th 93.

Practice Guides and Treatises.

Construction Litigation § 1.99 Interference with the Submission of a Contract (IICLE).

§ 720 ILCS 5/33E-7. Kickbacks

Sec. 33E-7. Kickbacks. (a) A person violates this Section when he knowingly either:

(1) provides, attempts to provide or offers to provide any kickback;

(2) solicits, accepts or attempts to accept any kickback; or

(3) includes, directly or indirectly, the amount of any kickback prohibited by paragraphs (1) or (2) of this subsection (a) in the contract price charged by a subcontractor to a prime

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contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to any unit of State or local government for a public contract.

(b) Any person violates this Section when he has received an offer of a kickback, or has been solicited to make a kickback, and fails to report it to law enforcement officials, including but not limited to the Attorney General or the State's Attorney for the county in which the contract is to be performed.

(c) A violation of subsection (a) is a Class 3 felony. A violation of subsection (b) is a Class 4 felony.

(d) Any unit of State or local government may, in a civil action, recover a civil penalty from any person who knowingly engages in conduct which violates paragraph (3) of subsection (a) of this Section in twice the amount of each kickback involved in the violation. This subsection (d) shall in no way limit the ability of any unit of State or local government to recover monies or damages regarding public contracts under any other law or ordinance. A civil action shall be barred unless the action is commenced within 6 years after the later of (1) the date on which the conduct establishing the cause of action occurred or (2) the date on which the unit of State or local government knew or should have known that the conduct establishing the cause of action occurred.

(Source: P.A. 85-1295.)

Note.

This section was Ill.Rev.Stat., Ch. 38, Para. 33E-7.

RESEARCH REFERENCES

Public contracts: Low bidder's monetary relief against state or local agency for nonaward of contract. 65 ALR4th 93.

Practice Guides and Treatises.

Construction Litigation § 1.100 Kickbacks (IICLE).

Construction Litigation § 1.95 Official Misconduct (IICLE).

§ 720 ILCS 5/33E-8. Bribery of inspector employed by contractor

Sec. 33E-8. Bribery of inspector employed by contractor. (a) A person commits bribery of an inspector when he offers to any person employed by a contractor or subcontractor on any public project contracted for by any unit of State or local government any

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property or other thing of value with the intent that such offer is for the purpose of obtaining wrongful certification or approval of the quality or completion of any goods or services supplied or performed in the course of work on such project. Violation of this subsection is a Class 4 felony.

(b) Any person employed by a contractor or subcontractor on any public project contracted for by any unit of State or local government who accepts any property or other thing of value knowing that such was intentionally offered for the purpose of influencing the certification or approval of the quality or completion of any goods or services supplied or performed under subcontract to that contractor, and either before or afterwards issues such wrongful certification, commits a Class 3 felony. Failure to report such offer to law enforcement officials, including but not limited to the Attorney General or the State's Attorney for the county in which the contract is performed, constitutes a Class 4 felony.

(Source: P.A. 85-1295.)

Note.

This section was Ill.Rev.Stat., Ch. 38, Para. 33E-8.

Practice Guides and Treatises.

Construction Litigation § 1.101 Bribery of an Inspector Employed by a Contractor (IICLE).

Construction Litigation § 1.95 Official Misconduct (IICLE).

§ 720 ILCS 5/33E-9. Change orders

Sec. 33E-9. Change orders. Any change order authorized under this Section shall be made in writing. Any person employed by and authorized by any unit of State or local government to approve a change order to any public contract who knowingly grants that approval without first obtaining from the unit of State or local government on whose behalf the contract was signed, or from a designee authorized by that unit of State or local government, a determination in writing that (1) the circumstances said to necessitate the change in performance were not reasonably foreseeable at the time the contract was signed, or (2) the change is germane to the original contract as signed, or (3) the change order is in the best interest of the unit of State or local government and authorized by law, commits a Class 4 felony. The written determination and the written change order resulting from that determination shall be preserved in the contract's file which shall be open to the public for inspection. This Section shall only apply to a change order or series of change orders which authorize or necessitate an increase or decrease in either the cost of a public contract by a total of $10,000 or more or the time of completion by a total of

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30 days or more.

(Source: P.A. 86-150; 87-618.)

Note.

This section was Ill.Rev.Stat., Ch. 38, Para. 33E-9.

Practice Guides and Treatises.

Construction Litigation § 1.102 Improper Change Orders (IICLE).

§ 720 ILCS 5/33E-10. Rules of evidence

Sec. 33E-10. Rules of evidence. (a) The certified bid is prima facie evidence of the bid.

(b) It shall be presumed that in the absence of practices proscribed by this Article 33E [720 ILCS 5/33E-1 et seq.], all persons who submit bids in response to an invitation to bid by any unit of State or local government submit their bids independent of all other bidders, without information obtained from the governmental entity outside the invitation to bid, and in a good faith effort to obtain the contract.

(Source: P.A. 85-1295.)

Note.

This section was Ill.Rev.Stat., Ch. 38, Para. 33E-10.

Practice Guides and Treatises.

Construction Litigation § 1.109 Rules of Evidence (IICLE).

§ 720 ILCS 5/33E-11. [Certification of eligibility to bid]

Sec. 33E-11. (a) Every bid submitted to and public contract executed pursuant to such bid by the State or a unit of local government shall contain a certification by the prime contractor that the prime contractor is not barred from contracting with any unit of State or local government as a result of a violation of either Section 33E-3 or 33E-4 of this

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Article [720 ILCS 5/33E-3 or 720 ILCS 5/33E-4]. The State and units of local government shall provide the appropriate forms for such certification.

(b) A contractor who makes a false statement, material to the certification, commits a Class 3 felony.

(Source: P.A. 86-150.)

Note.

This section was Ill.Rev.Stat., Ch. 38, Para. 33E-11.

§ 720 ILCS 5/33E-12. [Actions permitted under Article]

Sec. 33E-12. It shall not constitute a violation of any provisions of this Article for any person who is an official of or employed by a unit of State or local government to (1) disclose the name of any person who has submitted a bid in response to or requested plans or specifications regarding an invitation to bid or who has been awarded a public contract to any person or, (2) to convey information concerning acceptable alternatives or substitute to plans or specifications if such information is also made generally available to the public and mailed to any person who has submitted a bid in response to or requested plans or specifications regarding an invitation to bid on a public contract or, (3) to negotiate with the lowest responsible bidder a reduction in only the price term of the bid.

(Source: P.A. 86-150.)

Note.

This section was Ill.Rev.Stat., Ch. 38, Para. 33E-12.

Practice Guides and Treatises.

Construction Litigation § 1.66 Post-Bid Pre-Award Negotiations (IICLE).

§ 720 ILCS 5/33E-13. [Contract negotiations]

Sec. 33E-13. Contract negotiations under the Local Government Professional Services Selection Act [50 ILCS 510/0.01 et seq.] shall not be subject to the provisions of this

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Article.

(Source: P.A. 87-855.)

Note.

This section was Ill.Rev.Stat., Ch. 38, Para. 33E-13.

§ 720 ILCS 5/33E-14. False statements on vendor applications

Sec. 33E-14. False statements on vendor applications. Whoever knowingly makes any false statement or report, for the purpose of influencing in any way the action of any unit of local government or school district in considering a vendor application, is guilty of a Class 3 felony.

(Source: P.A. 90-800, § 5.)

Effective Date. Section 99 of P.A. 90-800 made this section effective January 1, 1999.

Practice Guides and Treatises.

Construction Litigation § 1.103 False Statements on Vendor Applications (IICLE).

§ 720 ILCS 5/33E-15. False entries

Sec. 33E-15. False entries. Any officer, agent, or employee of, or anyone who is affiliated in any capacity with any unit of local government or school district and makes a false entry in any book, report, or statement of any unit of local government or school district with the intent to defraud the unit of local government or school district, is guilty of a Class 3 felony.

(Source: P.A. 90-800, § 5.)

Effective Date. Section 99 of P.A. 90-800 made this section effective January 1, 1999.

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Construction Litigation § 1.104 False Entry of a Public Official (IICLE).

§ 720 ILCS 5/33E-16. Misapplication of funds

Sec. 33E-16. Misapplication of funds. Whoever, being an officer, director, agent, or employee of, or affiliated in any capacity with any unit of local government or school district, willfully misapplies any of the moneys, funds, or credits of the unit of local government or school district is guilty of a Class 3 felony.

(Source: P.A. 90-800, § 5.)

Effective Date. Section 99 of P.A. 90-800 made this section effective January 1, 1999.

Practice Guides and Treatises.

Construction Litigation § 1.105 Misapplication of Funds (IICLE).

§ 720 ILCS 5/33E-17. Unlawful participation

Sec. 33E-17. Unlawful participation. Whoever, being an officer, director, agent, or employee of, or affiliated in any capacity with any unit of local government or school district participates, shares in, or receiving directly or indirectly any money, profit, property, or benefit through any contract with the unit of local government or school district, with the intent to defraud the unit of local government or school district is guilty of a Class 3 felony.

(Source: P.A. 90-800, § 5.)

Effective Date. Section 99 of P.A. 90-800 made this section effective January 1, 1999.

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Construction Litigation § 1.106 Unlawful Participation (IICLE).

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§ 720 ILCS 5/33E-18. Unlawful stringing of bids

Sec. 33E-18. Unlawful stringing of bids. (a) No person for the purpose of evading the bidding requirements of any unit of local government or school district shall knowingly string or assist in stringing, or attempt to string any contract or job order with the unit of local government or school district.

(b) Sentence. A person who violates this Section is guilty of a Class 4 felony.

(Source: P.A. 90-800, § 5.)

Effective Date. Section 99 of P.A. 90-800 made this section effective January 1, 1999.

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Construction Litigation § 1.43 Bid Splitting and Stringing (IICLE).

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CHAPTER 740.
CIVIL LIABILITIES

740 ILCS 23Illinois Civil Rights Act of 2003
740 ILCS 115Parental Responsibility Law

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Illinois Civil Rights Act of 2003

Sec.

740 ILCS 23/1.Short title
740 ILCS 23/5.Discrimination prohibited

§ 740 ILCS 23/1. Short title

Sec. 1. Short title. This Act may be cited as the Illinois Civil Rights Act of 2003.

(Source: P.A. 93-425, § 1.)

Effective Date. This Act is effective January 1, 2004, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Practice Guides and Treatises.

Employment Discrimination § 11S.8C The Civil Rights Act of 2003 (IICLE).

§ 740 ILCS 23/5. Discrimination prohibited

Sec. 5. Discrimination prohibited. (a) No unit of State, county, or local government in Illinois shall:

(1) exclude a person from participation in, deny a person the benefits of, or subject a person to discrimination under any program or activity on the grounds of that person's race, color, national origin, or gender; or

(2) utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, national origin, or gender.

(b) Any party aggrieved by conduct that violates subsection (a) may bring a civil lawsuit, in a federal district court or State circuit court, against the offending unit of government. Any State claim brought in federal district court shall be a supplemental claim to a federal claim. This lawsuit must be brought not later than 2 years after the violation of subsection (a). If the court finds that a violation of paragraph (1) or (2) of subsection (a) has occurred, the court may award to the plaintiff actual damages. The court, as it deems appropriate, may grant as relief any permanent or preliminary negative or mandatory injunction, temporary restraining order, or other order.

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(c) Upon motion, a court shall award reasonable attorneys' fees and costs, including expert witness fees and other litigation expenses, to a plaintiff who is a prevailing party in any action brought:

(1) pursuant to subsection (b); or

(2) to enforce a right arising under the Illinois Constitution.

In awarding reasonable attorneys' fees, the court shall consider the degree to which the relief obtained relates to the relief sought.

(d) For the purpose of this Act, the term "prevailing party" includes any party:

(1) who obtains some of his or her requested relief through a judicial judgment in his or her favor;

(2) who obtains some of his or her requested relief through any settlement agreement approved by the court; or

(3) whose pursuit of a non-frivolous claim was a catalyst for a unilateral change in position by the opposing party relative to the relief sought.

(Source: P.A. 93-425, § 5; 93-750, § 5; 95-541, § 5.)

Effective Date. This Act is effective January 1, 2004, pursuant to Ill. Const. (1970), Art. IV, § 10 and 5 ILCS 75/1.

Effect of Amendments. The 2004 amendment by P.A. 93-750, effective January 1, 2005, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2007 amendment by P.A. 95-541, effective January 1, 2008, in (a)(1) and (a)(2), inserted "or gender" following "national origin"; and made related changes.

CASE NOTES

Analysis

Grounds
Scope of Act

Grounds

Under the notice pleading requirements of Fed. R. Civ. P. 8, plaintiffs' allegations that a principal was aware of a teacher's sexual abuse of his female students, that the principal did nothing to stop the abuse, and that the principal failed to take action because plaintiffs were females, were

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sufficient under Rule 8 to state plaintiffs' equal protection and Illinois Civil Rights Act claims. Roe v. Sperlik, F. Supp. 2d , 2005 U.S. Dist. LEXIS 31260 (N.D. Ill. Nov. 30, 2005).

Principal's motion to dismiss female students' Equal Protection and Illinois Civil Rights Act claims was denied because in their complaints, the students universally alleged that the principal knew about a teacher's abuse on the students and did nothing to stop it and that she failed to take action because the students' were female, and those allegations, which had to be accepted as true for the purposes of the motion to dismiss, more than met the requirements of Fed. R. Civ. P. 8. Marciela G. v. Sperlik, F. Supp. 2d , 2005 U.S. Dist. LEXIS 31213 (N.D. Ill. Nov. 30, 2005).

Under the notice pleading requirements of Fed. R. Civ. P. 8, plaintiffs' allegations that a principal was aware of a teacher's sexual abuse of his female students, that the principal did nothing to stop the abuse, and that the principal failed to take action because plaintiffs were females, were sufficient under Rule 8 to state plaintiffs' equal protection and Illinois Civil Rights Act claims. Jane Doe # 1 v. Sperlik, F. Supp. 2d , 2005 U.S. Dist. LEXIS 31222 (N.D. Ill. Nov. 30, 2005).

Principal's motion to dismiss female students' Equal Protection and Illinois Civil Rights Act claims was denied because in their complaints, the students universally alleged that the principal knew about a teacher's abuse on the students and did nothing to stop it and that she failed to take action because the students' were female, and those allegations, which had to be accepted as true for the purposes of the motion to dismiss, more than met the requirements of Fed. R. Civ. P. 8. Judith B. v. Sperlik, F. Supp. 2d , 2005 U.S. Dist. LEXIS 31196 (N.D. Ill. Nov. 30, 2005).

Principal's motion to dismiss female students' Equal Protection and Illinois Civil Rights Act claims was denied because in their complaints, the students universally alleged that the principal knew about a teacher's abuse on the students and did nothing to stop it and that she failed to take action because the students' were female, and those allegations, which had to be accepted as true for the purposes of the motion to dismiss, more than met the requirements of Fed. R. Civ. P. 8. Sandra T.E. v. Sperlik, F. Supp. 2d , 2005 U.S. Dist. LEXIS 31180 (N.D. Ill. Nov. 30, 2005), aff'd, 599 F.3d 583, 2010 U.S. App. LEXIS 5503 (7th Cir. Ill. 2010).

Defendant school board's motion to dismiss was denied, where plaintiff minority and limited English students stated sufficient allegations that the board's actions in adjusting school populations denied their rights to equal protection, and constituted a failure to provide language services, 20 U.S.C.S. § 1703(f) of the Equal Education Opportunity Act of 1974, 20 U.S.C.S. § 1701 et seq. The Illinois Civil Rights Act of 2003, 740 ILCS 23/5, applied to acts alleged to have occured after January 1, 2004. Daniel v. Bd. of Educ. for Ill. Sch. Dist. U-46, 379 F. Supp. 2d 952, 2005 U.S. Dist. LEXIS 15532 (N.D. Ill. 2005).

Trial court dismissed claims which a state employee filed against the Illinois Department of Commerce & Economic Opportunity (DCEO), the Director of the DCEO, and others, alleging that her former supervisor violated the Illinois Civil Rights Act of 2003 when he committed illegal discrimination, because the conduct which formed the basis for the employee's claims occurred before the Civil Rights Act became effective. Nicol v. Lavin, F. Supp. 2d , 2004 U.S. Dist. LEXIS 16060 (N.D. Ill. Aug. 12, 2004).

Scope of Act

Trial court properly dismissed the action alleging that the use of a mascot by the University of Illinois that was supposed to approximate an American Indian chief violated the Illinois Civil Rights Act of 2003; the Act, as evidenced by 740 ILCS 23/5(b) and legislators' comments, did not create new civil rights, instead only creating a state venue for civil rights actions, and the Act did not overrule 110 ILCS 305/1f, which declared that the mascot was permitted to remain the symbol of the University. Ill. Native Am. Bar Ass'n v. Univ. of Ill., 368 Ill. App. 3d 321, 305 Ill. Dec. 655,

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856 N.E.2d 460, 2006 Ill. App. LEXIS 843 (1 Dist. 2006).

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Parental Responsibility Law

Sec.

740 ILCS 115/1.[Short title]
740 ILCS 115/2.[Definitions]
740 ILCS 115/3.Liability
740 ILCS 115/4.[Enforcement of liability]
740 ILCS 115/5.Limitation on damages; damages allowable
740 ILCS 115/6.[Other causes of action]
740 ILCS 115/7.[Code of Civil Procedure]

§ 740 ILCS 115/1. [Short title]

Sec. 1. This Act shall be known and may be cited as the Parental Responsibility Law.

(Source: P.A. 76-1679.)

Derivation.

Title: An Act to authorize recovery of damages from parents or legal guardians due to the wilful injury to person or property by minor children.

Cite: 740 ILCS 115/1 et seq.

Source: P.A. 76-1679.

Date: Approved October 6, 1969.

Note.

This section was Ill.Rev.Stat., Ch. 70, Para. 51.

CASE NOTES

Analysis

Constitutionality
Parental Authority
- Search of Child's Room
Purpose

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Constitutionality

This Act was held constitutional as a valid exercise of the police power of the state. Van Thournout v. Burge, 69 Ill. App. 3d 193, 25 Ill. Dec. 685, 387 N.E.2d 341 (2 Dist. 1979).

Parental Authority

- Search of Child's Room

Implicit in the rights and duties imposed upon a parent is the right to exert parental authority and control over minor's surrounding; therefore, a minor's mother could give valid consent to a warrantless police search of minor's locked bedroom located in her home. People v. Salyer, 44 Ill. App. 3d 854, 3 Ill. Dec. 648, 358 N.E.2d 1333 (3 Dist. 1977).

Purpose

The legislative purpose of this Act is twofold: (1) to compensate innocent victims of juvenile misconduct that is willful or malicious; and (2) to place upon the parents the obligation to control a minor child so as to prevent intentional harm to others. Van Thournout v. Burge, 69 Ill. App. 3d 193, 25 Ill. Dec. 685, 387 N.E.2d 341 (2 Dist. 1979); Robison v. First State Bank, 144 Ill. App. 3d 991, 99 Ill. Dec. 190, 495 N.E.2d 637 (3 Dist. 1986).

LEGAL PERIODICALS

For article, "Survey of Illinois Law [1988-89] - Insurance," see 14 S. Ill. U.L.J. 1057 (1990).

For note on constitutional law and parental responsibility discussing Van Thournout v. Burge, 69 Ill. App. 3d 193, 387 N.E.2d 341 (1979), see 68 Ill. B.J. 474 (1980).

RESEARCH REFERENCES

Criminal responsibility of parent for acts of child. 12 ALR4th 673.

Liability of adult assailant's family to third party for physical assault. 25 ALR5th 1.

Practice Guides and Treatises.

Wrongful Death and Survival Actions in Illinois § 5.27 Claims Under Parental Responsibility Law (IICLE).

Causes of Action (Illinois): Tort Actions § 2.6 Parties (IICLE).

§ 740 ILCS 115/2. [Definitions]

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Sec. 2. As used in this Act, unless the context otherwise requires, the terms specified have the meanings ascribed to them:

(1) "Legal guardian" means a person appointed guardian, or given custody, of a minor by a circuit court of the State, but does not include a person appointed guardian, or given custody, of a minor under the Juvenile Court Act or the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.].

(2) "Minor" means a person who is above the age of 11 years, but not yet 19 years of age.

(Source: P.A. 85-1209.)

Note.

This section was Ill.Rev.Stat., Ch. 70, Para. 52.

The Juvenile Court Act, referred to above, was repealed. See now 705 ILCS 405/1-1 et seq.

CASE NOTES

Unemancipated Minor

Where testimony showed that parents maintained a furnished bedroom for son which he frequently used during short time period before the shootings, parents provided him with a vehicle that he used daily, he continued to receive mail at his parent's address and worked on the family farm in exchange for other consideration, trial court properly found that a person of ordinary caution and prudence would entertain a strong suspicion that son was an unemancipated minor residing with his parents at the time of the shooting and trial court erred in denying motion to convert parents from respondents in discovery to defendants under 740 ILCS 115/3. McGee v. Heimburger, 287 Ill. App. 3d 242, 222 Ill. Dec. 752, 678 N.E.2d 364 (4 Dist. 1997).

RESEARCH REFERENCES

Modern trends as to tort liability of child of tender years. 27 ALR4th 15.

Practice Guides and Treatises.

1-17 Illinois Tort Law § 17.03 Vicarious Liability.

§ 740 ILCS 115/3. Liability

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Sec. 3. Liability. The parent or legal guardian of an unemancipated minor who resides with such parent or legal guardian is liable for actual damages for the wilful or malicious acts of such minor which cause injury to a person or property, including damages caused by a minor who has been adjudicated a delinquent for violating Section 21-1.3 of the Criminal Code of 1961 [720 ILCS 5/21-1.3]. Reasonable attorney's fees may be awarded to any plaintiff in any action under this Act. If the plaintiff is a governmental unit, reasonable attorney's fees may be awarded up to $15,000.

The changes to this Section made by this amendatory Act of the 95th General Assembly [P.A. 95-914] apply to causes of action accruing on or after its effective date.

(Source: P.A. 76-1679; 88-406, § 5; 90-311, § 5; 95-914, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 70, Para. 53.

Effect of Amendments. The 1993 amendment by P.A. 88-406, effective August 20, 1993, added at the end "including damages caused by a minor who has been adjudicated a delinquent for violating Section 21-1.3 of the Criminal Code of 1961".

The 1997 amendment by P.A. 90-311, effective January 1, 1998, added the section catchline; and added the second sentence.

The 2008 amendment by P.A. 95-914, effective January 1, 2009, in the first paragraph substituted "any plaintiff" for "a plaintiff that is not a governmental unit" in the second sentence, and added the third sentence; and added the second paragraph.

CASE NOTES

Analysis

Adequacy of Complaint
- Failure to Read Basis of Liability
Directed Verdict
Emancipation
- Burden of Proof
- Not Shown
Liability
- Basis
- Insurer's Duty
- Not Shown

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Adequacy of Complaint

- Failure to Read Basis of Liability

Complaint against minor and his legal guardian, setting forth the theft of plaintiff's auto and resulting damages from that theft, as a whole, was sufficient to inform the adult defendant that the claim was being made for the theft and damage of plaintiff's auto, and that his involvement arose out of his position as guardian over the minor, and the failure to specifically base liability in the complaint on this Act was not fatal. Murray v. Cockburn, 124 Ill. App. 3d 724, 79 Ill. Dec. 938, 464 N.E.2d 842 (3 Dist. 1984).

Directed Verdict

In suit against parents of 14 year old child for injuries resulting from child's taking of plaintiff's car and subsequently becoming involved in a collision, the appellate court reversed the judgment of the trial court which granted the plaintiff's motion for a directed verdict, which was based on the contention that the operation of a vehicle without a license was sufficiently connected with injuries resulting from the operation to be deemed the cause of the injury, and remanded the case for presentation of facts to the jury. Lawrence v. Jones, 52 Ill. App. 3d 704, 10 Ill. Dec. 402, 367 N.E.2d 1011 (2 Dist. 1977).

Emancipation

- Burden of Proof

Emancipation may not be presumed but must be expressly or impliedly proven. Conrad v. Dickerson, 31 Ill. App. 3d 1011, 335 N.E.2d 67 (2 Dist. 1975).

- Not Shown

Where testimony showed that parents maintained a furnished bedroom for son which he frequently used during short time period before the shootings, parents provided him with a vehicle that he used daily, he continued to receive mail at his parent's address and worked on the family farm in exchange for other consideration, trial court properly found that a person of ordinary caution and prudence would entertain a strong suspicion that son was an unemancipated minor residing with his parents at the time of the shooting and trial court erred in denying motion to convert parents from respondents in discovery to defendants under this section. McGee v. Heimburger, 287 Ill. App. 3d 242, 222 Ill. Dec. 752, 678 N.E.2d 364 (4 Dist. 1997).

Liability

- Basis

Parents are not liable for the torts of their children merely because of the parent-child relationship. Allstate Ins. Co. v. Pruitt ex rel. Pruitt, 177 Ill. App. 3d 407, 126 Ill. Dec. 716, 532 N.E.2d 401 (1 Dist. 1988).

- Insurer's Duty

Homeowner's insurer had no duty to cover homeowner's liability under the Parental Responsibility Act where the action was based on minor's negligent operation of a dirt bike and homeowner's policy specifically excluded from coverage accidents arising out of the use of motorized land vehicles when not on the insured premises. Allstate Ins. Co. v. Panzica, 162 Ill. App. 3d 589, 114 Ill. Dec. 28, 515 N.E.2d 1299 (3 Dist. 1987).

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- Not Shown

Where no liability was found for assault and battery as against the son, no liability could inure to his parents. Sklan v. Smolla, 95 Ill. App. 3d 658, 51 Ill. Dec. 161, 420 N.E.2d 575 (1 Dist. 1981).

LEGAL PERIODICALS

For note, "From Columbine to Kazaa: Parental Liability in a New World", see, See 2005 U. Ill. L. Rev. 573.

Practice Guides and Treatises.

Wrongful Death and Survival Actions in Illinois § 5.27 Claims Under Parental Responsibility Law (IICLE).

1-17 Illinois Tort Law § 17.03 Vicarious Liability.

2-43 Illinois Forms of Jury Instructions § 43.41 Liability of Parent for Tort of Minor - Plaintiff's Burden of Proof.

Illinois Jurisprudence, Personal Injury and Torts § 2:35 For willful and malicious acts of adjudicated delinquent.

§ 740 ILCS 115/4. [Enforcement of liability]

Sec. 4. Any municipal corporation, county, township, village or any other political subdivision or department of the State of Illinois, or the United States or any of its instrumentalities, or any person, partnership, corporation, association or any incorporated or unincorporated religious, educational or charitable organization is entitled to enforce the liability imposed by this Act.

(Source: P.A. 76-1679; 88-406, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 70, Para. 54.

Effect of Amendments. The 1993 amendment by P.A. 88-406, effective August 20, 1993, inserted "or the United States or any of its instrumentalities,".

Practice Guides and Treatises.

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2-43 Illinois Forms of Jury Instructions § 43.41 Liability of Parent for Tort of Minor - Plaintiff's Burden of Proof.

§ 740 ILCS 115/5. Limitation on damages; damages allowable

Sec. 5. Limitation on damages; damages allowable. No recovery under this Act may exceed $20,000 actual damages for each person, or legal entity as provided in Section 4 of this Act [740 ILCS 115/4], for the first act or occurrence of such wilful or malicious acts by the minor causing injury, and $30,000 if a pattern or practice of wilful or malicious acts by a minor exists for a separate act or occurrence, in addition to taxable court costs and attorney's fees. In determining the damages to be allowed in an action under this Act for personal injury, only medical, dental and hospital expenses and expenses for treatment by Christian Science practitioners and nursing care appropriate thereto may be considered.

The changes to this Section made by this amendatory Act of the 95th General Assembly [P.A. 95-914] apply to causes of action accruing on or after its effective date.

(Source: P.A. 81-588; 90-311, § 5; 94-130, § 5; P.A. 95-914, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 70, Para. 55.

Cross References.

As to restitution damages payable by parents for the damages caused by their unemancipated minor at a cemetery or related grounds, see 765 ILCS 835/1.

Concerning hate crimes, and their relationship to this section, see 720 ILCS 5/12-7.1.

Concerning educational intimidation, and its relationship to this section, see 720 ILCS 5/12-7.2.

As to civil liability for retail theft, and its relationship to this section, see 720 ILCS 5/16A-7.

As to institutional vandalism, and its relationship to this section, see 720 ILCS 5/21-1.2.

Effect of Amendments. The 1997 amendment by P.A. 90-311, effective January 1, 1998, added the section catchline; and in the first sentence, substituted "$2,500" for "$1,000," and added "and attorney's fees" at the end.

The 2005 amendment by P.A. 94-130, effective July 7, 2005, substituted "$20,000" for "$2,500".

The 2008 amendment by P.A. 95-914, effective January 1, 2009, in the first sentence of the first paragraph substituted "for the first act or occurrence" for "for each occurrence", inserted "and $30,000 if a pattern or practice of wilful or malicious acts by a minor exists for a separate act or occurrence" and made a related change; and added the second paragraph.

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CASE NOTES

Judgment

- Offset

Where plaintiff's unemancipated 17 year old forged his name on a withdrawal slip and withdrew $1,200 from the bank, responsibility for the bank's loss rested on the plaintiff and the bank was authorized to limit its loss to the amount exceeding $1,000, i.e., $200; therefore, the trial court properly offset the plaintiff's $1,000 judgment. Robison v. First State Bank, 144 Ill. App. 3d 991, 99 Ill. Dec. 190, 495 N.E.2d 637 (3 Dist. 1986).

LEGAL PERIODICALS

For article, "New Laws Okay Jail and Work for Juveniles," see 68 Ill. B.J. 514 (1980).

Practice Guides and Treatises.

Wrongful Death and Survival Actions in Illinois § 5.27 Claims Under Parental Responsibility Law (IICLE).

2-43 Illinois Forms of Jury Instructions § 43.41 Liability of Parent for Tort of Minor - Plaintiff's Burden of Proof.

§ 740 ILCS 115/6. [Other causes of action]

Sec. 6. This Act shall not affect the recovery of damages in any other cause of action where the liability of the parent or legal guardian is predicated on a common law basis.

(Source: P.A. 76-1679.)

Note.

This section was Ill.Rev.Stat., Ch. 70, Para. 56.

Practice Guides and Treatises.

Wrongful Death and Survival Actions in Illinois § 5.27 Claims Under Parental Responsibility Law (IICLE).

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§ 740 ILCS 115/7. [Code of Civil Procedure]

Sec. 7. Section 12-107 of the Code of Civil Procedure, as now or hereafter amended [735 ILCS 5/12-107], is not applicable to judgments obtained under this Act.

(Source: P.A. 82-783.)

Note.

This section was Ill.Rev.Stat., Ch. 70, Para. 57.

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CHAPTER 745.
CIVIL IMMUNITIES

745 ILCS 10Local Governmental and Governmental Employees Tort Immunity Act
745 ILCS 25Tort Liability of Schools Act
745 ILCS 54Interscholastic Association Defamation Act

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Local Governmental and Governmental Employees Tort Immunity Act

Article I
General Provisions

Part 1
Short Title, Construction and Application of the Act

Sec.

745 ILCS 10/1-101.[Short title]
745 ILCS 10/1-101.1.[Purpose; application]
745 ILCS 10/1-102.[Severability]

Part 2

General Definitions

745 ILCS 10/1-201.[Definitions of terms]
745 ILCS 10/1-202.[Employee defined]
745 ILCS 10/1-203.[Enactment defined]
745 ILCS 10/1-204.[Injury defined]
745 ILCS 10/1-205.[Law defined]
745 ILCS 10/1-206.[Local public entity defined]
745 ILCS 10/1-207.[Public Employee defined]
745 ILCS 10/1-208.[Regulation defined]
745 ILCS 10/1-209.[Statute defined]
745 ILCS 10/1-210.[Willful and wanton conduct defined]

Article II

General Provisions Relating To Immunity

Part 1

Immunity Of Local Public Entities

745 ILCS 10/2-101.[Effects on other rights of action]
745 ILCS 10/2-102.[Punitive or other exemplary damages not allowed]
745 ILCS 10/2-103.[Adoption or failure to adopt enactment; failure to enforce law]
745 ILCS 10/2-104.[Permits, licenses, certificates, approvals, other authorizations]
745 ILCS 10/2-105.[Failure to inspect adequately]
745 ILCS 10/2-106.[Oral promise or misrepresentation]
745 ILCS 10/2-107.[Libel; slander; false information]

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745 ILCS 10/2-108.[Granting or failure to grant public welfare goods or monies]
745 ILCS 10/2-109.[Act or omission of employee]
745 ILCS 10/2-111.[Other defenses]

Part 2

Immunity Of Public Employees

745 ILCS 10/2-201.[Employee's liability; policymaking and discretionary acts]
745 ILCS 10/2-202.[Execution or enforcement of law]
745 ILCS 10/2-203.[Act performed under apparent authority of invalid enactment]
745 ILCS 10/2-204.[Act or omission of another person]
745 ILCS 10/2-205.[Adoption or failure to adopt enactment; failure to enforce law]
745 ILCS 10/2-206.[Permits, licenses, certificates, approvals, other authorizations]
745 ILCS 10/2-207.[Failure to inspect adequately]
745 ILCS 10/2-208.[Prosecution of judicial or administrative proceeding]
745 ILCS 10/2-209.[Entry authorized by law]
745 ILCS 10/2-210.[Misrepresentation or false information]
745 ILCS 10/2-211.[School safety patrols]
745 ILCS 10/2-212.[Application to employees who function jointly with other employees]
745 ILCS 10/2-213.[Punitive or exemplary damages not allowed]
745 ILCS 10/2-214.Court volunteer

Part 3

Indemnification Of Public Employees

745 ILCS 10/2-301.[Construction with other laws]
745 ILCS 10/2-302.[Action against employee of public entity; employer elects defense]

Article III

Immunity From Liability For Injury Occurring In The Use Of Public Property

745 ILCS 10/3-101.[Public property defined]
745 ILCS 10/3-102.[Duty to maintain property]
745 ILCS 10/3-103.[Adoption of construction or improvement plan]
745 ILCS 10/3-104.[Failure to provide proper traffic devices, signs, markings or barriers]
745 ILCS 10/3-105.[Effects of weather conditions on public ways; failure to upgrade]
745 ILCS 10/3-106.[Public property used for recreational purposes]

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745 ILCS 10/3-107.[Access roads; trails]
745 ILCS 10/3-108.[Failure to supervise activity on public property; swimming areas]
745 ILCS 10/3-109.[Hazardous recreational activities]
745 ILCS 10/3-110.[Bodies of water not under control of public entity]

Article IV

Police and Correctional Activities

745 ILCS 10/4-101.[Prisoner defined]
745 ILCS 10/4-102.[Failure to provide adequate police protection]
745 ILCS 10/4-103.[Failure to provide jails]
745 ILCS 10/4-104.[Interference with prisoners' rights]
745 ILCS 10/4-105.[Failure to furnish medical care for prisoner]
745 ILCS 10/4-106.[Injury relating to parole determination; injury inflicted by escaped prisoner]
745 ILCS 10/4-107.[Failure to arrest; release of person in custody]

Article V

Fire Protection And Rescue Services

745 ILCS 10/5-101.[Failure to provide fire protection]
745 ILCS 10/5-102.[Failure to suppress or contain fire]
745 ILCS 10/5-103.[Failure to maintain fire protection equipment or facilities]
745 ILCS 10/5-104.[Damage to bridges and roads owned by state or local government]
745 ILCS 10/5-106.[Negligent operation of emergency vehicle]

Article VI

Medical, Hospital and Public Health Activities

745 ILCS 10/6-101.[Definitions]
745 ILCS 10/6-103.[Interference with inmates' rights]
745 ILCS 10/6-104.[Discretionary health care decisions]
745 ILCS 10/6-105.[Failure to examine]
745 ILCS 10/6-106.[Diagnosis of or failure to diagnose illness or addiction; negligent or wrongful acts or omissions]
745 ILCS 10/6-107.[Confinement for illness or addiction]
745 ILCS 10/6-108.[Escape by mental patient]
745 ILCS 10/6-109.[Failure to admit person to medical facility]
745 ILCS 10/6-110.[Public health standing order phsyicians]

Article VIA

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Public And Community Service Programs
745 ILCS 10/6A-101.Definitions
745 ILCS 10/6A-105.Exemption from liability

Article VII

Tort Liability Under Agreements Between Local Public Entities

745 ILCS 10/7-101.[Agreements with other public entities]
745 ILCS 10/7-102.[Contribution or indemnification]
745 ILCS 10/7-103.[Application]

Article VIII

Actions Against Local Public Entities and Public Employees - Limitations, Notice

745 ILCS 10/8-101.Limitation
745 ILCS 10/8-103.[Failure to serve notice]

Article IX

Payment Of Claims And Judgment
745 ILCS 10/9-101.[Definitions]
745 ILCS 10/9-102.[Payment of judgments or settlements; authority to settle or compromise]
745 ILCS 10/9-103.[Insurance methods]
745 ILCS 10/9-104.[Installment payments]
745 ILCS 10/9-105.[Issuance of bond]
745 ILCS 10/9-106.[Charges for services and facilities]
745 ILCS 10/9-107.Policy; tax levy

Article X

Repealer; Effective Date
745 ILCS 10/10-101.[Repealer]

Article I.

General Provisions

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Part 1.
Short Title, Construction and Application of the Act

§ 745 ILCS 10/1-101. [Short title]

Sec. 1-101. This Act shall be known and may be cited as the "Local Governmental and Governmental Employees Tort Immunity Act".

(Source: Laws 1965, p. 2983.)

Derivation.

Title: An Act in relation to the tort immunity of local public entities, and their employees, and to repeal Acts and parts of Acts therein named.

Cite: 745 ILCS 10/1-101 et seq.

Source: L. 1965, p. 2983.

Date: Approved August 13, 1965.

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 1-101.

Cross References.

For the applicability of the provisions under this Act see the following sections: as to all districts created pursuant to the Soil and Water Conservation Districts Act, see 70 ILCS 405/2; as to all employees of any airport established and operated under the Intergovernmental Cooperation Act with regard to the Joint Airports Act, see 620 ILCS 20/3.

As to the exclusion from the aggregate amount of taxes levied by a sanitary district with regard to any taxes levied for the maintaining of a reserve fund to pay claims imposed under this Act, see 70 ILCS 2605/12.

As to a local public entity subject to the Open Meeting Act not being prohibited from holding a closed meeting to establish reserves or settle claims as provided under this Act, see 5 ILCS 120/2.

As to the consideration as a public employee under this Act of a receiver of a facility appointed by a court with regard to the Nursing Home Care Act, see 210 ILCS 45/3-513.

As to the inability of a school board to transfer the interest earned from fund for the purpose of tort immunity to another fund in the school district, see 105 ILCS 5/10-22.44.

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In General

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To the extent that municipal ordinances are in conflict with the Tort Immunity Act, they are invalid; municipal authorities cannot adopt ordinances which infringe the spirit of a State law or are repugnant to the general policy of the State. O'Malley v. Vill. of Palos Park, 346 Ill. App. 3d 567, 281 Ill. Dec. 940, 805 N.E.2d 308, 2004 Ill. App. LEXIS 147 (1 Dist. 2004).

The purpose of this Act is to circumscribe carefully the tort liability of local government entities, and there is nothing in its history or structure to show it was intended to allow a governmental entity to limit its liability for breaching a contract. Dewitt v. McHenry County, 294 Ill. App. 3d 712, 229 Ill. Dec. 278, 691 N.E.2d 388 (2 Dist. 1998).

Where a local public entity engaged in the supervision or oversight of a municipal construction project in accordance with a previously agreed upon plan or design of construction, that entity was no longer engaged in the exercise of a discretionary function and, as such, was not afforded immunity from liability under the Tort Immunity Act, therefore the court erred by granting the county's motion to dismiss. Eck v. McHenry County Public Bldg. Com., 237 Ill. App. 3d 755, 178 Ill. Dec. 586, 604 N.E.2d 1109, 1992 Ill. App. LEXIS 1972 (1 Dist. 1992).

This Act does not create any new liabilities for negligent acts or omissions which did not previously exist, but articulates the common-law duty to which the subsequently delineated immunities apply. Wood ex rel. Harrold v. Village of Grayslake, 229 Ill. App. 3d 343, 170 Ill. Dec. 590, 593 N.E.2d 132 (2 Dist. 1992).

This Act is in derogation of the common law action against local public entities and must be strictly construed against the public entity involved. Aikens v. Morris, 145 Ill. 2d 273, 164 Ill. Dec. 571, 583 N.E.2d 487 (1991).

Applicability

Public school district had immunity under 745 ILCS 10/1-101 of the Local Governmental and Governmental Employees Act (Act) with regard to a student's false imprisonment claim because the decision by an administrator to detain and then discipline the student following a fight at a high school because pursuant to 745 ILCS 10/1-206, the district's board of education was a local public entity for purposes of the Act and the decision to discipline the student was a discretionary, as opposed to ministerial, act for purposes of 745 ILCS 10/2-201. Rogers v. Cook, F. Supp. 2d , 2008 U.S. Dist. LEXIS 103702 (N.D. Ill. Dec. 23, 2008).

Limited immunity provision of the Emergency Medical Services Systems Act, 210 ILCS 50/3.150(a) (EMS Act), rather than the immunity provisions of the Local Governmental and Governmental Employees Tort Immunity, 745 ILCS 10/1-101 et seq. (Tort Immunity Act), applied to the estate representative's complaint that the city was liable for the emergency medical technicians alleged willful and wanton misconduct in allegedly not examining or providing any treatment to decedent despite being dispatched to do so. The EMS Act, which did not immunize willful and wanton misconduct, applied because it more specifically involved the delivery of emergency medical services and was the more recent statute, while the Tort Immunity Act, specifically the absolute immunity provisions of 745 ILCS 10/6-105 and 745 ILCS 10/6-106(a), more generally applied to the failure to perform, or adequately perform, an examination or diagnosis. Abruzzo v. City of Park Ridge, 231 Ill. 2d 324, 325 Ill. Dec. 584, 898 N.E.2d 631, 2008 Ill. LEXIS 1413 (2008).

Immunity provisions under the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-01 et seq., could not be used to thwart an employee's retaliatory discharge claim against an employer for the employee's filing of a workers' compensation claim. Indeed, 745 ILCS 10/2-101(c) specifically prohibited tort immunity provisions from keeping employees from pursuing their workers' compensation rights. Smith v. Waukegan Park Dist., Ill. 2d , Ill. Dec. , N.E.2d , 2008 Ill. LEXIS 312 (Apr. 17, 2008).

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Legislature created no new duties when it enacted the Local Government and Governmental Employees Tort Immunity Act; it created only immunities and defenses. Int'l Memory Prods. of Ill., Inc. v. Metro. Pier & Exposition Auth., 335 Ill. App. 3d 602, 269 Ill. Dec. 708, 781 N.E.2d 505, 2002 Ill. App. LEXIS 1078 (1 Dist. 2002).

Local Government and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., adopts the general principle that local governmental units are liable in tort, but limits this liability with an extensive list of immunities based on specific government functions, and governmental units are liable in tort on the same basis as private tortfeasors unless a valid statute dealing with tort immunity imposes conditions upon that liability. Int'l Memory Prods. of Ill., Inc. v. Metro. Pier & Exposition Auth., 335 Ill. App. 3d 602, 269 Ill. Dec. 708, 781 N.E.2d 505, 2002 Ill. App. LEXIS 1078 (1 Dist. 2002).

In negligence action brought by estate administrator against the State, which arose from a collision with a vehicle fleeing apprehension by the Illinois State Police, an ordinary negligence standard applied in relating 625 ILCS 5/11-205(e) to the conduct of the Illinois State Police because no special statutory tort immunities, such as those existing for local police and their municipalities under 745 ILCS 10/1 - 101 et seq., existed for the State or its employees. Valluzzi v. State, 51 Ill. Ct. Cl. 126, 1998 Ill. Ct. Cl. LEXIS 70 (Ct. Cl. 1998).

- In General

In an action under 42 U.S.C.S. § 1983 suit, defendants, a county and doctor employed by the county, did not have absolute immunity under the Act because immunity on federal constitutional claims is a matter of federal law, not state law. Alexander v. Reid, F. Supp. 2d , 2004 U.S. Dist. LEXIS 26442 (N.D. Ill. Jan. 7, 2004).

City and city officials were not liable to plaintiff for allegedly failing to protect her property after plaintiff was evicted from her residence, as the city and the city officials were immune from such claims for damages under the Illinois Tort Immunity Act. YHWHnewBN v. County of Cook, F. Supp. 2d , 2003 U.S. Dist. LEXIS 21250 (N.D. Ill. Nov. 20, 2003).

Action by a division of the Regional Transit Authority (RTA) against the RTA asserting violations of 70 ILCS 3615/4.11 was not an action sounding in tort and therefore, the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq. could not be applied to the case. Pace v. Reg'l Transp. Auth., 346 Ill. App. 3d 125, 280 Ill. Dec. 783, 803 N.E.2d 13, 2003 Ill. App. LEXIS 930 (2 Dist. 2003), appeal denied, 206 Ill. 2d 624, 282 Ill. Dec. 479, 806 N.E.2d 1067 (2003).

The Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101, only provides immunity to torts, not to constitutional claims or claims for injunctive relief. People ex rel. Birkett v. City of Chicago, 325 Ill. App. 3d 196, 259 Ill. Dec. 180, 758 N.E.2d 25, 2001 Ill. App. LEXIS 791 (1 Dist. 2001).

Appellate court refused to dismiss student's complaint against board of education pursuant to this statute or 745 ILCS 10/3-106 because student alleged that she was injured while working at a high school basketball game due to negligent supervision by a teacher who controlled and directed her behavior and not because of a defect in the condition or maintenance of school property. Manuel v. Red Hill Cmty. Unit Sch. Dist. 10, 324 Ill. App. 3d 279, 257 Ill. Dec. 790, 754 N.E.2d 448, 2001 Ill. App. LEXIS 636 (5 Dist. 2001).

The tort liability of municipalities is governed by this Act. West v. Kirkham, 147 Ill. 2d 1, 167 Ill. Dec. 963, 588 N.E.2d 1104 (1992).

Local public bodies may be successfully sued in Illinois only upon those terms and conditions and within the limitations on the liability of such bodies as specified by the General Assembly in this Act. Thompson v. County of Cook, 222 Ill. App. 3d 459, 164 Ill. Dec. 958, 584 N.E.2d 170 (1 Dist. 1991), aff'd, 154 Ill. 2d 374, 181 Ill. Dec. 922, 609 N.E.2d 290 (1993).

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This Act applies only to tort actions. American Ambassador Cas. Co. v. City of Chicago, 205 Ill. App. 3d 879, 150 Ill. Dec. 755, 563 N.E.2d 882 (1 Dist. 1990).

Where sheriff's deputies sued a county board for money damages for breach of an oral employment contract, the county board was not immune from the action. Scutt v. La Salle County Bd., 97 Ill. App. 3d 181, 53 Ill. Dec. 21, 423 N.E.2d 213 (3 Dist. 1981).

This Act cannot protect defendants against a cause of action grounded on a federal statute. Hamrick v. Lewis, 515 F. Supp. 983 (N.D. Ill. 1981).

Conduct by persons acting under color of state law which is wrongful under the Federal Civil Rights Act, 42 U.S.C. § 1983 or § 1985(3), cannot be immunized by state law. Hampton v. City of Chicago, 484 F.2d 602 (7th Cir. 1973), cert. denied, 415 U.S. 917, 94 S. Ct. 1413, 94 S. Ct. 1414, 39 L. Ed. 2d 471 (1974).

This Act deals only with immunities and does not purport to impose liability on school districts where no liability otherwise exists. Fustin v. Board of Educ., 101 Ill. App. 2d 113, 242 N.E.2d 308 (5 Dist. 1968).

- Airport Design

Where the nuisance alleged resulted from the city's airport's existence, location, and the manner in which the runways are laid out, those decisions could only have resulted from acts of discretion by city agents in policy-making positions; therefore, the city's actions were discretionary in nature, the affirmative defense was properly pleaded, and the claims for nuisance were properly dismissed. People ex rel. Birkett v. City of Chicago, 325 Ill. App. 3d 196, 259 Ill. Dec. 180, 758 N.E.2d 25, 2001 Ill. App. LEXIS 791 (1 Dist. 2001).

- Golf Course Design

Trial court properly granted summary judgment to defendant in plaintiff's suit alleging that she was injured as a result of the design and maintenance of defendant's golf course; defendant was immunized under the Local Governmental and Governmental Employees Tort Immunity Act. Koltes v. St. Charles Park Dist., 293 Ill. App. 3d 171, 227 Ill. Dec. 293, 687 N.E.2d 543 (2 Dist. 1997), appeal denied, 177 Ill. 2d 571, 232 Ill. Dec. 453, 698 N.E.2d 544 (1998).

- Governmental/Proprietary Function

The governmental/proprietary function distinction was developed as an exception to and engrafted onto the sovereign immunity doctrine, now abolished, but does not preclude the application of this Act. In re Chicago Flood Litig., 176 Ill. 2d 179, 223 Ill. Dec. 532, 680 N.E.2d 265 (1997).

- Highway Design and Construction

In action to recover damages for injuries received when plaintiff's Jeep struck a guardrail on a public highway, trial court properly dismissed complaint alleging violations of the Illinois Highway Code, former Ill. Rev. Stat. ch. 121, para. 5-205.1, 5-205.3, 6-407 (1991), because the county and its superintendent of highways did not owe plaintiff a duty, no act or omission by defendants proximately caused plaintiff's injuries, defendants were immune from liability under the Local Governmental and Governmental Employees Tort Immunity Act, former ch. 85, par. 1-101 et seq.3-104 (1991), and statutes under which the action was brought merely provided a guideline or framework in which county and township officials were allowed to carry out the functions of their offices but were not relevant to the imposition of a duty on the county and the superintendent. Bernabei v. County of La Salle, 236 Ill. App. 3d 958, 176 Ill. Dec. 896, 602 N.E.2d 842, 1992 Ill. App. LEXIS 1688 (1 Dist. 1992).

- Hospital District

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Hospital district was a municipal corporation and as such could exercise governmental powers pursuant to 70 ILCS 910/15; consequently, it was entitled to the benefits of the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq. Wheaton v. Suwana, 355 Ill. App. 3d 506, 291 Ill. Dec. 407, 823 N.E.2d 993, 2005 Ill. App. LEXIS 18 (5 Dist. 2005), appeal denied, 214 Ill. 2d 553, 294 Ill. Dec. 9, 830 N.E.2d 9 (2005).

- Particular Persons

A state's attorney is a state employee whose acts are governed by the Court of Claims Act, rather than a county employee whose acts are governed by the Local Governmental and Governmental Employee Tort Immunity Act. Sneed v. Howell, 306 Ill. App. 3d 1149, 240 Ill. Dec. 203, 716 N.E.2d 336, 1999 Ill. App. LEXIS 603 (5 Dist. 1999), appeal denied, 187 Ill. 2d 590, 244 Ill. Dec. 191, 724 N.E.2d 1275 (2000).

- Private School

Illinois Tort Immunity Act did not govern activities at a private school, and trial court erred by finding that the school had immunity from suit alleging wilful and wanton and dismissing that suit, where suit was filed after a student was injured while playing. Brugger v. Joseph Academy, Inc., 326 Ill. App. 3d 328, 260 Ill. Dec. 56, 760 N.E.2d 135, 2001 Ill. App. LEXIS 863 (1 Dist. 2001), aff'd, 202 Ill. 2d 435, 269 Ill. Dec. 472, 781 N.E.2d 269 (2002).

- Probable Cause

Police officers had probable cause to arrest citizen for theft, where discrepancies between the safe log and the receipts provided a reasonable basis for believing that the citizen had taken money from her employer; therefore officers were entitled to summary judgement based on qualified immunity on a charge of unlawful arrest. Robinson v. Gerritson, 210 F. Supp. 2d 1004, 2002 U.S. Dist. LEXIS 12039 (N.D. Ill. 2002).

- Rabies Control

Defendant's argument that rabies control is exclusively a governmental function under the former Rabies Control Act, and that because defendant was engaged in rabies control, he was a governmental employee within the meaning of this Act, was without merit. Placko ex rel. Placko v. Fawver, 55 Ill. App. 3d 759, 13 Ill. Dec. 492, 371 N.E.2d 187 (3 Dist. 1977).

- Sports Facility Authority

Although the sports facility authority was a "local public entity" within the meaning of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., it was not entitled to immunity it might otherwise have had under the Act, as it did not assert the protections of the Act at trial and its failure to raise the Act as an affirmative defense meant the protections of the Act were waived in a case where the fan fell outside of the city sports venue and brought a negligence action against the sports facility authority and others for the injury he sustained. Mazin v. Chi. White Sox, Ltd., Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 150 (1 Dist. Feb. 22, 2005), modified, 358 Ill. App. 3d 856, 295 Ill. Dec. 377, 832 N.E.2d 827 (2005).

- Wrongful Death

This Act did not apply to wrongful death action based on student's suicide while with mother. Grant v. Board of Trustees of Valley View Sch. Dist. No. 365-U, 286 Ill. App. 3d 642, 221 Ill. Dec. 902, 676 N.E.2d 705 (3 Dist. 1997), appeal denied, 173 Ill. 2d 524, 226 Ill. Dec. 132, 684 N.E.2d 1335 (1997).

Assertion of Defense

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Although the motorist filed a personal injury action against the bus operator about seven months inside of the two-year personal injury statute of limitations, 735 ILCS 5/13-202, the bus operator was permitted to assert as an affirmative defense that the motorist's action was untimely filed, as the bus operator's status as a non-profit corporation made it a "local public entity" under 745 ILCS 10/1-206 of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq. (Act), and entitled it to assert the one-year limitations period in the Act, 745 ILCS 10/8-101(a), as a defense. Since the motorist's action, arising out of being struck by the bus operator's bus, was not filed within that one-year time period, the motorist's action was time barred. Hubble v. Bi-State Dev. Agency of the Illinois-Missouri Metro. Dist., 238 Ill. 2d 262, 345 Ill. Dec. 44, 938 N.E.2d 483, 2010 Ill. LEXIS 1066 (2010).

Defendants' immunity defense was either premature at the Fed. R. Civ. P. 12(b)(6) stage or did not apply to the charges pled; defendants would be able to reassert their tort immunity defense, if appropriate, through a motion of summary judgment when the record was more fully developed. Atlas v. City of N. Chi., F. Supp. 2d , 2004 U.S. Dist. LEXIS 3995 (N.D. Ill. Mar. 11, 2004).

Common Law

- Corrupt or Malicious Motives Exception

The Illinois Constitution prohibits the insertion of the common law "corrupt or malicious motives" exception into the immunities provided by the Local Governmental and Governmental Employees Tort Immunity Act 745 ILCS 10/1-101 et seq. Village of Bloomingdale v. C.D.G. Enters., 196 Ill. 2d 484, 256 Ill. Dec. 848, 752 N.E.2d 1090, 2001 Ill. LEXIS 778 (2001).

- Nature of Immunity

The Illinois Supreme Court states that courts must look to the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101, and not the common law to determine whether a governmental immunity exists. People ex rel. Birkett v. City of Chicago, 325 Ill. App. 3d 196, 259 Ill. Dec. 180, 758 N.E.2d 25, 2001 Ill. App. LEXIS 791 (1 Dist. 2001).

During the interim between the Illinois Supreme Court decision which ended tort immunity for school districts and denounced generally the concept of governmental immunity, and the enactment of this Act, the common law which governed plaintiff's injury when his car fell into an unmarked rut on a public street provided governmental officials with immunity from liability in their exercise of discretionary authority. Eicken v. Johnson, 1 Ill. App. 3d 165, 273 N.E.2d 633 (1 Dist. 1971).

Discretionary Immunity Doctrine

- Not Applicable

When plaintiff, thirteen-year-old Canadian citizen, filed suit after suffering injuries when she was instructed to dive into a pool while attending a swimming program at a high school, defendants, the school and its employees, were not protected by the Illinois Tort Immunity Act, 745 ILCS 10/1-101 et seq. Because there was no evidence that the decision to instruct plaintiff to dive into a pool required the balancing of competing interests, it was improbable that defendants were required to engage in policy calculations; and the complaint alleged willful and wanton conduct. Karalyos v. Bd. of Educ., 788 F. Supp. 2d 727, 2011 U.S. Dist. LEXIS 23871 (N.D. Ill. 2011).

Duty

Custodial arrest subsection of the East Peoria (Illinois) Police Department's vehicle impoundment policy was invalid because it was unreasonable, as it gave police officers unfettered discretion to

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decide whether or not to impound a vehicle after a custodial arrest was made. The fact that police officers might be motivated by a desire to protect arrestees' vehicles from theft or vandalism did not, by itself, establish a valid justification for impoundment because the Illinois Local Government Tort Immunity statute did not impose a duty on the police to protect the property of individuals from torts or crimes. United States v. Osborne, 489 F. Supp. 2d 860, 2007 U.S. Dist. LEXIS 42497 (C.D. Ill. 2007).

Where officers told the tortfeasors, who were intoxicated, to leave a festival, and the tortfeasors, unbeknownst to the officers, left in their vehicle and later struck the injured parties' vehicle, the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., was inapplicable to the injured parties' personal injury action against the village, because the officer had no duty to the injured parties, as their injuries were not reasonably foreseeable. Romine v. Vill. of Irving, 336 Ill. App. 3d 624, 270 Ill. Dec. 764, 783 N.E.2d 1064, 2003 Ill. App. LEXIS 20 (5 Dist. 2003).

Section 3-102, former Ill. Rev. Stat. ch. 85, para. 3-102 (now 745 ILCS 10/3-102) of the Local Governmental and Governmental Employees Tort Immunity Act, former Rev. Stat. ch. 85, para. 1-101 et seq. (now 745 ILCS 10/101), imposes a duty on public entities who own or lease property, to maintain such property in a reasonably safe condition for intended or permitted users of the property. Vesey v. Chicago Housing Authority, 205 Ill. App. 3d 962, 150 Ill. Dec. 789, 563 N.E.2d 916, 1990 Ill. App. LEXIS 1682 (1 Dist. 1990).

Emergency

Definition of emergency in the Illinois Public Safety Employee Benefits Act (Benefits Act), 820 ILCS 320/1 et seq., is broader than that used in the Illinois Tort Immunity Act, 745 ILCS 10/1-101 et seq., or under sovereign immunity to provide immunity; the Tort Immunity Act does not concern an injured officer's health care costs. DeRose v. City of Highland Park, 386 Ill. App. 3d 658, 325 Ill. Dec. 836, 898 N.E.2d 1115, 2008 Ill. App. LEXIS 1081 (2 Dist. 2008).

In Pari Materia

This Act must be read in pari materia with the indemnity provisions of the Illinois Municipal Code (65 ILCS 5/1-4-5 and 65 ILCS 5/1-4-6). Glover v. City of Chicago, 106 Ill. App. 3d 1066, 62 Ill. Dec. 597, 436 N.E.2d 623 (1 Dist. 1982).

Injunctive Relief

Where an amended complaint of homeowners sought an injunctive order against their village that swales be removed and replaced by underground drainage systems and/or the natural flow of surface water be restored, even though the injunction may require the expenditure of money by defendants, such injunctive relief did not constitute damages. Romano v. Village of Glenview, 277 Ill. App. 3d 406, 213 Ill. Dec. 799, 660 N.E.2d 56 (1 Dist. 1995).

Ministerial Acts

A township was not immune from its negligence in failing to supervise the improvement of an intersection and for its alleged failure in providing additional traffic signs since its conduct constituting negligence was ministerial in nature. LoCoco v. XL Disposal Corp., 307 Ill. App. 3d 684, 240 Ill. Dec. 474, 717 N.E.2d 823 (3 Dist. 1999), appeal denied, 187 Ill. 2d 570, 244 Ill. Dec. 185, 724 N.E.2d 1269 (2000).

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Obvious Danger

In an action in which a forest visitor sought to recover damages for injuries she sustained when she fell from a rope swing into a ravine located on the premises of a forest district, the forest district's failure to remedy the dangerous condition of the rope swing did not constitute willful and wanton within the meaning of former Ill. Rev. Stat. ch. 85, para. 1-210 and former Ill. Rev. Stat. ch. 85, para. 3-106 (now 745 ILCS 10/1-101 et seq.) of the Government and Governmental Employees Tort Immunity Act, because the danger was obvious. The 16-year-old visitor was expected to appreciate and avoid the obvious risk involved in swinging over a deep ravine from a 30-foot rope while wearing wet or muddy shoes. Barrett v. Forest Preserve Dist., 228 Ill. App. 3d 975, 171 Ill. Dec. 170, 593 N.E.2d 990, 1992 Ill. App. LEXIS 748 (1 Dist. 1992).

Preemption

Federal maritime law preempted the defenses claimed under the Illinois Workers' Compensation Act and the Illinois Local Governmental and Governmental Employees Tort Immunity Act where both of these acts would have limited the remedies available under federal maritime law. In re Garvey Marine, Inc., F. Supp. 2d , 2004 U.S. Dist. LEXIS 17622 (N.D. Ill. Sept. 1, 2004).

The Tort Immunity Act was preempted by admiralty law in an action arising from the flooding of numerous sub-basements in the city during the repair of timber pilings around the piers of several bridges over the Chicago River. Commercial Union v. City of Chicago, 308 Ill. App. 3d 314, 241 Ill. Dec. 714, 719 N.E.2d 1117 (1 Dist. 1999), appeal denied, 187 Ill. 2d 568, 244 Ill. Dec. 184, 724 N.E.2d 1268 (2000), appeal denied, 188 Ill. 2d 564, 246 Ill. Dec. 123, 729 N.E.2d 496 (2000).

Property Used for Recreational Purposes

In a negligence action that was based on the condition of a school playground that was owned by a board of education, tort immunity laws barred the cause of action even though the injured party did not enter the playground for recreational purposes; the injured party had entered the property at the request of the board of education to make masonry repairs. Hanover Ins. Co. v. Board of Educ., 240 Ill. App. 3d 173, 181 Ill. Dec. 110, 608 N.E.2d 183, 1992 Ill. App. LEXIS 2015 (1 Dist. 1992).

Prosecutors

- Quasi-Judicial Function

A State's attorney and his assistant were immune from monetary liability for damages because dismissing the charges in exchange for the release was within the quasi-judicial function of the prosecutor and not among the investigatory activities normally performed by laymen, such as police officers. Boyd v. Adams, 513 F.2d 83 (7th Cir. 1975).

Punitive Damages

Punitive damages are available against the individual defendants if they acted wilfully and wantonly. Rojicek v. Community Consol. Sch. Dist. 15, 888 F. Supp. 878 (N.D. Ill. 1995).

Special Duty Doctrine

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The decision in Harinek v. 161 N. Clark St. Ltd. Partnership, 181 Ill. 2d 335, 230 Ill. Dec. 11, 692 N.E.2d 1177 (1998), eliminating the special duty doctrine, applied to a pending case filed before that decision was issued. Riordan v. City of Joliet, 3 F. Supp. 2d 887 (N.D. Ill. 1998).

Because the special duty doctrine is a judicially created exception to the public duty rule, the special duty doctrine, cannot, and was not intended to, contravene the immunities provided to governmental entities under this Act; such operation constitutes a violation of Ill. Const. (1970), art. XIII, § 4 as well as Ill. Const. (1970), Art II, § 1. Zimmerman v. Village of Skokie, 183 Ill. 2d 30, 231 Ill. Dec. 914, 697 N.E.2d 699 (1998).

Even if this Act was applicable the special duty doctrine was not, where at the time of the student's death, he was no longer under the direct and immediate control of the school officials but had left school with his mother. Grant v. Board of Trustees of Valley View Sch. Dist. No. 365-U, 286 Ill. App. 3d 642, 221 Ill. Dec. 902, 676 N.E.2d 705 (3 Dist. 1997), appeal denied, 173 Ill. 2d 524, 226 Ill. Dec. 132, 684 N.E.2d 1335 (1997).

Tax Levy

- Not Required

Although the court order directed the school district to fund remedial programs, it explicitly left the manner of funding to the discretion of the school district and, therefore, did not require the school district to levy the taxes at issue. In re County Collector, 96 F.3d 890 (7th Cir. 1996).

Wilful and Wanton Misconduct

Although a school guard and his public school district employer might possibly have immunity under 745 ILCS 10/1-101 of the Local Governmental and Governmental Employees Act (Act) with regard to a student's assault and battery claim, if the guard's decision to push the student through a glass door following a fight constituted a discretionary policy decision, the student's claims against the guard and the district would not be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) because the student sufficiently alleged facts which, if proved, would establish that the guard's conduct was willful and wanton. Pursuant to 745 ILCS 10/2-202, willful and wanton conduct by public employees was excepted from the immunity provided by the Act. Rogers v. Cook, F. Supp. 2d , 2008 U.S. Dist. LEXIS 103702 (N.D. Ill. Dec. 23, 2008).

Although many decisions involving false imprisonment are based on the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., under which local public entities and their employees are protected from liability arising from the operation of government, except for willful and wanton conduct, the Act does not include the State and, as a result, the requirement of willful and wanton conduct may not be inferred from the Act. Pitts v. State, 51 Ill. Ct. Cl. 29, 1999 Ill. Ct. Cl. LEXIS 23 (Ct. Cl. 1999).

To deny a plaintiff the right to pursue allegations of wilful and wanton misconduct, absent a prayer for punitive damages, would effectively deny her a remedy provided for by Ill. Const. (1970), Art. I, § 12, the Wrongful Death Act, (740 ILCS 180/0.01 et seq.) as well as this Act; thus, the trial court erred in denying plaintiff's motion to amend her complaint by deleting her request for punitive damages, and in dismissing her complaint. Kupianen ex rel. Kupianen v. Graham, 107 Ill. App. 3d 373, 63 Ill. Dec. 125, 437 N.E.2d 774 (1 Dist. 1982).

- Not Shown

District court dismissed insurer's claim for violation of recovered property statutes and violation of the Illinois Law Enforcement Disposition of Property Act, 765 ILCS 10/30-2 et seq. and a transport company's cross-claim for contribution against a sheriff and two deputies because the deputies' conduct did not amount to willful and wanton misconduct, and the sheriff and the

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deputies were immune from liability under the Illinois Tort Immunity Act, 745 ILCS 10/1-101 et seq. Fireman's Fund Ins. Co. v. Werner Enters., F. Supp. 2d , 2004 U.S. Dist. LEXIS 2106 (N.D. Ill. Feb. 5, 2004).

In a negligence action where plaintiffs sustained injuries when bleachers at a rodeo collapsed the trial court did not err in granting summary judgment in favor of the Village for although it owned the park where the rodeo was held, and it had a duty to maintain the property in a reasonably safe condition, the conduct was not wilful or wanton. Dunbar v. Latting, 250 Ill. App. 3d 786, 190 Ill. Dec. 363, 621 N.E.2d 232 (3 Dist. 1993).

- Shown

Payroll specialist alleged more than mere negligence where she claimed that her employment was terminated in retaliation for informing her supervisor of an overstatement in the Teacher Retirement System report and refusing to go along with it; the defendants' actions constituted wilful and wanton conduct. Rojicek v. Community Consol. Sch. Dist. 15, 888 F. Supp. 878 (N.D. Ill. 1995).

OPINIONS OF ATTORNEY GENERAL

Analysis
County Liability
Liability

County Liability

The county, in its corporate capacity, is not liable for the default of its officers in carrying out their statutory duties. 1996 Op. Atty. Gen. (96-013).

Liability

A county clerk and/or collector may be held liable personally and upon his or her bond for negligence in carrying out the ministerial duties of his or her office. 1996 Op. Atty. Gen. (96-013).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Education Law," see 25 S. Ill. U. L.J. 761 (2001).

For comment, "Violence and Injury in Illinois Schools: Students Deserve a Remedy," see 34 J. Marshall L. Rev. 803 (2001).

For article, Feldmeier, "Armstead and its Progeny: the Illinois Supreme Court's 'Vested Rights' Approach to the Application of Statutory Amendments to Pre-existing Cases or Causes of Action," see 25 S. Ill. U. L. J. 95 (2000).

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For article, "The Death of the Special Duty Exception to Statutory Governmental Immunity", see 86 Ill. B.J. 372 (1998).

For article, "Survey of Illinois Law: Torts," see 21 S. Ill. U.L.J. 891 (1997).

For article, "Survey of Illinois Law: Education Law," see 21 S. Ill. U.L.J. 815 (1997).

For article, "Illinois Tort Law: A Rich History of Cooperation and Respect Between the Courts and the Legislature," see 28 Loy. U. Chi. L.J. 745 (1997).

For article, "Survey of Illinois Law: Education Law," 19 S. Ill. U.L.J. 761 (1996).

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For article, "Survey of Illinois Law: Tort Developments," see 17 S. Ill. U.L.J. 961 (1993).

For article, "Liability of Illinois Public Officials for Illegal Expenditures," see 15 S. Ill. U.L.J. 235 (1991).

For comment, "The Scope of the Public Duty/Special Duty Doctrine in Illinois: Municipal Liability for Failure to Provide Police Protection," see 10 N. Ill. U.L. Rev. 269 (1990).

For article, "State and Local Government: 1988-89 Illinois Law Survey," see 21 Loy. U. Chi. L.J. 601 (1989-90).

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For note, "Unraveling the Illinois Retaliatory Discharge Tort," see 1989 U. Ill. L. Rev. 517.

For article, "Torts: 1985-86 Survey," see 11 S. Ill. U.L.J. 1001 (1987).

For article, "Citizen Remedies Against Errant Illinois Public Servants," see 11 S. Ill. U.L.J. 285 (1987).

For article, "Local and State Government: 1985-86 Illinois Law Survey," see 18 Loy. U. Chi. L.J. 683 (1986-87).

For article, "Risk Shifting Devices and Third-Party Practice: The Impact of Skinner and Alvis," see 14 Loy. U. Chi. L.J. 467 (1982-83).

For note on Constitutional Law and Employment discussing Melvin v. City of West Frankfort, 93 Ill. App. 3d 425, 417 N.E.2d 260 (1981), see 70 Ill. B.J. 520 (1982).

For article, "Medical Negligence and the Court of Claims: A Dilemma for the Sovereign Doctors," see 68 Ill. B.J. 534 (1980).

For article, "Action and Remedies Against Government Visits and Public Officers for Nonfeasance," see 11 Loy. U. Chi. L.J. 101 (1979-80).

For comments, "The In Loco Parentis Status of Illinois School Teachers: An Unjustifiably Broad Extension of Immunity," see 10 J. Marshall J. Prac. & Proc. 629 (1977).

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RESEARCH REFERENCES

Claims arising from governmental conduct causing damage to plaintiff's real property as within discretionary function exception of federal tort claims act (28 U.S.C.A. § 2680(a)). 167 ALR Fed. 1

Liability of United States for failure to warn of danger or hazard not directly created by act or omission of federal government and not in national parks as affected by "discretionary function or duty" exception to Federal Tort Claims Act. 169 ALR Fed. 421.

Liability of United States for failure to warn of danger or hazard resulting from governmental act or omission as affected by "discretionary function or duty" exception to Federal Tort Claims Act (28 U.S.C.A. § 2680(a)). 170 ALR Fed. 365.

Liability of United States for failure to warn local police or individuals of discharge, release, or escape of person who is deemed dangerous to public as affected by "discretionary act or duty" exception to Federal Tort Claims Act. 171 ALR Fed. 655.

Claims arising from conduct of governmental employer in administering or failing to administer medical care as within discretionary function exception of Federal Tort Claims Act (28 U.S.C.A. § 2680(a)). 172 ALR Fed. 407.

Liability of United States, under Federal Tort Claims Act (28 U.S.C.A. §§ 1346, 2680), for damages caused by ingestion or administration of government-approved drugs, vaccines, and medications. 173 ALR Fed. 431.

Construction and application of Federal Tort Claims Act (FTCA) exception in 28 U.S.C.A. § 3680(c), concerning claims arising in respect of assessment or collection of any tax or customs duty, or detention of goods or merchandise by any officer of customs or excise or any other law-enforcement officer. 173 ALR Fed. 465.

Liability of governmental unit or its officers for injury to innocent occupant of moving vehicle, or for damage to such vehicle, as result of police chase. 4 ALR4th 865.

Immunity of public officer from liability for injuries caused by negligently released individual. 5 ALR4th 773.

Actual notice or knowledge by governmental body or officer of injury or incident resulting in injury as constituting required claim or notice of claim for injury - Modern status. 7 ALR4th 1063.

Liability of governmental officer or entity for failure to warn or notify of release of potentially dangerous individual from custody. 12 ALR4th 722.

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Governmental tort liability for detour accidents. 1 ALR5th 163.

Municipal liability for negligent performance of building inspector's duties. 24 ALR5th 200.

Tort Liability of Public Schools and Institutions of Higher Learning for Accident Involving Motor Vehicle Operated by Student. 85 ALR5th 301.

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Practice Guides and Treatises.

Civil Practice (Illinois) Volume I: Opening the Case § 7.34 When a party is a government entity When plaintiff brings suit through a representative (IICLE).

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Contract Law § 5.16 Promissory Estoppel and the Public Entity (IICLE).

Third-Party Practice § 5.12 Timeliness of Third-Party Action (IICLE).

Third-Party Practice § 3.22 Third-Party Actions Involving Local Governmental Entitites (IICLE).

Third-Party Practice § 1.15 Statute of Limitations for Contribution Claims (IICLE).

Proving Fault in Auto Accident Cases § 5.5 Actions Against Road Contractors and Municipalities (IICLE).

Proving Fault in Auto Accident Cases § 3.4 The Illinois Vehicle Code (IICLE).

Land Use Law (Illinois) § 13.15 Statutory Immunity (IICLE).

Construction Litigation § 3.31 Scope of Application (IICLE).

Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 22.12 Government Immunity (IICLE).

Employment Termination 2002 Ed., Updated 2005 § 5.47 Municipalities as Defendants (IICLE).

1-22 Illinois Tort Law § 22.08 Tort Immunities.

Illinois Jurisprudence, Personal Injury and Torts § 35:53 Defamation.

Practice Forms.

§ 2-615 Motion To Dismiss Contribution Action Against Local Public Entities, Third-Party Practice § 3.40 Form (IICLE).

§ 745 ILCS 10/1-101.1. [Purpose; application]

Sec. 1-101.1. (a) The purpose of this Act is to protect local public entities and public employees from liability arising from the operation of government. It grants only immunities and defenses.

(b) Any defense or immunity, common law or statutory, available to any private person shall likewise be available to local public entities and public employees.

(Source: P.A. 84-1431.)

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Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 1-101.1.

CASE NOTES

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Applicability

Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., applied to the Metra Electric Line because it was a not-for-profit corporation with no shareholders, it was funded with public funds, and it operated a commuter rail line in the public interest. Del Real v. Northeast Ill. Reg'l Commuter R.R. Corp., 404 Ill. App. 3d 65, 343 Ill. Dec. 250, 934 N.E.2d 574, 2010 Ill. App. LEXIS 825 (1 Dist. 2010).

Despite language in 745 ILCS 10/2-202 indicating that immunity did not extend in cases involving willful and wanton conduct, the police department employee's cause of action alleging willful and wanton prosecution was properly dismissed; the Illinois Local Governmental and Governmental

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Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., pursuant to 745 ILCS 10/1-101.1, did not create new liabilities that did not exist at common law. Sparks v. Starks, 367 Ill. App. 3d 834, 305 Ill. Dec. 770, 856 N.E.2d 575, 2006 Ill. App. LEXIS 881 (1 Dist. 2006).

The Local Governmental and Governmental Employees Tort Immunity Act provides immunity only for acts which are "discretionary" in nature but does not provide immunity for acts which are "ministerial" in nature; discretionary acts are those which require personal deliberation, decision, and judgment, while ministerial acts are those amounting to the performance of a task in accordance with an order. Bonnell v. Regional Bd. of Sch. Trustees, 258 Ill. App. 3d 485, 196 Ill. Dec. 612, 630 N.E.2d 547 (5 Dist. 1994).

The Local Governmental and Governmental Employees Tort Immunity Act applies only to tort actions and does not bar a civil rights action. Firestone v. Fritz, 119 Ill. App. 3d 685, 75 Ill. Dec. 83, 456 N.E.2d 904 (2 Dist. 1983).

Authority

Because of the clear language of Ill. Const. (1970), Art. XIII, which makes the General Assembly the ultimate authority in determining whether a unit of local government is immune from tort liability, the language of this Act should control in any analysis of whether plaintiff's complaint states a cause of action. Burdinie v. Village of Glendale Heights, 139 Ill. 2d 501, 152 Ill. Dec. 121, 565 N.E.2d 654 (1990), overruled on other grounds, McCuen v. Peoria Park Dist., 163 Ill. 2d 125, 205 Ill. Dec. 487, 643 N.E.2d 778 (1994).

Function Distinction

There is no language in the Tort Immunity Act which would support a proprietary/governmental function distinction as having any bearing in determining the liability of a local government entity in a personal injury action. Corral ex rel. Corral v. Chicago Park Dist., 277 Ill. App. 3d 357, 213 Ill. Dec. 832, 660 N.E.2d 89 (1 Dist. 1995).

Immunity

- Interpretation of Statute

Immunity under the School Code (105 ILCS 5/1-1 et seq.) does not derive from immunity in this Act; the two statutes are to be interpreted apart from one another. Bowers ex rel. Bowers v. DuPage County Regional Bd. of Sch. Trustees, 183 Ill. App. 3d 367, 131 Ill. Dec. 893, 539 N.E.2d 246 (2 Dist. 1989).

- Pleading

Statutory governmental tort immunity under this Act is an affirmative defense and should therefore be pleaded. Midwest Bank & Trust Co. v. Village of Lakewood, 113 Ill. App. 3d 962, 69 Ill. Dec. 671, 447 N.E.2d 1358 (2 Dist. 1983).

- Qualified

Where defendants, local school officials, alleged to have discriminated against plaintiffs by firing them for union activity, retained only a qualified immunity, dependent on good faith action, absolute immunity was not applicable and defendants would prevail only if they showed that plaintiffs were discharged on justifiable grounds. McLaughlin v. Tilendis, 398 F.2d 287 (7th Cir. 1968).

- Taxpayer Suit

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Where plaintiff was not suing in tort, but in a taxpayer derivative suit, defendant could not avail himself of any protection that this Act would afford him. Kinzer ex rel. City of Chicago v. City of Chicago, 169 Ill. App. 3d 447, 120 Ill. Dec. 8, 523 N.E.2d 919 (1 Dist. 1988), rev'd on other grounds, 128 Ill. 2d 437, 132 Ill. Dec. 410, 539 N.E.2d 1216 (1989).

Independent Contractors

Because independent contractors such as fire and ambulance services employed by a fire protection district were not considered employees, the provisions of this Act could not be relied upon to levy a tax for liability insurance, workers' compensation, and unemployment insurance; therefore, no additional revenue was available to the district when city threatened to annex area, thereby reducing district's fire protection revenue. Elk Grove Rural Fire Protection Dist. v. City of Des Plaines, 148 Ill. App. 3d 921, 102 Ill. Dec. 430, 500 N.E.2d 52 (1 Dist. 1986).

Legislative Intent

The purpose of the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., is to protect local public entities and public employees from liability arising from the operation of government; in promulgating the Tort Immunity Act, the legislature sought to prevent the dissipation of public funds on damage awards in tort cases. Kevin's Towing, Inc. v. Thomas, 351 Ill. App. 3d 540, 286 Ill. Dec. 777, 814 N.E.2d 1003, 2004 Ill. App. LEXIS 973 (2 Dist. 2004), appeal denied, 212 Ill. 2d 533, 291 Ill. Dec. 708, 824 N.E.2d 284 (2004).

The Tort Immunity Act is intended to confer immunities and defenses upon municipalities, not to strip them of immunities and defenses available to other defendants. Gavin v. City of Chicago, 238 Ill. App. 3d 518, 179 Ill. Dec. 674, 606 N.E.2d 506 (1 Dist. 1992).

Local Public Entities

- Protection

Pursuant to the Compact Clause of the United States Constitution, U.S. Const. art. I, § 10, cl. 3, an Illinois court was not authorized to order relief that was inconsistent with the express terms of an interstate compact unless that compact was somehow unconstitutional. However, since the Local Governmental and Governmental Employees Tort Immunity Act (Act) had an express purpose of protecting local public entities and public employees from liability arising from the operation of government, granted only immunities and defenses as recognized by 745 ILCS 10/1-101.1(a), and was constitutional, the Act and its limitations period could be held to bar the motorist's personal injury action against the bus operator for a collision that they were involved in, as the Act generally protected, rather than burdened, the interstate compact at issue that provided transportation services to Illinois and Missouri residents, Hubble v. Bi-State Dev. Agency of the Illinois-Missouri Metro. Dist., 238 Ill. 2d 262, 345 Ill. Dec. 44, 938 N.E.2d 483, 2010 Ill. LEXIS 1066 (2010).

The primary purpose of the Tort Immunity Act is to encourage early investigation into claims against a governmental body, correct defective conditions, budget liability and settle claims to avoid costly litigation. Kievman v. Edward Hosp., 135 Ill. App. 3d 442, 90 Ill. Dec. 109, 481 N.E.2d 909 (2 Dist. 1985).

Negligence

- Duty

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To establish the unique awareness element, facts must be alleged that the defendant had actual knowledge of a particular risk to the particular plaintiff and where there were no allegations that the board or one of its employees had specific knowledge that the particular student was in possession of a gun on the premises of the school or that the minor plaintiff was specifically in danger of being shot by student, the plaintiff failed to allege sufficient facts to satisfy the unique awareness requirement of the "special duty" exception. Thames v. Board of Educ., 269 Ill. App. 3d 210, 206 Ill. Dec. 440, 645 N.E.2d 445 (1 Dist. 1994), appeal denied, 161 Ill. 2d 541, 208 Ill. Dec. 369, 649 N.E.2d 425 (1995).

The direct control element of the "special duty" exception does not exist when a failure to protect is alleged unless a corresponding allegation is made that the entity or its employee initiated the circumstances creating the dangerous situation for the particular plaintiff. Thames v. Board of Educ., 269 Ill. App. 3d 210, 206 Ill. Dec. 440, 645 N.E.2d 445 (1 Dist. 1994), appeal denied, 161 Ill. 2d 541, 208 Ill. Dec. 369, 649 N.E.2d 425 (1995).

Fact that a municipality was insured, thereby waiving defenses granted it by this Act, did not serve to impose duties upon the municipality, but rather, plaintiff still had to premise a negligence action against the municipality upon a duty to him in the factual circumstances of the case. Ferentchak v. Village of Frankfort, 121 Ill. App. 3d 599, 76 Ill. Dec. 950, 459 N.E.2d 1085 (3 Dist 1984), rev'd on other grounds, 105 Ill. 2d 474, 86 Ill. Dec. 443, 475 N.E.2d 822 (1985).

Operation of Government

The "operation of government" necessarily encompasses the policy decisions made by a municipality, that is, those decisions which require the municipality to balance competing interests and to make a judgment call as to what solution will best serve each of those interests. West v. Kirkham, 147 Ill. 2d 1, 167 Ill. Dec. 963, 588 N.E.2d 1104 (1992).

Purpose

The purpose of the Tort Immunity Act is to protect local governments and their employees from liability arising out of the operation of government, and the Act therefore grants immunities and defenses. Burke v. Grillo, 227 Ill. App. 3d 9, 169 Ill. Dec. 45, 590 N.E.2d 964 (2 Dist. 1992).

Scope of Immunity

There exists blanket immunity for all discretionary acts of public employees not ministerial in nature; however, it has been found that such immunity should not extend to (1) public employee's acts based on corrupt or malicious motives or (2) public employee's wilful and wanton acts. Munizza v. City of Chicago, 164 Ill. Dec. 645, 583 N.E.2d 561 (1991), cert. denied, 144 Ill. 2d 635, 169 Ill. Dec. 144, 591 N.E.2d 24 (1992).

This Act adopted the general principle that local governmental units are liable in tort but limited this principle with an extensive list of immunities based on specific government functions. Burdinie v. Village of Glendale Heights, 139 Ill. 2d 501, 152 Ill. Dec. 121, 565 N.E.2d 654 (1990), overruled on other grounds, McCuen v. Peoria Park Dist., 163 Ill. 2d 125, 205 Ill. Dec. 487, 643 N.E.2d 778 (1994).

This Act does not impose duties, but confers immunities. Havens ex rel. Havens v. Harris Tp., 175 Ill. App. 3d 768, 125 Ill. Dec. 256, 530 N.E.2d 284 (3 Dist. 1988).

While this Act offers broad protection to actions of governmental units, it does not offer municipalities absolute immunity from tort actions. Plesnicar ex rel. Plesnicar v. Kovach, 102 Ill. App. 3d 867, 58 Ill. Dec. 616, 430 N.E.2d 648 (1 Dist. 1981).

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Municipalities and their employees enjoy no immunity from suit, except as provided by this Act. Melbourne Corp. v. City of Chicago, 76 Ill. App. 3d 595, 31 Ill. Dec. 914, 394 N.E.2d 1291 (1 Dist. 1979).

Special Duty Doctrine

- Upheld

The combination of the great weight of precedent and the constitutional provision which expressly grant the General Assembly control over municipal immunity convinced the court that the legislature is the appropriate body to alter any existing exception to municipal tort immunity as contained in this Act. Burdinie v. Village of Glendale Heights, 139 Ill. 2d 501, 152 Ill. Dec. 121, 565 N.E.2d 654 (1990), overruled on other grounds, McCuen v. Peoria Park Dist., 163 Ill. 2d 125, 205 Ill. Dec. 487, 643 N.E.2d 778 (1994).

Statutory Construction

This Act is in derogation of the common law and must be strictly construed against a public entity. Kievman v. Edward Hosp., 135 Ill. App. 3d 442, 90 Ill. Dec. 109, 481 N.E.2d 909 (2 Dist. 1985); American Ambassador Cas. Co. v. City of Chicago, 205 Ill. App. 3d 879, 150 Ill. Dec. 755, 563 N.E.2d 882 (1 Dist. 1990).

Supremacy Clause

Under the Supremacy Clause of the United States Constitution, U.S. Const. Art. VI, this section could not protect defendants against a cause of action grounded on a federal statute. McLaughlin v. Tilendis, 398 F.2d 287 (7th Cir. 1968).

Union Membership

Where defendants had not adopted any rule, regulation or resolution forbidding union membership, no paramount public interest of Illinois warranted the limiting of plaintiff's right of association. McLaughlin v. Tilendis, 398 F.2d 287 (7th Cir. 1968).

Waiver

- Failure to Raise Defense

A county's failure to raise tort immunity defense in the trial court precluded the county from raising said defense on appeal. Porter v. County of Cook, 42 Ill. App. 3d 287, 355 N.E.2d 561 (1 Dist. 1976).

Wrongful Death Action

- Punitive Damages Precluded

Punitive damages are precluded in any claim under the Illinois Wrongful Death Act (740 ILCS 185/0.01 et seq.). Means v. City of Chicago, 535 F. Supp. 455 (N.D. Ill. 1982).

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LEGAL PERIODICALS

For article, "Illinois Courts: Vital Developers of Tort Law as Constitutional Vanguards, Statutory Interpreters, and Common Law Adjudicators", see 30 Loy. U. Chi. L.J. 183 (1999).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 3:39 Defenses not included in Tort Immunity Act.

§ 745 ILCS 10/1-102. [Severability]

Sec. 1-102. If any provision or clause of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 1-102.

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Employment Law, "see, See 28 S. Ill. U.L.J. 705 (2004).

Part 2.
General Definitions

§ 745 ILCS 10/1-201. [Definitions of terms]

Sec. 1-201. Unless the context otherwise requires, words and terms used in this Act have the meanings ascribed to them in the following sections of this Part 2.

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(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 1-201.

LEGAL PERIODICALS

For article, "Intergovernmental Cooperation and the Municipal Insurance Crisis," see 30 De Paul L. Rev. 325 (1981).

§ 745 ILCS 10/1-202. [Employee defined]

Sec. 1-202. "Employee" includes a present or former officer, member of a board, commission or committee, agent, volunteer, servant or employee, whether or not compensated, but does not include an independent contractor.

(Source: P.A. 84-1431.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 1-202.

CASE NOTES

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Corporal Punishment
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Corporal Punishment

Plaintiffs were required to create an issue of fact that the employees of defendant school district, in their relations with the plaintiffs, were actuated by malice, or were wilful and wanton in their use of corporal punishment; the trial court correctly found that plaintiffs failed to create such an issue of fact. Gordon v. Oak Park Sch., 24 Ill. App. 3d 131, 320 N.E.2d 389 (1 Dist. 1974).

Educational Discipline

- Disparaging Comments

A teacher stands in loco parentis, and in the absence of malice or wantonness, it may well be that disparaging comments about a pupil may be necessary and conducive to proper educational discipline. Wexell ex rel. Wexell v. Scott, 2 Ill. App. 3d 646, 276 N.E.2d 735 (3 Dist. 1971).

Independent Contractor or Employee

Physician was an employee of a hospital district, not an independent contractor, because the hospital exercised control over him by: (1) requiring him to maintain certain office hours, to live within a certain geographic range and be accessible by phone, and to abide by the terms of the employee handbook; (2) maintaining the right to discharge him; (3) providing office space, equipment, personnel, supplies, and business management services; and (4) either funding or deducting from his salary insurance, social security, and taxes. Wheaton v. Suwana, 355 Ill. App. 3d 506, 291 Ill. Dec. 407, 823 N.E.2d 993, 2005 Ill. App. LEXIS 18 (5 Dist. 2005), appeal denied, 214 Ill. 2d 553, 294 Ill. Dec. 9, 830 N.E.2d 9 (2005).

Officers

- Liability

Officers were included in the statutory definition of "employee" thus eliminating the liability of the mayor, city manager, and commissioners who were made defendants to an action involving street plan and design. Deren ex rel. Deren v. City of Carbondale, 13 Ill. App. 3d 473, 300 N.E.2d 590 (5 Dist. 1973).

Scope

The purpose of the 1986 amendment adding the words "agent" and "volunteer" was to broaden the scope of immunities provided for under this Act. Sunderland v. Tri-City Community Unit Sch., 193 Ill. App. 3d 266, 140 Ill. Dec. 341, 549 N.E.2d 992 (4 Dist. 1990).

Scope of Employment

In negligence action brought against county sheriff's department and State arising from an alleged negligent eviction, although 705 ILCS 505/8 eliminated immunity from respondeat superior liability, the State was not liable under respondeat superior for actions of individuals who were not state employees under definitions of 745 ILCS 10/1-202 or 745 ILCS 5/1. Alencastro v. State, 54 Ill. Ct. Cl. 457, 2001 Ill. Ct. Cl. LEXIS 28 (Ct. Cl. 2001).

Once a determination is made that a public employee was not acting within the scope of his employment, that public employee's duty to others is that of any other private citizen. Thus, whether municipal firefighters were protected by this Act or whether they acted outside of the

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scope of their employment as private citizens, they had no legal duty to offer fire protection to plaintiffs. Jackson v. Chicago Firefighters Union, 160 Ill. App. 3d 975, 112 Ill. Dec. 393, 513 N.E.2d 1002 (1 Dist. 1987).

Volunteer

- Shown

Where defendant, a student at codefendant school's gymnasium, was acting solely as an unpaid manager of the school's volleyball team and was under the direction and supervision of teachers and coaches when she moved a volleyball stand which caused plaintiff's injury, she was a volunteer and therefore covered under this Act. Sunderland v. Tri-City Community Unit Sch., 193 Ill. App. 3d 266, 140 Ill. Dec. 341, 549 N.E.2d 992 (4 Dist. 1990).

§ 745 ILCS 10/1-203. [Enactment defined]

Sec. 1-203. "Enactment" means a constitutional provision, statute, ordinance or regulation.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 1-203.

§ 745 ILCS 10/1-204. [Injury defined]

Sec. 1-204. "Injury" means death, injury to a person, or damage to or loss of property. It includes any other injury that a person may suffer to his person, reputation, character or estate which does not result from circumstances in which a privilege is otherwise conferred by law and which is of such a nature that it would be actionable if inflicted by a private person. "Injury" includes any injury alleged in a civil action, whether based upon the Constitution of the United States or the Constitution of the State of Illinois, and the statutes or common law of Illinois or of the United States.

(Source: P.A. 84-1431.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 1-204.

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CASE NOTES

Analysis

Constitutional Tort
Damage or Loss of Property
Police Shooting

Constitutional Tort

To constitute a "constitutional tort," defendant's actions must constitute a knowing or malicious violation of plaintiff's clearly established constitutional rights. Melbourne Corp. v. City of Chicago, 76 Ill. App. 3d 595, 31 Ill. Dec. 914, 394 N.E.2d 1291 (1 Dist. 1979).

Damage or Loss of Property

"Injury" for purposes of this Act, includes "damage to or loss of property." O'Fallon Dev. Co. v. City of O'Fallon, 43 Ill. App. 3d 348, 2 Ill. Dec. 6, 356 N.E.2d 1293 (5 Dist. 1976).

Police Shooting

A superintendent of police could not be held liable for defendant police officer's actions in the shooting of plaintiff. Eiland v. Hardesty, 564 F. Supp. 930 (N.D. Ill. 1982).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 11:38 Executive branch; public officials, generally.

§ 745 ILCS 10/1-205. [Law defined]

Sec. 1-205. "Law" includes not only enactments but also the case law applicable within this State as determined and declared from time to time by the courts of review of this State and of the United States.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 1-205.

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CASE NOTES

Definition

The definition of "law" encompasses constitutional provisions, statutes, ordinances, regulations and case law. O'Fallon Dev. Co. v. City of O'Fallon, 43 Ill. App. 3d 348, 2 Ill. Dec. 6, 356 N.E.2d 1293 (5 Dist. 1976).

§ 745 ILCS 10/1-206. [Local public entity defined]

Sec. 1-206. "Local public entity" includes a county, township, municipality, municipal corporation, school district, school board, educational service region, regional board of school trustees, trustees of schools of townships, treasurers of schools of townships, community college district, community college board, forest preserve district, park district, fire protection district, sanitary district, museum district, emergency telephone system board, and all other local governmental bodies. "Local public entity" also includes library systems and any intergovernmental agency or similar entity formed pursuant to the Constitution of the State of Illinois or the Intergovernmental Cooperation Act [5 ILCS 220/1 et seq.] as well as any not-for-profit corporation organized for the purpose of conducting public business. It does not include the State or any office, officer, department, division, bureau, board, commission, university or similar agency of the State.

The changes made by this amendatory Act of the 94th General Assembly [P.A. 94-424] do not apply to an action or proceeding accruing on or before its effective date.

(Source: P.A. 86-292; 86-1332; 87-706; 89-403, § 10; 94-424, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 1-206.

Cross References.

As to the inapplicability of this Act's definition of a local public entity with regard to the definition of "state" in the State Employee Indemnification Act, see 5 ILCS 350/1.

Illinois Administrative Code.

See 14 Illinois Administrative Code, § 610.200.

Effect of Amendments. The 1995 amendment by P.A. 89-403, effective January 1, 1996, in the first sentence inserted "emergency telephone system board".

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The 2005 amendment by P.A. 94-424, effective August 2, 2005, added "trustees of schools of townships, treasurers of schools of townships" in the first sentence of the first paragraph; and added the last paragraph.

CASE NOTES

Analysis

Bi-State Development Agency
Board of Education
Children's Home
Company Engaged in Governmental Activities
Council on Aging
Definition
- Local Public Entity
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- Sanitary Inspections
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School District
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Voluntary Association

Bi-State Development Agency

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Although the motorist filed a personal injury action against the bus operator about seven months inside of the two-year personal injury statute of limitations, 735 ILCS 5/13-202, the bus operator was permitted to assert as an affirmative defense that the motorist's action was untimely filed, as the bus operator's status as a non-profit corporation made it a "local public entity" under 745 ILCS 10/1-206 of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq. (Act), and entitled it to assert the one-year limitations period in the Act, 745 ILCS 10/8-101(a), as a defense. Since the motorist's action, arising out of being struck by the bus operator's bus, was not filed within that one-year time period, the motorist's action was time barred. Hubble v. Bi-State Dev. Agency of the Illinois-Missouri Metro. Dist., 238 Ill. 2d 262, 345 Ill. Dec. 44, 938 N.E.2d 483, 2010 Ill. LEXIS 1066 (2010).

Bi-State Development Agency was considered a "local government body" and, consequently, a "local public entity" under this Act so as to be entitled to notice of plaintiff's claim against it. Grady v. Bi-State Dev. Agency, 151 Ill. App. 3d 748, 104 Ill. Dec. 427, 502 N.E.2d 1087 (5 Dist. 1986).

Board of Education

In the absence of malice or wantonness, a cause of action could not be maintained against the Board of Education of a school district on the basis that the teacher verbally chastised a student. Wexell ex rel. Wexell v. Scott, 2 Ill. App. 3d 646, 276 N.E.2d 735 (3 Dist. 1971).

Under a former Act entitled "Schools," the appellee Board of Education was a corporation created by the general law of the state to aid in the administration of the state government, and charged, as such, with duties purely governmental in character. The state acted in its sovereign capacity, and did not submit its action to the judgment of courts, and was not liable for the torts or negligence of its agents, and a corporation created by the state as a mere agency for the more efficient exercise of governmental function was likewise exempted from the obligation to respond in damages, as master, for negligent acts of its servants to the same extent as was the state itself. Kinnare v. City of Chicago, 171 Ill. 332, 49 N.E. 536 (1898).

Children's Home

Non-profit children's home that was accused of negligence and willful and wanton misconduct was not a local public entity under 745 ILCS 10/1-206 and was not immune from suit, because the home was not engaged in conducting public business; the children's home was privately controlled by a church board of directors and was not subject to governmental control. Dawn T. v. Hudelson Baptist Children's Home, 333 Ill. App. 3d 445, 266 Ill. Dec. 785, 775 N.E.2d 625, 2002 Ill. App. LEXIS 746 (5 Dist. 2002).

Company Engaged in Governmental Activities

Management company was immune from liability for injuries incurred at a public housing project as a "local public entity" since it was created as part of a federal program, was engaged in governmental activities, and was entirely government funded. Barnes v. Chi. Hous. Auth., 326 Ill. App. 3d 710, 260 Ill. Dec. 439, 761 N.E.2d 283, 2001 Ill. App. LEXIS 895 (1 Dist. 2001), appeal denied, 198 Ill. 2d 612, 264 Ill. Dec. 323, 770 N.E.2d 217 (2002).

Council on Aging

A county council on aging, which was a not-for-profit organization incorporated "to help senior citizens to live independently and with dignity in their own homes," was not a local public entity within the meaning of the statute since: (1) it was not specifically included under the statute or

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operated by an entity specifically included under the statute; and (2) it was not almost entirely government funded and, instead, was a membership organization that provided limited services to a narrow range of the public and received some government funding. Niehaus v. Rural Peoria County Council on Aging, 314 Ill. App. 3d 665, 247 Ill. Dec. 416, 732 N.E.2d 132, 2000 Ill. App. LEXIS 516 (3 Dist. 2000), appeal denied, 191 Ill. 2d 535, 250 Ill. Dec. 459, 738 N.E.2d 928 (2000).

Definition

Although the legislature used the term "local entity" in 745 ILCS 10/8-101(a), it meant to use the term "local public entity" pursuant to 745 ILCS 10/1-206, as was used in the remainder of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq.; such mistaken term was deemed a scrivener's error. Hubble v. Bi-State Dev. Agency, 393 Ill. App. 3d 1016, 333 Ill. Dec. 543, 915 N.E.2d 64, 2009 Ill. App. LEXIS 761 (5 Dist. 2009).

Court of Claims' dismissal of claimant's tort action against the State was based on public officials' immunity for performance of discretionary duties undertaken in good faith, rather than immunity under the Local Governmental and Governmental Employees Tort Immunity Act (the Act), 745 ILCS 10/1-101 et seq., because the Act did not include the State of Illinois or its employees. The court overruled its prior decision holding 745 ILCS 10/4-106,applied equally to units of local government and to the State. Larson v. State, 50 Ill. Ct. Cl. 1, 1997 Ill. Ct. Cl. LEXIS 41 (Ct. Cl. 1997).

- Local Public Entity

Interstate compact entity between Illinois and Missouri, which was approved by Congress and which regulated public transportation on both sides of the Mississippi River, was not within the definition of "local public entity" pursuant to 745 ILCS 10/1-206 of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/8-101 et seq., such that the one-year limitations period of 745 ILCS 10/8-101(a) did not apply to a driver's action against a bus driver and the entity. Hubble v. Bi-State Dev. Agency, 393 Ill. App. 3d 1016, 333 Ill. Dec. 543, 915 N.E.2d 64, 2009 Ill. App. LEXIS 761 (5 Dist. 2009).

Transportation Cooperation Act of 1971, 5 ILCS 225/2, did not support the proposition that an interstate compact clause entity that was developed between two states and Congress for purposes of public transportation on both sides of the Mississippi River was a local public entity for purposes of 745 ILCS 10/1-206 of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., as the Cooperation Act defined "units of local government" in such a way that inclusion within its unit definition was clear and expressed; further, the Cooperation Act was contrary to the entity's compact agreement, as the entity was prohibited from exercising additional powers unless they were properly conferred by both states and approved by Congress. Hubble v. Bi-State Dev. Agency, 393 Ill. App. 3d 1016, 333 Ill. Dec. 543, 915 N.E.2d 64, 2009 Ill. App. LEXIS 761 (5 Dist. 2009).

Sheriff sued in an official capacity for sexual discrimination and harassment fell within the statutory definition of a public entity empowered to settle claims; therefore, the Illinois Supreme Court responded to the federal appeals court's certified question that the county was bound to pay the settlement. Carver v. Sheriff of La Salle County, 203 Ill. 2d 497, 272 Ill. Dec. 312, 787 N.E.2d 127, 2003 Ill. LEXIS 13 (2003).

Where a particular entity, such as defendant, must petition another public entity to hold public elections as a necessary antecedent to its creation, requires public elections of its governing board of trustees and is financed by taxes and other public funds, this inexorably leads to the conclusion that defendant was an "other governmental body" within the definition of local public entity as recited in the earlier version of this statute preceding the amendment by P.A. 86-292.

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Luciano v. Waubonsee Community College, 245 Ill. App. 3d 1077, 185 Ill. Dec. 463, 614 N.E.2d 904 (2 Dist. 1993).

This section specifically defines the term "local public entity" to include a municipal corporation. LeSanche v. North Sub. Mass Transit Dist., 142 Ill. App. 3d 394, 96 Ill. Dec. 710, 491 N.E.2d 1170 (1 Dist. 1985).

Denial of Permit

Plaintiff truck rental company, seeking a special use permit from defendant municipality to allow development of its rental business on premises it had acquired in the municipality was precluded from recovering money damages for its business losses stemming from an allegedly wrongful denial of the permit, because defendants were considered either "local public entities" or "public employees." U-Haul Co. v. Town of Cicero, 87 Ill. App. 3d 915, 43 Ill. Dec. 286, 410 N.E.2d 286 (1 Dist. 1980).

Drainage Districts

Although drainage districts are not specifically listed as public entities by statute, these districts fit within the catchall category of "other local government bodies." Roark v. Macoupin Creek Drainage Dist., 316 Ill. App. 3d 835, 250 Ill. Dec. 358, 738 N.E.2d 574, 2000 Ill. App. LEXIS 783 (4 Dist. 2000).

Elements

Sheriff, because of answering to the electorate and not to the county board, was a public entity for purposes of the Illinois Tort Immunity Act, 745 ILCS 10/1-206; therefore, the county was obliged to pay the amount due to former employees under a settlement of a lawsuit, alleging sex discrimination, against the sheriff in an official capacity. Carver v. Sheriff of La Salle County, 203 Ill. 2d 497, 272 Ill. Dec. 312, 787 N.E.2d 127, 2003 Ill. LEXIS 13 (2003).

Not-for-profit corporation needed to be organized for the purpose of conducting public business in order to satisfy the definition of a "local public entity;" characteristics making a not-for-profit corporation a charitable organization did not, without more, also qualify the corporation as a "local public entity" under the Local Governmental and Governmental Tort Immunity Act. Carroll v. Paddock, 199 Ill. 2d 16, 262 Ill. Dec. 1, 764 N.E.2d 1118, 2002 Ill. LEXIS 13 (2002).

The phrase "public business" is commonly understood to mean the business of the government. O'Melia v. Lake Forest Symphony Ass'n, 303 Ill. App. 3d 825, 237 Ill. Dec. 223, 708 N.E.2d 1263 (2 Dist. 1999), appeal denied, 185 Ill. 2d 632, 242 Ill. Dec. 140, 720 N.E.2d 1095 (1999).

To conduct public business under the Act, a corporation must pursue an activity that benefits the entire community without limitation. O'Melia v. Lake Forest Symphony Ass'n, 303 Ill. App. 3d 825, 237 Ill. Dec. 223, 708 N.E.2d 1263 (2 Dist. 1999), appeal denied, 185 Ill. 2d 632, 242 Ill. Dec. 140, 720 N.E.2d 1095 (1999).

The elements of a cause of action for wilful and wanton negligence are a duty to the injured party, and a breach of that duty which is a proximate cause of the injury. Breck v. Cortez, 141 Ill. App. 3d 351, 95 Ill. Dec. 615, 490 N.E.2d 88 (2 Dist. 1986).

Evidence

The question of wilful and wanton misconduct may be determined by a court on a motion for a directed verdict if evidence, when viewed in its aspect most favorable to opponent, so

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overwhelmingly favors movant that no contrary determination could ever stand. Breck v. Cortez, 141 Ill. App. 3d 351, 95 Ill. Dec. 615, 490 N.E.2d 88 (2 Dist. 1986).

Forest Preserve District

Self-insured forest preserve district was a local public entity; it therefore enjoyed the immunity granted to it under this Act. Durham v. Forest Preserve Dist., 152 Ill. App. 3d 472, 105 Ill. Dec. 614, 504 N.E.2d 899 (1 Dist. 1986).

Hospitals

Hospital was not a "local public entity" under the Local Government and Governmental Employee Tort Immunity Act, 745 ILCS 10/1-206, as it was not government funded and did not participate in the business of government. Thus, the hospital and its employees were not entitled to invoke the one-year statute of limitations pursuant to 745 ILCS 10/ 8-101 in an action brought under the Wrongful Death Act, 740 ILCS 180/0.01 et seq.. Carroll v. Paddock, 317 Ill. App. 3d 985, 251 Ill. Dec. 732, 741 N.E.2d 326, 2000 Ill. App. LEXIS 1020 (1 Dist. 2000).

Little League Association

A little league association was not a local public entity where it was not shown that it conducted public business, was not a sub-unit of the village in which it was located, and owned the field on which it played. Hills v. Bridgeview Little League Ass'n, 306 Ill. App. 3d 13, 239 Ill. Dec. 85, 713 N.E.2d 616 (1 Dist. 1999).

Membership Organization

The court declined to find that a membership organization such as the YWCA was a public entity entitled to the immunities and defenses of this Act. Johnson v. Decatur Park Dist., 301 Ill. App. 3d 798, 235 Ill. Dec. 67, 704 N.E.2d 416 (4 Dist. 1998), appeal denied, 183 Ill. 2d 569, 238 Ill. Dec. 714, 712 N.E.2d 818 (1999).

Municipal Housing Authority

Housing authority was immune from liability for willful and wanton acts when it allegedly failed to supervise a public housing management company and failed to promptly approve a security contract for a housing project; the "voluntary undertaking" theory did not supercede its statutory immunity. Barnes v. Chi. Hous. Auth., 326 Ill. App. 3d 710, 260 Ill. Dec. 439, 761 N.E.2d 283, 2001 Ill. App. LEXIS 895 (1 Dist. 2001), appeal denied, 198 Ill. 2d 612, 264 Ill. Dec. 323, 770 N.E.2d 217 (2002).

Where municipal housing authority was a municipal corporation, and thus a "local public entity" for purposes of this Act, whether the housing authority owed a duty of ordinary care to maintain its property for the benefit of the plaintiff, who was injured on property owned by the housing authority, was governed by the requirements of this Act. Vesey v. Chicago Hous. Auth., 145 Ill. 2d 404, 164 Ill. Dec. 622, 583 N.E.2d 538 (1991).

Not-For-Profit Human Resources Center

Not-for-profit human resources center was not organized for the purpose of conducting public business and was not a "local public entity" under the Local Government and Governmental

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Employee Tort Immunity Act, 745 ILCS 10/1-206, even if it received some grants from government sources. Thus, the center and its employees were not entitled to invoke the one-year statute of limitations pursuant to 745 ILCS 10/ 8-101 in an action brought under the Wrongful Death Act, 740 ILCS 180/0.01 et seq.. Carroll v. Paddock, 317 Ill. App. 3d 985, 251 Ill. Dec. 732, 741 N.E.2d 326, 2000 Ill. App. LEXIS 1020 (1 Dist. 2000).

Park District

The Park District was a local public entity and the sidewalk, located within the park, on which plaintiff fell was public property within the meaning of this section. Corral ex rel. Corral v. Chicago Park Dist., 277 Ill. App. 3d 357, 213 Ill. Dec. 832, 660 N.E.2d 89 (1 Dist. 1995).

Private Schools

Private school that served troubled children upon referral from the public school district, receiving payment in many cases out of public funds, was not so intertwined with public business as to be entitled to immunity from tort liability as a local governmental entity. Brugger v. Joseph Acad., Inc., 202 Ill. 2d 435, 269 Ill. Dec. 472, 781 N.E.2d 269, 2002 Ill. LEXIS 960 (2002).

Illinois Tort Immunity Act did not govern activities at a private school and trial court erred by finding that the school had immunity from suit alleging wilful and wanton misconduct and dismissing that suit, where suit was filed after a student was injured while playing. Brugger v. Joseph Academy, Inc., 326 Ill. App. 3d 328, 260 Ill. Dec. 56, 760 N.E.2d 135, 2001 Ill. App. LEXIS 863 (1 Dist. 2001), aff'd, 202 Ill. 2d 435, 269 Ill. Dec. 472, 781 N.E.2d 269 (2002).

Public Function

The City of Chicago, in the collection and removal of the garbage of its citizens, acted in the discharge of a special power granted it by the legislature, in the exercise of which it was a legal individual, as distinguished from its governmental function when it acted as a sovereign, and the fact that the discharge of that duty might incidentally benefit the public health did not make the removal of the garbage a public function for purposes of prior similar provision. Schmidt v. City of Chicago, 284 Ill. App. 570, 1 N.E.2d 234 (1 Dist. 1936).

Public Schools

- Sanitary Inspections

The doctrine of sovereign immunity was inapplicable where a county, through its Department of Health, sought to enjoin district from prohibiting sanitary inspections of the district's public school cafeterias. County of Macon v. Board of Educ., 165 Ill. App. 3d 1, 116 Ill. Dec. 31, 518 N.E.2d 653 (4 Dist. 1987).

Punitive Damages

- Exemptions

The 1986 amendment to this section includes within the definition local public entity not-for-profit corporations like Northeast Illinois Regional Commuter Railroad Corporation (METRA) organized for the purpose of conducting public business, and clarifies the exempt status from punitive damage liability that METRA already had under common law. Smith v. Northeast Ill. Regional Commuter R.R., 210 Ill. App. 3d 223, 155 Ill. Dec. 41, 569 N.E.2d 41 (1 Dist. 1991).

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Requirements

- Wilful and Wanton Conduct

To plead a sufficient cause of action for wilful and wanton conduct, in addition to the common law definition, plaintiff must allege the existence of a duty owed by the defendant to the plaintiff, a breach of that duty and an injury proximately caused by the breach; where the defendant is a local public entity and the injury is based on the existence of a condition of public property used for recreational purposes, the plaintiff must also plead that the proximate cause of the plaintiff's injury was the governmental entity's wilful and wanton conduct. Benhart v. Rockford Park Dist., 218 Ill. App. 3d 554, 161 Ill. Dec. 242, 578 N.E.2d 600 (2 Dist. 1991).

School District

Public school district had immunity under 745 ILCS 10/1-101 of the Local Governmental and Governmental Employees Act (Act) with regard to a student's false imprisonment claim because the decision by an administrator to detain and then discipline the student following a fight at a high school because pursuant to 745 ILCS 10/1-206, the district's board of education was a local public entity for purposes of the Act and the decision to discipline the student was a discretionary, as opposed to ministerial, act for purposes of 745 ILCS 10/2-201. Rogers v. Cook, F. Supp. 2d , 2008 U.S. Dist. LEXIS 103702 (N.D. Ill. Dec. 23, 2008).

Where a father had a wrongful death action (WDA) against a local school district, which was a "local public entity" under 745 ILCS 10/1-206 for purposes of determining that the limitations period for filing such claims was one year, pursuant to 745 ILCS 10/8-101, and the attorneys and firm that he initially retained withdrew from further representation while the WDA was still viable, a trial court erred in dismissing the father's legal malpractice action against the attorneys. The attorney who informed the father that representation was being terminated also mistakenly advised him that there was a two-year limitations period, and the fact that the father consulted with another attorney during that time but he did not retain a successor attorney until after the one-year period had run did not constitute a superceding cause in order to exonerate the attorneys from liability, and accordingly, questions of fact remained regarding causation which were appropriately determined by the trier of fact and not as a matter of law in a dismissal motion. Lopez v. Clifford Law Offices, P.C., 362 Ill. App. 3d 969, 299 Ill. Dec. 53, 841 N.E.2d 465, 2005 Ill. App. LEXIS 1211 (1 Dist. 2005), appeal denied, 218 Ill. 2d 541, 303 Ill. Dec. 3, 850 N.E.2d 808 (2006).

Punitive damages could not be recovered from school district because it was a local public entity. Landstrom v. Illinois Dep't of Children & Family Servs., 699 F. Supp. 1270 (N.D. Ill. 1988), aff'd, 892 F.2d 670 (7th Cir. 1990).

Although a school district can be held liable for wanton and malicious acts if its employees absent proof of wantonness or malice, liability is absolutely precluded. Gordon v. Oak Park Sch., 24 Ill. App. 3d 131, 320 N.E.2d 389 (1 Dist. 1974).

A teacher stands in loco parentis, and in the absence of malice or wantonness, it may well be that disparaging comments about a pupil may be necessary and conducive to proper educational discipline. Wexell ex rel. Wexell v. Scott, 2 Ill. App. 3d 646, 276 N.E.2d 735 (3 Dist. 1971).

Sports Facility Authority

Although the sports facility authority was a "local public entity" within the meaning of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., it was not entitled to immunity it might otherwise have had under the Act, as it did not assert the

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protections of the Act at trial and its failure to raise the Act as an affirmative defense meant the protections of the Act were waived in a case where the fan fell outside of the city sports venue and brought a negligence action against the sports facility authority and others for the injury he sustained. Mazin v. Chi. White Sox, Ltd., Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 150 (1 Dist. Feb. 22, 2005), modified, 358 Ill. App. 3d 856, 295 Ill. Dec. 377, 832 N.E.2d 827 (2005).

Strict Construction

Because this Act is in derogation of the common law, it must be strictly construed against the local public entity or public employee. Kirnbauer v. Cook County Forest Preserve Dist., 215 Ill. App. 3d 1013, 159 Ill. Dec. 499, 576 N.E.2d 168 (1 Dist. 1991).

Former Ill. Rev. Stat. ch. 85, paras. 1-206, 3-102, 3-103, and 3-106 (now 735 ILCS 10/1-206, 3-102, 3-103, and 3-106) evidence a legislative intent to limit the premises tort liability of local public entities to only those instances in which the local entities or their employees are guilty of wilful and wanton negligence proximately causing the injury. Newby v. Lake Zurich Community Unit Dist. 95, 136 Ill. App. 3d 92, 90 Ill. Dec. 778, 482 N.E.2d 1061, 1985 Ill. App. LEXIS 2368 (1 Dist. 1985).

Symphony Association

Because the symphony association was a member organization and operated in an area outside of the traditional areas of governmental concern, it was not a local public entity for purposes of the Act. O'Melia v. Lake Forest Symphony Ass'n, 303 Ill. App. 3d 825, 237 Ill. Dec. 223, 708 N.E.2d 1263 (2 Dist. 1999), appeal denied, 185 Ill. 2d 632, 242 Ill. Dec. 140, 720 N.E.2d 1095 (1999).

Village

Village was plainly a "local public entity" under this section meaning that it, like the fire protection district was immune from liability for inadequate fire protection services. Pierce v. Village of Divernon, 17 F.3d 1074 (7th Cir. 1994).

Voluntary Association

Illinois High School Association (IHSA) and its executive director were outside the protection of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., because the IHSA was not a "local public entity" as defined by 745 ILCS 10/1-206; it was a voluntary association. Hood v. Ill. High Sch. Ass'n, 359 Ill. App. 3d 1065, 296 Ill. Dec. 585, 835 N.E.2d 938, 2005 Ill. App. LEXIS 947 (2 Dist. 2005), appeal denied, 217 Ill. 2d 601, 300 Ill. Dec. 522, 844 N.E.2d 965 (2006).

OPINIONS OF ATTORNEY GENERAL

Applicability

The Greater Egypt Regional Planning and Development Commission is a local governmental body within the meaning of the Local Governmental and Governmental Employees Tort Immunity

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Act, and thus, is subject to the provisions of that Act. 1977 Op. Atty. Gen. 73.

LEGAL PERIODICALS

For article, "When the King Does Wrong: What Immunity Does Local Government Deserve?," see 86 Ill. B.J. 138 (1998).

For article, "Survey of Illinois Law [1989-90] - Municipal Corporations," see 15 S. Ill. U.L.J. 1021 (1991).

For comments, "The In Loco Parentis Status of Illinois School Teachers: An Unjustifiably Broad Extension of Immunity," see 10 J. Marshall J. Prac. & Proc. 629 (1977).

For article, "Survey of Illinois Law: Employment Law," see, See 30 S. Ill. U.L.J. 613 (2006).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 35:76 Defamation.

§ 745 ILCS 10/1-207. [Public Employee defined]

Sec. 1-207. "Public Employee" means an employee of a local public entity.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 1-207.

CASE NOTES

Analysis
In General
Evidence
Money Damages
- Not Available
Police Officers
- Wilful and Wanton
School Employees
- Corporal Punishment

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- Teacher
Sheriff
Superintendent of Police
- Liability

In General

Court of Claims' dismissal of claimant's tort action against the State was based on public officials' immunity for performance of discretionary duties undertaken in good faith, rather than immunity under the Local Governmental and Governmental Employees Tort Immunity Act (the Act), 745 ILCS 10/1-101 et seq., because the Act did not include the State of Illinois or its employees. The court overruled its prior decision holding 745 ILCS 10/4-106, applied equally to units of local government and to the State. Larson v. State, 50 Ill. Ct. Cl. 1, 1997 Ill. Ct. Cl. LEXIS 41 (Ct. Cl. 1997).

Under Illinois law, the liability of a public employee is governed by this Act. Eiland v. Hardesty, 564 F. Supp. 930 (N.D. Ill. 1982).

Evidence

The question of wilful and wanton misconduct may be determined by a court on a motion for a directed verdict if evidence when viewed in its aspect most favorable to opponent, so overwhelmingly favors movant that no contrary determination could ever stand. Breck v. Cortez, 141 Ill. App. 3d 351, 95 Ill. Dec. 615, 490 N.E.2d 88 (2 Dist. 1986).

Money Damages

- Not Available

Plaintiff truck rental company, seeking a special use permit from defendant municipality to allow development of its rental business on premises it had acquired in the municipality was precluded from recovering money damages for its business losses stemming from an allegedly wrongful denial of the permit, because defendants were considered either "local public entities" or "public employees." U-Haul Co. v. Town of Cicero, 87 Ill. App. 3d 915, 43 Ill. Dec. 286, 410 N.E.2d 286 (1 Dist. 1980).

Police Officers

- Wilful and Wanton

Police officers owe the general public a duty to refrain from wilful and wanton misconduct in the pursuit of suspected law violators. Breck v. Cortez, 141 Ill. App. 3d 351, 95 Ill. Dec. 615, 490 N.E.2d 88 (2 Dist. 1986).

School Employees

- Corporal Punishment

Plaintiffs were required to create an issue of fact that the employees of defendant school district, in their relations with the plaintiffs, were actuated by malice or were wilful and wanton in their use of corporal punishment; the trial court correctly found that plaintiffs failed to create an issue of fact

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as to malice or injury. Gordon v. Oak Park Sch., 24 Ill. App. 3d 131, 320 N.E.2d 389 (1 Dist. 1974).

- Teacher

Absent allegations and proof of wantonness or malice, a teacher could not be held liable for injury due to corporal punishment. Gordon v. Oak Park Sch., 24 Ill. App. 3d 131, 320 N.E.2d 389 (1 Dist. 1974).

A cause of action cannot be maintained against a teacher on the basis that the teacher verbally chastised a student in the absence of malice or wantonness. Wexell ex rel. Wexell v. Scott, 2 Ill. App. 3d 646, 276 N.E.2d 735 (3 Dist. 1971).

Sheriff

Where a pre-trial detainee died of meningitis after the detainee's requests for medical treatment were denied, a sheriff was not entitled to immunity under the Illinois Tort Immunity Act, because an institutional defendant was not a public employee. Thomas v. Cook County Sheriff, 401 F. Supp. 2d 867, 2005 U.S. Dist. LEXIS 28829 (N.D. Ill. 2005).

Superintendent of Police

- Liability

A superintendent of police could not be held liable for defendant police officer's actions in the shooting of plaintiff. Eiland v. Hardesty, 564 F. Supp. 930 (N.D. Ill. 1982).

§ 745 ILCS 10/1-208. [Regulation defined]

Sec. 1-208. "Regulation" means a rule, regulation, order or standard, having the force of law, adopted by an employee or agency of the United States, of the State of Illinois, or of a local public entity pursuant to authority vested by constitution, statute or ordinance in such employee or agency to implement, interpret, or make specific the law enforced or administered by the employee or agency.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 1-208.

§ 745 ILCS 10/1-209. [Statute defined]

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Sec. 1-209. "Statute" means an act adopted by the General Assembly of this State or by the Congress of the United States.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 1-209.

§ 745 ILCS 10/1-210. [Willful and wanton conduct defined]

Sec. 1-210. "Willful and wanton conduct" as used in this Act means a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property. This definition shall apply in any case where a "willful and wanton" exception is incorporated into any immunity under this Act.

(Source: P.A. 84-1431; 90-805, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 1-210.

Effect of Amendments. The 1998 amendment by P.A. 90-805, effective December 2, 1998, added the last sentence.

CASE NOTES

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Evidence Insufficient

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Allegation of Conduct

High school dean, who had ordered two students to submit to strip searches, was not entitled to immunity under 745 ILCS 10/2-201 of the Illinois Governmental Employees Tort Immunity Act as a matter of law, with regard to the students' invasion of privacy, negligent infliction of emotional distress, and intentional infliction of emotional distress claims, because the students had sufficiently asserted facts that, if proven, would show wanton and willful misconduct on the dean's part, as defined in 745 ILCS 10/1-210. 745 ILCS 10/2-201 provided immunity only as to the dean's discretionary acts; it did not protect her from liability arising from her intentional, wanton, and willful misconduct. Carlson v. Bremen High Sch. Dist. 228, 423 F. Supp. 2d 823, 2006 U.S. Dist. LEXIS 14468 (N.D. Ill. 2006).

Where plaintiff brought a civil rights action against a city and police officers, seeking to establish the officers' liability in tort for an encounter and subsequent arrest in which plaintiff was injured, the claim was controlled by the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., and the claim would not be dismissed under 745 ILCS 10/2-202 where plaintiff alleged conduct that if proven could be considered willful and wanton conduct pursuant to 745 ILCS 10/1-210. Jackson v. City of Joliet, F. Supp. 2d , 2004 U.S. Dist. LEXIS 4278 (N.D. Ill. Mar. 17, 2004).

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Comparative Negligence

Because of the qualitative difference between simple negligence and wilful and wanton conduct, and because wilful and wanton conduct carries a degree of opprobrium not found in merely negligent behavior, a plaintiff's negligence cannot be compared with a defendant's wilful and wanton conduct. Burke v. 12 Rothschild's Liquor Mart, Inc., 148 Ill. 2d 429, 170 Ill. Dec. 633, 593 N.E.2d 522 (1992).

While the legislature intended to protect municipalities from having to insure against suits for negligence and from paying punitive damages, the legislature did not intend to shield municipalities whose conduct shows a deliberate intention to cause harm or a complete indifference to the safety of others. Moreover, the legislature, balancing its dual interest in protecting municipalities and protecting the people, did not intend to reject the deterrent of placing wilful and wanton conduct beyond the reach of comparison with mere negligence. Thus, the qualitative difference in defendant city's wilful and wanton conduct mandated that the plaintiff's negligence should not reduce his damages. Burke v. 12 Rothschild's Liquor Mart, Inc., 148 Ill. 2d 429, 170 Ill. Dec. 633, 593 N.E.2d 522 (1992).

Complaint

- Dismissed

When a reviewing court finds that a complaint was properly dismissed for failure to state a cause of action for wilful and wanton conduct, it is unnecessary to address whether or not the plaintiff's claim is also barred under the Tort Immunity Act. Oravek ex rel. Brown v. Community Sch. Dist. 146, 264 Ill. App. 3d 895, 202 Ill. Dec. 15, 637 N.E.2d 554 (1 Dist. 1994).

- Held Insufficient

Plaintiff who was injured in a public, indoor shower when a mirror, wedged behind a shower pipe, fell on him, failed to allege any intentional act, or any act committed under circumstances exhibiting utter indifference or a reckless disregard for the safety of others, where the plaintiff alleged no facts to indicate that the park district knew of other injuries or accidents due to the placement of mirrors behind the pipes by unknown patrons of the showers. Brown ex rel. Brown v. Chicago Park Dist., 220 Ill. App. 3d 940, 163 Ill. Dec. 404, 581 N.E.2d 355 (1 Dist. 1991).

- Held Sufficient

Injured youth and his mother's second-amended complaint stated sufficient facts to show that their claim based on serious injuries that the injured youth sustained in a mini-trampoline accident fell within the willful and wanton exception to the immunity that would otherwise be afforded to the city board of education, city youth center, and city youth center employee pursuant to 745 ILCS 10/2-201 and 745 ILCS 10/3-108(a), and the provision exempting a local public entity from liability where the employee was not liable under 745 ILCS 10/2-109; indeed, the city board of education, city youth center, and city youth center employee's conduct as alleged in the second amended complaint could be found to meet the exceptions to immunity provisions set forth in 745 ILCS 10/3-109 based on the definition of willful and wanton conduct contained in 745 ILCS 10/1-210. Murray v. Chi. Youth Ctr., 224 Ill. 2d 213, 309 Ill. Dec. 310, 864 N.E.2d 176, 2007 Ill. LEXIS 438 (2007).

Reasonable jury could have found, in accordance with an individual's excessive force claim, that police officers' acts were wilful and wanton, where the individual: (1) was not suspected of any crime; (2) never threatened the officers and had been patted down once prior to being hit and slammed down on a car truck by officers during a second pat-down; and (3) was not actively resisting arrent or attempting to evade arrest by flight. Bedenfield v. Shultz, F. Supp. 2d , 2002 U.S. Dist. LEXIS 14659 (N.D. Ill. Aug. 7, 2002).

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Park District's course of action in failing to remedy a broken slide constituted wilful and wanton conduct within the meaning of this Act where the evidence of the condition of the slide and the ground underneath the slide coupled with the forewarning and acknowledgment of the same sufficiently constituted knowledge of impending danger. Green v. Chicago Park Dist., 248 Ill. App. 3d 334, 187 Ill. Dec. 923, 618 N.E.2d 514 (1 Dist.), appeal denied, 152 Ill. 2d 558, 190 Ill. Dec. 888, 622 N.E.2d 1205 (1993).

Where the complaint alleged that plaintiff paid a fee and entered defendant's wave pool, that subsequently automatic wave machine created a wave which made contact with plaintiff and caused her to lose her footing and fall, and that at all times defendant owed a duty to plaintiff to refrain from engaging in wilful and wanton conduct that was likely to cause injury, complaint alleged sufficient facts to show the wilful and wanton conduct of the defendant in the removal of nonslip strips was a course of action that caused plaintiff's injuries. Benhart v. Rockford Park Dist., 218 Ill. App. 3d 554, 161 Ill. Dec. 242, 578 N.E.2d 600 (2 Dist. 1991).

Where an amended complaint alleged wilful and wanton misconduct by a police officer, allegations of amended complaint were sufficient to state a cause of action against the city under this Act. LaMonte v. City of Belleville, 41 Ill. App. 3d 697, 355 N.E.2d 70 (5 Dist. 1976).

Elements

- Conscious Disregard

To constitute wilful and wanton conduct, a defendant's acts or omissions must have been committed with an actual or deliberate intention to cause harm or with an utter indifference to or conscious disregard for the safety of others. Laco v. City of Chicago, 154 Ill. App. 3d 498, 107 Ill. Dec. 400, 507 N.E.2d 64 (1 Dist. 1987).

Evidence Insufficient

Trial court did not err by granting the park district summary judgment based on its immunity under 745 ILCS 10/3-106 because there was no evidence that the park district's conduct demonstrated an utter indifference to or a conscious disregard for the safety of others; at most, the failure of a park district employee to discover the missing spring clamps during his inspection was negligent but was not willful or wanton under 745 ILCS 10/1-210. The park district did not have actual notice of the dangerous condition of the seesaw because it was not until the employee received a diagram from the seesaw's seller, after the accident at issue and after his inspection, that he learned the seesaw was missing two spring clamps. Tagliere v. W. Springs Park Dist., 408 Ill. App. 3d 235, 348 Ill. Dec. 643, 944 N.E.2d 884, 2011 Ill. App. LEXIS 151 (1 Dist. 2011).

Trial court correctly dismissed all defendants on the police officer's claim against them that, in enacting a particular ordinance that reduced the number of sergeants working for the village's police department, they interfered with his prospective economic advantage. They could not be held liable for adopting a law and that was true even though the police officer contended that their conduct was wilful and wanton since the law did not provide an exception to immunity even for wilful and wanton conduct. Schlicher v. Bd. of Fire & Police Comm'rs, 363 Ill. App. 3d 869, 300 Ill. Dec. 634, 845 N.E.2d 55, 2006 Ill. App. LEXIS 144 (1 Dist. 2006).

Evidence Not Sufficient

Where gym teacher set up 50-yard dash which ended approximately four feet before an area of loose and broken sections of asphalt, and plaintiff while running the dash, in an attempt to avoid colliding with a kindergarten student, ran into the loose asphalt, injuring herself, there was not a showing of wilful and wanton conduct upon which to predicate a cause of action. Pomaro v.

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Community Consol. Sch. Dist. 21, 278 Ill. App. 3d 266, 214 Ill. Dec. 872, 662 N.E.2d 438 (1 Dist. 1995).

Plaintiffs did not established that defendant's conduct was wilful and wanton, as such, defendant could avail himself of this Act. Estate of Chlopek ex rel. Fahrforth v. Jarmusz, 877 F. Supp. 1189 (N.D. Ill. 1995).

Illustrative Cases

Detainee's claims for damages against city officials and a county sheriff for violations of the Illinois Constitution, false arrest, and false imprisonment were barred under 745 ILCS 10/2-204 of the Illinois Tort Immunity Act, 745 ILCS 10/2-101 et seq., as the "willful and wanton conduct" exception under 745 ILCS 10/1-210 did not apply to supervisors' immunity under 745 ILCS 10/2-204. Catchings v. City of Chicago, F. Supp. 2d , 2006 U.S. Dist. LEXIS 33625 (N.D. Ill. May 15, 2006).

In officer one's suit alleging defamation by officer two when officer two sent an unflattering memorandum about officer one to officer one's boss, officer two was not determined to be immune under 745 ILCS 10/2-202 at the summary judgment stage; there remained genuine issues of material fact as to whether officer two's action in sending the memorandum, which did not contain firsthand knowledge of the allegations made therein, constituted willful or wanton conduct under the definition in 745 ILCS 10/1-210. Ernst v. Anderson, F. Supp. 2d , 2005 U.S. Dist. LEXIS 7469 (N.D. Ill. Mar. 3, 2005).

Town and its police officers were immune from negligence liability under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., following failure to rescue the victims of a residential fire, where: (1) neither the town nor its police officers at the scene could be held liable for failure to attempt a rescue; and (2) even if the police officers' acts were found to be willful and wanton, immunity still applied under 745 ILCS 10/2-201 because the officers had to make a policy decision in balancing the competing interests of their own safety and their chances of success with the interests of the victims and survivors. Fender v. Town of Cicero, 347 Ill. App. 3d 46, 283 Ill. Dec. 1, 807 N.E.2d 606, 2004 Ill. App. LEXIS 242 (1 Dist. 2004).

Where an officer pursued a suspect for over 8 minutes and 6.5 miles, the pursued vehicle ran stop signs and red lights, there was a near collision and an actual fatal collision related to the pursuit, the speeds reached 100 miles per hour, and the driver was suspected only of a nonviolent, property-based felony, the trial court erred in granting summary judgment dismissing the suit by the estate of an innocent driver against the officer and village; whether the officer acted wilfully and wantonly was a jury question. Suwanski v. Vill. of Lombard, 342 Ill. App. 3d 248, 276 Ill. Dec. 766, 794 N.E.2d 1016, 2003 Ill. App. LEXIS 966 (2 Dist. 2003).

Where plaintiff claimed that the referees' imposition of penalties for rough tactics in touch football game organized by municipality was insufficient to deal with the situation which led to his injury by an opposing player, the penalties, however, demonstrated, that the referees were not "utterly indifferent" to the plaintiff's safety, but instead used their discretion in a way that was inadequate; although the referees made incompetent discretionary decisions, this proved at most a negligent exercise of the referees' discretion, and thus failed to show wilful and wanton conduct as a matter of law. Geimer v. Chicago Park Dist., 272 Ill. App. 3d 629, 208 Ill. Dec. 891, 650 N.E.2d 585 (1 Dist. 1995), appeal denied, 163 Ill. 2d 555, 212 Ill. Dec. 419, 657 N.E.2d 620 (1995).

Where the evidence showed that officer drew his gun, put his finger on the trigger, and approached victim, the jury could have found that victim did not hit or say anything to officer prior to the shooting, had not committed any crime up to that point, and did not pose a threat to the officer, the police firearms expert opined that the gun did not discharge accidentally, and the police handbook indicated that actions such as officer's were not justified, the jury finding that the

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conduct was wilful and wanton was supported. Medina v. City of Chicago, 238 Ill. App. 3d 385, 179 Ill. Dec. 658, 606 N.E.2d 490 (1 Dist. 1992), appeal denied, 149 Ill. 2d 651, 183 Ill. Dec. 863, 612 N.E.2d 515 (1993).

Where employer knew that open pipes which caused plaintiff's injury existed; employer was aware and acknowledged the danger of pipes protruding from the ground by painting them so machine operators could readily see and avoid the pipes; where employer consciously disregarded the safety of the general public by painting only those pipes which it determined could damage its equipment; where an employee of defendant testified that it was common knowledge among personnel that pipe lids were being stolen; and where, in addition, a witness testified without objection that in his opinion the particular pipe which caused plaintiff's injury had its lid missing for at least one month, employer's conduct was wilful and wanton. Muellman v. Chicago Park Dist., 233 Ill. App. 3d 1066, 175 Ill. Dec. 425, 600 N.E.2d 48 (1 Dist. 1992).

Where officer while responding to a call that a burglary might be in progress, had his emergency warning lights activated and was using his siren intermittently, and where he noticed the plaintiff's vehicle proceeding into intersection and tried to avoid collision, his actions did not rise to the level of wanton and wilful misconduct. Bosen v. City of Collinsville, 166 Ill. App. 3d 848, 117 Ill. Dec. 287, 520 N.E.2d 638 (5 Dist. 1987).

Jury Question

Though the question of wilful and wanton conduct is normally reserved for the trier of fact, a court may make a determination of that issue if the evidence overwhelmingly favors the movant and no contrary determination based on the evidence could ever stand. Lester v. Chicago Park Dist., 159 Ill. App. 3d 1054, 111 Ill. Dec. 826, 513 N.E.2d 72 (1 Dist. 1987).

Motion to Dismiss

Pedestrian could not recover from the village and village park district under a willful and wanton misconduct theory for injuries the pedestrian sustained as a result of a slip and fall on a sidewalk adjacent to a village park. The pedestrian's complaint had to be dismissed to the extent of those allegations because the pedestrian did not sufficiently allege facts to show that they were either deliberately indifferent or consciously disregarded the pedestrian's safety regarding the ice and snow accumulation, as was required by 745 ILCS 10/1-201. Callaghan v. Vill. of Clarendon Hills, 401 Ill. App. 3d 287, 340 Ill. Dec. 757, 929 N.E.2d 61, 2010 Ill. App. LEXIS 383 (2 Dist. 2010).

The mere characterization of acts as wilful and wanton, absent facts to support such a characterization, is not sufficient to withstand a motion to dismiss. Rooney v. Franklin Park Dist., 256 Ill. App. 3d 1058, 195 Ill. Dec. 210, 628 N.E.2d 674 (1 Dist. 1993), appeal denied, 155 Ill. 2d 576, 198 Ill. Dec. 552, 633 N.E.2d 14 (1994).

Negligence

- Ordinary Care

"Wilful and wanton" negligence means failure, after knowledge of impending danger, to exercise ordinary care to prevent it, or a failure to discover the danger through recklessness or carelessness when it should have been discovered through ordinary care. Lester v. Chicago Park Dist., 159 Ill. App. 3d 1054, 111 Ill. Dec. 826, 513 N.E.2d 72 (1 Dist. 1987).

- Proper Pleading

Plaintiff's third amended complaint sufficiently stated a cause of action for wilful and wanton misconduct by pleading that defendant knew or should have known of the dangers posed by

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defendant's fallen fence and yet failed to implement remedial measures. Palmer v. Chicago Park Dist., 277 Ill. App. 3d 282, 213 Ill. Dec. 889, 660 N.E.2d 146 (1 Dist. 1995), appeal denied, 166 Ill. 2d 543, 216 Ill. Dec. 6, 664 N.E.2d 643 (1996).

- Rehabilitative Action

Plaintiff failed to state a cause of action for wilful and wanton negligence where defendant, a park district, admitted to rehabilitative action to fill in various holes and ruts in a playing field, indicating a concern for possible injuries; such conduct did not, as a matter of law, rise to the level of "utter indifference" or "conscious disregard" for the safety of lives. Lester v. Chicago Park Dist., 159 Ill. App. 3d 1054, 111 Ill. Dec. 826, 513 N.E.2d 72 (1 Dist. 1987).

Police Department

- Inadequate Inspection of Prisoner

Defendants were not entitled to j.n.o.v. under this Act where evidence was sufficient to support the jury's finding that defendant's city police department, and police officer, were wilful and wanton in failing to provide the required precautionary inspection of prisoner who committed suicide. Bragado v. City of Zion/Police Dep't, 839 F. Supp. 551 (N.D. Ill. 1993).

Police Officer

Police officers were entitled to immunity under 745 ILCS 10/2-202 of the Illinois Local Governmental and Governmental Employees Tort Immunity Act from protestors' claims of false arrest and false imprisonment, which were based on arrests that took place during a protest march. The officers acted reasonably in making the arrests and did not act willfully and wantonly within the meaning of 745 ILCS 10/1-210. Vodak v. City of Chicago, 624 F. Supp. 2d 933, 2009 U.S. Dist. LEXIS 15396 (N.D. Ill. 2009).

- Pursuit

Jury could have found that an officer's failure to abide a police department general order by caravanning or pursuing a suspect or failing to adhere to basic traffic safety practices was willful and wanton conduct pursuant to 745 ILCS 10/1-210. Hudson v. City of Chicago, Ill. App. 3d , Ill. Dec. , N.E.2d , 2007 Ill. App. LEXIS 997 (1 Dist. Sept. 7, 2007).

Evidence was sufficient for the jury to reach a finding of willful and wanton conduct pursuant to 745 ILCS 10/1-210. The jury could have concluded that an officer's actions in crossing multiple lanes of traffic at once without looking at the lane the officer was traveling into was a deliberate infliction of an unreasonable risk of harm upon civilians. Hudson v. City of Chicago, Ill. App. 3d , Ill. Dec. , N.E.2d , 2007 Ill. App. LEXIS 997 (1 Dist. Sept. 7, 2007).

Recklessness

Wilful and wanton conduct may be proven where acts are less than intentional; recklessness will suffice. Carter v. New Trier E. High Sch., 272 Ill. App. 3d 551, 208 Ill. Dec. 963, 650 N.E.2d 657 (1 Dist. 1995).

Requirements

Wilful and wanton conduct consists of more than mere inadvertence, incompetence, or unskillfulness. Stiff ex rel. Stiff v. Eastern Ill. Area of Special Educ., 279 Ill. App. 3d 1076, 216

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Ill. Dec. 893, 666 N.E.2d 343 (4 Dist. 1996), appeal denied, 168 Ill. 2d 626, 219 Ill. Dec. 577, 671 N.E.2d 744 (1996).

To plead a sufficient cause of action for wilful and wanton conduct, in addition to the common law definition, plaintiff must allege the existence of a duty owed by the defendant to the plaintiff, a breach of that duty and an injury proximately caused by the breach; where the defendant is a local public entity and the injury is based on the existence of a condition of public property used for recreational purposes, the plaintiff must also plead that the proximate cause of the plaintiff's injury was the governmental entity's wilful and wanton conduct. Benhart v. Rockford Park Dist., 218 Ill. App. 3d 554, 161 Ill. Dec. 242, 578 N.E.2d 600 (2 Dist. 1991).

- More Than Inadvertence

Wilful and wanton conduct consists of more than mere inadvertence, incompetence, unskillfulness, or a failure to take precautions to enable the actor adequately to cope with a possible future emergency. Bialek v. Moraine Valley Community College Sch. Dist. 524, 267 Ill. App. 3d 857, 204 Ill. Dec. 924, 642 N.E.2d 825 (1 Dist. 1994).

School Board

- Allegations Insufficient

Where complaint alleged that an employee of the school board failed to exercise proper supervision and was thereby responsible for the injury of a child struck in the face and eye by another student, the trial court was correct in its decision that a cause of action for wilful and wanton negligence was not stated against the school board and that the board's motion to dismiss adequately presented its claim that wilful and wanton negligence was not properly shown by the facts stated. Clay ex rel. James v. Chicago Bd. of Educ., 22 Ill. App. 3d 437, 318 N.E.2d 153 (1 Dist. 1974).

Schools

- Disparaging Comments

A teacher stands in loco parentis, and in the absence of malice or wantonness, it may well be that disparaging comments about a pupil may be necessary and conducive to proper educational discipline. Wexell ex rel. Wexell v. Scott, 2 Ill. App. 3d 646, 276 N.E.2d 735 (3 Dist. 1971).

- RICO Claim

Former student's Racketeer Influenced and Corrupt Organizations Act (RICO) claim against a state university failed, as the university was immune from suit under RICO; the state had not waived sovereign immunity pursuant to 745 ILCS 10/1-210 and 745 ILCS 10/2-202. Doe v. Bd. of Trs. of the Univ. of Ill., 429 F. Supp. 2d 930, 2006 U.S. Dist. LEXIS 26154 (N.D. Ill. 2006).

- Skateboard Ramp

Where plaintiff's complaint alleged that school was informed, at some unspecified time, that skateboard ramp was on school property on a non-school day and that school failed to remove the ramp until after plaintiff's accident, the alleged misconduct did not rise to the level of deliberate intention to harm or an utter indifference to or conscious disregard for plaintiff's safety necessary to state a cause of action for wilful and wanton conduct. Oravek ex rel. Brown v. Community Sch. Dist. 146, 264 Ill. App. 3d 895, 202 Ill. Dec. 15, 637 N.E.2d 554 (1 Dist. 1994).

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Teacher's Aide

- Nature of Immunity

Defendant, a teacher's aide, was not an individual who fell within the class of persons entitled to immunity from suit for ordinary negligence under the School Code (105 ILCS 5/24-24) because she was not a teacher performing the function of classroom instruction but she was protected from any ordinary negligent conduct under this Act and therefore the circuit court's application of the wilful and wanton misconduct standard was proper. Jackson ex rel. Jackson v. Chicago Bd. of Educ., 192 Ill. App. 3d 1093, 140 Ill. Dec. 178, 549 N.E.2d 829 (1 Dist. 1989).

Waiver

Municipality did not waive its statutory immunity defense by failing to plead this defense after plaintiff amended her complaint to conform her pleadings to the proof where the municipality did plead the affirmative defense of statutory immunity in response to the plaintiff's original complaint and continued to maintain that it was not liable for the plaintiff's injuries absent a finding of wilful and wanton conduct by its employees. Vines v. City of Chicago, 110 Ill. App. 3d 1060, 66 Ill. Dec. 726, 443 N.E.2d 652 (1 Dist. 1982).

Wilful and Wanton Misconduct

Officers' Fed. R. Civ. P. 50(b) motion was denied as to plaintiffs' claim under the Illinois Wrongful Death Act, 740 ILCS 180/1, because the jury had a legally sufficient basis for finding that the officers' conduct was willful and wanton as required under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/4-105,10/1-210, based on their conscious disregard of the detainee's health and safety; the trial record revealed that the officers consciously disregarded the detainee's serious medical condition and her requests for medical care many times throughout her incarceration. Cobige v. City of Chicago, 752 F. Supp. 2d 860, 2010 U.S. Dist. LEXIS 113133 (N.D. Ill. 2010).

Court erred in dismissing a complaint against a school district because there was a question as to whether the district was subject to immunity as the property was located on school grounds and was being used for a summer football camp; therefore, at a minimum, there was an inference that the property in question was being used for educational purposes. Additionally, the allegation that the child had been instructed by the coaching staff to encounter the hazard upon which he was injured was sufficient to support a cause of action for willful and wanton conduct. Peters v. Herrin Cmty. Sch. Dist. No. 4, 401 Ill. App. 3d 356, 340 Ill. Dec. 661, 928 N.E.2d 1258, 2010 Ill. App. LEXIS 432 (5 Dist. 2010).

Evidence adduced at trial in a negligence action was sufficient for the jury to reach a finding of willful and wanton conduct pursuant to 745 ILCS 10/1-210 of the Tort Immunity Act, 745 ILCS 10/1-101 et seq., as the jury was free to disbelieve the city's position that plaintiff pulled out in front of a police officer's vehicle while the officer was changing lanes, and was free to give great weight to the officer's admission that the officer was not looking at the lane that the officer was going in. Hudson v. City of Chicago, 378 Ill. App. 3d 373, 317 Ill. Dec. 262, 881 N.E.2d 430, 2007 Ill. App. LEXIS 1292 (1 Dist. 2007).

Police officers' conduct in a pursuit that lasted 30 to 40 seconds was not wilful and wanton; initiating the pursuit, standing alone, was not wilful and wanton conduct, nor was the fact that the officers failed to activate their squad cars overhead lights or to notify their superiors of the pursuit where the evidence also established that the weather was clear, traffic was light, and the roads were dry. Shuttlesworth v. City of Chicago, 377 Ill. App. 3d 360, 316 Ill. Dec. 581, 879 N.E.2d 969, 2007 Ill. App. LEXIS 1160 (1 Dist. 2007).

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Police officers and a police department were entitled to summary judgment in a negligence action filed by a decedent's estate administrator, arising from the decedent having hanged himself in a detention cell after he was arrested for shoplifting, as the police were entitled to immunity under the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq.; they had no liability for their failure to furnish medical care to the decedent while he was in the cell pursuant to 745 ILCS 10/4-105 where there was no showing that they exhibited wanton or willful conduct, as defined in 745 ILCS 10/1-210, or that the decedent was alive when they first saw him hanging in the cell, such that they could have saved his life. Luss v. Vill. of Forest Park, 377 Ill. App. 3d 318, 316 Ill. Dec. 169, 878 N.E.2d 1193, 2007 Ill. App. LEXIS 1159 (1 Dist. 2007).

- Not Found

Plaintiffs' battery claim under 720 ILCS 5/12-3 against a police officer and the chief of police failed because neither the officer nor the chief made physical contact with plaintiff husband, and further, the officer and the chief were immune from suit under 745 ILCS 10/2-202 because their conduct did not rise to the level of willful and wanton conduct under 745 ILCS 10/1-210; because neither the officer nor the chief were liable, neither was the village under 745 ILCS 10/2-109. Backes v. Village of Peoria Heights, F. Supp. 2d , 2010 U.S. Dist. LEXIS 114867 (C.D. Ill. Oct. 28, 2010), aff'd, 662 F.3d 866, 2011 U.S. App. LEXIS 22652 (7th Cir. Ill. 2011).

Estate and family members of a pretrial detainee who committed suicide while incarcerated at the county jail failed to establish liability on the part of the jail's corrections officers and the sheriff (defendants) in their individual capacities under the Illinois Wrongful Death Statute, 740 ILCS 180/1, because defendants' conduct was not willful or wanton as defined in the 745 ILCS 10/1-210 of the Tort Immunity Act; they were thus immune from liability for the pretrial detainee's alleged wrongful death. Estate of Wells v. Bureau County, 723 F. Supp. 2d 1061, 2010 U.S. Dist. LEXIS 66213 (C.D. Ill. 2010).

Widow could not show that the village and Board were civilly liable for the death of the widow's husband in a fire at a tavern the husband was patronizing despite the widow's claim that the failure of the 911 emergency response system played a role in the husband's death. They were entitled to qualified immunity under the Emergency Telephone System Act, 50 ILCS 750/15.1, the widow did not show that they had an utter indifference to or conscious disregard for the husband's safety such that the 745 ILCS 10/1-210 wilful and wanton conduct exception to immunity applied, and the widow could not show that they owed the husband any duty. Donovan v. Vill. of Ohio, 397 Ill. App. 3d 844, 337 Ill. Dec. 100, 921 N.E.2d 1238, 2010 Ill. App. LEXIS 10 (3 Dist. 2010).

Evidence overwhelmingly showed that police officer was not driving recklessly in pursuit of fleeing vehicle, and, in fact, the evidence showed that the officer was driving safely while stuck in traffic and was keeping a safe distance from the fleeing vehicle when the fleeing vehicle recklessly drove on the sidewalk and struck the pedestrian; since the officer was not driving recklessly in pursuit, the officer was not liable for the fleeing vehicle's reckless driving. The pedestrian simply failed to show willful and wanton conduct as defined under the Local Governmental and Governmental Employees Tort Immunity Act at 745 ILCS 10/1-210, so the officer was entitled to immunity under 745 ILCS 10/2-202, which freed the city from liability under 745 ILCS 10/2-109. Wade v. City of Chicago, 364 Ill. App. 3d 773, 301 Ill. Dec. 621, 847 N.E.2d 631, 2006 Ill. App. LEXIS 201 (1 Dist. 2006).

Section 2-201 of the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/2-201, contains no exception to immunity for willful and wanton misconduct, which is defined under 745 ILCS 10/1-210 of the Act as actual or deliberate intention to cause harm, or conscious disregard for the safety of others or their property. Kevin's Towing, Inc. v. Thomas, 351 Ill. App. 3d 540, 286 Ill. Dec. 777, 814 N.E.2d 1003, 2004 Ill. App. LEXIS 973 (2 Dist. 2004), appeal denied, 212 Ill. 2d 533, 291 Ill. Dec. 708, 824 N.E.2d 284 (2004).

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County's nonaction in failing to remove a crosswalk which was part of a system of interconnected bicycle pathways used for recreational purposes did not rise to the level of wilful and wanton conduct. Dinelli v. County of Lake, 294 Ill. App. 3d 876, 229 Ill. Dec. 284, 691 N.E.2d 394 (2 Dist. 1998).

Defendant's nonaction in failing to remedy unsafe condition despite having knowledge that prior to plaintiff's injury another person was struck by an errant golf ball while standing in the same general area did not rise to the level of wilful and wanton conduct; the person previously struck had not been injured, and the course's golf professional testified he had not received any complaints about the area and that it was not subject to more errant golf balls than other areas of the course. Koltes v. St. Charles Park Dist., 293 Ill. App. 3d 171, 227 Ill. Dec. 293, 687 N.E.2d 543 (2 Dist. 1997), appeal denied, 177 Ill. 2d 571, 232 Ill. Dec. 453, 698 N.E.2d 544 (1998).

Even if the facts alleged conduct sufficient to support a contention of negligence, they did not support a contention that the officers acted in utter disregard for the plaintiff's safety, nor was there factual evidence of willful and wanton conduct. Moran v. City of Chicago, 286 Ill. App. 3d 746, 222 Ill. Dec. 112, 676 N.E.2d 1316 (1 Dist. 1997), appeal denied, 174 Ill. 2d 567, 227 Ill. Dec. 8, 686 N.E.2d 1164 (1997).

Plaintiffs failed to establish a prima facie case of wilful and wanton misconduct by defendant, because plaintiffs had not proven defendant knew or should have known about an imminent danger posed by glass and debris in a drainage ditch. Conoway v. Hanover Park Park Dist., 277 Ill. App. 3d 896, 214 Ill. Dec. 674, 661 N.E.2d 528 (1 Dist. 1996).

Police officers who arrested a citizen following a traffic stop in the belief that the temporary registration permit on the citizen's car belonged to another vehicle could have reasonably believed that the citizen had violated 625 ILCS 5/4-104(a)(4), and thus they had sufficient probable cause to arrest her pursuant to their statutory authority under 725 ILCS 5/107-2(1)(c), and had no duty to verify the validity of the documents which the citizen presented to them in the traffic stop concerning the citizen's purchase of her car. Further, 745 ILCS 10/2-202 provided the officers with immunity from any liability resulting from their interaction with the citizen as their conduct was not willful and wanton. Ross v. Mauro Chevrolet, 369 Ill. App. 3d 794, 308 Ill. Dec. 248, 861 N.E.2d 313, 2006 Ill. App. LEXIS 1225 (1 Dist. 2006).

Appellate court properly affirmed the trial court's grant of summary judgment to the board of education, agency, and agency employee, although on the ground that they were immune from negligence pursuant to 745 ILCS 10/3-109 and that even though that section did not make them immune from wilful and wanton misconduct, no wilful and wanton misconduct had been shown; even though the injured child had been injured when he did a front flip off a mini-trampoline at a school and landed awkwardly, in order to show wilful and wanton misconduct as defined in 745 ILCS 10/1-210, there would have to have been evidence of a course of action which showed an actual or deliberate intention to cause harm or which, if not intentional, showed an utter indifference to or conscious disregard for the safety of others or their property, and that had not been shown in the injured child's case. Murray v. Chi. Youth Ctr., Ill. 2d , Ill. Dec. , N.E.2d , 2006 Ill. LEXIS 1104 (July 5, 2006).

In an action by the personal representatives of a decedent's estate against a police officer there was a question of whether the officer was immune under 745 ILCS 10/2-202 from the representatives' state wrongful death claim pertaining to the death of the decendent from being pinned under the officer's vehicle where the parties failed to address whether the officer's conduct was willful and wanton under 745 ILCS 10/1-210. Hand v. Vill. of Brooklyn, F. Supp. 2d , 2005 U.S. Dist. LEXIS 12143 (S.D. Ill. June 15, 2005).

Evidence of police officers' delay in calling an ambulance, failing to perform CPR, and failing to roll an arrestee on his back to open his airway did not create an issue of fact as to whether any of the officers acted willfully and wantonly in failing to summon medical attention for the arrestee. Lewis v. City of Chicago, F. Supp. 2d , 2005 U.S. Dist. LEXIS 7617 (N.D. Ill. Apr. 11, 2005).

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Allegations that sheriff's deputies recovered a stolen trailer, drove it to a lot which, although unfenced and unsecured, was well-lit, secured the trailer doors with a padlock and removed the ignition key, and then notified the owner as to the trailer's location, did not constitute willful and wanton misconduct. Fireman's Fund Ins. Co. v. Werner Enters., F. Supp. 2d , 2004 U.S. Dist. LEXIS 2106 (N.D. Ill. Feb. 5, 2004).

- Proof

In the upcoming personal injury retrial, the trial court could not admit the testimony of a psychiatrist who had evaluated the officer who was involved in the car accident with the injured driver and opined that she was suffering from uncontrolled biopolar disorder, because: (1) whether the officer's conduct was willful and wanton under 745 ILCS 10/1-210 (2010) was best evaluated by determining her actions at the time of the accident rather than the reasons underlying those actions; (2) as there was no mention of the officer's mental health in the complaint her mental health was not at issue; and (3) the testimony's prejudicial effect far outweighed any possible probative value. Petraski v. Thedos, Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 1332 (1 Dist. Dec. 16, 2011).

Plaintiffs raised issues of material fact which, if true, could have been found by the jury to amount to willful and wanton conduct on the part of the paramedics and, therefore, summary judgment was not appropriate; under the American National standard, the case raised the question of whether the paramedics failed, after being informed of an impending danger to the decedent, to exercise ordinary care to prevent it. Whether the doctor offered to assist the paramedics and whether he told them that the decedent needed to be immediately intubated and whether the paramedics did not follow the Standard Operating Procedures/Standing Medical Orders that governed intubation were issues of material fact which prevented summary judgment. Henslee v. Provena Hosps., 369 F. Supp. 2d 970, 2005 U.S. Dist. LEXIS 9104 (N.D. Ill. 2005).

- Shown

Where officers went to plaintiffs' residence in response to a burglar alarm, the unlawful trespass claim survived because the Illinois Tort Immunity Act did not shield the officers from liability since there was evidence in the record that the officers' conduct was willful and wanton when they unlawfully entered the home. Callahan v. Aldridge, F. Supp. 2d , 2011 U.S. Dist. LEXIS 12756 (N.D. Ill. Feb. 9, 2011).

When plaintiff, thirteen-year-old Canadian citizen, filed suit after suffering injuries when she was instructed to dive into a pool while attending a swimming program at defendant high school, the amended complaint alleged the supervision and instruction provided to plaintiff was deficient. Defendants, the high school and its employees, were not immune from liability, because the complaint pled facts showing defendants' conduct was willful and wanton for purposes of 745 ILCS 10/1-210 of the Illinois Torts Claims Act. Karalyos v. Bd. of Educ., 788 F. Supp. 2d 727, 2011 U.S. Dist. LEXIS 23871 (N.D. Ill. 2011).

LEGAL PERIODICALS

For comment, "Violence and Injury in Illinois Schools: Students Deserve a Remedy," see 34 J. Marshall L. Rev. 803 (2001).

For article, "Illinois Courts: Vital Developers of Tort Law as Constitutional Vanguards, Statutory Interpreters, and Common Law Adjudicators", see 30 Loy. U. Chi. L.J. 183 (1999).

Practice Guides and Treatises.

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Proving Fault in Auto Accident Cases § 3.25 Police Officers and Emergency Personnel and "Police Chase" Cases (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 35:10 Effect of willful and wanton conduct.

Illinois Jurisprudence, Personal Injury and Torts § 3:53 Willful and wanton misconduct exception.

Article II.

General Provisions Relating to Immunity

Part 1.
Immunity of Local Public Entities

§ 745 ILCS 10/2-101. [Effects on other rights of action]

Sec. 2-101. Nothing in this Act affects the right to obtain relief other than damages against a local public entity or public employee. Nothing in this Act affects the liability, if any, of a local public entity or public employee, based on:

a.contract;

b.operation as a common carrier; and this Act does not apply to any entity organized under or subject to the "Metropolitan Transit Authority Act", approved April 12, 1945, as amended [70 ILCS 3605/1 et seq.];

c.The "Workers' Compensation Act", approved July 9, 1951, as heretofore or hereafter amended [820 ILCS 305/1 et seq.];

d.The "Workers' Occupational Diseases Act", approved July 9, 1951, as heretofore or hereafter amended [820 ILCS 310/1 et seq.];

e.Section 1-4-7 of the "Illinois Municipal Code", approved May 29, 1961, as heretofore or hereafter amended [65 ILCS 5/1-4-7].

f.The "Illinois Uniform Conviction Information Act", enacted by the 85th General Assembly, as heretofore or hereafter amended [20 ILCS 2635/1 et seq.].

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(Source: P.A. 85-922.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-101.

CASE NOTES

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- Section 1983 Claims

Applicability

Conclusion that the employer did not have immunity for the retaliatory discharge of an employee exercising the employee's right to file a workers' compensation claim was buttressed by 745 ILCS 10/2-101(c). That law stated that nothing in the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., affected the liability, if any, of a local public entity or public employee based on workers' compensation law, and, thus, the employer could be held liable if it was found to have discharged the employee in retaliation for the employee's filing of a workers' compensation claim. Smith v. Waukegan Park Dist., Ill. 2d , Ill. Dec. , N.E.2d , 2008 Ill. LEXIS 312 (Apr. 17, 2008).

Property buyers' conspiracy to commit fraud claims against a town and its building commissioner, based on allegations that defendants conspired to conceal building code violations present in a property the buyers purchased, were not barred by the plain language of 745 ILCS 10/2-101 or by the plain language of 745 ILCS 10/2-103, 745 ILCS 10/2-105, 745 ILCS 10/2-205, 745 ILCS 10/2-206, and 745 ILCS 10/2-207. Those statutes did not affect the buyers right to obtain relief other than damages against the town and the commissioner. Alcala v. Totaro, F. Supp. 2d , 2005 U.S. Dist. LEXIS 33655 (N.D. Ill. Dec. 16, 2005).

In a case involving a declaratory judgment as to the validity of a village ordinance requiring the payment of impact fees to obtain building permits and a refund of those fees paid by the corporations, 745 ILCS 10/8-101 did not bar the corporations' cause of action because the claim sought "relief other than damages," as set forth in the first sentence of 745 ILCS 10/2-101, and was, therefore, excluded from the Local Governmental and Governmental Employees Tort Immunity Act. Raintree Homes, Inc. v. Vill. of Long Grove, 209 Ill. 2d 248, 282 Ill. Dec. 815, 807 N.E.2d 439, 2004 Ill. LEXIS 362 (2004).

- Common Carrier

Argument that railroad company was not entitled to the protections of the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., was rejected because it was not acting as a common carrier when a slip and fall occurred; an injured party was not a passenger when she fell trying to enter a train platform, even though she had purchased a ticket for 10 rides. The injured party was not in a proper place to be transported, and the railroad company had not accepted her for transportation. Del Real v. Northeast Ill. Reg'l Commuter R.R. Corp., 404 Ill. App. 3d 65, 343 Ill. Dec. 250, 934 N.E.2d 574, 2010 Ill. App. LEXIS 825 (1 Dist. 2010).

Although the railroad corporation as a common carrier owed the highest duty of care to those people it was carrying as passengers, pursuant to 745 ILCS 10/2-101, that duty did not extend to the commuter who was injured when the commuter tripped on a protruding bolt in the middle of an intersection as the commuter headed towards the train station. At the time that the commuter tripped and fell, the commuter was not a passenger and, thus, the railroad corporation was not a common carrier with respect to the commuter. Pence v. Northeast Ill. Reg'l Commuter R.R. Corp., 398 Ill. App. 3d 13, 337 Ill. Dec. 1003, 923 N.E.2d 854, 2010 Ill. App. LEXIS 63 (1 Dist. 2010).

A common carrier is not excepted from the Tort Immunity Act statute of limitations provision by the terms of this section. Slaughter v. Rock Island County Metro. Mass Transit Dist., 275 Ill. App. 3d 873, 212 Ill. Dec. 284, 656 N.E.2d 1118 (3 Dist. 1995).

- Injunctions

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Detainee's claims for damages against city officials and a county sheriff for violations of the Illinois Constitution, false arrest, and false imprisonment were barred under 745 ILCS 10/2-204 of the Illinois Tort Immunity Act, 745 ILCS 10/2-101 et seq., as the "willful and wanton conduct" exception under 745 ILCS 10/1-210 did not apply to supervisors' immunity under 745 ILCS 10/2-204. However, a claim against the sheriff for injunctive relief survived pursuant to 745 ILCS 10/2-101. Catchings v. City of Chicago, F. Supp. 2d , 2006 U.S. Dist. LEXIS 33625 (N.D. Ill. May 15, 2006).

The plain and ordinary meaning of the language in former section 8-102 and this section is that they do not apply to a suit for an injunction because injunctive relief is "relief other than damages." Anderson v. Sutter, 119 Ill. App. 3d 1070, 75 Ill. Dec. 871, 458 N.E.2d 39 (2 Dist. 1983).

Bailment

- Immunity

Where defendant accepted, exercised exclusive possession of, but failed to return automobile of plaintiff's insured, which was stolen from police impound lot, this Act did not provide city with immunity from liability under a bailment theory. American Ambassador Cas. Co. v. City of Chicago, 205 Ill. App. 3d 879, 150 Ill. Dec. 755, 563 N.E.2d 882 (1 Dist. 1990).

Nothing in the language of this Act provides local public entities or public employees immunity from suit for breach of contract or the failure to return bailed property in good condition; to infer such immunity would be an abuse of the court's responsibility for statutory construction. American Ambassador Cas. Co. v. City of Chicago, 205 Ill. App. 3d 879, 150 Ill. Dec. 755, 563 N.E.2d 882 (1 Dist. 1990).

- Negligence

Plaintiff's contract action, predicated upon a bailment, was not transformed into a tort action merely by characterizing the conduct which caused the breach as negligent. American Ambassador Cas. Co. v. City of Chicago, 205 Ill. App. 3d 879, 150 Ill. Dec. 755, 563 N.E.2d 882 (1 Dist. 1990).

Compensatory Damages

The Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101.1 et seq., did not bar a village subrogor's comparative negligence defense against a subrogee because the village subrogor initiated judicial proceedings to recover damages for its own injury after an ambulance of the village subrogor was involved in an accident with a vehicle driven by another party. Gallagher Bassett Servs. v. Miggins, 346 Ill. App. 3d 1022, 282 Ill. Dec. 627, 806 N.E.2d 1215, 2004 Ill. App. LEXIS 319 (2 Dist. 2004).

- Retaliatory Discharge

The unavailability of punitive damages does not preclude a plaintiff from seeking compensatory damages for what the plaintiff claims was an improper termination of her employment and, under appropriate circumstances, an employee may bring an action for retaliatory discharge against a local public entity employer for compensatory damages, even though the public entity is not subject to an award of punitive damages. Only the damages available are restricted; the cause of action in tort for retaliatory discharge remains unchanged. Boyles v. Greater Peoria Mass Transit Dist., 113 Ill. 2d 545, 101 Ill. Dec. 847, 499 N.E.2d 435 (1986).

Contract

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- In General

In a police officer's action alleging discrimination under 42 U.S.C. § 1981 and a breach of contract involving the decision of a city, the police department, an examining board, and the police chief not to promote a police officer to the rank of sergeant, the decision not to promote the officer was not protected by the absolute immunity accorded under 745 ILCS 10/2-109, 745 ILCS 10/2-201, and 745 ILCS 10/2-101(a) provides that Illinois statutory immunity does not apply to contracts; it does not apply to constitutional violations either. Drikos v. City of Palos Heights, F. Supp. 2d , 2003 U.S. Dist. LEXIS 21764 (N.D. Ill. Dec. 2, 2003).

- Legislative Intent

It is evident from the manner in which the word "contract" is employed in subsection (a) that the legislature meant to exclude causes of action under contract theory, and the Local Governmental and Governmental Employees Tort Immunity Act does not affect liability "based on a contract." DiMarco v. City of Chicago, 278 Ill. App. 3d 318, 214 Ill. Dec. 959, 662 N.E.2d 525 (1 Dist. 1996), appeal denied, 167 Ill. 2d 551, 217 Ill. Dec. 663, 667 N.E.2d 1056 (1996).

- Limitations Period

One-year limitation period in 745 ILCS 10/8-101(a), (c) did not bar an airline's action against a city relating to damage done to a plane because the cause of action arose from an alleged breach of contract; moreover, the incorporation of the rules, regulations, and orders into the written contract satisfied the writing requirement. Therefore, a ten-year statute of limitations for written contracts under 735 ILCS 5/13-206 applied in this case. United Airlines, Inc. v. City of Chicago, Ill. App. 3d , 352 Ill. Dec. 627, 954 N.E.2d 710, 2011 Ill. App. LEXIS 600 (1 Dist. 2011).

- Oral

Where sheriff's deputies sued the county board for money damages for breach of an oral employment contract, the county board was not immune from the action. Scutt v. La Salle County Bd., 97 Ill. App. 3d 181, 53 Ill. Dec. 21, 423 N.E.2d 213 (3 Dist. 1981).

Contract Implied in Law

- In General

Because a quasi-contract is no contract at all, but instead is a remedy based upon the principle of unjust enrichment, it follows that quasi-contract is not a "contract" for purposes of 745 ILCS 10/2-101(a). Village of Bloomingdale v. C.D.G. Enters., 196 Ill. 2d 484, 256 Ill. Dec. 848, 752 N.E.2d 1090, 2001 Ill. LEXIS 778 (2001).

- Common-Law Immunity

Village or municipality had no common-law immunity from plaintiff's suit in quasi-contract because contract was implied in law and not in fact. Woodfield Lanes, Inc. v. Village of Schaumburg, 168 Ill. App. 3d 763, 119 Ill. Dec. 568, 523 N.E.2d 36 (1 Dist. 1988).

- Immunity Denied

In an action in which a real estate developer alleged that a village corruptly misused its governmental powers to prevent the developer's plans from going forward and appropriated the benefits of the developer's plans for developing certain properties for its own ends, the developer established an action in quasi-contract where it alleged that, when it filed its rezoning petition and paid the required fee, the village became obligated to process its application reasonably and in good faith, which it failed to do. Village of Bloomingdale v. C.D.G. Enters., 314 Ill. App. 3d 210, 247 Ill. Dec. 578, 732 N.E.2d 633, 2000 Ill. App. LEXIS 500 (2 Dist. 2000).

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- Inequitable Result

A court will find a contract implied by law without regard to agreements or promises between the parties when the contract must be imposed upon the parties in order to avoid an inequitable result. Woodfield Lanes, Inc. v. Village of Schaumburg, 168 Ill. App. 3d 763, 119 Ill. Dec. 568, 523 N.E.2d 36 (1 Dist. 1988).

- Legislative Intent

Legislature did not mean to grant governmental bodies immunity from suit based on contract where equity demands that the court impose a contract; therefore, this Act does not bar plaintiff's action based on a contract implied by law. Woodfield Lanes, Inc. v. Village of Schaumburg, 168 Ill. App. 3d 763, 119 Ill. Dec. 568, 523 N.E.2d 36 (1 Dist. 1988).

- Liability

State courts have held municipalities and other governmental units liable on contracts implied in law despite the absence of proper contractual forms. Woodfield Lanes, Inc. v. Village of Schaumburg, 168 Ill. App. 3d 763, 119 Ill. Dec. 568, 523 N.E.2d 36 (1 Dist. 1988).

- Scope

The statutory phrase "unwritten contracts, expressed or implied" has been found broad enough to include contracts implied in law. Woodfield Lanes, Inc. v. Village of Schaumburg, 168 Ill. App. 3d 763, 119 Ill. Dec. 568, 523 N.E.2d 36 (1 Dist. 1988).

Injunction

The Tort Immunity Act (745 ILCS 10/1-101 et seq.) does not apply to the right to obtain relief other than damages sought against a local public entity or its employees and, therefore, does not bar an action seeking injunctive relief. Roark v. Macoupin Creek Drainage Dist., 316 Ill. App. 3d 835, 250 Ill. Dec. 358, 738 N.E.2d 574, 2000 Ill. App. LEXIS 783 (4 Dist. 2000).

The statute excludes injunctive remedies from the requirements of the Tort Immunity Act. People Who Care v. Tax Objectors (In re Consolidated Objections to Tax Levies of Sch. Dist. No. 205), 193 Ill. 2d 490, 250 Ill. Dec. 745, 739 N.E.2d 508, 2000 Ill. LEXIS 1687 (2000).

Limitation of Actions

Wrongful demolition action against the city under 65 ILCS 5/1-4-7 was not barred by the one-year limitations period contained in 745 ILCS 10/8-101(a), because the one-year statute of limitations did not apply to a cause of action for damages brought pursuant to 65 ILCS 5/1-4-7, when the Illinois Supreme Court had answered in the affirmative that 745 ILCS 10/2-101 operated to exclude the enumerated actions from the time limitation set forth in 745 ILCS 10/8-101(a); to the extent that the reasoning in Cooper v. Bi-State Development Agency, 158 Ill. App. 3d 19 (1987), and McClintock v. Bi-State Development Agency, 228 Ill. App. 3d 382 (1992), conflicts with the Illinois Supreme Court's reasoning in Raintree Homes, Inc., the appellate court hereby abandons it. Harvest Church of Our Lord v. City of E. St. Louis, 407 Ill. App. 3d 649, 348 Ill. Dec. 320, 943 N.E.2d 1230, 2011 Ill. App. LEXIS 89 (5 Dist. 2011).

One-year statute of limitations under 745 ILCS 10/8-101 of the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., did not bar the beneficial owners' declaratory judgment action against a city because, pursuant to 745 ILCS 10/2-101, the beneficial owners did not seek damages, but a determination of real property rights. Bigelow v. City of Rolling Meadows, 372 Ill. App. 3d 60, 309 Ill. Dec. 858, 865 N.E.2d 221, 2007 Ill. App. LEXIS 243 (1 Dist. 2007).

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The five-year limitation period of 735 ILCS 5/13-205 and not the one-year period of 745 ILCS 10/8-101, applied to claims against a city for breach of implied contract and abuse of governmental power. River Park, Inc. v. City of Highland Park, 295 Ill. App. 3d 90, 229 Ill. Dec. 596, 692 N.E.2d 369 (2 Dist. 1998), aff'd in part and rev'd in part on other grounds, 184 Ill. 2d 290, 234 Ill. Dec. 783, 703 N.E.2d 883 (1998).

Municipal Code

A city was not immune from liability because it was acting in its governmental capacity and not its corporate capacity; section 1-4-7 of the Municipal Code (65 ILCS 5/1-4-7) does not make any such distinction. City of Chicago v. Vickers, 8 Ill. App. 3d 902, 291 N.E.2d 315 (1 Dist. 1972).

Pleading

- Governmental Tort Immunity Defense

The governmental tort immunity defense is an affirmative defense that must be pleaded in timely fashion. First Nat'l Bank v. Village of Mundelein, 166 Ill. App. 3d 83, 116 Ill. Dec. 584, 519 N.E.2d 476 (2 Dist. 1988).

Public Carrier

- Not Shown

Where bus service contracted with school district to transport special education students and neither held itself out to, nor did, serve the general public, it was acting as a private carrier. Doe v. Rockdale Sch. Dist. No. 84, 287 Ill. App. 3d 791, 223 Ill. Dec. 320, 679 N.E.2d 771 (3 Dist. 1997).

- Standard of Care

A public carrier owes its passengers the highest degree of care in contrast to the lower standards of care applicable to other public entities. Cooper v. Bi-State Dev. Agency, 158 Ill. App. 3d 19, 110 Ill. Dec. 257, 510 N.E.2d 1288 (5 Dist.), appeal denied, 113 Ill. Dec. 295, 515 N.E.2d 104 (Ill. 1987).

The provision that nothing in this Act affects defendant's liability based upon operation as a common carrier preserves the standard of care to which a defendant must adhere in order to avoid liability; once notice is given, the liability of defendant as a common carrier is unaffected by the Act. Cooper v. Bi-State Dev. Agency, 158 Ill. App. 3d 19, 110 Ill. Dec. 257, 510 N.E.2d 1288 (5 Dist.), appeal denied, 113 Ill. Dec. 295, 515 N.E.2d 104 (Ill. 1987).

Punitive Damages

- Exemptions

The 1986 amendment to prior provision (see now 745 ILCS 10/1-206) included within the definition of "local public entity," not-for-profit corporations like the Northeast Illinois Regional Commuter Railroad Corporation (METRA) organized for the purpose of conducting public business, and clarified the exempt status from punitive damage liability that METRA already had under common law. Smith v. Northeast Ill. Regional Commuter R.R., 210 Ill. App. 3d 223, 155 Ill. Dec. 41, 569 N.E.2d 41 (1 Dist. 1991).

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Portion of this Act exempting public entities covered by it from punitive damages is merely a reiteration and codification of a long established principle that governmental entities are not subject to punitive damages. George v. Chicago Transit Auth., 58 Ill. App. 3d 692, 15 Ill. Dec. 896, 374 N.E.2d 679 (1 Dist. 1978).

The Chicago Transit Authority was not excluded from this Act because of a legislative intent to single out the CTA as the only municipal corporation against which punitive damages might be imposed; rather, the Act was made inapplicable to the CTA because as a common carrier, it is subject to a "highest degree of care" standard, while other public entities not operating as common carriers are held to lower standards of care. George v. Chicago Transit Auth., 58 Ill. App. 3d 692, 15 Ill. Dec. 896, 374 N.E.2d 679 (1 Dist. 1978).

- Prohibited

In view of this Act's express prohibition of assessing punitive damages against local governmental entities, there is inherent in the Act a public policy against imposing punitive damage liability on local taxpayers; regardless of whether plaintiff could prove that she was discharged in retaliation for filing a worker compensation claim, the Act precluded plaintiff from recovering punitive damages from transit district. Boyles v. Greater Peoria Mass Transit Dist., 113 Ill. 2d 545, 101 Ill. Dec. 847, 499 N.E.2d 435 (1986).

Wilful and Wanton Misconduct

- Section 1983 Claims

Inquiry into what conduct will constitute wilful and wanton is no different than what is required to show deliberate indifference in the context of section 1983 claims. McMurry v. Sheahan, 927 F. Supp. 1082 (N.D. Ill. 1996).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Civil Procedure," see 21 S. Ill. U.L.J. 691 (1997).

For article, "Municipal Corporations: 1986-87 Survey," see 12 S. Ill. U.L.J. 1045 (1988).

For article, "Intergovernmental Cooperation and the Municipal Insurance Crisis," see 30 De Paul L. Rev. 325 (1981).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 24:30 Generally.

§ 745 ILCS 10/2-102. [Punitive or other exemplary damages not allowed]

Sec. 2-102. Notwithstanding any other provision of law, a local public entity is not liable to pay punitive or exemplary damages in any action brought directly or indirectly against it by the injured party or a third party. In addition, no public official is liable to pay punitive or exemplary damages in any action arising out of an act or omission made by the public official while serving in an official executive, legislative, quasi-legislative or

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quasi-judicial capacity, brought directly or indirectly against him by the injured party or a third party.

(Source: P.A. 84-1431.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-102.

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Attorney Fees

Plaintiffs' attempt to obtain a punitive award of attorneys' fees from the city was prohibited by the Act. Ryan v. City of Chicago, 274 Ill. App. 3d 913, 211 Ill. Dec. 21, 654 N.E.2d 483 (1 Dist. 1995), appeal denied, 165 Ill. 2d 565, 214 Ill. Dec. 865, 662 N.E.2d 431 (1996).

Common Carrier

The Chicago Transit Authority was not excluded from this Act because of a legislative intent to single out the CTA as the only municipal corporation against which punitive damages might be imposed; rather, the Act was made inapplicable to the CTA because as a common carrier, it is subject to a "highest degree of care" standard, while other public entities not operating as common carriers are held to lower standards of care. George v. Chicago Transit Auth., 58 Ill. App. 3d 692, 15 Ill. Dec. 896, 374 N.E.2d 679 (1 Dist. 1978).

Comparative Negligence

While the legislature intended to protect municipalities from having to insure against suits for negligence and from paying punitive damages, the legislature did not intend to shield municipalities whose conduct shows a deliberate intention to cause harm or a complete indifference to the safety of others. Moreover, the legislature, balancing its dual interest in protecting municipalities and protecting the people, did not intend to reject the deterrent of placing wilful and wanton conduct beyond the reach of comparison with mere negligence. Thus, the qualitative difference in defendant city's wilful and wanton conduct mandated that the plaintiff's negligence should not reduce his damages. Burke v. 12 Rothschild's Liquor Mart, Inc., 148 Ill. 2d 429, 170 Ill. Dec. 633, 593 N.E.2d 522 (1992).

Compensatory Damages

- Retaliatory Discharge

The unavailability of punitive damages does not preclude a plaintiff from seeking compensatory damages for what the plaintiff claims was an improper termination of her employment and, under appropriate circumstances, an employee may bring an action for retaliatory discharge against a local public entity employer for compensatory damages, even though the public entity is not subject to an award of punitive damages. Only the damages available are restricted; the cause of action in tort for retaliatory discharge remains unchanged. Boyles v. Greater Peoria Mass Transit Dist., 113 Ill. 2d 545, 101 Ill. Dec. 847, 499 N.E.2d 435 (1986).

Construction With Other Laws

The Tort Immunity Act's prohibition of a local public entity paying punitive damages trumps 105 ILCS 5/34-18.1 and bars a claim for punitive damages against a school board. Anderson v. Bd. of Educ. of Chi., 169 F. Supp. 2d 864, 2001 U.S. Dist. LEXIS 16897 (N.D. Ill. 2001).

Illustrative Cases

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City was entitled to immunity from a mother's claims related to the death of her daughter where the mother's allegations were based on a negligence theory. Keener v. City of Herrin, 385 Ill. App. 3d 545, 324 Ill. Dec. 426, 895 N.E.2d 1141, 2008 Ill. App. LEXIS 994 (5 Dist. 2008).

Legislative Intent

The legislature intended this section to impact upon provisions of law such as 210 ILCS 45/3-602 which otherwise would allow punitive damages to be assessed against a local public entity; there is nothing in the Nursing Home Care Act indicating that the legislature intended that section should remain unaffected by the Tort Immunity Act. Paulson v. County of De Kalb, 268 Ill. App. 3d 78, 205 Ill. Dec. 821, 644 N.E.2d 37 (2 Dist. 1994).

Liability Insurance

Park district as a municipal corporation was immune from punitive damages awards and did not waive such immunity by purchasing general liability insurance policy which did not specifically include or exclude punitive damages. Engel ex rel. Hultman v. Chicago & N.W. Transp. Co., 186 Ill. App. 3d 522, 134 Ill. Dec. 383, 542 N.E.2d 729 (1 Dist.), appeal denied, 128 Ill. 2d 662, 139 Ill. Dec. 512, 548 N.E.2d 1068 (1989).

Pendent Action

- Liability

A city could not be held liable for punitive damages in a pendent action, pursuant to this section. Jones v. City of Chicago, 639 F. Supp. 146 (N.D. Ill. 1986).

Potential Liability

- Actual Damages

Where a plaintiff's allegations were sufficient to state a cause of action against four municipalities and eight individual police officers, the one count of the plaintiff's amended complaint that asked for exemplary money damages from the defendants could only apply to the eight individual defendants, the four municipalities named as defendants could not be liable for exemplary money damages under this section; therefore, the limit of their potential liability would be actual damages. Newell v. City of Elgin, 34 Ill. App. 3d 719, 340 N.E.2d 344 (2 Dist. 1976).

Prosecutor

Where allegations in plaintiff's complaint pertained to prosecutorial acts of misconduct associated with the judicial phase of the criminal process, they were within the scope of the prosecutor's absolute immunity. Jones v. City of Chicago, 639 F. Supp. 146 (N.D. Ill. 1986).

Punitive Damages

Amended stipulation was correct that a city could not have been found liable for punitive damages under 745 ILCS 10/2-102 in a former arrestee's 42 U.S.C. § 1983 Monell claim for reckless hiring and retention of a police officer. McMackin v. Crawford, F. Supp. 2d , 2009 U.S. Dist. LEXIS 18136 (N.D. Ill. Mar. 10, 2009).

- Exemptions

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Under Fed. R. Civ. P. 12(f), punitive damage claims were stricken from a civil rights complaint filed by an arrestee after police officers executed a warrant at the wrong apartment because the officers' official actions fell under the immunity umbrella in Illinois' Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/2-102. Short v. Nolan, F. Supp. 2d , 2010 U.S. Dist. LEXIS 2983 (C.D. Ill. Jan. 14, 2010).

Nothing in the text of 745 ILCS 10/2-102 that suggests it is limited to official capacity suits. It provides immunity from punitive damages in any action arising out of an act or omission made by the public official while serving in an official executive capacity, brought directly or indirectly against him. Campbell v. City of Johnston City, F. Supp. 2d , 2005 U.S. Dist. LEXIS 35617 (S.D. Ill. Dec. 14, 2005).

The Illinois Local Governmental and Governmental Employees Tort Immunity Act does not shield police officers from punitive damages when they are sued in their individual capacity. Bedenfield v. Shultz, F. Supp. 2d , 2002 U.S. Dist. LEXIS 14659 (N.D. Ill. Aug. 7, 2002).

The 1986 amendment to this section includes within the definition local public entity not-for-profit corporations like Northeast Illinois Regional Commuter Railroad Corporation (METRA) organized for the purpose of conducting public business, and clarifies the exempt status from punitive damage liability that METRA already had under common law. Smith v. Northeast Ill. Regional Commuter R.R., 210 Ill. App. 3d 223, 155 Ill. Dec. 41, 569 N.E.2d 41 (1 Dist. 1991).

- Immunity for Local Governments

Although a seasonal city employee had not pleaded himself out of court with regard to the tortious interference with a prospective advantage claim that he asserted against a city ward supervisor, who had allegedly caused the employee to be fired, the employee was statutorily barred under 745 ILCS 10/2-102 from recovering punitive damages in connection with that claim. 745 ILCS 10/2-102 applied because the employee was seeking to hold the supervisor liable for tortious acts that he committed while acting within his official capacity. Lonzo v. City of Chicago, 461 F. Supp. 2d 661, 2006 U.S. Dist. LEXIS 83257 (N.D. Ill. 2006).

City could not be liable for punitive or exemplary damages, thus, the court struck plaintiff's request for punitive damages from the city. Trepanier v. City of Blue Island, F. Supp. 2d , 2004 U.S. Dist. LEXIS 19837 (N.D. Ill. Sept. 30, 2004).

Two city building inspector supervisors' prayer for punitive damages against the city was stricken because the city was immune from punitive damages under federal civil rights laws and the Local Government and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq. Davis v. City of Chicago, F. Supp. 2d , 2004 U.S. Dist. LEXIS 5603 (N.D. Ill. Mar. 31, 2004).

Tenant's request for punitive damages in a count that the housing authority denied her access to common rooms would be stricken; municipal entities are not liable for punitive damages. Thomas v. Chicago Hous. Auth., 981 F. Supp. 558 (N.D. Ill. 1997).

Municipalities are immune from punitive damages imposed under the civil rights laws; although this immunity may be waived by federal or state law, Illinois has instead reaffirmed immunity for its local governments. Adams v. City of Chicago, 865 F. Supp. 445 (N.D. Ill. 1994).

- Individual Capacity

Police officer was a public official exercising his discretion in the performance of his unique police functions when he allegedly used excessive force in dealing with an arrestee and in failing to obtain adequate medical care for the arrestee, and therefore, he was entitled to immunity from punitive damages in both his official and individual capacity under 745 ILCS 10/2-102 on a state law battery claim filed against the officer by the arrestee. Campbell v. City of Johnston City, F. Supp. 2d , 2005 U.S. Dist. LEXIS 35617 (S.D. Ill. Dec. 14, 2005).

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Former kindergarten teacher's request for punitive damages against her principal was not struck where it was impossible to determine from the pleadings whether the principal was acting outside the scope of his official duties when he made the allegedly defamatory statements. Lifton v. Bd. of Educ. of Chi., 290 F. Supp. 2d 940, 2003 U.S. Dist. LEXIS 20280 (N.D. Ill. 2003).

Police officers who were serving in their official capacity at the time of an incident involving an individual but who were being sued in their individual capacity because of their alleged use of excessive force against the individual were not shielded from punitive damages. Bedenfield v. Shultz, F. Supp. 2d , 2002 U.S. Dist. LEXIS 14659 (N.D. Ill. Aug. 7, 2002).

- Malicious Prosecution

Punitive damages against a city are prohibited under the Illinois Tort Immunity Act and plaintiff may not seek punitive damages from the city for a 42 U.S.C. § 1983 policy and custom claim against the governmental body alleging malicious prosecution and intentional infliction of emotional distress by police officers. Treece v. Village of Naperville, 903 F. Supp. 1251 (N.D. Ill. 1995).

- Public Policy

In view of this Act's express prohibition of assessing punitive damages against local governmental entities, there is inherent in the Act a public policy against imposing punitive damage liability on local taxpayers; regardless of whether plaintiff could prove that she was discharged in retaliation for filing a workers' compensation claim, the Act precluded plaintiff from recovering punitive damages from the district. Boyles v. Greater Peoria Mass Transit Dist., 113 Ill. 2d 545, 101 Ill. Dec. 847, 499 N.E.2d 435 (1986).

Retaliatory Discharge

Regardless of whether a plaintiff can prove discharge in retaliation for filing a workers' compensation claim, 745 ILCS 10/2-102 precludes the plaintiff from recovering punitive damages; however, under appropriate circumstances, an employee may bring an action for retaliatory discharge against a local public entity employer for compensatory damages, even though the public entity is not subject to an award of punitive damages, but the damages available are restricted and the cause of action in tort for retaliatory discharge remains unchanged.

School Districts

- Award Not Punitive

Where arbitrator awarded employee a sum of money, which was not only for the economic damages that the employee had suffered, in the form of lost wages and benefits plus increases in travel and child care costs, but also for the loss of the opportunity for tenure and concomitant employment security and for the financial losses that he likely would suffer in the future, even if there were no direct evidence of immediate, direct injury to the employee's reputation, the award was nothing more than compensation for the economic injuries the arbitrator determined the employee had suffered and would continue to suffer in the future as a result of the school district's breach; accordingly, keeping in mind that a court must construe an arbitration award as valid, if possible, the Illinois Educational Labor Relations Board correctly determined that the arbitrator's award was not punitive. Board of Educ. of Community High Sch. Dist. No. 155 v. Illinois Educ. Labor Relations Bd., 247 Ill. App. 3d 337, 187 Ill. Dec. 61, 617 N.E.2d 269, 1993 Ill. App. LEXIS 703 (1 Dist. 1993).

- Immunity

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Punitive damages could not be recovered from school district because it was a local public entity. Landstrom v. Illinois Dep't of Children & Family Servs., 699 F. Supp. 1270 (N.D. Ill. 1988), aff'd, 892 F.2d 670 (7th Cir. 1990).

This Act specifically immunizes local public entities, such as school districts, from liability for the payment of punitive or exemplary damages. Hicks v. Board of Educ., 77 Ill. App. 3d 974, 33 Ill. Dec. 683, 397 N.E.2d 16 (5 Dist. 1979).

Scope

745 ILCS 10/2-102's use of the phrase "public official" is significant in that it does not include all public employees, but it does include all public employees that use discretion or make policy. Campbell v. City of Johnston City, F. Supp. 2d , 2005 U.S. Dist. LEXIS 35617 (S.D. Ill. Dec. 14, 2005).

Although 210 ILCS 45/1-113 of the Nursing Home Care Act reveals that the legislature intended that the general regulatory provisions of that act apply to county-operated nursing homes, the unambiguous language of this section nevertheless reveals that the legislature also intended that county-operated nursing homes not be subject to liability for treble damages. Paulson v. County of De Kalb, 268 Ill. App. 3d 78, 205 Ill. Dec. 821, 644 N.E.2d 37 (2 Dist. 1994).

Portion of this Act exempting public entities covered by the Act from punitive damages is merely a reiteration and codification of a long established principle that governmental entities are not subject to punitive damages. George v. Chicago Transit Auth., 58 Ill. App. 3d 692, 15 Ill. Dec. 896, 374 N.E.2d 679 (1 Dist. 1978).

Setoff

The legislature has immunized municipal defendants against the payment of punitive damages, for in the absence of punitive damages, disallowing a setoff for the plaintiff's contributory negligence can serve as an effective deterrent to a municipal defendant's wilful and wanton conduct. Burke v. 12 Rothschild's Liquor Mart, Inc., 148 Ill. 2d 429, 170 Ill. Dec. 633, 593 N.E.2d 522 (1992).

Summary Judgment

- Damages Issue Remaining

Where complaint sought actual and exemplary damages in same count, and where issue of whether defendant school district's conduct caused actual damages remained, count could rightfully have withstood a motion for summary judgment. Collins v. School Dist. No. 189, 115 Ill. App. 3d 100, 70 Ill. Dec. 914, 450 N.E.2d 387 (1 Dist. 1983).

Tort Immunity

- Damages

Where district was uninsured with respect to punitive damages, there was no waiver of tort immunity for punitive damages, although actual, compensatory damages could be recovered if liability were found. Collins v. School Dist. No. 189, 115 Ill. App. 3d 100, 70 Ill. Dec. 914, 450 N.E.2d 387 (1 Dist. 1983).

Waiver of Immunity

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A local public entity waives its immunity from punitive damages by procuring a policy of liability insurance. Holda v. County of Kane, 88 Ill. App. 3d 522, 43 Ill. Dec. 552, 410 N.E.2d 552 (2 Dist. 1980).

OPINIONS OF ATTORNEY GENERAL

Liability Insurance

Non-home rule counties possess the general authority to insure against the liability arising from the entry of punitive damage awards. 1996 Op. Atty. Gen. (96-034).

The public policy of the State does not prohibit a county from insuring against liability for a punitive damage award entered against one of its officers or employees in a civil rights action. 1996 Op. Atty. Gen. (96-034).

LEGAL PERIODICALS

For article, "State and Local Government: 1986-87 Illinois Law Survey," see 19 Loy. U. Chi. L.J. 691 (1987-88).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 3:40 Punitive damages; attorneys' fees.

§ 745 ILCS 10/2-103. [Adoption or failure to adopt enactment; failure to enforce law]

Sec. 2-103. A local public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-103.

CASE NOTES

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In General

Village was not immune from liability under 745 ILCS 10/2-103 in a claim against it for tortious interference with prospective advantage as the issue was whether the village had complied with the law, not whether it had enforced the law, and, accordingly, that immunity provision was not applicable; similarly, 745 ILCS 10/2-104 was inapplicable to provide immunity to the village as the complaint alleged that the village had acted outside of its statutory authority in approving a rebate agreement. Vill. of Itasca v. Vill. of Lisle, 352 Ill. App. 3d 847, 288 Ill. Dec. 35, 817 N.E.2d 160, 2004 Ill. App. LEXIS 1248 (2 Dist. 2004), appeal denied, 213 Ill. 2d 560, 293 Ill. Dec. 863, 829 N.E.2d 788 (2005).

Failure on the part of a municipality to exercise a governmental function does not, without more, expose the municipality to liability. Keane v. City of Chicago, 98 Ill. App. 2d 460, 240 N.E.2d 321 (1 Dist. 1968).

Approval of Snow Trail

County's and Forest Preserve's act of approving a Northeastern Illinois Association of Snowmobile Club's trail would be immunized under this section. Jost v. Bailey, 286 Ill. App. 3d 872, 222 Ill. Dec. 69, 676 N.E.2d 1033 (2 Dist. 1997).

Corrupt or Malicious Motives

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This section, 745 ILCS 10/2-201 and 745 10/2-205 do not apply to acts resulting from corrupt or malicious motives. Madonna v. Giacobbe, 190 Ill. App. 3d 859, 138 Ill. Dec. 90, 546 N.E.2d 1145 (2 Dist. 1989).

Damages

Property buyers' conspiracy to commit fraud claims against a town and its building commissioner, based on allegations that defendants conspired to conceal building code violations present in a property the buyers purchased, were not barred by the plain language of 745 ILCS 10/2-101 or by the plain language of 745 ILCS 10/2-103, 745 ILCS 10/2-105, 745 ILCS 10/2-205, 745 ILCS 10/2-206, and 745 ILCS 10/2-207. Those statutes did not affect the buyers right to obtain relief other than damages against the town and the commissioner. Alcala v. Totaro, F. Supp. 2d , 2005 U.S. Dist. LEXIS 33655 (N.D. Ill. Dec. 16, 2005).

Hiring or Retention

- Police Chief

Decision to hire or retain police chief was not shown to be a "legislative enactment," so that mayor and city were not acting in their legislative capacity when they hired or retained police chief and were not thus accorded immunity. Dirksen v. City of Springfield, 842 F. Supp. 1117 (C.D. Ill. 1994).

Liability

Trial court correctly dismissed all defendants on the police officer's claim against them that, in enacting a particular ordinance that reduced the number of sergeants working for the village's police department, they interfered with his prospective economic advantage. They could not be held liable for adopting a law and that was true even though the police officer contended that their conduct was wilful and wanton since the law did not provide an exception to immunity even for wilful and wanton conduct. Schlicher v. Bd. of Fire & Police Comm'rs, 363 Ill. App. 3d 869, 300 Ill. Dec. 634, 845 N.E.2d 55, 2006 Ill. App. LEXIS 144 (1 Dist. 2006).

Trial court properly granted summary judgment to the village on the private water company's contribution claim after the private water company and village were sued for damages the property owners incurred when the main sewer line clogged, causing sewer water to back up into their homes. The village was immune from liability because it could not be found liable for failing to pass legislation that might have prevented the occurrence, pursuant to the immunity recognized in 745 ILCS 10/2-103, and it could not be found liable for failing to conduct an inspection which might have disclosed the likelihood of a backup, pursuant to the immunity in 745 ILCS 10/2-105. Alexander v. Consumers Ill. Water Co., 358 Ill. App. 3d 774, 298 Ill. Dec. 70, 838 N.E.2d 963, 2005 Ill. App. LEXIS 685 (3 Dist. 2005).

- Failure to Enforce Laws

Since other, specific statutory provisions applied to give the city complete immunity from the alleged willful and wanton conduct of the building inspectors in inspecting the staircase with the removed handrail from which the injured woman fell, the injured woman could not maintain a cause of action against the city by claiming that the injured woman was injured due to the city's failure to enforce the law. Indeed, the injured woman could not successfully claim that the injured woman's damages were really due to the city's failure in enforcing its laws under 745 ILCS 10/2-202, 745 ILCS 10/2-103, and 745 ILCS 10/2-205, as the injured woman's claims were actually about inadequate or incompetent inspections. Hess v. Flores, 408 Ill. App. 3d 631, 350 Ill. Dec. 571, 948 N.E.2d 1078, 2011 Ill. App. LEXIS 301 (1 Dist. 2011).

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City was immune from liability for failing to enforce a building code, issuing the construction permit, negligently inspecting and/or failing to inspect the property as 745 ILCS 10/2-202 could not be read in conjunction with 745 ILCS 10/2-104 to create an exception to the immunity § 2-104 provided for issuance of a permit; accordingly, the city was immune from liability pursuant to 745 ILCS 10/2-103,2-205, 2-104 and 2-105. Bowler v. City of Chicago, 376 Ill. App. 3d 208, 315 Ill. Dec. 140, 876 N.E.2d 140, 2007 Ill. App. LEXIS 977 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1786 (Ill. 2007).

Neither a public employee nor a local public entity, which includes a municipal corporation, is liable for an injury caused by a failure to enforce any law. Luber v. City of Highland, 151 Ill. App. 3d 758, 104 Ill. Dec. 583, 502 N.E.2d 1243 (5 Dist. 1986).

Ministerial or Proprietary Acts

- Liability Imposed

Liability may be imposed upon a municipality where the tortious acts of its employees are either affirmative or wilful in nature, or where the municipality's employees' acts are "ministerial" or "proprietary," rather than "governmental." Keane v. City of Chicago, 98 Ill. App. 2d 460, 240 N.E.2d 321 (1 Dist. 1968).

Misuse of Power

The statute did not provide a village with immunity in an action in which a real estate developer alleged that the village corruptly misused its governmental powers to prevent the developer's plans from going forward and appropriated the benefits of the developer's plans for developing certain properties for its own ends. Village of Bloomingdale v. C.D.G. Enters., 314 Ill. App. 3d 210, 247 Ill. Dec. 578, 732 N.E.2d 633, 2000 Ill. App. LEXIS 500 (2 Dist. 2000).

Pension Funds

This section did not bar an action in which the plaintiffs alleged that the defendant city caused a loss to pension funds by depriving the funds of moneys to which the participants were entitled. Houlihan v. City of Chicago, 306 Ill. 2d 589, 239 Ill. Dec. 650, 714 N.E.2d 569 (1 Dist. 1999), appeal denied, 187 Ill. 2d 568, 244 Ill. Dec. 183, 724 N.E.2d 1267 (2000).

Police Protection

The duty of city to protect a public school teacher from criminal acts was no more than the general duty to all citizens to protect the safety and well-being of the public at large. Keane v. City of Chicago, 98 Ill. App. 2d 460, 240 N.E.2d 321 (1 Dist. 1968).

Public Policy

There are strong public policy concerns which dictate that public officials be shielded from liability in civil actions based upon their vote, in the exercise of discretion, either for or against any legislation. Carter v. City of Elmwood, 162 Ill. App. 3d 235, 113 Ill. Dec. 606, 515 N.E.2d 415 (3 Dist. 1987).

Retaliatory Discharge

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Police officer's retaliatory discharge complaint against mayor and city council was dismissed because this Act shielded the municipality and its officials from liability where the discharge resulted from legislative action. Carter v. City of Elmwood, 162 Ill. App. 3d 235, 113 Ill. Dec. 606, 515 N.E.2d 415 (3 Dist. 1987).

Special Duty

- Elements

Traditionally, Illinois courts have established four elements which a plaintiff must prove in order to establish a special relationship duty: (1) the municipality must be uniquely aware of the particular danger or risk to which the plaintiff is exposed; (2) there must be allegations of specific acts or omissions on the part of the municipality; (3) the specific acts or omissions must be either affirmative or wilful in nature; and (4) the injury must occur while the plaintiff is under the direct and immediate control of employees or agents of the municipality. Burdinie v. Village of Glendale Heights, 139 Ill. 2d 501, 152 Ill. Dec. 121, 565 N.E.2d 654 (1990), overruled on other grounds, McCuen v. Peoria Park Dist., 163 Ill. 2d 125, 205 Ill. Dec. 487, 643 N.E.2d 778 (1994).

- Not Found

A "special duty" to a public school teacher for the safety and well-being of her person would impose an all but impossible burden upon a city, considering the numerous police, fire, housing and other laws, ordinances and regulations in force. No cause of action for the wrongful death of a teacher, who was killed while on the premises of the school to which she was assigned, was stated against defendant municipality for its failure to provide adequate police protection. Keane v. City of Chicago, 98 Ill. App. 2d 460, 240 N.E.2d 321 (1 Dist. 1968).

Waiver of Immunity

The plaintiffs' complaint was properly dismissed where there were no allegations that it had waived its statutory immunity by obtaining insurance covering the liability asserted. Devonshire v. Harper, 92 Ill. App. 3d 595, 48 Ill. Dec. 164, 416 N.E.2d 59 (5 Dist. 1981).

Willful and Wanton Conduct

Court properly dismissed the claimant's action against the village alleging willful and wanton conduct, claiming that the village, through its employees, failed to instruct the owner to trim his bushes further and failed to enforce its intersection visibility ordinance, because 745 ILCS 10/2-202 did not apply, when the village employees were not in the course of putting into effect any law at the time of the claimant's injury; the village employees were doing nothing to enforce the ordinance when the daughter's death occurred. Pouk v. Vill. of Romeoville, 405 Ill. App. 3d 194, 344 Ill. Dec. 777, 937 N.E.2d 800, 2010 Ill. App. LEXIS 1166 (3 Dist. 2010).

When it was alleged that a city let a nightclub, at which numerous people were injured or died when trying to exit the building, operate despite knowing it was dangerous, the city was entitled to absolute immunity, under 745 ILCS 10/2-103, providing immunity for a failure to enforce the law, because the immunity exception in 745 ILCS 10/2-202 for willful and wanton conduct did not apply, as that exception applied to employees rather than entities. Anthony v. City of Chicago, 382 Ill. App. 3d 983, 321 Ill. Dec. 202, 888 N.E.2d 721, 2008 Ill. App. LEXIS 429 (1 Dist. 2008), appeal denied, 229 Ill. 2d 617, 325 Ill. Dec. 1, 897 N.E.2d 249, 2008 Ill. LEXIS 1334 (2008).

When it was alleged that a city let a nightclub, at which numerous people were injured or died when trying to exit the building, operate despite knowing it was dangerous, the city was entitled to absolute immunity, under 745 ILCS 10/2-103, providing immunity for a failure to enforce the law,

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because the immunity exception in 745 ILCS 10/2-202 for willful and wanton conduct did not apply, as it was not alleged that injury or death occurred while anyone was in the course of putting a law into effect, but that the city did nothing, which was immunized by 745 ILCS 10/2-103. Anthony v. City of Chicago, 382 Ill. App. 3d 983, 321 Ill. Dec. 202, 888 N.E.2d 721, 2008 Ill. App. LEXIS 429 (1 Dist. 2008), appeal denied, 229 Ill. 2d 617, 325 Ill. Dec. 1, 897 N.E.2d 249, 2008 Ill. LEXIS 1334 (2008).

Trial court erred in ruling that the City of Chicago was not protected from claims of willful and wanton conduct by building inspectors under the immunities provided by 745 ILCS 10/2-103,2-105, 2-205 and 2-207; those statutes did not specifically except willful and wanton conduct, and thus, they provided the City with blanket immunity. Ware v. City of Chicago, 375 Ill. App. 3d 574, 314 Ill. Dec. 14, 873 N.E.2d 944, 2007 Ill. App. LEXIS 837 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1797 (Ill. 2007), appeal denied, 2007 Ill. LEXIS 1733 (Ill. 2007), appeal denied, 2007 Ill. LEXIS 1743 (Ill. 2007).

LEGAL PERIODICALS

For comment, "The Chicago Public Schools and its violent students: How Can the Law Protect Teachers?", see 48 DePaul L. Rev. 907 (1999).

For article, "Survey of Illinois Law: Employment Law", see 22 S. Ill. U.L.J. 841 (1998).

For article, "Survey of Illinois Law [1989-90] - Municipal Corporations," see 15 S. Ill. U.L.J. 1021 (1991).

RESEARCH REFERENCES

Municipal liability for negligent performance of building inspector's duties. 24 ALR5th 200.

Liability of municipality or other governmental unit for failure to provide police protection from crime. 90 ALR5th 273.

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 3:46 Adoption or enforcement of law.

§ 745 ILCS 10/2-104. [Permits, licenses, certificates, approvals, other authorizations]

Sec. 2-104. A local public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization where the entity or its employee is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

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(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-104.

CASE NOTES

Analysis

In General
Applicability
- Discretionary Actions
Corrupt or Malicious Motives Exception
Immunity
- Found
- Limitations
- Not Found
Liability
- Revocation of Sign Permits
- Tortious Interference with Property
Misuse of Power

In General

The Tort Immunity Act does not create duties or obligations, but provides municipalities with immunities or affirmative defenses for specific government functions which bar a plaintiff's right to recovery. Millerick v. Village of Tinley Park, 272 Ill. App. 3d 738, 209 Ill. Dec. 703, 652 N.E.2d 17 (1 Dist. 1995).

Applicability

Village was not immune from liability under 745 ILCS 10/2-103 in a claim against it for tortious interference with prospective advantage as the issue was whether the village had complied with the law, not whether it had enforced the law, and, accordingly, that immunity provision was not applicable; similarly, 745 ILCS 10/2-104 was inapplicable to provide immunity to the village as the complaint alleged that the village had acted outside of its statutory authority in approving a rebate agreement. Vill. of Itasca v. Vill. of Lisle, 352 Ill. App. 3d 847, 288 Ill. Dec. 35, 817 N.E.2d 160, 2004 Ill. App. LEXIS 1248 (2 Dist. 2004), appeal denied, 213 Ill. 2d 560, 293 Ill. Dec. 863, 829 N.E.2d 788 (2005).

Claim of tortious interference against airport Authority failed where complaint did not allege business relationships with specific third parties, but rather "continuous negotiations" or negative actions by the Authority toward a third party. Du Page Aviation Corp. v. Du Page Airport Auth., 229 Ill. App. 3d 793, 171 Ill. Dec. 814, 594 N.E.2d 1334, 1992 Ill. App. LEXIS 887 (1 Dist. 1992).

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- Discretionary Actions

Under 735 ILCS 5/2-610(a), defendant city was immune from liability under 745 ILCS 10/2-104 where defendant had not violated any ordinance and plaintiff home purchasers had not suggested bad faith or that defendant acted with malicious motives; the city retained the ultimate authority to determine whether to allow building on a particular parcel within the city limits. Doyle v. City of Marengo, 303 Ill. App. 3d 831, 270 Ill. Dec. 752, 783 N.E.2d 1052, 1999 Ill. App. LEXIS 202 (1 Dist. 1999).

The language of this section regarding, the licensing immunity provisions govern discretionary rather than ministerial actions. Munizza v. City of Chicago, 164 Ill. Dec. 645, 583 N.E.2d 561 (1991), cert. denied, 144 Ill. 2d 635, 169 Ill. Dec. 144, 591 N.E.2d 24 (1992).

Corrupt or Malicious Motives Exception

The Illinois Constitution prohibits the insertion of the common law "corrupt or malicious motives" exception into the immunities provided by the Local Governmental and Governmental Employees Tort Immunity Act. Village of Bloomingdale v. C.D.G. Enters., 196 Ill. 2d 484, 256 Ill. Dec. 848, 752 N.E.2d 1090, 2001 Ill. LEXIS 778 (2001).

Immunity

Where a church sued based on the requirement that it was required to obtain a permit to operate a shelter in a city center district, and the delay in the issuance of the permit, the court held that under the statutory framework in the Illinois Tort Immunity Act, the outright issuance or denial of a permit was insulated from legal consequences; because the greater obviously includes the lesser, the complained of delay followed by issuance of the permit was a fortiori immune under the Tort Immunity Act as well. Family Life Church v. City of Elgin, 561 F. Supp. 2d 978, 2008 U.S. Dist. LEXIS 47210 (N.D. Ill. 2008).

Church was precluded from seeking damages from a village for denial of a special use permit because the village was immune from such a claim under 745 ILCS 10/2-104, which provided immunity from claims for damages arising from a municipality's legislative decisions. Vision Church v. Vill. of Long Grove, 397 F. Supp. 2d 917, 2005 U.S. Dist. LEXIS 25829 (N.D. Ill. 2005).

In an action in which a not-for-profit religious organization filed suit against defendant village alleging violations of the Free Exercise and Establishment Clauses of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, and violations of the Religious Land Use and Institutionalized Persons Act, summary judgment was appropriate as to the organization's arbitrary and capricious claim. Pursuant to 745 ILCS 10/2-104, the organization was barred from recovering damages against the village for their official actions. Vision Church v. Vill. of Long Grove, F. Supp. 2d , 2005 U.S. Dist. LEXIS 23493 (N.D. Ill. Oct. 7, 2005).

Summary judgment was properly granted to a village in an action by a property owner who asserted that she had a vested right to approval of a property development plan, which the village had rejected; under 745 ILCS 10/2-104, the village and its officials were immune from liability for the rejection of the plan. O'Malley v. Vill. of Palos Park, 346 Ill. App. 3d 567, 281 Ill. Dec. 940, 805 N.E.2d 308, 2004 Ill. App. LEXIS 147 (1 Dist. 2004).

- Found

City was immune from liability for failing to enforce a building code, issuing the construction permit, negligently inspecting and/or failing to inspect the property as 745 ILCS 10/2-202 could not be read in conjunction with 745 ILCS 10/2-104 to create an exception to the immunity 745 ILCS 10/2-104 provided for issuance of a permit; accordingly, the city was immune from liability

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pursuant to 745 ILCS 10/2-103,2-205, 2-104 and 2-105. Bowler v. City of Chicago, 376 Ill. App. 3d 208, 315 Ill. Dec. 140, 876 N.E.2d 140, 2007 Ill. App. LEXIS 977 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1786 (Ill. 2007).

City was immune from negligence claims brought by a trucking company and a carrier relating to an oversize load permit issued by the city that allowed the carrier to transport a machine over city streets, where the machine struck a roadside pole and was damaged; 745 ILCS 10/2-104 did not distinguish between ministerial and discretionary acts. Mach Mold Inc. v. Clover Assocs., 383 F. Supp. 2d 1015, 2005 U.S. Dist. LEXIS 17451 (N.D. Ill. 2005).

City officials were granted summary judgment on the property owners' willful and wanton claims arising from the denial of an occupancy permit where the property owners failed to show that their claims went beyond the mere denial of a permit; thus, the claims were barred by 745 ILCS 10/2-104 and 745 ILCS 10/2-206. Moberg v. City of W. Chi., F. Supp. 2d , 2003 U.S. Dist. LEXIS 1657 (N.D. Ill. Feb. 3, 2003).

Where homeowners were required to purchase flood plain insurance after city issued certificates of occupancy to builders without having letters of map revision demonstrating that the properties were no longer considered to be in the flood plain, city was immune from liability under 745 ILCS 10/2-104; city did not violate any ordinance and purchasers of homes did not suggest bad faith or that city acted with malicious motives. Doyle v. City of Marengo, 303 Ill. App. 3d 831, 270 Ill. Dec. 752, 783 N.E.2d 1052, 1999 Ill. App. LEXIS 202 (1 Dist. 1999).

- Limitations

This section does not shield a local public entity from liability based on alleged conduct that is corrupt, malicious, or otherwise undertaken in bad faith. River Park v. City of Highland Park, 281 Ill. App. 3d 154, 217 Ill. Dec. 410, 667 N.E.2d 499 (2 Dist. 1996), appeal denied, 168 Ill. 2d 624, 219 Ill. Dec. 576, 671 N.E.2d 743 (1996).

- Not Found

Commissioner of public vehicle operations and superintendent of police were not immune from tort liability under this section, where taxi cab driver's chauffeur's license was improperly issued, contrary to an ordinance requiring that the application be denied if applicant included any material omissions or misstatements of fact, or that the applicant lacked any of the qualifications specified in the ordinance licensing. Munizza v. City of Chicago, 164 Ill. Dec. 645, 583 N.E.2d 561 (1991), cert. denied, 144 Ill. 2d 635, 169 Ill. Dec. 144, 591 N.E.2d 24 (1992).

Liability

- Revocation of Sign Permits

This section precluded any liability on the part of a city for the passage and enforcement of an ordinance revoking a permit for the erection of electric signs after the city had originally issued the permits. Foster & Kleiser v. City of Chicago, 146 Ill. App. 3d 928, 100 Ill. Dec. 481, 497 N.E.2d 459 (1 Dist. 1986).

- Tortious Interference with Property

Defendant government officials were not protected from a suit based on tortious interference with property by this section or 745 ILCS 10/2-206. City of Rock Falls v. Chicago Title & Trust Co., 13 Ill. App. 3d 359, 300 N.E.2d 331 (3 Dist. 1973).

Misuse of Power

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The statute did not provide a village with immunity in an action in which a real estate developer alleged that the village corruptly misused its governmental powers to prevent the developer's plans from going forward and appropriated the benefits of the developer's plans for developing certain properties for its own ends. Village of Bloomingdale v. C.D.G. Enters., 314 Ill. App. 3d 210, 247 Ill. Dec. 578, 732 N.E.2d 633, 2000 Ill. App. LEXIS 500 (2 Dist. 2000).

LEGAL PERIODICALS

For comment, "The Chicago Public Schools and its violent students: How Can the Law Protect Teachers?", see 48 DePaul L. Rev. 907 (1999).

For article, "Survey of Illinois Law: Employment Law", see 22 S. Ill. U.L.J. 841 (1998).

Practice Guides and Treatises.

Land Use Law (Illinois) § 8.38 Action for Damages (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 3:34 Granting of permits or welfare.

§ 745 ILCS 10/2-105. [Failure to inspect adequately]

Sec. 2-105. A local public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than its own, to determine whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-105.

CASE NOTES

Analysis

Cause of Action
- Extent of Liability
Duty to Warn
Failure to Inspect
Immunity

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No Duty Shown
Willful and Wanton Conduct

Cause of Action

Property buyers' conspiracy to commit fraud claims against a town and its building commissioner, based on allegations that defendants conspired to conceal building code violations present in a property the buyers purchased, were not barred by the plain language of 745 ILCS 10/2-101 or by the plain language of 745 ILCS 10/2-103, 745 ILCS 10/2-105, 745 ILCS 10/2-205, 745 ILCS 10/2-206, and 745 ILCS 10/2-207. Those statutes did not affect the buyers right to obtain relief other than damages against the town and the commissioner. Alcala v. Totaro, F. Supp. 2d , 2005 U.S. Dist. LEXIS 33655 (N.D. Ill. Dec. 16, 2005).

- Extent of Liability

This section and 745 ILCS 10/2-207, which declare certain immunities for negligent municipal inspections or failure to inspect property not owned by the municipality, could not be coupled with 745 ILCS 10/9-103, which formally waived such immunity if public liability insurance was acquired, so as to create a new liability of municipalities in performing building inspections. Hannon v. Counihan, 54 Ill. App. 3d 509, 12 Ill. Dec. 210, 369 N.E.2d 917 (2 Dist. 1977).

The failure to enforce compliance with a municipal building ordinance by contractors who built a house for owners did not raise a duty on the part of municipal defendants, which could support a cause of action for damages against the municipality. Hannon v. Counihan, 54 Ill. App. 3d 509, 12 Ill. Dec. 210, 369 N.E.2d 917 (2 Dist. 1977).

Duty to Warn

The determination whether a condition is a hazard cannot be separated from the determination whether a condition is a hazard sufficient to justify a warning and negligence, both in discovering the hazard and giving warning, is subject to the immunity of this section of the Act. Rascher v. City of Champaign, 262 Ill. App. 3d 592, 199 Ill. Dec. 767, 634 N.E.2d 1121 (4 Dist. 1994).

The duty to warn stems from the duty to maintain the public roadways in a reasonably safe condition. Dinges v. Gabardi, 202 Ill. App. 3d 732, 147 Ill. Dec. 873, 560 N.E.2d 21 (2 Dist. 1990).

Immunity is not available to a governmental entity for the failure to warn of a condition which endangers the safe movement of traffic. Dinges v. Gabardi, 202 Ill. App. 3d 732, 147 Ill. Dec. 873, 560 N.E.2d 21 (2 Dist. 1990).

Failure to Inspect

Trial court properly granted summary judgment to the village on the private water company's contribution claim after the private water company and village were sued for damages the property owners incurred when the main sewer line clogged, causing sewer water to back up into their homes. The village was immune from liability because it could not be found liable for failing to pass legislation that might have prevented the occurrence, pursuant to the immunity recognized in 745 ILCS 10/2-103, and it could not be found liable for failing to conduct an inspection which might have disclosed the likelihood of a backup, pursuant to the immunity in 745 ILCS 10/2-105. Alexander v. Consumers Ill. Water Co., 358 Ill. App. 3d 774, 298 Ill. Dec. 70, 838 N.E.2d 963, 2005 Ill. App. LEXIS 685 (3 Dist. 2005).

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Immunity

City, pursuant to 745 ILCS 10/2-105 and 745 ILCS 10/2-207, had complete immunity from the injured woman's claims that the city was liable to the injured woman for the alleged willful and wanton conduct of its building inspectors that purportedly resulted in the injuries the injured woman sustained in a fall from a second-story staircase that had a missing handrail. The city under those provisions could not be held liable for negligent or inadequate inspections, and it could not be held liable for willful and wanton conduct because those statutory provisions made no exception for holding a municipality liable for such conduct. Hess v. Flores, 408 Ill. App. 3d 631, 350 Ill. Dec. 571, 948 N.E.2d 1078, 2011 Ill. App. LEXIS 301 (1 Dist. 2011).

City was immune from liability for failing to enforce a building code, issuing the construction permit, negligently inspecting and/or failing to inspect the property as 745 ILCS 10/2-202 could not be read in conjunction with 745 ILCS 10/2-104 to create an exception to the immunity 745 ILCS 10/2-104 provided for issuance of a permit; accordingly, the city was immune from liability pursuant to 745 ILCS 10/2-103,2-205, 2-104 and 2-105. Bowler v. City of Chicago, 376 Ill. App. 3d 208, 315 Ill. Dec. 140, 876 N.E.2d 140, 2007 Ill. App. LEXIS 977 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1786 (Ill. 2007).

No Duty Shown

There was no duty on the part of defendant to remove dumpster on his property so that vehicles approaching the intersection could see other intersecting motorists, bicyclists or pedestrians as the dumpster was not inherently dangerous as a falling tree or branch. Adame v. Munoz, 287 Ill. App. 3d 181, 222 Ill. Dec. 619, 678 N.E.2d 26 (1 Dist. 1997).

Willful and Wanton Conduct

Court properly dismissed the claimant's action against the village alleging willful and wanton conduct, claiming that the village, through its employees, failed to instruct the owner to trim his bushes further and failed to enforce its intersection visibility ordinance, because 745 ILCS 10/2-202 did not apply, when the village employees were not in the course of putting into effect any law at the time of the claimant's injury; the village employees were doing nothing to enforce the ordinance when the daughter's death occurred. Pouk v. Vill. of Romeoville, 405 Ill. App. 3d 194, 344 Ill. Dec. 777, 937 N.E.2d 800, 2010 Ill. App. LEXIS 1166 (3 Dist. 2010).

No basis existed for applying the willful and wanton conduct exception found in 745 ILCS 10/2-202 in conjunction with the immunities provided to a city by 745 ILCS 10/2-105,2-207, particularly in light of the fact that the former statute provided a general immunity while the latter statutes directly addressed the subjects at issue in an action against the city alleging willful and wanton conduct by city building inspectors with regard to their inspections of a porch that collapsed killing 13 people. Ware v. City of Chicago, 375 Ill. App. 3d 574, 314 Ill. Dec. 14, 873 N.E.2d 944, 2007 Ill. App. LEXIS 837 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1797 (Ill. 2007), appeal denied, 2007 Ill. LEXIS 1733 (Ill. 2007), appeal denied, 2007 Ill. LEXIS 1743 (Ill. 2007).

Trial court erred in ruling that the City of Chicago was not protected from claims of willful and wanton conduct by building inspectors under the immunities provided by 745 ILCS 10/2-103,2-105, 2-205 and 2-207; those statutes did not specifically except willful and wanton conduct, and thus, they provided the City with blanket immunity. Ware v. City of Chicago, 375 Ill. App. 3d 574, 314 Ill. Dec. 14, 873 N.E.2d 944, 2007 Ill. App. LEXIS 837 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1797 (Ill. 2007), appeal denied, 2007 Ill. LEXIS 1733 (Ill. 2007), appeal denied, 2007 Ill. LEXIS 1743 (Ill. 2007).

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LEGAL PERIODICALS

For article, "Local and State Government: 1985-86 Illinois Law Survey," see 18 Loy. U. Chi. L.J. 683 (1986-87).

RESEARCH REFERENCES

Municipal liability for negligent fire inspection and subsequent enforcement. 69 ALR4th 739.

Municipal liability for negligent performance of building inspector's duties. 24 ALR5th 200.

§ 745 ILCS 10/2-106. [Oral promise or misrepresentation]

Sec. 2-106. A local public entity is not liable for an injury caused by an oral promise or misrepresentation of its employee, whether or not such promise or misrepresentation is negligent or intentional.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-106.

CASE NOTES

Analysis

Corrupt or Malicious Motives Exception
Immunity from Liability
Willful And Wanton Conduct

Corrupt or Malicious Motives Exception

The Illinois Constitution prohibits the insertion of the common law "corrupt or malicious motives" exception into the immunities provided by the Local Governmental and Governmental Employees Tort Immunity Act. Village of Bloomingdale v. C.D.G. Enters., 196 Ill. 2d 484, 256 Ill. Dec. 848, 752 N.E.2d 1090, 2001 Ill. LEXIS 778 (2001).

Immunity from Liability

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Liability for detrimental reliance based on assurances made by village officials is precluded by the Illinois Tort Immunity Act. O'Malley v. Vill. of Palos Park, 346 Ill. App. 3d 567, 281 Ill. Dec. 940, 805 N.E.2d 308, 2004 Ill. App. LEXIS 147 (1 Dist. 2004).

Defendant village was not liable for any injury caused by an oral promise or misrepresentation of its employee, whether or not such promise or misrepresentation was negligent or intentional. Kuch & Watson, Inc. v. Woodman, 29 Ill. App. 3d 638, 331 N.E.2d 350 (2 Dist. 1975).

Willful And Wanton Conduct

Court properly dismissed the claimant's action against the village alleging willful and wanton conduct, claiming that the village, through its employees, failed to instruct the owner to trim his bushes further and failed to enforce its intersection visibility ordinance, because 745 ILCS 10/2-202 did not apply, when the village employees were not in the course of putting into effect any law at the time of the claimant's injury; the village employees were doing nothing to enforce the ordinance when the daughter's death occurred. Pouk v. Vill. of Romeoville, 405 Ill. App. 3d 194, 344 Ill. Dec. 777, 937 N.E.2d 800, 2010 Ill. App. LEXIS 1166 (3 Dist. 2010).

LEGAL PERIODICALS

For article, Feldmeier, "Armstead and its Progeny: the Illinois Supreme Court's 'Vested Rights' Approach to the Application of Statutory Amendments to Pre-existing Cases or Causes of Action," see 25 S. Ill. U. L. J. 95 (2000).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 3:36 Oral promises or misrepresentations; defamation and provision of information.

§ 745 ILCS 10/2-107. [Libel; slander; false information]

Sec. 2-107. A local public entity is not liable for injury caused by any action of its employees that is libelous or slanderous or for the provision of information either orally, in writing, by computer or any other electronic transmission, or in a book or other form of library material.

(Source: P.A. 84-1431; 89-100, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-107.

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Effect of Amendments. The 1995 amendment by P.A. 89-100, effective July 7, 1995, inserted "by computer or any other electronic transmission, or".

CASE NOTES

Analysis

Constitutionality
In General
Absolute Immunity
Applicability
- Slander
Jurisdiction
Village Immunity

Constitutionality

This section is not unconstitutional under the equal protection clauses of the United States or Illinois Constitution (U.S. Const., Amend XIV; Ill. Const. (1970), Art. I, § 2), or under the Illinois Constitution's prohibition against special legislation (Ill. Const. (1970), Art. IV, § 13). Gavery v. County of Lake, 160 Ill. App. 3d 761, 112 Ill. Dec. 518, 513 N.E.2d 1127 (2 Dist. 1987).

In General

There is no exception to the immunity provided by this section with respect to wanton or willful misconduct. Harris v. City of W. Chi., F. Supp. 2d , 2002 U.S. Dist. LEXIS 16579 (N.D. Ill. Aug. 30, 2002).

Absolute Immunity

In a defamation case brought by plaintiff against a school district and two individual defendants, the circuit court did not err in dismissing the complaint against the district. The plain language of 745 ILCS 10/2-107 unambiguously immunized the district from liability. Goldberg v. Brooks, 409 Ill. App. 3d 106, 350 Ill. Dec. 601, 948 N.E.2d 1108, 2011 Ill. App. LEXIS 363 (1 Dist. 2011).

Pursuant to the Illinois Local Government and Governmental Employees Tort Immunity Act, 745 ILCS 10/2-107, a city was entitled to absolute immunity from a defamation claim filed by a company and its owners. Chi. United Indus. v. City of Chicago, F. Supp. 2d , 2006 U.S. Dist. LEXIS 98640 (N.D. Ill. Dec. 20, 2006).

In an action in which plaintiffs, a company and individuals, filed suit against defendants, the City of Chicago, the City's Department of Procurement Services, its Department of Transportation (DOT), and the Director of Administration of DOT, alleging violations of due process, retaliation, and defamation, the defamation claims were dismissed; 745 ILCS 10/2-107 granted municipalities absolute immunity from suit for defamation, even for intentional misconduct. Chi. United Indus. v. City of Chicago, F. Supp. 2d , 2006 U.S. Dist. LEXIS 90032 (N.D. Ill. Dec. 7, 2006).

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Applicability

- Slander

This section and 745 ILCS 10/2-201, expressly barred plaintiff's action for slander against the Board of Education and its Director of Civil Service Personnel where the alleged statement was made by the Director within the scope of his employment. Meyers v. Board of Educ., 121 Ill. App. 2d 186, 257 N.E.2d 183 (1 Dist 1970).

Jurisdiction

Plaintiff's challenge to the constitutionality of this section was stricken by the appellate court since it was without jurisdiction to determine the matter, and there was no transfer to the Supreme Court because the constitutionality of these sections was not raised in the trial court and the argument was made for the first time on appeal. Meyers v. Board of Educ., 121 Ill. App. 2d 186, 257 N.E.2d 183 (1 Dist 1970).

Village Immunity

Towing company's defamation claim against a village failed. The company acknowledged that the village was a public entity under the Illinois Tort Immunity Act, and therefore, the village was afforded immunity from defamation suits under 745 ILCS 10/2-107. SMJ Towing, Inc. v. Vill. of Midlothian, F. Supp. 2d , 2005 U.S. Dist. LEXIS 33370 (N.D. Ill. Dec. 16, 2005).

Sheriff officer's defamation claim, pursuant to 42 U.S.C.S. § 1983, against a village and its police officers, based on statements the police officers allegedly made to a third party and the sheriff officer's employer, was dismissed as to the village because the village was statutorily immune from suit for defamation under 745 ILCS 10/2-207. Villagrana v. Village of Oswego, F. Supp. 2d , 2005 U.S. Dist. LEXIS 21355 (N.D. Ill. Sept. 22, 2005).

Village was immune from injury caused by any action of its employees that amounted to libel or slander. Union Pac. R.R. v. Village of S. Barrington, 958 F. Supp. 1285 (N.D. Ill. 1997).

OPINIONS OF ATTORNEY GENERAL

Analysis
In General
False Information

In General

The plain language of this section and 745 ILCS 10/2-210 grants the recorder and the county immunity from liability for negligence in providing information in writing, orally or by electronic transmission and this will extend to assisting individuals in looking up mortgage identification numbers and providing access to telephone or computer equipment in connection with the Mortgage Electronic Registration System. 1997 Op. Atty. Gen. (97-008).

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False Information

The county recorder and the county would ordinarily be immune from liability in connection with any cause of action resulting from their provision of access to Mortgage Electronic Registration System. 1997 Op. Atty. Gen. (97-008).

RESEARCH REFERENCES

Defamation: Privilege accorded state or local governmental administrative records relating to private individual member of public. 40 ALR4th 318.

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 35:76 Defamation.

Illinois Jurisprudence, Personal Injury and Torts § 35:53 Defamation.

Illinois Jurisprudence, Personal Injury and Torts § 11:38 Executive branch; public officials, generally.

Illinois Jurisprudence, Personal Injury and Torts § 3:36 Oral promises or misrepresentations; defamation and provision of information.

§ 745 ILCS 10/2-108. [Granting or failure to grant public welfare goods or monies]

Sec. 2-108. A local public entity is not liable for any injury caused by the granting, or failure to grant, public welfare goods or monies.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-108.

§ 745 ILCS 10/2-109. [Act or omission of employee]

Sec. 2-109. A local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable.

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(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-109.

CASE NOTES

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In General

Under Illinois law, only this Act provides municipalities and their employees immunity from suit. Clark v. City of Chicago, 595 F. Supp. 482 (N.D. Ill. 1984).

Affirmative Defense

- In General

A municipality is able to assert immunities permitted under this section and 745 ILCS 10/2-201 and 745 ILCS 10/2-202 in an action brought under the Joint Tortfeasor Contribution Act (740 ILCS 100/0.01 et seq.). Lietsch v. Allen, 173 Ill. App. 3d 516, 123 Ill. Dec. 340, 527 N.E.2d 978 (3 Dist. 1988).

Although it is not one of the defenses listed in 735 ILCS 5/2-613, statutory governmental immunity under this section and 745 ILCS 10/2-202, has been recognized as a valid affirmative defense in cases alleging negligence by public employees. Fitzpatrick v. City of Chicago, 131 Ill. App. 3d 582, 86 Ill. Dec. 616, 475 N.E.2d 995 (1 Dist. 1985), rev'd on other grounds, 112 Ill. 2d 211, 97 Ill. Dec. 419, 492 N.E.2d 1292 (1986).

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Applicability

Pursuant to 745 ILCS 10/2-109, the city could not be liable to the injured parties whose vehicle, stopped at an intersection, was struck by the police car stolen by the detainee once the trial court granted a directed verdict to the officer whose vehicle was stolen. Under that statute, the city could not be held liable where its employee was not liable, as the liability of the city depended upon the employee's liability. Ries v. City of Chicago, 396 Ill. App. 3d 418, 335 Ill. Dec. 746, 919 N.E.2d 465, 2009 Ill. App. LEXIS 1177 (1 Dist. 2009).

Trial court erred by dismissing a dog bit victim's complaint against a city because 745 ILCS 10/2-109 did not grant the city immunity for the victim's claim under 510 ILCS 5/16 as the victim contended that the mere ownership of a police dog was the basis for the city's liability; rather, than the conduct of the police officer who handled the dog. Wilson v. City of Decatur, 389 Ill. App. 3d 555, 329 Ill. Dec. 597, 906 N.E.2d 795, 2009 Ill. App. LEXIS 249 (4 Dist. 2009), appeal denied, 233 Ill. 2d 602, 335 Ill. Dec. 647, 919 N.E.2d 366, 2009 Ill. LEXIS 1654 (2009).

In a police officer's action alleging discrimination under 42 U.S.C. § 1981 and a breach of contract involving the decision of a city, the police department, an examining board, and the police chief not to promote a police officer to the rank of sergeant, the decision not to promote the officer was not protected by the absolute immunity accorded under 745 ILCS 10/2-109 and 745 ILCS 10/2-201. 745 ILCS 10/2-101(a) provides that Illinois statutory immunity does not apply to contracts; it does not apply to constitutional violations either. Drikos v. City of Palos Heights, F. Supp. 2d , 2003 U.S. Dist. LEXIS 21764 (N.D. Ill. Dec. 2, 2003).

This section is not limited to cases of vicarious liability on the part of city for acts of its employees, based on the doctrine of respondeat superior. Melbourne Corp. v. City of Chicago, 76 Ill. App. 3d 595, 31 Ill. Dec. 914, 394 N.E.2d 1291 (1 Dist. 1979).

Cause of Action

- Municipal Employer

City employer was not liable, pursuant to 745 ILCS 10/2-109, in a former arrestee's action asserting claims of false arrest, assault and battery, and malicious prosecution against city police officers, where the officers had not been found liable for those same claims asserted against them. Askew v. City of Chicago, F. Supp. 2d , 2005 U.S. Dist. LEXIS 8276 (N.D. Ill. Apr. 6, 2005), aff'd, 440 F.3d 894 (7th Cir. 2006).

Municipal community college's Fed. R. Civ. P. 12(b)(6) motion to dismiss a former program manager's claims of retaliatory discharge and intentional infliction of emotional distress was denied where the college was not immune from the state law claims under Illinois' Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., because allegations of wilful and wanton conduct by two employees of the college were sufficient to state a cause of action against the college. Carpanzano v. College of Dupage, F. Supp. 2d , 2003 U.S. Dist. LEXIS 22004 (N.D. Ill. Dec. 5, 2003).

Allegations of wilful and wanton conduct by a public employee are sufficient to state a cause of action against a municipal employer. Glover v. City of Chicago, 106 Ill. App. 3d 1066, 62 Ill. Dec. 597, 436 N.E.2d 623 (1 Dist. 1982).

Construction

Since the Immunity Act was enacted in derogation of the common law, it must be construed strictly. Snyder v. Curran Tp., 167 Ill. 2d 466, 212 Ill. Dec. 643, 657 N.E.2d 988 (1995).

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745 ILCS 10/10-101 specifically repealed a number of statutes, but not 65 ILCS 5/1-4-6, providing for indemnification of police officers for injuries to persons or property caused by officers while engaged in performances of their duties; therefore, this section did not bar recovery by a plaintiff injured in an automobile accident while acting under the direction of a police officer to whom plaintiff was lending assistance in apprehending a criminal suspect. Meador v. City of Salem, 51 Ill. 2d 572, 284 N.E.2d 266 (1972).

Conversion

Although evidence of negligent conduct will not support an action for conversion, it may be proven without evidence of wilful and wanton conduct as defined in this Act; as a result, the city would be immune from liability if the police officers' conduct in seizing what they mistakenly believed were illegal fireworks was not wilful and wanton. Martel Enters. v. City of Chicago, 164 Ill. Dec. 945, 584 N.E.2d 157 (1 Dist. 1991).

Discretionary Act

City was not entitled to a summary judgment under 745 ILCS 10/2-201 as there were material issues of fact concerning whether the city timely hooked up a bypass pump to the lift station and whether the city's acts or omissions in hooking up the bypass pump resulted in a backup of sewage into the property owners' basement. The city had a duty not to discharge sewage from its sewer system on to private property and the acts or omissions that might have occurred during the process of hooking up the bypass pump were ministerial, not discretionary. Trtanj ex rel. State Farm Fire & Cas. Co. v. City of Granite City, 379 Ill. App. 3d 795, 318 Ill. Dec. 773, 884 N.E.2d 741, 2008 Ill. App. LEXIS 223 (1 Dist. 2008).

City's supervision of pile driving constituted a discretionary activity that immunized the city from liability. In re Chicago Flood Litig., 176 Ill. 2d 179, 223 Ill. Dec. 532, 680 N.E.2d 265 (1997).

- In General

For village to avail itself of immunities afforded by this Act, village's acts must have been discretionary and not ministerial. Johnson v. Mers, 279 Ill. App. 3d 372, 216 Ill. Dec. 31, 664 N.E.2d 668 (2 Dist. 1996).

- Airports

In an action arising from an airplane crash at a municipal airport, the municipal defendants were not entitled to summary judgment on the basis of immunity as there was a material question of fact as to whether they failed to maintain the runway safety area in a reasonably safe condition, notwithstanding the municipal defendants' contention that they acted in a discretionary manner in maintaining the runway safety area. Anderson v. Alberto-Culver USA, Inc., 317 Ill. App. 3d 1104, 251 Ill. Dec. 533, 740 N.E.2d 819, 2000 Ill. App. LEXIS 948 (1 Dist. 2000).

- Compared to Ministerial

The distinction between discretionary and ministerial acts resists precise formulation and the determination of whether acts are discretionary or ministerial must be made on a case by case basis. Johnson v. Mers, 279 Ill. App. 3d 372, 216 Ill. Dec. 31, 664 N.E.2d 668 (2 Dist. 1996).

- Golf Course Design

The trial court properly found that defendant's actions in constructing a standing area at a golf course were discretionary; decisions about whether to provide fencing and warnings and how to design or construct the golf course were not prescribed but instead were left to the discretion and judgment of defendant's employees. Koltes v. St. Charles Park Dist., 293 Ill. App. 3d 171, 227

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Ill. Dec. 293, 687 N.E.2d 543 (2 Dist. 1997), appeal denied, 177 Ill. 2d 571, 232 Ill. Dec. 453, 698 N.E.2d 544 (1998).

- Hiring of Police Officer

Where village devised a hiring plan which included an application process, a polygraph examination, psychological testing, physical testing and interviews, village's decision to hire police officer was not a ministerial decision; the village's decision to hire a police officer ultimately required the exercise of discretion, and therefore was subject to the immunities contained in this Act. Johnson v. Mers, 279 Ill. App. 3d 372, 216 Ill. Dec. 31, 664 N.E.2d 668 (2 Dist. 1996).

- Not Shown

When plaintiff, thirteen-year-old Canadian citizen, filed suit after suffering injuries when she was instructed to dive into a pool while attending a swimming program at a high school, defendants, the school and its employees, were not protected by Section 2-201 of the Illinois Tort Immunity Act, 745 ILCS 10/2-201. Because there was no evidence that the decision to instruct plaintiff to dive into a pool required the balancing of competing interests, it was improbable that defendants were required to engage in policy calculations; therefore, the discretionary immunity doctrine did not apply under 745 ILCS 10/2-109. Karalyos v. Bd. of Educ., 788 F. Supp. 2d 727, 2011 U.S. Dist. LEXIS 23871 (N.D. Ill. 2011).

- Shown

Trial court properly awarded summary judgment to a city and its mayor on a towing company's claim that the mayor committed tortious interference with a contract when she persuaded one of its customers to cancel its contract and to obtain towing services from another company because the mayor's actions, even if true, were protected by 745 ILCS 10/2-201. Kevin's Towing, Inc. v. Thomas, 351 Ill. App. 3d 540, 286 Ill. Dec. 777, 814 N.E.2d 1003, 2004 Ill. App. LEXIS 973 (2 Dist. 2004), appeal denied, 212 Ill. 2d 533, 291 Ill. Dec. 708, 824 N.E.2d 284 (2004).

Removal of particular rise in the road was a discretionary matter with the road commissioner and the trial court was correct in holding that there was immunity from liability under this section and 745 ILCS 10/2-201. Kennell v. Clayton Tp., 239 Ill. App. 3d 634, 179 Ill. Dec. 980, 606 N.E.2d 812 (4 Dist. 1992).

Discretionary Activity

Public entity's argument that 745 ILCS 10/2-201 of the Tort Immunity Act immunized a supervisor and that the entity was correspondingly immune pursuant to 745 ILCS 10/2-109 of the Act failed because it incorrectly viewed the employee as the pertinent actor when it was the employer who acted within the meaning of 745 ILCS 10/2-109 in a retaliatory discharge. Smith v. Waukegan Park Dist., 231 Ill. 2d 111, 324 Ill. Dec. 446, 896 N.E.2d 232, 2008 Ill. LEXIS 1411 (2008).

Elements

Claim of tortious interference against airport Authority failed where complaint did not allege business relationships with specific third parties, but rather "continuous negotiations" or negative actions by the Authority toward a third party. Du Page Aviation Corp. v. Du Page Airport Auth., 229 Ill. App. 3d 793, 171 Ill. Dec. 814, 594 N.E.2d 1334, 1992 Ill. App. LEXIS 887 (1 Dist. 1992).

The elements of a cause of action for wilful and wanton negligence are a duty to the injured party, and a breach of that duty which is a proximate cause of the injury. Breck v. Cortez, 141 Ill. App. 3d 351, 95 Ill. Dec. 615, 490 N.E.2d 88 (2 Dist. 1986).

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Employees Not Liable

Pursuant to 745 ILCS 10/2-109, a city could not be held liable under a respondeat superior theory based on police officers' arrests of protestors during a march, as the officers were not liable for alleged First and Fourth Amendment violations and tort claims. Vodak v. City of Chicago, 624 F. Supp. 2d 933, 2009 U.S. Dist. LEXIS 15396 (N.D. Ill. 2009).

City could not be held liable to an employee for indemnification under 745 ILCS 10/9-102 based on the alleged actions of two city officials, as neither official retaliated against the employee under 42 U.S.C. § 1983 and the First Amendment; because the officials were not liable, the city could not be held liable pursuant to 745 ILCS 10/2-109. Sebastian v. City of Chicago, F. Supp. 2d , 2008 U.S. Dist. LEXIS 60570 (N.D. Ill. July 24, 2008).

Summary judgment in favor of a city on a wilful and wanton conduct claim arising out of an accident that occurred at the end of a police pursuit was appropriate as no genuine issue of material fact existed that the actions of the officers involved in the accident were wilful and wanton; initiating the pursuit, alone, was not wilful and wanton conduct, nor was the officers' failure to activate the police car's overhead lights or to notify their superiors of the 30 to 40 second pursuit. Further, the evidence established that the weather was clear, traffic was light, and the roads were dry. Shuttlesworth v. City of Chicago, 377 Ill. App. 3d 360, 316 Ill. Dec. 581, 879 N.E.2d 969, 2007 Ill. App. LEXIS 1160 (1 Dist. 2007).

In an action by parents, individually and on behalf of their son, alleging that a school principal revealed information about a bullying incident in violation of the Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/1 et seq., the trial court properly granted the motion to dismiss, under 735 ILCS 5/2-619, of the principal and the school board because the principal was immune under 745 ILCS 10/2-201 and the school board was immune under 745 ILCS 10/2-109 where (1) the school principal was dealing with a disciplinary matter that required him to balance several competing interests and make a judgment as to what balance to strike among them; and (2) the way that the principal handled instances of bullying in his school fell within the definition of a "discretionary" act under 745 ILCS 10/2-101. Albers v. Breen, 346 Ill. App. 3d 799, 282 Ill. Dec. 370, 806 N.E.2d 667, 2004 Ill. App. LEXIS 362 (4 Dist. 2004), appeal denied, 211 Ill. 2d 569, Ill. Dec. , 823 N.E.2d 962 (2004).

- Dismissal Upheld

Police officers' immunity to a citizen's claim of false imprisonment rendered the citizen's identical claim against the city moot because it was premised on the officers' liability under 745 ILCS 10/2-109. Ross v. Mauro Chevrolet, 369 Ill. App. 3d 794, 308 Ill. Dec. 248, 861 N.E.2d 313, 2006 Ill. App. LEXIS 1225 (1 Dist. 2006).

Since individual counterdefendants, who were allegedly acting as employees of city defendant, could not be held liable under the allegations of the counterclaim, the city also could not have been held liable; therefore, the counterclaim was properly dismissed as to all counterdefendants. Madonna v. Giacobbe, 190 Ill. App. 3d 859, 138 Ill. Dec. 90, 546 N.E.2d 1145 (2 Dist. 1989).

- Not Named as Parties

Fact that individual paramedic employees were not named as party defendants, did not relieve city of liability if the wilful and wanton acts alleged in plaintiffs' complaint were in fact committed by those employees; it is sufficient for recovery against a public entity to prove that an identified employee would be liable even though that employee is not named a defendant in the action. McCottrell v. City of Chicago, 135 Ill. App. 3d 517, 90 Ill. Dec. 258, 481 N.E.2d 1058 (1 Dist. 1985).

- Summary Judgment Granted

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A county was immune from the plaintiff's state tort claims where there was no evidence that any county employee committed any tortious act. Egebergh v. Sheahan, F. Supp. 2d , 2001 U.S. Dist. LEXIS 161 (N.D. Ill. Jan. 3, 2001), aff'd sub nom. Egebergh v. Nicholson, 272 F.3d 925 (7th Cir. 2001).

- Summary Judgment Granted

Plaintiffs' battery claim under 720 ILCS 5/12-3 against a police officer and the chief of police failed because neither the officer nor the chief made physical contact with plaintiff husband, and further, the officer and the chief were immune from suit under 745 ILCS 10/2-202 because their conduct did not rise to the level of willful and wanton conduct under 745 ILCS 10/1-210; because neither the officer nor the chief were liable, neither was the village under 745 ILCS 10/2-109. Backes v. Village of Peoria Heights, F. Supp. 2d , 2010 U.S. Dist. LEXIS 114867 (C.D. Ill. Oct. 28, 2010), aff'd, 662 F.3d 866, 2011 U.S. App. LEXIS 22652 (7th Cir. Ill. 2011).

Employer-Employee Liability

Employer's contention had to be rejected that it could not be held liable because one of its supervisory employees made a decision to terminate the employee, and since that employee could not be held liable, the employer also could not be liable pursuant to 745 ILCS 10/2-109 on the employee's complaint for retaliatory discharge based on the employee's filing of a workers' compensation claim. The tort of retaliatory discharge could only be committed by the employer and, thus, 745 ILCS 10/2-109 immunity did not apply in cases of retaliatory discharge because the employer, not the employee, ultimately caused the injury. Smith v. Waukegan Park Dist., Ill. 2d , Ill. Dec. , N.E.2d , 2008 Ill. LEXIS 312 (Apr. 17, 2008).

Appellate court properly affirmed the trial court's summary judgment grant to the board of education, agency, and agency employee, although on different grounds than the trial court set forth for granting summary judgment in a case where the injured child and his mother sued them for injuries he sustained when he landed awkwardly after doing a front flip off of a mini-trampoline at a school; while the trial court found that they were immune pursuant to 745 ILCS 10/2-201 and 745 ILCS 10/3-108(a), 745 ILCS 10/3-109 determined the scope of their immunity because the injured child was involved in a hazardous recreational activity at the time he was injured and that statutory section did not provide them with immunity from willful and wanton misconduct, but the injured child and his mother's second amended complaint did not alleged facts showing that they had engaged in willful and wanton misconduct. Murray v. Chi. Youth Ctr., Ill. 2d , Ill. Dec. , N.E.2d , 2006 Ill. LEXIS 1104 (July 5, 2006).

Where a paramedic sued the City of Chicago and a physician after being terminated due to a positive drug test, the district court declined to grant the physician immunity under 745 ILCS 10/2-109 because it was possible that, as a medical doctor and Medical Review Officer for the Chicago Fire Department, the physician was performing a function that was both discretionary and a policy determination; however, the City of Chicago was immune. Hughes v. City of Chicago, F. Supp. 2d , 2003 U.S. Dist. LEXIS 11261 (N.D. Ill. July 1, 2003).

A highway commissioner's decision to place an S-curve warning sign was an exercise of his official discretion, as it required personal judgment; therefore, the commissioner was immune from liability under this Act, and because the commissioner was not liable, township that employed him was not liable. Greeson v. Mackinaw Tp., 207 Ill. App. 3d 193, 152 Ill. Dec. 162, 565 N.E.2d 695 (3 Dist. 1990), cert. denied, 139 Ill. 2d 595, 159 Ill. Dec. 107, 575 N.E.2d 914 (1991).

In a case alleging negligence of municipal employees, because the employee was not liable to plaintiff, the municipality was also protected from liability. Greeson v. Mackinaw Tp., 207 Ill. App. 3d 193, 152 Ill. Dec. 162, 565 N.E.2d 695 (3 Dist. 1990), cert. denied, 139 Ill. 2d 595, 159 Ill. Dec. 107, 575 N.E.2d 914 (1991).

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Enforcement of Any Law

- Illustrative Cases

Where evidence established that at the time of his alleged negligence, a public employee was engaged in a course of conduct designed to carry out or put into effect any law, an affirmative defense based upon this section and 745 ILCS 10/2-202 should be available to the governmental employee and his employer. Fitzpatrick v. City of Chicago, 112 Ill. 2d 211, 97 Ill. Dec. 419, 492 N.E.2d 1292 (1986).

Where a police officer observed two cars parked on median of expressway and saw people walking on the shoulder waving their arms at him, and he activated the emergency lights on his squad car, including his mars lights, drove across the median, parked his squad car and was investigating the damage to an auto when plaintiff collided with his squad car, the officer was in the process of executing or enforcing the applicable traffic laws. Fitzpatrick v. City of Chicago, 112 Ill. 2d 211, 97 Ill. Dec. 419, 492 N.E.2d 1292 (1986).

Evidence

Railroad was not entitled to a new trial based on the trial court's alleged error in allowing the executrix to present evidence and argue that the railroad was negligent for having failed to install and activate pedestrian signals prior to the decedent's accident under 745 ILCS 10/3-104 and 745 ILCS 10/2-109 because the jury could have separated the claims and demonstrated its ability to do so by specifically finding that the engineer had failed to sound the train's horn in a timely manner in addition to finding more generally that the railroad did not provide adequate warning of the train's approach. McDonald v. Northeast Ill. Reg'l Commuter R.R. Corp., Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 910 (1 Dist. Aug. 24, 2011).

The question of wilful and wanton misconduct may be determined by a court on a motion for a directed verdict if evidence when viewed in its aspect most favorable to opponent, so overwhelmingly favors movant that no contrary determination could ever stand. Breck v. Cortez, 141 Ill. App. 3d 351, 95 Ill. Dec. 615, 490 N.E.2d 88 (2 Dist. 1986).

Execution or Enforcement of Any Law

- Illustrative Cases

Court dismissed plaintiffs' claims regarding a wrongful arrest and negligence in failing to provide medical care to a prisoner because under 745 ILCS 10/2-202 police officers were not liable for the arrest when the officers were enforcing the law, and because the officers were not liable, the city was not liable under 745 ILCS 10/2-109. Claims alleging negligence for failure to provide medical treatment were dismissed because 745 ILCS 10/4-105 provided that the officers and the city were not liable for an injury proximately caused by the failure of the officers to furnish or obtain medical care for the arrestee. Montegomery v. City of Collinsville Police Dep't, F. Supp. 2d , 2006 U.S. Dist. LEXIS 49058 (S.D. Ill. July 18, 2006).

Where defendant/police officer testified that he was merely cruising when he observed several individuals standing outside and in the hallway of the apartment building and suspected a drug deal, he was not engaged in the execution or enforcement of a law while he was routinely cruising the neighborhood. Leaks v. City of Chicago, 238 Ill. App. 3d 12, 179 Ill. Dec. 324, 606 N.E.2d 156 (1 Dist. 1992).

Exemption

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Because 105 ILCS 5/22-15, granting to the Board of Education power to provide medical and hospital service through insurance, to its students, participating in athletic contests, it is within the discretion of the Board of Education, whether or not to provide such insurance, and therefore the Board's failure to provide adequate insurance protection for plaintiff-student who sustained injuries in a football game would subject it to tort liability under this Act. Friederich v. Board of Educ., 59 Ill. App. 3d 79, 16 Ill. Dec. 510, 375 N.E.2d 141 (2 Dist. 1978).

Immunity

Where a county corrections officer alleged that she was fired in retaliation for her refusal to commit perjury before a grand jury, the city defendants in the case were dismissed because there was no allegation that a city employee intentionally interfered with the corrections officer's employment. Because the only city employee named in the suit was dismissed, the city could not be held liable based on his actions under a theory of respondeat superior, 745 ILCS 10/2-109. Redd v. Dougherty, 578 F. Supp. 2d 1042, 2008 U.S. Dist. LEXIS 76807 (N.D. Ill. 2008), aff'd, 663 F.3d 287, 2011 U.S. App. LEXIS 23692 (7th Cir. Ill. 2011).

Former inmate filed a Federal Tort Claims Act suit based on an alleged assault and battery by a corrections officer; the district court entered judgment for the United States after a bench trial. As plaintiff testified he could not say if the incident was an accident, and had previously signed an affidavit that exculpated the officer, he failed to prove assault and battery, much less willful and wanton misconduct under 745 ILCS 10/2-202,10/2-109. Mitchell v. United States, F. Supp. 2d , 2005 U.S. Dist. LEXIS 25719 (N.D. Ill. Oct. 26, 2005).

In an action by a former pretrial detainee against city police officers, a city police department, and a city, the department and city were entitled to immunity from the detainee's respondeat superior claims under 745 ILCS 10/2-109 as a matter of law because the officers it employed were not found liable for violating the detainee's rights. Crane v. Juster, F. Supp. 2d , 2005 U.S. Dist. LEXIS 22337 (N.D. Ill. Oct. 4, 2005).

Inflatable slide manufacturer could not maintain a contribution action against a park district and its camp volunteer in a personal injury action filed by an employee of the park district who was injured due to an alleged defect in the slide. The park district was immune from the manufacturer's claims of failure to supervise under 745 ILCS 10/3-108, from claims of negligence regarding the condition of the slide under 745 ILCS 10/3-106, and from vicarious liability for the volunteer's involvement in the employee's injury under 45 ILCS 10/2-109. The volunteer was protected under the Workers' Compensation Act, 820 ILCS 305/5(a). Flores v. Palmer Mktg., 361 Ill. App. 3d 172, 297 Ill. Dec. 61, 836 N.E.2d 792, 2005 Ill. App. LEXIS 939 (1 Dist. 2005).

- Employer

Two municipalities and an airport commission were not shielded from liability by 745 ILCS 10/2-109 and 745 ILCS 10/2-201 in a wrongful death and survival action following the crash of a private jet aircraft that veered from the center of a runway during takeoff, left the runway, and crashed after striking a drainage ditch in a runway safety area alongside the runway. Alwin v. Vill. of Wheeling, 371 Ill. App. 3d 898, 309 Ill. Dec. 656, 864 N.E.2d 897, 2007 Ill. App. LEXIS 225 (1 Dist. 2007).

Injured youth and his mother's second-amended complaint stated sufficient facts to show that their claim based on serious injuries that the injured youth sustained in a mini-trampoline accident fell within the willful and wanton exception to the immunity that would otherwise be afforded to the city board of education, city youth center, and city youth center employee pursuant to 745 ILCS 10/2-201 and 745 ILCS 10/3-108(a), and the provision exempting a local public entity from liability where the employee was not liable under 745 ILCS 10/2-109; indeed, the city board of education, city youth center, and city youth center employee's conduct as alleged in the second amended complaint could be found to meet the exceptions to immunity provisions set forth in 745 ILCS

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10/3-109 based on the definition of willful and wanton conduct contained in 745 ILCS 10/1-210. Murray v. Chi. Youth Ctr., 224 Ill. 2d 213, 309 Ill. Dec. 310, 864 N.E.2d 176, 2007 Ill. LEXIS 438 (2007).

Any immunity available to a municipal employee under this Act is available to the municipality as well. Clark v. City of Chicago, 595 F. Supp. 482 (N.D. Ill. 1984).

A local public entity is not liable for an injury resulting from an act or omission of an employee where the employee is not liable. LaMonte v. City of Belleville, 41 Ill. App. 3d 697, 355 N.E.2d 70 (5 Dist. 1976).

If the employee is immune, so is his employer. Thiele v. Kennedy, 18 Ill. App. 3d 465, 309 N.E.2d 394 (3 Dist. 1974).

- Tortious Acts by Employees

Town and its police officers were immune from negligence liability under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., following failure to rescue the victims of a residential fire, where: (1) neither the town nor its police officers at the scene could be held liable for failure to attempt a rescue, and (2) even if the police officers' acts were found to be willful and wanton, immunity still applied under 745 ILCS 10/2-201 because the officers had to make a policy decision in balancing the competing interests of their own safety and their chances of success with the interests of the victims and survivors. Fender v. Town of Cicero, 347 Ill. App. 3d 46, 283 Ill. Dec. 1, 807 N.E.2d 606, 2004 Ill. App. LEXIS 242 (1 Dist. 2004).

Under this Act, a municipal corporation is immune from liability for tortious acts of its employees committed in the execution or enforcement of any law unless the acts constitute wilful and wanton misconduct. LaMonte v. City of Belleville, 41 Ill. App. 3d 697, 355 N.E.2d 70 (5 Dist. 1976); Mattila v. City of Belleville, 184 Ill. App. 3d 49, 132 Ill. Dec. 485, 539 N.E.2d 1291 (5 Dist. 1989).

- Type of Act

Evidence overwhelmingly showed that police officer was not driving recklessly in pursuit of fleeing vehicle, and, in fact, the evidence showed that the officer was driving safely while stuck in traffic and was keeping a safe distance from the fleeing vehicle when the fleeing vehicle recklessly drove on the sidewalk and struck the pedestrian. Since the officer was not driving recklessly in pursuit, the officer was not liable for the fleeing vehicle's reckless driving. The pedestrian simply failed to show willful and wanton conduct as defined under the Local Governmental and Governmental Employees Tort Immunity Act at 745 ILCS 10/1-210, so the officer was entitled to immunity under 745 ILCS 10/2-202, which freed the city from liability under 745 ILCS 10/2-109. Wade v. City of Chicago, 364 Ill. App. 3d 773, 301 Ill. Dec. 621, 847 N.E.2d 631, 2006 Ill. App. LEXIS 201 (1 Dist. 2006).

Public employees are extended immunity from liability for discretionary acts, those requiring personal deliberation, decision, and judgment, but are not immune from negligent performance of ministerial acts, those amounting to an obedience of orders or the performance of a task in which the employee has no choice of his own. Bonnell v. Regional Bd. of Sch. Trustees, 258 Ill. App. 3d 485, 196 Ill. Dec. 612, 630 N.E.2d 547 (5 Dist. 1994).

Inherently Dangerous or Ultrahazardous Activities

- Municipal Liability

A municipal entity can be held liable for injury resultant from inherently dangerous or ultrahazardous activity whether performed by an employee or independent contractor; therefore,

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city was liable for injuries resulting from demolition of a five-story building. Clark v. City of Chicago, 88 Ill. App. 3d 760, 43 Ill. Dec. 892, 410 N.E.2d 1025 (1 Dist. 1980).

Liability

Plaintiffs' indemnification claims against an Illinois city were dismissed pursuant to 745 ILCS 10/2-109 to the extent that plaintiffs' underlying state law tort claims were dismissed because the city's indemnification duty did not come into play unless one of its employees was held liable for torts committed within the scope of his or her public employment. While plaintiffs asserted actionable state law false imprisonment claims against seven city police detectives, which claims might give rise to an indemnification duty on the part of the city, the city was not required to provide indemnification with regard to plaintiffs' intentional infliction of emotional distress (IIED) claims against two police officers because plaintiffs' factual allegations were insufficient to support their IIED claims. Warfield v. City of Chicago, 565 F. Supp. 2d 948, 2008 U.S. Dist. LEXIS 54629 (N.D. Ill. 2008).

- Injuries

A municipality cannot be liable for injuries caused by its employee absent a finding that the employee is liable. Vines v. City of Chicago, 110 Ill. App. 3d 1060, 66 Ill. Dec. 726, 443 N.E.2d 652 (1 Dist. 1982).

- Monetary Settlement

Even though the Tort Immunity Act did not impute the liability of police officers to the cities employing them, the Act did require the cities to satisfy any monetary settlement or judgment entered against their officers. Saffold v. City of Calumet Park, 47 F. Supp. 2d 927 (N.D. Ill. 1999).

- Not Precluded

Liability for damages incurred when plaintiff's automobile was struck by a squad car driven by a police officer was not precluded by this section and 745 ILCS 10/2-202. Aikens v. Morris, 201 Ill. App. 3d 404, 147 Ill. Dec. 63, 559 N.E.2d 63 (1 Dist. 1990), aff'd, 145 Ill. 2d 273, 164 Ill. Dec. 571, 583 N.E. 487 (1991).

- Police Officer

Plaintiff arrestee's state law claims for respondeat superior liability and indemnification against defendant village and police officers were not barred by 745 ILCS 10/2-109, and the court denied defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(6) on this ground, since the court had not dismissed the arrestee's claims against the officers. Trejo v. Village of Itasca, F. Supp. 2d , 2003 U.S. Dist. LEXIS 22232 (N.D. Ill. Dec. 9, 2003).

Immunity attached where officer was responding to a call of shots fired, as he clearly was being called upon to execute or enforce a law, and the facts that he was not specifically dispatched to the scene, did not have his emergency lights and siren activated, and did not subjectively consider the situation to be an emergency did not alter that conclusion. Bruecks ex rel. Bruecks v. County of Lake, 276 Ill. App. 3d 567, 213 Ill. Dec. 68, 658 N.E.2d 538 (2 Dist. 1995).

Where officer, pursuing driver whose muffler was dangling and causing sparks, flashed his red light, and where neither his decision to chase her nor the manner in which he did so could be said to approach the infliction of deliberate harm nor did they indicate a reckless indifference to the rights of the decedent, there was no showing that officer was guilty of any wilful and wanton misconduct which was a proximate cause of the decedent's death, and thus officer and village employing him had immunity from liability. Sank v. Poole, 231 Ill. App. 3d 780, 173 Ill. Dec. 319, 596 N.E.2d 1198 (4 Dist. 1992).

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Where officer while responding to a call that a burglary may be in progress, had his emergency warning lights activated and was using his siren intermittently, and where he did notice plaintiff's vehicle proceeding into the intersection and did try to avoid the collision, his actions did not rise to the level of wanton and wilful misconduct. Bosen v. City of Collinsville, 166 Ill. App. 3d 848, 117 Ill. Dec. 287, 520 N.E.2d 638 (5 Dist. 1987).

Police officers owe the general public a duty to refrain from wilful and wanton misconduct in the pursuit of suspected law violators. Breck v. Cortez, 141 Ill. App. 3d 351, 95 Ill. Dec. 615, 490 N.E.2d 88 (2 Dist. 1986).

- Prosecutor

Plaintiff's claim against county could not properly be based on prosecutor's actions insomuch as prosecutors enjoy immunity for judicially-related acts and as this section prohibits imposing liability on a local public entity for its employee's torts when the employee is not liable. Weimann v. County of Kane, 150 Ill. App. 3d 962, 104 Ill. Dec. 110, 502 N.E.2d 373 (2 Dist. 1986).

- Public entity

Where an inter-departmental emergency response team (CIERT) removed a husband from a car, the battery claim failed because any harm suffered by the husband could not be attributable to the police chief since the police chief did not take part in the CIERT operation. Because the police chief was not liable, the village was also free from liability for battery. Backes v. Vill. of Peoria Heights, 662 F.3d 866, 2011 U.S. App. LEXIS 22652 (7th Cir. 2011).

- School Districts

The selection and modification of specific athletic equipment involve a degree of discretion and district court erred in ruling this Act did not immunize school district for alleged negligence in furnishing and modifying of football helmet. McGurk v. Lincolnway Community Sch. Dist. # 210, 287 Ill. App. 3d 1059, 223 Ill. Dec. 127, 679 N.E.2d 71 (3 Dist. 1997), appeal denied, 173 Ill. 2d 527, 226 Ill. Dec. 133, 684 N.E.2d 1336 (1997).

This Act immunizes high school districts from alleged acts of negligence pertaining to the providing of athletic equipment to students. McGurk v. Lincolnway Community Sch. Dist. # 210, 287 Ill. App. 3d 1059, 223 Ill. Dec. 127, 679 N.E.2d 71 (3 Dist. 1997), appeal denied, 173 Ill. 2d 527, 226 Ill. Dec. 133, 684 N.E.2d 1336 (1997).

- Scope

City was not entitled to discretionary immunity where the injured party, a city resident, sued the city after the injured party tripped and fell in a small depression in an alley, which was the city's property. The city's decisions about making repairs to its property, after it had already decided to conduct those repairs, was a ministerial matter, and since the city's employees were not immune under 745 ILCS 10/2-201 because no such repairs had been made to the alley at issue, the city could not use 745 ILCS 10/2-109 to shelter itself from liability based on a claim that its employees were immune. Gutstein v. City of Evanston, 402 Ill. App. 3d 610, 341 Ill. Dec. 26, 929 N.E.2d 680, 2010 Ill. App. LEXIS 546 (1 Dist. 2010).

The immunity granted a local public entity by this section is not limited to vicarious liability, but includes injuries allegedly resulting out of the wrongful hiring or retention of a public employee. Sank v. Poole, 231 Ill. App. 3d 780, 173 Ill. Dec. 319, 596 N.E.2d 1198 (4 Dist. 1992).

- Vicarious Liability

A city, like any other corporate entity, is vicariously liable for the torts of its officers and employees unless a valid statute dealing with tort immunity imposes conditions upon that liability. Turpen v. City of St. Francisville, 145 Ill. App. 3d 891, 99 Ill. Dec. 616, 495 N.E.2d 1351 (5 Dist. 1986).

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Malicious Motives

- Common Law

The Illinois Constitution prohibits the insertion of the common law "corrupt or malicious motives" exception into the immunities provided by the Local Governmental and Governmental Employees Tort Immunity Act. Village of Bloomingdale v. C.D.G. Enters., 196 Ill. 2d 484, 256 Ill. Dec. 848, 752 N.E.2d 1090, 2001 Ill. LEXIS 778 (2001).

- Illustrative Cases

A former inmate of a county jail failed to allege or prove that defendant sheriff acted from corrupt or malicious motives knowingly permitting her to become injured by other inmates; negligent and wanton conduct was held not to be sufficient to overcome the protection afforded acts in the exercise of official discretion. Thiele v. Kennedy, 18 Ill. App. 3d 465, 309 N.E.2d 394 (3 Dist. 1974).

Ministerial Acts

Where township had undertaken to make improvements on road it was acting ministerially and it had a duty to proceed with reasonable care; therefore, township was not entitled to immunity under this section, 745 ILCS 10/2-201 or 745 ILCS 10/3-102 for plaintiff's injuries. Herman v. Will Tp., 284 Ill. App. 3d 53, 219 Ill. Dec. 688, 671 N.E.2d 1141 (3 Dist. 1996), appeal denied, 171 Ill. 2d 565, 222 Ill. Dec. 431, 677 N.E.2d 965 (1997).

Subsection (a) of 745 ILCS 10/3-102, applies only to the performance of ministerial duties, there is absolute immunity in the performance of discretionary functions, as set forth in this section and 745 ILCS 10/2-201, there is simply no conflict between the provisions of 745 ILCS 10/3-102(a) and those of 745 ILCS 10/2-201 and this section. Kennell v. Clayton Tp., 239 Ill. App. 3d 634, 179 Ill. Dec. 980, 606 N.E.2d 812 (4 Dist. 1992).

Misuse of Power

The statute did not provide a village with immunity in an action in which a real estate developer alleged that the village corruptly misused its governmental powers to prevent the developer's plans from going forward and appropriated the benefits of the developer's plans for developing certain properties for its own ends. Village of Bloomingdale v. C.D.G. Enters., 314 Ill. App. 3d 210, 247 Ill. Dec. 578, 732 N.E.2d 633, 2000 Ill. App. LEXIS 500 (2 Dist. 2000).

Notice

- Illustrative Cases

In action by an injured driver and occupant of car that arose out of intersection accident which was not filed against county superintendent of highways but filed against the county, such failure to file notice with the superintendent did not bar action against county. Duewel v. Lahman, 103 Ill. App. 3d 220, 58 Ill. Dec. 630, 430 N.E.2d 662 (2 Dist. 1981).

Policy Determination

In a personal injury action, the appellate court declined to apply the immunity granted under 745 ILCS 10/2-109 and 745 ILCS 10/2-201 to the actions of a city's fire marshall because the court determined that the directing of plaintiff to stand behind a door during a fire drill, though

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discretionary, was not a policy determination within the meaning of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq. Harinek v. City of Chicago, 283 Ill. App. 3d 491, 219 Ill. Dec. 191, 670 N.E.2d 869, 1996 Ill. App. LEXIS 715 (1 Dist. 1996).

Preemption by Vehicle Code

The more specific provisions of the Illinois Motor Vehicle Code (625 ILCS 5/1-101 et seq.), delineating the conduct and duty of the driver of an authorized emergency vehicle, govern over the general pronouncements of the Tort Immunity Act (this section and 745 ILCS 10/2-202), which shield a public entity or its employees from liability. Bradshaw v. City of Metropolis, 293 Ill. App. 3d 389, 227 Ill. Dec. 851, 688 N.E.2d 332 (5 Dist. 1997).

Retaliatory Discharge

745 ILCS 10/2-109 provides a local public entity with complete immunity to a retaliatory discharge action. Smith v. Waukegan Park Dist., 373 Ill. App. 3d 626, 312 Ill. Dec. 102, 869 N.E.2d 1093, 2007 Ill. App. LEXIS 616 (1 Dist. 2007).

As park district superintendent who fired an employee was not subject to personal liability on a retaliatory discharge claim, the park district itself was immune from liability under 745 ILCS 10/2-109, regardless of whether the superintendent's act was a discretionary one based on a determination of policy. Smith v. Waukegan Park Dist., 373 Ill. App. 3d 626, 312 Ill. Dec. 102, 869 N.E.2d 1093, 2007 Ill. App. LEXIS 616 (1 Dist. 2007).

Specific Person

Board of Education may assert immunity under this Act even though no specific employee of the Board has been named as causing the alleged wrongful act. Bowers ex rel. Bowers v. DuPage County Regional Bd. of Sch. Trustees, 183 Ill. App. 3d 367, 131 Ill. Dec. 893, 539 N.E.2d 246 (2 Dist. 1989).

Sufficient Allegations

A plaintiff's allegation that two police officers as agents and employees of a local municipality committed the tortious and unlawful act of driving their car across the center line into plaintiff's lane causing plaintiff to veer off highway across a curbing with resulting personal injuries to plaintiff was sufficient to state a cause of action against the individual officers and the municipality since it was obvious from those allegations that the officers were acting in the execution or enforcement of law, and that they were acting as agents and employees of the municipality. Newell v. City of Elgin, 34 Ill. App. 3d 719, 340 N.E.2d 344 (2 Dist. 1976).

Waiver

In personal injury action against city where issue of whether trial court erred in refusing the city's instructions based on this Act was waived, for the city failed to raise the issue in its post-trial motion. McDonnell v. City of Chicago, 102 Ill. App. 3d 578, 58 Ill. Dec. 227, 430 N.E.2d 169 (1 Dist. 1981).

Wrongful Injunction

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A village is shielded from liability for damages arising from a wrongfully issued injunction where the injunction was not sought maliciously or without probable cause. Village of Lake in the Hills v. Laidlaw Waste Sys., 160 Ill. App. 3d 427, 112 Ill. Dec. 184, 513 N.E.2d 598 (2 Dist. 1987).

Village and city were immune from a corporation's claim for damages resulting from the vacation of a preliminary injunction that had been issued upon application of the public entities because the filing of the injunction proceeding was necessarily the product of the exercise of official discretion, as contemplated by Ill. Rev. Stat. ch. 85, para. 2-201 (now 745 ILCS 10/2-201); therefore, because the public employees were not liable pursuant to 2-201, the public entities themselves were immune from liability pursuant to Ill. Rev. Stat. ch. 85, para. 2-109 (now 745 ILCS 10/2-109). Wilsonville v. Earthline Corp., 65 Ill. App. 3d 392, 22 Ill. Dec. 369, 382 N.E.2d 689, 1978 Ill. App. LEXIS 3502 (1 Dist. 1978).

When there was no allegation that any officer or employee of a village or county acted maliciously or without probable cause when they instituted a proceeding to enjoin a corporation from storing chemical wastes at a landfill, both the village and city were immune from the corporation's claim for damages resulting from the vacation of the preliminary injunction that had been issued because Ill. Rev. Stat. ch. 85, para. 2-208 (now 745 ILCS 10/2-208) precluded a finding that the public employees filing the suit were liable and therefore, pursuant to Ill. Rev. Stat. ch. 85, para. 2-109 (now 745 ILCS 10/2-109), the public entities were not liable. Wilsonville v. Earthline Corp., 65 Ill. App. 3d 392, 22 Ill. Dec. 369, 382 N.E.2d 689, 1978 Ill. App. LEXIS 3502 (1 Dist. 1978).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Torts," see 25 S. Ill. U. L.J. 1001 (2001).

For comment, "The Chicago Public Schools and its violent students: How Can the Law Protect Teachers?", see 48 DePaul L. Rev. 907 (1999).

For article, "Survey of Illinois Law: Employment Law", see 22 S. Ill. U.L.J. 841 (1998).

For note on Constitutional Law and Employment discussing Melvin v. City of West Frankfort, 93 Ill. App. 3d 425, 417 N.E.2d 260 (1981) 70 Ill. B.J. 520 (1982).

For comments, "The In Loco Parentis Status of Illinois School Teachers: An Unjustifiably Broad Extension of Immunity," see 10 J. Marshall J. Prac. & Proc. 629 (1977).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 35:38 Failure to provide disability insurance.

Illinois Jurisprudence, Personal Injury and Torts § 3:35 Employee liability as affecting liability of entity.

§ 745 ILCS 10/2-111. [Other defenses]

Sec. 2-111. Nothing contained herein shall operate to deprive any public entity of any defense heretofore existing and not described herein.

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(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-111.

CASE NOTES

Analysis

Construction
Corporal Punishment
Employer of Teacher
- Cause of Action
Legislative Intent

Construction

The inclusion of the phrase "described herein" in this section was designed to confine the insurance waiver doctrine formerly contained in 745 ILCS 10/9-103 to those immunities conferred on local governmental entities by the Act itself. Lansing v. County of McLean, 69 Ill. 2d 562, 14 Ill. Dec. 543, 372 N.E.2d 822 (1978).

Corporal Punishment

Absent allegations and proof of wantonness or malice, neither the teacher nor the school district could be held liable for injury due to corporal punishment. Gordon v. Oak Park Sch., 24 Ill. App. 3d 131, 320 N.E.2d 389 (1 Dist. 1974).

Employer of Teacher

- Cause of Action

In the absence of malice or wantonness, a cause of action cannot be maintained against the employer of a teacher on the basis that the teacher verbally chastised a student. Wexell ex rel. Wexell v. Scott, 2 Ill. App. 3d 646, 276 N.E.2d 735 (3 Dist. 1971).

Legislative Intent

The Tort Immunity Act is intended to confer immunities and defenses upon municipalities, not to strip them of immunities and defenses available to other defendants. Gavin v. City of Chicago, 238 Ill. App. 3d 518, 179 Ill. Dec. 674, 606 N.E.2d 506 (1 Dist. 1992).

Practice Guides and Treatises.

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Land Use Law (Illinois) § 13.15 Statutory Immunity (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 3:39 Defenses not included in Tort Immunity Act.

Part 2.
Immunity of Public Employees

§ 745 ILCS 10/2-201. [Employee's liability; policymaking and discretionary acts]

Sec. 2-201. Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-201.

CASE NOTES

Analysis

Constitutionality
In General
Abuse of Discretion
Applicability
- In General
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Constitutionality

Plaintiff's contention that this section was unconstitutional was stricken by the appellate court since it was without jurisdiction to determine the matter, and there was no transfer to the Supreme Court because the issue was not raised in the trial court and the argument was made for the first time on appeal. Meyers v. Board of Educ., 121 Ill. App. 2d 186, 257 N.E.2d 183 (1 Dist 1970).

In General

Defendant will not be immune under 745 ILCS 10/2-201 unless the plaintiff's injury results from an act performed or omitted by the defendant in determining policy and in exercising discretion. Moore v. Bd. of Educ. of Chi., 300 F. Supp. 2d 641, 2004 U.S. Dist. LEXIS 4156 (N.D. Ill. 2004).

In an action brought by homeowners alleging that defendants' actions in building a municipal recreation area caused flooding of a home; the municipal defendants failed to show that they were entitled to absolute immunity under 745 ILCS 10/2-201, as it was not apparent on the face of the complaint that the municipal defendants actions and omissions were the result of a policy decision, or that the municipal defendants' actions were discretionary. Van Meter v. Darien Park Dist., 207 Ill. 2d 359, 278 Ill. Dec. 555, 799 N.E.2d 273, 2003 Ill. LEXIS 1499 (2003).

The immunity of this section remained available to a county special education district, notwithstanding the assertion that 105 ILCS 5/24-24 and 105 ILCS 5/34-84a governed the level of immunity available. D.M. v. National Sch. Bus Serv., Inc., 305 Ill. App. 3d 735, 238 Ill. Dec. 950, 713 N.E.2d 196 (2 Dist. 1999).

An employee may be granted immunity if he holds either a position involving the determination of policy or the exercise of discretion. However, that immunity will not attach unless plaintiff's injury results from an act performed or omitted by the employee in determining policy and in exercising such discretion. Harinek v. 161 N. Clark St. Ltd. Partnership, 181 Ill. 2d 335, 230 Ill. Dec. 11, 692 N.E.2d 1177 (1998).

Claim of tortious interference against airport Authority failed where complaint did not allege business relationships with specific third parties, but rather "continuous negotiations" or negative

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actions by the Authority toward a third party. Du Page Aviation Corp. v. Du Page Airport Auth., 229 Ill. App. 3d 793, 171 Ill. Dec. 814, 594 N.E.2d 1334, 1992 Ill. App. LEXIS 887 (1 Dist. 1992).

Public officials are immune from liability for acts falling within their official discretion. Gavery v. County of Lake, 160 Ill. App. 3d 761, 112 Ill. Dec. 518, 513 N.E.2d 1127 (2 Dist. 1987).

Abuse of Discretion

When injury occurs as a result of a determination of policy or exercise of discretion even though abused, immunity is afforded where, if there is no indication that it was done with malice or without probable cause. Village of Lake in the Hills v. Laidlaw Waste Sys., 160 Ill. App. 3d 427, 112 Ill. Dec. 184, 513 N.E.2d 598 (2 Dist. 1987).

Applicability

Where a pre-trial detainee died of meningitis after the detainee's requests for medical treatment were denied, defendants were not entitled to immunity under the Illinois Tort Immunity Act, because, inter alia, the mother only alleged an abuse of discretion in determination of policy in the federal claim, and a state law could not shield a defendant from a federal claim. Thomas v. Cook County Sheriff, 401 F. Supp. 2d 867, 2005 U.S. Dist. LEXIS 28829 (N.D. Ill. 2005).

- In General

Appellate court properly affirmed the trial court's summary judgment grant to the board of education, agency, and agency employee, although on different grounds than the trial court set forth for granting summary judgment in a case where the injured child and his mother sued them for injuries he sustained when he landed awkwardly after doing a front flip off of a mini-trampoline at a school; while the trial court found that they were immune pursuant to 745 ILCS 10/2-201 and 745 ILCS 10/3-108(a), 745 ILCS 10/3-109 determined the scope of their immunity because the injured child was involved in a hazardous recreational activity at the time he was injured and that statutory section did not provide them with immunity from willful and wanton misconduct, but the injured child and his mother's second amended complaint did not alleged facts showing that they had engaged in willful and wanton misconduct. Murray v. Chi. Youth Ctr., Ill. 2d , Ill. Dec. , N.E.2d , 2006 Ill. LEXIS 1104 (July 5, 2006).

In a police officer's action alleging discrimination under 42 U.S.C. § 1981 and a breach of contract involving the decision of a city, the police department, an examining board, and the police chief not to promote a police officer to the rank of sergeant, the decision not to promote the officer was not protected by the absolute immunity accorded under 745 ILCS 10/2-109 and 745 ILCS 10/2-201. 745 ILCS 10/2-101(a) provides that Illinois statutory immunity does not apply to contracts; it does not apply to constitutional violations either. Drikos v. City of Palos Heights, F. Supp. 2d , 2003 U.S. Dist. LEXIS 21764 (N.D. Ill. Dec. 2, 2003).

- Affirmative Defense

Police officers' testimony demonstrated that he entered the decedent's household to enforce the law, and based on the representations of the decedent's family, the officers both believed they would arrest the decedent, a psychotic man, for disorderly conduct; one officer wanted to gather more information before making a decision on whether to arrest the man, but his entry was designed to gather information to enforce the law. The officers' actions had to be evaluated under 745 ILCS 10/2-202, not 745 ILCS 10/2-201, and the officers were not immune for any conduct found to be willful and wanton. Sallenger v. City of Springfield, F. Supp. 2d , 2005 U.S. Dist. LEXIS 18202 (C.D. Ill. Aug. 4, 2005), aff'd, 473 F.3d 731, 2007 U.S. App. LEXIS 436 (7th Cir. Ill. 2007).

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A municipality is able to assert the immunities permitted under this Act in an action brought under the Joint Tortfeasor Contribution Act (740 ILCS 100/0.01 et seq.). Lietsch v. Allen, 173 Ill. App. 3d 516, 123 Ill. Dec. 340, 527 N.E.2d 978 (3 Dist. 1988).

Sending letter to county employees, advising them that they would no longer be able to select plaintiff medical center as a health care provider, and referring to a number of complaints from county employees regarding the clinic, was a discretionary action within the scope of defendant's duties as county personnel director, and was therefore protected within the scope of this section. Gavery v. County of Lake, 160 Ill. App. 3d 761, 112 Ill. Dec. 518, 513 N.E.2d 1127 (2 Dist. 1987).

Public employees, which included all defendants except the city, were exempted from liabilities having to do with the design and construction of improvements to public property. Deren ex rel. Deren v. City of Carbondale, 13 Ill. App. 3d 473, 300 N.E.2d 590 (5 Dist. 1973).

This section and 745 ILCS 10/2-107 expressly barred the plaintiff's action for slander against the board of education and director of civil service personnel for the board of education where the alleged statement was made by defendant within the scope of his employment. Meyers v. Board of Educ., 121 Ill. App. 2d 186, 257 N.E.2d 183 (1 Dist 1970).

- Section 1983 Claims

The Tort Immunity Act did not apply to plaintiff's § 1983 claims because of the supremacy clause of the United States Constitution (U.S. Const., art. VI, cl. 2). Anderson v. Village of Forest Park, 238 Ill. App. 3d 83, 179 Ill. Dec. 373, 606 N.E.2d 205 (1 Dist. 1992).

Blatant Disregard of Ordinance

Common Law

This section is actually a codification of the common law doctrine known as public official immunity. Horton v. City of Ottawa, 40 Ill. App. 3d 544, 352 N.E.2d 23 (3 Dist. 1976).

During the interim between the Illinois Supreme Court decision which ended tort immunity for school districts and denounced generally the concept of governmental immunity, and enactment of this Act, the common law which governed a case in which plaintiff was injured when his car fell into an unmarked rut on a public street continued to provide governmental officials with immunity from liability in their exercise of discretional authority. Eicken v. Johnson, 1 Ill. App. 3d 165, 273 N.E.2d 633 (1 Dist. 1971).

Construction

Since the Immunity Act was enacted in derogation of the common law, it must be construed strictly. Snyder v. Curran Tp., 167 Ill. 2d 466, 212 Ill. Dec. 643, 657 N.E.2d 988 (1995).

Corrupt or Malicious Motives

- Discretionary Immunity

This section, 745 ILCS 10/2-103 and 745 ILCS 10/2-205 do not apply to acts resulting from corrupt or malicious motives. Madonna v. Giacobbe, 190 Ill. App. 3d 859, 138 Ill. Dec. 90, 546 N.E.2d 1145 (2 Dist. 1989).

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Discretionary immunity extends only to those types of acts not resulting from corrupt or malicious motives, and a public official may not hide behind the cloak of immunity if he maliciously and intentionally misuses the powers of his office. Idlehour Dev. Co. v. City of St. Charles, 88 Ill. App. 3d 47, 42 Ill. Dec. 929, 409 N.E.2d 544 (2 Dist. 1980).

Discretionary Act

School principal was authorized to make personnel recommendations to the city school board under 105 ILCS 5/34-8.1 and, thus, her decision to recommend the termination of an employee was an inherently discretionary one and protected by the Illinois Local Governmental and Governmental Employees Tort Immunity Act 745 ILCS 10/2-201. Williams v. Bd. of Educ., F. Supp. 2d , 2009 U.S. Dist. LEXIS 3916 (N.D. Ill. Jan. 21, 2009).

Spouse who visited her incarcerated husband and the prison official who searched her disputed whether the official touched the spouse's vaginal area to varying degrees during three of her ten to twenty pat-down searches; if the touching was incidental, and the official did not intend to (or did not) touch the spouse's vaginal area as the official claimed, no assault or battery pursuant to 720 ILCS 5/12-1(a) and 720 ILCS 5/12-3(2) occurred, but this was insufficient for summary judgment. In addition, the official was not immune from liability under 745 ILCS 10/2-201 because battery did not amount to an exercise of discretion or determination of policy. Zboralski v. Monahan, 616 F. Supp. 2d 792, 2008 U.S. Dist. LEXIS 85402 (N.D. Ill. 2008).

City was not entitled to a summary judgment under 745 ILCS 10/2-201 as there were material issues of fact concerning whether the city timely hooked up a bypass pump to the lift station and whether the city's acts or omissions in hooking up the bypass pump resulted in a backup of sewage into the property owners' basement. The city had a duty not to discharge sewage from its sewer system on to private property and the acts or omissions that might have occurred during the process of hooking up the bypass pump were ministerial, not discretionary. Trtanj ex rel. State Farm Fire & Cas. Co. v. City of Granite City, 379 Ill. App. 3d 795, 318 Ill. Dec. 773, 884 N.E.2d 741, 2008 Ill. App. LEXIS 223 (1 Dist. 2008).

For 745 ILCS 10/2-201 to apply, the particular act or omission challenged must be both a determination of policy, i.e., a decision that requires the public entity or employee to balance competing interests and to make a judgment call as to what solution will best serve each of those interests, and an exercise of discretion, i.e., an act or omission that is unique to a particular public office; thus, in an action by parents, individually and on behalf of their son, alleging that a school principal revealed information about a bullying incident in violation of the Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/1 et seq., the trial court properly granted the motion to dismiss, under 735 ILCS 5/2-619, of the principal and the school board because the principal was immune under 745 ILCS 10/2-201 and the school board was immune under 745 ILCS 10/2-109 where (1) the school principal was dealing with a disciplinary matter that required him to balance several competing interests and make a judgment as to what balance to strike among them; and (2) the way that the principal handled instances of bullying in his school fell within the definition of a "discretionary" act under 745 ILCS 10/2-101. Albers v. Breen, 346 Ill. App. 3d 799, 282 Ill. Dec. 370, 806 N.E.2d 667, 2004 Ill. App. LEXIS 362 (4 Dist. 2004), appeal denied, 211 Ill. 2d 569, Ill. Dec. , 823 N.E.2d 962 (2004).

- In General

Tortious interference claim with prospective advantage was properly dismissed against a village pursuant to 735 ILCS 5/2-615 as it failed to state a claim because plaintiff had not shown that it had a business expectancy; however, it was noted that the village did not enjoy tort immunity because, while it exercised discretion in deciding to enter into a tax rebate agreement, pursuant to 745 ILCS 10/2-201, it exercised a ministerial function when making the statutorily required findings to support that agreement under 65 ILCS 5/8-11-20. Vill. of Itasca v. Vill. of Lisle, 352 Ill.

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App. 3d 847, 288 Ill. Dec. 35, 817 N.E.2d 160, 2004 Ill. App. LEXIS 1248 (2 Dist. 2004), appeal denied, 213 Ill. 2d 560, 293 Ill. Dec. 863, 829 N.E.2d 788 (2005).

"Discretionary acts" are those which are unique to a particular public office. Moore v. Bd. of Educ. of Chi., 300 F. Supp. 2d 641, 2004 U.S. Dist. LEXIS 4156 (N.D. Ill. 2004).

Where a paramedic sued the City of Chicago and a physician after being terminated due to a positive drug test, the district court declined to grant the physician immunity under 745 ILCS 10/2-109 because it was possible that, as a medical doctor and Medical Review Officer for the Chicago Fire Department, the physician was performing a function that was both discretionary and a policy determination; however, the City of Chicago was immune. Hughes v. City of Chicago, F. Supp. 2d , 2003 U.S. Dist. LEXIS 11261 (N.D. Ill. July 1, 2003).

For village to avail itself of immunities afforded by this Act, village's acts must have been discretionary and not ministerial. Johnson v. Mers, 279 Ill. App. 3d 372, 216 Ill. Dec. 31, 664 N.E.2d 668 (2 Dist. 1996).

Discretionary acts have been defined as those which are unique to the particular public office and not merely ministerial in nature. Gavery v. County of Lake, 160 Ill. App. 3d 761, 112 Ill. Dec. 518, 513 N.E.2d 1127 (2 Dist. 1987).

- Airports

The Local Governmental and Governmental Employees Tort Immunity Act, at 745 ILCS 10/2-201, 745 ILCS 10/3-108, and 745 ILCS 10/3-109, did not provide immunity to an airport for decisions regarding a determination of policy and exercise of that policy where a claim for injuries alleged an act or omission with respect to those decisions; the decision was discretionary and not made in the course of determining policy. Spangenberg v. Verner, 321 Ill. App. 3d 429, 254 Ill. Dec. 319, 747 N.E.2d 359, 2001 Ill. App. LEXIS 513 (1 Dist. 2001).

In an action arising from an airplane crash at a municipal airport, the municipal defendants were not entitled to summary judgment on the basis of immunity as there was a material question of fact as to whether they failed to maintain the runway safety area in a reasonably safe condition, notwithstanding the municipal defendants' contention that they acted in a discretionary manner in maintaining the runway safety area. Anderson v. Alberto-Culver USA, Inc., 317 Ill. App. 3d 1104, 251 Ill. Dec. 533, 740 N.E.2d 819, 2000 Ill. App. LEXIS 948 (1 Dist. 2000).

- Compared to Ministerial

The distinction between discretionary and ministerial acts resists precise formulation; and the determination of whether acts are discretionary or ministerial must be made on a case by case basis. Johnson v. Mers, 279 Ill. App. 3d 372, 216 Ill. Dec. 31, 664 N.E.2d 668 (2 Dist. 1996).

- Drainage Districts

The legislature did not intend to permit drainage commissioners to insulate their negligence by automatically labeling every failure to repair a drainage system as a "discretionary" decision; thus, the issue of whether a district's decision not to repair a system was discretionary or ministerial presented questions of fact that needed to be resolved in the trial court. Roark v. Macoupin Creek Drainage Dist., 316 Ill. App. 3d 835, 250 Ill. Dec. 358, 738 N.E.2d 574, 2000 Ill. App. LEXIS 783 (4 Dist. 2000).

- Firefighting

The extinguishment of fires and the rescuing of persons in buildings that are on fire involve a determination of policy and an exercise of discretion. Crowley v. City of Berwyn, 306 Ill. App. 3d 496, 239 Ill. Dec. 344, 713 N.E.2d 1194 (4 Dist. 1999), appeal denied, 185 Ill. 2d 621, 242 Ill. Dec. 135, 720 N.E.2d 1090 (1999).

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- Golf Course Design

The trial court properly found that defendant's actions in constructing a standing area at a golf course were discretionary; decisions about whether to provide fencing and warnings and how to design or construct the golf course were not prescribed but instead were left to the discretion and judgment of defendant's employees. Koltes v. St. Charles Park Dist., 293 Ill. App. 3d 171, 227 Ill. Dec. 293, 687 N.E.2d 543 (2 Dist. 1997), appeal denied, 177 Ill. 2d 571, 232 Ill. Dec. 453, 698 N.E.2d 544 (1998).

- Highway Repair

In an action to recover for injuries sustained in an automobile accident which was allegedly caused when a third party lost control of his vehicle after striking a pothole in the roadway and his vehicle veered into oncoming traffic in which plaintiffs were traveling, the defendant city was entitled to immunity since the repair of potholes involved both policy determinations and the exercise of discretion. Wrobel v. City of Chicago, 318 Ill. App. 3d 390, 252 Ill. Dec. 151, 742 N.E.2d 401, 2000 Ill. App. LEXIS 991 (1 Dist. 2000).

- Hiring of Police Officer

Where village devised a hiring plan which included an application process, a polygraph examination, psychological testing, physical testing and interviews, village's decision to hire police officer was not a ministerial decision; the village's decision to hire a police officer ultimately required the exercise of discretion, and therefore was subject to the immunities contained in this Act. Johnson v. Mers, 279 Ill. App. 3d 372, 216 Ill. Dec. 31, 664 N.E.2d 668 (2 Dist. 1996).

- Medical Assistance

The statute did not apply to immunize police officers who were alleged not to have called for medical assistance for a shooting victim until an hour and a half after they arrived at the scene, as they neither determined policy nor exercised discretion in failing to call for assistance for the victim. Torres v. City of Chicago, 123 F. Supp. 2d 1130, 2000 U.S. Dist. LEXIS 17960 (N.D. Ill. 2000).

- Not Shown

When plaintiff, thirteen-year-old Canadian citizen, filed suit after suffering injuries when she was instructed to dive into a pool while attending a swimming program at a high school, defendants, the school and its employees were not protected by Section 2-201 of the Illinois Tort Immunity Act, 745 ILCS 10/2-201. Because there was no evidence that the decision to instruct plaintiff to dive into a pool required the balancing of competing interests, it was improbable that defendants were required to engage in policy calculations. Karalyos v. Bd. of Educ., 788 F. Supp. 2d 727, 2011 U.S. Dist. LEXIS 23871 (N.D. Ill. 2011).

A school district was not immune under the statute from an allegation that it failed to provide adequately trained instructors and/or other individuals with such degree and skill necessary to respond to emergency situations since the drowning at issue did not result from an act or omission by the school district in determining policy when acting in the exercise of discretion. Trotter v. School Dist. 218, 315 Ill. App. 3d 1, 247 Ill. Dec. 899, 733 N.E.2d 363, 2000 Ill. App. LEXIS 562 (1 Dist. 2000).

- Reporting Sexual Abuse

Since the defendants were mandated by state law to report suspected sexual abuse, meaning the reporter must first determine what constitutes sexual abuse, which clearly entailed the exercise of a degree of judgment and discretion, this section applied to plaintiff's claims of failure to report. Doe v. Board of Educ., 18 F. Supp. 2d 954 (N.D. Ill. 1998).

- Shown

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Defendants were immune from liability for plaintiffs' injuries under 745 ILCS 10/2-201 and defendants' Rule 12(b)(6), F.R.Civ. P. motion to dismiss was granted where (1) defendants' handling of plaintiffs' complaint against the teacher, as well as the decision to retain the teacher as an employee, constituted policy decisions and acts of discretion, (2) rather than fire the teacher, defendants opted to remove the minor from the teacher's classroom, (3) the resolution of the situation required the balancing of competing interests, including those of the students, faculty, and public at large, and (4) that defendants may have owed a special duty to the minor did not compel a contrary result. Moore v. Bd. of Educ. of Chi., 300 F. Supp. 2d 641, 2004 U.S. Dist. LEXIS 4156 (N.D. Ill. 2004).

Township's Board of Trustees was entitled to immunity for their passing of ordinances which diminished the scope of the office of town collector because doing so required a weighing of interests and exercise of judgment. Hanania v. Loren-Maltese, 319 F. Supp. 2d 814, 2004 U.S. Dist. LEXIS 4154 (N.D. Ill. 2004).

A discretionary policy determination was involved where a shop teacher removed a safety shield from a table saw, allegedly because it was not functioning properly, and the immunity of the Local Governmental and Governmental Employees Tort Immunity Act, specifically 745 ILCS 10/2-201, applied. Courson v. Danville Sch. Dist., 333 Ill. App. 3d 86, 266 Ill. Dec. 950, 775 N.E.2d 1022, 2002 Ill. App. LEXIS 709 (4 Dist. 2002).

The record demonstrated that the individual defendant's failure to accommodate the plaintiff's decedent's medical needs when he was transferred while incarcerated was caused by defendant's act or omission in determining policy when acting in the exercise of discretion for the defendant village and was therefore immune from the plaintiff's state tort claims. Egebergh v. Sheahan, F. Supp. 2d , 2001 U.S. Dist. LEXIS 161 (N.D. Ill. Jan. 3, 2001), aff'd sub nom. Egebergh v. Nicholson, 272 F.3d 925 (7th Cir. 2001).

In an action arising from the drowning of a student in a high school swimming class, the school district was immune under the statute from allegations that it delegated important duties to two, unqualified minor students instead of having those duties performed by competent individuals and that it failed to provide qualified instructors and educational personnel in the swimming pool area during the plaintiff's swimming class since both allegations pertained to discretionary functions. Trotter v. School Dist. 218, 315 Ill. App. 3d 1, 247 Ill. Dec. 899, 733 N.E.2d 363, 2000 Ill. App. LEXIS 562 (1 Dist. 2000).

A school district was not entitled to immunity in an action arising from a fall from an accessability ramp to a school gymnasium, notwithstanding that the initial decision to construct the ramp was a determination of policy, since the subsequent determinations whether to put a railing on the ramp, install lighting, warn of a drop-off, or supervise patrons were discretionary decisions. Capps v. Belleville Sch. Dist. No. 201, 313 Ill. App. 3d 710, 246 Ill. Dec. 401, 730 N.E.2d 81, 2000 Ill. App. LEXIS 317 (5 Dist. 2000).

A tumbling team coach's actions in determining what maneuvers the tumblers would perform, whether participants were capable of performing those maneuvers, and what equipment and safety precautions were needed, were discretionary acts for which immunity is granted. Johnson v. Decatur Park Dist., 301 Ill. App. 3d 798, 235 Ill. Dec. 67, 704 N.E.2d 416 (4 Dist. 1998), appeal denied, 183 Ill. 2d 569, 238 Ill. Dec. 714, 712 N.E.2d 818 (1999).

Where allegations in a complaint as to the fire marshal's actions in planning and conducting a fire drill clearly described acts or omissions in determining policy and exercising discretion, this section immunizes the city from liability for plaintiff's injuries. Harinek v. 161 N. Clark St. Ltd. Partnership, 181 Ill. 2d 335, 230 Ill. Dec. 11, 692 N.E.2d 1177 (1998).

City's supervision of pile driving constituted a discretionary activity that immunized the city from liability. In re Chicago Flood Litig., 176 Ill. 2d 179, 223 Ill. Dec. 532, 680 N.E.2d 265 (1997).

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Removal of particular rise in the road was a discretionary matter with the road commissioner and the trial court was correct in holding that there was immunity from liability under 745 ILCS 10/2-109 and this section. Kennell v. Clayton Tp., 239 Ill. App. 3d 634, 179 Ill. Dec. 980, 606 N.E.2d 812 (4 Dist. 1992).

The decision to remove plaintiff from her bedroom and seek medical evaluation was discretionary, and fell within the scope of this section. Anderson v. Village of Forest Park, 238 Ill. App. 3d 83, 179 Ill. Dec. 373, 606 N.E.2d 205 (1 Dist. 1992).

While the School Code (105 ILCS 5/10-20.8) provides that it is the duty of the Board of Education to direct what apparatus is to be used, it does not direct that the Board is to use or supply particular equipment and therefore, the provision of equipment is a discretionary act under this section. Bowers ex rel. Bowers v. DuPage County Regional Bd. of Sch. Trustees, 183 Ill. App. 3d 367, 131 Ill. Dec. 893, 539 N.E.2d 246 (2 Dist. 1989).

Because section 22-15 of the School Code (105 ILCS 5/10-22-15), granting to the Board of Education the power to provide medical and hospital service through insurance, to its students, participating in athletic contests, it is within the discretion of the Board of Education whether or not to provide such insurance, and therefore the Board's failure to provide adequate insurance protection for plaintiff-student who sustained injuries in a football game would not subject it to tort liability by the effect of this Act. Friederich v. Board of Educ., 59 Ill. App. 3d 79, 16 Ill. Dec. 510, 375 N.E.2d 141 (2 Dist. 1978).

- Summary Judgment

Summary judgment in favor of the school was improper due to the existence of a question of fact as to whether or not a failure to use a guard or other safety device on a table saw in shop class was the result of an exercise of discretion by the teacher. Courson v. Danville Sch. Dist. No. 118, 301 Ill. App. 3d 752, 235 Ill. Dec. 98, 704 N.E.2d 447 (4 Dist. 1998), appeal denied, 183 Ill. 2d 566, 238 Ill. Dec. 712, 712 N.E.2d 816 (1999).

- Victim Rescue

Town and its police officers were immune from negligence liability under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., following failure to rescue the victims of a residential fire, where: (1) neither the town nor its police officers at the scene could be held liable for failure to attempt a rescue; and (2) even if the police officers' acts were found to be willful and wanton, immunity still applied under 745 ILCS 10/2-201 because the officers had to make a policy decision in balancing the competing interests of their own safety and their chances of success with the interests of the victims and survivors. Fender v. Town of Cicero, 347 Ill. App. 3d 46, 283 Ill. Dec. 1, 807 N.E.2d 606, 2004 Ill. App. LEXIS 242 (1 Dist. 2004).

Discretionary Immunity

It was error for the appellate court to hold that discretionary immunity abrogates the duty established in 745 ILCS 11-304 of the Vehicle Code, which mandates that all traffic control devices conform to the state manual. Snyder v. Curran Tp., 167 Ill. 2d 466, 212 Ill. Dec. 643, 657 N.E.2d 988 (1995).

Drug-Testing of Police Officers

Although mishandling of specimens of employee police officers being tested for drugs may have constituted negligence, city was immune from liability under the provisions of this Act. Shamley v. City of Chicago, 163 Ill. App. 3d 375, 114 Ill. Dec. 491, 516 N.E.2d 646 (1 Dist. 1987).

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Evidence Weighed

- Discretion

Where hearing board considered legal sufficiency of charges, conducted a hearing, weighed the evidence and arrived at a determination, the board was clearly exercising quasi judicial discretion in its decision-making, and, no liability flowed from its decision. Melbourne Corp. v. City of Chicago, 76 Ill. App. 3d 595, 31 Ill. Dec. 914, 394 N.E.2d 1291 (1 Dist. 1979).

Immunity

Public entity's argument that 745 ILCS 10/2-201 of the Tort Immunity Act immunized a supervisor and that the entity was correspondingly immune pursuant to 745 ILCS 10/2-109 of the Act failed because it incorrectly viewed the employee as the pertinent actor when it was the employer who acted within the meaning of 745 ILCS 10/2-109 in a retaliatory discharge. Smith v. Waukegan Park Dist., 231 Ill. 2d 111, 324 Ill. Dec. 446, 896 N.E.2d 232, 2008 Ill. LEXIS 1411 (2008).

Where a retaliatory discharge claim was involved, the local public entity did not enjoy immunity through the immunity of its supervisory employee pursuant to 745 ILCS 10/2-201 because the local public entity and not the supervisory employee was the actor. As a result, the employer did not have immunity from the employee's claim of retaliatory discharge due to the employee's filing of a workers' compensation claim because the employer was the actor even though the supervisory employee was the actual person who terminated the employee. Smith v. Waukegan Park Dist., Ill. 2d , Ill. Dec. , N.E.2d , 2008 Ill. LEXIS 312 (Apr. 17, 2008).

Sexual abuse victims' claims against a school district that alleged the school district was liable for negligent retention of the teacher who abused the victims was barred by the Illinois Tort Immunity Act, 745 ILCS 10/2-201, because any action to retain the teacher was a discretionary decision. Alicia B. v. Sperlik, F. Supp. 2d , 2005 U.S. Dist. LEXIS 31215 (N.D. Ill. Nov. 30, 2005).

Sexual abuse victims' claims against a school district that alleged the school district was liable for negligent retention of the teacher who abused the victims was barred by the Illinois Tort Immunity Act, 745 ILCS 10/2-201, because any action to retain the teacher was a discretionary decision. Raymond S. v. Sperlik, F. Supp. 2d , 2005 U.S. Dist. LEXIS 31313 (N.D. Ill. Nov. 30, 2005).

Court dismissed the tortious interference with employment relationship claims asserted by two terminated education employees against a regional school superintendent and a special education district coordinator because the superintendent and the coordinator were immune from liability pursuant to 745 ILCS 10/2-201 of the Illinois Local Governmental and Governmental Employees Tort Immunity Act: (1) the employees' claims arose from the termination of their employment; (2) the decision to terminate the employees was a discretionary act; and (3) 745 ILCS 10/2-201 provided immunity with regard to discretionary acts, even when the exercise of the discretion was willful. Downey v. Shonkwiler, F. Supp. 2d , 2005 U.S. Dist. LEXIS 29475 (C.D. Ill. Nov. 16, 2005).

- In General

Students' claims against a school district for negligent hiring were dismissed because the district was immune under 745 ILCS 10/2-201; the students' claims for negligent supervision were also dismissed because they were barred by 745 ILCS 10/3-108 and because the violation of the school district's policies did not state a negligent supervision claim. Doe v. Bd. of Educ. of the Cmty. Unit Sch. Dist. No. 5, 680 F. Supp. 2d 957, 2010 U.S. Dist. LEXIS 1902 (C.D. Ill. 2010).

City employee, city youth, and city education board could not be held liable for the spinal cord injury the student incurred in an after-school tumbling program as the result of the use of a mini-trampoline, as the student had not shown they engaged in wilful and wanton conduct in

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connection with that injury. Murray v. Chi. Youth Ctr., 352 Ill. App. 3d 95, 287 Ill. Dec. 102, 815 N.E.2d 746, 2004 Ill. App. LEXIS 397 (1 Dist. 2004), aff'd, 2006 Ill. LEXIS 1104 (Ill. 2006); different results reached on reh'g, 224 Ill. 2d 213, 864 N.E.2d 176, 2007 Ill. LEXIS 438, 309 Ill. Dec. 310 (2007).

Because it was not a determination of policy for a city superintendent to announce to a gathering crowd that plaintiff was a squatter as police officer's removed the plaintiff's personal items from the plaintiff's residence, 745 ILCS 10/2-201 did not immunize the city superintendent from a defamation claim brought by the plaintiff. Akpulonu v. McGowan, F. Supp. 2d , 2004 U.S. Dist. LEXIS 15932 (N.D. Ill. Aug. 11, 2004).

District court dismissed insurer's claim for violation of recovered property statutes and violation of the Illinois Law Enforcement Disposition of Property Act, 765 ILCS 1030-2 et seq. and a transport company's cross-claim for contribution against a sheriff and two deputies because the sheriff and the deputies were immune from liability under the Illinois Tort Immunity Act, 745 ILCS 10/1-101 et seq. Fireman's Fund Ins. Co. v. Werner Enters., F. Supp. 2d , 2004 U.S. Dist. LEXIS 2106 (N.D. Ill. Feb. 5, 2004).

If the employee is immune, so is his employer. Thiele v. Kennedy, 18 Ill. App. 3d 465, 309 N.E.2d 394 (3 Dist. 1974).

- Discretion

Trial court properly awarded summary judgment to a city and its mayor on a towing company's claim that the mayor committed tortious interference with a contract when she persuaded one of its customers to cancel its contract and to obtain towing services from another company because the mayor's actions, even if true, were protected by 745 ILCS 10/2-201. Kevin's Towing, Inc. v. Thomas, 351 Ill. App. 3d 540, 286 Ill. Dec. 777, 814 N.E.2d 1003, 2004 Ill. App. LEXIS 973 (2 Dist. 2004), appeal denied, 212 Ill. 2d 533, 291 Ill. Dec. 708, 824 N.E.2d 284 (2004).

- Discretionary Acts

Where an arrestee alleged that a sergeant and an officer committed battery against the arrestee at the jail, regarding the argument that defendants were immune because they were public employees serving in a position involving the determination of policy or the exercise of discretion, 745 ILCS 10/2-201 did not apply because the alleged battery and failure to provide medical treatment were not discretionary actions or determinations of policy. Wilhold v. Gebke, F. Supp. 2d , 2005 U.S. Dist. LEXIS 20096 (S.D. Ill. Sept. 1, 2005).

Because city's act of discharging an employee was a discretionary decision, the city was immune from the employee's common law retaliation suit under the Local Governmental and Government Employees Tort Immunity Act. Ellis v. City of Chicago, 272 F. Supp. 2d 729, 2003 U.S. Dist. LEXIS 11607 (N.D. Ill. 2003), aff'd sub nom. Dumas v. Infinity Broad. Corp., 416 F.3d 671 (7th Cir. 2005).

Village, village president, and board of commissioners were immune from liability under state law from a minor's tort claims of recklessly hiring, negligently supervising, and wrongfully retaining the fire chief who sexually assaulted the minor; as these acts involved both acts of discretion and decisions of policy. Doe v. V. of T., F. Supp. 2d , 2003 U.S. Dist. LEXIS 17570 (N.D. Ill. Sept. 30, 2003).

Police failure to provide medical care for prisoners does not fall within the scope of this section because public officials receive immunity under this section only when the official's position requires the determination of policy or the exercise of discretion, and the act or omission that caused the injury was both a determination of policy and an exercise of discretion. Singleton v. City of Chicago, F. Supp. 2d , 2000 U.S. Dist. LEXIS 3220 (N.D. Ill. Feb. 25, 2000).

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Under 735 ILCS 5/2-610(a), defendant city was immune from liability under 745 ILCS 10/2-104 where defendant had not violated any ordinance and plaintiff home purchasers had not suggested bad faith or that defendant acted with malicious motives; the city retained the ultimate authority to determine whether to allow building on a particular parcel within the city limits. Doyle v. City of Marengo, 303 Ill. App. 3d 831, 270 Ill. Dec. 752, 783 N.E.2d 1052, 1999 Ill. App. LEXIS 202 (1 Dist. 1999).

City was afforded discretionary immunity against liability for any alleged negligence in failing to supervise or monitor company's pile driving for any alleged wilful and wanton misconduct and for any alleged negligence in failing to promptly repair the tunnel or warn class plaintiff of the tunnel damage. In re Chicago Flood Litig., 176 Ill. 2d 179, 223 Ill. Dec. 532, 680 N.E.2d 265 (1997).

After tunnel breach, city had to decide who would repair the tunnel and what terms of arrangement would be used and whether warning the public would cause panic and if so whether that warning was justified and since those decisions were all within the city's discretion, it was afforded immunity against liability. In re Chicago Flood Litig., 176 Ill. 2d 179, 223 Ill. Dec. 532, 680 N.E.2d 265 (1997).

In a case alleging injury due to the improper placement of road signs, the court ruled that because advice is necessarily discretionary as it is personal judgment, county superintendent of highways who provided advice to township highway commissioners as to the placement of the road signs was immune from liability because the giving of advice was a discretionary function. Greeson v. Mackinaw Tp., 207 Ill. App. 3d 193, 152 Ill. Dec. 162, 565 N.E.2d 695 (3 Dist. 1990), cert. denied, 139 Ill. 2d 595, 159 Ill. Dec. 107, 575 N.E.2d 914 (1991).

Where suit was based on discretionary acts by city employees, officials responsible were held harmless under facts by this section which governs the acts or omissions of public employees engaged in the exercise of discretion, even where it is subsequently determined that discretion had been abused. Melvin v. City of W. Frankfort, 93 Ill. App. 3d 425, 48 Ill. Dec. 858, 417 N.E.2d 260 (5 Dist. 1981).

- Exclusion

Discretionary function provision should be interpreted to exclude from liability public employees who are involved in the decision-making or planning level of a government function. Melbourne Corp. v. City of Chicago, 76 Ill. App. 3d 595, 31 Ill. Dec. 914, 394 N.E.2d 1291 (1 Dist. 1979).

- Illustrative Cases

In a case alleging a failure to hire, defamation and state constitutional claims that sounded in tort were barred by the Illinois Local Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., because the hiring and firing of employees was inherently discretionary within the meaning of 745 ILCS 10/2-201. However, the state immunity rules did not apply to the extent that the actions were brought under 42 U.S.C.S. § 1983. Collins v. Bd. of Educ., 792 F. Supp. 2d 992, 2011 U.S. Dist. LEXIS 57890 (N.D. Ill. 2011).

City was not entitled to discretionary immunity where the injured party, a city resident, sued the city after the injured party tripped and fell in a small depression in an alley, which was the city's property. The city's decisions about making repairs to its property, after it had already decided to conduct those repairs, was a ministerial matter, and since the city's employees were not immune under 745 ILCS 10/2-201 because no such repairs had been made to the alley at issue, the city could not use 745 ILCS 10/2-109 to shelter itself from liability based on a claim that its employees were immune. Gutstein v. City of Evanston, 402 Ill. App. 3d 610, 341 Ill. Dec. 26, 929 N.E.2d 680, 2010 Ill. App. LEXIS 546 (1 Dist. 2010).

Two municipalities and an airport commission were not shielded from liability by 745 ILCS 10/2-109 and 745 ILCS 10/2-201 in a wrongful death and survival action following the crash of a private jet aircraft that veered from the center of a runway during takeoff, left the runway, and

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crashed after striking a drainage ditch in a runway safety area alongside the runway. Alwin v. Vill. of Wheeling, 371 Ill. App. 3d 898, 309 Ill. Dec. 656, 864 N.E.2d 897, 2007 Ill. App. LEXIS 225 (1 Dist. 2007).

Terminated seasonal city employee had not pleaded himself out of court with regard to the tortious interference with a prospective advantage (IPEC) claim that he asserted against a city ward supervisor, who had allegedly caused the employee to be fired: (1) the employee alleged that the city promised to make him a full-time employee, that the supervisor interfered with that economic opportunity by causing him to be fired, and that the supervisor was motivated by racial discrimination and by a desire to retaliate after a private business transaction fell through; (2) the supervisor contended that the employee's IPEC claim was barred as a matter of law by 745 ILCS 10/2-201,10/2-204, which provided immunity to public employees; (3) the supervisor could assert affirmative defenses based on 745 ILCS 10/2-201,10/2-204, but the statutes did not operate to bar the employee from asserting his IPEC claim; and (4) the employee had sufficiently alleged facts to support his IPEC claim, and those facts, if proven, might override the supervisor's statutory defenses. Lonzo v. City of Chicago, 461 F. Supp. 2d 661, 2006 U.S. Dist. LEXIS 83257 (N.D. Ill. 2006).

Motion to dismiss the claims for wrongful death, pursuant to 745 ILCS 10/2-201 and 745 ILCS 10/2-202, brought against a county sheriff and a deputy and, pursuant to 745 ILCS 10/4-106, the claims against a county, a sheriff's department, the sheriff, and the deputy, for allowing a decedent to escape and commit suicide while in custody was denied because the record was not yet sufficiently developed, and the briefing was inadequate, to determine if any of the defendants were entitled to immunity under any of the respective provisions. Sidwell v. County of Jersey, F. Supp. 2d , 2006 U.S. Dist. LEXIS 29565 (S.D. Ill. May 15, 2006).

In officer one's suit alleging defamation by officer two when officer two sent an unflattering memorandum about officer one to officer one's boss, officer two was not immune under 745 ILCS 10/2-201 because he failed to demonstrate that he was determining a policy when he submitted the memorandum. Ernst v. Anderson, F. Supp. 2d , 2005 U.S. Dist. LEXIS 7469 (N.D. Ill. Mar. 3, 2005).

Where the record did not show whether the actual repair of a pothole was discretionary or whether the repair was adequately performed, a city was not entitled to summary judgment on the basis of immunity in plaintiff's personal injury action. Hanley v. City of Chicago, 343 Ill. App. 3d 49, 277 Ill. Dec. 140, 795 N.E.2d 808, 2003 Ill. App. LEXIS 1020 (1 Dist. 2003).

Township board member's conduct was not protected by 745 ILCS 10/2-206 or 745 ILCS 10/2-201 because (1) the board member was not granting or denying approval of the landowner's resort when the board member republished the defamatory letter, and (2) the board member failed to show that the board member was acting in the pursuit of a township policy. Clarage v. Kuzma, 342 Ill. App. 3d 573, 276 Ill. Dec. 995, 795 N.E.2d 348, 2003 Ill. App. LEXIS 963 (3 Dist. 2003), appeal denied, 206 Ill. 2d 619, 282 Ill. Dec. 477, 806 N.E.2d 1065 (2003).

This section did not provide immunity for actions of school district personnel in refusing a student's request for an early dismissal because it was snowing and the student wanted to leave early so he would not have an accident, since the decision was not made at the planning level and did not involve the formulation of principles to achieve a common public benefit. Harrison v. Hardin County Community Unit Sch. Dist. No. 1, 313 Ill. App. 3d 702, 246 Ill. Dec. 381, 730 N.E.2d 61, 2000 Ill. App. LEXIS 307 (5 Dist. 2000).

The act of assigning the plaintiff, without extraordinary protection, to ride a bus with another student who had allegedly harmed him in the past was both a determination of policy and an exercise of discretion and, therefore, was immunized under this section. D.M. v. National Sch. Bus Serv., Inc., 305 Ill. App. 3d 735, 238 Ill. Dec. 950, 713 N.E.2d 196 (2 Dist. 1999).

Complaint established on its face that third party defendants were public employees who were immunized from liability; the alleged conduct described acts and omissions of the third party

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defendants as they acted in their official capacities as public employees for city colleges in determining policy and making discretionary decisions pursuant to that policy within the meaning of this section. Board of Trustees v. Coopers & Lybrand, 296 Ill. App. 3d 538, 231 Ill. Dec. 274, 696 N.E.2d 3 (1 Dist. 1998).

Chief of police, as former boss, was not exercising his official discretion while making the alleged defamatory statements about the former employee because his acts were not unique to the office of police chief nor were his actions a policy determination; therefore, because the chief's statements were not discretionary and were not policy determinations, the defendant was not entitled to immunity from suit under this section. Stratman v. Brent, 291 Ill. App. 3d 123, 225 Ill. Dec. 448, 683 N.E.2d 951 (2 Dist. 1997), appeal denied, 175 Ill. 2d 555, 228 Ill. Dec. 726, 689 N.E.2d 1147 (1997).

Former inmate of a county jail failed to allege or prove that defendant sheriff acted from corrupt or malicious motives in knowingly permitting her to become injured by other inmates; negligent and wanton conduct was held not to be sufficient to overcome the protection afforded acts in the exercise of official discretion. Thiele v. Kennedy, 18 Ill. App. 3d 465, 309 N.E.2d 394 (3 Dist. 1974).

Intentional Interference of Contractual Relationship

- Immunity Not Applicable

Premised on proper proof of the elements of tort of intentional interference of contractual relationship, defendants would not be immune from liability under the discretionary immunity provision of this Act. Idlehour Dev. Co. v. City of St. Charles, 88 Ill. App. 3d 47, 42 Ill. Dec. 929, 409 N.E.2d 544 (2 Dist. 1980).

Legislative Intent

- Street Maintenance

The plain language of the provisions in Article III of this Act (see 745 ILCS 10/3-101 et seq.), demonstrates the legislative intention to continue the common law liability of local governments for failure to maintain streets in a condition reasonably safe for public use, provided the governmental entity has either actual or constructive notice of the defect in time to have corrected the condition. Horton v. City of Ottawa, 40 Ill. App. 3d 544, 352 N.E.2d 23 (3 Dist. 1976).

Liability

- Not Found

In an action seeking damages against owner of building and manufacturer of protective clothing for injuries suffered as a result of fighting a fire, where firefighter filed third-party complaint against city and fire department for contribution, in regard to injuries resulting from the alleged negligent provision of fire protection services, a city and its fire department cannot be "liable in tort" under the Contribution Act (740 ILCS 100/2) and, therefore, are not subject to liability within the meaning of the Contribution Act. Martin v. Lion Uniform Co., 180 Ill. App. 3d 955, 129 Ill. Dec. 686, 536 N.E.2d 736 (1 Dist. 1989).

Malicious Conduct

City manager was entitled to be dismissed from an action alleging that he acted improperly in steering a sports arena development contract away from the partnership that was originally

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chosen because, whether or not the manager was acting in the city's interests, his actions were discretionary and protected under 745 ILCS 10/2-201. Bloomington Partners, LLC v. City of Bloomington, F. Supp. 2d , 2005 U.S. Dist. LEXIS 37988 (C.D. Ill. Dec. 23, 2005).

The Illinois Constitution prohibits the insertion of the common law "corrupt or malicious motives" exception into the immunities provided by the Local Governmental and Governmental Employees Tort Immunity Act. Village of Bloomingdale v. C.D.G. Enters., 196 Ill. 2d 484, 256 Ill. Dec. 848, 752 N.E.2d 1090, 2001 Ill. LEXIS 778 (2001).

A reasonable jury could conclude that police chief's actual use of recorded conversations on a line previously designated as unrecorded and alleged disregard of village attorney's advice suggested a malicious motive. Abbott v. Village of Winthrop Harbor, 953 F. Supp. 931 (N.D. Ill. 1996).

The mere inclusion of the word "malicious" in a complaint cannot serve to transform an ordinary tort claim into an action for wilful, wanton and malicious conduct. Youker v. Schoenenberger, 22 F.3d 163 (7th Cir. 1994).

A public official may not hide behind the cloak of immunity if he maliciously and intentionally misuses the powers of his office. Young v. Hansen, 118 Ill. App. 2d 1, 249 N.E.2d 300 (2 Dist. 1969).

This section could not afford protection to municipal defendants from the charge of conspiracy maliciously to harass and persecute plaintiff in the operation of his taxicab business. Young v. Hansen, 118 Ill. App. 2d 1, 249 N.E.2d 300 (2 Dist. 1969).

Malicious Prosecution

Count one for malicious prosecution under state law sufficiently alleged that the police department employee played a significant role in causing the employee's prosecution, and the police department employee was not immune from suit under 745 ILCS 10/2-201 because his alleged participation in securing false testimony at a probable cause hearing was not a discretionary act. Theriault v. Schaumburg, F. Supp. 2d , 2002 U.S. Dist. LEXIS 23945 (N.D. Ill. Dec. 11, 2002).

Ministerial Acts

City's claim had to be rejected that the city was entitled to discretionary immunity in a case where the injured party sued the city for an injury that the injured party suffered to an elbow after the injured party tripped and fell on a small depression in the alley, which was the city's property. Although the decision to repair defects in the city's alley was indeed a discretionary matter, the city's decisions about making the repairs after it had already decided to conduct repairs was a ministerial matter and since the city's employees were not immune under 745 ILCS 10/2-201 because no such repairs had been made to the alley at issue, the city could not use 745 ILCS 10/2-209 to shelter itself based on a claim that its employees were immune. Gutstein v. City of Evanston, Ill. App. 3d , Ill. Dec. , N.E.2d , 2010 Ill. App. LEXIS 194 (1 Dist. Mar. 12, 2010).

The duty to ensure that eye protection is worn when students undertake any of the activities listed in 105 ILCS 115/1 is ministerial in nature and, thus, is not protected by the immunity granted to public entities and their employees under 745 ILCS 10/2-201. Hill v. Galesburg Cmty. Unit Sch. Dist. 205, 346 Ill. App. 3d 515, 281 Ill. Dec. 931, 805 N.E.2d 299, 2004 Ill. App. LEXIS 180 (3 Dist. 2004).

"Ministerial acts" are those which a person performs on given state of facts in a prescribed manner, in obedience to the mandate of legal authority, and without reference to the official's

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discretion as to the propriety of the act. Moore v. Bd. of Educ. of Chi., 300 F. Supp. 2d 641, 2004 U.S. Dist. LEXIS 4156 (N.D. Ill. 2004).

Former kindergarten teacher's defamation claims survived a motion to dismiss where it was impossible to determine from the pleadings whether the principal was acting outside the scope of his official duties when he made the allegedly defamatory statements and therefore he was not entitled to immunity at that stage. Lifton v. Bd. of Educ. of Chi., 290 F. Supp. 2d 940, 2003 U.S. Dist. LEXIS 20280 (N.D. Ill. 2003).

Police Chief's act of recording phone line previously designated as an unrecorded line was a result of his personal deliberation, decision and judgment and thus not a ministerial act. Abbott v. Village of Winthrop Harbor, 953 F. Supp. 931 (N.D. Ill. 1996).

Where township had undertaken to make improvements on road it was acting ministerially and it had a duty to proceed with reasonable care; therefore, township was not entitled to immunity under this section, 745 ILCS 10/2-109 or 745 ILCS 10/3-102 for plaintiff's injuries. Herman v. Will Tp., 284 Ill. App. 3d 53, 219 Ill. Dec. 688, 671 N.E.2d 1141 (3 Dist. 1996), appeal denied, 171 Ill. 2d 565, 222 Ill. Dec. 431, 677 N.E.2d 965 (1997).

Subsection (a) of 745 ILCS 10/3-102, applies only to the performance of ministerial duties, there is absolute immunity in the performance of discretionary functions, as set forth in 745 ILCS 10/2-109 and this section, there is simply no conflict between the provisions of 745 ILCS 10/3-102(a) and those of 745 ILCS 10/2-109 and this section. Kennell v. Clayton Tp., 239 Ill. App. 3d 634, 179 Ill. Dec. 980, 606 N.E.2d 812 (4 Dist. 1992).

Ministerial acts are those which a person performs on a given state of facts in a prescribed manner, in obedience to the mandate of legal authority, and without reference to the official's discretion as to the propriety of the act. Gavery v. County of Lake, 160 Ill. App. 3d 761, 112 Ill. Dec. 518, 513 N.E.2d 1127 (2 Dist. 1987).

Misuse of Power

The statute did not provide a village with immunity in an action in which a real estate developer alleged that the village corruptly misused its governmental powers to prevent the developer's plans from going forward and appropriated the benefits of the developer's plans for developing certain properties for its own ends. Village of Bloomingdale v. C.D.G. Enters., 314 Ill. App. 3d 210, 247 Ill. Dec. 578, 732 N.E.2d 633, 2000 Ill. App. LEXIS 500 (2 Dist. 2000).

Police Officers

- Immunity Not Applicable

Where family members asserted assault and battery claims, alleging that police officers, inter alia, entered their apartment without permission, punched some of them, and threatened them, the officers' argument that they were entitled to immunity was rejected because the officers contended that they were exercising discretion, but not that they were determining policy. Ramos v. Town of Cicero, F. Supp. 2d , 2005 U.S. Dist. LEXIS 15529 (N.D. Ill. July 28, 2005).

In suit against police officers alleging false arrest and use of excessive force, 745 ILCS 10/2-201 did not apply to the officers' conduct; for the section to have applied, the conduct was required to be both an exercise of discretion and a policy determination, and although the officers were arguably exercising discretion in their actions, certainly they were not formulating policy. Brown v. Village of Evergreen Park, F. Supp. 2d , 2002 U.S. Dist. LEXIS 24261 (N.D. Ill. Dec. 16, 2002).

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Policy Determination

In a case where an injured party slipped and fell while trying to enter a train platform, a railroad company was immune from liability because it was a policy determination whether to put a staircase on a certain end of the train platform. Del Real v. Northeast Ill. Reg'l Commuter R.R. Corp., 404 Ill. App. 3d 65, 343 Ill. Dec. 250, 934 N.E.2d 574, 2010 Ill. App. LEXIS 825 (1 Dist. 2010).

745 ILCS 10/2-201 of the Illinois Tort Immunity Act did not exempt a village and certain village employees from liability for a former employee's retaliatory discharge action because, in order to receive immunity under § 2-201, the municipal official must have been making a "policy decision" when committing the alleged retaliatory act. Valentino v. Vill. of S. Chi. Heights, 575 F.3d 664, 2009 U.S. App. LEXIS 16817 (7th Cir. 2009).

"Policy decisions" are those decisions which require a municipality to balance competing interests and to make a judgment call as to what solution will best serve each of those interests. Moore v. Bd. of Educ. of Chi., 300 F. Supp. 2d 641, 2004 U.S. Dist. LEXIS 4156 (N.D. Ill. 2004).

A "policy determination" requires considered evaluation and judgment by a governmental unit, utilizing its own particular expertise, to formulate principles and procedures directed toward the achievement of common and general goals for the community's benefit; during the evaluation process, several factors, including the public benefit, the practicability of the plan or procedure, and the best methods to be employed considering available resources, costs, and safety, must be considered. Harrison v. Hardin County Community Unit Sch. Dist. No. 1, 313 Ill. App. 3d 702, 246 Ill. Dec. 381, 730 N.E.2d 61, 2000 Ill. App. LEXIS 307 (5 Dist. 2000).

In a personal injury action, the appellate court declined to apply the immunity granted under 745 ILCS 10/2-109 and 745 ILCS 10/2-201 to the actions of a city's fire marshall because the court determined that the directing of plaintiff to stand behind a door during a fire drill, though discretionary, was not a policy determination within the meaning of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq. Harinek v. City of Chicago, 283 Ill. App. 3d 491, 219 Ill. Dec. 191, 670 N.E.2d 869, 1996 Ill. App. LEXIS 715 (1 Dist. 1996).

Prosecutor

- Absolute Immunity

Allegations of malicious prosecution and abuse of process against a prosecutor fall within the scope of the prosecutor's absolute immunity. Jones v. City of Chicago, 639 F. Supp. 146 (N.D. Ill. 1986).

Prosecutorial immunity is a derivative of judicial immunity. Boyd v. Adams, 513 F.2d 83 (7th Cir. 1975).

Public Streets

- Public Official Immunity

After local governmental immunity was abolished, public official immunity nonetheless survived to protect government officers from personal liability for injuries resulting from holes in public streets and highways under their care. Horton v. City of Ottawa, 40 Ill. App. 3d 544, 352 N.E.2d 23 (3 Dist. 1976).

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Purpose

- Protection

The purpose of this section is to shield the public decision-maker from liability when making decisions assessing the public's needs so that such decisions may be made without fear of personal liability or the second guessing of courts or juries. Village of Lake in the Hills v. Laidlaw Waste Sys., 160 Ill. App. 3d 427, 112 Ill. Dec. 184, 513 N.E.2d 598 (2 Dist. 1987).

- Public Policy

There are strong public policy concerns which dictate that public officials be shielded from liability in civil actions based upon their vote, in the exercise of discretion, either for or against any legislation. Carter v. City of Elmwood, 162 Ill. App. 3d 235, 113 Ill. Dec. 606, 515 N.E.2d 415 (3 Dist. 1987).

Quasi Judicial Immunity

The principle that public officers should not be liable in tort for injuries arising out of the exercise of governmental powers vested in good faith if the powers are discretionary as opposed to ministerial in nature, known as quasi judicial immunity, is derived from the immunity enjoyed by judges for actions taken by them in the course of their official duties. Thiele v. Kennedy, 18 Ill. App. 3d 465, 309 N.E.2d 394 (3 Dist. 1974).

Quasi judicial immunity is conditioned upon good faith exercise of discretion and extends only to acts not resulting from corrupt or malicious motives. Thiele v. Kennedy, 18 Ill. App. 3d 465, 309 N.E.2d 394 (3 Dist. 1974).

Retaliatory Discharge

As park district superintendent who fired an employee was not subject to personal liability on a retaliatory discharge claim, the park district itself was immune from liability under 745 ILCS 10/2-109, regardless of whether the superintendent's act was a discretionary one based on a determination of policy. Smith v. Waukegan Park Dist., 373 Ill. App. 3d 626, 312 Ill. Dec. 102, 869 N.E.2d 1093, 2007 Ill. App. LEXIS 616 (1 Dist. 2007).

Court denied a municipal employer's motion to dismiss a terminated employee's Illinois Workers' Compensation Act retaliatory discharge claim because the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., immunized the employer only with regard to discretionary actions taken by its employees and officials, and the determination of whether a municipal official's act was ministerial or discretionary was fact specific and had to be determined on a case-by-case basis. The court could not grant the dismissal motion because the employee had sufficiently alleged a retaliatory discharge claim and the facts surrounding his termination had yet to be determined. Hillmann v. City of Chicago, F. Supp. 2d , 2005 U.S. Dist. LEXIS 14760 (N.D. Ill. July 20, 2005).

Action for retaliatory discharge, even discharge in retaliation for filing a workers' compensation claim, is a common law tort, which is clearly covered by the general immunity provisions of 745 ILCS 10/2-201; any attempt to preclude the application of those immunity provisions impermissibly elevates a common law duty over an applicable statutory immunity.

In retaliatory discharge action, a mere claim of dismissal is not sufficient to plead wilful and wanton misconduct and, further, mere conclusory allegations of wilful and wanton conduct are insufficient to overcome a public employee's immunity; the plaintiff must plead in detail specific

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facts showing bad faith and improper motive. Youker v. Schoenenberger, 22 F.3d 163 (7th Cir. 1994).

Police officer's retaliatory discharge complaint against mayor and city council was dismissed because this Act shielded the municipality and its officials from liability where the discharge resulted from legislative action. Carter v. City of Elmwood, 162 Ill. App. 3d 235, 113 Ill. Dec. 606, 515 N.E.2d 415 (3 Dist. 1987).

School Board

In suit by a former high school football coach against board of education for loss of plaintiff's personal coaching library which had been contained in plaintiff's file cabinet and removed and thrown away by employees of the school board, the school board was not immune from tort liability. Williams v. Board of Educ., 52 Ill. App. 3d 328, 10 Ill. Dec. 161, 367 N.E.2d 549 (4 Dist. 1977).

School Districts

Public school district had immunity under 745 ILCS 10/2-201 with regard to a student's claim that it negligently retained a school security guard, who allegedly pushed the student through a glass door following a fight at school, because decisions regarding the hiring and firing of employees were considered to be discretionary policy decisions within the meaning of 745 ILCS 10/2-201, the Local Governmental and Governmental Employees Tort Immunity Act provided immunity to government supervisors when they hired and fired public employees, and there was not exception to immunity with regard to an employer's willful and wanton conduct in connection to the hiring and firing of employees. Rogers v. Cook, F. Supp. 2d , 2008 U.S. Dist. LEXIS 103702 (N.D. Ill. Dec. 23, 2008).

Public school district had immunity under 745 ILCS 10/1-101 of the Local Governmental and Governmental Employees Act (Act) with regard to a student's false imprisonment claim because the decision by an administrator to detain and then discipline the student following a fight at a high school because pursuant to 745 ILCS 10/1-206, the district's board of education was a local public entity for purposes of the Act and the decision to discipline the student was a discretionary, as opposed to ministerial, act for purposes of 745 ILCS 10/2-201. Rogers v. Cook, F. Supp. 2d , 2008 U.S. Dist. LEXIS 103702 (N.D. Ill. Dec. 23, 2008).

When a former student alleged that the student was sexually assaulted by a school bus driver, the school district was not entitled to summary judgment as to the student's negligent hiring claim based on immunity under 745 ILCS 10/2-201, because a fact question existed as to when the district hired the driver and whether 105 ILCS 5/34-18.5(d), requiring criminal background investigations of applicants for employment by a school district, applied. Green v. Carlinville Cmty. Unit Sch. Dist. No. 1, 381 Ill. App. 3d 207, 320 Ill. Dec. 307, 887 N.E.2d 451, 2008 Ill. App. LEXIS 253 (1 Dist. 2008).

Student's negligent retention claims against a school district, as well as the school principal, in her official capacity, were dismissed with prejudice because such claims were barred by 745 ILCS 10/2-201. Marciela G. v. Sperlik, F. Supp. 2d , 2005 U.S. Dist. LEXIS 31213 (N.D. Ill. Nov. 30, 2005).

School principal made a policy decision when he refused to let a student leave school early due to inclement weather; therefore, the school district was not liable for injuries sustained by a plaintiff in a subsequent automobile accident caused by the student. Harrison v. Hardin County Cmty. Unit Sch. Dist. No. 1, 197 Ill. 2d 466, 259 Ill. Dec. 442, 758 N.E.2d 848, 2001 Ill. LEXIS 1429 (2001).

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The statute does not abrogate a school district's affirmative duty to provide safety equipment and, therefore, did not bar an action against a school district in which the plaintiffs alleged that the school district failed to provide appropriate equipment in a physical education class. Arteman v. Clinton Community Unit Sch. Dist. No. 15, 317 Ill. App. 3d 453, 251 Ill. Dec. 217, 740 N.E.2d 47, 2000 Ill. App. LEXIS 924 (4 Dist. 2000).

The selection and modification of specific athletic equipment involve a degree of discretion and district court erred in ruling this Act did not immunize school district for alleged negligence in furnishing and modifying of football helmet. McGurk v. Lincolnway Community Sch. Dist. # 210, 287 Ill. App. 3d 1059, 223 Ill. Dec. 127, 679 N.E.2d 71 (3 Dist. 1997), appeal denied, 173 Ill. 2d 527, 226 Ill. Dec. 133, 684 N.E.2d 1336 (1997).

This Act immunizes high school districts from alleged acts of negligence pertaining to the providing of athletic equipment to students. McGurk v. Lincolnway Community Sch. Dist. # 210, 287 Ill. App. 3d 1059, 223 Ill. Dec. 127, 679 N.E.2d 71 (3 Dist. 1997), appeal denied, 173 Ill. 2d 527, 226 Ill. Dec. 133, 684 N.E.2d 1336 (1997).

Scope

This section creates a blanket immunity for all discretionary acts, and the remaining sections of this Article, 745 ILCS 10/2-202 and 745 ILCS 10/2-212, deal with mandatory acts. Emulsicoat, Inc. v. City of Hoopeston, 99 Ill. App. 3d 835, 55 Ill. Dec. 176, 425 N.E.2d 1349 (4 Dist. 1981).

Sheriffs

A sheriff was not entitled to dismissal of an action alleging that after an initial arrest on a traffic charge, the plaintiff was improperly placed on "hold" because of an outstanding warrant against another person with a similar name, and the sheriff was not entitled to immunity for his alleged failure to implement policies to prevent the detention of misidentified individuals. Hernandez v. City of Chicago, F. Supp. 2d , 2001 U.S. Dist. LEXIS 15834 (N.D. Ill. Oct. 2, 2001).

Shown

While there were most likely guidelines which a city used in hiring, training and supervising employees, all three acts required discretion, balancing of interests, and judgment calls; therefore, the alleged conduct of the city in breaching a duty to carefully supervise, train and hire police officers was discretionary activity and involved determinations of policy, to which the city was immune. Reed v. City of Chicago, F. Supp. 2d , 2002 U.S. Dist. LEXIS 13375 (N.D. Ill. Mar. 12, 2002).

Special Duty Exception

The special duty doctrine may not operate to impose liability upon a public entity after a court has found that entity immune from liability under the Tort Immunity Act. Harinek v. 161 N. Clark St. Ltd. Partnership, 181 Ill. 2d 335, 230 Ill. Dec. 11, 692 N.E.2d 1177 (1998).

- Not Applicable

Special duty doctrine may not operate to impose liability upon a public entity after a court has found that entity immune from liability under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq. Moore v. Bd. of Educ. of Chi., 300 F. Supp. 2d 641, 2004 U.S. Dist. LEXIS 4156 (N.D. Ill. 2004).

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The plaintiff failed to show the existence of a special duty in connection with her rescue by firefighters from a burning building as: (1) there was nothing unique about the defendant city's awareness of the danger to the plaintiff; (2) the plaintiff made no special allegations of acts or omissions by the defendant city; (3) the plaintiff's allegation that she was not rescued quickly enough did not show affirmative or willful conduct by the city; and (4) the defendant city did not create the fire that endangered the plaintiff. Crowley v. City of Berwyn, 306 Ill. App. 3d 496, 239 Ill. Dec. 344, 713 N.E.2d 1194 (4 Dist. 1999), appeal denied, 185 Ill. 2d 621, 242 Ill. Dec. 135, 720 N.E.2d 1090 (1999).

Plaintiff could not invoke the "special duty exception" to governmental immunity where she eagerly and voluntarily applied for the firefighter position, and failed to show that she was compelled to take the physical agility test. White v. Village of Homewood, 285 Ill. App. 3d 496, 220 Ill. Dec. 671, 673 N.E.2d 1092 (1 Dist. 1996).

Specific Person

Board of Education may assert immunity under this Act even though no specific employee of the board has been named as causing the alleged wrongful act. Bowers ex rel. Bowers v. DuPage County Regional Bd. of Sch. Trustees, 183 Ill. App. 3d 367, 131 Ill. Dec. 893, 539 N.E.2d 246 (2 Dist. 1989).

Statutory Construction

The presence of the word "discretion" in this section, and its absence in the remaining sections, triggers the familiar maxim of construction that the inclusion of one is the exclusion of all else. Emulsicoat, Inc. v. City of Hoopeston, 99 Ill. App. 3d 835, 55 Ill. Dec. 176, 425 N.E.2d 1349 (4 Dist. 1981).

Traffic Control Sign

- Discretion

The moving, changing or up-grading of an existing traffic control sign is a matter of discretion for township government. Frances v. Mills, 214 Ill. App. 3d 122, 157 Ill. Dec. 905, 573 N.E.2d 323 (3 Dist. 1991).

Since task of determining whether to erect a warning sign required the exercise of judgment and discretion, the decision not to erect the sign, even though possibly an abuse of discretion, did not result in liability. Dinges v. Gabardi, 202 Ill. App. 3d 732, 147 Ill. Dec. 873, 560 N.E.2d 21 (2 Dist. 1990).

- Vandalism

Where the stop sign fell into disrepair because of vandalism, there was no basis to conclude that defendants exercised their discretion in removing the stop sign; therefore, dismissal on the pleadings pursuant to this section was improper. Corning v. East Oakland Tp., 283 Ill. App. 3d 765, 218 Ill. Dec. 853, 670 N.E.2d 350 (4 Dist. 1996).

Unreasonable Conduct

- No Immunity

College vice president who was sued by a college employee he had supervised could not claim immunity under 745 ILCS 10/2-201, as his verbally and physically abusing the employee was not

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an exercise of discretion or a determination of policy. Valentino v. Hilquist, 337 Ill. App. 3d 461, 271 Ill. Dec. 697, 785 N.E.2d 891, 2003 Ill. App. LEXIS 84 (1 Dist. 2003), appeal denied, 204 Ill. 2d 684, 275 Ill. Dec. 83, 792 N.E.2d 314 (2003).

Defendant village was not immune from liability where its actions unreasonably interfered with homeowners property rights. Romano v. Village of Glenview, 277 Ill. App. 3d 406, 213 Ill. Dec. 799, 660 N.E.2d 56 (1 Dist. 1995).

Wilful and Wanton Misconduct

Injured youth and his mother's second-amended complaint stated sufficient facts to show that their claim based on serious injuries that the injured youth sustained in a mini-trampoline accident fell within the willful and wanton exception to the immunity that would otherwise be afforded to the city board of education, city youth center, and city youth center employee pursuant to 745 ILCS 10/2-201 and 745 ILCS 10/3-108(a); indeed, the city board of education, city youth center, and city youth center employee's conduct as alleged in the second amended complaint could be found to meet the exceptions to immunity provisions set forth in 745 ILCS 10/3-109 based on the definition of willful and wanton conduct contained in 745 ILCS 10/1-210. Murray v. Chi. Youth Ctr., 224 Ill. 2d 213, 309 Ill. Dec. 310, 864 N.E.2d 176, 2007 Ill. LEXIS 438 (2007).

High school dean, who had ordered two students to submit to strip searches, was not entitled to immunity under 745 ILCS 10/2-201 of the Illinois Governmental Employees Tort Immunity Act as a matter of law, with regard to the students' invasion of privacy, negligent infliction of emotional distress, and intentional infliction of emotional distress claims, because the students had sufficiently asserted facts that, if proven, would show wanton and willful misconduct on the dean's part, as defined in 745 ILCS 10/1-210. 745 ILCS 10/2-201 provided immunity only as to the dean's discretionary acts; it did not protect her from liability arising from her intentional, wanton, and willful misconduct. Carlson v. Bremen High Sch. Dist. 228, 423 F. Supp. 2d 823, 2006 U.S. Dist. LEXIS 14468 (N.D. Ill. 2006).

Where plaintiff employee alleged that his termination was an exercise of discretion, but still argued that the Tort Immunity Act did not apply because it has an exception for acts that are willful and wanton or based on malicious motive, he failed in that argument because this section contains no such exceptions, and accordingly, defendants were immune from his retaliatory discharge claim. Deane v. Skinner, F. Supp. 2d , 2004 U.S. Dist. LEXIS 26905 (N.D. Ill. Dec. 1, 2004).

Willful and wanton conduct cannot deprive a local public entity of immunity granted by 745 ILCS 10/2-201 of the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq. Moore v. Bd. of Educ. of Chi., 300 F. Supp. 2d 641, 2004 U.S. Dist. LEXIS 4156 (N.D. Ill. 2004).

Plaintiff's affidavit and deposition testimony that a police officer used unreasonable force in shooting him and intentionally kicking him after he was lying on the ground was enough to bring the alleged conduct within the wilful and wanton immunity exception of the Illinois Tort Immunity Act. Rudolph v. Jones, F. Supp. 2d , 2002 U.S. Dist. LEXIS 15550 (N.D. Ill. Aug. 20, 2002).

Employee argued that while the city's alleged activity was most likely discretionary and a determination of policy, the city could not claim immunity since the employee alleged that the conduct was willful and wanton; however, there was no willful and wanton exception to the immunity provided in 745 ILCS10/2-201 of the Immunity Act. Zinnermon v. City of Chi. Dep't of Police, 209 F. Supp. 2d 908, 2002 U.S. Dist. LEXIS 7727 (N.D. Ill. 2002).

The statute does not apply where the plaintiff alleges wilful and wanton conduct by a police officer. Crudup v. Barton, F. Supp. 2d , 2002 U.S. Dist. LEXIS 3047 (N.D. Ill. Feb. 25, 2002).

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The plaintiff's allegations were insufficient to state a claim for willful and wanton misconduct against the defendant city where the plaintiff alleged that the city was negligent when it carelessly and negligently failed to properly train, supervise, control, instruct police officers and was otherwise careless. Bates-Bay v. City of Chicago, F. Supp. 2d , 2001 U.S. Dist. LEXIS 12732 (N.D. Ill. Aug. 20, 2001).

The statute does not permit an exception for conduct that is willful and wanton or that is corrupt and malicious. Hartman v. Lisle Park Dist., 158 F. Supp. 2d 869, 2001 U.S. Dist. LEXIS 12414 (N.D. Ill. 2001).

Because assault is by its nature an intentional tort, a teacher was not entitled to immunity in an assault action by a student. Ianson v. Zion-Benton Twp. High Sch., F. Supp. 2d , 2001 U.S. Dist. LEXIS 1931 (N.D. Ill. Feb. 16, 2001).

This section immunizes a public employee who causes injury through wilful and wanton misconduct. D.M. v. National Sch. Bus Serv., Inc., 305 Ill. App. 3d 735, 238 Ill. Dec. 950, 713 N.E.2d 196 (2 Dist. 1999).

This section does not contain an immunity exception for wilful and wanton misconduct. In re Chicago Flood Litig., 176 Ill. 2d 179, 223 Ill. Dec. 532, 680 N.E.2d 265 (1997).

Even wilful and wanton misconduct cannot deprive a municipality of an immunity granted by this section. Harinek v. 161 N. Clark St. Ltd. Partnership, 181 Ill. 2d 335, 230 Ill. Dec. 11, 692 N.E.2d 1177 (1998).

Wrongful Injunction

Villages were immune from liability for a wrongfully issued injunction where the injunction was not sought maliciously or without probable cause. Village of Lake in the Hills v. Laidlaw Waste Sys., 160 Ill. App. 3d 427, 112 Ill. Dec. 184, 513 N.E.2d 598 (2 Dist. 1987).

Village and city were immune from a corporation's claim for damages resulting from the vacation of a preliminary injunction that had been issued upon application of the public entities because the filing of the injunction proceeding was necessarily the product of the exercise of official discretion, as contemplated by Ill. Rev. Stat. ch. 85, para. 2-201 (now 745 ILCS 10/2-201); therefore, because the public employees were not liable pursuant to 2-201, the public entities themselves were immune from liability pursuant to Ill. Rev. Stat. ch. 85, para. 2-109 (now 745 ILCS 10/2-109). Wilsonville v. Earthline Corp., 65 Ill. App. 3d 392, 22 Ill. Dec. 369, 382 N.E.2d 689, 1978 Ill. App. LEXIS 3502 (1 Dist. 1978).

LEGAL PERIODICALS

For comment, "The Chicago Public Schools and its violent students: How Can the Law Protect Teachers?", see 48 DePaul L. Rev. 907 (1999).

For article, "Survey of Illinois Law: Employment Law", see 22 S. Ill. U.L.J. 841 (1998).

For article, "Liability of Illinois Public Officials for Illegal Expenditures," see 15 S. Ill. U.L.J. 235 (1991).

For comments, "The In Loco Parentis Status of Illinois School Teachers: An Unjustifiably Broad Extension of Immunity," see 10 J. Marshall J. Prac. & Proc. 629 (1977).

For note on School Law and Torts discussing Kobylanski v. Chicago Bd. of Ed., 63 Ill. 2d 165, 347 N.E.2d 705 (1976), see 65 Ill. B.J. 466 (1977).

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For article, "Permitted But Not Intended: Boub v. Township of Wayne, Municipal Tort Immunity in Illinois, and the Right to Local Travel," see, See 38 J. Marshall L. Rev. 545 (2004).

For article, "Survey of Illinois Law: Employment Law, "see, See 28 S. Ill. U.L.J. 705 (2004).

For article, "Survey of Illinois Law: Significant Developments in Education Law 2003- 2004," see, See 29 S. Ill. U.L.J. 603 (2005).

For article, "Survey of Illinois Law: Employment Law," see, See 29 S. Ill. U.L.J. 639 (2005).

Practice Guides and Treatises.

Proving Fault in Auto Accident Cases § 5.5 Actions Against Road Contractors and Municipalities (IICLE).

Land Use Law (Illinois) § 13.15 Statutory Immunity (IICLE).

Employment Termination 2002 Ed., Updated 2005 § 16.15 Tort and Contract Claims Against State Employers (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 35:38 Failure to provide disability insurance.

Illinois Jurisprudence, Personal Injury and Torts § 35:28 Under Tort Immunity Act.

Illinois Jurisprudence, Personal Injury and Torts § 27:08 Generally.

Illinois Jurisprudence, Personal Injury and Torts § 3:90 Generally.

Illinois Jurisprudence, Personal Injury and Torts § 3:49 Liability of individual police officers.

Illinois Jurisprudence, Personal Injury and Torts § 3:48 Liability for wrongful conduct of law enforcement personnel.

Illinois Jurisprudence, Personal Injury and Torts § 3:43 Ministerial or mandatory acts.

Illinois Jurisprudence, Personal Injury and Torts § 3:42 Policy determinations; exercises of discretion.

Illinois Jurisprudence, Personal Injury and Torts § 3:35 Employee liability as affecting liability of entity.

§ 745 ILCS 10/2-202. [Execution or enforcement of law]

Sec. 2-202. A public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct.

(Source: P.A. 84-1431.)

Note.

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This section was Ill.Rev.Stat., Ch. 85, Para. 2-202.

CASE NOTES

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Constitutionality

- Equal Protection

The classification made by this section is in terms of the type of municipal function performed by the employees; such classification has a rational basis and is valid. Arnolt v. City of Highland Park, 52 Ill. 2d 27, 282 N.E.2d 144 (1972).

- Vagueness

There was no merit in the contention that the words, "in the execution or enforcement of any law," were so vague and uncertain as to render this section unconstitutional; it is only where language is so vague that courts cannot, by accepted rules of construction, and with any reasonable degree of certainty, determine the legislative intent, that a statute is void. Arnolt v. City of Highland Park, 52 Ill. 2d 27, 282 N.E.2d 144 (1972).

In General

General statutory grant of immunity under 745 ILCS 10/2-202 to government employees for their negligent acts gave way to the specific imposition of a statutory duty on those employees to exercise reasonable care outlined in 625 ILCS 5/11-205 and 625 ILCS 5/11-907 when operating emergency vehicles. Carter v. Du Page County Sheriff, Ill. App. 3d , Ill. Dec. , N.E.2d , 1999 Ill. App. LEXIS 10 (1 Dist. Jan. 20, 1999).

This section is insufficient to circumvent the blanket immunity provided by 745 ILCS 10/3-108. Grandalski ex rel. Grandalski v. Lyons Tp. High Sch., 305 Ill. App. 3d 1, 238 Ill. Dec. 269, 711 N.E.2d 372 (1 Dist. 1999), appeal denied, 185 Ill. 2d 623, 242 Ill. Dec. 136, 720 N.E.2d 1091 (1999).

This section is not a general exception to all of the other immunities established by the Tort Immunity Act and does not grant immunity for every act or omission of public employees while on duty. Barnett v. Zion Park Dist., 171 Ill. 2d 378, 216 Ill. Dec. 550, 665 N.E.2d 808 (1996).

A municipality in Illinois is liable only for the wilful and wanton acts of its employees. Gordon v. Degelmann, 29 F.3d 295 (7th Cir. 1994).

Although public employee immunity extends to negligent acts, it does not extend to wilful and wanton conduct, or to acts by public employees based on corrupt or malicious motives. Youker v. Schoenenberger, 763 F. Supp. 361 (N.D. Ill. 1991).

A municipality and a police officer are not liable as a result of the failure to make an arrest or to enforce a law in absence of a special relationship; this general rule is based on sound public

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policy, and will not be disturbed. Schaffrath v. Village of Buffalo Grove, 160 Ill. App. 3d 999, 112 Ill. Dec. 417, 513 N.E.2d 1026 (1 Dist. 1987).

This section provides immunity from liability torts committed by public officials in enforcing or executing a law, but creates an exception for conduct constituting wilful or wanton negligence. Gavery v. County of Lake, 160 Ill. App. 3d 761, 112 Ill. Dec. 518, 513 N.E.2d 1127 (2 Dist. 1987).

Under this section of the Act, a public employee is relieved of liability for his acts or omissions in the execution or enforcement of any law unless such acts or omissions constitute wilful and wanton negligence. Kupianen ex rel. Kupianen v. Graham, 107 Ill. App. 3d 373, 63 Ill. Dec. 125, 437 N.E.2d 774 (1 Dist. 1982).

This Act clearly applies to any public employees and to any act or omission by them in the execution or enforcement of any law. Board of Educ. of Community Unit Sch. v. Pomeroy, 47 Ill. App. 3d 468, 5 Ill. Dec. 742, 362 N.E.2d 55 (3 Dist. 1977).

Affirmative Defense

A municipality is able to assert the immunities permitted under this section, 745 ILCS 10/2-109 and 745 ILCS 10/2-201 in an action brought under the Joint Tortfeasor Contribution Act (740 ILCS 100/0.01 et seq.). Lietsch v. Allen, 173 Ill. App. 3d 516, 123 Ill. Dec. 340, 527 N.E.2d 978 (3 Dist. 1988).

While it is not one of the defenses listed in 735 ILCS 5/2-613, statutory governmental immunity has been recognized as a valid affirmative defense in cases involving allegations of negligence by public employees. Fitzpatrick v. City of Chicago, 131 Ill. App. 3d 582, 86 Ill. Dec. 616, 475 N.E.2d 995 (1 Dist. 1985), rev'd on other grounds, 112 Ill. 2d 211, 97 Ill. Dec. 419, 492 N.E.2d 1292 (1986).

Applicability

Since other, specific statutory provisions applied to give the city complete immunity from the alleged willful and wanton conduct of the building inspectors in inspecting the staircase with the removed handrail from which the injured woman fell, the injured woman could not maintain a cause of action against the city by claiming that the injured woman was injured due to the city's failure to enforce the law. Indeed, the injured woman could not successfully claim that the injured woman's damages were really due to the city's failure in enforcing its laws under 745 ILCS 10/2-202, 745 ILCS 10/2-103, and 745 ILCS 10/2-205, as the injured woman's claims were actually about inadequate or incompetent inspections. Hess v. Flores, 408 Ill. App. 3d 631, 350 Ill. Dec. 571, 948 N.E.2d 1078, 2011 Ill. App. LEXIS 301 (1 Dist. 2011).

Willful and wanton exception recognized in 745 ILCS 10/2-202 did not apply to defeat the immunity that protected the city from the injured motorists' personal injury claims that they filed after a man placed in the back of a squad car by a police officer stole the squad car and collided it with the injured motorists' vehicle, which was stopped at a red light. The city was protected by the immunity set forth in 745 ILCS 10/4-106(b) for injuries caused by escaping prisoners, as 745 ILCS 10/4-101 made him a prisoner because the officer had placed him "in custody, and the willful and wanton exception did not apply because the legislature would have expressly stated in 745 ILCS 10/4-106(b) if it had wanted the exception to apply and it did not do so. Ries v. City of Chicago, 242 Ill. 2d 205, 351 Ill. Dec. 135, 950 N.E.2d 631, 2011 Ill. LEXIS 427 (2011).

Because the mother of a quadriplegic, who fell off a roof, did not allege the injury occurred because city employees acted willfully and wantonly in executing or enforcing the law, but rather that her son was injured because the city failed to enforce the law, her claims did not fall within the immunity exception stated in 745 ILCS 10/2-202, even if it was applicable. Bowler v. City of

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Chicago, 376 Ill. App. 3d 208, 315 Ill. Dec. 140, 876 N.E.2d 140, 2007 Ill. App. LEXIS 977 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1786 (Ill. 2007).

No basis existed for applying the willful and wanton conduct exception found in 745 ILCS 10/2-202 in conjunction with the immunities provided to a city by 745 ILCS 10/2-105,2-207, particularly in light of the fact that the former statute provided a general immunity while the latter statutes directly addressed the subjects at issue in an action against the city alleging willful and wanton conduct by city building inspectors with regard to their inspections of a porch that collapsed killing 13 people. Ware v. City of Chicago, 375 Ill. App. 3d 574, 314 Ill. Dec. 14, 873 N.E.2d 944, 2007 Ill. App. LEXIS 837 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1797 (Ill. 2007), appeal denied, 2007 Ill. LEXIS 1733 (Ill. 2007), appeal denied, 2007 Ill. LEXIS 1743 (Ill. 2007).

Despite language in 745 ILCS 10/2-202 indicating that immunity did not extend in cases involving willful and wanton conduct, the police department employee's cause of action alleging willful and wanton prosecution was properly dismissed; the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., pursuant to 745 ILCS 10/1-101.1, did not create new liabilities that did not exist at common law. Sparks v. Starks, 367 Ill. App. 3d 834, 305 Ill. Dec. 770, 856 N.E.2d 575, 2006 Ill. App. LEXIS 881 (1 Dist. 2006).

Police officers' testimony demonstrated that he entered the decedent's household to enforce the law, and based on the representations of the decedent's family, the officers both believed they would arrest the decedent, a psychotic man, for disorderly conduct; one officer wanted to gather more information before making a decision on whether to arrest the man, but his entry was designed to gather information to enforce the law. The officers' actions had to be evaluated under 745 ILCS 10/2-202, not 745 ILCS 10/2-201, and the officers were not immune for any conduct found to be willful and wanton. Sallenger v. City of Springfield, F. Supp. 2d , 2005 U.S. Dist. LEXIS 18202 (C.D. Ill. Aug. 4, 2005), aff'd, 473 F.3d 731, 2007 U.S. App. LEXIS 436 (7th Cir. Ill. 2007).

Section applies to torts against non governmental persons or property, not co-workers. Lohman v. Bemis, 289 Ill. App. 3d 139, 223 Ill. Dec. 869, 680 N.E.2d 819 (1 Dist. 1997).

Claim Stated

Even if the Local Governmental and Governmental Employees Tort Immunity Act applied to a student's negligent supervision claim against a public school district, the student sufficiently pleaded facts showing that the willful and wanton conduct exception, set out in 745 ILCS 10/2-202, might apply, as he alleged that a school security guard had a history of violent acts, that the guard had used excessive violence against other students in the past, and that the school district knew about the guard's history and past misconduct. Rogers v. Cook, F. Supp. 2d , 2008 U.S. Dist. LEXIS 103702 (N.D. Ill. Dec. 23, 2008).

Where plaintiff brought a civil rights action against a city and police officers, seeking to establish the officers' liability in tort for an encounter and subsequent arrest in which plaintiff was injured, the claim was controlled by the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., and the claim would not be dismissed under 745 ILCS 10/2-202 where plaintiff alleged conduct that if proven could be considered willful and wanton conduct pursuant to 745 ILCS 10/1-210. Jackson v. City of Joliet, F. Supp. 2d , 2004 U.S. Dist. LEXIS 4278 (N.D. Ill. Mar. 17, 2004).

The plaintiff sufficiently alleged that the officers were executing or enforcing the law and their failure to stop an attack on the plaintiff was wilful and wanton, therefore the plaintiff stated a claim against the officers and the city under this section. Holder v. Ivanjack, 39 F. Supp. 2d 965 (N.D. Ill. 1999).

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Construction

When it was alleged that a city did not assist the patrons of a nightclub who were trapped in the building while trying to exit the building, the city was absolutely immune, under 745 ILCS 10/4-102, because: (1) crowd control was a typical police function immunized by 745 ILCS 10/4-102; (2) the immunity exception in 745 ILCS 10/2-202 for willful and wanton conduct did not apply to claims that police did not assist individuals; and (3) 745 ILCS 10/2-202's exception only applied to individual employees and not to entities. Anthony v. City of Chicago, 382 Ill. App. 3d 983, 321 Ill. Dec. 202, 888 N.E.2d 721, 2008 Ill. App. LEXIS 429 (1 Dist. 2008), appeal denied, 229 Ill. 2d 617, 325 Ill. Dec. 1, 897 N.E.2d 249, 2008 Ill. LEXIS 1334 (2008).

When it was alleged that a city let a nightclub, at which numerous people were injured or died when trying to exit the building, operate despite knowing it was dangerous, the city was entitled to absolute immunity, under 745 ILCS 10/2-103, providing immunity for a failure to enforce the law, because the immunity exception in 745 ILCS 10/2-202 for willful and wanton conduct did not apply, as that exception applied to employees rather than entities. Anthony v. City of Chicago, 382 Ill. App. 3d 983, 321 Ill. Dec. 202, 888 N.E.2d 721, 2008 Ill. App. LEXIS 429 (1 Dist. 2008), appeal denied, 229 Ill. 2d 617, 325 Ill. Dec. 1, 897 N.E.2d 249, 2008 Ill. LEXIS 1334 (2008).

When it was alleged that a city let a nightclub, at which numerous people were injured or died when trying to exit the building, operate despite knowing it was dangerous, the city was entitled to absolute immunity, under 745 ILCS 10/2-103, providing immunity for a failure to enforce the law, because the immunity exception in 745 ILCS 10/2-202 for willful and wanton conduct did not apply, as it was not alleged that injury or death occurred while anyone was in the course of putting a law into effect, but that the city did nothing, which was immunized by 745 ILCS 10/2-103. Anthony v. City of Chicago, 382 Ill. App. 3d 983, 321 Ill. Dec. 202, 888 N.E.2d 721, 2008 Ill. App. LEXIS 429 (1 Dist. 2008), appeal denied, 229 Ill. 2d 617, 325 Ill. Dec. 1, 897 N.E.2d 249, 2008 Ill. LEXIS 1334 (2008).

Because the language in 750 ILCS 60/305 mirrors the language in this section, municipalities and police officers were not entitled to absolute immunity under former section for alleged violations of the Illinois Domestic Violence Act of 1986; they were entitled to immunity only if their actions under the Act were not considered willful and wanton misconduct. Lacey v. Vill. of Palatine, 379 Ill. App. 3d 62, 318 Ill. Dec. 64, 882 N.E.2d 1187, 2008 Ill. App. LEXIS 61 (1 Dist. 2008), rev'd; superseded, 2009 Ill. LEXIS 186 (Ill. 2009).

City was immune from liability for failing to enforce a building code, issuing s construction permit, negligently inspecting and/or failing to inspect the property as 745 ILCS 10/2-202 could not be read in conjunction with 745 ILCS 10/2-104 to create an exception to the immunity § 2-104 provided for issuance of a permit; accordingly, the city was immune from liability pursuant to 745 ILCS 10/2-103,2-205, 2-104 and 2-105. Bowler v. City of Chicago, 376 Ill. App. 3d 208, 315 Ill. Dec. 140, 876 N.E.2d 140, 2007 Ill. App. LEXIS 977 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1786 (Ill. 2007).

Village and one of its police officers were providing a police service when the officer responded to a stranded motorist call and were immunized under 745 ILCS 10/4-102 rather than under 745 ILCS 10/2-202, which provided immunity to police officers executing or enforcing the law; under the former, the village and the police officer were immune from liability in a personal injury action even if the officer's conduct in assisting the stranded motorist constituted willful and wanton misconduct that was a proximate cause of the severe injuries to two teens and the death of a third teen. McElmeel v. Vill. of Hoffman Estates, 359 Ill. App. 3d 824, 296 Ill. Dec. 328, 835 N.E.2d 183, 2005 Ill. App. LEXIS 875 (1 Dist. 2005), appeal denied, 217 Ill. 2d 567, 300 Ill. Dec. 367, 844 N.E.2d 39 (2005).

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This section sets the governing standard of care in a case involving a law enforcement officer who is enforcing the law; 625 ILCS 5/11-205 applies to all drivers of emergency vehicles, both public and private, while this section applies only to public employees engaged in law enforcement. Zurba v. United States, F. Supp. 2d , 2000 U.S. Dist. LEXIS 6937 (N.D. Ill. May 12, 2000), aff'd, 318 F.3d 736 (7th Cir. 2003).

While 105 ILCS 5/34-84(a) posits a duty of enforcement in educators, it is not a law enforced or executed in the sense contemplated by this section. A.R. v. Chicago Bd. of Educ., 311 Ill. App. 3d 29, 243 Ill. Dec. 697, 724 N.E.2d 6, 1999 Ill. App. LEXIS 924 (1 Dist. 1999), appeal denied, 188 Ill. 2d 561, 246 Ill. Dec. 121, 729 N.E.2d 494 (2000); but see Doe v. Chi. Bd. of Educ., 213 Ill. 2d 19, 289 Ill. Dec. 642, 820 N.E.2d 418 (2004).

Summary judgment was not proper in an action arising from injuries caused by a drunk driver, who had not been taken into custody following a domestic dispute, because although the officers did not owe a special duty to the victims to protect them from an intoxicated driver under the "special duty exception" to the former Local Governmental and Governmental Employees Tort Immunity Act, Ill. Rev. Stat. ch. 85, para. 4-102 (now 745 ILCS 10/4-102) and Ill. Rev. Stat. ch. 85, 4-107 (now 745 ILCS 10/4-107), the officers could be still held liable under the act for willful and wanton conduct in enforcement of the law under former Il. Rev. Stat. ch. 85, para. 2-202 (now 745 ILCS 10/2-202), former Ill. Rev. Stat. ch. 85 para. 2-204 (now 745 ILCS 10/2-204), and former Ill. Rev. Stat. ch. 85, para. 2-210 (now 745 ILCS 10/2-210). Fatigato v. Village of Olympia Fields, 281 Ill. App. 3d 347, 217 Ill. Dec. 63, 666 N.E.2d 732, 1996 Ill. App. LEXIS 359 (1 Dist. 1996).

This section provides immunity only where the public employee is negligent while actually engaged in the execution or enforcement of a law. Barnett v. Zion Park Dist., 171 Ill. 2d 378, 216 Ill. Dec. 550, 665 N.E.2d 808 (1996).

Article V of this Act is intended to provide blanket immunity in the specific area of fire protection and is not subject to the exception set forth in this section. Jackson v. Chicago Firefighters Union, 160 Ill. App. 3d 975, 112 Ill. Dec. 393, 513 N.E.2d 1002 (1 Dist. 1987).

Because 745 ILCS 10/4-102 and 745 ILCS 10/4-107 pertain specifically to police and their functions in enforcing the criminal law and making arrests, those sections govern and prevail over the wilful and wanton negligence language of this section in a case alleging negligence by failure to make an arrest. Luber v. City of Highland, 151 Ill. App. 3d 758, 104 Ill. Dec. 583, 502 N.E.2d 1243 (5 Dist. 1986).

An on-duty policeman who failed to enforce a posted speed limit would not be liable for an accident caused thereby unless his actions were wilful and wanton under this section; police chief who failed to instruct the patrolman to enforce the limit would not be liable under 745 ILCS 10/2-205. The "act" of the policeman, if wilful and wanton, is actionable and there is no immunity; the "injury caused by" the failure of the police chief is not actionable. Emulsicoat, Inc. v. City of Hoopeston, 99 Ill. App. 3d 835, 55 Ill. Dec. 176, 425 N.E.2d 1349 (4 Dist. 1981).

This section is broader than 745 ILCS 10/4-102 and 745 ILCS 10/4-107 in two respects: (1) it pertains to all public employees and (2) in the execution or enforcement of any law. Jamison v. City of Chicago, 48 Ill. App. 3d 567, 6 Ill. Dec. 558, 363 N.E.2d 87 (1 Dist. 1977).

Elements

- Negligence

The elements of a cause of action for wilful and wanton negligence are a duty to the injured party, and a breach of that duty which is a proximate cause of the injury. Breck v. Cortez, 141 Ill. App. 3d 351, 95 Ill. Dec. 615, 490 N.E.2d 88 (2 Dist. 1986).

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Employees

- Immunity of Municipality

Court dismissed plaintiffs' claims regarding a wrongful arrest and negligence in failing to provide medical care to a prisoner because under 745 ILCS 10/2-202 police officers were not liable for the arrest when the officers were enforcing the law, and because the officers were not liable, the city was not liable under 745 ILCS 10/2-109. Claims alleging negligence for failure to provide medical treatment were dismissed because 745 ILCS 10/4-105 provided that the officers and the city were not liable for an injury proximately caused by the failure of the officers to furnish or obtain medical care for the arrestee. Montegomery v. City of Collinsville Police Dep't, F. Supp. 2d , 2006 U.S. Dist. LEXIS 49058 (S.D. Ill. July 18, 2006).

This provision indicates that a municipality would not be liable for the negligent acts of their employees in the execution or enforcement of any law. Byrne v. City of Chicago, 215 Ill. App. 3d 698, 159 Ill. Dec. 350, 576 N.E.2d 19 (1 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 915, 584 N.E.2d 127 (1991).

Evidence

The question of wilful and wanton misconduct may be determined by a court on a motion for a directed verdict if evidence which viewed in its aspect most favorable to opponent, so overwhelmingly favors movant that no contrary determination could ever stand. Breck v. Cortez, 141 Ill. App. 3d 351, 95 Ill. Dec. 615, 490 N.E.2d 88 (2 Dist. 1986).

Execution or Enforcement

- Not Shown

Where defendant/police officer testified that he was merely cruising when he observed several individuals standing outside and in the hallway of the apartment building and suspected a drug deal he was not engaged in the execution or enforcement of a law while he was routinely cruising the neighborhood. Leaks v. City of Chicago, 238 Ill. App. 3d 12, 179 Ill. Dec. 324, 606 N.E.2d 156 (1 Dist. 1992).

Where at the time of accident in which child's bicycle struck a police car, officer was responding to a call from a dispatcher about a missing person and where that officer stated that he did not consider the call an emergency and there was no indication that any crime had been committed or that any law required execution or enforcement the trial court erred in finding that the officer was executing and enforcing the law at the time of the accident. Simpson v. City of Chicago, 233 Ill. App. 3d 791, 175 Ill. Dec. 29, 599 N.E.2d 1043 (1 Dist. 1992).

- Shown

Where driver and passengers in vehicle were suspected of being involved in a drive by shooting and after being stopped by police one passenger drew a gun on an officer and driver sped off breaking numerous traffic laws, pursuing police were engaged in law enforcement. Morton v. City of Chicago, 286 Ill. App. 3d 444, 222 Ill. Dec. 21, 676 N.E.2d 985 (1 Dist. 1997).

Governmental Immunity

- In General

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Governmental immunities have become the exception rather than the rule; unless the defendant can demonstrate an applicable immunity under this Act, there is no immunity. Byrne v. City of Chicago, 215 Ill. App. 3d 698, 159 Ill. Dec. 350, 576 N.E.2d 19 (1 Dist.), cert. denied, 142 Ill. 2d 651, 164 Ill. Dec. 915, 584 N.E.2d 127 (1991).

- Individual Employees

While county can be sued for the wilful and wanton acts of its employees, the individual employees cannot be held individually liable to the extent their conduct is protected by the immunity. Oppe v. State of Mo., 171 Ill. App. 3d 491, 121 Ill. Dec. 882, 525 N.E.2d 1189 (4 Dist. 1988).

A public employee is not immune from liability when, while enforcing or executing a law, he acts wilfully and wantonly. Glover v. City of Chicago, 106 Ill. App. 3d 1066, 62 Ill. Dec. 597, 436 N.E.2d 623 (1 Dist. 1982).

Illustrative Cases

- Defendant Immune

745 ILCS 10/4-102 applied to a situation in which county police personnel completely failed to respond to a passing motorist's report of a possible accident, providing defendants with absolute immunity for both negligence and willful and wanton misconduct with regard to a wrongful death action filed by the representative of the estate of a decedent who was found dead outside her vehicle three days later when defendants finally responded and located the accident scene. 745 ILCS 10/2-202, with its willful and wanton misconduct exception, did not apply to the facts of the case because defendants were not executing or enforcing the law and they did not exercise any control over the decedent. DeSmet v. County of Rock Island, 219 Ill. 2d 497, 302 Ill. Dec. 466, 848 N.E.2d 1030, 2006 Ill. LEXIS 617 (2006).

Former student's Racketeer Influenced and Corrupt Organizations Act (RICO) claim against a state university failed, as the university was immune from suit under RICO; the state had not waived sovereign immunity pursuant to 745 ILCS 10/1-210 and 745 ILCS 10/2-202. Doe v. Bd. of Trs. of the Univ. of Ill., 429 F. Supp. 2d 930, 2006 U.S. Dist. LEXIS 26154 (N.D. Ill. 2006).

Where decedent pointed his gun at an officer, an act reasonably perceived by the officer to constitute an imminent threat to his life, the officer's use of deadly force was justified; because the record was devoid of any evidence to support an allegation that the officer acted willfully or wantonly, the officer was insulated from liability by the Illinois Tort Immunity Act. Taylor v. City of Chi., F. Supp. 2d , 2003 U.S. Dist. LEXIS 17433 (N.D. Ill. Sept. 29, 2003).

Defendant's motion to dismiss, pursuant to Fed. R. Civ. P. 12(b)(6), was granted with regard to negligence claims on the ground that since the police officer and the sergeant were trying to arrest plaintiff on a warrant when plaintiff was shot they were legitimately executing and enforcing the law and were immune from negligence liability under the Illinois Local Governmental Tort Immunity Act, 745 ILCS 10/2-202. Allen v. City of Zion, F. Supp. 2d , 2003 U.S. Dist. LEXIS 15457 (N.D. Ill. Sept. 2, 2003).

Defendant was immune from action for false arrest and for brandishing a weapon without cause or provocation where the plaintiff's complaint did not allege sufficient facts to justify the conclusion that the defendant engaged in wilful and wanton conduct. Bruce v. Perkins, 701 F. Supp. 163 (N.D. Ill. 1988).

- Defendant Not Immune

Deputy, sergeant, and the state's attorney's motion to dismiss state-law claims against them under the Illinois Tort Immunity Act, 745 ILCS 10/2-202 was denied because the record had to be

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further developed before the court could evaluate the veracity of the individual's claim that deputy's, sergeant's, and state's attorney's behavior was willful and wanton. Horstman v. County of Dupage, 284 F. Supp. 2d 1125, 2003 U.S. Dist. LEXIS 17030 (N.D. Ill. 2003).

This section did not exempt defendants from liability for blatant departure from an environmental control ordinance. Tavarez v. O'Malley, 635 F. Supp. 1274 (N.D. Ill. 1986), modified on other grounds, 826 F.2d 671 (7th Cir. 1987).

- Motion to Dismiss Denied

Motion to dismiss the claims for wrongful death, pursuant to 745 ILCS 10/2-201, 745 ILCS 10/2-202, and 745 ILCS 10/2-204, brought against a county sheriff and a deputy, and pursuant to 745 ILCS 10/4-106, the claims against a county, a sheriff's department, the sheriff, and the deputy, for allowing a decedent to escape and commit suicide while in custody was denied because the record was not yet sufficiently developed, and the briefing was inadequate, to determine if any of the defendants were entitled to immunity under any of the respective provisions. Sidwell v. County of Jersey, F. Supp. 2d , 2006 U.S. Dist. LEXIS 29565 (S.D. Ill. May 15, 2006).

- Municipality Immune

Where sheriff had knowledge that an effective system to remove quashed warrants from the database was necessary to minimize (if not to eliminate entirely) the arrest and detention of persons against whom no valid outstanding warrants exist but failed to take any of the measures readily available to him to improve the effectiveness of the system, this manifested deliberate indifference as a matter of law; however, where neither of the corrective measures that might reasonably have been required of sheriff would have prevented plaintiff's detention, the municipality was not liable for plaintiff's false arrests. Hvorcik v. Sheahan, 847 F. Supp. 1414 (N.D. Ill. 1994).

- Municipality Liable

It was self-evident that the failure to wash dead warrants from the system was a substantial factor in causing the type of unlawful arrest and detention complained of in action, thus for those class members who (unlike named plaintiffs) would not have suffered arrest and detention if sheriff had taken appropriate action rather than remaining deliberately indifferent, causation did not stand as an obstacle to finding municipality liable. Hvorcik v. Sheahan, 847 F. Supp. 1414 (N.D. Ill. 1994).

Misconduct

- Municipal Corporation

A municipal corporation is immune from liability for tortious acts of its employees committed in the execution of enforcement of any law unless the acts constitute wilful and wanton misconduct. Mattila v. City of Belleville, 184 Ill. App. 3d 49, 132 Ill. Dec. 485, 539 N.E.2d 1291 (5 Dist. 1989).

Municipal Code

- Indemnification

In the event a policeman is granted immunity under this section, the municipality may not be subjected to liability by virtue of the provisions of 65 ILCS 5/1-4-5 and 65 ILCS 5/1-4-6; if there is no liability upon the policeman in the first instance because of the immunity statute, there is no duty to indemnify under the indemnity statute. To this extent, the two statutes, insofar as they are in pari materia, can be construed together. Arnolt v. City of Highland Park, 52 Ill. 2d 27, 282 N.E.2d 144 (1972).

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Pleadings

- No Waiver

The statutory immunity provided for public employees executing or enforcing a law is an affirmative defense which under 745 ILCS 5/2-613 should have been raised in the defendants' answer; however, 735 ILCS 5/2-616 allowed the defense to be interposed before the final judgment, and where plaintiff was prepared to and did argue the merits of defendants' directed verdict motion on the issue, defendants did not waive the statutory immunity defense by failing to raise it in their original pleadings. Morris v. City of Chicago, 130 Ill. App. 3d 740, 86 Ill. Dec. 77, 474 N.E.2d 1274 (1 Dist. 1985).

Police Officer

Police officers were entitled to immunity under 745 ILCS 10/2-202 of the Illinois Local Governmental and Governmental Employees Tort Immunity Act from protestors' claims of false arrest and false imprisonment, which were based on arrests that took place during a protest march. The officers acted reasonably in making the arrests and did not act willfully and wantonly within the meaning of 745 ILCS 10/1-210. Vodak v. City of Chicago, 624 F. Supp. 2d 933, 2009 U.S. Dist. LEXIS 15396 (N.D. Ill. 2009).

- Factual Determination

In a case where an arrestee brought an Illinois state law battery claim against a police officer who arrested him, the district court erred by granting summary judgment in favor of the officer because further factual development was necessary to determine whether the officer was shielded from liability under this section. Chelios v. Heavener, 520 F.3d 678, 2008 U.S. App. LEXIS 5894 (7th Cir. 2008).

Police Officers

Deputy police chief was not entitled to immunity under the Illinois Local Governmental Tort Immunity Act, 745 ILCS 10/2-202, from an arrestee's false arrest and false imprisonment claims, as a reasonable jury could have found that the deputy chief acted willfully and wantonly in arresting the arrestee for disorderly conduct; under the arrestee's version of a conversation with the deputy chief, there would not have been probable cause to believe that the arrestee had made a false complaint against a police officer, and the arrestee claimed that the deputy chief acted in retaliation for the arrestee's complaint. Sexton v. Cotton, F. Supp. 2d , 2008 U.S. Dist. LEXIS 89762 (N.D. Ill. Nov. 5, 2008).

Where plaintiff alleged that his conviction for possession of a stolen vehicle was the product of a false complaint and false testimony, he filed a civil rights suit against the police and alleged a claim for "negligent-willful and wanton conduct." The district court ordered stricken the word "negligence" from the claim because the officers had immunity under the Immunity Act, 745 ILCS 10/2-202, for a claim of simple negligence. Gordon v. Devine, F. Supp. 2d , 2008 U.S. Dist. LEXIS 81234 (N.D. Ill. Oct. 14, 2008).

Jury could have found that an officer was not on an expressway to enforce the law, but was merely following a pursuit out of personal interest in the outcome or some unofficial camaraderie with fellow officers leading the pursuit. Therefore, it could not be said that the jury erred in determining that the officer was not enforcing or executing the law at the time of the collision so as to be immune from liability pursuant to § 2-202 of the Tort Immunity Act, 745 ILCS 10/1-101 et seq. Hudson v. City of Chicago, 378 Ill. App. 3d 373, 317 Ill. Dec. 262, 881 N.E.2d 430, 2007 Ill. App. LEXIS 1292 (1 Dist. 2007).

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Summary judgment in favor of a city on a wilful and wanton conduct claim arising out of an accident that occurred at the end of a police pursuit was appropriate as no genuine issue of material fact existed that the actions of the officers involved in the accident were wilful and wanton; initiating the pursuit, alone, was not wilful and wanton conduct, nor was the officers' failure to activate the police car's overhead lights or to notify their superiors of the 30 to 40 second pursuit. Further, the evidence established that the weather was clear, traffic was light, and the roads were dry. Shuttlesworth v. City of Chicago, 377 Ill. App. 3d 360, 316 Ill. Dec. 581, 879 N.E.2d 969, 2007 Ill. App. LEXIS 1160 (1 Dist. 2007).

While 745 ILCS 10/2-202 provided broader immunity than available under federal concepts of qualified immunity to police officers regarding survival and wrongful death actions stemming from the death of an individual detained and questioned in a parking lot, summary judgment on those state claims based on 745 ILCS 10/2-202 immunity was precluded as questions of material fact existed as to whether the officers' conduct in detaining the individual and in obtaining medical attention for the individual when he became ill constituted willful and wanton conduct. Davis v. Village of Fox Lake, F. Supp. 2d , 2005 U.S. Dist. LEXIS 30892 (N.D. Ill. Nov. 30, 2005).

Defendants were entitled to dismissal of a Local Governmental and Governmental Tort Immunity Act claim filed by plaintiff, who was injured when a police officer's car struck her car. Plaintiff did not allege that the officer was on duty or acting under color of state law at the time of the accident, so her claim did not allege that the officer was enforcing the laws at the time of the accident. McDorman v. Smith, F. Supp. 2d , 2005 U.S. Dist. LEXIS 15964 (N.D. Ill. Aug. 2, 2005).

- Apprehending Escaped Criminal

Law enforcement officers attempting to apprehend an escaped criminal is a uniquely governmental function; therefore, the public official immunity applies and the individual law enforcement officers cannot be personally liable. Oppe v. State of Mo., 171 Ill. App. 3d 491, 121 Ill. Dec. 882, 525 N.E.2d 1189 (4 Dist. 1988).

- Arrest

Plaintiff had been convicted of sexual assault, but later had his conviction vacated when DNA evidence proved it was his uncle who had had sexual intercourse with the victim. His malicious prosecution claim against the police officers who arrested him were properly dismissed because there was probable cause to arrest him, and therefore no malice. Holland v. City of Chicago, 641 F.3d 248, 2011 U.S. App. LEXIS 12688 (7th Cir. 2011), cert. denied, 2011 U.S. LEXIS 8224, 181 L. Ed. 2d 424 (U.S. 2011).

A police officer was not entitled to summary judgment in an action which alleged false arrest and imprisonment when he arrested the plaintiffs after they passed through a transit authority gate to board a train where the officer knew the gate was broken and was not accepting fare cards at the time he observed the plaintiffs, he witnessed the plaintiffs place their fare cards into the gate, and he arrested them for theft of services after they walked through the gate. Marchetta v. Chicago Transit Auth., F. Supp. 2d , 2002 U.S. Dist. LEXIS 1679 (N.D. Ill. Feb. 1, 2002).

Where evidence supported finding that police officer had probable cause to arrest caretaker for theft of elderly person's automobile, same evidence could support finding that arrest was not willful and wanton under this section. Boyce v. Fernandes, 77 F.3d 946 (7th Cir. 1996).

- Attack by Another

When a police officer engaged in enforcing the law comes under attack, the officer does not necessarily cease to be enforcing the law merely because he or she attempts to maneuver out of range of the attack. Thompson v. City of Chicago, 108 Ill. 2d 429, 92 Ill. Dec. 231, 484 N.E.2d 1086 (1985).

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- Conduct

In an action by the personal representatives of a decedent's estate against a police officer there was a question of whether the officer was immune under 745 ILCS 10/2-202 from the representatives' state wrongful death claim pertaining to the death of the decendent from being pinned under the officer's vehicle where the parties failed to address whether the officer's conduct was willful and wanton under 745 ILCS 10/1-210. Hand v. Vill. of Brooklyn, F. Supp. 2d , 2005 U.S. Dist. LEXIS 12143 (S.D. Ill. June 15, 2005).

Where officer while responding to a call that a burglary may be in progress, had his emergency warning lights activated and was using his siren intermittently, and where he did notice plaintiff's vehicle proceeding into the intersection and did try to avoid the collision; his actions did not rise to the level of wanton and wilful misconduct. Bosen v. City of Collinsville, 166 Ill. App. 3d 848, 117 Ill. Dec. 287, 520 N.E.2d 638 (5 Dist. 1987).

Enforcing the law is rarely a single, discrete act, but is instead a course of conduct. Thompson v. City of Chicago, 108 Ill. 2d 429, 92 Ill. Dec. 231, 484 N.E.2d 1086 (1985).

- Emergency Vehicles

Pursuant to the plain language of 625 ILCS 5/11-205, 625 ILCS 5/11-907, and this section, the legislature has chosen to grant broader immunity to a public employee actually engaged in the execution or enforcement of a law, than to a private employee or to a public employee not engaged in the execution or enforcement of a law. Carter v. Du Page County Sheriff, 304 Ill. Ap. 3d 443, 238 Ill. Dec. 161, 710 N.E.2d 1263 (2 Dist. 1999).

- Enforcement of Any Law

Where evidence establishes that at the time of his alleged negligence, a public employee was engaged in a course of conduct designed to carry out or put into effect any law, an affirmative defense based upon this section and 745 ILCS 10/2-109 should be available to the governmental employee and his employer. Fitzpatrick v. City of Chicago, 112 Ill. 2d 211, 97 Ill. Dec. 419, 492 N.E.2d 1292 (1986).

- Enforcement of Traffic Laws

Where a police officer observed two cars parked on median of expressway and saw people walking on shoulder waving their arms at him, he activated emergency lights on his squad car, including his mars lights, drove across the median, parked his squad car and was investigating the damage to an auto when plaintiff collided with his squad car, the officer was in the process of executing or enforcing the applicable traffic laws. Fitzpatrick v. City of Chicago, 112 Ill. 2d 211, 97 Ill. Dec. 419, 492 N.E.2d 1292 (1986).

- Factual Determination

The question of whether a police officer is executing and enforcing the law is a factual determination which must be made in light of the circumstances involved, however, the question may be decided as a matter of law where the evidence is undisputed or susceptible to only one possible interpretation. Simpson v. City of Chicago, 233 Ill. App. 3d 791, 175 Ill. Dec. 29, 599 N.E.2d 1043 (1 Dist. 1992).

Whether a police officer is engaged in the enforcement of the law is a factual determination which in every case must be made in light of the circumstances involved. King v. City of Chicago, 66 Ill. App. 3d 356, 23 Ill. Dec. 386, 384 N.E.2d 22 (1 Dist. 1978); Morris v. City of Chicago, 130 Ill. App. 3d 740, 86 Ill. Dec. 77, 474 N.E.2d 1274 (1 Dist. 1985).

- Failure to Arrest

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Large verdict in favor of the surviving mother of a decedent passenger killed in a drunk driving accident against police officers who earlier failed to arrest the driver, and against the village that employed them, was upheld on appeal, despite claims of governmental tort immunity; 745 ILCS 10/2-202 provided an explicit exception to the general rule of immunity for injuries to individuals where the evidence established willful and wanton behavior by the officers. Ozik v. Gramins, 345 Ill. App. 3d 502, 279 Ill. Dec. 68, 799 N.E.2d 871, 2003 Ill. App. LEXIS 1291 (1 Dist. 2003), appeal denied, 207 Ill. 2d 606, 283 Ill. Dec. 135, 807 N.E.2d 976 (2004).

- Immunity

Police officers who arrested a citizen following a traffic stop in the belief that the temporary registration permit on the citizen's car belonged to another vehicle could have reasonably believed that the citizen had violated 625 ILCS 5/4-104(a)(4), and thus they had sufficient probable cause to arrest her pursuant to their statutory authority under 725 ILCS 5/107-2(1)(c), and had no duty to verify the validity of the documents which the citizen presented to them in the traffic stop concerning the citizen's purchase of her car. Further, 745 ILCS 10/2-202 provided the officers with immunity from any liability resulting from their interaction with the citizen as their conduct was not willful and wanton. Ross v. Mauro Chevrolet, 369 Ill. App. 3d 794, 308 Ill. Dec. 248, 861 N.E.2d 313, 2006 Ill. App. LEXIS 1225 (1 Dist. 2006).

Immunity attached where officer was responding to a call of shots fired, as he clearly was being called upon to execute or enforce a law, and the facts that he was not specifically dispatched to the scene, did not have his emergency lights and siren activated, and did not subjectively consider the situation to be an emergency did not alter that conclusion. Bruecks ex rel. Bruecks v. County of Lake, 276 Ill. App. 3d 567, 213 Ill. Dec. 68, 658 N.E.2d 538 (2 Dist. 1995).

Allegation that police officer made an arrest while acting in his official capacity and in pursuance of his official duties lead to an inference that he was engaged in the enforcement of the law and came within the statutory immunity provided by this section. Wilson v. Hunk, 51 Ill. App. 3d 1030, 10 Ill. Dec. 90, 367 N.E.2d 478 (4 Dist. 1977).

- Infliction of Battery

Sheriff's officer was not entitled to summary judgment on immunity grounds on an arrestee's assault and battery claim, as there were factual disputes as to whether the officer's use of a police dog was reasonable; disputed questions of fact included (1) whether the arrestee was trying to surrender when the dog dragged the arrestee from a hiding place under a trailer and (2) whether the officer warned the arrestee prior to ordering the dog to apprehend or seize the arrestee. McGovern v. Vill. of Oak Law, F. Supp. 2d , 2003 U.S. Dist. LEXIS 799 (N.D. Ill. Jan. 17, 2003).

The trial court did not err in entering a judgment in favor of plaintiff in the amount of $17,500 to recover damages for a battery allegedly inflicted upon him by police officers, where at the time of the battery, the police officers were not in execution or enforcement of any law and therefore not immune from liability under this Act. King v. City of Chicago, 66 Ill. App. 3d 356, 23 Ill. Dec. 386, 384 N.E.2d 22 (1 Dist. 1978).

- Injury to Arrested Person

Conduct causing injury to an arrested person other than in the course of arrest would not be immunized by this section; however, where it was specifically alleged that the negligence occurred in the course of arresting him, the negligence alleged was part of acts enforcing or executing the law and defendants were immune from this negligence claim. Jones v. Village of Villa Park, 784 F. Supp. 533 (N.D. Ill. 1992).

For purposes of limited tort liability under this Act, a municipal police officer was not enforcing or executing a law within the meaning of this section at the time of automobile accident by

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transporting an arrestee from one lockup to another. Aikens v. Morris, 145 Ill. 2d 273, 164 Ill. Dec. 571, 583 N.E.2d 487 (1991).

- Instrument

Public employees are immune from liability for their negligent acts or omissions whenever the employee is executing or enforcing the law; this section makes no exception for cases where the instrumentality causing the injury is not itself being used to enforce the law. Thompson v. City of Chicago, 108 Ill. 2d 429, 92 Ill. Dec. 231, 484 N.E.2d 1086 (1985).

Whether or not a police car was being used as a tool to enforce the law at the time it struck the plaintiff was irrelevant to the question of whether a police officer in the car himself was engaged in enforcing the law at the time of his alleged negligence. Thompson v. City of Chicago, 108 Ill. 2d 429, 92 Ill. Dec. 231, 484 N.E.2d 1086 (1985).

- Liability Not Precluded

In an action based on injuries sustained in a car accident allegedly caused by a police chase, the willful and wanton standard under 745 ILCS 10/2-202 applied, rather than the ordinary negligence standard under 625 ILCS 5/11-205(e) and 625 ILCS 5/11-907(b) of the Illinois Vehicle Code. Lanning v. Harris, 342 Ill. App. 3d 965, 277 Ill. Dec. 581, 796 N.E.2d 667, 2003 Ill. App. LEXIS 1093 (3 Dist. 2003).

In an action for false arrest and imprisonment, this Act would not apply to protect an officer where there was a question of fact as to whether he planted a substance on the plaintiff at the time of his arrest. Neal v. City of Harvey, 1 F. Supp. 2d 849 (N.D. Ill. 1998).

Liability for damages incurred when plaintiff's automobile was struck by a squad car driven by police officer was not precluded by this section and 745 ILCS 10/2-109. Aikens v. Morris, 201 Ill. App. 3d 404, 147 Ill. Dec. 63, 559 N.E.2d 63 (1 Dist. 1990), aff'd, 145 Ill. 2d 273, 164 Ill. Dec. 571, 583 N.E. 487 (1991).

- Maneuvering

Where a police officer was enforcing the law when he moved his car forward in an attempt to disperse a crowd, when he reversed the car, he did not automatically cease to be engaged in enforcing the law. Thompson v. City of Chicago, 108 Ill. 2d 429, 92 Ill. Dec. 231, 484 N.E.2d 1086 (1985).

- Medical Care

The plaintiffs sufficiently alleged wilful and wanton conduct by police officers where they alleged that: (1) a shooting victim was lying on the ground, bleeding from multiple gunshot wounds when the officers arrived on the scene; and (2) witnesses to the shooting requested medical assistance when the officers arrived; but (3) the officers waited nearly an hour and a half to call an ambulance. Torres v. City of Chicago, 123 F. Supp. 2d 1130, 2000 U.S. Dist. LEXIS 17960 (N.D. Ill. 2000).

- Mere Negligence

A city would be immune from liability if police officers' conduct in seizing what they mistakenly believed were illegal fireworks was not wilful and wanton. Martel Enters. v. City of Chicago, 164 Ill. Dec. 945, 584 N.E.2d 157 (1 Dist. 1991).

Policeman was not liable for his act or omission in the execution of a law where such act or omission did not constitute wilful or wanton negligence, but was found to be only negligent. Eberle v. Baumfalk, 524 F. Supp. 515 (N.D. Ill. 1981).

- Ordinary Care

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Unless decedent's representative could have shown that there was a "special duty" for police officer to protect the occupants of the car that was hit by a driver whom the officer was pursuing, there was no liability under an ordinary care standard for the officer and consequently, for the United States. Estate of Warner v. United States, 754 F. Supp. 1271 (N.D. Ill. 1990).

- Pursuit

Jury could have found an officer was not on an expressway to enforce the law, but was merely following the pursuit out of personal interest in the outcome or some unofficial camaraderie with fellow officers who were leading the pursuit. The jury did not err in determining that the officer was enforcing or executing the law at the time of a collision, so as to be protected by immunity under 745 ILCS 10/2-202. Hudson v. City of Chicago, Ill. App. 3d , Ill. Dec. , N.E.2d , 2007 Ill. App. LEXIS 997 (1 Dist. Sept. 7, 2007).

Evidence overwhelmingly showed that police officer was not driving recklessly in pursuit of fleeing vehicle, and, in fact, the evidence showed that the officer was driving safely while stuck in traffic and was keeping a safe distance from the fleeing vehicle when the fleeing vehicle recklessly drove on the sidewalk and struck the pedestrian; since the officer was not driving recklessly in pursuit, the officer was not liable for the fleeing vehicle's reckless driving. The pedestrian simply failed to show willful and wanton conduct as defined under the Local Governmental and Governmental Employees Tort Immunity Act at 745 ILCS 10/1-210, so the officer was entitled to immunity under 745 ILCS 10/2-202, which freed the city from liability under 745 ILCS 10/2-109. Wade v. City of Chicago, 364 Ill. App. 3d 773, 301 Ill. Dec. 621, 847 N.E.2d 631, 2006 Ill. App. LEXIS 201 (1 Dist. 2006).

Where officer observed conduct that led him to reasonably believe driver was under the influence of alcohol or drugs and officer did not disregard the safety of others when he pursued the vehicle by turning on his siren and lights, under good road conditions, in a densely populated area, the officer was not liable to third party injured in chase under this Act or the Vehicle Code (625 ILCS 5/1-101 et seq.). Hall v. Village of Bartonville Police Dep't, 298 Ill. App. 3d 569, 232 Ill. Dec. 701, 699 N.E.2d 148 (3 Dist. 1998).

- Question of Fact

The determination of whether a police officer is engaged in the execution or enforcement of a law is not one which must always be made by the trier of fact. Fitzpatrick v. City of Chicago, 131 Ill. App. 3d 582, 86 Ill. Dec. 616, 475 N.E.2d 995 (1 Dist. 1985), rev'd on other grounds, 112 Ill. 2d 211, 97 Ill. Dec. 419, 492 N.E.2d 1292 (1986).

Where a police officer is engaged "in the execution and enforcement of any law" or "is engaged in the performance of his duties as a policeman" is a factual determination which must, in every case, be made in the light of the circumstances involved. Arnolt v. City of Highland Park, 52 Ill. 2d 27, 282 N.E.2d 144 (1972); Fitzpatrick v. City of Chicago, 131 Ill. App. 3d 582, 86 Ill. Dec. 616, 475 N.E.2d 995 (1 Dist. 1985), rev'd on other grounds, 112 Ill. 2d 211, 97 Ill. Dec. 419, 492 N.E.2d 1292 (1986).

- Responding to Radio Call

In an action arising from an accident in which the plaintiff's daughter was struck and killed by a police officer's vehicle, it was error for the trial court to grant summary judgment on the causes of action for negligence where the defendant city asserted that the police officer was responding to an emergency call for assistance from a fellow officer, but there was evidence that the emergency had ended and that a "slow down" had been broadcast before the accident. Sanders v. City of Chicago, 306 Ill. 2d 356, 239 Ill. Dec. 628, 714 N.E.2d 547 (1 Dist. 1999).

The defendant police officer was not entitled to summary judgment in an action arising from a motor vehicle accident which occurred when the officer went through a red light while responding to a radio call concerning a death investigation since it was not clear that the legal requirements

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which governed the officer's activities rose to the level of executing and enforcing a law. Carter v. Du Page County Sheriff, 304 Ill. Ap. 3d 443, 238 Ill. Dec. 161, 710 N.E.2d 1263 (2 Dist. 1999).

Where undisputed facts showed an unbroken effort on the part of the police officer to respond to a radio call of a crime in progress at the time of collision, the trial court correctly determined that he was executing or enforcing a law within the meaning of this section, and properly directed a verdict on the issue of the police officer's negligence. Morris v. City of Chicago, 130 Ill. App. 3d 740, 86 Ill. Dec. 77, 474 N.E.2d 1274 (1 Dist. 1985).

- Reversal of Police Car

Where reversal of a police car was merely a tactical retreat, part of a course of conduct continuously directed toward preventing or remedying a breach of the peace, and it struck a woman, the officer was engaged in enforcing the law. Thompson v. City of Chicago, 108 Ill. 2d 429, 92 Ill. Dec. 231, 484 N.E.2d 1086 (1985).

- Summary Judgment

Claims against police officers under this act are not generally suitable for resolution at the summary judgment phase, since the issue of whether a defendant's acts amounted to wilful and wanton misconduct is a question of fact to be resolved by the jury based on the circumstances of the case; so long as sufficient evidence has been presented on the issue, the matter should be left for the trier of fact to decide. Alto v. City of Chicago, 863 F. Supp. 658 (N.D. Ill. 1994).

- Traffic Stop

Complaint which alleged a police officer improperly performed a traffic stop and thereby failed to discharge his police duties in a manner providing adequate protection to decedents and other oncoming traffic, but which did not show that there was a special relationship giving rise to such a duty, failed to state a cause of action for more than ordinary negligence. Trepachko v. Village of West-Haven, 184 Ill. App. 3d 241, 132 Ill. Dec. 602, 540 N.E.2d 342 (1 Dist. 1989).

- Wilful and Wanton

Where an officer allegedly pointed a gun at a father and children in their residence, an assault claim against the officer survived because, inter alia, the Illinois Tort Immunity Act did not shield the officer from liability since the evidence created a genuine issue of material fact that the officer's conduct was willful and wanton because it exhibited a conscious disregard for the children's safety. Callahan v. Aldridge, F. Supp. 2d , 2011 U.S. Dist. LEXIS 12756 (N.D. Ill. Feb. 9, 2011).

Plaintiffs' battery claim under 720 ILCS 5/12-3 against a police officer and the chief of police failed because neither the officer nor the chief made physical contact with plaintiff husband, and further, the officer and the chief were immune from suit under 745 ILCS 10/2-202 because their conduct did not rise to the level of willful and wanton conduct under 745 ILCS 10/1-210; because neither the officer nor the chief were liable, neither was the village under 745 ILCS 10/2-109. Backes v. Village of Peoria Heights, F. Supp. 2d , 2010 U.S. Dist. LEXIS 114867 (C.D. Ill. Oct. 28, 2010), aff'd, 662 F.3d 866, 2011 U.S. App. LEXIS 22652 (7th Cir. Ill. 2011).

The defendant police officers were not entitled to dismissal of an action on the ground of immunity in connection with an incident in which, without probable cause, they battered down the door to the plaintiffs' apartment, forced one plaintiff to the floor at gunpoint, and pointed a gun at her grandson's head, where the plaintiffs alleged that the officers consciously disregarded the safety of the plaintiffs or their property, which was adequate to allege wanton and willful conduct. McCray v. Hermen, F. Supp. 2d , 2000 U.S. Dist. LEXIS 7296 (N.D. Ill. May 23, 2000).

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In an action for false arrest and imprisonment, the police chief and the officers were protected by this Act absent evidence they acted maliciously or with wilful and wanton intent. Neal v. City of Harvey, 1 F. Supp. 2d 849 (N.D. Ill. 1998).

Police officers owe the general public a duty to refrain from wilful and wanton misconduct in the pursuit of suspected law violators. Breck v. Cortez, 141 Ill. App. 3d 351, 95 Ill. Dec. 615, 490 N.E.2d 88 (2 Dist. 1986).

A jury could conclude that police officer was guilty of wilful and wanton conduct when he took his gun from his shoulder holster in a manner that allowed his gun to slip from his hand, to fall to the ground, and to discharge hitting another officer. Glover v. City of Chicago, 106 Ill. App. 3d 1066, 62 Ill. Dec. 597, 436 N.E.2d 623 (1 Dist. 1982).

A jury could conclude that police officer was guilty of wilful and wanton misconduct when he shot occupants of apartment, and was aware of potential danger implicit in firing his gun into a closed door of an occupied apartment and that he chose to ignore the natural and probable result of his actions. Glover v. City of Chicago, 106 Ill. App. 3d 1066, 62 Ill. Dec. 597, 436 N.E.2d 623 (1 Dist. 1982).

Preemption by Vehicle Code

The immunity granted by this section is not abrogated by 625 ILCS 5/11-205 and 625 ILCS 5/11-907, which impose a duty on drivers of emergency vehicles to refrain from negligence. Sanders v. City of Chicago, 306 Ill. 2d 356, 239 Ill. Dec. 628, 714 N.E.2d 547 (1 Dist. 1999).

The more specific provisions of the Illinois Motor Vehicle Code (625 ILCS 5/1-101 et seq.) delineating the conduct and duty of the driver of an authorized emergency vehicle govern over the general pronouncements of the Tort Immunity Act (this section and 745 ILCS 10/2-109) which shield a public entity or its employees from liability. Bradshaw v. City of Metropolis, 293 Ill. App. 3d 389, 227 Ill. Dec. 851, 688 N.E.2d 332 (5 Dist. 1997).

Proximate Cause

Where the injury to plaintiff was a natural and probable consequence of a police officer's negligent parking of his police vehicle and his directing plaintiff to stand between the cars to observe the expired license plate, the police department and the officer were aware that such practices were unsafe and could lead to rear-end collisions, as was evident from both the department bulletin and the deposition testimony, this reasonable foreseeability of injury to plaintiff (even though the actual injury was caused by a third party motorist's reckless driving) distinguished the action from situations in which a defendant's negligence only furnished the condition making a plaintiff's injury possible, and the court affirmed the finding of proximate cause. Leone v. City of Chicago, 235 Ill. App. 3d 595, 176 Ill. Dec. 244, 601 N.E.2d 942 (1 Dist. 1992), aff'd, 156 Ill. 2d 33, 188 Ill. Dec. 755, 619 N.E.2d 119 (1993).

Public Employee

- Immunity

The specific police immunity provisions, prevail over the general immunity provisions relating to any public employee enforcing any law and therefore wrongful death action against City of Chicago for the actions of its police officers was barred. Nieder v. Gacy, 121 Ill. App. 3d 854, 77 Ill. Dec. 286, 460 N.E.2d 342 (1 Dist. 1984).

Respondeat Superior

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- Direct Action

Because no other provision of the Act immunized a city, a plaintiff was able to maintain a direct action against the city based upon its agents' conduct. Clark v. City of Chicago, 595 F. Supp. 482 (N.D. Ill. 1984).

- Liability

Since this section imposes liability for willful and wanton conduct on public employees, once liability is found, common law principles of respondeat superior apply to make the public employer liable as well. Brown v. King, 328 Ill. App. 3d 717, 262 Ill. Dec. 897, 767 N.E.2d 357, 2001 Ill. App. LEXIS 878 (1 Dist. 2001), appeal denied, 201 Ill. 2d 561, 271 Ill. Dec. 923, 786 N.E.2d 181 (2002).

Parties named only on respondeat superior grounds were insulated from liability. Clark v. City of Chicago, 595 F. Supp. 482 (N.D. Ill. 1984).

Revenue

- Tortious Conduct

To the extent that an action brought with respect to certain alleged practices in the assessment of property, collection of taxes, and distribution of tax revenues, and for the recovery of tax revenues alleged to have been wrongfully withheld, and additionally, for interest and statutory penalties, was based on tortious conduct, it fell within the purview of this Act. Board of Educ. of Community Unit Sch. v. Pomeroy, 47 Ill. App. 3d 468, 5 Ill. Dec. 742, 362 N.E.2d 55 (3 Dist. 1977).

School Code

105 ILCS 5/24-24, which grants to or confers on educators and school districts the same immunity that parents enjoy with respect to suits by their children, is not a law that is enforced in the sense contemplated by this section. Grandalski ex rel. Grandalski v. Lyons Tp. High Sch., 305 Ill. App. 3d 1, 238 Ill. Dec. 269, 711 N.E.2d 372 (1 Dist. 1999), appeal denied, 185 Ill. 2d 623, 242 Ill. Dec. 136, 720 N.E.2d 1091 (1999).

Scope

- On Duty

Tort immunity of local public entities and their employees is not afforded for every act or omission by public employees during their hours of duty. Aikens v. Morris, 145 Ill. 2d 273, 164 Ill. Dec. 571, 583 N.E.2d 487 (1991).

This section does not afford qualified immunity from liability for all acts or omissions of a public employee while on duty, but only for those connected with the actual execution or enforcement of a law. Arnolt v. City of Highland Park, 52 Ill. 2d 27, 282 N.E.2d 144 (1972); Clark v. City of Chicago, 595 F. Supp. 482 (N.D. Ill. 1984).

Although a public employee is not liable (absent wilful and wanton negligence) for acts or omissions in the execution or enforcement of any law, this provision does not necessarily include all the activities of a public employee during all of his hours on duty. Thompson v. City of Chicago, 128 Ill. App. 3d 59, 83 Ill. Dec. 292, 470 N.E.2d 47 (1 Dist. 1984), rev'd on other grounds, 108 Ill. 2d 429, 92 Ill. Dec. 231, 484 N.E.2d 1086 (1985).

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Special Duty

- In General

Plaintiffs can escape the statutory immunities granted municipalities and their employees either by proving facts that show the existence of a special duty and proving simple negligence, or by proving wilful and wanton conduct alone. Doe v. Calumet City, 161 Ill. 2d 374, 204 Ill. Dec. 274, 641 N.E.2d 498 (1994).

This section by its terms, already eliminates municipal immunity for injury resulting from the wilful and wanton acts or omissions of public employees in the enforcement or execution of the law. This is so even where no special duty is present. Leone v. City of Chicago, 156 Ill. 2d 33, 188 Ill. Dec. 755, 619 N.E.2d 119 (1993).

Illinois law allows a claim against a police officer under an "ordinary care" standard only when the officer had a "special duty" to the particular plaintiff. Absent such a relationship, police officers in Illinois are immune from suit for negligence unless their behavior rises to the level of "wilful and wanton conduct." Estate of Warner v. United States, 754 F. Supp. 1271 (N.D. Ill. 1990).

- Exception

Special duty exception did not override the immunities provided governmental entities under the Local Governmental and Governmental Employees Tort Immunity Act (Act) because the administrator did not make any allegations that could have been construed as the Board of Education acting in a supervisory manner under 745 ILCS 10/3-108 of the Act nor did she make any allegations that the Board was executing or enforcing a law under 745 ILCS 10/2-202 of the Act. Green v. Chicago Bd. of Educ., 407 Ill. App. 3d 721, 348 Ill. Dec. 506, 944 N.E.2d 459, 2011 Ill. App. LEXIS 101 (1 Dist. 2011).

- Exception

An exception to the general rule has been created where the police have assumed a special duty to a person and this special duty exception to the general immunity of municipalities arises only where four criteria are met: (1) the police are uniquely aware of the particular danger or risk to which the person is exposed; (2) there are allegations of specific acts or omissions on the part of the police; (3) those acts or omissions are either affirmative or wilful in nature; and (4) the injury occurs while the person is under the direct and immediate control of the police. Trepachko v. Village of West-Haven, 184 Ill. App. 3d 241, 132 Ill. Dec. 602, 540 N.E.2d 342 (1 Dist. 1989).

Whether or not a codefendant was under the direct and immediate control of the police is not relevant to a discussion of the special duty exception. Trepachko v. Village of West-Haven, 184 Ill. App. 3d 241, 132 Ill. Dec. 602, 540 N.E.2d 342 (1 Dist. 1989).

- Negligence

When the exception is activated, liability will be imposed for the employee's negligence. Leone v. City of Chicago, 156 Ill. 2d 33, 188 Ill. Dec. 755, 619 N.E.2d 119 (1993).

- Not Essential

A "special duty" is not a prerequisite for an officer to be potentially liable for a citizen's death. Estate of Warner v. United States, 754 F. Supp. 1271 (N.D. Ill. 1990).

- Not Shown

Police officers have no special duty to protect every bystander from whom the officers elicit information at the scene of an investigation where the police did not create the dangerous condition or summon the bystander into it. Moran v. City of Chicago, 286 Ill. App. 3d 746, 222

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Ill. Dec. 112, 676 N.E.2d 1316 (1 Dist. 1997), appeal denied, 174 Ill. 2d 567, 227 Ill. Dec. 8, 686 N.E.2d 1164 (1997).

A police officer had no special duty to a decedent whose death was a result of a collision between a vehicle driven by an unlicensed underage driver who had recently attempted suicide, and another vehicle in which he was a passenger, when the officer was in pursuit of the unlicensed driver's automobile at the time of the accident. Estate of Warner v. United States, 754 F. Supp. 1271 (N.D. Ill. 1990).

- Shown

The facts were sufficient to establish that plaintiff was under the direct control of a police officer, thus satisfying one element of the "special duty" cause of action. Leone v. City of Chicago, 235 Ill. App. 3d 595, 176 Ill. Dec. 244, 601 N.E.2d 942 (1 Dist. 1992), aff'd, 156 Ill. 2d 33, 188 Ill. Dec. 755, 619 N.E.2d 119 (1993).

Sufficient Allegations

- Shown

A plaintiff's allegation that two police officers as agents and employees of a local municipality committed the tortious and unlawful act of driving their car across the center line into plaintiff's lane causing plaintiff to veer off the highway across a curbing with resulting personal injuries to plaintiff, was sufficient to state a cause of action against the individual officers and the municipality since it was obvious from those allegations that the officers were acting in the execution or enforcement of law, and that they were acting as agents and employees of the municipality. Newell v. City of Elgin, 34 Ill. App. 3d 719, 340 N.E.2d 344 (2 Dist. 1976).

Waiver

In personal injury action against city, issue of whether trial court erred in refusing the city's instructions based on this Act was waived, for the city failed to raise the issue in its post trial motion. McDonnell v. City of Chicago, 102 Ill. App. 3d 578, 58 Ill. Dec. 227, 430 N.E.2d 169 (1 Dist. 1981).

Wilful and Wanton Conduct

City's immunity under 745 ILCS 10/4-106(b) for the conduct of escaped prisoners causing injury, as well as its immunity for not providing adequate police protection of failing to prevent a crime under 745 ILCS 10/4-102 was not subject to the willful and wanton exception of 745 ILCS 10/2-202. Despite the city's police officers failing to stop the detainee from stealing one officer's police vehicle, the officers were not in control of the intersection about a mile away from where the vehicle was stolen and the detainee crashed the vehicle into the injured parties' vehicle stopped at the intersection. Ries v. City of Chicago, 396 Ill. App. 3d 418, 335 Ill. Dec. 746, 919 N.E.2d 465, 2009 Ill. App. LEXIS 1177 (1 Dist. 2009).

Under Illinois law, a public employee and, in turn, a public entity, is only liable for willful and wanton conduct; conduct is willful and wanton under Illinois law if it constitutes a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property. With no identified officer, and no evidence as to what happened before plaintiff collapsed, plaintiff could not establish willful and wanton - or even negligent conduct - on anyone's part, so summary judgment was appropriate on the plaintiff's wrongful death claim. Hunt v. Dart, 754 F. Supp. 2d 962, 2010 U.S. Dist. LEXIS 128869 (N.D. Ill. 2010).

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Whether police officers engaged in willful and wanton conduct and were therefore liable for their actions under 745 ILCS 10/2-202 was an issue for the jury, where the officers briefly subdued an African-American motorist pursuant to a traffic stop. Thurman v. Vill. of Hazel Crest, 570 F. Supp. 2d 1019, 2008 U.S. Dist. LEXIS 59962 (N.D. Ill. 2008).

- In General

Where property owners had alleged that a city and three city officials had acted willfully and wantonly, they escaped the statutory immunities granted municipalities and their employees under 745 ILCS 10/2-202, and the court denied defendants' Fed. R. Civ. P. 12(b)(6) motion to dismiss the property owners' willful and wanton claim. Moberg v. City of W. Chi., F. Supp. 2d , 2002 U.S. Dist. LEXIS 20395 (N.D. Ill. Oct. 23, 2002).

Where a jury found that the town president was liable for malicious prosecution regarding the suspension and discharge of a police chief and a deputy police chief, the town president was not entitled to state statutory immunity, because there was plenty of evidence that the town president was guilty of wanton and wilful misconduct. Niebur v. Town of Cicero, 212 F. Supp. 2d 790, 2002 U.S. Dist. LEXIS 8723 (N.D. Ill. 2002).

Immunity under this Act does not apply to wilful and wanton conduct. Carter v. Dixon, 718 F. Supp. 1389 (N.D. Ill. 1989).

- Defined

In order for a public employee's acts or omissions to be characterized as "wilful or wanton" they must have been committed with actual or deliberate intention to harm or with an utter indifference to or conscious disregard for the safety of others. Owusu v. Grzyb, 749 F. Supp. 897 (N.D. Ill. 1990).

To state a claim for wilful and wanton conduct under Illinois law, plaintiffs must allege not only duty, breach, and proximate cause, but also that defendants either intentionally injured or acted in reckless disregard for the safety of the person arrested. Carter v. Dixon, 718 F. Supp. 1389 (N.D. Ill. 1989).

- Directed Verdict

A directed verdict should not be granted for defendant unless it can be said that evidence in its aspect most favorable to plaintiff so overwhelmingly favors the defendant that a wilful and wanton verdict based thereon would never stand. Glover v. City of Chicago, 106 Ill. App. 3d 1066, 62 Ill. Dec. 597, 436 N.E.2d 623 (1 Dist. 1982).

- High Speed Chase

The law that states "A public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes wilful and wanton conduct" is applicable where police officers are involved in high speed chase situations. Oppe v. State of Mo., 171 Ill. App. 3d 491, 121 Ill. Dec. 882, 525 N.E.2d 1189 (4 Dist. 1988).

- Intent to Harm

Former inmate filed a Federal Tort Claims Act suit based on an alleged assault and battery by corrections officer; the district court entered judgment for the United States after a bench trial. As plaintiff testified he could not say if the incident was an accident, and had previously signed an affidavit that exculpated the officer, he failed to prove assault and battery, much less willful and wanton misconduct under 745 ILCS 10/2-202, 745 ILCS 10/2-109. Mitchell v. United States, F. Supp. 2d , 2005 U.S. Dist. LEXIS 25719 (N.D. Ill. Oct. 26, 2005).

Wilful and wanton conduct has been defined as conduct which is intentional or committed under circumstances exhibiting a reckless disregard for the safety of others. Glover v. City of Chicago,

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106 Ill. App. 3d 1066, 62 Ill. Dec. 597, 436 N.E.2d 623 (1 Dist. 1982); Breck v. Cortez, 141 Ill. App. 3d 351, 95 Ill. Dec. 615, 490 N.E.2d 88 (2 Dist. 1986).

- Jury

Whether a person is guilty of wilful and wanton conduct is a question of fact for the jury and should rarely be ruled upon as a matter of law. Glover v. City of Chicago, 106 Ill. App. 3d 1066, 62 Ill. Dec. 597, 436 N.E.2d 623 (1 Dist. 1982).

In determining whether a charge of wilful and wanton conduct ought to have been submitted to the jury, neither the trial court nor a reviewing court may resolve conflicts in the evidence, decide what weight to apply to the evidence or decide the relative credibility of witnesses. Glover v. City of Chicago, 106 Ill. App. 3d 1066, 62 Ill. Dec. 597, 436 N.E.2d 623 (1 Dist. 1982).

- Jury Question

In officer one's suit alleging defamation by officer two when officer two sent an unflattering memorandum about officer one to officer one's boss, officer two was not determined to be immune under 745 ILCS 10/2-202 at the summary judgment stage; there remained genuine issues of material fact as to whether officer two's action in sending the memorandum, which did not contain firsthand knowledge of the allegations made therein, constituted willful or wanton conduct under the definition in 745 ILCS 10/1-210. Ernst v. Anderson, F. Supp. 2d , 2005 U.S. Dist. LEXIS 7469 (N.D. Ill. Mar. 3, 2005).

Plaintiffs' complaint presented a jury question as to whether police officer's conduct was wilful and wanton where the complaint repeatedly stated that officer was the officer in control at the scene, and that officer was aware of the facts surrounding the intrusion into plaintiffs' home, including the assault of plaintiff's mother and the presence of an intruder in the plaintiffs' home with plaintiff's children. Doe v. Calumet City, 161 Ill. 2d 374, 204 Ill. Dec. 274, 641 N.E.2d 498 (1994).

- Not Shown

Court properly dismissed the claimant's action against the village alleging willful and wanton conduct, claiming that the village, through its employees, failed to instruct the owner to trim his bushes further and failed to enforce its intersection visibility ordinance, because 745 ILCS 10/2-202 did not apply, when the village employees were not in the course of putting into effect any law at the time of the claimant's injury; the village employees were doing nothing to enforce the ordinance when the daughter's death occurred. Pouk v. Vill. of Romeoville, 405 Ill. App. 3d 194, 344 Ill. Dec. 777, 937 N.E.2d 800, 2010 Ill. App. LEXIS 1166 (3 Dist. 2010).

Even if the willful and wanton component of 745 ILCS 10/2-202 could be applied in conjunction with other immunities afforded to a city, plaintiffs could not demonstrate that a city acted willfully and wantonly regarding the inspection of a porch that later collapsed killing 13 people and could not establish that they were under the direct and immediate control of either the city or its inspectors when the porch collapsed; those elements were required before an exception to the public duty rule for willful and wanton conduct could be successful. Ware v. City of Chicago, 375 Ill. App. 3d 574, 314 Ill. Dec. 14, 873 N.E.2d 944, 2007 Ill. App. LEXIS 837 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1797 (Ill. 2007), appeal denied, 2007 Ill. LEXIS 1733 (Ill. 2007), appeal denied, 2007 Ill. LEXIS 1743 (Ill. 2007).

Evidence was insufficient to show wilful and wanton behavior by the defendant police officers in connection with their arrest of the plaintiff where the plaintiff fled as soon as he saw the officers approach, the officers believed that he was armed, and the plaintiff vigorously resisted their attempts to handcuff him. Tidwell v. Teneyuque, F. Supp. 2d , 2002 U.S. Dist. LEXIS 2736 (N.D. Ill. Feb. 20, 2002).

In an action arising from an airport strip search and x-ray of the plaintiff, the court declined to follow the advisory jury's verdict and concluded that the plaintiff failed to show wilful and wanton

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conduct by the defendants, notwithstanding that no contraband was found on the plaintiff. Kaniff v. United States, F. Supp. 2d , 2002 U.S. Dist. LEXIS 3831 (N.D. Ill. Mar. 8, 2002), aff'd, 351 F.3d 780 (7th Cir. 2003).

The evidence did not support a finding that an officer's actions in effectuating an arrest were willful and wanton as pulling a suspect from a car, pushing him against the car, and pinning his arms behind his back to handcuff him were all reasonable actions to take when arresting a potentially dangerous suspect. Smith v. City of Chicago, 242 F.3d 737, 2001 U.S. App. LEXIS 3362 (7th Cir. 2001).

The plaintiffs failed to offer sufficient evidence to establish that the defendant school officials engaged in wanton or willful conduct by trusting a police officer to properly conduct a student investigation. Therefore, summary judgment was granted in favor of the school officials regarding the plaintiffs claims of false imprisonment. Bell v. Marseilles Elem. Sch. Dist. 150, F. Supp. 2d , 2001 U.S. Dist. LEXIS 2367 (N.D. Ill. Mar. 6, 2001), recons. denied, 160 F. Supp. 2d 883 (N.D. Ill. 2001).

Since the court denied summary judgment on a § 1983 claim for failure to provide medical care, which employs the deliberate indifference standard, it was equally unavailable on the state law claim through this section or 745 ILCS 10/4-105. Regalado v. City of Chicago, 40 F. Supp. 2d 997 (N.D. Ill. 1999).

Third party complaint did not plead specific facts that showed third party defendants acted intentionally or with a conscious disregard for the well being of colleges' investments; the allegations sounded more in ordinary negligence than wilful and wanton misconduct. Board of Trustees v. Coopers & Lybrand, 296 Ill. App. 3d 538, 231 Ill. Dec. 274, 696 N.E.2d 3 (1 Dist. 1998).

Even if the facts alleged conduct sufficient to support a contention of negligence, they did not support a contention that the officers acted in utter disregard for the plaintiff's safety, and did not show indifference or willful and wanton conduct. Moran v. City of Chicago, 286 Ill. App. 3d 746, 222 Ill. Dec. 112, 676 N.E.2d 1316 (1 Dist. 1997), appeal denied, 174 Ill. 2d 567, 227 Ill. Dec. 8, 686 N.E.2d 1164 (1997).

In an action for wilful and wanton misconduct on the part of police officer in pursuit of motorcycle the trial court concluded, as a matter of law, that officer's pursuit of motorcycle operator and the helmetless decedent passenger did not amount to wilful and wanton conduct; in granting summary judgment in favor of defendants, the court considered the dangerous manner in which operator was driving the motorcycle and the undisputed testimony of officer that he pursued the motorcycle out of concern for the safety of the decedent as well as operator and noted that officer kept a safe distance from the motorcycle and maintained a constant speed such that his vehicle posed no harm to other vehicles on the roadway. Urban v. Village of Lincolnshire, 272 Ill. App. 3d 1087, 209 Ill. Dec. 505, 651 N.E.2d 683 (1 Dist. 1995), appeal denied, 163 Ill. 2d 591, 212 Ill. Dec. 440, 657 N.E.2d 641 (1995).

Where officer, pursuing driver whose muffler was dangling and causing sparks, flashed his red light, and where neither his decision to chase her nor the manner in which he did so could be said to approach the infliction of deliberate harm nor did they indicate a reckless indifference to the rights of the decedent, there was no showing that officer was guilty of any wilful and wanton misconduct which was a proximate cause of the decedent's death, and thus officer and village employing him had immunity from liability. Sank v. Poole, 231 Ill. App. 3d 780, 173 Ill. Dec. 319, 596 N.E.2d 1198 (4 Dist. 1992).

An officer was not wilfully and wantonly negligent in his pursuit of an unlicensed underage driver who had recently attempted suicide although he did not turn on his lights or use his siren to warn other motorists, where he was attempting to protect the public from a driver who had already displayed reckless behavior, and his driving did not affect the safety of others; his failing to stop his pursuit earlier (sometime within the approximately 60 second interval between the beginning

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of the driver's race and the accident) was not a "wilful and wanton" disregard for the safety of others, nor would it have changed the outcome of the driver's actions. Estate of Warner v. United States, 754 F. Supp. 1271 (N.D. Ill. 1990).

Allowing a student plaintiff to tour a museum without supervision was an intentional act, but it was not an act which the defendant teachers knew - or should have known - would result in harm to the plaintiff or create an unreasonable risk of harm; thus, there was no wilful or wanton act or omission on the part of the teachers and the public employee was not liable under this section. Mancha ex rel. Mancha v. Field Museum of Natural History, 5 Ill. App. 3d 699, 283 N.E.2d 899 (1 Dist. 1972).

- Observable Dangerous Conditions

A person is guilty of wilful and wanton conduct when he ignores known or plainly observable dangerous conditions and does something that will naturally and probably result in injury to another. Glover v. City of Chicago, 106 Ill. App. 3d 1066, 62 Ill. Dec. 597, 436 N.E.2d 623 (1 Dist. 1982).

- Pleadings

745 ILCS 10/2-202 of the Tort Immunity Act did not apply to an action in which plaintiffs, elementary students from another school district and their mothers, alleged liability by defendants, a school district and its administrators, based on the facts that defendants had actual knowledge that the teacher had sexually abused students while working for defendant district, defendant district did not report the abuse to the Department of Children and Family Services, and an administrator had written a falsely positive letter of recommendation for the teacher; willful and wanton conduct was pled based on those allegations. Doe-3 v. White, 409 Ill. App. 3d 1087, 351 Ill. Dec. 396, 951 N.E.2d 216, 2011 Ill. App. LEXIS 406 (4 Dist. 2011).

- Question of Fact

Where an arrestee alleged that a sergeant and an officer committed battery against the arrestee at the jail, regarding the argument that defendants were entitled to immunity because the arrestee failed to allege that defendants acted willfully and wantonly, whether the conduct was willful or wanton was a question of fact, not to be decided on a motion to dismiss. Wilhold v. Gebke, F. Supp. 2d , 2005 U.S. Dist. LEXIS 20096 (S.D. Ill. Sept. 1, 2005).

Whether certain acts of police officers amounted to wilful and wanton misconduct was a question of fact to be determined by the jury; all defendants' motions for summary judgment were properly denied. Owusu v. Grzyb, 749 F. Supp. 897 (N.D. Ill. 1990).

- Required

Police officer involved in chase which resulted in decedent's death could be liable to decedent only if officer's conduct was wilful and wanton. Sank v. Poole, 231 Ill. App. 3d 780, 173 Ill. Dec. 319, 596 N.E.2d 1198 (4 Dist. 1992).

Although a school guard and his public school district employer might possibly have immunity under 745 ILCS 10/1-101 of the Local Governmental and Governmental Employees Act (Act) with regard to a student's assault and battery claim, if the guard's decision to push the student through a glass door following a fight constituted a discretionary policy decision, the student's claims against the guard and the district would not be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) because the student sufficiently alleged facts which, if proved, would establish that the guard's conduct was willful and wanton. Pursuant to 745 ILCS 10/2-202, willful and wanton conduct by public employees was excepted from the immunity provided by the Act. Rogers v. Cook, F. Supp. 2d , 2008 U.S. Dist. LEXIS 103702 (N.D. Ill. Dec. 23, 2008).

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OPINIONS OF ATTORNEY GENERAL

Analysis
Liability
Refusal to Record

Liability

The sheriff or warden is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes wilful and wanton negligence. 1977 Op. Atty. Gen. 142.

Refusal to Record

A recorder would be liable for damages resulting from his improper refusal to record a document, only if his action can be shown to constitute wilful and wanton negligence. 1978 Op. Atty. Gen. 97.

LEGAL PERIODICALS

For comment, "The Scope of the Public Duty/Special Duty Doctrine in Illinois: Municipal Liability for Failure to Provide Police Protection," see 10 N. Ill. U.L. Rev. 269 (1990).

For article, "Survey of Illinois Law: Employment Law," see, See 30 S. Ill. U.L.J. 613 (2006).

For article, "Municipal Corporations: 1986-87 Survey," see 12 S. Ill. U.L.J. 1045 (1988).

For article, "State and Local Government: 1986-87 Illinois Law Survey," see 19 Loy. U. Chi. L.J. 691 (1987-88).

For article, "Local and State Government: 1985-86 Illinois Law Survey," see 18 Loy. U. Chi. L.J. 683 (1986-87).

RESEARCH REFERENCES

Recovery of exemplary or punitive damages from municipal corporations. 1 ALR4th 448.

Liability, Under State Law Claims, of Public and Private Schools and Institutions of Higher Learning for Teacher's, Other Employee's, or Student's Sexual Relationship with, or Sexual Harassment or Abuse of, Student. 86 ALR5th 1.

Practice Guides and Treatises.

Third-Party Practice § 4.15 Government Entities Entitled to Assert Special Defenses or Immunities (IICLE).

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Proving Fault in Auto Accident Cases § 4.22 Statute (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 3:67 Generally; special duty doctrine eliminated.

Illinois Jurisprudence, Personal Injury and Torts § 3:64 Pursuit of lawbreaker under Tort Immunity Act.

Illinois Jurisprudence, Personal Injury and Torts § 3:56 Assault and battery by law enforcement officer.

Illinois Jurisprudence, Personal Injury and Torts § 3:54 False arrest.

Illinois Jurisprudence, Personal Injury and Torts § 3:51 Negligent execution or enforcement of law.

§ 745 ILCS 10/2-203. [Act performed under apparent authority of invalid enactment]

Sec. 2-203. If a public employee acts in good faith, without malice, and under the apparent authority of an enactment that is unconstitutional, invalid or inapplicable, he is not liable for any injury caused thereby except to the extent that he would have been liable had the enactment been constitutional, valid and applicable.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-203.

CASE NOTES

Analysis
Applicability
Immunity
- Public Official

Applicability

Where police officers relied on a state law and a city ordinance defining illegal fireworks, and a city ordinance allowing destruction of seized contraband that was dangerous to store, the city would be immune from liability if the officers relied on the enactments and acted in good faith

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without malice. Martel Enters. v. City of Chicago, 164 Ill. Dec. 945, 584 N.E.2d 157 (1 Dist. 1991).

Immunity

Claims that an ordinance banning the use of hand held cell phones while operating a motor vehicle were dismissed because the enforcing officers were entitled to qualified immunity, and for acting in good faith under 745 ILCS 10/2-203. Schor v. Daley, 563 F. Supp. 2d 893, 2008 U.S. Dist. LEXIS 50602 (N.D. Ill. 2008).

Defendant city was not shielded from a conversion claim by the Tort Immunity Act, 745 ILCS 10/2-203, which precluded relief against a municipality for acting under the apparent authority of an inapplicable enactment, because plaintiff alleged facts from which one could infer bad faith or malice and had also characterized the actions of the city as illegal, unconscionable with a clear disregard of the legal rights of plaintiff. Elmdale Dev., LLC v. City of Des Plaines, F. Supp. 2d , 2005 U.S. Dist. LEXIS 16967 (N.D. Ill. Aug. 15, 2005).

- Public Official

A public official, who acts in good faith, under the apparent authority of an enactment which proves to be unconstitutional, will not be adjudged liable for resulting injuries in any degree greater than if the enactment had proven to be constitutional. Melvin v. City of W. Frankfort, 93 Ill. App. 3d 425, 48 Ill. Dec. 858, 417 N.E.2d 260 (5 Dist. 1981).

LEGAL PERIODICALS

For note on Constitutional Law and Employment discussing Melvin v. City of West Frankfort, 93 Ill. App. 3d 425, 417 N.E.2d 260 (1981), see 70 Ill. B.J. 520 (1982).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 3:44 Other specific.

§ 745 ILCS 10/2-204. [Act or omission of another person]

Sec. 2-204. Except as otherwise provided by statute, a public employee, as such and acting within the scope of his employment, is not liable for an injury caused by the act or omission of another person.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-204.

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CASE NOTES

Analysis

Immunity Not Found
Immunity Upheld
Motion to Dismiss Denied
Scope of Employment
Superintendent's Liability

Immunity Not Found

Where a pre-trial detainee died of meningitis after the detainee's requests for medical treatment were denied, a sheriff was not entitled to immunity under the Illinois Tort Immunity Act, because an institutional defendant was not included within the plain language of the Act. Thomas v. Cook County Sheriff, 401 F. Supp. 2d 867, 2005 U.S. Dist. LEXIS 28829 (N.D. Ill. 2005).

In officer one's suit alleging defamation by officer two when officer two sent an unflattering memorandum about officer one to officer one's boss, officer two was not found to be immune under 745 ILCS 10/2-204 at the summary judgment stage because officer one alleged that it was officer two who wrote the memorandum. Ernst v. Anderson, F. Supp. 2d , 2005 U.S. Dist. LEXIS 7469 (N.D. Ill. Mar. 3, 2005).

Summary judgment was not proper in an action arising from injuries caused by a drunk driver, who had not been taken into custody following a domestic dispute, because although the officers did not owe a special duty to the victims to protect them from an intoxicated driver under the "special duty exception" to the former Local Governmental and Governmental Employees Tort Immunity Act, Ill. Rev. Stat. ch. 85, para. 4-102 (now 745 ILCS 10/4-102) and Ill. Rev. Stat. ch. 85, 4-107 (now 745 ILCS 10/4-107), the officers could be still held liable under the act for willful and wanton conduct in enforcement of the law under former Il. Rev. Stat. ch. 85, para. 2-202 (now 745 ILCS 10/2-202), former Ill. Rev. Stat. ch. 85 para. 2-204 (now 745 ILCS 10/2-204), and former Ill. Rev. Stat. ch. 85, para. 2-210 (now 745 ILCS 10/2-210). Fatigato v. Village of Olympia Fields, 281 Ill. App. 3d 347, 217 Ill. Dec. 63, 666 N.E.2d 732, 1996 Ill. App. LEXIS 359 (1 Dist. 1996).

Immunity Upheld

Officials were immune under 745 ILCS 10/2-204 of the Illinois Tort Immunity Act from claims of negligence and negligent infliction of emotional distress brought by detainees who claimed that they were sexually abused by a corrections officer; the officials could not be held liable based on the officer's negligent acts. Hawkins v. St. Clair County, F. Supp. 2d , 2009 U.S. Dist. LEXIS 26969 (S.D. Ill. Mar. 31, 2009).

State law claims against supervisory jail personnel required dismissal based on immunity under 745 ILCS 10/2-204 because they were public employees who could not be held liable under a respondeat superior theory. Thomas v. Sheahan, 499 F. Supp. 2d 1062, 2007 U.S. Dist. LEXIS 60036 (N.D. Ill. 2007).

Detainee's claims for damages against city officials and a county sheriff for violations of the Illinois Constitution, false arrest, and false imprisonment were barred under 745 ILCS 10/2-204 of

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the Illinois Tort Immunity Act, 745 ILCS 10/2-101 et seq., as the "willful and wanton conduct" exception under 745 ILCS 10/1-210 did not apply to supervisors' immunity under 745 ILCS 10/2-204. However, a claim against the sheriff for injunctive relief survived pursuant to 745 ILCS 10/2-101. Catchings v. City of Chicago, F. Supp. 2d , 2006 U.S. Dist. LEXIS 33625 (N.D. Ill. May 15, 2006).

Even though the officers on the scene had a constitutional duty to intervene to prevent the use of excessive force, they could not be liable under the Illinois Wrongful Death Act, 740 ILCS 180/1, based on a failure to intervene; 745 ILCS 10/2-204 of the Tort Immunity Act immunized them from liability for the wrongful death caused by the choking officer. Lewis v. City of Chicago, F. Supp. 2d , 2005 U.S. Dist. LEXIS 7617 (N.D. Ill. Apr. 11, 2005).

Police supervisor's motion for summary judgment on a couple's false imprisonment and battery claims was granted because he could not be liable in his capacity as supervisor for the acts of other police officers under this section; he had neither assisted in the actual arrests, nor played a role in the couple's subsequent transport to and confinement at the police station, nor had he touched either one of the arrestees. Woods v. Clay, F. Supp. 2d , 2005 U.S. Dist. LEXIS 343 (N.D. Ill. Jan. 10, 2005).

The county sheriff was immune from allegations he was vicariously liable for the conduct of his agents. Payne v. Churchich, 161 F.3d 1030, 1998 U.S. App. LEXIS 28215 (7th Cir. 1998), cert. denied, 527 U.S. 1004, 119 S. Ct. 2339, 144 L. Ed. 2d 236 (1999).

Motion to Dismiss Denied

City ward supervisor's dismissal motion was denied because a terminated seasonal city employee had not pleaded himself out of court with regard to his tortious interference with a prospective advantage (IPEC) claim, arising from the superintendent's conduct in allegedly causing the employee to be fired: (1) the employee alleged that the city promised to make him a full-time employee, that the supervisor interfered with that economic opportunity by causing him to be fired, and that the supervisor was motivated by racial discrimination and by a desire to retaliate after a private business transaction fell through; (2) the supervisor contended that the employee's IPEC claim was barred as a matter of law by 745 ILCS 10/2-201,10/2-204, which provided immunity to public employees; (3) the supervisor could assert affirmative defenses based on 745 ILCS 10/2-201,10/2-204, but the statutes did not operate to bar the employee from asserting his IPEC claim; and (4) the employee had sufficiently alleged facts to support his IPEC claim, and those facts, if proven, might override the supervisor's statutory defenses. Lonzo v. City of Chicago, 461 F. Supp. 2d 661, 2006 U.S. Dist. LEXIS 83257 (N.D. Ill. 2006).

Motion to dismiss the claims for wrongful death, pursuant to 745 ILCS 10/2-201, 745 ILCS 10/2-202, and 745 ILCS 10/2-204, brought against a county sheriff and a deputy, and pursuant to 745 ILCS 10/4-106, the claims against a county, a sheriff's department, the sheriff, and the deputy, for allowing a decedent to escape and commit suicide while in custody was denied because the record was not yet sufficiently developed, and the briefing was inadequate, to determine if any of the defendants were entitled to immunity under any of the respective provisions. Sidwell v. County of Jersey, F. Supp. 2d , 2006 U.S. Dist. LEXIS 29565 (S.D. Ill. May 15, 2006).

Scope of Employment

Police officer could proceed with a claim for intentional infliction of emotional distress against the individual municipal defendants under 745 ILCS 10/2-204; however she had to establish that the individual defendants acted outside the scope of their employment. Frazier v. Harris, 266 F. Supp. 2d 853, 2003 U.S. Dist. LEXIS 9607 (C.D. Ill. 2003).

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Superintendent's Liability

Under this section, a superintendent of police could not be held liable for defendant police officer's actions in shooting plaintiff. Eiland v. Hardesty, 564 F. Supp. 930 (N.D. Ill. 1982).

OPINIONS OF ATTORNEY GENERAL

Electronic Mortgage Registration

This section plainly grants the recorder immunity from liability for the act or omission of another person and this provision will protect the recorder from liability for any error by a lender in providing a mortgage identification number, by an individual in copying or keying in a number or by Mortgage Electronic Registration System personnel in providing information. 1997 Op. Atty. Gen. (97-008).

The county recorder and the county would ordinarily be immune from liability in connection with any cause of action resulting from their provision of access to Mortgage Electronic Registration System. 1997 Op. Atty. Gen. (97-008).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 3:45 Acts of other persons.

§ 745 ILCS 10/2-205. [Adoption or failure to adopt enactment; failure to enforce law]

Sec. 2-205. A public employee is not liable for an injury caused by his adoption of, or failure to adopt, an enactment, or by his failure to enforce any law.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-205.

CASE NOTES

Analysis

Absolute Immunity

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City Councilmen
Construction
Corrupt or Malicious Motives
Failure to Enforce Laws
Hiring or Retention
- Police Chief
Misuse of Power
Public Policy
Retaliatory Discharge
Scope
Willful And Wanton Conduct

Absolute Immunity

In view of the language of this section when compared to other provisions of the Act, similar interpretations of other sections, and the recognized public policy of providing immunity for actions like those encompassed this section, the grant of immunity contained in this section is absolute. Glenn v. City of Chicago, 256 Ill. App. 3d 825, 195 Ill. Dec. 380, 628 N.E.2d 844 (1 Dist. 1993), appeal denied, 156 Ill. 2d 557, 202 Ill. Dec. 921, 638 N.E.2d 1115 (1994).

City Councilmen

Trial court correctly dismissed all defendants on the police officer's claim against them that, in enacting a particular ordinance that reduced the number of sergeants working for the village's police department, they interfered with his prospective economic advantage. They could not be held liable for adopting a law and that was true even though the police officer contended that their conduct was wilful and wanton since the law did not provide an exception to immunity even for wilful and wanton conduct. Schlicher v. Bd. of Fire & Police Comm'rs, 363 Ill. App. 3d 869, 300 Ill. Dec. 634, 845 N.E.2d 55, 2006 Ill. App. LEXIS 144 (1 Dist. 2006).

A property owner's complaint, which alleged willful and wanton misconduct by individual city councilmen defendants in voting for an invalid ordinance that sought to rezone the property, was barred by this Act. Mahoney Grease Serv., Inc. v. City of Joliet, 85 Ill. App. 3d 578, 40 Ill. Dec. 708, 406 N.E.2d 911 (3 Dist. 1980).

Construction

Section 745 ILCS 10/2-202 is aimed at the direct action of the employee, while this section is aimed at the decisional action of others. Emulsicoat, Inc. v. City of Hoopeston, 99 Ill. App. 3d 835, 55 Ill. Dec. 176, 425 N.E.2d 1349 (4 Dist. 1981).

Corrupt or Malicious Motives

This section and 745 ILCS 10/2-102 and 745 ILCS 10/2-201 do not apply to acts resulting from corrupt or malicious motives. Madonna v. Giacobbe, 190 Ill. App. 3d 859, 138 Ill. Dec. 90, 546 N.E.2d 1145 (2 Dist. 1989).

Failure to Enforce Laws

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Since other, specific statutory provisions applied to give the city complete immunity from the alleged willful and wanton conduct of the building inspectors in inspecting the staircase with the removed handrail from which the injured woman fell, the injured woman could not maintain a cause of action against the city by claiming that the injured woman was injured due to the city's failure to enforce the law. Indeed, the injured woman could not successfully claim that the injured woman's damages were really due to the city's failure in enforcing its laws under 745 ILCS 10/2-202, 745 ILCS 10/2-103, and 745 ILCS 10/2-205, as the injured woman's claims were actually about inadequate or incompetent inspections. Hess v. Flores, 408 Ill. App. 3d 631, 350 Ill. Dec. 571, 948 N.E.2d 1078, 2011 Ill. App. LEXIS 301 (1 Dist. 2011).

City was immune from liability for failing to enforce a building code, issuing the construction permit, negligently inspecting and/or failing to inspect the property as 745 ILCS 10/2-202 could not be read in conjunction with 745 ILCS 10/2-104 to create an exception to the immunity § 2-104 provided for issuance of a permit; accordingly, the city was immune from liability pursuant to 745 ILCS 10/2-103,2-205, 2-104 and 2-105. Bowler v. City of Chicago, 376 Ill. App. 3d 208, 315 Ill. Dec. 140, 876 N.E.2d 140, 2007 Ill. App. LEXIS 977 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1786 (Ill. 2007).

Neither a public employee nor a local public entity, which includes a municipal corporation, is liable for an injury caused by a failure to enforce any law. Luber v. City of Highland, 151 Ill. App. 3d 758, 104 Ill. Dec. 583, 502 N.E.2d 1243 (5 Dist. 1986).

Hiring or Retention

- Police Chief

Decision to hire or retain police chief was not shown to be a "legislative enactment," so that mayor and city were not acting in their legislative capacity when they hired or retained police chief and were not thus accorded immunity. Dirksen v. City of Springfield, 842 F. Supp. 1117 (C.D. Ill. 1994).

Misuse of Power

The statute did not provide a village with immunity in an action in which a real estate developer alleged that the village corruptly misused its governmental powers to prevent the developer's plans from going forward and appropriated the benefits of the developer's plans for developing certain properties for its own ends. Village of Bloomingdale v. C.D.G. Enters., 314 Ill. App. 3d 210, 247 Ill. Dec. 578, 732 N.E.2d 633, 2000 Ill. App. LEXIS 500 (2 Dist. 2000).

Public Policy

There are strong public policy concerns which dictate that public officials be shielded from liability in civil actions based upon their vote, in the exercise of discretion, either for or against any legislation. Carter v. City of Elmwood, 162 Ill. App. 3d 235, 113 Ill. Dec. 606, 515 N.E.2d 415 (3 Dist. 1987).

Retaliatory Discharge

Police officer's retaliatory discharge complaint against mayor and city council was dismissed because this Act shielded the municipality and its officials from liability where the discharge resulted from legislative action. Carter v. City of Elmwood, 162 Ill. App. 3d 235, 113 Ill. Dec. 606, 515 N.E.2d 415 (3 Dist. 1987).

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Scope

Property buyers' conspiracy to commit fraud claims against a town and its building commissioner, based on allegations that defendants conspired to conceal building code violations present in a property the buyers purchased, were not barred by the plain language of 745 ILCS 10/2-101 or by the plain language of 745 ILCS 10/2-103, 745 ILCS 10/2-105, 745 ILCS 10/2-205, 745 ILCS 10/2-206, and 745 ILCS 10/2-207. Those statutes did not affect the buyers right to obtain relief other than damages against the town and the commissioner. Alcala v. Totaro, F. Supp. 2d , 2005 U.S. Dist. LEXIS 33655 (N.D. Ill. Dec. 16, 2005).

Defendant public employees were exempt from liability arising from the design and construction of improvements to public property. Deren ex rel. Deren v. City of Carbondale, 13 Ill. App. 3d 473, 300 N.E.2d 590 (5 Dist. 1973).

Willful And Wanton Conduct

Trial court erred in ruling that the City of Chicago was not protected from claims of willful and wanton conduct by building inspectors under the immunities provided by 745 ILCS 10/2-103,2-105, 2-205 and 2-207; those statutes did not specifically except willful and wanton conduct, and thus, they provided the City with blanket immunity. Ware v. City of Chicago, 375 Ill. App. 3d 574, 314 Ill. Dec. 14, 873 N.E.2d 944, 2007 Ill. App. LEXIS 837 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1797 (Ill. 2007), appeal denied, 2007 Ill. LEXIS 1733 (Ill. 2007), appeal denied, 2007 Ill. LEXIS 1743 (Ill. 2007).

LEGAL PERIODICALS

For article, "Municipal Corporations: 1986-87 Survey," see 12 S. Ill. U.L.J. 1045 (1988).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 3:46 Adoption or enforcement of law.

§ 745 ILCS 10/2-206. [Permits, licenses, certificates, approvals, other authorizations]

Sec. 2-206. A public employee is not liable for an injury caused by his issuance, denial, suspension or revocation of or by his failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization where he is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

(Source: Laws 1965, p. 2983.)

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Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-206.

CASE NOTES

Analysis

Immunity
- Not Shown
- Shown
Intentional Interference of Contractual Relationship
- Immunity Not Applicable
Tortious Interference with Property
- Immunity Not Applicable

Immunity

- Not Shown

Property buyers' conspiracy to commit fraud claims against a town and its building commissioner, based on allegations that defendants conspired to conceal building code violations present in a property the buyers purchased, were not barred by the plain language of 745 ILCS 10/2-101 or by the plain language of 745 ILCS 10/2-103, 745 ILCS 10/2-105, 745 ILCS 10/2-205, 745 ILCS 10/2-206, and 745 ILCS 10/2-207. Those statutes did not affect the buyers right to obtain relief other than damages against the town and the commissioner. Alcala v. Totaro, F. Supp. 2d , 2005 U.S. Dist. LEXIS 33655 (N.D. Ill. Dec. 16, 2005).

Township board member's conduct was not protected by 745 ILCS 10/2-206 or 745 ILCS 10/2-201 because (1) the board member was not granting or denying approval of the landowner's resort when the board member republished the defamatory letter, and (2) the board member failed to show that the board member was acting in the pursuit of a township policy. Clarage v. Kuzma, 342 Ill. App. 3d 573, 276 Ill. Dec. 995, 795 N.E.2d 348, 2003 Ill. App. LEXIS 963 (3 Dist. 2003), appeal denied, 206 Ill. 2d 619, 282 Ill. Dec. 477, 806 N.E.2d 1065 (2003).

- Shown

City officials were granted summary judgment on the property owners' willful and wanton claims arising from the denial of an occupancy permit where the property owners failed to show that their claims went beyond the mere denial of a permit; thus, the claims were barred by 745 ILCS 10/2-104 and 745 ILCS 10/2-206. Moberg v. City of W. Chi., F. Supp. 2d , 2003 U.S. Dist. LEXIS 1657 (N.D. Ill. Feb. 3, 2003).

Intentional Interference of Contractual Relationship

- Immunity Not Applicable

Premised on proper proof of the elements of tort of intentional interference of contractual relationship defendants would not be immune from liability under the discretionary immunity

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provision of this Act. Idlehour Dev. Co. v. City of St. Charles, 88 Ill. App. 3d 47, 42 Ill. Dec. 929, 409 N.E.2d 544 (2 Dist. 1980).

Tortious Interference with Property

- Immunity Not Applicable

Defendant government officials were not protected by this section, or by 745 ILCS 10/2-104 from a suit based on tortious interference with property. City of Rock Falls v. Chicago Title & Trust Co., 13 Ill. App. 3d 359, 300 N.E.2d 331 (3 Dist. 1973).

RESEARCH REFERENCES

Liability, Under State Law Claims, of Public and Private Schools and Institutions of Higher Learning for Teacher's, Other Employee's, or Student's Sexual Relationship with, or Sexual Harassment or Abuse of, Student. 86 ALR5th 1.

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 3:43 Ministerial or mandatory acts.

§ 745 ILCS 10/2-207. [Failure to inspect adequately]

Sec. 2-207. A public employee is not liable for an injury caused by his failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than that of the local public entity employing him, for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-207.

CASE NOTES

Analysis

Building Inspections

- Cause of Action

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- Willful and Wanton Conduct
Failure to Enforce Compliance
- Damages
Willful and Wanton Conduct

Building Inspections

- Cause of Action

Property buyers' conspiracy to commit fraud claims against a town and its building commissioner, based on allegations that defendants conspired to conceal building code violations present in a property the buyers purchased, were not barred by the plain language of 745 ILCS 10/2-101 or by the plain language of 745 ILCS 10/2-103, 745 ILCS 10/2-105, 745 ILCS 10/2-205, 745 ILCS 10/2-206, and 745 ILCS 10/2-207. Those statutes did not affect the buyers right to obtain relief other than damages against the town and the commissioner. Alcala v. Totaro, F. Supp. 2d , 2005 U.S. Dist. LEXIS 33655 (N.D. Ill. Dec. 16, 2005).

Section 745 ILCS 10/2-105, which declares certain immunities for negligent municipal inspections or failure to inspect property not owned by the municipality, could not be coupled with section 745 ILCS 10/9-103 which formerly waived such immunity if public liability insurance was acquired, so as to create a new liability of municipalities in performing building inspections. Hannon v. Counihan, 54 Ill. App. 3d 509, 12 Ill. Dec. 210, 369 N.E.2d 917 (2 Dist. 1977).

- Willful and Wanton Conduct

No basis existed for applying the willful and wanton conduct exception found in 745 ILCS 10/2-202 in conjunction with the immunities provided to a city by 745 ILCS 10/2-105,2-207, particularly in light of the fact that the former statute provided a general immunity while the latter statutes directly addressed the subjects at issue in an action against the city alleging willful and wanton conduct by city building inspectors with regard to their inspections of a porch that collapsed killing 13 people. Ware v. City of Chicago, 375 Ill. App. 3d 574, 314 Ill. Dec. 14, 873 N.E.2d 944, 2007 Ill. App. LEXIS 837 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1797 (Ill. 2007), appeal denied, 2007 Ill. LEXIS 1733 (Ill. 2007), appeal denied, 2007 Ill. LEXIS 1743 (Ill. 2007).

Failure to Enforce Compliance

- Damages

No duties are owed to an individual member of the public by a municipality for its negligent failure to enforce compliance with a municipal building ordinance by contractors who build a house for owners; thus, such failure to enforce compliance will not raise a duty, the violation of which could support a cause of action for damages against the municipality. Hannon v. Counihan, 54 Ill. App. 3d 509, 12 Ill. Dec. 210, 369 N.E.2d 917 (2 Dist. 1977).

Willful and Wanton Conduct

City, pursuant to 745 ILCS 10/2-105 and 745 ILCS 10/2-207, had complete immunity from the injured woman's claims that the city was liable to the injured woman for the alleged willful and wanton conduct of its building inspectors that purportedly resulted in the injuries the injured woman sustained in a fall from a second-story staircase that had a missing handrail. The city under those provisions could not be held liable for negligent or inadequate inspections, and it could not be held liable for willful and wanton conduct because those statutory provisions made

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no exception for holding a municipality liable for such conduct. Hess v. Flores, 408 Ill. App. 3d 631, 350 Ill. Dec. 571, 948 N.E.2d 1078, 2011 Ill. App. LEXIS 301 (1 Dist. 2011).

Trial court erred in ruling that the City of Chicago was not protected from claims of willful and wanton conduct by building inspectors under the immunities provided by 745 ILCS 10/2-103,2-105, 2-205 and 2-207; those statutes did not specifically except willful and wanton conduct, and thus, they provided the City with blanket immunity. Ware v. City of Chicago, 375 Ill. App. 3d 574, 314 Ill. Dec. 14, 873 N.E.2d 944, 2007 Ill. App. LEXIS 837 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1797 (Ill. 2007), appeal denied, 2007 Ill. LEXIS 1733 (Ill. 2007), appeal denied, 2007 Ill. LEXIS 1743 (Ill. 2007).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Tort Law," see 26 S. Ill. U.L.J. 777 (2002).

§ 745 ILCS 10/2-208. [Prosecution of judicial or administrative proceeding]

Sec. 2-208. A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, unless he acts maliciously and without probable cause.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-208.

CASE NOTES

Analysis

Drug-Testing of Police Officers
Malicious Prosecution
- Common Law Elements
- Liability Not Precluded
- Probable Cause

Probable Cause Shown
Statements Held Privileged
Summary Judgment
Wrongful Injunction
- Village Not Liable

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Drug-Testing of Police Officers

Although mishandling of specimens of employee police officers being tested for drugs may have constituted negligence, city was immune from liability under this Act. Shamley v. City of Chicago, 163 Ill. App. 3d 375, 114 Ill. Dec. 491, 516 N.E.2d 646 (1 Dist. 1987).

Malicious Prosecution

- Common Law Elements

In a malicious prosecution claim brought as part of a federal civil rights proceeding against police officers, the common-law elements of the tort were applicable, without regard to this section, so the jury verdict in favor of plaintiff was relevant. Logan v. Drew, 790 F. Supp. 181 (N.D. Ill. 1992).

- Liability Not Precluded

In an action for malicious prosecution, this Act would not apply to protect an officer where there was a question of fact as to whether he planted a substance on the plaintiff at the time of his arrest. Neal v. City of Harvey, 1 F. Supp. 2d 849 (N.D. Ill. 1998).

- Probable Cause

Plaintiff had been convicted of sexual assault, but later had his conviction vacated when DNA evidence proved it was his uncle who had had sexual intercourse with the victim. His malicious prosecution claim against the police officers who arrested him were properly dismissed because there was probable cause to arrest him, and therefore no malice. Holland v. City of Chicago, 641 F.3d 248, 2011 U.S. App. LEXIS 12688 (7th Cir. 2011), cert. denied, 2011 U.S. LEXIS 8224, 181 L. Ed. 2d 424 (U.S. 2011).

Village was not entitled to immunity in an action brought by the builder for damages the builder sustained as a result of a temporary injunction obtained by the village preventing the builder from developing certain property since the village acted maliciously and without probable cause when it instigated its action against builder. Vill. of Sleepy Hollow v. Pulte Home Corp., 336 Ill. App. 3d 506, 270 Ill. Dec. 793, 783 N.E.2d 1093, 2003 Ill. App. LEXIS 90 (2 Dist. 2003), appeal denied, 204 Ill. 2d 683, 275 Ill. Dec. 83, 792 N.E.2d 314 (2003).

In an action for malicious prosecution, police chief and officers were protected by this Act where probable cause existed for the plaintiff's arrest. Neal v. City of Harvey, 1 F. Supp. 2d 849 (N.D. Ill. 1998).

Probable Cause Shown

Applying the "reasonably prudent person" test, the county had probable cause to persist in its request for an injunction to prevent strip mining. Knox County v. Midland Coal Co., 265 Ill. App. 3d 782, 203 Ill. Dec. 577, 640 N.E.2d 4 (3 Dist. 1994).

Statements Held Privileged

Statements made by defendant school superintendent to a Board of Education concerning plaintiff's job qualifications were communications within the duty of the defendant as superintendent, and were absolutely privileged. McLaughlin v. Tilendis, 115 Ill. App. 2d 148, 253 N.E.2d 85 (1 Dist. 1969).

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Summary Judgment

In officer one's suit alleging defamation by officer two when officer two sent an unflattering memorandum about officer one to officer one's boss, officer two was not found to be immune under 745 ILCS 10/2-208 at the summary judgment stage because genuine issues of material fact remained as to whether officer two had an untoward motive for writing the memorandum and whether he acted maliciously and without probable cause in writing the memorandum, which contained statements concerning which officer two did not have first hand knowledge. Ernst v. Anderson, F. Supp. 2d , 2005 U.S. Dist. LEXIS 7469 (N.D. Ill. Mar. 3, 2005).

Plaintiff was not entitled to partial summary judgment on her state law malicious prosecution and false imprisonment claims where liability turned on whether police officers had probable cause to arrest and detain defendant; there was a genuine issue of fact with regard to defendants' liability under state law for malicious prosecution and false imprisonment, notwithstanding state judges's finding of no probable cause at preliminary hearing. Kumar v. Chicago Hous. Auth., 862 F. Supp. 213 (N.D. Ill. 1994).

Wrongful Injunction

- Village Not Liable

A village is shielded from liability for damages arising from a wrongfully issued injunction under 735 ILCS 5/11-110, where the injunction was not sought maliciously or without probable cause. Village of Lake in the Hills v. Laidlaw Waste Sys., 160 Ill. App. 3d 427, 112 Ill. Dec. 184, 513 N.E.2d 598 (2 Dist. 1987).

When there was no allegation that any officer or employee of a village or county acted maliciously or without probable cause when they instituted a proceeding to enjoin a corporation from storing chemical wastes at a landfill, both the village and city were immune from the corporation's claim for damages resulting from the vacation of the preliminary injunction that had been issued because Ill. Rev. Stat. ch. 85, para. 2-208 (now 745 ILCS 10/2-208) precluded a finding that the public employees filing the suit were liable and therefore, pursuant to Ill. Rev. Stat. ch. 85, para. 2-109 (now 745 ILCS 10/2-109), the public entities were not liable. Wilsonville v. Earthline Corp., 65 Ill. App. 3d 392, 22 Ill. Dec. 369, 382 N.E.2d 689, 1978 Ill. App. LEXIS 3502 (1 Dist. 1978).

RESEARCH REFERENCES

Failure to restrain drunk driver as ground of liability of state or local government unit or officer. 48 ALR4th 320.

Malicious prosecution: Defense of acting on advice of justice of the peace, magistrate, or lay person. 48 ALR4th 250.

Excessiveness or inadequacy of compensatory damages for malicious prosecution. 50 ALR4th 843.

§ 745 ILCS 10/2-209. [Entry authorized by law]

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Sec. 2-209. A public employee is not liable for an injury arising out of his entry upon any property where such entry is expressly or impliedly authorized by law.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-209.

CASE NOTES

Analysis
Impliedly Authorized by Law
Scope of Immunity

Impliedly Authorized by Law

Where defendant police officers had entered the complainants' home in response to a call for assistance from other officers, in reliance upon the earlier entries of the other officers, who were still in the home, with no reason to believe the earlier entries were unlawful, defendant officers' entries were "impliedly authorized by law" within the meaning of this section. Owusu v. Grzyb, 749 F. Supp. 897 (N.D. Ill. 1990).

Scope of Immunity

City's claim had to be rejected that the city was entitled to discretionary immunity in a case where the injured party sued the city for an injury that the injured party suffered to an elbow after the injured party tripped and fell on a small depression in the alley, which was the city's property. Although the decision to repair defects in the city's alley was indeed a discretionary matter, the city's decisions about making the repairs after it had already decided to conduct repairs was a ministerial matter and since the city's employees were not immune under 745 ILCS 10/2-201 because no such repairs had been made to the alley at issue, the city could not use 745 ILCS 10/2-209 to shelter itself based on a claim that its employees were immune. Gutstein v. City of Evanston, Ill. App. 3d , Ill. Dec. , N.E.2d , 2010 Ill. App. LEXIS 194 (1 Dist. Mar. 12, 2010).

Sheriff and the deputy sheriffs were immune from liability for their conduct exhibited during the execution of an eviction warrant issued by a state court, and plaintiff's claim under 42 U.S.C. § 1983 and for state tort liability was dismissed. YHWHnewBN v. County of Cook, F. Supp. 2d , 2003 U.S. Dist. LEXIS 21250 (N.D. Ill. Nov. 20, 2003).

Where plaintiff evictee sued defendant sheriff, a deputy, unknown evicting employees, and police officers for constitutional violations, The Tort Immunity Act, 745 ILCS 10/1-101 et. seq., immunized these defendants from liability for alleged negligence, wrongful eviction, and failure to protect the evictee's property claims arising during the execution and enforcement of a forcible

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eviction order. YHWHnewBN v. County of Cook, F. Supp. 2d , 2003 U.S. Dist. LEXIS 20714 (N.D. Ill. Nov. 19, 2003).

Tort immunity of local public entities and their employees is not afforded for every act or omission by public employees during their hours of duty; the appropriate analysis in determining whether immunity is applicable is whether the public employee was executing or enforcing a law at the time of the subject incident. Aikens v. Morris, 145 Ill. 2d 273, 164 Ill. Dec. 571, 583 N.E.2d 487 (1991).

§ 745 ILCS 10/2-210. [Misrepresentation or false information]

Sec. 2-210. A public employee acting in the scope of his employment is not liable for an injury caused by his negligent misrepresentation or the provision of information either orally, in writing, by computer or any other electronic transmission, or in a book or other form of library material.

(Source: P.A. 84-1431; 89-100, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-210.

Effect of Amendments. The 1995 amendment by P.A. 89-100, effective July 7, 1995, inserted "by computer or any other electronic transmission, or".

CASE NOTES

Analysis

Defamation
- No Immunity
Defamation immunity upheld
Negligent Misrepresentation
- Memorandum to Employer
- School Superintendents
Tortious Interference With Contract
Wilfull And Wanton Conduct

Defamation

- No Immunity

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In a case involving a high school coach who was terminated, and in which the coach sued a particular school official for defamation with respect to negative statements that official made about the coach at the time of the termination, the school official was not entitled to immunity under 745 ILCS 10/2-210 because that statute provides protection for certain negligent misrepresentations and here there was no basis in the record to conclude that the statements made by the official were merely negligent. Bryant v. Gardner, 587 F. Supp. 2d 951, 2008 U.S. Dist. LEXIS 96137 (N.D. Ill. 2008).

Defamation immunity upheld

City employee who made allegedly defamatory statements about former employee was cloaked with immunity under the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act), 745 ILCS 10/1-101 et seq. (2000), for her alleged negligent statements. King v. City of Chicago, 324 Ill. App. 3d 856, 258 Ill. Dec. 62, 755 N.E.2d 143, 2001 Ill. App. LEXIS 644 (1 Dist. 2001).

Negligent Misrepresentation

- Memorandum to Employer

In officer one's suit alleging defamation by officer two when officer two sent an unflattering memorandum about officer one to officer one's boss, officer two was not found to be immune under 745 ILCS 10/2-210 at the summary judgment stage because genuine issues of material fact remained as to officer two's motivation in writing the memorandum and his firsthand knowledge of the statements contained therein, and thus, it was not possible to determine whether his misrepresentations were negligent or intentional or reckless. Ernst v. Anderson, F. Supp. 2d , 2005 U.S. Dist. LEXIS 7469 (N.D. Ill. Mar. 3, 2005).

- School Superintendents

School superintendent was protected against claims of negligent misrepresentation by this Act. Sitton v. Gibbs, 73 Ill. App. 3d 812, 29 Ill. Dec. 687, 392 N.E.2d 244 (1 Dist. 1979).

Tortious Interference With Contract

Circuit court, which dismissed plaintiff's defamation claim, did not err in denying plaintiff leave to file an amended complaint alleging defamation and tortious interference with contract, as the tortious interference with contract claims were subject to the same claims of immunity and privilege that defeated the defamation claims. Goldberg v. Brooks, 409 Ill. App. 3d 106, 350 Ill. Dec. 601, 948 N.E.2d 1108, 2011 Ill. App. LEXIS 363 (1 Dist. 2011).

Wilfull And Wanton Conduct

Summary judgment was not proper in an action arising from injuries caused by a drunk driver, who had not been taken into custody following a domestic dispute, because although the officers did not owe a special duty to the victims to protect them from an intoxicated driver under the "special duty exception" to the former Local Governmental and Governmental Employees Tort Immunity Act, Ill. Rev. Stat. ch. 85, para. 4-102 (now 745 ILCS 10/4-102) and Ill. Rev. Stat. ch. 85, 4-107 (now 745 ILCS 10/4-107), the officers could be still held liable under the act for willful and wanton conduct in enforcement of the law under former Il. Rev. Stat. ch. 85, para. 2-202 (now 745 ILCS 10/2-202), former Ill. Rev. Stat. ch. 85 para. 2-204 (now 745 ILCS 10/2-204), and former Ill. Rev. Stat. ch. 85, para. 2-210 (now 745 ILCS 10/2-210). Fatigato v. Village of Olympia Fields, 281 Ill. App. 3d 347, 217 Ill. Dec. 63, 666 N.E.2d 732, 1996 Ill. App. LEXIS 359 (1

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Dist. 1996).

OPINIONS OF ATTORNEY GENERAL

Electronic Mortgage Registration

This section plainly grants the recorder immunity from liability for the act or omission of another person and this provision will protect the recorder from liability for any error by a lender in providing a mortgagee identification number, by an individual in copying or keying in a number or by Mortgage Electronic Registration System personnel in providing information. 1997 Op. Atty. Gen. (97-008).

The plain language of 745 ILCS 10/2-107 and this section grants the recorder and the county immunity from liability for negligence in providing information in writing, orally or by electronic transmission and this will extend to assisting individuals in looking up mortgage identification numbers and providing access to telephone or computer equipment in connection with the Mortgage Electronic Registration System. 1997 Op. Atty. Gen. (97-008).

The county recorder and the county would ordinarily be immune from liability in connection with any cause of action resulting from their provision of access to Mortgage Electronic Registration System. 1997 Op. Atty. Gen. (97-008).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 3:36 Oral promises or misrepresentations; defamation and provision of information.

§ 745 ILCS 10/2-211. [School safety patrols]

Sec. 2-211. A public employee is not liable for an injury caused by the organization, maintenance or operation of a school safety patrol as authorized by Section 10-22.28 of "The School Code", approved March 18, 1961, as heretofore or hereafter amended [105 ILCS 5/10-22.28].

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-211.

Practice Guides and Treatises.

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Illinois Jurisprudence, Personal Injury and Torts § 35:43 School safety patrol.

§ 745 ILCS 10/2-212. [Application to employees who function jointly with other employees]

Sec. 2-212. The provisions of this Part 2 which define or limit the liability of a public employee in terms of his doing of an act or of his failure to act apply to public employees who function jointly, in conjunction or in collaboration with other public employees as well as to those who function singly.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-212.

CASE NOTES

Immunity

- Not Found

In officer one's suit alleging defamation by officer two when officer two sent an unflattering memorandum about officer one to officer one's boss, officer two was not found to be immune under 745 ILCS 10/2-212 at the summary judgment stage because genuine issues of material fact remained as to the applicability of other immunity provisions. Ernst v. Anderson, F. Supp. 2d , 2005 U.S. Dist. LEXIS 7469 (N.D. Ill. Mar. 3, 2005).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 3:41 Generally.

§ 745 ILCS 10/2-213. [Punitive or exemplary damages not allowed]

Sec. 2-213. Notwithstanding any other provision of law, a public employee is not liable to pay punitive or exemplary damages in actions brought against the employee based on an injury allegedly arising out of an act or omission occurring within the scope of employment of such an employee serving in a position involving the determination of policy or the exercise of discretion when the injury is the result of an act or omission occurring in the performance of any legislative, quasi-legislative or quasi-judicial

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function, even though abused.

(Source: P.A. 84-1431.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-213.

CASE NOTES

Discretionary Acts

Where an arrestee alleged that a sergeant and an officer committed battery against the arrestee at the jail, regarding the argument that defendants were immune from any punitive damages since their positions involved a determination of policy or the exercise of discretion, dismissal was not warranted, because defendants did not explain how the misconduct alleged constituted performance of any legislative or judicial functions. Wilhold v. Gebke, F. Supp. 2d , 2005 U.S. Dist. LEXIS 20096 (S.D. Ill. Sept. 1, 2005).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 3:40 Punitive damages; attorneys' fees.

§ 745 ILCS 10/2-214. Court volunteer

Sec. 2-214. Court volunteer. (a) In this Section, "volunteer" means a person performing uncompensated services for a court pursuant to a court order, under a program certified by the Chief Judge of the circuit as a court volunteer program.

(b) A volunteer is not liable for his or her act or omission in performing volunteer services pursuant to a court order, under a program certified by the Chief Judge of the circuit as a court volunteer program, unless the act or omission constitutes willful and wanton conduct.

(Source: P.A. 90-746, § 3.)

Effective Date. Section 99 of P.A. 90-746, made this section effective upon becoming law. The Act was approved on August 14, 1998.

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Part 3.
Indemnification of Public Employees

§ 745 ILCS 10/2-301. [Construction with other laws]

Sec. 2-301. Nothing in this Part 3 relieves a local public entity of its duty to indemnify or insure its employees as provided in Sections 1-4-5 and 1-4-6 of the Illinois Municipal Code [65 ILCS 5/1-4-5 and 65 ILCS 5/1-4-6], Sections 10-20.20 and 34-18.1 of The School Code [105 ILCS 5/10-20.20 and 105 ILCS 5/34-18.1], in Sections 8-20 and 8-21 of The Park District Code [70 ILCS 1205/8-20 and 70 ILCS 1205/8-21], in Sections 7.2 and 7.3 of "An Act in relation to the creation, maintenance, operation and improvement of the Chicago Park District" [70 ILCS 1505/7.2 and 70 ILCS 1505/7.3], approved July 10, 1933, in Section 5-1002 of the Counties Code [55 ILCS 5/5-1002], and in Section 22 of "An Act in relation to the creation and management of forest preserve districts in counties having a population of less than 3,000,000" approved June 27, 1913 [70 ILCS 805/.01].

(Source: P.A. 86-1387.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-301.

§ 745 ILCS 10/2-302. [Action against employee of public entity; employer elects defense]

Sec. 2-302. If any claim or action is instituted against an employee of a local public entity based on an injury allegedly arising out of an act or omission occurring within the scope of his employment as such employee, the entity may elect to do any one or more of the following:

(a) Appear and defend against the claim or action;

(b) Indemnify the employee or former employee for his court costs or reasonable attorney's fees, or both, incurred in the defense of such claim or action;

(c) Pay, or indemnify the employee or former employee for a judgment based on such claim or action, or

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(d) Pay, or indemnify the employee or former employee for, a compromise or settlement of such a claim or action.

It is hereby declared to be the public policy of this State, however, that no local public entity may elect to indemnify an employee for any portion of a judgment representing an award of punitive or exemplary damages.

(Source: P.A. 84-1431; 92-810, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 2-302.

Effect of Amendments. The 2002 amendment by P.A. 92-810, effective August 21, 2002, inserted "or reasonable attorney's fees, or both" in subsection (b).

CASE NOTES

Analysis

Construction
Indemnification
- Optional
- Not Required
- Punitive Damages
Jurisdiction
- Multiple Claims
Reimbursement of Police Officer
- Conditions
Representation by City Counsel
Scope of Employment
- Determination
- Not Shown
Standing
- Not Shown

Construction

The Tort Immunity Act's prohibition of a local public entity paying punitive damages trumps 105 ILCS 5/34-18.1 and bars a claim for punitive damages against a school board. Anderson v. Bd. of Educ. of Chi., 169 F. Supp. 2d 864, 2001 U.S. Dist. LEXIS 16897 (N.D. Ill. 2001).

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Indemnification

- Optional

Excess insurer had to indemnify an insured municipality in the amount remaining from its loss after the primary insurer fulfilled its obligation because (1) the excess insurer's policy was triggered as the underlying malicious prosecution claim fell within the policy period; (2) the excess insurer's voluntary assumption defense failed because the insured was obligated to pay the judgment entered against its employee under the Illinois Local Governmental Employees Tort Immunity Act, 745 ILCS 10/9-102, and the insured did not voluntarily assume the employee's judgment under 745 ILCS 10/2-302 when it failed to raise a statute of limitations defense to the underlying claim under 745 ILCS 10/8-101 because any statute of limitations challenge by the insured would have failed under binding precedent; and (3) 65 ILCS 5/1-4-6 did not affect the operation of 745 ILCS 10/9-102, which required the insured to pay the judgment. Am. Safety Cas. Ins. Co. v. City of Waukegan, 776 F. Supp. 2d 670, 2011 U.S. Dist. LEXIS 21393 (N.D. Ill. 2011).

This statute makes it optional for a municipality to indemnify. Board of Trustees v. Underwood, Neuhaus & Co., 742 F. Supp. 984 (N.D. Ill. 1990).

- Not Required

Where police officer, at time of arrest, was engaged in a good faith effort to enforce a law and was thus immune from liability for any alleged damages arising out of the arrest, plaintiff's immunity at the time of the arrest necessarily precluded any duty on the part of defendant city to indemnify him for the amount of the settlement which he effected with arrestee suing for unlawful arrest. Gillespie v. City of Maroa, 104 Ill. App. 3d 874, 60 Ill. Dec. 646, 433 N.E.2d 688 (4 Dist. 1982).

- Punitive Damages

Municipalities may not indemnify individual defendants for punitive damage awards against them. Hammond v. Town of Cicero, 822 F. Supp. 512 (N.D. Ill. 1993).

Jurisdiction

- Multiple Claims

Plaintiff's claim for indemnity against a city under this section and 65 ILCS 5/1-4-5 would not be heard in federal court in concert with plaintiff's claim against city policemen for violation of his civil rights. Kerr v. City of Chicago, 424 F.2d 1134 (7th Cir.), cert. denied, 400 U.S. 833, 91 S. Ct. 66, 27 L. Ed. 2d 64 (1970).

Reimbursement of Police Officer

- Conditions

65 ILCS 5/1-4-6 and this section are in pari materia in that they relate to reimbursement of police officers for claims for damages which are filed against them arising out of acts committed in the course of their employment and set forth the conditions under which policemen may be reimbursed for the amount of such damages by their municipal employers. Gillespie v. City of Maroa, 104 Ill. App. 3d 874, 60 Ill. Dec. 646, 433 N.E.2d 688 (4 Dist. 1982).

Representation by City Counsel

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Although it might be easier, and maybe cheaper as well, to have the counsel for the city handle action by an officer against other officers, that explanation alone could not carry the day given the ethical constraints implicated. Smith v. Martin, 819 F. Supp. 733 (N.D. Ill. 1992).

Scope of Employment

- Determination

An objective test is used to determine whether an employee's acts are within the scope of his employment. Board of Trustees v. Underwood, Neuhaus & Co., 742 F. Supp. 984 (N.D. Ill. 1990).

- Not Shown

Plaintiffs, city commissioners and corporation counsel, could not recover for attorneys fees and costs in their criminal defense where their actions in negotiating a proposed settlement of a voting rights lawsuit, as a matter of law, were outside the scope of their employment as they utilized the negotiations to illegally advance their own personal interests by preserving their employment. Wright v. City of Danville, 174 Ill. 2d 391, 221 Ill. Dec. 203, 675 N.E.2d 110 (1996).

Standing

- Not Shown

Plaintiff was found to lack standing where he challenged a local ordinance allowing present State's attorney to represent a former State's attorney against the plaintiff's claim of malicious prosecution because the plaintiff failed to explain how any of his due process rights under the federal and state Constitutions would be negatively affected by such representation. Romanski v. Barra, 215 Ill. App. 3d 125, 158 Ill. Dec. 813, 574 N.E.2d 1206 (3 Dist. 1991).

LEGAL PERIODICALS

For article, "Survey of Illinois Law [1989-90] - Municipal Corporations," see 15 S. Ill. U.L.J. 1021 (1991).

For comments, "The In Loco Parentis Status of Illinois School Teachers: An Unjustifiably Broad Extension of Immunity," see 10 J. Marshall J. Prac. & Proc. 629 (1977).

Practice Guides and Treatises.

Employment Discrimination § 5.18 Punitive damages (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 3:86 Generally.

Article III.

Immunity from Liability for Injury Occurring in the Use of Public Property

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§ 745 ILCS 10/3-101. [Public property defined]

Sec. 3-101. As used in this Article unless the context otherwise requires "property of a local public entity" and "public property" mean real or personal property owned or leased by a local public entity, but do not include easements, encroachments and other property that are located on its property but that it does not own, possess or lease.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 3-101.

CASE NOTES

Analysis

Application
Construction
Legislative Intent
Public Property
- Responsibility to Maintain
- Scope of Immunity

Application

Actual notice means notice of the condition only, not the unsafe nature of the condition, and notice is imputed to a public entity where one of its employees has actual knowledge of the defect in question; thus, where evidence showed that the defective condition of a sidewalk had existed for one or two years prior to an accident and that the city had been advised of the problem, a judgment on a jury verdict in favor of the city was reversed because the only reasonable conclusion to be drawn was that the city, in fact, had notice, whether actual or constructive, of the defect and that the existence of notice should have been determined as a matter of law by the trial court. Glass v. City of Chicago, 323 Ill. App. 3d 158, 256 Ill. Dec. 88, 751 N.E.2d 141, 2001 Ill. App. LEXIS 400 (1 Dist. 2001).

Because the pre-amendment version of 745 ILCS 10/3-106 contains a different definition of the public property to which it applies, the definition of public property in this section does not apply to

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745 ILCS 10/3-106. Bonfield v. Jordan, 202 Ill. App. 3d 638, 148 Ill. Dec. 110, 560 N.E.2d 412 (4 Dist. 1990).

Construction

Village and village park district were immune from liability on the pedestrian's lawsuit against them for injuries the pedestrian sustained when the pedestrian slipped and fell on an unnatural accumulation of ice and snow on a sidewalk next to a village park. Public property was defined under 745 ILCS 10/3-101 to include both real, as well as moveable and immoveable personal property, and, thus, the immunity that they had for conditions on public property extended to the snow and ice accumulation. Callaghan v. Vill. of Clarendon Hills, 401 Ill. App. 3d 287, 340 Ill. Dec. 757, 929 N.E.2d 61, 2010 Ill. App. LEXIS 383 (2 Dist. 2010).

Tort Immunity Act, former Ill. Rev. Stat. ch. 85, para. 3-101 (now 745 ILCS 10/3-101) defines "property of a local public entity" as real or personal property owned or leased by a local public entity. Vesey v. Chicago Housing Authority, 205 Ill. App. 3d 962, 150 Ill. Dec. 789, 563 N.E.2d 916, 1990 Ill. App. LEXIS 1682 (1 Dist. 1990).

As this Act is in derogation of the common law, it must be strictly construed against local public entities. Davis ex rel. Davis v. Chicago Hous. Auth., 176 Ill. App. 3d 976, 126 Ill. Dec. 391, 531 N.E.2d 1018 (1 Dist. 1988), aff'd, 136 Ill. 2d 296, 144 Ill. Dec. 224, 555 N.E.2d 343 (1990).

Legislative Intent

The inclusion of the terms "possess" or "lease" suggest that the legislature intended to include within the definition of public property that property which is owned by the public entity and in its possession even if subject to an easement. The definition of property in this section includes both real and personal property; the phrase "other property" could be construed to refer to personal property located on real property or to interests in real property which include easements. The intent of the legislature is to include all real or personal property owned, possessed or leased by the public entity and to exclude any encroachment, easement or property of others which are located on its property but which it does not possess or lease. Kirnbauer v. Cook County Forest Preserve Dist., 215 Ill. App. 3d 1013, 159 Ill. Dec. 499, 576 N.E.2d 168 (1 Dist. 1991).

Public Property

In a negligence and wrongful death action brought by a special administrator against a city, a railroad, and others with regard to its decedent dying from injuries incurred from striking a steel cable while riding a dirt bike along a railroad service road, it was determined that the trial court erred by granting summary judgment to the city by concluding that there was no genuine issue of material fact existing with regard to the city owning the service road and that the decedent had been a trespasser, thus, the city owed no duty to him and was immune from liability under 745 ILCS 10/3-109. To the contrary, the reviewing court found that it could not say that the decedent was undisputedly a trespasser at the time of the incident since the city only had a limited easement granted to it with regard to the service road, which did not create an exclusive possessory ownership right to the land allowing it to unilaterally exclude the decedent as a permitted user or to prevent the railroad from permitting the decedent to use the service road and there was also evidence that the railroad knew of individuals using the service road for recreational purposes and did not take action to prohibit or prevent the activities. Steinbach v. CSX Transp., Inc., 393 Ill. App. 3d 490, 332 Ill. Dec. 622, 913 N.E.2d 554, 2009 Ill. App. LEXIS 665 (3 Dist. 2009), appeal denied, 234 Ill. 2d 553, 920 N.E.2d 1082, 2009 Ill. LEXIS 2019 (2009).

- Responsibility to Maintain

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Finding city had "maintenance responsibility" for curb was adequate to show that the city exercised sufficient dominion over curb, such that curb could be considered within the scope of this section. DiMarco v. City of Chicago, 278 Ill. App. 3d 318, 214 Ill. Dec. 959, 662 N.E.2d 525 (1 Dist. 1996), appeal denied, 167 Ill. 2d 551, 217 Ill. Dec. 663, 667 N.E.2d 1056 (1996).

- Scope of Immunity

In delineating the scope of the immunity, the legislature did not include a requirement that the property be owned by the governmental body named as defendant. Castenada v. Community Sch. Dist., 226 Ill. App. 3d 514, 168 Ill. Dec. 638, 589 N.E.2d 1038 (2 Dist. 1992).

LEGAL PERIODICALS

For article, "Permitted But Not Intended: Boub v. Township of Wayne, Municipal Tort Immunity in Illinois, and the Right to Local Travel," see, See 38 J. Marshall L. Rev. 545 (2004).

Practice Guides and Treatises.

Proving Fault in Auto Accident Cases § 5.5 Actions Against Road Contractors and Municipalities (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 31:48 Generally.

§ 745 ILCS 10/3-102. [Duty to maintain property]

Sec. 3-102. (a) Except as otherwise provided in this Article, a local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition for the use in the exercise of ordinary care of people whom the entity intended and permitted to use the property in a manner in which and at such times as it was reasonably foreseeable that it would be used, and shall not be liable for injury unless it is proven that it has actual or constructive notice of the existence of such a condition that is not reasonably safe in reasonably adequate time prior to an injury to have taken measures to remedy or protect against such condition.

(b) A public entity does not have constructive notice of a condition of its property that is not reasonably safe within the meaning of Section 3-102(a) if it establishes either:

(1) The existence of the condition and its character of not being reasonably safe would not have been discovered by an inspection system that was reasonably adequate considering the practicability and cost of inspection weighed against the likelihood and magnitude of the potential danger to which failure to inspect would give rise to inform the public entity whether the property was safe for the use or uses for which the public entity used or intended others to use the public property and for uses that the public entity actually knew others were making of the public property or adjacent property; or

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(2) The public entity maintained and operated such an inspection system with due care and did not discover the condition.

(Source: P.A. 84-1431.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 3-102.

CASE NOTES

Analysis

Adjacent Property
- Fences
Applicability
- Contributory Negligence Application Waived
Breach
- Duty of Ordinary Care
Chargeable with Knowledge
Common Law Duty
- In General
- Safe Parkways
Comparative Negligence
- Applied
Complaint
- Held Sufficient
Concession of Notice
- Plaintiff's Burden Met
Construction
Constructive Notice
- In General
- Control
- Duration
- Jury Determination
- Not Shown
- Summary Judgment Denied
Country Roads
- Pedestrians
Dangerous Conditions
- Negligence
- Notice
- Warning Devices

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Dangerous Use of Street
- Not Physically Defective
Defective Condition
- Cracks
- Elevator Door
- Failure to Allege
- Ice and Snow
- Question of Fact for Jury
- Repair Schedule
- Sidewalks
- Time Period
Degree of Care
Drainage System
- Knowledge of Hole
Duty
- In General
- Airports
- Alleys
- Applicability
- Berm
- Crosswalk
- Derivation
- Door
- Driver Negligence
- Drivers
- Effect of Ordinance
- Highway Maintenance
- Improvements
- Installation of Road Sign
- Landlord and Tenant
- Midblock Curb
- Operation of Elevator
- Parkway
- Parkways
- Property Not Owned by Municipality
- Public Highways
- Safe Condition
- Safe Intersection
- Scope
- Sidewalk
- Stoplights
- Street as Walkway
- Streets
- Traffic Control Device
- Warning
- Warning Devices

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- Water System
Employee Negligence
Evidence Held Insufficient
- Duty
- Notice
- Specific Condition
Evidence Held Sufficient
Federal Government
- Not Liable
Foreseeability
- Designated Crosswalk
- Shown
- Sidewalks
Immunity
- Effect of Notice
- Failure to Plead
Inspection
- Elevator Door
Intended and Permitted Use
Intended and Permitted User
- In General
- Bicyclist
- Exit From Vehicle
- Median Strip
- Not Shown
- Passenger
- Shown
- Unlicensed Driver
- Unmarked Crosswalk
Intended Use
- Bicyclist
- Crosswalks
- Determination
- Issues
- Jaywalker
- Legally Parked Vehicle
- Loading Zone
- Maintenance of Streets for Pedestrians
- Motorcycles
- Pedestrians
- Persons Owed Duty of Care
- Street Cleaning
- Street Parking
Intended User
- Not Shown
Intent

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Knowledge
- Stop Sign
Legislative Intent
- Duty of Care
Liability
- County
- Dangerous Condition
- Public Ways
- Sufficient Time
Location of Defect
- Jury Determination
Majority Rule
- Liability of Municipality
Ministerial Acts
Notice
- In General
- Admissibility of Phone Conversation
- Illustrative Cases
Oil Slick
- Liability
Parkways
- Injuries
Pedestrians
- Alley Return
- Crosswalk
Playground Liability
- Duty to Warn
- Wilful and Wanton Misconduct
Pleading
- Illustrative Cases
Pond
- Persons Owed Duty of Care
Prima Facie Evidence
- Shown
Public Policy
- Inoperable Elevators
Railroad Crossing
- Warning Signs on Parallel Road
Restrictions
- Foreseeable Uses
Schools
Scope
- Immunities
- Notice
Sidewalk Access
Snowmobiles

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- Related Provision
Special Duty Exception
- Not Applicable
Streets
- Around Vehicles
- Use by Pedestrians
Unsafe Intersection
- Insufficient Cause of Action
- Sufficient Cause of Action
Voluntary Undertaking
Wilful and Wanton Misconduct
- In General
- Football Field

Adjacent Property

Summary judgment should not have been granted to a forest preserve district in a negligence case because the trial court misconstrued 745 ILCS 10/3-102(a); the trial court's decision negated 745 ILCS 10/3-102's repeated references to "use" of the public entity's property and it lacked support in the common law since public entities were liable for injuries occurring on adjacent or abutting land. There were insufficient facts to determine whether the district owed a duty of care to a motorist, who was struck by a limb that fell from the preserve onto a car on an adjacent road; moreover, the district's proposed application of 745 ILCS 10/3-106 to injuries occurring outside a public entity's property line was too expansive and would have overcome the common law duty of due care codified by 745 ILCS 10/3-102(a), and the district's argument that the public duty doctrine supported a policy of no duties owed to individuals was rejected. Belton v. Forest Pres. Dist., 407 Ill. App. 3d 409, 347 Ill. Dec. 931, 943 N.E.2d 221, 2011 Ill. App. LEXIS 69 (1 Dist. 2011).

- Fences

Where city owned property adjacent to railroad property where plaintiff was injured, it had no duty to erect public improvements such as fences. Foreman ex rel. Heard v. Consolidated Rail Corp., 214 Ill. App. 3d 700, 158 Ill. Dec. 384, 574 N.E.2d 178 (1 Dist. 1991).

Applicability

- Contributory Negligence Application Waived

Where the first time city, sued for negligence, mentioned contributory negligence was when it filed its post-trial motion, the city made a strategic decision to send the case to the jury under comparative negligence principles, but then wanted to use the comparative fault calculation to impose contributory negligence ideals on plaintiff; the city was refused chance to circumvent the jury's right to apply the relevant law to the facts. Malek v. City of Chicago, 263 Ill. App. 3d 214, 200 Ill. Dec. 667, 635 N.E.2d 1006 (1 Dist. 1994).

Breach

- Duty of Ordinary Care

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There is no question that a local governmental unit has the duty to exercise ordinary care to maintain its streets in a reasonably safe condition; however, there is no authority that a public entity breaches its duty by allowing an area adjacent to an intersection to pose visual obstructions to traffic to oncoming drivers although there is a clearly visible, properly maintained traffic signal plainly observable to all drivers concerned. The exception is where there is a statutory directive requiring a public entity to remove any visual obstructions. Manning v. Hazekamp, 211 Ill. App. 3d 119, 155 Ill. Dec. 557, 569 N.E.2d 1168 (4 Dist. 1991).

Chargeable with Knowledge

Notice of facts which would put a reasonably prudent person on inquiry would render the authorities chargeable with knowledge of any fact that might be discovered by a reasonable investigation. Pinto v. DeMunnick, 168 Ill. App. 3d 771, 119 Ill. Dec. 579, 523 N.E.2d 47 (1 Dist. 1988).

Common Law Duty

- In General

This section of this Act codifies the common law duty of a local public entity to maintain its property. Swett v. Village of Algonquin, 169 Ill. App. 3d 78, 119 Ill. Dec. 838, 523 N.E.2d 594 (2 Dist. 1988); Greeson v. Mackinaw Tp., 207 Ill. App. 3d 193, 152 Ill. Dec. 162, 565 N.E.2d 695 (3 Dist. 1990), cert. denied, 139 Ill. 2d 595, 159 Ill. Dec. 107, 575 N.E.2d 914 (1991); Parson v. Carbondale Twp., 217 Ill. App. 3d 637, 160 Ill. Dec. 454, 577 N.E.2d 779 (5 Dist. 1991), cert. denied, 143 Ill. 2d 640, 167 Ill. Dec. 402, 587 N.E.2d 1017 (1992); Vesey v. Chicago Hous. Auth., 145 Ill. 2d 404, 164 Ill. Dec. 622, 583 N.E.2d 538 (1991).

Where there is no duty owed to the plaintiff under this section, no duty exists under the exceptions to the subsequent immunity sections, either. Swett v. Village of Algonquin, 169 Ill. App. 3d 78, 119 Ill. Dec. 838, 523 N.E.2d 594 (2 Dist. 1988).

- Safe Parkways

Prior to the passage of this Act, it was the common law of this state that a municipal corporation had a duty to exercise ordinary care to keep its parkways reasonably safe. Marshall ex rel. Marshall v. City of Centralia, 143 Ill. 2d 1, 155 Ill. Dec. 802, 570 N.E.2d 315 (1991).

Comparative Negligence

The city has a duty to maintain its property in a reasonably safe condition so that a person acting with ordinary care will not be injured, and if the city breaches this duty, even a negligent plaintiff may recover to the extent permitted under principles of comparative negligence. Wagner v. City of Chicago, 166 Ill. 2d 144, 209 Ill. Dec. 672, 651 N.E.2d 1120 (1995).

- Applied

The legislature did not intend that a plaintiff's contributory negligence would limit the duty of a municipality under subsection (a) of this section; this Act seeks to apply common law standards to municipalities and the purposes of the statute are served by applying comparative negligence. Palladini v. City of E. Peoria, 134 Ill. App. 3d 345, 89 Ill. Dec. 345, 480 N.E.2d 530 (3 Dist. 1985).

Complaint

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Students' claims for premises liability against a school district would not be dismissed because the Tort Immunity Act, 745 ILCS 10/3-102(a), codified the common law duty of public entities to maintain their property in a reasonably safe condition, and the students alleged that the private room given to the teacher who molested them directly contributed to and facilitated the abuse and that the district had actual knowledge that the teacher was utilizing the private room to commit the abuse. The gravamen of the students' premises liability claim was not that the district failed to supervise the teacher but was that the district knew that the teacher was using a private room to facilitate his abuse of his students and that it had unique knowledge that allowing the teacher to have access to a private room increased the danger to its students, yet did nothing to ensure that the premises were made safe. Marciela G. v. Sperlik, F. Supp. 2d , 2005 U.S. Dist. LEXIS 31213 (N.D. Ill. Nov. 30, 2005).

- Held Sufficient

Allegations that the private room a school district allowed a music teacher to use for giving lessons contributed to and facilitated the teacher's sexual abuse of female students and that the district had actual knowledge of the teacher using the room to commit the abuse, were sufficient to state a premises liability claim against the district under 745 ILCS 10/3-102(a). Roe v. Sperlik, F. Supp. 2d , 2005 U.S. Dist. LEXIS 31260 (N.D. Ill. Nov. 30, 2005).

A complaint alleging wilful and wanton misconduct on the part of a city was sufficient to state a cause of action where it alleged facts concerning the escorting of a convoy sufficient to charge conduct exhibiting a reckless disregard for the safety of others, and where these facts showed either a failure to exercise ordinary care to prevent an apparent danger, or a failure to discover danger through carelessness or recklessness when it could have been discovered by ordinary care. Porter v. City of Decatur, 16 Ill. App. 3d 1031, 307 N.E.2d 440 (4 Dist. 1974).

Concession of Notice

- Plaintiff's Burden Met

Because village conceded notice of the condition, plaintiff met his prima facie burden, if any, to show notice of the unsafe condition. Tracy v. Village of Lombard, 116 Ill. App. 3d 563, 71 Ill. Dec. 838, 451 N.E.2d 992 (2 Dist. 1983).

Construction

The Tort Immunity Act is in derogation of the common law and must be strictly construed against the public entity. Hough v. Kalousek, 279 Ill. App. 3d 855, 216 Ill. Dec. 373, 665 N.E.2d 433 (1 Dist. 1996).

The express language of this section contemplates that its application shall be precluded by the operation of other more specific provisions of the Tort Immunity Act. Fraley v. City of Elgin, 251 Ill. App. 3d 72, 190 Ill. Dec. 407, 621 N.E.2d 276 (2 Dist. 1993).

While this Act provides liability for a public entity, it simply codifies the common law duty of a local public entity to maintain its property, and does not place a municipality under a greater or special duty than an ordinary dramshop owner, simply by virtue of being a governmental entity. Goodknight v. Piraino, 197 Ill. App. 3d 319, 143 Ill. Dec. 208, 554 N.E.2d 1 (4 Dist. 1990).

This Act should be construed in terms of granting immunities and defenses instead of imposing duties, unless the plain language of a particular provision imposes a duty. Hi-Tek Consulting Servs., Inc. v. Bar-Nahum, 218 Ill. App. 3d 836, 161 Ill. Dec. 347, 578 N.E.2d 993 (1 Dist. 1991).

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Constructive Notice

Evidence was sufficient to support a partial summary judgment granted to the plaintiff on the issue of constructive notice to the defendant city regarding the condition of a sidewalk where a physician, whose office was at the location of the sidewalk, testified that the sidewalk slabs in the area were separated by a height of "maybe a couple of inches" and that they had been in this condition since he started his practice in that location in 1977, some 16 years prior to the plaintiff's fall. Ramirez v. City of Chicago, 318 Ill. App. 3d 18, 251 Ill. Dec. 619, 740 N.E.2d 1190, 2000 Ill. App. LEXIS 947 (1 Dist. 2000).

745 ILCS 10/3-102(a) of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., imposes liability when the public defendant has constructive notice of the dangerous condition that caused the injury. Cases decided under the Act, teaching that even where the condition has existed for a considerable time, constructive notice cannot exist where the dangerous condition is so well concealed that it is unlikely to be discovered through the exercise of reasonable care, therefore can be persuasive in other premises liability cases involving only private parties. Smolek v. K.W. Landscaping, 266 Ill. App. 3d 226, 203 Ill. Dec. 415, 639 N.E.2d 974, 1994 Ill. App. LEXIS 1211 (1 Dist. 1994).

- In General

745 ILCS 10/3-102(b) which provides that a public entity does not have constructive notice of an unsafe condition if it establishes that the condition would not have been discovered by a reasonably adequate inspection system or that it maintained and operated such an inspection system with due care and did not discover the condition, establishes an affirmative defense, rather than an additional basis for imposition of liability. Mielke v. United States, F. Supp. 2d , 2001 U.S. Dist. LEXIS 4782 (N.D. Ill. Apr. 16, 2001).

Constructive notice under subsection (a) of this section is established where a condition has existed for such a length of time, or was so conspicuous, that authorities exercising reasonable care and diligence might have known of it and the burden of proving notice is on the party charging it. Burke v. Grillo, 227 Ill. App. 3d 9, 169 Ill. Dec. 45, 590 N.E.2d 964 (2 Dist. 1992).

Constructive notice is present where a defective condition exists for such a length of time that public authorities, by the exercise of reasonable care and diligence, might have known of the condition. Livings v. City of Chicago, 26 Ill. App. 3d 850, 326 N.E.2d 170 (1 Dist. 1975); Buford ex rel. Buford v. Chicago Hous. Auth., 131 Ill. App. 3d 235, 86 Ill. Dec. 926, 476 N.E.2d 427 (1 Dist. 1985); Pinto v. DeMunnick, 168 Ill. App. 3d 771, 119 Ill. Dec. 579, 523 N.E.2d 47 (1 Dist. 1988); Finley v. Mercer County, 172 Ill. App. 3d 30, 122 Ill. Dec. 376, 526 N.E.2d 635 (3 Dist. 1988).

- Control

Simple control alone is not sufficient to infer constructive knowledge of a dangerous condition. Stewart v. United States, 918 F. Supp. 224 (N.D. Ill. 1996).

- Duration

A city cannot be held to have constructive notice of defective condition unless the condition is in existence for such a length of time that public authorities should have discovered it. Cook v. Gould, 109 Ill. App. 3d 311, 64 Ill. Dec. 896, 440 N.E.2d 448 (3 Dist. 1982).

Constructive notice is present where a defective condition exists for such a length of time that public authorities, by the exercise of reasonable care and diligence, might have known of the condition. Palermo v. City of Chicago Heights, 2 Ill. App. 3d 1004, 276 N.E.2d 470 (1 Dist. 1971).

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If a dangerous condition has existed for such a length of time that public authorities, by the exercise of reasonable care and diligence, might have known of the condition, then actual notice is not required, but the municipality is deemed to have constructive notice of the condition. Jones v. City of Rock Island, 101 Ill. App. 2d 174, 242 N.E.2d 302 (3 Dist. 1968).

- Jury Determination

A jury's decision regarding the issue of whether defendant fire protection district had constructive notice of the leaking brakes of its fire engine would not be overturned. C.D.L., Inc. v. East Dundee Fire Protection Dist., 252 Ill. App. 3d 835, 191 Ill. Dec. 509, 624 N.E.2d 5 (2 Dist. 1993), appeal denied, 155 Ill. 2d 562, 198 Ill. Dec. 541, 633 N.E.2d 3 (1994).

- Not Shown

In the injured party's personal injury action against a Township, the Township's motion for summary judgment was properly granted, as the injured party failed to show the Township's actual or constructive notice under 745 ILCS 10/3-102(a); no actual notice of alleged mental depression was given, and constructive notice had not occurred, as the injured party's testimony indicated that the depression was not unsafe only three days earlier and that the weekend rains may have caused it to worsen. Lewis v. Rutland Twp., 359 Ill. App. 3d 1076, 291 Ill. Dec. 963, 824 N.E.2d 1213, 2005 Ill. App. LEXIS 208 (3 Dist. 2005).

It was not unreasonable for jury to conclude that city did not have constructive notice of curb's condition, where plaintiff never noticed the condition of the curb and neither party presented any testimony concerning who built defective curb, and trial court did not err in entering judgment notwithstanding verdict in favor of the city based on jury's response to special interrogatory finding city did not have notice. DiMarco v. City of Chicago, 278 Ill. App. 3d 318, 214 Ill. Dec. 959, 662 N.E.2d 525 (1 Dist. 1996), appeal denied, 167 Ill. 2d 551, 217 Ill. Dec. 663, 667 N.E.2d 1056 (1996).

Where neither of two affidavits stated that rather shallow hole was conspicuous or even that either of the affiants had seen the hole prior to the accident and where plaintiff testified that she did not notice the hole, even though she walked by it on a daily basis, plaintiff failed to meet her burden to provide facts showing that the city had constructive notice of condition. Burke v. Grillo, 227 Ill. App. 3d 9, 169 Ill. Dec. 45, 590 N.E.2d 964 (2 Dist. 1992).

- Summary Judgment Denied

In an action arising from a slip and fall in a residential care facility caused by ice that spilled from an ice machine and melted on the floor, the defendant was not entitled to summary judgment as the plaintiff arguably established constructive notice of the water spill where she contended that employees of the facility were aware that there was a recurring problem with ice spills in the area, and the plaintiff also introduced evidence of actual notice. Byrne v. United States, F. Supp. 2d , 2002 U.S. Dist. LEXIS 4658 (N.D. Ill. Mar. 20, 2002).

Country Roads

- Pedestrians

A duty of reasonable care may not be imposed on a county to keep its rural country roads free from defects which may cause injuries to pedestrians. Sisk v. Williamson County, 167 Ill. 2d 343, 212 Ill. Dec. 558, 657 N.E.2d 903 (1995).

Dangerous Conditions

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Railroad was only entitled to immunity from the claimant's lawsuit for injuries she sustained when she was struck by a passenger train while trespassing on the railroad's property if the claimant was injured by a condition of the property, that is, where the property itself was unsafe, and not for unsafe activities conducted upon otherwise safe property. Nelson v. Northeast Ill. Reg'l Commuter R.R. Corp., 364 Ill. App. 3d 181, 301 Ill. Dec. 19, 845 N.E.2d 884, 2006 Ill. App. LEXIS 173 (1 Dist. 2006).

- Negligence

Applying the test set out in Lane v. Hardee's Food Systems, Inc., 184 F.3d 705, 707 (7th Cir. 1999), it was more likely that a post office employee, rather than a contract driver or some other third party, created a condition of a cardboard object being on the stairs where: first, there could be no dispute that the object, whether it was a 2-foot letter tray, a 1-foot letter tray, or a skid lid, related to the business of the post office; and second, the injured party produced more than enough evidence to show that it was more likely than not that the post office was responsible for the object. Watkins v. United States, F. Supp. 2d , 2005 U.S. Dist. LEXIS 16450 (N.D. Ill. Mar. 10, 2005).

Where no permanent physical obstruction or other condition of the road was unreasonably dangerous, the simultaneous presence of pedestrians and cars at the recreation facility in itself was not unreasonably dangerous, the owner could reasonably have expected drivers to watch for crossing pedestrians, and pedestrians to check before entering, and thus, since no condition on the land posed a danger absent the negligent act of either plaintiff or motorist, no duty was owed to a plaintiff injured in a crosswalk. Thompson v. Cook County Forest Preserve Dist., 231 Ill. App. 3d 88, 172 Ill. Dec. 584, 595 N.E.2d 1254 (1 Dist.), cert. denied, 146 Ill. 2d 653, 176 Ill. Dec. 823, 602 N.E.2d 477 (1992).

- Notice

When an affirmative act of a municipality's agents or employees causes a dangerous condition, no actual or constructive notice of said condition is required. Harding v. City of Highland Park, 228 Ill. App. 3d 561, 169 Ill. Dec. 448, 591 N.E.2d 952 (2 Dist. 1992).

There was evidence that the dangerous condition of the meter pit was created by defendant's employees and these facts provided actual or constructive notice to the defendant; hence, the protection from municipal liability provided by subsection (a) of this section did not apply. Harding v. City of Highland Park, 228 Ill. App. 3d 561, 169 Ill. Dec. 448, 591 N.E.2d 952 (2 Dist. 1992).

Village must have notice of a condition which, whether or not the village knows it, happens to be unsafe. Tracy v. Village of Lombard, 116 Ill. App. 3d 563, 71 Ill. Dec. 838, 451 N.E.2d 992 (2 Dist. 1983).

Where a city was operating through its agent under an arrangement to escort a convoy, without regard to the operation of the established traffic signals, it was apparent that the city had actual notice of the dangerous conditions it caused. Porter v. City of Decatur, 16 Ill. App. 3d 1031, 307 N.E.2d 440 (4 Dist. 1974).

Where the water meter into which plaintiff fell was not conspicuous, being in a parkway next to a tree and protruding only about one inch and one-half above the ground and where the evidence showed that the defect itself was even less conspicuous, and since the city had neither actual nor constructive notice, the city was not liable. Palermo v. City of Chicago Heights, 2 Ill. App. 3d 1004, 276 N.E.2d 470 (1 Dist. 1971).

Notice to a city of a dangerous condition has always been required and such notice of the dangerous condition may be actual or constructive. Jones v. City of Rock Island, 101 Ill. App. 2d 174, 242 N.E.2d 302 (3 Dist. 1968).

- Warning Devices

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Under case governed by the pre-1986 745 ILCS 10/3-104(b) (see now 745 ILCS 10/3-104), the village had a duty under subsection (a) of this section and 745 ILCS 10/3-104(b) to provide traffic warning signals, signs, markings or other devices to warn of a condition which endangered the safe movement of traffic when compressor equipment was placed on the roadway; the road repair equipment constituted an obstacle on a public way that created an unreasonable risk of harm to vehicles and bicycles. Filipetto ex rel. Filipetto v. Village of Wilmette, 254 Ill. App. 3d 461, 193 Ill. Dec. 901, 627 N.E.2d 60 (1 Dist. 1993).

Dangerous Use of Street

- Not Physically Defective

Public liability for an injury resulting from the dangerous use of a street, but which does not render the street physically defective cannot be predicated on the failure of public authorities to prevent such use. Harding v. Chicago Park Dist., 34 Ill. App. 3d 425, 339 N.E.2d 779 (1 Dist. 1975).

Defective Condition

- Cracks

Although measurable cracks were very small, they constituted positive evidence of a defective condition, the unsafe character of which was properly given to the jury to determine. Tracy v. Village of Lombard, 116 Ill. App. 3d 563, 71 Ill. Dec. 838, 451 N.E.2d 992 (2 Dist. 1983).

- Elevator Door

Defendant housing authority had constructive notice of defective gibs in elevator door, which caused plaintiff to fall into elevator shaft, through work authorization tickets returned to defendant by elevator repair company mechanics as to the nature of the repairs made; therefore, defendant knew that gibs which had been bent and reshaped at least two times had been reinstalled in the subject elevator door. Buford ex rel. Buford v. Chicago Hous. Auth., 131 Ill. App. 3d 235, 86 Ill. Dec. 926, 476 N.E.2d 427 (1 Dist. 1985).

- Failure to Allege

Where plaintiff failed to allege any defects in street, and failed to state any allegations, pursuant to this section, of actual notice of the alleged unreasonably dangerous condition, municipal liability was preempted by this section. Bellino v. Village of Lake in the Hills, 166 Ill. App. 3d 702, 117 Ill. Dec. 845, 520 N.E.2d 1196 (2 Dist. 1988).

- Ice and Snow

Village employee testified that he was aware of the hazard posed by plowed snow melting and refreezing and given this awareness, the individual who was injured by a slip and fall on ice on village property presented sufficient evidence to raise a genuine issue of material fact as to whether the village had constructive notice of the hazard, and the issue was one for a jury to decide. Russell v. Vill. of Lake Villa, 335 Ill. App. 3d 990, 270 Ill. Dec. 347, 782 N.E.2d 906, 2002 Ill. App. LEXIS 1273 (2 Dist. 2002).

A municipality may be liable for unnatural accumulations of ice or snow by reason of a defect in the sidewalk. Jones v. City of Rock Island, 101 Ill. App. 2d 174, 242 N.E.2d 302 (3 Dist. 1968).

- Question of Fact for Jury

It is generally a question of fact for a jury to determine whether a defective condition has existed for a sufficient period of time prior to the injury and was of such a character for city to be deemed

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to have constructive notice. Baker v. City of Granite City, 75 Ill. App. 3d 157, 31 Ill. Dec. 117, 394 N.E.2d 33 (5 Dist. 1979).

Factors to be considered in determining whether a public authority had notice of the defective condition of a parkway are the conspicuity of the defect and the length of time it existed, an issue which is generally one for the trier of fact. Palermo v. City of Chicago Heights, 2 Ill. App. 3d 1004, 276 N.E.2d 470 (1 Dist. 1971).

- Repair Schedule

Evidence of the circumstances under which city determines that it will repair a sidewalk was not relevant to any of the issues necessary to prove the plaintiff's cause of action for injuries sustained by child when man carrying him fell in a hole. Aguinaga v. City of Chicago, 243 Ill. App. 3d 552, 183 Ill. Dec. 648, 611 N.E.2d 1296 (1 Dist.), appeal denied, 151 Ill. 2d 561, 186 Ill. Dec. 378, 616 N.E.2d 331 (1993).

- Sidewalks

Where all reasonable minds cannot agree that a purported sidewalk defect is so minor that no danger to pedestrians could reasonably be foreseen, the issue is properly for the jury's consideration. Baker v. City of Granite City, 75 Ill. App. 3d 157, 31 Ill. Dec. 117, 394 N.E.2d 33 (5 Dist. 1979).

Generally whether a defect in a public sidewalk has existed a sufficient length of time prior to the injury for a city to be deemed to have constructive notice is a question of fact for a jury. Livings v. City of Chicago, 26 Ill. App. 3d 850, 326 N.E.2d 170 (1 Dist. 1975).

- Time Period

Where evidence indicated that construction which resulted in injury-causing defect was performed by an independent contractor, and where the work was completed when plaintiff sustained her injuries, defendant's power to delegate the duty to keep the construction site safe as the work progressed was not at issue; as the construction site was unbarricaded less than 24 hours before the plaintiff sustained her injuries, the jury could properly have concluded that the defective condition did not exist for a sufficient period of time prior to the injury for the defendant to be deemed to have constructive notice of the flaw in the concrete. Coultas v. City of Winchester, 208 Ill. App. 3d 238, 153 Ill. Dec. 142, 566 N.E.2d 992 (4 Dist. 1991).

There is no requirement for a witness to testify that defective condition had existed for any specified length of time prior to an injury, especially where jury could reasonably infer that the condition existing at the time of the accident had developed over a period of long duration. Baker v. City of Granite City, 75 Ill. App. 3d 157, 31 Ill. Dec. 117, 394 N.E.2d 33 (5 Dist. 1979).

Degree of Care

The extension of a municipality's duty of care to reasonably maintain not only the crosswalks, but also those areas of the street used by a pedestrian while in the immediate zone of travel to and from his legally parked vehicle will not subject the municipality to open-ended liability thereby causing an unreasonable burden on municipal finances. Torres v. City of Chicago, 218 Ill. App. 3d 89, 161 Ill. Dec. 31, 578 N.E.2d 158 (1 Dist. 1991).

The degree of care which a city is required to exercise to keep its streets and sidewalks in a reasonably safe condition varies according to the location, character, and extent of the use to which they are put. Larson v. City of Chicago, 142 Ill. App. 3d 81, 96 Ill. Dec. 351, 491 N.E.2d 165 (1 Dist. 1986).

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Drainage System

- Knowledge of Hole

Court did not charge municipality with knowledge of hole based on no more than their awareness of a general sinkhole problem in the municipality's drainage system. Pinto v. DeMunnick, 168 Ill. App. 3d 771, 119 Ill. Dec. 579, 523 N.E.2d 47 (1 Dist. 1988).

Duty

As decedent was an "intended" user of a public parking garage's stairwell under 745 ILCS 10/3-102(a), and intended users were always permitted users, a city was not entitled to summary judgment as to a negligence claim brought by decedent's father where the stairwell collapsed and killed decedent. Gaston v. City of Danville, 393 Ill. App. 3d 591, 332 Ill. Dec. 284, 912 N.E.2d 771, 2009 Ill. App. LEXIS 684 (4 Dist. 2009).

Trial court erred in extending limited duty imposed on municipalities under 745 ILCS 10/3-102(a) for the maintenance of parkways to the Illinois Sports Facilities Authority and a major league baseball club; the Authority waived its protection under the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., by failing to assert that protection as an affirmative defense in a pedestrian's personal injury action, and the baseball club was not an entity protected by the Act. Mazin v. Chicago White Sox, Ltd., 358 Ill. App. 3d 856, 295 Ill. Dec. 377, 832 N.E.2d 827, 2005 Ill. App. LEXIS 694 (1 Dist. 2005).

City's duty under 745 ILCS 10/3-102(a) regarding parkways was to maintain parkways so that they were free of pitfalls, traps, snares and the like; the grate around a tree outside a baseball park was part of the parkway, it did not constitute a pitfall, trap, snare or other like obstruction, and therefore, the city was not liable to a pedestrian who caught his foot in the grate, causing serious injury to the foot. Mazin v. Chicago White Sox, Ltd., 358 Ill. App. 3d 856, 295 Ill. Dec. 377, 832 N.E.2d 827, 2005 Ill. App. LEXIS 694 (1 Dist. 2005).

- In General

Because a commuter railroad and a city park district owed no duty to a child who was hit by a train while crossing railroad tracks that were adjacent to a city park, the issue of immunity under 745 ILCS 10/3-102(a) was never reached. Vega v. Northeast Ill. Reg'l Commuter R.R. Corp., 371 Ill. App. 3d 572, 309 Ill. Dec. 101, 863 N.E.2d 733, 2007 Ill. App. LEXIS 98 (1 Dist. 2007).

The statute does not provide blanket immunity to a school district for negligently maintaining its property. Catberro v. Naperville Sch. Dist. No. 203, 317 Ill. App. 3d 150, 250 Ill. Dec. 654, 739 N.E.2d 115, 2000 Ill. App. LEXIS 864 (2 Dist. 2000).

Court concluded that the legislature, in enacting former Ill. Rev. Stat. ch. 85, para. 3-102 (now 745 ILCS 10/3-102) of the Local Governmental and Governmental Employees Tort Immunity Act, former Rev. Stat. ch. 85, para. 1-101 et seq. (now 745 ILCS 10/101), intended that a public entity would be held to the duty of ordinary care in maintaining all of its property in a reasonable safe condition, subject to the qualifications of that duty as set out in that section. Vesey v. Chicago Housing Authority, 205 Ill. App. 3d 962, 150 Ill. Dec. 789, 563 N.E.2d 916, 1990 Ill. App. LEXIS 1682 (1 Dist. 1990).

Immunity that § 3-102, former Ill. Rev. Stat. ch. 85, para. 3-102 (now 745 ILCS 10/3-102) of the Local Governmental and Governmental Employees Tort Immunity Act, former Rev. Stat. ch. 85, para. 1-101 et seq. (now 745 ILCS 10/101), bestows on a public entity is limited to those "unsafe conditions" on its premises of which the entity cannot be said to be aware, or for injuries which may be found "unforeseeable." Vesey v. Chicago Housing Authority, 205 Ill. App. 3d 962, 150 Ill. Dec. 789, 563 N.E.2d 916, 1990 Ill. App. LEXIS 1682 (1 Dist. 1990).

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Section 3-102, former Ill. Rev. Stat. ch. 85, para. 3-102 (now 745 ILCS 10/3-102) of the Local Governmental and Governmental Employees Tort Immunity Act, former Rev. Stat. ch. 85, para. 1-101 et seq. (now 745 ILCS 10/101), imposes a duty on public entities who own or lease property, to maintain such property in a reasonably safe condition for intended or permitted users of the property. Vesey v. Chicago Housing Authority, 205 Ill. App. 3d 962, 150 Ill. Dec. 789, 563 N.E.2d 916, 1990 Ill. App. LEXIS 1682 (1 Dist. 1990).

- Airports

Two municipalities and an airport commission were not shielded from liability by 745 ILCS 10/2-109 and 745 ILCS 10/2-201 in a wrongful death and survival action following the crash of a private jet aircraft that veered from the center of a runway during takeoff, left the runway, and crashed after striking a drainage ditch in a runway safety area alongside the runway. Additionally, the entities owed a duty of care to the decedent under 745 ILCS 10/3-102(a) to maintain the public airport in a reasonably safe condition. Alwin v. Vill. of Wheeling, 371 Ill. App. 3d 898, 309 Ill. Dec. 656, 864 N.E.2d 897, 2007 Ill. App. LEXIS 225 (1 Dist. 2007).

In an action arising from an airplane crash at a municipal airport, the municipal defendants were not entitled to summary judgment on the basis of immunity as there was a material question of fact as to whether they failed to maintain the runway safety area in a reasonably safe condition, notwithstanding the municipal defendants contention that they acted in a discretionary manner in maintaining the runway safety area. Anderson v. Alberto-Culver USA, Inc., 317 Ill. App. 3d 1104, 251 Ill. Dec. 533, 740 N.E.2d 819, 2000 Ill. App. LEXIS 948 (1 Dist. 2000).

- Alleys

The city had no duty to maintain the alley in a reasonably safe condition for a pedestrian using the alley as if it were a sidewalk or a designated walkway. Khalil v. City of Chicago, 283 Ill. App. 3d 161, 218 Ill. Dec. 663, 669 N.E.2d 1189 (1 Dist. 1996).

Although alleys may commonly be used for purposes other than vehicular traffic, those uses are not intended by the municipality and even frequent use by pedestrians cannot convert the alley into a sidewalk. Khalil v. City of Chicago, 283 Ill. App. 3d 161, 218 Ill. Dec. 663, 669 N.E.2d 1189 (1 Dist. 1996).

- Applicability

County was incorrect in arguing that under subsection (a) local governments have a duty to maintain their property for the benefit of only those persons who are exercising ordinary care for their own safety. Rector v. Mattingly, 273 Ill. App. 3d 344, 210 Ill. Dec. 9, 652 N.E.2d 811 (5 Dist. 1995), appeal denied, 163 Ill. 2d 586, 212 Ill. Dec. 436, 657 N.E.2d 637 (1995).

- Berm

Based on evidence that at the time of accident, husband was driving in an intoxicated condition and at a speed greatly in excess of the relevant legal limit, there was no duty owed by village to passenger wife when husband drove over a berm at high speed, injuring wife. La Puma v. Village of Long Grove, 236 Ill. App. 3d 881, 177 Ill. Dec. 769, 603 N.E.2d 839 (2 Dist. 1992), appeal denied, 149 Ill. 2d 651, 183 Ill. Dec. 862, 612 N.E.2d 514 (1993).

- Crosswalk

Where plaintiff did not plead that decedent/pedestrian was standing in a crosswalk, the complaint did not establish any duty by city to the decedent. Hough v. Kalousek, 279 Ill. App. 3d 855, 216 Ill. Dec. 373, 665 N.E.2d 433 (1 Dist. 1996).

Where no crosswalk had been designated and until village undertook such a traffic control device, it could have no duty to plaintiffs to maintain it in a safe condition. Swett v. Village of Algonquin, 169 Ill. App. 3d 78, 119 Ill. Dec. 838, 523 N.E.2d 594 (2 Dist. 1988).

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- Derivation

The duty of care described in 745 ILCS 10/3-103 derives from the more basic delineation of governmental duty found in this section in the absence of any duty owing under the latter section, no duty existed under the former. Curtis v. County of Cook, 98 Ill. 2d 158, 74 Ill. Dec. 614, 456 N.E.2d 116 (1983).

- Door

Where there was no allegation that a door of school was of a condition that was not safe for careful use or that injury resulted from a careful use, the allegation that defendant school breached its duty of ordinary care to plaintiff by permitting a door to exist without a spring-loaded or pneumatic device designed to retard the closing of the door and that defendant should have known of the defective condition of the door was insufficient to bring the allegation of the count within the requirements of this section. Holsapple ex rel. Holsapple v. Casey Community Unit Sch. Dist., 157 Ill. App. 3d 391, 109 Ill. Dec. 631, 510 N.E.2d 499 (4 Dist. 1987).

- Driver Negligence

Even though driver was intoxicated he and the decedents were using the roadway for purposes of travel, thus, the decedents were intended or permitted users of the road; although the facts indicate that driver and the decedents were intoxicated at the time of the accident, the focus is on the intended and permitted use of the road, and not whether that use was made by a negligent plaintiff. Rector v. Mattingly, 273 Ill. App. 3d 344, 210 Ill. Dec. 9, 652 N.E.2d 811 (5 Dist. 1995), appeal denied, 163 Ill. 2d 586, 212 Ill. Dec. 436, 657 N.E.2d 637 (1995).

- Drivers

Municipality owed a duty of care to driver of truck stopped in street to unload merchandise. Curatola v. Niles, 324 Ill. App. 3d 954, 258 Ill. Dec. 425, 756 N.E.2d 407, 2001 Ill. App. LEXIS 685 (1 Dist. 2001).

- Effect of Ordinance

The plaintiff's breach of the city ordinance prohibiting water skiing and surfing in the areas near the shore where the members of the public sunbathe, swim, float, dock and launch their boats, did not destroy the city's duty to exercise ordinary care to maintain its property in a reasonably safe condition. Sullivan v. City of Hillsboro, 303 Ill. App. 3d 650, 236 Ill. Dec. 703, 707 N.E.2d 1273 (5 Dist. 1999), appeal denied, 184 Ill. 2d 574, 239 Ill. Dec. 614, 714 N.E.2d 533 (1999).

Local ordinance prohibiting a vehicle from obstructing a city sidewalk held not relevant to issue of whether defendant municipality owed duty of care to plaintiff who injured herself while walking in parkway to avoid a car obstructing the sidewalk. Griffin v. Village of Willowbrook, 212 Ill. App. 3d 211, 156 Ill. Dec. 477, 570 N.E.2d 1199 (2 Dist. 1991).

- Highway Maintenance

In a retail store's complaint against a village for failure to maintain a frontage road access to the store, although the village owed a duty under 745 ILCS 10/3-102 to exercise reasonable care for persons physically injured on its roadway, the Illinois Tort Immunity Act said nothing about the propriety of the remedy sought as a separate matter. The Tort Immunity Act merely codified duties which separately existed at common law, like negligence, and at common law one could not recover in tort for purely economic injuries; that portion of the complaint was dismissed. Effingham Retail 27, Inc. v. Vill. of Montrose, F. Supp. 2d , 2005 U.S. Dist. LEXIS 15693 (S.D. Ill. July 26, 2005).

A genuine issue of material fact existed as to whether the district's maintenance of the collision site was the proximate cause of victim's injuries thus precluding summary judgment. Mark Twain

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Illinois Bank v. Clinton County, 302 Ill. App. 3d 763, 235 Ill. Dec. 834, 706 N.E.2d 94 (5 Dist. 1999), appeal denied, 184 Ill. 2d 559, 239 Ill. Dec. 609, 714 N.E.2d 528 (1999).

The general duty in terms of a city's obligations to maintain its highways, is one of ordinary care. Burnett v. Donath, 127 Ill. App. 3d 131, 82 Ill. Dec. 239, 468 N.E.2d 501 (4 Dist. 1984).

- Improvements

Subsection (a) did not impose a duty on the district to alter the roadway in order to improve sight distance and/or to construct a shoulder area nor was there a duty imposed to erect warning signs and to install roadway markings. Mark Twain Illinois Bank v. Clinton County, 302 Ill. App. 3d 763, 235 Ill. Dec. 834, 706 N.E.2d 94 (5 Dist. 1999), appeal denied, 184 Ill. 2d 559, 239 Ill. Dec. 609, 714 N.E.2d 528 (1999).

Where township had undertaken to make improvements on road it was acting ministerially and had a duty to proceed with reasonable care; therefore, township was not entitled to immunity under this section, 745 ILCS 10/2-109 or 745 ILCS 10/2-201 for plaintiff's injuries. Herman v. Will Tp., 284 Ill. App. 3d 53, 219 Ill. Dec. 688, 671 N.E.2d 1141 (3 Dist. 1996), appeal denied, 171 Ill. 2d 565, 222 Ill. Dec. 431, 677 N.E.2d 965 (1997).

- Installation of Road Sign

Having undertaken to install the road sign by the dangerous hill, defendant township's duty of reasonable care included installation of a sign which conformed to specifications set forth in state manual and such placement and maintenance of the sign as is required to regulate, warn, or guide traffic. Parson v. Carbondale Twp., 217 Ill. App. 3d 637, 160 Ill. Dec. 454, 577 N.E.2d 779 (5 Dist. 1991), cert. denied, 143 Ill. 2d 640, 167 Ill. Dec. 402, 587 N.E.2d 1017 (1992).

- Landlord and Tenant

Housing authority had no duty to warn decedent of the dangerousness of the gas stove defendant placed in her apartment. Engram v. Chicago Hous. Auth., 304 Ill. App. 3d 570, 237 Ill. Dec. 595, 710 N.E.2d 18 (1 Dist. 1999).

Housing authority had no duty to use ordinary care in maintaining the premises leased to decedent and was not responsible for injuries occurring on leased premises under decedent's control. Engram v. Chicago Hous. Auth., 304 Ill. App. 3d 570, 237 Ill. Dec. 595, 710 N.E.2d 18 (1 Dist. 1999).

The general duty of public entities set out in this section must be read in conjunction with the common law principle that where a defective condition exists on premises leased to a tenant and under the tenant's control, a landlord is not liable for injuries caused by the condition. Vesey v. Chicago Hous. Auth., 145 Ill. 2d 404, 164 Ill. Dec. 622, 583 N.E.2d 538 (1991).

The legislature did not intend for this section to require a local public housing authority to maintain demised portions of its property in a reasonably safe condition, in conflict with the principles of landlord and tenant law. Vesey v. Chicago Hous. Auth., 145 Ill. 2d 404, 164 Ill. Dec. 622, 583 N.E.2d 538 (1991).

- Midblock Curb

City had owed no duty to a pedestrian who, in returning to a parked car, crossed a street outside of a crosswalk and fell when she stepped up on the mid-street curb; the pedestrian was not an intended and permitted user of the street or the mid-street curb, and the exception to 745 ILCS 10/3-102 for persons who were required to use the street to enter or exit vehicles did not apply. Williams v. City of Chicago, 371 Ill. App. 3d 105, 308 Ill. Dec. 550, 861 N.E.2d 1115, 2007 Ill. App. LEXIS 14 (1 Dist. 2007).

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When plaintiff left the safety of the sidewalk and walked onto the middle of the road, he was neither an intended or permitted user of the roadway, and city owed him no duty of ordinary care; bus stops were not required to be reconfigured to accommodate longer buses, and city owed plaintiff no duty when plaintiff chose to cross the street at mid-block. Scerba v. City of Chicago, 284 Ill. App. 3d 435, 219 Ill. Dec. 804, 672 N.E.2d 312 (1 Dist. 1996), appeal denied, 171 Ill. 2d 586, 222 Ill. Dec. 438, 677 N.E.2d 972 (1997).

The city has a duty only to those pedestrians who must use the curb as a necessary means of entering or exiting their legally parked vehicles; it has no duty to those pedestrians who use the curb when crossing the street at mid-block. Such pedestrians are not intended and permitted users of the curbing. Tieman v. City of Princeton, 251 Ill. App. 3d 766, 191 Ill. Dec. 179, 623 N.E.2d 769 (3 Dist. 1993).

- Operation of Elevator

That elevators break down and must remain inoperable pending repair is a fact of life and a defendant landowner does not have a duty to guarantee the continuous operation of the elevators housed in its buildings. Curry v. Chicago Hous. Auth., 150 Ill. App. 3d 862, 105 Ill. Dec. 49, 503 N.E.2d 1055 (1 Dist. 1986).

Statutes and ordinances governing housing did not establish a duty to ensure that the elevator in building was operating continuously. Curry v. Chicago Housing Auth., 148 Ill. App. 3d 268, 101 Ill. Dec. 525, 498 N.E.2d 849 (1 Dist. 1986).

- Parkway

Trial court properly granted summary judgment to the city on the fan's negligence claim against the city for an injury he sustained when he fell while standing on a tree grate outside of the city sports venue; the area in which the fan fell was a parkway, the city only had the limited duty to keep the parkway area free of pitfalls, traps, snares, and the like, and the fan was not able to show that the city did not fulfill that duty. Mazin v. Chi. White Sox, Ltd., Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 150 (1 Dist. Feb. 22, 2005), modified, 358 Ill. App. 3d 856, 295 Ill. Dec. 377, 832 N.E.2d 827 (2005).

- Parkways

In personal injury action against city, appellate court declined to determine whether height variation between street and gravel path where plaintiff fell was de minimis and remanded case for factual determination of whether condition was unreasonably unsafe in light of prior case law discussing duty of care for maintenance of parkway pursuant to Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/3-102(a). Strawder v. City of Chicago, 294 Ill. App. 3d 399, 228 Ill. Dec. 881, 690 N.E.2d 640, 1998 Ill. App. LEXIS 21 (1 Dist. 1998).

- Property Not Owned by Municipality

Where the hazard complained of, cement pillars off the roadway on property not owned or controlled by defendant who operated a factory adjacent to roadway, had no effect on the safe movement of traffic, there was no duty imposed on defendant to warn under these circumstances. Battisfore v. Moraites, 186 Ill. App. 3d 180, 133 Ill. Dec. 938, 541 N.E.2d 1376 (2 Dist. 1989).

Although this section imposes a duty to alter a traffic island if the island is city property, in the absence of any evidence to indicate that the city had any control over a traffic island, the city was entitled to a directed verdict on the allegation that it was negligent in failing to alter the island. Janssen v. City of Springfield, 79 Ill. 2d 435, 38 Ill. Dec. 789, 404 N.E.2d 213 (1980).

- Public Highways

A passenger of a car with an intoxicated driver did not fall within the class of motorists by whom the county's highways were intended to be used. Thompson v. County of Cook, 222 Ill. App. 3d

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459, 164 Ill. Dec. 958, 584 N.E.2d 170 (1 Dist. 1991), aff'd, 154 Ill. 2d 374, 181 Ill. Dec. 922, 609 N.E.2d 290 (1993).

- Safe Condition

Although a municipality is not an insurer against all accidents occurring on the public way, it has a duty to maintain its streets in a reasonably safe condition for the amount and kind of traffic that may be fairly expected on them; this duty is extended to keeping public ways free of obstacles that create an unreasonable risk of harm and is also extended to any adjacent part or portion of the public way. Filipetto ex rel. Filipetto v. Village of Wilmette, 254 Ill. App. 3d 461, 193 Ill. Dec. 901, 627 N.E.2d 60 (1 Dist. 1993).

The duty imposed upon a local public entity under this section is to use reasonable care to maintain its property in a reasonably safe condition for use by persons who are in the exercise of ordinary care. Holsapple ex rel. Holsapple v. Casey Community Unit Sch. Dist., 157 Ill. App. 3d 391, 109 Ill. Dec. 631, 510 N.E.2d 499 (4 Dist. 1987); Majewski v. Chicago Park Dist., 177 Ill. App. 3d 337, 126 Ill. Dec. 724, 532 N.E.2d 409 (1 Dist. 1988).

Local municipal entities have a duty to maintain their property in a reasonably safe condition which extends beyond their mere physical upkeep. Hennigs v. Centreville Tp., 56 Ill. 2d 151, 306 N.E.2d 287 (1973); Curtis ex rel. Curtis v. County of Cook, 109 Ill. App. 3d 400, 65 Ill. Dec. 87, 440 N.E.2d 942 (1 Dist. 1982), rev'd on other grounds, 98 Ill. 2d 158, 74 Ill. Dec. 614, 456 N.E.2d 116 (1983).

- Safe Intersection

City fulfilled its duty to maintain a safe intersection by providing clearly visible and functioning traffic lights, and therefore city's failure to remove trees and bushes near the intersection furnished merely a condition of the plaintiff's incompetent's injuries and not the proximate cause and the city could not be held liable for the injuries sustained in car accident at the intersection. Boylan v. Martindale, 103 Ill. App. 3d 335, 59 Ill. Dec. 43, 431 N.E.2d 62 (2 Dist. 1982).

- Scope

Where there is no duty owing to plaintiff under this section, no duty exists under 745 ILCS 10/3-103. Horrell v. City of Chicago, 145 Ill. App. 3d 428, 99 Ill. Dec. 524, 495 N.E.2d 1259 (1 Dist. 1986); Risner v. City of Chicago, 150 Ill. App. 3d 827, 104 Ill. Dec. 94, 502 N.E.2d 357 (1 Dist. 1986).

Local municipal entities have a duty to maintain their property in a reasonably safe condition, which extends beyond their mere physical upkeep. Curtis ex rel. Curtis v. County of Cook, 109 Ill. App. 3d 400, 65 Ill. Dec. 87, 440 N.E.2d 942 (1 Dist. 1982), rev'd on other grounds, 98 Ill. 2d 158, 74 Ill. Dec. 614, 456 N.E.2d 116 (1983).

- Sidewalk

While the village and village park district ordinarily owed a duty of reasonable care to pedestrians using the sidewalk adjacent to a village park, pursuant to 745 ILCS 10/3-102, they were immune from liability to the pedestrian for injuries the pedestrian sustained due to a slip and fall on an unnatural accumulation of snow and ice on that sidewalk. They could not be found negligent because, under 745 ILCS 10/3-106, the sidewalk had an intended or permitted recreational use that provided increased-usefulness to obtaining access to the park. Callaghan v. Vill. of Clarendon Hills, 401 Ill. App. 3d 287, 340 Ill. Dec. 757, 929 N.E.2d 61, 2010 Ill. App. LEXIS 383 (2 Dist. 2010).

Where sidewalk where the plaintiff fell was not intended for use by adult bicyclists, the city owed no duty to the plaintiff. Lipper v. City of Chicago, 233 Ill. App. 3d 834, 175 Ill. Dec. 395, 600 N.E.2d 18 (1 Dist. 1992).

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Because the common law duty to maintain property in a reasonably safe condition did not require the creation of public improvements such as crosswalks and sidewalks, the Forest Preserve owed no duty to construct a sidewalk at a recreational area where a child was killed, moreover, the characterization of the facility as a parking lot or a roadway did not alter this result. Thompson v. Cook County Forest Preserve Dist., 231 Ill. App. 3d 88, 172 Ill. Dec. 584, 595 N.E.2d 1254 (1 Dist.), cert. denied, 146 Ill. 2d 653, 176 Ill. Dec. 823, 602 N.E.2d 477 (1992).

Where plaintiff was injured while roller skating on a public sidewalk in a residential neighborhood, city had a duty to maintain its sidewalks in a reasonably safe condition for roller skating, and because the plaintiff was a foreseeable user of the sidewalk, the city was liable for negligently failing to maintain, repair, and inspect its sidewalks. Larson v. City of Chicago, 142 Ill. App. 3d 81, 96 Ill. Dec. 351, 491 N.E.2d 165 (1 Dist. 1986).

- Stoplights

Regardless of whether or not drivers' view of the area extending laterally from an intersection was restricted by trees and bushes, city successfully discharged its duty by the maintenance of properly working stoplights at the intersection. Boylan v. Martindale, 103 Ill. App. 3d 335, 59 Ill. Dec. 43, 431 N.E.2d 62 (2 Dist. 1982).

- Street as Walkway

Where decedent was not a motorist to whom a duty was owed, but rather was a pedestrian wrongfully using street as a walkway to his vehicle, such use of the street does not serve to convert the street into a sidewalk or crosswalk so as to give rise to a duty on the part of the governmental unit toward plaintiff's decedent. Wojdyla v. City of Park Ridge, 209 Ill. App. 3d 290, 154 Ill. Dec. 144, 568 N.E.2d 144 (1 Dist. 1991), aff'd, 148 Ill. 2d 417, 170 Ill. Dec. 418, 592 N.E.2d 1098 (1992).

- Streets

Where the record did not show whether the actual repair of a pothole was discretionary or whether the repair was adequately performed, a city was not entitled to summary judgment on the basis of immunity in plaintiff's personal injury action. Hanley v. City of Chicago, 343 Ill. App. 3d 49, 277 Ill. Dec. 140, 795 N.E.2d 808, 2003 Ill. App. LEXIS 1020 (1 Dist. 2003).

In an action by plaintiff to recover damages sustained when he stepped from the rear of his parked truck onto the street which was owned and maintained by defendant village, where plaintiff's use of the immediately surrounding street to exit his vehicle was permitted and intended, and was mandated by virtue of the fact that he had parked his vehicle and had to exit or reenter it, the village had a duty to maintain the street immediately around plaintiff's legally parked vehicle. Curatola v. Village of Niles, 154 Ill. 2d 201, 181 Ill. Dec. 631, 608 N.E.2d 882 (1993).

A municipality is not liable for failing to initially undertake an improvement to a public way in order to prevent injury to travelers. Foreman ex rel. Heard v. Consolidated Rail Corp., 214 Ill. App. 3d 700, 158 Ill. Dec. 384, 574 N.E.2d 178 (1 Dist. 1991).

A municipality has a duty to reasonably maintain its streets for vehicular traffic and to reasonably maintain its crosswalks for pedestrians. Wojdyla v. City of Park Ridge, 209 Ill. App. 3d 290, 154 Ill. Dec. 144, 568 N.E.2d 144 (1 Dist. 1991), aff'd, 148 Ill. 2d 417, 170 Ill. Dec. 418, 592 N.E.2d 1098 (1992).

A municipality owes no duty to a pedestrian crossing a public street outside of crosswalk. Vlahos v. City of Chicago, 198 Ill. App. 3d 911, 145 Ill. Dec. 42, 556 N.E.2d 660 (1 Dist. 1990); Vance v. City of Chicago, 199 Ill. App. 3d 652, 145 Ill. Dec. 724, 557 N.E.2d 494 (1 Dist. 1990).

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The duty to maintain roadways in a reasonably safe condition does not extend to the creation of public improvements, such as the erection of median barriers. Charpentier v. City of Chicago, 150 Ill. App. 3d 988, 104 Ill. Dec. 122, 502 N.E.2d 385 (1 Dist. 1986).

A local public entity has a duty to exercise ordinary care to maintain its property in a reasonably safe condition; the duty requires that a city keep its streets and alleys in a reasonably safe condition for the use of persons who are in the exercise of ordinary care for their own safety. Ortiz v. City of Chicago, 79 Ill. App. 3d 902, 35 Ill. Dec. 57, 398 N.E.2d 1007 (1 Dist. 1979).

Because under 745 ILCS 10/3-103, physical damage or deterioration of streets resulting from rain is a condition expressly excluded from tort immunity, defendant city was not immune from liability under this section where plaintiff's personal injuries were caused by a pothole that the city had filled with gravel, which repeatedly washed out when it rained. Horton v. City of Ottawa, 40 Ill. App. 3d 544, 352 N.E.2d 23 (3 Dist. 1976).

Governmental liability for failure to maintain streets in a reasonably safe condition must, under this section, be extended to include townships. Horton v. City of Ottawa, 40 Ill. App. 3d 544, 352 N.E.2d 23 (3 Dist. 1976).

A city cannot claim immunity for dangerous defects in its streets, regardless of the liability of public officials obligated to maintain and repair city streets. Horton v. City of Ottawa, 40 Ill. App. 3d 544, 352 N.E.2d 23 (3 Dist. 1976).

- Traffic Control Device

In action against municipality where plaintiff contended that municipality was negligent in that it failed to exercise ordinary care in the maintenance of its traffic control devices, the traffic control signals were owned by the State of Illinois and maintained by municipality pursuant to a contract with the State Department of Transportation and indicated with specificity municipality's obligations in executing its maintenance function with respect to these traffic control signals; the responsibilities delineated all related to keeping the equipment in a clean, properly adjusted working order but there was no obligation to make traffic control studies and update equipment nor was there any duty to monitor or change the timing schedule of the lights. Ellison v. Village of Northbrook, 272 Ill. App. 3d 559, 209 Ill. Dec. 86, 650 N.E.2d 1059 (1 Dist. 1995), appeal denied, 163 Ill. 2d 553, 212 Ill. Dec. 418, 657 N.E.2d 619 (1995).

Installation of traffic control devices is an integral part of the municipality's common law duty to maintain its public highways in a reasonably safe condition. Filipetto ex rel. Filipetto v. Village of Wilmette, 254 Ill. App. 3d 461, 193 Ill. Dec. 901, 627 N.E.2d 60 (1 Dist. 1993).

The obligation to provide traffic control devices is expressly excluded from the purview of the general duty to maintain; this limitation is in keeping with the scope of that duty as it existed at common law. West v. Kirkham, 147 Ill. 2d 1, 167 Ill. Dec. 963, 588 N.E.2d 1104 (1992).

While a city is not liable for its failure initially to provide improvements such as lights or traffic control devices, once having adopted and embarked upon a plan of public improvement, a city has a duty to maintain those improvements in a condition conducive to the safety of the traveling public. Santelli v. City of Chicago, 222 Ill. App. 3d 862, 165 Ill. Dec. 277, 584 N.E.2d 456 (1 Dist. 1991).

A municipality or other public entity may incur liability for failure to maintain visibility of a traffic control device or for failure to keep such devices functioning properly, and in the absence of such traffic control devices, a public entity may have a duty under its own ordinances to maintain an intersection so that it is free of visual obstructions. Boylan v. Martindale, 103 Ill. App. 3d 335, 59 Ill. Dec. 43, 431 N.E.2d 62 (2 Dist. 1982).

- Warning

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Where there is no duty owing a plaintiff under this section, no duty exists under 745 ILCS 10/3-103 or 745 ILCS 10/3-104 for allegedly creating an unreasonably dangerous condition and failing to warn of that danger, respectively. Jorgensen v. Whiteside, 233 Ill. App. 3d 783, 174 Ill. Dec. 925, 599 N.E.2d 1009 (1 Dist.), appeal denied, 147 Ill. 2d 627, 180 Ill. Dec. 150, 606 N.E.2d 1227 (1992).

A governmental unit which controls a roadway has a duty to warn motorists of hazards adjacent to the roadway even if the hazard itself is not within the control of the governmental unit. Janssen v. City of Springfield, 79 Ill. 2d 435, 38 Ill. Dec. 789, 404 N.E.2d 213 (1980).

- Warning Devices

As 745 ILCS 10/3-104 includes not only traffic control devices but warning devices as well, the city was under no duty to provide warning devices under subsection (a). Castorena v. Browning-Ferris Indus. of Ill., Inc., 237 Ill. App. 3d 702, 178 Ill. Dec. 790, 605 N.E.2d 584 (2 Dist. 1992).

- Water System

Court declined to dismiss plaintiff insurer's negligence claim against defendant city pursuant to 745 ILCS 10/3-102 because the church that owned the property was not a user of the city's property, where a water main broke and caused flooding, and the city's duty toward the church was not limited by that section. Am. Emplrs. Ins. Co. v. City of Chi., F. Supp. 2d , 2003 U.S. Dist. LEXIS 9119 (N.D. Ill. May 28, 2003).

Employee Negligence

Where plaintiff allegedly tripped over gravel, and the alleged injury to the plaintiff occurred on township property, the township was amenable to suit for the alleged negligence of its employee, the highway commissioner, in piling the gravel in an unsafe place. Hennigs v. Centreville Tp., 56 Ill. 2d 151, 306 N.E.2d 287 (1973).

Evidence Held Insufficient

- Duty

Plaintiff failed to sufficiently allege the duty element where she failed to establish that the City owed a duty to erect median barriers on the highway. O'Brien v. City of Chicago, 285 Ill. App. 3d 864, 221 Ill. Dec. 134, 674 N.E.2d 927 (1 Dist. 1996), appeal denied, 172 Ill. 2d 554, 223 Ill. Dec. 196, 679 N.E.2d 381 (1997).

Because the decedent (who was highly intoxicated himself) was riding on a motorcycle driven by an intoxicated person, the decedent was not using the road with "ordinary care" and therefore he was not an "intended and permitted" user of the road; township was not liable for decedent's death. Dolder v. Martinton Tp., 998 F.2d 499 (7th Cir. 1993).

Summary judgment was properly granted in favor of defendant as no duty was owed because plaintiff's decedent's deviation from the roadway onto defendant's property was not in the ordinary course of travel. Battisfore v. Moraites, 186 Ill. App. 3d 180, 133 Ill. Dec. 938, 541 N.E.2d 1376 (2 Dist. 1989).

- Notice

Plaintiff failed to present sufficient evidence that hole was plainly visible or that hole was apparent for so long a time prior to the injury to permit an inference that municipality was constructively notified of the existence of the hole. Pinto v. DeMunnick, 168 Ill. App. 3d 771, 119 Ill. Dec. 579, 523 N.E.2d 47 (1 Dist. 1988).

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- Specific Condition

A village did not violate its duty with regard to a tree cut-out area adjacent to a sidewalk where difference in height between the sidewalk and that area was about two and one-quarter inches. Barnhisel v. Village of Oak Park, 311 Ill. App. 3d 108, 243 Ill. Dec. 885, 724 N.E.2d 194, 1999 Ill. App. LEXIS 959 (1 Dist. 1999), appeal denied, 188 Ill. 2d 561, 246 Ill. Dec. 121, 729 N.E.2d 494 (2000).

Where plaintiff offered no hint as to what defect in a window glass caused his injury, other than his speculation that the glass might have been too thin, liability could not be predicated upon surmise or conjecture as to the cause of the liability, and as plaintiff did not establish any specific condition of which defendant had knowledge and which caused plaintiff's injury, the trial court did not err in granting summary judgment for defendant. Zonta v. Village of Bensenville, 167 Ill. App. 3d 354, 118 Ill. Dec. 206, 521 N.E.2d 274 (2 Dist. 1988).

Where defendant park district did not create a hazardous condition, and when it became aware of the hazardous condition created by others on the roadway it controlled, defendant on five different occasions took steps to curtail the hazardous condition, there was no evidence of any negligence on the part of defendant park district, and the jury's answer to the special interrogatory concerning defendant's negligence was set aside. Harding v. Chicago Park Dist., 34 Ill. App. 3d 425, 339 N.E.2d 779 (1 Dist. 1975).

Evidence Held Sufficient

Where evidence showed that: (1) city ordered a white line painted a distance from the curb (four feet), indicating an intention the area be used by others than those driving automobiles; (2) the city became aware the area was being used by many bicyclists; (3) the city became aware that at least one person had been injured locally when a bicycle tire was caught between similar grates; and (4) the city had become aware that the type of grates used did not meet then existing standards and replaced parallel grates when they were damaged, thus evidence was produced that the city both intended and permitted cyclists to use the four foot strip, that it was foreseeable that the use would continue, that the condition was unsafe, and that the city had a reasonable time to remedy the condition of the grate, all as required by subsection (a) of this section in order to negate immunity. Cole v. City of E. Peoria, 201 Ill. App. 3d 756, 147 Ill. Dec. 429, 559 N.E.2d 769 (3 Dist. 1990).

Evidence was sufficient to show knowledge on the part of public entity of missing stop sign at intersection. Duewel v. Lahman, 103 Ill. App. 3d 220, 58 Ill. Dec. 630, 430 N.E.2d 662 (2 Dist. 1981).

Federal Government

- Not Liable

Federal government was protected by provisions of the Illinois Local Government Tort Immunity Act in plaintiff's personal injury suit stemming from a slip and fall outside a post office branch. Nieves v. United States, 980 F. Supp. 1295 (N.D. Ill. 1997).

U.S. Postal Service was entitled to summary judgment against plaintiff who slipped and fell on sidewalk in front of post office, where plaintiff failed to present sufficient evidence that her injury was caused by an unnatural accumulation of ice or snow. Rose v. United States, 929 F. Supp. 305 (N.D. Ill. 1996).

As a public entity, the United States is protected by the Illinois Local Government Tort Immunity Act for injuries occurring within the state to the same extent as any other municipality. Stewart v. United States, 918 F. Supp. 224 (N.D. Ill. 1996).

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The United States was not liable for injuries sustained by plaintiff when she tripped on a sidewalk located in front of the Federal Archives and Records Center in Illinois. Cooks v. United States, 815 F.2d 34 (7th Cir. 1987).

Foreseeability

- Designated Crosswalk

Pedestrian plaintiffs who were crossing roadway outside of a designated crosswalk were not making a foreseeable use of the roadway so as to create a duty in the village toward them under this section of this Act. Swett v. Village of Algonquin, 169 Ill. App. 3d 78, 119 Ill. Dec. 838, 523 N.E.2d 594 (2 Dist. 1988).

- Shown

It was reasonably foreseeable that a motorist driving at night could have failed to see the nonconforming warning sign and thus fail to reduce his speed and lose control of his car and thus township's failure to install a traffic control device in compliance with state manual will subject the township to liability for negligent performance of a ministerial duty. Parson v. Carbondale Twp., 217 Ill. App. 3d 637, 160 Ill. Dec. 454, 577 N.E.2d 779 (5 Dist. 1991), cert. denied, 143 Ill. 2d 640, 167 Ill. Dec. 402, 587 N.E.2d 1017 (1992).

- Sidewalks

City did not have a duty to a businessman who tripped over a light pole base protruding from the sidewalk as the city could not foresee that a reasonable person would be so distracted by the fear of being robbed that it could be said the city owed a duty to that person, and, thus, city did not owe a duty of reasonable care to the businessman regarding its property. Bonner v. City of Chicago, 334 Ill. App. 3d 481, 268 Ill. Dec. 299, 778 N.E.2d 285, 2002 Ill. App. LEXIS 913 (1 Dist. 2002).

It cannot be said that all reasonable minds would agree that a hole in a sidewalk that was 11/2 inches deep and 11/2 feet in diameter was so minor that city could not reasonably foresee any danger to a pedestrian. Repinski v. Jubilee Oil Co., 85 Ill. App. 3d 15, 40 Ill. Dec. 291, 405 N.E.2d 1383 (1 Dist. 1980).

Immunity

- Effect of Notice

City had no immunity from a duty to maintain its property in a reasonably safe condition and to exercise ordinary care for people using the property in a foreseeable manner as long as it had actual or constructive notice of a dangerous condition for a reasonable length of time to correct the condition. Cole v. City of E. Peoria, 201 Ill. App. 3d 756, 147 Ill. Dec. 429, 559 N.E.2d 769 (3 Dist. 1990).

- Failure to Plead

Governmental tort immunity under the Tort Immunity Act must be raised and pled as an affirmative defense or else it is waived; this is so even if the evidence supports the existence or appropriateness of the defense. Martin v. Chicago Hous. Auth., 264 Ill. App. 3d 1063, 201 Ill. Dec. 917, 637 N.E.2d 506 (1 Dist. 1994).

Inspection

- Elevator Door

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Circuit court erred in granting judgment n.o.v. to defendant housing authority where plaintiff, a nine year old child, fell down elevator shaft in defendant's building because the elevator door gave way and defendant failed to have a proper inspection program in place. Buford ex rel. Buford v. Chicago Hous. Auth., 131 Ill. App. 3d 235, 86 Ill. Dec. 926, 476 N.E.2d 427 (1 Dist. 1985).

Intended and Permitted Use

In the context of determining whether a particular use of a particular property was "intended" under 745 ILCS 10/3-102(a), the importance, if any, of "historical use" is limited to its connection to how it must have informed the governmental entity's intent for a certain property. If the entity knew, based on historical use, that a type of property would most likely be used in a certain way yet did nothing to prevent that use on a particular piece of property, then the historical use may become evidence of the entity's intent for the piece of property. Doria v. Vill. of Downers Grove, 397 Ill. App. 3d 752, 336 Ill. Dec. 864, 921 N.E.2d 478, 2009 Ill. App. LEXIS 1331 (2 Dist. 2009).

Court need look no further than the property itself to determine the municipality's manifestations of intent with regard to the use of the property for purposes of 745 ILCS 10/3-102(a). Reference to the "historical use" of a type of property is but a euphemism for the type of determination courts always make when they evaluate the purposes of a particular piece of property; for example, a court considering the intended use of a sidewalk will look at the sidewalk itself, but the sidewalk itself will in most cases tell the court nothing if the court does not assume or otherwise determine sidewalks' customary purpose. Doria v. Vill. of Downers Grove, 397 Ill. App. 3d 752, 336 Ill. Dec. 864, 921 N.E.2d 478, 2009 Ill. App. LEXIS 1331 (2 Dist. 2009).

As the Appellate Court of Illinois understands Marshall, the Illinois Supreme Court relied on "historical use" for the narrow purpose of elucidating the intent underlying a piece of property for purposes of under 745 ILCS 10/3-102(a) - just as a public body that is aware of the custom of street parking likely intends street parking if it does not prevent it, a public body that is aware of a different historical use of another type of property (for example, limited pedestrian use of parkways) but does not prevent it likely intends it. This narrow purpose necessarily limits the scope of "historical use" considerations to those that pertained to the general class of property (i.e., roads, bridges, sidewalks, parkways) at the time the relevant governing entity formed or manifested its intent; thus, a showing that a particular piece of property has been put to a particular use does not detail the type of "historical use" that Marshall relied on to help elucidate the intent underlying the property. Doria v. Vill. of Downers Grove, 397 Ill. App. 3d 752, 336 Ill. Dec. 864, 921 N.E.2d 478, 2009 Ill. App. LEXIS 1331 (2 Dist. 2009).

For the purposes of 745 ILCS 10/3-102(a), in the context of street parking, which is customary and expected on paved streets unless expressly prohibited, the fact that a governmental entity permits street parking indicates that it intended street parking, along with the accompanying pedestrian ingress and egress to and from parked vehicles. Doria v. Vill. of Downers Grove, 397 Ill. App. 3d 752, 336 Ill. Dec. 864, 921 N.E.2d 478, 2009 Ill. App. LEXIS 1331 (2 Dist. 2009).

Trial court properly held that a gravel lot was not intended to be used for parking and that a village was thus not liable under 745 ILCS 10/3-102 to a pedestrian who fell after parking there. The lot was unpaved and unmarked and was located near two paved, marked parking areas; although it did not contain a "no parking" sign, the village was not in the practice of placing such signs on every lot it did not intend as a parking lot; although there was a parking bumper there, the village did not place it there; and the pedestrian had demonstrated no historical use to indicate that the gravel lot was intended to be used as a parking lot. Doria v. Vill. of Downers Grove, 397 Ill. App. 3d 752, 336 Ill. Dec. 864, 921 N.E.2d 478, 2009 Ill. App. LEXIS 1331 (2 Dist. 2009).

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In a negligence and wrongful death action brought by a special administrator against a city, a railroad, and others with regard to its decedent dying from injuries incurred from striking a steel cable while riding a dirt bike along a railroad service road, it was determined that the trial court erred by granting summary judgment to the city by concluding that there was no genuine issue of material fact existing with regard to the city owning the service road and that the decedent had been a trespasser, thus, the city owed no duty to him and was immune from liability under 745 ILCS 10/3-109. To the contrary, the reviewing court found that it could not say that the decedent was undisputedly a trespasser at the time of the incident since the city only had a limited easement granted to it with regard to the service road, which did not create an exclusive possessory ownership right to the land allowing it to unilaterally exclude the decedent as a permitted user or to prevent the railroad from permitting the decedent to use the service road and there was also evidence that the railroad knew of individuals using the service road for recreational purposes and did not take action to prohibit or prevent the activities. Steinbach v. CSX Transp., Inc., 393 Ill. App. 3d 490, 332 Ill. Dec. 622, 913 N.E.2d 554, 2009 Ill. App. LEXIS 665 (3 Dist. 2009), appeal denied, 234 Ill. 2d 553, 920 N.E.2d 1082, 2009 Ill. LEXIS 2019 (2009).

Intended and Permitted User

- In General

The historical purpose of a property is not dispositive of its intended use. Montano v. City of Chicago, 308 Ill. App. 3d 618, 242 Ill. Dec. 7, 720 N.E.2d 628 (1 Dist. 1999), appeal denied, 188 Ill. 2d 567, 246 Ill. Dec. 125, 729 N.E.2d 498 (2000).

Municipalities are liable for areas in which pedestrians are intended as well as permitted to use, but those areas do not include a highway in midblock. Poindexter v. City of Chicago, 247 Ill. App. 3d 47, 186 Ill. Dec. 967, 617 N.E.2d 206 (1 Dist. 1993).

For a pedestrian to be protected by the conditions in this act, he must be both an intended and permitted user of the property under a municipality's control; although pedestrians are apparently permitted to cross a busy street at midblock, this everyday occurrence does not mean that the municipality intended them to have unlimited access to cross the street at any time and under any circumstances. Poindexter v. City of Chicago, 247 Ill. App. 3d 47, 186 Ill. Dec. 967, 617 N.E.2d 206 (1 Dist. 1993).

By requiring buses to discharge passengers within approximately 18 inches of the curb, the City evinced its intent that passengers step directly from the bus to the curb rather than use the street, therefore, the plaintiff, who injured her leg when she stepped in a pothole when she exited the bus, was not an intended and permitted user of the street under subsection (a). Wolowinski v. City of Chicago, 238 Ill. App. 3d 639, 179 Ill. Dec. 441, 606 N.E.2d 273 (1 Dist. 1992).

- Bicyclist

Although bicyclists were permitted users of city sidewalks, they were not intended users; instead, it was intended that bicycles be operated on city streets. Diefendorf v. City of Peoria, 308 Ill. App. 3d 465, 242 Ill. Dec. 34, 720 N.E.2d 655 (3 Dist. 1999), appeal denied, 187 Ill. 2d 566, 244 Ill. Dec. 183, 724 N.E.2d 1267 (2000).

Though bicycle riders were considered permitted users of the road and the bridge involved, which had no special pavement markings for bicyclists, they were not found to be the intended users of the bridge; however, the subsequent erection of signs for bicyclists at the approach to the bridge did show the township's intent before accident to include bicyclcists among its intended users. Boub v. Township of Wayne, 183 Ill. 2d 520, 234 Ill. Dec. 195, 702 N.E.2d 535 (1998).

- Exit From Vehicle

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A person exiting from a legally parked car is an intended and permitted user of the space around his car. Scarse v. City of Chicago, 272 Ill. App. 3d 903, 209 Ill. Dec. 512, 651 N.E.2d 690 (1 Dist. 1995), appeal denied, 163 Ill. 2d 587, 212 Ill. Dec. 437, 657 N.E.2d 638 (1995).

City did not owe a duty of care to passenger who got out of her taxi and walked on street as she was not an intended or permitted user of the street. Scarse v. City of Chicago, 272 Ill. App. 3d 903, 209 Ill. Dec. 512, 651 N.E.2d 690 (1 Dist. 1995), appeal denied, 163 Ill. 2d 587, 212 Ill. Dec. 437, 657 N.E.2d 638 (1995).

- Median Strip

Where median strip was a small grassy piece of land between busy lanes of traffic and not adjacent to any sidewalk, strip was not intended for pedestrian use and injured pedestrian was not an intended user of median strip. Roberson v. City of Chicago, 260 Ill. App. 3d 994, 201 Ill. Dec. 344, 636 N.E.2d 776 (1 Dist.), appeal denied, 157 Ill. 2d 522, 205 Ill. Dec. 185, 642 N.E.2d 1302 (1994).

- Not Shown

In a case where an injured party slipped and fell while trying to enter a train platform, a railroad company was immune from liability because the injured party was not an intended or permitted user of the property. Del Real v. Northeast Ill. Reg'l Commuter R.R. Corp., 404 Ill. App. 3d 65, 343 Ill. Dec. 250, 934 N.E.2d 574, 2010 Ill. App. LEXIS 825 (1 Dist. 2010).

Although the commuter was arguably a permitted user of property where the commuter tripped and fell, the railroad corporation could not be held liable for not keeping that property in a reasonably safe condition. Under 745 ILCS 10/3-102, the commuter was not using the crosswalk at the intersection where the commuter tripped and fell, and, thus, the commuter did not meet the requirement that the commuter also be an intended user of the property that contained the allegedly unsafe condition. Pence v. Northeast Ill. Reg'l Commuter R.R. Corp., 398 Ill. App. 3d 13, 337 Ill. Dec. 1003, 923 N.E.2d 854, 2010 Ill. App. LEXIS 63 (1 Dist. 2010).

A truck driver was not an intended user of an alley as he violated a city ordinance when he parked his truck in the alley to unload and deliver a couch. Montano v. City of Chicago, 308 Ill. App. 3d 618, 242 Ill. Dec. 7, 720 N.E.2d 628 (1 Dist. 1999), appeal denied, 188 Ill. 2d 567, 246 Ill. Dec. 125, 729 N.E.2d 498 (2000).

The plaintiff was not an intended user of an alley where the alley was intended for use by vehicles and the plaintiff used the alley as a sidewalk. Thomas v. Town of Cicero, 307 Ill. App. 3d 840, 241 Ill. Dec. 326, 719 N.E.2d 187, 1999 Ill. App. LEXIS 684 (1 Dist. 1999), appeal denied, 186 Ill. 2d 590, 243 Ill. Dec. 569, 723 N.E.2d 1170 (1999).

Plaintiff failed to establish that he was an intended user of the alley. Khalil v. City of Chicago, 283 Ill. App. 3d 161, 218 Ill. Dec. 663, 669 N.E.2d 1189 (1 Dist. 1996).

- Passenger

Passenger in automobile accident was not outside the class of motorists by whom the village's roadways were intended to be used where no evidence was presented which would show that the driver was either drag racing or intoxicated, there was evidence presented which indicated that driver was driving the speed limit and obeying all traffic control devices at the time of the accident and, finally, there was no jury finding that plaintiff negligently contributed to her own injuries. Vacala v. Village of LaGrange Park, 260 Ill. App. 3d 599, 201 Ill. Dec. 380, 636 N.E.2d 812 (1 Dist.), appeal denied, 157 Ill. 2d 524, 205 Ill. Dec. 188, 642 N.E.2d 1305 (1994).

- Shown

A pedestrian was an intended and permitted user of a tree cut-out area adjacent to a sidewalk since such area allowed access to cars parked along the curb, allowed passage of slower-moving

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pedestrians, and allowed pedestrian access for purposes of cutting grass and raking leaves within the area. Barnhisel v. Village of Oak Park, 311 Ill. App. 3d 108, 243 Ill. Dec. 885, 724 N.E.2d 194, 1999 Ill. App. LEXIS 959 (1 Dist. 1999), appeal denied, 188 Ill. 2d 561, 246 Ill. Dec. 121, 729 N.E.2d 494 (2000).

Where property was intended to be used for water-based recreation activities, including skiing and boating, the plaintiff, who was water skiing, was an intended and permitted user of the area to which the city owed a duty. Sullivan v. City of Hillsboro, 303 Ill. App. 3d 650, 236 Ill. Dec. 703, 707 N.E.2d 1273 (5 Dist. 1999), appeal denied, 184 Ill. 2d 574, 239 Ill. Dec. 614, 714 N.E.2d 533 (1999).

The fact that plaintiff was speeding and had run a red light at the time of the accident did not prevent him from being an intended and permitted user of the road. Wagner v. City of Chicago, 166 Ill. 2d 144, 209 Ill. Dec. 672, 651 N.E.2d 1120 (1995).

- Unlicensed Driver

Even though plaintiff was driving a motorcycle, for which he was not licensed to drive, he was still an intended and permitted user of the road. Redlin v. Village of Hanover Park, 278 Ill. App. 3d 183, 214 Ill. Dec. 893, 662 N.E.2d 459 (1 Dist. 1996), appeal denied, 167 Ill. 2d 569, 217 Ill. Dec. 669, 667 N.E.2d 1062 (1996).

- Unmarked Crosswalk

Where plaintiff was injured when she fell into an open utility hole that was 15 inches outside of an unmarked crosswalk, the plaintiff was not an intended and permitted user of the street and the defendant municipality had no duty to maintain the street in a reasonably safe condition for plaintiff. Evans v. City of Chicago, 276 Ill. App. 3d 631, 213 Ill. Dec. 412, 659 N.E.2d 42 (1 Dist. 1995).

Intended Use

- Bicyclist

A bicyclist was not an intended user of a street with no bicycle lane markings on which she had an accident due to broken and uneven pavement, notwithstanding that the municipal code defined a street as a public way used for traffic and defined traffic to include bicycles using a public way, and that the municipal code also prohibited adults from riding bicycles on sidewalks. Latimer v. Chicago Park Dist., 323 Ill. App. 3d 466, 256 Ill. Dec. 919, 752 N.E.2d 1161, 2001 Ill. App. LEXIS 432 (1 Dist. 2001).

An infant bicyclist was an intended and permitted user of city sidewalks and, therefore, was entitled to a duty of reasonable care from the defendant city in its maintenance of city sidewalks. Brooks v. City of Peoria, 305 Ill. App. 3d 806, 238 Ill. Dec. 665, 712 N.E.2d 387 (3 Dist. 1999).

In bicyclist's suit against a township to recover for injuries suffered while riding on a bridge, the court properly granted summary judgment to the defendant; the plaintiff was not an intended user of the bridge, and thus the defendant did not owe the plaintiff a duty to maintain the bridge in a reasonably safe condition. Boub v. Township of Wayne, 291 Ill. App. 3d 713, 226 Ill. Dec. 44, 684 N.E.2d 1040 (2 Dist. 1997), aff'd, 183 Ill. 2d 520, 234 Ill. Dec. 195, 702 N.E.2d 535 (1998).

- Crosswalks

Marked and unmarked crosswalks are intended for the protection of pedestrians crossing streets within the meaning of this act. Poindexter v. City of Chicago, 247 Ill. App. 3d 47, 186 Ill. Dec. 967, 617 N.E.2d 206 (1 Dist. 1993).

- Determination

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City, pursuant to 745 ILCS 10/3-102(a), owed a duty of ordinary care to the injured party and could be found liable for not exercising that care in failing to maintain an unimproved alley behind the injured party's home after the injured party tripped and fell in a small depression in the alley while disposing of a weed plucked from the injured party's yard. The city, through a municipal ordinance, forced city residents to place trash containers in the alley and, thus, the injured party was an intended user of the property, which was the city's property. Gutstein v. City of Evanston, 402 Ill. App. 3d 610, 341 Ill. Dec. 26, 929 N.E.2d 680, 2010 Ill. App. LEXIS 546 (1 Dist. 2010).

City pursuant to 745 ILCS 10/3-102 owed a duty of ordinary care to the injured party and could be found liable for not exercising that care in failing to maintain an unimproved alley behind the injured party's home after the injured party tripped and fell on a small depression in the alley as the injured party went to dispose of a weed plucked from the injured party's yard. The city, through a municipal ordinance, forced the injured party to place the injured party's trash container in the alley, and, thus, the injured party was an intended user of the alley, which was the city's property. Gutstein v. City of Evanston, Ill. App. 3d , Ill. Dec. , N.E.2d , 2010 Ill. App. LEXIS 194 (1 Dist. Mar. 12, 2010).

Historical practice alone is not sufficient to make a particular use of public property an intended one. Boub v. Township of Wayne, 183 Ill. 2d 520, 234 Ill. Dec. 195, 702 N.E.2d 535 (1998).

- Issues

While a municipality's failure to prohibit an individual from engaging in a given use of public property may well indicate that a person is "permitted" to use the property in the given manner, subsection (a) of this section provides that no duty runs unless the person is an "intended and permitted" user of the property. Ramirez v. City of Chicago, 212 Ill. App. 3d 751, 156 Ill. Dec. 842, 571 N.E.2d 822 (1 Dist. 1991).

Before a determination can be made as to whether city has a duty toward plaintiff, issues of whether plaintiff was an intended and permitted user of the street, and if so, whether her use of the street was reasonably foreseeable must be resolved. Princivalli v. City of Chicago, 202 Ill. App. 3d 525, 147 Ill. Dec. 850, 559 N.E.2d 1190 (1 Dist. 1990).

- Jaywalker

A city had no duty to a pedestrian who walked into the street about five to six steps and tripped over a water-main cover, since she was not en route to or from her motor vehicle, but was crossing the street outside the crosswalk to go to her son's house; she was not an intended user of the street. Gabriel v. City of Edwardsville, 237 Ill. App. 3d 649, 178 Ill. Dec. 309, 604 N.E.2d 565 (5 Dist. 1992), appeal denied, 149 Ill. 2d 648, 183 Ill. Dec. 860, 612 N.E.2d 512 (1993).

- Legally Parked Vehicle

The defendant village was entitled to immunity in an action in which the plaintiff alleged that he was walking in the boundaries of a parking lane in the immediate vicinity of his lawfully parked car when he tripped and fell over an indentation at the intersection of a street and an alleyway where the evidence showed that his car was parked on the opposite side of the street from where he fell. Bonert v. Village of Schiller Park, 322 Ill. App. 3d 557, 255 Ill. Dec. 692, 750 N.E.2d 273, 2001 Ill. App. LEXIS 356 (1 Dist. 2001).

Courts in Illinois have developed the general principle that pedestrians who walk in or cross a public roadway outside of a crosswalk are not intended and permitted users of the roadway and are owed no duty, however, an exception exists for passengers and drivers of legally parked vehicles; because these pedestrians must of necessity use the roadway for a means of access to their vehicles, they are intended and permitted users of the portion of the roadway which surrounds their vehicles. Tieman v. City of Princeton, 251 Ill. App. 3d 766, 191 Ill. Dec. 179, 623 N.E.2d 769 (3 Dist. 1993).

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- Loading Zone

Where the city's own witnesses, testified that on the day of the injury the airport property on which plaintiff was injured was designated as a loading zone and where at the time plaintiff was injured, she was standing in such area, specifically designated by the city as a loading zone, and was using the area for its intended purpose, the plaintiff was an intended and permitted user of the City's property, despite City's argument that the loading zone applied exclusively to vehicular use and did not contemplate pedestrian use. Jorgensen v. Whiteside, 233 Ill. App. 3d 783, 174 Ill. Dec. 925, 599 N.E.2d 1009 (1 Dist.), appeal denied, 147 Ill. 2d 627, 180 Ill. Dec. 150, 606 N.E.2d 1227 (1992).

Where a street was for the use of vehicular traffic, jaywalker was not intended or permitted user, and city therefore owed no duty to jaywalker. Risner v. City of Chicago, 150 Ill. App. 3d 827, 104 Ill. Dec. 94, 502 N.E.2d 357 (1 Dist. 1986).

- Maintenance of Streets for Pedestrians

Where the Chicago Municipal Code did not specifically allow the Chicago Transit Authority to drop passengers off in a street, bus passengers were not intended and permitted users of the street as required under this section, of this Act and the city did not owe a duty to keep the street in a reasonably safe condition for such pedestrian traffic. Vance v. City of Chicago, 199 Ill. App. 3d 652, 145 Ill. Dec. 724, 557 N.E.2d 494 (1 Dist. 1990).

- Motorcycles

The plaintiff was not entitled to recover for personal injuries resulting from an off-road motorbike accident occurring on village property since he was not an intended user of the property, notwithstanding the assertions that the village was aware that people were using motorbike trails on its property, that it did not warn or guard against the dangers of such conduct, and that it created jumps on the trails by dumping large quantities of dirt, soil, gravel, and other debris across the trails, where: (1) the village had enacted an ordinance that specifically prohibited the operation of motorbikes on public property, and (2) there were no physical manifestations on the property to indicate that the village intended the property to be used for motorbiking. First Midwest Trust Co., N.A. v. Britton, 322 Ill. App. 3d 922, 256 Ill. Dec. 134, 751 N.E.2d 187, 2001 Ill. App. LEXIS 415 (2 Dist. 2001).

- Pedestrians

The plaintiff pedestrian was not an intended user of a median in a street on which she fell while crossing the street to get to a pharmacy where she presented no evidence that there was no safe route from her parking space to a crosswalk and, even if the parking space was not connected to the building that housed the pharmacy by a pedestrian route, she did not allege that the parking space itself was defective. Krampert v. Village of Mt. Prospect, 323 Ill. App. 3d 41, 256 Ill. Dec. 107, 751 N.E.2d 160, 2001 Ill. App. LEXIS 402 (1 Dist. 2001).

As a matter of law, pedestrians are permitted and intended users of the property that consists of the sidewalk area that extends across any alley in an urban area. Kavales v. City of Berwyn, 305 Ill. App. 3d 536, 238 Ill. Dec. 738, 712 N.E.2d 842 (1 Dist. 1999), appeal denied, 185 Ill. 2d 629, 242 Ill. Dec. 139, 720 N.E.2d 1094 (1999).

Parkways, while beautifying the street, are also intended for the limited use of pedestrians. Marshall ex rel. Marshall v. City of Centralia, 143 Ill. 2d 1, 155 Ill. Dec. 802, 570 N.E.2d 315 (1991).

- Persons Owed Duty of Care

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This section has been construed to extend a duty of care only to those persons to whom the entity's property was intended to be used. Durham v. Forest Preserve Dist., 152 Ill. App. 3d 472, 105 Ill. Dec. 614, 504 N.E.2d 899 (1 Dist. 1986).

- Street Cleaning

Plaintiff who was cleaning the street in front of her house was not an intended user of the street as this was not a necessary use of the roadway. Ramirez v. City of Chicago, 212 Ill. App. 3d 751, 156 Ill. Dec. 842, 571 N.E.2d 822 (1 Dist. 1991).

- Street Parking

Where defendant village permitted curbside parking on one of its streets, it must have recognized the necessity of pedestrians walking in the street and using a portion of it as a pathway as means of ingress and egress to and from their vehicles, thus village defendant "intended and permitted" pedestrians to use the street and failure to maintain the street in a safe condition resulted in tort liability. Di Domenico v. Village of Romeoville, 171 Ill. App. 3d 293, 121 Ill. Dec. 436, 525 N.E.2d 242 (3 Dist. 1988); Torres v. City of Chicago, 218 Ill. App. 3d 89, 161 Ill. Dec. 31, 578 N.E.2d 158 (1 Dist. 1991).

Intended User

- Not Shown

Plaintiff's decedents, three years old and under no supervision, were permitted but not intended users of the property; although park district constructed a public park open to public, a sign near the playground explicitly prescribed that children be at least five years old before using the playground, and that all children be supervised and lagoon was not intended to serve as a recreational body; therefore, park district owed no duty under subsection (a) to protect plaintiff's decedents from lagoon. Mostafa v. City of Hickory Hills, 287 Ill. App. 3d 160, 222 Ill. Dec. 513, 677 N.E.2d 1312 (1 Dist. 1997).

Intent

It is the intent of the local public entity that controls under subsection (a); therefore, the intent of another public body, whether it is the state, a county, or other local entity, should be irrelevant. Boub v. Township of Wayne, 183 Ill. 2d 520, 234 Ill. Dec. 195, 702 N.E.2d 535 (1998).

Knowledge

- Stop Sign

Public works supervisor's testimony that stop sign was standing on day before automobile accident between plaintiff and codefendant was insufficient to show that village defendant knew or should have known that the stop sign was inoperative in sufficient time to take remedial measures. Wilsey v. Schlawin, 35 Ill. App. 3d 892, 342 N.E.2d 417 (1 Dist. 1975).

Legislative Intent

- Duty of Care

The language of this section evinces a legislative intent to extend a duty of care only to those persons by whom the local government intended the property to be used. Curtis v. County of Cook, 98 Ill. 2d 158, 74 Ill. Dec. 614, 456 N.E.2d 116 (1983); Eddings ex rel. Eddings v.

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Dundee Tp. Hwy. Comm'r, 135 Ill. App. 3d 190, 88 Ill. Dec. 397, 478 N.E.2d 888 (2 Dist. 1985).

Liability

- County

Regardless of whatever immunity the public officials and employees of a county enjoyed for their work in connection with road and culvert improvements, the county itself could be subjected to liability consistent with the terms of this Act. Warner/Elektra/Atlantic Corp. v. County of DuPage, 762 F. Supp. 784 (N.D. Ill. 1991).

- Dangerous Condition

This section does not preclude a municipality's liability in cases where it has negligently caused the dangerous condition. Harding v. City of Highland Park, 228 Ill. App. 3d 561, 169 Ill. Dec. 448, 591 N.E.2d 952 (2 Dist. 1992).

- Public Ways

Although liability of a municipal corporation is currently governed by this Act, this Act has essentially continued the common law duties with respect to the liability of a municipality in the maintenance of its public ways. Warchol ex rel. Warchol v. City of Chicago, 75 Ill. App. 3d 289, 30 Ill. Dec. 689, 393 N.E.2d 725 (1 Dist. 1979).

- Sufficient Time

A local public entity is only liable if it has either actual or constructive notice of a defect for a sufficient time prior to an injury to have corrected the condition. Livings v. City of Chicago, 26 Ill. App. 3d 850, 326 N.E.2d 170 (1 Dist. 1975).

Location of Defect

- Jury Determination

While a given defect may not be actionable in residential area, a jury could reasonably determine that such a defect or condition located in a busy commercial district should result in a finding of negligence. Baker v. City of Granite City, 75 Ill. App. 3d 157, 31 Ill. Dec. 117, 394 N.E.2d 33 (5 Dist. 1979).

Majority Rule

- Liability of Municipality

An overwhelming majority of jurisdictions have found that municipalities may be liable to pedestrians who are injured because of unsafe or dangerous conditions within parkways. Marshall ex rel. Marshall v. City of Centralia, 143 Ill. 2d 1, 155 Ill. Dec. 802, 570 N.E.2d 315 (1991).

Ministerial Acts

Subsection (a), applies only to the performance of ministerial duties, there is absolute immunity in the performance of discretionary functions, as set forth in 745 ILCS 10/2-109 and 745 ILCS 10/2-201, there is simply no conflict between the provisions of subsection (a) and those of 745 ILCS

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10/2-109 and 745 ILCS 10/2-201. Kennell v. Clayton Tp., 239 Ill. App. 3d 634, 179 Ill. Dec. 980, 606 N.E.2d 812 (4 Dist. 1992).

Notice

- In General

A city's affirmatively negligent act constitutes notice under the statute. Bernal v. City of Hoopeston, 307 Ill. App. 3d 766, 240 Ill. Dec. 748, 718 N.E.2d 229 (4 Dist. 1999).

- Admissibility of Phone Conversation

In suit against city for damages as a result of injuries sustained when plaintiff fell into a meter box of the city, witness' testimony that her husband had called the water company six weeks before date of the accident to complain about a defect in the water meter box and that she heard her husband ask to have someone sent out to fix the cover was inadmissible, where the other party to the conversation was not identified. Palermo v. City of Chicago Heights, 2 Ill. App. 3d 1004, 276 N.E.2d 470 (1 Dist. 1971).

- Illustrative Cases

The United States was entitled to summary judgment in an action arising from a fall in a post office since the plaintiff failed to cite to specific facts that could support a reasonable jury's finding of actual or constructive notice on the part of the United States where; plaintiff offered no evidence that the floor mat over which she allegedly fell, or any other floor mat, was ever seen by anyone (including herself) in a bunched up or flipped over condition and also failed to establish that prior falls in the post office were either caused by a rumpled up or flipped over floor mat or involved the same floor mat that allegedly caused her to fall. Franke v. United States, F. Supp. 2d , 2000 U.S. Dist. LEXIS 12983 (N.D. Ill. Sept. 1, 2000).

Where the plaintiff established that employees of the defendant county engaged in snow removal operations created a large mound of snow at an intersection, the plaintiff also necessarily established notice to the county of the hazard. Ziencina v. County of Cook, 188 Ill. 2d 1, 241 Ill. Dec. 610, 719 N.E.2d 739 (1999).

Where store owner told Mayor she was concerned about slope that caused plaintiff's injury because it effected the ability of her customers to enter and exit her business safely, and had gone before the village board for permission to build steps, village had ample notice the slope constituted a potential danger to persons such as plaintiff. Huggins v. Village of Bishop Hill, 294 Ill. App. 3d 466, 228 Ill. Dec. 897, 690 N.E.2d 656 (3 Dist. 1998), appeal denied, 178 Ill. 2d 576, 232 Ill. Dec. 846, 699 N.E.2d 1031 (1998).

Jury's finding that city did not have actual or constructive notice of twisted traffic signal in sufficient time prior to car accident to remedy or protect against it was against the manifest weight of the evidence where, applying the relevant factors of time and conspicuity to the uncontroverted evidence, it was clear the traffic signal remained twisted for a sufficient amount of time and in a sufficiently conspicuous location to impute constructive notice to the city; witnesses' uncontradicted testimony established that the traffic signal remained twisted for 111/2 hours prior to the accident and that there was a city police officer directing traffic at the intersection that day. Mtengule v. City of Chicago, 257 Ill. App. 3d 323, 195 Ill. Dec. 580, 628 N.E.2d 1044 (1 Dist. 1993).

Oil Slick

- Liability

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Where the street was well traveled and patrolled by the police, yet no one noticed or reported any problems prior to the accident in question, considering the inconspicuous nature of the oil slick, the short time the spill remained on the street and that the time of day was late evening, it was not improper for the trial court to find, as a matter of law, city did not have actual or constructive notice of the oil slick. Cook v. Gould, 109 Ill. App. 3d 311, 64 Ill. Dec. 896, 440 N.E.2d 448 (3 Dist. 1982).

Parkways

- Injuries

The court found a duty of care on the part of defendant municipal corporation where plaintiff was injured on a parkway while leaving sidewalk to avoid a parked car which was obstructing the sidewalk. Griffin v. Village of Willowbrook, 212 Ill. App. 3d 211, 156 Ill. Dec. 477, 570 N.E.2d 1199 (2 Dist. 1991).

Municipalities cannot be held liable for parkway conditions which are customary, even though such conditions may be slightly dangerous; however, a city has no right to maintain anything in the nature of a pitfall, trap, snare or other like obstruction whereby the traveler, in yielding to the impulse of the average person to cut across a corner in a hurry, may be injured. Marshall ex rel. Marshall v. City of Centralia, 143 Ill. 2d 1, 155 Ill. Dec. 802, 570 N.E.2d 315 (1991).

Pedestrians

- Alley Return

City could be liable for injuries pedestrian sustained in fall on an icy alley return if the slippery condition was combined with a defect in the property that was not reasonably safe, such as a "spall" condition causing the alley return's concrete to break up and freeze water caught in the resulting reservoir, if the defect proximately caused the injury and the city had proper notice of it, and improper admission of discovery deposition testimony of witness who saw pedestrian fall on icy alley return meant a new trial was required to determine whether a natural defect or a spall condition caused her to fall. Rios v. City of Chicago, 331 Ill. App. 3d 763, 265 Ill. Dec. 71, 771 N.E.2d 1030, 2002 Ill. App. LEXIS 444 (1 Dist. 2002).

- Crosswalk

Local municipalities owe no duty to maintain streets and roadways in a reasonably safe condition for pedestrians who choose to cross the street outside the protection of the crosswalks. Vaughn v. City of W. Frankfort, 166 Ill. 2d 155, 209 Ill. Dec. 667, 651 N.E.2d 1115 (1995).

Playground Liability

- Duty to Warn

Even assuming that a park district was not immune under the Local Governmental and Governmental Employees Tort Immunity Act, where plaintiff fell from a set of exercise rings in a park, rendering him a paraplegic, and the injury occurred after the effective date of the Premises Liability Act and plaintiff was not a trespasser, the park district did not have a duty to warn plaintiff of the open and obvious danger of falling from the equipment. Helms v. Chicago Park Dist., 258 Ill. App. 3d 675, 196 Ill. Dec. 851, 630 N.E.2d 1016, 1994 Ill. App. LEXIS 174 (1 Dist. 1994).

- Wilful and Wanton Misconduct

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In wilful and wanton cases a bare allegation of knowledge is insufficient and must be supported by facts such as allegations that the defendant removed safety equipment, or had previous knowledge of accidents, or had been put on notice of the danger. Winfrey v. Chicago Park Dist., 274 Ill. App. 3d 939, 211 Ill. Dec. 46, 654 N.E.2d 508 (1 Dist. 1995).

A local public entity has a duty to exercise ordinary care to maintain its property in a reasonably safe condition; however, when liability is based on a condition of any public park, playground, or recreational area, a local public entity is liable only when it is guilty of wilful and wanton misconduct proximately causing the injury. Young ex rel. Young v. Chicago Hous. Auth., 162 Ill. App. 3d 53, 113 Ill. Dec. 794, 515 N.E.2d 779 (1 Dist. 1987).

Pleading

Sexual abuse victims' claim of premises liability against a school district was not barred by the Illinois Tort Immunity Act, 745 ILCS 10/3-102, because the complaint alleged that the private room given to the teacher accused of abuse directly contributed to and facilitated the abuse, and the district had actual knowledge that the teacher was utilizing the private room to commit the abuse but failed to take any action to ensure that the premises were made safe. Raymond S. v. Sperlik, F. Supp. 2d , 2005 U.S. Dist. LEXIS 31313 (N.D. Ill. Nov. 30, 2005).

- Illustrative Cases

Where plaintiff simply alleged that a raised median strip constituted an unreasonably dangerous condition, and that the city was negligent for failing to remove it and for failing to maintain an "S" curve in a reasonably safe condition, plaintiff alleged a legally sufficient theory of recovery; however, the complaint was factually incomplete in that it failed to allege what made these conditions dangerous. Santelli v. City of Chicago, 222 Ill. App. 3d 862, 165 Ill. Dec. 277, 584 N.E.2d 456 (1 Dist. 1991).

Pond

- Persons Owed Duty of Care

Where pond was built as a retention pond and was used for fishing and not swimming, and defendant did not intend its patrons to use the picnic tables as flotation or diving devices, decedent, who drowned in defendant's pond after falling off picnic table used as a raft, was not within the class of persons defendant intended to use the property; therefore, it followed that defendant did not owe any duty to decedent. Durham v. Forest Preserve Dist., 152 Ill. App. 3d 472, 105 Ill. Dec. 614, 504 N.E.2d 899 (1 Dist. 1986).

Prima Facie Evidence

- Shown

Plaintiff presented sufficient evidence to withstand defendant's motion for directed verdict when the plaintiff presented evidence that the defendant was a local public entity owing a duty of reasonable care to those using its facilities; therefore, the trial court was in error in entering judgment at the conclusion of the plaintiff's case. Haught v. Rend Lake Conservancy Dist., 158 Ill. App. 3d 382, 110 Ill. Dec. 743, 511 N.E.2d 920 (5 Dist. 1987).

Public Policy

- Inoperable Elevators

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While an inoperable elevator may cause some discomfort, it is not the type of circumstance in which public policy would be furthered through the imposition of tort liability especially where the very reason that the elevator fails to operate may actually be in society's best interest (e.g., the elevator is shut down for periodic repairs or inspections). Curry v. Chicago Hous. Auth., 150 Ill. App. 3d 862, 105 Ill. Dec. 49, 503 N.E.2d 1055 (1 Dist. 1986).

Railroad Crossing

- Warning Signs on Parallel Road

A railroad advance warning sign on a parallel road is discretionary. Robinson v. Atchison, T. & S.F. Ry., 257 Ill. App. 3d 772, 195 Ill. Dec. 901, 629 N.E.2d 209 (3 Dist.), appeal denied, 156 Ill. 2d 566, 202 Ill. Dec. 931, 638 N.E.2d 1125 (1994).

Restrictions

- Foreseeable Uses

A municipality need not separately prohibit each and every potential foreseeable use of its property in order to assert that it owes no duty under subsection (a) of this section. Ramirez v. City of Chicago, 212 Ill. App. 3d 751, 156 Ill. Dec. 842, 571 N.E.2d 822 (1 Dist. 1991).

Schools

Failure to assert that a condition of defendant school district's property was dangerous precluded premises liability claim under 745 ILCS 10/3-102. Plaintiffs did not allege that a condition of defendant teacher's classroom itself was unsafe, but only that the teacher's ongoing propensity to sexually harass his minor female students on school premises created dangerous conditions on the school district's property. Doe v. White, F. Supp. 2d , 2010 U.S. Dist. LEXIS 4163 (C.D. Ill. Jan. 19, 2010).

745 ILCS 10/3-102 of the Illinois Local Governmental and Governmental Employees Tort Immunity Act imposes on a school district the duty to exercise reasonable care to maintain its property. Courson v. Danville Sch. Dist., 333 Ill. App. 3d 86, 266 Ill. Dec. 950, 775 N.E.2d 1022, 2002 Ill. App. LEXIS 709 (4 Dist. 2002).

Parking lot at a public high school was a recreational property under 745 ILCS 10/3-106, and a city which owned a utility that removed a fire hydrant from the parking lot and the school board which operated the high school were immune from liability to a student who stepped in a hole which was left after the hydrant was removed and broke his ankle. Rexroad v. City of Springfield, 331 Ill. App. 3d 545, 265 Ill. Dec. 450, 772 N.E.2d 821, 2002 Ill. App. LEXIS 512 (4 Dist. 2002).

Where plaintiff's son, a high school student, was shot and killed on high school premises by another student, plaintiff could not allege that school board created or facilitated the condition that caused her loss or that board had actual or constructive knowledge of criminal conduct, so that plaintiff could not state a cause of action for premises liability against the board. Lawson v. City of Chicago, 278 Ill. App. 3d 628, 215 Ill. Dec. 237, 662 N.E.2d 1377 (1 Dist. 1996).

Scope

- Immunities

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This Act does not impose a duty on a township to maintain roads in a reasonably safe condition; rather, the Act confers immunities. Havens ex rel. Havens v. Harris Tp., 175 Ill. App. 3d 768, 125 Ill. Dec. 256, 530 N.E.2d 284 (3 Dist. 1988).

- Notice

The question of constructive notice is generally one of fact; it becomes a question of law, and thereby amenable to judgment n.o.v., if all of the evidence, when viewed in an aspect most favorable to plaintiff, so overwhelmingly favors defendant public entity that no contrary finding based on that evidence could ever stand. Buford ex rel. Buford v. Chicago Hous. Auth., 131 Ill. App. 3d 235, 86 Ill. Dec. 926, 476 N.E.2d 427 (1 Dist. 1985); Pinto v. DeMunnick, 168 Ill. App. 3d 771, 119 Ill. Dec. 579, 523 N.E.2d 47 (1 Dist. 1988).

Sidewalk Access

No liability where plaintiff had to traverse street midblock to reach the sidewalk available on the west side of the street. Vaughn v. City of W. Frankfort, 166 Ill. 2d 155, 209 Ill. Dec. 667, 651 N.E.2d 1115 (1995).

Snowmobiles

- Related Provision

This section mandates a standard of ordinary care for people whom the entity intended and permitted to use the property. This clearly does not encompass snowmobiles, which are inherently dangerous instrumentalities. In 625 ILCS 40/5-1, the legislature has determined that there is no duty to keep premises safe for snowmobiling, and this determination does not conflict with the general provisions of this section. Ostergren v. Forest Preserve Dist., 104 Ill. 2d 128, 83 Ill. Dec. 892, 471 N.E.2d 191 (1984).

Special Duty Exception

- Not Applicable

The special duty exception to governmental tort immunity was not triggered, where plaintiff pleaded that decedent's suicide was caused by defendant's careless, negligent, and wilful failure to check decedent on a regular basis, remove his personal effects at the time of detention, supervise the cell blocks, seek a treatment alternative to detention, exercise practices and customs relative to intoxicated or self-destructive persons, maintain a camera surveillance system, and inspect the jail facility for health and safety hazards. Fraley v. City of Elgin, 251 Ill. App. 3d 72, 190 Ill. Dec. 407, 621 N.E.2d 276 (2 Dist. 1993).

Streets

- Around Vehicles

Pursuant to subsection (a), a local public entity has a duty to exercise ordinary care in maintaining in a reasonably safe condition those areas of public roadways around legally parked vehicles, this duty extends only to those pedestrians walking to or from the curb area, going to or from a legally parked vehicle, moreover, this duty extends only to pedestrians walking to or from the curb alongside the legally parked vehicle, not to pedestrians crossing the roadway to get to or from the vehicle. Grove v. City of Park Ridge, 240 Ill. App. 3d 659, 181 Ill. Dec. 348, 608 N.E.2d 421 (1 Dist. 1992).

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- Use by Pedestrians

Pedestrian use of the streets, even with the knowledge of such use by governmental entity, does not serve to convert the streets to crosswalks so as to give rise to a duty on the part of the governmental unit toward the plaintiff. Swett v. Village of Algonquin, 169 Ill. App. 3d 78, 119 Ill. Dec. 838, 523 N.E.2d 594 (2 Dist. 1988).

Unsafe Intersection

- Insufficient Cause of Action

Trial court did not err in dismissing the driver's complaint against the government representatives for not removing or trimming allegedly obstructive trees, shrubbery, and foliage from their public highway intersections in a case where her vehicle was struck in an intersection, after having stopped at a stop sign, by another vehicle being operated on an intersecting road who ignored a clearly visible stop sign; the government representatives did not owe her a duty where, as in this case, the intersection was marked by two clearly visible stop signs. Kirschbaum v. Vill. of Homer Glen, 365 Ill. App. 3d 486, 302 Ill. Dec. 488, 848 N.E.2d 1052, 2006 Ill. App. LEXIS 390 (1 Dist. 2006), appeal denied, 219 Ill. 2d 567, 303 Ill. Dec. 833, 852 N.E.2d 240 (2006).

- Sufficient Cause of Action

Even though motorist's complaint that city breached its duty to maintain an intersection in a reasonably safe manner did not state the location of tree and only the second amended complaint alleged that tree was on city or city controlled property, the city was sufficiently advised about its location and even if it had been on private property, the city, under its ordinances, still had a duty to remove it; therefore, the complaint did state a cause of action. First Nat'l Bank v. City of Aurora, 71 Ill. 2d 1, 15 Ill. Dec. 642, 373 N.E.2d 1326 (1978).

Voluntary Undertaking

Installation by school board of metal detectors and usage of those detectors on a random basis at high school was not a voluntary undertaking which obligated the board to protect against any criminal activity; rather, the board became obligated to use reasonable care and not to enhance the risk of danger. Lawson v. City of Chicago, 278 Ill. App. 3d 628, 215 Ill. Dec. 237, 662 N.E.2d 1377 (1 Dist. 1996).

Wilful and Wanton Misconduct

- In General

Former Ill. Rev. Stat. ch. 85, paras. 1-206, 3-102, 3-103, and 3-106 (now 735 ILCS 10/1-206, 3-102, 3-103, and 3-106) evidence a legislative intent to limit the premises tort liability of local public entities to only those instances in which the local entities or their employees are guilty of wilful and wanton negligence proximately causing the injury. Newby v. Lake Zurich Community Unit Dist. 95, 136 Ill. App. 3d 92, 90 Ill. Dec. 778, 482 N.E.2d 1061, 1985 Ill. App. LEXIS 2368 (1 Dist. 1985).

- Football Field

Court erred in dismissing a complaint against a school district because there was a question as to whether the district was subject to immunity as the property was located on school grounds and was being used for a summer football camp; therefore, at a minimum, there was an inference that the property in question was being used for educational purposes. Additionally, the allegation that the child had been instructed by the coaching staff to encounter the hazard upon which he was

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injured was sufficient to support a cause of action for willful and wanton conduct. Peters v. Herrin Cmty. Sch. Dist. No. 4, 401 Ill. App. 3d 356, 340 Ill. Dec. 661, 928 N.E.2d 1258, 2010 Ill. App. LEXIS 432 (5 Dist. 2010).

Where plaintiff identified defendant's wilful and wanton misconduct as: (1) failing to post signs around the football field warning of the possible presence of broken glass; and (2) failing to inspect, and remove debris from the field, the allegations described mere omissions, which did not amount to wilful and wanton misconduct. Majewski v. Chicago Park Dist., 177 Ill. App. 3d 337, 126 Ill. Dec. 724, 532 N.E.2d 409 (1 Dist. 1988).

Where plaintiff was injured in a school gymnasium, trial court properly dismissed plaintiff's complaint that alleged ordinary negligence; plaintiff must allege and prove wilful and wanton conduct in a negligence action against a "recreational facility." Ozuk v. River Grove Bd. of Educ., 281 Ill. App. 3d 239, 217 Ill. Dec. 18, 666 N.E.2d 687 (1 Dist. 1996).

Evidence could not support a finding of wilful and wanton conduct because the balance of the burdens did not demonstrate that the likelihood of severe injury clearly outweighed by a large margin the burden of preventing injury; plaintiff showed only three prior incidents involving a stretch of sidewalk about one quarter of a mile in length, making four injuries in a six year period, and the cost of repair would be quite substantial. Burlingame v. Chicago Park Dist., 293 Ill. App. 3d 931, 228 Ill. Dec. 362, 689 N.E.2d 234 (1 Dist. 1997).

LEGAL PERIODICALS

For article, "A Crossroads for Municipal Liability: The Curbing of Pedestrian Claims," see 83 Ill. B.J. 545 (1995).

For article, "Survey of Illinois Law [1990-91]: Tort Developments," see 16 S. Ill. U.L.J. 999 (1992).

For article, "Survey of Illinois Law [1989-90] - Municipal Corporations," see 15 S. Ill. U.L.J. 1021 (1991).

For article, "Municipal Corporations: 1986-87 Survey," see 12 S. Ill. U.L.J. 1045 (1988).

For article, "Permitted But Not Intended: Boub v. Township of Wayne, Municipal Tort Immunity in Illinois, and the Right to Local Travel," see, See 38 J. Marshall L. Rev. 545 (2004).

RESEARCH REFERENCES

Liability of owner, operator, or other parties, for personal injuries allegedly resulting from snow or ice on premises of parking lot. 74 ALR5th 49.

Liability of building owner, lessee, or manager for injury or death resulting from use of automatic passenger elevator. 99 ALR5th 141.

Liability of municipal corporation or electric utility for injury resulting from inoperative, malfunctioning, or otherwise defective streetlight. 111 ALR5th 579.

Practice Guides and Treatises.

Proving Fault in Auto Accident Cases § 4.34 Notice (IICLE).

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Illinois Jurisprudence, Personal Injury and Torts § 34:101 Park roads and parking lots.

Illinois Jurisprudence, Personal Injury and Torts § 34:96 Snowmobiling.

Illinois Jurisprudence, Personal Injury and Torts § 34:89 Generally; duty of care.

Illinois Jurisprudence, Personal Injury and Torts § 31:55 Inspection system.

Illinois Jurisprudence, Personal Injury and Torts § 31:54 Notice requirement.

Illinois Jurisprudence, Personal Injury and Torts § 31:52 Generally.

Illinois Jurisprudence, Personal Injury and Torts § 27:48 What constitutes constructive notice.

Illinois Jurisprudence, Personal Injury and Torts § 27:47 Generally.

Illinois Jurisprudence, Personal Injury and Torts § 27:30 Streets and highways.

Illinois Jurisprudence, Personal Injury and Torts § 27:18 Design, materials, and modes of construction.

Illinois Jurisprudence, Personal Injury and Torts § 27:10 Generally.

Illinois Jurisprudence, Personal Injury and Torts § 27:01 Generally; nature of duty.

Illinois Jurisprudence, Personal Injury and Torts § 3:83 Maintenance of public property.

§ 745 ILCS 10/3-103. [Adoption of construction or improvement plan]

Sec. 3-103. (a) A local public entity is not liable under this Article for an injury caused by the adoption of a plan or design of a construction of, or an improvement to public property where the plan or design has been approved in advance of the construction or improvement by the legislative body of such entity or by some other body or employee exercising discretionary authority to give such approval or where such plan or design is prepared in conformity with standards previously so approved. The local public entity is liable, however, if after the execution of such plan or design it appears from its use that it has created a condition that it is not reasonably safe.

(b) A public employee is not liable under this Article for an injury caused by the adoption of a plan or design of a construction of, or an improvement to public property.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 3-103.

CASE NOTES

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Analysis

Applicability
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Dangerous Condition
- Failure to Warn
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Improper Dismissal
- Shown
Improvements
Liability
- Defense
- Minor Child's Society and Companionship
Maintenance
- Jury Instruction Denied
Municipality
- Liability
Non-Absolute Protection
- Improvements
Plan or Design
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- Unsafe Condition
Scope
Sewer Grating
- Scope of Immunity
Signs
- Placement
Speed Limit Sign
- No Basis for Liability

Applicability

Where property in question is used for a sportive activity, 745 ILCS 10/3-106 rather than this section applies. Koltes v. St. Charles Park Dist., 293 Ill. App. 3d 171, 227 Ill. Dec. 293, 687

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N.E.2d 543 (2 Dist. 1997), appeal denied, 177 Ill. 2d 571, 232 Ill. Dec. 453, 698 N.E.2d 544 (1998).

Where a complaint did not clearly allege when injury arose, nor precisely how the injury was caused, it was apparent that plaintiffs did not allege that the cause of the injury was the plan or design of the dam; therefore, the immunity provision was not controlling. Anderson v. Sutter, 119 Ill. App. 3d 1070, 75 Ill. Dec. 871, 458 N.E.2d 39 (2 Dist. 1983).

Construction

Taken together, this section and 745 ILCS 10/3-104 and 745 ILCS 10/3-105 indicate that the General Assembly has carefully considered the liability of public entities with respect to traffic control devices. Snyder v. Curran Tp., 167 Ill. 2d 466, 212 Ill. Dec. 643, 657 N.E.2d 988 (1995).

Dangerous Condition

- Failure to Warn

Where there is no duty owing a plaintiff under 745 ILCS 10/3-102 no duty exists under this section or 745 ILCS 10/3-104 for allegedly creating an unreasonably dangerous condition and failing to warn of that danger, respectively. Jorgensen v. Whiteside, 233 Ill. App. 3d 783, 174 Ill. Dec. 925, 599 N.E.2d 1009 (1 Dist.), appeal denied, 147 Ill. 2d 627, 180 Ill. Dec. 150, 606 N.E.2d 1227 (1992).

Duty

- Common Law Duty

Where there is no duty owed to the plaintiff under 745 ILCS 10/3-102, no duty exists under the exceptions to the subsequent immunity sections either. Swett v. Village of Algonquin, 169 Ill. App. 3d 78, 119 Ill. Dec. 838, 523 N.E.2d 594 (2 Dist. 1988).

745 ILCS 10/3-102 creates no new duties, but simply articulates the common law duty to which the subsequently delineated immunities apply. The "duties" described in the exceptions to the immunities provisions in this section and 745 ILCS 10/3-104 all derive from the basic common law duty which is articulated in 745 ILCS 10/3-102. Swett v. Village of Algonquin, 169 Ill. App. 3d 78, 119 Ill. Dec. 838, 523 N.E.2d 594 (2 Dist. 1988).

- Crosswalks

Where no permanent physical obstruction or other condition of the road was unreasonably dangerous, the simultaneous presence of pedestrians and cars at the recreation facility in itself was not unreasonably dangerous, the owner could reasonably have expected drivers to watch for crossing pedestrians, and pedestrians to check before entering, and thus, since no condition on the land posed a danger absent the negligent act of either plaintiff or motorist, no duty was owed to a plaintiff injured in a crosswalk. Thompson v. Cook County Forest Preserve Dist., 231 Ill. App. 3d 88, 172 Ill. Dec. 584, 595 N.E.2d 1254 (1 Dist.), cert. denied, 146 Ill. 2d 653, 176 Ill. Dec. 823, 602 N.E.2d 477 (1992).

An argument that city owed plaintiff a duty of care to provide crosswalks at bus stops based on an exception to the grant of immunity to municipalities found in this section had no merit for two reasons: first, "Street Marking Standards" did not create an overall plan, but merely established guidelines for placing crosswalks and did not delineate particular locations for crosswalks; second, the location of each crosswalk was separately determined and would involve a

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discretionary decision on the part of the Commissioner of Public Works each time a crosswalk was established and, thus, a separate plan. Horrell v. City of Chicago, 145 Ill. App. 3d 428, 99 Ill. Dec. 524, 495 N.E.2d 1259 (1 Dist. 1986).

- Improvements

This section does not impose a duty on a local governmental entity to obtain proper approval for a road improvement project. Boub v. Township of Wayne, 291 Ill. App. 3d 713, 226 Ill. Dec. 44, 684 N.E.2d 1040 (2 Dist. 1997), aff'd, 183 Ill. 2d 520, 234 Ill. Dec. 195, 702 N.E.2d 535 (1998).

Because evidence showed that township created a condition that was reasonably unsafe, where the road was not adequately compacted and was unsafe, and had notice of the condition through road commissioner, the township was not entitled to immunity under subsection (a). Herman v. Will Tp., 284 Ill. App. 3d 53, 219 Ill. Dec. 688, 671 N.E.2d 1141 (3 Dist. 1996), appeal denied, 171 Ill. 2d 565, 222 Ill. Dec. 431, 677 N.E.2d 965 (1997).

- Not Shown

Defendants owed no duty under this section or 745 ILCS 10/3-104 in the absence of a duty owed under 745 ILCS 10/3-102. Mostafa v. City of Hickory Hills, 287 Ill. App. 3d 160, 222 Ill. Dec. 513, 677 N.E.2d 1312 (1 Dist. 1997).

Plaintiff failed to sufficiently allege the duty element where she failed to establish that the City owed a duty to erect median barriers on the highway. O'Brien v. City of Chicago, 285 Ill. App. 3d 864, 221 Ill. Dec. 134, 674 N.E.2d 927 (1 Dist. 1996), appeal denied, 172 Ill. 2d 554, 223 Ill. Dec. 196, 679 N.E.2d 381 (1997).

Where there was no duty owing to a jaywalking plaintiff under 745 ILCS 10/3-102, no duty existed under this section or 745 ILCS 10/3-104 for allegedly creating an unreasonably dangerous condition and failing to warn of that danger. Risner v. City of Chicago, 150 Ill. App. 3d 827, 104 Ill. Dec. 94, 502 N.E.2d 357 (1 Dist. 1986).

Where there is no duty owing to the plaintiff under 745 ILCS 10/3-102, no duty exists under this section; therefore, city owed no duty to plaintiff. Horrell v. City of Chicago, 145 Ill. App. 3d 428, 99 Ill. Dec. 524, 495 N.E.2d 1259 (1 Dist. 1986).

- Operation of Sewage System

Where plaintiff did not allege a cause of action based on the design or plan of construction of defendant sanitary district's sewer system, but on defendant's negligence or intentional failure to properly operate the system so as to prevent the sewage overflow onto his property, this section did not bar a small claims action by plaintiff. Porter v. Urbana-Champaign Sanitary Dist., 237 Ill. App. 3d 296, 178 Ill. Dec. 137, 604 N.E.2d 393 (1992).

- Roadways

A public entity has a duty to maintain its roadways in a reasonably safe condition and to warn of a condition which endangers the safe movement of traffic and this duty extends to make public improvements, once undertaken, reasonably safe. Jorgensen v. Whiteside, 233 Ill. App. 3d 783, 174 Ill. Dec. 925, 599 N.E.2d 1009 (1 Dist.), appeal denied, 147 Ill. 2d 627, 180 Ill. Dec. 150, 606 N.E.2d 1227 (1992).

- Scope

A duty to maintain roadways in a reasonably safe condition does not extend to the creation of public improvements, such as the erection of median barriers. Charpentier v. City of Chicago, 150 Ill. App. 3d 988, 104 Ill. Dec. 122, 502 N.E.2d 385 (1 Dist. 1986).

- Sidewalks

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Because the common law duty to maintain property in a reasonably safe condition did not require the creation of public improvements such as crosswalks and sidewalks, the forest preserve owed no duty to construct a sidewalk at a recreational area where a child was killed, moreover, the characterization of the facility as a parking lot or a roadway did not alter this result. Thompson v. Cook County Forest Preserve Dist., 231 Ill. App. 3d 88, 172 Ill. Dec. 584, 595 N.E.2d 1254 (1 Dist.), cert. denied, 146 Ill. 2d 653, 176 Ill. Dec. 823, 602 N.E.2d 477 (1992).

Where, under a village ordinance, there was no duty imposed on the village to install sidewalks, it would be unreasonable to require the village to continue existing sidewalks, despite plaintiff's claim that the village undertook a plan to provide sidewalks. Best v. Richert ex rel. Pauley, 72 Ill. App. 3d 371, 27 Ill. Dec. 663, 389 N.E.2d 894 (2 Dist. 1979).

Hazardous Condition

- Shown

Installation of a road sign by township, intended to warn motorists of a dangerous hill and to reduce their speed to avoid a possible accident caused by driving too fast, which by its nonconforming construction made it unlikely that it would be seen by motorists at night, created a hazardous highway condition. Parson v. Carbondale Twp., 217 Ill. App. 3d 637, 160 Ill. Dec. 454, 577 N.E.2d 779 (5 Dist. 1991), cert. denied, 143 Ill. 2d 640, 167 Ill. Dec. 402, 587 N.E.2d 1017 (1992).

Improper Dismissal

- Shown

Dismissal of plaintiff's complaint based on defense of subsection (a) of this section was improper where the case was decided solely on the pleadings filed by the plaintiff, where the record contained no affidavit or affirmation of fact which would give rise to any defense under this section, and where the defendant did not address the issue of governmental immunity in its brief. Bridgman v. Sanitary Dist., 164 Ill. App. 3d 287, 115 Ill. Dec. 107, 517 N.E.2d 309 (4 Dist. 1987).

Improvements

Where plaintiff's claim was that road improvements had created slope which caused defendant's injuries, village was not immune under subsection (a) where jury found slope was not reasonably safe. Huggins v. Village of Bishop Hill, 294 Ill. App. 3d 466, 228 Ill. Dec. 897, 690 N.E.2d 656 (3 Dist. 1998), appeal denied, 178 Ill. 2d 576, 232 Ill. Dec. 846, 699 N.E.2d 1031 (1998).

Liability

- Defense

A city may not escape liability from this section by raising the immunities contained in sections 745 ILCS 10/3-104 and 745 ILCS 10/3-108. Jorgensen v. Whiteside, 233 Ill. App. 3d 783, 174 Ill. Dec. 925, 599 N.E.2d 1009 (1 Dist.), appeal denied, 147 Ill. 2d 627, 180 Ill. Dec. 150, 606 N.E.2d 1227 (1992).

- Minor Child's Society and Companionship

Other jurisdictions overwhelmingly support the view that parents may not recover for the loss of a minor child's society and companionship; the court was in agreement with those determinations in

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a suit under subsection (a) of this section brought by parents of a minor for recovery for damages for loss of minor's society and companionship during her minority due to injuries sustained by minor while in a car in which she was a passenger, when the car went out of control and struck a signpost while speed-clocking. Curtis ex rel. Curtis v. County of Cook, 109 Ill. App. 3d 400, 65 Ill. Dec. 87, 440 N.E.2d 942 (1 Dist. 1982), rev'd on other grounds, 98 Ill. 2d 158, 74 Ill. Dec. 614, 456 N.E.2d 116 (1983).

Maintenance

- Jury Instruction Denied

Where the issue of maintenance of crosswalk was not within the scope of the pleadings in a pedestrian crossing guard's personal injury action, the court properly refused her instruction which set out city's duty to maintain its property in a reasonably safe condition. Fugate v. City of Peoria, 44 Ill. App. 3d 692, 3 Ill. Dec. 314, 358 N.E.2d 712 (3 Dist. 1976).

Municipality

- Liability

Regardless of whatever immunity the public official and employees of county enjoyed for their work in connection with road and culvert improvements, county itself could be subjected to liability consistent with the terms of this Act. Warner/Elektra/Atlantic Corp. v. County of DuPage, 762 F. Supp. 784 (N.D. Ill. 1991).

Former Ill. Rev. Stat. ch. 85, paras. 1-206, 3-102, 3-103, and 3-106 (now 735 ILCS 10/1-206, 3-102, 3-103, and 3-106) evidence a legislative intent to limit the premises tort liability of local public entities to only those instances in which the local entities or their employees are guilty of wilful and wanton negligence proximately causing the injury. Newby v. Lake Zurich Community Unit Dist. 95, 136 Ill. App. 3d 92, 90 Ill. Dec. 778, 482 N.E.2d 1061, 1985 Ill. App. LEXIS 2368 (1 Dist. 1985).

Non-Absolute Protection

- Improvements

Although this Act offers seemingly broad protection to the actions of governmental units, that protection or immunity is not absolute, and once a governmental unit adopts a plan in the making of public improvements, it owes a duty to a plaintiff to maintain those improvements. First Nat'l Bank v. City of Aurora, 71 Ill. 2d 1, 15 Ill. Dec. 642, 373 N.E.2d 1326 (1978).

Plan or Design

- Scope

Although a local government had an obligation to maintain public property in a reasonably safe condition, precise location of a signpost does not constitute a "plan or design" within the intendment of this section. Curtis v. County of Cook, 98 Ill. 2d 158, 74 Ill. Dec. 614, 456 N.E.2d 116 (1983).

- Unsafe Condition

Mother's action against the city and a car manufacturer arising out of a car accident in which the mother's daughter was fatally injured was remanded to state court because the manufacturer

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failed to show that the mother's claim against the non-diverse city had no reasonable possibility of success as the parties disputed the nature and scope of the plan of improvements the city undertook to correct dangerous conditions where the accident occurred. The dispute was relevant to the issue of immunity under 745 ILCS 10/3-104 of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/3-103, and a reasonable reading of the mother's allegations was that the city engaged in actions that were outside the scope of immunity under the Act. Chang v. Mazda Motor of Am., Inc., F. Supp. 2d , 2009 U.S. Dist. LEXIS 26981 (N.D. Ill. Mar. 31, 2009).

City's argument that this act bars plaintiff's action was meritless because the second-amended complaint did allege that the design created an unsafe condition. McKinnon v. City of Chicago, 243 Ill. App. 3d 87, 183 Ill. Dec. 810, 612 N.E.2d 67 (1 Dist.), appeal denied, 151 Ill. 2d 566, 186 Ill. Dec. 384, 616 N.E.2d 337 (1993).

Under former Ill. Rev. Stat. ch. 85, para. 3-103(a) (now 745 ILCS 10/3-103), when a municipality adopts a plan or design for improvements of public property, the Local Governmental and Governmental Employees Tort Immunity Act, after exculpating the governmental unit from liability, generally provides that local public entity is liable, however, if after the execution of such plan or design it appears from its use that it has created a condition that it is not reasonably safe. Newby v. Lake Zurich Community Unit Dist. 95, 136 Ill. App. 3d 92, 90 Ill. Dec. 778, 482 N.E.2d 1061, 1985 Ill. App. LEXIS 2368 (1 Dist. 1985).

Scope

By the express terms of the final sentence of subsection (a) of this section, immunity from liability for injuries resulting from a design defect does not extend to designs which result in an unsafe condition. Warner/Elektra/Atlantic Corp. v. County of DuPage, 762 F. Supp. 784 (N.D. Ill. 1991).

Public employees, which included all defendants except the city, were exempt from liability arising from the design and construction of improvements to public property. Deren ex rel. Deren v. City of Carbondale, 13 Ill. App. 3d 473, 300 N.E.2d 590 (5 Dist. 1973).

Sewer Grating

- Scope of Immunity

City had immunity for the plan or design of a sewer grating where the record showed the then Illinois Department of Public Works approved the design at the time of the construction project; however, the city would not have immunity if, after the sewer grating was put in, it appeared from its use that the design created a condition that was not reasonably safe. Cole v. City of E. Peoria, 201 Ill. App. 3d 756, 147 Ill. Dec. 429, 559 N.E.2d 769 (3 Dist. 1990).

Signs

- Placement

If township had received prior written approval from the county superintendent of highways prior to the placement of warning sign, pursuant to 625 ILCS 5/11-304 of the Vehicle Code, or had erected sign in compliance with the standards enunciated in the Illinois Manual, it would have been immune from liability. Snyder v. Curran Tp., 167 Ill. 2d 466, 212 Ill. Dec. 643, 657 N.E.2d 988 (1995).

Speed Limit Sign

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- No Basis for Liability

Where the continuing act of using a speed limit sign as a base for speed clocking was the precise knowledge with which defendant county was charged, failure to post patrols or install speed control equipment in the area was not a basis for liability. Curtis ex rel. Curtis v. County of Cook, 109 Ill. App. 3d 400, 65 Ill. Dec. 87, 440 N.E.2d 942 (1 Dist. 1982), rev'd on other grounds, 98 Ill. 2d 158, 74 Ill. Dec. 614, 456 N.E.2d 116 (1983).

LEGAL PERIODICALS

For article, "Permitted But Not Intended: Boub v. Township of Wayne, Municipal Tort Immunity in Illinois, and the Right to Local Travel," see, See 38 J. Marshall L. Rev. 545 (2004).

Practice Guides and Treatises.

Proving Fault in Auto Accident Cases § 4.25 Design of Intersections (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 31:50 Design and construction.

Illinois Jurisprudence, Personal Injury and Torts § 27:18 Design, materials, and modes of construction.

Illinois Jurisprudence, Personal Injury and Torts § 3:83 Maintenance of public property.

§ 745 ILCS 10/3-104. [Failure to provide proper traffic devices, signs, markings or barriers]

Sec. 3-104. Neither a local public entity nor a public employee is liable under this Act for an injury caused by the failure to initially provide regulatory traffic control devices, stop signs, yield right-of-way signs, speed restriction signs, distinctive roadway markings or any other traffic regulating or warning sign, device or marking, signs, overhead lights, traffic separating or restraining devices or barriers.

(Source: P.A. 84-1431.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 3-104.

CASE NOTES

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- Signs
Warning Devices

Breach of Duty

There is no question that a local governmental unit has the duty to exercise ordinary care to maintain its streets in a reasonably safe condition; however, there is no authority that a public entity breaches its duty by allowing an area adjacent to an intersection to pose visual obstructions to traffic to oncoming drivers although there is a clearly visible, properly maintained traffic signal plainly observable to all drivers concerned. The exception is where there is a statutory directive requiring a public entity to remove any visual obstructions. Manning v. Hazekamp, 211 Ill. App. 3d 119, 155 Ill. Dec. 557, 569 N.E.2d 1168 (4 Dist. 1991).

City Ordinances

- Immunity

Assuming that plaintiff was correct that city's ordinances imposed a duty upon it to post barriers at its street reconstruction sites and assuming, further, that the city was thus negligent in failing to post such barriers, the fact remained that this Act immunized the city from liability for that negligence. Newsome v. Thompson, 202 Ill. App. 3d 1074, 148 Ill. Dec. 377, 560 N.E.2d 974 (1 Dist. 1990).

Common Law Duty

- In General

Section 745 ILCS 10/3-102 creates no new duties, but simply articulates the common law duty to which the subsequently delineated immunities apply. The "duties" described in the exceptions to those immunities provisions in 745 ILCS 10/3-103 and this section all derive from the basic common law duty which is articulated in 745 ILCS 10/3-102. Swett v. Village of Algonquin, 169 Ill. App. 3d 78, 119 Ill. Dec. 838, 523 N.E.2d 594 (2 Dist. 1988).

Where there is no duty owed to plaintiff under 745 ILCS 10/3-102, no duty exists under the exceptions to the subsequent immunity sections, either. Swett v. Village of Algonquin, 169 Ill. App. 3d 78, 119 Ill. Dec. 838, 523 N.E.2d 594 (2 Dist. 1988).

- Traffic Control

Installation of traffic control devices is an integral part of the municipality's common law duty to maintain its public highways in a reasonably safe condition. Parson v. Carbondale Twp., 217 Ill. App. 3d 637, 160 Ill. Dec. 454, 577 N.E.2d 779 (5 Dist. 1991), cert. denied, 143 Ill. 2d 640, 167 Ill. Dec. 402, 587 N.E.2d 1017 (1992).

Complaint

- Held Insufficient

Where plaintiff alleged that the city breached its statutory duty under 625 ILCS 5/11-304 by failing to install various traffic control devices, the complaint failed to state a cause of action against the city. Santelli v. City of Chicago, 222 Ill. App. 3d 862, 165 Ill. Dec. 277, 584 N.E.2d 456 (1 Dist. 1991).

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- Held Sufficient

A complaint alleging wilful and wanton misconduct on the part of a city was sufficient to state a cause of action where it alleged facts concerning the escorting of a convoy sufficient to charge conduct under circumstances exhibiting a reckless disregard for the safety of others, and where such facts showed either a failure to exercise ordinary care to prevent an apparent danger or a failure to discover danger through carelessness or recklessness when it could have been discovered by ordinary care. Porter v. City of Decatur, 16 Ill. App. 3d 1031, 307 N.E.2d 440 (4 Dist. 1974).

Conduct Immunized

This section immunizes not only negligent conduct, but also wilful and wanton conduct. Gapinske v. Town of Condit, 250 Ill. App. 3d 1045, 189 Ill. Dec. 334, 619 N.E.2d 1383 (4 Dist. 1993), cert. denied, 154 Ill. 2d 559, 197 Ill. Dec. 485, 631 N.E.2d 707 (1994).

Construction

Taken together, 745 ILCS 10/3-103, 745 ILCS 10/3-105 and this section indicate that the General Assembly has carefully considered the liability of public entities with respect to traffic control devices. Snyder v. Curran Tp., 167 Ill. 2d 466, 212 Ill. Dec. 643, 657 N.E.2d 988 (1995).

In action to recover damages for injuries received when plaintiff's Jeep struck a guardrail on a public highway, trial court properly dismissed complaint alleging violations of the Illinois Highway Code, former Ill. Rev. Stat. ch. 121, para. 5-205.1, 5-205.3, 6-407 (1991), because the county and its superintendent of highways did not owe plaintiff a duty, no act or omission by defendants proximately caused plaintiff's injuries, defendants were immune from liability under the Local Governmental and Governmental Employees Tort Immunity Act, former ch. 85, par. 1-101 et seq.3-104 (1991), and statutes under which the action was brought merely provided a guideline or framework in which county and township officials were allowed to carry out the functions of their offices but were not relevant to the imposition of a duty on the county and the superintendent. Bernabei v. County of La Salle, 236 Ill. App. 3d 958, 176 Ill. Dec. 896, 602 N.E.2d 842, 1992 Ill. App. LEXIS 1688 (1 Dist. 1992).

Division of Responsibility

The question of division of responsibility between various governmental agencies for road maintenance is generally one of law for the courts. Fitt v. City of Mattoon, 215 Ill. App. 3d 472, 158 Ill. Dec. 882, 574 N.E.2d 1275 (4 Dist.), cert. denied, 141 Ill. 2d 539, 162 Ill. Dec. 486, 580 N.E.2d 112 (1991).

Duty Not Shown

Trial court properly granted summary judgment to the city on the visually-impaired pedestrian's personal injury lawsuit against it for injuries she sustained in a fall on its dug-up sidewalk as a local public entity was not liable for an injury caused by its failure to initially provide traffic warning signs, restraining devices, or barriers, and "traffic" applied not only to street traffic, but also pedestrians as well. Prostran v. City of Chicago, 349 Ill. App. 3d 81, 285 Ill. Dec. 123, 811 N.E.2d 364, 2004 Ill. App. LEXIS 676 (1 Dist. 2004).

There was no duty on the part of defendant to remove dumpster on his property so that vehicles approaching the intersection could see other intersecting motorists, bicyclists or pedestrians as

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the dumpster was not inherently dangerous as a falling tree or branch. Adame v. Munoz, 287 Ill. App. 3d 181, 222 Ill. Dec. 619, 678 N.E.2d 26 (1 Dist. 1997).

Duty to Build

Because the common law duty to maintain property in a reasonably safe condition did not require the creation of public improvements such as crosswalks and sidewalks, the forest preserve owed no duty to construct a sidewalk at a recreational area where a child was killed, moreover, the characterization of the facility as a parking lot or a roadway did not alter this result. Thompson v. Cook County Forest Preserve Dist., 231 Ill. App. 3d 88, 172 Ill. Dec. 584, 595 N.E.2d 1254 (1 Dist.), cert. denied, 146 Ill. 2d 653, 176 Ill. Dec. 823, 602 N.E.2d 477 (1992).

Duty to Maintain

- Traffic Cones

This section did not bar those portions of the plaintiff's complaint that alleged misconduct in the way the traffic regulating cones were placed. Jefferson v. City of Chicago, 269 Ill. App. 3d 672, 207 Ill. Dec. 218, 646 N.E.2d 1305 (1 Dist. 1995).

- Traffic Control Devices

Once the decision to post a sign was made, officials had a duty to maintain the sign with reasonable care. Corning v. East Oakland Tp., 283 Ill. App. 3d 765, 218 Ill. Dec. 853, 670 N.E.2d 350 (4 Dist. 1996).

Once having elected to erect devices to guide, direct or illuminate traffic, a city then has a duty to maintain those devices in a condition conducive to the safe flow of traffic. Smith v. Godin, 61 Ill. App. 3d 480, 18 Ill. Dec. 754, 378 N.E.2d 218 (5 Dist. 1978).

Duty to Warn

- In General

Where there is no duty owing a plaintiff under 745 ILCS 10/3-102 no duty exists under this section or 745 ILCS 10/3-103 for allegedly creating an unreasonably dangerous condition and failing to warn of that danger, respectively. Jorgensen v. Whiteside, 233 Ill. App. 3d 783, 174 Ill. Dec. 925, 599 N.E.2d 1009 (1 Dist.), appeal denied, 147 Ill. 2d 627, 180 Ill. Dec. 150, 606 N.E.2d 1227 (1992).

A duty to warn stems from the duty to maintain the public roadways in a reasonably safe condition, and does not arise from this section. Dinges v. Gabardi, 202 Ill. App. 3d 732, 147 Ill. Dec. 873, 560 N.E.2d 21 (2 Dist. 1990).

- Failure to Allege

Where plaintiff's complaint did not contain any factual allegations indicating that it was necessary to warn of a condition or that condition was not reasonably apparent to, or anticipated by, a person in the exercise of due care and the extent of plaintiff's factual allegations was that plaintiff was a passenger in a vehicle driven by another, the vehicle left the road striking a bridge abutment, and plaintiff was injured, complaint was appropriately dismissed. Ball v. Waldo Tp., 207 Ill. App. 3d 968, 153 Ill. Dec. 295, 567 N.E.2d 10 (4 Dist. 1991).

- Not Shown

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City did not owe a duty to the businessman to put a rubber cone or wooden horse over a light pole base sticking up from the city's sidewalk as a city was not liable for an injury caused by its failure to provide safety devices regardless of the ease or burden of doing so, and, thus, it was not liable for injuries the businessman suffered when the businessman tripped over the light pole base. Bonner v. City of Chicago, 334 Ill. App. 3d 481, 268 Ill. Dec. 299, 778 N.E.2d 285, 2002 Ill. App. LEXIS 913 (1 Dist. 2002).

Defendant township was absolutely immune from liability for any failure to initially place warning signs at a bridge that was under repair and on which the plaintiff was injured while riding a bicycle. Boub v. Township of Wayne, 291 Ill. App. 3d 713, 226 Ill. Dec. 44, 684 N.E.2d 1040 (2 Dist. 1997), aff'd, 183 Ill. 2d 520, 234 Ill. Dec. 195, 702 N.E.2d 535 (1998).

Defendants owed no duty under this section or 745 ILCS 10/3-103 in the absence of a duty owed under 745 ILCS 10/3-102. Mostafa v. City of Hickory Hills, 287 Ill. App. 3d 160, 222 Ill. Dec. 513, 677 N.E.2d 1312 (1 Dist. 1997).

Where there was no duty owing to a jaywalking plaintiff under 745 ILCS 10/3-102, no duty existed under 745 ILCS 10/3-103 or this section for allegedly creating an unreasonably dangerous condition and failing to warn of that danger. Risner v. City of Chicago, 150 Ill. App. 3d 827, 104 Ill. Dec. 94, 502 N.E.2d 357 (1 Dist. 1986).

Where collision occurred in a residential area, it would be reasonable to expect that pedestrians would be crossing the street at various locations and to expect motorists to anticipate this and drive accordingly; therefore village, as a matter of law, could not be negligent for failing to warn of such an obvious fact. Best v. Richert ex rel. Pauley, 72 Ill. App. 3d 371, 27 Ill. Dec. 663, 389 N.E.2d 894 (2 Dist. 1979).

- Roadways

Municipality did not have a duty to warn the decedent of the icy condition of roadway by posting warning signs at the rail crossing where he was hit by a train. Patch v. Township of Persifer, 214 Ill. App. 3d 108, 158 Ill. Dec. 21, 573 N.E.2d 834 (3 Dist.), cert. denied, 141 Ill. 2d 545, 162 Ill. Dec. 493, 580 N.E.2d 119 (1991).

Effect of Amendment

The legislature's 1986 deletion of subsection (b) in its entirety stripped the word "initially" of any meaning, and we view its continued presence in the statute (the old subsection (a)) as simply a legislative oversight. Gapinske v. Town of Condit, 250 Ill. App. 3d 1045, 189 Ill. Dec. 334, 619 N.E.2d 1383 (4 Dist. 1993), cert. denied, 154 Ill. 2d 559, 197 Ill. Dec. 485, 631 N.E.2d 707 (1994).

- Legislative Intent

When the legislature amended this section in 1986, it deleted subsection (b) in its entirety and enlarged the scope of a municipality's immunity if it failed to provide traffic devices. Filipetto ex rel. Filipetto v. Village of Wilmette, 254 Ill. App. 3d 461, 193 Ill. Dec. 901, 627 N.E.2d 60 (1 Dist. 1993).

- Retroactivity

Where an accident which applied subsection (b) of this section occurred one month before this section was amended, the pre-1986 subsection (b) applied, which stated that a local governmental entity had an obligation to maintain public highways within its boundaries in a safe condition, and that obligation included a duty to warn motorists of dangerous conditions. Nobles v. White County, 973 F.2d 544 (7th Cir. 1992).

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- Warning Devices

Under subsection (b), prior to its 1986 amendment, it was possible to hold a municipality liable for the failure to provide a traffic warning sign or device if such was necessary to warn of a condition which endangered the safe movement of traffic; however, in 1986, the legislature revised this section, repealing subsection (b) in its entirety and expanding the coverage of subsection (a) so that now a local public entity does not have a duty to provide traffic control devices. Herzog v. Lexington Tp., 254 Ill. App. 3d 337, 194 Ill. Dec. 329, 627 N.E.2d 666 (4 Dist. 1993), rev'd on other grounds, 167 Ill. 2d 288, 212 Ill. Dec. 581, 657 N.E.2d 926 (1995).

Under case governed by the pre-1986 section 3-104(b) (see now this section), village had a duty under section 3-102(a) (745 ILCS 10/3-102) and former subsection (b) to provide traffic warning signals, signs, markings or other devices to warn of a condition which endangered the safe movement of traffic when compressor equipment was placed on the roadway; the road repair equipment constituted an obstacle on a public way that created an unreasonable risk of harm to vehicles and bicycles. Filipetto ex rel. Filipetto v. Village of Wilmette, 254 Ill. App. 3d 461, 193 Ill. Dec. 901, 627 N.E.2d 60 (1 Dist. 1993).

Evidence Allowed

Testimony that there were no warning signs was allowed as it was introduced to show defendant has no warning of hazardous road conditions and trial court gave a limiting instruction that such testimony could only be used on the issue of the township's negligence. Herman v. Will Tp., 284 Ill. App. 3d 53, 219 Ill. Dec. 688, 671 N.E.2d 1141 (3 Dist. 1996), appeal denied, 171 Ill. 2d 565, 222 Ill. Dec. 431, 677 N.E.2d 965 (1997).

Granted

The deficiencies identified within plaintiff's negligence complaint pertained to visual devices at the crosswalk, announcements over the existing loudspeaker system, audible devices in addition to the loudspeaker system, and a gate at the crosswalk; the first three were traffic warning signs or devices and the fourth a traffic barrier, all of which were included in the scope of 745 ILCS 10/3-104. Chiriboga v. AMTRAK, 687 F. Supp. 2d 764, 2009 U.S. Dist. LEXIS 78995 (N.D. Ill. 2009).

Immunity

- Duration

While a public entity or public employee is immune from liability for initially failing to provide signs warning of a dangerous condition, after there has been notice to the public entity or public employee that such a dangerous condition exists, the immunity no longer exists. Castorena v. Browning-Ferris Indus., 217 Ill. App. 3d 328, 160 Ill. Dec. 309, 577 N.E.2d 185 (2 Dist. 1991), cert. denied, 144 Ill. 2d 631, 167 Ill. Dec. 1062, 588 N.E.2d 1192, modified on other grounds, 237 Ill. App. 3d 702, 178 Ill. Dec. 790, 605 N.E.2d 584 (2 Dist. 1992).

- Emergency Vehicles

A municipality need only maintain the roadways in a safe and passable condition and that the area surrounding the roadway is unsafe for vehicular travel is not the sort of defect for which a municipality is liable; an exception to this rule for emergency vehicles would enlarge the duty of the City in an inappropriate way. Knight v. City of Chicago, 298 Ill. App. 3d 797, 233 Ill. Dec. 9, 700 N.E.2d 110 (1 Dist. 1998), aff'd sub nom. Washington v. City of Chicago, 188 Ill. 2d 235, 242 Ill. Dec. 75, 720 N.E.2d 1030 (1999).

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City did not have a duty to make the median reasonably safe and free from obstructions for emergency vehicles. Knight v. City of Chicago, 298 Ill. App. 3d 797, 233 Ill. Dec. 9, 700 N.E.2d 110 (1 Dist. 1998), aff'd sub nom. Washington v. City of Chicago, 188 Ill. 2d 235, 242 Ill. Dec. 75, 720 N.E.2d 1030 (1999).

- Failure to Post Railroad Crossing Signs

Where village failed to post certain warning and speed reduction signs in advance of railroad crossing as mandated by both the Illinois Vehicle Code (625 ILCS 5/1-100 et seq.) and the Illinois Commerce Commission, this Act absolutely immunized local public entities from any tort liability for failing to fulfill those duties. Ramirez v. Village of River Grove, 266 Ill. App. 3d 930, 204 Ill. Dec. 48, 641 N.E.2d 7 (1 Dist. 1994), appeal denied, 159 Ill. 2d 579, 207 Ill. Dec. 523, 647 N.E.2d 1016 (1995).

- Granted

This section provides public entities with immunity from all liability for failing to provide traffic control devices, including warning signs. Culver v. Velcor, 247 Ill. App. 3d 589, 186 Ill. Dec. 571, 616 N.E.2d 1013 (2 Dist.), appeal denied, 152 Ill. 2d 556, 190 Ill. Dec. 885, 622 N.E.2d 1202 (1993).

This section immunized a city from alleged acts of negligence. Milder v. Van Alstine, 230 Ill. App. 3d 869, 172 Ill. Dec. 332, 595 N.E.2d 693 (3 Dist. 1992).

While 625 ILCS 5/11-304 imposes an obligation on local authorities to post warning signs, this section immunizes local authorities from any tort liability for failing to fulfill this duty. Fitt v. City of Mattoon, 215 Ill. App. 3d 472, 158 Ill. Dec. 882, 574 N.E.2d 1275 (4 Dist.), cert. denied, 141 Ill. 2d 539, 162 Ill. Dec. 486, 580 N.E.2d 112 (1991).

Liability

- Defenses

A city may not escape liability from 745 ILCS 10/3-103 by raising the immunities contained in this section and 745 ILCS 10/3-108. Jorgensen v. Whiteside, 233 Ill. App. 3d 783, 174 Ill. Dec. 925, 599 N.E.2d 1009 (1 Dist.), appeal denied, 147 Ill. 2d 627, 180 Ill. Dec. 150, 606 N.E.2d 1227 (1992).

- Not Shown

Notwithstanding a municipality's general duty to maintain its property in a reasonably safe condition, and its duty to make public improvements, once undertaken, in a reasonably safe manner under this section, there was no liability for failing to provide traffic separating devices or barriers or warning signs of any kind during road reconstruction; in view of city's immunity from liability, it was immaterial that it was a reasonable inference from the amended complaint that the street was in a dangerous condition on the date of plaintiff's accident. Newsome v. Thompson, 202 Ill. App. 3d 1074, 148 Ill. Dec. 377, 560 N.E.2d 974 (1 Dist. 1990).

Summary Judgment

- Held Proper

Trial court properly granted partial summary judgment to legal counsel on the issue of proximate cause in the insurer's legal malpractice claim against legal counsel for allegedly not perfecting an appeal in a case where the insured, the county, was found liable for negligently placing stripes on the road it owned that permitted passing and caused a head-on collision when a driver passing

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another vehicle could not see the car coming in the opposite direction due to a rise in the road; the county, in any event, was not immunized under the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/3-104 because immunity was authorized only for the initial-failure-to-place traffic control devices, not the negligent placement of them. Governmental Interinsurance Exch. v. Judge, 356 Ill. App. 3d 264, 292 Ill. Dec. 141, 825 N.E.2d 729, 2005 Ill. App. LEXIS 250 (4 Dist. 2005), aff'd, 221 Ill. 2d 195, 302 Ill. Dec. 746, 850 N.E.2d 183 (2006).

Summary judgment in the city's favor in a case asserting failure to provide traffic control device was held proper pursuant to this section. West v. Kirkham, 147 Ill. 2d 1, 167 Ill. Dec. 963, 588 N.E.2d 1104 (1992).

- Not Proper

In a legal malpractice action, the county's motion for summary judgment on the issue of proximate cause was properly denied because 745 ILCS 10/3-104 did not immunize the county in the underlying case. Had defendants perfected the appeal in the underlying case, the appellate court would not have reversed the judgment based on 745 ILCS 10/3-104, and, therefore, defendants' negligence in failing to perfect the appeal was not the proximate cause of the clients' injuries. Governmental Interinsurance Exch. v. Judge, 221 Ill. 2d 195, 302 Ill. Dec. 746, 850 N.E.2d 183, 2006 Ill. LEXIS 629 (2006).

Traffic Control

- In General

This section clearly provides absolute immunity to municipalities who fail to provide traffic signals and signs. Milder v. Van Alstine, 230 Ill. App. 3d 869, 172 Ill. Dec. 332, 595 N.E.2d 693 (3 Dist. 1992).

Court concluded that the city was not in violation of the Local Governmental and Governmental Employees Tort Immunity Act, former Ill. Rev. Stat. ch. 85, para. 3-104 (now 745 ILCS 10/3-104), because it never undertook or was required to provide traffic regulating signs at the intersection. First Nat'l Bank v. Aurora, 41 Ill. App. 3d 326, 353 N.E.2d 309, 1976 Ill. App. LEXIS 2953 (1 Dist. 1976).

- Immunity Applied

County had no duty to install a stop sign for southbound or westbound traffic and warning signs of a hazardous condition, as it was immune from liability for any failure to post traffic-control devices under this section. Nobles v. White County, 973 F.2d 544 (7th Cir. 1992).

City was immune from suit for failure to post traffic control devices. Hermann v. City of Chicago, 16 Ill. App. 3d 696, 306 N.E.2d 516 (1 Dist. 1973).

- Notice of Danger

Trial court properly granted summary judgment to the city on the visually-impaired pedestrian's personal injury lawsuit against it for injuries she sustained in a fall on its dug-up sidewalk as a local public entity was not liable for an injury caused by its failure to initially provide traffic warning signs, restraining devices, or barriers, and "traffic" applied not only to street traffic, but also pedestrians as well. Prostran v. City of Chicago, 349 Ill. App. 3d 81, 285 Ill. Dec. 123, 811 N.E.2d 364, 2004 Ill. App. LEXIS 676 (1 Dist. 2004).

This section absolutely immunizes a local public entity from failing to provide traffic control devices even if the governmental unit had notice of the hazardous condition of the roadway. Wood ex rel. Harrold v. Village of Grayslake, 229 Ill. App. 3d 343, 170 Ill. Dec. 590, 593

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N.E.2d 132 (2 Dist. 1992); Milder v. Van Alstine, 230 Ill. App. 3d 869, 172 Ill. Dec. 332, 595 N.E.2d 693 (3 Dist. 1992).

- Responsibility

The fact that local law enforcement officials could enforce traffic laws in an intersection is irrelevant to the issue of who, the state or the local municipality, had the responsibility and duty to maintain traffic control devices at the intersection. Fitt v. City of Mattoon, 215 Ill. App. 3d 472, 158 Ill. Dec. 882, 574 N.E.2d 1275 (4 Dist.), cert. denied, 141 Ill. 2d 539, 162 Ill. Dec. 486, 580 N.E.2d 112 (1991).

- Signs

A clearance sign, indicating the height under an overpass, is not a "traffic regulating sign" within the meaning of subsection (a) of this section. DiOrio v. City of Chicago, 99 Ill. App. 3d 1047, 55 Ill. Dec. 50, 425 N.E.2d 1223 (1 Dist. 1981).

The denomination of a sign as a regulatory or warning sign in the state manual does not determine whether a particular sign is necessary to warn of a condition which endangered the safe movement of traffic, the standard which governs immunity under subsection (b) of this section. Janssen v. City of Springfield, 79 Ill. 2d 435, 38 Ill. Dec. 789, 404 N.E.2d 213 (1980).

Warning Devices

Railroad was not entitled to a new trial based on the trial court's alleged error in allowing the executrix to present evidence and argue that the railroad was negligent for having failed to install and activate pedestrian signals prior to the decedent's accident under 745 ILCS 10/3-104 and 745 ILCS 10/2-109 because the jury could have separated the claims and demonstrated its ability to do so by specifically finding that the engineer had failed to sound the train's horn in a timely manner in addition to finding more generally that the railroad did not provide adequate warning of the train's approach. McDonald v. Northeast Ill. Reg'l Commuter R.R. Corp., Ill. App. 3d , Ill. Dec. , N.E.2d , 2011 Ill. App. LEXIS 910 (1 Dist. Aug. 24, 2011).

City has absolute immunity from liability based on alleged failure to erect traffic warnings or barricades. Knight v. City of Chicago, 298 Ill. App. 3d 797, 233 Ill. Dec. 9, 700 N.E.2d 110 (1 Dist. 1998), aff'd sub nom. Washington v. City of Chicago, 188 Ill. 2d 235, 242 Ill. Dec. 75, 720 N.E.2d 1030 (1999).

As this section includes not only traffic control devices but warning devices as well, the city was under no duty to provide warning devices under 745 ILCS 10/3-102(a). Castorena v. Browning-Ferris Indus. of Ill., Inc., 237 Ill. App. 3d 702, 178 Ill. Dec. 790, 605 N.E.2d 584 (2 Dist. 1992).

LEGAL PERIODICALS

For article, "Medical Negligence and the Court of Claims: A Dilemma for the Sovereign Doctors," see 68 Ill. B.J. 534 (1980).

RESEARCH REFERENCES

Liability of motorbus carrier or driver for death of, or injury to, discharged passenger struck by another vehicle. 16 ALR5th 1.

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Practice Guides and Treatises.

Proving Fault in Auto Accident Cases § 5.5 Actions Against Road Contractors and Municipalities (IICLE).

Proving Fault in Auto Accident Cases § 4.35 Weather Conditions (IICLE).

Proving Fault in Auto Accident Cases § 4.27 Traffic Signs and Signals (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 27:45 Maintenance of signs.

Illinois Jurisprudence, Personal Injury and Torts § 27:42 Generally.

Illinois Jurisprudence, Personal Injury and Torts § 3:85 Provision of traffic control devices.

§ 745 ILCS 10/3-105. [Effects of weather conditions on public ways; failure to upgrade]

Sec. 3-105. (a) Neither a local public entity nor a public employee is liable for an injury caused by the effect of weather conditions as such on the use of streets, highways, alleys, sidewalks or other public ways, or places, or the ways adjoining any of the foregoing, or the signals, signs, markings, traffic or pedestrian control devices, equipment or structures on or near any of the foregoing or the ways adjoining any of the foregoing. For the purpose of this section, the effect of weather conditions as such includes but is not limited to the effect of wind, rain, flood, hail, ice or snow but does not include physical damage to or deterioration of streets, highways, alleys, sidewalks, or other public ways or place or the ways adjoining any of the foregoing, or the signals, signs, markings, traffic or pedestrian control devices, equipment or structures on or near any of the foregoing or the ways adjoining any of the foregoing resulting from weather conditions.

(b) Without implied limitation, neither a local public entity nor a public employee is liable for any injury caused by the failure of a local public entity or a public employee to upgrade any existing street, highway, alley, sidewalk or other public way or place, or the ways adjoining any of the foregoing, or the signals, signs, markings, traffic or pedestrian control devices, equipment or structures on or near such street, highway, alley, sidewalk or other public way or place, or the ways adjoining any of the foregoing from the standards, if any, which existed at the time of the original dedication to, or acquisition of, the right of way of such street, highway, alley, sidewalk or other public way or place, or the ways adjoining any of the foregoing, by the first local public entity to acquire the property or right of way, to standards which are or may be applicable or are imposed by any government or other person or organization between the time of such dedication and the time of such injury.

(c) Nothing in this Section shall relieve the local public entity of the duty to exercise ordinary care in the maintenance of its property as set forth in Section 3-102 [745 ILCS 10/3-102].

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(Source: P.A. 84-1431.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 3-105.

CASE NOTES

Analysis

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Discretion
- Traffic Control Signs
Duty to Warn
- Accumulation of Ice
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Summary Judgment
Weather Conditions
- Damage to Streets
- Injury
- Salt
- Unnatural Accumulations

Applicability

The immunity granted under subsection (b) of this section concerns the upgrading of streets existing at the time of dedication of the street to public use or acquisition of the street by the first public entity to standards existing at the time of injury; subsection (b) of this section is not keyed

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to standards existing when an improvement is made to an existing roadway. Cole v. City of E. Peoria, 201 Ill. App. 3d 756, 147 Ill. Dec. 429, 559 N.E.2d 769 (3 Dist. 1990).

745 ILCS 10/3-105 does not apply to injuries caused by the effect of weather conditions on state highways. Pessin v. State, 49 Ill. Ct. Cl. 42, 1987 Ill. Ct. Cl. LEXIS 88 (Ct. Cl. 1987).

Construction

Taken together, 745 ILCS 10/3-103, 745 ILCS 10/3-104 and this section indicate that the General Assembly has carefully considered the liability of public entities with respect to traffic control devices. Snyder v. Curran Tp., 167 Ill. 2d 466, 212 Ill. Dec. 643, 657 N.E.2d 988 (1995).

Discretion

- Traffic Control Signs

The moving, changing, or upgrading of an existing traffic control sign is a matter of discretion for township government. Frances v. Mills, 214 Ill. App. 3d 122, 157 Ill. Dec. 905, 573 N.E.2d 323 (3 Dist. 1991).

Duty to Warn

- Accumulation of Ice

Where city was not liable for the accumulation of ice and snow on bridge, the city had no duty to warn motorists of the accumulation. Enriquez v. City of Chicago, 187 Ill. App. 3d 1110, 135 Ill. Dec. 337, 543 N.E.2d 905 (1 Dist. 1989).

If a municipality has no duty to remove accumulated snow and ice, it has no duty to warn that it has not done so. Enriquez v. City of Chicago, 187 Ill. App. 3d 1110, 135 Ill. Dec. 337, 543 N.E.2d 905 (1 Dist. 1989).

Hidden Danger

Where plaintiffs never alleged or offered any evidence showing that materials used in constructing bridge rendered the bridge especially slippery when wet or icy, or that there was anything else unusual about this bridge so as to support their claim that the icy condition of the bridge was a hidden danger, there was no genuine issue of material fact present and the city was entitled to judgment as a matter of law. Enriquez v. City of Chicago, 187 Ill. App. 3d 1110, 135 Ill. Dec. 337, 543 N.E.2d 905 (1 Dist. 1989).

Immunity Upheld

The city was immune from liability for the icy condition of a bridge. Enriquez v. City of Chicago, 187 Ill. App. 3d 1110, 135 Ill. Dec. 337, 543 N.E.2d 905 (1 Dist. 1989).

Where complaint contained absolutely no allegations that there existed any defective roadway, sidewalk, or gutter which would account for vision obstructing snow mounds, city was not liable for any injuries which resulted. Bellino v. Village of Lake in the Hills, 166 Ill. App. 3d 702, 117 Ill. Dec. 845, 520 N.E.2d 1196 (2 Dist. 1988).

Median Strip

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- Not a Defect

Providing a median strip rather than a median barrier did not render a street physically defective or unsafe for the normal course of travel for which the roadway was intended, so municipality had no common law duty to erect. Ross v. City of Chicago, 168 Ill. App. 3d 83, 118 Ill. Dec. 760, 522 N.E.2d 215 (1 Dist. 1988).

Origins

- Judicial Rules

This section codified the preexisting judicially created rule of nonliability and extended it to counties which had enjoyed a governmental immunity from suits for damages arising out of negligence in the maintenance of highways. Lansing v. County of McLean, 69 Ill. 2d 562, 14 Ill. Dec. 543, 372 N.E.2d 822 (1978).

Potholes

Because under this section physical damage or deterioration of streets resulting from rain is a condition expressly excluded from tort immunity, defendant city was not immune from liability under 745 ILCS 10/3-102 where plaintiff's personal injuries were caused by a pothole that the city had filled with gravel, which repeatedly washed out when it rained. Horton v. City of Ottawa, 40 Ill. App. 3d 544, 352 N.E.2d 23 (3 Dist. 1976).

Proximate Cause

Trial court erred in admitting the discovery deposition testimony of a witness who was walking about a block behind the pedestrian when the pedestrian fell, and who died prior to trial, as the city did not lay a proper foundation for introduction of witness' testimony that it had been sleeting all day and ice was everywhere, and, thus, did not show the testimony was reliable regarding the central issue in the case, whether the pedestrian's fall was proximately caused by a natural accumulation of ice or whether it was proximately caused by a condition that the city failed to remedy which allowed water to build up and make icy the surface where the pedestrian fell. Rios v. City of Chicago, 331 Ill. App. 3d 763, 265 Ill. Dec. 71, 771 N.E.2d 1030, 2002 Ill. App. LEXIS 444 (1 Dist. 2002).

Purpose

Negligence action was properly dismissed because a township did not have a duty to the motoring public to make drainage ditches that ran parallel to the traveled way safe for vehicular traffic, even though it was foreseeable that cars would fall into the ditch. DiBenedetto v. Flora Township, 153 Ill. 2d 66, 178 Ill. Dec. 777, 605 N.E.2d 571, 1992 Ill. LEXIS 167 (1992).

The purpose of subsection (b) of this section is to relieve local public entities from responsibility for upgrading streets and related facilities, particularly those in subdivisions dedicated by the subdivider, when, at the time of the dedication or other acquisition, the streets and facilities meet the then existing standards. Cole v. City of E. Peoria, 201 Ill. App. 3d 756, 147 Ill. Dec. 429, 559 N.E.2d 769 (3 Dist. 1990).

Question of Fact

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Whether street lights being out was the effect of weather conditions rather than the result of physical damage is a question of fact precluding summary judgment. Ciochon v. Bellino, 184 Ill. App. 3d 993, 132 Ill. Dec. 918, 540 N.E.2d 840 (1 Dist. 1989).

Rail Crossing

- No Duty

A municipality did not acquire a duty to spread salt or sand on a rail crossing from its prior voluntary acts of spreading abrasive material on the roadway. Patch v. Township of Persifer, 214 Ill. App. 3d 108, 158 Ill. Dec. 21, 573 N.E.2d 834 (3 Dist.), cert. denied, 141 Ill. 2d 545, 162 Ill. Dec. 493, 580 N.E.2d 119 (1991).

Required Notice

- Actual or Constructive

Notice to a city of a dangerous condition has always been required, and such notice may be actual or constructive. Jones v. City of Rock Island, 101 Ill. App. 2d 174, 242 N.E.2d 302 (3 Dist. 1968).

Summary Judgment

Under 735 ILCS 5/2-1005(c), summary judgment was properly granted to an exposition authority in a trade show exhibitor's suit for damages arising from high winds entering the authority's building, where the exhibitor had set up a booth, because the authority was not liable for damage arising from weather conditions, under 745 ILCS 10/3-105(a), and there was no evidence that it had assumed such a duty with respect to the exhibitor's property. Int'l Memory Prods. of Ill., Inc. v. Metro. Pier & Exposition Auth., 335 Ill. App. 3d 602, 269 Ill. Dec. 708, 781 N.E.2d 505, 2002 Ill. App. LEXIS 1078 (1 Dist. 2002).

Weather Conditions

- Damage to Streets

Weather conditions do not include physical damage to or deterioration to streets and sidewalks resulting from weather conditions. Bellino v. Village of Lake in the Hills, 166 Ill. App. 3d 702, 117 Ill. Dec. 845, 520 N.E.2d 1196 (2 Dist. 1988).

- Injury

A municipality cannot be liable for an injury caused only by weather conditions. DiBenedetto v. Flora Tp., 219 Ill. App. 3d 1091, 162 Ill. Dec. 684, 580 N.E.2d 647 (2 Dist. 1991), cert. denied, 143 Ill. 2d 637, 167 Ill. Dec. 398, 587 N.E.2d 1013 (1992), rev'd on other grounds, 153 Ill. 2d 66, 178 Ill. Dec. 777, 605 N.E.2d 571 (1992).

- Salt

A municipality has no duty to spread salt on an icy road. Patch v. Township of Persifer, 214 Ill. App. 3d 108, 158 Ill. Dec. 21, 573 N.E.2d 834 (3 Dist.), cert. denied, 141 Ill. 2d 545, 162 Ill. Dec. 493, 580 N.E.2d 119 (1991).

- Unnatural Accumulations

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A large mound of snow created by the defendant county's snow-removal efforts and which blocked the view at an intersection was properly considered an unnatural accumulation for which liability could be imposed against the county. Ziencina v. County of Cook, 188 Ill. 2d 1, 241 Ill. Dec. 610, 719 N.E.2d 739 (1999).

Although the evidence was sufficient to establish that the city created an unnatural accumulation of snow and that plaintiff's injuries would not have occurred without this unnatural accumulation, the evidence did not establish that the city breached its duty of ordinary care; the city created a small, but easily visible, mound of snow on the curb as a side effect of its street- and sidewalk-clearing efforts; elsewhere, the city took the extraordinary measure of collecting snow from curbside and depositing it in the park, however, the mere fact that the city failed to use extraordinary measures everywhere did not mean it failed to use ordinary care where the unnatural accumulation was. Kiel v. City of Girard, 274 Ill. App. 3d 821, 211 Ill. Dec. 291, 654 N.E.2d 1101 (4 Dist. 1995), appeal denied, 164 Ill. 2d 565, 214 Ill. Dec. 322, 660 N.E.2d 1271 (1995).

Injuries caused by unnatural accumulations of piled snow may form the basis of liability, provided that the creation or placement of such piles was negligent. Kiel v. City of Girard, 274 Ill. App. 3d 821, 211 Ill. Dec. 291, 654 N.E.2d 1101 (4 Dist. 1995), appeal denied, 164 Ill. 2d 565, 214 Ill. Dec. 322, 660 N.E.2d 1271 (1995).

A public entity may be liable for unnatural accumulations of ice and snow, provided that the public entity has violated its duty to exercise ordinary care, even absent a showing that the underlying sidewalk or street was defective. Kiel v. City of Girard, 274 Ill. App. 3d 821, 211 Ill. Dec. 291, 654 N.E.2d 1101 (4 Dist. 1995), appeal denied, 164 Ill. 2d 565, 214 Ill. Dec. 322, 660 N.E.2d 1271 (1995).

When an accumulation of snow and ice is "unnatural," a municipality may be held liable for failing to remove the snow or ice. Ide v. City of Evanston, 267 Ill. App. 3d 881, 204 Ill. Dec. 854, 642 N.E.2d 755 (1 Dist. 1994), appeal denied, 159 Ill. 2d 568, 207 Ill. Dec. 517, 647 N.E.2d 1010 (1995).

"Unnatural accumulations," for which a municipality may become liable refer to situations where a defect exists in the roadway or as a result of unnatural circumstances. Bellino v. Village of Lake in the Hills, 166 Ill. App. 3d 702, 117 Ill. Dec. 845, 520 N.E.2d 1196 (2 Dist. 1988).

A municipality may become liable for unnatural accumulations of ice or snow which occur by reason of a defect in the sidewalk. Jones v. City of Rock Island, 101 Ill. App. 2d 174, 242 N.E.2d 302 (3 Dist. 1968).

LEGAL PERIODICALS

For article, "Is the Natural Accumulation Rule All Wet?," see 26 Loy. U. Chi. L.J. 631 (1995).

RESEARCH REFERENCES

Governmental liability for failure to reduce vegetation obscuring view at railroad crossing or at street or highway intersection. 22 ALR4th 624.

Practice Guides and Treatises.

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Proving Fault in Auto Accident Cases § 5.5 Actions Against Road Contractors and Municipalities (IICLE).

Proving Fault in Auto Accident Cases § 4.35 Weather Conditions (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 27:39 Generally.

Illinois Jurisprudence, Personal Injury and Torts § 27:32 Ice or snow.

Illinois Jurisprudence, Personal Injury and Torts § 27:31 Water.

Illinois Jurisprudence, Personal Injury and Torts § 27:19 Climate, weather, and acts of God.

§ 745 ILCS 10/3-106. [Public property used for recreational purposes]

Sec. 3-106. Neither a local public entity nor a public employee is liable for an injury where the liability is based on the existence of a condition of any public property intended or permitted to be used for recreational purposes, including but not limited to parks, playgrounds, open areas, buildings or other enclosed recreational facilities, unless such local entity or public employee is guilty of willful and wanton conduct proximately causing such injury.

(Source: P.A. 84-1431.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 3-106.

CASE NOTES

Analysis

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Purpose
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Recreation
- Passive
- Scope
- Spectators

Restroom Facilities

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- Part of Park
Supervision of Child
- Extent of Duty
Wilful and Wanton Conduct
- Illustrative Cases
- Not Shown
- Proof Required
- Proper Pleading
- Question for Jury

Constitutionality

Statutory and common law provisions which differentiate between municipal and private corporations as to tort liability have been held reasonable and valid under the equal protection and special legislation clauses; therefore this section is not unconstitutional. Davis v. Chicago Hous. Auth., 136 Ill. 2d 296, 144 Ill. Dec. 224, 555 N.E.2d 343 (1990).

This section was held not to violate former Ill. Const. (1870), Art. II, § 19 or Art. IV, § 22 (see now Ill. Const. (1970), Art. I, § 12 and Art. IV, § 13). Sullivan v. Midlothian Park Dist., 51 Ill. 2d 274, 281 N.E.2d 659 (1972).

This section was not violative of former section 22 of Article IV of the 1870 Constitution (see now Ill. Const. (1970), Art. IV, § 13) as special legislation, nor did this section deprive plaintiff of a remedy to which he was constitutionally entitled under former section 19 of Article II of the 1870 Constitution (see now Ill. Const. (1970), Art. I, § 12). Maloney v. Elmhurst Park Dist., 47 Ill. 2d 367, 265 N.E.2d 654 (1970).

Applicability

Summary judgment should not have been granted to a forest preserve district in a negligence case because the trial court misconstrued 745 ILCS 10/3-102(a); the trial court's decision negated 745 ILCS 10/3-102's repeated references to "use" of the public entity's property and it lacked support in the common law since public entities were liable for injuries occurring on adjacent or abutting land. There were insufficient facts to determine whether the district owed a duty of care to a motorist, who was struck by a limb that fell from the preserve onto a car on an adjacent road; moreover, the district's proposed application of 745 ILCS 10/3-106 to injuries occurring outside a public entity's property line was too expansive and would have overcome the common law duty of due care codified by 745 ILCS 10/3-102(a), and the district's argument that the public duty doctrine supported a policy of no duties owed to individuals was rejected. Belton v. Forest Pres. Dist., 407 Ill. App. 3d 409, 347 Ill. Dec. 931, 943 N.E.2d 221, 2011 Ill. App. LEXIS 69 (1 Dist. 2011).

Assuming that a library was intended or permitted to be used for recreational purposes, any recreational use of a gate and fence surrounding the library's fenced-in parking lot would be so incidental that 745 ILCS 10/3-106 tort immunity would not apply where the gate and fence fell on a person and injured him. Johnson v. City of Chicago, 347 Ill. App. 3d 638, 283 Ill. Dec. 259, 807 N.E.2d 1100, 2004 Ill. App. LEXIS 321 (1 Dist. 2004).

City's interpretation of the Tort Immunity Act, 745 ILCS 10/3-106, was too expansive and summary judgment was not proper in a minor's personal injury suit where the minor was injured when walking along the sidewalk adjacent to the city's library parking lot when the gate to the fenced-in parking lot fell on his leg, injuring him. The recreational use of the gate and fence, if

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any, were incidental, and the minor was not injured inside the city's recreational property, but was outside the parking lot, on a public sidewalk when the gate to the parking lot fell upon him. Johnson v. City of Chicago, 347 Ill. App. 3d 638, 283 Ill. Dec. 259, 807 N.E.2d 1100, 2004 Ill. App. LEXIS 321 (1 Dist. 2004).

- In General

Application of this section should be based on a case-by-case examination of the nature of the property and its past use. Bubb v. Springfield Sch. Dist., 167 Ill. 2d 372, 212 Ill. Dec. 542, 657 N.E.2d 887 (1995).

This section applies equally to all local governmental entities, and comes into operation only where liability of a particular governmental entity is sought to be predicated upon the existence of a condition of public property maintained by it and intended or permitted to be used as a park, playground or open area for recreational purposes. Maloney v. Elmhurst Park Dist., 47 Ill. 2d 367, 265 N.E.2d 654 (1970).

- Amendment of Section

Where on the effective date of the 1986 amendment of this section, defendant had an inchoate right to seek contribution from a third-party defendant, and if plaintiff had sued defendant a few days before the effective date, defendant's complaint unquestionably would have been subject to the preamendment version of this section, since her cause of action would have occurred before the effective date of the amendment, defendant's contribution action would not be barred solely because of plaintiff's delay in filing suit and the resultant applicability of the amended version of this section to defendant's contribution claim. Bonfield v. Jordan, 202 Ill. App. 3d 638, 148 Ill. Dec. 110, 560 N.E.2d 412 (4 Dist. 1990).

Determination as to whether the amended version of this section may be retroactively applied so as to bar defendant's right to seek contribution is not governed by such outmoded distinctions as whether vested or nonvested rights are involved, or whether this section affects rights or merely affects remedies; rather, this question must be decided on basis of whether fundamental concepts of justice, fairness, and equity militate for or against retroactive application of this section under the facts of the case. Bonfield v. Jordan, 202 Ill. App. 3d 638, 148 Ill. Dec. 110, 560 N.E.2d 412 (4 Dist. 1990).

- Condition of Property

Item does not need to be affixed to property in order to constitute a "condition" of that property under § 3-106 (745 ILCS 10/3-106) of the Local Governmental and Governmental Employees Tort Immunity Act. Grundy v. Lincoln Park Zoo, Ill. App. 3d , 354 Ill. Dec. 125, 957 N.E.2d 441, 2011 Ill. App. LEXIS 790 (1 Dist. 2011).

Stationary but movable warning sign sitting in the same location in the outdoor food court of a caf in a zoo constituted "a condition of any public property" under § 3-106 (745 ILCS 10/3-106) of the Local Governmental and Governmental Employees Tort Immunity Act. Grundy v. Lincoln Park Zoo, Ill. App. 3d , 354 Ill. Dec. 125, 957 N.E.2d 441, 2011 Ill. App. LEXIS 790 (1 Dist. 2011).

Natural accumulation of ice and snow that the park district employee had moved allegedly unsafely into an unnatural accumulation of ice and snow, upon which decedent fell and broke her leg, was not the "existence of a condition of any public property" as that expression was used in 745 ILCS 10/3-106. As a result, the park district was not immune from suit under that statutory provision. Moore v. Chi. Park District, Ill. App. 3d , 351 Ill. Dec. 530, 951 N.E.2d 1194, 2011 Ill. App. LEXIS 684 (1 Dist. 2011).

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A hose used by employees of the defendant park district to water plants was not a "condition" of the property and, therefore, the statute did not apply. Stein v. Chicago Park Dist., 323 Ill. App. 3d 574, 256 Ill. Dec. 751, 752 N.E.2d 631, 2001 Ill. App. LEXIS 489 (1 Dist. 2001).

- Dual Purposes

The fact that property may have both a recreational and non-recreational purpose will not defeat the applicability of this section. Baggio v. Chicago Park Dist., 289 Ill. App. 3d 768, 224 Ill. Dec. 868, 682 N.E.2d 429 (1 Dist. 1997), appeal denied, 174 Ill. 2d 554, 227 Ill. Dec. 1, 686 N.E.2d 1157 (1997).

- Failure to Act

This section did control even though defendants' negligence occurred by their action rather than inaction. Straub v. City of Mt. Olive, 240 Ill. App. 3d 967, 180 Ill. Dec. 603, 607 N.E.2d 672 (4 Dist.), appeal denied, 149 Ill. 2d 661, 183 Ill. Dec. 872, 612 N.E.2d 524 (1993).

This section is not intended to immunize defendants from liability only when their negligence arises from their failure to act. Straub v. City of Mt. Olive, 240 Ill. App. 3d 967, 180 Ill. Dec. 603, 607 N.E.2d 672 (4 Dist.), appeal denied, 149 Ill. 2d 661, 183 Ill. Dec. 872, 612 N.E.2d 524 (1993).

- Municipal Corporations

This section applies to municipal corporations. Davis ex rel. Davis v. Chicago Hous. Auth., 176 Ill. App. 3d 976, 126 Ill. Dec. 391, 531 N.E.2d 1018 (1 Dist. 1988), aff'd, 136 Ill. 2d 296, 144 Ill. Dec. 224, 555 N.E.2d 343 (1990).

- Recreational Purposes

Where property in question is used for a sportive activity, this section rather than 745 ILCS 10/3-103 applies. Koltes v. St. Charles Park Dist., 293 Ill. App. 3d 171, 227 Ill. Dec. 293, 687 N.E.2d 543 (2 Dist. 1997), appeal denied, 177 Ill. 2d 571, 232 Ill. Dec. 453, 698 N.E.2d 544 (1998).

Where a plaintiff in a personal injury action against a municipal zoo claimed that the Tort Immunity Act applied only to sportive activities, the court found no citation to authority, nor any language in the statute to support such a statement; the unambiguous language of the Tort Immunity Act grants immunity where the property is used for recreational purposes, there is no language which would support a sportive or active activity limitation. Corral ex rel. Corral v. Chicago Park Dist., 277 Ill. App. 3d 357, 213 Ill. Dec. 832, 660 N.E.2d 89 (1 Dist. 1995).

Attractive Nuisance

- Inapplicable

The doctrine of attractive nuisance was inapplicable to an action involving injuries suffered by a child on a school playground and in no way negated school district's immunity from liability for the child's injuries. Jackson ex rel. Dymond v. Board of Educ., 109 Ill. App. 3d 716, 65 Ill. Dec. 328, 441 N.E.2d 120 (1 Dist. 1982).

Cause of Action

- Barred

Plaintiff's claim arising from an injury to her hand and arm while assisting her husband in backing out of a mooring was barred by this section. Baggio v. Chicago Park Dist., 289 Ill. App. 3d 768,

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224 Ill. Dec. 868, 682 N.E.2d 429 (1 Dist. 1997), appeal denied, 174 Ill. 2d 554, 227 Ill. Dec. 1, 686 N.E.2d 1157 (1997).

- Not Shown

Patron alleging that the park district was responsible for injuries the patron sustained when the patron ran into a steel beam behind an opaque tarp while playing tennis at the park district's facility failed to state a cause of action against the park district. Since the park district was a public entity operating a recreational facility, the patron under 745 ILCS 10/3-106 had to plead sufficient facts showing that the injuries were based on 745 ILCS 10/1-210 willful and wanton conduct, but the relevant pleading did not do so because the factual allegations failed to show that the park district acted intentionally to cause harm or had any knowledge that its conduct posed a danger to others. Thurman v. Champaign Park Dist., Ill. App. 3d , 355 Ill. Dec. 575, 960 N.E.2d 18, 2011 Ill. App. LEXIS 820 (4 Dist. 2011).

City park district was entitled to summary judgment on the parents' negligence action because the parents failed to show that the park district was responsible for the fence that ran between the park and the adjacent railroad tracks where the parents' minor child was injured. Therefore, the parents did not show that the park district's actions or inactions were wilful and wanton under 745 ILCS 10/3-106. Vega v. Northeast Ill. Reg'l Commuter R.R. Corp., 371 Ill. App. 3d 572, 309 Ill. Dec. 101, 863 N.E.2d 733, 2007 Ill. App. LEXIS 98 (1 Dist. 2007).

If liability is not based on the existence of a condition of public property, this section does not apply; so where liability was alleged based on the conduct of lifeguards at a pool, and not on any physical defect of the premises, this section was inapplicable. Barnett ex rel. Estate of King v. Zion Park Dist., 267 Ill. App. 3d 283, 204 Ill. Dec. 791, 642 N.E.2d 492 (2 Dist. 1994), aff'd, 171 Ill. 2d 378, 216 Ill. Dec. 550, 665 N.E.2d 808 (1996).

Plaintiff's amended complaint did not state a cause of action for wilful and wanton misconduct as it did not contain sufficient factual allegations upon which such misconduct may be based (i.e., the nature or extent of the crack or unevenness in the sidewalk or that others had been injured because of the sidewalk's allegedly dangerous condition). Ramos v. Waukegan Community Unit Sch., 188 Ill. App. 3d 1031, 136 Ill. Dec. 527, 544 N.E.2d 1302 (2 Dist. 1989).

Complaint which failed to allege that school district's wilful or wanton misconduct proximately caused injuries sustained by child while playing on school playground did not state a cause of action against the school district. Jackson ex rel. Dymond v. Board of Educ., 109 Ill. App. 3d 716, 65 Ill. Dec. 328, 441 N.E.2d 120 (1 Dist. 1982).

- Shown

A local governmental entity is not immune from liability under this section for negligent acts arising from a hayrack ride pulled by two mules which it operated on its own property where plaintiffs' complaint was not based on the existence of a condition of the hayrack or mules but simply alleged that defendant's employee failed to use reasonable care in the operation of the ride and handling of the mules. McCuen v. Peoria Park Dist., 245 Ill. App. 3d 694, 185 Ill. Dec. 894, 615 N.E.2d 764 (3 Dist. 1993), aff'd, 163 Ill. 2d 125, 205 Ill. Dec. 487, 643 N.E.2d 778 (1994).

Where plaintiff's complaint explained the danger involved in the support wire used to stabilize trees was that it was not evident to people walking through the park, it was rusted, and it was not marked to notify people of its presence to prevent them from tripping or falling over it and plaintiff's complaint against defendant also alleged the city knew about these dangers because other individuals had informed it and the city knew other people had tripped or fallen over the wire, informing it of the danger before plaintiff sustained her injury; these allegations were sufficient to set forth a cause of action against the city based on a wilful and wanton misconduct theory. Straub v. City of Mt. Olive, 240 Ill. App. 3d 967, 180 Ill. Dec. 603, 607 N.E.2d 672 (4 Dist.), appeal denied, 149 Ill. 2d 661, 183 Ill. Dec. 872, 612 N.E.2d 524 (1993).

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- Wilful and Wanton Conduct

To plead a sufficient cause of action in negligence where the defendant is a local public entity, the plaintiff must plead that the proximate cause of the plaintiff's injury was the governmental entity's wilful and wanton conduct, if the injury is based on the existence of a condition of public property used for recreational purposes. Lerma v. Rockford Blacktop Constr. Co., 247 Ill. App. 3d 567, 187 Ill. Dec. 323, 617 N.E.2d 531 (2 Dist.), cert. denied, 153 Ill. 2d 560, 191 Ill. Dec. 620, 624 N.E.2d 808 (1993).

Construction

This section is not limited to public property intended or permitted to be used for recreational purposes. Lewis v. Jasper County Community Unit Sch. Dist. No. 1, 258 Ill. App. 3d 419, 196 Ill. Dec. 383, 629 N.E.2d 1227 (5 Dist.), appeal denied, 156 Ill. 2d 558, 202 Ill. Dec. 923, 638 N.E.2d 1117 (1994).

Dual-Purpose Property

- Primary Purpose Irrelevant

Immunity is triggered by the recreational character of the property, i.e., whether the property in question is "intended or permitted to be used for recreational purposes;" nothing in this section requires an examination of the property's primary purpose. Diamond v. Springfield Metro. Exposition Auditorium Auth., 44 F.3d 599 (7th Cir. 1995).

Effect of Amendment

- Broaden Scope of Immunity

The 1986 amendment to this section evidenced the legislature's intent to broaden the scope of immunity beyond parks and playgrounds to encompass other properties where recreational uses are intended or permitted. Diamond v. Springfield Metro. Exposition Auditorium Auth., 44 F.3d 599 (7th Cir. 1995).

Gymnasium

- Compulsory Physical Education

Where school gymnasium was used only for compulsory physical education, immunity under this section would not be permitted and plaintiff injured in such venue need only show ordinary negligence. Ozuk v. River Grove Bd. of Educ., 281 Ill. App. 3d 239, 217 Ill. Dec. 18, 666 N.E.2d 687 (1 Dist. 1996).

- Recreational Facility

Where plaintiff was injured in a school gymnasium which was a "recreational facility", trial court properly dismissed plaintiff's complaint that alleged ordinary negligence; plaintiff must allege and prove wilful and wanton conduct in a negligence action against a "recreational facility." Ozuk v. River Grove Bd. of Educ., 281 Ill. App. 3d 239, 217 Ill. Dec. 18, 666 N.E.2d 687 (1 Dist. 1996).

Immunity

- Character of Property

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While the village and village park district ordinarily owed a duty of reasonable care to pedestrians using the sidewalk adjacent to a village park, pursuant to 745 ILCS 10/3-102, they were immune from liability to the pedestrian for injuries the pedestrian sustained due to a slip and fall on an unnatural accumulation of snow and ice on that sidewalk. They could not be found negligent because, under 745 ILCS 10/3-106, the sidewalk had an intended or permitted recreational use that provided increased-usefulness to obtaining access to the park. Callaghan v. Vill. of Clarendon Hills, 401 Ill. App. 3d 287, 340 Ill. Dec. 757, 929 N.E.2d 61, 2010 Ill. App. LEXIS 383 (2 Dist. 2010).

Character and nature of public property as a whole determined recreational use immunity, not plaintiff's use of property or activity at time of injury; use of high school as recreational facility was incidental to its regular educational function, and immunity did not apply to injury occuring in high school parking lot. Adamczyk v. Twp. High Sch. Dist. 214, 324 Ill. App. 3d 920, 257 Ill. Dec. 928, 755 N.E.2d 30, 2001 Ill. App. LEXIS 601 (1 Dist. 2001).

Question whether the portion of a sidewalk adjacent to a school gymnasium was recreational property precluded summary judgment grounded on immunity. Batson v. Pinckneyville Elementary Sch. Dist. # 50, 294 Ill. App. 3d 832, 229 Ill. Dec. 30, 690 N.E.2d 1077 (5 Dist. 1998), appeal denied, 178 Ill. 2d 573, 232 Ill. Dec. 845, 699 N.E.2d 1030 (1998).

Immunity under this section depends upon the character of the property as a whole, rather than whether the injured person was engaged in a nonrecreational activity. Diamond v. Springfield Metro. Exposition Auditorium Auth., 44 F.3d 599 (7th Cir. 1995).

- Insurance

Immunity under the Local Governmental and Governmental Tort Immunity Act, former Ill. Rev. Stat. ch. 85, para. 3-106 (now 745 ILCS 10/3-106), is qualified by former Ill. Rev. Stat. ch. 85, para. 9-103(c) (now 745 ILCS 10/9-103), which provides that a local public entity waives immunity from a particular form of liability by obtaining insurance to cover that liability. Adamcyzk v. Forest Preserve Dist., 151 Ill. App. 3d 320, 104 Ill. Dec. 537, 502 N.E.2d 1197, 1986 Ill. App. LEXIS 3319 (1 Dist. 1986).

- Limitation

By its very terms, this section does not apply to limit the immunity granted by 745 ILCS 10/3-108. Johnson v. Decatur Park Dist., 301 Ill. App. 3d 798, 235 Ill. Dec. 67, 704 N.E.2d 416 (4 Dist. 1998), appeal denied, 183 Ill. 2d 569, 238 Ill. Dec. 714, 712 N.E.2d 818 (1999).

Immunity Not Upheld

- Illustrative Cases

745 ILCS 10/3-106 (1994) of the Illinois Local Governmental and Governmental Employees Tort Immunity Act was not applicable to the school parking lot because the character of school property as a whole was educational, and because the parking lot was not within the bounded area of the practice field, the independent character of the parking lot controlled over any increased usefulness it may have added to the practice field. Rexroad v. City of Springfield, 207 Ill. 2d 33, 277 Ill. Dec. 674, 796 N.E.2d 1040, 2003 Ill. LEXIS 1417 (2003).

When plaintiff, thirteen-year-old Canadian citizen, filed suit after suffering injuries when she was instructed to dive into a pool while attending a swimming program at defendant high school, the amended complaint alleged the supervision and instruction provided to plaintiff was deficient. Because the complaint did not allege that the pool itself was of an unsuitable condition, 745 ILCS 10/3-106 was inapplicable and did not shield defendants, the high school and its employees, from liability. Karalyos v. Bd. of Educ., 788 F. Supp. 2d 727, 2011 U.S. Dist. LEXIS 23871 (N.D. Ill. 2011).

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Court erred in dismissing a complaint against a school district because there was a question as to whether the district was subject to the immunity as the property was located on school grounds and was being used for a summer football camp; therefore, at a minimum, there was an inference that the property in question was being used for educational purposes. Additionally, the allegation that the child had been instructed by the coaching staff to encounter the hazard upon which he was injured was sufficient to support a cause of action for willful and wanton conduct. Peters v. Herrin Cmty. Sch. Dist. No. 4, 401 Ill. App. 3d 356, 340 Ill. Dec. 661, 928 N.E.2d 1258, 2010 Ill. App. LEXIS 432 (5 Dist. 2010).

An accessability ramp leading into a school gymnasium did not itself constitute recreational public property and, therefore, the defendant school district was not immune under this section in connection with a fall from the ramp. Capps v. Belleville Sch. Dist. No. 201, 313 Ill. App. 3d 710, 246 Ill. Dec. 401, 730 N.E.2d 81, 2000 Ill. App. LEXIS 317 (5 Dist. 2000).

Where the claimed liability was based on the alleged negligence of an employee and not on the existence of a condition of public property, this section did not apply. McCuen v. Peoria Park Dist., 163 Ill. 2d 125, 205 Ill. Dec. 487, 643 N.E.2d 778 (1994).

Immunity Upheld

Inflatable slide manufacturer could not maintain a contribution action against a park district and its camp volunteer in a personal injury action filed by an employee of the park district who was injured due to an alleged defect in the slide. The park district was immune from the manufacturer's claims of failure to supervise under 745 ILCS 10/3-108, from claims of negligence regarding the condition of the slide under 745 ILCS 10/3-106, and from vicarious liability for the volunteer's involvement in the employee's injury under 45 ILCS 10/2-109. The volunteer was protected under the Workers' Compensation Act, 820 ILCS 305/5(a). Flores v. Palmer Mktg., 361 Ill. App. 3d 172, 297 Ill. Dec. 61, 836 N.E.2d 792, 2005 Ill. App. LEXIS 939 (1 Dist. 2005).

- Community Building

A community building was held to be public property intended or permitted to be used for recreational purposes where it was used for family picnics, club meetings, receptions, bake sales, book sales, Chamber of Commerce meetings, preschool concerts and long range planning committee group suppers and meetings. Kayser v. Village of Warren, 303 Ill. App. 3d 198, 236 Ill. Dec. 440, 707 N.E.2d 285 (2 Dist. 1999), appeal denied, 184 Ill. 2d 558, 239 Ill. Dec. 608, 714 N.E.2d 527 (1999).

- Illustrative Cases

Trial court did not err by granting the park district summary judgment based on its immunity under 745 ILCS 10/3-106 because there was no evidence that the park district's conduct demonstrated an utter indifference to or a conscious disregard for the safety of others; at most, the failure of a park district employee to discover the missing spring clamps during his inspection was negligent but was not willful or wanton under 745 ILCS 10/1-210. The park district did not have actual notice of the dangerous condition of the seesaw because it was not until the employee received a diagram from the seesaw's seller, after the accident at issue and after his inspection, that he learned the seesaw was missing two spring clamps. Tagliere v. W. Springs Park Dist., 408 Ill. App. 3d 235, 348 Ill. Dec. 643, 944 N.E.2d 884, 2011 Ill. App. LEXIS 151 (1 Dist. 2011).

Because the bike path was property intended or permitted to be used for recreational purposes, this section provided immunity for ordinary negligence. Goodwin v. Carbondale Park Dist., 268 Ill. App. 3d 489, 205 Ill. Dec. 956, 644 N.E.2d 512 (5 Dist. 1994).

The providing of a playground is a governmental activity, and therefore defendant Chicago Housing Authority was held immune from plaintiff's suit alleging that defendant's ordinary

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negligence caused defendant's playground injury. Davis v. Chicago Hous. Auth., 136 Ill. 2d 296, 144 Ill. Dec. 224, 555 N.E.2d 343 (1990).

This section immunized school district from liability for ordinary negligence where, at the time of plaintiff's alleged injury, the sidewalk was, in fact, being used by her, at the direction of a teacher, for a recreational purpose. Ramos v. Waukegan Community Unit Sch., 188 Ill. App. 3d 1031, 136 Ill. Dec. 527, 544 N.E.2d 1302 (2 Dist. 1989).

Where a three year old child drowned in a lagoon located in a public park, municipality was immune from suit under this section. Spencer v. City of Chicago, 192 Ill. App. 3d 150, 139 Ill. Dec. 216, 548 N.E.2d 601 (1 Dist. 1989).

Allegations that a public entity installed monkey bars upon a concrete surface and failed to remove or replace the concrete surface with a softer surface after children had allegedly been injured after falling on the concrete surface did not amount to wilful and wanton misconduct so as to overcome the immunity granted by this section. Young ex rel. Young v. Chicago Hous. Auth., 162 Ill. App. 3d 53, 113 Ill. Dec. 794, 515 N.E.2d 779 (1 Dist. 1987).

- Pier

A pier, consisting of 50 acres of promenades, parks, gardens, shops, restaurants and entertainment attractions, was found to be property intended or permitted for activities involving relaxation and pleasure, and, as recreational property, fell within the scope of protection provided by this section. Wallace v. Metropolitan Pier & Exposition Auth., 302 Ill. App. 3d 573, 236 Ill. Dec. 295, 707 N.E.2d 140 (1 Dist. 1998).

- School Playground

Clearly, in light of the definitions provided by the legislature, this section immunizes the school district from injuries occurring on school property used for recreational purposes, absent wilful or wanton conduct by the school district. Lewis v. Jasper County Community Unit Sch. Dist. No. 1, 258 Ill. App. 3d 419, 196 Ill. Dec. 383, 629 N.E.2d 1227 (5 Dist.), appeal denied, 156 Ill. 2d 558, 202 Ill. Dec. 923, 638 N.E.2d 1117 (1994).

Dismissal of the negligence counts of the complaint under the immunity provisions of this section of the Local Governmental and Governmental Employees Tort Immunity Act was proper for injuries sustained after child fell against a pumphouse on the school playground during school hours. Lewis v. Jasper County Community Unit Sch. Dist. No. 1, 258 Ill. App. 3d 419, 196 Ill. Dec. 383, 629 N.E.2d 1227 (5 Dist.), appeal denied, 156 Ill. 2d 558, 202 Ill. Dec. 923, 638 N.E.2d 1117 (1994).

- Walkway

Soldier Field and its adjacent walkways and parking lots are intended or permitted to be used for recreational purposes, so a plaintiff who falls while on a walkway is on property that increases the usefulness of the property used for recreational purposes, and the owner of that walkway is entitled to immunity under this section. Sylvester v. Chicago Park Dist., 179 Ill. 2d 500, 228 Ill. Dec. 698, 689 N.E.2d 1119 (1997).

Intended Use

- In General

Where the plaintiff was not an intended user of village property, the village could not owe a duty to him under the exceptions to immunity contained in the statute. First Midwest Trust Co., N.A. v. Britton, 322 Ill. App. 3d 922, 256 Ill. Dec. 134, 751 N.E.2d 187, 2001 Ill. App. LEXIS 415 (2 Dist. 2001).

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- Public Sidewalk

A public sidewalk in a residential neighborhood is not similar to a park or playground which are open areas designated by a governmental entity as being specifically intended for recreational purposes. Larson v. City of Chicago, 142 Ill. App. 3d 81, 96 Ill. Dec. 351, 491 N.E.2d 165 (1 Dist. 1986).

Liability

- In General

If liability for the injury is based on the existence of a condition of public property, the court must then consider the cause of the dangerous condition and if the dangerous condition was caused by the negligence of a local public entity or a public employee this section provides immunity for any resulting liability; however, if the dangerous condition was caused by wilful and wanton conduct, this section does not provide immunity. McCuen v. Peoria Park Dist., 163 Ill. 2d 125, 205 Ill. Dec. 487, 643 N.E.2d 778 (1994).

Local entities are not liable for ordinary negligence in the upkeep of parks, playgrounds, and athletic fields; they are only liable for wilful and wanton conduct. Bialek v. Moraine Valley Community College Sch. Dist. 524, 267 Ill. App. 3d 857, 204 Ill. Dec. 924, 642 N.E.2d 825 (1 Dist. 1994).

A local public entity has a duty to exercise ordinary care to maintain its property in a reasonably safe condition; however, when liability is based on the condition of any public park, playground, or recreational area, a local public entity is liable only when it is guilty of wilful and wanton misconduct proximately causing the injury. Young ex rel. Young v. Chicago Hous. Auth., 162 Ill. App. 3d 53, 113 Ill. Dec. 794, 515 N.E.2d 779 (1 Dist. 1987).

Former Ill. Rev. Stat. ch. 85, paras. 1-206, 3-102, 3-103, and 3-106 (now 735 ILCS 10/1-206, 3-102, 3-103, and 3-106) evidence a legislative intent to limit the premises tort liability of local public entities to only those instances in which the local entities or their employees are guilty of wilful and wanton negligence proximately causing the injury. Newby v. Lake Zurich Community Unit Dist. 95, 136 Ill. App. 3d 92, 90 Ill. Dec. 778, 482 N.E.2d 1061, 1985 Ill. App. LEXIS 2368 (1 Dist. 1985).

Playgrounds

- Equipment

Park District's course of action in failing to remedy a broken slide constituted wilful and wanton conduct within the meaning of this Act where the evidence of the condition of the slide and the ground underneath the slide coupled with the forewarning and acknowledgment of the same sufficiently constituted knowledge of impending danger. Green v. Chicago Park Dist., 248 Ill. App. 3d 334, 187 Ill. Dec. 923, 618 N.E.2d 514 (1 Dist.), appeal denied, 152 Ill. 2d 558, 190 Ill. Dec. 888, 622 N.E.2d 1205 (1993).

Claims of negligence and failure to supervise a minor injured on playground equipment owned and possessed by defendant city park district were properly dismissed since this section bars suits based upon negligence and 745 ILCS 10/3-108 eliminates liability based upon failure to supervise. Jarvis ex rel. Jarvis v. Herrin City Park Distr., 6 Ill. App. 3d 516, 285 N.E.2d 564 (5 Dist. 1972).

- Immunity Conferred

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This section conferred immunity upon the Chicago Housing Authority from liability for injuries sustained in a playground provided for the exclusive use of its tenants and their guests. Davis v. Chicago Hous. Auth., 136 Ill. 2d 296, 144 Ill. Dec. 224, 555 N.E.2d 343 (1990).

- Stray Baseballs

Absent an allegation that claimed negligence was wilful and wanton, the Board of Education was immune from liability for property damage to plaintiffs' garden plants and shrubs allegedly resulting from straying baseballs which crossed street landing on the premises and from acts of those seeking to retrieve such baseballs under this section and 745 ILCS 10/3-108. Keller v. Board of Educ., 68 Ill. App. 3d 7, 24 Ill. Dec. 644, 385 N.E.2d 785 (5 Dist. 1978).

Public Property

- Access

That general public has access to property in order that it be considered public property is neither expressly stated in this Act nor can it reasonably be implied. Davis v. Chicago Hous. Auth., 136 Ill. 2d 296, 144 Ill. Dec. 224, 555 N.E.2d 343 (1990).

- Defined

Stationary but movable warning sign can qualify as "public property" under § 3-106 (745 ILCS 10/3-106) of the Local Governmental and Governmental Employees Tort Immunity Act. Grundy v. Lincoln Park Zoo, Ill. App. 3d , 354 Ill. Dec. 125, 957 N.E.2d 441, 2011 Ill. App. LEXIS 790 (1 Dist. 2011).

As used in this section, "public property" simply refers to property owned or leased by a local public entity which it intends or permits to be used as a park, playground or open area for recreational purposes, not property which is used for such purposes and is open to the general public. Davis ex rel. Davis v. Chicago Hous. Auth., 176 Ill. App. 3d 976, 126 Ill. Dec. 391, 531 N.E.2d 1018 (1 Dist. 1988), aff'd, 136 Ill. 2d 296, 144 Ill. Dec. 224, 555 N.E.2d 343 (1990).

- Intended for Recreational Purposes

A crosswalk which was part of system of interconnected bicycle pathways fell within the immunity provided by this section. Dinelli v. County of Lake, 294 Ill. App. 3d 876, 229 Ill. Dec. 284, 691 N.E.2d 394 (2 Dist. 1998).

A local public entity is not liable for any injury resulting from a condition on public property intended or permitted to be used for recreational purposes unless the local public entity is guilty of wilful and wanton conduct which proximately caused the injury. Dunbar v. Latting, 250 Ill. App. 3d 786, 190 Ill. Dec. 363, 621 N.E.2d 232 (3 Dist. 1993).

Land which was used primarily as a block to public vehicular access, but was also used as a footpath to gain access to a lake for fishing, as access to a horse trail, and as part of an area maintained for the public's recreational purposes, was public property intended for recreational use. Kirnbauer v. Cook County Forest Preserve Dist., 215 Ill. App. 3d 1013, 159 Ill. Dec. 499, 576 N.E.2d 168 (1 Dist. 1991).

- Sidewalk

The Park District was a local public entity and the sidewalk, located within the park, on which plaintiff fell was public property within the meaning of this section. Corral ex rel. Corral v. Chicago Park Dist., 277 Ill. App. 3d 357, 213 Ill. Dec. 832, 660 N.E.2d 89 (1 Dist. 1995).

- Where Recreation May Occur

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This section applies if public property is intended or permitted to be used for recreational purposes, regardless of the primary purpose of the property. Bubb v. Springfield Sch. Dist., 167 Ill. 2d 372, 212 Ill. Dec. 542, 657 N.E.2d 887 (1995).

This section does not apply to any public area where recreation might occur as the statute contains a specific list of recreational property to which the statute applies. Bubb v. Springfield Sch. Dist., 167 Ill. 2d 372, 212 Ill. Dec. 542, 657 N.E.2d 887 (1995).

Purpose

The purpose of this section is to encourage the development and maintenance of parks, playgrounds and other recreational areas. Ozuk v. River Grove Bd. of Educ., 281 Ill. App. 3d 239, 217 Ill. Dec. 18, 666 N.E.2d 687 (1 Dist. 1996).

- Recreation

School district was immune from negligence where a student was injured on a school sidewalk used for recreation. Bubb v. Springfield Sch. Dist., 167 Ill. 2d 372, 212 Ill. Dec. 542, 657 N.E.2d 887 (1995).

The purpose of this section is to encourage the development and maintenance of parks, playgrounds and similar areas; it applies to areas where public activities of a sportive nature, as opposed to stage entertainment, are permitted. John v. City of Macomb, 232 Ill. App. 3d 877, 173 Ill. Dec. 375, 596 N.E.2d 1254 (3 Dist.), cert. denied, 147 Ill. 2d 627, 180 Ill. Dec. 150, 606 N.E.2d 1227 (1992).

By the enactment of this section, the General Assembly has encouraged the development and maintenance of parks, playgrounds, and other open areas to be used for recreational purposes in a manner which is in no way arbitrary, capricious or unreasonable. Maloney v. Elmhurst Park Dist., 47 Ill. 2d 367, 265 N.E.2d 654 (1970); Beckus ex rel. Beckus v. Chicago Bd. of Educ., 78 Ill. App. 3d 558, 33 Ill. Dec. 842, 397 N.E.2d 175 (1 Dist. 1979); Larson v. City of Chicago, 142 Ill. App. 3d 81, 96 Ill. Dec. 351, 491 N.E.2d 165 (1 Dist. 1986); Davis ex rel. Davis v. Chicago Hous. Auth., 176 Ill. App. 3d 976, 126 Ill. Dec. 391, 531 N.E.2d 1018 (1 Dist. 1988), aff'd, 136 Ill. 2d 296, 144 Ill. Dec. 224, 555 N.E.2d 343 (1990); Annen ex rel. Annen v. Village of McNabb, 192 Ill. App. 3d 711, 139 Ill. Dec. 669, 548 N.E.2d 1383 (3 Dist. 1990).

Recreation

- Passive

The phrase "recreational purpose" is not limited to sportive or active activity, but includes passive activity as well. Wallace v. Metropolitan Pier & Exposition Auth., 302 Ill. App. 3d 573, 236 Ill. Dec. 295, 707 N.E.2d 140 (1 Dist. 1998).

- Scope

Parking lot at a public high school was a recreational property under 745 ILCS 10/3-106, and a city which owned a utility that removed a fire hydrant from the parking lot and the school board which operated the high school were immune from liability to a student who stepped in a hole which was left after the hydrant was removed and broke his ankle. Rexroad v. City of Springfield, 331 Ill. App. 3d 545, 265 Ill. Dec. 450, 772 N.E.2d 821, 2002 Ill. App. LEXIS 512 (4 Dist. 2002).

Permitting a band concert, without more, does not so alter the character of a public area not generally used for recreational activity that it would necessarily fall within the intended scope of

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this section. John v. City of Macomb, 232 Ill. App. 3d 877, 173 Ill. Dec. 375, 596 N.E.2d 1254 (3 Dist.), cert. denied, 147 Ill. 2d 627, 180 Ill. Dec. 150, 606 N.E.2d 1227 (1992).

The term recreation area or recreation purpose is not limited to active recreation. Spencer v. City of Chicago, 192 Ill. App. 3d 150, 139 Ill. Dec. 216, 548 N.E.2d 601 (1 Dist. 1989).

- Spectators

The participants in - as well as the spectators of - basketball tournaments, wrestling events, rodeos, boxing matches, and karate tournaments held at convention center were engaged in some form of diversion of play; the fact that some members of the public enjoyed the diversion offered by these events as spectators does not alter their recreational character. Diamond v. Springfield Metro. Exposition Auditorium Auth., 44 F.3d 599 (7th Cir. 1995).

Restroom Facilities

- Part of Park

A restroom facility located within a park is a part of the park; while a restroom building itself is not intended to be used for recreational purposes, it increases the usefulness of the park by allowing a park user to continue using the park without having to leave the park to use restroom facilities. Annen ex rel. Annen v. Village of McNabb, 192 Ill. App. 3d 711, 139 Ill. Dec. 669, 548 N.E.2d 1383 (3 Dist. 1990).

Supervision of Child

- Extent of Duty

The addition of the words "wilful and wanton" did not impose a duty on defendant municipality to supervise an unattended three year old child who was near a lagoon and was unattended by either parents or babysitter and drowned as the result of his fall into the water. Spencer v. City of Chicago, 192 Ill. App. 3d 150, 139 Ill. Dec. 216, 548 N.E.2d 601 (1 Dist. 1989).

Wilful and Wanton Conduct

- Illustrative Cases

The specific allegations that defendants positioned gym mats in front of the open ends of the bleachers, that these mats would occasionally fall onto the field, that defendants were aware the mats would occasionally fall and have to be repositioned, that defendants took no steps to prevent the mats from periodically falling onto the field and that on the day in question, one of the mats fell onto the field and plaintiff, not seeing the mat, tripped over it and was injured, do not support a finding that defendants intentionally caused plaintiff's injury; nor do these allegations indicate that defendants were utterly indifferent to or consciously disregarded plaintiff's safety. Rooney v. Franklin Park Dist., 256 Ill. App. 3d 1058, 195 Ill. Dec. 210, 628 N.E.2d 674 (1 Dist. 1993), appeal denied, 155 Ill. 2d 576, 198 Ill. Dec. 552, 633 N.E.2d 14 (1994).

- Not Shown

In an action arising from an incident in which an 8-year old child ran into a tree with long sharp thorns while playing tag in a recreational part of a forest preserve, the evidence did not establish willful and wanton conduct by the forest preserve since it was undisputed that the forest preserve had no knowledge of a prior injury or even a prior complaint about the tree at issue and, therefore, the fact that the forest preserve's employee mowed the grass around the tree, although long grass could have been a natural deterrent or barrier, did not show willful or wanton conduct.

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A.D. v. Forest Preserve Dist., 313 Ill. App. 3d 919, 247 Ill. Dec. 182, 731 N.E.2d 955, 2000 Ill. App. LEXIS 471 (2 Dist. 2000).

Where an accessability ramp leading into a school gymnasium met all applicable standards at the time it was designed and no one reported an injury associated with the accessibility ramp from the date of its construction in 1980 until 1995, the defendant school district's conduct could not be said to be willful and wanton. Capps v. Belleville Sch. Dist. No. 201, 313 Ill. App. 3d 710, 246 Ill. Dec. 401, 730 N.E.2d 81, 2000 Ill. App. LEXIS 317 (5 Dist. 2000).

County's nonaction in failing to remove a crosswalk which was part of a system of interconnected bicycle pathways used for recreational purposes did not rise to the level of wilful and wanton conduct. Dinelli v. County of Lake, 294 Ill. App. 3d 876, 229 Ill. Dec. 284, 691 N.E.2d 394 (2 Dist. 1998).

Defendant's nonaction in failing to remedy unsafe condition despite having knowledge that prior to plaintiff's injury another person was struck by an errant golf ball while standing in the same general area did not rise to the level of wilful and wanton conduct; the person previously struck had not been injured, and the course's golf professional testified he had not received any complaints about the area and that it was not subject to more errant golf balls than other areas of the course. Koltes v. St. Charles Park Dist., 293 Ill. App. 3d 171, 227 Ill. Dec. 293, 687 N.E.2d 543 (2 Dist. 1997), appeal denied, 177 Ill. 2d 571, 232 Ill. Dec. 453, 698 N.E.2d 544 (1998).

Where gym teacher set up 50-yard dash which ended approximately four feet before an area of loose and broken sections of asphalt, and plaintiff while running the dash, in an attempt to avoid colliding with a kindergarten student, ran into the loose asphalt, injuring herself, there was not a showing of wilful and wanton conduct upon which to predicate a cause of action. Pomaro v. Community Consol. Sch. Dist. 21, 278 Ill. App. 3d 266, 214 Ill. Dec. 872, 662 N.E.2d 438 (1 Dist. 1995).

Plaintiff's second amended complaint that alleged that defendant was wilful and wanton in leaving the hole in the fence despite the danger it posed to invitees, failing to repair the hole even though plaintiff and other invitees would be exposed to a substantial drop-off, and/or in allowing a section of the east wall to remain unfenced, despite its knowledge that this condition exposed plaintiffs and other invitees to the drop-off, was insufficient to support a claim of wilful and wanton conduct. Winfrey v. Chicago Park Dist., 274 Ill. App. 3d 939, 211 Ill. Dec. 46, 654 N.E.2d 508 (1 Dist. 1995).

The evidence presented at trial did not support a judgment of wilful and wanton conduct because the park district did not have notice, either actual or constructive, that the stake was above ground level at the time of plaintiff's injury, earlier that day, or within one month of that time. Hernandez v. Chicago Park Dist., 274 Ill. App. 3d 970, 211 Ill. Dec. 1, 654 N.E.2d 463 (1 Dist. 1995), appeal denied, 164 Ill. 2d 563, 214 Ill. Dec. 320, 660 N.E.2d 1269 (1995).

The city's acts or omissions could not properly be characterized as wilful and wanton conduct where the evidence showed that the conduct of the city and its employees in either failing to discover the rut or in failing to repair it or warn of it was, at most, due to inadvertence, incompetence or unskillfulness. Foley v. City of La Salle, 241 Ill. App. 3d 54, 181 Ill. Dec. 713, 608 N.E.2d 964 (3 Dist. 1993).

The trial court properly determined that the allegations in plaintiff's complaint were insufficient to establish a cause of action for wilful and wanton conduct. Oropeza ex rel. Trujillo v. Board of Educ., 238 Ill. App. 3d 399, 179 Ill. Dec. 650, 606 N.E.2d 482 (1 Dist. 1992).

Where plaintiff, in case brought on account of injuries received by a child on a sliding board-jungle gym combination owned by defendant city park district and located in a park operated by defendant, alleged that certain omissions showed defendant's utter indifference to or conscious disregard for the safety of the plaintiff, but there was nothing in the allegations of fact which, if proved, would have showed that defendant was utterly indifferent to or consciously disregarded

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the safety of the plaintiff, while the allegations of fact may have been sufficient to constitute negligence, they were not sufficient to show wilful and wanton conduct. Jarvis ex rel. Jarvis v. Herrin City Park Distr., 6 Ill. App. 3d 516, 285 N.E.2d 564 (5 Dist. 1972).

- Proof Required

In a negligence action against a municipality, if the defendant proved and the jury determined that certain immunities were applicable, then the only way in which plaintiff could recover for the $125,000 not covered by insurance was if he proved wilful and wanton conduct on the part of defendant. Mastrandrea v. Chicago Park Dist., 259 Ill. App. 3d 897, 198 Ill. Dec. 440, 632 N.E.2d 1051 (1 Dist.), appeal denied, 157 Ill. 2d 504, 205 Ill. Dec. 167, 642 N.E.2d 1284 (1994).

- Proper Pleading

Plaintiff's third amended complaint sufficiently stated a cause of action for wilful and wanton misconduct by pleading that defendant knew or should have known of the dangers posed by defendant's fallen fence and yet failed to implement remedial measures. Palmer v. Chicago Park Dist., 277 Ill. App. 3d 282, 213 Ill. Dec. 889, 660 N.E.2d 146 (1 Dist. 1995), appeal denied, 166 Ill. 2d 543, 216 Ill. Dec. 6, 664 N.E.2d 643 (1996).

- Question for Jury

Taking the evidence and all reasonable inferences in a light most favorable to plaintiff, a jury could have found that the city's failure to act to prevent or to warn of the dangerous condition posed by the submerged pipe in the lake, known only to it, constituted reckless or wilful and wanton conduct; therefore the trial court abused its discretion in invading the province of the jury on the issue. Sullivan v. City of Hillsboro, 303 Ill. App. 3d 650, 236 Ill. Dec. 703, 707 N.E.2d 1273 (5 Dist. 1999), appeal denied, 184 Ill. 2d 574, 239 Ill. Dec. 614, 714 N.E.2d 533 (1999).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Torts," see 21 S. Ill. U.L.J. 891 (1997).

For article, "Survey of Illinois Law: Education Law," see 21 S. Ill. U.L.J. 815 (1997).

For article, "Survey of Illinois Law [1989-90] - Municipal Corporations," see 15 S. Ill. U.L.J. 1021 (1991).

For article, "Survey of Illinois Law: Significant Developments in Education Law 2003- 2004," see, See 29 S. Ill. U.L.J. 603 (2005).

RESEARCH REFERENCES

Liability of local government entity for injury resulting from use of outdoor playground equipment at municipally owned park or recreation area. 73 ALR4th 496.

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 35:52 Playgrounds and playground equipment.

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Illinois Jurisprudence, Personal Injury and Torts § 35:50 Recreational property.

Illinois Jurisprudence, Personal Injury and Torts § 34:95 Ball games; golf.

Illinois Jurisprudence, Personal Injury and Torts § 34:91 Applicable property.

Illinois Jurisprudence, Personal Injury and Torts § 34:89 Generally; duty of care.

Illinois Jurisprudence, Personal Injury and Torts § 3:84 Public property used for recreational purposes; supervision of activities on public property; hazardous recreational activities.

Illinois Jurisprudence, Personal Injury and Torts § 3:83 Maintenance of public property.

§ 745 ILCS 10/3-107. [Access roads; trails]

Sec. 3-107. Neither a local public entity nor a public employee is liable for an injury caused by a condition of: (a) Any road which provides access to fishing, hunting, or primitive camping, recreational, or scenic areas and which is not a (1) city, town or village street (2) county, state or federal highway or (3) a township or other road district highway. (b) Any hiking, riding, fishing or hunting trail.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 3-107.

CASE NOTES

Analysis

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- Duty to Warn
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- Paved Bike Path
Immunity Upheld
- Access Road in Public Park
- Paved Bike Path
Physical Condition
- Not Shown

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Applicability

Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/3-107(b) does not exclude manmade objects such as a wooden bridge that is part of a recreational multiuse trail from the immunity afforded to local governments and their employees. McElroy v. Forest Pres. Dist. of Lake County, 384 Ill. App. 3d 662, 323 Ill. Dec. 611, 894 N.E.2d 170, 2008 Ill. App. LEXIS 823 (1 Dist. 2008).

Dangerous Condition

- Duty to Warn

Although there was nothing in the record demonstrating that defendant placed chain across the road on the day that plaintiff was injured, where the evidence did show that defendant erected and maintained the chain, defendant had a duty to warn of the condition and should not have created the dangerous condition. Sites v. Cook County Forest Preserve Dist., 257 Ill. App. 3d 807, 196 Ill. Dec. 76, 629 N.E.2d 621 (1 Dist. 1994).

Immunity

Immunity afforded to local governments and their employee's applied in a personal injury action involving a manmade bridge that was part of a multiuse trail in a forest preserve; 745 ILCS 10/3-107(b) was not limited to "unimproved" trails and the bridge was an integral part of the trail. McElroy v. Forest Pres. Dist. of Lake County, 384 Ill. App. 3d 662, 323 Ill. Dec. 611, 894 N.E.2d 170, 2008 Ill. App. LEXIS 823 (1 Dist. 2008).

Immunity Not Upheld

- Paved Bike Path

The legislature did not intend to include a paved bike path in a developed city park within the definition of a "riding trail" of subsection (b); therefore, the absolute immunity provided by this section is not available. Goodwin v. Carbondale Park Dist., 268 Ill. App. 3d 489, 205 Ill. Dec. 956, 644 N.E.2d 512 (5 Dist. 1994).

Immunity Upheld

- Access Road in Public Park

Defendant park district and city were entitled to tort immunity in action by nine year old bicycle rider who fell when he struck a crack in bridge over a creek in a public park used for recreational purposes; the bridge provided access from the park's corner for persons using the recreational path and the recreational facilities in the park. Scott v. Rockford Park Dist., 263 Ill. App. 3d 853, 201 Ill. Dec. 643, 636 N.E.2d 1075 (2 Dist.), appeal denied, 157 Ill. 2d 522, 205 Ill. Dec. 186, 642 N.E.2d 1303 (1994).

- Paved Bike Path

Where a forest preserve was immune from suit under 745 ILCS 10/3-107(a), (b) because a bike path running through the preserve's property was a "marked path through a forest or mountainous region," the trial court erred by denying the preserve's motion for a judgment notwithstanding the verdict in a bicyclist's personal injury action. Mull v. Kane County Forest Pres.

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Dist., 337 Ill. App. 3d 589, 271 Ill. Dec. 978, 786 N.E.2d 236, 2003 Ill. App. LEXIS 294 (2 Dist. 2003), appeal denied, 204 Ill. 2d 662, 275 Ill. Dec. 77, 792 N.E.2d 308 (2003).

Where record established that area where plaintiff fell was not developed property simply because bicycle path on which he was riding was paved, and where area was described as "a forest," municipal corporation was entitled to absolute immunity provided by subsection (b). Brown v. Cook County Forest Preserve, 284 Ill. App. 3d 1098, 220 Ill. Dec. 471, 673 N.E.2d 383 (1 Dist. 1996), appeal denied, 172 Ill. 2d 562, 222 Ill. Dec. 429, 677 N.E.2d 963 (1997).

Physical Condition

- Not Shown

A structure erected on an access road, such as a chain or cable gate causing an injury, should not be considered a physical condition of the road covered by this section; the structure was an artificial barrier and not part of the road itself. Sites v. Cook County Forest Preserve Dist., 257 Ill. App. 3d 807, 196 Ill. Dec. 76, 629 N.E.2d 621 (1 Dist. 1994).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 34:102 Particular areas, ways, and portions thereof.

Illinois Jurisprudence, Personal Injury and Torts § 27:14 Particular areas, ways, and portions thereof.

§ 745 ILCS 10/3-108. [Failure to supervise activity on public property; swimming areas]

Sec. 3-108. (a) Except as otherwise provided in this Act, neither a local public entity nor a public employee who undertakes to supervise an activity on or the use of any public property is liable for an injury unless the local public entity or public employee is guilty of willful and wanton conduct in its supervision proximately causing such injury.

(b) Except as otherwise provided in this Act, neither a local public entity nor a public employee is liable for an injury caused by a failure to supervise an activity on or the use of any public property unless the employee or the local public entity has a duty to provide supervision imposed by common law, statute, ordinance, code or regulation and the local public entity or public employee is guilty of willful and wanton conduct in its failure to provide supervision proximately causing such injury.

(Source: Laws 1965, p. 2983; P.A. 90-805, § 5.)

Note.

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This section was Ill.Rev.Stat., Ch. 85, Para. 3-108.

Effect of Amendments. The 1998 amendment by P.A. 90-805, effective December 2, 1998, rewrote the section.

CASE NOTES

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In General

745 ILCS 10/2-202 is insufficient to circumvent the blanket immunity provided by this section. Grandalski ex rel. Grandalski v. Lyons Tp. High Sch., 305 Ill. App. 3d 1, 238 Ill. Dec. 269, 711 N.E.2d 372 (1 Dist. 1999), appeal denied, 185 Ill. 2d 623, 242 Ill. Dec. 136, 720 N.E.2d 1091 (1999).

Applicability

745 ILCS 10/3-108(a) did not apply with regard to a student's negligent supervision claim against a public school district because the student was not alleging that a public school district was negligent in supervising an activity, but rather that it was negligent in supervising one of its employees. Rogers v. Cook, F. Supp. 2d , 2008 U.S. Dist. LEXIS 103702 (N.D. Ill. Dec. 23, 2008).

- Driver's Education Program

Driver's education teacher, as a passenger in a vehicle equipped with a dual control brake, owed a duty to victims that was independent of his duty as a driving instructor; he had a duty to prevent the accident by using the brakes, a duty not immunized by this Act. Jania ex rel. Canales v. Aguilera, 293 Ill. App. 3d 940, 228 Ill. Dec. 311, 689 N.E.2d 183 (1 Dist. 1997).

- In General

745 ILCS 10/3-108 was inapplicable in student's negligence action against school board for board's failure to report allegations of sexual harassment of student by a teacher. Doe v.

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Dimovski, 336 Ill. App. 3d 292, 270 Ill. Dec. 618, 783 N.E.2d 193, 2003 Ill. App. LEXIS 42 (2 Dist. 2003), appeal denied, 204 Ill. 2d 658, 275 Ill. Dec. 75, 792 N.E.2d 306 (2003).

The 1998 amendment to this section, which was intended to allow a plaintiff to defeat the immunity of a local public entity or public employee who causes injury by a willful and wanton failure to supervise an activity involving public property, could not be applied retroactively to a cause of action which arose in January 1996. D.M. v. National Sch. Bus Serv., Inc., 305 Ill. App. 3d 735, 238 Ill. Dec. 950, 713 N.E.2d 196 (2 Dist. 1999).

The unconditional language of this section exonerated arguably wilful and wanton behavior exhibited by lifeguards at pool operated by pool district, in which plaintiff's child drowned. Barnett ex rel. Estate of King v. Zion Park Dist., 267 Ill. App. 3d 283, 204 Ill. Dec. 791, 642 N.E.2d 492 (2 Dist. 1994), aff'd, 171 Ill. 2d 378, 216 Ill. Dec. 550, 665 N.E.2d 808 (1996).

- Illustrative Cases

Appellate court properly affirmed the trial court's summary judgment grant to the board of education, agency, and agency employee, although on different grounds than the trial court set forth for granting summary judgment in a case where the injured child and his mother sued them for injuries he sustained when he landed awkwardly after doing a front flip off of a mini-trampoline at a school; while the trial court found that they were immune pursuant to 745 ILCS 10/2-201 and 745 ILCS 10/3-108(a), 745 ILCS 10/3-109 determined the scope of their immunity because the injured child was involved in a hazardous recreational activity at the time he was injured and that statutory section did not provide them with immunity from willful and wanton misconduct, but the injured child and his mother's second amended complaint did not alleged facts showing that they had engaged in willful and wanton misconduct. Murray v. Chi. Youth Ctr., Ill. 2d , Ill. Dec. , N.E.2d , 2006 Ill. LEXIS 1104 (July 5, 2006).

Dismissal of the minor's complaint for injuries against a park program and its supervisor was upheld because the minor had not set forth a course of action taken by defendants that proximately caused the injuries and there was thus no grounds for asserting that there was a willful and wanton failure to supervise. Floyd v. Rockford Park Dist., 355 Ill. App. 3d 695, 291 Ill. Dec. 418, 823 N.E.2d 1004, 2005 Ill. App. LEXIS 24 (2 Dist. 2005), appeal denied, 215 Ill. 2d 595, 295 Ill. Dec. 520, 833 N.E.2d 2 (2005).

A school district was not entitled to immunity in an action arising from a fall from an accessability ramp leading to a school gymnasium since this section concerns a specific type of conduct and has nothing to do with the condition of the property. Capps v. Belleville Sch. Dist. No. 201, 313 Ill. App. 3d 710, 246 Ill. Dec. 401, 730 N.E.2d 81, 2000 Ill. App. LEXIS 317 (5 Dist. 2000).

While none of the sexual activity was alleged to have occurred on school property, defendant's obligation and ability to supervise the school instructor arose out of his school position and the conduct plaintiffs asserted gave defendants occurred either at school or at a school-sponsored function, therefore this section applied to plaintiff's claims. Doe v. Board of Educ., 18 F. Supp. 2d 954 (N.D. Ill. 1998).

Where plaintiff did not show that victim strayed onto private property before the accident, immunity under subsection (a) applied. Downey v. Wood Dale Park Dist., 286 Ill. App. 3d 194, 221 Ill. Dec. 549, 675 N.E.2d 973 (2 Dist. 1997), appeal denied, 172 Ill. 2d 549, 223 Ill. Dec. 194, 679 N.E.2d 379 (1997).

Where plaintiff student was injured while attempting to break up a fight which occurred on school grounds after school, the Tort Immunity Act was applicable with regard to all defendants including board of education as a local public entity, and defendants, vice principal, assistant principal, and security guard as public employees. Towner v. Board of Educ., 275 Ill. App. 3d 1024, 212 Ill. Dec. 333, 657 N.E.2d 28 (1 Dist. 1995).

- Structural Work Act Claim

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Subsection (a) provides local public entities immunity from any injury for failure to supervise activity on public property, including the failure to supervise construction activities that form the basis of a Structural Work Act claim. Epstein v. Chicago Bd. of Educ., 178 Ill. 2d 370, 227 Ill. Dec. 560, 687 N.E.2d 1042 (1997).

- Summer Program

This section is applicable to shield a city from liability for an asserted failure to adequately supervise a summer recreation program held on public property. Ramos ex rel. Ramos v. City of Countryside, 137 Ill. App. 3d 1028, 92 Ill. Dec. 607, 485 N.E.2d 418 (1 Dist. 1985).

Duty to Supervise

- Swimming Pool

Subsection (b) did not impose a duty on the Park District to supervise the activities at the pool. Blankenship v. Peoria Park Dist., 269 Ill. App. 3d 416, 207 Ill. Dec. 325, 647 N.E.2d 287 (1995).

The Park District's common law duty to supervise the patrons of its swimming pool does not extend to adult swimmers. Blankenship v. Peoria Park Dist., 269 Ill. App. 3d 416, 207 Ill. Dec. 325, 647 N.E.2d 287 (1995).

Immunity

Students' claims against a school district for negligent hiring were dismissed because the district was immune under 745 ILCS 10/2-201; the students' claims for negligent supervision were also dismissed because they were barred by 745 ILCS 10/3-108 and because the violation of the school district's policies did not state a negligent supervision claim. Doe v. Bd. of Educ. of the Cmty. Unit Sch. Dist. No. 5, 680 F. Supp. 2d 957, 2010 U.S. Dist. LEXIS 1902 (C.D. Ill. 2010).

Sexual abuse victims' claims against a school district that alleged the school district was liable for negligent supervision of the teacher who abused the victims was not barred by the Illinois Tort Immunity Act, 745 ILCS 10/3-108, because the negligent supervision claims did not sound strictly in negligence, but included allegations that the district's failure to supervise the teacher was willful and wanton. Further, the claims also included an allegation that, despite knowledge of the teacher's actions, the district refused to take any steps to prevent him from abusing students and incorporated by reference an allegation that the district failed to report the teacher's actions to the Department of Children and Family Services, as required by law. Alicia B. v. Sperlik, F. Supp. 2d , 2005 U.S. Dist. LEXIS 31215 (N.D. Ill. Nov. 30, 2005).

Students' negligent supervision claims against a school district, as well as the school principal, in her official capacity, were not barred by the Illinois Tort Immunity Act (TIA), 745 ILCS 10/3-108, because the claims did not sound strictly in negligence as they included a paragraph that alleged that the district failure to supervise the teacher was willful and wanton and that, despite knowledge of the teacher's actions, the district refused to take any steps to prevent him from abusing students, and they also incorporated by reference an allegation that the district's failed to report the teacher's actions to the Department of Children and Family Services, as required by law; the TIA did not immunize conduct that was willful and wanton pursuant 745 ILCS 10/3-108, and Illinois courts had sanctioned claims based on a failure by the school district to report or investigate sexual misconduct of a teacher. Marciela G. v. Sperlik, F. Supp. 2d , 2005 U.S. Dist. LEXIS 31213 (N.D. Ill. Nov. 30, 2005).

Immunity Not Upheld

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- Adult Swimmer

Where three lifeguards were obstensibly on duty and were present in the pool area, according to the complaint they were on a break and not in a position to observe the pool, this was not mere inattention or a momentary lack of vigilance, it was a complete absence of supervision and these allegations constituted a "failure to provide supervision" within the meaning of subsection (b). Blankenship v. Peoria Park Dist., 269 Ill. App. 3d 416, 207 Ill. Dec. 325, 647 N.E.2d 287 (1995).

- Failure to Provide Appropriate Equipment

Subsection (a) did not apply to an action against a school district in which the plaintiffs alleged that the school district failed to provide appropriate equipment in a physical education class since the gist of the allegations set forth in the complaint was not a failure to supervise an activity. Arteman v. Clinton Community Unit Sch. Dist. No. 15, 317 Ill. App. 3d 453, 251 Ill. Dec. 217, 740 N.E.2d 47, 2000 Ill. App. LEXIS 924 (4 Dist. 2000).

- Failure to Supervise

Subsection (a) does not confer immunity upon a public employee for injuries sustained as a result of a failure to supervise an activity on property owned by the state. Stiff ex rel. Stiff v. Eastern Ill. Area of Special Educ., 251 Ill. App. 3d 859, 190 Ill. Dec. 349, 621 N.E.2d 218 (4 Dist. 1993), appeal denied, 154 Ill. 2d 569, 197 Ill. Dec. 496, 631 N.E.2d 718 (1994).

- Private School

Illinois Tort Immunity Act did not govern activities at a private school and trial court erred by finding that the school had immunity from suit alleging wilful and wanton misconduct and dismissing that suit, where suit was filed after a student was injured while playing. Brugger v. Joseph Academy, Inc., 326 Ill. App. 3d 328, 260 Ill. Dec. 56, 760 N.E.2d 135, 2001 Ill. App. LEXIS 863 (1 Dist. 2001), aff'd, 202 Ill. 2d 435, 269 Ill. Dec. 472, 781 N.E.2d 269 (2002).

- Students

By virtue of this section, the insured board of education could not rely upon immunity conferred by this section to support an award of summary judgment in an action by plaintiff for damages for personal injuries suffered as a result of actions by students who were allegedly poorly supervised. Edmonson ex rel. Edmonson v. Chicago Bd. of Educ., 62 Ill. App. 3d 211, 19 Ill. Dec. 512, 379 N.E.2d 27 (1 Dist. 1978).

- Supervisor Role Abandoned

Defendant abandoned his role as supervisor of the activity and became an active participant in an intense one on one competition in an activity that had a winner and a loser; therefore trial court erred in determining defendants were immune from liability pursuant to subsection (a). Longfellow ex rel. Longfellow v. Corey, 286 Ill. App. 3d 366, 221 Ill. Dec. 656, 675 N.E.2d 1386 (4 Dist. 1997).

Immunity Upheld

As long as lifeguards were present on the pool deck, the park district was immune from liability for a patron's drowning death; the clear legislative intent was to shield public entities from liability for ordinary negligence, and the district was entitled to a directed verdict. Robinson v. Chicago Park Dist., 325 Ill. App. 3d 493, 258 Ill. Dec. 876, 757 N.E.2d 565, 2001 Ill. App. LEXIS 702 (1 Dist. 2001), appeal denied, 196 Ill. 2d 563, 261 Ill. Dec. 356, 763 N.E.2d 326 (2001).

- School Employees

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Special duty exception did not override the immunities provided governmental entities under the Local Governmental and Governmental Employees Tort Immunity Act (Act) because the administrator did not make any allegations that could have been construed as the Board of Education acting in a supervisory manner under 745 ILCS 10/3-108 of the Act nor did she make any allegations that the Board was executing or enforcing a law under 745 ILCS 10/2-202 of the Act. Green v. Chicago Bd. of Educ., 407 Ill. App. 3d 721, 348 Ill. Dec. 506, 944 N.E.2d 459, 2011 Ill. App. LEXIS 101 (1 Dist. 2011).

- City Construction

City's supervision of pile driving constituted a discretionary activity that immunized the city from liability. In re Chicago Flood Litig., 176 Ill. 2d 179, 223 Ill. Dec. 532, 680 N.E.2d 265 (1997).

- Golf Course

The alleged negligent conduct of defendant village in supervising and regulating the use of its public golf course during a golf tournament in which plaintiff was injured by an airborne golf ball was immune from the liability sought to be imposed under plaintiff's complaint. Koh v. Village Greens, 158 Ill. App. 3d 226, 110 Ill. Dec. 677, 511 N.E.2d 854 (2 Dist. 1987).

- Illustrative Cases

Where lifeguards were present around pool and supposedly supervising patrons when decedent drowned, although the supervision may have been deficient, defendant need only have provided supervision in order to acquire immunity under subsection (b). Barnett ex rel. Estate of King v. Zion Park Dist., 267 Ill. App. 3d 283, 204 Ill. Dec. 791, 642 N.E.2d 492 (2 Dist. 1994), aff'd, 171 Ill. 2d 378, 216 Ill. Dec. 550, 665 N.E.2d 808 (1996).

- Job Site Accident

The minimal amount of control retained by a water reclamation district over safety issues and quality assurance in connection with a tunnel construction project did not exceed the bounds of a supervisory role for purposes of the statute where the district's only active participation in the project focused on overseeing the work and enforcing the terms of a contract. Moorehead v. Metro. Water Reclamation Dist., 322 Ill. App. 3d 635, 255 Ill. Dec. 342, 749 N.E.2d 443, 2001 Ill. App. LEXIS 335 (1 Dist. 2001).

This section provided immunity to county so as to bar plaintiffs' causes of action against the county under the former Structural Work Act (740 ILCS 150/1 et seq. (now repealed)) for accident on job site where the county maintained supervision or control over the work performed at the job site. Eiben v. E. J. Cattani & Sons, 217 Ill. App. 3d 609, 160 Ill. Dec. 557, 577 N.E.2d 882 (3 Dist.), cert. denied, 142 Ill. 2d 653, 164 Ill. Dec. 916, 584 N.E.2d 128 (1991).

- Playground Equipment

Inflatable slide manufacturer could not maintain a contribution action against a park district and its camp volunteer in a personal injury action filed by an employee of the park district who was injured due to an alleged defect in the slide. The park district was immune from the manufacturer's claims of failure to supervise under 745 ILCS 10/3-108, from claims of negligence regarding the condition of the slide under 745 ILCS 10/3-106, and from vicarious liability for the volunteer's involvement in the employee's injury under 45 ILCS 10/2-109. The volunteer was protected under the Workers' Compensation Act, 820 ILCS 305/5(a). Flores v. Palmer Mktg., 361 Ill. App. 3d 172, 297 Ill. Dec. 61, 836 N.E.2d 792, 2005 Ill. App. LEXIS 939 (1 Dist. 2005).

Claims of negligence and failure to supervise a minor injured on playground equipment owned and possessed by defendant city park district were properly dismissed, since 745 ILCS 10/3-106 bars suits based upon negligence and this section eliminates liability based upon failure to

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supervise. Jarvis ex rel. Jarvis v. Herrin City Park Distr., 6 Ill. App. 3d 516, 285 N.E.2d 564 (5 Dist. 1972).

- School Districts

Teacher who failed to ensure that a student was wearing eye protection before proceeding with a chemistry experiment was acting in a supervisory capacity; thus, the school district the teacher worked for was immune from liability under 745 ILCS 10/3-108(a) for the teacher's negligence in carrying out her supervisory duty. Hill v. Galesburg Cmty. Unit Sch. Dist. 205, 346 Ill. App. 3d 515, 281 Ill. Dec. 931, 805 N.E.2d 299, 2004 Ill. App. LEXIS 180 (3 Dist. 2004).

Coach, high school, and school district were immune from suit by a student who broke her arm while practicing a cheerleading routine on school grounds, and the fact that the defendants had joined a state high school association, had adopted the association's rules governing cheerleading, and may have violated those rules did not change that result. Repede v. Cmty. Unit Sch. Dist. No. 300, 335 Ill. App. 3d 140, 268 Ill. Dec. 758, 779 N.E.2d 372, 2002 Ill. App. LEXIS 1063 (2 Dist. 2002).

Where both subsection (a) of this section and 105 ILCS 5/24-24 applied to a cause of action which alleged that a school district required, allowed, or failed to prohibit the plaintiff's participation in a water basketball game with knowledge of the plaintiff's medical condition and permanent medical restrictions on his activities, and where the immunity granted by the former statute barred the cause of action while the immunity granted by the latter statute did not bar the cause of action, the former statute controlled. Henrich v. Libertyville High Sch., 186 Ill. 2d 381, 238 Ill. Dec. 576, 712 N.E.2d 298 (1999).

- School Employees

As employees of defendant board of education, the two individual defendants, a teacher's aide and a school community representative, were not liable for plaintiff's injury since it arose out of their alleged failure to supervise an activity on public property. Edmonson ex rel. Edmonson v. Chicago Bd. of Educ., 62 Ill. App. 3d 211, 19 Ill. Dec. 512, 379 N.E.2d 27 (1 Dist. 1978).

Where a plaintiff who sustained personal injuries resulting from actions of students who were allegedly poorly supervised did not allege any wilful or wanton misconduct on the part of defendants, a teacher's aide and a school community representative, the granting of summary judgment to these defendants based upon the immunity conferred by this section was proper. Edmonson ex rel. Edmonson v. Chicago Bd. of Educ., 62 Ill. App. 3d 211, 19 Ill. Dec. 512, 379 N.E.2d 27 (1 Dist. 1978).

- Stray Baseballs

Absent an allegation that the claimed negligence was wilful and wanton, Board of Education was immune from liability for property damage to plaintiffs' garden plants and shrubs allegedly resulting from straying baseballs which crossed street landing on the premises and from the acts of those seeking to retrieve such baseballs under 745 ILCS 10/3-106 and this section. Keller v. Board of Educ., 68 Ill. App. 3d 7, 24 Ill. Dec. 644, 385 N.E.2d 785 (5 Dist. 1978).

- Swimming Pool

The pre-1998 version of subsection (a) provided immunity to a physical education teacher and to volunteer student guards for what was alleged to be wilful and wanton conduct in the supervision of a required physical education swimming class. Trotter v. School Dist. 218, 315 Ill. App. 3d 1, 247 Ill. Dec. 899, 733 N.E.2d 363, 2000 Ill. App. LEXIS 562 (1 Dist. 2000).

There was no evidence in the record that notice of the hours for use of the pool was posted anywhere on the school premises, therefore, absolute immunity applied. Dixon v. Chicago Bd. of Educ., 304 Ill. App. 3d 744, 237 Ill. Dec. 689, 710 N.E.2d 112 (1 Dist. 1999).

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Improper Supervision

A "failure to supervise" as used in subsection (a) encompasses improper supervision. Henrich ex rel. Henrich v. Libertyville High Sch., 289 Ill. App. 3d 809, 225 Ill. Dec. 191, 683 N.E.2d 135 (2 Dist. 1997), aff'd, 86 Ill. 2d 381, 238 Ill. Dec. 576, 712 N.E.2d 298 (1998).

Legislative Intent

The 1998 amendment to this section does not demonstrate a legislative intent to comprehensively limit immunity under the act to instances of ordinary negligence; instead the amendment serves to verify that only the explicit language of the act can exclude willful and wanton conduct from its coverage. A.R. v. Chicago Bd. of Educ., 311 Ill. App. 3d 29, 243 Ill. Dec. 697, 724 N.E.2d 6, 1999 Ill. App. LEXIS 924 (1 Dist. 1999), appeal denied, 188 Ill. 2d 561, 246 Ill. Dec. 121, 729 N.E.2d 494 (2000); but see Doe v. Chi. Bd. of Educ., 213 Ill. 2d 19, 289 Ill. Dec. 642, 820 N.E.2d 418 (2004).

- Ownership of Property

The plain language of subsection (a) gives no indication that the legislature contemplated a difference between property owned by the state and property owned by local public entities. Stiff ex rel. Stiff v. Eastern Ill. Area of Special Educ., 251 Ill. App. 3d 859, 190 Ill. Dec. 349, 621 N.E.2d 218 (4 Dist. 1993), appeal denied, 154 Ill. 2d 569, 197 Ill. Dec. 496, 631 N.E.2d 718 (1994).

Liability

- Defenses

A city may not escape liability from 745 ILCS 10/3-103 by raising the immunities contained in this section and 745 ILCS 10/3-104. Jorgensen v. Whiteside, 233 Ill. App. 3d 783, 174 Ill. Dec. 925, 599 N.E.2d 1009 (1 Dist.), appeal denied, 147 Ill. 2d 627, 180 Ill. Dec. 150, 606 N.E.2d 1227 (1992).

Limitation on Immunity

Local Governmental and Governmental Employees Tort Immunity Act, at 745 ILCS 10/2-201, 745 ILCS 10/3-108, and 745 ILCS 10/3-109, did not provide immunity to an airport for decisions regarding a determination of policy and exercise of that policy where a claim for injuries alleged an act or omission with respect to those decisions; the decision was discretionary and not made in the course of determining policy. Spangenberg v. Verner, 321 Ill. App. 3d 429, 254 Ill. Dec. 319, 747 N.E.2d 359, 2001 Ill. App. LEXIS 513 (1 Dist. 2001).

Subdivision (c)(2) of 745 ILCS 10/3-109 does not provide an exception to the absolute immunity granted under subsection (a). Johnson v. Decatur Park Dist., 301 Ill. App. 3d 798, 235 Ill. Dec. 67, 704 N.E.2d 416 (4 Dist. 1998), appeal denied, 183 Ill. 2d 569, 238 Ill. Dec. 714, 712 N.E.2d 818 (1999).

745 ILCS 10/3-106 does not apply to limit the immunity granted by this section. Johnson v. Decatur Park Dist., 301 Ill. App. 3d 798, 235 Ill. Dec. 67, 704 N.E.2d 416 (4 Dist. 1998), appeal denied, 183 Ill. 2d 569, 238 Ill. Dec. 714, 712 N.E.2d 818 (1999).

Nominal Fees

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- Protection Not Destroyed

A municipal golf course, operated to provide recreation for the general public on village property, may not be excluded from the protections of this Act for charging nominal fees for such use. Koh v. Village Greens, 158 Ill. App. 3d 226, 110 Ill. Dec. 677, 511 N.E.2d 854 (2 Dist. 1987).

Public Property

Public Property, as used in subsection (a) includes public schools. Henrich ex rel. Henrich v. Libertyville High Sch., 289 Ill. App. 3d 809, 225 Ill. Dec. 191, 683 N.E.2d 135 (2 Dist. 1997), aff'd, 86 Ill. 2d 381, 238 Ill. Dec. 576, 712 N.E.2d 298 (1998).

Review

Interpreting the Tort Immunity Act is purely a matter of law and appropriate for summary judgment. Barnett v. Zion Park Dist., 171 Ill. 2d 378, 216 Ill. Dec. 550, 665 N.E.2d 808 (1996).

Scope of Immunity

To the extent plaintiffs' claims against a school district of negligent supervision regarding a teacher who sexually abused his young female students were based on purely negligent actions, they were barred by the immunity shield granted by 745 ILCS 10/3-108. However, to the extent the negligent supervision claims were based on plaintiffs' allegations that the district's failure to supervise the teacher was willful and wanton, that despite knowledge of the teacher's actions, the district refused to take any steps to prevent him from abusing students, and that the district failed to report the teacher's actions to the Illinois Department of Children and Family Services, as required by law, 745 ILCS 10/3-108 did not provide immunity and those claims would be allowed to proceed. Roe v. Sperlik, F. Supp. 2d , 2005 U.S. Dist. LEXIS 31260 (N.D. Ill. Nov. 30, 2005).

Sexual abuse victims' claims against a school district that alleged the school district was liable for negligent supervision of the teacher who abused the victims was not barred by the Illinois Tort Immunity Act, 745 ILCS 10/3-108, because the negligent supervision claims did not sound strictly in negligence, but included allegations that the district's failure to supervise the teacher was willful and wanton. Further, the claims also included an allegation that, despite knowledge of the teacher's actions, the district refused to take any steps to prevent him from abusing students and incorporated by reference an allegation that the district failed to report the teacher's actions to the Department of Children and Family Services, as required by law. Raymond S. v. Sperlik, F. Supp. 2d , 2005 U.S. Dist. LEXIS 31313 (N.D. Ill. Nov. 30, 2005).

- Absolute

Subsection (a) unequivocally grants absolute immunity to public entities and their employees from liability resulting from a failure to supervise. Benbenek v. Chicago Park Dist., 279 Ill. App. 3d 930, 216 Ill. Dec. 440, 665 N.E.2d 500 (1 Dist. 1996).

- Ownership of Property

In delineating the scope of the immunity granted, the legislature did not include a requirement that the property be owned by the governmental body named as defendant. Castenada v. Community Sch. Dist., 226 Ill. App. 3d 514, 168 Ill. Dec. 638, 589 N.E.2d 1038 (2 Dist. 1992).

- School Classes

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There is no exception in subsection (a) for alleged improper supervision by a teacher that occurred in a required class. Henrich ex rel. Henrich v. Libertyville High Sch., 289 Ill. App. 3d 809, 225 Ill. Dec. 191, 683 N.E.2d 135 (2 Dist. 1997), aff'd, 86 Ill. 2d 381, 238 Ill. Dec. 576, 712 N.E.2d 298 (1998).

- School Code

The School Code (105 ILCS 5/1-1 et seq.) and this Act are to be interpreted independently of each other. Henrich ex rel. Henrich v. Libertyville High Sch., 289 Ill. App. 3d 809, 225 Ill. Dec. 191, 683 N.E.2d 135 (2 Dist. 1997), aff'd, 86 Ill. 2d 381, 238 Ill. Dec. 576, 712 N.E.2d 298 (1998).

With respect to the immunity provided to a school district, subsection (a) is more direct and specific than 105 ILCS 5/24-24. Henrich ex rel. Henrich v. Libertyville High Sch., 289 Ill. App. 3d 809, 225 Ill. Dec. 191, 683 N.E.2d 135 (2 Dist. 1997), aff'd, 86 Ill. 2d 381, 238 Ill. Dec. 576, 712 N.E.2d 298 (1998).

- Supervision of Activity

Where a local entity does not undertake to supervise any activity, it cannot be held liable pursuant to this section. Jorgensen v. Whiteside, 233 Ill. App. 3d 783, 174 Ill. Dec. 925, 599 N.E.2d 1009 (1 Dist.), appeal denied, 147 Ill. 2d 627, 180 Ill. Dec. 150, 606 N.E.2d 1227 (1992).

- Wilful and Wanton Conduct

Injured youth and his mother's second-amended complaint stated sufficient facts to show that their claim based on serious injuries that the injured youth sustained in a mini-trampoline accident fell within the willful and wanton exception to the immunity that would otherwise be afforded to the city board of education, city youth center, and city youth center employee pursuant to 745 ILCS 10/2-201 and 745 ILCS 10/3-108(a); indeed, the city board of education, city youth center, and city youth center employee's conduct as alleged in the second amended complaint could be found to meet the exceptions to immunity provisions set forth in 745 ILCS 10/3-109 based on the definition of willful and wanton conduct contained in 745 ILCS 10/1-210. Murray v. Chi. Youth Ctr., 224 Ill. 2d 213, 309 Ill. Dec. 310, 864 N.E.2d 176, 2007 Ill. LEXIS 438 (2007).

Although the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., provided exceptions to the immunity of governmental entities and governmental employees where an individual sustained injury due to their willful and wanton conduct proximately causing that injury, the city employee, city youth, and city education board could not be held liable for the spinal cord injury the student incurred in an after-school tumbling program from use of a mini-trampoline, as the student had not shown they engaged in wilful and wanton conduct in connection with that injury. Murray v. Chi. Youth Ctr., 352 Ill. App. 3d 95, 287 Ill. Dec. 102, 815 N.E.2d 746, 2004 Ill. App. LEXIS 397 (1 Dist. 2004), aff'd, 2006 Ill. LEXIS 1104 (Ill. 2006); different results reached on reh'g, 224 Ill. 2d 213, 864 N.E.2d 176, 2007 Ill. LEXIS 438, 309 Ill. Dec. 310 (2007).

If the General Assembly wished to limit the immunity provided under subsection (a) to situations where there was no wilful or wanton conduct, it could have simply included such language as it did in 745 ILCS 10/3-106 and 745 ILCS 10/3-109. Benbenek v. Chicago Park Dist., 279 Ill. App. 3d 930, 216 Ill. Dec. 440, 665 N.E.2d 500 (1 Dist. 1996).

The plain language of the statute does not provide an exception where a public entity or a public employee acts in a wilful and wanton manner. Benbenek v. Chicago Park Dist., 279 Ill. App. 3d 930, 216 Ill. Dec. 440, 665 N.E.2d 500 (1 Dist. 1996).

Unlike 745 ILCS 10/2-202, 745 ILCS 10/3-106, and 745 ILCS 10/3-109(c)(2) notably absent from subsection (a) is language excepting wilful and wanton conduct from the scope of immunity that this section provides; subsection (a) unambiguously grants immunity from liability that would

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otherwise arise from a wilful and wanton failure to supervise an activity occurring on public property. Payne v. Lake Forest Community High Sch. Dist. 115, 268 Ill. App. 3d 783, 206 Ill. Dec. 67, 644 N.E.2d 835 (2 Dist. 1994), appeal denied, 161 Ill. 2d 529, 208 Ill. Dec. 362, 649 N.E.2d 418 (1995).

Special Duty Doctrine

As plaintiffs' allegations that a school district owed a special duty to the young female students who had been molested by a teacher could not be pled as a stand alone claim, the allegations, which provided an exception to the immunity that might otherwise attach to the school district's actions, were stricken as independent claims but were considered to be reincorporated into plaintiffs' complaints. Roe v. Sperlik, F. Supp. 2d , 2005 U.S. Dist. LEXIS 31260 (N.D. Ill. Nov. 30, 2005).

School district's motion to dismiss female students' special duty claims was denied because the motion was premised on the district's belief that it was immune from the student's negligent supervision claims, but the special duty doctrine provided an avenue for the students to overcome the district's immunity under the Illinois Tort Immunity Act and to prove that the district was liable for negligent supervision even without demonstrating willful and wanton conduct. The special duty exception was not a stand-alone claim, but an exception allowing plaintiffs to proceed where they were otherwise barred by a claim of immunity, so the court struck the students' special duty claims as independent claims, but each numbered paragraph was considered to be reincorporated into the complaints. Marciela G. v. Sperlik, F. Supp. 2d , 2005 U.S. Dist. LEXIS 31213 (N.D. Ill. Nov. 30, 2005).

- Direct or Immediate Control

Element of direct and immediate control was lacking where child, participating in summer program, broke away from the group, ran into the street and was injured; park district did not solicit decedent's participation in summer program and no agent of the park district instructed victim to run into the street. Downey v. Wood Dale Park Dist., 286 Ill. App. 3d 194, 221 Ill. Dec. 549, 675 N.E.2d 973 (2 Dist. 1997), appeal denied, 172 Ill. 2d 549, 223 Ill. Dec. 194, 679 N.E.2d 379 (1997).

- Scope

The special duty doctrine does not apply only in the context of law enforcement; so long as the elements set forth by the supreme court are met there is no reason to limit the doctrine to those circumstances. Downey v. Wood Dale Park Dist., 286 Ill. App. 3d 194, 221 Ill. Dec. 549, 675 N.E.2d 973 (2 Dist. 1997), appeal denied, 172 Ill. 2d 549, 223 Ill. Dec. 194, 679 N.E.2d 379 (1997).

- Swimming Pools

Although this section did not impose a duty on the defendant, defendant did owe a common-law duty of care to plaintiff. Barnett ex rel. Estate of King v. Zion Park Dist., 267 Ill. App. 3d 283, 204 Ill. Dec. 791, 642 N.E.2d 492 (2 Dist. 1994), aff'd, 171 Ill. 2d 378, 216 Ill. Dec. 550, 665 N.E.2d 808 (1996).

- Uniquely Aware

Park district was not uniquely aware of the particular danger or risk that victim was exposed to; that he would break away from his fellow participant's hand and run into the street. Downey v. Wood Dale Park Dist., 286 Ill. App. 3d 194, 221 Ill. Dec. 549, 675 N.E.2d 973 (2 Dist. 1997), appeal denied, 172 Ill. 2d 549, 223 Ill. Dec. 194, 679 N.E.2d 379 (1997).

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Strict Construction

- Required

A strict construction of this section is required since it is in derogation of the common law. Woodman ex rel. Woodman v. Litchfield Community Sch., 102 Ill. App. 2d 330, 242 N.E.2d 780 (5 Dist. 1968).

Supervision Defined

The plain and ordinary meaning of "supervise" is to oversee with the powers of direction and decision the implementation of one's own or another's intentions. Gusich v. Metro. Pier & Exposition Auth., 326 Ill. App. 3d 1030, 260 Ill. Dec. 768, 762 N.E.2d 34, 2001 Ill. App. LEXIS 929 (1 Dist. 2001).

Supervision does not encompass active participation that rises to a level of intense one on one competition in the form of a game or activity that has a winner and a loser; under such circumstances the public employee clearly has abandoned the role of supervisor and becomes an equal competitor with the participant. Longfellow ex rel. Longfellow v. Corey, 286 Ill. App. 3d 366, 221 Ill. Dec. 656, 675 N.E.2d 1386 (4 Dist. 1997).

Giving the statutory language its plain and ordinary meaning, supervision extends beyond passive oversight of an activity and includes direction, teaching, demonstration of techniques, and to some degree active participation in an activity while supervising it. Longfellow ex rel. Longfellow v. Corey, 286 Ill. App. 3d 366, 221 Ill. Dec. 656, 675 N.E.2d 1386 (4 Dist. 1997).

Supervision Shown

Where a high school swim team's coach was also a water safety instructor and was on the pool deck when the victim was in the water, this constituted supervision as contemplated by the immunity statute. Dixon v. Chicago Bd. of Educ., 304 Ill. App. 3d 744, 237 Ill. Dec. 689, 710 N.E.2d 112 (1 Dist. 1999).

Wilful and Wanton Negligence

Trial court properly decided the issue of 745 ILCS 10/3-108 willful and wanton conduct as a matter of law. The record showed no evidence that a public school's employees displayed either an utter indifference to or a conscious disregard for a special education student's safety. Mitchell v. Special Educ. Joint Agreement Sch. Dist. No. 208, 386 Ill. App. 3d 106, 325 Ill. Dec. 104, 897 N.E.2d 352, 2008 Ill. App. LEXIS 1020 (1 Dist. 2008).

Summary judgment in favor of a school was proper where there was no genuine issue of material fact as to whether the school's employees were excluded from immunity under 745 ILCS 10/3-108(a) for willful and wanton conduct in supervising students. The employees' close supervision and prompt action to prevent danger to special education student evinced their concern for his safety, and the student provided no contrary evidence. Mitchell v. Special Educ. Joint Agreement Sch. Dist. No. 208, 386 Ill. App. 3d 106, 325 Ill. Dec. 104, 897 N.E.2d 352, 2008 Ill. App. LEXIS 1020 (1 Dist. 2008).

- Not Shown

The city's allegations that the school district instructed its crossing guards to leave the intersection in question after the school day officially began, despite knowing that some students might still need assistance, did not demonstrate that the school district had actually intended to

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injure plaintiff or had exhibited utter indifference or a reckless disregard for plaintiff's safety, nor were any of the other foregoing allegations sufficient to state a cause of action for wilful and wanton misconduct and they did not allege sufficient facts upon which wilful and wanton misconduct could be based as to avoid subsection (a) accordingly, the trial court's dismissal of the city's second amended complaint for failure to state a cause of action was proper. Gilmore v. City of Zion, 237 Ill. App. 3d 744, 178 Ill. Dec. 671, 605 N.E.2d 110 (2 Dist. 1992).

Where a student was kicked in head by another student but the teacher continued to let students move freely about, there was no alleged such act or omission in the maintenance of discipline, including the supervision of the movement of the children in the classroom, that would constitute such wilful and wanton negligence as to impose liability under this statute. Woodman ex rel. Woodman v. Litchfield Community Sch., 102 Ill. App. 2d 330, 242 N.E.2d 780 (5 Dist. 1968).

- Question of Fact

Court declined to dismiss a negligent supervision claim against defendant city under 745 ILCS 10/3-108 because the court could not say, as a matter of law, that the city's conduct did not rise to the level of "willful and wanton"; plaintiff insurer was entitled to the benefit of discovery before dismissal on that ground. Am. Emplrs. Ins. Co. v. City of Chi., F. Supp. 2d , 2003 U.S. Dist. LEXIS 9119 (N.D. Ill. May 28, 2003).

- Shown

When plaintiff, thirteen-year-old Canadian citizen, filed suit after suffering injuries when she was instructed to dive into a pool while attending a swimming program at defendant high school, the amended complaint alleged the supervision and instruction provided to plaintiff was deficient. Defendants, the high school and its employees, were not immune from liability, because the complaint pled facts showing defendants' conduct was willful and wanton for purposes of 745 ILCS 10/3-108 of the Illinois Torts Claims Act. Karalyos v. Bd. of Educ., 788 F. Supp. 2d 727, 2011 U.S. Dist. LEXIS 23871 (N.D. Ill. 2011).

Trial court erred in dismissing wilful and wanton misconduct claims against a school district for its failure to require a student to wear eye protection during a chemistry experiment; the student and his father made sufficient allegations that a teacher's failure to ensure that the student was wearing eye protection constituted wilful and wanton conduct in the supervision of the student, and such conduct was not covered by the immunity extended in 745 ILCS 10/3-108(a). Hill v. Galesburg Cmty. Unit Sch. Dist. 205, 346 Ill. App. 3d 515, 281 Ill. Dec. 931, 805 N.E.2d 299, 2004 Ill. App. LEXIS 180 (3 Dist. 2004).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Education Law," see 25 S. Ill. U. L.J. 761 (2001).

For comment, "Violence and Injury in Illinois Schools: Students Deserve a Remedy," see 34 J. Marshall L. Rev. 803 (2001).

For article, "Illinois Supreme Court Civil '98: Back to the Nuts and Bolts", see 87 Ill. B.J. 250 (1998).

For article, "Survey of Illinois Law: Employment Law", see 22 S. Ill. U.L.J. 841 (1998).

For article, "Survey of Illinois Law: Torts," see 21 S. Ill. U.L.J. 891 (1997).

For comments, "The In Loco Parentis Status of Illinois School Teachers: An Unjustifiably Broad Extension of Immunity," see 10 J. Marshall J. Prac. & Proc. 629 (1977).

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For article, "Survey of Illinois Law: Significant Developments in Education Law 2003- 2004," see, See 29 S. Ill. U.L.J. 603 (2005).

RESEARCH REFERENCES

Tort Liability of Public Schools and Institutions of Higher Learning for Accident Involving Motor Vehicle Operated by Student. 85 ALR5th 301.

Practice Guides and Treatises.

Land Use Law (Illinois) § 8.38 Action for Damages (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 35:13 Immunity of noncertificated personnel.

Illinois Jurisprudence, Personal Injury and Torts § 34:105 Water areas and ditches.

Illinois Jurisprudence, Personal Injury and Torts § 34:95 Ball games; golf.

Illinois Jurisprudence, Personal Injury and Torts § 34:92 Failure to supervise.

Illinois Jurisprudence, Personal Injury and Torts § 31:51 Supervision.

Illinois Jurisprudence, Personal Injury and Torts § 3:84 Public property used for recreational purposes; supervision of activities on public property; hazardous recreational activities.

§ 745 ILCS 10/3-109. [Hazardous recreational activities]

Sec. 3-109. (a) Neither a local public entity nor a public employee is liable to any person who participates in a hazardous recreational activity, including any person who assists the participant, or to any spectator who knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury to himself or herself and was voluntarily in the place of risk, or having the ability to do so failed to leave, for any damage or injury to property or persons arising out of that hazardous recreational activity.

(b) As used in this Section, "hazardous recreational activity" means a recreational activity conducted on property of a local public entity which creates a substantial (as distinguished from a minor, trivial, or insignificant) risk of injury to a participant or a spectator.

"Hazardous recreational activity" also means:

(1) Water contact activities, except diving, in places where or at a time when lifeguards are not provided and reasonable warning thereof has been given or the injured party should reasonably have known that there was no lifeguard provided at the time.

(2) Diving at any place or from any structure where diving is prohibited and reasonable warning as to the specific dangers present has been given.

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(3) Animal racing, archery, bicycle racing or jumping, off-trail bicycling, boat racing, cross-country and downhill skiing, sledding, tobogganing, participating in an equine activity as defined in the Equine Activity Liability Act [745 ILCS 47/1 et seq.], hang gliding, kayaking, motorized vehicle racing, off-road motorcycling or four-wheel driving of any kind, orienteering, pistol and rifle shooting, rock climbing, rocketeering, rodeo, spelunking, sky diving, sport parachuting, body contact sports (i.e., sports in which it is reasonably foreseeable that there will be rough bodily contact with one or more participants), surfing, trampolining, tree climbing, tree rope swinging where the person or persons furnished their own rope, water skiing, white water rafting, and wind surfing.

(c) Notwithstanding the provisions of subsection (a), this Section does not limit liability which would otherwise exist for any of the following:

(1) Failure of the local public entity or public employee to guard or warn of a dangerous condition of which it has actual or constructive notice and of which the participant does not have nor can be reasonably expected to have had notice.

(2) An act of willful and wanton conduct by a public entity or a public employee which is a proximate cause of the injury.

Nothing in this subsection creates a duty of care or basis of liability for personal injury or for damage to personal property.

(d) Nothing in this Section shall limit the liability of an independent concessionaire, or any person or organization other than the local public entity or public employee, whether or not the person or organization has a contractual relationship with the public entity to use the public property, for injuries or damages suffered in any case as a result of the operation of a hazardous recreational activity on public property by the concessionaire, person, or organization.

(Source: P.A. 84-1431; 89-111, § 905; 89-502, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 3-109.

Effect of Amendments. The 1995 amendment by P.A. 89-111, effective July 7, 1995, in subdivision (b)(3) deleted "including equestrian competition" preceding "archery" and inserted "participating in an equine activity as defined in the Equine Activity Liability Act".

The 1996 amendment by P.A. 89-502, effective June 28, 1996, in subdivision (b)(3) inserted "off-trail bicycling" and inserted "sledding, tobogganing".

CASE NOTES

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Analysis

Body Contact Sports
Cause of Action
- Not Shown
Hazardous Recreational Activity
- Not Shown
Intended Use
Limitation on Immunity
Recreational Activity
Water Contact Activities
- Defined

Body Contact Sports

Under the plain language of this section, the legislature exempted wilful and wanton conduct from the immunity extended to cases involving body contact sports such as football. McGurk v. Lincolnway Community Sch. Dist. # 210, 287 Ill. App. 3d 1059, 223 Ill. Dec. 127, 679 N.E.2d 71 (3 Dist. 1997), appeal denied, 173 Ill. 2d 527, 226 Ill. Dec. 133, 684 N.E.2d 1336 (1997).

Cause of Action

- Not Shown

Although the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., provided exceptions to the immunity of governmental entities and governmental employees where an individual sustained injury due to their wilful and wanton conduct proximately causing that injury, the city employee, city youth, and city education board could not be held liable for the spinal cord injury the student incurred in an after-school tumbling program as the result of the use of a mini-trampoline, as the student had not shown they engaged in wilful and wanton conduct in connection with that injury. Murray v. Chi. Youth Ctr., 352 Ill. App. 3d 95, 287 Ill. Dec. 102, 815 N.E.2d 746, 2004 Ill. App. LEXIS 397 (1 Dist. 2004), aff'd, 2006 Ill. LEXIS 1104 (Ill. 2006); different results reached on reh'g, 224 Ill. 2d 213, 864 N.E.2d 176, 2007 Ill. LEXIS 438, 309 Ill. Dec. 310 (2007).

Hazardous Recreational Activity

- Not Shown

Even if a compulsory high school physical education class was deemed to be a "recreational" activity within the meaning of the statute, a basic gymnastics class is not a "hazardous recreational activity." Grandalski ex rel. Grandalski v. Lyons Tp. High Sch., 305 Ill. App. 3d 1, 238 Ill. Dec. 269, 711 N.E.2d 372 (1 Dist. 1999), appeal denied, 185 Ill. 2d 623, 242 Ill. Dec. 136, 720 N.E.2d 1091 (1999).

A mule-drawn hayrack ride was not the type of "hazardous recreational activity" for which a public entity is granted immunity under this section. McCuen v. Peoria Park Dist., 245 Ill. App. 3d 694, 185 Ill. Dec. 894, 615 N.E.2d 764 (3 Dist. 1993), aff'd, 163 Ill. 2d 125, 205 Ill. Dec. 487, 643 N.E.2d 778 (1994).

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Intended Use

Where the plaintiff was not an intended user of village property, the village could not owe a duty to him under the exceptions to immunity contained in the statute. First Midwest Trust Co., N.A. v. Britton, 322 Ill. App. 3d 922, 256 Ill. Dec. 134, 751 N.E.2d 187, 2001 Ill. App. LEXIS 415 (2 Dist. 2001).

Limitation on Immunity

Injured youth and his mother's second-amended complaint stated sufficient facts to show that their claim based on serious injuries that the injured youth sustained in a mini-trampoline accident fell within the willful and wanton exception to the immunity that would otherwise be afforded to the city board of education, city youth center, and city youth center employee pursuant to 745 ILCS 10/2-201 and 745 ILCS 10/3-108(a); indeed, the city board of education, city youth center, and city youth center employee's conduct as alleged in the second amended complaint could be found to meet the exceptions to immunity provisions set forth in 745 ILCS 10/3-109 based on the definition of willful and wanton conduct contained in 745 ILCS 10/1-210. Murray v. Chi. Youth Ctr., 224 Ill. 2d 213, 309 Ill. Dec. 310, 864 N.E.2d 176, 2007 Ill. LEXIS 438 (2007).

Appellate court properly affirmed the trial court's summary judgment grant to the board of education, agency, and agency employee, although on different grounds than the trial court set forth for granting summary judgment in a case where the injured child and his mother sued them for injuries he sustained when he landed awkwardly after doing a front flip off of a mini-trampoline at a school; while the trial court found that they were immune pursuant to 745 ILCS 10/2-201 and 745 ILCS 10/3-108(a), 745 ILCS 10/3-109 determined the scope of their immunity because the injured child was involved in a hazardous recreational activity at the time he was injured and that statutory section did not provide them with immunity from willful and wanton misconduct, but the injured child and his mother's second amended complaint did not alleged facts showing that they had engaged in willful and wanton misconduct. Murray v. Chi. Youth Ctr., Ill. 2d , Ill. Dec. , N.E.2d , 2006 Ill. LEXIS 1104 (July 5, 2006).

Although the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., provided exceptions to the immunity of governmental entities and governmental employees where an individual sustained injury due to their willful and wanton conduct proximately causing that injury, the city employee, city youth, and city education board could not be held liable for the spinal cord injury the student incurred in an after-school tumbling program as the result of the use of a mini-trampoline, as the student had not shown they engaged in willful and wanton conduct in connection with that injury. Murray v. Chi. Youth Ctr., 352 Ill. App. 3d 95, 287 Ill. Dec. 102, 815 N.E.2d 746, 2004 Ill. App. LEXIS 397 (1 Dist. 2004), aff'd, 2006 Ill. LEXIS 1104 (Ill. 2006); different results reached on reh'g, 224 Ill. 2d 213, 864 N.E.2d 176, 2007 Ill. LEXIS 438, 309 Ill. Dec. 310 (2007).

Local Governmental and Governmental Employees Tort Immunity Act, at 745 ILCS 10/2-201, 745 ILCS 10/3-108, and 745 ILCS 10/3-109, did not provide immunity to an airport for decisions regarding a determination of policy and exercise of that policy where a claim for injuries alleged an act or omission with respect to those decisions; the decision was discretionary and not made in the course of determining policy. Spangenberg v. Verner, 321 Ill. App. 3d 429, 254 Ill. Dec. 319, 747 N.E.2d 359, 2001 Ill. App. LEXIS 513 (1 Dist. 2001).

Subdivision (c)(2) does not provide an exception to the absolute immunity granted under 745 ILCS 10/3-108(a). Johnson v. Decatur Park Dist., 301 Ill. App. 3d 798, 235 Ill. Dec. 67, 704 N.E.2d 416 (4 Dist. 1998), appeal denied, 183 Ill. 2d 569, 238 Ill. Dec. 714, 712 N.E.2d 818 (1999).

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Recreational Activity

In a negligence and wrongful death action brought by a special administrator against a city, a railroad, and others with regard to its decedent dying from injuries incurred from striking a steel cable while riding a dirt bike along a railroad service road, it was determined that the trial court erred by granting summary judgment to the city by concluding that there was no genuine issue of material fact existing with regard to the city owning the service road and that the decedent had been a trespasser, thus, the city owed no duty to him and was immune from liability under 745 ILCS 10/3-109. To the contrary, the reviewing court found that it could not say that the decedent was undisputedly a trespasser at the time of the incident since the city only had a limited easement granted to it with regard to the service road, which did not create an exclusive possessory ownership right to the land allowing it to unilaterally exclude the decedent as a permitted user or to prevent the railroad from permitting the decedent to use the service road and there was also evidence that the railroad knew of individuals using the service road for recreational purposes and did not take action to prohibit or prevent the activities. Steinbach v. CSX Transp., Inc., 393 Ill. App. 3d 490, 332 Ill. Dec. 622, 913 N.E.2d 554, 2009 Ill. App. LEXIS 665 (3 Dist. 2009), appeal denied, 234 Ill. 2d 553, 920 N.E.2d 1082, 2009 Ill. LEXIS 2019 (2009).

A compulsory high school physical education class is not a "recreational" activity within the meaning of the statute. Grandalski ex rel. Grandalski v. Lyons Tp. High Sch., 305 Ill. App. 3d 1, 238 Ill. Dec. 269, 711 N.E.2d 372 (1 Dist. 1999), appeal denied, 185 Ill. 2d 623, 242 Ill. Dec. 136, 720 N.E.2d 1091 (1999).

Water Contact Activities

- Defined

"Water contact activities" include swimming, boating and water skiing. Burdinie v. Village of Glendale Heights, 139 Ill. 2d 501, 152 Ill. Dec. 121, 565 N.E.2d 654 (1990), overruled on other grounds, McCuen v. Peoria Park Dist., 163 Ill. 2d 125, 205 Ill. Dec. 487, 643 N.E.2d 778 (1994).

LEGAL PERIODICALS

For article, "When the King Does Wrong: What Immunity Does Local Government Deserve?," see 86 Ill. B.J. 138 (1998).

RESEARCH REFERENCES

State and local government liability for injury or death of bicyclist due to defect or obstruction in public bicycle path. 68 ALR4th 204.

Liability for injuries to, or death of, water-skiers. 34 ALR5th 77.

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 35:10 Effect of willful and wanton conduct.

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Illinois Jurisprudence, Personal Injury and Torts § 34:104 Exceptions to immunity.

Illinois Jurisprudence, Personal Injury and Torts § 34:103 Hazardous recreational activities.

Illinois Jurisprudence, Personal Injury and Torts § 3:84 Public property used for recreational purposes; supervision of activities on public property; hazardous recreational activities.

§ 745 ILCS 10/3-110. [Bodies of water not under control of public entity]

Sec. 3-110. Neither a local public entity nor a public employee is liable for any injury occurring on, in, or adjacent to any waterway, lake, pond, river or stream not owned, supervised, maintained, operated, managed or controlled by the local public entity.

(Source: P.A. 84-1431.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 3-110.

CASE NOTES

Analysis

Constitutionality
Immunity

Constitutionality

745 ILCS 10/3-110 did not violate the Illinois Constitution's special legislation clause by creating an arbitrary barrier to certain injured people who had meritorious claims, regardless of the evidence, because the sections of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., were created to address certain groups, 745 ILCS 10/3-110 dealt with immunity in the context of local public entities near waterways, and the statute treated all municipalities near the water in the same manner. McCoy v. Ill. Int'l Port Dist., 334 Ill. App. 3d 462, 268 Ill. Dec. 439, 778 N.E.2d 705, 2002 Ill. App. LEXIS 909 (1 Dist. 2002), appeal denied, 202 Ill. 2d 673, 272 Ill. Dec. 359, 787 N.E.2d 174 (2003).

Immunity

Where there was no evidence that fire protection districts or their employees controlled or supervised a lake where a firefighter drowned during dive rescue training, the districts and the employees were immune under Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/3-110, from the firefighter's administrator's action alleging they

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breached duties to control and supervise the dive training in a safe manner. There was no evidence suggesting the district or the employees could exert any minimal control over the lake, they had no right to grant or deny access to any portion of the lake, they had to receive permission from the club that owned the lake to use the lake, and, while their movement on the lake seemed unrestricted and while they may have controlled and supervised every aspect of the dive, they had no authority over the lake itself to preclude immunity. The districts and the employees were properly granted summary judgment on the administrator's suit. Frayne v. Dacor Corp., 362 Ill. App. 3d 575, 298 Ill. Dec. 524, 840 N.E.2d 294, 2005 Ill. App. LEXIS 1173 (3 Dist. 2005).

Port district was immune from liability for a longshoreman's fall from a dock it maintained and subsequent drowning in an adjacent river because the port district's authority did not extend beyond the maintenance of the dock, and other facilities, to control of the river. McCoy v. Ill. Int'l Port Dist., 334 Ill. App. 3d 462, 268 Ill. Dec. 439, 778 N.E.2d 705, 2002 Ill. App. LEXIS 909 (1 Dist. 2002), appeal denied, 202 Ill. 2d 673, 272 Ill. Dec. 359, 787 N.E.2d 174 (2003).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Employment Law," see, See 30 S. Ill. U.L.J. 613 (2006).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 34:105 Water areas and ditches.

Article IV.

Police and Correctional Activities

§ 745 ILCS 10/4-101. [Prisoner defined]

Sec. 4-101. As used in this Article, "prisoner" means a person held in custody.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 4-101.

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CASE NOTES

"Prisoner"

Willful and wanton exception recognized in 745 ILCS 10/2-202 did not apply to defeat the immunity that protected the city from the injured motorists' personal injury claims that they filed after a man placed in the back of a squad car by a police officer stole the squad car and collided it with the injured motorists' vehicle, which was stopped at a red light. The city was protected by the immunity set forth in 745 ILCS 10/4-106(b) for injuries caused by escaping prisoners, as 745 ILCS 10/4-101 made him a prisoner because the officer had placed him in custody, and the willful and wanton exception did not apply because the legislature would have expressly stated in 745 ILCS 10/4-106(b) if it had wanted the exception to apply and it did not do so. Ries v. City of Chicago, 242 Ill. 2d 205, 351 Ill. Dec. 135, 950 N.E.2d 631, 2011 Ill. LEXIS 427 (2011).

§ 745 ILCS 10/4-102. [Failure to provide adequate police protection]

Sec. 4-102. Neither a local public entity nor a public employee is liable for failure to establish a police department or otherwise provide police protection service or, if police protection service is provided, for failure to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals. This immunity is not waived by a contract for private security service, but cannot be transferred to any non-public entity or employee.

(Source: P.A. 84-1431.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 4-102.

CASE NOTES

Analysis

In General
Adequate Lighting
Building Inspections
Bystanders
Common Carrier
- Insufficient Allegations
Construction
- Negligence

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Contract
- Recovery Allowed
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- Duty
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Immunity
- In General
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- Victim Rescue
Proximate Cause
Public Housing Project
Scope of Employment
- Illustrative Cases
Security Provider
- Proprietary Duty Not Owed
Special Duty
- In General
- Arrested Person
- Determinative Factor
- Direct Control
- Elements
- Insufficient Pleading
- Material Witness
- Member of General Public

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- Not Shown
- Shown

Wilful Action

- In General
- Illustrative Cases
- Not Shown

In General

This section is intended to provide immunity not only to entities formally sworn to duty of law enforcement, but to all public entities as defined within the Tort Immunity Act. A.R. v. Chicago Bd. of Educ., 311 Ill. App. 3d 29, 243 Ill. Dec. 697, 724 N.E.2d 6, 1999 Ill. App. LEXIS 924 (1 Dist. 1999), appeal denied, 188 Ill. 2d 561, 246 Ill. Dec. 121, 729 N.E.2d 494 (2000); but see Doe v. Chi. Bd. of Educ., 213 Ill. 2d 19, 289 Ill. Dec. 642, 820 N.E.2d 418 (2004).

The language of this section applies equally to the failure to provide police protection or service and to the failure to provide adequate police protection or service. Hernandez v. Kirksey, 306 Ill. App. 3d 912, 239 Ill. Dec. 915, 715 N.E.2d 669, 1999 Ill. App. LEXIS 521 (1 Dist. 1999), appeal denied, 186 Ill. 2d 568, 243 Ill. Dec. 561, 723 N.E.2d 1162 (1999).

The scope of this section is not limited to a police department's failure to control crime or to maintain a sufficient number of police officers, but applies to the adequacy of the police services provided. Hernandez v. Kirksey, 306 Ill. App. 3d 912, 239 Ill. Dec. 915, 715 N.E.2d 669, 1999 Ill. App. LEXIS 521 (1 Dist. 1999), appeal denied, 186 Ill. 2d 568, 243 Ill. Dec. 561, 723 N.E.2d 1162 (1999).

Just as Article IV of this Act specifically provides immunity to police personnel, Article V of the Act specifically provides immunity to firefighters. Jackson v. Chicago Firefighters Union, 160 Ill. App. 3d 975, 112 Ill. Dec. 393, 513 N.E.2d 1002 (1 Dist. 1987).

Article IV of this Act pertains specifically to public employees engaged in enforcing the law and making arrests. In particular, this section and 745 ILCS 10/4-107 provide immunity for the failure to prevent the commission of crimes, the failure to apprehend criminals, and the failure to make an arrest. Jackson v. Chicago Firefighters Union, 160 Ill. App. 3d 975, 112 Ill. Dec. 393, 513 N.E.2d 1002 (1 Dist. 1987).

Blanket immunity for police is necessary to protect municipalities from limitless liabilities. Jackson v. Chicago Firefighters Union, 160 Ill. App. 3d 975, 112 Ill. Dec. 393, 513 N.E.2d 1002 (1 Dist. 1987).

Neither a municipality nor a police officer are liable as a result of the failure to make an arrest or to enforce a law in absence of a special relationship. Schaffrath v. Village of Buffalo Grove, 160 Ill. App. 3d 999, 112 Ill. Dec. 417, 513 N.E.2d 1026 (1 Dist. 1987).

Adequate Lighting

To hold a governmental entity liable for the criminal acts of others due to its failure to provide adequate or effective lighting on its streets, sidewalks or walkways would be contrary to the legislative intent contained in this section. Burley v. On the Waterfront, Inc., 228 Ill. App. 3d 412, 170 Ill. Dec. 187, 592 N.E.2d 623 (2 Dist. 1992).

Building Inspections

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Trial court erred in ruling that plaintiffs stated a legally sufficient claim that the City of Chicago owed them a duty to protect them against the willful and wanton conduct of City building inspectors who inspected a porch that later collapsed killing 13 people; the public duty rule had been incorporated in the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., vis a vis 745 ILCS 10/4-102 only, and as no common law duty existed regarding the City's failure to enforce the building code, no duty extended to plaintiffs. Ware v. City of Chicago, 375 Ill. App. 3d 574, 314 Ill. Dec. 14, 873 N.E.2d 944, 2007 Ill. App. LEXIS 837 (1 Dist. 2007), appeal denied, 2007 Ill. LEXIS 1797 (Ill. 2007), appeal denied, 2007 Ill. LEXIS 1733 (Ill. 2007), appeal denied, 2007 Ill. LEXIS 1743 (Ill. 2007).

Bystanders

Police officers have no special duty to protect every bystander from whom the officers elicit information at the scene of an investigation where the police did not create the dangerous condition or summon the bystander into it. Moran v. City of Chicago, 286 Ill. App. 3d 746, 222 Ill. Dec. 112, 676 N.E.2d 1316 (1 Dist. 1997), appeal denied, 174 Ill. 2d 567, 227 Ill. Dec. 8, 686 N.E.2d 1164 (1997).

Common Carrier

- Insufficient Allegations

Plaintiff alleged insufficient facts to support a conclusion that a city had undertaken the operation of a common carrier by providing security for rapid transit system passengers, and the Metropolitan Transit Authority Act (70 ILCS 3605/1 et seq.) was inapplicable to the existence of any duty owed by the city. Marvin v. Chicago Transit Auth., 113 Ill. App. 3d 172, 68 Ill. Dec. 786, 446 N.E.2d 1183 (1 Dist. 1983).

Construction

- Negligence

Because this section and 745 ILCS 10/4-107 pertain specifically to police and their functions in enforcing the criminal law and making arrests, those sections govern and prevail over the wilful and wanton negligence language of 745 ILCS 10/2-202, in a case alleging negligence by failure to make an arrest. Luber v. City of Highland, 151 Ill. App. 3d 758, 104 Ill. Dec. 583, 502 N.E.2d 1243 (5 Dist. 1986).

Contract

- Recovery Allowed

This section did not bar plaintiff's recovery from defendant where a contract had been entered into by the parties, warranting protection of the common areas of a building. Pippin v. Chicago Hous. Auth., 58 Ill. App. 3d 1029, 16 Ill. Dec. 280, 374 N.E.2d 1055 (1 Dist. 1978), aff'd, 78 Ill. 2d 204, 35 Ill. Dec. 530, 399 N.E.2d 596 (1979).

Crossing Guards

- Duty

An undertaking to provide crossing guards cannot reasonably be construed to have imposed a duty upon a city to protect plaintiff's decedent, a minor child crossing at an unmanned corner.

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Goebig v. City of Chicago, 188 Ill. App. 3d 614, 136 Ill. Dec. 339, 544 N.E.2d 1114 (1 Dist. 1989).

Crossing guard service is a part of police service; thus a municipality is not liable for failing to provide crossing guard service at intersection where decedent, while crossing the intersection on his way to school, was struck by a vehicle. Goebig v. City of Chicago, 188 Ill. App. 3d 614, 136 Ill. Dec. 339, 544 N.E.2d 1114 (1 Dist. 1989).

- Illustrative Cases

This section immunized a crossing guard and the city which employed her in an action in which it was alleged that the plaintiff was injured when a vehicle struck her while she crossed a street manned by the crossing guard. Hernandez v. Kirksey, 306 Ill. App. 3d 912, 239 Ill. Dec. 915, 715 N.E.2d 669, 1999 Ill. App. LEXIS 521 (1 Dist. 1999), appeal denied, 186 Ill. 2d 568, 243 Ill. Dec. 561, 723 N.E.2d 1162 (1999).

Crowd Control and Traffic Management

- Immunity Provided

Crowd control and traffic management at a municipal Fourth of July celebration constituted "police functions" and fell within the immunity provided by this Act. Dockery v. Village of Steeleville, 200 Ill. App. 3d 926, 146 Ill. Dec. 486, 558 N.E.2d 449 (5 Dist. 1990).

- Security at Baseball Game

Park District did not waive its governmental immunity by entering into a written agreement requiring it to provide security at baseball games; a public entity's immunity is not waived by a contract for private security service. Packard v. Rockford Professional Baseball Club, 244 Ill. App. 3d 643, 184 Ill. Dec. 294, 613 N.E.2d 321 (2 Dist.), appeal denied, 152 Ill. 2d 563, 190 Ill. Dec. 894, 622 N.E.2d 1211 (1993).

Duty of Police

- Community

The duty of police is to preserve the well-being of a community at large; the police generally do not owe this duty to specific individuals. Galuszynski v. City of Chicago, 131 Ill. App. 3d 505, 86 Ill. Dec. 581, 475 N.E.2d 960 (1 Dist. 1985); Barth ex rel. Barth v. Board of Educ., 141 Ill. App. 3d 266, 95 Ill. Dec. 604, 490 N.E.2d 77 (1 Dist. 1986), overruled on other grounds, see In re Chicago Flood Litig., 176 Ill. 2d 179, 680 N.E.2d 265 (1997); Poliny v. Soto, 178 Ill. App. 3d 203, 127 Ill. Dec. 397, 533 N.E.2d 15 (1 Dist. 1988).

- Medical Attention

Trial court erred in granting summary judgment to the city on the ground that it owed decedent no enforceable duty arising out of its police officers failing to obtain medical care for one and one-half hours for him after responding to a report of a shooting and finding him wounded in a bathroom where the city, through its police officers, voluntarily undertook the responsibility to aide him as a shooting victim, the city owed him a duty of reasonable care, and the city could not claim it was immune from liability since obtaining emergency medical care was not a police function for which the city could claim immunity. Torres v. City of Chicago, 352 Ill. App. 3d 533, 287 Ill. Dec. 849, 816 N.E.2d 816, 2004 Ill. App. LEXIS 1115 (1 Dist. 2004), appeal denied, 213 Ill. 2d 576, 293 Ill. Dec. 869, 829 N.E.2d 794 (2005).

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Plaintiff's claim for failure to provide medical attention did not fall within the ambit of this section. Regalado v. City of Chicago, 40 F. Supp. 2d 1009 (N.D. Ill. 1999).

- Protection of Property

District court dismissed insurer's claim for violation of recovered property statutes and violation of the Illinois Law Enforcement Disposition of Property Act, 765 ILCS 10/30-2 et seq. and a transport company's cross-claim for contribution against a sheriff and two deputies because the sheriff and the deputies were immune from liability under the Illinois Tort Immunity Act, 745 ILCS 10/1-101 et seq. Fireman's Fund Ins. Co. v. Werner Enters., F. Supp. 2d , 2004 U.S. Dist. LEXIS 2106 (N.D. Ill. Feb. 5, 2004).

The Illinois Local Governmental Tort Immunity statute does not impose a duty on the police to protect the property of individuals from tort or crime. United States v. Duguay, 93 F.3d 346 (7th Cir. 1996), cert. denied, 526 U.S. 1029, 119 S. Ct. 1274, 143 L. Ed. 2d 368 (1999).

Fireworks Display

Because crowd control and traffic management at Fourth of July celebration constituted "police functions," plaintiffs' claim that the municipality provided inadequate police protection in allowing spectators into an unsafe area to watch the fireworks display was barred; it was firemen and not policemen who set up and manned the barricades and immunity attaches to "police services," not police departments. McLellan v. City of Chicago Heights, 61 F.3d 577 (7th Cir. 1995).

Fleeing Criminal

- Hot Pursuit

To expose municipalities to liability for negligence in engaging in a chase of a fleeing criminal if the fleeing criminal injures someone in the chase would cut at the heart of this section and 745 ILCS 10/4-107. Veach v. Cross, 178 Ill. App. 3d 102, 127 Ill. Dec. 240, 532 N.E.2d 1069 (4 Dist. 1988).

Illustrative Cases

Neither municipalities nor municipal employees could be held liable for alleged breaches of the Illinois Domestic Violence Act of 1986, 750 ILCS 60/101 et seq. (Act), that allegedly led to a former boyfriend killing the decedent. Since that statute's limited immunity for rendering emergency assistance was not at issue, the municipalities and municipal employees could only be liable under the Act if they were "enforcing this Act" and engaged in willful and wanton misconduct. Where the estate administrator's complaint showed that they were not giving effect to some part of the Act that could not be considered an emergency, they were entitled to immunity under 745 ILCS 10/4-102 for failing to provide adequate police protection and under 745 ILCS 10/4-107 failing to make an arrest. Lacey v. Vill. of Palatine, 232 Ill. 2d 349, 328 Ill. Dec. 256, 904 N.E.2d 18, 2009 Ill. LEXIS 186 (2009).

Where children were in mother's apartment with defendant when police arrived at the scene, the police officers did not have direct or immediate control over defendant or over what was occurring in the mother's apartment when they reached the scene, nor at any time during the incident, nor were they aware of exactly what was happening inside of the apartment; plaintiffs did not adequately allege that the police officers exacerbated the situation through their awareness of the dangers of the situation and any harm occurring to children by defendant while the police were outside the apartment determining their method of action could not have been proximately caused by the police. Doe v. Calumet City, 240 Ill. App. 3d 911, 182 Ill. Dec. 155, 609 N.E.2d

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689 (1 Dist. 1992), modified on other grounds, 161 Ill. 2d 374, 204 Ill. Dec. 274, 641 N.E.2d 498 (1994).

Where village authorities had established a police department and then had dissolved the program, there was no basis for liability resulting from such a procedure. Lemenger v. Fitzgerald, 1 Ill. App. 3d 803, 274 N.E.2d 913 (3 Dist. 1971).

Complaint which did not allege that town and officials knew of the presence of decedent in the town, that he had requested police protection, or that he was in some peculiar danger, and did not allege any specific acts or omissions by defendants or any causal connection between such conduct or lack of conduct and the fatal injury of plaintiff's intestate, could not survive a motion to dismiss. Huey v. Town of Cicero, 41 Ill. 2d 361, 243 N.E.2d 214 (1968).

Immunity

City was not entitled to absolute immunity under 745 ILCS 10/4-102 and 10/4-107 from a mother's wanton and wilful conduct claims where a city police officer had arrested the daughter for underage drinking, the police department thus owed her a duty to not engage in wanton and wilful conduct, and the allegations that the department allowed her, an intoxicated pedestrian, to leave the police station unsupervised were sufficient to create triable issues of fact as to the city's liability for wilful and wanton acts. Keener v. City of Herrin, 385 Ill. App. 3d 545, 324 Ill. Dec. 426, 895 N.E.2d 1141, 2008 Ill. App. LEXIS 994 (5 Dist. 2008).

- In General

Even if housing authority undertook to protect the plaintiff from criminal attacks and thus owed him a duty, the authority would be immune from any liability by virtue of this Act. Hill v. Chicago Hous. Auth., 233 Ill. App. 3d 923, 175 Ill. Dec. 104, 599 N.E.2d 1118 (1 Dist. 1992).

- Upheld

Complaint was properly dismissed because the Board of Education carried its burden of proving its immunity from the claim under the under 745 ILCS 10/4-102 of the Local Governmental and Governmental Employees Tort Immunity Act; the administrator did not show how the incident that occurred after the students had been dismissed from the school day could have been considered an activity in which the school provided supervision, as opposed to a failure to properly police the area. Green v. Chicago Bd. of Educ., 407 Ill. App. 3d 721, 348 Ill. Dec. 506, 944 N.E.2d 459, 2011 Ill. App. LEXIS 101 (1 Dist. 2011).

City's immunity under 745 ILCS 10/4-106(b) for the conduct of escaped prisoners causing injury, as well as its immunity for not providing adequate police protection of failing to prevent a crime under 745 ILCS 10/4-102 was not subject to the willful and wanton exception of 745 ILCS 10/2-202. Despite the city's police officers failing to stop the detainee from stealing one officer's police vehicle, the officers were not in control of the intersection about a mile away from where the vehicle was stolen and the detainee crashed the vehicle into the injured parties' vehicle stopped at the intersection. Ries v. City of Chicago, 396 Ill. App. 3d 418, 335 Ill. Dec. 746, 919 N.E.2d 465, 2009 Ill. App. LEXIS 1177 (1 Dist. 2009).

- Exceptions

Large verdict in favor of the surviving mother of a decedent passenger killed in a drunk driving incident against police officers who earlier failed to arrest the driver, and against the village that employed them, was upheld on appeal, despite claims of governmental tort immunity; 745 ILCS 10/2-1202 provided an explicit exception to the general rule of immunity for injuries to individuals where the evidence established willful and wanton behavior by the officers. Ozik v. Gramins, 345 Ill. App. 3d 502, 279 Ill. Dec. 68, 799 N.E.2d 871, 2003 Ill. App. LEXIS 1291 (1 Dist. 2003), appeal denied, 207 Ill. 2d 606, 283 Ill. Dec. 135, 807 N.E.2d 976 (2004).

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The judiciary recognizes an exception to immunity under this section where the police assume a "special duty" to protect a category of individuals from criminal acts. Bilyk v. Chicago Transit Auth., 125 Ill. 2d 230, 125 Ill. Dec. 822, 531 N.E.2d 1 (1988).

Exceptions to immunity under this section have been held to arise only under special circumstances or when conduct of officers involved is purely ministerial and involves no discretion. Veach v. Cross, 178 Ill. App. 3d 102, 127 Ill. Dec. 240, 532 N.E.2d 1069 (4 Dist. 1988).

745 ILCS 10/4-102 applied to a situation in which county police personnel completely failed to respond to a passing motorist's report of a possible accident, providing defendants with absolute immunity for both negligence and willful and wanton misconduct with regard to a wrongful death action filed by the representative of the estate of a decedent who was found dead outside her vehicle three days later when defendants finally responded and located the accident scene. 745 ILCS 10/2-202, with its willful and wanton misconduct exception, did not apply to the facts of the case because defendants were not executing or enforcing the law and they did not exercise any control over the decedent. DeSmet v. County of Rock Island, 219 Ill. 2d 497, 302 Ill. Dec. 466, 848 N.E.2d 1030, 2006 Ill. LEXIS 617 (2006).

Because the administratrix's wrongful death claim against the officers alleged that the officers acted negligently and willfully and wantonly in providing a police service to the decedent, and because 745 ILCS 10/4-102 barred all theories of tort liability, including claims of willful and wanton misconduct, the officers were entitled to immunity on the administratrix's state law claims. Medina v. City of Chi., F. Supp. 2d , 2002 U.S. Dist. LEXIS 17011 (N.D. Ill. Sept. 6, 2002).

Defendant municipal corporation and police officers were held to be immune from liability by virtue of this section in the death of an intoxicated person who was lost, became the subject of police search, and subsequently died. Platacis v. Village of Streamwood, 224 Ill. App. 3d 336, 166 Ill. Dec. 606, 586 N.E.2d 564 (1 Dist. 1991).

This section and 745 ILCS 10/4-107 unequivocally provided immunity for defendant city, probation officers and State's attorney in case seeking damages for wrongful death of victim killed by individual formally on probation, who had been reported to have threatened victim. Vasconcelles v. City of Springfield, 170 Ill. App. 3d 404, 120 Ill. Dec. 690, 524 N.E.2d 720 (4 Dist. 1988).

Because there were no allegations in either original or amended complaint which stated that plaintiffs were injured while they were under the direct and immediate control of police officer, the plaintiffs failed to show a "special duty" relationship between the parties; therefore, the county defendants were immune from liability under this Act. Long v. Soderquist, 126 Ill. App. 3d 1059, 82 Ill. Dec. 80, 467 N.E.2d 1153 (2 Dist. 1984); Luber v. City of Highland, 151 Ill. App. 3d 758, 104 Ill. Dec. 583, 502 N.E.2d 1243 (5 Dist. 1986).

The specific police immunity provisions prevail over the general immunity provisions relating to any public employee enforcing any law, and therefore wrongful death action against the City of Chicago for actions of its police officers was barred. Nieder v. Gacy, 121 Ill. App. 3d 854, 77 Ill. Dec. 286, 460 N.E.2d 342 (1 Dist. 1984).

This section and 745 ILCS 10/4-107 provided immunity for a city and its police officers where a person about whom the police had been warned was behaving strangely and violently toward family members, and whom the police did not attempt to arrest, shot and killed a stranger. Jamison v. City of Chicago, 48 Ill. App. 3d 567, 6 Ill. Dec. 558, 363 N.E.2d 87 (1 Dist. 1977).

Immunity Not Applicable

Where police officers were accused of willfully and wantonly failing to prevent a crime against a victim of domestic violence, the provision of the Illinois Domestic Violence Act limiting law

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enforcement liability (750 ILCS 60/305), not this section or 745 ILCS 10/4-107, controlled in a wrongful death and survival action brought by plaintiff administrator against the officers and their city employer. Moore v. Green, 355 Ill. App. 3d 81, 290 Ill. Dec. 787, 822 N.E.2d 69, 2004 Ill. App. LEXIS 1549 (1 Dist. 2004), aff'd, 219 Ill. 2d 470, 302 Ill. Dec. 451, 848 N.E.2d 1015 (2006).

In an action alleging that the Board of Education was liable for injuries a mentally impaired child sustained while riding the school bus, 745 ILCS 10/4-102 immunity did not apply to the Board of Education because furnishing a bus attendant for the transportation of special needs students to and from school was not providing a police protection service. Doe v. Chi. Bd. of Educ., 213 Ill. 2d 19, 289 Ill. Dec. 642, 820 N.E.2d 418, 2004 Ill. LEXIS 1668 (2004).

- Civil Rights Action

Trustees, employees, and agents of town were not immune from liability under this section in a civil rights action pursuant to 42 U.S.C. §§ 1985 and 1986 seeking recovery of damages for death of African-American college student who was attacked and beaten by white youths as he walked along sidewalk. Huey v. Barloga, 277 F. Supp. 864 (N.D. Ill. 1967).

- Victim of Domestic Violence

Contrary to the arguments by two municipalities and several police officers, in an action alleging violations of the Illinois Domestic Violence Act of 1986, the immunity provisions in 750 ILCS 60/305 were applicable and were not overridden by the provisions of this section and 745 ILCS 10/4-107. Lacey v. Vill. of Palatine, 379 Ill. App. 3d 62, 318 Ill. Dec. 64, 882 N.E.2d 1187, 2008 Ill. App. LEXIS 61 (1 Dist. 2008), rev'd; superseded, 2009 Ill. LEXIS 186 (Ill. 2009).

Willful and wanton misconduct by a municipality or its police officers in failing to assist a victim of domestic violence pursuant to the Illinois Domestic Violence Act of 1986, 750 ILCS 60/305, is not immunized from liability by the provisions contained within the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/4-102 or 745 ILCS 10/4-107, as the clear legislative intent of the limited immunity provision of the Domestic Violence Act establishes that the legislature chose to burden municipalities with the duty to enforce the Domestic Violence Act and chose to provide only limited immunity from tort claims associated with a breach of that duty. As such, the denial of the motions to dismiss filed by defendants, two police officers and the City of Chicago, Illinois, were properly denied with regard to an estate administrator's wrongful death suit against defendants, which alleged that the officers' willful and wanton conduct in failing to investigate and assist the decedent breached their duty under the Domestic Violence Act and proximately caused her death, when the officers failed to respond to the decedent's 911 call that requested police assistance due to her husband's violation of a emergency order of protection. Moore v. Green, 219 Ill. 2d 470, 302 Ill. Dec. 451, 848 N.E.2d 1015, 2006 Ill. LEXIS 613 (2006).

Metal Detectors

City was immune from liability for any alleged failure to provide adequate police protection, a governmental function, or to prevent the commission of the alleged crime at high school, and the city's undertaking to operate metal detectors at the school did not override the Tort Immunity Act nor prevent that statutory immunity from attaching to immunize the city from liability for any alleged negligence in the performance of that function. Lawson v. City of Chicago, 278 Ill. App. 3d 628, 215 Ill. Dec. 237, 662 N.E.2d 1377 (1 Dist. 1996).

Police Service

- Medical Care

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The statute did not apply to immunize police officers who were alleged to not have called for medical assistance for a shooting victim until an hour and a half after they arrived at the scene, as calling for medical assistance does not constitute the provision of police protection. Torres v. City of Chicago, 123 F. Supp. 2d 1130, 2000 U.S. Dist. LEXIS 17960 (N.D. Ill. 2000).

It has never been determined that this section extends beyond what are traditionally viewed as police functions to encompass conduct such as a police officer's failure to provide medical care. Regalado v. City of Chicago, 40 F. Supp. 2d 997 (N.D. Ill. 1999).

- Police Protection

Generally, a municipality is not liable for its failure to supply police protection. Marvin v. Chicago Transit Auth., 113 Ill. App. 3d 172, 68 Ill. Dec. 786, 446 N.E.2d 1183 (1 Dist. 1983).

- Private Security

Unlike the purchase of insurance which will result in the waiver of immunity, the retention of private security guards leaves the public entity exposed to same financial risk in attempting to cope with the identical problem as would be present by its own provision of police protection. Hill v. Chicago Hous. Auth., 233 Ill. App. 3d 923, 175 Ill. Dec. 104, 599 N.E.2d 1118 (1 Dist. 1992).

- Scope

The phrase "adequate police protection or service," as used in this section, includes the police function of responding to a call of a traffic matter involving a motor vehicle that had been driven off the roadway and into a nearby retention pond; therefore, police service, in this context, may also include police aid, assistance, or rescue, because these functions are commonly recognized as an important part of police services. Kavanaugh v. Midwest Club, Inc., 164 Ill. App. 3d 213, 115 Ill. Dec. 245, 517 N.E.2d 656 (2 Dist. 1987).

Where there had been a withdrawal of a previously established police system, plaintiff was not justified in relying on police protection to protect him as against a potential incendiary destruction of his property with a consequential action against public employees if his property was destroyed; he could not have had a cause of action if there was no police protection provided at any time nor could he have such action if there was some police protection even though completely inadequate. Lemenger v. Fitzgerald, 1 Ill. App. 3d 803, 274 N.E.2d 913 (3 Dist. 1971).

- Shown

The defendant board of education was entitled to dismissal of a cause of action for negligence arising from a sexual assault on a developmentally-disabled student during a bus ride to her home, where the plaintiffs sought to impose liability for failure to provide police services to prevent such an assault. A.R. v. Chicago Bd. of Educ., 311 Ill. App. 3d 29, 243 Ill. Dec. 697, 724 N.E.2d 6, 1999 Ill. App. LEXIS 924 (1 Dist. 1999), appeal denied, 188 Ill. 2d 561, 246 Ill. Dec. 121, 729 N.E.2d 494 (2000); but see Doe v. Chi. Bd. of Educ., 213 Ill. 2d 19, 289 Ill. Dec. 642, 820 N.E.2d 418 (2004).

By setting up barricades to control crowd at fireworks display, setting parameter as to where the crowd could go rather than affirmatively directing them to an unsafe area, the city's conduct fell within the police services protected under this section and the city was immune for plaintiff's claims of negligence. Cadena ex rel. Moreno v. Chiacgo Fireworks Mfg. Co., 297 Ill. App. 3d 945, 232 Ill. Dec. 60, 697 N.E.2d 802 (1 Dist. 1998), appeal denied, 181 Ill. 2d 568, 235 Ill. Dec. 940, 706 N.E.2d 495 (1998).

- Victim Rescue

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Town and its police officers were immune from negligence liability under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., following failure to rescue the victims of a residential fire, where: (1) neither the town nor its police officers at the scene could be held liable for failure to attempt a rescue, and (2) even if the police officers' acts were found to be willful and wanton, immunity still applied under 745 ILCS 10/2-201 because the officers had to make a policy decision in balancing the competing interests of their own safety and their chances of success with the interests of the victims and survivors. Fender v. Town of Cicero, 347 Ill. App. 3d 46, 283 Ill. Dec. 1, 807 N.E.2d 606, 2004 Ill. App. LEXIS 242 (1 Dist. 2004).

Proximate Cause

Where the injury to plaintiff was a natural and probable consequence of a police officer's negligent parking of his police vehicle and his directing plaintiff to stand between the cars to observe the expired license plate, the police department and the officer were aware that such practices were unsafe and could lead to rear-end collisions, as was evident from both the department bulletin and the deposition testimony, this reasonable foreseeability of injury to plaintiff (even though the actual injury was caused by a third party motorist's reckless driving) distinguished the action from situations in which a defendant's negligence only furnished the condition making a plaintiff's injury possible, and the court affirmed the finding of proximate cause. Leone v. City of Chicago, 235 Ill. App. 3d 595, 176 Ill. Dec. 244, 601 N.E.2d 942 (1 Dist. 1992), aff'd, 156 Ill. 2d 33, 188 Ill. Dec. 755, 619 N.E.2d 119 (1993).

Public Housing Project

Housing authority was immune from liability for willful and wanton acts when it allegedly failed to supervise a public housing management company and failed to promptly approve a security contract for a housing project; the "voluntary undertaking" theory did not supercede its statutory immunity. Barnes v. Chi. Hous. Auth., 326 Ill. App. 3d 710, 260 Ill. Dec. 439, 761 N.E.2d 283, 2001 Ill. App. LEXIS 895 (1 Dist. 2001), appeal denied, 198 Ill. 2d 612, 264 Ill. Dec. 323, 770 N.E.2d 217 (2002).

Management company was immune from liability for injuries incurred during a gap in contracts for security protection at a public housing project, since it was a "local public entity" created as part of a federal program, was engaged in governmental activities, and was entirely government funded. Barnes v. Chi. Hous. Auth., 326 Ill. App. 3d 710, 260 Ill. Dec. 439, 761 N.E.2d 283, 2001 Ill. App. LEXIS 895 (1 Dist. 2001), appeal denied, 198 Ill. 2d 612, 264 Ill. Dec. 323, 770 N.E.2d 217 (2002).

Scope of Employment

- Illustrative Cases

A police officer acted outside scope of his employment where he broke into a woman's apartment in an intoxicated and confused condition, was disoriented and believed he was confronting an intruder in his own apartment; his conduct was sufficiently reckless and irresponsible so as to represent an appalling departure from acceptable conduct within the scope of employment. Dzing v. City of Chicago, 84 Ill. App. 3d 704, 40 Ill. Dec. 420, 406 N.E.2d 121 (1 Dist. 1980).

Security Provider

- Proprietary Duty Not Owed

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Park District did not owe a special proprietary duty to plaintiffs as security providers at baseball field because providing security to persons who enter onto park district property is one of its governmental functions pursuant to the Park District Code. Packard v. Rockford Professional Baseball Club, 244 Ill. App. 3d 643, 184 Ill. Dec. 294, 613 N.E.2d 321 (2 Dist.), appeal denied, 152 Ill. 2d 563, 190 Ill. Dec. 894, 622 N.E.2d 1211 (1993).

Special Duty

Special duty exception did not override the immunities provided governmental entities under the Local Governmental and Governmental Employees Tort Immunity Act (Act) because the administrator did not make any allegations that could have been construed as the Board of Education acting in a supervisory manner under 745 ILCS 10/3-108 of the Act nor did she make any allegations that the Board was executing or enforcing a law under 745 ILCS 10/2-202 of the Act. Green v. Chicago Bd. of Educ., 407 Ill. App. 3d 721, 348 Ill. Dec. 506, 944 N.E.2d 459, 2011 Ill. App. LEXIS 101 (1 Dist. 2011).

- In General

It is not necessary for a plaintiff to prove the special duty exception to the public duty rule when bringing an action based upon wilful and wanton conduct in the execution and enforcement of the law under 745 ILCS 10/2-202. The wilful and wanton exception is a separate exception to the public duty rule. Ozik v. Gramins, Ill. App. 3d , Ill. Dec. , N.E.2d , 2003 Ill. App. LEXIS 846 (1 Dist. June 30, 2003).

Summary judgment was not proper in an action arising from injuries caused by a drunk driver, who had not been taken into custody following a domestic dispute, because although the officers did not owe a special duty to the victims to protect them from an intoxicated driver under the "special duty exception" to the former Local Governmental and Governmental Employees Tort Immunity Act, Ill. Rev. Stat. ch. 85, para. 4-102 (now 745 ILCS 10/4-102) and Ill. Rev. Stat. ch. 85, 4-107 (now 745 ILCS 10/4-107), the officers could be still held liable under the act for willful and wanton conduct in enforcement of the law under former Il. Rev. Stat. ch. 85, para. 2-202 (now 745 ILCS 10/2-202), former Ill. Rev. Stat. ch. 85 para. 2-204 (now 745 ILCS 10/2-204), and former Ill. Rev. Stat. ch. 85, para. 2-210 (now 745 ILCS 10/2-210). Fatigato v. Village of Olympia Fields, 281 Ill. App. 3d 347, 217 Ill. Dec. 63, 666 N.E.2d 732, 1996 Ill. App. LEXIS 359 (1 Dist. 1996).

The special-duty doctrine is a common-law exception which Illinois courts have invoked in two basic factual situations. The first is where a plaintiff sues a municipality for failure to enforce a law or ordinance. The second is where a plaintiff sues a municipality for injuries negligently caused by police officers or firefighters performing their official duties. In both situations, the common-law rule exempts municipalities and their employees from tort liability unless plaintiffs can show that the municipalities owe them a special duty that is different from its duty to the general public. Gordon v. County of Jackson, 231 Ill. App. 3d 1017, 173 Ill. Dec. 562, 597 N.E.2d 270 (5 Dist.), cert. denied, 147 Ill. 2d 626, 180 Ill. Dec. 149, 606 N.E.2d 1226 (1992).

The special duty exception is a common law doctrine, an exception to the blanket immunity provided by this section, recognized by the courts of Illinois both before and after the passage of the immunities provisions. Leone v. City of Chicago, 235 Ill. App. 3d 595, 176 Ill. Dec. 244, 601 N.E.2d 942 (1 Dist. 1992), aff'd, 156 Ill. 2d 33, 188 Ill. Dec. 755, 619 N.E.2d 119 (1993).

Although the duty of police to preserve a community's well-being and to prevent the commission of crimes is owed to the public at large, not to specific individuals, and is the reason for the public policy allowing immunity under these circumstances, an exception arises where the police have assumed a special relationship or are under a special duty to an individual which elevates his status beyond that of a member of the general public. Kavanaugh v. Midwest Club, Inc., 164 Ill. App. 3d 213, 115 Ill. Dec. 245, 517 N.E.2d 656 (2 Dist. 1987).

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Under this section, a municipality and its employees are shielded from tort liability for the failure to prevent a crime or to provide adequate police protection to a particular person, unless the municipality has a "special duty" to protect that individual. Rush v. City of Chicago, 163 Ill. App. 3d 725, 115 Ill. Dec. 52, 517 N.E.2d 17 (1 Dist. 1987).

An exception to the general rule that law enforcement officials have no duty to protect individual citizens from criminal acts exists when the police assume a special relationship to an individual which elevates that person's status beyond that of a general citizen of the community. Mallder v. Rasmussen, 145 Ill. App. 3d 809, 99 Ill. Dec. 621, 495 N.E.2d 1356 (3 Dist. 1986).

In actions against a police officer in the exercise of his duties as an officer of a municipality, a special duty of care toward plaintiff as contrasted with the public at large must be shown to exist before recovery will be allowed; a special duty of care did not arise between the officer and plaintiff as distinguished from the general public where there were no facts alleged in the complaint which demonstrated that the officer knew or should have known that plaintiff, a child, was playing on the lawn near the scene of the arrest, or that a third party was about to drive out of the parking lot across the lawn and that plaintiff therefore was in unusual danger of being struck by the third-party's automobile. Gillan ex rel. Gillan v. Hanna, 6 Ill. App. 3d 18, 284 N.E.2d 448 (1 Dist. 1972).

Exceptions to general rule that a municipality or its employees is not liable for failure to supply general police or fire protection have been found only in instances where the municipality was under a special duty to a particular individual, such as protecting a material witness from threatened injury by third parties. Huey v. Town of Cicero, 41 Ill. 2d 361, 243 N.E.2d 214 (1968).

- Arrested Person

The city had no special duty to prevent injury to a rape suspect, who was in police custody, by the rape victim's mother or to otherwise protect him where the evidence did not demonstrate that the police were uniquely aware of the particular danger that the rape victim's mother posed to his safety even though she owned a handgun and had been arrested once for aggravated battery. Rush v. City of Chicago, 163 Ill. App. 3d 725, 115 Ill. Dec. 52, 517 N.E.2d 17 (1 Dist. 1987).

- Determinative Factor

The determinative factor in finding whether the "special duty" exception to this Act applies is whether public official was responsible for the occurrence which gave rise to the need for protection, not whether the official had actual notice of the plaintiff's need for protection. Lane v. City of Harvey, 178 Ill. App. 3d 270, 127 Ill. Dec. 457, 533 N.E.2d 75 (1 Dist. 1988).

A public employee's actual knowledge of another's need for protection is not determinative of a finding of direct and immediate control; rather, the pivotal fact is whether the police officer or the firefighter was responsible for the occurrence which gave rise to the need for protection. Jackson v. Chicago Firefighters Union, 160 Ill. App. 3d 975, 112 Ill. Dec. 393, 513 N.E.2d 1002 (1 Dist. 1987).

- Direct Control

Special duty rule strikes the proper balance between the interests of the municipality and the public; where the municipality's agent does not initiate the circumstances that create the dangerous situation, the control element is not satisfied and no special duty can come into existence. Doe v. Calumet City, 161 Ill. 2d 374, 204 Ill. Dec. 274, 641 N.E.2d 498 (1994).

A person is under the direct and immediate control of a municipality if a municipal employee who is acting with official authority which private citizens would reasonably believe they cannot refuse (such as a police officer's authority) makes a request of the private citizen and the citizen complies with the request; where a private citizen asks the municipal employee to perform a task,

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and the employee performs the task so as to injure the citizen, the citizen cannot claim he was under the municipality's direct or immediate control. Doe v. Calumet City, 240 Ill. App. 3d 911, 182 Ill. Dec. 155, 609 N.E.2d 689 (1 Dist. 1992), modified on other grounds, 161 Ill. 2d 374, 204 Ill. Dec. 274, 641 N.E.2d 498 (1994).

The facts were sufficient to establish that plaintiff was under the direct control of a police officer, thus satisfying one element of the "special duty" cause of action. Leone v. City of Chicago, 235 Ill. App. 3d 595, 176 Ill. Dec. 244, 601 N.E.2d 942 (1 Dist. 1992), aff'd, 156 Ill. 2d 33, 188 Ill. Dec. 755, 619 N.E.2d 119 (1993).

The "direct and immediate control" element is still a part of the "special duty" exception to this Act. Galuszynski v. City of Chicago, 131 Ill. App. 3d 505, 86 Ill. Dec. 581, 475 N.E.2d 960 (1 Dist. 1985).

- Elements

The general requirements of the "special duty" exception, whereby the police owe a special duty to an individual, as contrasted to the public at large, are as follows: (1) the municipality must be uniquely aware of the particular danger or risk to which plaintiff is exposed; (2) there must be allegations of specific acts or omissions on the part of the municipality; (3) the specific acts or omissions must be either affirmative or wilful in nature, and (4) the injury must occur while the plaintiff is under the direct and immediate control of employees or agents of the municipality. Doe v. Calumet City, 240 Ill. App. 3d 911, 182 Ill. Dec. 155, 609 N.E.2d 689 (1 Dist. 1992), modified on other grounds, 161 Ill. 2d 374, 204 Ill. Dec. 274, 641 N.E.2d 498 (1994).

There are four elements which a plaintiff must prove to establish a special duty to act: (1) the municipality must be uniquely aware of the particular danger or risk to which the plaintiff is exposed; (2) there must be allegations of specific acts or omissions on the part of the municipality; (3) the specific acts or omissions must be either affirmative or wilful in nature; and (4) the injury must occur while the plaintiff is under the direct and immediate control of employees or agents of the municipality. Gordon v. County of Jackson, 231 Ill. App. 3d 1017, 173 Ill. Dec. 562, 597 N.E.2d 270 (5 Dist.), cert. denied, 147 Ill. 2d 626, 180 Ill. Dec. 149, 606 N.E.2d 1226 (1992).

The four requisite elements to the "special duty" exception, whereby a public employee owes a special duty to an individual rather than merely to the public at large, are: (1) the municipality must be uniquely aware of the particular danger or risk to which plaintiff is exposed; (2) there must be allegations of specific acts or omissions on the part of the municipality; (3) the specific acts or omissions must be either affirmative or wilful in nature; and (4) the injury must occur while plaintiff is under the direct and immediate control of employees or agents of the municipality. Marvin v. Chicago Transit Auth., 113 Ill. App. 3d 172, 68 Ill. Dec. 786, 446 N.E.2d 1183 (1 Dist. 1983); Galuszynski v. City of Chicago, 131 Ill. App. 3d 505, 86 Ill. Dec. 581, 475 N.E.2d 960 (1 Dist. 1985); Barth ex rel. Barth v. Board of Educ., 141 Ill. App. 3d 266, 95 Ill. Dec. 604, 490 N.E.2d 77 (1 Dist. 1986), overruled on other grounds, see In re Chicago Flood Litig., 176 Ill. 2d 179, 680 N.E.2d 265 (1997); Mallder v. Rasmussen, 145 Ill. App. 3d 809, 99 Ill. Dec. 621, 495 N.E.2d 1356 (3 Dist. 1986); Laco v. City of Chicago, 154 Ill. App. 3d 498, 107 Ill. Dec. 400, 507 N.E.2d 64 (1 Dist. 1987); Jackson v. Chicago Firefighters Union, 160 Ill. App. 3d 975, 112 Ill. Dec. 393, 513 N.E.2d 1002 (1 Dist. 1987); Rush v. City of Chicago, 163 Ill. App. 3d 725, 115 Ill. Dec. 52, 517 N.E.2d 17 (1 Dist. 1987); Kavanaugh v. Midwest Club, Inc., 164 Ill. App. 3d 213, 115 Ill. Dec. 245, 517 N.E.2d 656 (2 Dist. 1987); Poliny v. Soto, 178 Ill. App. 3d 203, 127 Ill. Dec. 397, 533 N.E.2d 15 (1 Dist. 1988); Trepachko v. Village of West-Haven, 184 Ill. App. 3d 241, 132 Ill. Dec. 602, 540 N.E.2d 342 (1 Dist. 1989); Gordon v. County of Jackson, 231 Ill. App. 3d 1017, 173 Ill. Dec. 562, 597 N.E.2d 270 (5 Dist.), cert. denied, 147 Ill. 2d 626, 180 Ill. Dec. 149, 606 N.E.2d 1226 (1992).

- Insufficient Pleading

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Plaintiffs made no allegations which led to conclusion that the plaintiff's injuries suffered when he was beaten by six youths at a subway platform occurred while he was under the direct and immediate control of a police officer of city who was patrolling the subway station; mere disjunctive allegation that police officer "directed, permitted, or caused" plaintiff to descend without protection into the subway did not meet this control requirement. Marvin v. Chicago Transit Auth., 113 Ill. App. 3d 172, 68 Ill. Dec. 786, 446 N.E.2d 1183 (1 Dist. 1983).

- Material Witness

Police owed plaintiff no special duty based on his status as a "material witness" where plaintiff was not called into a position of peril by the police to make an arrest, nor was he "used" by the police in order to arrest assault suspect, but acted voluntarily to effect suspect's arrest. Poliny v. Soto, 178 Ill. App. 3d 203, 127 Ill. Dec. 397, 533 N.E.2d 15 (1 Dist. 1988).

- Member of General Public

This section does not apply where police have assumed a special duty to a person that elevates his status to something more than a member of the general public. Long v. Soderquist, 126 Ill. App. 3d 1059, 82 Ill. Dec. 80, 467 N.E.2d 1153 (2 Dist. 1984); Barth ex rel. Barth v. Board of Educ., 141 Ill. App. 3d 266, 95 Ill. Dec. 604, 490 N.E.2d 77 (1 Dist. 1986), overruled on other grounds, see In re Chicago Flood Litig., 176 Ill. 2d 179, 680 N.E.2d 265 (1997).

- Not Shown

Allegations in plaintiff's special duty count that city had a special relationship with decedent, high school student, beyond any duty owed to the general public and that city was uniquely aware of the particular risk to persons lawfully on high school premises were conclusory and nonspecific, and because they neither identified the type of risk to which the decedent was exposed nor set forth specific facts, such as knowledge and control by the city, upon which to establish a special relationship, plaintiff's special duty count was properly dismissed. Lawson v. City of Chicago, 278 Ill. App. 3d 628, 215 Ill. Dec. 237, 662 N.E.2d 1377 (1 Dist. 1996).

No special duty relationship arose where a death occurred after the police attempted to rescue decedent, but were unable to do so because of the lack of trained water rescue personnel and water rescue gear, as decedent was not under the direct and immediate control of the police officers. Kavanaugh v. Midwest Club, Inc., 164 Ill. App. 3d 213, 115 Ill. Dec. 245, 517 N.E.2d 656 (2 Dist. 1987).

Village was not liable, under the "special duty" exception to the specific blanket immunity afforded by Ill. Rev. Stat. ch. 85, para. 4-102 (now 745 ILCS 10/4-102) to a plaintiff who alleged that village police were aware of a bank's intention to repossess his car, that the police department knew that the car was kept within the premises of his home, and that the police did nothing to protect his home after he called to report that the car was being stolen and his home was being broken into; the exception was not applicable because plaintiff was not under the direct and immediate control of employees or agents of the municipality and because the police had no knowledge that the repossession would be executed in a manner that was arguably unlawful. Tannenbaum v. Lincoln Nat'l Bank, 143 Ill. App. 3d 572, 97 Ill. Dec. 661, 493 N.E.2d 143, 1986 Ill. App. LEXIS 2230 (1 Dist. 1986).

- Shown

Where police officer placed plaintiff, a hospital employee, in a position of peril by bringing a known aggressor into a volatile situation in the hospital, the special duty exception to immunity granted by this section applied, and the trial court erred by dismissing the action on defendant's motion. Gordon v. County of Jackson, 231 Ill. App. 3d 1017, 173 Ill. Dec. 562, 597 N.E.2d 270 (5 Dist.), cert. denied, 147 Ill. 2d 626, 180 Ill. Dec. 149, 606 N.E.2d 1226 (1992).

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Wilful Action

When it was alleged that a city did not assist the patrons of a nightclub who were trapped in the building while trying to exit the building, the city was absolutely immune, under 745 ILCS 10/4-102, because: (1) crowd control was a typical police function immunized by 745 ILCS 10/4-102; (2) the immunity exception in 745 ILCS 10/2-202 for willful and wanton conduct did not apply to claims that police did not assist individuals; and (3) 745 ILCS 10/2-202's exception only applied to individual employees and not to entities. Anthony v. City of Chicago, 382 Ill. App. 3d 983, 321 Ill. Dec. 202, 888 N.E.2d 721, 2008 Ill. App. LEXIS 429 (1 Dist. 2008), appeal denied, 229 Ill. 2d 617, 325 Ill. Dec. 1, 897 N.E.2d 249, 2008 Ill. LEXIS 1334 (2008).

There is no wilful and wanton exception to this section. Holder v. Ivanjack, 39 F. Supp. 2d 965 (N.D. Ill. 1999).

- In General

This section does not create a general exception to immunity for willful and wanton misconduct where a public entity fails to provide any or adequate police services; instead, it only allows claims premised upon a public entity's willful and wanton misconduct in the actual execution and enforcement of the law, such claims falling within the exception to immunity under 745 ILCS 10/2-202. A.R. v. Chicago Bd. of Educ., 311 Ill. App. 3d 29, 243 Ill. Dec. 697, 724 N.E.2d 6, 1999 Ill. App. LEXIS 924 (1 Dist. 1999), appeal denied, 188 Ill. 2d 561, 246 Ill. Dec. 121, 729 N.E.2d 494 (2000); but see Doe v. Chi. Bd. of Educ., 213 Ill. 2d 19, 289 Ill. Dec. 642, 820 N.E.2d 418 (2004).

- Illustrative Cases

Village and one of its police officers were providing a police service when the officer responded to a stranded motorist call and were immunized under 745 ILCS 10/4-102 rather than under 745 ILCS 10/2-202, which provided immunity to police officers executing or enforcing the law; under the former, the village and the police officer were immune from liability in a personal injury action even if the officer's conduct in assisting the stranded motorist constituted willful and wanton misconduct that was a proximate cause of the severe injuries to two teens and the death of a third teen. McElmeel v. Vill. of Hoffman Estates, 359 Ill. App. 3d 824, 296 Ill. Dec. 328, 835 N.E.2d 183, 2005 Ill. App. LEXIS 875 (1 Dist. 2005), appeal denied, 217 Ill. 2d 567, 300 Ill. Dec. 367, 844 N.E.2d 39 (2005).

- Not Shown

Mere fact that a crossing guard was not consistently at the location in question was not indicative of wilful or affirmative action. Goebig v. City of Chicago, 188 Ill. App. 3d 614, 136 Ill. Dec. 339, 544 N.E.2d 1114 (1 Dist. 1989).

OPINIONS OF ATTORNEY GENERAL

Intergovernmental Agreement for Police Services

If Pike County and neighboring Missouri County enter into an interagency agreement for purposes of coordinating interstate law enforcement efforts, Pike County would be protected by the provisions of this Act for tortious acts committed by Missouri county officers in Pike County as the county's immunity, with respect to the provision of police services, is not waived by contract. 1999 Op. Atty. Gen. (99-003).

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LEGAL PERIODICALS

For comment, "Violence and Injury in Illinois Schools: Students Deserve a Remedy," see 34 J. Marshall L. Rev. 803 (2001).

For comment, "The Scope of the Public Duty/Special Duty Doctrine in Illinois: Municipal Liability for Failure to Provide Police Protection," see 10 N. Ill. U.L. Rev. 269 (1990).

For article, "Municipal Corporations: 1986-87 Survey," see 12 S. Ill. U.L.J. 1045 (1988).

For article, "State and Local Government: 1986-87 Illinois Law Survey," see 19 Loy. U. Chi. L.J. 691 (1987-88).

For article, "Municipal Liability for Failure to Supply Adequate Police Service and for Criminal Acts Occurring on Its Property," see 36 De Paul L. Rev. 309 (1987).

For article, "Survey of Illinois Law: Employment Law," see 28 S. Ill. U.L.J. 705 (2004).

For article, "Survey of Illinois Law: Significant Developments in Education Law 2003- 2004," see 29 S. Ill. U.L.J. 603 (2005).

For article, "Survey of Illinois Law: Employment Law," see 29 S. Ill. U.L.J. 639 (2005).

For article, "Survey of Illinois Law: Employment Law," see 30 S. Ill. U.L.J. 613 (2006).

For article, "Survey of Illinois Law: Employment Law," see 31 S. Ill. U.L.J. 859 (2007).

RESEARCH REFERENCES

Governmental tort liability for failure to provide police protection to specifically threatened crime victim. 46 ALR4th 948.

Liability, Under State Law Claims, of Public and Private Schools and Institutions of Higher Learning for Teacher's, Other Employee's, or Student's Sexual Relationship with, or Sexual Harassment or Abuse of, Student. 86 ALR5th 1.

Liability of municipality or other governmental unit for failure to provide police protection from crime. 90 ALR5th 273.

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 35:22 Student's assault of third person.

Illinois Jurisprudence, Personal Injury and Torts § 35:20 Generally.

Illinois Jurisprudence, Personal Injury and Torts § 31:140 Absence of guard or police protection.

Illinois Jurisprudence, Personal Injury and Torts § 26:04 Liability of municipality.

Illinois Jurisprudence, Personal Injury and Torts § 3:67 Generally; special duty doctrine eliminated.

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§ 745 ILCS 10/4-103. [Failure to provide jails]

Sec. 4-103. Neither a local public entity nor a public employee is liable for failure to provide a jail, detention or correctional facility, or if such facility is provided, for failure to provide sufficient equipment, personnel, supervision or facilities therein. Nothing in this Section requires the periodic inspection of prisoners.

(Source: P.A. 84-1431.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 4-103.

CASE NOTES

Analysis

Immunity
Legislative Intent
Special Duty Exception
- Not Applicable

Immunity

County was immune under 745 ILCS 10/4-103 from claims by detainees for negligence and negligent infliction of emotional distress brought by detainees in a detention center who alleged that they were sexually abused by a corrections officer; the claims were based on an alleged failure to train officers and to protect the detainees. Hawkins v. St. Clair County, F. Supp. 2d , 2009 U.S. Dist. LEXIS 26969 (S.D. Ill. Mar. 31, 2009).

State claims asserted by the mother of a deceased pretrial detainee in connection with the detainee's death from meningitis while detained in a county jail were dismissed because the county was immune under 745 ILCS 10/4-103 and could not be held liable for failure to provide sufficient equipment, personnel, supervision, or facilities; there was no exception for willful or wanton conduct as alleged by the mother. Based on the supreme nature of federal law, however, that section did not immunize the county from liability under 42 U.S.C.S. § 1983. Thomas v. Sheahan, 499 F. Supp. 2d 1062, 2007 U.S. Dist. LEXIS 60036 (N.D. Ill. 2007).

Where a pre-trial detainee died of meningitis after the detainee's requests for medical treatment were denied, defendants were not entitled to immunity under the Illinois Tort Immunity Act, because, inter alia, the allegations of wrongful death were premised on willful and wanton

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conduct. Thomas v. Cook County Sheriff, 401 F. Supp. 2d 867, 2005 U.S. Dist. LEXIS 28829 (N.D. Ill. 2005).

Where, in her tort claim against a county sheriff, plaintiff alleged that she told the jail custodian that she was diabetic but that jail staff refused to give her insulin, the sheriff was entitled to dismissal of the claim, insofar as it was based upon his failure to provide sufficient personnel or supervision, because he had immunity therefrom under this section. Pico v. County of Cook, F. Supp. 2d , 2004 U.S. Dist. LEXIS 25353 (N.D. Ill. Dec. 14, 2004).

Estate administrator alleged wrongful death and survival actions for willful and wanton conduct against law enforcement officials for failing to provide decedent prisoner with timely medical treatment; however, while the administrator's complaint did allege a failure to provide sufficiently trained personnel, the gravamen of the complaint was the officials' failure to provide timely medical care; thus, the court concluded that 745 ILCS 10/4-103 of the Tort Immunity Act did not require dismissal. Cooper v. Office of the Sheriff, 333 F. Supp. 2d 728, 2004 U.S. Dist. LEXIS 17460 (N.D. Ill. 2004).

The claim that the county's acts in failing to provide proper jail space and maintenance for misdemeanant arrestees, resulting in the victim being housed in a city lockup where he was not sufficiently protected from self-inflicted injuries which resulted in his suicide, failed because the county was immune under this section for failing to provide sufficient supervision or facilities or for failing to provide periodic inspections. Payne v. Churchich, 161 F.3d 1030, 1998 U.S. App. LEXIS 28215 (7th Cir. 1998), cert. denied, 527 U.S. 1004, 119 S. Ct. 2339, 144 L. Ed. 2d 236 (1999).

Legislative Intent

There is a boundary between the immunity granted under 745 ILCS 10/4-103 (Illinois) and the immunity granted under 745 ILCS 10/4-105. Not only did the Illinois General Assembly not intend the terms "equipment" and "facilities" to cover the provision of all medical care, but an interpretation of § 4-103 applying it to cases involving a failure to provide medical care would render the exception in § 6-105 a nullity and frustrate the General Assembly's intent. Smith v. Cook County, F. Supp. 2d , 2009 U.S. Dist. LEXIS 29133 (N.D. Ill. Apr. 8, 2009).

The legislature did not intend an exception for wilful and wanton misconduct in this section and none may be judicially created. Jefferson v. Sheahan, 279 Ill. App. 3d 74, 215 Ill. Dec. 815, 664 N.E.2d 212 (1 Dist. 1996), appeal denied, 168 Ill. 2d 593, 219 Ill. Dec. 565, 671 N.E.2d 732 (1996).

Special Duty Exception

- Not Applicable

The special duty exception to governmental tort immunity was not triggered, where plaintiff pleaded that decedent's suicide was caused by defendant's careless, negligent, and wilful failure to check decedent on a regular basis, remove his personal effects at the time of detention, supervise the cell blocks, seek a treatment alternative to detention, exercise practices and customs relative to intoxicated or self-destructive persons, maintain a camera surveillance system, and inspect the jail facility for health and safety hazards. Fraley v. City of Elgin, 251 Ill. App. 3d 72, 190 Ill. Dec. 407, 621 N.E.2d 276 (2 Dist. 1993).

Practice Guides and Treatises.

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Illinois Jurisprudence, Personal Injury and Torts § 3:78 Self-inflicted injury and suicide.

§ 745 ILCS 10/4-104. [Interference with prisoners' rights]

Sec. 4-104. Neither a local public entity nor a public employee acting within the scope of his employment is liable for interfering with the right of a prisoner to obtain a judicial determination or review of the legality of his confinement, but a public employee and the local public entity where the employee is acting within the scope of his employment is liable for injury proximately caused by his intentional and unjustifiable interference with such right.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 4-104.

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 3:79 Interference with judicial review of custody.

§ 745 ILCS 10/4-105. [Failure to furnish medical care for prisoner]

Sec. 4-105. Neither a local public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody; but this Section shall not apply where the employee, acting within the scope of his employment, knows from his observation of conditions that the prisoner is in need of immediate medical care and, through willful and wanton conduct, fails to take reasonable action to summon medical care. Nothing in this Section requires the periodic inspection of prisoners.

(Source: P.A. 84-1431.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 4-105.

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CASE NOTES

Analysis

Appeal
- Waiver
Health of Prisoner
- Reasonable Care
Illustrative Case's
Legislative Intent
Psychiatric Care
- Not Mandatory
Special Duty Exception
Wilful and Wanton Conduct
- Federal Law Compared
- Former Provisions
- Not Shown
- Question of Fact

Appeal

- Waiver

A county's failure to raise tort immunity defense in the trial court precluded the county from raising said defense on appeal. Porter v. County of Cook, 42 Ill. App. 3d 287, 355 N.E.2d 561 (1 Dist. 1976).

Health of Prisoner

- Reasonable Care

Where estate administrator alleged wrongful death and survival actions for negligent conduct against law enforcement officials for failing to provide decedent prisoner with timely medical treatment for his asthma, as a matter of statutory interpretation, 745 ILCS 10/4-105 trumped 55 ILCS 5/3-6016 as the more specific provision and, thus, provided immunity against the administrator's negligence claims; therefore, the officials' motion to dismiss was granted. Cooper v. Office of the Sheriff, 333 F. Supp. 2d 728, 2004 U.S. Dist. LEXIS 17460 (N.D. Ill. 2004).

Where a jail detainee alleged that deputies were deliberately indifferent to his increased pain after receiving a foot cast, the district court correctly characterized the detainee's allegations, in his motion to dismiss a negligence claim, as relating to the obtaining and furnishing of medical care, which was squarely covered by the immunity provision in 745 ILCS 10/4-105. Johnson v. Myers, F.3d , 2004 U.S. App. LEXIS 17650 (7th Cir. Aug. 11, 2004).

Jailers are required to exercise ordinary and reasonable care for the preservation of their prisoner's health and life under the circumstances of the particular case. Dezort v. Village of Hinsdale, 35 Ill. App. 3d 703, 342 N.E.2d 468 (2 Dist. 1976).

Illustrative Case's

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Court dismissed plaintiffs' claims regarding a wrongful arrest and negligence in failing to provide medical care to a prisoner because under 745 ILCS 10/2-202 police officers were not liable for the arrest when the officers were enforcing the law, and because the officers were not liable, the city was not liable under 745 ILCS 10/2-109. Claims alleging negligence for failure to provide medical treatment were dismissed because 745 ILCS 10/4-105 provided that the officers and the city were not liable for an injury proximately caused by the failure of the officers to furnish or obtain medical care for the arrestee. Montegomery v. City of Collinsville Police Dep't, F. Supp. 2d , 2006 U.S. Dist. LEXIS 49058 (S.D. Ill. July 18, 2006).

Where, in an action against the county sheriff, plaintiff alleged that she told the jail custodian that she was diabetic but that jail staff refused to give her insulin, the sheriff was not entitled to dismissal of the tort claims because plaintiff alleged facts that could have constituted willful and wanton misconduct. Pico v. County of Cook, F. Supp. 2d , 2004 U.S. Dist. LEXIS 25353 (N.D. Ill. Dec. 14, 2004).

A city was not held responsible for acts of negligence in the failure of its employees to furnish or obtain medical care for prisoners in its custody under this section. Singleton v. City of Chicago, F. Supp. 2d , 2000 U.S. Dist. LEXIS 3220 (N.D. Ill. Feb. 25, 2000).

Legislative Intent

There is a boundary between the immunity granted under 745 ILCS 10/4-103 (Illinois) and the immunity granted under 745 ILCS 10/4-105. Not only did the Illinois General Assembly not intend the terms "equipment" and "facilities" to cover the provision of all medical care, but an interpretation of 745 ILCS 10/4-103 applying it to cases involving a failure to provide medical care would render the exception in 745 ILCS 10/6-105 a nullity and frustrate the General Assembly's intent. Smith v. Cook County, F. Supp. 2d , 2009 U.S. Dist. LEXIS 29133 (N.D. Ill. Apr. 8, 2009).

Psychiatric Care

- Not Mandatory

This section does not establish a mandatory duty on jailers and other public employees to furnish psychiatric care to prisoners. Dezort v. Village of Hinsdale, 35 Ill. App. 3d 703, 342 N.E.2d 468 (2 Dist. 1976).

Special Duty Exception

Special duty exception applied where defendant was uniquely aware of the particular risk to decedent, defendant failed to get defendant's medication or medical assistance, this was a deliberate decision and decedent was in defendant's direct and immediate control. Egebergh v. Sheahan, 955 F. Supp. 965 (N.D. Ill. 1997).

The statute does not foreclose the common law special duty exception to governmental tort immunity, which applies in certain limited circumstances. Egebergh v. Sheahan, 955 F. Supp. 965 (N.D. Ill. 1997).

Wilful and Wanton Conduct

Under Illinois law, a public employee and, in turn, a public entity, is only liable for willful and wanton conduct; conduct is willful and wanton under Illinois law if it constitutes a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property. With no

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identified officer, and no evidence as to what happened before plaintiff collapsed, plaintiff could not establish willful and wanton - or even negligent conduct - on anyone's part, so summary judgment was appropriate on the plaintiff's wrongful death claim. Hunt v. Dart, 754 F. Supp. 2d 962, 2010 U.S. Dist. LEXIS 128869 (N.D. Ill. 2010).

Officers' Fed. R. Civ. P. 50(b) motion was denied as to plaintiffs' claim under the Illinois Wrongful Death Act, 740 ILCS 180/1, because the jury had a legally sufficient basis for finding that the officers' conduct was willful and wanton as required under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/4-105,10/1-210, based on their conscious disregard of the detainee's health and safety; the trial record revealed that the officers consciously disregarded the detainee's serious medical condition and her requests for medical care many times throughout her incarceration. Cobige v. City of Chicago, 752 F. Supp. 2d 860, 2010 U.S. Dist. LEXIS 113133 (N.D. Ill. 2010).

District court properly granted summary judgment in favor of an arresting officer on an arrestee's claim against the officer under 745 ILCS 10/4-105 for failure to provide him with medical care. The officer did not know that the arrestee was in need of immediate medical care and therefore did not exhibit willful and wanton conduct; moreover, the arrestee's asthma was not sufficiently severe during his arrest and processing to be considered objectively serious for purposes of his claim against the arresting officer. Williams v. Rodriguez, 509 F.3d 392, 2007 U.S. App. LEXIS 28201 (7th Cir. 2007).

Police officers and a police department were entitled to summary judgment in a negligence action filed by a decedent's estate administrator, arising from the decedent having hanged himself in a detention cell after he was arrested for shoplifting, as the police were entitled to immunity under the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq.; they had no liability for their failure to furnish medical care to the decedent while he was in the cell pursuant to 745 ILCS 10/4-105 where there was no showing that they exhibited wanton or willful conduct, as defined in 745 ILCS 10/1-210, or that the decedent was alive when they first saw him hanging in the cell, such that they could have saved his life. Luss v. Vill. of Forest Park, 377 Ill. App. 3d 318, 316 Ill. Dec. 169, 878 N.E.2d 1193, 2007 Ill. App. LEXIS 1159 (1 Dist. 2007).

Where a pre-trial detainee died of meningitis after the detainee's requests for medical treatment were denied, defendants were not entitled to immunity under the Illinois Tort Immunity Act, because, inter alia, the allegations of wrongful death were premised on wilful and wanton conduct. Thomas v. Cook County Sheriff, 401 F. Supp. 2d 867, 2005 U.S. Dist. LEXIS 28829 (N.D. Ill. 2005).

- Federal Law Compared

The definitions of "wilful and wanton" in this Act is essentially the same as the definition of "deliberate indifference" under federal constitutional law. Bragado v. City of Zion/Police Dep't, 788 F. Supp. 366 (N.D. Ill. 1992).

- Former Provisions

The plain language of the pre-1986 amended version of this section indicated that a negligence standard would apply to the nonliability exception contained in this section, unless a factual determination was made that defendant's conduct fell within the parameters of the provisions of 745 ILCS 10/2-202, thereby raising the standard to that of wilful and wanton misconduct. Zimmerman v. Village of Skokie, 183 Ill. 2d 30, 231 Ill. Dec. 914, 697 N.E.2d 699 (1998).

- Not Shown

Since the court denied summary judgment on a 42 U.S.C. § 1983 claim for failure to provide medical care, which employs the deliberate indifference standard, it was equally unavailable on

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the state law claim through this section or 745 ILCS 10/2-202. Regalado v. City of Chicago, 40 F. Supp. 2d 997 (N.D. Ill. 1999).

- Question of Fact

Where an arrestee alleged that a sergeant and an officer committed battery against the arrestee at the jail, defendants were not entitled to dismissal of the failure to provide medical attention claims based on immunity, because, inter alia, whether the conduct was willful or wanton was a question of fact, not to be decided on a motion to dismiss, and the complaint stated that the arrestee was in clear need of medical attention. Wilhold v. Gebke, F. Supp. 2d , 2005 U.S. Dist. LEXIS 20096 (S.D. Ill. Sept. 1, 2005).

Under Illinois law, whether certain conduct is "wilful and wanton" is normally a question of fact for the fact-finder to decide, although the court must first decide as a matter of law that sufficient evidence has been presented on the issue. Bragado v. City of Zion/Police Dep't, 788 F. Supp. 366 (N.D. Ill. 1992).

§ 745 ILCS 10/4-106. [Injury relating to parole determination; injury inflicted by escaped prisoner]

Sec. 4-106. Neither a local public entity nor a public employee is liable for:

(a) Any injury resulting from determining to parole or release a prisoner, to revoke his parole or release, or the terms and conditions of his parole.

(b) Any injury inflicted by an escaped or escaping prisoner.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 4-106.

CASE NOTES

Analysis
Applicability
Immunity

Applicability

Court of Claims' dismissal of claimant's tort action against the State was based on public officials' immunity for performance of discretionary duties undertaken in good faith, rather than immunity under the Local Governmental and Governmental Employees Tort Immunity Act (the Act), 745

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ILCS 10/1-101 et seq., because the Act did not include the State of Illinois or its employees. The court overruled its prior decision holding 745 ILCS 10/4-106, applied equally to units of local government and to the State. Larson v. State, 50 Ill. Ct. Cl. 1, 1997 Ill. Ct. Cl. LEXIS 41 (Ct. Cl. 1997).

Immunity

Willful and wanton exception recognized in 745 ILCS 10/2-202 did not apply to defeat the immunity that protected the city from the injured motorists' personal injury claims that they filed after a man placed in the back of a squad car by a police officer stole the squad car and collided it with the injured motorists' vehicle, which was stopped at a red light. The city was protected by the immunity set forth in 745 ILCS 10/4-106(b) for injuries caused by escaping prisoners, as 745 ILCS 10/4-101 made him a prisoner because the officer had placed him "in custody, and the willful and wanton exception did not apply because the legislature would have expressly stated in 745 ILCS 10/4-106(b) if it had wanted the exception to apply and it did not do so. Ries v. City of Chicago, 242 Ill. 2d 205, 351 Ill. Dec. 135, 950 N.E.2d 631, 2011 Ill. LEXIS 427 (2011).

City's immunity under 745 ILCS 10/4-106(b) for the conduct of escaped prisoners causing injury, as well as its immunity for not providing adequate police protection of failing to prevent a crime under 745 ILCS 10/4-102 was not subject to the willful and wanton exception of 745 ILCS 10/2-202. Despite the city's police officers failing to stop the detainee from stealing one officer's police vehicle, the officers were not in control of the intersection about a mile away from where the vehicle was stolen and the detainee crashed the vehicle into the injured parties' vehicle stopped at the intersection. Ries v. City of Chicago, 396 Ill. App. 3d 418, 335 Ill. Dec. 746, 919 N.E.2d 465, 2009 Ill. App. LEXIS 1177 (1 Dist. 2009).

Motion to dismiss the claims for wrongful death, pursuant to 745 ILCS 10/2-201, 745 ILCS 10/2-202, and 745 ILCS 10/2-204, brought against a county sheriff and a deputy, and pursuant to 745 ILCS 10/4-106, the claims against a county, a sheriff's department, the sheriff, and the deputy, for allowing a decedent to escape and commit suicide while in custody was denied because the record was not yet sufficiently developed, and the briefing was inadequate, to determine if any of the defendants were entitled to immunity under any of the respective provisions. Sidwell v. County of Jersey, F. Supp. 2d , 2006 U.S. Dist. LEXIS 29565 (S.D. Ill. May 15, 2006).

OPINIONS OF ATTORNEY GENERAL

Liability

A county is immune from liability for property damage caused by an escaped prisoner. 1979 Op. Atty. Gen. 135.

A county board because of its immunity could not compensate an automobile owner for damages to an automobile caused by an escaped prisoner, as such would be a gift which a county is not allowed to make. 1979 Op. Atty. Gen. 135.

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 3:76 By prisoner on third person after release or escape.

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§ 745 ILCS 10/4-107. [Failure to arrest; release of person in custody]

Sec. 4-107. Neither a local public entity nor a public employee is liable for an injury caused by the failure to make an arrest or by releasing a person in custody.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 4-107.

CASE NOTES

Analysis

In General
Applicability
Construction
Fleeing Criminal
Immunity
- Not Upheld
- Upheld
Special Duty
- Direct Control
- Not Shown

In General

745 ILCS 10/4-102 and this section provide immunity for the failure to prevent the commission of crimes, the failure to apprehend criminals, and the failure to make an arrest. Jackson v. Chicago Firefighters Union, 160 Ill. App. 3d 975, 112 Ill. Dec. 393, 513 N.E.2d 1002 (1 Dist. 1987).

Applicability

745 ILCS 10/2-102 is broader than 745 ILCS 10/4-102 and this section in two respects: (1) it pertains to all public employees, (2) in the execution or enforcement of any law. This section and 745 ILCS 10/4-102 pertain specifically to police and their function in enforcing the criminal law and making arrests. Jamison v. City of Chicago, 48 Ill. App. 3d 567, 6 Ill. Dec. 558, 363 N.E.2d 87 (1 Dist. 1977).

Construction

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Neither municipalities nor municipal employees could be held liable for alleged breaches of the Illinois Domestic Violence Act of 1986, 750 ILCS 60/101 et seq. (Act), that allegedly led to a former boyfriend killing the decedent. Since that statute's limited immunity for rendering emergency assistance was not at issue, the municipalities and municipal employees could only be liable under the Act if they were "enforcing this Act" and engaged in willful and wanton misconduct. Where the estate administrator's complaint showed that they were not giving effect to some part of the Act that could not be considered an emergency, they were entitled to immunity under 745 ILCS 10/4-102 for failing to provide adequate police protection and under 745 ILCS 10/4-107 failing to make an arrest. Lacey v. Vill. of Palatine, 232 Ill. 2d 349, 328 Ill. Dec. 256, 904 N.E.2d 18, 2009 Ill. LEXIS 186 (2009).

Summary judgment was not proper in an action arising from injuries caused by a drunk driver, who had not been taken into custody following a domestic dispute, because although the officers did not owe a special duty to the victims to protect them from an intoxicated driver under the "special duty exception" to the former Local Governmental and Governmental Employees Tort Immunity Act, Ill. Rev. Stat. ch. 85, para. 745 ILCS 10/4-102 (now 745 ILCS 10/4-102) and Ill. Rev. Stat. ch. 85, 745 ILCS 10/4-107 (now 745 ILCS 10/4-107), the officers could be still held liable under the act for willful and wanton conduct in enforcement of the law under former Il. Rev. Stat. ch. 85, para. 2-202 (now 745 ILCS 10/2-202), former Ill. Rev. Stat. ch. 85 para. 2-204 (now 745 ILCS 10/2-204), and former Ill. Rev. Stat. ch. 85, para. 2-210 (now 745 ILCS 10/2-210). Fatigato v. Village of Olympia Fields, 281 Ill. App. 3d 347, 217 Ill. Dec. 63, 666 N.E.2d 732, 1996 Ill. App. LEXIS 359 (1 Dist. 1996).

Because 745 ILCS 10/4-102 and this section pertain specifically to police and their functions in enforcing the criminal law and making arrests, those sections govern and prevail over the wilful and wanton negligence language of 745 ILCS 10/2-202 in a case alleging negligence by failure to make an arrest. Luber v. City of Highland, 151 Ill. App. 3d 758, 104 Ill. Dec. 583, 502 N.E.2d 1243 (5 Dist. 1986).

Fleeing Criminal

To expose municipalities to liability for negligence in engaging in a chase of a fleeing criminal if the fleeing criminal injures someone in the chase would cut at the heart of 745 ILCS 10/4-102 and this section. Veach v. Cross, 178 Ill. App. 3d 102, 127 Ill. Dec. 240, 532 N.E.2d 1069 (4 Dist. 1988).

Immunity

City was not entitled to absolute immunity under 745 ILCS 10/4-102 and 10/4-107 from a mother's wanton and wilful conduct claims where a city police officer had arrested the daughter for underage drinking, the police department thus owed her a duty to not engage in wanton and wilful conduct, and the allegations that the department allowed her, an intoxicated pedestrian, to leave the police station unsupervised were sufficient to create triable issues of fact as to the city's liability for wilful and wanton acts. Keener v. City of Herrin, 385 Ill. App. 3d 545, 324 Ill. Dec. 426, 895 N.E.2d 1141, 2008 Ill. App. LEXIS 994 (5 Dist. 2008).

- Not Upheld

Contrary to the arguments by two municipalities and several police officers, in an action alleging violations of the Illinois Domestic Violence Act of 1986, the immunity provisions in 750 ILCS 60/305 were applicable and were not overridden by the provisions of 745 ILCS 10/4-102 and this section. Lacey v. Vill. of Palatine, 379 Ill. App. 3d 62, 318 Ill. Dec. 64, 882 N.E.2d 1187, 2008 Ill. App. LEXIS 61 (1 Dist. 2008), rev'd; superseded, 2009 Ill. LEXIS 186 (Ill. 2009).

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Willful and wanton misconduct by a municipality or its police officers in failing to assist a victim of domestic violence pursuant to the Illinois Domestic Violence Act of 1986, 750 ILCS 60/305, is not immunized from liability by the provisions contained within the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/4-102 or 745 ILCS 10/4-107, as the clear legislative intent of the limited immunity provision of the Domestic Violence Act establishes that the legislature chose to burden municipalities with the duty to enforce the Domestic Violence Act and chose to provide only limited immunity from tort claims associated with a breach of that duty. As such, the denial of the motions to dismiss filed by defendants, two police officers and the City of Chicago, Illinois, were properly denied with regard to an estate administrator's wrongful death suit against defendants, which alleged that the officers' willful and wanton conduct in failing to investigate and assist the decedent breached their duty under the Domestic Violence Act and proximately caused her death, when the officers failed to respond to the decedent's 911 call that requested police assistance due to her husband's violation of a emergency order of protection. Moore v. Green, 219 Ill. 2d 470, 302 Ill. Dec. 451, 848 N.E.2d 1015, 2006 Ill. LEXIS 613 (2006).

Where police officers were accused of willfully and wantonly failing to prevent a crime against a victim of domestic violence, the provision of the Illinois Domestic Violence Act limiting law enforcement liability (750 ILCS 60/305), not this section or 745 ILCS 10/4-102, controlled in a wrongful death and survival action brought by plaintiff administrator against the officers and their city employer. Moore v. Green, 355 Ill. App. 3d 81, 290 Ill. Dec. 787, 822 N.E.2d 69, 2004 Ill. App. LEXIS 1549 (1 Dist. 2004), aff'd, 219 Ill. 2d 470, 302 Ill. Dec. 451, 848 N.E.2d 1015 (2006).

Large verdict in favor of the surviving mother of a decedent passenger killed in a drunk driving incident against police officers who earlier failed to arrest the driver, and against the village that employed them, was upheld on appeal, despite claims of governmental tort immunity; 745 ILCS 10/2-1202 provided an explicit exception to the general rule of immunity for injuries to individuals where the evidence established willful and wanton behavior by the officers. Ozik v. Gramins, 345 Ill. App. 3d 502, 279 Ill. Dec. 68, 799 N.E.2d 871, 2003 Ill. App. LEXIS 1291 (1 Dist. 2003), appeal denied, 207 Ill. 2d 606, 283 Ill. Dec. 135, 807 N.E.2d 976 (2004).

- Upheld

745 ILCS 10/4-102 and this section unequivocally provided immunity for defendant city, probation officers, and State's attorney in case seeking damages for wrongful death of victim killed by individual formally on probation, who had been reported to have threatened victim. Vasconcelles v. City of Springfield, 170 Ill. App. 3d 404, 120 Ill. Dec. 690, 524 N.E.2d 720 (4 Dist. 1988).

The specific police immunity provisions prevail over the general immunity provisions relating to any public employee enforcing any law; therefore, wrongful death action against the City of Chicago for the actions of its police officers was barred. Nieder v. Gacy, 121 Ill. App. 3d 854, 77 Ill. Dec. 286, 460 N.E.2d 342 (1 Dist. 1984).

This section and 745 ILCS 10/4-102 provided immunity for a city and its police officers where a person about whom the police had been warned was behaving strangely and violently toward family members, and whom the police did not attempt to arrest, shot and killed a stranger. Jamison v. City of Chicago, 48 Ill. App. 3d 567, 6 Ill. Dec. 558, 363 N.E.2d 87 (1 Dist. 1977).

Special Duty

- Direct Control

Special duty rule strikes the proper balance between the interests of the municipality and the public; where the municipality's agent does not initiate the circumstances that create the dangerous situation, the control element is not satisfied and no special duty can come into existence. Doe v. Calumet City, 161 Ill. 2d 374, 204 Ill. Dec. 274, 641 N.E.2d 498 (1994).

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- Not Shown

It is not necessary for a plaintiff to prove the special duty exception to the public duty rule when bringing an action based upon wilful and wanton conduct in the execution and enforcement of the law under 745 ILCS 10/2-202. The wilful and wanton exception is a separate exception to the public duty rule. Ozik v. Gramins, Ill. App. 3d , Ill. Dec. , N.E.2d , 2003 Ill. App. LEXIS 846 (1 Dist. June 30, 2003).

Where there were no allegations that plaintiff was injured while under direct and immediate control of police officer, plaintiff's cause of action did not fall under the special duty exception to this Act. Luber v. City of Highland, 151 Ill. App. 3d 758, 104 Ill. Dec. 583, 502 N.E.2d 1243 (5 Dist. 1986).

LEGAL PERIODICALS

For article, "Municipal Corporations: 1986-87 Survey," see 12 S. Ill. U.L.J. 1045 (1988).

For article, "State and Local Government: 1986-87 Illinois Law Survey," see 19 Loy. U. Chi. L.J. 691 (1987-88).

For article, "Municipal Liability for Failure to Supply Adequate Police Service and for Criminal Acts Occurring on Its Property," see 36 De Paul L. Rev. 309 (1987).

For article, "Survey of Illinois Law: Employment Law," see 28 S. Ill. U.L.J. 705 (2004).

For article, "Survey of Illinois Law: Employment Law," see 31 S. Ill. U.L.J. 859 (2007).

Article V.

Fire Protection and Rescue Services

§ 745 ILCS 10/5-101. [Failure to provide fire protection]

Sec. 5-101. Neither a local public entity nor a public employee is liable for failure to establish a fire department or otherwise to provide fire protection, rescue or other emergency service.

As used in this Article, "rescue services" includes, but is not limited to, the operation of an ambulance as defined in the Emergency Medical Services (EMS) Systems Act [210 ILCS 50/1 et seq.].

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(Source: P.A. 84-1431.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 5-101.

CASE NOTES

Analysis

Constitutionality
In General
Conflict with Fire Fighter Liability Act
Construction with Emergency Telephone System Act
Exceptions Not Applied
- Firefighters
Liability
- In General
- Not Shown
- Specific Instances
Special Duty
- Affirmative Action
- Control
- Exception
- Not Shown
- Unique Awareness
- Victim Rescue

Constitutionality

The constitutionality of this Act is unaffected by the existence of Ill. Const. (1970), Art. I, § 12. Adams v. City of Peoria, 77 Ill. App. 3d 683, 33 Ill. Dec. 183, 396 N.E.2d 572 (3 Dist. 1979).

In General

The statute immunizes only a local public entity that has not established a fire department or rescue service or has not instituted a system for otherwise providing fire or rescue services; it does immunize a local public entity which offers these services in general but fails to provide them in a particular case. American Nat'l Bank & Trust Co. v. City of Chicago, 192 Ill. 2d 274, 248 Ill. Dec. 900, 735 N.E.2d 551, 2000 Ill. LEXIS 1219 (2000).

Just as Article IV of this Act specifically provides immunity to police personnel, Article V of the Act specifically provides immunity to firefighters. Jackson v. Chicago Firefighters Union, 160 Ill. App. 3d 975, 112 Ill. Dec. 393, 513 N.E.2d 1002 (1 Dist. 1987).

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Conflict with Fire Fighter Liability Act

When choosing between two statutes in direct conflict, the more recent enactment generally will prevail as the later expression of legislative intent; therefore, the amended version of the Tort Immunity Act must prevail and the Fire Fighter Liability Act (740 ILCS 75/0.01 et seq.) has been repealed by implication. Jahn v. Troy Fire Protection Dist., 163 Ill. 2d 275, 206 Ill. Dec. 106, 644 N.E.2d 1159 (1994).

Construction with Emergency Telephone System Act

Provisions of the Emergency Telephone System Act (50 ILCS 750/0.01 et seq.) govern over those of this Act with regard to immunity for units of local government for emergency services; this Act does not apply where local public entity has undertaken to provide 9-1-1 services to the public at large. Harrell v. City of Chicago Heights, 945 F. Supp. 1112 (N.D. Ill. 1996).

Exceptions Not Applied

- Firefighters

Article V of this Act is intended to provide blanket immunity in the specific area of fire protection and is not subject to the exception set forth in 745 ILCS 10/2-202. Jackson v. Chicago Firefighters Union, 160 Ill. App. 3d 975, 112 Ill. Dec. 393, 513 N.E.2d 1002 (1 Dist. 1987).

Liability

- In General

Where the Fire Fighter Liability Act (740 ILCS 75/0.01 et seq.) imposed liability for mere negligence, while the Tort Immunity Act granted immunity from mere negligence, the two statutes exhibit total repugnance and a construction of the two statutes that would allow both to stand is not possible. Jahn v. Troy Fire Protection Dist., 163 Ill. 2d 275, 206 Ill. Dec. 106, 644 N.E.2d 1159 (1994).

- Not Shown

An alleged failure to provide sufficient water or water pressure could be viewed either as a complete failure to provide fire protection or other emergency services under this section or as a failure to provide sufficient "facilities" to suppress or contain a fire under 745 ILCS 10/5-102 and either way, the village was immune. Pierce v. Village of Divernon, 17 F.3d 1074 (7th Cir. 1994).

Plaintiff's complaint alleging commission was guilty of willful and wanton misconduct in failing to maintain adequate water pressure in its water mains used for fire fighting purposes was properly dismissed. Jones v. Village of Willow Springs, 240 Ill. App. 3d 235, 181 Ill. Dec. 225, 608 N.E.2d 298 (1 Dist. 1992), appeal denied, 149 Ill. 2d 650, 183 Ill. Dec. 861, 612 N.E.2d 513 (1993).

- Specific Instances

Where city undertook to provide emergency services to public at large, it no longer "completely failed" to provide emergency services and any subsequent actions fell outside the scope of this section. Harrell v. City of Chicago Heights, 945 F. Supp. 1112 (N.D. Ill. 1996).

Special Duty

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- Affirmative Action

In order for the court to find that decedent was under the "direct and immediate control of employees of a municipality," plaintiff must show that an employee or agent of the municipality took an affirmative action which called injured party into a position of peril. McGuckin v. Chicago Union Station, 191 Ill. App. 3d 982, 139 Ill. Dec. 76, 548 N.E.2d 461 (1 Dist. 1989), appeal denied, 131 Ill. 2d 560, 142 Ill. Dec. 882, 553 N.E.2d 396 (1990).

- Control

In determining the control prong of the special duty exception, the issue is whether a municipality was responsible for the occurrence which gave rise to the need for protection. McGuckin v. Chicago Union Station, 191 Ill. App. 3d 982, 139 Ill. Dec. 76, 548 N.E.2d 461 (1 Dist. 1989), appeal denied, 131 Ill. 2d 560, 142 Ill. Dec. 882, 553 N.E.2d 396 (1990).

The mere fact that municipality is aware of another's need for protection is not a conclusive finding of direct and immediate control. McGuckin v. Chicago Union Station, 191 Ill. App. 3d 982, 139 Ill. Dec. 76, 548 N.E.2d 461 (1 Dist. 1989), appeal denied, 131 Ill. 2d 560, 142 Ill. Dec. 882, 553 N.E.2d 396 (1990).

- Exception

A four prong test must be satisfied before imposition of the special duty exception: (1) the municipality must be uniquely aware of the particular danger or risk to which the decedent was exposed; (2) there must be allegations of specific acts or omissions on the part of the municipality; (3) the specific acts or omissions must be either affirmative or wilful in nature; and (4) the injury must occur while the plaintiff's decedent was under the direct and immediate control of employees or agents of the municipality. McGuckin v. Chicago Union Station, 191 Ill. App. 3d 982, 139 Ill. Dec. 76, 548 N.E.2d 461 (1 Dist. 1989), appeal denied, 131 Ill. 2d 560, 142 Ill. Dec. 882, 553 N.E.2d 396 (1990).

- Not Shown

Where facts failed to reveal any situation where firefighters acted affirmatively to call decedent into a position of peril by ordering, instructing, or advising the decedent and other tenants to remain in building, decedent was not under the direct and immediate control of the fire department; therefore, imposition of a special duty was not owed to decedent. McGuckin v. Chicago Union Station, 191 Ill. App. 3d 982, 139 Ill. Dec. 76, 548 N.E.2d 461 (1 Dist. 1989), appeal denied, 131 Ill. 2d 560, 142 Ill. Dec. 882, 553 N.E.2d 396 (1990).

- Unique Awareness

In order to find "unique awareness," municipality must be on notice that a preventable danger threatens a particular individual of whom they are aware. McGuckin v. Chicago Union Station, 191 Ill. App. 3d 982, 139 Ill. Dec. 76, 548 N.E.2d 461 (1 Dist. 1989), appeal denied, 131 Ill. 2d 560, 142 Ill. Dec. 882, 553 N.E.2d 396 (1990).

Where record did not disclose that firefighters knew of decedent's existence on the premises nor did they receive from him a request for protection, the firefighters were found not to be uniquely aware of any specific danger to the decedent. McGuckin v. Chicago Union Station, 191 Ill. App. 3d 982, 139 Ill. Dec. 76, 548 N.E.2d 461 (1 Dist. 1989), appeal denied, 131 Ill. 2d 560, 142 Ill. Dec. 882, 553 N.E.2d 396 (1990).

- Victim Rescue

Town and its police officers were immune from negligence liability under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., following failure to rescue the victims of a residential fire, where: (1) neither the town nor its police officers at the scene could be held liable for failure to attempt a rescue; and (2) even if the police

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officers' acts were found to be willful and wanton, immunity still applied under 745 ILCS 10/2-201 because the officers had to make a policy decision in balancing the competing interests of their own safety and their chances of success with the interests of the victims and survivors. Fender v. Town of Cicero, 347 Ill. App. 3d 46, 283 Ill. Dec. 1, 807 N.E.2d 606, 2004 Ill. App. LEXIS 242 (1 Dist. 2004).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 3:62 Damage to bridge caused by fire equipment.

§ 745 ILCS 10/5-102. [Failure to suppress or contain fire]

Sec. 5-102. Neither a local public entity that has undertaken to provide fire protection service nor any of its employees is liable for an injury resulting from the failure to suppress or contain a fire or from the failure to provide or maintain sufficient personnel, equipment or other fire protection facilities.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 5-102.

CASE NOTES

Analysis

Cause of Action
- Shown

Duty
- Not Shown

Immunity Granted

Liability
- In General
- Distinguished
- Not Shown
- Willful and Wanton Conduct

Special Duty
- Determination
- Exception

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Cause of Action

- Shown

Plaintiff sufficiently alleged he was instructed and directed to aid firefighter and therefore firefighter assumed responsibility for plaintiff's safety, thus demonstrating that firefighter's affirmative acts created a position of peril for the plaintiff; therefore, lower court erred in finding insufficient facts to state a cause of action. Anthony v. City of Chicago, 168 Ill. App. 3d 733, 119 Ill. Dec. 554, 523 N.E.2d 22 (1 Dist. 1988).

Duty

- Not Shown

In an action seeking damages against owner of building and manufacturer of protective clothing for injuries suffered as a result of fighting a fire, where firefighter filed third-party complaint against city and fire department for contribution, the city did not acknowledge the existence of a duty in tort by asserting an affirmative defense of sovereign immunity. Martin v. Lion Uniform Co., 180 Ill. App. 3d 955, 129 Ill. Dec. 686, 536 N.E.2d 736 (1 Dist. 1989).

Immunity Granted

Where the corporation alleged that a fire spread and ultimately consumed its building because the city failed to notify the corporation and the city fire department that water service had been interrupted and provide uninterrupted service to the hydrants and sprinklers, the facts fell squarely within the plain language of 745 ILCS 10/5-102 and the city had immunity. Remet Corp. v. City of Chicago, 509 F.3d 816, 2007 U.S. App. LEXIS 27976 (7th Cir. 2007).

Immunity granted under 745 ILCS 10/5-102 is only from injuries or damage resulting from failure to suppress or contain a fire or failure to have sufficient personnel, equipment or other fire protection facilities. In a personal injury action, a city could not claim immunity under 745 ILCS 10/5-102 from liability for plaintiff's injury because the city's fire marshall instructed plaintiff to stand next to a heavy fire door during a fire drill, a co-worker unexpectedly opened the door which struck and injured plaintiff, and, therefore, plaintiff was not injured by reason of the failure to fight a fire, by a lack of equipment or personnel, or by reason of the lack of fire protection facilities. Harinek v. City of Chicago, 283 Ill. App. 3d 491, 219 Ill. Dec. 191, 670 N.E.2d 869, 1996 Ill. App. LEXIS 715 (1 Dist. 1996).

Liability

- In General

A municipality or its employees may not be held liable for failure to supply general police or fire protection. Anthony v. City of Chicago, 168 Ill. App. 3d 733, 119 Ill. Dec. 554, 523 N.E.2d 22 (1 Dist. 1988).

- Distinguished

A fire protection district fireman could be liable for wilful and wanton supervision of fire fighting activities, while a municipal fireman could not be liable for such conduct. Adams v. Brooks, 123 Ill. App. 3d 840, 79 Ill. Dec. 119, 463 N.E.2d 460 (3 Dist. 1984).

- Not Shown

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Town and its police officers were immune from negligence liability under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., following failure to rescue the victims of a residential fire, where: (1) neither the town nor its police officers at the scene could be held liable for failure to attempt a rescue, and (2) even if the police officers' acts were found to be willful and wanton, immunity still applied under 745 ILCS 10/2-201 because the officers had to make a policy decision in balancing the competing interests of their own safety and their chances of success with the interests of the victims and survivors. Fender v. Town of Cicero, 347 Ill. App. 3d 46, 283 Ill. Dec. 1, 807 N.E.2d 606, 2004 Ill. App. LEXIS 242 (1 Dist. 2004).

An alleged failure to provide sufficient water or water pressure could be viewed either as a complete failure to provide fire protection or other emergency services under 745 ILCS 10/5-101 or as a failure to provide sufficient "facilities" to suppress or contain a fire under this section and either way, the village was immune. Pierce v. Village of Divernon, 17 F.3d 1074 (7th Cir. 1994).

In an action seeking damages against owner of building and manufacturer of protective clothing for injuries suffered as a result of fighting a fire, where firefighter filed third-party complaint against city and fire department for contribution, in regard to injuries resulting from the alleged negligent provision of fire protection services, a city and its fire department could not be "liable in tort" under the Joint Tortfeasor Contribution Act (740 ILCS 100/0.01 et seq.) and, therefore, were not subject to liability within the meaning of the Joint Tortfeasor Contribution Act (740 ILCS 100/0.01 et seq.). Martin v. Lion Uniform Co., 180 Ill. App. 3d 955, 129 Ill. Dec. 686, 536 N.E.2d 736 (1 Dist. 1989).

- Willful and Wanton Conduct

City was immune where its putative liability arose from the fire department's alleged failure to extinguish a fire completely, and 745 ILCS 10/5-103(b) did not create an exception for "willful and wanton" conduct. Atl. Mut. Ins. Co. v. Chi. Diversified Prods., F. Supp. 2d , 2002 U.S. Dist. LEXIS 5391 (N.D. Ill. Mar. 27, 2002).

Special Duty

- Determination

A public employee's actual knowledge of another's need for protection is not determinative of a finding of direct and immediate control; rather, the pivotal fact is whether the police officer or the firefighter was responsible for the occurrence which gave rise to the need for protection. Jackson v. Chicago Firefighters Union, 160 Ill. App. 3d 975, 112 Ill. Dec. 393, 513 N.E.2d 1002 (1 Dist. 1987).

- Exception

Where a public employee exercises care or custody over an individual, the individual's status is elevated beyond that of a member of the general public, the "special duty" exception is activated, and the employee is liable for injury proximately caused by his negligence. Anthony v. City of Chicago, 168 Ill. App. 3d 733, 119 Ill. Dec. 554, 523 N.E.2d 22 (1 Dist. 1988).

The "special duty" exception is not limited to a particular class or type of public official; instead the exception has been held relevant to a variety of public entities. Anthony v. City of Chicago, 168 Ill. App. 3d 733, 119 Ill. Dec. 554, 523 N.E.2d 22 (1 Dist. 1988).

The four requisite elements to the "special duty" exception, whereby a public employee owes a special duty to an individual rather than merely to the public at large are: (1) the municipality must be uniquely aware of the particular danger or risk to which plaintiff is exposed; (2) there must be allegations of specific acts or omissions on the part of the municipality; (3) the specific acts or omissions must be either affirmative or wilful in nature; and (4) the injury must occur while plaintiff

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is under the direct and immediate control of employees or agents of the municipality. Jackson v. Chicago Firefighters Union, 160 Ill. App. 3d 975, 112 Ill. Dec. 393, 513 N.E.2d 1002 (1 Dist. 1987); Anthony v. City of Chicago, 168 Ill. App. 3d 733, 119 Ill. Dec. 554, 523 N.E.2d 22 (1 Dist. 1988).

RESEARCH REFERENCES

Liability for spread of fire intentionally set for legitimate purpose. 25 ALR5th 391.

§ 745 ILCS 10/5-103. [Failure to maintain fire protection equipment or facilities]

Sec. 5-103. (a) Neither a local public entity, nor a public employee acting in the scope of his employment, is liable for an injury resulting from the condition of fire protection or firefighting equipment or facilities. Nothing in this section shall exonerate a public entity from liability for negligence by reason of the condition of a motor vehicle while it is traveling on public ways.

(b) Neither a local public entity nor a public employee acting in the scope of his employment, is liable for an injury caused by an act or omission of a public employee while engaged in fighting a fire. However, this Section shall not apply if the injury is caused by the willful and wanton conduct of the public employee.

(Source: P.A. 84-1431.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 5-103.

CASE NOTES

Analysis

Constitutionality
Applicability
Cause of Action
- Shown

Equipment or Facilities
Fire Drills
Liability
- In General
- Distinguished

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- Not Barred
- Not Shown
- Willfull and Wanton Conduct

Rescue Services

Special Duty
- Exception
- Not Shown

Constitutionality

Subsection (b) of this section is unaffected by the existence of Ill. Const. (1970), Art. XIII, § 4. Adams v. City of Peoria, 77 Ill. App. 3d 683, 33 Ill. Dec. 183, 396 N.E.2d 572 (3 Dist. 1979).

Applicability

The activity of a municipal fire department in fighting a fire which was alleged to have caused plaintiff's injury comes within the grant of immunity of this section. Stubblefield v. City of Chicago, 48 Ill. 2d 267, 269 N.E.2d 504 (1971).

Cause of Action

- Shown

Plaintiff sufficiently alleged he was instructed and directed to aid firefighter and therefore firefighter assumed responsibility for plaintiff's safety, thus demonstrating that firefighter's affirmative acts created a position of peril for the plaintiff; therefore, lower court erred in finding insufficient facts to state a cause of action. Anthony v. City of Chicago, 168 Ill. App. 3d 733, 119 Ill. Dec. 554, 523 N.E.2d 22 (1 Dist. 1988).

Equipment or Facilities

A pipe that carries water from a water main to a fire hydrant is not "firefighting equipment or facilities" within the meaning of this section; therefore, a city was not immune from liability in an action for damages from a flood caused by a leak in such a pipe. Independent Trust Corp. v. City of Chicago Dep't of Water, 295 Ill. App. 3d 811, 230 Ill. Dec. 330, 693 N.E.2d 459 (1 Dist. 1998).

Fire Drills

Language "while engaged in fighting a fire" in 745 ILCS 10/5-103(b) refers to acts or omissions occurring in the course of fighting an actual or present fire and not in the performance of a fire drill, which by definition relates to a future or potential occurrence. Harinek v. City of Chicago, 283 Ill. App. 3d 491, 219 Ill. Dec. 191, 670 N.E.2d 869, 1996 Ill. App. LEXIS 715 (1 Dist. 1996).

Liability

- In General

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A municipality or its employees may not be held liable for failure to supply general police or fire protection. Anthony v. City of Chicago, 168 Ill. App. 3d 733, 119 Ill. Dec. 554, 523 N.E.2d 22 (1 Dist. 1988).

Under subsection (b) of this section, neither a local public entity nor a public employee is liable for an injury caused by that public employee while fighting a fire. Adams v. City of Peoria, 77 Ill. App. 3d 683, 33 Ill. Dec. 183, 396 N.E.2d 572 (3 Dist. 1979).

- Distinguished

A fire protection district fireman could be liable for wilful and wanton supervision of fire fighting activities, while a municipal fireman could not be liable for such conduct. Adams v. Brooks, 123 Ill. App. 3d 840, 79 Ill. Dec. 119, 463 N.E.2d 460 (3 Dist. 1984).

- Not Barred

Where plaintiffs contended that defendant fire protection district was negligent in failing to discover a fire engine's defective brake condition prior to its operation on the date of an accident, the trial court did not err in ruling that 745 ILCS 10/5-106 was inapplicable to bar plaintiffs' recovery. C.D.L., Inc. v. East Dundee Fire Protection Dist., 252 Ill. App. 3d 835, 191 Ill. Dec. 509, 624 N.E.2d 5 (2 Dist. 1993), appeal denied, 155 Ill. 2d 562, 198 Ill. Dec. 541, 633 N.E.2d 3 (1994).

- Not Shown

Town and its police officers were immune from negligence liability under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., following failure to rescue the victims of a residential fire, where: (1) neither the town nor its police officers at the scene could be held liable for failure to attempt a rescue; and (2) even if the police officers' acts were found to be willful and wanton, immunity still applied under 745 ILCS 10/2-201 because the officers had to make a policy decision in balancing the competing interests of their own safety and their chances of success with the interests of the victims and survivors. Fender v. Town of Cicero, 347 Ill. App. 3d 46, 283 Ill. Dec. 1, 807 N.E.2d 606, 2004 Ill. App. LEXIS 242 (1 Dist. 2004).

In an action seeking damages against owner of building and manufacturer of protective clothing for injuries suffered as a result of fighting a fire, where firefighter filed third-party complaint against city and fire department for contribution, in regard to injuries resulting from the alleged negligent provision of fire protection services, a city and its fire department could not be "liable in tort" and, therefore, were not subject to liability within the meaning of the Joint Tortfeasor Contribution Act (740 ILCS 100/0.01 et seq.). Martin v. Lion Uniform Co., 180 Ill. App. 3d 955, 129 Ill. Dec. 686, 536 N.E.2d 736 (1 Dist. 1989).

- Willfull and Wanton Conduct

City was immune where its putative liability arose from the fire department's alleged failure to extinguish a fire completely; 745 ILCS 10/5-103(b) did not create an exception for "willful and wanton" conduct. Atl. Mut. Ins. Co. v. Chi. Diversified Prods., F. Supp. 2d , 2002 U.S. Dist. LEXIS 5391 (N.D. Ill. Mar. 27, 2002).

Rescue Services

The term "firefighting" includes rescue services. Crowley v. City of Berwyn, 306 Ill. App. 3d 496, 239 Ill. Dec. 344, 713 N.E.2d 1194 (4 Dist. 1999), appeal denied, 185 Ill. 2d 621, 242 Ill. Dec. 135, 720 N.E.2d 1090 (1999).

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Special Duty

- Exception

Four elements are necessary to establish the special duty exception cause of action: (1) the municipality must be uniquely aware of the particular danger or risk to which plaintiff is exposed; (2) there must be specific acts or omissions on the part of the municipality; (3) the specific acts or omissions must be affirmative or wilful in nature; and (4) the injury must occur while plaintiff is under the direct and immediate control of municipal employees or agents. Anthony v. City of Chicago, 168 Ill. App. 3d 733, 119 Ill. Dec. 554, 523 N.E.2d 22 (1 Dist. 1988).

The "special duty" exception is not limited to a particular class or type of public official; instead, the exception has been held relevant to a variety of public entities. Anthony v. City of Chicago, 168 Ill. App. 3d 733, 119 Ill. Dec. 554, 523 N.E.2d 22 (1 Dist. 1988).

Where a public employee exercises care or custody over an individual, the individual's status is elevated beyond that of a member of the general public, the "special duty" exception is activated, and the employee is liable for injury proximately caused by his negligence. Anthony v. City of Chicago, 168 Ill. App. 3d 733, 119 Ill. Dec. 554, 523 N.E.2d 22 (1 Dist. 1988).

- Not Shown

The plaintiff failed to show the existence of a special duty in connection with her rescue by firefighters from a burning building as: (1) there was nothing unique about the defendant city's awareness of the danger to the plaintiff; (2) the plaintiff made no special allegations of acts or omissions by the defendant city; (3) the plaintiff's allegation that she was not rescued quickly enough did not show affirmative or willful conduct by the city; and (4) the defendant city did not create the fire that endangered the plaintiff. Crowley v. City of Berwyn, 306 Ill. App. 3d 496, 239 Ill. Dec. 344, 713 N.E.2d 1194 (4 Dist. 1999), appeal denied, 185 Ill. 2d 621, 242 Ill. Dec. 135, 720 N.E.2d 1090 (1999).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 3:61 Conduct of employee; while fighting fire.

§ 745 ILCS 10/5-104. [Damage to bridges and roads owned by state or local government]

Sec. 5-104. Except as provided in this Article, no trustee, officer or employee of a fire protection district or fire department having a mutual aid agreement with such district, nor any such fire protection district or department, shall be liable for damage caused to bridges and roads thereon, owned by the State or by a unit of local government, when such damage is caused by fire fighting equipment crossing bridges and roads thereon, for which load limits are lower than the weight of such equipment, when responding to an alarm or returning therefrom.

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(Source: P.A. 80-839.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 5-104.

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 3:62 Damage to bridge caused by fire equipment.

§ 745 ILCS 10/5-106. [Negligent operation of emergency vehicle]

Sec. 5-106. Except for willful or wanton conduct, neither a local public entity, nor a public employee acting within the scope of his employment, is liable for an injury caused by the negligent operation of a motor vehicle or firefighting or rescue equipment, when responding to an emergency call, including transportation of a person to a medical facility.

(Source: P.A. 84-1431.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 5-106.

CASE NOTES

Analysis

Affirmative Defense
Applicability
- Co-Workers
- Failure to Inspect Fire Engine
- Negligent Operation of Vehicle
Construction
- Preemption by Vehicle Code
Emergency Calls
Invalid Classification
Statutory Construction
- Fire Fighter Liability Act

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Affirmative Defense

The Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101.1 et seq., did not bar a village subrogor's comparative negligence defense against a subrogee because the village subrogor initiated judicial proceedings to recover damages for its own injury after an ambulance of the village subrogor was involved in an accident with a vehicle driven by another party. Gallagher Bassett Servs. v. Miggins, 346 Ill. App. 3d 1022, 282 Ill. Dec. 627, 806 N.E.2d 1215, 2004 Ill. App. LEXIS 319 (2 Dist. 2004).

This section may be used as an affirmative defense in action for contribution. Buell v. Oakland Fire Protection Dist. Bd., 237 Ill. App. 3d 940, 178 Ill. Dec. 824, 605 N.E.2d 618 (4 Dist. 1992).

Applicability

- Co-Workers

Section applies to torts against non governmental persons or property, not co-workers. Lohman v. Bemis, 289 Ill. App. 3d 139, 223 Ill. Dec. 869, 680 N.E.2d 819 (1 Dist. 1997).

- Failure to Inspect Fire Engine

Where plaintiffs contended that defendant fire protection district was negligent in failing to discover a fire engine's defective brake condition prior to its operation on the date of an accident, the trial court did not err in ruling that this section was inapplicable to bar plaintiffs' recovery. C.D.L., Inc. v. East Dundee Fire Protection Dist., 252 Ill. App. 3d 835, 191 Ill. Dec. 509, 624 N.E.2d 5 (2 Dist. 1993), appeal denied, 155 Ill. 2d 562, 198 Ill. Dec. 541, 633 N.E.2d 3 (1994).

- Negligent Operation of Vehicle

This section clearly relates to negligent operation, as opposed to the condition, of fire fighting vehicle and/or equipment. C.D.L., Inc. v. East Dundee Fire Protection Dist., 252 Ill. App. 3d 835, 191 Ill. Dec. 509, 624 N.E.2d 5 (2 Dist. 1993), appeal denied, 155 Ill. 2d 562, 198 Ill. Dec. 541, 633 N.E.2d 3 (1994).

Construction

- Preemption by Vehicle Code

Provisions of the Vehicle Code pertaining to the operation of emergency vehicles do not conflict with and/or control over the Tort Immunity Act as each statute stands in its own sphere and serve different purposes. Young v. Forgas, 308 Ill. App. 3d 553, 241 Ill. Dec. 905, 720 N.E.2d 360 (4 Dist. 1999).

Emergency Calls

An automatic alarm directed to the fire department is sufficient to constitute an "emergency call" within the meaning of the statute. Young v. Forgas, 308 Ill. App. 3d 553, 241 Ill. Dec. 905, 720 N.E.2d 360 (4 Dist. 1999).

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Invalid Classification

Under this section municipalities are liable only for injuries caused by the wilful and wanton conduct of their fire fighters in operating motor vehicles, while the standard is lower for fire protection districts; under 740 ILCS 75/1 fire protection districts can be held liable for injuries caused by the negligent operation of motor vehicles by their fire fighters. Clearly, as the situation now stands, there is an invalid classification. Jahn v. Troy Fire Protection Dist., 255 Ill. App. 3d 933, 194 Ill. Dec. 574, 627 N.E.2d 1216 (3 Dist.), appeal granted, 156 Ill. 2d 558, 202 Ill. Dec. 922, 638 N.E.2d 1116, aff'd, 163 Ill. 2d 275, 206 Ill. Dec. 106, 644 N.E.2d 1159 (1994).

Statutory Construction

- Fire Fighter Liability Act

The legislature enacted this section, a provision applying to all firemen operating motor vehicles and at the same time repealed former 65 ILCS 5/1-4-4, the specific provision relating to the operation of motor vehicles by municipal firemen. It does not make sense that at the same time the legislature would not repeal 740 ILCS 75/1, the specific provision relating to the operation of motor vehicles by fire protection district firemen. This was probably an oversight that occurred because the Fire Fighter Liability Act was in a different chapter of the statutes, therefore the Tort Immunity Act contains the later expression of legislative intent, and therefore it prevails; the Fire Fighter Liability Act has been repealed by implication. Jahn v. Troy Fire Protection Dist., 255 Ill. App. 3d 933, 194 Ill. Dec. 574, 627 N.E.2d 1216 (3 Dist.), appeal granted, 156 Ill. 2d 558, 202 Ill. Dec. 922, 638 N.E.2d 1116, aff'd, 163 Ill. 2d 275, 206 Ill. Dec. 106, 644 N.E.2d 1159 (1994).

Willful and Wanton

Summary judgment was properly granted in favor of a city and the city's ambulance driver in a suit filed by a motorist and the motorist's passenger after a collision between the motorist's vehicle and the ambulance driver's ambulance because there was no genuine issue of material fact as to whether the ambulance driver engaged in willful and wanton conduct, under 745 ILCS 10/5-106, as, inter alia, if the ambulance driver's alleged failure to stop at the intersection where the collision occurred violated fire department policy, such a violation was not willful and wanton conduct. Williams v. City of Evanston, 378 Ill. App. 3d 590, 318 Ill. Dec. 251, 883 N.E.2d 85, 2007 Ill. App. LEXIS 1369 (1 Dist. 2007).

Summary judgment was improperly granted in an action arising from a collision between an automobile and a fire truck at an intersection since there was a genuine issue of fact as to whether the fire truck driver acted in a willful and wanton manner where the automobile driver had a green light, the fire truck had a red light, and there was contradictory evidence regarding whether the fire truck slowed down and/or stopped before entering the intersection. Young v. Forgas, 308 Ill. App. 3d 553, 241 Ill. Dec. 905, 720 N.E.2d 360 (4 Dist. 1999).

As a matter of law, the record presented insufficient evidence to raise a question of fact relating to whether ambulance driver wilfully and wantonly failed to slow upon reaching the intersection or maintain a proper lookout for other traffic; first, no evidence existed to support a reasonable conclusion that ambulance driver acted with a deliberate intention to harm plaintiff and; second, the testimony provided no evidentiary basis to establish a triable issue of fact on the question of whether ambulance driver, while operating the ambulance, acted with utter indifference or conscious disregard for plaintiff's safety. Hampton v. Cashmore, 265 Ill. App. 3d 23, 202 Ill. Dec. 237, 637 N.E.2d 776 (2 Dist. 1994).

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RESEARCH REFERENCES

Liability for injury or damages resulting from operation of vehicle in funeral procession or in procession which is claimed to have such legal status. 52 ALR5th 155.

Practice Guides and Treatises.

Proving Fault in Auto Accident Cases § 3.25 Police Officers and Emergency Personnel and "Police Chase" Cases (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 3:66 Liability of fire protection district and firefighters.

Illinois Jurisprudence, Personal Injury and Torts § 3:61 Conduct of employee; while fighting fire.

Article VI.

Medical, Hospital and Public Health Activities

§ 745 ILCS 10/6-101. [Definitions]

Sec. 6-101. As used in this Article, unless the context otherwise requires:

(a) "Medical facility" includes a hospital, infirmary, clinic, dispensary, mental institution or similar facility.

(b) "Mental institution" means any medical facility or part of any medical facility used primarily for the care or treatment of persons committed for mental illness or addiction.

(c) "Public health clinic" means an outpatient program conducted by a locally based not-for-profit corporation, or by any local board of health whose health department is recognized by, and has a designation status established by, the Illinois Department of Public Health and complies with the Public Health Standing Orders Act [410 ILCS 125/1 et seq.].

(d) "Public health standing orders physician" means a person licensed to practice medicine in all its branches in Illinois and who, under an agreement with a locally based not-for-profit corporation which conducts a public health clinic which provides among its services free medical services to indigent persons unable to pay for their own medical

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care, or a local board of health, provides medical oversight to a public health clinic in accordance with the following:

(1) reviews the standing orders for the public health clinic and amends the standing orders from time to time in keeping with current trends in sound medical practice;

(2) reviews the standing orders, as amended, with the professional staff of the public health clinic at least once a year;

(3) participates in a site visit of a clinic covered by the standing orders periodically;

(4) signs standing orders for medical procedures conducted in the public health clinic in conformance with sound medical practice; and

(5) is available for consultation with the professional clinic staff.

(e) The changes to this Section made by this amendatory Act of the 97th General Assembly [P.A. 97-589] apply only to causes of actions accruing on or after the effective date of this amendatory Act of the 97th General Assembly.

(Source: P.A. 86-950; 97-589, § 90.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 6-101.

Effect of Amendments. The 2011 amendment by P.A. 97-589, effective January 1, 2012, in (c), substituted "program" for "clinic" and added "and complies with the Public Health Standing Orders Act" to the end; added "Public health" to the beginning of the introductory language of (d); substituted "standing orders" for "protocols" twice in (d)(1) and in (d)(2); substituted "periodically" for "at least once a year" in (d)(3); added (e); and made a related change.

LEGAL PERIODICALS

For article, "Medical Negligence and the Court of Claims: A Dilemma for the Sovereign Doctors," see 68 Ill. B.J. 534 (1980).

§ 745 ILCS 10/6-103. [Interference with inmates' rights]

Sec. 6-103. Neither a local public entity nor a public employee acting within the scope of his employment is liable for interfering with the right of an inmate of a medical facility operated or maintained by the local public entity to obtain a judicial determination or review of the legality of his confinement but a public employee and the local public entity where the employee is acting within the scope of his employment is liable for

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injury proximately caused by his intentional and unjustifiable interference with such right.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 6-103.

§ 745 ILCS 10/6-104. [Discretionary health care decisions]

Sec. 6-104. (a) Neither a local public entity nor a public employee is liable for an injury resulting from the policy decision to perform or not to perform any act to promote the public health of the community by preventing disease or controlling the communication of disease within the community if such decision was the result of the exercise of discretion vested in the local public entity or the public employee, whether or not such discretion was abused.

(b) Neither a local public entity nor a public employee is liable for an injury caused by an act or omission in carrying out with due care a decision described in subdivision (a).

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 6-104.

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 35:35 Generally.

Illinois Jurisprudence, Personal Injury and Torts § 3:82 Prevention or control of communicable disease; diagnosis and treatment.

§ 745 ILCS 10/6-105. [Failure to examine]

Sec. 6-105. Neither a local public entity nor a public employee acting within the scope of his employment is liable for injury caused by the failure to make a physical or mental examination, or to make an adequate physical or mental examination of any person for the purpose of determining whether such person has a disease or physical or mental

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condition that would constitute a hazard to the health or safety of himself or others.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 6-105.

CASE NOTES

Analysis

Constitutionality
Action for Contribution
- Precluded
Applicability
- In General
- County Hospital
- County Mental Health Center
Illustrative Cases
Immunity Not Shown
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Constitutionality

The application of this section and 745 ILCS 10/6-106 as a defense in a lawsuit alleging a failure to diagnose and treat the decedent's breast cancer was not unconstitutional in depriving the decedent a remedy for an injury and wrong inflicted upon her person. Michigan Ave. Nat'l Bank v. County of Cook, 191 Ill. 2d 493, 247 Ill. Dec. 473, 732 N.E.2d 528, 2000 Ill. LEXIS 825 (2000).

Action for Contribution

- Precluded

A third-party plaintiff cannot maintain an action for contribution against a local public entity which is immune from suit. McQueen v. Shelby County, 730 F. Supp. 1449 (C.D. Ill. 1990).

Applicability

Limited immunity provision of the Emergency Medical Services Systems Act, 210 ILCS 50/3.150(a) (EMS Act), rather than the immunity provisions of the Local Governmental and Governmental Employees Tort Immunity, 745 ILCS 10/1-101 et seq. (Tort Immunity Act), applied

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to the estate representative's complaint that the city was liable for the emergency medical technicians alleged willful and wanton misconduct in allegedly not examining or providing any treatment to decedent despite being dispatched to do so. The EMS Act, which did not immunize willful and wanton misconduct, applied because it more specifically involved the delivery of emergency medical services and was the more recent statute, while the Tort Immunity Act, specifically the absolute immunity provisions of 745 ILCS 10/6-105 and 745 ILCS 10/6-106(a), more generally applied to the failure to perform, or adequately perform, an examination or diagnosis. Abruzzo v. City of Park Ridge, 231 Ill. 2d 324, 325 Ill. Dec. 584, 898 N.E.2d 631, 2008 Ill. LEXIS 1413 (2008).

- In General

This section provides immunity from liability to a local public entity and its employees who have failed to make a physical or mental examination or who have failed to make an adequate physical or mental examination; there is no language in the section which indicates that the General Assembly intended to confine the scope of immunity to preventive health examinations of the public at large. Michigan Ave. Nat'l Bank v. County of Cook, 191 Ill. 2d 493, 247 Ill. Dec. 473, 732 N.E.2d 528, 2000 Ill. LEXIS 825 (2000).

The immunity provided in this section is not limited to preventive public health examinations, even though the term "preventive" appears in the caption of the section in the West edition of the Illinois Compiled Statutes; tort immunity exists with respect to any physical or mental examination, whether preventive or for purposes of treatment. Michigan Ave. Nat'l Bank v. County of Cook, 306 Ill. App. 3d 392, 239 Ill. Dec. 713, 714 N.E.2d 1010 (1 Dist. 1999).

- County Hospital

In a negligence action against a county doctor was not entitled to statutory immunity under 745 ILCS 10/6-105 and 745 ILCS 10/6-106(a), since the doctor made an adequate examination and a proper diagnosis immunity of the deceased. Mills v. County of Cook, 338 Ill. App. 3d 219, 272 Ill. Dec. 865, 788 N.E.2d 169, 2003 Ill. App. LEXIS 351 (1 Dist. 2003).

- County Mental Health Center

County mental health center falls within the plain meaning of the definition of "local public entity" and is entitled to the immunity provided by this section. McQueen v. Shelby County, 730 F. Supp. 1449 (C.D. Ill. 1990).

Illustrative Cases

A county hospital and a physician were immune from liability where the uncontradicted evidence was that the physician did not treat the plaintiff's lacerated tendons in his foot and the plaintiff sought to recover for the failure to properly examine or diagnose him. Carr v. Cook County Hosp., 323 Ill. App. 3d 184, 256 Ill. Dec. 66, 751 N.E.2d 119, 2001 Ill. App. LEXIS 393 (1 Dist. 2001), appeal denied, 195 Ill. 2d 576, 258 Ill. Dec. 93, 755 N.E.2d 476 (2001).

Because the gravamen of the plaintiff's action against the defendants was that the defendants' failure either to perform examinations or to adequately perform examinations led to their failure to diagnose the decedent's breast cancer, which, in turn, proximately caused her death, the immunity provided to local public entities and their public employees in this section and 745 ILCS 10/6-106(a) applied. Michigan Ave. Nat'l Bank v. County of Cook, 191 Ill. 2d 493, 247 Ill. Dec. 473, 732 N.E.2d 528, 2000 Ill. LEXIS 825 (2000).

Immunity Not Shown

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Hospital's motion to dismiss plaintiff's negligence action on the ground that it had immunity from all acts of negligence alleged against it pursuant to the Local Government and Governmental Employees Tort Immunity Act, 745 ILCS 10/6-105 and 745 ILCS 10/6-106, was denied because the court lacked the information it needed to determine whether the doctor who saw plaintiff at the hospital had made any diagnosis. Merritt v. United States, F. Supp. 2d , 2005 U.S. Dist. LEXIS 38063 (S.D. Ill. Dec. 21, 2005).

Estate administrator alleged wrongful death and survival actions for willful and wanton conduct against law enforcement officials for failing to provide decedent prisoner with timely medical treatment; because the officials were aware of decedents asthmatic condition and failed to administer medical treatment, the officials' claims of immunity pursuant to 745 ILCS 10/6-106 and this section failed and the claims survived dismissal. Cooper v. Office of the Sheriff, 333 F. Supp. 2d 728, 2004 U.S. Dist. LEXIS 17460 (N.D. Ill. 2004).

Public employees were liable for medical malpractice where doctor's failure to schedule or perform certain medical tests constituted act of omission in administering mother's prescribed treatment for previously diagnosed condition. Am. Nat'l Bank & Trust Co. v. County of Cook, 327 Ill. App. 3d 212, 261 Ill. Dec. 85, 762 N.E.2d 654, 2001 Ill. App. LEXIS 1491 (1 Dist. 2001).

Immunity Shown

Estate administrator's allegations that the health care providers. in performing a screening test on decedent, failed to adequately examine and/or diagnose decedent's cervical cancer could not withstand the health care providers' summary judgment motion. The alleged failure was part of the diagnostic process, for which the health care providers had immunity under 745 ILCS 10/6-105 for failing to examine and 745 ILCS 10/6-106 for failing to diagnose. Hemminger v. Nehring, 399 Ill. App. 3d 1118, 339 Ill. Dec. 692, 927 N.E.2d 233, 2010 Ill. App. LEXIS 315 (3 Dist. 2010).

County hospital, one of its pathologists, and one of its cytotechnicians, were immune from liability in a medical malpractice action filed by the estate of a decedent who died of cervical cancer because the defendants never improperly treated the decedent for the cancer because cancer was never a diagnosis or differential diagnosis made by defendants, and under this section and 745 ILCS 10/6-106(a), defendants were immune from liability for failure to conduct an adequate examination and for failure to diagnose an illness. Wilkerson v. County of Cook, 379 Ill. App. 3d 838, 318 Ill. Dec. 840, 884 N.E.2d 808, 2008 Ill. App. LEXIS 135 (1 Dist. 2008).

Trial court properly granted summary judgment to the fifth and sixth doctors on the representative's medical malpractice claim against them regarding their treatment of decedent for a lump on his neck, as the complaint against them essentially alleged that they failed to diagnose his Hodgkins lymphoma condition and they were immune as county employees from failing to diagnose that condition. Willis v. Khatkhate, 373 Ill. App. 3d 495, 311 Ill. Dec. 548, 869 N.E.2d 222, 2007 Ill. App. LEXIS 418 (1 Dist. 2007), appeal denied, 875 N.E.2d 1126, 2007 Ill. LEXIS 1495 (Ill. 2007).

Doctor's own experts agreed with a patient that the doctor never diagnosed a perforation or penetrating injury and the failure to diagnose the injury caused patient not to get the care needed; however, the doctor never treated the injury and, thus, hospital district which employed the doctor was entitled to immunity under 745 ILCS 10/6-105, 745 ILCS 10/6-106(a). Merritt v. United States, 484 F. Supp. 2d 864, 2007 U.S. Dist. LEXIS 7663 (S.D. Ill. 2007).

A county and a county hospital were immune from liability under this section and 745 ILCS 10/6-106 because the plaintiff's medical malpractice cause of action alleged negligence in the defendants' physicians' failure to diagnose his mother's pulmonary embolism, the medical disease that caused her death, notwithstanding the plaintiff's argument that the defendants were not immune from liability because their negligent conduct included a failure to follow up an

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ordered test and engage in a proper course of treatment while the plaintiff's mother was hospitalized. Mabry v. County of Cook, 315 Ill. App. 3d 42, 248 Ill. Dec. 62, 733 N.E.2d 737, 2000 Ill. App. LEXIS 560 (1 Dist. 2000).

Waived

Claim by local prison officials that they were entitled to evidentiary rulings essentially eliminating any claims by the estate of a dead inmate because they were rendered immune to such liability by 745 ILCS 10/6-105 (Illinois), being a part of the Illinois Tort Immunity Act, 745 ILCS 10/1-101 et seq., were rejected because immunity was classified as an affirmative defense by Fed. R. Civ. P. 8(c) that was waived if not timely asserted and the defense had not been asserted in a timely manner. Smith v. Cook County, F. Supp. 2d , 2009 U.S. Dist. LEXIS 29133 (N.D. Ill. Apr. 8, 2009).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Health Care," see 25 S. Ill. U. L.J. 873 (2001).

For article, "Survey of Illinois Law [1989-90] - Municipal Corporations," see 15 S. Ill. U.L.J. 1021 (1991).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 30:21 Generally.

Illinois Jurisprudence, Personal Injury and Torts § 29:08 Health care personnel and facilities of local governmental entities.

Illinois Jurisprudence, Personal Injury and Torts § 3:82 Prevention or control of communicable disease; diagnosis and treatment.

§ 745 ILCS 10/6-106. [Diagnosis of or failure to diagnose illness or addiction; negligent or wrongful acts or omissions]

Sec. 6-106. (a) Neither a local public entity nor a public employee acting within the scope of his employment is liable for injury resulting from diagnosing or failing to diagnose that a person is afflicted with mental or physical illness or addiction or from failing to prescribe for mental or physical illness or addiction.

(b) Neither a local public entity nor a public employee acting within the scope of his employment is liable for administering with due care the treatment prescribed for mental or physical illness or addiction.

(c) Nothing in this section exonerates a public employee who has undertaken to prescribe for mental or physical illness or addiction from liability for injury proximately caused by his negligence or by his wrongful act in so prescribing or exonerates a local public entity whose employee, while acting in the scope of his employment, so causes such an injury.

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(d) Nothing in this section exonerates a public employee from liability for injury proximately caused by his negligent or wrongful act or omission in administering any treatment prescribed for mental or physical illness or addiction or exonerates a local public entity whose employee, while acting in the scope of his employment, so causes such an injury.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 6-106.

CASE NOTES

Analysis

Administration of Treatment
Immunity Not Shown
Immunity Shown
Pleadings Sufficient
Public Policy
- Treatment Which Causes Injury
Treatment

Administration of Treatment

There was no liability for treatment under subsection (d) where the undisputed facts showed that no medical treatment had been prescribed or undertaken with respect to the plaintiff's fibrocystic breast condition and the treatment undertaken with respect to her threatened spontaneous abortion and post-spontaneous-abortion conditions did not require diagnosis of her breast cancer. Michigan Ave. Nat'l Bank v. County of Cook, 306 Ill. App. 3d 392, 239 Ill. Dec. 713, 714 N.E.2d 1010 (1 Dist. 1999).

Immunity Not Shown

Hospital's motion to dismiss plaintiff's negligence action on the ground that it had immunity from all acts of negligence alleged against it pursuant to the Local Government and Governmental Employees Tort Immunity Act, 745 ILCS 10/6-105 and 745 ILCS 10/6-106, was denied because the court lacked the information it needed to determine whether the doctor who saw plaintiff at the hospital had made any diagnosis. Merritt v. United States, F. Supp. 2d , 2005 U.S. Dist. LEXIS 38063 (S.D. Ill. Dec. 21, 2005).

Where a pre-trial detainee died of meningitis after the detainee's requests for medical treatment were denied, defendants were not entitled to immunity under the Illinois Tort Immunity Act, because, inter alia, the exception stated in 745 ILCS 10/6-106(d) precluded immunity since the

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mother repeatedly alleged that defendants caused the detainee's injuries through wrongful acts or omissions in treating the medical condition that led to the detainee's death. Thomas v. Cook County Sheriff, 401 F. Supp. 2d 867, 2005 U.S. Dist. LEXIS 28829 (N.D. Ill. 2005).

Estate administrator alleged wrongful death and survival actions for willful and wanton conduct against law enforcement officials for failing to provide decedent prisoner with timely medical treatment; because the officials were aware of decedents asthmatic condition and failed to administer medical treatment, the officials claims of immunity pursuant to 745 ILCS 10/6-105 and this section failed and the claims survived dismissal. Cooper v. Office of the Sheriff, 333 F. Supp. 2d 728, 2004 U.S. Dist. LEXIS 17460 (N.D. Ill. 2004).

In a negligence action against a county doctor was not entitled to statutory immunity under 745 ILCS 10/6-105, subsection (a) of this section, since the doctor made an adequate examination and a proper diagnosis immunity of the deceased and 745 ILCS 10/6-106(c),(d) did not immunize the county for the negligent treatment of a patient. Mills v. County of Cook, 338 Ill. App. 3d 219, 272 Ill. Dec. 865, 788 N.E.2d 169, 2003 Ill. App. LEXIS 351 (1 Dist. 2003).

Public employees were liable for medical malpractice where doctor's failure to schedule or perform certain medical tests constituted act of omission in administering mother's prescribed treatment for previously diagnosed condition. Am. Nat'l Bank & Trust Co. v. County of Cook, 327 Ill. App. 3d 212, 261 Ill. Dec. 85, 762 N.E.2d 654, 2001 Ill. App. LEXIS 1491 (1 Dist. 2001).

Where the convalescent center provided medical and nursing care, and therapy for the decedent's broken leg, the center was not immune from allegations that its negligent care injured the decedent's leg further, caused pressure sores, weight loss, numerous infectious processes, incontinence, hallucinations and delirium. Lloyd v. County of Du Page, 303 Ill. App. 3d 544, 236 Ill. Dec. 682, 707 N.E.2d 1252 (2 Dist. 1999), appeal denied, 184 Ill. 2d 559, 239 Ill. Dec. 609, 714 N.E.2d 528 (1999).

Immunity Shown

Estate administrator's allegations that the health care providers. in performing a screening test on decedent, failed to adequately examine and/or diagnose decedent's cervical cancer could not withstand the health care providers' summary judgment motion. The alleged failure was part of the diagnostic process, for which the health care providers had immunity under 745 ILCS 10/6-105 for failing to examine and 745 ILCS 10/6-106 for failing to diagnose. Hemminger v. Nehring, 399 Ill. App. 3d 1118, 339 Ill. Dec. 692, 927 N.E.2d 233, 2010 Ill. App. LEXIS 315 (3 Dist. 2010).

County hospital, one of its pathologists, and one of its cytotechnicians, were immune from liability in a medical malpractice action filed by the estate of a decedent who died of cervical cancer because the defendants never improperly treated the decedent for the cancer because cancer was never a diagnosis or differential diagnosis made by defendants, and under 745 ILCS 10/6-105 and subsection (a) of this section, defendants were immune from liability for failure to conduct an adequate examination and for failure to diagnose an illness. Wilkerson v. County of Cook, 379 Ill. App. 3d 838, 318 Ill. Dec. 840, 884 N.E.2d 808, 2008 Ill. App. LEXIS 135 (1 Dist. 2008).

Trial court properly granted summary judgment to the fifth and sixth doctors on the representative's medical malpractice claim against them regarding their treatment of decedent for a lump on his neck, as the complaint against them essentially alleged that they failed to diagnose his Hodgkins lymphoma condition and they were immune as county employees from failing to diagnose that condition. Willis v. Khatkhate, 373 Ill. App. 3d 495, 311 Ill. Dec. 548, 869 N.E.2d 222, 2007 Ill. App. LEXIS 418 (1 Dist. 2007), appeal denied, 875 N.E.2d 1126, 2007 Ill. LEXIS 1495 (Ill. 2007).

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Where a jail detainee alleged that deputies were deliberately indifferent to his increased pain after receiving a foot cast, the district court correctly characterized the detainee's allegations, in his motion to dismiss claims, as relating to the obtaining and furnishing of medical care, which was squarely covered by the immunity provision in 745 ILCS 10/4-105 and not 745 ILCS 10/6-106. Johnson v. Myers, F.3d , 2004 U.S. App. LEXIS 17650 (7th Cir. Aug. 11, 2004).

A county hospital and a physician were immune from liability where the uncontradicted evidence was that the physician did not treat the plaintiff's lacerated tendons in his foot and the plaintiff sought to recover for the failure to properly examine or diagnose him. Carr v. Cook County Hosp., 323 Ill. App. 3d 184, 256 Ill. Dec. 66, 751 N.E.2d 119, 2001 Ill. App. LEXIS 393 (1 Dist. 2001), appeal denied, 195 Ill. 2d 576, 258 Ill. Dec. 93, 755 N.E.2d 476 (2001).

A county and a county hospital were immune from liability under 745 ILCS 10/6-105 and this section because the plaintiff's medical malpractice cause of action alleged negligence in the defendants' physicians' failure to diagnose his mother's pulmonary embolism, the medical disease that caused her death, notwithstanding the plaintiff's argument that the defendants were not immune from liability because their negligent conduct included a failure to follow up an ordered test and engage in a proper course of treatment while the plaintiff's mother was hospitalized. Mabry v. County of Cook, 315 Ill. App. 3d 42, 248 Ill. Dec. 62, 733 N.E.2d 737, 2000 Ill. App. LEXIS 560 (1 Dist. 2000).

Because the gravamen of the plaintiff's action against the defendants was that the defendants' failure either to perform examinations or to adequately perform examinations led to their failure to diagnose the decedent's breast cancer, which, in turn, proximately caused her death, the immunity provided to local public entities and their public employees in 745 ILCS 10/6-105 and subsection (a) of this section applied. Michigan Ave. Nat'l Bank v. County of Cook, 191 Ill. 2d 493, 247 Ill. Dec. 473, 732 N.E.2d 528, 2000 Ill. LEXIS 825 (2000).

Pleadings Sufficient

Circuit court erred in dismissing the administrator's claim against the city for the wrongful death of the decedent where the factual allegations of the complaint and the attached physician's report indicated that there may or may not have been a diagnosis by the paramedics and prescribed treatment that would exclude tort immunity under 745 ILCS 10/6-106. Antonacci v. City of Chicago, 335 Ill. App. 3d 22, 268 Ill. Dec. 814, 779 N.E.2d 428, 2002 Ill. App. LEXIS 1034 (1 Dist. 2002).

Where the allegations informed the defendants that their negligent training and supervision of their employees had resulted in the decedent's failure to receive an appropriate two-person assist when being transferred on the specific dates thus causing further injury to her broken leg, the employees had failed to do anything to prevent pressure sores and address complaints of pain, and established with reasonable certainty that the negligent conduct alleged and the injuries were causally connected, the allegations were sufficient, and the trial court abused its discretion in dismissing for failure to state a cause of action. Lloyd v. County of Du Page, 303 Ill. App. 3d 544, 236 Ill. Dec. 682, 707 N.E.2d 1252 (2 Dist. 1999), appeal denied, 184 Ill. 2d 559, 239 Ill. Dec. 609, 714 N.E.2d 528 (1999).

Public Policy

- Treatment Which Causes Injury

Public policy militates in favor of holding public employees liable for negligently prescribing or administering treatment which causes injury. O'Brien v. Township High Sch. Dist., 83 Ill. 2d 462, 47 Ill. Dec. 702, 415 N.E.2d 1015 (1980).

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Treatment

Limited immunity provision of the Emergency Medical Services Systems Act, 210 ILCS 50/3.150(a) (EMS Act), rather than the immunity provisions of the Local Governmental and Governmental Employees Tort Immunity, 745 ILCS 10/1-101 et seq. (Tort Immunity Act), applied to the estate representative's complaint that the city was liable for the emergency medical technicians alleged willful and wanton misconduct in allegedly not examining or providing any treatment to decedent despite being dispatched to do so. The EMS Act, which did not immunize willful and wanton misconduct, applied because it more specifically involved the delivery of emergency medical services and was the more recent statute, while the Tort Immunity Act, specifically the absolute immunity provisions of 745 ILCS 10/6-105 and 745 ILCS 10/6-106(a), more generally applied to the failure to perform, or adequately perform, an examination or diagnosis. Abruzzo v. City of Park Ridge, 231 Ill. 2d 324, 325 Ill. Dec. 584, 898 N.E.2d 631, 2008 Ill. LEXIS 1413 (2008).

OPINIONS OF ATTORNEY GENERAL

Liability

Where a governmental unit has purchased malpractice insurance, the amount of liability for a claim under subsection (c) and (d) will be the dollar amount of the policy; however, if the claim could have been made without the existence of the insurance, there is no dollar limit to the amount of the recovery. 1979 Op. Atty. Gen. 82.

Because subsections (c) and (d) do not create any immunities, a government unit's liability is not effected by the purchase of insurance. 1979 Op. Atty. Gen. 82.

Subsections (a) and (b) do create immunities and a governmental unit's purchase of insurance will make the departments' liability for physician's malpractice the same as that of the operators of similar health facilities. 1979 Op. Atty. Gen. 82.

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Health Care," see 25 S. Ill. U. L.J. 873 (2001).

For article, "Recent Trends in School Tort Immunity," see 71 Ill. B.J. 240 (1982).

For article, "Medical Negligence and the Court of Claims: A Dilemma for the Sovereign Doctors," see 68 Ill. B.J. 534 (1980).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 29:08 Health care personnel and facilities of local governmental entities.

Illinois Jurisprudence, Personal Injury and Torts § 35:35 Generally.

Illinois Jurisprudence, Personal Injury and Torts § 30:22 Diagnosis and treatment of mental or physical illness or addiction.

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Illinois Jurisprudence, Personal Injury and Torts § 3:82 Prevention or control of communicable disease; diagnosis and treatment.

§ 745 ILCS 10/6-107. [Confinement for illness or addiction]

Sec. 6-107. (a) Neither a local public entity nor a public employee acting within the scope of his employment is liable for any injury resulting from determining in accordance with any applicable enactment:

(1) Whether to confine a person for mental illness or addiction.

(2) The terms and conditions of confinement for mental illness or addiction in a medical facility operated or maintained by a local public entity.

(3) Whether to parole or release a person from confinement for mental illness or addiction in a medical facility operated or maintained by a local public entity.

A public employee is not liable for carrying out a determination described in this subdivision (a).

(b) Nothing in this Section exonerates a public employee from liability for false arrest or false imprisonment.

(Source: Laws 1965, p. 2983; P.A. 91-357, § 255.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 6-107.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, made stylistic changes.

CASE NOTES

Bad Faith

Alleged abuse of the minor's rights could have constituted conduct on the part of defendants that was extreme in degree and went beyond all possible bounds of decency and, therefore, the motions to dismiss the intentional infliction of emotional distress claim were denied; moreover, defendants were not afforded immunity under the Illinois Tort Immunity Act, 745 ILCS 10/6-107(a)(1), for that tort because the complaint alleged bad faith, improper motives and other elements of intentional, willful and wanton misconduct. Binkley v. Edward Hosp., F. Supp. 2d , 2004 U.S. Dist. LEXIS 19843 (N.D. Ill. Sept. 30, 2004).

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LEGAL PERIODICALS

For article, "Should Illinois Allow Tort Liability for State Employed Psychotherapists Who Recommend the Release of Criminally Insane Persons?," see 62 Chi. B. Rec. 37 (1980).

RESEARCH REFERENCES

Excessiveness or inadequacy of compensatory damages for false imprisonment or arrest. 48 ALR4th 165.

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 30:23 Confinement for mental illness or addiction; release.

Illinois Jurisprudence, Personal Injury and Torts § 3:73 Protective custody of substance abuser.

§ 745 ILCS 10/6-108. [Escape by mental patient]

Sec. 6-108. Neither a local public entity nor a public employee is liable for an injury caused by or to an escaping or escaped mental patient.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 6-108.

RESEARCH REFERENCES

Hospital's liability for patient's injury or death resulting from escape or attempted escape. 37 ALR4th 200.

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 30:21 Generally.

§ 745 ILCS 10/6-109. [Failure to admit person to medical facility]

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Sec. 6-109. Neither a local public entity nor a public employee acting in the scope of his employment is liable for an injury resulting from the failure to admit a person to a medical facility operated or maintained by a local public entity.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 6-109.

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 30:21 Generally.

§ 745 ILCS 10/6-110. [Public health standing order phsyicians]

Sec. 6-110. Public health standing orders physicians providing medical oversight to a public health clinic in conformance with an agreement with a locally based not-for-profit corporation which conducts a public health clinic, or with a local board of health, whether compensated or not, shall be considered employees of a local public entity for the purpose of affording them the protections of this Act.

The changes to this Section made by this amendatory Act of the 97th General Assembly [P.A. 97-589] apply only to causes of actions accruing on or after the effective date of this amendatory Act of the 97th General Assembly.

(Source: P.A. 97-589, § 90.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 6-110.

Effect of Amendments. The 2011 amendment by P.A. 97-589, effective January 1, 2012, added "Public health" to the beginning of the first paragraph; added the second paragraph; and made a related change.

Article VIA.

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Public and Community Service Programs

§ 745 ILCS 10/6A-101. Definitions

Sec. 6A-101. Definitions. As used in this Article, "public or community service" means uncompensated labor for a non-profit organization or public body whose purpose is to enhance physical or mental stability, environmental quality or the social welfare and which agrees to accept public or community service from offenders or those adjudged liable for civil violations of a local public entity and to report on the progress of the public or community service to the court.

(Source: P.A. 89-7, § 45.)

Note.

P.A. 89-7, which enacted this section, was declared unconstitutional in Best v. Taylor Mach. Works, 179 Ill. 2d 367, 228 Ill. Dec. 636, 689 N.E.2d 1057 (1997).

Effective Date. Section 995 of P.A. 89-7 made this Article effective upon becoming law. The Act was approved March 9, 1995, and applicable to causes of action as specified in each Section of the Act.

LEGAL PERIODICALS

For note, "Illinois' Landmark Tort Reform: The Sponsor's Policy Explanation," 27 Loy. U. Chi. L.J. 805 (1996).

§ 745 ILCS 10/6A-105. Exemption from liability

Sec. 6A-105. Exemption from liability. Neither a local public entity nor a public employee acting within the scope of his or her employment is liable for any injury or loss a person might receive while performing public or community service as ordered by the court, nor shall a local public entity or a public employee acting within the scope of his or her employment be liable for any tortious acts of any person performing public or community service for a violation of a penal, quasi-criminal, or civil ordinance of a local public entity, except for willful and wanton misconduct or gross negligence on the part of

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the local public entity or public employee.

(Source: P.A. 89-7, § 45.)

Note.

P.A. 89-7, which enacted this section, was declared unconstitutional in Best v. Taylor Mach. Works, 179 Ill. 2d 367, 228 Ill. Dec. 636, 689 N.E.2d 1057 (1997).

Article VII.

Tort Liability Under Agreements Between Local Public Entities

§ 745 ILCS 10/7-101. [Agreements with other public entities]

Sec. 7-101. When permitted by law to transfer any of its functions or services to, to lease its property to or to perform any function, service or act with or for any other local public entity or employee thereof by agreement with such other local public entity, a local public entity may agree with the other entity as to the manner in which liability for an injury resulting from such function, service or act is to be allocated or shared. Such agreement may be expressed by resolution, contract, lease, ordinance or in any other manner provided by law.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 7-101.

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 3:33 Allocation of liability among public entities.

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§ 745 ILCS 10/7-102. [Contribution or indemnification]

Sec. 7-102. As part of any agreement under this Article, the local public entities may provide for contribution or indemnification by any or all of the local public entities that are parties to the agreement upon any liability arising out of the performance of the agreement.

(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 7-102.

CASE NOTES

Moot

Where a former employee of a township commission obtained a judgment against the commission and her former boss for sexual harassment that she endured while employed by the commission, the township was entitled to summary judgment on the employee's claim that the township was obligated to indemnify the commission and/or the boss against damages and attorneys' fees under the Tort Immunity Act because the judgment had been satisfied, and the claim was therefore moot. Brogato v. Proviso Twp. Mental Health Comm'n, F. Supp. 2d , 2008 U.S. Dist. LEXIS 32379 (N.D. Ill. Mar. 31, 2008).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 3:33 Allocation of liability among public entities.

§ 745 ILCS 10/7-103. [Application]

Sec. 7-103. This Article applies to any agreement between local public entities whether entered into before or after the effective date of this Act. Nothing in this Article affects the right of recovery of a person injured by a local public entity or by its employee.

(Source: Laws 1965, p. 2983.)

Note.

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This section was Ill.Rev.Stat., Ch. 85, Para. 7-103.

CASE NOTES

Untimely Filing

- Termination of Employment Action

Where plaintiff's injury, if any, accrued on May 13, 1992 when plaintiff was informed that he would not be reappointed as a patrol officer, the one year statute of limitations began to run, and when plaintiff did not file his complaint until May 25, 1993, the trial court properly dismissed the complaint as time-barred. Ericksen v. Village of Willow Springs, 279 Ill. App. 3d 210, 213 Ill. Dec. 805, 660 N.E.2d 62 (1 Dist. 1995), appeal denied, 167 Ill. 2d 552, 217 Ill. Dec. 663, 667 N.E.2d 1056 (1996).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 3:33 Allocation of liability among public entities.

Article VIII.

Actions Against Local Public Entities and Public Employees - Limitations, Notice

§ 745 ILCS 10/8-101. Limitation

Sec. 8-101. Limitation. (a) No civil action other than an action described in subsection (b) may be commenced in any court against a local entity or any of its employees for any injury unless it is commenced within one year from the date that the injury was received or the cause of action accrued.

(b) No action for damages for injury or death against any local public entity or public employee, whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought more than 2 years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of the injury or death for which damages are sought in the action, whichever of those dates occurs first, but in no event shall such an action be brought more than 4 years after the date on which occurred the act or omission or occurrence alleged in the action to have been the cause of the injury or death.

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(c) For purposes of this Article, the term "civil action" includes any action, whether based upon the common law or statutes or Constitution of this State.

(d) The changes made by this amendatory Act of the 93rd General Assembly [P.A. 93-11] apply to an action or proceeding pending on or after this amendatory Act's effective date, unless those changes (i) take away or impair a vested right that was acquired under existing law or (ii) with regard to a past transaction or past consideration, create a new obligation, impose a new duty, or attach a new disability.

(Source: P.A. 84-1431; 93-11, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 8-101.

Effect of Amendments. The 2003 amendment by P.A. 93-11, effective June 4, 2003, rewrote the section to the extent that a detailed comparison would be impracticable.

CASE NOTES

Analysis

Constitutionality
- Due Process
- Equal Protection

In General
- Federal Civil Rights Action

Accrual of Action

Applicability
- In General
- Breach of Contract
- Civil Action
- Common Carrier
- Declaratory Judgment
- Employment Contracts
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- Injury
- Injury Arising Out of Patient Care
- Limitations Period
- Local Public Hospitals
- Medical Malpractice
- Minors

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- More Specific Limitation Statutes
- Prospective
- Public Hospital
- Relation Back
- Tort Actions
Construction
Contribution
- Accrual of Cause of Action
Defense
Discovery
Employment Contract Not Shown
Filing of Complaint
- Timeliness
Former Notice Requirement
- Illustrative Cases
Identity
- Failure to Discover
Intentional Infliction of Emotional Distress
Legislative Intent
- Contribution
- Limitations
Malicious Prosecution
Notice
- In General
- Construction
- Failure to Comply
- Purpose
Purpose
- Early Investigation
- Protection from Fraud
Repeated Injury
- In General
- Accrual of Cause of Action
Retaliatory Discharge Actions
Right to Assert Defense
- Third-Party Defendant
Scope
- General Limitation
- Limitation
Timeliness
Tolling
- Americans With Disabilities Act
- Equitable Tolling
Waiver
- In General
Waiver of Notice

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- Purchase of Insurance

Constitutionality

The legislative scheme requiring a plaintiff to give notice under 70 ILCS 3605/41 of the Transit Act, but not requiring such notice under this section does not deny plaintiff equal protection of the laws. Niziolek v. Chicago Transit Auth., 251 Ill. App. 3d 537, 189 Ill. Dec. 780, 620 N.E.2d 1097 (1 Dist. 1993).

Because a local government entity must anticipate that the number of claims made against it will far exceed those brought against a private individual, the provision of an abridged period of time within which a claim must be asserted is reasonable, and the constitutionality of this section has accordingly been upheld. Saragusa v. City of Chicago, 63 Ill. 2d 288, 348 N.E.2d 176 (1976).

- Due Process

Provision of subsection (d) of this section extending the statute of limitations from one to two years, could not be applied retroactively to a malpractice suit that was time-barred under the prior statute because, under the Due Process Clause of the Illinois Constitution, defendant doctor had a vested right in the expiration of the statute of limitations. Wheaton v. Suwana, 355 Ill. App. 3d 506, 291 Ill. Dec. 407, 823 N.E.2d 993, 2005 Ill. App. LEXIS 18 (5 Dist. 2005), appeal denied, 214 Ill. 2d 553, 294 Ill. Dec. 9, 830 N.E.2d 9 (2005).

- Equal Protection

Barring a suit if not commenced within one year did not constitute a special privilege or an arbitrary and unreasonable classification; the separate classification of public entities for this purpose is proper. Fanio v. John W. Breslin Co., 51 Ill. 2d 366, 282 N.E.2d 443 (1972).

In General

Under the Illinois' Local Governmental Employees Tort Immunity Act, a civil action against a local governmental entity must be commenced within one year from the date that the injury was received or the cause of action accrued. Northen v. City of Chicago, 841 F. Supp. 234 (N.D. Ill. 1993).

- Federal Civil Rights Action

Because an alleged coerced confession was first used in a motion to suppress less than two years before suit was filed, plaintiff arrestee's 42 U.S.C.S. ' 1983 claim for a Fifth Amendment violation on the basis of the forced confession was not time-barred by the applicable two-year limitations period under 745 ICLS 10/8-101. Williams v. City of Chicago, 803 F. Supp. 2d 861, 2011 U.S. Dist. LEXIS 26091 (N.D. Ill. 2011).

Accrual of Action

In a 42 U.S.C.S. § 1983 suit, because an arrestee's prison term began more than four years before he filed suit, his false imprisonment claim against city police officers for conspiring to convict him of unlawful aggravated use of a weapon by falsifying charges and fabricating evidence was untimely under 745 ILCS 10/8-101. Thompson v. City of Chi., F. Supp. 2d , 2009 U.S. Dist. LEXIS 20348 (N.D. Ill. Mar. 12, 2009).

Plaintiff's claim, alleging the employer fired him in retaliation for filing worker's compensation claims, was time barred because the time for filing a charge of discrimination began at the time of

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his suspension, not when the consequences of that act became painful. Myers v. Metro. Water Reclamation Dist., F. Supp. 2d , 2005 U.S. Dist. LEXIS 7976 (N.D. Ill. Apr. 11, 2005).

City's motion to dismiss the employee's intentional infliction of emotional distress (IIED) claim was granted where the Illinois Tort Immunity Act's one-year statute of limitation, 745 ILCS 10/8-101, barred the IIED claim because the employee pled the IIED claim by alleging acts which occurred between April 2001 and September 2002, and the employee filed the original complaint on May 28, 2004, after the one-year limitation period had expired. Majid v. City of Chi., F. Supp. 2d , 2004 U.S. Dist. LEXIS 22241 (N.D. Ill. Nov. 2, 2004).

Where plaintiffs' claims for assault and battery and for statutory violations accrued on the date of the incident, August 17, 2000, and the complaint was filed on August 19, 2002, the counts were time-barred; in addition although the Tort Immunity Act's statute of limitations also applied to an intentional infliction of emotional distress claim, it was unclear when the claim accrued because it was not stated in the complaint when the criminal proceedings for the felony battery charges were terminated and, thus, that count was dismissed without prejudice, with leave to amend. Gomez v. Riccio, F. Supp. 2d , 2004 U.S. Dist. LEXIS 12896 (N.D. Ill. July 7, 2004).

Where plaintiff filed his complaint within a year of receiving his pardon, his intentional infliction of emotional distress claim was timely, pursuant to the one year statute of limitations for tort 745 ILCS 10/8-101, because his claim did not accrue until the state criminal proceedings against him were terminated when he was pardoned. Patterson v. Burge, 328 F. Supp. 2d 878, 2004 U.S. Dist. LEXIS 15321 (N.D. Ill. 2004).

Where a client was convicted of murder, the state appellate court vacated the conviction, and the client was found not guilty on retrial, the client's legal malpractice cause of action against the public defenders accrued when the client's conviction was vacated. Woidtke v. St. Clair County, 335 F.3d 558, 2003 U.S. App. LEXIS 13573 (7th Cir. 2003).

Pro se plaintiff arrestee failed to file the claims against the city that arose out of the alleged assault within one year of the date of the injury under 745 ILCS 10/8-101 as amended by 2003 Ill. Laws 11. James v. City of Chicago, F. Supp. 2d , 2003 U.S. Dist. LEXIS 12302 (N.D. Ill. July 15, 2003).

Arrestee's claims against police officers for violation of his right to be free from illegal seizure, false arrest, and emotional distress failed as time-barred under 735 ILCS 5/13-202 and 745 ILCS 10/8-101, where he should have known his arrest was illegal at the time the arrest was made. Day v. Conwell, 244 F. Supp. 2d 961, 2003 U.S. Dist. LEXIS 2324 (N.D. Ill. 2003).

One-year statute of limitations for filing suit against a municipality or its employees did not begin to run until the pedestrian's legal disability, that of being sedated for a month after a pedestrian was run over by a garbage truck, was removed, and thus the pedestrian's cause of action filed against the city and the city employee who was driving the garbage truck more than one year after the accident occurred, but less than one year after she was taken off the sedatives, was timely filed. Basham v. Hunt, 332 Ill. App. 3d 980, 266 Ill. Dec. 143, 773 N.E.2d 1213, 2002 Ill. App. LEXIS 599 (1 Dist. 2002).

A cause of action for intentional infliction of emotional distress did not accrue on the date of the plaintiff's arrest because the claim was based not just on the events occurring on the day of his arrest but on the defendants' participation in the plaintiff's wrongful prosecution and their allegedly false testimony at his trial. Therefore, the claim did not accrue until the trial concluded and the plaintiff was acquitted. Pierce v. Pawelski, F. Supp. 2d , 2000 U.S. Dist. LEXIS 18229 (N.D. Ill. Dec. 11, 2000).

A cause of action for malicious prosecution did not accrue until the underlying criminal prosecution of the plaintiff terminated in his favor. Pierce v. Pawelski, F. Supp. 2d , 2000 U.S. Dist. LEXIS 18229 (N.D. Ill. Dec. 11, 2000).

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A cause of action for false imprisonment accrued on the date that the plaintiff was arrested rather than on the date the plaintiff was released from prison since the plaintiff did not allege any wrongful acts by the defendants after they supplied the information leading to his initial incarceration. Pierce v. Pawelski, F. Supp. 2d , 2000 U.S. Dist. LEXIS 18229 (N.D. Ill. Dec. 11, 2000).

The period of limitations on plaintiff's claim against a city for tortious interference with a business expectancy accrued no later than the date on which city purchased the property which was key to plaintiff's venture. River Park, Inc. v. City of Highland Park, 295 Ill. App. 3d 90, 229 Ill. Dec. 596, 692 N.E.2d 369 (2 Dist. 1998), aff'd in part and rev'd in part on other grounds, 184 Ill. 2d 290, 234 Ill. Dec. 783, 703 N.E.2d 883 (1998).

Plaintiff's legal malpractice action against the county and two of its public defenders was dismissed because it was barred by the one year limitations period set forth in 745 ILCS 10/8-101 when it was not filed within one year after the state appellate court issued a final mandate that overturned plaintiff's criminal conviction; the date of accrual for the malpractice action was the date that the appellate court issued its final ruling. Woidtke v. County of St. Clair, F. Supp. 2d , 2002 U.S. Dist. LEXIS 22126 (S.D. Ill. Nov. 8, 2002), aff'd, 335 F.3d 558 (7th Cir. 2003).

Applicability

Trial court erred in finding that a former student's action against school officials for childhood sexual abuse was barred by the limitations provision in 745 ILCS 10/8-101. 735 ILCS 5/13-202.2(b) began with the language "notwithstanding any other provision of law," indicating a clear legislative intent for § 13-202.2 to control over other provisions of law, such as § 8-101, which would otherwise bar the action; accordingly, based on the legislature's use of the unambiguous language "notwithstanding any other provision of law," the court applied § 13-202.2 as written without resorting to other aids of construction. Doe v. Hinsdale Twp. High Sch. Dist. 86, 388 Ill. App. 3d 995, 328 Ill. Dec. 809, 905 N.E.2d 343, 2009 Ill. App. LEXIS 124 (2 Dist. 2009).

In a medical malpractice action where the evidence supported a finding that the doctor was employed by the municipal hospital and was not in private practice, the patient's action, filed one year and eleven months after the patient was injured was subject to summary judgment because a and one-year limitations period applied and there was no basis for equitable relief from the limitations period, as the doctor did not mislead the patient. Thede v. Kapsas, 386 Ill. App. 3d 396, 325 Ill. Dec. 97, 897 N.E.2d 345, 2008 Ill. App. LEXIS 1022 (3 Dist. 2008).

Plaintiff's state law claims against a police officer for battery and false imprisonment were barred by the one-year statute of limitations; the incident took place on August 6, 2001, but plaintiff filed his complaint naming the officer as a defendant on August 5, 2003. Walley v. Placencia, F. Supp. 2d , 2005 U.S. Dist. LEXIS 25266 (N.D. Ill. Oct. 20, 2005).

Medical examiner was entitled to immunity under 745 ILCS 10/8-101 in a negligence action filed by the mother of a decedent who claimed the medical examiner was negligent in ruling the decedent's death accidental. The medical examiner did not owe a duty of care to individual citizens in performing customary duties such as autopsies, medical examiners were entitled to the protection of the public duty rule, and the mother failed to establish that the medical examiner owed her a "special duty." Sims-Hearn v. Office of the Med. Exam'r, 359 Ill. App. 3d 439, 295 Ill. Dec. 924, 834 N.E.2d 505, 2005 Ill. App. LEXIS 800 (1 Dist. 2005), appeal denied, 217 Ill. 2d 593, 300 Ill. Dec. 375, 844 N.E.2d 47 (2005).

Terminated employee's breach of contract claim against his former municipal employer was not time-barred under 745 ILCS 10/8-101 because that provision, which imposed a one year statute of limitations for civil actions commenced against a local entity or its employees, applied only to tort claims. Hillmann v. City of Chicago, F. Supp. 2d , 2005 U.S. Dist. LEXIS 14760 (N.D. Ill. July 20, 2005).

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- In General

Two-year statute of limitations under the Contribution Act, 735 ILCS 5/13-204, applied to circumscribe a contribution action against a local public entity, a railroad line, in a negligence action, rather than the one-year statute of limitations under the Tort Immunity Act, 745 ILCS 10/8-101, because the plain language of the Contribution Act preempted all other statutes of limitation or repose; moreover, because contribution was a specific type of suit, and because a party seeking contribution might not realize that it had a valid claim for contribution until well after the event giving rise to the original claim had occurred, the two-year statute of limitations applied. Brooks v. Ill. Cent. R.R., 364 Ill. App. 3d 120, 301 Ill. Dec. 328, 846 N.E.2d 931, 2005 Ill. App. LEXIS 549 (1 Dist. 2005), appeal denied, 217 Ill. 2d 558, 300 Ill. Dec. 363, 844 N.E.2d 35 (2005).

In a case involving a declaratory judgment as to the validity of a village ordinance requiring the payment of impact fees to obtain building permits and a refund of those fees paid by the corporations, 745 ILCS 10/8-101 did not bar the corporations' cause of action because the claim sought "relief other than damages," as set forth in the first sentence of 745 ILCS 10/2-101, and was, therefore, excluded from the Local Governmental and Governmental Employees Tort Immunity Act. Raintree Homes, Inc. v. Vill. of Long Grove, 209 Ill. 2d 248, 282 Ill. Dec. 815, 807 N.E.2d 439, 2004 Ill. LEXIS 362 (2004).

Where a homeowner had alleged that a village did not have constitutional authority to charge an impact fee for a building permit, the one-year limitations period of the Illinois Local Governmental and Governmental Employees Tort Immunity Act did not apply, because the action was not one in tort. Raintree Homes, Inc. v. Village of Long Grove, 335 Ill. App. 3d 317, 269 Ill. Dec. 301, 780 N.E.2d 773, 2002 Ill. App. LEXIS 1129 (1 Dist. 2002).

A suit by the City of Chicago against third party defendant was not a suit against a local public entity; hence, this section had no application. Lin v. City of Chicago, 276 Ill. App. 3d 13, 212 Ill. Dec. 313, 657 N.E.2d 8 (1 Dist. 1995), appeal denied, 165 Ill. 2d 566, 214 Ill. Dec. 866, 662 N.E.2d 432 (1996).

The 1986 amendments to this Act applied to a contribution claim brought by a third party which accrued in July, 1988, since they would not unjustly or inequitably bar the claim retroactively, and since the complaint was filed within one year of the date on which the cause of action accrued and no notice requirement applied, the claim was not subject to dismissal on the grounds that it was not timely filed or was not preceded by proper notice. Bonfield v. Jordan, 202 Ill. App. 3d 638, 148 Ill. Dec. 110, 560 N.E.2d 412 (4 Dist. 1990).

The language of this section covering civil actions is inclusive and applies to a contribution action. Rummel v. Yazoo Mfg. Co., 222 Ill. App. 3d 526, 164 Ill. Dec. 465, 583 N.E.2d 19 (1 Dist. 1991).

This section was intended to apply to common law tort claims as opposed to quasi-tort actions of a constitutional nature. Cain v. City of Chicago, 619 F. Supp. 1228 (N.D. Ill. 1985).

- Breach of Contract

One-year limitation period in 745 ILCS 10/8-101(a), (c) did not bar an airline's action against a city relating to damage done to a plane because the cause of action arose from an alleged breach of contract; moreover, the incorporation of the rules, regulations, and orders into the written contract satisfied the writing requirement. Therefore, a ten-year statute of limitations for written contracts under 735 ILCS 5/13-206 applied in this case. United Airlines, Inc. v. City of Chicago, Ill. App. 3d , 352 Ill. Dec. 627, 954 N.E.2d 710, 2011 Ill. App. LEXIS 600 (1 Dist. 2011).

Limousine service corporation's breach of contract claim against a city, which stemmed from the city's decision to lift a cap on the number of livery licenses it would issue, did not fall under the

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statute, particularly given the narrow application of the statute. Chicago Limousine Serv. v. City of Chicago, 335 Ill. App. 3d 489, 269 Ill. Dec. 624, 781 N.E.2d 421, 2002 Ill. App. LEXIS 1052 (1 Dist. 2002).

The five-year limitation period of 735 ILCS 5/13-205, not the one-year period of this section, applied to claims against a city for breach of implied contract and abuse of governmental power. River Park, Inc. v. City of Highland Park, 295 Ill. App. 3d 90, 229 Ill. Dec. 596, 692 N.E.2d 369 (2 Dist. 1998), aff'd in part and rev'd in part on other grounds, 184 Ill. 2d 290, 234 Ill. Dec. 783, 703 N.E.2d 883 (1998).

- Civil Action

Plaintiff's state law battery claim which accrued on the date the injury was received in 1987 was untimely, as was the claim brought under the Illinois Hate Crime Act, 720 ILCS 5/12-7.1; further, to the extent the state law conspiracy, respondeat superior, and indemnification claims were premised on the time-barred state law claims, they were dismissed as well. Hobley v. Burge, F. Supp. 2d , 2004 U.S. Dist. LEXIS 10228 (N.D. Ill. June 2, 2004).

This section's one-year statute of limitations did not apply in an action alleging a required payment of impact fees prior to the issuance of building permits by a village which was beyond village's statutory authority and unconstitutional, rather the limitations period under 735 ILCS 5/13-205 should be applied. Raintree Homes, Inc. v. Village of Kildeer, 302 Ill. App. 3d 304, 235 Ill. Dec. 770, 705 N.E.2d 953 (2 Dist. 1999), appeal denied, 184 Ill. 2d 573, 239 Ill. Dec. 614, 714 N.E.2d 533 (1999).

- Common Carrier

A common carrier is not excepted from the Tort Immunity Act statute of limitations provision by the terms of 745 ILCS 10/2-101. Slaughter v. Rock Island County Metro. Mass Transit Dist., 275 Ill. App. 3d 873, 212 Ill. Dec. 284, 656 N.E.2d 1118 (3 Dist. 1995).

Plaintiff's negligence action against metropolitan mass transit district (defendant) for injuries sustained when a bus operated by defendant collided with plaintiff's vehicle causing personal injury was barred by the one-year statute of limitations found in the Local Governmental and Governmental Employees Tort Immunity Act and the general two-year statute of limitations for personal injury actions did not apply (735 ILCS 5/13-202). Slaughter v. Rock Island County Metro. Mass Transit Dist., 275 Ill. App. 3d 873, 212 Ill. Dec. 284, 656 N.E.2d 1118 (3 Dist. 1995).

- Declaratory Judgment

One-year statute of limitations under 745 ILCS 10/8-101 of the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., did not bar the beneficial owners' declaratory judgment action against a city because, pursuant to 745 ILCS 10/2-101, the beneficial owners did not seek damages, but a determination of real property rights. Bigelow v. City of Rolling Meadows, 372 Ill. App. 3d 60, 309 Ill. Dec. 858, 865 N.E.2d 221, 2007 Ill. App. LEXIS 243 (1 Dist. 2007).

- Employment Contracts

General statutes of limitation (735 ILCS 5/13-205 or 735 ILCS 5/13-206), not this section, applied to a former employee's action against a county for breach of an employment contract. Dewitt v. McHenry County, 294 Ill. App. 3d 712, 229 Ill. Dec. 278, 691 N.E.2d 388 (2 Dist. 1998).

- Federal Action

Parolee's claims under 42 U.S.C.S. §§ 1983 and 1985(3), alleging that two police officers arrested him without cause and conspired to mask their violation of his rights by creating a false police report, were governed by the two-year statute of limitations for personal injury actions contained in Illinois law, and the court found that the parolee filed his complaint in time to assert

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those claims. However the court dismissed state law claims the parolee asserted that arose out of the same incident because those claims were governed by the one-year statute of limitations contained in 745 ILCS 10/8-101, and they were untimely. Jackson v. City of Joliet, F. Supp. 2d , 2005 U.S. Dist. LEXIS 12007 (N.D. Ill. May 19, 2005).

The one year statute of limitations contained in 745 ILCS 10/8-101, rather than the two year statute of limitations contained in 735 ILCS 5/13-202, applied to state law claims of false arrest and false imprisonment against the defendant police officers, notwithstanding that the latter statute of limitations applied to federal claims under 42 U.S.C.S. § 1983, since a federal court applies to state law claims the same limitations period a state court would apply. Long v. Williams, 155 F. Supp. 2d 938, 2001 U.S. Dist. LEXIS 11359 (N.D. Ill. 2001).

Claim of park district employee that he was entitled to continuation of health care benefits under the Public Health Service Act, 42 U.S.C. § 300bb-1, was subject to limitations for breach of contracts under 735 ILCS 5/13-206, and not statute of limitations in this Act because it did not apply to plaintiff's action brought under federal statute. Mansfield v. Chicago Park Dist. Group Plan, 946 F. Supp. 586 (N.D. Ill. 1996).

Federal actions against public entities no longer fall within the provisions of the Tort Immunity Act. Slaughter v. Rock Island County Metro. Mass Transit Dist., 275 Ill. App. 3d 873, 212 Ill. Dec. 284, 656 N.E.2d 1118 (3 Dist. 1995).

- Federal Civil Rights Action

Because plaintiff arrestee's civil rights complaint against defendant police officer alleging false arrest was filed over one year after the arrest, 745 ILCS 10/8-101 barred the action. Long v. McDermott, F. Supp. 2d , 2004 U.S. Dist. LEXIS 8471 (N.D. Ill. May 13, 2004).

The one-year statute of limitations found in the Tort Immunity Act, which applies to civil actions brought against local governments or local governmental employees, 745 ILCS 10/8-101, rather than the two-year statute of limitations for personal injury claims which applies to civil rights claims, 735 ILCS 5/13-202, applied to supplemental state law claims that the plaintiffs brought with their civil rights claims. Am. Nat'l Bank & Trust Co. v. Town of Cicero, F. Supp. 2d , 2001 U.S. Dist. LEXIS 21469 (N.D. Ill. Dec. 14, 2001).

The one-year period which applies to tort litigation against municipalities may not be employed in 42 U.S.C. § 1983 litigation, but the same period of limitations that state deems satisfactory for private suits within its borders should apply. Palmer v. Board of Educ. of Community Unit Sch. Dist. 201-U, 46 F.3d 682 (7th Cir. 1995).

Illinois' statute of limitations, and not the limitation of 42 U.S.C. § 1983 controlled because plaintiff failed to plead that defendant city had a policy for depriving one of constitutional rights, therefore § 1983 did not apply. DiBenedetto v. City of Chicago, 873 F. Supp. 106 (N.D. Ill. 1994).

The special limitations provision embodied in this section does not apply to actions alleging violations of civil rights under 42 U.S.C. § 1983, which is governed by the general personal injury limitations period; consequently, a state attempt, through this Act, to immunize a municipality from liability in a § 1983 action was ineffective. Weiss v. Village of Downers Grove, 225 Ill. App. 3d 466, 167 Ill. Dec. 794, 588 N.E.2d 435 (2 Dist.), appeal denied, 145 Ill. 2d 645, 173 Ill. Dec. 14, 596 N.E.2d 638 (1992).

This section and 745 ILCS 10/8-103 were not intended to be and are not applicable to civil rights actions brought pursuant to 42 U.S.C. §§ 1983 and 1985, in the state courts of Illinois or in federal courts sitting in Illinois. Luker v. Nelson, 341 F. Supp. 111 (N.D. Ill. 1972).

- Injury

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Interstate compact entity between Illinois and Missouri, which was approved by Congress and which regulated public transportation on both sides of the Mississippi River, was not within the definition of "local public entity" pursuant to 745 ILCS 10/1-206 of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/8-101 et seq., such that the one-year limitations period of 745 ILCS 10/8-101(a) did not apply to a driver's action against a bus driver and the entity. Hubble v. Bi-State Dev. Agency, 393 Ill. App. 3d 1016, 333 Ill. Dec. 543, 915 N.E.2d 64, 2009 Ill. App. LEXIS 761 (5 Dist. 2009).

The definition of the word "injury," does not relegate legislative provisions of this section to accidental encounters, but is applicable to any tortious injury to a person or his property. Panko v. County of Cook, 42 Ill. App. 3d 912, 1 Ill. Dec. 577, 356 N.E.2d 859 (1 Dist. 1976).

- Injury Arising Out of Patient Care

Negligence and other causes of actions against a hospital were properly dismissed because they were time barred under 745 ILCS 10/8-101(b); a patient was not harmed by medical care that she received, rather, a harm resulted from a sexual assault that occurred during an unnecessary examination and sedation. The patient's assertion that the action was timely under a two-year limitations period was rejected, and the "arising out of patient care" language contained in 745 ILCS 10/8-101(b) was interpreted in conformity with 735 ILCS 5/13-212(a) because the two provisions were intended to be harmonious. Kaufmann v. Schroeder, 241 Ill. 2d 194, 349 Ill. Dec. 151, 946 N.E.2d 345, 2011 Ill. LEXIS 433 (2011).

Patient's suit against a hospital was time-barred by 745 ILCS 10/8-101(a). Her injuries arose from a physician's act of sexual gratification, which was clearly separate from her patient care; without an injury arising out of patient care, all of her claims against the hospital were untimely under § 10/8-101(a). Kaufmann v. Jersey Cmty. Hosp., 396 Ill. App. 3d 729, 336 Ill. Dec. 152, 919 N.E.2d 1077, 2009 Ill. App. LEXIS 1224 (4 Dist. 2009).

For a plaintiff's claims to come within the limitations period of 745 ILCS 10/8-101(b), the plaintiff's injury must have arisen out of patient care regardless of the legal theory the plaintiff used to pursue her claim. Kaufmann v. Jersey Cmty. Hosp., 396 Ill. App. 3d 729, 336 Ill. Dec. 152, 919 N.E.2d 1077, 2009 Ill. App. LEXIS 1224 (4 Dist. 2009).

- Limitations Period

Counts III and IV were common law claims for false imprisonment and intentional infliction of emotional distress against the employees of a local entity, the City of Chicago. Therefore, the limitation described in 745 ILCS 10/8-101(a), one year, applied in this case. Perkins v. O'Shaughnessy, F. Supp. 2d , 2011 U.S. Dist. LEXIS 12775 (N.D. Ill. Feb. 9, 2011).

Plaintiff's cause of action for retaliatory discharge was a tort within the meaning and purpose of the Act and the limitations period in this section applied. Halleck v. County of Cook, 264 Ill. App. 3d 887, 202 Ill. Dec. 374, 637 N.E.2d 1110 (1 Dist. 1994).

The legislature intended for section 13-214(a) of the Code of Civil Procedure (735 ILCS 5/13-214(a)) which was enacted after this section, to constitute a limited exception to this section; thus, actions against a body politic for an act or omission in the design, planning, supervision, observation or management of construction, or construction of an improvement to real property must be brought within the limitations period set forth under section 13-214(a) (735 ILCS 5/13-214(a)). Zimmer v. Village of Willowbrook, 242 Ill. App. 3d 437, 182 Ill. Dec. 840, 610 N.E.2d 709 (2 Dist. 1993).

The status of an entity as it existed on the date of the injury controls what statute of limitations applies. Feiler v. Covenant Medical Ctr. of Champaign-Urbana, 232 Ill. App. 3d 1088, 174 Ill. Dec. 179, 598 N.E.2d 376 (4 Dist. 1992).

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The appropriate limitations period for a suit between a private property owner and a municipality over the negligent design of a culvert system was found in this section. Starcevich v. City of Farmington, 110 Ill. App. 3d 1074, 66 Ill. Dec. 811, 443 N.E.2d 737 (3 Dist. 1982).

- Local Public Hospitals

Claims against local public hospital and its doctors for medical malpractice were governed by the one year limitations period in this section as it is more specific than section 13-212(a) of the Code of Civil Procedure (735 ILCS 5/13-212) in that it applies, without exception, to any actions against public entities and their employees. Tosado v. Miller, 293 Ill. App. 3d 544, 228 Ill. Dec. 76, 688 N.E.2d 774 (1 Dist. 1997), aff'd, 188 Ill. 2d 186, 242 Ill. Dec. 120, 720 N.E.2d 1075 (1999).

Like the notice provision of this Act before its repeal in 1986, the limitations period set forth in this section also applies to actions against local public hospitals. Tosado v. Miller, 293 Ill. App. 3d 544, 228 Ill. Dec. 76, 688 N.E.2d 774 (1 Dist. 1997), aff'd, 188 Ill. 2d 186, 242 Ill. Dec. 120, 720 N.E.2d 1075 (1999).

- Medical Malpractice

The holding that the one year statute of limitations contained in this section, rather than the two year statute of limitations contained in 735 ILCS 5/13-212(a), applies to medical malpractice actions against local governmental entities and/or their employees would be applied retroactively as the court's decision was foreshadowed by the language of the statutes. Tosado v. Miller, 188 Ill. 2d 186, 242 Ill. Dec. 120, 720 N.E.2d 1075 (1999).

The one year statute of limitations contained in this section, rather than the two year statute of limitations contained in 735 ILCS 5/13-212(a), applies to medical malpractice actions against local governmental entities and/or their employees. Tosado v. Miller, 188 Ill. 2d 186, 242 Ill. Dec. 120, 720 N.E.2d 1075 (1999).

The two-year limitations period in 735 ILCS 5/13-212, and not the one-year period in this section, applies to a medical malpractice action against a county. Murry v. Sheahan, 991 F. Supp. 1052 (N.D. Ill. 1998).

- Minors

The trial court erred in dismissing a child's action against defendants, a principal and school district, alleging that the principal assaulted the child, because the statutes of limitations in both 745 ILCS 10/8-101 and 735 ILCS 5/13-211 applied, and therefore the child had until his 19th birthday to file the action. McKinnon v. Thompson, 325 Ill. App. 3d 241, 259 Ill. Dec. 193, 758 N.E.2d 316, 2001 Ill. App. LEXIS 680 (2 Dist. 2001).

735 ILCS 5/13-212(b) applied to the plaintiff insofar as she was a minor at the time that her cause of action accrued. However, because the defendants were a local governmental entity and its employees, the one-year limitations period of 745 ILCS 10/8-101 also applied to the plaintiff and began to run when she reached 18 years of age. Ferguson v. McKenzie, 202 Ill. 2d 304, 269 Ill. Dec. 188, 780 N.E.2d 660, 2001 Ill. LEXIS 6 (2001).

This section does not address the claims of those without capacity to sue, such as minors, whereas the Code of Civil Procedure very specifically addresses the tolling of limitations periods for minors under 735 ILCS 5/13-211. Bertolis v. Community Unit Sch. Dist. No. 7, 283 Ill. App. 3d 874, 219 Ill. Dec. 414, 671 N.E.2d 79 (4 Dist. 1996).

Limitation provisions have only been held applicable to minors when they have been part of a statutory cause of action, and limitation provision in this section does not apply to minors, since this section is not a part of a statutory cause of action; instead, this section is a general limitation provision for suits against local entities and their employees. Halper v. Vayo, 210 Ill. App. 3d 81,

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154 Ill. Dec. 693, 568 N.E.2d 914 (2 Dist.), cert. denied, 139 Ill. 2d 595, 159 Ill. Dec. 107, 575 N.E.2d 914 (1991).

- More Specific Limitation Statutes

In determining whether this section or 735 ILCS 5/13-212 should apply, the focus of the inquiry should be on the nature of the defendants rather than the type of the cause of action, therefore the one year limitation contained in this section is more specifically applicable to a local government employee irrespective of the fact that the employee also fits the description of one of the specifically defined potential defendants in 735 ILCS 5/13-212. Tosado v. Miller, 188 Ill. 2d 186, 242 Ill. Dec. 120, 720 N.E.2d 1075 (1999).

- Prospective

Absent a clearly expressed intention to apply this Act to preexisting causes of action, the legislation should be held to be prospective. Stanley v. Denning, 130 Ill. App. 2d 628, 264 N.E.2d 521 (2 Dist. 1970).

- Public Hospital

The one year limitation in this section applied to malpractice claims against a municipal hospital, rather than the two year limitation period established by 735 ILCS 5/13-212(4). Tosado v. Miller, 188 Ill. 2d 186, 242 Ill. Dec. 120, 720 N.E.2d 1075 (1999). Meusel v. Ballard, 296 Ill. App. 3d 377, 230 Ill. Dec. 641, 694 N.E.2d 610 (3 Dist. 1998).

- Relation Back

One-year limitations period under 745 ILCS 10/8-101(a) barred an arrestee's tort claims against police officers who were named as defendants in amended complaints after expiration of the statute of limitations, as the arrestee waived any claim that the amended complaints related back to the original, timely filed complaint under Fed. R. Civ. P. 15(c). Swanigan v. Trotter, 645 F. Supp. 2d 656, 2009 U.S. Dist. LEXIS 68395 (N.D. Ill. 2009).

Plaintiff arrestee's state law claims against defendant village and police officers, including assault and battery and malicious prosecution, were not barred by the statute of limitations under 745 ILCS 10/8-101 of the Illinois Tort Immunity Act, as the claims in the arrestee's amended complaint related back to a prior pleading that complied with the limitations period; the earlier pleading contained essentially the same claims as in the amended complaint, and the facts and events detailed in the earlier pleading arose out of the same occurrence as the amended complaint. Trejo v. Village of Itasca, F. Supp. 2d , 2003 U.S. Dist. LEXIS 22232 (N.D. Ill. Dec. 9, 2003).

Negligence claim set forth in a pedestrian's second amended complaint was time barred under the Tort Immunity Act, Ill. Rev. Stat. ch. 85, para. 8-101 (now 745 ILCS 10/8-101), because the second amended complaint did not relate back to the pedestrian's first amended complaint where the first and second amended complaints did not describe the same location where the pedestrian was allegedly electrocuted by an unmarked exposed primary electrical cable. Digby v. Chicago Park Dist., 240 Ill. App. 3d 88, 181 Ill. Dec. 43, 608 N.E.2d 116, 1992 Ill. App. LEXIS 1994 (1 Dist. 1992).

- Tort Actions

Wrongful demolition action against the city under 65 ILCS 5/1-4-7 was not barred by the one-year limitations period contained in 745 ILCS 10/8-101(a), because the one-year statute of limitations did not apply to a cause of action for damages brought pursuant to 65 ILCS 5/1-4-7, when the Illinois Supreme Court had answered in the affirmative that 745 ILCS 10/2-101 operated to exclude the enumerated actions from the time limitation set forth in 745 ILCS 10/8-101(a); to the extent that the reasoning in Cooper v. Bi-State Development Agency, 158 Ill. App. 3d 19 (1987), and McClintock v. Bi-State Development Agency, 228 Ill. App. 3d 382 (1992), conflicts with the

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Illinois Supreme Court's reasoning in Raintree Homes, Inc., the appellate court hereby abandons it. Harvest Church of Our Lord v. City of E. St. Louis, 407 Ill. App. 3d 649, 348 Ill. Dec. 320, 943 N.E.2d 1230, 2011 Ill. App. LEXIS 89 (5 Dist. 2011).

Court dismissed plaintiff's negligent hiring and gross negligence claims against a city because plaintiff did not dispute that the claims were state law negligence claims, which were controlled by the Local Governmental and Governmental Employees Immunity Act, and that the claims were time-barred under the one-year statute of limitations set forth in 745 ILCS 10/8-101. Sloan v. Vill. of Hickory Hills, F. Supp. 2d , 2008 U.S. Dist. LEXIS 83807 (N.D. Ill. Aug. 27, 2008).

One-year limitations period in 745 ILCS 10/8-101, applied to the driver's negligence action against a school bus driver. Griffin v. Willoughby, 369 Ill. App. 3d 405, 311 Ill. Dec. 21, 867 N.E.2d 1007, 2006 Ill. App. LEXIS 1272 (1 Dist. 2006).

Appellate court answered a certified question under Rule 308(a), Supreme Court Rules, to the effect that the statute of limitations contained in 745 ILCS 10/8-101 of the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., governed an accident victim's action against an animal control warden who was transporting a stray dog to an animal control facility at the time of an automobile collision. Accordingly, pursuant to 745 ILCS 10/9-102 of the Act, the warden's employer was obligated to reimburse him for liabilities he incurred for damages he caused while acting within the scope of his employment. Sperandeo v. Zavitz, 365 Ill. App. 3d 691, 302 Ill. Dec. 957, 850 N.E.2d 394, 2006 Ill. App. LEXIS 511 (1 Dist. 2006).

Illinois Local Government and Governmental Employees Tort Immunity Act's, 745 ILCS 10/1-101 et seq., one-year statute of limitations barred a mother's state law wrongful death claim; the mother had no good reason for missing the one-year Illinois statute of limitation because of the availability of filing the complaint against an unknown official and then later amending the complaint once determining the official's identity through discovery. McCall v. Sheahan, F. Supp. 2d , 2005 U.S. Dist. LEXIS 18245 (N.D. Ill. Aug. 23, 2005).

Police officer was entitled to summary judgment on an arrestee's state law claims for false arrest, false imprisonment, and malicious prosecution because they were filed beyond the one-year statute of limitations in 745 ILCS 10/8-101. Long v. McDermott, F. Supp. 2d , 2004 U.S. Dist. LEXIS 21678 (N.D. Ill. May 18, 2004).

County jail guards' Rule 12(b)(6), F.R.Civ.P. motion to dismiss a detainee's intentional infliction of emotional distress claim as time-barred was granted where the guards were not named in a prior state court action and as a result, 745 ILCS 10/8-101 did not apply. Pettiford v. Sheahan, F. Supp. 2d , 2004 U.S. Dist. LEXIS 5024 (N.D. Ill. Mar. 25, 2004).

As plaintiff, a former college employee, testified that a college vice president battered him less than one year before he filed suit, the vice president was not entitled to summary judgment on the grounds that the battery claims were time-barred under 745 ILCS 10/8-101. Valentino v. Hilquist, 337 Ill. App. 3d 461, 271 Ill. Dec. 697, 785 N.E.2d 891, 2003 Ill. App. LEXIS 84 (1 Dist. 2003), appeal denied, 204 Ill. 2d 684, 275 Ill. Dec. 83, 792 N.E.2d 314 (2003).

Hospital was not a "local public entity" under the Local Government and Governmental Employee Tort Immunity Act, 745 ILCS 10/1-206, as it was not government funded and did not participate in the business of government. Thus, the hospital and its employees were not entitled to invoke the one-year statute of limitations pursuant to 745 ILCS 10/8-101 in an action brought under the Wrongful Death Act, 740 ILCS 180/0.01 et seq.. Carroll v. Paddock, 317 Ill. App. 3d 985, 251 Ill. Dec. 732, 741 N.E.2d 326, 2000 Ill. App. LEXIS 1020 (1 Dist. 2000).

Not-for-profit human resources center was not organized for the purpose of conducting public business and was not a "local public entity" under the Local Government and Governmental Employee Tort Immunity Act, 745 ILCS 10/1-206, even if it received some grants from government sources. Thus, the center and its employees were not entitled to invoke the one-year

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statute of limitations pursuant to 745 ILCS 10/8-101 in an action brought under the Wrongful Death Act, 740 ILCS 180/0.01 et seq.. Carroll v. Paddock, 317 Ill. App. 3d 985, 251 Ill. Dec. 732, 741 N.E.2d 326, 2000 Ill. App. LEXIS 1020 (1 Dist. 2000).

This Act applies only to tort actions and does not bar a civil rights action. Firestone v. Fritz, 119 Ill. App. 3d 685, 75 Ill. Dec. 83, 456 N.E.2d 904 (2 Dist. 1983).

Construction

Although the legislature used the term "local entity" in 745 ILCS 10/8-101(a), it meant to use the term "local public entity" pursuant to 745 ILCS 10/1-206, as was used in the remainder of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq.; such mistaken term was deemed a scrivener's error. Hubble v. Bi-State Dev. Agency, 393 Ill. App. 3d 1016, 333 Ill. Dec. 543, 915 N.E.2d 64, 2009 Ill. App. LEXIS 761 (5 Dist. 2009).

Where the administratrix's first suit was dismissed for lack of jurisdiction, she could not take advantage of 735 ILCS 5/13-217 in regards to her negligence claim because that claim had not been a claim in her original lawsuit and 745 ILCS 10/8-101(a) provided the administratrix with only a one-year statute of limitations to file a claim against the municipality and its employees; thus, defendants' Fed. R. Civ. P. 12(b)(6) motion to dismiss that claim was granted. Gayton v. Lansing, F. Supp. 2d , 2004 U.S. Dist. LEXIS 14774 (N.D. Ill. July 30, 2004).

735 ILCS 5/13-214 (Construction Act) is more specific than 745 ILCS 10/8-101 (Tort Immunity Act) because the Construction Act identifies governmental entities on its fact and deals specifically with those entities in the context of construction and, when the government gets in the business of construction, it should be treated no differently than any other business engaged in construction; thus, the four-year statute of limitations found in the Construction Act, not the one-year statute in the Tort Immunity Act, applied to the plaintiff's action seeking damages for injuries sustained while working as a construction worker on a jobsite controlled by the City of Chicago. Hager v. Il In One Contrs., Inc., 342 Ill. App. 3d 1082, 277 Ill. Dec. 820, 797 N.E.2d 167, 2003 Ill. App. LEXIS 1116 (1 Dist. 2003).

Dismissal of plaintiff's action seeking damages for injuries sustained while working as a construction worker on a jobsite controlled by the City of Chicago was reversed where the trial court erred in holding that the one-year statute of limitations found in the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/8-101, applied rather than the four-year statute of limitations found in the Construction Act, 735 ILCS 5/13-214. Hager v. Il In One Contrs., Inc., 342 Ill. App. 3d 1082, 277 Ill. Dec. 820, 797 N.E.2d 167, 2003 Ill. App. LEXIS 1116 (1 Dist. 2003).

When a party seeks to sue a local governmental entity or its employees in tort on a cause of action relating to construction design management and supervision, the one year statute of limitations contained in the Tort Immunity Act, 745 ILCS 10/8-101, rather than the four statute of limitations contained in 735 ILCS 5/13-214, applies because the Tort Immunity Act is more specific to the type of defendant than is the latter statute. Greb v. Forest Pres. Dist., 323 Ill. App. 3d 461, 256 Ill. Dec. 639, 752 N.E.2d 519, 2001 Ill. App. LEXIS 442 (1 Dist. 2001).

The one-year statute of limitations contained in this section, rather than the five year statute of limitations contained in 735 ILCS 5/13-205, applied to the plaintiff's action under the Illinois Whistleblower Protection Act against his former employer, a county hospital. Padilla v. County of Cook, 100 F. Supp. 2d 1145, 2000 U.S. Dist. LEXIS 8734 (N.D. Ill. 2000).

The one-year statute of limitations contained in this section overrides the two-year statute of limitations for medical malpractice claims contained in 735 ILCS 5/13-212(a). Sherrod v. Lingle, 223 F.3d 605, 2000 U.S. App. LEXIS 18089 (7th Cir. 2000).

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The one-year statute of limitations provided for in this section, rather than the five year statute of limitations provided for in 735 ILCS 5/13-205, applied to an action against a drainage district for negligent failure to maintain the drainage system as the former statute was more specifically applicable. Roark v. Macoupin Creek Drainage Dist., 316 Ill. App. 3d 835, 250 Ill. Dec. 358, 738 N.E.2d 574, 2000 Ill. App. LEXIS 783 (4 Dist. 2000).

The term "civil action", as it pertains to the one year limitations provision of this section, includes any action, whether based upon the common law, statutes, or constitution of this state; certainly, a claim for medical malpractice satisfies this definition. Tosado v. Miller, 293 Ill. App. 3d 544, 228 Ill. Dec. 76, 688 N.E.2d 774 (1 Dist. 1997), aff'd, 188 Ill. 2d 186, 242 Ill. Dec. 120, 720 N.E.2d 1075 (1999).

Action for flooding damages allegedly resulting from village's installation and enlargement of certain culverts near plaintiffs' property fell within the law of continuing nuisance and continuing trespass and the statute of limitations merely specified the window in time for which damages could be recovered prior to the filing of the complaint. Zimmer v. Village of Willowbrook, 242 Ill. App. 3d 437, 182 Ill. Dec. 840, 610 N.E.2d 709 (2 Dist. 1993).

Contribution

Because an employee sued a manufacturer beyond the one-year statute of limitations applicable to the employer as a local public entity as set forth in 745 ILCS 10/8-101, the employer could not be sued for contribution; the exception in 735 ILCS 5/13-204(c) did not apply. Nava v. Hertz Equip. Rental & Jlg Indus., F. Supp. 2d , 2011 U.S. Dist. LEXIS 22054 (N.D. Ill. Mar. 3, 2011).

- Accrual of Cause of Action

A third-party contribution action against a city and the state was timely filed in an action arising from a motor vehicle accident in which the defendant asserted the several liability of the city and state as an affirmative defense where the third-party action was commenced within one year after the Supreme Court struck down a statute that replaced joint and several liability with proportionate several liability as the plaintiff had no cause of action for contribution until that Supreme Court decision. Adukia v. Finney, 315 Ill. App. 3d 766, 248 Ill. Dec. 854, 735 N.E.2d 174, 2000 Ill. App. LEXIS 708 (4 Dist. 2000).

Cause of action for contribution brought by third-party plaintiff did not accrue for purposes of the statute of limitations under this section until the date the action was filed against third-party plaintiff. Highland v. Bracken, 202 Ill. App. 3d 625, 148 Ill. Dec. 104, 560 N.E.2d 406 (4 Dist. 1990).

Defense

Sale of public hospital to a private entity before the one-year limitations period expired did not waive hospital's right to assert the limitations period as a defense, to suit by party injured before sale of hospital. Feiler v. Covenant Medical Ctr. of Champaign-Urbana, 232 Ill. App. 3d 1088, 174 Ill. Dec. 179, 598 N.E.2d 376 (4 Dist. 1992).

Discovery

The discovery rule did not apply to toll the statute of limitations with regard to the plaintiff's claim where he was vague as to when he learned of the challenged actions by the defendants and did not respond to the defendants' motions to dismiss. Ellis v. City of Chicago, F. Supp. 2d , 2000 U.S. Dist. LEXIS 17827 (N.D. Ill. Nov. 30, 2000).

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When plaintiff knew or should have known that his rights had been invaded as a result of arrest and search allegedly in violation of U.S. Const., Amend. IV, was a question of fact that could not be resolved on motion for judgment on the pleadings. Patterson v. Leyden, 947 F. Supp. 1211 (N.D. Ill. 1996).

Employment Contract Not Shown

Probationary police officer's argument that this section did not apply because her retaliatory discharge and wrongful discharge claims arose from her employment contract failed because she did not have an employment contract with defendants. Krecek v. Board of Police Comm'rs, 271 Ill. App. 3d 418, 207 Ill. Dec. 227, 646 N.E.2d 1314 (1 Dist. 1995).

Filing of Complaint

Where a father had a wrongful death action (WDA) against a local school district, which was a "local public entity" under 745 ILCS 10/1-206 for purposes of determining that the limitations period for filing such claims was one year, pursuant to 745 ILCS10/8-101, and the attorneys and firm that he initially retained withdrew from further representation while the WDA was still viable, a trial court erred in dismissing the father's legal malpractice action against the attorneys. The attorney who informed the father that representation was being terminated also mistakenly advised him that there was a two-year limitations period, and the fact that the father consulted with another attorney during that time but he did not retain a successor attorney until after the one-year period had run did not constitute a superceding cause in order to exonerate the attorneys from liability, and accordingly, questions of fact remained regarding causation which were appropriately determined by the trier of fact and not as a matter of law in a dismissal motion. Lopez v. Clifford Law Offices, P.C., 362 Ill. App. 3d 969, 299 Ill. Dec. 53, 841 N.E.2d 465, 2005 Ill. App. LEXIS 1211 (1 Dist. 2005), appeal denied, 218 Ill. 2d 541, 303 Ill. Dec. 3, 850 N.E.2d 808 (2006).

- Timeliness

State-law tort claims against employer health department were time-barred, and employee's federal complaint, filed beyond the two-year limitations period, did not relate back to her state complaint, as they were two separately-filed actions; thus, the employer's motion to dismiss was granted for employee's failure to state a claim. Protich v. Will County Health Dep't, F. Supp. 2d , 2002 U.S. Dist. LEXIS 24645 (N.D. Ill. Dec. 23, 2002).

Where plaintiff alleged he was assaulted and battered yet he did not file his complaint against defendant municipality until one day after the one year statute of limitations period had expired, plaintiff's assertion that he had provided defendant a copy of the complaint prior to the expiration of the statute of limitations was irrelevant. Ramos v. City of Chicago, 707 F. Supp. 345 (N.D. Ill. 1989).

Former Notice Requirement

- Illustrative Cases

For cases relating to notice requirements under former section 8-102 of this Act and similar law, prior to repeal of section 8-102, and reduction of the time limitation of this section from two years to one year, see McDonald v. City of Spring Valley, 285 Ill. 52, 120 N.E. 476, 2 A.L.R. 1359 (1918); Caruso v. City of Chicago, 278 Ill. App. 247 (1 Dist. 1934); Costello v. City of Aurora, 295 Ill. App. 510, 15 N.E.2d 38 (2 Dist. 1938); Fromme v. City of Girard, 295 Ill. App. 144, 14 N.E.2d 690 (3 Dist. 1938); Koch v. City of Chicago, 297 Ill. App. 103, 17 N.E.2d 411 (1 Dist. 1938); Keller v. Tomaska, 299 Ill. App. 34, 19 N.E.2d 442 (1 Dist. 1939); McCarthy v. City of

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Chicago, 312 Ill. App. 268, 38 N.E.2d 519 (1 Dist. 1941); Lutsch v. City of Chicago, 318 Ill. App. 156, 47 N.E.2d 565 (1 Dist. 1943); Murphy v. City of Chicago, 318 Ill. App. 166, 47 N.E.2d 494 (1 Dist. 1943); McWane Case Iron Pipe Co. v. Aetna Cas. & Sur. Co., 3 Ill. App. 2d 399, 122 N.E.2d 435 (3 Dist. 1954); White v. City of Centralia, 8 Ill. App. 2d 483, 131 N.E.2d 825 (4 Dist. 1956); Carlson ex rel. Carlson v. Village of Glen Ellyn, 21 Ill. App. 2d 335, 158 N.E.2d 225 (2 Dist. 1959); Riddle v. City of Marion, 44 Ill. App. 2d 11, 193 N.E.2d 877 (4 Dist. 1963); Wills ex rel. Wills v. Metz, 89 Ill. App. 2d 334, 231 N.E.2d 628 (4 Dist. 1967); Fannon v. City of Aurora, 106 Ill. App. 2d 408, 245 N.E.2d 286 (2 Dist. 1969); Sappington v. Sparta Mun. Hosp. Dist., 106 Ill. App. 2d 255, 245 N.E.2d 262 (5 Dist. 1969); Ritsema-Millgard, Inc. v. Michael J. McDermott & Co., 295 F. Supp. 180 (N.D. Ill. 1969); Skrapits v. Skala, 314 F. Supp. 510 (N.D. Ill. 1970); Stanley v. Denning, 130 Ill. App. 2d 628, 264 N.E.2d 521 (2 Dist. 1970); Hoffman v. Evans, 129 Ill. App. 2d 439, 263 N.E.2d 140 (4 Dist. 1970); King v. Johnson, 47 Ill. 2d 247, 265 N.E.2d 874 (1970); Dear v. Locke, 128 Ill. App. 2d 356, 262 N.E.2d 27 (2 Dist. 1970); Brown v. Shook, 132 Ill. App. 2d 246, 268 N.E.2d 883 (2 Dist. 1971); Reynolds v. City of Tuscola, 48 Ill. 2d 339, 270 N.E.2d 415 (1971); Rapacz v. Township High Sch., 2 Ill. App. 3d 1095, 278 N.E.2d 540 (1 Dist. 1971); Klein v. Springborn, 327 F. Supp. 1289 (N.D. Ill. 1971); Eckel v. City of Sullivan, 3 Ill. App. 3d 342, 277 N.E.2d 890 (4 Dist. 1972); Reynolds v. Perry, 8 Ill. App. 3d 238, 289 N.E.2d 665 (5 Dist. 1972); Kummer v. Bonarek, 351 F. Supp. 141 (N.D. Ill. 1972); Public Litho Serv., Inc. v. City of Chicago, 8 Ill. App. 3d 315, 290 N.E.2d 677 (1 Dist. 1972); Ramos v. Armstrong, 8 Ill. App. 3d 503, 289 N.E.2d 709 (3 Dist. 1972); Luker v. Nelson, 341 F. Supp. 111 (N.D. Ill. 1972); Kepper v. La Salle-Peru Tp. High Sch. Dist., 7 Ill. App. 3d 138, 287 N.E.2d 180 (3 Dist. 1972); Housewright v. City of LaHarpe, 51 Ill. 2d 357, 282 N.E.2d 437 (1972); Helle v. Brush, 53 Ill. 2d 405, 292 N.E.2d 372 (1973); City of Rock Falls v. Chicago Title & Trust Co., 13 Ill. App. 3d 359, 300 N.E.2d 331 (3 Dist. 1973); Hecko v. City of Chicago, 25 Ill. App. 3d 572, 323 N.E.2d 595 (1 Dist. 1975); Saragusa v. City of Chicago, 63 Ill. 2d 288, 348 N.E.2d 176 (1976); Zavala v. City of Chicago, 41 Ill. App. 3d 718, 354 N.E.2d 398 (1 Dist. 1976), aff'd, 66 Ill. 2d 573, 6 Ill. Dec. 901, 363 N.E.2d 848 (1977); Panko v. County of Cook, 42 Ill. App. 3d 912, 1 Ill. Dec. 577, 356 N.E.2d 859 (1 Dist. 1976); Gambling v. Cornish, 426 F. Supp. 1153 (N.D. Ill. 1977); Lansing v. County of McLean, 45 Ill. App. 3d 91, 3 Ill. Dec. 755, 359 N.E.2d 165 (4 Dist. 1977), modified on other grounds, 69 Ill. 2d 393, 14 Ill. Dec. 543, 372 N.E.2d 822 (1978); Ivy v. Health & Hosps. Governing Comm'n, 45 Ill. App. 3d 958, 4 Ill. Dec. 565, 360 N.E.2d 501 (1 Dist. 1977); United States Gen., Inc. v. City of Joliet, 432 F. Supp. 346 (N.D. Ill. 1977); Lee v. City of Rockford, 51 Ill. App. 3d 26, 9 Ill. Dec. 4, 366 N.E.2d 118 (2 Dist. 1977); Addison v. Health & Hosp. Governing Comm'n, 56 Ill. App. 3d 533, 14 Ill. Dec. 7, 371 N.E.2d 1060 (1 Dist. 1977); Eason v. Garfield Park Community Hosp., 55 Ill. App. 3d 483, 13 Ill. Dec. 72, 370 N.E.2d 1099 (1 Dist. 1977); Johnson v. King, 55 Ill. App. 3d 336, 13 Ill. Dec. 323, 371 N.E.2d 18 (1 Dist. 1977); Cooney v. Society of Mt. Carmel, 61 Ill. App. 3d 108, 18 Ill. Dec. 464, 377 N.E.2d 1100 (1 Dist. 1978), aff'd, 75 Ill. 2d 430, 27 Ill. Dec. 485, 389 N.E.2d 549 (1979); Mounce v. City of Lincoln, 64 Ill. App. 3d 461, 21 Ill. Dec. 312, 381 N.E.2d 421 (4 Dist. 1978); Cooney v. Society of Mt. Carmel, 75 Ill. 2d 430, 27 Ill. Dec. 485, 389 N.E.2d 549 (1979); Pate v. City of Sesser, 75 Ill. App. 3d 233, 30 Ill. Dec. 799, 393 N.E.2d 1146 (5 Dist. 1979); Zagar v. Health & Hosps. Governing Comm'n, 83 Ill. App. 3d 894, 39 Ill. Dec. 112, 404 N.E.2d 496 (1 Dist. 1980); Smith v. City of Chicago, 92 Ill. App. 3d 247, 48 Ill. Dec. 125, 416 N.E.2d 20 (1 Dist. 1980); Girman v. County of Cook, 103 Ill. App. 3d 897, 59 Ill. Dec. 534, 431 N.E.2d 1291 (1 Dist. 1981); Glasgow v. Brueggemann, 105 Ill. App. 3d 71, 61 Ill. Dec. 71, 434 N.E.2d 8 (5 Dist. 1982); Starcevich v. City of Farmington, 110 Ill. App. 3d 1074, 66 Ill. Dec. 811, 443 N.E.2d 737 (3 Dist. 1982); Stephens v. McBride, 105 Ill. App. 3d 880, 61 Ill. Dec. 673, 435 N.E.2d 162 (1 Dist. 1982), aff'd, 97 Ill. 2d 515, 74 Ill. Dec. 24, 455 N.E.2d 54 (1983); Brooks ex rel. Brooks v. City of Chicago, 106 Ill. App. 3d 459, 62 Ill. Dec. 210, 435 N.E.2d 1182 (1 Dist. 1982); Anderson v. Sutter, 119 Ill. App. 3d 1070, 75 Ill. Dec. 871, 458 N.E.2d 39 (2 Dist. 1983); Rio v. Edward Hosp., 120 Ill. App. 3d 699, 76 Ill. Dec. 206, 458 N.E.2d 606 (2 Dist. 1983); Lando v. City of Chicago, 128 Ill. App. 3d 597, 83 Ill. Dec. 752, 470 N.E.2d 1172 (1 Dist. 1984); Hintz v. Jamison, 743 F.2d 535 (7th Cir. 1984); Rio v. Edward Hosp., 104 Ill. 2d 354, 84 Ill. Dec. 461, 472 N.E.2d 421 (1984); Kievman v. Edward Hosp., 135 Ill. App. 3d 442, 90 Ill. Dec. 109, 481 N.E.2d 909 (2 Dist. 1985); Kasza v. Commonwealth Edison, 602 F. Supp. 717 (N.D. Ill. 1985); Oliver v. City of Chicago, 137 Ill. App. 3d 958, 92 Ill.

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Dec. 617, 485 N.E.2d 428 (1 Dist. 1985); LeSanche v. North Sub. Mass Transit Dist., 142 Ill. App. 3d 394, 96 Ill. Dec. 710, 491 N.E.2d 1170 (1 Dist. 1985); H. Winter Metal Co. v. City of Chicago, 143 Ill. App. 3d 542, 97 Ill. Dec. 611, 493 N.E.2d 93 (1 Dist. 1986); Tomas v. Universal Health Servs., Inc., 145 Ill. App. 3d 663, 99 Ill. Dec. 451, 495 N.E.2d 1186 (1 Dist. 1986); Lane v. Chicago Hous. Auth., 147 Ill. App. 3d 876, 101 Ill. Dec. 280, 498 N.E.2d 604 (1 Dist. 1986); Grady v. Bi-State Dev. Agency, 151 Ill. App. 3d 748, 104 Ill. Dec. 427, 502 N.E.2d 1087 (5 Dist. 1986).

Identity

Estate administrator's wrongful death claims against unknown correctional and police officers were time barred by 745 ILCS 10/8-101, as an amendment to identify the officers would not have related back under Fed. R. Civ. P. 15(c)(1)(C) or 735 ILCS 5/2-616(d) because there was no "mistake" regarding identity. Equitable estoppel or tolling did not apply because there was no showing that a defense objection to a request for production of personnel files prevented the administrator from discovering the officers' identities. Hunt v. Dart, 612 F. Supp. 2d 969, 2009 U.S. Dist. LEXIS 36710 (N.D. Ill. 2009).

- Failure to Discover

The one year limitations requirement of this Act was not tolled for a plaintiff who failed to discover the identity of a village as the owner of the stadium in which he was injured and, as a result, did not file his action until approximately 18 months after his injury occurred. Jackson v. Village of Rosemont, 180 Ill. App. 3d 932, 129 Ill. Dec. 670, 536 N.E.2d 720 (1 Dist. 1988).

Intentional Infliction of Emotional Distress

An action for intentional infliction of emotional distress arising from an arrest in May, 1997 was filed in a timely manner where a nolle prosequi of the charges against the plaintiff was issued on March, 2000 and the action was commenced in November, 2000. Evans v. City of Chicago, F. Supp. 2d , 2001 U.S. Dist. LEXIS 14083 (N.D. Ill. Sept. 4, 2001).

Although a paramedic had failed to meet the threshold that established conduct that could have conceivably construed sexual discrimination, and the intentional infliction of emotional distress claims were time-barred by 745 ILCS 10/8-101, the paramedic had provided adequate notice of race discrimination on the part of the village. Cortes-Devito v. Vill. of Stone Park, 390 F. Supp. 2d 706, 2005 U.S. Dist. LEXIS 11721 (N.D. Ill. 2005).

In an action by a student and his mother against a school district board of education (board), a superintendent, a principal, and a teacher's aide, the mother's state law claims, which included an intentional infliction of emotional distress claim, were time-barred for her failure to file them within the one year limitations period under 745 ILCS 10/8-101. Doe v. Woodridge Elem. Sch. Dist. No. 68 Bd. of Educ., F. Supp. 2d , 2005 U.S. Dist. LEXIS 7023 (N.D. Ill. Apr. 13, 2005).

Because the statute of limitations did not commence until the criminal case was terminated, and the federal action was filed within one year of plaintiff's pardon, plaintiff's intentional infliction of emotional distress claim was not barred under the one-year limitations period set forth in the Illinois Local Government and Governmental Employees Tort Immunity Act, 745 ILCS 10/8-101; accordingly, dismissal of the claim on statute of limitations grounds was unwarranted and defendant's motion to dismiss was denied. Hobley v. Burge, F. Supp. 2d , 2004 U.S. Dist. LEXIS 10228 (N.D. Ill. June 2, 2004).

Police officers were entitled to summary judgment on the arrestee's intentional infliction of emotional distress claim where the criminal proceedings at issue were not resolved in plaintiff's favor, and therefore the arrests and testimony in the resulting criminal proceedings could not be characterized as extreme and outrageous conduct; claim arising from strip searches of the

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arrestee accrued more than two years before the filing of the claim and was barred by the one-year statute of limitations of 745 ILCS 10/8-101. Evans v. City of Chicago, F. Supp. 2d , 2003 U.S. Dist. LEXIS 17024 (N.D. Ill. Sept. 26, 2003), aff'd, 434 F.3d 916 (7th Cir. 2006).

Legislative Intent

- Contribution

The legislature intended that this section apply to a third-party plaintiff's action for contribution. Rummel v. Yazoo Mfg. Co., 222 Ill. App. 3d 526, 164 Ill. Dec. 465, 583 N.E.2d 19 (1 Dist. 1991).

- Limitations

Amendment to this section not only added language which stated that the term "civil action" includes "any action," but retained the mandate that the cause of action must be commenced within the appropriate statute of limitations "from the date that the injury was received or the cause of action accrued", this indicated that the legislature intended to keep the two phases separate, and intended this Act's statute of limitations to run from either the date the injury occurred or the cause of action accrued. Highland v. Bracken, 202 Ill. App. 3d 625, 148 Ill. Dec. 104, 560 N.E.2d 406 (4 Dist. 1990).

Malicious Prosecution

Malicious prosecution claims were time-barred because plaintiffs filed their initial complaint on March 23, 2010, and sought leave to file the first amended complaint on July 16, 2010. Thus, even accepting plaintiffs' contention that the malicious prosecution claims in the first amended complaint related back to the initial complaint, the claims were brought more than a year after the criminal proceedings were terminated. Askew v. Waukegan Pub. Sch. Dist. 60, 767 F. Supp. 2d 923, 2011 U.S. Dist. LEXIS 13247 (N.D. Ill. 2011).

Excess insurer had to indemnify an insured municipality in the amount remaining from its loss after the primary insurer fulfilled its obligation because (1) the excess insurer's policy was triggered as the underlying malicious prosecution claim fell within the policy period; (2) the excess insurer's voluntary assumption defense failed because the insured was obligated to pay the judgment entered against its employee under the Illinois Local Governmental Employees Tort Immunity Act, 745 ILCS 10/9-102, and the insured did not voluntarily assume the employee's judgment under 745 ILCS 10/2-302 when it failed to raise a statute of limitations defense to the underlying claim under 745 ILCS 10/8-101 because any statute of limitations challenge by the insured would have failed under binding precedent; and (3) 65 ILCS 5/1-4-6 did not affect the operation of 745 ILCS 10/9-102, which required the insured to pay the judgment. Am. Safety Cas. Ins. Co. v. City of Waukegan, 776 F. Supp. 2d 670, 2011 U.S. Dist. LEXIS 21393 (N.D. Ill. 2011).

City was denied summary judgment on plaintiff's state law claims for malicious prosecution, intentional infliction of emotional distress, conspiracy, and a respondeat superior and indemnification because (1) plaintiff's malicious prosecution claim accrued when he knew or should have known of the governor's pardon, a date that would be determined by the jury; (2) plaintiff's allegations of intentional infliction of emotional distress claim were intertwined with the allegations of his malicious prosecution claim, so the intentional infliction of emotional distress claim was not time-barred under 745 ILCS 10/8-101(a) to the extent the malicious prosecution claim was found to be timely by the jury; and (3) likewise, to the extent the conspiracy, respondeat superior, and indemnification claims were based on plaintiff's malicious prosecution claim, they were not barred by the statute of limitations if the jury found that the malicious

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prosecution claim was timely. Walden v. City of Chicago, 755 F. Supp. 2d 942, 2010 U.S. Dist. LEXIS 134988 (N.D. Ill. 2010).

Arrestee's malicious prosecution claim against a police officer was time-barred under 745 ILCS 10/8-101(a) of the Illinois Tort Immunity Act, which provided a one-year limitations period for state law claims against law enforcement officers. The arrestee filed suit nearly two years after a nolle prosequi order terminated the criminal case on which the claim was based. Foryoh v. Hannah-Porter, 428 F. Supp. 2d 816, 2006 U.S. Dist. LEXIS 26184 (N.D. Ill. 2006), aff'd, 2007 U.S. App. LEXIS 4098 (7th Cir. Ill. 2007).

Arrestee's malicious prosecution claim was not barred by the statute of limitations for claims against public entities and their employees, set forth in 745 ILCS 10/8-101, because the arrestee filed his complaint within one year after a state court granted his motion for a directed verdict with respect to his aggravated intimidation charge. Long v. McDermott, F. Supp. 2d , 2005 U.S. Dist. LEXIS 4499 (N.D. Ill. Feb. 8, 2005).

Trial court erred in dismissing the resident's complaint against the city for malicious prosecution because the complaint was timely where it was filed within one year of the termination of the criminal proceedings against the resident as required by 745 ILCS 10/8-101. The resident's malicious prosecution claim did not accrue until such time as the State was precluded from seeking reinstatement of the charges, and that period was marked by the expiration of the statutory speedy-trial period, which was February 1, 2001. Ferguson v. City of Chicago, 213 Ill. 2d 94, 289 Ill. Dec. 679, 820 N.E.2d 455, 2004 Ill. LEXIS 1673 (2004).

Teacher's claim for malicious prosecution against a principal was time-barred under the one-year limitation under 745 ILCS 10/8-101 because the criminal proceedings against the teacher were not abandoned for reasons other than the principal's knowledge of the teacher's innocence, and therefore, the termination of the proceedings had occurred more than one-year before suit was filed. Frazier v. Bd. of Educ., F. Supp. 2d , 2003 U.S. Dist. LEXIS 10946 (N.D. Ill. June 27, 2003).

A malicious prosecution action arising from an arrest in May, 1997 was filed in a timely manner where a nolle prosequi of the charges against the plaintiff was issued on March, 2000 and the action was commenced in November, 2000. Evans v. City of Chicago, F. Supp. 2d , 2001 U.S. Dist. LEXIS 14083 (N.D. Ill. Sept. 4, 2001).

The clock does not start running on state law claims for intentional infliction of emotional distress and for malicious prosecution until state criminal proceedings have been terminated. Treece v. Village of Naperville, 903 F. Supp. 1251 (N.D. Ill. 1995).

Notice

- In General

The notice provision of this section is not a condition precedent to the right to bring suit against a public entity, rather, it is a limitation provision. McClintock v. Bi-State Dev. Agency, 228 Ill. App. 3d 382, 169 Ill. Dec. 463, 591 N.E.2d 967 (5 Dist. 1992).

- Construction

The notice requirement is in derogation of common law and must therefore be strictly construed against the local public entity and liberally in favor of the injured party. McClintock v. Bi-State Dev. Agency, 228 Ill. App. 3d 382, 169 Ill. Dec. 463, 591 N.E.2d 967 (5 Dist. 1992).

- Failure to Comply

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The failure to comply with the notice provision is regarded as an affirmative defense which the public entity must raise to defeat the injured party's claim. McClintock v. Bi-State Dev. Agency, 228 Ill. App. 3d 382, 169 Ill. Dec. 463, 591 N.E.2d 967 (5 Dist. 1992).

- Purpose

The primary purpose of the notice requirement is to furnish timely notice of injury so that a public entity can investigate and make prompt settlement of meritorious claims, and also to give notice to a public entity of possible liability so that budgetary provisions may be knowledgeably arranged. McClintock v. Bi-State Dev. Agency, 228 Ill. App. 3d 382, 169 Ill. Dec. 463, 591 N.E.2d 967 (5 Dist. 1992).

Purpose

- Early Investigation

The purpose of this Act is to encourage early investigation into a claim asserted against the local government at a time when the matter is still fresh, witnesses are available, and conditions have not materially changed; this facilitates prompt disposal of claims, and public entities can take into account potential liabilities when planning their budgets. Saragusa v. City of Chicago, 63 Ill. 2d 288, 348 N.E.2d 176 (1976); Kirby v. Town of Somer, 162 Ill. App. 3d 463, 113 Ill. Dec. 533, 515 N.E.2d 342 (4 Dist. 1987).

- Protection from Fraud

The purpose of this Act is to protect a public body from fraudulent claims. Dunbar v. Reiser, 26 Ill. App. 3d 708, 325 N.E.2d 440 (1 Dist. 1975).

Repeated Injury

- In General

In an action against a drainage district for negligent failure to maintain the drainage system, the plaintiff alleged an ongoing injury and, therefore, was not subject to dismissal of her claim on the basis of the statute of limitations where her claims were based on the statutory duty of the drainage district's commissioner to make an annual inspection of all the district's improvements and works and keep the drains, levees, pumping plants, and other works of the district in operation and repair. Roark v. Macoupin Creek Drainage Dist., 316 Ill. App. 3d 835, 250 Ill. Dec. 358, 738 N.E.2d 574, 2000 Ill. App. LEXIS 783 (4 Dist. 2000).

In an action for damages arising from an alleged trespass by the defendant city in the construction of a subway system under the plaintiff's property, the presence of the subway system under the property did not constitute a continuous injury and, therefore, the one year statute of limitations applied to bar the action; the fact that the subway was present below ground was a continual effect from the initial violation, but was not a continual violation. Bank of Ravenswood v. City of Chicago, 307 Ill. App. 3d 161, 240 Ill. Dec. 385, 717 N.E.2d 478 (1 Dist. 1999).

- Accrual of Cause of Action

Arrestee's claim of intentional infliction of emotional distress arising from alleged harassment by police officers after the arrestee accused police of murdering the arrestee's cousin was time-barred under 745 ILCS 10/8-101. The continuing violation doctrine did not render the suit timely because the last interaction between the officers and the arrestee was in 1997, and the arrestee did not file suit until three years later. Evans v. City of Chicago, 434 F.3d 916, 2006 U.S. App. LEXIS 264 (7th Cir. 2006).

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Plaintiff's claims for intentional infliction of emotional distress fell outside the limitations period of this section, where plaintiff relied on a continuing violation theory, but the only incident allegedly occurring within one year before her complaint was filed was not so extreme or outrageous as to cause severe emotional distress. Carpenter v. City of Northlake, 948 F. Supp. 759 (N.D. Ill. 1996).

When a continuing violation is alleged, the rule in Illinois is that the statute of limitations begins to run from the date of the last injury or tortious act, therefore since plaintiff alleged a continuing violation that extended into 1992, less than one year before the complaint was filed all of the claims contained within the complaint were brought within the applicable limitations periods against all of the defendants. Wolf v. City of Chicago Heights, 828 F. Supp. 520 (N.D. Ill. 1993).

Where a tort involved repeated injury, statute of limitations begins to run from the date of the last injury or when the tortious acts cease. Starcevich v. City of Farmington, 110 Ill. App. 3d 1074, 66 Ill. Dec. 811, 443 N.E.2d 737 (3 Dist. 1982); Urban v. Village of Inverness, 176 Ill. App. 3d 1, 125 Ill. Dec. 567, 530 N.E.2d 976 (1 Dist. 1988).

Retaliatory Discharge Actions

The statute of limitations period begins to run for retaliatory discharge on the date of firing; for retaliatory failure to recall it begins on the date the employee could reasonably have been recalled; and for retaliatory failure to rehire it begins on the first date other seasonal employees doing the same or similar work were hired or rehired by the employer in question. Webb v. County of Cook, 275 Ill. App. 3d 674, 211 Ill. Dec. 893, 656 N.E.2d 85 (1 Dist. 1995).

Right to Assert Defense

- Third-Party Defendant

That a third-party defendant was on notice of the matters relating to the lawsuit once it intervened did not deprive it of the right to assert the statute of limitations defense. Rummel v. Yazoo Mfg. Co., 222 Ill. App. 3d 526, 164 Ill. Dec. 465, 583 N.E.2d 19 (1 Dist. 1991).

Scope

- General Limitation

The limitation period in this section is not part of a statutory cause of action; instead, this section is a general limitation provision for suits against local entities and their employees. Halper v. Vayo, 210 Ill. App. 3d 81, 154 Ill. Dec. 693, 568 N.E.2d 914 (2 Dist.), cert. denied, 139 Ill. 2d 595, 159 Ill. Dec. 107, 575 N.E.2d 914 (1991).

- Limitation

Unlike immunity provisions, this section does not create a shield from liability, nor does it control whether one can hold a person or entity liable; it is simply a limitation upon the time allowed for commencing an injury action. Herriott v. Powers, 236 Ill. App. 3d 151, 177 Ill. Dec. 584, 603 N.E.2d 654 (1 Dist. 1992).

Timeliness

To the extent that an employee's retaliation claim under the Illinois False Claims Act was based on conduct prior to May 16, 2005, it was time-barred because the continuing conduct doctrine was rejected. Moreover, because the end date of the alleged harassment preceded the

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applicable statute of limitations date, a supervisor's conduct did not support the employee's claim under the Act. McDonough v. City of Chicago, 743 F. Supp. 2d 961, 2010 U.S. Dist. LEXIS 103993 (N.D. Ill. 2010).

Although the motorist filed a personal injury action against the bus operator about seven months inside of the two-year personal injury statute of limitations, 735 ILCS 5/13-202, the bus operator was permitted to assert as an affirmative defense that the motorist's action was untimely filed, as the bus operator's status as a non-profit corporation made it a "local public entity" under 745 ILCS 10/1-206 of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq. (Act), and entitled it to assert the one-year limitations period in the Act, 745 ILCS 10/8-101(a), as a defense. Since the motorist's action, arising out of being struck by the bus operator's bus, was not filed within that one-year time period, the motorist's action was time barred. Hubble v. Bi-State Dev. Agency of the Illinois-Missouri Metro. Dist., 238 Ill. 2d 262, 345 Ill. Dec. 44, 938 N.E.2d 483, 2010 Ill. LEXIS 1066 (2010).

Where plaintiff arrested in 2001 and convicted of possessing a stolen vehicle was released from his sentence on June 4, 2007 during post-conviction proceedings in which he alleged that prosecutors violated his civil rights, plaintiff filed a false imprisonment claim against the police on January 16, 2008. The claim accrued on the date of his arrest and was thus time-barred by the one-year statute of limitations set forth in the Illinois Local Government and Governmental Employees Tort Immunity Act, 745 ILCS 10/8-101. Gordon v. Devine, F. Supp. 2d , 2008 U.S. Dist. LEXIS 81234 (N.D. Ill. Oct. 14, 2008).

Where plaintiff arrested in 2001 and convicted of possessing a stolen vehicle was released from his sentence on June 4, 2007 during post-conviction proceedings in which he alleged that prosecutors violated his civil rights, plaintiff filed a civil rights suit against the police, the city, the county, and the prosecutors on January 16, 2008. The district court held that plaintiff's state law conspiracy claims based upon alleged due process violations and malicious prosecution were timely filed within the one-year statute of limitations set forth in the Illinois Local Government and Governmental Employees Tort Immunity Act, 745 ILCS 10/8-101; the claims did not accrue until the post-conviction proceeding terminated in plaintiff's favor. Gordon v. Devine, F. Supp. 2d , 2008 U.S. Dist. LEXIS 81234 (N.D. Ill. Oct. 14, 2008).

Negligence action against a medical examiner's office, filed nearly four years after a mother's action for compensation in the Illinois Court of Claims was denied, at least in part on the basis of an autopsy report that stated the mother's son died due to accidental, not homicidal causes, was untimely under 745 ILCS 10/8-101; the statute of limitations began to run when the court of claims action was denied. Sims-Hearn v. Office of the Med. Exam'r, 359 Ill. App. 3d 439, 295 Ill. Dec. 924, 834 N.E.2d 505, 2005 Ill. App. LEXIS 800 (1 Dist. 2005), appeal denied, 217 Ill. 2d 593, 300 Ill. Dec. 375, 844 N.E.2d 47 (2005).

State law child endangerment claim, which was asserted by a criminal suspect's mother in a 42 U.S.C.S. § 1983 suit, was time-barred under Illinois law because the mother had not asserted the claim within one year of her arrest by a city police officer, which is when the act of endangerment allegedly occurred. Sargent v. Idle, F. Supp. 2d , 2005 U.S. Dist. LEXIS 30413 (C.D. Ill. Nov. 16, 2005).

Contractor's state claims were dismissed to the extent that they alleged injuries that arose more than one year before the contractor filed his complaint because the statute of limitations for actions filed against municipalities and their employees, officers, or agents acting in their official capacities was one year from the date the injury was received or the cause of action accrued. Lathrop v. Juneau & Assocs., 220 F.R.D. 330, 2004 U.S. Dist. LEXIS 1818 (S.D. Ill. 2004).

City's Rule 12(b)(6), F.R. Civ.P. motion to dismiss the resident's claim, which alleged that the city had a pattern or practice of placing huge clamps on vehicles owned by African-Americans, was granted where the resident's action was time-barred for both the 42 U.S.C.S. § 1983 and Illinois causes of action because (1) in Illinois, the statute of limitations for 42 U.S.C.S. § 1983 claims

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was two years and the statute of limitations for state law claims filed against a local entity was one year, pursuant to 745 ILCS 10/8-101, (2) the statute of limitations began to run when the resident knew or should have known that the city committed the illegal act, (3) the date the resident knew or should have known of the illegal act was April 9, 2001, when the city placed a clamp on the resident's car, and (4) this date was more than two years removed from the date the resident filed the suit. Russell v. City of Chi., F. Supp. 2d , 2004 U.S. Dist. LEXIS 6921 (N.D. Ill. Apr. 21, 2004).

Parents' complaint filed on May 30, 2001, naming the individual police officers as defendants for the first time, was barred by the one-year statute of limitation of 745 ILCS 10/8-101 because that period expired on September 15, 1998. Fender v. Town of Cicero, 347 Ill. App. 3d 46, 283 Ill. Dec. 1, 807 N.E.2d 606, 2004 Ill. App. LEXIS 242 (1 Dist. 2004).

When developers sought relief against various city and county entities because their development did not receive enterprise zone tax benefits after they had been assured it would, the governmental entities were entitled to summary judgment and dismissal under 735 ILCS 5/2-619 because the developers, although framing certain claims for relief in terms of equitable relief, actually sought monetary damages, and their claims were subject to the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., and its one-year statute of limitations in 745 ILCS 10/8-101, and their complaint was not filed within the applicable period. ESM Dev. Corp. v. Dawson, 342 Ill. App. 3d 688, 277 Ill. Dec. 30, 795 N.E.2d 397, 2003 Ill. App. LEXIS 1015 (5 Dist. 2003).

Teacher's claims for battery, false arrest, and malicious prosecution against a principal and school board under Illinois law were time-barred because the claims were not filed within one-year of the date of the alleged injury pursuant to 745 ILCS 10/8-100 of the Illinois Local Governmental and Governmental Employees Tort Immunity Act. Frazier v. Bd. of Educ., F. Supp. 2d , 2003 U.S. Dist. LEXIS 10946 (N.D. Ill. June 27, 2003).

Plaintiff's claim of common law battery, based on the assertion that the city and two police officers owed a duty to plaintiff not to stab or drag plaintiff without justification failed, where the claim was not brought within the one-year statute of limitations period set forth under the Illinois Local Government Employees Tort Immunity Act. Crockett v. City of Northlake, F. Supp. 2d , 2002 U.S. Dist. LEXIS 19228 (N.D. Ill. Sept. 30, 2002).

Where a state law trespass claim was added almost three years after the events in question, it could not be maintained against police officers since it was barred by 745 ILCS 10/8-101. Carter v. Rosenbeck, 214 F. Supp. 2d 889, 2002 U.S. Dist. LEXIS 14836 (C.D. Ill. 2002).

Where a complaint was signed June 11, 1996 and postmarked June 12, 1996, but the cause of action arose two years earlier in June 1994, the complaint was not filed within the statute of limitations. Boyce v. Fairman, 24 F. Supp. 2d 880 (N.D. Ill. 1998).

Where plaintiff failed to file his action within one year period, plaintiff's state law false imprisonment claim was time barred. Harrell v. Sheahan, 937 F. Supp. 754 (N.D. Ill. 1996).

Negligent act of hiring occurred when police chief was hired without an investigation into his past employment, and was not an "on-going" activity, so that complaint alleging negligent hiring filed more than one year after date of hiring was barred. Dirksen v. City of Springfield, 842 F. Supp. 1117 (C.D. Ill. 1994).

Where former police officers, who receive disability pensions from the City of Chicago, sued the city for requiring them to pay for their own health insurance, claim was time barred as they filed more than one year after they were required to provide their own health insurance. Northen v. City of Chicago, 841 F. Supp. 234 (N.D. Ill. 1993).

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Plaintiff's action was time barred because his action was instituted after expiration of the one year statutory filing requirement. Luciano v. Waubonsee Community College, 245 Ill. App. 3d 1077, 185 Ill. Dec. 463, 614 N.E.2d 904 (2 Dist. 1993).

Where the defendant was operating within the scope of her employment as a school bus driver at the time of the collision, the plaintiff's civil action fell within the parameters of this statute, thus, the circuit court correctly determined that the plaintiff's court correctly determined that the plaintiff's cause of action was time barred and dismissed his complaint with prejudice. Racich v. Anderson, 241 Ill. App. 3d 336, 181 Ill. Dec. 721, 608 N.E.2d 972 (3 Dist. 1993).

Where a contribution action was filed within the pending litigation and within a year of the filing of the original complaint, the action was timely under this Act. Highland v. Bracken, 202 Ill. App. 3d 625, 148 Ill. Dec. 104, 560 N.E.2d 406 (4 Dist. 1990).

Where plaintiff's cause of action accrued when he was falsely arrested, detained and charged, and where his original complaint was filed more than two years later, plaintiff filed the complaint outside of the two-year statutory period established by the former version of this section, and his state claims were time-barred; accordingly, defendant's motion to dismiss it from plaintiff's state law claims was properly dismissed. Carr v. City of Chicago, 660 F. Supp. 375 (N.D. Ill. 1987).

Tolling

Plaintiff's tort claims against a sheriff were time-barred pursuant to the Illinois Local Governmental and Governmental Employees Tort Immunity Act, since they were not filed within one year of plaintiff's injury, and plaintiff's status as a prisoner did not toll the statute of limitations. Truly v. Sheahan, F. Supp. 2d , 2002 U.S. Dist. LEXIS 17336 (N.D. Ill. Sept. 5, 2002).

Inmate's state law tort claims were dismissed as barred by the Illinois limitations statute, 745 ILCS 10/8-101, where tolling was unavailable because the Prison Litigation Reform Act's exhaustion requirement was interpreted to apply only to federal substantive law claims, not state law claims. Johnson v. Rivera, F. Supp. 2d , 2002 U.S. Dist. LEXIS 16721 (N.D. Ill. Sept. 6, 2002).

Once plaintiff was disqualified for his arrest record, he knew the department's statement about his arrest record was untrue, therefore there was no continuing injury resulting from reliance on the department's material representation that could extend the statute of limitations. McCraven v. City of Chicago, 18 F. Supp. 2d 877 (N.D. Ill. 1998).

Statutes of limitations should not have been suspended for the eight months that plaintiff's judicial review action was pending in court because her administrative review case in chancery court had nothing to do with her retaliatory discharge and wrongful discharge claims; thus, they did not affect the statute of limitations, which began to run when she was terminated. Krecek v. Board of Police Comm'rs, 271 Ill. App. 3d 418, 207 Ill. Dec. 227, 646 N.E.2d 1314 (1 Dist. 1995).

- Americans With Disabilities Act

Enforcement of the policies defined by the federal Americans with Disabilities Act does not permit the tolling of the statute of limitations. Wolinsky v. City of Chicago, F. Supp. 2d , 2000 U.S. Dist. LEXIS 6580 (N.D. Ill. May 10, 2000).

- Equitable Tolling

Limitations period of 745 ILCS 10/8-101(a) on a patient's claims against a hospital was not equitably tolled. Although the patient had allegedly been asked by police not to file a civil suit while a criminal investigation was pending against a physician, she had more than six months to file her claim against the hospital after the physician was indicted. Kaufmann v. Jersey Cmty.

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Hosp., 396 Ill. App. 3d 729, 336 Ill. Dec. 152, 919 N.E.2d 1077, 2009 Ill. App. LEXIS 1224 (4 Dist. 2009).

Neither equitable estoppel nor equitable tolling precluded enforcement of 745 ILCS 10/8-101, since the insurance company's conduct was not calculated to lull the driver into a reasonable belief that the driver's claim would be settled without suit, and the driver's settlement demand alone did not toll the limitations period. Griffin v. Willoughby, 369 Ill. App. 3d 405, 311 Ill. Dec. 21, 867 N.E.2d 1007, 2006 Ill. App. LEXIS 1272 (1 Dist. 2006).

The court concluded that equitable tolling was inapplicable to the plaintiff's claim for false arrest, notwithstanding his assertion that the claim should be tolled until the date that he was released from prison following his erroneous conviction for murder, as the plaintiff's imprisonment did not prevent him from asserting his rights. Castillo v. Zuniga, F. Supp. 2d , 2002 U.S. Dist. LEXIS 4261 (N.D. Ill. Mar. 14, 2002).

Waiver

- In General

A public entity may waive some benefits of this Act's limitations of actions when it initiates an action against a party with an otherwise barred claim. Patsis v. Zion-Benton Tp. High Sch., 234 Ill. App. 3d 232, 174 Ill. Dec. 747, 599 N.E.2d 531 (2 Dist.), cert. denied, 147 Ill. 2d 629, 180 Ill. Dec. 151, 606 N.E.2d 1228 (1992).

Waiver of Notice

- Purchase of Insurance

The purchase of insurance by a municipality insuring against liability constituted waiver of the notice requirement of this Act. Crowe v. Doyle, 6 Ill. App. 3d 1098, 287 N.E.2d 99 (3 Dist. 1972).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Education Law," see 21 S. Ill. U.L.J. 815 (1997).

For article, "Municipal Corporations: 1986-87 Survey," see 12 S. Ill. U.L.J. 1045 (1988).

For article, "State and Local Government: 1986-87 Illinois Law Survey," see 19 Loy. U. Chi. L.J. 691 (1987-88).

For article, "Shielding the Plaintiff's Achilles' Heel: Tort Claim Notices to Governmental Entities," see 28 De Paul L.Rev. 609 (1979).

For article, "Survey of Illinois Law: Employment Law," see, See 29 S. Ill. U.L.J. 639 (2005).

RESEARCH REFERENCES

Validity and construction of statute or ordinance limiting the kinds or amount of actual damages recoverable in tort action against governmental unit. 43 ALR4th 19.

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Medical malpractice in connection with diagnosis, care or treatment of diabetes. 43 ALR5th 87.

Persons or entities upon whom notice of injury or claim against state or state agencies may or must be served. 45 ALR5th 173.

Sufficiency of notice of claim against local government unit as regards identity, name, address, and residence of claimant. 53 ALR5th 617.

Sufficiency of notice of claim against local political entity as regards time when accident occurred. 57 ALR5th 689.

Practice Guides and Treatises.

Civil Practice (Illinois) Volume I: Opening the Case § 6.90 Actions Against Local Public Entities (IICLE).

Third-Party Practice § 3.22 Third-Party Actions Involving Local Governmental Entitites (IICLE).

Third-Party Practice § 2.39 Governmental Tort Immunity (IICLE).

Medical Malpractice § 9.19 The Discovery Doctrine Applied to the Local Governmental and Governmental Employees Tort Immunity Act (IICLE).

Construction Litigation § 3.31 Scope of Application (IICLE).

Causes of Action (Illinois): Tort Actions § 21.5 Statute of Limitations (IICLE).

Causes of Action (Illinois): Tort Actions § 19.5 Statute of Limitations (IICLE).

Causes of Action (Illinois): Tort Actions § 5.5 Statute of Limitations (IICLE).

Employment Termination 2002 Ed., Updated 2005 § 5.53 Statute of Limitations (IICLE).

Employment Termination 2002 Ed., Updated 2005 § 2.27 Tort Actions (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 31:121 Statute of limitations.

Illinois Jurisprudence, Personal Injury and Torts § 29:42 Particular types of actions; derivative claims; claims against local governmental entities.

Illinois Jurisprudence, Personal Injury and Torts § 3:102 Jurisdiction and notice; limitations period.

Illinois Jurisprudence, Personal Injury and Torts § 1:29 Tolling of statute of limitations.

§ 745 ILCS 10/8-103. [Failure to serve notice]

Sec. 8-103. If the notice under Section 8-102 is not served as provided therein, any such civil action commenced against a local public entity, or against any of its employees whose act or omission committed while acting in the scope of his employment as such employee caused the injury, shall be dismissed and the person to whom such cause of injury accrued shall be forever barred from further suing.

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(Source: Laws 1965, p. 2983.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 8-103.

Section 8-102 of the Local Governmental and Governmental Employees Tort Immunity Act, referred to above, has been repealed.

CASE NOTES

Constitutionality

Where the record failed to show that a fairly debatable constitutional question was urged in the trial court, the Illinois Supreme Court had no jurisdiction to entertain whether this section was invalid as special legislation under the Illinois Constitution or proscribed as a denial of equal protection of the laws under the Federal Constitution. Van Meter v. Stout, 45 Ill. 2d 7, 256 N.E.2d 784 (1970).

LEGAL PERIODICALS

For article, "Shielding the Plaintiff's Achilles' Heel: Tort Claim Notices to Governmental Entities," see 28 De Paul L.Rev. 609 (1979).

RESEARCH REFERENCES

Insufficiency of notice of claim against municipality as regards statement of place where accident occurred. 69 ALR4th 484.

Article IX.

Payment of Claims and Judgment

§ 745 ILCS 10/9-101. [Definitions]

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Sec. 9-101. As used in this Article:

(a) "Board" means the governing body of a local taxing entity.

(b) "Fiscal year" means the fiscal year prescribed for a local public entity or adopted by the local public entity as authorized by law.

(c) "Local taxing entity" means a local public entity that has the power to levy or have levied on its behalf taxes or assessments upon property within the territory of the entity.

(d) "Tort judgment" means a final judgment founded on an injury, as defined by this Act, proximately caused by a negligent or wrongful act or omission of a local public entity or an employee of a local public entity while acting within the scope of his employment.

(e) "Settlement" means a payment based on an injury or event which a local public entity reasonably believes might have been caused by a negligent or wrongful act or omission of the local public entity or an employee while acting within the scope of his employment.

(f) "Claims service" means any arrangement whereby skilled personnel are employed or retained to investigate, settle, or defend an injury or event which is alleged to have been caused by, or which a local public entity reasonably believes might have been caused by, a negligent or wrongful act or omission of the local public entity or an employee while acting within the scope of his employment. The term "claims service" shall include, but not be limited to, loss control before or after an injury or event and the retention of independent legal counsel for purposes of defending claims under this Act.

(Source: P.A. 80-1341.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 9-101.

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Employment Law," see 25 S. Ill. U. L.J. 805 (2001).

§ 745 ILCS 10/9-102. [Payment of judgments or settlements; authority to settle or compromise]

Sec. 9-102. A local public entity is empowered and directed to pay any tort judgment or settlement for compensatory damages (and may pay any associated attorney's fees and costs) for which it or an employee while acting within the scope of his employment is liable in the manner provided in this Article. All other provisions of this Article [745

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ILCS 10/9-101 et seq.], including but not limited to the payment of judgments and settlements in installments, the issuance of bonds, the maintenance of rates and charges, and the levy of taxes shall be equally applicable to judgments or settlements relating to both a local public entity or an employee and those undertakings assumed by a local public entity in intergovernmental joint self-insurance contracts. A local public entity may make payments to settle or compromise a claim or action which has been or might be filed or instituted against it when the governing body or person vested by law or ordinance with authority to make over-all policy decisions for such entity considers it advisable to enter into such a settlement or compromise.

(Source: P.A. 84-1431; 92-810, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 9-102.

Cross References.

As to the authority of a school district to levy an annual tax upon the value of taxable property within its territory so as to produce a sum sufficient to pay the cost of settlements or judgments under this section, see 105 ILCS 5/17-2.5.

Effect of Amendments. The 2002 amendment by P.A. 92-810, effective August 21, 2002, inserted "(and may pay any associated attorney's fees and costs)" in the first sentence.

CASE NOTES

Analysis

Applicability
- Abstention
- Damages
- Judgment

Attorneys' Fees
Authority to Settle
- Sheriffs

Immunity
Indemnification
Injunctive Relief
Jurisdiction
Liability
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- Basis

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Permissible Use of Funds
Personal Liability
Punitive Damages
- Civil Rights Action
Reversible Error
Scope of Employment
- In General
- Not Shown
- Shown
Status as Employee
Statute of Limitations
Timing
Tort Judgment

Applicability

- Abstention

Where plaintiff arrestee appealed her state criminal conviction of resisting arrest under 720 ILCS 5/31-1, arguing excessive force as a central issue, a federal excessive force claim under 19 U.S.C. § 1983 and a claim for indemnification under 745 ILCS 10/9-102 were mirror images of the state court criminal defense and the abstention doctrine warranted a stay of the federal suit. Robinson v. Lother, F. Supp. 2d , 2004 U.S. Dist. LEXIS 17659 (N.D. Ill. Aug. 31, 2004).

- Damages

In an action for gender discrimination and harassment in the workplace by employees of a county sheriff's department, the plaintiffs properly included a cause of action for indemnification under the statute as the nature of the remedies they sought were of the type contemplated by the term "damages" in the Illinois Tort Immunity Act. Buttron v. Sheahan, F. Supp. 2d , 2001 U.S. Dist. LEXIS 1042 (N.D. Ill. Jan. 31, 2001).

- Judgment

Once it became clear after remand that city would not pay a judgment when and if one was entered against its employee, the plaintiff, in order to expedite the collection of the judgment, could ask the court to enter a judgment against the city that would take effect when and if a judgment against employee was entered and no longer contestable. Wilson v. City of Chicago, 120 F.3d 681 (7th Cir. 1997).

This section only applies once a judgment has been entered against a public employee. Rosentreter v. Munding, 736 F. Supp. 165 (N.D. Ill. 1990).

Attorneys' Fees

The statute does not provide for attorneys' fees against municipalities within its definition of compensatory damages. Yang v. City of Chicago, 195 Ill. 2d 96, 253 Ill. Dec. 418, 745 N.E.2d 541, 2001 Ill. LEXIS 191 (2001).

Authority to Settle

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- Sheriffs

Sheriff sued in an official capacity for sexual discrimination and harassment fell within the statutory definition of a public entity empowered to settle claims; therefore, the Illinois Supreme Court responded to the federal appeals court's certified question that the county was bound to pay the settlement. Carver v. Sheriff of La Salle County, 203 Ill. 2d 497, 272 Ill. Dec. 312, 787 N.E.2d 127, 2003 Ill. LEXIS 13 (2003).

Immunity

Illinois counties were not liable for their sheriffs' actions since Illinois sheriffs were independently elected officials not subject to the control of the county, and Illinois state's attorneys were independently elected; moreover, plaintiff arrestee's respondeat superior theory could not save the claims against the county because municipalities could not be liable for the actions of their employees under a respondeat superior theory, and 745 ILCS 10/9-102 did not offer an avenue for suit against the county because the sheriff and state's attorney were elected state officials. Horstman v. County of Dupage, 284 F. Supp. 2d 1125, 2003 U.S. Dist. LEXIS 17030 (N.D. Ill. 2003).

City's claim that it was immune from liability in the day care owner's suit for malicious prosecution, the alleged violation of the day care owner's civil rights, and the spouse's claims for alleged loss of consortium, had to be rejected as the city's claim was based on the alleged immunity of the police chief and the two police officers, and the appellate court concluded that the police chief and two police officers were entitled to neither immunity nor summary judgment on the day care owner and spouse's claims. Fabiano v. City of Palos Hills, 336 Ill. App. 3d 635, 271 Ill. Dec. 40, 784 N.E.2d 258, 2002 Ill. App. LEXIS 1099 (1 Dist. 2002), appeal denied, 204 Ill. 2d 658, 275 Ill. Dec. 75, 792 N.E.2d 306 (2003).

Indemnification

Whether a local entity concedes that its employee acted within the scope of his employment does not control whether a plaintiff may bring a conditional claim for indemnification under the Illinois Governmental Tort Immunity Act, 745 ILCS 10/9-102. Perkins v. O'Shaughnessy, F. Supp. 2d , 2011 U.S. Dist. LEXIS 12775 (N.D. Ill. Feb. 9, 2011).

Plaintiffs brought an indemnification claim conditioned on a possible judgment against the police officers, who were employees of the City of Chicago; plaintiffs could bring such claims under the Illinois Governmental Tort Immunity Act, 745 ILCS 10/9-102. Perkins v. O'Shaughnessy, F. Supp. 2d , 2011 U.S. Dist. LEXIS 12775 (N.D. Ill. Feb. 9, 2011).

Excess insurer had to indemnify an insured municipality in the amount remaining from its loss after the primary insurer fulfilled its obligation because (1) the excess insurer's policy was triggered as the underlying malicious prosecution claim fell within the policy period; (2) the excess insurer's voluntary assumption defense failed because the insured was obligated to pay the judgment entered against its employee under the Illinois Local Governmental Employees Tort Immunity Act, 745 ILCS 10/9-102, and the insured did not voluntarily assume the employee's judgment under 745 ILCS 10/2-302 when it failed to raise a statute of limitations defense to the underlying claim under 745 ILCS 10/8-101 because any statute of limitations challenge by the insured would have failed under binding precedent; and (3) 65 ILCS 5/1-4-6 did not affect the operation of 745 ILCS 10/9-102, which required the insured to pay the judgment. Am. Safety Cas. Ins. Co. v. City of Waukegan, 776 F. Supp. 2d 670, 2011 U.S. Dist. LEXIS 21393 (N.D. Ill. 2011).

Because an official capacity claim against the county sheriff remained for trial, the county itself remained a necessary defendant in the case for purposes of indemnification pursuant to 745

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ILCS 10/9-102 of the Tort Immunity Act. Estate of Wells v. Bureau County, 723 F. Supp. 2d 1061, 2010 U.S. Dist. LEXIS 66213 (C.D. Ill. 2010).

Defendant county's obligation to pay judgments against a state's attorney under 745 ILCS § 10/9-102 was not a covered occurrence or accident as defined by the insurance policies at issue. The obligation to pay a judgment did not mean the county itself was liable to an underlying plaintiff, but rather, the county was only a necessary party to the suit so that, as an insurer or backstop for the independent official, it could veto improvident settlements; moreover, the obligation to indemnify an official for liability arose by operation of law and was not an occurrence. Nat'l Cas. Co. v. McFatridge, 604 F.3d 335, 2010 U.S. App. LEXIS 8762 (7th Cir. 2010).

Defendants' motion to dismiss plaintiff's indemnity claims against defendant town under the Illinois Tort Immunity Act, 745 ILCS 10/9-102, was denied because plaintiff had stated claims against defendants, the town president and police officers, pursuant to 42 U.S.C.S. § 1983, and had alleged that defendants committed the acts complained of in the scope of their employment. Gardunio v. Town of Cicero, 674 F. Supp. 2d 976, 2009 U.S. Dist. LEXIS 110880 (N.D. Ill. 2009).

Court denied a village's motion to dismiss plaintiffs' claim under 745 ILCS 10/9-102 alleging that the village was liable for any judgment against its police officers if they were acting within the scope of their employment during their encounter with plaintiffs because 745 ILCS 10/9-102 conferred a right on plaintiffs, as the alleged victims of the officers' tort, and thus, they had standing to enforce it; while the village could not be made to pay a judgment while the liability of its employees was still in question, it did not follow that plaintiffs could not proceed under 745 ILCS 10/9-102 until a judgment against the officers became final. Blancas v. Vill. of Rosemont, F. Supp. 2d , 2008 U.S. Dist. LEXIS 88380 (N.D. Ill. May 21, 2008).

Bifurcation under Fed. R. Civ. P. 42(b) of a parent's 42 U.S.C. § 1983 Monell claim against a city from other claims against the city and police officers in an excessive force case was not warranted; the city's indemnification of the officers under 745 ILCS 10/9-102 would not have extinguished the separate claim against the city, as nominal damages would still have been available. Cadiz v. Kruger, F. Supp. 2d , 2007 U.S. Dist. LEXIS 88458 (N.D. Ill. Nov. 29, 2007).

When a plaintiff makes a claim under 745 ILCS 10/9-102, for judgment against a municipality for its employees' tortious conduct within the scope of their employment, a request to bar all evidence or argument regarding indemnification is overly broad; the plaintiff cannot argue that the city will pay the costs on the claims against defendants, without offering evidence that their financial circumstances are modest (which they are entitled to do as to a claim for punitive damages). Rodriguez v. Woodall, F. Supp. 2d , 2005 U.S. Dist. LEXIS 4760 (N.D. Ill. Mar. 28, 2005).

City's motion to dismiss an individual's indemnification claim under 745 ILCS 10/9-102 was denied where the individual sufficiently alleged that the officer was or had been a city employee who had acted within the scope of his employment during the tortious conduct, i.e., macing him and inflicting multiple gunshot wounds upon him after he was found sleeping in a limousine. Malden v. City of Waukegan, F. Supp. 2d , 2004 U.S. Dist. LEXIS 20843 (N.D. Ill. Oct. 13, 2004).

Where an arrestee's 42 U.S.C. § 1983 claims against a village police officer for unreasonable search, malicious prosecution, and due process were dismissed for failure to state a cause of action, the arrestee's claim against the village for statutory indemnification under 745 ILCS 10/9-102 was also subject to dismissal because the indemnification claim was dependent upon a finding that the officer violated the arrestee's constitutional rights. Mocny v. Rake, F. Supp. 2d , 2004 U.S. Dist. LEXIS 14614 (N.D. Ill. July 29, 2004).

In the sexual harassment case, pursuant to 745 ILCS 10/9-102, against a police officer, the district court erred when it decided indemnity before liability and then allowed a premature

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appeal; the only alternative was to vacate the sentence and the related summary judgment. Doe v. City of Chicago, 360 F.3d 667, 2004 U.S. App. LEXIS 3811 (7th Cir. 2004).

Village's motion, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss police officers' claims for indemnification asserted under 745 ILCS 10/9-102 was denied because it was not necessary to plead a conspiracy for recovery under the statute. Jamison v. Luster, F. Supp. 2d , 2003 U.S. Dist. LEXIS 23048 (N.D. Ill. Dec. 19, 2003).

Where an officer was entitled to summary judgment on an excessive force claim (because the decedent's pointing his gun at the officer, an act reasonably perceived by the officer to constitute an imminent threat to his life, warranted the use of deadly force), the court also had to grant summary judgment on the administratrix's claims against the city for respondeat superior liability and indemnification; there could be no vicarious liability without primary liability. Taylor v. City of Chi., F. Supp. 2d , 2003 U.S. Dist. LEXIS 17433 (N.D. Ill. Sept. 29, 2003).

Undisputed facts showed that as soon as the city became aware of the co-worker's sexual harassment, it immediately caused that harassment to end; because the city could not have reasonably anticipated the co-worker's acts, the city was not liable for indemnification as a matter of law. McPherson v. City of Waukegan, F. Supp. 2d , 2003 U.S. Dist. LEXIS 9098 (N.D. Ill. May 29, 2003), aff'd, 379 F.3d 430 (7th Cir. 2004).

Injunctive Relief

The statute does not apply to the payment of costs of complying with injunctive relief. People Who Care v. Tax Objectors (In re Consolidated Objections to Tax Levies of Sch. Dist. No. 205), 193 Ill. 2d 490, 250 Ill. Dec. 745, 739 N.E.2d 508, 2000 Ill. LEXIS 1687 (2000).

A school district could not levy taxes to fund injunctive relief ordered by a federal court in a school desegregation and educational discrimination class action since the relief ordered did not constitute "compensatory damages" within the meaning of this section. People Who Care v. Tax Objectors (In re Consolidated Objections to Tax Levies of Sch. Dist. No. 205), 306 Ill. App. 3d 1104, 240 Ill. Dec. 155, 715 N.E.2d 1212, 1999 Ill. App. LEXIS 582 (2 Dist. 1999), aff'd, 193 Ill. 2d 490, 250 Ill. Dec. 745, 739 N.E.2d 508 (2000).

Jurisdiction

The district court had jurisdiction over a supplemental proceeding brought under Rule 69(a), F.R.Civ.P. against a city to enforce a judgment against a police officer in the plaintiff's civil rights action against the officer. Yang v. City of Chicago, 137 F.3d 522 (7th Cir. 1998), cert. denied, 525 U.S. 1140, 119 S. Ct. 1031, 143 L. Ed. 2d 40 (1999).

Because both counts were so related to claims in the action within the district courts original jurisdiction that they formed part of the same case or controversy under U.S. Const., Art. III, and because neither of them came within the grounds for declination of exercise of such supplemental jurisdiction specified in 28 U.S.C. § 1367(c), they were sustained. Ellis ex rel. Ingram v. CHA Police Officers, 828 F. Supp. 45 (N.D. Ill. 1993).

Liability

City's police officer was not liable to an arrestee for false imprisonment or excessive force, thus, the city could not be held liable for any injury resulting from the officer's actions. Tibbs v. City of Chicago, F. Supp. 2d , 2005 U.S. Dist. LEXIS 4510 (N.D. Ill. Feb. 8, 2005).

Based on 745 ILCS 10/9-102, plaintiff demanded that, should the court find the deputy sheriff liable for the acts alleged in the complaint, the county and the sheriff must pay plaintiff any

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judgment obtained against the deputy. The statute operated to require a county to pay for judgments entered against a sheriff in his official capacity, thus the county's motion to dismiss it from Count IV was denied. Wallace v. Masterson, 345 F. Supp. 2d 917, 2004 U.S. Dist. LEXIS 24053 (N.D. Ill. 2004).

Where an individual claimed that, regardless of whether four off-duty police officers were acting within the scope of their employment when they allegedly beat him, the city was still liable for battery under the doctrine of respondeat superior and was responsible for any judgment entered against the officers under 745 ILCS 10/9-102 because the city "ratified" the officers' actions, the individual's claim failed on summary judgment; the individual did not cite any authority for the proposition that ratification was sufficient to impose liability under the doctrine of respondeat superior or pursuant to 745 ILCS 10/9-102. Lyons v. Adams, 257 F. Supp. 2d 1125, 2003 U.S. Dist. LEXIS 9907 (N.D. Ill. 2003).

While a municipality cannot be held directly liable under 42 U.S.C. § 1983 on a theory of respondent superior, a plaintiff may join a municipality in a suit against the municipality's employee using 745 ILCS 10/9-102. Tibbs v. City of Chi., F. Supp. 2d , 2003 U.S. Dist. LEXIS 1849 (N.D. Ill. Feb. 5, 2003).

Even a home rule unit does not have the authority under the Illinois Constitution to limit a city's liability for the torts of its employees to acts that were not willful misconduct. Wilson v. City of Chicago, 900 F. Supp. 1015 (N.D. Ill. 1995).

Pendent Jurisdiction

- Basis

A municipality's liability under this section is based solely on the employer-employee relationship, and does not arise until judgment has been entered against an employee; thus, to permit such a claim to be brought pre-judgment would be tantamount to exercising pendent jurisdiction based on respondeat superior, which would circumvent the jurisdictional limitation which allows a plaintiff to bring a municipality into federal court only when a municipal custom or policy has been alleged. Rosentreter v. Munding, 736 F. Supp. 165 (N.D. Ill. 1990).

Permissible Use of Funds

Appellate court found in response to the trial court's certified questions in a tax objection case that some expenditures by the taxing districts pursuant to tax levies authorized under 745 ILCS 10/9-107(b) involved permissible risk management responsibilities, especially where those responsibilities identified and implemented techniques to reduce liability exposure in order to protect the taxing district and were not merely ordinary job duties; however, it also found that the first school district's use of funds to pay for a program that would help hold off threatened litigation by an organization representing minorities was not a permissible use of funds pursuant to 745 ILCS 10/9-102 because the funds were to try and prevent litigation, a remedial goal, rather than the permissible use of paying a judgment or settlement for compensatory damages. Tax Objectors v. Pearl City Sch. Dist. No. 200 (In re Objections to Tax Levies), 372 Ill. App. 3d 562, 310 Ill. Dec. 37, 865 N.E.2d 361, 2007 Ill. App. LEXIS 335 (1 Dist. 2007).

Personal Liability

Seventh Circuit precedent, which holds that an Illinois county is a required party under Fed. R. Civ. P. 19 that must be joined as an additional defendant in a 42 U.S.C. § 1983 suit brought against a county sheriff in his official capacity, does not apply if the suit is brought against the sheriff or a sheriff's deputy in his or her individual capacity: (1) 745 ILCS 10/9-102 is what makes

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a county a required party in official capacity suits brought against county sheriffs, as 745 ILCS 10/9-102 requires counties to pay for any judgment entered against county sheriffs in their official capacities; (2) counties do not have similar liability with regard to sheriff's deputies because they can not be held vicariously liable for the actions of those deputies, as pursuant to Ill. Const. Art. VII, § 4(c) and 55 ILCS 5/3-6008, county sheriffs are independently elected county officers who are authorized to hire and appoint their own deputies; and (3) a judgment may be entered against a sheriff or a sheriff's deputy in his or her individual capacity, without regard to any collateral sources to which that defendant might turn to fund the judgment. Askew v. Sheriff of Cook County, 568 F.3d 632, 2009 U.S. App. LEXIS 10466 (7th Cir. 2009).

Punitive Damages

- Civil Rights Action

This section did not waive a county's immunity from punitive damages for actions of its employees in their official capacities for purposes of a civil rights action brought pursuant to 42 U.S.C. § 1983. Strandell v. Jackson County, 648 F. Supp. 126 (S.D. Ill. 1986).

Reversible Error

District court committed reversible error in dismissing a former county jail detainee's 42 U.S.C. § 1983 suit for failure to join necessary party: (1) the detainee asserted constitutional violation claims against a county corrections officer in his individual capacity and Monell liability claims against a county sheriff in his official capacity; (2) pursuant to existing Seventh Circuit precedent, the county was necessary party with regard to the official capacity claims asserted against the sheriff because pursuant to 745 ILCS 10/9-102, it was required it pay any judgment entered against the sheriff in his official capacity; (3) instead of dismissing the suit for failure to join the county as an additional defendant, pursuant to Fed. R. Civ. P. 19(a)(2), the district court should have ordered the county to be joined as an additional defendant in the suit because the joinder of the county would not have destroyed its subject matter jurisdiction and it had personal jurisdiction over the county; (4) in his appellate brief, however, the detainee had waived his official capacity claims against the county sheriff, and he was bound by that waiver; and (5) therefore, on remand, the suit would proceed against the corrections officer only, and the county did not have to be joined as a required party under Fed. R. Civ. P. 19(a)(2) in the remanded action because the officer was employed by the sheriff, who pursuant to Ill. Const. Art. VII, § 4(c), was an independently elected county official and not a county employee, and because any judgment entered against the officer would be against him individually, without regard to any collateral sources to which he might turn to fund that judgment. Askew v. Sheriff of Cook County, 568 F.3d 632, 2009 U.S. App. LEXIS 10466 (7th Cir. 2009).

Scope of Employment

City could not be held liable to an employee for indemnification under 745 ILCS 10/9-102 based on the alleged actions of two city officials, as neither official retaliated against the employee under 42 U.S.C. § 1983 and the First Amendment; because the officials were not liable, the city could not be held liable pursuant to 745 ILCS 10/2-109. However, there were fact questions as to whether a manager retaliated against the employee due to the employee's lack of political activity and whether any such actions were within the scope of the manager's employment. Sebastian v. City of Chicago, F. Supp. 2d , 2008 U.S. Dist. LEXIS 60570 (N.D. Ill. July 24, 2008).

Victim of crime committed against her by a police officer could not recover the 42 U.S.C. § 1983 judgment she obtained against the officer from the city that employed him via 745 ILCS 10/9-102. No reasonable jury could find that the officer was acting within the scope of his employment when he announced himself as a police officer, falsely claimed he had a warrant, detained and

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handcuffed the victim and searched her home. Rivera v. City of Chicago, F. Supp. 2d , 2005 U.S. Dist. LEXIS 25271 (N.D. Ill. Oct. 24, 2005).

- In General

Whether defendant off duty police officer was acting within the scope of employment for purposes of 745 ILCS 10/9-102 and 42 U.S.C. § 1983, as to defendant city's liability for the customer's indemnity claim, was a jury issue and it did not depend on that fact that the officer was off duty, did not wear a uniform, and showed no badge during a fight in a bar when the customer alleged he was shot by the officer; the officer had testified that his actions satisfied police orders to take action when a crime was being committed, that he perceived himself as taking police action to stop crime, and that was why he shouted "police" at least once. Coles v. City of Chicago, 361 F. Supp. 2d 740, 2005 U.S. Dist. LEXIS 8069 (N.D. Ill. 2005).

City's motion for summary judgment was denied because while plaintiff had not explicitly charged the city with indemnification under 745 ILCS 10/9-102, plaintiff satisfied the requirements of notice pleading and genuine issues of material fact existed as to whether the off-duty police officer was the "peace-keeper" when he broke up a fight between plaintiff and another off-duty police officer, therefore furthering the interest of the city to preserve the peace and as such was acting within the scope of his employment. Goldsmith v. Murphy, F. Supp. 2d , 2004 U.S. Dist. LEXIS 21327 (N.D. Ill. Oct. 20, 2004).

City's motion for summary judgment was denied because, while plaintiff had not explicitly charged the city with indemnification under 745 ILCS 10/9-102, plaintiff satisfied the requirements of notice pleading and genuine issues of material fact existed as to whether the off-duty police officer was the "peace-keeper" when he broke up a fight between plaintiff and another off-duty police officer, therefore furthering the interest of the city to preserve the peace and, as such, was acting within the scope of his employment. Goldsmith v. Murphy, F. Supp. 2d , 2004 U.S. Dist. LEXIS 21327 (N.D. Ill. Oct. 20, 2004).

Those actions having an intimate bearing on the duties normally assigned to the office of employment, even though usurped or misused, must be considered as falling within the meaning of the term "scope of employment"; if the relevant acts are shown to be a natural part of or incident to the service of employment, this section is satisfied. Coleman v. Smith, 814 F.2d 1142 (7th Cir. 1987).

- Not Shown

District court properly granted summary judgment under Fed. R. Civ. P. 56 in favor of an employer in an employee's action seeking indemnity from the employer for any judgment obtained against a co-employee for sexual battery and for intentional infliction of emotional distress; the employer, a city, was immune under 745 ILCS 10/9-102 of the Illinois Tort Immunity Act, 745 ILCS 10/1-101 et seq., because the co-employee's actions were not within the scope of his employment and because the employer could not have reasonably anticipated the co-employee's allegedly tortious acts. McPherson v. City of Waukegan, 379 F.3d 430, 2004 U.S. App. LEXIS 16513 (7th Cir. 2004).

State law battery claim against four off-duty officers and a city alleging that the city was liable for battery under the doctrine of respondeat superior because the police officers were acting within the scope of their employment when they allegedly beat him against the officers under 745 ILCS 10/9-102 because the officers were acting, the individual's claims failed on summary judgment because: there was no evidence that the officers intended to serve the city's interests; the fight was a purely private affair and the officers did not intend to carry out any law enforcement function. Moreover, there was no evidence that the officers' actions were in any way connected to their duties as police officers. Lyons v. Adams, 257 F. Supp. 2d 1125, 2003 U.S. Dist. LEXIS 9907 (N.D. Ill. 2003).

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The defendant sheriff was entitled to summary judgment in an action alleging inappropriate sexual touching of the plaintiff inmate by a correctional officer and seeking indemnification by the sheriff since the alleged sexual touching was not within the scope of employment of the correctional officer. Dorsey v. Givens, 209 F. Supp. 2d 850, 2001 U.S. Dist. LEXIS 7735 (N.D. Ill. 2001).

- Shown

Appellate court answered a certified question under IRule 308(a), Supreme Court Rules to the effect that the statute of limitations contained in 745 ILCS 10/8-101 of the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., governed an accident victim's action against an animal control warden who was transporting a stray dog to an animal control facility at the time of an automobile collision. Accordingly, pursuant to 745 ILCS 10/9-102 of the Act, the warden's employer was obligated to reimburse him for liabilities he incurred for damages he caused while acting within the scope of his employment. Sperandeo v. Zavitz, 365 Ill. App. 3d 691, 302 Ill. Dec. 957, 850 N.E.2d 394, 2006 Ill. App. LEXIS 511 (1 Dist. 2006).

Sheriff's deputy was acting within the scope of employment for purposes of imposing respondeat superior liability on sheriff, when, while investigating a traffic accident while technically off duty, he shot one of the persons being investigated without good cause. Brown v. King, 328 Ill. App. 3d 717, 262 Ill. Dec. 897, 767 N.E.2d 357, 2001 Ill. App. LEXIS 878 (1 Dist. 2001), appeal denied, 201 Ill. 2d 561, 271 Ill. Dec. 923, 786 N.E.2d 181 (2002).

Where employee was enforcing the criminal law of Illinois overzealously by extracting confessions by criminal suspects by improper means, he was acting within the scope of his employment Wilson v. City of Chicago, 120 F.3d 681 (7th Cir. 1997).

Where local director of public works, who was on duty 24 hours per day, went to the village hall, picked up his assigned village vehicle, retrieved notes and a clipboard to use for village business, drove to inspect a village business, and proceeded in the village vehicle to a village garage for a meeting with a village superintendent to talk and give him notes regarding the retention pond, the director was within the scope of his employment when he was involved in an automobile accident on his way to the meeting. Herriott v. Powers, 236 Ill. App. 3d 151, 177 Ill. Dec. 584, 603 N.E.2d 654 (1 Dist. 1992).

Status as Employee

Official capacity claim against a county sheriff was not redundant of a 42 U.S.C.S. § 1983 claim against the county, as the sheriff was an independently elected officer and not an employee of the county. Because the county was required to pay any judgment entered against the sheriff in the sheriff's official capacity, both the sheriff and the county were necessary parties to the claim. Garrett v. Dart, F. Supp. 2d , 2010 U.S. Dist. LEXIS 67965 (N.D. Ill. July 8, 2010).

A village attorney was not an employee of the village for purposes of this section where he represented other clients besides the village, he was paid a retainer and then billed on an additional hourly basis, he worked out of his own office and used his own equipment, and the village did not control the manner or detail to be employed in connection with accomplishing any desired result. Warren v. Williams, 313 Ill. App. 3d 450, 246 Ill. Dec. 487, 730 N.E.2d 512, 2000 Ill. App. LEXIS 373 (1 Dist. 2000), appeal denied, 191 Ill. 2d 562, 250 Ill. Dec. 468, 738 N.E.2d 937 (2000).

Statute of Limitations

Claim that bar owners asserted against an Illinois city under 745 ILCS 10/9-102 was time-barred: (1) the parties agreed that a one year statute of limitations applied to that claim; (2) the owners

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had waited more than three years to file their suit after the incident giving rise to their claim occurred, i.e. after various city police officers allegedly engaged in a criminal conspiracy and robbed the owner's bar; and (3) equitable tolling did not apply because the owners did not allege that the city or any other defendant prevented them from timely filing their suit. Heidegger v. City of Chicago, 585 F. Supp. 2d 1006, 2008 U.S. Dist. LEXIS 87110 (N.D. Ill. 2008).

Timing

Even though their parents' tort claims and their claims under 745 ILCS 10/9-102 and 42 U.S.C. §§ 1983, 1985, against an Illinois city and various city police officers were time-barred, pursuant to 35 ILCS 5/13-211 the parents' two children could still pursue those claims because they were minors when the suit was filed, and they still had not reached the age of 18 years old. Reyes v. City of Chicago, 585 F. Supp. 2d 1010, 2008 U.S. Dist. LEXIS 87153 (N.D. Ill. 2008).

Arrestees' claim against a city under 745 ILCS 10/9-102 based on the alleged wrongdoing of a city police officer was not untimely, as it was not necessary to wait until judgment was obtained against the officer to bring the statutory claim against the city. However, a 745 ILCS 10/9-102 claim against a village failed because underlying tort claims against a village official had been dismissed. Sassak v. City of Park Ridge, 431 F. Supp. 2d 810, 2006 U.S. Dist. LEXIS 15546 (N.D. Ill. 2006).

Indemnification claim against a sheriff and a county brought under 745 ILCS 10/9-102 was not dismissed pursuant to Fed. R. Civ. P. 12(b)(6) because such a claim could be asserted before a judgment had been entered against one of their employees. Weber v. Keller, F. Supp. 2d , 2004 U.S. Dist. LEXIS 10923 (N.D. Ill. June 16, 2004).

Plaintiff's count for city liability pursuant to 745 ILCS 10/9-102 was premature and could not be brought prior to judgment. Atlas v. City of N. Chi., F. Supp. 2d , 2004 U.S. Dist. LEXIS 3995 (N.D. Ill. Mar. 11, 2004).

745 ILCS 10/9-102 claims are strictly relegated to the post-judgment stages of litigation. 745 ILCS 10/9-102 claim cannot be brought prior to a judgment. Concealed Carry, Inc. v. City of Chicago, F. Supp. 2d , 2003 U.S. Dist. LEXIS 17425 (N.D. Ill. Sept. 30, 2003).

Where the plaintiff sued a police officer and a city under 42 U.S.C. § 1983 and the city argued that the plaintiff's claim was premature because it had not refused indemnification of the police officer, the court denied the city's Fed. R. Civ. P. 12(b)(6) motion because courts allow plaintiffs to include claims brought under 745 ILCS 10/9-102 against municipalities in their complaints against employees. Tibbs v. City of Chi., F. Supp. 2d , 2003 U.S. Dist. LEXIS 1849 (N.D. Ill. Feb. 5, 2003).

City's motion to strike or dismiss a former employee's indemnification claim was denied; the claim was timely filed although the employee's termination had occurred almost three years earlier, as 745 ILCS 10/9-102 allowed a plaintiff the option of filing earlier but did not require an earlier filing. Fogarty v. City of Chi., F. Supp. 2d , 2002 U.S. Dist. LEXIS 20531 (N.D. Ill. Oct. 22, 2002).

A sheriff could be sued for indemnification before liability was established against his employee. Buttron v. Sheahan, F. Supp. 2d , 2001 U.S. Dist. LEXIS 1042 (N.D. Ill. Jan. 31, 2001).

Claims under this section are strictly relegated to the post judgment stages of litigation, and cannot be brought prior to judgment against a city employee. Spiegel v. City of Chicago, 920 F. Supp. 891 (N.D. Ill. 1996).

A count of a complaint seeking indemnification from a village in the event village police officers were found liable to the plaintiffs was not premature, notwithstanding that the village had not declared that it would pay a judgment rendered against the officers; the plaintiff could not be forced to first obtain a judgment against the officers and then be forced to initiate ancillary

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proceedings to obtain payment if the village refused to indemnify the officers. Savin v. Robinson, F. Supp. 2d , 2001 U.S. Dist. LEXIS 16378 (N.D. Ill. Oct. 2, 2001).

Tort Judgment

Wife of a private citizen subjected to an unreasonable seizure was permitted to join in her husband's claims for statutory indemnification against the village for any judgment he obtained against the village police officer who conducted the search. Shemenski v. Chapiesky, F. Supp. 2d , 2003 U.S. Dist. LEXIS 13177 (N.D. Ill. July 28, 2003).

Given that federal law expressly authorizes attorney fees and costs for prevailing civil rights plaintiffs, such awards fall within the express definition of the terms "tort judgment" and "injury" as defined in this section. Yang v. City of Chicago, 29 F. Supp. 2d 480 (N.D. Ill. 1998).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Employment Law, "see, See 28 S. Ill. U.L.J. 705 (2004).

RESEARCH REFERENCES

Amount of appropriation as limitation on damages for breach of contract recoverable by one contracting with government agency. 40 ALR4th 998.

Liability of municipal corporation or other governmental entity for injury or death caused by action or inaction of off-duty police officer. 36 ALR5th 1.

Practice Guides and Treatises.

Employment Discrimination § 5.18 Punitive damages (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 3:103 Payment of judgment or settlement.

Illinois Jurisprudence, Personal Injury and Torts § 3:35 Employee liability as affecting liability of entity.

Illinois Jurisprudence, Personal Injury and Torts § 3:102 Jurisdiction and notice; limitations period.

§ 745 ILCS 10/9-103. [Insurance methods]

Sec. 9-103. (a) A local public entity may protect itself against any property damage or against any liability or loss which may be imposed upon it or one of its employees for a tortious act under Federal or State common or statutory law, or imposed upon it under the Workers' Compensation Act [820 ILCS 305/1 et seq.], the Workers' Occupational Diseases Act [820 ILCS 310/1 et seq.], or the Unemployment Insurance Act [820 ILCS 405/220 et seq.] by means including, but not limited to, insurance, individual or joint self-

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insurance, including all operating and administrative costs and expenses directly associated therewith, claims services and risk management directly attributable to loss prevention and loss reduction, legal services directly attributable to the insurance, self-insurance, or joint self-insurance program, educational, inspectional, and supervisory services directly relating to loss prevention and loss reduction, or participation in a reciprocal insurer as provided in Sections 72, 76 and 81 of the Illinois Insurance Code [215 ILCS 5/72, 215 ILCS 5/76 and 215 ILCS 5/81]. Insurance shall be carried with a company authorized by the Department of Insurance to write such insurance coverage in Illinois.

(a-5) A local public entity may individually or jointly self-insure provided it complies with any other statutory requirements specifically related to individual or joint self-insurance by local public entities. Whenever the terms "self-insure" or "self-insurance" are utilized within this Act, such term shall apply to both individual and joint self-insurance. The expenditure of funds of a local public entity to protect itself or its employees against liability is proper for any local public entity. A local public entity that has individually self-insured may establish reserves for expected losses for any liability or loss for which the local public entity is authorized to purchase insurance under this Act. The decision of the local public entity to establish a reserve and the amount of the reserve shall be based on reasonable actuarial or insurance underwriting evidence. Property taxes shall not be levied or extended if the effect is to increase the reserve beyond 125% of the actuary's or insurance underwriter's estimated ultimate losses at the 95% confidence level. Certification of the amount of the reserve shall be made by the independent auditor, actuary, or insurance underwriter and included in an annual report. The annual report shall also list all expenditures from the reserve or from property taxes levied or extended for tort immunity purposes. Total claims payments and total reserves must be listed in aggregate amounts. All other expenditures must be identified individually. A local public entity that maintains a self-insurance reserve or that levies and extends a property tax for tort immunity purposes must include in its audit or annual report any expenditures made from the property tax levy or self-insurance reserve within the scope of the audit or annual report.

(b) A local public entity may contract for or purchase any of the guaranteed fund certificates or shares of guaranteed capital as provided for in Section 56 of the Illinois Insurance Code [215 ILCS 5/56]. The expenditure of funds of the local public entity for said contract or purchase is proper for any local public entity.

(c) Any insurance company that provides insurance coverage to a local public entity shall utilize any immunities or may assert any defenses to which the insured local public entity or its employees are entitled. Public entities which are individually or jointly self-insured shall be entitled to assert all of the immunities provided by this Act or by common law or statute on behalf of themselves or their employees unless the local public entities shall elect by action of their corporate authorities or specifically contract to waive in whole or in part such immunities.

(d) Within 30 days after January 1, 1991, and within 30 days after each January 1 thereafter, local public entities that are individually or jointly self-insured to protect against liability under the Workers' Compensation Act [820 ILCS 305/1 et seq.] and the

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Workers' Occupational Diseases Act [820 ILCS 310/1 et seq.] shall file with the Illinois Workers' Compensation Commission a report indicating an election to self-insure.

(Source: P.A. 86-1405; 87-706; 89-150, § 10; 91-628, § 5; 93-721, § 55.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 9-103.

Cross References.

As to the authority for a Board of Library Trustees to provide for the contracting and payment of premiums for insurance against loss or liability as provided by this section, see 75 ILCS 5/4-14.

As to the authority of a county that has elected to self-insure under this section being able to self-insure with respect to official bonds, thus satisfying the requirements of the Official Bond Payment Act, see 5 ILCS 270/1.

Effect of Amendments. The 1995 amendment by P.A. 89-150, effective July 14, 1995, in subsection (a) substituted "including all operating and administrative costs and expenses directly associated therewith" for "the purchase of", substituted "and risk management directly attributable to loss prevention and loss reduction" for "and", substituted "directly attributable to the insurance, self-insurance, or joint self-insurance program" for "the purchase of", added a comma after "inspectional", inserted "directly" and inserted "and loss reduction"; added the subsection (a-5) designation; and in subsection (a-5) added the fourth through eighth sentences.

The 1999 amendment by P.A. 91-628, effective January 1, 2000, substituted "against any property damage or against any liability or loss" for "against any liability, property damage or loss" near the beginning of subsection (a); and added the last four sentences in subsection (a-5).

The 2004 amendment by P.A. 93-721, effective January 1, 2005, substituted "Illinois Workers' Compensation" for "Industrial" in subsection (d).

CASE NOTES

Analysis

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- Self-Insured Retention
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- Former Provisions
- Not Shown
- Purchase of Insurance

Constitutionality

This section is not unconstitutional on equal protection grounds. Poliny v. Soto, 178 Ill. App. 3d 203, 127 Ill. Dec. 397, 533 N.E.2d 15 (1 Dist. 1988).

Applicability

Intergovernmental risk management agency was a pooled self-insurance group of governmental entities that shared the risks and costs of civil liabilities and it could not be treated as a private insurance carrier; thus, a clause making a private insurance carrier's uninsured motorist coverage excess if "other coverage" existed was not operable, and the private carrier had primary coverage responsibility to a police officer it insured who was injured in an accident while he was in a squad car insured by the risk management agency. Yaccino v. State Farm Mut. Auto. Ins. Co., 346 Ill. App. 3d 431, 281 Ill. Dec. 712, 804 N.E.2d 677, 2004 Ill. App. LEXIS 106 (2 Dist. 2004).

- Self-Insured Retention

The intent of the Tort Immunity Act is to protect public funds, and the court must carry out that intent regardless of whether a plaintiff seeks damages in an amount below or above the municipality's self-insured retention where city had no insurance for the first $125,000 of the judgment against them, that amount would be paid from public funds and therefore the Tort Immunity Act should have been applied to the extent of the $125,000 deductible. Mastrandrea v. Chicago Park Dist., 259 Ill. App. 3d 897, 198 Ill. Dec. 440, 632 N.E.2d 1051 (1 Dist.), appeal denied, 157 Ill. 2d 504, 205 Ill. Dec. 167, 642 N.E.2d 1284 (1994).

Employee Misconduct

- Illustrative Cases

The isolated misconduct of two employees in refusing to furnish a disability medical certificate to another agency is precisely the type of random and unauthorized act which, even if deliberate, is not deemed the act of their municipal employer. Schroeder v. City of Chicago, 927 F.2d 957 (7th Cir. 1991).

Requirement

Subsection (c) of this section requires a contractual provision specifically waiving all or part of a governmental entity's tort immunity before such waiver will be found to exist. Burley v. On the Waterfront, Inc., 228 Ill. App. 3d 412, 170 Ill. Dec. 187, 592 N.E.2d 623 (2 Dist. 1992).

Self-insurance

Umbrella/automobile insurer of a county employee could not establish that the self-insured county was a carrier and therefore was not entitled to equitable subrogation of its settlement with a driver who was injured in a collision with the insured/employee. State Farm Mut. Auto. Ins. Co. v. Du Page County, Ill. App. 3d , 352 Ill. Dec. 891, 955 N.E.2d 67, 2011 Ill. App. LEXIS 638 (2 Dist. 2011).

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Self-insured municipality is not an insurer or an insurance company, nor does it provide insurance coverage. State Farm Mut. Auto. Ins. Co. v. Du Page County, Ill. App. 3d , 352 Ill. Dec. 891, 955 N.E.2d 67, 2011 Ill. App. LEXIS 638 (2 Dist. 2011).

Waiver

- In General

Immunity under the Local Governmental and Governmental Tort Immunity Act, former Ill. Rev. Stat. ch. 85, para. 3-106 (now 745 ILCS 10/3-106), is qualified by former Ill. Rev. Stat. ch. 85, para. 9-103(c) (now 745 ILCS 10/9-103), which provides that a local public entity waives immunity from a particular form of liability by obtaining insurance to cover that liability. Adamcyzk v. Forest Preserve Dist., 151 Ill. App. 3d 320, 104 Ill. Dec. 537, 502 N.E.2d 1197, 1986 Ill. App. LEXIS 3319 (1 Dist. 1986).

Subsection (b) of this section does not waive the right of a public entity to deny liability for negligent conduct. Kobylanski ex rel. Kobylanski v. Chicago Bd. of Educ., 22 Ill. App. 3d 551, 317 N.E.2d 714 (1 Dist. 1974), aff'd, 63 Ill. 2d 165, 347 N.E.2d 705 (1976).

- Former Provisions

Under the pre-1986 amendment version, where a judgment, or portion thereof, would be paid from public funds, the immunities of the Act were not waived to the extent of the exposure of the government funds. Zimmerman v. Village of Skokie, 183 Ill. 2d 30, 231 Ill. Dec. 914, 697 N.E.2d 699 (1998).

Under the pre-1986 amendment version, if a municipality decided to protect individuals against negligent conduct by acquiring commercial insurance, the immunity was waived since government funds were no longer in jeopardy and immunity would inure to the benefit of private investors who had assumed the risk of insurers. Zimmerman v. Village of Skokie, 183 Ill. 2d 30, 231 Ill. Dec. 914, 697 N.E.2d 699 (1998).

For cases construing former version of this section providing for waiver of right to deny liability, see Lynwood v. Decatur Park Dist., 26 Ill. App. 2d 431, 168 N.E.2d 185 (3 Dist. 1960); Rapacz v. Township High Sch., 2 Ill. App. 3d 1095, 278 N.E.2d 540 (1 Dist. 1971); Gowler v. City of Mount Vernon, 7 Ill. App. 3d 466, 288 N.E.2d 80 (5 Dist. 1972); Fanio v. John W. Breslin Co., 51 Ill. 2d 366, 282 N.E.2d 443 (1972); Sullivan v. Midlothian Park Dist., 51 Ill. 2d 274, 281 N.E.2d 659 (1972); Housewright v. City of LaHarpe, 51 Ill. 2d 357, 282 N.E.2d 437 (1972); Marshall-Putnam Farm Bureau, Inc. v. Shaver, 12 Ill. App. 3d 402, 299 N.E.2d 10 (3 Dist. 1973); Lightfoot v. Henderson County Drainage Dist., 21 Ill. App. 3d 124, 315 N.E.2d 142 (3 Dist. 1974); Kobylanski ex rel. Kobylanski v. Chicago Bd. of Educ., 22 Ill. App. 3d 551, 317 N.E.2d 714 (1 Dist. 1974), aff'd, 63 Ill. 2d 165, 347 N.E.2d 705 (1976); Kobylanski v. Chicago Bd. of Educ., 63 Ill. 2d 165, 347 N.E.2d 705 (1976); Weinstein v. Evanston Tp. Community Consol. Sch., 40 Ill. App. 3d 6, 351 N.E.2d 236 (1 Dist. 1976); Lansing v. County of McLean, 45 Ill. App. 3d 91, 3 Ill. Dec. 755, 359 N.E.2d 165 (4 Dist. 1977), modified on other grounds, 69 Ill. 2d 393, 14 Ill. Dec. 543, 372 N.E.2d 822 (1978); Hannon v. Counihan, 54 Ill. App. 3d 509, 12 Ill. Dec. 210, 369 N.E.2d 917 (2 Dist. 1977); Eason v. Garfield Park Community Hosp., 55 Ill. App. 3d 483, 13 Ill. Dec. 72, 370 N.E.2d 1099 (1 Dist. 1977); Pippin v. Chicago Hous. Auth., 58 Ill. App. 3d 1029, 16 Ill. Dec. 280, 374 N.E.2d 1055 (1 Dist. 1978), aff'd, 78 Ill. 2d 204, 35 Ill. Dec. 530, 399 N.E.2d 596 (1979); Lansing v. County of McLean, 69 Ill. 2d 562, 14 Ill. Dec. 543, 372 N.E.2d 822 (1978); Bollinger ex rel. Bollinger v. Schneider, 64 Ill. App. 3d 758, 21 Ill. Dec. 522, 381 N.E.2d 849 (3 Dist. 1978); Melbourne Corp. v. City of Chicago, 76 Ill. App. 3d 595, 31 Ill. Dec. 914, 394 N.E.2d 1291 (1 Dist. 1979); Beckus ex rel. Beckus v. Chicago Bd. of Educ., 78 Ill. App. 3d 558, 33 Ill. Dec. 842, 397 N.E.2d 175 (1 Dist. 1979); Porter v. City of Urbana, 88 Ill. App. 3d 443, 43 Ill. Dec. 610, 410 N.E.2d 610 (4 Dist. 1980); Holda v. County of Kane, 88 Ill. App. 3d 522, 43 Ill. Dec. 552, 410 N.E.2d 552 (2 Dist. 1980); Devonshire v.

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Harper, 92 Ill. App. 3d 595, 48 Ill. Dec. 164, 416 N.E.2d 59 (5 Dist. 1981); Ferentchak v. Village of Frankfort, 121 Ill. App. 3d 599, 76 Ill. Dec. 950, 459 N.E.2d 1085 (3 Dist 1984), rev'd on other grounds, 105 Ill. 2d 474, 86 Ill. Dec. 443, 475 N.E.2d 822 (1985); Hintz v. Jamison, 743 F.2d 535 (7th Cir. 1984); Antiporek v. Village of Hillside, 135 Ill. App. 3d 871, 90 Ill. Dec. 596, 482 N.E.2d 415 (1 Dist. 1985); Turpen v. City of St. Francisville, 145 Ill. App. 3d 891, 99 Ill. Dec. 616, 495 N.E.2d 1351 (5 Dist. 1986); Antiporek v. Village of Hillside, 114 Ill. 2d 246, 102 Ill. Dec. 294, 499 N.E.2d 1307 (1986); People v. Sequoia Books, Inc., 149 Ill. App. 3d 383, 102 Ill. Dec. 460, 500 N.E.2d 82 (2 Dist. 1986), cert. denied, 484 U.S. 917, 108 S. Ct. 268, 98 L. Ed. 2d 225 (1987); Koh v. Village Greens, 158 Ill. App. 3d 226, 110 Ill. Dec. 677, 511 N.E.2d 854 (2 Dist. 1987); Schaffrath v. Village of Buffalo Grove, 160 Ill. App. 3d 999, 112 Ill. Dec. 417, 513 N.E.2d 1026 (1 Dist. 1987); Turner v. Green, 704 F. Supp. 139 (N.D. Ill. 1988); Swope v. Northern Ill.
Gas Co., 221 Ill. App. 3d 241, 163 Ill. Dec. 665, 581 N.E.2d 819 (3 Dist. 1991), cert. denied, 143 Ill. 2d 649, 167 Ill. Dec. 411, 587 N.E.2d 1026 (1992).

- Not Shown

An agreement to provide security protection did not waive a Park District's tort immunity pursuant to subsection (c) of this section. Burley v. On the Waterfront, Inc., 228 Ill. App. 3d 412, 170 Ill. Dec. 187, 592 N.E.2d 623 (2 Dist. 1992).

- Purchase of Insurance

Unlike the purchase of insurance which will result in the waiver of immunity, the retention of private security guards leaves the public entity exposed to same financial risk in attempting to cope with the identical problem as would be present by its own provision of police protection. Hill v. Chicago Hous. Auth., 233 Ill. App. 3d 923, 175 Ill. Dec. 104, 599 N.E.2d 1118 (1 Dist. 1992).

The waiver provision of this section, based on a local public entity's purchase of liability insurance, is inapplicable to suits based upon violations of this section and 105 ILCS 5/24-24. Kobylanski v. Chicago Bd. of Educ., 63 Ill. 2d 165, 347 N.E.2d 705 (1976).

OPINIONS OF ATTORNEY GENERAL

Analysis
Extent of Immunity
Limit

Extent of Immunity

The purchase of medical malpractice insurance by the department does not affect its immunity to claims pertaining to the clinic but unrelated to malpractice by physicians and to claims on matters unrelated to the clinic; the waiver of immunity is limited to the type of accents covered by the policy. 1979 Op. Atty. Gen. 82.

Limit

If a department has purchased malpractice insurance and is successfully sued on a claim that is actionable only because the department is insured, the extent of its liability is limited to the

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amount of the policy. 1979 Op. Atty. Gen. 82.

LEGAL PERIODICALS

For article, "Recent Trends in School Tort Immunity," see 71 Ill. B.J. 240 (1982).

For article, "Intergovernmental Cooperation and the Municipal Insurance Crisis," see 30 De Paul L. Rev. 325 (1981).

For comments, "The In Loco Parentis Status of Illinois School Teachers: An Unjustifiably Broad Extension of Immunity," see 10 J. Marshall J. Prac. & Proc. 629 (1977).

For note on School Law and Torts discussing Kobylanski v. Chicago Bd. of Ed., 63 Ill. 2d 165, 347 N.E.2d 705 (1976), see 65 Ill. B.J. 466 (1977).

For article, "Permitted But Not Intended: Boub v. Township of Wayne, Municipal Tort Immunity in Illinois, and the Right to Local Travel," see, See 38 J. Marshall L. Rev. 545 (2004).

RESEARCH REFERENCES

Municipal liability for negligent performance of building inspector's duties. 24 ALR5th 200.

Practice Guides and Treatises.

Proving Fault in Auto Accident Cases § 5.5 Actions Against Road Contractors and Municipalities (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 35:12 Effect of insurance.

§ 745 ILCS 10/9-104. [Installment payments]

Sec. 9-104. (a) Subject to subsection (b) of this Section, if a local public entity does not pay a tort judgment during the fiscal year in which it becomes final and if, in the opinion of its governing body, the payment of the judgment creates an unreasonable financial hardship for the local public entity it shall pay the balance of the judgment, with interest thereon, in installments.

(b) The court which enters judgment shall order that the governing body pay the judgment, with interest thereon, in not exceeding 10 annual installments if both of the following conditions are satisfied:

(1) The governing body of the local public entity has adopted an ordinance or resolution finding that an unreasonable hardship will result unless the judgment is paid in installments.

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(2) The court, after hearing, has found that payment of the judgment in installments as ordered by the court is necessary to avoid an unreasonable hardship.

(c) Each installment payment shall be of an equal portion of the principal of the judgment except that where a judgment is $500,000 or more the court may, upon a showing by the plaintiff of an extraordinary need for immediate funds in order to secure medical necessities immediately after judgment including, but not limited to, equipment, supplies, medication, residence or other items, order that unequal payments of the principal of the judgment be made in proportions to be determined by the court, but in no event shall any increase in a payment cause such payment to be greater than 50% of the judgment. The local public entity, in its discretion, may prepay any one or more installments or any part of an installment.

(d) A local public entity shall have the power to enter into a settlement agreement subject to a term not to exceed the period of years negotiated by the parties.

(Source: P.A. 84-1431.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 9-104.

Cross References.

As to the authority of a Board of Library Trustees to provide for the payment of any judgment for which it is liable in the manner provided for in this section, see 75 ILCS 5/4-14.

CASE NOTES

Property Interest

- Not Found

Where a city complied with this section, the plaintiffs did not have a right to immediate payment of their judgment under Illinois law and, thus did not have a property interest subject to due process protection. Tamalunis v. City of Georgetown, 757 F. Supp. 956 (C.D. Ill. 1991).

LEGAL PERIODICALS

For article, "Intergovernmental Cooperation and the Municipal Insurance Crisis," see 30 De Paul L. Rev. 325 (1981).

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§ 745 ILCS 10/9-105. [Issuance of bond]

Sec. 9-105. The board of a local taxing entity may, instead of following the procedure under subdivision (b) of Section 9-104 [745 ILCS 10/9-104] or when it considers the action advisable, issue general obligation or revenue bonds without referendum for the purpose of creating a reserve for or for the payment of any cost, liability or loss against which such entity may protect itself or self-insure pursuant to Section 9-103 [745 ILCS 10/9-103] or for the payment of which such entity may levy a tax pursuant to Section 9-107 [745 ILCS 10/9-107], including any or all tort judgments or settlements entered against or entered into by the entity or by or against another local public entity or an employee of that other public entity while acting within the scope of employment, either individually or where the local public entities have joined in an intergovernmental joint self-insurance contract which among other undertakings authorizes each local public entity to utilize its funds to protect, wholly or partially, any other local public entity or its employees against liability or loss in accordance with the intergovernmental contract. Such bonds may be issued in an amount necessary to fund a reserve created for any or all of the above described purposes including the discharge of obligations under such judgments or settlements. Such bonds shall not be considered debt under any statutory limitation, and may be issued in an amount, including existing indebtedness, in excess of any heretofore or hereafter imposed statutory limitation as to debt but subject to constitutional limits.

Any bonds issued under this Section as limited bonds as defined in Section 3 of the Local Government Debt Reform Act [30 ILCS 350/3] shall comply with the requirements of the Bond Issue Notification Act [30 ILCS 352/1 et seq.].

(Source: P.A. 85-854; 89-655, § 105.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 9-105.

Effect of Amendments. The 1996 amendment by P.A. 89-655, effective January 1, 1997, added the second paragraph.

CASE NOTES

Analysis

School Desegregation

Standing to Sue

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School Desegregation

A school district could not levy taxes to pay the debt service on general obligation bonds issued to fund capital improvement remedies ordered by a federal court in a school desegregation and educational discrimination class action since the relief ordered did not constitute compensatory damages and, therefore, could not be funded under the authority of the Tort Immunity Act. People Who Care v. Tax Objectors (In re Consolidated Objections to Tax Levies of Sch. Dist. No. 205), 306 Ill. App. 3d 1104, 240 Ill. Dec. 155, 715 N.E.2d 1212, 1999 Ill. App. LEXIS 582 (2 Dist. 1999), aff'd, 193 Ill. 2d 490, 250 Ill. Dec. 745, 739 N.E.2d 508 (2000).

Prejudice to the parties resulted from delay of intervenor contesting the funding of school desegregation plan, and intervention would not be allowed where, had he intervened earlier, other methods of funding could certainly have been explored; at the least the parties and the court would not have wasted the time and effort designing, approving and implementing the contested funding program under the Tort Immunity Act for which bonds had been issued, taxes levied, and remedial arrangements put into place. People Who Care v. Rockford Bd. of Educ., 68 F.3d 172 (7th Cir. 1995).

Standing to Sue

Township where hospital was located did not have standing to challenge a decision by the hospital to issue bonds and levy a real estate tax to fund the bonds, and the trial court also properly dismissed an action filed by taxpayers who owned property in the township which sought a declaration that the bonds and real estate taxes were void because the taxpayers had a legal remedy through the tax-objection process. Wood River Twp. v. Wood River Twp. Hosp., 331 Ill. App. 3d 599, 265 Ill. Dec. 270, 772 N.E.2d 308, 2002 Ill. App. LEXIS 511 (5 Dist. 2002), appeal denied, 202 Ill. 2d 665, 272 Ill. Dec. 355, 787 N.E.2d 170 (2002).

LEGAL PERIODICALS

For article, "Intergovernmental Cooperation and the Municipal Insurance Crisis," see 30 De Paul L. Rev. 325 (1981).

§ 745 ILCS 10/9-106. [Charges for services and facilities]

Sec. 9-106. A local public entity that derives revenue for its maintenance and operation from rates and charges made for services or facilities it provides shall in each fiscal year make rates and charges or both, or otherwise provide funds, in an amount sufficient to pay all its tort judgments and settlements in accordance with this Article and its obligations under the Workers' Compensation Act [820 ILCS 305/1 et seq.], the Workers' Occupational Diseases Act [820 ILCS 310/1 et seq.] and the Unemployment Insurance Act [820 ILCS 405/220 et seq.].

(Source: P.A. 82-783.)

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Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 9-106.

§ 745 ILCS 10/9-107. Policy; tax levy

Sec. 9-107. Policy; tax levy. (a) The General Assembly finds that the purpose of this Section is to provide an extraordinary tax for funding expenses relating to (i) tort liability, (ii) liability relating to actions brought under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. § 6921 et seq.] or the Environmental Protection Act [415 ILCS 5/1 et seq.], but only until December 31, 2010, (iii) insurance, and (iv) risk management programs. Thus, the tax has been excluded from various limitations otherwise applicable to tax levies. Notwithstanding the extraordinary nature of the tax authorized by this Section, however, it has become apparent that some units of local government are using the tax revenue to fund expenses more properly paid from general operating funds. These uses of the revenue are inconsistent with the limited purpose of the tax authorization.

Therefore, the General Assembly declares, as a matter of policy, that (i) the use of the tax revenue authorized by this Section for purposes not expressly authorized under this Act is improper and (ii) the provisions of this Section shall be strictly construed consistent with this declaration and the Act's express purposes.

(b) A local public entity may annually levy or have levied on its behalf taxes upon all taxable property within its territory at a rate that will produce a sum that will be sufficient to: (i) pay the cost of insurance, individual or joint self-insurance (including reserves thereon), including all operating and administrative costs and expenses directly associated therewith, claims services and risk management directly attributable to loss prevention and loss reduction, legal services directly attributable to the insurance, self-insurance, or joint self-insurance program, and educational, inspectional, and supervisory services directly relating to loss prevention and loss reduction, participation in a reciprocal insurer as provided in Sections 72, 76, and 81 of the Illinois Insurance Code [215 ILCS 5/72, 215 ILCS 5/76, and 215 ILCS 5/81], or participation in a reciprocal insurer, all as provided in settlements or judgments under Section 9-102 [745 ILCS 10/9-102], including all costs and reserves directly attributable to being a member of an insurance pool, under Section 9-103 [745 ILCS 10/9-103]; (ii) pay the costs of and principal and interest on bonds issued under Section 9-105 [745 ILCS 10/9-105]; (iii) pay judgments and settlements under Section 9-104 of this Act [745 ILCS 10/9-104]; (iv) discharge obligations under Section 34-18.1 of the School Code [105 ILCS 5/34-18.1]; (v) pay judgments and settlements under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. § 9601 et seq.] and the Environmental Protection Act [415 ILCS 5/1 et seq.], but only until December 31, 2010; (vi) pay the costs authorized by the Metro-East Sanitary District Act of 1974 as provided in subsection (a) of Section 5-1 of that Act (70 ILCS 2905/5-1); and (vii) pay the cost of risk management programs. Provided it complies with any other applicable statutory requirements, the local public entity may self-insure and establish reserves for expected

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losses for any property damage or for any liability or loss for which the local public entity is authorized to levy or have levied on its behalf taxes for the purchase of insurance or the payment of judgments or settlements under this Section. The decision of the board to establish a reserve shall be based on reasonable actuarial or insurance underwriting evidence and subject to the limits and reporting provisions in Section 9-103 [745 ILCS 10/9-103].

If a school district was a member of a joint-self-health-insurance cooperative that had more liability in outstanding claims than revenue to pay those claims, the school board of that district may by resolution make a one-time transfer from any fund in which tort immunity moneys are maintained to the fund or funds from which payments to a joint-self-health-insurance cooperative can be or have been made of an amount not to exceed the amount of the liability claim that the school district owes to the joint-self-health-insurance cooperative or that the school district paid within the 2 years immediately preceding the effective date of this amendatory Act of the 92nd General Assembly [92-732].

Funds raised pursuant to this Section shall only be used for the purposes specified in this Act, including protection against and reduction of any liability or loss described hereinabove and under Federal or State common or statutory law, the Workers' Compensation Act [820 ILCS 305/1 et seq.], the Workers' Occupational Diseases Act [820 ILCS 310/1 et seq.] and the Unemployment Insurance Act [820 ILCS 405/220 et seq.]. Funds raised pursuant to this Section may be invested in any manner in which other funds of local public entities may be invested under Section 2 of the Public Funds Investment Act [30 ILCS 235/2]. Interest on such funds shall be used only for purposes for which the funds can be used or, if surplus, must be used for abatement of property taxes levied by the local taxing entity.

A local public entity may enter into intergovernmental contracts with a term of not to exceed 12 years for the provision of joint self-insurance which contracts may include an obligation to pay a proportional share of a general obligation or revenue bond or other debt instrument issued by a local public entity which is a party to the intergovernmental contract and is authorized by the terms of the contract to issue the bond or other debt instrument. Funds due under such contracts shall not be considered debt under any constitutional or statutory limitation and the local public entity may levy or have levied on its behalf taxes to pay for its proportional share under the contract. Funds raised pursuant to intergovernmental contracts for the provision of joint self-insurance may only be used for the payment of any cost, liability or loss against which a local public entity may protect itself or self-insure pursuant to Section 9-103 [745 ILCS 10/9-103] or for the payment of which such entity may levy a tax pursuant to this Section, including tort judgments or settlements, costs associated with the issuance, retirement or refinancing of the bonds or other debt instruments, the repayment of the principal or interest of the bonds or other debt instruments, the costs of the administration of the joint self-insurance fund, consultant, and risk care management programs or the costs of insurance. Any surplus returned to the local public entity under the terms of the intergovernmental contract shall be used only for purposes set forth in subsection (a) of Section 9-103 [745 ILCS 10/9-103] and Section 9-107 or for abatement of property taxes levied by the local taxing entity.

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Any tax levied under this Section shall be levied and collected in like manner with the general taxes of the entity and shall be exclusive of and in addition to the amount of tax that entity is now or may hereafter be authorized to levy for general purposes under any statute which may limit the amount of tax which that entity may levy for general purposes. The county clerk of the county in which any part of the territory of the local taxing entity is located, in reducing tax levies under the provisions of any Act concerning the levy and extension of taxes, shall not consider any tax provided for by this Section as a part of the general tax levy for the purposes of the entity nor include such tax within any limitation of the percent of the assessed valuation upon which taxes are required to be extended for such entity.

With respect to taxes levied under this Section, either before, on, or after the effective date of this amendatory Act of 1994:

(1) Those taxes are excepted from and shall not be included within the rate limitation imposed by law on taxes levied for general corporate purposes by the local public entity authorized to levy a tax under this Section.

(2) Those taxes that a local public entity has levied in reliance on this Section and that are excepted under paragraph (1) from the rate limitation imposed by law on taxes levied for general corporate purposes by the local public entity are not invalid because of any provision of the law authorizing the local public entity's tax levy for general corporate purposes that may be construed or may have been construed to restrict or limit those taxes levied, and those taxes are hereby validated. This validation of taxes levied applies to all cases pending on or after the effective date of this amendatory Act of 1994.

(3) Paragraphs (1) and (2) do not apply to a hospital organized under Article 170 or 175 of the Township Code [60 ILCS 1/170-5 et seq. or 60 ILCS 1/175-5 et seq.], under the Town Hospital Act [repealed], or under the Township Non-Sectarian Hospital Act [repealed] and do not give any authority to levy taxes on behalf of such a hospital in excess of the rate limitation imposed by law on taxes levied for general corporate purposes. A hospital organized under Article 170 or 175 of the Township Code [60 ILCS 1/170-5 et seq. or 60 ILCS 1/175-5 et seq.], under the Town Hospital Act [repealed], or under the Township Non-Sectarian Hospital Act [repealed] is not prohibited from levying taxes in support of tort liability bonds if the taxes do not cause the hospital's aggregate tax rate from exceeding the rate limitation imposed by law on taxes levied for general corporate purposes.

Revenues derived from such tax shall be paid to the treasurer of the local taxing entity as collected and used for the purposes of this Section and of Section 9-102, 9-103, 9-104 or 9-105 [745 ILCS 10/9-102, 745 ILCS 10/9-103, 745 ILCS 10/9-104 or 745 ILCS 10/9-105], as the case may be. If payments on account of such taxes are insufficient during any year to meet such purposes, the entity may issue tax anticipation warrants against the current tax levy in the manner provided by statute.

(Source: P.A. 86-725; 88-545, § 10; 88-692, § 5; 89-150, § 10; 91-628, § 5; 92-732, § 5; 95-244, § 10; 95-723, § 50.)

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Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 9-107.

The Town Hospital Act, referred to above, has been repealed; see now Article 170 of the Township Code, 60 ILCS 1/170-5 et seq.

The Township Non-Sectarian Hospital Act, referred to above, has been repealed; see now Article 175 of the Township Code, 60 ILCS 1/175-5 et seq.

Cross References.

As to the ability of corporate authorities under the Local Library Act to levy taxes in accordance with this section, see 75 ILCS 5/4-14.

Effect of Amendments. The 1994 amendment by P.A. 88-545, effective January 1, 1995, added the fifth paragraph.

The 1994 amendment by P.A. 88-692, effective January 1, 1995, added subsection (3) following the fifth paragraph.

The 1995 amendment by P.A. 89-150, effective July 14, 1995, combined the amendments by P.A. 89-545 and P.A. 89-692; in the first paragraph, in the first sentence, inserted "annually", deleted "annually" preceding "upon all taxable property", substituted "that will" for "which will", inserted "(i)", inserted "insurance, individual or joint self-insurance (including reserves thereon) ... all as provided in", deleted "to pay the costs of protecting itself or its employees against liability, property damage or loss" preceding "including all costs", substituted "directly attributable to" for "of", substituted "(ii)" for "to", substituted "(iii)" for "to", substituted "pay judgments and" for "to pay tort judgments or", substituted "and (iv)" for "to the extent necessary to", deleted "to discharge any and all obligations" preceding "under Section" and deleted "care" preceding "management programs" and in the third sentence inserted "actuarial or insurance underwriting" and added at the end "and subject to the limits and reporting provisions in Section 9-103"; rewrote the second paragraph; and in the third paragraph added the fourth sentence.

The 1999 amendment by P.A. 91-628, effective January 1, 2000, added the section heading, the subsection (b) designation, and subsection (a); and inserted "property damage or for any" in the next to last sentence of subsection (b).

The 2002 amendment by P.A. 92-732, effective July 25, 2002, inserted the second paragraph of subsection (b).

The 2007 amendment by P.A. 95-244, effective August 17, 2007, rewrote the first paragraph of each of (a) and (b), in part by adding "Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or the Environmental Protection Act, but only until December 31, 2010".

The 2008 amendment by P.A. 95-723, effective June 23, 2008, in subsection (b) added present item (vi), and renumbered former item (vi) as item (vii).

CASE NOTES

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Analysis

Amendment of Statute
Doctrine of Representation
Independent Contractors
- Revenue
Levy
- Limitation of Tax
- Risk Managment

Amendment of Statute

Retroactive application of amendments to 55 ILCS 5/5-1024 of the Counties Code and 745 ILCS 10/9-107 of the Tort Immunity Act did not violate the due process provisions of Ill. Const., Art. I, § 2, where the purpose of the General Assembly in enacting the amendments was to correct a law and not to target a group of taxpayers for retribution or other illegitimate purposes, the period of retroactivity of the amendments was only six weeks, there was no evidence that a taxpayer detrimentally relied upon the tax rate that existed prior to the enactment of the amendments, and the taxpayer had adequate notice of the impending amendatory change in the tax rate. Commonwealth Edison Co. v. Will County Collector, 196 Ill. 2d 27, 255 Ill. Dec. 482, 749 N.E.2d 964, 2001 Ill. LEXIS 1040 (2001).

Amendments to 55 ILCS 5/5-1024 of the Counties Code and 745 ILCS 10/9-107 of the Tort Immunity Act applied retroactively to certain tax levies adopted by a county shortly before the amendments became effective because the plain language of the amendments expressly stated that the amendments applied to all cases pending on or after the effective date of the amendments, and the General Assembly clearly intended to validate levies which were enacted prior to the effective date of the amendments. Commonwealth Edison Co. v. Will County Collector, 196 Ill. 2d 27, 255 Ill. Dec. 482, 749 N.E.2d 964, 2001 Ill. LEXIS 1040 (2001).

Levies adopted prior to the effective date of the 1995 amendment to this section, which provided that a tort immunity levy is to be exclusive of and in addition to the corporate rate limit, were valid where they were adopted after the amendment was signed into law, but before its effective date. Commonwealth Edison Co. v. Will County Collector, 305 Ill. App. 3d 819, 239 Ill. Dec. 41, 713 N.E.2d 572 (3 Dist. 1999).

Doctrine of Representation

Doctrine of representation did not apply in the tax objection case, because it was a procedural doctrine that provided an exception to the necessary party rule, and no party had a legal or beneficial interest in another's right to a refund. In re Objection to 2005 Tax Levy v. Tax Collector, 393 Ill. App. 3d 999, 333 Ill. Dec. 327, 914 N.E.2d 1139, 2009 Ill. App. LEXIS 794 (3 Dist. 2009), appeal denied, 234 Ill. 2d 522, 920 N.E.2d 1073, 2009 Ill. LEXIS 2242 (2009).

Independent Contractors

- Revenue

Because independent contractors such as fire and ambulance services employed by fire protection district were not considered employees, the provisions of this Act could not be relied upon to levy a tax for liability insurance, workers' compensation, and unemployment insurance;

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therefore, no additional revenue was available to the district under this Act when city threatened to annex area and thereby reduce district's fire protection revenue. Elk Grove Rural Fire Protection Dist. v. City of Des Plaines, 148 Ill. App. 3d 921, 102 Ill. Dec. 430, 500 N.E.2d 52 (1 Dist. 1986).

Levy

- Limitation of Tax

The language of this section does not exclude county liability insurance taxes from the maximum rate limitation on a county's general corporate tax rate imposed by section 5-1024 of the Counties Code (55 ILCS 5/5-1024) which would have effectively circumvented the maximum rate limitation placed on general corporate tax levies; the trial court properly sustained the taxpayer's objections. In re Du Page County Tax Collector, 243 Ill. App. 3d 823, 183 Ill. Dec. 939, 612 N.E.2d 866 (2 Dist.), appeal denied, 152 Ill. 2d 560, 190 Ill. Dec. 890, 622 N.E.2d 1207 (1993).

- Risk Managment

Appellate court found in response to the trial court's certified questions in a tax objection case that some expenditures by the taxing districts pursuant to tax levies authorized under 745 ILCS 10/9-107(b) involved permissible risk management responsibilities, especially where those responsibilities identified and implemented techniques to reduce liability exposure in order to protect the taxing district and were not merely ordinary job duties; however, it also found that the first school district's use of funds to pay for a program that would help hold off threatened litigation by an organization representing minorities was not a permissible use of funds pursuant to 745 ILCS 10/9-102 because the funds were to try and prevent litigation, a remedial goal, rather than the permissible use of paying a judgment or settlement for compensatory damages. Tax Objectors v. Pearl City Sch. Dist. No. 200 (In re Objections to Tax Levies), 372 Ill. App. 3d 562, 310 Ill. Dec. 37, 865 N.E.2d 361, 2007 Ill. App. LEXIS 335 (1 Dist. 2007).

OPINIONS OF ATTORNEY GENERAL

Analysis

Asbestos Abatement
Insurance
- Authority of County
Legal Services

Asbestos Abatement

The tax levy authorized in this section is specifically related to the payment of the types of claims or costs of protection against claims set forth in sections 745 ILCS 10/9-102 through 745 ILCS 10/9-105 of the Act; since asbestos abatement is not included within the purview of section 745 ILCS 10/9-107, the tax levy cannot be used for the purpose of finding such work. 1991 Op. Atty. Gen. 9

Insurance

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- Authority of County

Counties may not obtain funds for unemployment or worker's compensation insurance by levying a tax under this section of the Local Governmental and Governmental Employees Tort Immunity Act since the clear wording of the Act excludes unemployment and worker's compensation insurance. 1978 Op. Atty. Gen. 113.

Legal Services

This section does not authorize the county board to pay fees or expenses to attorneys other than the State's Attorney and those designated by the State's Attorney to assist him in carrying out his duties, or those appointed by the court pursuant to statute. 1997 Op. Atty. Gen. (97-001).

LEGAL PERIODICALS

For article, "Intergovernmental Cooperation and the Municipal Insurance Crisis," see 30 De Paul L. Rev. 325 (1981).

Article X.

Repealer; Effective Date

§ 745 ILCS 10/10-101. [Repealer]

Sec. 10-101. The following Acts and parts of Acts are repealed: Sections 1-4-1, 1-4-2, 1-4-3, of the "Illinois Municipal Code", approved May 29, 1961, as amended;

Section 3a, (Immunity) as added by House Bill No. 1640 of the Seventy-First General Assembly, of "An Act to provide for the creation and management of forest preserve districts and repealing certain acts therein named", approved June 27, 1913, as amended;

"An Act relating to damages recoverable in actions for torts of park districts", approved July 9, 1959, as amended;

Section 2a as added by Act approved July 22, 1959 of "An Act in relation to the creation, maintenance, operation and improvement of the Chicago Park District", approved July 10, 1933, as amended;

Section 23 of the "Chicago Regional Port District Act", approved June 6, 1951, as amended;

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Section 26 of the "Waukegan Port District Act", approved June 30, 1955 as amended;

Section 25 of the "Joliet Regional Port District Act", approved July 6, 1957, as amended;

Section 26 of the "Tri-City Regional Port District Act", approved April 1, 1959, as amended;

Section 26 of the "Seneca Regional Port District Act", approved August 9, 1961, as amended;

Section 26 of the "Shawneetown Regional Port District Act", approved August 9, 1961, as amended;

Section 30 of the "Southwest Regional Port District Act", approved August 9, 1961, as amended;

Section 8.5a of the "Housing Authorities Act", approved March 19, 1934, as amended.

(Source: P.A. 87-895.)

Note.

This section was Ill.Rev.Stat., Ch. 85, Para. 10-101.

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Tort Liability of Schools Act

Sec.

745 ILCS 25/0.01.Short title
745 ILCS 25/1.[Declaration of public policy]
745 ILCS 25/2.[Limitation of actions]
745 ILCS 25/3.[Notice of action]
745 ILCS 25/4.[Failure to provide notice]
745 ILCS 25/5.[Limits on recovery]
745 ILCS 25/6.[Injuries occurring prior to effective date of Act; limitation of actions]
745 ILCS 25/7.[Injuries occurring prior to effective date of Act; notice of action]
745 ILCS 25/8.[Injuries occurring prior to effective date of Act; failure to provide notice]
745 ILCS 25/9.[Injuries occurring prior to effective date of Act; limits on recovery]
745 ILCS 25/10.[Actions against school districts or non-profit private schools]
745 ILCS 25/11.[Severability]

§ 745 ILCS 25/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Tort Liability of Schools Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act relating to damages recoverable against school districts and non-profit private schools for injuries occurring as a result of negligence in the conduct of schools.

Cite: 745 ILCS 25/0.01 et seq.

Source: L. 1959, p. 2060.

Date: Approved July 22, 1959.

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 820.

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RESEARCH REFERENCES

Tort liability of public schools and institutions of higher learning for educational malpractice. 1 ALR4th 1139.

Liability of university, college, or other school for failure to protect student from crime. 1 ALR4th 1099.

Personal liability in negligence action of public school employee, other than teacher or executive or administrative officer, for personal injury or death of student. 35 ALR4th 328.

Personal liability of public school executive or administrative officer in negligence action for personal injury or death of student. 35 ALR4th 272.

Tort liability of public schools and institutions of higher learning for accidents associated with transportation of students. 23 ALR5th 1.

§ 745 ILCS 25/1. [Declaration of public policy]

Sec. 1. The General Assembly finds and hereby enacts as the public policy of the State of Illinois that public schools in the exercise of purely governmental functions should be protected from excessive diversion of their funds for purposes not directly connected with their statutory functions, if there is liability imposed by any court, and that there should be a reasonable distribution among the members of the public at large of the burden of individual loss from injuries incurred as a result of negligence in the conduct of school district affairs; and that non-profit private schools conducted by bona fide eleemosynary or religious institutions should be protected from excessive diversion of their funds for purposes not directly connected with their educational functions and also that there should be a reasonable contribution by non-profit private schools conducted by bona fide eleemosynary or religious institutions toward alleviation of the burden of individual loss arising from injuries incurred as a result of negligence in the conduct of such non-profit private schools.

(Source: Laws 1959, p. 2060.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 821.

CASE NOTES

Analysis

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In General
Applicability
- Religious Schools
Purpose

In General

This section did not create liability or a cause of action, but rather limited the amount of damages if liability was imposed by any court. Garrison v. Community Consol. Sch., 34 Ill. App. 2d 322, 181 N.E.2d 360 (1 Dist. 1962).

Applicability

- Religious Schools

This section, which sets forth the public policy of the state, refers to non-profit private schools conducted by bona fide eleemosynary or religious institutions, and there can be little doubt that the legislature had in mind private schools conducted by religious institutions. Terrill v. City of Chicago, 72 Ill. App. 2d 286, 219 N.E.2d 705 (1 Dist. 1966).

Purpose

This Act establishes limitations with respect to a nonstatutory cause of action. Haymes ex rel. Haymes v. Catholic Bishop, 52 Ill. App. 2d 140, 201 N.E.2d 675 (1 Dist. 1964), aff'd, 33 Ill. 2d 425, 211 N.E.2d 690 (1965).

RESEARCH REFERENCES

Personal liability of public school teacher in negligence action for personal injury or death of student. 34 ALR4th 228.

§ 745 ILCS 25/2. [Limitation of actions]

Sec. 2. No civil action shall be commenced in any court against any school district or non-profit private school by any person for any injury to his person or property unless it is commenced within one year from the date that the injury was received or the cause of action accrued.

(Source: Laws 1959, p. 2060.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 822.

CASE NOTES

Analysis

Applicability
- Private Schools
Prima Facie Case

Applicability

- Private Schools

The notice and limitation provisions of this Act were invalid as to both public and nonprofit private schools. Cleary v. Catholic Diocese, 57 Ill. 2d 384, 312 N.E.2d 635 (1974).

Prima Facie Case

Amended complaint sufficiently alleged facts which stated a cause of action. Haymes ex rel. Haymes v. Catholic Bishop, 52 Ill. App. 2d 140, 201 N.E.2d 675 (1 Dist. 1964), aff'd, 33 Ill. 2d 425, 211 N.E.2d 690 (1965).

§ 745 ILCS 25/3. [Notice of action]

Sec. 3. Within six months from the date that such injury was received or such cause of action accrued, any person who is about to commence any civil action in any court against any school district for damages on account of any injury to his person or property shall file in the office of the school board attorney, if there is a school board attorney, and also in the office of the clerk or secretary of the school board, either by himself, his agent or attorney, a statement in writing signed by himself, his agent or attorney, giving the name of the person to whom the cause of action has accrued, the name and residence of the person injured, the date and about the hour of the accident, the place or location where the accident occurred and the name and address of the attending physician, if any.

With respect to non-profit private schools the statement in writing required hereunder shall be filed in the office of the Superintendent or Principal of such school.

(Source: Laws 1959, p. 2060.)

Note.

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This section was Ill.Rev.Stat., Ch. 122, Para. 823.

CASE NOTES

Analysis

Applicability
- Minors
- Private Schools
- Religious Schools
Failure to Comply
- Effect
Record of Proceedings
- Requirements
Recovery
- Held Improper

Applicability

- Minors

This section and 725 ILCS 25/4 are not applicable to or binding upon minor plaintiffs. Haymes v. Catholic Bishop, 33 Ill. 2d 425, 211 N.E.2d 690 (1965).

Compliance with the notice requirement need not have been alleged by plaintiff in this case, a minor 13 years of age, in order to recover damages for injuries sustained on premises of nonprofit private school. Haymes ex rel. Haymes v. Catholic Bishop, 52 Ill. App. 2d 140, 201 N.E.2d 675 (1 Dist. 1964), aff'd, 33 Ill. 2d 425, 211 N.E.2d 690 (1965).

- Private Schools

The notice and limitation provisions of this Act were invalid as to both public and nonprofit private schools. Cleary v. Catholic Diocese, 57 Ill. 2d 384, 312 N.E.2d 635 (1974).

- Religious Schools

The plaintiff was required to serve six months' notice on the principal of a private school conducted by a religious institution, assuming the accident happened on the school property. Terrill v. City of Chicago, 72 Ill. App. 2d 286, 219 N.E.2d 705 (1 Dist. 1966).

Failure to Comply

- Effect

Where attached to the motion to dismiss the complaint for failure to comply with the notice provision of this section was an affidavit stating that the affiant was the attorney for the school board at the time of the affidavit and had been from an unstated time prior to the accident, but there was no evidence of any official record of the school board appointing any attorney as school board attorney, nor any evidence of any contract, verbal or written, nor any evidence of any work

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done or consultation had as school board attorney, nor any salary or other compensation agreed upon or paid any school board attorney, nor any evidence that an official office of school board attorney existed nor that any place was in any way designated as office of school board attorney, and where it appeared from the briefs that the affiant had since died, there was no proper showing that there was a school board attorney for the defendant district holding office within the meaning of this section, and the order of the trial court dismissing the complaint was reversed. Schroeder v. Community Unit Sch. Dist., 75 Ill. App. 2d 352, 220 N.E.2d 505 (4 Dist. 1966).

Record of Proceedings

- Requirements

Where official bodies are required to keep a record of their proceedings, the only proper evidence of the proceedings of such bodies is the official record of their acts. Schroeder v. Community Unit Sch. Dist., 75 Ill. App. 2d 352, 220 N.E.2d 505 (4 Dist. 1966).

Recovery

- Held Improper

No liability could be imposed under this section because immunity of school district continued for all causes of action arising prior to December 16, 1959; therefore plaintiff could not recover for injuries sustained during explosion of "prop cannon" in school dramatic production. Garrison v. Community Consol. Sch., 34 Ill. App. 2d 322, 181 N.E.2d 360 (1 Dist. 1962).

§ 745 ILCS 25/4. [Failure to provide notice]

Sec. 4. If the notice provided by Section 3 [745 ILCS 25/3] is not filed as provided therein, any such civil action commenced against any school district or non-profit private school shall be dismissed and the person to whom any such cause of action accrued for any personal injury or property damage shall be forever barred from further suing.

(Source: Laws 1959, p. 2060.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 824.

CASE NOTES

Analysis
Applicability
- Minors

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- Private Schools

Applicability

- Minors

Amended complaint alleging that plaintiff's injuries were proximately caused by the negligence of school and its owners met the requirements of the former Civil Practice Act (see now 735 ILCS 5/2-601 and 735 ILCS 5/2-603). Haymes v. Catholic Bishop, 33 Ill. 2d 425, 211 N.E.2d 690 (1965).

Compliance with the notice requirement need not have been alleged by plaintiff in this case, a minor 13 years of age, in order to recover damages for injuries sustained on premises of non-profit private school. Haymes ex rel. Haymes v. Catholic Bishop, 52 Ill. App. 2d 140, 201 N.E.2d 675 (1 Dist. 1964), aff'd, 33 Ill. 2d 425, 211 N.E.2d 690 (1965).

- Private Schools

The notice and limitation provisions of this Act were invalid as to both public and non-profit private schools. Cleary v. Catholic Diocese, 57 Ill. 2d 384, 312 N.E.2d 635 (1974).

§ 745 ILCS 25/5. [Limits on recovery]

Sec. 5. A.The amount recovered in each separate cause of action against a public school district shall not exceed $10,000.00, except as is otherwise provided by law.

B.The amount recovered in each separate cause of action against a non-profit private school shall not exceed $10,000.00.

(Source: Laws 1959, p. 2060.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 825.

CASE NOTES

Analysis
Constitutionality
Standing

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Constitutionality

The challenge to the constitutionality of subsection A of this section which limits the recovery in each separate cause of action against a public school district to $10,000 was well founded. Treece v. Shawnee Community Unit Sch. Dist. No. 84, 39 Ill. 2d 136, 233 N.E.2d 549 (1968).

A ten thousand dollar limitation on recovery under subsection B of this section violated former Ill. Const. (1870), Art. IV, § 22 (see now Ill. Const. (1970), Art. IV, § 13). Haymes v. Catholic Bishop, 41 Ill. 2d 336, 243 N.E.2d 203 (1968).

Standing

Plaintiff was in no position to contest the validity of the monetary limitation of the statute, for in neither the original nor the amended complaints did she seek to recover more than the maximum amount recoverable thereunder. Lorton v. Brown County Community Unit Sch., 35 Ill. 2d 362, 220 N.E.2d 161 (1966).

One of the most firmly established doctrines in the field of constitutional law is that a court will ordinarily inquire into the constitutionality of a statute only to the extent required by the case before it, and will not formulate a rule broader than that necessitated by the precise situation in question. Lorton v. Brown County Community Unit Sch., 35 Ill. 2d 362, 220 N.E.2d 161 (1966).

LEGAL PERIODICALS

For comment, "The In Loco Parentis Status of Illinois School Teachers: An Unjustifiably Broad Extension of Immunity," see 10 J. Marshall J. Prac. & Proc. 629 (1977).

§ 745 ILCS 25/6. [Injuries occurring prior to effective date of Act; limitation of actions]

Sec. 6. In case of injury occurring prior to the effective date of this Act, where action for such injury is not barred by the provisions of "An Act in regard to limitations", approved April 4, 1872, as amended, no civil action shall be commenced in any court against any school district or non-profit private school by any person for any injury to his person or property unless it is commenced within one year from the effective date of this Act.

(Source: Laws 1959, p. 2060.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 826.

"An Act in regard to limitations" has been repealed. See now 735 ILCS 5/13-101 et seq.

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CASE NOTES

Immunity

- Not Shown

Where no allegation was made that defendant was a teacher, principal or certified educational employee, and it appeared from the evidence that he was not, defendant and his employer board, vicariously, were unprotected by this section. LeRose v. City of Zion/Police Dep't, 696 F. Supp. 1222 (N.D. Ill. 1988).

§ 745 ILCS 25/7. [Injuries occurring prior to effective date of Act; notice of action]

Sec. 7. Within six months from the effective date of this Act any person who is about to commence any civil action in any court against any school district for damages on account of any injury to his person or property occurring prior to the effective date of this Act shall file in the office of the school board attorney, if there is a school board attorney, and also in the office of the clerk or secretary of the school board, either by himself, his agent or attorney, a statement in writing signed by himself, his agent or attorney, giving the name of the person to whom the cause of action has accrued, the name and residence of the person injured, the date and about the hour of the accident, the place or location where the accident occurred and the name and address of the attending physician, if any.

With respect to non-profit private schools the statement in writing required hereunder shall be filed in the office of the Superintendent or Principal of such school.

(Source: Laws 1959, p. 2060.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 827.

§ 745 ILCS 25/8. [Injuries occurring prior to effective date of Act; failure to provide notice]

Sec. 8. If the notice provided by Section 7 [745 ILCS 25/7] is not filed as provided therein, any such civil action commenced against any school district or non-profit private school shall be dismissed and the person to whom any such cause of action accrued for any personal injury or property damage shall be forever barred from further suing.

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(Source: Laws 1959, p. 2060.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 828.

§ 745 ILCS 25/9. [Injuries occurring prior to effective date of Act; limits on recovery]

Sec. 9. A.The amount recovered in each separate cause of action against a public school district for injuries to person or property occurring prior to the effective date of this Act shall not exceed $10,000.00, except as is otherwise provided by law.

B.The amount recovered in each separate cause of action against a non-profit private school for injuries to person or property occurring prior to the effective date of this Act shall not exceed $10,000.00.

(Source: Laws 1959, p. 2060.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 829.

LEGAL PERIODICALS

For comment, "The In Loco Parentis Status of Illinois School Teachers: An Unjustifiably Broad Extension of Immunity," see 10 J. Marshall J. Prac. & Proc. 629 (1977).

§ 745 ILCS 25/10. [Actions against school districts or non-profit private schools]

Sec. 10. Nothing contained in this Act shall be deemed to authorize the bringing of any action against any school district or non-profit private school, nor the entry of a judgment in any such action.

(Source: Laws 1959, p. 2060.)

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This section was Ill.Rev.Stat., Ch. 122, Para. 830.

CASE NOTES

Liability

Prior to December 16, 1959, the rule was that liability itself, not merely the collectibility of the judgment, depended on the presence of nontrust funds; and a complaint must have alleged the existence of such funds, such as liability insurance, to overcome the barrier of governmental immunity from tort liability. Garrison v. Community Consol. Sch., 34 Ill. App. 2d 322, 181 N.E.2d 360 (1 Dist. 1962).

§ 745 ILCS 25/11. [Severability]

Sec. 11. If any section or part of any section of this Act is held unconstitutional by a court of competent jurisdiction, all other sections or parts of sections shall remain in full force and effect.

(Source: Laws 1959, p. 2060.)

Note.

This section was Ill.Rev.Stat., Ch. 122, Para. 831.

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Interscholastic Association Defamation Act

Sec.

745 ILCS 54/1.Short title
745 ILCS 54/5.Definition
745 ILCS 54/10.Defamation
745 ILCS 54/98.Applicability
745 ILCS 54/99.Effective date

§ 745 ILCS 54/1. Short title

Sec. 1. Short title. This Act may be cited as the Interscholastic Association Defamation Act.

(Source: P.A. 96-723, § 1.)

Effective Date. Section 99 of P.A. 96-723 made this Act effective October 1, 2009.

§ 745 ILCS 54/5. Definition

Sec. 5. Definition. As used in this Act, "association" means the Illinois High School Association.

(Source: P.A. 96-723, § 5.)

§ 745 ILCS 54/10. Defamation

Sec. 10. Defamation. Any association which has as its purpose promoting, sponsoring, regulating, or in any manner providing for interscholastic athletics or any form of athletic competition among schools and students within this State is not liable for defamation, except for actual malice.

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(Source: P.A. 96-723, § 10.)

§ 745 ILCS 54/98. Applicability

Sec. 98. Applicability. This Act applies only to causes of actions accruing on or after its effective date.

(Source: P.A. 96-723, § 98.)

§ 745 ILCS 54/99. Effective date

Sec. 99. Effective date. This Act takes effect October 1, 2009.

(Source: P.A. 96-723, § 99.)

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CHAPTER 750.
FAMILIES

750 ILCS 30Emancipation of Minors Act

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Emancipation of Minors Act

Sec.

750 ILCS 30/1.Short title
750 ILCS 30/2.Purpose and policy
750 ILCS 30/3.Definitions
750 ILCS 30/3-1.Minor
750 ILCS 30/3-2.Mature minor
750 ILCS 30/3-2.5.Homeless minor
750 ILCS 30/3-2.10.Youth transitional housing program
750 ILCS 30/3-3.Parents
750 ILCS 30/3-4.Guardian
750 ILCS 30/3-5.Petition
750 ILCS 30/4.Jurisdiction
750 ILCS 30/5.Rights and responsibilities of an emancipated minor
750 ILCS 30/6.Duration of emancipation and discharge of proceedings
750 ILCS 30/7.Petition
750 ILCS 30/8.Notice
750 ILCS 30/9.Hearing on petition
750 ILCS 30/10.Joinder, Juvenile Court Proceedings
750 ILCS 30/11.Appeal

§ 750 ILCS 30/1. Short title

Sec. 1. Short title. This Act may be cited as the Emancipation of Minors Act.

(Source: P.A. 81-833; 93-105, § 10.)

Derivation.

Title: An Act relating to the emancipation of certain minors.

Cite: 750 ILCS 30/1 et seq.

Source: P.A. 81-833.

Date: Approved September 19, 1979.

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This section was Ill.Rev.Stat., Ch. 40, Para. 2201.

Effect of Amendments. The 2003 amendment by P.A. 93-105, effective July 8, 2003, deleted "shall be known and" following "This Act" and substituted "Emancipation of Minors Act" for "Emancipation of Mature Minors Act".

CASE NOTES

Analysis

Refusal of Medical Treatment
- Legislative Intent
- Partial Emancipation

Refusal of Medical Treatment

- Legislative Intent

This Act, when read together in a complementary fashion with the Consent by Minors to Medical Procedures Act (410 ILCS 210/1 et seq.), indicates that the legislature did not intend that there be an absolute 18 year old age barrier prohibiting minors from consenting to medical treatment. People v. E.G., 133 Ill. 2d 98, 139 Ill. Dec. 810, 549 N.E.2d 322 (1989).

- Partial Emancipation

A Jehovah's Witness, found to be mature and to have made the decision to refuse blood transfusions independently, could not be denied her constitutional right to the free exercise of religion solely because of her minority; upon finding that the minor was medically neglected, she should have been partially emancipated and granted the right to accept or refuse transfusions based on her religious belief. People v. E.G., 161 Ill. App. 3d 765, 113 Ill. Dec. 477, 515 N.E.2d 286 (1 Dist. 1987).

LEGAL PERIODICALS

For comment, "Minors, Medical Treatment, and Interspousal Disagreement: Should Solomon Split the Child?" see 41 De Paul L. Rev. 841 (1992).

For note, "In re E.G.: The Right of Mature Minors in Illinois to Refuse Lifesaving Medical Treatment," see 21 Loy. U. Chi. L.J. 1199 (1989-90).

For article, "New Laws Okay Jail and Work for Juveniles," see 68 Ill. B.J. 514 (1980).

Practice Guides and Treatises.

Contract Law § 4.12 Illinois Emancipation of Minors Act (IICLE).

Wrongful Death and Survival Actions in Illinois § 5.7 Effect of Divorce and Emancipation (IICLE).

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Illinois Jurisprudence, Family Law § 10:10 Mature minors.

Illinois Jurisprudence, Family Law § 7:41 Generally.

§ 750 ILCS 30/2. Purpose and policy

Sec. 2. Purpose and policy. The purpose of this Act is to provide a means by which a mature minor who has demonstrated the ability and capacity to manage his own affairs and to live wholly or partially independent of his parents or guardian, may obtain the legal status of an emancipated person with power to enter into valid legal contracts. This Act is also intended (i) to provide a means by which a homeless minor who is seeking assistance may have the authority to consent, independent of his or her parents or guardian, to receive shelter, housing, and services provided by a licensed agency that has the ability and willingness to serve the homeless minor and (ii) to do so without requiring the delay or difficulty of first holding a hearing.

This Act is not intended to interfere with the integrity of the family or the rights of parents and their children. No order of complete or partial emancipation may be entered under this Act if there is any objection by the minor, his parents or guardian. No petition may be filed for the partial emancipation of a homeless minor unless appropriate attempts have been made to reunify the homeless minor with his or her family through the services of a Comprehensive Community Based Youth Services Agency. This Act does not limit or exclude any other means either in statute or case law by which a minor may become emancipated.

(Source: P.A. 81-833; 93-105, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 40, Para. 2202.

Effect of Amendments. The 2003 amendment by P.A. 93-105, effective July 8, 2003, added the second sentences in both the first and second paragraphs.

Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 7:44 Purpose and policy of Emancipation of Mature Minors Act.

§ 750 ILCS 30/3. Definitions

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Sec. 3. Definitions. Terms used in this Act, unless the context otherwise requires, have the meanings ascribed to them in Sections 3-1 through 3-5 [750 ILCS 30/3-1 through 750 ILCS 30/3-5].

(Source: P.A. 81-833.)

Note.

This section was Ill.Rev.Stat., Ch. 40, Para. 2203.

§ 750 ILCS 30/3-1. Minor

Sec. 3-1. Minor. "Minor" means a person 16 years of age or over, and under the age of 18 years, subject to this Act.

(Source: P.A. 81-833.)

Note.

This section was Ill.Rev.Stat., Ch. 40, Para. 2203-1.

Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 7:42 Definitions; "minor" and "mature minor".

§ 750 ILCS 30/3-2. Mature minor

Sec. 3-2. Mature minor. "Mature minor" means a person 16 years of age or over and under the age of 18 years who has demonstrated the ability and capacity to manage his own affairs and to live wholly or partially independent of his parents or guardian.

(Source: P.A. 81-833.)

Note.

This section was Ill.Rev.Stat., Ch. 40, Para. 2203-2.

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Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 7:42 Definitions; "minor" and "mature minor".

§ 750 ILCS 30/3-2.5. Homeless minor

Sec. 3-2.5. Homeless minor. "Homeless minor" means a person at least 16 years of age but less than 18 years of age who lacks a regular, fixed, and adequate place to live and who desires to participate in a youth transitional housing program. The term includes, but is not limited to, a minor who is sharing the dwelling of another or living in a temporary shelter or who is unable or unwilling to return to the residence of a parent. The term does not include a minor in the custody or under the guardianship of the Department of Children and Family Services. No child may be terminated from the custody or guardianship of the Department of Children and Family Services for the purpose of obtaining emancipation as a homeless minor.

(Source: P.A. 93-105, § 10.)

Effective Date. Section 99 of P.A. 93-105 made this section effective upon becoming law. The Act was approved July 8, 2003.

§ 750 ILCS 30/3-2.10. Youth transitional housing program

Sec. 3-2.10. Youth transitional housing program. "Youth transitional housing program" means a program licensed by the Department of Children and Family Services to provide services, shelter, or housing to a minor.

(Source: P.A. 93-105, § 10.)

Effective Date. Section 99 of P.A. 93-105 made this section effective upon becoming law. The Act was approved July 8, 2003.

§ 750 ILCS 30/3-3. Parents

Sec. 3-3. Parents. "Parent" means the father or mother of a lawful child of the parties or a child born out of wedlock, and includes any adoptive parent. It does not include a parent whose rights in respect to the minor have been terminated in any manner provided by

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law.

(Source: P.A. 81-833; 94-229, § 20.)

Note.

This section was Ill.Rev.Stat., Ch. 40, Para. 2203-3.

Effect of Amendments. The 2005 amendment by P.A. 94-229, effective January 1, 2006, substituted "lawful child of the parties or a child born out of wedlock" for "legitimate or illegitimate child".

Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 7:43 "Parent" and "guardian".

§ 750 ILCS 30/3-4. Guardian

Sec. 3-4. Guardian. "Guardian" means any person, association or agency appointed guardian of the person of the minor under the Juvenile Court Act, the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.], the "Probate Act of 1975" [755 ILCS 5/1-1 et seq.], or any other statute or court order.

(Source: P.A. 85-1440.)

Note.

This section was Ill.Rev.Stat., Ch. 40, Para. 2203-4.

The Juvenile Court Act, referred to above, has been repealed. See now the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq.

Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 7:43 "Parent" and "guardian".

§ 750 ILCS 30/3-5. Petition

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Sec. 3-5. Petition. "Petition" means the petition provided for in Section 7 of this Act [750 ILCS 30/7], or any other petition filed under the Juvenile Court Act or the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.], seeking the emancipation of a minor in accordance with the provisions of this Act.

(Source: P.A. 85-1209.)

Note.

This section was Ill.Rev.Stat., Ch. 40, Para. 2203-5.

The Juvenile Court Act referred to above, was repealed. See now the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq.

§ 750 ILCS 30/4. Jurisdiction

Sec. 4. Jurisdiction. The circuit court in the county where the minor resides, is found, owns property, or in which a court action affecting the interests of the minor is pending, may, upon the filing of a petition on behalf of the minor by his next friend, parent or guardian and after any hearing or notice to all persons as set forth in Sections 7, 8, and 9 of this Act [750 ILCS 30/7, 750 ILCS 30/8 and 750 ILCS 30/9], enter a finding that the minor is a mature minor or a homeless minor as defined in this Act and order complete or partial emancipation of the minor. The court in its order for partial emancipation may specifically limit the rights and responsibilities of the minor seeking emancipation. In the case of a homeless minor, the court shall restrict the order of emancipation to allowing the minor to consent to the receipt of transitional services and shelter or housing from a specified youth transitional program and its referral agencies only.

(Source: P.A. 81-833; 93-105, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 40, Para. 2204.

Effect of Amendments. The 2003 amendment by P.A. 93-105, effective July 8, 2003, in the first sentence, substituted "any hearing or notice" for "a hearing on notice," inserted "9" and inserted "or a homeless minor" and added the last sentence.

Practice Guides and Treatises.

Contract Law § 4.12 Illinois Emancipation of Minors Act (IICLE).

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Illinois Jurisprudence, Family Law § 7:46 Petition for emancipation; jurisdiction.

Illinois Jurisprudence, Family Law § 7:45 Complete and partial emancipation; rights and responsibilities of emancipated minor.

§ 750 ILCS 30/5. Rights and responsibilities of an emancipated minor

Sec. 5. Rights and responsibilities of an emancipated minor. (a) A mature minor ordered emancipated under this Act shall have the right to enter into valid legal contracts, and shall have such other rights and responsibilities as the court may order that are not inconsistent with the specific age requirements of the State or federal constitution or any State or federal law.

(b) A mature minor or homeless minor who is partially emancipated under this Act shall have only those rights and responsibilities specified in the order of the court.

(Source: P.A. 81-833; 93-105, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 40, Para. 2205.

Effect of Amendments. The 2003 amendment by P.A. 93-105, effective July 8, 2003, inserted "or homeless minor" in subsection (b).

CASE NOTES

Earnings

The right of parents to emancipate their child, and relinquish their right to his wages and earnings during the child's minority, is recognized; this may be done by a written instrument or implied by acquiescence on the part of the parent in allowing the child to receive his wages and earnings, or from conduct inconsistent with his claim for the further services of the child. Romine v. City of Watseka, 341 Ill. App. 370, 91 N.E.2d 76 (2 Dist. 1950).

Where a minor has been emancipated, the parent will be barred from his right to claim the child's earnings, and they may be sued for and recovered in a suit by the minor's guardian or next friend, and in such a suit the minor does not sue as assignee of his parents' right of action, as they have lost that right by emancipation, but the minor sues for wages and earnings due and owing him in his own right. Romine v. City of Watseka, 341 Ill. App. 370, 91 N.E.2d 76 (2 Dist. 1950).

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Illinois Jurisprudence, Family Law § 7:45 Complete and partial emancipation; rights and responsibilities of emancipated minor.

§ 750 ILCS 30/6. Duration of emancipation and discharge of proceedings

Sec. 6. Duration of emancipation and discharge of proceedings. The court shall retain continuing jurisdiction over the proceedings until the emancipated minor reaches age 18, and may modify or terminate its previous emancipation orders. However, any subsequent modification or termination of a previous order shall be effective only prospectively and shall not affect any rights, duties, obligations or causes of action existing prior to the modification or termination of any order under this Act.

(Source: P.A. 81-833.)

Note.

This section was Ill.Rev.Stat., Ch. 40, Para. 2206.

Practice Guides and Treatises.

Contract Law § 4.12 Illinois Emancipation of Minors Act (IICLE).

Illinois Jurisprudence, Family Law § 7:49 Continuing jurisdiction over proceedings; modification or termination of order.

§ 750 ILCS 30/7. Petition

Sec. 7. Petition. The petition for emancipation shall be verified and shall set forth: (1) the age of the minor; (2) that the minor is a resident of Illinois at the time of the filing of the petition, or owns real estate in Illinois, or has an interest or is a party in any case pending in Illinois; (3) the cause for which the minor seeks to obtain partial or complete emancipation; (4) the names of the minor's parents, and the address, if living; (5) the names and addresses of any guardians or custodians appointed for the minor; (6) that the minor is (i) a mature minor who has demonstrated the ability and capacity to manage his own affairs or (ii) a homeless minor who is located in this State; and (7) that the minor has lived wholly or partially independent of his parents or guardian. If the minor seeks emancipation as a homeless minor, the petition shall also set forth the name of the youth transitional housing program that is willing and able to provide services and shelter or housing to the minor, the address of the program, and the name and phone number of the contact person at the program. The petition shall also briefly assert the reason that the services and shelter or housing to be offered are appropriate and necessary for the well-

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being of the homeless minor.

(Source: P.A. 81-833; 93-105, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 40, Para. 2207.

Effect of Amendments. The 2003 amendment by P.A. 93-105, effective July 8, 2003, in the first sentence, added the (i) designation and added (ii) and added the second sentence.

Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 7:46 Petition for emancipation; jurisdiction.

§ 750 ILCS 30/8. Notice

Sec. 8. Notice. All persons named in the petition shall be given written notice within 21 days after the filing of the petition for emancipation. Those persons shall have a right to be present if a hearing is sought or scheduled and to be represented by counsel.

All notices shall be served on persons named in the petition by personal service or by "certified mail, return receipt requested, addressee only". If personal service cannot be made in accordance with the provisions of this Act, substitute service or service by publication shall be made in accordance with the Civil Practice Law [735 ILCS 5/2-101 et seq.].

(Source: P.A. 83-1539; 93-105, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 40, Para. 2208.

Effect of Amendments. The 2003 amendment by P.A. 93-105, effective July 8, 2003, substituted the present first paragraph for the former which read "All persons named in the petition shall be given written notice 21 days prior to the hearing and shall have a right to be present and be represented by counsel".

Practice Guides and Treatises.

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§ 750 ILCS 30/9. Hearing on petition

Sec. 9. Hearing on petition. (a) Mature minor. Before proceeding to a hearing on the petition for emancipation of a mature minor the court shall advise all persons present of the nature of the proceedings, and their rights and responsibilities if an order of emancipation should be entered.

If, after the hearing, the court determines that the minor is a mature minor who is of sound mind and has the capacity and maturity to manage his own affairs including his finances, and that the best interests of the minor and his family will be promoted by declaring the minor an emancipated minor, the court shall enter a finding that the minor is an emancipated minor within the meaning of this Act, or that the mature minor is partially emancipated with such limitations as the court by order deems appropriate. No order of complete or partial emancipation may be entered under this Act if there is any objection by the minor, his parents or guardian.

(b) Homeless minor. Upon the verified petition of a homeless minor, the court shall immediately grant partial emancipation for the sole purpose of allowing the homeless minor to consent to the receipt of services and shelter or housing provided by the youth transitional housing program named in the petition and to other services that the youth transitional housing program may arrange by referral. The court may require that a youth transitional housing program employee appear before the court at the time of the filing of the petition and may inquire into the facts asserted in the petition. No other hearing shall be scheduled in the case of a petition affecting a homeless minor, unless, after notice, a parent or guardian requests such a hearing. If such a hearing is requested, then the homeless minor must be present at the hearing. After the granting of partial emancipation to a homeless youth, if the youth transitional housing program determines that its facility and services are no longer appropriate for the minor or that another program is more appropriate for the minor, the program shall notify the court and the court, after a hearing, may modify its order.

(Source: P.A. 81-833; 93-105, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 40, Para. 2209.

Effect of Amendments. The 2003 amendment by P.A. 93-105, effective July 8, 2003, added "on petition" in the section heading; in subsection (a) added the subsection (a) designation and the heading and inserted "for emancipation of a mature minor"; and added subsection (b).

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Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 7:48 Finding and order of emancipation; appeal of order.

Illinois Jurisprudence, Family Law § 7:47 Notice and hearing.

§ 750 ILCS 30/10. Joinder, Juvenile Court Proceedings

Sec. 10. Joinder, Juvenile Court Proceedings. The petition for declaration of emancipation may, with leave of the court, be joined with any pending litigation affecting the interests of the minor including a petition filed under the Juvenile Court Act or the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.].

If any minor seeking emancipation as a mature minor is a ward of the court under the Juvenile Court Act or the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.] at the time of the filing of the petition for emancipation, the petition shall be set for hearing in the juvenile court.

(Source: P.A. 85-1209; 93-105, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 40, Para. 2210.

The Juvenile Court Act, referred to above, was repealed. See now the Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq.

Effect of Amendments. The 2003 amendment by P.A. 93-105, effective July 8, 2003, inserted "as a mature minor" in the second paragraph.

Practice Guides and Treatises.

Illinois Jurisprudence, Family Law § 7:46 Petition for emancipation; jurisdiction.

§ 750 ILCS 30/11. Appeal

Sec. 11. Appeal. Any judgment or order allowing or denying a complete or partial emancipation is a final order for purposes of appeal.

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(Source: P.A. 81-833.)

Note.

This section was Ill.Rev.Stat., Ch. 40, Para. 2211.

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Illinois Jurisprudence, Family Law § 7:48 Finding and order of emancipation; appeal of order.

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CHAPTER 775.
HUMAN RIGHTS

775 ILCS 5Illinois Human Rights Act
775 ILCS 35Religious Freedom Restoration Act

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Illinois Human Rights Act

Article 1

General Provisions

775 ILCS 5/1-101.Short Title
775 ILCS 5/1-101.1.Construction
775 ILCS 5/1-102.Declaration of Policy
775 ILCS 5/1-103.General Definitions

Article 2

Employment

775 ILCS 5/2-101.Definitions
775 ILCS 5/2-102.Civil Rights Violations - Employment
775 ILCS 5/2-103.Arrest Record
775 ILCS 5/2-104.Exemptions
775 ILCS 5/2-105.Equal Employment Opportunities; Affirmative Action

Article 5A

Elementary, Secondary, And Higher Education

775 ILCS 5/5A-101.Definitions
775 ILCS 5/5A-101.1.Notice
775 ILCS 5/5A-102.Civil Rights Violations - Elementary, Secondary, and Higher Education

Article 6

Additional Civil Rights Violations

775 ILCS 5/6-101.Additional Civil Rights Violations
775 ILCS 5/6-102.Violations of other Acts

Article 7A

Department Of Human Rights: Procedures Under Articles 2, 4, 5, 5a And 6

775 ILCS 5/7A-101.[Applicability]
775 ILCS 5/7A-102.Procedures
775 ILCS 5/7A-103.Settlement
775 ILCS 5/7A-104.Judicial Proceedings

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Article 8A

Illinois Human Rights Commission; Procedures Under Articles 2, 4, 5, 5a And 6

775 ILCS 5/8A-101.[Applicability]
775 ILCS 5/8A-102.Hearing on Complaint
775 ILCS 5/8A-102.5.Alternative hearing procedure
775 ILCS 5/8A-103.Review by Commission
775 ILCS 5/8A-104.Relief; Penalties

Article 1.

General Provisions

§ 775 ILCS 5/1-101. Short Title

Sec. 1-101. Short Title. This Act shall be known and may be cited as the Illinois Human Rights Act.

(Source: P.A. 81-1216.)

Derivation.

Title: An Act to promote the public health, welfare and safety of the People of the State of Illinois by preventing unlawful discrimination in employment, real property transactions, access to financial credit, and public accommodations, by authorizing the creation of a Department of Human Rights to enforce, and a Human Rights Commission to adjudicate, allegations of unlawful discrimination, and by making uniform the law with reference to unlawful discrimination through the addition, amendment and repeal of various Acts.

Cite: 775 ILCS 5/1-101 et seq.

Source: P.A. 81-1216.

Date: Approved December 6, 1979.

Note.

This section was Ill.Rev.Stat., Ch. 68, Para. 1-101.

Cross References.

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For provision regarding applicability of this Act to the employment practices of county officials, see 55 ILCS 5/3-12010.

For provision regarding applicability of this Act to state employment training programs, see 20 ILCS 4020/11.

For provision regarding applicability of this Act to the appointment of officers and employees pursuant to the Regional Transportation Authority Act, see 70 ILCS 3615/2.14.

For provision regarding compliance with the Drug Free Workplace Act and the applicability of this Act thereto, see 30 ILCS 580/11.

For provision regarding the applicability of this Act to the Capital Development Board Act, see 20 ILCS 3105/10.12.

Illinois Administrative Code.

See 2 Illinois Administrative Code, § 926.200.

CASE NOTES

Analysis

In General
- Immunity
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- Due Process
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- Shifts
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- Illustrative Cases
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Failure to Comply
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Prima Facie Case

Retroactivity
- Amendments
- Denied

Wrongful Discharge Tort
- Not Recognized

In General

State of Illinois did not waive its Eleventh Amendment immunity in sexual harassment case by: (1) the Illinois Court of Claims Act, 705 ILCS 505/1 et seq.; (2) the Illinois Public Relations Act, 5 ILCS 315/1 et seq.; and (3) the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. Bartley v. United States Dep't of the Army, 221 F. Supp. 2d 934, 2002 U.S. Dist. LEXIS 14394 (C.D. Ill. 2002).

Dismissal of an employer's complaint appealing a ruling by the Illinois Department of Human Rights was proper under 735 ILCS 5/2-615 because the term "cause of action" in 775 ILCS 5/7A-102 meant "charge" filed with the department and not "complaint" and because the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 et seq., did not apply retroactively to complaints filed before 1/1/1996. Bowne of Chicago v. Human Rights Comm'n, 301 Ill. App. 3d 116, 234 Ill. Dec. 582, 703 N.E.2d 443, 1998 Ill. App. LEXIS 757 (1 Dist. 1998).

The Illinois Human Rights Act provides a comprehensive scheme of remedies and administrative procedures to redress human rights violations, and claims under the Act fall within the exclusive jurisdiction of the Illinois Human Rights Commission. Talley v. Washington Inventory Serv., 37 F.3d 310 (7th Cir. 1994).

The Illinois Human Rights Act prohibits discriminatory hiring practices where the decision to hire or not to hire is based on an applicant's age. Cano v. Village of Dolton, 250 Ill. App. 3d 130, 189 Ill. Dec. 883, 620 N.E.2d 1200 (1 Dist. 1993).

- Immunity

In an action against the Department of Corrections and its employees, amendments to 775 ILCS 5/7A-102(C)(4), (K) did not indicate that the State waived its sovereign immunity under 745 ILCS 5/1 for claims asserted against it under the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. Harris v. Illinois, 753 F. Supp. 2d 734, 2010 U.S. Dist. LEXIS 118922 (N.D. Ill. 2010).

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Constitutionality

- Due Process

Procedures for processing discrimination claims under this Act comport with due process although certain adversarial-type processes are not available during the initial investigative stages of discrimination claims, including: the right to cross-examine witnesses at fact finding conferences, the right to subpoena witnesses and documents, and a prohibition against ex parte communication between an investigator and a charging party or employer. Luckett v. Jett, 955 F.2d 1152 (7th Cir.), opinion amended, 966 F.2d 209 (7th Cir. 1992), cert. denied, 507 U.S. 922, 113 S. Ct. 1287, 122 L. Ed. 2d 679 (1993).

Administrative Remedies

Plaintiff's Illinois Human Rights Act (IHRA) claim was dismissed because plaintiff did not properly exhaust his claim as he failed to inform the Illinois Department of Human Rights (IDHR) within 35 days of receiving the IDHR's right to sue letter that he wished to pursue his charge as required by 775 ILCS 5/7A-102(A-1), and even if plaintiff had properly exhausted his administrative remedies, the IHRA claim would be dismissed because he filed his claim either too early or too late. O'Connell v. Cont'l Elec. Constr. Co., F. Supp. 2d , 2011 U.S. Dist. LEXIS 119921 (N.D. Ill. Oct. 17, 2011).

The court dismissed the plaintiff's claim that the defendants violated the Illinois Human Rights Act by discharging him in retaliation for his filing suit against his former employer on the basis that the plaintiff failed to exhaust his administrative remedies where there was no indication that the plaintiff filed a charge of discrimination with the Illinois Human Rights Commission and he did not allege in his complaint that he had done so. Rash v. Minority Intermodal Specialists, Inc., F. Supp. 2d , 2001 U.S. Dist. LEXIS 21371 (N.D. Ill. Dec. 18, 2001).

Where employee failed to show that Illinois Human Rights Commission had issued a final order on his complaint, employee's claim under Illinois Human Rights Act was dismissed for failure to exhaust the administrative remedies provided for under the Act. Huff v. Uarco, Inc., 925 F. Supp. 550 (N.D. Ill. 1996), rev'd on other grounds, 122 F.3d 374 (7th Cir. 1997).

This Act denies an aggrieved party direct access to the courts; instead a plaintiff must first file an action before the Illinois Department of Human Rights (IDHR) and only when the IDHR issues a final order is judicial review available. Jablonski v. Chas. Levy Circulating Co., 888 F. Supp. 84 (N.D. Ill. 1995).

Applicability

Employee could not adhere to the requirements of his job even with a reasonable accommodation, and thus, could not perform the job in question and was not handicapped under the Illinois Human Rights Act. Van Campen v. IBM, 326 Ill. App. 3d 963, 260 Ill. Dec. 886, 762 N.E.2d 545, 2001 Ill. App. LEXIS 924 (1 Dist. 2001).

- University of Illinois

The University of Illinois is part of the state for purposes of this Act. Faulkner-King v. Illinois Dep't of Human Rights, 225 Ill. App. 3d 784, 167 Ill. Dec. 330, 587 N.E.2d 599 (4 Dist.), cert. denied, 145 Ill. 2d 633, 173 Ill. Dec. 3, 596 N.E.2d 627 (1992).

Burden of Proof

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- Pretext

Complainant must show not only that the employer's articulated reasons were incredible or a pretext, but also produce sufficient evidence to allow the trier of fact to make an additional finding, which may be inferred from the record, that those reasons were a pretext for unlawful discrimination. Cisco Trucking Co. v. Illinois Human Rights Comm'n, 274 Ill. App. 3d 72, 210 Ill. Dec. 791, 653 N.E.2d 986 (4 Dist. 1995).

- Shifts

Mixed-motive analysis can be used in appropriate cases under the Illinois Human Rights Act; once a fired attorney credibly established that his previous filing of discrimination complaints against his housing authority employer was a contributing motive, the burden shifted to the employer to prove that it would have fired him anyway. Chi. Hous. Auth. v. Human Rights Comm'n, 325 Ill. App. 3d 1115, 259 Ill. Dec. 557, 759 N.E.2d 37, 2001 Ill. App. LEXIS 787 (1 Dist. 2001), appeal denied, 198 Ill. 2d 612, 264 Ill. Dec. 323, 770 N.E.2d 217 (2002).

In cases involving charges of discrimination filed pursuant to this Act, the complainant must first establish by a preponderance of the evidence a prima facie case of discrimination, and the respondent then assumes the burden of articulating a legitimate and nondiscriminatory reason for its actions; once a legitimate, nondiscriminatory reason is advanced, the complainant then has the burden of proving that the reason advanced is a pretext for discrimination. Zaderaka v. Human Rights Comm'n, 171 Ill. App. 3d 626, 121 Ill. Dec. 894, 525 N.E.2d 1201 (3 Dist. 1988), rev'd on other grounds, 131 Ill. 2d 172, 137 Ill. Dec. 31, 545 N.E.2d 684 (1989).

Constitutional Claims

- Direct Actions Inappropriate

Where Ill. Const. (1970), Art. I, § 17 is implemented by this Act, an employee is entitled to the benefits of an elaborate administrative scheme designed to protect individuals from arbitrary actions by their supervisors; it is inappropriate to thwart that scheme by permitting a direct cause of action for damages based directly on the Constitution. Curtis v. Continental Ill. Nat'l Bank, 568 F. Supp. 740 (N.D. Ill. 1983).

- Direct Actions Invalid

Claims under Ill. Const. (1970), Art. I, §§ 17 and 18 are subject to this Act's administrative procedures. Danielson v. DuPage Area Vocational Educ. Auth., 595 F. Supp. 27 (N.D. Ill. 1984).

Construction

In the absence of a provision in the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., governing the service of notice, it is appropriate to interpret the time limit of § 113 (735 ILCS 5/3-113) of the Illinois Administrative Review Law, 735 ILCS 5/3-101 et seq., as if the five-day mailing presumption contained in Ill. Admin. Code tit. 56, § 2520.20, is a part of the period provided by § 8-111(a)(1) (775 ILCS 5/8-111(a)(1) of the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. Moren v. Ill. Dep't of Human Rights, 338 Ill. App. 3d 906, 273 Ill. Dec. 944, 790 N.E.2d 86, 2003 Ill. App. LEXIS 570 (1 Dist. 2003).

Illinois courts look to federal case law interpreting provisions of Title VII of the Civil Rights Act of 1964 as authority for construing provisions of this Act. Muraoka v. Illinois Human Rights Comm'n, 252 Ill. App. 3d 1039, 192 Ill. Dec. 291, 625 N.E.2d 251 (1 Dist. 1993).

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Because this Act is remedial legislation, it must be construed liberally to effectuate its purpose. Muraoka v. Illinois Human Rights Comm'n, 252 Ill. App. 3d 1039, 192 Ill. Dec. 291, 625 N.E.2d 251 (1 Dist. 1993).

Constructive Discharge

Where plaintiff was compelled to leave the job site before his shift was over and plaintiff was never permitted to return to his job, he never resigned from his position and waited at least three weeks before bringing a discrimination charge and seeking unemployment benefits, although he was never specifically told he had been fired, employers actions precluded him from performing his normal job duties and deprived him of the salary he would have earned which amounted to, at a minimum, a constructive discharge and clearly constituted an adverse employment action. Raintree Health Care Ctr. v. Human Rights Comm'n, 275 Ill. App. 3d 387, 211 Ill. Dec. 561, 655 N.E.2d 944 (1 Dist. 1995), aff'd, 173 Ill. 2d 469, 220 Ill. Dec. 124, 672 N.E.2d 1136 (1996).

Decision Upheld

Appellate court affirmed the decision of the state human rights agency's chief legal counsel that sustained the dismissal of the job applicant's charge of hiring discrimination, as the job applicant failed to show a prima facie case of employment discrimination in violation of the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., especially since the hiring entity, the city, showed that it had not hired anyone to fill the position that the job applicant had sought. C.R.M. v. Chief Legal Counsel, 372 Ill. App. 3d 730, 310 Ill. Dec. 575, 866 N.E.2d 1177, 2007 Ill. App. LEXIS 369 (1 Dist. 2007).

Because plaintiff failed to rebut the legitimate non-discriminatory reason given and supported by the employer, the Human Rights Commission's decision to dismiss plaintiff's claim was not arbitrary, capricious or an abuse of discretion. Zunino v. Cook County Comm'n on Human Rights, 289 Ill. App. 3d 133, 224 Ill. Dec. 617, 682 N.E.2d 178 (1 Dist. 1997).

Discriminatory Intent

An employee presented no evidence to demonstrate his employer's motives in terminating his employment were based on unlawful age discrimination; the judge's disbelief of the employer's proffered reasons for termination was not enough. Illinois J. Livingston Co. v. Illinois Human Rights Comm'n, 302 Ill. App. 3d 141, 235 Ill. Dec. 224, 704 N.E.2d 797 (1 Dist. 1998), appeal denied, 183 Ill. 2d 568, 238 Ill. Dec. 714, 712 N.E.2d 818 (1999).

Duplicate Common Law Claims

- Dismissal Warranted

Plaintiff's claim of breach of an implied covenant of good faith in an employment contract in fact asserted a cause of action for retaliatory discharge, and while a common law cause of action for retaliatory discharge might be available to plaintiff as a violation of clearly mandated public policies against sexual discrimination if the plaintiff had no other means of legal redress, where plaintiff had alleged violations of both Title VII (42 U.S.C. § 2000e et seq.) and of this Act, since both of these statutes provide comprehensive mechanisms for the enforcement of their substantive provisions, defendant's motion to dismiss was granted because plaintiff's claim was duplicative of plaintiff's federal and state statutory remedies. Horbaczewsky v. Spider Staging Sales Co., 621 F. Supp. 749 (N.D. Ill. 1985).

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Employee Termination

Former employee was not entitled to recover on the former employee's claim of employment discrimination, based on sexual orientation in violation of a city ordinance, against the former employee and department manager. In reviewing such claims, appellate court's analyzed such claims the same way they would in considering an employment discrimination cases under the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., and the former employee under that standard of review was unable to make even the threshold showing of a prima facie case of unlawful discrimination since the record demonstrated that the former employee was terminated after the former employer applied a lengthy disciplinary process to the former employee's excessive absences. Powell v. City of Chi. Human Rights Comm'n, 389 Ill. App. 3d 45, 329 Ill. Dec. 179, 906 N.E.2d 24, 2009 Ill. App. LEXIS 137 (1 Dist. 2009), cert. denied, 130 S. Ct. 1079, 2010 U.S. LEXIS 445, 175 L. Ed. 2d 904 (U.S. 2010).

Plaintiff's alleged rudeness did not rise to the level of an articulated reason for discharge. Lake Point Tower, Ltd. v. Illinois Human Rights Comm'n, 291 Ill. App. 3d 897, 225 Ill. Dec. 957, 684 N.E.2d 948 (1 Dist. 1997).

Employee terminations that are related to conduct that promotes particular public policies may be actionable as common law tort claims, while terminations that are motivated by discriminatory conduct may be actionable as human rights violations. Talley v. Washington Inventory Serv., 37 F.3d 310 (7th Cir. 1994).

Evidence Insufficient

Case reversed and remanded to the Human Rights Commission for the taking of further evidence regarding issue of whether hospital's reasons for denying employee a promotion were a pretext for racial discrimination. Christ Hosp. & Medical Ctr. v. Illinois Human Rights Comm'n, 293 Ill. App. 3d 105, 227 Ill. Dec. 608, 687 N.E.2d 1090 (1 Dist. 1997), appeal denied, 177 Ill. 2d 568, 232 Ill. Dec. 451, 698 N.E.2d 542 (1998).

Exclusive Remedy

- Civil Rights Violations

Illinois Human Rights Act (IHRA), 775 ILCS 5/1-101 et seq., prohibits employer liability for state common law claims that are inextricably linked to a civil rights violation such that there is no independent basis for the action apart from the IHRA, and where such a claim is preempted by the IHRA, neither the state courts nor a federal court sitting in Illinois has jurisdiction over the tort claim; mere factual overlap is not decisive, and the determination of whether preemption has occurred is contingent on whether a plaintiff can establish the necessary elements of his or her tort claim independent of any legal duties created by the IHRA. Santos v. Boeing Co., F. Supp. 2d , 2004 U.S. Dist. LEXIS 8337 (N.D. Ill. May 10, 2004).

In a sexual harassment case where two employees had alleged a Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) et seq., claim for liability based on a company's negligent supervision, the tort claim was not preempted by the Illinois Human Rights Acts, 775 ILCS 5/1-101 et seq., because the claim did not allege an Illinois common law tort. Sinkule v. Fisher Dev., F. Supp. 2d , 2002 U.S. Dist. LEXIS 10681 (N.D. Ill. June 13, 2002).

This Act was intended to be the exclusive source for redress of civil rights violations. On-Line Financial Servs., Inc. v. Department of Human Rights, 228 Ill. App. 3d 99, 170 Ill. Dec. 73, 592 N.E.2d 509 (1 Dist. 1992).

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Where the Illinois Human Rights Act, former Ill. Rev. Stat. ch. 68, para. 1-101 et seq. (now 775 ILCS 5/1-101), applies, it is the exclusive source for redress of alleged civil rights violations, and a covered employee may not bring a private cause of action to recover damages for violation of his rights under Ill. Const. (1970), Art. I, § 17. Ritzheimer v. Insurance Counselors, 173 Ill. App. 3d 953, 123 Ill. Dec. 506, 527 N.E.2d 1281, 1988 Ill. App. LEXIS 1216 (1 Dist. 1988).

- Employment Discrimination

Where a former employee sued a former employer, alleging failure to supervise based on acts of sexual harassment from unwanted touching and inappropriate sexual comments by supervisors and co-workers as well as a recurring hole in a changing room wall, the employer was entitled to summary judgment because this claim was preempted by the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., as this claim was premised upon and inextricably linked to the employee's allegations of sexual harassment. Ciesielski v. Hooters of Am., Inc., F. Supp. 2d , 2004 U.S. Dist. LEXIS 14478 (N.D. Ill. July 27, 2004).

The plaintiff's claim for tortious interference with prospective economic advantage and contract was barred by the Illinois Human Rights Act as his claims could not stand without relying on allegations of employment discrimination based on race and disability. Dorado v. Aargus Sec. Sys., F. Supp. 2d , 2002 U.S. Dist. LEXIS 2732 (N.D. Ill. Feb. 13, 2002).

This Act provides the exclusive remedy for violations of Ill. Const. (1970), Art. I, § 17, relating to employment discrimination; no independent right of action exists. Sanders v. A.J. Canfield Co., 635 F. Supp. 85 (N.D. Ill. 1986).

- Human Rights Act

Customer's claim was largely circumscribed by Illinois human rights legislation where the customer claimed that a bank intentionally inflicted emotional distress by closing the customer's account after the customer suffered from seizures in the lobby of the bank. Sanglap v. Lasalle Bank, F.S.B., 345 F.3d 515, 2003 U.S. App. LEXIS 20006 (7th Cir. 2003).

Absent a final order from the Illinois Human Rights Commission, which plaintiff failed to allege he had received, the federal court had to dismiss plaintiff's employment discrimination claim under the Illinois Human Rights Act for failure to exhaust state administrative remedies. Jimenez v. Thompson Steel Co., 264 F. Supp. 2d 693, 2003 U.S. Dist. LEXIS 8771 (N.D. Ill. 2003).

- Illustrative Cases

Employer childrens home's motion to dismiss a child care worker's claims that he was terminated in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and the Family Medical Leave Act, 29 U.S.C. § 2601 et seq., succeeded only as to claims the employee had failed to raise to the Equal Employment Opportunity Commission, an abandoned claim for punitive damages, and his claims for intentional infliction of emotional distress that were preempted under the Illinois Human Rights Act, 775 ILCS 5/1-101, et seq. Stansberry v. Uhlich Children's Home, 264 F. Supp. 2d 681, 2003 U.S. Dist. LEXIS 8512 (N.D. Ill. 2003).

Court reversed the dismissal of the former employee's complaint, because the Illinois Human Rights Act, former Ill. Rev. Stat. ch. 68, para. 1-101 et seq. (now 775 ILCS 5/1-101), was not applicable where the former employer did not have the requisite number of employees. Ritzheimer v. Insurance Counselors, 173 Ill. App. 3d 953, 123 Ill. Dec. 506, 527 N.E.2d 1281, 1988 Ill. App. LEXIS 1216 (1 Dist. 1988).

- Racial Discrimination

Although a direct cause of action for racial discrimination exists under Ill. Const. (1970) Art. I, § 17, this Act provides the exclusive enforcement mechanism for those constitutional rights; therefore, the plaintiff's attempt at evading this Act's exhaustion requirement by bringing a direct

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action under Ill. Const. (1970), Art. I, § 17 was improper and dismissed. Walker v. Woodward Governor Co., 631 F. Supp. 91 (N.D. Ill. 1986).

Failure to Comply

- Preclusion

Failure of former employee to comply with this Act precluded her age discrimination claim against her former employer. Muellner v. Mars, Inc., 714 F. Supp. 351 (N.D. Ill. 1989).

Jurisdiction

When the Missouri Commission on Human Rights issued a right-to-sue letter to an employee, the employee was not barred from bringing suit against the employee's former employer in an Illinois trial court because, inter alia, there was no violation of Illinois public policy in permitting the employee to bring a civil rights claim, which arose outside of the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., directly in an Illinois trial court. Ferreri v. Hewitt Assocs., LLC, 391 Ill. App. 3d 221, 330 Ill. Dec. 415, 908 N.E.2d 1073, 2009 Ill. App. LEXIS 264 (2 Dist. 2009).

An adverse employment decision based on the existence of a social relationship between an unmarried man and woman fell within the public policy embodied in the Illinois Human Rights Act and exclusive jurisdiction over such a claim is conferred upon the Illinois Human Rights Commission. Talley v. Washington Inventory Serv., 37 F.3d 310 (7th Cir. 1994).

In an employee's age discrimination suit, the employer was entitled to summary judgment as to the Illinois Human Rights Act claim because the employee failed to exhaust administrative remedies under 775 ILCS 5/8-111(C) as the employee presented no evidence that a final order had been issued. Ryan v. Robert Bosch Corp., F. Supp. 2d , 2004 U.S. Dist. LEXIS 18807 (N.D. Ill. Sept. 14, 2004).

- Circuit Courts

Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., deprives Illinois circuit courts of subject matter jurisdiction over all civil rights claims, regardless of whether they are brought under state or federal law. With respect to the Illinois court system, jurisdiction over all of a civil rights plaintiff's claims exists only in the Illinois Human Rights Commission.

- Civil Rights Violations

Where a district court sua sponte raised the issue of subject matter jurisdiction under the Rooker-Feldman doctrine and dismissed pursuant to Rule 12(b)(1), F.R.Civ.P. a disabled police officer's discrimination action against a municipality, its police pension board, and a board member under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and under 42 U.S.C. §§ 1981, 1983, the appeals court concluded that the action should have been dismissed pursuant to a summary judgment motion under Rule 56, F.R.Civ.P on res judicata grounds under the full faith and credit provision of 28 U.S.C. § 1738; the federal civil rights action was barred by res judicata because an Illinois state court affirmance of the police pension board's denial of duty-related disability benefits was based on the same core of operative facts. Further, the officer had a full and fair opportunity to litigate the federal civil rights claims because he could have litigated the claims in the state court; under the Illinois Civil Rights Act of 1979, 775 ILCS 5/1-101 - 5/10-101, the Illinois courts could have exercised jurisdiction over the federal civil rights claims either directly or after the exhaustion of available administrative remedies. Garcia v. Vill. of Mt. Prospect, 360 F.3d 630, 2004 U.S. App. LEXIS 3226 (7th Cir. 2004).

Federal district court may exercise jurisdiction only to review actions of the Illinois Department of Human Rights. Cavalieri-Conway v. L. Butterman & Assocs., 992 F. Supp. 995, 1998 U.S.

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Dist. LEXIS 792 (N.D. Ill. 1998), aff'd, 172 F.3d 52 (7th Cir. 1999), cert. denied, 528 U.S. 847, 120 S. Ct. 121, 145 L. Ed. 2d 103 (1999).

District court did not have jurisdiction over plaintiff's cause of action for intentional infliction of emotional distress because after removal of allegations referring to retaliation for assisting co-workers with sexual harassment complaints, a civil rights violation, nothing was left of the plaintiff's cause. Garcia v. Frye, 972 F. Supp. 1133 (N.D. Ill. 1997).

Plaintiff's contention that his discrimination claim could not have been heard by either the police board or the state court, because this Act vests sole jurisdiction over civil rights claims in the state Human Rights Commission, was without merit where the lower courts supported the proposition that this Act only precludes direct access to the circuit courts for redress of civil rights violations. Pirela v. Village of N. Aurora, 935 F.2d 909 (7th Cir.), cert. denied, 502 U.S. 983, 112 S. Ct. 587, 116 L. Ed. 2d 612 (1991).

Preemption

Allegations of an employer's extreme and outrageous behavior (including stacking boxes in front of the employee's office, telling others inside and outside of the employer that the employee should not be the director of professional relations, and not considering the employee for other positions) were inextricably linked to the employee's disability claim. The conduct described did not rise to the level of conduct that would support an independent claim for intentional infliction of emotional distress (IIED). Accordingly, the employee's IIED claim was preempted by the Illinois Human Rights Act, 775 ILCS5/1-101 et seq. Brown v. GC Am., Inc., F. Supp. 2d , 2005 U.S. Dist. LEXIS 28065 (N.D. Ill. Nov. 15, 2005).

Where a former employee sued a former employer, alleging intrusion upon the seclusion of another based on acts of sexual harassment from unwanted touching and inappropriate sexual comments by supervisors and co-workers as well as a recurring hole in a changing room wall, the employer was entitled to summary judgment because this claim was preempted by the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., as this claim was premised upon and inextricably linked to the employee's allegations of sexual harassment. Ciesielski v. Hooters of Am., Inc., F. Supp. 2d , 2004 U.S. Dist. LEXIS 14478 (N.D. Ill. July 27, 2004).

In an action that a former sales representative for an airline company filed under the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., alleging that the airline refused to accommodate her physical handicap, the representative's claim was pre-empted by the Railway Labor Act, 45 U.S.C. § 151, and the Federal Aviation Act (FAA), as amended by the Airline Deregulation Act, 49 U.S.C. § 41713(b)(1), because the claim required an interpretation of a collective bargaining agreement; the representative contended that her transfer to a part-time position violated the collective bargaining agreement, and grievances that the representative filed under the collective bargaining agreement contested the same conduct that gave rise to her discrimination charge. The sales representative position related to rates, routes, or services of an air carrier within the meaning of the FAA because the position required the representative to perform passenger service, ticket counter, ramp and gate agent duties. Lara-Girjikian v. Mexicana Airlines, 307 Ill. App. 3d 510, 241 Ill. Dec. 13, 718 N.E.2d 584, 1999 Ill. App. LEXIS 619 (1 Dist. 1999).

- In General

Employees' argument that the terminated worker's claims of intentional interference with the terminated worker's employment were preempted by the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., had to be rejected. No preemption exists if there is an independent basis for the action apart from the Illinois Human Rights Act and the terminated worker's allegations that an investigation of the terminated employee's workplace conduct intentionally interfered with the employment of the terminated employee were cognizable without reference to the legal duties

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created by the Illinois Human Rights Act. Harrison v. Addington, Ill. App. 3d , 353 Ill. Dec. 233, 955 N.E.2d 700, 2011 Ill. App. LEXIS 973 (3 Dist. 2011).

Where a former employee sued a former employer, alleging intentional infliction of emotional distress based on acts of sexual harassment from unwanted touching and inappropriate sexual comments by supervisors and co-workers as well as a recurring hole in a changing room wall, the employer was entitled to summary judgment because this claim was preempted by the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., as this claim was premised upon and inextricably linked to the employee's allegations of sexual harassment. Ciesielski v. Hooters of Am., Inc., F. Supp. 2d , 2004 U.S. Dist. LEXIS 14478 (N.D. Ill. July 27, 2004).

- Breach of Contract Claims

Where plaintiff's breach of contract claim rested solely on proof of discriminatory motive or impact, the claim was preempted by this Act, and the grant of defendant's motion for summary judgment was proper. Perera v. Flexonics, Inc., 727 F. Supp. 406 (N.D. Ill. 1989).

- Human Rights Act

Employer's motion to dismiss the employee's wrongful termination claim for lack of subject matter jurisdiction was denied because the employee's wrongful termination claim was not preempted by the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., since the employee's wrongful termination claim stood independent of the employee's allegations of disability discrimination, and the employee did not refer to her disability discrimination allegations in her wrongful termination claim. Macchia v. Loyola Univ. Med. Ctr., F. Supp. 2d , 2004 U.S. Dist. LEXIS 21430 (N.D. Ill. Oct. 19, 2004).

- Intentional Infliction of Emotional Distress Claims

Illinois Human Rights Act (IHRA), 775 ILCS 5/1-101 et seq., did not preempt plaintiff's intentional infliction of emotional distress claim because plaintiff's allegation that his supervisor removed his medication from his desk drawer stated an emotional distress claim independent of the duties imposed by the IHRA. O'Connell v. Cont'l Elec. Constr. Co., F. Supp. 2d , 2011 U.S. Dist. LEXIS 119921 (N.D. Ill. Oct. 17, 2011).

Plaintiff former employee's intentional infliction of emotional distress against defendants, her former employer and another employee, was not preempted by the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq.; given the extreme behavior outlined by the district court, and presented to the jury, defendants committed a tort independent of any duties not to discriminate against plaintiff. Naeem v. McKesson Drug Co., 444 F.3d 593, 2006 U.S. App. LEXIS 8967 (7th Cir. 2006).

Employee's motion for reconsideration of the dismissal of intentional infliction of emotional distress claims against the owner of her employer was denied because the fact that new evidence showed that the owner was not officially connected with the employer at the time of his alleged sexual harassment did not alter the court's holding that the employee's intentional infliction of emotional distress claims were inextricably linked to her claim of sexual harassment and, therefore, the court lacked subject matter jurisdiction over those claims pursuant to the Illinois Human Rights Act, since the owner held himself out to be some sort of employee prior to the date his official relationship with the employer began. Mindell v. David Kronfeld & Boncher & Anderson, Ltd., F. Supp. 2d , 2004 U.S. Dist. LEXIS 13315 (N.D. Ill. July 12, 2004).

Employer's motion to dismiss an intentional infliction of emotional distress (IIED) claim was granted because the tort claims were inextricably linked to an employee's claims of sexual harassment and retaliation, brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.; therefore, the IIED claim was preempted by the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. Mustari v. New Hope Acad., F. Supp. 2d , 2004 U.S. Dist. LEXIS 11126 (N.D. Ill. June 18, 2004).

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Employee's intentional infliction of emotional distress claim was inextricably linked to the claim of employment disability discrimination where the factual allegations set forth in the discrimination claim were re-alleged and incorporated by reference to support the employee's claim for intentional infliction of emotional distress, and the employee failed to state an independent basis for imposing liability for intentional infliction of emotional distress; thus, the intentional infliction of emotional distress claim was preempted by the Illinois Human Rights Act. Caroselli v. Allstate Ins. Co., F. Supp. 2d , 2004 U.S. Dist. LEXIS 2778 (N.D. Ill. Feb. 20, 2004).

Summary judgment was proper where the student's intentional infliction of emotional distress was unsupported and preempted by Illinois Human Rights Act, 775 ILCS 5/1-101, et seq, as the student was an Illinois resident, and the center was in Illinois, there was no federal jurisdiction. Fontalvo v. Constr. & Gen. Laborers' Dist. Council of Chi., F. Supp. 2d , 2004 U.S. Dist. LEXIS 533 (N.D. Ill. Jan. 12, 2004).

Plaintiff's emotional distress claims were not preempted by Illinois Human Rights Act (IHRA) as they did not arise solely out of alleged discrimination; plaintiff's harassment allegations formed a basis independent of IHRA duties for establishing the emotional distress claims. Jimenez v. Thompson Steel Co., 264 F. Supp. 2d 693, 2003 U.S. Dist. LEXIS 8771 (N.D. Ill. 2003).

Same allegations which formed the basis for an employee's Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., claim also supported her intentional infliction of emotion distress claim; the intentional infliction of emotional distress claim was "inextricably linked" to her Title VII claim and could not exist but for the sexual harassment/discrimination allegations and thus, that count of her complaint was dismissed because it was preempted by the Illinois Human Rights Act, 775 ILCS 5/101 et seq. Wiginton v. CB Richard Ellis, Inc., F. Supp. 2d , 2003 U.S. Dist. LEXIS 7621 (N.D. Ill. May 5, 2003).

A state law tort action for intentional infliction of emotional distress was preempted by the Illinois Human Rights Act because it was inextricably linked to a claim for a civil rights violation under the Act where the factual allegations set forth in the first count of the plaintiff's complaint were re-alleged and incorporated by reference as the facts supporting the plaintiff's intentional infliction of emotional distress claim and, without the allegation of discrimination, the plaintiff had no basis for imposing liability for intentional infliction of emotional distress. Haas v. Vill. of Hinsdale, F. Supp. 2d , 2001 U.S. Dist. LEXIS 20989 (N.D. Ill. Dec. 13, 2001).

The plaintiff's claims for intentional or negligent infliction of emotional distress were preempted by the Act. Shelton v. Ernst & Young, LLP, 143 F. Supp. 2d 982, 2001 U.S. Dist. LEXIS 5717 (N.D. Ill. 2001).

An action for intentional infliction of emotional distress arising from employment discrimination is preempted under the statute. Schwartz v. Home Depot U.S.A., Inc., F. Supp. 2d , 2000 U.S. Dist. LEXIS 17744 (N.D. Ill. Dec. 1, 2000).

Where the plaintiff police officer based his claim for intentional infliction of emotional distress on several statements made by police department employees that referred to his mental condition, the district court properly concluded that the alleged comments were inextricably linked to the plaintiff's disability discrimination claim because they were only offensive to the extent that they referred to the plaintiff's disability and, therefore, that such claim was preempted by the Illinois Human Rights Act. Krocka v. City of Chicago, 203 F.3d 507 (7th Cir. 2000).

- Negligence

Former employee's negligent retention claim, which asserted that a former employer had knowingly retained a violent co-worker, was not preempted by the Illinois Human Rights Act (IHRA), 775 ILCS 5/1-101 et seq., because although some of the facts alleged were also asserted with regard to the employee's Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. § 2000e et seq., race discrimination and retaliation claims, the Title VII facts were not necessary to establish the elements of the negligent retention claim and the employee had

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sufficiently shown that his negligent retention claim was based on a duty other than one created by the IHRA. Santos v. Boeing Co., F. Supp. 2d , 2004 U.S. Dist. LEXIS 8337 (N.D. Ill. May 10, 2004).

- Retaliatory Discharge

In a suit wherein a former employee alleged common law retaliatory discharge and a claim for retaliatory discharge under 42 U.S.C. § 1981, the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., preempted both claims and, therefore, the trial court lacked subject matter jurisdiction to entertain any of the civil rights claims.

Prima Facie Case

Although unlawful discrimination was prohibited under the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., the employee could not recover on the employee's charge that the employer committed race and age discrimination in twice reprimanding the employee for poor work performance while employed by the employer as a warehouse worker fulfilling customer orders. Despite 775 ILCS 5/1-102 outlawing forms of discrimination such as race and age discrimination, the employee was not able to make a prima facie showing of discrimination, as the employee did not demonstrate that the written reprimands resulted in material adverse employment actions against the employee, such as changes in compensation or working conditions, and the employee did not show that similarly-situated employees in the same protected class were treated differently. Owens v. Dep't of Human Rights, 403 Ill. App. 3d 899, 344 Ill. Dec. 94, 936 N.E.2d 623, 2010 Ill. App. LEXIS 851 (1 Dist. 2010).

An employee established a prima facie case of age discrimination where he was 61 at the time of his termination, he met the employer's performance standards and he was replaced by rotating manpower within the building rather than hiring a new employee. Illinois J. Livingston Co. v. Illinois Human Rights Comm'n, 302 Ill. App. 3d 141, 235 Ill. Dec. 224, 704 N.E.2d 797 (1 Dist. 1998), appeal denied, 183 Ill. 2d 568, 238 Ill. Dec. 714, 712 N.E.2d 818 (1999).

Plaintiff established a prima facie case of discrimination in her claim that she was terminated due to cancer; evidence showed that she was terminated soon after: (1) she mentioned the possibility of undergoing chemotherapy; (2) a new general manager took charge; and (3) she was given a significant raise. Lake Point Tower, Ltd. v. Illinois Human Rights Comm'n, 291 Ill. App. 3d 897, 225 Ill. Dec. 957, 684 N.E.2d 948 (1 Dist. 1997).

Retroactivity

- Amendments

District court did not err in refusing to grant retroactive relief to the plaintiffs who were subject to the constitutionally defective procedures of this Act existing before September 24, 1987, since retroactivity was not necessary to insure future compliance with due process. Luckett v. Jett, 966 F.2d 209 (7th Cir. 1992), cert. denied, 507 U.S. 922, 113 S. Ct. 1287, 122 L. Ed. 2d 679 (1993); Luckett v. Jett, 955 F.2d 1152 (7th Cir.), opinion amended, 966 F.2d 209 (7th Cir. 1992), cert. denied, 507 U.S. 922, 113 S. Ct. 1287, 122 L. Ed. 2d 679 (1993).

- Denied

Since an Illinois statute will always be given prospective application unless there is a clear expression of legislative intent to the contrary, this Act is not retroactive. Willis v. Berger Transfer & Storage, Inc., 529 F. Supp. 279 (N.D. Ill. 1981).

Wrongful Discharge Tort

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- Not Recognized

While state courts have recognized, in limited circumstances, the tort of wrongful discharge in contravention of public policy, they have not extended this tort to situations where a plaintiff alleges that the public policy violated is the policy contained in this Act. Ring v. R.J. Reynolds Indus. Inc., 597 F. Supp. 1277 (N.D. Ill. 1984), aff'd, 804 F.2d 143 (7th Cir. 1986).

OPINIONS OF ATTORNEY GENERAL

Nature of Proceedings

With respect to determining eligibility for compensation from the federal Equal Employment Opportunity Commission, the administrative proceedings of the Illinois Human Rights Commission, when hearing or reviewing cases alleging a violation of the Illinois Human Rights Act, are functionally equivalent to the proceedings in Illinois' circuit courts for other civil cases. 1996 Op. Atty. Gen. (96-022).

LEGAL PERIODICALS

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For article, "Survey of Illinois Law: Employment Law," see 31 S. Ill. U.L.J. 859 (2007).

For article, "Balancing Alcoholics' Rights and Employer Liability Under Anti-Discrimination Laws," see 86 Ill. B.J. 148 (1998).

For article, "No Right to Exclude: Public Accommodations and Private Property," see 90 Nw. U.L. Rev. 1283 (1996).

For article, "Reasonable Accommodation: An Illinois Employer's Guide to the Emerging Standard," see 84 Ill. B.J. 236 (1996).

For article, "The Department of Human Rights' Power to Issue Complaints: A Question of Timing," see 82 Ill. B.J. 78 (1994).

For article, "Survey of Illinois Law: Employment Law," see 17 S. Ill. U.L.J. 823 (1993).

For comment, "The Challenge of Transsexuality: Legal Responses to an Assertion of Rights," see 4 N. Ill. U.L. Rev. 119 (1993).

For comment, "Executive Veto, Congressional Compromise, and Judicial Confusion: The 1991 Civil Rights Act - Does It Apply Retroactively?," see 24 Loy. U. Chi. L.J. 109 (1992).

For article, "Proposed Legislative Solution to Procedural Problems in the Illinois Human Rights Act," see 6 Chi. B. Rec. 26 (July/Aug. 1992).

For article, "Proposed Legislative Solution to Procedural Problems in the Illinois Human Rights Act," see 6 Chi. B. Rec. 26 (July/Aug. 1992).

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For article, "Litigation of the Illinois Human Rights Commission," see 6 Chi. B. Rec. 30 (July/Aug. 1992).

For article, "Handling Discriminators Cases in Illinois - A Practical Guide," see 5 Chi. B. Rec. 28 (1991).

For article, "Survey of Illinois Law [1989-90] - Employment Law," see 15 S. Ill. U.L.J. 861 (1991).

For article, "Employer Insurance Coverage for Employment Litigation," see 79 Ill. B.J. 32 (1991).

For article, "Evaluating Successful Employment Discrimination Claims," see 4 Chi. B. Rec. 21 (1990).

For comment, "Employment at Will in Illinois - Has the Employer Been Forgotten?," see 9 N. Ill. U.L. Rev. 603 (1989).

For article, "Recent Developments in Employment Law: 1987-88 Survey," see 13 S. Ill. U.L.J. 656 (1989).

For note, "Good Faith and Fair Dealing in Illinois: An Application in the Employment Context," see 1987 U. Ill. Rev. 183.

For article, "Federal and State Handicapped Discrimination Laws: Toward an Accommodating Legal Framework," see 18 Loy. U. Chi. L.J. 1119 (1986-87).

For article, "Retaliatory Discharge in Illinois: Recent Development," see 61 Chi-Kent L. Rev. 671 (1985).

For note and comment, "Cancer as a Protected Handicap in Illinois," see 60 Chi.-Kent L. Rev. 715 (1984).

For article, "Historical and Structural Analysis of the Illinois," 59 Chi.-Kent L. Rev. 761 (1983).

For article, "Practice and Procedure Under the Illinois Human Rights Act," see 3 N. Ill. U.L. Rev. 75 (1982).

For article, "A Survey of Illinois Employment Discrimination Law," see 31 De Paul L. Rev. 323 (1982).

For article, "Employment-at-Will in Illinois: Implications and Anticipations for the Practitioner," see 31 De Paul L. Rev. 359 (1982).

For note on Constitutional Law and Employment discussing Melvin v. City of West Frankfort, 93 Ill. App. 3d 425, 417 N.E.2d 260 (1981), see 70 Ill. B.J. 520 (1982).

For note on State Constitutional Law and Special Legislation discussing Wilson v. All-Steel, 87 Ill. 2d 38, 428 N.E.2d 489 (1981), see 71 Ill. B.J. 189 (1982).

For article, "The Illinois Human Rights Act: Revision of Illinois Law Concerning Discrimination in Employment," see 69 Ill. B.J. 218 (1980).

RESEARCH REFERENCES

Discrimination "because of handicap" or "on the basis of handicap" under state statutes prohibiting job discrimination on account of handicap. 81 ALR4th 144.

State civil rights legislation prohibiting sex discrimination in housing. 81 ALR4th 205.

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Judicial construction and application of state legislation prohibiting religious discrimination in employment. 37 ALR5th 349.

Application of state law to age discrimination in employment. 51 ALR5th 1.

Same-sex sexual harassment under state antidiscrimination laws. 73 ALR5th 1.

Necessity of, and what constitutes, employer's reasonable accommodation of employee's religious preference under state law. 107 ALR5th 623.

Federal and state constitutional provisions and state statutes as prohibiting employment discrimination based on heterosexual conduct or relationship. 123 ALR5th 411.

Practice Guides and Treatises.

Contract Law § 19.29 "Knowing and Voluntary" (IICLE).

Not-For-Profit Corporations § 5.72 Human Rights Act (IICLE).

Disability Law Today: An Accessible Guide for Illinois Practitioners § 7.1 Introduction (IICLE).

Disability Law Today: An Accessible Guide for Illinois Practitioners § 1.7 Overview of Chapter 7: Disability Discrimination Under Illinois Law (IICLE).

Conducting the Employment Practices Audit § 13.6 Illinois Human Rights Act (IICLE).

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Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 22.11 Preemption (IICLE).

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Employment Discrimination § 2.3 Statutes and Laws Involved (IICLE).

Employment Discrimination § 1.1 Applicable Laws (IICLE).

Labor Law Handbook § 10.48 State Agencies (IICLE).

1-8 Employment in Illinois § 8-2 State and Federal Laws.

1-30 Illinois Forms of Jury Instructions § 30.06 Wrongful Termination of At-Will Employment in Contravention of Statute.

Illinois Jurisprudence, Personal Injury and Torts § 8:17 Generally.

Illinois Jurisprudence, Personal Injury and Torts § 8:08 Statutory construction.

Practice Checklists.

Further Operating Considerations, Estate Administration (Illinois) § 6.43 (IICLE).

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§ 775 ILCS 5/1-101.1. Construction

Sec. 1-101.1. Construction. Nothing in this Act shall be construed as requiring any employer, employment agency, or labor organization to give preferential treatment or special rights based on sexual orientation or to implement affirmative action policies or programs based on sexual orientation.

(Source: P.A. 93-1078, § 5.)

Effective Date. This section is effective January 1, 2006, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/1.

§ 775 ILCS 5/1-102. Declaration of Policy

Sec. 1-102. Declaration of Policy. It is the public policy of this State:

(A) Freedom from Unlawful Discrimination. Freedom from Unlawful Discrimination. To secure for all individuals within Illinois the freedom from discrimination against any individual because of his or her race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service in connection with employment, real estate transactions, access to financial credit, and the availability of public accommodations.

(B) Freedom from Sexual Harassment-Employment and Elementary, Secondary, and Higher Education. To prevent sexual harassment in employment and sexual harassment in elementary, secondary, and higher education.

(C) Freedom from Discrimination Based on Citizenship Status-Employment. To prevent discrimination based on citizenship status in employment.

(D) Freedom from Discrimination Based on Familial Status-Real Estate Transactions. To prevent discrimination based on familial status in real estate transactions.

(E) Public Health, Welfare and Safety. To promote the public health, welfare and safety by protecting the interest of all people in Illinois in maintaining personal dignity, in realizing their full productive capacities, and in furthering their interests, rights and privileges as citizens of this State.

(F) Implementation of Constitutional Guarantees. To secure and guarantee the rights established by Sections 17, 18 and 19 of Article I of the Illinois Constitution of 1970.

(G) Equal Opportunity, Affirmative Action. To establish Equal Opportunity and Affirmative Action as the policies of this State in all of its decisions, programs and

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activities, and to assure that all State departments, boards, commissions and instrumentalities rigorously take affirmative action to provide equality of opportunity and eliminate the effects of past discrimination in the internal affairs of State government and in their relations with the public.

(H) Unfounded Charges. To protect citizens of this State against unfounded charges of unlawful discrimination, sexual harassment in employment and sexual harassment in elementary, secondary, and higher education, and discrimination based on citizenship status in employment.

(Source: P.A. 86-910; 86-1343; 87-579; 88-178, § 5; 93-1078, § 5; 95-668, § 5; 96-447, § 5; 96-1319, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 68, Para. 1-102.

Effect of Amendments. The 1993 amendment by P.A. 88-178, effective August 4, 1993, in subsection (A) inserted "against any individual", inserted "his or her" and inserted "military status".

The 2005 amendment by P.A. 93-1078, effective January 1, 2006, inserted "sexual orientation" in (a).

The 2007 amendment by P.A. 95-668, effective October 10, 2007, substituted "mental disability" for "mental handicap" in (A).

The 2009 amendment by P.A. 96-447, effective January 1, 2010, added "order of protection status" in (A).

The 2010 amendment by P.A. 96-1319, effective July 27, 2010, inserted "elementary, secondary, and" each time it appears in (B) and (H).

CASE NOTES

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Sexual Harassment

In General

Employer's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) was granted because an employee failed to file timely charges with the appropriate state and federal agencies as required under the Illinois Human Rights Act, 775 ILCS 5/1-102(A), or Title VII, 42 U.S.C. § 2000e-5.

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Despot v. Combined Ins. Co. of Am., F. Supp. 2d , 2004 U.S. Dist. LEXIS 8368 (N.D. Ill. May 12, 2004).

The protections afforded by this Act cannot be compromised; to condone discrimination clearly contravenes the public policy expressly declared in this Act. Maye v. Illinois Human Rights Comm'n, 224 Ill. App. 3d 353, 166 Ill. Dec. 592, 586 N.E.2d 550 (1 Dist. 1991), cert. denied, 144 Ill. 2d 635, 169 Ill. Dec. 143, 591 N.E.2d 23 (1992).

Union member's race discrimination claim did not depend on the existence of the collective bargaining agreement because it had its origin in the public policy of Illinois; the existence of that public policy is shown in Ill. Rev. Stat. ch. 68, para. 1-102(A), now 775 ILCS 5/1-102(A). Kraft, Inc., Dairy Group v. Peoria, 177 Ill. App. 3d 197, 126 Ill. Dec. 470, 531 N.E.2d 1106, 1988 Ill. App. LEXIS 1753 (1 Dist. 1988).

Applicability

- In General

The act does not encompass the jury selection process. People v. McGaughy, 313 Ill. App. 3d 656, 246 Ill. Dec. 447, 730 N.E.2d 127, 2000 Ill. App. LEXIS 393 (3 Dist. 2000), appeal denied, 191 Ill. 2d 549, 250 Ill. Dec. 463, 738 N.E.2d 932 (2000).

This Act is only applicable in a case where unlawful discrimination is charged and was not applicable in a case where a business owner prevented a patron from entering business premises. Meerbrey v. Marshall Field & Co., 169 Ill. App. 3d 1014, 120 Ill. Dec. 463, 524 N.E.2d 228 (1 Dist. 1988).

Illinois courts have broadly interpreted the applicability of this Act and the reach of its administrative procedures. Danielson v. DuPage Area Vocational Educ. Auth., 595 F. Supp. 27 (N.D. Ill. 1984).

Defendants' Fed. R. Civ. P. 12(b)(1), (6) motion to dismiss the employee's intentional infliction of emotional distress (IIED) claim was granted where: (1) defendants argued that the IIED claim was factually indistinguishable from the sex and race discrimination claim, making the Illinois Human Rights Act preempt the claim; (2) the employee claimed that defendants' conduct, including lower wages, lack of training, placing trash on the employee's toolbox, and the alleged intentional incorrect programming of a machine, caused her to suffer from severe emotional distress, humiliation, degradation, physical symptoms therefrom, deterioration of health, medical expenses, and interference with family relationships; (3) the incidents, standing alone, did not support an IIED claim; (4) the actions were inextricably linked to the employee's harassment claims because they were extreme and outrageous only to the extent they were motivated by gender-based or race-based animus; and (5) in any event, the employee failed to state a claim for IIED. Hamilton v. Spraying Sys., F. Supp. 2d , 2003 U.S. Dist. LEXIS 13824 (N.D. Ill. Aug. 5, 2003).

Defendants' Fed. R. Civ. P. 12(b)(1), (6) motion to dismiss the employee's assault claim was denied as to the co-worker where: (1) the employee alleged that the co-worker, intending to place the employee in fear of harmful physical contact, programmed the machine to crash, and, after the machine crashed, the employee allegedly feared for her immediate safety, ran to the side of the machine, and pushed the emergency stop; (2) the employee's assault claim was not preempted by the Illinois Human Rights Act (IHRA) because she alleged that claim without reference to legal duties created by the IHRA; and (3) the employee's allegations stated a claim for assault. Hamilton v. Spraying Sys., F. Supp. 2d , 2003 U.S. Dist. LEXIS 13824 (N.D. Ill. Aug. 5, 2003).

- Exclusive Remedy

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Plaintiff's claim for relief under Il. Const. (1970), Art. 1, § 17 was dismissed as plaintiff should have filed a complaint under this Act for the alleged discrimination in the sale of property. Abierta v. City of Chicago, 949 F. Supp. 637 (N.D. Ill. 1996).

This Act, which contains a comprehensive scheme of remedies and administrative procedures, is meant to be the exclusive source for redress of civil rights violations. Village of Bellwood Bd. of Fire & Police Comm'rs v. Human Rights Comm'n, 184 Ill. App. 3d 339, 133 Ill. Dec. 810, 541 N.E.2d 1248 (1 Dist. 1989).

Where this Act applies, it is the exclusive source for redress of alleged civil rights violations, and a covered employee may not bring a private cause of action to recover damages for violation of his rights under Ill. Const. (1970), Art. I, § 17. Ritzheimer v. Insurance Counselors, Inc., 123 Ill. App. 506, 173 Ill. App. 3d 953, 123 Ill. Dec. 506, 527 N.E.2d 1281 (5 Dist. 1988); Pace v. Human Rights Comm'n, 187 Ill. App. 3d 16, 134 Ill. Dec. 770, 542 N.E.2d 1277 (5 Dist. 1989).

- School Teacher Claims

A charge of unlawful discrimination in the employment of school teachers must be brought under this Act, not under the School Code (105 ILCS 5/1-1 et seq.), because this Act contains public policy objectives that are not expressed in the School Code (105 ILCS 5/1-1 et seq.) but that are applicable to all cases of employment discrimination. Danielson v. DuPage Area Vocational Educ. Auth., 595 F. Supp. 27 (N.D. Ill. 1984).

Applicability of Federal Law

- In General

This Act is similar to title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000a et seq.), and Illinois courts have routinely consulted and relied upon federal law when determining whether discrimination violates Illinois law. Pioneer Life Ins. Co. v. Woodard, 152 Ill. App. 3d 236, 105 Ill. Dec. 361, 504 N.E.2d 230 (2 Dist. 1987).

That there are potential state remedies available to plaintiffs is not a sufficient ground for dismissal of an action under 42 U.S.C. § 1983. James v. Ogilvie, 310 F. Supp. 661 (N.D. Ill. 1970).

- Disabilities Act

Private litigation to enforce the Americans With Disabilities Act may not proceed in federal court. Having opened its courts to claims based on state law, including its own prohibition of disability discrimination by units of state government in 775 ILCS 5/1-102,5/2-101(B)(1)(c), Illinois may not exclude claims based on federal law. Erickson v. Board of Governors of State Colleges & Univs. ex rel. Northeastern Ill. Univ., 207 F.3d 945, 2000 U. S. App. LEXIS 5074 (7th Cir. 2000), cert. denied, 531 U.S. 1190, 121 S. Ct. 1187, 149 L. Ed. 2d 104 (2001).

- Preemption

Although federal court opinions which interpret analogous federal anti-discrimination statutes are both helpful and relevant, they are not binding in cases brought pursuant to the Illinois anti-discrimination laws. Habinka v. Human Rights Comm'n, 192 Ill. App. 3d 343, 139 Ill. Dec. 317, 548 N.E.2d 702 (1 Dist. 1989).

City's Fair Employment and Housing Commission, created pursuant to Ill. Rev. Stat. ch. 68, para. 7-108(A) (now 775 ILCS 5/7-108(A)), had jurisdiction to hear a union member's claim that his employment was terminated in a racially discriminatory manner; the race discrimination claim was not preempted by federal law because its origin was in the public policy of Illinois, announced in Ill. Rev. Stat. ch. 68, para. 1-102(A) (now 775 ILCS 5/1-102(A)), rather than the collective

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bargaining agreement. Kraft, Inc., Dairy Group v. Peoria, 177 Ill. App. 3d 197, 126 Ill. Dec. 470, 531 N.E.2d 1106, 1988 Ill. App. LEXIS 1753 (1 Dist. 1988).

Burden of Proof

- In General

A complainant in a civil rights case need not present direct evidence of discrimination, but may meet his burden of proof by presenting evidence of a genuine issue of fact as to whether discrimination occurred. All Purpose Nursing Serv. v. Human Rights Comm'n, 205 Ill. App. 3d 816, 150 Ill. Dec. 717, 563 N.E.2d 844 (1 Dist. 1990).

- Preponderance of Evidence

While a suspicion might reasonably remain that a discriminatory action has been committed, a mere suspicion cannot be elevated to the standard of preponderance of the evidence, as required to prove unlawful discrimination under this Act. Pioneer Life Ins. Co. v. Woodard, 152 Ill. App. 3d 236, 105 Ill. Dec. 361, 504 N.E.2d 230 (2 Dist. 1987).

- Presumption of Discrimination

An employee's establishment of a prima facie case creates a rebuttable presumption that the employer unlawfully discriminated against the employee, and once the employee carries the initial burden and demonstrates a prima facie case, the burden shifts to the employer to articulate some legitimate, nondiscriminatory reason for the alleged discriminatory action. If the employer fails to meet this burden, the employee's prima facie case stands unrebutted and judgment must be entered for the employee as a matter of law, but if the employer articulates a legitimate nondiscriminatory reason, the presumption created by the prima facie showing drops from the case and the factual inquiry proceeds to a new level of specificity. (Decided prior to the 1995 Amendment of 775 ILCS 5/7A-102) Valley Mould & Iron Co. v. Illinois Human Rights Comm'n, 133 Ill. App. 3d 273, 88 Ill. Dec. 134, 478 N.E.2d 449 (1 Dist. 1985); Zaderaka v. Illinois Human Rights Comm'n, 131 Ill. 2d 172, 137 Ill. Dec. 31, 545 N.E.2d 684 (1989).

- Shift

Once a complainant has established a prima facie case of discrimination, defendant then has the burden of articulating a legitimate and nondiscriminatory reason for its actions, and once the defendant has done so, the burden shifts back to the complainant to prove that the defendant's stated reason is in fact a pretext for discrimination. Freeman United Coal Mining Co. v. Human Rights Comm'n, 173 Ill. App. 3d 965, 123 Ill. Dec. 514, 527 N.E.2d 1289 (5 Dist. 1988).

In employment sex discrimination action, the burden of proof, which shifts to the employer after the complainant has made a prima facie case, is merely that of proving that he based his employment decision on a legitimate consideration. Board of Educ. v. Illinois Fair Emp. Practices, 79 Ill. App. 3d 446, 34 Ill. Dec. 796, 398 N.E.2d 619 (2 Dist. 1979).

Construction with Other Laws

- Intentional Infliction of Emotional Distress

City's motion to dismiss an employee's intentional infliction of emotional distress claim was granted because the claim was preempted by the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., where the claim was "inextricably linked" to her discrimination claims, as the only allegations presented for the emotion distress claim were that the City intended to inflict emotional distress on the employee and the City's conduct was extreme and outrageous such that the claim depended on the theory that she was discriminated against because of her disability, race, and

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sex, which constituted a violation of 775 ILCS 5/1-102(A); therefore, the claim had to be brought before the Illinois Human Rights Commission, and courts lacked jurisdiction to hear it by operation of 775 ILCS 5/8-111(C). Beard v. City of Chicago, 299 F. Supp. 2d 872, 2004 U.S. Dist. LEXIS 1366 (N.D. Ill. 2004).

- Preemption of Negligence Action

Motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) was granted because an employee's negligence allegations based on an employer's duty to provide an employee with a safe working environment, free from harassment or discrimination, were preempted by the Illinois Human Rights Act, 775 ILCS 5/1-102(A). Despot v. Combined Ins. Co. of Am., F. Supp. 2d , 2004 U.S. Dist. LEXIS 8368 (N.D. Ill. May 12, 2004).

- Preemption of Ordinance

By enacting this Act, the legislature has preempted the subject of freedom from unlawful discrimination and insofar as a city ordinance attempted a broader scope than that set forth in subsection (A) of this section, it was not permissible. Hutchcraft Van Serv., Inc. v. City of Urbana Human Relations Comm'n, 104 Ill. App. 3d 817, 60 Ill. Dec. 532, 433 N.E.2d 329 (4 Dist. 1982).

Damages

- Cause of Action

Where civil rights are not protected by legislation, the only conclusion with reference to the language of Ill. Const. (1970), Art. I, § 17 and this Act is that a private right of action for damages remains. Ritzheimer v. Insurance Counselors, Inc., 123 Ill. App. 506, 173 Ill. App. 3d 953, 123 Ill. Dec. 506, 527 N.E.2d 1281 (5 Dist. 1988).

Discrimination

- In General

To adequately state a claim for discrimination there need only exist some relevant evidence such that a reasonable mind might find it sufficient to support a conclusion that the alleged discriminatory practice had been committed. Glassworks, Inc. v. Human Rights Comm'n, 164 Ill. App. 3d 842, 115 Ill. Dec. 818, 518 N.E.2d 343 (1 Dist. 1987).

Employment Discrimination

- Employer's Good Faith

Alleged good-faith belief of nursing home operator that it was required to terminate HIV-positive employee working as cook in facility was irrelevant in determining liability under this Act where state administrative rules did not ban employee from working as cook in facility. Raintree Health Care Ctr. v. Illinois Human Rights Comm'n, 173 Ill. 2d 469, 220 Ill. Dec. 124, 672 N.E.2d 1136 (1996).

- National Origin Based

For a case discussing the preference against employment of resident aliens on public works projects as violative of the equal protection clause of the U.S. Constitution where no compelling state interest in preferring resident citizens over resident aliens for employment on public works projects was shown, see People ex rel. Holland v. Bleigh Constr. Co., 61 Ill. 2d 258, 335 N.E.2d 469 (1975).

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- Not Shown

Although unlawful discrimination was prohibited under the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., the employee could not recover on the employee's charge that the employer committed race and age discrimination in twice reprimanding the employee for poor work performance while employed by the employer as a warehouse worker fulfilling customer orders. Despite 775 ILCS 5/1-102 outlawing forms of discrimination such as race and age discrimination, the employee was not able to make a prima facie showing of discrimination, as the employee did not demonstrate that the written reprimands resulted in material adverse employment actions against the employee, such as changes in compensation or working conditions, and the employee did not show that similarly-situated employees in the same protected class were treated differently. Owens v. Dep't of Human Rights, 403 Ill. App. 3d 899, 344 Ill. Dec. 94, 936 N.E.2d 623, 2010 Ill. App. LEXIS 851 (1 Dist. 2010).

The duty to accommodate only extends to accommodating a handicapped employee in the employee's present position; it does not require employers to transfer a handicapped employee to a different shift, which would exceed the duty of reasonable accommodation. Fitzpatrick v. Illinois Human Rights Comm'n, 267 Ill. App. 3d 386, 204 Ill. Dec. 785, 642 N.E.2d 486 (4 Dist. 1994), appeal denied, 159 Ill. 2d 566, 207 Ill. Dec. 516, 647 N.E.2d 1009 (1995).

Employee's claim of disparate treatment, based on the fact that he was disciplined for losing work time after he accidentally injured himself while engaged in conversation with a white employee while the white employee was not disciplined for distracting him, failed because there was a sound basis for the difference in treatment; the employee lost time because of his negligence while the white employee was guilty of no more than talking to a co-worker. Kraft, Inc., Dairy Group v. Peoria, 177 Ill. App. 3d 197, 126 Ill. Dec. 470, 531 N.E.2d 1106, 1988 Ill. App. LEXIS 1753 (1 Dist. 1988).

Employee's claim of disparate treatment, that he was given warning letters for careless job performance while white employees were not, was overcome by evidence that the employer had instituted a policy change and had begun issuing warning letters for all lost-time accidents relating to job negligence after the date of the white employees' claimed negligence, that warning letters were not given to anyone before that date, and that the employee had not received warning letters for two accidents he had before the date the new policy was implemented. Kraft, Inc., Dairy Group v. Peoria, 177 Ill. App. 3d 197, 126 Ill. Dec. 470, 531 N.E.2d 1106, 1988 Ill. App. LEXIS 1753 (1 Dist. 1988).

Employee who was suspended, and then fired, after he hooked up a tank containing 2,000 gallons of ice cream mix to a wash line that ran caustic cleaning solution into the tank was not treated differently than a white employee who was not disciplined after that employee hit a valve which caused a fluid that the employee believed to be caustic to enter a vat of remix because the two incidents were not similar; the incidents varied in scope (the white employee's vat contained only 40 or 50 gallons) and the incident involving the white employee was caused by an error of another employee, while the suspended employee was directly responsible for the incident for which he was disciplined. Kraft, Inc., Dairy Group v. Peoria, 177 Ill. App. 3d 197, 126 Ill. Dec. 470, 531 N.E.2d 1106, 1988 Ill. App. LEXIS 1753 (1 Dist. 1988).

An employer's investigation of an incident and determination of dismissal as being called for were reasonable, fair and routine under the former Fair Employment Practices Act (see now this Act) where the employee discharged had attacked and severely beaten a fellow employee, who approximately one-half hour earlier had inadvertently used the word "nigger" in his presence, when the speaker had not addressed him, but rather described a kind of music. Olin Corp. v. Fair Emp. Practices Comm'n, 5 Ill. App. 3d 921, 284 N.E.2d 413 (5 Dist. 1972).

- Physical Handicap

Operator of nursing home facility did not prove that it made an individualized determination of HIV-positive claimant's ability to perform his job duties as cook at facility without undue harm to

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himself or others, required before adverse employment action could be taken against claimant due to his handicap. Raintree Health Care Ctr. v. Illinois Human Rights Comm'n, 173 Ill. 2d 469, 220 Ill. Dec. 124, 672 N.E.2d 1136 (1996).

Enforcement of Constitutional Rights

- In General

This Act is the exclusive mechanism for enforcement of rights guaranteed by Ill. Const. (1970), Art. I, § 17. Ritzheimer v. Insurance Counselors, Inc., 123 Ill. App. 506, 173 Ill. App. 3d 953, 123 Ill. Dec. 506, 527 N.E.2d 1281 (5 Dist. 1988); Bismarck Hotel Co. v. Sutherland, 175 Ill. App. 3d 739, 125 Ill. Dec. 15, 529 N.E.2d 1091 (1 Dist. 1988).

- Direct Cause of Action

The statutory scheme of this Act, which serves to protect and enforce the rights of Ill. Const. (1970), Art. I, § 17, effectively bars a plaintiff from bringing a direct cause of action until the administrative procedures and remedies in this Act have been exhausted. Thakkar v. Wilson Enters., Inc., 120 Ill. App. 3d 878, 76 Ill. Dec. 331, 458 N.E.2d 985 (1 Dist. 1983).

Fair Employment Practices Commission

- In General

A legal determination of discrimination was not presumptively established by a Fair Employment Practices Commission's order under the former Fair Employment Practices Act (see now this Act). Chicago-Allis Mfg. Corp. v. Fair Emp. Practices Comm'n, 32 Ill. App. 3d 392, 336 N.E.2d 40 (1 Dist. 1975).

- Jurisdiction

Under the former Fair Employment Practices Act (see now this section), a plaintiff had the initial burden to establish a prima facie case of discrimination; if the plaintiff successfully carried the burden, the employer had to articulate some legitimate, nondiscriminatory reason for its employment decision; if the employer fulfilled this obligation, the plaintiff, then was required to prove by a preponderance of the evidence that the legitimate reason offered by the employer was a pretext for discrimination. Caterpillar, Inc. v. Human Rights Comm'n, 154 Ill. App. 3d 424, 107 Ill. Dec. 138, 506 N.E.2d 1029 (3 Dist. 1987).

Former section 852(c) of the Fair Employment Practices Act (see now subsection 2(c) of this section) was merely definitional and did not establish the jurisdiction of the Fair Employment Practices Commission; since one only needed to be a complainant in order to file a charge under that Act, it was immaterial whether or not the complainant qualified as an employee and the Fair Employment Practices Commission had jurisdiction to hear a complaint filed by a chief administrative officer alleging unlawful discharge by municipal governmental body. Joliet Mass Transit Dist. v. Illinois Fair Emp. Practices Comm'n, 66 Ill. App. 3d 296, 23 Ill. Dec. 24, 383 N.E.2d 791 (3 Dist. 1978).

Housing Discrimination

- Children

In a special use permit to build a mobile home, a condition which stated that not more than 25% of the home sites could be made available to families with children violated the public policy of

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this state, as reflected in the former "An Act in Relation to landlord and tenant" (see now this section). Duggan v. County of Cook, 60 Ill. 2d 107, 324 N.E.2d 406 (1975).

HIV Infection

Employer was not precluded from allowing plaintiff to continue to perform his duties as a cook because of his human immunodeficiency virus (HIV) positive status as 77 Ill. Adm. Code § 690.100 specifically lists the conditions which are defined as contagious, infectious, or communicable and this list includes Acquired Immunodeficiency Syndrome (AIDS), but not HIV infection. Raintree Health Care Ctr. v. Human Rights Comm'n, 275 Ill. App. 3d 387, 211 Ill. Dec. 561, 655 N.E.2d 944 (1 Dist. 1995), aff'd, 173 Ill. 2d 469, 220 Ill. Dec. 124, 672 N.E.2d 1136 (1996).

Infection with human immunodeficiency virus (HIV) is a determinable physical characteristic resulting from a disease and has been held to be a protected condition or handicap under civil rights laws. Raintree Health Care Ctr. v. Human Rights Comm'n, 275 Ill. App. 3d 387, 211 Ill. Dec. 561, 655 N.E.2d 944 (1 Dist. 1995), aff'd, 173 Ill. 2d 469, 220 Ill. Dec. 124, 672 N.E.2d 1136 (1996).

Mandatory Retirement

Where government has attempted to protect working people by establishing legislation limiting mandatory retirement, those legislative enactments have been clear and express and courts have not been required to discover these rights by implication. Provenzano v. City of Des Plaines, 256 Ill. App. 3d 458, 195 Ill. Dec. 792, 629 N.E.2d 100 (1 Dist. 1993).

Physical Handicap

It would be unlawful discrimination for an employer to fire an employee because of his physical handicap, if that handicap was unrelated to his ability to perform his job duties under the terms of this Act. Raintree Health Care Ctr. v. Illinois Human Rights Comm'n, 173 Ill. 2d 469, 220 Ill. Dec. 124, 672 N.E.2d 1136 (1996).

Pleadings

This Act does not require any specific form of pleading. Gonzalez v. Human Rights Comm'n, 179 Ill. App. 3d 362, 128 Ill. Dec. 362, 534 N.E.2d 544 (1 Dist. 1989).

Proof

- In General

Each element of illegal discrimination need not be proved to establish a prima facie case; the facts necessarily will vary and a specification of the prima facie proof required is not applicable in every respect to differing factual situations. Pioneer Life Ins. Co. v. Woodard, 152 Ill. App. 3d 236, 105 Ill. Dec. 361, 504 N.E.2d 230 (2 Dist. 1987).

- Prima Facie Case

An employee may establish a prima facie case of unlawful discrimination either by direct or indirect evidence. Kenall Mfg. Co. v. Human Rights Comm'n, 152 Ill. App. 3d 695, 105 Ill. Dec. 520, 504 N.E.2d 805 (1 Dist. 1987).

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Purpose

The mission of this Act is to prevent and eliminate discriminatory practices. Maye v. Illinois Human Rights Comm'n, 224 Ill. App. 3d 353, 166 Ill. Dec. 592, 586 N.E.2d 550 (1 Dist. 1991), cert. denied, 144 Ill. 2d 635, 169 Ill. Dec. 143, 591 N.E.2d 23 (1992).

This Act's role is to be a preemptive vehicle for resolution of employment discrimination cases in Illinois. Danielson v. DuPage Area Vocational Educ. Auth., 595 F. Supp. 27 (N.D. Ill. 1984).

- Consolidation of Law

The purpose of this Act is to draw together and consolidate in a single act all Illinois law relating to discrimination in employment, real estate transaction, access to financial credit and availability of public accommodations. Hutchcraft Van Serv., Inc. v. City of Urbana Human Relations Comm'n, 104 Ill. App. 3d 817, 60 Ill. Dec. 532, 433 N.E.2d 329 (4 Dist. 1982); Yount v. Hesston Corp., 124 Ill. App. 3d 943, 80 Ill. Dec. 231, 464 N.E.2d 1214 (2 Dist. 1984).

Sex and Handicap Discrimination

- Cause of Action

Where plaintiff filed a complaint for sex and handicap discrimination under the former Illinois Fair Practices Act (see now this section), subsequently filed an amended complaint under this section but was prevented from having his claim disposed of due to the Human Rights Commission's administrative inaction, was denied relief in the trial court, did not raise a theory of relief which would justify a reversal and remand and timely filed his claim before the statute of limitations expired, plaintiff stated a cause of action. Sauers v. City of Woodstock, 113 Ill. App. 3d 892, 68 Ill. Dec. 725, 446 N.E.2d 896 (2 Dist. 1983).

- Employee Health Benefits

Employer's sickness and accident plan, the purpose of which was to provide a noncontributory income continuation benefit when an employee was unable to work because of a "non-occupational accident or sickness," was not discriminatory in that it was a noncomprehensive plan designed to cover "sickness" which could properly exclude pregnancy from coverage. Illinois Consol. Tel. Co. v. Illinois Fair Emp. Practices Comm'n, 104 Ill. App. 3d 162, 60 Ill. Dec. 319, 432 N.E.2d 1218 (5 Dist. 1982).

A group insurance plan which allowed limited maternity leave benefits if the employee was married, discriminated between married and unmarried female employees, but did not constitute unlawful sex discrimination, where the limited maternity benefit was provided for both married female and male employees who enrolled their spouses. Illinois Consol. Tel. Co. v. Illinois Fair Emp. Practices Comm'n, 104 Ill. App. 3d 162, 60 Ill. Dec. 319, 432 N.E.2d 1218 (5 Dist. 1982).

- Private Right of Action

Ill. Const. (1970), Art. I, § 18 does not confer on plaintiff a private right of action for alleged gender discrimination. Faulkner-King v. Wicks, 226 Ill. App. 3d 962, 168 Ill. Dec. 874, 590 N.E.2d 511 (4 Dist.), appeal denied, 146 Ill. 2d 626, 176 Ill. Dec. 796, 602 N.E.2d 450 (1992), cert. denied, 507 U.S. 960, 113 S. Ct. 1384, 122 L. Ed. 2d 760 (1993).

Sexual Harassment

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Employers are strictly liable for the sexual harassment of an employee by a supervisory employee. Sangamon County Sheriff's Dep't v. Ill. Human Rights Comm'n, 233 Ill. 2d 125, 330 Ill. Dec. 187, 908 N.E.2d 39, 2009 Ill. LEXIS 378 (2009).

LEGAL PERIODICALS

For case note, "Smith v. Fair Employment and Housing Commission: Religious Freedom and Anti-Discrimination Laws Square Off in the Landlord Tenant Setting", see 18 N. Ill. U.L. Rev. 197 (1997).

For article, "The Courts and Legislature Begin to Adopt ADR Methods to Deal with Growing Number of Employment Discrimination Claims," see 13 N. Ill. U.L. Rev. 221 (1993).

For article, "The Silenced Majority: Martin v. Wilks and the Legislative Response," see 1992 U. Ill. L. Rev. 43 (1992).

For note, "Unraveling the Illinois Retaliatory Discharge Tort," see 1989 U. Ill. L. Rev. 517.

For article, "Labor Law: 1985-86 Illinois Law Survey," see 18 Loy. U. Chi. L.J. 665 (1986-87).

For note, "Affirmative Action Requirements in Illinois Public Contracts - S.N. Nielsen Company v. Public Building Commission," see 30 De Paul L. Rev. 899 (1981).

RESEARCH REFERENCES

On-the-job sexual harassment as violation of state civil rights law. 18 ALR4th 328.

Same-sex sexual harassment under state antidiscrimination laws. 73 ALR5th 1.

Practice Guides and Treatises.

Employment Termination 2002 Ed., Updated 2005 § 11.2 Sexual Harassment (IICLE).

1-8 Employment in Illinois 2 Antinepotism.

1-8 Employment in Illinois § 8-4 Age Discrimination.

Illinois Jurisprudence, Personal Injury and Torts § 8:36 With regard to constitutional anti-discrimination guarantees.

Illinois Jurisprudence, Personal Injury and Torts § 8:17 Generally.

Illinois Jurisprudence, Personal Injury and Torts § 8:10 Declaration of Illinois public policy.

Illinois Jurisprudence, Labor and Employment § 4:20 Sex discrimination, generally.

Illinois Jurisprudence, Labor and Employment § 4:01 Generally; Act as providing exclusive remedy for employment discrimination.

§ 775 ILCS 5/1-103. General Definitions

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Sec. 1-103. General Definitions. When used in this Act, unless the context requires otherwise, the term:

(A) Age. "Age" means the chronological age of a person who is at least 40 years old, except with regard to any practice described in Section 2-102 [775 ILCS 5/2-102], insofar as that practice concerns training or apprenticeship programs. In the case of training or apprenticeship programs, for the purposes of Section 2-102, "age" means the chronological age of a person who is 18 but not yet 40 years old.

(B) Aggrieved Party. "Aggrieved party" means a person who is alleged or proved to have been injured by a civil rights violation or believes he or she will be injured by a civil rights violation under Article 3 [775-5/3-101 et seq.] that is about to occur.

(C) Charge. "Charge" means an allegation filed with the Department by an aggrieved party or initiated by the Department under its authority.

(D) Civil Rights Violation. "Civil rights violation" includes and shall be limited to only those specific acts set forth in Sections 2-102, 2-103, 2-105, 3-102, 3-102.1, 3-103, 3-104, 3-104.1, 3-105, 3-105.1, 4-102, 4-103, 5-102, 5A-102, 6-101, and 6-102 of this Act, [775 ILCS 5/2-102, 775 ILCS 5/2-103, 775 ILCS 5/2-105,775 ILCS 5/3-102, 775 ILCS 5/3-102.1, 775 ILCS 5/3-103, 775 ILCS 5/3-104.1, 775 ILCS 5/3-105, 775 ILCS 5/3-105.1, 775 ILCS 5/4-102, 775 ILCS 5/4-103, 775 ILCS 5/5-102, 775 ILCS 5/5A-102, 775 ILCS 5/6-101, and 775 ILCS 5/6-102].

(E) Commission. "Commission" means the Human Rights Commission created by this Act.

(F) Complaint. "Complaint" means the formal pleading filed by the Department with the Commission following an investigation and finding of substantial evidence of a civil rights violation.

(G) Complainant. "Complainant" means a person including the Department who files a charge of civil rights violation with the Department or the Commission.

(H) Department. "Department" means the Department of Human Rights created by this Act.

(I) Disability. "Disability" means a determinable physical or mental characteristic of a person, including, but not limited to, a determinable physical characteristic which necessitates the person's use of a guide, hearing or support dog, the history of such characteristic, or the perception of such characteristic by the person complained against, which may result from disease, injury, congenital condition of birth or functional disorder and which characteristic:

(1) For purposes of Article 2 [775-5/2-101 et seq.] is unrelated to the person's ability to perform the duties of a particular job or position and, pursuant to Section 2-104 of this Act [775 ILCS 5/2-104], a person's illegal use of drugs or alcohol is not a disability;

(2) For purposes of Article 3 [775-5/4-101 et seq.], is unrelated to the person's ability to acquire, rent or maintain a housing accommodation;

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(3) For purposes of Article 4 [775-5/5-101 et seq.], is unrelated to a person's ability to repay;

(4) For purposes of Article 5, is unrelated to a person's ability to utilize and benefit from a place of public accommodation.

(5) For purposes of Article 5, also includes any mental, psychological, or developmental disability, including autism spectrum disorders.

(J) Marital Status. "Marital status" means the legal status of being married, single, separated, divorced or widowed.

(J-1) Military Status. "Military status" means a person's status on active duty in or status as a veteran of the armed forces of the United States, status as a current member or veteran of any reserve component of the armed forces of the United States, including the United States Army Reserve, United States Marine Corps Reserve, United States Navy Reserve, United States Air Force Reserve, and United States Coast Guard Reserve, or status as a current member or veteran of the Illinois Army National Guard or Illinois Air National Guard.

(K) National Origin. "National origin" means the place in which a person or one of his or her ancestors was born.

(K-5) "Order of protection status" means a person's status as being a person protected under an order of protection issued pursuant to the Illinois Domestic Violence Act of 1986 [750 ILCS 60/101 et seq.] or an order of protection issued by a court of another state.

(L) Person. "Person" includes one or more individuals, partnerships, associations or organizations, labor organizations, labor unions, joint apprenticeship committees, or union labor associations, corporations, the State of Illinois and its instrumentalities, political subdivisions, units of local government, legal representatives, trustees in bankruptcy or receivers.

(M) Public Contract. "Public contract" includes every contract to which the State, any of its political subdivisions or any municipal corporation is a party.

(N) Religion. "Religion" includes all aspects of religious observance and practice, as well as belief, except that with respect to employers, for the purposes of Article 2, "religion" has the meaning ascribed to it in paragraph (F) of Section 2-101 [775 ILCS 5/2-101].

(O) Sex. "Sex" means the status of being male or female.

(O-1) Sexual orientation. "Sexual orientation" means actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person's designated sex at birth. "Sexual orientation" does not include a physical or sexual attraction to a minor by an adult.

(P) Unfavorable Military Discharge. "Unfavorable military discharge" includes discharges from the Armed Forces of the United States, their Reserve components or any

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National Guard or Naval Militia which are classified as RE-3 or the equivalent thereof, but does not include those characterized as RE-4 or "Dishonorable".

(Q) Unlawful Discrimination. "Unlawful discrimination" means discrimination against a person because of his or her race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, or unfavorable discharge from military service as those terms are defined in this Section.

(Source: P.A. 86-910; 88-178, § 5; 88-180, § 5; 88-670, § 2-74; 93-941, § 5; 93-1078, § 5; 94-803, § 5; 95-392, § 35; 95-668, § 5; 95-876, § 385; 96-328, § 405; 96-447, § 5; 97-410, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 68, Para. 1-103.

Section 775 ILCS 5/3-104, referred to in subsection (D), has been repealed. For present similar provisions, see § 775 ILCS 5/3-102

The reference to Section 3-104 of this Act, appears in subsection (D) as enacted; however no section 775 ILCS 5/3-104 was ever enacted.

Effect of Amendments. The 1993 amendment by P.A. 88-178, effective August 4, 1993, added subdivision (J-1) and in subdivision (Q) inserted "military status".

The 1993 amendment by P.A. 88-180, effective January 1, 1994, added at the end of subdivision (I)(1) "and, pursuant to Section 2-104 of this Act, a person's illegal use of drugs or alcohol is not a handicap".

The 1994 amendment by P.A. 88-670, effective December 2, 1994, combined the amendments by P.A. 88-178 and P.A. 88-180.

The 2004 amendment by P.A. 93-941, effective August 16, 2004, in subsection (J-1) inserted the language beginning "status as a current member" through the end of the subsection.

The 2005 amendment by P.A. 93-1078, effective January 1, 2006, inserted (O-1); and inserted "sexual orientation" in (Q).

The 2006 amendment by P.A. 94-803, effective May 26, 2006, in (J-1), added " or status as a veteran of" following "active duty in" and twice added "or veteran" after "a current member".

The 2007 amendment by P.A. 95-392, effective August 23, 2007, inserted "6-102" in (D) and made related changes.

The 2007 amendment by P.A. 95-668, effective October 10, 2007, in (I), (I)(1) and (Q), substituted "disability" for "handicap".

The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, combined multiple amendments to the section.

The 2009 revisory amendment by P.A. 96-328, effective August 11, 2009, added "3-102.1" and "3-105.1" in the sections list of (D).

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The 2009 amendment by P.A. 96-447, effective January 1, 2010, in (D), added "3-102.1" and "3-105.1"; added (K-5); and added "order of protection status" in (Q).

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

The 2011 amendment by P.A. 97-410, effective January 1, 2012, added (I)(5).

CASE NOTES

Analysis

Applicability
- Age
- Physical Conditions
- Race
- Sexual Orientation

Handicap
- In General
- Burden of Proof
- Character Traits
- Defined
- Drug Dependency
- Endometriosis
- Heart Condition
- HIV Infection
- Mental Condition
- Not Shown
- Perceived Handicaps
- Severe Barriers
- Shown
- Uterine Cancer

Marital Status
- Identity of Spouse

Person

Unlawful Discrimination
- Age
- Physical Handicap
- Relevant Evidence

Applicability

A "civil rights violation" as defined in 775 ILCS 5/1-103(D) is limited to civil rights violations arising under the enumerated sections of the Human Rights Act (Act) and does not include a civil rights violation as defined by, or arising under, federal law. Accordingly, the administrative procedures

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contained in the Act, which govern the filing and disposition of alleged "civil rights violations," are applicable only to civil rights violations under the Act. Blount v. Stroud, 232 Ill. 2d 302, 328 Ill. Dec. 239, 904 N.E.2d 1, 2009 Ill. LEXIS 181 (2009).

- Age

Plaintiff who admitted that he was 39 years of age at the time of his termination could not claim a violation of this Act, because he was not in the age group covered by this Act at the time of the alleged violation. Ring v. R.J. Reynolds Indus. Inc., 597 F. Supp. 1277 (N.D. Ill. 1984), aff'd, 804 F.2d 143 (7th Cir. 1986).

While this Act makes it unlawful for an employer to discriminate against an employee on the basis of age, the Act only applies to individuals who are between 40 and 70 years old. Ring v. R.J. Reynolds Indus. Inc., 597 F. Supp. 1277 (N.D. Ill. 1984), aff'd, 804 F.2d 143 (7th Cir. 1986).

- Physical Conditions

Court dismissed pursuant to Fed. R. Civ. P. 12(b)(6) a former employee's lawsuit alleging his employer committed intentional infliction of emotional distress (IIED) and violated the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and the Family Medical Leave Act, 29 U.S.C. § 2601 et seq. because, to the extent the employee's IIED claim was based on the alleged disability discrimination, the Illinois Human Rights Act, specifically 775 ILCS 5/8-111(c), preempted that claim since disability discrimination constituted a civil rights violation under 775 ILCS 5/2-102(A) and 775 ILCS 5/1-103(Q). Lozano v. Kay Mfg. Co., F. Supp. 2d , 2004 U.S. Dist. LEXIS 12948 (N.D. Ill. July 9, 2004).

Not all physical conditions that may give rise to discriminatory treatment are physical handicaps within the meaning of this Act; race, sex, age, although physical conditions, are not handicaps. Lyons v. Heritage House Restaurants, Inc., 89 Ill. 2d 163, 59 Ill. Dec. 686, 432 N.E.2d 270 (1982).

- Race

Plaintiff did not satisfy the third element of a prima facie case of discrimination, namely, that she was treated differently than similarly situated white employees. Motley v. Illinois Human Rights Comm'n, 263 Ill. App. 3d 367, 200 Ill. Dec. 909, 636 N.E.2d 100 (4 Dist. 1994).

- Sexual Orientation

The court lacked jurisdiction to hear plaintiff's claim that the department violated the Act because it discriminated against him on the basis of his sexual orientation, as there is nothing in the Act that prohibits discrimination based upon sexual orientation. Flynn v. Hillard, 303 Ill. App. 3d 119, 236 Ill. Dec. 589, 707 N.E.2d 716 (1 Dist. 1999).

Handicap

- In General

Company's policy requiring an employee's own doctor to assess the employee's physical condition and provide an unrestricted release was not discriminatory. Wilhelm v. Human Rights Comm'n, 324 Ill. App. 3d 793, 257 Ill. Dec. 941, 755 N.E.2d 43, 2001 Ill. App. LEXIS 604 (1 Dist. 2001).

The plain language of this section provides that an individual may be protected when he or she has a determinable physical characteristic which results from a disease and which is unrelated to his or her ability to perform a particular job or function, or when his or her condition is perceived as a handicap. Illinois Bell Tel. Co. v. Human Rights Comm'n, 190 Ill. App. 3d 1036, 138 Ill. Dec. 332, 547 N.E.2d 499 (1 Dist. 1989).

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- Burden of Proof

The Human Rights Commission was bound by interpretive rules stating that it was the complainant's burden to establish that his condition met the definition of "handicap" contained in subdivision (I)(1) of this section and, specifically in the case of drug abuse, to demonstrate that the condition arose from or constituted the equivalent of a disease or functional disorder. Habinka v. Human Rights Comm'n, 192 Ill. App. 3d 343, 139 Ill. Dec. 317, 548 N.E.2d 702 (1 Dist. 1989).

A prima facie case of unlawful discrimination based on a handicap requires a showing that an employee is handicapped within the meaning of subsection (I) of this section. Aero Testing & Balancing Sys. v. Human Rights Comm'n, 185 Ill. App. 3d 956, 133 Ill. Dec. 791, 541 N.E.2d 1229 (1 Dist.), overruled on other grounds, 132 Ill. 2d 347, 138 Ill. Dec. 282, 547 N.E.2d 449 (1989).

- Character Traits

Petitioner failed to establish a prima facie case of discrimination based on a perceived mental handicap when he was not hired as a police officer where, although doctor was unable to confirm a mental illness, did find egotistical character traits that would have made it difficult for petitioner to fit in with other trainees and to be supervised. Roulette v. State Human Rights Comm'n, 256 Ill. App. 3d 682, 195 Ill. Dec. 503, 628 N.E.2d 967 (1 Dist. 1993).

- Defined

Under the former Equal Opportunities for the Handicap Act (see now this section), the question of whether a person is handicapped turns upon whether the character of the disability is one generally perceived as one which severely limits the individual in performing work-related functions. Advocates for the Handicapped v. Sears, Roebuck & Co., 67 Ill. App. 3d 512, 24 Ill. Dec. 272, 385 N.E.2d 39 (1 Dist. 1978).

- Drug Dependency

Neither the legislature nor the Human Rights Commission, acting pursuant to statutory authority, has chosen to officially recognize drug dependency as a condition included within the definition of handicap as stated in this Act. Habinka v. Human Rights Comm'n, 192 Ill. App. 3d 343, 139 Ill. Dec. 317, 548 N.E.2d 702 (1 Dist. 1989).

- Endometriosis

Endometriosis is a handicap within the meaning of this section. Illinois Bell Tel. Co. v. Human Rights Comm'n, 190 Ill. App. 3d 1036, 138 Ill. Dec. 332, 547 N.E.2d 499 (1 Dist. 1989).

- Heart Condition

While a former employee's medical conditions of congestive heart disease, hypertension, chronic obstructive pulmonary disease, and sleep apnea, supported the employee's claim of a disability that periodically caused her to miss work, the employer did not discriminate against her for termination of her employment when she failed to return to work after a disability leave ended; though the employee's doctor supported her claim that the employer's transfer of her from a nearby location to a distant one made her commute dangerous, the employer was not obligated to accommodate the employee's commute to work where the employee made no allegations that the disability affected her on the job performance. Owens v. Dep't of Human Rights, 356 Ill. App. 3d 46, 292 Ill. Dec. 398, 826 N.E.2d 539, 2005 Ill. App. LEXIS 235 (1 Dist. 2005).

Where the Human Rights Commission found that an employee had a history of a heart condition and that the employer perceived the employee as handicapped, the fact that the employee had fully recovered from his first heart attack did not preclude him, as a matter of law, from coming

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under the statutory definition of a handicapped person. Kenall Mfg. Co. v. Human Rights Comm'n, 152 Ill. App. 3d 695, 105 Ill. Dec. 520, 504 N.E.2d 805 (1 Dist. 1987).

- HIV Infection

Employee's HIV infection is a protected condition under this Act; infection with HIV is a determinable physical characteristic resulting from a disease held to be a qualifying condition under civil rights laws. Raintree Health Care Ctr. v. Illinois Human Rights Comm'n, 173 Ill. 2d 469, 220 Ill. Dec. 124, 672 N.E.2d 1136 (1996).

- Mental Condition

Three-part test for determining whether police officer was fired due to a handicap or because the police officer was unfit to perform police work, with or without accommodations, showed that the state human rights department chief legal counsel properly dismissed the police officer's discrimination charge, especially since the police officer introduced no evidence that the state police used the police officer's alleged mental condition as a pretext to discharge the police officer; rather, since "handicap" was defined as a characteristic of a person unrelated to the person's ability to perform the duties of a particular job and the state police introduced uncontradicted evidence in the form of a doctor's report that the police officer was unfit to perform state police work. Deen v. Lustig, 337 Ill. App. 3d 294, 271 Ill. Dec. 589, 785 N.E.2d 521, 2003 Ill. App. LEXIS 338 (4 Dist. 2003).

- Not Shown

By failing to show the impairment to his neck and shoulders met the statutory definition of handicap, the employee did not make a prima facie case of discrimination based on the company's failure to transfer him to a foreman position. Wilhelm v. Human Rights Comm'n, 324 Ill. App. 3d 793, 257 Ill. Dec. 941, 755 N.E.2d 43, 2001 Ill. App. LEXIS 604 (1 Dist. 2001).

Myofascial pain syndrome did not constitute a handicap within the meaning of the statute where the condition was transitory in nature, the diagnosis was not made until after the charges in the case were filed, and there was nothing in the record to show that the complainant suffered from myofascial pain syndrome prior to or at the time the charges were filed. Anderson v. Modern Metal Prods., 305 Ill. App. 3d 91, 238 Ill. Dec. 361, 711 N.E.2d 464 (2 Dist. 1999).

From the finding that the applicant could not have performed the duties of the principal clerk even with accommodation, it necessarily followed that she was not handicapped within the meaning of the Act and that the City's refusal to consider her for that position, even if based on her blindness, did not rise to the level of unlawful discrimination as that phrase is defined in this section; therefore, since the City did not unlawfully discriminate against applicant, it committed no civil rights violation which could form the predicate for the Commission's award of relief. Harton v. City of Chicago, 301 Ill. App. 3d 378, 234 Ill. Dec. 632, 703 N.E.2d 493 (1 Dist. 1998), appeal denied, 182 Ill. 2d 549, 236 Ill. Dec. 669, 707 N.E.2d 1239 (1999).

Where a plaintiff had a malignant tumor on his colon which was successfully removed, doctors would not consider him cured until five years had passed without a recurrence, and where he alleged that he was physically handicapped in that his physiological condition limited certain of his major life functions, plaintiff did not assert a physical handicap under the former Equal Opportunities for the Handicapped Act (see now this section). Kubik v. CNA Fin. Corp., 96 Ill. App. 3d 715, 52 Ill. Dec. 320, 422 N.E.2d 1 (1 Dist. 1981).

- Perceived Handicaps

Definition of "handicap" under the former Employment Practices Act (see now this Act) included perceived handicaps. Switch v. Human Rights Comm'n, 164 Ill. App. 3d 582, 115 Ill. Dec. 176, 517 N.E.2d 587 (1 Dist. 1987).

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- Severe Barriers

Where no guidance was provided in Ill. Const. (1970), Art. I, § 19 or the former Equal Opportunities for the Handicapped Act (see now this section), as to the scope of the phrase "physical or mental handicap," an unreasonable classification did not result from a judicial interpretation of the phrase that the legislature had in mind a severe class of physical and mental conditions which are generally believed to impose severe barriers, and the classification was not contrary to the language of those provisions. Kubik v. CNA Fin. Corp., 96 Ill. App. 3d 715, 52 Ill. Dec. 320, 422 N.E.2d 1 (1 Dist. 1981).

- Shown

Total loss of hearing in applicant's right ear and a major impairment of hearing in his left ear was the type of handicap which legislature sought to include under the provisions of former Equal Opportunity for the Handicapped Act (see now this Act); therefore, applicant who claimed defendant denied him employment as a foundry worker on three occasions because of his physical handicap, alleged a physical handicap within the meaning of that Act. Doss v. GMC, 478 F. Supp. 139 (C.D. Ill. 1979).

- Uterine Cancer

Uterine cancer was not a handicap within the meaning of the former Equal Opportunities for the Handicapped Act (see now this section). Lyons v. Heritage House Restaurants, Inc., 89 Ill. 2d 163, 59 Ill. Dec. 686, 432 N.E.2d 270 (1982).

Marital Status

- Identity of Spouse

The statutory definition of marital status discrimination does not encompass policies based on the identity of one's spouse. Boaden v. Department of Law Enforcement, 171 Ill. 2d 230, 215 Ill. Dec. 664, 664 N.E.2d 61 (1996).

No-spouse policies precluding employment on the basis of spousal identity do not constitute unlawful discrimination based upon marital status. Boaden v. State, Dep't of Law Enforcement, 267 Ill. App. 3d 645, 205 Ill. Dec. 213, 642 N.E.2d 1330 (4 Dist. 1994), appeal granted, 161 Ill. 2d 523, 208 Ill. Dec. 357, 649 N.E.2d 413 (1995), aff'd, 171 Ill. 2d 230, 215 Ill. Dec. 664, 215 Ill. Dec. 679, 664 N.E.2d 61 (1996).

The definition of "marital status" includes the identity of one's spouse, and this Act prohibits discrimination based on the spouse's identity. River Bend Community Unit Sch. Dist. No. 2 v. Illinois Human Rights Comm'n, 232 Ill. App. 3d 838, 173 Ill. Dec. 868, 597 N.E.2d 842 (3 Dist.), cert. denied, 147 Ill. 2d 637, 180 Ill. Dec. 158, 606 N.E.2d 1235 (1992).

Person

The employer was liable on employee's retaliation claim, even though the employee's initial action, for discrimination, was dismissed for lack of subject matter jurisdiction because the employer did not fit the statutory definition of "employer"; 775 ILCS 5/6-101 expressly prohibits a "person" from retaliating against another person, and a "person," as defined in the Illinois Human Rights Act, can include an employer with fewer than 15 employees. Dana Tank Container, Inc. v. Human Rights Comm'n, 292 Ill. App. 3d 1022, 227 Ill. Dec. 179, 687 N.E.2d 102 (1 Dist. 1997).

Unlawful Discrimination

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Since the term "unlawful discrimination" under the Illinois Human Rights Act meant discrimination against a person for a multitude of reasons, including handicap, but did not include retaliation against an employee for filing a workers' compensation claim, the Illinois Human Rights Commission had jurisdiction to consider whether the former employee was terminated due to a handicap, but did not consider whether he was terminated for filing a workers' compensation claim for res judicata purposes in the former employee's case against the former employer for retaliatory discharge. Terry v. Watts Copy Sys., 329 Ill. App. 3d 382, 263 Ill. Dec. 708, 768 N.E.2d 789, 2002 Ill. App. LEXIS 297 (4 Dist. 2002), appeal denied, 218 Ill. 2d 558, 303 Ill. Dec. 9, 850 N.E.2d 814 (2006).

- Age

Whether an individual is a member of a protected class turns on his chronological age on the day the discrimination against him is complete or, put another way, his age is fixed for the purpose of determining whether he is a member of the protected class, on the day he is first advised that he will not be hired. Cano v. Village of Dolton, 250 Ill. App. 3d 130, 189 Ill. Dec. 883, 620 N.E.2d 1200 (1 Dist. 1993).

It is a civil rights violation for an employer to discharge an individual on the basis of unlawful discrimination, which includes discrimination against a person because of his age. Burke v. Margolis, 738 F. Supp. 1201 (C.D. Ill. 1990).

- Physical Handicap

Operator of nursing home facility did not prove that it made an individualized determination of HIV-positive claimant's ability to perform his job duties as cook at facility without undue harm to himself or others, required before adverse employment action could be taken against claimant due to his handicap. Raintree Health Care Ctr. v. Illinois Human Rights Comm'n, 173 Ill. 2d 469, 220 Ill. Dec. 124, 672 N.E.2d 1136 (1996).

It would be unlawful discrimination for an employer to fire an employee because of his physical handicap, if that handicap was unrelated to his ability to perform his job duties under the terms of this Act. Raintree Health Care Ctr. v. Illinois Human Rights Comm'n, 173 Ill. 2d 469, 220 Ill. Dec. 124, 672 N.E.2d 1136 (1996).

- Relevant Evidence

In a case alleging improper discharge on the basis of racial discrimination, uncontradicted statistics submitted by the employer to the Equal Opportunity Commission which established, inter alia, that 43% of its employees and 19% of its supervisors were black - each of which was promoted from the rank and file - but that only four, or 16%, of the 25 employees discharged during a two-year period were black, while not determinative, were relevant as circumstantial evidence of the employer's nondiscriminatory employment practices. Acorn Corrugated Box Co. v. Illinois Human Rights Comm'n, 181 Ill. App. 3d 122, 129 Ill. Dec. 882, 536 N.E.2d 932 (1 Dist. 1989).

LEGAL PERIODICALS

For article, "Balancing Alcoholics' Rights and Employer Liability Under Anti-Discrimination Laws," see 86 Ill. B.J. 148 (1998).

For article, "Survey of Illinois Law: Administrative Law," see 21 S. Ill. U.L.J. 675 (1997).

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For article, "Recent Developments in Employment Law: 1987-88 Survey," see 13 S. Ill. U.L.J. 656 (1989).

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Application of state law to age discrimination in employment. 51 ALR5th 1.

What constitutes handicap under state legislation forbidding job discrimination on account of handicap. 82 ALR4th 26.

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Validity, construction, and application of state enactment, order, or regulation expressly prohibiting sexual orientation discrimination. 82 ALR5th 1.

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Planning for Unmarried Couples § 5.2 Housing Cases (IICLE).

Disability Law Today: An Accessible Guide for Illinois Practitioners § 7.2 Covered Persons (IICLE).

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Employment Discrimination § 4.113 Determination of Whether Handicap Is Related to Ability To Perform - Reasonable Accommodation Duty (IICLE).

Employment Discrimination § 4.111 Definition of "Handicapped" Within the Meaning of the Illinois Human Rights Act - Conditions Covered (IICLE).

1-8 Employment in Illinois § 8-6 Disability Discrimination.

1-2 Employment in Illinois § 2-7 Hiring Aliens.

1-2 Employment in Illinois § 2-4 Veterans' Reemployment Rights.

Illinois Jurisprudence, Personal Injury and Torts § 8:11 "Civil rights violation" and "unlawful discrimination" defined.

Illinois Jurisprudence, Labor and Employment § 4:34 Unfavorable military discharge.

Illinois Jurisprudence, Labor and Employment § 4:27 Generally.

Illinois Jurisprudence, Labor and Employment § 4:25 Generally.

Illinois Jurisprudence, Labor and Employment § 4:24 Marital status.

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Article 2.

Employment

§ 775 ILCS 5/2-101. Definitions

Sec. 2-101. Definitions. The following definitions are applicable strictly in the context of this Article.

(A) Employee.

(1) "Employee" includes:

(a) Any individual performing services for remuneration within this State for an employer;

(b) An apprentice;

(c) An applicant for any apprenticeship.

(2) "Employee" does not include:

(a) Domestic servants in private homes;

(b) Individuals employed by persons who are not "employers" as defined by this Act;

(c) Elected public officials or the members of their immediate personal staffs;

(d) Principal administrative officers of the State or of any political subdivision, municipal corporation or other governmental unit or agency;

(e) A person in a vocational rehabilitation facility certified under federal law who has been designated an evaluee, trainee, or work activity client.

(B) Employer.

(1) "Employer" includes:

(a) Any person employing 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation;

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(b) Any person employing one or more employees when a complainant alleges civil rights violation due to unlawful discrimination based upon his or her physical or mental handicap unrelated to ability or sexual harassment;

(c) The State and any political subdivision, municipal corporation or other governmental unit or agency, without regard to the number of employees;

(d) Any party to a public contract without regard to the number of employees;

(e) A joint apprenticeship or training committee without regard to the number of employees.

(2) "Employer" does not include any religious corporation, association, educational institution, society, or non-profit nursing institution conducted by and for those who rely upon treatment by prayer through spiritual means in accordance with the tenets of a recognized church or religious denomination with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, society or non-profit nursing institution of its activities.

(C) Employment Agency. "Employment Agency" includes both public and private employment agencies and any person, labor organization, or labor union having a hiring hall or hiring office regularly undertaking, with or without compensation, to procure opportunities to work, or to procure, recruit, refer or place employees.

(D) Labor Organization. "Labor Organization" includes any organization, labor union, craft union, or any voluntary unincorporated association designed to further the cause of the rights of union labor which is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or apprenticeships or applications for apprenticeships, or of other mutual aid or protection in connection with employment, including apprenticeships or applications for apprenticeships.

(E) Sexual Harassment. "Sexual harassment" means any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

(F) Religion. "Religion" with respect to employers includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(G) Public Employer. "Public employer" means the State, an agency or department thereof, unit of local government, school district, instrumentality or political subdivision.

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(H) Public Employee. "Public employee" means an employee of the State, agency or department thereof, unit of local government, school district, instrumentality or political subdivision. "Public employee" does not include public officers or employees of the General Assembly or agencies thereof.

(I) Public Officer. "Public officer" means a person who is elected to office pursuant to the Constitution or a statute or ordinance, or who is appointed to an office which is established, and the qualifications and duties of which are prescribed, by the Constitution or a statute or ordinance, to discharge a public duty for the State, agency or department thereof, unit of local government, school district, instrumentality or political subdivision.

(J) Eligible Bidder. "Eligible bidder" means a person who, prior to a bid opening, has filed with the Department a properly completed, sworn and currently valid employer report form, pursuant to the Department's regulations. The provisions of this Article relating to eligible bidders apply only to bids on contracts with the State and its departments, agencies, boards, and commissions, and the provisions do not apply to bids on contracts with units of local government or school districts.

(K) Citizenship Status. "Citizenship status" means the status of being:

(1) a born U.S. citizen;

(2) a naturalized U.S. citizen;

(3) a U.S. national; or

(4) a person born outside the United States and not a U.S. citizen who is not an unauthorized alien and who is protected from discrimination under the provisions of Section 1324b of Title 8 of the United States Code, as now or hereafter amended [8 U.S.C. § 1324b].

(Source: P.A. 86-1343; 87-579; 87-666; 87-895.)

Note.

This section was Ill.Rev.Stat., Ch. 68, Para. 2-101.

CASE NOTES

Analysis

Accommodation
Administrative Directives
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Disabilities Act
Employee
- Independent Agent
- Independent Contractor
- State
Employer
- Burden of proof
- Defined
- Found
- Not found
- Religious Exception Applicable
- Religious Exception Not Applicable
- Retaliation Action
Evidence
- Inference
Jurisdiction
- Exhaustion of Remedies
Preemption
- Tort Action
Remuneration
Sexual Harassment
- Conduct of a Sexual Nature Shown
- Jurisdiction
- Psychological Harm
- Shown

Accommodation

Commission correctly found that employee established a prima facie case of handicap discrimination and Department failed to take sufficient steps to accommodate her handicap; employee was able to perform every duty of her job as correctional sergeant except for firing a weapon due to her shoulder injury but Department never even considered retraining employee to shoot with her nondominant arm and uninjured shoulder. Illinois Dep't of Cors. v. Illinois Human Rights Comm'n, 298 Ill. App. 3d 536, 232 Ill. Dec. 696, 699 N.E.2d 143 (3 Dist. 1998).

Administrative Directives

Decision to discharge employee was based in part upon invalid administrative directives, therefore, Commission violated the Act in discharging employee. Illinois Dep't of Cors. v. Illinois Human Rights Comm'n, 298 Ill. App. 3d 536, 232 Ill. Dec. 696, 699 N.E.2d 143 (3 Dist. 1998).

Applicability

The court lacked jurisdiction to hear plaintiff's claim that the department violated the Act because it discriminated against him on the basis of his sexual orientation, as there is nothing in the Act that prohibits discrimination based upon sexual orientation. Flynn v. Hillard, 303 Ill. App. 3d 119, 236 Ill. Dec. 589, 707 N.E.2d 716 (1 Dist. 1999).

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As a general rule, the Illinois Human Rights Act does not apply to employers which have fewer than 15 employees within the State of Illinois. Vitug v. Multistate Tax Comm'n, 860 F. Supp. 546 (N.D. Ill. 1994), aff'd, 88 F.3d 506 (7th Cir. 1996).

The Human Rights Act implicitly exempts small employers from a claim under Ill. Const. (1970), Art. I, § 17; by such exemption, employees of small employers are "covered" under the Act. Because the Act is the exclusive remedy for employment discrimination claims, employees of small employers may not bring a direct action under Ill. Const. (1970), Art. I, § 17. Baker v. Miller, 159 Ill. 2d 249, 201 Ill. Dec. 119, 636 N.E.2d 551 (1994).

Construction

Subparts (1) and (2) of subsection (E) define what has been called "quid pro quo sexual harassment"; subpart (3) refers to what is commonly known as "hostile environment sexual harassment." Trayling v. Board of Fire & Police Comm'rs, 273 Ill. App. 3d 1, 209 Ill. Dec. 846, 652 N.E.2d 386 (2 Dist. 1995).

The relationship between section 8-111(C) of this Act (775 ILCS 5/8-111(C)) and subdivision (B)(1)(a) of this section creating the "15 or more employees" requirement in order to be defined as an "employer" is such that the legislature also intended that those employing fewer than the required number of employees be in the category of a "reasonable exemption" from the requirements of Article I, Section 17, of the Constitution. Baker v. Miller, 242 Ill. App. 3d 44, 182 Ill. Dec. 865, 610 N.E.2d 734 (4 Dist.), appeal granted, 152 Ill. 2d 554, 190 Ill. Dec. 883, 622 N.E.2d 1200 (1993), aff'd, 159 Ill. 2d 249, 201 Ill. Dec. 119, 636 N.E.2d 551 (1994).

Disabilities Act

Private litigation to enforce the Americans With Disabilities Act may not proceed in federal court: Having opened its courts to claims based on state law, including its own prohibition of disability discrimination by units of state government in 775 ILCS 5/1-102 and subsection (B)(1)(c) of this section, Illinois may not exclude claims based on federal law. Erickson v. Board of Governors of State Colleges & Univs. ex rel. Northeastern Ill. Univ., 207 F.3d 945, 2000 U. S. App. LEXIS 5074 (7th Cir. 2000), cert. denied, 531 U.S. 1190, 121 S. Ct. 1187, 149 L. Ed. 2d 104 (2001).

Employee

- Independent Agent

Plaintiff, an independent agent, was an employee of the defendant and, therefore, was within the ambit of the former Fair Employment Practices Act (see now this section). Unger v. Sierna Div. of Consol. Foods Corp., 60 Ill. App. 3d 840, 18 Ill. Dec. 113, 377 N.E.2d 266 (1 Dist. 1978).

- Independent Contractor

Plaintiff's role as an attorney was that of an independent contractor, not an employee; attorney maintained a full time practice and the practice was employed and paid to represent employer. Wanless v. Illinois Human Rights Comm'n, 296 Ill. App. 3d 401, 230 Ill. Dec. 1011, 695 N.E.2d 501 (3 Dist. 1998).

- State

Assistant State's Attorney was an "employee" as defined in § 2-101(B) of the Illinois Human Rights Act (Act), Ill. Rev. Stat. ch. 68, para. 1-101 et seq. (1985) (now 775 ILCS 5/2-101 et seq.), and therefore, she was entitled to protection from discrimination under the Act and she was not exempt from such protection pursuant to § 2-101(A)(2)(c) of the Act because she was not a

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member of the immediate personal staff of the State's Attorney. Office of Lake County State's Attorney v. Human Rights Com., 235 Ill. App. 3d 1036, 176 Ill. Dec. 596, 601 N.E.2d 1294, 1992 Ill. App. LEXIS 1590 (1 Dist. 1992).

Employer

- Burden of proof

The employer's status as an "employer" within the definition of this section is an essential element of the cause of action and must be pleaded and proved by the complainant. Aero Servs. Int'l, Inc. v. Human Rights Comm'n, 291 Ill. App. 3d 740, 225 Ill. Dec. 761, 684 N.E.2d 446 (4 Dist. 1997), appeal denied, 176 Ill. 2d 569, 229 Ill. Dec. 52, 690 N.E.2d 1379 (1998).

- Defined

Office of the State's Attorney was the legal equivalent of the State itself and was an "employer" as defined in § 2-101(B)(1) of the Illinois Human Rights Act, Ill. Rev. Stat. ch. 68, para. 1-101 et seq. (1985) (now 775 ILCS 5/2-101 et seq.), for purposes of a discrimination suit brought under the Act. Office of Lake County State's Attorney v. Human Rights Com., 235 Ill. App. 3d 1036, 176 Ill. Dec. 596, 601 N.E.2d 1294, 1992 Ill. App. LEXIS 1590 (1 Dist. 1992).

For purposes of the Illinois Human Rights Act, former Ill. Rev. Stat. ch. 68, para. 1-101 et seq. (now 775 ILCS 5/1-101), an "employer" is any person employing 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation. Ritzheimer v. Insurance Counselors, 173 Ill. App. 3d 953, 123 Ill. Dec. 506, 527 N.E.2d 1281, 1988 Ill. App. LEXIS 1216 (1 Dist. 1988).

The state and its agencies are "employers" as defined in this section. Lott v. Governors State Univ., 106 Ill. App. 3d 851, 62 Ill. Dec. 543, 436 N.E.2d 569 (1 Dist. 1982).

- Found

Illinois Department of Human Rights entered a final order dismissing the claimant's case that was proper in part and improper in part in a case where the claimant alleged that she was the victim of sex discrimination and retaliation while working for the city and unlawful retaliation for having complained of sexual harassment; substantial evidence support a finding that the conduct was not severe or pervasive enough to constitute sex discrimination, but could support a finding that the employer, the city, was liable for acts of retaliation taken against her that arguably resulted in an intimidating, hostile, or offensive work environment. Hoffelt v. Ill. Dep't of Human Rights, Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 790 (1 Dist. Sept. 1, 2006).

- Not found

Illinois Human Rights Commission finding that the Illinois Department of Corrections (DOC) had discriminated against an African-American employee was clearly erroneous because a private contractor, which the DOC contracted with to provide health care services at correctional centers, was the employee's employer under 775 ILCS 5/2-101(B). Although the facts that the DOC provided the equipment for the employee's work and dictated his work schedule weighed in favor of a finding that the DOC was the employee's employer, the important element of control weighed in favor of finding that the DOC was not the employee's employer because the DOC was merely exercising a contractual right to regulate the employee's work conditions, but it was not controlling the manner in which he performed his duties. Mitchell v. Dep't of Corr., 367 Ill. App. 3d 807, 305 Ill. Dec. 788, 856 N.E.2d 593, 2006 Ill. App. LEXIS 880 (1 Dist. 2006).

In a racial discrimination complaint, where the employee did not establish that the respondent was an "employer" under the Illinois Human Rights Act, the Human Rights Commission was without jurisdiction. Aero Servs. Int'l, Inc. v. Human Rights Comm'n, 291 Ill. App. 3d 740, 225

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Ill. Dec. 761, 684 N.E.2d 446 (4 Dist. 1997), appeal denied, 176 Ill. 2d 569, 229 Ill. Dec. 52, 690 N.E.2d 1379 (1998).

- Religious Exception Applicable

Where a corporation which owned hospitals neither issued stock nor paid out dividends, nor had the power to do so, the charters of the hospitals stated that among their corporate purposes was the raising of funds, loans and gifts for the use and benefit of the corporation which operated the hospitals, all the funds raised for and profits accrued from the hospitals were applied to the operation of the hospitals, no profits accrued to the private benefit of any individual or organization, and the hospitals admitted a number of free patients who were unable to pay, and where other hospitals were owned and operated by a corporation which was the legal entity under which an order of nuns of the Roman Catholic Church conducted their business concerning the hospitals, all the hospitals were exempt under prior similar provision (see now subdivision (b)(2) of this section), which provided for an exemption for charitable organizations affiliated with a church or religious organization. Fair Emp. Practices Comm'n v. Tenerovitz, 25 Ill. App. 3d 471, 323 N.E.2d 353 (1 Dist. 1975).

- Religious Exception Not Applicable

Trial court erred in finding that medical center was sufficiently affiliated with a church or religious institution so as to exempt it from the definition of an employer contained in the former Fair Employment Practices Act (see now this section). Fair Emp. Practices Comm'n v. Rush-Presbyterian-St. Luke's Medical Ctr., 41 Ill. App. 3d 712, 354 N.E.2d 596 (1 Dist. 1976).

- Retaliation Action

The employer was liable on employee's retaliation claim, even though the employee's initial action, for discrimination, was dismissed for lack of subject matter jurisdiction because the employer did not fit the statutory definition of "employer"; 775 ILCS 5/6-101 expressly prohibits a "person" from retaliating against another person, and a "person," as defined in the Illinois Human Rights Act, can include an employer with fewer than 15 employees. Dana Tank Container, Inc. v. Human Rights Comm'n, 292 Ill. App. 3d 1022, 227 Ill. Dec. 179, 687 N.E.2d 102 (1 Dist. 1997).

Evidence

- Inference

In a sexual harassment case, an individual's motivation for conduct can be determined by drawing inferences from the evidence. Trayling v. Board of Fire & Police Comm'rs, 273 Ill. App. 3d 1, 209 Ill. Dec. 846, 652 N.E.2d 386 (2 Dist. 1995).

Jurisdiction

The employee did not allege that he filed a charge with the Illinois Department of Human Rights and, thus, the court had no jurisdiction to hear his claims under the Illinois Human Rights Act, 775 ILCS 5/2-101 et seq. Cabrera v. World's Finest Chocolate, Inc., F. Supp. 2d , 2004 U.S. Dist. LEXIS 12638 (N.D. Ill. July 6, 2004).

- Exhaustion of Remedies

Because a prospective employee had not exhausted her state administrative remedies by filing a charge with the Illinois Department of Human Rights (and receiving a final order from the Department), her claim against a prospective employer under the Illinois Human Rights Act, 775

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ILCS 5/2-101 et seq., was dismissed. Chung v. PricewaterhouseCoopers LLP, F. Supp. 2d , 2005 U.S. Dist. LEXIS 18993 (N.D. Ill. Aug. 29, 2005).

Issue raised as to whether an individual is an employer or whether he is an employee as defined in this Act presented an attack on the Human Rights Commission's jurisdiction to hear a discrimination complaint, and consequently, the State's attorney was not required to exhaust his administrative remedies before seeking relief in the circuit court. Office of State's Att'y v. Illinois Human Rights Comm'n, 200 Ill. App. 3d 151, 146 Ill. Dec. 705, 558 N.E.2d 668 (2 Dist. 1990).

Preemption

Court granted a former employer's motion to dismiss a former employee's state law claims because the Illinois Worker's Compensation Act preempted the employee's claims for negligent supervision, hiring and retention, negligent infliction of emotional distress, and willful and wanton misconduct as the employee's allegations did not fall under any of the exemptions, and the Illinois Human Rights Act (IHRA) preempted the employee's remaining claims because the sexual harassment provisions of the IHRA provided the duty that the employer was alleged to have breached in the state law claims and were, thus, "inextricably linked" to the employee's claims. Doe v. La Magdalena II, Inc., 585 F. Supp. 2d 984, 2008 U.S. Dist. LEXIS 47578 (N.D. Ill. 2008).

The Human Rights Act contains no specific language limiting a home rule unit's power with regard to the applicability of sexual harassment laws, as required for the preemption of home rule power; thus, a home rule unit has the power to broaden the applicability of harassment prohibitions to employers with less than 15 employees. Page v. City of Chicago, 299 Ill. App. 3d 450, 233 Ill. Dec. 575, 701 N.E.2d 218 (1 Dist. 1998), appeal denied, 182 Ill. 2d 552, 236 Ill. Dec. 670, 707 N.E.2d 1240 (1999).

- Tort Action

Prospective employee's claims of interference with prospective economic advantage and intentional infliction of emotional distress against a prospective employer were preempted by the Illinois Human Rights Act (IHRA), 775 ILCS 5/2-101 et seq., because they were "inextricably linked" to the allegations that would have supported a claim under the IHRA. The employee's claims of interference with prospective economic advantage and intentional infliction of emotional distress appeared to rely entirely on the fact that the employer failed to hire her because she was an Asian-American woman, and absent the employee's allegations of gender, race, and national origin discrimination, she would have no basis to assert a claim for intentional infliction of emotional distress or interference with prospective business advantage. Chung v. PricewaterhouseCoopers LLP, F. Supp. 2d , 2005 U.S. Dist. LEXIS 18993 (N.D. Ill. Aug. 29, 2005).

The preemptive effect of this Act deprived the court of jurisdiction over private-party damage actions emanating from the rape of one employee of defendant by her co-employee. Al-Dabbagh v. Greenpeace, Inc., 873 F. Supp. 1105 (N.D. Ill. 1994).

Remuneration

Fees paid to an individual for services performed solely as director of the corporation or association cannot constitute remuneration of an employee for purposes of the act. Wanless v. Illinois Human Rights Comm'n, 296 Ill. App. 3d 401, 230 Ill. Dec. 1011, 695 N.E.2d 501 (3 Dist. 1998).

Sexual Harassment

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In the context of the timing of filing a civil rights action based upon sexual harassment, whether the act that caused the harassment was physical or not was irrelevant because "sexual harassment" was defined as any conduct of a sexual nature that had the purpose or effect of substantially interfering with an individual's work performance, pursuant to 775 ILCS 5/2-101(E). Moreover, the change in a supervisor's conduct from verbal to physical was not relevant to the determination of whether his conduct within the 180-day period was "related," for purposes of National R.R. Passenger Corp. v. Morgan, 536 U.S. 101 (2002), to his conduct outside the 180-day period, and the alleged "character" of the prior acts was not determinative of whether an act occurring within the filing period bore "no relation" to acts occurring outside the filing period and contributed to the same hostile work environment. Jones v. Lockard, Ill. App. 3d , 353 Ill. Dec. 761, 956 N.E.2d 623, 2011 Ill. App. LEXIS 977 (3 Dist. 2011).

Commission's finding that a supervisor committed a variety of sexually harassing acts that cumulatively constituted a hostile work environment was not against the manifest weight of the evidence as the supervisor sent a forged Department of Public Health letter asserting that the employee had contracted a sexually transmitted disease and the Commission found that the supervisor's conduct promoted a sexual atmosphere at the Sheriff's Department generally and in the employee's work life particularly. The evidence of the forged letter, together with the other conduct proved by the employee, was sufficient to establish a hostile working environment. Sangamon County Sheriff's Dep't v. Ill. Human Rights Comm'n, 233 Ill. 2d 125, 330 Ill. Dec. 187, 908 N.E.2d 39, 2009 Ill. LEXIS 378 (2009).

Motion to dismiss was granted on intentional infliction of emotional distress (IIED) claim because the conduct alleged for the IIED claim was inextricably linked with the employee's sexual harassment and retaliation claims and, therefore, preempted by the Illinois Human Rights Act (IHRA). Mustari v. New Hope Acad., F. Supp. 2d , 2004 U.S. Dist. LEXIS 11780 (N.D. Ill. June 21, 2004).

- Conduct of a Sexual Nature Shown

The use of gender specific terms, such as bitch, together with other incidents, such as sexual references to an employee's daughter, a photograph of a supervisor with his hands on clothed women's breasts, a phone call to a pornographic phone service and derogatory comments about women and the female anatomy, constituted conduct of a sexual nature. State v. Human Rights Comm'n, 178 Ill. App. 3d 1033, 128 Ill. Dec. 141, 534 N.E.2d 161 (4 Dist. 1989).

- Jurisdiction

Since plaintiff's claim of intentional infliction of emotional distress was inextricably linked to her sexual harassment and retaliation claims, both Illinois state courts and federal court lacked subject matter jurisdiction. Jansen v. Packaging Corp. of Am., 895 F. Supp. 1053 (N.D. Ill. 1995), rev'd on other grounds, 123 F.3d 490 (7th Cir. 1997).

- Psychological Harm

A showing of concrete psychological harm is not a prerequisite to finding sexual harassment under the Act. Trayling v. Board of Fire & Police Comm'rs, 273 Ill. App. 3d 1, 209 Ill. Dec. 846, 652 N.E.2d 386 (2 Dist. 1995).

- Shown

Illinois Human Rights Commission's finding that an employer was liable for an employee's sexual harassment was not against the manifest weight of the evidence where it was shown that a co-worker frequently engaged in inappropriate conduct toward the employee and others, and that a supervisor, who often asked the employee if he and the co-worker had kissed and made up, was aware of the hostile environment created by the co-worker and was an active participant in perpetuating such environment. Pinnacle Ltd. P'ship v. Ill. Human Rights Comm'n, 354 Ill. App. 3d 819, 290 Ill. Dec. 139, 820 N.E.2d 1206, 2004 Ill. App. LEXIS 1524 (4 Dist. 2004).

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Hospital employee properly fired for sexual harassment. O'Sullivan v. Board of Comm'rs, 293 Ill. App. 3d 1, 227 Ill. Dec. 621, 687 N.E.2d 1103 (1 Dist. 1997).

A finding that a reasonable person would have perceived the bureau office to be an offensive working environment was supported by the record, therefore the board's finding that plaintiff committed sexual harassment was not against the manifest weight of the evidence. Trayling v. Board of Fire & Police Comm'rs, 273 Ill. App. 3d 1, 209 Ill. Dec. 846, 652 N.E.2d 386 (2 Dist. 1995).

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For article, "Balancing Alcoholics' Rights and Employer Liability Under Anti-Discrimination Laws," see 86 Ill. B.J. 148 (1998).

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Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 19.4 Sexual Harassment (IICLE).

Employment Discrimination § 11.9 Private Employers (IICLE).

Employment Discrimination § 2.31 Definitions (IICLE).

Employment Discrimination § 2.8 Sexual Harassment (IICLE).

1-8 Employment in Illinois § 8-6 Disability Discrimination.

1-8 Employment in Illinois § 8-5 Sex Discrimination, Pregnancy, Sexual Harassment, Marital Status, Sexual Preference.

1-8 Employment in Illinois § 8-2 State and Federal Laws.

1-2 Employment in Illinois § 2-7 Hiring Aliens.

Illinois Jurisprudence, Labor and Employment § 4:31 Generally.

Illinois Jurisprudence, Labor and Employment § 4:22 Sexual harassment.

Illinois Jurisprudence, Labor and Employment § 4:05 Who is "employee" under Act.

Illinois Jurisprudence, Labor and Employment § 4:04 Who is "employer" under Act.

§ 775 ILCS 5/2-102. Civil Rights Violations - Employment

Sec. 2-102. Civil Rights Violations - Employment. It is a civil rights violation:

(A) Employers. For any employer to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or

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apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of unlawful discrimination or citizenship status.

(A-5) Language. For an employer to impose a restriction that has the effect of prohibiting a language from being spoken by an employee in communications that are unrelated to the employee's duties.

For the purposes of this subdivision (A-5), "language" means a person's native tongue, such as Polish, Spanish, or Chinese. "Language" does not include such things as slang, jargon, profanity, or vulgarity.

(B) Employment Agency. For any employment agency to fail or refuse to classify properly, accept applications and register for employment referral or apprenticeship referral, refer for employment, or refer for apprenticeship on the basis of unlawful discrimination or citizenship status or to accept from any person any job order, requisition or request for referral of applicants for employment or apprenticeship which makes or has the effect of making unlawful discrimination or discrimination on the basis of citizenship status a condition of referral.

(C) Labor Organization. For any labor organization to limit, segregate or classify its membership, or to limit employment opportunities, selection and training for apprenticeship in any trade or craft, or otherwise to take, or fail to take, any action which affects adversely any person's status as an employee or as an applicant for employment or as an apprentice, or as an applicant for apprenticeships, or wages, tenure, hours of employment or apprenticeship conditions on the basis of unlawful discrimination or citizenship status.

(D) Sexual Harassment. For any employer, employee, agent of any employer, employment agency or labor organization to engage in sexual harassment; provided, that an employer shall be responsible for sexual harassment of the employer's employees by nonemployees or nonmanagerial and nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures.

(E) Public Employers. For any public employer to refuse to permit a public employee under its jurisdiction who takes time off from work in order to practice his or her religious beliefs to engage in work, during hours other than such employee's regular working hours, consistent with the operational needs of the employer and in order to compensate for work time lost for such religious reasons. Any employee who elects such deferred work shall be compensated at the wage rate which he or she would have earned during the originally scheduled work period. The employer may require that an employee who plans to take time off from work in order to practice his or her religious beliefs provide the employer with a notice of his or her intention to be absent from work not exceeding 5 days prior to the date of absence.

(F) Training and Apprenticeship Programs. For any employer, employment agency or labor organization to discriminate against a person on the basis of age in the selection, referral for or conduct of apprenticeship or training programs.

(G) Immigration-Related Practices.

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(1) For an employer to request for purposes of satisfying the requirements of Section 1324a(b) of Title 8 of the United States Code [8 U.S.C. § 1324a(b)], as now or hereafter amended, more or different documents than are required under such Section or to refuse to honor documents tendered that on their face reasonably appear to be genuine; or

(2) For an employer participating in the Basic Pilot Program, as authorized by 8 U.S.C. 1324a, Notes, Pilot Programs for Employment Eligibility Confirmation (enacted by PL 104-208, div. C title IV, subtitle A) to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment without following the procedures under the Basic Pilot Program.

(H) Pregnancy; peace officers and fire fighters. For a public employer to refuse to temporarily transfer a pregnant female peace officer or pregnant female fire fighter to a less strenuous or hazardous position for the duration of her pregnancy if she so requests, with the advice of her physician, where that transfer can be reasonably accommodated. For the purposes of this subdivision (H), "peace officer" and "fire fighter" have the meanings ascribed to those terms in Section 3 of the Illinois Public Labor Relations Act [5 ILCS 315/3].

It is not a civil rights violation for an employer to take any action that is required by Section 1324a of Title 8 of the United States Code, as now or hereafter amended.

(I) Pregnancy. For an employer to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of pregnancy, childbirth, or related medical conditions. Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work.

(Source: P.A. 87-579; 93-217, § 5; 95-25, § 5; 95-137, § 5; 95-876, § 385; 97-596, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 68, Para. 2-102.

Section 97 of P.A. 95-137, which amended this section, contains a severability provision.

Effect of Amendments. The 2003 amendment by P.A. 93-217, effective January 1, 2004, added subsection (A-5).

The 2007 amendment by P.A. 95-25, effective January 1, 2008, added (H).

The 2007 amendment by P.A. 95-137, effective January 1, 2008, added the (G)(1) designation and added subsection (G)(2).

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The 2008 general revisory amendment by P.A. 95-876, effective August 21, 2008, combined multiple amendments to the section.

The 2011 amendment by P.A. 97-596, effective August 26, 2011, added (l).

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In General

This Act provides the statutory framework in which the Illinois constitutional right to freedom from unlawful employment discrimination is to be enforced. O'Young v. Hobart Corp., 579 F. Supp. 418 (N.D. Ill. 1983).

The legislature never intended to withhold from the condemnation of the former Fair Employment Act (see now this section) practices directed against a class or classes of individuals because of their race, origin, sex, color, or religion. Eastman Kodak Co. v. Fair Emp. Practices Comm'n, 86 Ill. 2d 60, 55 Ill. Dec. 552, 426 N.E.2d 877 (1981).

Age Discrimination

- Action for Damages

The former Age Discrimination Act (see now this section) did not expressly or impliedly authorize a civil action for damages where an employee was involuntarily retired because of his age. Teale v. Sears, Roebuck & Co., 66 Ill. 2d 1, 3 Ill. Dec. 834, 359 N.E.2d 473 (1976).

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- Burden of Proof

If an employer articulates a lawful reason for an employee's dismissal, the employee has the burden of proving that the reason given by the employer is merely a pretext by showing that the discriminatory reason more likely motivated the employer or that the employer's proffered explanation is unworthy of credence. Kindred v. Human Rights Comm'n, 180 Ill. App. 3d 766, 129 Ill. Dec. 607, 536 N.E.2d 447 (3 Dist. 1989).

- Choice of Remedy

To the extent that defendants may have aided, abetted, compelled or coerced plaintiff's employer to discriminate against them on account of their age, they could have been liable to plaintiffs under this Act for committing a civil rights violation; this Act provided plaintiffs with a remedy which they consciously chose not to pursue. Anderson v. Pistner, 148 Ill. App. 3d 616, 102 Ill. Dec. 9, 499 N.E.2d 566 (1 Dist. 1986).

- Jurisdiction

Forms of discrimination under the disparate treatment and disparate impact method fall within the exclusive jurisdiction of this Act and therefore are barred by its exclusive remedy provision. Anderson v. Pistner, 148 Ill. App. 3d 616, 102 Ill. Dec. 9, 499 N.E.2d 566 (1 Dist. 1986).

- Mandatory Retirement

The mandatory retirement provision of 625 ILCS 5/2-115, providing for retirement of Secretary of State investigators at age 60, is inconsistent with the provisions of this section of this Act, which is the controlling statute. State v. Mikusch, 138 Ill. 2d 242, 149 Ill. Dec. 704, 562 N.E.2d 168 (1990).

City ordinance specifying mandatory retirement of firefighter at age 60, as well as provision of municipal code, was preempted and, therefore, effectively repealed by this Act. Jirus v. City of Berwyn, 712 F. Supp. 672 (N.D. Ill. 1989).

- Not Shown

Evidence held insufficient to substantiate employee's claim that he was discharged because of his age. Chromium Corp. v. Human Rights Comm'n, 165 Ill. App. 3d 716, 117 Ill. Dec. 372, 520 N.E.2d 723 (1 Dist. 1987).

- Preemption

Where the injured party alleged claims of negligent and intentional infliction of emotional distress as a result of the injured party's failure to find employment because of the discriminatory policies of the employment agency and potential employers, the injured party failed to state a claim; the tort claims were preempted by the Illinois Human Rights Act, 775 ILCS 5/1-101, because they were inextricably linked to an alleged civil rights violation of unlawful discrimination pursuant to 775 ILCS 5/2-102, and pursuant to 775 ILCS 5/1-103; unlawful discrimination included age discrimination. Cady v. Miss Paige, Ltd., F. Supp. 2d , 2003 U.S. Dist. LEXIS 5597 (N.D. Ill. Mar. 31, 2003).

- Prima Facie Case

The plaintiff made out a prima facie case of age discrimination, notwithstanding that she was replaced by an employee who was also a member of the same protected class, where that employee was 13 years younger than she and other younger similarly-situated employees in her department were treated better and not discharged. Anderson v. Human Rights Comm'n, 314 Ill. App. 3d 35, 246 Ill. Dec. 843, 731 N.E.2d 371, 2000 Ill. App. LEXIS 445 (1 Dist. 2000).

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In order to prove that an employer has unlawfully discriminated against an employee on the basis of age, a discharged employee must establish a prima facie case by the preponderance of the evidence that: he is a member of a protected class, is qualified for the position from which he was discharged, and was replaced by a younger employee with qualifications similar to his own; once this has been demonstrated, the employer must present legitimate, nondiscriminatory reasons for the discharge, and then the employee is obligated to demonstrate that these reasons for discharge were pretextual and that the employee's age was, in reality, a dispositive reason for his discharge. Chromium Corp. v. Human Rights Comm'n, 165 Ill. App. 3d 716, 117 Ill. Dec. 372, 520 N.E.2d 723 (1 Dist. 1987).

- Retirement Systems

Where complainants did not retire in the conventional sense of the word but were terminated because employer ceased its operations, the employer's severance policies on its closure constituted a retirement system, as they were designed to achieve the same result as would a traditional retirement system in the ordinary sense of that term, that is, the severance policies, like a retirement plan, insured that the employees received a source of income upon termination from their employment. Babcock & Wilcox Co. v. Department of Human Rights, 189 Ill. App. 3d 827, 137 Ill. Dec. 146, 545 N.E.2d 799 (2 Dist. 1989), appeal denied, 129 Ill. 2d 561, 140 Ill. Dec. 668, 550 N.E.2d 553, cert. denied, 497 U.S. 1004, 110 S. Ct. 3239, 111 L. Ed. 2d 750 (1990).

Employer's retirement policies did not constitute unlawful discrimination as all terminated employees received compensation by means of an age-neutral employer action, and there was no evidence that the retirement system was intended to discriminate against complainant due to his employment relationship. Babcock & Wilcox Co. v. Department of Human Rights, 189 Ill. App. 3d 827, 137 Ill. Dec. 146, 545 N.E.2d 799 (2 Dist. 1989), appeal denied, 129 Ill. 2d 561, 140 Ill. Dec. 668, 550 N.E.2d 553, cert. denied, 497 U.S. 1004, 110 S. Ct. 3239, 111 L. Ed. 2d 750 (1990).

The long existence of the statutory system of annuities and pensions and its general application to teachers throughout the state demonstrate that the "retirement system" is not a subterfuge to evade the former Age Discrimination Act (see now this section). Kennedy v. Community Unit School, 23 Ill. App. 3d 382, 319 N.E.2d 243 (4 Dist. 1974).

The sum of the legislative acts demonstrates an intended interrelation between the Teachers' Retirement System of Illinois, and section 24-11 of the School Code (105 ILCS 5/24-11); however, the legislature did not intend the former Age Discrimination Act (see now this section) make inoperative any portion of 105 ILCS 5/24-11 and such Teachers' Retirement System. Kennedy v. Community Unit School, 23 Ill. App. 3d 382, 319 N.E.2d 243 (4 Dist. 1974).

- Shown

The employer's proffered reasons for complainants' discharge was pretextual, and complainants met the ultimate burden of proving age discrimination. Southern Ill. Clinic, Ltd. v. Illinois Human Rights Comm'n, 274 Ill. App. 3d 840, 211 Ill. Dec. 193, 654 N.E.2d 655 (5 Dist. 1995).

The Human Rights Commission's decision that employee proved by a preponderance of the evidence that the reasons for his termination as articulated by his employer were merely a pretext for age discrimination, was amply supported by the record and was not against the manifest weight of the evidence. Charles A. Stevens & Co. v. Human Rights Comm'n, 196 Ill. App. 3d 748, 143 Ill. Dec. 904, 554 N.E.2d 976 (1 Dist. 1990).

Repeated references in plaintiff's complaint to older and younger employees could not be dismissed as inadvertent or merely descriptive of the persons who happened to have been affected by defendants' conduct, rather, the allegations clearly suggested that the defendants deliberately discriminated against plaintiffs because of their age and, even assuming that a nondiscriminatory motive could be ascribed to defendants' decision to terminate older upper

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management level employees, it was apparent that the decision had a discriminatory effect. Anderson v. Pistner, 148 Ill. App. 3d 616, 102 Ill. Dec. 9, 499 N.E.2d 566 (1 Dist. 1986).

- Standard of Proof

In an age discrimination suit, an employee may prove his case with either direct or circumstantial evidence. Kindred v. Human Rights Comm'n, 180 Ill. App. 3d 766, 129 Ill. Dec. 607, 536 N.E.2d 447 (3 Dist. 1989).

Applicability

- In General

The plain meaning of Ill. Const. (1970), Art. I, § 17, along with the insight provided by the proceedings of this state's Bill of Rights Committee, indicates that this section extends only to hiring and promotion as opposed to all employment practices. Thakkar v. Wilson Enters., Inc., 120 Ill. App. 3d 878, 76 Ill. Dec. 331, 458 N.E.2d 985 (1 Dist. 1983).

- Federal Preemption

Plaintiff's claim that he was discriminated against based on his age when refused severance pay given to other similarly situated discharged employees, if proven, would have violated 29 U.S.C. § 623(a)(1); therefore, 29 U.S.C. § 1144 (d) excepted the claim from preemption claim under subsection (A). Barber-Colman Co. v. Barbosa, 940 F. Supp. 1269 (N.D. Ill. 1996).

The Federal Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.) preempts this section and 775 ILCS 5/204(5)(a) insofar as these sections may vary from the Federal Age Discrimination in Employment Act (29 U.S.C. § 623(f)(2)). Babcock & Wilcox Co. v. Department of Human Rights, 189 Ill. App. 3d 827, 137 Ill. Dec. 146, 545 N.E.2d 799 (2 Dist. 1989), appeal denied, 129 Ill. 2d 561, 140 Ill. Dec. 668, 550 N.E.2d 553, cert. denied, 497 U.S. 1004, 110 S. Ct. 3239, 111 L. Ed. 2d 750 (1990).

Defendant's discrimination claim, that his discharge from his job had its origin in the public policy of Illinois and did not depend on the existence of a collective bargaining agreement, under state law, was not preempted by § 301 of the Labor Management Relations Act (29 U.S.C.A. § 185(a)). Kraft, Inc. v. City of Peoria, 177 Ill. App. 3d 197, 126 Ill. Dec. 470, 531 N.E.2d 1106 (3 Dist. 1988).

Where the Human Rights Commission's decision that an employer's refusal to rehire a handicapped employee at a time when others had seniority was significantly intertwined with interpretation of a collective-bargaining agreement, federal labor law preempted the decision. Carver Lumber Co. v. Human Rights Comm'n, 162 Ill. App. 3d 419, 113 Ill. Dec. 608, 515 N.E.2d 417 (3 Dist. 1987).

- Res Judicata

For a case discussing the applicability of the defense of res judicata under the former Fair Employment Practices Act (see now this section), see City of Chicago v. Illinois Fair Emp. Practices Comm'n, 87 Ill. App. 3d 597, 43 Ill. Dec. 136, 410 N.E.2d 136 (1 Dist. 1980).

- Sexual Orientation

The court lacked jurisdiction to hear plaintiff's claim that the department violated the Act because it discriminated against him on the basis of his sexual orientation, as there is nothing in the Act that prohibits discrimination based upon sexual orientation. Flynn v. Hillard, 303 Ill. App. 3d 119, 236 Ill. Dec. 589, 707 N.E.2d 716 (1 Dist. 1999).

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Burden of Proof

- In General

Plaintiff has the burden of proving by a preponderance of the evidence a prima facie case of unlawful discrimination, and once the plaintiff has satisfied this burden of proof, an employer may rebut it by presenting a legitimate nondiscriminatory reason for its employment decision. If the employer carries this burden, the presumption of unlawful discrimination is abrogated and plaintiff must prove by a preponderance of the evidence that the reason offered by the employer was a pretext for discrimination. Lipsey v. Human Rights Comm'n, 157 Ill. App. 3d 1054, 110 Ill. Dec. 195, 510 N.E.2d 1226 (1 Dist.), appeal denied, 116 Ill. 2d 560, 113 Ill. Dec. 301, 515 N.E.2d 110 (1987); Illinois Bell Tel. Co. v. Human Rights Comm'n, 190 Ill. App. 3d 1036, 138 Ill. Dec. 332, 547 N.E.2d 499 (1 Dist. 1989).

In considering employment discrimination actions under this Act, Illinois courts have utilized a three-step analysis: first, the plaintiff has the burden of proving by a preponderance of the evidence a prima facie case of unlawful discrimination, and by establishing a prima facie case, the plaintiff creates a rebuttable presumption that the employer unlawfully discriminated against her; second, if the plaintiff succeeds in proving a prima facie case, to rebut the presumption raised the employer must clearly set forth, through the introduction of admissible evidence, a legitimate, nondiscriminatory reason for its employment decision; third, if the employer carries the burden of production, the presumption of unlawful discrimination drops from the case, and the plaintiff must prove by a preponderance of the evidence that the legitimate reason offered by the employer was not its true reason, that is, a pretext, which merges with the plaintiff's ultimate burden of proving whether the employer unlawfully discriminated against her. Village of Oak Lawn v. Illinois Human Rights Comm'n, 133 Ill. App. 3d 221, 88 Ill. Dec. 507, 478 N.E.2d 1115 (1 Dist. 1985); Kenall Mfg. Co. v. Human Rights Comm'n, 152 Ill. App. 3d 695, 105 Ill. Dec. 520, 504 N.E.2d 805 (1 Dist. 1987); City of Belleville v. Human Rights Comm'n, 167 Ill. App. 3d 834, 118 Ill. Dec. 813, 522 N.E.2d 268 (5 Dist. 1988), appeal denied, 122 Ill. 2d 569, 125 Ill. Dec. 213, 530 N.E.2d 241 (1988); State v. Human Rights Comm'n, 178 Ill. App. 3d 1033, 128 Ill. Dec. 141, 534 N.E.2d 161 (4 Dist. 1989); Russ Berrie & Co. v. Illinois Human Rights Comm'n, 224 Ill. App. 3d 874, 167 Ill. Dec. 29, 586 N.E.2d 1301, appeal denied, 146 Ill. 2d 651, 176 Ill. Dec. 822, 602 N.E.2d 476 (1992).

- Eligible Bidder

In filing an application with the former Fair Employment Practices Commission to qualify for the privilege of bidding on public contracts, the appellant bore the burden of proof in establishing that it satisfied the Commission's requirements regarding under utilization and affirmative action programs. Eastman Kodak Co. v. Fair Emp. Practices Comm'n, 86 Ill. 2d 60, 55 Ill. Dec. 552, 426 N.E.2d 877 (1981).

- Employee

The ultimate burden of proving unlawful discrimination remains at all times with the plaintiff. St. Mary of Nazareth Hosp. Ctr. v. Curtis, 163 Ill. App. 3d 566, 114 Ill. Dec. 658, 516 N.E.2d 813 (1 Dist. 1987).

Plaintiff (employee) must prove by a preponderance of the evidence a prima facie case of unlawful discrimination; if a prima facie case is established, plaintiff creates a rebuttable presumption that the employer unlawfully discriminated against him. St. Mary of Nazareth Hosp. Ctr. v. Curtis, 163 Ill. App. 3d 566, 114 Ill. Dec. 658, 516 N.E.2d 813 (1 Dist. 1987).

Once an employer successfully rebuts the presumption of discrimination, the presumption drops from the case, at which point an employee may show that the employer's stated reasons for discharging him were pretextual. Loyola Univ. v. Human Rights Comm'n, 149 Ill. App. 3d 8, 102 Ill. Dec. 746, 500 N.E.2d 639 (1 Dist. 1986).

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It was complainant's initial burden to show that the ostensibly legitimate reasons expressed by the board of eduction for not hiring complainant were pretextual in employment sex discrimination action, since if the actions remained unexplained it was more likely than not that they were based on discriminatory criterion. Board of Educ. v. Illinois Fair Emp. Practices, 79 Ill. App. 3d 446, 34 Ill. Dec. 796, 398 N.E.2d 619 (2 Dist. 1979).

- Employer

Where respondent employee received good employee evaluations and consistent raises but was reprimanded and fired by her supervisor after it became clear that she would be called to testify against her employer in another case, employer bore the burden of showing that evidence in the record, when viewed in employee's favor, was insufficient to support the Human Rights Commission's ruling that the articulated reason for firing employee was a pretext for discrimination. All Purpose Nursing Serv. v. Human Rights Comm'n, 205 Ill. App. 3d 816, 150 Ill. Dec. 717, 563 N.E.2d 844 (1 Dist. 1990).

The burden is on the employer to demonstrate by a preponderance of the evidence that the employee would have been discharged for causes other than those demonstrating discrimination. Charles A. Stevens & Co. v. Human Rights Comm'n, 196 Ill. App. 3d 748, 143 Ill. Dec. 904, 554 N.E.2d 976 (1 Dist. 1990).

The employer must raise a question of fact as to the asserted reason for a discharge. St. Mary of Nazareth Hosp. Ctr. v. Curtis, 163 Ill. App. 3d 566, 114 Ill. Dec. 658, 516 N.E.2d 813 (1 Dist. 1987).

- Shift

To rebut the presumption of unlawful discrimination, an employer must clearly articulate a legitimate, nondiscriminatory reason for its employment decision; if the employer carries that burden of production, the presumption of unlawful discrimination falls and the plaintiff must then prove by a preponderance of the evidence that the legitimate reason offered by the employer was not its true reason, but was instead a pretext for unlawful discrimination, and this burden merges with plaintiff's ultimate burden of proving that the employer unlawfully discriminated against him. St. Mary of Nazareth Hosp. Ctr. v. Curtis, 163 Ill. App. 3d 566, 114 Ill. Dec. 658, 516 N.E.2d 813 (1 Dist. 1987).

Business Necessity

- Managerial Convenience

Business necessity is not synonymous with managerial convenience. Board of Trustees v. Knight, 163 Ill. App. 3d 289, 114 Ill. Dec. 836, 516 N.E.2d 991 (5 Dist. 1987).

- Strict Standards

Federal precedent suggests that the standards for business necessity are strict. Board of Trustees v. Knight, 163 Ill. App. 3d 289, 114 Ill. Dec. 836, 516 N.E.2d 991 (5 Dist. 1987).

Constructive Discharge

- In General

Before a constructive discharge may be found, entitling employee to quit working altogether rather than accepting a transfer which he thinks is violative of his constitutional rights, the trier of fact must be satisfied that the new working conditions would have been so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign. Steele v.

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Human Rights Comm'n, 160 Ill. App. 3d 577, 112 Ill. Dec. 568, 513 N.E.2d 1177 (3 Dist. 1987).

Constructive discharge occurs when an employer deliberately makes an employee's working conditions so intolerable that the employee is forced to resign involuntarily, and when that happens, the employer is liable for any illegal conduct as if it had formally discharged the aggrieved employee. Steele v. Human Rights Comm'n, 160 Ill. App. 3d 577, 112 Ill. Dec. 568, 513 N.E.2d 1177 (3 Dist. 1987).

To constitute a constructive discharge, an employee must be compelled to resign by her working conditions, not some cause unrelated and merely coincidental to them; thus, the applicable test has two prongs: (1) difficult or unpleasant working conditions, and (2) a compulsion to resign in a reasonable person caused by those conditions. Brewington v. Illinois Dep't of Cors., 161 Ill. App. 3d 54, 112 Ill. Dec. 447, 513 N.E.2d 1056 (1 Dist. 1987).

- Demotions

A single instance of demotion, without other acts of discrimination, is not constructive discharge where the employee retains the same salary and benefits in spite of any perceived reduction in responsibility; where a demotion is accompanied by other demeaning conduct on the part of the employer and suggestions that the employee quit or retire, it has been held that a question of fact exists as to whether constructive discharge occurred. Steele v. Human Rights Comm'n, 160 Ill. App. 3d 577, 112 Ill. Dec. 568, 513 N.E.2d 1177 (3 Dist. 1987).

- Reasonable Person Test

Constructive discharge occurs when a reasonable person would feel compelled to leave the job, but in the course of most people's employment, a wide variety of disappointments, and possibly some injustices, occur, most of which are normal incidents of employment that would not lead a reasonable person to quit. Motley v. Illinois Human Rights Comm'n, 263 Ill. App. 3d 367, 200 Ill. Dec. 909, 636 N.E.2d 100 (4 Dist. 1994).

The reasonable person test applies to employment discrimination cases involving constructive discharge. Steele v. Human Rights Comm'n, 160 Ill. App. 3d 577, 112 Ill. Dec. 568, 513 N.E.2d 1177 (3 Dist. 1987).

Discrimination

- In General

Under this Act, it is a civil rights violation for any employer to act with respect to, inter alia, matters of discharge, discipline, privileges or conditions of employment on the basis of a person's race or color. Department of Cors. v. Clay, 135 Ill. App. 3d 710, 90 Ill. Dec. 280, 481 N.E.2d 1080 (5 Dist. 1985).

- Arrest Record

Exclusion of an individual from employment due to a past arrest record is inherently discriminatory; this principle is equally applicable to a former employer who is also a potential future employer. Montgomery Ward & Co. v. Fair Emp. Practices Comm'n, 49 Ill. App. 3d 796, 8 Ill. Dec. 297, 365 N.E.2d 535 (1 Dist. 1977).

- Elements

A charge of discrimination must be based on two elements: (1) a statement of fact which is encompassed by one or more of the unfair employment practices delineated in the former Fair Employment Practices Act (see now this section), and (2) an accusation against some one, or some organization, which has allegedly committed the unfair practice; in other words, there must

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be a res and a persona. Smith v. City of Springfield, 84 Ill. App. 3d 112, 39 Ill. Dec. 633, 405 N.E.2d 386 (4 Dist. 1980).

- Not Shown

Evidence was insufficient to sustain complainant's claim of employment discrimination where defendant met its burden of articulating a nondiscriminatory reason supported by evidence of disparate treatment. Board of Regents v. Human Rights Comm'n, 196 Ill. App. 3d 187, 142 Ill. Dec. 632, 552 N.E.2d 1373 (4 Dist. 1990).

Where a college failed to renew a professor's contract because it was dissatisfied with her performance as a teacher based in part on student evaluations of the professor, the findings of the Human Rights Commissions that the college's stated reason for rejecting the professor's contract was not a pretext for discrimination and was not against the manifest weight of the evidence was not disturbed. Foley v. Human Rights Comm'n, 165 Ill. App. 3d 594, 116 Ill. Dec. 539, 519 N.E.2d 129 (5 Dist. 1988).

- Personal Appearance

Discrimination based upon appearance is not illegal discrimination unless it can be linked to the employer's knowledge that the appearance was a reflection of the individual's race, religion, or national origin. Gayle v. Illinois Human Rights Comm'n, 218 Ill. App. 3d 109, 161 Ill. Dec. 17, 578 N.E.2d 144 (1 Dist.), cert. denied, 142 Ill. 2d 653, 164 Ill. Dec. 917, 584 N.E.2d 129 (1991).

Even though the discrimination based on complainant's personal appearance occurred prior to the effective date of this Act, and the complaint was in process at that time, it was still governed by the Act. Hutchcraft Van Serv., Inc. v. City of Urbana Human Relations Comm'n, 104 Ill. App. 3d 817, 60 Ill. Dec. 532, 433 N.E.2d 329 (4 Dist. 1982).

- Pretext

Evidence which may be relevant to a showing of pretext of discrimination includes an employer's treatment of complainant during his term of employment and the employer's general policy and practice with respect to employment of persons in protected groups, and on the latter point, statistics as to the employer's policy and practice may be helpful. Foley v. Human Rights Comm'n, 165 Ill. App. 3d 594, 116 Ill. Dec. 539, 519 N.E.2d 129 (5 Dist. 1988).

- Prima Facie Case

Employee was not entitled to proceed with the employee's charge that the employer engaged in unlawful race and age discrimination in issuing two written reprimands to the employee for alleged poor work performance while working for the employer as a warehouse employee fulfilling customer orders. The employee did not make a prima facie showing of a civil rights violation as that term was defined in the employment context in 775 ILCS 5/2-102(A), as the employee did not show that the two written reprimands resulted in a material adverse employment action against the employee or that similarly-situated employees in the same protected class were treated differently. Owens v. Dep't of Human Rights, 403 Ill. App. 3d 899, 344 Ill. Dec. 94, 936 N.E.2d 623, 2010 Ill. App. LEXIS 851 (1 Dist. 2010).

Female instructor who was denied a promotion to assistant professor demonstrated a prima facie case of employment discrimination by direct comparison with similarly situated, nonclass members. Board of Regents v. Human Rights Comm'n, 196 Ill. App. 3d 187, 142 Ill. Dec. 632, 552 N.E.2d 1373 (4 Dist. 1990).

- Subjective Evaluation

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An employer can legally consider a subjective evaluation of a candidate's qualifications so long as discrimination is not the motive behind the selection. Foley v. Human Rights Comm'n, 165 Ill. App. 3d 594, 116 Ill. Dec. 539, 519 N.E.2d 129 (5 Dist. 1988).

Disparateness

- Applicability of Method

The disparate impact method is appropriate for dealing with employment discrimination based upon race, religion, and gender, but is not a useful tool for dealing with employment discrimination due to physical or mental disability. Board of Trustees v. Human Rights Comm'n, 138 Ill. App. 3d 71, 92 Ill. Dec. 478, 485 N.E.2d 33 (4 Dist. 1985).

- Defined

Disparate treatment means an employer treats some people less favorably than others because of their race, color, religion, sex or national origin. Valley Mould & Iron Co. v. Illinois Human Rights Comm'n, 133 Ill. App. 3d 273, 88 Ill. Dec. 134, 478 N.E.2d 449 (1 Dist. 1985); Pioneer Life Ins. Co. v. Woodard, 152 Ill. App. 3d 236, 105 Ill. Dec. 361, 504 N.E.2d 230 (2 Dist. 1987).

- Factual Inquiry

In an employment discrimination case brought under the disparate treatment theory, rather than the disparate impact theory, the ultimate factual inquiry is whether defendant employer intentionally discriminated against plaintiff. Zaderaka v. Illinois Human Rights Comm'n, 131 Ill. 2d 172, 137 Ill. Dec. 31, 545 N.E.2d 684 (1989).

Employment Discrimination

- In General

In analyzing employment discrimination actions under this Act, Illinois courts have adopted the three-part analysis set forth by the United States Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). St. Mary of Nazareth Hosp. Ctr. v. Curtis, 163 Ill. App. 3d 566, 114 Ill. Dec. 658, 516 N.E.2d 813 (1 Dist. 1987).

- Committees

For a decision to be based upon a prohibited factor in a committee context, a working majority of the committee must rely on the prohibited factor. If the majority does not consider a prohibited factor in coming to a decision, then that decision is not discriminatory. Lalvani v. Illinois Human Rights Comm'n, Ill. App. 3d , Ill. Dec. , N.E.2d , 2000 Ill. App. LEXIS 1005 (1 Dist. Dec. 29, 2000).

- Denial of Reemployment

The conduct of a plaintiff in denying defendant reinstatement, because of the use of documentation pertaining to defendant's prior arrest and in spite of defendant's prior acquittal, was a violation of the former Fair Employment Practices Act (see now this section). Montgomery Ward & Co. v. Fair Emp. Practices Comm'n, 49 Ill. App. 3d 796, 8 Ill. Dec. 297, 365 N.E.2d 535 (1 Dist. 1977).

- Dissimilar Pay

In review under 775 ILCS 5/8-111, there was sufficient evidence to support finding that employer violated Illinois Human Rights Act, applying either McDonnell Douglas analysis or Equal Pay Act

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approach, where female employee had lower pay than male employees with substantially similar duties. Illinois State Bd. of Elections v. Human Rights Comm'n, 291 Ill. App. 3d 185, 225 Ill. Dec. 508, 683 N.E.2d 1011, 1997 Ill. App. LEXIS 572 (1 Dist. 1997).

- Factors Considered

In analyzing employment discrimination actions under this Act, first plaintiff must establish by a preponderance of the evidence a prima facie case of unlawful discrimination; if he does so, a rebuttable presumption arises that the employer unlawfully discriminated. To rebut the presumption, the employer must articulate, not prove, a legitimate, nondiscriminatory reason for its decision; if the employer carries its burden of production, the presumption of discrimination falls, and the plaintiff must then prove by a preponderance of the evidence that the employer's articulated reason was not the true reason, but was instead a pretext for unlawful discrimination. Peck v. Department of Human Rights, 234 Ill. App. 3d 334, 175 Ill. Dec. 456, 600 N.E.2d 79 (2 Dist. 1992).

- Jurisdiction

The employer was liable on employee's retaliation claim, even though the employee's initial action, for discrimination, was dismissed for lack of subject matter jurisdiction because the employer did not fit the statutory definition of "employer"; 775 ILCS 5/6-101 expressly prohibits a "person" from retaliating against another person, and a "person," as defined in the Illinois Human Rights Act, can include an employer with fewer than 15 employees. Dana Tank Container, Inc. v. Human Rights Comm'n, 292 Ill. App. 3d 1022, 227 Ill. Dec. 179, 687 N.E.2d 102 (1 Dist. 1997).

- Not Shown

There was not a statutory violation since a working majority of the hospital's interview committee did not consider a one-time, discriminatory remark by an unidentified member in making its decision; therefore, employee failed to show that race was a significant factor and the burden of proof did not shift. Lalvani v. Illinois Human Rights Comm'n, 324 Ill. App. 3d 774, 257 Ill. Dec. 949, 755 N.E.2d 51, 2001 Ill. App. LEXIS 605 (1 Dist. 2001).

Evidence held insufficient to establish claim of employment discrimination. Peck v. Department of Human Rights, 234 Ill. App. 3d 334, 175 Ill. Dec. 456, 600 N.E.2d 79 (2 Dist. 1992).

Claimant was held to have been denied employment for a legitimate, nondiscriminatory reason. Russ Berrie & Co. v. Illinois Human Rights Comm'n, 224 Ill. App. 3d 874, 167 Ill. Dec. 29, 586 N.E.2d 1301, appeal denied, 146 Ill. 2d 651, 176 Ill. Dec. 822, 602 N.E.2d 476 (1992).

There was substantial evidence in the record to support the Human Rights Commission's contentions and findings of fact that plaintiff initially did not make out a prima facie case of unlawful discrimination where he violated company standards by his excessive absenteeism and tardiness, and the employer's articulated reason for discharge of plaintiff was not a pretext for unlawful discrimination in light of various reports and other available documents. Luckett v. Human Rights Comm'n, 210 Ill. App. 3d 169, 155 Ill. Dec. 6, 569 N.E.2d 6 (1 Dist. 1989), appeal denied, 141 Ill. 2d 543, 162 Ill. Dec. 491, 580 N.E.2d 117 (1991), cert. denied, 502 U.S. 1113, 112 S. Ct. 1220, 117 L. Ed. 2d 456 (1992).

While employee proved a prima facie case, employer met its burden of articulating a legitimate, nondiscriminatory reason for discharging and the employee did not show by a preponderance of the evidence that the employer's stated reason was pretext for discrimination; therefore, the evidence was insufficient to support the employee's discrimination claim. St. Mary of Nazareth Hosp. Ctr. v. Curtis, 163 Ill. App. 3d 566, 114 Ill. Dec. 658, 516 N.E.2d 813 (1 Dist. 1987).

Employer articulated a legitimate nondiscriminatory reason for its action and met its burden of proving its burden when it stated that it fired plaintiff based upon plaintiff's poor rapport with

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employees whom he supervised and his poor choice in selecting an assistant. Kenall Mfg. Co. v. Human Rights Comm'n, 152 Ill. App. 3d 695, 105 Ill. Dec. 520, 504 N.E.2d 805 (1 Dist. 1987).

- Pretextual Discharge

An employee establishes pretext in a discriminatory dismissal from employment case by a preponderance of the evidence, either directly by persuading the court that discriminatory purpose most likely motivated the employer, or indirectly by showing that the employer's proffered explanation is unworthy of credence. Vidal v. Illinois Human Rights Comm'n, 223 Ill. App. 3d 467, 165 Ill. Dec. 737, 585 N.E.2d 133 (1991), appeal denied, 145 Ill. 2d 645, 173 Ill. Dec. 14, 596 N.E.2d 638 (1992).

Plaintiff's stated willingness at the time of her firing to accept a pay cut to keep her job was insignificant on the question of her firing being pretextual, because the elimination of her job came as a result of the board of education's total budget concerns and before she indicated that she would take a cut in pay. Smith v. Chicago Bd. of Educ., 176 Ill. App. 3d 109, 125 Ill. Dec. 680, 530 N.E.2d 1089 (1 Dist. 1988).

While the fact that the employer has given a false reason for discharge is strong evidence of discriminatory intent, it is not dispositive of the issue. St. Mary of Nazareth Hosp. Ctr. v. Curtis, 163 Ill. App. 3d 566, 114 Ill. Dec. 658, 516 N.E.2d 813 (1 Dist. 1987).

- Prima Facie Case

An employee's prima facie case of employment discrimination stands and judgment must be entered as a matter of law against the employer if the employer fails to meet his burden; if, however, the employer does articulate his burden, the presumption created by the prima facie showing drops from the case, and the factual inquiry proceeds to a new level of specificity where the employee must have an adequate opportunity to demonstrate that the proffered reason was not the true reason for the employment decision to discharge, but rather a pretext for discrimination. Pioneer Life Ins. Co. v. Woodard, 152 Ill. App. 3d 236, 105 Ill. Dec. 361, 504 N.E.2d 230 (2 Dist. 1987).

- Shown

Employee established a prima facie case of employment discrimination where she submitted evidence that she was a member of a protected class and was performing her responsibilities at a level which met her employer's legitimate expectations. Charles A. Stevens & Co. v. Human Rights Comm'n, 196 Ill. App. 3d 748, 143 Ill. Dec. 904, 554 N.E.2d 976 (1 Dist. 1990).

Exclusivity

- Intentional Infliction of Emotional Distress

Where a former employee contended that pervasive sexual harassment in the workplace constituted intentional infliction of emotional distress, the employee's exclusive remedy was 775 ILCS 5/2-102(D), the tort claim relied on facts identical to the employee's sexual harassment claim and the harassment was not merely incidental to the tort. Silverman v. Johnson, F. Supp. 2d , 2004 U.S. Dist. LEXIS 19767 (N.D. Ill. Sept. 3, 2004).

Court dismissed pursuant to Fed. R. Civ. P. 12(b)(6) a former employee's lawsuit alleging his employer committed intentional infliction of emotional distress (IIED) and violated the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and the Family Medical Leave Act, 29 U.S.C. § 2601 et seq. because, to the extent the employee's IIED claim was based on the alleged disability discrimination, the Illinois Human Rights Act, specifically 775 ILCS 5/8-111(c), preempted that claim since disability discrimination constituted a civil rights violation under 775 ILCS 5/2-102(A)

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and 775 ILCS 5/1-103(Q). Lozano v. Kay Mfg. Co., F. Supp. 2d , 2004 U.S. Dist. LEXIS 12948 (N.D. Ill. July 9, 2004).

Employee's claim of intentional infliction of emotional distress was preempted by the Illinois Human Rights Act, which confines claims of civil rights violations under Illinois law to proceedings under the Act. Jansen v. Packaging Corp. of Am., 123 F.3d 490 (7th Cir. 1997), cert. denied, 524 U.S. 951, 118 S. Ct. 2365, 141 L. Ed. 2d 734, aff'd sub nom. Burlington Indus. v. Ellerth, 524 U.S. 742, 118 S. Ct. 2257, 141 L. Ed. 2d 633 (1998).

A claim for intentional infliction of emotional distress was not preempted by this act because the tort of intentional infliction of emotional distress required proof of more than was required for sexual harassment and served a different policy than that served by this act. Sutton v. Overcash, 251 Ill. App. 3d 737, 191 Ill. Dec. 230, 623 N.E.2d 820 (3 Dist. 1993).

Exhaustion of Remedies

- In General

An aggrieved party may not directly sue for employment discrimination under Ill. Const. (1970), Art. I, § 17 without first exhausting the administrative remedies set forth in this Act. Dilley v. Americana Healthcare Corp., 129 Ill. App. 3d 537, 84 Ill. Dec. 636, 472 N.E.2d 596 (4 Dist. 1984).

Handicap Discrimination

- In General

The focus of an employer's inquiry defending a claim against handicap discrimination should be whether a particular handicapped person applying for work can perform the particular work involved. Board of Trustees v. Human Rights Comm'n, 138 Ill. App. 3d 71, 92 Ill. Dec. 478, 485 N.E.2d 33 (4 Dist. 1985).

- Accommodation

Second prong of test for showing a prima facie case of handicap discrimination expanded to state as follows: Her handicap is unrelated to her ability to perform the functions of the job she was hired to perform or, if the handicap is related to that ability to perform, after her request, the employer has failed to make a reasonable accommodation which was necessary for her performance. (Decided prior to the 1995 Amendment of this section. See Webb v. Lustig, 298 Ill App. 3d 695, 233 Ill. Dec. 119, 700 N.E.2d 220 (4th Dist. 1998)) Whipple v. Illinois Dep't of Rehabilitation Servs., 269 Ill. App. 3d 554, 206 Ill. Dec. 980, 646 N.E.2d 275 (4 Dist. 1995).

- Burden of Proof

Where an employee was handicapped but his handicap was related to his ability to perform his basic job duties of lifting and sorting parcels, which were not light-duty jobs, and where the employee's burden in seeking an accommodation for the handicap was to apprise the employer of his condition and submit any necessary medical documentation, plaintiff failed to meet the burden and therefore, the Human Rights Commission's finding of no discrimination was correct. Sanders v. UPS, 142 Ill. App. 3d 362, 96 Ill. Dec. 854, 491 N.E.2d 1314 (1 Dist. 1986).

- Employer's Responsibilities

An employer need not accommodate an employee's alleged handicap unless the employee is actually handicapped and the handicap is unrelated to the person's ability to perform the duties of

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a particular job or position. Sanders v. UPS, 142 Ill. App. 3d 362, 96 Ill. Dec. 854, 491 N.E.2d 1314 (1 Dist. 1986).

- HIV Infection

Infection with human immunodeficiency virus (HIV) is a determinable physical characteristic resulting from a disease and has been held to be a protected condition or handicap under civil rights laws. Raintree Health Care Ctr. v. Human Rights Comm'n, 275 Ill. App. 3d 387, 211 Ill. Dec. 561, 655 N.E.2d 944 (1 Dist. 1995), aff'd, 173 Ill. 2d 469, 220 Ill. Dec. 124, 672 N.E.2d 1136 (1996).

Employer was not precluded from allowing plaintiff to continue to perform his duties as a cook because of his human immunodeficiency virus (HIV) positive status as 77 Ill. Adm. Code § 690.100 specifically lists the conditions which are defined as contagious, infectious, or communicable and this list includes Acquired Immunodeficiency Syndrome (AIDS), but not HIV infection. Raintree Health Care Ctr. v. Human Rights Comm'n, 275 Ill. App. 3d 387, 211 Ill. Dec. 561, 655 N.E.2d 944 (1 Dist. 1995), aff'd, 173 Ill. 2d 469, 220 Ill. Dec. 124, 672 N.E.2d 1136 (1996).

- Mental Condition

Once it was established that plaintiff suffered from a mental condition, the pivotal question was whether the plaintiff's mental condition was a mental handicap unrelated to his ability to work, such that a company's imposition of a special condition on his employment constituted a discriminatory practice under the former Fair Employment Practices Act (see now this section). Chambers v. Illinois Fair Emp. Practices Comm'n, 96 Ill. App. 3d 884, 52 Ill. Dec. 449, 422 N.E.2d 130 (1 Dist. 1981).

The failure of the former Fair Employment Practices Commission (now Human Rights Commission) to specifically address in its findings the issue of the effect of a plaintiff's mental condition on his ability to work was inconsistent with the statutory language of the former Fair Employment Practices Act (see now this section), as well as with its stated policy. Chambers v. Illinois Fair Emp. Practices Comm'n, 96 Ill. App. 3d 884, 52 Ill. Dec. 449, 422 N.E.2d 130 (1 Dist. 1981).

To presume that an individual with a mental condition or a mental handicap is unable to perform his work duties eliminates the very protection upon which this Act was based. Chambers v. Illinois Fair Emp. Practices Comm'n, 96 Ill. App. 3d 884, 52 Ill. Dec. 449, 422 N.E.2d 130 (1 Dist. 1981).

- Not Shown

From the finding that the applicant could not have performed the duties of the principal clerk even with accommodation, it necessarily followed that she was not handicapped within the meaning of the Act and that the City's refusal to consider her for that position, even if based on her blindness, did not rise to the level of unlawful discrimination as that phrase is defined in 775 ILCS 5/1-103; therefore, since the City did not unlawfully discriminate against the applicant, it committed no civil rights violation which could form the predicate for the Commission's award of relief. Harton v. City of Chicago, 301 Ill. App. 3d 378, 234 Ill. Dec. 632, 703 N.E.2d 493 (1 Dist. 1998), appeal denied, 182 Ill. 2d 549, 236 Ill. Dec. 669, 707 N.E.2d 1239 (1999).

Where an employer's perception of a complainant's problem was not simply attributable to a misunderstanding about his methodone treatment but was largely the result of complainant's own concealment of a larger multiple substance abuse problem which he faced and which may have impinged upon job related activities, the Human Rights Commission's findings that the complainant failed to establish handicap discrimination was upheld. Habinka v. Human Rights Comm'n, 192 Ill. App. 3d 343, 139 Ill. Dec. 317, 548 N.E.2d 702 (1 Dist. 1989).

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Where an employee's grievance form made no mention that he suffered from any health problems or that he had explained to his supervisor that it was because of health considerations that he objected to a job reassignment, the absence of any reference to his health in the grievance was compelling evidence rising to the level of an admission by the employee that the incident had nothing whatsoever to do with any alleged lung disease; therefore, employee's claim that he was discharged because of a physical handicap had no merit. Acorn Corrugated Box Co. v. Illinois Human Rights Comm'n, 181 Ill. App. 3d 122, 129 Ill. Dec. 882, 536 N.E.2d 932 (1 Dist. 1989).

Where record revealed that deaf-mute employee effectively communicated with the city for 16 years, and had been informed of the necessity of communicating with his supervisor during unauthorized absences coupled with the fact that employee was admittedly aware of the call-in rule and the risk of discharge if he did not return on time, Human Rights Commission's determination that employee was discharged because he violated that rule was correct and therefore, the violation of the call-in policy was the result of employee's own imprudent behavior and was not related to his handicap. Milan v. Human Rights Comm'n, 169 Ill. App. 3d 979, 120 Ill. Dec. 244, 523 N.E.2d 1155 (1 Dist. 1988).

The Human Rights Commission's finding that employer's articulated reasons for firing plaintiff based on plaintiff's claim for handicap discrimination were pretextual was not against the manifest weight of the evidence. Kenall Mfg. Co. v. Human Rights Comm'n, 152 Ill. App. 3d 695, 105 Ill. Dec. 520, 504 N.E.2d 805 (1 Dist. 1987).

Where plaintiff returned to work approximately one year following his accident, and prior to his return to work, employer obtained medical clearances from plaintiff's doctors permitting plaintiff to perform his work, but plaintiff refused to perform the work and failed to provide documentation indicating that he could not perform any job to which he had been assigned, the Human Rights Commission's finding that plaintiff failed to provide sufficient evidence to support his charge of employment discrimination on grounds of a handicap was affirmed. Castillo v. Human Rights Comm'n, 159 Ill. App. 3d 158, 111 Ill. Dec. 168, 512 N.E.2d 72 (1 Dist. 1987).

Evidence held insufficient to demonstrate that defendant transit authority discriminated against plaintiff, bus driver, where the Human Rights Commission's finding that plaintiff, who suffered a mental handicap due to his phobia of carbon monoxide, failed to provide sufficient evidence of his inability to work as a bus driver. Barnes v. Barbosa, 144 Ill. App. 3d 860, 98 Ill. Dec. 497, 494 N.E.2d 619 (1 Dist. 1986).

Where plaintiff failed to provide employer with necessary medical documentation and failed to produce substantial evidence of handicap discrimination, the decision to dismiss the charge was not arbitrary, capricious, or an abuse of discretion. Sanders v. UPS, 142 Ill. App. 3d 362, 96 Ill. Dec. 854, 491 N.E.2d 1314 (1 Dist. 1986).

No violation of this Act occurred where plaintiff did not meet her initial burden of proving a prima facie case of handicap discrimination and, even if plaintiff had established a prima facie case, the defendant articulated a legitimate, nondiscriminatory reason for its presumptively unlawful discrimination due to her misrepresentations. Village of Oak Lawn v. Illinois Human Rights Comm'n, 133 Ill. App. 3d 221, 88 Ill. Dec. 507, 478 N.E.2d 1115 (1 Dist. 1985).

- Physical Disability

Applicant's physical disability requiring a prosthesis on one leg was insufficient to warrant a determination that the applicant could safely perform as a sheet metal worker when he was not given a test concerning his ability to climb or his agility or balance. Board of Trustees v. Human Rights Comm'n, 138 Ill. App. 3d 71, 92 Ill. Dec. 478, 485 N.E.2d 33 (4 Dist. 1985).

- Prima Facie Case

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The prerequisites for establishing a prima facie case of handicap discrimination were nonexistent where an alleged handicap was clearly related to adequate performance of a plaintiff's job as a stock supervisor. Shah v. Human Rights Comm'n, 192 Ill. App. 3d 263, 139 Ill. Dec. 310, 548 N.E.2d 695 (1 Dist. 1989).

Applicant clearly met his burden of establishing a prima facie case of handicap discrimination. City of Belleville v. Human Rights Comm'n, 167 Ill. App. 3d 834, 118 Ill. Dec. 813, 522 N.E.2d 268 (5 Dist. 1988), appeal denied, 122 Ill. 2d 569, 125 Ill. Dec. 213, 530 N.E.2d 241 (1988).

Plaintiff, who had a history of heart disease, as evidenced by his heart attack and disability leave of absence, made out a prima facie case of handicap discrimination by showing that he fell within statutorily protected group, that his termination by employer was related to his handicap and that the handicap was unrelated to his qualifications and ability to perform his job. Kenall Mfg. Co. v. Human Rights Comm'n, 152 Ill. App. 3d 695, 105 Ill. Dec. 520, 504 N.E.2d 805 (1 Dist. 1987).

To establish a prima facie case of handicap discrimination, a complainant must prove that: he is handicapped within the definition of this Act; handicap is unrelated to his ability to perform the functions of the job he was hired to perform; and an adverse job action was taken against him related to his handicap. Caterpillar, Inc. v. Human Rights Comm'n, 154 Ill. App. 3d 424, 107 Ill. Dec. 138, 506 N.E.2d 1029 (3 Dist. 1987); City of Belleville v. Human Rights Comm'n, 167 Ill. App. 3d 834, 118 Ill. Dec. 813, 522 N.E.2d 268 (5 Dist. 1988), appeal denied, 122 Ill. 2d 569, 125 Ill. Dec. 213, 530 N.E.2d 241 (1988); Kenall Mfg. Co. v. Human Rights Comm'n, 152 Ill. App. 3d 695, 105 Ill. Dec. 520, 504 N.E.2d 805 (1 Dist. 1987); Acorn Corrugated Box Co. v. Illinois Human Rights Comm'n, 181 Ill. App. 3d 122, 129 Ill. Dec. 882, 536 N.E.2d 932 (1 Dist. 1989); Habinka v. Human Rights Comm'n, 192 Ill. App. 3d 343, 139 Ill. Dec. 317, 548 N.E.2d 702 (1 Dist. 1989).

- Protected Handicaps

Even if plaintiff's injured elbow was a handicap, it was not protected by the former Fair Employment Practices Act (see now this section) because it was related to her ability to perform the job of drill operator. Caterpillar, Inc. v. Human Rights Comm'n, 154 Ill. App. 3d 424, 107 Ill. Dec. 138, 506 N.E.2d 1029 (3 Dist. 1987).

- Relation Back

Where a village did not learn of plaintiff's misrepresentations until after a handicap discrimination charge was filed, the village asserted a legitimate, nondiscriminatory reason which related back to the time of the employment decision. Village of Oak Lawn v. Illinois Human Rights Comm'n, 133 Ill. App. 3d 221, 88 Ill. Dec. 507, 478 N.E.2d 1115 (1 Dist. 1985).

Hearing

- Discriminatory Intent

Discriminatory intent need not be proved by direct evidence, and it is usually shown by resort to statistics or comparable cases. St. Mary of Nazareth Hosp. Ctr. v. Curtis, 163 Ill. App. 3d 566, 114 Ill. Dec. 658, 516 N.E.2d 813 (1 Dist. 1987).

- Due Process

The right to a hearing as to an employment discrimination charge is a property interest protected by the due process clause of U.S. Const., Amend. XIV. Woods v. Brucker Co., 129 Ill. App. 3d 983, 85 Ill. Dec. 104, 473 N.E.2d 472 (1 Dist. 1984).

- Questions of Fact

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Whether an employer's articulated reason for dismissing an employee is pretextual is a question of fact. Zaderaka v. Illinois Human Rights Comm'n, 131 Ill. 2d 172, 137 Ill. Dec. 31, 545 N.E.2d 684 (1989).

- Rejection of Claims

In cases charging discrimination in employment under Title VII (42 U.S.C. § 2000e et seq.), claims that a person having the best objective qualifications has been rejected for employment for lack of subjective qualification are looked on with suspicion by the courts. Springfield-Sangamon County Regional Plan Comm'n v. Fair Emp. Practices Comm'n, 45 Ill. App. 3d 116, 3 Ill. Dec. 764, 359 N.E.2d 174 (4 Dist. 1976), rev'd on other grounds, 71 Ill. 2d 61, 15 Ill. Dec. 623, 373 N.E.2d 1307 (1978).

- Time Limitation

The charge filing limitation period is an inherent part of an employment discrimination action. Larrance v. Human Rights Comm'n, 166 Ill. App. 3d 224, 117 Ill. Dec. 36, 519 N.E.2d 1203 (4 Dist.), cert. denied, 122 Ill. 2d 577, 125 Ill. Dec. 220, 530 N.E.2d 248 (1988), 489 U.S. 1054, 109 S. Ct. 1316, 103 L. Ed. 2d 585 (1989).

The time period for bringing a charge of unlawful employment discrimination is jurisdictional. Pickering v. Human Rights Comm'n, 146 Ill. App. 3d 340, 99 Ill. Dec. 885, 496 N.E.2d 746 (2 Dist. 1986).

- Treatment of Employees

The central focus of an inquiry in a discrimination case is whether, when the evidence is evaluated in the light of common experience, it shows that an employer is treating some employees less favorably that others because of, for example, sex. Lipsey v. Human Rights Comm'n, 157 Ill. App. 3d 1054, 110 Ill. Dec. 195, 510 N.E.2d 1226 (1 Dist.), appeal denied, 116 Ill. 2d 560, 113 Ill. Dec. 301, 515 N.E.2d 110 (1987).

Intolerable Working Conditions

- Not Shown

Being asked to take a course which the majority of other employees, regardless of their race, are also requested to take does not result in the creation of intolerable working conditions, nor does a below expectation rating in one area cause intolerable working conditions. Motley v. Illinois Human Rights Comm'n, 263 Ill. App. 3d 367, 200 Ill. Dec. 909, 636 N.E.2d 100 (4 Dist. 1994).

Jurisdiction

- Delayed Appeal Hearing

The Commission had jurisdiction over claim of a discriminatorily-delayed hearing of her appeal before the Personnel Review Board because, although the Human Rights Act does not expressly state that "grievance procedures" fall within its coverage, it expressly includes "terms, privileges or conditions of employment", and a grievance process is one of the terms, conditions and privileges of employment. Gilchrist v. Human Rights Comm'n, 312 Ill. App. 3d 597, 245 Ill. Dec. 484, 728 N.E.2d 566, 2000 Ill. App. LEXIS 189 (1 Dist. 2000).

- Department of Human Rights

Illinois law sharply limits the jurisdiction of the Department of Human Rights; the Department has jurisdiction to investigate and dispose of charges filed pursuant to this Act, which prohibits

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"unlawful discrimination" in employment. McAdoo v. Lane, 564 F. Supp. 1215 (N.D. Ill. 1983), aff'd, 774 F.2d 1168 (7th Cir. 1985).

- Due Process Deprivation

Where plaintiff's complaint was that defendants engaged in a course of harassment that deprived him of property without due process of law, none of the types of discrimination covered by this Act was alleged; hence, the Department of Human Rights did not have jurisdiction to consider the issue plaintiff raised, and could not have decided it against him. McAdoo v. Lane, 564 F. Supp. 1215 (N.D. Ill. 1983), aff'd, 774 F.2d 1168 (7th Cir. 1985).

- Intentional Infliction of Emotional Distress

In considering employee's allegations of employment discrimination, the trial court had jurisdiction to consider employee's intentional infliction of emotional distress claim. Pavilon v. Kaferly, 204 Ill. App. 3d 235, 149 Ill. Dec. 549, 561 N.E.2d 1245 (1 Dist. 1990).

- Retaliatory Discharge

Under the Illinois Human Rights Act, an employee's civil rights were violated if the employer made an employment decision based on unlawful discrimination, and, thus, the Illinois Human Rights Commission had only a limited subject matter jurisdiction; accordingly, its decision that the former employee was not terminated due to a handicap was not res judicata in the former employee's subsequent suit alleging retaliatory discharge, as that type of claim fell under the Workers' Compensation Act. Terry v. Watts Copy Sys., 329 Ill. App. 3d 382, 263 Ill. Dec. 708, 768 N.E.2d 789, 2002 Ill. App. LEXIS 297 (4 Dist. 2002), appeal denied, 218 Ill. 2d 558, 303 Ill. Dec. 9, 850 N.E.2d 814 (2006).

Plaintiff's complaint that she was dismissed because of a work related injury did not sound in employment discrimination but was clearly phrased under a retaliatory discharge theory, and therefore jurisdiction was vested with the circuit court and not the Human Rights Commission, under this Act. Vear La Porte v. Jostens, Inc., 213 Ill. App. 3d 1089, 157 Ill. Dec. 745, 572 N.E.2d 1209 (3 Dist.), cert. denied, 141 Ill. 2d 543, 162 Ill. Dec. 491, 580 N.E.2d 117 (1991).

Marital Discrimination

Because the Human Rights Commission did not have subject matter jurisdiction of a claim against a corporation for marital status discrimination based on the identity of an employee's spouse, an order entered on the claim was void and subject to collateral attack. Davis v. Haas & Haas Inc., 296 Ill. App. 3d 369, 230 Ill. Dec. 619, 694 N.E.2d 588 (3 Dist. 1998).

The statutory definition of marital status discrimination does not encompass policies based on the identity of one's spouse. Boaden v. Department of Law Enforcement, 171 Ill. 2d 230, 215 Ill. Dec. 664, 664 N.E.2d 61 (1996).

National Origin Discrimination

- Legitimate Discharge

Where the evidence demonstrated that a plaintiff was discharged for falsifying his employment application, not only as to injury inquiries, but also regarding his employment history and educational level, his charges of discrimination based on his national origin were rebutted. Shah v. Human Rights Comm'n, 192 Ill. App. 3d 263, 139 Ill. Dec. 310, 548 N.E.2d 695 (1 Dist. 1989).

- Prima Facie Case

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The complainant must prove a prima facie case of national origin discrimination by showing that: he is a member of a class protected by this Act; he was performing satisfactorily in his job when he suffered an adverse employment action; and similarly situated members of the unprotected class did not suffer the same adverse action. Freeman United Coal Mining Co. v. Human Rights Comm'n, 173 Ill. App. 3d 965, 123 Ill. Dec. 514, 527 N.E.2d 1289 (5 Dist. 1988).

- Shown

Charge stated sufficient facts to support a claim of discrimination based on complainant's national origin. Glassworks, Inc. v. Human Rights Comm'n, 164 Ill. App. 3d 842, 115 Ill. Dec. 818, 518 N.E.2d 343 (1 Dist. 1987).

No Preemption

- Intentional-Infliction Claim

Employee's suit against county and against her supervisor alleging, intentional infliction of emotional distress based on a decrease in job duties for the employee's refusal of her supervisor's sexual advances was not preempted by the Illinois Human Rights Act (IHRA), 775 ILCS 5/2-102(A), because the claim was not based on the violation of a legal duty created by the IHRA. Roberts v. County of Cook, F. Supp. 2d , 2004 U.S. Dist. LEXIS 8089 (N.D. Ill. May 7, 2004).

Claims of preemption of intentional-infliction cause of action in sexual harrassment and retaliatory discharge case by the Illinois Human Rights Act were not permitted. Zakutansky v. Bionetics Corp., 806 F. Supp. 1362 (N.D. Ill. 1992).

Preemption

Court denied a government official's motion to dismiss a former state employee's claim brought under § 15 of the State Officials and Employees Ethics Act, 5 ILCS 430/15 et seq., because the employee adequately pleaded acts of retaliation attributable to the official, and the employee's allegations of race discrimination and retaliation were not preempted by the Illinois Human Rights Act (IHRA), 775 ILCS 5/8-111(D), as the IHRA did not address retaliation for reporting non race-related violations of law or regulations, which the employee had clearly alleged under the State Ethics Act, 5 ILCS 430/15-10. Benjamin v. Ill. Dep't of Fin., 688 F. Supp. 2d 796, 2010 U.S. Dist. LEXIS 17726 (N.D. Ill. 2010).

Where a company and supervisor threatened to terminate the employee, who suffered from multiple sclerosis, and intentionally manipulated the employee's computer to prevent the employee from performing his job; the extreme and out rageous conduct that formed the basis for the employee's intentional infliction of emotional distress claim was the same conduct that allegedly violated the Illinois Human Rights Act (IHRA), 775 ILCS 5/1-101 et seq., and would not be actionable absent defendants' duty to refrain from discriminating against the employee on the basis of his disability or age, the IHRA preempted the employee's state-law claim of intentional infliction of emotional distress. Nagel v. Morgan Stanley DW Inc., F. Supp. 2d , 2007 U.S. Dist. LEXIS 81447 (N.D. Ill. Oct. 31, 2007).

Motion to dismiss was granted on intentional infliction of emotional distress (IIED) claim because the conduct alleged for the IIED claim was inextricably linked with the employee's sexual harassment and retaliation claims and, therefore, preempted by the Illinois Human Rights Act (IHRA). Mustari v. New Hope Acad., F. Supp. 2d , 2004 U.S. Dist. LEXIS 11780 (N.D. Ill. June 21, 2004).

Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., preempts any state or common law claims that are inextricably linked to a civil rights violation such that there is no independent basis for the

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action apart from the Act itself; thus, former employee's allegations of intentional infliction of emotional distress for acts occurring during his employment stated a claim that was inextricably linked to the alleged civil rights violation, and those allegations were preempted by the Act, however, claims based on post-employment occurrences were not preempted and survived dismissal. McDowell v. J.B. Hunt Transp., Inc., F. Supp. 2d , 2004 U.S. Dist. LEXIS 15728 (N.D. Ill. Aug. 5, 2004).

Court dismissed state law tort claims asserted by a former employee against her former employer and one of the employer's human relations specialists because the tort claims were preempted under the Illinois Human Rights Act (IHRA) where: (1) the IHRA preempted state tort claims that were inextricably linked to civil rights violations; (2) the employee had also alleged a violation under the Americans With Disabilities Act (ADA), 42 U.S.C. § 12101 et. seq., which was a civil rights violation prohibited by the IHRA; and (3) the claims were inextricably linked because the allegations asserted with regard to the tort claims were identical to those that the employee asserted with regard to her ADA claim. Ulatowski v. John Sterling Corp., F. Supp. 2d , 2004 U.S. Dist. LEXIS 11181 (N.D. Ill. June 16, 2004).

Because the Illinois Human Rights Act (IHRA) preempts state tort claims that are inextricably linked to a civil rights violation within the meaning of the statute, federal district courts lack subject matter jurisdiction over state tort claims when the allegations asserted with regard to the those claims constitute civil rights violations as defined by the IHRA; discrimination based on a disability is a civil rights violation prohibited by the IHRA. Ulatowski v. John Sterling Corp., F. Supp. 2d , 2004 U.S. Dist. LEXIS 11181 (N.D. Ill. June 16, 2004).

Employee's allegation of intentional infliction of emotional distress, which was based was supported by factual allegations identical to those set forth in his Americans With Disabilities Act, 42 U.S.C. § 12101 et seq., claim, was subject to summary judgment where it was preempted by the Illinois Human Rights Act. Luttrell v. Certified Grocers Midwest, Inc., F. Supp. 2d , 2003 U.S. Dist. LEXIS 21520 (N.D. Ill. Nov. 26, 2003).

Pretext

- Not Shown

Plaintiff's serious and recurring misconduct and the resulting impact on the firm's relationships with its clients provided a reasonable basis for conclusion that misconduct was more likely the reason for plaintiff's discharge than discrimination, and that the firm's reason for discharge was not pretextual. Clark v. Illinois Human Rights Comm'n, 312 Ill. App. 3d 582, 245 Ill. Dec. 500, 728 N.E.2d 582, 2000 Ill. App. LEXIS 186 (1 Dist. 2000), appeal denied, 191 Ill. 2d 527, 250 Ill. Dec. 456, 738 N.E.2d 925 (2000).

Racial Discrimination

- In General

It is a civil rights violation for any employer to discharge an employee on the basis of race. Lipsey v. Human Rights Comm'n, 157 Ill. App. 3d 1054, 110 Ill. Dec. 195, 510 N.E.2d 1226 (1 Dist.), appeal denied, 116 Ill. 2d 560, 113 Ill. Dec. 301, 515 N.E.2d 110 (1987).

- Affirmative Action Deemed Necessary

In a case involving race discrimination, although a school board only admitted the existence of de facto segregation, the former Fair Employment Practices Commission (now Human Rights Commission) could properly accept the finding of federal agencies, after an examination of legal precedents, that the board's policy as to faculty assignments was de jure discriminatory in its effect and that affirmative action was therefore required to correct it, thereby suspending

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applicable state laws. Legg v. Illinois Fair Employment Practices Comm'n, 28 Ill. App. 3d 932, 329 N.E.2d 486 (1 Dist. 1975).

- Compliance with State Laws

Absent a constitutional duty to remedy de facto segregation, a school board in a race discrimination case lacks any higher authority to excuse its noncompliance with valid state laws and, accordingly, it is bound by such laws in its attempts to alleviate de facto segregation. Legg v. Illinois Fair Employment Practices Comm'n, 28 Ill. App. 3d 932, 329 N.E.2d 486 (1 Dist. 1975).

- Denial of Promotion

Illinois Human Rights Commission finding that the Illinois Department of Corrections (DOC) had discriminated against an African-American employee was clearly erroneous because a private contractor, which the DOC contracted with to provide health care services at correctional centers, was the employee's employer under 775 ILCS 5/2-101(B). Although the facts that the DOC provided the equipment for the employee's work and dictated his work schedule weighed in favor of a finding that the DOC was the employee's employer, the important element of control weighed in favor of finding that the DOC was not the employee's employer because the DOC was merely exercising a contractual right to regulate the employee's work conditions, but it was not controlling the manner in which he performed his duties. Mitchell v. Dep't of Corr., 367 Ill. App. 3d 807, 305 Ill. Dec. 788, 856 N.E.2d 593, 2006 Ill. App. LEXIS 880 (1 Dist. 2006).

Where employer knew plaintiff was black, and summarized her impressions of the candidates on the list for the hiring authority who made his decision based on that information, the Human Rights Commission's decision finding discrimination in the choice of a white applicant for promotion was not against the manifest weight of the evidence. R.R. Donnelley & Sons Co. v. Illinois Human Rights Comm'n, 219 Ill. App. 3d 789, 162 Ill. Dec. 330, 579 N.E.2d 1144 (1 Dist. 1991), appeal denied, 143 Ill. 2d 648, 167 Ill. Dec. 410, 587 N.E.2d 1025 (1992).

Human Rights Commission's decision that plaintiff proved by a preponderance of the evidence that the reasons articulated by the Department of Corrections for failing to promote him on the basis of his race were pretextual was amply supported by the record, and the Commission's decision was not against the manifest weight of the evidence. Department of Cors. v. Adams, 146 Ill. App. 3d 173, 100 Ill. Dec. 73, 496 N.E.2d 1138 (1 Dist. 1986).

- Discovery Documents Not Provided

In a racial discrimination case, plaintiff was not prejudiced where certain documentation was not provided to her and in fact was barred from inclusion as evidence because of the defendant's tardy compliance with a discovery request, especially where the plaintiff failed to move to compel the production of the documents, did not request a continuance of the hearing to review the documents and, in fact, successfully moved to bar the documents from evidence. Smith v. Chicago Bd. of Educ., 176 Ill. App. 3d 109, 125 Ill. Dec. 680, 530 N.E.2d 1089 (1 Dist. 1988).

- Discriminatory Atmosphere

Where documents labeled "Nigger Application for Employment" were placed in a police officer's mailbox at a police station, where the chief of police was aware of these documents but took no action and where racially derogatory cartoons frequently were posted on bulletin boards in the roll-call room but no action was taken, an administrative law judge correctly concluded that a racially discriminatory atmosphere existed. Village of Bellwood Bd. of Fire & Police Comm'rs v. Human Rights Comm'n, 184 Ill. App. 3d 339, 133 Ill. Dec. 810, 541 N.E.2d 1248 (1 Dist. 1989).

- Employer's Responsibilities

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City could not be held liable for the alleged discriminatory actions based on race and political affiliation of police superintendent where the superintendent had no authority either to create or to alter city policies regarding discrimination for reasons of race or political affiliation. Auriemma v. City of Chicago, 747 F. Supp. 465 (N.D. Ill. 1990), aff'd, 957 F.2d 397 (7th Cir. 1992).

- Good Cause for Discharge

Good cause for discharge from employment is not an issue under this Act even if the Human Rights Commission infers that an employee's termination was pretextual because he was fired for insubordination totally unrelated to his probation. Pioneer Life Ins. Co. v. Woodard, 152 Ill. App. 3d 236, 105 Ill. Dec. 361, 504 N.E.2d 230 (2 Dist. 1987).

- Jurisdiction

The Human Rights Commission has jurisdiction to adjudicate cases including subject matter jurisdiction of charges involving racial discrimination by employers. Luckett v. Human Rights Comm'n, 210 Ill. App. 3d 169, 155 Ill. Dec. 6, 569 N.E.2d 6 (1 Dist. 1989), appeal denied, 141 Ill. 2d 543, 162 Ill. Dec. 491, 580 N.E.2d 117 (1991), cert. denied, 502 U.S. 1113, 112 S. Ct. 1220, 117 L. Ed. 2d 456 (1992).

- Labor Organizations

For a case discussing the right of a skilled, qualified worker not to be excluded from membership in a labor organization because of his race or skin color, which is a firm, established statutory right under federal law (42 U.S.C. § 2000e-1) and under prior similar provision (see now this section), see James v. Ogilvie, 310 F. Supp. 661 (N.D. Ill. 1970).

- Not Shown

Human Rights Commission erred in finding that a board of education had discriminated against complainant, a white male, in violation of 775 ILCS 5/2-102. When a placement office secretary testified that she had mistakenly written that applicants for a music teaching position had to be minorities instead of that minorities were encouraged to apply, the record did not support an ALJ's finding of a discriminatory motive, and the board had established that it would not have hired the complainant because he lacked a subject endorsement to teach music under 105 ILCS 5/21-1 and 5/21-1b and thus was unqualified. Bd. of Educ. v. Cady, 369 Ill. App. 3d 486, 307 Ill. Dec. 872, 860 N.E.2d 526, 2006 Ill. App. LEXIS 1147 (1 Dist. 2006), cert. denied, 2008 U.S. LEXIS 1049 (U.S. 2008).

A black employee did not meet his burden of proving, through the comparison of his record to those of white employees, that an employer's asserted reason for firing him because of his insubordination coupled with a poor work record was merely a pretext for racial discrimination. Acorn Corrugated Box Co. v. Illinois Human Rights Comm'n, 181 Ill. App. 3d 122, 129 Ill. Dec. 882, 536 N.E.2d 932 (1 Dist. 1989).

Where a petitioner claimed to have discharged respondent, a police officer, for poor report writing skills, a poor attitude towards the public and other officers, inability to find the streets in the town, and inability to perform desk duties, the petitioner successfully articulated a legitimate, reasonable explanation for its discharge of respondent and, therefore, successfully rebutted the presumption of racial discrimination. Village of Bellwood Bd. of Fire & Police Comm'rs v. Human Rights Comm'n, 184 Ill. App. 3d 339, 133 Ill. Dec. 810, 541 N.E.2d 1248 (1 Dist. 1989).

Where plaintiff's employer testified that he eliminated two positions in order to save money, hired only one person as a replacement and that the other positions in his budget had more priority than did the two eliminated vocational aide positions, the administrative law judge's dismissal of a complaint based on racial discrimination was incorrect. Smith v. Chicago Bd. of Educ., 176 Ill. App. 3d 109, 125 Ill. Dec. 680, 530 N.E.2d 1089 (1 Dist. 1988).

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Where the Human Rights Commission's inference that an employee's discharge was racially motivated was based on lack of evidence, the employee failed to establish a prima facie case of discrimination. Pioneer Life Ins. Co. v. Woodard, 152 Ill. App. 3d 236, 105 Ill. Dec. 361, 504 N.E.2d 230 (2 Dist. 1987).

Where the record established that an employee violated three company rules governing proper employee conduct and that an employer's covert reason for employee's discharge was to prevent a recurrence of racial tension in a plant between Puerto Rican and black employees, the discharge for cause of the employee by his employer did not constitute a violation of the former Fair Employment Practices Act (see now this section). GE Co. v. Illinois Fair Employment Practices Comm'n, 38 Ill. App. 3d 967, 349 N.E.2d 553 (1 Dist. 1976).

- Prima Facie Case

Plaintiff did not satisfy the third element of a prima facie case of discrimination, namely, that she was treated differently than similarly situated white employees. Motley v. Illinois Human Rights Comm'n, 263 Ill. App. 3d 367, 200 Ill. Dec. 909, 636 N.E.2d 100 (4 Dist. 1994).

Claimant, alleging a civil rights violation by highway department for its refusal to hire him as a road maintenance worker, failed to establish a prima facie case of racial discrimination where he did not prove that he was qualified for a road maintenance job, the primary requisite for which was eligibility for a Class C driver's license, which he did not have. Human Rights Comm'n v. Rockford Tp. Hwy. Dep't, 213 Ill. App. 3d 769, 157 Ill. Dec. 235, 572 N.E.2d 304 (2 Dist.), cert. denied, 141 Ill. 2d 541, 162 Ill. Dec. 488, 580 N.E.2d 114 (1991).

There are four elements of a prima facie case of racial discrimination that need to be alleged and proven: that plaintiff is a member of a minority group, had been performing her job satisfactorily, was terminated, and was replaced by a white person. Whitaker v. Human Rights Comm'n, 184 Ill. App. 3d 356, 132 Ill. Dec. 621, 540 N.E.2d 361 (1 Dist. 1989).

Respondent sufficiently proved a prima facie case of racial discrimination when he established that similarly situated employees of a different race were treated more favorably. Village of Bellwood Bd. of Fire & Police Comm'rs v. Human Rights Comm'n, 184 Ill. App. 3d 339, 133 Ill. Dec. 810, 541 N.E.2d 1248 (1 Dist. 1989).

Plaintiff established her prima facie case of racial discrimination by showing that: she was a member of a minority group, was qualified for and was performing her job adequately, was discharged, and was replaced by a nonminority employee. Smith v. Chicago Bd. of Educ., 176 Ill. App. 3d 109, 125 Ill. Dec. 680, 530 N.E.2d 1089 (1 Dist. 1988).

A claimant can make out a prima facie claim of racial discrimination where he proves by a preponderance of the evidence that: the employee is a member of a racial minority; the employee was qualified for the job he was performing; the employee was satisfying the normal requirements in his or her work; the employee was discharged; and after the employee's discharge the employer assigned white employees to perform the same work. Pioneer Life Ins. Co. v. Woodard, 152 Ill. App. 3d 236, 105 Ill. Dec. 361, 504 N.E.2d 230 (2 Dist. 1987).

A terminated black employee presented sufficient evidence to establish a prima facie case of racial discrimination where the employer had a policy of issuing written warnings to employees that they would be discharged if they repeated conduct for which they had been reprimanded and no such notice of termination was issued to plaintiff. Lipsey v. Human Rights Comm'n, 157 Ill. App. 3d 1054, 110 Ill. Dec. 195, 510 N.E.2d 1226 (1 Dist.), appeal denied, 116 Ill. 2d 560, 113 Ill. Dec. 301, 515 N.E.2d 110 (1987).

Since a prima facie case of race discrimination can be established by showing that similarly situated employees of a different race were treated more favorably, where, in the year prior to an employee's termination, fellow employees were charged with sexual harassment and the employer either imposed no discipline or only briefly suspended the employees, and where the

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employer fired a black employee for the same offense, the black employee established a prima facie case by proving that he was a member of a protected class who was disciplined in a harsher manner than comparably situated persons of a different race. Loyola Univ. v. Human Rights Comm'n, 149 Ill. App. 3d 8, 102 Ill. Dec. 746, 500 N.E.2d 639 (1 Dist. 1986).

In order to prove a prima facie case of racial discrimination involving discharge for violation of work rules, a claimant must first demonstrate by a preponderance of the evidence either that he did not violate the rule or that, if he did, white employees who engaged in similar acts were not punished similarly. Department of Cors. v. Clay, 135 Ill. App. 3d 710, 90 Ill. Dec. 280, 481 N.E.2d 1080 (5 Dist. 1985).

Department of Corrections' officers were entitled to rely on uncontradicted reports regarding discharged correctional counselor's witnessing unusual behavior in prison visiting room and were not required to conduct an extended witch-hunt by the mere fact that discharged employee, an admitted wrongdoer from the start, was a member of a group protected by this Act, and therefore, plaintiff failed to prove a prima facie case of racial discrimination. Department of Cors. v. Clay, 135 Ill. App. 3d 710, 90 Ill. Dec. 280, 481 N.E.2d 1080 (5 Dist. 1985).

A prima facie case of racial discrimination may be made by showing that plaintiff belongs to a (racial) minority, that he applied and was qualified for a job for which the employer was seeking applicants, that he was rejected despite his qualifications, and that the position remained open and the employer continued to seek applicants from persons of complainant's qualifications after his rejection; it is also recognized that the specification of the usual elements of prima facie proof will not necessarily be applicable in every respect to different factual situations. Board of Educ. v. Illinois Fair Emp. Practices, 79 Ill. App. 3d 446, 34 Ill. Dec. 796, 398 N.E.2d 619 (2 Dist. 1979).

Evidence that bricklayers belonged to a racial minority, they applied and were qualified for job for which mason contractor was seeking applicants, they were rejected despite their qualifications and the jobs were subsequently filled by white bricklayers was sufficient to establish a prima facie case of discrimination in violation of former section 853(a) of the Fair Employment Practices Act (see now this section) which was not rebutted by testimony on behalf of mason contractor that the men subsequently put to work were promised jobs and thus hired prior to the time complainants made their applications. A. P. Green Serv. Div. of Bigelow-Liptak Corp. v. Fair Emp. Practice Comm'n, 19 Ill. App. 3d 875, 312 N.E.2d 314 (1 Dist. 1974).

- Relevant Evidence

In a case alleging improper discharge on the basis of racial discrimination, uncontradicted statistics submitted by the employer to the Equal Opportunity Commission which established, inter alia, that 43% of its employees and 19% of its supervisors were black - each of whom was promoted from the rank and file - but that only four, or 16%, of the 25 employees discharged during a two-year period were black, while not determinative, were relevant as circumstantial evidence of the employer's nondiscriminatory employment practices. Acorn Corrugated Box Co. v. Illinois Human Rights Comm'n, 181 Ill. App. 3d 122, 129 Ill. Dec. 882, 536 N.E.2d 932 (1 Dist. 1989).

- Shown

A black police officer sustained his overall burden of establishing that a village engaged in unlawful discrimination where the record amply reflected an atmosphere charged with racism which ultimately resulted in a racially motivated discharge of the officer. Village of Bellwood Bd. of Fire & Police Comm'rs v. Human Rights Comm'n, 184 Ill. App. 3d 339, 133 Ill. Dec. 810, 541 N.E.2d 1248 (1 Dist. 1989).

Where the type of misconduct in three similar cases involving non-black employees concerned physical touching of women and were more serious than a black employee's conduct, yet he received a much harsher punishment, and where the black employee's work record within the 12

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months prior to the sexual harassment charge was no worse than the other three employees' records, the Human Rights Commission was justified in finding that employer's reasoning in attempting to distinguish the work histories of the other three non-black employees was pretextual. Loyola Univ. v. Human Rights Comm'n, 149 Ill. App. 3d 8, 102 Ill. Dec. 746, 500 N.E.2d 639 (1 Dist. 1986).

Findings of the Human Rights Commission and circuit court that plaintiff discharged defendant on the basis of his race, where plaintiff established a prima facie case of racial discrimination by showing that other black employees were inequitably investigated and disciplined for breakdowns of a piece of machinery, were not contrary to the manifest weight of the evidence. Valley Mould & Iron Co. v. Illinois Human Rights Comm'n, 133 Ill. App. 3d 273, 88 Ill. Dec. 134, 478 N.E.2d 449 (1 Dist. 1985).

Trial court order affirming the decision of the Human Rights Commission that employer violated the former Fair Employment Practices Act (see now this section) by discriminating against an employee because of his race was upheld by the appellate court, where the evidence demonstrated that the employee was fired for performing acts for which equally situated employees were not disciplined. Clark Oil & Ref. Corp. v. Golden, 114 Ill. App. 3d 300, 70 Ill. Dec. 80, 448 N.E.2d 958 (1 Dist. 1983).

The decision to terminate an employee based on an attempt to arrest him was a racially discriminatory practice under the former Fair Employment Practices Act (see now this section and 775 ILCS 5/2-102) where neither his employment record nor his time card indicated any performance problems. Abex Corp. v. Illinois Fair Emp. Practices Comm'n, 49 Ill. App. 3d 469, 7 Ill. Dec. 334, 364 N.E.2d 495 (1 Dist. 1977).

Transfer of a white teacher from one school to another in an effort to end teacher segregation was a racially discriminatory practice with respect to conditions of her employment. Legg v. Illinois Fair Employment Practices Comm'n, 28 Ill. App. 3d 932, 329 N.E.2d 486 (1 Dist. 1975).

Reason for Firing

An employer need not have a good reason for its employment decisions; it merely cannot be motivated by unlawful discrimination. St. Mary of Nazareth Hosp. Ctr. v. Curtis, 163 Ill. App. 3d 566, 114 Ill. Dec. 658, 516 N.E.2d 813 (1 Dist. 1987).

Reduction in Work Force

In employment discrimination cases involving reductions in a work force, a modified version of the prima facie proof formulation requires that complainant show that: he was within the protected class; he was performing according to his employer's legitimate expectations; he was terminated or demoted; and others not in the protected class were treated more favorably. Clyde v. Illinois Human Rights Comm'n, 206 Ill. App. 3d 283, 151 Ill. Dec. 288, 564 N.E.2d 265 (4 Dist. 1990), cert. denied, 137 Ill. 2d 664, 156 Ill. Dec. 560, 571 N.E.2d 147 (1991).

Religious Discrimination

- Not Shown

The decision of the former Fair Employment Practices Commission (now Human Rights Commission) that employer could have made an accommodation to employee's religious beliefs proscribing work on Saturdays without undue hardship in the conduct of its business was not supported by a required preponderance of the evidence. Olin Corp. v. Fair Emp. Practices Comm'n, 67 Ill. 2d 466, 10 Ill. Dec. 501, 367 N.E.2d 1267 (1977).

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- Scope

For a case discussing the accommodation of religious beliefs and practices under the former Fair Employment Practices Act (see now this section), see Olin Corp. v. Illinois Fair Emp. Practices Comm'n, 34 Ill. App. 3d 868, 341 N.E.2d 459 (5 Dist. 1976), aff'd, 67 Ill. 2d 466, 10 Ill. Dec. 501, 367 N.E.2d 1267 (1977).

Retaliatory Discrimination

- Cooperation with Commission

The legislature addressed itself to the fears expressed by the former Fair Employment Practices Commission (now Human Rights Commission) that the availability of judicial review would necessarily hamper its investigative efforts since it would be unable to guarantee total confidentiality to people cooperating in an investigation by expressly making it an unfair employment practice to retaliate against one who cooperates with the Commission during its investigation of a charge under the former Fair Employment Practices Act (see now this section). Klein v. Fair Emp. Practices Comm'n, 31 Ill. App. 3d 473, 334 N.E.2d 370 (1 Dist. 1975).

- Not Shown

Where plaintiff's conduct toward her employer was insolent and insubordinate, the record as reflected both by an examiner's findings and the plaintiff's own testimony disclosed overwhelming support for the employer's decision to terminate her employment so that the termination was not retaliatory. Unger v. Sierna Div. of Consol. Foods Corp., 60 Ill. App. 3d 840, 18 Ill. Dec. 113, 377 N.E.2d 266 (1 Dist. 1978).

- Prima Facie Case

Where employee alleged discrimination based on both race and retaliation, a prima facie case of discrimination based on retaliation was established by showing a short time span between the filing of the charge and employer's adverse action. Loyola Univ. v. Human Rights Comm'n, 149 Ill. App. 3d 8, 102 Ill. Dec. 746, 500 N.E.2d 639 (1 Dist. 1986).

Sexual Discrimination

- Application

Under the former Fair Employment Practices Act (see now this section), a finding that plaintiff did not apply for a fourth grade position premised on the fact that plaintiff did not submit a formal written application was erroneous where on two different occasions plaintiff told principal she wanted the fourth grade teaching job yet, when plaintiff asked for the job, she was not informed that it was necessary to submit a formal written application before she could be considered for the position. Schoneberg v. Grundy County Special Educ. Coop., 67 Ill. App. 3d 899, 24 Ill. Dec. 439, 385 N.E.2d 351 (3 Dist. 1979).

- Burden of Proof

Chief legal counsel of the Illinois Department of Human Resources did not abuse the counsel's discretion by sustaining the Department's dismissal of an employee's charge of sex discrimination based on disparate pay under 775 ILCS 5/2-102(A) because the employee did not satisfy the employee's burden to establish that the reasons given by the employer for paying two men more than the employee, i.e., that the men were not similarly situated, that they held different positions, and that they were hired to perform different job duties involving more skill and responsibility than employee had, were pretextual. Budzileni v. Dep't of Human Rights, 392 Ill. App. 3d 422, 331

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Ill. Dec. 434, 910 N.E.2d 1190, 2009 Ill. App. LEXIS 361 (1 Dist. 2009), appeal denied, 233 Ill. 2d 552, 335 Ill. Dec. 631, 919 N.E.2d 350, 2009 Ill. LEXIS 1328 (2009).

In sex discrimination actions, the burden is on the employee to establish a prima facie case of discrimination; once this is done, the burden shifts to the employer to demonstrate the employment practice at issue is within one of the exceptions to the proscription of unequal pay for equal work by persons of different sexes. McCullar v. Human Rights Comm'n, 158 Ill. App. 3d 1011, 111 Ill. Dec. 80, 511 N.E.2d 1375 (4 Dist. 1987).

- Comparison of Duties

On the basis of the pleadings submitted by plaintiff, the Human Rights Commission could have concluded that, without definitive evidence concerning the duration of a high school football season, there was no basis for concluding that during the relevant time period the high school football coaches were required to devote approximately the same or a lesser amount of time to their coaching duties as plaintiff was required to devote to her duties as girls' high school volleyball coach insofar as it related to an attempted comparison of the positions of girls' high school volleyball coach and high school football coach. McCullar v. Human Rights Comm'n, 158 Ill. App. 3d 1011, 111 Ill. Dec. 80, 511 N.E.2d 1375 (4 Dist. 1987).

- Constitutional Prohibition

The Illinois Constitution (Ill. Const. (1970), Art. I, § 17) prohibits sex discrimination in employment, and the protection afforded by such a prohibition has been interpreted broadly. Illinois Bell Telephone Co. v. Fair Emp. Practices Comm'n, 81 Ill. 2d 136, 41 Ill. Dec. 41, 407 N.E.2d 539 (1980).

- Disparate Wages

Human Rights Commission's determination that employer discriminated against former employee on the basis of sex was not contrary to the manifest weight of the evidence where the former employee was paid less than male who had same responsibilities. Northtown Ford v. Human Rights Comm'n, 171 Ill. App. 3d 479, 121 Ill. Dec. 908, 525 N.E.2d 1215 (4 Dist. 1988).

It was apparent that complainant had failed to impress her fellow faculty members with her credentials, they rightfully chose not to reward her with salary increments to the extent earned by some other members of the faculty; thus, the decision of the former Fair Employment Practices Commission that complainant was discriminated against because of her sex with regard to her wages was against the manifest weight of the evidence. Northern Ill. Univ. v. Fair Emp. Practices Comm'n, 58 Ill. App. 3d 992, 15 Ill. Dec. 965, 374 N.E.2d 748 (2 Dist. 1978).

- Employee Participation in Investigation

In a sexual discrimination case, plaintiff had no constitutional right under the former Fair Employment Practices Act (see now this section) to participate in an investigation of her charge of unfair employment practices since such participation would entitle every complainant to participate in her own proceedings regardless of the validity of the allegations of her charge. Klein v. Fair Emp. Practices Comm'n, 31 Ill. App. 3d 473, 334 N.E.2d 370 (1 Dist. 1975).

- Employment Application

Requiring a female but not a male to submit a written application for employment seemed a questionable practice under the former Fair Employment Practices Act (see now this section). Schoneberg v. Grundy County Special Educ. Coop., 67 Ill. App. 3d 899, 24 Ill. Dec. 439, 385 N.E.2d 351 (3 Dist. 1979).

- Good Faith Reliance

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In an action brought under the former Fair Employment Practices Act, (see now this section), employer's good faith reliance on former section 9.01 of the Coal Mining Act (see now 225 ILCS 705/9.01), which, prior to its 1975 amendment, provided that no woman or girl should be allowed to do any manual labor in or about a mine, could be a legitimate and nondiscriminatory reason for rejecting alleged discrimination claim, although the Attorney General for this state had issued an opinion that coal companies could no longer rely on the provision of the Coal Mining Act (see now 225 ILCS 705/9.01) to exclude women from employment in or around coal mines. Freeman United Coal Mining Co. v. Fair Emp. Practices Comm'n, 113 Ill. App. 3d 19, 68 Ill. Dec. 637, 446 N.E.2d 543 (5 Dist. 1983).

- Hiring

Fact that discipline was not listed as a necessary qualification in a job description did not preclude board of education from considering disciplinary skills for purposes of determining whether selection of male applicant over female applicant for high school librarian position, due to male applicant's disciplinary skills, was pretextual. Board of Educ. v. Human Rights Comm'n, 135 Ill. App. 3d 206, 90 Ill. Dec. 194, 481 N.E.2d 994 (5 Dist. 1985).

- Jurisdiction

Portion of a school commission's order awarding attorney fees to a prospective employee was void as exceeding the jurisdiction of the Fair Employment Practices Commission (now Human Rights Commission) under the former Fair Employment Practices Act (see now this section). School Dist. No. 175 v. Illinois Fair Emp. Practices Comm'n, 57 Ill. App. 3d 979, 15 Ill. Dec. 101, 373 N.E.2d 447 (5 Dist. 1978).

- Not Shown

Because an employee must establish as a part of her prima facie case that any two jobs sought to be compared involve equal skill, effort, and responsibility, where plaintiff did not properly establish that her volleyball coaching positions involved approximately the same number of hours of work per season as the positions held by men with which she sought to compare, and therefore did not establish the positions involved the same amount of effort, she did not establish a prima facie case of sex discrimination in employment. McCullar v. Human Rights Comm'n, 158 Ill. App. 3d 1011, 111 Ill. Dec. 80, 511 N.E.2d 1375 (4 Dist. 1987).

Evidence held insufficient to establish that plaintiff was a victim of employment discrimination on the basis of her sex. McCullar v. Human Rights Comm'n, 158 Ill. App. 3d 1011, 111 Ill. Dec. 80, 511 N.E.2d 1375 (4 Dist. 1987).

Determination of a hearing examiner and the former Fair Employment Practices Commission that college's action in failing to grant complainant's application for paid sabbatical was based on discrimination against her because she was female had no support in the evidence, because there was nothing in the record indicating the decision was sexually premised and the mere fact that her application was ranked last was adequately explained by the college. Northern Ill. Univ. v. Fair Emp. Practices Comm'n, 58 Ill. App. 3d 992, 15 Ill. Dec. 965, 374 N.E.2d 748 (2 Dist. 1978).

- Preemption of Claims

Because this Act does not purport to reach discriminatory practices by smaller employers, the Act cannot be construed as preempting a claim of gender discrimination against such an employer asserted directly under Ill. Const. (1970), Art. I, § 17. Ritzheimer v. Insurance Counselors, Inc., 123 Ill. App. 506, 173 Ill. App. 3d 953, 123 Ill. Dec. 506, 527 N.E.2d 1281 (5 Dist. 1988).

- Pregnancy

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An employer's sickness and accident plan, the purpose of which was to provide a noncontributory income continuation benefit when an employee was unable to work because of a "non-occupational accident or sickness," was not discriminatory in that it was a noncomprehensive plan designed to cover "sickness" which could properly exclude pregnancy from coverage. Illinois Consol. Tel. Co. v. Illinois Fair Emp. Practices Comm'n, 104 Ill. App. 3d 162, 60 Ill. Dec. 319, 432 N.E.2d 1218 (5 Dist. 1982).

Group insurance plan which allowed limited maternity leave benefits if the employee was married discriminated between married and unmarried female employees, but did not constitute unlawful sex discrimination where the limited maternity benefit was provided for both married female and male employees who enrolled their spouses. Illinois Consol. Tel. Co. v. Illinois Fair Emp. Practices Comm'n, 104 Ill. App. 3d 162, 60 Ill. Dec. 319, 432 N.E.2d 1218 (5 Dist. 1982).

A worker selected for a layoff as a result of an employer's belief that she was pregnant constituted prohibited sex discrimination under the former Fair Employment Practices Act (see now this section). Florsheim Shoe Co. v. Illinois Fair Emp. Practices Comm'n, 99 Ill. App. 3d 868, 55 Ill. Dec. 46, 425 N.E.2d 1219 (1 Dist. 1981).

The necessary allegations for a prima facie claim of discrimination with respect to pregnancy are that complainant is pregnant and that she was laid off because she was pregnant; evidence of disparate treatment of men and women is not necessary under the former Fair Employment Practices (see now this section). Florsheim Shoe Co. v. Illinois Fair Emp. Practices Comm'n, 99 Ill. App. 3d 868, 55 Ill. Dec. 46, 425 N.E.2d 1219 (1 Dist. 1981).

Under former section 853 of the Fair Employment Practices Act (see now this section) the exclusion of pregnancy from an employer's disability benefits plan was allowable (prior to 42 U.S.C. sec. 2000e), not because pregnancy was a voluntary disability, but because it was not a sickness. Illinois Bell Telephone Co. v. Fair Emp. Practices Comm'n, 81 Ill. 2d 136, 41 Ill. Dec. 41, 407 N.E.2d 539 (1980).

- Pretextual Decision

Where there was evidence of applicant's past disciplinary problems and board of education's stated reasons for hiring male applicant were his strong disciplinary approach and rapport with students, the Human Rights Commission's determination that the board's reasons for hiring male applicant over female applicant were pretextual was against the manifest weight of the evidence, even though there was evidence that the female was objectively better qualified. Board of Educ. v. Human Rights Comm'n, 135 Ill. App. 3d 206, 90 Ill. Dec. 194, 481 N.E.2d 994 (5 Dist. 1985).

- Prima Facie Case

Because an employee must establish as a part of her prima facie case of sex discrimination that the two jobs sought to be compared involve equal skill, effort, and responsibility, where plaintiff did not establish that her volleyball coaching positions involved approximately the same number of hours of work per season as the positions with which she sought to compare them, and that the positions involved the same amount of effort, she did not establish a prima facie case of sex discrimination in employment. McCullar v. Human Rights Comm'n, 158 Ill. App. 3d 1011, 111 Ill. Dec. 80, 511 N.E.2d 1375 (4 Dist. 1987).

- Promotions

Where the record disclosed that within the college was a female faculty membership of 12 women, four of whom were full professors and two of whom were associate professors, clearly women were not prevented from becoming full professors on account of their sex, therefore, the Fair Employment Practices Commission's determination that the defendant had not been promoted to full professor because of sexual discrimination against her was unsupported by the

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evidence. Northern Ill. Univ. v. Fair Emp. Practices Comm'n, 58 Ill. App. 3d 992, 15 Ill. Dec. 965, 374 N.E.2d 748 (2 Dist. 1978).

- Proof of Pretext

Under the former Fair Employment Practices Act (see now this section), subsequent to defendant establishing a nondiscriminatory reason for rejection, the plaintiff had the opportunity to show that the defendant's assigned reason for refusing to employ was a pretext or discriminatory in its application. Schoneberg v. Grundy County Special Educ. Coop., 67 Ill. App. 3d 899, 24 Ill. Dec. 439, 385 N.E.2d 351 (3 Dist. 1979).

- Segregated Groups

As decided under the former Fair Employment Practices Act (see now this section), it was a violation for plaintiff to maintain two groups, segregated along sexual lines, who performed the same work for disparate wages. City of Chicago v. Illinois Fair Emp. Practices Comm'n, 87 Ill. App. 3d 597, 43 Ill. Dec. 136, 410 N.E.2d 136 (1 Dist. 1980).

- Shown

The plaintiff established sex discrimination where the employer asserted that the plaintiff was discharged for leaving work early without permission, but the evidence showed that such assertion was a pretext as a similarly situated male employee was not discharged for leaving work early. Wal-Mart Stores, Inc. v. Human Rights Comm'n, 307 Ill. App. 3d 264, 240 Ill. Dec. 459, 717 N.E.2d 552 (2 Dist. 1999).

Under the former Fair Employment Practices Act (see now this section), where a school board failed to prove that maleness was bona fide occupational qualification for a particular teaching position and, the Fair Employment Practices Commission (now Human Rights Commission) made no such determination, the evidence overwhelmingly established a prima facie case of sex discrimination. Schoneberg v. Grundy County Special Educ. Coop., 67 Ill. App. 3d 899, 24 Ill. Dec. 439, 385 N.E.2d 351 (3 Dist. 1979).

Where there was testimony by prospective employee that prior to her interview, she was told by the employment committee that they desired to hire a male, if a qualified one could be found, where there was no evidence that the fact that hired employee be male was a bona fide occupational qualification, under the Fair Employment Practices Act (see now this section), as could be the case under the circumstances for purposes of discipline or role identification, and where the school district did not dispute that a refusal to hire the prospective employee was based primarily on her sex, the district's refusal to hire prospective employee was unlawful discrimination. School Dist. No. 175 v. Illinois Fair Emp. Practices Comm'n, 57 Ill. App. 3d 979, 15 Ill. Dec. 101, 373 N.E.2d 447 (5 Dist. 1978).

- Similarly Situated Employees

Where a claim of sex discrimination was made under former section 853 of the Fair Employment Practices Act (see now this section), an initial inquiry was whether the party claiming discrimination was similarly situated with those said to be receiving preferential treatment; if the complaining party was, in fact, not similarly situated with those with whom he or she sought to be compared, a vital prerequisite to a finding of discrimination was lacking. Illinois Bell Telephone Co. v. Fair Emp. Practices Comm'n, 81 Ill. 2d 136, 41 Ill. Dec. 41, 407 N.E.2d 539 (1980).

- Waiver of Testimony

In an attempted comparison of high school girls' volleyball and high school football coaching positions where plaintiff testified that the regular high school football season ended the first week in November, she waived her right to rely on this testimony as a basis for establishing a prima facie case of sex discrimination in employment by failing to mention it in either her proposed

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conclusions of law and award submitted to an administrative law judge or her exceptions to the administrative law judge's proposed order and supporting memorandum submitted to the Human Rights Commission. McCullar v. Human Rights Comm'n, 158 Ill. App. 3d 1011, 111 Ill. Dec. 80, 511 N.E.2d 1375 (4 Dist. 1987).

Sexual Harassment

Commission's finding that a supervisor committed a variety of sexually harassing acts that cumulatively constituted a hostile work environment was not against the manifest weight of the evidence as the supervisor sent a forged Department of Public Health letter asserting that the employee had contracted a sexually transmitted disease and the Commission found that the supervisor's conduct promoted a sexual atmosphere at the Sheriff's Department generally and in the employee's work life particularly. The evidence of the forged letter, together with the other conduct proved by the employee, was sufficient to establish a hostile working environment. Sangamon County Sheriff's Dep't v. Ill. Human Rights Comm'n, 233 Ill. 2d 125, 330 Ill. Dec. 187, 908 N.E.2d 39, 2009 Ill. LEXIS 378 (2009).

Tenant established a prima facie case of quid pro quo sexual harassment in violation of subsection (B) based upon her testimony that she, without her consent, was grabbed and kissed by her landlord, she slapped him and rebuffed his sexual advance and she was thereafter evicted. Szkoda v. Human Rights Comm'n, 302 Ill. App. 3d 532, 236 Ill. Dec. 88, 706 N.E.2d 962 (1 Dist. 1998).

- As Sex Discrimination

One of the purposes of this Act is to secure freedom from discrimination based upon sex in connection with employment, and it is consistent with this purpose to interpret sexual harassment inflicted upon an employee as a form of unlawful sex discrimination with respect to the "terms, privileges or conditions of employment." Old Ben Coal Co. v. Human Rights Comm'n, 150 Ill. App. 3d 304, 103 Ill. Dec. 603, 501 N.E.2d 920 (5 Dist. 1986).

Sexual harassment was prohibited by this Act as a form of unlawful sex discrimination prior to the enactment of this section. Old Ben Coal Co. v. Human Rights Comm'n, 150 Ill. App. 3d 304, 103 Ill. Dec. 603, 501 N.E.2d 920 (5 Dist. 1986).

- Complaint Sufficient

Plaintiff adequately pleaded cause of action in tort for negligent hiring where she alleged that employer could have learned thorough investigation that manager had predisposition to, and work history of, sexual harassment of female co-workers, and alleged as her proximate injury physical violations resulting from the employer's failure to act. Thus, trial court erred in dismissing this count pursuant to former Ill. Rev. Stat. ch. 110, para. 2-615 (1991). Geise v. Phoenix Co., 246 Ill. App. 3d 441, 186 Ill. Dec. 122, 615 N.E.2d 1179, 1993 Ill. App. LEXIS 731 (1 Dist. 1993).

- Constructive Discharge

Where an employee is subjected to sexual harassment, or any other form of illegal discrimination, constructive discharge is deemed to have occurred because an employer has deliberately made working conditions so intolerable as to force an involuntary resignation. Board of Dirs. v. Human Rights Comm'n, 162 Ill. App. 3d 216, 113 Ill. Dec. 216, 514 N.E.2d 1227 (5 Dist. 1987).

- Jurisdiction

Where a claim for tortious battery rests on the exact same facts as a sexual harassment claim, the battery claim is preempted under the Illinois Human Rights Act; this preemption extends to both employers and individual employees. Damato v. Jack Phelan Chevrolet Geo, Inc., 927 F. Supp. 283 (N.D. Ill. 1996).

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Since plaintiff's claim of intentional infliction of emotional distress was inextricably linked to her sexual harassment and retaliation claims, both Illinois state courts and federal court lacked subject matter jurisdiction. Jansen v. Packaging Corp. of Am., 895 F. Supp. 1053 (N.D. Ill. 1995), rev'd on other grounds, 123 F.3d 490 (7th Cir. 1997).

In a sexual harassment case, failure to file a verified statement was not grounds for dismissal for lack of jurisdiction, since the procedural rules were confusing, verification could be viewed as only a formality, and the statement was held until after the expiration of the 180 day period without a charge being prepared. Phelps v. Human Rights Comm'n, 185 Ill. App. 3d 96, 133 Ill. Dec. 281, 540 N.E.2d 1147 (4 Dist. 1989).

- Liability of Employer

State human rights commission erred in finding that the county sheriff's department was strictly liable for the alleged harasser's alleged sexual harassment of the employee, as the alleged harasser was not the supervisor of the employee and the record showed that the county sheriff's department undertook corrective measures once it learned of the alleged inappropriate conduct. Sangamon County Sheriff's Dep't v. State Human Rights Comm'n, 375 Ill. App. 3d 834, 314 Ill. Dec. 631, 875 N.E.2d 10, 2007 Ill. App. LEXIS 947 (1 Dist. 2007).

- Mitigation of Damages

In a sexual harassment and retaliatory discharge claim, finding that the complainants mitigated their damages was supported by evidence that both complainants were employed for various periods after leaving employment, that they sent out resumes and that they generally endeavored to remain employed. Board of Dirs. v. Human Rights Comm'n, 162 Ill. App. 3d 216, 113 Ill. Dec. 216, 514 N.E.2d 1227 (5 Dist. 1987).

- Negligent Hiring and Retention

Plaintiff adequately pleaded a cause of action in tort for negligent retention given the Illinois Human Rights Act's clear prohibition against workplace sexual harassment and given plaintiff's allegations that she suffered injury after she repeatedly informed her employer of her manager's sexually harassing conduct toward her and that the employer took no action. Thus, the trial court erred in dismissing this count pursuant to former Ill. Rev. Stat. ch. 110, para. 2-615 (1991). Geise v. Phoenix Co., 246 Ill. App. 3d 441, 186 Ill. Dec. 122, 615 N.E.2d 1179, 1993 Ill. App. LEXIS 731 (1 Dist. 1993).

- Preemption

Summary judgment for supervisor on employee's intentional infliction of emotional distress claim was affirmed because that claim was supported by factual allegations identical to those set forth in the employee's sexual-harassment claim, and thus, was preempted by 775 ILCS 5/2-102(D) and 775 ILCS 5/8-111(C) of the Illinois Human Rights Act. Quantock v. Shared Mktg. Servs., 312 F.3d 899, 2002 U.S. App. LEXIS 25466 (7th Cir. 2002).

- Reinstatement Upheld

The Human Rights Commission was justified in holding that the discharge of an employee was not necessary to fulfill employer's duty to take reasonably corrective measures to prevent a recurrence of sexual harassment, because employer kept three other employees previously charged with discrimination and therefore, the Commission's order reinstating employee was not an abuse of discretion. Loyola Univ. v. Human Rights Comm'n, 149 Ill. App. 3d 8, 102 Ill. Dec. 746, 500 N.E.2d 639 (1 Dist. 1986).

- Shown

Illinois Human Rights Commission's finding that an employer was liable for an employee's sexual harassment was not against the manifest weight of the evidence where it was shown that a co-

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worker frequently engaged in inappropriate conduct toward the employee and others, and that a supervisor, who often asked the employee if he and the co-worker had kissed and made up, was aware of the hostile environment created by the co-worker and was an active participant in perpetuating such environment. Pinnacle Ltd. P'ship v. Ill. Human Rights Comm'n, 354 Ill. App. 3d 819, 290 Ill. Dec. 139, 820 N.E.2d 1206, 2004 Ill. App. LEXIS 1524 (4 Dist. 2004).

Human Rights Commission's decision that an employee at whom sexual comments were directed was subjected to sexual harassment in violation of subsection (D) of this section was not against the manifest weight of the evidence in view of the office environment, the context in which the comments were made, the nature and frequency of the comments, and supervisor's failure to desist after repeated requests to do so. State v. Human Rights Comm'n, 178 Ill. App. 3d 1033, 128 Ill. Dec. 141, 534 N.E.2d 161 (4 Dist. 1989).

- Similar Cases

One method of showing pretext for discharge for sexual harassment is to demonstrate that employees involved in misconduct of comparable seriousness were retained while the complainant was discharged. Loyola Univ. v. Human Rights Comm'n, 149 Ill. App. 3d 8, 102 Ill. Dec. 746, 500 N.E.2d 639 (1 Dist. 1986).

- Strict Liability

Employers are strictly liable for sexual harassment of their employees by supervisory personnel regardless of whether harassment was quid pro quo or part of a hostile environment and regardless of whether the employer knew of such conduct. Board of Dirs. v. Human Rights Comm'n, 162 Ill. App. 3d 216, 113 Ill. Dec. 216, 514 N.E.2d 1227 (5 Dist. 1987).

Terms, Privileges or Conditions of Employment

- Wages

Wages are a "term or condition of employment" and, therefore, one type of discrimination covered by the former Female Employment Act (see now this Act). Canton State Bank v. Illinois Human Rights Comm'n, 123 Ill. App. 3d 652, 79 Ill. Dec. 95, 463 N.E.2d 436 (3 Dist. 1984).

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For article, "Sexual Harassment and the Illinois Business Corporation Act," see 20 S. Ill. U. L.J. 459 (1996).

For article, "Sexual Harassment and the Illinois Business Corporation Act" see 19 S. Ill. U.L.J. 459 (1995).

For article, "The 'Reasonable Woman' Standard in Sexual Harassment Cases," see 81 Ill. B.J. 404 (1993).

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1-8 Employment in Illinois § 8-8 Discrimination Based on National Origin.

1-8 Employment in Illinois § 8-5 Sex Discrimination, Pregnancy, Sexual Harassment, Marital Status, Sexual Preference.

1-8 Employment in Illinois § 8-3 General Principles.

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1-2 Employment in Illinois § 2-7 Hiring Aliens.

Illinois Jurisprudence, Personal Injury and Torts § 7:10 Sexual and asexual contact.

Illinois Jurisprudence, Labor and Employment § 4:32 Allowance by public employer of time off for religious reasons.

Illinois Jurisprudence, Labor and Employment § 4:22 Sexual harassment.

Illinois Jurisprudence, Labor and Employment § 4:03 Conduct prohibited on part of employment agencies and labor organizations.

Illinois Jurisprudence, Labor and Employment § 4:02 Conduct prohibited on part of employers.

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Form: Charge of Discrimination (EEOC Form 5), Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 19.13 (IICLE).

§ 775 ILCS 5/2-103. Arrest Record

Sec. 2-103. Arrest Record. (A) Unless otherwise authorized by law, it is a civil rights violation for any employer, employment agency or labor organization to inquire into or to use the fact of an arrest or criminal history record information ordered expunged, sealed or impounded under Section 5.2 of the Criminal Identification Act [20 ILCS 2630/5.2] as a basis to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment. This Section does not prohibit a State agency, unit of local government or school district, or private organization from requesting or utilizing sealed felony conviction information obtained from the Department of State Police under the provisions of Section 3 of the Criminal Identification Act [20 ILCS 2630/3] or under other State or federal laws or regulations that require criminal background checks in evaluating the qualifications and character of an employee or a prospective employee.

(B) The prohibition against the use of the fact of an arrest contained in this Section shall not be construed to prohibit an employer, employment agency, or labor organization from obtaining or using other information which indicates that a person actually engaged in the conduct for which he or she was arrested.

(Source: P.A. 87-548; 87-847; 87-895; 89-370, § 5; 93-1084, § 10; 96-409, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 68, Para. 2-103.

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Effect of Amendments. The 1995 amendment by P.A. 89-370, effective August 18, 1995, and applicable to causes of action as specified in each Section or part of the Act, added the subsection (A) designation; in subsection (A), in the first sentence, inserted "the fact of an" and deleted "information" preceding "or criminal history"; and added subsection (B).

The 2005 amendment by P.A. 93-1084, effective June 1, 2005, in (A) inserted "requesting or", "sealed felony", and "or under other State or federal laws or regulations that require criminal background checks".

The 2009 amendment by P.A. 96-409, effective January 1, 2010, substituted "Section 5.2" for "Section 5" in the first sentence of (A).

CASE NOTES

Analysis

In General
Job Applicant
- Arrest Record
Justification for Rejection
- Not Shown
Racial Discrimination
- Inherent Discriminatory Impact
Termination

In General

Where the employee was arrested for possession of a small amount of marijuana and the city terminated the employee for violating a work rule prohibiting the possession of illegal drugs, the city was entitled to summary judgment as to the employee's claim that the city deprived the employee of a liberty interest arising from a state statute, 775 ILCS 5/2-103(A), because the employee did not show that the city had actually relied on the arrest as a basis for the employee's discharge. Franklin v. City of Evanston, 384 F.3d 838, 2004 U.S. App. LEXIS 20311 (7th Cir. 2004), cert. denied, 544 U.S. 956, 125 S. Ct. 1696, 161 L. Ed. 2d 539 (2005).

Because of discriminatory effect, an employer may not automatically bar a minority applicant from consideration for employment simply because the applicant has been convicted of a crime. Board of Trustees v. Knight, 163 Ill. App. 3d 289, 114 Ill. Dec. 836, 516 N.E.2d 991 (5 Dist. 1987).

Job Applicant

- Arrest Record

Job applicant did not show that the city impermissibly considered the job applicant's arrest record in declining to hire the job applicant, as that record also showed that the job applicant held several aliases and that the job applicant had been convicted on criminal charges. C.R.M. v. Chief Legal Counsel, 372 Ill. App. 3d 730, 310 Ill. Dec. 575, 866 N.E.2d 1177, 2007 Ill. App. LEXIS 369 (1 Dist. 2007).

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Because an arrest record is not a bona fide occupational qualification for a parking attendant, employer could not be held liable for having failed to consider employees' arrest records when hiring them, after employees killed guest at hotel where they were employed. DeMyrick v. Guest Quarters Suite Hotels, 944 F. Supp. 661 (N.D. Ill. 1996).

Building owners and managers, as a matter of law, did not owe tenant who was attacked by maintenance worker a duty to investigate worker's arrest record before hiring him to do maintenance work at apartment building; inquiring into a job applicant's arrests would be a civil rights violation, except where such inquiry relates to bona fide occupational qualifications, and worker's arrest record would tell an employer nothing regarding his ability to perform maintenance work. Ernst v. Parkshore Club Apts. Ltd. Partnership, 863 F. Supp. 651 (N.D. Ill. 1994).

Justification for Rejection

Expungement of the applicant's criminal offense did not bar consideration of the conduct at issue, which included conduct that amounted to theft under 720 ILCS 5/16-1, as 775 ILCS 5/2-103(B) did not bar an employer from using evidence of actual conduct, as opposed to a conviction, to disqualify an applicant. Sroga v. Pers. Bd., 359 Ill. App. 3d 107, 295 Ill. Dec. 795, 833 N.E.2d 1001, 2005 Ill. App. LEXIS 744 (1 Dist. 2005), appeal denied, 217 Ill. 2d 625, 300 Ill. Dec. 529, 844 N.E.2d 972 (2006).

- Not Shown

A single misdemeanor weapons possession charge did not justify a refusal to hire on grounds of business necessity an applicant for a university police position where conviction was imposed five years before the job application was denied, during the years following the conviction the job applicant established a history of professional and responsible police and police-related work which involved the use of firearms, and the employer had adduced no evidence to show how the job applicant's conviction could reasonably be related to his present ability to perform acceptably on the job. Board of Trustees v. Knight, 163 Ill. App. 3d 289, 114 Ill. Dec. 836, 516 N.E.2d 991 (5 Dist. 1987).

Racial Discrimination

- Inherent Discriminatory Impact

Arrest record hiring criteria have an inherently discriminatory impact upon black job applicants. Board of Trustees v. Knight, 163 Ill. App. 3d 289, 114 Ill. Dec. 836, 516 N.E.2d 991 (5 Dist. 1987).

Termination

Former employee's termination after the employer learned of the employee's guilty plea followed by successful court supervision did not violate 775 ILCS 5/2-103(A); the restoration of rights and privileges under 730 ILCS 5/5-6-3.1(e) and (f) after the employee's successful completion of supervision did not relate to any rights involving private employment, and 775 ILCS 5/2-103(b) gave the employer the right to consider information that the employee actually engaged in the conduct for which the employee was arrested. Beard v. Sprint Spectrum, LP, 359 Ill. App. 3d 315, 295 Ill. Dec. 616, 833 N.E.2d 449, 2005 Ill. App. LEXIS 798 (3 Dist. 2005), appeal denied, 217 Ill. 2d 558, 300 Ill. Dec. 363, 844 N.E.2d 35 (2005).

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Employment Discrimination § 1.10 Criminal Offenses, Arrests, and Convictions (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 8:11 "Civil rights violation" and "unlawful discrimination" defined.

Illinois Jurisprudence, Labor and Employment § 4:35 Arrest record.

Illinois Jurisprudence, Labor and Employment § 4:17 Ability tests.

§ 775 ILCS 5/2-104. Exemptions

Sec. 2-104. Exemptions. (A) Nothing contained in this Act shall prohibit an employer, employment agency or labor organization from:

(1) Bona Fide Qualification. Hiring or selecting between persons for bona fide occupational qualifications or any reason except those civil-rights violations specifically identified in this Article.

(2) Veterans. Giving preferential treatment to veterans and their relatives as required by the laws or regulations of the United States or this State or a unit of local government.

(3) Unfavorable Discharge From Military Service. Using unfavorable discharge from military service as a valid employment criterion when authorized by federal law or regulation or when a position of employment involves the exercise of fiduciary responsibilities as defined by rules and regulations which the Department shall adopt.

(4) Ability Tests. Giving or acting upon the results of any professionally developed ability test provided that such test, its administration, or action upon the results, is not used as a subterfuge for or does not have the effect of unlawful discrimination.

(5) Merit and Retirement Systems.

(a) Applying different standards of compensation, or different terms, conditions or privileges of employment pursuant to a merit or retirement system provided that such system or its administration is not used as a subterfuge for or does not have the effect of unlawful discrimination.

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(b) Effecting compulsory retirement of any employee who has attained 65 years of age and who, for the 2-year period immediately preceding retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans of the employer of such employee, which equals, in the aggregate, at least $44,000. If any such retirement benefit is in a form other than a straight life annuity (with no ancillary benefits) or if the employees contribute to any such plan or make rollover contributions, the retirement benefit shall be adjusted in accordance with regulations prescribed by the Department, so that the benefit is the equivalent of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

(c) Until January 1, 1994, effecting compulsory retirement of any employee who has attained 70 years of age, and who is serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) at an institution of higher education as defined by Section 1201(a) of the Higher Education Act of 1965 [20 U.S.C. § 1141].

(6) Training and Apprenticeship programs. Establishing an educational requirement as a prerequisite to selection for a training or apprenticeship program, provided such requirement does not operate to discriminate on the basis of any prohibited classification except age.

(7) Police and Firefighter/Paramedic Retirement. Imposing a mandatory retirement age for firefighters/paramedics or law enforcement officers and discharging or retiring such individuals pursuant to the mandatory retirement age if such action is taken pursuant to a bona fide retirement plan provided that the law enforcement officer or firefighter/paramedic has attained:

(a) the age of retirement in effect under applicable State or local law on March 3, 1983; or

(b) if the applicable State or local law was enacted after the date of enactment of the federal Age Discrimination in Employment Act Amendments of 1996 (P.L. 104-208), the age of retirement in effect on the date of such discharge under such law.

This paragraph (7) shall not apply with respect to any cause of action arising under the Illinois Human Rights Act as in effect prior to the effective date of this amendatory Act of 1997.

(8) Police and Firefighter/Paramedic Appointment. Failing or refusing to hire any individual because of such individual's age if such action is taken with respect to the employment of an individual as a firefighter/paramedic or as a law enforcement officer and the individual has attained:

(a) the age of hiring or appointment in effect under applicable State or local law on March 3, 1983; or

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(b) the age of hiring in effect on the date of such failure or refusal to hire under applicable State or local law enacted after the date of enactment of the federal Age Discrimination in Employment Act Amendments of 1996 (P.L. 104-208).

As used in paragraph (7) or (8):

"Firefighter/paramedic" means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, or to provide emergency medical services, including an employee engaged in this activity who is transferred to a supervisory or administrative position.

"Law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of criminal offenses, including an employee engaged in this activity who is transferred to a supervisory or administrative position.

(9) Citizenship Status. Making legitimate distinctions based on citizenship status if specifically authorized or required by State or federal law.

(B) With respect to any employee who is subject to a collective bargaining agreement:

(a) which is in effect on June 30, 1986,

(b) which terminates after January 1, 1987,

(c) any provision of which was entered into by a labor organization as defined by Section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)), and

(d) which contains any provision that would be superseded by this amendatory Act of 1987 (Public Act 85-748),

such amendatory Act of 1987 shall not apply until the termination of such collective bargaining agreement or January 1, 1990, whichever occurs first.

(C)(1) For purposes of this Act, the term "handicap" shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when an employer acts on the basis of such use.

(2) Paragraph (1) shall not apply where an employee or applicant for employment:

(a) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(b) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(c) is erroneously regarded as engaging in such use, but is not engaging in such use.

It shall not be a violation of this Act for an employer to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that

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an individual described in subparagraph (a) or (b) is no longer engaging in the illegal use of drugs.

(3) An employer:

(a) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(b) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(c) may require that employees behave in conformance with the requirements established under the federal Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.) and the Drug Free Workplace Act [30 ILCS 580/1 et seq.];

(d) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such employer holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(e) may, with respect to federal regulations regarding alcohol and the illegal use of drugs, require that:

(i) employees comply with the standards established in such regulations of the United States Department of Defense, if the employees of the employer are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the employer who are employed in such positions (as defined in the regulations of the Department of Defense);

(ii) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the employer are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the employer who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(iii) employees comply with the standards established in such regulations of the United States Department of Transportation, if the employees of the employer are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the employer who are employed in such positions (as defined in the regulations of the United States Department of Transportation).

(4) For purposes of this Act, a test to determine the illegal use of drugs shall not be considered a medical examination. Nothing in this Act shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

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(5) Nothing in this Act shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by an employer subject to the jurisdiction of the United States Department of Transportation of authority to:

(a) test employees of such employer in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(b) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to subparagraph (a) from safety-sensitive duties in implementing paragraph (3).

(Source: P.A. 87-348; 87-579; 87-895; 88-180, § 5; 90-481, § 35; 95-331, § 1210.)

Note.

This section was Ill.Rev.Stat., Ch. 68, Para. 2-104.

Effect of Amendments. The 1993 amendment by P.A. 88-180, effective January 1, 1994, added subsection (C).

The 1997 amendment by P.A. 90-481, effective August 17, 1997, in subdivision (A)(7), in the first paragraph, inserted "Paramedic", inserted "paramedics", substituted "and discharging or retiring such individuals pursuant to the mandatory retirement age if such action is taken pursuant to a bona fide retirement plan provided that" for "if prior to December 31, 1993", inserted "paramedic" and added a colon at the end and in the second paragraph substituted "the effective date of this amendatory Act of 1997" for "December 3, 1987 (the effective date of Public Act 85-949)"; added the subdivision (A)(7)(a) designation; in subdivision (A)(7)(a) substituted "or" for "and if such retirement action is taken pursuant to a bona fide retirement plan"; added subdivision (A)(7)(b); in subdivision (A)(8), in the introductory language deleted "or to discharge" preceding "any individual" and added a colon at the end, in the second paragraph inserted "(7) or", deleted "(a)" preceding "Firefighter/paramedic" and deleted "(b)" preceding "'Law enforcement officer" and deleted the third paragraph regarding the effective date of paragraph (8); added the present subdivision (A)(8)(a) designation; in subdivision (A)(8)(a) substituted "appointment" for "retirement", deleted "which provides a maximum age hiring limitation or for mandatory retirement, in effect" preceding "on", deleted "or before" preceding "March" and added "or" at the end; and added subdivision (A)(8)(b).

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, substituted "41 U.S.C. 701 et seq." for "11 U.S.C. 701 et seq." in (C)(3)(c).

CASE NOTES

Analysis

Age Discrimination
- Mandatory Retirement
- Rational Basis

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Applicability
Bona Fide Qualification
- Spouse as Supervisor
Construction With Other Law
Handicap Discrimination
- Burden of Proof
Job Applicant
- Arrest Record
Merit System
- Nondiscriminatory
Retirement System
- In General
- Cost Justification Requirement
- Secretary of State Investigators
- Subterfuge

Age Discrimination

- Mandatory Retirement

The mandatory retirement provision of 625 ILCS 5/2-115 providing for retirement of Secretary of State investigators at age 60 is inconsistent with the provisions of this Act, which is the controlling statute. State v. Mikusch, 138 Ill. 2d 242, 149 Ill. Dec. 704, 562 N.E.2d 168 (1990).

Subdivision (E)(1) of this section forbids compulsory retirement of tenured professors before they reach age 70. Board of Trustees v. Human Rights Comm'n, 88 Ill. 2d 22, 57 Ill. Dec. 844, 429 N.E.2d 1207 (1981).

This Act must be interpreted as barring mandatory retirement prior to age 70 of all employees except those specifically exempted; therefore the Act prohibits involuntary retirement on the basis of age. Board of Trustees v. Human Rights Comm'n, 88 Ill. 2d 22, 57 Ill. Dec. 844, 429 N.E.2d 1207 (1981).

- Rational Basis

Age is neither a suspect classification nor otherwise a basis for requiring states to supply an enhanced justification for their laws; however, Chicago may constitutionally select age 63 as a cap for retirement and there is a rational basis for treating sergeants differently from patrol officers. McCann v. City of Chicago, 968 F.2d 635 (7th Cir.), cert. denied, 506 U.S. 986, 113 S. Ct. 495, 121 L. Ed. 2d 432 (1992).

The bona fide qualification exception is applicable if an employer demonstrates that age is reasonably related to the essential operation of the job involved and if there is a factual basis for believing that all or substantially all persons above the age limit would be unable to properly perform the duties of the job, or that it is impossible or impracticable to determine job fitness on an individualized basis. State v. Mikusch, 138 Ill. 2d 242, 149 Ill. Dec. 704, 562 N.E.2d 168 (1990).

Local board of education was not under compulsion to hire the best objectively qualified person for any position, providing of course that discrimination was not the basis for its decision. Board of Educ. v. Illinois Fair Emp. Practices, 79 Ill. App. 3d 446, 34 Ill. Dec. 796, 398 N.E.2d 619 (2 Dist. 1979).

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Applicability

For a case discussing the applicability of subdivision (E)(1) of this section before it was repealed, see Board of Trustees v. Human Rights Comm'n, 88 Ill. 2d 22, 57 Ill. Dec. 844, 429 N.E.2d 1207 (1981).

Bona Fide Qualification

- Spouse as Supervisor

A school district policy which forbid transferring a teacher to a school where his or her spouse was the supervisor did not constitute a bona fide occupational qualification. River Bend Community Unit Sch. Dist. No. 2 v. Illinois Human Rights Comm'n, 232 Ill. App. 3d 838, 173 Ill. Dec. 868, 597 N.E.2d 842 (3 Dist.), cert. denied, 147 Ill. 2d 637, 180 Ill. Dec. 158, 606 N.E.2d 1235 (1992).

Construction With Other Law

The only reasonable construction to the interplay between 775 ILCS 5/8-111(C) and this section is that the General Assembly intended that the conduct described in this section was intended to constitute "reasonable exemption" from article I, section 17, of the Constitution. Baker v. Miller, 242 Ill. App. 3d 44, 182 Ill. Dec. 865, 610 N.E.2d 734 (4 Dist.), appeal granted, 152 Ill. 2d 554, 190 Ill. Dec. 883, 622 N.E.2d 1200 (1993), aff'd, 159 Ill. 2d 249, 201 Ill. Dec. 119, 636 N.E.2d 551 (1994).

Handicap Discrimination

- Burden of Proof

An employer will escape liability for handicap discrimination by showing that a complainant cannot perform the job, but the employer need not show that no one in the class can do the job. City of Belleville v. Human Rights Comm'n, 167 Ill. App. 3d 834, 118 Ill. Dec. 813, 522 N.E.2d 268 (5 Dist. 1988), appeal denied, 122 Ill. 2d 569, 125 Ill. Dec. 213, 530 N.E.2d 241 (1988).

Job Applicant

- Arrest Record

Building owners and managers, as a matter of law, did not owe tenant who was attacked by maintenance worker a duty to investigate worker's arrest record before hiring him to do maintenance work at apartment building; inquiring into a job applicant's arrests would be a civil rights violation, except where such inquiry relates to bona fide occupational qualifications, and worker's arrest record would tell an employer nothing regarding his ability to perform maintenance work. Ernst v. Parkshore Club Apts. Ltd. Partnership, 863 F. Supp. 651 (N.D. Ill. 1994).

Merit System

- Nondiscriminatory

Plaintiff received less compensation than her coworkers, not because of differences in their races, but because of a written nondiscriminatory merit system. Motley v. Illinois Human Rights Comm'n, 263 Ill. App. 3d 367, 200 Ill. Dec. 909, 636 N.E.2d 100 (4 Dist. 1994).

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Retirement System

- In General

Where complainants did not retire in the conventional sense of the word but were terminated because employer ceased its operations in this state, the employer's severance policies on its closure constituted a retirement system as they were designed to achieve the same result as would a traditional retirement system where severance policies, like a retirement plan, ensured that the employees received a source of income upon termination from their employment. Babcock & Wilcox Co. v. Department of Human Rights, 189 Ill. App. 3d 827, 137 Ill. Dec. 146, 545 N.E.2d 799 (2 Dist. 1989), appeal denied, 129 Ill. 2d 561, 140 Ill. Dec. 668, 550 N.E.2d 553, cert. denied, 497 U.S. 1004, 110 S. Ct. 3239, 111 L. Ed. 2d 750 (1990).

- Cost Justification Requirement

An employer need not meet a cost justification requirement to be eligible for a merit or retirement system exemption under subdivision (A)(5)(a) of this section. Babcock & Wilcox Co. v. Department of Human Rights, 189 Ill. App. 3d 827, 137 Ill. Dec. 146, 545 N.E.2d 799 (2 Dist. 1989), appeal denied, 129 Ill. 2d 561, 140 Ill. Dec. 668, 550 N.E.2d 553, cert. denied, 497 U.S. 1004, 110 S. Ct. 3239, 111 L. Ed. 2d 750 (1990).

- Secretary of State Investigators

Section 625 ILCS 5/2-115 which set a mandatory retirement age of 60 for Secretary of State investigators, was not intended as an exception to this section of the Human Rights Act. State v. Mikusch, 138 Ill. 2d 242, 149 Ill. Dec. 704, 562 N.E.2d 168 (1990).

- Subterfuge

A retirement system may be considered as a subterfuge for unlawful age discrimination only if an employee proves that the system was intended to discriminate in an aspect of the employment relation not related to fringe benefits. Babcock & Wilcox Co. v. Department of Human Rights, 189 Ill. App. 3d 827, 137 Ill. Dec. 146, 545 N.E.2d 799 (2 Dist. 1989), appeal denied, 129 Ill. 2d 561, 140 Ill. Dec. 668, 550 N.E.2d 553, cert. denied, 497 U.S. 1004, 110 S. Ct. 3239, 111 L. Ed. 2d 750 (1990).

LEGAL PERIODICALS

For note, "Kremer v. Chemical Construction Corp.: Federal-State Comity in Employment Discrimination," see 15 Loy. U. Chi. L.J. 121 (1983-84).

RESEARCH REFERENCES

"Bona fide employee benefit plan" exception to general prohibition of Age Discrimination in Employment Act (29 U.S.C.A. § 623(f)(2)(B)) as applied to plans other than early retirement incentive plans. 184 ALR Fed. 1

Application of state law to age discrimination in employment. 51 ALR5th 1.

Validity and operation of pre-employment drug testing - State cases. 96 ALR5th 485.

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Practice Guides and Treatises.

Conducting the Employment Practices Audit § 3.37 Criminal Background Checks (IICLE).

Conducting the Employment Practices Audit § 3.25 Drug/Alcohol Testing (IICLE).

Conducting the Employment Practices Audit § 3.24 Task-Oriented/Physical Fitness (IICLE).

Employment Discrimination § 11.13 Joint Apprenticeship Committees (IICLE).

Employment Discrimination § 4.115 Bona Fide Occupational Qualification (IICLE).

Employment Discrimination § 3.81 Substantive Provisions (IICLE).

1-8 Employment in Illinois § 8-4 Age Discrimination.

1-8 Employment in Illinois § 8-3 General Principles.

1-7 Employment in Illinois § 7-2 Drug and Alcohol Testing.

1-2 Employment in Illinois § 2-2 Discrimination.

Illinois Jurisprudence, Labor and Employment § 4:19 Other protected criteria.

Illinois Jurisprudence, Labor and Employment § 4:18 Illegal drug use by employee.

Illinois Jurisprudence, Labor and Employment § 4:15 Bona fide occupational qualifications.

§ 775 ILCS 5/2-105. Equal Employment Opportunities; Affirmative Action

Sec. 2-105. Equal Employment Opportunities; Affirmative Action. (A) Public Contracts. Every party to a public contract and every eligible bidder shall:

(1) Refrain from unlawful discrimination and discrimination based on citizenship status in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;

(2) Comply with the procedures and requirements of the Department's regulations concerning equal employment opportunities and affirmative action;

(3) Provide such information, with respect to its employees and applicants for employment, and assistance as the Department may reasonably request;

(4) Have written sexual harassment policies that shall include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) the vendor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Department and the Commission; (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation as provided by Section 6-101 of this Act [775 ILCS 5/6-101]. A copy of the policies shall be provided to the Department upon request.

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(B) State Agencies. Every State executive department, State agency, board, commission, and instrumentality shall:

(1) Comply with the procedures and requirements of the Department's regulations concerning equal employment opportunities and affirmative action;

(2) Provide such information and assistance as the Department may request.

(3) Establish, maintain, and carry out a continuing affirmative action plan consistent with this Act and the regulations of the Department designed to promote equal opportunity for all State residents in every aspect of agency personnel policy and practice. For purposes of these affirmative action plans, the race and national origin categories to be included in the plans are: American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander.

This plan shall include a current detailed status report:

(a) indicating, by each position in State service, the number, percentage, and average salary of individuals employed by race, national origin, sex and disability, and any other category that the Department may require by rule;

(b) identifying all positions in which the percentage of the people employed by race, national origin, sex and disability, and any other category that the Department may require by rule, is less than four-fifths of the percentage of each of those components in the State work force;

(c) specifying the goals and methods for increasing the percentage by race, national origin, sex and disability, and any other category that the Department may require by rule, in State positions;

(d) indicating progress and problems toward meeting equal employment opportunity goals, including, if applicable, but not limited to, Department of Central Management Services recruitment efforts, publicity, promotions, and use of options designating positions by linguistic abilities;

(e) establishing a numerical hiring goal for the employment of qualified persons with disabilities in the agency as a whole, to be based on the proportion of people with work disabilities in the Illinois labor force as reflected in the most recent decennial Census.

(4) If the agency has 1000 or more employees, appoint a full-time Equal Employment Opportunity officer, subject to the Department's approval, whose duties shall include:

(a) Advising the head of the particular State agency with respect to the preparation of equal employment opportunity programs, procedures, regulations, reports, and the agency's affirmative action plan.

(b) Evaluating in writing each fiscal year the sufficiency of the total agency program for equal employment opportunity and reporting thereon to the head of the agency with recommendations as to any improvement or correction in recruiting, hiring or promotion needed, including remedial or disciplinary action with respect to managerial or

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supervisory employees who have failed to cooperate fully or who are in violation of the program.

(c) Making changes in recruitment, training and promotion programs and in hiring and promotion procedures designed to eliminate discriminatory practices when authorized.

(d) Evaluating tests, employment policies, practices and qualifications and reporting to the head of the agency and to the Department any policies, practices and qualifications that have unequal impact by race, national origin as required by Department rule, sex or disability or any other category that the Department may require by rule, and to assist in the recruitment of people in underrepresented classifications. This function shall be performed in cooperation with the State Department of Central Management Services.

(e) Making any aggrieved employee or applicant for employment aware of his or her remedies under this Act.

In any meeting, investigation, negotiation, conference, or other proceeding between a State employee and an Equal Employment Opportunity officer, a State employee (1) who is not covered by a collective bargaining agreement and (2) who is the complaining party or the subject of such proceeding may be accompanied, advised and represented by (1) an attorney licensed to practice law in the State of Illinois or (2) a representative of an employee organization whose membership is composed of employees of the State and of which the employee is a member. A representative of an employee, other than an attorney, may observe but may not actively participate, or advise the State employee during the course of such meeting, investigation, negotiation, conference or other proceeding. Nothing in this Section shall be construed to permit any person who is not licensed to practice law in Illinois to deliver any legal services or otherwise engage in any activities that would constitute the unauthorized practice of law. Any representative of an employee who is present with the consent of the employee, shall not, during or after termination of the relationship permitted by this Section with the State employee, use or reveal any information obtained during the course of the meeting, investigation, negotiation, conference or other proceeding without the consent of the complaining party and any State employee who is the subject of the proceeding and pursuant to rules and regulations governing confidentiality of such information as promulgated by the appropriate State agency. Intentional or reckless disclosure of information in violation of these confidentiality requirements shall constitute a Class B misdemeanor.

(5) Establish, maintain and carry out a continuing sexual harassment program that shall include the following:

(a) Develop a written sexual harassment policy that includes at a minimum the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) the agency's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Department and the Commission; (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation as provided by Section 6-101 of this Act. The policy shall be reviewed annually.

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(b) Post in a prominent and accessible location and distribute in a manner to assure notice to all agency employees without exception the agency's sexual harassment policy. Such documents may meet, but shall not exceed, the 6th grade literacy level. Distribution shall be effectuated within 90 days of the effective date of this amendatory Act of 1992 and shall occur annually thereafter.

(c) Provide training on sexual harassment prevention and the agency's sexual harassment policy as a component of all ongoing or new employee training programs.

(6) Notify the Department 30 days before effecting any layoff. Once notice is given, the following shall occur:

(a) No layoff may be effective earlier than 10 working days after notice to the Department, unless an emergency layoff situation exists.

(b) The State executive department, State agency, board, commission, or instrumentality in which the layoffs are to occur must notify each employee targeted for layoff, the employee's union representative (if applicable), and the State Dislocated Worker Unit at the Department of Commerce and Economic Opportunity.

(c) The State executive department, State agency, board, commission, or instrumentality in which the layoffs are to occur must conform to applicable collective bargaining agreements.

(d) The State executive department, State agency, board, commission, or instrumentality in which the layoffs are to occur should notify each employee targeted for layoff that transitional assistance may be available to him or her under the Economic Dislocation and Worker Adjustment Assistance Act [29 USCS § 2101 et seq.] administered by the Department of Commerce and Economic Opportunity. Failure to give such notice shall not invalidate the layoff or postpone its effective date.

As used in this subsection (B), "disability" shall be defined in rules promulgated under the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.].

(C) Civil Rights Violations. It is a civil rights violation for any public contractor or eligible bidder to:

(1) fail to comply with the public contractor's or eligible bidder's duty to refrain from unlawful discrimination and discrimination based on citizenship status in employment under subsection (A)(1) of this Section; or

(2) fail to comply with the public contractor's or eligible bidder's duties of affirmative action under subsection (A) of this Section, provided however, that the Department has notified the public contractor or eligible bidder in writing by certified mail that the public contractor or eligible bidder may not be in compliance with affirmative action requirements of subsection (A). A minimum of 60 days to comply with the requirements shall be afforded to the public contractor or eligible bidder before the Department may issue formal notice of non-compliance.

(D) As used in this Section:

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(1) "American Indian or Alaska Native" means a person having origins in any of the original peoples of North and South America, including Central America, and who maintains tribal affiliation or community attachment.

(2) "Asian" means a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, but not limited to, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(3) "Black or African American" means a person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American".

(4) "Hispanic or Latino" means a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

(5) "Native Hawaiian or Other Pacific Islander" means a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(Source: P.A. 86-1004; 86-1343; 87-579; 87-116; 87-895; 87-1257, § 1; 88-498, § 15; 89-370, § 5; 91-178, § 5; 94-793, § 865; 97-396, § 85.)

Note.

This section was Ill.Rev.Stat., Ch. 68, Para. 2-105.

Section 995 of P.A. 94-793 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Illinois Administrative Code.

See 17 Illinois Administrative Code, §§ 3025.70, 3030.50, 3040.70, 3050.80.

Effect of Amendments. The 1992 amendment, effective July 1, 1993, added subdivision (A)(4); substituted "that the Department" for "which the Department" in subdivisions (B)(3)(a) through (B)(3)(c); added subdivision (B)(5); deleted the (5) designation at the beginning of the last undesignated paragraph in subsection (B); in the last paragraph of subsection (B) substituted "promulgated under" for "promulgated pursuant to"; and in subdivision (C)(2) substituted "60 days" for "sixty days".

The 1993 amendment by P.A. 88-498, effective July 1, 1994, in subdivision (B)(4), added the last paragraph.

The 1995 amendment by P.A. 89-370, effective August 18, 1995, and applicable to causes of action as specified in each Section or part of the Act, in subdivision (C)(2), in the first sentence, substituted "(A)" for "(A)(1)", deleted "and subsection (A)(2) and (A)(3) of this Section" preceding "provided however" and deleted from the end "(1) and with subsections (A)(2) and (A)(3) of this Section, and is given" and in the second sentence added at the end "shall be afforded to the public contractor or eligible bidder before the Department may issue formal notice of non-compliance".

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The 1999 amendment by P.A. 91-178, effective January 1, 2000, inserted subdivision (B)(6).

The 2006 amendment of P.A. 93-25 by revisory act P.A. 94-793, effective May 19, 2006, substituted references to "Governor's Office of Management and Budget" for references to "Bureau of the Budget", and substituted references to "Department of Commerce and Economic Opportunity" for references to "Department of Commerce and Community Affairs" throughout the Illinois Compiled Statutes.

The 2011 amendment by P.A. 97-396, effective January 1, 2012, substituted "American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander" for "African American, Hispanic or Latino, Native American, Asian, and any other category as required by Department rule" in the second sentence of the first paragraph of (B)(3); and added (D).

CASE NOTES

Analysis

Affirmative Action
Applicability
- Federal Preemption
Burden of Proof
Injunctive Relief
- Administrative Authority
- Pre-Enforcement Review
- Ripeness
Public Contracts
- Eligibility
Retaliatory Discrimination
- In General
- Jurisdiction
- Not Shown

Affirmative Action

The term "affirmative action," as it was used in section 4 of the former Fair Employment Act (see now this section), was not limited in its application to individual acts of discrimination in employment. Eastman Kodak Co. v. Fair Emp. Practices Comm'n, 86 Ill. 2d 60, 55 Ill. Dec. 552, 426 N.E.2d 877 (1981).

The obligation to take affirmative action imports more than the negative obligation not to discriminate. S. N. Nielsen Co. v. Public Bldg. Comm'n, 81 Ill. 2d 290, 43 Ill. Dec. 40, 410 N.E.2d 40 (1980).

Applicability

- Federal Preemption

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Title VII, 42 U.S.C. § 2000h-4, expressly disclaims any intent to preempt state action relating to affirmative action programs. Alfred Eng'g, Inc. v. Illinois Fair Emp. Practices Comm'n, 19 Ill. App. 3d 592, 312 N.E.2d 61 (4 Dist. 1974).

Burden of Proof

A complainant in a civil rights case need not present direct evidence of discrimination, but may meet his burden of proof by presenting evidence of a genuine issue of fact as to whether discrimination occurred. All Purpose Nursing Serv. v. Human Rights Comm'n, 205 Ill. App. 3d 816, 150 Ill. Dec. 717, 563 N.E.2d 844 (1 Dist. 1990).

Injunctive Relief

- Administrative Authority

The former Fair Employment Practices Commission did not exceed its authority in requiring appellant to submit a reasonable recruitment area and an affirmative action program following its determination that appellant was underutilizing minorities at one of its facilities. Eastman Kodak Co. v. Fair Emp. Practices Comm'n, 86 Ill. 2d 60, 55 Ill. Dec. 552, 426 N.E.2d 877 (1981).

- Pre-Enforcement Review

Where administrative and judicial review were available to the plaintiffs and all members of the class pursuant to the former Fair Employment Practices Act (see now 775 ILCS 5/7A-104 and 775 ILCS 5/8-111), they had an adequate remedy at law and pre-enforcement review of rules and regulations of the former Fair Employment Practices Commission promulgated pursuant to the former Fair Employment Practices Act was in error. Alfred Eng'g, Inc. v. Illinois Fair Emp. Practices Comm'n, 19 Ill. App. 3d 592, 312 N.E.2d 61 (4 Dist. 1974).

- Ripeness

In an action seeking to bar enforcement of rules and regulations of the former Fair Employment Practices Commission (now Human Rights Commission) purportedly promulgated pursuant to former sections 4 and 4A of the former Fair Employment Practices Act (see now this section) pertaining to affirmative action programs regarding public contracts, upon the issue of plaintiffs' standing to sue and ripeness for judicial determination, where the alleged immediate severity of the regulations' impact upon the plaintiffs in no way indicated pre-enforcement relief, and the feared injury was clearly prospective and it was neither severe nor immediate; therefore, the trial court's issuance of preliminary injunction was error. Alfred Eng'g, Inc. v. Illinois Fair Emp. Practices Comm'n, 19 Ill. App. 3d 592, 312 N.E.2d 61 (4 Dist. 1974).

Public Contracts

- Eligibility

Authorization for a Public Building Commission's minorities canvassing formula was found in the affirmative action provisions of the former Fair Employment Practices Act (see now this section); therefore, a contractor's affirmative action efforts were properly taken into account in determining whether that contractor was the lowest responsible bidder within the meaning of the Commission's bidding statute (50 ILCS 20/20). S. N. Nielsen Co. v. Public Bldg. Comm'n, 81 Ill. 2d 290, 43 Ill. Dec. 40, 410 N.E.2d 40 (1980).

A decision of the former Fair Employment Practices Commission (now Human Rights Commission) that an employer was not eligible for public contracts because its recruitment area was unreasonable within the rules and regulations promulgated under the former Fair

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Employment Practices Act (see now this section) was not against the manifest weight of the evidence. Eastman Kodak Co. v. Fair Emp. Practices Comm'n, 83 Ill. App. 3d 215, 38 Ill. Dec. 620, 403 N.E.2d 1224 (2 Dist. 1980).

Retaliatory Discrimination

- In General

Plaintiffs cannot state a cause of action for wrongful discharge outside the purview of this Act. Mein v. Masonite Corp., 124 Ill. App. 3d 617, 80 Ill. Dec. 154, 464 N.E.2d 1137 (1 Dist. 1984).

- Jurisdiction

Court lacked jurisdiction over a university employee's retaliation claims under 775 ILCS 5/2-105 and 6-101 of the Illinois Human Relations (IHR) Act; pursuant to 775 ILCS 5/8-111(B)-(C), the court could do nothing other than review or enforce final orders of the IHR Commission, and the employee did not seek review of any such order. Alexander v. Northeastern Ill. Univ., 586 F. Supp. 2d 905, 2008 U.S. Dist. LEXIS 48719 (N.D. Ill. 2008).

- Not Shown

Where plaintiff alleged in his complaint, grounded in the tort of wrongful discharge, that he was dismissed because of he was 55 years old, and not because of his conduct or activity, plaintiff's allegations of discrimination of the basis of his status were insufficient to support a cause of action for retaliatory discharge. Mein v. Masonite Corp., 124 Ill. App. 3d 617, 80 Ill. Dec. 154, 464 N.E.2d 1137 (1 Dist. 1984).

RESEARCH REFERENCES

Necessity of, and what constitutes, employer's reasonable accommodation of employee's religious preference under state law. 107 ALR5th 623.

Practice Guides and Treatises.

Employment Termination 2002 Ed., Updated 2005 § 15.13 Sexual Harassment Policy (IICLE).

Employment Discrimination § 11.10 Private Employers with Government Contracts (IICLE).

Employment Discrimination § 4.107 State Contractors (IICLE).

Employment Discrimination § 4.106 State Agencies (IICLE).

1-2 Employment in Illinois § 2-2 Discrimination.

1-8 Employment in Illinois § 8-5 Sex Discrimination, Pregnancy, Sexual Harassment, Marital Status, Sexual Preference.

Illinois Jurisprudence, Labor and Employment § 4:08 Compliance by State agencies.

Illinois Jurisprudence, Labor and Employment § 4:07 Applicability of Act to public contracts.

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Article 5A.

Elementary, Secondary, and Higher Education

§ 775 ILCS 5/5A-101. Definitions

Sec. 5A-101. Definitions. The following definitions are applicable strictly in the content of this Article, except that the term "sexual harassment in elementary, secondary, and higher education" as defined herein has the meaning herein ascribed to it whenever that term is used anywhere in this Act.

(A) Institution of Elementary, Secondary, or Higher Education. "Institution of elementary, secondary, or higher education" means: (1) a publicly or privately operated university, college, community college, junior college, business or vocational school, or other educational institution offering degrees and instruction beyond the secondary school level; or (2) a publicly or privately operated elementary school or secondary school.

(B) Degree. "Degree" means: (1) a designation, appellation, series of letters or words or other symbols which signifies or purports to signify that the recipient thereof has satisfactorily completed an organized academic, business or vocational program of study offered beyond the secondary school level; or (2) a designation signifying that the recipient has graduated from an elementary school or secondary school.

(C) Student. "Student" means any individual admitted to or applying for admission to an institution of elementary, secondary, or higher education, or enrolled on a full or part time basis in a course or program of academic, business or vocational instruction offered by or through an institution of elementary, secondary, or higher education.

(D) Elementary, Secondary, or Higher Education Representative. "Elementary, secondary, or higher education representative" means and includes the president, chancellor or other holder of any executive office on the administrative staff of an institution of higher education, an administrator of an elementary school or secondary school, a member of the faculty of an institution of higher education, including but not limited to a dean or associate or assistant dean, a professor or associate or assistant professor, and a full or part time instructor or visiting professor, including a graduate assistant or other student who is employed on a temporary basis of less than full time as a teacher or instructor of any course or program of academic, business or vocational instruction offered by or through an institution of higher education, and any teacher, instructor, or other employee of an elementary school or secondary school.

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(E) Sexual Harassment in Elementary, Secondary, and Higher Education. "Sexual harassment in elementary, secondary, and higher education" means any unwelcome sexual advances or requests for sexual favors made by an elementary, secondary, or higher education representative to a student, or any conduct of a sexual nature exhibited by an elementary, secondary, or higher education representative toward a student, when such conduct has the purpose of substantially interfering with the student's educational performance or creating an intimidating, hostile or offensive educational environment; or when the elementary, secondary, or higher education representative either explicitly or implicitly makes the student's submission to such conduct a term or condition of, or uses the student's submission to or rejection of such conduct as a basis for determining:

(1) Whether the student will be admitted to an institution of elementary, secondary, or higher education;

(2) The educational performance required or expected of the student;

(3) The attendance or assignment requirements applicable to the student;

(4) To what courses, fields of study or programs, including honors and graduate programs, the student will be admitted;

(5) What placement or course proficiency requirements are applicable to the student;

(6) The quality of instruction the student will receive;

(7) What tuition or fee requirements are applicable to the student;

(8) What scholarship opportunities are available to the student;

(9) What extracurricular teams the student will be a member of or in what extracurricular competitions the student will participate;

(10) Any grade the student will receive in any examination or in any course or program of instruction in which the student is enrolled;

(11) The progress of the student toward successful completion of or graduation from any course or program of instruction in which the student is enrolled; or

(12) What degree, if any, the student will receive.

(Source: P.A. 83-91; 96-1319, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 68, Para. 5A-101.

Effect of Amendments. The 2010 amendment by P.A. 96-1319, effective July 27, 2010, added "elementary, secondary, and" in the article heading; inserted "elementary, secondary, and" and "elementary, secondary, or" throughout the section; in (A) and (B), added the item (1) designation

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and added item (2) to the end; in (D), substituted "an administrator of an elementary school or secondary school, a member" for "and any member" and added "and any teacher, instructor, or other employee of an elementary school or secondary school" to the end; and made related and stylistic changes.

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 8:31 Sexual harassment in higher education.

§ 775 ILCS 5/5A-101.1. Notice

Sec. 5A-101.1. Notice. (A) Every institution of higher education covered by this Act shall post in a prominent and accessible location a poster stating sexual harassment laws and policies. The poster shall be (i) posted and kept posted at each campus in common area positions easily accessible to all students including, but not limited to residence halls, administration buildings, student unions, cafeterias, and libraries or (ii) posted annually at each campus in common area positions easily accessible to all students including, but not limited to, residence halls, administration buildings, student unions, cafeterias, and libraries, with an electronic copy of the sexual harassment laws and policies also sent to each student at the time that registration materials are emailed or (iii) on campuses that provide for online registration of student classes, such information pertaining to sexual harassment laws and policies may be incorporated into the registration process so that students must review the policies and laws and acknowledge such review, prior to being allowed to register. Documents to be posted shall be retrieved from the Illinois Department of Human Rights website to satisfy posting requirements. Posting of the posters shall be effectuated within 90 days of the effective date of this amendatory Act of the 96th General Assembly and shall occur annually thereafter.

(B) The posted sexual harassment poster shall include, at a minimum, the following information: (i) the illegality of sexual harassment in higher education; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) the institution's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Department of Human Rights; (vi) directions on how to contact the Department; and (vii) protection against retaliation as provided by Section 6-101 of this Act [775 ILCS 5/6-101].

(C) Upon notification of a failure to post, the Department of Human Rights may launch a preliminary investigation. If the Department finds a failure to post, the Department may issue a notice to show cause giving the institution 30 days to correct the failure to post. If the failure to post is not corrected, the Department may initiate a charge of a civil rights violation.

(Source: P.A. 96-574, § 5.)

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Effective Date. Section 99 of P.A. 96-574 purports to make this section effective August 1, 2009; however, P.A. 96-574 was approved August 18, 2009.

§ 775 ILCS 5/5A-102. Civil Rights Violations - Elementary, Secondary, and Higher Education

Sec. 5A-102. Civil Rights Violations - Elementary, Secondary, and Higher Education. It is a civil rights violation:

(A) Elementary, Secondary, or Higher Education Representative. For any elementary, secondary, or higher education representative to commit or engage in sexual harassment in elementary, secondary, or higher education.

(B) Institution of Elementary, Secondary, or Higher Education. For any institution of elementary, secondary, or higher education to fail to take remedial action, or to fail to take appropriate disciplinary action against an elementary, secondary, or higher education representative employed by such institution, when such institution knows that such elementary, secondary, or higher education representative was committing or engaging in or committed or engaged in sexual harassment in elementary, secondary, or higher education.

(Source: P.A. 83-91; 96-574, § 5; 96-1319, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 68, Para. 5A-102.

Effect of Amendments. The 2009 amendment by P.A. 96-574, effective August 1, 2009, made no changes.

The 2010 amendment by P.A. 96-1319, effective July 27, 2010, inserted "Elementary, Secondary, and" in the section heading; inserted "elementary, secondary, or" throughout (A) and (B); and made a stylistic change.

Article 6.

Additional Civil Rights Violations

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§ 775 ILCS 5/6-101. Additional Civil Rights Violations

Sec. 6-101. Additional Civil Rights Violations. It is a civil rights violation for a person, or for two or more persons to conspire, to:

(A) Retaliation. Retaliate against a person because he or she has opposed that which he or she reasonably and in good faith believes to be unlawful discrimination, sexual harassment in employment or sexual harassment in elementary, secondary, and higher education, discrimination based on citizenship status in employment, or because he or she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this Act;

(B) Aiding and Abetting; Coercion. Aid, abet, compel or coerce a person to commit any violation of this Act;

(C) Interference. Wilfully interfere with the performance of a duty or the exercise of a power by the Commission or one of its members or representatives or the Department or one of its officers or employees.

Definitions. For the purposes of this Section, "sexual harassment" and "citizenship status" shall have the same meaning as defined in Section 2-101 of this Act [775 ILCS 5/2-101].

(Source: P.A. 87-579; 96-1319, § 5; 97-333, § 600.)

Note.

This section was Ill.Rev.Stat., Ch. 68, Para. 6-101.

Section 995 of P.A. 97-333 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Illinois Administrative Code.

See 17 Illinois Administrative Code, §§ 3025.70, 3030.50, 3050.80.

Effect of Amendments. The 2010 amendment by P.A. 96-1319, effective July 27, 2010, inserted "elementary, secondary, and" in (A).

The 2011 revisory amendment by P.A. 97-333, effective August 12, 2011, deleted the (D) designation.

CASE NOTES

Analysis

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Aiding and Abetting
Burden of Proof
Civil Rights Violations
Preemption
Retaliation
- Common-Law Cause of Action
- Jurisdiction
- Not Shown
- Prima Facie Case
- Race
- Refusal to Hire
- Remedy
- Scope
- Shown
- Standard of Review

Aiding and Abetting

To the extent that defendants may have aided, abetted, compelled or coerced plaintiff's employer to discriminate against defendants on account of their age, they could have been liable to plaintiffs under this Act for committing a civil rights violation and this violation to plaintiffs under this Act thus provided plaintiffs with a remedy which they consciously chose not to pursue. Anderson v. Pistner, 148 Ill. App. 3d 616, 102 Ill. Dec. 9, 499 N.E.2d 566 (1 Dist. 1986).

Burden of Proof

Once a prima facie case of retaliation has been established, the employer must articulate a legitimate, nondiscriminatory reason for its decision to discharge the complaining former employee. Maye v. Illinois Human Rights Comm'n, 224 Ill. App. 3d 353, 166 Ill. Dec. 592, 586 N.E.2d 550 (1 Dist. 1991), cert. denied, 144 Ill. 2d 635, 169 Ill. Dec. 143, 591 N.E.2d 23 (1992).

Civil Rights Violations

Retaliation for filing a workers compensation claim was not a civil rights violation under the Illinois Human Rights Act, and, thus, the Illinois Human Rights Commission did not have jurisdiction over such a claim, which meant neither the doctrine of res judicata nor collateral estoppel barred the former employee's retaliatory discharge claim filed pursuant to the Workers' Compensation Act as the Illinois Human Rights Commission's limited subject matter jurisdiction meant it did not consider that claim when it ruled on the former employee's earlier claim that the former employee was discharged due to a handicap. Terry v. Watts Copy Sys., 329 Ill. App. 3d 382, 263 Ill. Dec. 708, 768 N.E.2d 789, 2002 Ill. App. LEXIS 297 (4 Dist. 2002), appeal denied, 218 Ill. 2d 558, 303 Ill. Dec. 9, 850 N.E.2d 814 (2006).

Preemption

Court denied a government official's motion to dismiss a former state employee's claim brought under § 15 of the State Officials and Employees Ethics Act, 5 ILCS 430/15 et seq., because the employee adequately pleaded acts of retaliation attributable to the official, and the employee's

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allegations of race discrimination and retaliation were not preempted by the Illinois Human Rights Act (IHRA), 775 ILCS 5/8-111(D), as the IHRA did not address retaliation for reporting non race-related violations of law or regulations, which the employee had clearly alleged under the State Ethics Act, 5 ILCS 430/15-10. Benjamin v. Ill. Dep't of Fin., 688 F. Supp. 2d 796, 2010 U.S. Dist. LEXIS 17726 (N.D. Ill. 2010).

University employee's retaliation claim under 740 ILCS 174/15 of the Illinois Whistleblower Act was preempted by the Illinois Human Relations (IHR) Act; the claim that the employee was retaliated against for complaining about sexual harassment was inextricably linked to matters covered by 775 ILCS 5/6-101 of the IHR Act. Alexander v. Northeastern Ill. Univ., 586 F. Supp. 2d 905, 2008 U.S. Dist. LEXIS 48719 (N.D. Ill. 2008).

Employee's retaliation claim was preempted by the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., because the employee's claim that the employee was terminated for supporting a co-worker's racial and sexual harassment claim was identical to the definition of a claim for retaliation under 775 ILCS 5/6-101, and therefore, was treated as a common law claim that was preempted by the Act; even if the claim was treated strictly as a 42 U.S.C. § 1981 claim, the result would have been the same, as the exclusivity of the remedy provided under the Act also extended to claims of civil rights violations brought under federal law. Blount v. Stroud, Ill. App. 3d , Ill. Dec. , N.E.2d , 2007 Ill. App. LEXIS 1073 (1 Dist. Sept. 28, 2007).

In a suit wherein a former employee alleged common law retaliatory discharge and a claim for retaliatory discharge under 42 U.S.C. § 1981, the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., preempted both claims and, therefore, the trial court lacked subject matter jurisdiction to entertain any of the civil rights claims.

Because a former employee's only theory of recovery on her intentional infliction of emotional distress claim sounded in retaliation, it was not an independent claim under 775 ILCS5/6-101(a), and was preempted. Thomas v. Habitat Co., 213 F. Supp. 2d 887, 2002 U.S. Dist. LEXIS 14362 (N.D. Ill. 2002).

Where plaintiff could not separate his state law claims from his claims of discrimination based on disability, this Act preempted the state law claim. Krocka v. Riegler, 958 F. Supp. 1333 (N.D. Ill. 1997), aff'd, 203 F.3d 507 (7th Cir. 2000).

Where plaintiff's complaint and brief showed her intentional infliction of emotional distress claim seemed to be based on retaliation by defendants and was therefore inextricably linked to her sexual harassment claims, this Act preempted the state law claim. Guy v. Illinois, 958 F. Supp. 1300 (N.D. Ill. 1997).

Retaliation

Court lacked jurisdiction over a university employee's retaliation claims under 775 ILCS 5/2-105 and 6-101 of the Illinois Human Relations (IHR) Act; pursuant to 775 ILCS 5/8-111(B)-(C), the court could do nothing other than review or enforce final orders of the IHR Commission, and the employee did not seek review of any such order. Alexander v. Northeastern Ill. Univ., 586 F. Supp. 2d 905, 2008 U.S. Dist. LEXIS 48719 (N.D. Ill. 2008).

- Common-Law Cause of Action

Plaintiff complaining under the Illinois Human Rights Act, having exhausted the administrative and judicial remedies provided for by that Act, may not then pursue a common-law cause of action for the same complaint. Johnson v. Baxter Healthcare Corp., 907 F. Supp. 271 (N.D. Ill. 1995).

- Jurisdiction

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Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., deprives Illinois circuit courts of subject matter jurisdiction over all civil rights claims, regardless of whether they are brought under state or federal law. With respect to the Illinois court system, jurisdiction over all of a civil rights plaintiff's claims exists only in the Illinois Human Rights Commission.

Where former employees alleged a retaliation claim under the Illinois Whistleblower Act, 740 ILCS 174/1 et seq., the court granted the former employer's motion to dismiss for lack of jurisdiction because the claim was preempted by the Illinois Human Rights Act, which provides a comprehensive scheme that is the exclusive source for the redress of human rights violations under Illinois law. Bell v. Lasalle Bank N.A./ABN AMRO N.A., F. Supp. 2d , 2005 U.S. Dist. LEXIS 382 (N.D. Ill. Jan. 10, 2005).

District court did not have jurisdiction over plaintiff's cause of action for intentional infliction of emotional distress because after removal of allegations referring to retaliation for assisting co-workers with sexual harassment complaints, a civil rights violation, nothing was left of the plaintiff's cause. Garcia v. Frye, 972 F. Supp. 1133 (N.D. Ill. 1997).

- Not Shown

Where a Mexican-American woman established a prima facie case of retaliation by showing that she was a competent television station employee who had filed a charge with the former Fair Employment Practices Commission (now Human Rights Commission) and was subsequently terminated, where her employer met its burden of proof by presenting ample evidence of proper cause for her termination, and where the employee did not establish that the cause was a pretext, the trial court did not err in determining that the finding of retaliatory discharge was against the manifest weight of the evidence. Weigel Broadcasting Co. v. Hammer, 67 Ill. App. 3d 805, 23 Ill. Dec. 904, 384 N.E.2d 811 (1 Dist. 1978).

- Prima Facie Case

To establish a prima facie case of retaliation under this Act, a plaintiff employee must show that: (1) he engaged in a protected activity, (2) the employer committed an adverse act against him, and (3) a causal nexus existed between the protected activity and the adverse act. Maye v. Illinois Human Rights Comm'n, 224 Ill. App. 3d 353, 166 Ill. Dec. 592, 586 N.E.2d 550 (1 Dist. 1991), cert. denied, 144 Ill. 2d 635, 169 Ill. Dec. 143, 591 N.E.2d 23 (1992).

A prima facie case of retaliatory discharge can be established by showing a short span between the time a competent employee filed a discrimination charge and the time of the employer's adverse action. State v. Human Rights Comm'n, 178 Ill. App. 3d 1033, 128 Ill. Dec. 141, 534 N.E.2d 161 (4 Dist. 1989); Maye v. Illinois Human Rights Comm'n, 224 Ill. App. 3d 353, 166 Ill. Dec. 592, 586 N.E.2d 550 (1 Dist. 1991), cert. denied, 144 Ill. 2d 635, 169 Ill. Dec. 143, 591 N.E.2d 23 (1992).

An employee of the Department of Corrections (DOC) established a prima facie case of unlawful retaliatory discrimination where the record established that she opposed the sexual harassment she was subjected to by making repeated complaints to DOC personnel and her supervisor, then filed a charge of discrimination with the Department of Human Rights, and, shortly after DOC received notice of the charge, she was discharged. State v. Human Rights Comm'n, 178 Ill. App. 3d 1033, 128 Ill. Dec. 141, 534 N.E.2d 161 (4 Dist. 1989).

Where employee alleged discrimination based on both race and retaliation, a prima facie case of discrimination based on retaliation was established by showing a short time span between the filing of the charge and employer's adverse action. Loyola Univ. v. Human Rights Comm'n, 149 Ill. App. 3d 8, 102 Ill. Dec. 746, 500 N.E.2d 639 (1 Dist. 1986).

- Race

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Evidence demonstrated that employee's alleged illegal tape recording of conversations was not the true reason underlying her discharge and that it was only a pretext, where highly questionable circumstances surrounded the alleged tape recording of the supervisor's conversation, where the employer confiscated and failed to produce the tape, and, where at the disciplinary hearing that followed, none of the witnesses were sworn and a court reporter was not permitted to be present. State v. Human Rights Comm'n, 178 Ill. App. 3d 1033, 128 Ill. Dec. 141, 534 N.E.2d 161 (4 Dist. 1989).

- Refusal to Hire

A cause of action may be established if an employer refuses to hire a person because that person has previously filed a charge of discrimination against a former employer. Carter Coal Co. v. Human Rights Comm'n, 261 Ill. App. 3d 1, 198 Ill. Dec. 740, 633 N.E.2d 202 (5 Dist.), appeal denied, 157 Ill. 2d 496, 205 Ill. Dec. 158, 642 N.E.2d 1275 (1994).

- Remedy

The remedies provided by this Act are exclusive; therefore, the U.S. District Court refused to imply an independent cause of action for retaliatory discharge. Stoecklein v. Illinois Tool Works, Inc., 589 F. Supp. 139 (N.D. Ill. 1984).

Where both federal and state law specifically provided that it was an unlawful employment practice to discharge an employee in retaliation for his opposition to unlawful employment practices, and where both federal and state law established exclusive remedies for the enforcement of their terms and the corresponding vindication of the public policies involved, the federal district did not imply an independent cause of action. Brudnicki v. GE Co., 535 F. Supp. 84 (N.D. Ill. 1982).

- Scope

This section protects a person from retaliation for making a charge under the Illinois Human Rights Act regardless of whether the charge is meritorious or otherwise able to survive a motion to dismiss for lack of subject matter jurisdiction; once a person has made a charge under the Act, regardless of the ultimate disposition, he is protected from retaliation therefor. Dana Tank Container, Inc. v. Human Rights Comm'n, 292 Ill. App. 3d 1022, 227 Ill. Dec. 179, 687 N.E.2d 102 (1 Dist. 1997).

The employer was liable on employee's retaliation claim, even though the employee's initial action, for discrimination, was dismissed for lack of subject matter jurisdiction because the employer did not fit the statutory definition of "employer"; this section expressly prohibits a "person" from retaliating against another person, and a "person," as defined in the Illinois Human Rights Act, can include an employer with fewer than 15 employees. Dana Tank Container, Inc. v. Human Rights Comm'n, 292 Ill. App. 3d 1022, 227 Ill. Dec. 179, 687 N.E.2d 102 (1 Dist. 1997).

Retaliation for failure to persuade another employee to drop sexual harassment charges is a civil rights violation. ISS Int'l Serv. Sys. v. Illinois Human Rights Comm'n, 272 Ill. App. 3d 969, 209 Ill. Dec. 414, 651 N.E.2d 592 (1 Dist. 1995), appeal dismissed without op., 164 Ill. 2d 565, 214 Ill. Dec. 321, 660 N.E.2d 1270 (1995).

"Retaliation" in subsection (A) includes the refusal to hire or the discharge of a person because that person had filed a discrimination charge against another entity. Carter Coal Co. v. Human Rights Comm'n, 261 Ill. App. 3d 1, 198 Ill. Dec. 740, 633 N.E.2d 202 (5 Dist.), appeal denied, 157 Ill. 2d 496, 205 Ill. Dec. 158, 642 N.E.2d 1275 (1994).

- Shown

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Human Rights Commission's decision that discharge was not retaliatory was held to be against manifest weight of evidence. Maye v. Illinois Human Rights Comm'n, 224 Ill. App. 3d 353, 166 Ill. Dec. 592, 586 N.E.2d 550 (1 Dist. 1991), cert. denied, 144 Ill. 2d 635, 169 Ill. Dec. 143, 591 N.E.2d 23 (1992).

- Standard of Review

For a case discussing the standard of review for a case of retaliation under the former Fair Employment Practices Commission (now Human Rights Commission), see Weigel Broadcasting Co. v. Hammer, 67 Ill. App. 3d 805, 23 Ill. Dec. 904, 384 N.E.2d 811 (1 Dist. 1978).

RESEARCH REFERENCES

Liability for discharging at-will employee for refusing to participate in, or for disclosing, unlawful or unethical acts of employer or coemployers. 9 ALR4th 329.

Right to jury trial in action for retaliatory discharge from employment. 52 ALR4th 1141.

Practice Guides and Treatises.

Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 20.11 Related Actions (IICLE).

Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 20.10 Affirmative Defense Specific to Cause of Action (IICLE).

Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 20.8 Remedies - Special Issues (IICLE).

Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 20.7 Special Considerations (IICLE).

Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 20.6 Parties (IICLE).

Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 20.3 Elements (IICLE).

Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 20.2 What Law Controls (IICLE).

Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 20.1 Cause of Action (IICLE).

Employment Discrimination § 11.11 Private Individuals (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 8:33 Aiding and abetting, coercion, and willful interference.

Illinois Jurisprudence, Personal Injury and Torts § 8:32 Retaliation.

Illinois Jurisprudence, Personal Injury and Torts § 7:10 Sexual and asexual contact.

Illinois Jurisprudence, Labor and Employment § 4:37 Aiding, abetting, or compelling violation of Act; interference with Human Rights Department or Commission.

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Illinois Jurisprudence, Labor and Employment § 4:36 Retaliation.

Illinois Jurisprudence, Labor and Employment § 4:04 Who is "employer" under Act.

Illinois Jurisprudence, Labor and Employment § 1:21 Whistleblowing; reporting matters to authorities.

Practice Forms.

Sample Form: Complaint - Retaliatory Discharge, Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 20.12 (IICLE).

Practice Checklists.

Checklist for Complaint, Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 20.9

§ 775 ILCS 5/6-102. Violations of other Acts

Sec. 6-102. Violations of other Acts. A person who violates the Military Leave of Absence Act [5 ILCS 325/0.01 et seq.], the Public Employee Armed Services Rights Act [5 ILCS 330/1 et seq.], Section 11-117-12.2 of the Illinois Municipal Code [65 ILCS 5/11-117-12.2], Section 224.05 of the Illinois Insurance Code [215 ILCS 5/224.05], Section 8-201.5 of the Public Utilities Act [220 ILCS 5/8-201.5], Section 9-107.10 of the Code of Civil Procedure [735 ILCS 5/9-107.10], Section 4.05 of the Interest Act [35 ILCS 735/4.05], the Military Personnel Cellular Phone Contract Termination Act [815 ILCS 633/1 et seq.], or Section 37 of the Motor Vehicle Leasing Act [815 ILCS 636/1 et seq.] commits a civil rights violation within the meaning of this Act.

(Source: P.A. 95-392, § 35.)

Effective Date. Section 99 of P.A. 95-392 made this section effective upon becoming law. The Act was approved August 23, 2007.

Article 7A.

Department of Human Rights: Procedures under Articles 2, 4, 5, 5A and 6

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§ 775 ILCS 5/7A-101. [Applicability]

Sec. 7A-101. The procedures specified in this Article shall apply solely to Articles 2, 4, 5, 5A and 6 [775 ILCS 5/2-101 et seq., 775 ILCS 5/4-101 et seq., 775 ILCS 5/5-101 et seq., 775 ILCS 5/5A-101 et seq. and 775 ILCS 5/6-101 et seq.].

(Source: P.A. 86-910.)

Note.

This section was Ill.Rev.Stat., Ch. 68, Para. 7A-101.

LEGAL PERIODICALS

For article, "A General Practioner's Guide to Employment-Based Claims," see 84 Ill. B.J. 524 (1996).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 8:45 Generally; investigatory nature of proceedings.

§ 775 ILCS 5/7A-102. Procedures

Sec. 7A-102. Procedures. (A) Charge.

(1) Within 180 days after the date that a civil rights violation allegedly has been committed, a charge in writing under oath or affirmation may be filed with the Department by an aggrieved party or issued by the Department itself under the signature of the Director.

(2) The charge shall be in such detail as to substantially apprise any party properly concerned as to the time, place, and facts surrounding the alleged civil rights violation.

(3) Charges deemed filed with the Department pursuant to subsection (A-1) of this Section shall be deemed to be in compliance with this subsection.

(A-1) Equal Employment Opportunity Commission Charges.

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(1) If a charge is filed with the Equal Employment Opportunity Commission (EEOC) within 180 days after the date of the alleged civil rights violation, the charge shall be deemed filed with the Department on the date filed with the (EEOC). If the EEOC is the governmental agency designated to investigate the charge first, the Department shall take no action until the EEOC makes a determination on the charge and after the complainant notifies the Department of the EEOC's determination. In such cases, after receiving notice from the EEOC that a charge was filed, the Department shall notify the parties that (i) a charge has been received by the EEOC and has been sent to the Department for dual filing purposes; (ii) the EEOC is the governmental agency responsible for investigating the charge and that the investigation shall be conducted pursuant to the rules and procedures adopted by the EEOC; (iii) it will take no action on the charge until the EEOC issues its determination; (iv) the complainant must submit a copy of the EEOC's determination within 30 days after service of the determination by the EEOC on complainant; and (v) that the time period to investigate the charge contained in subsection (G) of this Section is tolled from the date on which the charge is filed with the EEOC until the EEOC issues its determination.

(2) If the EEOC finds reasonable cause to believe that there has been a violation of federal law and if the Department is timely notified of the EEOC's findings by complainant, the Department shall notify complainant that the Department has adopted the EEOC's determination of reasonable cause and that complainant has the right, within 90 days after receipt of the Department's notice, to either file his or her own complaint with the Illinois Human Rights Commission or commence a civil action in the appropriate circuit court or other appropriate court of competent jurisdiction. The Department's notice to complainant that the Department has adopted the EEOC's determination of reasonable cause shall constitute the Department's Report for purposes of subparagraph (D) of this Section.

(3) For those charges alleging violations within the jurisdiction of both the EEOC and the Department and for which the EEOC either (i) does not issue a determination, but does issue the complainant a notice of a right to sue, including when the right to sue is issued at the request of the complainant, or (ii) determines that it is unable to establish that illegal discrimination has occurred and issues the complainant a right to sue notice, and if the Department is timely notified of the EEOC's determination by complainant, the Department shall notify the parties that the Department will adopt the EEOC's determination as a dismissal for lack of substantial evidence unless the complainant requests in writing within 35 days after receipt of the Department's notice that the Department review the EEOC's determination.

(a) If the complainant does not file a written request with the Department to review the EEOC's determination within 35 days after receipt of the Department's notice, the Department shall notify complainant that the decision of the EEOC has been adopted by the Department as a dismissal for lack of substantial evidence and that the complainant has the right, within 90 days after receipt of the Department's notice, to commence a civil action in the appropriate circuit court or other appropriate court of competent jurisdiction. The Department's notice to complainant that the Department has adopted the EEOC's determination shall constitute the Department's report for purposes of subparagraph (D) of this Section.

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(b) If the complainant does file a written request with the Department to review the EEOC's determination, the Department shall review the EEOC's determination and any evidence obtained by the EEOC during its investigation. If, after reviewing the EEOC's determination and any evidence obtained by the EEOC, the Department determines there is no need for further investigation of the charge, the Department shall issue a report and the Director shall determine whether there is substantial evidence that the alleged civil rights violation has been committed pursuant to subsection (D) of Section 7A-102 [775 ILCS 5/7A-102]. If, after reviewing the EEOC's determination and any evidence obtained by the EEOC, the Department determines there is a need for further investigation of the charge, the Department may conduct any further investigation it deems necessary. After reviewing the EEOC's determination, the evidence obtained by the EEOC, and any additional investigation conducted by the Department, the Department shall issue a report and the Director shall determine whether there is substantial evidence that the alleged civil rights violation has been committed pursuant to subsection (D) of Section 7A-102 of this Act.

(4) Pursuant to this Section, if the EEOC dismisses the charge or a portion of the charge of discrimination because, under federal law, the EEOC lacks jurisdiction over the charge, and if, under this Act, the Department has jurisdiction over the charge of discrimination, the Department shall investigate the charge or portion of the charge dismissed by the EEOC for lack of jurisdiction pursuant to subsections (A), (A-1), (B), (B-1), (C), (D), (E), (F), (G), (H), (I), (J), and (K) of Section 7A-102 of this Act.

(5) The time limit set out in subsection (G) of this Section is tolled from the date on which the charge is filed with the EEOC to the date on which the EEOC issues its determination.

(B) Notice and Response to Charge. The Department shall, within 10 days of the date on which the charge was filed, serve a copy of the charge on the respondent. This period shall not be construed to be jurisdictional. The charging party and the respondent may each file a position statement and other materials with the Department regarding the charge of alleged discrimination within 60 days of receipt of the notice of the charge. The position statements and other materials filed shall remain confidential unless otherwise agreed to by the party providing the information and shall not be served on or made available to the other party during pendency of a charge with the Department. The Department shall require the respondent to file a verified response to the allegations contained in the charge within 60 days of receipt of the notice of the charge. The respondent shall serve a copy of its response on the complainant or his representative. All allegations contained in the charge not timely denied by the respondent shall be deemed admitted, unless the respondent states that it is without sufficient information to form a belief with respect to such allegation. The Department may issue a notice of default directed to any respondent who fails to file a verified response to a charge within 60 days of receipt of the notice of the charge, unless the respondent can demonstrate good cause as to why such notice should not issue. The term "good cause" shall be defined by rule promulgated by the Department. Within 30 days of receipt of the respondent's response, the complainant may file a reply to said response and shall serve a copy of said reply on the respondent or his representative. A party shall have the right to supplement his response or reply at any time that the investigation of the charge is pending. The

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Department shall, within 10 days of the date on which the charge was filed, and again no later than 335 days thereafter, send by certified or registered mail written notice to the complainant and to the respondent informing the complainant of the complainant's right to either file a complaint with the Human Rights Commission or commence a civil action in the appropriate circuit court under subparagraph (2) of paragraph (G), including in such notice the dates within which the complainant may exercise this right. In the notice the Department shall notify the complainant that the charge of civil rights violation will be dismissed with prejudice and with no right to further proceed if a written complaint is not timely filed with the Commission or with the appropriate circuit court by the complainant pursuant to subparagraph (2) of paragraph (G) or by the Department pursuant to subparagraph (1) of paragraph (G).

(B-1) Mediation. The complainant and respondent may agree to voluntarily submit the charge to mediation without waiving any rights that are otherwise available to either party pursuant to this Act and without incurring any obligation to accept the result of the mediation process. Nothing occurring in mediation shall be disclosed by the Department or admissible in evidence in any subsequent proceeding unless the complainant and the respondent agree in writing that such disclosure be made.

(C) Investigation.

(1) After the respondent has been notified, the Department shall conduct a full investigation of the allegations set forth in the charge.

(2) The Director or his or her designated representatives shall have authority to request any member of the Commission to issue subpoenas to compel the attendance of a witness or the production for examination of any books, records or documents whatsoever.

(3) If any witness whose testimony is required for any investigation resides outside the State, or through illness or any other good cause as determined by the Director is unable to be interviewed by the investigator or appear at a fact finding conference, his or her testimony or deposition may be taken, within or without the State, in the same manner as is provided for in the taking of depositions in civil cases in circuit courts.

(4) Upon reasonable notice to the complainant and the respondent, the Department shall conduct a fact finding conference, unless prior to 365 days after the date on which the charge was filed the Director has determined whether there is substantial evidence that the alleged civil rights violation has been committed, the charge has been dismissed for lack of jurisdiction, or the parties voluntarily and in writing agree to waive the fact finding conference. Any party's failure to attend the conference without good cause shall result in dismissal or default. The term "good cause" shall be defined by rule promulgated by the Department. A notice of dismissal or default shall be issued by the Director. The notice of default issued by the Director shall notify the respondent that a request for review may be filed in writing with the Commission within 30 days of receipt of notice of default. The notice of dismissal issued by the Director shall give the complainant notice of his or her right to seek review of the dismissal before the Human Rights Commission or commence a civil action in the appropriate circuit court. If the complainant chooses to have the Human Rights Commission review the dismissal order, he or she shall file a request for review with the Commission within 90 days after receipt of the Director's

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notice. If the complainant chooses to file a request for review with the Commission, he or she may not later commence a civil action in a circuit court. If the complainant chooses to commence a civil action in a circuit court, he or she must do so within 90 days after receipt of the Director's notice.

(D) Report.

(1) Each charge shall be the subject of a report to the Director. The report shall be a confidential document subject to review by the Director, authorized Department employees, the parties, and, where indicated by this Act, members of the Commission or their designated hearing officers.

(2) Upon review of the report, the Director shall determine whether there is substantial evidence that the alleged civil rights violation has been committed. The determination of substantial evidence is limited to determining the need for further consideration of the charge pursuant to this Act and includes, but is not limited to, findings of fact and conclusions, as well as the reasons for the determinations on all material issues. Substantial evidence is evidence which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance.

(3) If the Director determines that there is no substantial evidence, the charge shall be dismissed by order of the Director and the Director shall give the complainant notice of his or her right to seek review of the dismissal order before the Commission or commence a civil action in the appropriate circuit court. If the complainant chooses to have the Human Rights Commission review the dismissal order, he or she shall file a request for review with the Commission within 90 days after receipt of the Director's notice. If the complainant chooses to file a request for review with the Commission, he or she may not later commence a civil action in a circuit court. If the complainant chooses to commence a civil action in a circuit court, he or she must do so within 90 days after receipt of the Director's notice.

(4) If the Director determines that there is substantial evidence, he or she shall notify the complainant and respondent of that determination. The Director shall also notify the parties that the complainant has the right to either commence a civil action in the appropriate circuit court or request that the Department of Human Rights file a complaint with the Human Rights Commission on his or her behalf. Any such complaint shall be filed within 90 days after receipt of the Director's notice. If the complainant chooses to have the Department file a complaint with the Human Rights Commission on his or her behalf, the complainant must, within 30 days after receipt of the Director's notice, request in writing that the Department file the complaint. If the complainant timely requests that the Department file the complaint, the Department shall file the complaint on his or her behalf. If the complainant fails to timely request that the Department file the complaint, the complainant may file his or her complaint with the Commission or commence a civil action in the appropriate circuit court. If the complainant files a complaint with the Human Rights Commission, the complainant shall give notice to the Department of the filing of the complaint with the Human Rights Commission.

(E) Conciliation.

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(1) When there is a finding of substantial evidence, the Department may designate a Department employee who is an attorney licensed to practice in Illinois to endeavor to eliminate the effect of the alleged civil rights violation and to prevent its repetition by means of conference and conciliation.

(2) When the Department determines that a formal conciliation conference is necessary, the complainant and respondent shall be notified of the time and place of the conference by registered or certified mail at least 10 days prior thereto and either or both parties shall appear at the conference in person or by attorney.

(3) The place fixed for the conference shall be within 35 miles of the place where the civil rights violation is alleged to have been committed.

(4) Nothing occurring at the conference shall be disclosed by the Department unless the complainant and respondent agree in writing that such disclosure be made.

(5) The Department's efforts to conciliate the matter shall not stay or extend the time for filing the complaint with the Commission or the circuit court.

(F) Complaint.

(1) When the complainant requests that the Department file a complaint with the Commission on his or her behalf, the Department shall prepare a written complaint, under oath or affirmation, stating the nature of the civil rights violation substantially as alleged in the charge previously filed and the relief sought on behalf of the aggrieved party. The Department shall file the complaint with the Commission.

(2) If the complainant chooses to commence a civil action in a circuit court, he or she must do so in the circuit court in the county wherein the civil rights violation was allegedly committed. The form of the complaint in any such civil action shall be in accordance with the Illinois Code of Civil Procedure [735 ILCS 5/1-101 et seq.].

(G) Time Limit.

(1) When a charge of a civil rights violation has been properly filed, the Department, within 365 days thereof or within any extension of that period agreed to in writing by all parties, shall issue its report as required by subparagraph (D). Any such report shall be duly served upon both the complainant and the respondent.

(2) If the Department has not issued its report within 365 days after the charge is filed, or any such longer period agreed to in writing by all the parties, the complainant shall have 90 days to either file his or her own complaint with the Human Rights Commission or commence a civil action in the appropriate circuit court. If the complainant files a complaint with the Commission, the form of the complaint shall be in accordance with the provisions of paragraph (F) (1). If the complainant commences a civil action in a circuit court, the form of the complaint shall be in accordance with the Illinois Code of Civil Procedure. The aggrieved party shall notify the Department that a complaint has been filed and shall serve a copy of the complaint on the Department on the same date that the complaint is filed with the Commission or in circuit court. If the complainant

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files a complaint with the Commission, he or she may not later commence a civil action in circuit court.

(3) If an aggrieved party files a complaint with the Human Rights Commission or commences a civil action in circuit court pursuant to paragraph (2) of this subsection, or if the time period for filing a complaint has expired, the Department shall immediately cease its investigation and dismiss the charge of civil rights violation. Any final order entered by the Commission under this Section is appealable in accordance with paragraph (B)(1) of Section 8-111 [775 ILCS 5/8-111]. Failure to immediately cease an investigation and dismiss the charge of civil rights violation as provided in this paragraph (3) constitutes grounds for entry of an order by the circuit court permanently enjoining the investigation. The Department may also be liable for any costs and other damages incurred by the respondent as a result of the action of the Department.

(4) The Department shall stay any administrative proceedings under this Section after the filing of a civil action by or on behalf of the aggrieved party under any federal or State law seeking relief with respect to the alleged civil rights violation.

(H) This amendatory Act of 1995 applies to causes of action filed on or after January 1, 1996.

(I) This amendatory Act of 1996 applies to causes of action filed on or after January 1, 1996.

(J) The changes made to this Section by Public Act 95-243 apply to charges filed on or after the effective date of those changes.

(K) The changes made to this Section by this amendatory Act of the 96th General Assembly [P.A. 96-876] apply to charges filed on or after the effective date of those changes.

(Source: P.A. 86-910; 89-370, § 5; 89-520, § 5; 94-146, § 5; 94-326, § 5; 94-857, § 5; 95-243, § 5; 96-876, § 5; 97-22, § 5; 97-596, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 68, Para. 7A-102.

Section 90 of P.A. 96-876 reads: "Section 7-101.1 of the Illinois Human Rights Act, as it existed immediately before its repeal by Public Act 95-243, applies to charges that were filed under that Act before January 1, 2008 and were pending on that date."

Effect of Amendments. The 1995 amendment by P.A. 89-370, effective August 18, 1995, and applicable to causes of action as specified in each Section or part of the Act, rewrote the section.

The 1996 amendment by P.A. 89-520, effective July 18, 1996, in subsection (B), in the fifth sentence, inserted "of the notice"; in subdivision (G)(3) added the second sentence; and added subsection (I).

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The 2005 amendment by P.A. 94-146, effective July 8, 2005, in (D)(2) deleted "and questions of credibility" from the end of the second sentence.

The 2005 amendment by P.A. 94-326, effective July 26, 2005, substituted "may issue" for "shall issue" in the seventh sentence, and added the eighth sentence in (B).

The 2006 amendment by P.A. 94-857, effective June 15, 2006, added (A-1); and added the last sentence to (C)(1), (D)(2), and (G)(1).

The 2007 amendment by P.A. 95-243, effective January 1, 2008, rewrote the section.

The 2010 amendment by P.A. 96-876, effective February 2, 2010, in (2)(C)(4), substituted "The notice of default issued by the Director shall notify the respondent" for "and shall notify the relevant party", deleted "dismissal or" following "30 days of receipt of notice of", and added the last 4 sentences; in (D)(4), substituted "file his or her complaint with the Commission or commence" for "only commence", and added the last sentence; substituted "90 days" for "30 days" in (D)(3); substituted "Public Act 95-243" for "this amendatory Act of the 95th General Assembly" in (J); and added (K).

The 2011 amendment by P.A. 97-22, effective January 1, 2012, in (C)(4), in the first sentence, inserted "unless," deleted "unless" following "was filed," and added "or the parties voluntarily and in writing agree to waive the fact finding conference" to the end and deleted the former second sentence, which read: "If the parties agree in writing, the fact finding conference may be held at a time after the 365 day limit"; and made related changes.

The 2011 amendment by P.A. 97-596, effective August 26, 2011, added (A)(3); and rewrote (A-1).

This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor.

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Constitutionality

The amendments by P.A. 89-370 still provide the same benefits from the informal procedures before the Department and other chief legal counsel as were derived from the informal procedures before the Department and Commission prior to the amendments and the counsel's power to review without holding a formal hearing protects the strong state interest in having a simple, nonadversarial process to determine whether a discrimination charge has sufficient merit to warrant further adjudicative proceedings under the Act; therefore there is no due process violation. Folbert v. Department of Human Rights, 303 Ill. App. 3d 13, 236 Ill. Dec. 463, 707 N.E.2d 590 (1 Dist. 1999).

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The fact that chief legal counsel, under amendments by P.A. 89-370, now reviews the Department finding, instead of the Commission, does not in any way change the nature of the investigative proceedings before the Department or its investigative role; consequently petitioner is not entitled to the full panoply of the due process rights guaranteed in a judicial proceeding. Folbert v. Department of Human Rights, 303 Ill. App. 3d 13, 236 Ill. Dec. 463, 707 N.E.2d 590 (1 Dist. 1999).

The amendments by P.A. 89-370 do not provide separate treatment or classification for claimants based on their individual sex, race or age but allows dismissal based on claimant's failure to present substantial evidence to the Department of a civil rights violation. Folbert v. Department of Human Rights, 303 Ill. App. 3d 13, 236 Ill. Dec. 463, 707 N.E.2d 590 (1 Dist. 1999).

The change in procedure by P.A. 89-370 which required that dismissals be reviewed by chief legal counsel of the Department rather than the Human Rights Commission, does not deny equal protection of the law by treating employees differently than employers; the amendment did not change the essential distinction between an investigative agency, the Department, and an adjudicative agency, the Commission. Folbert v. Department of Human Rights, 303 Ill. App. 3d 13, 236 Ill. Dec. 463, 707 N.E.2d 590 (1 Dist. 1999).

The amendments by P.A. 89-370 requiring review of dismissals for lack of substantial claim to be done by chief legal counsel of the Department is rationally related to a legitimate state goal, to address the backlog of cases by providing a more efficient and timely mechanism to review claims, and therefore does not violate equal protection. Folbert v. Department of Human Rights, 303 Ill. App. 3d 13, 236 Ill. Dec. 463, 707 N.E.2d 590 (1 Dist. 1999).

In General

The consideration of the denial of a charge of lack of substantial evidence need not be restricted to the prima facie prong. Webb v. Lustig, 298 Ill. App. 3d 695, 233 Ill. Dec. 119, 700 N.E.2d 220 (4 Dist. 1998), appeal denied, 182 Ill. 2d 573, 236 Ill. Dec. 676, 707 N.E.2d 1246 (1999).

Applicability

Court concluded the regarding the Illinois Human Rights Act (IHRA) count, although the employee could not rely upon former Ill. Rev. Stat. ch. 68, para. 9-102(B) (now 775 ILCS 5/9-102), which had been declared unconstitutional, the employee could protect her property interest in her discrimination claim by proceeding under two other articles of the IHRA, former Ill. Rev. Stat. ch. 68, para. 7-102 and 8-102 (now 775 ILCS 5/7A-102 and 5/8-102). Sauers v. Woodstock, 113 Ill. App. 3d 892, 68 Ill. Dec. 725, 446 N.E.2d 896, 1983 Ill. App. LEXIS 1667 (1 Dist. 1983).

- Retroactive

Dismissal of an employer's complaint appealing a ruling by the Illinois Department of Human Rights was proper under 735 ILCS 5/2-615 because the term "cause of action" in 775 ILCS 5/7A-102 meant "charge" filed with the department and not "complaint" and because the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 et seq., did not apply retroactively to complaints filed before 1/1/1996. Bowne of Chicago v. Human Rights Comm'n, 301 Ill. App. 3d 116, 234 Ill. Dec. 582, 703 N.E.2d 443, 1998 Ill. App. LEXIS 757 (1 Dist. 1998).

It is clear from the legislative history that the legislature did not intend for P.A. 89-370, which added subsection (H), to be applied retroactively. Bowne of Chicago, Inc. v. Human Rights Comm'n, 301 Ill. App. 3d 116, 234 Ill. Dec. 582, 703 N.E.2d 443 (1 Dist. 1998).

- Statute of Limitations

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The state notice requirement of 42 USC § 2000a-3(c) does not incorporates the 180-day limitations period applicable to Illinois Department of Human Rights claims under Illinois law. Hill v. Shell Oil Co., 78 F. Supp. 2d 764 (N.D. Ill. 1999).

For a case discussing the statute of limitations under the former Fair Employment Practices Act, see Lee v. Human Rights Comm'n, 126 Ill. App. 3d 666, 81 Ill. Dec. 821, 467 N.E.2d 943 (1 Dist. 1984).

For a case discussing the applicability of the statute of limitations under former Fair Employment Practices Act, see Montgomery Ward & Co. v. Fair Emp. Practices Comm'n, 49 Ill. App. 3d 796, 8 Ill. Dec. 297, 365 N.E.2d 535 (1 Dist. 1977).

Charge

Where the charge form filed by a former university employee included a check mark on a box that indicated he wanted the charge filed with both the Equal Employment Opportunity Commission (EEOC) and the Illinois Department of Human Rights, and nothing within the Illinois Administrative Code or the Illinois Human Rights Act required the employee to file the charge with the Department himself rather than rely on transmission of the charge to the Department, the EEOC's transmission of a copy of the charge to the Department was sufficient to trigger the Department's duty to process and investigate the charge. Allen v. Lieberman, 359 Ill. App. 3d 1170, 296 Ill. Dec. 649, 836 N.E.2d 64, 2005 Ill. App. LEXIS 891 (5 Dist. 2005).

In the context of university appointments, discriminatory conduct occurs upon a complainant's receipt of notification of a term appointment, and not when the complainant's request for reconsideration is denied or when the complainant's employment ends. The limitations period under 775 ILCS 5/7A-102(A)(1) began to run on December 12, 2001, the date that a university employee received a letter informing him that his status was being changed from continual employment to term employment, rather than the date one-year later when the employee was informed that his term contract would not be renewed, and his discrimination charge, filed in June 2003 was properly dismissed by the Illinois Department of Human Rights based on lack of jurisdiction. Allen v. Lieberman, 359 Ill. App. 3d 1170, 296 Ill. Dec. 649, 836 N.E.2d 64, 2005 Ill. App. LEXIS 891 (5 Dist. 2005).

The creation of a hostile work environment is a single prohibited employment practice, and a charge based on this alleged practice is timely so long as an act contributing to that hostile environment took place within the statutory time period. Gusciara v. Lustig, 346 Ill. App. 3d 1012, 282 Ill. Dec. 449, 806 N.E.2d 746, 2004 Ill. App. LEXIS 307 (2 Dist. 2004).

- Amendment

When complainant did not amend his charge of discrimination to name a school board as a respondent until almost two years after the alleged violations, this did not mean that the amended charge could not relate back to the original filing. The complainant information sheet contained clear references to a high school and its principal, but the Department of Human Rights had failed to include the board of education in its formal charges. Bd. of Educ. v. Cady, 369 Ill. App. 3d 486, 307 Ill. Dec. 872, 860 N.E.2d 526, 2006 Ill. App. LEXIS 1147 (1 Dist. 2006), cert. denied, 2008 U.S. LEXIS 1049 (U.S. 2008).

As long as an original charge is filed within the 180 day period, leave to amend should be liberally granted. Gonzalez v. Human Rights Comm'n, 179 Ill. App. 3d 362, 128 Ill. Dec. 362, 534 N.E.2d 544 (1 Dist. 1989).

- Changes

Petitioner's changes to the formal charges prepared for her by the Department of Human Rights merely conformed the charges to the factual allegations contained in her original Complainant

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Information Sheet (CIS); petitioner's perfected (notarized) charge filed on February 27, 1987, related back to the date she filed her unperfected charge on April 21, 1986 which was within the 180 day limitation period. Muraoka v. Illinois Human Rights Comm'n, 252 Ill. App. 3d 1039, 192 Ill. Dec. 291, 625 N.E.2d 251 (1 Dist. 1993).

- Equitable Tolling

Equitable concepts of waiver, estoppel, and tolling, generally will not be available to extend the jurisdictional time limit for filing a charge; consequently, where charges have not been filed within the 180 day period, they have been dismissed by the Human Rights Commission. Robinson v. Illinois Human Rights Comm'n, 201 Ill. App. 3d 722, 147 Ill. Dec. 229, 559 N.E.2d 229 (1 Dist. 1990).

Equitable tolling under former section 7-102(A)(1) of this Act (see now this section) is a concept which should be applied to prevent injustice when an agency has knowingly misled a complainant or in some manner acted unfairly. Larrance v. Human Rights Comm'n, 166 Ill. App. 3d 224, 117 Ill. Dec. 36, 519 N.E.2d 1203 (4 Dist.), cert. denied, 122 Ill. 2d 577, 125 Ill. Dec. 220, 530 N.E.2d 248 (1988), 489 U.S. 1054, 109 S. Ct. 1316, 103 L. Ed. 2d 585 (1989).

Petitioner's assertion that his layoff for inability to perform job responsibilities was a "temporary decision," and that the decision did not become final until the arbitration decision was rendered 575 days later, was without merit; therefore, the grievance procedure would not toll the running of the 180 day filing period. Polacek v. Human Rights Comm'n, 160 Ill. App. 3d 664, 112 Ill. Dec. 508, 513 N.E.2d 1117 (5 Dist. 1987).

Petitioner's assertion that a continuing violation existed for purposes of staying the running of the limitations period, because other individuals had been hired in deference to his supposed "right to be rehired," was without merit. Polacek v. Human Rights Comm'n, 160 Ill. App. 3d 664, 112 Ill. Dec. 508, 513 N.E.2d 1117 (5 Dist. 1987).

The equitable tolling doctrine is not applicable to the 180 day statute of limitations of this Act. Pickering v. Human Rights Comm'n, 146 Ill. App. 3d 340, 99 Ill. Dec. 885, 496 N.E.2d 746 (2 Dist. 1986).

This Act establishes "reasonable exemptions" to the enforcement of the rights provided for in Ill. Const. (1970), Art. 1, § 17, and where plaintiff's failure to file a complaint with the Department of Human Rights within 180 days classified his claim as a reasonable exemption, he failed to state a cause of action for which relief could be granted. O'Young v. Hobart Corp., 579 F. Supp. 418 (N.D. Ill. 1983).

- Exhaustion of Administrative Remedies

Defendants were entitled to summary judgment on plaintiff's complaint of alleged civil rights violations under state statutory and common law where plaintiff failed to exhaust the administrative remedies of this Act. Suarez v. Illinois Valley Community College, 688 F. Supp. 376 (N.D. Ill. 1988).

Where an employee who alleged retaliatory discharge for his opposition to employer's policies of sex discrimination never presented his claim to the former Fair Employment Practices Commission (now Human Rights Commission) and had not pursued his administrative remedies pursuant to the former Fair Employment Practice Act (see now this section), much less exhausted them, the employee was precluded from maintaining action against employer. Beane v. Millers Mut. Ins. Ass'n, 90 Ill. App. 3d 258, 45 Ill. Dec. 542, 412 N.E.2d 1124 (5 Dist. 1980).

- Federal Actions

Where a state discrimination case filing period is not shorter than the 180 day federal filing period available in non-deferral states, a timely filing with the appropriate state agency is not a condition

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precedent to filing a charge with the Equal Employment Opportunity Commission under the extended 300 day statutory period, in order to bring suit in federal court under the Age Discrimination in Employment Act (29 U.S.C. § 621 et seq.). Anderson v. Illinois Tool Works, Inc., 753 F.2d 622 (7th Cir. 1985).

In employment discrimination proceedings, the Office of the United States Equal Employment Opportunity Commission's failure to timely refer plaintiff's charge to the Illinois Department of Human Rights did not preclude plaintiff from bringing discrimination claim. Flagg v. Atchison, T. & S.F. Ry., 662 F. Supp. 278 (N.D. Ill. 1985).

Where plaintiff failed to file a complaint with the Department of Human Rights within the 180 day state filing period provided by this section, he was not entitled to the 300 day filing period with the Equal Employment Opportunity Commission (see 42 U.S.C. § 2000e-5(e)). O'Young v. Hobart Corp., 579 F. Supp. 418 (N.D. Ill. 1983).

- Illustrative Cases

Where the record showed that petitioner discovered on July 15, 1986, that he was excluded from the revised eligibility list for the position of patrolman and that petitioner did not file his charge alleging employment discrimination in the department until July 24, 1987, there was nothing in the record that prevented petitioner from filing his charge within the required 180 days following the posting of the revised eligibility list; since petitioner filed his charge more than 180 days after his dismissal, the charge was untimely filed, and therefore properly dismissed by the commission for lack of jurisdiction. Trembczynski v. Human Rights Comm'n, 252 Ill. App. 3d 966, 192 Ill. Dec. 255, 625 N.E.2d 215 (1 Dist. 1993).

Complaint filed more than 180 days after an employee's discharge, where employee had knowledge of the facts necessary to make her charge within the 180 day period, was untimely. Whitaker v. Human Rights Comm'n, 184 Ill. App. 3d 356, 132 Ill. Dec. 621, 540 N.E.2d 361 (1 Dist. 1989).

An unperfected claim filed within the period allowed by this section was not untimely where petitioner was expressly assured by the Department of Human Rights that he could leave the client information sheet for retyping, that it would then be mailed out for his signature and oath, and that there would be no problem with this procedure, where the Department in fact had followed that procedure and accepted unperfected charges in thousands of cases, where following its own rules the Department did not act on the charge until it had been perfected, where employee hospital was not prejudiced in any way nor was it faced with a stale claim since notice of the unperfected charge was sent to the hospital upon its receipt, and where petitioner supplied his notarized signature within a reasonable time after receiving the typed charge in the mail. Gonzalez v. Human Rights Comm'n, 179 Ill. App. 3d 362, 128 Ill. Dec. 362, 534 N.E.2d 544 (1 Dist. 1989).

Since petitioner filed his charge of a civil rights violation more than 180 days after his dismissal, and nothing excused his delay, it was untimely filed and was properly dismissed by the Human Rights Commission for lack of jurisdiction. Polacek v. Human Rights Comm'n, 160 Ill. App. 3d 664, 112 Ill. Dec. 508, 513 N.E.2d 1117 (5 Dist. 1987).

- Jurisdictional

One hundred eighty day filing requirement is jurisdictional; failure to file a charge within the prescribed time deprives the department and the commission of jurisdiction to proceed further. Trembczynski v. Human Rights Comm'n, 252 Ill. App. 3d 966, 192 Ill. Dec. 255, 625 N.E.2d 215 (1 Dist. 1993).

The 180 day limitations period for filing a charge is jurisdictional; however, a narrow exception has been allowed where the charge was untimely filed because of defendant's misleading conduct, in which case defendant would be estopped from raising the limitations period as a

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defense if it was conduct initiated by defendant which induced plaintiff not to act. Faulkner-King v. Illinois Dep't of Human Rights, 225 Ill. App. 3d 784, 167 Ill. Dec. 330, 587 N.E.2d 599 (4 Dist.), cert. denied, 145 Ill. 2d 633, 173 Ill. Dec. 3, 596 N.E.2d 627 (1992).

The time period for bringing a charge of unlawful employment discrimination is jurisdictional. Pickering v. Human Rights Comm'n, 146 Ill. App. 3d 340, 99 Ill. Dec. 885, 496 N.E.2d 746 (2 Dist. 1986); Robinson v. Illinois Human Rights Comm'n, 201 Ill. App. 3d 722, 147 Ill. Dec. 229, 559 N.E.2d 229 (1 Dist. 1990).

The 180 day filing requirement of subdivision (A)(1) of this section is jurisdictional, and failure to file a charge within the prescribed time deprives the Department of Human Rights and the Human Rights Commission of jurisdiction to proceed further. Polacek v. Human Rights Comm'n, 160 Ill. App. 3d 664, 112 Ill. Dec. 508, 513 N.E.2d 1117 (5 Dist. 1987).

- Mandatory

The 180 day limitation on filing a charge, under the former Fair Employment Practices Act (see now this section) was mandatory, and the Human Rights Commission was not at liberty to relax the filing requirement; a failure to file within the prescribed limits deprived the Commission of jurisdiction. Lee v. Human Rights Comm'n, 126 Ill. App. 3d 666, 81 Ill. Dec. 821, 467 N.E.2d 943 (1 Dist. 1984).

Compliance with the 180 day filing requirement of the former Fair Employment Practices Act (see now this section) was a necessary condition for the former Fair Employment Practices Commission (now Human Rights Commission) to have jurisdiction. Board of Governors v. Rothbardt, 98 Ill. App. 3d 423, 53 Ill. Dec. 951, 424 N.E.2d 742 (4 Dist. 1981).

Absent a signed agreement between the parties and approved by a member of the former Fair Employment Practices Commission (now Human Rights Commission), the 180 day time period for filing a charge was mandatory. Joliet Mass Transit Dist. v. Illinois Fair Emp. Practices Comm'n, 85 Ill. App. 3d 270, 40 Ill. Dec. 849, 407 N.E.2d 80 (3 Dist. 1980).

While the 180 day period limiting the time of filing a complaint under this section is not jurisdictional in the sense it cannot be waived, the limitation imposes a mandatory time within which a complaint can be issued by the former Fair Employment Practices Commission (now Human Rights Commission) and such time periods will be considered directory only where the rights of the parties are not injuriously affected by the failure to act within the time indicated under former Fair Employment Practices Act (see now this Act). Springfield-Sangamon County Regional Plan Comm'n v. Fair Emp. Practices Comm'n, 71 Ill. 2d 61, 15 Ill. Dec. 623, 373 N.E.2d 1307 (1978).

Since the 180 day time period under former Fair Employment Practices Act, see now this Act, imposes a mandatory limit within which an agency is required to act, it is comparable to a statute of limitations. Springfield-Sangamon County Regional Plan Comm'n v. Fair Emp. Practices Comm'n, 71 Ill. 2d 61, 15 Ill. Dec. 623, 373 N.E.2d 1307 (1978).

- Perfected

A perfected charge is defined as one that has been signed and notarized under oath or affirmation. Davis v. Illinois Human Rights Comm'n, 286 Ill. App. 3d 508, 221 Ill. Dec. 794, 676 N.E.2d 315 (1 Dist. 1997).

- Procedure

Plaintiff's Illinois Human Rights Act (IHRA) claim was dismissed because plaintiff did not properly exhaust his claim as he failed to inform the Illinois Department of Human Rights (IDHR) within 35 days of receiving the IDHR's right to sue letter that he wished to pursue his charge as required by 775 ILCS 5/7A-102(A-1), and even if plaintiff had properly exhausted his administrative remedies,

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the IHRA claim would be dismissed because he filed his claim either too early or too late. O'Connell v. Cont'l Elec. Constr. Co., F. Supp. 2d , 2011 U.S. Dist. LEXIS 119921 (N.D. Ill. Oct. 17, 2011).

Where petitioner filed her Complainant Information Sheet (CIS) within the 180 day limitations period; and her CIS complied substantially with the requirements under this Act, this was sufficient to require the Department of Human Rights to docket her complaint, serve notice on defendants and prepare formal charges. Muraoka v. Illinois Human Rights Comm'n, 252 Ill. App. 3d 1039, 192 Ill. Dec. 291, 625 N.E.2d 251 (1 Dist. 1993).

Filing a complaint with the Illinois Commission of Human Rights is not the proper procedure for bringing an action under this Act, since a plaintiff may institute a civil rights action only by filing a charge with the Illinois Department of Human Rights. Suarez v. Illinois Valley Community College, 688 F. Supp. 376 (N.D. Ill. 1988).

- Purpose

Where the purpose underlying an extension of the 180 day period by agreement of the parties was to increase the opportunity for settlement and conciliation and to ensure that rigid time constraints did not hinder the judicious resolution of disputes by the former Fair Employment Practices Commission (now Human Rights Commission), that purpose was not promoted where throughout the entire period of investigation, conciliation, and attempted settlement, a city and county charged were not involved in the proceeding and were therefore deprived of the opportunity to benefit from the purpose for which the 180 day period and extensions to the period were designed, under former Fair Employment Practices Act (see now this section). Springfield-Sangamon County Regional Plan Comm'n v. Fair Emp. Practices Comm'n, 71 Ill. 2d 61, 15 Ill. Dec. 623, 373 N.E.2d 1307 (1978).

- Signature

Subdivision (G)(1) required plaintiff to sign and notarize her charge under oath or affirmation. Davis v. Illinois Human Rights Comm'n, 286 Ill. App. 3d 508, 221 Ill. Dec. 794, 676 N.E.2d 315 (1 Dist. 1997).

- Time of Filing

Illinois Department of Human Resources, pursuant to 775 ILCS 5/7A-102(A)(1), lacked jurisdiction to investigate an employee's allegations of unequal pay that occurred more than 180 days before the filing of the employee's complaint. Budzileni v. Dep't of Human Rights, 392 Ill. App. 3d 422, 331 Ill. Dec. 434, 910 N.E.2d 1190, 2009 Ill. App. LEXIS 361 (1 Dist. 2009), appeal denied, 233 Ill. 2d 552, 335 Ill. Dec. 631, 919 N.E.2d 350, 2009 Ill. LEXIS 1328 (2009).

Where an employee alleging sexual harassment did not file an administrative charge with the Equal Employment Opportunity Commission (EEOC), but filed a charge with the Illinois Department of Human Rights, the state filing was itself untimely and thus did not extend the time for filing an EEOC charge. Espinoza v. Immaculate Conception High Sch., F. Supp. 2d , 2005 U.S. Dist. LEXIS 12895 (N.D. Ill. June 20, 2005).

A charge of sexual harassment was timely where the petitioner filed it within 180 days of any act that was part of the hostile work environment. Jenkins v. Lustig, 354 Ill. App. 3d 193, 290 Ill. Dec. 114, 820 N.E.2d 1181, 2004 Ill. App. LEXIS 1511 (3 Dist. 2004), appeal denied, 215 Ill. 2d 598, 295 Ill. Dec. 521, 833 N.E.2d 3 (2005).

180-day requirement in section 775 ILCS 5/7A-102(A)(1) is mandatory, and compliance is jurisdictional. Thus, the continuing violation doctrine did not apply to an employee's sexual harassment claims where many actions described by employee would have independently supported a charge and put employee on notice of an actionable claim. Graves v. Chief Legal

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Counsel, 327 Ill. App. 3d 293, 261 Ill. Dec. 153, 762 N.E.2d 722, 2002 Ill. App. LEXIS 46 (1 Dist. 2002).

This Act allows an asserted victim of prohibited discrimination 180 days after the date of the alleged violation to file a charge with the Department of Human Rights which then may conduct an investigation. On-Line Financial Servs., Inc. v. Department of Human Rights, 228 Ill. App. 3d 99, 170 Ill. Dec. 73, 592 N.E.2d 509 (1 Dist. 1992).

Alleged civil rights violation against assistant university professor for denial of tenure and promotion was held to have occurred when terminal contract was issued. Faulkner-King v. Illinois Dep't of Human Rights, 225 Ill. App. 3d 784, 167 Ill. Dec. 330, 587 N.E.2d 599 (4 Dist.), cert. denied, 145 Ill. 2d 633, 173 Ill. Dec. 3, 596 N.E.2d 627 (1992).

Terminated employee's reliance on a State agency that advised him to wait until filing a discrimination claim did not bar retroactive application of an Illinois Supreme Court decision interpreting 775 ILCS 7A/2-102, (formerly the Fair Employment Practices Act, Ill. Rev. Stat. ch. 48, para. 858) to apply a 180-day period retroactively and his claim was properly dismissed. Larrance v. Human Rights Com., 166 Ill. App. 3d 224, 117 Ill. Dec. 36, 519 N.E.2d 1203, 1988 Ill. App. LEXIS 227 (1 Dist. 1988).

The charge filing limitation period is an inherent part of an employment discrimination action. Larrance v. Human Rights Comm'n, 166 Ill. App. 3d 224, 117 Ill. Dec. 36, 519 N.E.2d 1203 (4 Dist.), cert. denied, 122 Ill. 2d 577, 125 Ill. Dec. 220, 530 N.E.2d 248 (1988), 489 U.S. 1054, 109 S. Ct. 1316, 103 L. Ed. 2d 585 (1989).

Notification of a discharge, rather than the date of discharge itself, commences the running of the limitations period, and where there is a demotion followed by a discharge, it is the date of the demotion that triggers the limitations period. Polacek v. Human Rights Comm'n, 160 Ill. App. 3d 664, 112 Ill. Dec. 508, 513 N.E.2d 1117 (5 Dist. 1987).

The limitations period of the former Fair Employment Practices Act (see now this Act) began to run on the date of an employee's first refusal to reinstate plaintiff, and employer's subsequent refusals were not independent acts of discrimination that would restart the running of the limitations period. Lee v. Human Rights Comm'n, 126 Ill. App. 3d 666, 81 Ill. Dec. 821, 467 N.E.2d 943 (1 Dist. 1984).

The state filing period for a discrimination action under prior similar provision, like the federal filing period, began on the date that an unfair employment practice was allegedly committed; in the case of a continuing violation, the period began on the date of the last injury. Lowell v. Glidden-Durkee, Div. of SCM Corp., 529 F. Supp. 17 (N.D. Ill. 1981).

Time limitation within which to file charges of discrimination began to accrue on the date female faculty member's employment was terminated rather than on the date that the non-renewal of her contract was announced. Board of Governors v. Rothbardt, 98 Ill. App. 3d 423, 53 Ill. Dec. 951, 424 N.E.2d 742 (4 Dist. 1981).

Commission

- Duty

The former Fair Employment Practices Commission (now Human Rights Commission) was duty-bound under the former Fair Employment Practices Act (now this Act) to proceed in a straightforward manner once a charge had been properly filed with it. Klein v. Fair Emp. Practices Comm'n, 31 Ill. App. 3d 473, 334 N.E.2d 370 (1 Dist. 1975).

- Orders

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This section, which governs the procedure for discrimination actions before administrative agencies became involved, is silent as to the method for service of final orders of the Human Rights Commission. Gemini Servs., Inc. v. Martin, 141 Ill. App. 3d 17, 95 Ill. Dec. 417, 489 N.E.2d 1145 (4 Dist. 1986).

- Other Decisions

An arbitrator, whose duty was to interpret and apply the provisions of a collective bargaining agreement, could not limit, prevent or "bind" an individual from exercising his statutory rights under the former Fair Employment Practices Act (see now this Act), and this was especially true where the arbitrator was not interpreting or construing a nondiscrimination clause in a collective bargaining agreement and did not mention the words "racial discrimination" in his report. Moss-American, Inc. v. Illinois Fair Emp. Practices Comm'n, 22 Ill. App. 3d 248, 317 N.E.2d 343 (5 Dist. 1974).

The former Fair Employment Practice Commission and trial court were not bound by a prior decision of an arbitrator on matters of seniority. Moss-American, Inc. v. Illinois Fair Emp. Practices Comm'n, 22 Ill. App. 3d 248, 317 N.E.2d 343 (5 Dist. 1974).

- Powers

It is within the special province of the Human Rights Commission to review and weigh conflicting evidence, whether it is at the preliminary investigation level or at a later stage. Sanders v. UPS, 142 Ill. App. 3d 362, 96 Ill. Dec. 854, 491 N.E.2d 1314 (1 Dist. 1986).

Complaint

- Not Necessary

Plaintiffs seeking mandamus relief had no right to have the Department of Human Rights issue a discrimination complaint to the Human Rights Commission in the absence of a finding by the Department that no substantial evidence existed to support a charge within the 300 day time limit imposed by subsection (G) of this section. Franks v. Tucker, 132 Ill. App. 3d 455, 87 Ill. Dec. 323, 476 N.E.2d 1315 (1 Dist. 1985).

Construction

- Causes of Action

When the language of this section is viewed in the light of the policies that motivated the legislature to enact it, it becomes clear that the legislature intended "causes of action" to be a substitute for "charges" filed with the Department. Bowne of Chicago, Inc. v. Human Rights Comm'n, 301 Ill. App. 3d 116, 234 Ill. Dec. 582, 703 N.E.2d 443 (1 Dist. 1998).

- Directory

Subsection (G) is directory rather than a mandatory jurisdictional limitation is correct. Christ Hosp. & Medical Ctr. v. Human Rights Comm'n, 271 Ill. App. 3d 133, 207 Ill. Dec. 745, 648 N.E.2d 201 (1 Dist. 1995).

- Filing Limitations

The time limitation requirements for the filing of a complaint under the former Fair Employment Practices Act and under the subsequently enacted Human Rights Act (775 ILCS 5/1-101 et seq.) are directory and not mandatory; this directory interpretation was required on procedural due process grounds and a belief that the aggrieved party should not lose his right to bring a discrimination action because of the commission's failure to file a timely complaint. Lipsey v.

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Illinois Human Rights Comm'n, 267 Ill. App. 3d 980, 204 Ill. Dec. 845, 642 N.E.2d 746 (1 Dist. 1994), appeal denied, 161 Ill. 2d 528, 208 Ill. Dec. 361, 649 N.E.2d 417 (1995).

The language of this Act regarding filing limitations is directory rather than mandatory. On-Line Financial Servs., Inc. v. Department of Human Rights, 228 Ill. App. 3d 99, 170 Ill. Dec. 73, 592 N.E.2d 509 (1 Dist. 1992).

Delay

- Held Prejudicial

Where a claimant was denied the opportunity to seek a remedy because of the Department of Human Rights' failure to file a complaint with the Human Rights Commission within the 300-day period, the Department's dilatoriness in investigating and acting upon her charge was irremissible and its undue delay frustrated the purposes of this Act. On-Line Financial Servs., Inc. v. Department of Human Rights, 228 Ill. App. 3d 99, 170 Ill. Dec. 73, 592 N.E.2d 509 (1 Dist. 1992).

Discrimination

- Not Shown

Former patient was unable to hold a medical care clinic and doctor liable under this section for handicap discrimination, as the clinic was not a place of public accommodation as defined under 775 ILCS 5/5-101(A). Duffy v. Ill. Dep't of Human Rights, 354 Ill. App. 3d 236, 290 Ill. Dec. 119, 820 N.E.2d 1186, 2004 Ill. App. LEXIS 1522 (4 Dist. 2004), appeal denied, 214 Ill. 2d 529, 294 Ill. Dec. 2, 830 N.E.2d 2 (2005).

Dismissal of a sex discrimination charge based on disparate pay was not an abuse of discretion, as employer established that the female claimant and the male employee had substantially dissimilar experience, duties, and responsibilities; thus, the claimant did not prove that the employer discriminated against her. Anderson v. Chief Legal Counsel, 334 Ill. App. 3d 630, 268 Ill. Dec. 272, 778 N.E.2d 258, 2002 Ill. App. LEXIS 917 (3 Dist. 2002).

School custodian failed to produce substantial evidence that he was suspended for 30 days without pay solely because he is white and physically disabled. Reeise v. State Dep't of Human Rights, 295 Ill. App. 3d 364, 230 Ill. Dec. 443, 693 N.E.2d 1194 (3 Dist. 1998).

Under prior similar provision, there was substantial evidence in the record to support the Human Rights Commission's contentions and findings of fact that plaintiff initially did not make out a prima facie case of unlawful discrimination where he violated company standards by his excessive absenteeism and tardiness, and the employer's articulated reason for discharge of plaintiff was not a pretext for unlawful discrimination in light of various reports and other available documents. Luckett v. Human Rights Comm'n, 210 Ill. App. 3d 169, 155 Ill. Dec. 6, 569 N.E.2d 6 (1 Dist. 1989), appeal denied, 141 Ill. 2d 543, 162 Ill. Dec. 491, 580 N.E.2d 117 (1991), cert. denied, 502 U.S. 1113, 112 S. Ct. 1220, 117 L. Ed. 2d 456 (1992).

- Shown

Petitioner established a prima facie case of fact discrimination in that she was discharged while a similarly situated white male was not. McGaughy v. State Human Rights Comm'n, 243 Ill. App. 3d 751, 184 Ill. Dec. 88, 612 N.E.2d 964 (3 Dist.), appeal allowed, 152 Ill. 2d 562, 190 Ill. Dec. 893, 622 N.E.2d 1210 (1993).

Dismissal

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"Good cause" necessary to default a party for not appearing at the state human rights department's fact-finding conference to defend a charge that it engaged in race discrimination in serving food to a customer did not exist in the case against the restaurant, and, thus, the state human rights department's default order was too harsh. Although the restaurant's failure to attend the conference was entirely attributable to its own personnel failing to forward proper notice of the fact-finding conference to its local counsel, the failure to attend was not intentional and did not show that the restaurant "deliberately and contumaciously disregarded" the state human rights department's authority. Denny's, Inc. v. Dep't of Human Rights, 363 Ill. App. 3d 1, 299 Ill. Dec. 26, 841 N.E.2d 438, 2005 Ill. App. LEXIS 1158 (1 Dist. 2005).

- Procedure

The Commission's consideration of a dismissal of a discrimination charge for lack of substantial evidence need not be restricted to the prima facie prong. Alcequeire v. Human Rights Comm'n, 292 Ill. App. 3d 515, 226 Ill. Dec. 519, 685 N.E.2d 974 (1 Dist. 1997).

A decision of the commission dismissing a charge after only investigation by the department must be based upon the insufficiency of a prima facie case. (Decided prior to the 1995 Amendment of this section. See Webb v. Lustig, 298 Ill App. 3d 695, 233 Ill. Dec. 119, 700 N.E.2d 220 (4th Dist. 1998)) Whipple v. Illinois Dep't of Rehabilitation Servs., 269 Ill. App. 3d 554, 206 Ill. Dec. 980, 646 N.E.2d 275 (4 Dist. 1995).

If the Human Rights Commission determines after investigation of unlawful discrimination charges that there is a lack of substantial evidence to support the employee's charge of a violation, the Commission may dismiss the charge. Sanders v. UPS, 142 Ill. App. 3d 362, 96 Ill. Dec. 854, 491 N.E.2d 1314 (1 Dist. 1986).

- Upheld

Where the petitioner failed to show substantial evidence of retaliatory conduct regarding the withdrawal of a salary increase offer when the offer was rescinded because it was part of a settlement offer that was not accepted by the petitioner, petitioner failed to show substantial evidence of a violation and, therefore, the charge was properly dismissed. Welch v. Hoeh, 314 Ill. App. 3d 1027, 247 Ill. Dec. 946, 733 N.E.2d 410, 2000 Ill. App. LEXIS 580 (2 Dist. 2000).

Chief legal counsel did not abuse its discretion in sustaining dismissal of petitioner's charge of age discrimination for lack of substantial evidence; the employer had nonpretextual reasons to discharge petitioner, such as evidence petitioner was not satisfactorily performing her duties, was reluctant to implement new quote system and expressed disloyalty to the company, petitioner failed to present any evidence that similarly situated employees were treated differently, petitioner was discharged by an employee 13 years older and part of her duties were assumed by an employee three years older. Folbert v. Department of Human Rights, 303 Ill. App. 3d 13, 236 Ill. Dec. 463, 707 N.E.2d 590 (1 Dist. 1999).

Department and Chief Legal Counsel could have found that there was no substantial evidence that petitioner was demoted or denied promotion because of his sex, therefore dismissal of the charge was not arbitrary, capricious or an abuse of discretion. Peyton v. Department of Human Rights, 298 Ill. App. 3d 1100, 233 Ill. Dec. 146, 700 N.E.2d 451 (4 Dist. 1998), appeal denied, 182 Ill. 2d 571, 236 Ill. Dec. 675, 707 N.E.2d 1245 (1999).

Employer's actions in an employment discrimination case were insufficient to show that plaintiff was misled, and, consequently, plaintiff was not entitled to an evidentiary hearing as the charge was properly dismissed under 180 day statute of limitations. Pickering v. Human Rights Comm'n, 146 Ill. App. 3d 340, 99 Ill. Dec. 885, 496 N.E.2d 746 (2 Dist. 1986).

Employer

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County was not the former employer, within the meaning of the Illinois Human Rights Act for a former secretary for the county probation office. The secretary's claim that the State was named as a party to the suit was not supported by the documentary evidence and the secretary was given every opportunity under the procedures of the act to correct the problem. Travis v. Human Rights Comm'n, 241 Ill. App. 3d 649, 182 Ill. Dec. 763, 610 N.E.2d 187, 1993 Ill. App. LEXIS 361 (1 Dist. 1993).

Filing Requirement

- Mandatory

Requirement that the complaint be filed with the Commission of Human Rights rather than the Department of Human Rights is mandatory but not jurisdictional as long as the claimant shows that he made a good faith effort to comply with the filing rules and the defect is corrected expeditiously. Moeser v. Human Rights Comm'n, 292 Ill. App. 3d 402, 226 Ill. Dec. 743, 686 N.E.2d 373 (5 Dist. 1997), appeal denied, 176 Ill. 2d 576, 229 Ill. Dec. 55, 690 N.E.2d 1382 (1998).

Final Order

Illinois Department of Human Rights entered a final order dismissing the claimant's case that was proper in part and improper in part in a case where the claimant alleged that she was the victim of sex discrimination and retaliation while working for the city and unlawful retaliation for having complained of sexual harassment; substantial evidence support a finding that the conduct was not severe or pervasive enough to constitute sex discrimination, but could support a finding that the employer, the city, was liable for acts of retaliation taken against her that arguably resulted in an intimidating, hostile, or offensive work environment. Hoffelt v. Ill. Dep't of Human Rights, Ill. App. 3d , Ill. Dec. , N.E.2d , 2006 Ill. App. LEXIS 790 (1 Dist. Sept. 1, 2006).

Since the 30 day window to file directly with the Commission had expired and the Act provides no provision for renewal, the interlocutory order had the force and effect of abridging plaintiff's property right protected by the fourteenth amendment and was in substance a final order appealable under Rule 335, Supreme Court Rules and 735 ILCS 5/3-113 permitting direct review of administrative orders by the appellate court. Davis v. Illinois Human Rights Comm'n, 286 Ill. App. 3d 508, 221 Ill. Dec. 794, 676 N.E.2d 315 (1 Dist. 1997).

Hearing

- In General

For a case discussing a right to a hearing under the former Fair Employment Practices Act, see Chambers v. Illinois Fair Emp. Practices Comm'n, 96 Ill. App. 3d 884, 52 Ill. Dec. 449, 422 N.E.2d 130 (1 Dist. 1981).

- Time Limit

This section does not require a hearing to be held not less than 20 nor more than 60 days from the date of service in order for the commission to retain jurisdiction; the time proscription merely requires that the complaint set a date for hearing within the time limits allowed, after which a continuance may be granted as the circumstances require. City of Chicago v. Fair Emp. Practices Comm'n, 32 Ill. App. 3d 242, 336 N.E.2d 359 (1 Dist. 1975).

Injunction

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- Entitlement

Handicapped employee was properly granted injunctive relief where evidence presented raised a fair question as to employer's accommodation to the disability, there was a likelihood of recovery when his cause of action accrued, and when the burden of accommodation placed on the employer by the injunction was very slight. Constant v. Turris Coal Co., 199 Ill. App. 3d 214, 145 Ill. Dec. 205, 556 N.E.2d 823 (4 Dist. 1990).

Investigation

- Attorney Representation

Representation of transit authority exclusively through an attorney offended the purpose and intent of subdivision (c)(4) of this section, as this subdivision was intended to promote the purpose of the fact finding conference and this subdivision was therefore, a proper exercise of administrative power. Chicago Transit Auth. v. Department of Human Rights, 169 Ill. App. 3d 749, 120 Ill. Dec. 197, 523 N.E.2d 1108 (1 Dist. 1988).

- Conference

A fact finding conference is an opportunity for the Department of Human Rights to gather facts from both parties and promote settlement or other resolution of the charge whenever possible, and the rule prohibiting a verbatim record of the fact finding conference is not inconsistent with the provisions of this Act. Board of Educ. v. Eckmann, 103 Ill. App. 3d 1127, 59 Ill. Dec. 714, 432 N.E.2d 298 (2 Dist. 1982).

- Credibility Determination

Reliance on investigators' credibility determinations in making substantial evidence determinations violated due process where those investigators evaluated credibility without affording complainants an opportunity to confront or cross examine witnesses or otherwise address credibility disputes and, therefore, the Department of Human Rights was permanently enjoined from relying on any credibility determinations made without affording complainants an opportunity to confront and cross examine witnesses against them. Cooper v. Salazar, F. Supp. 2d , 2001 U.S. Dist. LEXIS 17952 (N.D. Ill. Nov. 1, 2001).

Department is allowed to make a determination of credibility of witnesses or choose between conflicting versions of incidents during the investigatory process. Webb v. Lustig, 298 Ill. App. 3d 695, 233 Ill. Dec. 119, 700 N.E.2d 220 (4 Dist. 1998), appeal denied, 182 Ill. 2d 573, 236 Ill. Dec. 676, 707 N.E.2d 1246 (1999).

- Failure to Attend Conference

Where transit authority was given several opportunities to either present witnesses as requested or submit good reason for their nonattendance at fact finding conference in a suit where former employee alleged racial discrimination, a deliberate, contumacious and unwarranted disregard of the Department of Human Rights investigatory authority was shown and default judgment was justified against transit authority. Chicago Transit Auth. v. Department of Human Rights, 169 Ill. App. 3d 749, 120 Ill. Dec. 197, 523 N.E.2d 1108 (1 Dist. 1988).

The procedures set forth in this Act did not deprive plaintiff of its due process rights by authorizing the entry of a default judgment against it when plaintiff failed to appear for a fact finding conference. Glassworks, Inc. v. Human Rights Comm'n, 164 Ill. App. 3d 842, 115 Ill. Dec. 818, 518 N.E.2d 343 (1 Dist. 1987).

- Legislative Intent

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Entry of default for failure to show good cause for failing to produce two witnesses at a fact-finding conference was against the manifest weight of the evidence; amendments to 775 ILCS 5/7A-102 had not changed the requirement of showing of actual contumacious conduct, as opposed to negligent failure to arrange to attend, before default was appropriate. Denny's Inc. v. Ill. Dep't of Human Rights, Ill. App. 3d , Ill. Dec. , N.E.2d , 2005 Ill. App. LEXIS 189 (1 Dist. Mar. 7, 2005).

The legislature intended that the investigatory stage contemplated by subsection (C) of this section not be adversarial. Jabbari v. Human Rights Comm'n, 173 Ill. App. 3d 227, 123 Ill. Dec. 17, 527 N.E.2d 480 (1 Dist. 1988).

- On Request for Review

Although the department is required to conduct an investigation of the allegations contained in a complainant's charge, including a fact-finding conference, nothing in the act requires a second investigation when a complainant files a request for review. Welch v. Hoeh, 314 Ill. App. 3d 1027, 247 Ill. Dec. 946, 733 N.E.2d 410, 2000 Ill. App. LEXIS 580 (2 Dist. 2000).

- Procedural Protections

The rights of discovery, confrontation, cross examination and other elements of equal protection and due process attending judicial and quasi-judicial proceedings do not apply in investigative proceedings. Jabbari v. Human Rights Comm'n, 173 Ill. App. 3d 227, 123 Ill. Dec. 17, 527 N.E.2d 480 (1 Dist. 1988).

The right to a hearing as to an employment discrimination charge is a property interest protected by the due process clause of U.S. Const., Amend. XIV. Woods v. Brucker Co., 129 Ill. App. 3d 983, 85 Ill. Dec. 104, 473 N.E.2d 472 (1 Dist. 1984).

- Subpoenas

The Department of Human Rights need not request subpoenas before arranging for attendance of parties at a fact finding conference under this section. Chicago Transit Auth. v. Department of Human Rights, 169 Ill. App. 3d 749, 120 Ill. Dec. 197, 523 N.E.2d 1108 (1 Dist. 1988).

- Sufficiency

The investigation of petitioner's claim of age discrimination was sufficient, notwithstanding that the department did not discuss the petitioner's job performance specifically with the petitioner's immediate supervisor, where the investigator had access to the supervisor's notes, which stated that the petitioner had a bad attitude, and the supervisor was not the only person with knowledge of the petitioner's job performance. Willis v. Illinois Dep't of Human Rights, 307 Ill. App. 3d 317, 240 Ill. Dec. 759, 718 N.E.2d 240 (4 Dist. 1999).

Where the record of proceedings showed that the Department of Human Rights conducted a conference with plaintiff and members of the school board, interviewed ten witnesses and prepared a detailed report of its findings, the Department fully investigated, as required by this section, the verifiable facts tending to show the circumstances and causes of plaintiff's dismissal as basketball coach, which resulted in a finding of a lack of substantial evidence of either unequal treatment or discharge based on his race. Parham v. Macomb Unit Sch. Dist. No. 185, 231 Ill. App. 3d 764, 173 Ill. Dec. 313, 596 N.E.2d 1192 (4 Dist. 1992).

- Time Period

The 300 day investigation period began to run from the date plaintiff filed a charge containing her notarized signature under oath or affirmation. Davis v. Illinois Human Rights Comm'n, 286 Ill. App. 3d 508, 221 Ill. Dec. 794, 676 N.E.2d 315 (1 Dist. 1997).

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Joinder

- In General

Where plaintiff filed his original charge against former employer within 180 days of the time when an alleged unfair employment practice occurred, where he was prevented from having his claim disposed of by the former Fair Employment Practices Commission (now Human Rights Commission) because of administrative inaction, and where he was denied relief in the trial court, plaintiff was entitled, under the former Fair Employment Practices Act (see now this section) to remandment to the trial court with permission to join the Human Rights Commission and the Department of Human Rights as necessary party defendants and to an order from the trial court compelling those entities to accept and process plaintiff's charge. Woods v. Brucker Co., 129 Ill. App. 3d 983, 85 Ill. Dec. 104, 473 N.E.2d 472 (1 Dist. 1984).

Jurisdiction

- In General

The Department of Human Rights has jurisdiction to investigate and dispose of charges filed pursuant to this Act, which prohibits "unlawful discrimination" in employment. McAdoo v. Lane, 564 F. Supp. 1215 (N.D. Ill. 1983), aff'd, 774 F.2d 1168 (7th Cir. 1985).

- Effect of Withdrawal

Once an employment discrimination complainant decided to withdraw her charge of sexual harassment which was pending before the Department of Human Rights, her statutory right to file a complaint with the Human Rights Commission ended. Pace v. Human Rights Comm'n, 187 Ill. App. 3d 16, 134 Ill. Dec. 770, 542 N.E.2d 1277 (5 Dist. 1989).

- Lost

The Human Rights Commission properly concluded it lacked jurisdiction to rule on claimant's complaint because she lost her right to file her own complaint when the Department of Human Rights issued the notice of dismissal during the 30 day window period, six days before claimant filed her complaint. Wallace v. Human Rights Comm'n, 261 Ill. App. 3d 564, 199 Ill. Dec. 55, 633 N.E.2d 851 (1 Dist. 1994).

- Not Lost

Employee's mailing of civil rights complaint to the Department of Human Rights rather than the Human Rights Commission did not deprive the Commission of jurisdiction; the employee complied with the necessary jurisdictional requirement of filing the complaint within the 30-day window set forth in this section. Moeser v. Human Rights Comm'n, 292 Ill. App. 3d 402, 226 Ill. Dec. 743, 686 N.E.2d 373 (5 Dist. 1997), appeal denied, 176 Ill. 2d 576, 229 Ill. Dec. 55, 690 N.E.2d 1382 (1998).

The former Fair Employment Practices Commission (see now Human Rights Commission) did not lack subject matter jurisdiction over the complaints of appellants where it failed to issue and serve the complaints within 180 days from the date on which appellants' charges of unfair employment practices were properly filed. Moss-American, Inc. v. Illinois Fair Emp. Practices Comm'n, 22 Ill. App. 3d 248, 317 N.E.2d 343 (5 Dist. 1974).

Legislative Intent

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The clear legislative intent of this Act is to promote the voluntary settlement, conciliation and adjustment of discrimination charges. Board of Educ. v. Eckmann, 103 Ill. App. 3d 1127, 59 Ill. Dec. 714, 432 N.E.2d 298 (2 Dist. 1982).

Notice and Response to Charge

- Procedural Protections

The failure of the Department of Human Resources to serve charges within the 10 day period is not intended to prejudice a complainant; a petitioner must not lose the right to a hearing on his claim due to the failure of the Department to fulfill its statutory obligations. Muraoka v. Illinois Human Rights Comm'n, 252 Ill. App. 3d 1039, 192 Ill. Dec. 291, 625 N.E.2d 251 (1 Dist. 1993).

Complainants are assured of two protections which they were denied prior to the amendment of this section in 1987: access to a verified response by a respondent to the claimant's charge, and the right to reply to respondent's defenses and present reasons why claimant's charge should not be dismissed. Luckett v. Human Rights Comm'n, 210 Ill. App. 3d 169, 155 Ill. Dec. 6, 569 N.E.2d 6 (1 Dist. 1989), appeal denied, 141 Ill. 2d 543, 162 Ill. Dec. 491, 580 N.E.2d 117 (1991), cert. denied, 502 U.S. 1113, 112 S. Ct. 1220, 117 L. Ed. 2d 456 (1992).

This Act does not require any specific form of pleading. Gonzalez v. Human Rights Comm'n, 179 Ill. App. 3d 362, 128 Ill. Dec. 362, 534 N.E.2d 544 (1 Dist. 1989).

Party of Record

As long as the Department is named a respondent, it is unnecessary to name the Chief Legal Counsel of the Department as a respondent. Peyton v. Department of Human Rights, 298 Ill. App. 3d 1100, 233 Ill. Dec. 146, 700 N.E.2d 451 (4 Dist. 1998), appeal denied, 182 Ill. 2d 571, 236 Ill. Dec. 675, 707 N.E.2d 1245 (1999).

Prima Facie Case

- Elements

A complainant in a proceeding under this act has the burden of proving a prima facie case of discrimination by a preponderance of the evidence; in order to do so, the complainant must show the following: (1) she is a member of a group protected by the law; (2) she was treated in a certain manner by the employer; and (3) she was treated differently than similarly situated employees who are not members of the protected group. McGaughy v. State Human Rights Comm'n, 243 Ill. App. 3d 751, 184 Ill. Dec. 88, 612 N.E.2d 964 (3 Dist.), appeal allowed, 152 Ill. 2d 562, 190 Ill. Dec. 893, 622 N.E.2d 1210 (1993).

- Not Established

Employee did not present the "substantial evidence" required under 775 ILCS 5/7A-102(D)(2) that was necessary to support the employee's charge of race and age discrimination and, thus, the employee was not entitled to relief on the employee's claims that the employer's two written reprimands against the employee for poor performance while working for the employee as a warehouse worker fulfilling customer orders were due to race and age discrimination. The employee failed to even make a prima facie case of employment discrimination because the employee did not show that the written reprimands resulted in material adverse employment actions against the employee or that similarly-situated workers in the same protected class were treated differently. Owens v. Dep't of Human Rights, 403 Ill. App. 3d 899, 344 Ill. Dec. 94, 936 N.E.2d 623, 2010 Ill. App. LEXIS 851 (1 Dist. 2010).

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It was not an abuse of discretion for Chief Legal Counsel to find that a prima facie case of age discrimination had not been proved by substantial evidence since the evidence only satisfied the first element of a prima facie case, that plaintiff was a member of a protected class. Kalush v. Illinois Dep't of Human Rights Chief Legal Counsel, 298 Ill. App. 3d 980, 233 Ill. Dec. 31, 700 N.E.2d 132 (1 Dist. 1998), appeal denied, 181 Ill. 2d 573, 235 Ill. Dec. 942, 706 N.E.2d 497 (1998).

Social worker who sought job at alternative high school for students with behavior disorders, did not establish prima facie case of discrimination based on her visual impairment; facts supported conclusion that petitioner's impairment prevented her from performing a critical job function, recognizing subtle signs that precede violence and supported conclusion she was not qualified because of lack of experience. Truger v. Department of Human Rights, 293 Ill. App. 3d 851, 228 Ill. Dec. 232, 688 N.E.2d 1209 (2 Dist. 1997).

Report

- Due Process

Local board of education was not denied due process where it was prohibited from compiling a verbatim report of proceedings of a fact finding conference, held pursuant to the provisions of this Act, through a court reporter at the board's expense. Board of Educ. v. Eckmann, 103 Ill. App. 3d 1127, 59 Ill. Dec. 714, 432 N.E.2d 298 (2 Dist. 1982).

- Review

If a claimant does not believe that the report of the Department of Human Rights is sufficient, he may submit supplemental evidence to the Human Rights Commission for their review. Gayle v. Illinois Human Rights Comm'n, 218 Ill. App. 3d 109, 161 Ill. Dec. 17, 578 N.E.2d 144 (1 Dist.), cert. denied, 142 Ill. 2d 653, 164 Ill. Dec. 917, 584 N.E.2d 129 (1991).

Trial court properly set aside the findings and conclusions of the Fair Employment Practices Commission (now Human Rights Commission) regarding discharge of transit authority employee pursuant to the former Fair Employment Practices Act (see now this section), since such findings and conclusions were not supported by a preponderance of the evidence presented. Chicago Transit Auth. v. Fair Emp. Practices Comm'n, 103 Ill. App. 2d 329, 243 N.E.2d 638 (1 Dist. 1968).

Request for Review

- Access to Investigative Files

The policy of the Department of Human Rights to deny complainants access to their investigative files until after the Request for Review process had been completed violated due process and, therefore, the department was required to provide complainants with access to all documents available to counsel during the Request for Review inquiry, including the investigators' notes of witness interviews. Cooper v. Salazar, F. Supp. 2d , 2001 U.S. Dist. LEXIS 17952 (N.D. Ill. Nov. 1, 2001).

- Due Process Violations

The Request for Review system used by the Department of Human Rights violated due process where complainants had no opportunity to respond to arguments or to additional materials presented in the respondent's reply, parties were not permitted to attend or participate in briefing sessions conducted by attorneys for the legal division or to examine documents used in the briefing sessions, and findings of fact such as credibility determinations were upheld unless

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contrary to the manifest weight of the evidence. Cooper v. Salazar, F. Supp. 2d , 2001 U.S. Dist. LEXIS 17952 (N.D. Ill. Nov. 1, 2001).

Retaliation

Evidence did not support a prima facie case of retaliation where most of the actions petitioner viewed as adverse were not committed solely against petitioner but applied to all officers, thus, the fact they occurred shortly after petitioner filed her charges with the Department did not show a causal link between the charges and the actions. Stone v. Department of Human Rights, 299 Ill. App. 3d 306, 233 Ill. Dec. 397, 700 N.E.2d 1105 (4 Dist. 1998), appeal denied, 182 Ill. 2d 572, 236 Ill. Dec. 675, 707 N.E.2d 1245 (1999).

Sexual Harassment

- Jurisdiction

In a sexual harassment case, failure to file a verified statement was not grounds for dismissal for lack of jurisdiction, since the procedural rules were confusing, verification could be viewed as only a formality, and the statement was held until after the expiration of the 180 day period without a charge being prepared. Phelps v. Human Rights Comm'n, 185 Ill. App. 3d 96, 133 Ill. Dec. 281, 540 N.E.2d 1147 (4 Dist. 1989).

Sovereign Immunity

In an action against the Department of Corrections and its employees, amendments to 775 ILCS 5/7A-102(C)(4), (K) did not indicate that the State waived its sovereign immunity under 745 ILCS 5/1 for claims asserted against it under the Illinois Human Rights Act, 775 ILCS 5/1 et seq. Harris v. Illinois, 753 F. Supp. 2d 734, 2010 U.S. Dist. LEXIS 118922 (N.D. Ill. 2010).

Where plaintiffs claimed defendants refused to process complaints, in violation of this section, and they sought to compel defendants to fulfill duties they believed were mandated by this Act, the lawsuits were not actions against the state and therefore barred by sovereign immunity. Franks v. Tucker, 132 Ill. App. 3d 455, 87 Ill. Dec. 323, 476 N.E.2d 1315 (1 Dist. 1985).

Standard of Review

- Abuse of Discretion

In reviewing the Human Rights Commission's determination, a court must determine whether the Commission's decision was arbitrary, capricious, or an abuse of discretion. Barnes v. Barbosa, 144 Ill. App. 3d 860, 98 Ill. Dec. 497, 494 N.E.2d 619 (1 Dist. 1986).

- Initial Stages

The Department and Commission should be able to consider at the initial stage whether a legitimate reason for an employer's actions exists because the petitioner's prima facie case sets up only a rebuttable presumption discrimination occurred. Stone v. Department of Human Rights, 299 Ill. App. 3d 306, 233 Ill. Dec. 397, 700 N.E.2d 1105 (4 Dist. 1998), appeal denied, 182 Ill. 2d 572, 236 Ill. Dec. 675, 707 N.E.2d 1245 (1999).

- Reasonableness

The Human Rights Commission uses a standard of reasonableness in determining whether a claimant has presented substantial evidence to support his charge of unlawful discrimination, and

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the mere scintilla language is not meant to detract from this reasonableness standard. Sanders v. UPS, 142 Ill. App. 3d 362, 96 Ill. Dec. 854, 491 N.E.2d 1314 (1 Dist. 1986).

Time Limit

Commission properly considered all of the charged conduct by a supervisor because part of the employee's claim of hostile work environment occurred within 180 days of the date she filed her charge. Sangamon County Sheriff's Dep't v. Ill. Human Rights Comm'n, 233 Ill. 2d 125, 330 Ill. Dec. 187, 908 N.E.2d 39, 2009 Ill. LEXIS 378 (2009).

Under 775 ILCS 5/7A-102(A)(1), a charge of sexual harassment based on a hostile work environment is timely as long as any of the acts that contributed to the hostile environment occurred no more than 180 days before the claimant filed her charge unless: (1) the acts within the jurisdictional period had no relation to those outside the period; or (2) for some other reason, the later act was no longer part of the same hostile environment claim. Gusciara v. Lustig, 346 Ill. App. 3d 1012, 282 Ill. Dec. 449, 806 N.E.2d 746, 2004 Ill. App. LEXIS 307 (2 Dist. 2004).

Even if an employee's discrimination complaint against his employer, which he filed with the Illinois Human Rights Commission, was time-barred pursuant to 775 ILCS 5/7A-102(G) for failure to file it within 30 days after the time that was permitted for filing by the Human Rights Department, the employee was not barred from relief under the Human Rights Act. The statute merely allowed an aggrieved employee to file his own complaint with the Commission if he was not satisfied with the Department's progress; however, even if a complaining party was unable to personally file a complaint with the Commission because the statutory time period had passed, recourse was still available. Tandy Corp. v. Illinois Human Rights Comm'n, 264 Ill. App. 3d 828, 202 Ill. Dec. 186, 637 N.E.2d 725, 1994 Ill. App. LEXIS 1070 (1 Dist. 1994).

- Constitutionality

Because failure to meet the 30 day requirement imposed by subdivision (G)(2) of this section does not preclude an aggrieved party from continuing to seek relief under this Act, the 30 day time period is not an unreasonable burden on the ability of a party to secure redress for discrimination in employment and does not violate Ill. Const. (1970), Art. I, § 17 or the due process requirements of U.S. Const., Amend. XIV. Pace v. Human Rights Comm'n, 187 Ill. App. 3d 16, 134 Ill. Dec. 770, 542 N.E.2d 1277 (5 Dist. 1989).

- In General

In the context of the timing of filing a civil rights action based upon sexual harassment, any alleged "intervening action" which does not remove an employee from the complained-of workplace, nor changes the employment relationship between the employees involved in the hostile working environment, does not constitute an intervening action under National R.R. Passenger Corp. v. Morgan, 536 U.S. 101 (2002), such that the employer's "intervention" creates a break between the previous conduct and the subsequent conduct. Jones v. Lockard, Ill. App. 3d , 353 Ill. Dec. 761, 956 N.E.2d 623, 2011 Ill. App. LEXIS 977 (3 Dist. 2011).

Illinois Department of Human Rights has a sua sponte duty to enforce the 60-day period for filing a verified response as provided for in 775 ILCS 5/7A-102(B). Ferrari v. Ill. Dep't of Human Rights, 351 Ill. App. 3d 1099, 287 Ill. Dec. 14, 815 N.E.2d 417, 2004 Ill. App. LEXIS 939 (4 Dist. 2004), appeal denied, 213 Ill. 2d 557, Ill. Dec. , 829 N.E.2d 787 (2005).

Illinois Department of Human Rights exceeded its statutory authority by unconditionally accepting a respondent's verified response notwithstanding the failure to show good cause for failing to file it within the mandatory 60-day time period; thus, a petitioner's case was reinstated and remanded for determination of whether good cause existed to have permitted the Department to accept the late response. Ferrari v. Ill. Dep't of Human Rights, 351 Ill. App. 3d 1099, 287 Ill. Dec. 14, 815

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N.E.2d 417, 2004 Ill. App. LEXIS 939 (4 Dist. 2004), appeal denied, 213 Ill. 2d 557, Ill. Dec. , 829 N.E.2d 787 (2005).

Although Illinois Department of Human Rights lacked jurisdiction to consider certain alleged civil rights violations raised by the police officer because the claims were filed more than 180 days beyond the date of the alleged violations in violation of the time limit set forth in the Illinois Human Rights Act, 775 ILCS 5/7A-102(A)(1), it still had the power to consider whether the police officer was refused reinstatement to the state police force based on the police officer's mental condition or whether reinstatement was refused because the police officer was unfit, as the claim that the termination was due to the police officer's mental condition, a handicap, was timely filed. Deen v. Lustig, 337 Ill. App. 3d 294, 271 Ill. Dec. 589, 785 N.E.2d 521, 2003 Ill. App. LEXIS 338 (4 Dist. 2003).

Failure to meet the 30 day requirement imposed by subdivision (G)(2) does not preclude an aggrieved party from continuing to seek relief under the act. In re Izzo, 264 Ill. App. 3d 790, 202 Ill. Dec. 184, 637 N.E.2d 723 (1 Dist. 1994).

- Backdating Complaints

The 300 day deadline imposed by subsection (G) of this section is directory, not mandatory; therefore, trial court did not err in refusing to compel the Department of Human Rights to backdate the complaints filed on plaintiff's behalf so as to bring them within the 300 day deadline. Franks v. Tucker, 132 Ill. App. 3d 455, 87 Ill. Dec. 323, 476 N.E.2d 1315 (1 Dist. 1985).

- Date of Event

Based on company correspondence, date of defendant's discharge was determined to be same as date used in his complaint and appeal and not earlier date used in handwritten unperfected charge. Villalobos v. F.D.L. Foods, Inc., 298 Ill. App. 3d 132, 232 Ill. Dec. 405, 698 N.E.2d 243 (2 Dist. 1998).

- Hostile Work Environment

In the context of the timing of filing a civil rights action based upon sexual harassment, whether the act that caused the harassment was physical or not was irrelevant because "sexual harassment" was defined as any conduct of a sexual nature that had the purpose or effect of substantially interfering with an individual's work performance, pursuant to 775 ILCS 5/2-101(E). Moreover, the change in a supervisor's conduct from verbal to physical was not relevant to the determination of whether his conduct within the 180-day period was "related," for purposes of National R.R. Passenger Corp. v. Morgan, 536 U.S. 101 (2002), to his conduct outside the 180-day period, and the alleged "character" of the prior acts was not determinative of whether an act occurring within the filing period bore "no relation" to acts occurring outside the filing period and contributed to the same hostile work environment. Jones v. Lockard, Ill. App. 3d , 353 Ill. Dec. 761, 956 N.E.2d 623, 2011 Ill. App. LEXIS 977 (3 Dist. 2011).

Discrimination charge of sexual harassment was timely filed under 775 ILCS 5/7A-102(A)(1) because a shoulder massage that occurred within the 180-day time period was not an isolated example of nonsexual physical conduct that was distinct from a series of sexually tinged comments and photographs made by the same perpetrator that created a hostile work environment. Moreover, an employer's intervening actions did not interrupt the hostile environment and break any connection to the earlier conduct. Jones v. Lockard, Ill. App. 3d , 353 Ill. Dec. 761, 956 N.E.2d 623, 2011 Ill. App. LEXIS 977 (3 Dist. 2011).

- Met

Time limit was met where complaint with attached proof of service certifying the date the complaint was mailed by the attorney contained a date which was within the 30 day period that

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followed the expiration of the 300 day period following the filing of the perfected charge. Villalobos v. F.D.L. Foods, Inc., 298 Ill. App. 3d 132, 232 Ill. Dec. 405, 698 N.E.2d 243 (2 Dist. 1998).

The 300 day time limit for the Department to investigate plaintiff's charge began to run the day following the date the plaintiff filed his perfected charge with the Department not when his unperfected charge was filed. Villalobos v. F.D.L. Foods, Inc., 298 Ill. App. 3d 132, 232 Ill. Dec. 405, 698 N.E.2d 243 (2 Dist. 1998).

Plaintiff's charge was postmarked no later than 180th day from the date of his alleged discriminatory discharge. Villalobos v. F.D.L. Foods, Inc., 298 Ill. App. 3d 132, 232 Ill. Dec. 405, 698 N.E.2d 243 (2 Dist. 1998).

An unverified complaint filed within the 30-day window, but later amended by an identical verified complaint on the 31st day, was timely filed. Maliszewski v. Human Rights Comm'n, 269 Ill. App. 3d 472, 207 Ill. Dec. 59, 646 N.E.2d 625 (5 Dist. 1995).

- Not Mandatory

The 300 day limitation period of subdivision (G)(1) of this section is not mandatory. Wildwood Indus. v. State Human Rights Comm'n, 220 Ill. App. 3d 12, 162 Ill. Dec. 546, 580 N.E.2d 172 (4 Dist. 1991), cert. denied, 143 Ill. 2d 649, 167 Ill. Dec. 411, 587 N.E.2d 1026 (1992).

- Relation Back

Employee's amended charge based on retaliation did not related back to the employee's original claim of discrimination based on race; therefore, the employee's claim was not filed within the 180-day period set forth in 775 ILCS 5/7A-102(A)(1), and the Illinois Human Rights Commission properly dismissed the complaint for want of jurisdiction. Weatherly v. Ill. Human Rights Comm'n, 338 Ill. App. 3d 433, 273 Ill. Dec. 299, 788 N.E.2d 1175, 2003 Ill. App. LEXIS 467 (1 Dist. 2003).

When plaintiff filed perfected charge against defendant it related back to the date he filed his unperfected charge which was within 180 days after the alleged violation. Villalobos v. F.D.L. Foods, Inc., 298 Ill. App. 3d 132, 232 Ill. Dec. 405, 698 N.E.2d 243 (2 Dist. 1998).

- Tolling

The Act does not provide for application of equitable principles to toll the 30 day window contained in subdivision (G)(2). Davis v. Illinois Human Rights Comm'n, 286 Ill. App. 3d 508, 221 Ill. Dec. 794, 676 N.E.2d 315 (1 Dist. 1997).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Employment Law," see 29 S. Ill. U.L.J. 639 (2005).

For article, "Survey of Illinois Law: Employment Law", see 22 S. Ill. U.L.J. 841 (1998).

For article, "A General Practioner's Guide to Employment-Based Claims," see 84 Ill. B.J. 524 (1996).

For note, "The Subtle Vices of the Employment Discrimination Laws," see 29 J. Marshall L. Rev. 575 (1996).

For article, "The Department of Human Rights' Power to Issue Complaints: A Question of Timing," see 82 Ill. B.J. 78 (1994).

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For article, "Recent Developments in Employment Law: 1987-88 Survey," see 13 S. Ill. U.L.J. 656 (1989).

For article, "Labor Law: 1986-87 Illinois Law Survey," see 19 Loy. U. Chi. L.J. 591 (1987-88).

Practice Guides and Treatises.

Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 19.7 Parties (IICLE).

Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 19.6 Statute of Limitations (IICLE).

Employment Discrimination § 12S.11 Pre-Litigation Investigation Through the EEOC or the IDHR (IICLE).

Employment Discrimination § 4.109 Statute of Limitations (IICLE).

Employment Discrimination § 4.108 Exhaustion Requirement (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 8:56 Time limitation for issuing and filing complaint.

Illinois Jurisprudence, Personal Injury and Torts § 8:55 Determination of existence of substantial evidence.

Illinois Jurisprudence, Personal Injury and Torts § 8:54 Fact finding conference.

Illinois Jurisprudence, Personal Injury and Torts § 8:53 Compulsory process; discovery.

Illinois Jurisprudence, Personal Injury and Torts § 8:52 Generally.

Illinois Jurisprudence, Personal Injury and Torts § 8:51 Generally.

Illinois Jurisprudence, Personal Injury and Torts § 8:49 Time limitation; relation back.

Illinois Jurisprudence, Personal Injury and Torts § 8:47 Conciliation and mediation.

Illinois Jurisprudence, Labor and Employment § 4:50 Issuance of complaint.

Illinois Jurisprudence, Labor and Employment § 4:46 Conciliation.

Illinois Jurisprudence, Labor and Employment § 4:44 Determination whether charge is supported by substantial evidence.

Illinois Jurisprudence, Labor and Employment § 4:43 Generally; fact finding conference.

Illinois Jurisprudence, Labor and Employment § 4:41 Time within which Department must act on charge.

Illinois Jurisprudence, Labor and Employment § 4:40 Service of charge; response; reply to response.

Illinois Jurisprudence, Labor and Employment § 4:39 Sufficiency of charge; amendments.

Illinois Jurisprudence, Labor and Employment § 4:38 Time within which charge must be filed.

§ 775 ILCS 5/7A-103. Settlement

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Sec. 7A-103. Settlement. (A) Circumstances. A settlement of any charge prior to the filing of a complaint may be effectuated at any time upon agreement of the parties and the approval of the Department. A settlement of any charge after the filing of a complaint shall be effectuated as specified in Section 8-105(A)(2) of this Act [775 ILCS 5/8-105].

(B) Form. Settlements of charges prior to the filing of complaints shall be reduced to writing by the Department, signed by the parties, and submitted by the Department to the Commission for approval. Settlements of charges after the filing of complaints shall be effectuated as specified in Section 8-105(A)(2) of this Act [775 ILCS 5/8-105].

(C) Violation.

(1) When either party alleges that a settlement order has been violated, the Department shall conduct an investigation into the matter.

(2) Upon finding substantial evidence to demonstrate that a settlement has been violated, the Department shall file notice of a settlement order violation with the Commission and serve all parties.

(D) Dismissal For Refusal To Accept Settlement Offer.

The Department shall dismiss a charge if it is satisfied that:

(1) the respondent has eliminated the effects of the civil rights violation charged and taken steps to prevent its repetition; or

(2) the respondent offers and the complainant declines to accept terms of settlement which the Department finds are sufficient to eliminate the effects of the civil rights violation charged and prevent its repetition.

When the Department dismisses a charge under this Section it shall notify the complainant that he or she may seek review of the dismissal order before the Commission. The complainant shall have 30 days from receipt of notice to file a request for review by the Commission.

In determining whether the respondent has eliminated the effects of the civil rights violation charged, or has offered terms of settlement sufficient to eliminate same, the Department shall consider the extent to which the respondent has either fully provided, or reasonably offered by way of terms of settlement, as the case may be, the relevant relief available to the complainant under Section 8-108 of this Act [775 ILCS 5/8-108].

(E) This amendatory Act of 1995 applies to causes of action filed on or after January 1, 1996.

(F) The changes made to this Section by this amendatory Act of the 95th General Assembly [P.A. 95-243] apply to charges filed on or after the effective date of those changes.

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(Source: P.A. 86-910; 89-370, § 5; 91-357, § 285; 95-243, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 68, Para. 7A-103.

Effect of Amendments. The 1995 amendment by P.A. 89-370, effective August 18, 1995, and applicable to causes of action as specified in each Section or part of the Act, in subsection (D), in the introductory language substituted "shall" for "may"; in subdivision (D)(3), in the first and second sentence, substituted "Chief Legal Counsel of the Department" for "Commission"; and added subsection (E).

The 1999 amendment by P.A. 91-357, effective July 29, 1999, made stylistic changes.

The 2007 amendment by P.A. 95-243, effective January 1, 2008, twice substituted "Commission" for "Chief Legal Counsel of the Department" in (D); and added (F).

CASE NOTES

Analysis

Approval Required
Investigative Stage
Review
- Distinguishment of Duties
- Hearing Denied

Approval Required

Where a settlement agreement was unambiguous and knowingly and voluntarily entered into, and where it complied with all requirements of this Act, the Human Rights Commission was required to approve the settlement. Woodward Governor Co. v. Human Rights Comm'n, 139 Ill. App. 3d 853, 93 Ill. Dec. 828, 487 N.E.2d 653 (2 Dist. 1985).

Investigative Stage

At the investigative stage, an employee would only have to tender sufficient evidence to warrant the director of the department to conclude substantial evidence exists on each of the elements in support of the charge to establish a prima facie case of handicap discrimination. Whipple v. Illinois Dep't of Rehabilitation Servs., 269 Ill. App. 3d 554, 206 Ill. Dec. 980, 646 N.E.2d 275 (4 Dist. 1995).

Review

- Distinguishment of Duties

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The Department of Human Rights is an investigatory agency, whose duties commence when a charge is filed and end when the Department files a complaint with the Human Rights Commission, the adjudicatory agency. The Human Rights Commission's duties commence when a complaint is filed by the Department or when a party files a request for review and ends when the Commission issues an order. The Commission's order is then subject to judicial review, at which time the findings of fact are held to be prima facie correct and the decision is sustained unless it is contrary to the manifest weight of the evidence. Gayle v. Illinois Human Rights Comm'n, 218 Ill. App. 3d 109, 161 Ill. Dec. 17, 578 N.E.2d 144 (1 Dist.), cert. denied, 142 Ill. 2d 653, 164 Ill. Dec. 917, 584 N.E.2d 129 (1991).

- Hearing Denied

Dismissal of complainant's charge without a hearing did not deny her a day in court since she had the right to request review of the Department of Human Rights' decision by the Human Rights Commission at which time she would have had the opportunity to present evidence, and she had the right to appeal the Commission's decision. Jabbari v. Human Rights Comm'n, 173 Ill. App. 3d 227, 123 Ill. Dec. 17, 527 N.E.2d 480 (1 Dist. 1988).

Practice Guides and Treatises.

Employment Discrimination § 12.18 Pre-Litigation Settlements (IICLE).

Employment Discrimination § 11.41 Conciliation (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 8:78 Settlement orders.

Illinois Jurisprudence, Personal Injury and Torts § 8:43 Settlement.

Illinois Jurisprudence, Labor and Employment § 4:49 Dismissal of charge or complaint for refusal to accept offer of settlement.

Illinois Jurisprudence, Labor and Employment § 4:47 Prior to filing of complaint.

§ 775 ILCS 5/7A-104. Judicial Proceedings

Sec. 7A-104. Judicial Proceedings. (A) Temporary Relief.

(1) At any time after a charge is filed, the Department or complainant may petition the appropriate court for temporary relief, pending final determination of the proceedings under this Act, including an order or judgment restraining the respondent from doing or causing any act which would render ineffectual an order which the Commission may enter with respect to the complainant. Whether it is brought by the Department or by the complainant, the petition shall contain a certification by the Director that the particular matter presents exceptional circumstances in which irreparable injury will result from a civil rights violation in the absence of temporary relief.

(2) The petition shall be filed in the circuit court for the county in which the respondent resides or transacts business or in which the alleged violation took place, and the proceedings shall be governed by Part I of Article XI of the "Code of Civil Procedure", as amended [735 ILCS 5/11-101 et seq.]. Except as provided in subsection (A)(3), the court may grant temporary relief or a temporary restraining order as it deems just and proper.

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(3) When the petition is based upon a civil rights violation as defined in Article 3 of this Act [775 ILCS 5/3-101 et seq.], the relief or restraining order entered by the court shall not exceed 5 days unless:

(a) A longer period is agreed to by the respondent; or

(b) The court finds that there is substantial evidence to demonstrate that the respondent has engaged in unlawful discrimination.

(B) Expedited Proceedings.

(1) A complainant or the Department at the request of the complainant may at any time petition the circuit court for expedited proceedings. Except as to causes the circuit court considers to be of greater importance, consideration of petitions for expedited proceedings under this subsection shall take precedence on the docket over all other causes and be assigned for hearing at the earliest practicable date and expedited in every way.

(2) Venue for a petition filed under this subsection shall lie in the county where the respondent resides or is found or where the alleged violation was committed.

(3) Any petition filed by the complainant shall name the Department, Commission and the respondent. Any petition filed by the Department, upon request of the complainant, shall name the Commission and the respondent.

(4) If the circuit court determines that the complainant is likely to die before the termination of the proceedings under this Act, it may order the proceedings expedited. When an order for expedited proceedings is issued, the processing of the complainant's charge by the Department and Commission shall take precedence over all matters except older matters of the same character. Where such order is issued, the Department, the Commission, any panel of the Commission, or any Commission hearing officer shall be authorized to shorten any time period, other than the 180 day charge filing period set by this Act or by rule. If such an order is issued and the complainant is before the Department, the Department shall immediately appoint an investigator if an investigator has not been appointed and shall in 90 days either file a complaint or order that no complaint be issued. If the Department fails to make a determination within 90 days the complainant shall have 30 days to file his complaint with the Commission.

(C) Enforcement of Commission Orders. When authorized by this Act, the Department, at the request of the Commission, may take whatever action may be authorized for the enforcement of Commission orders.

(Source: P.A. 86-910; 86-1028.)

Note.

This section was Ill.Rev.Stat., Ch. 68, Para. 7A-104.

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CASE NOTES

Analysis

Applicability
Construction
Employment Discrimination
Injunction
- Entitlement
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Jurisdiction
Legislative Intent
- Judicial Review

Applicability

The legislature, cognizant of the public policy against open and notorious cohabitation, declined to extend this section's protections to unmarried cohabitants, regardless of whether the couple's conduct was open and notorious. Mister v. A.R.K. Partnership, 197 Ill. App. 3d 105, 143 Ill. Dec. 166, 553 N.E.2d 1152 (2 Dist.), cert. denied, 133 Ill. 2d 559, 149 Ill. Dec. 324, 561 N.E.2d 694 (1990).

Construction

It would serve no purpose to apply a rule of liberal construction in interpreting this section to bring plaintiffs within this Act's coverage when the rule is applied only in favor of those who are intended to be protected under this Act. Mister v. A.R.K. Partnership, 197 Ill. App. 3d 105, 143 Ill. Dec. 166, 553 N.E.2d 1152 (2 Dist.), cert. denied, 133 Ill. 2d 559, 149 Ill. Dec. 324, 561 N.E.2d 694 (1990).

Employment Discrimination

Employer who was the losing party in a proceeding before the former Fair Employment Practices Commission (now Human Rights Commission) and had not pursued judicial review pursuant to former Fair Employment Practices Act (see now this section and 775 ILCS 5/8-111) and the former Administrative Review Act (see now 735 ILCS 5/3-102, 735 ILCS 5/3-110 and 735 ILCS 5/3-111), could not plead affirmative defenses in reply to an enforcement proceeding brought under Fair Employment Practices Act (see now 775 ILCS 5/8-111(B)). People ex rel. Petersen v. Turner Co., 37 Ill. App. 3d 450, 346 N.E.2d 102 (2 Dist. 1976).

Injunction

A trial court does not have the power to enter a permanent injunction under this Act, and a court may only grant temporary relief during the pendency of administrative proceedings before the Department of Human Rights and the Human Rights Commission. People ex rel. Ill. Dep't of Human Rights v. Arlington Park Race Track Corp., 122 Ill. App. 3d 517, 77 Ill. Dec. 882, 461 N.E.2d 505 (1 Dist. 1984).

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- Entitlement

Handicapped employee was properly granted injunctive relief when evidence presented raised a fair question as to employer's accommodation to the disability, there was a likelihood of recovery when his cause of action accrued, and when the burden of accommodation placed on the employer by the injunction was very slight. Constant v. Turris Coal Co., 199 Ill. App. 3d 214, 145 Ill. Dec. 205, 556 N.E.2d 823 (4 Dist. 1990).

Judicial Review

The dismissal of a charge of an unfair employment practice for lack of substantial evidence qualified as an administrative decision and operated as an order for purposes of entitling a complainant to judicial review under the former Fair Employment Practices Act (see now this Act). Klein v. Fair Emp. Practices Comm'n, 31 Ill. App. 3d 473, 334 N.E.2d 370 (1 Dist. 1975).

Jurisdiction

The circuit court was without jurisdiction to issue a temporary restraining order or a temporary injunction where "exceptional circumstances" requiring such relief were not shown. Pierson v. University Orthopedics, 282 Ill. App. 3d 339, 218 Ill. Dec. 17, 668 N.E.2d 180 (1 Dist. 1996).

Legislative Intent

The authority given to the Human Rights Commission under the former Fair Employment Practices Act (see now this section and 775 ILCS 5/8-111) evidenced not only a legislative intent to permit the Human Rights Commission to enlist the aid of a court in the enforcement of its orders but also, in situations in which the validity of the agency's order was contested, an intent to permit complete resolution of the dispute in one court proceeding. People ex rel. Petersen v. Turner Co., 37 Ill. App. 3d 450, 346 N.E.2d 102 (2 Dist. 1976).

- Judicial Review

The legislature, in enacting the former Fair Employment Practices Act (see now this section and 775 ILCS 5/8-111) intended that the former Administrative Review Act (see now 735 ILCS 5/3-102) be the exclusive method of judicial review and did not contemplate an additional form of judicial review of an administrative agency's decision and order by raising defenses on the merits of the controversy in an enforcement proceeding brought under 775 ILCS 5/8-111(B). People ex rel. Petersen v. Turner Co., 37 Ill. App. 3d 450, 346 N.E.2d 102 (2 Dist. 1976).

Practice Guides and Treatises.

Employment Discrimination § 11.37 Expedited Proceedings (IICLE).

Employment Discrimination § 11.36 Temporary Injunctive Relief (IICLE).

Employment Discrimination § 9.4 Who May Seek Preliminary Relief (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 8:44 Petition for temporary relief.

Illinois Jurisprudence, Labor and Employment § 4:42 Judicial relief pending determination of charge; expedited proceedings.

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Article 8A.

Illinois Human Rights Commission; Procedures Under Articles 2, 4, 5, 5A and 6

§ 775 ILCS 5/8A-101. [Applicability]

Sec. 8A-101. This Article shall apply solely to Articles 2, 4, 5, 5A and 6 [775 ILCS 5/2-101 et seq., 775 ILCS 5/4-101 et seq., 775 ILCS 5/5-101 et seq., 775 ILCS 5/5A-101 et seq. and 775 ILCS 5/6-101 et seq.].

(Source: P.A. 86-910.)

Note.

This section was Ill.Rev.Stat., Ch. 68, Para. 8A-101.

CASE NOTES

Employment Discrimination

- Prima Facie Case

The Human Rights Commission's decision that employee maintained a prima facie case of employment discrimination was against the manifest weight of the evidence where it came to an arbitrary and capricious inference based on a lack of evidence. Pioneer Life Ins. Co. v. Woodard, 152 Ill. App. 3d 236, 105 Ill. Dec. 361, 504 N.E.2d 230 (2 Dist. 1987).

§ 775 ILCS 5/8A-102. Hearing on Complaint

Sec. 8A-102. Hearing on Complaint. (A) Services. Within five days after a complaint is filed by the Department, or the aggrieved party, as the case may be, the Commission shall cause it to be served on the respondent together with a notice of hearing before a hearing officer of the Commission at a place therein fixed.

(B) Time and Location of Hearing. An initial hearing date shall be scheduled for not less than thirty nor more than ninety days after service of the complaint at a place that is

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within one hundred miles of the place at which the civil rights violation is alleged to have occurred. The hearing officer may, for good cause shown, extend the date of the hearing.

(C) Amendment.

(1) A complaint may be amended under oath by leave of the presiding hearing officer, for good cause shown, upon timely written motion and reasonable notice to all interested parties at any time prior to the issuance of a recommended order pursuant to Section 8A-102(I) or 8B-102(J) [775 ILCS 5/8A-102 or 775 ILCS 5/8B-102]. The amended complaint shall be served upon all parties of record and the Department of Human Rights by the complainant, or by the Department if it prepared and filed the amended complaint, within 7 days of the date of the order permitting its filing or such additional time as the hearing officer may order. Amendments to the complaint may encompass any unlawful discrimination which is like or reasonably related to the charge and growing out of the allegations in such charge, including, but not limited to, allegations of retaliation.

(2) A motion that the complaint be amended to conform to the evidence, made prior to the close of the public hearing, may be addressed orally on the record to the hearing officer, and shall be granted for good and sufficient cause.

(D) Answer.

(1) The respondent shall file an answer under oath or affirmation to the original or amended complaint within 30 days of the date of service thereof, but the hearing officer may, for good cause shown, grant further time for the filing of an answer.

(2) When the respondent files a motion to dismiss the complaint within 30 days and the motion is denied by the hearing officer, the time for filing the answer shall be within 15 days of the date of denial of the motion.

(3) Any allegation in the complaint which is not denied or admitted in the answer is deemed admitted unless the respondent states in the answer that he is without sufficient knowledge or information to form a belief with respect to such allegation.

(4) The failure to file an answer is deemed to constitute an admission of the allegations contained in the complaint.

(5) The respondent has the right to amend his answer, upon leave of the hearing officer, for good cause shown.

(E) Proceedings In Forma Pauperis.

(1) If the hearing officer is satisfied that the complainant or respondent is a poor person, and unable to prosecute or defend the complaint and pay the costs and expenses thereof, the hearing officer may permit the party to commence and prosecute or defend the action as a poor person. Such party shall have all the necessary subpoenas, appearances, and proceedings without prepayment of witness fees or charges. Witnesses shall attend as in other cases under this Act and the same remedies shall be available for failure or refusal to obey the subpoena as are provided for in Section 8-104 of this Act [775 ILCS 5/8-104].

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(2) A person desiring to proceed without payment of fees or charges shall file with the hearing officer an affidavit stating that he is a poor person and unable to pay costs, and that the action is meritorious.

(F) Discovery. The procedure for obtaining discovery of information from parties and witnesses shall be specified by the Commission in rules. If no rule has been promulgated by the Commission on a particular type of discovery, the Code of Civil Procedure [735 ILCS 5/1-101 et seq.] may be considered persuasive authority. The types of discovery shall be the same as in civil cases in the circuit courts of this State, provided, however, that a party may take discovery depositions only upon leave of the hearing officer and for good cause shown.

(G) Hearing.

(1) Both the complainant and the respondent may appear at the hearing and examine and cross-examine witnesses.

(2) The testimony taken at the hearing shall be under oath or affirmation and a transcript shall be made and filed in the office of the Commission.

(3) The testimony taken at the hearing is subject to the same rules of evidence that apply in courts of this State in civil cases.

(H) Compelling Appearance of Parties at Hearing. The appearance at the hearing of a party or a person who at the time of the hearing is an officer, director, or employee of a party may be required by serving the party with a notice designating the person who is required to appear. The notice also may require the production at the hearing of documents or tangible things. If the party or person is a nonresident of the county, the hearing officer may order any terms and conditions in connection with his appearance at the hearing that are just, including payment of his reasonable expenses. Upon a failure to comply with the notice, the hearing officer may enter any order that is just.

(I) Decision.

(1) When all the testimony has been taken, the hearing officer shall determine whether the respondent has engaged in or is engaging in the civil rights violation with respect to the person aggrieved as charged in the complaint. A determination sustaining a complaint shall be based upon a preponderance of the evidence.

(2) The hearing officer shall make findings of fact in writing and, if the finding is against the respondent, shall issue and cause to be served on the parties and the Department a recommended order for appropriate relief as provided by this Act.

(3) If, upon all the evidence, the hearing officer finds that a respondent has not engaged in the discriminatory practice charged in the complaint or that a preponderance of the evidence does not sustain the complaint, he shall state his findings of fact and shall issue and cause to be served on the parties and the Department a recommended order dismissing the complaint.

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(4) The findings and recommended order of the hearing officer shall be filed with the Commission. The findings and recommended order may be authored by a hearing officer other than the hearing officer who presides at the public hearing if:

(a) the hearing officer who presides at the public hearing is unable to author the findings and recommended order by reason of death, disability, or separation from employment; and

(b) all parties to a complaint file a joint motion agreeing to have the findings and recommended order written by a hearing officer who did not preside at the public hearing.

(5) A recommended order dismissing a complaint may include an award of reasonable attorneys fees in favor of the respondent against the complainant or the complainant's attorney, or both, if the hearing officer concludes that the complaint was frivolous, unreasonable or groundless or that the complainant continued to litigate after it became clearly so.

(6) The hearing officer may issue a recommended order of dismissal with prejudice or a recommended order of default as a sanction for the failure of a party to prosecute his or her case, file a required pleading, appear at a hearing, or otherwise comply with this Act, the rules of the Commission, or a previous order of the hearing officer.

(Source: P.A. 86-910; 89-370, § 5; 92-472, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 68, Para. 8A-102.

Effect of Amendments. The 1995 amendment by P.A. 89-370, effective August 18, 1995, and applicable to causes of action as specified in each Section or part of the Act, in subsection (B), in the first sentence, substituted "An initial hearing date shall be scheduled for" for "The hearing shall be held"; in subdivision (C)(1), in the first sentence, inserted "presiding", deleted "conducting the public hearing" preceding "for good cause", inserted "timely written motion and" and substituted "a recommended order pursuant to Section 8A-102(I) or 8B-102(J)" for "an order based thereon" and added the second sentence; in subsection (F), added the first and second sentences, and in the third sentence, added "The types of" at the beginning, deleted "of information from parties and witnesses" preceding "shall be", substituted "the same" for "available to the parties" and deleted "other" preceding "civil cases"; in subdivision (I)(4) added the second sentence; in subdivision (I)(5) inserted "against the complainant or the complainant's attorney, or both"; and added subdivision (I)(6).

The 2001 amendment by P.A. 92-472, effective January 1, 2002, substituted in subsection (I)(4) "may" for "need not", and inserted "a hearing officer other than"; added subsection (I)(4)(a), redesignated former subsection (I)(4)(a) as subsection (I)(4)(b), deleted former subsections (I)(4)(b) and (I)(4)(c), and made related changes.

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CASE NOTES

Analysis

Determination of Discrimination
- In General
- Violation Shown
Directed Finding
Employer
Hearing Officer
- Findings
- Purpose
Standard of Review
Testimony

Determination of Discrimination

- In General

Unlike findings of fact, a legal determination of discrimination is not presumptively established by an order of the Human Rights Commission. Pioneer Life Ins. Co. v. Woodard, 152 Ill. App. 3d 236, 105 Ill. Dec. 361, 504 N.E.2d 230 (2 Dist. 1987).

- Violation Shown

Unfair employment practice was proved by a preponderance of the evidence under section 858(f) of the former Fair Employment Practices Act (see now this section) where mason contractor hired white bricklayers after black bricklayers applied and there was no legitimate, nondiscriminatory explanation given. A. P. Green Serv. Div. of Bigelow-Liptak Corp. v. Fair Emp. Practice Comm'n, 19 Ill. App. 3d 875, 312 N.E.2d 314 (1 Dist. 1974).

Directed Finding

In order to escape the entry of a directed finding, a petitioner must show discrimination under a preponderance of the evidence standard; a presentation of substantial evidence is insufficient. Koulegeorge v. State Human Rights Comm'n, 316 Ill. App. 3d 1079, 250 Ill. Dec. 208, 738 N.E.2d 172, 2000 Ill. App. LEXIS 796 (1 Dist. 2000), cert. denied, 534 U.S. 886, 122 S. Ct. 195, 151 L. Ed. 2d 138 (2001), appeal denied, 193 Ill. 2d 587, 253 Ill. Dec. 3, 744 N.E.2d 285 (2001).

An administrative law judge has the authority to enter a directed finding where the petitioner has not established a prima facie case by a preponderance of the evidence. Koulegeorge v. State Human Rights Comm'n, 316 Ill. App. 3d 1079, 250 Ill. Dec. 208, 738 N.E.2d 172, 2000 Ill. App. LEXIS 796 (1 Dist. 2000), cert. denied, 534 U.S. 886, 122 S. Ct. 195, 151 L. Ed. 2d 138 (2001), appeal denied, 193 Ill. 2d 587, 253 Ill. Dec. 3, 744 N.E.2d 285 (2001).

Employer

County was not the former employer, within the meaning of the Illinois Human Rights Act for a former secretary for the county probation office. The secretary's claim that the State was named

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as a party to the suit was not supported by the documentary evidence and the secretary was given every opportunity under the procedures of the act to correct the problem. Travis v. Human Rights Comm'n, 241 Ill. App. 3d 649, 182 Ill. Dec. 763, 610 N.E.2d 187, 1993 Ill. App. LEXIS 361 (1 Dist. 1993).

Hearing Officer

- Findings

This section does not confer upon the Commission the authority to allow an ALJ, other than the ALJ who presided at the evidentiary hearing, to author the findings and recommended order merely because the parties agree by stipulation to such action. Gilchrist v. Human Rights Comm'n, 312 Ill. App. 3d 597, 245 Ill. Dec. 484, 728 N.E.2d 566, 2000 Ill. App. LEXIS 189 (1 Dist. 2000).

- Purpose

There is a need to have a single hearing officer receive evidence and prepare a proposed order in complaints filed under this Act because he has the ability to observe the witnesses' demeanor and assess their credibility. Quincy Country Club v. Human Rights Comm'n, 147 Ill. App. 3d 497, 101 Ill. Dec. 134, 498 N.E.2d 316 (4 Dist. 1986).

Standard of Review

In order to reverse a finding of the former Fair Employment Practices Commission (now Human Rights Commission) as being against the manifest weight of the evidence, the trial court must find sufficient evidence in the record to make an opposite finding clearly evident. Weigel Broadcasting Co. v. Hammer, 67 Ill. App. 3d 805, 23 Ill. Dec. 904, 384 N.E.2d 811 (1 Dist. 1978).

Testimony

Ill. Const. (1970), Art. I, § 17 does not require that an ultimate decision maker always hear the testimony relied upon for the decision; however, where credibility is a determining factor in a case, the presiding administrative law judge must participate in the decision. Quincy Country Club v. Human Rights Comm'n, 147 Ill. App. 3d 497, 101 Ill. Dec. 134, 498 N.E.2d 316 (4 Dist. 1986).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Employment Law," see 25 S. Ill. U. L.J. 805 (2001).

Practice Guides and Treatises.

Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 19.5 Relevant Standard Jury Instructions (IICLE).

Employment Discrimination § 11.52 Discovery (IICLE).

Employment Discrimination § 11.50 Complaint and Answer (IICLE).

Employment Discrimination § 11.25 Procedure under the IHRA (IICLE).

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Illinois Jurisprudence, Personal Injury and Torts § 8:64 Summary decision; directed finding; decision and recommended order.

Illinois Jurisprudence, Personal Injury and Torts § 8:63 Substitution of hearing officers.

Illinois Jurisprudence, Personal Injury and Torts § 8:62 Right to appear; testimony.

Illinois Jurisprudence, Personal Injury and Torts § 8:61 Generally; alternative hearing procedure.

Illinois Jurisprudence, Labor and Employment § 4:53 Decision and recommended order.

Illinois Jurisprudence, Labor and Employment § 4:52 Conduct of hearing.

Illinois Jurisprudence, Labor and Employment § 4:51 Service of complaint; answer; discovery.

§ 775 ILCS 5/8A-102.5. Alternative hearing procedure

Sec. 8A-102.5. Alternative hearing procedure. (A) All parties shall be given the right to proceed under this Section.

(B) If all parties to a complaint stipulate to proceedings under this Section, the complaint shall be resolved in the following manner:

(1) The parties shall select a hearing officer by mutual agreement from a pool of hearing officers determined by the Commission.

(2) The parties shall have a limited right to discovery. The methods of discovery available to the parties shall be specified in rules promulgated by the Commission.

(3) If a dispositive motion is made with respect to a case, the hearing officer mutually agreed upon shall have the authority to issue a final order disposing of the complaint based upon the motion.

(4) If the case proceeds to public hearing, the hearing officer mutually agreed upon shall have the authority to issue a final order disposing of the complaint based upon the pleadings and the evidence presented. The final order shall be in sufficient detail to apprise the parties as to the basis for the decisions, but need not contain detailed findings of fact and conclusions of law.

(C) There is no right of appeal of orders issued under this Section. By stipulating to resolution of the complaint under this Section, the parties waive all right of appeal except for orders procured by fraud or duress.

(D) Final orders issued under this Section are enforceable in the same manner as orders issued by the Commission.

(Source: P.A. 89-370, § 5.)

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Effective Date. Section 99 of P.A. 89-370 made this section effective upon becoming law and applicable to causes of action as specified in each Section or part of the Act. The Act was approved August 18, 1995.

Practice Guides and Treatises.

Employment Discrimination § 11.51 Alternative Hearing Procedure (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 8:61 Generally; alternative hearing procedure.

§ 775 ILCS 5/8A-103. Review by Commission

Sec. 8A-103. Review by Commission. (A) Exceptions. Within 30 days of the receipt of service of the hearing officer's recommended order, a party may file with the Commission any written exceptions to any part of the order. Exceptions shall be supported by argument and served on all parties at the time they are filed. If no exceptions are filed, the recommended order shall become the order of the Commission without further review.

(B) Response. Within 21 days of the receipt of service of exceptions, a party may file with the Commission any response to the exceptions. Responses shall be supported by argument and served on all parties at the time they are filed.

(C) Oral Argument. A party may request oral argument at the time of filing exceptions or a response to exceptions. When any party requests oral argument in this manner, the Commission may schedule oral argument to be heard by a panel of 3 Commission members. If the panel grants oral argument, it shall notify all parties of the time and place of argument. Any party so notified may present oral argument.

(D) Remand.

(1) The Commission, on its own motion or at the written request of any party made at the time of filing exceptions or responses, may remand a case to a hearing officer for purposes of a rehearing to reconsider evidence or hear additional evidence in the matter. The Commission shall issue and serve on all parties a written order remanding the cause and specifying the additional evidence.

(2) The hearing officer presiding at a rehearing shall set a hearing date, in accordance with subsection (B) of Section 8A-102 [775 ILCS 5/8A-102], upon due notice to all parties.

(3) After conclusion of the rehearing, the hearing officer shall file written findings and recommendations with the Commission and serve copies at the same time on all parties in the same manner as provided in subsection (I) of Section 8A-102 [775 ILCS 5/8A-102]. The findings and recommendations shall be subject to review by the Commission as provided in this Section.

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(E) Review.

(1) Following the filing of the findings and recommended order of the hearing officer and any written exceptions and responses, and any other proceedings provided for in this Section, the Commission, through a panel of 3 members, shall decide whether to accept the case for review. If the panel declines to review the recommended order, it shall become the order of the Commission. If the panel accepts the case, it shall review the record and may adopt, modify, or reverse in whole or in part the findings and recommendations of the hearing officer.

(2) When reviewing a recommended order, the Commission shall adopt the hearing officer's findings of fact if they are not contrary to the manifest weight of the evidence.

(3) If the Commission accepts a case for review, it shall file its written order and decision in its office and serve copies on all parties together with a notification of the date when it was filed. If the Commission declines to review a recommended order or if no exceptions have been filed, it shall issue a short statement notifying the parties that the recommended order has become the order of the Commission. The statement shall be served on the parties by first class mail.

(4) A recommended order authored by a non-presiding hearing officer under subparagraph 8A-102(I)(4) of this Act [775 ILCS 5/8A-102] shall be reviewed in the same manner as a recommended order authored by a presiding hearing officer.

(F) Rehearing.

(1) Within 30 days after service of the Commission's order or statement declining review, a party may file an application for rehearing before the full Commission. The application shall be served on all other parties. The Commission shall have discretion to order a response to the application. The filing of an application for rehearing is optional. The failure to file an application for rehearing shall not be considered a failure to exhaust administrative remedies. This amendatory Act of 1991 applies to pending proceedings as well as those filed on or after its effective date.

(2) Applications for rehearing shall be viewed with disfavor and may be granted, by vote of 6 Commission members, only upon a clear demonstration that a matter raises legal issues of significant impact or that Commission decisions are in conflict.

(3) When an application for rehearing is granted, the original order shall be nullified and oral argument before the full Commission shall be scheduled. The Commission may request the parties to file any additional written arguments it deems necessary.

(G) Modification of Order.

(1) At any time before a final order of the court in a proceeding for judicial review under this Act, the Commission or the 3-member panel that decided the matter, upon reasonable notice, may modify or set aside in whole or in part any finding or order made by it in accordance with this Section.

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(2) Any modification shall be accomplished by the filing and service of a supplemental order and decision by the Commission in the same manner as provided in this Section.

(H) Extensions of time. All motions for extensions of time with respect to matters being considered by the Commission shall be decided by the full Commission or a 3-member panel. If a motion for extension of time cannot be ruled upon before the filing deadline sought to be extended, the Chairperson of the Commission shall be authorized to extend the filing deadline to the date of the next Commission meeting at which the motion can be considered.

(Source: P.A. 86-910; 86-1028; 87-371; 89-348, § 5; 89-370, § 5; 89-626, § 2-82.)

Note.

This section was Ill.Rev.Stat., Ch. 68, Para. 8A-103.

Effect of Amendments. The 1995 amendment by P.A. 89-348, effective January 1, 1996, in subsection (A) added the third sentence; in subsection (C), in the second sentence, substituted "may" for "shall" and in the third sentence substituted "If the panel grants oral argument, it" for "and"; in subdivision (E)(1), in the first sentence, added "decide whether to accept the case for review" at the end, added the second sentence, and in the third sentence added at the beginning "If the panel accepts the case, it shall"; in subdivision (E)(2) added at the beginning "When reviewing a recommended order"; in subdivision (E)(3), in the first sentence, substituted "If the Commission accepts a case for review, it" for "The Commission" and added the second and third sentences; in subdivision (F)(1), in the first sentence, inserted "or statement declining review"; and in subdivision (F)(2) substituted "Commission" for "3 member panel".

The 1995 amendment by P.A. 89-370, effective August 18, 1995, and applicable to causes of action as specified in each Section or part of the Act, added subdivision (E)(4).

The 1996 amendment by P.A. 89-626, effective August 9, 1996, combined the amendments by P.A. 89-348 and P.A. 89-370; and in subdivision (E)(1) substituted "it" for "is" following "recommended order,".

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Supplemental Hearing

Construction

The term "may" is to be interpreted in a mandatory sense in instances where parties desire judicial review of a panel decision. Castaneda v. Illinois Human Rights Comm'n, 132 Ill. 2d 304, 138 Ill. Dec. 270, 547 N.E.2d 437 (1989).

Modification of Order

- Additional Back Pay

Human Rights Commission did not err in modifying its order to award additional back pay where the additional damages were for damages suffered after the hearing, and therefore could be calculated only later; modification of an order at any time before a final order of the reviewing court is permitted. ISS Int'l Serv. Sys. v. Illinois Human Rights Comm'n, 272 Ill. App. 3d 969, 209 Ill. Dec. 414, 651 N.E.2d 592 (1 Dist. 1995), appeal dismissed without op., 164 Ill. 2d 565, 214 Ill. Dec. 321, 660 N.E.2d 1270 (1995).

Rehearing

- In General

The language in a prior version of this section was merely a statement of policy that obtaining a rehearing would be difficult; it did not preclude a rehearing by the full Human Rights Commission. Thus, an appellant's application for a rehearing would not be futile so as to exempt appellant from seeking the rehearing before the full Commission prior to judicial review. Board of Trustees v. Illinois Human Rights Comm'n, 197 Ill. App. 3d 345, 143 Ill. Dec. 122, 553 N.E.2d 1108 (5 Dist. 1990).

- Application Not Timely

Where employer did not file an application for rehearing within the 30 day period, the case could not be considered a pending proceeding because the Human Rights Commission panel decision was not appealable due to the passing of the deadline to file the application for rehearing.

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Hamilton County Tel. Coop. v. Maloney, 151 Ill. 2d 227, 176 Ill. Dec. 62, 601 N.E.2d 760 (1992).

- Continuous Proceeding

Because this section allows an application for rehearing only if it is filed within a specified time, the filing of such application does not constitute the commencement of a new proceeding before the agency, but a continuation of the original one, the right to request rehearing is not a separate or second remedy. Castaneda v. Human Rights Comm'n, 175 Ill. App. 3d 1085, 125 Ill. Dec. 596, 530 N.E.2d 1005 (1 Dist. 1988), appeal allowed, 125 Ill. 2d 563, 130 Ill. Dec. 478, 537 N.E.2d 807, aff'd, 132 Ill. 2d 304, 138 Ill. Dec. 270, 547 N.E.2d 437 (1989).

- Correction of Errors

An application for rehearing before the Human Rights Commission, and ultimately the rehearing itself, is more likely to result in the correction of any errors in the three member panel's decision than the procedural counterpart under 735 ILCS 5/2-1203 and Rules 303 and 315, Supreme Court Rules, because six more judges who have not yet considered the aggrieved party's case are now examining it for the first time. Castaneda v. Illinois Human Rights Comm'n, 132 Ill. 2d 304, 138 Ill. Dec. 270, 547 N.E.2d 437 (1989).

- Exhaustion of Remedies

The general rule is that petitioners seeking judicial review of decisions by a three-member panels of the Human Rights Commission must seek an en bloc rehearing before the Commission in order to exhaust their administrative remedies and to render such decisions final and reviewable; where petitioner did not request a rehearing of a panel decision by the entire Human Rights Commission, petitioner failed to exhaust his administrative remedies. Castaneda v. Human Rights Comm'n, 175 Ill. App. 3d 1085, 125 Ill. Dec. 596, 530 N.E.2d 1005 (1 Dist. 1988), appeal allowed, 125 Ill. 2d 563, 130 Ill. Dec. 478, 537 N.E.2d 807, aff'd, 132 Ill. 2d 304, 138 Ill. Dec. 270, 547 N.E.2d 437 (1989).

- Full Panel

The rehearing contemplated by this section occurs before the entire Human Rights Commission, which allows the full nine member commission fully to develop and consider the facts of the cause more thoroughly than a three member panel. Castaneda v. Illinois Human Rights Comm'n, 132 Ill. 2d 304, 138 Ill. Dec. 270, 547 N.E.2d 437 (1989).

- Procedure Not Followed

Where the Human Rights Commission failed to follow the procedure established by subsection (F) of this section when employee's petition for reconsideration of the dismissal of her civil rights complaint for want of prosecution was considered and denied by a three member panel rather than the full Commission, the order denying the petition was void. Jones v. Department of Human Rights, 162 Ill. App. 3d 702, 113 Ill. Dec. 948, 515 N.E.2d 1255 (2 Dist. 1987).

- Purpose

The principles underlying creation of the Human Rights Commission require that the Commission, in its expertise, should be allowed every opportunity to dispose of complaints involving civil rights violations fairly and efficiently; thus, requiring an application for rehearing gives the Commission an opportunity to fulfill that purpose, but allowing panel decisions to be appealable, skips over an available remedy and offends the legislative purposes in empowering the Commission. Castaneda v. Illinois Human Rights Comm'n, 132 Ill. 2d 304, 138 Ill. Dec. 270, 547 N.E.2d 437 (1989).

- Retroactivity of Amendment

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The legislative amendment to subdivision (F)(1) of this section which became effective January 1, 1992, making the filing of an application for rehearing optional, was not applied retroactively. Hamilton County Tel. Coop. v. Maloney, 151 Ill. 2d 227, 176 Ill. Dec. 62, 601 N.E.2d 760 (1992).

Remand

- Failure Not Improper

The Human Rights Commission's failure to remand a case for a new hearing before a hearing officer was not procedurally improper under this section prior to its 1989 amendment. Kenall Mfg. Co. v. Human Rights Comm'n, 152 Ill. App. 3d 695, 105 Ill. Dec. 520, 504 N.E.2d 805 (1 Dist. 1987).

- Improper Burden of Proof

Where the Human Rights Commission applied an improper burden of proof upon employee over the objection of the hearing officer, the Commission's order had to be vacated and remanded for review consistent with the proper burden for proving pretext. Vidal v. Illinois Human Rights Comm'n, 223 Ill. App. 3d 467, 165 Ill. Dec. 737, 585 N.E.2d 133 (1991), appeal denied, 145 Ill. 2d 645, 173 Ill. Dec. 14, 596 N.E.2d 638 (1992).

Review

- In General

Judicial review of an administrative decision must be limited to a review of the legal standard used by the Human Rights Commission and the findings of the Commission and although courts may not pass upon the propriety of the Commission's determination, they may pass upon the actual determination of the Commission just as if the Commission were the original fact finder. All Purpose Nursing Serv. v. Human Rights Comm'n, 205 Ill. App. 3d 816, 150 Ill. Dec. 717, 563 N.E.2d 844 (1 Dist. 1990).

- Final Order

Because this Act permits the Human Rights Commission to modify or set aside its order for an indefinite period of time prior to any final order by a reviewing court, the Commission's order must be considered as final, even though it may be modified or vacated by the Commission while being reviewed by the appellate courts or the Supreme Court. Babcock & Wilcox Co. v. Department of Human Rights, 189 Ill. App. 3d 827, 137 Ill. Dec. 146, 545 N.E.2d 799 (2 Dist. 1989), appeal denied, 129 Ill. 2d 561, 140 Ill. Dec. 668, 550 N.E.2d 553, cert. denied, 497 U.S. 1004, 110 S. Ct. 3239, 111 L. Ed. 2d 750 (1990).

- Findings of Hearing Officer

In an employee's sexual harassment action, the Illinois Human Rights Commission did not make a factual finding that a supervisor of the employer made a particular statement, rather, in accordance with subsection (E)(2) of this section, the Commission indicated that it had adopted the administrative law judge's finding that the supervisor made such statement. Pinnacle Ltd. P'ship v. Ill. Human Rights Comm'n, 354 Ill. App. 3d 819, 290 Ill. Dec. 139, 820 N.E.2d 1206, 2004 Ill. App. LEXIS 1524 (4 Dist. 2004).

In an employee's sexual harassment action, the employer failed in its contention that the Illinois Human Rights Commission usurped the administrative law judge's duties by determining "who said what"; the Commission did not make a factual finding that a supervisor of the employer made a particular statement, rather, it determined that the judge's finding that the supervisor did

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not make the statement was against the manifest weight of the evidence, and such determination was clearly allowed under subsection (E)(2) of this section. Pinnacle Ltd. P'ship v. Ill. Human Rights Comm'n, 354 Ill. App. 3d 819, 290 Ill. Dec. 139, 820 N.E.2d 1206, 2004 Ill. App. LEXIS 1524 (4 Dist. 2004).

The Human Rights Commission must give the same deference to the hearing officer's findings as an appellate court must give to the findings of a circuit court. Quincy Country Club v. Human Rights Comm'n, 147 Ill. App. 3d 497, 101 Ill. Dec. 134, 498 N.E.2d 316 (4 Dist. 1986).

- Legal Misapprehension

Where the Human Rights Commission found that an administrative law judge placed an erroneous burden of proving pretext upon the complainant, the Commission could reject the factual findings inherent in a recommended decision where those findings were premised upon a misapprehension of the law. Board of Regents v. Human Rights Comm'n, 196 Ill. App. 3d 187, 142 Ill. Dec. 632, 552 N.E.2d 1373 (4 Dist. 1990).

- Limitation

Judicial review is limited to the findings of the Human Rights Commission because a review of the decision of an administrative law judge is not contemplated by this Act and the case law. All Purpose Nursing Serv. v. Human Rights Comm'n, 205 Ill. App. 3d 816, 150 Ill. Dec. 717, 563 N.E.2d 844 (1 Dist. 1990).

Where the Human Rights Commission rejects some of an administrative law judge's findings because they are contrary to the manifest weight of the evidence, the function of the court on administrative review is limited to ascertaining whether the Commission's decision, not that of the administrative law judge, was contrary to the manifest weight of the evidence. Sherman v. Illinois Human Rights Comm'n, 206 Ill. App. 3d 374, 151 Ill. Dec. 226, 564 N.E.2d 203 (4 Dist. 1990).

- Substitute Hearing Officer

The Human Rights Commission's authority to review is neither invoked nor revoked because a substitute hearing officer prepared the interim order and decision. Illinois Bell Tel. Co. v. Human Rights Comm'n, 190 Ill. App. 3d 1036, 138 Ill. Dec. 332, 547 N.E.2d 499 (1 Dist. 1989).

Supplemental Hearing

An administrative law judge did not abuse his discretion in ordering a supplemental hearing on the accommodations even though neither the Act nor the regulations specifically authorize a judge to order such a supplemental hearing; but because subsection (D) does authorize remand for additional evidence there was no error in considering the additional evidence. Harton v. City of Chicago, 301 Ill. App. 3d 378, 234 Ill. Dec. 632, 703 N.E.2d 493 (1 Dist. 1998), appeal denied, 182 Ill. 2d 549, 236 Ill. Dec. 669, 707 N.E.2d 1239 (1999).

Practice Guides and Treatises.

Employment Discrimination § 11.69 Acceptance of the Case (IICLE).

Employment Discrimination § 11.67 Exceptions (IICLE).

Employment Discrimination § 11.64 Recommended Order and Decision (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 8:67 Rehearing.

Illinois Jurisprudence, Personal Injury and Torts § 8:66 Review.

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Illinois Jurisprudence, Personal Injury and Torts § 8:65 Generally.

Illinois Jurisprudence, Labor and Employment § 4:57 Issuance of order by Commission; rehearing; modification of order.

Illinois Jurisprudence, Labor and Employment § 4:56 Administrative review of recommended order, generally.

§ 775 ILCS 5/8A-104. Relief; Penalties

Sec. 8A-104. Relief; Penalties. Upon finding a civil rights violation, a hearing officer may recommend and the Commission or any three-member panel thereof may provide for any relief or penalty identified in this Section, separately or in combination, by entering an order directing the respondent to:

(A) Cease and Desist Order. Cease and desist from any violation of this Act.

(B) Actual Damages. Pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant.

(C) Hiring; Reinstatement; Promotion; Backpay; Fringe Benefits. Hire, reinstate or upgrade the complainant with or without back pay or provide such fringe benefits as the complainant may have been denied.

(D) Restoration of Membership; Admission To Programs. Admit or restore the complainant to labor organization membership, to a guidance program, apprenticeship training program, on the job training program, or other occupational training or retraining program.

(E) Public Accommodations. Admit the complainant to a public accommodation.

(F) Services. Extend to the complainant the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the respondent.

(G) Attorneys Fees; Costs. Pay to the complainant all or a portion of the costs of maintaining the action, including reasonable attorney fees and expert witness fees incurred in maintaining this action before the Department, the Commission and in any judicial review and judicial enforcement proceedings. Provided, however, that no award of attorney fees or costs shall be made pursuant to this amendatory Act of 1987 with respect to any charge for which the complaint before the Commission was filed prior to December 1, 1987. With respect to all charges for which complaints were filed with the Commission prior to December 1, 1987, attorney fees and costs shall be awarded pursuant to the terms of this subsection as it existed prior to revision by this amendatory Act of 1987.

(H) Compliance Report. Report as to the manner of compliance.

(I) Posting of Notices. Post notices in a conspicuous place which the Commission may publish or cause to be published setting forth requirements for compliance with this Act

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or other relevant information which the Commission determines necessary to explain this Act.

(J) Make Complainant Whole. Take such action as may be necessary to make the individual complainant whole, including, but not limited to, awards of interest on the complainant's actual damages and backpay from the date of the civil rights violation. Provided, however, that no award of prejudgment interest shall be made pursuant to this amendatory Act of 1987 with respect to any charge in which the complaint before the Commission was filed prior to December 1, 1987. With respect to all charges for which complaints were filed with the Commission prior to December 1, 1987, make whole relief shall be awarded pursuant to this subsection as it existed prior to revision by this amendatory Act of 1987.

There shall be no distinction made under this Section between complaints filed by the Department and those filed by the aggrieved party.

(Source: P.A. 86-910.)

Note.

This section was Ill.Rev.Stat., Ch. 68, Para. 8A-104.

CASE NOTES

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- Not Excessive
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- Cease and Desist Order

Attorney Fees

- In General

For a case discussing the awardings of attorney fees under former similar provision, see Crider v. State, 174 Ill. App. 3d 163, 123 Ill. Dec. 897, 528 N.E.2d 442 (4 Dist. 1988).

Attorney fees awarded in discrimination litigation are necessary to ensure proper representation of complaints before the Human Rights Commission and to enforce the important public policies in this Act. Rackow v. Human Rights Comm'n, 152 Ill. App. 3d 1046, 105 Ill. Dec. 826, 504 N.E.2d 1344 (2 Dist. 1987).

- Appellate Representation

An award of fees and costs for appellate representation is not authorized under this Act. Village of Bellwood Bd. of Fire & Police Comm'rs v. Human Rights Comm'n, 184 Ill. App. 3d 339, 133 Ill. Dec. 810, 541 N.E.2d 1248 (1 Dist. 1989).

- Awarded

Given the Commission's recognition of the purposes behind this Act's attorney fees provision, it did not abuse its discretion in concluding that plaintiff had obtained excellent results and was thus entitled to a fully compensatory attorney fee. Brewington v. Illinois Dep't of Cors., 161 Ill. App. 3d 54, 112 Ill. Dec. 447, 513 N.E.2d 1056 (1 Dist. 1987).

There was not an abuse of discretion in awarding attorney fees where there was sufficient evidence in the record that the attorney devoted the hours charged, where the compensatory damages were only $300 and were disproportionate to the attorney fees award, and where the success of the litigation was a significant victory because it awarded complainant the right to rent the apartment in question and win a cease and desist order against apartment owners. Rackow v. Human Rights Comm'n, 152 Ill. App. 3d 1046, 105 Ill. Dec. 826, 504 N.E.2d 1344 (2 Dist. 1987).

Where the Human Rights Commission found that an employer failed to file any specific objections to a charge of discrimination, an award of attorney fees was proper. Loyola Univ. v. Human Rights Comm'n, 149 Ill. App. 3d 8, 102 Ill. Dec. 746, 500 N.E.2d 639 (1 Dist. 1986).

- Criteria for Award

The criteria generally utilized for determining whether a statutory award of attorneys fees is reasonable include the skill and standing of the attorney, the nature of the controversy, the difficulty and novelty of the issues in the case, the importance of the subject matter, the degree of responsibility involved in the management of the case, the time and labor required to be expended on the case, the customary charge in the community and the benefits resulting to the client. Rackow v. Human Rights Comm'n, 152 Ill. App. 3d 1046, 105 Ill. Dec. 826, 504 N.E.2d 1344 (2 Dist. 1987).

- Hearing Not Required

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Where a civil rights violation was established, administrative law judge (ALJ) and Human Rights Commission decided to award attorney fees, and ALJ examined fee petition, affidavits, billing worksheet and written response submitted by defendant to calculate reasonable fee, ALJ did not err in failing to hold a hearing on plaintiff's petition for attorney fees. Raintree Health Care Ctr. v. Illinois Human Rights Comm'n, 173 Ill. 2d 469, 220 Ill. Dec. 124, 672 N.E.2d 1136 (1996).

- Not Allowed

The fact that a complaint was found legally insufficient did not justify the further conclusion that employee's discrimination charge must have been wholly without merit, frivolous, unreasonable, or groundless, or that it was continued after it became clearly so, and therefore the employer was not entitled to attorney fees. Pepsi-Cola Gen. Bottlers, Inc. v. Illinois Human Rights Comm'n, 137 Ill. App. 3d 288, 92 Ill. Dec. 23, 484 N.E.2d 538 (1 Dist. 1985).

Portion of a school commission's order awarding attorney fees to a prospective employee was void as exceeding the jurisdiction of the Commission under the former Fair Employment Practices Act (see now this section). School Dist. No. 175 v. Illinois Fair Emp. Practices Comm'n, 57 Ill. App. 3d 979, 15 Ill. Dec. 101, 373 N.E.2d 447 (5 Dist. 1978).

- Review

A reviewing court will not vacate an award of attorney fees absent a showing of abuse of discretion in making the award. Rackow v. Human Rights Comm'n, 152 Ill. App. 3d 1046, 105 Ill. Dec. 826, 504 N.E.2d 1344 (2 Dist. 1987); Village of Bellwood Bd. of Fire & Police Comm'rs v. Human Rights Comm'n, 184 Ill. App. 3d 339, 133 Ill. Dec. 810, 541 N.E.2d 1248 (1 Dist. 1989).

- Work by Law Students

The Commission did not abuse its discretion in awarding plaintiff attorney fees which included 388.45 hours worked by senior law students. Brewington v. Illinois Dep't of Cors., 161 Ill. App. 3d 54, 112 Ill. Dec. 447, 513 N.E.2d 1056 (1 Dist. 1987).

Authority

- Award of Prejudgment Interest

The Human Rights Commission is not a court for the purposes of 735 ILCS 5/2-1303; its only authority to award prejudgment interest is in this Act. Thus, prior to amendment to subsection (J) of this section providing for prejudgment, prejudgment interest could not be awarded by the Commission. Johnson v. Human Rights Comm'n, 173 Ill. App. 3d 564, 123 Ill. Dec. 245, 527 N.E.2d 883 (1 Dist. 1988).

- Deduction of Collateral Benefits

A determination that benefits are "collateral" does not mean that such benefits can never be deducted from damages received on account of discrimination; instead, the decision lies within the sound discretion of the trial court or, in this case, the Human Rights Commission. City of Chicago v. Illinois Human Rights Comm'n, 264 Ill. App. 3d 982, 202 Ill. Dec. 50, 637 N.E.2d 589 (1 Dist. 1994).

Civil Rights Violation

From the finding that the applicant could not have performed the duties of the principal clerk even with accommodation, it necessarily followed that she was not handicapped within the meaning of the Act and that the City's refusal to consider her for that position, even if based on her blindness,

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did not rise to the level of unlawful discrimination as that phrase is defined in 775 ILCS 5/1-103; therefore, since the City did not unlawfully discriminate against the applicant, it committed no civil rights violation which could form the predicate for the Commission's award of relief. Harton v. City of Chicago, 301 Ill. App. 3d 378, 234 Ill. Dec. 632, 703 N.E.2d 493 (1 Dist. 1998), appeal denied, 182 Ill. 2d 549, 236 Ill. Dec. 669, 707 N.E.2d 1239 (1999).

Damages

- Actual Damages

The term "actual damages" in this Act contemplates compensation for emotional harm and mental suffering caused by a violation of the Human Rights Act. Village of Bellwood Bd. of Fire & Police Comm'rs v. Human Rights Comm'n, 184 Ill. App. 3d 339, 133 Ill. Dec. 810, 541 N.E.2d 1248 (1 Dist. 1989).

- Back Pay

The purpose of a back pay award is to put the claimant in the position he would have been with respect to salary, raises, sick leave, vacation pay, pension benefits, and other fringe benefits, had the discriminatory act not occurred, and any ambiguities are to be resolved against the discriminating employer since the employer's wrongful act gave rise to the uncertainty. State v. Human Rights Comm'n, 178 Ill. App. 3d 1033, 128 Ill. Dec. 141, 534 N.E.2d 161 (4 Dist. 1989).

- Emotional and Mental Harm

Actual damages include compensation for emotional harm and mental suffering. ISS Int'l Serv. Sys. v. Illinois Human Rights Comm'n, 272 Ill. App. 3d 969, 209 Ill. Dec. 414, 651 N.E.2d 592 (1 Dist. 1995), appeal dismissed without op., 164 Ill. 2d 565, 214 Ill. Dec. 321, 660 N.E.2d 1270 (1995).

- Front Pay

Front pay is a remedy available to compensate an individual who has been discriminated against on the basis of his age and this remedy may be especially appropriate when the plaintiff has no reasonable prospect of obtaining comparable employment. Charles A. Stevens & Co. v. Human Rights Comm'n, 196 Ill. App. 3d 748, 143 Ill. Dec. 904, 554 N.E.2d 976 (1 Dist. 1990).

- Mitigation

A complainant in an employment discrimination case is required to make reasonable efforts to seek subsequent employment. ISS Int'l Serv. Sys. v. Illinois Human Rights Comm'n, 272 Ill. App. 3d 969, 209 Ill. Dec. 414, 651 N.E.2d 592 (1 Dist. 1995), appeal dismissed without op., 164 Ill. 2d 565, 214 Ill. Dec. 321, 660 N.E.2d 1270 (1995).

The employer has the burden of proving that the employee failed to mitigate damages in a discrimination suit. ISS Int'l Serv. Sys. v. Illinois Human Rights Comm'n, 272 Ill. App. 3d 969, 209 Ill. Dec. 414, 651 N.E.2d 592 (1 Dist. 1995), appeal dismissed without op., 164 Ill. 2d 565, 214 Ill. Dec. 321, 660 N.E.2d 1270 (1995).

Employer has the burden of proving that dismissed employee failed to mitigate her damages by taking advantage of other employment opportunities. Charles A. Stevens & Co. v. Human Rights Comm'n, 196 Ill. App. 3d 748, 143 Ill. Dec. 904, 554 N.E.2d 976 (1 Dist. 1990).

The complainant is required to take reasonable efforts in seeking subsequent employment to mitigate his damages. Charles A. Stevens & Co. v. Human Rights Comm'n, 196 Ill. App. 3d 748, 143 Ill. Dec. 904, 554 N.E.2d 976 (1 Dist. 1990).

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- Not Excessive

Where the Human Rights Commission had ample evidence to demonstrate that a black officer was deprived of employment and sustained much emotional harm as a result of that conduct, an award of $10,000 was not excessive. Village of Bellwood Bd. of Fire & Police Comm'rs v. Human Rights Comm'n, 184 Ill. App. 3d 339, 133 Ill. Dec. 810, 541 N.E.2d 1248 (1 Dist. 1989).

- Promotion

The Human Rights Commission was entitled to award a complainant a promotion and back pay when it found that an employer has discriminated on the basis of race. R.R. Donnelley & Sons Co. v. Illinois Human Rights Comm'n, 219 Ill. App. 3d 789, 162 Ill. Dec. 330, 579 N.E.2d 1144 (1 Dist. 1991), appeal denied, 143 Ill. 2d 648, 167 Ill. Dec. 410, 587 N.E.2d 1025 (1992).

Venue

- Cease and Desist Order

Under the former Fair Employment Practices Act (see now this section), in a discrimination suit by female faculty member against a university, venue in the circuit court of the county where the board of governors of state colleges and universities had its office, rather than the county in which university was located and where all acts comprising the alleged discrimination occurred, was proper only if the contested administrative order required plaintiff to cease or desist. Board of Governors v. Rothbardt, 98 Ill. App. 3d 423, 53 Ill. Dec. 951, 424 N.E.2d 742 (4 Dist. 1981).

Practice Guides and Treatises.

Causes of Action (Illinois): Estate, Business & Non-Personal Injury Actions § 19.9 Remedies - Special Issues (IICLE).

Employment Discrimination § 11.76 Back Pay and Reinstatement (IICLE).

Employment Discrimination § 11.43 Complaints Filed by Complainants (IICLE).

Employment Discrimination § 11.10 Private Employers with Government Contracts (IICLE).

Illinois Jurisprudence, Personal Injury and Torts § 8:71 Public contracts and officials, licensees; penalties.

Illinois Jurisprudence, Personal Injury and Torts § 8:69 Remedies available.

Illinois Jurisprudence, Personal Injury and Torts § 8:68 Generally.

Illinois Jurisprudence, Labor and Employment § 4:54 Relief available; generally.

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Religious Freedom Restoration Act

Sec.

775 ILCS 35/1.Short title
775 ILCS 35/5.Definitions
775 ILCS 35/10.Findings and purposes
775 ILCS 35/15.Free exercise of religion protected
775 ILCS 35/20.Judicial relief
775 ILCS 35/25.Application of Act; home rule powers
775 ILCS 35/30.O'Hare Modernization

§ 775 ILCS 35/1. Short title

Sec. 1. Short title. This Act may be cited as the Religious Freedom Restoration Act.

(Source: P.A. 90-806, § 1.)

Effective Date. Section 99 of P.A. 90-806 made this Act effective July 1, 1998.

CASE NOTES

Analysis

Right to Sue
Subject Matter Jurisdiction

Right to Sue

Religious Freedom Restoration Act, 775 ILCS 35/1 et seq., and the Health Care Right of Conscience Act, 745 ILCS 70/1 et seq., expressly confer a right to file a judicial action when the rights protected therein are infringed upon. Morr-Fitz, Inc. v. Blagojevich, 231 Ill. 2d 474, 327 Ill. Dec. 45, 901 N.E.2d 373, 2008 Ill. LEXIS 1834 (2008).

Subject Matter Jurisdiction

Illinois Religious Freedom Restoration Act (IRFRA,) 775 ILCS 35/1 et seq., claims brought by Muslim patients involuntarily committed to a state-run mental health facility against staff members in their individual capacities based on their alleged failure to meet Islamic dietary needs, were not

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cognizable because 775 ILCS 35/15 applied only to governments, as defined in 775 ILCS 35/5, not to government employees. Banks v. Dougherty, F. Supp. 2d , 2010 U.S. Dist. LEXIS 17443 (N.D. Ill. Feb. 26, 2010).

Whether the trial court pursuant to the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1 et seq. (Act), had subject matter jurisdiction over the priest's claims of defamation and intentional infliction of emotional distress arising out of allegedly false statements made about the priest in a church disciplinary proceeding could not be decided. Although the First Amendment, U.S. Const. Amend. I, barred the trial court from having such jurisdiction under those circumstances, whether the exercise of subject matter jurisdiction would substantially burden the free exercise of religion under 775 ILCS 35/15 of the Act could not be determined because the issue had not been sufficiently developed by the parties on appeal. Stepek v. Doe, 392 Ill. App. 3d 739, 331 Ill. Dec. 246, 910 N.E.2d 655, 2009 Ill. App. LEXIS 513 (1 Dist. 2009), appeal denied, 233 Ill. 2d 600, 335 Ill. Dec. 647, 919 N.E.2d 366, 2009 Ill. LEXIS 1355 (2009).

LEGAL PERIODICALS

Dolan, The Constitutional Flaws in the New Illinois Religious Freedom Restoration Act: Why RFRAs Don't Work, 31 Loy. U. Chi L.J. 153 (Winter, 2000).

RESEARCH REFERENCES

Validity, construction, and operation of state religious freedom restoration acts. 116 ALR5th 233.

Practice Guides and Treatises.

Land Use Law (Illinois) § 14.32 Religious Land Use and Municipal Regulation (IICLE).

Land Use Law (Illinois) § 10.15 Living Word (IICLE).

§ 775 ILCS 35/5. Definitions

Sec. 5. Definitions. In this Act:

"Demonstrates" means meets the burdens of going forward with the evidence and of persuasion.

"Exercise of religion" means an act or refusal to act that is substantially motivated by religious belief, whether or not the religious exercise is compulsory or central to a larger system of religious belief.

"Government" includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the State of Illinois or a political subdivision of the State, including a home rule unit.

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(Source: P.A. 90-806, § 5.)

Practice Guides and Treatises.

Land Use Law (Illinois) § 14.70 Summary of the Illinois RFRA (IICLE).

§ 775 ILCS 35/10. Findings and purposes

Sec. 10. Findings and purposes. (a) The General Assembly finds the following:

(1) The free exercise of religion is an inherent, fundamental, and inalienable right secured by Article I, Section 3 of the Constitution of the State of Illinois.

(2) Laws "neutral" toward religion, as well as laws intended to interfere with the exercise of religion, may burden the exercise of religion.

(3) Government should not substantially burden the exercise of religion without compelling justification.

(4) In Employment Division v. Smith, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement under the First Amendment to the United States Constitution that government justify burdens on the exercise of religion imposed by laws neutral toward religion.

(5) In City of Boerne v. P.F. Flores, 65 LW 4612 (1997) the Supreme Court held that an Act passed by Congress to address the matter of burdens placed on the exercise of religion infringed on the legislative powers reserved to the states under the Constitution of the United States.

(6) The compelling interest test, as set forth in Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S. 398 (1963), is a workable test for striking sensible balances between religious liberty and competing governmental interests.

(b) The purposes of this Act are as follows:

(1) To restore the compelling interest test as set forth in Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S. 398 (1963), and to guarantee that a test of compelling governmental interest will be imposed on all State and local (including home rule unit) laws, ordinances, policies, procedures, practices, and governmental actions in all cases in which the free exercise of religion is substantially burdened.

(2) To provide a claim or defense to persons whose exercise of religion is substantially burdened by government.

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(Source: P.A. 90-806, § 10.)

Note.

City of Boerne v. P.F. Flores, referred to in subdivision (a)(5), can be found at 521 U.S. 507, 117 S.Ct. 2157, 38 L.Ed. 2d 624.

CASE NOTES

Substantial Burden

Seizure of the inmate's Islam-related pamphlet condemning all correctional officers did not violate 775 ILCS 35/10(a)(6), (b)(1) of the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1 et seq., because the seizure did not place a substantial burden on the inmate's practice of Islam; possession of the pamphlet was not required by the basic tenets of Islam. Diggs v. Snyder, 333 Ill. App. 3d 189, 266 Ill. Dec. 478, 775 N.E.2d 40, 2002 Ill. App. LEXIS 702 (5 Dist. 2002), appeal denied, 202 Ill. 2d 601, 272 Ill. Dec. 341, 787 N.E.2d 156 (2002).

Practice Guides and Treatises.

Land Use Law (Illinois) § 14.70 Summary of the Illinois RFRA (IICLE).

§ 775 ILCS 35/15. Free exercise of religion protected

Sec. 15. Free exercise of religion protected. Government may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest.

(Source: P.A. 90-806, § 15.)

CASE NOTES

Analysis
Applicability
Compelling Interest

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Election of Directors
Jurisdiction
Substantial Burden
Zoning Ordinance

Applicability

Illinois Religious Freedom Restoration Act (IRFRA) 775 ILCS 35/1 et seq., claims brought by Muslim patients involuntarily committed to a state-run mental health facility against staff members in their individual capacities based on their alleged failure to meet Islamic dietary needs, were not cognizable because 775 ILCS 35/15 applied only to governments, as defined in 775 ILCS 35/5, not to government employees. Banks v. Dougherty, F. Supp. 2d , 2010 U.S. Dist. LEXIS 17443 (N.D. Ill. Feb. 26, 2010).

Compelling Interest

Seizure of the inmate's Islam-related pamphlet containing a pledge, signed by inmates, condemning all correctional officers did not violate 775 ILCS 35/15 of the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1 et seq., because there was a compelling reason for the seizure, which was the security of the facility. Diggs v. Snyder, 333 Ill. App. 3d 189, 266 Ill. Dec. 478, 775 N.E.2d 40, 2002 Ill. App. LEXIS 702 (5 Dist. 2002), appeal denied, 202 Ill. 2d 601, 272 Ill. Dec. 341, 787 N.E.2d 156 (2002).

Election of Directors

Trial court's order for an election of new church directors, which order also set out written criteria for determining church members who could vote in the election of church directors, was affirmed because the court did not take control of the church away from church members, the court did not change the church's form of governance, and the court did not restrict the exercise of religion by church members. Marsaw v. Richards, 368 Ill. App. 3d 418, 306 Ill. Dec. 395, 857 N.E.2d 794, 2006 Ill. App. LEXIS 870 (1 Dist. 2006).

Jurisdiction

Whether the trial court pursuant to the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1 et seq. (Act), had subject matter jurisdiction over the priest's claims of defamation and intentional infliction of emotional distress arising out of allegedly false statements made about the priest in a church disciplinary proceeding could not be decided. Although the First Amendment, U.S. Const. Amend. I, barred the trial court from having such jurisdiction under those circumstances, whether the exercise of subject matter jurisdiction would substantially burden the free exercise of religion under 775 ILCS 35/15 of the Act could not be determined because the issue had not been sufficiently developed by the parties on appeal. Stepek v. Doe, 392 Ill. App. 3d 739, 331 Ill. Dec. 246, 910 N.E.2d 655, 2009 Ill. App. LEXIS 513 (1 Dist. 2009), appeal denied, 233 Ill. 2d 600, 335 Ill. Dec. 647, 919 N.E.2d 366, 2009 Ill. LEXIS 1355 (2009).

Rooker-Feldman doctrine barred the district court from exercising jurisdiction over an action brought by a church and a bishop arising out of the city's acquisition of a tax deed to church property because the church's claims under 42 U.S.C. § 1983, the Religious Land Use and Institutionalized Persons Act, and the Illinois Religious Freedom Restoration Act, all targeted to overturn the tax deed judgment, as well as the 735 ILCS 5/2-1401 proceeding and the judgment that resulted from it, and the state court system was not closed to the church by the fact that a

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petition to vacate a judgment had to be brought within two years unless the ground for relief was fraudulently concealed because a judgment approving a tax sale for tax-exempt property was void and could be attacked at any time under 735 ILCS 5/2-1401(f), so the church could have, and should have, argued in the § 2-1401 proceeding that the tax deed judgment was void due to the property being tax exempt under Ill. Const. (1970), Art. IX, § 6 and 35 ILCS 200/15-40(a)(1) as it was allegedly used for religious purposes and without a view to profit. Beth-El All Nations Church v. City of Chicago, 486 F.3d 286, 2007 U.S. App. LEXIS 11262 (7th Cir. 2007).

Substantial Burden

Because the Illinois Religious Freedom Restoration Act (RFRA) has an essentially identical provision, 775 ILCS 35/15, to the Religious Land Use and Institutionalized Persons Act's (RLUIPA) substantial burden provision, the Illinois law is materially identical to 42 U.S.C.S. ' 2000cc-1(a)(1) of the federal law. Therefore, since a RLUIPA claim survived a motion to dismiss, the RFRA claim also survived and did not need to be discussed separately. Irshad Learning Ctr. v. County of DuPage, 804 F. Supp. 2d 697, 2011 U.S. Dist. LEXIS 33481 (N.D. Ill. 2011).

Determination that noncomplying churches could not use the city's site plan review process, but should submit their application to a special use permit process was not irrational and did not discriminate based on religion. As a result, the church's ability to freely exercise its religious beliefs were not "substantially burdened," and the city did not violate either 775 ILCS 35/15 or 775 ILCS 35/25 of the Illinois Religious Freedom Restoration Act. Our Savior Evangelical Lutheran Church v. Saville, 397 Ill. App. 3d 1003, 337 Ill. Dec. 566, 922 N.E.2d 1143, 2009 Ill. App. LEXIS 1336 (2 Dist. 2009), appeal denied, 2010 Ill. LEXIS 499 (Ill. 2010).

In an inmate's action against a prison chaplain for alleged violations of the inmate's free exercise of religion rights under the First Amendment, the Religious Land Use and Institutionalized Persons Act (RLUIPA), and the Illinois Religious Freedom Restoration Act (IRFRA), the district court's judgment that the inmate's free exercise of religion was not substantially burdened by the prison's procedures for dietary requests and its denial of a non-meat diet on Fridays and during Lent was reversed because the chaplain's requirement that the inmate show that his Catholicism compelled him to abstain from eating meat on Fridays or avoid the meat of four-legged animals and that he submit documentation to that effect constituted a substantial burden as it made the inmate's desired religious exercise "effectively impracticable," and while the inmate's avoidance of all meat of four-legged animals was not substantially burdened, the chaplain's denial of a non-meat diet on Fridays and during Lent substantially burdened the inmate's practice of religion; the case was remanded for the district court to determine whether the chaplain's procedures and conduct were in furtherance of a compelling government interest and the least restrictive means of furthering that compelling government interest under 42 U.S.C. § 1983; the RLUIPA, 42 U.S.C. 2000cc-1(a)(1), (2); and the IRFRA, 775 ILCS 35/15. Nelson v. Miller, 570 F.3d 868, 2009 U.S. App. LEXIS 14240 (7th Cir. 2009).

Having concluded that plaintiffs sufficiently alleged federal constitutional claims against defendants, the district court concluded that, pursuant to 28 U.S.C. § 1367(c)(3), it should exercise supplemental jurisdiction over plaintiffs' claim under 775 ILCS 35/15 of the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1 to 775 ILCS 35/99, because the state law claim was based on the same operative facts as plaintiffs' federal claims. Plaintiffs sufficiently alleged that defendants' speech policy imposed a substantial burden on their exercise of religion, which was required to state a claim under § 775 ILCS 35/15, because the policy purportedly prevented them from engaging in religious discussions with the public on city sidewalks, which activity was an important and required part of plaintiffs' religious faith and practice. Marcavage v. City of Chicago, 467 F. Supp. 2d 823, 2006 U.S. Dist. LEXIS 90443 (N.D. Ill. 2006).

Trial evidence provided a rational basis for a jury to conclude that a city did not substantially burden a mosque foundation's right to free exercise of religion under U.S. Const. amend. I and the Illinois Religious Freedom Restoration Act, 775 ILCS 35/15, during the foundation's

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negotiations to purchase a church within the city where: 1) the mayor's personal opinion about the city's actions did not constitute an act of the municipality for purposes of municipal liability; 2) an alderman's statements at a public hearing did not constitute city action because he did not have authority to adopt rules for the conduct of government without the votes of other aldermen; and 3) the remaining trial evidence was insufficient to show any interfere with the foundation's free exercise of religion. Al Salam Mosque Found. v. City of Palos Heights, F. Supp. 2d , 2005 U.S. Dist. LEXIS 18237 (N.D. Ill. Aug. 26, 2005).

Plaintiff church had shown that it incurred significant expense by having to rent a space in which to hold worship services, and it demonstrated logistical difficulties in not having worship services in a property owned and run by the church; however, these inconveniences did not rise to the level of a substantial burden, as the church remained able to hold worship services, and the possibility remained that the church might be able to find a suitable property and sell the property affected by defendant city's zoning ordinance. Vineyard Christian Fellowship of Evanston, Inc. v. City of Evanston, 250 F. Supp. 2d 961, 2003 U.S. Dist. LEXIS 5079 (N.D. Ill. 2003).

Zoning Ordinance

Because the city's zoning ordinances were facially neutral and generally applicable and because they did not saddle the church with a substantial burden, neither the Free Exercise Clause nor 42 U.S.C. § 2000cc(a)(1) was implicated, and the aspects of the church's complaint based on the permit process required to build a homeless shelter and the time it took to obtain a permit was dismissed; nor did the city substantially burden the church's religious exercise, as was required to state a claim under the Illinois Religious Freedom Restoration Act, 775 ILCS 35/15. Family Life Church v. City of Elgin, 561 F. Supp. 2d 978, 2008 U.S. Dist. LEXIS 47210 (N.D. Ill. 2008).

Church did not have a reasonable likelihood of success on its zoning claims where it did not have a vested right to conduct worship services under a newer zoning ordinance because it never had a right to conduct them under the older ordinance; therefore a district court adopted a magistrate judge's recommendation to deny the church's motion for a preliminary injunction. Petra Presbyterian Church v. Northbrook, F. Supp. 2d , 2004 U.S. Dist. LEXIS 3910 (N.D. Ill. Mar. 4, 2004).

Under 775 ILCS 35/15 a law that substantially burdens religious freedom is impermissible unless the law serves a compelling governmental interest and is the least restrictive means of furthering that interest; thus, city council's reliance on a comprehensive zoning plan, which was in any case improper under 65 ILCS 5/11-13-6, could not be used to justify denial of a church's application for a special use permit where use as a church was compatible with the applicable zoning ordinance. City of Chicago Heights v. Living Word Outreach Full Gospel Church & Ministries, Inc., 196 Ill. 2d 1, 255 Ill. Dec. 434, 749 N.E.2d 916, 2001 Ill. LEXIS 243 (2001).

Practice Guides and Treatises.

Land Use Law (Illinois) § 14.73 Application of the Illinois RFRA (IICLE).

Land Use Law (Illinois) § 14.72 The Illinois RFRA and Substantial Burden on Religious Exercise (IICLE).

§ 775 ILCS 35/20. Judicial relief

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Sec. 20. Judicial relief. If a person's exercise of religion has been burdened in violation of this Act, that person may assert that violation as a claim or defense in a judicial proceeding and may obtain appropriate relief against a government. A party who prevails in an action to enforce this Act against a government is entitled to recover attorney's fees and costs incurred in maintaining the claim or defense.

(Source: P.A. 90-806, § 20.)

CASE NOTES

Analysis
In General
Attorney's Fees
Election of Directors

In General

In an inmate's action against a prison chaplain for alleged violations of his rights under the First Amendment, the Religious Land Use and Institutionalized Persons Act, and the Illinois Religious Freedom Restoration Act, the inmate's request for injunctive relief was moot because he was receiving a non-meat diet as requested, and while it was possible that the inmate's religious diet could be revoked, that possibility was supported only by speculation and not evidence. Nelson v. Miller, 570 F.3d 868, 2009 U.S. App. LEXIS 14240 (7th Cir. 2009).

Applicant's failure to bring a challenge to requirement that applicant supply the applicant's social security number on the applicant's request for a driver's license under the Religious Freedom Restoration Act, 775 ILCS 35/1 et seq., meant the applicant's challenge was waived on appeal since the Act required that such a claim be brought in a "judicial proceeding" and applicant only raised the claim for the first time on appeal. Mefford v. White, 331 Ill. App. 3d 167, 264 Ill. Dec. 555, 770 N.E.2d 1251, 2002 Ill. App. LEXIS 758 (4 Dist. 2002).

Attorney's Fees

Worship center's was not entitled to attorney's fees pursuant to the Illinois Religious Freedom Restoration Act, 775 ILCS 35/20, in relation to an action brought by a city alleging that the church violated zoning rules by operating a church in a zone which did not allow such use, because the worship center was not a prevailing property in the dispute, as the city agreed to allow the center to occupy the property while the city considered whether to amend the ordinance, and the city voluntarily decided to amend the ordinance to allow the operation of the church. City of Elgin v. All Nations Worship Ctr., 373 Ill. App. 3d 167, 311 Ill. Dec. 385, 868 N.E.2d 385, 2007 Ill. App. LEXIS 482 (1 Dist. 2007).

Election of Directors

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Trial court's order for an election of new church directors, which order also set out written criteria for determining church members who could vote in the election of church directors, was affirmed because the court did not take control of the church away from church members, the court did not change the church's form of governance, and the court did not restrict the exercise of religion by church members. Marsaw v. Richards, 368 Ill. App. 3d 418, 306 Ill. Dec. 395, 857 N.E.2d 794, 2006 Ill. App. LEXIS 870 (1 Dist. 2006).

Practice Guides and Treatises.

Land Use Law (Illinois) § 14.72 The Illinois RFRA and Substantial Burden on Religious Exercise (IICLE).

§ 775 ILCS 35/25. Application of Act; home rule powers

Sec. 25. Application of Act; home rule powers. (a) This Act applies to all State and local (including home rule unit) laws, ordinances, policies, procedures, practices, and governmental actions and their implementation, whether statutory or otherwise and whether adopted before or after the effective date of this Act.

(b) Nothing in this Act shall be construed to authorize a government to burden any religious belief.

(c) Nothing in this Act shall be construed to affect, interpret, or in any way address any of the following: (i) that portion of the First Amendment of the United States Constitution prohibiting laws respecting the establishment of religion, (ii) the second sentence of Article I, Section 3 of the Illinois Constitution, or (iii) Article X, Section 3 of the Illinois Constitution. Granting government funding, benefits, or exemptions, to the extent permissible under the 3 constitutional provisions described in items (i), (ii), and (iii) of this subsection, does not constitute a violation of this Act. In this subsection, "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

(d) The corporate authorities of a municipality or other unit of local government may enact ordinances, standards, rules, or regulations that protect the free exercise of religion in a manner or to an extent equal to or greater than the protection provided in this Act. If an ordinance, standard, rule, or regulation enacted under the authority of this Section or under the authority of a unit of local government's home rule powers prohibits, restricts, narrows, or burdens a person's exercise of religion or permits the prohibition, restriction, narrowing, or burdening of a person's exercise of religion, that ordinance, standard, rule, or regulation is void and unenforceable as to that person if it (i) is not in furtherance of a compelling governmental interest and (ii) is not the least restrictive means of furthering that governmental interest. This subsection is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.

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(Source: P.A. 90-806, § 25.)

Practice Guides and Treatises.

Land Use Law (Illinois) § 14.73 Application of the Illinois RFRA (IICLE).

Land Use Law (Illinois) § 3.45 First Amendment Claims (IICLE).

CASE NOTES

Substantial Burden

Determination that noncomplying churches could not use the city's site plan review process, but should submit their application to a special use permit process was not irrational and did not discriminate based on religion. As a result, the church's ability to freely exercise its religious beliefs were not "substantially burdened," and the city did not violate either 775 ILCS 35/15 or 775 ILCS 35/25 of the Illinois Religious Freedom Restoration Act. Our Savior Evangelical Lutheran Church v. Saville, 397 Ill. App. 3d 1003, 337 Ill. Dec. 566, 922 N.E.2d 1143, 2009 Ill. App. LEXIS 1336 (2 Dist. 2009), appeal denied, 2010 Ill. LEXIS 499 (Ill. 2010).

§ 775 ILCS 35/30. O'Hare Modernization

Sec. 30. O'Hare Modernization. Nothing in this Act limits the authority of the City of Chicago to exercise its powers under the O'Hare Modernization Act [60 ILCS 65/1 et seq.] for the purposes of relocation of cemeteries or the graves located therein.

(Source: P.A. 93-450, § 96.)

Effective Date. Section 99 of P.A. 93-450 provides: "This Act takes effect upon its becoming law, and Section 95 of this Act applies to cases pending on or after the effective date." P.A. 93-450 was approved August 6, 2003.

CASE NOTES

Analysis
Constitutionality
Applicability

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Constitutionality

775 ILCS 35/30 of the Illinois Religious Freedom Restoration Act (IRFRA), 775 ILCS 35/1 et seq., as added by the O'Hare Modernization Act (OMA), validly precluded application of the IRFRA's protections to acquisition of a church's cemetery for airport expansion purposes. 775 ILCS 35/30 did not violate the Free Exercise Clause of the First Amendment, as the OMA was a neutral law of general applicability and was designed to address a serious problem regarding the efficiency of air transportation; nor did the OMA violate the Equal Protection Clause of the Fourteenth Amendment, as § 35/30 did not classify on the basis of religion and was rationally related to a legitimate government purpose. St. John's United Church of Christ v. City of Chicago, 502 F.3d 616, 2007 U.S. App. LEXIS 21914 (7th Cir. 2007).

Claim that 775 ILCS 35/30 violated the First Amendment's Free Exercise Clause, which was brought by a church whose cemetery was in the path of a proposed expansion of O'Hare International Airport, was dismissed because the statute did not single out any cemetery on the basis of religious affiliation, but instead brought the treatment of cemeteries in line with the treatment of other land in the expansion path. St. John's United Church of Christ v. City of Chicago, 401 F. Supp. 2d 887, 2005 U.S. Dist. LEXIS 39529 (N.D. Ill. 2005).

Under a rational relationship review, the amendment to 775 ILCS 35/30, which allowed the City of Chicago to relocate graves as part of the airport expansion, did not trigger violations of the Free Exercise of Religion clause or of the First Amendment or the Equal Protection Clause of the Fourteenth Amendment because the law was drafted in a neutral and generally applicable manner and was related to the interest of the city and the state to go forward with airport expansion. St. John's United Church of Christ v. City of Chicago, F. Supp. 2d , 2005 U.S. Dist. LEXIS 28072 (N.D. Ill. Nov. 11, 2005).

Applicability

City's decision, made pursuant to an amendment set forth in the Illinois Religious Freedom Restoration Act, 775 ILCS 35/30, to acquire cemetery property owned by the church and to relocate the graves, did not offend the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc et seq., because the action involved a taking and not a land use or zoning regulation. Only zoning or land use decisions came under the purview of RLUIPA. St. John's United Church of Christ v. City of Chicago, F. Supp. 2d , 2005 U.S. Dist. LEXIS 28072 (N.D. Ill. Nov. 11, 2005).

Construction

City under the O'Hare Modernization Act, 620 ILCS 65/15, had the power to condemn cemetery property and under the Religious Freedom Restoration Act, 775 ILCS 35/30, had the power to relocate cemeteries as it worked on its project to expand the city's airport. As a result, and because it filed a sufficient 735 ILCS 30/20-5-5(b) motion for taking that described the project it was working on and included a specific timeline stating how the property in question would be affected, it was entitled to have title of the cemetery owner's cemetery vested in itself via a quick-take procedure. City of Chicago v. St. John's United Church of Christ, 404 Ill. App. 3d 505, 343 Ill. Dec. 930, 935 N.E.2d 1158, 2010 Ill. App. LEXIS 989 (2 Dist. 2010).

Amendment to 775 ILCS 35/30, which allowed the City of Chicago, Illinois, to relocate graves as part of airport expansion, was not subject to strict scrutiny analysis when considered for violations of the First Amendment and the Fourteenth Amendment, because the statute did not infringe on a

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particular religion and was not passed because of religious motivation. St. John's United Church of Christ v. City of Chicago, F. Supp. 2d , 2005 U.S. Dist. LEXIS 28072 (N.D. Ill. Nov. 11, 2005).

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CHAPTER 820.
EMPLOYMENT

LABOR RELATIONS
820 ILCS 40Personnel Record Review Act
WAGES AND HOURS
820 ILCS 115Illinois Wage Payment and Collection Act
820 ILCS 130Prevailing Wage Act
820 ILCS 147School Visitation Rights Act
820 ILCS 151Family Military Leave Act
820 ILCS 180Victim's Economic Security and Safety Act
HEALTH AND SAFETY
820 ILCS 205Child Labor Law

LABOR RELATIONS

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Personnel Record Review Act

Sec.

820 ILCS 40/0.01.Short title
820 ILCS 40/1.Definitions
820 ILCS 40/2.Open Records
820 ILCS 40/3.Copies
820 ILCS 40/4.[Personnel record information]
820 ILCS 40/5.Personnel Record Inspection by Representative
820 ILCS 40/6.Personnel Record Correction
820 ILCS 40/7.[Confidentiality of disciplinary action]
820 ILCS 40/8.[Review of personnel record prior to release]
820 ILCS 40/9.[Record of employee's nonemployment activities prohibited; exceptions]
820 ILCS 40/10.Exceptions
820 ILCS 40/11.[Right of access to records otherwise provided by law]
820 ILCS 40/12.[Enforcement by Director of Labor; complaint; action to compel compliance; contempt; penalties]
820 ILCS 40/13.[Record of investigation by Department of Children and Family Services; expungement]

§ 820 ILCS 40/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Personnel Record Review Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act to permit employees to review personnel records; to provide criteria for the review; to prescribe the information which may be contained in personnel records; and to provide penalties.

Cite: 820 ILCS 40/0.01 et seq.

Source: P.A. 83-1104.

Date: Certified January 15, 1984.

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 2000.

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CASE NOTES

Analysis
Constitutionality
Applicability
Construction

Constitutionality

A former version of this Act was held unconstitutional due to its ambiguous and inconsistent provisions. Spinelli v. Immanuel Evangelical Lutheran Congregation, Inc., 144 Ill. App. 3d 325, 98 Ill. Dec. 269, 494 N.E.2d 196 (2 Dist. 1986), rev'd on other grounds, 118 Ill. 2d 389, 113 Ill. Dec. 915, 515 N.E.2d 1222 (1987).

Applicability

District court did not abuse its discretion in denying an employee's motion to amend a complaint alleging race and national origin discrimination in violation of federal statutes to include a claim against a municipal employer for a violation of the Illinois Personnel Record Review Act, where the employee sought only to exclude from trial documents that the employer allegedly had intentionally withheld; as a state evidentiary statute, the Illinois Personnel Record Review Act may not displace the Federal Rules of Evidence and the guidelines that they establish concerning the admissibility of the contested documents. Park v. City of Chi., 297 F.3d 606, 2002 U.S. App. LEXIS 14667 (7th Cir. 2002).

Construction

District court correctly rejected an employee's motion in limine seeking exclusion of certain contested documents in a race and national origin discrimination action because the Illinois Personnel Record Review Act, 820 ILCS 40/1 et seq., did not displace the Federal Rules of Evidence as to the documents' admissibility. Park v. City of Chi., 297 F.3d 606, 2002 U.S. App. LEXIS 14667 (7th Cir. 2002).

OPINIONS OF ATTORNEY GENERAL

Constitutionality

The General Assembly had the power to cure the constitutional deficiencies in the Personnel Record Review Act found in Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc., 118 Ill. 2d 389 (1987) without re-enacting the entire Act. 1992 Op. Atty. Gen. (92-005).

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LEGAL PERIODICALS

For article, "A General Practioner's Guide to Employment-Based Claims," see 84 Ill. B.J. 524 (1996).

For article, "Workplace Privacy in Illinois: A Review," see 83 Ill. B.J. 454 (1995).

RESEARCH REFERENCES

Validity, construction, and application of statute requiring employer, on employee's request, to provide written statement of employee's service record and reason for termination of employment. 24 ALR4th 1115.

Validity and construction of statute giving employee the right to review and comment upon personnel record maintained by the employer. 64 ALR4th 619.

§ 820 ILCS 40/1. Definitions

Sec. 1. Definitions. As used in this Act:

(a) "Employee" means a person currently employed or subject to recall after layoff or leave of absence with a right to return at a position with an employer or a former employee who has terminated service within the preceding year.

(b) "Employer" means an individual, corporation, partnership, labor organization, unincorporated association, the State, an agency or a political subdivision of the State, or any other legal, business, or commercial entity which has 5 employees or more than 5 employees exclusive of the employer's parent, spouse or child or other members of his immediate family and includes an agent of the employer.

(Source: P.A. 83-1339.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 2001.

LEGAL PERIODICALS

For article, "Employer Insurance Coverage for Employment Litigation," see 79 Ill. B.J. 32 (1991).

For article, "Constitutional Law: 1987-88 Illinois Law Survey," see 20 Loy. U. Chi. L.J. 275 (1988-89).

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For article, "The Illinois Personal Records Statute: New Rights for Employees, New Risks for Employers," see 73 Ill. B.J. 386 (1985).

§ 820 ILCS 40/2. Open Records

Sec. 2. Open Records. Every employer shall, upon an employee's request which the employer may require be in writing on a form supplied by the employer, permit the employee to inspect any personnel documents which are, have been or are intended to be used in determining that employee's qualifications for employment, promotion, transfer, additional compensation, discharge or other disciplinary action, except as provided in Section 10 [820 ILCS 40/10]. The inspection right encompasses personnel documents in the possession of a person, corporation, partnership, or other association having a contractual agreement with the employer to keep or supply a personnel record. An employee may request all or any part of his or her records, except as provided in Section 10 [820 ILCS 40/10]. The employer shall grant at least 2 inspection requests by an employee in a calendar year when requests are made at reasonable intervals, unless otherwise provided in a collective bargaining agreement. The employer shall provide the employee with the inspection opportunity within 7 working days after the employee makes the request or if the employer can reasonably show that such deadline cannot be met, the employer shall have an additional 7 days to comply. The inspection shall take place at a location reasonably near the employee's place of employment and during normal working hours. The employer may allow the inspection to take place at a time other than working hours or at a place other than where the records are maintained if that time or place would be more convenient for the employee. Nothing in this Act shall be construed as a requirement that an employee be permitted to remove any part of such personnel records or any part of such records from the place on the employer's premises where it is made available for inspection. Each employer shall retain the right to protect his records from loss, damage, or alteration to insure the integrity of the records. If an employee demonstrates that he or she is unable to review his or her personnel record at the employing unit, the employer shall, upon the employee's written request, mail a copy of the requested record to the employee.

(Source: P.A. 83-1362.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 2002.

CASE NOTES

Analysis

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Constitutionality
- Due Process
Effect of Release
Personnel Records

Constitutionality

- Due Process

The conflicting and inconsistent provisions of this Act, entitling employees to review personnel records, offends due process because an employer of ordinary intelligence cannot determine with reasonable certainty which personnel documents are, or are not, subject to disclosure. Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc., 118 Ill. 2d 389, 113 Ill. Dec. 915, 515 N.E.2d 1222 (1987).

Given the broad and ambiguous language of 820 ILCS 40/10, the legislature failed to provide an adequate guide concerning what an employer may properly refuse to disclose; as it was not clear what documents an employee could rightfully inspect under this section, the two sections violated due process. Spinelli v. Immanuel Evangelical Lutheran Congregation, Inc., 144 Ill. App. 3d 325, 98 Ill. Dec. 269, 494 N.E.2d 196 (2 Dist. 1986), rev'd on other grounds, 118 Ill. 2d 389, 113 Ill. Dec. 915, 515 N.E.2d 1222 (1987).

Effect of Release

Plaintiff's right to review his personnel records was not barred by the general release executed in connection with the dispute over compensation between the parties. Landwer v. Scitex Am. Corp., 238 Ill. App. 3d 403, 179 Ill. Dec. 653, 606 N.E.2d 485 (1 Dist. 1992).

Personnel Records

Defendant's motion to compel arbitration and stay proceedings was granted pursuant to 9 U.S.C.S. § 4 because (1) defendant did not violate the Illinois Personnel Record Review Act (IPRRA) when it failed to provide the reverse side of the consent form as the reverse side was not covered by the IPRRA, 820 ILCS 40/2; (2) defendant did not intentionally exclude the document, so the IPRRA's sanction provision would not apply under 820 ILCS 40/4; and (3) defendant's act of removing the arbitration policy from the handbook had no effect on the continued validity of the arbitration agreement. Milnes v. Aimco/Bethesda Holdings, Inc., 805 F. Supp. 2d 525, 2011 U.S. Dist. LEXIS 36098 (N.D. Ill. 2011).

In a cross appeal involving a records request dispute wherein the requestor sought all citizen complaints made against a deputy sheriff held by the sheriff's office, the trial court erred by allowing the sheriff to withhold unfounded complaints of wrongdoing by the deputy sheriff in the performance of his duties as such information did not constitute an invasion of privacy under 5 ILCS 140/7(1)(b). Gekas v. Williamson, 393 Ill. App. 3d 573, 332 Ill. Dec. 161, 912 N.E.2d 347, 2009 Ill. App. LEXIS 687 (4 Dist. 2009).

Former employee sufficiently stated her Illinois Personnel Record Review Act claim against her former employer where she alleged 1) that she was neither allowed to inspect her personnel file within seven days nor provided access to documents which she had a right to inspect under 820 ILCS 40/2, and 2) that she was not afforded an opportunity to file a statement in her personnel file disputing information contained therein pursuant to 820 ILCS 40/6. Sinio v. McDonald's Corp., F. Supp. 2d , 2005 U.S. Dist. LEXIS 11660 (N.D. Ill. May 16, 2005).

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Contracts which plaintiff wrote were "personnel documents" within the meaning of this act. Landwer v. Scitex Am. Corp., 238 Ill. App. 3d 403, 179 Ill. Dec. 653, 606 N.E.2d 485 (1 Dist. 1992).

LEGAL PERIODICALS

For article, "Labor Law: 1987-88 Illinois Law Survey," see 20 Loy. U. Chi. L.J. 527 (1988-89).

Practice Guides and Treatises.

1-9 Employment in Illinois § 9-7 Employee Inspection of Personnel Records.

Illinois Jurisprudence, Labor and Employment § 1:30 What may be inspected.

Illinois Jurisprudence, Labor and Employment § 1:29 Inspection by employee's designee.

Illinois Jurisprudence, Labor and Employment § 1:28 Review by employee.

§ 820 ILCS 40/3. Copies

Sec. 3. Copies. After the review time provided in Section 2 [820 ILCS 40/2], an employee may obtain a copy of the information or part of the information contained in the employee's personnel record. An employer may charge a fee for providing a copy of such information. The fee shall be limited to the actual cost of duplicating the information.

(Source: P.A. 83-1104.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 2003.

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 1:28 Review by employee.

§ 820 ILCS 40/4. [Personnel record information]

Sec. 4. Personnel record information which was not included in the personnel record but should have been as required by this Act shall not be used by an employer in a judicial or quasi-judicial proceeding. However, personnel record information which, in the opinion

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of the judge in a judicial proceeding or the hearing officer in a quasi-judicial proceeding, was not intentionally excluded from the personnel record may be used by the employer in the proceeding if the employee agrees or has been given a reasonable time to review the information. Material which should have been included in the personnel record shall be used at the request of the employee.

(Source: P.A. 83-1104.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 2004.

CASE NOTES

Analysis
Admissibility of Information
Location of Information

Admissibility of Information

Although 820 ILCS 40/4 precluded admission of a former employee's agreement to arbitrate disputes upon the employer's inability to produce the agreement, state law did not govern the admission of evidence in federal court and a partial and undisputed copy of the agreement, including the employee's signature, was sufficient to compel arbitration. Reineke v. Circuit City Stores, Inc., F. Supp. 2d , 2004 U.S. Dist. LEXIS 3495 (N.D. Ill. Mar. 8, 2004).

Location of Information

Defendant's motion to compel arbitration and stay proceedings was granted pursuant to 9 U.S.C.S. § 4 because (1) defendant did not violate the Illinois Personnel Record Review Act (IPRRA) when it failed to provide the reverse side of the consent form as the reverse side was not covered by the IPRRA, 820 ILCS 40/2; (2) defendant did not intentionally exclude the document, so the IPRRA's sanction provision would not apply under 820 ILCS 40/4; and (3) defendant's act of removing the arbitration policy from the handbook had no effect on the continued validity of the arbitration agreement. Milnes v. Aimco/Bethesda Holdings, Inc., 805 F. Supp. 2d 525, 2011 U.S. Dist. LEXIS 36098 (N.D. Ill. 2011).

This section does not require that all personnel record information be kept in one file - it merely requires the employer to make all personnel records available to the employee. Sindermann v. Civil Serv. Comm'n, 275 Ill. App. 3d 917, 212 Ill. Dec. 346, 657 N.E.2d 41 (2 Dist. 1995), appeal denied, 165 Ill. 2d 565, 214 Ill. Dec. 865, 662 N.E.2d 431 (1996).

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§ 820 ILCS 40/5. Personnel Record Inspection by Representative

Sec. 5. Personnel Record Inspection by Representative. An employee who is involved in a current grievance against the employer may designate in writing a representative of the employee's union or collective bargaining unit or other representative to inspect the employee's personnel record which may have a bearing on the resolution of the grievance, except as provided in Section 10 [820 ILCS 40/10]. The employer shall allow such a designated representative to inspect that employee's personnel record in the same manner as provided under Section 2 [820 ILCS 40/2].

(Source: P.A. 83-1362.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 2005.

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 1:29 Inspection by employee's designee.

§ 820 ILCS 40/6. Personnel Record Correction

Sec. 6. Personnel Record Correction. If the employee disagrees with any information contained in the personnel record, a removal or correction of that information may be mutually agreed upon by the employer and the employee. If an agreement cannot be reached, the employee may submit a written statement explaining the employee's position. The employer shall attach the employee's statement to the disputed portion of the personnel record. The employee's statement shall be included whenever that disputed portion of the personnel record is released to a third party as long as the disputed record is a part of the file. The inclusion of any written statement attached in the record without further comment or action by the employer, shall not imply or create any presumption of employer agreement with its contents. If either the employer or the employee knowingly places in the personnel record information which is false, the employer or employee, whichever is appropriate, shall have remedy through legal action to have that information expunged.

(Source: P.A. 83-1104.)

Note.

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This section was Ill.Rev.Stat., Ch. 48, Para. 2006.

CASE NOTES

Due Process

Former employee sufficiently stated her Illinois Personnel Record Review Act claim against her former employer where she alleged 1) that she was neither allowed to inspect her personnel file within seven days nor provided access to documents which she had a right to inspect under 820 ILCS 40/2, and 2) that she was not afforded an opportunity to file a statement in her personnel file disputing information contained therein pursuant to 820 ILCS 40/6. Sinio v. McDonald's Corp., F. Supp. 2d , 2005 U.S. Dist. LEXIS 11660 (N.D. Ill. May 16, 2005).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 1:31 Correction; attachment of written statement by employee.

Illinois Jurisprudence, Labor and Employment § 1:28 Review by employee.

§ 820 ILCS 40/7. [Confidentiality of disciplinary action]

Sec. 7. (1) An employer or former employer shall not divulge a disciplinary report, letter of reprimand, or other disciplinary action to a third party, to a party who is not a part of the employer's organization, or to a party who is not a part of a labor organization representing the employee, without written notice as provided in this Section.

(2) The written notice to the employee shall be by first-class mail to the employee's last known address and shall be mailed on or before the day the information is divulged.

(3) This Section shall not apply if:

(a) the employee has specifically waived written notice as part of a written, signed employment application with another employer;

(b) the disclosure is ordered to a party in a legal action or arbitration; or

(c) information is requested by a government agency as a result of a claim or complaint by an employee, or as a result of a criminal investigation by such agency.

(4) An employer who receives a request for records of a disciplinary report, letter of reprimand, or other disciplinary action in relation to an employee under the Freedom of Information Act [5 ILCS 140/1 et seq.] may provide notification to the employee in written form as described in subsection (2) or through electronic mail, if available.

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(Source: P.A. 83-1104; 96-1212, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 2007.

Effect of Amendments. The 2010 amendment by P.A. 96-1212, effective July 22, 2010, added (4).

Practice Guides and Treatises.

1-9 Employment in Illinois § 9-7 Employee Inspection of Personnel Records.

§ 820 ILCS 40/8. [Review of personnel record prior to release]

Sec. 8. An employer shall review a personnel record before releasing information to a third party and, except when the release is ordered to a party in a legal action or arbitration, delete disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than 4 years old.

(Source: P.A. 83-1104.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 2008.

LEGAL PERIODICALS

For comment, "The Employment Record Disclosure Act in Illinois: Applying the Knowledge Standard Liberally", see 22 S. Ill. U.L.J. 743 (1998).

Practice Guides and Treatises.

1-9 Employment in Illinois § 9-7 Employee Inspection of Personnel Records.

§ 820 ILCS 40/9. [Record of employee's nonemployment activities prohibited; exceptions]

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Sec. 9. An employer shall not gather or keep a record of an employee's associations, political activities, publications, communications or nonemployment activities, unless the employee submits the information in writing or authorizes the employer in writing to keep or gather the information. This prohibition shall not apply to the activities that occur on the employer's premises or during the employee's working hours with that employer which interfere with the performance of the employee's duties or the duties of other employees or activities, regardless of when and where occurring, which constitute criminal conduct or may reasonably be expected to harm the employer's property, operations or business, or could by the employee's action cause the employer financial liability. A record which is kept by the employer as permitted under this Section shall be part of the personnel record.

(Source: P.A. 83-1104; 91-357, § 304.)

Note.

P.A. 91-357, § 996 contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

This section was Ill.Rev.Stat., Ch. 48, Para. 2009.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, deleted the subsection (1) designation.

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 1:33 Information that may not be retained in personnel records.

CASE NOTES

Waiver

Terminated worker's claim that the investigation of the terminated worker's conduct regarding fellow employees and relatives of employees violated the Illinois Personnel Record Review Act, 820 ILCS 40/9, was not raised until the terminated worker did so in the terminated worker's reply brief. As a result, the issue was waived under Ill. Sup. Ct. R. 341(h)(7) because that rule dictated that the terminated worker could not wait until filing a reply brief in order to raise an issue for the first time. Harrison v. Addington, Ill. App. 3d , 353 Ill. Dec. 233, 955 N.E.2d 700, 2011 Ill. App. LEXIS 973 (3 Dist. 2011).

§ 820 ILCS 40/10. Exceptions

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Sec. 10. Exceptions. The right of the employee or the employee's designated representative to inspect his or her personnel records does not apply to:

(a) Letters of reference for that employee or external peer review documents for academic employees of institutions of higher education.

(b) Any portion of a test document, except that the employee may see a cumulative total test score for either a section of or the entire test document.

(c) Materials relating to the employer's staff planning, such as matters relating to the business' development, expansion, closing or operational goals, where the materials relate to or affect more than one employee, provided, however, that this exception does not apply if such materials are, have been or are intended to be used by the employer in determining an individual employee's qualifications for employment, promotion, transfer, or additional compensation, or in determining an individual employee's discharge or discipline.

(d) Information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.

(e) An employer who does not maintain any personnel records.

(f) Records relevant to any other pending claim between the employer and employee which may be discovered in a judicial proceeding.

(g) Investigatory or security records maintained by an employer to investigate criminal conduct by an employee or other activity by the employee which could reasonably be expected to harm the employer's property, operations, or business or could by the employee's activity cause the employer financial liability, unless and until the employer takes adverse personnel action based on information in such records.

(Source: P.A. 85-1440.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 2010.

CASE NOTES

Analysis

Constitutionality
- Due Process

Disclosure Improper

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Evaluation Material
Legislative Purpose

Constitutionality

- Due Process

The conflicting and inconsistent provisions of this act, entitling employees to review personnel records, offends due process because an employer of ordinary intelligence cannot determine with reasonable certainty which personnel documents are, or are not, subject to disclosure. Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc., 118 Ill. 2d 389, 113 Ill. Dec. 915, 515 N.E.2d 1222 (1987).

Given the broad and ambiguous language of this section, the legislature failed to provide an adequate guide concerning what an employer may properly refuse to disclose; as it was not clear what documents an employee could rightfully inspect under 820 ILCS 40/2, the two sections violated due process. Spinelli v. Immanuel Evangelical Lutheran Congregation, Inc., 144 Ill. App. 3d 325, 98 Ill. Dec. 269, 494 N.E.2d 196 (2 Dist. 1986), rev'd on other grounds, 118 Ill. 2d 389, 113 Ill. Dec. 915, 515 N.E.2d 1222 (1987).

Disclosure Improper

The trial court properly declined to provide plaintiff with financial data that would be relevant to any pending claim between the employer and the employee; the act was not meant to be a substitute for discovery in actual controversies. Landwer v. Scitex Am. Corp., 238 Ill. App. 3d 403, 179 Ill. Dec. 653, 606 N.E.2d 485 (1 Dist. 1992).

Evaluation Material

Firefighter applicant was not entitled to obtain under the Illinois Personnel Record Review Act the results of a physical abilities test the firefighter applicant took but did not pass, in a case where the firefighter applicant was not able to obtain that material under the Freedom of Information Act. Pursuant to 820 ILCS 40/10, the firefighter applicant was only entitled to receive cumulative test score evidence and there was no dispute that the firefighter applicant had received that evidence. Kopchar v. City of Chicago, 395 Ill. App. 3d 762, 335 Ill. Dec. 555, 919 N.E.2d 76, 2009 Ill. App. LEXIS 1066 (1 Dist. 2009), appeal denied, 2010 Ill. LEXIS 475 (Ill. 2010).

If an employee, who has a vested interest in a continued association with the state, is forbidden to view tests and evaluation material, then a job applicant, who has no vested interest in state employment, should also be forbidden to inspect his evaluation material. Roulette v. Department of Cent. Mgt. Servs., 141 Ill. App. 3d 394, 95 Ill. Dec. 587, 490 N.E.2d 60 (1 Dist. 1986).

Legislative Purpose

Subsection (c) of this section was not meant to preclude only management employees from inspecting materials utilized by an employer for management planning, as the legislature sought also to preclude university level instructors from gaining access to external peer review documents contained in their personnel files. Spinelli v. Immanuel Evangelical Lutheran Congregation, Inc., 144 Ill. App. 3d 325, 98 Ill. Dec. 269, 494 N.E.2d 196 (2 Dist. 1986), rev'd on other grounds, 118 Ill. 2d 389, 113 Ill. Dec. 915, 515 N.E.2d 1222 (1987).

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OPINIONS OF ATTORNEY GENERAL

Constitutionality

The General Assembly had the power to cure the constitutional deficiencies in the Personnel Record Review Act found in Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc., 118 Ill. 2d 389 (1987) without re-enacting the entire act. 1992 Op. Atty. Gen. (92-005).

LEGAL PERIODICALS

For article, "Labor Law: 1987-88 Illinois Law Survey," see 20 Loy. U. Chi. L.J. 527 (1988-89).

Practice Guides and Treatises.

Illinois Jurisprudence, Personal Injury and Torts § 17:57 Protection of personnel records.

Illinois Jurisprudence, Labor and Employment § 1:30 What may be inspected.

Illinois Jurisprudence, Labor and Employment § 1:29 Inspection by employee's designee.

§ 820 ILCS 40/11. [Right of access to records otherwise provided by law]

Sec. 11. This Act shall not be construed to diminish a right of access to records already otherwise provided by law, provided that disclosure of performance evaluations under the Freedom of Information Act shall be prohibited.

(Source: P.A. 83-1104; 96-1483, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 2011.

Effect of Amendments. The 2010 amendment by P.A. 96-1483, effective December 1, 2010, added the proviso at the end.

§ 820 ILCS 40/12. [Enforcement by Director of Labor; complaint; action to compel compliance; contempt; penalties]

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Sec. 12. (a) The Director of Labor or his authorized representative shall administer and enforce the provisions of this Act. The Director of Labor may issue rules and regulations necessary to administer and enforce the provisions of this Act.

(b) If an employee alleges that he or she has been denied his or her rights under this Act, he or she may file a complaint with the Department of Labor. The Department shall investigate the complaint and shall have authority to request the issuance of a search warrant or subpoena to inspect the files of the employer, if necessary. The Department shall attempt to resolve the complaint by conference, conciliation, or persuasion. If the complaint is not so resolved and the Department finds the employer has violated the Act, the Department may commence an action in the circuit court to enforce the provisions of this Act including an action to compel compliance. The circuit court for the county in which the complainant resides, in which the complainant is employed, or in which the personnel record is maintained shall have jurisdiction in such actions.

(c) If an employer violates this Act, an employee may commence an action in the circuit court to enforce the provisions of this Act, including actions to compel compliance, where efforts to resolve the employee's complaint concerning such violation by conference, conciliation or persuasion pursuant to subsection (b) have failed and the Department has not commenced an action in circuit court to redress such violation. The circuit court for the county in which the complainant resides, in which the complainant is employed, or in which the personnel record is maintained shall have jurisdiction in such actions.

(d) Failure to comply with an order of the court may be punished as contempt. In addition, the court shall award an employee prevailing in an action pursuant to this Act the following damages:

(1) Actual damages plus costs.

(2) For a willful and knowing violation of this Act, $200 plus costs, reasonable attorney's fees, and actual damages.

(e) Any employer or his agent who violates the provisions of this Act is guilty of a petty offense.

(f) Any employer or his agent, or the officer or agent of any private employer, who discharges or in any other manner discriminates against any employee because that employee has made a complaint to his employer, or to the Director or his authorized representative, or because that employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this Act, or because that employee has testified or is about to testify in an investigation or proceeding under this Act, is guilty of a petty offense.

(Source: P.A. 84-525.)

Note.

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This section was Ill.Rev.Stat., Ch. 48, Para. 2012.

CASE NOTES

Analysis
Attorney Fees
Exhaustion of Remedies

Attorney Fees

There was no wilful violation of the act and therefore no entitlement to attorney fees. Landwer v. Scitex Am. Corp., 238 Ill. App. 3d 403, 179 Ill. Dec. 653, 606 N.E.2d 485 (1 Dist. 1992).

Exhaustion of Remedies

Attempted resolution through the Department of Labor is a prerequisite to filing a claim in court. Anderson v. Bd. of Educ. of Chi., 169 F. Supp. 2d 864, 2001 U.S. Dist. LEXIS 16897 (N.D. Ill. 2001).

RESEARCH REFERENCES

Validity and construction of statute giving employee the right to review and comment upon personnel record maintained by the employer. 64 ALR4th 619.

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 1:35 Penalties for violation of Personnel Record Review Act.

Illinois Jurisprudence, Labor and Employment § 1:34 Administrative and enforcement of Personnel Record Review Act.

§ 820 ILCS 40/13. [Record of investigation by Department of Children and Family Services; expungement]

Sec. 13. An employer shall not gather or keep a record identifying an employee as the subject of an investigation by the Department of Children and Family Services if the investigation by the Department of Children and Family Services resulted in an unfounded report as specified in the Abused and Neglected Child Reporting Act [325 ILCS 5/1 et seq.].

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An employee upon receiving written notification from the Department of Children and Family Services that an investigation has resulted in an unfounded report shall take the written notification to his or her employer and have any record of the investigation expunged from his or her employee record.

(Source: P.A. 87-400.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 2013.

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 1:33 Information that may not be retained in personnel records.

WAGES AND HOURS

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Illinois Wage Payment and Collection Act

Sec.

820 ILCS 115/1.[Applicability]
820 ILCS 115/2.[Terms defined]
820 ILCS 115/3.[Minimum pay periods]
820 ILCS 115/4.[Payment of wages]
820 ILCS 115/5.[Separated employees]
820 ILCS 115/6.[Assistance in collection of wages]
820 ILCS 115/7.[Reciprocity with other states]
820 ILCS 115/8.[Contributions to employee benefit, trust or fund]
820 ILCS 115/9.[Deductions by employers from wages or final compensation prohibited; exceptions; disputes]
820 ILCS 115/10.[Notification of rate, time and place of payment]
820 ILCS 115/11.[Enforcement; powers of Department]
820 ILCS 115/12.[Administration and enforcement]
820 ILCS 115/13.Officers or agents deemed to be employers
820 ILCS 115/14.[Penalty for wilful refusal to pay; violation of Departmental order; retaliatory action]
820 ILCS 115/15.[Short title]

§ 820 ILCS 115/1. [Applicability]

Sec. 1. This Act applies to all employers and employees in this State, including employees of units of local government and school districts, but excepting employees of the State or Federal governments.

(Source: P.A. 84-883.)

Derivation.

Title: An Act in relation to the payment of wages due nongovernmental employees from their employers, to provide for the enforcement thereof through the Department of Labor, to make a violation thereof a misdemeanor, and to repeal certain acts therein named.

Cite: 820 ILCS 115/1 et seq.

Source: P.A. 78-914.

Date: Approved September 21, 1973.

Note.

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This section was Ill.Rev.Stat., Ch. 48, Para. 39m-1.

CASE NOTES

Analysis

In General
Amendment of Pleadings to Add a Claim
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- Company President
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Class Action
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Purpose
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Scope of Remedies
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In General

Absent an employer/employee relationship, employees of an exterior company could not prevail on their claims under the Illinois Wage Payment Act, 820 ILCS 115/1 et seq., and breach of contract. Brown v. Sears Roebuck & Co., F. Supp. 2d , 2003 U.S. Dist. LEXIS 16814 (N.D. Ill. Sept. 24, 2003).

Since an employee refused to sign a check tendered by the employee to settle the employee's claim for earned salary and accrued vacation under the Illinois Wage Payment and Collection Act

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because the employee disagreed with the waiver language on the back of the check, the court denied the employer's motion for partial summary judgment on that claim. Neuman v. Superior Jamestown Corp., F. Supp. 2d , 2003 U.S. Dist. LEXIS 6172 (N.D. Ill. Apr. 10, 2003).

Former employee did not have an actionable claim against two of his former supervisors under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 because the supervisors were not the employer and had not been named in the employee's charge before the Equal Employment Opportunity Commission. Bishopp v. ABN-AMRO Servs. Co., F. Supp. 2d , 2003 U.S. Dist. LEXIS 12368 (N.D. Ill. July 16, 2003).

Former employee's claim under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 against two parent companies that were related to the former employer was dismissed because the entities' status as parent corporations was not enough to assert an actionable claim against them. Bishopp v. ABN-AMRO Servs. Co., F. Supp. 2d , 2003 U.S. Dist. LEXIS 12368 (N.D. Ill. July 16, 2003).

This section does not preclude a private right of action by an employee and sets forth a mechanism for nongovernmental employees of the state to recover the payment of wages due from their employers. In re Faber, 52 Bankr. 563 (Bankr. N.D. Ill. 1985).

Amendment of Pleadings to Add a Claim

Trial court abused its discretion in denying the terminated employee the opportunity to amend his complaint to add a claim under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., as the relevant amendment factors favored allowing the employee to amend, the amendment was material to the case, and reversal of the judgment entered in favor of the employee based on the fact that the employee had not pled a violation of that could be cured if an amendment was permitted. Clemons v. Mech. Devices Co., 202 Ill. 2d 344, 269 Ill. Dec. 882, 781 N.E.2d 1072, 2002 Ill. LEXIS 953 (2002).

Applicability

Trial court did not err in denying the correctional officer's 42 U.S.C. § 1983 lawsuit alleging that the sheriff deprived her of property, backpay she claimed she was entitled to and interest on that backpay, as she did not establish that she was deprived of property without due process of law pursuant to U.S. Const. amend. XIV. The record showed that she had adequate procedural routes to obtain a hearing to contest the alleged deprivation, especially since she was still entitled to bring an action under the Illinois Wage Payment Act, 820 ILCS 115/1 et seq., given that backpay for a period of suspension qualified as a wage pursuant to 820 ILCS 115/2. Ellis v. Sheahan, 412 F.3d 754, 2005 U.S. App. LEXIS 11562 (7th Cir. 2005).

- Attorney Fees

705 ILCS 225/1 specifically states that a demand for wages must be made in writing for a "sum" not exceeding the amount found due and owing, and by using the word "sum," the legislature intended that a plaintiff make a written demand of the specific amount due to her; thus, where an employee's written demands for payment under the Illinois Wage Payment Act, 820 ILCS 115/1 et seq., did not include a demand for a specific sum, the employee was not entitled to recover attorneys' fees under the Attorneys Fees In Wage Actions Act, 705 ILCS 225/0.01 et seq. Catania v. Local 4250/5050 of the Communs. Workers of Am., 359 Ill. App. 3d 718, 296 Ill. Dec. 161, 834 N.E.2d 966, 2005 Ill. App. LEXIS 814 (1 Dist. 2005), appeal denied, 217 Ill. 2d 558, 300 Ill. Dec. 363, 844 N.E.2d 35 (2005).

An incentive compensation plan offered by an employer did not create an enforceable contract because it did not contain a clear right to bonus commission; because the employee was not due

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any wages or commission, he was not entitled to attorneys' fees under 705 ILCS 225/1. Rakos v. Skytel Corp., 954 F. Supp. 1234, 1996 U.S. Dist. LEXIS 19318 (N.D. Ill. 1996).

- Company President

As president of the company, plaintiff was an employee who also had some control over the business direction and over the performance of his work; therefore, plaintiff did not fall into the class of employees the Wage Act (820 ILCS 130/0.01) seeks to protect. Doherty v. Kahn, 289 Ill. App. 3d 544, 224 Ill. Dec. 602, 682 N.E.2d 163 (1 Dist. 1997).

- Employee Retirement Income Security Act

Where an employee alleged that his employer and its health care plan violated the Illinois Wage and Payment Act, 820 ILCS 115/1 et seq., by deducting money from his weekly pay check based on a disputed amount owed for overpayment of benefits under the plan, the employee's claim was preempted under § 502 of the Employee Retirement and Income Security Act, 29 U.S.C. § 1132, because it could not be resolved without an interpretation of the plan. Anderson v. Daimler Chrysler Corp., F. Supp. 2d , 2004 U.S. Dist. LEXIS 23638 (N.D. Ill. Oct. 1, 2004).

In the context of pension contributions, this Act is expressly preempted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.). Plumbers' Pension Fund, Local 130 v. Niedrich, 891 F.2d 1297 (7th Cir. 1989), cert. denied, 495 U.S. 930, 110 S. Ct. 2169, 109 L. Ed. 2d 499 (1990).

Since 820 ILCS 115/14 subjects employers to criminal sanctions, this Act is a generally applicable criminal law of the state and as such is not preempted by the Employee Retirement Income Security Act (29 U.S.C. § 1001 et seq.). Upholsterer's Int'l Union Health & Welfare Fund Trustees v. Pontiac Furn., Inc., 647 F. Supp. 1053 (C.D. Ill. 1986).

This Act, insofar as it applies to employer contributions to employee benefit plans, is preempted by ERISA (29 U.S.C. § 1001 et seq.). Baker v. Caravan Moving Corp., 561 F. Supp. 337 (N.D. Ill. 1983).

- Federal Labor Management and Relations Act

In an action by current and former employees against an employer alleging, inter alia, violations of the Illinois Minimum Wage Law, 820 ILCS 105/1 et seq., and the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., the employees' state claims were preempted by the federal Labor Management Relations Act because (1) the employees' claims were based on the parties' collective bargaining agreements (CBAs), and (2) the employees failed to exhaust all administrative requirements in the parties' CBAs. Gonzalez v. Farmington Foods, Inc., 296 F. Supp. 2d 912, 2003 U.S. Dist. LEXIS 23047 (N.D. Ill. 2003).

The plaintiffs' claim that the defendants failed to pay overtime in violation of the Illinois Wage Payment and Collection Act was not preempted by the federal Labor Management and Relations Act, 29 U.S.C. § 185, notwithstanding the contention that the claim could not be adjudicated without interpreting the collective bargaining agreement between the parties, since neither party submitted to the court the relevant provisions of the collective bargaining agreement at issue and the complaint on its face alleged a clear, unambiguous contractual obligation and, therefore, it was impossible for the court to decide whether the agreement required interpretation, rather than simply reference. Colgren v. County Line Cartage, Inc., F. Supp. 2d , 2000 U.S. Dist. LEXIS 11740 (N.D. Ill. Aug. 11, 2000).

By enacting this Act, the legislature clearly indicated that it is the public policy of the state to ensure the proper payment of wages to employees by employers; therefore, an employee's claim, which arises under a clear mandate of Illinois public policy, exists independently of the parties' collective bargaining agreement, and is therefore not subject to preemption by the Federal Labor Management and Relations Act. Brazinski v. Transport Serv. Co., 159 Ill. App. 3d 1061, 111 Ill.

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Dec. 830, 513 N.E.2d 76 (1 Dist.), appeal denied, 117 Ill. 2d 542, 115 Ill. Dec. 398, 517 N.E.2d 1084 (1987).

- Illinois Employers

Motion to dismiss a claim brought under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1-15, was denied because whether a company and its president were Illinois employers was a question of fact, and it could be reasonably inferred from the salesman's complaint that both defendants were Illinois employers. Weyent v. Vertical Networks, Inc., F. Supp. 2d , 2004 U.S. Dist. LEXIS 1354 (N.D. Ill. Feb. 3, 2004).

- Illustrative Cases

Here it was clear that the company was an out-of-state employer, where it was organized in Louisiana, and the trustee admitted that the business was located in Louisiana where the shareholder lived and that the company's bank account was with a bank in Louisiana. No evidence was presented that the company had any offices, registered agent, or any business contacts in Illinois other than that debtor and certain other employees conducted some of their work from home in Illinois. Myler v. Raj Rai (In re Kouzios), Bankr. , 2011 Bankr. LEXIS 4354 (Bankr. N.D. Ill. Mar. 10, 2011).

Trial court in the claimants' case regarding alleged violation of the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., should not have found that the commissions that the claimants were seeking accrued on the date the commissions were paid. The steel company president's testimony showed that an industry custom dictated that commissions accrued on the date that the customer paid the relevant invoice. Ashley v. IM Steel, Inc., 406 Ill. App. 3d 222, 345 Ill. Dec. 293, 939 N.E.2d 22, 2010 Ill. App. LEXIS 1161 (3 Dist. 2010).

When an employee voluntarily participated in a capital accumulation plan under which part of his compensation was paid in restricted stock, the Wage Payment and Collection Act applied because the election made it clear that the plan was compensation. Furthermore, deductions for the plan were proper under 820 ILCS 115/9 because the employee had benefited from the deductions, which resulted in tax benefits and gave him voting privileges. Kim v. Citigroup, Inc., 368 Ill. App. 3d 298, 305 Ill. Dec. 834, 856 N.E.2d 639, 2006 Ill. App. LEXIS 893 (1 Dist. 2006).

When an employee, a financial planner, voluntarily participated in a capital accumulation plan (CAP), under which part of his compensation was paid in restricted stock, the provision of the CAP under which the employee forfeited part of the stock upon the termination of his employment did not violate public policy as reflected in the Wage Payment and Collection Act. The employee elected to participate in the CAP; his position as a financial planner led to an inference that he knew of the forfeiture provision; and the record indicated that he regarded the plan as a smart investment. Kim v. Citigroup, Inc., 368 Ill. App. 3d 298, 305 Ill. Dec. 834, 856 N.E.2d 639, 2006 Ill. App. LEXIS 893 (1 Dist. 2006).

Employee failed in her claim that her former employer unlawfully kept commissions due her in violation of their wage agreement and this Act, where the employee's contract explicitly stated that she was not due the commissions. Jackson v. Xerox Corp., 349 F. Supp. 2d 1119, 2004 U.S. Dist. LEXIS 25700 (N.D. Ill. 2004).

Where an employer's failure to timely pay employees due to a downturn in business had arguably amounted to a violation of the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., the employees' covenants not to compete after they quit and formed their own company were unenforceable because the employer's conduct had breached the covenants. Francorp, Inc. v. Siebert, 126 F. Supp. 2d 543, 2000 U.S. Dist. LEXIS 14991 (N.D. Ill. 2000).

- Nonresident

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There was no argument that defendant, a key officer and shareholder of the company, was an Illinois employer. It was undisputed that he lived and resided in Louisiana, and there was no evidence presented that he had ever even stepped foot in Illinois during the timeframe in question. Myler v. Raj Rai (In re Kouzios), Bankr. , 2011 Bankr. LEXIS 4354 (Bankr. N.D. Ill. Mar. 10, 2011).

Under Seventh Circuit precedent, court interpreted the Illinois Wage Payment and Collection Act (Wage Act), 820 ILCS 115/1 et seq., to apply only where an employee had done at least some work for an Illinois employer while physically present in the state of Illinois; worker plead himself out of court because he alleged that he was a Georgia resident that performed all of his work for corporation out of an office in Georgia. Vendetti v. Compass Envtl., Inc., F. Supp. 2d , 2006 U.S. Dist. LEXIS 90404 (N.D. Ill. Dec. 14, 2006).

Illinois Wage Payment and Collection Act does not provide an Illinois employee with a cause of action against an out-of-state employer. Maxwell v. Vertical Networks, Inc., F. Supp. 2d , 2005 U.S. Dist. LEXIS 7619 (N.D. Ill. Mar. 18, 2005).

Court erred in dismissing an employee's action against an employer for a violation of the Illinois Wage Payment and Collection Act [820 ILCS 115/1] because nonresidents who worked in the State of Illinois for an in-state employer could state a claim under the Act. Adams v. Catrambone, 359 F.3d 858, 2004 U.S. App. LEXIS 2778 (7th Cir. 2004).

Former employee did not qualify as an "employee of the principal" under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 because this act was strictly limited to employers and employees within Illinois; therefore, the employee, who was never in Illinois, was a sales representative within 820 ILCS 120/1(4) and thus, able to recover from his employer for unpaid commissions in violation of the Illinois Sales Representative Act, 820 ILCS 120 et seq. Nicor Energy v. Dillon, F. Supp. 2d , 2004 U.S. Dist. LEXIS 86 (N.D. Ill. Jan. 7, 2004).

Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., did not apply to defendant, even though he worked in Illinois, where he was not an Illinois resident. PRM Realty Group v. Wood, F. Supp. 2d , 2002 U.S. Dist. LEXIS 19576 (N.D. Ill. Aug. 5, 2002).

The Illinois Wage Payment and Collection Act applies to a group consisting of employers and employees, all of whom are in Illinois; thus, the language of this section indicates that an employee must be in Illinois to be able to invoke the act. Glass v. Kemper Corp., 920 F. Supp. 928 (N.D. Ill. 1996), aff'd, 133 F.3d 999 (7th Cir. 1998).

- Workers' Compensation Act

In employee's action alleging retaliatory discharge for filing a workers' compensation claim, the trial court's error in admitting evidence regarding the Act and in instructing the jury on the Act, taken in conjunction with plaintiff's closing argument, so seriously prejudiced the employer as to require a new trial. Clemons v. Mechanical Devices, Co., 292 Ill. App. 3d 242, 226 Ill. Dec. 141, 684 N.E.2d 1344 (4 Dist. 1997), aff'd, 184 Ill. 2d 328, 235 Ill. Dec. 54, 704 N.E.2d 403 (1998).

Evidence that employer had violated the Act was irrelevant in employee's action alleging retaliatory discharge for filing a workers' compensation claim. Clemons v. Mechanical Devices, Co., 292 Ill. App. 3d 242, 226 Ill. Dec. 141, 684 N.E.2d 1344 (4 Dist. 1997), aff'd, 184 Ill. 2d 328, 235 Ill. Dec. 54, 704 N.E.2d 403 (1998).

Application and Construction

- Federal Labor Management and Relations Act

Court denied plaintiffs' 28 U.S.C.S. § 1447(c) motion to remand their action alleging that defendant violated the Illinois Minimum Wage Act (IMWL) and the Illinois Wage Payment and

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Collection Act (IWPCA) by failing to properly pay overtime wages for time spend donning and doffing because although § 203(o) of the Fair Labor Standards Act did not preempt the claims as there was no apparent conflict between the IMWL and IWPCA and § 203(o), § 301 of the Labor Management Relations Act did preempt the claims as plaintiffs' IMWL and IWPCA claims for unpaid time donning and doffing required application and interpretation of the wage, overtime, and pay provisions in the collective bargaining agreement; thus, the court had original jurisdiction over the matter under 28 U.S.C.S. § 1441. Curry v. Kraft Foods Global, Inc., F. Supp. 2d , 2010 U.S. Dist. LEXIS 113946 (N.D. Ill. Oct. 25, 2010).

Class Action

Because there was no categorical rule against certifying a Fed. R. Civ. P. 23(b)(3) state-law class action in a proceeding that also included a 29 U.S.C.S. § 216(b) Fair Labor Standards Act of 1938 collective action, it was error to deny class certification plaintiff employees' state-law claims against defendant employer under the Illinois Minimum Wage Law, 820 ILCS 105/1 et seq., and the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq. Ervin v. OS Rest. Servs., 632 F.3d 971, 2011 U.S. App. LEXIS 863 (7th Cir. 2011).

Employer's releases were void as a matter of law because they were obtained from the current and former employees either as a means of getting them to give up their class action claims for alleged violation of the Minimum Wage Law, 820 ILCS 105/1 et seq., and Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., in return for a nominal payment and to allow the employer to violate those acts, thwart an attempt to obtain class certification, or both. Such releases were not enforceable because they violated public policy. Lewis v. Giordano's Enters., 397 Ill. App. 3d 581, 336 Ill. Dec. 884, 921 N.E.2d 740, 2009 Ill. App. LEXIS 1272 (1 Dist. 2009).

Because commissary employees were entitled to structure their suit to proceed as a class under 29 U.S.C. § 216(b), and because they could proceed with limited discovery prior to provisional class certification, the employers were ordered to comply with the employees' interrogatories and requests for production of contact information for similarly situated employees, but only with respect to commissary employees at one facility, and not to all hourly employees, because the employees did not demonstrate a reasonable factual basis for suspecting that all hourly employees were subject to the same pay practices, which allegedly violated the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., the Illinois Minimum Wage Law, 820 ILCS 105/1 et seq., and the Illinois Wage Payment Collection Act, 820 ILCS 115/1 et seq. Acevedo v. Ace Coffee Bar, Inc., 248 F.R.D. 550, 2008 U.S. Dist. LEXIS 13948 (N.D. Ill. 2008).

Laborers' suit met Fed. R. Civ. P 23(b)(3) superiority requirements despite the fact that they asserted claims under both the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 et seq., as well as the Illinois Minimum Wage Law, 820 ILCS 105/1 et seq., and the Illinois Wage Payment and Collection Act. 820 ILCS 115/1 et seq.: (1) the suit was filed in a state court and was removed after the laborers added their FLSA claims; (2) defendant's removal of the suit significantly diminished the merits of its Fed. R. Civ. P. 23(b) superiority challenge; (3) while some potential conflict existed between the FLSA's "opt-in" requirement, 29 U.S.C. § 216(b), and the "opt-out" approach contemplated by Fed. R. Civ. P. 23, that conflict would not bar class certification as to the laborers' state law claims because they were proceeding individually, rather than collectively, on their FLSA claims; and (4) given that the laborers were not proceeding collectively on their FLSA claims, it would be both unfair and inefficient to allow defendant to remove the suit and thereafter to oppose class certification as to the laborers' state law claims. Acosta v. Scott Labor LLC, F. Supp. 2d , 2006 U.S. Dist. LEXIS 153 (N.D. Ill. Jan. 3, 2006).

Motion by the employer and its principals to decertify a class that was certified for state law claims under 820 ILCS 105/1 et seq. and 115/1 et seq. was denied because the potential class was provided with notice of the requirement that it "opt in" to the claims under 29 U.S.C. § 216 and that they would need to "opt out" of the state law claims, and the fact that the two classes

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were of different sizes did not necessarily require decertification particularly when there was some evidence that certain employees might have been coerced into opting out. Ladegaard v. Hard Rock Concrete Cutters, Inc., F. Supp. 2d , 2004 U.S. Dist. LEXIS 11718 (N.D. Ill. June 25, 2004).

Collective Bargaining

County's motion for reconsideration of class certification on some employees' Wage Payment and Collection Act (WPCA), 820 ILCS 115/1 et seq., overtime payment claim was granted, as the county and employees did not define compensable work in the relevant collective bargaining agreement (CBA), so it was not appropriate to resolve the present dispute through the CBA's grievance process; thus, the employees' WPCA claim was not too weak to render them inadequate representatives for class certification. Belbis v. County of Cook, F. Supp. 2d , 2003 U.S. Dist. LEXIS 1132 (N.D. Ill. Jan. 23, 2003).

Construction

District court was required to consider an employee's claim under the Illinois Wage Payment and Collection Act for unpaid commissions, as the claim was pleaded as a supplemental claim under 28 U.S.C. § 1367 in the employee's action under the Employee Retirement Income Security Act and the federal claim was decided on the basis of a trial. Leister v. Dovetail, Inc., 546 F.3d 875, 2008 U.S. App. LEXIS 21982 (7th Cir. 2008), corrected, 2008 U.S. App. LEXIS 24665 (7th Cir. Ill. 2008).

Contract

Employee admitted that the 2003 Incentive Plan was not an enforceable contract, as he had to in order to pursue his unjust enrichment/quantum meruit claim. Without an alleged employment contract or other agreement, the employee's claim for violation of the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., failed. Chinchilla v. SPX Corp., F. Supp. 2d , 2005 U.S. Dist. LEXIS 22010 (N.D. Ill. Sept. 27, 2005).

Evidence

Where plaintiff former officer's action alleged breach of a severance agreement and violation of the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., evidence of the officer's alleged misconduct that was not known to defendant former employer at the time of firing was not relevant in proving termination for cause, however, it was relevant to the employer's breach of the duty of loyalty counterclaim. Von Pein v. Hedstrom Corp., F. Supp. 2d , 2004 U.S. Dist. LEXIS 19431 (N.D. Ill. Sept. 22, 2004).

Jurisdiction

Although the district court improperly dismissed a retired teacher's action to enforce a settlement agreement with a city board of education and for due-and-owing wages based on its erroneous determination that the claims had to be arbitrated pursuant to an arbitration clause in a collective bargaining agreement, the teacher could not reinstate her claims in federal court because: (1) the claim to enforce the settlement was an action on the settlement contract, which arose under state law; (2) the teacher could not amend the complaint to state a claim under the Fair Labor Standards Act because the Act did not cover teachers in public schools under 29 U.S.C. § 213(a)(1); (3) there was no subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 based on the teacher's claim that the board's failure to pay amounted to "retaliation" for her assertion of

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constitutional rights because any speech within the bureaucracy and related to her claim to be paid was outside the First Amendment's scope, the teacher's retaliation claim was based on pre-settlement speech and was extinguished by the settlement, and failure to abide by the settlement could not be treated as a fresh claim under federal law; and (4) the courts of Illinois had jurisdiction to enforce both the settlement contract and the Wage Payment and Collection Act, 820 ILCS 115/1, 115/2. Kay v. Bd. of Educ., 547 F.3d 736, 2008 U.S. App. LEXIS 22301 (7th Cir. 2008).

Court could exercise supplemental jurisdiction over laborers' Illinois Minimum Wage Law, 820 ILCS 105/1 et seq., and Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., claims because those claims were based on the same underlying facts and formed part of the same controversy giving rise to the laborers' individual Fair Labor Standards Act, 29 U.S.C. 201 et seq., claims. The court had, in fact, already exercised supplemental jurisdiction when it entered an agreed order certified classes as to the laborers' state law claims. Acosta v. Scott Labor LLC, F. Supp. 2d , 2006 U.S. Dist. LEXIS 153 (N.D. Ill. Jan. 3, 2006).

An Illinois resident does not have a cause of action against an out-of-state employer under 820 Ill. Comp. Stat. 115/1 et seq. Khan v. Van Remmen, Inc., 325 Ill. App. 3d 49, 258 Ill. Dec. 628, 756 N.E.2d 902, 2001 Ill. App. LEXIS 739 (2 Dist. 2001).

The trial court correctly dismissed employee's claim of violation of the Illinois Wage Payment and Collection Act, notwithstanding that the defendant had its principal place of business in Illinois, where the employee was not a resident of Illinois and did all his work for the employer in Spain. Glass v. Kemper Corp., 133 F.3d 999 (7th Cir. 1998).

Minimum Wage Law

District court denied employee's motion to certify his claims under the Illinois Minimum Wage Law, 820 ILCS 105/1 et seq., the Illinois Wage Payment and Collection Act, 820 ILCS 115 et seq., and for conversion under state law because certification under Fed. R. Civ. P. 23 was not a superior method of litigating the claims when they were brought in conjunction with a claim under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 et seq.; this is especially true where there would be a conflict between the affirmative "opt in" procedure of a claim under 29 U.S.C. § 216 of the FLSA, and the "opt out" procedure of Fed. R. Civ. P. 23. McClain v. Leona's Pizzeria, Inc., 222 F.R.D. 574, 2004 U.S. Dist. LEXIS 14779 (N.D. Ill. 2004).

In a restaurant employee's suit alleging violations of the Illinois Minimum Wage Law, 820 ILCS 105/1 et seq., and the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., where the restaurant owners argued that a Fair Labor Standards Act, 29 U.S.C. § 201 et seq., collective action was the superior method of adjudicating the claims, the numerosity requirement was satisfied. Sorensen v. CHT Corp., F. Supp. 2d , 2004 U.S. Dist. LEXIS 3729 (N.D. Ill. Mar. 9, 2004).

Despite employees' attempt to posit an agreement separate from the parties' collective bargaining agreement, obligation to pay for preparation, travel, and cleanup time was dependent on interpretation of provisions of the Joint Agreement, and claim pursuant to the Illinois Wage Payment and Collection Act (IWPCA), 820 ILCS 115/1 et seq., for the time period covered by the Joint Agreement was preempted. O'Brien v. Encotech Constr., F. Supp. 2d , 2004 U.S. Dist. LEXIS 4696 (N.D. Ill. Mar. 22, 2004).

Private Right of Action

Private actions under the Ilinois Minimum Wage Law, 820 ILCS 105/1 et seq., did not lie under Illinois criminal employment laws. Skelton v. Am. Intercontinental Univ. Online, 382 F. Supp. 2d 1068, 2005 U.S. Dist. LEXIS 17604 (N.D. Ill. 2005).

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Purpose

The purpose of this Act is to assist employees in seeking redress for an employer's wrongful withholding of employee benefits. Miller v. J.M. Jones Co., 198 Ill. App. 3d 151, 144 Ill. Dec. 461, 555 N.E.2d 820 (4 Dist. 1990).

The primary objective of this Act is to ensure employees receive all earned benefits upon leaving their employer; the evil it seeks to remedy is the forfeiture of any of those benefits. Mueller Co. v. Department of Labor, 187 Ill. App. 3d 519, 135 Ill. Dec. 135, 543 N.E.2d 518 (4 Dist. 1989).

The purpose of this Act is to insure prompt and full payment of wages due workers at the time of separation from employment, either by discharge, layoff or quitting. Conlon-Moore Corp. v. Cummins, 28 Ill. App. 2d 368, 171 N.E.2d 676 (1 Dist. 1960), aff'd, 23 Ill. 2d 341, 178 N.E.2d 336 (1961).

Relation to Other Laws

Debtor who owned a metal finishing business defrauded an employee and violated the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., before he declared bankruptcy, when he wrote 11 checks to the employee that were returned for insufficient funds, did not keep promises he made to issue new checks to pay the employee wages he was owed, cancelled the employee's healthcare coverage but continued to withhold money from his wages to pay premiums, did not compensate the employee for vacation he accrued but had not taken at the time he lost his job, and withdrew $832,890 from the company's profit-sharing pension plan to pay personal expenses and operate the company, and the bankruptcy court found that the debtor owed the employee a debt in the amount of $271,581, plus interest, and that the employee was entitled to summary judgment on his claim that the debt was nondischargeable under 11 U.S.C.S. § 523(a)(2)(A), (a)(4), and (a)(6). However, the court refused to find that a default judgment the employee obtained against the debtor in state court was entitled to preclusive effect because a copy of the state court's judgment which the employee provided did not show that the state court made findings of fact that were binding on the bankruptcy court. Zamora v. Jacobs (In re Jacobs), 448 B.R. 453, 2011 Bankr. LEXIS 311 (Bankr. N.D. Ill. 2011).

Pursuant to 820 ILCS 175/95(a)(1), day or temporary workers, but not other Illinois workers, can seek liquidated damages from their employers for violations of the wage and hour laws set out in the Illinois Wage Payment and Collection Act (IWPCA), 820 ILCS 115/1 et seq.: (1) although the Illinois Day and Temporary Labor Services Act (IDTLSA),, 820 ILCS 175/1 et seq., does not itself contain any provisions incorporating the earned vacation and holiday pay provisions of the IWPCA, the Illinois Department of Labor has promulgated regulations stating that payments under the IDTLSA must be in compliance with all law relating to wages contained in chapter 820 of the Illinois Compiled Statutes, which includes the IWPCA; (2) the Department of Labor's interpretation of the statute is entitled to judicial deference; and (3) this interpretation is consistent with legislative history, which reflects that the Illinois legislature intended to provide extra protections and remedies for day and temporary laborers because they are more vulnerable to abuse of their labor rights than other workers, including abuses involving unpaid wages, failure to pay for all hours worked, minimum wage and overtime violations, and unlawful deductions from their pay. Arrez v. Kelly Servs., Inc., 522 F. Supp. 2d 997, 2007 U.S. Dist. LEXIS 79813 (N.D. Ill. 2007).

Right to Jury Trial

No right to a jury trial exists for actions filed under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq. Covinsky v. Hannah Marine Corp., 388 Ill. App. 3d 478, 328 Ill. Dec. 35, 903 N.E.2d 422, 2009 Ill. App. LEXIS 72 (1 Dist. 2009).

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Ill. Const. Art. I, § 13 does not confer the right to a jury trial for actions filed pursuant to the Illinois Wage Payment Act, 820 ILCS 115/1 et seq. Catania v. Local 4250/5050 of the Communs. Workers of Am., 359 Ill. App. 3d 718, 296 Ill. Dec. 161, 834 N.E.2d 966, 2005 Ill. App. LEXIS 814 (1 Dist. 2005), appeal denied, 217 Ill. 2d 558, 300 Ill. Dec. 363, 844 N.E.2d 35 (2005).

Scope of Remedies

Former employee terminated one October by the former employer did not show in the former employee's action under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., against the former employer for a pro rate bonus where the bonus at issue was based on calendar-year sales figures. While 820 ILCS 115/2 regarding the payment of compensation did not define "earned bonus," payment of compensation under 820 ILCS 115/5 was due no later than the former employee's next-regularly scheduled payday, in that same October, which was well before the calendar year ended and any performance bonus could be calculated. McLaughlin v. Sternberg Lanterns, Inc., 395 Ill. App. 3d 536, 335 Ill. Dec. 1, 917 N.E.2d 1065, 2009 Ill. App. LEXIS 1000 (2 Dist. 2009).

While an employee could bring an action against both her employer and its president for violations of the Illinois Wage Payment Act, 820 ILCS 115/1 et seq., she could only make one recovery for those violations. Although a jury ruled in the employee's favor on her claims against both the employer and the president, she was entitled to only one of the damage awards made by the jury. Catania v. Local 4250/5050 of the Communs. Workers of Am., 359 Ill. App. 3d 718, 296 Ill. Dec. 161, 834 N.E.2d 966, 2005 Ill. App. LEXIS 814 (1 Dist. 2005), appeal denied, 217 Ill. 2d 558, 300 Ill. Dec. 363, 844 N.E.2d 35 (2005).

Summary Judgment

Employee alleged that he was directed to alter his time records to avoid being eligible for overtime in violation of the Fair Labor Standards Act, 29 U.S.C. § 207(a)(1), and the Illinois Wage Payment and Collection Act, 820 ILCS 115/1, but the employer's records flatly refuted the employee's allegations, and the employee offered nothing to support any purported alteration of the records; thus, the employee's claims failed to survive summary judgment. Turner v. The Saloon, Ltd., 491 F. Supp. 2d 767, 2007 U.S. Dist. LEXIS 39936 (N.D. Ill. 2007).

Employer was entitled to summary judgment with respect to a former's employee's claim brought under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq. (IWPCA), which alleged that the employee was not paid for all hours worked because the employee failed to offer any evidence that the employer failed to pay him for any of the disputed hours. Marchman v. Advocate Bethany Hosp., F. Supp. 2d , 2006 U.S. Dist. LEXIS 50889 (N.D. Ill. July 12, 2006).

Employer was entitled to summary judgment on an Illinois Wage Payment and Collection Act (IWPCA), 820 ILCS 115/1 et seq., claim as the employee admitted that she did not have an agreement with anyone that she would be paid overtime if she worked more than 40 hours per week. Blue v. Chubb Group, F. Supp. 2d , 2005 U.S. Dist. LEXIS 14253 (N.D. Ill. July 13, 2005).

Summary judgment was granted to an employer in an action by a former employee under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., because the unpaid wages that the employee sought as damages for wrongful termination of an employment contract were for work that would have been performed in another state. Chen v. Quark Biotech, Inc., F. Supp. 2d , 2004 U.S. Dist. LEXIS 11029 (N.D. Ill. June 15, 2004).

Where a female employee was terminated for failing to attend a meeting and obtaining confidential emails, the employee waived the wage payment claim by failing to mention the claim

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in the brief. Torain v. Delta-T Group Ill., Inc., F. Supp. 2d , 2004 U.S. Dist. LEXIS 6846 (N.D. Ill. Apr. 21, 2004).

Former employee's claim under this section was dismissed where the court ruled in favor of the employer on the employee's claim under the American with Disabilities Act (42 U.S.C. § 12101 et seq.); there was no longer a federal question pending and the employee presented no unusual circumstances. Nelson v. Finishes Unlimited, Inc., 983 F. Supp. 765 (N.D. Ill. 1997).

Temporary Employees

Temporary employees asserted actionable legal claims for liquidated damages against their employer under 820 ILCS 175/95(a)(1), arising from the employer's alleged failure to pay the amount owed them for vacation and holiday day benefits in violation of their rights under the Illinois Wage Payment and Collection Act (IWPCA), 820 ILCS 115/1 et seq. As interpreted by the Illinois Department of Labor, the Illinois Day and Temporary Labor Services Act (IDTLSA), 820 ILCS 175/1 et seq., required compliance with all law relating to wages contained in chapter 820 ILCS, the IWPCA was codified within that chapter, and the employees were protected by the IDTLSA because they were temporary workers. Arrez v. Kelly Servs., Inc., 522 F. Supp. 2d 997, 2007 U.S. Dist. LEXIS 79813 (N.D. Ill. 2007).

Vesting of Right to Wages

Once an employee has earned wages by having done the work that under his explicit or implicit employment contract entitles him to those wages, he has a vested right to them. Harrell v. United States, 13 F.3d 232 (7th Cir. 1993).

Waiver Prohibited

Releases signed by the plaintiffs of rights under the Illinois Minimum Wage Law were invalid, even though the defendant employer paid the plaintiffs for those releases, as the Illinois Minimum Wage Law involves public rights and embodies the state's public policy and, therefore, those rights are nonwaivable. O'Brien v. Encotech Constr. Servs., Inc., 183 F. Supp. 2d 1047, 2002 U.S. Dist. LEXIS 942 (N.D. Ill. 2002).

It would be against the public policy of the Illinois Minimum Wage Law and the Illinois Wage Payment and Collection Act to permit parties to waive or release their claims under those acts based on the similar purposes of the federal Fair Labor Standards Act and the Illinois acts, recognition that these statutes involve public rights, the long history of United States Supreme Court interpretation of the Fair Labor Standards Act prohibiting release of such claims, and the Illinois common law rule that laws enacted to serve a public concern cannot be abrogated by mere private agreement, of which the legislature is presumed to be aware. Ladegaard v. Hard Rock Concrete Cutters, Inc., F. Supp. 2d , 2001 U.S. Dist. LEXIS 18370 (N.D. Ill. Nov. 7, 2001).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Employment Law," see 26 S. Ill. U.L.J. 613 (2002).

Assignments for Wages in Illinois: Pitfalls for Employer Businesses, see 14 DePaul Bus. L.J. 21 (2001).

For article, "Survey of Illinois Law: Employment Law", see 22 S. Ill. U.L.J. 841 (1998).

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For article, "Minimum Guaranteed Rights Under the Illinois Wage Payment and Collection Act," see 81 Ill. B.J. 194 (1993).

For note, "Unraveling the Illinois Retaliatory Discharge Tort," see U. Ill. L. Rev. 517 (1989).

For article, "Survey of Illinois Law: Employment Law, "see, See 28 S. Ill. U.L.J. 705 (2004).

For article, "Survey of Illinois Law: Employment Law," see, See 29 S. Ill. U.L.J. 639 (2005).

Practice Guides and Treatises.

1-4 Employment in Illinois § 4-9 Collection of Wages.

Illinois Jurisprudence, Labor and Employment § 3:22 By individual employee.

Illinois Jurisprudence, Labor and Employment § 3:08 Severance pay.

Illinois Jurisprudence, Labor and Employment § 3:06 Bonuses.

Illinois Jurisprudence, Labor and Employment § 3:05 Sales commissions.

§ 820 ILCS 115/2. [Terms defined]

Sec. 2. For all employees, other than separated employees, "wages" shall be defined as any compensation owed an employee by an employer pursuant to an employment contract or agreement between the 2 parties, whether the amount is determined on a time, task, piece, or any other basis of calculation. Payments to separated employees shall be termed "final compensation" and shall be defined as wages, salaries, earned commissions, earned bonuses, and the monetary equivalent of earned vacation and earned holidays, and any other compensation owed the employee by the employer pursuant to an employment contract or agreement between the 2 parties. Where an employer is legally committed through a collective bargaining agreement or otherwise to make contributions to an employee benefit, trust or fund on the basis of a certain amount per hour, day, week or other period of time, the amount due from the employer to such employee benefit, trust, or fund shall be defined as "wage supplements", subject to the wage collection provisions of this Act.

As used in this Act, the term "employer" shall include any individual, partnership, association, corporation, limited liability company, business trust, employment and labor placement agencies where wage payments are made directly or indirectly by the agency or business for work undertaken by employees under hire to a third party pursuant to a contract between the business or agency with the third party, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, for which one or more persons is gainfully employed.

As used in this Act, the term "employee" shall include any individual permitted to work by an employer in an occupation, but shall not include any individual:

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(1) who has been and will continue to be free from control and direction over the performance of his work, both under his contract of service with his employer and in fact; and

(2) who performs work which is either outside the usual course of business or is performed outside all of the places of business of the employer unless the employer is in the business of contracting with third parties for the placement of employees; and

(3) who is in an independently established trade, occupation, profession or business.

(Source: P.A. 83-198; 89-364, § 43; 89-626, § 3-45; 94-1025, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39m-2.

Effect of Amendments. The 1995 amendment by P.A. 89-364, effective August 18, 1995, in the second paragraph, in the first sentence inserted "employment and labor placement agencies where wage payments are made directly or indirectly by the agency or business for work undertaken by employees under hire to a third party pursuant to a contract between the business or agency with the third party" and in the third paragraph inserted "unless the employer is in the business of contracting with third parties for the placement of employees".

The 1996 amendment by P.A. 89-626, effective August 9, 1996, substituted a comma for a period following "the 2 parties" in the first sentence of the first paragraph.

The 2006 amendment by P.A. 94-1025, effective July 14, 2006, added "limited liability company" in the second paragraph.

CASE NOTES

Analysis

Applicability
Employee
Employer
- Corporate Officer
- Illustrative Cases

Independent Contractor
Liability
Scope of Remedies
Wages
- Earned Income
- Incentive Plan
- Legislative Intent
- Severance Pay

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- Vacation Pay
Work Status

Applicability

Although the district court improperly dismissed a retired teacher's action to enforce a settlement agreement with a city board of education and for due-and-owing wages based on its erroneous determination that the claims had to be arbitrated pursuant to an arbitration clause in a collective bargaining agreement, the teacher could not reinstate her claims in federal court because: (1) the claim to enforce the settlement was an action on the settlement contract, which arose under state law; (2) the teacher could not amend the complaint to state a claim under the Fair Labor Standards Act because the Act did not cover teachers in public schools under 29 U.S.C. § 213(a)(1); (3) there was no subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 based on the teacher's claim that the board's failure to pay amounted to "retaliation" for her assertion of constitutional rights because any speech within the bureaucracy and related to her claim to be paid was outside the First Amendment's scope, the teacher's retaliation claim was based on pre-settlement speech and was extinguished by the settlement, and failure to abide by the settlement could not be treated as a fresh claim under federal law; and (4) the courts of Illinois had jurisdiction to enforce both the settlement contract and the Wage Payment and Collection Act, 820 ILCS 115/1, 115/2. Kay v. Bd. of Educ., 547 F.3d 736, 2008 U.S. App. LEXIS 22301 (7th Cir. 2008).

Illinois Wage Payment and Collection Act does not provide an Illinois employee with a cause of action against an out-of-state employer. Maxwell v. Vertical Networks, Inc., F. Supp. 2d , 2005 U.S. Dist. LEXIS 7619 (N.D. Ill. Mar. 18, 2005).

Employee

Delivery drivers from Illinois were not entitled to class certification under Fed. R. Civ. P. 23(b)(2) in their actions challenging their classification as independent contractors. An inquiry into whether the drivers were employees under the Illinois Wage Act, 820 ILCS 115/2, and under state case law required a driver-by-driver examination and could not be resolved on a class-wide basis. In re FedEx Ground Package Sys., Empl. Practices Litig., 273 F.R.D. 424, 2008 U.S. Dist. LEXIS 112104 (N.D. Ind. 2008).

As the three criteria for determining one's status as an "employee" under 820 ILCS 115/2 are conjunctive, and plaintiff, a former president of a corporation, fit only the first requirement (free from control and direction), the trial court erred in dismissing his claims under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., on grounds that he was not an "employee." Soh v. Target Mktg. Sys., 353 Ill. App. 3d 126, 288 Ill. Dec. 455, 817 N.E.2d 1105, 2004 Ill. App. LEXIS 1182 (1 Dist. 2004).

Since the three criteria listed in § 2 of the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., are conjunctive, a person who does not fit all three requirements cannot be excluded from the class of people who are to be considered employees under § 2 of the Act. Soh v. Target Mktg. Sys., 353 Ill. App. 3d 126, 288 Ill. Dec. 455, 817 N.E.2d 1105, 2004 Ill. App. LEXIS 1182 (1 Dist. 2004).

All three conditions provided for in Illinois Wage Payment and Collection Act (Wage Act), 820 ILCS 115/2, must apply to a plaintiff before an exclusion, such as the status of an indepdent contractor, applies; if any one of the three conditions does not apply, the plaintiff is an "employee" as statutorily defined. Anderson v. First Am. Group of Cos., 353 Ill. App. 3d 403, 288 Ill. Dec. 808, 818 N.E.2d 743, 2004 Ill. App. LEXIS 1143 (1 Dist. 2004).

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Whether an employee qualifies as an "employee" under the Illinois Wage Payment and Collection Act (Wage Act), 820 ILCS 115/2, is a mixed question of law and fact; whether the plaintiff's position fits the statutory definition of "employee" is a factual question and interpreting § 2 is a legal question. Anderson v. First Am. Group of Cos., 353 Ill. App. 3d 403, 288 Ill. Dec. 808, 818 N.E.2d 743, 2004 Ill. App. LEXIS 1143 (1 Dist. 2004).

Vice president of operations of a corporation was entitled to severance pay and relocation expenses as a result of his termination as his status fit the statutory definition of an employee under the Illinois Wage Payment and Collection Act (Wage Act), 820 ILCS 115/2, in that he did not have an ownership/proprietary interest in the corporation and his position did not place his performance outside of the usual course of business. Anderson v. First Am. Group of Cos., 353 Ill. App. 3d 403, 288 Ill. Dec. 808, 818 N.E.2d 743, 2004 Ill. App. LEXIS 1143 (1 Dist. 2004).

In a dispute regarding allegedly unpaid commissions, since the court was not ruling that the former marketing manager was an employee or was not an employee under the the Illinois Wage Payment and Collection Act (IWPCA), 820 ILCS 115/1 et seq., but the court ruled that based on the facts presently before it, it could not say that the manager was an employee under the IWPCA and the manager could not be deemed a sales representative under the Illinois Sales Representative Act, 820 ILCS 120/1 et seq., and recover treble damages thereby giving the court subject matter jurisdiction, the court denied the former employer's Fed. R. Civ. P. 12(b)(1) and alternative Fed. R. Civ. P. 12(b)(6) motion to dismiss. Pfeifer v. Metro. Siding & Windows, Inc., F. Supp. 2d , 2004 U.S. Dist. LEXIS 2742 (N.D. Ill. Feb. 23, 2004).

Where the former employer asserted that the court lacked subject matter jurisdiction because the former marketing manager mistakenly thought he was able to bring his claim for unpaid commissions under the Illinois Sales Representative Act, 820 ILCS 120/1 et seq., which provided for treble damages, but was actually an employee because he used the term employed in his complaint, the court denied the employer's Fed. R. Civ. P. 12(b)(1) motion to dismiss finding that the employer's argument was premature and merely because the manager used the word employed in his complaint did not necessarily mean that he should be deemed an employee as defined by the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq. Pfeifer v. Metro. Siding & Windows, Inc., F. Supp. 2d , 2004 U.S. Dist. LEXIS 2742 (N.D. Ill. Feb. 23, 2004).

Whether someone is an employee within the ambit of the Illinois Wage Payment and Collection Act [820 ILCS 115/1 et seq.] hinges on (1) whether he is an individual permitted to work by an employer in an occupation in Illinois, and (2) whether he is excepted under the three-pronged test for exclusion listed in 820 ILCS 115/2. Adams v. Catrambone, 359 F.3d 858, 2004 U.S. App. LEXIS 2778 (7th Cir. 2004).

Only a plaintiff who meets all three prongs of 820 ILCS 115/2 falls within the statutory exclusion to the Illinois Wage Payment and Collection Act's definition of "employee;" conjunctive language in the statute requires that all three prongs be met. Adams v. Catrambone, 359 F.3d 858, 2004 U.S. App. LEXIS 2778 (7th Cir. 2004).

Terminated employee did not show that he was entitled to be paid a bonus despite his assertion to the contrary; while he alleged on appeal that he had a claim for a bonus under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq. (Act), he did not assert that claim in his complaint; moreover, he did not show, as required under the Act, that he had an employment contract or agreement that contained a provision outlining either his right to such compensation as an employee or the employer's or its benefit plan's obligation to pay a bonus to him as an employee. Stark v. PPM Am., Inc., 354 F.3d 666, 2004 U.S. App. LEXIS 240 (7th Cir. 2004).

Even though there was support for the plaintiff's argument that in order to be found not to be an employee under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., all three prongs of 820 ILCS 115/2 had to be met, the court denied the plaintiff's motion for reconsideration; as requiring only the first prong is the standing precedent. Amoroso v. Crescent Private Capital, L.P., F. Supp. 2d , 2003 U.S. Dist. LEXIS 17996 (N.D. Ill. Oct. 10, 2003).

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In a former company president's lawsuit to recover unpaid wages under 820 ILCS 115/5 of the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., the court denied the parties' cross-motions for summary judgment, Fed. R. Civ. P. 56; where the president alleged that once the company experienced financial difficulties severe enough to require lay-offs, the company's governing board took an active role in the operation of the company and directed and controlled the president's work, a material fact dispute existed about whether the president was an "employee," as defined by 820 ILCS 115/2, for purposes of the Act. Amoroso v. Crescent Private Capital, L.P., F. Supp. 2d , 2003 U.S. Dist. LEXIS 15103 (N.D. Ill. Aug. 28, 2003).

Employer

Illinois Supreme Court rejects the use of the "economic realities" test in determining who is an employer in the context of the Illinois Wage Payment and Collection Act, 802 ILCS 115/1 et seq., because there are no gaps in the Act rendering such a test necessary. Andrews v. Kowa Printing Corp., 217 Ill. 2d 101, 298 Ill. Dec. 1, 838 N.E.2d 894, 2005 Ill. LEXIS 1608 (2005).

Illinois Supreme Court has determined that joint employer liability is allowed by the Illinois Wage Payment and Collection Act, 802 ILCS 115/1 et seq.; however, a corporation was not held liable as a joint employer where the evidence showed that it had absolutely no control over the employees of a failed business, and the fact that the entities were owned by the same person was not enough. Andrews v. Kowa Printing Corp., 217 Ill. 2d 101, 298 Ill. Dec. 1, 838 N.E.2d 894, 2005 Ill. LEXIS 1608 (2005).

820 ILCS 115/2 confirms that an employer is liable both for its own violations of the Illinois Wage Act and for any Illinois Wage Act violations committed by its agents. 820 ILCS 115/13, in turn, imposes personal liability on any officers or agents who knowingly permitted a wage violation; therefore, an owner and a corporation did not qualify as employers under 820 ILCS 115/2 because the owner was not in control of the business when wages were not paid, and the corporation was not deemed an employer simply because it acted directly or indirectly in the interest of several employees, who did not receive their wages. Andrews v. Kowa Printing Corp., 217 Ill. 2d 101, 298 Ill. Dec. 1, 838 N.E.2d 894, 2005 Ill. LEXIS 1608 (2005).

- Corporate Officer

Where trial testimony from an employee and two owners of related businesses established that the employee was hired by the owners to work for one of their other company's subsidiaries, that the owners were the president and chief financial officer of the subsidiary, and that the owners negotiated the terms of the employee's bonus and salary but knowingly refused to pay him his bonus, the testimony was sufficient to establish that the subsidiary, its parent company, and both of the owners were all the employee's "employers" under 820 ILCS 115/2 and 115/13. Zabinsky v. Gelber Group, Inc., 347 Ill. App. 3d 243, 283 Ill. Dec. 61, 807 N.E.2d 666, 2004 Ill. App. LEXIS 262 (1 Dist. 2004), appeal denied, Ill. 2d , Ill. Dec. , 823 N.E.2d 980 (2004).

Debtor in his capacity as President and Chief Operating Officer of corporation was the "employer" of corporation as used in this Act. In re Faber, 52 Bankr. 563 (Bankr. N.D. Ill. 1985).

- Illustrative Cases

Employee's allegation that she had an employment agreement with a company that provided human resource services, including payroll services, to a company that employed the employee as an account executive, was sufficient to allow her Wage Payment and Collection Act claim to survive a motion to dismiss for failure to state a cause of action; the broad definition of employer found in 820 ILCS 115/2 included employment agreement situations and did not require the employee to allege that the company had any supervisory duties over her work. Landers-Scelfo v. Corporate Office Sys., 356 Ill. App. 3d 1060, 293 Ill. Dec. 170, 827 N.E.2d 1051, 2005 Ill. App. LEXIS 381 (2 Dist. 2005).

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While arguments existed that the Doherty case decided by the Illinois Appellate Court incorrectly applied 820 ILCS 115/2, that the Illinois Supreme Court would decide the case differently, and that the present court's reliance on the Doherty case was misplaced, the court nonetheless denied the company president's motion for reconsideration because such motions were not vehicles for rehashing old arguments, however persuasive, that had previously been presented to the court. Amoroso v. Crescent Private Capital, L.P., F. Supp. 2d , 2003 U.S. Dist. LEXIS 17996 (N.D. Ill. Oct. 10, 2003).

Employees' wage claims under the Illinois Wage Payment and Collection Act against a store that had employed their employer to install home improvement items failed where the contract designated the employer as an independent contractor and the store did not have day-to-day control over the employer, and hence the store was not an employer under 820 ILCS 115/2. Brown v. Sears Roebuck & Co., F. Supp. 2d , 2002 U.S. Dist. LEXIS 21022 (N.D. Ill. Oct. 28, 2002).

A physician, who served as president of a corporation, was not an employer within the meaning of this Act where: (1) he was hired by the sole director, shareholder and provider of funds to the corporation; and (2) he was wholly uncompensated for his time, which amounted to only 2 to 3 hours a week, performing his limited tasks for the corporation, all the while maintaining a full-time medical practice. Reed v. MycoPharma, Inc., F. Supp. 2d , 2000 U.S. Dist. LEXIS 11539 (N.D. Ill. Aug. 7, 2000).

Independent Contractor

A jury might have reasonably determined that the agent was representing the subsidiary's interests while working despite his infrequent office presence, and striking real estate representation deals was well within the subsidiary's usual course of business; accordingly, the district court may have erred in granting the subsidiary's Fed. R. Civ. P. 50(a) motion based on its determination that the agent was an independent contractor under the Illinois Wage Collection and Payment Act, 820 ILCS 115/2. However, that potential error did not require reversal because even if a jury were to determine that the agent had been an "employee" under the Wage Act, the employee could not have maintained a claim under the Wage Act because he was not owed any commissions. Marcus & Millichap Inv. Servs. of Chi., Inc. v. Sekulovski, 639 F.3d 301, 2011 U.S. App. LEXIS 5912 (7th Cir. 2011).

In a case involving the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2607, the trial court erred in granting summary judgment to the mortgage lender and its employee because there was a genuine issue as to the employee's status with the mortgage lender (whether the employee was an employee or a mortgage broker), which would affect the nature of the mortgage lender's payment to the employee and its obligation to disclose the payment to the mortgagee, where (1) the mortgage lender never issued assignments, set quotas, or imposed time requirements on the employee, (2) the employee worked hours of the employee's own choosing and did not have to abide by a specific routine or schedule, and (3) the mortgage lender did not provide the employee with a pension, bonuses, or sick pay, nor did it restrict the employee in the employee's choice of customers or limit the employee's territory. Novakovic v. Samutin, 354 Ill. App. 3d 660, 289 Ill. Dec. 892, 820 N.E.2d 967, 2004 Ill. App. LEXIS 1366 (1 Dist. 2004).

Where a former company president sought to certify the question of whether under 820 ILCS 115/2, the employer must prove all three criteria of the independent contractor exception for the exception to apply against a corporate president, the court denied the president's 28 U.S.C. § 1292(b) motion finding that certification would speed up the litigation and there was no substantial conflicting decisions regarding the claimed controlling issue of law. Amoroso v. Crescent Private Capital, L.P., F. Supp. 2d , 2003 U.S. Dist. LEXIS 21368 (N.D. Ill. Nov. 25, 2003).

Liability

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Employee failed to state a claim under the Illinois Wage Payment and Collection Act, 820 ILCS 115/2, because she failed to allege that the employer agreed to compensate the employee for the time she spent attending a staff meeting, taking one exercise class per week, and listening to a motivational CD. Brown v. Lululemon Athletica, Inc., F. Supp. 2d , 2011 U.S. Dist. LEXIS 18217 (N.D. Ill. Feb. 24, 2011).

Any termination benefits which a former employee was owed under an employment contract met the definition of compensation under 820 ILCS 115/2. However, the employee was not entitled to summary judgment because the employee had no final compensation to collect if a provision of the contract did not apply to the employee's termination, and the determination of whether the provision applied to the employee's termination had to be remanded to the circuit court for determination. Covinsky v. Hannah Marine Corp., 388 Ill. App. 3d 478, 328 Ill. Dec. 35, 903 N.E.2d 422, 2009 Ill. App. LEXIS 72 (1 Dist. 2009).

Where employer made assumptions about hours worked in order to calculate salary amounts, this did not in itself, without specific communication to employees (about which there was manifest factual dispute), contractually or under the Illinois Wage Payment and Collection Act,a820 ILCS 115/2 obligate the employer to pay employees additional amounts for every hour worked above the baseline assumption. Ergo v. Int'l Merch. Servs., 519 F. Supp. 2d 765, 2007 U.S. Dist. LEXIS 67699 (N.D. Ill. 2007).

Scope of Remedies

Former employee terminated one October by the former employer did not show in the former employee's action under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., against the former employer for a pro rate bonus where the bonus at issue was based on calendar-year sales figures. While 820 ILCS 115/2 regarding the payment of compensation did not define "earned bonus," payment of compensation under 820 ILCS 115/5 was due no later than the former employee's next-regularly scheduled payday, in that same October, which was well before the calendar year ended and any performance bonus could be calculated. McLaughlin v. Sternberg Lanterns, Inc., 395 Ill. App. 3d 536, 335 Ill. Dec. 1, 917 N.E.2d 1065, 2009 Ill. App. LEXIS 1000 (2 Dist. 2009).

While an employee could bring an action against both her employer and its president for violations of the Illinois Wage Payment Act, 820 ILCS 115/1 et seq., she could only make one recovery for those violations. Although a jury ruled in the employee's favor on her claims against both the employer and the president, she was entitled to only one of the damage awards made by the jury. Catania v. Local 4250/5050 of the Communs. Workers of Am., 359 Ill. App. 3d 718, 296 Ill. Dec. 161, 834 N.E.2d 966, 2005 Ill. App. LEXIS 814 (1 Dist. 2005), appeal denied, 217 Ill. 2d 558, 300 Ill. Dec. 363, 844 N.E.2d 35 (2005).

Trial court did not err in denying the correctional officer's 42 U.S.C. § 1983 lawsuit alleging that the sheriff deprived her of property, backpay she claimed she was entitled to and interest on that backpay, as she did not establish that she was deprived of property without due process of law pursuant to U.S. Const. amend. XIV. The record showed that she had adequate procedural routes to obtain a hearing to contest the alleged deprivation, especially since she was still entitled to bring an action under the Illinois Wage Payment Act, 820 ILCS 115/1 et seq., given that backpay for a period of suspension qualified as a wage pursuant to 820 ILCS 115/2. Ellis v. Sheahan, 412 F.3d 754, 2005 U.S. App. LEXIS 11562 (7th Cir. 2005).

Reimbursements for relocation expenses fit within the category of "any other compensation owed" as provided for in the Illinois Wage Payment and Collection Act (Wage Act), 820 ILCS 115/2; thus, the fact that a plaintiff delineated different subtotals for wages and reimbursements for relocation expenses did not make them separate demands. Anderson v. First Am. Group of Cos., 353 Ill. App. 3d 403, 288 Ill. Dec. 808, 818 N.E.2d 743, 2004 Ill. App. LEXIS 1143 (1 Dist. 2004).

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Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., provides an employee with remedies more expansive than a common law breach of contract action when it uses the words "employment contract or agreement" in 820 ILCS 115/2; thus, to require an employee to have a valid, enforceable contract before invoking the Act would render the Act surplusage. Zabinsky v. Gelber Group, Inc., 347 Ill. App. 3d 243, 283 Ill. Dec. 61, 807 N.E.2d 666, 2004 Ill. App. LEXIS 262 (1 Dist. 2004), appeal denied, Ill. 2d , Ill. Dec. , 823 N.E.2d 980 (2004).

Wages

District court erred when it granted summary judgment on plaintiff lawyer's fee claims and held that Illinois courts had already decided that a law firm did not owe the lawyer any payments based on cases that settled after he was fired. In the state lien matters, plaintiff's claims were rejected because he no longer had an attorney-client relationship with the clients; thus, no court- - neither the Illinois state courts nor the district court below and summary judgment was inappropriate for his contract theories, which he raised under the Illinois Wage Payment and Collection Act and under general contract law. Hess v. Kanoski & Assocs., 668 F.3d 446, 2012 U.S. App. LEXIS 1936 (7th Cir. 2012).

Employees who worked as temporary employees asserted actionable claims under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., against their employer, arising from its failure to pay them holiday and vacation benefits pursuant to its benefits policies. The holiday and vacation pay benefits constituted part of the employees' "final compensation" as defined in 820 ILCS 115/2 and thus were subject to the payment requirement imposed under 820 ILCS 115/5. Arrez v. Kelly Servs., Inc., 522 F. Supp. 2d 997, 2007 U.S. Dist. LEXIS 79813 (N.D. Ill. 2007).

Because an employer did not breach any contractual obligation to pay overtime, no Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq. (IWPCA), claim existed and the correct route for the employee to obtain earned pay, including potential overtime pay, was through timely claims under the Illinois Minimum Wage Law, 820 ILCS 105/1 et seq., and Fair Labor Standards Act, 29 U.S.C. § 201 et seq. Palmer v. Great Dane Trailers, F. Supp. 2d , 2005 U.S. Dist. LEXIS 12747 (N.D. Ill. June 28, 2005).

Employee's testimony at trial that he worked for a quarter pursuant to an agreement that the owners and businesses would pay him a bonus based upon a mutually agreed-upon formula was sufficient to establish his right to a bonus under 820 ILCS 115/5 and 115/2, as well as to the amount of the bonus, because, although there was some contrary testimony as to whether the agreement existed or whether the employee complied with the terms of the agreement, that issue was for the jury. Zabinsky v. Gelber Group, Inc., 347 Ill. App. 3d 243, 283 Ill. Dec. 61, 807 N.E.2d 666, 2004 Ill. App. LEXIS 262 (1 Dist. 2004), appeal denied, Ill. 2d , Ill. Dec. , 823 N.E.2d 980 (2004).

- Earned Income

Where a former employee failed to provide sufficient evidence that would allow a reasonable trier of fact to conclude that all the conditions on the bonus pool program were met, the employee had not provided sufficient competent evidence indicating that he was entitled to a bonus; thus, the employer was entitled to summary judgment on the employee's Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., claim. Johnson v. Montgomery Place, F. Supp. 2d , 2004 U.S. Dist. LEXIS 21319 (N.D. Ill. Oct. 21, 2004).

Employer's motion for partial summary judgment on a former employee's breach of contract, quantum meruit, and 820 ILCS 115/2 claims related to a sales transaction was granted where the parties' sales commission plan only covered 2002 transactions and the employee admitted that the subject contract became effective in 2001 and, thus, was not covered by the plan. Sondker v. Philips Elecs. N., F. Supp. 2d , 2004 U.S. Dist. LEXIS 14477 (N.D. Ill. July 26, 2004).

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Employer's motion for partial summary judgment on a former employee's breach of contract, quantum meruit, and 820 ILCS 115/2 claims for a sales transaction involving a community hospital was granted where the employee admitted that another transaction for which he was paid a commission was the same transaction and, as a result, the commission for the duplicate transaction had not been earned. Sondker v. Philips Elecs. N., F. Supp. 2d , 2004 U.S. Dist. LEXIS 14477 (N.D. Ill. July 26, 2004).

The terms "earned vacation" and "earned bonus" in this section should be interpreted similarly; the proper interpretation is, where with an employee, bonus is based on length of service and store profits, that the employee earns the bonus pro rata just as he earns vacation pay pro rata. Camillo v. Wal-Mart Stores, Inc., 221 Ill. App. 3d 614, 164 Ill. Dec. 166, 582 N.E.2d 729 (5 Dist. 1991), cert. denied, 144 Ill. 2d 631, 169 Ill. Dec. 140, 591 N.E.2d 20 (1992).

- Incentive Plan

An incentive compensation plan offered by an employer did not create an enforceable contract because it did not contain a clear right to bonus commission; because the employee was not due any wages or commission, he was not entitled to attorneys' fees under 705 ILCS 225/1. Rakos v. Skytel Corp., 954 F. Supp. 1234, 1996 U.S. Dist. LEXIS 19318 (N.D. Ill. 1996).

- Legislative Intent

The comprehensiveness of this Act demonstrates a legislative intent to include broad classes of compensation under the responsibility of the Department of Labor. Metropolitan Distribs., Inc. v. Illinois Dep't of Labor, 114 Ill. App. 3d 1090, 70 Ill. Dec. 653, 449 N.E.2d 1000 (1 Dist. 1983).

- Severance Pay

Severance pay constitutes either wages or final compensation. Metropolitan Distribs., Inc. v. Illinois Dep't of Labor, 114 Ill. App. 3d 1090, 70 Ill. Dec. 653, 449 N.E.2d 1000 (1 Dist. 1983).

- Vacation Pay

The term wages, as used in this Act, embraces within its meaning and purpose vacation pay. Conlon-Moore Corp. v. Cummins, 28 Ill. App. 2d 368, 171 N.E.2d 676 (1 Dist. 1960), aff'd, 23 Ill. 2d 341, 178 N.E.2d 336 (1961).

Work Status

Act is not contingent on an employee actually performing services; therefore, count not dismissed on argument plaintiff performed no work during period for which she sought wages. Anderson v. Illinois Bell Tel. Co., 961 F. Supp. 1208 (N.D. Ill. 1997).

LEGAL PERIODICALS

For article, "Representing Workers Under the Fair Labor Standards Act and Illinois Minimum Wage Act", see 86 Ill. B.J. 208 (1998).

For article, "A Guide to Assignments for the Benefit of Creditors," see 85 Ill. B.J. 588 (1997).

For article, "Survey of Illinois Law: Employment Law," see 29 S. Ill. U.L.J. 639 (2005).

For article, "Survey of Illinois Law: Employment Law," see 30 S. Ill. U.L.J. 613 (2006).

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For article, "Survey of Illinois Law: Employment Law," see 31 S. Ill. U.L.J. 859 (2007).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:22 By individual employee.

Illinois Jurisprudence, Labor and Employment § 3:06 Bonuses.

Illinois Jurisprudence, Labor and Employment § 3:05 Sales commissions.

Illinois Jurisprudence, Labor and Employment § 3:01 Definitions.

§ 820 ILCS 115/3. [Minimum pay periods]

Sec. 3. Every employer shall be required, at least semi-monthly, to pay every employee all wages earned during the semi-monthly pay period. Wages of executive, administrative and professional employees, as defined in the Federal Fair Labor Standards Act of 1939 [29 U.S.C. § 201 et seq.], may be paid once a month. Commissions may be paid once a month. At the request of a person employed by an employment or labor placement agency which, in the ordinary course of business, makes daily wage payments to employees, the agency shall hold the daily wages and make either weekly or semi-monthly payments. Upon the written request of the employee, the wage shall be paid in a single check representing the wages earned during the period, either weekly or semi-monthly, designated by the employee in accordance with Section 4 of this Act [820 ILCS 115/4]. Employment and labor placement agencies that make daily wage payments shall provide written notification to all daily wage payment employees of the right to request weekly or semi-monthly checks. The employer may provide this notice by conspicuously posting the notice at the location where the wages are received by the daily wage employees.

(Source: P.A. 78-914; 89-364, § 43.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39m-3.

Effect of Amendments. The 1995 amendment by P.A. 89-364, effective August 18, 1995, added the third through sixth sentences.

CASE NOTES

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Analysis
Assignment
Time for payment

Assignment

Although it is clear that the Act mandates that employers shall pay every employee all wages earned, nothing in the Act directly prohibits an employee from assigning his wages to a third party. Swavely v. Freeway Ford Truck Sales, Inc., 298 Ill. App. 3d 969, 233 Ill. Dec. 80, 700 N.E.2d 181 (1 Dist. 1998), appeal denied, 181 Ill. 2d 590, 235 Ill. Dec. 948, 706 N.E.2d 503 (1998).

Time for payment

Workers who claimed that they performed work on a construction project with the understanding that they would be paid as money was released from an escrow account sufficiently alleged that they were not paid within the time required by the Illinois Wage Payment and Collection Act. Sanchez v. Haltz Constr., Inc., F. Supp. 2d , 2012 U.S. Dist. LEXIS 537 (N.D. Ill. Jan. 4, 2012).

§ 820 ILCS 115/4. [Payment of wages]

Sec. 4. All wages earned by any employee during a semi-monthly or bi-weekly pay period shall be paid to such employee not later than 13 days after the end of the pay period in which such wages were earned. All wages earned by any employee during a weekly pay period shall be paid not later than 7 days after the end of the weekly pay period in which the wages were earned. All wages paid on a daily basis shall be paid insofar as possible on the same day as the wages were earned, or not later in any event than 24 hours after the day on which the wages were earned. Wages of executive, administrative and professional employees, as defined in the Federal Fair Labor Standards Act of 1938 [29 U.S.C. § 201 et seq.], may be paid on or before 21 calendar days after the period during which they are earned.

The terms of this Section shall not apply, if there exists a valid collective bargaining agreement which provides for a different date or for different arrangements for the payment of wages.

Employers shall pay to workers on strike or layoff, no later than the next regular payday, all wages earned up to the time of such strike or layoff.

Any employee who is absent at the time fixed for payment, or who for any other reason is not paid at that time, shall be paid upon demand at any time within a period of 5 days after the time fixed for payment; and after the expiration of the 5 day period, payment shall be made upon 5 days demand. Payment to the absent employee shall be made by mail if the employee so requests in writing.

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All wages and final compensation shall be paid in lawful money of the United States, by check, redeemable upon demand and without discount at a bank or other financial institution readily available to the employee, or by deposit of funds in an account in a bank or other financial institution designated by the employee. No employer may designate a particular financial institution, bank, savings bank, savings and loan, or currency exchange for the exclusive payment or deposit of a check for wages. No financial institution, bank, savings bank, savings and loan, or currency exchange shall refuse to honor a check for wages that exclusively designates, in violation of this Section, a particular bank, savings bank, savings and loan, or currency exchange as the exclusive place of payment or deposit except to the extent the bank, savings bank, savings and loan, or currency exchange is otherwise excused from honoring the check under Section 3-111 of the Uniform Commercial Code [810 ILCS 5/3-111] because the bank, savings bank, savings and loan, or currency exchange is not the drawee or the maker of the check.

(Source: P.A. 80-750; 89-364, § 43.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39m-4.

Effect of Amendments. The 1995 amendment by P.A. 89-364, effective August 18, 1995, in the fifth paragraph added the second and third sentences.

CASE NOTES

Analysis

Assignment
Bankruptcy
Collective Bargaining Agreements
- Breach
- Federal Preemption
- Personal Liability
- Standing
Employment Contracts

Assignment

Although it is clear that the Act mandates that employers shall pay every employee all wages earned, nothing in the Act directly prohibits an employee from assigning his wages to a third party. Swavely v. Freeway Ford Truck Sales, Inc., 298 Ill. App. 3d 969, 233 Ill. Dec. 80, 700 N.E.2d 181 (1 Dist. 1998), appeal denied, 181 Ill. 2d 590, 235 Ill. Dec. 948, 706 N.E.2d 503 (1998).

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Bankruptcy

Where employee filed a wage claim application under this Act for an unpaid bonus, and where plaintiff employer filed a petition under Chapter 11 of the Bankruptcy Code, the payment to the employee was a preference as defined by 11 U.S.C. § 547(b); therefore, since the payment to the employee enabled him to receive more than he would have if the case were under Chapter 7 of the Bankruptcy Code, the payment was voidable. Virtual Network Servs. Corp. v. Affiliated Tel., 92 Bankr. 784 (Bankr. N.D. Ill. 1988).

Collective Bargaining Agreements

Grocery chain employee's claim that her employer violated 820 ILCS 115/4 by failing to timely pay employees their wages, could not be considered by a circuit court because the claim arose out of a collective bargaining agreement (CBA), and under 29 U.S.C.S. § 185(a), such a claim had to be arbitrated in accordance with the CBA. Kostecki v. Dominick's Finer Foods, Inc., 361 Ill. App. 3d 362, 297 Ill. Dec. 106, 836 N.E.2d 837, 2005 Ill. App. LEXIS 957 (1 Dist. 2005), appeal denied, 217 Ill. 2d 603, 300 Ill. Dec. 523, 844 N.E.2d 966 (2006).

- Breach

Claims against the owner of employer that failed to make contributions under a collective bargaining agreement (CBA) were dismissed as personal liability did not lie under § 301(a) of the Labor Management Relations Act (LMRA), 29 U.S.C.S. § 185(a), and LMRA preempted a state law claim under the Illinois Wage Payment and Collection Act, 820 ILCS 115/4, where the claim was based on breach of the CBA. Shales v. Asphalt Maint., Inc., F. Supp. 2d , 2004 U.S. Dist. LEXIS 19394 (N.D. Ill. Sept. 28, 2004).

- Federal Preemption

Retired employee's state law claims for breach of contract, violation of the Illinois Wage Payment and Collection Act, promissory estoppel, and fraudulent misrepresentation were not preempted by 29 U.S.C.S. § 185 of the Labor Management Relations Act and were remanded to state court, where the claims arose from an individual bonus contract and were independent of rights under a collective bargaining agreement. Dollear v. G.F. Connelly Mech. Contrs., Inc., 355 F. Supp. 2d 937, 2005 U.S. Dist. LEXIS 1888 (N.D. Ill. 2005).

Employees' state wage law violation claim under 820 ILCS 115/4 was preempted by federal law, 29 U.S.C.S. § 185(a), because the claim was founded directly on rights created by a collective bargaining agreement and resolution of the dispute required interpretation of the agreement. Lopez v. Smurfit-Stone Container Corp., F. Supp. 2d , 2003 U.S. Dist. LEXIS 2180 (N.D. Ill. Feb. 10, 2003).

- Personal Liability

President of company was held personally liable for company's failure to pay union dues where funds were withdrawn from employees' payroll checks but not paid as required under the collective bargaining agreement and where the president personally controlled issuance of and deductions from payroll checks and disbursements of such funds. Johnson v. Western Amusement Corp., 157 Ill. App. 3d 873, 109 Ill. Dec. 923, 510 N.E.2d 991 (1 Dist. 1987).

- Standing

Plaintiff, a union member bound by the collective bargaining agreement negotiated on his behalf, who sought no relief outside the arbitrator's authority and failed to show that he had exhausted his remedies under the agreement, or that the union had breached its duty of fair representation

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in its handling of the employee's grievance, lacked standing to pursue his actions for wages. Uehlein v. Shwachman, 156 Ill. App. 3d 274, 108 Ill. Dec. 797, 509 N.E.2d 493 (1 Dist. 1987).

Employment Contracts

The statutory requirement of prompt and frequent wage payments under a prior similar provision did not forbid the computation of hours and wages under proration rules in an otherwise valid union contract between employer and its employees. Pullman Co. v. Cummins, 10 Ill. 2d 454, 140 N.E.2d 713 (1957).

The proration rules in a union contract were a part and parcel of a complicated formula within a valid privately negotiated contract for the purpose of determining the amount of compensation due and payable under such contract; they are not designed or intended to delay time of payment of wages. Pullman Co. v. Cummins, 10 Ill. 2d 454, 140 N.E.2d 713 (1957).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:26 Partial federal preemption of Wage Payment and Collection Act.

Illinois Jurisprudence, Labor and Employment § 3:12 When payments are made; form of payment.

Illinois Jurisprudence, Labor and Employment § 3:09 What may be deducted from wages.

§ 820 ILCS 115/5. [Separated employees]

Sec. 5. Every employer shall pay the final compensation of separated employees in full, at the time of separation, if possible, but in no case later than the next regularly scheduled payday for such employee. Where such employee requests in writing that his final compensation be paid by check and mailed to him, the employer shall comply with this request.

Unless otherwise provided in a collective bargaining agreement, whenever a contract of employment or employment policy provides for paid vacations, and an employee resigns or is terminated without having taken all vacation time earned in accordance with such contract of employment or employment policy, the monetary equivalent of all earned vacation shall be paid to him or her as part of his or her final compensation at his or her final rate of pay and no employment contract or employment policy shall provide for forfeiture of earned vacation time upon separation.

(Source: P.A. 83-199.)

Note.

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This section was Ill.Rev.Stat., Ch. 48, Para. 39m-5.

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Administrative Leave Credit

Where police officer had earned 181/4 days of vacation, and defendant employer therefore owed plaintiff 181/4 days in pay when it terminated him, the fact that defendant chose to place plaintiff on administrative leave for 18 days was not a proper consideration in that regard and the administrative leave pay should not have been credited against vacation pay. Swanson v. Village of Lake In The Hills, 233 Ill. App. 3d 58, 174 Ill. Dec. 233, 598 N.E.2d 430 (2 Dist.), cert. denied, 147 Ill. 2d 637, 180 Ill. Dec. 158, 606 N.E.2d 1235 (1992).

Attorney Fees

In a former company president's lawsuit to recover unpaid wages under 820 ILCS 115/5 of the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., defendants were entitled to partial summary judgment, Fed. R. Civ. P. 56, on the president's claims for attorney's fees; the Ritter exception to the American Rule did not apply to the president's claims; there was no authority that the exception applied to proceedings before the Illinois Department of Labor, and the exception applied only in cases litigating claims to real estate. Amoroso v. Crescent Private Capital, L.P., F. Supp. 2d , 2003 U.S. Dist. LEXIS 15103 (N.D. Ill. Aug. 28, 2003).

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Employee

In a former company president's lawsuit to recover unpaid wages under 820 ILCS 115/5 of the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., the court denied the parties' cross-motions for summary judgment, Fed. R. Civ. P. 56; where the president alleged that once the company experienced financial difficulties severe enough to require lay-offs, the company's governing board took an active role in the operation of the company and directed and controlled the president's work, a material fact dispute existed about whether the president was an "employee," as defined by 820 ILCS 115/2, for purposes of the Act. Amoroso v. Crescent Private Capital, L.P., F. Supp. 2d , 2003 U.S. Dist. LEXIS 15103 (N.D. Ill. Aug. 28, 2003).

Final Compensation

- Accrual of Compensation

When an employee renders services to an employer, her right to receive the compensation that the employer promised, such as severance pay, vests as much as her right to receive wages or any other form of compensation; the lack of a promise to vest does not revoke the employer's obligation to pay since the employer must return those benefits that he derives from the continued labor of the employee. Camillo v. Wal-Mart Stores, Inc., 221 Ill. App. 3d 614, 164 Ill. Dec. 166, 582 N.E.2d 729 (5 Dist. 1991), cert. denied, 144 Ill. 2d 631, 169 Ill. Dec. 140, 591 N.E.2d 20 (1992).

- Bonus

Former employee terminated one October by the former employer did not show entitlement to bonus in the former employee's action under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., against the former employer for a pro rate bonus where the bonus at issue was based on calendar-year sales figures. While 820 ILCS 115/2 regarding the payment of compensation did not define "earned bonus," payment of compensation under 820 ILCS 115/5 was due no later than the former employee's next-regularly scheduled payday, in that same October, which was well before the calendar year ended and any performance bonus could be calculated. McLaughlin v. Sternberg Lanterns, Inc., 395 Ill. App. 3d 536, 335 Ill. Dec. 1, 917 N.E.2d 1065, 2009 Ill. App. LEXIS 1000 (2 Dist. 2009).

Where a former employee failed to provide sufficient evidence that would allow a reasonable trier of fact to conclude that all the conditions on the bonus pool program were met, the employee had not provided sufficient competent evidence indicating that he was entitled to a bonus; thus, the employer was entitled to summary judgment on the employee's Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., claim. Johnson v. Montgomery Place, F. Supp. 2d , 2004 U.S. Dist. LEXIS 21319 (N.D. Ill. Oct. 21, 2004).

Employee's testimony at trial that he worked for a quarter pursuant to an agreement that the owners and businesses would pay him a bonus based upon a mutually agreed-upon formula was sufficient to establish his right to a bonus under 820 ILCS 115/5 and 115/2, as well as to the amount of the bonus, because, although there was some contrary testimony as to whether the agreement existed or whether the employee complied with the terms of the agreement, that issue was for the jury. Zabinsky v. Gelber Group, Inc., 347 Ill. App. 3d 243, 283 Ill. Dec. 61, 807 N.E.2d 666, 2004 Ill. App. LEXIS 262 (1 Dist. 2004), appeal denied, Ill. 2d , Ill. Dec. , 823 N.E.2d 980 (2004).

- Not Paid

Debtors stated a valid claim to extend the automatic stay, under 11 U.S.C.S. § 362, to bar further investigation and suit by the Illinois Department of Labor and former employees, for claims under the Illinois Wage Payment and Collection Act, 820 ILCS 115/5, against two officers; the debtors

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were obligated to indemnify the officers. Midway Games, Inc. v. Anonuevo (In re Midway Games, Inc.), 428 B.R. 327, 2010 Bankr. LEXIS 1904 (Bankr. D. Del. 2010).

Plaintiffs do not have to prove that an employer wilfully failed to pay final compensation; rather, it is enough that plaintiffs were simply not paid by the next regularly scheduled payday after separation. Andrews v. Kowa Printing Corp., 351 Ill. App. 3d 668, 286 Ill. Dec. 548, 814 N.E.2d 198, 2004 Ill. App. LEXIS 946 (4 Dist. 2004), aff'd, 217 Ill. 2d 101, 298 Ill. Dec. 1, 838 N.E.2d 894 (2005).

Employees' motion for partial judgment on the pleadings pursuant to Rule 12(c), F.R.Civ.P. was granted on the counts of the complaint that alleged a violation of the Illinois Wage Payment and Collection Act [820 ILCS 115/1] for the failure to pay the employees their wages for February 2002 and the failure to pay the employees their vacation and personal days as part of their final compensation following the cessation of their employment with the employers, where the employers admitted to failing to pay the employees their wages for the month of February 2002 and any final compensation due the employees, and the employers violated 820 ILCS 115/5. Conley v. Team Info Age, F. Supp. 2d , 2004 U.S. Dist. LEXIS 1007 (N.D. Ill. Jan. 27, 2004).

- Severance Pay

An employee earns severance pay, in part, each week that he or she works. Camillo v. Wal-Mart Stores, Inc., 221 Ill. App. 3d 614, 164 Ill. Dec. 166, 582 N.E.2d 729 (5 Dist. 1991), cert. denied, 144 Ill. 2d 631, 169 Ill. Dec. 140, 591 N.E.2d 20 (1992).

Severance pay is a benefit for which employees work as much as they work for any other benefit held out to them as compensation by the employer; it accrues during each year that an employment agreement is in effect, not only on the date that it becomes payable. Camillo v. Wal-Mart Stores, Inc., 221 Ill. App. 3d 614, 164 Ill. Dec. 166, 582 N.E.2d 729 (5 Dist. 1991), cert. denied, 144 Ill. 2d 631, 169 Ill. Dec. 140, 591 N.E.2d 20 (1992).

An employer is not obligated to award severance pay unless the obligation arises from an employment contract. Stacey v. Insurance Corp. of Ireland, 189 Ill. App. 3d 229, 136 Ill. Dec. 697, 545 N.E.2d 221 (1 Dist. 1989).

Three factors must exist in order for an employment contract or policy statement to obligate the employer to award severance pay: first, the language of the policy statement must contain a promise clear enough that an employee would reasonably believe that an offer has been made; second, the statement must be disseminated to the employee in such a manner that the employee is aware of its contents and reasonably believes it to be an offer; and third, the employee must accept the offer by commencing or continuing to work after learning of the policy statement. When these conditions are present, then the employee's continued work constitutes consideration for the promises contained in the statement, and under traditional principles forms a valid contract. Stacey v. Insurance Corp. of Ireland, 189 Ill. App. 3d 229, 136 Ill. Dec. 697, 545 N.E.2d 221 (1 Dist. 1989).

Severance pay constitutes either wages or final compensation. Metropolitan Distribs., Inc. v. Illinois Dep't of Labor, 114 Ill. App. 3d 1090, 70 Ill. Dec. 653, 449 N.E.2d 1000 (1 Dist. 1983).

- Time of Payment

Based on the intended purpose of the Wage Act and a reasonable construction of this section, final compensation must be paid at the time of separation, creating a cause of action if payment is not made and starting the running of the statute of limitations. Armstrong v. Hedlund Corp., 316 Ill. App. 3d 1097, 250 Ill. Dec. 199, 738 N.E.2d 163, 2000 Ill. App. LEXIS 790 (1 Dist. 2000).

Liability

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Appellate court in an action by the claimants seeking payment of alleged unpaid wages and commissions under the Illinois Wage Payment and Collection Act (Act) did not need to address the trial court's finding that the claimants did not prove that the steel company and its president who allegedly owed the money did not engage in any activity with a fraudulent motive. Under the provisions of the Act at the heart of the claimants' lawsuit, the Act neither required an employee to demand unpaid wages nor did it require a fraudulent purpose for employers who failed to pay the required compensation in a timely fashion under the Act, which meant that fraud was not an issue in applying 820 ILCS 115/5 and 820 ILCS 115/13 because the criminal offense of fraud had not been alleged under 820 ILCS 115/14(a). Ashley v. IM Steel, Inc., 406 Ill. App. 3d 222, 345 Ill. Dec. 293, 939 N.E.2d 22, 2010 Ill. App. LEXIS 1161 (3 Dist. 2010).

Former employee was not to entitled to summary judgment on the employee's claims under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., because the determination of whether the Act applied was dependent on the trial court's determination on remand of whether the termination provision in the employee's written contract applied to the matter. Covinsky v. Hannah Marine Corp., 388 Ill. App. 3d 478, 328 Ill. Dec. 35, 903 N.E.2d 422, 2009 Ill. App. LEXIS 72 (1 Dist. 2009).

820 ILCS 115/2 confirms that an employer is liable both for its own violations of the Illinois Wage Act and for any Illinois Wage Act violations committed by its agents. 820 ILCS 115/13, in turn, imposes personal liability on any officers or agents who knowingly permitted a wage violation. An owner and a corporation did not qualify as employers under 820 ILCS 115/2 because the owner was not in control of the business when wages were not paid, and the corporation was not deemed an employer simply because it acted directly or indirectly in the interest of several employees, who did not receive their wages. Andrews v. Kowa Printing Corp., 217 Ill. 2d 101, 298 Ill. Dec. 1, 838 N.E.2d 894, 2005 Ill. LEXIS 1608 (2005).

Preemption

State wage law claims of plaintiffs, former employees subject to plant closure, brought under the Illinois Wage Payment and Collection Act, 820 ILCS 115/5, against non-signatories to a plant shutdown agreement were preempted under 29 U.S.C.S. § 185. Baker v. Kingsley, F. Supp. 2d , 2005 U.S. Dist. LEXIS 12772 (N.D. Ill. June 10, 2005).

District court orders were reversed where plaintiff employees, whose benefits were terminated following bankruptcy and takeover, could proceed in federal court as their claim under the Illinois Wage Act, 820 ILCS 115/5, was preempted by § 301 of the Labor Management Relations Act, 29 U.S.C.S. § 185. Baker v. Kingsley, 387 F.3d 649, 2004 U.S. App. LEXIS 22343 (7th Cir. 2004).

If the resolution of a state-law claim depends upon the meaning of a collective-bargaining agreement, the application of state law, which might lead to inconsistent results since there could be as many state-law principles as there are states, is preempted and federal labor-law principles, necessarily uniform throughout the nation, must be employed to resolve the dispute; further, where the parties present a court with a stipulation that they have already interpreted collective bargaining agreements, a court does not construe the various provisions of the collective-bargaining agreements. Andrews v. Kowa Printing Corp., 351 Ill. App. 3d 668, 286 Ill. Dec. 548, 814 N.E.2d 198, 2004 Ill. App. LEXIS 946 (4 Dist. 2004), aff'd, 217 Ill. 2d 101, 298 Ill. Dec. 1, 838 N.E.2d 894 (2005).

Vacation Pay

Even though its original decision was based on an interpretation of former 820 ILCS 115/5, the holding of the Appellate Court of Illinois - that under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq.; employees earn vacation pay pro rata as service is rendered and that a vacation policy that forfeits earned vacation pay unless employees are employed on a specific

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date violates 820 ILCS 115/5 is still good law. The new version of § 115/5 is not materially different from the former version, and the appellate court reaffirmed its original holding after the statute was amended. Arrez v. Kelly Servs., Inc., 522 F. Supp. 2d 997, 2007 U.S. Dist. LEXIS 79813 (N.D. Ill. 2007).

Employees who worked as temporary employees asserted actionable claims under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., against their employer, arising from its failure to pay them holiday and vacation benefits pursuant to its benefits policies: (1) the holiday and vacation pay benefits constituted part of the employees' "final compensation" as defined in 820 ILCS 115/2 and thus were subject to the payment requirement imposed under 820 ILCS 115/5; (2) the holiday and vacation benefits accrued pro rata during the year under Illinois law because payment of the benefits was dependent upon fulfillment of length-of-service requirements, which meant they were a benefit paid for the employees' past work and were not simply a bonus incentive for future work; (3) although the employer contended that the benefits were discretionary, its policies unequivocally stated that the benefits would be paid once service and other requirements were met; and (4) pursuant to existing Illinois precedent, an additional vacation benefit requirement, which required otherwise qualifying employees to also be employed on a specified date, was invalid and violated 820 ILCS 115/5. Arrez v. Kelly Servs., Inc., 522 F. Supp. 2d 997, 2007 U.S. Dist. LEXIS 79813 (N.D. Ill. 2007).

- Collective Bargaining Agreements

The employees' complaint seeking compensation for vacation days accrued but not taken during their former employment was improperly dismissed for lack of subject matter jurisdiction where the employees were members of a collective bargaining agreement that contained a grievance procedure that the employees failed to follow; the requirement of exhausting contractual remedies did not apply the employees' claims because, while the employer pointed to the articles in the agreement regarding the method of calculating vacation days and to the grievance procedure, it failed to point to any provision in either of those articles that addressed the topic of compensating terminated employees for accrued vacation days and the Wage Payment Act, 820 ILCS 115/5, dealt directly with the issue. Daniels v. Board of Educ., 277 Ill. App. 3d 968, 214 Ill. Dec. 614, 661 N.E.2d 468, 1996 Ill. App. LEXIS 45 (1 Dist. 1996).

Collective bargaining agreements have been so construed that vacation pay is included in the term wages and therefore arbitrable. In a number of bankruptcy cases vacation pay has been included in the priority given to wage claims; it has been said a vacation with pay is in effect additional wages, so, too, as with severance pay. Conlon-Moore Corp. v. Cummins, 28 Ill. App. 2d 368, 171 N.E.2d 676 (1 Dist. 1960), aff'd, 23 Ill. 2d 341, 178 N.E.2d 336 (1961).

- Employee Benefit Plans

Employers' vacation plans were not employee benefit plans within the meaning of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); therefore the Department of Labor's finding that the employees deserved accrued vacation pay upon their termination was not preempted by federal law. Golden Bear Family Restaurants, Inc. v. Murray, 144 Ill. App. 3d 616, 98 Ill. Dec. 459, 494 N.E.2d 581 (1 Dist. 1986).

- Out-of-state Employee

Both Illinois law and the employee manual entitled plaintiff to the vacation pay accrued while she was employed by defendant in Illinois even though she was working in Missouri at the time of her resignation. Herron v. Magna Group, Inc., 272 Ill. App. 3d 39, 208 Ill. Dec. 981, 650 N.E.2d 675 (5 Dist. 1995).

- Prior Law

Wages as used in the former Wage Payment Act (see now this Act) did not include vacation pay. Conlon-Moore Corp. v. Johnston, 23 Ill. 2d 341, 178 N.E.2d 336 (1961).

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- Pro Rata Payment

Employer's vacation policy was not an incentive for future work but rather, the vacation days were awarded under an "earn-in-arrears" policy, wherein they were compensation for the prior year's work; accordingly, the matter was controlled by Mueller and the policy violated § 5 of the Wage Payment and Collection Act, 820 ILCS 115/5, and further, the employees were entitled to penalties from the employer pursuant to § 14(b) of the Act, 820 ILCS 115/14(b). People ex rel. Ill. Dep't of Labor v. GE, 347 Ill. App. 3d 72, 282 Ill. Dec. 555, 806 N.E.2d 1143, 2004 Ill. App. LEXIS 224 (1 Dist. 2004).

The undisputed facts showed that plaintiffs were not deprived of any earned vacation benefits but were, in fact, allowed to keep all of the vacation benefits given them on January 1 of that year despite having only worked for nine months of that year; no labor was yet rendered by plaintiffs at the time they were allotted their 1992 vacation benefits thus, it could not be said that defendant's employees earn their vacation on a pro rata basis. Prettyman v. Commonwealth Edison Co., 273 Ill. App. 3d 1090, 210 Ill. Dec. 478, 653 N.E.2d 65 (1 Dist. 1995), appeal denied, 163 Ill. 2d 586, 212 Ill. Dec. 436, 657 N.E.2d 637 (1995).

As defendant's vacation policy was not set up to confer vacation benefits as payment for past services but, rather, was essentially set up to confer such benefits as an inducement for future services, plaintiffs could never prevail on their claim that the policy violated this section by depriving them of their pro rata share of earned vacation time. Prettyman v. Commonwealth Edison Co., 273 Ill. App. 3d 1090, 210 Ill. Dec. 478, 653 N.E.2d 65 (1 Dist. 1995), appeal denied, 163 Ill. 2d 586, 212 Ill. Dec. 436, 657 N.E.2d 637 (1995).

Under the current and prior language of this Act, an employee who voluntarily terminated his employment prior to the beginning of the company's fiscal year would be entitled to be paid pro rata for his earned but unused vacation time. Mueller Co. v. Department of Labor, 187 Ill. App. 3d 519, 135 Ill. Dec. 135, 543 N.E.2d 518 (4 Dist. 1989).

Vacation Time

- Maximum Exhausted

This Act makes no provision for compensation to a separated employee for vacation time when the employee has taken all the vacation to which he is entitled. Koules v. Euro-American Arbitrage, Inc., 293 Ill. App. 3d 823, 228 Ill. Dec. 539, 689 N.E.2d 411 (2 Dist. 1998).

Waiver

- Severance Package

Severance package offered by the employer and accepted by the employee, which provided that the employee accepted the offer in exchange for agreeing to be terminated, was sufficient consideration to support the waiver and release signed by the employee; summary judgment for the employer on the employee's claims for part of a guaranteed salary and for vacation benefits under the written employment contract was proper under 735 ILCS 5/2-1005 as the refusal to pay the vacation benefits did not violate the Wage Payment and Collection Act, 820 ILCS 115/5. Koules v. Euro-American Arbitrage, 293 Ill. App. 3d 823, 228 Ill. Dec. 539, 689 N.E.2d 411, 1998 Ill. App. LEXIS 2 (1 Dist. 1998).

LEGAL PERIODICALS

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For note, "ERISA Preemption of State Vacation Pay Laws: California Hospital Association v. Henning," see 16 Loy. U. Chi. L.J. 387 (1984-85).

For article, "Survey of Illinois Law: Employment Law," see 31 S. Ill. U.L.J. 859 (2007).

RESEARCH REFERENCES

Vacation pay rights of private employees not covered by collective labor contract. 33 ALR4th 264.

Validity, construction, and effect of state laws requiring payment of wages on discharge of employee immediately or within specified period. 18 ALR5th 577.

Practice Guides and Treatises.

1-5 Employment in Illinois § 5-2 Leave.

1-3 Employment in Illinois § 3-8 Payment of Wages on Termination.

Illinois Jurisprudence, Labor and Employment § 3:12 When payments are made; form of payment.

Illinois Jurisprudence, Labor and Employment § 3:07 Vacation pay.

§ 820 ILCS 115/6. [Assistance in collection of wages]

Sec. 6. The Director of the Department of Labor, or any other person in the Department designated by him, shall be authorized to assist any employee and act on his behalf in the collection of wages or final compensation due him, provided, however, that the Director, or his designee, may assist a class of employees and act in their behalf in a class action; or with respect to all employees of the class with respect to whom payments are due.

(Source: P.A. 81-593.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39m-6.

CASE NOTES

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Legislative Intent
Options
Statute of Limitations

Final Compensation

An agreement between the union and the employer providing for a severance allowance based upon one week of average weekly earnings for each year of employment up to a maximum of ten weeks was clearly final compensation for services rendered based upon previously earned wages as contemplated by 820 ILCS 115/2; therefore, the Department of Labor had the right to investigate and assist claimants in securing such compensation. Metropolitan Distribs., Inc. v. Illinois Dep't of Labor, 114 Ill. App. 3d 1090, 70 Ill. Dec. 653, 449 N.E.2d 1000 (1 Dist. 1983).

Legislative Intent

The comprehensiveness of this Act demonstrates a legislative intent to include broad classes of compensation under the responsibility of the Department of Labor. Metropolitan Distribs., Inc. v. Illinois Dep't of Labor, 114 Ill. App. 3d 1090, 70 Ill. Dec. 653, 449 N.E.2d 1000 (1 Dist. 1983).

Options

While this Act offers the Department of Labor several different ways to assist employees in collecting their wages, it grants the Department discretion to choose which, if any, of the options to use. Stafford v. Bowling, 85 Ill. App. 3d 978, 41 Ill. Dec. 273, 407 N.E.2d 771 (1 Dist. 1980).

Statute of Limitations

Suits brought by the Director under this Act are immune from statutory limitation periods of the Civil Practice Act (735 ILCS 5/13-205). People ex rel. Martin v. Lipkowitz, 225 Ill. App. 3d 980, 168 Ill. Dec. 68, 589 N.E.2d 182 (3 Dist. 1992).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:26 Department assistance to individuals; class actions.

§ 820 ILCS 115/7. [Reciprocity with other states]

Sec. 7. The Department of Labor shall be authorized to enter into agreements with other states to collect unpaid wages from out-of-state employers and to perform reciprocal services for such states in the State of Illinois.

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(Source: P.A. 78-914.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39m-7.

CASE NOTES

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Purpose

Construction

This section suggests that Illinois law does not protect even its own residents when they are working in another state, which makes it highly unlikely that the law would protect a resident of another state who is working in a foreign country. Glass v. Kemper Corp., 133 F.3d 999 (7th Cir. 1998).

Purpose

This section is necessary because out-of-state employees cannot invoke the Illinois Wage Payment and Collection Act to recover their wages owed by Illinois employers without assistance from the state of Illinois. Glass v. Kemper Corp., 920 F. Supp. 928 (N.D. Ill. 1996), aff'd, 133 F.3d 999 (7th Cir. 1998).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:21 By Department of Labor.

§ 820 ILCS 115/8. [Contributions to employee benefit, trust or fund]

Sec. 8. Where an employer is legally committed through a collective bargaining agreement, or otherwise to make contributions to an employee benefit, trust or fund on the basis of a certain amount per hour, day, week or other period of time, the amount due from the employer to such employee benefit, trust or fund shall be treated as wages, subject to the wage payment provisions of this Act.

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(Source: P.A. 78-914.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39m-8.

§ 820 ILCS 115/9. [Deductions by employers from wages or final compensation prohibited; exceptions; disputes]

Sec. 9. Except as hereinafter provided, deductions by employers from wages or final compensation are prohibited unless such deductions are (1) required by law; (2) to the benefit of the employee; (3) in response to a valid wage assignment or wage deduction order; (4) made with the express written consent of the employee, given freely at the time the deduction is made; (5) made by a municipality with a population of 500,000 or more, a county with a population of 3,000,000 or more, a community college district in a city with a population of 500,000 or more, a housing authority in a municipality with a population of 500,000 or more, the Chicago Park District, the Metropolitan Transit Authority, the Chicago Board of Education, the Cook County Forest Preserve District, or the Metropolitan Water Reclamation District to pay a debt owed by the employee to a municipality with a population of 500,000 or more, a county with a population of 3,000,000 or more, the Cook County Forest Preserve, the Chicago Park District, the Metropolitan Water Reclamation District, the Chicago Transit Authority, the Chicago Board of Education, or a housing authority of a municipality with a population of 500,000 or more; provided, however, that the amount deducted from any one salary or wage payment shall not exceed 25% of the net amount of the payment; or (6) made by a housing authority in a municipality with a population of 500,000 or more or a municipality with a population of 500,000 or more to pay a debt owed by the employee to a housing authority in a municipality with a population of 500,000 or more; provided, however, that the amount deducted from any one salary or wage payment shall not exceed 25% of the net amount of the payment. Before the municipality with a population of 500,000 or more, the community college district in a city with a population of 500,000 or more, the Chicago Park District, the Metropolitan Transit Authority, a housing authority in a municipality with a population of 500,000 or more, the Chicago Board of Education, the county with a population of 3,000,000 or more, the Cook County Forest Preserve District, or the Metropolitan Water Reclamation District deducts any amount from any salary or wage of an employee to pay a debt owed to a municipality with a population of 500,000 or more, a county with a population of 3,000,000 or more, the Cook County Forest Preserve District, the Chicago Park District, the Metropolitan Water Reclamation District, the Chicago Transit Authority, the Chicago Board of Education, or a housing authority of a municipality with a population of 500,000 or more under this Section, the municipality, the county, the Cook County Forest Preserve District, the Chicago Park District, the Metropolitan Water Reclamation District, the Chicago Transit Authority, the Chicago Board of Education, or a housing authority of a municipality with a population of 500,000 or more shall certify that (i) the employee has been afforded an

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opportunity for a hearing to dispute the debt that is due and owing the municipality, the county, the Cook County Forest Preserve District, the Chicago Park District, the Metropolitan Water Reclamation District, the Chicago Transit Authority, the Chicago Board of Education, or a housing authority of a municipality with a population of 500,000 or more and (ii) the employee has received notice of a wage deduction order and has been afforded an opportunity for a hearing to object to the order. Before a housing authority in a municipality with a population of 500,000 or more or a municipality with a population of 500,000 or more, a county with a population of 3,000,000 or more, the Cook County Forest Preserve District, the Chicago Park District, the Metropolitan Water Reclamation District, the Chicago Transit Authority, the Chicago Board of Education, or a housing authority of a municipality with a population of 500,000 or more deducts any amount from any salary or wage of an employee to pay a debt owed to a housing authority in a municipality with a population of 500,000 or more under this Section, the housing authority shall certify that (i) the employee has been afforded an opportunity for a hearing to dispute the debt that is due and owing the housing authority and (ii) the employee has received notice of a wage deduction order and has been afforded an opportunity for a hearing to object to the order. For purposes of this Section, "net amount" means that part of the salary or wage payment remaining after the deduction of any amounts required by law to be deducted and "debt due and owing" means (i) a specified sum of money owed to the municipality, county, the Cook County Forest Preserve District, the Chicago Park District, the Metropolitan Water Reclamation District, the Chicago Transit Authority, the Chicago Board of Education, or housing authority for services, work, or goods, after the period granted for payment has expired, or (ii) a specified sum of money owed to the municipality, county, the Cook County Forest Preserve District, the Chicago Park District, the Metropolitan Water Reclamation District, the Chicago Transit Authority, the Chicago Board of Education or housing authority pursuant to a court order or order of an administrative hearing officer after the exhaustion of, or the failure to exhaust, judicial review; (7) the result of an excess payment made due to, but not limited to, a typographical or mathematical error made by a municipality with a population of less than 500,000 or to collect a debt owed to a municipality with a population of less than 500,000 after notice to the employee and an opportunity to be heard; provided, however, that the amount deducted from any one salary or wage payment shall not exceed 15% of the net amount of the payment. Before the municipality deducts any amount from any salary or wage of an employee to pay a debt owed to the municipality, the municipality shall certify that (i) the employee has been afforded an opportunity for a hearing, conducted by the municipality, to dispute the debt that is due and owing the municipality, and (ii) the
employee has received notice of a wage deduction order and has been afforded an opportunity for a hearing, conducted by the municipality, to object to the order. For purposes of this Section, "net amount" means that part of the salary or wage payment remaining after the deduction of any amounts required by law to be deducted and "debt due and owing" means (i) a specified sum of money owed to the municipality for services, work, or goods, after the period granted for payment has expired, or (ii) a specified sum of money owed to the municipality pursuant to a court order or order of an administrative hearing officer after the exhaustion of, or the failure to exhaust, judicial review. Where the legitimacy of any deduction from wages is in dispute, the amount in

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question may be withheld if the employer notifies the Department of Labor on the date the payment is due in writing of the amount that is being withheld and stating the reasons for which the payment is withheld. Upon such notification the Department of Labor shall conduct an investigation and render a judgment as promptly as possible, and shall complete such investigation within 30 days of receipt of the notification by the employer that wages have been withheld. The employer shall pay the wages due upon order of the Department of Labor within 15 calendar days of issuance of a judgment on the dispute.

The Department shall establish rules to protect the interests of both parties in cases of disputed deductions from wages. Such rules shall include reasonable limitations on the amount of deductions beyond those required by law which may be made during any pay period by any employer.

In case of a dispute over wages, the employer shall pay, without condition and within the time set by this Act, all wages or parts thereof, conceded by him to be due, leaving to the employee all remedies to which he may otherwise be entitled as to any balance claimed. The acceptance by an employee of a disputed paycheck shall not constitute a release as to the balance of his claim and any release or restrictive endorsement required by an employer as a condition to payment shall be a violation of this Act and shall be void.

(Source: P.A. 82-250; 90-22, § 25; 91-443, § 5; 92-109, § 30; 97-120, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39m-9.

Effect of Amendments. The 1997 amendment by P.A. 90-22, effective June 20, 1997, in the first paragraph, in the first sentence, deleted "or" preceding "(2)", deleted "or" preceding "(3)", deleted "or" preceding "(4)", inserted "or" preceding "(5)" and added subsection (5) and added the second and third sentences.

The 1999 amendment by P.A. 91-443, effective August 6, 1999, in the first sentence inserted "a housing authority in a municipality with a population of 500,000 or more" in item (5) and added item (6); in the second sentence inserted "a housing authority in a municipality with a population of 500,000 or more" and "to pay a debt owed to a municipality with a population of 500,000 or more"; added the third sentence; and in the fourth sentence substituted "municipality or housing authority for services" for "municipality for city services"; and inserted "or housing authority" preceding "pursuant to".

The 2001 amendment by P.A. 92-109, effective July 20, 2001, rewrote the first paragraph to the extent that a detailed comparison would be impracticable.

The 2011 amendment by P.A. 97-120, effective January 1, 2012, in the first paragraph, added the language beginning with "(7) the result" to the end of the third sentence and inserted the fourth sentence.

CASE NOTES

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Analysis

Assignment
Benefit of Employee
Employee
Employer's Benefit
ERISA Claims
Orders
Release
Standing

Assignment

Although it is clear that the Act mandates that employers shall pay every employee all wages earned, nothing in the Act directly prohibits an employee from assigning his wages to a third party. Swavely v. Freeway Ford Truck Sales, Inc., 298 Ill. App. 3d 969, 233 Ill. Dec. 80, 700 N.E.2d 181 (1 Dist. 1998), appeal denied, 181 Ill. 2d 590, 235 Ill. Dec. 948, 706 N.E.2d 503 (1998).

Benefit of Employee

When an employee voluntarily participated in a capital accumulation plan under which part of his compensation was paid in restricted stock, the Wage Payment and Collection Act applied because the election made it clear that the plan was compensation. Furthermore, deductions for the plan were proper under 820 ILCS 115/9 because the employee had benefited from the deductions, which resulted in tax benefits and gave him voting privileges. Kim v. Citigroup, Inc., 368 Ill. App. 3d 298, 305 Ill. Dec. 834, 856 N.E.2d 639, 2006 Ill. App. LEXIS 893 (1 Dist. 2006).

Employee

Trial court was not provided with enough information concerning plaintiff's role as partner at firm to find whether he was an employee within the Act, and because plaintiff failed to plead any facts regarding Act's applicability he had no remedy under the Act, and the complaint was properly dismissed. Hurd v. Wildman, Harrold, Allen & Dixon, 303 Ill. App. 3d 84, 236 Ill. Dec. 482, 707 N.E.2d 609 (1 Dist. 1999).

Employer's Benefit

Where the reserve account protecting employer from uncollectible debts was solely for the benefit of the employer defendant, defendant's practice of withholding money from employee's salary was illegal under former Ill. Rev. Stat., Ch. 48, para. 39 (see now this section). Ury v. Fruit Belt Serv. Co., 108 Ill. App. 3d 1136, 64 Ill. Dec. 613, 440 N.E.2d 165 (5 Dist. 1982).

ERISA Claims

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Employer deductions from wages are prohibited without employee authorization and there is no reason to exclude ERISA plans from this provision. Nagel v. Chukerman Packaging, Ltd., 19 F. Supp. 2d 826 (N.D. Ill. 1998).

Orders

The state labor department did not have the authority to issue any orders for it to enforce compliance pursuant to 820 ILCS 115/9, as that section involved the legitimacy of deductions from wages and the parties agreed that no such deduction had been made. Walters v. Dep't of Labor, 356 Ill. App. 3d 785, 292 Ill. Dec. 543, 826 N.E.2d 979, 2005 Ill. App. LEXIS 274 (1 Dist. 2005).

Release

Plaintiff also knew of company's obligation and, as defendant testified, ordered executive vice-president to refuse to pay any of it unless plaintiff signed a release relinquishing his right to certain amount; this constituted a voluntary, intentional act, conduct that the Wage Act specifically prohibits. Stafford v. Puro, 63 F.3d 1436 (7th Cir. 1995).

Standing

Although plaintiff argued that his discharge contravened the public policy favoring the exercise of rights under this Act, he had no standing to assert rights under the Act where defendant never made a deduction from his salary, the sine qua non of a claim under the Act. Kavanagh v. KLM Royal Dutch Airlines, 566 F. Supp. 242 (N.D. Ill. 1983).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:09 What may be deducted from wages.

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Employment Law," see 31 S. Ill. U.L.J. 859 (2007).

§ 820 ILCS 115/10. [Notification of rate, time and place of payment]

Sec. 10. Employers shall notify employees, at the time of hiring, of the rate of pay and of the time and place of payment. Whenever possible, such notification shall be in writing and shall be acknowledged by both parties. Employers shall also notify employees of any changes in the arrangements, specified above, prior to the time of change. Employers shall keep records of names and addresses of all employees and of wages paid each payday, and shall furnish each employee with an itemized statement of deductions made from his wages for each pay period. Every employer shall post and keep posted at each regular place of business in a position easily accessible to all employees one or more notices indicating the regular paydays and the place and time for payment of his

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employees, and on forms supplied from time to time by the Department of Labor containing a copy or summary of the provisions of this Act.

(Source: P.A. 81-593.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39m-10.

Practice Guides and Treatises.

1-4 Employment in Illinois § 4-10 Records.

Illinois Jurisprudence, Labor and Employment § 3:04 Notice of terms of pay; records.

§ 820 ILCS 115/11. [Enforcement; powers of Department]

Sec. 11. It shall be the duty of the Department of Labor to inquire diligently for any violations of this Act, and to institute the actions for penalties herein provided, and to enforce generally the provisions of this Act.

An employee may file a complaint with the Department alleging violations of the Act by submitting a signed, completed wage claim application on the form provided by the Department and by submitting copies of all supporting documentation. Complaints shall be filed within one year after the wages, final compensation, or wage supplements were due.

Applications shall be reviewed by the Department to determine whether there is cause for investigation.

The department shall have the following powers:

(a) To investigate and attempt equitably to adjust controversies between employees and employers in respect of wage claims arising under this Act and to that end the department through the Director of Labor or any other person in the Department of Labor designated by him or her, shall have the power to administer oaths, subpoena and examine witnesses, to issue subpoenas duces tecum requiring the production of such books, papers, records and documents as may be evidence of any matter under inquiry and to examine and inspect the same as may relate to the question in dispute. Service of such subpoenas shall be made by any sheriff or any person. Any court in this State, upon the application of the department may compel attendance of witnesses, the production of books and papers, and the giving of testimony before the department by attachment for contempt or in any other way as the production of evidence may be compelled before such court.

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(b) To take assignments of wage claims in the name of the Director of Labor and his or her successors in office and prosecute actions for the collection of wages for persons financially unable to prosecute such claims when in the judgment of the department such claims are valid and enforceable in the courts. No court costs or any fees for necessary process and proceedings shall be payable in advance by the department for prosecuting such actions. In the event there is a judgment rendered against the defendant, the court shall assess as part of such judgment the costs of such proceeding. Upon collection of such judgments the department shall pay from the proceeds of such judgment such costs to such person who is by law entitled to same. The department may join in a single proceeding any number of wage claims against the same employer but the court shall have discretionary power to order a severance or separate trial for hearings.

(c) To make complaint in any court of competent jurisdiction of violations of this Act.

(d) In addition to the aforementioned powers, subject to appropriation, the Department may establish an administrative procedure to adjudicate claims or specific categories of claims filed with the Department for $3,000 or less per individual employee, exclusive of penalties, costs and fines, including instances where an employer fails to timely respond to a notice of claim issued by the Department; and to issue final and binding administrative decisions on such claims subject to the Administrative Review Law. To establish such a procedure, the Director of Labor or her or his authorized representative may promulgate rules and regulations. The adoption, amendment or rescission of rules and regulations for such a procedure shall be in conformity with the requirements of the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.].

Nothing herein shall be construed to prevent any employee from making complaint or prosecuting his or her own claim for wages. Any employee aggrieved by a violation of this Act or any rule adopted under this Act may file suit in circuit court of Illinois, in the county where the alleged violation occurred or where any employee who is party to the action resides, without regard to exhaustion of any alternative administrative remedies provided in this Act. Actions may be brought by one or more employees for and on behalf of themselves and other employees similarly situated.

Nothing herein shall be construed to limit the authority of the State's attorney of any county to prosecute actions for violation of this Act or to enforce the provisions thereof independently and without specific direction of the Department of Labor.

(Source: P.A. 83-1362; 95-209, § 10; 96-1407, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39m-11.

Effect of Amendments. The 2007 amendment by P.A. 95-209, effective August 16, 2007, inserted the second introductory paragraph.

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The 2010 amendment by P.A. 96-1407, effective January 1, 2011, added subsection (d) to the end of the fourth paragraph; and added the last two sentences to the end of the fifth paragraph.

CASE NOTES

Analysis

In General
Administrative Remedies
Application
Initial Determination of Liability
Private Cause of Action
Scope of Authority
Standard of Proof
Statute of Limitations

In General

Businessman did not have the right to appeal the state labor department's determination that he "apparently" was in violation of the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq. (Act), as the state labor department's determination was made pursuant to authority to investigate wage payment claims under the Act, 820 ILCS 115/11; accordingly, since the determination was not made while the state labor department was acting in its quasi-judicial function, the Act did not allow for the review of such determinations, and the common law writ of certiorari did not apply, the trial court's judgment that reversed the state labor department's determination that a possible violation of the Act had occurred had to be vacated. Walters v. Dep't of Labor, 356 Ill. App. 3d 785, 292 Ill. Dec. 543, 826 N.E.2d 979, 2005 Ill. App. LEXIS 274 (1 Dist. 2005).

Department of Labor proceedings pursuant to this Act are not judicial in nature and, thus, have no preclusive effect. Rekhi v. Wildwood Enters., Inc., 219 Ill. App. 3d 312, 162 Ill. Dec. 375, 579 N.E.2d 1189 (4 Dist. 1991).

Although authorized to subpoena witnesses, administer oaths and examine private documents, the Department of Labor can eschew such formalism and adopt a more relaxed method of attempting to resolve disputes. Stafford v. Bowling, 85 Ill. App. 3d 978, 41 Ill. Dec. 273, 407 N.E.2d 771 (1 Dist. 1980).

This Act must be read only as authorizing the Department of Labor to take certain actions, not mandating it to do so; the Department has the discretion to take assignments of wage claims, to prosecute wage collection actions for indigent employees or to file complaints against employers. Stafford v. Bowling, 85 Ill. App. 3d 978, 41 Ill. Dec. 273, 407 N.E.2d 771 (1 Dist. 1980).

Administrative Remedies

Since this Act does not grant the Department of Labor judicial or administrative powers, plaintiff had no administrative remedies to exhaust prior to commencing action against former employer for unpaid wages, vacation time and commissions. Nagel v. Gerald Dennen & Co., 272 Ill. App. 3d 516, 208 Ill. Dec. 853, 650 N.E.2d 547 (1 Dist. 1995).

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Application

Subsection (c) of this section does not preclude a private right of action by an employee. Aponte v. National Steel Serv. Ctr., 500 F. Supp. 198 (N.D. Ill. 1980).

Initial Determination of Liability

This Act does not contain any provision requiring that the Department of Labor make an initial determination of liability before a claimant may file an action in the circuit court. Nagel v. Gerald Dennen & Co., 272 Ill. App. 3d 516, 208 Ill. Dec. 853, 650 N.E.2d 547 (1 Dist. 1995).

Private Cause of Action

Subsection (c) of this Act allows a private cause of action by an employee. Nagel v. Gerald Dennen & Co., 272 Ill. App. 3d 516, 208 Ill. Dec. 853, 650 N.E.2d 547 (1 Dist. 1995).

Scope of Authority

Agreed order that entered judgment on an arbitrator's decisions and awards, but which provided that a specified finding of one of the awards did not bind the Illinois Department of Labor in wage claim proceedings initiated by the plaintiff, did not prevent plaintiff's wage claim from being barred in a subsequent lawsuit under the doctrine of res judicata because, pursuant to 820 Ill. Comp. Stat. Ann. 115/11(a), the labor department had no binding adjudicatory power; while the deferential language in the agreed order allowed the labor department to continue its investigatory function, the language did not permit any adjudicatory procedures to carry forward. Zabel v. Cohn, 283 Ill. App. 3d 1043, 219 Ill. Dec. 199, 670 N.E.2d 877, 1996 Ill. App. LEXIS 736 (1 Dist. 1996).

The Department of Labor was not only empowered to investigate and attempt to adjust wage claims, but also to prosecute such claims if necessary under former Ill. Rev. Stat., ch. 48, para. 391 (see now this section). Baker v. Chicago, Fire & Burglary Detection Inc., 489 F.2d 953 (7th Cir. 1973).

Standard of Proof

No specific standard of proof is required in hearing evidence under this Act; the many formulations of the varying standards - some evidence, preponderance of the evidence, beyond a reasonable doubt or clear and convincing evidence - are open to the Department of Labor to choose in the exercise of its discretion. Stafford v. Bowling, 85 Ill. App. 3d 978, 41 Ill. Dec. 273, 407 N.E.2d 771 (1 Dist. 1980).

Statute of Limitations

Action by Illinois Department of Labor to recover vacation wages due a former employee was the enforcement of a private rather than a public right, so governmental immunity from the running of the statute of limitations did not apply; since there were no allegations of physical or mental injury, the five-year catchall limitations period, rather than the two-year period applicable to personal injury actions, applied. People ex rel. Ill. DOL v. Tri State Tours, Inc., 342 Ill. App. 3d 842, 277 Ill. Dec. 322, 795 N.E.2d 990, 2003 Ill. App. LEXIS 1034 (1 Dist. 2003).

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The public interest in enforcing this Act was sufficient to permit the Director of the Department of Labor to pursue claims under the Act against an employer without regard to statutory time barring under 735 ILCS 5/13-101 et seq.; suits brought by the Director under this Act are immune from the statutory limitation periods of the Civil Practice Act [735 ILCS 5/13-101 et seq.]. People ex rel. Martin v. Lipkowitz, 225 Ill. App. 3d 980, 168 Ill. Dec. 68, 589 N.E.2d 182 (3 Dist. 1992).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:22 By individual employee.

Illinois Jurisprudence, Labor and Employment § 3:21 By Department of Labor.

§ 820 ILCS 115/12. [Administration and enforcement]

Sec. 12. The Director of Labor or his authorized representatives shall administer and enforce the provisions of this Act. In order to accomplish the objectives of this Act and to carry out the duties prescribed by this Act, the Director of Labor or his authorized representative shall, within one year from the effective date of this amendatory Act of 1991, promulgate rules and regulations necessary to administer and enforce the provisions of this Act including the procedures that shall be followed for hearings under Section 6 of this Act [820 ILCS 115/6]. The adoption, amendment or rescission of rules and regulations shall be in conformity with the requirements of the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.].

(Source: P.A. 87-349.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39m-12.

CASE NOTES

Rules and Regulations

- Application and Construction

Only where wage deductions are concerned must the Department of Labor make rules; where the other substantive provisions of this Act are involved, the Department simply "may" make rules. Stafford v. Bowling, 85 Ill. App. 3d 978, 41 Ill. Dec. 273, 407 N.E.2d 771 (1 Dist. 1980).

§ 820 ILCS 115/13. Officers or agents deemed to be employers

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Sec. 13. Officers or agents deemed to be employers. In addition to an individual who is deemed to be an employer pursuant to Section 2 of this Act [820 ILCS 115/2], any officers of a corporation or agents of an employer who knowingly permit such employer to violate the provisions of this Act shall be deemed to be the employers of the employees of the corporation.

(Source: P.A. 78-914; 96-1407, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39m-13.

Effect of Amendments. The 2010 amendment by P.A. 96-1407, effective January 1, 2011, added "In addition to an individual who is deemed to be an employer pursuant to Section 2 of this Act" to the beginning; and made a stylistic change.

CASE NOTES

Analysis

Conditional Privilege
Employer
Lack of Personal Jurisdiction
Liability
Scope of Remedies
Violation
- Knowingly Permitted

Conditional Privilege

Corporate officers lost their conditional privilege that protects them from personal liability for their decisions made on behalf of the corporation where their conduct clearly violated the Wage Act, thereby making it illegal. Stafford v. Puro, 63 F.3d 1436 (7th Cir. 1995).

Employer

Former employee failed to state a claim for violation of the Illinois Wage Payment and Collection Act because none of the employers were Illinois residents, and the law only applied to Illinois employers. DeGeer v. Gillis, 707 F. Supp. 2d 784, 2010 U.S. Dist. LEXIS 39321 (N.D. Ill. 2010).

Illinois Supreme Court rejects the use of the "economic realities" test in determining who is an employer in the context of the Illinois Wage Payment and Collection Act, 802 ILCS 115/1 et seq.,

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because there are no gaps in the Act rendering such a test necessary. Andrews v. Kowa Printing Corp., 217 Ill. 2d 101, 298 Ill. Dec. 1, 838 N.E.2d 894, 2005 Ill. LEXIS 1608 (2005).

820 ILCS 115/2 confirms that an employer is liable both for its own violations of the Illinois Wage Act and for any Illinois Wage Act violations committed by its agents. 820 ILCS 115/13, in turn, imposes personal liability on any officers or agents who knowingly permitted a wage violation. An owner and a corporation did not qualify as employers under 820 ILCS 115/2 because the owner was not in control of the business when wages were not paid, and the corporation was not deemed an employer simply because it acted directly or indirectly in the interest of several employees, who did not receive their wages. Andrews v. Kowa Printing Corp., 217 Ill. 2d 101, 298 Ill. Dec. 1, 838 N.E.2d 894, 2005 Ill. LEXIS 1608 (2005).

Merely hiring a firm to perform a service for an employer for remuneration does not make that hired firm an "employer" to the employees of the hiring company; thus, a corporation, despite being registered under the same servicemark as an employer and despite being owned and operated by the same individual, is a completely separate corporation with its own employees, duties, and records, and it is not an "employer" within the meaning of the Wage Act with respect to unpaid employees nor is it not liable for the employees' unpaid compensation. Andrews v. Kowa Printing Corp., 351 Ill. App. 3d 668, 286 Ill. Dec. 548, 814 N.E.2d 198, 2004 Ill. App. LEXIS 946 (4 Dist. 2004), aff'd, 217 Ill. 2d 101, 298 Ill. Dec. 1, 838 N.E.2d 894 (2005).

Sole officer and director of a corporation, as an employer, was not personally liable to employees in a civil act brought under the Wage Act where there was no evidence that the employer knowingly or wilfully aided or allowed the corporation to violate provisions of the Wage Act by not paying the employees' vacation or severance pay due upon a takeover of the business by another corporation. Andrews v. Kowa Printing Corp., 351 Ill. App. 3d 668, 286 Ill. Dec. 548, 814 N.E.2d 198, 2004 Ill. App. LEXIS 946 (4 Dist. 2004), aff'd, 217 Ill. 2d 101, 298 Ill. Dec. 1, 838 N.E.2d 894 (2005).

If a legislature intends for corporate officers or agents to be personally liable in all situations where that officer or agent exercises operational control over a corporation and its employees, it must so state and limit that personal liability to situations where a plaintiff must prove an officer or agent knowingly or wilfully aided the corporation in a violation of the Wage Act as set forth in 820 ILCS 115/13 and 14(a); individual officers or agents of a corporation are not "employers" within the meaning of § 5 of the Wage Act without first implicating the officers' personal liability under §§ 13 or 14(a). Andrews v. Kowa Printing Corp., 351 Ill. App. 3d 668, 286 Ill. Dec. 548, 814 N.E.2d 198, 2004 Ill. App. LEXIS 946 (4 Dist. 2004), aff'd, 217 Ill. 2d 101, 298 Ill. Dec. 1, 838 N.E.2d 894 (2005).

Where trial testimony from an employee and two owners of related businesses established that the employee was hired by the owners to work for one of their other company's subsidiaries, that the owners were the president and chief financial officer of the subsidiary, and that the owners negotiated the terms of the employee's bonus and salary but knowingly refused to pay him his bonus, the testimony was sufficient to establish that the subsidiary, its parent company, and both of the owners were all the employee's "employers" under 820 ILCS 115/2 and 115/13. Zabinsky v. Gelber Group, Inc., 347 Ill. App. 3d 243, 283 Ill. Dec. 61, 807 N.E.2d 666, 2004 Ill. App. LEXIS 262 (1 Dist. 2004), appeal denied, Ill. 2d , Ill. Dec. , 823 N.E.2d 980 (2004).

Lack of Personal Jurisdiction

Action by a former employee, who alleged that the employer's vice president was individually liable for unpaid wages under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., was dismissed for lack of personal jurisdiction; because the vice president was only involved in the employee's discharge and the nonpayment of wages did not arise from the discharge, the vice president's involvement was not conduct from which the employee's claim under the Act against the vice president arose and therefore could not support personal

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jurisdiction. Chen v. Quark Biotech, Inc., F. Supp. 2d , 2003 U.S. Dist. LEXIS 22780 (N.D. Ill. Dec. 12, 2003).

Action by a former employee, who alleged that the employer's president was individually liable for unpaid wages under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., was dismissed for lack of personal jurisdiction; because none of the unpaid wages claimed were for work that would have been performed in the forum state, there was an insufficient connection to support personal jurisdiction over the president. Chen v. Quark Biotech, Inc., F. Supp. 2d , 2003 U.S. Dist. LEXIS 22780 (N.D. Ill. Dec. 12, 2003).

Liability

Appellate court in an action by the claimants seeking payment of alleged unpaid wages and commissions under the Illinois Wage Payment and Collection Act (Act) did not need to address the trial court's finding that the claimants did not prove that the steel company and its president who allegedly owed the money did not engage in any activity with a fraudulent motive. Under the provisions of the Act at the heart of the claimants' lawsuit, the Act neither required an employee to demand unpaid wages nor did it require a fraudulent purpose for employers who failed to pay the required compensation in a timely fashion under the Act, which meant that fraud was not an issue in applying 820 ILCS 115/5 and 820 ILCS 115/13 because the criminal offense of fraud had not been alleged under 820 ILCS 115/14(a). Ashley v. IM Steel, Inc., 406 Ill. App. 3d 222, 345 Ill. Dec. 293, 939 N.E.2d 22, 2010 Ill. App. LEXIS 1161 (3 Dist. 2010).

Debtors stated a valid claim to extend the automatic stay, under 11 U.S.C.S. § 362, to bar further investigation and suit by the Illinois Department of Labor and former employees, for claims under the Illinois Wage Payment and Collection Act, 820 ILCS 115/5, against two officers; the debtors were obligated to indemnify the officers, who had potential liability under 820 ILCS 115/13 (2010). Midway Games, Inc. v. Anonuevo (In re Midway Games, Inc.), 428 B.R. 327, 2010 Bankr. LEXIS 1904 (Bankr. D. Del. 2010).

Former employee was not to entitled to summary judgment on the employee's claims, under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., against the principal of a corporation because the determination of whether the Act applied was dependent on the trial court's determination on remand of whether the termination provision in the employee's written contract applied to the matter. Covinsky v. Hannah Marine Corp., 388 Ill. App. 3d 478, 328 Ill. Dec. 35, 903 N.E.2d 422, 2009 Ill. App. LEXIS 72 (1 Dist. 2009).

Scope of Remedies

While an employee could bring an action against both her employer and its president for violations of the Illinois Wage Payment Act, 820 ILCS 115/1 et seq., she could only make one recovery for those violations. Although a jury ruled in the employee's favor on her claims against both the employer and the president, she was entitled to only one of the damage awards made by the jury. Catania v. Local 4250/5050 of the Communs. Workers of Am., 359 Ill. App. 3d 718, 296 Ill. Dec. 161, 834 N.E.2d 966, 2005 Ill. App. LEXIS 814 (1 Dist. 2005), appeal denied, 217 Ill. 2d 558, 300 Ill. Dec. 363, 844 N.E.2d 35 (2005).

Violation

- Knowingly Permitted

A corporation's inability to pay amounts due negates a finding that it behaved wilfully under the Wage Act. Stafford v. Puro, 63 F.3d 1436 (7th Cir. 1995).

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Although chairman of the board testified that he had no idea how company compensated plaintiff, the jury could reasonably have given this statement little credence based on plaintiff's testimony that he originally reported to chairman of the board and the uncontroverted evidence that he routinely signed plaintiff's paychecks and knew he received a commission. Moreover, plaintiff's memoranda and his attorney's letter to chairman of the board demonstrated chairman of the board's awareness of the corporation's debt to plaintiff and its non-payment. After receiving the letter, chairman of the board asked executive vice president about the situation, but took no other action to ensure that company fulfilled its duty to pay plaintiff. Although neither officers individually could disburse a check for over $1,000, together they could. Thus, the jury could have found that chairman of the board knowingly permitted company to violate the Wage Act. Stafford v. Puro, 63 F.3d 1436 (7th Cir. 1995).

LEGAL PERIODICALS

For comment, "Employment at Will in Illinois - Has the Employer Been Forgotten?," see 9 N. Ill. U.L. Rev. 603 (1989).

For article, "Survey of Illinois Law: Employment Law," see, See 29 S. Ill. U.L.J. 639 (2005).

For article, "Survey of Illinois Law: Employment Law," see, See 30 S. Ill. U.L.J. 613 (2006).

§ 820 ILCS 115/14. [Penalty for wilful refusal to pay; violation of Departmental order; retaliatory action]

Sec. 14. (a) Any employee not timely paid wages, final compensation, or wage supplements by his or her employer as required by this Act shall be entitled to recover through a claim filed with the Department of Labor or in a civil action, but not both, the amount of any such underpayments and damages of 2% of the amount of any such underpayments for each month following the date of payment during which such underpayments remain unpaid. In a civil action, such employee shall also recover costs and all reasonable attorney's fees.

(a-5) In addition to the remedies provided in subsections (a), (b), and (c) of this Section, any employer or any agent of an employer, who, being able to pay wages, final compensation, or wage supplements and being under a duty to pay, wilfully refuses to pay as provided in this Act, or falsely denies the amount or validity thereof or that the same is due, with intent to secure for himself or other person any underpayment of such indebtedness or with intent to annoy, harass, oppress, hinder, delay or defraud the person to whom such indebtedness is due, upon conviction, is guilty of:

(1) for unpaid wages, final compensation or wage supplements in the amount of $5,000 or less, a Class B misdemeanor; or

(2) for unpaid wages, final compensation or wage supplements in the amount of more than $5,000, a Class A misdemeanor

Each day during which any violation of this Act continues shall constitute a separate and distinct offense.

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Any employer or any agent of an employer who violates this Section of the Act a subsequent time within 2 years of a prior criminal conviction under this Section is guilty, upon conviction, of a Class 4 felony.

(b) Any employer who has been demanded or ordered by the Department or ordered by the court to pay wages, final compensation, or wage supplements due an employee shall be required to pay a non-waivable administrative fee of $250 to the Department of Labor. Any employer who has been so demanded or ordered by the Department or ordered by a court to pay such wages, final compensation, or wage supplements and who fails to seek timely review of such a demand or order as provided for under this Act and who fails to comply within 15 calendar days after such demand or within 35 days of an administrative or court order is entered shall also be liable to pay a penalty to the Department of Labor of 20% of the amount found owing and a penalty to the employee of 1% per calendar day of the amount found owing for each day of delay in paying such wages to the employee. All moneys recovered as fees and civil penalties under this Act, except those owing to the affected employee, shall be deposited into the Wage Theft Enforcement Fund, a special fund which is hereby created in the State treasury. Moneys in the Fund may be used only for enforcement of this Act.

(b-5) Penalties and fees under this Section may be assessed by the Department and recovered in a civil action brought by the Department in any circuit court or in any administrative adjudicative proceeding under this Act. In any such civil action or administrative adjudicative proceeding under this Act, the Department shall be represented by the Attorney General.

(c) Any employer, or any agent of an employer, who discharges or in any other manner discriminates against any employee because that employee has made a complaint to his employer, to the Director of Labor or his authorized representative, in a public hearing, or to a community organization that he or she has not been paid in accordance with the provisions of this Act, or because that employee has caused to be instituted any proceeding under or related to this Act, or because that employee has testified or is about to testify in an investigation or proceeding under this Act, is guilty, upon conviction, of a Class C misdemeanor. An employee who has been unlawfully retaliated against shall be entitled to recover through a claim filed with the Department of Labor or in a civil action, but not both, all legal and equitable relief as may be appropriate. In a civil action, such employee shall also recover costs and all reasonable attorney's fees.

(Source: P.A. 83-202; 94-1025, § 10; 95-209, § 10; 96-1407, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39m-14.

Effect of Amendments. The 2006 amendment by P.A. 94-1025, effective July 14, 2006, in (b): substituted "demanded" for "ordered", added "ordered by", and added "demand or".

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The 2007 amendment by P.A. 95-209, effective August 16, 2007, added the last sentence in (b); and added (b-5).

The 2010 amendment by P.A. 96-1407, effective January 1, 2011, rewrote the section.

CASE NOTES

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Application and Construction

Although workers did not make a pre-suit demand for payment, as required in order to recover attorneys' fees under the Attorneys' Fees in Wage Actions Act (AFWAA), it was no longer necessary to rely on the AFWAA to recover fees in cases alleging violations of the Illinois Wage Payment and Collection Act. Sanchez v. Haltz Constr., Inc., F. Supp. 2d , 2012 U.S. Dist. LEXIS 537 (N.D. Ill. Jan. 4, 2012).

Appellate court in an action by the claimants seeking payment of alleged unpaid wages and commissions under the Illinois Wage Payment and Collection Act (Act) did not need to address

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the trial court's finding that the claimants did not prove that the steel company and its president who allegedly owed the money did not engage in any activity with a fraudulent motive. Under the provisions of the Act at the heart of the claimants' lawsuit, the Act neither required an employee to demand unpaid wages nor did it require a fraudulent purpose for employers who failed to pay the required compensation in a timely fashion under the Act, which meant that fraud was not an issue in applying 820 ILCS 115/5 and 820 ILCS 115/13 because the criminal offense of fraud had not been alleged under 820 ILCS 115/14(a). Ashley v. IM Steel, Inc., 406 Ill. App. 3d 222, 345 Ill. Dec. 293, 939 N.E.2d 22, 2010 Ill. App. LEXIS 1161 (3 Dist. 2010).

State labor department's determination that the businessman was "apparently" in violation of the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq. was a determination made pursuant to its investigative powers under the Act; thus, wage payment demand was not part of it acting in a quasi-judicial function pursuant to Illinois Wage Payment and Collection Act, 820 ILCS 115/14, since the businessman was not subject to immediate criminal or civil penalties, which meant that he did not have the right to appeal the state labor department's determination. Walters v. Dep't of Labor, 356 Ill. App. 3d 785, 292 Ill. Dec. 543, 826 N.E.2d 979, 2005 Ill. App. LEXIS 274 (1 Dist. 2005).

There was no evidence that an employee incentive plan was modified to exclude its "no vested rights" provision; thus, the employees could not show a breach of contract by their former employer who refused to pay bonuses to which the employees claimed they were entitled. Absent a contractual breach, there was no violation of the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq.. Galietta v. Comdisco Holding Co. (In re Comdisco, Inc.), F. Supp. 2d , 2003 U.S. Dist. LEXIS 2982 (N.D. Ill. Feb. 27, 2003).

Former employer was not liable for statutory penalties under 820 ILCS 115/14(b) because (1) such provision conflicted with federal procedure under 28 USCS § 1961 and Fed. R. Civ. P. 62, (2) under the Erie doctrine, the federal court was obligated to follow federal procedure, and (3) under the federal procedure, the payment of the judgment was not late. Houben v. Telular Corp., 309 F.3d 1028, 2002 U.S. App. LEXIS 22849 (7th Cir. 2002).

Since this section subjects employers to criminal sanctions for failure to make payments to employee benefit plans, this act is a generally applicable criminal law of the state and as such is not preempted by the Employee Retirement Income Security Act (29 U.S.C. § 1001 et seq.). Upholsterer's Int'l Union Health & Welfare Fund Trustees v. Pontiac Furn., Inc., 647 F. Supp. 1053 (C.D. Ill. 1986).

Bankruptcy

- Exception to Automatic Stay

Debtors stated a valid claim to extend the automatic stay, under 11 U.S.C.S. § 362, to bar further investigation and suit by the Illinois Department of Labor and former employees, for claims under the Illinois Wage Payment and Collection Act, 820 ILCS 115/5, against two officers; the debtors were obligated to indemnify the officers, who had potential liability under 820 ILCS 115/14 (2010). Midway Games, Inc. v. Anonuevo (In re Midway Games, Inc.), 428 B.R. 327, 2010 Bankr. LEXIS 1904 (Bankr. D. Del. 2010).

Since a violation of this act is a misdemeanor, punishable by the imposition of a penalty, a proceeding commenced under this section is criminal in nature; therefore, the proceeding is subject to exception from automatic stay as provided by section 362(b)(1) of the Bankruptcy Code, 11 U.S.C. § 362(b)(1). Swan v. Dervos, 37 Bankr. 731 (Bankr. N.D. Ill. 1984).

Construction

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820 ILCS 115/14(c) does not reflect a clearly mandated expression of public policy that employers may not force employees to choose between exercising their rights under the Illinois Wage Payment and Collection Act and keeping their jobs because the statute is economic in nature and does not "strike at the heart" of an employee's social rights, duties, and responsibilities. McGrath v. CCC Info. Servs., 314 Ill. App. 3d 431, 246 Ill. Dec. 856, 731 N.E.2d 384, 2000 Ill. App. LEXIS 447 (1 Dist. 2000).

Department Orders

- Effect

Even if the Department of Labor could have acted as a court in former employee case, there was no suggestion that it did, and its determination that employer owed former employee only a meager sum was therefore not entitled to preclusive effect in former employee's breach of contract lawsuits. Rekhi v. Wildwood Indus., Inc., 61 F.3d 1313 (7th Cir. 1995).

Emotional Distress Damages

The jury reasonably could have concluded that plaintiffs financial and medical problems would have been relieved, at least partially, had company paid him as required by law. Stafford v. Puro, 63 F.3d 1436 (7th Cir. 1995).

Exemplary Damages

Because the court, and presumably the jury, relied on impermissible considerations, buttressed by the fact that the court reduced the emotional distress damages, the punitive damages award was vacated and remanded for a new trial unless the plaintiff accepted a remittitur to $250,000, an amount which would adequately punish and deter such conduct. Stafford v. Puro, 63 F.3d 1436 (7th Cir. 1995).

Penalties

- Determination of Liability

Sole officer and director of a corporation, as an employer, was not personally liable to employees in a civil act brought under the Wage Act where there was no evidence that the employer knowingly or wilfully aided or allowed the corporation to violate provisions of the Wage Act by not paying the employees' vacation or severance pay due upon a takeover of the business by another corporation. Andrews v. Kowa Printing Corp., 351 Ill. App. 3d 668, 286 Ill. Dec. 548, 814 N.E.2d 198, 2004 Ill. App. LEXIS 946 (4 Dist. 2004), aff'd, 217 Ill. 2d 101, 298 Ill. Dec. 1, 838 N.E.2d 894 (2005).

If a legislature intends for corporate officers or agents to be personally liable in all situations where that officer or agent exercises operational control over a corporation and its employees, it must so state and limit that personal liability to situations where a plaintiff must prove an officer or agent knowingly or wilfully aided the corporation in a violation of the Wage Act as set forth in 820 ILCS 115/13 and 14(a); individual officers or agents of a corporation are not "employers" within the meaning of § 5 of the Wage Act without first implicating the officers' personal liability under §§ 13 or 14(a). Andrews v. Kowa Printing Corp., 351 Ill. App. 3d 668, 286 Ill. Dec. 548, 814 N.E.2d 198, 2004 Ill. App. LEXIS 946 (4 Dist. 2004), aff'd, 217 Ill. 2d 101, 298 Ill. Dec. 1, 838 N.E.2d 894 (2005).

A reasonable interpretation of this act requires a finding that while certain penalties and interest provisions may run from the Department of Labor's initial determination of liability, actual liability,

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if contested, must be determined by the trial court. Miller v. J.M. Jones Co., 198 Ill. App. 3d 151, 144 Ill. Dec. 461, 555 N.E.2d 820 (4 Dist. 1990).

- Vacation Policy

Employer's vacation policy was not an incentive for future work but rather, the vacation days were awarded under an "earn-in-arrears" policy, wherein they were compensation for the prior year's work; accordingly, the matter was controlled by Mueller and the policy violated § 5 of the Wage Payment and Collection Act, 820 ILCS 115/5, and further, the employees were entitled to penalties from the employer pursuant to § 14(b) of the Act, 820 ILCS 115/14(b). People ex rel. Ill. Dep't of Labor v. GE, 347 Ill. App. 3d 72, 282 Ill. Dec. 555, 806 N.E.2d 1143, 2004 Ill. App. LEXIS 224 (1 Dist. 2004).

Private Action

The Illinois Wage Payment and Collection Act does not contain an implied civil remedy for damages due to a retaliatory discharge. McGrath v. CCC Info. Servs., 314 Ill. App. 3d 431, 246 Ill. Dec. 856, 731 N.E.2d 384, 2000 Ill. App. LEXIS 447 (1 Dist. 2000).

There is no private right of action for the tort of retaliatory discharge based on the discharge of an employee for exercising his rights under the Illinois Wage Payment and Collection Act. McGrath v. CCC Info. Servs., 314 Ill. App. 3d 431, 246 Ill. Dec. 856, 731 N.E.2d 384, 2000 Ill. App. LEXIS 447 (1 Dist. 2000).

An employee's private right of action under the act includes the right to litigate the recovery of penalties which have accrued under subsection (b) as a result of the employer's non-compliance with the Department of Labor's findings and wage demand. Rehki v. Wildwood Indus., Inc., 816 F. Supp. 1308 (C.D. Ill. 1992).

This statute allows a private action by the employee against an employer. Stafford v. Purofied Down Prods. Corp., 801 F. Supp. 130 (N.D. Ill. 1992).

Public Policy

A claim of retaliatory discharge based on the filing of a workers' compensation claim is clearly based on public policy and is not dependent upon interpretation of a collective bargaining agreement. Brazinski v. Transport Serv. Co., 159 Ill. App. 3d 1061, 111 Ill. Dec. 830, 513 N.E.2d 76 (1 Dist.), appeal denied, 117 Ill. 2d 542, 115 Ill. Dec. 398, 517 N.E.2d 1084 (1987).

Refusal to Pay Wages

- In General

Merely hiring a firm to perform a service for an employer for remuneration does not make that hired firm an "employer" to the employees of the hiring company; thus, a corporation, despite being registered under the same servicemark as an employer and despite being owned and operated by the same individual, is a completely separate corporation with its own employees, duties, and records, and it is not an "employer" within the meaning of the Wage Act with respect to unpaid employees nor is it not liable for the employees' unpaid compensation. Andrews v. Kowa Printing Corp., 351 Ill. App. 3d 668, 286 Ill. Dec. 548, 814 N.E.2d 198, 2004 Ill. App. LEXIS 946 (4 Dist. 2004), aff'd, 217 Ill. 2d 101, 298 Ill. Dec. 1, 838 N.E.2d 894 (2005).

An exception, objection, challenge, postjudgment motion, or an appeal does not toll the accrual of the statutory interest penalties. Miller v. Kiefer Specialty Flooring, Inc., 317 Ill. App. 3d 370, 251 Ill. Dec. 49, 739 N.E.2d 982, 2000 Ill. App. LEXIS 903 (2 Dist. 2000).

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To assert a claim for interest penalties, all that need be shown is that there is an order for back wages issued by the department or by a court and that the amount due has not been paid; when a party seeks interest penalties under subsection (b), the reasonable doubt standard does not apply as it would in a criminal prosecution. Miller v. Kiefer Specialty Flooring, Inc., 317 Ill. App. 3d 370, 251 Ill. Dec. 49, 739 N.E.2d 982, 2000 Ill. App. LEXIS 903 (2 Dist. 2000).

- Burden of Proof

The state must prove beyond a reasonable doubt that a corporate defendant was able to pay and that it wilfully refused to pay. People v. Chaindrive Corp., 49 Ill. App. 3d 564, 7 Ill. Dec. 427, 364 N.E.2d 588 (1 Dist. 1977).

- Private Right of Action

An employee has a private right of action for statutory civil interest penalties against an employer that fails to pay wages within 15 days of the order of the department or a court. Miller v. Kiefer Specialty Flooring, Inc., 317 Ill. App. 3d 370, 251 Ill. Dec. 49, 739 N.E.2d 982, 2000 Ill. App. LEXIS 903 (2 Dist. 2000).

- Statute of Limitations

Each day on which defendant has continued to fail to pay final compensation to her former employee constitutes a separate and distinct offense, for which the statute of limitations begins to run anew. People v. Hurley, 269 Ill. App. 3d 117, 206 Ill. Dec. 525, 645 N.E.2d 530 (1 Dist. 1994).

This act does not toll the period of limitations until the employer pays the indebtedness in question. Clark v. Western Union Tel. Co., 141 Ill. App. 3d 174, 95 Ill. Dec. 563, 490 N.E.2d 36 (1 Dist. 1986).

The continuing violation provision of subsection (a) of this section applies to actions brought by the Department of Labor, but civil suits by aggrieved employees are governed by the limitations provisions of the Code of Civil Procedure [735 ILCS 5/13-101 et seq.]. Clark v. Western Union Tel. Co., 141 Ill. App. 3d 174, 95 Ill. Dec. 563, 490 N.E.2d 36 (1 Dist. 1986).

- Summary Judgment Denied

In a wage payment and collection proceeding, summary judgment was denied, where there was a discrepancy between defendant's W-2 and his deposition testimony to the effect that his salary was $6,700 per month, and where the court observed that defendant did not declare bankruptcy until two years after plaintiff's termination. Stafford v. Purofied Down Prods. Corp., 801 F. Supp. 130 (N.D. Ill. 1992).

- Survival of Action

In a wage payment and collection action, the action was not penal, this being so, and because the action protected plaintiff's interest in personal property, the Wage Payment and Collection Act claim survived employer's death. Stafford v. Purofied Down Prods. Corp., 801 F. Supp. 130 (N.D. Ill. 1992).

Retaliatory Conduct Other Than Discharge

The claim that the defendant retaliated and/or discriminated against the plaintiffs for asserting their rights under the Illinois Wage Payment and Collection Act by reducing their hours was dismissed because the federal court concluded that Illinois courts would not recognize a claim for retaliatory conduct less severe than discharge. Colgren v. County Line Cartage, Inc., F. Supp. 2d , 2000 U.S. Dist. LEXIS 11740 (N.D. Ill. Aug. 11, 2000).

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Retaliatory Discharge

Where a superintendent told employees that they had to perform work on their "own time" and they were terminated for not working, defendants were entitled to summary judgment as to the employees' common law retaliatory discharge claim because the employees could not state a claim for common law retaliatory discharge pursuant to the Illinois Minimum Wage Law, 820 ILCS 105/1 et seq. Wilke v. Salamone, 404 F. Supp. 2d 1040, 2005 U.S. Dist. LEXIS 23090 (N.D. Ill. 2005).

Private action for retaliatory discharge is not necessary to provide an adequate remedy for discharging an employee who attempts to enforce his rights under the Illinois Wage Payment and Collection Act (IWPCA) because the legislature explicity provided, at 820 ILCS 115/14(c), for criminal sanctions against employers or their agents who retaliated against employees who attempted to enforce their rights under the IWPCA; the criminal penalties adequately safeguarded the purposes of the IWPCA and adequately deterred persons from acting in retaliation. McGrath v. CCC Info. Servs., 314 Ill. App. 3d 431, 246 Ill. Dec. 856, 731 N.E.2d 384, 2000 Ill. App. LEXIS 447 (1 Dist. 2000).

Termination of employee based on the employee's refusal to withdraw a suit against the employer that alleged a violation of the Illinois Wage Payment and Collection Act (IWPCA) did not state a compelling case for an expansion of the tort of retaliatory discharge because: (1) 820 ILCS 115/14(c) did not reflect a clearly mandated expression of public policy that employers could not force employees to choose between exercising their rights under the IWPCA and keeping their jobs; (2) the dispute was economic in nature (3) the dispute was more in the nature of a private and individual grievance; (4) a claim pursuant to the IWPCA was not so analogous to a workers' compensation action that it would be incongruous not to also allow a retaliatory discharge action for discharges related to an employee's exercise of rights under the IWPCA; and (5) the Illinois Supreme Court had expressly stated its reluctance to extend the tort of retaliatory discharge. McGrath v. CCC Info. Servs., 314 Ill. App. 3d 431, 246 Ill. Dec. 856, 731 N.E.2d 384, 2000 Ill. App. LEXIS 447 (1 Dist. 2000).

- At Will Employee

An at-will employee's retaliatory discharge for complaints about unpaid wages made under the Illinois Wage Payment and Collections Act did not violate a "clearly mandated public policy" and therefore the discharge could not support recovery for the employee under the tort of retaliatory discharge. Geary v. Telular Corp., 341 Ill. App. 3d 694, 275 Ill. Dec. 648, 793 N.E.2d 128, 2003 Ill. App. LEXIS 808 (1 Dist. 2003).

To be actionable, a retaliatory discharge of an at-will employee must not be of a purely personal nature, but must strike at the heart of a citizen's social rights, duties, and responsibilities. Abrams v. Echlin Corp., 174 Ill. App. 3d 434, 123 Ill. Dec. 884, 528 N.E.2d 429 (1 Dist. 1988).

- Burden of Proof

To state a claim for retaliatory discharge, an employee must show that he was dismissed in retaliation for his activities, and that the dismissal was in contravention of a clearly mandated public policy. The mere citation to a constitutional or statutory provision in a complaint will not by itself be enough to sustain a cause of action for retaliatory discharge. Freiburger v. Emery Air Charter, Inc., 795 F. Supp. 253 (N.D. Ill. 1992).

- Contract Dispute

Where the plaintiff and defendant had a written agreement that provided for the payment of commissions, and where there was no disagreement between them as to whether or not a set-off could be made as against commissions if a customer returned merchandise, rather, the dispute arose because their agreement did not specifically delineate when such a set-off was to be made,

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the interpretation of a written agreement between two parties could not be classified as an issue which struck at the heart of a citizen's social rights, duties, and responsibilities, and was not actionable under the retaliatory discharge provision. Abrams v. Echlin Corp., 174 Ill. App. 3d 434, 123 Ill. Dec. 884, 528 N.E.2d 429 (1 Dist. 1988).

- Elements of Offense

Where a complaint reasonably informed the defendant that the plaintiff claimed he was discharged in retaliation for complaining to his employer that he had not been paid for his services and for stating that he would take legal action to enforce such payment, the plaintiff's complaint supplied the first element of the retaliatory discharge test in that he pled a set of the facts that could establish retaliation in his firing. Abrams v. Echlin Corp., 174 Ill. App. 3d 434, 123 Ill. Dec. 884, 528 N.E.2d 429 (1 Dist. 1988).

In order to establish a valid retaliatory discharge cause of action, the plaintiff must allege that he was discharged in retaliation for his activities, and that the discharge was in contravention of a clearly mandated public policy. Brazinski v. Transport Serv. Co., 159 Ill. App. 3d 1061, 111 Ill. Dec. 830, 513 N.E.2d 76 (1 Dist.), appeal denied, 117 Ill. 2d 542, 115 Ill. Dec. 398, 517 N.E.2d 1084 (1987).

LEGAL PERIODICALS

For article, "Representing Workers Under the Fair Labor Standards Act and Illinois Minimum Wage Act", see 86 Ill. B.J. 208 (1998).

For article, "Workers' Compensation: Retaliatory Discharge of Employees Covered by a Collective Bargaining Agreement," see 70 Ill. B.J. 164 (1981).

For article, "Survey of Illinois Law: Employment Law," see, See 29 S. Ill. U.L.J. 639 (2005).

For article, "Survey of Illinois Law: Employment Law," see, See 30 S. Ill. U.L.J. 613 (2006).

Practice Guides and Treatises.

1-3 Employment in Illinois § 3-8 Payment of Wages on Termination.

Illinois Jurisprudence, Labor and Employment § 3:25 Retaliatory discharge.

Illinois Jurisprudence, Labor and Employment § 3:24 Penalties under Wage Payment and Collect Act.

§ 820 ILCS 115/15. [Short title]

Sec. 15. This Act shall be known and may be cited as the Illinois Wage Payment and Collection Act.

(Source: P.A. 78-914.)

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Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39m-15.

CASE NOTES

Constitutionality

The whole 1891 Act regarding set offs was declared void for violating the Federal Constitution and for interfering with the privilege of contracting. Kellyville Coal Co. v. Harrier, 207 Ill. 624, 69 N.E. 927 (1904).

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Prevailing Wage Act

Sec.

820 ILCS 130/0.01.Short title
820 ILCS 130/1.[Public policy]
820 ILCS 130/2.[Applicability; definitions]
820 ILCS 130/3.[Prevailing rate of hourly wages for construction of public works]
820 ILCS 130/4.Ascertaining prevailing wage
820 ILCS 130/5.Certified payroll
820 ILCS 130/6.[Penalty; enforcement]
820 ILCS 130/7.[Finality of finding]
820 ILCS 130/8.[Inability to ascertain prevailing rate of wage]
820 ILCS 130/9.[Investigation and ascertainment of prevailing rate during month of June; objections; judicial review]
820 ILCS 130/10.[Oaths; depositions; subpoenas]
820 ILCS 130/11.[Compliance; enforcement; civil damages]
820 ILCS 130/11a.[Publication of names of contractors, subcontractors in violation]
820 ILCS 130/11b.Discharge or discipline of "whistle blowers" prohibited
820 ILCS 130/12.[Severability]

§ 820 ILCS 130/0.01. Short title

Sec. 0.01. Short title. This Act may be cited as the Prevailing Wage Act.

(Source: P.A. 86-1324.)

Derivation.

Title: An Act regulating wages of laborers, mechanics and other workers employed in any public works by the State, county, city or any public body or any political subdivision or by anyone under contract for public works.

Cite: 820 ILCS 130/0.01 et seq.

Source: L. 1941, vol. 1, p. 703. Title amended by P.A. 81-992.

Date: Approved June 26, 1941.

Note.

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This section was Ill.Rev.Stat., Ch. 48, Para. 39s-0.01.

CASE NOTES

Analysis

Constitutionality
Application and Construction
Time Limitations

Constitutionality

It was within the power of the General Assembly to enact into law that those persons employed under public works contracts paid for from public funds shall receive no less than the prevailing rate of per diem wages paid in the particular locality to various crafts and types of works, because the legislature has the power to pass any law not expressly prohibited by the Constitution; it possesses every power not delegated to some other department or to the federal Government and not denied to it by the federal or state Constitution. Bradley v. Casey, 415 Ill. 576, 114 N.E.2d 681 (1953).

The title of this Act was clear and unmistakable and did not embrace persons directly employed by the state or other public bodies; those provisions of the Act which heretofore might have been construed as requiring payment by public bodies of prevailing per diem wages in direct employment of workmen in construction of public works were invalid as being within the prohibition of Ill. Const. (1870), Art. IV, § 13 (see now Ill. Const., (1970), Art. IV, § 8(d)). Bradley v. Casey, 415 Ill. 576, 114 N.E.2d 681 (1953).

Application and Construction

Trial court erred by denying the Illinois Department of Labor's motion to dismiss the portion of a construction company's complaint seeking injunctive relief and by denying the Department's motion to vacate an injunction order permanently enjoining the Department from commencing penalty proceedings against the construction company for alleged violations of the Prevailing Wage Act, 820 ILCS 130/0.01 et seq., from preventing the construction company to bid on public work, and from seeking back wages under the Act for jobs already completed since the complaint was silent as to an allegation of irreparable damage. The construction company, though validly bringing a declaratory judgment action, simply failed to show how the Department's letters, directing it to pay accrued back wages and penalties constituted irreparable harm for injunctive relief purposes as the construction company, in waiting for a declaration of his rights under the Act had neither complied nor refused to comply with the Department's letters and the Department had not initiated any enforcement or penalty proceedings against it. Brandt Constr. Co. v. Ludwig, 376 Ill. App. 3d 94, 315 Ill. Dec. 890, 878 N.E.2d 116, 2007 Ill. App. LEXIS 1016 (1 Dist. 2007).

Trial court properly denied the motion to dismiss filed by the Director of the Illinois Department of Labor, which sought dismissal of a construction company's declaratory judgment action that sought to enjoin the Department from holding the construction company liable for an increase in the prevailing rate of wages not paid on certain city projects that the construction company received no notice of as the construction company would endure significant hardship if a decision on the notice requirement was not rendered by a court in that it would be put into a dilemma by

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having to choose between: 1) paying the Department for the alleged improper wage increase, or 2) risk serious penalties while continuing and waiting for the axe of the agency prosecution to fall; therefore, if the declaratory complaint survived dismissal, the parties to the dispute could learn the consequences of their actions before acting. Further, because the trial court's interpretation of the Prevailing Wage Act's notice provision would allow the parties to alter their conduct to avoid liability in the future, the doctrine of nonliability for past conduct barring declaratory relief was inapplicable to the case, and all of the exceptions to the requirement that the construction company was suppose to exhaust all of its administrative remedies before filing suit existed in that the Department, by its letters to the construction company demanding the back pay and imposing penalties upon it, established a clear position and, with the Department's claims that publication on its website and passage of an ordinance by a public body satisfied the notice provision, the legal questions presented in the action were within the province of judicial review and outside the scope of the exhaustion of remedies doctrine. Brandt Constr. Co. v. Ludwig, 376 Ill. App. 3d 94, 315 Ill. Dec. 890, 878 N.E.2d 116, 2007 Ill. App. LEXIS 1016 (1 Dist. 2007).

The language of this Act is clear and unambiguous, and is not restricted to institutions wholly supported by public funds. People ex rel. Bernardi v. Illini Community Hosp., 163 Ill. App. 3d 987, 114 Ill. Dec. 926, 516 N.E.2d 1320 (4 Dist. 1987).

Time Limitations

A suit under the Prevailing Wage Act (Act), 820 ILCS 130/0.01 et seq. (2000), qualifies as an action "not otherwise provided for" under 735 ILCS 5/13-205 (2000) because the Act is silent regarding a limitations period, and accordingly, the five-year "catch-all" period applies to claims brought under the Act. Seaman v. Thompson Elecs. Co., 325 Ill. App. 3d 560, 259 Ill. Dec. 331, 758 N.E.2d 454, 2001 Ill. App. LEXIS 776 (3 Dist. 2001).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Employment Law," see 26 S. Ill. U.L.J. 613 (2002).

For article, "The Presumptive Effect of ERISA on the Prevailing Wage Act," see 29 J. Marshall L. Rev. 55 (1996).

For article, "Labor Law: 1987-88 Illinois Law Survey," see 20 Loy. U. Chi. L.J. 527 (1988-89).

For article, "Atrophied Rights: Maximum Hours Labor Standards under the FLSA and Illinois Law," see 28 N. Ill. U. L. Rev. 261 (2008).

RESEARCH REFERENCES

What entities or projects are "public" for purposes of state statutes requiring payment of prevailing wages on public works projects. 5 ALR5th 470.

§ 820 ILCS 130/1. [Public policy]

Sec. 1. It is the policy of the State of Illinois that a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the

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work is performed, shall be paid to all laborers, workers and mechanics employed by or on behalf of any and all public bodies engaged in public works.

(Source: P.A. 83-443.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39s-1.

Cross References.

As for the requirement that all employment contracts let by the State Toll Highway Authority must conform to the applicable provisions of this Act, see 605 ILCS 10/8.

As to rules and regulations pertaining to public works contracts under this Act, see 30 ILCS 505/6.

As to wages for those employed on public works projects under this Act, see 30 ILCS 750/23-1.

CASE NOTES

Analysis

Constitutionality
In General
Applicability
Contribution
Joint Employer
Legislative Intent
Notice
Purpose
Standing
Work of a Similar Character
- Not Shown

Constitutionality

Alleged errors by the Director of the Illinois Department of Labor in interpreting the Illinois Prevailing Wage Act (IPWA), 820 ILCS 130/1 et seq., were not actionable under 42 U.S.C. § 1983 as a due process violation, nor could a due process claim be based on potential stigma that might result if landscape contractors were determined to have violated the IPWA; however, contractors and their officers and owners did state a procedural due process claim based on allegations that they had a property interest in money from public landscaping contracts that they should not have to pay in the form of excessively high wages. Beary Landscaping, Inc. v. Ludwig, 479 F. Supp. 2d 857, 2007 U.S. Dist. LEXIS 23431 (N.D. Ill. 2007).

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This Act is not unconstitutional as requiring public bodies to pay workers on construction projects more than they would without the statute, nor does it violate the due process and equal protection clauses of Ill. Const.(1970), Art. I, § 2 and U.S. Const., Amend. XIV, § 1. People ex rel. Bernardi v. Roofing Sys., 101 Ill. 2d 424, 78 Ill. Dec. 945, 463 N.E.2d 123 (1984).

This Act does not violate due process, because it bears a rational relationship to a legitimate state interest; the same observations sustain the Act against attack under the minimum scrutiny standard of the equal protection clause. Hayen v. County of Ogle, 101 Ill. 2d 413, 78 Ill. Dec. 946, 463 N.E.2d 124 (1984).

This Act, which in essence sets a minimum wage for public works projects, is not arbitrary and thus violates neither due process nor equal protection. Hayen v. County of Ogle, 116 Ill. App. 3d 80, 71 Ill. Dec. 644, 451 N.E.2d 612 (2 Dist. 1983).

In General

This Act is a public policy statute; public bodies are required to adhere to its provisions. Fox River Valley Dist. Council v. Board of Educ., 57 Ill. App. 3d 345, 14 Ill. Dec. 929, 373 N.E.2d 60 (2 Dist. 1978).

Applicability

Developers were not required to have paid a prevailing wage pursuant to the Prevailing Wage Act, 820 ILCS 130/1 et seq. (Act), on a redevelopment project that they undertook in the town. The legislature intended that the Act would subject "public bodies" under 820 ILCS 130/2, which the developers as private individuals building private residences were not, to paying prevailing wages to workers employed on public works. Town of Normal v. Hafner, 395 Ill. App. 3d 589, 335 Ill. Dec. 455, 918 N.E.2d 1268, 2009 Ill. App. LEXIS 1168 (4 Dist. 2009).

Contribution

Illinois Prevailing Wage Act, 820 ILCS 130/1 et seq. does not expressly create a tort duty, and a plain reading of the Act indicates that it was not intended to protect human life or property; therefore, the Act cannot create a duty in tort. As a result, a subcontractor found liable under the Act was unable to seek contribution under 740 ILCS 100/2(a) because there was no showing that both it and a general contractor were subject to liability in tort for the underpayment of the subcontractor's employees, despite a failure to provide notice. People ex rel. DOL v. Valdivia, Ill. App. 3d , 353 Ill. Dec. 164, 955 N.E.2d 631, 2011 Ill. App. LEXIS 886 (2 Dist. 2011).

Joint Employer

Defendant's Fed. R. Civ. P. 12(b)(6) motion to dismiss was denied where (1) viewing workers' allegations, that they worked regularly on defendant's premises and that defendant set their work hours, gave detailed work assignments, supervised their work and maintained records of the hours they worked, in the light most favorable to the workers, and (2) given the liberal notice pleading requirements of Fed. R. Civ. P. 8, the court could not conclude that the defendant was not a joint employer as a matter of law under the Fair Labor Standards Act, the Illinois Prevailing Wage Act, Illinois Workers' Compensation Act, and Illinois Minimum Wage Law. Vega v. Contract Cleaning Maint., Inc., F. Supp. 2d , 2004 U.S. Dist. LEXIS 20949 (N.D. Ill. Oct. 18, 2004).

Legislative Intent

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The legislature intended this Act to apply only to contractors under contracts for public works. Bradley v. Casey, 415 Ill. 576, 114 N.E.2d 681 (1953).

Notice

Lack of notice that a project was a public work under 820 ILCS 130/2 governed by prevailing wage requirements did not relieve a subcontractor of its obligation to pay the prevailing hourly rate because 820 ILCS 130/1, 130/4(a) require payment of back wages at the prevailing rate even when a subcontractor did not receive notice. Because the subcontractor did not pay the prevailing wage, it was liable for penalties as provided in 820 ILCS 130/11. People ex rel. DOL v. Sackville Constr., Inc., 402 Ill. App. 3d 195, 341 Ill. Dec. 549, 930 N.E.2d 1063, 2010 Ill. App. LEXIS 556 (3 Dist. 2010).

Purpose

Foundation, a non-for-profit corporation functioning as a Presbyterian ministry for college students, financed its state university campus construction project with tax-exempt bonds issued under the Illinois Finance Authority Act, 20 ILCS 3501/801-1 et seq. As a result, the foundation was considered to be a "public body" for the purpose of the Prevailing Wage Act, 820 ILCS 130/1 et seq., 820 ILCS 130/2, and 820 ILCS 130/3, which aimed to protect workers, despite the fact that it was a private religious foundation. McKinley Found. at the Univ. of Ill. v. Ill. Dep't of Labor, 404 Ill. App. 3d 1115, 344 Ill. Dec. 179, 936 N.E.2d 708, 2010 Ill. App. LEXIS 955 (4 Dist. 2010).

A purpose of this Act is to ensure that workers receive a decent wage. People ex rel. Bernardi v. Illini Community Hosp., 163 Ill. App. 3d 987, 114 Ill. Dec. 926, 516 N.E.2d 1320 (4 Dist. 1987).

The general purpose of this Act is to compel municipalities and other legal entities to ascertain and pay prevailing wages on public projects. City of Monmouth v. Lorenz, 30 Ill. 2d 60, 195 N.E.2d 661 (1963).

Standing

Where contractor had not alleged a substantial injury, actual or imminent, to any recognized interest in any of his capacities, whether as contractor, taxpayer, or citizen resident, he had no standing to maintain action which sought to enjoin a county highway construction project. Lynch v. Devine, 45 Ill. App. 3d 743, 4 Ill. Dec. 185, 359 N.E.2d 1137 (3 Dist. 1977), overruled on other grounds, Glisson v. City of Marion, 188 Ill. 2d 211, 242 Ill. Dec. 79, 720 N.E.2d 1034 (1999).

Work of a Similar Character

- Not Shown

The Department of Labor did not show that because workers operated a forklift, their work was similar in character to an operating engineer to refute plaintiff's contention that work similar in character to that performed by the workers was the work of attending to masons, regardless of the tools used. Mulligan Masonry Co. v. Martin, 267 Ill. App. 3d 772, 205 Ill. Dec. 289, 643 N.E.2d 240 (2 Dist. 1994).

OPINIONS OF ATTORNEY GENERAL

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Analysis
Applicability
Construction

Applicability

This Act is not applicable to a construction project solely because its funding is facilitated through the linked deposit program; compliance with the provisions of this Act on such a project, however, may be made a condition of the agreement between the treasurer and the financial institution which receives the deposit. 1991 Op. Atty. Gen. (91-003).

Construction

Projects constructed pursuant to The Industrial Project Revenue Bond Act (65 ILCS 5/11-74-1 et seq.) are public works as described in this Act and the Preference to Citizens on Public Works Act (30 ILCS 560/1 et seq.); therefore, such projects should conform to the requirements of those Acts. 1979 Op. Atty. Gen. 155.

LEGAL PERIODICALS

For article, "State and Local Government: 1987-88 Illinois Law Survey," see 20 Loy. U. Chi. L.J. 623 (1988-89).

RESEARCH REFERENCES

What are "prevailing wages," or the like for purposes of state statute requiring payment of prevailing wages on public works projects. 7 ALR5th 400.

What projects involve work subject to state statutes requiring payment of prevailing wages on public works projects. 10 ALR5th 337.

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:49 Generally.

12-403 Midwest Transaction Guide § 403.02 State Statutes.

§ 820 ILCS 130/2. [Applicability; definitions]

Sec. 2. This Act applies to the wages of laborers, mechanics and other workers employed in any public works, as hereinafter defined, by any public body and to anyone under

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contracts for public works. This includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.

As used in this Act, unless the context indicates otherwise:

"Public works" means all fixed works constructed or demolished by any public body, or paid for wholly or in part out of public funds. "Public works" as defined herein includes all projects financed in whole or in part with bonds, grants, loans, or other funds made available by or through the State or any of its political subdivisions, including but not limited to: bonds issued under the Industrial Project Revenue Bond Act (Article 11, Division 74 of the Illinois Municipal Code) [65 ILCS 5/11-74-1 et seq.], the Industrial Building Revenue Bond Act [30 ILCS 425/1 et seq.], the Illinois Finance Authority Act [20 ILCS 3501/801-1 et seq.], the Illinois Sports Facilities Authority Act [70 ILCS 3205/1 et seq.], or the Build Illinois Bond Act; loans or other funds made available pursuant to the Build Illinois Act [30 ILCS 750/1-1 et seq.]; or funds from the Fund for Illinois' Future under Section 6z-47 of the State Finance Act [30 ILCS 105/6z-47], funds for school construction under Section 5 of the General Obligation Bond Act [30 ILCS 330/5], funds authorized under Section 3 of the School Construction Bond Act [30 ILCS 390/3], funds for school infrastructure under Section 6z-45 of the State Finance Act [30 ILCS 105/6z-45], and funds for transportation purposes under Section 4 of the General Obligation Bond Act [30 ILCS 330/4]. "Public works" also includes (i) all projects financed in whole or in part with funds from the Department of Commerce and Economic Opportunity under the Illinois Renewable Fuels Development Program Act [20 ILCS 689/1 et seq.]for which there is no project labor agreement; (ii) all work performed pursuant to a public private agreement under the Public Private Agreements for the Illiana Expressway Act [605 ILCS 130/1 et seq.]; and (iii) all projects undertaken under a public-private agreement under the Public-Private Partnerships for Transportation Act [630 ILCS 5/1 et seq.]. "Public works" also includes all projects at leased facility property used for airport purposes under Section 35 of the Local Government Facility Lease Act [50 ILCS 65/35]. "Public works" also includes the construction of a new wind power facility by a business designated as a High Impact Business under Section 5.5(a)(3)(E) of the Illinois Enterprise Zone Act [20 ILCS 655/5.5]. "Public works" does not include work done directly by any public utility company, whether or not done under public supervision or direction, or paid for wholly or in part out of public funds. "Public works" does not include projects undertaken by the owner at an owner-occupied single-family residence or at an owner-occupied unit of a multi-family residence.

"Construction" means all work on public works involving laborers, workers or mechanics. This includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.

"Locality" means the county where the physical work upon public works is performed, except (1) that if there is not available in the county a sufficient number of competent skilled laborers, workers and mechanics to construct the public works efficiently and properly, "locality" includes any other county nearest the one in which the work or construction is to be performed and from which such persons may be obtained in sufficient numbers to perform the work and (2) that, with respect to contracts for highway work with the Department of Transportation of this State, "locality" may at the discretion

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of the Secretary of the Department of Transportation be construed to include two or more adjacent counties from which workers may be accessible for work on such construction.

"Public body" means the State or any officer, board or commission of the State or any political subdivision or department thereof, or any institution supported in whole or in part by public funds, and includes every county, city, town, village, township, school district, irrigation, utility, reclamation improvement or other district and every other political subdivision, district or municipality of the state whether such political subdivision, municipality or district operates under a special charter or not.

The terms "general prevailing rate of hourly wages", "general prevailing rate of wages" or "prevailing rate of wages" when used in this Act mean the hourly cash wages plus fringe benefits for training and apprenticeship programs approved by the U.S. Department of Labor, Bureau of Apprenticeship and Training, health and welfare, insurance, vacations and pensions paid generally, in the locality in which the work is being performed, to employees engaged in work of a similar character on public works.

(Source: P.A. 86-799; 86-1028; 91-105, § 5; 91-935, § 25; 92-16, § 106; 93-15, § 905; 93-16, § 5; 93-205, § 890-28; 94-750, § 910; 95-341, § 5; 96-28, § 10; 96-58, § 5; 96-186, § 5; 96-913, § 945; 96-1000, § 695; 97-502, § 950.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39s-2.

Section 996 of P.A. 92-16 contains a "no acceleration or delay" provision, and Section 997 contains a "no revival or extension" provision.

Section 995 of P.A. 96-100o contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

Effect of Amendments. The 1999 amendment by P.A. 91-105, effective January 1, 2000, deleted "as now or hereafter amended" five times in the definition of "Public works"; and inserted "training and apprenticeship programs approved by the U.S. Department of Labor, Bureau of Apprenticeship and Training" in the last paragraph.

The 2001 amendment by P.A. 91-935, effective June 1, 2001, inserted "the Illinois Sports Facilities Authority Act" in the second sentence of the definition of "Public Works"; and made a spelling correction.

The 2001 amendment by P.A. 92-16, effective June 28, 2001, amending the versions of the section both before and after amendment by P.A. 91-935, made a spelling correction.

The 2003 amendment by P.A. 93-15, effective June 11, 2003, in the definition of "public works" deleted "for public use" after "works constructed" in the first sentence, and added the last sentence; and in the definition of "public body" deleted "authorized by law to construct public works or to enter into any contract for the construction of public works" after "public funds" in the first paragraph.

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The 2003 amendment by P.A. 93-16, effective January 1, 2004, in the definition of "public works" deleted "for public use" after "works constructed" in the first sentence, and added the last sentence; and in the definition of "public body" deleted "authorized by law to construct public works or to enter into any contract for the construction of pulic works" after "public funds" in the first paragaraph.

The 2003 amendment by P.A. 93-205, effective January 1, 2004, deleted "Development" preceding "Finance Authority" in the paragraph defining "Public works".

The 2006 amendment by P.A. 94-750, effective May 9, 2006, in the last paragraph substituted "Economic Opportunity" for "Community Affairs" in the next-to-last sentence, and added the last sentence.

The 2007 amendment by P.A.95-341, effective August 21, 2008, added the last sentence in the first paragraph; and added the last sentence in "Construction".

The 2009 amendment by P.A. 96-28, effective June 30, 2009, added the last sentence under the definition of "Public works".

The 2009 amendment by P.A. 96-58, effective January 1, 2010, rewrote the paragraph defining "public works."

The 2009 amendment by P.A. 96-186, effective January 1, 2010, inserted "or demolished" in the first sentence of the definition of "Public works".

The 2010 amendment by P.A. 96-913, effective June 9, 2010, in the definition of "Public works", added the item designation (i), and added item (ii).

The 2010 revisory amendment by P.A. 96-1000, effective July 2, 2010, combined earlier multiple amendments to the section.

The 2011 amendment by P.A. 97-502, effective August 23, 2011, added item (iii) to the end of the third sentence of the definition of Public works; and made a related change.

CASE NOTES

Analysis

Applicability
- Exhaustion of Remedies
- Home Rule Units
- Legislative Intent
- Maintenance
- Premature Action

Laborers and Other Workers
- Landscape Workers
- Prevailing Rate Not Required

Preemption by Federal Law

Public Body
- Authorized to Construct Public Works
- Hospital
- Nonprofit Corporation

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Public Works
- Elements
- Industrial Project Revenue Bond Act
- Public Use
- Real Estate

Applicability

When public money is spent on a public work that is being constructed by a public body, this Act applies. Opportunity Ctr. of S.E. Ill., Inc. v. Bernardi, 204 Ill. App. 3d 945, 150 Ill. Dec. 250, 562 N.E.2d 1053 (5 Dist. 1990).

- Exhaustion of Remedies

Plaintiff's complaint for a declaration that it was a partnership and not in violation of this act was properly dismissed as it was not filed in response to a debarment decision by the department but, rather, in anticipation of such a decision; plaintiff's administrative remedies not were exhausted, and there has been no pursuit of the remedies provided by the act. Schwanke, Schwanke & Assocs. v. Martin, 241 Ill. App. 3d 738, 182 Ill. Dec. 120, 609 N.E.2d 654 (1 Dist. 1992).

- Home Rule Units

A home rule municipality must conform to the requirements of this Act in seeking bids and awarding contracts for public works projects. People ex rel. Bernardi v. City of Highland Park, 121 Ill. 2d 1, 117 Ill. Dec. 155, 520 N.E.2d 316 (1988).

- Legislative Intent

Developers were not required to have paid a prevailing wage pursuant to the Prevailing Wage Act, 820 ILCS 130/1 et seq. (Act), on a redevelopment project that they undertook in the town. The legislature intended that the Act would subject "public bodies" under 820 ILCS 130/2, which the developers as private individuals building private residences were not, to paying prevailing wages to workers employed on public works. Town of Normal v. Hafner, 395 Ill. App. 3d 589, 335 Ill. Dec. 455, 918 N.E.2d 1268, 2009 Ill. App. LEXIS 1168 (4 Dist. 2009).

The legislature intended this Act to provide for the equalization of wages paid for similar jobs only within the public works sector. Hayen v. County of Ogle, 116 Ill. App. 3d 80, 71 Ill. Dec. 644, 451 N.E.2d 612 (2 Dist. 1983).

- Maintenance

Prior to January 1, 1984, maintenance work on existing public works was specifically excepted from this Act; but effective January 1, 1984, this specific exception was eliminated from this section (as amended by Public Act 83-433, § 1). Raibley v. County of Wabash, 153 Ill. App. 3d 1083, 107 Ill. Dec. 1, 506 N.E.2d 744 (5 Dist. 1987).

- Premature Action

Contractor's action seeking a declaratory judgment that it was not in violation of the act was premature as plaintiff's action sought a declaration of nonliability for past conduct and legal advice which would foreclose the Department of Labor's right to take formal action against plaintiff in the future; plaintiff's complaint failed to allege or establish the existence of an actual controversy ripe for judicial determination and the trial court properly dismissed the complaint as being premature. Schwanke, Schwanke & Assocs. v. Martin, 241 Ill. App. 3d 738, 182 Ill. Dec. 120, 609 N.E.2d 654 (1 Dist. 1992).

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Laborers and Other Workers

- Landscape Workers

Administrative law judge's (ALJ) decision to uphold the state labor department's classification of landscape workers as laborers under the Prevailing Wage Act, 820 ILCS 130/1 et seq., was not error, as evidence was presented at the relevant hearing before the ALJ that landscape workers did not possess different skills, knowledge, or abilities from those of laborers, and no evidence established that landscape workers had to undergo specialized training. Ill. Landscape Contrs. Ass'n v. Dep't of Labor, 372 Ill. App. 3d 912, 310 Ill. Dec. 431, 866 N.E.2d 592, 2007 Ill. App. LEXIS 333 (1 Dist. 2007), appeal denied, 225 Ill. 2d 633, 875 N.E.2d 1112, 2007 Ill. LEXIS 1358 (2007).

- Prevailing Rate Not Required

Iron workmen who were not employed steadily on a year-round basis, but were paid by the hour and subject to layoffs, and thereafter to recalls, were not entitled to be paid prevailing rate of wages in locality where work was performed. Seybold v. City of Chicago, 7 Ill. App. 3d 932, 288 N.E.2d 899 (1 Dist. 1972).

Preemption by Federal Law

Where, in a union's claim for wages against a contractor, those wages were based upon fringe benefit contributions for health, welfare, insurance, vacation, and pensions, within the purview of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 et seq., and where the union's claim sought to recover the underpayment of pension, welfare, and education benefits that contractor owed to certain funds, and the fringe benefit contribution compliance audit performed on the contractor attached to the union's complaint specifically found underpayment of welfare, pension, and education contributions, the union's claim was preempted by ERISA. Construction & Gen. Laborers' Dist. Council v. James McHugh Constr. Co., 230 Ill. App. 3d 939, 172 Ill. Dec. 740, 596 N.E.2d 19 (1 Dist.), cert. denied, 146 Ill. 2d 625, 176 Ill. Dec. 795, 602 N.E.2d 449 (1992).

Public Body

- Authorized to Construct Public Works

The words "authorized by law to construct public works" in this section are not words of limitation. Opportunity Ctr. of S.E. Ill., Inc. v. Bernardi, 204 Ill. App. 3d 945, 150 Ill. Dec. 250, 562 N.E.2d 1053 (5 Dist. 1990).

- Hospital

A nonsectarian hospital, which receives tax funds, was a public institution and a public body for purposes of this Act. People ex rel. Bernardi v. Illini Community Hosp., 163 Ill. App. 3d 987, 114 Ill. Dec. 926, 516 N.E.2d 1320 (4 Dist. 1987).

The fact that a public hospital would not be a public body for purposes of other statutes did not control the definition of public body included in this Act. People ex rel. Bernardi v. Illini Community Hosp., 163 Ill. App. 3d 987, 114 Ill. Dec. 926, 516 N.E.2d 1320 (4 Dist. 1987).

- Nonprofit Corporation

Foundation, a non-for-profit corporation functioning as a Presbyterian ministry for college students, financed its state university campus construction project with tax-exempt bonds issued

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under the Illinois Finance Authority Act, 20 ILCS 3501/801-1 et seq. As a result, the foundation was considered to be a "public body" for the purpose of the Prevailing Wage Act, 820 ILCS 130/1 et seq., 820 ILCS 130/2, and 820 ILCS 130/3, which aimed to protect workers, despite the fact that it was a private religious foundation. McKinley Found. at the Univ. of Ill. v. Ill. Dep't of Labor, 404 Ill. App. 3d 1115, 344 Ill. Dec. 179, 936 N.E.2d 708, 2010 Ill. App. LEXIS 955 (4 Dist. 2010).

Private, not-for-profit corporation, whose purpose was to provide social, educational and rehabilitation programs for handicapped and developmentally disabled adults, contracting with the Department of Mental Health and other governmental agencies to provide such services, which received one-half of its money from public funds, and would contract for the construction of public works, was a public body covered by this Act. Opportunity Ctr. of S.E. Ill., Inc. v. Bernardi, 204 Ill. App. 3d 945, 150 Ill. Dec. 250, 562 N.E.2d 1053 (5 Dist. 1990).

Public Works

Lack of notice that a project was a public work under 820 ILCS 130/2 governed by prevailing wage requirements did not relieve a subcontractor of its obligation to pay the prevailing hourly rate because 820 ILCS 130/1, 130/4(a) require payment of back wages at the prevailing rate even when a subcontractor did not receive notice. Because the subcontractor did not pay the prevailing wage, it was liable for penalties as provided in 820 ILCS 130/11. People ex rel. DOL v. Sackville Constr., Inc., 402 Ill. App. 3d 195, 341 Ill. Dec. 549, 930 N.E.2d 1063, 2010 Ill. App. LEXIS 556 (3 Dist. 2010).

- Elements

A "public work" has two elements: (1) it is a "fixed work"; and (2) it is for a "public use." Opportunity Ctr. of S.E. Ill., Inc. v. Bernardi, 204 Ill. App. 3d 945, 150 Ill. Dec. 250, 562 N.E.2d 1053 (5 Dist. 1990).

- Industrial Project Revenue Bond Act

A warehouse construction project financed and authorized under The Industrial Project Revenue Bond Act (65 ILCS 5/11-74-1 et seq.), was not a public work as defined by this Act, where the actual use of the warehouse was private in nature and where the actual contracting and construction of the warehouse were done by private industry, not a public body. Zickuhr v. Bowling, 97 Ill. App. 3d 534, 53 Ill. Dec. 65, 423 N.E.2d 257 (2 Dist. 1981).

- Public Use

"Public use" does not turn on whether an institution is publicly or privately owned, nor on whether the greater portion of those who use the facility are paying for their use from their own private funds; rather, the term "public use" must be determined so that the broad purpose of the act is not thwarted. Opportunity Ctr. of S.E. Ill., Inc. v. Bernardi, 204 Ill. App. 3d 945, 150 Ill. Dec. 250, 562 N.E.2d 1053 (5 Dist. 1990).

- Real Estate

Real estate is a "fixed work" within the meaning of this section. Opportunity Ctr. of S.E. Ill., Inc. v. Bernardi, 204 Ill. App. 3d 945, 150 Ill. Dec. 250, 562 N.E.2d 1053 (5 Dist. 1990).

OPINIONS OF ATTORNEY GENERAL

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Analysis

Applicability
Prevailing Wage Rate
Public Body

Applicability

Where college foundation, whose sole mission was to support the college, built a structure for public use by a public body upon land belonging to that public body (which was apparently transferred to the foundation solely for construction convenience), to specifications meeting the needs of the public body, it must be concluded that the Act was applicable in these circumstances even though the construction was carried out by the foundation, rather than under the direct supervision of the college. 1997 Op. Atty. Gen. (97-014).

Prevailing Wage Rate

The prevailing rate of wages is to be determined on the basis of separate prevailing rates for hourly cash wages, health and welfare, insurance, vacations and pensions. 1993 Op. Atty. Gen. (93-009).

Because of the statutory procedure set out for determining prevailing rates, a prevailing wage rate is not susceptible to decrease, except in very limited circumstances, if the act is properly enforced and implemented. 1993 Op. Atty. Gen. (93-009).

Public Body

The acceptance of a one-time grant of public funds by a not-for-profit corporation or other private entity for construction of a fixed work, even if the entity does not otherwise receive sufficient public financial support to be considered a 'public body,' will nonetheless subject the entity to the provisions of the Prevailing Wage Act with respect to that project. 2000 Op. Atty. Gen. 18.

A non-governmental entity which provides services to the public and in return receives public funding for its support will be considered a 'public body' to which the provisions of the Prevailing Wage Act will be applicable. 2000 Op. Atty. Gen. 18.

Wabash Valley College, as part of a community college district, is a "public body" for purposes of the Act; therefore, the construction of any building by the College for its own use would be subject to the requirements of the Act. 1997 Op. Atty. Gen. (97-014).

LEGAL PERIODICALS

For article, "The Presumptive Effect of ERISA on the Prevailing Wage Act," see 29 J. Marshall L. Rev. 55 (1996).

RESEARCH REFERENCES

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What are "prevailing wages," or the like for purposes of state statute requiring payment of prevailing wages on public works projects. 7 ALR5th 400.

What projects involve work subject to state statutes requiring payment of prevailing wages on public works projects. 10 ALR5th 337.

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:50 Application of Prevailing Wage Act to public works.

§ 820 ILCS 130/3. [Prevailing rate of hourly wages for construction of public works]

Sec. 3. Not less than the general prevailing rate of hourly wages for work of a similar character on public works in the locality in which the work is performed, and not less than the general prevailing rate of hourly wages for legal holiday and overtime work, shall be paid to all laborers, workers and mechanics employed by or on behalf of any public body engaged in the construction or demolition of public works. This includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented. Only such laborers, workers and mechanics as are directly employed by contractors or subcontractors in actual construction work on the site of the building or construction job, and laborers, workers and mechanics engaged in the transportation of materials and equipment to or from the site, but not including the transportation by the sellers and suppliers or the manufacture or processing of materials or equipment, in the execution of any contract or contracts for public works with any public body shall be deemed to be employed upon public works. The wage for a tradesman performing maintenance is equivalent to that of a tradesman engaged in construction or demolition.

(Source: P.A. 83-443; 93-15, § 905; 93-16, § 5; 95-341, § 5; 96-186, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39s-3.

Effect of Amendments. The 2003 amendment by P.A. 93-15, effective June 11, 2003, added the last sentence.

The 2003 amendment by P.A. 93-16, effective January 1, 2004, added the last sentence.

The 2007 amendment by P.A.95-341, effective August 21, 2008, added the second sentence.

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The 2009 amendment by P.A. 96-186, effective January 1, 2010, inserted "or demolition" in the first and last sentences.

CASE NOTES

Analysis

Constitutionality
Excluded Individuals
Generally Prevailing Wages
- Determinative Factors
- Pay Negotiation
Landscape Workers
Legislative Intent
Public Works
- Maintenance Workers
Purpose

Constitutionality

Because the State has an interest in seeing that its projects are completed by workers with at least average skills, the Prevailing Wage Act, 820 ILCS 130/3 (formerly Ill. Rev. Stat. ch. 48, paras. 39s-1 to 39s-12), is not unconstitutional under Ill. Const. (1970), Art. I, § 2 because the Act bears a rational relationship to a legitimate State interest. People ex rel. Bernardi v. Roofing Systems, Inc., 101 Ill. 2d 424, 78 Ill. Dec. 945, 463 N.E.2d 123, 1984 Ill. LEXIS 272 (1984).

A former version of this section, defining wages under a collective bargaining agreement as the prevailing rate of wages in a given locality, was invalid for the reason that it delegated a discretionary legislative power to private parties and that it tended to be too restrictive and discriminatory. Bradley v. Casey, 415 Ill. 576, 114 N.E.2d 681 (1953).

This section did not violate the doctrine of liberty to contract, since a company would be free to determine for itself whether it should adopt the policy of employing the cheapest labor it can obtain in the cheapest market or the policy of paying at least as much as the average workman would receive in the locality where the work is to be done. Bradley v. Casey, 415 Ill. 576, 114 N.E.2d 681 (1953).

Excluded Individuals

Those employed by sellers or suppliers engaged in the transportation of materials are excluded from coverage therefore the truck drivers fell specifically within the exemption; the fact they dumped the material where it would be used is not dispositive as they did not perform actual construction work on the site of the construction project, rather, any "spreading" done by them was a result of the unloading process and was the final act of unloading; they did not get out of their trucks and spread the material; all handling of the material was done by other workers on the project. Sparks & Wiewel Constr. Co. v. Martin, 250 Ill. App. 3d 955, 189 Ill. Dec. 565, 620 N.E.2d 533 (4 Dist.), appeal denied, 153 Ill. 2d 570, 191 Ill. Dec. 629, 624 N.E.2d 817 (1993).

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Generally Prevailing Wages

- Determinative Factors

This section does not require the county to use any specific formula in calculating the generally prevailing wage; rather, the county must simply ascertain the "generally current" or "most frequent" wage for each particular craft in public construction projects in the area. Hayen v. County of Ogle, 116 Ill. App. 3d 80, 71 Ill. Dec. 644, 451 N.E.2d 612 (2 Dist. 1983).

- Pay Negotiation

A contractor's privilege of paying his employees whatever wages he can negotiate is not one of the fundamental rights of national citizenship guaranteed by the privileges and immunities clause of U.S. Const., Amend. XIV, § 1. Hayen v. County of Ogle, 101 Ill. 2d 413, 78 Ill. Dec. 946, 463 N.E.2d 124 (1984).

Landscape Workers

Given the administrative and judicial remedies available in a related prior case, the state department of labor did not impermissibly delegate its regulatory power to a union's collective bargaining agreement (CBA) signatories by referring to the union's CBA, rather than another CBA, to determine the prevailing wage for plantsmen, and the determination was reasonable and did not violate Due Process Clause. Beary Landscaping, Inc. v. Costigan, 667 F.3d 947, 2012 U.S. App. LEXIS 1784 (7th Cir. 2012).

Administrative law judge's (ALJ) decision to uphold the state labor department's classification of landscape workers as laborers under the Prevailing Wage Act, 820 ILCS 130/1 et seq., was not error, as evidence was presented at the relevant hearing before the ALJ that landscape workers did not possess different skills, knowledge, or abilities from those of laborers, and no evidence established that landscape workers had to undergo specialized training. Ill. Landscape Contrs. Ass'n v. Dep't of Labor, 372 Ill. App. 3d 912, 310 Ill. Dec. 431, 866 N.E.2d 592, 2007 Ill. App. LEXIS 333 (1 Dist. 2007), appeal denied, 225 Ill. 2d 633, 875 N.E.2d 1112, 2007 Ill. LEXIS 1358 (2007).

Legislative Intent

The intent of this Act is to ensure that on public works projects, no contractor or subcontractor can pay workers less than the going rate for the job to be done. Frye v. County of Iroquois, 140 Ill. App. 3d 749, 95 Ill. Dec. 185, 489 N.E.2d 406 (3 Dist. 1986).

Public Works

- Maintenance Workers

Frye v. County of Iroquois, 140 Ill. App. 3d 749, 489 N.E.2d 406 (3d Dist. 1986), established that even though maintenance is no longer excluded from the process of determining prevailing wages, neither is it mandated that the prevailing wage for a tradesman performing maintenance be equivalent to that of a construction worker. Raibley v. County of Wabash, 153 Ill. App. 3d 1083, 107 Ill. Dec. 1, 506 N.E.2d 744 (5 Dist. 1987).

Purpose

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Foundation, a non-for-profit corporation functioning as a Presbyterian ministry for college students, financed its state university campus construction project with tax-exempt bonds issued under the Illinois Finance Authority Act, 20 ILCS 3501/801-1 et seq. As a result, the foundation was considered to be a "public body" for the purpose of the Prevailing Wage Act, 820 ILCS 130/1 et seq., 820 ILCS 130/2, and 820 ILCS 130/3, which aimed to protect workers, despite the fact that it was a private religious foundation. McKinley Found. at the Univ. of Ill. v. Ill. Dep't of Labor, 404 Ill. App. 3d 1115, 344 Ill. Dec. 179, 936 N.E.2d 708, 2010 Ill. App. LEXIS 955 (4 Dist. 2010).

One of the purposes of this Act is to protect local workers by removing the incentive to import less expensive labor from areas outside the locality in which the work is being performed. Lake County Contractors Dev. Ass'n v. North Shore San. Dist., 198 Ill. App. 3d 31, 144 Ill. Dec. 326, 555 N.E.2d 445 (2 Dist. 1990).

OPINIONS OF ATTORNEY GENERAL

Analysis

Applicability
Maintenance Work
Public Body

Applicability

The Illinois statute requiring payment of "prevailing" wages on public works does not apply to repair of private homes under the Federal Community Development Block Grant Program. 1977 Op. Atty. Gen. 193.

Maintenance Work

Prior to the enactment of Public Act 83-443, effective January 1, 1984, the Act contained language excluding "maintenance work," from the application of its provisions; the Public Act, however, specifically deleted all language exempting maintenance work on public works projects for the provisions of the Act. Thus, the state and its subdivisions are now required to pay the prevailing wage on all public works projects including those which would have previously fallen within the exception for maintenance work. 1984 Op. Atty. Gen. 47.

Public Body

A nongovernmental institution may be considered a public body, for purposes of this Act, if it is supported in whole or in part by public funds; thus, this Act will be applicable when the entity receiving financing comes within the definition of "public body," because it is otherwise supported by public funds. 1991 Op. Atty. Gen. (91-003).

The fact that a financial institution is enabled by a deposit of state funds to make a private loan to an entity which is not otherwise a "public body" does not transform that entity into a "public body," or the project into a "public work.", 1991 Op. Atty. Gen. (91-003).

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RESEARCH REFERENCES

Who is "employee," "workman," or the like, of contractor subject to state requiring payment of prevailing wages on public works projects. 5 ALR5th 513.

Practice Guides and Treatises.

12-403 Midwest Transaction Guide § 403.51 Contracting With State Government.

§ 820 ILCS 130/4. Ascertaining prevailing wage

Sec. 4. Ascertaining prevailing wage. (a) The public body awarding any contract for public work or otherwise undertaking any public works, shall ascertain the general prevailing rate of hourly wages in the locality in which the work is to be performed, for each craft or type of worker or mechanic needed to execute the contract, and where the public body performs the work without letting a contract therefor, shall ascertain the prevailing rate of wages on a per hour basis in the locality, and such public body shall specify in the resolution or ordinance and in the call for bids for the contract, that the general prevailing rate of wages in the locality for each craft or type of worker or mechanic needed to execute the contract or perform such work, also the general prevailing rate for legal holiday and overtime work, as ascertained by the public body or by the Department of Labor shall be paid for each craft or type of worker needed to execute the contract or to perform such work, and it shall be mandatory upon the contractor to whom the contract is awarded and upon any subcontractor under him, and where the public body performs the work, upon the public body, to pay not less than the specified rates to all laborers, workers and mechanics employed by them in the execution of the contract or such work; provided, however, that if the public body desires that the Department of Labor ascertain the prevailing rate of wages, it shall notify the Department of Labor to ascertain the general prevailing rate of hourly wages for work under contract, or for work performed by a public body without letting a contract as required in the locality in which the work is to be performed, for each craft or type of worker or mechanic needed to execute the contract or project or work to be performed. Upon such notification the Department of Labor shall ascertain such general prevailing rate of wages, and certify the prevailing wage to such public body.

(a-1) The public body or other entity awarding the contract shall cause to be inserted in the project specifications and the contract a stipulation to the effect that not less than the prevailing rate of wages as found by the public body or Department of Labor or determined by the court on review shall be paid to all laborers, workers and mechanics performing work under the contract.

(a-2) When a public body or other entity covered by this Act has awarded work to a contractor without a public bid, contract or project specification, such public body or other entity shall comply with subsection (a-1) by providing the contractor with written

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notice on the purchase order related to the work to be done or on a separate document indicating that not less than the prevailing rate of wages as found by the public body or Department of Labor or determined by the court on review shall be paid to all laborers, workers, and mechanics performing work on the project.

(a-3) Where a complaint is made and the Department of Labor determines that a violation occurred, the Department of Labor shall determine if proper written notice under this Section 4 [820 ILCS 130/4] was given. If proper written notice was not provided to the contractor by the public body or other entity, the Department of Labor shall order the public body or other entity to pay any interest, penalties or fines that would have been owed by the contractor if proper written notice were provided. The failure by a public body or other entity to provide written notice does not relieve the contractor of the duty to comply with the prevailing wage rate, nor of the obligation to pay any back wages, as determined under this Act. For the purposes of this subsection, back wages shall be limited to the difference between the actual amount paid and the prevailing rate of wages required to be paid for the project. The failure of a public body or other entity to provide written notice under this Section 4 does not diminish the right of a laborer, worker, or mechanic to the prevailing rate of wages as determined under this Act.

(b) It shall also be mandatory upon the contractor to whom the contract is awarded to insert into each subcontract and into the project specifications for each subcontract a written stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work under the contract. It shall also be mandatory upon each subcontractor to cause to be inserted into each lower tiered subcontract and into the project specifications for each lower tiered subcontract a stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work under the contract. A contractor or subcontractor who fails to comply with this subsection (b) is in violation of this Act.

(b-1) When a contractor has awarded work to a subcontractor without a contract or contract specification, the contractor shall comply with subsection (b) by providing a subcontractor with a written statement indicating that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work on the project. A contractor or subcontractor who fails to comply with this subsection (b-1) is in violation of this Act.

(b-2) Where a complaint is made and the Department of Labor determines that a violation has occurred, the Department of Labor shall determine if proper written notice under this Section 4 was given. If proper written notice was not provided to the subcontractor by the contractor, the Department of Labor shall order the contractor to pay any interest, penalties, or fines that would have been owed by the subcontractor if proper written notice were provided. The failure by a contractor to provide written notice to a subcontractor does not relieve the subcontractor of the duty to comply with the prevailing wage rate, nor of the obligation to pay any back wages, as determined under this Act. For the purposes of this subsection, back wages shall be limited to the difference between the actual amount paid and the prevailing rate of wages required for the project. However, if proper written notice was not provided to the contractor by the public body or other entity under this Section 4, the Department of Labor shall order the public body or other entity

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to pay any interest, penalties, or fines that would have been owed by the subcontractor if proper written notice were provided. The failure by a public body or other entity to provide written notice does not relieve the subcontractor of the duty to comply with the prevailing wage rate, nor of the obligation to pay any back wages, as determined under this Act. For the purposes of this subsection, back wages shall be limited to the difference between the actual amount paid and the prevailing rate of wages required for the project. The failure to provide written notice by a public body, other entity, or contractor does not diminish the right of a laborer, worker, or mechanic to the prevailing rate of wages as determined under this Act.

(c) A public body or other entity shall also require in all contractor's and subcontractor's bonds that the contractor or subcontractor include such provision as will guarantee the faithful performance of such prevailing wage clause as provided by contract or other written instrument. All bid specifications shall list the specified rates to all laborers, workers and mechanics in the locality for each craft or type of worker or mechanic needed to execute the contract.

(d) If the Department of Labor revises the prevailing rate of hourly wages to be paid by the public body, the revised rate shall apply to such contract, and the public body shall be responsible to notify the contractor and each subcontractor, of the revised rate.

(e) Two or more investigatory hearings under this Section on the issue of establishing a new prevailing wage classification for a particular craft or type of worker shall be consolidated in a single hearing before the Department. Such consolidation shall occur whether each separate investigatory hearing is conducted by a public body or the Department. The party requesting a consolidated investigatory hearing shall have the burden of establishing that there is no existing prevailing wage classification for the particular craft or type of worker in any of the localities under consideration.

(f) It shall be mandatory upon the contractor or construction manager to whom a contract for public works is awarded to post, at a location on the project site of the public works that is easily accessible to the workers engaged on the project, the prevailing wage rates for each craft or type of worker or mechanic needed to execute the contract or project or work to be performed. In lieu of posting on the project site of the public works, a contractor which has a business location where laborers, workers, and mechanics regularly visit may: (1) post in a conspicuous location at that business the current prevailing wage rates for each county in which the contractor is performing work; or (2) provide such laborer, worker, or mechanic engaged on the public works project a written notice indicating the prevailing wage rates for the public works project. A failure to post or provide a prevailing wage rate as required by this Section is a violation of this Act.

(Source: P.A. 86-799; 92-783, § 7; 93-15, § 905; 93-16, § 5; 93-38, § 5; 95-331, § 1270; 96-437, § 5.)

Note.

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This section was Ill.Rev.Stat., Ch. 48, Para. 39s-4.

Effect of Amendments. The 2002 amendment by P.A. 92-783, effective January 1, 2003, added the last three sentences beginning "Two or more investigatory hearings".

The 2003 amendment by P.A. 93-15, effective June 11, 2003, added the last paragraph.

The 2003 amendment by P.A. 93-16, effective January 1, 2004, added the last paragraph.

The 2003 amendment by P.A. 93-38, effective June 1, 2004, added the subsection designations and inserted subsection (b); and in subsection (a) in the last sentence inserted "project specifications and the".

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, combined earlier multiple amendments to the section and added the subsection designation "(f)".

The 2009 amendment by P.A. 96-437, effective January 10, 2010, added the section heading; added the (a-1) designation; added "or other entity" in (a-1); added (a-2), (a-3), (b-1), and (b-2); in the first sentence of (c), substituted "A public body or other entity" for "It", substituted "contractor's and subcontractor's" for "such contractor's," added "or subcontractor," and added "or other written instrument"; in (f), added the second sentence and added "or provide" in the last sentence.

CASE NOTES

Analysis

Ascertaining Prevailing Wages
- Federal Prevailing Wage Calculation
- Inquiry Limited
- Legislative Intent
- Maintenance Workers
- Notice
- Overtime
- Wage Rate Statements

Contract Terms
Injunctive Relief
Landscape Workers
Ordinances

Ascertaining Prevailing Wages

- Federal Prevailing Wage Calculation

The supremacy clause of the United States Constitution (U.S. Const., Art. VI) does not require that this state adopt the same scheme for calculating the prevailing wage rate on state or local construction projects as the one the federal government has adopted under the prevailing wage provisions of the Davis-Bacon Act (40 U.S.C.S., § 276a et seq.) for federal construction projects. Hayen v. County of Ogle, 101 Ill. 2d 413, 78 Ill. Dec. 946, 463 N.E.2d 124 (1984).

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- Inquiry Limited

The phrase "on public works" in the first sentence of 820 ILCS 130/3 has the effect of limiting the inquiry in ascertaining the prevailing wage rate to only those wages paid on public projects. Hayen v. County of Ogle, 116 Ill. App. 3d 80, 71 Ill. Dec. 644, 451 N.E.2d 612 (2 Dist. 1983).

The words "on public works" have the effect of limiting the field of inquiry in ascertaining the prevailing wage rates prescribed by the statute; but those words are not the decisive factor in establishing the prevailing wage rate. Anderson v. County of Jo Daviess, 81 Ill. App. 3d 354, 36 Ill. Dec. 584, 401 N.E.2d 265 (2 Dist. 1980).

- Legislative Intent

The intent of this Act the statute was to determine and require payment of the prevailing wage in the locality in question for construction (not maintenance) work on public works; the language is not open to the charge that it fixes rather than finds or ascertains a standard, so there is no unlawful delegation of a union's authority to set wage rates. Anderson v. County of Jo Daviess, 81 Ill. App. 3d 354, 36 Ill. Dec. 584, 401 N.E.2d 265 (2 Dist. 1980).

- Maintenance Workers

Evidence of prevailing wage rates for maintenance workers held sufficient to support municipal board's ascertainment of the prevailing wages. Raibley v. County of Wabash, 153 Ill. App. 3d 1083, 107 Ill. Dec. 1, 506 N.E.2d 744 (5 Dist. 1987).

- Notice

Illinois Prevailing Wage Act, 820 ILCS 130/1 et seq. does not expressly create a tort duty, and a plain reading of the Act indicates that it was not intended to protect human life or property; therefore, the Act cannot create a duty in tort. As a result, a subcontractor found liable under the Act was unable to seek contribution under 740 ILCS 100/2(a) because there was no showing that both it and a general contractor were subject to liability in tort for the underpayment of the subcontractor's employees, despite a failure to provide notice. People ex rel. DOL v. Valdivia, Ill. App. 3d , 353 Ill. Dec. 164, 955 N.E.2d 631, 2011 Ill. App. LEXIS 886 (2 Dist. 2011).

Lack of notice that a project was a public work under 820 ILCS 130/2 governed by prevailing wage requirements did not relieve a subcontractor of its obligation to pay the prevailing hourly rate because 820 ILCS 130/1, 130/4(a) require payment of back wages at the prevailing rate even when a subcontractor did not receive notice. Because the subcontractor did not pay the prevailing wage, it was liable for penalties as provided in 820 ILCS 130/11. People ex rel. DOL v. Sackville Constr., Inc., 402 Ill. App. 3d 195, 341 Ill. Dec. 549, 930 N.E.2d 1063, 2010 Ill. App. LEXIS 556 (3 Dist. 2010).

Trial court properly denied the motion to dismiss filed by the Director of the Illinois Department of Labor, which sought dismissal of a construction company's declaratory judgment action that sought to enjoin the Department from holding the construction company liable for an increase in the prevailing rate of wages not paid on certain city projects that the construction company received no notice of as the construction company would endure significant hardship if a decision on the notice requirement was not rendered by a court in that it would be put into a dilemma by having to choose between: 1) paying the Department for the alleged improper wage increase, or 2) risk serious penalties while continuing and waiting for the axe of the agency prosecution to fall; therefore, if the declaratory complaint survived dismissal, the parties to the dispute could learn the consequences of their actions before acting. Further, because the trial court's interpretation of the Prevailing Wage Act's notice provision would allow the parties to alter their conduct to avoid liability in the future, the doctrine of nonliability for past conduct barring declaratory relief was inapplicable to the case, and all of the exceptions to the requirement that the construction company was suppose to exhaust all of its administrative remedies before filing suit existed in that the Department, by its letters to the construction company demanding the back pay and

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imposing penalties upon it, established a clear position and, with the Department's claims that publication on its website and passage of an ordinance by a public body satisfied the notice provision, the legal questions presented in the action were within the province of judicial review and outside the scope of the exhaustion of remedies doctrine. Brandt Constr. Co. v. Ludwig, 376 Ill. App. 3d 94, 315 Ill. Dec. 890, 878 N.E.2d 116, 2007 Ill. App. LEXIS 1016 (1 Dist. 2007).

Failure of several cities to give a general contractor notice of the revised prevailing rate of wages does not relieve the general contractor from its obligation to pay wages at the revised increased rate. Brandt Constr. Co. v. Ludwig, 376 Ill. App. 3d 94, 315 Ill. Dec. 890, 878 N.E.2d 116, 2007 Ill. App. LEXIS 1016 (1 Dist. 2007).

Language of 820 ILCS130/4(d) places an affirmative obligation on all public bodies to notify the contractor that the prevailing wage has been revised with the public body being responsible for providing actual notice of the revised rate to the contractor. Brandt Constr. Co. v. Ludwig, 376 Ill. App. 3d 94, 315 Ill. Dec. 890, 878 N.E.2d 116, 2007 Ill. App. LEXIS 1016 (1 Dist. 2007).

Mere publication of prevailing rates does not satisfy a public body's statutory obligation to notify the contractor of the newly-revised wage rate under 820 ILCS 130/4(d). Brandt Constr. Co. v. Ludwig, 376 Ill. App. 3d 94, 315 Ill. Dec. 890, 878 N.E.2d 116, 2007 Ill. App. LEXIS 1016 (1 Dist. 2007).

- Overtime

This Act authorizes the Department of Labor or a public body to determine the prevailing overtime practices. Lake County Contractors Dev. Ass'n v. North Shore San. Dist., 198 Ill. App. 3d 31, 144 Ill. Dec. 326, 555 N.E.2d 445 (2 Dist. 1990).

- Wage Rate Statements

Signed statements by contractors in the localities showing wage rates paid by them on public works are not objectionable as a means of ascertaining the prevailing wages on such projects. Anderson v. County of Jo Daviess, 81 Ill. App. 3d 354, 36 Ill. Dec. 584, 401 N.E.2d 265 (2 Dist. 1980).

Contract Terms

If a contract contains a general prevailing wage provision and if the prevailing wage has been determined by either the public body or the Department of Labor, the contractor is bound to pay the contractor's relevant employees that specified wage. Contreras v. Control Resources Corp., 680 F. Supp. 289 (N.D. Ill. 1988).

This section does not require that the specific amount of the prevailing wage be included in the public works contract; instead, it merely calls on the public body itself or the Department of Labor to "ascertain" the amount. Contreras v. Control Resources Corp., 680 F. Supp. 289 (N.D. Ill. 1988).

The employer mandated a prevailing wage rate, where two contracts, by incorporating the advertisement for bids in the contracts' provisions, unambiguously called for the prevailing rate of wages to be paid to the employees of company who worked on an asbestos-removal projects. Contreras v. Control Resources Corp., 680 F. Supp. 289 (N.D. Ill. 1988).

Injunctive Relief

Trial court erred by denying the Illinois Department of Labor's motion to dismiss the portion of a construction company's complaint seeking injunctive relief and by denying the Department's motion to vacate an injunction order permanently enjoining the Department from commencing

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penalty proceedings against the construction company for alleged violations of the Prevailing Wage Act, 820 ILCS 130/0.01 et seq., from preventing the construction company to bid on public work, and from seeking back wages under the Act for jobs already completed since the complaint was silent as to an allegation of irreparable damage. The construction company, though validly bringing a declaratory judgment action, simply failed to show how the Department's letters, directing it to pay accrued back wages and penalties constituted irreparable harm for injunctive relief purposes as the construction company, in waiting for a declaration of his rights under the Act had neither complied nor refused to comply with the Department's letters and the Department had not initiated any enforcement or penalty proceedings against it. Brandt Constr. Co. v. Ludwig, 376 Ill. App. 3d 94, 315 Ill. Dec. 890, 878 N.E.2d 116, 2007 Ill. App. LEXIS 1016 (1 Dist. 2007).

Landscape Workers

Administrative law judge's (ALJ) decision to uphold the state labor department's classification of landscape workers as laborers under the Prevailing Wage Act, 820 ILCS 130/1 et seq., was not error, as evidence was presented at the relevant hearing before the ALJ that landscape workers did not possess different skills, knowledge, or abilities from those of laborers, and no evidence established that landscape workers had to undergo specialized training. Ill. Landscape Contrs. Ass'n v. Dep't of Labor, 372 Ill. App. 3d 912, 310 Ill. Dec. 431, 866 N.E.2d 592, 2007 Ill. App. LEXIS 333 (1 Dist. 2007), appeal denied, 225 Ill. 2d 633, 875 N.E.2d 1112, 2007 Ill. LEXIS 1358 (2007).

Ordinances

Cities, in the construction of public improvements, ought to have the right to select for use the article of substance best fitted and adapted to the purpose, as to deprive the public of the right to select and use such superior articles is opposed to public policy, and positively disadvantageous to the public; an ordinance making it indispensable that an article or substance in the control of but one certain person or corporation be used in the construction of a public work must necessarily create a monopoly in favor of such person or corporation, and may also limit the persons bidding to those who may be able to make the most advantageous terms with the favored person or corporation. Fishburn v. City of Chicago, 171 Ill. 338, 49 N.E. 532 (1898).

LEGAL PERIODICALS

For article, "Survey of Illinois Law: Employment Law," see, See 30 S. Ill. U.L.J. 613 (2006).

RESEARCH REFERENCES

Waiver of competitive bidding requirements for state and local public building and construction contracts. 40 ALR4th 968.

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:52 Determination of rate of wages.

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§ 820 ILCS 130/5. Certified payroll

Sec. 5. Certified payroll. (a) Any contractor and each subcontractor who participates in public works shall:

(1) make and keep, for a period of not less than 3 years from the date of the last payment on a contract or subcontract for public works, records of all laborers, mechanics, and other workers employed by them on the project; the records shall include each worker's name, address, telephone number when available, social security number, classification or classifications, the hourly wages paid in each pay period, the number of hours worked each day, and the starting and ending times of work each day; and

(2) no later than the tenth day of each calendar month file a certified payroll for the immediately preceding month with the public body in charge of the project. A certified payroll must be filed for only those calendar months during which construction on a public works project has occurred. The certified payroll shall consist of a complete copy of the records identified in paragraph (1) of this subsection (a), but may exclude the starting and ending times of work each day. The certified payroll shall be accompanied by a statement signed by the contractor or subcontractor or an officer, employee, or agent of the contractor or subcontractor which avers that: (i) he or she has examined the certified payroll records required to be submitted by the Act and such records are true and accurate; (ii) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required by this Act; and (iii) the contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class A misdemeanor. A general contractor is not prohibited from relying on the certification of a lower tier subcontractor, provided the general contractor does not knowingly rely upon a subcontractor's false certification. Any contractor or subcontractor subject to this Act and any officer, employee, or agent of such contractor or subcontractor whose duty as such officer, employee, or agent it is to file such certified payroll who willfully fails to file such a certified payroll on or before the date such certified payroll is required by this paragraph to be filed and any person who willfully files a false certified payroll that is false as to any material fact is in violation of this Act and guilty of a Class A misdemeanor. The public body in charge of the project shall keep the records submitted in accordance with this paragraph (2) of subsection (a) for a period of not less than 3 years from the date of the last payment for work on a contract or subcontract for public works. The records submitted in accordance with this paragraph (2) of subsection (a) shall be considered public records, except an employee's address, telephone number, and social security number, and made available in accordance with the Freedom of Information Act [5 ILCS 140/1 et seq.]. The public body shall accept any reasonable submissions by the contractor that meet the requirements of this Section.

(b) Upon 7 business days' notice, the contractor and each subcontractor shall make available for inspection and copying at a location within this State during reasonable hours, the records identified in paragraph (1) of subsection (a) of this Section to the public body in charge of the project, its officers and agents, the Director of Labor and his deputies and agents, and to federal, State, or local law enforcement agencies and

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prosecutors.

(Source: P.A. 81-992; 92-783, § 7; 93-38, § 5; 94-515, § 5; 94-1023, § 5; 97-571, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39s-5.

Effect of Amendments. The 2002 amendment by P.A. 92-783, effective January 1, 2003, added the last sentence.

The 2003 amendment by P.A. 93-38, effective June 1, 2004, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2005 amendment by P.A. 94-515, effective August 10, 2005, rewrote the section.

The 2006 amendment by P.A. 94-1023, effective July 12, 2006, added "but may exclude the starting and ending times of work each day" in (a)(2); and twice substituted "7" for "2" in (b).

The 2011 amendment by P.A. 97-571, effective January 1, 2012, in the introductory language of (a), substituted "Any" for "While participating on public works, the" and inserted "who participates in public works"; inserted "from the date of the last payment on a contract or subcontract for public works" in (a)(1); rewrote (a)(2); in (b), inserted "and copying at a location within this State during reasonable hours," deleted "and to" after "officers and agents," and added "and to federal, State, or local law enforcement agencies and prosecutors" to the end; and deleted the former second sentence of (b), which read: "Upon 7 business days' notice, the contractor and each subcontractor shall make such records available at all reasonable hours at a location within this State."

CASE NOTES

Violation of the Act

Under 820 ILCS 130/5 and 820 ILCS 130/6 the individual entities enumerated are responsible for compliance with the provisions of 820 ILCS 130/5 and they are each individually subject to the punishment described in 820 ILCS 130/5. Those sections could not be used by the administrators of certain union benefits funds to hold a general contractor liable for an insolvent subcontractor's failure to pay its employees a prevailing wage. Cement Masons Pension Fund, Local 803 v. William A. Randolph, Inc., 358 Ill. App. 3d 638, 295 Ill. Dec. 77, 832 N.E.2d 228, 2005 Ill. App. LEXIS 598 (1 Dist. 2005), appeal denied, 217 Ill. 2d 559, 300 Ill. Dec. 364, 844 N.E.2d 36 (2005).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:55 Record keeping.

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§ 820 ILCS 130/6. [Penalty; enforcement]

Sec. 6. Any officer, agent or representative of any public body who wilfully violates, or willfully fails to comply with, any of the provisions of this Act, and any contractor or subcontractor, and any officer, employee, or agent thereof, who as such officer, employee, or agent, has a duty to create, keep, maintain, or produce any record or document required by this Act to be created, kept, maintained, or produced who willfully fails to create, keep, maintain, or produce such record or document as or when required by this Act, is guilty of a Class A misdemeanor.

The Department of Labor shall inquire diligently as to any violation of this Act, shall institute actions for penalties herein prescribed, and shall enforce generally the provisions of this Act. The Attorney General shall prosecute such cases upon complaint by the Department or any interested person.

(Source: P.A. 81-992; 94-488, § 5; 97-571, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39s-6.

Effect of Amendments. The 2005 amendment by P.A. 94-488, effective January 1, 2006, substituted "A" for "B" at the end of the first paragraph.

The 2011 amendment by P.A. 97-571, effective January 1, 2012, rewrote the first paragraph of this section, which formerly read: "Any officer, agent or representative of any public body who wilfully violates, or omits to comply with, any of the provisions of this Act, and any contractor or subcontractor, or agent or representative thereof, doing public work as aforesaid, who neglects to keep, or cause to be kept, an accurate record of the names, occupation and actual wages paid to each laborer, worker and mechanic employed by him, in connection with the public work or who refuses to allow access to same at any reasonable hour to any person authorized to inspect same under this Act, is guilty of a Class A misdemeanor."

CASE NOTES

Analysis

Enforcement
- Authority of Department
Injunctive Relief
Penalty
- Upheld
Violation of Act
- Authority of Department

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- Notice

Enforcement

- Authority of Department

An employee of the Department of Labor, whose duties as a conciliator included investigations, was clearly acting within the scope of his employment in carrying out his duty under the statute in advising a general contractor that plaintiffs were being investigated for violations and that payments to plaintiffs should be withheld. Hanzel Constr., Inc. v. Wehde & Southwick, Inc., 130 Ill. App. 3d 196, 85 Ill. Dec. 624, 474 N.E.2d 38 (2 Dist. 1985).

Although the Department of Labor's actions resulted in an interference with plaintiffs' contract, they were not unlawful and were a reasonable means in these circumstances to seek compliance with this Act; as such, a conditional privilege existed permitting the Department to so Act in an effort to preserve and enforce the public policy expressed in the act and justified its conduct. Hanzel Constr., Inc. v. Wehde & Southwick, Inc., 130 Ill. App. 3d 196, 85 Ill. Dec. 624, 474 N.E.2d 38 (2 Dist. 1985).

Injunctive Relief

Trial court erred by denying the Illinois Department of Labor's motion to dismiss the portion of a construction company's complaint seeking injunctive relief and by denying the Department's motion to vacate an injunction order permanently enjoining the Department from commencing penalty proceedings against the construction company for alleged violations of the Prevailing Wage Act, 820 ILCS 130/0.01 et seq., from preventing the construction company to bid on public work, and from seeking back wages under the Act for jobs already completed since the complaint was silent as to an allegation of irreparable damage. The construction company, though validly bringing a declaratory judgment action, simply failed to show how the Department's letters, directing it to pay accrued back wages and penalties constituted irreparable harm for injunctive relief purposes as the construction company, in waiting for a declaration of his rights under the Act had neither complied nor refused to comply with the Department's letters and the Department had not initiated any enforcement or penalty proceedings against it. Brandt Constr. Co. v. Ludwig, 376 Ill. App. 3d 94, 315 Ill. Dec. 890, 878 N.E.2d 116, 2007 Ill. App. LEXIS 1016 (1 Dist. 2007).

Penalty

- Upheld

The defendant Department of Labor's decision to debar plaintiffs from public works contracts for a period of two years because of violations of this Act was not against the manifest weight of the evidence, where the evidence supported the conclusion that the plaintiffs' employees' work day began at 5:30 a.m. and concluded at 5 p.m. to 7 p.m., but the employees were never given lunch or rest breaks where the evidence disclosed that the plaintiffs were not strangers to the provisions of this Act, and where plaintiffs had been in business for some 20 to 25 years. Gray v. Department of Labor, 176 Ill. App. 3d 285, 125 Ill. Dec. 853, 531 N.E.2d 32 (3 Dist. 1988).

Violation of Act

Under 820 ILCS 130/5 and 820 ILCS 130/6 the individual entities enumerated are responsible for compliance with the provisions of 820 ILCS 130/5 and they are each individually subject to the

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punishment described in 820 ILCS 130/5; those sections could not be used by the administrators of certain union benefits funds to hold a general contractor liable for an insolvent subcontractor's failure to pay its employees a prevailing wage. Cement Masons Pension Fund, Local 803 v. William A. Randolph, Inc., 358 Ill. App. 3d 638, 295 Ill. Dec. 77, 832 N.E.2d 228, 2005 Ill. App. LEXIS 598 (1 Dist. 2005), appeal denied, 217 Ill. 2d 559, 300 Ill. Dec. 364, 844 N.E.2d 36 (2005).

- Authority of Department

This Act requires the Department of Labor to inquire diligently into violations and to enforce the terms of the Act. Hanzel Constr., Inc. v. Wehde & Southwick, Inc., 130 Ill. App. 3d 196, 85 Ill. Dec. 624, 474 N.E.2d 38 (2 Dist. 1985).

- Notice

Trial court properly denied the motion to dismiss filed by the Director of the Illinois Department of Labor, which sought dismissal of a construction company's declaratory judgment action that sought to enjoin the Department from holding the construction company liable for an increase in the prevailing rate of wages not paid on certain city projects that the construction company received no notice of as the construction company would endure significant hardship if a decision on the notice requirement was not rendered by a court in that it would be put into a dilemma by having to choose between: 1) paying the Department for the alleged improper wage increase, or 2) risk serious penalties while continuing and waiting for the axe of the agency prosecution to fall; therefore, if the declaratory complaint survived dismissal, the parties to the dispute could learn the consequences of their actions before acting. Further, because the trial court's interpretation of the Prevailing Wage Act's notice provision would allow the parties to alter their conduct to avoid liability in the future, the doctrine of nonliability for past conduct barring declaratory relief was inapplicable to the case, and all of the exceptions to the requirement that the construction company was suppose to exhaust all of its administrative remedies before filing suit existed in that the Department, by its letters to the construction company demanding the back pay and imposing penalties upon it, established a clear position and, with the Department's claims that publication on its website and passage of an ordinance by a public body satisfied the notice provision, the legal questions presented in the action were within the province of judicial review and outside the scope of the exhaustion of remedies doctrine. Brandt Constr. Co. v. Ludwig, 376 Ill. App. 3d 94, 315 Ill. Dec. 890, 878 N.E.2d 116, 2007 Ill. App. LEXIS 1016 (1 Dist. 2007).

LEGAL PERIODICALS

For article, "The Presumptive Effect of ERISA on the Prevailing Wage Act," see 29 J. Marshall L. Rev. 55 (1996).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:58 Enforcement.

§ 820 ILCS 130/7. [Finality of finding]

Sec. 7. The finding of the public body awarding the contract or authorizing the work or the Department of Labor ascertaining and declaring the general prevailing rate of hourly

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wages shall be final for all purposes of the contract for public work then being considered, unless reviewed under the provisions of this Act. Nothing in this Act, however, shall be construed to prohibit the payment to any laborer, worker or mechanic employed on any public work, as aforesaid, of more than the prevailing rate of wages; provided further that nothing in this Act shall be construed to limit the hours of work which may be performed by any person in any particular period of time.

(Source: P.A. 81-992.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39s-7.

CASE NOTES

Analysis

Independent Investigation Required
Wage Rate Determination

Independent Investigation Required

The determinations of the Department of Labor and the North Shore Sanitary District of Lake County were properly set aside by the circuit court where the Sanitary District, County, and Lake County Public Building Commission all adopted the Department's determination as to prevailing wage rates and where no evidence was presented as to any independent investigation by the Sanitary District, County or Commission. Lake County Contractors Dev. Ass'n v. North Shore San. Dist., 198 Ill. App. 3d 31, 144 Ill. Dec. 326, 555 N.E.2d 445 (2 Dist. 1990).

Wage Rate Determination

Park district's determination as to the prevailing wage rate for construction work became final when the state labor department did not object or seek review of that rate pursuant to the Prevailing Wage Act, 820 ILCS 130/0.01 et seq., and, thus, the trial court properly granted summary judgment to the landscape business and the landscape business owner on the state labor department's claim that they did not pay the proper prevailing wage under the Act when they paid the rate established by the park district. People ex rel. Dep't of Labor v. Skoog Landscape & Design, 337 Ill. App. 3d 232, 271 Ill. Dec. 798, 785 N.E.2d 992, 2003 Ill. App. LEXIS 238 (3 Dist. 2003).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:52 Determination of rate of wages.

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§ 820 ILCS 130/8. [Inability to ascertain prevailing rate of wage]

Sec. 8. In the event the public body authorizing the work or the Department of Labor is unable to ascertain the prevailing rate of wage of any class of work required to be performed under the proposed contract, it is the duty of the Department of Labor where the determination of said prevailing rate has been referred to it to so notify the public body authorizing the proposed work, and it is the duty of the public body in either case to state the fact of inability to ascertain said prevailing rate in its resolution, ordinance or notice for bids in which event the clause specifying the prevailing wage as to such class of work may be excluded from the contract unless such wage may be determined by the court on appeal as provided by this Act.

(Source: Laws 1957, p. 2662.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39s-8.

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:52 Determination of rate of wages.

§ 820 ILCS 130/9. [Investigation and ascertainment of prevailing rate during month of June; objections; judicial review]

Sec. 9. To effectuate the purpose and policy of this Act each public body shall, during the month of June of each calendar year, investigate and ascertain the prevailing rate of wages as defined in this Act and publicly post or keep available for inspection by any interested party in the main office of such public body its determination of such prevailing rate of wage and shall promptly file, no later than July 15 of each year, a certified copy thereof in the office of the Secretary of State at Springfield and the office of the Illinois Department of Labor.

The Department of Labor shall during the month of June of each calendar year, investigate and ascertain the prevailing rate of wages for each county in the State. If a public body does not investigate and ascertain the prevailing rate of wages during the month of June as required by the previous paragraph, then the prevailing rate of wages for that public body shall be the rate as determined by the Department under this paragraph for the county in which such public body is located.

Where the Department of Labor ascertains the prevailing rate of wages, it is the duty of the Department of Labor within 30 days after receiving a notice from the public body

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authorizing the proposed work, to conduct an investigation to ascertain the prevailing rate of wages as defined in this Act and such investigation shall be conducted in the locality in which the work is to be performed. The Department of Labor shall send a certified copy of its findings to the public body authorizing the work and keep a record of its findings available for inspection by any interested party in the office of the Department of Labor at Springfield.

The public body except for the Department of Transportation with respect to highway contracts shall within 30 days after filing with the Secretary of State, or the Department of Labor shall within 30 days after filing with such public body, publish in a newspaper of general circulation within the area that the determination is effective, a notice of its determination and shall promptly mail a copy of its determination to any employer, and to any association of employers and to any person or association of employees who have filed their names and addresses, requesting copies of any determination stating the particular rates and the particular class of workers whose wages will be affected by such rates.

At any time within 30 days after the Department of Labor has published on its official web site a prevailing wage schedule, any person affected thereby may object in writing to the determination or such part thereof as they may deem objectionable by filing a written notice with the public body or Department of Labor, whichever has made such determination, stating the specified grounds of the objection. It shall thereafter be the duty of the public body or Department of Labor to set a date for a hearing on the objection after giving written notice to the objectors at least 10 days before the date of the hearing and said notice shall state the time and place of such hearing. Such hearing by a public body shall be held within 45 days after the objection is filed, and shall not be postponed or reset for a later date except upon the consent, in writing, of all the objectors and the public body. If such hearing is not held by the public body within the time herein specified, the Department of Labor may, upon request of the objectors, conduct the hearing on behalf of the public body.

The public body or Department of Labor, whichever has made such determination, is authorized in its discretion to hear each written objection filed separately or consolidate for hearing any one or more written objections filed with them. At such hearing the public body or Department of Labor shall introduce in evidence the investigation it instituted which formed the basis of its determination, and the public body or Department of Labor, or any interested objectors may thereafter introduce such evidence as is material to the issue. Thereafter, the public body or Department of Labor, must rule upon the written objection and make such final determination as it believes the evidence warrants, and promptly file a certified copy of its final determination with such public body and the Secretary of State, and serve a copy by personal service or registered mail on all parties to the proceedings. The final determination by the Department of Labor or a public body shall be rendered within 30 days after the conclusion of the hearing.

If proceedings to review judicially the final determination of the public body or Department of Labor are not instituted as hereafter provided, such determination shall be final and binding.

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The provisions of the Administrative Review Law, and all amendments and modifications thereof [735 ILCS 5/3-101 et seq.], and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of any public body or the Department of Labor hereunder. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure [735 ILCS 5/3-101].

Appeals from all final orders and judgments entered by the court in review of the final administrative decision of the public body or Department of Labor, may be taken by any party to the action.

Any proceeding in any court affecting a determination of the Department of Labor or public body shall have priority in hearing and determination over all other civil proceedings pending in said court, except election contests.

In all reviews or appeals under this Act, it shall be the duty of the Attorney General to represent the Department of Labor, and defend its determination. The Attorney General shall not represent any public body, except the State, in any such review or appeal.

(Source: P.A. 83-201; 93-38, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39s-9.

Effect of Amendments. The 2003 amendment by P.A. 93-38, effective January 1, 2004, in the first paragraph inserted "no later than July 15 of each year" and "and the office of the Illinois Department of Labor"; in the fourth paragraph substituted "30 days after the Department of Labor has published on its official web site a prevailing wage schedule" for "15 days after a certified copy of the determination has been published as herein provided" in the first sentence, and substituted "45 days" for "20 days" in the third sentence; and in the fifth paragraph in the last sentence inserted "the Department of Labor or" and substituted "30 days" for "10 days".

CASE NOTES

Analysis

Equal Protection
Hearing
- Evidence
- Procedure
- Survey Responses
Notice
Objections

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- Timeliness

Equal Protection

Landscaping contractors and their officers and owners sufficiently stated an equal protection claim against the Director of the Illinois Department of Labor (IDOL) based on allegations that the IDOL used a different methodology for purposes of 820 ILCS 130/9 to calculate prevailing wages in the landscaping industry than in the construction industry and that the IDOL engaged in punitive conduct against landscape companies that did not have workers organized by a particular union; the complaint sufficiently alleged improper disparate treatment and retaliatory conduct. Beary Landscaping, Inc. v. Ludwig, 479 F. Supp. 2d 857, 2007 U.S. Dist. LEXIS 23431 (N.D. Ill. 2007).

Hearing

- Evidence

Administrative law judge's (ALJ) decision to uphold the state labor department's classification of landscape workers as laborers under the Prevailing Wage Act, 820 ILCS 130/1 et seq., was not error, as evidence was presented at the relevant hearing before the ALJ that landscape workers did not possess different skills, knowledge, or abilities from those of laborers, and no evidence established that landscape workers had to undergo specialized training. Ill. Landscape Contrs. Ass'n v. Dep't of Labor, 372 Ill. App. 3d 912, 310 Ill. Dec. 431, 866 N.E.2d 592, 2007 Ill. App. LEXIS 333 (1 Dist. 2007), appeal denied, 225 Ill. 2d 633, 875 N.E.2d 1112, 2007 Ill. LEXIS 1358 (2007).

- Procedure

Where a company's records had been audited by the Department of Labor and a deficiency or violation found, this was tantamount to a de facto finding as to the prevailing wage; the company's requests for a hearing under this section should have been granted by the Department. Martin v. Garde, 195 Ill. App. 3d 25, 141 Ill. Dec. 724, 551 N.E.2d 1067 (1 Dist. 1990).

- Survey Responses

In an administrative hearing, information submitted by the county taken from the employers' replies to the questionnaires are not impermissible on the ground of hearsay. Anderson v. County of Jo Daviess, 81 Ill. App. 3d 354, 36 Ill. Dec. 584, 401 N.E.2d 265 (2 Dist. 1980).

Notice

Trial court properly denied the motion to dismiss filed by the Director of the Illinois Department of Labor, which sought dismissal of a construction company's declaratory judgment action that sought to enjoin the Department from holding the construction company liable for an increase in the prevailing rate of wages not paid on certain city projects that the construction company received no notice of as the construction company would endure significant hardship if a decision on the notice requirement was not rendered by a court in that it would be put into a dilemma by having to choose between: 1) paying the Department for the alleged improper wage increase, or 2) risk serious penalties while continuing and waiting for the axe of the agency prosecution to fall; therefore, if the declaratory complaint survived dismissal, the parties to the dispute could learn the consequences of their actions before acting. Further, because the trial court's interpretation of the Prevailing Wage Act's notice provision would allow the parties to alter their conduct to avoid

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liability in the future, the doctrine of nonliability for past conduct barring declaratory relief was inapplicable to the case, and all of the exceptions to the requirement that the construction company was suppose to exhaust all of its administrative remedies before filing suit existed in that the Department, by its letters to the construction company demanding the back pay and imposing penalties upon it, established a clear position and, with the Department's claims that publication on its website and passage of an ordinance by a public body satisfied the notice provision, the legal questions presented in the action were within the province of judicial review and outside the scope of the exhaustion of remedies doctrine. Brandt Constr. Co. v. Ludwig, 376 Ill. App. 3d 94, 315 Ill. Dec. 890, 878 N.E.2d 116, 2007 Ill. App. LEXIS 1016 (1 Dist. 2007).

Objections

- Timeliness

State labor department's failure to timely object to prevailing wage rate determined by a public body, the park district, meant the state labor department could not impose its determination as to what the prevailing wage rate should be on a public works project as the failure to timely object meant the park district's determination was final for purposes of the project where the wage rate was disputed. People ex rel. Dep't of Labor v. Skoog Landscape & Design, 337 Ill. App. 3d 232, 271 Ill. Dec. 798, 785 N.E.2d 992, 2003 Ill. App. LEXIS 238 (3 Dist. 2003).

Upon the expiration of 15 days after the publication of a certified copy of its determination, the Labor Department's hearing officer, presiding over the hearing conducted on behalf of the Lake County Public Building Commission, properly declined to consider new, untimely oral objections to an ordinance specifying the prevailing wage rates for various categories of trade workers on public works projects in Lake County. Lake County Contractors Dev. Ass'n v. North Shore San. Dist., 198 Ill. App. 3d 31, 144 Ill. Dec. 326, 555 N.E.2d 445 (2 Dist. 1990).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:54 Judicial review of wage determination.

Illinois Jurisprudence, Labor and Employment § 3:53 Annual ascertainment of prevailing wage rates; objections, review.

§ 820 ILCS 130/10. [Oaths; depositions; subpoenas]

Sec. 10. The presiding officer of the public body, or his or her authorized representative and the Director of the Department of Labor, or his or her authorized representative may interview workers, administer oaths, take or cause to be taken the depositions of witnesses, and require by subpoena the attendance and testimony of witnesses, and the production of all books, records, and other evidence relative to the matter under investigation or hearing. Such subpoena shall be signed and issued by such presiding officer or his or her authorized representative, or the Director or his or her authorized representative.

Upon request by the Director of Labor or his or her deputies or agents, records shall be copied and submitted for evidence at no cost to the Department of Labor. Every employer upon request shall furnish to the Director or his or her authorized representative, on

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demand, a sworn statement of the accuracy of the records. Any employer who refuses to furnish a sworn statement of the records is in violation of this Act.

In case of failure of any person to comply with any subpoena lawfully issued under this section or on the refusal of any witness to produce evidence or to testify to any matter regarding which he or she may be lawfully interrogated, it is the duty of any circuit court, upon application of such presiding officer or his or her authorized representative, or the Director or his or her authorized representative, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by such court or a refusal to testify therein. Such presiding officer and the Director may certify to official acts.

(Source: P.A. 83-334; 93-38, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39s-10.

Effect of Amendments. The 2003 amendment by P.A. 93-38, effective June 1, 2004, in the first paragraph inserted "interview workers" in the first sentence; and inserted the second paragraph.

CASE NOTES

Analysis

Injunctions
Subpoena
- Challenges
- Private Body
- Remedies

Injunctions

To allow the Department of Labor to exercise their jurisdiction over a party who allegedly was not subject to their jurisdiction, and to allow them to subpoena private records, would be a sufficient irreparable harm to grant the party a preliminary injunction until the issue of jurisdiction is resolved. Opportunity Ctr. of S.W. Ill., Inc. v. Bernardi, 145 Ill. App. 3d 899, 99 Ill. Dec. 765, 496 N.E.2d 340 (5 Dist. 1986).

Subpoena

- Challenges

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Allegations of harassment, coercion and abuse of process raised by employer were sufficient to establish a prima facie case challenging the legitimacy of the department's purpose in issuing subpoena of contract records. Martin v. Garde, 195 Ill. App. 3d 25, 141 Ill. Dec. 724, 551 N.E.2d 1067 (1 Dist. 1990).

Respondent's allegations of harassment and retaliation sufficiently raised the issue of the subpoena's validity so as to require the court to conduct a hearing. People ex rel. Bernardi v. Lawrence & Ahlman, Inc., 105 Ill. App. 3d 470, 61 Ill. Dec. 350, 434 N.E.2d 503 (1 Dist. 1982).

- Private Body

The Director of the Department of Labor has power over public bodies when issuing subpoenas; but a party who was not a public body had a lawful right to protect its records from the Department. Opportunity Ctr. of S.W. Ill., Inc. v. Bernardi, 145 Ill. App. 3d 899, 99 Ill. Dec. 765, 496 N.E.2d 340 (5 Dist. 1986).

- Remedies

The only remedy existing under this section was to go before the Department and to refuse to produce the subpoenaed documents; however, the plaintiff's appearance would be admitting jurisdiction and to being "a public body"; therefore the plaintiffs did not have an adequate remedy at law and properly sought a declaratory judgment and a preliminary injunction. Opportunity Ctr. of S.W. Ill., Inc. v. Bernardi, 145 Ill. App. 3d 899, 99 Ill. Dec. 765, 496 N.E.2d 340 (5 Dist. 1986).

To allow the Department of Labor to exercise their jurisdiction over a party who allegedly was not subject to their jurisdiction, and to allow them to subpoena private records, would be a sufficient irreparable harm to grant the party a preliminary injunction until the issue of jurisdiction is resolved. Opportunity Ctr. of S.W. Ill., Inc. v. Bernardi, 145 Ill. App. 3d 899, 99 Ill. Dec. 765, 496 N.E.2d 340 (5 Dist. 1986).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:53 Annual ascertainment of prevailing wage rates; objections, review.

§ 820 ILCS 130/11. [Compliance; enforcement; civil damages]

Sec. 11. No public works project shall be instituted unless the provisions of this Act have been complied with. The provisions of this Act shall not be applicable to Federal construction projects which require a prevailing wage determination by the United States Secretary of Labor. The Illinois Department of Labor represented by the Attorney General is empowered to sue for injunctive relief against the awarding of any contract or the continuation of work under any contract for public works at a time when the prevailing wage prerequisites have not been met. Any contract for public works awarded at a time when the prevailing wage prerequisites had not been met shall be void as against public policy and the contractor is prohibited from recovering any damages for the voiding of the contract or pursuant to the terms of the contract. The contractor is limited to a claim for amounts actually paid for labor and materials supplied to the public body.

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Where objections to a determination of the prevailing rate of wages or a court action relative thereto is pending, the public body shall not continue work on the project unless sufficient funds are available to pay increased wages if such are finally determined or unless the Department of Labor certifies such determination of the prevailing rate of wages as correct.

Any laborer, worker or mechanic employed by the contractor or by any sub-contractor under him who is paid for his services in a sum less than the stipulated rates for work done under such contract, shall have a right of action for whatever difference there may be between the amount so paid, and the rates provided by the contract together with costs and such reasonable attorney's fees as shall be allowed by the court. Such contractor or subcontractor shall also be liable to the Department of Labor for 20% of such underpayments and shall be additionally liable to the laborer, worker or mechanic for punitive damages in the amount of 2% of the amount of any such penalty to the State for underpayments for each month following the date of payment during which such underpayments remain unpaid. Where a second or subsequent action to recover underpayments is brought against a contractor or subcontractor and the contractor or subcontractor is found liable for underpayments to any laborer, worker, or mechanic, the contractor or subcontractor shall also be liable to the Department of Labor for 50% of the underpayments payable as a result of the second or subsequent action, and shall be additionally liable for 5% of the amount of any such penalty to the State for underpayments for each month following the date of payment during which the underpayments remain unpaid. The Department shall also have a right of action on behalf of any individual who has a right of action under this Section. An action brought to recover same shall be deemed to be a suit for wages, and any and all judgments entered therein shall have the same force and effect as other judgments for wages. At the request of any laborer, workman or mechanic employed by the contractor or by any subcontractor under him who is paid less than the prevailing wage rate required by this Act, the Department of Labor may take an assignment of such wage claim in trust for the assigning laborer, workman or mechanic and may bring any legal action necessary to collect such claim, and the contractor or subcontractor shall be required to pay the costs incurred in collecting such claim.

(Source: P.A. 86-799; 94-488, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39s-11.

Effect of Amendments. The 2005 amendment by P.A. 94-488, effective January 1, 2006, added the third sentence in the second paragraph the language beginning "Where a second" and ending "underpayments remain unpaid."

CASE NOTES

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Analysis

Attorney Fees
Injunctive Relief
- Denied
- Home Rule Unit
- Untimely
Liability
Preemption by Federal Law
Procedure

Attorney Fees

Though he may have been the exclusive source of the false statements upon which the award of attorney's fees was predicated, the president of a company was not a party to the action, nor was he an attorney of record, and was not, therefore, subject to an award of attorney's fees. Plainfield Community Consol. Sch. Dist. No. 202 v. Lindblad Constr. Co., 174 Ill. App. 3d 149, 124 Ill. Dec. 105, 528 N.E.2d 996 (3 Dist. 1988), appeal denied, 124 Ill. 2d 561, 129 Ill. Dec. 155, 535 N.E.2d 920 (1989).

Injunctive Relief

- Denied

Trial court erred by denying the Illinois Department of Labor's motion to dismiss the portion of a construction company's complaint seeking injunctive relief and by denying the Department's motion to vacate an injunction order permanently enjoining the Department from commencing penalty proceedings against the construction company for alleged violations of the Prevailing Wage Act, 820 ILCS 130/0.01 et seq., from preventing the construction company to bid on public work, and from seeking back wages under the Act for jobs already completed since the complaint was silent as to an allegation of irreparable damage. The construction company, though validly bringing a declaratory judgment action, simply failed to show how the Department's letters, directing it to pay accrued back wages and penalties constituted irreparable harm for injunctive relief purposes as the construction company, in waiting for a declaration of his rights under the Act had neither complied nor refused to comply with the Department's letters and the Department had not initiated any enforcement or penalty proceedings against it. Brandt Constr. Co. v. Ludwig, 376 Ill. App. 3d 94, 315 Ill. Dec. 890, 878 N.E.2d 116, 2007 Ill. App. LEXIS 1016 (1 Dist. 2007).

- Home Rule Unit

In an action to determine whether a home rule municipality must conform to the requirements of this Act, appeal was not moot merely because the project which was the subject of the controversy had been completed where injunctions enumerated in the prayer for relief were too late; there was life in the appeal because a decision could have a direct impact on the rights and duties of the parties. People ex rel. Bernardi v. City of Highland Park, 121 Ill. 2d 1, 117 Ill. Dec. 155, 520 N.E.2d 316 (1988).

- Untimely

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State labor department was not entitled to bring an action for an injunction against the landscape business and the landscape business owner for the alleged failure to pay the prevailing wage rate to its employees on a construction project as 820 ILCS 130/11, which empowered the state labor department to seek injunctive relief did not allow an untimely challenge to the park district's determination as to what the prevailing wage rate should be on the park district's projects, which the landscape business and landscape business owner indisputably paid. People ex rel. Dep't of Labor v. Skoog Landscape & Design, 337 Ill. App. 3d 232, 271 Ill. Dec. 798, 785 N.E.2d 992, 2003 Ill. App. LEXIS 238 (3 Dist. 2003).

Liability

Lack of notice that a project was a public work under 820 ILCS 130/2 governed by prevailing wage requirements did not relieve a subcontractor of its obligation to pay the prevailing hourly rate because 820 ILCS 130/1, 130/4(a) require payment of back wages at the prevailing rate even when a subcontractor did not receive notice. Because the subcontractor did not pay the prevailing wage, it was liable for penalties as provided in 820 ILCS 130/11. People ex rel. DOL v. Sackville Constr., Inc., 402 Ill. App. 3d 195, 341 Ill. Dec. 549, 930 N.E.2d 1063, 2010 Ill. App. LEXIS 556 (3 Dist. 2010).

Trial court properly denied the motion to dismiss filed by the Director of the Illinois Department of Labor, which sought dismissal of a construction company's declaratory judgment action that sought to enjoin the Department from holding the construction company liable for an increase in the prevailing rate of wages not paid on certain city projects that the construction company received no notice of as the construction company would endure significant hardship if a decision on the notice requirement was not rendered by a court in that it would be put into a dilemma by having to choose between: 1) paying the Department for the alleged improper wage increase, or 2) risk serious penalties while continuing and waiting for the axe of the agency prosecution to fall; therefore, if the declaratory complaint survived dismissal, the parties to the dispute could learn the consequences of their actions before acting. Further, because the trial court's interpretation of the Prevailing Wage Act's notice provision would allow the parties to alter their conduct to avoid liability in the future, the doctrine of nonliability for past conduct barring declaratory relief was inapplicable to the case, and all of the exceptions to the requirement that the construction company was suppose to exhaust all of its administrative remedies before filing suit existed in that the Department, by its letters to the construction company demanding the back pay and imposing penalties upon it, established a clear position and, with the Department's claims that publication on its website and passage of an ordinance by a public body satisfied the notice provision, the legal questions presented in the action were within the province of judicial review and outside the scope of the exhaustion of remedies doctrine. Brandt Constr. Co. v. Ludwig, 376 Ill. App. 3d 94, 315 Ill. Dec. 890, 878 N.E.2d 116, 2007 Ill. App. LEXIS 1016 (1 Dist. 2007).

Language of 820 ILCS 130/11 does not create a cause of action against a general contractor when an insolvent subcontractor fails to pay its employees the full prevailing wage for their work. Cement Masons Pension Fund, Local 803 v. William A. Randolph, Inc., 358 Ill. App. 3d 638, 295 Ill. Dec. 77, 832 N.E.2d 228, 2005 Ill. App. LEXIS 598 (1 Dist. 2005), appeal denied, 217 Ill. 2d 559, 300 Ill. Dec. 364, 844 N.E.2d 36 (2005).

Preemption by Federal Law

Where, in a union's claim for wages against a contractor, those wages were based upon fringe benefit contributions for health, welfare, insurance, vacation, and pensions, within the purview of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 et seq., and where the union's claim sought to recover the underpayment of pension, welfare, and education benefits that contractor owed to certain funds, and the fringe benefit contribution compliance audit performed on the contractor attached to the union's complaint, specifically found underpayment of welfare, pension, and education contributions, the union's claim was preempted by ERISA.

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Construction & Gen. Laborers' Dist. Council v. James McHugh Constr. Co., 230 Ill. App. 3d 939, 172 Ill. Dec. 740, 596 N.E.2d 19 (1 Dist.), cert. denied, 146 Ill. 2d 625, 176 Ill. Dec. 795, 602 N.E.2d 449 (1992).

Procedure

Based on a suit in which the plaintiffs argued that by rubber-stamping the wage rate in the contract the State Department of Labor had delegated a governmental function to private entities, the Department's suits against plaintiffs who refused to pay wages at the level of the current wage of laborers employed in public works were stayed. Beary Landscaping, Inc. v. Costigan, 667 F.3d 947, 2012 U.S. App. LEXIS 1784 (7th Cir. 2012).

LEGAL PERIODICALS

For article, "The Presumptive Effect of ERISA on the Prevailing Wage Act," see 29 J. Marshall L. Rev. 55 (1996).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:60 Publication of names of violators; prohibition against awarding contract to violator.

Illinois Jurisprudence, Labor and Employment § 3:58 Enforcement.

Illinois Jurisprudence, Labor and Employment § 3:56 Retaliatory discharge and whistleblower protection.

Illinois Jurisprudence, Labor and Employment § 3:50 Application of Prevailing Wage Act to public works.

§ 820 ILCS 130/11a. [Publication of names of contractors, subcontractors in violation]

Sec. 11a. The Director of the Department of Labor shall publish in the Illinois Register no less often than once each calendar quarter a list of contractors or subcontractors found to have disregarded their obligations to employees under this Act. The Department of Labor shall determine the contractors or subcontractors who, on 2 separate occasions within 5 years, have been determined to have violated the provisions of this Act. Upon such determination the Department shall notify the violating contractor or subcontractor. Such contractor or subcontractor shall then have 10 working days to request a hearing by the Department on the alleged violations. Failure to respond within the 10 working day period shall result in automatic and immediate placement and publication on the list. If the contractor or subcontractor requests a hearing within the 10 working day period, the Director shall set a hearing on the alleged violations. Such hearing shall take place no later than 45 calendar days after the receipt by the Department of Labor of the request for a hearing. The Department of Labor is empowered to promulgate, adopt, amend and

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rescind rules and regulations to govern the hearing procedure. No contract shall be awarded to a contractor or subcontractor appearing on the list, or to any firm, corporation, partnership or association in which such contractor or subcontractor has an interest until 4 years have elapsed from the date of publication of the list containing the name of such contractor or subcontractor.

A contractor or subcontractor convicted or found guilty under Section 5 or 6 of this Act [820 ILCS 130/5 or 820 ILCS 130/6] shall be subject to an automatic and immediate debarment, thereafter prohibited from participating in any public works project for 4 years, with no right to a hearing.

(Source: P.A. 86-693; 86-799; 86-1028; 93-38, § 5; 94-488, § 5; 97-571, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39s-11a.

Effect of Amendments. The 2003 amendment by P.A. 93-38, effective June 1, 2004, in the seventh sentence substituted "45 calendar days" for "30 calendar days".

The 2005 amendment by P.A. 94-488, effective January 1, 2006, inserted "within 5 years" following "occasions" in the second sentence.

The 2011 amendment by P.A. 97-571, effective January 1, 2012, added the last paragraph.

OPINIONS OF ATTORNEY GENERAL

Rulemaking Authority

The Department of Labor has the authority to promulgate rules only with respect to sections 11a and 11b of the Act (820 ILCS 130/11a, 11b); the department possesses no general rulemaking authority with respect to the determination of wage classifications and prevailing rates or other aspects of the act. 1999 Op. Atty. Gen. (99-010).

§ 820 ILCS 130/11b. Discharge or discipline of "whistle blowers" prohibited

Sec. 11b. Discharge or discipline of "whistle blowers" prohibited. (a) No person shall discharge, discipline, or in any other way discriminate against, or cause to be discharged, disciplined, or discriminated against, any employee or any authorized representative of employees by reason of the fact that the employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of this Act, or offers any evidence of any violation of this Act.

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(b) Any employee or a representative of employees who believes that he has been discharged, disciplined, or otherwise discriminated against by any person in violation of subsection (a) of this Section may, within 30 days after the alleged violation occurs, apply to the Director of Labor for a review of the discharge, discipline, or alleged discrimination. A copy of the application shall be sent to the person who allegedly committed the violation, who shall be the respondent. Upon receipt of an application, the Director shall cause such investigation to be made as he or she deems appropriate. The investigation shall provide an opportunity for a public hearing at the request of any party to the review to enable the parties to present information relating to the alleged violation. The parties shall be given written notice of the time and place of the hearing at least 5 days before the hearing. Upon receiving the report of the investigation, the Director shall make findings of fact. If the Director finds that a violation did occur, he or she shall issue a decision incorporating his or her findings and requiring the party committing the violation to take such affirmative action to abate the violation as the Director deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his or her former position and compensating him or her for the time he or she was unemployed. The party committing the violation shall also be liable to the Department of Labor for a penalty of $5,000 for each violation of this Section. If the Director finds that there was no violation, he or she shall issue an order denying the application. An order issued by the Director under this Section shall be subject to judicial review under the Administrative Review Law [735 ILCS 5/3-101 et seq.].

(c) The Director shall adopt rules implementing this Section in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.].

(Source: P.A. 88-359, § 5; 94-488, § 5.)

Effect of Amendments. The 2005 amendment by P.A. 94-488, effective January 1, 2006, added the eighth sentence in (b) the language beginning "The party committing" and ending "of this Section."

OPINIONS OF ATTORNEY GENERAL

Rulemaking Authority

The Department of Labor has the authority to promulgate rules only with respect to sections 11a and 11b of the Act (820 ILCS 130/11a, 11b); the department possesses no general rulemaking authority with respect to the determination of wage classifications and prevailing rates or other aspects of the act. 1999 Op. Atty. Gen. (99-010).

RESEARCH REFERENCES

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Pre-emption by workers' compensation statute of employee's remedy under state "whistleblower" statute. 20 ALR5th 677.

§ 820 ILCS 130/12. [Severability]

Sec. 12. If any section, sentence, clause or part of this act, is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this act. The General Assembly hereby declares that it would have passed this Act, and each section, sentence, clause, or part thereof, irrespective of the fact that one or more sections, sentences, clauses, or parts might be declared unconstitutional.

(Source: Laws 1941, vol. 1, p. 703.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 39s-12.

CASE NOTES

Illustrative Case

Section 10a of the former Prevailing Wage Law as it amended § 8 of the Motor Fuel Tax Act (35 ILCS 505/8) and certain sections of the Illinois Highway Code (605 ILCS 5/1-101 et seq.) by dealing with the same subject matter, without being complete in itself and without setting forth the section amended, was within the constitutional prohibition against revision or amendment of a law by reference to its title only, and was therefore declared unconstitutional. City of Monmouth v. Lorenz, 30 Ill. 2d 60, 195 N.E.2d 661 (1963).

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School Visitation Rights Act

Sec.

820 ILCS 147/1.[Short title]
820 ILCS 147/5.Policy
820 ILCS 147/10.Definitions
820 ILCS 147/15.School conference and activity leave
820 ILCS 147/20.Compensation
820 ILCS 147/25.Notification
820 ILCS 147/30.Verification
820 ILCS 147/35.Employee rights
820 ILCS 147/40.Applicability
820 ILCS 147/45.Violation
820 ILCS 147/49.Limits on leave

§ 820 ILCS 147/1. [Short title]

Sec. 1. This Act may be cited as the School Visitation Rights Act.

(Source: P.A. 87-1240, § 1.)

Derivation.

Title: An Act in relation to school visitation rights.

Cite: 820 ILCS 147/1 et seq.

Source: P.A. 87-1240.

Date: Certified December 22, 1992.

CASE NOTES

Accrual of vacation hours

Employee's accrual of 3.23 vacation hours was fatal to the employee's right to seek leave pursuant to the Illinois School Visitation Rights Act; additionally, the employee did not demonstrate that the employee gave seven days advance written notice of the request or that the employee contacted the school to reschedule the meeting to a time after his workday. Cisneros v. Condell Med. Ctr., F. Supp. 2d , 2002 U.S. Dist. LEXIS 11800 (N.D. Ill. June 25, 2002).

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§ 820 ILCS 147/5. Policy

Sec. 5. Policy. The General Assembly of the State of Illinois finds that the basis of a strong economy is an educational system reliant upon parental involvement. The intent of this Act is to permit employed parents and guardians who are unable to meet with educators because of a work conflict the right to an allotment of time during the school year to attend necessary educational or behavioral conferences at the school their children attend.

(Source: P.A. 87-1240, § 5.)

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:72 Time to attend school conferences and activities.

§ 820 ILCS 147/10. Definitions

Sec. 10. Definitions. As used in this Act:

(a) "Employee" means a person who performs services for hire for an employer for:

(1) at least 6 consecutive months immediately preceding a request for leave under this Act; and

(2) an average number of hours per week equal to at least one-half the full-time equivalent position in the employer's job classification, as defined by the employer's personnel policies or practices or in accordance with a collective bargaining agreement, during those 6 months.

"Employee" includes all individuals meeting the above criteria but does not include an independent contractor.

(b) "Employer" means any of the following: a State agency, officer, or department, a unit of local government, a school district, an individual, a corporation, a partnership, an association, or a nonprofit organization.

(c) "Child" means a biological, adopted or foster child, a stepchild or a legal ward of an employee and who is enrolled in a primary or secondary public or private school in this State or a state which shares a common boundary with Illinois.

(d) "School" means any public or private primary or secondary school or educational facility located in this State or a state which shares a common boundary with Illinois.

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(e) "School administrator" means the principal or similar administrator who is responsible for the operations of the school.

(Source: P.A. 87-1240, § 10.)

§ 820 ILCS 147/15. School conference and activity leave

Sec. 15. School conference and activity leave. (a) An employer must grant an employee leave of up to a total of 8 hours during any school year, and no more than 4 hours of which may be taken on any given day, to attend school conferences or classroom activities related to the employee's child if the conference or classroom activities cannot be scheduled during nonwork hours; however, no leave may be taken by an employee of an employer that is subject to this Act unless the employee has exhausted all accrued vacation leave, personal leave, compensatory leave and any other leave that may be granted to the employee except sick leave and disability leave. Before arranging attendance at the conference or activity, the employee shall provide the employer with a written request for leave at least 7 days in advance of the time the employee is required to utilize the visitation right. In emergency situations, no more than 24 hours notice shall be required. The employee must consult with the employer to schedule the leave so as not to disrupt unduly the operations of the employer.

(b) Nothing in this Act requires that the leave be paid.

(c) For regularly scheduled, nonemergency visitations, schools shall make time available for visitation during both regular school hours and evening hours.

(Source: P.A. 87-1240, § 15.)

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:73 Compensation and make-up time.

§ 820 ILCS 147/20. Compensation

Sec. 20. Compensation. An employee who utilizes or seeks to utilize the rights afforded by this Act may choose the opportunity to make up the time so taken as guaranteed by this Act on a different day or shift as directed by the employer. An employee who exercises his rights under this Act shall not be required to make up the time taken, but if such employee does not make up the time taken, such employee shall not be compensated

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for the time taken. An employee who does make up the time taken shall be paid at the same rate as paid for normal working time. Employers shall make a good faith effort to permit an employee to make up the time taken for the purposes of this Act. If no reasonable opportunity exists for the employee to make up the time taken, the employee shall not be paid for the time. A reasonable opportunity to make up the time taken does not include the scheduling of make-up time in a manner that would require the payment of wages on an overtime basis. Notwithstanding any other provision of this Section, if unpaid leave under this Act conflicts with the unreduced compensation requirement for exempt employees under the federal Fair Labor Standards Act [29 U.S.C. § 201 et seq.], an employer may require an employee to make up the leave hours within the same pay period.

(Source: P.A. 87-1240, § 20.)

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 3:73 Compensation and make-up time.

§ 820 ILCS 147/25. Notification

Sec. 25. Notification. The State Superintendent of Education shall notify each public and private primary and secondary school of this Act. Each public and private school shall notify parents or guardians of the school's students of their school visitation rights. The Department of Labor shall notify employers of this Act.

(Source: P.A. 87-1240, § 25.)

§ 820 ILCS 147/30. Verification

Sec. 30. Verification. Upon completion of school visitation rights by a parent or guardian, the school administrator shall provide the parent or guardian documentation of the school visitation. The parent or guardian shall submit such verification to the employer. The State Superintendent and the Director of the Department of Labor shall suggest a standard form of documentation of school visitation to schools for use as required by this Section. The standard form of documentation shall include, but not be limited to, the exact time and date the visitation occurred and ended. Failure of a parent or guardian to submit the verification statement from the school to his or her employer within 2 working days of the school visitation subjects the employee to the standard

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disciplinary procedures imposed by the employer for unexcused absences from work.

(Source: P.A. 87-1240, § 30.)

§ 820 ILCS 147/35. Employee rights

Sec. 35. Employee rights. No employee shall lose any employee benefits, except as provided for in Section 20 of this Act [820 ILCS 147/20], for exercising his or her rights under this Act. Nothing in this Act shall be construed to affect an employer's obligation to comply with any collective bargaining agreement or employee benefit plan. Nothing in this Act shall prevent an employer from providing school visitation rights in excess of the requirements of this Act. The rights afforded by this Act shall not be diminished by any collective bargaining act or by any employee benefit plan.

(Source: P.A. 87-1240, § 35.)

§ 820 ILCS 147/40. Applicability

Sec. 40. Applicability. This Act applies solely to public and private employers that employ at least 50 or more individuals in Illinois, and to their employees.

(Source: P.A. 87-1240, § 40.)

§ 820 ILCS 147/45. Violation

Sec. 45. Violation. Any employer who violates this Act is guilty of a petty offense and may be fined not more than $100 for each offense.

(Source: P.A. 87-1240, § 45.)

§ 820 ILCS 147/49. Limits on leave

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Sec. 49. Limits on leave. No employer that is subject to this Act is required to grant school visitation leave to an employee if granting the leave would result in more than 5% of the employer's work force or 5% of an employer's work force shift taking school conference or activity leave at the same time.

(Source: P.A. 87-1240, § 49.)

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Family Military Leave Act

Sec.

820 ILCS 151/1.Short title
820 ILCS 151/5.Definitions
820 ILCS 151/10.Family Military Leave Requirement
820 ILCS 151/15.Employee benefits protection
820 ILCS 151/20.Effect on existing employee benefits
820 ILCS 151/25.Prohibited acts
820 ILCS 151/30.Enforcement
820 ILCS 151/99.Effective date

§ 820 ILCS 151/1. Short title

Sec. 1. Short title. This Act may be cited as the Family Military Leave Act.

(Source: P.A. 94-589, § 1.)

Effective Date. Section 99 of P.A. 94-589 made this Act effective upon becoming law. The Act was approved August 15, 2005.

§ 820 ILCS 151/5. Definitions

Sec. 5. Definitions. In this Act:

"Employee" means any person who may be permitted, required, or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment. "Employee" does include an independent contractor. "Employee" includes an employee of a covered employer who has been employed by the same employer for at least 12 months, and has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave.

"Employee benefits" means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance and pensions, regardless of whether benefits are provided by a policy or practice of an employer.

"Employer" means (1) any person, partnership, corporation, association, or other business entity; and (2) the State of Illinois, municipalities and other units of local government.

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"Family military leave" means leave requested by an employee who is the spouse, parent, child, or grandparent of a person called to military service lasting longer than 30 days with the State or United States pursuant to the orders of the Governor or the President of the United States.

(Source: P.A. 94-589, § 5; 96-1417, § 5.)

Effect of Amendments. The 2010 amendment by P.A. 96-1417, effective January 1, 2011, inserted "child, or grandparent" in the definition of Family military leave; and made a related change.

§ 820 ILCS 151/10. Family Military Leave Requirement

Sec. 10. Family Military Leave Requirement. (a) Any employer, as defined in Section 5 of this Act [820 ILCS 151/5], that employs between 15 and 50 employees shall provide up to 15 days of unpaid family military leave to an employee during the time federal or State deployment orders are in effect, subject to the conditions set forth in this Section. Family military leave granted under this Act may consist of unpaid leave.

(b) An employer, as defined in Section 5 of this Act, that employs more than 50 employees shall provide up to 30 days of unpaid family military leave to an employee during the time federal or State deployment orders are in effect, subject to the conditions set forth in this Section. Family military leave granted under this Act may consist of unpaid leave. The number of days of leave provided to an employee under this subsection (b) because the employee's spouse or child is called to military service shall be reduced by the number of days of leave provided to the employee under subdivision (a)(1)(E) of Section 102 of the Family and Medical Leave Act of 1993 because of any qualifying exigency arising out of the fact that the employee's spouse or child is on covered active duty as defined in that Act (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

(c) The employee shall give at least 14 days notice of the intended date upon which the family military leave will commence if leave will consist of 5 or more consecutive work days. Where able, the employee shall consult with the employer to schedule the leave so as to not unduly disrupt the operations of the employer. Employees taking military family leave for less than 5 consecutive days shall give the employer advanced notice as is practicable. The employer may require certification from the proper military authority to verify the employee's eligibility for the family military leave requested.

(d) An employee shall not take leave as provided under this Act unless he or she has exhausted all accrued vacation leave, personal leave, compensatory leave, and any other leave that may be granted to the employee, except sick leave and disability leave.

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(Source: P.A. 94-589, § 10; 96-1417, § 5.)

Effect of Amendments. The 2010 amendment by P.A. 96-1417, effective January 1, 2011, added the last sentence to the end of (b).

§ 820 ILCS 151/15. Employee benefits protection

Sec. 15. Employee benefits protection. (a) Any employee who exercises the right to family military leave under this Act, upon expiration of the leave, shall be entitled to be restored by the employer to the position held by the employee when the leave commenced or to a position with equivalent seniority status, employee benefits, pay and other terms and conditions of employment. This Section does not apply if the employer proves that the employee was not restored as provided in this Section because of conditions unrelated to the employee's exercise of rights under this Act.

(b) During any family military leave taken under this Act, the employer shall make it possible for employees to continue their benefits at the employee's expense. The employer and employee may negotiate for the employer to maintain benefits at the employer's expense for the duration of the leave.

(Source: P.A. 94-589, § 15.)

§ 820 ILCS 151/20. Effect on existing employee benefits

Sec. 20. Effect on existing employee benefits. (a) Taking family military leave under this Act shall not result in the loss of any employee benefit accrued before the date on which the leave commenced.

(b) Nothing in this Act shall be construed to affect an employer's obligation to comply with any collective bargaining agreement or employee benefit plan that provides greater leave rights to employees than the rights provided under this Act.

(c) The family military leave rights provided under this Act shall not be diminished by any collective bargaining agreement or employee benefit plan.

(d) Nothing in this Act shall be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered under this Act.

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(Source: P.A. 94-589, § 20.)

§ 820 ILCS 151/25. Prohibited acts

Sec. 25. Prohibited acts. (a) An employer shall not interfere with, restrain, or deny the exercise or the attempt to exercise any right provided under this Act.

(b) An employer shall not discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee that exercises any right provided under this Act.

(c) An employer shall not discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee for opposing any practice made unlawful by this Act.

(Source: P.A. 94-589, § 25.)

§ 820 ILCS 151/30. Enforcement

Sec. 30. Enforcement. A civil action may be brought in the circuit court having jurisdiction by an employee to enforce this Act. The circuit court may enjoin any act or practice that violates or may violate this Act and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce this Act.

(Source: P.A. 94-589, § 30.)

§ 820 ILCS 151/99. Effective date

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 94-589, § 99.)

Note.

P.A. 94-589 was approved August 15, 2005.

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Effective Date. Section 99 of P.A. 94-589 made this section effective upon becoming law. The Act was approved August 15, 2005.

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Victim's Economic Security and Safety Act

Sec.

820 ILCS 180/1.Short title
820 ILCS 180/5.Findings
820 ILCS 180/10.Definitions
820 ILCS 180/15.Purposes
820 ILCS 180/20.Entitlement to leave due to domestic or sexual violence
820 ILCS 180/25.Existing leave usable for addressing domestic or sexual violence
820 ILCS 180/30.Victims' employment sustainability; prohibited discriminatory acts
820 ILCS 180/35.Enforcement
820 ILCS 180/40.Notification
820 ILCS 180/45.Effect on other laws and employment benefits
820 ILCS 180/905.Severability
820 ILCS 180/999.Effective date

§ 820 ILCS 180/1. Short title

Sec. 1. Short title. This Act may be cited as the Victims' Economic Security and Safety Act.

(Source: P.A. 93-591, § 1.)

Effective Date. Section 999 of P.A. 93-591 made this Act effective upon becoming law. The Act was approved August 25, 2003.

§ 820 ILCS 180/5. Findings

Sec. 5. Findings. The General Assembly finds and declares the following:

(1) Domestic and sexual violence affects many persons without regard to age, race, educational level, socioeconomic status, religion, or occupation.

(2) Domestic and sexual violence has a devastating effect on individuals, families, communities and the workplace.

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(3) Domestic violence crimes account for approximately 15% of total crime costs in the United States each year.

(4) Violence against women has been reported to be the leading cause of physical injury to women. Such violence has a devastating impact on women's physical and emotional health and financial security.

(5) According to recent government surveys, from 1993 through 1998 the average annual number of violent victimizations committed by intimate partners was 1,082,110, 87% of which were committed against women.

(6) Female murder victims were substantially more likely than male murder victims to have been killed by an intimate partner. About one-third of female murder victims, and about 4% of male murder victims, were killed by an intimate partner.

(7) According to recent government estimates, approximately 987,400 rapes occur annually in the United States, 89% of the rapes are perpetrated against female victims.

(8) Approximately 10,200,000 people have been stalked at some time in their lives. Four out of every 5 stalking victims are women. Stalkers harass and terrorize their victims by spying on the victims, standing outside their places of work or homes, making unwanted phone calls, sending or leaving unwanted letters or items, or vandalizing property.

(9) Employees in the United States who have been victims of domestic violence, dating violence, sexual assault, or stalking too often suffer adverse consequences in the workplace as a result of their victimization.

(10) Victims of domestic violence, dating violence, sexual assault, and stalking face the threat of job loss and loss of health insurance as a result of the illegal acts of the perpetrators of violence.

(11) The prevalence of domestic violence, dating violence, sexual assault, stalking, and other violence against women at work is dramatic. Approximately 11% of all rapes occur in the workplace. About 50,500 individuals, 83% of whom are women, were raped or sexually assaulted in the workplace each year from 1992 through 1996. Half of all female victims of violent workplace crimes know their attackers. Nearly one out of 10 violent workplace incidents is committed by partners or spouses.

(12) Homicide is the leading cause of death for women on the job. Husbands, boyfriends, and ex-partners commit 15% of workplace homicides against women.

(13) Studies indicate that as much as 74% of employed battered women surveyed were harassed at work by their abusive partners.

(14) According to a 1998 report of the U.S. General Accounting Office, between one-fourth and one-half of domestic violence victims surveyed in 3 studies reported that the victims lost a job due, at least in part, to domestic violence.

(15) Women who have experienced domestic violence or dating violence are more likely than other women to be unemployed, to suffer from health problems that can affect

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employability and job performance, to report lower personal income, and to rely on welfare.

(16) Abusers frequently seek to control their partners by actively interfering with their ability to work, including preventing their partners from going to work, harassing their partners at work, limiting the access of their partners to cash or transportation, and sabotaging the child care arrangements of their partners.

(17) More than one-half of women receiving welfare have been victims of domestic violence as adults and between one-fourth and one-third reported being abused in the last year.

(18) Sexual assault, whether occurring in or out of the workplace, can impair an employee's work performance, require time away from work, and undermine the employee's ability to maintain a job. Almost 50% of sexual assault survivors lose their jobs or are forced to quit in the aftermath of the assaults.

(19) More than one-fourth of stalking victims report losing time from work due to the stalking and 7% never return to work.

(20) (A) According to the National Institute of Justice, crime costs an estimated $450,000,000,000 annually in medical expenses, lost earnings, social service costs, pain, suffering, and reduced quality of life for victims, which harms the Nation's productivity and drains the Nation's resources. (B) Violent crime accounts for $426,000,000,000 per year of this amount. (C) Rape exacts the highest costs per victim of any criminal offense, and accounts for $127,000,000,000 per year of the amount described in subparagraph (A).

(21) The Bureau of National Affairs has estimated that domestic violence costs United States employers between $3,000,000,000 and $5,000,000,000 annually in lost time and productivity. Other reports have estimated that domestic violence costs United States employers $13,000,000,000 annually.

(22) United States medical costs for domestic violence have been estimated to be $31,000,000,000 per year.

(23) Ninety-four percent of corporate security and safety directors at companies nationwide rank domestic violence as a high security concern.

(24) Forty-nine percent of senior executives recently surveyed said domestic violence has a harmful effect on their company's productivity, 47% said domestic violence negatively affects attendance, and 44% said domestic violence increases health care costs.

(25) Employees, including individuals participating in welfare to work programs, may need to take time during business hours to:

(A) obtain orders of protection or civil no contact orders;

(B) seek medical or legal assistance, counseling, or other services; or

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(C) look for housing in order to escape from domestic or sexual violence.

(Source: P.A. 93-591, § 5; 96-635, § 5.)

Effect of Amendments. The 2009 amendment by P.A. 96-635, effective August 24, 2009, added "or civil no contact orders" in (25)(A); and added "or sexual" in (25)(C).

§ 820 ILCS 180/10. Definitions

Sec. 10. Definitions. In this Act, except as otherwise expressly provided:

(1) "Commerce" includes trade, traffic, commerce, transportation, or communication; and "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and includes "commerce" and any "industry affecting commerce".

(2) "Course of conduct" means a course of repeatedly maintaining a visual or physical proximity to a person or conveying oral or written threats, including threats conveyed through electronic communications, or threats implied by conduct.

(3) "Department" means the Department of Labor.

(4) "Director" means the Director of Labor.

(5) "Domestic or sexual violence" means domestic violence, sexual assault, or stalking.

(6) "Domestic violence" means abuse, as defined in Section 103 of the Illinois Domestic Violence Act of 1986 [750 ILCS 60/103], by a family or household member, as defined in Section 103 of the Illinois Domestic Violence Act of 1986.

(7) "Electronic communications" includes communications via telephone, mobile phone, computer, e-mail, video recorder, fax machine, telex, or pager, or any other electronic communication, as defined in Section 12-7.5 of the Criminal Code of 1961 [720 ILCS 5/12-7.5].

(8) "Employ" includes to suffer or permit to work.

(9) Employee.

(A) In general. "Employee" means any person employed by an employer.

(B) Basis. "Employee" includes a person employed as described in subparagraph (A) on a full or part-time basis, or as a participant in a work assignment as a condition of receipt of federal or State income-based public assistance.

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(10) "Employer" means any of the following: (A) the State or any agency of the State; (B) any unit of local government or school district; or (C) any person that employs at least 15 employees.

(11) "Employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, pensions, and profit-sharing, regardless of whether such benefits are provided by a practice or written policy of an employer or through an "employee benefit plan". "Employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

(12) "Family or household member", for employees with a family or household member who is a victim of domestic or sexual violence, means a spouse, parent, son, daughter, other person related by blood or by present or prior marriage, other person who shares a relationship through a son or daughter, and persons jointly residing in the same household.

(13) "Parent" means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter. "Son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age, or is 18 years of age or older and incapable of self-care because of a mental or physical disability.

(14) "Perpetrator" means an individual who commits or is alleged to have committed any act or threat of domestic or sexual violence.

(15) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(16) "Public agency" means the Government of the State or political subdivision thereof; any agency of the State, or of a political subdivision of the State; or any governmental agency.

(17) "Public assistance" includes cash, food stamps, medical assistance, housing assistance, and other benefits provided on the basis of income by a public agency or public employer.

(18) "Reduced work schedule" means a work schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(19) "Repeatedly" means on 2 or more occasions.

(20) "Sexual assault" means any conduct proscribed by the Criminal Code of 1961 in Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15, and 12-16 [720 ILCS 5/11-1.20, 720 ILCS 5/11-1.30, 720 ILCS 5/11-1.40, 720 ILCS 5/11-1.50, 720 ILCS 5/11-1.60, 720 ILCS 5/12-13, 720 ILCS 5/12-14, 720 ILCS 5/12-14.1, 720 ILCS 5/12-15, and 720 ILCS 5/12-16].

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(21) "Stalking" means any conduct proscribed by the Criminal Code of 1961 in Sections 12-7.3, 12-7.4, and 12-7.5 [720 ILCS 5/12-7.3, 720 ILCS 5/12-7.4, and 720 ILCS 5/12-7.5].

(22) "Victim" or "survivor" means an individual who has been subjected to domestic or sexual violence.

(23) "Victim services organization" means a nonprofit, nongovernmental organization that provides assistance to victims of domestic or sexual violence or to advocates for such victims, including a rape crisis center, an organization carrying out a domestic violence program, an organization operating a shelter or providing counseling services, or a legal services organization or other organization providing assistance through the legal process.

(Source: P.A. 93-591, § 10; 96-635, § 5; 96-1551, § 1130.)

Note.

Section 9995 of P.A. 96-1551 contains a "no acceleration or delay" provision.

Effect of Amendments. The 2009 amendment by P.A. 96-635, effective August 24, 2009, rewrote (6); added "or any other electronic communication, as defined in Section 12-7.5 of the Criminal Code of 1961" in (7); substituted "15 employees" for "50 employees" in (10); added "and profit-sharing" in the first sentence of (11); in (12), added "for employees with a family or household member who is a victim of domestic or sexual violence" and "other person related by blood or by present or prior marriage, other person who shares a relationship through a son or daughter"; added "and 12-7.5" in (21); and made related changes.

The 2011 amendment by P.A. 96-1551, effective July 1, 2011, inserted "11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60" to the section listing of (20).

§ 820 ILCS 180/15. Purposes

Sec. 15. Purposes. The purposes of this Act are:

(1) to promote the State's interest in reducing domestic violence, dating violence, sexual assault, and stalking by enabling victims of domestic or sexual violence to maintain the financial independence necessary to leave abusive situations, achieve safety, and minimize the physical and emotional injuries from domestic or sexual violence, and to reduce the devastating economic consequences of domestic or sexual violence to employers and employees;

(2) to address the failure of existing laws to protect the employment rights of employees who are victims of domestic or sexual violence and employees with a family or household member who is a victim of domestic or sexual violence, by protecting the civil

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and economic rights of those employees, and by furthering the equal opportunity of women for economic self-sufficiency and employment free from discrimination;

(3) to accomplish the purposes described in paragraphs (1) and (2) by (A) entitling employed victims of domestic or sexual violence and employees with a family or household member who is a victim of domestic or sexual violence to take unpaid leave to seek medical help, legal assistance, counseling, safety planning, and other assistance without penalty from their employers for the employee or the family or household member who is a victim; and (B) prohibiting employers from discriminating against any employee who is a victim of domestic or sexual violence or any employee who has a family or household member who is a victim of domestic or sexual violence, in a manner that accommodates the legitimate interests of employers and protects the safety of all persons in the workplace.

(Source: P.A. 93-591, § 15; 96-635, § 5.)

Effect of Amendments. The 2009 amendment by P.A. 96-635, effective August 24, 2009, rewrote (3), which formerly read: "to accomplish the purposes described in paragraphs (1) and (2) by entitling employed victims of domestic or sexual violence to take unpaid leave to seek medical help, legal assistance, counseling, safety planning, and other assistance without penalty from their employers".

§ 820 ILCS 180/20. Entitlement to leave due to domestic or sexual violence

Sec. 20. Entitlement to leave due to domestic or sexual violence. (a) Leave requirement.

(1) Basis. An employee who is a victim of domestic or sexual violence or has a family or household member who is a victim of domestic or sexual violence whose interests are not adverse to the employee as it relates to the domestic or sexual violence may take unpaid leave from work to address domestic or sexual violence by:

(A) seeking medical attention for, or recovering from, physical or psychological injuries caused by domestic or sexual violence to the employee or the employee's family or household member;

(B) obtaining services from a victim services organization for the employee or the employee's family or household member;

(C) obtaining psychological or other counseling for the employee or the employee's family or household member;

(D) participating in safety planning, temporarily or permanently relocating, or taking other actions to increase the safety of the employee or the employee's family or household member from future domestic or sexual violence or ensure economic security; or

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(E) seeking legal assistance or remedies to ensure the health and safety of the employee or the employee's family or household member, including preparing for or participating in any civil or criminal legal proceeding related to or derived from domestic or sexual violence.

(2) Period. Subject to subsection (c), an employee working for an employer that employs at least 50 employees shall be entitled to a total of 12 workweeks of leave during any 12-month period. Subject to subsection (c), an employee working for an employer that employs at least 15 but not more than 49 employees shall be entitled to a total of 8 workweeks of leave during any 12-month period. The total number of workweeks to which an employee is entitled shall not decrease during the relevant 12-month period. This Act does not create a right for an employee to take unpaid leave that exceeds the unpaid leave time allowed under, or is in addition to the unpaid leave time permitted by, the federal Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.).

(3) Schedule. Leave described in paragraph (1) may be taken intermittently or on a reduced work schedule.

(b) Notice. The employee shall provide the employer with at least 48 hours' advance notice of the employee's intention to take the leave, unless providing such notice is not practicable. When an unscheduled absence occurs, the employer may not take any action against the employee if the employee, upon request of the employer and within a reasonable period after the absence, provides certification under subsection (c).

(c) Certification.

(1) In general. The employer may require the employee to provide certification to the employer that:

(A) the employee or the employee's family or household member is a victim of domestic or sexual violence; and

(B) the leave is for one of the purposes enumerated in paragraph (a)(1).

The employee shall provide such certification to the employer within a reasonable period after the employer requests certification.

(2) Contents. An employee may satisfy the certification requirement of paragraph (1) by providing to the employer a sworn statement of the employee, and upon obtaining such documents the employee shall provide:

(A) documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the employee or the employee's family or household member has sought assistance in addressing domestic or sexual violence and the effects of the violence;

(B) a police or court record; or

(C) other corroborating evidence.

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(d) Confidentiality. All information provided to the employer pursuant to subsection (b) or (c), including a statement of the employee or any other documentation, record, or corroborating evidence, and the fact that the employee has requested or obtained leave pursuant to this Section, shall be retained in the strictest confidence by the employer, except to the extent that disclosure is:

(1) requested or consented to in writing by the employee; or

(2) otherwise required by applicable federal or State law.

(e) Employment and benefits.

(1) Restoration to position.

(A) In general. Any employee who takes leave under this Section for the intended purpose of the leave shall be entitled, on return from such leave:

(i) to be restored by the employer to the position of employment held by the employee when the leave commenced; or

(ii) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(B) Loss of benefits. The taking of leave under this Section shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

(C) Limitations. Nothing in this subsection shall be construed to entitle any restored employee to:

(i) the accrual of any seniority or employment benefits during any period of leave; or

(ii) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(D) Construction. Nothing in this paragraph shall be construed to prohibit an employer from requiring an employee on leave under this Section to report periodically to the employer on the status and intention of the employee to return to work.

(2) Maintenance of health benefits.

(A) Coverage. Except as provided in subparagraph (B), during any period that an employee takes leave under this Section, the employer shall maintain coverage for the employee and any family or household member under any group health plan for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave.

(B) Failure to return from leave. The employer may recover the premium that the employer paid for maintaining coverage for the employee and the employee's family or household member under such group health plan during any period of leave under this Section if:

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(i) the employee fails to return from leave under this Section after the period of leave to which the employee is entitled has expired; and

(ii) the employee fails to return to work for a reason other than:

(I) the continuation, recurrence, or onset of domestic or sexual violence that entitles the employee to leave pursuant to this Section; or

(II) other circumstances beyond the control of the employee.

(C) Certification.

(i) Issuance. An employer may require an employee who claims that the employee is unable to return to work because of a reason described in subclause (I) or (II) of subparagraph (B)(ii) to provide, within a reasonable period after making the claim, certification to the employer that the employee is unable to return to work because of that reason.

(ii) Contents. An employee may satisfy the certification requirement of clause (i) by providing to the employer:

(I) a sworn statement of the employee;

(II) documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the employee has sought assistance in addressing domestic or sexual violence and the effects of that violence;

(III) a police or court record; or

(IV) other corroborating evidence.

(D) Confidentiality. All information provided to the employer pursuant to subparagraph (C), including a statement of the employee or any other documentation, record, or corroborating evidence, and the fact that the employee is not returning to work because of a reason described in subclause (I) or (II) of subparagraph (B)(ii) shall be retained in the strictest confidence by the employer, except to the extent that disclosure is:

(i) requested or consented to in writing by the employee; or

(ii) otherwise required by applicable federal or State law.

(f) Prohibited acts.

(1) Interference with rights.

(A) Exercise of rights. It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under this Section.

(B) Employer discrimination. It shall be unlawful for any employer to discharge or harass any individual, or otherwise discriminate against any individual with respect to

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compensation, terms, conditions, or privileges of employment of the individual (including retaliation in any form or manner) because the individual:

(i) exercised any right provided under this Section; or

(ii) opposed any practice made unlawful by this Section.

(C) Public agency sanctions. It shall be unlawful for any public agency to deny, reduce, or terminate the benefits of, otherwise sanction, or harass any individual, or otherwise discriminate against any individual with respect to the amount, terms, or conditions of public assistance of the individual (including retaliation in any form or manner) because the individual:

(i) exercised any right provided under this Section; or

(ii) opposed any practice made unlawful by this Section.

(2) Interference with proceedings or inquiries. It shall be unlawful for any person to discharge or in any other manner discriminate (as described in subparagraph (B) or (C) of paragraph (1)) against any individual because such individual:

(A) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this Section;

(B) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this Section; or

(C) has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this Section.

(Source: P.A. 93-591, § 20; 96-635, § 5.)

Effect of Amendments. The 2009 amendment by P.A. 96-635, effective August 24, 2009, in (a)(2), added "working for an employer that employs at least 50 employees" in the first sentence and added the second and third sentences; and added "upon request of the employer and" in the second sentence of (b).

Practice Guides and Treatises.

1-5 Employment in Illinois § 5-2 Leave.

§ 820 ILCS 180/25. Existing leave usable for addressing domestic or sexual violence

Sec. 25. Existing leave usable for addressing domestic or sexual violence. An employee who is entitled to take paid or unpaid leave (including family, medical, sick, annual,

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personal, or similar leave) from employment, pursuant to federal, State, or local law, a collective bargaining agreement, or an employment benefits program or plan, may elect to substitute any period of such leave for an equivalent period of leave provided under Section 20 [820 ILCS 180/20]. The employer may not require the employee to substitute available paid or unpaid leave for leave provided under Section 20.

(Source: P.A. 93-591, § 25; 96-635, § 5.)

Effect of Amendments. The 2009 amendment by P.A. 96-635, effective August 24, 2009, added the second sentence.

§ 820 ILCS 180/30. Victims' employment sustainability; prohibited discriminatory acts

Sec. 30. Victims' employment sustainability; prohibited discriminatory acts. (a) An employer shall not fail to hire, refuse to hire, discharge, constructively discharge, or harass any individual, otherwise discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, or retaliate against an individual in any form or manner, and a public agency shall not deny, reduce, or terminate the benefits of, otherwise sanction, or harass any individual, otherwise discriminate against any individual with respect to the amount, terms, or conditions of public assistance of the individual, or retaliate against an individual in any form or manner, because:

(1) the individual involved:

(A) is or is perceived to be a victim of domestic or sexual violence;

(B) attended, participated in, prepared for, or requested leave to attend, participate in, or prepare for a criminal or civil court proceeding relating to an incident of domestic or sexual violence of which the individual or a family or household member of the individual was a victim, or requested or took leave for any other reason provided under Section 20 [820 ILCS 180/20]; or

(C) requested an adjustment to a job structure, workplace facility, or work requirement, including a transfer, reassignment, or modified schedule, leave, a changed telephone number or seating assignment, installation of a lock, or implementation of a safety procedure in response to actual or threatened domestic or sexual violence, regardless of whether the request was granted; or (2) the workplace is disrupted or threatened by the action of a person whom the individual states has committed or threatened to commit domestic or sexual violence against the individual or the individual's family or household member.

(b) In this Section:

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(1) "Discriminate", used with respect to the terms, conditions, or privileges of employment or with respect to the terms or conditions of public assistance, includes not making a reasonable accommodation to the known limitations resulting from circumstances relating to being a victim of domestic or sexual violence or a family or household member being a victim of domestic or sexual violence of an otherwise qualified individual:

(A) who is:

(i) an applicant or employee of the employer (including a public agency); or

(ii) an applicant for or recipient of public assistance from a public agency; and

(B) who is:

(i) a victim of domestic or sexual violence; or

(ii) with a family or household member who is a victim of domestic or sexual violence whose interests are not adverse to the individual in subparagraph (A) as it relates to the domestic or sexual violence;

unless the employer or public agency can demonstrate that the accommodation would impose an undue hardship on the operation of the employer or public agency.

A reasonable accommodation must be made in a timely fashion. Any exigent circumstances or danger facing the employee or his or her family or household member shall be considered in determining whether the accommodation is reasonable.

(2) "Qualified individual" means:

(A) in the case of an applicant or employee described in paragraph (1)(A)(i), an individual who, but for being a victim of domestic or sexual violence or with a family or household member who is a victim of domestic or sexual violence, can perform the essential functions of the employment position that such individual holds or desires; or

(B) in the case of an applicant or recipient described in paragraph (1)(A)(ii), an individual who, but for being a victim of domestic or sexual violence or with a family or household member who is a victim of domestic or sexual violence, can satisfy the essential requirements of the program providing the public assistance that the individual receives or desires.

(3) "Reasonable accommodation" may include an adjustment to a job structure, workplace facility, or work requirement, including a transfer, reassignment, or modified schedule, leave, a changed telephone number or seating assignment, installation of a lock, or implementation of a safety procedure, or assistance in documenting domestic or sexual violence that occurs at the workplace or in work-related settings, in response to actual or threatened domestic or sexual violence.

(4) Undue hardship.

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(A) In general. "Undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered. In determining whether a reasonable accommodation would impose an undue hardship on the operation of an employer or public agency, factors to be considered include:

(i) the nature and cost of the reasonable accommodation needed under this Section;

(ii) the overall financial resources of the facility involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such accommodation on the operation of the facility;

(iii) the overall financial resources of the employer or public agency, the overall size of the business of an employer or public agency with respect to the number of employees of the employer or public agency, and the number, type, and location of the facilities of an employer or public agency; and

(iv) the type of operation of the employer or public agency, including the composition, structure, and functions of the workforce of the employer or public agency, the geographic separateness of the facility from the employer or public agency, and the administrative or fiscal relationship of the facility to the employer or public agency.

(Source: P.A. 93-591, § 30; 96-635, § 5.)

Effect of Amendments. The 2009 amendment by P.A. 96-635, effective August 24, 2009, added "constructively discharge" in the introductory language of (a); added "or requested or took leave for any other reason provided under Section 20" in (a)(1)(B); added the last paragraph of (b)(1); and added "or assistance in documenting domestic or sexual violence that occurs at the workplace or in work-related setting" in (b)(3).

§ 820 ILCS 180/35. Enforcement

Sec. 35. Enforcement. (a) Department of Labor.

(1) The Director or his or her authorized representative shall administer and enforce the provisions of this Act. Any employee or a representative of employees who believes his or her rights under this Act have been violated may, within 3 years after the alleged violation occurs, file a complaint with the Department requesting a review of the alleged violation. A copy of the complaint shall be sent to the person who allegedly committed the violation, who shall be the respondent. Upon receipt of a complaint, the Director shall cause such investigation to be made as he or she deems appropriate. The investigation shall provide an opportunity for a public hearing at the request of any party to the review to enable the parties to present information relating to the alleged allegation. The parties

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shall be given written notice of the time and place of the hearing at least 7 days before the hearing. Upon receiving the report of the investigation, the Director shall make findings of fact. If the Director finds that a violation did occur, he or she shall issue a decision incorporating his or her findings and requiring the party committing the violation to take such affirmative action to abate the violation as the Director deems appropriate, including:

(A) damages equal to the amount of wages, salary, employment benefits, public assistance, or other compensation denied or lost to such individual by reason of the violation, and the interest on that amount calculated at the prevailing rate;

(B) such equitable relief as may be appropriate, including but not limited to hiring, reinstatement, promotion, and reasonable accommodations; and

(C) reasonable attorney's fees, reasonable expert witness fees, and other costs of the action to be paid by the respondent to a prevailing employee.

If the Director finds that there was no violation, he or she shall issue an order denying the complaint. An order issued by the Director under this Section shall be final and subject to judicial review under the Administrative Review Law.

(2) The Director shall adopt rules necessary to administer and enforce this Act in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.]. The Director shall have the powers and the parties shall have the rights provided in the Illinois Administrative Procedure Act for contested cases, including, but not limited to, provisions for depositions, subpoena power and procedures, and discovery and protective order procedures.

(3) Intervention. The Attorney General of Illinois may intervene on behalf of the Department if the Department certifies that the case is of general public importance. Upon such intervention the court may award such relief as is authorized to be granted to an employee who has filed a complaint or whose representative has filed a complaint under this Section.

(b) Refusal to pay damages. Any employer who has been ordered by the Director of Labor or the court to pay damages under this Section and who fails to do so within 30 days after the order is entered is liable to pay a penalty of 1% per calendar day to the employee for each day of delay in paying the damages to the employee.

(Source: P.A. 93-591, § 35.)

§ 820 ILCS 180/40. Notification

Sec. 40. Notification. Every employer covered by this Act shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees are

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customarily posted, a notice, to be prepared or approved by the Director of Labor, summarizing the requirements of this Act and information pertaining to the filing of a charge. The Director shall furnish copies of summaries and rules to employers upon request without charge. Any employer that fails to post the required notice may not rely on the provisions in subsection (b) of Section 20 [820 ILCS 180/20] to claim that the employee failed to inform the employer that she or he wanted or was eligible for leave under this Act.

(Source: P.A. 93-591, § 40; 96-635, § 5.)

Effect of Amendments. The 2009 amendment by P.A. 96-635, effective August 24, 2009, added the last sentence.

§ 820 ILCS 180/45. Effect on other laws and employment benefits

Sec. 45. Effect on other laws and employment benefits. (a) More protective laws, agreements, programs, and plans. Nothing in this Act shall be construed to supersede any provision of any federal, State, or local law, collective bargaining agreement, or employment benefits program or plan that provides:

(1) greater leave benefits for victims of domestic or sexual violence than the rights established under this Act; or

(2) leave benefits for a larger population of victims of domestic or sexual violence (as defined in such law, agreement, program, or plan) than the victims of domestic or sexual violence covered under this Act.

(b) Less protective laws, agreements, programs, and plans. The rights established for employees who are victims of domestic or sexual violence and employees with a family or household member who is a victim of domestic or sexual violence under this Act shall not be diminished by any federal, State or local law, collective bargaining agreement, or employment benefits program or plan.

(Source: P.A. 93-591, § 45.)

§ 820 ILCS 180/905. Severability

Sec. 905. Severability. If any provision of this Act or the application of such provision to any person or circumstance is held to be in violation of the Unites States Constitution or Illinois Constitution, the remainder of the provisions of this Act and the application of

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those provisions to any person or circumstance shall not be affected.

(Source: P.A. 93-591, § 905.)

§ 820 ILCS 180/999. Effective date

Sec. 999. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 93-591, § 999.)

Note.

P.A. 93-591 was approved August 25, 2003.

HEALTH AND SAFETY

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Child Labor Law

Sec.

820 ILCS 205/1.[Restrictions on employment of minors]
820 ILCS 205/2.[Exceptions]
820 ILCS 205/2.5.Officiating youth activities
820 ILCS 205/3.[Restrictions on hours of work]
820 ILCS 205/4.[Meal period]
820 ILCS 205/5.[Posting of notice]
820 ILCS 205/6.[Register of minor employees]
820 ILCS 205/7.[Prohibited occupations]
820 ILCS 205/8.Authority to issue employment certificates
820 ILCS 205/8.1.[Exceptions for models, performers]
820 ILCS 205/9.[Employment certificate - requirement]
820 ILCS 205/10.[Employment certificate - contents]
820 ILCS 205/11.Employment certificate issuance; duration; revocation
820 ILCS 205/12.[Employment certificate - application]
820 ILCS 205/13.[Employment certificate - retained by employer during period of employment]
820 ILCS 205/14.[Certificate of age]
820 ILCS 205/15.[Employment certificate - prima facie evidence of age]
820 ILCS 205/16.[Rules and regulations]
820 ILCS 205/17.[Enforcement]
820 ILCS 205/17.1.[Judicial review]
820 ILCS 205/17.2.[Contempt]
820 ILCS 205/17.3.[Civil penalty]
820 ILCS 205/17.4.[Toll free telephone numbers]
820 ILCS 205/17.5.[Outreach and education]
820 ILCS 205/17.6.Reports of work related death, injury, or illness
820 ILCS 205/18.2.Annual report
820 ILCS 205/19.[Criminal penalty]
820 ILCS 205/21.[Severability]
820 ILCS 205/22.[Short title]

§ 820 ILCS 205/1. [Restrictions on employment of minors]

Sec. 1. No minor under 16 years of age, except minors 14 or 15 years of age who are participating in federally funded work experience career education programs under the direction of the State Board of Education, at any time shall be employed, permitted or allowed to work in any gainful occupation in connection with any theater, concert hall or place of amusement, or any mercantile institution, store, office, hotel, laundry, manufacturing establishment, mill, cannery, factory or workshop, restaurant, lunchroom,

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beauty parlor, barber shop, bakery, or coal, brick or lumber yard, or in any type of construction work within this State; however, minors between 14 and 16 years of age may be employed, permitted, or allowed to work outside school hours and during school vacations but not in dangerous or hazardous factory work or in any occupation otherwise prohibited by law or by order or regulation made in pursuance of law. No minor under 12 years of age, except members of the farmer's own family who live with the farmer at his principal place of residence, at any time shall be employed, permitted or allowed to work in any gainful occupation in connection with agriculture, except that any minor of 10 years of age or more may be permitted to work in a gainful occupation in connection with agriculture during school vacations or outside of school hours.

(Source: P.A. 84-551; 91-357, § 308.)

Derivation.

Title: An Act to regulate the employment of children and to repeal an Act herein named.

Cite: 820 ILCS 205/1 et seq.

Source: L. 1945, p. 754.

Date: Approved June 30, 1945.

Note.

P.A. 91-357, § 996 contains a "no acceleration or delay" provision, and P.A. 91-357, § 997, contains a "no revival or extension" provision.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.1.

Cross References.

As for the definition of the term "minor," see 820 ILCS 215/2.3.

As for the prohibition against the placement by private employment agencies of children in violation of this section, see 225 ILCS 515/10.

Effect of Amendments. The 1999 amendment by P.A. 91-357, effective July 29, 1999, made stylistic changes.

CASE NOTES

Analysis

Burden of Proof

Indirect Employment

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Place of Amusement
- Employment Shown
- Race Track

Burden of Proof

Where the declaration alleged as the cause of action in each count that the deceased, being between 15 and 16 years old, was employed by the defendant in operating a drill machine and in carrying, transferring, loading, and unloading boxes filled with material of great weight and hoisting the same by an elevator, that while he was so employed he was under the control of defendant's foreman, and that deceased was then and there unlawfully employed at said work, the basis of the action was the unlawful employment of the deceased at said work; if the unlawful employment was proved, it was not necessary that the plaintiff should prove that he was doing all the things alleged in the declaration or that he was specifically ordered to do what he was doing. Rost v. F.H. Noble Co., 316 Ill. 357, 147 N.E. 258 (1925).

Indirect Employment

A defendant who does not directly employ a minor can be liable under the law if he has enough control over the employer to discover the illegal employment and terminate it. Almendarez v. Keller, 207 Ill. App. 3d 756, 152 Ill. Dec. 754, 566 N.E.2d 441 (1 Dist. 1990), cert. denied, 137 Ill. 2d 663, 156 Ill. Dec. 559, 571 N.E.2d 146 (1991).

Place of Amusement

- Employment Shown

Where walking "hot" horses was necessary in the operation of defendant's race track where plaintiff walked horses at this track for approximately one month before being kicked by a horse, at the time of the occurrence he was being paid every two weeks, where the defendant owed plaintiff $17 or $18 at the time of the mishap and gave plaintiff's mother $20 at the hospital, then at the time of the occurrence plaintiff was working at a gainful occupation in, for or in connection with a place of amusement as defined under former section 17 of the Child Labor Act (see now this section). Gorczynski v. Nugent, 335 Ill. App. 63, 80 N.E.2d 418 (1 Dist.), aff'd, 402 Ill. 147, 83 N.E.2d 495 (1948).

- Race Track

The stable area was an integral part of defendants' entire race track plant; and when plaintiff was injured in the stable area he was working in, for or in connection with a place of amusement. Gorczynski v. Nugent, 335 Ill. App. 63, 80 N.E.2d 418 (1 Dist.), aff'd, 402 Ill. 147, 83 N.E.2d 495 (1948).

RESEARCH REFERENCES

Employee's act or threat of physical violence as bar to unemployment compensation. 20 ALR4th 637.

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Practice Guides and Treatises.

1-2 Employment in Illinois § 2-5 Hiring of Minors.

Illinois Jurisprudence, Workers' Compensation § 3:06 Illegally employed minors.

Illinois Jurisprudence, Labor and Employment § 5:04 Exceptions and work permitted.

Illinois Jurisprudence, Labor and Employment § 5:01 Generally.

Illinois Jurisprudence, Family Law § 10:03 Progressive capacity.

§ 820 ILCS 205/2. [Exceptions]

Sec. 2. Nothing in this Act applies to the work of a minor engaged in agricultural pursuits except for those persons restricted from working in a gainful occupation in connection with agriculture in Section 1 [820 ILCS 205/1] or in the sale and distribution of magazines and newspapers at hours when the schools of the district are not in session. Nothing in this Act applies to the employment of a minor outside school hours in and around a home at work usual to the home of the employer so long as that work is not in connection with or a part of the business, trade or profession of the employer.

Nothing in this Act applies to the work of a minor in caddying at a golf course who is 13 or more years of age.

Nothing in Section 9 of this Act [820 ILCS 205/9] applies to a minor, 14 or 15 years of age, during that part of the year from May 1 through September 30, in an occupational, vocational, or educational program funded by the Job Training Partnership Act [29 U.S.C. § 1501 et seq.].

(Source: P.A. 85-695; 87-903, § 2.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.2.

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 5:05 Employment certificates requirement.

Illinois Jurisprudence, Labor and Employment § 5:04 Exceptions and work permitted.

§ 820 ILCS 205/2.5. Officiating youth activities

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Sec. 2.5. Officiating youth activities. Nothing in this Act prohibits a minor who is 12 or 13 years of age from officiating youth sports activities for a not-for-profit youth club, park district, or municipal parks and recreation department if each of the following restrictions is met:

(1) The parent or guardian of the minor who is officiating or an adult designated by the parent or guardian shall be responsible for being present at the youth sports activity while the minor is officiating. Failure of the parent or guardian or designated adult to be present may result in the revocation of the employment certificate.

(2) The employer must obtain certification as provided for in Section 9 of this Act [820 ILCS 205/9].

(3) The minor may work as a sports official for a maximum of 3 hours per day on school days and a maximum of 4 hours per day on non-school days, may not exceed 10 hours of officiating in any week, and may not work later than 9 p.m.

(4) The participants in the youth sports activity must be at least 3 years younger than the officiating minor, or an adult must be officiating the same youth sports activity. For the purposes of this subdivision (4), "adult" means an individual 16 years of age or older.

(Source: P.A. 92-592, § 5; 93-720, § 5.)

Effective Date. Section 99 of P.A. 92-592 made this section effective upon becoming law. The Act was approved June 27, 2002.

Effect of Amendments. The 2004 amendment by P.A. 93-720, effective July 13, 2004, inserted "or an adult designated by the parent or guardian" and "or designated adult" in subdivision (1).

§ 820 ILCS 205/3. [Restrictions on hours of work]

Sec. 3. Except as hereinafter provided, no minor under 16 years of age shall be employed, permitted, or allowed to work in any gainful occupation mentioned in Section 1 of this Act [820 ILCS 205/1] for more than 6 consecutive days in any one week, or more than 48 hours in any one week, or more than 8 hours in any one day, or be so employed, permitted or allowed to work between 7 p.m. and 7 a.m. from Labor Day until June 1 or between 9 p.m. and 7 a.m. from June 1 until Labor Day.

The hours of work of minors under the age of 16 years employed outside of school hours shall not exceed 3 a day on days when school is in session, nor shall the combined hours of work outside and in school exceed a total of 8 a day; except that a minor under the age of 16 may work both Saturday and Sunday for not more than 8 hours each day if the following conditions are met: (1) the minor does not work outside school more than 6

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consecutive days in any one week, and (2) the number of hours worked by the minor outside school in any week does not exceed 24.

A minor 14 or more years of age who is employed in a recreational or educational activity by a park district, not-for-profit youth club, or municipal parks and recreation department while school is in session may work up to 3 hours per school day twice a week no later than 9 p.m. if the number of hours worked by the minor outside school in any week does not exceed 24 or between 10 p.m. and 7 a.m. during that school district's summer vacation, or if the school district operates on a 12 month basis, the period during which school is not in session for the minor.

(Source: P.A. 87-139; 90-410, § 5; 92-592, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.3.

Effect of Amendments. The 1997 amendment by P.A. 90-410, effective January 1, 1998, in the first sentence of the first paragraph, added "Except as hereinafter provided" at the beginning; and added the third paragraph.

The 2002 amendment by P.A. 92-592, effective June 27, 2002, inserted "not-for-profit youth club" following "park district" in the third paragraph.

Practice Guides and Treatises.

1-2 Employment in Illinois § 2-5 Hiring of Minors.

§ 820 ILCS 205/4. [Meal period]

Sec. 4. No minor under sixteen (16) years of age shall be employed, or permitted to work in any gainful occupations mentioned in Section 1 of this Act [820 ILCS 205/1] for more than five (5) hours continuously without an interval of at least thirty (30) minutes for meal period, and no period of less than thirty (30) minutes shall be deemed to interrupt a continuous period of work.

(Source: Laws 1945, p. 754.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.4.

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§ 820 ILCS 205/5. [Posting of notice]

Sec. 5. Every employer covered by this Act shall post in a conspicuous place where minors under 16 years of age are employed, or allowed to work, a printed abstract of this Act and a list of the occupations prohibited to such minors, to be furnished by the Department of Labor. Such employers shall post in a conspicuous place where minors under 16 years of age are employed, or allowed to work a printed notice stating the hours of commencing and stopping work, the hours when the time or times allowed for dinner or other meals, begin and end, and the Department's toll free telephone number established under Section 17.4 [820 ILCS 205/17.4]. The printed form of such notice shall be furnished by the Department of Labor.

(Source: P.A. 84-551; 88-365, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.5.

§ 820 ILCS 205/6. [Register of minor employees]

Sec. 6. It shall be the duty of every employer of minors between the ages of 14 and 16 years employed for or in connection with any gainful occupation mentioned in Section 1 [820 ILCS 205/1] to keep a register upon the premises where the work is being done on which register shall be recorded the name, age and place of residence of every minor between the ages of 14 and 16 years. It shall be unlawful for any person, firm or corporation to hire or employ or to permit or allow to work in or for or in connection with any of the gainful occupations mentioned in Section 1 [820 ILCS 205/1], any minor between the ages of 14 and 16 years unless there is first procured and placed on file on the premises where the work is being done, employment certificates issued as hereinafter provided and accessible to the authorized officers and employees of the Department of Labor, and to the truant officers and other school officials charged with the enforcement of the compulsory education law [105 ILCS 5/26-1 et seq.].

(Source: P.A. 84-551.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.6.

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CASE NOTES

Violation

- Shown

Even though the plaintiff misrepresented her age upon applying for employment at defendant's factory, the jury had the right to reasonably infer from the facts that an employment certificate for the plaintiff was not on file and that defendant did not keep a register recording the name and other data relative to plaintiff or other minors under the age of 16 years employed or permitted to work in its factory; therefore, it was properly determined that the defendant violated former section 18 of the Child Labor Act (see now this section). Hylak v. Marcal, Inc., 335 Ill. App. 48, 80 N.E.2d 411 (1 Dist. 1948).

§ 820 ILCS 205/7. [Prohibited occupations]

Sec. 7. No minor under 16 years of age shall be employed, permitted or allowed to work:

1.In, about or in connection with any public messenger or delivery service, bowling alley, pool room, billiard room, skating rink, exhibition park or place of amusement, garage, or as a bell-boy in any hotel or rooming house or about or in connection with power-driven machinery; except this subsection shall not apply to ice skating rinks owned and operated by a school or unit of local government;

2.In the oiling, cleaning or wiping of machinery or shafting;

3.In or about any mine or quarry; provided that office and messenger and other non-hazardous employment shall not be prohibited by this Act;

4.In stone cutting or polishing;

5.In or about any hazardous factory work;

6.In or about any plant manufacturing explosives or articles containing explosive components, or in the use or transportation of same; provided that office and messenger and other non-hazardous employment shall not be prohibited by this Act;

7.In or about plants manufacturing iron or steel, ore reduction works, smelters, foundries, forging shops, hot rolling mills or any other place in which the heating, melting, or heat treatment of metals is carried on; provided that office and messenger and other non-hazardous employment shall not be prohibited by this Act;

8.In the operation of machinery used in the cold rolling of heavy metal stock, or in the operation of power-driven punching, shearing, stamping, or metal plate bending machines;

9.In or about sawmills or lath, shingle, or cooperage-stock mills; provided that office and messenger and other non-hazardous employment shall not be prohibited by this Act;

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10.In the operation of power-driven woodworking machines, or off-bearing from circular saws;

11.In the operation of freight elevators or hoisting machines and cranes;

12.In spray painting or in occupations involving exposure to lead or its compounds or to dangerous or poisonous dyes or chemicals;

13.In any place or establishment in which intoxicating alcoholic liquors are served or sold for consumption on the premises, or in which such liquors are manufactured or bottled, except as follows:

(A) bus-boy and kitchen employment, not otherwise prohibited, when in connection with the service of meals at any private club, fraternal organization or veteran's organization shall not be prohibited by this subsection;

(B) this subsection 13 does not apply to employment that is performed on property owned or operated by a park district, as defined in subsection (a) of Section 1-3 of the Park District Code [70 ILCS 1205/1-3], if the employment is not otherwise prohibited by law;

14.In oil refineries, gasoline blending plants, or pumping stations on oil transmission lines;

15.In the operation of laundry, dry cleaning, or dyeing machinery;

16.In occupations involving exposure to radioactive substances;

17.In or about any filling station or service station;

18.In construction work, including demolition and repair;

19.In roofing operations;

20.In excavating operations;

21.In logging operations;

22.In public and private utilities and related services;

23.In operations in or in connection with slaughtering, meat packing, poultry processing, and fish and seafood processing;

24.In operations which involve working on an elevated surface, with or without use of equipment, including but not limited to ladders and scaffolds;

25.In security positions or any occupations that require the use or carrying of a firearm or other weapon; or

26.In occupations which involve the handling or storage of human blood, human blood products, human body fluids, or human body tissues.

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(Source: P.A. 84-551; 88-365, § 10; 90-410, § 5; 95-180, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.7.

Effect of Amendments. The 1997 amendment by P.A. 90-410, effective January 1, 1998, in subsection 13., in the introductory language, substituted "except as follows" for "provided that"; added the subdivision 13(A) designation; and added subdivision 13(B).

The 2007 amendment by P.A. 95-180, effective January 1, 2008, added ""human" four times in 26.

CASE NOTES

Analysis

Employment Required
Non-Hazardous Occupations
- Paper Manufacturing Factory
Prohibited Occupations
- Service Station
Purpose

Employment Required

Limiting application of the Child Labor Laws to the employed is not unreasonable, although extension of the coverage of the Child Labor Laws is more properly within the realm of the legislative branch of government than the judicial branch; as employment, not just work, was required before this Act could be violated, where 12 year old plaintiff was not employed, this section was not violated. Eads ex rel. Helfand v. Thomas, 167 Ill. App. 3d 529, 118 Ill. Dec. 346, 521 N.E.2d 628 (4 Dist. 1988).

Non-Hazardous Occupations

- Paper Manufacturing Factory

There was no proof that the employment at defendant's paper manufacturing factory was an employment that the Department of Labor found to be dangerous to minors lives or limbs; therefore, plaintiff failed to prove violation of former section 26 of the Child Labor Act (see now this section). Hylak v. Marcal, Inc., 335 Ill. App. 48, 80 N.E.2d 411 (1 Dist. 1948).

Prohibited Occupations

- Service Station

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Court concluded that the record indicated that the minor was merely doing work for the owner of the service station and was not an employee of either the service station or the garage at the time that the wheel exploded; thus, the limiting of the Illinois Child Labor Law, former Ill. Rev. Stat. ch. 48, para. 31.7(17) (now 820 ILCS 205/7), to those employed was not unreasonable. Eads v. Thomas, 167 Ill. App. 3d 529, 118 Ill. Dec. 346, 521 N.E.2d 628, 1988 Ill. App. LEXIS 392 (1 Dist. 1988).

Under Illinois Child Labor Law, former Ill. Rev. Stat. ch. 48, para. 31.7(17) (now 820 ILCS 205/7), no minor under the age of 16 shall be employed, permitted, or suffered to work in or about any filling station or service station. Eads v. Thomas, 167 Ill. App. 3d 529, 118 Ill. Dec. 346, 521 N.E.2d 628, 1988 Ill. App. LEXIS 392 (1 Dist. 1988).

Purpose

The legislative purpose of this section to protect children against the risks of working in certain employments which involve dangers the minors would probably be unable or unlikely to protect themselves against by reason of their immaturity, inexperience or heedlessness. Yerk ex rel. Wierck v. Rockford Coca Cola Bottling Co., 12 Ill. App. 3d 299, 298 N.E.2d 319 (2 Dist. 1973).

OPINIONS OF ATTORNEY GENERAL

Analysis
Exception
Theatrical Productions

Exception

Section 8 of the Child Labor Law (820 ILCS 205/8) is an exception to other provisions of the act. 1979 Op. Atty. Gen. 35.

Theatrical Productions

A minor under the age of 16 may appear in a theatrical production in a theater where liquor is served under the provisions of this section of the Child Labor Law (820 ILCS 205/8). 1979 Op. Atty. Gen. 35.

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 5:03 Hazardous occupations.

§ 820 ILCS 205/8. Authority to issue employment certificates

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Sec. 8. Authority to issue employment certificates. (a) Notwithstanding the provisions of this Act, the City or County Superintendent of Schools, or their duly authorized agents, are authorized to issue an employment certificate for any minor under sixteen (16) years of age, said certificate authorizing and permitting the appearance of such minor in a play or musical comedy with a professional traveling theatrical production on the stage of a duly licensed theatre wherein not more than two performances are given in any one day and not more than eight performances are given in any one week, or nine when a holiday occurs during the week, or in a musical recital or concert: Provided, that such minor is accompanied by his parent or guardian or by a person in whose care the parent or guardian has placed the minor and whose connection with the performance or with the operation of the theatre in which the minor is to appear is limited to the care of such minor or of minors appearing therein: And provided further, that such minor shall not appear on said stage or in a musical recital or concert, attend rehearsals, or be present in connection with such appearance or rehearsals, in the theatre where the play or musical comedy is produced or in the place where the concert or recital is given, for more than a total of six (6) hours in any one day, or on more than six (6) days in any one week, or for more than a total of twenty-four (24) hours in any one week, or after the hour of 11 postmeridian; and provided further, no such minor shall be excused from attending school except as authorized pursuant to Section 26-1 of the School Code [105 ILCS 5/26-1]. Application for such certificate shall be made by the manager of the theatre, or by the person in the district responsible for the musical recital or concert, and by the parent or guardian of such minor to the City or County Superintendent of Schools or his authorized agent at least fourteen (14) days in advance of such appearance. The City or County Superintendent of Schools or his agent may issue a permit if satisfied that adequate provision has been made for the educational instruction of such minor, for safeguarding his health and for the proper moral supervision of such minor, and that proper rest and dressing room facilities are provided in the theatre for such minor.

(b) Notwithstanding the provisions of this Act, the City or Regional Superintendent of Schools, or their duly authorized agents, are authorized to issue an employment certificate for any minor under 16 years of age, such certificate authorizing and permitting the appearance of such minor as a model or in a motion picture, radio or television production: Provided, that no such minor shall be excused from attending school except as authorized pursuant to Section 26-1 of The School Code. The Department of Labor shall promulgate rules and regulations to carry out the provisions of this subsection. Such rules and regulations shall be designed to protect the health and welfare of child models or actors and to insure that the conditions under which minors are employed, used or exhibited will not impair their health, welfare, development or proper education.

(c) In situations where a minor from another state seeks to obtain an Illinois employment certificate, the Department shall work with a City or Regional Superintendent of Schools, or the State Superintendent of Education, or his or her duly authorized agents, to issue the certificate. The Superintendent may waive the requirement in Section 12 of this Act [820 ILCS 205/12] that a minor submit his or her application in person, if the minor resides in another state.

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(Source: P.A. 84-436; 84-675; 96-1247, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.8.

Effect of Amendments. The 2010 amendment by P.A. 96-1247, effective July 23, 2010, added the section heading; and added (c).

OPINIONS OF ATTORNEY GENERAL

Analysis
Exception
Service of Liquor

Exception

This section is an exception to other provisions of the act. 1979 Op. Atty. Gen. 35.

Service of Liquor

A minor under the age of 16 may appear in a theatrical production in a theater where liquor is served. 1979 Op. Atty. Gen. 35.

§ 820 ILCS 205/8.1. [Exceptions for models, performers]

Sec. 8.1. (a) Notwithstanding the provisions of this Act, minors under 16 years of age may be employed as models, or as performers on live or pre-recorded radio or television, or in motion pictures, or in other entertainment-related performances, subject to reasonable conditions to be imposed by rule of the Department of Labor. This Section shall not apply to employment covered under Section 8 of this Act [820 ILCS 205/8].

(b) Notwithstanding the provisions of this Act, an employer who employs a minor under 16 years of age in a television, motion picture, or related entertainment production may apply to the Director of Labor, or his or her authorized representative, for a special waiver from that portion of Section 3 of this Act [820 ILCS 205/3] that prohibits the employment of a minor under 16 years of age between 7 p.m. and 7 a.m. from Labor Day to June 1 or between 9 p.m. and 7 a.m. from June 1 until Labor Day. An employer applying for the waiver shall submit to the Director of Labor, or his or her authorized representative, a completed application on the form that the Director of Labor provides.

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The Director of Labor, or his or her authorized representative, shall issue the waiver if, after investigation, he or she is satisfied that (i) the employment will not be detrimental to the health or welfare of the minor, (ii) the minor will be supervised adequately, and (iii) the education of the minor will not be neglected. The waiver shall contain signatures that show the consent of a parent or legal guardian of the minor, the employer, and an authorized representative of a collective bargaining unit if a collective bargaining unit represents the minor upon employment. The Department of Labor shall promulgate and publish all necessary rules for the enforcement of this Section, in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.], within 60 days after the effective date of this amendatory Act of 1994.

(Source: P.A. 84-834; 88-594, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.8-1.

Effect of Amendments. The 1994 amendment by P.A. 88-594, effective August 26, 1994, added the subsection (a) designation; and added subsection (b).

§ 820 ILCS 205/9. [Employment certificate - requirement]

Sec. 9. Except in occupations specifically exempted by Section 2 [820 ILCS 205/2] and agriculture, no minor under 16 years of age shall be employed, permitted or allowed to work in any gainful occupation unless the person, firm or corporation employing such minor procures and keeps on file an employment certificate.

(Source: P.A. 84-551.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.9.

CASE NOTES

Analysis
Purpose

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Remedies

Purpose

The prohibition contained in section 2 of the former Child Labor Act (see now this section) against employment without securing an employment certificate was absolute; the purpose of that act was the protection of the lives, persons, health, well being, and physical and mental development of children under 16 years of age. When the employer's unlawful employment of the child was the proximate cause of the child's injury, the employer was liable in an action for the damages suffered by the child. Gill v. Boston Store of Chicago Inc., 337 Ill. 70, 168 N.E. 895 (1929).

Remedies

Minor, under the age of 16 years, who allegedly sustained injuries through the negligence of his employer, and who was illegally employed in that no employment certificate was secured as required by this section, was entitled to reject the benefits of the Workers' Compensation Act (820 ILCS 305/1 et seq.) and sue the employer at common law. Ginsberg v. Coca-Cola Bottling Co., 285 F.2d 77 (7th Cir. 1961).

Practice Guides and Treatises.

1-2 Employment in Illinois § 2-5 Hiring of Minors.

Illinois Jurisprudence, Labor and Employment § 5:05 Employment certificates requirement.

§ 820 ILCS 205/10. [Employment certificate - contents]

Sec. 10. Employment certificates shall permit employment during the school vacation or outside of school hours. The employment certificate shall be signed by the City or County Superintendent of Schools or their duly authorized agents and shall be in such a form as to show on its face the information and evidence required by Section 11 [820 ILCS 205/11] to be filed before the certificate is issued. An original certificate and 3 copies of the certificate shall be issued and the person issuing it shall:

(i) mail the original to the minor's employer,

(ii) send copies to the State Department of Labor and to the minor's parent or legal guardian, and

(iii) retain a copy in his files.

(Source: Laws 1945, p. 754; P.A. 88-365, § 10.)

Note.

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This section was Ill.Rev.Stat., Ch. 48, Para. 31.10.

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 5:05 Employment certificates requirement.

§ 820 ILCS 205/11. Employment certificate issuance; duration; revocation

Sec. 11. Employment certificate issuance; duration; revocation. (a) The employment certificate shall be issued by the City or County Superintendent of Schools or by their duly authorized agents and shall be valid for a period of one year. The person issuing these certificates shall have authority to administer the oaths provided for herein, but no fee shall be charged. It shall be the duty of the school board or local school authority, to designate a place or places where certificates shall be issued and recorded, and physical examinations made without fee, as hereinafter provided, and to establish and maintain the necessary records and clerical services for carrying out the provisions of this Act.

The issuing officer shall notify the principal of the school attended by the minor for whom an employment certificate for out of school work is issued by him.

The parent or legal guardian of a minor, or the principal of the school attended by the minor for whom an employment certificate has been issued may ask for the revocation of the certificate by petition to the Department of Labor in writing, stating the reasons he believes that the employment is interfering with the best physical, intellectual or moral development of the minor. The Department of Labor shall thereupon revoke the employment certificate by notice in writing to the employer of the minor.

(b) In situations where a minor from another state seeks to obtain an Illinois employment certificate, the Department shall work with a City or Regional Superintendent of Schools, or the State Superintendent of Education, or his or her duly authorized agents, to issue the certificate. The Superintendent may waive the requirement in Section 12 of this Act [820 ILCS 205/12] that a minor submit his or her application in person, if the minor resides in another state.

(Source: Laws 1945, p. 754; P.A. 88-365, § 10; 96-1247, § 5.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.11.

Effect of Amendments. The 2010 amendment by P.A. 96-1247, effective July 23, 2010, added the section heading; added the (a) designation; and added (b).

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§ 820 ILCS 205/12. [Employment certificate - application]

Sec. 12. The person authorized to issue employment certificates shall issue a certificate only after examining and approving the written application and other papers required under this Section. The application shall be signed by the applicant's parent or legal guardian. The application shall be submitted in person by the minor desiring employment. The minor shall be accompanied by his or her parent, guardian, or custodian. The following papers shall be submitted with the application:

1.A statement of intention to employ signed by the prospective employer, or by someone duly authorized by him, setting forth the specific nature of the occupation in which he intends to employ such minor and the exact hours of the day and number of hours per day and days per week during which the minor shall be employed.

2.Evidence of age showing that the minor is of the age required by this Act, which evidence shall be documentary, and shall be required in the order designated, as follows:

a.a birth certificate or transcript thereof furnished by the State or County or a signed statement of the recorded date and place of birth issued by a registrar of vital records, or other officer charged with the duty of recording births, such registration having been completed within 10 years after the date of birth;

b.a certificate of baptism, or transcript thereof, duly certified, showing the date of birth and place of baptism of the child;

c.other documentary proof of age (other than a school record or an affidavit of age) such as a bona fide record of the date and place of the child's birth, kept in the Bible in which the records of births, marriages and deaths in the family of the child are preserved; a certificate of confirmation or other church ceremony at least one year old, showing the age of the child and the date and place of the confirmation or ceremony; or a certificate of arrival in the United States, issued by the United States Immigration Officer, showing the age of the child; or a life insurance policy at least one year old showing the age of the child;

d.If none of the proofs of age described in items a, b and c are obtainable, and only in that case, the issuing officer may accept a certificate signed by a physician, who shall be a public health officer or a public school physician, stating that he has examined the child and that in his opinion the child is at least of the age required by this Act. The certificate shall show the height and weight of the child, the condition of the child's teeth, and any other facts concerning the child's physical development revealed by the examination and upon which his opinion as to the child's age is based, and shall be accompanied by a school record of age.

3.A statement on a form approved by the Department of Labor and signed by the principal of the school that the minor attends, or during school holidays when the principal is not available, then by the regional superintendent of schools or by a person designated by him for that purpose, showing the minor's name, address, social security number, grade last completed, and the names of his parents, provided that the statement

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shall be required only in the case of a minor who is employed on school days outside school hours, or on Saturdays or other school holidays during the school term.

4.A statement of physical fitness signed by a public health or public school physician who has examined the minor, certifying that the minor is physically fit to be employed in all legal occupations or to be employed in legal occupations under limitations specified. If the statement of physical fitness is limited, the employment certificate issued thereon shall state clearly the limitations upon its use, and shall be valid only when used under the limitations so stated.

In any case where the physician deems it advisable he may issue a certificate of physical fitness for a specified period of time, at the expiration of which the person for whom it was issued shall appear and be re-examined before being permitted to continue work.

Examinations shall be made in accordance with the standards and procedures prescribed by the State Director of the Department of Labor, in consultation with the State Director of the Department of Public Health and the State Superintendent of Education, and shall be recorded on a form furnished by the Department of Labor. When made by public health or public school physicians, the examination shall be made without charge to the minor. In case a public health or public school physician is not available, a statement from a private physician who has examined the minor may be accepted, provided that the examination is made in accordance with the standards and procedures established by the Department of Labor.

If the issuing officer refuses to issue a certificate to a minor, the issuing officer shall send to the principal of the school last attended by the minor the name and address of the minor and the reason for the refusal to issue the certificate.

(Source: P.A. 87-895; 88-365, § 10.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.12.

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 5:06 Prerequisites for certificate.

§ 820 ILCS 205/13. [Employment certificate - retained by employer during period of employment]

Sec. 13. Every employer, during the period of employment of a minor under 16 years of age, shall keep on file at the place of employment an employment certificate issued for such minor. Any employer, upon termination of the employment of such minor, shall

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immediately return the certificate issued to the issuing officer. An employment certificate shall be valid only for the employer for whom issued, and a new certificate shall not be issued for the employment of a minor under 16 years of age except on the presentation of a new statement of intention to employ. The failure of any employer to produce for inspection such employment certificate for each minor in his establishment shall be prima facie evidence that the minor is employed without a certificate.

(Source: P.A. 78-607.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.13.

§ 820 ILCS 205/14. [Certificate of age]

Sec. 14. Upon request, the issuing officer shall issue a certificate of age to any person between sixteen (16) and twenty (20) years of age upon presentation of the same proof of age as is required for the issuance of employment certificates under this Act.

(Source: Laws 1945, p. 754.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.14.

§ 820 ILCS 205/15. [Employment certificate - prima facie evidence of age]

Sec. 15. Any certificate duly issued in accordance with this Act shall be prima facie evidence of the age of the minor for whom issued in any proceeding involving the employment of the minor under the Child Labor Law of the State [820 ILCS 205/1 et seq.], as to any act occurring subsequent to its issuance, or until revoked.

(Source: Laws 1945, p. 754.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.15.

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§ 820 ILCS 205/16. [Rules and regulations]

Sec. 16. The Department of Labor shall make, promulgate and enforce such reasonable rules and regulations relating to the administration and enforcement of the provisions of this Act, including the issuance of certificates authorized under this Act, as may be deemed expedient. The Department shall promulgate and publish all necessary rules for the enforcement of this Act, in accordance with the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.], within 60 days after the effective date of this amendatory Act of 1991. In order to promote uniformity and efficiency of issuance, it shall in consultation with the State Superintendent of Education formulate the forms on which certificates shall be issued and also forms needed in connection with such issuance, and it shall supply such forms to the issuing officers. The Department of Labor, its deputies and inspectors, may suspend any certificate as an emergency action imperatively required for the public health, safety and welfare of minors if in their judgment it was improperly issued or if the minor is illegally employed. If the certificate is so suspended the employer and all interested parties shall be notified of such suspension in writing and such minor shall not thereafter be employed, permitted, or allowed to work until a final order is issued by the Department of Labor after a hearing either reinstating or revoking the certificate. The hearing shall commence within 21 days after the date of any such suspension. If the certificate is revoked the minor shall not thereafter be employed, permitted or allowed to work until a new certificate for the minor's employment has been obtained.

(Source: P.A. 87-139.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.16.

§ 820 ILCS 205/17. [Enforcement]

Sec. 17. It shall be the duty of the Department of Labor to enforce the provisions of this Act. The Department of Labor shall have the power to conduct investigations in connection with the administration and enforcement of this Act and the authorized officers and employees of the Department of Labor are hereby authorized and empowered, to visit and inspect, at all reasonable times and as often as possible, all places covered by this Act. Truant officers and other school officials authorized by the board of education or school directors shall report violations under this Act to the Department of Labor, and may enter any place in which children are, or are believed to be employed and inspect the work certificates on file. Such truant officers or other school officials also are authorized to file complaints against any employer found violating the provisions of this Act in case no complaints for such violations are pending; and when

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such complaints are filed by truant officers or other school officials the State's attorneys of this state shall appear for the people, and attend to the prosecution of such complaints. The Department of Labor shall conduct hearings in accordance with "The Illinois Administrative Procedure Act," approved September 22, 1975, as amended [5 ILCS 100/1-1 et seq.], upon written complaint by an investigator of the Department of Labor, truant officer or other school official, or any interested person of a violation of the Act or to revoke any certificate under this Act. After such hearing, if supported by the evidence, the Department of Labor may issue and cause to be served on any party an order to cease and desist from violation of the Act, take such further affirmative or other action as deemed reasonable to eliminate the effect of the violation, and may revoke any certificate issued under the Act and determine the amount of any civil penalty allowed by the Act. The Director of Labor or his authorized representative may compel by subpoena, the attendance and testimony of witnesses and the production of books, payrolls, records, papers and other evidence in any investigation or hearing and may administer oaths to witnesses.

(Source: P.A. 80-1482.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.17.

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 5:08 Enforcement.

§ 820 ILCS 205/17.1. [Judicial review]

Sec. 17.1. Any party to a proceeding under the Act may apply for and obtain judicial review of an order of the Department of Labor entered under this Act in accordance with the provisions of the Administrative Review Law, as amended [735 ILCS 5/3-101 et seq.], and the Department in proceedings under this Section may obtain an order of court for the enforcement of its order.

(Source: P.A. 82-783.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.17-1.

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§ 820 ILCS 205/17.2. [Contempt]

Sec. 17.2. Whenever it appears that any employer has violated a valid order of the Department of Labor issued under this Act the Director of Labor may commence an action and obtain from the court an order upon the employer commanding him to obey the order of the Department or be adjudged guilty of contempt of court and punished accordingly.

(Source: P.A. 80-1482.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.17-2.

§ 820 ILCS 205/17.3. [Civil penalty]

Sec. 17.3. Any employer who violates any of the provisions of this Act or any rule or regulation issued under the Act shall be subject to a civil penalty of not to exceed $5,000 for each such violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the employer charged and the gravity of the violation shall be considered. The amount of such penalty, when finally determined, may be

(1) recovered in a civil action brought by the Director of Labor in any circuit court, in which litigation the Director of Labor shall be represented by the Attorney General;

(2) ordered by the court, in an action brought for violation under Section 19 [820 ILCS 205/19], to be paid to the Director of Labor.

Any administrative determination by the Department of Labor of the amount of each penalty shall be final unless reviewed as provided in Section 17.1 of this Act [820 ILCS 205/17.1].

Civil penalties recovered under this Section shall be paid into the Child Labor and Day and Temporary Labor Enforcement Fund, a special fund which is hereby created in the State treasury. Moneys in the Fund may be used, subject to appropriation, for exemplary programs, demonstration projects, and other activities or purposes related to the enforcement of this Act or for the activities or purposes related to the enforcement of the Day and Temporary Labor Services Act [820 ILCS 175/1 et seq.].

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(Source: P.A. 87-139; 88-365, § 10; 92-783, § 15.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.17-3.

Effect of Amendments. The 1993 amendment by P.A. 88-365, effective August 16, 1993, in the second sentence of the third paragraph inserted "exemplary programs, demonstration projects, and other".

The 2002 amendment by P.A. 92-783, effective January 1, 2003, in the last paragraph in the first sentence inserted "and Day and Temporary Labor", in the second sentence substituted "Moneys" for "Monies" and "may" for "shall", and added "or for the activities or purposes related to the enforcement of the Day and Temporary Labor Services Act" at the end.

CASE NOTES

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Civil Liability
- In General
- Illustrative Case
- Implied
- Jury Instructions
- Not Shown
- Verdict Upheld
- Work Related Injury
Defenses
- Contributory Negligence
- Lack of Knowledge
- Negligence of Parents
Violation
- Shown

Affirmative Defenses

Contributory negligence is not a permissible defense in a private action based on a violation of this Act. Vegich v. McDougal Hartmann Co., 84 Ill. 2d 461, 50 Ill. Dec. 650, 419 N.E.2d 918 (1981).

Civil Liability

- In General

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If an employer employed a child in violation of the statute, the employer would be liable if the child were injured while in such employment; the fact that the child falsely represented himself to be over the age of the protected class of children did not preclude him from maintaining an action to recover for an injury sustained while he was engaged in such employment nor did it furnish a defense to his employer against such action. Beauchamp v. Sturges & Burn Mfg. Co., 250 Ill. 303, 95 N.E. 204 (1911).

- Illustrative Case

Pursuant to section 1 of the Child Labor Act (former Ill. Rev. Stat., ch. 48, para. 17) (see now this Act), where plaintiff, a boy thirteen years of age, was employed to walk and cool off horses after workouts or races and paid every two weeks, he was engaged in gainful occupation in connection with a place of amusement; defendants, who permitted minor to work in violation of this Law, were liable for injuries sustained when plaintiff was kicked while walking and grazing one of the horses. Gorezunski v. Nugent, 402 Ill. 147, 83 N.E.2d 495 (1948).

- Implied

Where a statute was enacted for the protection of the health and safety of children, a liability for damages resulting from its violation was created whether it was expressly so declared in the statute or not. Beauchamp v. Sturges & Burn Mfg. Co., 250 Ill. 303, 95 N.E. 204 (1911).

- Jury Instructions

In action to recover damages for minor plaintiff who sustained injuries while working for defendant employer, where plaintiff did not tender an instruction concerning "loss of future earnings," he could not raise as error on appeal the court's failure to give the instruction. Frym ex rel. Frym v. Rovex Pharmacy, Inc., 10 Ill. App. 3d 173, 294 N.E.2d 39 (1 Dist. 1973).

- Not Shown

Where plaintiff was injured while illegally employed by defendant at work which was about or in connection with power-driven machinery (a bottle sorting machine) in violation of 820 ILCS 205/7, and where plaintiff suffered injuries during working hours in defendant's plant when he was assaulted by a fellow employee, the circumstances of the injury suffered here were in no way related to the danger against which that section sought to protect, so that liability was not imposed. Yerk ex rel. Wierck v. Rockford Coca Cola Bottling Co., 12 Ill. App. 3d 299, 298 N.E.2d 319 (2 Dist. 1973).

- Verdict Upheld

In action to recover damages for plaintiff who sustained injuries while working for defendant employer, where plaintiff at the trial introduced evidence of approximately $600 in medical expenses, and where the jury awarded plaintiff $4,500 in damages, the verdict was not so inadequate as to require a new trial on the issue of damages; nor was plaintiff prejudiced as a result of the trial court's refusal to direct verdict on the issue of liability. Frym ex rel. Frym v. Rovex Pharmacy, Inc., 10 Ill. App. 3d 173, 294 N.E.2d 39 (1 Dist. 1973).

- Work Related Injury

Compensation is proper only where it is shown that the injury arose out of some risk inherent in the conditions of employment; the mere fact that an employee was present at the place of injury because of his employment was insufficient, unless the injury itself was a result of some risk of the employment. Yerk ex rel. Wierck v. Rockford Coca Cola Bottling Co., 12 Ill. App. 3d 299, 298 N.E.2d 319 (2 Dist. 1973).

Defenses

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- Contributory Negligence

A child under 14 who was in appellant's plant, who temporarily abandoned the work he was employed and directed to do and was engaged in a forbidden line in violation of 820 ILCS 205/7, did not destroy the causal relation between the employment and the injury; as contributory negligence of the child constituted no defense, the court did not err in refusing to submit that question to the jury. Strafford v. Republic Iron & Steel Co., 238 Ill. 371, 87 N.E. 358 (1909).

- Lack of Knowledge

Lack of knowledge of the child's actual age is no defense even when a child employed misleads the employer as to his true age; it is the duty of those liable under this Act to see that children are not employed contrary to its provisions. Gorezunski v. Nugent, 402 Ill. 147, 83 N.E.2d 495 (1948).

- Negligence of Parents

The fact that the parents permitted the deceased to be employed in violation of this Act prevented recovery in a civil action by the administrator of the estate of the deceased. Newton v. Illinois Oil Co., 316 Ill. 416, 147 N.E. 465 (1925).

Violation

- Shown

Despite defendant's assertion that the illegal employment of plaintiff was not permitted or suffered by them, where defendant knew or could have known that plaintiff was under 14 years of age, was working at a gainful occupation, and that it had the power and right to prevent the employment, defendant was still guilty of violating this Act. Gorczynski v. Nugent, 335 Ill. App. 63, 80 N.E.2d 418 (1 Dist.), aff'd, 402 Ill. 147, 83 N.E.2d 495 (1948).

§ 820 ILCS 205/17.4. [Toll free telephone numbers]

Sec. 17.4. The Department of Labor shall establish a toll free telephone number to facilitate: (a) information requests concerning the issuance of certificates under this Act, and (b) the reporting of violations of this Act.

(Source: P.A. 87-139.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.17-4.

§ 820 ILCS 205/17.5. [Outreach and education]

Sec. 17.5. The Department of Labor shall conduct ongoing outreach and education efforts concerning this Act targeted toward school districts, employers, and other

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appropriate community organizations. The Department shall, to the extent possible, coordinate these outreach and education activities with other appropriate State and federal agencies.

(Source: P.A. 87-139.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.17-5.

§ 820 ILCS 205/17.6. Reports of work related death, injury, or illness

Sec. 17.6. Reports of work related death, injury, or illness. If an employer is required to file a report with the Illinois Workers' Compensation Commission under Section 6 of the Workers' Compensation Act [820 ILCS 305/6] or Section 6 of the Workers' Occupational Diseases Act [820 ILCS 310/6], and the report relates to the work related death, injury, or illness of a minor, the employer shall file a copy of the report with the Department of Labor. The Department may, by rule, require other employers to submit reports of work related deaths, injuries and illnesses of minors to the Department.

(Source: P.A. 88-365, § 10; 93-721, § 60.)

Effect of Amendments. The 2004 amendment by P.A. 93-721, effective January 1, 2005, substituted "Illinois Workers' Compensation" for "Industrial" in the first sentence.

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 5:06 Prerequisites for certificate.

§ 820 ILCS 205/18.2. Annual report

Sec. 18.2. Annual report. The Department shall file with the General Assembly, no later than January 1 each year, a report of its activities regarding administration and enforcement of this Act for the preceding fiscal year.

(Source: P.A. 88-365, § 10.)

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§ 820 ILCS 205/19. [Criminal penalty]

Sec. 19. Whoever wilfully employs or permits or allows any minor to be employed or to work in violation of this Act, or of any rule, regulation, order or ruling issued under the provisions of this Act, or whoever obstructs the Department of Labor, its inspectors or deputies, or any other person authorized to inspect places of employment under this Act, or whoever wilfully fails to comply with the provisions of Sections 5 and 6 of this Act [820 ILCS 205/5 and 820 ILCS 205/6], and whoever having under his, her or its control or custody any minor, wilfully permits or allows a minor to be employed or to work in violation of this Act, shall be guilty of a Class A misdemeanor. Each day during which any such violation of this Act continues shall constitute a separate and distinct offense, and such employment of any minor in violation of the Act shall, with respect to each minor so employed, constitute a separate and distinct offense. Whenever in the opinion of the Department of Labor such a violation of the Act has occurred it shall report said violation to the Attorney General of this State who shall prosecute all such violations reported.

(Source: P.A. 84-551.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.19.

CASE NOTES

Analysis

Defenses
- Lack of Knowledge
Effect of Violation on Wrongful Death Act
Violation
- Shown

Defenses

- Lack of Knowledge

Lack of knowledge of the child's actual age is no defense even when the child employed misleads the employer as to his true age; it is the duty of those liable under this Act to see that children are not employed contrary to its provisions. Gorezunski v. Nugent, 402 Ill. 147, 83 N.E.2d 495 (1948).

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Effect of Violation on Wrongful Death Act

The decedent minor's parents were barred from recovering damages in a wrongful death action because they violated this Act by permitting the decedent to be employed in violation of the Child Labor Law; however, the parents' violation of the statute did not bar the decedent minor's estate from recovering in a wrongful death action. Reed v. Witvoet, 311 Ill. App. 3d 735, 243 Ill. Dec. 954, 724 N.E.2d 553, 2000 Ill. App. LEXIS 63 (3 Dist. 2000).

Violation

- Shown

Despite defendant's assertion that the illegal employment of plaintiff was not permitted or suffered by them, where defendant knew or could have known that plaintiff was under 14 years of age, was working at a gainful occupation, and that it had the power and right to prevent the employment, defendant was still guilty of violating this Act. Gorczynski v. Nugent, 335 Ill. App. 63, 80 N.E.2d 418 (1 Dist.), aff'd, 402 Ill. 147, 83 N.E.2d 495 (1948).

Practice Guides and Treatises.

Illinois Jurisprudence, Labor and Employment § 5:08 Enforcement.

§ 820 ILCS 205/21. [Severability]

Sec. 21. If any part of this Act is decided to be unconstitutional and void, such decision shall not affect the validity of the remaining parts of this Act unless the part held void is indispensable to the operation of the remaining parts.

(Source: Laws 1945, p. 754.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.21.

CASE NOTES

Analysis
Constitutionality
Police Power

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Constitutionality

The Child Labor Acts of 1897 and 1917 (see now this Act) were not unconstitutional for lack of definition or standards; employments that were extrahazardous, or which were dangerous to life or limb, or where health may have been injured or morals depraved, were properly defined therein. Kowalczyk v. Swift & Co., 329 Ill. 308, 160 N.E. 588 (1928).

Prior similar provision regulating employment by children under 16 did not violate the 14th Amendment to the U.S. Constitution (U.S. Const., Amend. XIV). Sturges & Burn Mfg. Co. v. Beauchamp, 231 U.S. 320, 34 S. Ct. 60, 58 L. Ed. 245 (1913).

Police Power

Children under 16 years of age are wards of the state and are pre-eminently fit subjects for the protecting care of its police power. Beauchamp v. Sturges & Burn Mfg. Co., 250 Ill. 303, 95 N.E. 204 (1911).

§ 820 ILCS 205/22. [Short title]

Sec. 22. This Act may be known and cited as the "Child Labor Law".

(Source: Laws 1945, p. 754.)

Note.

This section was Ill.Rev.Stat., Ch. 48, Para. 31.22.

CASE NOTES

Analysis

Applicability
- Choice of Remedies
- Employment Contract
- Worker's Compensation Act
Purpose

Applicability

- Choice of Remedies

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Minor, under the age of 16 years, who allegedly sustained injuries through the negligence of his employer, and who was illegally employed in that no employment certificate was secured as required by section 9 of this Act (820 ILCS 205/9), was entitled to reject the benefits of the Workers' Compensation Act (820 ILCS 305/1 et seq.) and sue the employer at common law. Ginsberg v. Coca-Cola Bottling Co., 285 F.2d 77 (7th Cir. 1961).

- Employment Contract

Where the contract of employment, even though unenforceable by either party because it violated this Act, retained sufficient virility to establish the relationship of employer and employee within the intended meaning of the employment exclusion clause of the employer's insurance policy; therefore, coverage was excluded and insurer had no duty to defend. Sun Ins. Co. v. Azzarella, 58 Ill. App. 2d 107, 206 N.E.2d 792 (1 Dist. 1965).

A contract of employment of a minor in violation of this Act is a void contract and unenforceable by either party to it; but a minor thus employed is an employee as defined by the Workers' Compensation Act (820 ILCS 305/1 et seq.). Scarpelli v. Travelers Indem. Co., 248 F.2d 791 (7th Cir. 1957).

- Worker's Compensation Act

Although the hiring of a minor in violation of this Law is an illegal contract for the purposes of enforcement of the contract by either party, it is not absolutely void in all other respects, but has sufficient virility to fix the relation of master and servant for the purposes of sustaining the claim of the minor employee under the Worker's Compensation Act (820 ILCS 305/1 et seq.). Sun Ins. Co. v. Azzarella, 58 Ill. App. 2d 107, 206 N.E.2d 792 (1 Dist. 1965).

This Act and the Workers' Compensation Act (820 ILCS 305/1 et seq.) must be construed in pari materia. Scarpelli v. Travelers Indem. Co., 248 F.2d 791 (7th Cir. 1957).

Purpose

The prohibition contained in section 2 of the former Child Labor Act (see now 820 ILCS 205/9) against employment without securing an employment certificate was absolute; the purpose of that act was the protection of the lives, persons, health, well being, and physical and mental development of children under 16 years of age, and when the employer's unlawful employment of the child was the proximate cause of the child's injury, the employer was liable in an action for the damages suffered by the child, and the employer's property was not taken without due process of law, and it was not deprived of the equal protection of the law. Gill v. Boston Store of Chicago Inc., 337 Ill. 70, 168 N.E. 895 (1929).

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